

1 of how you wanted to approach Justin in the questioning
2 process?

3 A. Yes.

4 Q. Kind of an interrogation game plan if you
5 will?

6 A. Yes. You have to have a plan.

7 Q. Yeah. You want to lay out the order of the
8 questions you were going to ask or the crimes you were
9 going to ask?

10 A. Yes.

11 Q. You didn't want to start off talking about a
12 homicide right out of the box because he might have --
13 he might have shut down?

14 A. Yes.

15 Q. And you don't want the suspect to shut down?

16 A. That's the whole -- the whole intent of a
17 interview is to find the truth.

18 Q. It's contrary to the game plan if he shuts
19 down?

20 A. Yes.

21 Q. In fact, your game plan and your entire reason
22 for traveling all the way to Chicago fails if the
23 defendant invokes his right to remain silent?

24 A. It's never a failure. Any time you get to

1 talk to a suspect is good.

2 Q. Well, what I'm saying --

3 A. Whether they invoke or not.

4 Q. What I'm saying is your game plan of going
5 there and getting this statement wouldn't have played
6 out the way you wanted if he invokes his right to
7 remain silent?

8 A. That's correct.

9 Q. Or if he invokes his right to have an attorney
10 present?

11 A. That's correct.

12 Q. Because in your experience, for all intense
13 purposes, if the attorney is there he's going to stay
14 silent?

15 A. Sure. Once they invoke, we don't get to talk
16 to them.

17 Q. Right. And that kind of would have been a
18 wasted trip if that happened?

19 A. Well --

20 Q. Maybe not personally, but the purpose was to
21 go get a statement?

22 A. That's correct.

23 Q. And if you get that and he invokes and doesn't
24 give a statement, then the trip was kind of a waste?

1 A. Sure.

2 Q. Okay. There are many, many approaches when
3 interrogating a suspect; is that correct?

4 A. I just ask him questions. I don't really use
5 much of finesse to it.

6 Q. Well, have you had any training in --

7 A. Sure. I've been to probably some of the same
8 schools that you guys have been to.

9 Q. Right. And they bring out different teachers
10 when we get there, but, essentially, we go to the
11 same -- to the same ones. And when you're at these
12 training seminars, essentially, they're teaching you
13 kind of the art of obtaining a statement from a
14 suspect?

15 A. Yes.

16 Q. And some of the things that they really stress
17 or you want to develop a rapport?

18 A. Yes.

19 Q. Which you agree with?

20 A. Absolutely.

21 Q. You want to be friendly when possible?

22 A. Yes.

23 Q. Or when the case and the facts of that case
24 call upon it. You essentially want to create an

1 environment conducive to discussion?

2 A. Yes.

3 Q. Is that a fair statement?

4 A. Absolutely.

5 Q. And in this particular case, when discussing
6 your game plan or maybe just your particular style, it
7 became apparent you need to establish that friendly
8 type of a rapport to obtain a statement in this case?

9 A. We walked in -- I interview everybody the same
10 way.

11 Q. And that is the friendly?

12 A. Absolutely.

13 Q. The friendly rapport build type of approach?

14 A. Absolutely.

15 Q. You find that it works for you?

16 A. Yes.

17 Q. And if it works, then that's the style you're
18 going to use. Now you've already stated that when you
19 were talking to Justin on the telephone, that you
20 didn't advise him of his rights because you didn't have
21 to?

22 A. That's correct.

23 Q. In fact, if it were up to you, and maybe many
24 other detectives, if you weren't required to advise an

1 individual of his rights to remain silent and have an
2 attorney, you wouldn't do so?

3 A. That's not the case.

4 Q. Well, let me put it this way. If the Supreme
5 Court tomorrow said we misapplied Miranda, the police
6 are no longer required by law to tell an individual,
7 you have a right to remain silent, you have a right to
8 have an attorney here, if that were the case, you'd
9 stop telling them that?

10 A. Yes, I would.

11 Q. Okay. I mean, you're not in the rights
12 business. You're in the interrogation business; is
13 that fair?

14 A. I'm in the police business.

15 MR. HERNDON: Well, Judge, I think that
16 they're part and parcel of the same thing as the
17 current state of the law, so --

18 MR. BROWN: Maybe. And I'm not implying --

19 THE COURT: You may know something we don't
20 know about the supreme court.

21 BY MR. BROWN:

22 Q. You are in the information business.

23 A. I'm in the law enforcement business.

24 Q. You're in the investigation -- and that

1 involves investigation?

2 A. Yes.

3 Q. And to investigate you need information?

4 A. That's correct.

5 Q. Okay. And Miranda warnings, if anything,
6 potentially impede the gathering of information?

7 A. Not necessarily. I mean, I've interviewed a
8 lot of people, and I've advised a lot of people of
9 their Miranda rights, and a lot of them talk to me.

10 Q. Well, let me rephrase.

11 The rights to remain silent, if invoked,
12 impede potentially the gathering of the information.

13 A. Yes.

14 Q. Which potentially impedes the investigation?

15 A. It depends on your investigation. Depends on
16 other evidence that you have.

17 Q. Potentially?

18 A. Sure.

19 Q. And so, I guess, ultimately, the hope when you
20 are advising an individual of his rights per Miranda,
21 frankly, is that he elects to talk to you?

22 A. Yes, I love it when people talk to me.

23 Q. I mean, your hope is that he elects to not
24 invoke his right to remain silent?

1 A. Absolutely.

2 Q. Your hope is that he elects not to invoke his
3 right to have an attorney present?

4 A. Sure.

5 Q. Okay. But like you said, you advise many
6 individuals of their rights and they talk to you
7 anyway?

8 A. That's correct.

9 Q. Because, essentially, you have successfully
10 created this environment of discussion?

11 I saw you nod something.

12 A. Well, I don't know if it's because of an
13 environment that I create. I think it's because some
14 people just want to tell you what they did.

15 Q. Some do. And some want to tell you what they
16 did because you've done the things you're trained to
17 do? You've created the rapport and the environment to
18 where they feel like they can talk to you. That's your
19 goal?

20 A. My goal is to get people to talk to me.

21 Q. Right.

22 Now, with -- you indicated with individuals
23 who do talk to you, sometimes based upon, they want to
24 talk to you, sometimes based upon they feel that they

1 can talk to you in these courses, these trainings that
2 you have, they discuss the training seminars, discuss
3 Miranda and how to deal with Miranda; isn't that fair
4 to say?

5 A. Yes.

6 Q. I mean, that's probably one of the biggest
7 things that an investigating detective needs to learn
8 how to negotiate is the Miranda warning themselves?

9 A. I don't negotiate Miranda warnings.

10 Q. Well, in the seminars that you attend, part of
11 the reason when they're talking to you about being
12 friendly and developing a rapport is so that you can
13 give somebody their warnings or you advise them of
14 their rights, but they still want to talk to you
15 because that's the goal?

16 A. Be a very small portion of a class.

17 Q. But you have had training in that area?

18 A. Yes.

19 Q. Okay. Now, the purpose of Miranda, really, as
20 you understood it, and correct me if I'm wrong, but the
21 purpose of Miranda is to simply advise the suspect or
22 an accused that he has a right to not talk to you if he
23 doesn't want to?

24 A. Yes.

1 Q. Okay. And that he can demand to have an
2 attorney present before the questioning begins and have
3 an attorney present during any questioning if there is
4 any?

5 A. That's correct.

6 Q. Okay. And you would agree with me that the
7 advisement of these rights are essentially meaningless
8 if the person you're giving them to doesn't understand
9 them?

10 A. Agree, yes.

11 Q. Yeah, okay. I mean --

12 A. They're --

13 Q. You obviously couldn't read it in French to
14 somebody who doesn't speak French and expect to have
15 any meaning whatsoever; is that fair to say?

16 A. That's correct.

17 Q. Okay. Now, either through your experience or
18 through your training, in keeping with your goal to get
19 the information notwithstanding you telling them what
20 their rights are, one of the ways to do that is for you
21 to personally not actually advise them of their rights
22 but to have them read it to you?

23 A. I have people read me the rights so you can --
24 you can see how well they, they read. You can get a

1 good idea on a person's education.

2 And also to make sure that they know how to
3 read.

4 Q. Okay. But, I mean, the Miranda -- there are
5 other reading tests, obviously, that you can
6 incorporate other than just Miranda. You have them
7 read it to you in hopes that they understand it?

8 A. No. I have them read it to me so I know that
9 they know how to read.

10 Q. Okay. And in this case, you did that with
11 Justin?

12 A. Yes, I did.

13 Q. And we'll get to that in just a second.

14 A. Okay.

15 Q. But it's your policy or your practice to have
16 every suspect read the rights of person's arrested
17 notification?

18 A. I try to have everybody read the rights of a
19 person arrested card.

20 Q. Okay. And that kind of gives a guage as to
21 where they are for you?

22 A. Yes.

23 Q. Is that what you're saying?

24 Okay. Now, nowhere in this rights of persons

1 arrested card -- do you have a copy of this with you?

2 You may in your --

3 A. I don't know if I do or not.

4 Q. I'll give you a second to look for it because
5 I'm going to refer to it. And I don't know if you've
6 got it completely memorized.

7 A. You know what? I don't think I do, Mr. Brown.

8 MR. BROWN: I have it, Mr. Herndon.

9 BY MR. BROWN:

10 Q. I'm going to hand this to you. We'll refer to
11 it periodically. But -- now the copy that I've just
12 handed you, does that appear to be an accurate copy of
13 the actual rights of Miranda card that you provided to
14 Justin Porter?

15 A. Yes. This is the ones we used back in 2000.

16 Q. Okay. The newer ones have -- are split into
17 two sections; is that right? An adult rights and a
18 juvenile rights on the other side?

19 A. Yes. They have adult on one side, juveniles
20 on another side, and then they also have Spanish cards
21 with the same.

22 Q. On the back?

23 A. Yes.

24 Q. Okay. So when we're talking about this

1 particular case in 2000, August Twelve, 2000, this a
2 copy of the rights of person arrested card that you
3 provided to Justin?

4 A. Yes.

5 Q. Okay. And we know that because you dated and
6 signed it?

7 A. That's correct.

8 Q. And Justin signed it as well?

9 A. Yes.

10 Q. Okay. Now getting back just for one second.
11 When somebody has either read this or otherwise been
12 advised of their rights, you don't actually ask them,
13 do you waive those rights?

14 A. No.

15 Q. Okay. Because you've learned through your
16 experience or your training that the words waiver and
17 rights might alarm somebody to the point where they
18 actually get a little nervous?

19 A. No. I just ask them if they understand them.
20 If they understand their rights. If they understand
21 what I just read, words to that effect.

22 Q. Okay. And then you ask, and then you just
23 start talking?

24 A. Yes.

1 Q. And if they start talking, you assume that
2 they've waived those rights?

3 A. Generally, they reply either yes or no.

4 Q. That they understand?

5 A. Yes.

6 Q. But you don't ask them whether they waive it.

7 A. That's correct.

8 Q. Okay. And I'll ask you again, is the reason
9 for that, were you told or trained to not ask
10 individuals if they waive their rights?

11 A. No. You know, I -- I think this is just
12 something that I've always done when I've advised
13 persons of their rights.

14 Q. You're not alone.

15 A. Pardon me?

16 Q. You're not alone. Now, referring specifically
17 to the rights of persons arrested card that we have,
18 nowhere in this, in this admonition does it ask them,
19 do you understand what you've just read?

20 A. That's correct.

21 Q. Nowhere in this admonition does it actually
22 ask them, do you waive these rights above and agree to
23 speak?

24 A. Right.

1 Q. Okay. Now this rights of persons arrested
2 card is essentially prepared for you by police for
3 police?

4 A. I don't know who prepares them. Our
5 department has the revised date on there which is four
6 of 94.

7 Q. Okay. You don't know who prepares these
8 cards?

9 A. I don't know who prints them.

10 Q. Defense attorneys didn't write this?

11 A. Probably not.

12 Q. Okay.

13 A. It would be much longer.

14 Q. Right. It might actually include those other
15 two lines we just discussed about. Now, part of the
16 reason, maybe, that you just discuss -- you just begin
17 discussing the case after you ask somebody if they
18 understand it, is you don't want to do anything that
19 actually might cause a suspect to shut down? I mean,
20 is that fair to say?

21 A. No. I start as soon as they tell me they
22 understand their rights. I start asking them questions
23 because I want to get the statement over with.

24 Q. You want to start getting them in the flow so

1 they'll start opening up and discussing; is that fair
2 to say?

3 A. I want them to tell me what they did.

4 Q. But it's based upon your experience that,
5 generally, people don't immediately start blurting out
6 confessions?

7 A. Oh.

8 Q. It takes time?

9 A. Generally not.

10 Q. Through your discussions with them, you're
11 continuing to create a rapport throughout your
12 interrogation?

13 A. I don't know much of a rapport I can build up
14 when I start asking questions about the crimes that I'm
15 investigating, but --

16 Q. Well answer it this way: Is it fair to say
17 early on through your interrogation you're not
18 attacking the person discussing this?

19 A. No.

20 Q. You're not challenging them?

21 A. No.

22 Q. You don't want them to shut down?

23 A. I want them to continue talking and telling me
24 what they did?

1 Q. Okay. Which is, essentially, you don't want
2 them to quiet up?

3 A. Right.

4 Q. You do not want them, at any point during the
5 interrogation, to say, you know what? I do want a
6 lawyer here?

7 A. It doesn't bother me if they do. It's
8 happened to me.

9 Q. I'm sure it has, but that's not your goal?

10 A. That's not my goal.

11 Q. You don't want them to do that?

12 A. That's correct.

13 Q. Okay. And, additionally, or concurrently you
14 don't want them, during the statement, to say, you know
15 what, like it says here, I do now invoke my right to be
16 silent? You don't want that?

17 A. No.

18 Q. Okay. Now, in this particular case, and you
19 can correct me if your memory or your notes are
20 different. I believe you arrived in Chicago about
21 fifteen hours after you were notified that Justin was
22 taken into custody?

23 A. That's probably close.

24 Q. Okay. And you're picked up at the airport by

1 violent crimes detectives from Chicago?

2 A. Yes.

3 Q. Okay. And you go to the Chicago substation,
4 police station for Unit Four?

5 A. Right.

6 Q. And that's where you meet Detective Kriston
7 Kato?

8 A. Yes.

9 Q. Okay. And you learned that he is also a
10 detective with that unit?

11 A. That's correct.

12 Q. Okay. Now he advised you that he verbally
13 advised Justin of his Miranda and that Justin will talk
14 with you?

15 A. I think he told that to Detective La Rochelle.

16 Q. Okay.

17 A. When we first got there, we were meeting
18 people. And I don't remember talking to Kato about he
19 advised him and that he spoke to Justin.

20 Q. At some point you became aware through Kato or
21 Detective La Rochelle that Kato did represent that he
22 verbally Mirandized --

23 A. Yes, sir.

24 Q. -- Justin?

1 A. Yes.

2 Q. But at some point you don't, other than him
3 saying verbally, you don't know if it was from memory?

4 A. That's correct.

5 Q. Whether he read it word for word off of a
6 card?

7 A. That's correct. I just learned that Kato had
8 advised Justin of his rights per Miranda.

9 Q. And you don't know exactly how the Chicago
10 Police Department's notice or rights of persons
11 arrested card reads?

12 A. No.

13 Q. And you don't know when Kato says I verbally
14 Mirandized, you don't know exactly what he says to him?

15 A. Correct.

16 Q. Okay. But nonetheless you do at some point
17 meet Justin?

18 A. Yes.

19 Q. And you indicated that was in a holding cell?

20 A. Yes.

21 Q. And you go from the holding cell to the
22 interview room?

23 A. That's correct.

24 Q. Now, Justin has met you, Detective La

1 Rochelle, and Sergeant Cricket all at the same time?

2 A. Yes.

3 Q. Okay. The three of you appear and you
4 represent to him that you are detectives from Las
5 Vegas?

6 A. Las Vegas.

7 Q. You don't identify yourselves as a sexual
8 assault detective?

9 A. I believe he already knew that I was a sexual
10 assault detective from speaking with his mother.

11 Q. Okay. You believe that from speaking with his
12 mother?

13 A. No.

14 Q. Or he spoke with his mother?

15 A. That he spoke with his mother. And I believe
16 that she told him that I was a sexual assault
17 detective.

18 Q. Do you know that?

19 A. No. I don't know it. But that's my
20 impression from his phone messages.

21 Q. Does your answering machine in any way reflect
22 that you're a sexual assault detective?

23 A. I don't believe so.

24 Q. Okay. Well back in 2000?

1 A. Back in 2000.

2 Q. Because it wouldn't now?

3 A. Correct.

4 Q. All right. Detective La Rochelle did not
5 introduce himself as a homicide detective?

6 A. I don't recall.

7 Q. Okay. Is it your general practice when
8 interrogating a suspect to introduce yourself either as
9 sexual assault or just a detective?

10 A. I generally just tell them a detective with
11 Las Vegas Metro.

12 Q. Okay. Now after you meet Justin, you will be
13 friendly as is your practice?

14 A. Yes.

15 Q. You will attempt to build a rapport as is your
16 practice?

17 A. Yes.

18 Q. You will attempt to create this trust
19 environment as is your practice?

20 A. However you -- yeah, your building it, yeah.

21 Q. And all of these things are essentially, as
22 you've indicated, in an effort to obtain information?

23 A. Yes, we want --

24 Q. You want his statement?

1 A. Yes, I want people --

2 Q. You want his story?

3 A. Yes.

4 Q. And when I say his, I mean, a suspect's?

5 A. Absolutely.

6 Q. Okay. And you would agree with me that the
7 interrogation or an interview of a suspect is different
8 than the interrogation or interview of, maybe, a
9 collateral witness?

10 A. Mr. Brown, I do my interviews basically the
11 same way whether they are a witness or a suspect.

12 Q. And I'm not really approaching the way you do
13 your interview as much as the information you're
14 seeking to obtain. There's a difference between
15 interviewing a suspect or a potential defendant and a
16 witness? You can either agree or disagree?

17 A. Well, I think when I interview a witness I
18 want to know what they saw, what they did, where they
19 were at.

20 When I interview a suspect I want to know what
21 he saw, what he did, and where he was at.

22 Q. And at some point are you discussing with a
23 suspect allegations against him?

24 A. Maybe from time to time.

1 Q. I mean, again, in certain circumstances, and I
2 think you indicated here you're required to feed some
3 information to somebody that you're interviewing?

4 A. Yeah. He couldn't -- Justin couldn't remember
5 dates or exact addresses. But if I -- if we gave him a
6 general description, maybe, a location that was near
7 the apartment or the house, he was able to provide us
8 with details.

9 Q. Okay. Well, got off track a little bit with
10 the suspect versus the witness thing. But just back to
11 your philosophy, as we discussed, of the rapport and so
12 forth in gaining the information, all of this is in an
13 effort in this case for Justin to not invoke his right
14 to have an attorney present?

15 A. No. It's so Justin will tell us what he did.

16 Q. Okay. But when you're approaching a suspect,
17 you've indicated that your goal is to get them to talk
18 to, give you a statement?

19 A. Yes.

20 Q. Okay. And in order to do that, they have to
21 know what their rights are?

22 A. That's correct.

23 Q. And they have to agree to not invoke those
24 rights?

1 A. I believed that Justin Porter understood his
2 rights.

3 Q. Okay. I understand. I'm not at that question
4 but a suspect in general has to know what his rights
5 are?

6 A. Yes.

7 Q. And he has to agree to not invoke those
8 rights?

9 A. Yes.

10 Q. In order to talk to you?

11 A. Yes.

12 Q. And so in keeping with your goal of getting a
13 statement from a suspect, you have to be creating a
14 situation where you hope they will not invoke those
15 rights?

16 A. That's correct.

17 Q. Okay. Now at this point when you're with
18 Justin in the interview room, he's clearly under
19 arrest?

20 A. Absolutely.

21 Q. And you're going to ask him questions?

22 A. Yes.

23 Q. And the law calls that interrogation?

24 A. That's an interview.

1 Q. An interview. Unlike before when he was
2 calling you on the phone, you realize now you are
3 required to provide Justin with his rights per Miranda;
4 is that correct?

5 A. That's correct.

6 Q. Okay. Did you have any discussions with
7 Justin prior to you discussing his Miranda rights?

8 A. I believe we just introduced ourselves. We
9 sat down, and I provided him with the card, and asked
10 him to read it out loud.

11 Q. So nothing, no discussions of significance?

12 A. No.

13 Q. Okay. Now you do recall Detective Kato or the
14 information you received that Detective Kato had
15 already Mirandized him?

16 A. Yes.

17 Q. Okay. But that was maybe up to fifteen hours
18 before?

19 A. It was.

20 Q. Is that right?

21 A. It was some time ago, yes.

22 Q. I mean, you're new detectives. This is --
23 this is a new statement. To be safe, I guess, you want
24 to re-Mirandize him?

1 A. That's correct.

2 Q. Okay. And you do this, obviously, before any
3 questioning takes place?

4 A. That's correct.

5 Q. All right. Now you also know through your
6 training and experience that you must at some point
7 make a record that a suspect has been given, notified,
8 or advised of his rights before questioning, and that
9 he's agreed to waive them; is that correct?

10 A. Yes.

11 Q. Okay. And there are various ways of doing
12 that. You could write a report?

13 A. Yeah.

14 Q. Okay. Or you could tape or whatever?

15 A. Right.

16 Q. Okay. But some record needs to be made that
17 he actually was advised and is going to speak?

18 A. And that's what we use the card for.

19 Q. Okay. And that's why you actually have a card
20 with the rights on and have a suspect sign it?

21 A. That's correct.

22 Q. Okay. And the reason we ask the card, and you
23 make the record is because you recognize the importance
24 that the legal system places on the rights of a

1 suspect?

2 A. I do that because that's our policy.

3 Q. Okay. And the policy is generated because it
4 is recognized, the legal importance of the rights of
5 the suspect?

6 A. Yes.

7 Q. I mean, you recognize as the detective that at
8 some point a judge is going to rely on this
9 information?

10 A. Yes.

11 Q. Attorneys are going to rely on this
12 information?

13 A. Yes.

14 Q. And you need to provide that information as
15 accurately and clearly as you possibly can?

16 A. That's correct.

17 Q. Now, I think we know from the reports and
18 maybe have some prior testimony in your direct
19 examination with respect to the conversations you had
20 with Justin. I thought I understood you to say, at one
21 point, that the entire time that you were in the room
22 with him was between three and-a-half and four hours?

23 A. That's what I recall.

24 Q. Okay. And part of the reason for that is when

1 you first went into the room and began -- and advised
2 Miranda, began discussing, you actually are
3 interviewing the suspect about everything that happens
4 without any recordings or anything of that nature; is
5 that correct?

6 A. That's correct.

7 Q. Okay. And that any interview lasted hour,
8 hour and-a-half?

9 A. Approximately that long.

10 Q. Okay. Now just to clarify for the judge, we
11 do have a taped statement in this case?

12 A. Yes.

13 Q. But the taped statement is something that took
14 place after your interview?

15 A. That's correct.

16 Q. So your initial interview with Justin, the one
17 we just said hour, hour and-a-half, there's not a
18 single recording of it in existence?

19 A. That's correct.

20 Q. Okay. And this is your policy when
21 approaching a suspect in a criminal case?

22 A. A suspect or a witness.

23 Q. A suspect or a witness. Okay. Later, once
24 it's determined and the information is at some point

1 important or relevant, you repeat the entire process,
2 but now it's for the tape recorder?

3 A. Yes.

4 Q. Okay. You want the information on tape
5 because it's more reliable than maybe your memory?

6 A. Yes. It's more reliable than my memory. It's
7 better than having somebody sit down and hand write it
8 out. Myself, I have terrible handwriting.

9 And that's why we use the tape recorder.

10 Q. Audio taping is more reliable reflection of
11 what actually took place than summaries, notes, or
12 memory?

13 A. Yes.

14 Q. Okay. I mean, theoretically you have a
15 statement from him. After your first interview, you
16 have admissions from Justin or any suspect, you're not
17 required to audio tape it for purposes of having the
18 information? You do that as a matter of, as we
19 discussed, reliability and maybe convenience?

20 A. Yes.

21 Q. Okay. But notwithstanding the acknowledgement
22 of the reliable nature of the audio tape, it's still
23 your practice to conduct the first interview without
24 any audio tape?

1 A. That's correct.

2 Q. Okay. Now, I believe from prior testimony and
3 I can't remember whether I was talking to you or not,
4 but there are a couple of reasons for conducting the
5 first interview while not on audio tape, and correct me
6 if you have other ones, but it's more cost effective?

7 A. Yes.

8 Q. Is that accurate?

9 A. Yes.

10 Q. I mean, you don't want to be setting up the
11 transcript, setting up the audio tape, interviewing
12 somebody only for them to say nothing. And then, I
13 guess, you'd have to have somebody transcribe nothing?

14 A. That's correct.

15 Q. Okay. But here in this case, we're talking
16 about the suspect of multiple sexual assaults and a
17 homicide?

18 A. Yes.

19 Q. And you testified earlier that, frankly, in
20 your opinion, it wouldn't be a waste of time if the
21 defendant invokes because you want to hear anything the
22 defendant says?

23 A. I want to have the defendant tell me anything
24 he has.

1 Q. Okay. So from a cost effective standpoint,
2 there really is no good reason, at least, when we're
3 talking about a defendant in a criminal case for not
4 recording it from the word go?

5 A. That's not true.

6 Q. From a cost effective standpoint with the
7 defendant?

8 A. Cost effect is a very low --

9 Q. Okay.

10 A. -- priority.

11 Q. Let's get to the real reason.

12 THE COURT: Wait. One at a time.

13 BY MR. BROWN:

14 Q. Let's get to the real reason we don't record
15 the initial interview. And I think you hinted at it in
16 your direct examination. You've spent a lot of time,
17 maybe, establishing a rapport or the friendly, or the
18 environment we've talked about to get somebody to talk
19 to you, is that -- I see you nodding again.

20 A. Yes.

21 Q. Okay. It would be counter to those efforts if
22 you immediately sit down and throw down a tape; is that
23 correct?

24 A. Some people don't like to talk in front of a

1 tape. And it's -- it's not a good environment when you
2 come in and just put a tape down.

3 Q. And, again, the goal is to get them to talk to
4 you?

5 A. Yes.

6 Q. And if there's any chance that showing this
7 audio tape will keep you from reaching that goal, you
8 don't want to do it at that point; is that correct?

9 A. Yes.

10 Q. Okay. And so the cost effective thing, if
11 represented that way, is not the real reason we don't
12 audio tape the first initial interview, it's to
13 continue in our environment of discussion; isn't that
14 fair?

15 A. Yes.

16 Q. Okay. And that's what we did in this case?
17 Or that's what you guys did in this case?

18 A. Yes. That's what we did.

19 Q. Okay. Now, in this particular case,
20 unfortunately, it also would mean, and maybe in every
21 case, that your advisement of rights to Justin was not
22 recorded?

23 A. That's correct.

24 Q. Because that's part of the initial discussion?

1 A. That's right.

2 Q. So notwithstanding the more reliable nature of
3 the audio tape, we don't have his reading the rights
4 card to you on tape?

5 A. And you don't have me reading the rights card
6 to him.

7 Q. And we'll talk about that in just a second.

8 THE COURT: Make sure we state the time frame.

9 MR. BROWN: This is the initial interview.

10 THE WITNESS: That's correct.

11 BY MR. BROWN:

12 Q. None of that is on tape?

13 A. No.

14 Q. Okay. We don't have any discussions of
15 Miranda or his rights on tape?

16 A. On tape, I had asked him if he remembers
17 signing the card and reading the card out loud.

18 Q. Right.

19 A. And he said he did.

20 Q. We'll get to that, but we don't have the
21 initial reading and discussion about Miranda with
22 Justin on tape?

23 A. That's correct.

24 Q. Okay. Now not to be confusing, you had a tape

1 recorder there?

2 A. Yes.

3 Q. I mean, it was within reach?

4 A. I'm sure it was.

5 Q. I mean, you used it just a few hours later?

6 A. Yes.

7 Q. Okay. But a decision had been made to not
8 turn this recorder on at that time?

9 A. That's correct.

10 Q. Okay. So when we are discussing, with the
11 initial interview, your advisements of the Miranda
12 rights, we have only your memory and any reports that
13 you generated to rely on?

14 A. That's correct.

15 Q. Okay. Now you indicated that you handed
16 Justin, early on, the rights of persons arrested card
17 and asked him to read it to you?

18 A. Yes, I did.

19 Q. And this took a little bit of time?

20 A. Yes.

21 Q. I mean, he reads slowly?

22 A. Yes.

23 Q. He read very deliberately and slowly to you?

24 A. He read the card to where I would think it was

1 within normal reasons.

2 Q. But it was slow and deliberate, relative?

3 A. It was slow.

4 Q. You said that you asked them to read it, very
5 often, to get a gauge of their, would you say,
6 education level?

7 A. I said education, yes.

8 Q. Okay. And based upon Justin's reading, you
9 would have estimated his education to at least have
10 been lower than average?

11 A. No. I would have said that he was -- he would
12 be a normal high school kid reading.

13 Q. In fairness you're not --

14 A. One.

15 THE COURT: One a time.

16 THE WITNESS: I don't know what a normal high
17 school kid reads at. I know my son reads very similar
18 to what Justin did.

19 BY MR. BROWN:

20 Q. In fairness --

21 MR. HERNDON: I'm sorry. For the record how
22 old of a son is he referring to?

23 THE WITNESS: I'm sorry. He's fifteen.

24 BY MR. BROWN:

1 Q. Okay. Was he fifteen four years ago?

2 A. No. He was -- he's fifteen now, and --

3 Q. He was eleven then?

4 A. Yeah, but he reads like that now at fifteen.

5 Q. Okay. But in fairness, you're not a trained
6 educator?

7 A. No.

8 Q. Your expertise is in the investigating and
9 gathering of information?

10 A. Yes.

11 Q. But you did say that you needed to help Justin
12 pronounce words?

13 A. Yes. He sounded them out.

14 Q. And you had to help him?

15 A. Yes.

16 Q. And there's assist there?

17 A. Yes.

18 Q. Which words did you have to help Justin
19 pronounce?

20 A. I don't recall which words.

21 Q. Okay. You don't recall?

22 A. No.

23 Q. You don't have a report as to which words?

24 A. No.

1 Q. And we know we don't have the audio tape?

2 A. No.

3 Q. And so in -- as you look through, you don't
4 have an inclination or an idea as to which word you
5 would have had to help him pronounce?

6 A. No.

7 Q. Okay. The rights of persons arrested card is
8 basically drafted to be understood?

9 A. Yes.

10 Q. I mean, for lack of a better phrase or words,
11 it's dumbed down a bit so that hopefully just about
12 anybody can comprehend it?

13 A. Yes.

14 Q. Okay. But there were words within this rights
15 card that Justin just couldn't pronounce?

16 A. Oh, he pronounced them and was able to get
17 through them.

18 Q. With your help?

19 A. Yes.

20 Q. Okay. He was clearly struggling to read the
21 card out loud to you?

22 A. He had trouble on some of the words, but he
23 was able to read the card out loud.

24 Q. But it wasn't just flying along reading it and

1 then all of a sudden hit a word he's never seen. It
2 was slow and deliberate the whole way through?

3 A. Yes.

4 Q. And then there were certain words he wouldn't
5 pronounce at all, and you had to help him?

6 A. Right.

7 Q. Okay. Once you helped him sound out a word,
8 you never explained what that word means to him?

9 A. No.

10 Q. Okay. Now you testified this morning, I'm
11 sorry, earlier that you recall reading the card back to
12 him?

13 A. Yes.

14 Q. Okay. Now, we don't have a report on that?

15 A. No.

16 Q. We don't have an audio tape of that?

17 A. No.

18 Q. And so we're relying on the recollection as
19 you sit here today?

20 A. Yes.

21 Q. Okay. But do you recall testifying at the
22 preliminary hearing three years ago? How long ago?

23 MR. HERNDON: Pardon me.

24 THE WITNESS: About three and-a-half years

1 ago.

2 BY MR. BROWN:

3 Q. Was the prelim -- well, it took so long to
4 do. Let's just round it off to three years ago.

5 A. Okay.

6 Q. Do you recall testifying here?

7 A. Yes, I do.

8 Q. Do you have a copy of your prelim transcript?

9 A. No, I don't.

10 Q. Did you have a chance to review it at all?

11 A. No.

12 Q. Mind if I approach. Mr. Abood is going to
13 give you his copy. I'm going to direct your attention
14 to page eighty-three.

15

16 (RECESS)

17 THE COURT: Let the record reflect we're back
18 in session in the matter of Justin Porter.

19 Detective, I remind you you're still under
20 oath.

21 THE WITNESS: Yes.

22 BY MR. BROWN:

23 Q. Detective, when we broke we were discussing
24 your direct testimony where you indicated that you had,

1 after Justin read the card to you, you followed and
2 read the card to him?

3 A. That's correct.

4 Q. But we discussed that -- I just want to
5 discuss that we clarified that the Miranda reading were
6 not on audio tape?

7 A. Yes. That's correct.

8 Q. And that no report was specifically generated
9 referencing those Miranda readings?

10 A. Yes.

11 Q. And that we essentially have to rely, at this
12 point, on your memory as to the Miranda readings and
13 the discussions with Mr. Porter during that initial
14 interview?

15 A. Yes.

16 Q. Okay. Would you agree with me also that
17 memory is generally more reliable closer to an event
18 than further away?

19 A. Yes.

20 Q. Your memory was more reliable two years ago
21 than today?

22 A. Yes.

23 Q. Okay. Now, I directed your attention to the
24 preliminary hearing that we had, maybe, three years

1 ago. Does that sound like a fair time?

2 A. Yes.

3 Q. And do you recall, and I've referenced you to
4 the middle of page eighty-three where I asked you,
5 specifically, after he read -- after he read the card
6 to you, you didn't in turn read it back to him? And
7 you answered, no; is that correct?

8 A. That's correct.

9 Q. So it seems to -- at this point, three years
10 ago you indicated that you did not read the card to
11 Justin?

12 A. Three years ago, I did.

13 Q. Okay.

14 A. And last night while I was reviewing my notes,
15 I found Mike Castaneda's officer's report dated August
16 Seventeenth of 2000. And it says that Detective Jensen
17 advised Justin Porter of his rights per Miranda.
18 Justin Porter also read the Miranda right card out loud
19 to detective Jensen and La Rochelle, and then Justin
20 Porter signed the card.

21 Q. Right. Detective Castaneda was not in the
22 interview room with you?

23 A. That's correct.

24 Q. It was you and Detective La Rochelle?

1 A. Right, and he typed.

2 Q. And he typed up a report?

3 A. What I had told him from our experience.

4 Q. But when we're testifying about what you
5 recall, you don't recall reading Justin his rights:

6 A. That's correct.

7 Q. Okay.

8 A. At that time I didn't.

9 Q. Well, you don't recall today reading it. You
10 just referenced the report where he maybe indicated you
11 did?

12 A. That's correct.

13 Q. But you still have no recollection of actually
14 reading it to him?

15 A. That's correct.

16 Q. Okay. And you didn't recall it? Don't recall
17 it today and you didn't recall it three years ago?

18 A. That's correct.

19 Q. Which was within months of his arrest?

20 A. Yes.

21 Q. Okay. Now moving along, in your direct
22 testimony you indicated that following his reading the
23 card to you and you helping him with some words, it's
24 your practice to ask a suspect if they understand it?

1 A. Yes.

2 Q. And did you do that here?

3 A. Yes, I did.

4 Q. And presumably Justin indicated he did?

5 A. Yes, he did.

6 Q. It is him saying, yes, that you're relying on
7 him understanding?

8 A. That's correct.

9 Q. Okay. You didn't break it down and explain
10 the nuances of what his rights are?

11 A. No.

12 Q. Okay. It's not your practice to further
13 explain what's written in this admonition card?

14 A. Correct.

15 Q. Okay. Now as we discussed, following your
16 interview, you've decided you want to tape record this
17 conversation, you're going to retape record the
18 interview?

19 A. Yes.

20 Q. You turn the tape on and it begins. Now, when
21 referencing the audio taped portion of the interview,
22 the statement, you don't read Justin his Miranda rights
23 off this card on the audio tape?

24 A. No, I do not.

1 Q. And, in fact, you don't even have him reread
2 it to you on the audio tape?

3 A. No, I do not.

4 Q. How long normally would you estimate you think
5 it takes for somebody to read this? Thirty seconds?

6 A. Minute.

7 Q. At most a minute?

8 A. Minute, minute and a half.

9 Q. I'm going to read it.

10 It's at fifteen, judge.

11 You have the right to remain silent. If you
12 give up that right to remain silent anything you say
13 can and will be used against you in a court of law.
14 You have the right to speak to an attorney before
15 answering any questions. And to have an attorney
16 present with you while you're answering any questions.

17 If you can not afford an attorney, an attorney
18 will be appointed for you by the Court at no cost to
19 you. And you need not answer any questions until that
20 attorney has been appointed for you.

21 If you decide to answer questions now, you may
22 stop at any time and ask to talk to an attorney before
23 any questioning continues.

24 If you decide to stop answering questions once

1 you've begun all questions will stop.

2 Thirty-five seconds?

3 A. Approximately.

4 Q. I didn't read that particularly fast?

5 A. Right.

6 Q. Okay. So it doesn't take a significant amount
7 of time to read the Miranda warnings into the record?

8 A. That's correct.

9 Q. Especially in light of, I think you've
10 indicated the whole interview process took somewhere
11 around four hours?

12 A. Yes.

13 Q. Okay. In fairness, Justin Porter would not
14 have read it in thirty-five seconds?

15 A. That's correct.

16 Q. It would have taken a little longer?

17 A. Yes.

18 Q. But it really wouldn't -- even Justin's
19 reading really wouldn't have been too much significant
20 of a time to have reread into the record?

21 A. That's correct.

22 Q. You just elected not to do it that way?

23 A. Right.

24 Q. Okay. Now, what you do is, you ask him if he

1 remembers you giving him the rights card?

2 A. Yes.

3 Q. Correct? And this is because we discussed
4 earlier, it's important to make a record that he was
5 advised of his rights?

6 A. That's correct.

7 Q. Okay. You asked him if he remembers? He
8 says, yes, sir?

9 A. Yes.

10 Q. Okay. Clear, unequivocal?

11 A. That's correct.

12 Q. Then you asked him if he signed it? And if
13 you want to reference it for any reason, feel free.
14 And then you asked him if he signed it? Again answers,
15 yes, sir?

16 A. Yes.

17 Q. Clear, unequivocal?

18 A. That's correct.

19 Q. And then you asked him if he understood his
20 rights. The sixty-four thousand dollar question.

21 A. Yes.

22 Q. And he says something to the effect, kind of,
23 I do, but sometimes, you know, yes?

24 A. Yes.

1 Q. And that's your interpretation of having
2 listened to the tape as to what he says?

3 A. That's who transcribed it?

4 Q. Transcribed it. Okay. Now the same clear and
5 unequivocal answer that had been given to the two
6 previous questions.

7 A. Yes.

8 Q. In fact, before he actually answers that
9 question, he pauses for just a moment before he even
10 says, hmmm kind of, I do, correct?

11 A. Yes.

12 Q. Okay.

13 A. That's what it indicates.

14 Q. Now, also within his statement, and, boy, we
15 went through this corrected uncorrected copy thing
16 before. But also within his statement when you're
17 asking him if he remembers reading it to you and
18 signing it, you don't ever reference that you read it
19 to him?

20 A. That's correct.

21 Q. And had you read it to him, you would have
22 likely referenced that in the recorded version that you
23 read him his rights?

24 A. I may or may not have.

1 Q. Okay. Now when he indicated, hmmm, kind of I
2 do, but sometimes, yes, your reliance that he
3 understood his rights was based upon him saying yes?

4 A. I use the whole statement.

5 Q. Well, again, you're not re-Mirandizing him in
6 this tape recorded statement?

7 A. That's correct.

8 Q. You are referencing an earlier discussion?

9 A. Yes.

10 Q. Okay. Now once we're past this section of the
11 transcribed tape, there's no further discussions about
12 Miranda or rights to an attorney or rights to remain
13 silent?

14 A. No.

15 Q. Okay. And when the interview was over, I
16 trust there were no further discussions about those
17 particular rights?

18 A. That's correct.

19 Q. Okay. Now, after this taped statement is
20 complete, he gives another statement moments later, or
21 a couple minutes later that doesn't last nearly as
22 long; is that correct?

23 A. That's correct.

24 Q. Okay. And that's referencing Detective La

1 Rochelle's case?

2 A. Yes.

3 Q. Primarily?

4 A. Yes, primarily.

5 Q. And then you conclude the interview?

6 A. Yes.

7 Q. And I believe you indicated to Mr. Herndon
8 that it should be a long day, and so forth, but you
9 concluded the interview. And then later on you realize
10 that there was an entire case that you failed to bring
11 up?

12 A. Yes.

13 Q. Okay. And if I understood you correct, before
14 in your report it was more of an oversight than an
15 intentional leaving it out?

16 A. Yes.

17 Q. Okay. You didn't discuss it in the
18 preinterview?

19 A. No.

20 Q. And you didn't discuss it in the tape
21 interview?

22 A. No, I did no.

23 Q. And for our discussions we'll call -- I
24 believe we've been calling this the Joan Hall case.

1 That's the name of the alleged victim?

2 A. Yes.

3 Q. You just forgot to bring it up?

4 A. Yes.

5 Q. But you knew you were going to be there for a
6 couple more days, so you could go back tomorrow and ask
7 him about it?

8 A. Yes.

9 Q. And that's what you did?

10 A. That's correct.

11 Q. Okay. Now, prior to this next video tape on
12 the Thirteenth, do you recall if you had another
13 preinterview?

14 A. I don't recall.

15 Q. Okay. You don't have any record or reports
16 documenting a preinterview?

17 A. No.

18 Q. Okay. No, you don't have them?

19 A. No. I don't have them.

20 Q. Okay. Now, just to be clear, Justin didn't
21 call you to come back?

22 A. No. He did not.

23 Q. Okay. You went there and you initiated the
24 contact?

1 A. Yes.

2 Q. Okay. Now, you got another taped statement
3 about this other incident?

4 A. Yes.

5 Q. Okay. Now this other incident is a completely
6 different allegation in that, I know you have a broad
7 spectrum of a connection between cases, but this
8 allegation is a completely separate victim?

9 A. Yes.

10 Q. Completely separate crimes to that victim?

11 A. Yes.

12 Q. Other than common occurrence wise, is really
13 not connected to the other crimes?

14 A. They're all connected through the series, but,
15 yes.

16 Q. I mean, it's a separate crime?

17 A. It's a separate crime.

18 Q. Okay. At least, well, you don't recall a
19 preinterview and on the taped interview that we have,
20 you did not advise Justin of his rights per Miranda
21 prior to talking to you about this new offense?

22 A. That's correct.

23 Q. And you have no recollection of advising him
24 prior to turning on the tape?

1 A. Correct.

2 Q. Now, when you interviewed Justin in Chicago,
3 you were aware that he was seventeen?

4 A. Yes.

5 Q. Okay. And you're investigating crimes out of
6 Nevada, not Chicago?

7 A. That's correct.

8 Q. Notwithstanding, you're aware that in Chicago
9 someone is considered an adult at seventeen in Chicago,
10 you understood that?

11 A. Yes.

12 Q. You still realize in Nevada, or maybe you
13 didn't, that it's eighteen is the age?

14 A. That's correct.

15 Q. Okay. Now when advising Justin of his rights
16 you indicated that he was advised of only the rights
17 that are listed on this card?

18 A. That's correct.

19 Q. Okay. You didn't advise him of a right to
20 have a parent or guardian present during any
21 questioning?

22 A. That's correct.

23 Q. Okay. Now was this a conscious decision on
24 your part to not advise him of those rights?

1 A. He was going to be interviewed on a
2 homicide --

3 Q. Okay.

4 A. -- case, and in Nevada that also makes him an
5 adult.

6 Q. Okay.

7 A. And so in Chicago he was considered an adult,
8 so we gave him the adult Miranda card.

9 Q. So based upon there was a homicide
10 investigation and that in Chicago he's an adult, you
11 did make a conscious decision to treat him strictly as
12 an adult?

13 A. Yes.

14 THE COURT: Excuse me. Excuse me. Let me
15 interrupt. I thought he just testified that he
16 understood that someone charged in Nevada with a
17 homicide, albeit seventeen years of age, was considered
18 an adult for purposes of the law. Is that what you
19 testified to?

20 THE WITNESS: I thought so.

21 MR. BROWN: I thought.

22 MR. HERNDON: I thought he said he knew in
23 Nevada, his age, charged with a homicide, he would be
24 prosecuted as an adult.

1 THE WITNESS: As an adult.

2 THE COURT: Okay. Go ahead.

3 BY MR. BROWN:

4 Q. And that was really the basis for you treating
5 this interrogation as an adult and not a juvenile?

6 A. And we were in Illinois where he was treated
7 as an adult.

8 Q. But for charges here out of Nevada?

9 A. Yes.

10 Q. Okay. I mean, as an example, do you operate
11 under the laws if -- you if you have a policy, or if
12 you know, of where the crime was committed or where an
13 individual is arrested?

14 A. That I don't know.

15 Q. Okay.

16 THE COURT: Counsel, I still have a headache
17 from my conflict of laws class. Don't go into that.

18 MR. BROWN: Looks like we may have to touch on
19 it a little bit later, Judge.

20 BY MR. BROWN:

21 Q. But again, based upon those factors, those are
22 the reasons you treated this as an adult and not as a
23 juvenile?

24 A. Yes.

1 Q. Okay. And as you sit here today, those are
2 the sole reasons for those?

3 A. Those are some of the reasons. I don't --

4 Q. Well, can you explain other reasons?

5 A. No. There was other detectives involved and
6 that's what we decided to do.

7 Q. Okay. And as you recall in your discussions
8 of the information was because homicide charge,
9 automatically an adult?

10 A. Yes.

11 Q. In Illinois he's a juvenile. He's not a
12 juvenile anyway?

13 A. That's correct.

14 Q. You prepared the arrest affidavit and warrant?

15 A. Yes, I did.

16 Q. And you testified earlier he was arrested
17 based upon that affidavit and warrant?

18 A. Yes.

19 Q. And there were no allegations of a homicide in
20 that arrest warrant or affidavit?

21 A. That's correct.

22 Q. So he's under arrest and in custody for a
23 number of offenses, but not the homicide?

24 A. That's correct.

1 Q. Okay.

2 MR. BROWN: Judge, I have an audio tape of the
3 initial portion of the statement. But there's -- I
4 mean, we can play that through other witnesses later.
5 I mean, it's only a little bit. If the state doesn't
6 have a problem, we don't need to do that now. You know
7 what I'm saying?

8 MR. HERNDON: If it pertains to this witness.

9 MR. BROWN: All I'm going to do is ask him if
10 that's the way it took place.

11 MR. HERNDON: Let's go ahead and do it.

12 MR. BROWN: Okay.

13 BY MR. BROWN:

14 Q. Well, you can't recognize the tape, so you're
15 just -- I'm just going to play a little bit of it, and
16 see if you recognize that?

17 A. Okay.

18 Q. And this is, I will represent, the beginning
19 portions of you and Detective La Rochelle. And you can
20 follow along on you, because it's literally just the
21 very beginning. I'm going to need a microphone, so I'm
22 going to squeeze over here and play it into the -- stop
23 it.

24 MR. HERNDON: This would be the --

1 (Whereupon, a portion of the
2 tape was played.)

3 BY MR. BROWN:

4 Q. Now does this at least appear to be the tape
5 recording of the transcribed interview that you had
6 with Mr. Porter?

7 A. Yes.

8 Q. Okay. Now I'm going to play a couple of
9 seconds of this referencing the part where you remind
10 him about his Miranda.

11 (Whereupon, another portion
12 of the tape was played.)

13 Q. And from that point forward you go right into
14 the statement?

15 A. Yes.

16 Q. And you talk to Justin basically about what
17 happened?

18 A. Yes.

19 Q. And as we discussed earlier, that's
20 essentially the last reference on the tape of his
21 Miranda rights?

22 A. That's correct.

23 Q. Okay.

24 MR. BROWN: Judge, I pass back the witness.

1 THE COURT: Redirect?

2 MR. HERNDON: Thank you, judge.

3

4

REDIRECT EXAMINATION

5 BY MR. HERNDON:

6 Q. You know, in criminal law we talk about a
7 trial presumption of reasonable doubt. I think a lot
8 of attorneys agree it is what it is. You're not
9 supposed to interpret it and change it in any fashion.
10 In Miranda warnings you just give them the warnings as
11 they're enunciated on that card or by law; is that
12 correct?

13 A. That's correct.

14 Q. You don't try to interpret for them what they
15 mean or don't mean?

16 A. No.

17 Q. Add to or subtract from them?

18 A. No, I don't.

19 Q. It kind of is what it is?

20 A. That's correct.

21 Q. And in terms of juveniles, I mean, you've
22 interviewed juvenile offenders before, I take it?

23 A. Yes, I have.

24 Q. The issue of informing them about parent's

1 presence or so forth, do you interpret that to be a
2 right or something you advise them about sometimes?

3 A. That's a right.

4 Q. Okay.

5 A. The way I interpret it.

6 Q. And do you know legally whether it's an
7 absolute right or whether it's something that the law
8 says you should advise them about?

9 A. I don't know.

10 Q. Okay. You also knew, I take it from your
11 earlier testimony, that Mr. Porter had a prior armed
12 robbery adjudication as a juvenile, and, therefore, was
13 automatically certifiable as an adult in Nevada?

14 A. That's correct.

15 Q. Okay. At any time when you were interviewing
16 Mr. Porter with Detective La Rochelle or during the
17 next day when you were interviewing him by yourself,
18 did you ever have any type of demeanor with him other
19 than that which you've displayed on the stand?

20 A. No. I have not.

21 Q. Ever yell at him?

22 A. No.

23 Q. Or badger him in any fashion?

24 A. No.

1 Q. And did Detective La Rochelle do any of that
2 during the time he was present with you?

3 A. No, he did not.

4 Q. Did Mr. Porter, in fact, during his
5 discussions with you kind of indicate that he knew the
6 wrongfulness of things that he had done?

7 A. Yes, he did.

8 Q. Say things like he wished he could go back in
9 time and take back certain things that he had done?

10 A. Yes.

11 Q. Did he talk about knowing that he was in
12 trouble and needing to get himself out of that area and
13 isolate himself somewhere else so that he couldn't be
14 found.

15 A. Yes.

16 Q. And in terms of whether or not he raised
17 questions to you about the Miranda warning, did he
18 raise questions during the interview about things?
19 Would he ask you all questions?

20 A. No.

21 Q. Do you remember a portion during one of the
22 interviews where towards the end of one of the
23 interviews where he asked you to ask him whether he was
24 sorry for what he had done?

1 A. I don't remember that.

2 Q. Okay. Well, and I say you, counsel is
3 correct, he's kind of indicating something to me. It
4 may have been during Detective La Rochelle's
5 questioning. But do you recall a point in time where
6 Detective La Rochelle had said to him, is there
7 anything you want to add or any questions you have.
8 And he said, do you think I'm sorry? And Detective La
9 Rochelle said, do you want me to ask you if I think
10 you're sorry? Are you sorry?

11 A. I don't recall that in the interview without
12 looking at it.

13 Q. Okay. If that had taken place, it would kind
14 of indicate to you that he was, at least, comfortable
15 asking you all questions about things?

16 A. Yes.

17 Q. Okay. Do you also recall that the next day,
18 August the Thirteenth, Mr. Porter's dad was also
19 interviewed, George Porter?

20 A. I believe La Rochelle met with his dad at his
21 house.

22 Q. And to your knowledge was there any indication
23 from his dad that he had been at the police station
24 trying to talk to Justin and was being thwarted in his

1 effort?

2 A. No. There was none.

3 Q. Okay. Do you remember a time during the -- at
4 the end, I believe, and I don't think it's on the taped
5 statement. But at the end of the second interview on
6 August the Twelfth where Mr. Porter indicated that he
7 could die for what he had done in terms of homicide
8 case here?

9 A. Yes. He told us that he knew it was a serious
10 trouble, and he could spend a lot of time in jail and
11 even die for what he had done.

12 Q. And do you remember what else he said
13 specifically about an attorney?

14 A. I think he said, made mention that he's going
15 to need a good attorney or something like it. I don't
16 remember the exact words.

17 Q. Do you recall him saying something to the
18 effect I'm going to need a good attorney once I get
19 back to Las Vegas?

20 A. Again, I don't remember exactly the words,
21 but --

22 Q. Okay.

23 A. -- similar to that.

24 Q. You recall him bringing the issue of, I'm

1 going to need a good attorney?

2 A. Yes.

3 Q. So it's obviously something that he was
4 cognitive of his right and possibly the need to get an
5 attorney for everything?

6 A. That's correct.

7 Q. Mr. Brown asked you a lot of questions about
8 things essentially boiling down to your hope that
9 somebody talks to you during an interview?

10 A. Yes.

11 Q. Whether it's a suspect or a witness?

12 A. Yes.

13 Q. Primarily with the suspect, would you
14 characterize your hope as simply that they talk to you,
15 not necessarily that they confess? Just that they talk
16 to you?

17 A. Exactly, just so they talk to me.

18 Q. Do you close cases out sometimes without
19 submitting them because a potential suspect has talked
20 to you, and, based on that conversation, you may not
21 feel that the case is prosecutable?

22 A. Are you talking sexual assault cases?

23 Q. Okay. You're in sexual assault at the time.

24 A. Yes. I've done that.

1 Q. Okay. You may have somebody that reports to
2 you a certain thing happened to them, reports a crime?

3 A. Yes.

4 Q. If it's just based on that victim's statement
5 you might have to submit the case?

6 A. That's correct.

7 Q. But if a potential perpetrator or potential
8 suspect talks to you and maybe that explains the charge
9 in such a fashion that you do not submit a case?

10 A. That's correct.

11 Q. So your goal isn't to talk to people just to
12 get confessions? It's to get them to talk to you and
13 provide you with information?

14 A. That's correct.

15 Q. If you have a situation where somebody has
16 reported a crime, a he said she said type situation, or
17 even a homicide and you don't have a lot of physical
18 evidence, obviously, what a potential suspect has to
19 say is much more important than in a case in which you
20 have a lot of other physical evidence?

21 A. That's correct.

22 Q. And in Mr. Porter's case, would you consider
23 it to be one where you all had a lot of physical
24 evidence indicative of his culpability separate and

1 apart from anything he said to you?

2 A. I thought we had a lot of physical and
3 circumstantial evidence.

4 Q. You had --

5 A. Reference.

6 Q. -- D.N.A.? You had D.N.A. linking him to at
7 least two of the sexual assaults?

8 A. Yes.

9 Q. You had fingerprints linking him to some of
10 the crimes?

11 A. Yes.

12 Q. There is some eye witness identification of a
13 person with his exact description, so forth and so on.

14 A. Yes.

15 Q. You had shoe wear impressions ultimately
16 linked to him; is that correct?

17 A. I don't know if the shoe wear led to him, but
18 we had footwear impressions.

19 Q. Ballistics evidence linking a home invasion
20 robbery to the homicide itself?

21 A. That's correct.

22 Q. Okay. So it isn't a case where you need to
23 badger, bully, coerce, or intimidate him to get him to
24 talk to you?

1 A. No.

2 MR. HERNDON: I don't have anything further,
3 judge. Thank you.

4 MR. BROWN: I don't believe an allegation of
5 badgering or bullying to Detective Jensen was ever
6 proffered, Judge.

7 THE COURT: I agree.

8 MR. HERNDON: I'm not saying in Court. I'm
9 kind of going a lot off of the moving papers, Judge.

10

11

RECROSS EXAMINATION

12

BY MR. BROWN:

13 Q. With respect to this case, Mr. Herndon spent a
14 couple of minutes talking to you about there are cases
15 where defendant's statements may set him free; you may
16 not file charges?

17 A. That's correct.

18 Q. We weren't in that situation in this case when
19 you went to interview Justin Porter; is that correct?

20 A. (No audible response.)

21 Q. Let me rephrase. You had D.N.A. matching him
22 to at least to two separate sexual assaults?

23 A. Correct.

24 Q. Okay. And you traveled from Las Vegas to

1 Chicago for the sole purpose of talking to this young
2 man?

3 A. Yes.

4 Q. And notwithstanding your hopes to get a
5 statement or not get a statement in this case, your
6 hope was to travel that distance, three of you, to get
7 a statement from Justin?

8 A. We just wanted information from him.

9 Q. Well, you had D.N.A. matching him to a crime?

10 A. Yes.

11 Q. You wanted explanations as to what was going
12 on?

13 A. That's correct.

14 Q. You had police reports that charged him with
15 other crimes that you didn't have D.N.A. on?

16 A. That's correct.

17 Q. Correct. So you needed further information
18 with respect to those crimes and were hoping that he
19 would provide it to you?

20 A. Yes.

21 Q. And he did?

22 A. Yes, he did.

23 Q. Particularly with the homicide, I believe
24 early on in your direct examination with Mr. Herndon,

1 you indicated we didn't really have a whole lot of
2 information on the homicide and were hoping to be able
3 to get some information from him; do you recall
4 testifying to that?

5 A. Yeah. What I meant was I didn't have a lot of
6 information about the homicide.

7 Q. Sure. And Detective La Rochelle went with you
8 for the sole purpose of getting information on the
9 homicide?

10 A. That's correct.

11 Q. The sole purpose of getting information
12 through the statement of Mr. Porter on the homicide?

13 A. Yes.

14 Q. Okay.

15 A. To either eliminate him as a suspect or
16 possibly connect him to the crime.

17 Q. But he was already a suspect?

18 A. Yes?

19 Q. And you had tied him in with all the others,
20 other cases?

21 A. Yes.

22 Q. And it is his statement that is relied upon
23 now to link him to those cases primarily?

24 A. Yes. A statement helps link him.

1 Q. Okay.

2 MR. BROWN: We're done, Judge.

3 MR. HERNDON: Thank you, Judge.

4 MR. BROWN: Set this man free.

5 THE COURT: Thank me or thank him.

6 MR. HERNDON: No, no. Thank you. Mr. Jensen,
7 obviously.

8 THE WITNESS: You're welcome.

9 THE COURT: All right. Do you have another?

10 MR. HERNDON: No, we don't have any more for
11 today, Judge. We need to talk to the Court for a date
12 to reset for the doctor.

13 I know Mr. Brown has his Dr. Brown isn't
14 available until after March Fifteenth.

15 MR. BROWN: That's correct, your Honor.

16 THE CLERK: I think we should probably set it
17 on a Monday.

18 THE COURT: Set it on a Monday.

19 THE CLERK: Okay. Is the Twenty-second of
20 March available? I mean, it's available.

21 MS. LUSAICH: Considering we haven't checked
22 with Victor and his schedule. Do you want to status
23 check this for sometime this week and they can check
24 with their doctor?

1 THE COURT: On Wednesday.

2 MR. HERNDON: Pardon?

3 THE CLERK: March Seventeen at nine o'clock.

4 Status check to reset the second part of hearing.

5 THE COURT: Thank you. Court will be in
6 recess.

7

8

9 (WHEREUPON, THE PROCEEDINGS WERE
10 CONCLUDED.)

11 * * * * *

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REPORTER'S CERTIFICATE

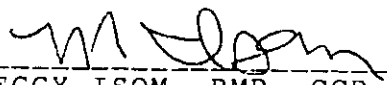
STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER,
DO HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF
THE PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT
THE TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.



PEGGY ISOM, RMR, CCR 541

JUSTIN JUG CAPRI PORTER,) No. 54866
)
 Appellant,)
)
 vi.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)

CATHERINE CORTEZ MASTO
Attorney General
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Counsel for Respondent

Employee, Clark County Public
Defender's Office

1 and stay in the interview room for a period?

2 A. Yes.

3 Q. While you were in the interview room at that
4 time did he ever ask for a parent, father, mother,
5 stepmother, anything of that nature?

6 A. No.

7 Q. Did you participate in any further interview
8 of the defendant at that time?

9 A. Yes, we did.

10 Q. And can you describe how that came about?

11 A. Well, we were aware that Vegas Police
12 Department was en route, and we basically were
13 informing him, after advising him of his rights, we
14 informed him that Vegas was coming out to talk to him
15 again. And we, basically, went over the same story
16 that he had repeated earlier.

17 Q. First, you said that you informed him that
18 Vegas was coming out. What was his reaction to that?

19 A. He was more of the nature, like, he expected
20 it. He figured this was what it was about.

21 Q. And he didn't say anything like, no, no, no, I
22 don't want to talk to them.

23 A. No.

24 Q. And you said he explained some of the things

1 from the day before. What do you remember him saying
2 when you were in the interview room?

3 A. He talked about certain incidents. You want
4 me to get into the content of the conversation?

5 Q. If you recall, please.

6 A. He didn't refer to date specifically, but I
7 know that as we stand here today, I know what the dates
8 are, so on the date of June Seventh of 2000, he
9 referred to a time in which he had entered a female's
10 apartment or home. Said the door was ajar. He made
11 his way in.

12 The woman was afraid. She basically said that
13 she would do whatever he wanted. He asked her to take
14 her clothes off. She complied. He performed -- he had
15 vaginal sex with her. And, basically, he had said that
16 he had obtained a knife from the kitchen during this
17 incident.

18 Q. Now, you said he said the door was ajar. Was
19 that his word, ajar?

20 A. No. I don't think it was his word ajar. I
21 think he described it as being open, but he didn't have
22 to use any force to enter.

23 Q. Okay. And you said that he said that they had
24 vaginal sex. Was that his word?

1 A. No. It wasn't his word. I'm sure he just
2 said sex or something thereof?

3 Q. Okay. Do you remember what he said about
4 other incidents?

5 A. He referred to one on the Sixteenth of May in
6 a similar circumstance where he entered a female's
7 apartment. She was afraid. He basically asked her to
8 remove her clothes, she complied. Again he had
9 obtained a knife from the kitchen, and he had sex.

10 Q. Okay. How many incidents do you recall him
11 discussing?

12 A. They were six incidents that were asked about,
13 but he only remembered five.

14 Q. Okay. What were the other three that he
15 remembered?

16 A. There was one involving an older woman on the
17 fourth of April, 2000. He had made a comment about how
18 the woman kind of reminded him of his mother. He said
19 that he felt bad about that incident. He said that the
20 woman had performed oral sex on him, but he didn't like
21 it, so, you know, before he left, she had given him a
22 ring. She had given him \$50, and she had also given
23 his keys -- her keys to her car which he took, but he
24 said he threw the ring away.

1 Q. Okay. What other incidents?

2 A. He discussed an incident involving a woman of
3 Spanish decent. He said that, basically, the same
4 scenario. Door was opened. He let himself in.

5 He, again, performs -- has sex with the woman
6 one time, and he obtained a knife from the kitchen.

7 There was one last incident regarding a woman
8 who he said that he had previous contact with that he
9 had known from someone, he used her phone in the past,
10 stuff like that. And that when he went there, it was
11 consensual sex with this woman, but when he wanted to
12 have sex again, she became angry. And it was as if
13 they weren't -- that she was no longer attracted to
14 him, so he retrieved a knife from the kitchen.

15 He had poked her a couple of times with it,
16 but he didn't believe the injury was serious even
17 though he had saw some blood. He said that she ran to
18 the bathroom.

19 And at that point he kind of panicked, and he
20 set a blanket on fire and threw the match to the floor
21 on the rug.

22 Q. Okay. Now, do you remember what, if any --
23 well, let me rephrase that.

24 Was he just blurting out this information or

1 was there some prompting?

2 A. No. There was some prompting. I mean, we
3 had -- he had to remember which, what we were talking
4 about, so it was a question and answer session.

5 Q. And do you remember what, if anything,
6 information was used to prompt him for each discussion?

7 A. Specifically, no. But I do remember, like,
8 using the terms, you know, let's talk about the
9 incident with the fire. Let's talk about the incident
10 with the older woman. Stuff like that. And that that
11 would be about as far as the prompting would go.

12 Q. Okay. Were his answers more along the line of
13 narrative? Or did you or Detective Kato say, did you
14 have sex with this woman and set her home on fire?

15 A. No. They were more narrative. It was
16 question and answer session, but it was more him
17 answering narratively.

18 Q. Okay.

19 MS. LUSAICH: Thank you. I pass the witness.

20 THE COURT: Thank you.

21 You may cross.

22 MR. ABOOD: Thank you, sir.

23

24

CROSS EXAMINATION

1 BY MR. ABOOD:

2 Q. Detective Cirone?

3 A. Yes, sir.

4 Q. You testified that you were Detective Kato's
5 partner for approximately eight years?

6 A. That's correct.

7 Q. And, obviously, you've become aware in the
8 last eight years that a number of complaints have been
9 made against Kato?

10 A. I'm not sure what you mean by aware. I mean,
11 am I aware that he ever had complaints registered
12 against him?

13 Q. Yeah.

14 A. Every officer has. I'm sure that he has too.

15 Q. Brutality complaints during interrogations?

16 A. I would say that almost every officer has
17 those.

18 Q. Say in volume of complaints endemic to every
19 officer in your department, as there are to Kato?

20 A. I don't really know what that means. Can you
21 repeat that for me?

22 Q. Yeah. Let me do that. Does Kato seem to have
23 more of these complaints lodged against him by suspects
24 he interrogates than your other detective?

1 A. I'd say no to that.

2 Q. Can you explain to the court why it is that so
3 many articles have been written specifically about
4 Kato's interrogation techniques as opposed to the other
5 officers in your department?

6 A. Well, those articles were written well before
7 I ever started working with him. And, secondly, I
8 don't know how anybody would have the knowledge to
9 write what techniques they're using when they're not
10 working with him.

11 Q. And when he doesn't record any of his
12 interrogations, correct?

13 A. I'm not sure what you mean by that either.
14 What do you mean, don't record?

15 Q. He doesn't video tape or audio tape any of his
16 interrogations?

17 A. But that's not the Chicago Police Department
18 procedure. That's not -- it's not necessarily his
19 procedure. That's the department's procedure.

20 Q. So the department itself doesn't record any of
21 those interrogations?

22 A. At the time of -- well, as we stand here
23 today, they do. But that was instituted, I'd say, in
24 the last three years or so. But, originally, when we

1 began working together, there was no audio tape, no
2 video tape. There was none of that.

3 Q. And the reason that they started recording
4 these things three years ago is because of the high
5 volume of complaints that have been made against
6 detectives like Kato; is that right?

7 A. I couldn't answer that question.

8 Q. Couldn't or won't?

9 A. You want me --

10 MS. LUSAICH: Argumentative.

11 THE COURT: Wait a minute. Sustained.

12 BY MR. ABOOD:

13 Q. Now, you -- are you or are you not aware that
14 the Chicago tribune has written numerous articles about
15 Detective Kato questioning his interrogation
16 techniques?

17 A. I know articles have been written,
18 specifically by which paper or source, I'm not totally
19 familiar with.

20 Q. So your department doesn't -- you know, the
21 detectives in your department don't sit around and
22 brainstorm and try to figure out ways to address these
23 kinds of issues, when they appear in the Tribune?

24 A. Brainstorm. Can you repeat that? I'm not

1 sure what the question is.

2 Q. Sure. Sure. It's, obviously, problematic for
3 your department when a paper like the Tribune writes
4 article after article about a detective like Kato's
5 techniques; correct?

6 A. Is it problematic for the department? I'm
7 not -- I would -- I understand that the department
8 probably doesn't like to see articles written about it
9 in that light, but I'm not sure what the question is.

10 Q. I guess the question is: Have you or your
11 Detectives or your leaders out there done anything
12 about it to address these kinds of issues?

13 A. I don't know what I could do about it.

14 Q. Okay. So the answer is no; is that right?

15 A. If I understand the question you want to know
16 what I did in retaliation of these articles; I did
17 not --

18 MR. HERNDON: Judge.

19 BY MR. ABOOD:

20 Q. Did your department institute any programs or
21 policies, in educational type things, with you
22 detectives to prevent these kinds of things appearing
23 in the paper?

24 THE COURT: You can answer that yes or no if

1 you know.

2 MR. HERNDON: Judge, part of my objection was
3 going to be, I don't know when -- I know the detective
4 earlier referenced something before he ever became
5 partners with Kato. And I don't know what time frame
6 we were referencing in the newspaper articles and
7 whether he was even a detective then. So I guess my
8 question is kind of foundational. If we could
9 establish when all this stuff occurred.

10 THE COURT: You could ask. I said, lay the
11 foundation and then ask him a question.

12 BY MR. ABOOD:

13 Q. You told this judge that you were aware that
14 certain unflattering articles have been written in the
15 Chicago Tribune concerning Detective Kato, correct?

16 A. Not precisely. I don't know which source they
17 were from, but I know articles were written.

18 Q. Okay. My question is simple. Has your
19 department done anything to address this issue to not
20 have to deal with these unflattering articles in the
21 future?

22 A. I don't know.

23 Q. Have you discussed any of these articles or
24 any of these allegations with other detectives in your

1 unit?

2 A. Have I ever discussed an allegation brought
3 upon another officer? I'm certain I have, but
4 specifically that I don't know that I have.

5 Q. So it doesn't seem to be a concern to your
6 violent crimes unit that feature articles are written
7 about Detective Kato's interrogation techniques? It's
8 not a concern to you?

9 A. A concern to me, personally?

10 Q. To your department.

11 A. You want me to speak for the department?

12 Q. Yes, Detective. I'd like you to.

13 A. I don't know that I have that authority to
14 tell you what the department thinks.

15 Q. I'm not interested in sparring with you.

16 MR. HERNDON: Judge, I'm going to object.

17 THE COURT: Sustained.

18 MR. HERNDON: He is sparring. The Detective
19 is trying to answer the questions, and Mr. Abood is
20 going back and going over the same things.

21 MR. ABOOD: He's obviously -- the question --

22 THE COURT: Sustained. He can answer the
23 question yes or no.

24 BY MR. ABOOD:

1 Q. Anything -- anything put in place to address
2 these kinds of articles against Kato?

3 THE COURT: If you know.

4 THE WITNESS: Yeah. I don't know.

5 MR. ABOOD: Okay.

6 BY MR. ABOOD:

7 Q. And I guess your testimony is that you and
8 Detective Kato never discussed any of these feature
9 articles or the allegations in these articles; is that
10 correct?

11 A. Other than to be aware that they were printed,
12 I've never actually specifically broke it down and
13 discussed it with him, no.

14 Q. Do you read the Chicago Tribune?

15 A. I do read the Chicago Tribune on occasion,
16 yes.

17 THE COURT: So they're better than the Sun
18 Times?

19 THE WITNESS: Yeah.

20 BY MR. ABOOD:

21 Q. You told this court that you believe that an
22 officer had his gun drawn when they entered into the
23 Porter residence; is that right?

24 A. Correct. I believe someone had their gun

1 drawn.

2 Q. Who entered first, Detective Kato?

3 A. I don't remember specifically who entered
4 first. But I would say that we probably entered the
5 apartment almost simultaneously. If one was standing,
6 walked in before another, it would have been by less
7 than a second.

8 Q. How many total officers responded there; do
9 you know?

10 A. I don't know. But I would say at least four
11 to five squad cars did, so probably talking about eight
12 to ten guys, maybe.

13 Q. Okay. Can you tell this judge how many people
14 entered that residence with their guns drawn?

15 A. I would say at least -- well, I couldn't say
16 they entered with the gun drawn, but a gun was probably
17 drawn at some point. At least one that I remember
18 seeing.

19 I don't specifically remember who it was, but
20 I want to say that it was at least one officer with a
21 gun drawn. But I would expect someone had their gun
22 out at that point.

23 Q. Is it unusual or does it sound unusual that
24 out of eight or ten officers, one would draw their gun?

1 A. Eight or ten officers didn't enter the
2 apartment. Just that you can specifically -- eight or
3 ten officers responded to the scene. We secured the
4 building and then entered the apartment.

5 Q. How many entered the apartment?

6 A. As least three.

7 Q. Okay.

8 A. Could be one or more at the most, but I would
9 say at least three.

10 Q. Does, that include you and Kato?

11 A. That's correct.

12 Q. So you and Kato did not draw your guns. You
13 think the third guy did?

14 A. That's correct. If there was somebody else
15 there too, I don't know if another person had entered
16 at that point or not. Either may have been another two
17 or one of the other ones.

18 Q. Any reasons why they would draw their guns?

19 A. Because Justin is a bad man.

20 Q. I guess my question is: Why would they have
21 to draw their guns and you and Kato would not?

22 A. Well --

23 Q. If he's a bad man?

24 A. Because you can't really place cuffs on

1 somebody with your gun in your hand. You have to be
2 smart about how you handle it.

3 Q. I see. So it takes two of you to place cuffs
4 on Justin?

5 A. No. Sometimes it takes more than one person
6 to control a person, and it's not always done by a gun.

7 Q. Did you have to control Justin in this case?

8 A. No, I did not. He was -- he complied with
9 all verbal commands.

10 Q. So hypothetically sometimes it takes two
11 people to control someone, but that didn't happen in
12 this case, correct?

13 A. That's correct.

14 Q. So one of the officers felt a need to draw his
15 gun, but you and Kato did not?

16 A. Like I said, somebody drew their weapon. I
17 did not.

18 Q. Did you see whether or not Kato draw his
19 weapon?

20 A. Yeah. I don't remember him drawing his weapon
21 because I remember him moving the couch. So I don't --
22 I'm pretty positive he didn't have his weapon in his
23 hand when he did that.

24 Q. Other than the articles, the newspaper

1 articles that I asked you about, did you discuss with
2 Kato this appeals court decision that specifically
3 mentions him by name and calls, calls into question his
4 testimony at trial, 2001, appeals court decision?

5 A. Can you be a little more specific about what
6 case that is?

7 Q. Yeah. This is a case concerning a fourteen
8 year old named Ezekiel McDaniel.

9 A. Okay. And what's the question. Did we
10 discuss what portion of this?

11 Q. Did you ever discuss this case with Detective
12 Kato?

13 A. Are you talking about which portion of the
14 case? The investigation?

15 Q. After the investigation by the time that this
16 thing is reported in the Court of Appeals opinion,
17 obviously, your department became aware of it, didn't
18 they?

19 A. I'm sure they did. I don't -- I understand
20 the question. I don't recall, specifically, talking
21 about that case with him. I'm not even sure the
22 specifics of the ruling?

23 Q. Has your department -- I mean, your department
24 has become aware of this ruling; is that correct?

1 A. I could only assume so.

2 Q. I don't want you to assume.

3 A. Well, then I couldn't answer.

4 Q. I'm sorry.

5 A. Then I'm not one hundred percent sure.

6 Q. Okay. So which unit are you assigned to now?

7 A. Violent crimes.

8 Q. How long have you been there?

9 A. I've been violent crimes detective for almost
10 over nine years.

11 Q. Okay. And how many other violent crimes
12 detectives were there assigned to that unit?

13 A. I'd say there's probably violent crimes alone,
14 I'm guessing sixty, maybe more, maybe less.

15 Q. Okay. And do you guys have regular meetings
16 with each other or things along those lines?

17 A. We have roll calls. We have, you know,
18 meetings, specifically. I'm not sure what you mean,
19 though.

20 Q. And you're friendly with these other
21 detectives?

22 A. Yes.

23 Q. You discuss cases?

24 A. When the need arises, yes.

1 Q. You discuss allegations that are made against
2 each other when they become noteworthy?

3 A. I'm not sure, specifically, when we discuss
4 them, but sometimes they are discussed.

5 Q. And appeals court decisions that specifically
6 names one of the detectives in your unit would be
7 something that you would discuss with other detectives;
8 is that right?

9 A. If they were aware of it. I'm not sure that
10 some people are really aware of that decision.

11 Q. You were aware of it?

12 A. I'm not specifically aware of the ruling in
13 that. I am aware that there was what you're referring
14 to, but I'm not -- I'm not aware of everything that
15 ruling is.

16 Q. But Kato discussed this with you in a general
17 sense?

18 A. I don't know that general sense. Could you be
19 more specific what that means?

20 Q. Yeah. He just brought it up. Hey, the
21 Ezekiel case just got reported not necessarily the
22 specific facts, but you discussed it, generally?

23 A. You know, I don't remember what we discussed
24 regarding that case.

1 Q. Do you get a lot of appeals court decisions
2 that name specific Detectives in your unit?

3 MS. LUSAICH: Well, objection. He can't
4 testify about that.

5 MR. ABOOD:

6 BY MR. ABOOD:

7 Q. If you know.

8 THE COURT: If you know.

9 THE WITNESS: I don't know.

10 BY MR. ABOOD:

11 Q. You don't know?

12 A. I don't know.

13 Q. So it could be a common occurrence? It could
14 be something that almost never happens according to
15 your testimony?

16 MS. LUSAICH: Well, he doesn't know.

17 THE COURT: That's right.

18 THE WITNESS: What common occurrence?

19 THE COURT: I didn't hear what you said, sir.

20 BY MR. ABOOD:

21 Q. Let me ask you specifically about your
22 interview of Justin Porter. My understanding is that
23 this interview takes place at one-thirty in the
24 morning; is that right?

1 A. No, sir.

2 Q. What time did it take place?

3 A. Three o'clock in the afternoon.

4 Q. Were you -- was this the only interview
5 that -- that Chicago detectives had with Justin Porter,
6 if you know?

7 A. No, sir. There was one prior to that.

8 Q. Can you tell the judge what time that
9 interview took place?

10 A. I would say you reference, its probably
11 one-thirty in the morning might be correct. I wasn't
12 present for that interview, so I don't know.

13 Q. Was a report generated concerning that
14 interview before you joined in at three o'clock the
15 following day?

16 A. Yes.

17 MR. ABOOD: Do you mind if I approach, Judge?

18 THE COURT: You may.

19 BY MR. ABOOD:

20 Q. I want to ask you if this report looks
21 familiar to you.

22 A. Yes, sir, it does.

23 Q. Is that the report that you were made aware of
24 prior to your involvement in the interview?

1 A. I don't know if I was aware of the -- I was
2 aware of the case. I'm not sure if I, specifically,
3 was aware of this report or not. But I, yeah, was
4 aware of the contents.

5 Q. Did you just tell this judge that you were
6 aware of this report --

7 A. Yes.

8 Q. -- prior to your interview with Justin?

9 MS. LUSAICH: That misstates his testimony.
10 He said he was aware it was generated.

11 THE WITNESS: Did I say that?

12 THE COURT: I agree. He was aware it was
13 generated, but I believe you testified you didn't read
14 it.

15 THE WITNESS: That's correct.

16 BY MR. ABOOD:

17 Q. So you don't know whether this report was
18 generated before you involved yourself in the interview
19 or sometime after, is that what you're saying?

20 A. Yeah. I didn't write the report. I wasn't
21 present for when the report was written, so I'm not --
22 I can't answer your question. I don't know when.

23 Q. When was the first time you saw this report?

24 A. Don't remember. This case is kind of old, but

1 I'm sure I've seen the report prior to today.

2 Q. Did you see this report prior to your
3 interview at three o'clock?

4 A. I don't believe I saw that report prior to my
5 interview.

6 Q. Okay. You told this judge that one of the
7 things that Justin said, or one of the things that you
8 recall from your part of the interview at three o'clock
9 was that Justin claimed, concerning the Seventh of June
10 incident, that the door of the apartment was ajar; is
11 that right?

12 A. Yes, sir.

13 Q. And you told this judge that that was not
14 Justin's word; is that right?

15 A. That's correct.

16 Q. Whose words were they?

17 A. Well, they would be whoever wrote the report
18 which is Detective Kato.

19 Q. The reason I asked is I found it interesting
20 that you used the same word, ajar. Where did you get
21 that word from?

22 A. Ajar? Where did I get the word from? I don't
23 know that means, where did I get it from.

24 Q. Did you read this report before you testified

1 today?

2 A. Yes, I did.

3 Q. So you refreshed your memory from an interview
4 report that you weren't in on?

5 A. No. I was involved in a interview that
6 substantially the same information was discussed.

7 Q. Sir, you weren't at the first interview, so
8 you don't know exactly what was discussed. And you
9 told this judge you hadn't seen this report before your
10 interview, correct?

11 MS. LUSAICH: That misstates the testimony.
12 He said he didn't know if he had seen it or not.

13 THE WITNESS: I was involved in the second
14 interview. I know what he told me during that second
15 interview and what's on that report is predominantly
16 the same information.

17 BY MR. ABOOD:

18 Q. Okay. So your recollection from the interview
19 you were involved in, and then you're reading of this
20 report leads you to believe that it was essentially the
21 same; is that right?

22 A. That's correct.

23 Q. Before you testified here today, when was the
24 last time you read this report?

1 A. I don't know.

2 Q. You told the judge during your testimony that
3 Justin said something along the lines of: The door of
4 the apartment was ajar, correct?

5 A. Correct.

6 Q. Is that your impression of what Justin said?
7 Or is that your impression of what this report said?

8 A. That's my impression of what Justin said.

9 Q. Did he use the word ajar?

10 A. No.

11 Q. So you and Detective Kato just happened to use
12 the same word, ajar, to describe that apartment door,
13 correct?

14 A. You're concentrating on the word ajar. It
15 doesn't come from Justin. It came from the report that
16 Kato generated. Is that what you're asking me?

17 Q. Yes.

18 A. Okay. I am not sure what you you're asking
19 because I use the word ajar which, basically, you know,
20 I think I can interpret what that might mean, so the
21 word was reported, was documented, and that report was
22 written by Detective Kato.

23 Q. Exactly.

24 A. Okay. So I'm a little confused on what you're

1 asking me.

2 THE COURT: What he's asking, you just adopted
3 Detective Kato's terminology.

4 THE WITNESS: From reading the report, yes. I
5 used the word ajar because it refreshes my memory from
6 that report.

7 BY MR. ABOOD:

8 Q. Okay. so you don't have any idea or any
9 recollection when you read this report last, but you
10 remember that the apartment door was ajar because
11 that's what appeared in this report, correct?

12 A. Well I'm positive I read that report at some
13 time, but at what time I don't remember.

14 Q. Was there another report generated after you
15 involved yourself in the interview?

16 A. No.

17 Q. What was the purpose of having you reinterview
18 Justin Porter the following day, if Kato had already
19 done it?

20 THE COURT: Excuse me, Counsel. I don't think
21 it was -- was it the following day or later that same
22 day?

23 BY MR. ABOOD:

24 Q. I guess you're right, your Honor. It would be

1 later that same day, the afternoon of that day, three
2 o'clock.

3 A. The purpose of the interview was just to
4 inform Justin that Vegas was coming out to talk to him
5 and to see if he was still talking.

6 Q. So you went over the same facts with him with
7 Kato, correct?

8 A. Correct.

9 Q. All over again?

10 A. It wasn't really that in-depth as far as I'm
11 concerned. When you say all over again, it was --
12 sounds like a summary to me, that report.

13 Q. Now, you told this judge that Justin was
14 Mirandized?

15 A. He was Mirandized.

16 Q. How did that happen? When did it happen?

17 A. Detective Kato did it from memory when we
18 entered the room.

19 Q. Okay. So three o'clock that afternoon Miranda
20 took place?

21 A. Approximately three o'clock, correct.

22 Q. Was it off a card that Kato carries?

23 A. No. It's from memory.

24 Q. Who did the Mirandizing? You or Kato?

1 A. Detective Kato did.

2 Q. Do you use, typically, a waiver of Miranda
3 right cards or anything like that where people
4 signature or initial?

5 A. No.

6 Q. Do you record your Miranda waivers in any way?

7 A. No.

8 Q. No video tape? No audio tape?

9 A. Correct.

10 Q. And so what it comes down to is if a defendant
11 complaints that he wasn't Mirandized, it's his word
12 against some detective's word, correct?

13 A. I guess that's correct. I mean, I don't know
14 that I can answer for the Court, but --

15 Q. Is that the first time you've been asked that
16 question?

17 A. The way you just put it, yes.

18 Q. You act -- you seem perplexed by that.

19 A. I'm just perplexed because you're asking me to
20 speak for, like, the Court system. And you're asking
21 me to speak for the police department as a whole. And
22 I don't know that I can do that.

23 Q. I'm asking you to speak from your experience.

24 A. Well, if -- as far as my experience is

1 concerned, I can tell you that I don't record waiver of
2 Miranda, but when you asked me a question such as is if
3 you know one person's word against another person's
4 word, I don't know that I'm eligible to answer that.

5 Q. Isn't the point of not recording these
6 interrogations, the point of not recording this Miranda
7 warning and the waiver itself, isn't the point of that
8 so that you won't have any -- anything that court's can
9 look at later to determine whether or not things were
10 done properly?

11 A. Isn't it the point not to record it so that
12 you can't -- can you repeat that for me? I mean, I
13 don't understand what you're asking me because,
14 obviously, it sounds pretty --

15 Q. Why don't you tell the judge why it is that
16 you don't record interrogations and you don't record
17 Miranda waivers?

18 A. Well, as I explained earlier, it wasn't the
19 procedure of the police department to do that.

20 Q. Do you have any idea why it's not? Anybody
21 ever explain it to you?

22 MS. LUSAICH: Well, that's not relevant why
23 it's not. It's not --

24 THE COURT: I agree.

1 MS. LUSAICH: Onto the next.

2 THE COURT: I agree.

3 BY MR. ABOOD:

4 Q. Obviously, if that were done, we wouldn't be
5 here wasting our time today; is that right?

6 MS. LUSAICH: Argumentative.

7 THE COURT: Just a minute. Let me ask the
8 officer a question.

9 Did you not testify earlier that the practice
10 and policy of the Chicago Police Department at that
11 time was not to record any statements, correct?

12 THE WITNESS: Right.

13 THE COURT: With regards to the Miranda
14 warnings?

15 THE WITNESS: That's correct. And it's still
16 that procedure as we stand here today.

17 THE COURT: Still not as per Miranda?

18 THE WITNESS: Correct.

19 THE COURT: Didn't you also testify that
20 recently the procedures have been changed?

21 THE WITNESS: Regarding statements of
22 offenders in certain cases, they now video record. But
23 they wouldn't have did that in this case because it's
24 not one of ours.

1 THE COURT: All right. Thank you very much.
2 That's the point I want to make.

3 BY MR. ABOOD:

4 Q. Do you have any idea or can you tell the judge
5 why it is that they changed the policy?

6 A. I don't know.

7 MS. LUSAICH: It's not relevant.

8 THE COURT: Sustained.

9 BY MR. ABOOD:

10 Q. You don't know?

11 THE COURT: Sustained.

12 BY MR. ABOOD:

13 Q. So this three o'clock interview that took
14 place, you didn't generate a report; Kato didn't
15 generate a report; is that right?

16 A. Correct.

17 Q. No notes?

18 A. Correct.

19 Q. How long ago was this? Five years ago?

20 A. The incident?

21 Q. Yeah.

22 A. I think it was, I'm guessing, three years
23 ago. I think.

24 Q. Your interview, the interview you were

1 involved in was about three years ago?

2 A. Three and-a-half, thereabouts.

3 Q. And you prepared yourself for your testimony
4 here today one of the things you did to prepare
5 yourself was talk to these district attorneys?

6 A. That's correct.

7 Q. Spoke to Kato?

8 A. I reviewed the report.

9 Q. This report?

10 A. That's correct.

11 MR. ABOOD: Thank you. Nothing more.

12 THE COURT: Redirect?

13 MS. LUSAICH: No.

14 THE COURT: Thank you.

15 Call your next witness.

16 Thank you, Officer.

17 MR. HERNDON: State would call Barry Jensen.

18

19 BARRY JENSEN

20 Having been first duly sworn to tell the
21 truth, the whole truth and nothing but the
22 truth, testified as follows:

23 THE CLERK: Would you state your name and
24 spell your last name for the record, please.

1 THE WITNESS: My name is Barry Jensen,
2 J-e-n-s-e-n. B-a-r-r-y.
3

4 DIRECT EXAMINATION

5 BY MR. HERNDON:

6 Q. It's Detective Jensen, correct?

7 A. That's correct.

8 Q. And with whom are you employed?

9 A. Las Vegas Metropolitan Police Department.

10 Q. And for how long have you been with that
11 department?

12 A. Fifteen years.

13 Q. And what division of the department are you
14 currently assigned to?

15 A. I'm currently assigned to the homicide detail.

16 Q. And for how long have you been there?

17 A. Approximately three years.

18 Q. And where were you before the homicide detail?

19 A. Assigned to the adult sexual assault unit.

20 Q. And how long were you with the adult sexual
21 assault unit?

22 A. Approximately three, three and-a-half years.

23 Q. And would the time period that you were on the
24 adult sexual assault unit have included the summer and

1 early fall of the year 2000?

2 A. Yes.

3 Q. And did you have occasion to become involved
4 in the investigation of a series of events that had
5 occurred in the downtown area, what's referred to the
6 downtown area of command at least within the Metro
7 jurisdiction?

8 A. Yes, I did.

9 Q. Okay. What was your initial involvement in
10 that series of happenings in downtown?

11 A. I was investigating a sexual assault which we
12 later determined to be involved in the series of sexual
13 assaults with, and so I investigated those with other
14 detectives.

15 Q. Which was the particular one that you
16 initially were assigned to investigate.

17 A. Marlena Livingston.

18 Q. Do you remember -- do you recall the date when
19 that one was?

20 A. I believe it was April Fourth of 2000.

21 Q. So it wasn't the first and it wasn't the last?

22 A. No.

23 Q. Okay. And I take it from your testimony that
24 other detectives were investigating other similar type

1 sexual assaults, and it became the belief, at least of
2 the police department, at that time, that they were all
3 somehow related?

4 A. That's correct.

5 Q. Okay. And did there ever come a time where
6 some evidence developed that lead you all to the belief
7 that absolutely they were related?

8 A. Yes. On August Tenth we had a D.N.A. match
9 from two of the crime scenes that came back to a Justin
10 Porter.

11 Q. Okay. So there were some crime scenes from
12 which biological fluid evidence was collected, a
13 profile was developed and ultimately it was matched to
14 the defendant's D.N.A. profile?

15 A. Yes, it was.

16 Q. And I say the defendant. Do you recognize
17 Justin Porter in court today?

18 A. Yes, I do.

19 Q. Where is he seated? What is he wearing today?

20 A. He's seated between Mr. Brown and Mr. Abood at
21 the defense table. He's wearing blue jail garb.

22 MR. HERNDON: The record reflect the
23 identification of the defendant?

24 THE COURT: Yes.

1 MR. HERNDON: Thank you, Judge.

2 BY MR. HERNDON:

3 Q. On August Tenth when you referred to the fact
4 that the sexual assault detail received notice of a
5 D.N.A. profile match, at that time were sexual assault
6 type crimes the only crimes that you were aware of that
7 had been occurring, that seemed to be related to this
8 one perpetrator?

9 A. No. There was sexual assault crimes and home
10 invasion robberies.

11 Q. Okay.

12 A. And there was a possible homicide. We didn't
13 know. We didn't have much information on that at that
14 time.

15 Q. Okay. You and your fellow detectives in the
16 sexual assault detail would have been solely
17 responsible for the sexual assaults?

18 A. That's correct.

19 Q. And then the robbery detail would have been
20 involved in the home invasion robberies?

21 A. Yes.

22 Q. Homicide detail for the possible homicide?

23 A. That's correct.

24 Q. Okay. Now, after you received notice of the

1 D.N.A. match with regard to Justin Porter, what, if
2 anything, did you all do in the sexual assault detail
3 to try to go about trying to locate Mr. Porter?

4 A. We received information right when I was
5 getting ready to go home. I don't remember exactly if
6 I stayed late that night and started working on an
7 arrest warrant at that time, or if I came in the next,
8 early the next morning and started preparing an arrest
9 affidavit involving the cases that we had.

10 Q. So that would have been the night of August
11 Tenth or the next day August Eleventh?

12 A. That's correct.

13 Q. Okay. Were there -- did you get any
14 information about anybody locally or a place of
15 residence possibly for Mr. Porter to go to, to attempt
16 to locate him?

17 A. Yes, we did.

18 Q. Okay. And was that a residence that he lived
19 at by himself? Or what was the nature of that
20 residence?

21 A. It was an apartment that he lived in with his
22 mother, Angela, and his stepfather, Sergio.

23 Q. Okay. And in addition to the arrest warrant
24 that you were preparing for Mr. Porter, based -- and I

1 take it that was just based on the sexual assault
2 crimes; is that --

3 A. That's correct.

4 Q. Okay. Did you do any other type of warrant in
5 relation to the residence that you had located here?

6 A. A search warrant was prepared by Detective
7 Michael Castaneda.

8 Q. Okay. Was he also a sexual assault detective?

9 A. Yes, he was.

10 Q. Was contact had that day? And by that, I mean
11 August Eleventh with either Mr. Porter or his mother
12 and stepfather?

13 A. Yes. We made contact with his mother and
14 stepfather.

15 Q. And did you get an understanding, at that
16 time, as to whether or not Mr. Porter was in Las Vegas?

17 A. No. We found out from his mother and
18 stepfather that he had left for Chicago about a month
19 prior to that.

20 Q. Okay. Did you have contact with the mother
21 and stepfather while a search warrant was being
22 served? Or was that separate from the search warrant?

23 A. It was before the search warrant was served.
24 And when we contacted them, I obtained a consent to

1 search for their apartment. I explained to them that
2 Justin was a suspect in some -- in some crimes that we
3 were investigating. And I asked if he had any of his
4 property left in their apartment.

5 And they said that he had taken some of his
6 clothing with him, but he did have some property left
7 in his house.

8 Q. Okay.

9 A. And they signed a consent to search. And they
10 had other business. They were on their way to look at
11 a new apartment or something. So we let them go. And
12 at that time the search warrant hadn't been signed by a
13 judge yet, so instead of going in just on the consent
14 to search, we waited for Michael Castaneda to call us
15 and tell us that the warrant had been signed.

16 Q. Okay. Did you tell his mother what the crimes
17 were that you all were investigating?

18 A. I don't remember if I explained them to her or
19 not. But I gave her -- I provide her my business card
20 which has my name and the sexual assault detail that
21 I'm working on.

22 Q. Okay. Were you aware of how a D.N.A. profile
23 was obtained from Mr. Porter originally?

24 A. Yes. Patrol units and other sexual assault

1 detectives were canvassing the downtown area. And one
2 of the patrol units had stopped a young man who was
3 later identified as Justin Porter. It was
4 approximately three in the morning. And along with
5 them, Detective Love had asked for a buccal swab which
6 is a sample to get D.N.A. from a person, like a
7 toothbrush.

8 And with the consent of Justin's mother and, I
9 believe, Justin, that buccal swab was obtained, I
10 believe, in June.

11 Q. Okay. So that was a couple of months before
12 the D.N.A. profile match happened in August?

13 A. Yes.

14 Q. Okay. But to your knowledge, Justin's mother
15 was involved in the decision to give the D.N.A. sample
16 to Detective Love?

17 A. Yes. I believe she signed. Justin's mother
18 signed a consent to search for that.

19 Q. And to your knowledge, was it explained to
20 them the series of crimes, at that time, back in June,
21 the series of crimes that were being investigated and
22 the reason for collecting buccal swabs from
23 individuals?

24 A. I can't say for sure. I wasn't there. And I

1 don't recall if Debbie had explained that to them.

2 Q. Okay. Going back to August now. I'm sorry.
3 When you executed the search warrant at the residence
4 of Justin's mother and stepfather, was a copy of that
5 search warrant left there when it was done?

6 A. I believe a copy of the search warrant and
7 sealing order.

8 Q. Okay. And to your knowledge did the search
9 warrant reference crimes that were being investigated?

10 A. Yes, it did.

11 Q. Okay. Did you have any contact with Justin
12 Porter that day, the day that the search warrant was
13 served August Eleventh of 2000?

14 A. I had had -- at my office I had had three
15 separate phone calls from him, left on my voice mail,
16 where he said that he had talked to his mother and he
17 knew that we were looking for him. And he wanted to
18 talk, words to the effect. That he wanted to talk to
19 us.

20 Q. So he had indicated that he had talked to his
21 mother which would have been after you informed his
22 mother that he was a suspect in some crimes that you
23 were investigating?

24 A. That's correct.

1 Q. And he contacted you after having that
2 knowledge and was indicating to you on the machine that
3 he wanted to talk to you?

4 A. Yes.

5 Q. Okay.

6 A. And I also had, that same day, as I was typing
7 the arrest affidavit, I spoke to Justin Porter over the
8 telephone. At that time he told me that he was going
9 to be back in Las Vegas, I believe he said, at the end
10 of August, and that, you know, he said we could take
11 care of everything then.

12 Q. Okay. Was that after the three phone
13 messages? Or in between them? Or?

14 A. It was after.

15 Q. Okay.

16 A. The phone messages.

17 Q. So had you returned a call to him after
18 getting the message. And then he called you a fourth
19 time? Or was it just him calling a fourth time?

20 A. He called a fourth time. I didn't -- I never
21 telephoned him.

22 Q. Okay.

23 A. He was staying at his father's house in
24 Chicago.

1 Q. All right. So your testimony would be that he
2 called you four times in that one day to talk to you
3 about what you are looking for him for?

4 A. Yes.

5 Q. Okay. Now, did you have any knowledge about
6 whether or not -- well, at some point that day you
7 learned that the Chicago Police Department had
8 ultimately taken Mr. Porter into custody?

9 A. Yes. After we had the warrant signed by Judge
10 Lippis, we faxed them a copy of the warrant. And
11 detective Michael Castaneda had also spoke with a
12 Sergeant Keen from the Chicago Police Department and
13 explained to him that we were investigating Justin
14 Porter on a series of sexual assaults, and that we had
15 a -- we were in the process of getting a warrant.

16 And I think Michael Castaneda provided the
17 sergeant in Chicago with Justin Porter's father's home
18 address and telephone number.

19 Q. Okay. And your testimony was that the
20 warrant, and I'm going to assume this was by Detective
21 Castaneda, was faxed to the Chicago Police Department
22 eventually?

23 A. I don't believe the search warrant was faxed
24 up.

1 Q. No, not the search warrant. Just the arrest
2 warrant.

3 A. Yes. The arrest warrant was faxed up to the
4 Chicago Police Department.

5 Q. Okay. Do you know what, if any, other
6 information Detective Castaneda provided to Chicago
7 about the crimes you all were investigating?

8 A. No. I wasn't with Detective Castaneda when he
9 made the telephone call.

10 Q. Okay. I'm going to assume when we're dealing
11 with felony crimes that there's going to initially be
12 incident reports when patrol responds to sexual
13 assaults?

14 A. Yes.

15 Q. So there's going to an arrest report? Or if
16 you don't arrest a person right away, at least, officer
17 reports from the detective?

18 A. Yes.

19 Q. Maybe multiple officers' reports?

20 A. Yes.

21 Q. You obviously do a declaration for an arrest
22 warrant that combines everything together?

23 A. Yes, I do.

24 Q. Was there also an administrative assistant in

1 will be arrested in other jurisdiction, correct?

2 A. That's correct.

3 Q. And then they may either waive or fight
4 extradition, and we eventually bring them back here?

5 A. That's correct.

6 Q. It is not all the time that you'll fly to
7 another jurisdiction to talk to a suspect; is it?

8 A. Not always, but it happens.

9 Q. Okay. Why did you fly to Chicago on this
10 occasion? I mean, did you have some belief that Justin
11 Porter wanted to talk to you?

12 A. When, when Michael Castaneda spoke with, I
13 believe, it was the lieutenant from that area that had
14 Justin Porter in custody, he told Detective Castaneda
15 that Justin Porter wanted to talk to detectives.

16 Q. Okay. So which would be in line with the four
17 phone messages you had received that same day --

18 A. That's correct.

19 Q. -- from Mr. Porter himself?

20 A. Yes.

21 Q. Okay. And you had occasion to go to Chicago
22 and ultimately talk to Mr. Porter?

23 A. Yes, I did.

24 Q. And in talking to him and listening to his

1 voice, were you confident that it was the same person
2 that had made the phone calls to you?

3 A. Yes, I was.

4 Q. Do you recall about what time of day it was
5 that you arrived in Chicago?

6 A. I want to think it was some time in the
7 afternoon three-thirty, four-thirty in the afternoon
8 their time.

9 Q. August Twelfth now?

10 A. August Twelfth.

11 Q. Okay. And where did you go from the airport?

12 A. From the airport I believe we went directly to
13 the Area Four Police Station where Justin Porter was
14 being held for us.

15 Q. Okay. And did you spend any time conversing
16 with Chicago detectives once you got there?

17 A. Just, it would have been maybe five, ten
18 minutes. We met the chain of command, you know, told
19 them thank you for getting him into custody without any
20 incidents. And then we located the room where we could
21 do an interview in.

22 Q. Was he already in that room?

23 A. No, he was not.

24 Q. Okay.

1 A. He was in a holding cell.

2 Q. Okay. When you initially talked to the
3 Chicago detectives, did you inquire as to whether or
4 not he had been Mirandized?

5 A. I believe Detective La Rochelle did that. And
6 we found out that he was Mirandized.

7 Q. Okay. Did you ask them about -- or did they
8 offer up, at that time, that they had interviewed him
9 and talked to him for a while.

10 A. I didn't -- I didn't speak with those guys at
11 the scene.

12 Q. Okay.

13 A. -- or at the police station.

14 Q. Did Detective La Rochelle give you any
15 indication that he knew that Chicago detectives had
16 already interviewed Mr. Porter at all?

17 A. That I don't remember if he, if he said
18 something about that or not.

19 Q. Okay. When you first -- did you first see
20 Mr. Porter in the interview room where you all
21 interviewed him or did you first see him in the holding
22 cell?

23 A. We met him in the holding cell.

24 Q. Okay. And what, if anything, was he doing

1 when you first came upon him?

2 A. He was smoking a cigarette and drinking a
3 soda. But he had finished up some fast food that was
4 in there.

5 Q. Okay. So there were bags? Or wrappers? Or?

6 A. Yes.

7 Q. Okay. What was he acting like when you went
8 in there?

9 A. He was very calm. He didn't appear to be
10 agitated or upset.

11 Q. Was he handcuffed?

12 A. I don't -- I don't believe he was.

13 Q. Okay. And you all transported him to the
14 other room where you were going to interview him?

15 A. Yeah. It was just down a small hallway into
16 another room.

17 Q. Okay. What is the procedure that you all go
18 about? And first off, let me back track.

19 You, Detective La Rochelle, and Laura Cricket
20 all take him down to the interview room?

21 A. Well, yeah. We all went down there in a
22 group.

23 Q. Okay.

24 A. Um.

1 Q. And all three of you and Mr. Porter go into
2 the interview room together?

3 A. Yes.

4 Q. Okay. Are you guys carrying, wearing guns?

5 A. I didn't take a gun with me.

6 Q. Okay.

7 A. I believe Detective La Rochelle and Sergeant
8 Cricket had weapons, but they were -- they weren't
9 exposed.

10 Q. Okay. What is the procedure that you all have
11 decided upon to go about interviewing Mr. Porter?

12 A. I was going to speak to him first about the
13 sexual assaults. And then Detective La Rochelle would
14 speak to him about -- I'm sorry. We were going to
15 speak to him about the sexual assaults. And Laura
16 Cricket was going to speak to him about the home
17 invasion robberies.

18 And then Detective La Rochelle would speak to
19 him about the homicide investigation.

20 Q. Okay. And do you remember about what time it
21 was when you first began to talk to Mr. Porter?

22 A. I want to say it was approximately five-thirty
23 Chicago time.

24 Q. Okay. So about three-thirty Las Vegas time?

1 A. Yes.

2 Q. Okay. And was the procedure to initially drop
3 the tape recorder down and start taping it? Or what?

4 A. No. The first thing we did was re-Mirandized
5 him from one of our L.V.M.P.D. cards.

6 Q. Okay.

7 A. I had him read it aloud.

8 Q. So you did the Miranda?

9 A. Yes.

10 Q. Okay. And you said you did it? You read it
11 off of a department issued card?

12 A. I had Justin Porter read it first.

13 Q. Okay.

14 A. And he was -- he was having trouble
15 pronouncing some of the words. He sounded the words
16 out and read it to where I could understand what he was
17 saying.

18 Q. Okay.

19 A. Then I read the card to him out loud. And I
20 asked if he understood his rights. And he said he
21 did. And then we told him to, or we asked him to sign
22 the card. And we signed it. Put the date and time on
23 it and the event number.

24 Q. Okay. When you read the card to him and then

1 asked him if he understood it, then you said that he
2 said, yes?

3 A. Yes.

4 Q. I mean, were you confident that he understood
5 it as opposed to just giving you have lip service?

6 A. Absolutely. There wasn't a doubt in my mind
7 that he did not understand his rights.

8 THE COURT: What? He what?

9 THE WITNESS: There's not a doubt in my mind
10 that he -- that he did -- that he understood his
11 rights.

12 THE COURT: You said, did not.

13 THE WITNESS: I'm sorry.

14 THE COURT: Keeping me awake.

15 BY MR. HERNDON:

16 Q. I mean, his demeanor wasn't one of, I'm
17 confused. I don't really understand?

18 A. No.

19 Q. He didn't say anything like, I understand. I
20 could be quiet, but I don't understand this part?

21 A. No. He did not.

22 Q. Okay. Did you ask him: Do you have any
23 questions about it?

24 A. Pardon me?

1 Q. Did you ask him if he had any questions about
2 when you read it back to him?

3 A. No. I just asked him if he understood them.

4 Q. Okay. And he signed the card?

5 A. Yes, he did.

6 Q. And then you all begin talking to him?

7 A. Yes.

8 Q. Okay. Was it -- did he appear comfortable
9 talking to the three of you initially?

10 A. No, not initially. We -- we believe it was
11 because Laura, Sergeant Cricket was a female, and she
12 was in the room.

13 Q. Okay.

14 A. And we asked him if he was comfortable with
15 her being there. And he said, no, that he wasn't. He
16 was embarrassed. And so we had her leave the room.
17 And just Detective La Rochelle and I continued the
18 interviews.

19 Q. Okay. And when you first went into the
20 interview with him, and by that I mean, even when
21 Sergeant Cricket was in there, did he ever say anything
22 about, I would like to talk to my dad or my mom before
23 I talk to you?

24 A. No.

1 Q. I would like to see my dad or my mom or my
2 stepfather or stepmother before I talk to you?

3 A. No, he did not.

4 Q. Once Laura left the room and then you and
5 Detective La Rochelle began to talk to him, did he ever
6 make any of those statements?

7 A. No, he did not.

8 Q. Did any time during the time that you and
9 Detective La Rochelle talked to him that day, during
10 that initial conversation, the interview portion, did
11 he ever make any of those kinds of statements?

12 A. No, he did not.

13 Q. After you've interviewed Mr. Porter, do you
14 actually then take a taped statement from him?

15 A. Yes, we do.

16 Q. Did he at any time during the taped statement
17 make any kind of indications about, I want to talk or
18 see my mother or father before I do anything?

19 A. No. It was -- as we were -- both during the
20 interview and the statement portion of it, he had
21 indicated that he couldn't talk to his mom about this
22 because she would think he was crazy.

23 Q. Okay.

24 A. And words to that effect about his father too.

1 Q. Okay. And that was during the interview
2 portion before the tape statement was taken?

3 A. And I believe it's also on the taped
4 statement.

5 Q. Okay. So the subject of his parents having
6 any knowledge of this, the specifics at least, came up,
7 and his indication to you was he didn't want them to
8 have any knowledge of this?

9 A. That's correct.

10 Q. Okay. You had an understanding that
11 Mr. Porter was how old at the time you were
12 interviewing him?

13 A. I believe he was seventeen.

14 Q. Okay. And that -- did you have any knowledge
15 about a prior criminal system involvement that he had?

16 A. Yes. I knew that he had been arrested for a
17 robbery and through the Court system for an armed
18 robbery in Chicago.

19 Q. Okay.

20 A. Or Illinois. I'm not one hundred percent sure
21 Chicago.

22 Q. Okay. And did you have any understanding
23 of other criminal involvement he had in Chicago after
24 that armed robbery as well?

1 A. I believe he mentioned that he was on
2 probation during our interview.

3 Q. Okay. So you, at least, had some belief that
4 he had some involvement and had been through the
5 criminal justice system?

6 A. Yes.

7 Q. Such that if he was on probation he had to
8 have some, at least, some kind of formal or informal
9 conviction or adjudication?

10 A. Yes.

11 Q. Okay. When you first start going through the
12 interview process with Mr. Porter and that being when
13 you and Mr. La Rochelle were in there, who was the
14 person that was doing most of the questioning?

15 A. I started off the questioning, but Detective
16 La Rochelle kind of took over the interview.

17 Q. And did it follow in that same vane once you
18 did the taped statement?

19 A. Yes.

20 Q. Okay. And what portion of the interview
21 process were you involving yourself in before Detective
22 La Rochelle did?

23 A. Prior to that, I was just involving myself in
24 the sexual assault investigations.

1 Q. Okay. How many sexual assaults investigations
2 did you discuss with Mr. Porter prior to -- in the
3 interview prior to Detective La Rochelle getting
4 involved?

5 A. I believe there was just three that I talked
6 to him about.

7 Q. Okay. And this question -- was the -- were
8 the statements that he gave during the interview
9 process consistent with what he gave in the taped
10 statement?

11 A. Yes.

12 Q. And did the interview process travel along in
13 the same vane that the taped statement did?

14 A. Yes, it did.

15 Q. Okay. No major inconsistencies or really any
16 inconsistencies?

17 A. No.

18 Q. Okay. So my questions are kind of just
19 directed to what he was saying regardless of the
20 specific interview or statement?

21 Did he seem to have ready recall about the
22 incidents you were talking to him about?

23 A. He didn't recall names or exact addresses.
24 But, you know, I mentioned, like, one house was near

1 the Showboat. He had details that matched that crime
2 and details in my opinion that only somebody that was
3 there would know.

4 Q. And you referenced the house near the
5 Showboat. Would that have been the event involving
6 Teresa Tyler?

7 A. Yes.

8 Q. So you're saying that you could kind of tell
9 him do you recall an incident with the girl near the
10 Showboat?

11 A. Right.

12 Q. And he would say, oh, yeah. And then give you
13 details of it?

14 A. Yes, he would.

15 Q. Without any further prompting of details by
16 yourself, he could then provide you with details of
17 that incident?

18 A. Yes.

19 Q. And they were details that your investigation
20 had revealed were corroborated by physical evidence or
21 the victims statements themselves?

22 A. That's correct.

23 Q. Okay. And did he do that for the other sexual
24 assault event you talked to him about?

1 A. Yes.

2 Q. Again, you provide him with some detail to
3 refer him to an event, and then he would then provide
4 you with lots of details?

5 A. That's correct.

6 Q. Was it a difficult thing to get him to talk or
7 did he seem cooperative or talkative during the
8 interviews?

9 A. He seemed very cooperative and talkative.

10 Q. Did he give you one word answers to things?
11 Or did he give you paragraphs of information?

12 A. No. He would give us a pretty good account of
13 what had happened, again, according to victims or crime,
14 scene evidence.

15 Q. I mean, would I be correct in saying that the
16 taped statement sometimes had half a page of a
17 narrative answer by him describing an event that
18 occurred?

19 A. That's correct.

20 Q. And it's not a lot of inaudible kind of uh,
21 and stuff. It's details?

22 A. That's correct.

23 Q. Once you started the taped statement with
24 Mr. Porter on August the Twelfth, do you recall about

1 how long that that first statement went?

2 A. The first time that we interviewed and took
3 the statement from him, I would say it lasted -- we
4 were probably in the room for three and-a-half hours,
5 four hours.

6 Q. Okay.

7 A. All together.

8 Q. Did -- I mean, would it surprise you that the
9 starting time for the initial statement with Mr. Porter
10 on August the Twelfth was five-thirty p.m. Las Vegas
11 time ending at six forty-six p.m. Las Vegas time?

12 A. No.

13 Q. About an hour a sixteen minutes?

14 A. Yeah, that's --

15 Q. And then followed up by a thirty minute
16 interview that began at about half an hour after that
17 first statement ended?

18 A. That's consistent, yes.

19 Q. Okay. And the break in between the first two
20 statements was what?

21 A. For Justin to use the restroom, other
22 detectives to use the restroom, get a drink of water,
23 things like that.

24 Q. Okay. And did you talk with him -- did

1 Detective La Rochelle get a chance to talk to him about
2 the homicide during those two statements?

3 A. Yes, he did.

4 Q. And did you get a chance to talk to him about
5 some of the sexual assault crimes?

6 A. Yes, I did.

7 Q. Were some of the robbery home invasions
8 discussed?

9 A. I believe they were.

10 Q. Okay.

11 A. But --

12 Q. By Detective La Rochelle, not you?

13 A. That's correct.

14 Q. Okay. And was there a reason that you didn't
15 try and go into all the sexual assaults during the
16 interviews that were conducted on that day?

17 A. Well, we had -- we wanted to talk to him about
18 the sexual assaults and once -- once we had the sexual
19 assaults covered, then Detective La Rochelle was going
20 to go in about the homicides.

21 It was getting -- we'd been there for a while,
22 and I had -- I felt I had enough information with the
23 sexual assaults, so Detective La Rochelle went into the
24 homicide --

1 Q. Okay.

2 A. -- investigation.

3 Q. And you said, I think you kind of began to
4 talk about the time, the lateness of the hour?

5 And I referred to Las Vegas time.

6 The sec -- the second interview with
7 Mr. Porter actually ended, if my time here is correct,
8 got to be a reason to disagree with me, probably close
9 to ten o'clock Chicago time.

10 A. That's correct.

11 Q. Okay. Oh, and you'd been talking to him for
12 about two hours total?

13 A. Right.

14 Q. Was the lateness of the hour and deference to
15 him any part of your decision to stop the interviews
16 and pick it up at another time?

17 A. Yes. We were going to end the interviews and
18 then come back tomorrow after he had had a night sleep,
19 we'd had a night's sleep.

20 Q. Okay. And did you go back the next day?

21 A. Yes, we did.

22 Q. And did you talk to Mr. Porter again?

23 A. Yes, I did.

24 Q. About what time was it the next day?

1 A. I don't recall off hand.

2 Q. Okay. Was it you and Detective La Rochelle
3 again?

4 A. I believe it was myself and Sergeant Cricket.

5 Q. Okay. When you went back in that second time
6 to talk to Mr. Porter, did Sergeant Cricket go in with
7 you?

8 A. Yes, she did.

9 Q. Was he any more comfortable at that time
10 talking in front of her?

11 A. Yeah. He seemed -- it was -- he was more
12 comfortable with her. I believe we only discussed one
13 sexual assault.

14 Q. Okay. And then did you discuss some of the
15 other robberies?

16 A. Yes.

17 Q. Okay. Was he cooperative in talking with you
18 on that occasion?

19 A. Yes, he was.

20 Q. Did he give narrative answers on that
21 occasion?

22 A. Yes, he did.

23 Q. Did he ever, on the second day, August
24 Thirteenth now, did he ever make any statements about

1 wanting his mother or father or anybody to be present?

2 A. No, he did not.

3 Q. Okay. Was there ever any occasion that you
4 were interviewing him when you actually had contact
5 with one of his parents?

6 A. Yes.

7 Q. When was that?

8 A. That would have been, I believe, on the
9 Thirteenth.

10 Q. Okay.

11 A. Towards the end of the interview he had asked
12 me to contact a Pastor John. And I want to say he was
13 from Tennessee. And he told me that his mother would
14 have his Pastor John's number.

15 As I called, as I was dialing his mother's
16 phone number, I asked him if he wanted to speak to her,
17 and he said, no. He leaned back in his chair and
18 waived his arms and said, no, he didn't want to talk to
19 her. He just wanted the father's number, the Pastor's
20 number.

21 Q. Okay. What is the purpose, from your
22 perspective, of conducting an interview before you do a
23 taped statement?

24 A. Just makes people more comfortable, and they

1 get comfortable talking with you as opposed to putting
2 a tape recorder right in there in their face and going
3 that way.

4 Q. All right. And this case, I take it that you
5 talked to him an hour and-a-half or so, I guess, in the
6 interview before you did a taped statement?

7 A. That's correct.

8 Q. And that length of time did you try and go
9 through, I mean, you had a pretty voluminous series of
10 crimes that you were investigating over an
11 approximately six month period of time; that's correct?

12 A. That's correct.

13 Q. Did you try and go through as much of those as
14 you can in the hour and a half either starting up the
15 taped statement?

16 A. Yes, we did.

17 Q. Just to see what all ones he had knowledge of?

18 A. Yes.

19 Q. Did at any time that you had contact with
20 Mr. Porter either on August the Twelfth or August the
21 Thirteenth either during the interview or during the
22 statement portion, did he ever make any complaints
23 about how he had been treated prior to you all's
24 arrival?

1 A. No.

2 Q. Did Chicago Police Department beat him up?

3 A. No. He never mentioned anything like that.

4 Q. Threatened him?

5 A. No.

6 Q. Told him his crimes were petti, and he'd
7 likely get probation if he just admitted to things?

8 A. No.

9 Q. Take him down to the docks and whoop his ass?

10 A. Never mentioned anything like that.

11 Q. Hit him with phone books?

12 A. No.

13 Q. Nothing like that?

14 A. No.

15 Q. When you all were talking to him, separate and
16 apart from the issue of Miranda, when you all were
17 talking with him, did he seem to readily understand the
18 questions you all were asking?

19 A. Yes, he did.

20 Q. Have any problems communicating with you?

21 A. No.

22 Q. Not just using little bitty kindergarten type
23 words? I mean, communicating with everyday language
24 that we use?

1 A. Yes. I was able to understand everything that
2 he was saying.

3 Q. Okay.

4 MR. HERNDON: Judge, I don't have any further
5 questions at this time.

6 THE COURT: Cross.

7 MR. BROWN: Sure, Judge. Thank you.

8

9 CROSS EXAMINATION

10 BY MR. BROWN:

11 Q. Good afternoon, Detective.

12 A. Good afternoon.

13 Q. You need any water or anything?

14 A. No, not right now.

15 Q. All right. Seen any cups up --

16 Judge, okay if I stay seated as well?

17 THE COURT: Sure.

18 BY MR. BROWN:

19 Q. Initially, just to go back kind of where we
20 were at the beginning. Justin was developed as a
21 suspect primarily because of a D.N.A. match?

22 A. That's correct.

23 Q. You had all these crimes with a generalized
24 description of a perpetrator, and then the robbery or

1 the sexual assault units had put out a D.N.A. net where
2 they were trying to get samples from as many people
3 that matched that description as possible?

4 A. Yes. When they were working the downtown
5 area, if they had stopped somebody who matched the
6 description, they took a D.N.A. sample from them.

7 Q. And it was based upon that sample from Justin
8 that was matched to one or more -- or one or two of the
9 crimes?

10 A. Two crimes.

11 Q. Two crimes? That's when you solidified him as
12 a suspect?

13 A. That's correct.

14 Q. You hadn't interviewed him before that?

15 A. No.

16 Q. You hadn't gone to his house to obtain a
17 search warrant or meet with his parents before that?

18 A. Not prior to obtaining the D.N.A. sample.

19 Q. All right. And after obtaining the D.N.A.
20 sample, it was your conclusion along with other
21 detectives involved in the area of command that Justin
22 Porter, or a singular person, was responsible for a
23 number of crimes?

24 A. That's correct.

1 Q. And when you got the match that singular
2 person was Justin Porter?

3 A. Yeah. Justin Porter's D.N.A. matched the two
4 cases that we had D.N.A. in.

5 Q. And even though it only matched the two, you
6 considered him a suspect in all of them?

7 A. Yes.

8 Q. Okay. And that includes a homicide charge?

9 A. I didn't become aware that homicide was
10 involved until much later in the investigation.

11 Q. A little bit later you did become aware that
12 he was considered a suspect in the homicide because it
13 was similar to the other charges?

14 A. And in the same location, yes.

15 Q. And in the same location. And this is when
16 Detective La Rochelle joined the group investigation?

17 A. They never really joined the group
18 investigation, until August Eleventh when we had when
19 Justin Porter was in custody. That's when they wanted
20 to fly out to Chicago with us and interview him about
21 that murder.

22 Q. Okay. But once you got the D.N.A. matching,
23 Justin Porter was going to be arrested for those
24 crimes. It was just a matter of when?

1 A. That's correct.

2 Q. Okay. And once it was learned that he was in
3 Chicago and not in Las Vegas, an affidavit and a
4 warrant -- affidavit for warrant was prepared by
5 yourself for the Chicago police?

6 A. Yes.

7 Q. And you prepared that immediately upon
8 learning he's in another state?

9 A. Yes.

10 Q. Okay. And the purpose for that was so that --
11 so he could -- that he could be taken in custody by the
12 Chicago police?

13 A. Yes. So he could be taken in custody by
14 whatever jurisdiction he was in.

15 Q. Whatever. Okay. In this case turns out
16 Illinois?

17 A. Right.

18 Q. But wherever he was, you sent -- you had
19 information that he was in Chicago?

20 A. That's correct.

21 Q. Information you received from his mother; is
22 that correct?

23 A. Yes.

24 Q. And confirmed through, at least, one or more

1 of the phone message left by Justin himself?

2 A. That's correct.

3 Q. So you informed the police in Chicago, gave
4 them an address where he might be located?

5 A. No. Detective Castaneda did that.

6 Q. And sometimes when I speak of the you?

7 A. If it --

8 Q. If it was to somebody else, I appreciate you
9 clarifying that because I might speak generally about
10 you or Detective Castaneda in this instance.

11 A. Okay.

12 Q. And with that knowledge that he's in Chicago,
13 you're relying on the Chicago Police Department,
14 essentially, to take him into custody for you?

15 A. Yes.

16 Q. Okay. Now, you, Nevada, Las Vegas homicide,
17 is relying on the assistance of Chicago Police
18 Department and sought it out?

19 A. Well, we knew he was in their jurisdiction,
20 and we knew that it -- we were -- we were obtaining a
21 warrant for his arrest. So we advised them that he was
22 going to be wanted and he was in their jurisdiction,
23 and, you know, they did their duty by arresting him.

24 Q. In essence, you're forced to rely upon them to

1 do that?

2 A. Yes.

3 Q. And you, as an agency, yourself specifically,
4 or Detective Castaneda actually had discussions with
5 the detectives in the Chicago Police Department about
6 this case?

7 A. That's correct.

8 Q. I believe you testified to that earlier.
9 Now in the meantime, Justin and you are
10 actually having some communication?

11 A. Yes.

12 Q. And I think that we've discovered that -- that
13 he had left a couple of phone messages for you?

14 A. Yes, he did.

15 Q. And then at one point he actually called and
16 did get ahold of you?

17 A. Yes, he did.

18 Q. That is on the same day that he is ultimately
19 going to be arrested?

20 A. That's the same day that I'm typing the
21 affidavit.

22 Q. You are in the process of preparing this
23 affidavit to have him arrested?

24 A. Yes, I am.

1 Q. On one of the messages, didn't he indicated to
2 you that his mother was really worried about this and
3 he just needed talk to you?

4 A. Yes.

5 Q. You didn't know what he was going to say, at
6 that point, just that he was going to talk to you?

7 A. That's correct.

8 Q. Okay. Now, you know as you're talking to him
9 that he's going to be arrested very soon?

10 A. Yes.

11 Q. Okay. And, in fact, if he was in your office
12 right then, had walked into your office to talk to you,
13 you would have placed him under arrest; and taken him
14 to jail?

15 A. Sure.

16 Q. But at no time in these initial contacts with
17 Justin, did you ever advise him of any of his rights?

18 A. No.

19 Q. Right. I mean, you didn't say to him, Justin,
20 listen. The police are coming there to arrest you real
21 soon. You have a right to remain silent, and you have
22 a right to have a lawyer there with you. You didn't
23 say any of that?

24 A. Absolutely not.

1 Q. And the reason for that is you didn't have to?

2 A. Correct.

3 Q. In fact, even though the defendant possessed
4 certain rights, you're not going to advise him of those
5 rights until you absolutely have to?

6 A. That's correct.

7 Q. Okay. And at that time you didn't absolutely
8 have to, so you didn't?

9 Now back to the warrant?

10 When we're talking about the warrant, you
11 prepared it personally?

12 A. Yes.

13 Q. At no time in the warrant did you ever mention
14 in the affidavit or the body of the warrant that Justin
15 was actually a suspect in a homicide case?

16 A. No, I did not.

17 Q. So when he's arrested in Chicago on the
18 warrant, he's arrested for a number of offenses, but
19 he's not arrested for a homicide?

20 A. That's correct.

21 Q. He's not in custody in Chicago for a homicide?

22 A. That's correct.

23 Q. But he was a suspect in the homicide?

24 A. Yes.

1 Q. Okay. Are you aware that Detective Castaneda
2 actually discussed the homicide charge with the Chicago
3 Police Department?

4 A. That I'm not aware of.

5 Q. Are you -- you, at some point, met Detective
6 Kato from the Chicago Police Department?

7 A. Yes.

8 Q. Are you aware that he's a homicide detective?

9 A. He's a major case. They do sexual assault,
10 robbery, and homicide, I believe.

11 Q. So unlike here, they cover more than just the
12 homicides?

13 A. Yes.

14 Q. Okay. Were you aware that the Chicago Police
15 Department was requested to question Justin about these
16 crimes?

17 A. I was not aware of that until later on.

18 Q. Did you become aware, at some point, that they
19 were asked to question Justin?

20 A. When we were in Chicago, I had found out that
21 they were -- they had questioned him at, I believe, it
22 was our Lieutenant Monahan that said it would be okay
23 if they spoke with him.

24 Q. Somebody gave them authority or permission to

1 question Justin?

2 A. Yes.

3 Q. Okay. Nobody from the Las Vegas Police
4 Department instructed the Chicago police to not
5 question him?

6 A. That's correct.

7 Q. Okay. And, in fact, some -- if you're aware,
8 summaries of certain case allegations were actually
9 faxed to and provided to the Chicago Police Department?

10 A. Yes.

11 Q. And this information was provided to them so
12 that they would have a basis to begin their
13 interrogation of Mr. Porter?

14 A. Yes.

15 Q. Be able to speak from an informative
16 standpoint?

17 A. I know that some of the synopses of the cases,
18 I believe, it was just the sexual assault cases were
19 sent to Chicago.

20 Q. Now, at the time that you're on your way to
21 Chicago, are you aware of the reputation of the
22 homicide unit or the homicide detectives of the Chicago
23 Police Department?

24 A. No. I was not.

1 Q. They get results. Was that ever discussed
2 amongst you or your lieutenant?

3 A. No.

4 Q. Was it ever discussed amongst you and your
5 lieutenant why he would want the Chicago Police
6 Department to interrogate a suspect in your case?

7 A. Absolutely not.

8 Q. Have you -- have you questioned him since your
9 return?

10 A. No, I have not.

11 Q. Okay. And, in fact, he didn't even tell you
12 before you went that he had made such a request?

13 A. That's correct.

14 Q. All right. Now at some point, I guess, it was
15 on August Eleventh, you were informed or advised that
16 Justin was in custody in Chicago?

17 A. Yes.

18 Q. And he was in custody on the arrest warrant
19 that you prepared?

20 A. That's correct.

21 Q. And now you made preparations to travel to
22 Chicago to question him?

23 A. That's correct.

24 Q. Okay. Now the only reason you're going to

1 Chicago is to question Justin?

2 A. Yes.

3 Q. You and two other detectives or one other
4 detective and sergeant?

5 A. That's correct.

6 Q. Okay. You travel, however that you it is,
7 half way across the country, for the singular purpose
8 of talking to Justin and getting information?

9 A. That's correct.

10 Q. Now, as we already clarified, he's not in
11 custody on the homicide but a homicide Detective is
12 going along?

13 A. Yes.

14 Q. To question him?

15 A. Yes.

16 Q. About the homicide?

17 A. Yes.

18 Q. Okay. And you had indicated before in
19 answering Mr. Herndon's question that you developed
20 somewhat of a procedure as how to go about this
21 questioning?

22 A. Yes.

23 Q. I mean, you -- whether you planned it maybe on
24 the plane or before you went, you kind of had an idea

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 JUSTIN JUG CAPRI PORTER,

) No. 54866

Electronically Filed
Apr 21 2010 09:08 a.m.
Tracie K. Lindeman

4 Appellant,

5 v.

6 THE STATE OF NEVADA,

7 Respondent.

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9
10 **APPELLANT'S APPENDIX – VOLUME VI – PAGES 1146-1384**

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Case No. 54866

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CASE NO. C174954

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Shirley A. Hargrave
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

PLAINTIFF,

vs.

JUSTIN D. PORTER,
AKA JUG CAPRI PORTER,

DEFENDANT,

REPORTER'S TRANSCRIPT

OF

EVIDENTIARY HEARING

BEFORE THE HONORABLE JUDGE JOHN MCGROARTY
DISTRICT COURT JUDGE

DATED MONDAY, MARCH 8, 2004

FOR THE PLAINTIFF: LISA LUSAICH -AND- DOUGLAS HERNDON

FOR THE DEFENDANT: CURTIS BROWN -AND- JOSEPH ABOOD

REPORTED BY: PEGGY ISOM, RMR, CCR NUMBER 541

RECEIVED

MAR - 9 2004

COUNTY CLERK

1 APPEARANCES:

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16 * * * * *

1 LAS VEGAS, NEVADA; MONDAY, MARCH 8, 2004

2 11:20 A.M.

3 P R O C E E D I N G S

4 * * * * *

5 THE COURT: Let the record reflect this is the
6 time set for hearing in the matter of state versus
7 Justin Porter. Let the record reflect the presence of
8 the defendant, his attorneys, the state's attorneys,
9 the absence of the jury because it's a motion.

10 MS. LUSAICH: Because we haven't picked one
11 yet.

12 THE COURT: No. I said it's a motion hearing.
13 Counsel, call your first witness.

14 MS. LUSAICH: State would call Detective Kris
15 Kato.

16
17 KRISTON KATO

18 Having been first duly sworn to tell the
19 truth, the whole truth and nothing but the
20 truth, testified as follows:

21 THE CLERK: Would you state your name and
22 spell your last name for the record, please.

23 THE WITNESS: Detective Kriston Kato,
24 K-a-t-o. Chicago police department.

1 MS. LUSAICH: K-a-t-o?

2 THE WITNESS: That's correct.

3 MS. LUSAICH: And Chris C.

4 THE WITNESS: K-r-i-s-t-o-n.

5 MS. LUSAICH: May I inquire?

6 THE COURT: Yes, you may.

7 BY MS. LUSAICH:

8 Q. Sir, are you a detective with the Chicago
9 Police Department?

10 A. Yes, ma'am, I am.

11 Q. How long have you been with Chicago Police
12 Department?

13 A. Twenty-eight years.

14 Q. And what area of the detective bureau do you
15 work these days?

16 A. Area four, violent crimes.

17 Q. How long have you been with violent crimes?

18 A. Eighteen years.

19 Q. And what does violent crimes entail?

20 A. We handle the homicides, the aggravated
21 batteries, robberies and sex cases.

22 Q. And do you sometimes get called upon to assist
23 other jurisdictions when requested?

24 A. Yes, ma'am.

1 Q. Specifically in August of the year 2000 were
2 you asked to assist the Las Vegas Metropolitan Police
3 Department in apprehending a suspect?

4 A. That's correct.

5 Q. And how did that come to you?

6 A. Through my supervisors. They informed me that
7 they were in touch with Las Vegas Police Department and
8 they had information where a person they were looking
9 for was located.

10 Q. And that would be in Chicago?

11 A. In Chicago.

12 Q. Okay. And would that have been on or about
13 August Eleventh of 2000?

14 A. That's correct.

15 Q. When you got the information from your
16 supervisors -- when you got the information from your
17 supervisors what did you do?

18 A. We went to one of the locations they had
19 provided us and located the defendant.

20 Q. Okay. When you say we, who is we?

21 A. My partner and I and several assist units.

22 Q. Who specifically is your partner that you're
23 referring to?

24 A. Detective Cirone.

1 Q. Could you spell Cirone for our court reporter?

2 A. C-i-r-o-n-e.

3 Q. And when you say several assist units,
4 approximately how many individuals would have gone to
5 this residence?

6 A. I believe approximately eight people.

7 Q. Okay. And were they all detectives who went?

8 A. Yes.

9 Q. Would you have been in plain clothes, I mean,
10 fairly similar to the way you're dressed now?

11 A. That's correct.

12 Q. Nobody in uniform?

13 A. No, ma'am. Not that I recall.

14 Q. And would you all have been driving unmarked
15 vehicles?

16 A. Yes, that's correct.

17 Q. Are your unmarked vehicles fairly well known
18 anyway in Chicago?

19 A. Yes, ma'am, they are.

20 Q. And when you went to this location in Chicago,
21 did you have the name of the person you were looking
22 for?

23 A. Yes, we did.

24 Q. And what is that name?

1 A. Justin Porter.

2 Q. Did you know anything else about Justin Porter
3 at that point?

4 A. Physical description.

5 Q. Age?

6 A. Basically, yeah, and age.

7 Q. And did you know anything about the crimes
8 that he was alleged to have committed?

9 A. Yes.

10 Q. And what did you know at that point?

11 A. They were described to me as home invasions,
12 sex crimes, and murder.

13 Q. Okay. So when you and fellow detectives went
14 to this location. Was it a home? I mean, a house, or
15 an apartment?

16 A. It was an apartment.

17 Q. What did you do when you got there, the
18 collective all of you?

19 A. I specifically went to the front door of the
20 second floor apartment and other -- the other units
21 went to either the side and the back door of the
22 building.

23 Q. Do you know how many individuals were at the
24 front door?

1 A. I believe four.

2 Q. And when you went to the front door, did you
3 knock?

4 A. Yes, ma'am.

5 Q. What time of day was it?

6 A. It was approximately quarter to one in the
7 morning.

8 Q. So would this have been into August Twelfth of
9 2000?

10 A. That's correct.

11 Q. And you knocked on the door?

12 A. Yes.

13 Q. Did you announce who you were or anything like
14 that?

15 A. Yes. We announced that we're the police, and
16 then identified ourselves when the person opened the
17 door.

18 Q. Okay. So somebody answered the door?

19 A. Yes.

20 Q. Man? Woman? Child?

21 A. It was a lady.

22 Q. A older lady? Younger lady?

23 A. Younger, 40.

24 Q. I guess that was a relative question. Okay.

1 A. Approximately 40 years. Okay.

2 Q. A 40ish year old woman?

3 A. Yes.

4 Q. Did you have to kick the door in?

5 A. No.

6 Q. She let you -- opened the door?

7 A. She opened the door.

8 Q. Were -- what -- are you the one who was
9 physically standing there face to face with her?

10 A. Yes.

11 Q. Did you have a gun drawn?

12 A. No, ma'am.

13 Q. You said there may have been four detectives
14 there. Would somebody have had a gun drawn?

15 A. When our -- we requested to see if Justin
16 Porter was at home. And the way she indicated to us is
17 with her eyes she stated, nothing, but looked in toward
18 the living room that indicated to us that he was home.
19 Some people might have drawn their weapons at that
20 time.

21 Q. Okay. So at that point that you were standing
22 in the door and the door was still closed, nobody had
23 weapons drawn?

24 A. Not to my knowledge, no.

1 Q. Okay. And is the front of the apartment --
2 does it overlook the street, like, if you're standing
3 in -- once you went inside, could you tell -- if you're
4 standing, like, at the front window of the apartment
5 can you see the street?

6 A. Yes. There were windows to the street area,
7 yes.

8 Q. So it would have been possible to see you guys
9 arriving?

10 A. Yes, very possible.

11 Q. And I expect you made a little bit of noise as
12 you all pulled up and got out?

13 A. Well, I don't know that.

14 Q. Okay. So you said that this woman gave you
15 some signal with her eyes. Where did she signal you
16 with her eyes?

17 A. Toward the front room where there was living
18 room furniture located.

19 Q. And when you saw that, what did you do?

20 A. We went to that front room and noticed that
21 Justin Porter, we didn't know at the time, was Justin
22 Porter, hiding under or in between the couch and the
23 wall.

24 Q. Okay. So you noticed an individual hiding

1 between the couch and the wall?

2 A. Yes.

3 Q. And at the time that you saw this individual
4 between the couch and the wall, where were you
5 standing?

6 A. I was standing directly in front of the couch
7 and I pulled the couch away from the wall.

8 Q. Okay. And how many detectives would have been
9 standing near the couch at the time the couch was
10 pulled away from the wall?

11 A. Whoever was with me, would probably be three
12 other officers.

13 Q. Okay. And was your gun drawn?

14 A. No.

15 Q. Could you see your partner, Detective Cirone?

16 A. Yes. He was standing next to me.

17 Q. Was his gun drawn?

18 A. No, it was not.

19 Q. Did you know or did you personally see whether
20 any gun was drawn?

21 A. I did not see, but there probably was somebody
22 who had a weapon drawn.

23 Q. And that would be for what purpose?

24 A. Because at the time we could not see his

1 hands.

2 Q. Officer safety?

3 A. That's correct.

4 Q. Okay. And when you pulled -- when you -- when
5 somebody pulled the crouch away from the wall and you
6 saw that person hiding back there, what was said by you
7 or police officers?

8 A. We gave -- I gave verbal commands to see his
9 hands. At which time he complied. Told him to put his
10 hands behind his back, and my partner Detective Cirone
11 handcuffed the individual that was still kneeling on
12 the floor.

13 Q. Okay. And he was cooperative?

14 A. Yes.

15 Q. You see that person here in court today?

16 A. Yes, I do.

17 Q. Can you describe where he's sitting and an
18 article of clothing he's wearing?

19 A. Wearing a dark blue shirt, V neck.

20 MS. LUSAICH: Record reflect the
21 identification of the defendant?

22 THE COURT: Yes.

23 BY MS. LUSAICH:

24 Q. At the time that you went to this location did

1 you have a warrant for the defendant's arrest?

2 A. I was informed there was a warrant, yes.

3 Q. Okay. So the defendant is handcuffed. And at
4 that point did you indicate to him that he was under
5 arrest for that warrant?

6 A. Yes, ma'am.

7 Q. Did you say anything to him about the nature
8 of the charges that he was under arrest for?

9 A. I did not.

10 Q. When he -- when you pulled the couch out and
11 he was there, how did he react?

12 A. He just complied. He did not react in any
13 unusual manner. It wasn't -- he was startled or
14 anything, he was just kneeling behind a couch. And
15 when we pulled it out, he did not make any sudden moves
16 or anything.

17 Q. Okay. Did he say anything to you while in the
18 apartment?

19 A. No, he did not.

20 Q. When you took him from the apartment, where
21 did you go?

22 A. We escorted him to the vehicle that was parked
23 in front of the house.

24 Q. And where from there did you go?

1 A. We drove to area four and escorted him up to
2 the violent crimes office.

3 Q. So to the police station, basically?

4 A. Correct.

5 Q. Whose vehicle did he drive in?

6 A. I believe it was mine.

7 Q. And would it have been you and Detective
8 Cirone in the vehicle?

9 A. Correct.

10 Q. Okay. As you -- did you at some point look
11 through the apartment to see who, if anybody else, was
12 present?

13 A. I did not. As soon as Justin Porter was
14 apprehended, I escorted him outside.

15 Q. Are you aware, was there anyone other than the
16 woman who answered the door and the defendant in the
17 apartment?

18 A. I was told no one else beside the woman was
19 there.

20 Q. So somebody would have checked the apartment
21 to make sure it was safe?

22 A. Some remained and talked to the woman.

23 Q. Okay. Do you know who the woman was?

24 A. No, I do not.

1 Q. Okay. When you went back to the police
2 station in the vehicle with him, was there any
3 conversation?

4 A. No, ma'am.

5 Q. You didn't say anything to him about the
6 nature of the charges, anything along those lines?

7 A. I did not.

8 Q. Did he -- well, did your partner?

9 A. No, he did not.

10 Q. Did the defendant ask any questions while in
11 the vehicle?

12 A. Not in the vehicle, no.

13 Q. Was there any small talk about the defendant
14 in the vehicle?

15 A. Not that I recall.

16 Q. But when you got back to the police station,
17 where did you take him?

18 A. Up to the second floor and into an interview
19 room.

20 Q. And is it -- when you got to the interview
21 room, what did you do with him?

22 A. I took the handcuffs off and explained to him,
23 at that time, that he'd be remaining in there, and if
24 he needed anything to knock on the door.

1 Q. Okay. So up until then, he was handcuffed,
2 but you took them off in the interview room?

3 A. That's correct.

4 Q. Can you tell me what's in the interview room?

5 A. The interview he went into, there was a couple
6 of chairs and a table.

7 Q. Okay. Is there a telephone in there?

8 A. No, ma'am.

9 Q. Telephone book in there?

10 A. No.

11 Q. And you said you uncuffed him?

12 A. That's correct.

13 Q. Was he ever cuffed again while in the
14 interview room?

15 A. Not while I was present, no.

16 Q. Okay. You said you told him that if he wanted
17 anything to knock. So does that mean he was not able
18 to leave the interview room?

19 A. The door closes and locks from the outside.
20 He could not leave.

21 Q. Okay. Did he ask could he see his father or
22 mother or anybody along those lines?

23 A. No, ma'am.

24 Q. When you left the interview room, what did you

1 do?

2 A. I then talked to my supervisor and attempted
3 to get as much information as I could on the actual
4 crimes that he committed in Las Vegas.

5 Q. And were you able to get some information?

6 A. Yes, I did.

7 Q. What -- where did you get the information from?

8 A. From my supervisor.

9 Q. From documents?

10 A. Yes. They were faxed over to him.

11 Q. Okay. Is it your understanding that Las Vegas
12 faxed some documents to your supervisor?

13 A. That's correct. Whatever they had, we had in
14 the violent crimes office, and I read the document.

15 Q. Okay. So whatever documents Las Vegas faxed
16 over, you read?

17 A. That's correct.

18 Q. And for what purpose did you read them?

19 A. I was going to have an interview and see if he
20 would elaborate on any of the investigations that they
21 sent over on the fax.

22 Q. Okay. Did you go back into the room at some
23 point?

24 A. Yes, I did.

1 Q. For how long a period of time were you out of
2 the room, do you know, about?

3 A. Approximately half an hour or so.

4 Q. So do you know about what time it was that you
5 went back in the room?

6 A. It was probably approximately one-thirty in
7 the morning.

8 Q. When you went back in the room, were you alone
9 or were you with anyone?

10 A. I was with Detective Cunningham.

11 Q. And when you went into the room with Detective
12 Cunningham was he also in plain clothes?

13 A. Yes, he was.

14 Q. Did he -- when you went back in the interview
15 room, did you have a gun with you?

16 A. No, I did not.

17 Q. Did detective Cunningham have a gun with him?

18 A. No, he did not.

19 Q. And would it be your practice when you go in
20 the interview room not to bring a weapon?

21 A. That's correct.

22 MS. LUSAICH: Sorry, Judge.

23 BY MS. LUSAICH:

24 Q. When you went back in the interview room what,

1 if anything, did you tell the defendant or say to the
2 defendant?

3 A. Advised him of his rights.

4 Q. I'm sorry. When you read him his rights, did
5 you do it from memory or do you have a department issue
6 card in Chicago?

7 A. We do, but I do it from memory.

8 Q. And could you recite them for the judge as you
9 recited them for the defendants?

10 A. Sure. I advised him he had the right to
11 remain silent, anything he said would be used against
12 him in a court of law. And that he had the right to
13 have an attorney present during any questioning. If
14 you couldn't afford one, one would be appointed for
15 him.

16 Q. Did he indicate to you that he understood
17 those rights?

18 A. Yes, he did.

19 Q. Did he indicate to you whether or not he
20 wanted to speak with you?

21 A. He stated he wanted to talk.

22 Q. He stated he wanted to talk?

23 A. Yes, ma'am.

24 Q. So what was the nature of your conversation

1 after that?

2 A. I then had to explain to him what he was there
3 for.

4 Q. And how did you explain that to him?

5 A. I mentioned crimes that were committed in Las
6 Vegas, and he indicated that he understood.

7 Q. What did he tell you?

8 A. That I gave specific dates to, I started from
9 the most recent at which time he stated he did not
10 remember any dates. But he remembered certain
11 incidents. So I explained to him what I knew about
12 it. And when I mentioned a specific item that was
13 taken in the, I believe, the June incident, he stated
14 he remembered that and gave a brief summary of what he
15 remembered of that incident.

16 Q. And do you recall what he told you in that
17 brief summary?

18 A. Yes. He stated that the door was ajar. And
19 that he did not force it open. It pushed open.

20 And that a woman that was present inside the
21 apartment, was attracted to him when he entered.

22 He had consensual sex and took some items, put
23 them in a baby stroller. I believe it was a C.D. and
24 another recording device and placed it in the

1 stroller. He had left with the -- pushing the stroller
2 with the other items in the stroller.

3 And at some point down the street he left them
4 on the side. And when he came back -- he left it for a
5 few minutes. He came back, he said the stroller was
6 gone with the items.

7 Q. Do you remember him telling you what the
8 demeanor of the lady inside the apartment was?

9 A. Just that she acted like she liked him.

10 Q. Did she tell -- did he tell you that the lady
11 inside the apartment was afraid and told him that she
12 would do anything if he promised not to harm her?

13 A. I believe so, yes.

14 Q. Okay. That was the June -- and you know what
15 I forgot to ask? You said that you've been with the
16 Chicago Police Department for twenty-eight years?

17 A. That's correct.

18 Q. In Chicago at what age is an individual
19 considered to be an adult?

20 A. Seventeen years old.

21 Q. Okay. And you were under the impression that
22 the defendant was, in fact, seventeen at the time?

23 A. Yes. We had his birth date.

24 Q. And, therefore, was an adult in Chicago?

1 A. That's correct.

2 Q. Okay.

3 Sorry, didn't mean to digress there.

4 You said you talked about a June incident.

5 Did you talk about other incidents?

6 A. Yes, I did. And he would indicate that he
7 doesn't remember the date and would indicate in some,
8 some way that he remembered by either the age of the
9 victim or the -- at one point he said he remembered a
10 Spanish woman. And things like that. That's how we
11 pinpointed each incident by certain acts that he
12 remembered.

13 Q. Okay.

14 A. That he remembered.

15 Q. Did you talk with him about an incident that
16 you believed occurred on May Sixteenth of 2000?

17 A. Yes. We talked about all the incidents that
18 we were aware of.

19 Q. Did the May Sixteenth incident have something
20 to do with a potential possible meat cleaver?

21 A. Yes. There was a meat cleaver mentioned in
22 the information we had. He denied having a meat
23 cleaver.

24 Q. Did he admit, however, although he denied a

1 meat cleaver, did he describe a different type of
2 weapon he used in that instance?

3 A. In just about every incident that he
4 remembered, the weapon that he said was used was a
5 knife that he obtained from the kitchen and never
6 brought a weapon into the apartment. It was always
7 obtained from inside the apartment. A kitchen knife.

8 Q. Okay. So in the May Sixteenth incident, did
9 he tell you that he asked the woman to take her clothes
10 off. And after she complied he had vaginal sex with
11 her once?

12 A. That's correct.

13 Q. Did he tell you about taking \$5 off of her
14 dresser?

15 A. That's correct.

16 Q. And that he described that weapon not as a
17 meat cleaver, but as a small steak knife?

18 A. Yes.

19 Q. That he obtained from the kitchen?

20 A. Yes.

21 Q. Okay. Did he also talk with you about an
22 incident in April?

23 A. Yeah. The April one I believe he remembered
24 because of the age, age of the victim. He told me that

1 she reminded him of his mother.

2 Q. Did he tell you how he felt about that?

3 A. Yes. He felt bad about what he did to her.

4 Q. Did he describe how he got into her apartment?

5 A. I believe he never forced his way into to any
6 of the apartments according to him. He said the door
7 was probably ajar.

8 Q. Did he also indicate that he believed he may
9 have broken the chain that secured the door?

10 A. Yeah. At one, I believe it was the April
11 incident where the chain was on, but the door was open.

12 Q. Did he tell you that the woman was very nice?

13 A. Yes.

14 Q. And that when they sat down on the bed the
15 lady said she would do anything he wanted?

16 A. That's correct.

17 Q. And what did he do when she told him that?

18 A. He stated that he took his penis out, and that
19 she gave him oral sex.

20 Q. How did he state --

21 A. He didn't like it.

22 Q. Did he describe where that person lived?

23 A. Yeah. I believe that's the one where he
24 stated he remembered she lived close to the Showboat.

1 Q. Did he say something about obtaining something
2 from the kitchen?

3 A. Yes. I believe he obtained a kitchen knife.

4 Q. Did he take anything?

5 A. Yes, he did. But I can't recall what it was
6 from her.

7 Q. Did you generate a report at or near the time
8 that this interview took place?

9 A. Yes, ma'am.

10 Q. Would it refresh your memory to look at that
11 report?

12 A. The older woman, I believe he took a white
13 car. I'm --

14 Q. Well, do you have a copy of the report?

15 A. Yes. No, I don't.

16 MS. LUSAICH: Can I approach, Judge?

17 THE COURT: You may.

18 BY MS. LUSAICH:

19 A. He stated that she gave him \$50. And that she
20 also gave him a ring off her finger.

21 Q. What, if anything, did he tell you he did with
22 the ring?

23 A. He stated that he threw it as soon as he got
24 outside the apartment. He threw it away.

1 Q. Why is that?

2 A. I believe he was stating he felt bad about
3 taking it.

4 Q. Did he say he didn't like the ring and threw
5 it away?

6 A. Yes.

7 Q. What about, you mentioned earlier a car. Was
8 there something about a car involved in this?

9 A. Yes. She gave him car keys, and he described
10 her car as being white.

11 Q. And what did do with it?

12 A. He drove it about half a block, and then he
13 realized what he had done, became afraid, and he got
14 out of the car and left it parked.

15 Q. Okay. Did you also talk with him about an
16 incident that occurred in March?

17 A. Yeah. Yes. I believe that was the one he
18 remembered as being Spanish, of Spanish decent.

19 Q. And what did he say happened there?

20 A. Door was open again. She was attracted to
21 him. He had vaginal sex. And he denied taking any
22 vehicle. And he obtained the weapon which was a knife
23 from her kitchen.

24 Q. Okay. Then finally did you talk with him

1 about a second incident that occurred in March?

2 A. Yeah. That was earlier in March. That's the
3 one he described as having consensual sex once, and
4 that he wanted -- she liked him, so she wanted it a
5 second time. And she got mad at him, so he got angry
6 at her, obtained a knife from the kitchen again, and
7 poked her twice he said. He didn't believe he poked
8 her too hard, but he saw blood. But then he stated she
9 got sick, ran to the bathroom, and was becoming sick in
10 the bathroom.

11 He got scared what he did and stated he lit a,
12 I think, a blanket. Yeah, he lit a blanket with a
13 match on fire, and that was on the bed in the bedroom.
14 Then he throws a match on a rug, and then he left the
15 apartment. He denied using scissors as a weapon. He
16 denied strangling her.

17 And he did not -- in this incident did not
18 take anything from the apartment.

19 Q. Did he say anything to you about having been
20 in her apartment once before?

21 A. Yes, he did.

22 Q. And how did he describe that?

23 A. He said he used a phone. I believe he used a
24 phone in her apartment before.

1 Q. And that she had allowed him entry that time
2 before?

3 A. That's correct.

4 Q. A moment ago you said that he wanted -- or he
5 wanted to have sex a second time but she became angry?

6 A. Well, he said that she was no longer attracted
7 to him because of whatever reason, but she was
8 attracted to him the first time.

9 Q. And that made him angry not being attracted to
10 him the second time?

11 A. The second time he became angry because he
12 believed she was no longer attracted to him.

13 Q. And are those all the incidents that he
14 described to you during that interview?

15 A. That's the ones he remembered. He didn't
16 remember the February First incident.

17 Q. Excuse me. I'm sorry.

18 A. And nothing would refresh his memory on that
19 one.

20 Q. Okay. Now as you were having this interview
21 with him, were you asking him questions, and that he
22 was giving you answers? Or was he volunteering
23 information?

24 A. He volunteered once he remembered.

1 MS. LUSAICH: Excuse me, judge. I'm sorry.

2 THE COURT: It's all right.

3 MS. LUSAICH: Can I have a second?

4 THE COURT: Bill, do we have water? She's got
5 water right there.

6 MS. LUSAICH: I'm just going to -- I have
7 throat lozenges.

8 BY MS. LUSAICH:

9 Q. Now, approximately how long did this interview
10 take?

11 A. It was approximately forty-five minutes.

12 Q. And were you and detective Cunningham the only
13 ones in the room with him the entire time?

14 A. That's correct.

15 Q. No guns drawn the entire time?

16 A. No, ma'am.

17 Q. Were any threats made to him at any time?

18 A. No, ma'am.

19 Q. Did you ever tell him anything to the effect
20 of, oh, you're from Chicago, you know that people from
21 Chicago sometimes go down to the docks and get their
22 ass whooped?

23 A. No, ma'am.

24 Q. Was there any threat of a use of a phone book

1 to brutalize him so that it would leave no evidence?

2 A. No, ma'am.

3 Q. Did you ever tell him that the crimes that he
4 committed would be considered petti in Chicago?

5 A. No.

6 Q. Did you ever tell him that he'd probably get
7 probation if he would admit to those crimes?

8 A. No, ma'am.

9 Q. Did he ever ask you to speak with his father
10 or mother, any parental type person?

11 A. No, he did not.

12 Q. Was one of his parents in the station house at
13 all?

14 A. No, not that I was aware of.

15 Q. Not father, not mother, not stepmother?

16 A. No, ma'am.

17 Q. After your approximately forty-five minute
18 interview took place, what did you do?

19 A. We left the interview room and contacted the
20 Las Vegas Police Department.

21 Q. When you left the interview room did you cuff
22 him again or left him uncuffed?

23 A. He was never cuffed in my presence.

24 Q. Okay. And so approximately what time was it

1 by now?

2 A. Sometime after two o'clock in the morning.

3 Q. Okay. And did you stay the rest of the night
4 or did you go home?

5 A. No. We didn't stay much longer after our
6 first interview and contacted Las Vegas.

7 Q. So you left?

8 A. That's correct.

9 Q. And would it be, maybe not your habit, but is
10 it something that happens frequently that a person may
11 be left in the interview room when you leave?

12 A. Yes, ma'am.

13 Q. And when you leave, do you tell anybody that's
14 there? What, if anything, to do with this person?

15 A. Well, I instructed the individual, which was
16 Justin, that I was leaving and that all he had to do if
17 he needed anything was to knock on the door. And that
18 our supervisor was informed of the fact that we were
19 leaving and that Justin was in the room. He -- they
20 answer the door if they knock.

21 Q. Okay. So if he were to knock on the door,
22 somebody would answer it?

23 A. That's correct.

24 Q. But it would not be a practice for anybody

1 else to just go in there and chat with him?

2 A. No. Our supervisor is then responsible for
3 whoever is left in the rooms.

4 Q. Okay. Did you then have further contact with
5 him later that day?

6 A. Yeah. We returned back approximately three
7 o'clock in the afternoon because we were told Las Vegas
8 Police Department was coming to Chicago to interview
9 Justin.

10 Q. Okay. So at three o'clock when you got to the
11 station was he still in the interview room?

12 A. Yes, ma'am.

13 Q. And did you go in and have contact with him?

14 A. Yes.

15 Q. What was his demeanor at that point?

16 A. He was still alert, very calm.

17 Q. Did he complain to you that he had been poorly
18 treated?

19 A. While we were gone?

20 Q. Yes.

21 A. No, he did not.

22 Q. Did he complain to you that they wouldn't let
23 me use the bathroom?

24 A. No, ma'am.

1 Q. Did he explain to you, they wouldn't let me
2 eat?

3 A. No. He did not complain at all.

4 Q. Did he say anything like, they wouldn't let me
5 talk to my dad?

6 A. No, ma'am.

7 Q. And when you went back in the room, did you
8 have further conversation with him?

9 A. I readvised him of his rights, and he stated
10 he still understood those same rights I gave him
11 earlier. And then just informed him that Las Vegas
12 Police Department was coming to talk to him. And he --
13 I -- we just went through the same basically the same
14 conversation we had earlier. And he reiterated the
15 same things. We left. Las Vegas Police Department
16 showed up shortly after that.

17 Q. Okay. When you went back in the room later
18 that day around three in the afternoon, who was with
19 you at that point?

20 A. My partner Detective Cirone at that time.

21 Q. Okay. And when you told the defendant that
22 the Las Vegas police were coming, what was his response
23 to that?

24 A. Like he expected that to happen, and he was

1 fine with it.

2 Q. Did he say anything like, no, I don't want to
3 talk to them?

4 A. No, he did not.

5 Q. And I'm sorry. I forgot to ask you. When you
6 had received information from the Las Vegas
7 Metropolitan Police Department about the crimes that
8 the defendant had committed, the questions that you
9 asked him were about sexual assaults, or the
10 conversations that you had were about sexual assaults,
11 did you have any paperwork relating to robberies or
12 homicides?

13 A. They were just brief descriptions of the
14 sexual assaults, I believe.

15 Q. So everything was sexual assault that you had?

16 A. I believe so, yes.

17 Q. Okay. Thank you.

18 MS. LUSAICH: I pass the witness.

19 MR. ABOOD: Thank you, Judge. You mind if I
20 keep my seat?

21 THE COURT: No. Go ahead.

22

23 CROSS EXAMINTION

24 BY MR. ABOOD:

1 Q. Welcome to Las Vegas, Detective Kato.

2 A. Thank you, Counsel.

3 Q. You've been prepared for your testimony here
4 today; is that right?

5 A. Yes. I read this report prior to coming to
6 this court.

7 Q. In other words you read your report?

8 A. That's correct.

9 Q. You also read our motion?

10 A. No, I did not.

11 Q. You were informed by the district attorney's
12 of the allegation that Mr. Porter has made against you?

13 A. That's correct.

14 Q. You testified in hearings just like this one
15 numerous times in the past, correct?

16 A. That's correct.

17 Q. This isn't the first time that you have been
18 accused of brutalizing people during interrogations; is
19 that correct?

20 A. That's correct.

21 Q. I want to talk to you about the arrest of
22 Justin Porter on the Twelfth of August, 2000?

23 My understanding is that Metro detectives
24 requested -- our detectives from here requested that he

1 be arrested for various home invasions and sexual
2 assaults; is that right?

3 A. And murder.

4 Q. They mentioned a murder to you as well?

5 A. That's correct.

6 Q. But they didn't provide you any information on
7 the murder case?

8 A. I didn't have it when I went to that address
9 to locate Justin, no.

10 Q. Who was it, specifically, that you spoke to
11 that gave you the information of the charges that he's
12 accused of?

13 A. Lieutenant Farrell.

14 Q. Farrell?

15 A. Yes. That's my lieutenant.

16 Q. Your lieutenant. Okay. Do you know who your
17 lieutenant spoke to get the information from our
18 detectives?

19 A. No, sir.

20 Q. Were you faxed an arrest warrant?

21 A. Not that I was aware of.

22 Q. So you never saw an arrest warrant?

23 A. No. I was informed there was a warrant,
24 though.

1 Q. That warrant itself as far, as you know, did
2 it or did it not spell out these incidents that you
3 ended up specking to Justin about?

4 A. I imagine it did, yes.

5 Q. But you never read it?

6 A. No.

7 Q. Now, you testified that someone eventually
8 provided you with some documents that spelled out six
9 specific incidents that you ended up questioning Justin
10 about; is that right?

11 A. That's correct.

12 Q. Do you have a copy of that document?

13 A. No, I do not.

14 Q. Did you ever have a copy of that document?

15 A. The one I read, yes.

16 Q. Was it a police report?

17 A. You know, I don't know. I don't know what
18 kind of official report it was.

19 Q. Did it look like an official record that said
20 on top, police report or continuation report?

21 A. I don't recall.

22 Q. You read this document, correct?

23 A. That's correct.

24 Q. Was it typed or was it handwritten?

1 A. It was typed.

2 Q. What did do you with that document after you
3 read it?

4 A. I don't recall.

5 Q. You didn't save it?

6 A. Did I, no?

7 Q. Did you -- do you recall throwing it out?

8 A. No, I don't recall.

9 Q. So as far as this judge knows, I mean, this
10 judge will never be able to see that document from you,
11 correct?

12 A. Not from me, no, sir.

13 Q. Now, my understanding is that you received or
14 you were -- you were told that Metro had requested that
15 Justin Porter be arrested sometime on the eleventh of
16 August, 2002, correct?

17 A. I believe that's when we obtained the first
18 information, was on the Eleventh.

19 Q. Do you recall what time of day it was that you
20 received that information?

21 A. It was late at night.

22 Q. On the Eleventh?

23 A. That's correct.

24 Q. You told the district attorney that you read a

1 document that had these allegations spelled out in them
2 so that you could conduct an interview; is that right?

3 A. That's correct.

4 Q. Now, Mr. Porter, at the time he was arrested,
5 he was a suspect; was he not?

6 A. Yes, sir.

7 Q. And you know the difference between an
8 interview and an interrogation, don't you?

9 A. No, sir.

10 Q. You don't know the difference?

11 A. No, sir.

12 Q. Okay. Did met -- did you have any phone
13 contact with Metro detectives in conjunction with this
14 information that you received about these incidents?

15 A. Did I -- no, sir.

16 Q. Did your supervisor, as far as you know?

17 A. Yes, sir.

18 Q. Did your supervisor indicate to you that Metro
19 wanted you to interview their suspect?

20 A. Me specifically?

21 Q. You or anybody else?

22 A. They wanted him to be interviewed, yes.

23 Q. Would it surprise you that detectives
24 testified here at a preliminary hearing that they had

1 no idea that he had been interviewed by Chicago
2 detectives?

3 A. Repeat that question.

4 Q. Would it surprise you that detectives here
5 testified at a preliminary hearing that they had no
6 idea that he had been interviewed by Chicago
7 detectives?

8 A. Yes, sir.

9 Q. That would surprise you?

10 A. Yes, sir.

11 Q. So if our detectives said that, they would be
12 wrong as far as you know?

13 A. I don't know which detective you're talking
14 about.

15 Q. Did your supervisor tell you which detective
16 requested that some Chicago detective interviewed their
17 suspect, on a Las Vegas incident?

18 A. I don't know, no.

19 Q. Would you have written that down?

20 A. No, sir.

21 Q. So we have no way of finding that out from you
22 at this time?

23 A. That's correct.

24 Q. Is there any reason that Mr. Porter was

1 arrested at twelve forty-five in the morning as opposed
2 to sometime during the day?

3 A. No, sir.

4 Q. Is it your practice to arrest people in the
5 middle of the night?

6 A. I had -- I've done it before, yes.

7 Q. You've done it numerous times; haven't you?

8 A. Yes, sir.

9 Q. In fact, on homicide cases it's almost always
10 the case that an individual is arrested very late at
11 night or early in the morning, correct?

12 A. I couldn't tell you specific times.

13 Q. Well, being a detective on the -- on the major
14 violators unit for the past eighteen years, you don't
15 have an experience you can tell this judge as to what
16 time of day you guys generally arrest these type of
17 individuals?

18 A. No, sir.

19 Q. You don't?

20 A. No, sir.

21 Q. Okay. You talk -- you told us a little bit
22 about the actual arrest. My guess is, obviously, that
23 you know about this. You were there, personally,
24 correct?

1 A. That's true.

2 Q. And you told this judge that at twelve
3 forty-five in the morning you knocked on the door?

4 A. Yes, sir.

5 Q. How long did you wait before the door was
6 kicked in?

7 A. The door was never kicked in.

8 Q. The front door of this apartment building also
9 had a locked door; is that right?

10 A. Not that I recall. The door to the building
11 was not locked, no.

12 Q. It was not locked?

13 A. That's correct.

14 Q. It was one of these doors that does lock; is
15 that right?

16 A. I don't recall, but it wasn't locked when we
17 went up.

18 Q. Okay. How long after you knocked on this door
19 did this woman that you described answer that door?

20 A. Very short time.

21 Q. Can you give me any better answer than that?

22 A. A very short time.

23 Q. Did you knock loudly?

24 A. No. She heard it and answered the door.

1 Q. You were aware at the time that you knocked on
2 this door, that you were looking for an individual who
3 had been charged in Las Vegas with a number of serious
4 crimes; is that right?

5 A. Charged? I don't know.

6 Q. Accused?

7 A. Accused, yes.

8 Q. Okay. Sexual assaults?

9 A. That's correct.

10 Q. Home invasions?

11 A. Yes, sir.

12 Q. Attempt murder?

13 A. Yes, sir.

14 Q. Murder?

15 A. Yes, sir.

16 Q. And, in fact, you were aware that this
17 individual is alleged also to have used weapons; is
18 that correct?

19 A. Yes, sir.

20 Q. Knives?

21 A. That's correct.

22 Q. Guns?

23 A. I wasn't specific with the weapons, but I knew
24 he used weapons.

1 Q. And you're telling this judge that you guys
2 just knocked on the door and waited for someone to
3 answer?

4 A. That's correct.

5 Q. Is that your normal practice when you're
6 trying to arrest someone who is suspected or accused of
7 murder?

8 A. Yes, sir.

9 Q. Now you told us that -- you told us that your
10 interrogation began at one-thirty; is that right?

11 A. Approximately one-thirty, yes.

12 Q. And you also told this judge that Mr. Porter
13 was Mirandized; is that correct?

14 A. Yes.

15 Q. I assume you have a signed Miranda card?

16 A. You assumed what?

17 Q. That you have a signed Miranda card?

18 A. No, sir.

19 Q. You've seen waiver of rights forms before,
20 haven't you?

21 A. Yes.

22 Q. In fact, you use them as a detective in
23 Chicago, don't you?

24 A. No, sir.

1 Q. You don't use them?

2 A. No, sir.

3 Q. You don't have suspects sign a waiver of
4 Miranda rights?

5 A. That's correct.

6 Q. You do not?

7 A. That's correct.

8 Q. Then this waiver of his Miranda rights must be
9 on tape somewhere; is that right?

10 A. Not that I'm aware of, no, sir.

11 Q. No audio tape? No video tape?

12 A. No, sir.

13 Q. Is that standard in Chicago?

14 A. Yes, sir.

15 Q. So in other words this judge has nothing to
16 assess whether or not you actually Mirandized our
17 client except your word; is that right?

18 A. On this specific case, yes, sir. On our cases
19 they're documented with a state's attorney's office?

20 Q. In other words your procedure in Chicago is
21 that once a confession has been made, a state's
22 attorney comes down and goes through a signed statement
23 with the suspect, correct?

24 A. No, sir. Confession doesn't have to be made

1 for a state's attorney to arrive --

2 Q. Or --

3 A. -- or to be notified.

4 Q. Let me do it step by step.

5 A. Yes, sir.

6 Q. You interview a suspect, correct?

7 A. Justin?

8 Q. No. Generally speaking you interview a
9 suspect?

10 A. Yes, sir.

11 Q. They, at some point, decide to confess,
12 correct?

13 A. In general? Or?

14 Q. Let's assume that, at some point, a suspect
15 you interview decides to confess?

16 A. Yes.

17 Q. Who types that statement, that confession?
18 Who puts that in written form?

19 A. It depends if that's what the individual
20 chooses. He could give a court reported statement,
21 handwritten statement, or video.

22 Q. Okay. So one of those is done, correct? At
23 that point, a state's attorney is contacted; is that
24 right?

1 A. A state's attorney gives them those options.
2 We do not.

3 Q. Okay. And then the state's attorney goes
4 through the specifics of that confession with the
5 individual; is that right?

6 A. That's correct.

7 Q. None of that happened in this case, correct?

8 A. That's correct.

9 Q. In other words the only information we have
10 about what Mr. Porter said is from you; is that right?

11 A. Well, what he told me is from me. What he
12 told Las Vegas Police Department, I don't know what
13 kind of document they have.

14 Q. Obviously, I'm talking about what he told
15 you.

16 A. Yes, sir.

17 Q. Okay. No video tape. No audio tape. No
18 written statement. Nothing like that?

19 A. That's correct.

20 Q. Now, you told this judge that Mr. Porter was
21 Mirandized; is that right?

22 A. Yes, sir.

23 Q. And you told this judge that he understood his
24 rights; is that correct?

1 A. Yes, sir, he did.

2 Q. Do you have any information, other than your
3 bald assertion, that he understood his right for this
4 judge to make a determination whether or not that's
5 true?

6 A. Just what he told me he understood those
7 rights.

8 Q. All right. So you asked him do you
9 understand?

10 A. Yes, sir.

11 Q. And he said?

12 A. He understood.

13 Q. Now, is it your belief that Metro detectives
14 asked that you question their suspect?

15 MS. LUSAICH: Asked and answered.

16 THE COURT: You can answer it again.

17 THE WITNESS: That they asked me to talk to
18 him?

19 BY MR. ABOOD:

20 Q. Is it your belief that Metro Detectives asked
21 that you or anyone in your position question their
22 suspect?

23 A. Yes, that's correct.

24 Q. And who -- who told you that to cause you to

1 believe that?

2 A. My lieutenant.

3 Q. Your lieutenant is -- what is his name, sir?

4 A. Farrell.

5 Q. Farrell?

6 A. That's correct.

7 Q. F-a-r-r-e-l-l?

8 A. Yes, sir.

9 Q. And is it your testimony to this judge that
10 Lieutenant Farrell told you that Metro wanted their
11 suspect questioned?

12 A. Interviewed, yes.

13 Q. Now, you obviously don't have any interest in
14 interviewing Mr. Porter about incidents that occurred
15 in Las Vegas; is that right?

16 A. Yes, sir, I do.

17 Q. What interest do you have?

18 A. Just to interview someone who was accused of
19 doing all these things.

20 Q. Why? He's not in your jurisdiction. He
21 didn't do it in your jurisdiction?

22 A. Doesn't matter to me.

23 Q. Because it's important to you to help solve
24 crime?

1 A. No. I like to know what he's thinking when
2 he's doing these things.

3 Q. So you wanted to know what Mr. Porter was
4 thinking when he did these things?

5 A. That's correct.

6 Q. So you didn't have any problem with your
7 lieutenant's request that you interview a suspect who
8 committed crimes outside of your jurisdiction?

9 A. No, sir.

10 Q. Was Mr. Porter, at any point, handcuffed to a
11 steel bar along a wall?

12 A. No, sir.

13 Q. You have in Chicago, in your substation rooms
14 that have steel bars running across the wall, correct?

15 A. That's correct. We have, like, rings on the
16 wall that you can place handcuffs onto individuals.

17 Q. Are there any steel bars there with the rings
18 attached?

19 A. To a bench, there's a bar to the bench. But
20 he was not in a room with a bench.

21 Q. Okay. Is it typical that you will handcuff
22 murder suspects to these steel rings or the steel bar,
23 that you just described for the judge?

24 A. If they're a danger to anyone or to

1 themselves, yes.

2 Q. Okay. But in this case that didn't happen; is
3 your testimony?

4 A. That's correct.

5 Q. Do you have any information for this judge
6 that Justin was ever provided food, water, sleep,
7 anything like that?

8 A. I gave him something to drink before I left.
9 But I'm not sure of who fed him. I know he was fed,
10 but I don't know who did.

11 Q. What was he fed?

12 A. I'm not sure, sir.

13 Q. How do you know he was fed?

14 A. There was bags of food.

15 Q. That you attribute to Justin?

16 A. It was in his room, yes.

17 Q. Now what time did -- you said the arrest
18 occurred at twelve forty-five, correct?

19 A. Yes, sir, approximately.

20 Q. You interviewed him at one-thirty in the
21 morning, correct?

22 A. Yes, sir.

23 Q. What time did you leave to go home, sir?

24 A. I don't recall.

1 Q. Three in the morning? Four in the morning?

2 A. It's possible.

3 Q. What time did you come back?

4 A. Approximately three o'clock in the afternoon.

5 Q. The next afternoon? You had --

6 A. The same afternoon, yes.

7 Q. You had an opportunity to sleep, eat, drink,
8 any of those things you wanted to do, correct?

9 A. Yes, sir.

10 Q. You have no idea whether or not Justin had
11 those same opportunities, correct?

12 A. While I was gone, that's correct.

13 Q. Okay. At what point in time were you informed
14 that Justin's father had shown up at the substation?

15 A. I was never informed.

16 Q. You have no information for this judge that
17 this man or this boy's father showed up while -- after
18 he was arrested?

19 A. That's correct.

20 Q. Do you have any information for this judge
21 that any relatives of Justin's showed up at that
22 substation after he'd been arrested?

23 A. I do not have that.

24 Q. Now you knew that Justin was a juvenile when

1 you arrested him, correct?

2 A. I knew he was seventeen.

3 Q. Apparently in Chicago that's not a juvenile?

4 A. That's correct.

5 Q. You knew in Las Vegas that it was?

6 A. No, sir.

7 Q. Nobody -- these detectives or nobody from Las
8 Vegas told you in advance that the person you were
9 about to arrest was a juvenile?

10 A. Only when they arrived did I learn that
11 seventeen was a juvenile here.

12 Q. You're aware of the Illinois Juvenile Court's
13 Act, aren't you?

14 A. I'm aware of it, yes, sir.

15 Q. Does it state something like a police officer
16 who arrested a juvenile must immediately attempt to
17 notify the suspect's parents and without unnecessary
18 delay take him to the nearest youth officer?

19 A. In our case, yes.

20 Q. That's what it says, correct?

21 A. Our juvenile act does, yes.

22 Q. And if he were a juvenile, those are steps you
23 would have had to have taken, correct?

24 A. That's correct.

1 Q. When you interrogated Justin, obviously, there
2 was no parent or youth officer present; is that right?

3 A. That's correct.

4 Q. You've already told this judge that no efforts
5 were made to memorialize this giving of his Miranda
6 warnings and his waiver; is that right?

7 A. That's correct.

8 Q. You, obviously, agree that the providing of
9 Miranda warnings is a critical step in an interview or
10 an interrogation procedure; is that right?

11 A. Critical.

12 MS. LUSAICH: Well, actually that calls for a
13 legal conclusion.

14 MR. ABOOD: Well, let me rephrase. I don't
15 want to waste any time on this.

16 THE COURT: Sure.

17 BY MR. ABOOD:

18 Q. Is it important to you, when you're taking a
19 statement from a suspect to a crime, to make sure that
20 the requirements of Miranda are strictly adhered to?

21 A. Yes, sir.

22 Q. Can you explain to the judge why it wasn't
23 important enough for you to make any notes of this
24 Miranda event in this particular case?

1 MS. LUSAICH: That assumes facts not in
2 evidence that he made no notes.

3 MR. ABOOD: I believe these facts are
4 abundantly in evidence.

5 THE COURT: Overruled.

6 Go ahead.

7 MS. LUSAICH: Well, no. He generated a
8 report. He says he made no notes. He generated a
9 report. He didn't tape record.

10 THE COURT: No. He's referring to a signed
11 Miranda waiver.

12 MR. ABOOD: Or recorded, Judge.

13 THE COURT: Or recorded.

14 MR. ABOOD: Or video taped or anything.

15 THE COURT: I agree.

16 Sir, it wasn't memorialized, correct?

17 THE WITNESS: That's correct.

18 THE COURT: The waiver was not memorialized?

19 THE WITNESS: That's correct.

20 THE COURT: Thank you.

21 BY MR. ABOOD:

22 Q. In this murder case where you're receiving
23 information from the suspect himself concerning sexual
24 assaults, attempt murders, murders, et cetera, didn't

1 that strike you as important to make sure you had taken
2 care of this Miranda issue, so we wouldn't have to be
3 talking about this?

4 A. It was up to Las Vegas Police Department.

5 Q. But, sir, you were there questioning their
6 suspect. They were not there; is that correct?

7 A. That's correct.

8 Q. So, again, did you think about it?

9 A. No, sir.

10 MR. HERNDON: Judge, at this point.

11 THE WITNESS: I didn't.

12 THE COURT: Sustained.

13 MR. HERNDON: Objection, it has been asked and
14 answered. Alls he's doing is, was it memorialized per
15 protocol in the Chicago Police Department.

16 THE COURT: Sustained.

17 BY MR. ABOOD:

18 Q. Now, just like the Miranda warning, the only
19 information that we have to support your assertion that
20 Justin admitted involvement in these incidents is your
21 general progress report; is that right?

22 A. That's correct.

23 Q. You say in this report concerning incident
24 number one, and, sir, I know you've got one with you.

1 You can look at it if you need to.

2 A. I have it right here.

3 Q. Okay. In the incident that alleged occurred
4 the Seventh of June, you make a statement along the
5 lines of, the door of the apartment was ajar; is that
6 correct?

7 A. That's correct.

8 Q. Is that a word that Justin Porter used?

9 A. No. All his incidents were the door was open
10 or slightly open. He never had to forcibly gain
11 entrance to the apartment.

12 Q. I'm sorry to interrupt, but I don't think you
13 understand my question. You use the word or you
14 attribute to Justin the statement along the lines to
15 the door of the apartment was ajar. What I'm asking
16 you is, is that a word that Justin Porter used?

17 A. No. That's my word.

18 Q. That's your word?

19 A. That's correct.

20 Q. You also said something like, Porter stated he
21 became sexually excited. Was that a word that Justin
22 used?

23 A. No. That's how I phrased it?

24 Q. You stated that he felt that the woman was

1 attracted to him. Was that a word that Justin Porter
2 used?

3 A. He just said that he believed that she liked
4 him.

5 Q. Is it fair for me to say that this isn't
6 Justin's statement; this is your statement; is that
7 right?

8 A. These are my summarizations of what Justin
9 told me.

10 Q. These are your interpretations?

11 A. That's correct.

12 Q. Of what Justin said?

13 A. That's correct.

14 Q. And since there are no recording, recordings
15 of this interview or interviews or anything along those
16 lines, even a handwritten statement by Justin himself,
17 this is all you've got, correct?

18 A. That's correct.

19 Q. Your testimony to this judge is that the way
20 this interrogation took place is that you would give
21 Justin various facts about each incident, and,
22 apparently, he would then remember what you were
23 talking about and admit the rest of the facts?

24 A. The best he remembered. I would keep giving

1 him whatever he needed to remember that specific
2 incident. Some cases it would be one thing, and some
3 incidents it would be more than two or three different
4 facts.

5 Q. And these two or three different facts that
6 you had to give Justin came from the fax that Metro
7 apparently sent to Chicago, correct?

8 A. That's correct.

9 Q. You saw this fax, correct?

10 A. Yes, sir.

11 Q. So we don't really know beyond the fact that
12 these are your words in your report and not Justin's.
13 We don't really know what facts you provided to Justin
14 in order for him to remember the rest of the alleged
15 incidents; is that right?

16 A. Well, just what I had specifically stated in
17 some of these statements what he remembered. He
18 remembered a Spanish decent. He remembered the older
19 woman by her age. He remembered the first incident
20 because of the baby stroller. Just --

21 Q. Is it your testimony that you recall exactly
22 which facts you had to give Justin in each one of those
23 incidents?

24 A. Do I recall?

1 Q. Is it your --

2 A. Yes, yes.

3 Q. -- testimony?

4 A. Yes, sir.

5 Q. So you recall every fact you had to give him?

6 A. Yes, sir.

7 Q. So you know in these reports that are all in
8 your -- or in these statements that are all in your
9 words, not Justin's, you know which parts came from you
10 and which parts came from him, correct?

11 A. No. I just gave him the specific.

12 Q. You don't know?

13 A. In each of these statements I put one sentence
14 of which fact he remembered.

15 Q. Sir, is your answer that you know or you do
16 not know?

17 A. Do I know what?

18 Q. Is your answer that you know exactly which
19 facts you had to give Justin so that we can separate
20 your information from Justin's information?

21 A. Yes, sir. I put it in the report.

22 Q. Okay. Now you've interviewed thousands of
23 suspects in the past, correct?

24 A. Yes, sir.

1 Q. You have extensive training in the
2 interrogation techniques?

3 A. I didn't -- just your initial school for
4 detectives when I first made it in nineteen eighty-six.

5 Q. So you don't go to any kind of follow ups that
6 teach you?

7 A. No, sir.

8 Q. You do?

9 A. No, sir.

10 Q. Okay. Now, obviously, as a detective you want
11 people to confess to crimes because there's no way in
12 the world that Chicago police can investigate every
13 single crime that occurs in Chicago; is that right?

14 A. Is the question, do I want them to confess?

15 Q. Yes.

16 A. Sure. Yes, sir.

17 Q. And, obviously, you agree that a suspect's own
18 confession can be the most powerful evidence in a
19 criminal case, correct?

20 A. Yes, sir.

21 Q. Do you have any explanation to this judge why
22 Justin was so willing to give up his Miranda rights and
23 answer your questions concerning these serious
24 offenses?

1 A. Do I.?

2 MS. LUSAICH: Calls for speculation

3 THE COURT: Sustained.

4 BY MR. ABOOD:

5 Q. Did you use any ploys or rouses to get him to
6 confess?

7 A. No, sir.

8 Q. And your testimony is, you didn't threaten him
9 physically or brutalize him in any way to get him to
10 confess?

11 A. No, sir.

12 Q. Your testimony is that you did not tell
13 Justin, in effect, that, hey, look, what you're
14 suspected of is pretty petti if it were done here in
15 Chicago. It could be easier for you if you just
16 admitted it?

17 A. That's right.

18 Q. You didn't say that?

19 A. That's correct.

20 Q. You didn't remind Justin what happens to
21 people that don't cooperate with detectives in Chicago?

22 A. No, sir.

23 Q. You didn't threaten him with a phone book?

24 A. No, sir.

1 Q. You'd never do anything like those things; is
2 that right?

3 A. That's correct.

4 Q. Now you're, obviously, aware that you have a
5 reputation in Chicago for getting confessions in
6 homicide cases that other detectives don't seem to get;
7 is that right?

8 A. No, sir.

9 Q. You're not aware of that reputation?

10 A. No, sir.

11 Q. Well, you're aware that there have been scores
12 of articles written specifically about you and your
13 interrogations techniques; is that right?

14 A. Yes, sir.

15 Q. You're aware of that?

16 A. Yes, sir.

17 Q. Chicago Tribune did a whole series on you?

18 A. That's correct.

19 Q. Wasn't very flattering was it?

20 A. Which one?

21 Q. Well, did they write an article called When Is
22 a Tough Policeman a Brutal Policeman where they
23 featured you?

24 A. I don't know which one that one is.

1 Q. You don't remember When Is a Tough Policeman a
2 Brutal Policeman?

3 A. No.

4 Q. You don't remember that one? Do you recall
5 this: Fine Line Between Tough Police Work and
6 Brutality; do you remember that one?

7 MR. HERNDON: Judge.

8 THE WITNESS: Is that the Tribune?

9 BY MR. ABOOD:

10 Q. Yes.

11 A. I don't remember the titles.

12 Q. You don't remember?

13 A. No.

14 Q. What about, Under Siege, Kris Kato Gets
15 Results as a Homicide Detective, and Murder Suspects
16 Say It's Because He Brutalizes Them?

17 MR. HERNDON: Judge, at this point I'm going
18 to object. You know I -- with all due respect to the
19 various reporters in the courtroom, you know what gets
20 in the papers isn't always what happens in a criminal
21 case to begin with. That's the first thing.

22 Secondly, I'm failing to find the relevance of
23 citing a bunch of newspaper articles from Chicago
24 papers about his interview with Justin Porter. I mean,

1 if there's some specific thing that they want to bring
2 up, they need to ask specific questions, did you do X,
3 Y, and Z?

4 MR. ABOOD: Judge.

5 MR. HERNDON: If they think there's a way to
6 bring in other witnesses to attack the credibility of
7 Detective Kato's statement to what they did in this
8 case, then that's fine. But Lexis nexus copies of
9 newspaper articles isn't relevant to this proceeding.

10 MR. ABOOD: I intend to get into specific
11 instances with him. If your Honor wants me to make a
12 record of the questions I intend to ask and the
13 information I have that backs them up, I'll be happy to
14 do that. But there's no jury here, Judge.

15 THE COURT: Goes to credibility.

16 MR. ABOOD: If he doesn't remember.

17 THE COURT: Goes --

18 MR. ABOOD: I'm sorry.

19 THE COURT: Goes to credibility. Go ahead.

20 MR. ABOOD: Thank you, Judge.

21 BY MR. ABOOD:

22 Q. Do you remember --

23 THE COURT: I agree because the jury is not
24 here.

1 MR. ABOOD: That's right. I agree. We intend
2 to have specific witnesses at trial, Judge.

3 THE COURT: I suspected.

4 BY MR. ABOOD:

5 Q. Do you remember this issue of the Chicago
6 Reader that had a big feature called: Good Cop, Bad
7 Cop. What Is It about Detective Kriston Kato That
8 Makes Murder Suspects So Eager to Confess?

9 A. I remember that one, yes, sir.

10 Q. Okay. Do you remember an article, said murder
11 conviction of teen overturned?

12 A. No, sir.

13 Q. Do you remember coercive and illegal tactics
14 torpedo scores of Cook Count murder cases?

15 A. No, sir.

16 Q. Do you remember: Officers Ignore Laws Set Up
17 to Guard Kids that featured you?

18 A. No, sir.

19 Q. Do you recall convicted killer seeks pardon
20 based on your interview technique?

21 A. No, sir.

22 Q. Do you recall appellate court decision which
23 found that you specifically lied in court concerning
24 your interview of the suspect in the case?

1 A. No, sir.

2 Q. Apparently, you don't keep a scrape book?

3 A. No, sir.

4 Q. By the way your cohort or the individual that
5 you claim that was with you, Detective Cunningham, when
6 you interviewed my client?

7 A. The first time, yes.

8 Q. And Detective Cunningham himself has also been
9 accused numerous times of brutality in interrogations;
10 is that right?

11 A. I don't -- I don't have any knowledge of that.

12 Q. You don't have any knowledge of that?

13 A. No, sir.

14 Q. Let's talk about some allegations that have
15 been made against you in the past concerning
16 brutalizing suspects into confessing to murder. Now
17 you agree you already told this judge you've been
18 accused of this dozens of times in the past, correct?

19 A. Yes, sir.

20 Q. And you agree you'll admit to this judge that
21 a number of persons who have been interrogated by you
22 and confessed to you have been found not guilty in
23 trial because their confessions did not match the
24 evidence? You agree with that, don't you?

1 MS. LUSAICH: Well, I would object.

2 THE COURT: Sustained.

3 MS. LUSAICH: He doesn't -- thank you.

4 BY MR. ABOOD:

5 Q. Do you remember a young man named Angelo
6 Rogers?

7 A. No, sir.

8 Q. You don't recall that he claimed that you kept
9 him awake and unfed overnight, and you physically
10 abused him, threatened him, and had him handcuffed to a
11 wall for hours?

12 A. No, sir.

13 Q. You don't recall that he was found not guilty
14 despite his confession to you by a jury?

15 A. I don't recall.

16 Q. What about Keith Washington; do you recall
17 him?

18 A. That name sounds familiar, yes, sir.

19 Q. What do you remember about Keith Washington?

20 A. I believe he killed a girl in an alley or in
21 his apartment and started the apartment on fire, I
22 believe.

23 Q. Do you recall telling him just to admit to the
24 killing and it would go better for him?

1 A. No, sir.

2 Q. When he refused to cooperate with you between
3 midnight and five-fifty in the morning, you slapped him
4 repeatedly, punched him, and kicked him in the chest;
5 do you remember that?

6 A. No, sir.

7 Q. He asked to speak to his mother, and you
8 didn't allow him to; do you remember that?

9 A. No, sir.

10 Q. Do you remember his confession being -- or his
11 conviction being overturned; do you remember anything
12 like that?

13 A. I believe so, yes, sir.

14 Q. You do remember his conviction being
15 overturned?

16 A. I believe so.

17 Q. And the basis of that overturning of his
18 conviction was your interrogation; is that correct?

19 MS. LUSAICH: Well, objection.

20 THE COURT: Sustained.

21 BY MR. ABOOD:

22 Q. What about Sean Hardy; do you remember, Sean
23 Hardy?

24 MR. HERNDON: Your Honor.

1 MR. ABOOD: I'm sorry.

2 MR. HERNDON: I want to relodge my objection
3 again to the relevance and the manner in which we're
4 doing this. The point seems to be the man has been
5 accused of improper interviews and stuff which he
6 admits. I don't see the relevance of now trying to up
7 drudge old names and go through questioning him as if
8 he's on trial for these old incidents as if we're
9 trying to establish them beyond a reasonable doubt in
10 some fashion.

11 The point to the court, apparently, he's been
12 accused of these things in the past. Regardless of
13 whether or not they're true is not going to be decided
14 here.

15 So, I mean, if they want to ask him, have you
16 been accused of chaining people to the wall? Have you
17 been accused of telling them these things to get them
18 to confess, and so forth to get these points out,
19 that's fine. But I really don't understand the process
20 we're going through now.

21 THE COURT: It does seem cumulative.

22 BY MR. ABOOD:

23 Q. You'll agree that there are numerous people
24 who have made similar allegations to the one I just

1 brought up with you, correct?

2 A. I don't know specific allegations.

3 THE COURT: He said similar.

4 THE WITNESS: Similar to the ones you
5 mentioned? Yes, sir.

6 BY MR. ABOOD:

7 Q. And you'll agree to this judge that a number
8 of your confessions have resulted in defendants being
9 found not guilty based on the interview technique,
10 correct?

11 A. No, sir.

12 MS. LUSAICH: Well, objection.

13 THE COURT: Sustained.

14 BY MR. ABOOD:

15 Q. Well, let me talk to you about an appeals
16 courts case. Do you remember a guy name Ezekiel
17 McDaniel?

18 A. That name sounds familiar.

19 Q. He was -- do you recall he was a minor?

20 A. Minor, no, sir.

21 Q. There was an appeals court decision rendered
22 in Chicago or in Illinois concerning, in 2001,
23 concerning Ezekiel McDaniel; is that right?

24 A. I don't recall.

1 Q. So there's an appeals courts decision that
2 specifically has your name in it and your interview
3 technique, and you don't recall it?

4 A. That's correct.

5 Q. Do you recall the appellate court of Illinois
6 concluding that you lied in trial concerning your
7 interview technique?

8 A. No, sir.

9 Q. And let me finish, and the defendant's desire
10 to see his mother; do you recall that?

11 A. No, sir.

12 Q. So they didn't conclude that you were
13 dishonest in your testimony before the jury?

14 A. About not allowing him to see his mother?

15 Q. Well --

16 MS. LUSAICH: Well, I would object. If he
17 doesn't remember the case, he certainly can't testify
18 to what, if anything, the Court concluded.

19 MR. ABOOD: Let me give the citation if you
20 don't mind for the record.

21 THE COURT: For the record.

22 MR. ABOOD: This is the People of The State of
23 Illinois versus Ezekiel McDaniel, appellate court of
24 Illinois, first district, third division, three

1 twenty-six, Illinois appellate third, seven 71. Seven
2 twenty-six, north east second 10 eighty-six. And it's
3 a published opinion. I think we can find it in Lexis
4 if anybody wants it.

5 I guess your testimony is, and the D.A. is
6 helping you here, that you don't have any knowledge of
7 this appellate court opinion; is that right?

8 A. They said I lied about letting him see his
9 mother? Is that what the -- that --

10 Q. Well, let me, do you have any recollection of
11 this appellate court decision?

12 A. Do you know what it's about?

13 Q. It's about a young fourteen year old who
14 claims that you brutalized him, you slapped him, you
15 kicked him, you hit him, and he asked to see his mother
16 numerous times, and you refused to allow him. And then
17 you testified to that in court. And the appeals courts
18 overturned his conviction saying, it's unbelievable
19 that the trial judge did not conclude that this
20 Detective was essentially lying to the jury?

21 A. About what?

22 MR. HERNDON: Objection, does it say he was
23 lying or essentially that he was lying?

24 MR. ABOOD: Well, no.

1 THE COURT: One at a time. One at a time.

2 MR. ABOOD: I'm not sure what the distinction
3 is.

4 THE COURT: Just a minute. Wait a minute.
5 Wait a minute. Wait a minute.

6 Counsel, you know she can't take down two
7 people talking at the same time. She's good, but not
8 that good.

9 MR. HERNDON: I apologize. He was just asking
10 is that true proper verbiage in this opinion be given
11 to the witness.

12 THE COURT: Hold it.

13 MR. ABOOD: Let me answer his question.

14 BY MR. ABOOD:

15 Q. Our review of the record shows that the; trial
16 court's factual findings were against the manifest
17 weight of the evidence. Significantly, the trial court
18 should have found that the defendant's mother asked to
19 see the defendant several times between two-thirty a.m.
20 and eight a.m., and that each time her requests were
21 denied.

22 It is not believable that the defendant's
23 mother waited at the area four police station for over
24 five hours, twice calling Officer Sykes for advice on

1 how she could see her son without asking to see the
2 defendant.

3 Moreover, if Detective Kato was not truthful
4 regarding Ms. McDaniel efforts to see defendant, then
5 the rest of his testimony is suspect as to
6 believability. Especially, the detective's assertion
7 that the defendant did not want his mother present
8 during his questioning; do you recall that?

9 A. No, sir.

10 MR. HERNDON: Well, Judge, I'll just state for
11 the record that I am not surprised by finding out that
12 that sounds distinctly dissimilar to what Mr. Abood
13 kept saying was represented in there. That the appeal
14 court said this man was lying and that he lied about
15 things that he did to the suspect, and that he lied
16 about things the suspect said to him.

17 THE COURT: Counsel, you made your point. I
18 agree. Thank you.

19 Go ahead.

20 BY MR. ABOOD:

21 Q. Are you proud of what the appeals court said
22 concerning you?

23 A. No, sir.

24 Q. That I just read?

1 MR. HERNDON: Objection.

2 MS. LUSAICH: Argumentative.

3 THE COURT: It's argumentative. Ad hominem.

4 BY MR. ABOOD:

5 Q. The Court said, essentially, that if you lied
6 about the defendant or that the defendant's mother
7 wanted to see him, if you lied about that, which they
8 concluded that you did, then the rest of your testimony
9 is suspect. They said that; didn't they?

10 MS. LUSAICH: Well, objection. You know, it's
11 been read into the record. He doesn't remember any of
12 it. The Court --

13 THE COURT: Sustained.

14 BY MR. ABOOD:

15 Q. By the way do you remember telling this judge
16 earlier that Justin never asked to see his father or
17 anybody else while you questioned him at the police
18 station?

19 A. That's correct.

20 Q. Let's talk about your experience with
21 juveniles like Justin. Isn't it true that between
22 nineteen ninety-one and two thousand and one,
23 seventy-one confessions involving children under the
24 age of sixteen have been thrown out by courts in

1 Chicago due to coercive confessions by your department?

2 MR. HERNDON: Judge, I'll object.

3 THE COURT: Sustained.

4 MR. HERNDON: If he's asking him questions
5 about himself then.

6 THE COURT: I said sustained.

7 MR. ABOOD: Your Honor, I believe that endemic
8 problems in the Chicago Police Department, of which
9 this detective is a member of, has been accused of
10 personally, are important to your Honor's analysis of
11 what happened to Justin.

12 THE COURT: I'll allow questions as to his
13 particular cases, but not as to the entire Chicago
14 Police Department.

15 BY MR. ABOOD:

16 Q. Do you have any experience or do you have any
17 knowledge that between nineteen ninety-one and two
18 thousand and one, two hundred and forty-seven cases
19 have been thrown out by your courts because of tainted
20 interrogation procedure?

21 MS. LUSAICH: Well, objection. Same
22 objection.

23 THE COURT: Sustained.

24 MR. ABOOD: Doesn't make any difference,

1 Judge. I'm asking him generally if he has any
2 knowledge.

3 MS. LUSAICH: Not relevant.

4 THE COURT: Sustained.

5 BY MR. ABOOD:

6 Q. You have personally obtained confessions of
7 men who were in jail when the crime occurred, correct?

8 A. I have -- repeat that.

9 Q. You have personally obtained confessions from
10 men who it turns out later were in jail when the crime
11 occurred?

12 A. No, sir.

13 Q. You haven't?

14 A. No, sir.

15 Q. You have personally obtained confessions from
16 men who were found not guilty by D.N.A. evidence later,
17 correct?

18 A. No, sir.

19 Q. No? You have --

20 A. No, sir.

21 Q. -- personally -- you have personally obtained
22 confessions from men who gave confessions that juries
23 found contradicted the facts of the case, correct?

24 MR. HERNDON: Judge, I'm going to object to

1 that unless he's interviewing juries after cases are
2 over, to know what their basis is.

3 THE COURT: Sustained.

4 BY MR. ABOOD:

5 Q. You're aware that your former Governor Ryan
6 placed a moratorium on death penalty cases in Illinois
7 based on these problems with murder cases in your
8 state; is that right?

9 MS. LUSAICH: Well, objection.

10 THE COURT: I don't see the relevance.

11 BY MR. ABOOD:

12 Q. Do you have -- do you know how many thousands
13 of dollars the state of Chicago has paid out to victims
14 of your brutal interrogations?

15 MS. LUSAICH: Objection.

16 THE COURT: Sustained.

17 MR. ABOOD: Specifically his interrogations,
18 Judge.

19 THE COURT: His. All right.

20 MR. HERNDON: Still, Judge, I mean, we're
21 talking about, apparently, the police department or the
22 city or the county settles a suit for some reason
23 rather than take the risk of civil litigation.

24 THE COURT: I'll let him ask the question as

1 to his cases only.

2 MR. ABOOD: As to his cases.

3 THE COURT: If he knows?

4 MS. LUSAICH: Yeah, but lawsuits get settled.

5 THE COURT: Just a minute. I said as to his
6 cases only.

7 Do you understand?

8 BY MR. ABOOD:

9 Q. Detective.

10 THE WITNESS: No, sir.

11 BY MR. ABOOD:

12 Q. Would you like me to repeat the question?

13 THE COURT: He said no. I didn't think he
14 did.

15 THE WITNESS: No, sir.

16 BY MR. ABOOD:

17 Q. You don't know?

18 A. That's correct.

19 Q. I do know, and we'll see you in trial?

20 THE COURT: All right. Counsel, anything
21 else?

22 MR. ABOOD: Thank you, Judge. That's all.

23 THE COURT: You're welcome.

24 MR. HERNDON: Redirect?

1 MS. LUSAICH: Can we come back at lunch and
2 redirect?

3 THE COURT: All right. Fine. Come back at
4 two o'clock. Thank you. Court will be in recess.

5 (RECESS)

6 THE COURT: Let the record reflect we're back
7 it session in the matter of state versus Justin
8 Porter. Let the record reflect the presence of the
9 defendant, his attorneys, the state's attorneys, the
10 absence of any jury because this is a hearing.

11 You may continue. Call your next witness.

12 MS. LUSAICH: It's still Kris Kato.

13 THE COURT: Okay. Detective, I remind you you
14 are still you under oath.

15 THE WITNESS: Yes, judge.

16 THE COURT: Thank you.

17 MS. LUSAICH: May I, Judge?

18 THE COURT: Yes, you may.

19

20

REDIRECT EXAMINATION

21 BY MS. LUSAICH:

22 Q. Detective Kato, at the time that you were
23 speaking to the defendant in the interview room in
24 Chicago, were you aware whether or not he had

1 previously been through the criminal justice system?

2 A. Yes, ma'am.

3 Q. And what was your knowledge of his prior visit
4 through the system?

5 A. He was arrested in our system as a juvenile.

6 Q. Do you know what he was arrested for?

7 A. No, ma'am, I don't.

8 Q. Could it have been armed robbery?

9 A. I believe so, yes.

10 Q. And are you aware that he was actually
11 adjudicated guilty as a juvenile of the armed robbery?

12 A. I don't know if I was aware of it at that
13 time.

14 Q. Okay. Mr. Abood asked you a bunch of
15 questions about the alleged use of force in Chicago.
16 Is there an independent body that investigates
17 allegations of use of force by police officers?

18 A. Yes, ma'am.

19 Q. And after investigating, do they come down
20 with a decision: Yes, we find too much force? No, we
21 don't?

22 A. They have: Sustain, not sustained, unfounded
23 and exonerated. Those are the -- what the conclusions
24 they come to.

1 Q. And has a use of force ever been sustained
2 against you?

3 A. No, ma'am.

4 Q. Okay. In fact, you said that you spent
5 eighteen years working homicides, or so?

6 A. That's correct.

7 Q. And you've worked with a multitude of
8 different detectives over those eighteen years?

9 A. Yes, ma'am.

10 Q. Have pretty much all of your other brethren
11 detectives had similar allegations lodged against them?

12 A. When they -- when there's a confession?

13 Q. Well, just of force?

14 A. Oh, yes, ma'am.

15 Q. And then, specifically, when there's a
16 confession, have they also had allegations of a similar
17 nature lodged against them?

18 A. Yes, ma'am.

19 Q. Pretty much all of them?

20 A. Yes.

21 Q. On a frequent basis?

22 A. That's correct.

23 Q. Okay. Thank you.

24 MS. LUSAICH: Nothing further.

1 THE COURT: Any recross on that?

2 MR. ABOOD: Yes, briefly, Judge.

3

4

RECROSS EXAMINATION

5

BY MR. ABOOD:

6

7

8

Q. Detective, you made mention to the fact that Justin Porter, in Chicago, Illinois, had been through the system before; is that correct?

9

A. Yes, sir.

10

11

Q. Do you recall how old he was when he was arrested for that one offense that you brought up?

12

A. No, I don't.

13

Q. Would it surprise you that he was twelve?

14

A. No. It wouldn't surprise me, no.

15

16

17

18

Q. You also told the judge just now in response to Ms. Lusaich's questions that the Use of Force Board has never found or has never sustained actual use of force against you; is that right?

19

A. That's correct.

20

21

22

Q. And isn't that because you don't record interviews in any way, so it ends up being your word against the defendant?

23

A. I don't understand the question.

24

Q. Well, you don't record these interrogations;

1 is that right?

2 A. Yes, sir. I -- my police reports, if there's
3 an interview and a statement, it's all recorded under
4 my reports.

5 THE COURT: No. But he's talking about
6 there's no tape recordings; is that correct?

7 BY MR. ABOOD:

8 Q. You're talking about this, correct?

9 A. No. We -- ours is a supplemental report.

10 THE COURT: Let the record reflect that the
11 counsel was referring to a written report.

12 MR. ABOOD: That's correct, Judge. Let me
13 rephrase. Let me rephrase the question.

14 THE COURT: Rephrase the question. Yeah.

15 BY MR. ABOOD:

16 Q. There are no interviews of your interrogation
17 procedures, correct?

18 A. Sometimes if they -- the defendant or the
19 interview person requests a video, they do have video
20 tapes.

21 Q. So what percentage of the time do you
22 interrogate suspects where that interrogation is
23 actually video taped or audio taped?

24 A. That process just started a couple of years

1 ago in Chicago.

2 Q. Has that --

3 A. In Cook County.

4 Q. Has there been any marked decrease in
5 complaints against you once that process started?

6 A. I'm not sure. I don't know.

7 Q. So, again, I guess my question is: Because
8 there's no video taping or audio taping, it's your word
9 against a defendant's word, correct?

10 A. Like I said, if there is a video tape, if they
11 request one, the state's attorney is present during
12 their oral or handwritten or court reported statement.

13 Q. Detective --

14 A. It's not just my word against the
15 defendant's --

16 Q. Detective --

17 A. -- word.

18 Q. The state's attorney is present during the
19 record -- during the -- going over the actual facts of
20 the case after the interrogation; is that right?

21 A. After I interview the person?

22 Q. Yes.

23 A. Yes.

24 Q. In other words --

1 A. I interview the person first, and then the
2 state's attorney.

3 Q. And the allegations that have been made
4 against you, that I just brought up with the judge
5 earlier today, were all allegations of brutality that
6 occurred before a state's attorney appeared; is that
7 right?

8 A. That's correct.

9 Q. Okay. Thank you.

10 MR. ABOOD: Thank you, Judge.

11 THE COURT: Any redirect?

12 MS. LUSAICH: No.

13 THE COURT: Thank you, sir. You may step
14 down.

15 Call your next witness.

16 MS. LUSAICH: Detective Sam Cirone.

17
18 SAM Cirone

19 Having been first duly sworn to tell the
20 truth, the whole truth and nothing but the
21 truth, testified as follows:

22 THE CLERK: Would you state your name and
23 spell your last name for the record, please.

24 THE WITNESS: Detective Sam Cirone,

1 C-i-r-o-n-e. Star number 20941.

2
3 DIRECT EXAMINATION

4 BY MS. LUSAICH:

5 Q. Sir, are you a police officer with the Chicago
6 Police Department?

7 A. That's correct.

8 Q. How long have you been there?

9 A. Approximately twelve years.

10 Q. And what area of Chicago Police Department or
11 what area of the detective bureau are you working?

12 A. Currently it's labeled homicide, gang, sex.
13 But we refer to it as violent crimes.

14 Q. How long have you been working for violent
15 crimes?

16 A. Almost eleven -- about nine or ten years now.

17 Q. Do you have a partner over there?

18 A. Detective Kato, K-a-t-o.

19 Q. How long have you and Detective Kato been
20 partners?

21 A. We've been partners a little over eight years,
22 I think.

23 Q. Okay. Did you, on August Eleventh and Twelfth
24 of the year, 2000, along with Detective Kato get a

1 request from the Las Vegas police to locate a suspect?

2 A. Yes.

3 Q. And did you go with Detective Kato to a
4 residence to actually get that suspect?

5 A. That's correct.

6 Q. And when you went there, was it you, Detective
7 Kato, and several other detectives?

8 A. Yes, along with some supervision.

9 Q. I'm sorry?

10 A. Along with supervisors.

11 Q. Okay. And did you go to the front door with
12 Detective Kato or were you assigned to another
13 location?

14 A. It was myself, Detective Kato, and, I believe,
15 Lieutenant Farrell were at the front door.

16 Q. And when you went to the front door, how was
17 entry obtained?

18 A. Knocking.

19 Q. And?

20 A. We knocked at the door, a female answered the
21 door and allowed us entry.

22 Q. Okay. The door wasn't kicked in?

23 A. No.

24 Q. When the female answered the door; do you know

1 who that female was?

2 A. I believe it's the stepmother of Justin.

3 Q. Okay. And did that female do anything that
4 indicated to you you need to look somewhere?

5 A. She -- we asked for Justin, and she looked at
6 us and with her eyes and her head bobbed toward the
7 couch in the living room.

8 Q. When she did that, what did you do?

9 A. I went toward the couch in the living room.

10 Q. What did you find near the couch in the living
11 room?

12 A. Found the defendant, Justin, behind the couch
13 in between the couch and the wall.

14 Q. And you keep nodding over here and saying
15 defendant Justin. Do you see him here in court?

16 A. Sitting with the blue shirt on at defense
17 table.

18 MS. LUSAICH: Record reflect identification of
19 the defendant?

20 THE COURT: Yes.

21 BY MS. LUSAICH:

22 Q. And at that time was your gun drawn?

23 A. Mine personally was not, no.

24 Q. Was Detective Kato?

1 A. I don't believe his was either. I'm sure
2 somebody did, though.

3 Q. Was the defendant cooperative?

4 A. Yes.

5 Q. Showed his hands, got up, put his hands behind
6 his back, things of that nature?

7 A. We gave him verbal directions, and he
8 complied.

9 Q. Was there any conversation at that point?

10 A. Outside of the verbal direction to place him
11 under arrest, no.

12 Q. Okay. And was he then placed in your vehicle
13 and transported back to your police station?

14 A. That's correct.

15 Q. Was there any conversation between yourself or
16 Detective Kato and the defendant on the way to the
17 police station?

18 A. No.

19 Q. Once at the police station what did you do?

20 A. We placed him in an interview room, uncuffed
21 him, and it was pretty much the end of my contact with
22 him for that night.

23 Q. Okay. So you did not participate in the
24 interview of the defendant that night?

1 A. That's correct.

2 Q. Did you have occasion to come back the next
3 day?

4 A. Yeah.

5 Q. Oh, no. Sorry. Later that same day?

6 A. Correct, I did.

7 Q. And about what time of day was that?

8 A. Approximately three o'clock.

9 Q. And when you came back at three o'clock did
10 you go to that same interview room?

11 A. Yes.

12 Q. And was the defendant in there?

13 A. Yes, he was.

14 Q. What was he doing in there?

15 A. If memory serves me correct, I think he was
16 just sitting there.

17 Q. Okay. Was he cuffed?

18 A. No.

19 Q. Did he complain about being treated poorly?

20 A. No.

21 Q. Did he ever say anything about being treated
22 poorly?

23 A. No.

24 Q. While you were -- or did you actually go in