

1 Q Okay. And you said that Mr. Sterling was cooperative
2 in the fact that he also gave you clothes and shoes?

3 A Yes.

4 Q Now, his shoes that you collected, those shoes were
5 bloody?

6 A Yes.

7 Q And you actually collected those shoes and marked,
8 tagged and placed them into evidence as well.

9 A Yes.

10 Q Okay. And you said that he came up to you because he
11 was concerned that something may have happened to a friend of
12 his. When you guys go out and you're investigating a crime
13 scene like this, about how many patrol cars are generally
14 there?

15 A On a homicide there's many crimes -- there's many
16 patrol cars initially to help cordon off the area and help us
17 canvass the area. In addition, there's a number of unmarked
18 cars that are readily recognizable as being unmarked police
19 cars that are parked along the street or near the scene.

20 Q And then in addition to the patrol cars that are
21 there would be patrol officers in uniform wandering around --

22 A Yes.

23 Q -- the area as well? And a bunch of plainclothes
24 detectives would be walking around, too.

25 A That's correct.

1 Q So it's pretty obvious that there's something
2 significant going on if somebody were to just walk by not
3 knowing.

4 A That's correct.

5 Q Okay. And you in fact confirmed and spoke with a
6 person who lived in that upstairs apartment on the back that
7 was in fact Derrick Sterling's friend, correct?

8 A I'd have to look at my notes to refresh that. I
9 can't remember exactly who I spoke with on that side.

10 Q But there was a friend --

11 A Yes.

12 Q -- that was living there, and he confirmed what Mr.
13 Sterling had told you.

14 A Yes.

15 Q Okay. The shoes that you collected from Mr.
16 Sterling, however, they were white tennis shoes, right?

17 A Yes.

18 Q But they were not Saucony brand.

19 A That's correct. They were not.

20 Q Okay. Now while you are at the scene -- you talked
21 for a minute some bullets and a shell casing. Was there also
22 something on the door that was important in your investigation?

23 A Yes. There was the transfer pattern of a sole from a
24 sneaker.

25 Q In the transfer pattern of the sole from the sneaker

1 was a name or brand name readable?

2 A Yes.

3 Q What was that?

4 A Saucony.

5 Q Okay. And that was not Mr. Sterling's shoe.

6 A That's correct.

7 Q And would you be the one who would cause that lift to
8 be examined and compared with other things?

9 A Yes.

10 Q In addition to Mr. Sterling's buccal swab and blood
11 being examined, did you also ask Mr. Welch to examine the blood
12 at the front of the apartment, the actual -- sorry, the front
13 of the building, the actual crime scene?

14 A Yes.

15 Q And whose blood did he determine that was?

16 A He determined that that was the victim, Gyaltsa
17 Lungtok's blood.

18 Q Okay. So you're at the scene, and you're looking
19 around, and you interview witnesses. Do you also then go to
20 the autopsy of the victim?

21 A Yes.

22 Q When was that?

23 A That would most likely have been on Sunday morning,
24 the following day.

25 Q The next day.

1 A Yes.

2 Q And why do you go to the autopsy?

3 A To discuss the details of the case with the medical
4 examiner, to tell them how we found the body, how the body was
5 positioned. Also, there's evidence that is retrieved at the
6 autopsy. There can be clothing from a victim. There can be
7 ballistic evidence from the victim that our crime scene people
8 impound also at that location. And also for us to get a more
9 detailed listing of the injuries on the victim at that time.

10 Q And, in fact, there were three bullets or bullet
11 fragments recovered from Mr. Lungtok's body, correct?

12 A Yes.

13 Q And the -- is there a crime scene analyst with you
14 also at the autopsy?

15 A Yes, there is.

16 Q Do they take photographs of the body?

17 A Yes, they do.

18 Q To preserve for these purposes as well, right?

19 A That's correct.

20 Q And did you cause the three bullet fragments that
21 were recovered from the body as well as the three bullets or
22 fragments recovered from the crime scene and the shell casing
23 to go to the lab for analysis?

24 A Yes. That's correct.

25 Q And did Richard Good, a person who works at the crime

1 lab, analyze or perform some tests on those?

2 A Yes.

3 Q What exactly -- Richard Good does not work at Metro
4 anymore, correct? He retired?

5 A I'm not aware of -- I can't recall if he retired or
6 not. I'm sorry.

7 Q Okay. Did he work at Metro's lab for many, many
8 years?

9 A Yes, he did.

10 Q And what was -- what did he do?

11 A He was a forensic examiner as far as ballistics.

12 Q And what does that mean?

13 A That they look at firearms. They make comparisons of
14 shell casings, ballistic evidence such as bullets, determine if
15 a particular bullet was fired from a firearm, a particular
16 firearm, make a comparison between the two, a casing found at
17 the scene, if it was extracted from that firearm.

18 Q Did he -- and what was his conclusion in relation to
19 the bullets from the crime scene, the -- Gyaltsso Lungtok's body
20 and the shell casing?

21 A That the casings, the cartridge casings, meaning that
22 they're the spent casings that expel from the firearm, were
23 fired from the same firearm, and that the case -- recovered --
24 three of the bullets recovered at the autopsy were consistent
25 with a .22 caliber which is consistent with the cartridge

1 casing that was found at the scene.

2 Q Okay. And that bullets all came from the same gun.

3 A Yes.

4 Q Okay. During the course of your investigation, did
5 you develop a suspect known to you as Justin Porter?

6 A Yes.

7 Q Would that information be shared with all the
8 detectives investigating the case?

9 A Yes.

10 Q Did you have contact with Detective Barry Jensen
11 regarding that on August 10th of 2000?

12 A Yes.

13 Q And did he talk to you about being at a residence on
14 13th Street?

15 A Yes. That's correct.

16 Q And did he talk to you about speaking with Justin
17 Porter's mother and the information that he got from her?

18 A Yes.

19 Q And did he talk to you about finding -- well, serving
20 a search warrant at the residence?

21 A Yes.

22 Q And finding some Saucony tennis shoes?

23 A That's correct.

24 Q Now, there was no blood found on the Saucony tennis
25 shoes, correct?

1 A No, there was not.

2 Q Okay. Did you also go to that residence later, after
3 Detective Jensen?

4 A Yes.

5 Q What was the purpose of your going there?

6 A That from the information that I received from
7 Detective Jensen and additional interviews is that I wanted to
8 search that residence for a.22 caliber firearm and any
9 ammunition or ballistic evidence.

10 Q And did you do that pursuant to a search warrant?

11 A Yes.

12 Q A search warrant that you obtained, got signed by a
13 judge, and then went to the residence to serve?

14 A Yes.

15 Q And when you went there, was Ms. Porter there?

16 A Yes.

17 Q Did you have conversation with her?

18 A Yes, I did.

19 Q And did she also tell you where Justin Porter was?

20 A Yes, she did.

21 Q Did you find any firearm or anything pertaining to a
22 firearm while you searched the residence?

23 A No, I did not.

24 Q Did you speak with Detective Jensen on the next day,
25 August 11th, about some messages and a phone call that he got?

1 A Yes.

2 Q And did you also -- or were you also aware that one
3 of the detectives had sent -- with that information in mind,
4 sorry, sent information to the Chicago Police Department for
5 them to look for Justin Porter?

6 A That's correct.

7 Q And did you discover at some point that Justin Porter
8 was actually placed into custody in Chicago?

9 A Yes.

10 Q And because of that, did you then go to Chicago?

11 A Yes, I did.

12 Q Who did you go to Chicago with?

13 A I flew to Chicago early that morning with Sergeant
14 Laurie Cricket and Detective Barry Jensen.

15 Q When you went to Chicago, do you remember around what
16 time of day it was that you got there?

17 A We arrived in Chicago in the early afternoon hours,
18 afternoon.

19 Q And did you go right to the police department?

20 A Yes.

21 Q And did Detective Jensen do something for the
22 individual when he got there?

23 A We sat down and met with Justin Porter.

24 Q Okay. Did he bring him some food first?

25 A Yes.

1 Q Okay. You didn't go with him, though, did you?

2 A No.

3 Q So you sat down and you met with somebody while you
4 were there?

5 A Yes.

6 Q Do you see that person here in court today?

7 A Yes, I do.

8 Q Can you describe where he's sitting, what he's
9 wearing?

10 A He's sitting at counsel's table in the middle. That
11 he's a black male, adult, with his hair pulled back wearing
12 glasses and a slight goatee.

13 MS. LUZAICH: Record reflect identification of the
14 defendant.

15 THE COURT: Yes.

16 MS. LUZAICH: Thank you.

17 BY MS. LUZAICH:

18 Q When you found Mr. Porter, the defendant, in Chicago,
19 where was he?

20 A He was located in a police station. It's called Area
21 No. 4 or Area 4, and he was in a room, and I did not see the
22 room that he was initially.

23 We went into a conference room, spoke briefly with
24 Detective Kato and myself. Detective Jensen was there and
25 Sergeant Cricket, and then Justin Porter came into the room to

1 meet with us and talk.

2 Q At the time that he was brought into the room where
3 you were, was he handcuffed?

4 A I don't recall if he was handcuffed when he was
5 brought in. I don't think he was. He was not handcuffed when
6 we spoke with him.

7 Q Okay. So when you spoke with him, who exactly was in
8 the room?

9 A When we talked with him at length it was just
10 Detective Jensen and myself.

11 Q When you talked to him, you said he was not
12 handcuffed.

13 A That's correct.

14 Q And Detective Jensen used a card to provide the
15 defendant with his rights pursuant to Miranda?

16 A Yes.

17 Q Were you there while that happened?

18 A Yes, I was.

19 Q And after he was given his rights pursuant to
20 Miranda, did he choose to give a statement?

21 A Yes.

22 Q Now, when you take a statement, do you have some --
23 well, do you tape record statements?

24 A We do an interview and then we take a recorded
25 statement. Yes.

1 Q That's where I was going. So you have some
2 conversation before you turn your tape recorder on.

3 A Yes, we do.

4 Q And during the course of -- you call that the
5 interview and then a taped statement? During the course of the
6 interview, was conversation flowing freely between yourselves
7 and the defendant?

8 A Yes.

9 Q And what did he tell you?

10 A That we first got into his background --

11 MR. ABOOD: And I'm sorry to interrupt, Detective.
12 Your Honor, based on previous rulings we've lodged our
13 objection. The Court's made its decision. I just wanted to
14 make the Court know -- aware that this is (indiscernible).

15 THE COURT: All right. And my ruling's the same, but
16 that's fine. Thank you.

17 MS. LUZAICH: Thank you.

18 THE COURT: Go ahead.

19 BY MS. LUZAICH:

20 Q Go ahead.

21 A Initially we got just background information about
22 Justin Porter, how tall he was, how much he weighed, where was
23 he living at, how long he lived Las Vegas, some general
24 information, and that's to help establish a rapport and get a
25 feel how he's answering questions.

1 Then we started to talk about this incident on 10th
2 Street, and initially he did not know where 10th Street was.
3 He did not know the incident I was talking about, and I had
4 mentioned 10th Street and this hundred block. So I placed a
5 photograph, crime scene photograph, in front of him that just
6 showed the outside of the complex.

7 And I did not say anything particular about this
8 incident, that it was a homicide investigation. I said that I
9 want to talk about this incident here and it was with the
10 photograph in front of him.

11 When he saw the photograph, his demeanor had changed.
12 That he became very serious, almost scared or frightful of the
13 photograph. That he paled, he pushed the chair back, he got up
14 out of the chair and said that he had nothing to do with that.
15 He knows what I'm talking about, but he had nothing to do with
16 that. And he sat back down, and we talked about the incident.

17 And he said that he was leaving his house and he was
18 with a person by the name of Dionne (phonetic), and he
19 described Dionne, though he was unsure of the exact name. He
20 said Dionne, something like that.

21 He said that he had -- that Justin Porter had a
22 firearm upon his person, a firearm that contains small bullets,
23 and that he passed that firearm on to Dionne. Dionne said that
24 he was going to do a lick, and I asked Justin Porter what a
25 lick means, and he had told me it was a street term for

1 robbery. Dionne was looking to make some cash by doing a
2 robbery.

3 They walked south on 10th Street from his house. He
4 described the path that they walked. And he described the
5 location of the scene that he didn't see from the photograph
6 that I provided him. He described a school that was located
7 nearby.

8 And he says that he's at a phone booth when Dionne
9 talks about -- or is headed towards this apartment. Justin
10 says that he's on the phone acting like he's talking on the
11 phone while Dionne goes to the apartment complex. And that he
12 goes upstairs, and he hears a banging noise followed by -- and
13 he used kind of a term like "locka (phonetic), locka, locka",
14 and I asked him what does that mean, and he had signified --
15 told me that that was gunshots, that he had heard gunshots.

16 Dionne is upstairs for approximately about a minute,
17 comes skipping or running back down, runs northbound towards
18 Justin Porter's location and tells Justin we got to go. I did
19 -- I did the guy. And as they're running he tells Justin that
20 he had picked up the shell casings, the cartridge casings that
21 are expelled from the gun at the shooting scene.

22 Justin gets the gun back, goes back to his house. In
23 the area of house they separate, Dionne and him, and then
24 Justin decides to go back to the scene. Justin goes back to
25 the scene to check on -- to see what had happened.

1 He approaches the apartment, he goes up the stairs,
2 and he says that the door is shut but not shut, and he pushes
3 it open with his foot by the door knob. And he steps back in,
4 and he can see blood on that tread of the threshold of the
5 door, and he looks into the apartment and he sees that a back
6 door is closed.

7 He says that he hears some noise I believe in that
8 statement, that -- some moaning. And then as soon as -- he
9 indicates that that moaning might be in his head, that he's
10 thinking about that, and at which time he leaves the scene and
11 goes back home to his house.

12 Q This is conversation that you have in what you call
13 the interview, so the tape recording is not going yet, correct?

14 A That's correct.

15 Q And then after you have this interview, you turn the
16 tape recorder on?

17 A Yes.

18 Q And then what?

19 A The --

20 Q You asked him to just go over the story so that it's
21 preserved?

22 A Right. We turned the tape recorder on. It's a
23 statement. It's taken in place or in lieu of a victim, witness
24 or suspect writing out everything that we discussed. We have a
25 memorialization in their own words of what was just discussed.

1 And we go over again what we just talked about.

2 Q When you turned the tape recorder on, did he say
3 anything to you like no, I don't want to talk on tape?

4 A No.

5 Q Did he do anything to indicate that he didn't want to
6 be tape recorded?

7 A No, he did not.

8 Q Are there people who sometimes do refuse to speak on
9 tape?

10 A Yes.

11 Q And if that happens, what do you do?

12 A We have to document the conversation, the interview,
13 between the two detectives on what was said during that
14 interview.

15 Q But you don't force them to talk on tape, correct?

16 A No.

17 Q So the fact that it's tape recorded and his voice is
18 there means it's voluntary --

19 A Yes.

20 Q -- essentially.

21 MS. LUZAICH: Can I get this marked next in order?
22 May I approach?

23 THE COURT: Yes.

24 BY MS. LUZAICH:

25 Q After you take a taped statement from somebody, do

1 you then take the either tape or disk or whatever and cause it
2 to be transcribed?

3 A Yes, we do.

4 Q And then do you provide a copy to the State so that
5 we can then provided it to the defense and everybody has one?

6 A Yes, we do.

7 MS. LUZAICH: May I approach?

8 THE COURT: Yes.

9 BY MS. LUZAICH:

10 Q Showing you what's been marked as State's Proposed
11 Exhibit 107. Does this look familiar to you?

12 A Yes, it does.

13 Q Is that a transcript of the taped statement you took
14 from the defendant that you are about to actually talk about?

15 A Yes.

16 MS. LUZAICH: Move it into evidence.

17 THE WITNESS: Yes.

18 THE COURT: Any objection?

19 MR. BROWN: Yes, Your Honor.

20 MR. ABOOD: Yes. Oh, I beg your pardon. Go ahead.

21 MR. BROWN: Previously noted.

22 THE COURT: Okay. It's overruled. It will be
23 admitted.

24 (Plaintiff's Exhibit 107 admitted into evidence.)

25 MS. LUZAICH: Oh, you know, actually I'm going to

1 leave it with you.

2 BY MS. LUZAICH:

3 Q And specifically, when you went back and talked to
4 him on tape, did he tell you essentially the same thing that he
5 told before the tape was turned on?

6 A Yes.

7 Q And specifically, you said that he talked to you
8 about a lick?

9 A Yes.

10 Q And a lick where he describes it as somebody going to
11 get some money; is that correct?

12 A Yes.

13 Q And specifically when he's talking about Dionne, I
14 mean, he goes into like great detail about Dionne, right?

15 A As far as a description. His name, no.

16 Q Right. Sorry. Description of the individual.

17 A Yes.

18 Q Did you believe that Dionne existed?

19 A No.

20 Q Why not?

21 A That Justin Porter knew some specific information
22 that only the person at the scene of the crime would know.
23 That he knew going into this that we were looking for some
24 items of evidentiary interest, knowing that we'd do a search
25 warrant on his house for the firearm that we were looking for,

1 the Saucony shoes beforehand. So previous to contacting him he
2 knew that the police were looking for those things.

3 The statement that he gives is that he's walking down
4 the street, stops at a phone booth, and even in that -- at that
5 point of the interview in the statement is that he says that
6 he's aware that Dionne goes upstairs to the apartment to the
7 left. However, if you're situated at the phone bank or the
8 phone booth that he alleges was there is that you would not be
9 in a position to determine which apartment that he went to.

10 Q And, in fact, there is no phone booth on 10th Street,
11 correct, South 10th Street?

12 A No, there's not.

13 Q Anything else that he knew that he shouldn't have
14 known if he weren't physically in there?

15 A And then he talks about the cartridge cases being
16 picked up, and then he talks about the blood spatter at the
17 threshold door. And he talks about Dionne leaving and excited
18 flight from the scene, but in his flight he's talking about how
19 Dionne says -- they're having a conversation about why is it so
20 important to pick up casings from the scene to me which seems
21 very unreasonable for two people fleeing a scene.

22 Q Does he say that Dionne tells him something about if
23 the police get the bullets or something?

24 A Yes.

25 Q What was that?

1 A That if the police get the bullets, that they can
2 match it to a firearm and they can match it to any other crime
3 that that firearm could have been used in.

4 Q Okay. Now, specifically when you're talking to him
5 on tape in this interview, do you remember asking him about the
6 window, the apartment -- the victim's apartment -- the window?

7 A He -- the picture of the window is that he made a
8 reference to the window I believe is that he mentioned that the
9 window was open when he saw the picture.

10 Q Right. The shade.

11 A Yes.

12 Q But did you ask him whether the shade was actually
13 open or closed?

14 A I may have asked that question.

15 Q I would invite your attention to page 11.

16 A And the question's asked, "Okay. And do you remember
17 if there's a window that overlooked the street from this
18 apartment or not?" The answer was, "The window is right
19 there."

20 "Was the shade open or closed do you remember," is
21 the question I asked. His response is, "In the picture you
22 showed me it was open."

23 My question is then, "In the picture I showed you it
24 was open?" And he responds, "Yes."

25 And I said, "Okay. Do you remember -- do you

1 remember that night if it was open or closed?" And his
2 response was, "I can't recall if it was open or closed, but I
3 know it was a window right there."

4 Q And he talked to you about the phone that we talked
5 about doesn't exist. Did he talk to you a lot about money?
6 Well, not a lot, but did he talk to you about money and
7 dressing nice?

8 A Yes, he did.

9 Q What did he indicate about that?

10 A He indicated that people have nice clothes,
11 name-brand clothes, particularly the brands that a teenager
12 would like to wear. That when they wear those things, that
13 those things help bolster their respectability or their
14 standing among their peers.

15 Q And did he talk to you about what he heard when this
16 Dionne was up at the door?

17 A Yes.

18 Q What did he tell you he heard when this Dionne was at
19 the door?

20 A He heard a loud banging noise followed by the
21 terminology he had used for gunshots, and he indicated that he
22 had heard by sounding off those gunshots by going locka, locka,
23 locka approximately four times.

24 Q And did he say something about the door? At the top
25 of page 14.

1 A Yes. His response is when he was upstairs that, "I
2 heard a noise like shhh, like something cracking in." And I
3 asked, "Okay. Like something cracking in? Yes. And then what
4 do you hear? Like locka, locka, locka, locka," and he says
5 that four times.

6 Q Did he talk to you about what he did with the gun
7 after -- and I'm sorry. Did you say that he told you he had
8 the gun and that this Dionne person asked for the gun and he
9 lent it to him?

10 A Yes.

11 Q Did he tell you what he did with the gun when this
12 was over?

13 A He said they brought it back to his apartment, that
14 he retained possession of it, and that he put it on the roof of
15 his house is my recollection.

16 Q Did he then kind of change his mind and tell you he
17 gave it to somebody?

18 A Is that -- I can't remember if it was that part of
19 the statement or later on that he said that he had passed the
20 firearm on.

21 Q To anyone in particular? Do you remember?

22 A Yes. My recollection was to a cousin, Kristopher
23 Deloney.

24 Q Okay. At the conclusion of that particular
25 interview, did he say something that you found to be different?

1 A Yes. In this interview and then we take the
2 statement is that he's putting himself as a witness to a crime.
3 He placed himself there.

4 But at the end of the statement he asked me can you
5 ask me if I'm sorry for this which I found very strange. And
6 you can hear me on the statement after he asked that, and I
7 asked him do you feel sorry for this.

8 Q So he wanted you to ask him if he felt bad.

9 A Yes.

10 Q Okay. When you finished with that interview, did you
11 stay in the room or what did you do?

12 A We took a break. That I told him that I'd turn off
13 the tape recorder. I said that I'm going to go meet with my
14 supervisor outside that was in the lobby area that could
15 oversee the interview, and that I was going to discuss it with
16 Detective Jensen, and when I came back that I was going to tell
17 him what I thought about his story and about this incident and
18 this case.

19 Q So what happened?

20 A We left the interview room, took a break, and then I
21 could see that he had stood up. It was a room approximately 12
22 by 8, in that area, and he had got up and he started pacing the
23 room inside the room. And he wasn't sitting down. He looked
24 nervous.

25 And after discussing it is that I went back into the

1 room with Detective Jensen. We sat down and I said, Justin,
2 our investigation shows that you're not being completely
3 truthful with us. That you had something more to do with this
4 incident.

5 Q How did he respond?

6 A He became very emotional. He started crying, had his
7 head down. He said that telling the truth is very hard to do.
8 That he said he was in a loop or he was saying over and over
9 again for a moment if I could only take back the hands of time,
10 if I could only take back the hands of time. Then he started
11 talking about the incident.

12 I said I wanted to get to the truth, to know the
13 truth. He talked about how he was leaving his girlfriend's
14 house, and that the police were in the area, and the police
15 went to stop him, was trying to flash a spotlight on him, and
16 he got scared and he ran. And he said that he ran to an
17 apartment that he remembers or thought that was empty, ran up
18 the stairwell and he kicked the door, and out of the darkness
19 this person came at him. And he just remembers pointing the
20 gun and the gun going off and shots being fired.

21 He said this very quickly, this story right here,
22 much the way I just told the jury here now. And it's at the
23 point where I'm trying to get this statement memorialized
24 because it's different from the other one. So I start getting
25 out my tape recorder, and I'm going to take a second taped

1 statement where we get to the truth of the matter.

2 Q Was Detective Jensen also in the room with you?

3 A Yes.

4 Q Did you turn the tape recorder on?

5 A Yes.

6 Q Did he then give you a statement on tape?

7 A Yes.

8 Q He didn't say no, I refuse to talk on tape or
9 anything like that?

10 A No.

11 Q In-between the time that you walked out of the room
12 until the time you walked in the room to get the second
13 statement, how much time passed?

14 A I'd say approximately 30 minutes.

15 Q And after you took that taped statement, did you
16 cause a copy of it to be given me, us, the State of Nevada?

17 A Yes.

18 MS. LUZAICH: And do we have a copy -- or and we have
19 a disk here in court that is -- may I approach --

20 THE COURT: Yes.

21 MS. LUZAICH: -- State's Proposed Exhibit 104. The
22 defense has a copy and (indiscernible) I would move it into
23 evidence and ask to play it.

24 MR. ABOOD: Same issue, Your Honor.

25 THE COURT: All right. That will be admitted.

1 (Plaintiff's Exhibit 104 admitted into evidence.)

2 MS. LUZAICH: Thank you. And may I play it?

3 THE COURT: Yes. Go ahead.

4 (The recorded statement was played at 2:33 p.m. until 3:03
5 p.m.)

6 BY MS. LUZAICH:

7 Q Okay. Detective LaRochelle, the fact that the
8 defendant talked to you about shells, going back and picking up
9 shells, does that necessarily mean that he's talking about the
10 fact that he shot the man using a semiautomatic weapon as
11 opposed to a revolver?

12 A Yes.

13 Q And for those people who have no gun knowledge like
14 myself, can you describe what is the difference between a
15 revolver and a semiautomatic weapon?

16 A A revolver is like a -- for simple terms -- an
17 old-fashion cowboy gun that has a cylinder that turns. When
18 you load that weapon, you -- the cylinder comes out and you put
19 in each cartridge into an individual slot, close it. And after
20 you fire by the hammer being back coming forward is that the
21 gun rotates for each pull of the trigger, but those cartridge
22 casings -- meaning that the bullet has gone out the barrel of
23 the gun and the casings still remaining inside, is that they're
24 not expelled from the firearm. They stay within that cylinder
25 until somebody takes them out.

1 On a semiautomatic means that you have a magazine or
2 magazine well, sometimes people call a magazine a clip, and it
3 usually enters the bottom of a firearm, and then you have to
4 charge the firearm by sending a cartridge into the chamber to
5 be shot outside the barrel. So you have a magazine that comes
6 from the bottom, you charge it by moving the slide backwards.
7 It chambers a cartridge. And then when you pull the trigger,
8 each cartridge expels outside to the right and then the action
9 of the firearm automatically cycles a new cartridge into that
10 chamber.

11 So on a semiautomatic we have -- at this scene we
12 have a cartridge that was found at the scene at the time the --
13 we processed the scene, and then we also have Justin Porter in
14 his statement talking about picking up additional cartridges
15 which would account for the total of the shots that were fired
16 in this incident.

17 Q Okay. And when you are shooting a semiautomatic
18 weapon, assuming, of course, there are six, seven, eight, nine,
19 ten, twelve bullets in a magazine, do you just keep pulling the
20 trigger with no other movement for the bullets to keep going
21 out the end of the gun?

22 A Yes.

23 Q Revolver, on the other hand, is that different?

24 A The revolver has a greater trigger pull to it and the
25 cylinder moves. On the old-fashioned revolvers you have to

1 move the trigger backwards with your thumb to cycle that
2 cylinder.

3 Q Okay. And to go back for one second --

4 MS. LUZAICH: Can I approach the clerk?

5 THE COURT: Yes.

6 BY MS. LUZAICH:

7 Q When you were talking with the defendant about his
8 first statement, the Dionne statement, did he actually draw
9 something for you?

10 A Yes.

11 Q And what was that and why?

12 A Trying to get the bearings of the scene, location
13 that he's talking about and where he was standing is that I
14 wanted to know because I didn't recall this phone booth and to
15 see what he could see from that location, the proximity that he
16 put himself at. And so I pictured the front of the apartment
17 complex, and then he drew in the phone booth in his handwriting
18 on that piece of paper.

19 MS. LUZAICH: May I approach?

20 THE COURT: Yes.

21 BY MS. LUZAICH:

22 Q I'm showing you what's been marked as State's
23 Proposed Exhibit 101. Do you recognize that?

24 A Yes.

25 Q What is that?

1 A That is the drawing that we talk about in the
2 statement. You can see right there.

3 Q And in the drawing -- this is what he drew in front
4 of you in your presence?

5 A Yes. I drew this here, and then he drew the phone
6 book -- phone booth there.

7 Q Okay.

8 MS. LUZAICH: Move it into evidence.

9 MR. BROWN: No --

10 MR. ABOOD: Same objection. Well, actually same
11 objection does apply. It's in the context of the statement,
12 Your Honor.

13 MR. BROWN: Oh, that's correct, Your Honor.

14 THE COURT: All right. It will be admitted.

15 (Plaintiff's Exhibit 101 admitted into evidence.)

16 MS. LUZAICH: Thank you. May I publish?

17 THE COURT: Yes.

18 BY MS. LUZAICH:

19 Q Okay. Showing you on the overhead State's Exhibit
20 101, and I'm sorry. You just -- you said that you drew
21 something. What did you draw?

22 A The apartment complex.

23 Q If you look at the screen to your right.

24 A Yes. I drew the building in here.

25 Q If you touch the screen it'll --

1 A Right in here. I drew this and then the streets kind
2 we're talking about, and I asked him to place where he was at
3 this phone booth where he had stopped and he saw Dionne go to
4 the apartment. And he drew -- this is all his handwriting
5 right here.

6 Q The nonexistent phone booth right there.

7 A Yes.

8 Q Okay. Thank you. Additionally -- well, when you
9 were done talking to the defendant that day, did he just go
10 back and stay in Chicago in custody?

11 A That day he was in custody, yes.

12 Q Did you stay there for that night into the next day?

13 A Yes.

14 Q And then on August 13th of 2000, where did you go?

15 A I tried to contact Justin Porter's family. I wanted
16 to retrieve the bus ticket to show what time he was in Chicago
17 and what time he would have been in Las Vegas, and I contacted
18 Justin Porter's either his step dad or his real dad. I can't
19 remember.

20 Q Is dad George Porter?

21 A Yes.

22 Q At the apartment on Kildare (phonetic)?

23 A Yes.

24 Q When you went there, did you go with somebody?

25 A Yes.

1 Q A Chicago detective or sergeant?

2 A Yes. I believe it was lieutenant.

3 Q Oh, sorry. And did you actually talk with the
4 defendant's father, George Porter?

5 A Yes.

6 Q Did you get from Mr. Porter the bus pass that -- or
7 bus ticket, sorry, that the defendant used to get from Las
8 Vegas to Chicago?

9 A Yes.

10 MS. LUZAICH: May I approach?

11 THE COURT: Yes.

12 BY MS. LUZAICH:

13 Q I'm showing you what's been marked as State's
14 Proposed Exhibit 103.

15 (Pause in proceedings)

16 BY MS. LUZAICH:

17 Q I'm showing you what's been marked as State's
18 Proposed Exhibit 103. Do you recognize this?

19 A Yes.

20 Q And what is that?

21 A That is the Greyhound Lines bus ticket that departed
22 Las Vegas July 13th it says here.

23 Q And --

24 A The destination is Chicago.

25 Q And Mr. Porter gave that to you and then you brought

1 it back here with you?

2 A Yes.

3 MS. LUZAICH: Move it into evidence.

4 MR. ABOOD: No objection.

5 THE COURT: It's admitted.

6 (Plaintiff's Exhibit 103 admitted into evidence.)

7 BY MS. LUZAICH:

8 Q Actually before you even went to Chicago did you talk
9 with Kristopher Deloney, the defendant's best friend and
10 cousin?

11 A Yes.

12 Q And pursuant to information that you got from him and
13 to either corroborate or contradict what the defendant told
14 you, after Chicago did you also speak with or cause other
15 detectives to speak with Antwoyne Wilson?

16 A Yes.

17 Q And Kurtis Richards?

18 A Yes.

19 Q And were you able to -- you, the collective you --
20 sorry -- detectives able to find Maria that the defendant was
21 talking about?

22 A Yes.

23 Q And did detectives go talk to Maria?

24 A Yes.

25 Q Was she actually living at the time on Las Vegas

1 Boulevard or staying -- sorry -- Las Vegas Boulevard and
2 Charleston?

3 A Yes.

4 Q The place that she was staying at Las Vegas Boulevard
5 and Charleston, is that -- let me rephrase that. Is the
6 victim's apartment pretty much directly between where Maria was
7 staying at Las Vegas Boulevard and Charleston and the
8 defendant's home on 13th Street?

9 A Yes. It would be a reasonable path if you left her
10 house to travel to Justin Porter's house to cross that -- very
11 near to that proximity in front of the house.

12 Q Thank you.

13 MS. LUZAICH: I would pass the witness.

14 THE COURT: Okay. Cross.

15 MR. BROWN: Your Honor, would this be an appropriate
16 time to take a quick break --

17 THE COURT: (Indiscernible).

18 MR. ABOOD: Yeah. I think I might need one.

19 THE COURT: All right. All right. We'll go ahead
20 and take our afternoon break at this point.

21 Ladies and gentlemen, during this short break you're
22 admonished not to talk or converse among yourselves or with
23 anyone else on any subject connected with this trial or to
24 read, watch or listen to any report of or commentary on the
25 trial or any person connected with this trial by any medium of

1 information, including, without limitation, newspapers,
2 television, the Internet and radio, or to form or express any
3 opinion on any subject connected with this trial until the case
4 is finally submitted to you.

5 See you in a few minutes.

6 THE MARSHAL: All rise.

7 (Court recessed at 3:12 p.m. until 3:25 p.m.)

8 (Outside the presence of the jury)

9 THE MARSHAL: Court's now in session again.

10 MR. BROWN: I need to make a quick record, Your
11 Honor, and this is in reference to -- just so that the
12 appellate record is clear for purposes and people in my office.

13 THE COURT: Yes.

14 MR. BROWN: If Detective LaRochelle had testified
15 with respect to findings and conclusions drawn by Firearms
16 Expert Good as well as DNA results from the -- what's his first
17 name?

18 MR. TOMSHECK: Dave.

19 MR. BROWN: Welch. That was with stipulation with
20 defense counsel --

21 THE COURT: Okay.

22 MR. BROWN: -- for purposes that Detective LaRochelle
23 could bring that information in as opposed to having them come
24 here directly.

25 THE COURT: Okay.

1 MR. BROWN: And that I just wanted to make that clear
2 when they're --

3 THE COURT: Okay.

4 MR. BROWN: -- throwing up their hands --

5 THE COURT: I figured you had some reason --

6 MR. BROWN: -- as they're reading the transcript.

7 THE COURT: -- not to object.

8 MR. TOMSHECK: And there was actually a couple
9 reasons for it, Judge. One is both of those individuals are
10 currently retired. Secondly, obviously there's the issue with
11 the severance. And the testing that was done specifically by
12 Mr. Good included testing from another event which linked all
13 the cartridges together. And we were concerned that there
14 would be some spill over.

15 THE COURT: Okay. All right.

16 MR. BROWN: Thank you, Judge.

17 THE COURT: No problem.

18 THE MARSHAL: Please be seated.

19 (In the presence of the jury)

20 THE COURT: Counsel stipulate to the presence of the
21 jury?

22 MS. LUZAICH: Yes.

23 MR. ABOOD: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. ABOOD:

1 Q How you doing, Detective?

2 A Good. Thank you.

3 Q Good. Thank you. Okay. Let me just review a few
4 things with you. As you told us, June 10th of 2000 you were a
5 homicide detective with Metro.

6 A Yes, sir.

7 Q And you were assigned to the investigation in this
8 case, and that was the killing of Gyaltsso Lungtok at 415 South
9 10th Street, Apartment H.

10 A Yes, sir.

11 Q Now, there was a two-detective team assigned to that
12 case and the other detective was Detective Thowsen?

13 A That's correct.

14 Q And the two of you responded to that scene, and the
15 way it works with Metro is that one of you will interview the
16 witnesses and the other detective will document the scene
17 itself.

18 A Yes, sir.

19 Q Now, you actually were responsible for interviewing
20 the witnesses; is that correct?

21 A Yes.

22 Q But as part of that interview, you obviously want to
23 do a walk-through of the scene so you can get an idea of what's
24 going on in there to assist you in the interview of the
25 witnesses.

1 A Yes, sir.

2 Q And that's something that you did in this case.

3 A That's correct.

4 Q Okay. And you described to the jury kind of a basic
5 layout of what you saw, and let me just go over a couple of
6 those things with you if I can.

7 A Yes.

8 Q Now, you saw this blood that was documented in the
9 apartment.

10 A Yes.

11 Q And there was blood both inside and outside the
12 apartment. In fact, it was sort of like a blood trail; is that
13 fair?

14 A Yes.

15 Q And you can conclude based on what you saw that after
16 Mr. Lungtok was shot, he apparently traveled around from one
17 spot of his apartment to another and left that trail.

18 A Yes.

19 Q Now that's not just based on what you saw, but it's
20 also based on some of the interviews that you did with the
21 neighbors that heard things the evening that this thing -- that
22 happened.

23 A That the neighbors -- if I can summarize the gist of
24 several interviews with the neighbors -- that they heard --

25 Q Yeah. That's fine.

1 A -- a loud crashing noise, some banging, footsteps and
2 then also the gunshots in there. So that I would not say
3 basically from statements from the neighbors that I could say
4 exactly how Gyaltso Lungtok took -- walked about in that
5 apartment.

6 Q Right. And essentially what you're telling us is the
7 neighbors were able to hear footsteps actually up in that
8 apartment, and that was after the loud banging.

9 A Yes.

10 Q Okay. And by that you concluded that he was able to
11 move around.

12 A Yes.

13 Q Okay. Now you don't know exactly where he went from
14 one room to another, but you did get confirmation that he was
15 moving about into the apartment towards the back.

16 A Yes.

17 Q Okay. Let me ask you about the light switch that's
18 in that apartment. Now, sir, did you notice the light switch
19 that had blood smeared on it?

20 A Yes.

21 Q And that light switch was directly inside the front
22 door when you walk into the apartment?

23 A Yes.

24 Q Now did you -- were you able to determine whether
25 that was a light switch that turned the light on outside where

1 the stairs were or whether it was a switch that turned lights
2 on in the apartment?

3 A I don't recall. I did not do that. No.

4 Q Okay. But at least when you got there your
5 understanding was that there were no lights on other than the
6 lamp light that was on that was in the bedroom.

7 A That I didn't document the condition of the lights,
8 that -- that the walk-through at that time was daylight hours.
9 I would have you look at the crime scene analyst's report on
10 the condition of the lights and look at the photographs, the
11 photographs in place at the time of the crime scene.

12 Q Right. And I did do that, and I guess what I'm
13 getting at is nobody was able to tell you that the lights were
14 actually on when the first responding officer showed up and
15 then the detectives and crime scene people showed up
16 thereafter.

17 A Right. That's correct.

18 Q Okay. Now, one of the things that you did at this
19 point in the investigation is you tried to look around to
20 determine if there was any evidence that would explain why
21 someone kicked that door in to get into that apartment; is that
22 right?

23 A There was evidence of that, yes.

24 Q Okay. And obviously you want to know if there's any
25 evidence that someone broke into steal from this apartment; is

1 that fair?

2 A I would look for a motive of why the door was kicked
3 in, yes.

4 Q Right. And when we use the term "ransacking", are we
5 describing a situation where a thief kind of pulls out drawers
6 or goes through closets, turns things over? Is that a fair I
7 use the term "ransacking"?

8 A Yes, it is.

9 Q And in your report you stated in two separate places
10 that there was no ransacking that went on in this apartment; is
11 that right?

12 A Yes. And that would have been I believe Tom
13 Thowsen's report.

14 Q Okay. And no ransacking in the bedroom either.

15 A That's correct.

16 Q Okay. And, in fact, did you notice that there were
17 some items of value that were in that apartment? And obviously
18 they were in there, nobody took them.

19 A That's correct.

20 Q Okay. And specifically there's a TV in there.

21 A Yes, sir.

22 Q And there are a set of keys, a pen, an envelope.
23 They're sitting on top of this TV.

24 A I'd have to look at the photo for that.

25 Q Well, if you want to look at the report, that would

1 be fine with me as well.

2 A Sure. Let me get --

3 Q I think you'll find it on page 8 of the crime scene
4 report. And specifically what I'm asking you is the TV that's
5 in the apartment, were there a set of keys, a pen and an
6 envelope that were sitting on top of this TV?

7 A That sounds reasonable (indiscernible) --

8 Q Oh, okay.

9 A Yeah. But just give me a moment to pull up that
10 report.

11 Q Please.

12 A Do you have that report with you?

13 Q Yeah, I think I might.

14 (Pause in proceedings)

15 THE WITNESS: Sir, on page 6 of Tom Thowsen's report
16 that may be similarly situated to the crime scene analyst's
17 report, it says a set of keys including one to the apartment
18 along with a pen and envelope were on top of the TV set.

19 BY MR. ABOOD:

20 Q Okay. Now, near that TV there was a wall calendar,
21 and it had 119 dollars cash in it?

22 A Yes, sir.

23 Q Okay. In front of the couch there's a coffee table,
24 and the coffee table had a watch, a gambling card, some
25 prescriptions. Do you see that in the report as well?

1 A Yes.

2 Q And obviously those things weren't taken.

3 A That's correct.

4 Q Now, the kitchen was east in this small apartment,
5 and it appeared undisturbed; is that fair?

6 A Okay.

7 Q In the bedroom was a lamp on a night stand, and what
8 I'm getting from the report is that that was the only light
9 that was on in the apartment. Do you have a recollection?

10 A Yes, that's my recollection.

11 Q Okay. Now, there's no evidence at all to suggest
12 that whoever entered into that apartment ever entered into the
13 bathroom, the bedroom or the kitchen; is that right?

14 A There's no education that they did or didn't.

15 Q Okay. Okay. That's fair. Now, obviously, no
16 evidence was collected, no photographs were taken, nothing like
17 that that would suggest anyone entered into any of those rooms.

18 A There's nothing that I could say with definitive that
19 they entered that room.

20 Q All right. And in the bedroom we talked about a
21 small table next to the bed, and the cordless phone base was on
22 that small table. Do you recall that?

23 A Yes.

24 Q And there was a small clock sitting on that table?

25 A Yes.

1 Q And there was a dollar bill and there was some change
2 sitting in a cup. Is that part of the report?

3 A It sounds reasonable, yes.

4 Q Okay. Now, we spoke earlier with another witness
5 that underneath that table in the bedroom was an envelope, a
6 telephone directory and a wallet with the victim's name and ID
7 in the wallet. Do you recall that?

8 A Yes.

9 Q And, obviously, there was no evidence that anyone had
10 touched that wallet other than Mr. Lungtok.

11 A That's correct.

12 Q Okay. Now, a search warrant was issued for the home
13 that Justin Porter was living in here in Las Vegas. Do you
14 recall that?

15 A Yes.

16 Q All right. And the address to that apartment was 208
17 North 13th Street, Apartment 3. Does that ring a bell?

18 A Yes.

19 Q All right. And do you have any recollection as to
20 what day that warrant was issued?

21 A There was two search warrants. The first one --

22 Q Let's go with the first one.

23 A Yeah. The first search warrant was -- the author or
24 the affiant of that search warrant was Detective Casteneda.

25 Q Um-h'm.

1 A And my recollection was that would have been on
2 August 10th. Then the following day I was the affiant on a
3 search warrant previous -- prior to traveling to Chicago.

4 Q Okay. And that was the home that was Angela Porter's
5 home, is the mother.

6 A Yes.

7 Q Okay. And living in that home were Sergio, and
8 that's Justin stepfather.

9 A At that house, yes.

10 Q At that house. And Justin was living there as well.
11 And as far as you know, he didn't have any room of his own. He
12 apparently I guess slept on the couch, Justin did.

13 A Yes.

14 Q Okay. Now, obviously, you found no gun, no bullets,
15 no clothing with blood on it, no evidence connecting him to
16 this killing other than the shoes that the jury heard about
17 earlier.

18 A That's correct.

19 Q The Saucony's. All right. And we had -- did you get
20 a chance to see those shoes when they were taken into --

21 A No.

22 Q You didn't look at them. Okay. Now, Justin wasn't
23 there at the time that the warrant was issued at this apartment
24 that his mother lived in.

25 A No, he was not.

1 Q In fact, you came to find that he was with his father
2 in Chicago.

3 A That's correct.

4 Q Okay. Now, you told us about you and a number of
5 other detectives traveling to Chicago to interview Justin
6 Porter. Do you recall had he been in custody approximately 15
7 hours by the time the detectives got there?

8 A That's what the -- my estimation is that my
9 recollection was we had worked all day (indiscernible) the
10 afternoon of the search warrant. And then late that evening,
11 close to midnight, I was advised that Justin Porter was in
12 custody and that -- to try to make expeditious travel plans to
13 Chicago.

14 So we flew out that morning at -- I want to say the
15 flight left around 7:00, and then arriving into Chicago 3:00 or
16 4:00 o'clock to contact Justin Porter. So you're looking at
17 that evening around midnight down to going to the following day
18 early evening.

19 Q Now, as you told us, you did end up getting a taped
20 interview with Justin concerning this shooting, and the jury
21 heard one of those tapes; is that right?

22 A Yes.

23 Q Now, we've been talking about the fact that Justin
24 essentially gave two statements, and you were there for both of
25 them.

1 A Yes, sir.

2 Q All right. Now, obviously he had the right to remain
3 silent and everything else, but according to you he waived that
4 right and he agreed to talk.

5 A Yes.

6 Q And before you got to the taped portion of the
7 interview, apparently you had something called a preinterview
8 that you told the jury about.

9 A No. I would not term it preinterview, but we think
10 it in these terms is that you have an interview. And in an
11 interview you're trying to develop a rapport, trying to get
12 some background information, try to tell us a direction on how
13 this interview's going to proceed.

14 Many, many times is that if you sit down and you talk
15 to somebody whether it's a victim, witness or a suspect, if
16 that tape recorder is placed from the very beginning is that
17 it's very, very difficult to solicit the truth. That people
18 are less apt to talk with you, less willing to speak with you
19 about a number of things, and it really makes it very difficult
20 to get to the truth.

21 So we have an interview and then in lieu of having a
22 written statement where somebody sits down for a very, very
23 lengthy period of time and may leave things out and admit
24 things is we take a taped statement, and that taped statement
25 is a memorialization of what was discussed in the interview.

1 Q All right. So I guess the point that I'm making is
2 before the actual tape recorder went on you spent some time
3 talking with Justin, and that didn't end up on the actual
4 recorded statements where we have transcripts.

5 A Yes.

6 Q Okay. Now, you told the jury you asked him about
7 what happened at 415 South 10th Street, and initially he didn't
8 know where that was.

9 A That's correct. When I said the address, when I --
10 when I described it as South 10th Street this address, he did
11 not know where that was.

12 Q But then you showed him a photograph. And when you
13 showed him that photograph, I guess it showed the exterior of
14 the apartment complex. That's when he immediately, apparently,
15 recognized the building, and he stated that I had nothing to do
16 with this.

17 A That's correct.

18 Q All right. And it's at that point that he tells you
19 about Dionne.

20 A Yes, sir.

21 Q Let's talk a little bit about what he told you. In
22 the first statement that he gave, apparently Justin explain
23 that when you walk out of Justin's back door at 208 North 13th
24 Street -- now that's his mother's place --

25 A Yes.

1 Q -- is that true? Okay. When you walk out the back
2 door, there's a man who's about 50 or 55 years old that lives
3 back there in a house the same color as Justin's house. Did he
4 mention that?

5 A Yes.

6 Q Okay. And this man that Justin described is
7 apparently dark skinned, and he walked with some kind of a
8 weird walker type thing; is that right?

9 A Yes.

10 Q Okay. And the man has a wife who's apparently
11 Mexican; is that right?

12 A I don't recall about the wife, but I remember him
13 discussing the man.

14 MR. ABOOD: Your Honor, you mind if I approach?

15 THE COURT: Go ahead.

16 MR. ABOOD: Thank you.

17 BY MR. ABOOD:

18 Q Sir, is one of the statements that you were there
19 with Detective Jensen to tape, did one of them occur on
20 8/12/2000 at 19:30 hours in Chicago?

21 A Yes.

22 Q Does this appear to be that statement? You can go
23 ahead and have a look at it.

24 A Yes, it is. Yes, it is.

25 Q Okay. Let me direct you to page 4, see if we can

1 refresh your memory as to what he told you about the man's
2 wife. I'm sort of in the middle of the page there. And this
3 is where he's describing the man that I just spoke of, isn't
4 it?

5 A Yes, sir.

6 Q And did he mention that she (sic) had a Mexican wife?

7 A Yes, he did.

8 Q Okay. Thank you. And living with that man and his
9 Mexican wife was this guy named Dionne.

10 A Can I follow along with my statement here with that?

11 Q Yeah. This is the same. And I'll try to help you by
12 telling you page numbers as we go along, and I'm still looking
13 at page 4.

14 A That he said that this one was staying with him.
15 That I don't know if -- he didn't use the word "living" but
16 certainly that he was at the apartment.

17 Q Okay. So they were together apparently in this
18 apartment.

19 A Yes.

20 Q Okay. Now, Justin goes on to tell you that he's
21 actually willing to take you there where you can actually talk
22 to this man named Dionne; is that right?

23 A Yes.

24 Q And he goes forward, and he knows gives you an actual
25 physical description of Dionne himself; is that correct?

1 though Justin tells you that he'll actually take you there; is
2 that right?

3 A Yes.

4 Q And no one looks into questioning this Dionne to find
5 out if he's involved in any way at all.

6 A That's correct.

7 Q Okay. Now, later in the statement Justin was asked
8 about the nature of his relationship with Dionne. And do you
9 recall was his response, "There ain't no buddy relationship
10 there"?

11 A Dionne. That's what he says.

12 Q With Dionne.

13 A Yes.

14 Q Okay. So, in other words, Justin and Dionne
15 apparently are not buddies.

16 A Right.

17 Q Okay.

18 A That's correct.

19 Q Now, it's at that point that he goes forward and
20 tells you how this incident that we've been talking about takes
21 place; is that right?

22 A That is --

23 Q The shooting.

24 A Right. And again, that's the first narration where
25 he says that -- subsequently he says that did not happen.

1 Q Right. This is -- so far we're still in the first
2 recorded statement.

3 A That's correct.

4 Q Okay. And that's when he says that Dionne and him
5 were out late at night and Justin had a gun with him; is that
6 fair?

7 A Yes.

8 Q Okay. Dionne asks if he could borrow the gun because
9 he wants to conduct -- or he wants to conduct a lick. Do you
10 recall that?

11 A Yes.

12 Q Okay. And Justin describes a lick as a situation
13 where someone wants to get money or something along those
14 lines?

15 A Robbery would be --

16 Q Is that the word Justin used?

17 A He said that Dionne may have said that to him as far
18 as (indiscernible), correct. If you -- I can look at the
19 report and can clarify whether it was his narration that he
20 said Dionne said it to him or if that was a term that Justin
21 had used.

22 Q Yeah. If you can find where it's a term that Justin
23 actually used.

24 A It's on page 8, and so it was dark out and Justin's
25 response was, "Yeah." He tells -- he told me that he had a

1 lick and I said a lick -- said a lick, excuse me. "All right.
2 Cool. I'll go with you but I ain't going in." So this is --

3 Q Now, this is Justin talking, right?

4 A So this is Justin answering the question, and he's
5 saying that Dionne is talking about doing a lick or a robbery.

6 Q Um-h'm. So Justin says Dionne wants to do a lick,
7 but Justin responds I ain't going in with you.

8 A That's correct.

9 Q And then he asks what does a lick mean. Do you see
10 that?

11 A Yes.

12 Q And he says, "Well, some -- anybody go get some
13 money." So does that clear up whether or not Justin actually
14 used the word "robbery"?

15 A No. Justin did not use the word "robbery". He --

16 Q Okay.

17 A However, my understanding was is that when we use the
18 "lick", we were talking about a robbery.

19 Q That was your understanding. Okay. Now apparently
20 Dionne, according to Justin, then runs upstairs and Justin
21 waits by this phone booth.

22 A Yes.

23 Q And when Dionne was coming back down the stairs,
24 Justin was walking towards him.

25 A Yes.

1 THE COURT: I'm sorry. Say that again.

2 MR. ABOOD: While Dionne was walking back down the
3 stairs, Justin was walking towards him.

4 THE COURT: Sorry. Go ahead.

5 BY MR. ABOOD:

6 Q Okay.

7 A And if I could just clarify that a little bit,
8 Counselor, is that he describes not Dionne walking down the
9 stairs but skipping down.

10 Q Skipping down the stairs.

11 A Right.

12 Q Okay. Thank you. And Justin apparently heard the
13 sound of a door cracking in and then heard what you described
14 as the locka, locka, locka, the gunshots; is that right?

15 A Yes, sir.

16 Q Let me talk to you about what Justin said about the
17 shell casings themselves. Now, he told you at that point that
18 Dionne picked up the shell casings.

19 A In his initial statement, yes.

20 Q In the same statement that we're talking about.

21 A Yes.

22 Q Okay. And that's because according to Justin, "That
23 still just by one little bullet, you know, just thinking about
24 that one little bullet could tell every gun which one it is."
25 Do you recall Justin saying that?

1 A Yes, I do.

2 Q Now, in that recorded statement he never told you
3 what caliber bullet it was; is that fair?

4 A That's fair.

5 Q And you didn't ask him what caliber it was.

6 A No.

7 Q He specifically described the bullet in this
8 statement as just one little bullet, true?

9 A True.

10 Q Okay.

11 A And to clarify that answer is that I had asked him
12 previously to describe --

13 Q But I'm talking about this statement. In this
14 statement one little bullet is what he said, and you took that
15 to mean size of the bullet, not like quantity.

16 A No. In this statement here I took it to mean that he
17 felt like if there was forensic evidence of a bullet at a
18 scene, regardless, just one bullet, that that -- the police had
19 the ability compare that bullet to other ballistic evidence.

20 Q Right. Okay. Now, Justin then tells you that
21 eventually he goes back and looks in the apartment door after
22 Dionne did what he did.

23 A Yes.

24 Q Now, you already told us there was a blood trail from
25 the broken door and actually parts of it going down the stairs

1 of this complex; is that right?

2 A Yes.

3 Q So if Justin didn't know that it was the apartment on
4 the left-hand side before this, he certainly knows that now
5 having seen the blood trail; is that fair?

6 A No. I think that he only mentions that he sees the
7 blood at the threshold of the door after opening the door, and
8 that the apartment complex, it's a narrow stairway. There's
9 carpet I believe on that stairway or -- and that may not be
10 readily identifiable walking to the scene --

11 Q Well --

12 A -- at night time.

13 Q It may not, but you acknowledge there was blood on
14 the stairs.

15 A Yes, sir.

16 Q And there was blood on the threshold that you
17 described for the jury. And, in fact, there was visible blood
18 on the threshold on the inner part of the apartment as well as
19 the threshold on the outer part where the door closes; is that
20 right?

21 A Yes. But --

22 Q Okay.

23 A -- in response to your question, you'd asked was
24 there a blood trail leading up to the apartment that you
25 discussed, and his response in all fairness when we discussed

1 the interview was that he noticed the blood at the threshold of
2 the door.

3 Q Okay. So he noticed the blood.

4 A At --

5 Q Where the left door was. Okay.

6 A That was after moving the door open.

7 Q He pushed on the door with his foot when the door was
8 cracked; is that right?

9 A Yes.

10 Q And he told you that he put his shoe under the --
11 under where the knob is to push that door open.

12 A Yes.

13 Q Okay. Finally, when you asked Justin if he had told
14 anyone about this, he says to you I might get killed for
15 telling you this; is that right?

16 A Yes.

17 Q And again, he's talking about Dionne. He's
18 frightened about what Dionne would do if he finds out that
19 Justin talked.

20 A Yes.

21 Q Okay. Now, you also talked to the jury a little bit
22 about you finding it odd that Justin said something about being
23 sorry for what he did. Do you recall that?

24 A Yes.

25 Q Now, when Justin said towards the end of that first

1 recorded statement that we've been talking about don't you want
2 to ask me whether or not I'm sorry or something along those
3 lines, you did ask him that, didn't you?

4 A Yes, I did.

5 Q And that's where you told the jury about finding it
6 unusual that Justin said that he was in fact sorry for what he
7 did. You took it to mean he was talking about the shooting.

8 A That's correct.

9 Q Now, you don't know whether or not he was talking
10 about the shooting or whether he was talking about lending
11 Dionne his gun or whether he was in fact talking about not
12 calling the police or an ambulance when he heard a man up in
13 the apartment. You just don't know.

14 A From the totality of the interview, it was my opinion
15 that he was saying that he was sorry for something he committed
16 and --

17 Q That's your opinion, isn't it?

18 A Yes, sir.

19 Q He certainly had other things to be sorry about,
20 didn't he?

21 A In that narration of events that I just found it
22 unusual.

23 Q Okay. No. I understand. Now, it's at this point
24 that you explained to the jury that Justin asks you what you
25 all think about the statement he gave, and I think that the

1 position you took is that he's not being truthful with you; is
2 that right?

3 A Yes, sir.

4 Q And you told him that, I'm not being truthful, and
5 that's when he gives the second statement, and that's the one
6 that the jury in fact heard.

7 A Right.

8 Q Okay. Let me talk to you -- review with you just
9 very briefly some of the portions of that second statement. He
10 says to you -- do you have that statement with you, sir?

11 A The second part, yes, I do.

12 Q Okay. He starts out by saying that he wants to tell
13 you the truth in his words because it's too important; is that
14 right?

15 A It's too important?

16 Q Yeah.

17 A Yes.

18 Q Okay.

19 A At first initially when we come in, the second
20 statement, is that --

21 Q I'm talking about the recorded statement itself.
22 Does he use --

23 A The recorded statement.

24 Q Does he use the words "I want to tell you the truth
25 because it's too important"?

1 A Yes, sir.

2 Q Okay. I want to stick to the actual recorded
3 statement itself.

4 A Okay.

5 Q All right. Now, the story that is now being told --

6 THE COURT: Take down the (indiscernible), please.

7 Thanks.

8 UNIDENTIFIED SPEAKER: Sorry.

9 THE COURT: It's okay.

10 UNIDENTIFIED SPEAKER: Okay.

11 BY MR. ABOOD:

12 Q Is that the night before this killing, assuming that
13 it happened in the early hours the following day -- you know,
14 like sometime after midnight -- that Justin was with his
15 ex-girlfriend Maria. And he tells you where she lives. She
16 lives with her grandma on Bruce and Stewart; is that right?

17 A No. That my recollection is that she was staying at
18 Charleston and the Boulevard.

19 Q All right. Does she tell you that -- he tells you
20 where she works, at Stewart Market.

21 A Yes.

22 Q Okay. And again, he offers to actually take you
23 there.

24 A Yes.

25 Q Okay. Now, after he was with Maria at sometime after

1 midnight, he tells you that -- and this is what the jury heard
2 -- eventually he wants to walk home and he's carrying a gun,
3 true?

4 A Right.

5 Q Okay. And this is when he sees that police car
6 coming, and the police car apparently shines a spotlight on
7 him, he gets scared and he runs.

8 A Yes.

9 Q Okay. And he ran past the apartment building stairs,
10 and in his words he remembered that nobody lived there.

11 A That's correct.

12 Q And, in fact, he stated a number of times -- and this
13 is something that the jury heard on the tape -- nobody lives
14 there, nobody lives there; is that right?

15 A Yes.

16 Q Okay. And, in fact, he even talks about the fact
17 that every time he ever walked by that apartment he never saw
18 that anybody lived there because he looked at the window, true?

19 A That's correct.

20 Q And the window always looked the same; is that right?

21 A He related something similar to that about the
22 curtains being opened.

23 Q Okay. And he goes on to say that the curtains are
24 always open. Okay. And he tells you the only reason he runs
25 up there is because nobody lives there; is that right?

1 A Yes.

2 Q Okay. And he kicks the door open again at the knob.
3 So in both statements that he gives there's going to be reason
4 for his footprint to be on that door underneath the knob; is
5 that right?

6 A Certainly in the second statement that we're talking
7 about right now. The first one with the lock that was busted
8 out that the transfer and a full kick seemed that that would be
9 unreasonable to push a whole door open --

10 Q Well, Detective, the actual print that was taken off
11 that door was a faint print, wasn't it? I mean, it wasn't a
12 good print.

13 A It -- in my opinion it was decent, a very decent
14 print in that we don't find those very, very often and you
15 got --

16 Q Okay. And a person wearing a shoe like a dusty shoe
17 like that, if they place their foot on that door they're going
18 to leave a print.

19 A In reviewing it, the first statement, it seems like
20 it would be much more reasonable --

21 Q Well, but that's --

22 A -- to push the --

23 Q It's a simple question. If somebody puts that --

24 A Yeah. I'm just trying to clarify.

25 Q I'm sorry. If somebody puts their shoe on that door,

1 it's going to leave a print that can be lifted.

2 A Yes.

3 Q Okay.

4 A Particularly if it's a door kick.

5 Q No. I understand what you're saying, but we've
6 established that there's reason for his shoe to be on the door
7 in both statements. You'll acknowledge that.

8 A Yes.

9 Q Okay. Now, specifically this night when he goes up
10 to that apartment before he goes in, he recollects that there
11 was no light on this night either, true?

12 A That's correct.

13 Q Okay. And had there been a light on, he would have
14 just kept going, kept running. This is what he says.

15 MS. LUZAICH: Well, objection. He did not.

16 MR. ABOOD: Well, but that's what he said.

17 THE COURT: The question is is that what he said in
18 his statement?

19 MR. ABOOD: Is that what he said in his statement.

20 THE COURT: Okay. Is that what he said, Officer?
21 Detective. I'm sorry.

22 THE WITNESS: There was a question about the light
23 being on. And if I could look at the statement, I could
24 clarify.

25 THE COURT: Go ahead.

1 BY MR. ABOOD:

2 Q Let me just show you page 11. Do you ask him, "Okay.
3 Was there a light on inside of that?"

4 A Yes, I do.

5 Q He responds, "There was no light."

6 A That's correct.

7 Q And you say, "Okay."

8 A Yes.

9 Q And he says, "No light, cause if there was a light, I
10 wouldn't have went in there. I would have kept going."

11 A Yes.

12 Q Okay. Now, after he got into the apartment, that's
13 when some guy just came at him out the dark; is that right?

14 A That's what he said.

15 Q Okay. And he scared him -- or this man scared
16 Justin, and again it's because in his mind nobody lives there;
17 is that right?

18 A That's what Justin said, yes.

19 Q Okay. And the jury in fact heard his own words in
20 terms of how frightened he became when this person came at him
21 from inside the apartment, and you heard that as well.

22 A Yes.

23 Q Okay. Let me talk to you very quickly about the
24 shells that we've been discussing. Do you know -- Justin was
25 asked during the course of this statement -- again, we're still

1 talking about the second recorded statement -- whether or not
2 he knew where he dropped those shells after he picked them up.
3 Do you recall that?

4 A Yes.

5 Q Okay. And he said if I went back, I probably will
6 remember. Do you recall that?

7 A Yes.

8 Q In other words, he dropped them somewhere on the
9 street, and he was willing to actually take you where he
10 dropped them to get those shells. Do you agree with that?

11 A Yes.

12 Q Okay. Now that never happened, right?

13 A No.

14 Q Okay. Let me ask you about the photo and the diagram
15 that you showed Justin during the course of his statement. Mr.
16 Porter, Justin, actually describes this apartment complex for
17 you during the course of this statement; is that right?

18 A Yes.

19 Q In other words, you want him to describe the building
20 so that you get an idea of what he knows about this building.

21 A Right.

22 Q All right. And it's at that point that you showed
23 him the photograph of the building, and at that point there was
24 a sketch done on a piece of paper to assist him in his
25 description of the apartment building; is that right?

1 A No. The photo was much earlier. The photo was
2 initially when he said that he didn't know what we were talking
3 about 10th Street.

4 Q That's when you started the interview.

5 A Yes.

6 Q Okay. So you never took that photo back?

7 A Yes, I did take the photo back.

8 Q Oh, you did take it back.

9 A Yes.

10 Q All right. So at the point where he's describing the
11 apartment building, what we're talking about then is that
12 sketch.

13 A There's a part in there and that we're talking about
14 the sketch, and that would be just particular to the sketch.
15 But other times when he's about walking down to the building,
16 his approach to the building, the stairs, many times when we
17 talk about this location that sketch would not have been used
18 then.

19 Q All right. But at the point in time that he's
20 describing the apartment to you, a sketch was being used to
21 assist him in the description of the actual building. That's
22 what I'm getting at.

23 A I believe I was trying to get to his location where
24 he was standing at.

25 Q Okay. And that's when he -- you had him draw where

1 the phone booth might be.

2 A Yes, sir.

3 THE COURT: Sorry. Are you still -- you're not still
4 in the second statement, are you?

5 MR. ABOOD: The first statement he's describing the
6 building with a sketch.

7 THE COURT: Okay. Sorry. I lost you.

8 MR. ABOOD: I'm sorry.

9 BY MR. ABOOD:

10 Q There was only one sketch made; is that right?

11 A Right. Right. And that was the first statement.

12 Q Right. And then shortly thereafter the second
13 statement was given. At that point there was no further
14 description. That was done when he gave the initial statement.

15 A That's correct.

16 Q Okay. There's a point in time that you asked him
17 about the actual window that was on that apartment building.
18 Do you recall that?

19 A Yes.

20 Q And he says something like -- he was asked was the
21 window open or closed, and his response was, well, in the photo
22 it's open. Do you recall?

23 A Yes.

24 Q And that again is referring to the photograph that
25 you gave him when he -- when you initially started questioning

1 about this.

2 A Yes.

3 Q Okay.

4 A Very briefly made reference to it and noted the
5 window was open.

6 Q All right. Let's talk a little bit about the
7 evidence that links Justin to this specific killing, and we've
8 heard about this Sarsony (sic) -- is it Sarsony or --

9 A Saucony.

10 Q Saucony.

11 A Yes.

12 Q Saucony. Okay. We've heard about the shoes. There
13 was no other forms of clothing found obviously that had any
14 blood on them, anything that would indicate that the clothing
15 itself was associated with this crime scene.

16 A That's correct.

17 Q And that would be either here in Las Vegas or in
18 Chicago.

19 A That's correct.

20 Q Now, even the shoes that we talked about, the
21 Sasonies (sic), there was no sign of blood on them either top
22 or bottom.

23 A That's correct.

24 Q And as we already discussed, nobody can say that
25 anything was stolen from that apartment by Justin Porter.

1 A That's correct.

2 Q Now, no gun was found that would link Justin to this
3 killing.

4 A No.

5 Q And in Justin's voluntary statement, he describes the
6 gun as in the -- a black gun with a brown handle.

7 A Yes.

8 Q Okay. So that's all he says in his statement itself.

9 A In that statement.

10 Q In the statement. Now, nothing else is asked of him
11 in terms of any further description. This is the description
12 that he gives.

13 A No. There were some --

14 Q From the statement.

15 A Just in the statements, correct.

16 Q Okay. Now, a black gun with a brown handle, could
17 that describe guns other than a .22?

18 A Yes.

19 Q Okay. In one of the statements Justin states that he
20 goes home, takes the gun with him and puts it up on the roof;
21 is that right?

22 A Yes.

23 Q At his grandma's house?

24 A Yes.

25 Q Did anybody actually get up on the roof to see if

1 there was a gun there?

2 A My recollection is that the eaves were checked. That
3 -- and that is an apartment complex that has a walkway that's
4 -- you can easily look over or see the eave from walking in
5 front of the apartment complex.

6 Q And obviously there was no gun there. And in one
7 statement he claims that he gave the gun to his cousin Kris.

8 A Yes.

9 Q Does Kris say Justin ever gave him a gun?

10 A No.

11 Q He didn't give him that gun. Okay. Now just to wrap
12 up, the jury heard the second recorded statement. Will you
13 agree, Detective, that when Justin gave you the second
14 statement he was obviously very emotional in his explanation of
15 what happened?

16 A Yes.

17 Q And he expressed to you a great deal of remorse for
18 what happened.

19 A Yes.

20 Q And as the jury heard, he said numerous times he just
21 wished he could hurt -- you know, turn back the hands of time,
22 and that was the position he took.

23 A Yes.

24 Q Okay. Sir, thank you very much.

25 MR. ABOOD: Thank you, Your Honor.

1 THE COURT: Thank you. Redirect.

2 MS. LUZAICH: Just briefly.

3 REDIRECT EXAMINATION

4 BY MS. LUZAICH:

5 Q Detective LaRochelle, prior to conducting the first
6 taped statement in the interview portion of the first -- sorry,
7 the first interview I guess we would call it, did you ask him
8 to describe the gun that you guys were all talking about?

9 A Yes.

10 Q And specifically how did he describe it?

11 A He described it as a firearm that you had to pull a
12 slide back and that -- that the gun took tiny, very small,
13 bullets.

14 Q And black gun, brown handle.

15 A Black gun and brown grips. Yes.

16 Q Okay. The fact that there was no ransacking of the
17 apartment, does that necessarily mean that he didn't go there
18 with the intent to commit a robbery?

19 MR. BROWN: Your Honor, I'm going to object to the
20 question and the speculative answer.

21 MS. LUZAICH: Well, no.

22 MR. BROWN: That's ultimately the jury --

23 MS. LUZAICH: The question was does it necessarily
24 mean.

25 THE COURT: Sustained.

1 BY MS. LUZAICH:

2 Q No ransacking of the apartment only means that nobody
3 tore the apartment up.

4 A That's correct.

5 Q Would you agree with that?

6 A In this case, the -- I was asked is there any
7 evidence that shows that a person was or was not in a room, and
8 I cannot say that specifically. But, however, in this case it
9 was noted that the wallet that was on the floor did not contain
10 any money. That there was no money in that wallet.

11 Q That was empty.

12 A Yes.

13 Q And when Mr. Abood asked you about the 119 dollars
14 that was found in the calendar, that was actually in a pocket
15 that was kind of hidden beyond, not observable to the naked eye
16 unless you walked up and touched it.

17 A That's correct.

18 Q That TV that was sitting on the coffee table for want
19 of a better word, wasn't that like a 13-inch black and white
20 TV?

21 A Right. It was an older TV sitting by the front door,
22 yes.

23 Q Just because the defendant gave a detailed
24 description of Dionne, does that mean that Dionne actually
25 exists?

1 A Absolutely not. It's my opinion that there is no
2 Dionne.

3 MR. BROWN: I'm going to object to that, Your Honor.

4 MR. ABOOD: I'm going to object to it also.

5 THE COURT: Okay. You guys got to stop
6 double-teaming me. If it's witness, he's the one who does it.

7 MR. BROWN: I apologize, Your Honor. I thought --
8 earlier I thought we had -- I was going to do the objections.

9 MR. ABOOD: No, that's fine.

10 MR. BROWN: But he's implicit, too.

11 MR. ABOOD: I don't mind if Curtis does it.

12 THE COURT: Pick one.

13 MR. ABOOD: Go ahead.

14 MR. BROWN: I'll handle the objection and I object.

15 THE COURT: Okay. Okay. And --

16 MR. BROWN: His opinion as to the existence or
17 nonexistence of Dionne again is a jury question. I would
18 object to this witness giving his opinion.

19 MS. LUZAICH: Actually if I can respond to that. Mr.
20 Abood went to great lengths to talk about the fact that they
21 didn't try to track Dionne down, so his opinion whether or not
22 Dionne existed is absolutely relevant.

23 THE COURT: So ask him why he didn't try to track
24 Dionne down.

25 BY MS. LUZAICH:

1 police a different narration of events.

2 In this particular case is that we have a tight
3 chronology of events. We have Maria, Justin's girlfriend, at a
4 location with Justin prior to the incident that was
5 corroborated. We have a path from her house to his house they
6 traveled on. We have him telling us that he's telling us the
7 truth now in an emotional statement where he's saying that the
8 truth is hard to say, hard to tell, if I could turn back the
9 hands of time, and he gives us a narration of events that fits
10 what we know from a witness' statement. And then we also have
11 him placing himself at a location that does not exist north of
12 the apartment where he could not have seen or where this person
13 had alleged -- gone up to the second floor to the left of that
14 apartment.

15 BY MS. LUZAICH:

16 Q Directly across the street from that apartment is a
17 school, correct?

18 A Yes.

19 Q And there's several buildings to that school?

20 A Yes.

21 Q And the apartment, 415, has a sister apartment, kind
22 of 417?

23 A Yes, south of it.

24 Q And there's trees and all sorts of things around
25 that --

1 A Yes.

2 Q -- correct? When the police are driving by and
3 flashing a spotlight on him, there were numerous places where
4 he could have hidden in that area, correct?

5 A That's correct.

6 Q Mr. Abood asked you about him saying repeatedly
7 nobody lives there, nobody lives there, nobody lives there.
8 But on page 9 did he tell you, "I only walked past a few
9 times"?

10 A Is that at the top --

11 Q Oh, do you have State's Exhibit -- where's the
12 exhibit statement?

13 MR. BROWN: We haven't marked it yet.

14 MS. LUZAICH: Oh, you know what, can I -- no, this is
15 the second one.

16 (Pause in proceedings)

17 MS. LUZAICH: I'm talking about the second one.
18 Where's the exhibit? Oh, this is -- can I get the second
19 statement marked as State's next in order?

20 THE COURT: Yes.

21 MS. LUZAICH: All right. State's Proposed Exhibit
22 108 is the second statement. I would move it into evidence.

23 MR. BROWN: No objection.

24 THE COURT: It will be admitted.

25 (Plaintiff's Exhibit 108 admitted into evidence.)

1 BY MS. LUZAICH:

2 Q Okay. Now, on page 9 at the bottom, does he say
3 something to the effect of every time I walk by it was empty,
4 but I only walked by there a few times?

5 A Yes.

6 Q Thank you.

7 MS. LUZAICH: Nothing further?

8 THE COURT: Recross.

9 MR. BROWN: Court's indulgence for just a second,
10 Your Honor.

11 THE COURT: Um-h'm.

12 RECROSS-EXAMINATION

13 BY MR. BROWN:

14 Q I guess what you're telling us, Detective, is that
15 you just -- you discounted the whole Dionne story?

16 A No. I certainly weighed it in that first statement,
17 but going back that Justin told us that the first story was not
18 true.

19 Q So you ended up discounting the Dionne story.

20 A Yes.

21 Q Okay. Thank you.

22 MR. BROWN: Nothing further, Judge.

23 MS. LUZAICH: Nothing.

24 THE COURT: Okay. Thank you, sir.

25 THE WITNESS: Thank you.

1 MS. LUZAICH: Can I approach the clerk to make sure
2 everything's been moved into evidence that needs to be?

3 THE COURT: Yes.

4 (Pause in proceedings)

5 (Off-record bench conference began at 4:19 p.m.)

6 THE COURT: Checking out the evidence.

7 MR. BROWN: I think they're done.

8 THE COURT: That's what I'm thinking. They're about
9 to rest and they're making sure.

10 MR. BROWN: Yeah. I think we can probably settle
11 instructions this afternoon and then close tomorrow. I don't
12 want us to initially close yet, give you a chance to --

13 THE COURT: Right.

14 MR. BROWN: -- (indiscernible).

15 THE COURT: Yeah.

16 MR. BROWN: And maybe we'll do it later today or in
17 the morning.

18 THE COURT: (Indiscernible).

19 MR. BROWN: There's an outside chance -- I just sent
20 an E-mail out (indiscernible). I actually do think there's a
21 (indiscernible) but it's no big deal, but we're going to go see
22 if we can take a picture of it since it's (indiscernible) so I
23 got to try (indiscernible).

24 THE COURT: All right.

25 UNIDENTIFIED SPEAKER: (Indiscernible) we can ask

1 that they disclose their (indiscernible).

2 MR. BROWN: Yeah. I'm just (indiscernible) --

3 THE COURT: That's (indiscernible). Right. I
4 understand.

5 MR. BROWN: It's only because (indiscernible).

6 THE COURT: Okay. You have no more witnesses?

7 MS. LUZAICH: Um-um.

8 THE COURT: Okay. So okay.

9 (Off-record bench conference concluded at 4:20 p.m.)

10 MR. TOMSHECK: Judge, at this time the State has no
11 additional witnesses. However, prior to resting we would ask
12 to be moved into evidence what's previously been marked as
13 State's Proposed 56 through 68 in order. The defense has no
14 objection.

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

16 THE COURT: 56 to 60 --

17 MR. TOMSHECK: 8.

18 THE COURT: 68. They'll be admitted.

19 (Plaintiff's Exhibits 56 through 68 admitted into evidence.)

20 MR. TOMSHECK: With that, the State has rested.

21 THE COURT: Okay. All right. Ladies and gentlemen,
22 at this point we're going to go ahead and break for the evening
23 and come back tomorrow and finish up. And we'll ultimately get
24 to arguments tomorrow and have you deliberate tomorrow as well.

25 I do have a hearing tomorrow morning. I think we

1 probably should not plan to start before 10:30. I just think
2 realistically I don't want you to stay out in the hall longer
3 than we need you to. So just plan to be here at 10:30 tomorrow
4 morning outside the courtroom.

5 And as usual, during this recess you're admonished
6 not to talk or converse among yourselves or with anyone else on
7 any subject connected with this trial or to read, watch or
8 listen to any report of or commentary on the trial or any
9 person connected with this trial by any medium of information,
10 including, without limitation, newspapers, television, the
11 Internet and radio, or to form or express any opinion on any
12 subject connected with this trial until the case is finally
13 submitted to you.

14 Thanks. You're excused for the night.

15 THE MARSHAL: All rise. Folks, leave your books and
16 make your way out.

17 (Outside the presence of the jury)

18 THE COURT: All right. The jurors have left the
19 courtroom. Everyone can have a seat.

20 Before we go ahead and talk about the instructions, I
21 want to go ahead and advise the defendant of his rights before
22 I -- to make that we do that today.

23 Now, Mr. Porter, under the Constitution of the United
24 States and under the Constitution of the State of Nevada you
25 cannot be compelled to testify in this case. Do you understand

1 that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And you may at your own request give up
4 this right and take the witness stand and testify. If you do,
5 you will be subject to cross-examination by the deputy district
6 attorneys and anything that you may say on direct or
7 cross-examination will be the subject of fair comment when the
8 State speaks to the jury in their final argument. Do you
9 understand that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Now if you choose not to testify,
12 the Court will not permit State to make any comments to the
13 jury because you have not testified. Do you understand that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And if you elect not to testify, the
16 Court will instruct the jury if your attorney requests as
17 follows: That the law does not compel a defendant in a
18 criminal case to take the stand and testify and no presumption
19 may be raised and no inference of any kind may be drawn from
20 the failure of a defendant to testify.

21 Do you have any questions about these rights?

22 THE DEFENDANT: No.

23 THE COURT: Now, if you have a felony conviction and
24 more than 10 years have not elapsed from the date you've been
25 convicted or discharged from prison, parole or probation,

1 whichever is later, unless it's previously been taken up by the
2 Court, if you take the stand and testify the deputy district
3 attorneys in the presence of the jury will be permitted to ask
4 you the following: Have you been convicted of a felony, what
5 was the felony, and when did it happen. However, no details
6 may be gone into. Do you understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. Now, we're going to talk some
9 more about jury instruction things before we break for the
10 evening. But before we pick up tomorrow, before we continue
11 these proceedings and before you make your final decision about
12 whether to testify or not to testify, you should discuss that
13 decision with your counsel keeping in mind these rights that I
14 have just explained to you. Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. Thank you. All right. You
17 can go ahead and have a seat. Sorry.

18 (Pause in proceedings)

19 THE COURT: Apparently there is an Exhibit 105. The
20 clerk had made an error. Apparently, Exhibit 105 which is a
21 voluntary statement was not moved into evidence. You want to
22 take a look at it and see if it's something that you intended?

23 MS. LUZAICH: Probably just another copy of what I
24 moved in as No. 107.

25 THE COURT: I don't know.

1 (Pause in proceedings)

2 THE COURT: Let's go off the record for just a
3 minute.

4 (Off the record at 4:26 p.m. until 4:27 p.m.)

5 COURT RECORDER: Back on the record.

6 THE COURT: Okay. So State doesn't need and will not
7 be offering 105.

8 MR. TOMSHECK: Correct. In reviewing 105, it's not
9 something we intended to offer for admission, yes.

10 THE COURT: Okay.

11 MR. TOMSHECK: That it not go back to the jury
12 (indiscernible).

13 THE COURT: Okay. It's not admitted. It won't be
14 going to the jury.

15 MR. ABOOD: I'd even ask that we remove it from the
16 area so it doesn't run the risk of going back.

17 THE COURT: I trust Keith to not send anything back
18 that hasn't been admitted.

19 MR. BROWN: While we're at it, Your Honor, the
20 Court's aware of the history of this case and the order in
21 which some of the evidence was collected. There was at least
22 one evidentiary bag that was containing the shoes that
23 specifically was not moved into admission because it references
24 sexual assault.

25 THE COURT: Right.

1 MR. BROWN: I Just want to point out that any of the
2 cover bags -- and I think that may be the only one that
3 mentions the sexual assault and wasn't moved in, but those do
4 not accidentally make their way back to the jury.

5 THE COURT: Right. So that was --

6 MS. LUZAICH: That's the only bag that there is at
7 all.

8 MR. BROWN: I think the shoes were put back into that
9 bag is the only reason I bring it up --

10 THE COURT: Yep.

11 MR. BROWN: -- when they were cleared and set back on
12 the counter.

13 THE COURT: Right.

14 MR. BROWN: And we just want to make sure that the --

15 THE COURT: All right. They're not.

16 MR. BROWN: Okay.

17 THE COURT: So, right, the bag that the shoes were in
18 was not moved into evidence and shouldn't go back. All right.
19 Got it? And, right, the others were moved into evidence.

20 MR. BROWN: Yeah. And I think those are fine.

21 THE COURT: Okay. All right. Are you ready to go
22 through the proposed jury instructions? We received today one,
23 two, three, four additional instructions from the State. Did
24 defense receive those?

25 MR. BROWN: I have, Your Honor.

1 THE COURT: Okay. All right.

2 (Pause in proceedings)

3 THE COURT: On the State's proposed instructions it's
4 always hard to go through this because they're not numbered
5 yet. But if we just kind of flip through the pages one by one,
6 hopefully, we have the same pages, and you can tell me if
7 there's any objection to them unless you have a better method.

8 MR. BROWN: I'm trying to pull them up now, Your
9 Honor. I inadvertently left my copy sitting on a desk, so I'm
10 going to pull them up and follow along with the Court.

11 THE COURT: Oh, okay.

12 MR. TOMSHECK: Do you have a copy of the full set
13 that we provided you, Judge?

14 THE COURT: I think so. I have the one that I've had
15 all week, and I've had the other four that I got today.

16 MR. TOMSHECK: The only reason I ask is neither Ms.
17 Luziach or Mr. Brown have a hard copy. I don't know if they're
18 comfortable following along with (indiscernible). I am.
19 That's how I'm prepared to proceed but --

20 THE COURT: Go make a couple copies including those
21 other four.

22 Do you have the defense instructions?

23 MR. TOMSHECK: I have them in electronic form.

24 THE COURT: I know. But do other people need them
25 while he's making copies?

1 MR. BROWN: That would be nice, Your Honor.

2 THE COURT: Okay. Thank you. All right. Let's go
3 off for a minute while we're waiting for the --

4 (Off the record at 4:30 p.m. until 4:39 p.m.)

5 COURT RECORDER: We're on.

6 THE COURT: Okay. Does everyone have the sets of the
7 proposed instructions now?

8 MR. TOMSHECK: We do, Judge.

9 MR. BROWN: Yes, Your Honor.

10 THE COURT: Okay. All right. So looking at the
11 State's proposed instructions are there any instructions in
12 there to which the defense objects? And try to direct me to
13 the page or general vicinity.

14 MR. BROWN: It's the instruction called the
15 transition instruction, Judge.

16 THE COURT: Yeah.

17 MR. BROWN: It should be after larceny, verdict,
18 murder. Okay. It's dang near right in the middle. It starts
19 with, "You are instructed that if the State has established the
20 defendant's committed first-degree murder."

21 THE COURT: Okay.

22 MR. BROWN: It's immediately after --

23 THE COURT: I got it.

24 MR. BROWN: -- all murder which is not murder of the
25 first degree. That's the transition instructions which the

1 State has agreed to submit my transition instruction which I
2 submitted to the Court which starts off exactly the same.

3 MR. TOMSHECK: And just for the Court's edification,
4 really the only difference is in the first paragraph, the last
5 sentence Mr. Brown has added after "first fully and carefully
6 considering murder of the first degree" and then the first
7 portion of the enumerated No. 1 is slightly different.

8 THE COURT: "Any of you are not convinced."

9 MR. BROWN: That's correct.

10 THE COURT: Okay. All right.

11 MR. TOMSHECK: So the Court's aware, it comes from
12 the Green (phonetic) case. I think some of the language that
13 he pulls is directly from the Green case. The instruction that
14 the State offered is the one we've always given, but I think
15 it's just a minute difference I certainly have no objection to
16 it.

17 THE COURT: Okay. So we're going to switch out the
18 defendant's proposed instruction on that point, that you are
19 instructed that if you find that the State has established and
20 so on.

21 MR. TOMSHECK: Correct, Your Honor.

22 THE COURT: And we'll substitute that for what the
23 State had proposed.

24 Anything else? Any other objections to the State's
25 proposed instructions? And I'm including the four additional

1 ones that we received today.

2 MR. BROWN: I understand, Your Honor. I've reviewed
3 those. No further objections.

4 THE COURT: Okay. Now let me just ask on -- in the
5 State's instruction -- let's see -- looks like about six back
6 from that transitional one we were just looking at in the
7 State's set is an instruction that says, "In your deliberation
8 you may not discuss or consider the subject of penalty or
9 punishment."

10 MR. TOMSHECK: Yes.

11 THE COURT: You had put in there a second sentence
12 that if it was murder of the first degree you will at a later
13 hearing determine the penalty or punishment, so we're going to
14 take out that sentence.

15 MR. TOMSHECK: Right. At the time I had submitted
16 them we had not yet agreed upon it.

17 THE COURT: I understand. I just want to be clear
18 that we need to change that.

19 MR. BROWN: I would agree.

20 THE COURT: Okay. And -- okay. Sorry. Further
21 towards the front of the stack, a few before the transitional,
22 there's the burglary instruction. "Every person who by day or
23 night enters any building." Let me let you get there and then
24 I'll ask you a question.

25 MR. BROWN: You said before that was before the

1 transitional instruction, Your Honor?

2 THE COURT: Yes. Like four before.

3 MR. BROWN: Okay.

4 THE COURT: Are you there?

5 MR. TOMSHECK: I am.

6 THE COURT: Every person who by day or night?

7 MR. BROWN: It says robbery, not burglary.

8 THE COURT: Yeah.

9 MR. BROWN: Yeah. I circled that as well.

10 MR. TOMSHECK: No. It's supposed to say robbery.

11 THE COURT: Why?

12 MR. TOMSHECK: What that instruction says is it
13 defines what burglary is and in the definition of burglary it's
14 with the intent to commit a larceny and/or a felony therein is
15 guilty of a burglary.

16 THE COURT: Oh, that robbery is a felony offense.

17 MR. BROWN: Robbery --

18 THE COURT: So if that was the crime they intended to
19 commit, then it's a felony. So that's correct.

20 MR. TOMSHECK: Correct.

21 THE COURT: Okay.

22 MR. TOMSHECK: And then immediately thereafter it
23 defines what larceny is in the next instruction. I don't have
24 an objection either way, if you want it in one instruction or
25 two. And I would suggest to the Court that the four additional

1 instructions that we submitted should go immediately after
2 those instructions because they're burglary instructions as
3 well.

4 MR. BROWN: And, you know, the way it is is fine, but
5 it almost seems like it would be easier on this instruction if
6 it said with the intent to commit larceny and/or robbery
7 therein because those are the only allegations that we have.
8 It includes it. It doesn't -- because the way it was written
9 was confusing to me as well.

10 THE COURT: Yeah. I --

11 MR. BROWN: And now I understand what he's talking
12 about.

13 THE COURT: Right. Me too.

14 MR. BROWN: But it almost appeared originally as a
15 typo.

16 THE COURT: That makes sense and, well, how is the
17 charge?

18 MR. TOMSHECK: Except that in the charging document
19 Count 1 --

20 THE COURT: Yeah. That's why I was just looking.

21 MR. TOMSHECK: -- (indiscernible) appears in
22 Instruction No. 3.

23 THE COURT: Larceny and/or robbery under any other
24 felony.

25 MR. TOMSHECK: Correct.

1 THE COURT: So how about commit larceny, robbery,
2 and/or another felony? At least it explains the connection to
3 the below sentence to robbery.

4 MR. BROWN: Okay.

5 THE COURT: I mean, that's the way the charge reads,
6 "Intent to commit larceny and/or robbery and/or any other
7 felony."

8 MR. BROWN: I have no objection to that.

9 THE COURT: All right. So it will read, "Every
10 person who by day or night enters any building, house or
11 apartment with the intent to commit larceny, robbery and/or
12 another felony therein is a burglary. You are instructed that"
13 -- actually, then we don't need that other sentence, actually.

14 MR. BROWN: We wouldn't need it because is what I
15 originally was trying to do, but it's the State's
16 (indiscernible).

17 THE COURT: Right. We don't need that other
18 sentence.

19 MS. LUZAICH: Good. So larceny, robbery and/or any
20 other felony?

21 THE COURT: I could make it any other.

22 MR. BROWN: They (indiscernible) allege one. I know
23 it's in there but (indiscernible) --

24 MR. TOMSHECK: (Indiscernible).

25 MR. BROWN: Oh, the attempt. Okay.

1 (Pause in proceedings)

2 MR. TOMSHECK: Judge, something that might help clear
3 something up is the subsequent instruction defines larceny. If
4 we were in the burglary instruction to put after the sentence
5 every person day or night, then put the definition of larceny,
6 and then at the conclusion of that say you are instructed that
7 robbery is a felony, I think it might help.

8 THE COURT: I'm fine with putting the larceny
9 sentence in there, but I don't understand why we need to tell
10 them that robbery is a felony if we're telling them that if
11 they entered with intent to commit robbery they're guilty of a
12 felony.

13 MR. TOMSHECK: We don't. If you think it reads clear
14 that way, I certainly don't oppose it.

15 THE COURT: So we've got the definition of robbery in
16 another instruction already, correct?

17 MR. TOMSHECK: We do.

18 MR. BROWN: Yes, Your Honor.

19 THE COURT: Okay. So we're moving the larceny
20 sentence --

21 MR. TOMSHECK: If you want to take out that robbery
22 sentence in the first one?

23 THE COURT: And just leave it as separate?

24 MR. TOMSHECK: Just leave them separate.

25 THE COURT: Okay.

1 MR. TOMSHECK: And then after the larceny
2 instruction --

3 THE COURT: So there will be one instruction that
4 says, "Every person who by day or night enters any building,
5 house or apartment with the intent to commit larceny, robbery
6 and/or another felony therein is guilty of burglary." Next
7 page, "Larceny is defined as the stealing, taking and carrying
8 away." Then after that, you want the other four that you've
9 proposed. Okay. Okay.

10 Are there any other objections to any of the State's
11 proposed instructions?

12 MR. BROWN: No, Your Honor.

13 THE COURT: Okay. Then looking at the defendant's
14 proposed instructions, now we already did the transition
15 instruction as you've referred to it that we're going to
16 substitute in.

17 MR. BROWN: Yes, Your Honor.

18 THE COURT: Are there -- let's look at what else you
19 have that defense is proposing. I'm sorry. You had an
20 instruction in the defense proposed behind that transition
21 instruction that is partly duplicative I think.

22 MR. BROWN: It would have been a transition
23 instruction for second-degree to voluntary manslaughter --

24 THE COURT: Oh, I got you.

25 MR. BROWN: -- in the event --

1 THE COURT: So we still need to look at that.

2 MR. BROWN: Yes.

3 THE COURT: Okay. All right. I got you. I was just
4 looking at it on the whole without reading it in detail. All
5 right.

6 So let's start at the first of the defendant's
7 proposed instructions that I have is the heat of passion which
8 will reduce a homicide to voluntary manslaughter must be such
9 an irresistible passion and so on.

10 MR. BROWN: Correct. And, Your Honor, I also
11 submitted to the Court a felony murder instruction, but the
12 State's is virtually identical, so that's -- if you were
13 looking at that one, obviously there's no need for me resubmit
14 that instruction.

15 The other instruction submitted were the voluntary
16 manslaughter and the heat of passion instructions that were
17 offered on behalf of Mr. Porter. And if the Court's inclined
18 to allow them, it would be the accompanying transition
19 instruction that transitions a second-degree murder to a
20 voluntary manslaughter.

21 THE COURT: Okay.

22 MR. TOMSHECK: And obviously, Judge, the State has an
23 objection to any --

24 MR. BROWN: I think before we get into the nuts and
25 bolts and details of the voluntary manslaughter instructions

1 I've submitted and whether the State feels that these are what
2 they would submit if it were a voluntary manslaughter case, we
3 probably ought to first decide whether or not the Court's even
4 going to offer voluntary manslaughter instructions and a
5 voluntary manslaughter verdict option to the jury. The defense
6 would be asking for it. It was pled as an open murder. It was
7 pled, you know, that includes the multiple homicides.
8 Obviously that includes first-degree murder and second-degree
9 murder.

10 In this case, one of the primary distinctions between
11 a second-degree murder and a voluntary manslaughter is going to
12 be the actions, the heat of passion actions, based upon a
13 provocation. The provocation would be the startling event of
14 the gentleman coming out of the house.

15 Now, that maybe a little different. Obviously, we
16 didn't ask for self-defense instructions --

17 THE COURT: No.

18 MR. BROWN: -- in light of the accompanying
19 circumstances. However, the reaction of Mr. Porter based upon
20 being startled provoked him into shooting.

21 Now whether or not that's reasonable or not, that of
22 course is up to the jury to decide. And if they determine his
23 reaction was not a reasonable provocation or his actions and
24 response to a provocation were certainly unreasonable, they
25 don't have to consider them at all and they can disregard the

1 manslaughter, focus on whether or not he committed the offense
2 and whether it was first- or second-degree murder.

3 But I think that with respect to considering that the
4 standard's pretty low as to getting an instruction, that we
5 would ask that the Court consider it and submit them to the
6 jury.

7 MR. TOMSHECK: I mean, I obviously have an opinion
8 about that, Judge.

9 THE COURT: I'm sure. All right. Let me go ahead
10 and hear what you have to say.

11 MR. TOMSHECK: I think Mr. Brown's correct. The
12 standard's pretty low, but there has to be some evidence in
13 order to obtain a theory of the case instruction. If they want
14 to argue voluntary manslaughter, there's got to be some
15 evidence that there was some type of provocation that would
16 lead a reasonable person to shoot.

17 I don't understand especially under -- as how the
18 facts came out at trial that could even be raised given the
19 fact that this individual in the middle of the night who's home
20 in his own apartment with the door dead bolted, the lights are
21 out, and it's clear that he was shot in the back and at an
22 angle that suggests he was bending over.

23 And when we were discussing earlier, Mr. Brown and I
24 kind of discussed the idea of how that would have to occur.
25 And essentially what the argument would have to be is that

1 Justin Porter kicks in the door and the owner of the house, the
2 lawful residence, in the dark runs at him backwards bent over
3 and that is sufficient to arouse a provocation that would lead
4 to the defendant firing shots that ultimately kill him. I
5 don't see how an argument can even be fashioned that would
6 allow for that instruction to be given.

7 THE COURT: Okay. So let me ask you this because --
8 and I'm sorry. You have more experience in this area at this
9 point than I do, and I freely admit that.

10 To get even second-degree murder you need to have
11 malice, right? Okay. Now, so what if you -- what if you don't
12 prove malice but there isn't a provocation? There's nothing in
13 between.

14 MR. BROWN: Well --

15 THE COURT: Sorry I have to ask these questions but I
16 do.

17 MR. ABOOD: The malice, Your Honor, is expressed or
18 implied.

19 THE COURT: Right.

20 MR. ABOOD: So I don't know that there's any
21 circumstance where they wouldn't be able to show malice.

22 MR. TOMSHECK: If you point a gun at someone and pull
23 the trigger, it --

24 THE COURT: And shoot then it's intentional under
25 malice.

1 MR. TOMSHECK: Yeah.

2 THE COURT: Okay.

3 MR. TOMSHECK: Even if he were to say the
4 circumstances that he just suggested, it would certainly be
5 implied malice, but the firing of the gun itself, I --

6 THE COURT: Any unjustifiable. I'm just reading the
7 instruction on malice. Okay.

8 MR. BROWN: I mean, what that would be, Your Honor --
9 and you're touching on close to where we're at -- is if the
10 theory was he was shot based upon a sudden and irresistible
11 heat of passion, that's a manslaughter if the jury thinks that
12 he was maybe acting reasonable.

13 If the jury thinks that your response to that was
14 unreasonable but doesn't rise to the level to the first-degree
15 murder, it can be second-degree murder. But what that also
16 would require would be that basically that level of
17 provocation.

18 And I understand what the State is saying is to
19 having some standard. I disagree that Mr. Lungtok had to be
20 walking out backwards. The Court recalls he was shot seven
21 times, some in the front chest. At some point he was facing
22 clearly turning around and bending and moving, very well could
23 have been --

24 THE COURT: Apparently near the front door.

25 MR. BROWN: Very well could have been heading away.

1 You know, I mean, that's, you know, that's not -- we really
2 can't tell, but he did get shot in the back, so he was at least
3 facing that way at some point.

4 But Mr. Tomsheck's example that he was backing into
5 him in the dark and that couldn't be a provocation I would
6 disagree with.

7 The startling event which he -- you know, all the
8 evidence in the case essentially the State's relying on as Mr.
9 Tomsheck said in his opening statement are the words that come
10 out of Mr. Porter's mouth. So we have to look to there to find
11 out what the provocation would be, what the startling event is.
12 There can be no doubt based upon how he described his reaction
13 to the man being there as startling.

14 THE COURT: Right.

15 MR. BROWN: Now whether or not it's reasonable or not
16 the jury has to decide, and I suspect most of them will find
17 probably not.

18 THE COURT: Right.

19 MR. BROWN: But that's not the standard for giving
20 them the option and the --

21 THE COURT: Right.

22 MR. BROWN: -- opportunity to at least argue.

23 THE COURT: "A sudden heat of passion caused by a
24 provocation apparently sufficient to make the passion
25 irresistible."

1 MR. TOMSHECK: And that's precisely the point. That
2 sentence and the next paragraph in the instructions which
3 should say something to the effect of the provocation required
4 (indiscernible) consistent with serious or highly-provoking
5 injury sufficient to excite an irresistible passion in a
6 reasonable person. I don't know how you get there, Judge, is
7 the State's problem.

8 MR. ABOOD: Well, the injury doesn't have to be
9 direct physical contact. I mean, injury could consist of a
10 frightening event itself, I mean, responding to a shocking, you
11 know -- again, whether or not it's reasonable is a different
12 question.

13 But in terms of whether or not we'd be entitled to
14 that instruction, I think you can conclude that charging open
15 murder in this circumstance where the defendant himself has
16 said that when he walked in there he believed nobody lived
17 there, he fully expected nobody would live there and then
18 someone --

19 THE COURT: No. Right. I mean, I think --

20 MR. ABOOD: -- rushes him at him from the dark.

21 THE COURT: I mean, I think that the jury could find
22 that he was startled to have someone come out of that bedroom.
23 That certainly can be a reasonable inference to draw given the
24 evidence.

25 MR. BROWN: Your Honor, I think the final note I

1 would make or the comparative prejudices versus giving it and
2 not giving it, the -- by not providing it he's denied even the
3 opportunity to have a jury evaluate it, look at it and make a
4 reasonable judgment.

5 If it is provided to the jury, the worst that can
6 happen if the State is correct is they convince them of their
7 position and the jury doesn't even consider it.

8 So I think that when you compare relatively the
9 prejudices or potentially that it should err on the side -- if
10 it's a close call -- and I can see that Your Honor's pensive at
11 least thinking about it. If it's a close call, the err should
12 be on providing it and letting the State argue that.

13 You know, we didn't ask for an instruction that says
14 the State has to prove beyond a reasonable doubt that it's not
15 voluntary manslaughter. I've seen those proffered but that's
16 -- we didn't include that in the packet. The State would just
17 merely meet -- you know, my guess is they're going to be
18 arguing why it is felony murder or first-degree murder and --

19 MR. TOMSHECK: The prejudice, Judge, is offering a
20 confusing instruction which is not legally appropriate. Open
21 murder as a charge carries with it all the lesser-included
22 offenses including involuntary manslaughter. So I guess my
23 point is where do we draw the line. I mean, I've had cases
24 before --

25 MR. ABOOD: Well, I think we draw it before

1 involutory.

2 MR. TOMSHECK: -- where an involuntary manslaughter
3 instruction is requested in a situation where a gun's used.
4 It's not legally appropriate. It's not a correct application
5 of the law. There has to be some evidence that there was not
6 only a provocation but that it was the type that would make the
7 urge to kill him irresistible. In other words, the classic
8 example catching your wife in bed with someone else.

9 THE COURT: Right.

10 MR. TOMSHECK: There has to be something like that.

11 MR. BROWN: I think our record's pretty fully clear,
12 Judge. I'm ready to submit.

13 THE COURT: Okay. So the serious and
14 highly-provoking injury that what you would argue is some
15 evidence of that is scaring him?

16 MR. BROWN: Well, in essence, Your Honor, yeah. He
17 was frightened.

18 THE COURT: Startling him?

19 MR. BROWN: Yeah. I mean, he was frightened for his
20 life. The question -- you know, he was scared. It's not self
21 defense because he couldn't reasonably be scared when you go
22 into somebody else's house and they resist you or show up or
23 startle you.

24 But when you're not expecting anybody to be in there,
25 I mean, let's -- we'll move it from being a house for a second.

1 Let's assume it's a warehouse or some other place you believe
2 to be abandoned, you kick in the door going in --

3 THE COURT: Okay.

4 MR. BROWN: -- and somebody pops out and startles you
5 and frightens you and you shoot them.

6 THE COURT: Right.

7 MR. BROWN: Okay. That's where we're at. Is it a
8 manslaughter, have you murdered that person, did you go -- is
9 it felony first-degree murder? Because we're kind of doing a
10 little bit of analogy on the only evidence we have is Mr.
11 Porter's mind-set which was empty, abandoned place, and he went
12 in there for shelter.

13 THE COURT: Right.

14 MR. BROWN: Okay. Now it's up to the jury --

15 THE COURT: So my question is about the instruction
16 which says there has to be a serious and highly-provoking
17 injury or an attempt to commit a serious personal injury. So,
18 sorry. What are you contending would be the serious and
19 highly-provoking injury?

20 MR. BROWN: I think Your Honor's touched on it. It
21 would be --

22 THE COURT: The startling is --

23 MR. BROWN: Yes.

24 THE COURT: -- considered an injury.

25 MR. BROWN: Right. I mean, what also is an injury, a

1 serious highly-provoking injury, is walking into your bedroom
2 and seeing your wife with another man.

3 THE COURT: Correct.

4 MR. BROWN: That is considered --

5 THE COURT: Right.

6 MR. BROWN: -- a serious, highly-provoking injury.
7 Obviously, nothing happened to you. But in the framework of
8 how they're describing it --

9 THE COURT: Right.

10 MR. BROWN: -- you know, that is a serious --

11 THE COURT: It's used in that context.

12 MR. BROWN: -- highly-provoking injury.

13 THE COURT: Okay.

14 MR. BROWN: This is not quite exactly that, but it is
15 an event, a startling event that has the reaction on him. It
16 -- you know, slight or marginal at least to the point where we
17 can argue it. But --

18 MR. TOMSHECK: And I think maybe if the roles were
19 reversed and Gyaltsso Lungtok shot Justin Porter, then Gyaltsso
20 Lungtok might be entitled to a voluntary manslaughter
21 instruction. You don't get one if you kick in someone's house
22 and they happen to get out of their bed naked in the dark and
23 say, hey, and you don't get to shoot them and get a voluntary
24 manslaughter instruction.

25 MR. BROWN: Only the State of Nevada would charge

1 Gyaltso Lungtok for a crime when he did that in his own house.

2 THE COURT: Yeah. Didn't we charge the pawnshop guy?
3 Sorry.

4 Anyway, given the definition of voluntary
5 manslaughter, I don't think there is any evidence to base that
6 instruction on.

7 MR. BROWN: Thank you, Your Honor.

8 THE COURT: So I'm going to deny it.

9 MR. BROWN: Do we at least mark -- I mean, they're --
10 for the record they're basically just standard. I know that
11 the State disagrees, but I would be offering these or
12 alternative instructions provided by the State in the general
13 area of voluntary manslaughter.

14 THE COURT: Right. So --

15 MR. BROWN: But we should go ahead and at least mark
16 the ones that I've proposed?

17 THE COURT: Right.

18 MR. BROWN: Thank you.

19 THE COURT: Right. Right.

20 MR. TOMSHECK: And just so the record's complete on
21 that --

22 THE COURT: I need a clean copy to do that with.
23 Okay. But yes, it should be marked and in the record,
24 absolutely.

25 MR. TOMSHECK: Just so the record's complete on that

1 in the event there's ultimately an appeal, the State would also
2 have an objection to the form of the instruction should the
3 Court have given them. They're not an appropriate definition
4 of voluntary manslaughter.

5 MR. BROWN: Well, I'm pliable. I'd be willing to
6 listen to their argument.

7 THE COURT: All right.

8 MR. TOMSHECK: I just wanted that on the record.

9 THE COURT: So there's a proposed -- you know, I
10 guess all of the proposed instructions should be on the record.
11 The heat of passion instruction, the manslaughter, the unlawful
12 killing instruction is being rejected for the reasons just
13 discussed.

14 The next proposed by the defense related to the
15 felony murder which is duplicative, and we don't need that.

16 MR. BROWN: Correct.

17 THE COURT: The next one is the transition
18 instruction we are using.

19 The next one is the one we now -- we don't need
20 because I've rejected the manslaughter instruction, so that's
21 not being used.

22 Now, the right to testify, did you have one in your
23 set?

24 MR. TOMSHECK: I did.

25 THE COURT: On not drawing any inference.

1 MR. BROWN: Correct.

2 THE COURT: So there's already one -- yeah. Let me
3 take look back here. Okay. So we don't need that one because
4 it's duplicative of what we've already got in. Yeah.

5 We'll need to make sure that we have sets of the
6 proposed instructions on the record.

7 (Pause in proceedings)

8 THE COURT: Okay. So when we pick up at 10:30
9 tomorrow, we will see if defense has any evidence to present.
10 And after that, we can go ahead with instructions and argument
11 and hopefully get it to them around lunch and --

12 MR. BROWN: You think we'll start at 10:30?

13 THE COURT: You know, nothing ever takes what I think
14 it will so who knows.

15 MR. BROWN: One is relative to when we start, but I
16 think we'll have to them early afternoon, Your Honor.

17 THE COURT: Okay. Let's see. How long do you
18 anticipate closings?

19 MR. BROWN: (Indiscernible).

20 THE COURT: Yeah. That's the way it works.

21 MR. TOMSHECK: Mine's last, so it depends on what he
22 has to say.

23 THE COURT: All right.

24 MR. BROWN: Like he hadn't already written it.

25 THE COURT: Okay. Well, unless my morning hearing

1 takes significantly longer than what I'm hoping it will, I
2 mean --

3 MR. BROWN: (Indiscernible).

4 THE COURT: -- if we get started really late, I don't
5 know what we'll do. But I'd rather get through all the
6 arguments before we break and then just let them go deliberate
7 and eat or eat and deliberate I guess is more properly --

8 MR. BROWN: How long do you think you'll keep them
9 here tomorrow, Judge?

10 THE COURT: Tomorrow, that's a good question. I
11 mean, I'd probably let them stay tomorrow night for a while. I
12 don't know that I want to be here until midnight tomorrow night
13 if it goes there.

14 UNIDENTIFIED SPEAKER: I agree.

15 THE COURT: I don't know. It will partly depend on
16 talking to them and see if they're still deliberating what they
17 prefer to do. If they'd rather -- you know, if they think
18 they'll have a verdict by 8:00 o'clock, I might let them stay.
19 If they think it's going to be awhile, I might just bring them
20 back Monday morning and they can deliberate while we're picking
21 another jury. I'll kind of feel them out and see how it looks.
22 Okay?

23 (Pause in proceedings)

24 THE COURT: All right. Good night.

25 MR. BROWN: Thank you, Your Honor, appreciate it.

1 MR. TOMSHECK: Judge, are we going to number them
2 prior to going on the record or is it -- because Ms. Luziach is
3 going to put numbers in her PowerPoint presentation.

4 MS. LUZAICH: Well, I mean, I can go without. That's
5 fine.

6 MR. TOMSHECK: Where is the --

7 THE COURT: We'll be numbering them.

8 MR. TOMSHECK: Where is the right of the defendant
9 instruction going to go (indiscernible)?

10 THE COURT: Yes.

11 MR. TOMSHECK: Because we had submitted it behind the
12 verdict form in the event they (indiscernible).

13 THE COURT: Where do you want it?

14 MS. LUZAICH: I usually put it after --

15 THE COURT: Oh, sorry.

16 MS. LUZAICH: -- reasonable doubt.

17 THE COURT: The verdict form, there was nothing --
18 given that I've rejected the voluntary manslaughter which I
19 understand you disagree with, other than that is the verdict
20 form acceptable?

21 MR. BROWN: You know, I didn't double-check. Did
22 they put a not guilty on there?

23 MS. LUZAICH: No.

24 THE COURT: They did.

25 MR. BROWN: Okay. That's rare.

1 THE COURT: It's a small box, but it's there.

2 MR. BROWN: It's smaller? All right. Your Honor, I
3 think that the defendant testifying is a good place for it.
4 All other things being equal, probably right after the
5 reasonable doubt instruction or in that area, you know.

6 THE COURT: Okay.

7 MR. BROWN: Kind of with the nine neutral legal
8 instruction, not specific to any --

9 MR. TOMSHECK: I think the appropriate place is right
10 behind the reasonable doubt instruction.

11 MS. LUZAICH: That's where I've always put it.

12 THE COURT: Okay. So right behind the reasonable
13 doubt instruction. And then what about -- we'll have to throw
14 the playback in somewhere.

15 MR. TOMSHECK: We don't need that if you don't want
16 it. I prefer not to give it. That's why I put it in the back.
17 A lot of courts don't give it, and I think it's a pain when we
18 do.

19 THE COURT: I give it. I haven't had anyone ask for
20 it, and I hope that will continue. I'll put it right before
21 the last instruction, right before the now you will listen to
22 the arguments, the playback one I'm talking about. It should
23 be after the ones that you're focusing on for your argument
24 purpose.

25 (Court recessed at 5:07 p.m., until May 8, 2009, at 10:43 a.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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Michele Phelps
MICHELE PHELPS, TRANSCRIBER

1-22-10
DATE

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

Employee, Clark County Public
Defender's Office

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Case No. 54866

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COPY

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA

Plaintiff,

vs.

JUSTIN D. PORTER,

Defendant.

CASE NO. C-174954

DEPT. NO. 6

**Transcript of
Proceedings**

*Officer & Plaintiff
of the District Court*

JAN 27 2010

FILED

BEFORE THE HONORABLE ELISSA CADISH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

THURSDAY, MAY 7, 2009

APPEARANCES:

FOR THE PLAINTIFF:

LISA LUZAICH, ESQ.
Chief Deputy District Attorney

JOSH TOMSHECK, ESQ.
Deputy District Attorney

FOR THE DEFENDANT:

CURTIS BROWN, ESQ.
JOSEPH ABOOD, ESQ.
Deputy Public Defenders

COURT RECORDER:

JESSICA RAMIREZ
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Littleton, CO 80120
(303) 915-1677

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, MAY 7, 2009, 10:54 A.M.

2 THE MARSHAL: All rise. This court, Department 6, is
3 now in session, the Honorable Judge Elissa Cadish presiding.
4 Please be seated, come to order.

5 THE COURT: All right. Good morning, everybody.

6 MR. TOMSHECK: Good morning, Your Honor.

7 THE COURT: Sorry for a little delay. We had to talk
8 about next week's case for a while this morning.

9 Do you anticipate State's witnesses taking all of
10 today and into tomorrow or what do you think?

11 MR. TOMSHECK: Yes.

12 THE COURT: What do you think, State?

13 MS. LUZAICH: I expect we're going to rest today.

14 MR. TOMSHECK: We'll get two witnesses on before
15 lunch I think, and then we'll have two that will be a little
16 bit more lengthy. We'll have to play the defendant's audio
17 tape through one of those.

18 THE COURT: Right.

19 MR. TOMSHECK: So the State will rest probably mid to
20 late afternoon. And if we could, probably settle the jury
21 instructions today and then just argue tomorrow.

22 THE COURT: Right. Okay. That would be good. Okay.
23 Anything else before we bring in the jurors?

24 MR. BROWN: No, Your Honor.

25 THE COURT: Okay. Let's go.

1 THE MARSHAL: Please rise.

2 (In the presence of the jury)

3 THE COURT: All right. Everybody can go ahead and
4 have a seat.

5 Do counsel stipulate to the presence of the jury?

6 MR. TOMSHECK: Yes, Judge.

7 MR. BROWN: Yes, Your Honor.

8 THE COURT: All right. State, call your next
9 witness.

10 MS. LUZAICH: State calls Dr. Olson.

11 THE MARSHAL: Please remain standing, raise your
12 right hand, face that gentleman right there.

13 DR. ALANE OLSON, PLAINTIFF'S WITNESS, SWORN

14 THE CLERK: Thank you. Please be seated. State your
15 complete name spelling both your first and last name for the
16 record, please.

17 THE WITNESS: My name is Alane Olson. My first name
18 is spelled A-l-a-n-e. My last name is spelled O-l-s-o-n.

19 THE CLERK: Thank you.

20 THE COURT: Go ahead.

21 DIRECT EXAMINATION

22 BY MS. LUZAICH:

23 Q And how are you employed?

24 A I'm employed as a medical examiner at the Clark
25 County Coroner's Office.

1 Q What does a medical examiner do?

2 A A medical examiner performs autopsies and other types
3 of examinations with the goal of determining cause and manner
4 of death.

5 Q Is a medical examiner also a physician?

6 A Yes.

7 Q Can you describe for the jurors what training and
8 education you have that qualifies you to do what you do?

9 A I have a bachelor's degree in microbiology. I did
10 medical school at the University of Nevada School of Medicine.
11 After I got my MD degree, I moved to Portland, Oregon, and
12 spent five years at Oregon Health Sciences University in an
13 anatomic and clinical pathology residency program. That's
14 where I learned how to do autopsies, also about learning to run
15 a clinical lab in hospitals and looking at surgical specimens.

16 Following my completion of residency, I moved to
17 Milwaukee, Wisconsin, and spent one year at the Milwaukee
18 County Medical Examiner's Office doing a forensic pathology
19 fellowship. That was one year. And following that, I was able
20 to go out and get a real job.

21 Q And what was that real job that you got?

22 A I worked at the coroner's office in Washoe County in
23 Reno for just over five years.

24 Q While you were at the coroner's office in Reno, what
25 did you?

1 A Again, I was performing autopsies and other
2 examinations with the goal of determining cause and manner of
3 death.

4 Q When you left the coroner's office in Reno, did you
5 come down here?

6 A Yes.

7 Q How long have you been here?

8 A I've been here for about three and a half years.

9 Q And do you have any idea in the years that you've
10 been with the office up in Reno and down here approximately how
11 many autopsies you've performed?

12 A I have a better idea of the number that I performed
13 since I started doing autopsies, and that number's around
14 2,000.

15 Q Okay. So you have a little bit of experience. And
16 have you had the opportunity to testify as an expert in the
17 area of forensic pathology in the courts in Clerk County?

18 A Yes, I have.

19 Q And as well in Washoe County.

20 A Yes.

21 Q As a medical examiner, in order to perform autopsies
22 -- sorry, to determine cause and manner of death, how do you go
23 about doing that?

24 A An autopsy generally consists of two main portions.
25 There's an external examination and an internal examination.

1 Q When you -- do you perform an autopsy on everyone who
2 dies?

3 A No.

4 Q What is the distinction?

5 A The distinction generally has to do with the statute
6 in the jurisdiction that you're working in. There are certain
7 types of deaths that must be reported to the coroner or medical
8 examiner's office, and among those certain types of death are
9 subsets in which autopsies are performed.

10 Generally, in Clark County, any case or any death
11 which is suspected to be the result of a homicide, those
12 definitely get autopsied. People who are young and don't have
13 much medical history and die suddenly, those generally get
14 autopsied.

15 Q And in those situations you're kind of looking for
16 manner of death, correct, as well as cause of death?

17 A Often, yes.

18 Q And what are the options for manner of death?

19 A In Nevada there are five manners of death. There's
20 homicide, suicide, accident, natural and undetermined.

21 Q So if somebody passes away in hospice, you're
22 probably not going to perform an autopsy.

23 A Likely not. They would generally have a
24 well-established medical history.

25 Q But somebody shows up with gunshot wounds, you're

1 going to do an autopsy.

2 A Yes.

3 Q Okay. Are you familiar with an individual by the
4 name of Dr. Giles Sheldon Green?

5 A Yes, I am.

6 Q Was he a medical examiner at the Clark County
7 Coroner's Office for many, many, many, many, many, years?

8 A Yes. He was employed at the coroner's office as a
9 medical examiner.

10 Q And are there occasions when a medical examiner who
11 performs an autopsy is unavailable somebody else from your
12 office will review reports and photographs from the autopsy so
13 that they can testify in trial on behalf of the person who's
14 unavailable? Did that make sense?

15 A Yes, it made sense and, yes, we do testify based on
16 other doctors' reports.

17 Q And, in fact, were you asked in this situation to
18 review the reports and photographs of an autopsy, coroner
19 medical examiner Case No. 003381, and an individual by the name
20 of G-y-a-l-t-s-o Lungtok?

21 A Yes.

22 Q And is that because Dr. Green was unavailable?

23 A That's correct.

24 Q Now, when an autopsy is performed at the Clark County
25 Medical Examiner's Office, does somebody actually attend and

1 specifically take photographs for this kind of purpose?

2 A Yes. When there is a suspicion that the death is a
3 result of a homicide, then there are people who attend from the
4 law enforcement jurisdiction in which the death took place.

5 Q When a body comes to the Clark County Coroner's
6 Office having been determined that an autopsy is required, what
7 happens? The body is picked up at the scene and placed into a
8 sealed bag, correct?

9 A Yes. That's correct.

10 Q And then when it gets to your office, what happens to
11 it?

12 A The -- the body is received in the office. It may be
13 stored overnight for examination the following day. The seal
14 is broken in the presence of the crime scene analyst and our
15 autopsy techs, and photo documentation occurs so that we have a
16 photographic record of how this person appeared when they
17 arrived at the coroner's office as well as sequential
18 photographs taken after the body's undressed. The wounds are
19 photographed individually so that there is a good close-up
20 photograph.

21 Q And is the body at some point then cleaned off as
22 well?

23 A Often it is, yes.

24 Q When I asked you about the Clark County Medical
25 Examiner number, now that is entirely different from Las Vegas

1 Metropolitan Police Department's event number; is that correct?

2 A Yes. We assign a unique number to all of the
3 decedents who come through our office.

4 Q And when I said 00-3381, the 00 does indicate the
5 year, though; is that correct?

6 A Yes. The first two numbers in the entire autopsy
7 number are referring to the year in which the examination was
8 conducted.

9 Q And when an autopsy is performed in your office, is
10 there a way to kind of take notes or keep track of notes while
11 you're performing the autopsy?

12 A The -- the question of whether a doctor or medical
13 examiner takes notes, it actually varies from person to person.
14 Dr. Green in fact in this case did perform the autopsy, and he
15 did take notes in the form of markings on body diagrams.

16 Q And did you review those body diagrams as well before
17 coming to court today?

18 A Yes, I did.

19 Q Maybe I should just ask you. What did you review
20 before coming to court today?

21 A I had the opportunity to review Dr. Green's autopsy
22 report. There was a toxicology report. I looked at the
23 investigator's report, Dr. Green's body diagrams, and the
24 photographs which were taken by the Metro CSIs.

25 Q And when you say investigation report, is there a

1 specific coroner's investigator that goes out to a scene and
2 documents the scene and gets information that is then provided
3 to the collective you, the medical examiner?

4 A Yes.

5 Q Specifically regarding the autopsy --

6 MS. LUZAICH: Well, may I approach?

7 THE COURT: Yes.

8 BY MS. LUZAICH::

9 Q Showing you what's been marked as State's Exhibits
10 74, 75, 76, 77, and Proposed Exhibit 97.

11 MS. LUZAICH: For the record they've been shown to
12 counsel.

13 BY MS. LUZAICH::

14 Q Did you review those photographs?

15 A Yes, I did.

16 Q And will they aid in your description of what you're
17 about to talk about?

18 A Yes, they will.

19 MS. LUZAICH: I would move 97 into evidence. It has
20 not yet --

21 MR. BROWN: No objection.

22 THE COURT: Admitted.

23 (Plaintiff's Exhibit 97 admitted into evidence.)

24 BY MS. LUZAICH:

25 Q And showing you what's been marked as State's

1 Proposed Exhibits 98 and 99, are those the body diagrams that
2 we talked about?

3 A Yes, they are.

4 Q And will that also aid in your description for the
5 jury of what we're about to talk about?

6 A Yes.

7 MS. LUZAICH: Move them into evidence as well.

8 MR. BROWN: No objection, Your Honor.

9 THE COURT: They're admitted.

10 (Plaintiff's Exhibits 98 and 99 admitted into evidence.)

11 MS. LUZAICH: Thank you.

12 BY MS. LUZAICH:

13 Q Okay. So just the -- so that I'm showing --

14 MS. LUZAICH: Do I need to do something to get a
15 picture?

16 UNIDENTIFIED SPEAKER: Yes.

17 (Off-record colloquy)

18 BY MS. LUZAICH:

19 Q Just so that we're sure we're talking about the same
20 person, showing you State's Exhibit 74 --

21 (Pause in proceedings)

22 BY MS. LUZAICH:

23 Q State's Exhibit 74, is this the individual who was
24 the subject of the autopsy?

25 A Yes, he was.

1 Q And that indicates the case number that we discussed,
2 correct?

3 A Yes. The case number is listed on the card which is
4 adjacent to his head.

5 Q Okay. Thank you. Now, Dr. Olson, pursuant to your
6 review of all the notes, photographs and reports, did Dr. Green
7 have the opportunity to perform an autopsy which would include
8 the external and internal evaluation of the decedent?

9 A Yes, he did.

10 Q And what if any significant findings externally did
11 he note?

12 A The significant external findings consisted of
13 multiple gunshot wounds which were present on the decedent's
14 torso and his right arm.

15 Q When you say multiple gunshot wounds, how many
16 gunshot wounds were there?

17 A There were seven separate injuries.

18 Q Now, specifically regarding the torso, what injuries
19 were located on the torso?

20 A On the torso there were injuries, gunshot entry
21 wounds on the back. There were two of those. There was a
22 gunshot exit wound on the right upper chest. There was a
23 through-and-through gunshot wound on the right chest, and there
24 was an additional gunshot entry wound on the abdomen.

25 Q And then as far as the arm, what wounds were noted?

1 A There was a gunshot entry wound on the right
2 shoulder, and there were two gunshot wounds both
3 through-and-through on the right forearm and also involving the
4 tissues near the elbow.

5 Q Showing you State's Exhibit 77 -- and just for the
6 record, when I showed you these up close, do they appear better
7 than they do on the screen here?

8 A Yes. The projection doesn't help usually with colors
9 and appearance. So yes, they do appear better in person than
10 they do projected.

11 Q Okay. Can you show us on this exhibit what -- well,
12 first, what is this depicting? What part of the body since
13 it's not very clear.

14 A This photograph depicts the decedent's back. On the
15 left is his head. His buttocks are down here, and on the right
16 side of his back roughly midway between his shoulder and his
17 buttocks there are two gunshot entry wounds.

18 Q For the record, you circled them on the screen,
19 correct?

20 A Yes.

21 Q Showing you State's Exhibit 75, can you orient us to
22 this photo?

23 A Yes. State's 75 is a picture of the front of the
24 decedent's body. Again, his head is at the left of the
25 photograph. On his right shoulder there is a gunshot entry

1 wound. On his right chest just towards center of his right
2 nipple is a gunshot exit wound.

3 On the side of his right chest outside of his right
4 nipple is a through-and-through gunshot injury, meaning that
5 the entry is on the skin of the chest. The bullet went through
6 just the soft tissue beneath the skin and it exited on this
7 lower portion.

8 And also depicted in this photograph near the bottom
9 of his chest towards his abdomen is another gunshot -- gunshot
10 entry wound. It doesn't like that. Okay. So I can't circle
11 that one, but it's basically near the bottom of the ribcage on
12 the right.

13 Q And then State's Exhibit 76, what does this show?

14 A This is a photograph. Again, you can orient
15 yourself. You see his face. His right arm has been drawn up
16 over his head. On the underside of his upper arm there is a
17 gunshot exit wound. On his forearm below the elbow is another
18 gunshot exit wound, and I don't think you can see the other
19 injuries on this particular photograph.

20 Q Which would be State's Exhibit 97. Does this show
21 you those other injuries?

22 A Yes, it does. So this particular photograph is of
23 the decedent's forearm, the right forearm. And the majority of
24 the photograph depicts the palm surface of the right forearm.
25 And on that surface there is a gunshot entry wound, and at the

1 edge of the forearm near where it turns on to the back of the
2 forearm there is another gunshot entry wound.

3 Q And I'm going to try this. I don't know if it's
4 going to work. I'm moving State's Exhibit 97 over a little and
5 putting 76 next to it. And does that depict the entry in 97
6 and the exit in 76 of both wounds?

7 A Yes, it does.

8 Q Now, you talked about entry wounds and exit wounds.
9 Can you describe the path that the wounds took if we look at
10 the diagrams, the body diagrams?

11 A Yes.

12 Q Like what went in where and out where. Okay. So
13 showing you State's Exhibit 98, can you describe what we're
14 looking at?

15 A Yes. This diagram has two views of the body, a front
16 and a back view. And we'll start with the injuries on his
17 torso.

18 So on the right back there are the two gunshot entry
19 wounds which you saw depicted in the photographs, and they're
20 essentially one atop the other. And Dr. Green, when he
21 performed his autopsy, determined that the gunshot entry wound
22 which was on top closer to the head, that bullet went into his
23 -- into the decedent's body and lodged in the right side of the
24 diaphragm, so that bullet was recovered.

25 The bullet which entered below that closer to the

1 waist, that is the bullet which went through his body. It went
2 through his right lung and it exited here on his right upper
3 chest.

4 Q And if I could stop you for just one second. As we
5 look at the diagram there appears to be a little bit of writing
6 and some circles. The circles, are those numbers in a circle?

7 A Yes, they are.

8 Q And did Dr. Green actually name or number each wound
9 in the body?

10 A Yes, he did.

11 Q So when you were talking about the two entry wounds
12 in the back and you said the upper one was the one that lodged
13 in the diaphragm, would that be No. 4?

14 A Yes. That's No. 4 on the diagram, and No. 5 is the
15 injury that's below it, the gunshot entry wound that's below
16 which went through his right lung.

17 Q And when No. 5 entered the body and went through his
18 lung, it exited. And is there on the diagram a number that
19 corresponds to the exit wound?

20 A Yes, there is and that's No. 1 on the front portion
21 of the body diagram.

22 Q Okay. So you talked about the two entry wounds and
23 there -- and one exit, and the other one was lodged. What
24 else?

25 A Going to the front aspect of the body diagram, on the

1 right chest -- and this is labeled No. 2 on the diagram -- is
2 the through-and-through gunshot wound that basically went only
3 through the soft tissues. It didn't hit any vital structures.

4 And continuing, on the abdomen labeled No. 3 on the
5 body diagram is a gunshot entry wound, and this gunshot entry
6 wound went into the front of the abdominal wall, and it did not
7 hit any vital structures, and that bullet was recovered from
8 within the soft tissues in the abdomen.

9 Q Okay. So so far we have two bullets recovered from
10 within the body, correct?

11 A Yes.

12 Q Okay. Now showing you State's Exhibit 99, what is
13 that?

14 A This is a diagram again prepared by Dr. Green during
15 the course of the autopsy, and this is essentially side views
16 of the body. And there are two additional more detailed views
17 of what he has labeled as the right arm.

18 So looking at the right side body diagram labeled as
19 No. 10 on the diagram, on the right shoulder is a gunshot entry
20 wound. And that particular bullet went through the soft
21 tissue. It actually -- it didn't go through the -- the body,
22 the chest cavity. It went through the muscle and soft tissue
23 of the back and was recovered on the left side of the body near
24 the tip of the 12th rib. It did not hit anything vital.

25 Going to the body diagram which depicts injuries on

1 the right arm, on the right forearm towards the wrist -- it's
2 labeled No. 6 on the diagram -- is a gunshot entry wound, and
3 this is the entry for an exit which is No. 8 on the diagram,
4 and this is the one that's on the inner aspect of the palm side
5 of the right forearm. Again, that's No. 8 on the diagram.

6 On the diagram No. 7 is actually on the edge of the
7 palm surface of the right forearm, and that's the entry wound.
8 And the exit wound for that particular bullet is labeled No. 9
9 on the diagram. And this is on the inside of the right upper
10 arm above the elbow.

11 Q So now we have a third bullet recovered inside the
12 body, the one that entered in the arm at No. 10, correct?

13 A Yes. That's correct.

14 Q Internally did Dr. Green find anything significant
15 when performing his autopsy?

16 A Yes, he did.

17 Q What did he find?

18 A The significant finding related to the gunshot wound,
19 specifically entry wound No. 5 on the right side of the back
20 and exit wound No. 1 on the right chest. That particular
21 bullet went through the right lung and it caused a great deal
22 of bleeding within his body.

23 Q And would you call that the fatal shot?

24 A Yes.

25 Q The other shots, other than the one that entered at

1 No. 5 and exited at No. 1, do you have an opinion? Would those
2 other wounds in and of themselves if treated have been fatal?

3 A Unlikely.

4 THE COURT: Sorry. What was that?

5 THE WITNESS: Unlikely.

6 THE COURT: Thanks.

7 BY MS. LUZAICH:

8 Q Now, you cannot, you, any medical examiner, cannot
9 tell the order in which the shots or the wounds were sustained,
10 correct?

11 A That's correct, not based upon the description of the
12 injuries that is present in the autopsy report as well as the
13 photographs. No.

14 Q And based on your review of the reports and
15 specifically the photographs, can you tell how far away the gun
16 was when these wounds were inflicted?

17 A Not with any great degree of accuracy, no.

18 Q Can you say either not less than or not more than
19 anything?

20 A For these particular injuries there was no soot or
21 unburned gunpowder on his skin, and, generally speaking, that
22 puts the distance between the end of the barrel and the skin
23 surface when the gun was fired at probably two to three feet.
24 And that distance depends on the type of ammunition that was
25 used as well as the type of weapon that was used, and it's --

1 it will vary depending on those factors.

2 Q Okay. If .22 caliber bullets were recovered, does
3 that factor into it?

4 A Well, again it depends on the type of ammunition and
5 the type of weapon that was used.

6 Q Can you say that the gun barrel was at least -- I
7 don't know -- two or three feet away? I mean, it was not up
8 close.

9 A It was not up close, no.

10 Q Okay. Based on everything that was observed and
11 known at the time of the decedent's death, did Dr. Green form
12 an opinion as to the cause of Mr. Lungtok's death?

13 A Yes, he did.

14 Q What was that opinion?

15 A Dr. Green opined that the decedent's death was the
16 result of a gunshot wound of -- I think he phrased it of the
17 back which went through the right lung.

18 Q Did he also find contributing factors to that cause
19 of death?

20 A Yes. He listed the additional gunshot wounds of the
21 torso and the right arm as contributing conditions.

22 Q And did Dr. Green form an opinion as to the manner of
23 Mr. Lungtok's death?

24 A Yes, he did.

25 Q And what was that?

1 A His opinion is that the death was a homicide.

2 Q Based on your review of the reports and photographs
3 and diagrams, do you concur with his opinions?

4 A Yes, I do.

5 Q Thank you.

6 MS. LUZAICH: I would pass the witness.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 BY MR. BROWN:

10 Q Good morning, Doctor.

11 A Hello.

12 MR. BROWN: Thank you, Your Honor.

13 BY MR. BROWN:

14 Q I actually just had a few follow-up questions, some
15 clarifications, and then just a couple of additional questions
16 if you don't mind. I'm probably going to use the same diagram.

17 If we could just go through the injuries real quickly
18 again just to clarify. Now, first off -- and I think you
19 stated this, but just to clarify, Dr. Green wrote numbers next
20 to these injuries. For example, this says No. 1 with a circle
21 around it, No. 2 with a circle around it; is that correct?

22 A Yes. Those are Dr. Green's notations.

23 Q And the jury's going to have this actual diagram, so
24 they can look at that and read the writing that's there. But
25 that's not indicative of the order of the wounds.

1 A No. That's simply a help to keep track of the
2 injuries.

3 Q He's just got to number them because there are, as
4 you indicated, seven separate entry wounds.

5 A Yes.

6 Q Okay. And so when we might be referencing wound No.
7 5 as being the fatal wound, it doesn't mean that the fifth shot
8 is the one that killed him. It's just No. 5 on this diagram.

9 A That's correct. Yes.

10 Q Okay. And with respect to that, of the seven wounds
11 that you identified, the ones in the arm and the two in the
12 back, only one of those you would have characterized as fatal.

13 A As immediately fatal, yes.

14 Q Okay. And we have the diagram. I'm going to use
15 myself a little bit here, also, but we have basically the two
16 wounds that you see on the pictures that were in the back?

17 A Yes.

18 Q And one was directly through the lung and then exited
19 in the front chest; is that correct?

20 A That's correct.

21 Q And that's the one that was fatal.

22 A Yes. That's the one.

23 Q It nicked some of the arteries and the pulmonary
24 artery.

25 A Yeah. It -- it went through the lung and it tore up

1 the blood vessels in the lung.

2 Q And you testified that it caused a great amount of --
3 a great deal of bleeding.

4 A Yes.

5 Q But would you agree that the wound wouldn't have been
6 immediately fatal?

7 A That's correct.

8 Q In fact, the person that was shot would have been
9 able to -- and we saw this in some of the pictures with the
10 crime scene analyst -- walk around a little bit and maybe drip
11 or leave blood in different places.

12 A Yes, that's possible.

13 Q Is it fair to say that this individual even after all
14 of these shots could have survived up to five or ten minutes?

15 A Yes.

16 Q Okay. There's another wound that you indicated that
17 went in the back. I think it was the lower one labeled No. 4
18 by Dr. Green.

19 A Actually, it's -- it's the upper --

20 Q It's the upper --

21 A -- one. Yes.

22 Q But that went through the tissue. That really didn't
23 go through any organs of the body?

24 A It didn't go through any vital organs. It actually
25 went through soft tissue and then the muscle in the diaphragm

1 on the right side.

2 Q Okay. So there was some discussions with the State
3 about directionality of the wounds. I think it's fair to say
4 No. 2 on the diagram which is right here -- actually, that's a
5 bad way to put my hand. Here?

6 A Yes.

7 Q Exiting here. Either the victim was bent over
8 similar to this or the -- you know, the -- or the shooter was
9 coming straight above if we assume an erect victim is --

10 A Yes.

11 Q So the most logical is that the person who was shot
12 was probably bent over.

13 A He was bent over or he could have been lying down on
14 a bed or something on the floor for that matter, but yes. The
15 angle between his body and the barrel of the gun when it was
16 fired was -- was very acute.

17 Q It's just straight back.

18 A Yes.

19 Q And the fatal injury also suggests kind of an upward
20 in the back, kind of upward and out the chest here so that
21 would -- again, if we're assuming the victim's standing and the
22 stationary shooter, this is also an explanation the victim was
23 somewhat bent over as a straight bullet went in and out
24 crossing the lung; is that fair?

25 A Yes. That's possible.

1 Q I guess what I'm getting at is it's not inconsistent
2 to as this person's being shot to imagine that he might be
3 turning, raising his arm and bending in some form of emotion.

4 A Yes.

5 Q Okay. Now, there was no indication that any of these
6 wounds occurred postmortem. In other words, it appears that
7 this person was alive during all of these gunshots.

8 A That can actually be a little difficult to say with
9 certainty one way or the other. Certainly if you are shot
10 around the time that you are dying or have just died,
11 sometimes we can't tell if the shot occurred while your heart
12 was still beating or shortly after it stopped beating.

13 Q In Dr. Green's autopsy findings he made no finding of
14 anything resembling blunt-force trauma for example.

15 A That's correct.

16 Q It didn't appear this victim had been beaten or
17 struck or hit with an object.

18 A No.

19 Q Now, I just want to clear up a little bit the
20 question about the distance of the shooter from the thing. And
21 what -- and if I understand you right, when a gun is fired,
22 powder comes out of the barrel of the gun and it's hot.

23 A Yeah. Actually it -- yes. A number of things come
24 out of end of the barrel of a gun when it's fired.

25 Q Go ahead and explain when -- because you said there

1 were no powder or no marks on the victim's body. Explain what
2 that would be.

3 A So when you fire a gun, obviously the bullet comes
4 out the end of the barrel, but there are other things that come
5 out, too. There are hot gases caused by the combustion or
6 burning of the gunpowder. There's soot which is the burned
7 gunpowder, and sometimes there are fragments of gunpowder that
8 doesn't actually burn.

9 So if you have a gun that is fired and you have a
10 surface relatively close to the end of the barrel when that gun
11 is fired, you can see deposits of those materials on that
12 surface if the gun is close enough. So at close range, within
13 say six inches, you can see deposits of soot around the gunshot
14 injury, and it actually looks like a very fine black powder or
15 dark gray powder.

16 As the range gets a little longer, you may start to
17 see a bit less soot, but you'll see fragments of unburned
18 gunpowder which actually hit the skin if you're aiming at skin
19 and cause little scrapes or abrasions. That's called gunpowder
20 stippling or gunpowder tattooing.

21 But as the range increases, you see less of those two
22 substances because of the distance. They don't travel all that
23 well. So the farther the distance between the end of the
24 barrel and the surface that the projectile or the core has
25 struck, the less you'll see of soot and powder until you get

1 out to a point where you don't see any soot or powder deposited
2 on the skin.

3 And the point at which you don't see soot or powder
4 deposited on the skin varies, and it varies because weapons are
5 different. For example, if you have a longer barrel on a
6 weapon, you may actually have more combustion or burning of the
7 gunpowder. You may see relatively little gunpowder stippling.

8 So the barrel length and actually the weapon itself
9 in general has an effect on what that range is where you stop
10 seeing soot and powder and also the type of ammunition has an
11 effect. If you have a cartridge that has a small amount of
12 gunpowder, relatively speaking, that gunpowder is more likely
13 to combust completely so you'll have less stippling than, for
14 example, a magnum which has more gunpowder.

15 So all of those factors effect what you see on the
16 skin surface depending on the distance between the end of the
17 barrel and the skin surface.

18 Q Thank you for that explanation. And so what we're
19 really talking about is if it had been a close-up shooting,
20 there are certain things you would expect to find on the
21 victim, on the body.

22 A Yes. That's correct.

23 Q And we had prior evidence that this particular victim
24 was unclothed, and so that would be -- you would expect to see
25 things on an unclothed person more readily than a person who

1 perhaps is wearing a shirt. Is that fair to say?

2 A Well, on the skin surface, yes. It's -- you more
3 readily see the deposits of soot and powder if the range is
4 close enough on someone who's not clothed. If they're wearing
5 clothing, then obviously those will be -- those substances will
6 be deposited on the clothing because it's between the end of
7 the barrel and the skin surface.

8 Q So where we're at is because you didn't note those
9 things and Dr. Green didn't note the soot, the powder, and the
10 things you just mentioned, we are assuming that the gunshot did
11 not occur within a certain distance, say one foot or maybe even
12 two feet. Is that fair?

13 A Yes, approximately.

14 Q You don't know how far back.

15 A No. I can't tell you that.

16 Q There's no indications that a wound's going to look
17 different at 10 feet than it does at 11 feet.

18 A That's correct.

19 Q All we can say is that at least this person was
20 greater than two to three feet away, could have been even
21 further.

22 A Yes, that's possible.

23 Q And the only reason I clarified that is I didn't want
24 to leave the jury with the impression that the opinion was the
25 shot was two or three feet away. I just wanted to make sure

1 we're clear it couldn't have been that close, it was at least
2 further. Is that fair?

3 A That's correct. Yes.

4 Q Okay. Thank you, Doctor.

5 MR. BROWN: Your Honor, I don't have anything
6 further.

7 THE COURT: Redirect?

8 MS. LUZAICH: Just briefly.

9 MR. BROWN: Do you need this?

10 MS. LUZAICH: No.

11 REDIRECT EXAMINATION

12 BY MS. LUZAICH:

13 Q Dr. Olson, Mr. Brown talked to you about, you know,
14 positions and contorting and stuff. The through-and-through
15 and the chest -- I'm on the wrong side. The
16 through-and-through and the chest, is that also consistent with
17 somebody standing over him and shooting down into him?

18 A Yes, that would be possible.

19 Q And then the two in the back, are those consistent
20 with him running away and being shot while running away?

21 A It's possible. I can't tell you -- I can't tell you
22 what he was doing, if he was running or walking. I can just
23 tell you that his back was facing the end of the gun barrel
24 when those shots were fired.

25 Q Okay. I'm sorry. Running, walking, I shouldn't have

1 used that. But he was moving away from the person who was
2 shooting him.

3 A Or at least his back was turned to the shooter.

4 Q Okay. Thank you.

5 THE COURT: Anything further?

6 MR. BROWN: No, Your Honor.

7 THE COURT: Okay. Thank you, ma'am.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Next witness.

10 MR. TOMSHECK: State calls Joel Geller.

11 THE MARSHAL: Please step up into the box, place your
12 items down, raise your right hand, face that gentleman right
13 there.

14 JOEL GELLER, PLAINTIFF'S WITNESS, SWORN

15 THE CLERK: Thank you. Please be seated. Please
16 state your complete name spelling both your first and last name
17 for the record, please.

18 THE WITNESS: Joel Geller, J-o-e-l G-e-l-l-e-r.

19 DIRECT EXAMINATION

20 BY MR. TOMSHECK:

21 Q Mr. Geller, can you tell the ladies and gentlemen of
22 the jury currently what it is you do for a living.

23 A I am retired.

24 Q Prior to being retired -- and I can tell there's a
25 little bit of satisfaction saying that -- what did you do

1 professionally?

2 A I was a latent print examiner forensic scientist with
3 the Las Vegas Metropolitan Police Department.

4 Q In addition to doing latent prints in your capacity
5 with Metro, did you also do examinations of footwear and tire
6 impressions?

7 A Yes, sir.

8 Q I want to talk to you a little bit about your history
9 professionally that allowed you to have that job and that
10 capacity with Metro. Obviously if I were to sit down in a lab
11 and compare fingerprints, I wouldn't know what I was looking
12 at, or if I was trying to compare footwear impressions I
13 wouldn't know what I was doing. What kind of education,
14 training and experience do you have that allows you to do that
15 type of work?

16 A I completed the 104-week latent print training course
17 which included footwear and tire track examination with the
18 United States Army Criminal Investigation Laboratory. I also
19 attended the footwear print and tire tread examination course
20 given by the Florida Department of Law Enforcement. I also
21 attended a footwear print and tire print class offered by the
22 Federal Bureau of Investigation. I also attended the
23 International Symposium on footwear hosted by the Federal
24 Bureau of Investigation.

25 I also authored articles pertaining to footwear and

1 tire track examination. I also attended over 20 educational
2 conferences hosted by the International Association for
3 Identification. I also provided classes during those
4 conferences, and I also attended International Association for
5 Identification division section such as the Missouri division,
6 Nevada division, Florida division and the California division.

7 Q With all that training, do you also have some
8 experience above and beyond that which you had at the Las Vegas
9 Metropolitan Police Department doing that work professionally?

10 A Yes. I did this type of examination throughout my
11 employment as a special agent with the U.S. Army CID. After
12 retirement I worked for the Florida Department of Law
13 Enforcement, the Kansas Bureau of Investigation, the Santa
14 Clara County Police Department, and the Colorado Springs Police
15 Department before I came to Las Vegas where I eventually
16 retired again.

17 Q Kept moving west.

18 A Yes. You could look at that.

19 Q Now that you're retired, obviously, there's still
20 some cases that you worked on that you are the person who has
21 the expertise that can testify about it. Do you remember the
22 case that you're here to testify about today?

23 A Yes, sir.

24 Q And would that be the case identified by Las Vegas
25 Metropolitan Police Department Event No. 000610-1143?

1 A Yes, sir.

2 Q In that particular case dealing with specifically the
3 area of footwear comparisons, were you asked to perform a
4 footwear comparison on some items of evidence recovered from a
5 crime scene as well as a pair of shoes recovered by Detective
6 Barry Jensen?

7 A Yes, sir.

8 Q Specifically what from the crime scene did you look
9 at in order to make your comparison?

10 A I looked at the footwear impression lifter and the I
11 believe photographs that were submitted under this event
12 number.

13 Q And obviously -- and the jury understands this to
14 some extent -- you don't go out and take the footwear
15 impressions yourself as a general rule of what you did at
16 Metro, correct?

17 A That's correct.

18 Q You work in a laboratory type environment?

19 A Yes, sir.

20 Q And you would be submitted certain items that had
21 been impounded by a crime scene analyst.

22 A Yes, sir.

23 Q And the particular items that you examined in this
24 case, the footwear lifter and the photographs, those were
25 submitted to you by Crime Scene Analyst Jeff Smink; is that

1 correct?

2 A That's correct, sir.

3 Q The examination that you did in this case, will you
4 tell the ladies and gentlemen of the jury how it is that you
5 would look at something taken from a crime scene and compare it
6 with a known object such a shoe that you have in the laboratory
7 and how you would make that comparison.

8 A First thing you would do is you look at the footwear
9 track which people also call an impression. Normally a
10 footwear track is a two- or three-dimensional reproduction of
11 the outsole of a shoe. The outsole is the design placed on the
12 bottom of shoes whether it be an athletic shoe, a boot, a
13 sandal.

14 Once you determine that there is a sufficient track
15 evidence present be it a photograph or a lift, you compare it
16 to any known shoes that are submitted. So you would compare
17 the outsole design that you would see in the footwear track to
18 the outsole design of the shoe. The first thing you would do
19 is determine whether or not it was a similar outsole design.
20 Then you would determine if it's a similar size. Then you
21 would look for individual characteristics that reproduce
22 themselves in the footwear track and also on the bottom of the
23 outsole design of the shoe.

24 Q In this particular science do you have access to the
25 sole design related to shoes provided by manufacturers? Are

1 you able to research that?

2 A Yes. In this case I did.

3 Q In this particular case you mentioned that you were
4 provided with a pair of shoes that were impounded by Detective
5 Barry Jensen; is that correct?

6 A Yes, sir.

7 Q Those particular shoes, what was the brand of shoes?

8 A It was a pair of Saucony athletic shoes.

9 MR. TOMSHECK: May I approach (indiscernible) the
10 witness, Judge?

11 THE COURT: Yes.

12 BY MR. TOMSHECK:

13 Q I want to show you what's been marked as State's
14 Proposed 100. Do you recognize that as a photograph of the
15 Saucony tennis shoe that was submitted to you by Detective
16 Barry Jensen?

17 A Yes, sir.

18 Q Fairly and accurately depict the tread pattern on the
19 bottom of the right shoe from that set of athletic shoes?

20 A Yes, sir. May I see the photograph? I'd just like
21 to note when the shoe is turned over it looks like the left
22 shoe, when it sits in the proper location it is the right shoe.
23 When you view it, you turn it over the shoe, it's in a reversed
24 position and it looks like the left shoe.

25 Q Okay. So this one here would be the right shoe.

1 A Yes, sir.

2 MR. TOMSHECK: Move for admission of State's Proposed
3 100.

4 MR. BROWN: No objection.

5 THE COURT: It's admitted.

6 (Plaintiff's Exhibit 100 admitted into evidence.)

7 BY MR. TOMSHECK:

8 Q And I'm going to show you what's already in evidence
9 -- you can see there -- as State's Exhibit 94, a rubber lifter
10 bearing footwear impression impounded by Jeff Smink on June
11 10th of 2000. Do you see a signature at the chain of custody
12 and a personnel number that you recognize down at the bottom?

13 A Yes. I see my signature, my former P number 5892,
14 the date and time.

15 Q Date and time that you would have reviewed and done
16 the work on this particular --

17 A The date and time I received it. Yes, sir.

18 MR. BROWN: Your Honor, if I may publish what's now
19 in evidence as State's 100.

20 BY MR. TOMSHECK:

21 Q Would that be the photograph of the known shoe from
22 the perspective of the bottom of the right shoe that you just
23 talked about?

24 A Yes, sir.

25 Q Did you do a comparison between the lifter that CSA

1 Smink provided to you and the right shoe depicted in State's
2 100?

3 A Actually, I had determined that the footwear
4 impression lifter was not of value for a comparative
5 examination. Even though I looked at it, I determined that I
6 couldn't do anything with it.

7 Q Were you also provided with crime scene photographs
8 that CSA Smink took in this particular case?

9 A Yes, sir.

10 MR. TOMSHECK: May I approach the witness, Judge?

11 THE COURT: Yes.

12 BY MR. TOMSHECK:

13 Q I'm going to hand you what's been marked for
14 identification State's Proposed 70. Can you tell us what
15 State's proposed 70 is?

16 A This is a poster board that I prepared depicting an
17 enlargement of the photograph that was taken by CSA Smink,
18 S-m-i-n-k, at the crime scene and a transparency that I made of
19 the right shoe. A transparency is made by putting the shoe on
20 top of a copier using a clear plastic film which reproduce the
21 outsole of a shoe.

22 Q Okay. And the purpose of doing that is that to
23 illustrate the comparison that you did between the Saucony shoe
24 that was provided to you and the photographs in black and white
25 that were provided to you by CSA Smink?

1 A Yes. It was used to determine that the footwear
2 track on the door was of a similar design as the Saucony shoe
3 that I compared it to.

4 Q Okay. And this is something that you yourself
5 prepared, correct?

6 A Yes. I had prepared this just for a demonstration
7 purpose at that time.

8 Q Okay.

9 MR. TOMSHECK: I'd move for admission of State's
10 Proposed 70.

11 MR. BROWN: No objection.

12 THE COURT: It's admitted.

13 (Plaintiff's Exhibit 70 admitted into evidence.)

14 BY MR. TOMSHECK:

15 Q When you said a moment ago that it was to illustrate
16 that it was a similar design, what do you mean by the phrase
17 "similar design"?

18 A Actually that the outsole design that was depicted in
19 the crime scene photograph was similar to the outsole design
20 which is the design that was placed on the bottom of the
21 Saucony shoe by the manufacturer. You could easily see the
22 triangular design and you can also read the word "Saucony" in
23 the crime scene photograph that also appears on the outsole of
24 the shoe.

25 Q In the photographs that you had you could actually

1 see the word "Saucony"; is that correct?

2 A That's correct, sir.

3 Q Taking out the word "Saucony", if you hadn't been
4 able to see that -- those diamond patterns at the top of the
5 shoe, did you do an analysis to determine if there were any
6 other manufacturers that used that type of tread design?

7 A Yes. I did a search on the Internet of Web sites
8 pertaining to footwear. Numerous outsole designs I reviewed.
9 I personally reviewed it rather than to request it from Saucony
10 to determine if any other manufacturer had it. I wanted to do
11 it myself. And I didn't find any other manufacturer that had a
12 similar outsole design.

13 Q In other words, can you tell us that the shoe print
14 that was left on the door was left by a Saucony tennis shoe?

15 A Yes, sir.

16 Q In other words, it couldn't have been made by a Nike
17 or a Reebok or a hiking boot.

18 A No, sir.

19 Q Did you conduct an investigation with Saucony itself
20 to determine if there were more than one type of Saucony shoe
21 that had the upper that matched that sole?

22 A Yes, sir. I was not familiar with that particular
23 Saucony outsole design, so I sent a request through channels to
24 the manufacturer to determine what the uppers looked like and
25 if it was significant just for one particular brand of shoe

1 that they made. Much to my surprise, within three days I got a
2 reply which showed over 60 uppers.

3 The upper is the part of the shoe above the outsole
4 design where you have your laces or buckles or whatever you --
5 is used to tighten the shoe. There were over 60 different
6 designs for the uppers. When I contacted the Saucony
7 individual that assisted me, he said the outsole design was so
8 popular they decided to put a lot of different uppers on it.

9 Q Okay. In other words, you can tell us that it's a
10 Saucony shoe. You can't tell us exactly which type of Saucony
11 shoe because there's several, correct?

12 A And not from just the outsole design from the crime
13 scene photograph. I was unable to do so.

14 Q Okay. Based on the comparison that you did related
15 to the Saucony shoe that you had in your possession provided by
16 Detective Jensen and the photographs that detective -- or CSA
17 Smink took at the crime scene, what was your determination
18 about whether or not that print could or could not have been
19 made by that shoe?

20 A I wrote a report which I have in front of me that
21 basically says that it could have been made -- the footwear
22 track could have been made the by right shoe. At the time that
23 was the way I normally wrote a report. Now I would write it
24 simply as a similar outsole design as the right shoe. I was
25 able to eliminate the left shoe.

1 Q Couldn't have been made by a left shoe, correct?

2 A No, sir.

3 Q Couldn't have been made by any other brand but a
4 Saucony shoe.

5 A That's right, sir.

6 Q And it could have been made by the shoe that you had
7 in your possession.

8 A That's right, sir.

9 Q In addition to the Saucony shoe were you provided
10 with some --

11 MR. TOMSHECK: I'm showing opposing counsel what's
12 been marked as State's Proposed 95 and 96. I don't believe
13 they have an objection, Judge. If I could move this.

14 THE COURT: Is there any objection?

15 MR. BROWN: No, there's no.

16 THE COURT: It'll be admitted.

17 (Plaintiff's Exhibits 95 and 96 admitted into evidence.)

18 BY MR. TOMSHECK:

19 Q Were you also asked to compare another set of shoes
20 recovered by CSA Smink related to this event number?

21 A Yes. I compared this pair of athletic shoes to the
22 footwear track photograph that was taken by Jeff Smink. And if
23 you notice on the outsole of the shoe, if you see the design,
24 this is the design on the bottom of the footwear made by the
25 manufacturer. There are no star designs whatsoever. So

1 basically this was an easy elimination that this pair of shoes
2 did not make the crime scene photograph of the track evidence
3 found at the scene.

4 Q And when you examine shoes or photographs, you don't
5 know from what person they came from. It's just information
6 that's provided to you.

7 A That's correct, sir.

8 Q So when you received these shoes which were impounded
9 by CSA Smink from an individual by the name of Derrick
10 Sterling, you don't know that information at that time,
11 correct?

12 A Unless it's written on the evidence package, I don't
13 pay that much attention to whose pair of shoes it is. My only
14 concern is whether or not this pair of shoes or any pair of
15 shoes made the track evidence that was recovered by the CSI.

16 Q And you can tell us that these shoes impounded by CSA
17 Smink from an individual by the name of Derrick Sterling did
18 not make the footwear on the door, correct?

19 A Definitely.

20 Q The shoes that you had provided by Detective Barry
21 Jensen, the Saucony brand shoes, did you visually inspect those
22 in order to see if there was any visible apparent blood on
23 them?

24 A Yes, I did. I did do a visual inspection.

25 Q And did you see any blood on them?

1 A No, sir.

2 MR. TOMSHECK: Pass the witness, Judge.

3 CROSS-EXAMINATION

4 BY MR. BROWN:

5 Q I have one kind of quick follow-up question, and
6 that's you had indicated that you kind of changed your standard
7 a little bit on how you evaluate could be or similar in design.

8 A Yes, sir.

9 Q Okay. And when Mr. Tomsheck was getting you to
10 finalize your opinion, he says this could be the same Saucony
11 shoe that you reviewed that was provided to you by Detective
12 Jensen?

13 A Yes. It could have been made by.

14 Q But if I understood you correctly, it could have been
15 made -- this particular footprint on the door could have been
16 made by any of the Saucony shoes with that similar outsole
17 design of the numerous top soles that you talked about.

18 A Upper soles.

19 Q Upper soles.

20 A That's 100 percent correct, sir. It could have been
21 made by any Saucony shoe with a similar outsole design and a
22 similar size.

23 Q I take it from your research that you concluded that
24 Saucony sold probably more than one pair of shoes in the year
25 2000 -- 1999 to 2000?

1 A Yes, sir. As I said, there was over 60 uppers for
2 this pair of shoes on the market at that time.

3 Q That's just the design. We don't know -- you know,
4 do you know how many shoes were actually Saucony sole?

5 A No, sir, I do not.

6 Q Fair to say numerous?

7 A Yes, sir.

8 MR. BROWN: Okay. I have no other questions, Judge.

9 REDIRECT EXAMINATION

10 BY MR. TOMSHECK:

11 Q Just real briefly. So we're clear, you said it had
12 to be -- that particular footwear impression had to be left by
13 a Saucony manufactured shoe, correct? Yes?

14 A Yes, sir.

15 Q In a similar size.

16 A Yes, sir.

17 Q In other words, it couldn't have been made by a size
18 14 or a size 8. It had to be of comparable size, correct?

19 A Yes, sir, plus or minus, anywhere from a 10 and a
20 half to 11 and a half. The reason why I say that especially
21 when you kick a door, there is some slippage, so there is
22 movement. So unless I had a full, complete photograph of an
23 entire outsole design to nail it down to a particular size it'd
24 be awful difficult.

25 Q So it'd have to be a 10 and a half, an 11, or an 11

1 and a half in U.S. size of a Saucony brand shoe.

2 A I would say so.

3 MR. TOMSHECK: Nothing else.

4 MR. BROWN: No.

5 THE COURT: Thank you, sir. Appreciate your time.

6 All right. We're going to go ahead and take our

7 lunch break at this time, ladies and gentlemen.

8 We'll take a break until -- I need to make it 1:15.

9 During this recess you're admonished again not to
10 talk or converse among yourselves or with anyone else on any
11 subject connected with this trial or to read, watch or listen
12 to any report of or commentary on this trial or any person
13 connected with this trial by any medium of information,
14 including, without limitation, newspapers, television, the
15 Internet and radio, or to form or express any opinion on any
16 subject connected with this trial until the case is finally
17 submitted to you.

18 See you after lunch.

19 THE MARSHAL: All rise. Court's now in recess.

20 (Court recessed at 11:55 a.m. until 1:19 p.m.)

21 (Outside the presence of the jury)

22 THE MARSHAL: Please rise. This court, Department 6,
23 is back in session. Please be seated, come to order.

24 THE COURT: All right. Are we ready to go?

25 MR. BROWN: I just have one thing real quick, Judge,

1 literally just a couple seconds. The record we made earlier
2 with respect to Detective Jensen and the comments that you
3 ruled, the conversations from Mr. Porter that could come in, I
4 wanted to mark and admit the actual testimony from the
5 preliminary hearing if that was okay with the Court. State
6 doesn't have an objection other than I have pages 17 through
7 22. They would like pages 15 through 22.

8 MR. TOMSHECK: And I'm just going off memory. It's
9 my recollection that that context of that testimony starts at
10 15. Before the end of the day today, we'll agree upon it and
11 we'll just submit it as a Court's exhibit.

12 THE COURT: And that's to be a Court exhibit for me.

13 MR. TOMSHECK: Correct.

14 MR. BROWN: Yeah. I actually have the -- my copy
15 plus a photo copy. I can include pages 15, 16, 17, et cetera.
16 They might be a little disjointed, but I don't need those two
17 pages right now. We have a statement (indiscernible) copy, so
18 we can make these a court exhibit.

19 THE DEFENDANT: Are they coming in?

20 THE COURT: All right. That's fine. It makes sense
21 to have that in the record.

22 (Pause in proceedings)

23 MR. TOMSHECK: I think that's appropriate, Judge.
24 That's fine.

25 THE COURT: Okay.

1 (Pause in proceedings)

2 MR. BROWN: Provide this to the clerk as a Court
3 exhibit.

4 THE COURT: Right. Okay.

5 (Pause in proceedings)

6 THE COURT: Those are the pages. All right.

7 UNIDENTIFIED SPEAKER: Okay.

8 THE COURT: So that will a Court exhibit.

9 (Pause in proceedings)

10 THE COURT: Okay. Anything else? Okay. Let's bring
11 in the jury.

12 THE MARSHAL: Please rise.

13 (In the presence of the jury)

14 THE MARSHAL: Be seated.

15 THE COURT: Counsel stipulate to the presence of the
16 jury?

17 MS. LUZAICH: Yes, Judge.

18 MR. ABOOD: Yes, Your Honor.

19 THE COURT: All right. State, call your next
20 witness.

21 MS. LUZAICH: Barry Jensen.

22 THE MARSHAL: Good. Just step up into the box,
23 remain standing, raise your right hand. Face that gentleman
24 right there.

25 BARRY JENSEN, PLAINTIFF'S WITNESS, SWORN

1 THE CLERK: Thank you. Please be seated. Please
2 state your complete name spelling both your first and last name
3 for the record, please.

4 THE WITNESS: My name is Barry Jensen. It's
5 B-a-r-r-y J-e-n-s-e-n.

6 MS. LUZAICH: Thank you.

7 DIRECT EXAMINATION

8 BY MS. LUZAICH:

9 Q Sir, how are you employed?

10 A I'm employed with the Las Vegas Metropolitan Police
11 Department.

12 Q How long have you been with Metro?

13 A About 20 years.

14 Q In what capacity are you now?

15 A I'm a detective.

16 Q How long have you been a detective?

17 A Approximately 14 years.

18 Q Okay. And as a detective are you assigned to
19 investigate many different crimes?

20 A Yes, I am.

21 Q As opposed to a patrol officer who just kind of
22 responds initially to a call.

23 A That's correct.

24 Q And when a homicide is involved when patrol comes
25 out, do many detectives go out?

1 A Yes, they do.

2 Q I'm going to take you back to June of 2000. In June
3 of 2000 were you also -- you were already a detective at Metro?

4 A That's correct.

5 Q And through the course of that summer, summer, June,
6 July, August of 2000, did you participate in an investigation
7 into the murder of an individual known as Gyaltso Lungtok?

8 A Yes, I did.

9 Q And I'm sorry. I don't mean to laugh. We were
10 having a hard time pronouncing his name. And while the
11 investigation into the gentleman's death was ongoing, were
12 there numerous detectives that participated in that?

13 A Yes, there were.

14 Q Another one is Detective LaRochelle?

15 A That's correct.

16 Q And he's outside, right?

17 A Yes.

18 Q Okay. Now, I'm going to take you forward, actually,
19 in August of 2000. Had the collective you, all of the
20 detectives, by then developed a suspect into the murder?

21 A Yes, we did.

22 Q And was that individual -- well, what was that
23 individual's name?

24 A Justin Porter.

25 Q And once Justin Porter was developed as a suspect,

1 did you and some other detectives go to his home?

2 A Yes, we did.

3 Q Where is his home -- or back in June of 2000 or
4 August was his home?

5 A His home was at 208 North 13th Street, Apartment 3.

6 Q Is that in the downtown area?

7 A Yes, it is.

8 Q And about how far -- you know where the scene of the
9 homicide was, correct?

10 A Yes, I do.

11 Q 10th Street?

12 A Yes.

13 Q 415 South 10th Street?

14 A That's correct.

15 Q How far from 415 South 10th Street -- I'm sorry --
16 was Justin Porter's home?

17 A Using Mapquest it was .6 miles.

18 Q Did you actually drive and/or walk the distance
19 between there?

20 A Yes. I walked the distance.

21 Q And how long did it take you?

22 A Well, using the sidewalks and street -- I didn't cut
23 across any vacant lots -- I believe it took me 14 minutes going
24 north on 14 Street -- correction, on 10th Street to Ogden
25 Street east, and then just a little north to his apartment.

1 And when we walked back, I walked down 13th Street south, came
2 up I believe Bridger and ended up at 415 10th Street, and that
3 took me 13 minutes.

4 Q Okay. And as you were doing this, were you running?

5 A No.

6 Q Were you walking at a leisurely pace?

7 A Yes. I was walking at a leisurely pace.

8 Q So if somebody were running, it would be much faster?

9 A Yes.

10 Q If somebody were cutting through lots and yards it
11 would be faster?

12 A Yes.

13 Q And with no disrespect intended, if somebody were in
14 a little better shape than you, would it be faster?

15 A Yes.

16 Q And younger than you.

17 A Yes.

18 Q Okay. Now, when you went to Justin Porter's home,
19 was it your intention to look for some evidence?

20 A Yes, it was.

21 Q Specifically, were you looking for a pair of shoes?

22 A Yes.

23 Q And is that because -- well, why is that?

24 A There was footwear at the murder scene.

25 Q A footwear impression?

1 A Yes.

2 Q And had it been looked at by an expert at the crime
3 lab?

4 A Yes, it was.

5 Q Okay. When you went there, was it your intention to
6 obtain and then serve a search warrant or just kind of go say,
7 hey, can we come in?

8 A No. Our intention was to -- we were preparing a
9 search warrant for the residence.

10 Q And was there actually team of officers waiting at
11 the house for the search warrant?

12 A Yes, there were.

13 Q So some officers were preparing the search warrant
14 and some officers were waiting?

15 A Yes.

16 Q In order to get a search warrant can you just, you
17 know, write something down on a piece of paper and that's it?

18 A No. There's -- there's a standard wording that we
19 use, and then you also have to enter the address that you're
20 going to search, a description of the residence, what you're
21 going to search for, and then you have to list your probable
22 cause that would allow you to go into the residence and search
23 for those items. And then you -- you take that search warrant
24 to a judge who reviews it. And if he agrees that there's
25 probable cause to search the residence, he signs it.

1 Q And that takes a little bit of time sometimes.

2 A Yes, it does.

3 Q So while you all were waiting for the search warrant,
4 did you come into contact with anybody from the residence that
5 you waiting at?

6 A Yes, we did. We came --

7 Q Who did you come into contact with?

8 A Angela Porter and her husband, Sergio, I believe.

9 Q How did it come about that you came into contact with
10 them?

11 A They were leaving the apartment, and the officers
12 that we had surveilling the apartment made a car stop a couple
13 blocks away from their apartment.

14 Q Why is that?

15 A We didn't know if Justin Porter was in there or not,
16 and if he did -- if he was, we didn't want to stop them where
17 he could see that the police were there in case it would cause
18 him to run or do anything.

19 Q Okay. Now, this is August 10th of 2000. What time
20 of day is it that you're having contact with Angela Porter and
21 her husband?

22 A It's late evening, 11:00 o'clock at night.

23 Q So very late at night and dark?

24 A Yes.

25 Q And when you had contact with Ms. Porter, did you

1 discover that Justin was not in fact in the residence?

2 A Yes, we did.

3 Q Did you discover that he was actually not even in
4 town?

5 A Yes, we did.

6 Q Where did you discover he was?

7 A His mother told us that he was -- that Justin Porter
8 was in Chicago with his father.

9 Q Was she cooperative with you at that point?

10 A Yes, she was.

11 Q And did you explain to her why you were wanting to
12 talk to Justin?

13 A Yes, we did.

14 Q Did you tell her something or give her something?

15 A I provided her my business card with my name and
16 phone number.

17 Q For what purpose?

18 A So she would know who to contact.

19 Q Did you then arrest her or keep her in custody or
20 anything?

21 A No.

22 Q What did you do?

23 A I believe her husband, Sergio, signed the -- signed a
24 consent to search card to allow us to search their apartment
25 without obtaining a search warrant. They were on their way to

1 a real estate transaction of some kind, and he provided us a
2 key to the apartment so we could go in.

3 Q He voluntarily provided that to you?

4 A Yes, he did.

5 Q So you have a consent to search the home in your hand
6 and you have the key. Did you then just go inside?

7 A No, we did not.

8 Q What did you do?

9 A We waited for the search warrant to be approved and
10 signed by a judge.

11 Q Okay. Did you think that was just the better course?

12 A Yes, we did.

13 Q Did you at some point actually get the search warrant
14 in hand?

15 A Yes, we did.

16 Q And go into the house?

17 A Yes.

18 Q Had Ms. Porter and her husband returned by then?

19 A Yes, they had.

20 Q When you went -- and I'm sorry. Did you personally
21 also go into the house?

22 A Yes, I did.

23 Q And did you participate in the search of the house?

24 A Yes.

25 Q Had you asked Ms. Porter or her husband whether or

1 not Justin Porter kept clothing and things of that nature at
2 that place?

3 A Yes, we did.

4 Q And did they show or tell you where he kept his
5 items?

6 A Yes. They told us that he -- his clothes were in the
7 hall closet.

8 Q Did you look in the hall closet?

9 A Yes, we did.

10 Q What if anything did you find of interest?

11 A Inside the hall closet there were some bags of -- of
12 clothes, and we found a pair of white Saucony tennis shoes.

13 Q And why is that significant to you?

14 A That was what the footwear impression on the door
15 came back to.

16 Q When you found those white Saucony shoes, did you
17 then mark, tag and place them into evidence?

18 A Yes, we did.

19 MS. LUZAICH: And may I approach the clerk?

20 THE COURT: Yes.

21 MS. LUZAICH: Court's indulgence one second. Since
22 there's a bag and contents, I would ask that

23 the bag be marked as A and the contents as B.

24 THE COURT: Okay. What number is it?

25 MR. TOMSHECK: 106.

1 MS. LUZAICH: 106. May I approach the witness?

2 THE COURT: Yes.

3 BY MS. LUZAICH:

4 Q Detective, showing you what's been marked as State's
5 Proposed Exhibit 106A, do you recognize that?

6 A Yes, I do.

7 Q And does that bag contain the tennis shoes that you
8 found at the residence?

9 A Yes, they do.

10 MS. LUZAICH: Can I have a scissor, please. Thank
11 you.

12 BY MS. LUZAICH:

13 Q Now, is the bag sealed?

14 A Yes, it is. (Indiscernible).

15 Q It's been opened.

16 A It's been opened.

17 Q Well, was there a preliminary hearing in this case?

18 A Yes, there was.

19 Q Did you testify at a preliminary hearing?

20 A Yes, I did.

21 Q And were the shoes brought to the preliminary
22 hearing?

23 A Yes, they were.

24 Q Okay. So since the preliminary hearing is that bag
25 -- does it look in the same or similar situation that it was

1 then?

2 A Yes, with the exception the staples have come through
3 the paper bag.

4 Q Okay. Can you open it up and make sure the shoes are
5 in there, and can you take them out?

6 MS. LUZAICH: And I would ask that the shoes be
7 marked as 106B, and I would move 106B into evidence.

8 THE COURT: Did you want 106A also?

9 MS. LUZAICH: No.

10 THE COURT: Okay. 106B.

11 MR. ABOOD: No objection.

12 THE COURT: 106B is admitted.

13 (Plaintiff's Exhibit 106B admitted into evidence.)

14 MS. LUZAICH: Thank you.

15 BY MS. LUZAICH:

16 Q And those shoes that are in front of you, do they in
17 fact say Saucony on the bottom?

18 A Yes, they do.

19 Q Did you ultimately have -- cause those to be examined
20 and compared to the door from Mr. Lungtok's apartment?

21 A Yes.

22 Q Okay. While you were serving this search warrant,
23 did like enough time pass that you're now into August 11th of
24 2000?

25 A Yes, we did. We were notified by the affiant of the

1 search warrant, Detective Casteneda, that the judge had signed
2 the search warrant and so we could go into the residence.

3 Q Okay. When you concluded your service of the search
4 warrant, did detectives go home essentially?

5 A I believe so.

6 Q Did you receive some phone calls later that day?

7 A Yes, I did.

8 Q Where did you receive some phone calls later that
9 day?

10 A Well, I had three voice messages on my message
11 machine on -- at my office.

12 Q Did you say on your E-mail?

13 A No. At my office phone.

14 Q On your office phone. Okay. Do you have an
15 answering machine on your office phone?

16 A Yes.

17 Q And when you gave -- oh, and who were messages from?

18 A They were from Justin Porter.

19 Q How could you tell that?

20 A Well, he identified himself as Justin Porter.

21 Q Okay. How many voice messages did you get from him?

22 A Three.

23 Q And what did they say, essentially?

24 A Essentially, he said that he got my name and number
25 from his mother, that he spoke to her. The second one I think

1 the message was like this is important, and I don't recall what
2 the third message was.

3 Q Okay. But in each message did he say hi, it's -- and
4 did he actually say it's me, Justin Porter?

5 A Yes, he did.

6 Q Okay. Did you actually have contact with the person
7 who left you the messages?

8 A Yes, I did.

9 Q How did that come about?

10 A I was sitting at my desk, and it would be August 11th
11 at 11:00 o'clock or so in the morning. I answered my phone and
12 a person identified himself as Justin Porter to me.

13 Q Did the person who identified himself to you
14 personally sound the same as the three messages that had been
15 left?

16 A Yes, he did.

17 Q And what if anything did the person identifying
18 himself to you as Justin Porter say?

19 A He said that he hadn't committed any crimes in Las
20 Vegas, and he believed that somebody was lying about him, and
21 he thought that person's name was Dude, and he told me he
22 thought Dude was in the jail.

23 Q Okay. Did he sound like he wanted to talk to you?

24 A Yeah. I mean, three -- three phone messages and a
25 phone call, yes.

1 Q In a relatively short period of time?

2 A Yes.

3 Q Did he tell you where he was?

4 A I believe he told me he was in Chicago. I don't know
5 if he told me that over the phone or if that was on one of the
6 messages, but he was in Chicago.

7 Q Okay. Did you arrange to talk to him?

8 A No.

9 Q In person?

10 A Oh, I didn't tell him -- I didn't set up an
11 appointment or anything like that.

12 Q I guess that was my question. Did you make an
13 appointment with him to talk in person?

14 A No, I did not.

15 Q Okay. What did you do, however?

16 A Eventually, myself and some other detectives flew to
17 Chicago where we interviewed Justin Porter.

18 Q Okay. Now, after you found out from Justin Porter's
19 mother that he was in Chicago, did one of the detectives that
20 you are working the investigation with contact the Chicago
21 police department and seek their help?

22 A Yes, he did.

23 Q And did they -- did the detective send some
24 information to Chicago that would aid them in helping you?

25 A Yes, he did.

1 Q One, did you have an address and a potential phone
2 number for Justin Porter in Chicago?

3 A Yes. We had an address, a phone number and a name of
4 his father, George Porter.

5 Q Where did you get that information from?

6 A I believe we got the phone number and the name from
7 Justin Porter's mother, and I think off an Internet search is
8 where they -- another detective or investigator came up with an
9 address.

10 Q Okay. And had you generated an arrest warrant for
11 Justin Porter prior to that?

12 A Prior to going to Chicago?

13 Q Yes.

14 A Yes.

15 Q Did one of the detectives also fax the warrant to
16 Chicago?

17 A Yes, he did.

18 Q Did the detective ask the Chicago police to actually
19 go to that location and find Justin Porter?

20 A I don't know if he personally asked him that, but we
21 provided that name and that address to the Chicago Police
22 Department.

23 Q Okay. Did you receive information back from Chicago
24 that Justin Porter was in their custody?

25 A Yes, we did.

1 Q Do you know about when it was that you received that
2 information?

3 A I believe that detective got notified at 11:30 at
4 night that --

5 Q So we're still on the 11th, correct?

6 A Yes.

7 Q August 11th?

8 A Yes.

9 Q So 11:30 or at least really late at night on the 11th
10 you all find out that he's in custody. What do you then do?

11 A Arrangements were made for myself, Detective
12 LaRochelle and a sergeant, Laurie Cricket (phonetic) to fly to
13 Chicago where we could interview Justin Porter.

14 Q When did you guys fly to Chicago?

15 A We flew out the early morning of the 12th I think
16 or --

17 Q And did the three of you arrive in Chicago?

18 A Yes, we did.

19 Q Did you go to the police department in Chicago?

20 A Yes, we did.

21 Q Do you know about what time of day in Chicago it was
22 that you got there?

23 A I believe we arrived in Chicago at 3:30 Central
24 Standard Time, Chicago time.

25 Q So mid afternoon.

1 Q Did you have contact with him right away?

2 A I don't recall if we contacted him right away. We
3 may have stopped in and said hi.

4 Q Did you do something for him?

5 A Yes. We -- being that time in the afternoon, I went
6 to a McDonald's which was down the street from the police
7 station and got him some McDonald's food, a hamburger and a
8 drink, some french fries.

9 Q Did you give it to him?

10 A Yes, we did.

11 Q Did you do that before having any conversation with
12 him?

13 A Yes, we did.

14 Q Why?

15 A I didn't know if he'd eaten that day. I believe we
16 may have asked him if he was hungry.

17 Q Just trying to be nice?

18 A Yes.

19 Q And did you at least give him time to eat by himself,
20 relax?

21 A Yes, we did.

22 Q And then did you and Detective LaRochelle go in the
23 room to talk to him?

24 A No, we didn't. We -- we took him down the hallway to
25 what they have as an interview room.

1 Q Okay. And when you took him to the interview room,
2 who was present in the room?

3 A At first it was me, Detective LaRochelle and Sergeant
4 Cricket, but Sergeant Cricket ended up excusing herself out of
5 the room.

6 Q Okay. So it was just you, Detective LaRochelle and
7 the defendant?

8 A Yes.

9 Q What did you do?

10 A I -- we advised him of rights. I provided him with a
11 Miranda card which I had him read out loud to me.

12 Q Do you do that all the time?

13 MS. LUZAICH: May I approach the clerk?

14 THE COURT: Yes?

15 THE WITNESS: I do it quite a bit. I wouldn't say
16 all the time.

17 MS. LUZAICH: May I approach the witness?

18 THE COURT: Yes.

19 BY MS. LUZAICH:

20 Q Showing you what's been marked as State's Proposed
21 Exhibit 102, is that the Miranda card that you had with you?

22 A Yes, it is.

23 Q When you had that card, you have them read it out
24 loud?

25 A Yes.

1 Q And do you have them sign it as well?

2 A Yes, I do.

3 Q Did he sign that card?

4 A Yes, he did.

5 Q In your presence?

6 A Yes.

7 Q And did you then sign it as well?

8 A Yes, I do.

9 MS. LUZAICH: Move it into evidence.

10 MR. ABOOD: No objection, Your Honor.

11 THE COURT: Admitted.

12 (Plaintiff's Exhibit 102 admitted into evidence.)

13 BY MS. LUZAICH:

14 Q Now, when you had him read it out loud, how did that
15 go?

16 A He read it slow. He kind of had to sound out some of
17 the words. I don't recall which words he had to sound out.
18 But after he read it, I explained it to him, and I asked him if
19 he understood it, and he said he did, and then that's when he
20 signed it.

21 Q And then did you guys talk to him for a bit?

22 A Yes, we did.

23 Q Now, as a detective with the Las Vegas Metropolitan
24 Police Department -- you know, you've been there for 20 years
25 -- are you familiar with some street terms?

1 A Yes, I am.

2 Q In your experience have you ever heard the term
3 "lick", a "lick"?

4 A Yes, I have.

5 Q What is a lick?

6 A A lick is a street term for a robbery.

7 Q And the -- just totally to change, the crime scene
8 where Mr. Lungtok was killed, that's on 10th Street, correct?

9 A Yes, it is.

10 Q And you're familiar with South 10th Street?

11 A Yes, I am.

12 Q Is there a phone or a phone booth on South 10th
13 Street?

14 A No, there is not.

15 Q Did you actually walk up and down 10th Street to see
16 if there was a phone or phone booth?

17 A Yes, I did.

18 Q And there isn't.

19 A That's correct. There's no phone there.

20 Q Thank you, Detective.

21 MS. LUZAICH: I would pass the witness.

22 THE COURT: Cross.

23 MR. ABOOD: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. ABOOD:

1 Q Detective, how are you?

2 A Very good.

3 Q Sir, you told us about going to 208 North 13th
4 Street, Apartment No. 3. Now that was his mother's apartment;
5 is that right?

6 A That's correct.

7 Q And you had some information that Justin was staying
8 there?

9 A Yes.

10 Q Now, did he have a room of his own?

11 A No, he did not.

12 Q It's like he just slept on the couch or something?

13 A Yes, sir.

14 Q And do you know where he kept his clothing and things
15 like that?

16 A According to his mother he kept it in the hall
17 closet.

18 Q And that's where you went to find these shoes that
19 you showed the jury?

20 A Yes.

21 Q Okay. Other than those shoes, I take it that no
22 other evidence was discovered at that apartment that linked
23 Justin to this crime scene; is that right?

24 A That's -- that's correct.

25 Q So we don't have any firearm.

1 A No, sir, we don't.

2 Q We don't have any bullets.

3 A No.

4 Q No clothing with blood on them or anything like that?

5 A No.

6 Q And no items of property that would have belonged to
7 Mr. Lungtok.

8 A That's correct.

9 Q Okay. Now, these Sarsony (phonetic) shoes -- is that
10 what they, are by the way, Sarsony or --

11 A I believe it's pronounced Saucony.

12 Q Saucony. Okay. These shoes, you had an opportunity
13 to look them over before you put them into evidence obviously.

14 A Yes, we did.

15 Q And you didn't discover any blood either top or
16 bottom, anywhere on those shoes; is that right?

17 A That's correct.

18 Q Okay. Now, you also told the jury that Justin's
19 mother told you during the course of your looking into the
20 apartment that Justin was in Chicago with his father?

21 A Yes.

22 Q And did you come to discover that his father actually
23 lived there in Chicago?

24 A Yes, we did.

25 Q And Justin was apparently visiting him at his

1 apartment there in Chicago.

2 A Yes.

3 Q And later I guess you discovered that, in fact,
4 Justin had plans to come back mid to late August.

5 A Yes, sir.

6 Q But obviously you don't have to wait for a suspect to
7 come back to Las Vegas. You decided you wanted to have him
8 arrested and go to Chicago to speak with him.

9 A Yes.

10 Q Okay. Now, as far as you know, nothing of value to
11 this investigation, the homicide investigation, was located in
12 his father's apartment in Chicago either.

13 A Not as far as I know.

14 Q So again, no clothing with blood on them, no gun, no
15 bullets, nothing relating to this homicide here in Las Vegas.

16 A That's correct.

17 Q Okay. Sir, you also discussed briefly the interview
18 process that you had with Justin, and you told us that you
19 advised him of his rights.

20 A Yes.

21 Q And obviously what we're talking about is you got the
22 right remain to silent, anything you say can and will be used
23 against you, things that people hear about all the time on TV.

24 A Right.

25 Q Okay. And when you advised him of these rights,

1 obviously he had a right to remain silent, but he agreed to
2 speak with you.

3 A Yes, he did.

4 Q And you spent some time interviewing him about this
5 incident in Las Vegas, the homicide.

6 A Yes.

7 Q And my understanding is Detective LaRochelle will
8 speak to the separate statements that Mr. Porter gave
9 concerning that homicide.

10 A Okay.

11 Q Okay. Oh, so you didn't know that. Okay. Give me
12 just one moment, sir.

13 MR. ABOOD: Court's indulgence.

14 BY MR. ABOOD:

15 Q Sir, Mr. Brown pointed something out to me. You
16 talked to the jury a little bit about what you took the meaning
17 of a lick to be?

18 A Yes, sir.

19 Q In other words, when Justin said something about a
20 lick, you thought that it meant a --

21 A It's a common street term that is used for a robbery.

22 Q Okay. Now, that's not something Justin told you, is
23 it?

24 A No. That's what a lick means to us in law
25 enforcement. That's what a lick means to people on the street

1 that would use terminology like that.

2 Q All right. And when Justin gave you his statement,
3 you asked him what a lick means; is that right? Do you recall
4 that?

5 A I don't recall that. I may have.

6 Q Well, let me see if I can refresh your memory a
7 little bit. Did he say to you when you asked what -- well, let
8 me just make sure -- yeah. When you asked what does a lick
9 mean, do you recall him saying something like, well, anybody go
10 get some money?

11 A Yeah, something like that.

12 Q Something like that. Okay. Sir, thank you very
13 much.

14 MR. ABOOD: Thank you, Your Honor.

15 THE COURT: Thank you. Redirect.

16 REDIRECT EXAMINATION

17 BY MS. LUZAICH:

18 Q In all your years as a police officer, do you see
19 often people use a gun during the commission of a crime and
20 then they get rid of it?

21 A Yes.

22 Q And then they get rid of bullets?

23 A Yes.

24 Q Do they generally keep bloody clothing?

25 A No.

1 Q Do they wash it sometimes?

2 A Sometimes.

3 Q Can you wash blood off tennis shoes?

4 A Yes, you can.

5 Q Thanks.

6 MR. ABOOD: Very briefly, Your Honor.

7 THE COURT: All right.

8 RECROSS-EXAMINATION

9 BY MR. ABOOD:

10 Q Sir, in all fairness you also you've also
11 investigated many crime scenes where people do have the guns
12 and the bullets or other items like that, firearms, that were
13 involved in a crime.

14 A Yes.

15 Q And you've also investigated many crime scenes where
16 you do find clothing or other items that link to the crime, the
17 crime scene?

18 A Yes, we do.

19 Q It just didn't happen in this case.

20 A That's correct.

21 Q Okay.

22 MS. LUZAICH: Nothing.

23 MR. BROWN: Before he leaves, Your Honor, can we
24 approach real quick?

25 THE COURT: Sure.

1 (Bench conference began at 1:51 p.m.)

2 MR. BROWN: The only reason I want to bring it up is
3 I thought they were going to use him to get into some
4 statements.

5 THE COURT: So did I.

6 MR. BROWN: We need to fix that statement that we
7 (indiscernible) where they're still talking about probation in
8 there. We had talked about it before. They'll probably do it
9 through Detective LaRochelle. (Indiscernible) he did mention
10 things (indiscernible) interviewed him, and he said certain
11 things.

12 I didn't stand up and lodge an objection. But
13 because of the statement -- you know, we are -- just to remind
14 the Court, we're objecting to anything referencing the
15 statement Justin gave --

16 THE COURT: Right.

17 MR. BROWN: -- in Chicago. And so I didn't want to
18 -- I didn't stand up and object right at the moment, so this is
19 my contemporaneous objection.

20 THE COURT: Okay.

21 MS. LUZAICH: And just so you know, we didn't
22 specifically (indiscernible).

23 THE COURT: I figured there was something like that
24 when he said no. Okay.

25 MR. BROWN: I am lodging the objection now. When

1 Detective LaRoche gets up and talks about, you know --

2 THE COURT: The statements.

3 MR. BROWN: -- (indiscernible) they're introducing
4 (indiscernible).

5 THE COURT: (Indiscernible).

6 MR. BROWN: And address (indiscernible) the phone
7 call (indiscernible) the phone call. Yes, I objected to it, of
8 course, the phone call. And the Court's made its record on
9 that, so I didn't object while he was speaking.

10 THE COURT: Right.

11 MR. BROWN: (Indiscernible) objections
12 (indiscernible). Thank you, Judge.

13 THE COURT: Okay.

14 (Bench conference concluded at 2:53 p.m.)

15 MR. ABOOD: Thank you, Your Honor.

16 THE COURT: Hold on.

17 MR. ABOOD: We don't have anything else further.

18 THE COURT: Hold on just a minute. You know what,
19 Counsel, I shouldn't have had you sit down. Come on up again,
20 Counsel.

21 (Bench conference began at 1:53 p.m.)

22 THE COURT: Uh-huh.

23 MS. LUZAICH: (Indiscernible).

24 UNIDENTIFIED SPEAKER: (Indiscernible).

25 THE COURT: They're all the same question. It's the

1 same question I had in my mind.

2 MS. LUZAICH: I-yi-yi (phonetic).

3 UNIDENTIFIED SPEAKER: That's a great question.

4 THE COURT: It is.

5 MS. LUZAICH: It is, yeah.

6 MR. BROWN: (Indiscernible).

7 MS. LUZAICH: Yeah.

8 THE COURT: All right. So is there any way to say
9 this without revealing the other crimes?

10 MS. LUZAICH: No.

11 THE COURT: Okay.

12 UNIDENTIFIED SPEAKER: (Indiscernible) the rules of
13 evidence we're not allowed you can't ask the question
14 (indiscernible).

15 THE COURT: Okay.

16 UNIDENTIFIED SPEAKER: I don't like them
17 (indiscernible).

18 THE COURT: (Indiscernible).

19 (Bench conference concluded at 1:54 p.m.)

20 THE COURT: All right, ladies and gentlemen. I
21 appreciate the questions that you've asked, but under the rules
22 of evidence I cannot ask the witness this question at this
23 time.

24 All right, sir. You are free to go. Thank you so
25 much.

1 THE WITNESS: Thank you, ma'am.

2 (Pause in proceedings)

3 MS. LUZAICH: Detective James LaRochelle.

4 THE MARSHAL: Please step up into the box, raise your
5 right hand, face that gentleman right there.

6 JAMES LaROCHELLE, PLAINTIFF'S WITNESS, SWORN

7 THE CLERK: Thank you. Please be seated. Please
8 state your complete name spelling both your first and last name
9 for the record.

10 THE WITNESS: James LaRochelle, L-a, capital R,
11 o-c-h-e-l-l-e.

12 THE CLERK: First name?

13 THE WITNESS: James.

14 THE CLERK: Spell it, please.

15 THE WITNESS: J-a-m-e-s. Thank you.

16 DIRECT EXAMINATION

17 BY MS. LUZAICH:

18 Q Sir, by whom are you employed?

19 A With Las Vegas Metropolitan Police Department.

20 Q How long have you been with Metro?

21 A Over 17 years.

22 Q In what capacity are you right now?

23 A A detective supervisor.

24 Q When you say a detective supervisor, are you
25 currently a sergeant?

1 A Yes, ma'am.

2 Q Did you spend many years as a detective not as a
3 supervisor?

4 A Yes.

5 Q How many years did you spend as a detective, not a
6 supervisor?

7 A Ten years.

8 Q How long have you been a sergeant?

9 A Four and a half years.

10 Q As a detective with Metro, do you work with many
11 other detectives in the investigation of offenses?

12 A Yes.

13 Q And specifically, if you're investigating a homicide,
14 are there many, many detectives that participate in the
15 investigation?

16 A Yes.

17 Q Is that because you just never know how much there is
18 to do?

19 A Yes.

20 Q I'm going to take you back to June of 2000. Were you
21 a detective back then?

22 A Yes.

23 Q And a detective, not a supervisor, correct?

24 A That's correct.

25 Q And in June of 2000, were you called upon to

1 participate in an investigation involving the death of an
2 individual named Gyaltsso Lungtok?

3 A Yes. That's correct.

4 Q Were you called to the residence at 415 South 10th
5 Street on June 10th of 2000?

6 A Yes.

7 Q Now, when you went out there in June to investigate
8 that homicide, were you kind of like the lead detective at that
9 time?

10 A No.

11 Q Well, were you and Detective Thowsen together?

12 A Yes.

13 Q Okay. And as the lead detectives, does one of you
14 take responsibility for scene and one for interviews and things
15 of that nature?

16 A Yes. That's correct.

17 Q And which part of it did you have?

18 A I had the interviews at the scene.

19 Q Although your primary responsibility would have been
20 interviews at the scene, would you also walk into and around
21 the scene so that you know what you're talking about?

22 A Yes. The scene was available, yes.

23 Q What time of day was it that you got there? Do you
24 remember?

25 A It was in the afternoon.

1 Q And when you went to 415 South 10th Street, Apartment
2 H, did you go inside?

3 A Yes.

4 Q Okay. What did you see, just briefly, when you went
5 inside?

6 A It was a crime scene that was in the second story of
7 an apartment complex or a duplex that had four apartments on
8 the east side of the -- excuse me, on the west side of the
9 street or west side of the building. The apartment, No. H, the
10 crime scene, was upstairs to the north side.

11 We walked in the door that faced south, walked into a
12 hallway. There was blood spatter in the apartment. The room
13 where the deceased, the victim, was located was in the east
14 side of the apartment. It was a one-bedroom apartment.

15 Through that door the victim was located along side
16 of a bed in that east bedroom propped up to the side, leaning
17 against the side of the bed near a night stand that was located
18 in the northeast corner and by a telephone.

19 Q When you talk about blood spattered throughout the
20 apartment, was there also blood on the -- like in the doorway
21 of the apartment?

22 A Yes.

23 Q Specifically like on the -- there's a word for it.
24 Like the strip of the door on the floor?

25 A Yes, like the tread of the threshold. Yes.

1 Q Thank you. Did you also notice that there were some
2 bullets or bullet fragments found in the apartment?

3 A Yes.

4 Q And a shell casing outside on the landing.

5 A Yes. That's correct.

6 Q While you were responsible for interviews, did you
7 and a bunch of other detectives attempt to interview all the
8 neighbors that were around to see what information you could
9 ascertain?

10 A Yes.

11 Q And did you discover that it had not happened
12 immediate prior but it was a little while before?

13 A That the incident occurred approximately two days
14 before? Is that the question?

15 Q Yes.

16 A Yes.

17 Q Okay. Two days before, like in the middle of the
18 night?

19 A Yes.

20 Q Okay. And was that pretty much consistent between
21 all the neighbors that you were able to talk to?

22 A Yes.

23 Q In addition to talking to the neighbors about what
24 had occurred pertaining to Apartment H, did you discover that
25 there was another blood trail that you had to be concerned

1 about?

2 A Yes. There was blood trail that was located on the
3 east side of the apartment, so that was the opposite side of
4 the apartment, that adjoined a parking lot area. That was also
5 on the second floor and led from a fire extinguisher down the
6 stairwell.

7 Q Okay. And you can keep talking about east side and
8 west side. Just because I'm not directional, would that be the
9 front side and the back side?

10 A Yes. The crime scene with the victim was located on
11 the front side closest to 10th Street, and there was a second
12 blood trail that was located on the opposite side of the
13 building closest to a parking lot area which would be the east
14 side, the opposite side.

15 Q Thank you. And while you guys were interviewing
16 witnesses, did you discover that the back side or as you call
17 it the east side blood trail really didn't have anything to do
18 with the murder you were investigating?

19 A That's correct.

20 Q And how did you find that out?

21 A That while we were at the scene and I'm doing
22 interviews, that a person by the name of Derrick Sterling
23 arrived. And initially he said that he was coming to the scene
24 because he was concerned that something could have happened to
25 a friend of his.

1 And -- and in talking with Derrick Sterling, that
2 Derrick Sterling said that he was the person that caused the
3 blood trail on that opposite side, on the east side next to the
4 parking lot. And he described a series of events that
5 occurred.

6 That he said that he was with a roommate or a former
7 roommate upstairs at that apartment on that side, and that he
8 was in an argument -- if my recollection's correct -- about a
9 girlfriend, and he had hit the fire extinguisher and cut his
10 hand, and that he had bled coming down the stairs. And he went
11 to a spigot that was located on the side of the building and
12 washed it off.

13 And during our contact with him, he was cooperative,
14 and he allowed us to get a buccal swab and to collect up his
15 clothing, his footwear that had some blood spatter on it. And
16 I compared that to what we found on that side of the building.

17 Q When you say a buccal swab, for those jurors who
18 don't do what you do, what is a buccal swab?

19 A A buccal swab is a swab that we use for evidentiary
20 purposes. It's controlled. The -- we ask the person to swab
21 the inside of their cheek to try to get some cells that can
22 slough off in the side of the mouth onto the swab, and we
23 impound that and we send it our forensic lab to do a DNA
24 analysis on that swab.

25 Q When you say we ask them to swab the inside of their