

1 THE COURT: So --

2 MS. SHEIN: An hour? Hour and a half maybe, at most?  
3 Unless they've got a litany of questions they want to ask.

4 THE COURT: So if I do -- if I give you a half a day,  
5 is that going to get us Mr. Morris and closings?

6 MS. SHEIN: Yes, I think so. Yes.

7 MR. ABT: Yes.

8 THE COURT: Okay.

9 MS. SHEIN: Unless you have some other --

10 THE COURT: Okay.

11 MR. ABT: I mean, I would estimate my closing would  
12 take 30 minutes.

13 THE COURT: Okay.

14 MS. SHEIN: Okay.

15 THE COURT: All right. Then before -- I've got a  
16 note, and before we leave I'll get you a half a day.  
17 Okay, then I'm ready.

18 MS. SHEIN: I invoke the rule. I don't think  
19 anybody's in here that's going to testify. And I need Mr.  
20 Griffin. Can we get him? There he is.

21 [Off the record briefly.]

22 MS. SHEIN: Good morning. Would you raise your right  
23 hand, please.

24 Whereupon,

25 JAMES A. GRIFFIN,

1 having been duly sworn under oath, was examined and testified  
2 as follows:

3 **DIRECT EXAMINATION**

4 **BY MS. SHEIN:**

5 Q. And would you please state your full name.

6 A. James A. Griffin, G-R-I-F-F-I-N.

7 Q. And how old are you?

8 A. Fifty-five.

9 Q. And what is your present occupation?

10 A. I am the owner of Forensic AVI.

11 Q. Can you explain what that business does?

12 A. I provide assistance to attorneys, law enforcement,  
13 private investigators, and corporate clients with respect to  
14 the analysis, enhancement, and authentication of audio and  
15 video evidence.

16 Q. And how long have you been doing this?

17 A. Since 1992, approximately 19 years.

18 Q. And what is the education you received in order to be  
19 able to do this?

20 A. I have attended numerous seminars around the country,  
21 including a course at the New York Institute for Forensic  
22 Audio, seminars put on by the Audio Engineering Society, the  
23 International Association for Identification, seminars by  
24 Digital Audio Corporation, and seminars both as an attendee and  
25 as a presenter at the American College of Forensic Evidence.

1           Q.    Is this an education that is traditionally known to  
2 be a part of the type of work that you do?

3           A.    Yes, it is.

4           Q.    Is this vocational training?

5           A.    You can call it that, yes.

6           Q.    Educational/vocational?

7           A.    Correct.

8           Q.    Do you -- have you also -- have you ever written any  
9 articles or taught any courses about this?

10          A.    I've published articles in a magazine called The  
11 Champion, which is for the National Association of Criminal  
12 Defense Lawyers, and I've published an article in the magazine  
13 for the National District Attorneys Association.

14          Q.    And what is that -- what do those articles basically  
15 deal with?

16          A.    Both of those articles dealt with assisting attorneys  
17 when they're preparing cases with audio or video evidence, and  
18 tips on how they might proceed.

19          Q.    And have you ever taught any courses?

20          A.    Yes, I have.

21          Q.    And where is that?

22          A.    At the International Association for Identification I  
23 have presented papers as well as at the American -- excuse me  
24 -- the Audio Engineering Society.

25          Q.    And what about at universities?

1           A.    I taught for a semester at Jackson State University  
2 in their -- as a recording engineer, yes.

3           Q.    And what does that entail?

4           A.    That course was geared to people who were considering  
5 careers in the music business as in working in recording  
6 studios. And I taught a one-semester course on recording  
7 engineering.

8           Q.    And have you used these experiences and education  
9 that you've received in the -- in representing -- in appearing  
10 in court?

11          A.    Yes.

12          Q.    And testifying on behalf of individuals?

13          A.    That's correct.

14          Q.    Have you testified on behalf of the government?

15          A.    Yes, I have.

16          Q.    Have you done so in federal and state cases or just  
17 -- both or --

18          A.    I've been retained in both cases. I'm trying to  
19 remember where I would have testified. I believe I've  
20 testified on behalf of the government in state cases but not in  
21 federal.

22          Q.    But you've been retained by the federal government?

23          A.    That's correct.

24          Q.    And what have they paid you to do?

25          A.    Both enhance recordings and authenticate recordings.

1 Q. And have -- they paid you to do this?

2 A. Yes.

3 Q. And you said you testified in cases for the State.  
4 What states have you testified in?

5 A. I'd have to look at my C.V. to know for sure, but  
6 I've testified in North Carolina, Georgia, Washington,  
7 Mississippi, Louisiana, Texas -- I can't remember them all, I'm  
8 sorry.

9 Q. Well, let me --

10 MS. SHEIN: May I approach, Your Honor, just to give  
11 him a copy of his resume, just so he can refresh his  
12 recollection?

13 THE COURT: Yes.

14 A. Is the question jurisdictions where I've testified?

15 Q. Yes, if you can recall as many as possible.

16 A. Sure. Again, Texas, Louisiana, Mississippi, Alabama,  
17 Singapore, Puerto Rico --

18 Q. Is this -- I appreciate -- can you give me a full --  
19 a number of places that you've testified, how many cases?

20 A. I have testified in 30 cases.

21 Q. Okay. And --

22 A. And some of those testified twice, both at a pretrial  
23 hearing and at the trial itself.

24 Q. And have you testified on behalf of the government  
25 and defense attorneys in criminal cases?

1           A.    Yes.

2           Q.    Also civil or just criminal?

3           A.    Also civil, plaintiff and defense.

4           Q.    And during those -- during the course of your  
5 testimony in these cases, has the Court determined that you  
6 were an expert in audio forensic --

7           A.    Yes, each time so tendered.

8           Q.    Each time you testified?

9           A.    Yes.

10          Q.    Do you have a recollection of some of the attorneys  
11 you've worked for?

12          A.    I suppose I could if I refer to the notes again. In  
13 Texas, Mark Cover, Stuart Johnston, Anne Winter -- there's a  
14 very long list of attorneys I've testified for.

15          Q.    So it's on your resume?

16          A.    Yes, many of them are.

17          MS. SHEIN: Would you object to tendering his resume  
18 just for the record?

19          MR. MALCOLM: Yes.

20          MS. SHEIN: I'm not tendering it as an exhibit, just  
21 for the record.

22          MR. MALCOLM: That's fine.

23          MS. SHEIN: So that I don't have to have him go  
24 through each and every item.

25          MR. MALCOLM: That's fine. I have no objection to

1           that, Your Honor.

2           MS. SHEIN: Excuse me, Your Honor.

3           THE COURT: What number are we giving it?

4           MS. SHEIN: Eighty-two, Your Honor.

5           **[WHEREUPON, Petitioner's Exhibit Number 82 was tendered**  
6           **and admitted for the record only without objection.]**

7           **BY MS. SHEIN: [Resuming]**

8           Q. What is the general procedures that you incorporate  
9           once someone asks you to look at a tape?

10          A. Well --

11          Q. The tape that was made in the course of law  
12          enforcement activity.

13          A. Sure. Well, procedure is going to be determined by  
14          the analysis I'm asked to do. Sometimes I'm asked to determine  
15          what certain sounds might be in the sequence and the timing of  
16          certain events. I might be asked to enhance the tape to  
17          improve its intelligibility, or I might be asked to do an  
18          authenticity examination. So the scope of the work determines  
19          what I'm going to do with it --

20          Q. And have you -- I'm sorry.

21          A. -- what I'm asked to do with it, yes.

22          Q. And have you done all of these types of things in  
23          your work for both the government and for defense or civil?

24          A. Yes.

25          Q. How do you normally start an analysis process?

1           A.    Well, again, it depends on what I'm asked to do, but  
2   in the case of an authenticity examination I will ask for the  
3   original recording where it's available, or if not, the  
4   original -- the recording which is to be offered into evidence.  
5   That's the -- obviously the recording that's at issue. And if  
6   it's authenticity, the first thing I do is to make a digital  
7   copy of it onto a computer using an audio software editing  
8   program. And depending on what I find there, I'm going to  
9   listen to the tape several times and perhaps identify any areas  
10  that need further study. Those areas will be looked at on the  
11  computer wave form as well as magnetically developed and viewed  
12  through the microscope where necessary to identify those areas.

13           Q.    And have you done this in other tape analysis work  
14  that you've done for various people you've described?

15           A.    Yes.

16           Q.    And has your training, since you have been in this  
17  business, allowed you to do that type of analysis or taught you  
18  how to do that?

19           A.    That's correct.

20           MS. SHEIN: Your Honor, I'm going to tender him as a  
21  tape expert in the area of forensic analysis. And he's  
22  been determined to be an expert in the past, subject to  
23  further voir dire.

24           MR. MALCOLM: No objection.

25           THE COURT: All right. He's admitted then.



1 MS. SHEIN: Thank you.

2 Q. Did there come a time -- now we've never met;  
3 correct?

4 A. That's true. Until today.

5 Q. The first time you met me was this morning?

6 A. That's correct.

7 Q. Did there come a time when I contacted you to assist  
8 us in doing a tape analysis?

9 A. Yes, you did.

10 Q. Do you recall approximately when that was?

11 A. Over the summer, I believe, late July, possibly  
12 August.

13 Q. And what did I ask you if you could do for us?

14 A. You told me that there was a tape that was presented  
15 at his -- at the trial of Mr. Davis, and you wanted an  
16 authenticity examination of that tape.

17 Q. And did you receive an order from the Court allowing  
18 you to do that authenticity exam?

19 A. Yes, I did.

20 MS. SHEIN: Your Honor, I don't know that I need to  
21 tender this as an exhibit, but just so you know that this  
22 is the order that was drafted.

23 MR. MALCOLM: That's fine.

24 MS. SHEIN: Anybody want to see it? It's in the  
25 record. Obviously, I don't need to -- because it's in the

1 public record. But it was an order of September 13<sup>th</sup>,  
2 2011, authorizing him to -- James Griffin, the Forensic  
3 Audio expert, to listen to and record Exhibit 251 in the  
4 trial in the Scott Winfield Davis case number 05SC37460.  
5 And he was allowed to bring the following equipment:  
6 laptop computer, USB audio interface device, cassette  
7 playback units, digital camera, microscope with camera  
8 attached, and lighting, and/or speaker.

9 Q. Did you take that equipment with you?

10 A. Yes, I did.

11 Q. Was there any additional equipment that you took?

12 A. There were some accessory items, numerous cables,  
13 that sort of thing.

14 Q. Things to help this equipment run?

15 A. That's correct.

16 Q. Now tell me the steps you took when you got the order  
17 to proceed with the exam.

18 A. I arrived at the courthouse in Atlanta, and I was  
19 given -- I was provided the tape by the court reporter. I  
20 believe her name is Beverly Barfield. And the first thing, I  
21 looked at the tape very carefully to see that it was not  
22 damaged, that it appeared to be in playable condition; and it  
23 was. I placed that into a microcassette transcriber and copied  
24 it to my computer using the audio interface device and SONY  
25 sound forge editing software program.

1           Q.    Okay, but before we go further into what that all  
2 means, what kind of a tape was this?

3           A.    It was a microcassette.

4           Q.    Is that considered like an analog tape or is there a  
5 tape for that kind of --

6           A.    It's -- it is an analog tape.

7           Q.    Would you describe for me and the Court what an  
8 analog tape is?

9           A.    An analog tape, the tapes are generally analog or  
10 digital these days -- mostly digital now. But an analog tape  
11 is a physical tape which has iron oxide particles on a long  
12 running stretch of Mylar to which it's attached, and the -- do  
13 you want to know what the recording process is or how that tape  
14 captures recording?

15          Q.    So, just the definition.

16          A.    Okay. Well, it would be a standard cassette, a  
17 microcassette, a reel-to-reel tape that we're all familiar with  
18 from the, you know, days gone by. We don't see those much  
19 anymore, but they're out there.

20          Q.    So it's a physical piece of tape.

21          A.    It's a piece of tape as opposed to a digital format  
22 which may be on some, you know, computer generated type device.

23          Q.    So you actually analyzed the analog tape as well as  
24 downloaded it into digital capacity?

25          A.    That's correct.

1           Q.    Now is downloading -- in the process of analyzing  
2 these kinds of tapes, is the standard procedure to not only  
3 examine the tape, but also to download it into digital format?

4           A.    That's correct. There are things that we gain from  
5 the tape itself. There are things that we can gain from  
6 looking at the digital representation of the tape.

7           Q.    Okay. Did you listen to the entire analog tape?

8           A.    Yes.

9           Q.    And did you download the entire tape?

10          A.    Yes.

11          Q.    Okay. You did not separate any portions of it?

12          A.    That's correct.

13          Q.    And then you were at the point where you're  
14 describing that you downloaded it to a digital machine?

15          A.    That's correct.

16          Q.    Okay. Then what is the steps you took? But before  
17 you did that, you did the analysis of the actual physical tape  
18 because that's what we --

19          A.    Well, before I did that, I physically inspected the  
20 tape to see it was in playable condition.

21          Q.    Okay. And you were listening to it as it was being  
22 recorded on a digital machine?

23          A.    That's correct.

24          Q.    So it was recorded on the digital machine. What is  
25 the next steps you took?

1           A.    The next step, as it's being recorded and I'm  
2    listening to it over headphones, I am hearing things that sound  
3    like things that might be needed to investigate further, things  
4    like stops and starts of the recorder, for instance,  
5    potentially erasure, over-recording, that sort of thing. And  
6    I'm making notes as to where those are located on the tape as  
7    I'm listening in real time.

8           After that, I'm going to look at those places on the wave  
9    form of the computer display and make some sort of  
10   determination as to which of those things that I heard are  
11   actually noteworthy events that need to be investigated  
12   further.

13          Q.    What is wave form analysis?

14          A.    A wave form -- I can demonstrate it here, if you'd  
15   like. I can put it on the computer screen.

16          Q.    That would be fine.

17          MS. SHEIN: Can everybody see it?

18          A.    It's difficult to see because the wall is gray. But  
19   essentially, if you're looking from right to left, that  
20   represents time. And the vertical striations are volume. So  
21   we can focus in on small portions of the tape. This particular  
22   view is the entire one hour and a few minutes of the entire  
23   side. Or I can focus on something as small as a fraction of a  
24   second and see what that looks like.

25          Q.    And this is part of what you did in analyzing this

1 tape, the Scott Davis tape?

2 A. Yes, it is.

3 Q. Okay. And during the course of the analysis, did you  
4 make -- you made this chart -- or is this -- how was this made?

5 A. Well, this is -- this chart is generated by the  
6 computer --

7 Q. Okay.

8 A. -- and I can -- as stated before, I can look at the  
9 entire -- I mean this that we're looking at right now on the  
10 screen, that's the entire one hour of Side A. If I want to, I  
11 can focus on a very small portion of Side A, and this like, for  
12 instance right here, this would be two seconds of Side A.

13 Q. I see.

14 A. So it gives me a great deal of flexibility in  
15 determining what I want to look at, and I can look at it in as  
16 much detail as I want to.

17 Q. I want to provide you with a copy of your report that  
18 you provided to me, to take a look at so we can go over it  
19 specifically. [Petitioner's Exhibit No. 83.]

20 A. Thank you. Okay.

21 Q. You got it?

22 A. Yes. Okay, this is the memo.

23 Q. Did you prepare this report from your analysis?

24 A. I did prepare a report. What you've handed me is the  
25 supplemental memo, [Petitioner's Exhibit No. 84.] Not the

1 report itself.

2 Q. Okay. I meant to hand you this one first.

3 A. Okay. That's okay. Yes, this is the report.

4 Q. Okay. Can you tell me the analysis in the report  
5 dealing with your examination, first of the analog tape?

6 A. I'm sorry, I need some more detail on that question,  
7 clarification.

8 Q. Like when you went to examine the physical tape  
9 itself --

10 A. That's right.

11 Q. -- did you find anything interesting or specific to  
12 that before you downloaded it or --

13 A. No, it appeared to be a normal tape of the  
14 approximate age it was purported to be.

15 Q. Okay.

16 A. And in relatively good condition.

17 Q. Okay. When you downloaded it, what were some of the  
18 specific findings that you were made aware of?

19 A. I was able to determine that at least with respect to  
20 the Scott Davis interview portion, and there was other material  
21 on the tape, some of it -- most of it not relevant to this case  
22 -- but throughout the recording, and specifically during the  
23 interview portion, there were numerous voice activated pauses  
24 of the recorder. There were stops and starts and there were  
25 over-recordings.

1           Q.    Well, let's talk about some of the language you're  
2 going to use in a few minutes.

3           A.    Okay.

4           Q.    What does over-recording mean?

5           A.    An over-recording is when you have an existing tape  
6 that has been recorded on, and at some later point in time, and  
7 it's not possible to determine how later in time that occurred,  
8 but at some point after the initial recording is made, the tape  
9 is in a playback and/or recording device, and the record button  
10 is pushed, erasing some of the underlying original recording.

11          Q.    Okay.

12          A.    That's an over-recording.

13          Q.    When you looked at the whole tape, not just Scott  
14 Davis' portion, were there some of those events?

15          A.    The over-recordings that I found were in the Scott  
16 Davis portion of the tape.

17          Q.    Let me point you out to Page 3, the first couple of  
18 locations.

19          A.    Right. And there were other ones scattered  
20 throughout, that's correct.

21          Q.    Okay. So what I wanted you, just to refresh your  
22 recollection --

23          A.    Right.

24          Q.    -- in the course of the whole tape, did you find  
25 evidence of over-recording?



1           A.    Yes, I did.

2           Q.    Okay. Did you also find that in the contents of the  
3 Scott Davis interview?

4           A.    Yes.

5           Q.    And can you identify on the two occasions which that  
6 occurred?

7           A.    On the Scott Davis interview portion?

8           Q.    Yes. I don't know if you can show it visually or  
9 just verbally.

10          A.    I actually can. At approximately 43.31 seconds into  
11 Side A, there is one over-recording. And I'll see if I can  
12 bring that up. And I'll call your attention to the screen.  
13 You'll see these vertical striations here represent --

14          Q.    Let me make sure I know which ones because they all  
15 look vertical to me.

16          A.    Okay.

17          Q.    Are you talking about the thin lines?

18          A.    I'm talking about the thick lines. All of the  
19 vertical lines, whether they're thick or thin, represent the  
20 volume. And if you'd like, I can play this section of the  
21 recording for just a moment. You'll hear during this first  
22 portion, this thick portion, you'll hear the conversation  
23 taking place, and then when it gets over to here, this section  
24 right here where there is apparently nothing going on, then  
25 that will be the erased portion. And if you'd like, I can play

1 that for just a few seconds.

2 Q. Go ahead.

3 [Portion of audio played in open court.]

4 A. So you heard a brief portion of silence where the  
5 conversation had previously been.

6 Q. Is there a second place where this also occurs?

7 A. Yes. It's on Side B at --

8 Q. It's on Page 6?

9 A. Yes, Page 6. At approximately 17:22, and this is at  
10 a portion where there's very little conversation at all, but  
11 you will see -- you will hear the same sort of thing, you'll  
12 hear a click where the over-recording takes place.

13 [Portion of audio played in open court.]

14 Q. And that's -- explain again, just for my edification,  
15 what an erase head touch down means in terms of that analysis.

16 A. All right. An erase head touch down is where -- it's  
17 similar to an over-recording, whereas in the over-recording  
18 instance the tape recorder actually is -- the record button is  
19 pushed and the recording proceeds. Actually, the tape moves to  
20 the housing and a new recording is generated over the old  
21 recording. In an erase head touch down the record button is  
22 pushed for some period of -- some short period of time, and it  
23 erases a smaller portion of the tape because the recording --  
24 the tape does not move through the housing, but the erase head  
25 touch down, nevertheless, erases a portion of the tape.

1 Q. So there are, at least in the Scott Davis interview,  
2 two portions of the tape that were erased?

3 A. That's correct.

4 Q. Now on the -- what is the stop and start in -- there  
5 are several of those that show up that are not audio activated  
6 but other stops and starts. Can you explain what the  
7 difference is in the stop and start?

8 A. Sure. With respect to a voice activated recording,  
9 that's set up so that the recorder automatically pauses when  
10 there is no conversation, the idea being to conserve the amount  
11 of tape on the recorder and it pauses when there's nothing  
12 going on. That's going to happen more or less randomly  
13 throughout the tape, and it's generated by the recorder itself.  
14 A stop, on the other hand, is when the actual physical button  
15 is pushed on the tape recorder which activates it and makes it  
16 stop, and then at some point later the recording is resumed  
17 when the record button is again pushed.

18 Q. In your analysis of this tape were there a number of  
19 those events?

20 A. There were, yes.

21 Q. Looking at the portion of the -- well, let me ask you  
22 this. Clearly, it's throughout the whole tape.

23 A. That's correct.

24 Q. But just to focus on Scott Davis' portion of that  
25 tape --

1           A.     Okay.

2           Q.     -- can you identify the location for those stops and  
3 starts?

4           A.     Yes.   On Side A there is a stop and start at  
5 approximately 43 minutes 2 seconds.   On Side B the stop is at  
6 approximately 17.21 seconds.

7           Q.     And when the tape is stopped and started, is there  
8 any way to determine how long the tape stopped and started?

9           A.     No, there's not.

10          Q.     And I'm showing you, if I may approach, what has been  
11 marked as a second memo that was requested from you; do you  
12 recall that?    [Petitioner's Exhibit No. 83.]

13          A.     Yes.

14          Q.     And what was the purpose of requesting that memo?

15          A.     You had asked me to somehow determine or somehow  
16 report on where the location was of the stops and starts on the  
17 tape.

18          Q.     And what did you find in that?

19          A.     What I did was to make a portion -- I transcribed a  
20 portion of the tape immediately before and immediately after  
21 the stops and starts.

22          Q.     And when you transcribed it, what did you discover?

23          A.     Please clarify that.

24          Q.     I'm sorry. During the -- let me get my report copy  
25 out here of this. Looking at Page -- Page 3.

1 A. Okay.

2 Q. What did you discover at 17:21?

3 A. At 17:21 I discovered a stop, and immediately after  
4 the tape was resumed, the detective in the room said, "Turn the  
5 tape over."

6 Q. What did that mean to you?

7 A. It suggested that there was another tape recorder  
8 being used. And I would add that immediately following the  
9 detective's words "Turn the tape over," there was some  
10 fumbling, handling, mechanical noise which was consistent the  
11 operation of the tape recorder.

12 Q. What does the term "authenticity" mean?

13 A. A tape is authentic if it is shown to be original,  
14 continuous, and unaltered.

15 Q. Is this tape authentic?

16 A. No.

17 Q. Is it continuous?

18 A. No.

19 Q. Has the tape been altered?

20 A. Yes, it has.



21 MS. SHEIN: A moment, Your Honor?

22 [Brief pause.]

23 Q. Can you locate on your analysis information that  
24 portion of the tape in your second memo that says, "Turn the  
25 tape over" and play that?

1 A. Certainly.

2 [Requested portion of tape played in open court.]

3 A. It goes by fairly --

4 MS. SHEIN: Your Honor, I mean I could hear it, so I  
5 just didn't know if --

6 THE COURT: Yes, ma'am.

7 **BY MS. SHEIN: (Resuming)**

8 Q. Would you play that section one more time a little  
9 bit longer?

10 A. Sure.

11 Q. Just to be sure it's clear?

12 A. Certainly.

13 Q. My client didn't hear it.

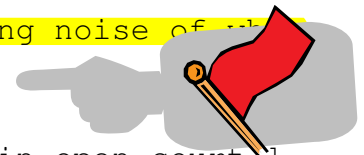
14 [Requested portion of tape replayed in open court.]

15 Q. Do you hear after that the other sounds?

16 A. Yes.

17 Q. Could you play that, please?

18 A. Certainly. I'll begin with the words "Turn the tape  
19 over," then there's approximately a 9-1/2 second pause in the  
20 conversation where you'll hear the handling noise of it  
21 appears to be another tape recorder.



22 [Requested portion of tape played in open court.]

23 MS. SHEIN: Okay. Nothing further from us, Your  
24 Honor.

25 **CROSS-EXAMINATION**

1 **BY MR. MALCOLM:**

2 Q. Good morning, Mr. Griffin.

3 A. Good morning.

4 Q. I just have a few questions I need to ask you. You  
5 said your first involvement with this case came in late July or  
6 early August of this past summer?

7 A. That's correct.

8 Q. Okay. And you were approached by Mr. Davis'  
9 attorneys -- or not necessarily attorneys, somebody with his  
10 legal team to analyze this audiotape, which you did?

11 A. That's correct.

12 Q. And you actually went to the courthouse and analyzed  
13 -- I'm not trying to belabor the point -- but listened to the  
14 original recording and put it into your computer so you could  
15 do all these things?

16 A. That's correct.

17 Q. All right. Other than actually going to the  
18 courthouse and listening to the tape, did you do anything else  
19 in regards to this case?

20 A. Well, the analysis entailed more than just listening  
21 to tape.

22 Q. All right, everything you did at your -- at the  
23 courthouse and subsequent to that, specific to the analysis of  
24 the tape, did you do anything else in regards to this case?

25 A. No.

1           Q.    Okay. Did you ever examine the actual tape recorder  
2 that was used by the detectives in this case?

3           A.    No. I would like to have, but it was not provided.

4           Q.    Did you have an opportunity to speak to anybody who  
5 was present during the interview of Mr. Davis?

6           A.    No.

7           Q.    All right. And you said there were three things --  
8 just want to be clear because this is all sort of Greek to me  
9 -- voice activated pauses, starts and stops, and over-  
10 recordings, those are all three separate classifications or  
11 things you look for when analyzing a tape?

12          A.    That's correct.

13          Q.    All right. You mentioned, I believe, in your direct  
14 testimony, two instances of over -- what you say are over-  
15 recordings of the tape, I believe one on Side A and one on Side  
16 B; is that correct?

17          A.    That's correct.

18          Q.    All right. And the first one on Side A, I believe  
19 you said was about 1.76 seconds?

20          A.    That's correct.

21          Q.    And the second one on Side B was about 0.52 seconds?

22          A.    That's correct.

23          Q.    All right. In regards to the voice activated pauses,  
24 is this the type of tape where it would have been at the  
25 interview that the detective or whoever was using the recording



1 device, when somebody speaks it comes on and records what's  
2 being said, or if there's noise it comes on and picks that up;  
3 is that correct?

4 A. When there is noise of a certain volume, the recorder  
5 activates. That's correct.

6 Q. All right. It's almost like a dictation type device  
7 where if somebody's talking it comes on and records what's  
8 being said in theory, and then stops when the talking goes  
9 below a certain volume?

10 A. That's correct.

11 Q. All right. And this is a relatively rudimentary or  
12 crude, compared to today's standards, way of recording  
13 somebody's conversation?

14 A. Yes, it is.

15 Q. All right. And when you're using a device like this  
16 it stops and starts based on voices or a certain volume. What  
17 volume does it have to get to play for it to start recording,  
18 or does that depend on the machine?

19 A. It depends on the machine, it depends on how close  
20 the talkers are to the machine.

21 Q. No way you could determine in this case what that  
22 volume level would have been?

23 A. That's correct.

24 Q. Okay. But is it safe to say that when the machine  
25 starts and stops the recording that there could be a slight

1 pause or it could miss maybe a slight portion of what somebody  
2 was saying; isn't that possible?

3 A. That is possible.

4 Q. All right. And you also mentioned about starts and  
5 stops. That's pretty easy to tell if a tape stopped and  
6 started; is that safe to say?

7 A. That's correct.

8 Q. All right. And you said the tape was stopped and  
9 started how many times?

10 A. It was stopped and started once on each side of the  
11 tape.

12 Q. Once on -- so once on Side A and once on Side B.

13 A. And I would add that it was also stopped at -- the  
14 tape ran out at the end of Side A, and we don't know what  
15 amount of time may have transpired before it was resumed on  
16 Side B.

17 Q. Okay. But it --

18 MS. SHEIN: Just for clarification purposes --

19 MR. MALCOLM: Yes, ma'am.

20 MS. SHEIN: -- you're just talking about the Scott  
21 Davis portion; correct?

22 MR. MALCOLM: Yes, just --

23 MS. SHEIN: Because there's other stops and starts on  
24 the whole tape.

25 MR. MALCOLM: Right.

1 MS. SHEIN: Okay. I just wanted --

2 MR. MALCOLM: Because I believe, just to clarify, the  
3 beginning portion of the tape contains some information or  
4 recordings from other cases.

5 MS. SHEIN: Thank you. I just wanted to be sure.

6 MR. MALCOLM: Yes, that's what I'm talking about.

7 **BY MR. MALCOLM: [Resuming]**

8 Q. So are we clear on that, Mr. Griffin?

9 A. Yes.

10 Q. Okay, thank you. Drawing your attention specifically  
11 to the stop and start on Side 2, that occurred at about 17:21;  
12 is that correct?

13 A. That's correct.

14 Q. And isn't it true that right before that stop and  
15 start, according to your report, that there was a question by  
16 the detective, "Do you want some water or something to drink?"  
17 asked of Mr. Davis?

18 A. That's correct.

19 Q. All right.

20 MR. MALCOLM: Just one moment, Your Honor.

21 [Brief pause.]

22 Q. Now were you aware from your examination of this tape  
23 that it had been used potentially on other investigations by  
24 these detectives?

25 A. Well, yes, I did hear material that was unrelated to

1 this case, apparently unrelated to it.

2 Q. Is it possible to, I assume, record over certain  
3 portions of an audiotape like this, like if I had an old case  
4 on a tape and wanted to record it with a new case I was working  
5 on, I could re-record over that old stuff; is that correct?

6 A. That's correct.

7 Q. And could do that with relative ease?

8 A. That's correct.

9 Q. All right. And it is true that the beginning  
10 portions of this tape there were other matters unrelated to the  
11 Scott Davis investigation; correct?

12 A. That's correct.

13 Q. That would make you believe that this tape had been  
14 used on other investigations in the past?

15 A. Yes.

16 Q. And you never examined any tapes other than this  
17 individual tape?

18 A. That's correct.

19 MR. MALCOLM: Just one moment, Your Honor.

20 [Counsel confer.]

21 MR. MALCOLM: I have no further questions, Your  
22 Honor. Thank you.

23 MS. SHEIN: Your Honor, just brief clarification.

24 **REDIRECT EXAMINATION**

25 **BY MS. SHEIN:**

1           Q.     Just to be sure we understand, would you re-explain  
2     the difference between the voice activation portions of this  
3     tape for the Scott Davis interview and the stops and starts?

4           A.     Yes.   A voice activation pause is done randomly by  
5     the machine itself when the volume falls below a certain  
6     threshold.   The stops and starts that I referred to are  
7     manually operated stops and starts by someone pushing the  
8     button.

9           Q.     And what are the erasures that are different from  
10    those two items?

11          A.     The erasures are also manually done when someone  
12    pushes the button.

13          Q.     The attorney general asked you -- assistant attorney  
14    general asked you if tapes that are used can be re-recorded.

15          A.     Yes.

16          Q.     Did you hear any over-recording conversation from  
17    another case on Scott Davis' interview?

18          A.     No, I did not.

19                 MS. SHEIN:   One moment, Your Honor.

20                         [Counsel confer.]

21          Q.     So just to be sure we're all clear, there are two  
22    stops and starts on this, and two separate erasures?

23          A.     That's correct.

24                 MS. SHEIN:   One more moment.   I'll make sure to get  
25    this right.

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[Counsel confer.]

MS. SHEIN: Your Honor, that's all we have for this witness.

MR. MALCOLM: Nothing further for this witness, Your Honor.

THE COURT: Can this witness be excused?

MS. SHEIN: Yes, he can.

THE COURT: Any objection?

MR. MALCOLM: No, Your Honor.

THE COURT: You are free to go, sir.

THE WITNESS: Thank you. It will take me just a moment to pack this up.

[Witness excused.]

[Brief recess.]

**[WHEREUPON, Petitioner's Exhibits No. 83 and 84 were admitted for the record only.]**

\* \* \*

MR. MALCOLM: Your Honor, the Respondent would call Mr. Rick Chambers to the witness stand. And he's already up there, so I'll swear you in, Mr. Chambers. Would you raise your right hand.

Whereupon,

**RICK CHAMBERS,**

having been duly sworn under oath, was examined and testified as follows: