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Q Okay. You don't know whether or not she had anything in her purse?

A No. I do not.

Q Okay. Did you ever receive any of her personal possessions back, like her purse or her clothing?

A No.

Q Okay.

MR. FEAZELL: That's all, Judge.

THE COURT: Any other questions?

REXCROSS EXAMINATION

BY MR. HUNT:

Q Just one, Mrs. Shaw. And that is, on the night that Jill left to come to Waco, did you -- do you recall what she was wearing, and if there was any jewelry that she was wearing that was not returned to you? If you recall.

A Well, she did not leave at night for Waco, she left in the morning.

Q Okay.

A The last time I saw Jill, she drove me to my carpool.

Q Okay.

A In her gown and housecoat.

Q I see.

A And she was not wearing anything, at that time.

Q Okay. Thank you, ma'am.

S. Smith

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2 MR. HUNT: I'll pass the witness, Your Honor.

3 THE COURT: Any other questions?

4 MR. FEAZELL: That's all, Your Honor.

5 THE COURT: All right.

6 Mrs. Shaw, you may step down.

7 MR. FEAZELL: May this witness be excused,
8 Judge?

9 MR. HUNT: Your Honor, I believe we're going
10 to have some questions later, so we would like her
11 subject to recall.

12 THE COURT: Mrs. Shaw, if you will leave your
13 -- how they can get ahold of you, so that if it becomes
14 necessary -- it might be necessary to call you back.

15 Call your next witness.

16 MR. BUTLER: Sidney Smith.

17 THE COURT: If you would come right around
18 here, sir.

19 If you will just have a seat, I believe you
20 have already been sworn.

21 SIDNEY WAYNE SMITH

22 called as a witness on behalf of the State of Texas, and
23 having been previously sworn, testified as follows, to-wit:
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25

DIRECT EXAMINATION

BY MR. BUTLER:

Q State your name, please, for the record.

A Sidney Wayne Smith.

Q All right. Now, Mr. Smith, every juror is going to have to hear you. So, if you would, try to keep your voice up, so that the furthest juror in the back corner can hear your answers.

A Okay.

Q Mr. Smith, where do you live?

A I live at 3702 Sleeper, Apartment 2.

Q Is that here in Waco?

A Yes, sir.

Q How long have you lived there?

A About three months.

Q And how long have you lived in Waco?

A About twelve years.

Q How are you employed, Mr. Smith?

A I work for Anderson Construction.

Q And how long have you been so employed?

A About six months.

Q Let me direct your attention back to the summer of 1982, and specifically, to July the 14th of 1982, and ask if you had occasion to go to Lake Waco on that day?

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A Yes, sir, I did.

Q All right. Would you explain to the jury your reason for going there, and approximately what time of the day or night you went.

A Okay. We started, my brother-in-law and I, about 11:00 or 11:30. We went by the bait shop, Rick's Place, I think, and we got bait.

Q All right. And where is that located?

A It's on this side of the twin bridges at Lake Waco.

Q Would that be near one of the parks?

A It's one of the parks, but I don't recall the name of it.

Q Okay. Could that be Midway Park?

A Probably.

Q How far from Highway 6, or the twin bridges, is it?

A It is just right off of the highway.

Q All right. And what did you do after you bought bait?

A Went around behind Rick's Place to a little slough, and we fished there for three or three and a half hours. After there, we went from there across the twin bridges to another park.

Q All right. Now, Mr. Smith, were you fishing from a boat?

A No, sir.

Q How were you fishing?

A We were fishing from the bank.

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Q Okay. And after buying the bait there at Rick's Bait Shop there, you fished in that area?

A Yes, sir.

Q For several hours?

A Yes, sir.

Q What was your reason for leaving there?

A Wasn't biting too good.

Q So, you took all of your equipment and went across the lake?

A Yes, sir.

Q All right. Was this the first time you had ever been fishing at Lake Waco?

A No, sir.

Q Did you know the area pretty well?

A Around Rick's Place; yes, sir. But over on the other side, we hadn't done quite that much fishing over there.

Q Where did you go after you crossed the twin bridges?

A Went to, I think, Killeen Park, or whatever it is. And -

Q All right. If you would, if you will look up there on the board, on the far side of the board, those are the twin bridges that were drawn yesterday by one of the other witnesses. Would you show the jury -- if you would, step up there to the board. All right. And the square in the middle represents the twin bridges going across

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the lake.

A Okay.

Q Would you show the jury -- just indicate with one of those markers there -- just put an X in the area where you and your brother-in-law were fishing originally.

A Okay. Back down in here was Rick's Bait Shop. Okay, there is a slough that comes in behind here. I went down in front, down, and back into this slough, was the first place.

Q And you fished there for several hours?

A Yes, sir.

Q All right. And where did you go after that?

A Okay. From there, we went across the twin bridges into this park. And -- well, we never did fish over here.

Q You never did fish. All right. If you would, just go ahead and resume your seat. Do you know the name of that park over there?

A Not exactly.

Q Could it be Speegleville Park?

A Speegleville Park.

Q All right. Now, would you tell the jury what you did after you entered Speegleville Park?

A Okay. We followed the -- went down the main road.

Q All right. Is that road paved, or is that a dirt road?

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A It is a paved road. Okay. At the end -- there is an intersection. We took a right. And it is also a paved road. We followed it around to where there is a field off to the right side with a dirt road following around it. We had never been there before, so we followed the dirt road. And it led right around the shore of the lake. And on down that dirt road is where we come across Franks body.

Q All right. Now, did that -- did you actually get down to the water, or to the lake, on that dirt road?

A No, sir. Didn't go all of the way to the lake.

Q Now, did it stay out in the field, or did it --

A Well --

Q -- did the road go into some trees?

A It went into some trees. Into a grove of trees.

Q All right. Who was driving your vehicle?

A Myself.

Q You were driving. And who was with you?

A My brother-in-law.

Q And what is his name?

A Joseph Chambers.

Q And you had not done any fishing on that side of the lake at all?

A Not that day; no, sir.

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2 Q Not that day. As a matter of fact, had you ever been on
3 that road before?

4 A Not the dirt road; no, sir.

5 Q And did something unusual happen while you were on that
6 road?

7 A Yes, sir.

8 Q What was it?

9 A We found Kenneth Franks.

10 Q All right. Would you explain to the jury what first
11 drew your attention to Kenneth Franks?

12 A Well, he was laying almost out in the middle of the road,
13 or on the side of the road.

14 Q All right. What, if anything, did you think or do, when
15 you first saw him?

16 A Well, my first instance, I thought it was a practical
17 joke, a prank, that somebody had played, not particu-
18 larly on us, but I thought it was just a made up dummy.

19 Q All right. And did you have occasion to -- how far away
20 from your vehicle was the body of Kenneth Franks, when
21 you first saw it?

22 A About 20 or 25 yards.

23 Q All right. Did you have occasion to go closer?

24 A Yes, sir.

25 Q Did you do that in your vehicle --

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A Yes, sir.

Q -- or on foot?

A In the vehicle.

Q How close did you get in your vehicle?

A We got within about ten -- five or ten yards from it.

Q And were you able to tell whether or not it was a practical joke?

A Yes, sir. And it was not.

Q And what did you do then?

A From there, we went up to the Marina.

Q All right. Mr. Smith, did you ever get out of your vehicle, at that time?

A Yes, sir. At that time, we got out.

Q When you saw that it was not a practical joke?

A Yes, sir.

Q Did you attempt to give any aid to Kenneth Franks?

A No, sir.

Q Why not?

A Well, it was kind of obvious that it wouldn't help.

Q So, what did you do then?

A We went to the Marina and got the park ranger, I guess, and told him what we had found. And he followed us back out there.

Q All right. Do you know who that person was that you

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went and notified?

A I don't recall his name; no, sir.

Q All right. How did you know to go to him?

A Well, he lives there in the trailer house.

Q Did you know him previously?

A No, sir.

Q Is there any indication that he is any kind of authority?

Or did you just happen to stop there?

A My brother-in-law was the one that told me where to go.

There might have been a sign, I can't recall.

Q When you got to the place where he was located, was that an office, or a trailer house that he was living in, or what?

A It was a trailer house.

Q How did you notify him?

A We went up to the door and knocked on the door.

Q What, if anything, did you tell him?

A We told him that we had found the body.

Q What did you then do?

A He followed us back to where we had found Ken Franks.

Q Do you know what time of the day or night it was?

A It was approximately between 3:00 and 3:30 in the afternoon.

Q All right. Were you upset at all?

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A Slightly.

Q Is it possible you could be wrong about that time?

A Yes, sir.

Q Could it have been later than that?

A It could have.

Q What did you do when you arrived back at the location?

A We just stood by the truck.

Q What, if anything, did the constable do?

A He got out and he walked over and he looked at the body, and he came back to his car and called in. And he took our names and our addresses. And, then, we had to go back up the main road, to show the rest -- or whoever he called -- how to get to where he was.

Q All right. Now, did all of you go up to the main road? Did all of you go back to the main road, or did just some of you go back?

A Just me and my brother-in-law.

Q Okay. Now, remember to keep your voice up, because everybody has to hear you. Did the constable ask you to go back and direct the people how to get to where the body was?

A Yes, sir.

Q And how long did you wait there at the main road before anybody arrived?

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A Twenty minutes, 25 minutes.

Q When you say "main road," are you talking about where the pavement was? Or are you talking about the main road out at the gate?

A No, sir. It's at the intersection.

Q Which intersection?

A Okay. After you pass the trailer house, you go straight, and there is an intersection. Well, we took the right, and we had to wait there.

Q All right. So, it is the place where people would first come, after coming through the gate and passing the trailer house there at the gate?

A Yes, sir.

Q The first intersection they came to, that's where you waited?

A Yes, sir.

Q All right. Who was the first person that came in, if you recall?

A I don't recall.

Q Did you and your brother-in-law both take them back down there?

A Yes, sir.

Q Then what did you do?

A Well, then, we had to turn around and come back and wait

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for other people.

Q How many times did you go back and direct people down to that location?

A I think we went back twice.

Q And after that, was someone else assigned that task of directing the people how to get down there? Or do you know?

A I don't know.

Q What happened after your last occasion to direct people down there?

A Well, we went back and they asked us questions. And while we were down there, is when one of the men found the two girls.

Q Did you ever see the bodies of the two girls?

A No, sir.

Q How long did you stay there at that location?

A About two and a half hours.

Q Was it dark when you left?

A Not quite.

Q Was it almost dark when you left?

A Close. Close to it.

Q Did you know Ken Franks?

A No, sir.

Q Did you know either of the girls?

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A No, sir.

Q Have you been back fishing at Lake Waco?

A Yes, sir.

Q Have you ever been back to Speegleville Park?

A No, sir.

MR. BUTLER: We pass the witness, Your Honor.

MR. FULLER: Did he give a statement?

MR. BUTLER: No.

CROSS EXAMINATION

BY MR. FULLER:

Q Mr. Smith, my name is Hayes Fuller. I don't believe we have had a chance to talk about this before. I have just a few questions. If you would, please remember to speak up. I know we're looking away from the jury, so they may have a little bit of trouble hearing you. I want to go back, if I can, and get just a few more details about what you can recall on July the 14th. Do you recall the time that you first saw the body of Kenneth Franks?

A Not exactly.

Q Okay. Can you give me your best approximation?

A I would say somewhere around 3:00 o'clock.

Q Okay. If you would, I would like you to go up to the board. And if you can find a blank space up there, could you diagram your approach into Speegleville Park, and

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indicate to us where you found the body of Kenneth Franks?

A Okay. As you come across the twin bridges, you exit off and you come into Speegleville Park. That is the gate. And here is the trailer house. You go on past. There is an intersection right here. You turn right. The road comes around and goes on back toward the Marina. Okay, right out in here is an open field. There is a dirt road that comes off -- out around the open field. And this is the lake back out in here.

Q Okay.

A And it comes along the edge of the field. And along about right in here, it starts trees. You come into the trees and the road kind of Y's. This one goes back out to the main road. Okay, right there is where we found Franks.

Q Okay. So, you found the body pretty much at the Y intersection?

A Right at the Y.

Q Okay. Now, how far was that intersection, would you say, from the lake itself?

A About 35 yards.

Q And did the dirt road run right down to the lake, if you went the other way?

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2 A I don't think so. I don't think it goes all of the way
3 to the lake.

4 Q And about how far off of paved road would you estimate
5 you were?

6 A About 50 yards.

7 Q You stated that you came as close -- or the vehicle --
8 as close as five to ten yards. How close to the body
9 did you get, when you actually got out of your truck?

10 A Well, right up to him.

11 Q Could you describe how he was positioned, in relation to
12 the road?

13 A His feet were laying out into one side of the road. He
14 was on his back. His hands looked as though they were
15 tied behind his back.

16 Q Okay.

17 A He was wearing sunglasses, and he had a gag.

18 Q Were his sunglasses on?

19 A Yes, sir.

20 Q Was the body absolutely prone, flat?

21 A Yes, sir.

22 Q It was not propped up?

23 A No, sir.

24 Q Okay. At that time, did you notice anything around the
25 body, which seemed to you unusual?

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A No, sir.

Q Did you kind of, at that time, look around the body?

A Not very long.

Q Okay. I believe you indicated that you did not see the bodies of the two girls?

A No, sir.

Q How long did you stay there, the first time, when you got out of your truck and looked at the body of Kenneth Franks?

A Not more than two minutes.

Q Then you got back in your truck?

A Yes, sir.

Q And went over to the Marina?

A Right.

Q How long did it take you to get to the Marina?

A Five minutes. Less than five minutes.

Q Could you indicate on your diagram with an arrow which way you would go to the Marina?

A (Indicating.)

Q Okay. Thank you. As you were leaving the site where you found the body, did you see any other people out there?

A No, sir.

Q When you got to the Marina, you immediately went to the

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trailer house?

A Yes, sir.

Q Okay. And he was there?

A Yes, sir.

O How long did it take you all to get back to the site where you found the body?

A Five to -- less than ten minutes.

Q And at that time, did you all remain in your truck, while he got out and looked at the body?

A No, sir.

O Okay. Tell me in detail exactly what you did when you got back to the site?

A When we got back to the site, my brother-in-law got out and stood beside the truck, and the constable walked over and looked at the body.

Q Okay. Did he do anything besides look at the body?

A Not that I can recall.

O Did he have any questions for you, at that time?

A Just our names and addresses and what we were doing out there.

O Okay. And after he got your names and addresses, is that when he radioed in?

A I don't remember if it was before or after.

O Okay. Do you know who he radioed to?

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A No, sir.

Q Okay. After he radioed in and took your names and addresses, what did he ask you to do?

A To go back to the main road and escort --

Q Okay. Excuse me. Go ahead.

A -- and escort the others in.

Q Okay. Where did you go position yourselves at the main road? Just make a little X there with a circle around it.

A (Marking on board.)

Q How long did it take you to get up there?

A Less than five minutes.

Q And how long did you have to wait until the first law enforcement officer got there?

A Around 15 to 20. Somewhere along in there.

Q Do you know which agency the first law enforcement officials were from? Were they Sheriff's deputies, constables, DPS, Waco P.D.?

A I want to say it was a constable, but I'm not sure.

Q McLennan County?

A Yes, sir.

Q Okay. Was it only one car?

A The first one, it was.

Q How many people were in the car? Just one?

A No, sir. There was about three or four.

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Q Okay. You escorted them down to where the other constable was with the body, is that correct?

A Uh-huh.

Q Did they drive on in? Or did they park outside the area where the body was?

A They drove on down to where it was.

Q And at that point, you went back up to the intersection to wait for more folks to come?

A Yes, sir.

Q When you went back up to the intersection the second time, was it still daylight out?

A Yes, sir.

Q Before we go any further, what was the condition of the dirt road? Was it dry? Wet? Muddy? How would you describe it?

A I don't remember.

Q How long did it take for other law enforcement officials to get there?

A About ten minutes.

Q And were they Sheriff's deputies, constables, or what?

A I can't remember.

Q You don't know what they were. Did they arrive in a patrol car?

A It was in a car; yes, sir.

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Q Only one car?

A I think there was two or three. I'm not sure.

Q Maybe two or three cars. How many people were in each car?

A I don't know.

Q More than one?

A I can't say for sure.

Q And did you also escort those cars down to the site?

A Yes, sir.

Q Did they park up at the paved road, or did they drive on in where the body was?

A They drove down the dirt road.

Q When you first found the body, did you notice any tire tracks or anything around the body?

A No, sir.

Q And you didn't actually drive all of the way up -- well, let me ask you this -- when you went to get the Constable did you back out, or drive on around?

A We drove on around the end.

Q Okay. After you escorted the second group of officers down there to the scene, what did ya'll do then?

A We came back down and parked at...

Q Yeah. Use the diagram, if that will help you.

A Came back down and parked about right here.

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Q Okay. So, you drove on into the park. Had an ambulance gotten there yet?

A I don't think so.

Q At the time you came on in and parked, is that when they took a statement from you?

A Yes, sir.

Q And do you recall who took the statement?

A No, sir.

Q Do you remember what type of uniform they were wearing?

A Not really.

Q Do you know the names of any of the individuals who were out there?

A No, sir.

Q How many people would you say were out there, at that time?

A Eight to ten people.

Q Did the officer who took your statement, was he writing that down?

A I think so.

Q Did you ever sign a statement?

A No, sir.

Q When was it during that time that they found the bodies of the girls?

A It was as we were giving a statement.

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Q And was it still light, at that time?

A Yes, sir.

Q What were these eight to ten people doing?

A Looking around.

Q Walking around the area. At that time, had anybody cordoned off the area?

A I can't remember.

Q They were just walking all through the area?

A (Nodding head.)

Q Describe to me how it was when they found the girls.

How did you become aware that they had found the girls?

Let me rephrase that.

A One of the guys was walking back down --

Q And use your diagram again, if that will help you.

A He was walking back down this road. And he hollered out, "Here they are!"

Q Did it appear that the officers knew what they were looking for? Or did it come as a surprise when they found the girls?

A It sounded like they knew what they were looking for.

Q All right. About how far from Kenneth Franks' body would you estimate the bodies of the girls were, or where the officer was when he said he saw them?

A Thirty-five or 40 yards.

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Q And how long did you stay there after you gave your statement?

A Until they told us we could go. I don't recall how long it was.

Q When you left, had the ambulance arrived?

A I think so.

Q And I believe you indicated you never actually saw the girls?

A No, sir.

Q Had reporters or members of the news media arrived by the time you left?

A Yes.

Q Television cameras and things of that nature?

A Yes, they had.

Q Had they come on down there where the bodies were?

A Yes, sir.

Q By the time you left, how many people were around the bodies?

A Fifteen.

Q At the time you left, had the bodies been removed?

A I don't think so. I can't remember for sure.

MR. FULLER: I believe that's all I have, Mr. Smith.

Pass the witness.

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THE COURT: Does the State have any other questions?

MR. BUTLER: Yes, Your Honor.

THE COURT: All right, sir.

REDIRECT EXAMINATION

BY MR. BUTLER:

Q What kind of vehicle were ya'll in?

A '69 Ford pickup.

Q Was it a four-wheel drive?

A Two-wheel drive.

Q What kind of condition were the roads in, if you recall? Were you worried about getting stuck?

A No, sir.

Q You were driving on several dirt roads in that area, were you not?

A No, sir. Just that one.

Q All right. But you came all of the way around the field on a dirt road?

A Yes, sir.

Q You went back up two or three times, to show people how to get down there?

A Yes, sir.

Q The roads were in good enough condition that you could drive on them without worrying about needing a four-

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wheel drive, or worried about getting stuck?

A Yes, sir.

O All right. There were many vehicles that came down through there?

A Yes, sir.

O They were mostly two-wheel drive vehicles, also, were they not?

A Right.

MR. BUTLER: Pass the witness.

THE COURT: Any other questions?

MR. FULLER: You say he did not give a written statement?

MR. BUTLER: That's exactly what I said, and that's what he said.

THE COURT: Any other questions?

MR. FULLER: None, Your Honor.

THE COURT: All right.

You may step down, Mr. Smith.

MR. BUTLER: May he be excused, Your Honor?

THE COURT: May this witness be excused?

MR. HUNT: Yes, sir.

THE COURT: All right.

You may be excused, Mr. Smith. Thank you very much.