

1 MR. CRANE: Jerry Trump.

2 THE COURT: Would you come forward and raise your
3 right hand, sir.

4
5 JERRY TRUMP,
6 being first duly sworn by the Court, testified as follows:

7 THE COURT: Would you take the witness stand,
8 please.

9 You may inquire.

10
11 DIRECT EXAMINATION

12 BY MR. CRANE:

13 Q. Give us your name, please, sir.

14 A. Jerry Trump.

15 Q. Jerry, how old are you?

16 A. Fifty-six.

17 Q. And back in -- where are you living now?

18 A. I'm living in Kirksville, Missouri.

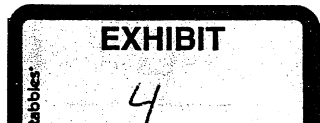
19 Q. Okay. Back in October of 2001, how were you
20 employed?

21 A. I was employed by the C & S Cleaning Company.

22 Q. And what was one of their places that you cleaned
23 during the -- October, November of 2001?

24 A. The Columbia Daily Tribune.

25 Q. Okay. Just a couple blocks down this way; right?



1 MR. CRANE: That was another reason why I raised
2 their motion.

3 MR. ROGERS: I was about to ask for a recess first.

4 THE COURT: All right. Do you wish to be heard
5 again on that motion? Or you wish to refer back to the
6 motion and arguments that you made?

7 MR. ROGERS: We would refer back to the motion and
8 argument, Your Honor, but if they are going to proffer some
9 sort of in-court identification, I think they need to develop
10 some evidentiary basis.

11 THE COURT: All right. I don't know what they're
12 going to do. Are you --

13 MR. CRANE: Well, what I was going to do is -- and,
14 you know, this the same thing we ran into at the motion
15 hearing. I was going to ask Mr. Trump -- is he out of the
16 room?

17 MR. ROGERS: He went out to smoke.

18 MR. CRANE: I was going to ask Mr. Trump about
19 receiving, from his wife, this article, with the photographs.
20 Ask him about that. Ask him whether or not -- you know, what
21 his reaction to that was, et cetera. And a lot of this we've
22 already litigated. And then what we never did -- but see,
23 that's the thing. He's never been shown that, by anybody in
24 the police department or my office or anybody in law
25 enforcement. If he is unable to recognize the individuals in

1 those photographs, then it's game over. If he is, then the
2 next question's going to be the form in which the exhibit
3 he's looking at comes in. It's the article that he's
4 described, but it's a newspaper article. So we'd have to
5 figure out a way to deal with that.

6 Then the next question would be: Whether or not he
7 sees one of the two individuals in the courtroom here today.
8 He's never been asked that. We didn't do that last time
9 because the defendant was in his jail clothing.

10 MR. ROGERS: That's my understanding also, Your
11 Honor. And that's -- I was kind of expecting them to keep
12 Mr. Trump here, to show him the newspaper article and to see
13 if that's the one he saw. I don't think that would -- I
14 mean, quite frankly, I don't think there's any question that
15 it is. So I don't think that's a problem.

16 I think it is evidence of the suggestive nature of
17 the out-of-court identification, but I don't think it's a --
18 a concern of further tainting the identification with regard
19 to the newspaper article.

20 With regard to the in-court identification, we don't
21 have a lineup arranged. And the state has filed no motion
22 for a lineup.

23 And I think the suggestive nature of the
24 out-of-court display of the photograph with the headline will
25 taint any possible in-court identification.

1 A. That's correct.

2 Q. And you came to the office, and Mr. Hawes was in the
3 room with us?

4 A. Yes.

5 Q. And one of the things we were going to do that day
6 was go down here to the Tribune building, and you were going
7 to show us where you'd been and all that --

8 A. That's correct.

9 Q. -- when this happened; correct?

10 A. Correct.

11 Q. And I think we listened to the 911 tape, and I asked
12 if you remembered that and et cetera.

13 A. Right.

14 Q. And during our conversation about what you'd seen
15 out there, what did you tell me you'd received while you were
16 incarcerated?

17 A. When -- it was printed in the paper that somebody
18 had confessed to the murder and named another individual. My
19 wife sent me a copy of that article from the Columbia Daily
20 Tribune. And I didn't know she was sending that. In opening
21 my mail, I first turned to the two pictures. And my mouth
22 dropped. I didn't see the headlines or anything, because I
23 recognized --

24 Q. How did you first turn to the two pictures? I
25 mean --

1 A. That's just the way it was folded in the envelope.

2 Q. All right. And what did -- well, it was obviously
3 an article about this.

4 A. Yes.

5 Q. Those photographs, when you saw those, what was your
6 reaction?

7 A. I remembered them as the ones that I had seen behind
8 Kent's car.

9 Q. That you've described here earlier when you were --
10 the incident you described when the jury was in here.

11 A. Absolutely.

12 Q. Okay. Do you remember when you -- the date when you
13 got the article?

14 A. Well, I'm assuming, but I think it was March or
15 April.

16 Q. You don't remember the exact date?

17 A. No, I don't.

18 Q. Okay.

19 A. It would have been a week or two after the article
20 first came out in the paper, I assume.

21 Q. Okay. Was this an article generated, to your --
22 well, were these photographs in the article in a Columbia
23 Daily Tribune?

24 A. I believe they were.

25 Q. Okay. Now, since that time, when you got that

1 article from your wife -- who obviously knew you were a
2 janitor when it all happened; right?

3 A. Sure.

4 Q. -- has anybody from law enforcement, and when I say
5 "law enforcement," Columbia police, highway patrol, sheriff,
6 prosecutor's office, FBI, CIA, anybody shown you those
7 photographs?

8 A. No.

9 Q. Okay. Now, you did look at various photographs at
10 the request of the police after this crime occurred; correct?

11 A. That's correct.

12 Q. Did you pick out, as the -- as the people you'd seen
13 out at the car at that night, from any of the photographs the
14 police had provided you with?

15 A. No.

16 MR. CRANE: Judge, I'd ask leave to show the witness
17 State's Exhibit -- you want to look at it again? State's
18 Exhibit 30 for identification.

19 THE COURT: 30 is the front page of the Tribune that
20 is dated 3-11-04?

21 MR. CRANE: Correct.

22 MR. ROGERS: May I make one preliminary inquiry of
23 the witness before he's shown the exhibit, Your Honor?

24 THE COURT: Well, I would think that
25 cross-examination might come after the examination of the

1 And I immediately went back to the night that we've been
2 talking about, that Kent was killed.

3 Q. Now, after you saw these photographs, when was the
4 first time you told anybody in law enforcement about those?

5 A. You.

6 Q. In that meeting on December 21st --

7 A. Somewhere, yeah.

8 Q. -- after you got out --

9 A. That's correct.

10 Q. -- of prison.

11 A. That's correct.

12 Q. Okay. And since then, nobody's showed you that.

13 A. No.

14 Q. That's the first time you've seen that since prison.

15 A. That's correct.

16 Q. What did you do with the article that your wife sent
17 you?

18 A. I threw it away after a day or so.

19 Q. Okay.

20 A. We just weren't able to keep extra stuff.

21 Q. Okay.

22 MR. CRANE: Judge, I'd offer -- well, I guess it
23 doesn't make any difference now. Do you want me to offer it
24 for the purposes of this hearing, or just not offer it?

25 MR. ROGERS: I think for the purposes of this

1 hearing, it might as well be in the record.

2 MR. CRANE: Okay. Offer it for purposes of this
3 hearing outside the presence of the jury.

4 THE COURT: 30 is admitted. I assume with your
5 consent.

6 MR. ROGERS: For the purposes of this hearing,
7 that's correct.

8 MR. CRANE: Okay.

9 - - -

10 State's Exhibit 30 admitted into evidence.

11 - - -

12 Q. Now, Mr. Trump, do you see in the courtroom here
13 today one of the individuals that you saw at Mr. Heitholt's
14 vehicle on the early morning hours of November 1, 2001?

15 A. Yes, I do.

16 Q. Could you point him out for us, please?

17 A. The defendant.

18 Q. Could you describe him for us, please?

19 A. Could I describe him?

20 Q. Yeah. We got to make a record.

21 A. I assume that he's --

22 Q. What's -- what's he wearing?

23 A. Oh, he's wearing a blue sweater, I'm sorry, red tie,
24 looks like a white shirt from here --

25 A. Okay. He's seated --

1 A. -- dark hair.

2 Q. -- between the young lady and the gentleman with
3 the --

4 A. And the attorney.

5 Q. Okay.

6 A. Maybe between two attorneys. I don't know.

7 MR. CRANE: Judge, I'd ask the record reflect that
8 Mr. Trump has identified the defendant.

9 THE COURT: It will reflect that.

10 Do you have anything further to ask of this
11 witness --

12 MR. CRANE: No.

13 THE COURT: -- Mr. Crane?

14 MR. CRANE: I do not, Your Honor.

15 THE COURT: You may inquire.

16 MR. ROGERS: Thank you, Your Honor.

17 - - -

18 CROSS-EXAMINATION

19 BY MR. ROGERS:

20 Q. Mr. Trump, where were you when you were shown
21 this -- when you received this newspaper in the mail?

22 A. I didn't hear the first part of your question.

23 Q. Where were you when you received this newspaper in
24 the mail?

25 A. I was in Bonne Terre Correctional Center.

1 hadn't been caught.

2 So there is no governmental connection. That was
3 his wife sending the article. He opened it up and made his
4 identification. He should be allowed to testify to it. If
5 he can identify the defendant, he should be allowed to do
6 that too, pursuant to Missouri law.

7 MR. ROGERS: Your Honor, I would just point out one
8 more item of governmental action. Those are police
9 photographs that were provided to the Columbia Daily Tribune.
10 That's certainly governmental action.

11 THE COURT: The motion in limine to suppress the
12 in-court identification by this witness is overruled.

13 I will move to the issue of the motion in limine by
14 the state as to impeaching by prior convictions. Are you
15 intending to go into the substance of any conviction that
16 this defendant might have -- or this witness might have?

17 MR. ROGERS: I do not disagree with Mr. Crane's
18 general statement about the scope of impeachment by prior
19 conviction. However, I believe there are things which have
20 been said on direct examination which have opened the doors
21 to some cross-examination, which may or may not open the door
22 to further detail on the impeachment. Before I -- if I think
23 I've got there before I do it, I will certainly approach the
24 bench and let the Court know.

25 THE COURT: Well, there are some rare occasions, I

1 please.

2

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3 The following proceedings were held in the presence of
4 the jury:

5 THE COURT: I apologize for keeping you so long,
6 ladies and gentlemen. There were some legal issues that we
7 needed to take up.

8 MR. CRANE: State would recall Mr. Trump.

9 THE COURT: Yes. Mr. Trump would be called to the
10 courtroom.

11 You remember you're still under oath, Mr. Trump.

12 THE WITNESS: Yes, ma'am.

13

- - -

14

JERRY TRUMP,

15 resumed the stand and testified further:

16

RESUMED DIRECT EXAMINATION

17

BY MR. CRANE:

18

Q. Sir, while you were in the penitentiary, and I

19

believe before the jury left, you indicated that was between

20

December '01 and December '04?

21

A. That's correct.

22

Q. Okay. What did you receive in the mail, while you

23

were incarcerated, from your spouse?

24

A. I received a -- the partial front page of the

25

Columbia Tribune.

1 Q. Okay. And do you recall the time frame when you
2 received this mailing from your wife?

3 A. March or April.

4 Q. Of --

5 A. Of '04.

6 Q. Okay. And when you opened this envelope --
7 envelope?

8 A. Yes.

9 Q. -- from your wife, what was inside?

10 A. There was a newspaper article. And it was folded --

11 Q. Let me ask you: Were you aware that she was sending
12 you this before you got it?

13 A. No.

14 Q. Okay. Now you opened up the envelope, and inside
15 was what?

16 A. A newspaper article, with a letter. But the
17 newspaper article struck my attention first. I was curious
18 about what it was. And I looked at it while it was still
19 folded.

20 Q. And when you opened that article, what did you see?

21 A. I saw that it was an article about the Kent Heitholt
22 murder and the two that had come forward -- or one that had
23 come forward.

24 Q. What was the first thing that your attention was
25 drawn to when you opened up this envelope and looked at its

1 contents?

2 A. As soon as I opened the envelope is: The way the
3 paper was folded, I saw the two pictures, only. I had no
4 idea what the article was about. And I recognized the two
5 pictures --

6 MR. ROGERS: Objection, Your Honor.

7 A. -- and faces.

8 MR. ROGERS: First of all, this is a narrative. He
9 answered the question, and then he went on to say something.
10 Secondly, I would like a continuing objection based upon our
11 pretrial motion and as developed today.

12 THE COURT: You may have a continuing objection to
13 your pretrial motion. And the answer is becoming a narrative
14 one, and I'd ask the state to ask specific questions than
15 rather have a narrative.

16 MR. CRANE: Very well, Judge.

17 Q. When you looked at these photos, what was your
18 reaction?

19 A. I've seen these two faces before.

20 Q. Where?

21 A. At the Tribune, the night that Kent was killed.

22 Q. The night you've described to the jury earlier this
23 afternoon?

24 A. Right.

25 Q. Prior to the time you saw these photographs in the

1 Q. Okay. Now, after you saw that article and those
2 photographs, you were released from the penitentiary in
3 December -- well, when were you released?

4 A. December the 13th, '04.

5 Q. All right. And when do you recall thereafter
6 meeting in my office reference this case?

7 A. About a week later.

8 Q. Okay. And you came down to my office, and Mr. Bill
9 Hawes, back there, was present when we met; is that correct?

10 A. That's correct.

11 Q. And on that occasion, we -- it's the first time we'd
12 met; right?

13 A. That's right.

14 Q. And we were actually going to go on down to the
15 Tribune, and you were going to show us your perspective down
16 there?

17 A. Correct.

18 Q. And also I think we listened to the 911 tape
19 together?

20 A. Correct.

21 Q. When was the first time you told anybody in law
22 enforcement about seeing the photos of these two individuals
23 that you recognize as the ones that were out at Kent
24 Heitholt's car on November 1, '01?

25 A. At your office.

1 Q. Had you told anybody before that?

2 A. No.

3 Q. Mr. Trump, thereafter, were you shown State's
4 Exhibit 30, the article, or those photos, before today?

5 A. No.

6 Q. Nobody from law enforcement showed you these photos
7 until today.

8 A. That's correct.

9 Q. Okay. Sir, do you see here in the courtroom -- and
10 I'm going to ask you to do this. If you do, point to the
11 individual, if you see the either of the people that you saw
12 that night, on 11-1-01, here in the courtroom with us today,
13 please point out that individual.

14 MR. ROGERS: Your Honor, I object. And I would ask
15 that this be subject also to my continuing objection, based
16 upon the pretrial motion and the record we made earlier.

17 THE COURT: It will -- there will be a continuing
18 objection until you tell me that there will not be.

19 MR. ROGERS: All right.

20 THE COURT: So it's understood that you are
21 objecting to the witness's in-court identification, as well
22 as the other matters. And it will continue.

23 MR. ROGERS: Thank you.

24 THE COURT: It is overruled.

25 MR. CRANE: Proceed, Your Honor?

1 THE COURT: Yes.

2 Q. Mr. Trump, if you see the individual here with us
3 today, or individuals in the courtroom today that you saw on
4 11-1-01 and the events you described out at Kent Heitholt's
5 vehicle, would you point to that individual or individuals,
6 please.

7 A. Yes. (Pointing.)

8 Q. Okay. Now, would you describe for us what the
9 person you're pointing to is wearing.

10 A. He's wearing a blue sweater, it looks -- appears,
11 and a red tie, white shirt.

12 Q. Okay.

13 A. Dark-haired.

14 Q. And --

15 A. Sitting between the woman and the gentleman that is
16 challenged without hair.

17 Q. Okay.

18 MR. ROGERS: Which one?

19 A. Two men challenged.

20 Q. And that is one of the two individuals that you saw.

21 A. That's correct.

22 Q. Had you ever seen -- well, strike that.

23 MR. CRANE: Judge, I'd ask the record reflect the
24 witness has identified the defendant.

25 THE COURT: It will.