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FOR THE STATE

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1 (At sidebar.)

2 THE COURT: All right. Good morning.

3 JUROR: Good morning.

4 THE COURT: I have a note that you brought  
5 from the doctor. Are you all right today?

6 JUROR: Yeah.

7 THE COURT: Okay.

8 JUROR: -- because there's something that I  
9 didn't --

10 THE COURT: So maybe it was something that  
11 you need --

12 JUROR: Yeah. I brought medication with me.

13 THE COURT: Okay. I understand you -- feel  
14 good yesterday. You can appreciate what has happened.  
15 The entire trial stopped. We couldn't do any of it.  
16 Jurors had to be sent home. The attorneys couldn't do  
17 their work. I couldn't do my work. I just want you to  
18 have an appreciation for the importance of this  
19 proceeding.

20 JUROR: I understand.

21 THE COURT: Don't discuss with the other  
22 jurors.

23 JUROR: No, I haven't -- or anything, but --

24 THE COURT: Thank you. -- okay.

25 (Sidebar concluded.)

1 THE COURT: Bring out the jurors.

2 (The jury entered the courtroom.)

3 THE COURT: Good morning ladies and gentlemen

4 of the jury.

5 (A chorus of good morning.)

6 THE COURT: Please be seated. Madam clerk,

7 roll call.

8 (Jury roll call with all jurors present.)

9 THE COURT: The second cup of coffee will be

10 passed out.

11 (Laughter.)

12 THE COURT: Prosecutor.

13 MR. MELLO: Thank you, Judge.

14 THE COURT: Call your next witness.

15 MR. MELLO: Thank you. Chief Michael Cioffi,

16 please.

17 THE COURT: Good morning. Please face the

18 court clerk.

19 THE CLERK: Raise your right hand.

20 M I C H A E L C I O F F I, STATE'S WITNESS, SWORN

21 THE CLERK: State your name for the record.

22 THE WITNESS: Michael Cioffi.

23 THE COURT: Please have a seat. You may

24 begin.

25 MR. MELLO: Thank you, Judge.

1 DIRECT EXAMINATION BY MR. MELLO:

2 Q Good morning, sir.

3 A Morning.

4 Q Why don't we start our day by having you tell  
5 the jury a little bit about yourself. All right. What  
6 I'd like you to do is tell us first by whom you are  
7 presently employed?

8 A By the Borough of Englewood Cliffs.

9 Q And in what capacity do you serve the Borough  
10 of Englewood Cliffs?

11 A As chief of police.

12 Q And how long have you been chief of police of  
13 the Borough of Englewood Cliffs?

14 A Since July 14, 2010.

15 Q If you would, what I'd like you to do is  
16 begin our discussion of your background by detailing  
17 for the jury your experience as a law enforcement  
18 officer, as a police officer?

19 A I started my career in law enforcement in 1976  
20 with the Hackensack police department. I was there for  
21 eight years, on the sergeant's list, number three  
22 actually. And I progressed and changed over  
23 departments in January 14th, correction, January 19,  
24 1984 to Englewood Cliffs police department.

25 And I have gone through the ranks in

1 Englewood Cliffs police department. I've been to many  
2 schools. I've been through over 800 arrests. I've  
3 done whatever I possible could do to advance our police  
4 department in Englewood Cliffs.

5 And through the years I was promoted in 1994  
6 to sergeant. In 2000 I was promoted to lieutenant. In  
7 2006 I was promoted to deputy chief. And in May I was  
8 promoted to acting chief and was made chief in July of  
9 2010.

10 Q Thank you. What I'd like to do now is  
11 discuss your background in not law enforcement as a  
12 police officer but in emergency response. Understood?

13 A Correct.

14 Q All right. If you would, would you begin to  
15 discuss that topic with the jury? Your background in  
16 rescue and emergency response.

17 A Well I joined the Englewood Cliffs fire department  
18 in 1973. Next month I'll complete 38 years I the  
19 Englewood Cliffs fire department. I went through every  
20 rank as an officer, first lieutenant, second  
21 lieutenant, captain and chief of the fire department.  
22 I am the president of the company and I have been for  
23 27 years.

24 I've gone through numerous classes with the  
25 fire department. When I was chief I instituted and

1 started a repel team for specific incidents where we  
2 would have to scale down a building or climb down a  
3 cliff because of the numerous rescues and recoveries  
4 that we have done on the cliffs.

5 I myself being on the fire department and  
6 growing up in Englewood Cliffs have been on the  
7 Palisades Cliffs numerous times. I've gone through  
8 every possible place that they have there. As a kid I  
9 liked to roam around and see what was going on.

10 They have 1,000 steps, it's actually 360  
11 steps. They have the old foundation for the Rivera  
12 Restaurant, which used to face New York and we'd go  
13 over there and just look at things like that. I would  
14 scale the cliffs and go down to the boat basin, because  
15 that was my stomping grounds as a kid and growing up in  
16 the town.

17 Through the years with the fire department  
18 and after I instituted a repel team, we used it  
19 numerous times. Prior to that we would, the old  
20 fashion block and tackle and, you know, attempt rescues  
21 in the old fashion way. But since the repel team came  
22 into existence I've gone approximately, I'd say 30  
23 repels on the cliffs for rescue or recovery. I've done  
24 approximately 25 drills, just on the cliffs, and  
25 approximately 50 other drills on buildings and things

1 of that nature.

2           Let alone all the times that I've gone on the  
3 fairs, safety fairs or expos. They have a McDonald's  
4 safety fair every year I repel there. They have fairs  
5 up in the Bergen County police academy. We were up  
6 there and we've, you know, showed the people what we do  
7 on repelling. We also do national night out. We, you  
8 know, set up our ropes and repel, the team does. I'm  
9 very proud of the team. We've really been very  
10 successful.

11           In reference to other incidents on the fire  
12 department I've gone through many schools. I've  
13 reached instructor level one, level two, self-contained  
14 reading apparatus instructor. I've a librarian  
15 instructor, an incident management one, two, three, and  
16 four hundred. I've done IMS seven hundred, which is an  
17 incident management system. I've gone through West  
18 Point leadership and command school. Things of that  
19 nature.

20           Not to brag, I feel I have an extensive  
21 resume. And that my background, you know, is really  
22 geared toward helping people and doing this. It's  
23 something I love. I guess it's in my blood and I've  
24 enjoyed all the things I've done over the past 38  
25 years.

1           Q     Thank you, Chief. For those of us not  
2 familiar with the term repel and you'd begun to discuss  
3 your experience with respect to repelling, can you give  
4 the jury kind of a primer, an understanding to those of  
5 us who are not familiar with repelling just what is  
6 that about?

7           A     It's a way to I'd say start from a top or a higher  
8 location, like the top of the cliffs or the top of a  
9 building, and slowly lowering yourself down the rope.  
10 The ropes are special ropes. They call them static  
11 kermantle ropes so that they have a little bit of  
12 stretch in them, but they're very safe because a person  
13 like me that's gaining weight every year would want to  
14 make sure that they're going to hold me and that  
15 they're strong enough.

16                     There's all different types of knots that we  
17 learn. We learn to tie them with our eyes closed so  
18 that we're able to do it when we're in a, you know, in  
19 a situation. We try to learn to tie them with one  
20 hand, but that's extremely difficult. And it's a way,  
21 a system that someone can lower themselves down.

22                     I'm sure you've seen people, the military  
23 coming out of helicopters, they repel right down to the  
24 ground in a matter of seconds or people going down on,  
25 fire department would use it at a fire in a highrise

1 building. If we wanted to get from one floor to the  
2 next floor to maybe pick up the people and lower them  
3 down to the next floor so that they're safe if the fire  
4 is contained in their apartment, which we have done in  
5 the past.

6           There is many times, or I'd say all the tools  
7 that we use are basically the knots that we're sure of,  
8 how we tie off. There's tie off ropes that you would  
9 tie off a rope to something secure and then attach your  
10 rope to that tie off. Your rope would be attached to  
11 that tie off by a device that's called the carabiner.

12           Each item that I'm talking about, the  
13 carabiners that we use are in the vicinity of 9,000  
14 pounds they'll hold. There's a thing called a figure  
15 of eight, which the rope actually goes through and you  
16 can actually make it go fast or slow through this  
17 figure of eight. So you can down faster, you can go  
18 down slow. It's all dependent upon how you're  
19 repelling as you're going down. The figure of eight is  
20 27,000 pounds. So everything that I've told you about  
21 the ropes themselves are 11,000 pounds they hold.

22           So everything I've told you is a pretty  
23 secure system. As long as you've got confidence in the  
24 ropes and confidence in your ability, many people can  
25 repel. And it's actually a fun thing to do, scary at

1 first, but it's a fun thing to do and it's really, it's  
2 really helped our fire department a lot and it's helped  
3 a lot of recoveries and rescues on the cliffs.

4 Q Speaking of rescues and recoveries on the  
5 cliffs, can you first tell the jury what you mean, and  
6 differentiate between the term rescue operation and  
7 recovery?

8 A Rescue is that we believe the person is alive and  
9 we have to get to them to render first aide, get them  
10 to care and help them. Recovery is that we're looking  
11 for a body. That the person is expired and we're there  
12 to recover the body.

13 Q And if you would, can you discuss with the  
14 jury your background in rescue and recovery operations  
15 with particular focus on the area known as the  
16 Palisades Cliffs?

17 A I've been up to the cliffs many times with the  
18 fire department. I actually can tell you that I've  
19 been there for a 150 motor vehicle accidents, for 70  
20 extractions, for 15 boat explosions that were down on  
21 the lower road, for I'd say it was 65 brush fires,  
22 things of that nature.

23 But the repelling was usually, the last repel  
24 that we were called out was June of 2010 for two hikers  
25 that had gotten lost. We called out, we assembled, we

1 were getting our ropes ready and ready to respond and  
2 the hikers came out off the cliffs fine, so we were  
3 cancelled.

4           Before that we went down on a repel mission I  
5 believe it was in 2009. Some subject ran away from an  
6 officer on a motor vehicle stop and ran toward the  
7 cliffs and they feared that he might have fallen off.  
8 So they called us. Subsequently they found that he had  
9 gotten picked up by a car and he was safe, so we  
10 returned.

11           Prior to that there was another incident  
12 where a gentleman fled the Palisades Interstate Parkway  
13 police --

14           MR. BILINKAS: Judge, if I may, I have no  
15 objection to his talking about experience. But  
16 specific incidents prior to this I don't think is  
17 relevant and I'm going to object to it.

18           MR. MELLO: Fair enough.

19 BY MR. MELLO:

20           Q     If you would, Chief, focus on rescue and  
21 recovery as you've experienced them on the Palisades  
22 Cliffs.

23 A     I would say I've done approximately 25 rescue and  
24 approximately five or six recoveries.

25           Q     Thank you. Now I'm going to direct your

1 attention to September of 1992. All right?

2 A Yes, sir.

3 Q I'm going to direct your attention  
4 specifically to September 20, 1992. Do you recall that  
5 date?

6 A Yes, sir, I do.

7 Q On that date did you participate in an effort  
8 to effect a rescue of a woman reported to have fallen  
9 from the cliffs at the site of the Rockefeller Lookout  
10 in Englewood Cliffs?

11 A Yes, sir, I did.

12 Q What I'd like to do is I'd like to begin  
13 discussion your participation in that event.  
14 Understood?

15 A Yes, sir.

16 Q If you can, can you tell us first in what  
17 capacity did you participate in the rescue attempt that  
18 I have referred to?

19 A I responded as part of the fire department. I am  
20 in charge of the repel team, which is under the  
21 direction of the chief of the fire department.

22 Q Can you tell us approximately what time you  
23 were notified and requested to respond to the  
24 Rockefeller Lookout in Englewood Cliffs, Bergen County,  
25 New Jersey?

1 A The fire department got dispatched at 8:16 p.m.

2 Q Can you tell us the approximate distance  
3 between the location of the rescue equipment that you  
4 would utilize and the Rockefeller Lookout?

5 A It's just over a mile.

6 Q Can you tell us what personnel and/or  
7 equipment responded to the Rockefeller Lookout  
8 following the assignment dispatch that you referred to?

9 A Yeah. The chief, the two trucks, one was a rescue  
10 truck and 15 personnel.

11 Q Can you tell us approximately how long it  
12 took you to respond from your headquarters to the  
13 Rockefeller Lookout?

14 A I would say we got there approximately 8:22, 20.

15 Q Just a few minutes then?

16 A Yes.

17 Q Now if you would, would you tell us as you  
18 arrived at the Rockefeller Lookout tell us first what  
19 you see?

20 A I saw a police car there, several police cars were  
21 there. And I was directed by Lieutenant Nelson Pagan  
22 to the cliffs.

23 Q All right. Now you've referred to Lieutenant  
24 Pagan. He's a lieutenant with the Palisades Interstate  
25 Parkway police; correct?

1 A That's correct.

2 Q Did you have a conversation with him at the  
3 lookout?

4 A Yes, I did.

5 Q Can you tell us with respect to that  
6 conversation were you directed to a particular  
7 location?

8 A Yes, sir. I was.

9 Q And were you directed by Lieutenant Pagan to  
10 a particular location?

11 A Yes, sir.

12 Q Did you, if you recall, at the time of  
13 arrival and your meeting with Lieutenant Pagan, did you  
14 meet with any other police officer?

15 A Sergeant Abbott.

16 Q And similarly did you have an opportunity to  
17 have a discussion with Sergeant Abbott?

18 A Yes, sir.

19 Q Now with respect to the very next activity  
20 that takes place, can you tell us what next occurred?

21 A They directed me to the lookout, a rock just north  
22 of the lookout where the cliff was and pointed directly  
23 to where this person fell off the cliffs. They told me  
24 it was a female who fell off the cliffs and this is  
25 where she fell off.

1 Q Now can you describe first the general  
2 location where you begin to walk to the ultimate point  
3 that you've described?

4 A It's actually north of the lookout, it's north of  
5 the paved roadway. And it's a wooded area that's  
6 really a path, and a lot of vegetation on it. It's  
7 approximately I'd say 75 feet in. We walked down this  
8 path along the fence and just past through the fence  
9 was where the cliff was that he directed me to where  
10 the woman fell off.

11 Q Now at this time it's now past 8:00 p.m.;  
12 correct?

13 A Oh, yes, sir.

14 Q Is it fair to say that it was dark at that  
15 time?

16 A Yes, sir.

17 Q Is it accurate to state that the foliage at  
18 that time at the lookout was on September 20 full?

19 A Yes, it was.

20 Q And is it also accurate to state that it is  
21 darker through the wooded area than it is on the  
22 parking lot?

23 A Yes.

24 Q And similarly so at the edge of the cliff?

25 A Yes, sir.

1 Q I'm going to show you what's been marked  
2 S-257, and I believe it is in evidence. First of all  
3 I'd like you to just take a moment to examine that  
4 exhibit.

5 A (Examining exhibit.)

6 Q Do you recognize that exhibit?

7 A Yes, sir.

8 Q If you would, if you would turn the exhibit  
9 toward the jury so that you can identify the location  
10 that is depicted in that particular exhibit?

11 A This is the lookout. This is just north of the  
12 lookout. And this is the wooded area. The path would  
13 be right down along the fence to where the cliff is.

14 Q I'm going to show you what's been marked  
15 S-250, just take a brief moment to examine that  
16 exhibit, if you would.

17 A (Examining exhibit.)

18 MR. MELLO: Exhibit 257 for the jury.

19 (Showing exhibit to the jury.)

20 BY MR. MELLO:

21 Q Do you recognize the exhibit that is before  
22 you, sir?

23 A Yes, sir. I do.

24 Q What do you recognize that exhibit to be?

25 A This is the retaining fence and this is the cliff.

1 And that's the area where I was directed that she had  
2 fallen off.

3 Q And can you in words briefly describe that  
4 which you have noted the area that you reported to be  
5 the point at which the woman fell?

6 A This is the edge of the cliff here and it's, I  
7 guess there's a natural seat from the rock. It goes  
8 down maybe 15 inches that you could actually sit here  
9 and put your back against it or sit here and put your  
10 back against it. If you're facing that way, you're  
11 facing eastbound. If you're facing this way you're  
12 facing southwest, I mean southeast. And that's the  
13 area where I was directed, right there.

14 Q And by the way from that particular point do  
15 you have a view of the George Washington Bridge?

16 A No, sir.

17 Q From that particular view do you have a view  
18 of the George Washington Bridge and the northern  
19 Manhattan skyline from that view?

20 A No, sir.

21 Q S-251 in evidence. Take a moment to examine  
22 that photograph please.

23 A (Examining exhibit.)

24 Q Do you recognize that photograph?

25 A Yes, sir.

1 Q What do you recognize that photograph to be?

2 A The retaining wall, the retaining fence where  
3 people are supposed to stay on this side. The ledge,  
4 again, and the seat in the area where I was directed  
5 that she had fallen off.

6 Q And by the way with respect to that  
7 restraining fence you have been obviously on the cliffs  
8 many times for many rescue operations; right?

9 A Yes, sir.

10 Q And is it fair to say that indeed persons do  
11 not always obey the rules and oftentimes cross over the  
12 boundaries established by the --?

13 A Yes, sir. They do.

14 Q Now I want to take you to that point in time  
15 when you have arrived at the point that you've  
16 described in word and by way of photographs. I want  
17 you to tell us first what equipment either has been set  
18 up at that location or is going to be set up?

19 A We set up some lighting with a generator. We set  
20 up --

21 Q Tell us about that, the kind of lighting.

22 A A small Honda generators that I think it's 500  
23 watt lights that they put out. And you can plug an  
24 extra light in off of the generator, which we usually  
25 do. And hand lights from the fire department we set up

1 throughout that area on the cliff edge, on the cliff.

2           The ropes that we used were 600 foot ropes  
3 that are taped off in half so they can repel, I can  
4 repel down 300 feet. Every rope we double. I set up  
5 the ropes for three tie offs to three different trees.  
6 And there was one extra safety line tied off to the  
7 post of the fence that went in, it was cemented into  
8 the ground. That was just a precautionary to bring all  
9 three ropes together.

10           And we used the figure of eight, our gear,  
11 our seats that we wear, and the figure eight, and the  
12 carabiners. And we set up repel ropes to go down right  
13 off, I went down exactly at the spot where I was  
14 pointed.

15           Q     All right. What I'd like to ask you is  
16 before you begin to repel, to attempt to effect the  
17 rescue, is any attempt made by any means to call out to  
18 the victim or attempt to find the victim in that  
19 manner?

20           A     Yes, sir.

21           Q     How was that?

22           A     I was setting up the ropes, I would hold onto the  
23 rope and I'd go toward the edge of the cliff and I  
24 would yell, you know, hello, hello, can you hear me,  
25 where are you. We use the flashlight to look. It was

1 not a small flashlight, it's a rather large light to  
2 just try and scan the area. But it was no response and  
3 I wasn't able to see anything.

4 Q I'm going to show you again what's been  
5 marked S-251. Does S-251 show the site where you began  
6 to repel?

7 A Yes, sir.

8 Q Point it out to us.

9 A (Pointing to site on photograph.)

10 Q Now where you are pointing to represents your  
11 repel site location?

12 A Yes, sir.

13 Q And you see something has been drawn on that  
14 particular photograph. Do you see that?

15 A Yes, sir.

16 Q Okay. Now I want you to tell us if you can  
17 where Pagan ties off and will begin his descent?

18 A I honestly don't know what tree he tied off to.  
19 His rope was set up before mine.

20 Q All right. Can you tell us the location that  
21 you will begin descent?

22 A He went down over here (pointing to photograph).

23 Q Approximately the area where the --

24 A Right. Yes, sir.

25 Q --

1 A Yes, sir.

2 Q S-252 in evidence. Can you tell us what that  
3 photograph depicts?

4 A That's the cliff where we were directed that the  
5 victim had fallen off. This is the cliff here. This  
6 is the seat that I was talking about. And this was th  
7 other seat where the person could face southeast. If  
8 they sat here, it would southeast. If they sat here  
9 they would face east.

10 Q And does this show the approximate location  
11 where your ropes would be?

12 A Yes, sir.

13 Q Would you point out to the jury?

14 A Right here (pointing to photograph).

15 Q And could you point out the approximate  
16 location of Pagan's ropes?

17 A Over here (pointing at photograph).

18 MR. MELLO: Does everyone see that?

19 (No audible response.)

20 BY MR. MELLO:

21 Q S-259. Do you recognize that photograph?

22 A Yes, sir.

23 Q What does that photograph depict?

24 A It's the edge of the cliff stone where the victim  
25 was supposed to have fallen off. And the seat.

1 MR. MELLO: S-259. (Showing photo to jury.)

2 BY MR. MELLO:

3 Q S-253 in evidence. Do you recognize that  
4 photograph?

5 A Yes, sir.

6 Q What does that photograph depict?

7 A The same cliff. This is the edge of the cliff.  
8 This is where I went off. And that's where Nelson went  
9 off. And that's the seat.

10 MR. MELLO: S-253. (Showing photograph to  
11 jury.)

12 BY MR. MELLO:

13 Q Now I want to take you to that point where  
14 you have tied off and Pagan has tied off. Understood?

15 A Yes, sir.

16 Q And I want you now to concentrate on the  
17 location where you and he begin descent. All right?

18 A Correct.

19 Q Can you tell us as you begin your descent are  
20 you north or south of Pagan's position?

21 A I am north.

22 Q Can you tell us as you begin your descent the  
23 approximate distance between you and Pagan?

24 A Approximately a foot and a half.

25 Q Can you tell us as you begin your descent do

1 you begin together or would one of you begin to descend  
2 first?

3 A No, I went down first.

4 Q Now as you begin your descent can you tell us  
5 in addition to the lighting that you earlier referred  
6 to, did you have any lighting on your person?

7 A Yes, sir. I did.

8 Q Okay. Can you describe that for the jury?

9 A On my helmet I have a light that's attached to the  
10 top of the helmet that looks directly out. And I also  
11 have a heavy duty light off of the fire truck that I  
12 have on around my neck that went down to basically my  
13 waist.

14 Q And do you recall if there was any lighting  
15 apparatus on the person of Pagan?

16 A I don't recall what Nelson had.

17 Q Do you recall if he had additional lighting?

18 A Yes, sir. He did.

19 Q Okay. Now is it fair to say that in terms of  
20 effecting a rescue attempt locating a point where the  
21 person is reported to have fallen is exceedingly  
22 important?

23 A Yes, sir.

24 Q In addition to the point at which the person  
25 is reported to have fallen what do you look for as you

1 begin to effect a rescue attempt of the kind that you  
2 did on September 20, 1992?

3 A At the top of the cliffs I look for any evidence  
4 that a person had fallen. Anything that, any debris,  
5 any kind of, you know, touching of the rock from the  
6 person's clothing, something ripped off, any kind of  
7 flesh, hair, blood, anything that possibly might  
8 indicate the exact spot where the person, you know,  
9 went off.

10 Q And is that the kind of thing you look for to  
11 attempt to locate the person?

12 A Yes, sir.

13 Q Now lets go to that point where you now begin  
14 your descent. Can you tell us what you observed first?

15 A As I was pointed out to the exact spot where she  
16 went, that's exactly where I went off. That was  
17 pointed out to me by both Sergeant Abbott and  
18 Lieutenant Nelson Pagan.

19 I repelled off of the cliffs there and  
20 started going down the fascia of the cliffs. At ten  
21 feet down all of a sudden there's a ledge. It was the  
22 beginning of a ledge that went and got wider as it went  
23 north. On this ledge I saw a pocketbook, two pieces of  
24 credit cards, two credit cards. One laminated ID,  
25 which I don't know what it was, and a piece of makeup.

1 It was round cylindrical piece of makeup. I'm not sure  
2 whether it was a lipstick or a eyebrush, but it was a  
3 round cylindrical item of makeup. It stuck out. I  
4 said this is very strange. I didn't know why --

5 MR. BILINKAS: Objection.

6 THE COURT: Your objection.

7 MR. BILINKAS: It's non-responsive, Judge,  
8 what he thought.

9 THE COURT: Ask another question.

10 BY MR. MELLO:

11 Q Please continue with your answer and if you  
12 would limit your answer to the observations that you  
13 made?

14 A I observed the purse or pocketbook. Those  
15 laminated ID, the two pieces, two credit cards, which I  
16 don't know what they were, and a piece of makeup that  
17 was on the beginning portion of the shelf, which the  
18 shelf was about ten feet down. I had never seen the  
19 shelf and didn't know it existed until I repelled down  
20 to that point. And I couldn't understand why they were  
21 there.

22 MR. BILINKAS: Again, Judge, I'd ask you to  
23 instruct the witness with regards to any  
24 understandings, suspicions, or anything like that.

25 THE COURT: Try to limit your responses, if

1 you would.

2 THE WITNESS: Yes, sir.

3 BY MR. MELLO:

4 Q Following your observations that you made,  
5 can you tell us what happens at this point?

6 A I inspected that area thoroughly with the aide of  
7 my flashlight, the one on my waist because it was a  
8 larger light, and looking for any kind of sign that the  
9 victim was there or that she had passed by there.

10 Either any type of debris, clothing, blood, hair,  
11 tissue, anything. Could not locate anything.

12 Q Can you tell us first more specifically where  
13 you observed the pocketbook or purse that you  
14 described? What part of the ledge?

15 A Right at the beginning portion of the ledge.  
16 Approximately six inches where after where it started.

17 Q And would that be the narrowest point of the  
18 ledge?

19 A Yes, sir.

20 MR. BILINKAS: Counsel can I see it?

21 MR. MELLO: Sure. (Showing exhibit to  
22 counsel.)

23 BY MR. MELLO:

24 Q S-254 in evidence. Do you recognize that  
25 photograph, Chief?

1 A Yes, sir.

2 Q Okay. What do you recognize that photograph  
3 to indicate?

4 A This is the cliff where we came off. And this is  
5 the beginning of the ledge.

6 Q And if you would would you locate for the  
7 jury the edge of the cliff where you began your  
8 descent?

9 A From here (pointing to photograph).

10 MR. MELLO: S-254. (Showing photograph to  
11 the jury.)

12 BY MR. MELLO:

13 Q I'm going to show you S-260.

14 A (Reviewing photograph.)

15 Q And if you would making sure the jury can see  
16 where you're pointing to. Can you show us the cliff  
17 edge where you began your descent?

18 A It's up on the top right here (pointing to  
19 photograph).

20 MR. MELLO: Everyone see it?

21 (No audible response.)

22 BY MR. MELLO:

23 Q And if you can can you tell is you can see  
24 the ledge that you referred to earlier in your  
25 testimony?

1 A It's right over here (pointing to photograph).

2 Q And it's accurate to state that this  
3 photograph and the photograph that I just showed you  
4 are taken from north looking south, so to speak?

5 A Correct.

6 Q All right.

7 MR. MELLO: 260. (Showing photograph to the  
8 jury.)

9 BY MR. MELLO:

10 Q S-255.

11 A (Examining photograph.)

12 Q Do you recognize that photograph?

13 A This is the ledge (pointing to photograph).

14 Q Okay. Can you tell us where in that  
15 photograph you saw the pocketbook, the purse that you  
16 referred to?

17 A Over here. (Pointing to photograph.)

18 Q If you would, would you just circle that  
19 area?

20 A Okay. (Circling area on photograph.)

21 MR. MELLO: I'll show that to the jury.  
22 (Showing photograph to jury.)

23 BY MR. MELLO:

24 Q S-256. I'm showing you S-256. Can you  
25 recognize where in that photograph --?

1 A This is the ledge (pointing to photograph).

2 Q Do you recognize the object that is in that  
3 photograph?

4 A No, sir.

5 Q Can you recall if you saw that object on the  
6 night that you referred to?

7 A I did not.

8 MR. MELLO: (Showing photograph to the jury.)

9 BY MR. MELLO:

10 Q Now if you would at the time that you  
11 repelled down to the ledge that you described can you  
12 tell us as the ledge lies south to north where is the  
13 greatest part of vegetation?

14 A To the north.

15 MR. MELLO: Judge, this series of photographs  
16 we're going to mark into evidence without objection.

17 MR. BILINKAS: No objection.

18 THE COURT: In evidence.

19 MR. MELLO: And for the record they would be  
20 S-261, 289, 290, 291, 292, 263, 261, 288.

21 BY MR. MELLO:

22 Q S-261 in evidence. Can you examine that  
23 photograph?

24 A Yes, sir. (Examining exhibit.)

25 Q I'm going to ask you if you can tell us what

1 that photograph depicts?

2 A That's the cliff where we began to repel. That's  
3 the ledge.

4 Q Now you indicated that you saw no indicia of  
5 human contact, that's blood, tissue, clothing, or  
6 anything of the kind on the ledge; correct?

7 A That's correct.

8 Q Can you tell us if you examined the cliff  
9 face as you came down --?

10 A Yes, sir. I did.

11 Q Did you see anything?

12 A Nothing.

13 MR. MELLO: (Showing photograph to jury.)

14 MR. BILINKAS: Counsel, for the record, can  
15 we have a date as to when those photographs were taken?

16 MR. MELLO: I'll put that on the record --.

17 BY MR. MELLO:

18 Q S-289.

19 A (Examining exhibit.)

20 Q Do you recognize that exhibit?

21 A Yes, sir.

22 Q What does that photograph show?

23 A The -- cliff where we repelled off and the ledge.

24 Q Does it show the site where, or approximately  
25 where you located the pocketbook?

1 A Right at the front tip here, (pointing to  
2 photograph).

3 MR. MELLO: S-289. This series of photographs  
4 12/22/04. (Showing exhibit to jury.)

5 BY MR. MELLO:

6 Q S-290 in evidence.

7 A (Examining exhibit.) Yes, sir.

8 Q Do you recognize that photograph?

9 A Yes, sir.

10 Q Tell us what that photograph shows, please?

11 A The ledge and the top of the cliffs.

12 Q When you say the ledge, and where you are  
13 pointing to, are you referring to the proximate  
14 location where you found the pocketbook and --

15 A Yes, sir. (Pointing to photograph.)

16 MR. MELLO: (Showing photograph to the jury.)  
17 S-290.

18 BY MR. MELLO:

19 Q S-291 in evidence.

20 A (Examining exhibit.)

21 Q Can you tell us what that photograph shows?

22 A The face of the top of the cliff is here and the  
23 ledge is right here. (Pointing to photograph.)

24 Q And once again can you point to that  
25 particular location when you say right here. Are you

1 referring to the location where you found the  
2 pocketbook --

3 A Yes, sir.

4 Q And does that ledge extend out northerly?

5 A Yes, sir.

6 Q And does it get wider as it --

7 A Yes, sir. It does.

8 MR. MELLO: S-291. (Showing exhibit to the  
9 jury.)

10 BY MR. MELLO:

11 Q S-292 in evidence.

12 A (Examining exhibit.) Yes, sir.

13 Q What's that photograph show?

14 A The top of the cliff and the ledge where the  
15 pocketbook was found. (Pointing to exhibit.)

16 MR. MELLO: 292 in evidence for the jury.

17 MR. BILINKAS: No objection.

18 THE COURT: In evidence.

19 MR. MELLO: (Showing exhibit to the jury.)

20 MR. BILINKAS: Again that --?

21 MR. MELLO: Yes, sir.

22 MR. BILINKAS: Same date?

23 MR. MELLO: Yes, sir.

24 BY MR. MELLO:

25 Q S-263 in evidence.

1 A (Examining exhibit.)

2 Q What does this photograph show?

3 A This is the cliff edge. This is where I repelled  
4 off. That's the beginning of the ledge. (Pointing to  
5 exhibit.)

6 Q You repelled in this area of this  
7 darkened --?

8 A Yes, sir.

9 Q Okay. And the ledge is where?

10 A Here. But it actually begins two feet right here.  
11 (Pointing to exhibit.)

12 Q Okay. Does that photograph show the  
13 proximate location of the pocketbook, purse?

14 A Right in this area here. (Pointing to exhibit.)

15 MR. MELLO: S-263 for the jury. (Showing  
16 exhibit to the jury.) This is in evidence, Judge, as  
17 261.

18 BY MR. MELLO:

19 Q What does that photograph show?

20 A This is the ledge with the seat. This is south,  
21 another crevice. (Pointing to exhibit.)

22 MR. MELLO: S-261 for the jury. (Showing  
23 exhibit to the jury.)

24 BY MR. MELLO:

25 Q S-288 in evidence.

1 A (Examining exhibit.)

2 Q Tell us what that photograph shows?

3 A This is the crevice south of the ledge. (Pointing  
4 to exhibit.)

5 MR. MELLO: (Showing exhibit to the jury.)

6 Judge, for the record, the following exhibit is marked  
7 into evidence without objection. It is an  
8 illustration, S-240.

9 THE COURT: Any objection?

10 MR. BILINKAS: No, Judge.

11 THE COURT: In evidence.

12 BY MR. MELLO:

13 Q Chief, I want to ask you to just hold that up  
14 for a moment.

15 MR. MELLO: First of all, Your Honor, for the  
16 record this is an illustration. It notes dimensions.  
17 It is not drawn, not drawn to scale.

18 BY MR. MELLO:

19 Q With respect to this exhibit, and you've  
20 reviewed this exhibit?

21 A Yes, sir.

22 Q Have you reviewed the dimensions on this  
23 exhibit?

24 A Yes, sir.

25 Q Do you find them to be accurate to your

1 recollection?

2 A Yes, sir.

3 Q Now understanding this is an illustration not  
4 drawn to scale can you first indicate the height of the  
5 fencepost on the restraining fence?

6 A About three feet.

7 Q The distance between the restraining strands,  
8 approximately?

9 A About ten inches.

10 Q Can you tell us the length of the upper rock  
11 seat?

12 A Six feet eleven inches.

13 Q And does it indicate at various points the  
14 width of the flat rock that we described?

15 A Yes, sir.

16 Q Okay.

17 A I believe it's four feet six inches.

18 Q And at the southern edge?

19 A It's three feet five inches.

20 Q This point to the edge?

21 A Five feet.

22 Q And from edge to edge of the --?

23 A Six feet seven inches.

24 MR. MELLO: (Showing illustration to the  
25 jury.)

1 BY MR. MELLO:

2 Q All right. Now we talked a good deal about  
3 the location of the pocketbook/purse, can you tell us  
4 what you recall of that particular item? Large or  
5 small?

6 A I couldn't, I'd be guessing. I couldn't tell you.

7 Q Fair enough. Do you recall anything specific  
8 about that item? The pocketbook/purse?

9 A I know it was open. I know the credit cards, it  
10 was credit cards. I know it was laminated ID. I don't  
11 know what kind, whether it was a driver's license. And  
12 I know it was a piece of makeup. I know, I wanted to  
13 preserve that for evidence. I wanted to photograph  
14 that.

15 Q And --

16 MR. BILINKAS: Objection.

17 THE COURT: Your objection?

18 MR. BILINKAS: What he wanted to do I think is  
19 unresponsive to the question.

20 MR. MELLO: Maybe I can ask this question.

21 BY MR. MELLO:

22 Q Did you photograph that item?

23 A No, I did not.

24 Q And did you have a discussion with anyone  
25 relative to photographing that item?

1 A Yes, sir. I did.

2 Q At the time you are now on the cliffs who is  
3 in operational control?

4 A Lieutenant Nelson Pagan.

5 Q Did you discuss photographing the  
6 pocketbook/purse with Pagan?

7 A Yes, I did.

8 Q Was a decision made?

9 A Yes.

10 Q What was the decision?

11 A He decided not to photograph it, to return to the  
12 cliff's edge.

13 Q Now if you would can you tell us what happens  
14 at this point?

15 A I was on a rope to the north, the repel rope. And  
16 Lieutenant Pagan was on a rope to my left, which is the  
17 south. I was below him. He moved over and he put the  
18 contents into the purse and passed it up to Sergeant  
19 Abbott I believe on the top of the cliff. He threw it  
20 up to him.

21 Q Now lets now begin to tell the jury of your  
22 descent from the point at the ledge following the  
23 recovery of the pocketbook and its toss to Abbott. All  
24 right? Tell us what happens?

25 A I began to repel down. It was extremely

1 difficult. It was out of the ordinary. There was no  
2 path to travel. I kept getting hung up on every branch  
3 and bushes and things of that nature. I had to stop  
4 and actually break the branches off.

5           During my repel going down, which took an  
6 inordinate amount of time, a longer amount of time than  
7 usual, I also broke branches for Nelson because he was  
8 to my left. I did not observe anything on the way  
9 down. There was nothing to indicate that person fell  
10 down this path or went down this route of travel.  
11 There was no debris, no clothing, no blood, no hair, no  
12 tissue, nothing.

13           It was extremely, it took about I'd say 45  
14 minutes to 50 minutes to get down, which is a long  
15 amount of time. My other repels it took much less  
16 time.

17           Q     Now as you're coming down as you've described  
18 it, can you tell the jury where you are looking for a  
19 path of victim's descent?

20           A     I'm directly where I was told the victim had  
21 fallen off. There would be some sign of broken  
22 branches --

23                   MR. BILINKAS: Objection.

24                   THE COURT: Sustained.

25           BY MR. MELLO:

1 Q Just tell us what you did or did not observe?

2 A I did not observe any broken branches aside from  
3 the ones that I broke. I did not observe any  
4 indication of a person falling that way. I did not  
5 observe anything next to me on my left where Nelson was  
6 also getting hung up on every branch coming down.  
7 There was no path of travel.

8 Q Now I guess one question I should ask is as  
9 you're coming down and you're coming down the cliff  
10 face, do you see anything on the cliff face indicating  
11 any human contact? Blood or tissue, clothing,  
12 anything?

13 A There was nothing. And I looked with my light. I  
14 looked and looked. There was nothing.

15 Q And as you're looking are you just looking at  
16 the cliff face or are you looking in other directions?

17 A I'm looking to my north and south of the cliff's  
18 face. I'm looking down below me. Nothing.

19 Q Now you have indicated it took you a period  
20 of time to get down the cliff's edge. Correct?

21 A Roughly 45 minutes.

22 Q Okay. When you say get down the cliff edge  
23 can you tell us what that means? Can you tell us what  
24 it means to get down the cliff face after about 45  
25 minutes?

1 A It would be repelling that wall. Just coming down  
2 a rope down that wall. But there were branches and  
3 overgrowth and things of that nature that inhibited me  
4 from just going straight down.

5 Q And does there come a point where you are  
6 able to stand?

7 A Yes, sir.

8 Q Okay. And is that the point that you've  
9 described as taking approximately 45 minutes to get to?

10 A Yes, sir.

11 Q Okay. Now when you arrive at that place  
12 where you are able to stand do you see a person?

13 A No, sir.

14 Q Do you begin to look about for a victim?

15 A I was looking around for a victim. I was yelling.  
16 You know, help is here, where are you, you know, of  
17 that nature. I expected the victim to be there where  
18 the ropes ended.

19 MR. BILINKAS: Objection what he expected.

20 THE COURT: Sustained.

21 BY MR. MELLO:

22 Q Did you see the victim where the ropes came  
23 down to the base?

24 A No, sir.

25 Q And again did you examine that area

1 carefully?

2 A Yes, sir.

3 Q Now of course at this moment in time, from  
4 the moment you're dispatched, this is a life and death  
5 situation?

6 A That's correct.

7 Q As you examined the area at the base of the  
8 cliff where you are able to stand you find no victim?

9 A That's correct.

10 Q Did you find anything in terms of what might  
11 be clothing or property of the victim at the base of  
12 the cliff?

13 A No, sir. There was nothing there.

14 Q When you were searching that area at the base  
15 of the cliff and found nothing did you, were you on  
16 ropes or not?

17 A I was off the rope.

18 Q And of course you were utilizing your  
19 lighting devices for the search?

20 MR. BILINKAS: Objection. Leading.

21 THE COURT: Sustained.

22 BY MR. MELLO:

23 Q What did you use, if anything?

24 A I used the lights that I had with me to search.

25 Q Now tell us what happens next?

1 A I had a radio to radio up to the top to the chief.

2 And I was concerned that --

3 MR. BILINKAS: Objection.

4 THE COURT: Sustained.

5 THE WITNESS: Okay.

6 BY MR. MELLO:

7 Q Tell us what you did.

8 A I began searching the area with Lieutenant Pagan.

9 Q Tell us what you observed as you searched the  
10 area?

11 A About 40 feet away was the victim laying between a  
12 tree and a rock face down. I immediately went over to  
13 the victim. I began an assessment, you know, are you  
14 okay. Because we're going to look for the what we call  
15 the ABCs, airway, breathing, circulation.

16 As I went over to the victim I began with,  
17 you know, touching her legs, going, going, feeling her  
18 body, you know, are you okay, you okay. I got up to  
19 look for her airway, breathing, and circulation by her  
20 face, which was face down. And I was obviously she had  
21 a severe skull fracture and trauma to the skull and  
22 some severe trauma to her chest. And there was no sign  
23 of life.

24 Q Can you tell us what you recall of the  
25 victim's clothing?

1 A The clothing was intact. She was, had stockings  
2 or pantyhose. She had shorts, light shorts, I don't  
3 know, they were striped. She had a white like jacket,  
4 a white t-shirt and a blue, I don't know if you call it  
5 a halter top. They were intact.

6 Q Did you search that immediate area for any  
7 articles that might belong to the victim?

8 A I looked throughout the area. She had no shoes.  
9 I didn't see any shoes, I didn't see any other debris  
10 from her or any other indication, clothing wise or  
11 material wise, in that area with her. I searched with  
12 my flashlight and did not see or locate anything. I  
13 did locate in the tree next to her about eight feet up  
14 an impact point.

15 Q What did you see, Chief?

16 A Approximately eight feet up on the tree, which was  
17 facing east toward the cliffs, it appeared to be an  
18 impact point. There was blood and tissue. And the  
19 blood was draining down the tree about two to three  
20 feet.

21 Q Was the blood, as you've described it,  
22 draining downward facing the cliffs or not?

23 A Yes, sir. It was facing the cliffs.

24 Q And that would actually be westward?

25 A That's correct. West.

1 Q To make it easy for all of us, it was facing  
2 the cliffs?

3 A Yes, sir. It was facing the cliffs.

4 Q Following the observations that you've made  
5 did you then begin the operation to recover the  
6 lifeless body of the victim?

7 A Yes, sir.

8 MR. MELLO: Than you. Mr. Bilinkas I think  
9 this would be a good time.

10 MR. BILINKAS: Sure.

11 MR. MELLO: -- morning break?

12 THE COURT: Ten minute break.

13 MR. MELLO: Thank you all.

14 (The jury exited the courtroom.)

15 (Ten Minute Recess.)

16 (The jury entered the courtroom.)

17 THE COURT: Welcome back ladies and gentlemen  
18 of the jury. You may be seated. Mr. Mello, you may  
19 proceed.

20 MR. MELLO: Thank you, sir.

21 BY MR. MELLO:

22 Q Chief, -- to the recovery operation. I just  
23 want to show you some exhibit.

24 MR. MELLO: These, Judge, have been marked in  
25 evidence without objection S-272, S-273.

1 MR. BILINKAS: Can we have a date for the  
2 record?

3 MR. MELLO: Same date. 12/22/04.

4 BY MR. MELLO:

5 Q I'm going to show you what's been marked  
6 S-273 in evidence. Do you recognize that photograph?

7 A Yes, sir.

8 Q Okay. Can you tell us the area that that  
9 photograph depicts?

10 A This is the base of the cliff.

11 Q Okay. Can you show us the area where you  
12 repelled down and arrived at the bottom of the base of  
13 the cliff?

14 A This area. (Pointing to photograph.)

15 Q Okay. And is there any distinguishing part  
16 of the cliff face there that you recall?

17 A In the photograph there's a discoloration in this  
18 rock. It's right around here. (Pointing to  
19 photograph.)

20 Q Okay. And is that the area that you landed?

21 A Yes, sir.

22 Q And you then made a search of the area as --?

23 A Correct.

24 MR. MELLO: S-273, for the jury. (Showing  
25 photograph to the jury.)

1 BY MR. MELLO:

2 Q S-272 in evidence. Do you recognize that  
3 photograph?

4 A Yes, sir.

5 Q Now if you would, would you please show us  
6 the approximate area again where you landed at the  
7 bottom of your repel?

8 A Here. (Pointing to photograph.)

9 Q And does that photograph show the area that  
10 you searched for the victim?

11 A I began searching here. (Pointing to photograph.)  
12 We kept search. There was no victim here. Located the  
13 victim over here. (Pointing to photograph.)

14 Q And see that tree?

15 A Yes, sir.

16 Q What is that tree?

17 A This is the tree that the point of impact on the  
18 tree.

19 Q Now there's a yellow marking on that tree.  
20 Correct, in the photograph?

21 A Yes, sir.

22 Q That was not on tree when you observed the  
23 victim at the base of the tree?

24 A No, sir.

25 Q And in respect to the tree and the edge of

1 the cliff where you began your descent, can you tell us  
2 how that tree lies in relation to the cliff edge where  
3 you began your descent?

4 A Oh, it's north of it. It's north of where we  
5 began our descent. North. And it's about 40 plus feet  
6 to that tree.

7 MR. MELLO: S-272 to the jury. (Showing  
8 exhibit to the jury.)

9 BY MR. MELLO:

10 Q Now, Chief, if you would, I'd like to begin a  
11 discussion of the recovery of the body of the victim.  
12 Can you again situate us in terms of how you saw the  
13 body at rest at the tree?

14 A The body was laying face down between the tree and  
15 there was a rock that was protruding from the ground.  
16 There was no impact with the rock as far as I --

17 MR. BILINKAS: Objection.

18 THE COURT: Sustained.

19 THE WITNESS: Between the tree and the rock.  
20 She was laying face down. We had rolled her over. It  
21 was during the assessment period. And she was now face  
22 up. I had a stokes basket sent down from the top and  
23 another firefighter repelled. This came down.

24 BY MR. MELLO:

25 Q Now let me back you up. Regarding the

1 observations that you made of the victim as you  
2 testified thus far today did either you or Pagan  
3 photograph that scene?

4 A No, sir.

5 Q Now can you tell us how the recovery effort  
6 began?

7 A We had a stokes basket brought down from the top  
8 with another firefighter. It was easy now, there was a  
9 path of travel so it came down quite quickly. We had  
10 her, the victim was rolled over onto her back. And we  
11 moved the rock. Lieutenant Pagan and myself we just  
12 pushed around and moved the rock physically and moved  
13 it out of the way. Placed the stokes basket there.  
14 Retrieved the victim with dignity and put her in the  
15 stokes basket and we started the descent. As some  
16 firefighters came up the cliff, lined up to our  
17 position and we carried her down to the lower road,  
18 which is the -- Hudson.

19 Q Can you tell us approximately when you  
20 arrived at the lower road?

21 A I believe it was in the area of I thing 20 minutes  
22 after 11:00, 20 to 30 minutes after 11:00.

23 Q Following arrival at the lower road was the  
24 victim now pronounced dead through the office of the  
25 medical examiner and other personnel?

1 A Yes, sir.

2 Q Following the events that you've just  
3 described did you thereafter clear the scene?

4 A Yes, sir.

5 Q And would that end your involvement on scene  
6 at this point?

7 A Yes, sir. It did.

8 Q Now is it fair to say that during the course  
9 of this investigation you've been to the location of  
10 the edge and the situs where the body was recovered on  
11 more than one occasion?

12 A Yes, sir.

13 Q Can you tell us if that was more than one,  
14 numerous, et cetera? Give us some idea of that.

15 A Without reference to this investigation I myself  
16 have been there about 60 to 70 times.

17 Q And have you reviewed and re-reviewed the  
18 scene as you saw it on September 20, 1992?

19 A Yes, sir. I have.

20 Q Both the cliff edge and the point where you  
21 found the body?

22 A Yes, sir.

23 MR. MELLO: These would be without objection,  
24 Your Honor, S-237, S-238, 239.

25 THE COURT: Any objection?

1 MR. BILINKAS: No, Judge.

2 THE COURT: The exhibits will be received in  
3 evidence.

4 MR. MELLO: Thank you.

5 BY MR. MELLO:

6 Q 237, can you tell us first if you recognize  
7 the exhibit?

8 A Yes, sir.

9 Q Okay. Now tell us what the photograph  
10 depicts?

11 A This is the lookout. This is the parkway. That's  
12 the cliff's edge and that's the tree that she struck.  
13 (Pointing to photograph.)

14 Q Okay. Is that actually -- what is that white  
15 speckle or yellow speckle if you recall?

16 A That's the I believe the coloration that was spray  
17 painted on the tree.

18 Q Was there ever a marking of a balloon?

19 A Yes, sir. But I did not do it.

20 Q You did not do that. Okay. I'm going to  
21 show you what's been marked S-238. Does that show you  
22 the location of the cliff edge?

23 A Yes, sir.

24 Q And down below would be the tree?

25 A That's the tree. (Pointing to photograph.)

1 Q S-239.

2 A Cliff's edge, the tree. (Pointing to photograph.)

3 MR. BILINKAS: And for the record can I get  
4 the dates of these pictures?

5 MR. MELLO: Sure. 6/6/04. The next item in  
6 evidence, Your Honor, without objection, S-265, 266,  
7 268, 267.

8 THE COURT: Any objection?

9 MR. BILINKAS: No.

10 THE COURT: In evidence.

11 MR. BILINKAS: -- counsel?

12 MR. MELLO: Yes. That's 4/6/04.

13 BY MR. MELLO:

14 Q I show you what's been marked S-265. Take a  
15 moment to look at that exhibit. Do you recognize that  
16 exhibit?

17 A Yes, sir.

18 Q Okay. What do you recognize that exhibit to  
19 show?

20 A Shows the edge of the cliff and the impact tree.  
21 (Pointing to photograph.)

22 Q (Showing photo to jury.) Can you do that  
23 once more, please?

24 A The cliff, the impact tree. (Pointing to  
25 photograph.)

1 Q There appears to be two other large trees in  
2 that area. One is to the north; correct?

3 A Correct.

4 Q Can you show that to the jury?

5 A (Pointing to the photograph.)

6 Q And one is to the south.

7 A (Pointing to the photograph.)

8 Q And that's standing trees. Anything else  
9 there?

10 A No, sir.

11 MR. MELLO: 265 for the jury. (Showing  
12 exhibit to the jury.)

13 BY MR. MELLO:

14 Q S-266 in evidence.

15 A Yes, sir.

16 Q What does that photograph show?

17 A The cliff and the impact tree (pointing to  
18 photograph).

19 Q And can you show us the search area what you  
20 referred to earlier in your testimony?

21 A I repelled down here and searched right here  
22 (pointing to photograph.)

23 MR. MELLO: S-266 to the jury. (Showing  
24 exhibit to the jury.)

25 BY MR. MELLO:

1 Q S-268 in evidence.

2 MR. BILINKAS: No objection.

3 MR. MELLO: Thank you.

4 BY MR. MELLO:

5 Q If you would, explain -- there?

6 A Once again, the cliff, the search area. The tree  
7 which is to the north. (Pointing to photograph.)

8 MR. MELLO: 268 to the jury. (Showing  
9 exhibit to the jury.)

10 BY MR. MELLO:

11 Q Chief, I think this will be a little bit  
12 easier. Just step down. This is S-267.

13 A (Witness stepping down from witness stand.)

14 Q And if you would, so everybody can see it, if  
15 you can just show us what this photograph depicts?

16 A This is the top of the cliff where the victim  
17 fell. (Pointing to photograph.)

18 Q Your path down?

19 A Our path down, repel down, the search area when we  
20 get down here. The tree is -- the impact tree.

21 (Pointing to photograph.)

22 MR. MELLO: Okay. Can everybody see that?

23 (No audible response.)

24 BY MR. MELLO:

25 Q Now if you would on this photograph, I'm

1 going to do this twice though, this half of the jury  
2 can see this and then this half. Can you show the jury  
3 the ledge where you found the pocketbook?

4 A Right here (pointing to photograph).

5 Q Okay. Lets let each half of the jury see it.

6 A (Pointing to photograph.)

7 Q Okay. Would you just mark that with a pen?

8 A (Marking photograph.)

9 Q Now does that photograph show the whole  
10 ledge?

11 A The ledge goes all the way around here (pointing  
12 to photograph).

13 Q Okay. And you found the pocketbook to the  
14 extreme south of that ledge?

15 A That's correct.

16 Q Is that the narrowest part of the ledge?

17 A Yes, sir.

18 Q Okay.

19 MR. MELLO: Can everybody see that?

20 (No audible response.)

21 BY MR. MELLO:

22 Q Okay. If you would would you show the same  
23 thing? It's kind of small for everybody to see it at  
24 one time. Just show them the ledge --

25 A This is the cliff, where we repelled down -- here.

1 The impact tree is to the north. This is the ledge  
2 where the pocketbook was. (Pointing to photograph.)

3 Q Thank you, Chief.

4 A (Witness returns to the witness stand.)

5 (Pause for jury to look at exhibit.)

6 MR. MELLO: Thank you, Judge. Nothing  
7 further of this witness.

8 THE COURT: Cross.

9 CROSS EXAMINATION BY MR. BILINKAS:

10 Q Good morning, Chief.

11 A Morning.

12 Q Before I state with some specific questions,  
13 I'd like to ask you a few things. This repel that you  
14 testified to happened almost 19 years ago; correct?

15 A Yes, sir.

16 Q And you indicated on direct that you have  
17 done approximately 30 repels?

18 A Yes, sir.

19 Q How many of those 30 were done prior to this?

20 A Fifteen, ten.

21 Q You can't recall a specific number?

22 A I have to, no, I can't recall a specific number  
23 unless I look back at the books.

24 Q Do you recall the specific location of the  
25 one immediately preceding this repel?

1 A Yes.

2 Q Which one was that?

3 A Lisa, there was two. Lisa Filia (phonetic) and a  
4 woman by the name of Barbara. They were in a south  
5 portion of the Rockefeller Lookout.

6 Q Okay. And the one before that?

7 A Was a gentleman down the bottom lower road off the  
8 cliff. He survived. He was a rescue.

9 Q The one before that?

10 A I'm trying to think. I'd be guessing. You know,  
11 I don't want to guess and give you the wrong  
12 information.

13 Q How about the one after this?

14 A One after this was I believe a gentleman, a  
15 recovery by the Rockefeller.

16 Q Okay. Is there a report with regard to that?

17 A The parkway does all the reports. There would  
18 just be a file report that we went out.

19 Q Now before your testimony today did you  
20 review any police reports?

21 A Yes, sir.

22 Q Did you review Sergeant Pagan's reports of  
23 the repelling?

24 A Yes, sir.

25 Q Now you never generated one single report

1 with regards to anything that you did concerning this  
2 case; correct?

3 A That's correct.

4 Q And is there any reason why you took a look  
5 at Sergeant Pagan's police reports that were generated  
6 by him regarding this case before your testimony today?

7 A Refresh my memory.

8 Q With his report?

9 A Certainly.

10 Q And who provided you with those reports?

11 A The prosecutor's office.

12 Q Did you request them or did he tell you to  
13 take a look at them before you testified?

14 A I asked to look at them.

15 Q Okay. So before you come here today you  
16 asked the prosecutor to look at another police  
17 officer's report as to what transpired on this day;  
18 correct?

19 A Yes, sir.

20 Q And when you say to refresh your  
21 recollection, as you sit here today before you read  
22 those reports do you have a specific recollection of  
23 everything that you testified to?

24 A Yes, I do. Pretty vivid.

25 Q And in light of that vivid recollection you

1 still felt you had to look at another officer's report;  
2 correct?

3 A Yes, sir.

4 Q All right. Now so I'm clear, in the last 19  
5 years you have never submitted anything in your hand  
6 regarding what you did on that night in question?

7 A There was a statement taken from me from the  
8 prosecutor's office back in I think 2003.

9 Q Okay. I'm referring to something that you  
10 did based on your specific recollection of that night.  
11 In 19 years is it not a fact that you never submitted  
12 one single report on your own?

13 A That's correct.

14 Q And when reviewing the reports before your  
15 testimony today you've indicated that you took a look  
16 at Pagan's reports; correct?

17 A Yes, sir.

18 Q And can I assume also that you took a look at  
19 the report generated by a detective from the Bergen  
20 County prosecutor's office with regards to his  
21 interview of you; correct?

22 A His interview of?

23 Q Of you.

24 A Yes.

25 Q The one you just referred to?

1 A Yes. Yes.

2 Q And as you sit here today that's the only  
3 report that deals specifically with what you said  
4 happened on that night; correct?

5 A That I, yes.

6 Q Now did you take any notes?

7 A No, sir.

8 Q Now that interview done by the prosecutor's  
9 office was approximately four months after the event;  
10 correct?

11 A No, sir.

12 Q Does January 24, 2003 ring a bell --

13 A Yes, sir.

14 Q -- at approximately 4:00?

15 A Yes, sir.

16 Q Would you agree that that's approximately  
17 four months later?

18 MR. MELLO: No.

19 THE WITNESS: No, sir.

20 MR. MELLO: No. It's not four months later.  
21 You asked a question --

22 THE COURT: Ask another question.

23 MR. MELLO: -- would you agree that it's four  
24 months later. It's a 2003 interview, sir.

25 MR. BILINKAS: 2003.

1 MR. MELLO: Yes.

2 BY MR. BILINKAS:

3 Q Do you recall talking to a detective from the  
4 prosecutor's office January 24, 2003 at approximately  
5 4:00 in the afternoon; correct?

6 A Yes, sir.

7 Q And at that particular time they were  
8 investigating a possible homicide; correct?

9 A That's correct.

10 Q And they brought that specific fact to your  
11 attention; correct?

12 A Actually I brought it to their attention years  
13 before this. I spoke to numerous people from the  
14 prosecutor's office and Lieutenant Pagan of my concerns  
15 with this case.

16 Q Well I'm referring to your statement back in  
17 January of 2003.

18 A Yes, sir.

19 Q When you were interviewed by the Bergen  
20 County prosecutor's office, aside from your own  
21 concern, you were specifically made aware of the fact  
22 that they were investigating a possible homicide;  
23 correct?

24 A Yes, sir.

25 Q And at that time when they interviewed you

1 with regards to what you did, what you observed on this  
2 date, is it fair to say that you told them everything  
3 you possible could with regards to the event on the  
4 night in question?

5 A Yes, sir.

6 Q And you take a look at that report; correct?

7 A Yes, sir.

8 Q And does that accurately reflect your  
9 interview with Detective Gerard Dargan (phonetic) from  
10 the Bergen County prosecutor's office?

11 A Yes, sir.

12 Q Did he leave anything out in that report that  
13 you discussed with him on that day?

14 A Oh, yes, sir.

15 Q So as you sit here almost 19 years later it's  
16 your recollection that Detective Gerard Dargan from the  
17 Bergen County prosecutor's office left out numerous  
18 things that you told him regarding this homicide case  
19 in his official report of his interview with you?

20 A Yes, sir.

21 Q Would you agree with me that, and I see you  
22 smiling at this point, that there's some big items that  
23 you testified to here today that are not contained in  
24 this report?

25 A The specifics of everything, yes. The

1 measurements, the details, yes. They're not in that  
2 report. That was a statement actually.

3 Q When you say it was a statement, these aren't  
4 your exact words; correct?

5 A Not my exact words, no.

6 Q And as the chief of police at that time you  
7 knew that they had available tape recorders; correct?  
8 Even in '92. Correct?

9 A '92 I was a patrolman. Yes, they do.

10 Q Even as a patrolman you realize that they had  
11 tape recorders to tape your exact words; correct?

12 A Yes, sir.

13 Q And they also had video cameras that they  
14 used back then in '92.

15 A Yes, sir.

16 Q And all we have, the only report that talks  
17 about your interview is a prosecutor's memorandum which  
18 is not in your exact words; correct?

19 A That's correct.

20 Q And it's something that you've indicated does  
21 not contain all the information that you told that  
22 detective on that day; correct?

23 A That's correct.

24 Q And will you agree with me that there are  
25 some very significant items that you testified to

1 before this jury that are not contained in this report?

2 A Yes, sir.

3 Q Significant items; correct?

4 A Yes, sir.

5 Q Was this detective taking notes when he was  
6 taking or doing, conducting this interview?

7 A I believe so.

8 Q And when you're prepping for this case did  
9 anyone ever show you any notes with regards to what  
10 specifically was taken down during your interview?

11 A No, sir.

12 Q Now the prosecutor has shown you numerous  
13 photographs throughout your testimony. Do you recall  
14 those?

15 A Yes, sir.

16 Q Will you agree with me that based on your  
17 extensive experience in law enforcement that how a  
18 photograph is taken could affect what's depicted in the  
19 image?

20 MR. MELLO: Objection. Objection to the form  
21 of the question.

22 THE COURT: Sustained.

23 BY MR. BILINKAS:

24 Q For instance, S-257 was a photograph shown to  
25 you by the prosecutor; correct?

1 A Correct.

2 Q And you indicated that you entered the area  
3 to the left of the tree that's depicted on the  
4 photograph; correct?

5 A Correct.

6 Q And this is the photograph that the  
7 prosecutor questioned you about and showed to the jury;  
8 correct?

9 A Correct.

10 Q Thank you. Before I get to my next picture,  
11 that report that the prosecutor generated concerning  
12 your interview is not '93, it's 2003; correct?

13 A Correct.

14 Q Ten years after this incident; correct?

15 A I guess.

16 Q Now back to my photographs. In evidence  
17 D-260.

18 MR. MELLO: No objection.

19 BY MR. BILINKAS:

20 Q I'm showing you a photograph that was taken  
21 by the prosecutor's office. Does that photograph  
22 depict the area looking from the path you went down up  
23 to the parking lot area?

24 A Yes, sir.

25 Q So when the prosecutor discussed S-257, that

1 photograph doesn't show as the photograph I've just  
2 showed you a clear path leading up to the parking lot  
3 area; correct?

4 A Correct.

5 Q And will you agree with me that the  
6 photograph that the prosecutor introduced is taken on  
7 an angle to the left of that path; correct?

8 A I didn't take the photograph, so I can't, I can't  
9 say that.

10 Q Wait a second. Can't you say where this  
11 photograph was taken from?

12 A It appears that it's taken from the left.

13 Q Any doubt in your mind, Chief?

14 A No.

15 Q You're the guy that they've introduced a  
16 number of photographs through.

17 A Yes.

18 Q Okay. Now would you agree with me that at  
19 the night in question the path was similar to that?

20 A This was taken the next day. That's the  
21 vegetation that was growing. (Referring to Exhibit  
22 257.) I don't know what date that was taken.  
23 (Referring to D-260.)

24 Q Well my specific question is was the path  
25 similar to the path depicted on the -- that the defense

1 has shown you on the night in question?

2 A Yes.

3 Q So there's no misunderstanding there was a  
4 clear path from the lot walking down toward that flat  
5 rock; correct? Based on your recollection 19 years  
6 ago.

7 A A clear path, no. There was vegetation.

8 Q Right. Like the one depicted in the defense  
9 photograph on the screen; correct?

10 A I believe there's more vegetation and there was a  
11 tree across the road. This is going back 19 years.  
12 There was a tree across that we had to climb underneath  
13 to get past, which isn't depicted in that photograph.

14 Q Have you ever seen the picture taken by the  
15 prosecutor with the tree in the path?

16 A I don't recall.

17 MR. MELLO: Can we have the date of that  
18 photograph, Mr. Bilinkas?

19 MR. BILINKAS: Bergen County Sheriff's  
20 Department, 6/8/2004.

21 MR. MELLO: Thank you.

22 BY MR. BILINKAS:

23 Q Now did the prosecutor show you various  
24 photographs regarding this case?

25 A Yes, sir.

1 Q Prior to your testimony; correct?

2 A Yes, sir.

3 Q And did he show you any photographs of the  
4 actual path?

5 A I don't believe he showed me any of the path,  
6 except that one that you just, that was introduced.

7 Q You testified, and correct me if I'm wrong,  
8 that this path coincides with your recollection as to  
9 how that path was, maybe but for a tree, on the night  
10 in question; correct?

11 A And more growing, the vegetation was growing  
12 thicker.

13 Q Okay. But would you agree with me that it's  
14 a well worn path?

15 A Yes.

16 Q And would you agree with me that many people  
17 have gone down that path to that exact spot that Ms.  
18 Scharf fell from?

19 A I would agree with you that people went down that  
20 path. To go to the exact spot, I couldn't tell.

21 Q Well on the night in question do you remember  
22 seeing graffiti on the flat rock that she fell from?

23 A I believe it was a white star or something of that  
24 nature; yes.

25 Q Was there anything to lead you to believe

1 that that white mark on the flat rock had anything to  
2 do with Stephen Scharf or his wife?

3 A I don't -- no.

4 Q And will you agree with me that there was  
5 other graffiti on that rock on that day?

6 A I don't recall.

7 Q Well, again, you testified you examined the  
8 area very carefully; correct?

9 A That's correct.

10 (Pause to converse with counsel.)

11 BY MR. BILINKAS:

12 Q I'm going to show you D-212 in evidence.  
13 Aside from that star or whatever you described do you  
14 recall seeing the graffiti on the side seat that you  
15 talked about on the rock?

16 A No, sir. I don't recall that.

17 Q So irrespective of how carefully you examined  
18 the area where Ms. Scharf initially fell from as you  
19 sit here today you have no specific recollection of  
20 seeing graffiti on the flat rock and on the seat base;  
21 correct?

22 A Correct.

23 Q And you had the same flashlights that you  
24 were using to examine everything else that you did on  
25 that day; correct?

1 A Correct.

2 Q And would you agree with me that you've  
3 indicated you started, you started to repel from the  
4 location, and I'm referring to the center of the rock,  
5 to the seat that had the graffiti on it?

6 A Yes, sir.

7 Q Now were all these trees and foliage the way  
8 they're depicted in here based on your recollection of  
9 that night?

10 A I can't recall that. It was at nighttime. Not in  
11 the daytime.

12 Q Nighttime. Very dark; correct?

13 A Correct.

14 Q And when you talk about the lighting, the  
15 generator that had the lighting that only illuminated  
16 the area on top; correct?

17 A Correct.

18 Q There was nothing other than the light that  
19 you've described was on your person or held in your  
20 hand illuminating from below the cliff base; correct?

21 A Correct.

22 Q Now at some point in time on the 20th you  
23 were called to Rockefeller Lookout; correct?

24 A Yes, sir.

25 Q And at that point in time in your mind you're

1 trying to save someone's life; correct?

2 A Yes, sir.

3 Q That was your paramount concern; correct?

4 A Correct.

5 Q And you got to that area and you were  
6 directed to a specific location where Ms. Scharf had  
7 fallen from; correct?

8 A Yes, sir.

9 Q Now on direct examination, and correct me if  
10 I'm wrong, I believe you used the term the exact spot  
11 that she fell from; correct?

12 A That's correct.

13 Q Now obviously you weren't there; correct?

14 A Correct.

15 Q Obviously Pagan wasn't there; correct?

16 A Correct.

17 Q You weren't present when Abbott or Tomeo  
18 (phonetic) had spoken to my client; correct?

19 A Correct.

20 Q Can I assume that the spot that you were  
21 directed to was told to you by Mr. Abbott?

22 A Yes, sir.

23 Q So whatever spot he directed you to was the  
24 spot that he had been told obviously by my client;  
25 correct?

1 A Correct.

2 Q Now will you agree with me that when you had  
3 your conversation with Abbott he did not indicate what  
4 side of the flat rock Ms. Scharf fell over?

5 A He pointed to where she fell over. This is the  
6 spot where she fell over.

7 Q Okay. Where are you point from?

8 A Where I went off the cliff.

9 Q And how close was he to the edge?

10 A He wasn't on the tip of the edge, but he was  
11 pretty close.

12 Q Was he on the flat rock?

13 A Yes.

14 Q And your recollection was that he pointed to  
15 the exact spot, and that's to the left of that ledge;  
16 correct?

17 A To the spot you put on that picture that's where  
18 he pointed to.

19 Q And for instance you'll agree with me that  
20 that flat rock has a left and a right edge; correct?

21 A Yes.

22 Q And your recollection on that night is that  
23 Abbott pointed to the left of that ledge directly above  
24 the ledge below?

25 A Yes.

1 Q And where did Pagan go down?

2 A To my left which is the south of me, a foot and a  
3 half to the south of me.

4 Q Okay. And, again, if you're on the flat rock  
5 facing the river, is that to the left or to the right?

6 A It's to the right, which would be to the south.

7 Q Okay. So you went down directly above the  
8 ledge; correct?

9 A Correct.

10 Q And Pagan went down to your right; correct?

11 A No.

12 Q Okay.

13 A It's easier using north and south.

14 Q Okay. Well again the jury I don't think has  
15 an idea of what's south.

16 MR. MELLO: Objection, the jury is --

17 THE COURT: Sustained.

18 MR. BILINKAS: All right. I'll rephrase it.

19 BY MR. BILINKAS:

20 Q You're standing on the flat rock looking out  
21 to the river --

22 A Okay.

23 Q -- okay. And my question to you is you went  
24 down to the left of the flat rock; correct?

25 A That's correct.

1 Q Okay. And did Pagan go, where does Pagan go?

2 A To the right.

3 Q To the right.

4 MR. MELLO: That's as you're facing the

5 river.

6 BY MR. BILINKAS:

7 Q As you're facing the river. And will you

8 agree with me that if you went to the tip of the ledge

9 below that Pagan would going down and did not hit the

10 ledge or the tip of the ledge?

11 A That's correct.

12 Q Now once you repelled down off of the flat

13 rock there was no light illuminating anything below;

14 correct; other than what you and Pagan have?

15 A Correct.

16 Q Now you indicated you had a light on your

17 helmet; correct?

18 A Correct.

19 Q And you had a flashlight; correct?

20 A Correct.

21 Q And you'll agree with me that you were

22 holding the flashlight in one hand and using your other

23 hand to repel; correct?

24 A Correct. First I was on my shoulder on a strap by

25 my waist.

1 Q So it wasn't in your hand?

2 A I used it when I needed to use it to direct the  
3 light where I wanted to look.

4 Q Okay. And the ropes are hanging directly  
5 over the flat rock at this point; correct?

6 A Correct.

7 Q And will you agree with me that, you know, in  
8 all repels you were facing the area that you're  
9 repelling from; correct?

10 A (No audible response.)

11 Q For instance, the cliff is right in front of  
12 you --

13 A Absolutely.

14 Q -- coming down.

15 A Yes.

16 Q Okay. And your light on your helmet is  
17 facing forward; correct?

18 A Yes.

19 Q And you indicated on direct that you were  
20 using your light, you were looking left and you were  
21 looking right; correct?

22 A Correct.

23 Q And will you agree with me that everything  
24 behind you was not illuminated?

25 A Correct.

1 Q So if you were directly below the cliff face,  
2 the flat rock, how close were you to the actual rock  
3 itself that you repelled down? Within feet; correct?

4 A Within feet. My feet were against the cliff's  
5 edge.

6 Q And would you agree with me that as you  
7 repelled down from the cliff anything that was  
8 disturbed behind you would not have been illuminated?

9 A Correct.

10 Q Now when you first set up your lines do you  
11 believe that this was clearly a rescue mission;  
12 correct?

13 A Correct.

14 Q And you wanted to save a life; correct?

15 A Correct.

16 Q And aside from being as safe as you possibly  
17 can, you wanted to get to the bottom of that cliff or  
18 to the area where the victim was lying as quick as you  
19 possibly can; correct?

20 A That's correct.

21 Q And there was no doubt in anybody's mind,  
22 that was your paramount concern; correct?

23 A Yes, sir.

24 Q At that point you're not looking at this as a  
25 homicide case; correct?

1 A That's correct.

2 Q Okay. And you're just looking for signs to  
3 indicate whether or not a body has passed through that  
4 area; correct?

5 A Correct.

6 Q And when you got to the ledge how long did it  
7 take you to find that purse?

8 A Not long. Right away.

9 Q And would you agree with me that it didn't  
10 take you much time at all to make a determination that  
11 Jody Scharf was not laying on that edge ten feet down?

12 A That's correct.

13 Q Within a matter of seconds, based on the  
14 length and width of that ledge, you had made a  
15 determination that she was not there; correct?

16 A Correct.

17 Q And at that point you felt you had to go down  
18 further to look for her, to save her life; correct?

19 A (No audible response.)

20 Q Correct?

21 A Ultimately yes. At that point I --

22 Q At that point.

23 A -- knew there was something wrong.

24 Q Okay. Well irrespective of what you knew,  
25 you didn't know whether she was alive or dead; correct?

1 A Correct.

2 Q And tell the jury how long did you stay on  
3 that ledge before you started to repel down to look for  
4 this woman to save her life?

5 A I wasn't on the ledge. I was just below the ledge  
6 looking at the ledge, seeing the pocketbook and items.  
7 We're talking about a minute, talking to Lieutenant  
8 Pagan who was on the rope above me about what I see and  
9 what to do with it.

10 Q Okay. So you looked at that ledge for  
11 approximate a minute; correct?

12 A Just about a minute, yes.

13 Q And you'll agree with me, as you just said,  
14 you were not even on the specific ledge, but off beyond  
15 the ledge looking at the ledge --

16 A At the ledge.

17 Q -- correct?

18 A Correct.

19 Q And will you agree with me that you didn't  
20 take the repel line and go all the way to the end of  
21 the ledge and go all the way to the other end of the  
22 ledge?

23 A The ledge is large. Going all the way, actually  
24 very large. Where I was was the beginning of the  
25 ledge, which was very small where the purse was and

1 those items were.

2 Q So for approximately a minute you make an  
3 observation of this ledge; correct? Correct?

4 A Correct.

5 Q And within that minute you clearly determine  
6 that Ms. Scharf was not on that ledge; correct?

7 A Correct.

8 Q And at that point in time you wanted to  
9 proceed down further in attempts to find her to save  
10 her life; correct?

11 A Correct.

12 Q Now did you see Pagan go on the ledge?

13 A He moved over to pick up the items.

14 Q Okay. And at that point in time you had  
15 already determined and communicated to him that Ms.  
16 Scharf was not on that ledge; correct?

17 A That's correct.

18 Q And did you tell him to pick up the purse and  
19 throw it up to the top of the rock?

20 A No. I told him to preserve it and photograph it.

21 Q Okay. And Pagan, he's the guy in charge;  
22 correct?

23 A Correct.

24 Q At that point he's the guy making the  
25 decisions with regards to the investigation; correct?

1 A Correct.

2 Q And it was his decision, not yours, to  
3 disturb the items on that ledge and not photograph  
4 them; correct? It was his decision?

5 A Yes.

6 Q And as a person of law enforcement of how  
7 many years?

8 A Me? I'm in my 35th year.

9 Q That was a huge mistake; correct, in your  
10 mind?

11 MR. MELLO: Objection to the form.

12 BY MR. BILINKAS:

13 Q It was a mistake from a law enforcement  
14 standard; correct?

15 A Correct.

16 Q No doubt in your mind; correct?

17 A There's no doubt in my mind that day and there's  
18 no doubt in my mind today; correct.

19 Q Okay. That's the first mistake that Pagan  
20 made on that evening that you're aware of; correct?

21 A Correct.

22 MR. MELLO: I'm going to object to the form  
23 of the question, Judge.

24 THE COURT: Sustained.

25 BY MR. BILINKAS:

1 Q Now the purse, the purse you testified was  
2 close to the end of the ledge. And, again, if you're  
3 looking down at the river from the flat rock it's the  
4 end of the ledge to the right, that was your testimony;  
5 correct?

6 A That's correct.

7 Q And I'm going to show you D-243, is a diagram  
8 of the flat rock and the ledge below and the location  
9 of the handbag. Did you do this diagram?

10 A I had nothing to do with that diagram.

11 Q Well would you agree that the diagram puts  
12 the purse in the middle of the ledge --

13 MR. MELLO: Objection to --

14 THE COURT: Sustained.

15 BY MR. BILINKAS:

16 Q Will you agree with me that the location of  
17 the handbag depicted in this diagram is inconsistent  
18 with your testimony?

19 MR. MELLO: Objection.

20 THE COURT: Sustained.

21 BY MR. BILINKAS:

22 Q Can you mark and X and initial the location  
23 on this diagram where you say the purse was?

24 A I didn't draw this diagram. I don't think it's  
25 accurate.

1 MR. MELLO: Judge, that makes the question  
2 inappropriate. There is another witness that should be  
3 examined on the diagram.

4 THE COURT: Sustained.

5 BY MR. BILINKAS:

6 Q Your testimony is that the diagram, whoever  
7 made it, is inaccurate; correct?

8 A (No audible response.)

9 Q Correct?

10 A Where the purse is, that's correct.

11 Q And with regards to this diagram can you mark  
12 where the credit cards, the identification document  
13 that you saw, and the makeup case that were found in  
14 relationship to the handbag?

15 MR. MELLO: Same objection, Judge. I think  
16 the photos might be more helpful in this regard.

17 THE COURT: Sustained. Lets move along.

18 BY MR. BILINKAS:

19 Q Okay. As you're looking out at the river on  
20 the flat, on the ledge, okay, were the credit cards  
21 found to the left or to the right of where you said the  
22 handbag was found?

23 A The credit cards were to --

24 Q If you're looking --

25 A At the river --

1 Q -- at the water.

2 A -- the credit cards were to the left.

3 Q And the makeup case?

4 A Was just a piece of makeup. To the left.

5 Q The brush?

6 A I didn't see the brush.

7 Q Lets talk about that for a second. You said  
8 you examined the ledge to make a determination as to  
9 the path that Ms. Scharf may have gone. That  
10 examination, you'll agree with me, did not identify the  
11 makeup brush that was depicted in the photographs;  
12 correct?

13 A Correct.

14 Q And the prosecutor asked you what area of  
15 that ledge had the most vegetation. Do you recall that  
16 question?

17 A Yes.

18 Q You have no idea where that makeup brush was  
19 actually found; correct?

20 A That's correct.

21 Q And even after seeing the photographs shown  
22 to you by the prosecutor, you can't determine where  
23 that brush was specifically found on the ledge;  
24 correct?

25 A Correct.

1 Q Now with regards to those items, did you or  
2 Pagan pick them up and preserve them as evidence?

3 A I had nothing to do with those items. Those  
4 items. The brush, I had nothing to do with that. I  
5 know nothing about that.

6 Q Now you've indicated on direct that you can't  
7 recall what the purse looked like; correct?

8 A That's correct.

9 Q It would be a good reason to photograph  
10 something; correct?

11 A I agree.

12 Q Do you know what type of credit cards were --

13 A I do not.

14 Q How about the identification that you saw on  
15 that night?

16 A I do not know what it was.

17 Q Do you know the make of the makeup case?

18 A It wasn't a makeup case. It was one piece of  
19 makeup that was cylindrical. I don't know if it was  
20 lipstick or an eyeliner.

21 Q Now you testified on direct that you examined  
22 the ledge for blood and tissue. Do you recall saying  
23 that on direct examination?

24 A Yes, sir.

25 Q I'm going to show you S-24. Is this the

1 report that was done by the Bergen County prosecutor's  
2 office ten years after these events?

3 A (Reviewing report.) Yes, sir.

4 Q Is there anything in that report indicating  
5 that you examined the ledge carefully for blood and  
6 tissue?

7 A No, sir.

8 Q Did you have a discussion with the prosecutor  
9 prior to your testimony with regards to blood and  
10 tissue?

11 A Yes, sir.

12 Q And that was 18 years after the event;  
13 correct?

14 A I've had discussion with many people from the  
15 prosecutor's office in reference to this case  
16 throughout all of these years.

17 Q And is there any --

18 MR. MELLO: Judge, I'm going to ask the same  
19 instruction that you gave regarding discussion with the  
20 witnesses be made now.

21 MR. BILINKAS: Judge, I'm not inferring that  
22 he can't talk to the prosecutor at all. I want to know  
23 what he told them.

24 BY MR. BILINKAS:

25 Q For instance, did you, when did you first

1 tell the prosecutor that there was no blood or tissue  
2 on that ledge? It wasn't within ten years; correct?

3 A It was before ten years.

4 Q And who did you tell that to?

5 A Frank Kellaheer, Sergeant Lynn Morrisy. I told  
6 Lieutenant Pagan when he was a sergeant my concerns in  
7 reference to this entire case.

8 Q And --

9 A And others that I don't know their names. I'm  
10 sorry.

11 Q And as you sit here today have you ever seen  
12 a report generated by anyone with regards to those  
13 conversations?

14 A They took my statement. No, I didn't see any  
15 other report generated.

16 THE COURT: This might a good time for break.

17 MR. BILINKAS: Yes, Judge.

18 THE COURT: We will resume at 1:30. You may  
19 step down, Chief.

20 (The jury exited the courtroom.)

21 (Luncheon recess.)

22 (The jury entered the courtroom.)

23 THE COURT: Welcome back ladies and gentlemen  
24 of the jury. Please be seated. Madam clerk, roll  
25 call.

1 (Jury roll call with all jurors present.)

2 THE COURT: Mr. Bilinkas, you may proceed.

3 MR. BILINKAS: Thank you, Judge.

4 BY MR. BILINKAS:

5 Q Chief, on direct examination the prosecutor  
6 introduced through you and showed the jury S-267. It's  
7 an aerial photograph depicting the top of the flat rock  
8 and the tree that the body was found on; correct?

9 A Correct.

10 Q And do you recall him discussing with you and  
11 showing the jury a number of these photographs;  
12 correct?

13 A Correct.

14 Q Now I'm going to show you what has been  
15 marked D-182 and D-188, in evidence.

16 MR. MELLO: I don't have any objection.

17 BY MR. BILINKAS:

18 Q 182. (Placing photograph on screen.) Can  
19 you step down from the stand, please?

20 A (Witness exits the witness stand.) (Both witness  
21 and counsel away from microphones.)

22 Q Would you agree with me that this is another  
23 aerial photograph depicting the same thing depicted in  
24 the prosecutor's photograph?

25 A I believe so.

1 Q When you say you believe so, is this the same  
2 series of photographs that you reviewed prior to you  
3 introducing the other aerial photographs?

4 A I didn't review this --

5 Q Well with regards to this photograph, can you  
6 point out to the jury the top of the rock?

7 A (Pointing to photograph.)

8 Q The big white -- on the top?

9 A Right.

10 Q Isn't this a blanket on top of the flat rock?  
11 Can you point to that so the jury can see that?

12 A (Pointing to photograph.)

13 Q And where is the tree that the body was  
14 found?

15 A (Pointing to the photograph.)

16 Q The blanket on the ground next to the tree.  
17 Can you point to it so the jury can see?

18 A (Pointing to the photograph.)

19 Q And will you agree that from this perspective  
20 that tree looks a little closer to the base of the  
21 cliff than the photographs that the prosecutor showed  
22 you?

23 MR. MELLO: Objection, Your Honor.

24 THE COURT: Sustained.

25 (Pause to show photograph to the jury.)

1 BY MR. BILINKAS:

2 Q I am going to show you has been marked D-188.  
3 Do you see the blanket on top of the flat rock in this  
4 aerial photograph?

5 A (Pointing to photograph.)

6 Q Can you maybe step to the side so the jury  
7 can see. And do you see the tree at the bottom?

8 A (Pointing to the photograph.)

9 MR. MELLO: Can we have the dates?

10 MR. BILINKAS: Same date as your aerial  
11 photographs, from a different angle.

12 (The Witness returns to the witness stand.)

13 BY MR. BILINKAS:

14 Q D-160, I show you D-160 in evidence, and ask  
15 you does this accurately reflect that corner of the  
16 ledge looking down directly from the top of the flat  
17 rock?

18 A Yes.

19 Q And do you see the tree in this photograph,  
20 with the blanket around the bottom?

21 A The tree is back here (pointing to photograph).

22 Q I'm pointing to the blanket by the base of  
23 the tree; correct?

24 A Correct.

25 Q And this view is looking directly down from

1 the top of the flat rock where Jody Scharf fell from;  
2 correct?

3 A Correct.

4 Q Directly down the path you say you repelled  
5 down on the night in question; correct?

6 A Correct.

7 MR. BILINKAS: I'd like to display this to  
8 the jury.

9 MR. MELLO: No objection.

10 (Showing photograph to the jury.)

11 BY MR. BILINKAS:

12 Q Now will you agree with me that the  
13 photograph I've just shown the jury, the picture of the  
14 ledge directly below the flat rock; correct?

15 A Yes. Closer to the rock, yes, the ledge.

16 Q Closer to the rock. And that the ledge  
17 extends to the left of the picture on the elmo;  
18 correct?

19 A Correct.

20 Q And that the makeup kit, credit card, and the  
21 ID, you were shown by the prosecutor was to the left of  
22 this area (pointing to the photograph).

23 A No.

24 Q Do you see the large rock in S-255?

25 A Correct. I see the rocks.

1 Q And you put a circle where the purse was;  
2 correct?

3 A Right here (pointing to photograph).

4 Q Okay. And will you agree with me that that's  
5 to the left of that rock looking down from the flat  
6 rock?

7 A It's right at the base of the cliff. Right at the  
8 base, the beginning of the ledge (pointing to the  
9 photograph).

10 Q You mean the purse wasn't out here?

11 A No.

12 Q You're sure about that?

13 A I'm sure.

14 Q Absolutely positive?

15 A Yes, sir.

16 Q Okay. You're saying it was close to the  
17 ledge?

18 A Yes.

19 Q Now can you describe the end of the ledge?

20 A The end of the ledge is just a rock that juts out  
21 and then it starts with a little bit of leaves, and  
22 then more rocks. And this is about I'd say two feet  
23 out on the ledge. (Pointing to the photograph).

24 Q Okay. So can you describe the rock formation  
25 at the end of the ledge in the area that you just

1 pointed? What would that look like?

2 A Just a rock. You know, it's just a ledge.

3 Q Is there any jagged rocks or anything like  
4 that on that corner?

5 A It's a rock, standing up, from the edge of the  
6 cliff.

7 Q Will you agree with me, D-156 --

8 MR. MELLO: In evidence?

9 MR. BILINKAS: In evidence.

10 MR. MELLO: No objection.

11 BY MR. BILINKAS:

12 Q -- accurately shows the rock formation on the  
13 end of that ledge?

14 A That's correct. Yes.

15 Q Okay. Do you see, one, two, three, four  
16 rocks?

17 A Yes.

18 Q Separate rocks that you're pointing here?

19 A I see the rocks. But the purse was closer to the  
20 ledge in that first area where you were, where the  
21 first rock was.

22 MR. BILINKAS: -- jury -- Defense 166.

23 (Showing photograph to the jury.)

24 BY MR. BILINKAS:

25 Q I show you what's been marked D-162 in

1 evidence, can you circle and initial the tree that the  
2 body was found in front of?

3 A (Marking on photograph.)

4 Q So again, you circled and initialed the tree  
5 where you found the body; correct?

6 A That's correct.

7 Q And will you agree that that ledge is a lot  
8 wider than three feet?

9 A Not at the beginning. It goes much, much wider  
10 than three feet. It starts out small and then gets  
11 bigger and bigger as it goes around to the north.

12 Q And will you agree that the flat rock slopes  
13 down a little bit on top? Correct?

14 A Unless I see the picture, I believe so, but I'm  
15 not 100 percent sure without looking at it.

16 Q And will you agree that the ledge slopes down  
17 a little bit?

18 A Yes.

19 Q D-165 in evidence. Will you agree that this  
20 is a close up of those one, two, three, four rocks at  
21 the edge of the ledge?

22 A Yes, sir.

23 Q And that's directly below the top of the  
24 ledge where you repelled down looking for Jody Scharf;  
25 correct?

1 A Yes.

2 Q Now you indicated before our break that you  
3 had been to this site many times over the years;  
4 correct?

5 A Correct.

6 Q Now with regards to the night in question,  
7 that was the first time you were ever at that specific  
8 rock and the base of the cliff at that specific  
9 location; correct?

10 A Correct.

11 Q It was unfamiliar to you; correct?

12 A Correct.

13 Q Is there any doubt in your mind if you've  
14 never been there that the base directly below the flat  
15 rock is unfamiliar to you?

16 A Correct.

17 Q And you've been there how many times since  
18 that night?

19 A Approximately 60 or 70 times to the location.

20 Q At the direction of the prosecutor's office?

21 A No.

22 Q On your own?

23 A Yes.

24 Q Did any of those, did any of those trips have  
25 anything to do with an official investigation on your

1 part with regards to this case?

2 A Maybe ten of them.

3 Q And with regards to those official  
4 investigations on ten specific occasions did you ever  
5 generate a police report?

6 A No.

7 Q Now from the date of the incident when was  
8 the next time you were at the base of the cliff?

9 A (No audible response.)

10 Q Years; correct?

11 A No I don't think it was a year. It was less than  
12 a year at the base to climb up.

13 Q And who did you go with?

14 A With another firefighter.

15 Q Was Pagan there?

16 A No.

17 Q Just went up there on your own?

18 A Yes.

19 Q Was the prosecutor aware of that?

20 A No.

21 Q Now, and again there is no report with  
22 regards to that? Your observations or anything like  
23 that; correct?

24 A No, sir.

25 Q Now you were dispatched at approximately what

1 time on the day in question?

2 A The fire department was dispatched around 8:16.

3 Q Okay. And you arrived on the scene when?

4 A Approximately 8:20, 8:22.

5 Q What time were you dispatched?

6 A I believe 8:16 at night.

7 Q Can you take a look at the Bergen County's  
8 interview, your report? Does that indicate that at

9 8:25 --

10 A Correct.

11 Q -- you were dispatched?

12 A That's correct.

13 Q What is it? 8:25 or 8:15?

14 A No. We were dispatched at 8:16.

15 Q Okay. And what time did you arrive?

16 A Approximately 8:22. Somewhere around there, 8:22.

17 Q Do you have any idea where the prosecutor's  
18 investigator had 8:25 and wrote it in his report?

19 A No.

20 Q Okay. And when you got there, say 8:22, what  
21 did you first do?

22 A I spoke to the officers that were on the scene.

23 Q And you spoke to?

24 A Sergeant Abbott.

25 Q And?

1 A And Lieutenant Pagan.

2 Q And approximately how long did that take?

3 A Minutes. Not even, you know, a few minutes. What  
4 do we have? What's going on? Things of that nature.

5 Q Are we at approximately 8:25 -- at this  
6 point?

7 A Probably. I was, you know --

8 Q Okay. Understood. I'm just trying to get an  
9 idea of how long things took. Now at approximately  
10 8:25, after you talk to those gentlemen, you start to  
11 set up your repel lines; correct?

12 A Correct.

13 Q Okay. And how long did that take? To get  
14 things out of the truck. To walk down 50/70 feet to  
15 that flat rock and tie your repel lines?

16 A It took, before we started repelling it was about  
17 I think about a quarter to 9:00 or ten to 9:00,  
18 somewhere in that area is when I went off the cliff  
19 actually, you know, repelling down. And in the  
20 beginning of that we sat the ropes up and I looked for  
21 the person over the edge, you know, yelling with the  
22 light.

23 Q Okay. So at approximately ten to 9:00 you  
24 start your repel down; correct?

25 A Correct.

1 Q And you indicated you were looking at the  
2 ledge for approximately a minute or so; correct?

3 A Correct.

4 Q And then from that point on you descended to  
5 the base of the cliff; correct?

6 A Correct.

7 Q And how long did it take you to get through  
8 all this brush and tree limbs that you were talking  
9 about?

10 A Approximately 45 minutes.

11 Q And you indicated, and correct me if I'm  
12 wrong, on direct that it was difficult for you to go  
13 down the path that you chose; correct?

14 A Correct.

15 Q And you were approximately a few feet from  
16 the actual cliff base while you were repelling;  
17 correct?

18 A That changes as I try to go down. I move out, I  
19 come back in. You know, whatever way was, you know, if  
20 I could find the path the travel that she went would be  
21 easier for me to go down.

22 Q Okay. So as you sit here today, 19 years  
23 later, you don't know exactly where you went down,  
24 meaning to the left, to the right, you didn't go  
25 straight down to the base; correct?

1 A No. I went straight down to the base. Yes, I  
2 did.

3 Q Okay. Well the branches or the bushes that  
4 were obstructing you and slowing you down, so to speak,  
5 were they sticking out of the cliff's base? Or were  
6 they coming from the side or from behind you?

7 A They were coming some from the cliff base, some  
8 from behind me, some, you know, whatever trees that  
9 were growing at that time, the branches were there.

10 Q And will you agree with me that as of that  
11 night at least with regards to the path that you took  
12 there were various branches, bushes that you had to  
13 come in contact with to get to the bottom of the cliff;  
14 correct?

15 A Correct.

16 Q Again, as you sit here today were there tree  
17 branches, tree tops, and things behind you on your way  
18 down?

19 A Yes.

20 Q And would you agree that it was heavily  
21 wooded? The foliage was thick at that point; correct?

22 A Yes.

23 Q And would you agree that at some points  
24 during your descent the foliage was so thick it was  
25 hard to see a few feet this way or that way?

1 A I would say to that point, no.

2 Q Well could you see five feet --

3 A Maybe not five feet, but --

4 Q You could at least see a few feet in front of  
5 your --

6 A Yes.

7 Q -- face; correct?

8 A Yes.

9 Q And that was what was being illuminated with  
10 the flashlight on your chest and the one on your  
11 helmet; correct?

12 A Correct.

13 Q And would you agree with me that if that  
14 light hit branches, leaves, or bushes, it wouldn't  
15 extend beyond those obstructions; correct?

16 A Correct.

17 Q Now, so at approximately ten of you start  
18 your descent; correct?

19 A Approximately, yes.

20 Q And you were with Pagan; correct?

21 A I went down first. He went right after me.

22 Q Okay. So Pagan gets to the base after you;  
23 correct?

24 A Correct.

25 Q And did it take Pagan any longer than you to

1 repel down to the base, based on your recollection?

2 A No. We basically got there together.

3 Q Did you review -- strike that. You testified  
4 it took how many minutes for you to get down?

5 A Approximately 45.

6 Q You said 45 to 50; correct? On direct?

7 A It's approximately 45 to 50.

8 Q I'm going to show you what has been marked  
9 D-262, which is a special report by Police Officer  
10 Elliott. Do you know who he is?

11 A I know Officer Elliott, yes.

12 Q Okay. And I'm going to refer you to the  
13 portion of this report with regards to the time that  
14 Pagan reported that he observed the body. Does that  
15 refresh your recollection as to how quickly you got  
16 down to the base?

17 A That says 21:23, which is 9:23.

18 Q And that's when Pagan called in he saw the  
19 body; correct?

20 A That he saw the body. Correct.

21 Q --; correct?

22 A I didn't write this report, so I can't, I can only  
23 say what's on the report here that says 21:23 and that  
24 Pagan observed the body. Or the victim was observed by  
25 Sergeant Pagan.

1 Q And would you agree that that's approximately  
2 a half hour after you say you started your descent;  
3 correct?

4 A (No audible response.)

5 Q Correct?

6 A Yeah, it's 33 minutes after. Somewhere around  
7 there.

8 Q Okay. And Pagan got to the base after you  
9 based on your recollection; correct?

10 A No. We got to the base together.

11 Q Got to the base, and you don't see the body  
12 right where you land at the base; correct?

13 A That's correct.

14 Q It took you a while for you to find the body,  
15 I'm told on direct examination; correct?

16 A Correct.

17 Q How many minutes did it take you and Pagan to  
18 find the body?

19 A Two to three minutes. Maybe five. I mean this is  
20 all approximate.

21 Q Correct. And would you agree with me that  
22 the time that you saw the body was pretty much the same  
23 time that Pagan saw the body? You guys are right next  
24 to each other.

25 A Pretty much so. I think he might have saw her

1 first. But pretty much so, yes.

2 Q And would you agree that when he saw the body  
3 he immediately notified you of that fact?

4 A Yes.

5 Q Chief, I'm going to show you D-194. Do you  
6 recognize the tree that the person in the black t-shirt  
7 is leaning up against?

8 A The one on the right there? May I step down a  
9 minute and take a look?

10 Q Sure, please.

11 A (The witness exits the witness stand to go to  
12 photograph on screen.) There. (Points to photograph.)

13 Q Can you point out the flat rock? It's up  
14 top.

15 A Thank you, sir. (Pointing to photograph.)

16 Q And maybe take a close look at the rock to  
17 the right of where you just pointed your finger, see if  
18 that may refresh your recollection?

19 A I'm not certain.

20 Q And I assume the prosecutor has shown you  
21 this photograph before you testified; correct?

22 A No.

23 Q And at this point you're not sure where the  
24 flat rock is that's depicted in this photograph;  
25 correct?

1 A Correct. I'm not, the perception is different  
2 from the -- the rock with the flat rock has a crevice  
3 directly next to it and I don't see a small rock with a  
4 crevice next to it. On the opposite side is a large  
5 crevice --

6 Q Okay. And you see all the tree branches  
7 between the rocks up top and the tree that the body was  
8 found under?

9 A Yes.

10 Q And does that coincide with your recollection  
11 with regards to the types of foliage and trees and  
12 branches on your way down on the night in question?

13 A This picture was obviously taken in -- foliage is  
14 gone.

15 Q Correct.

16 A The other one would --

17 Q And let me just show you another picture. Is  
18 that same tree depicted in this picture?

19 A --

20 Q And can you pick out the flat rock at the top  
21 of the cliff in this picture?

22 A --

23 Q Okay. You can have a seat. I'm going to  
24 show these photographs to the jury.

25 (Witness returns to the witness stand.)

1 MR. BILINKAS: D-194 and D-196 in evidence.

2 MR. MELLO: No objection.

3 (Showing photographs to the jury.)

4 BY MR. BILINKAS:

5 Q Chief, so irrespective of the time it took  
6 you to repel down, you repelled down approximately a  
7 200 plus feet; correct?

8 A I believe it was less than that.

9 Q Do you recall telling the detective from the  
10 prosecutor's office that you repelled out approximately  
11 250 feet?

12 A That's correct. That was due to the size of the  
13 ropes that we used. And I used the rope as an  
14 estimation of the distance.

15 Q My question is did you tell a detective from  
16 the prosecutor's office that --

17 A Yes.

18 Q -- you repelled 250 feet?

19 A Yes, I did.

20 Q He didn't get that number, you gave it to  
21 him; correct?

22 A That's correct.

23 Q And now you're saying that your estimation is  
24 incorrect?

25 A That's correct.

1 Q Does it have anything to do with the defense  
2 engineer expert who set forth the exact base of the  
3 cliff?

4 A I have no idea --

5 MR. MELLO: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. BILINKAS:

8 Q Now, irrespective of how long it is. It's  
9 how many feet in your mind?

10 A How many feet in my mind?

11 Q Right.

12 MR. MELLO: How many repelled down?

13 THE WITNESS: Repelled down?

14 BY MR. BILINKAS:

15 Q Yes.

16 A Approximately, I'd say 150 to 200.

17 Q Okay. And the entire time you're trying to  
18 find hopefully Ms. Scharf alive; correct?

19 A That's correct.

20 Q And will you agree with me that because at  
21 this point it was a rescue mission that you were trying  
22 to move down as quickly as possible; correct?

23 A Taking into consideration I'm looking for things  
24 on the way down. I thought she might have hit -- if  
25 she's on a ledge somewhere, things of that nature, yes.

1 Q Okay. But irrespective of that you're moving  
2 as quickly as you can to attempt to save a life?

3 A That's correct.

4 Q And that's your paramount concern; correct?

5 A Correct.

6 Q Now you get down onto the base of the cliff,  
7 okay, would you agree with me that the, from the base  
8 of the cliff to the tree where you found her body it's  
9 a very steep incline?

10 A Well it's an incline, but I don't believe it's  
11 that steep. It's about 40 feet away.

12 Q Irrespective of how far away it is, would you  
13 agree with me that it's difficult to even stand unless  
14 you're leaning or holding on to something because of  
15 the steepness of the incline?

16 A Yes. Yes.

17 Q Now you look where you come down and that's  
18 where someone else told you Ms. Scharf had fallen from  
19 above; correct?

20 A Came down where I was told she fell from.

21 Q Right. Told by someone else; correct?

22 A Told by Sergeant Abbott and Lieutenant Pagan.

23 Q Okay. And she's not at that location at the  
24 base of the cliff; correct?

25 A No body, no person, no one.

1 Q Okay. And she's off, and, again, looking at  
2 the river, she's off to the left of the area where you  
3 came down; correct?

4 A Correct.

5 Q Okay. And how far from that area?

6 A Approximately 40 feet.

7 Q And would you agree with me from that area if  
8 you look from the base of the tree straight up, you're  
9 looking almost at a straight angle to the ledge above?

10 A I don't believe so, no.

11 A All right. Now you find her and you hurry  
12 over to where you see her lying; correct?

13 A Correct.

14 Q Who got there first? You or Pagan?

15 A I don't recall.

16 Q Now will you agree with me that after falling  
17 between 150 or 200 feet down from this cliff that when  
18 you first observed her there's no doubt in your mind  
19 that she's dead?

20 A Not until I got to the point of where here skull  
21 and her chest were. I quickly did a quick assessment  
22 with my hands, going up, you know, her body until I got  
23 to that point and then observed that, then I discovered  
24 that there was no life, signs of life.

25 Q You could see major injuries to her skull;

1 correct?

2 A Correct.

3 Q And again within is it fair to say seconds  
4 you as the rescue person had made a determination that  
5 she was dead?

6 A That's correct.

7 Q Now can I assume that Pagan made the same  
8 assessment?

9 A I believe so, yes.

10 Q When you say believe so, wasn't it obvious to  
11 both you and Pagan --

12 A Yes.

13 Q -- that after falling almost 200 feet down  
14 from a cliff that this woman was dead?

15 A Yes. To me it was. I can't say what Nelson was  
16 thinking.

17 Q Now once you make that determination this  
18 rescue mission turns to something else; correct?

19 A Correct.

20 Q It turns into a recovery mission; correct?

21 A Correct.

22 Q Now at this point in time you find Ms. Scharf  
23 stuck, or wedged, between a rock and the tree in  
24 question; correct?

25 A Correct.

1 Q And there's no doubt about that observation;  
2 correct?

3 A Correct.

4 Q And that's reflected in the only report that  
5 you know of with regards to what your observations were  
6 on this night; correct?

7 A Correct.

8 Q Specifically says that the victim was stuck  
9 or wedged between a rock and a tree; correct?

10 A The report?

11 Q Correct.

12 A I have to see the report.

13 Q You've got it in front of you. Look on page  
14 two, second paragraph.

15 A Okay. (Reviewing report.)

16 Q Nine lines from the bottom. Does the  
17 official police report based on the interview by the  
18 Bergen County prosecutor's office with you, the only  
19 one in existence, say the victim was stuck or wedged  
20 between a rock and a tree?

21 A Right. The victim as being stuck or wedged  
22 between a rock and a tree.

23 Q Okay. And the tree is the one you pointed  
24 out to the jury; correct?

25 A I believe so, yes.

1 Q When you say you believe so, after 19 years  
2 is there any doubt in your mind?

3 A I can show you the tree if I bring you to the  
4 place. But looking at different pictures it has a  
5 different perspective on things. You know, like you  
6 said to me here before, isn't this picture taken from  
7 the right. Pictures can tell different stories.

8 Q My point exactly. When the prosecutor showed  
9 you the pictures of the tree, did you indicate that you  
10 weren't 100 percent sure?

11 A No, I'm sure that was the tree. I'm certain that  
12 was the tree.

13 Q You're certain that was the tree in the  
14 prosecutor's picture?

15 A Absolutely.

16 Q Now can you describe this large rock that the  
17 body was wedged between?

18 A It was --

19 Q You're smiling aren't you?

20 A It's a rock. It was a pointed rock like this  
21 (demonstrating.) Her head --

22 Q How big?

23 A How big was the rock? Probably about two feet by  
24 one foot. It was in the ground. I just moved it, I  
25 moved the rock out of the way when we, we rolled her

1 over first. And after we rolled her over we put the  
2 basket there. But we couldn't get the basket next to  
3 her without moving the rock. So we just wiggled the  
4 rock and moved it out of the way.

5 Q You wiggled the rock out of the way?

6 A Correct.

7 Q Now your recollection is that this rock was  
8 one foot by two foot?

9 A Approximately, yes.

10 Q And did you ever tell anybody that you moved  
11 or wiggled this rock out of the way?

12 A No.

13 Q In 19 years have you ever submitted any  
14 document -- why are you smiling?

15 A Because I'm smiling. I think it's, I wasn't going  
16 to tell anybody I moved a rock to help a victim to get  
17 down, you know, down to the bottom of the cliff.

18 Q Does your recollection of moving the rock  
19 have anything to do with the photographs provided by  
20 the defense at the base of the tree indicating that  
21 there is no rock there?

22 A No.

23 MR. MELLO: Objection, Your Honor.

24 BY MR. BILINKAS:

25 Q Okay. Now --

1 THE COURT: Your objection?

2 MR. MELLO: The form of the question. It's  
3 argumentative.

4 THE COURT: Sustained.

5 BY MR. BILINKAS:

6 Q In the official police report do you ever  
7 mention that you moved the rock that the body was  
8 wedged or stuck between that and the tree?

9 A I never did an official police report in reference  
10 to this. The item you showed me here is a statement I  
11 gave and somebody took it, interpreted it, and put it  
12 down. This isn't my writing.

13 Q And it doesn't contain all the information  
14 that you gave the prosecutor; correct?

15 A Correct.

16 Q Did you tell the prosecutor when you gave  
17 this statement that you or Pagan had moved the rock?

18 A I might have. I don't recall if I told that. But  
19 I might have.

20 Q Would you agree with me that no where in this  
21 statement is there anything indicating that you or  
22 Pagan moved the rock that the body was stuck or wedged  
23 in?

24 A Correct.

25 Q And you've reviewed Pagan's reports; correct?

1 A Correct.

2 Q And have you seen the prosecutor's  
3 photographs that were provided by defense counsel of  
4 the base of that tree?

5 A I believe yes, I did.

6 Q And who showed you those photographs?

7 A The prosecutor.

8 Q And when he showed you those photographs did  
9 he question you with regards to why there wasn't any  
10 rock at the bottom of the tree that you and Pagan said  
11 you found the body?

12 MR. MELLO: Can we have the date of the  
13 photos you're referring to?

14 THE COURT: The date?

15 MR. MELLO: The date of the defense photos?

16 MR. BILINKAS: (Showing photos to prosecutor.)

17 MR. MELLO: Thank you.

18 BY MR. BILINKAS:

19 Q I'm going to show you what has been marked  
20 D-191, which is a photograph taken by the prosecutor's  
21 office.

22 MR. MELLO: No objection, in evidence.

23 BY MR. BILINKAS:

24 Q Is this the tree you claim you found Jody  
25 Scharf wedged between the rock and the tree?

1 A I'm not certain if that's the tree.

2 Q Well can you step down off the stand and take  
3 a real good look at this?

4 A (Witness exits the witness stand and approaches  
5 scree where photo is displayed.) I'm not certain.

6 Q Would you agree with me that there is  
7 absolutely no rock depicted in that photograph taken by  
8 the prosecutor's office that a body could have been  
9 wedged or stuck between; correct?

10 A Right.

11 Q Let me show you what I'm moving into  
12 evidence, D-190. And ask you if this is the tree that  
13 you found the body wedged between it and a rock?

14 A --

15 Q Do you see my spray paint on the tree?

16 A No. The pictures I looked at the prosecutor's  
17 office, at the base with all the trees that are down  
18 there. There are only three trees down there at the  
19 time that this incident happened. This was the mid-  
20 size tree and it was in the center. It was the tree  
21 going north of the platform. You showed me a picture  
22 of a tree, but I would have to guess if it's the tree.  
23 I don't know if it's the tree. That could be any tree.  
24 It could be a tree in my back yard.

25 Q And does the tree in your background have --

1 spray paint at the approximate location where you say  
2 you saw the blood and the hair?

3 MR. MELLO: Objection, Your Honor.

4 Argumentative.

5 THE COURT: Sustained.

6 MR. BILINKAS: I'll ask the next question.

7 BY MR. BILINKAS:

8 Q Before I put this on the screen, do you see  
9 yellow spray paint on D-191?

10 A Yes.

11 Q Would you agree with me that the photographs  
12 that I've just gone over with you do not have any rock  
13 that a body can be wedged or stuck between that and the  
14 tree?

15 A Yes. (Witness returning to the witness stand.)

16 Q I'm going to show you D-189. Can you  
17 identify this tree as the tree you saw the body wedged  
18 between?

19 A It looks like the tree, yes.

20 Q And will you agree that there's no rock,  
21 large rock that a body can be wedged or stuck?

22 A Correct.

23 MR. BILINKAS: D-190, D-189, and D-191 in  
24 evidence.

25 MR. MELLO: No objection.

1 MR. BILINKAS: Judge, I'm going to pass these  
2 to the jury.

3 (Showing exhibits to the jury.)

4 BY MR. BILINKAS:

5 Q Now that photograph with the yellow spray  
6 paint on it that you identified that there's no rock at  
7 the base, do you recall that one just a moment ago?

8 A Yes.

9 Q That's the same spray paint that's depicted  
10 on the rock that you identified as the picture of the  
11 prosecutor; correct?

12 A I guess so, yes.

13 Q When you say you guess so, it's the same  
14 tree; correct?

15 A That's the same tree; correct.

16 Q And this is the tree that I've introduced  
17 photographs and there is no rock that a body can be  
18 wedged or stuck between; correct?

19 A There is no rock there, no. I moved it.

20 Q Now you said you came down to the right;  
21 correct?

22 A Yeah.

23 Q Now I'm going to show you a picture from 1994  
24 taken by the prosecutor's office, D-198 in evidence and  
25 ask you back in 1994, just two years after -- strike

1 that, four years after, do you see repel lines down in  
2 that photograph?

3 A I don't see them.

4 Q Can you step down, please.

5 A (Witness exits the witness stand to go to screen  
6 where photo is displayed.)

7 Q Can you point out the repel lines?

8 A (Pointing to the photograph.)

9 Q Okay. That goes all the way up; correct?

10 A (Pointing to photograph.)

11 Q And where do those repel lines start from?

12 A Here it looks like (pointing at photograph).

13 Q And is that by the ledge?

14 A -- in this area somewhere, but I'm not, I wouldn't  
15 be 100 percent sure saying -- they're not my repel  
16 lines.

17 Q Okay. And do you see --?

18 A I see --

19 Q Well you said there was only how many trees  
20 down at the base?

21 A Three trees.

22 Q And we agree that there's one tree directly  
23 in line of the top flat bottom?

24 MR. MELLO: Objection. That's a conclusion  
25 directly in line.

1 THE COURT: Sustained.

2 BY MR. BILINKAS:

3 Q Is it right in front of the flat rock?

4 MR. MELLO: That's another way of putting the  
5 same phrase.

6 THE COURT: Sustained. Ask another question.

7 BY MR. BILINKAS:

8 Q Would you agree with me that these repel  
9 lines are on the opposite side of the flat rock that  
10 you say you repelled down from?

11 MR. MELLO: Objection. How would he know  
12 that, Your Honor.

13 THE COURT: Sustained.

14 BY MR. BILINKAS:

15 Q I am showing you what has been marked with no  
16 objection into evidence D-201.

17 MR. MELLO: No objection.

18 THE COURT: In evidence.

19 BY MR. BILINKAS:

20 Q In evidence. This was a photograph taken in  
21 '94. Does that coincide with your recollection of the  
22 position of the trees and branches and foliage at or  
23 about the time you repelled down?

24 A -- (witness way from microphones.) (Pointing to  
25 photograph).

1 Q I'm not asking you about the tree. I'm  
2 asking you about all these branches and the foliage  
3 obviously without the leaves.

4 A Correct.

5 Q And do you see repel lines in this  
6 photograph?

7 A This is a repel line. (Pointing to photograph.)

8 Q And finally in evidence D-198, does that  
9 depict the same area with repel lines coming down?

10 A Yes, sir. It does.

11 Q Okay. You can go back to your seat.

12 A (Witness returns to the witness stand.)

13 MR. BILINKAS: I'm going to publish to the  
14 jury these three.

15 MR. MELLO: No objection.

16 (Showing exhibits to the jury.)

17 MR. BILINKAS: And for the record those were  
18 taken in 1994.

19 BY MR. BILINKAS:

20 Q Okay, Chief, you find Ms. Scharf's body and  
21 you indicated that she was stuck or wedged between a  
22 rock and a large tree; correct?

23 A Correct.

24 Q And what direction if you're looking from the  
25 base of the cliff out towards the river what side was

1 her head on? Left or right?

2 A Right. Of the tree you're talking about?

3 Q Exactly.

4 A Right.

5 Q -- between a rock and a tree; correct?

6 A Correct.

7 Q And her head, again, you're looking at the  
8 river was to the right of this tree?

9 A Just to the right of it, yes.

10 Q And her face was down?

11 A Correct.

12 Q And what portion of her body was wedged  
13 between this one foot by two foot rock?

14 A Just, her head was against it.

15 Q Her head was against the rock?

16 A Yes.

17 Q And was her blood on that rock?

18 A No.

19 Q There was no blood on the rock that her head  
20 was touching?

21 A Not that I recall, no.

22 Q And can you agree with me that she had  
23 suffered a massive head wound?

24 A Correct.

25 Q And it's your recollection that her head was

1 wedged between the rock and the tree; correct?

2 A Correct.

3 Q How close is that rock to the tree?

4 A About a foot and a half. Maybe a foot.

5 Q It wouldn't have had to be too big for a  
6 person's head; correct, to be wedged or stuck?

7 A Yes.

8 Q And how is the rest of her body situated?

9 A Facing, her back side was up facing toward the  
10 cliffs.

11 Q All right. I'm going to ask you to come down.

12 A (Witness exits the witness stand.)

13 Q We're going to have Mr. Alterbaum is the  
14 tree. And I'm going to be Ms. Scharf. And I want you  
15 to place me exactly as you found her.

16 A You have to lay down.

17 Q I'm going to lay down on the ground. Tell me  
18 how you --

19 A If he's the tree, he's facing the cliffs.

20 Q Correct.

21 A Okay. (Positions Mr. Bilinkas.) Here, face down.  
22 She's face down like that, her body --, and the rock is  
23 right here where my foot is. Okay. The rock was just,  
24 it wasn't a big rock. It was just sticking up out of  
25 the ground.

1 Q And how was her hands and her legs  
2 positioned, sir?

3 A Her legs were straight out to the back.

4 Q Like mine?

5 A Right. And her hands were --

6 Q Take my hands, put me exactly as you found  
7 her.

8 A Face down on the ground. (Positioning Mr.  
9 Bilinkas). And this arm was like this. Just like  
10 that. Well I'm not sure about that arm. The rock  
11 right here.

12 Q And that's exactly as you remember her?

13 A It's exactly how I remember her. (Witness returns  
14 to the witness stand.)

15 Q And you testified on direct that you moved  
16 her body out of the rock and checked her vitals;  
17 correct?

18 A I rolled her.

19 Q You rolled her.

20 A First I checked her vitals the way she was. I  
21 didn't move her until I checked her --

22 Q You knew she was dead, you rolled her over.  
23 Okay. And when you rolled her over she became unstuck  
24 from that rock; correct?

25 A Correct. She wasn't stuck. She was just against

1 the rock.

2 Q Do you have any idea how the Bergen County  
3 detectives got the word stuck with the word wedged when  
4 he wrote his report regarding his interview with you?

5 A I don't know. I honestly don't recall that.

6 Q And as you recall based on how you positioned  
7 me in front of the tree where the rock was, you  
8 indicated that her head was touching that rock;  
9 correct?

10 A No. Her head was next to the rock.

11 Q Next to it.

12 A Next to the rock. The rock was sticking up out of  
13 the ground, her head was laying face down like that,  
14 and the tree was on this side.

15 Q My question, was she stuck or wedged?

16 A No. She wasn't wedged. She was just there.

17 Q And your recollection is that there was no  
18 blood from this massive head wound on this rock?

19 A On the rock there wasn't. On the tree there was.  
20 On the ground --

21 Q You looked at, you looked at that rock as  
22 carefully as you looked on the rocks on the ledge and  
23 on the way down trying to rescue her; correct?

24 A No. I didn't look that carefully. I just moved  
25 the rock when we had to take her out. I moved the

1 rock, with Nelson. He helped me move it.

2 Q When you say when we moved her out, lets talk  
3 about that for a second. At this point it's a recovery  
4 mission --

5 A Correct.

6 Q -- correct?

7 A Correct.

8 Q And you had just seen Pagan throw a purse  
9 from the ledge up to someone up to the top of the rock;  
10 correct?

11 A At the beginning it was Sergeant Abbott he threw  
12 it up to.

13 Q Right. And you wanted that to remain there  
14 and to be photographed; correct?

15 A Absolutely, yes.

16 Q At this point in time you recover the body,  
17 you find it --

18 A Correct.

19 Q -- and there is obviously no hurry at this  
20 point with regard to saving a life; correct?

21 A Correct.

22 Q Okay. And you have an area where a woman has  
23 fallen from the cliff and died; correct?

24 A Correct.

25 Q And you have a blood smear on a tree;

1 correct?

2 A Correct.

3 Q And at that point in time did you photograph  
4 the body before you moved it?

5 A No, sir. I did not.

6 Q Did you tell Pagan, you better photograph  
7 this like I told you we should have done up on the top  
8 of the ledge?

9 A No, I did not.

10 Q Did you want to photograph the body before  
11 you moved it like you did the purse?

12 A Did I want to?

13 Q Yes.

14 A Did I want to? Certainly.

15 Q And did you communicate that fact to Pagan  
16 also?

17 A Not at that stage, no.

18 Q Why? Because he told you not to do what you  
19 wanted to do above?

20 A No.

21 Q Why didn't you tell him that?

22 A He was running the operation. He was the sergeant  
23 in charge of the operation.

24 Q And you didn't communicate with him before  
25 the body was moved?

1 A Not to that point, no.

2 Q Will you agree with me from a law enforcement  
3 standpoint it would be proper to document the scene?

4 A Yes, absolutely.

5 Q And when I say document the scene, photograph  
6 the body before it's moved; correct?

7 A Correct.

8 Q Photograph that rock to indicate whether or  
9 not there was any blood on it; correct?

10 A I would have photographed the body. But I don't  
11 think the rock played any part in what happened.

12 Q You wouldn't have photographed the rock that  
13 her head was, at least according to the Bergen County  
14 report, was wedged or not wedged?

15 A It was not wedged. It wasn't even touching the  
16 rock. It was between the rock and the tree. And the  
17 rock didn't have any blood on it.

18 Q Will you agree with me that the only report  
19 with regards to --

20 MR. MELLO: Objection, Your Honor. This is  
21 someone else's report.

22 MR. BILINKAS: Right. It's the only report -  
23 -

24 MR. MELLO: Not him.

25 MR. BILINKAS: -- regarding his interview,

1 Judge. And I believe I'm able to cross examine him  
2 with regard to it.

3 THE COURT: Overruled.

4 BY MR. BILINKAS:

5 Q Isn't it a fact that your, that the only  
6 report says, and I assume that all of the information  
7 that this investigator got came from you; correct?

8 A Yes.

9 Q And will you agree that in the official  
10 report it says Lieutenant Cioffi, which was you, right?

11 A Correct. Cioffi.

12 Q Described the victim as being stuck or wedged  
13 between a rock and tree; correct?

14 A That's what this says. That's correct.

15 Q Do you have any idea how this investigator  
16 got those words to put in the report?

17 A Certainly. He asked me. He wrote it his own way.  
18 I didn't sign this. When I saw this it's already been  
19 a document that's filed. I didn't write it. I gave  
20 him the information.

21 He might have misunderstood me as we did the  
22 demonstration there we have to do it two or three times  
23 to finally clarify that her head was not stuck against  
24 the rock. Her head didn't even come in contact with  
25 the rock. So there's no blood on the rock. The rock

1 played no part in my estimation of her demise.

2 Q And when did you tell the prosecutor that  
3 what was contained in the only report regarding your  
4 interview that the information in it was wrong? Did  
5 you ever tell anybody?

6 A No.

7 Q When you reviewed your testimony and looked  
8 at this report did you tell Assistant Prosecutor Mello  
9 that the head was not stuck or wedged between the rock?  
10 Did you tell him that when he was prepping you for  
11 trial?

12 MR. MELLO: Objection.

13 THE COURT: Your objection?

14 MR. MELLO: Objection to the form of the  
15 question.

16 THE COURT: Sustained.

17 BY MR. BILINKAS:

18 Q Have you told anyone from the Bergen County  
19 prosecutor's office that the only report regarding your  
20 interview contained inaccurate information?

21 A Did I? No. No. This is not to me, it's not a  
22 report. It's a memorandum. It's a statement that  
23 somebody asked me, hey, were you there, what happened.  
24 Give me a brief synopsis. Okay this is what happened.  
25 And they took it and wrote it down and put it in their

1 words. Not my words. Not my signature. I didn't sign  
2 this. I didn't type this. I didn't write it. Yes, I  
3 supplied the information but like anything else, you  
4 know, you get the information goes down the road and  
5 somebody interprets it the wrong way.

6 Q My point exactly. Now with regards to your  
7 testimony on direct examination that you saw a blood  
8 smear, you indicated it was how many feet from the  
9 base?

10 A I estimate about eight feet from the base of the  
11 tree up.

12 Q And can you tell what the Bergen County  
13 investigator interpreted your statement?

14 A I have to look at this, this report? This  
15 statement?

16 Q Yes. Second line up, page two. Let me save  
17 some time. Will you agree with me that it says several  
18 feet above the ground?

19 A I have to find it. (Reviewing statement.) It  
20 appeared the victim struck her face on the tree several  
21 feet above the ground. Yeah.

22 Q And several means what to you?

23 A Several.

24 Q What does that mean to you?

25 A Several could be from three to ten. Several feet

1 above the ground.

2 Q Will you agree with me as the chief of the  
3 police department that someone should have measured  
4 that blood smear to the base of the tree so there would  
5 be no misunderstanding exactly where the body touched  
6 the tree; correct?

7 A I fully agree with you.

8 Q That's a mistake; correct?

9 A Is it a mistake? I guess in hindsight, not my  
10 mistake, but probably a mistake in hindsight, yes.

11 Q Whose mistake is it? Pagan; correct? He's  
12 in charge of the scene at the bottom at that point;  
13 correct?

14 A It's the Palisade Parkway jurisdiction. Who's  
15 responsible, maybe their chief. I don't know.

16 Q Who was responsible at the scene at that time  
17 when those observations were made?

18 A Sergeant Pagan.

19 Q And would you agree with me that if someone  
20 had measured that distance and photographed it there  
21 would be absolutely no doubt what the distance actually  
22 was; correct?

23 A Yes, sir.

24 Q And that could effect the trajectory from  
25 coming off of the mountain; correct?

1 MR. MELLO: Objection.

2 THE COURT: Sustained.

3 BY MR. BILINKAS:

4 Q Now at any point in time prior to the body  
5 being put in the basket and lowered down to the road  
6 below, did you protect and try to talk to Pagan with  
7 regards to how this matter was being handled from a law  
8 enforcement standpoint?

9 A At that point?

10 Q At that point?

11 A No.

12 Q Kept your mouth shut. Never said --

13 A I looked around the area for any other evidence,  
14 any other things that I might be able to find. I  
15 didn't see anything further. And my mission then was  
16 to get the victim down to be pronounced.

17 Q Okay. And there's no hurry from an  
18 investigative standpoint to do that at that point;  
19 correct?

20 A Well I wouldn't say it was no hurry, no. But, you  
21 know, you'd like to get down there as expediently as  
22 you possibly can.

23 Q Correct. Now when you said you searched the  
24 whole area down at the base of the cliffs did you see  
25 beer bottles, beer cans?

1 A I don't know.

2 Q Food containers when you were searching the  
3 accident scene?

4 MR. MELLO: Objection.

5 THE WITNESS: All of those things are  
6 probably there.

7 MR. MELLO: Objection.

8 THE WITNESS: I don't recall.

9 MR. MELLO: Objection.

10 THE COURT: Hold on.

11 MR. MELLO: Objection. That's what he says,  
12 accident scene.

13 THE COURT: Sustained.

14 BY MR. BILINKAS:

15 Q Let me rephrase that. When you're searching  
16 the area for items associated with this call, did you  
17 see beer cans?

18 A I don't recall.

19 Q Did you see beer bottles?

20 A I don't recall any beer bottles.

21 Q Did you see any food containers?

22 A I don't recall.

23 Q Did you see a broken computer that someone  
24 threw over?

25 A I don't recall.

1 Q How about a water heater that someone threw  
2 off that flat rock approximately 200 feet down?

3 MR. MELLO: Objection.

4 BY MR. BILINKAS:

5 Q You could see a water heater.

6 THE COURT: Your objection.

7 MR. MELLO: How is this witness testify to  
8 such or be examined on such a question?

9 THE COURT: Your reply.

10 MR. BILINKAS: I have pictures of beer cans,  
11 beer bottles, a water heater, motorcycle, ham and  
12 computer parts. I'm asking him for his power of  
13 observation.

14 MR. MELLO: But this is at this time in 1992.

15 MR. BILINKAS: Correct. And no one took any  
16 photographs of that area. And I'm asking him what was  
17 there at that time. These items don't just show up  
18 ten, 15, 19 years later.

19 MR. MELLO: Who says that? Mr. Bilinkas says  
20 that?

21 MR. BILINKAS: I'm asking him, Judge, because  
22 there are no photographs. No one documented the scene.  
23 I'm asking him what he saw. He said he searched the  
24 area.

25 THE COURT: Have you shown him photographs?

1 MR. BILINKAS: I was planning on it, Judge,  
2 but I wanted to ask him first based on his search.

3 THE COURT: Well you need to show him the  
4 exhibit so that he can respond to the question,  
5 counselor.

6 BY MR. BILINKAS:

7 Q While I'm looking for these photographs, did  
8 you and Pagan search the base of the cliff for items  
9 associated with Jody Scharf?

10 A I looked for her shoes. Because she didn't have  
11 any shoes on. Couldn't find them.

12 Q Okay. And you searched how far of an area?

13 A I don't recall how far. We just searched the area  
14 down below.

15 Q Well did you go ten feet to the left or ten  
16 feet to the right?

17 A (No audible response.)

18 Q You don't recall the exact area you searched?  
19 Is that true?

20 A I don't want to say ten feet and it's 11 feet. We  
21 searched the area, a little perimeter around the body  
22 in a circular motion and I didn't locate anything. And  
23 at the base of the cliff. I didn't locate anything.

24 Q Let me show you D-252 in evidence. During  
25 your search did you see anything like this? Some type

1 of computer or electronic items?

2 A I don't recall that. No.

3 Q Did you see --

4 MR. MELLO: Can I have a date of these  
5 photographs?

6 MR. BILINKAS: It would have been last year.

7 MR. MELLO: -- that's the point. Is that --

8 THE COURT: I was under the impression  
9 that -- photographs taken back in 1992.

10 MR. MELLO: But they're taken within the last  
11 year.

12 THE COURT: But that was the representation  
13 made to me.

14 MR. MELLO: Well, I understand that.

15 THE COURT: This is improper.

16 MR. BILINKAS: Judge, the representation  
17 was --

18 THE COURT: This is improper. And it was  
19 represented to me that these were photographs taken in  
20 1992.

21 MR. BILINKAS: Judge, the representation was  
22 that there were no photographs taken in '92.

23 THE COURT: Counsel, you can't show a  
24 photograph years later and relate back to an incident  
25 at the time of 1992. The objection is sustained.

1 MR. MELLO: I'm going to object to any of  
2 those --.

3 THE COURT: If you have photographs from 1992  
4 that's a different story. If you have photographs  
5 subsequent to that time I will not allow it. Move on.

6 MR. BILINKAS: Can I ask --

7 THE COURT: Move on.

8 MR. BILINKAS: Judge, I'm not asking about the  
9 question. I'd like to ask if he saw items similar to  
10 that back in '92 when he searched the area.

11 THE COURT: What would be the basis for the  
12 question?

13 MR. BILINKAS: Well there's a lawyer here  
14 that's --

15 THE COURT: Items that existed afterwards,  
16 you're going to show him or talk to him, or ask  
17 questions about.

18 MR. MELLO: He said he didn't see anything.  
19 Now we're going to introduce photographs --

20 THE COURT: It's too speculative.

21 MR. MELLO: -- from 2010?

22 THE COURT: It really has no basis in fact.  
23 Move on.

24 MR. MELLO: That last item is, of course, not  
25 in evidence.

1 THE COURT: That last item is not in  
2 evidence. That photograph.

3 MR. MELLO: Thank you, Your Honor.

4 BYE B

5 Q Chief.

6 A Yes.

7 Q In your search of the area at the base where  
8 Jody Scharf's body was found did you find any item that  
9 didn't belong in the woods?

10 A I don't know how to answer that. There are items  
11 down there that don't belong in the woods. There's a  
12 washing machine down there. I don't know when it was  
13 put down there.

14 Q Did you see --

15 A Yes, there's items. People throw garbage out,  
16 yes. But I didn't take that into consideration then.  
17 That was not what I was searching for.

18 Q My question is did you see that washing  
19 machine that someone threw over the cliff back in 1992?

20 MR. MELLO: What's the relevance to anybody  
21 in the world throwing a washing machine off a cliff?  
22 This is about throwing a body off a cliff, not throwing  
23 a washing machine. We don't know when anybody did any  
24 such thing. And he can't testify to it it was done in  
25 1992. It could have been done in 1982 or '72 or '62.

1 MR. BILINKAS: I'm asking him, Judge, what he  
2 observed in '92.

3 MR. MELLO: That's a fine question.

4 THE COURT: That question can be asked.

5 BY MR. BILINKAS:

6 Q Did you observe the washing machine --

7 MR. MELLO: But it's not relevant.

8 MR. BILINKAS: Judge, it has to do with --

9 THE COURT: What did you observe?

10 THE WITNESS: There are debris down there,  
11 Your Honor. And I did observe a washing machine. It  
12 was at the base of the cliff. If somebody threw it off  
13 it went right down to the bottom. To the base. That's  
14 it.

15 BY MR. BILINKAS:

16 Q And what other items did you --

17 A I don't recall other items.

18 THE COURT: If I can ask, where was the  
19 washing machine in relationship to the tree and the  
20 rock?

21 THE WITNESS: Much further south.

22 THE COURT: What's the point?

23 MR. MELLO: What's the point.

24 THE COURT: What is the point? We're going  
25 to test his observation or his powers of observation as

1 to items that are outside of that area?

2 MR. BILINKAS: When you say outside of the  
3 area, it had --

4 THE COURT: How far was it?

5 THE WITNESS: It was quite a distance south,  
6 Your Honor.

7 THE COURT: Move on.

8 BY MR. BILINKAS:

9 Q Irrespective of what was there or not there,  
10 neither you or Pagan took any photographs of the area;  
11 correct?

12 A Correct.

13 Q You never documented exactly what was there  
14 on the night; correct?

15 A Correct.

16 Q For instance that blood smear, now you  
17 testified on direct that you saw tissue in that blood.

18 A On the tree.

19 Q Did you tell the investigator from Bergen  
20 County?

21 A No, Sergeant Pagan knew that that night. He  
22 actually, he knew that that night that there was tissue  
23 and blood on that tree.

24 Q Now irrespective of what Pagan knows, because  
25 he hasn't testified yet, my specific question is did

1 you tell the Bergen County detective during your  
2 interview that you saw blood and tissue on the tree?

3 A This interview? I don't recall.

4 Q Well will you agree with me that no where in  
5 that statement is there any reference to blood or more  
6 importantly tissue? Would you agree with me?

7 A I would agree with you. Yes.

8 Q And as you sit here today you can't recall  
9 whether or not during that interview you ever mentioned  
10 blood and tissue; correct?

11 A Not during this interview. But I did speak to  
12 several people from the prosecutor's office and I  
13 relayed my observations to them.

14 Q And is there any report that you know in  
15 existence of you relaying that information?

16 A No, unless you ask the people themselves. Like I  
17 said, Sergeant Morrisy is one, Frank Kellaher is  
18 another, who is in charge of homicide investigations,  
19 Sergeant Pagan. How many times I relayed this to him  
20 to talk to the prosecutor's office. This is his  
21 jurisdiction. I was there as a rescue personnel from  
22 the fire department.

23 Q You're also there as a police officer;  
24 correct?

25 A (No audible response.)

1 Q And would you agree with me that if you're  
2 not getting satisfaction so to speak that you should  
3 write your own report and throw it up the chain of  
4 command; correct?

5 MR. MELLO: Objection.

6 THE COURT: Your objection.

7 MR. MELLO: That question is not --

8 MR. BILINKAS: I'll rephrase the question.

9 BY MR. BILINKAS:

10 Q You never in 19 years with regards to that  
11 information wrote your own report and submitted it to  
12 your chief or to the country prosecutor; correct?

13 A Correct.

14 Q And with regards to that blood you say you  
15 saw and the tissue you say you saw, would you agree  
16 with me that it would be appropriate police procedures  
17 to have someone take a sample of that blood and tissue  
18 and submit it to a lab for the investigation?

19 A Yes.

20 Q And that wasn't done here; correct?

21 A Correct. To my knowledge it wasn't done.

22 Q Well when you say to your knowledge, you  
23 know, you left the area with the body; correct?

24 A Correct. I brought the body down to the lower  
25 road to be --

1 Q No one else remained at that scene; correct?

2 A The scene was the Palisade Interstate Parkway's  
3 authority, their jurisdiction, their scene. Not Mike  
4 Cioffi's scene. I can't walk in and say do this, do  
5 this, do this, it's not my jurisdiction. They were the  
6 people in charge. They ran the investigation. They  
7 knew who they had to call. And they had to follow  
8 certain protocols, which they did, or I believe they  
9 did. Not my jurisdiction. If it was my jurisdiction  
10 we wouldn't be having this conversation.

11 Q Did you ever go back with a member from the  
12 prosecutor's office after that night and point out the  
13 exact tree that you found the body in front of?

14 A I've been back numerous times with several people  
15 from the prosecutor's office, with several people from  
16 the Parkway, and by myself and with several people from  
17 my fire department. And, yes, the tree was already  
18 marked and pointed out --

19 Q By who?

20 A I believe it was marked by Sergeant Pagan.

21 Q So when you went up there the next time  
22 someone out of your presence had marked the tree;  
23 correct?

24 A The next time I went there the tree was not  
25 marked. Several times later I came up and the tree was

1 marked.

2 MR. BILINKAS: I believe I'm done, Judge. I  
3 just need to look over my notes quickly.

4 (Brief pause.)

5 BY MR. BILINKAS:

6 Q Oh, with regards to Jody Scharf's body, you  
7 talked about the clothing being intact; correct?

8 A Yes, sir.

9 Q Would you agree with me that there were  
10 various rips in her jacket and shorts?

11 A I believe most of them were, you know, I don't  
12 know if it was rip. I believe most of it was intact.  
13 There was none on the way down bouncing off the cliffs,  
14 there was no clothing there. And when I got to her and  
15 I did my hands, the clothing felt pretty much intact.  
16 It might have had a rip or tear in it but it wasn't  
17 ripped off of her body and laying on the side of the  
18 cliff.

19 Q I'm talking about the actual items of  
20 clothing that were on her body at the base of the  
21 cliff. Do you recall seeing various tears in her  
22 clothing?

23 A I believe there was some tears in her clothing,  
24 yes.

25 Q And with regards to those tears, do you

1 recall seeing green marks at each of the tears?

2 A I don't recall that, no.

3 Q Did you examine the clothing carefully?

4 A With the aide of my flashlight. I wasn't  
5 examining any clothing. I was actually feeling her  
6 body for, you know, if there was broken bones, arms,  
7 legs, things of that nature.

8 Q Okay. It's your recollection that you don't  
9 recall any grass or leaf marks right where the tears  
10 were on the clothing?

11 A No, I don't recall that.

12 (Brief pause while counsel reviews notes.)

13 MR. BILINKAS: No further questions, Judge.

14 THE COURT: All right. Does the jury want to  
15 take a short break or do you want to continue?

16 THE JURY: Continue.

17 THE COURT: Continue. All right. Redirect.

18 MR. MELLO: Thank you, Judge.

19 REDIRECT EXAMINATION BY MR. MELLO:

20 Q Not a lot of us see dead bodies. Do you  
21 agree with that statement?

22 MR. BILINKAS: Judge, I can't hear him.

23 THE WITNESS: True.

24 BY MR. MELLO:

25 Q I said, not a lot of us in life deal with

1 situations that -- on September 20, 1992.

2 MR. BILINKAS: Judge, is that a question?

3 MR. MELLO: That's a question. I'm just  
4 asking if --

5 MR. BILINKAS: Object to the form of the  
6 question.

7 THE COURT: Sustained.

8 BY MR. MELLO:

9 Q Now, Chief, why don't you tell the jury what  
10 it was like for you to come upon the scene of the body  
11 that you found?

12 MR. BILINKAS: Again, Judge, the relevance.  
13 What it's like?

14 MR. MELLO: Well the relevance is he's asked  
15 question after question about what might have been in  
16 the report, what wasn't in the report, and so forth. I  
17 am asking this witness could talk to this jury about  
18 his remembrance of that body.

19 MR. BILINKAS: What does that have to do with  
20 the question that he just asked?

21 MR. MELLO: That's exactly the question that  
22 I want him to discuss. He ought to be able to explain  
23 in light of Mr. Bilinkas' cross examination his  
24 remembrances and why he remembers. And that's the  
25 point of the question.

1 MR. BILINKAS: Is the prosecutor saying that  
2 because he was upset or it was an emotional situation  
3 that his powers of observation are affected?

4 MR. MELLO: The prosecutor is not --

5 MR. BILINKAS: Is that the relevance?

6 MR. MELLO: Well thank you for that speech.

7 The prosecutor is not saying anything --

8 MR. BILINKAS: Judge, may we be heard at  
9 sidebar?

10 MR. MELLO: -- I'm asking questions --

11 MR. BILINKAS: --

12 (At Sidebar.)

13 MR. BILINKAS: Judge, again, I don't think  
14 that's relevant with regards to what he was dealing  
15 with. You know, what his emotions were at the time.

16 MR. MELLO: It's relevant in light of his  
17 cross examination. He's cross examined him on his  
18 observations that aren't in this report, they're not in  
19 that report, you say this. He would be able to explain  
20 to the jury why he remembers this.

21 THE COURT: You spent a lot of time focusing  
22 on items that he may not have seen. Okay.

23 MR. BILINKAS: Correct.

24 THE COURT: The question has not been asked,  
25 but the question deals with what was your focus. That

1 may, to some extent, explain why he doesn't see certain  
2 things. He focused upon her bones -- things of that  
3 nature.

4 MR. BILINKAS: Judge --

5 THE COURT: You asked questions --

6 MR. MELLO: I'm asking him to discuss with  
7 the jury why he remembers this, why he remembers, why  
8 he remembers what. What. Everything he says I --

9 THE COURT: -- everything. I think you need  
10 to ask him specific questions or go into a little more  
11 detail to lay some sort of a foundation.

12 MR. MELLO: Okay. I'll ask him what his  
13 focus was.

14 (Sidebar concluded.)

15 BY MR. MELLO:

16 Q Back to my question. When you were at the  
17 point where you had found the victim, understood?

18 A Yes, sir.

19 Q Tell us what you observed, how you observed  
20 it, and how it is that you recall that?

21 MR. BILINKAS: Objection. Compound question.  
22 Can we break it down?

23 BY MR. MELLO:

24 Q Tell us what you observed?

25 A I observed the victim far away from the cliff. To

1 a tree north of where she fell off. I couldn't  
2 understand why --

3 MR. BILINKAS: Objection to what --

4 BY MR. MELLO:

5 Q Tell us what you observed?

6 A I observed her face down to the ground, severe  
7 trauma to her head, severe trauma to her right chest.  
8 She had hit the tree. Obviously the impact point was  
9 approximately eight feet high. There was tissue and  
10 blood flowing down the tree. It was fresh. The blood  
11 and the tissue.

12 She was not warm to the touch, but slightly  
13 warm. And I did a assessment of her body real quick  
14 and my adrenaline was high. It was an upsetting moment  
15 because I don't like to see someone die in that  
16 fashion. And it was unusual for me --

17 MR. BILINKAS: Objection. What's unusual for  
18 him.

19 THE COURT: Continue to tell us what you  
20 observed.

21 THE WITNESS: Most of her blood had saturated  
22 down into the leaves on the left side of her body near  
23 the tree. There was none on the rock. The rock was  
24 not touching her. Yes, her head was in between the  
25 rock and the tree. The words wedged might not be the

1 right or appropriate word to say. I don't know if I  
2 said it or if he interpreted it in that statement. But  
3 she was in between the tree and the rock.

4           There was enough room for me to roll her onto  
5 her back a little bit and see the extent of the injury  
6 to the front of her face. Actually her face was  
7 intact. It was more the top of her head and forehead  
8 and the back of her head.

9           It was clearly obvious that she had no sign  
10 of life. There was a slight odor of an alcoholic  
11 beverage that I could smell. She didn't have any shoes  
12 and, you know, I wanted to treat her with dignity.

13           Basically I asked for a stokes. Stokes comes  
14 down. One of my firefighters brought it down. Then we  
15 moved the rock, Nelson and I moved the rock, which  
16 really wasn't a huge rock. It was just a rock that was  
17 wedged there. Wiggled it and moved it and put the  
18 stokes there. Put her into the stokes. Covered her up  
19 and brought her down.

20 BY MR. MELLO:

21           Q     Is that a scene you'll ever forget?

22           A     No, sir.

23           Q     Mr. Bilinkas asked you about the steepness of  
24 the cliff terrain at the base of the cliff and the  
25 tree; right?

1 A Correct.

2 Q I'm going to show you what's been marked  
3 S-273. Does that show the base where you repelled  
4 down?

5 A This is where I repelled down right here (pointing  
6 to photograph.)

7 Q Now all of this is the cliff face in black?

8 A That's correct.

9 Q The body wasn't there.

10 A No, sir.

11 Q The body wasn't anywhere at the base of the  
12 cliff; was it?

13 A No, sir.

14 Q You climb down --

15 MR. MELLO: Judge, is Mr. Mello testifying  
16 again?

17 BY MR. MELLO:

18 Q Is it --

19 MR. MELLO: I thought that's what you asked  
20 him, but I'm sorry.

21 MR. BILINKAS: No, no. I can ask him, you  
22 can't lead, Mr. Mello.

23 THE COURT: Okay.

24 MR. MELLO: Thank you.

25 MR. BILINKAS: You can't put words in his

1 mouth.

2 THE COURT: Gentlemen, take it easy.

3 MR. MELLO: Thank you.

4 BY MR. MELLO:

5 Q Why don't you tell us about the incline.

6 A Well when I repelled down with my light I looked  
7 at every one of these indentations or dark spots.  
8 That's where the body would hit if it was, fell down.  
9 I didn't see any indication that any body or person  
10 fell that way. There was no clothing, debris, hair,  
11 flesh, anything, no blood.

12 I went down here (pointing to photograph) and  
13 there was no body. Where's the body. The body is all  
14 the way north about 40 feet to a tree that is north of  
15 the platform, the lookout ledge on top rather.

16 Q Now the information that you received prior  
17 to repelling on a rescue mission is critical; isn't it?

18 A Yes, sir.

19 Q The point of fall that's critical for you as  
20 a rescue person to know; isn't it?

21 A Yes, sir.

22 Q And as I recall your testimony you were given  
23 that point by Abbott; correct?

24 A Sergeant Abbott and Lieutenant Pagan.

25 Q And who did they get the information from?

1 A (Pointing to defendant.)

2 MR. BILINKAS: Objection. Hearsay.

3 BY MR. MELLO:

4 Q It was Mr. Scharf --

5 THE COURT: Hold on a second. There's an  
6 objection.

7 MR. BILINKAS: Objection. Hearsay. He can't  
8 testify where they --

9 THE COURT: Sustained. Ask another question.

10 BY MR. MELLO:

11 Q I'm going to show you S-268 in evidence. Now  
12 can you tell us if you see protrusions coming down the  
13 cliff as you repelled down from the top as you  
14 identified it earlier?

15 A There's many of them. Every time there's a,  
16 there's one right there (pointing to photograph).  
17 There's dark spots which means it goes in then it comes  
18 back out again. And there's probably four or five.

19 Q Now do you see the tree that you've  
20 identified?

21 A Yes, sir.

22 Q Okay. Is there in that photograph a strand  
23 of --

24 THE COURT: Mr. Mello.

25 MR. MELLO: Yes.

1 THE COURT: If you could move slightly to the  
2 side. Juror number one, two and three have difficulty  
3 seeing this.

4 MR. MELLO: Sorry.

5 BY MR. MELLO:

6 Q Locate that tree for us.

7 A (Pointing to photograph.)

8 Q Now there's another big tree in that area  
9 that you referred to in your testimony.

10 A The bigger tree is behind it.

11 Q So that's further away from --

12 A Yes, sir.

13 Q -- the fall point?

14 A Yes, sir.

15 Q I'm going to show you what's been marked  
16 S-267. And if you would would you again locate the top  
17 of the cliff, the fall point as it is indicated here?

18 A (Pointing to photograph.) Here.

19 Q And lets understand, that's the point that  
20 was indicated to you?

21 A That's correct.

22 Q And that was based on information that Abbott  
23 and Pagan got?

24 A That's correct.

25 Q And the point, the tree?

1 A The tree is north of that. (Pointing to  
2 photograph.)

3 Q You testified that you've been there on God  
4 knows how many occasions; correct?

5 A Correct.

6 Q Any doubt that's the tree?

7 A No, sir.

8 Q -- a picture that shows the entire scene?

9 A That's correct.

10 Q See those protrusions? Do you see any  
11 protrusions in that photograph coming down the cliff as  
12 you came down?

13 A There's one here. There's one here. There's one  
14 here. I think there's one more here. (Pointing to  
15 photograph.)

16 Q And does it continue down to the base?

17 A Yes, sir.

18 MR. MELLO: 268 and 267 to the jury.

19 (Pause to show photographs to the jury.)

20 MR. MELLO: And 273.

21 MR. BILINKAS: Which one is that?

22 MR. MELLO: That's the --

23 (Pause to show photograph to the jury.)

24 MR. MELLO: Thank you, Judge. Nothing  
25 further.

1 RE CROSS EXAMINATION BY MR. BILINKAS:

2 Q Chief.

3 A Yes, sir.

4 Q You were told where to repel down by Pagan;  
5 correct?

6 A I was told where she fell by Lieutenant Pagan and  
7 Sergeant Pa, Nelson Pagan and Sergeant Abbott.

8 Q And so you got information from those --  
9 strike that. You got information from those two people  
10 who got some information from someone else; correct?

11 A Correct.

12 Q And based on what those people said and  
13 relayed to other people you went down the cliffs;  
14 correct?

15 A Correct.

16 Q And you didn't see anything on the way down;  
17 correct?

18 A Correct.

19 Q And the body, again, if we're looking at the  
20 river, you went down to the right; correct, of the tree  
21 where the body was found?

22 A If we're looking at the river --

23 Q Looking at the river, like the jury is the  
24 river --

25 A That's correct.

1 Q Okay. When you got down to the base of the  
2 cliff and turned towards the river the tree was to the  
3 right; correct?

4 A No. The tree was to the left.

5 Q To the left, excuse me. The tree is to the  
6 left. Like this is my left hand. The tree is to the  
7 left. And you said it was 40 feet --

8 A About 40 feet.

9 Q -- approximately --

10 A Approximately 40 feet.

11 Q Again no one measured the distance, but your  
12 estimation is 40 feet to your left; correct?

13 A Correct.

14 Q Okay. And there is no doubt in your mind  
15 that Ms. Scharf fell from up above and landed where you  
16 found her; correct?

17 A Fell from up above.

18 Q Above, somewhere up above on top of the  
19 cliff; correct?

20 MR. MELLO: Objection.

21 BY MR. BILINKAS:

22 Q Correct?

23 THE COURT: What is your objection?

24 MR. MELLO: It's kind of hard for him to  
25 answer that question.

1 BY MR. BILINKAS:

2 Q She left the top of the cliff and landed  
3 where you saw her. Can you answer that question?

4 A I don't know how she left, but she left the top of  
5 the cliffs and she landed where that tree was.

6 Q Okay. And that was approximately 40 feet to  
7 the left where you went down; correct?

8 A Correct.

9 Q And do you think maybe that when you were  
10 going down that specific spot where someone else told  
11 you she went, that was 40 feet away from the tree that  
12 she landed, that that might not have been the direct  
13 path that she took; correct? You'll agree with me that  
14 that wasn't the direct path that she took? Correct?

15 A That's why Nelson repelled next to me.

16 Q Okay. But with regards to your observations  
17 you were 40 feet away from the tree that she landed;  
18 correct?

19 A Correct.

20 Q Okay. And you indicated that there was  
21 nothing where you landed at the base of the cliff;  
22 correct?

23 A Correct.

24 Q So you didn't see anything. Would you agree  
25 with me that that was not the direct path that she took

1 to get to the tree 40 feet away?

2 MR. MELLO: Objection. How does he know what  
3 the path was?

4 MR. BILINKAS: Because you can't go straight  
5 down and then 40 feet away.

6 MR. MELLO: Now he's going to testify.

7 THE COURT: I'm going to sustain the  
8 objection. Anything further?

9 BY MR. BILINKAS:

10 Q You don't know exactly where Jody Scharf fell  
11 off that flat rock; correct?

12 A Off the flat rock or the back.

13 Q Right.

14 A No, I don't know exactly where. Only where I was  
15 showed and I went there and Nelson went right next to  
16 me. So it was pretty much covered.

17 Q When you say right next to you, that was only  
18 a few feet away from you; correct?

19 A A foot and a half away from me.

20 Q A foot and a half away. So if you were 40  
21 feet away the most he could be would be 38 feet closer  
22 to that tree; correct?

23 A Well he's actually, he was actually further, 42  
24 feet.

25 Q Okay. So he's further away coming down the

1 mountain from the tree where she left; correct?

2 A Correct.

3 Q And so there's no misunderstanding -- strike  
4 that.

5 MR. BILINKAS: I have no further questions.

6 RE-REDIRECT EXAMINATION BY MR. MELLO:

7 Q Mr. Bilinkas just asked you, you don't know  
8 exactly where she fell from that flat rock. Remember  
9 that question?

10 A Yes.

11 Q As a matter of fact you don't know that she  
12 fell from that flat rock?

13 A I do not have first hand knowledge of that, no.

14 Q Thank you.

15 RE-RECROSS EXAMINATION BY MR. BILINKAS:

16 Q As you sit here today, do you personally have  
17 any evidence exactly where she fell from the top of the  
18 cliff, you personally? Without getting information  
19 from anyone else?

20 A No, I do not. No.

21 Q And when you repelled down the cliff with  
22 Pagan, you don't know if that was the right direction  
23 or was the path that she fell; correct?

24 A I was told that she fell.

25 Q By someone else; correct?

1 A Correct.

2 Q Correct?

3 A Correct.

4 MR. BILINKAS: Nothing further.

5 RE-RE-REDIRECT BY MR. MELLO:

6 Q Who was told by someone else --

7 A Correct.

8 Q -- namely the defendant?

9 A Correct.

10 MR. BILINKAS: Naming the general approximate  
11 location.

12 BY MR. MELLO:

13 Q Ah. The man's wife had just fallen from the  
14 cliff and he gave a --

15 MR. BILINKAS: Judge.

16 MR. MELLO: I'm sorry.

17 BY MR. MELLO:

18 Q -- a general approximately location? Is that  
19 what it was?

20 THE COURT: Are you finished with your  
21 question?

22 MR. MELLO: Withdrawn. Thank you. Nothing  
23 further.

24 THE COURT: Thank you, Chief. You may stand  
25 down.

1 THE WITNESS: Thank you, sir.

2 (The witness is excused.)

3 THE COURT: Okay. Can I see the attorneys?

4 (At Sidebar.)

5 THE COURT: The two of you certainly livened  
6 up this afternoon. We're going to break now?

7 MR. MELLO: Sure.

8 THE COURT: Okay. --

9 MR. MELLO: Yeah, that's perfect, Judge.

10 That's perfect.

11 (Sidebar concluded.)

12 THE COURT: All right. We're going to break  
13 at this time. We'll resume tomorrow at 9:00 a.m. Once  
14 again, do not watch, listen to, or read any media  
15 accounts. Do not watch any law related programs. Do  
16 not have any conversations of any nature with anyone.  
17 Thank you. Have a good evening and I will see you in  
18 the morning.

19 (The jury exited the courtroom.)

20 (Adjourned for the day.)

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Certification

I, Janice T. Warner, the assigned transcriber,  
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