

1 E. Mofson - DX

2 THE COURT: Good morning, ladies and  
3 gentlemen.

4 Appears everybody is present. Waive  
5 polling of the jury, gentlemen?

6 MR. VARGASON: Yes, Judge.

7 MR. MCGRAW: Yes, Your Honor.

8 THE COURT: Okay. Call your next witness,  
9 Mr. Vargason.

10 MR. VARGASON: Thank you, Judge.

11 People call Dr. Edward Mofson to the  
12 stand.

13 EDWARD MOFSON, a witness called on behalf of the People,  
14 after having been first duly sworn, took the witness  
15 stand and testified as follows:

16 DIRECT EXAMINATION BY MR. VARGASON:

17 Q. Good morning, sir.

18 A. Good morning.

19 Q. I am going to ask you some questions and ask  
20 that you keep your voice up so the jury won't have any  
21 problem hearing you, okay?

22 A. Fine.

23 Q. All right. Would you please tell the jury what  
24 your occupation is?

25 A. I am a dentist.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 Q. Okay, and where do you practice your profession?

3 A. My practice is in Syracuse.

4 Q. Okay. What degrees do you hold, Doctor?

5 A. I hold a Bachelor of Arts degree from Brooklyn  
6 College of the City of New York and DDS,  
7 Doctor of Dental Surgery degree from New York University.

8 Q. Okay, and do you have any military service?

9 A. Yes. I served in the United States Army dental  
10 corps from July of 1962 right after I graduated from dental  
11 school until November of 1964.

12 Q. Are you board certified, Doctor?

13 A. I am board certified in forensic odontology.

14 Q. Okay. Will you please explain to the jury what  
15 board certified means?

16 A. Board certification is a method of, of codifying  
17 one's qualifications. It's, it's granted by examination.

18 One must qualify to take the examination by  
19 demonstrating certain activity and expertise in the field  
20 of forensic odontology; and when you reach the necessary  
21 qualifications in that area, you are then given an  
22 examination which is a two-day written oral and practical  
23 examination which measures your degree of competency in the  
24 field.

25 Passing the examination grants certification in

1 E. Mofson - DX

2 the field. The Board requires that anyone who is certified  
3 must re-certify by demonstrating continued activity in the  
4 field every five years.

5 Q. Thank you very much.

6 Are you associated with any professional  
7 organizations?

8 A. Yes. I belong to the American Dental  
9 Association, Dental Society of the State of New York and  
10 the Onondaga County Dental Society, as well as the three  
11 organizations which constitute the forensic dental  
12 community, being the Dental Section of the American Academy  
13 of Forensic Sciences, the American Society of Forensic  
14 Odontology and the American Board of Forensic Odontology.

15 Q. Thank you. Doctor, do you do any consulting  
16 work in forensic dentistry?

17 A. Yes. I have consulted in forensic dentistry for  
18 many counties in the Central New York area, including  
19 Ulster County -- I will try to remember them all -- Madison  
20 County, Oneida County, Jefferson County, Tompkins County,  
21 Broome County, Cortland County, Cayuga County, Seneca,  
22 Onondaga.

23 I may -- pretty complete.

24 THE COURT: What is forensic odontology?

25 THE WITNESS: Forensic odontology is that

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 part of dentistry that, that, that consists of  
3 the, the proper obtaining and handling, the  
4 proper obtaining and handling of dental evidence  
5 and the proper, the proper -- what's the word I  
6 am looking for -- the proper presentation of  
7 that evidence in a court of law often or in  
8 depositions or in investigations towards the end  
9 that justice be done, whether the evidence is  
10 properly, properly analyzed and properly  
11 presented.

12 Q. Very good. Now, Doctor, do you hold any  
13 chairmanships?

14 A. Yes. I have been chairman since its inception  
15 of the Mass Disaster Committee of the Onondaga County  
16 Dental Society.

17 Q. Do you do any lecturing?

18 A. Yes. I lecture to the staff and residents in  
19 the dental program at St. Joseph's Hospital in Syracuse,  
20 New York.

21 I have lectured to the New York State County  
22 Coroners Medical Examiners Association.

23 I have lectured to the Fifth District Dental  
24 Society, which is the dental society which, that component  
25 of the dental society of the State of New York which

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 encompasses the Central New York area as well as to local  
3 study clubs.

4 Q. And, Doctor, in the past have you had  
5 opportunities to examine and evaluate dental findings in --  
6 or dental evidence --

7 A. Yes, yes, I have.

8 Q. -- rather? And in regard to this, have you had  
9 opportunities to present dental findings?

10 A. Yes.

11 Q. And the Judge has already asked you about  
12 forensic odontology. I will ask you, what is the role of  
13 an odontologist as an expert witness?

14 A. Well, in my opinion --

15 MR. MCGRAW: Objection, Your Honor.

16 A. My role as a forensic odontologist --

17 THE COURT: What's the objection?

18 MR. MCGRAW: I have an objection.

19 THE COURT: What's the objection?

20 MR. MCGRAW: What's his role? I think  
21 he's explained it.

22 THE COURT: I will allow it in,  
23 qualifications as an expert.

24 Proceed.

25 A. As an expert in the field I feel that my role is

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 to evaluate the dental evidence and to properly present it  
3 in an objective and professional manner such that the truth  
4 be found.

5 MR. MCGRAW: Your Honor, I object to self-  
6 serving, that whole last answer to the question.

7 THE COURT: Overruled.

8 Q. Doctor, is photography a part of odontology?

9 A. Yes, it is.

10 Q. Okay, and in what, what manner is it a part?

11 A. Well, one of the primary methods of bite mark  
12 analysis is to utilize photographs of the bite marks.

13 Q. Okay, and is there any specific film you use in  
14 obtaining this?

15 A. Well there are many films used but 35  
16 millimeter color film is the primary film used.

17 Q. Okay. Is there, or maybe you could describe to  
18 the jury in doing photographing of bite marks, is there a  
19 preferred method in doing that?

20 A. Yeah. It's rather, it's not only preferred but  
21 there are certain, certain techniques that are critical to  
22 the proper analysis of a bite mark. A bite mark must be  
23 photographed both full body photographs, so that the  
24 location of the bite mark can be oriented, and close up  
25 photography of the bite mark.

1 E. Mofson - DX

2 The bite mark must be photographed with a scale  
3 in the picture because the photograph for analysis purposes  
4 will have to be enlarged to a life-size photograph. The  
5 use of a scale in the picture enables the picture to be  
6 enlarged accurately to life-size.

7 It, to minimize the distortion in the  
8 photograph, the plane of the film and the plane of the bite  
9 mark must be kept as parallel to each other as possible.  
10 If the, if the photograph is taken at an angle to the bite  
11 mark, then the resulting picture will be a distorted  
12 picture of the bite mark.

13 Q. Doctor, in doing bite mark analysis, are there  
14 any specific questions you ask yourself in preparation?

15 A. Well, when I am called in, generally it's  
16 because some member of the team that's investigating the  
17 incident suspects that bite marks are present; and my first  
18 question to myself is: Is this, in fact, a bite mark?

19 My second question is: Is it a human bite mark?

20 If I answer those two questions to, positively  
21 to my own satisfaction, I then proceed with the photography  
22 and analysis of the mark.

23 Q. All right, and when you are interpreting bite  
24 marks, is there anything specific that you are looking for?

25 A. Yes. Their characteristic, shape and size of a

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 mark that tells you that it's possibly a bite mark; the  
3 semicircular ovoid or arc shape pattern injury; sometimes  
4 just bruising; sometimes with marks of individual marks  
5 within that arc shape strongly indicate the possibility of  
6 a bite mark.

7 Q. Okay, and would you please describe to the jury  
8 what impression medium means?

9 A. An impression medium is any medium that can be  
10 used or is used in dental practice, or I suppose you could  
11 say any, any medium in which you could impress the teeth  
12 if, we are talking about the teeth now, and be left with a  
13 negative impression of what the shape and size of those  
14 teeth were.

15 Q. Is skin considered a medium?

16 A. Well, anything that you could bite, and we are  
17 talking about impressions of teeth, anything you could bite  
18 into and leave evidence, leave a mark of some sort that the  
19 teeth bit into that, would be considered a medium. Some  
20 mediums, of course, are much more accurate in reproducing  
21 the teeth than others are.

22 Q. Okay, and how would you evaluate skin as a  
23 medium?

24 A. As an impression medium, skin is a very poor  
25 impression medium.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021



1 E. Mofson - DX

2 Q. Why is that?

3 A. Well, skin is elastic. Anyone ever -- you could  
4 take a pencil or a pen point and stick it in your skin and  
5 leave a, leave a mark there or a depression in your skin  
6 where you -- or your fingernail and in not too many minutes  
7 it disappears because the elasticity of, of the skin. So  
8 it doesn't hold an impression for a long period of time.

9 It's also distortable; that is to say, if you  
10 made that impression in one position and then took a  
11 photograph of it, you would see one type of mark. If you  
12 made that same impression in the same place but had your  
13 finger twisted around when you made the impression, then  
14 brought it back to the original position and photographed  
15 it, the mark wouldn't look the same because the skin having  
16 been stretched when the mark was made would distort the  
17 impression when the stretching was relaxed.

18 Q. And in evaluating the bite mark and skin as a  
19 medium, is it important to know whether the individual was  
20 alive or dead?

21 A. Well, some of the factors that go into -- for  
22 example, the whole question of distortion, which is the key  
23 one in analyzing a bite mark, is what was going on at the  
24 time of the bite. Was there a struggle going on? What was  
25 the position of the victim and the biter at the time the

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 bite was inflicted? Was there movement taking place,  
3 either one or both of the parties, were they moving? Was  
4 the part of the body that was being bitten in a relaxed  
5 position? Was it in a distorted or stretched position?

6 That is very difficult to tell when you look at,  
7 for example, a body with a bite mark on it. The body  
8 obviously is, when you see it, is in a relaxed position  
9 because that's the way it's been placed for examination  
10 purposes; but you can't tell what position the body was in  
11 when it was bitten and that may serve to distort the mark  
12 that you are looking at.

13 Q. And that would have an impact upon the quality  
14 or the characteristic of --

15 A. That would be an impact on the quality of the  
16 mark. It would have an impact on the accuracy of the mark  
17 in terms of reflection of the dentition that you are  
18 comparing.

19 Q. Does it matter where on the victim the bite mark  
20 is located?

21 A. It often does. The -- a bite mark, for example,  
22 on a part of a body that's, the skin is very close to the  
23 bone will leave a very different characteristic mark than a  
24 bite mark that was made on a part of the body, a very  
25 fleshy part of the body, a lot of fat in the area or muscle

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 tissue in the area.

3 Also, the surface area that's being bitten  
4 reflects itself in how many teeth or how much of the  
5 dentition you would expect to be reflected in the mark.

6 If I could make some sort of an analogy, if I  
7 took a stick and wrapped, a broomstick and wrapped a sheet  
8 of wax around it and asked you to bite into it, you could  
9 get that stick pretty far into your mouth and probably  
10 impress into the wax impressions of the teeth going well  
11 back into your mouth.

12 If I took the same sheet of wax and laid it on  
13 top of the surface like this and asked you to bite into it,  
14 it probably would be very difficult for you to impress more  
15 than just a very few of your front teeth because you  
16 couldn't grab hold of that surface.

17 Well, the same thing would be true, for example,  
18 if a bite is made on the back or the chest versus a wrist  
19 or a calf or an ankle.

20 Q. Okay. Very good. Thank you.

21 Did there come a time when you were requested by  
22 law enforcement officials in Cayuga County to come to  
23 Cayuga County, Doctor?

24 A. Yes.

25 Q. And what was the purpose of that?

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 A. I received a call and I don't -- it was the past  
3 summer of '91, I am not sure exactly when, by Dr. Ross,  
4 Cayuga County.

5 Q. And did you, in fact, respond to Cayuga County?

6 A. Yes, I did.

7 Q. Where did you go?

8 A. I went to the hospital in Auburn. I don't  
9 remember the name of it. It's where the county morgue is  
10 located.

11 Q. Did you have an opportunity to examine someone  
12 at the morgue?

13 A. Yes. When I got to the morgue, there were  
14 several people, including Dr. Ross, in the room and the  
15 body of a deceased female on the examining table.

16 Q. And were you -- was that individual identified  
17 to you as Sabina Kulakowski?

18 A. Was told to me that was Sabina Kulakowski, yes.

19 Q. And what, if anything, did you observe on Sabina  
20 Kulakowski?

21 A. Well, it was, the body was laid out on the  
22 table, very marked up kind of a body. There were many,  
23 many bruises and scrapes and what looked to me like --  
24 well, I didn't know what they were, I am not an expert, but  
25 large red areas. I thought perhaps they were burns or they

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 were abrasions. Several puncture wounds on the body and  
3 several bruises that my attention was drawn to particularly  
4 by Dr. Ross for, as the reason that she called me and asked  
5 me, did I think that these bruises in particular were bite  
6 marks?

7 Q. Okay, and based upon your examination of Sabina  
8 Kulakowski, did you arrive at an opinion within a  
9 reasonable degree of dental certainty as to whether there  
10 were bite marks on Sabina?

11 A. Yeah. I looked at the marks and based upon some  
12 of the characteristics that I mentioned before, my opinion  
13 was that the marks that Dr. Ross asked me to look at were,  
14 in fact, human bite marks.

15 Q. Thank you, and describe for the jury, please,  
16 what steps you next took.

17 A. I directed to some degree -- there was some  
18 photography being done of the marks and I contributed to  
19 some degree in my, my feeling about how the photography  
20 should have been done, and we did many photographs of the  
21 marks that I was examining, color photographs, at different  
22 angles and different distances from the marks.

23 Q. Okay, and do you have any of those photographs  
24 with you here today?

25 A. Yes, I have.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 (People's Exhibit 59 through 67, photographs, were  
3 marked for identification.)

4 Q. Doctor, I am going to show you what's been  
5 marked as People's Exhibit 59 and ask if you could identify  
6 that for us, please?

7 A. Yeah. It's a photograph of one of the bite  
8 marks, one of the marks that we took at that time.

9 Q. And does that photograph fairly and accurately  
10 depict the bite mark that you saw on Sabina Kulakowski on  
11 the day in question?

12 A. Yes, I believe it does.

13 Q. Okay. I am going to show you what's been marked  
14 as People's Exhibit 60 and ask if you could identify that  
15 for us, please?

16 A. It's a photograph of another of the marks taken  
17 at the same time.

18 Q. Okay, and again, does that photograph fairly and  
19 accurately depict the bite mark as you saw it on Sabina  
20 Kulakowski on the day in question?

21 A. Yes, it does.

22 Q. Okay. I will show you what's been marked as  
23 People's Exhibit 61, ask if you could identify that,  
24 please?

25 A. That's a photograph of -- in fact, it's a

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 photograph of the same mark as in the previous photograph  
3 and another mark that's located adjacent to it.

4 Q. Okay, and again, does that photograph fairly and  
5 accurately depict the bite mark as you saw it on Sabina  
6 Kulakowski?

7 A. Yes.

8 Q. I show you what's been marked as People's  
9 Exhibit 62 and ask if you could identify that, please?

10 A. Yes. That's a photograph of the same two marks  
11 as in Exhibit 61.

12 Q. Okay, and again, does that photograph fairly and  
13 accurately depict the bite mark as you saw it on Sabina  
14 Kulakowski?

15 A. Yes.

16 THE COURT: Keep your voice up,  
17 Mr. Vargason. You are talking to the witness  
18 and we are having a hard time hearing you.

19 MR. VARGASON: Very good, Judge.

20 Q. I will show you what's been marked as People's  
21 Exhibit 63 and ask if you could identify that for us,  
22 please?

23 A. It's a photograph of the bite marks taken at the  
24 same time. This bite mark I believe, there are two bite  
25 marks in this photograph, one of which is the same as in

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 People's Exhibit 59.

3 Q. Okay. Does that photograph fairly and  
4 accurately depict the bite mark as you saw it on Sabina  
5 Kulakowski?

6 A. Yes, it does.

7 Q. Okay. I will show you what's been marked as  
8 People's Exhibit 64 and ask if you could identify that,  
9 please?

10 A. 64 is a photograph of the same two bite marks as  
11 in the previous photograph.

12 Q. Okay, and again, does that photograph fairly and  
13 accurately depict the bite mark as you saw it on Sabina  
14 Kulakowski?

15 A. Yes.

16 Q. I show you what's been marked as People's  
17 Exhibit 65 and ask if you could identify that for us,  
18 please?

19 A. That is a photograph of the -- a different bite  
20 mark that was photographed at that time.

21 Q. Okay, and again, does that photograph fairly and  
22 accurately depict the bite mark as you saw it on Sabina  
23 Kulakowski?

24 A. Yes.

25 Q. Doctor, I will show you what's been marked as

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021



1 E. Mofson - DX

2 People's Exhibit 66 and ask if you could identify that,  
3 please?

4 A. This is a photograph of the same bite mark as  
5 the previous photograph.

6 Q. Okay, and again, does that photograph fairly and  
7 accurately depict the bite mark as you saw it on Sabina  
8 Kulakowski?

9 A. Yes.

10 Q. I will show you what's been market as People's  
11 Exhibit 67 and ask if you could identify that, please?

12 A. Yes. Another photograph of, the same as the  
13 previous two photographs.

14 Q. Okay, and does that photograph fairly and  
15 accurately depict the bite mark on Sabina Kulakowski as you  
16 saw it?

17 A. Yes, I believe so.

18 Q. And, Doctor, are those photographs photographs  
19 that you took?

20 A. Some of these I took. Some of these were taken  
21 by Dr. Ross, and perhaps some of them were taken by other  
22 investigators at the autopsy.

23 Q. Okay, and, Doctor, did you use those photographs  
24 in your evaluation or examination of the bite mark?

25 A. Yes, these are the photographs.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 Q. Very good. Doctor, did there come a time when  
3 you were provided with a dentition for purposes of  
4 evaluation and examination of the bite marks?

5 A. Yes. I received a set of dental models.

6 Q. Okay. I am going to show you what's been marked  
7 as People's Exhibit 24 and ask you just to take a minute,  
8 if you will and examine that.

9 A. Okay.

10 Q. Do you recognize that?

11 A. Yes. These, these are the models that were sent  
12 to me.

13 Q. You were provided with one model?

14 A. One set, one upper, one model of the upper  
15 dentition, one model of the lower.

16 Q. And they were identified to you as being?

17 A. They were identified as belonging to one Roy  
18 Brown.

19 Q. Okay, and, Doctor, did you use that model, or I  
20 would like to --

21 MR. VARGASON: Your Honor, may I approach  
22 the bench with counsel?

23 THE COURT: Yes.

24 (Bench conference held as follows:)

25 MR. VARGASON: Judge, I don't want an

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 issue to come up on cross-examination. This  
3 doctor examined a dentition that was identified  
4 to him as the defendant's. Counsel still has in  
5 his possession the first impression and I don't  
6 believe that the doctor knew at the time that  
7 there were two impressions and I'm not certain  
8 that he made any distinguishing --

9 MR. MCGRAW: Your Honor --

10 MR. VARGASON: -- comments.

11 MR. MCGRAW: I know that he made his  
12 comparisons from the other set that I have and I  
13 don't intend to raise on cross-examination any  
14 questions or issues in that regard.

15 MR. VARGASON: Maybe I could ask him that  
16 on the record.

17 THE COURT: Yeah. They are not available,  
18 right?

19 MR. MCGRAW: My doctor's bringing them  
20 back with him, Judge.

21 THE COURT: Yeah. So as long as you agree  
22 not to make that issue, that's fine.

23 MR. VARGASON: Okay. Very good. Thank  
24 you.

25 (Bench conference ended.)

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 Q. Doctor --

3 A. If I might interject something, I was looking at  
4 these models. I noticed it said second pour on these  
5 models. Now apparently when these models were made, two  
6 sets of models were made. I don't recall whether the  
7 models that say second pour on them were, in fact, the ones  
8 that I used in my analysis; but I think it's a reasonable  
9 assumption that if two sets of models were poured from the  
10 same impression, the models are virtually identical.

11 Q. Okay, and I believe that we've arrived at an  
12 understanding or agreement with defense counsel that, in  
13 fact, the models that you examined were the first poured  
14 models.

15 A. Yeah.

16 MR. MCGRAW: That's correct, Your Honor.

17 Q. Okay, and, Doctor, in response to the request  
18 from the Cayuga County law enforcement authorities to do an  
19 examination and evaluation, did, in fact, you conduct such  
20 an examination with regard to these dental models?

21 A. Yes, I did an evaluation of the bite marks. I  
22 consider all of this now to be bite mark evidence and I did  
23 evaluate this evidence.

24 Q. Okay. What was the next step you took, Doctor,  
25 with regard to your evaluation?

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 A. I made a transparency of the dentition in order  
3 to help me compare the biting pattern of the dentition with  
4 the marks in the photographs.

5 Q. Do you have that transparency with you here  
6 today?

7 A. Yeah. I have, it's a two or a three-step  
8 procedure and if you wish, I will go through it.

9 Q. I will get it marked first as --

10 A. Okay.

11 (People's Exhibit 68, Mofson transparency, was marked  
12 for identification.)

13 MR. MCGRAW: Could I, could I see that for  
14 a minute?

15 MR. VARGASON: (handing)

16 Q. Doctor, I am going to show you what's been  
17 marked as People's Exhibit 68 and ask if you can identify  
18 that, please?

19 A. Yeah. This, this is the transparency that I  
20 made from those models.

21 Q. Okay, and would you describe to the jury,  
22 please, how you made that transparency?

23 A. Yeah. The method is to take the models of the  
24 teeth and place them teeth side down on the copy plate of a  
25 copy machine and run a copy. What you get when you do that --

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 may I show this to the jury?

3 Q. I will get it marked.

4 (People's Exhibit 69, Mofson photocopy of teeth, was  
5 marked for identification.)

6 Q. Doctor, I will show you what's been marked as  
7 People's Exhibit 69 and ask if you could identify that,  
8 please?

9 A. Yeah. This is the copy that's the, results from  
10 putting the dental models in a copy machine and running a  
11 copy of it on a plain piece of paper.

12 Q. Okay. Doctor, let me stop you there and ask  
13 you, is that an acceptable method in the, in forensic  
14 odontology?

15 A. Yeah. This is a method, this is a published  
16 method of bite mark analysis.

17 Q. Okay. Proceed, please.

18 A. What you do then is take this copy, reverse it  
19 so that you are looking at the back side of the paper and  
20 put it against the light box, the box that I use for x-ray  
21 viewing or that you might use for looking at slides; and  
22 when you do that and the light shines through it, you can  
23 see the outline of the teeth.

24 With a marker I then trace the biting surfaces  
25 of the teeth on the back side of this paper so that gives

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 me an outline, inked outline, and placing that in the  
3 copier as an original and using the transparency copy  
4 sheets, I then get a copy, a transparent copy of just the  
5 outlines of the teeth without the extraneous parts of the  
6 models to get in the way of the biting surfaces.

7 Q. Okay, and the manner in which you made the  
8 transparency, is that an acceptable method --

9 A. Yes.

10 Q. -- in forensic odontology?

11 A. Yes.

12 Q. And is the transparency, which is People's  
13 Exhibit 68, substantially in the same condition as when you  
14 made it?

15 A. Seems to be, yes.

16 Q. And, in fact, did you use that in doing your  
17 evaluation?

18 A. Yes.

19 Q. I ask you also with regard to People's Exhibit  
20 69, is that substantially in the same condition?

21 A. Yes, it appears to be.

22 Q. And you used that in doing your evaluations?

23 A. I used this to make the transparency. Once the  
24 transparency was made, there is no more use for this copy  
25 paper.

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Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 Q. And it was the transparency which is People's  
3 Exhibit 68 that you used in doing your bite mark analysis --

4 A. That's correct.

5 Q. -- and comparison?

6 A. Yes.

7 Q. Would you please, for the jury, explain to them  
8 the -- it appears to be two sets here, upper or lower or  
9 something. Would you explain to the jury what they are and  
10 what they mean to you in forensic odontology?

11 THE COURT: Would it help to use the  
12 shadow box?

13 THE WITNESS: Okay.

14 MR. VARGASON: Yeah, it would. We can set  
15 that up.

16 THE COURT: Is it in -- what is the  
17 exhibit, its number? Is it in evidence?

18 Any objection to --

19 MR. VARGASON: It is not in evidence, yet,  
20 Your Honor.

21 THE COURT: Right. Before you show it to  
22 the jury, it should be in evidence.

23 Mr. McGraw, any objection to it being  
24 admitted?

25 MR. MCGRAW: I have no objection.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021



1 E. Mofson - DX

2 MR. VARGASON: I would move it into  
3 evidence.

4 MR. MCGRAW: No objection.  
5 (People's Exhibit 68 was received into evidence.)

6 MR. VARGASON: Can all the jurors see that  
7 okay?

8 THE COURT: Well, what you can do is --  
9 what we normally do is put it up on -- why don't  
10 we move the whole business back in now so he can  
11 walk through there.

12 Thank you, Carl.

13 Q. Doctor, would you please proceed and explain to  
14 the jury exactly what is depicted in People's Exhibit 68?

15 A. Yeah. This is the transparency of the biting  
16 surfaces of the teeth made from these. These represent  
17 copies of those dental models that were in that box, models  
18 made from impressions of someone's teeth. They are made  
19 and reversed this way.

20 You have to remember that a bite mark is, in  
21 fact, a mirror image of the teeth. You lift it up because  
22 the bite is this way and when you look at teeth, you look  
23 at them this way; but when the teeth impress themselves  
24 into what is being bitten, it's a mirror image. So when  
25 flipped over this way, that creates a mirror image, the

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 type, the tracing of the biting surfaces of the teeth or  
3 what one would expect would create the bruise in this  
4 orientation in the skin.

5 This represents the biting surfaces of the upper  
6 teeth, the spaces being where the upper teeth on the model  
7 are either missing or broken off.

8 This represents the biting surfaces of the lower  
9 teeth.

10 This type of configuration, this arch form is  
11 what's reflected in the bite mark. This arch form, what we  
12 call an arch or an upper dental arch, lower dental arch, is  
13 what we talk about when we talk about the upper arch or the  
14 lower arch, and it too is important because it --  
15 oftentimes you can relate positions of teeth to where they  
16 fall on that imagined arch line that describes the general  
17 pattern of the tooth.

18 The tooth may be outside the arch line, what we  
19 call labial version or on the lip side of the arch line or  
20 lingual version, tipped to the inside or tongue side of  
21 that arch line. Sometimes that's reflected in bite mark  
22 patterns.

23 Q. That's fine. Doctor, would you please take out  
24 the dentition that you received?

25 A. Yeah.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 Q. And show the jury in relationship to the upper  
3 and the lower arch the teeth which are depicted on that  
4 exhibit.

5 A. This is the model of the upper arch. This is  
6 the upper arch. Now this is, this will, identifies this as  
7 being the left side. This is the left side. So, in  
8 effect, as I say, it's a mirror image because it was done --  
9 if this were biting, it would be biting this way.

10 So these spaces here represent this broken tooth  
11 here, this broken tooth here.

12 The patterns only go back this far because in  
13 most cases a bite does not, a bite mark doesn't show teeth  
14 much beyond this part. It's very difficult in biting to  
15 get more than, I mean, get what you are biting further into  
16 your mouth than that. So that's about as far as the bite  
17 generally shows. Oftentimes not even that far. Sometimes  
18 only that far. So that's as far as I went, just to keep  
19 the confusion to a minimum, number of marks on the tracing.

20 So this is the upper. This, what looks like  
21 less than this corresponding tooth on this side, reflects  
22 this tooth which is broken in half; so there is, there's  
23 really only half a biting surface. Again, it's a reverse.  
24 It's a mirror image, goes down this way.

25 This represents the lower arch. Again, in this

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Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 orientation, this space here represents this space here and  
3 these marks being the outlines of the, just the biting  
4 surfaces of the teeth as they go around the arch. In this  
5 case, from this tooth around to one tooth past the space on  
6 this side.

7 Q. Doctor, did you prepare a report as pertains to  
8 your examination and evaluation?

9 A. Yes, I did.

10 Q. And would it help you in describing to the jury  
11 what your findings were if you were able to refer to that  
12 report?

13 A. Yes, it would.

14 Q. Okay. Do you have that report with you?

15 A. I think it's in the envelope here.

16 MR. VARGASON: Your Honor, at this point  
17 in time I am going to request that the Doctor  
18 give his opinion and conclusions as to his  
19 findings; and to that end, I would move into  
20 evidence People's Exhibit 69 and I would also  
21 move into evidence People's Exhibit 59.

22 THE COURT: Well, let's take them one at a  
23 time.

24 Any objection to 69, Mr. McGraw?

25 MR. MCGRAW: What's 69?

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Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 THE COURT: That's the photocopy.

3 MR. MCGRAW: I have no objection, Your  
4 Honor.

5 THE COURT: Okay. 69 is received.  
6 (People's Exhibit 69 was received into evidence.)

7 MR. VARGASON: I would also move into  
8 evidence Exhibit 59, which is the first  
9 photograph.

10 MR. MCGRAW: Your Honor, I am afraid I am  
11 going to have to object to the introduction of  
12 the photographs. The Doctor has made very clear  
13 the importance of the manner in which the bite  
14 marks were photographed and we don't even know  
15 which ones he photographed or who photographed  
16 others and there's not proper foundation, Your  
17 Honor.

18 MR. VARGASON: Your Honor, the Doctor has  
19 examined the photographs and has testified that  
20 he examined Sabina Kulakowski, he was present  
21 during the photographing, some of the  
22 photographs he took; but the fact is he used all  
23 these photographs in his analysis and he does  
24 clearly state that they do fairly and accurately  
25 depict the bite marks as he saw them on the day

1 E. Mofson - DX

2 in question.

3 MR. MCGRAW: Your Honor, I have heard all  
4 that but I think part of proper fundamental  
5 foundation is who took the photograph that he's  
6 offering, and particularly in this case, what  
7 appears significant to the expertise of the  
8 photographer in regard to his findings, I think  
9 there's not proper foundation.

10 MR. VARGASON: Your Honor, it's my  
11 understanding when you are moving photographs  
12 into evidence, the issue becomes whether that  
13 photograph fairly and accurately depicts the  
14 condition. The Doctor has already testified  
15 that he looks for certain things when he's  
16 looking at photographs or bite marks that need  
17 to be photographed.

18 He has looked at these photographs. He's  
19 indicated that they do fairly and accurately  
20 represent the bite marks as he saw them on the  
21 day in question. Therefore, I think he's  
22 uniquely qualified to testify to --

23 MR. MCGRAW: Your Honor, I also think it's  
24 significant as part of foundation, and I don't  
25 mean to belabor this, but I don't know what the

1 E. Mofson - DX

2 time or day was that these photographs were  
3 taken; and that has some significance as to the  
4 accuracy of the photographs as they are  
5 depicted. At least I should know that much.

6 THE COURT: All right. Let me ask. When  
7 did this occur? You talked -- you came to  
8 Auburn in the summer?

9 THE WITNESS: Yeah.

10 THE COURT: Do you know what day it was,  
11 sir?

12 THE WITNESS: I don't know what date but  
13 it must be a matter of some record somewhere.

14 THE COURT: Would your report reflect  
15 that, sir?

16 THE WITNESS: No, I don't believe it does.  
17 My report reflects only the analysis that I  
18 made.

19 THE COURT: I see.

20 THE WITNESS: No, the date of the  
21 photographs is not reflected but that would be  
22 the date I suspect of the initial post-mortem  
23 examination. I am sure that's a matter of  
24 record because I was there at the time in the  
25 morgue with Dr. Ross with the local

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 investigators at the initial examination of the  
3 body so I would expect that that would be the  
4 same date as her initial examination at the  
5 morgue.

6 THE COURT: Well, Mr. Vargason, maybe we  
7 could take a recess. You may have some  
8 documents that could refresh the Doctor's  
9 recollection as to time, place --

10 MR. VARGASON: Very good, Judge.

11 THE COURT: -- who was present, whether or  
12 not all of these photographs were taken of his --  
13 in his presence and indeed, what areas of the  
14 body that each photograph represents. Because  
15 as he identified them, he, I don't think he has  
16 yet said how many bites there were or identified --  
17 I don't think he has indicated which exhibits  
18 relate to which wound and so forth.

19 MR. VARGASON: Right.

20 THE WITNESS: That's in the report, Your  
21 Honor.

22 THE COURT: Yeah, but the jury doesn't  
23 have the report, Doctor.

24 MR. VARGASON: Right.

25 THE COURT: All right. Take a short



1 E. Mofson - DX

2 recess.

3 MR. VARGASON: Thank you, Judge.

4 (Whereupon court recessed at 10:33 a.m., commenced at  
5 10:45 a.m.; defendant present with counsel.)

6 THE COURT: Okay. Bring the jury in.

7 Your objection at this point is sustained.

8 MR. MCGRAW: Thank you, Your Honor.

9 (Jury returned to the courtroom.)

10 THE COURT: Okay. Ladies and gentlemen,  
11 the last item before you took a recess was the  
12 offer of Exhibit 59 by the prosecution.

13 Objection has been made and sustained.

14 Go ahead, Mr. Vargason.

15 MR. VARGASON: Thank you, Judge.

16 DIRECT EXAMINATION BY MR. VARGASON CONTINUED:

17 Q. Dr. Mofson, you testified on direct examination,  
18 I will try to move this along, that you responded to Cayuga  
19 County and you went to the morgue at the Auburn Memorial  
20 Hospital?

21 A. Yes.

22 Q. Okay. Who was present when you arrived?

23 A. Dr. Ross was present, gentleman by the name of  
24 Joe Contrera who is from the Onondaga County Medical  
25

1 E. Mofson - DX

2 Examiner's Office was present and it was Sheriff's deputy  
3 present.

4 Q. Okay, and do you recall, was that on the same  
5 day that you were called to Cayuga County?

6 A. Yes, it was.

7 Q. And do you recall when that was?

8 A. It was the, I think it was the 23rd of May.

9 Q. Okay, and at that time were photographs taken of  
10 Sabina Kulakowski?

11 A. Yes.

12 Q. Okay, and who was taking the photographs to the  
13 best of your knowledge?

14 A. The best I can recall, the photographs were  
15 taken by Dr. Ross and by Mr. Contrera.

16 Q. Okay, and were you present during the  
17 photographing?

18 A. Yes, I was.

19 Q. Okay, and were they taking the photographs at  
20 anybody's direction?

21 A. I was, I was, in insofar as the photographs of  
22 the bite marks were concerned, I was directing the  
23 photographing of the bite marks to be sure that they were  
24 done according to the established protocol of photographing  
25 bite marks.

1 E. Mofson - DX

2 Q. Okay, and while you were present directing the  
3 photographing of the bite marks, were you satisfied with  
4 the method in which they were being taken?

5 A. Yes.

6 Q. Okay, and I am going to show you again a series  
7 of photographs.

8 THE COURT: Well, maybe we ought to do it  
9 one at a time, Mr. Vargason, and that way we can  
10 get the testimony in and then Mr. McGraw can  
11 make whatever objections he wishes to make  
12 individually.

13 MR. VARGASON: Very good, Judge.

14 Q. I am going to show you what's been marked as  
15 People's Exhibit 59 which you previously identified as a  
16 bite mark on Sabina Kulakowski. Is, in fact, that a  
17 photograph that was taken while you were present?

18 A. Yes, it is.

19 Q. And --

20 A. To the best of my knowledge.

21 Q. Was that taken at your direction?

22 A. Yes.

23 Q. And under your supervision?

24 A. Yes.

25 Q. And did you use that photograph in writing a

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 report?

3 A. Yes.

4 Q. Okay, and do you have that report with you  
5 today?

6 A. Yes.

7 Q. And by looking at that photograph can you tell  
8 where the bite mark was located on Sabina Kulakowski?

9 A. Not by looking at this photograph, but it's in  
10 my report.

11 Q. Okay, and would it help you in reviewing your  
12 report to identify where on Sabina Kulakowski that bite  
13 mark was taken?

14 A. Yes.

15 Q. Okay. Would you please refer to your report?

16 A. Okay. This is photograph marked A, my marking.  
17 It was a photograph of the upper left back.

18 Q. Of Sabina Kulakowski?

19 A. Of Sabina Kulakowski.

20 Q. Okay, and does that photograph fairly and  
21 accurately depict the bite mark on the upper back of Sabina  
22 Kulakowski as you saw her on May 23rd?

23 A. Yes.

24 MR. VARGASON: Okay. At this point in  
25 time, Your Honor, the People would move Exhibit

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 59 into evidence.

3 MR. MCGRAW: May I have some voir dire,  
4 Your Honor?

5 THE COURT: Sure.

6 PRELIMINARY EXAMINATION BY MR. MCGRAW:

7 Q. Sir, I think you've testified on direct  
8 examination that the passage of time is significant in  
9 regard to the accuracy of the photograph as it relates to  
10 any comparison, correct?

11 A. I'm not sure I testified as to --

12 Q. Well, is that true?

13 A. The passage of time between the infliction of  
14 the mark and the taking of the photograph?

15 Q. Yes.

16 A. Does have, is a factor in the accuracy of the  
17 photograph, yes.

18 Q. Can you tell me what date and time this  
19 photograph was taken?

20 A. The photograph was taken to the best of my  
21 knowledge on May 23rd.

22 Q. What time?

23 A. Late afternoon, early evening.

24 Q. Okay.

25 MR. MCGRAW: I have no objection.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 THE COURT: Okay, and it's the, a  
3 photograph of a mark on the left upper back?

4 THE WITNESS: Upper left back, yes, sir.

5 THE COURT: Received.

6 (People's Exhibit 59 was received into evidence.)

7 DIRECT EXAMINATION BY MR. VARGASON CONTINUED:

8 Q. Doctor, I will show you what's been marked as  
9 People's Exhibit 60 and ask -- I believe you've already  
10 identified that, but ask if you could identify that again?

11 A. Yes. Photograph B, which according to the  
12 report is a photograph of the upper left back of the upper  
13 left arm.

14 Q. Doctor, I will ask you, was that a photograph  
15 that was taken under your direction on May 23rd at the  
16 morgue at Auburn Memorial Hospital?

17 A. Yes.

18 Q. And does that photograph fairly and accurately  
19 depict the bite mark as you saw it on that date?

20 A. Yes.

21 Q. Is that photograph a photograph you used in  
22 rendering your report?

23 A. Yes.

24 Q. And you've identified it as a photograph of the  
25 bite mark located on Sabina Kulakowski. Where?

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 A. Upper left arm, back of upper left arm.

3 Q. Very good.

4 MR. VARGASON: At this point in time, Your  
5 Honor, the People would move People's Exhibit 60  
6 into evidence.

7 PRELIMINARY EXAMINATION BY MR. MCGRAW:

8 Q. I assume, sir, this photograph was taken at the  
9 same time?

10 A. At the same time.

11 MR. MCGRAW: No objection, Your Honor.

12 THE COURT: Okay. Exhibit Number 60 is  
13 received in evidence.

14 (People's Exhibit 60 was received into evidence.)

15 DIRECT EXAMINATION BY MR. VARGASON CONTINUED:

16 Q. Doctor, I will show you what's been marked as  
17 People's Exhibit 61 and ask if you could identify that,  
18 please?

19 A. Photograph C, back of upper left arm. This is  
20 the same, same bite mark as in photograph B.

21 Q. And was that photograph taken while you were  
22 present at the morgue at Auburn Memorial Hospital?

23 A. Yes.

24 Q. On May 23rd?

25 A. Yes.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 Q. Was it taken under your direction?

3 A. Yes.

4 Q. And does the photograph fairly and accurately  
5 depict the bite mark on Sabina Kulakowski as you saw it on  
6 the day in question?

7 A. Yes.

8 Q. And did you use that photograph in writing the  
9 report?

10 A. Yes.

11 Q. Or making comparisons with the dentition of the  
12 defendant?

13 A. That's correct.

14 Q. Okay.

15 MR. VARGASON: At this point in time, Your  
16 Honor, People would move Exhibit 61 into  
17 evidence.

18 MR. MCGRAW: No objection, Your Honor.

19 THE COURT: Received.

20 (People's Exhibit 61 was received into evidence.)

21 Q. Dr. Mofson, I am going to show you what's  
22 been marked as People's Exhibit 62 and ask if you could  
23 identify that, please?

24 A. It's a photograph of the same bite mark as in  
25 the previous photograph, upper, back of upper left arm.



1 E. Mofson - DX

2 Q. And --

3 A. Sabina Kulakowski.

4 Q. Okay, and is that a photograph that was taken  
5 while you were present at the morgue on May 23rd?

6 A. Yes.

7 Q. And was that taken at your direction?

8 A. Yes.

9 Q. And is it, does it fairly and accurately depict  
10 the bite mark on Sabina Kulakowski as you saw it on May  
11 23rd?

12 A. Yes.

13 Q. Did you use that photograph in doing any  
14 evaluation and writing the report?

15 A. Yes.

16 MR. VARGASON: Thank you very much.

17 People would move Exhibit 62 into  
18 evidence, Your Honor.

19 MR. MCGRAW: No objection, Your Honor.

20 THE COURT: Received.

21 (People's Exhibit 62 was received into evidence.)

22 Q. Dr. Mofson, I am going to show you what's  
23 been marked as People's Exhibit 63 and ask if you could  
24 identify that, please?

25 A. This is a photograph of the upper left back

1 E. Mofson - DX

2 which shows two bite marks, one of which is the same as in  
3 the first photograph, another mark adjacent to it.

4 Q. Okay. Was that photograph taken on May 23, 1991  
5 at the morgue at Auburn Memorial Hospital?

6 A. Yes.

7 Q. And was that taken at your direction?

8 A. Yes.

9 Q. And does that photograph fairly and accurately  
10 depict the bite mark as you saw it on May 23rd at the  
11 morgue?

12 A. Yes.

13 Q. And did you use that photograph in doing any  
14 evaluation or analysis of the bite marks on Sabina  
15 Kulakowski and the dentition of the defendant?

16 A. Yes.

17 MR. VARGASON: Okay. People would move  
18 photograph, People's Exhibit 63 into evidence.

19 MR. MCGRAW: Could I see it, please?

20 MR. VARGASON: (handing)

21 MR. MCGRAW: No objection, Your Honor.

22 THE COURT: Received.

23 (People's Exhibit 63 was received into evidence.)

24 Q. Doctor, I am going to show you what's been  
25 marked as People's Exhibit 64 and ask if you could identify

1 E. Mofson - DX

2 that, please?

3 A. It's a photograph of the upper left back, same  
4 two bite marks as in the previous photograph.

5 Q. And was that photograph taken on May 23, 1991 at  
6 the morgue while you were present?

7 A. Yes.

8 Q. And was it taken at your direction?

9 A. Yes.

10 Q. And under your supervision?

11 A. Yes.

12 Q. And does the photograph fairly and accurately  
13 depict the bite mark on Sabina Kulakowski as you saw it on  
14 that day?

15 A. Yes.

16 Q. With regard to the area of her body?

17 A. Yes.

18 Q. And did you use that photograph in arriving at  
19 your opinions, conclusions and writing your report?

20 A. Yes, I did.

21 MR. VARGASON: People would move Exhibit  
22 64 into evidence.

23 MR. MCGRAW: No objection, Your Honor.

24 THE COURT: Received.

25 (People's Exhibit 64 was received into evidence.)

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 Q. Doctor, I will show you what's been marked as  
3 People's Exhibit 65 and ask if you could identify that,  
4 please?

5 A. Photograph of a mark on the left thigh.

6 Q. And does -- is that a photograph that was taken  
7 on May 23, 1991 at the morgue at Auburn Memorial Hospital  
8 while you were present?

9 A. Yes, I was.

10 Q. Is this a photograph depicting a bite mark on  
11 Sabina Kulakowski?

12 A. Yes.

13 Q. And is it in substantially the same condition as  
14 it was --

15 MR. VARGASON: Or strike that.

16 Q. Does the photograph fairly and accurately depict  
17 the bite mark as you saw it on the day in question?

18 A. Yes.

19 Q. And did you use that photograph in doing your  
20 analysis of the dentition of the defendant and the bite  
21 marks on Sabina?

22 A. Yes, I did.

23 MR. VARGASON: At this point in time the  
24 People would move Exhibit, People's Exhibit 65  
25 into evidence.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 MR. MCGRAW: Could I see it, please?

3 MR. VARGASON: (handing)

4 MR. MCGRAW: No objection, Your Honor.

5 THE COURT: 65 is received in evidence.

6 (People's Exhibit 65 was received into evidence.)

7 Q. Doctor, I will show you what's been marked as  
8 People's Exhibit 66 and ask if you could identify that,  
9 please?

10 A. That is a photograph of the same mark as the  
11 previous photograph.

12 Q. Okay, and was that photograph taken while you  
13 were present?

14 A. Yes.

15 Q. And was that at the morgue at Auburn Memorial  
16 Hospital on May 23rd?

17 A. Yes.

18 Q. Was it taken of a bite mark on Sabina  
19 Kulakowski?

20 A. Yes.

21 Q. Was it taken under your direction?

22 A. Yes.

23 Q. Doctor, does that photograph fairly and  
24 accurately depict the bite mark on Sabina Kulakowski as you  
25 saw it May 23rd?

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 A. Yes.

3 Q. Did you use that photograph at arriving at any  
4 conclusions or analysis with regard to the dentition of the  
5 defendant and the bite mark on Sabina Kulakowski?

6 A. Yes, I did.

7 MR. VARGASON: At this point in time, Your  
8 Honor, we move People's Exhibit 66 into  
9 evidence.

10 MR. MCGRAW: No objection, Your Honor.

11 THE COURT: Received.

12 (People's Exhibit 66 was received into evidence.)

13 Q. Doctor, I will show you People's Exhibit 67 and  
14 ask if you could identify that, please?

15 A. Photograph of the same bite mark as the previous  
16 two photographs.

17 Q. Okay, and was that photograph taken while you  
18 were present?

19 A. Yes.

20 Q. Was that on May 23, 1991?

21 A. Yes.

22 Q. At the morgue?

23 A. Yes.

24 Q. At Auburn Memorial Hospital?

25 A. Correct.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 Q. While Dr. Ross and Joe Contrera were present?

3 A. Yes.

4 Q. Was it taken at your direction?

5 A. Yes.

6 Q. And does that photograph fairly and accurately  
7 depict a bite mark as you saw it on Sabina Kulakowski on  
8 the day in question?

9 A. Yes, it does.

10 Q. Did you use that photograph in doing your  
11 analysis of the bite marks on Sabina Kulakowski and the  
12 dentition of the defendant, Roy Brown?

13 A. Yes.

14 THE COURT: I am sorry, what, where was  
15 that located?

16 THE WITNESS: That's the left thigh, Your  
17 Honor. That's the same bite mark as the  
18 previous two.

19 THE COURT: Okay. Thank you.

20 MR. VARGASON: At this point in time,  
21 People move Exhibit 67 into evidence.

22 MR. MCGRAW: No objection, Your Honor.

23 THE COURT: Received.

24 (People's Exhibit 67 was received into evidence.)

25 Q. Doctor --

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 THE COURT: Well, excuse me. Then are  
3 you, just to summarize at this point, Doctor,  
4 there was a bite mark on the left thigh, two  
5 marks on the upper left back, and a mark on the  
6 upper left arm?

7 THE WITNESS: Two marks on the upper left  
8 arm, Your Honor.

9 THE COURT: Two marks on the upper left  
10 arm. Okay. Thank you.

11 Q. Doctor, did you use the dentition, which has  
12 been previously marked as an exhibit and offered into  
13 evidence and identified by you, together with the  
14 transparency, which has also been accepted into evidence,  
15 together with the photographs in writing a report?

16 A. Yes.

17 Q. Okay, and that report you have here with you  
18 today?

19 A. Yes.

20 Q. And would it help you in explaining your  
21 findings if you were able to refer to that report?

22 A. Yes, it would.

23 MR. MCGRAW: Objection, Your Honor. I  
24 have an objection. He hasn't testified to  
25 anything that he would need to refresh his

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021



1 E. Mofson - DX

2 recollection by the report other than a broad --

3 THE COURT: I understand that, but it, the  
4 Court overrules the objection. It's normal that  
5 a, when a physician testifies that he may make  
6 reference to his report, which is certainly  
7 available to you, Mr. McGraw. So I will allow  
8 him to utilize his report in connection with his  
9 testimony.

10 MR. VARGASON: Thank you, Judge.

11 Q. Dr. Mofson, I am going to ask you to go  
12 through People's Exhibit 59, which is received in evidence,  
13 and explain to the jury, please, what findings or  
14 conclusions you arrived at in comparing the bite mark  
15 evidence and the dentition supplied by the defendant.

16 MR. MCGRAW: I object to the form of the  
17 question, Your Honor. If he's asking for an  
18 opinion rather than a conclusion, it might be  
19 appropriate in the proper question; but I think  
20 a conclusion is an -- improper from an expert  
21 who is offering his opinion.

22 THE COURT: Okay.

23 Q. Doctor, did you do an analysis?

24 A. I did an analysis.

25 Q. Okay.

1 E. Mofson - DX

2 A. Yes.

3 Q. And prepared a report?

4 A. Yes.

5 Q. Okay. I am going to ask you to please first  
6 explain to the jury what your findings were with regard to  
7 the bite marks depicted in the photograph and the  
8 transparency which is a representation of the defendant's  
9 dentition.

10 A. My findings in the comparison of this photograph  
11 with the dentition are that this photograph --

12 THE COURT: Well, wait a minute, Doctor.

13 I don't want you to read the report.

14 THE WITNESS: No, I'm not reading it, Your  
15 Honor.

16 THE COURT: Okay. Then slow down because  
17 we have to --

18 A. Okay. Okay, that this bite mark is entirely  
19 consistent with the dentition represented by these models  
20 and those transparencies.

21 Q. Okay, and would you explain to the jury, please,  
22 how you arrived at that finding?

23 A. I probably could do it better if I could show --

24 Q. Yes, sure.

25 A. The method that's used to analyze these marks is

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 to superimpose this transparency which I described to you  
3 before over the marks to see whether, in fact, the bruising  
4 corresponds to the presence -- to the positioning of the  
5 teeth that would have made the mark had, in fact, this  
6 dentition created this mark; and in analyzing this mark, we  
7 find that in this case the bruising in this, which I  
8 determined to be the upper arch, is consistent with the  
9 positioning and the shape of the teeth present.

10 Also, the absence in these two areas of  
11 significant bruising corresponds with the areas in which  
12 there are no teeth present in the upper arch in this case  
13 and in the lower arch.

14 The shape of the arch, the size of the arch is  
15 entirely consistent with the shape and size of both of  
16 these dental arches.

17 The position of the bruises and the position of  
18 the, absence of bruises is consistent with the position of  
19 the teeth and the absence of teeth in the dental arches.

20 Q. And, Doctor, I believe you testified that you  
21 arrived at a conclusion?

22 A. Yes.

23 Q. Do you have an opinion?

24 A. Yes. In my opinion this bruise is entirely  
25 consistent with this dentition. Entirely consistent that

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 this dentition made this mark.

3 Q. Very good. Doctor, and in doing your analysis  
4 of the bite marks and also in regard to the dentition that  
5 was supplied to you and the photographs, I will show you  
6 what's been marked as People's Exhibit 61 and ask if you  
7 could -- ask if you arrived at any conclusion --

8 MR. VARGASON: Or strike that.

9 Q. -- ask if you made any findings with regard to  
10 the dentition that was supplied and the bite marks depicted  
11 in that photograph?

12 THE COURT: This is the upper left arm?

13 THE WITNESS: This is upper left arm.

14 Q. And just so that the jury --

15 THE COURT: And 59 was the upper left  
16 back?

17 MR. VARGASON: Thank you, Your Honor.  
18 That was my next question.

19 Q. Doctor, would you tell the jury where People's  
20 Exhibit 59, which is in photograph A, was located on Sabina  
21 Kulakowski?

22 A. This bite mark that I just showed you is an --  
23 is a photograph of the, this is a photograph of a mark on  
24 the upper left back.

25 This photograph is a photograph of marks on the

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 upper, back of the upper left arm.

3 Q. Okay, and would you please demonstrate to the  
4 jury what your findings were with regard to that?

5 A. Using the same technique of superimposition of  
6 the transparency on the bruises, you find a consistency of  
7 the size and shape. There are two marks in this  
8 photograph, this a fainter one and this one. The fainter  
9 mark and the more distinct mark.

10 The size and shape of the dental arch is  
11 entirely consistent with the size and shape of the bruises.

12 The presence of the bruising and the spaces  
13 between the bruising is consistent again with the presence  
14 and absence of teeth in the arch.

15 This mark here right under this tooth which has  
16 a broken tip on it, this is a break in the skin and these  
17 bruises over here under these teeth in the lower arch.

18 Q. Doctor, I am going to ask you to stand back a  
19 little bit so the alternates can also --

20 A. I can find a place to be so that everybody can  
21 see. Kind of difficult.

22 The consistency of the shape and size of the  
23 arches and the positioning of the bruises that correspond  
24 with the position of the teeth and the absence of the  
25 bruising that corresponds with the spacing in the dentition

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 is all consistent with this dentition and the marks.

3 Q. Doctor, did you arrive at an opinion within a  
4 reasonable --

5 A. Yes.

6 Q. -- degree of dental --

7 A. In my --

8 Q. Let me finish.

9 A. I am sorry.

10 Q. -- within a reasonable degree of dental  
11 certainty as to the source of those bite marks?

12 A. Yes. In my opinion, these bite marks are  
13 entirely consistent with the dentition depicted in this  
14 transparency.

15 Q. Thank you, and, Doctor, I am going to show you  
16 what's been marked as People's Exhibit 62, previously  
17 identified by you as a bite mark of the upper left arm. I  
18 would again ask that you explain to the jury your findings  
19 with regard to that.

20 A. These, these two marks are, in fact, the same  
21 two marks as the previous photograph and so the analysis  
22 and the comparison of the transparency would be the same in  
23 terms of the size and shape of the arch and the bruising  
24 compared to the size and shape of the dentition as depicted  
25 in the transparency, as well as the position of the bruises

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 and the spaces where, where there are no teeth in the  
3 dentition. All consistent in comparing transparency with  
4 the photograph of the bite marks.

5 Q. And did you arrive at an opinion within a  
6 reasonable degree of dental certainty --

7 A. Yes.

8 Q. -- as to the source of that bite mark?

9 A. Yes. In my opinion these bite marks are  
10 entirely consistent with the dentition depicted in this  
11 transparency.

12 Q. Doctor, I will show you what's been marked as --

13 THE COURT: Doctor, let me ask a question,  
14 and I am, of course, I am listening from up here  
15 and not seeing the pictures, but in looking at  
16 the photograph, what shows a bruise on the  
17 photograph as to a non-bruise?

18 THE WITNESS: Coloration, Your Honor.

19 THE COURT: Bruise?

20 THE WITNESS: Discoloration. Bruise is  
21 darker, discolored. Bruise reds, shades of  
22 blues, reds, almost black in some cases  
23 depending on the intensity of the bruises.

24 THE COURT: I see. Okay. Thank you.

25 THE WITNESS: In some cases breaks in the

1 E. Mofson - DX

2 skin as well.

3 THE COURT: I see. Thank you.

4 Q. And, Doctor, just to follow up on that, what  
5 accounts for the, the redness in the areas that you  
6 indicated there was an absence of a tooth?

7 A. Well, there are several factors that could  
8 account for that. We spoke earlier about the distortion  
9 that occurs in a bite mark depending upon the movements,  
10 the relative movement taking place between the biter and  
11 the person being bitten.

12 Also, the consistency of the tissue being  
13 bitten, and a mark such as this that has a large reddish  
14 area in the center is felt to be indicative of a sucking  
15 type of a bite mark. That creates what we call ecchymosis  
16 or reddening of the tissue within the arch. That could  
17 well result in a dragging of the skin along the surface of  
18 the teeth during the -- so the mark would result in a  
19 broad, broader type of a bruise rather than a sharp bruise  
20 that would be almost a tracing of the tooth. The reaction  
21 to the skin would be over a broader area and would give one  
22 a broader or a -- well, I don't want to say a bleeding but  
23 kind of a diffusing of the marks of the individual teeth as  
24 a result of movement of the tissue.

25 Q. Doctor, I am going to show you what's been

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021



1 E. Mofson - DX

2 marked as People's Exhibit 63 and received into evidence  
3 and identified by you, ask just to remind the jury where  
4 that bite mark is located on Sabina Kulakowski?

5 A. This is the upper left back --

6 Q. Okay.

7 A. -- in this photograph.

8 Q. Doctor, did you make any findings with regard to  
9 that bite mark depicted in that photograph?

10 A. Yes, I did.

11 Q. Would you explain to the jury what those  
12 findings were?

13 A. Yes. The findings -- in fact, based on my  
14 analysis with the marks using the same technique as I  
15 showed you in the other marks, I find this mark to be  
16 completely consistent with the size, shape of the dentition  
17 and the placement and absence of teeth as depicted in the  
18 transparency.

19 Q. Would you show that to the jury, please, so they  
20 can see?

21 A. Yes, place to stand. The lower dental arch in  
22 this case I am not sure you can see, but the size and shape  
23 of the bruising, of the dentition is very consistent with  
24 the tracings.

25 The absence of a bruise where there's no tooth

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 present; the, I spoke earlier about a tooth that may be a  
3 little bit outside or inside the arch, very clear mark in  
4 my opinion right here of this tooth which is somewhat  
5 outside the arch and I think gives us a very clear outline  
6 in this particular case of that particular tooth there.  
7 Again, size and shape completely consistent with the  
8 opposing arch in that bite.

9 Q. And, Doctor, did you arrive at an opinion within  
10 a reasonable degree of --

11 THE COURT: Again, keep your voice up, Mr.  
12 Vargason. I know you are talking to him --

13 MR. VARGASON: Right.

14 THE COURT: -- but the rest of the  
15 courtroom would like to hear.

16 Q. Did you arrive at an opinion within a reasonable  
17 degree of dental certainty as to the source of that bite  
18 mark?

19 A. Yes. In my opinion this bite mark is completely  
20 consistent with the dentition shown in this transparency.

21 Q. Thank you. Doctor, I will show you what's been  
22 marked as People's Exhibit 64 which you have previously  
23 identified, and again, I am going to ask that you refresh  
24 the jury's memory of where you identified that bite mark on  
25 Sabina?

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 A. This photograph is the same as the two bite  
3 marks I just showed you, upper left back. It's the same  
4 two marks as in the previous photograph.

5 Q. Okay, and did you -- I believe you testified  
6 that you did a comparison of that with the transparency?

7 A. Yes, I did.

8 Q. With the dentition of the defendant. Would you  
9 please explain to the jury and show them what your findings  
10 were with regard to that comparison?

11 A. Again, by overlaying the transparency on the  
12 mark, we see the complete consistency of the shape of the  
13 arch, of the size of the arch and of the presence of  
14 bruising areas and the absence of a bruise which  
15 corresponds to the absence of a tooth in that particular  
16 case. Again, size and shape, consistency of the opposing  
17 arch.

18 Q. And, Doctor, let me ask you, and particularly  
19 with regard to that photograph, is each and every tooth as  
20 depicted in there depicted, or as depicted on the  
21 transparency, People's Exhibit 68, identified in the  
22 photograph?

23 A. In this particular photograph in fact there's  
24 quite a very good representation of the teeth in the lower  
25 dental arch. We can see almost certainly one, two, three,

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 four, five individual teeth and a bruise which corresponds  
3 to the two center lower teeth.

4 The upper arch does not show every individual  
5 tooth but in the case like this, again, given distortion,  
6 given curvature of the tissue, one does not necessarily  
7 expect every tooth in the arch to mark itself equally as  
8 every other tooth in the arch does.

9 Q. And would that be consistent with what you  
10 testified earlier as to what the surface was that was being  
11 bitten?

12 A. I'm not sure whether in this particular case  
13 it's a function of the surface so much as it's a function  
14 of the shape of the tissue, the curvature of the tissue and  
15 motion that might have been taking place.

16 Q. Very good, Doctor.

17 MR. MCGRAW: What number is that exhibit?

18 THE WITNESS: This is 64.

19 Q. I believe I asked you, if I didn't I will ask  
20 you again, Doctor, did you arrive at an opinion within a  
21 reasonable degree of dental certainty as to the source of  
22 that bite mark depicted in that photograph?

23 A. Yes. In my opinion that bite mark is completely  
24 consistent with the dentition depicted in the transparency.

25 Q. Okay. Doctor, I will show you what's been

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

E. Mofson - DX

1  
2 marked as People's Exhibit 60 and ask if you would refresh  
3 our memory as to where that photograph or where that bite  
4 mark depicted in that photograph was located on Sabina?

5 A. This is a photograph of the back of the upper  
6 left arm.

7 Q. Okay, and did you do some comparisons of the  
8 bite mark depicted in that photograph with the dentition  
9 supplied by the defendant?

10 A. Yes, I did.

11 Q. Okay. Would you explain to the jury, please,  
12 and use the photograph and your transparency, the findings  
13 that you made with regard to that?

14 A. Yes. Again, using the same technique of  
15 overlaying the arch on the bruise, we find a consistency of  
16 the size and shape of the arch, marks where there are  
17 teeth, no marks in fact where teeth are missing.

18 A much less distinct impression of the lower  
19 arch in this case. This I attribute to the curvature of  
20 the arm as the tissue falls away from the biting plane,  
21 heavier on this side and lighter as the arm curves towards  
22 the under part of the body, towards the, where it meets the  
23 chest wall.

24 Q. And, Doctor, I want to ask you to direct your  
25 attention to the top of the photograph here and ask if you

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 could explain to the jury what is depicted in here? It  
3 appears to be a dark, much darker area, and what -- whether  
4 you have an opinion?

5 A. This area here which is a rather darker and  
6 elongated kind of bruise in this particular area is in my  
7 opinion indicative of a scraping that takes place or that  
8 took place in this particualr instance of those two front  
9 teeth which on the transparency or which you can see on the  
10 model stand by themselves, and I believe that that type of  
11 bruise indicates a scraping or a movement of the skin along  
12 the surface of those two teeth resulting in the elongated  
13 type of a bruise in the location of those two upper front  
14 teeth.

15 Q. And, Doctor, did you arrive at an opinion within  
16 a reasonable degree of dental certainty as to the source of  
17 the bite mark on Sabina Kulakowski as depicted in that  
18 photograph?

19 A. Yes. In my opinion the bite mark depicted in  
20 this photograph is consistent with the dentition and the  
21 transparency.

22 Q. Very good. Doctor, I will show you what's been  
23 marked as People's Exhibit 65, previously received into  
24 evidence and identified by you, and again, I am going to  
25 ask that you refresh our memory as to where that bite mark

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 was located on Sabina Kulakowski?

3 A. This is the bite mark of the left, taken of the  
4 left thigh.

5 Q. And, Doctor, did you use that photograph in  
6 making any findings?

7 A. Yes, I did.

8 Q. Okay. Would you explain to the jury what those  
9 findings were?

10 A. With --

11 Q. With, yes.

12 A. Again, using the transparency overlay to overlay  
13 the bite mark, I find the pattern of bruising, the size and  
14 shape of the bruise to correspond with the size and shape  
15 of the dental arch, bruising where there are teeth present,  
16 heavy bruising under this broken tooth over here, bruising  
17 here and I find this to be consistent with the size and  
18 shape of this dental arch.

19 Q. And, Doctor, did you arrive at an opinion within  
20 a reasonable degree of dental certainty as to the source of  
21 the bite mark?

22 A. Yes. In my opinion this bite mark is consistent  
23 with this dentition.

24 Q. Okay. Doctor, I am going to show you what's  
25 been marked as People's Exhibit 66 and again, I am going to

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 ask if you could refresh our memory as to where that bite  
3 mark was located on Sabina?

4 A. This mark is the photograph of the same mark as  
5 the one I just showed you, the photograph, the same mark of  
6 the left thigh.

7 Q. Did you use the transparency --

8 A. Yes.

9 Q. -- in evaluating that?

10 A. Yes, I did in the same way.

11 Q. Okay. Would you please explain to the jury,  
12 please, the findings?

13 A. Using the transparency to see if there's a  
14 consistency, if there is a fit of the dentition to the  
15 mark, we find that the pattern of the teeth overlay the  
16 bruises quite consistently in terms of size, shape and  
17 location of teeth and bruise marks.

18 Q. And, Doctor, do you have an opinion within a  
19 reasonable degree of dental certainty as to the source of  
20 that bite mark?

21 A. Yes. I believe this bite mark is consistent  
22 with the dentition in this transparency.

23 Q. Doctor, I am going to show you what's been  
24 marked as People's Exhibit 67 and again, I am going to ask  
25 that you refresh our memory as to where that bite mark was

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021



1 E. Mofson - DX

2 located on Sabina?

3 A. This is a photograph of the same mark as I just  
4 showed you in the previous two photographs, left thigh.

5 Q. Did you use that photograph together with the  
6 transparency of the dentition in making any findings?

7 A. Yes.

8 Q. And would you please explain to the jury and  
9 demonstrate --

10 A. Yes.

11 Q. -- what those findings were?

12 A. Using the transparency again in the same way, I  
13 find that again, size, shape and presence of bruising where  
14 there are teeth is consistent with the dentition depicted  
15 in the transparency.

16 Q. Okay. Doctor, I am going to ask you, did you  
17 arrive at an opinion within a reasonable degree of dental  
18 certainty as to the source of that bite mark?

19 A. Yes. In my opinion this bite mark is consistent  
20 with the dentition shown in the transparency.

21 Q. Okay. Doctor, I am going to ask you with regard  
22 to all the bite marks that you examined on Sabina  
23 Kulakowski, were some of the bite marks that you looked at  
24 and did the comparisons on the transparency of the  
25 dentition of the defendant, did some of them lend themselves

1 E. Mofson - DX

2 to say easier comparisons?

3 A. Yes. They did.

4 Q. Okay, and would you please go through the  
5 photographs and identify those photographs to the jury that  
6 you found were better suited or depicted a bite mark that  
7 gave rise to an opinion from you as to the consistency?

8 A. The photograph, this is Exhibit 59, one of the  
9 photographs on the upper left back is a very clear  
10 photograph of both dental arches, upper and lower; and it  
11 shows with some clarity the spacing and bruising that was  
12 consistent with the location and so forth of teeth in the  
13 dental arches?

14 Q. Can I have that, please?

15 A. (handing)

16 Q. Okay.

17 A. Photograph C, this is the back of the upper left  
18 arm.

19 THE COURT: Well, there is a number on it,  
20 Doctor.

21 THE WITNESS: Oh, I am sorry, Number 61.

22 THE COURT: Okay. Thank you.

23 A. Upper left arm again, the pattern of tooth marks  
24 and spaces were consistent. Also, the irregularity of this  
25 tooth in what we call the labial version, as I mentioned

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 before, tooth slightly outside of the arch form.

3 Exhibit 62 is a photograph of the same mark as  
4 61 and so the characteristics are the same. So it, it  
5 analyzed out the same way as the previous photograph did  
6 given bruising and spacing and size.

7 Photograph Number 63 of the upper back shows  
8 again a good depiction of some individual teeth and a space  
9 which led to a very good comparison with the dentition.

10 Q. Doctor, were there any bite marks that were  
11 photographed that lended themselves to a more difficult  
12 comparison?

13 MR. MCGRAW: Objection, Your Honor. He's  
14 testified as to his findings. I don't think  
15 it's appropriate to testify as to -- in answer  
16 to that kind of question, what's more difficult  
17 and what's easier.

18 THE COURT: Well --

19 MR. MCGRAW: He's given his opinion.

20 THE COURT: I understand. I think the  
21 question is, and it's certainly, I think is  
22 within his province that some impressions may be  
23 easier to distinguish than other impressions.  
24 He's indicated those that appeared more  
25 prevalent or obvious and now he's asking for the

1 E. Mofson - DX

2 reverse of that. So I will allow him to  
3 testify.

4 MR. VARGASON: Thank you, Your Honor.

5 A. The photographs 65, 66 and 67, which are all of  
6 the thigh, while one of the arches shows quite a good  
7 consistency with the arch in the transparency in terms of  
8 size, shape, presence of bruising, the opposing arch does  
9 not show as good an overlay, as good a consistency with  
10 the, with the dental transparency.

11 This is what is referred to as maybe a  
12 consistency, as an explainable consistency in that I  
13 believe in my opinion while, while with distortion of the  
14 tissue, the curvature of the thigh as it falls away from  
15 the plane of the bite, the possible distortion of the  
16 tissue given the motion and even the possibility that that  
17 tissue was held in the hands at the time it was bitten  
18 would, would lead to a great distortion.

19 MR. MCGRAW: Your Honor, I object.

20 THE COURT: Overruled.

21 MR. MCGRAW: He's -- it's hypothetical.

22 THE COURT: Yes, it is.

23 MR. MCGRAW: There is no evidence or  
24 testimony to support that.

25 THE COURT: I agree but it's -- he's an

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - DX

2 expert and he's giving his opinion. It's up to  
3 the jury to evaluate. Overruled.

4 A. The possibility that that part of the body was  
5 held in the hand at the time of the bite in this manner,  
6 (indicating) hand pressure would tend to greatly distort  
7 the position of the tissue. When released, that tissue  
8 goes back to the normal position. The mark left by the bite  
9 would be a rather distorted mark and would not expect to be  
10 consistent in an overlay comparison with the size, shape,  
11 position of the teeth.

12 Q. And in your opinion, Doctor, is that what is  
13 generally represented in that photograph?

14 A. I believe that explains the apparent --

15 MR. MCGRAW: Objection, Your Honor,  
16 speculative.

17 THE COURT: It is.

18 MR. MCGRAW: Hypothetical, no evidence to  
19 support that in this trial.

20 THE COURT: Well, overruled.

21 Q. People's Exhibit 67, is that the photograph  
22 which you are testifying to?

23 A. 67, yeah. These three photographs are of the  
24 same bite. I believe that is an explanation of an  
25 apparent, an apparent inconsistency that one might, one

1 E. Mofson - DX

2 might find in comparing the upper arch in this bite to the  
3 transparency. There is no inconsistency in the comparison  
4 of the lower arch in this photograph.

5 MR. VARGASON: Very good. Thank you,  
6 Doctor.

7 No further questions, Your Honor.

8 THE COURT: Mr. McGraw?

9 MR. MCGRAW: Thank you.

10 THE COURT: Just wait a moment. We've got  
11 some spectators coming in and --

12 Did you have your coffee yet? Let's take  
13 a recess. I think that might be a good idea.

14 Court will stand in recess.

15 (Whereupon court recessed at 11:27 a.m.; commenced at  
16 11:44 a.m.; defendant present with counsel.)

17 THE COURT: Okay. Bring the jury in,  
18 please.

19 (Jury returned to the courtroom.)

20 THE COURT: Proceed, Mr. McGraw.

21 MR. MCGRAW: Thank you, Your Honor.

22 CROSS-EXAMINATION BY MR. MCGRAW:

23 Q. Dr. Mofson, there came a time where you were  
24 employed by the Cayuga County District Attorney to make  
25 these examinations; is that correct? Back in May of 1991

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson. - CX

2 you were employed by the District Attorney?

3 A. Well, I was asked by the medical, the Medical  
4 Examiner of Cayuga County to evaluate these.

5 Q. How many times in the course of your career have  
6 you testified in a criminal case, sir?

7 A. Five times.

8 Q. Five times, and most of your work consists of  
9 making comparisons to dental records to deceased for  
10 purposes of identification, correct?

11 A. Most of my work, yes, but the courtroom  
12 testimony has been, in all but one case has been bite mark  
13 evidence.

14 Q. Bite mark comparisons?

15 A. Bite mark evidence, yes.

16 Q. You testify on some occasions for the prosecutor  
17 and some occasions for the defense?

18 A. That's correct.

19 Q. How many times have you testified for a  
20 prosecutor in a criminal case?

21 A. Four times.

22 Q. And for the defense?

23 A. One time.

24 Q. And you are paid for your services; are you not?

25 A. Paid for the time that I spend on the case.

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Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 Q. Sure.

3 A. Yes.

4 Q. How much are you paid by the Cayuga County  
5 District Attorney for your services?

6 A. We've not determined a fee at this point in  
7 time.

8 Q. Well, do you have a general fee that you  
9 charged?

10 A. I have an hourly fee.

11 Q. Pardon?

12 A. I have an hourly fee depending upon the number  
13 of hours I spend in a case.

14 Q. Well, what's your hourly fee generally?

15 A. One hundred and fifty dollars.

16 Q. And you expect reimbursement or compensation  
17 from the District Attorney in exchange for your services,  
18 correct?

19 MR. VARGASON: Your Honor, I am going to --

20 THE COURT: Sustained in that form.

21 MR. VARGASON: -- object. This, this,  
22 it's not appropriate.

23 Q. All right. Now I believe you've testified on  
24 direct examination that the skin is not a very good surface  
25 for this type of analysis and comparison, correct?

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021



1 E. Mofson - CX

2 MR. VARGASON: Objection, Your Honor. He  
3 didn't say that.

4 A. No.

5 MR. VARGASON: It was this type -- he just  
6 indicated generally.

7 THE COURT: Sustained in that form. I  
8 don't think that was the testimony.

9 Q. Let me ask you this. Are you acquainted with a  
10 forensic odontologist, Dr. Lowell A. Levine?

11 A. Yes.

12 Q. Have you read any literature in respect to this  
13 type of analysis prepared by and published by Dr. Levine?

14 A. I've read some of Dr. Levine's articles.

15 Q. There aren't too many forensic odontologists in  
16 the country, are there?

17 A. I believe as of the last certifying examination  
18 there were about 100.

19 Q. All right.

20 A. Certified odontologists in the country.

21 Q. Are you acquainted with a Dr. Homer Campbell of  
22 New Mexico?

23 A. Yes, I am.

24 Q. Have you read any of his literature?

25 A. No, I don't believe I've read anything he

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 published.

3 Q. Have you published anything yourself in regard  
4 to this type of analysis?

5 A. No, I have not.

6 Q. Have you published anything in regard to  
7 forensic odontology?

8 A. Except for some, an article on some unusual  
9 radiographic or x-ray findings that were published some  
10 years ago in the Journal of Oral Surgery and Oral  
11 Pathology.

12 Q. Now would you agree with me that bite marks  
13 discovered may have changed their size and shape  
14 considerably from the time of the infliction?

15 A. No, I would not agree with that.

16 Q. You wouldn't agree with that?

17 A. No.

18 Q. Would you agree with me that if left on a dead  
19 body or just prior to dead, skin alteration in appearances  
20 will be entirely different? Do you agree or not agree with  
21 that?

22 A. Different than what?

23 Q. If left on a dead body or just prior to dead,  
24 skin alterations in appearance will be entirely different  
25 from the time the infliction of the bite mark from -- to

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 the time of the examination?

3 A. Yes, I think, I think the passage of time is a  
4 factor in the appearance of the bite mark, if that's what  
5 you are getting at.

6 Q. Well, I am asking you if left on a dead body or  
7 just prior to death, skin alteration appearance will be  
8 entirely different; do you agree or disagree with that?

9 A. Well, I am not sure.

10 MR. VARGASON: Objection, Your Honor.

11 A. You mean prior to death as compared to --

12 THE COURT: Wait, wait.

13 MR. VARGASON: As compared to when?

14 THE COURT: I will sustain the objection  
15 in that form.

16 Q. Let me ask you this. You are aware that the  
17 body cools after death, aren't you?

18 A. True, yes.

19 Q. Skin contracts with the cooling?

20 A. I -- that may be. I don't know.

21 Q. You don't know?

22 A. No.

23 Q. Well, if that were the fact, that would  
24 certainly alter the bite mark evidence; would it not?

25 A. If the contraction of the skin was discernible

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 amount in terms of dimensionally speaking, then it would  
3 alter the bite mark, yes.

4 Q. Do you agree with me that bite marks show  
5 changes and become distorted when the posture of the victim  
6 changes?

7 A. Yes.

8 Q. Are you aware in this particular case that there  
9 is some evidence that the, that the, that the remains of  
10 Sabina were moved physically after the infliction of bite  
11 marks? Were you aware of that?

12 A. I wasn't aware of that specifically but it's  
13 certainly believable hypothesis.

14 Q. Well, do you agree then that the bite marks show  
15 changes, become distorted when the posture of the victim  
16 changes, correct?

17 A. I believe that bite marks could show changes of  
18 distortion, yes.

19 Q. And do you agree that human skin is a poor  
20 medium for bite mark registration?

21 A. Yes, I think that's fair to say.

22 Q. What information were you provided prior to your  
23 examination and photography of the bite marks at the morgue  
24 in regard to any of the investigation?

25 A. Prior to my seeing the body at the morgue?

E. Mofson - CX

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Q. Yes.

A. I received a call from Dr. Ross who simply said that they had a victim. I don't recall whether she said it was a suspected homicide victim or not, and they have some marks that they think might be bite marks and could I come to the morgue and look at them and give my opinion.

Q. In your opinion when you examined those bite marks, did it happen that the bite marks represented teeth to skin?

A. Yes.

Q. Anything that would come between the teeth and the skin would in many respects distort those marks; isn't that correct?

A. It could, yeah, it could have an effect on the sharpness or the accuracy of the distinctivity, if that's a word, of the mark, yes.

Q. It's something that you would certainly consider in forming any opinion in regard to comparisons, correct?

A. Something that would come into consideration, yes.

Q. Nobody told you anything about a cotton nightshirt that was worn by the victim at any time, did they?

A. No. I wouldn't expect a cotton nightshirt would

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1 E. Mofson - CX

2 distort to any great degree a bite mark. It's a rather  
3 thin piece of material.

4 Q. Well, did you ever examine any cotton shirt in  
5 regard to your testing?

6 A. Not in this case, no, sir.

7 Q. The cotton or any fabric between the teeth and  
8 the bite mark would certainly have some relevance in your  
9 examination and your ultimate opinion; would it not?

10 A. Could make a difference.

11 MR. VARGASON: Objection, Your Honor. He  
12 asked and answered. He testified he didn't  
13 expect that a cot --

14 MR. MCGRAW: He just said it could make a  
15 difference so I would --

16 THE COURT: I will let it stand.

17 Q. Nobody told you anything about a nightshirt, did  
18 they?

19 A. No.

20 Q. Now I guess you told us that you took that  
21 dentition and you put it on a Xerox machine; is that  
22 correct?

23 A. Copying machine, yeah.

24 Q. What kind of copying machine?

25 A. It was a, a -- what's the brand of the copy

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 machine? Slips my mind but it's one of the large  
3 well-known brand copying machines. The brand name escapes  
4 me.

5 Q. All right. So you placed those dentitions on a  
6 copy machine and you came up with this; is that correct?

7 A. That's correct.

8 Q. Did you make a copy of this?

9 A. I don't believe -- I think that's the original  
10 one. I don't believe there is a copy. There may be a copy  
11 of that.

12 Q. Well, you are a dentist, correct?

13 A. Yes.

14 Q. You would never use such a procedure in, for use  
15 in making dentures for somebody, would you, a copy machine?

16 A. Well, copy machine gives you a two-dimensional  
17 copy so obviously you can't make dentures off a two-  
18 dimensional device. When we make dentures and we make  
19 impressions and pour models, in essence, models are three-  
20 dimensional copies of mouth.

21 Q. That is correct, taken from the mouth, correct?

22 A. Taken from the mouth.

23 Q. You are aware, are you not, that the copy  
24 machine is going to distort in size some respects what is  
25 placed on it?

1 E. Mofson - CX

2 A. Well, that's the reason for the scale that that  
3 copying machine, to, to ascertain as near as possible that  
4 that is an undistorted copy.

5 Q. Well, did you make that finding from looking at  
6 this scale?

7 A. Yeah.

8 Q. In what respect was the copy that you made on  
9 the Xerox or whatever machine distorted in size from the  
10 actual dentition?

11 A. By visual comparison of the scale that's  
12 depicted in that photograph to that copy, there was no  
13 apparent distortion, no apparent dimensional distortion.

14 Q. You made that examination?

15 A. Yes, I did.

16 Q. You mean you could tell from this ruler here  
17 that this tooth was exactly the same size that is  
18 represented in that exhibit?

19 A. No, no. The ruler is used by comparing the  
20 ruler to the ruler. The assumption is made then that if  
21 that part of the copy is dimensionally accurate, then the  
22 whole copy is.

23 Q. Well, are you telling us that your examination  
24 somehow proved that the size depicted by the Xerox machine  
25 or whatever machine it was, was exact and precise as the

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021



E. Mofson - CX

size of dentition?

A. Within the limits necessary to do a bite mark comparison, yes, sir.

Q. Well, how much bigger was this tooth as reproduced by the copy machine than the tooth that appears there?

A. I don't believe it's any bigger.

Q. Did you make any effort to make that determination?

A. None other than comparing the scale.

Q. Are you aware that when you make a copy of a document or anything else on a copy machine, there is distortion in size?

A. I'm not aware of that.

Q. It's not something you considered, did you?

A. Yeah, I considered it. That's the reason I used the scale in the copy.

Q. I see, but you told us the scale here couldn't tell us if there's any difference in the size of this tooth?

MR. VARGASON: Objection, asked and answered three times.

THE COURT: Sustained.

Q. And then from that scientific procedure you took

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Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 this thing that came out of the copying machine, correct?

3 A. Yes, sir.

4 Q. And you laid an overlay over it; is that  
5 correct?

6 A. No, that's not correct.

7 Q. What did you do?

8 A. Tracing of it on the back side of the paper.

9 Q. You traced this, didn't you?

10 A. Yes.

11 Q. That came out of the copy machine?

12 A. Yeah, on the paper, yeah.

13 Q. And that's how you arrived at this overlay,  
14 through that scientific --

15 A. That's a published accepted procedure in bite  
16 mark analysis.

17 Q. Who, who published that procedure, Lowell

18 A. Levine?

19 A. No, not Lowell Levine.

20 Q. Who?

21 A. Can't give you the name. It's a, in a  
22 publication called the Publication of the American Society  
23 of Forensic Odontology.

24 Q. Okay, all right. Can you give me some cite on  
25 that, some scientific article suggested that you use some

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 unknown machine to reproduce --

3 A. I could, I could cite it if I had an opportunity  
4 to look at the publication.

5 Q. All right. Now isn't it accepted principle and  
6 scientific accepted principle that upon examination of a  
7 bite mark for the odontologist or somebody to take a  
8 silicone impression of that bite mark?

9 A. Not necessarily.

10 Q. Well, wouldn't that be a more acceptable process  
11 of reproducing the bite mark from the victim?

12 A. In, in the, I would say in the somewhat unusual  
13 case where the bite mark is clearly three-dimensional, then  
14 taking an impression of the bite mark might have some  
15 value.

16 In a case where a bite mark is two-dimensional,  
17 in essence, bruising and no indentations or valleys or  
18 anything like that, an impression would be worth less.

19 Q. Are you saying there was no indentation in any  
20 part of the bite mark you examined in this case?

21 A. I think there is one mark where there is a  
22 breaking of the skin under one of the teeth; but for all  
23 intents and purposes, these are not indented marks.

24 Q. The body has contours, correct? It's rounded in  
25 some places?

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 A. Yes.

3 Q. That's not reflected in a photograph of a flat  
4 surface, is it?

5 A. No, it's not.

6 Q. The use of silicone to represent and preserve  
7 that bite mark would certainly have its advantages in that  
8 circumstance, would it not?

9 A. Well, it would, it would certainly reproduce the  
10 contours, the contours that you are referring to; but in  
11 the case of a two-dimensional bite mark, there would be no  
12 reference to the mark itself in the impression.

13 Q. Well, we don't know that because we don't have a  
14 silicone reproduction, do we?

15 A. Not of these marks we don't, no.

16 Q. And you told us that you ignored the back teeth,  
17 in layman's terms?

18 A. Yes.

19 Q. In regard to this --

20 A. Yes.

21 Q. -- thing that you reproduced from the Xerox?

22 A. Yes.

23 Q. Is there any reason you could not have prepared  
24 all the teeth from this Xerox thing that you produced?

25 A. By prepared, you mean reproduced in the tracing?

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

E. Mofson - CX

Q. Sure.

A. No, no reason.

Q. You just didn't do it?

A. I could have done it. I didn't do it.

Q. And what you got is photographs showing a flat surface, correct?

A. Correct.

Q. Although there are contours on the body, correct?

A. Correct.

Q. And what you've got is a flat surface from the Xerox machine, correct?

A. Correct.

Q. And your overlay was prepared as a result of lying this plastic thing over the Xerox copy, correct?

A. Yep. It was prepared in accordance with the --

Q. Accepted standard --

A. -- accepted standards.

Q. -- from -- and did it ever occur to you to preserve those bite marks by the use of silicone impressions?

A. In this case, that I did not feel it would be worthwhile to do that.

Q. You've read about that --

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 A. Oh, yes.

3 Q. -- in the professional journals, have you not?

4 A. Certainly, certainly. Also about the  
5 limitations in its use.

6 Q. Did you bring silicone with you for that purpose  
7 when you made this examination?

8 A. Didn't bring it with me but it's certainly  
9 readily available if I felt it was necessary.

10 Q. You are principally employed in this profession  
11 as a dentist; is that correct?

12 A. Yes.

13 Q. This you do occasionally on the side, right?

14 A. This I do whenever the occasions arise and so my  
15 services are requested.

16 Q. You also tell us that relevant to the accuracy  
17 of the bite mark is the position of the body at the time of  
18 the infliction of the wound, correct?

19 A. That's a factor, yes.

20 Q. Whether there is a struggle, whether the skin is  
21 stretched, correct?

22 A. All those are variables, yes.

23 Q. And those variables, were you provided any  
24 information in regard to --

25 A. No, sir.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 Q. -- those possibilities?

3 A. No, sir.

4 Q. So I assume if the skin is stretched, from what  
5 you say, the accuracy of the bite mark is questionable,  
6 correct?

7 A. Correct.

8 Q. I presume from what you've told us that if there  
9 is a struggle, depending on the position of the victim,  
10 that may have something to do with the accuracy of the bite  
11 mark left, correct?

12 A. May have, yes.

13 Q. And again, human skin is a poor medium for bite  
14 mark comparison, is it not?

15 A. A -- well, yes, it's a poor medium as compared  
16 to certainly many other materials.

17 Q. Now you've testified, you showed this overlay  
18 that you prepared from a Xerox copy about consistency,  
19 correct?

20 A. Um hum.

21 Q. And again, your opinion might change if you were  
22 aware that there was -- the bite marks were inflicted  
23 through a clothing, correct?

24 MR. VARGASON: Objection, Your Honor.

25 He's already testified to that.

1 E. Mofson - CX

2 THE COURT: Sustained.

3 Q. That may change your opinion, correct?

4 MR. VARGASON: Objection, Your Honor.

5 THE COURT: Sustained.

6 Q. And you found some photographs that you fit into  
7 your overlay that you took from the Xerox to be consistent;  
8 is that correct?

9 A. That's correct.

10 Q. And you found some to be not consistent,  
11 correct?

12 A. No, that's not correct.

13 Q. Didn't you give us some explanation as to the  
14 bite marks on the thigh, why they didn't fit into your  
15 Xerox copy here?

16 A. Oh, okay. Inconsistent but explainably so in my  
17 opinion.

18 Q. In your opinion?

19 A. Yes, sir.

20 Q. Do you know from anything that you've learned,  
21 from any investigator or anybody else the position of  
22 Sabina's body when the bite marks were applied to her  
23 thigh?

24 A. I do not.

25 Q. You don't know, do you?

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021



1 E. Mofson - CX

2 A. No, I don't.

3 Q. So -- but you explained it, correct?

4 A. I -- it's a possible explanation.

5 MR. VARGASON: I am going to object to  
6 that, Your Honor. That isn't what he said on  
7 direct examination.

8 THE COURT: It's a hypothetical  
9 explanation. To that --

10 Q. How do you arrive at that explanation? On what  
11 basis, on what information that was provided to you, this  
12 thing about holding with two hands and biting, how do you  
13 arrive at that?

14 A. I arrive at that by, by experience of an  
15 analysis of bite marks, by knowledge of how the teeth bite  
16 and the, and the characteristics of skin.

17 Q. So what you are saying is when you find an  
18 inconsistent bite mark, you arrive at it from your  
19 experience that somebody held the thigh and bit it?

20 A. No. When you find -- there are inconsistencies  
21 that are explainable and there are inconsistencies that are  
22 not explainable.

23 Q. So you have dreamed up an explanation in this  
24 case, haven't you, somebody held the thigh and bit?

25 MR. VARGASON: I am going --

1 E. Mofson - CX

2 THE COURT: Sustained as to the form of  
3 that question, Mr. McGraw.

4 Q. You didn't base that opinion on anything that  
5 was told to you or that you know, correct?

6 A. I didn't base that opinion on anything that was  
7 told to me, that's correct.

8 Q. Are you aware that Dr. Homer Campbell had an  
9 opportunity to examine those bites on the thigh?

10 A. I am.

11 Q. Was that discussed with the District Attorney  
12 before your testimony here?

13 A. I knew that he had seen those bites, yes.

14 Q. Were you aware that he excluded the defendant?

15 MR. VARGASON: Objection, Your Honor.

16 THE COURT: Sustained. Mr. McGraw, that's  
17 improper, highly. Wait.

18 Q. Did you have any discussions --

19 THE COURT: Wait just a moment.

20 Ladies and gentlemen, I direct you to  
21 disregard that question in its entirety as being  
22 improper.

23 Q. Did you have any discussions with the District  
24 Attorney or anybody else prior to your testimony about  
25 those bite marks that were found on the thigh of Sabina

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 Kulakowski?

3 A. We discussed all the bite marks.

4 Q. All right. Did you have any significant  
5 conversation regarding the findings of the bite marks on  
6 the thigh?

7 A. No. I don't think we had any conversation  
8 regarding those marks that were exceptionally different  
9 from the other marks.

10 Q. Well, did you, did you discuss your opinion as  
11 explainable inconsistency with the District Attorney?

12 A. Yes, I did.

13 Q. Today?

14 A. Not today.

15 Q. Recently?

16 A. I don't know. A week, two. I don't know when  
17 we met. I don't really, I don't recall how long ago it was  
18 that we met and we discussed this case.

19 Q. You told us on direct examination not only that  
20 skin is a poor medium for bite mark but the bony portions  
21 are more difficult to make an analysis on how a bite mark  
22 appears, like a back?

23 A. No, I didn't say that. I said they would appear  
24 different. Different consistencies, different surface  
25 contours, different underlying structures would result in

1 E. Mofson - CX

2 different appearing marks. I don't know where one  
3 necessarily would be more or less difficult than the other  
4 to analyze.

5 Q. Well, did, did you tell us on direct  
6 examination, and correct me if I am wrong, that a bite mark  
7 into the fleshy area of the body is more susceptible to an  
8 accurate comparison than bite marks on less fleshy parts of  
9 the body?

10 A. I don't believe I said that.

11 Q. Well, is it true?

12 A. I don't believe it's necessarily true.

13 Q. And you didn't tell us that on direct  
14 examination?

15 A. I don't think so.

16 Q. How do you explain your testimony to this jury  
17 that this thing that you took from the Xerox and made the  
18 overlay is consistent or fits with the examination of these  
19 photos? How do you explain that?

20 A. I am not sure I understand the question.

21 Q. Well, let me ask you this: The likelihood of  
22 change of the bruising or bite marks is greater if the  
23 victim's posture is changed, correct?

24 A. Yes.

25 Q. Passage of time would have a great deal to do

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 with the accuracy or with the bite mark impression on the  
3 body, correct?

4 A. Passage of time would affect the appearance of  
5 the mark, yes.

6 Q. Yes, and we know in this case that your  
7 examination occurred several hours after the victim was  
8 found, correct?

9 A. It appears to be that's true, yeah, I guess. I  
10 don't know exactly when the victim was found.

11 Q. Well, hypothetically, if the victim were found  
12 at approximately 2:15 the evening before the afternoon of  
13 your examination, there would be a passage of several  
14 hours, correct?

15 MR. VARGASON: I am going to object to  
16 this because there is no evidence in the record  
17 to that.

18 THE COURT: Sustained.

19 MR. VARGASON: In fact, it's quite  
20 different.

21 MR. MCGRAW: I don't understand, Judge.

22 THE COURT: I don't think that's -- the  
23 premise is not based in any evidence that's  
24 before this Court I don't think.

25 Q. You don't know how rapidly the body cools, do

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

E. Mofson - CX

1 you, after death?

2 A. I think it would depend upon the environment in  
3 which the body is --

4 Q. Correct. You don't know what the difference in  
5 the temperature was from the time that they found Sabina  
6 until the time that you made these examinations, correct?

7 A. No, I don't.

8 Q. Very important, isn't it, that you, that you  
9 take photographs of the bite marks on the victim, very  
10 important?  
11

12 A. Yes.

13 Q. That it be done properly?

14 A. Yes.

15 Q. Do you have some expertise in photography?

16 A. Yes, I think so.

17 Q. Why didn't you take the photographs?

18 A. Why didn't I take the photographs?

19 Q. Yes --

20 A. I didn't have the photographic equipment. I  
21 don't carry it with me.

22 Q. Do you know if any of the people that took the  
23 photographs as it relates to your analysis and opinion had  
24 any expertise in photographing?

25 A. I don't know.

LISA M. CLARK, Official Court Reporter  
Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 Q. Photography?

3 A. I don't know that.

4 Q. Well, back to my original question, would you  
5 expect the bite mark to be precisely and exactly as it was  
6 in the condition at the time it was inflicted, taking into  
7 consideration all these circumstances, moving the body,  
8 passage of time, bite marks, being a poor medium?

9 A. I would not expect the bite mark when examined  
10 under the circumstances under which it was examined to be  
11 exactly and identically unchanged from what it was at the  
12 time it was inflicted.

13 Q. Any of these -- but in this case, did you find  
14 it that way?

15 A. Well, I don't know what it looked like at the  
16 time it was inflicted. I can't make that comparison.

17 Q. All right. Well, from the time that you  
18 examined it and made your analysis, you are aware of all  
19 these circumstances, correct?

20 A. What circumstances is that?

21 Q. The length of time, moving the body, that sort  
22 of thing?

23 A. Well, obviously, yes.

24 MR. VARGASON: Objection, Your Honor.

25 He's already testified that --

1 E. Mofson - CX

2 Q. All right, and these casts of dentition show all  
3 the teeth that were apparently present in Mr. Brown,  
4 correct?

5 A. I would assume so. I've never had the  
6 opportunity to examine Mr. Brown.

7 Q. Well, let me ask you this: For purposes of  
8 further analysis and comparison, would it be helpful to you  
9 if Mr. Brown were to provide a bite mark, not a dental  
10 cast, but a bite mark for your examination and comparison?

11 A. I'm not sure it would be valuable because  
12 unless, unless the bite mark could be, could be inflicted  
13 under the same circumstances on which the bite mark we are  
14 comparing is inflicted, then there would be again a whole  
15 host of variables we have to contend with.

16 Q. A whole host of variables, whether or not the  
17 skin was stretched, whether or not this was part of a  
18 violent confrontation, all those things that are important  
19 for the -- to determine --

20 A. Yes.

21 Q. -- the accuracy, correct?

22 A. Correct.

23 Q. And you don't know of your own knowledge  
24 precisely how the bite marks were inflicted, under what  
25 conditions, correct?

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Cayuga County Courthouse, Auburn, New York 13021



1 E. Mofson - CX

2 A. Correct.

3 Q. So you are saying that if you -- he provided  
4 you, or if he provided the police back then a bite mark to  
5 human skin, that it may or may not be valuable in your  
6 analysis and examination?

7 MR. VARGASON: I am going to object to  
8 that, Judge.

9 THE COURT: Sustained.

10 MR. VARGASON: Way outside the scope.

11 Q. The overlay that you have prepared from your  
12 Xerox machine doesn't fit your transparency, does it?

13 A. What transparency are you talking about?

14 Q. This one, the Xerox machine transparency.

15 A. Which overlay now are you talking about?

16 Q. This photograph, this transparency.

17 THE COURT: Well, wait a minute. What  
18 photograph?

19 Q. Exhibit Number 68 and Exhibit Number 64.

20 A. Does not fit?

21 Q. Right.

22 A. I think I testified that it was consistent.

23 Q. You did. Do I have the transparency in the  
24 proper position for the comparison?

25 A. May I refer to my report and see?

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Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 Q. No. Just look at the exhibits.

3 THE COURT: No.

4 A. I would rather look at the report so I will make  
5 sure and see what --

6 Q. Exhibit 64, okay?

7 THE COURT: There is a letter on it. What  
8 letter is on the back?

9 Q. Exhibit F or your marked F.

10 A. May I take these and see?

11 Q. Sure.

12 A. Okay.

13 Q. Square peg, round hole, isn't it, Doctor?

14 A. No. It's a matter of getting the orientation  
15 correct.

16 Q. I see.

17 A. It fits.

18 Q. I see.

19 A. That's the orientation (indicating).

20 Q. Lower jaw?

21 A. Lower jaw.

22 Q. That fits?

23 A. That fits dimensionally and shape wise. That's  
24 a distortion in my opinion. There is an absence of  
25 bruising in those areas, corresponds with the missing

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1 E. Mofson - CX

2 teeth.

3 Q. That overlay is not consistent nor does it fit  
4 with that bite mark, does it?

5 A. I believe it's consistent.

6 MR. VARGASON: Objection, Your Honor. The  
7 witness has testified --

8 THE COURT: Sustained.

9 MR. MCGRAW: May I show the jury, Your  
10 Honor?

11 THE COURT: No.

12 Q. What you are telling us is that Exhibit 64,  
13 which is marked F, and this overlay are consistent, is that  
14 your testimony?

15 A. I think that's what I testified.

16 THE COURT: Ladies and gentlemen, at this  
17 point in the trial Dr. Mofson has given his  
18 opinion. Mr. McGraw has the right to  
19 cross-examine him.

20 Summations to the jury will be done at  
21 some later date. At that time he can ask you to  
22 look at particular pieces of evidence and so  
23 forth; but that's, this is not that point in the  
24 trial when summations take place.

25 Q. Can you explain to me how Exhibit Number 67, a

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1 E. Mofson - CX

2 picture of a bite mark, is consistent with your Xerox  
3 overlay in the lower jaw?

4 A. The lower jaw is the area we spoke of as  
5 distortion earlier on in my testimony, of possible  
6 distortion, possible stretching of tissue.

7 Q. Based on some opinion that you have that maybe  
8 somebody held the thigh with both hands, is that the area  
9 we are talking about?

10 A. That's a possible explanation, yes.

11 Q. Doesn't even come near it, does it?

12 A. I see it as consistent.

13 Q. You do?

14 A. Yes, sir, I do. I have testified to the fact  
15 that I do.

16 Q. You wouldn't want to testify that that  
17 distortion, whatever you call it, would disqualify  
18 Mr. Brown as the person who inflicted that bite, would you?

19 A. Go over that again for me, please.

20 Q. You wouldn't want to provide testimony here that  
21 that distortion as you have explained it and the difference  
22 between the overlay and the teeth marks would disqualify  
23 Mr. Brown as the person having inflicted that bite wound,  
24 would you?

25 MR. VARGASON: Your Honor, I am going to

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Cayuga County Courthouse, Auburn, New York 13021

1 E. Mofson - CX

2 object.

3 THE COURT: I will sustain it in that  
4 form.

5 MR. VARGASON: If he wants him as his own  
6 witness --

7 MR. MCGRAW: No, I don't want him as my  
8 own witness.

9 Q. The pictures, the dentition, that was provided  
10 you for your comparison and analysis to your knowledge or  
11 did you provide that same information and those same  
12 exhibits to anybody else for an examination?

13 MR. VARGASON: Objection.

14 Q. Did you send them any place?

15 MR. VARGASON: Objection, Your Honor.

16 THE COURT: Sustained, not relevant.

17 MR. VARGASON: Totally irrelevant.

18 THE COURT: Sustained.

19 Q. Did you consult --

20 THE COURT: Sustained. We are not going  
21 to argue about it.

22 MR. MCGRAW: I have nothing further.

23 Thank you.

24 (People's Exhibit 70, Manual of Forensic Odontology,  
25 was marked for identification.)

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1 E. Mofson - RDX

2 RE-DIRECT EXAMINATION BY MR. VARGASON:

3 Q. Dr. Mofson, on cross-examination there was  
4 considerable discussion about the procedure that you use in  
5 arriving at this transparency. I am going to show you  
6 what's been marked as People's Exhibit 70 and ask if you  
7 could identify that?

8 A. Yes, I can.

9 Q. And what is it?

10 A. The Manual of Forensic Odontology published by  
11 The American Society of Forensic Odontolgoy.

12 Q. Is that a publication that is respected within  
13 the field of forensic odontology?

14 A. Yes, it is.

15 Q. Is that a publication that you yourself have  
16 read?

17 A. Yes.

18 Q. And does that publication contain any discussion  
19 whatsoever concerning the method in which you employed to  
20 arrive at these?

21 A. Yes, it does.

22 Q. And is, is that the source from which you  
23 obtained or arrived at a determination as to use this  
24 method?

25 A. Yes, it is.

LISA M. CLARK, Official Court Reporter  
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1 E. Mofson - RDX

2 Q. Thank you very much, Doctor.

3 MR. MCGRAW: May I see that, please?

4 MR. VARGASON: Sure (handing).

5 A couple more questions if I may, Judge?

6 THE COURT: Okay. Are you going to offer  
7 that?

8 MR. MCGRAW: Go ahead.

9 MR. VARGASON: Oh, I am sorry. I thought  
10 he was going to request a voir dire of that or  
11 something, Judge.

12 THE COURT: I didn't know you had offered  
13 it.

14 MR. VARGASON: I have not offered it.

15 THE COURT: Okay. Then he's not entitled  
16 to a voir dire.

17 MR. MCGRAW: I just wanted to look at it.  
18 Excuse me.

19 Q. Doctor, tell us -- I believe you testified on  
20 cross-examination as pertains to the use of silicone. Tell  
21 us what the limitations, if any, there are.

22 A. Silicone is a very accurate impression material.  
23 It's very often used in dental impressions for making  
24 dental prostheses, crowns and what not. It gives a very  
25 accurate representation of a three-dimensional object.

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1 E. Mofson - RDX

2 If we are dealing with two-dimensional surface,  
3 flat skin surface containing bruising, the only thing that  
4 the silicone would reproduce would be the contour of the  
5 skin surface. It would show nothing of the bruising.

6 Q. And you testified here that a lot of these were  
7 bruising; is that correct?

8 A. Yes.

9 Q. So what use would silicone have with regard to  
10 examining those bite marks?

11 A. Well, in my opinion, these bite marks did not  
12 indicate the use of an impression technique. That's why I  
13 didn't suggest using it at the time I examined the marks.

14 Q. Doctor, let me ask you, and there was a great  
15 deal of discussion on cross-examination about the time  
16 elapsed here --

17 A. Um hum.

18 Q. -- and that it's important to examine the bite  
19 marks as soon after, would that be a fair statement?

20 A. Well, that would be, yeah, ideally, yes.

21 Q. Do you ever get to examine the bite marks while  
22 the bite marks or the biting is occurring?

23 MR. MCGRAW: Objection.

24 THE COURT: Sustained.

25 MR. VARGASON: Thank you.

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1 E. Mofson - RCX

2 MR. MCGRAW: Could I see the book, please?

3 MR. VARGASON: Do you want to read it now?

4 RE-CROSS EXAMINATION BY MR. MCGRAW:

5 Q. Silicone shows the contours of the body, doesn't  
6 it, where the bite mark appears?

7 A. Shows the contours, yes.

8 Q. Yes, and that's important, isn't it?

9 A. Well, it depends on what you want to use  
10 silicone. If you want to represent the contours of the  
11 body, silicone would do so. Silicone would not represent  
12 the bite mark unless the bite mark were a three-dimension  
13 bite mark.

14 Q. You gave us some explanation as to why a bite  
15 mark wasn't consistent, because somebody may have held the  
16 thigh in this -- and contoured the body, correct?

17 A. Okay.

18 Q. And you explained that away by talking about the  
19 contour of the body, did you not?

20 A. Yes, I did.

21 Q. Well, the silicone preservants of that bite mark  
22 would have been important to support or --

23 A. But you couldn't, you wouldn't have been able to  
24 visualize the bite mark in the silicone.

25 Q. You would have the -- you wouldn't be able to

1 E. Mofson - RCX

2 visualize any bite mark in the thigh, is that what your  
3 testimony is?

4 A. In the silicone impression of the thigh.

5 Q. So there was no depression whatsoever of the  
6 skin, is that what your testimony is?

7 A. That's right.

8 Q. In any of the bite marks there was no depression  
9 of the skin?

10 A. No. I think there was some breakage of the skin  
11 in one or possibly more of them, of the marks.

12 Q. There is a difference between the word  
13 depression and breaking the skin, isn't there?

14 A. Yes.

15 Q. There could be a depression of the skin visible  
16 and apparent without having the skin broken, correct?

17 A. Yes.

18 Q. And silicone would have showed that, would it  
19 not.

20 A. Yes.

21 Q. Somebody tell you before you came to the  
22 hospital not to bring your silicone because there's no  
23 depressions in the skin from the bite marks?

24 MR. VARGASON: Objection, Your Honor.

25 THE COURT: Overruled.

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1 E. Mofson - RCX

2 A. Subject never came up about bringing silicone or  
3 not bringing silicone in the phone call that I received.

4 Q. Exhibit Number 70 is a manual that you are  
5 familiar with; is that correct?

6 A. Yes.

7 Q. Some chapter in here that supports using a Xerox  
8 machine?

9 A. I don't think it's the -- they use it by brand  
10 name but yeah, copying machines are referred to.

11 Q. Where is that?

12 THE COURT: Well, it would be improper to  
13 refer to an exhibit that's not in evidence,  
14 Mr. McGraw, so if you want to offer it, that's  
15 fine.

16 MR. MCGRAW: Well --

17 THE COURT: But it's not in evidence at  
18 this point.

19 MR. MCGRAW: If I were given an  
20 opportunity to examine it thoroughly, Judge, I  
21 might just make that offer, not as to one  
22 chapter but as to all of it.

23 A. Yes.

24 MR. MCGRAW: I don't think the Judge wants  
25 you to answer the question.

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THE WITNESS: Oh, I see.

MR. MCGRAW: Could I look at it over the  
noon break, Your Honor?

THE COURT: Sure.

MR. MCGRAW: Do we keep the Doctor  
available for cross-examination in that regard?

THE COURT: No. No, I am not going to do  
that.

MR. MCGRAW: Well, then it wouldn't -- all  
right. Make it essentially --

THE COURT: He has not made reference to  
it. You, in your cross-examination you asked  
him for the reference. He has provided you with  
that reference. I don't think now --

MR. MCGRAW: Well, my position is, my  
position is that's a professional manual with  
lots of information and material in it, and I  
might want to use it to cross-examine him in  
other areas, Your Honor.

THE COURT: Well, anything further?

MR. MCGRAW: No, Your Honor.

MR. VARGASON: Nothing further, Judge.

THE COURT: Okay. Doctor, you are  
excused. Thank you very much.

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