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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN KEITH FLOWERS, aka NORMAN
HAROLD FLOWERS, III, #1179383,
Defendant.

Case No. C228755

Dept. No. VII

Volume 2-B

Before the Honorable Stewart L. Bell
Thursday, October 16, 2008, 1:00 p.m.Reporter's Transcript of
JURY TRIAL

APPEARANCES:

For the State:

PAMELA WECKERLY, ESQ.
LISA LUZAICH, ESQ.
Deputies District Attorney

For the Defendant:

RANDALL PIKE, ESQ.
CLARK PATRICK, ESQ.
Deputies Special Public Defender

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

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ACCUSCRIPTS (702) 391-0379

Las Vegas, Clark County, Nevada

Thursday, October 16, 2008, 1:00 p.m.

PROCEEDINGS

(The following proceedings were had in open
court in the presence of the jury panel:)

THE COURT: Back on the record in Case Number C228755,
State of Nevada versus Norman Flowers.

Let the record reflect the presence of the defendant, his
counsel, counsel for the State. The ladies and gentlemen of the
jury are back in the box.

Miss Weckerly, are you ready to proceed?

MS. WECKERLY: Yes, Your Honor.

THE COURT: Call your next witness.

MS. WECKERLY: Deborah Quarles.

(Witness sworn.)

THE CLERK: Thank you. Please be seated.

MR. PIKE: Your Honor, at this time, the defense would
move to invoke the exclusionary rule.

THE COURT: That's granted.

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Do we have any witnesses here?

MR. PIKE: I don't know. I don't think so.

THE COURT: Well, I always use that rule. That is, that
any witness who is going to testify, who has not testified, can't
sit and listen to anybody else's testimony because it would color
their evidence, if they testified. If they're not coming back,
they're certainly free to be in the courtroom because it's a
public courtroom.

But I will leave it to you, counsel, because you know the
witnesses, to enforce the rule.

MS. WECKERLY: That wouldn't apply to penalty witnesses,
would it?

THE COURT: No.

MS. WECKERLY: Thank you.

THE CLERK: Ma'am, could you please state your full name,
spelling your first and last name for the record.

THE WITNESS: Debra Sue Quarles; D-e-b-r-a,
Q-u-a-r-l-e-s.

THE COURT: Miss Quarles, you have a soft voice, so speak
up.

DEBRA QUARLES

called as a witness on behalf of the State,
having been first duly sworn,
was examined and testified as follows:

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DIRECT EXAMINATION

- 1
2 BY MS. WECKERLY:
3 Q Is it okay if I call you Deborah?
4 A Yes.
5 Q Ma'am, you are the mother of Sheila Quarles?
6 A Yes.
7 Q When was she born?
8 A June 23rd, 1986.
9 Q 1986?
10 A Yes.
11 Q Did she have a nickname?
12 A Pooka.
13 Q Like P-o-o-k-a?
14 A Yes.
15 Q I'd like to talk to you about March of 2005.
16 During that time, where were you living?
17 A 1001 North Pecos, Apartment 63.
18 Q Okay. Did you live by yourself or did you live with
19 other people?
20 A My children.
21 Q Who lived there with you?
22 THE COURT: Would you like some water?
23 THE WITNESS: Thank you, sir.
24 Pooka, Debrick, Miracle and Xavier.
25

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- 1 BY MS. WECKERLY:
2 Q Pooka, Debrick, Miracle and Xavier, those are your
3 children?
4 A Yes.
5 Q How old were they at that time, a couple years ago?
6 A Eight, nine and 12.
7 Q Okay. So they're younger than Sheila?
8 A Yes.
9 Q Okay. Were you working at that time?
10 A Yes.
11 Q Where did you work then?
12 A At Family Food Market II.
13 Q What did you do there?
14 A Cashier.
15 Q Was Sheila working?
16 A Yes.
17 Q What did she do?
18 A She worked at Starbucks. She had just become supervisor
19 there.
20 Q And do you know which Starbucks it was?
21 A At the Convention Center.
22 Q Did you ever drive her to or from work?
23 A She rode the bus.
24 Q She rode the bus to work?
25 A Sometime I would come and pick her up.

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- 1 Q Okay. Generally, she rode the bus. Is that yes?
2 A Yes.
3 Q Sorry. She didn't have a car?
4 A No.
5 Q During this time period, did you know of a person named
6 Qunise Toney?
7 A Yes, I knew Qunise.
8 Q What was your understanding of her relationship to your
9 daughter Pooka at that time?
10 A They were in a relationship.
11 Q Okay. They were friends?
12 A Yeah.
13 Q Okay. This is sort of a hard question, but was that a
14 relationship that you approved of?
15 A No.
16 Q Okay. Did Qunise live at the same apartment complex or
17 did she live somewhere else?
18 A Somewhere else.
19 Q And to your knowledge, did your daughter Pooka keep
20 clothes and other things at Qunise's?
21 A Sometimes, yes.
22 Q During this time period, did you know an individual whose
23 nickname was Chicken?
24 A Yes.
25 Q Do you know what his real name is?

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- 1 A George.
2 Q George. Do you know his last name?
3 A Bass.
4 Q And do you know any other of his family members?
5 A Yes, his mother. I know his little sister, his dad and
6 his uncle. Yeah, I know quite a few of them.
7 Q You know all of them?
8 A His bigger sister.
9 Q His mom, do you know where she lived in March of 2005?
10 A Right across from me, right across the hallway. Like if
11 I open my door, I can look into her door.
12 Q Is her name Janie?
13 A Yes.
14 Q Okay. And do you know his dad as well?
15 A Yes.
16 Q Did he live in the Pecos complex then?
17 A Yes.
18 Q Did he live with the mom?
19 A Yes; yes.
20 Q Okay. And I think you said you know George's sisters
21 too?
22 A Not George's sister; Miss Janie's sister.
23 Q Okay. Who is that?
24 A I don't know their names, but I think they're twins.
25 Q Did she live in the complex as well?

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1 A Her mother did.
 2 Q Okay. Now, Chicken, George -- his name is George, right?
 3 A Yes.
 4 Q Okay. Was he friends with any of your children?
 5 A Yes, with all my kids, but Pooka and Ralph, my oldest
 6 son.
 7 Q Okay. So George was friends with Ralph, your older son?
 8 A Uh-huh.
 9 Q Is that yes?
 10 A Yes.
 11 Q And is Ralph older than Pooka?
 12 A He's my oldest, yes.
 13 Q Okay. And Chicken or George was also friends with Pooka?
 14 A Yes.
 15 Q During this time period, would you see Chicken hanging
 16 around the complex socializing with either your son or your
 17 daughter or his family?
 18 A Yes.
 19 Q Pretty common to see him there?
 20 A Yeah. They live right across the hallway.
 21 Q Okay. During this time period, did you know whether or
 22 not Pooka had a sexual relationship at all with George?
 23 A No. I know they were close, but, no.
 24 Q You didn't know if they did or not?
 25 A Not sex.

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1 Q Okay. But it was your understanding they were close?
 2 A Yes.
 3 Q Did you see them spend a lot of time together?
 4 A No, not really.
 5 Q Okay. Did you ever see them talking?
 6 A Yeah, all the time.
 7 Q All the time.
 8 In March of 2005, did you make a purchase of a stereo for
 9 your house, for your family?
 10 A Yes.
 11 Q When was it that you bought the stereo?
 12 A Like maybe four days before my daughter was murdered.
 13 Q Okay. So she was murdered on the 24th?
 14 A Yes.
 15 Q Maybe on the 20th?
 16 A Yes.
 17 Q Did you buy it yourself?
 18 A Yes.
 19 Q Do you remember approximately how much you paid for it?
 20 A No.
 21 Q No? Okay.
 22 Where did you put the stereo once you bought it?
 23 A When you would come in my house, the living room was
 24 right here and I had like a china cabinet; and it was a big
 25 speaker and it sat right there facing the door.

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1 Q Okay. Was it a pretty big stereo?
 2 A It was about -- the face of it looked like a flat screen
 3 TV. The face of it was flat and it had two tall speakers with
 4 legs on it.
 5 Q Okay. You kind of gestured, but for the record, was that
 6 like maybe two and a half feet by maybe the same measurement?
 7 A Yeah.
 8 Q Okay. In the days before your daughter was murdered --
 9 A Yes.
 10 Q -- did she have a health problem that you were aware of?
 11 A Yes.
 12 Q What was that?
 13 A She had a kidney stone.
 14 Q Okay. Did you take her to the doctor for that?
 15 A Yes.
 16 Q Do you remember how many days before she died that you
 17 took her to the doctor?
 18 A Maybe like three.
 19 Q Three.
 20 And was her doctor's appointment in the day time or in
 21 the evening?
 22 A One was in the evening and then one was the next morning.
 23 Q Okay. Let me ask you a couple questions about that.
 24 The one that was in the evening, was it an appointment
 25 where you took her in to see a doctor?

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1 A Her side was hurting really bad. I went to UMC Quick
 2 Care on Nellis and they wanted to take blood, but the people that
 3 take blood had went home for the day. She told me to bring her
 4 out early in the morning to UMC on Boulder Highway.
 5 Q Okay. So did you take her to get the blood work the next
 6 day?
 7 A Yes.
 8 Q Okay. Was there a point in time when she got a
 9 prescription for the kidney problem?
 10 A Yes.
 11 Q Was that the same day as the blood work or the next day?
 12 A Same day.
 13 Q Same day.
 14 So there was a point in time when she was taking a
 15 prescription that --
 16 A Antibiotics.
 17 Q Antibiotics. Okay.
 18 And you took her to all those appointments?
 19 A Yes.
 20 Q Now, I'd like to talk to you about the night before that
 21 Shella was murdered. Okay?
 22 A Yeah.
 23 Q Okay. Were you at home that night?
 24 A Yes.
 25 Q And was Shella home?

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1 A No.
 2 Q Where had she gone?
 3 A She was at Qunise's.
 4 Q Okay. When you were at home, were you home alone or were
 5 other people with you?
 6 A I was at my house.
 7 Q And who is Robert?
 8 A A guy that stayed across. It's Chicken's uncle.
 9 Q Is his name Robert Lewis?
 10 A Yes.
 11 Q But he lives in the complex as well?
 12 A Yeah.
 13 Q Is that yes?
 14 A Yes.
 15 Q Okay. And you were sort of friendly with him?
 16 A Yes.
 17 Q Did he stay overnight at your apartment?
 18 A Yes.
 19 Q Did you socialize with any of your other neighbors that
 20 night?
 21 A No.
 22 Q The next morning, do you remember if you saw Pooka?
 23 A I did.
 24 Q Okay.
 25 A Yes.

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1 Q What time was it that you think you saw her?
 2 A Maybe like 6:30.
 3 Q In the morning?
 4 A Yes.
 5 Q What were you doing at that time?
 6 A She was coming in. I was going out.
 7 Q Do you remember at all what she was wearing?
 8 A Yes.
 9 Q What did she have on?
 10 A She had on a white sleeveless shirt with little ruffles
 11 around it, with light pink sleeper pants with little shirts on
 12 it.
 13 Q Little what?
 14 A Little shirts, like pajama shirts.
 15 Q So she was wearing her pajamas?
 16 A And she had a pink backpack.
 17 Q So when she came home at about 6:30 in the morning, you
 18 see her and she's in her pajamas?
 19 A Yes.
 20 Q Was that yes?
 21 A Yes.
 22 Q Was Robert Lewis still there?
 23 A No.
 24 Q He had left at that point?
 25 A Yes.

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1 Q Do you remember if you turned on your stereo at all when
 2 you were getting ready for work that morning?
 3 A No.
 4 Q You don't remember?
 5 A I didn't turn it on.
 6 Q Okay. Do you know if your stereo was in your apartment
 7 that morning?
 8 A Yes.
 9 Q So you saw it?
 10 A Yes.
 11 Q What time did you leave the apartment?
 12 A 6:30, because I had to be at work at seven.
 13 Q Okay. And when you left the apartment, who was in it?
 14 A Pooka, alone.
 15 Q Where were your smaller children?
 16 A Over at a good friend of mine's house, Yvette Tippet.
 17 It was track break.
 18 Q So your smaller children were staying with a friend?
 19 A Yes, because it was track break.
 20 Q Okay. From school?
 21 A Yes.
 22 Q And that left Sheila alone?
 23 A Yes.
 24 Q Once you were at work -- I assume you went to the food
 25 store where you worked?

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1 A Yes.
 2 Q Did you ever speak to your daughter during the morning
 3 hours?
 4 A Yes. I talked to her maybe like five times the whole
 5 day.
 6 Q Okay. During the times that you were talking to her,
 7 without saying what she said, did she sound at all distressed or
 8 did she sound normal?
 9 A Normal.
 10 Q Do you remember the last time that you actually had a
 11 conversation with her?
 12 A Yes.
 13 Q What time was that?
 14 A Maybe one o'clock.
 15 Q In that conversation, without telling me what your
 16 daughter said, she sounded normal?
 17 A Yeah, but the phone went dead.
 18 Q Okay. Explain what happened with that.
 19 A When I was talking to her, our conversation was cut
 20 short, but I thought it was cut short because she was on the
 21 cordless phone, so I called her back on my cell phone. Nobody
 22 answered.
 23 Q And when she was initially -- when she was first talking
 24 to you, the phone went dead during the conversation?
 25 A Yes.

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1 Q And were you thinking that maybe the phone ran out of
2 batteries?
3 A Yes.
4 Q And that's when you tried to call her cell phone?
5 A Yes.
6 Q And you don't get an answer?
7 A No.
8 Q Did anyone pick up or was it the phone just rang, the
9 cell phone?
10 A Just rang, went to voice mail.
11 Q What time did you leave work that day; what time did you
12 get off?
13 A About three o'clock.
14 Q Okay. Do you remember giving a statement to the police
15 about two, two and a half years ago when this happened?
16 A Yes.
17 Q Do you remember what time you told them that you left
18 work that day?
19 I know it's been a little while.
20 A Maybe like sometime at three.
21 Q Do you remember telling them you left work at two that
22 day?
23 A I could have, yes.
24 Q Would that be your shift that day, seven to two?
25 A Because I was sick, that's why I was leaving early.

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1 Q Okay. So if you left work at two, did you go straight
2 home?
3 A No.
4 Q What happened?
5 A On my way out -- I was driving my dad's car and a friend
6 of mine came up and asked me if I could give her a ride to her
7 house and I said yes.
8 Q Okay.
9 A I dropped her off at home and I seen another lady. She
10 was having car problems. Her name was -- I think her name was
11 Cassie, Cassandra. She told me she was having car problems, but
12 she was trying to drive her car all the way home, if I could take
13 Owens all the way down. Normally, I take Washington all the way
14 down. I told her yes. That's what made the time like I didn't
15 get straight home.
16 Q Okay. Did you stop anywhere to buy food or groceries?
17 A Yeah, right there where I worked at. I got that before I
18 left.
19 Q Okay. So you have your groceries with you and then you
20 help these two ladies with their car problems; one needs a ride
21 and one you are sort of following?
22 A Uh-huh.
23 Q Is that yes?
24 A Yes.
25 Q So it takes you, I would think, a little longer than

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1 normal to get home?
2 A Yes.
3 Q And if you left work at two, what time was it, do you
4 think, that you actually got to your house?
5 A Three something.
6 Q Okay. When you get there, what do you do?
7 A I pull up. I blow my horn and I yell out: Pooka, Pooka,
8 Pooka. She didn't answer me. And Robert, which is my neighbor,
9 he was looking out his window. I said: Could you come help me
10 with my bags? And he said yes.
11 Q So when you first got there, you are hoping for your
12 daughter to help you carry stuff?
13 A Yes.
14 Q She doesn't come out?
15 A Yes.
16 Q Your neighbor, the man that you are sort of friendly
17 with, he came down?
18 A Yes. He came to help me with the bags.
19 Q I want to talk about when you get actually to your
20 apartment door. Okay?
21 When you get up to the door, are you in front or is
22 Robert in front?
23 A I am.
24 Q Okay. And what happens as you go into the door?
25 A I put my key in there to turn it to go in.

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1 Q Was the door locked?
2 A No.
3 Q Okay. Was it shut?
4 A Yes.
5 Q It was shut, but not locked?
6 A Yes.
7 Q Okay. In the past, have you left your oldest daughter
8 Pooka at home and returned home other times, before this day?
9 A Yes.
10 Q And was it her habit to have the door locked while she
11 was inside?
12 A Yes.
13 Q But on this day, the door is open?
14 A Yes.
15 Q What happens as you go inside your house?
16 A When I go in, I called her name again. I set the bags
17 down. It's in the bar there I sat the bags down. And I looked
18 over to where the stereo was sitting and it was empty. I'm like
19 something is missing and I saw my stereo is gone.
20 Q Did that seem weird?
21 A Right.
22 And I went into my room and my bed was messed up. I
23 could hear drip, drip, water. The bathroom door was pulled to,
24 but it wasn't closed. So I went in there to turn the water off.
25 Q Where is Robert as you are kind of moving through your

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1 house?

2 A In the living room.

3 Q So he's just waiting in there?

4 A Uh-huh.

5 Q That yes?

6 A Yes.

7 Q Okay. So you go into the bedroom and it looks a little

8 different and the bathroom door is kind of shut, but there is a

9 little space?

10 A Just pulled to, but not closed.

11 Q What happened when you go in the bathroom?

12 A I could feel the steam. It was hot in there. And I

13 thought maybe she took a shower or whatever and left.

14 And when I pulled the shower curtain back, she was in the

15 tub.

16 THE COURT: Do you need a break or are you okay?

17 THE WITNESS: I'm okay.

18 BY MS. WECKERLY:

19 Q Debra, when you see her in the tub, how was she

20 positioned? Was she face up or --

21 A Face up.

22 Q Was any of her face outside of the water?

23 A She was like this. (Indicating)

24 Q Okay. Sort of laying back with her face up.

25 Was there water up on her face or not at all, do you

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1 remember?

2 A No.

3 Q Okay. That's all right.

4 Did you feel the water at all?

5 A Yeah. I pulled her out of it.

6 Q How did the water feel --

7 A Hot.

8 Q Really hot or kind of hot?

9 A It was too hot.

10 Q Really, really hot.

11 Was the actual faucet still on?

12 A Almost all the way off.

13 Q The bath water was still running?

14 A No. It was dripping.

15 Q Oh, it was dripping?

16 A But the way it is, you set it to the temperature, then

17 you pull it on. But it was set all the way to hot, as hot as it

18 could get.

19 Q So there is a knob just for temperature?

20 A Yes.

21 Q And that was on as hot as it could be?

22 A Yes.

23 Q But the actual water itself was off?

24 A It was just dripping.

25 Q Okay. And when you see your daughter, you actually feel

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1 the water?

2 A I push her -- because I thought maybe she was asleep --

3 and I said Pooka. She went way off to the side. (Indicating)

4 And then when I went to grab her, my hand went in the

5 water and I was trying to pull her out. I asked Robert: Would

6 you please come help me get her. He came and helped me.

7 Q So Robert runs in?

8 A He was right there.

9 Q Okay. When he comes in, does he help you get her out?

10 A Yeah, he pulled her out.

11 Q When you guys pulled her out of the tub, how did you lay

12 her in the bathroom?

13 A Like this is the tub and here's the toilet. There is a

14 little table. She was lying right in between with her head to the

15 door.

16 Q Head to the door.

17 And were her legs still over the tub?

18 A One of them, I believe.

19 Q Okay. After you and Robert pulled her out, what did you

20 do?

21 A I ran and got my son.

22 Q Okay. Do you remember if you went to a neighbor's house

23 at all first?

24 A I went to the car and got my son.

25 Q Well, which son were you going to get?

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1 A Ralph, my oldest kid.

2 Q And where does he live?

3 A He was living up the street from me on Bruce.

4 Q Is that far away from the apartment?

5 A No, maybe like five minutes.

6 Q Okay. So was he home?

7 A No. He was at the store, at the 7-Eleven, right up the

8 street from his house. That was like three minutes from his

9 house.

10 Q Did you find him there?

11 A Yes.

12 Q And what did you do once you saw him?

13 A I told him what happened and we got in the car and we

14 went back.

15 Q Okay. When you get back, were there other people at your

16 apartment?

17 A Yeah. There was -- the police were there, paramedics.

18 Q Okay. Any of your neighbors?

19 A A little girl that used to do her hair was there. She

20 tried to give her CPR.

21 Q Okay. Anybody that you saw go into the bathroom while

22 the paramedics were there?

23 And, at some point, you speak to detectives about this

24 case?

25 A Uh-huh.

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1 Q Right?

2 A Uh-huh.

3 Q Is that yes?

4 A Yes.

5 Q Okay. Was it that night?

6 A Yes.

7 Q And in your conversations with the detectives, do they

8 ask you questions about if Sheila had any enemies or any problems

9 with anyone?

10 A Yes.

11 Q And at that time, were you able to give them ideas about

12 who might have hurt your daughter?

13 A At first, I had told them that it could have been the

14 girl Qunise; not that they had got into it or anything, I just --

15 I didn't know if she had any enemies.

16 Q You are just looking for anybody that might help?

17 A Right.

18 Q Okay. Did you, at that time, know anyone that she was

19 having trouble with?

20 A No.

21 Q After you spoke to the police, were you ever able to go

22 back inside your apartment and tell them whether or not there was

23 certain things missing?

24 A I believe his name was Detective Norwood. Me and him

25 went back in there. And when we went back in there, we saw a

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1 whole bunch of keys. I told him about my stereo.

2 Q Okay.

3 A Pillow cases was missing off the pillows.

4 Q How about Sheila's cell phone?

5 A The cell phone was gone; her bank card was gone.

6 Q Okay.

7 A Jewelry.

8 Q So there was some jewelry gone?

9 A Cell phone.

10 Q The cell phone, hers.

11 You said pillow cases. Where were those gone from?

12 A Off my pillows.

13 Q Off your bed?

14 A Yes.

15 Q Okay. And, obviously, your stereo was gone?

16 A Yes.

17 Q And you told that to the detectives?

18 A All the CDs was gone with it.

19 Q When you were speaking to your daughter Sheila that

20 morning, before you went home, you know, before you go home with

21 your groceries --

22 A Uh-huh; yes.

23 Q -- did you ever tell her that you were going to be

24 shopping or anything else that day?

25 A No.

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1 Q You just sort of did that on your own?

2 A Yes, just to bring a few things home. It was the day I

3 do it, like juice, milk.

4 Q So you didn't communicate that to her at all?

5 A No.

6 Q The detectives speak with you the night -- or sort of the

7 afternoon and into the evening of your daughter's murder?

8 A Yes.

9 Q Okay. And did they speak with you sometime after that?

10 A Yeah, a lot of times.

11 Q A lot of times.

12 Sort of doing a follow-up investigation?

13 A Yes.

14 Q Okay. Did they ever come to you, you know, sometime

15 after her murder and ask you whether or not you knew someone by

16 the name of Norman or Keith Flowers?

17 A Yes.

18 Q And what was your knowledge of him?

19 A He was my boyfriend.

20 Q When were you two dating or when was he your boyfriend?

21 A For like three to four months.

22 Q And would that have been at the time of Sheila's death?

23 A No, no.

24 Q How much before?

25 A I hadn't seen him like maybe six to eight months or more.

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1 Q Okay.

2 A Prior to my baby.

3 Q Okay. So if she was murdered in March of '05, you are

4 saying that the last time you saw him was six months before that?

5 A The last time I saw him or the last time I was in a

6 relationship with him?

7 Q That's a good distinction.

8 When was the last time you were in a relationship with

9 him?

10 A It was in '04.

11 Q All right. So way before?

12 A Right.

13 Q So when you guys were in a dating relationship, how long

14 did the relationship last?

15 A Maybe like four months.

16 Q And was it a sexual relationship?

17 A Yes.

18 Q And during that four month period when you were going out

19 with him, do you remember if he ever met your daughter Sheila?

20 A Yes. He met all my kids.

21 Q Okay. So they knew who each other was?

22 A Yes.

23 Q Now, let me ask you a second question about that.

24 At some point, you and he, I assume, break up or the

25 relationship ends for whatever reason?

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1 A Yes.

2 Q When was the next time you saw him?

3 A Me and Pooka was sitting out on the power box, which is

4 like one door from my apartment. (Indicating)

5 Q And when you see him, on the power box, how much before

6 is that of her death? How far before?

7 A Two weeks before.

8 Q So two weeks before her murder, you and your daughter are

9 out on the power box?

10 A Yes.

11 Q And you see Norman or Keith Flowers?

12 A Yes. That's because he was like, hey, hey and we turned

13 and looked. And he said: You all live back here now?

14 When I was in a relationship with him, we lived in the

15 front, but we were transferred to the back.

16 Q Okay. So that six or eight months earlier when you guys

17 were going out, you still lived at that apartment complex?

18 A Yes. I still lived in the same complex, but in the back.

19 Q In a different unit?

20 A Right.

21 Q Okay.

22 A Yes.

23 Q And so when he says that, your understanding is he's

24 referring to you switching apartments essentially?

25 A Right.

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1 Q And what did you tell him when he said --

2 A And I said: What are you doing over here? He said: I

3 work here now.

4 And I say: You work here? And he said: Yeah.

5 I forgot our landlord's name, the manager's name. He

6 said: I work at a couple of their complexes.

7 I said: Really?

8 He said: Yeah, I'm a maintenance man.

9 He had paint on his clothes and pants.

10 Q Okay. How long does that conversation between you and

11 Mr. Flowers last?

12 A Maybe like 20 minutes.

13 Q Okay. Just kind of regular?

14 A Yeah.

15 Q Was your daughter talking to him as well or was it just

16 you?

17 A No, just me.

18 Q Okay. Now, I want to move to after the time period after

19 your -- after your daughter was killed.

20 Obviously, that was extremely upsetting to you.

21 A Yes.

22 Q Did you have any conversations with Norman or Keith

23 Flowers after Shella had been killed?

24 A Yes.

25 Q Where were you when you had that first conversation?

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1 A In my job, where I used to work. I was up there and he

2 came up to me and he hugged me and he said: I heard what happened

3 to your baby. That's really --

4 Q You can say the word.

5 A -- fucked up. She was a nice girl. She didn't deserve

6 that.

7 He said: You look so down and out. He said: You need

8 to go see a psychiatrist.

9 Q For depression?

10 A Yes.

11 Q And did you --

12 A I said okay.

13 Q And how did that work out then?

14 A He took me to meetings.

15 Q He took you to see the psychiatrist?

16 A Yes.

17 Q Did you pick out the psychiatrist?

18 A No. He recommended him.

19 Q He recommended one to you?

20 A Yes.

21 Q And he actually drove you?

22 A Yes.

23 Q How many times do you think you saw the psychiatrist?

24 A Maybe twice.

25 Q And would he have driven you to the appointments both

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1 times?

2 A Yes, he did.

3 Q Aside from the conversation that you had at your work,

4 where he suggested to you that you need to see a psychiatrist, did

5 you ever have any other conversations with him about the death of

6 your daughter?

7 A Yes. He came and spent the night at my son's house. And

8 he just wanted to be there to support us, because he know what we

9 was going through; and did they find out anything what happened to

10 her and who did it? Different things like that.

11 Q During this time period, did he did he ever tell you I've

12 had a sexual relationship with your daughter; your daughter and I

13 went out a few times, anything like that?

14 A No. And my daughter didn't like older men, no.

15 Q So he never indicated to you that they maybe had some

16 romantic relationship?

17 A No. Me and my daughter was close. We talked about

18 everything.

19 Q Okay. I assume then, in the time before she had died,

20 you never saw him talking to her, having contact with her or

21 anything like that?

22 A No, no.

23 Q Ma'am, I'm showing you what's been marked as State's

24 Proposed Exhibit 39.

25 Do you recognize what room of your apartment this

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1 photograph is taken in?

2 **A Bathroom.**

3 **Q The bathroom.**

4 **And it looks like in Exhibit 39 that there is a purse --**

5 **A That's my purse.**

6 **Q That's your purse?**

7 **A Yes.**

8 **Q And do you think you dropped that when you saw your**

9 **daughter?**

10 **A Yes, because I had it on my arm.**

11 MS. WECKERLY: The State moves to admit 39, Your Honor.

12 THE COURT: Any objection?

13 MR. PIKE: No objection.

14 THE COURT: Admitted.

15

16 (State's Exhibit 38 admitted into evidence.)

17

18 BY MS. WECKERLY:

19 **Q Ma'am, I'm showing you what's been marked as State's 1.**

20 **A Yes.**

21 **Q Is that your daughter?**

22 **A Yes.**

23 MS. WECKERLY: The State moves to admit State's 1.

24 MR. PIKE: No objection.

25 THE COURT: Admitted.

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1

2 (State's Exhibit 1 admitted into evidence.)

3

4 MS. WECKERLY: Your Honor, I'll pass the witness.

5 THE COURT: Any questions?

6 MR. PATRICK: Yes.

7

8 CROSS-EXAMINATION

9 BY MR. PATRICK:

10 **Q Good afternoon, Miss Quarles.**

11 **A Hi.**

12 **Q Do you need a minute before we start, ma'am? Are you**

13 **okay?**

14 **You said that Sheila never told you about the**

15 **relationship she was having with Miss Toney.**

16 **A With who?**

17 **Q With Qunise Toney.**

18 **A No. I didn't say she never told me about that.**

19 **Q Okay. Did Sheila tell you that her and Qunise Toney had**

20 **a sexual relationship?**

21 **A No. She said they never had sex.**

22 **Q Okay. Did she tell you that she was having a sexual**

23 **relationship with George Brass?**

24 **A No, but I knew they were close.**

25 **Q Okay. Now, you were talking about around that time**

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1 **Sheila had kidney stones.**

2 **A Yes.**

3 **Q Did she have any other medical problems?**

4 **A No.**

5 **Q She didn't have asthma?**

6 **A Yeah, like a slight asthma.**

7 **Q Okay.**

8 **A But nothing like she would get treated for.**

9 **Q Okay.**

10 **A Or that she took an inhaler for.**

11 **Q She didn't take an inhaler?**

12 **A No.**

13 **Q She didn't take any medicine for it?**

14 THE COURT: You have to speak up.

15 THE WITNESS: Oh, no.

16 THE COURT: Thank you.

17 BY MR. PATRICK:

18 **Q Now, when you went into the bathroom and you found**

19 **Sheila, you said that your friend came in with you, Mr. Lewis?**

20 **A Yes.**

21 **Q Were you both in the bathroom at the same time trying to**

22 **get Sheila out of the tub?**

23 **A No.**

24 **Q No?**

25 **A I pulled her first and asked him would he come and help**

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1 **me.**

2 **Q Your bathroom, was it fairly small?**

3 **A Yes.**

4 **Q If you put your arms out like this, could you touch both**

5 **walls? (Indicating)**

6 **A Yes.**

7 **Q And there was a tub and a toilet and a sink?**

8 **A Yes. And a small white table.**

9 **Q And a little table.**

10 **Now, you talked to the police several times about this**

11 **when they were doing their investigation?**

12 **A Yes.**

13 **Q Okay. And one time, you told them about a man that just**

14 **moved into the apartment that had just gotten out of prison?**

15 **A Yes.**

16 **Q And he was an older man?**

17 **A Yes.**

18 **Q Okay. Do you know what he was in prison for?**

19 **A No.**

20 **Q Okay. But at some point, that man sent Miracle in to get**

21 **Sheila for him?**

22 **A He knocked on my door once, yes.**

23 **Q But he was looking for Sheila?**

24 **A He was asking could he talk to her. I told him how old**

25 **she was and to stay away from my house.**

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1 Q Okay. So it was your impression that he didn't want to
2 just talk to her, that he wanted to date her maybe?
3 A No.
4 MS. WECKERLY: Objection; calls for speculation.
5 THE COURT: No, she said it wasn't her impression.
6 BY MR. PATRICK:
7 Q Do you remember what his name was?
8 A No.
9 Q Do you remember giving the police a name?
10 A No.
11 Q No?
12 If I was to show you your statement that you made to the
13 police, would that refresh your memory?
14 A Maybe.
15 MR. PATRICK: May I approach?
16 THE COURT: Sure.
17 BY MR. PATRICK:
18 Q Page 20 of your second statement.
19 Okay. Ma'am, if you could just, to yourself -- this is
20 where you are talking to him -- if you could just kind of read
21 that one down at the bottom.
22 A No.
23 Q Okay. Does that help refresh your memory?
24 A I still don't remember that.
25 Q You --

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1 A I don't remember his name or nothing. He had just moved
2 there.
3 Q But you gave the police a name?
4 A I had to.
5 Q Okay. But you don't remember now what that name was?
6 A Right.
7 Q Reading your statement, do you remember that --
8 A I didn't read it. I only got to see what I had
9 highlighted.
10 Q Okay. Take your time.
11 A Okay. I remember that, but I don't remember his name.
12 Q You remember telling the police that?
13 A Yes.
14 Q What name was it that you told the police that it was?
15 A I can't remember the name, but I see the name on there,
16 Darnell.
17 Q Darnell. Okay.
18 Now, when Miss Weckerly first asked you what time you got
19 off of work that day, you told her three o'clock; and then you
20 said you were sick, so you left an hour early?
21 A I could have, yes, because I was sick.
22 Q Okay.
23 A I hadn't been to work in like two weeks to three weeks
24 because I had hives real bad.
25 Q Okay. So your normal shift would have been until three

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1 p.m.?
2 A Yes.
3 Q But because you were sick, you got to leave an hour
4 early?
5 A Yes.
6 Q To your recollection?
7 THE COURT: She said yes.
8 MR. PATRICK: Okay.
9 BY MR. PATRICK:
10 Q During the course of the police investigation, did anyone
11 else ever ask you how the investigation was going?
12 A No.
13 Q No?
14 Nobody ever asked you if they found anybody or --
15 A Maybe. I don't remember.
16 Q Okay. All right.
17 Did you ever have conversations with any of your friends
18 and family about the case?
19 A Yeah.
20 Q And they never asked you if the police had found anybody?
21 A They would be there with me when I would go and talk to
22 the police or when the police would come to my house, they would
23 be there.
24 Q Okay. So they knew how the case was going?
25 A Yes.

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1 Q So they would have no reason to ask you if the police had
2 any leads?
3 A Right.
4 Q Did you ever talk to Chicken about the case after the
5 incident?
6 A Did I ever talk to him?
7 Q Yeah. Did you ever talk to him about Sheila's death?
8 A No.
9 Q Was he around the apartments as much after Sheila's death
10 as he was before --
11 A We weren't there anymore.
12 Q You weren't there anymore?
13 A The same night it happened to my baby, I never came back
14 except to get my stuff.
15 Q Okay.
16 A We moved.
17 Q Okay.
18 A And he did come to where we were.
19 Q Okay.
20 But not to talk about the case?
21 A He came over there for support.
22 Q You received a telephone call from Qunise Toney the day
23 after Sheila was killed?
24 A I talked to her the same day.
25 Q Okay. But then you told the police that you received a

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1 call from her the day after?

2 A I could have.

3 Q Do you remember that? Do you remember telling the police

4 that she called about what the cause of death was?

5 MS. WECKERLY: Objection; hearsay.

6 THE COURT: Why is it hearsay what she said?

7 Sustained. Go ahead.

8 BY MR. PATRICK:

9 Q Do you remember having conversations with Miss Toney?

10 A Yes. I talked to her a couple times.

11 Q Okay. And from those conversations, did you discern what

12 might have been the cause of death for Sheila?

13 MS. WECKERLY: Objection; hearsay.

14 THE COURT: Sustained.

15 BY MR. PATRICK:

16 Q At any point there, after Sheila's death, did you ever

17 hear of somebody talking to a psychic about this?

18 MS. WECKERLY: Objection; hearsay and foundation.

19 THE COURT: What would be the relevance?

20 MR. PATRICK: I'll withdraw it.

21 THE COURT: Sustained.

22 MR. PATRICK: I'll withdraw it.

23 THE COURT: Okay.

24 This person that you described to the police that had

25 just moved in --

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1 THE WITNESS: Yes.

2 THE COURT: You used the name Darnell.

3 Do you have a physical description of him, height,

4 weight, age?

5 THE WITNESS: Yeah. He was about 44, light skinned,

6 short hair cut and maybe about five seven.

7 THE COURT: Okay.

8 BY MR. PATRICK:

9 Q When you got home that day, was George, Chicken, around?

10 A No.

11 Q Okay. At any time after Sheila's death, did George tell

12 you that they were having a sexual relationship?

13 MS. WECKERLY: Objection; hearsay.

14 THE COURT: I'm not sure that that's introduced for the

15 truth.

16 MR. PATRICK: It's not introduced for the truth of the

17 matter. It's just her knowledge.

18 THE COURT: Overruled. I'll let her -- he can ask

19 whether he said that.

20 MR. PATRICK: I'm sorry?

21 THE COURT: I said overruled. I'm going to let her

22 answer if he, in fact, said such a thing.

23 BY MR. PATRICK:

24 Q Okay.

25 A No.

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1 Q No, he never told you that?

2 A No.

3 MR. PATRICK: That's all I have, Judge.

4 THE COURT: Anything else, Miss Weckerly?

5 MS. WECKERLY: Yes.

6

7 REDIRECT EXAMINATION

8 BY MS. WECKERLY:

9 Q Ma'am, the incident that you described with this guy

10 Darnell --

11 A Yes.

12 Q -- where there is a conversation he had with Miracle

13 about Sheila or bringing Sheila out or something like that, that

14 incident --

15 A Yes.

16 Q -- how many days before her murder did that occur?

17 A Maybe a month.

18 Q Like a month before?

19 A Yes, because he had just moved there with a lady

20 upstairs.

21 Q Okay. It wasn't during the days where she was -- you

22 were taking her to the doctor and getting her prescription?

23 A No.

24 Q Okay. And you gave the police the first name of Darnell.

25 Did you have a last name to give them, if you recall?

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1 A No.

2 Q Mr. Patrick asked you about your understanding of the

3 nature of the relationship between Pooka and Qunise.

4 Without saying what she said, you had conversations with

5 your daughter about Qunise?

6 A Yes.

7 Q And you were certainly aware that they were at least

8 friends?

9 A Yes.

10 Q And you were aware, obviously, the night before, that she

11 was with Qunise?

12 A Yes.

13 Q Were you aware whether or not they talked on the phone

14 and spent time together?

15 A Yes, they did.

16 Q Your understanding is they're at least friends?

17 A Yes.

18 Q And I think you mentioned that on the day of Pooka's

19 murder, you actually see the young lady who had done her hair, who

20 does her hair?

21 A Yes.

22 Q So you knew who had done your daughter's hair or who had

23 helped her with her hair?

24 A Yes.

25 Q Chicken is actually friends with your son Ralph, you

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1 said?

2 A Yes.

3 Q Are they, to your knowledge, still friends?

4 A Yes.

5 Q They still communicate?

6 A Yes.

7 Q Do you still see or socialize, to some extent, with

8 some -- I know that Chicken is sort of your son's age, but other

9 members of his family?

10 A I haven't seen them, no. I stay far away now.

11 Q Since you moved?

12 A Yes.

13 Q Okay. Once you moved -- you left that night you said and

14 you just came back to get your stuff?

15 A Yes. I moved in with my son.

16 Q You moved in with your son.

17 When you were living with your son, would Chicken or

18 George come over?

19 A Yes.

20 Q Did you see them quite a bit?

21 A Yes.

22 Q And this is all following Sheila's murder?

23 A Yes.

24 Q Before Sheila was killed, was it your understanding that

25 she spent the night at Qunise's house, not just the night before,

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1 but she did ever do it prior to that?

2 A All the time.

3 Q She was spending a substantial amount of time with her?

4 A Yes.

5 Q And you were aware of that?

6 A Yes.

7 Q Did Sheila actually tell you where she was going?

8 A Yes. Sometimes, if I wasn't there, she would call me and

9 tell me where she was.

10 MS. WECKERLY: Thank you.

11 THE COURT: Anything else, Mr. Patrick?

12 MR. PATRICK: Yes.

13

14 RE-CROSS-EXAMINATION

15 BY MR. PATRICK:

16 Q You said that Darnell had moved into the apartment

17 upstairs?

18 A Yes.

19 Q Was that directly across or to the right?

20 A Directly upstairs.

21 Q But it would have been the other apartment building?

22 A No.

23 Q No? Same apartment building as you?

24 A This is my apartment. (Indicating) This is where

25 Chicken lives, George. They stay right upstairs over him, but to

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1 the right.

2 Q Okay. And did you see him hanging around with the people

3 that lived in the apartment originally?

4 There was other people living in that apartment?

5 A Which apartment?

6 Q The one that Darnell moved into.

7 A Yeah, a lady lived there.

8 Q A lady lived there?

9 A And a kid.

10 Q And a kid.

11 An Darnell would hang around with them?

12 A That was his family, I suppose.

13 Q Do you know the names of the people who lived in that

14 apartment?

15 A No.

16 Q Now, you were talking about Norman coming a few days

17 before when you were sitting on the power box?

18 A Yes.

19 Q And when you were dating Norman, you were living in a

20 different apartment?

21 A Yes.

22 Q And that would have been the apartment that he knew --

23 you brought him into that apartment before?

24 A Yes. He used to bring me home from work. That's how I

25 met him.

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1 Q Okay. Did you ever bring him to the apartment where

2 Sheila was killed?

3 A He knew where we lived after he seen us outside.

4 Q When you were out on the power box?

5 A Right in front of the apartment.

6 Q Right in front of the apartment building?

7 A Right in front of the apartment.

8 This is my apartment; this is the power box.

9 (Indicating) it's one door, then my door. We was right in front

10 of my building.

11 Q Do you know who Tasha is?

12 A Qunise's cousin?

13 Q Yes.

14 A Yeah.

15 Q Okay. Did Sheila ever talk to you about Tasha?

16 A Talk to me about Tasha? Like what do you mean?

17 Q If they had a relationship.

18 A Relationship how? Friendship?

19 Q Friendship, sexual, any way?

20 A No.

21 MR. PATRICK: That's all I have, Judge.

22 THE COURT: Okay. Thanks, Miss Quarles. I appreciate

23 your time.

24 THE WITNESS: Thank you.

25 THE COURT: You are excused.

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1 THE WITNESS: I could leave?

2 THE COURT: You can leave.

3 THE WITNESS: Okay.

4 (Witness excused.)

5 THE COURT: The State.

6 MS. WECKERLY: Robert Lewis, Your Honor.

7 THE COURT: Robert Lewis.

8 (Witness sworn.)

9 THE CLERK: Please be seated.

10 Would you please state your name, spelling your first and
11 last name for the record.

12 THE WITNESS: Robert Earl Lewis; R-o-b-e-r-t, E-a-r-l,
13 L-e-w-i-s.

14 THE COURT: Go ahead.

15 MS. WECKERLY: Thank you.

16 ROBERT LEWIS

17 called as a witness on behalf of the State,
18 having been first duly sworn,
19 was examined and testified as follows:
20

21 ACCUSCRIPTS (702) 391-0379

22 DIRECT EXAMINATION

23 BY MS. WECKERLY:

24 Q Mr. Lewis, I'd like to talk to you about the time period
25 of March of 2005. Okay? Is that yes?

26 A Okay. Yes.

27 Q Okay. The lady in front of you is taking down what we
28 say, so you can't nod. You have to say yes or no out loud. Okay?

29 A Okay.

30 Q During that time period. Where were you living?

31 A 1001, Apartment 74.

32 Q Okay. And was that 1001 Pecos?

33 A Yes, Pecos and Washington.

34 Q Is that sort of a multi-building apartment complex?

35 A Yes.

36 Q Okay. Did you have a neighbor or did you know a lady by
37 the name of Deborah Quarles?

38 A Yes.

39 Q And is she the lady that just left the courtroom?

40 A Yes.

41 Q Is that yes?

42 A Yes.

43 Q Okay. Sorry. I didn't hear you on that one.

44 A Okay.

45 Q Were you friends with her?

46 A Yes. We had a little relationship.

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1 Q A little relationship?

2 A Yes.

3 Q Sort of a romantic relationship?

4 A Yeah, you can say that.

5 Q Okay. Besides knowing Miss Quarles, did you know other
6 people that lived in the apartment complex?

7 A The only one I knew was her, her sister; that's about it;
8 other than the other people I just see around.

9 Q Okay. Some people you would maybe recognize by their
10 face?

11 A Right.

12 Q Your sister who lived there, what is her name?

13 A Janie.

14 Q Janie?

15 A Yes.

16 Q And is her last name Brass?

17 A Yes.

18 Q Does your sister have children?

19 A Yes, she do.

20 Q What are their names?

21 A Pookie, George and Pug.

22 Q Okay. Those sound like nicknames, some of those names.

23 A Well, George --

24 Q So that would be George Brass?

25 A Yes.

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1 Q Okay.

2 A And Ebony.

3 Q And Ebony?

4 A Yeah.

5 Q Is that Ebony Lewis?

6 A Yeah. Ebony got my last name.

7 Q Okay. And is it Pug Jazman?

8 A Yes. Yeah.

9 Q Okay. And there is a George Brass, Junior and a George
10 Brass, Senior?

11 A Senior, yes.

12 Q During March of 2005, did all of your sister's children
13 live with her in her apartment, to your knowledge, or not?

14 A I think Ebony had her own place at the time.

15 Q Ebony had her own place?

16 A I think she did.

17 Q Okay. You, of course, remember a murder that took place
18 of Debra's daughter?

19 A Yes.

20 Q I want to talk to you about the night before that
21 happened. Okay?

22 A Okay.

23 Q On the night before, were you at the apartment complex?

24 A The night before it happened, yes.

25 Q Who were you with?

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1 A Debra.
 2 Q With Debra?
 3 A Yes.
 4 Q Were you kind of socializing?
 5 A Yes.
 6 Q Where was that taking place, in your apartment or hers?
 7 A In her apartment.
 8 Q In her apartment?
 9 A Yeah.
 10 Q Do you remember whether or not she had a new stereo at
 11 that time?
 12 A Yes.
 13 Q Were you listening to music that night?
 14 A Yes. I'm the one that hooked it up.
 15 Q Oh, okay.
 16 A Yeah. I put it together.
 17 Q So you and Debra kind of socialized that night?
 18 A Yes.
 19 Q Was anyone else there?
 20 A No.
 21 Q Was Pooka there? Was her daughter there?
 22 A Nope.
 23 Q She wasn't there?
 24 A Not at that time, no.
 25 Q Did you stay the night at Debra's?

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1 A Yes, I did.
 2 Q So, obviously, you were there on the 24th?
 3 A It was morning, the 24th, yes.
 4 Q Did you ever see Pooka that morning?
 5 A That morning, when she come in, they say she came from
 6 work, I said, hey, Pooka and I walked back upstairs.
 7 Q When you see her, are you still at Debra's?
 8 A Yes. I was just coming out the door, just leaving, and
 9 went home.
 10 Q You guys pass each other?
 11 A Right.
 12 Q When you see Pooka that morning, do you remember at all
 13 what she was wearing?
 14 A No, no.
 15 Q Okay. Do you guys say hi to each other or anything like
 16 that?
 17 A Oh, yeah, I said high.
 18 Q She knew who you were?
 19 A Yes, exactly.
 20 Q Knew you were her mom's friend?
 21 A Right.
 22 Q And you pass her and you go where?
 23 A Straight upstairs to my mom's house.
 24 Q Back up to your mom?
 25 A Right.

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1 Q Because you live with your mom?
 2 A Right.
 3 Q When you get to your mom's, what did you do the rest of
 4 the morning?
 5 A Well, I helped my mom in the kitchen. She was doing some
 6 rice. And I was watching the rice and I heard the horn blowing;
 7 and that's Debra, wanted me to carry some bags to the house, which
 8 that's what I did.
 9 Q And is this kind of in the afternoon of that day or do
 10 you remember what time that was?
 11 A I think it was a bit -- I don't even think it was after
 12 12 o'clock.
 13 Q You don't think it was?
 14 A I'm not sure.
 15 Q You are not sure of the time.
 16 A I'm not sure of the times.
 17 Q Okay. Was it quite a bit after you saw Pooka come home?
 18 A Yes, it was.
 19 Q At least a couple hours?
 20 A About that, about two or three hours.
 21 Q Not at night?
 22 A No, huh-uh, not at night.
 23 Q And you hear Debra honking her horn?
 24 A Right.
 25 Q And what did you do after you heard the horn?

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1 A She wanted me to come downstairs and help her carry some
 2 bag in the house.
 3 Q Did you do that?
 4 A Yes, I did.
 5 Q When you go down and help Debra with the bags, do you
 6 guys go back to her apartment?
 7 A Right; yes.
 8 Q And is she in front or are you in front?
 9 A She was in front of me and opened the door up.
 10 Q Do you go inside?
 11 A Yeah, right behind her.
 12 Q And so you are following Debra carrying some bags?
 13 A Right.
 14 Q What happened when you get in the apartment?
 15 A She goes: Oh, baby, my stereo is gone.
 16 And I looked and I said: Sure is.
 17 And that's when she hollered out for Pooka. She looked
 18 in the bathroom, pushed the door open, no Pooka. So she looked in
 19 the bedroom, hollered for Pooka, no Pooka. When she went back in
 20 the bathroom, then she pulled the curtain open.
 21 Q She pulled the shower curtain?
 22 A Right.
 23 Q What do you remember about Debra's reaction when she
 24 pulled the curtain?
 25 A She was hysterical, hurt and shocked.

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1 Q She was upset?
 2 A Yes, very upset.
 3 Q Did she call for you to help her?
 4 A Exactly, yeah.
 5 Q And where were you when she started calling?
 6 A Right at the bathroom door. When she pushed the curtain
 7 back, that's when she seen her and that's when I reached up and I
 8 pulled Pooka out of the tub. And after that, I couldn't take no
 9 more and I went to my sister's house and my niece was over there.
 10 Q So you actually helped pull Sheila out?
 11 A Yes, I pulled her out.
 12 Q I think you said that was upsetting; you couldn't take
 13 that?
 14 A Yeah, huh-uh, no.
 15 Q And you went over to your sister's?
 16 A No, I went to the stairs to sit down, after all that, you
 17 know.
 18 Q Did you see anybody else go inside Debra's apartment
 19 after you came out, after seeing Sheila?
 20 A Oh, after I left, no. My nieces went in there to try to
 21 help out or whatever they could do.
 22 Q Okay. And your niece would be Ebony?
 23 A And Marquetha.
 24 Q And Marquetha?
 25 A Yeah, Right.

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1 Q You actually see them run inside?
 2 A Yes. I'm the one that went and got them next door, from
 3 my sister's house.
 4 Q So you go over there first?
 5 A Yes, to my sister's house and knocked on the door and
 6 said: Pookie, I need some help. Come on.
 7 Q So you go to your sister's, tell your nieces Pooka needs
 8 help and you stay on the stairs?
 9 A Right. I sit right back on my mom's -- from where my
 10 momma stay, right back there. I was sitting right there.
 11 Q And your nieces run in?
 12 A Yes.
 13 Q Do you see the police arrive at the apartment?
 14 A Oh, on the incident, yeah.
 15 Q Okay.
 16 A Yeah.
 17 Q And did the police come and talk to you?
 18 A Yes, they definitely did.
 19 Q When they came and talked to you, where were you? Were
 20 you outside?
 21 A Upstairs in the house at the time when they came. When
 22 they come to question me, I was inside the house.
 23 Q Okay. And this is the apartment that you share with your
 24 mom?
 25 A Right.

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1 Q Where you were doing the rice?
 2 A That was afterwards. Yeah.
 3 Q Okay. When the police came and talked to you, did they
 4 ask you if you would give them like a little DNA sample?
 5 A Yeah, I volunteered for everything.
 6 Q You volunteered for that?
 7 A For everything.
 8 Q So you gave them a sample?
 9 A Right.
 10 Q Did they talk to you -- did they tape record you?
 11 A I'm not for sure if they had a tape recorder or not, but
 12 I was asked a bunch of questions.
 13 Q But you agreed to talk to them?
 14 A Right, yeah.
 15 Q When the police were talking to you, sir, after it all
 16 happened and they were getting a DNA sample from you, were you by
 17 yourself or was anyone else there?
 18 A Just me and that one sister.
 19 Q Do you know someone named Anthony Culverson?
 20 A That's my nephew.
 21 Q Was he there when the police were talking to you?
 22 A You know, I'm not even sure if he was or not.
 23 Q Okay. Possible?
 24 A He was there earlier, yeah.
 25 Q Okay.

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1 A But I'm not really sure if he was there at that time when
 2 the police was talking to me.
 3 Q Okay. And you never saw him talk to the police?
 4 A No.
 5 Q Okay. You just kind of know what you did?
 6 A Exactly.
 7 MS. WECKERLY: I'll pass the witness.
 8 THE COURT: After you left, do you know whether or not
 9 Debra had to go to work that day?
 10 THE WITNESS: Yes. When I left her house that morning,
 11 yes, she had to go to work.
 12
 13 CROSS-EXAMINATION
 14 BY MR. PATRICK:
 15 Q Good afternoon, Mr. Lewis.
 16 How are you doing today?
 17 A All right.
 18 Q Mr. Pike and I and our investigator came out and talked
 19 to you last month at your home?
 20 A Uh-huh.
 21 Q Do you remember that?
 22 A Yeah.
 23 Q Okay. You spent the night with Debra the night before?
 24 A Yes, I did.
 25 Q Okay. And what time did you leave the next morning?

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1 A I'll not really sure what time it was.
 2 Q Do you remember telling Mr. Perez, our Investigator, that
 3 you left at 8:30?
 4 A No.
 5 Q You don't remember that?
 6 A No.
 7 Q And do you know George Brass, Junior?
 8 A Yes, my nephew.
 9 Q He's your nephew?
 10 A Yeah.
 11 Q Okay. And the day that Sheila died, you saw him at the
 12 apartments?
 13 A Yeah, when weapon he come home for lunch or something.
 14 Next thing I know, he left and everybody is just kind of sitting
 15 there and walking off.
 16 Q Okay. So he came home around lunch time?
 17 A Yeah. That's when he say he came home for lunch.
 18 Q Okay. Did you see him when he came home?
 19 A Yeah. I was standing outside.
 20 Q Standing on the stairs?
 21 A No. I was up by the stairs. The other person that was
 22 there, we started talking.
 23 Q And around lunch time, would you have any idea when that
 24 is there?
 25 A Probably somewhere between 11:20 and 11:30, like that.

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1 Q Was that his regular lunch hour?
 2 A I'm not even sure.
 3 Q And you said that you saw Anthony Culverson also there
 4 that day?
 5 A Yes, sir.
 6 Q Are you related to him?
 7 A A nephew.
 8 Q Is he related to George?
 9 A Yeah, that's his cousin.
 10 Q Cousins?
 11 A Yes.
 12 Q Okay. And what was Anthony doing when you saw him?
 13 A Just standing there.
 14 Q Did he have a motorcycle that he was driving around?
 15 A No, sir. I haven't seen him on a motorcycle.
 16 Q Okay. Last month, when we came to talk to you, we asked
 17 you about a gentleman that lived upstairs.
 18 Do you remember that?
 19 A Yeah, I remember that.
 20 Q And at one point, he had tried to get together with
 21 Sheila?
 22 MS. WECKERLY: Objection; foundation.
 23 THE COURT: How would he know that?
 24 MR. PATRICK: He could have been there.
 25 THE COURT: Were you ever present when he and Sheila had

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1 some interaction?
 2 THE WITNESS: Well, I was told about the first time.
 3 THE COURT: Don't want to hear what you were told.
 4 Objection sustained.
 5 Go ahead.
 6 BY MR. PATRICK:
 7 Q Were you ever present when Sheila and this gentleman had
 8 interactions?
 9 A No.
 10 Q Did you ever confront this gentleman about any
 11 interaction he might have had with Sheila?
 12 A Well, I told him that she was a youngster; he shouldn't
 13 be trying to talk to her like that.
 14 Q Okay.
 15 A Yeah.
 16 Q How old was he, would you guess?
 17 A I'd say he'd run about my age, about 40 something.
 18 Q Okay. Do you know the other people that live in that
 19 apartment?
 20 A No, I don't socialize with too many.
 21 Q So you don't know the names of anybody else that lived
 22 there?
 23 A No.
 24 MR. PATRICK: Court's indulgence.
 25 THE COURT: Do you know if Pooka was working at that time

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1 or if she was home sick?
 2 THE WITNESS: I know she stayed home from work that
 3 morning.
 4 THE COURT: Anything else, Mr. Patrick?
 5 MR. PATRICK: Yes, Judge.
 6 BY MR. PATRICK:
 7 Q Do you remember seeing a motorcycle around that day?
 8 A No.
 9 Q Did you see the police talking to George?
 10 A No.
 11 Q Did you see the police talking to Anthony?
 12 A No.
 13 Q When you talked to the police, did they take a
 14 handwritten statement from you?
 15 A No. They just swabbed me and told me to go home and
 16 don't worry about it.
 17 Q Okay. Did they take a recorded statement from you?
 18 A I don't know if they recorded me or not.
 19 Q But do you remember about how long you talked with them?
 20 A Oh, man, almost an hour. As a matter of fact, four of
 21 them came upstairs and talked to me.
 22 Q And they never mentioned that they were recording
 23 everything?
 24 A No.
 25 Q Did they take notes?

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1 A I'm not sure if I saw anybody writing anything down or
2 not.

3 Q To your knowledge, the police never talked to George or
4 Anthony?

5 A I never seen that.

6 Q Did you ever see George go into Sheila's apartment?

7 THE COURT: You mean that day?

8 MR. PATRICK: That day.

9 THE WITNESS: No, I didn't. I didn't see him go in, you
10 know.

11 BY MR. PATRICK:

12 Q Did you ever see him come out of the Sheila's apartment
13 that day?

14 A No.

15 MR. PATRICK: That's all I have, Judge.

16 THE COURT: Anything else?

17 MS. WECKERLY: No.

18 THE COURT: Thanks. Appreciate your testimony,
19 Mr. Lewis. You are excused.

20 THE WITNESS: Thank you.

21
22 (Witness excused.)

23
24 MS. WECKERLY: James Vaccaro.
25

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1 (Witness sworn.)

2
3 THE CLERK: Thank you. Please be seated.

4 Please state your full name, spelling your first and last
5 name for the record.

6 THE WITNESS: My name is James Charles Vaccaro;

7 J-a-m-e-s, V-a-c-c-a-r-o.

8 THE COURT: Go ahead.

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JAMES VACCARO

called as a witness on behalf of the State,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Sir, how were you employed back in 2005?

A At that time, I was a member of the Las Vegas
Metropolitan Police Department and my capacity was as a detective
in homicide.

Q At some time after 2005, did you retire?

A Yes, in December of 2007.

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1 Q How many years did you work for the Las Vegas
2 Metropolitan Police Department?

3 A Thirty years.

4 Q And how many years did you work in homicide?

5 A About 13.

6 Q Okay. I think you said this, but in 2005, in March, you
7 were assigned to homicide?

8 A Yes.

9 Q Do you recall responding to a scene at 1001 North Pecos?

10 A Yes, I do.

11 Q On that date, when you responded, which was March the
12 24th, what was your capacity? How were you assigned?

13 A We responded in a squad formation, so there were six
14 members of the squad that went to the scene.

15 We were absent an immediate supervisor on that day, so I
16 was the acting supervisor, which meant that I was responsible for
17 what occurred during the investigation of that apartment.

18 Q Can you describe generally what that neighborhood or that
19 area of town is like.

20 A Sure. The Palm Village apartment complex is at that
21 intersection of Pecos and Washington; and it's sort of a — I
22 would say working class neighborhood, blue collar workers,
23 primarily Hispanic is the demographics in that part of our city.
24 It's a busy apartment complex, surrounded by single family, older
25 homes here in Las Vegas. It's the old downtown area.

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1 Q So it's a pretty populated area in the apartment complex
2 itself?

3 A Yes. It's a very busy apartment complex because of its
4 location. It's convenient for city workers, so to speak. It's
5 just a dense area.

6 Q The apartment buildings themselves at that address, are
7 there multiple buildings within the bigger complex?

8 A Yes. It's a pretty typical Las Vegas apartment complex,
9 two stories, stucco, tan with some brown wood trim, multi-units.

10 Most of them are two or three story. This was a two story
11 complex.

12 Q When you responded to the scene, can you remember or were
13 you aware if patrol officers responded ahead of homicide?

14 A Yes, they did.

15 Q Is that normal?

16 A Yes. I mean, it's a very busy valley here, and depending
17 on where your murder scene is, your patrol officers are almost

18 always going to beat us, so to speak. If it's a night time murder
19 and we're off duty and we get called from our residences, they're
20 going to beat us because they're working.

21 But in this particular case, it was in the afternoon,
22 just before three p.m. We knew that patrol would be there because
23 that dense area has a higher concentration of police patrol
24 officers in it, and so they were clearly going to beat us to the
25 scene with traffic and so forth.

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1 So patrol officers were present and they were already
2 taking steps to preserve the scene for us as they were trained to
3 do.
4 **Q** Once you get there, you're the homicide supervisor on
5 that scene?
6 **A** That's right.
7 **Q** What other homicide detectives responded to the scene
8 with you?
9 **A** The other detectives were Detective George Sherwood and
10 Detective Dan Long. They were the primary assigned detectives to
11 this incident. And the documentation of the scene was given to
12 Detective Sherwood. The interviewing of witnesses, that aspect of
13 the investigation would be with Detective Long, another detective
14 named Marty Wildman and another detective named Mike Wallace.
15 **Q** And is that typical in a potential murder investigation?
16 **A** Yes. What we do is evaluate our incident and based upon
17 the number of people that we may believe that are going to be able
18 to give us information, like to be interviewed, they know our
19 victim or they know something about the incident, we bring in
20 additional detectives. So we may do a saturation with five, six
21 detectives, maybe eight, and then we'll pare it down as time goes
22 by.
23 In this case, we brought out five; we have a six man
24 team, but I was acting as sergeant at that time, so that
25 eliminated one.

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1 We would just saturate and as things would slow down a
2 little bit, we could let people go. But Sherwood and Long would
3 remain forever there, as crime scene investigators, and myself.
4 **Q** And as the supervisor, you stayed with the scene or you
5 go do interviews?
6 **A** No, you stay with the scene. Your primary scene in any
7 murder investigation is the location of the body. My
8 responsibility is to control that and I have to stay there until
9 all aspects of that scene are documented, photographed, evidence
10 is collected.
11 The body is subsequently removed by the coroner's office
12 to the autopsy the following day. It's our responsibility to
13 maintain that scene until we feel that we have completed our
14 investigation there. I think, in this case, we stayed until about
15 nine o'clock at night. We started at three in the afternoon and
16 were there until nine that night.
17 **MS. WECKERLY:** May I approach, Your Honor?
18 **THE COURT:** Sure.
19 **BY MS. WECKERLY:**
20 **Q** I'm showing you first what's marked as State's Proposed
21 Exhibit 2.
22 Do you recognize what that is?
23 **A** Yes, I do.
24 **Q** And what is it?
25 **A** This is a typical crime scene diagram at the particular

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1 scene there at 1001 Pecos, in this incident, Apartment H-63.
2 **Q** And I'm showing you a group of photographs which have
3 been marked as State's Proposed Exhibits 2 through 47.
4 I would ask you to look through those and tell me when
5 you are done, please.
6 **MR. PIKE:** While the witness is looking through them,
7 Your Honor, may the record reflect the State has shown them to me.
8 I've reviewed them all. I don't have any objection to them being
9 admitted.
10 **THE COURT:** Exhibits 2 through 47 will be admitted.
11
12 (State's Exhibits 2 through 47 admitted into evidence.)
13
14 **THE WITNESS:** Yes, I'm familiar with those.
15 **BY MS. WECKERLY:**
16 **Q** Do they fairly and accurately depict the scene as you saw
17 it that night?
18 **A** Yes, they do.
19 **Q** Sir, I'm putting on the overhead what's been admitted as
20 State's 2. I think you said that this was a diagram of the crime
21 scene itself.
22 **A** Yes.
23 **Q** And that would have been completed by a crime scene
24 analyst, but you are familiar with the actual apartment unit
25 itself?

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1 **A** Yes.
2 **Q** You can either write on the screen there, or if you're
3 more comfortable, you can get up and write on the big screen, but
4 could you kind of orient the members of jury as to where the front
5 door is to this apartment and the various rooms that we see on the
6 diagram.
7 **THE COURT:** I have a pointer here for you.
8 **THE WITNESS:** Sure, I can do it like that.
9 Thank you.
10 This shows a north orientation right here, but this
11 sweeping door here is the front door of the apartment. It had an
12 H-63 designation. It was number 63, ground floor apartment, in
13 this two story complex, single bedroom apartment. There was an
14 apartment next door to it, but for the purposes of the diagram,
15 they just draw the one where the incident is occurring.
16 And then as you proceed, this is a sidewalk area like out
17 where the N is here. (Indicating).
18 And we were all pretty much clustered up at that
19 location, making our determination about who was going to go
20 inside of the apartment.
21 Once you entered the apartment here, you come into a
22 small area, where there was an end table and a love seat and then
23 another end table.
24 And then this is a large speaker, like for an
25 entertainment center, like a tall tower speaker. (Indicating)

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1 And then this is sort of a breakfast bar countertop; and
 2 there is the sink right there and the stove there. (Indicating)
 3 So as you come in the front door, you would wrap around
 4 this breakfast bar and come into the kitchen area here.
 5 (Indicating).

6 And then cross into this living room area is a
 7 three-cushion couch with an end table, another end table or coffee
 8 table, I guess you would call this here. (Indicating).

9 And then there was a small unit that had a television on
 10 it right here in the living room area. (Indicating)

11 And then back here is pretty much just a basic one
 12 bedroom with a connecting bath, back into the hallway here.
 13 (Indicating)

14 And that's pretty much a small one-bedroom apartment,
 15 right there. (Indicating)

16 BY MS. WECKERLY:

17 Q And now I'm putting on the overhead was been admitted as
 18 State's 3. That's just the outside of the apartment that you were
 19 just describing; correct?

20 A Right. This isn't depicting any particular apartment.
 21 It's just overall a photograph that -- when we first arrived we
 22 wanted to document that we have the crime scene taped off, and
 23 that we have good perimeter there that no one is inside of it,
 24 that hasn't been interviewed by a police officer.

25 And this is an overall view of how the apartment looks.

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1
 2 (Sotto voce at this time.)
 3

4 BY MS. WECKERLY:

5 Q Now, I'm putting on the overhead what's been admitted
 6 as State's 4.

7 I don't know if you want me to bring it out, but can you
 8 tell me what is depicted in that photograph?

9 A Yes, sure.

10 This is the front door to that apartment. If the door
 11 were in the closed position it would face west.

12 And as you saw from the diagram, it swings in this way
 13 towards the apartment. (Indicating)

14 We take this kind of a photograph because we are
 15 interested in looking at the door jam most of the time to see if
 16 there was a forced entry, if the door looks split, or if the lock
 17 has been damaged.

18 And in this case there was some damage in the strike
 19 area; however, it didn't seem to be new to us because there wasn't
 20 any crumbs or paint or sawdust, like you would see with a fresh
 21 door kick.

22 So we knew then in speaking with one of the people
 23 involved in the case it was in the closed position, but not
 24 locked; but it didn't appear to be forced. So that's the front
 25 door of the apartment.

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1 Q And when you say "the strike area" you mean the side that
 2 is going to connect to the wall; right?

3 A Right. The strike area would be over on this side.
 4 (Indicating)

5 The striker plate would be here. And then this is the
 6 dead bolt lock and the pass out over there. (Indicating)

7 Q Did yourself or another detective looked at that door and
 8 whatever damage or marks that were on it, you made the
 9 determination from looking at the door that it wasn't fresh or it
 10 didn't look like it's been kicked in or anything like that?

11 A Right. I mean we see thousands of doors during our
 12 investigations, and it's an apartment complex and so it's not
 13 unusual to see some damage that may have been preexisting from
 14 somebody else, a different tenant, or another situation.

15 So we usually look for a telltale signs that it's fresh
 16 or new, and it wasn't present in this case.

17 Q Showing you now what's been admitted as State's 9,
 18 looking at that photograph, what are we looking at?

19 A Okay. Right where that lamp and that end table are, make
 20 that hard left around this wall (indicating), that's where the
 21 front door was.

22 And this is that low breakfast bar that I talked about
 23 with the sink, right over in this area. (Indicating)

24 And this is the love seat and the other end table here
 25 and has this plastic covering on top of the love seat. So this

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1 would be the north wall of the apartment. (Indicating)

2 Q Now, I'm showing you what's been admitted as State's 6,
 3 what are we looking at in that photograph?

4 A Okay. Here this was interesting to us because of this
 5 wire. It appeared to us to be a speaker wire, just like you would
 6 have associated with a stereo or a television. And it was out in
 7 the middle of floor and the wires had strip ends, and there wasn't
 8 anything present, but it appeared that it had been patched.

9 And so our first thoughts were it was an electrical
 10 component or electronic component that's missing because the wire
 11 is here and the component is not there.

12 Q Now, I'm putting on the overhead State's 7. What are we
 13 looking at in that photograph?

14 A Here is the far corner, again that's the north wall, and
 15 this is the entrance towards the small closet, I think, and then
 16 the hallway towards the bathroom. (Indicating)

17 And this is significant because, as I said, right below
 18 here in the bottom of the picture was where that wire was, and
 19 this is this tall speaker that I spoke about in the beginning when
 20 we were describing the room, and it looked as though, with these
 21 C.D.s present on top of the speaker, that there is same sort of
 22 small unite, electronic unit, that was present there because there
 23 was sort of a dust shadow on top of the unit and it wasn't there.

24 Q Other than that though, this photograph, is there any
 25 sign of disturbance from looking at it other than maybe something

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1 is missing?

2 A Yeah; no, not essentially, not a disturbance like
3 anything was knocked over or anything.

4 Q And now I'm putting on the overhead State's 8. Is that
5 the coffee table that you were describing?

6 A Right. Now, although you see that plastic again, that's
7 a three cushion, so that's not the love seat that we saw in the
8 other picture. That's the couch that I described. And that's the
9 coffee table with some nicknacks and things on top of it and the
10 couch in the living room.

11 Q No sign of disturbance on that?

12 A No.

13 Q Now, I'm putting on the overhead State's 11. What are we
14 looking at in that photograph?

15 A Okay. Now, here in this photograph, your back is now --
16 of you were the one taking that photograph, your back is to the
17 north wall, and the door to the apartment would be to your hard
18 right, if you were holding the camera right now.

19 And this is that kitchen counter that I talked about, and
20 the cabinets overhead.

21 And there were a lot of things on the kitchen counter
22 here that were was recently, it looked like, purchased, because
23 there were plastic bags full associated with the store, and there
24 is this oscillating fan here. (Indicating)

25 And there is that small television that I talked about

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1 that was on the far side of the living room area.

2 Q Putting on the overhead State's 12. Does that better
3 depict the bags that you were talking about?

4 A Right. As a matter of fact, now if you were the
5 photographer, around the corner this way is the front door of the
6 apartment, and you are looking into that kitchenette area over
7 into the breakfast bar and the storage above.

8 Q Was the kitchen and maybe the apartment in general, was
9 it pretty crowded with stuff?

10 A Oh, yeah. You could see from these photographs that it's
11 very lived in.

12 There are a lot of things as far as in the kitchen area,
13 it seemed like food products and bottles of things, that were --
14 it was a cluttered kitchen in my opinion, but it just -- it was
15 kind of a small kitchen anyway.

16 Q This is State's 13. Does that show what you were just
17 talking about?

18 A Right.

19 Q This is State's 13. Does that show what you were just
20 talking about?

21 A Right. This particular area right here is sort of like
22 the shelving that you see in a convenience store, like the end
23 rack in a store. It sort of has an advertisement on the side of
24 it for cookies and stuff like that and then another shelving unit
25 behind here. And these both had, as you can see, numerous items

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1 that were associated with kitchen and cooking preparation.

2 Q But nothing was really knocked over or looked disturbed?

3 A No.

4 Q Kind of crowded because they have a lot of stuff?

5 A Yes.

6 Q Now, I'm putting on the overhead State's 16.

7 Is that another view of the kitchen?

8 A Yes. Just a little closer of the kitchen; and over here
9 in this corner would be that sink top and then the stove on the
10 far side. So this would be the west wall of the apartment. And
11 on the other side of this wall would be the front door of the
12 apartment.

13 Q Okay. You obviously walked through the entire apartment
14 that evening?

15 A Many times.

16 Q When you and other detectives are -- not just doing an
17 initial walk through, but like in the course of investigating the
18 case, do you make assessments or determinations, even with regard
19 to like an apartment that may be a crime scene, as to which areas
20 of the apartment seem more relevant than other areas?

21 A Sure we do. I mean, depending upon the size and the
22 location of our crime scene -- in this area, we have a one bedroom
23 apartment, so it's not overwhelming, but if we were in a three
24 story house, we would have to try to figure out what's in play and
25 oftentimes, we know that there could be an incident that's

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1 occurred in the master bedroom or, in this case, in the bathroom,
2 and we don't want to forensically work the entire house or the
3 entire apartment. So what we'll do is we'll try to determine what
4 looks like it could be an item of evidence that will help us in
5 our case.

6 And so we'll try to focus on what areas we really need to
7 be in. And we did that while we were present inside of this
8 apartment.

9 Q I think you might have said this, but did the kitchen
10 seem at all relevant in this investigation?

11 A No, it didn't. The kitchen, relatively speaking, was out
12 of play to me, in my opinion; however, we saw on that countertop,
13 there were items in a plastic bag and some other items that looked
14 like possibly a quart sized beer bottle and other things.

15 Well, those were of interest to us because if there is a
16 plastic bag from a store, maybe there is a receipt that's in the
17 plastic bag that could give us a purchase of that item that might
18 provide us with a date and time of that purchase to give us the
19 why is that in this apartment and when is our window? What is our
20 window here, the last time somebody made a purchase and came home
21 with it to that apartment to the time that the deceased is found.

22 So receipts are really important to us. When we see a
23 bag in an apartment like that, that's important to us.

24 Q Obviously, you went into the bedroom of that apartment?

25 A Yes.

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1 Q And now I'm showing you State's 21.

2 What are we looking at with that?

3 A Well, we're just taking that pulled back first shot

4 before we go into the bedroom and with the door in the open

5 position, this is a photograph taken by the crime scene

6 investigator looking into the bedroom.

7 This is the edge of the television here. The television
8 was on, something was on. I don't remember which show it was.

9 But on the floor here was this small bottle of Gatorade
10 with a red fluid inside of it. And then there was also some
11 wrappers from some convenience store kind of food items. I think
12 one was a beef and cheese stick and the other one was something to
13 do with like a bag of peanuts. That was on the floor here in
14 that -- in the bedroom.

15 We just took note of these things that were on the floor
16 because it was a little unusual.

17 Q Putting on the overhead State's 20.

18 Is that just another view of that TV area and those sort
19 of snacks?

20 A Yes, same, a little bit closer shot by the crime scene
21 investigator taking that photograph. We see some toys here under
22 the table supporting the television, a vial that had medication in
23 it. I don't recall exactly what it was, but I'm pretty sure, as I
24 recall, that was something that was prescribed to the victim in
25 this case.

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1 Q You are talking about that prescription bottle that's on
2 the sort of TV table?

3 A Sort of right in front of the TV. As a matter of fact,
4 that little cup there I think had some change and a gold ring
5 inside of it.

6 Q Now, I'm showing you State's 22.

7 Is that another view of the bedroom area?

8 A Yes. Now, that television that we were talking about a
9 moment ago is off to the right here and that's basically the top
10 of that dresser/mirror combination in there. You can just see the
11 bedspread at the bottom of the bed.

12 Q Now, I'm putting on the overhead State's 23.

13 What are we looking at in that photograph?

14 A Here, we're looking at a close up of that dresser; and at
15 first, we looked at these drawers and see they're a little askew
16 and we try to make a determination, looking at that, is that a
17 result of somebody hastily going through it or is it a dresser
18 that's in disrepair.

19 I had more of an opinion that it was a dresser in
20 disrepair than it had been searched and ransacked because the
21 things inside of it were still in the drawers.

22 Q So it didn't look ransacked to you?

23 A No, it didn't.

24 Q I'm showing you another dresser. This is State's 24.

25 Is that also in that bedroom?

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1 A Yes. This is in the bedroom, with the closet just to the
2 right of it when you refer to that diagram. I think this is on
3 the east wall.

4 Q And those drawers appear to be shut, right?

5 A Yes.

6 Q So it doesn't look ransacked?

7 A No, it doesn't.

8 Q Okay. Now, I'm showing you State's 26.

9 What are we looking at in that photograph?

10 A Now we're at the foot of the bed and the television is
11 behind us, if you are taking this photograph; and we're looking at
12 the bed and of particular interest to me when I saw this was that
13 this pillow here is without a pillow case and so was the other
14 pillow that's next to it.

15 So you have two pillows without pillow cases. It's
16 either the person's habit or it's something suspicious, because
17 the pillow cases are often used to carry something out of an
18 apartment or a house so that you don't see -- you are not seen
19 walking out of wherever -- whatever you are taking, just carrying
20 it in your hands; you are carrying it inside of something to
21 conceal it.

22 So this pillow had a pillow case on it and these did not
23 and that was of interest to us.

24 Q Was there a letter on the bed as well?

25 A Yes. Right here is a sealed, handwritten letter that was

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1 addressed to an individual and it also bore a return address on
2 the corner of it.

3 Q I'm now putting on the overhead State's 25. It's
4 probably a little washed out, but is that a closer up view of the
5 letter on the bed?

6 A Yes, it is.

7 Q And probably hard to see -- do you want me to walk up and
8 show you the photographs?

9 A I can see it really good here.

10 Q Okay.

11 A And so do you want me to say who the addressee is?

12 Q Yes.

13 A The addressee is William Kinsey, K-I-N-S-E-Y, and it has
14 a long number associated with his address right after his name,
15 1698867; and then it is addressed to 330 South Casino Boulevard,
16 Las Vegas, Nevada, 89101.

17 Q Could you tell who the return address is?

18 A I know -- I can't see it that clearly here, but I know
19 that it's from -- it says Mrs. Sheila Kinsey as the return
20 addressee on that.

21 Q Okay. Obviously, you went into the bathroom area of this
22 apartment as well.

23 A Yes.

24 Q I'm putting on the overhead what's been admitted as
25 State's 38. That is a photograph of the bathroom area with the

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1 victim, obviously?

2 A Yes.

3 Q In that photograph, is there evidence that she had been
4 at least -- well, paramedics had attempted treatment on her?

5 A Sure there is. We know that from our response time,
6 based on the response time of patrol officers and paramedics in
7 that area, that everybody beat us there. Everybody beat the
8 homicide detectives there. And the fact that I see these patches,
9 these are medically -- medical intervention, the ambulance
10 attendants would have gone in there -- or fire department,
11 depending upon who was there -- and attached these to see if there
12 were signs of life on the victim. And then after they determine
13 there are not, they back out of the apartment. So we see these
14 often at murder scenes.

15 Q The bathroom appears pretty small and kind of crowded?

16 A Yes. It's both of those. It's small, it's crowded and
17 it's very difficult to work in because of that.

18 And so we have to actually strategize about how we're
19 going to conduct our business in there, because we know that
20 everything in there is important to us because that's where the
21 body of the victim is and we have to take our time and decide how
22 we are going to remove things and what we are going to remove
23 first.

24 Q The items that are placed kind of over the torso area of
25 the victim, we've had some discussion from witnesses about their

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1 placement.

2 But when you get to the scene, do you know -- I mean,
3 until somebody is interviewed, you don't know kind of what was put
4 there by someone afterwards or how she even ended up in that
5 position, correct?

6 A That's correct. Oftentimes, the finder of a deceased
7 person does something unwittingly that will alter our crime scene,
8 especially if there is a loved one or family member involved in
9 the finding.

10 And so we often find that some dignity has been provided
11 to the victim by a family member or a loved one and they often do
12 something that, in our opinion, we would rather they didn't do,
13 but it often happens.

14 So we would learn later from conversation that this is
15 not how the victim was originally found, but that she was emersed
16 in the water in the bathtub.

17 And so we have to deal with those issues as far as
18 forensics when people have been in or near our victim before we
19 have an opportunity to be there to do what we do for a living.

20 Q I'm now putting on the overhead State's 40.

21 And that's a different view of the -- of the bathroom
22 with the victim, but there is sort of a little table next to her.

23 A That's right.

24 Q And there is items on there and it looks like some of the
25 items on the table are knocked over a little bit or some of them

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1 are at least.

2 A Right. I mean, we have this small table that's just
3 adjacent to the bathtub. Here is a box of tampons and some other
4 sundries and hair care products, I think, that are here.

5 And with regard to the appearance of the rest of the
6 apartment, this was a much more active room, in my opinion,
7 because of how many things were disturbed.

8 I mean, we have a victim on the floor, clothing strewn
9 about; we have a handbag that is tipped over the floor and then
10 this table and the products on top of it are moved around quite a
11 bit.

12 Q But when you get there, you don't know if that's knocked
13 over by people trying to help her, paramedics or even -- or if it
14 was knocked over prior to that. There is no way of knowing?

15 A Right. When we get there and we learn that she's
16 originally emersed in water and she had been removed from the
17 bathtub to this current position, we know that there has been
18 activity inside of that room.

19 We know in the panic, that may have taken place while
20 that was happening, that that person may have, without even
21 remembering it, knocked over that table or pushed over something.
22 So we have to take all of that into consideration.

23 That's why I said we would strategize about how we would
24 process items of evidence in that room and how we would take the
25 photographs and what we would remove first. So it's a big, long

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1 process because that's where the body is.

2 Q And now I'm showing you State's 36.

3 And this is sort of another view of the bathroom area and
4 there is a few items on the floor. And I assume that your
5 comments would be the same with regard to those items.

6 A Yes, they are.

7 Q Now, I'm putting on the overhead State's 34.

8 What are we looking at in that photograph?

9 A Well, here we have a photograph sometime later, because
10 you see the absence of the victim in this photograph. So we
11 didn't have the opportunity to really remove her from the room
12 until we did a lot of forensic work and slowly collected items of
13 evidence and took numerous photographs.

14 So, at the point where we could take this picture, the
15 pickup of that is to document the level of water to determine
16 maybe the temperature of the water and then the items that were
17 inside the water, whether or not they were in play for having
18 something to do with her death.

19 And here we see that there was a wash cloth at the
20 bottom, that was inside there, and a couple other items. I don't
21 recall exactly what was in there.

22 Q It looks like there is two wash clothes and then maybe a
23 bandana, a yellow one?

24 A Oh, right. I knew that there was a yellow bandana. It
25 didn't make it on the picture. That's right.

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1 Q After the victim's body was removed, were you able to
2 observe her clothing in the bathroom?

3 A Yes.

4 Q And now I'm putting on the overhead State's 35.
5 Does this photograph depict her clothing, which would
6 have been effectively underneath her in the bathroom?

7 A Right. And that was of particular interest to us
8 because -- because of her position, we knew that she was emersed
9 in the tub and now with this clothing being underneath her body,
10 so if you go back, you think to yourself, well, how does that
11 clothing fit into our situation?

12 And it's wet, and that makes sense because she was taken
13 out of a bathtub full of water. So the fact that the clothing is
14 wet doesn't necessarily mean that the clothing was ever in the tub
15 but that it got wet from the transfer of her body.

16 But we found this was a, I think, brown and reddish
17 tinted wig. We had a brassiere that was on the floor. We had a
18 pair of black jeans that were underneath her body as well and I
19 think a pair of underwear that were associated with those jeans
20 that was either a thong or a T back pair of underwear.

21 Q And now I'm putting on the overhead State's 37.
22 Obviously, they've been moved, but does that depict the
23 jeans and the bra that you have been talking about?

24 A Yes. And here on the -- there is a green, I think, a
25 dark colored cover on the toilet seat and the bra has been laid

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1 out on the toilet seat by one of the crime scene investigators
2 prior to the photography. And then we have this black pair of
3 jeans.

4 But these were all in sort of a disheveled pile
5 underneath her body, underneath the back side just outside of the
6 tub on the floor.

7 Q Now, the positioning of the thong or the underwear on the
8 jeans, kind of like on the outside of the jeans --

9 A Right.

10 Q -- was that done by homicide detectives or is that
11 literally how the thong was on the jeans and it's just like put on
12 -- put on the counter there so we could see the positioning?

13 A Right. No, we would never alter or change the appearance
14 of a particular item. All we would do is probably better display
15 it so that it could be photographed more efficiently.

16 And in this case, the thong underwear was on the outside
17 of the jeans in this case; and I recall them as being inside out
18 and also backwards; and to this moment, I have no idea how they
19 got like that.

20 Q It wouldn't -- I mean, they don't appear consistent with
21 someone taking off their own jeans and thong to hop in a bathtub.

22 A No. And as a matter of fact --

23 MR. PIKE: Objection; calls for speculation.

24 THE COURT: It was leading, too.

25 MR. PIKE: Well, objection as leading.

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1 MS. WECKERLY: I'll ask a different way.

2 THE COURT: Let's try it again.

3 MS. WECKERLY: Okay.

4 BY MS. WECKERLY:

5 Q The underwear are on the actual outside of the pants, of
6 the jeans.

7 A That's true.

8 Q Okay. They're not inside?

9 A They're not.

10 Q If someone were dressed and getting into a bathtub, in
11 your experience, would you expect their underwear to be within
12 their jeans?

13 MR. PIKE: Objection. I don't think he has the
14 experience in wearing women's clothing.

15 THE COURT: You just don't know how much underwear
16 experience the detective has.

17 In your training and experience, in years of doing this,
18 were you able to glean anything from that?

19 THE WITNESS: The only thing, Your Honor, is that there
20 is something wrong with that; that's not right. It is more likely
21 that it was not done by the victim.

22 THE COURT: Okay.

23 MS. WECKERLY: Thank you.

24 THE COURT: The apartment itself, where was it
25 juxtapositioned in the whole complex? Was it in the middle, the

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1 corner, at the end?

2 THE WITNESS: As I recall, there were apartments to all
3 four of my sides while I was there on that sidewalk. So I can't
4 really orient myself, thinking back on it now a couple years, but
5 I don't remember it being on the edge.

6 THE COURT: It wasn't on the edge.

7 THE WITNESS: Any of the edges, right.

8 BY MS. WECKERLY:

9 Q After you were the supervisor during the initial
10 investigation on this case, would you have been involved in
11 follow-up interviews or other investigation done for this case?

12 A No.

13 Q Do you recall if you attended the autopsy that was
14 conducted on Miss Quarles the next day?

15 A Yes, I did.

16 Q Have you attended a number of autopsies in your work as a
17 homicide detective?

18 A Hundreds of autopsies.

19 Q Okay. And why do detectives go to autopsies?

20 A Well, autopsy examinations are a keystone to a very
21 important homicide investigation because of the fact that there is
22 evidence that is collected at these autopsies that we need to be
23 witness to.

24 Oftentimes, we could determine the path of a bullet
25 through a body or the damage done to an individual by a strike

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1 with a hammer.

2 And so in this particular case, we had an 18 year old
3 girl who was, for some reason, deceased; seemed to be healthy; and
4 we needed to attend the autopsy to try to determine what it was
5 that made her stop working; something made her die.

6 And that would be possibly important to us, if and when
7 we develop a suspect in this case, about the methodology of how
8 she died. That's why we attend an autopsy.

9 Q And in your work as a homicide detective, are you
10 familiar with sexual assault kits?

11 A Yes.

12 Q What are those?

13 A We call it a kit because it contains numerous swabs and
14 slides that are used for a microscope and collection packets for
15 hairs and fibers.

16 And the sexual assault kit is typically a box that comes
17 in a sealed condition; the seal is broken for the first time by
18 people that are taking care of the autopsy, that are basically
19 conducting the autopsy.

20 We witness this with our crime scene investigators. Once
21 the box is opened up, several things happen: Fingernail clippings
22 are taken from every finger and dropped into a particular vial and
23 sealed. Hairs are pulled or combed from pubic areas that may
24 contain trace evidence.

25 There are long, possibly six inch long or eight inch long

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1 wooden dowels that are thin, like a Q-Tip with only the cotton at
2 one end, and these are placed in every orifice on the victim's
3 body.

4 So there are -- oftentimes, the mouth, these sticks with
5 the cotton swabs are placed into the vagina, the anus; all of
6 these cavities have these swabs placed in them. They're allowed
7 to sit in there for a ten minute period, approximately, while they
8 absorb whatever fluids may be of evidence to us. And then they're
9 collected and separated and placed in separate vials or packages;
10 then that entire kit is resealed and it's often refrigerated,
11 depending upon what's been collected, and then later examined at
12 the lab.

13 Q And you would be present when those swabs or the kit is
14 used or utilized on a particular victim?

15 A Sure, we're there for the whole process. We're there
16 from the moment -- usually, the victim is received in a body bag
17 and the victim is wrapped in a sterile sheet to protect our trays
18 evidence.

19 And usually by the time we get called to come down to our
20 autopsy, the body bag has been opened in the presence of our crime
21 scene investigator, after the seal on the bag has been
22 photographed that nothing has changed from the apartment scene all
23 the way to the start of the autopsy; no one has entered that body
24 bag.

25 And then we're there for the whole process, for every bit

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1 of the evidence collection, all the way through the full autopsy.

2 Q When that evidence is collected from the various parts of
3 a victim's body, is that done pretty carefully by the technicians
4 who are there to collect those swabs?

5 A Yes. It's a very clinical hospital-like atmosphere where
6 every minor little thing -- especially on a case like this, what
7 we would call a who done it -- I mean, we don't know who took this
8 girl's life, or if that's the case, until the doctor makes a
9 ruling that it's a natural death, a drug overdose or an actual
10 murder.

11 So until we know that, we are carefully looking for every
12 fiber, hair, everything we can possibly get off her body to tell
13 us a story about why she's not alive.

14 Q In addition to obviously being present for hundreds of
15 autopsies, I think you said you were in homicide for over a
16 decade, right?

17 A Yes.

18 Q In the years that you were in homicide, have you ever had
19 a case where you, in conjunction with a crime scene analyst, would
20 attempt to get a fingerprint off someone's -- off a victim's body?

21 A Yes.

22 Q In your experience at homicides, are there situations
23 where you would attempt to do that versus maybe thinking it would
24 be futile?

25 A Yes.

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1 MR. PIKE: Objection; he's answered the question. It was
2 a yes or no question.

3 THE COURT: Okay. What is your next question?

4 BY MS. WECKERLY:

5 Q Why would you do that in some cases?

6 THE COURT: There you go.

7 THE WITNESS: Depending upon the condition on how we
8 found the victim, we would make a determination and recommend that
9 processing, to try to determine if there are fingerprints on the
10 body or the use of poll-light, which is a multiple lighting
11 technique, to see if there were any marks or saliva or foreign
12 substances on the skin that we couldn't see with natural or
13 fluorescent lighting. So what it boils down to is simply we try
14 to describe the conditions that the body was found in and see if
15 those techniques would work.

16 Now I know that an emersed body, a body that had been
17 emersed in water for a period of time is not going to present good
18 for us for developing a fingerprint by use of chemicals.

19 MR. PIKE: Objection, Your Honor. He's testifying as an
20 expert in the areas that he isn't qualified in.

21 THE COURT: I don't think --

22 MR. PIKE: His opinion as to why he didn't do it, he's
23 offered his opinion and now he's interpreting whether the -- the
24 dynamics of it, processes done; and he's not a CSA; he hasn't
25 lifted prints like that.

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1 THE COURT: But it's under his supervision that this is
2 done and he's done hundreds of these and he's telling the jury why
3 in one instance a CSA does it and why, in another instance, he
4 doesn't. It's his call.

5 Go ahead, Detective.

6 THE WITNESS: Okay. So to follow up with that, we made a
7 determination -- I made that call that we would not need to
8 process for fingerprints by use of chemical fuming, which is one
9 of the techniques, because of the emersion in water, just like you
10 wouldn't do that with a body that was burned beyond recognition,
11 because the skin was burned, so you wouldn't use that technique in
12 that type of a situation either.

13 BY MS. WECKERLY:

14 Q So in your experience as a homicide detective, is it a
15 pretty common thing to be able to recover an identifiable print
16 off a body or is that sort of a rarity?

17 A It's very rare. As a matter of fact, I've had a case
18 where I've had that happen and a fingerprint was observed and
19 collected, however, it was not identifiable.

20 So it's very rare that you can get a chemical fuming of a
21 body and raise a fingerprint.

22 Q Okay. And you had one case where you know that's
23 occurred?

24 A Yes.

25 Q One last question: When you observed the victim in the

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1 bathroom out of the bathtub, could you tell, just from looking at
2 her, whether or not she had been sexually assaulted?

3 A No.

4 Q There was no clear external injury to her?

5 A No. I mean, we look at female victims and think all the
6 time that there could be a sexual issue involved whenever we're at
7 a scene like that. Or males, for that matter.

8 But in this case, we were open minded because there
9 wasn't any outward signs. She wasn't displayed where -- we have
10 seen in some cases where a victim had been displayed in a position
11 that might indicate there had been a sexual assault.

12 So just the way that we saw her in the bathroom, there
13 was no way to conclude that there was a sexual assault.

14 MS. WECKERLY: Thank you. I'll pass the witness.

15 THE COURT: Mr. Pike.

16 MR. PIKE: Thank you.

17 CROSS-EXAMINATION

19 BY MR. PIKE:

20 Q Congratulations on your retirement?

21 A Thank you.

22 Q Good to see you again.

23 Showing you what's been admitted as Exhibit Number 40.

24 When you were going through and examining or determining
25 what processing was going to be done, I see that there is a mark

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1 on the back side of the tub about there. (Indicating)

2 Yeah, that one.

3 A Yes.

4 Q You were able to look at that and were you able to
5 determine whether or not that indicated to you that there may have
6 been blood there or contact with the deceased?

7 A I know that I saw that mark and it had the appearance of
8 blood, but I don't know that -- you know, I never got the results
9 about whether that was or not and I don't know whether it was
10 collected or not. I believe it was.

11 Q Okay. And you would have that collected, because where
12 that is situated, it may have been consistent with a fall or a
13 forcible impact with the deceased or with somebody else at that
14 location; and if it was human blood, you would want to know if it
15 was, number one and number two, whose it was?

16 A Right. When we spoke about the victim in that position,
17 I wasn't aware of the fact that there was trauma on the back right
18 corner of the scalp and that blood presence on the wall had more
19 of a transfer than a location of injury; in other words, a
20 bleeding object leaned against that wall, rather than the object
21 struck that wall and that's what caused it to bleed, because that
22 wall had a smooth surface. And so I drew a different conclusion,
23 but I didn't learn until autopsy about that laceration that was at
24 the back side of the head.

25 Q And having learned of that, when you say it's transferred

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1 blood, is it something that -- it may have just been associated
2 with the head striking it or it may have had contact with another
3 person who then transferred the blood over there? (Indicating)

4 A Well, a transfer is simply that. I mean, the wall is not
5 bleeding. It's blood from something else, so it was transferred
6 to the wall.

7 And what items transferred it? Was it the actual
8 bleeding part of the body or was it somebody that touched it with
9 a hand or a glove or something like that?

10 That particular blood smear had more of the impression
11 that was consistent with the head hair on the victim.

12 Q And you directed that that item be collected just for
13 follow up?

14 A Yes.

15 Q Because when you went into the scene -- correct me if I'm
16 wrong -- you didn't know whether it was an accidental death, a
17 homicide, a drowning; you weren't certain what was the cause of
18 death?

19 A No, absolutely. That's why we were called. That's why
20 we were called by patrol.

21 Q And that's why you come out and that's why you take so
22 many photographs, because not knowing what it was that actually
23 occurred, until after you get the forensics back, you want to make
24 sure you take a photograph of potentially everything that may have
25 significance at a later time?

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1 A That's true. Although I talked about parts of the
2 apartment that might be out of play, we still take overall
3 photographs because, at some point, should the investigation swing
4 in a different direction, we may need to refer back to an item
5 that was or was not in that apartment, such as that bag that was
6 on the counter in the kitchen or a missing electronic component or
7 stereo or something like that.

8 So the number of photographs isn't really indicative of
9 the case, but it's the quality and the things that are taken, the
10 photographs that are taken.

11 Q And in going through and making additional determinations
12 in relationship to that, you went through and directed that
13 photographs be taken showing the general area of where the love
14 seat was.

15 A Right.

16 Q And this is -- you can't see it very well on that part,
17 but these actual photographs will go back to the jury.

18 This also shows the location in the room of where the
19 speaker wire was.

20 A Yes. It's just above your index finger there on the
21 floor, as a matter of fact, in the darkened area of the
22 photograph.

23 Q And that displays something that you felt was amiss?

24 A Yes. The cord was.

25 You know, you don't walk into an apartment and expect to

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1 see an electrical cord with bare ends or a speaker wire just
2 laying on the floor there; and it makes you think of, well, what
3 was it hooked up to?

4 Q And when you were having these photographs taken, had you
5 been informed that it was the belief of the occupants of the
6 apartment that there were items that were, in fact, missing,
7 things that had been taken?

8 A Yes.

9 Q So you felt certain, at that point in time, you were
10 processing a crime scene of at least a burglary or a theft?

11 A Yes. I mean, we have a deceased individual in a room and
12 there appears to be other criminal elements involved. So we're
13 looking at this not so much as a heart attack or a drug overdose
14 as there seems to be something else amiss here in this apartment.

15 So, absolutely, we are thinking that there are things
16 missing, if that's answering your question, sir.

17 Q It is. It is.

18 A Okay.

19 Q Also, in going through that, you try to ascertain the
20 items that you -- well, ascertain where the items were that are
21 missing so that you can document how it appeared and if there is
22 any evidence that may help you determine how it was removed, such
23 as the pillow case?

24 A That's correct. We would often contact a person with
25 knowledge of the interior of the apartment. In this case, it was

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1 the mother of the victim. We would have such a conversation with
2 her about the condition of her apartment after our victim was
3 removed, so that she wouldn't have to experience seeing her
4 daughter in that position again and then we would have done our
5 forensic work. Now we could bring Mom back into the apartment,
6 say, what's wrong with your apartment here, what's missing?

7 And that's where we would learn things like the pillow
8 cases and the stereo and the cell phone and things like that.

9 Q That's also important, because as a detective, as a
10 homicide detective investigating an offense like this, you've got
11 a panoply of tools that you can use.

12 For instance, if jewelry is taken, you have the ability
13 to contact the pawn shop detail?

14 A That's correct.

15 Q And would you describe for the jury what the pawn shop
16 detail is and what they do.

17 A The police department, years ago, created a detail, a
18 couple of detectives and civilian employees, that receive
19 information from all pawn shops in Clark County of items that are
20 pawned by an individual.

21 If you pawn your television, produce identification,
22 whatever state it happens to be from, and that item that's been
23 pawned, at which store, by whom, is brought to the attention, in
24 paper form, faxed, as a matter of fact, to the police department,
25 where those items are then compared to theft items that have been

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1 stolen in recent days or months.

2 And so it's sort of a stop gap or a checkpoint so that
3 thieves that are in the world don't steal something, take it to a
4 pawn shop, get the money for it and you don't ever see your ring
5 or television or whatever it is again. And the pawn shop is
6 successful in reuniting stolen items with victims because of the
7 work that they do.

8 Q And in reference to that, they also have the information
9 available to them as to the individual that pawned the item.

10 A Provided that's the information of the person that pawned
11 it.

12 Q Provided it's the real name?

13 A That's right.

14 Q And there is also something that's called a dropped pawn.
15 Are you familiar with that term?

16 A No.

17 Q Okay. Have you heard of people going into pawn shops --
18 well, let me go back.

19 Besides being a homicide detective, you've served as a
20 detective in lots of other areas, haven't you, over your career?

21 A A couple others. I was assistant team leader in our SWAT
22 unit for four years and I was a narcotics detective for ten years.

23 Q And in doing that, you have come into contact with people
24 that go to pawn shops and just sell something; they don't -- they
25 never intend to redeem it?

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1 A That's true.

2 Q And if I was to suggest to you that a dropped pawn would

3 be that type of a transaction, would that sound right to you?

4 A That sounds fine with me. I mean, I'm aware of the

5 technique. I didn't know that terminology.

6 Q Okay. So you had the ability -- you have that tool at

7 your hand.

8 You also have the ability to bring in the CSAs who take

9 the photographs and preserve, photographically, the scene and you

10 direct that?

11 A Yes.

12 Q You bring in CSAs to do the fingerprinting?

13 A That's true.

14 Q And you work collaboratively with them to say I think you

15 should take these fingerprints over in this area and they may

16 suggest other areas also?

17 A Right. And there again, as I described under direct

18 examination, we try to figure out what rooms or what the part of

19 this apartment is in play, so that we're not fingerprinting the

20 back shelf of a kitchen closet, trying to find a fingerprint that

21 may be of the owner of the apartment or a previous owner.

22 We are going to work our way out from the location of our

23 victim and try to find out what rooms are in play here. Is the

24 bedroom involved? Yes, because of the missing pillow cases.

25 Is the living room? Yes, because of the missing stereo

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1 or the broken wire that we saw. And also, obviously, the

2 bathroom. And so we concentrated primarily on the bathroom.

3 Q And you also had concentrated on some CDs?

4 A Yes.

5 Q And the items that are on the floor, the bottle and the

6 food items?

7 A That's true.

8 Q They were on the floor. They were in front of the TV.

9 So they were enough out of place that you thought, well, it was

10 worth investigating and fingerprinting that?

11 A Right. There was fingerprint work done on the plastics

12 of the snacks that I described; and there was also DNA work done

13 on the threaded rim of the Gatorade bottle.

14 Q An because there was a stereo that was missing -- and you

15 believe some CDs had also been taken?

16 A Yes. I mean, it was sort of a -- stereo goes, maybe some

17 CDs near that dust shadow that I referred to. So they were likely

18 to have been touched by the unknown person. So those particular

19 CDs were dusted for fingerprints.

20 Q And then when fingerprints are retrieved from those

21 items -- which they were in this case; am I correct?

22 A There were lifts taken by the crime scene investigators,

23 but the fact that you lift what appears to be a fingerprint may

24 not necessarily be a fingerprint when the actual people that

25 analyze fingerprints look at them. And I don't know if that's

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1 confusing or not.

2 But a crime scene investigator at a scene may powder what

3 looks like a smudge mark or a fingerprint and may see ridge

4 detail, but when it goes under the microscope for a comparison to

5 an actual human being, there may not be enough lines and ridges to

6 make that comparison. So it would be considered a non-print.

7 Q And that may be the tips, it may be the side, it could be

8 anything that has ridges that produces something that sort of

9 looks like a fingerprint?

10 A Yeah. Most of the time, it is a fingerprint. It's just

11 it was not laid down perfectly. It was an extra sweaty hand, a

12 wet hand, it was a bad surface, not a smooth enough surface to

13 leave a good transfer.

14 There are so many things that can affect a fingerprint,

15 age, weather, too many things for us to talk about, certainly me.

16 I don't know about fingerprints that much, just enough that you

17 don't get them all the time.

18 Q Well, this was inside an apartment, within an hour or two

19 of the death, so there certainly wouldn't have been any weather

20 that would have affected this?

21 A No.

22 Q And the fact that the -- or there were identifiable

23 prints that were then processed and submitted to AFIS.

24 You know what AFIS is?

25 A Sure I do.

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1 Q And would you describe for the jury what AFIS is?

2 A Sure. AFIS is an acronym for the Automated Fingerprint

3 Identification System, AFIS.

4 And in there, in that system data base, are the perfectly

5 rolled or perfectly documented ridge details of the fingerprints

6 of the people in that data base. If they're not clear, they're

7 not in AFIS.

8 My fingerprints are in AFIS; many people in gaming are in

9 AFIS. If my fingerprint was at a scene, such as touching that CD,

10 and it wasn't clear, AFIS, the computer program, would not have

11 hit on my fingerprint. So it has to be a good print that's lifted

12 in order for you to get an AFIS hit and the person has to be in

13 AFIS.

14 Well, everyone isn't in AFIS. So the fact that we didn't

15 get prints in this case off of the CD is not particularly

16 alarming. As a matter of fact, the proof is in the pudding,

17 because if those were owned by the owners of the apartment, we

18 should have gotten their fingerprints on those CDs.

19 Q And you got fingerprints from that; and, usually, at a

20 scene, to eliminate finding unnecessary work, the technician will

21 come out and say, well, let me get the prints of -- in this case,

22 Debra Quarles and Sheila Quarles, and you know that they take

23 fingerprints at the time of the autopsy, so that they will have

24 those fingerprints?

25 A Absolutely.

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1 Q Right?

2 A Right.

3 Q And if you have a suspect, you can go in and you can get

4 their fingerprints and you can take those into the CSA and say,

5 look at these two, match them?

6 A That's true.

7 Q Or not match them. You are not limited to AFIS. You

8 have that tool to go in and get those fingerprints, right?

9 A That's true.

10 Q When you came into the apartment, did you notice whether

11 or not the door was locked? Did you check it to determine,

12 although it was open to you, was the door knob itself locked?

13 A When I got there, the door was in the standing open

14 position. I did not open the door. I was informed about the

15 condition of the door, which was probably two or three deep in

16 this story by the time I got it. I was there about an hour after

17 the 911 call.

18 Q And you were over there, you were securing the scene,

19 overseeing the investigation of the scene; the other detectives

20 were out doing interviews, interviewing the people that, number

21 one, would identify themselves, and, number two, were in the

22 neighborhood.

23 And you weren't involved in the process of doing either

24 of those two things?

25 A Well, I wasn't out identifying people in the

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1 neighborhood. That's true.

2 Q And you were there until nine o'clock in the evening.

3 Did anybody come into you, into the apartment, and say: Hey, I'm

4 her boyfriend. I had sex with her just before she died.

5 A Well, no, obviously, no one said that to me, for a couple

6 of reasons. We have a crime scene --

7 Q I'm not asking for reasons.

8 A Perimeter.

9 Q That's a supposition. I'm just asking if anybody came in

10 and told you: I had sex with that poor girl before she died?

11 A No one said that to me.

12 Q And because you are overseeing the detectives that are in

13 there, you are the supervisor, if there was a witness that had

14 come forward and said, hey, this guy said that he had sex with her

15 an hour before she died or two hours before she died, you would

16 have been informed about that, wouldn't you have?

17 A Absolutely.

18 Q And you weren't informed of that? You were never told

19 that anybody came forward to do that or said that?

20 A I don't really know how to answer that because there is

21 no truth in that. If somebody had come to a perimeter patrol

22 officer or a detective at that scene and made that statement, we

23 would have a tape recorded statement or we would have interviewed

24 and talked to that individual.

25 Q So if the individual, who is subsequently identified as

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1 having sex with her just before her death or associated with her

2 death -- well, let me take it a step back. I'm sorry. I'll

3 withdraw the question at this time.

4 You used the term associated with, when you were

5 describing items. For instance, the items on the floor are

6 associated with the TV. They're nearby it. I'm sorry. Is that

7 okay if I leave it sideways like that?

8 A Yeah, if you must.

9 Q Okay. That's better. I'm sorry.

10 A Okay.

11 Q And those pills are associated with that table?

12 A Yes, I would say they're on the table. I would say

13 they're associated with the table.

14 Q All right. So associated means that there is some

15 proximity to or connection with; and would that be your definition

16 of associated with?

17 A I suppose that's good to say that.

18 Q Okay. So if someone was associated with having sex with

19 the deceased a short period of time before her death, you would

20 want to know about that person; is that correct?

21 A Sure. Of course, we would.

22 Q You'd also want to know everybody that went into that

23 apartment that afternoon, because you can't -- you come out about

24 three and then you are informed that there is a death that's

25 occurred and you're coming in.

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1 Do have a list of the people that was provided to you

2 that you needed to contact who had gone into that apartment or

3 come out of that apartment that afternoon?

4 A Yes, we do.

5 Q Okay. Would you read that list for me.

6 A Sure. I have it here in a report and I also know that --

7 I may be able to give you some of those by their description.

8 Do you want actual names?

9 Q Names, if you could.

10 A Okay.

11 Q And what you are referring to is a notebook that contains

12 a collection of the reports that are associated with this case.

13 And that's going to refresh your recollection?

14 A Yes. This is what we call a homicide book. (Indicating)

15 These binders are common and associated with every homicide that

16 occurs in our valley. Some cases have a single book; some have

17 multiple books.

18 And in here is the work of the detectives and the crime

19 scene investigators in this particular incident, along with

20 photographs and tape recorded statements and things like that. If

21 they're on tape still as they were in '05 and if we're digital

22 now, like we are, they would be either reduced to a CD or

23 something like that. But this is the book about this case.

24 Q Okay.

25 A And I know that in the apartment was a woman named Debra;

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1 that's the mother of the deceased, Debra Quarles. She entered the
2 apartment.

3 I know that there was another woman. Her name is, I
4 believe, Janie Brass, that entered -- a friend of Debra Quarles
5 that entered the apartment when she heard her screaming.

6 Q Just the names. We've heard their involvement.

7 A Okay. Another woman named Elizabeth Tolhurst, had an
8 apartment there, H-66, a nearby apartment.

9 And then I know that we have a list of the officers that
10 were the first responders that entered and a list of the fire
11 fighters or paramedics that entered the apartment.

12 So the officers would, at the scene, document the patrol
13 officers that arrived. They would ask the mother: Who, besides
14 you, went into the apartment after the finding of the deceased?
15 And then we would be able to document the fire paramedics
16 responders as well.

17 And then, of course, all of us from homicide and the
18 crime scene investigators are documented in that as well.

19 Q Would George Brass be documented in that file?

20 A No.

21 Q Would it surprise you that George Brass went into that
22 apartment and had sex with Pooka, Sheila Quarles, at a time that
23 is associated with her death?

24 MS. WECKERLY: Objection; that's not in evidence.

25 THE COURT: Well, wasn't that in your opening statement?

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1 discovered.

2 Q And I'm asking you: He didn't come forward. Nobody told
3 you that George Brass was in this apartment and had sex with her;
4 nobody told you that at the crime scene that day, did they?

5 A No. But I'm trying --

6 Q Okay. That's a yes or no question.

7 THE COURT: No, no. Let him answer. Go ahead.

8 THE WITNESS: I feel that your line of questions was:

9 Did that man go into that crime scene while we were there? And
10 that's not true.

11 BY MR. PIKE:

12 Q I didn't ask you that way. I said nobody told you that
13 George Brass was in there?

14 A No, no.

15 Q Okay. And had you known that day, at that time when you
16 were processing that scene or having it processed, that someone
17 had had sex with her in that apartment, then you would have
18 suspected more of a sexual component; would that be fair to say?

19 A Well --

20 Q You are processing a homicide; you may be looking at
21 processing a sexual assault?

22 A Uh-huh.

23 Q And so you may look at things differently, such as --
24 well, if he said that he had sex with her on the floor, you might
25 be more concerned about all of the stains on the floor; would that

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1 MS. WECKERLY: We can establish that with evidence, but I
2 don't know that we can -- Mr. Pike didn't say the time.

3 MR. PIKE: Okay. I'll rephrase the question.

4 THE COURT: Sometime earlier that day.

5 MR. PIKE: Okay.

6 BY MR. PIKE:

7 Q Sometime earlier that day, if I was to inform you that an
8 individual by the name of George Brass went in and says that he
9 had sex with Pooka, the deceased, that's information that's new to
10 you?

11 A Okay. I'm trying to see if I have your question --

12 Q Let me go back and -- It may not be a fair question to
13 ask you because you are retired.

14 When did you retire?

15 A Well, December of '07.

16 Q Okay. So information that came to light in August of
17 2008, you wouldn't know?

18 A No, not really, no.

19 Q So if I told you, in 2008, George Brass finally came
20 forward, after the police found him, and said, yeah, I had sex
21 with her that day inside that apartment, that's news to you?

22 A Well, as I sit here today, it's not news to me. I'm
23 aware of what you are saying.

24 However, your line of questioning was about what happened
25 at my crime scene at 1451 hours on the day that that body was

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1 be a fair statement?

2 A Yes. I mean, not to say that we didn't examine those.

3 Q I'm not saying that you didn't, but it's -- had you had
4 that knowledge, it would have allowed you to focus your
5 investigation?

6 A Well, we didn't have that knowledge until after the
7 results of the swabs came back though.

8 Q Right. And so then, you went back with the sexual
9 assault -- or CSA and went back to the scene and you did all the
10 lighting and cut out pieces of carpet and do all that?

11 A No, I didn't, and I don't know that that occurred in this
12 case either.

13 Q It didn't?

14 THE COURT: Well, okay. Don't -- you are not testifying.

15 Just ask him a question.

16 MR. PIKE: Okay. All right.

17 BY MR. PIKE:

18 Q So, to your knowledge, that never happened; nobody went
19 back to that scene and examined the carpet for any sort of
20 presence of spermatozoa or sperm, or any other biological evidence
21 associated with a sexual assault?

22 A That's true, to my knowledge.

23 Q To your knowledge?

24 A I don't know.

25 Q To your knowledge. Okay.

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1 And all these questions are to your knowledge.
 2 The other thing that you have that is available to you as
 3 a tool is going through and preparing photographic lineups?
 4 A Yes.
 5 Q And sometimes that's done when you have an identifiable
 6 suspect or someone that you believe may have been at a location
 7 and you want to check and see if anybody in the area or who you've
 8 been talking with can identify any of those individuals.
 9 Would that be a fair description of the whole process?
 10 A Well, so you are saying that we as detectives, knowing of
 11 an individual that's a suspect in the case, that we would return
 12 to that complex to show photographs, an array of photographs, to
 13 people to see if that person had been there?
 14 Q Yeah.
 15 A I think at the time that we were there, and for quite
 16 some time afterwards, we did not have an identifiable suspect, so
 17 it wouldn't make any sense that we would just -- whose picture
 18 would we take and incorporate in a photographic array to take to
 19 this complex? We didn't have a suspect.
 20 Q Well, as soon as you have a suspect, you can go back and
 21 do it then?
 22 A Well, I don't know at the time -- I wasn't involved in
 23 that aspect of the case when the identification of a potential
 24 suspect came up.
 25 Q Okay. To your knowledge, there was never a photographic

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1 lineup that involved Norman Keith Flowers?
 2 A I don't know whether that occurred or not, no.
 3 Q And, to your knowledge, there was never a photographic
 4 lineup that involved a Jesse Navaro that was located in that area?
 5 As far as you know, there were no photographs done in this case?
 6 A Not that I know of, no.
 7 Q If they're not in the book, it didn't happen?
 8 A It didn't happen.
 9 THE COURT: How much long will you be, Mr. Pike?
 10 MR. PIKE: I'll be very quick.
 11 THE COURT: Okay. We'll a break as soon as you are done.
 12 After the autopsy, the doctor opined that the victim had
 13 been sexually assaulted.
 14 Was there anything in your investigation that would lead
 15 you to be able to conclude where that may have occurred, on the
 16 bed, on the floor, in the bedroom, on the bathroom floor?
 17 THE WITNESS: No, there wasn't anything glaring that
 18 would tell us where that occurred.
 19 And, of course, at some point, we learned that there was
 20 vaginal tears, but I believe in this case that I remember that the
 21 doctor's opinion about the homicidal nature of this was not given
 22 to us that morning at autopsy. I think that it was pondered by
 23 the doctor -- I don't remember for sure -- but I don't know that
 24 we had the determination that we had a murder with a sexual
 25 assault right away.

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1 I don't know if that answers the question, Your Honor, or
 2 not, but I don't know what room -- the sexual assault, which we
 3 now know occurred, I don't know what room it happened in.
 4 BY MR. PIKE:
 5 Q You have available also for your use as a detective
 6 access to a number of different data bases, in which you can, once
 7 an individual is identified or known to you --
 8 A Uh-huh.
 9 Q -- that you can actually find them by their nicknames.
 10 So if I was to, for instance, tell you, I'm looking for
 11 somebody whose nickname is Chicken, you have the ability to access
 12 some data bases that would come back and say, well, these are
 13 people whose nicknames are Chicken?
 14 A Yes.
 15 Q And by using the same data bases that are available to
 16 you, you, oftentimes, can find friends or people that have had
 17 contact with or are relatives of those individuals?
 18 A Yes. If you know the moniker of an individual, there may
 19 be an association list in one of those data bases that Chicken is
 20 associated with this individual and Chicken's name is such and
 21 such and this person's name is such and such.
 22 Q And so Chicken may have been friends with these other
 23 individuals, and then you can use that investigative technique to
 24 obtain photographs of those individuals and find whether or not
 25 they match descriptions that have been given to you by eye

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1 witnesses?
 2 A That's all true. I wasn't involved in any of that aspect
 3 of this case, but that is all true.
 4 Q Okay. So that was another tool that was available, but,
 5 apparently, there are no lineup photographs that were developed
 6 that way either.
 7 A There again, there are no -- that I am aware of --
 8 photographic lineups in this file. So I would have to say that
 9 these detectives, if they did, they kept them in another location.
 10 I was the supervisor at the scene, but I'm not aware of the
 11 photographic lineups that were used in this case.
 12 Q Okay. And you weren't following through after, in 2008,
 13 when the information, I'll represent to you, may have come forward
 14 to you, that an individual admitted to having sex with her in that
 15 apartment?
 16 A That's true.
 17 Q All right.
 18 A I wasn't there. That's right.
 19 MR. PIKE: I don't have any further questions.
 20 THE COURT: Anything else?
 21 MS. WECKERLY: Yes.
 22 THE COURT: Is it going to be brief?
 23 MS. WECKERLY: Not -- no.
 24 THE COURT: All right. We'll take our afternoon recess.
 25

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(Jury admonished by the Court.)

THE COURT: We'll have a ten minute recess. We'll pick up at 3:30.

(Recess in proceedings.)

(The following proceedings were had in open court in the presence of the jury panel:)

THE COURT: Back on the record in Case Number C228755, State of Nevada versus Norman Keith Flowers.

Let the record reflect the presence of the defendant, his counsel and counsel for the State; all ladies and gentlemen are back in the box; the witness is back on the stand.

Detective Vaccaro, you are still under oath.

Go ahead, Miss Weckerly.

MS. WECKERLY: Thank you.

REDIRECT EXAMINATION

BY MS. WECKERLY:

Q Detective, on cross-examination, Mr. Pike was asking you about the pawn detail; do you remember that?

A Yes.

Q If you had an item stolen that's sort of a generic

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1 familiar with fingerprints and how they can and can't be valuable
2 in a particular investigation.

3 If an individual is someone who is social with the victim
4 or spends time with the victim or her family, would finding his
5 fingerprints inside her residence be particularly helpful in an
6 investigation?

A In that scenario, no, it wouldn't.

Q Why is that?

A Well, just like being inside of Debra Quarles' apartment,
where she lived with our victim Sheila, if we found -- let's say
we spent a half an hour trying to lift a fingerprint off of one of
those CDs, and time well spent, and then we get it back that
that's Debra Quarles' print, that didn't help us a bit because
that's a person that's associated with our victim.

And I use that word associated again, just like we would
have to learn about our victim, victimology, the study of our
victim and who is around our person, that would help us eliminate
or include people whose fingerprints could be or should be present
in that apartment.

Q And in your experience, are fingerprints -- I mean there
is no aspect to time when they're placed, correct?

A No. I know that fingerprints have a life to them. They
can deteriorate with time; and like I said to Mr. Pike, some
elements change, like heat, sun, weather, rain. That wasn't
present inside the apartment, but I don't know that there is a

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1 electronic item, like a stereo or something like that, in your
2 experience, how successful is the pawn detail in identifying a
3 generic stereo as being taken; you know, as belonging to a
4 specific individual?

A Well, in my experience, very unsuccessful if you don't
have very permanent markings that you may have etched into your
device. Let's say you have a stereo and you walk into a pawn shop
and you pawn it and you go to the police department and say I had
a Kenwood stereo stolen. You can say you could check in the pawn
shops in the area and you can walk into the pawn shop and say have
you had any Kenwood stereos come in recently? And they would say
probably 50 and they will say what is the serial number and they
will say I don't know.

They will say: Did you have a personal marking like a
social security number that you etched into it? No.

Well, you need to have more information than that because
we don't have that -- we need more information. We get all kinds
of stereos in here and we get Kenwoods and name brands. So it
would be unsuccessful in that scenario.

Q So a generic item like that and absent a serial number,
not a high percentage of identification of the property through
pawn by that means?

A That's true.

Q Mr. Pike was asking you about fingerprints and,
certainly, in your experience as a homicide detective, you are

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1 specific way to age a fingerprint within an hour range, but more
2 things like was there an extra layer of dust on top of the
3 fingerprint, you can presume something about its age, but I don't
4 know about that.

Q Mr. Pike asked you about sort of when you are at a crime
scene and, in your experience, when you start investigating or
talking to people at a particular crime scene, when you are at a
scene as a detective or law enforcement, do you have the ability
to force an individual to talk to you and give you information?

A No, we don't force anybody to talk to us. Certainly at a
crime scene, outside of our crime scene tape area, we're so far
insulated where we are working at the front of this apartment that
if there was someone on the perimeter tape, I wouldn't even be
able to see him, much less talk to him at that point. Our
officers would have taped that apartment complex out to the
extremes, the apartment complex parking lot.

So there wasn't actually a tape where people could stand
and look right in the front door of the apartment. It was further
back than that.

Q But I guess, in fairness, if someone had said I have
important information regarding this case and that was said to a
detective, certainly one of the detectives at the scene would have
documented it, taken a report or maybe even tape recorded the
person?

A Sure. I'm not saying at our crime scene tape that people

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1 don't get people that walk up on them and say, hey, I know
 2 something about an individual in this complex. What's going on?
 3 We get that all the time.
 4 And the patrol officers are going to immediately take
 5 their identification; oftentimes, they take their driver's license
 6 from them because it's sort of a way to make sure they don't leave
 7 the scene while they're trying to get that person established with
 8 a detective. So they take the driver's license; they keep it.
 9 And now the guy says they've got my driver's license and now I'm
 10 kind of stuck here to get it back to my officer.

11 But those officers and those detectives that are greeted
 12 by people at the scene tape are always going to evaluate their
 13 information and if it's important, they're going to tape record
 14 them or they're going to get a written statement from them.

15 Q Mr. Pike was asking you about who had access to or who
 16 went into the apartment after Miss Quarles was murdered and I
 17 think you spoke about the individuals who told the detective: I
 18 went in the apartment, I pulled her out of the tub and sort of
 19 facts like that --

20 A Right.

21 Q And then you are aware that the paramedics went in and
 22 patrol went in and then homicide and the crime scene analyst went
 23 in?

24 A That's right.

25 Q Obviously, though, in terms of investigating this case,

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1 what's more relevant or what's more of concern, in terms of
 2 deciding or assessing who's responsible for the homicide, is who
 3 was in there prior to her death?

4 A Obviously. I mean, we controlled it from the point that
 5 the 911 call was made and the first officer arrived. Once that
 6 officer arrived, his responsibility was to protect it and document
 7 from anybody who was there from that point on.

8 What happened before him, well, that's why we're there.
 9 That's the mystery. Of course, we would want to know that.

10 Q And certainly if you had a witness or someone who could
 11 tell you, look, I was here all day watching that day and I saw
 12 these five people going in and out of there, obviously, that's
 13 what you would want, but that's not realistic in terms of an
 14 investigation?

15 A No. Of course, we're going to do what we call a canvass.
 16 We're going to talk to as many people and knock on as many doors
 17 and see who will talk to us.

18 I mean, we're the police. We're in an apartment complex.
 19 Does everybody want to talk to us? No.

20 So sometimes we have people that say: I just got home.
 21 What's going on? Other people say: I was here all day and didn't
 22 hear a thing.

23 But the fact that our officers are there and doing that
 24 canvass and talking to everybody that they can talk to, that's
 25 being done and that's being brought back to us as detectives that

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1 are there and they're giving us whatever we can evaluate to see
 2 whether it's important and whether it's in play or not.

3 Then we go to that individual and we interview them and
 4 we tape record them if they will let us tape record them.

5 Q Mr. Pike asked you some questions about George Brass.

6 And you are familiar with that name.

7 A Sure, I know who he is.

8 Q And he discussed with you how he's been identified as an
 9 individual who admitted to having sex with the victim Sheila
 10 Quarles in the morning before he went to work?

11 A Right.

12 Q Now, in terms of an investigation --

13 MR. PIKE: I object. The phrasing of that is not proper.

14 I'm not conceding that he did it in the morning.

15 THE COURT: Sustained.

16 MR. PIKE: I believe -- thank you.

17 THE COURT: You are going to put on evidence and the jury
 18 is going to decide how that's going to shake down.

19 MS. WECKERLY: Sure.

20 THE COURT: But at some point, in the last few months,
 21 Mr. Brass came forward and admitted to having sex with her earlier
 22 in the day.

23 MS. WECKERLY: Certainly.

24 THE COURT: Earlier meaning before the murder.

25 MR. PIKE: Well, I object to him coming forward. He was

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1 found. They went out and searched and found him. He never
 2 voluntarily came in and did this.

3 MS. WECKERLY: Well, he voluntarily gave a statement so I
 4 would say that's voluntarily.

5 THE COURT: All right. Go ahead.

6 BY MS. WECKERLY:

7 Q In terms of Mr. Brass, or even a similar type situation,
 8 the fact that a female victim had consensual sex with someone
 9 known to her prior to her death, that won't necessarily implicate
 10 or mean that there was a sexual component of her homicide later
 11 on, would it?

12 A No, not necessarily.

13 Q I mean, women can have sex with people consensually and
 14 later get murdered and there is not necessarily a sexual component
 15 to the homicide?

16 A That's true.

17 Q But when you have an individual who has consensual sex
 18 and then maybe has lacerations to her vagina and has an additional
 19 source of DNA in her, then perhaps there might be a sexual
 20 component to the homicide?

21 MR. PIKE: Objection; calls for medical conclusions. The
 22 doctor can testify to that.

23 THE COURT: Well, the doctor did testify to that and it's
 24 in the doctor's report, in his file. And he's done hundreds of
 25 these; he's able to testify to that.

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1 Go ahead.

2 THE WITNESS: Yes, I would say that if there is some
3 damage that's associated with a sexual assault and it's in
4 conjunction with the death, that you would have to give that a
5 stronger bearing than you would that previous sexual activity.

6 BY MS. WECKERLY:

7 Q In this particular case, during the initial few days
8 after Miss Quarles was murdered, there was no easily or clearly
9 identifiable suspect, correct?

10 A Yes. To my knowledge, this was an unsolved -- what I
11 call -- what we all call a who done it, which was unsolved for
12 quite a period of time.

13 Q And when the findings of autopsy comes out that she has
14 evidence of being sexually assaulted, obviously, as a detective,
15 at that point, you all want to know who she had sexual contact
16 with?

17 A Yes, of course. When it was determined that there was a
18 vaginal tear, that became important to us.

19 We were learning more about our victim at that point and
20 now we were awaiting the results of our swabs that were collected
21 at the autopsy, because should those swabs bear DNA, then now,
22 hopefully, we would have a profile of an individual that could
23 tell us more, because whoever's DNA was going to be in our victim,
24 that person had something -- something to tell us, because that
25 was near the time of her death or at the time of her death.

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1 It doesn't tell you any more about the investigation or
2 how she was killed if he says I had sex with her on the living
3 room floor, on the kitchen floor or on the bedroom floor? That
4 doesn't tell you anything about who killed Sheila Quarles, does
5 it?

6 A No. I mean, he could have said he had sex with her at a
7 location other than the apartment even, for that matter. The fact
8 that he said that he had sexual contact with her, but then
9 additional information -- or additional investigation showed us
10 that he wasn't a suspect in that, where they had sex wasn't of
11 importance to us; and, at that point, I think that was beyond my
12 time there anyway.

13 So in my experience, that wouldn't have been important to
14 me.

15 Q And the fact that someone has sex with another individual
16 on a floor or on a carpet, that wouldn't necessarily mean that
17 sperm or some kind of DNA would end up on the carpet by virtue of
18 the sexual activity, would it?

19 A No. But I guess we could say that depending upon the
20 positioning of the two individuals having sex, you could make a
21 conclusion whether or not there was some deposit of semen on the
22 surface that they were having sex on.

23 So I don't really know how to answer that.

24 Q Maybe, maybe not?

25 A It doesn't mean it's always going to be there.

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1 So that was important for us to get those results back.

2 Q Because, at that point, a sexual assault and the homicide
3 are linked?

4 A Sure they are.

5 Q In terms of time?

6 A Sure.

7 Q Now, if Mr. Brass -- or assuming Mr. Brass admitted or
8 told detectives that he had sexual contact with Miss Quarles on
9 the day of her death, prior to her death, the room or the location
10 that the intercourse took place wouldn't be particularly relevant
11 in the investigation, would it, if it was a consensual encounter?

12 A Not with regard to that sexual contact with regard to
13 Mr. Brass.

14 Q Okay. So if he said that he had sex with her on the
15 floor of one of the rooms in Debra Quarles' apartment, knowing
16 that doesn't necessarily tell you who killed Sheila Quarles later
17 on?

18 A I think that the correct answer to that would be that it
19 wasn't important until we knew more about that sexual activity and
20 whether or not he was a suspect in our case.

21 So I don't know if that's a confusing answer, but when we
22 learned about him as a suspect or not a suspect in our case, when
23 he did not develop as a suspect in our case, then that location
24 that the consensual sex took place wasn't of any importance to us.

25 Q I mean -- yeah, I guess that's my question.

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1 MS. WECKERLY: Thank you.

2 THE COURT: Anything else, Mr. Pike?

3 MR. PIKE: Yes.

4 RE-CROSS-EXAMINATION

5 BY MR. PIKE:

6 Q Detective Vaccaro, when the detectives are investigating,
7 you indicated, at times if there is someone that's getting the new
8 information, they will record that statement, or that individual,
9 that conversation, correct?

10 A Yes. Those recorded statements are voluntary. If
11 somebody doesn't want to be recorded, then we'll do the best we
12 can to have an interview with them. But if they don't want to be
13 recorded, then we won't turn it on.

14 Q Those recordings are then transcribed and you've seen --
15 they're put on a form called a voluntary statement; is that
16 correct?

17 A Right. There is a handwritten statement that a lot of
18 people prefer to do, give us a short story; and then others will
19 do a taped statement, which then becomes typewritten word for
20 word.

21 MR. PIKE: If I may approach the witness, Your Honor.

22 THE COURT: Yes.

23 BY MR. PIKE:

24 Q I'm showing you what is -- appears to be a Voluntary
25

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1 Statement or a transcript of a Voluntary Statement.

2 And would you verify that that's what that is?

3 A That's what this is, yes.

4 Q Okay. And that would advise you or lead you to believe
5 that there was a voluntary statement or a recorded statement and
6 there was a detective that interviewed an individual that was
7 willing to discuss the case with him?

8 A Yes, correct.

9 Q And that individual that gave the statement, name appears
10 on that and that is --

11 A Right. It says the name of the person -- If I pronounce
12 this right -- Natalia, N-a-t-a-l-i-a, Sinna.

13 Q And which detective took that statement?

14 A It says that this interview was conducted by Detective
15 Wallace, Detective Mike Wallace -- he was one of the detectives on
16 our team that was there -- and by Detective Marty Wildman, who was
17 another detective there at the scene working on our squad.

18 Q And she gave a statement about what time?

19 A It says 1901 hours, which would be one minute after seven
20 p.m. Is when it started.

21 Q Okay. And that's a normal process and that's done during
22 investigation?

23 A Yes.

24 Q Okay. If during an interview there are key identifiers,
25 such as monikers, the nickname that you gave before, or something

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1 like gold teeth with initials in them, you are able to access a
2 number of different data bases to determine if there is an
3 individual that has gold teeth with initials in them?

4 A Well, we talked about monikers.

5 Q Right.

6 A Which I would say that it's a more favorable data base
7 than a gold tooth data base.

8 Q Okay.

9 A But there are gold teeth that are identified in data
10 bases in association with monikers. It's all relevant by who puts
11 the data in, based on the interview that's conducted by the
12 officer in the field.

13 So if a uniform officer writes a contact information card
14 of a suspicious person and he does what we call an FI, a field
15 interview, card, that would be put into the data base, that the
16 individual identified himself as Joe Blow, but his nickname is
17 Chicken and that individual had gold teeth or a bald head or
18 whatever it happens to be.

19 So whatever that data was that was on that card or
20 however it got into the system is all relative to the person that
21 writes it down.

22 Q And that's, in part, why officers are trained in the
23 preparation of reports; why you receive training on how to write a
24 report?

25 A Of course.

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1 Q And you've trained other officers, I'm sure, as part of
2 your duties?

3 A Probably, at some point.

4 Q Okay. Now, in reference to the pawn detail, you
5 indicated going to the local pawn shop to determine whether or not
6 there is a stereo, the Kenwood you used, to match that, you can
7 match or find out who has pawned something by going to the pawn
8 shop and asking for the records by name, can't you?

9 A Right. We would actually go to our own detail. We
10 wouldn't necessarily have to go to a pawn shop, but that is an
11 avenue.

12 We would go to our detail within the police department
13 and contact those investigators and say: Here is the name. Tell
14 me if that person has pawned recently; tell me what they found.

15 Q And to your knowledge, from going through that report,
16 there was never such an investigation in reference to the name
17 Robert Lewis, was there?

18 A I know Robert Lewis is a part of this investigative file,
19 but I don't know whether or not he was the subject of the pawn
20 shop examination.

21 Q And because you were unaware of George Brass, because you
22 retired before that time, you don't know whether there has been a
23 pawn shop investigation in reference to the name George Brass
24 either?

25 A That's true.

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1 Q In reference to the fingerprint, the unidentified
2 fingerprint -- we talked about obtaining different, I guess --
3 what do they call them -- exemplars?

4 A Yes.

5 Q So if somebody suspected me of doing something, they
6 would take my fingerprints and they would test them against other
7 ones?

8 A That's true.

9 Q Okay. Now, if -- If an eye witness in this case said I
10 saw so and so -- I'm just filling in the blank here -- with the
11 stereo that was taken from that apartment a couple days later, you
12 as a detective would want to get those fingerprints and you would
13 want to attempt to match them to see if they matched the
14 fingerprints that were inside the apartment?

15 A I would want to get the fingerprints of both of those
16 individuals, the one that told me, to see if he touched the
17 stereo, and so and so's fingerprints, to see if that was true, if
18 they were on there. That's according to, of course, if I found
19 the stereo, so that I could do that examination.

20 Q But even if you didn't find the stereo, but a witness
21 could identify that, or through various means, at least it would
22 be a lead or something you might want to follow up on a cold case?

23 A Well, I don't know if I'm getting confused. I'm not
24 trying to be argumentative. So you are saying I don't have the
25 stereo, so I don't have any fingerprints to compare it to so and

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1 so and the person that told you about it?

2 Q You don't have the stereo, but you do have the name of
3 the individual that has been identified with the witness as having
4 that stereo after the death.

5 A I wouldn't focus on fingerprints at that point. What I
6 would be more focused on is let's talk to both of these
7 individuals and find out what they know about this case. That's
8 where I would go first.

9 Q All right. Now, during the course of this investigation,
10 you were provided with information that there had been a burglary
11 that had occurred in the early morning hours in that apartment
12 complex between one and two. Do you recall that?

13 A I was aware of that while we were at the scene, that
14 there had been a burglary in another apartment complex. That was
15 sort of the buzz while we were there, yes.

16 Q Did you ever identify the individual that committed that
17 burglary?

18 A No.

19 Q In going through the investigation as it was going, when
20 did you first become aware that there was spermatozoa inside of
21 the body of Sheila Quarles?

22 A I don't remember the date. I know that when the results
23 came back from that analysis, because the kit is automatically
24 sent out, once that result came back, it was spoken about by my
25 peers, in my presence, and I was, as they were, enthused that we

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1 had a DNA profile of a male -- as a matter of fact, two; and the
2 fact that there was that presence was encouraging for us in the
3 case because we had a DNA profile. We had more people to talk to.

4 Q And now, looping back around through that, because you
5 were aware that there was a mixture of DNA of at least two
6 individuals, then the clothing became even more important because
7 the clothing could tell you -- could almost give you a time frame
8 as to if that clothing was worn after sexual contact with one
9 person, the other person, or both people; is that correct?

10 A Well, I guess that's sort of an opinion for me there,
11 because I don't know how long somebody wears an item of clothing,
12 what their particular personal habits are.

13 If you were, you know -- I guess I could only go into my
14 own personal tool bag. I can't tell you how often somebody would
15 change an item of clothing that might be stained with the semen of
16 an individual.

17 Q I'm not asking you to pull out a whole cloth and say:
18 Well, this is how this person would do it, because I've seen
19 pictures of it.

20 What I'm saying is that it would be true, based upon your
21 experience in murder cases and sexual assault cases that you have
22 dealt with before, if an individual has sex, a male has sex with a
23 female, and after they done having that sexual contact, then she
24 dresses herself and puts on her panties, gravity takes over and
25 there would be bodily fluids that would be deposited on the inside

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1 of the panties, correct?

2 A Well, if that were the case -- I mean, if you are talking
3 about this particular case --

4 Q I'm not talking about this case. I'm talking about
5 you -- you collected the panties in this case because --

6 A Right.

7 Q -- because that's what happens: People put on their
8 clothing and if there is something in there, it leaks out, right?

9 A And it can, and in this particular case, we examined
10 those items of clothing.

11 Q Right. And the panties had both DNAs on them?

12 A That's right.

13 Q Okay. Now, going back to that, and knowing the
14 importance of evidence as it's collected and going through and
15 wanting to complete the loop and complete the investigation, if
16 you were to collect the clothing that was worn the night before,
17 the pajamas, the panties that were worn the night before, then
18 that would be a piece of evidence that may provide you some
19 information as to whether or not sexual contact had occurred the
20 night before or sometime before, when those pajamas were worn, and
21 that would be a piece of evidence. It may or may not turn out,
22 but it's a piece of evidence, correct?

23 A I don't know. I would say I haven't done that. I don't
24 know that I would do that and I didn't do that in this case.

25 Q And so that potential piece of evidence is not something

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1 that was collected and we don't know what the results may or may
2 not be?

3 A Well, we didn't go through all of her clothing --

4 Q Yes or no, you didn't collect it?

5 A Well, we didn't collect it. We know that.

6 Q Okay. So you didn't collect it, so we don't know what
7 the results are going to be?

8 A We don't know.

9 Q Yes or No, you don't know?

10 A That's true.

11 Q And, finally, you indicated that there was -- I think
12 there was a high saturation of police presence in that area?

13 A Yes.

14 Q Is that a kind way of saying it's a high crime area?

15 A No. More people, more cops. There is lots of people in
16 that area, so there is more concentration of police officers.
17 It's a more densely populated area. It's not -- I don't know
18 really what the statistics are in that area, but I'm sure they're
19 higher than they are at, you know, Mount Charleston or something
20 like that.

21 MR. PIKE: Thank you very much.

22 Nothing further.

23 THE COURT: Anything else?

24 MS. WECKERLY: No, thanks.

25 THE COURT: Detective, thank you.

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1 THE WITNESS: Okay. Thank you.

2
3 (Witness excused.)

4
5 THE COURT: We had a question that doesn't really work
6 for this witness. Can you tell when the trauma occurred because
7 the two -- we had testimony about that from the coroner, the
8 coroner, who as I recall, from notes, who said there were
9 lacerations, but no bruising; and, hence, I know that the vaginal
10 trauma occurred contemporaneously with the killing, no more than
11 20, maybe 30 minimums before. I think that was his testimony.
12 So, hopefully, that answers your question.

13 MS. LUZAICH: Can we approach, Judge?

14 THE COURT: Yeah.

15
16 (Sidebar conference at bench, not reported.)

17
18 THE COURT: Ladies and gentlemen, somebody said one of
19 the potential witnesses may have been talking to the jurors, but
20 not about the case.

21 As a juror, please don't talk to any of the people out in
22 the hallway that aren't jurors, that may be witnesses, just
23 because we don't want to contaminate the jury.

24 MR. PIKE: Your Honor, we do need to make a record of the
25 content of the conversation.

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1 THE COURT: We will do that when we're done.

2 MS. WECKERLY: Qunise Toney.

3 THE COURT: Would you rather do that right now?

4 MR. PIKE: Yes, Your Honor.

5 THE COURT: Okay. I'm going to have to ask you to just
6 step outside a little bit so that we can talk to this potential
7 witness outside your presence.

8 So if you would just, ladies and gentlemen, step outside
9 for about two or three minutes, we will take care of this and then
10 we'll move on. Sorry.

11
12 (The following proceedings were had in open
13 court outside the presence of the jury panel:)

14
15 THE COURT: Come on in, Miss Toney.

16 THE MARSHAL: Judge, do you want her brought in?

17 THE COURT: Yes, Miss Toney.

18 MR. PIKE: While we're waiting for her, we can make a
19 record.

20 The note came to the District Attorney's attention by one
21 of their victim advocates, who was vigilant and watching and
22 assisting the District Attorney in handling their witnesses.

23 THE COURT: That's my understanding, Mr. Pike.

24 MR. PIKE: Yeah. And so it was brought -- as soon as he
25 or she opened it, they brought it to the District Attorney's

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1 presence or knowledge. The deputy D.A.'s have been present in the
2 courtroom throughout the entire time.

3 THE COURT: That's my understanding.

4 MR. PIKE: Thank you.

5 THE COURT: Come on up here, Miss Toney.

6
7 (Witness sworn.)

8
9 THE CLERK: Thank you. Please be seated.

10 State your name and spell it for the record.

11 THE WITNESS: Qunise Toney; Q-u-n-i-s-e, T-o-n-e-y.

12 THE COURT: Miss Toney, I got a note from the District
13 Attorney that said one of their witness advocates noticed you in a
14 conversation with one of our jurors. Did that occur?

15 THE WITNESS: Yeah.

16 THE COURT: Who did you talk to and what did you talk to
17 them about?

18 THE WITNESS: Well, I didn't -- well, I was just standing
19 there. I didn't talk. My friend was talking to her.

20 THE COURT: Who is your friend?

21 THE WITNESS: She's outside, Needra.

22 THE COURT: Is she a witness?

23 THE WITNESS: No.

24 THE COURT: She was talking to one of the jurors?

25 THE WITNESS: Yes. He asked her how does she get picked

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1 for a juror.

2 THE COURT: And you overheard that?

3 THE WITNESS: Yeah.

4 THE COURT: Was there anything more than that?

5 THE WITNESS: No.

6 THE COURT: Any questions, Mr. Pike?

7 MR. PIKE: No.

8 THE COURT: Any questions?

9 MS. WECKERLY: No.

10 THE COURT: Okay. Bring the jury in.

11 Okay. Thanks.

12
13 (The following proceedings were had in open
14 court in the presence of the jury panel:)

15
16 THE COURT: Back on the record in Case Number C228755,
17 State of Nevada versus Norman Flowers.

18 Let the record reflect the presence of the defendant, of
19 the defendant's counsel, counsel for the State; all the ladies and
20 gentlemen of the jury are back in the box.

21 This is Qunise Toney. She's already been sworn.

22 Miss Toney, would you state and spell your name again for
23 the jurors, please.

24 THE WITNESS: Qunise Toney; Q-u-n-i-s-e, T-o-n-e-y.

25 THE COURT: Go ahead.

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OUNISE TONEY

called as a witness on behalf of the State,
having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Miss Toney, do you know someone by the name of Sheila

Quarles?

A Yes, I did.

THE COURT: Speak up, please.

THE WITNESS: Yes, I did.

BY MS. WECKERLY:

Q When was it approximately that you met her?

A March of '04, at a barbecue.

Q And did you -- was it sort of a party? Were there a lot
of younger people?

A It was a variety, yeah.

Q A variety?

A Yeah, of different ages.

Q Okay. That was in '04?

A Yes.

Q Sometime after you met Sheila -- let me ask you this:

Did you call her Sheila or Pooka?

A Pooka.

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Q Sometime after you met Pooka at that barbecue, did you
start talking to her more?

A Yes.

Q About how long after the barbecue?

A About three months.

Q About three months?

A Two, three months.

Q Did the relationship ever turn into a romantic type
relationship?

A Yes.

Q When was that?

A Around August.

Q Of '04?

A Of '04.

Q I don't want to know what Pooka would say, but would she
come over to where you were living and stay overnight and that
sort of thing?

A Yes.

Q During this time period, were you working?

A Yes.

Q What did you do?

A I'm a bus driver for First Transit. At the time, it was
called Laha. I'm a bus driver for the mentally challenged,
disabled, handicapped.

Q Okay. And you were doing that in 2004 and 2005?

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A Yes.

Q Okay. So you said in maybe August of 2004, you and Pooka
developed sort of a romantic relationship?

A Yes.

Q At that time, where was she living?

A With her mother.

Q And do you know where that was, what street?

A Pecos and Washington.

Q Pecos and Washington?

A Yes.

Q And where were you living?

A Lamb and Owens.

Q Were you living alone?

A My mom and sister.

Q Your mom and sister?

A Yes.

Q From August 2004 into the beginning of 2005, were you
still socializing and involved with Pooka?

A Yes.

Q About how frequently were you guys seeing each other?

A Every day.

Q Every day?

A Yes.

Q How would that take place, if you were working?

A I picked her up when I get off, picked her up from work

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or picked her up from her mom's house, as well as taking her to
and from as well.

Q When you would pick her up, would you occasionally or
even frequently take her to stay the night at your apartment where
you, your mom and sister lived?

A Yes.

Q I want to talk specifically about March the 24th of 2005.
Do you remember that date?

A Yes.

Q Let me move a little bit backwards.

On the night of the 23rd, did you see Pooka at all?

A Yes, I did.

Q And where was it that you first saw her on the 23rd?

A I picked her up from her mom's house.

Q Was she staying over at your house that night?

A Yes.

Q When you picked her up from her mom's house, did you go
up to the door or did she just come out?

A She came out.

Q And when you picked her up, where did you guys go?

A We went and got something to eat.

Q Some food?

A Yeah. And then went back to my house.

Q Okay. When you went back to your house, who was home at
the apartment?

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1 A My mother and my sister.
 2 Q Both your mom and your sister were home?
 3 A Yes.
 4 Q Did you have your own room?
 5 A Yes.
 6 Q Did you and Pooka stay in your room that night?
 7 A Yeah.
 8 Q On the night of the 23rd, did you and Pooka have any
 9 sexual contact that night?
 10 A No.
 11 Q Okay. And sort of using the 23rd as a marker, did she
 12 also stay with you the night before on the 22nd?
 13 A No.
 14 Q How about on the 21st?
 15 A No.
 16 Q The 20th?
 17 A No.
 18 Q Okay. None of the previous couple nights?
 19 A Nope, none.
 20 Q When you saw her on the 23rd and you picked her up at her
 21 mom's -- did you see her the day before on the 22nd?
 22 A Yes, on my lunch break.
 23 Q On your lunch break?
 24 A Yeah.
 25 Q So on your lunch break, did you meet up or did you --

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1 A We met at the store by her house, the 7-Eleven.
 2 Q Is there a 7-Eleven pretty close to where her mom --
 3 A Her mom was, yeah.
 4 Q So you see her on your lunch break on the 22nd, obviously
 5 during the daytime?
 6 A Yeah.
 7 Q And then you pick her up on the night of the 23rd and she
 8 stays the night?
 9 A Correct.
 10 Q Did you have to work on the morning of the 24th?
 11 A What?
 12 Q She stays the night at your house on the 23rd, right?
 13 A Right.
 14 Q The next morning, did you have to go to work?
 15 A Yeah.
 16 Q So what did you do with Pooka?
 17 A I dropped her off at her mom's.
 18 Q Back at her mom's in the morning?
 19 A Yeah.
 20 Q Do you remember what time that was?
 21 A About 6:05.
 22 Q Did you go to work?
 23 A Yeah.
 24 Q When you go to work, did you have to report to a specific
 25 place to pick up the bus that you drive?

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1 A We have a manifest; we have to pick up the manifest and
 2 it's got different pick ups for different times, so, yeah.
 3 Q Where would you have had to go that morning to pick up
 4 the manifest?
 5 A Simmons and Carey.
 6 Q Simmons and Carey?
 7 A Yes.
 8 Q What time did you have to be there?
 9 A 6:20 or 6:30.
 10 Q So pretty early in the morning?
 11 A Yeah.
 12 Q So once you pick up the manifest, I presume you go and
 13 pick up your clients?
 14 A Yeah.
 15 Q If you started work at a little bit after 6:30, how late
 16 would you have had to work that day?
 17 A Twelve hours, 6:30.
 18 Q And is your route the same every day?
 19 A Never.
 20 Q Never the same?
 21 A Never.
 22 Q When you pick up that manifest, does that tell you who
 23 you are picking up that day?
 24 A Yeah.
 25 Q On the day of the 24th, you picked up the manifest and

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1 then, I assume, started picking up your clients?
 2 A Right.
 3 Q During the morning period of that day, were you in phone
 4 contact with Pooka at all?
 5 A Yes.
 6 Q Would you call her on her cell phone or on a phone in the
 7 apartment?
 8 A Cell phone.
 9 Q Do you recall about how many times you talked to her that
 10 morning?
 11 A Not for sure, about three, maybe four.
 12 Q Three or four?
 13 A Yeah.
 14 Q Did you have a cell phone?
 15 A I did.
 16 Q Do you remember what your number was at that time?
 17 A No.
 18 Q Would looking at your voluntary statement refresh your
 19 recollection as to what your phone number was back then?
 20 Do you know if you gave it to the police?
 21 A Yeah, I gave it to the police.
 22 Q Okay. I'm not going to walk up there. Mr. Pike is not
 23 going to make me.
 24 Does 245-9401 sound like it might have been your number
 25 back then?

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1 A Yeah, possibly, yeah.

2 THE COURT: Let me ask you this: Did you tell the police
3 accurately back then the number you had, even though you don't
4 remember today?

5 THE WITNESS: Right.

6 BY MS. WECKERLY:

7 Q When you were talking to her throughout that morning, do
8 you remember when it was that you last actually spoke with her and
9 had a conversation?

10 A Around eleven.

11 Q Around eleven in the morning?

12 A Yeah.

13 Q Without telling me what she said, did Pooka seem like she
14 was in a good mood, in a bad mood, anything about her mood that
15 you remember?

16 A In a good mood.

17 Q Good mood.

18 And after that conversation that you think took place
19 around eleven, did you have any further phone contact with her
20 that day?

21 A Yeah, about -- she called, but there was no -- nobody was
22 in.

23 Q Explain that?

24 A I got a phone call from her -- from her phone, but when I
25 answered it, no one said nothing.

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1 Q So your phone rings and it's Pooka's number --

2 A Right.

3 Q -- and when you click to answer it, no one was on the
4 other side?

5 A That's correct.

6 Q Could you tell from listening whether -- you know, like
7 the phone call didn't go through or whether it was like a signal
8 or could you hear anything or was it just dead?

9 A It was just dead.

10 Q When you got that call, what did you do?

11 A I said hello, hello; nothing; then I called back and it
12 went to voice mail.

13 Q So you called back her cell phone?

14 A Right.

15 Q And you got voice mail?

16 A Right.

17 Q So you never spoke to her?

18 A No.

19 Q The last conversation you had was maybe around eleven?

20 A Right.

21 Q Prior to that eleven o'clock conversation, did you have a
22 couple earlier conversations?

23 A Yes.

24 Q In any of those conversations, did you ever hear music
25 playing in the background?

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1 A I did hear music, yeah.

2 Q When you had that call where you got the dead -- the dead
3 end on the other side and then you called back, did you ever make
4 any other attempts to call her that afternoon?

5 A I did.

6 Q Okay. And did you just keep getting a voice mail or what
7 happened?

8 A Voice mail.

9 Q How was it that you ended up leaving work that day? What
10 happened?

11 A I had a pick up off of Bonanza and Lamb, which they had
12 to go to the Community College. That's on Cheyenne and Pecos. So
13 I took Bonanza up to Lamb -- I mean Bonanza to Pecos and then
14 Pecos all the way down to the college.

15 Q And what happened as you went that route?

16 A When I was passing over Washington, I thought I seen her
17 in the back of a police car. So when I dropped off my client, I
18 came back that way and got off the bus and that's when her
19 brother's girlfriend told me that she was no longer there.

20 Q She told you she had died?

21 A Yeah.

22 Q Did you actually get -- you parked your bus and you went
23 over?

24 A Yeah, I parked it like on the other end and then I walked
25 to the apartment.

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1 Q Were the police already there?

2 A Yes.

3 Q And so were people standing outside?

4 A Yes.

5 Q And one of her brother's girlfriends kind of told you
6 what happened?

7 A Yes.

8 Q After you heard that, did you stay there or what did you
9 do?

10 A I called my mom.

11 Q And did you go get your mom or did your mom come over?

12 A She met me at my job and then we proceeded over there.

13 Q So your mom meets you back where you drop off your bus?
14 Is that yes?

15 A Yes.

16 Q And then you and your mom go back to the Pecos --

17 A Me, my mom and my brother.

18 Q When you went back to the Pecos apartment that night, did
19 you talk to the police?

20 A I did.

21 Q And they interviewed you on tape?

22 A Yeah.

23 Q Is that yes?

24 A Yes.

25 Q Okay. Sometime after that night, did you have an

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1 additional conversation with the police?
 2 I mean, did they talk to you a couple times?
 3 A No.
 4 Q Just that night?
 5 A Just that night.
 6 Q Did they ever ask you for a DNA sample?
 7 A The second time I talked to them, yeah.
 8 Q Okay. And you provided that?
 9 A I did, yes.
 10 MS. WECKERLY: Court's indulgence.
 11 BY MS. WECKERLY:
 12 Q Let me ask you this: When you dropped Sheila off in the
 13 morning before you went to work, do you remember what she was
 14 wearing?
 15 A Pajamas.
 16 Q Pajamas?
 17 A Yes.
 18 Q And do you know where Sheila was working during this time
 19 period?
 20 A Starbucks in the Convention Center.
 21 Q Did she ever keep clothes at your house?
 22 A Yes.
 23 Q Like a lot or just --
 24 A Just a couple outfits.
 25 Q A couple outfits?

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1 A Some shoes.
 2 Q And that would -- would that be like a full change of
 3 clothes that she'd keep at your house?
 4 A Yes.
 5 MS. WECKERLY: Thank you. I'll pass the witness.
 6 THE COURT: Questions?
 7 MR. PATRICK: Thank you, Judge.
 8
 9 CROSS-EXAMINATION
 10 BY MR. PATRICK:
 11 Q Good afternoon, Miss Toney.
 12 A Good afternoon.
 13 Q So Sheila spent the night with you on the night of the
 14 23rd?
 15 A That's correct.
 16 Q And you brought her home about six a.m.?
 17 A Right.
 18 Q And I think you said throughout the day you made phone
 19 calls back and forth?
 20 A Right.
 21 Q Would it be fair to say when you had a break and you had
 22 a minute, you would be able to call her?
 23 A Right.
 24 Q Now, there was one phone call, I believe, around eleven
 25 a.m.?

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1 A Yes.
 2 Q And without saying what Sheila said, was there
 3 conversations about her seeing her grandfather that day?
 4 A That's correct.
 5 MS. WECKERLY: Objection; hearsay.
 6 THE COURT: Sustained. That is what she would have said.
 7 Sustained.
 8 BY MR. PATRICK:
 9 Q And then you were talking to Miss Weckerly about a phone
 10 call that you heard music in the background?
 11 A Uh-huh.
 12 Q And what time was that?
 13 A I'm not for sure.
 14 Q Okay. You gave a statement to the police on the day of
 15 the incident, 3/24, correct?
 16 A Right.
 17 Q And when they asked you questions, you answered them
 18 truthfully?
 19 A Right.
 20 Q And you probably had a better recollection of what
 21 happened on that day than you do three years later; is that fair?
 22 A That's fair.
 23 Q And if I was to show you your statement of that day,
 24 would that help you remember what you told the police?
 25 A Yeah.

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1 MR. PATRICK: May I approach?
 2 THE COURT: Well, only if you ask her do you know what
 3 you said and if she doesn't recall, then you can refresh her
 4 recollection or you can --
 5 MR. PATRICK: Well, I asked her what time the phone call
 6 was that she heard music and she said she didn't know.
 7 THE COURT: Fair enough, if that's what you are
 8 approaching her about.
 9 BY MR. PATRICK:
 10 Q On page four, if you could read that page to yourself for
 11 me, just the whole thing.
 12 Okay. Does that help refresh your memory?
 13 A A little bit.
 14 Q A little bit.
 15 So what time was the phone call where you told the police
 16 that you heard music in the background?
 17 A On that, it says 12:30.
 18 Q And this statement was taken the same day that phone call
 19 would have been made on the 24th?
 20 A Right.
 21 Q And the times that you talked to Sheila, I know you
 22 mentioned one time that, in your opinion, she sounded happy when
 23 you talked to her.
 24 Did she sound that way in all the phone calls that you
 25 actually talked to her?

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1 A Yeah. She was a happy person.
 2 Q And then you got a call on your cell phone from Sheila?
 3 A Yeah.
 4 Q And that would have been at approximately 1:35 that
 5 afternoon?
 6 A Yeah.
 7 Q And when you answered it, there was nobody on the other
 8 line?
 9 A That's correct.
 10 Q Did you try calling her back at that time?
 11 A I did.
 12 Q And did anybody answer the phone?
 13 A Nope, went straight to voice mail.
 14 Q And I think you said that you and Sheila started a
 15 romantic relationship around August of '04?
 16 A That's correct.
 17 Q So you were together for approximately seven months?
 18 A That's right.
 19 Q Now, you said that she didn't spend the night --
 20 Miss Weckerly went back three days prior to the 23rd.
 21 Do you remember when, prior to that time, Sheila would
 22 have spent the night with you?
 23 A Maybe a week or -- and a half.
 24 Q Was that common, that she would spend the night with you
 25 about once every week and a half?

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1 A No. She was ill; she said I worked too long, so she
 2 wanted to go home with her mom.
 3 Q Okay. So in that seven month period, it was more common
 4 that she would spend the night more often than that?
 5 A Yeah.
 6 Q What was the relationship like between you and Sheila's
 7 mother?
 8 MS. WECKERLY: Objection; relevance.
 9 THE COURT: What is the relevance?
 10 MR. PATRICK: Well, the relevance is Mom didn't know that
 11 they were having a sexual relationship; she didn't know that she
 12 was having a sexual relationship with George Brass.
 13 THE COURT: I'll give you a little leeway; just one
 14 question.
 15 Go ahead.
 16 THE WITNESS: Can you repeat it?
 17 BY MR. PATRICK:
 18 Q Yeah. What kind of relationship did you have with
 19 Sheila's mother?
 20 A Didn't know her.
 21 MR. PIKE: A little more leeway?
 22 BY MR. PATRICK:
 23 Q Did you ever talk to her?
 24 A Not really, no.
 25 Q Okay. Did you meet her?

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1 A No.
 2 Q You never met her in those seven months?
 3 A No.
 4 Q On the 24th, you said that your shift started
 5 approximately 6:30 in the morning?
 6 A Correct.
 7 Q Okay. Where did you say you went to pick up your
 8 manifest that day?
 9 A On Simmons and Carey.
 10 Q Okay. And about how far was that from Sheila's house?
 11 A About a 15 minute drive.
 12 Q So you had plenty of time to get to work on time?
 13 A Yeah.
 14 Q Were you aware of any other boyfriends or girlfriends
 15 that Sheila had during the time that you were seeing her?
 16 A No.
 17 Q She never talked about any boyfriends to you?
 18 A Ex-boyfriends, yeah.
 19 Q She talked about ex-boyfriends?
 20 A Yes.
 21 Q But nobody that she was seeing at the same time?
 22 A No.
 23 Q Did you feel that you had a monogamous relationship with
 24 Sheila?
 25 A I did, yeah.

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1 Q The ex-boyfriend that she talked about, do you know his
 2 name?
 3 A Will.
 4 Q Will? Okay.
 5 Did Sheila mention if they wrote letters back and forth
 6 to each other?
 7 A No.
 8 Q In your statement, you told the police that Sheila
 9 indicated that she was trying to get back together with Will.
 10 MS. WECKERLY: Objection.
 11 THE WITNESS: I never said that.
 12 THE COURT: I'm sorry. What did he say?
 13 MS. WECKERLY: He said, in your statement, you indicated
 14 Sheila said.
 15 THE COURT: No, you can't say what Sheila said.
 16 MR. PATRICK: I didn't use the word said, but --
 17 THE COURT: The objection is sustained.
 18 MR. PATRICK: That's all, Judge.
 19 THE COURT: Anything else?
 20 MS. WECKERLY: No, Your Honor.
 21 THE COURT: Thanks, Miss Toney. Appreciate your
 22 testimony. You are excused.
 23 (Witness excused.)
 24
 25 THE COURT: Next.

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MS. WECKERLY: Shawn Fletcher.

(Witness sworn.)

THE CLERK: Please be seated.

Please state your name, spelling first and last name for the record.

THE WITNESS: Shawn Fletcher; S-h-a-w-n, F-l-e-t-c-h-e-r.

THE COURT: Go ahead.

SHAWN FLETCHER

called as a witness on behalf of the State,
having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WECKERLY:

Q How are you employed?

A I am employed with the Las Vegas Metropolitan Police Department as a senior crime scene analyst.

Q How long have you worked as a crime scene analyst?

A Twelve years.

Q Always for Metro?

A Yes.

Q What does a crime scene analyst do?

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training or someone supervising you?

A In the beginning, we're with a trainer and then, gradually, the longer we've been on, we start going to more complicated scenes by ourselves.

Q And so when you first start out, I assume you are not going to a homicide or a potential homicide scene?

A Not usually.

Q You were working obviously on March the 24th of 2005?

A Yes.

Q Were you asked to respond to 1001 North Pecos?

A Yes.

Q That's obviously in Las Vegas, Clark County, Nevada?

A Yes.

Q Were you the only crime scene analyst who responded to that location?

A No. I was with Dave Horn, who is also a senior crime scene analyst, and my supervisor Mike Perkins.

Q We've heard a little -- well, quite a bit actually about the crime scene itself and we've heard this is a multi-building apartment complex.

When the crime scene people get there, yourself, Mr. Horn, and I think you said Mike Perkins, how is it that you three decide how you are going to divide the work at the scene?

A Normally, we just talk about it amongst ourselves.

Normally, one crime scene analyst will do the photography and then

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A As a crime scene analyst, we respond to the crime scenes at the request of either a detective or the patrol officer.

Our main job is documenting the scene and we generally start with that through photography. So we photograph the scene; we'll do any evidence collection and preservation that we need to do, fingerprint processing, and in cases like this, we complete a crime scene diagram.

Q Are you okay?

A Yeah.

Q Do you have training that allows you to work in that capacity?

A Yes. Most of us have a degree in either criminal justice or one of the science fields. Mine is in criminal justice and also in fitness and nutrition. And then once we get hired, we go through an academy that is specific to crime scene. It's not the police academy, but it's a crime scene academy.

And then we also go through a 13 week field training program where we ride with the senior people and get our field experience.

And then we're sent to quite a few classes. I've been to many death investigation classes, shooting reconstruction, blood spatter, fingerprint processing, photography. So it's pretty much a constant in the field training as well as classes and seminars.

Q When you first start as a crime scene analyst, could you respond by yourself to scenes or do you respond kind of with a

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another crime scene analyst will do the diagram and the evidence.

In this case, Dave Horn did the photography and I handled the diagram and the evidence.

Q When you three crime scene analysts get to the scene, do you and the detectives confer as to how the scene itself is going to be processed?

A Yes.

Q And then you go about, I assume, documenting it?

A That's correct.

Q In terms of the photography, is that the first thing that's done at a scene?

A Yes, usually it is.

Q Why would that be the case?

A The photography is done first to document the scene, how it was when we arrived.

Normally, as you are diagramming and picking up evidence and stuff, you are moving things around, so it's important to get the photographs done before you move anything.

Q And you were not the person who did the photographs in this case; you did the diagram?

A Yes.

Q And would that also mean that you impounded evidence?

A Yes.

Q In addition to impounding actual pieces of evidence, did you process certain items of evidence for the presence of latent

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1 fingerprints?

2 A Yes.

3 Q Any idea how much latent print processing that you did at
4 the scene?

5 A From what I recall, we did quite a bit.

6 Q Okay.

7 A I mean, we were doing door frames and counter tops and
8 the items of evidence that I recovered were printed as well.

9 Q When you are processing the structure, like the door
10 frame or counter top, is it noted in your report if you are unable
11 to obtain a fingerprint off a particular item?

12 A No. Normally, what we'll do is we process the scene and
13 the items that we recover prints from are listed in the report.

14 Q Okay. So everything that you attempt to get fingerprints
15 from isn't in the report; you report what you actually are
16 successful with?

17 A Right.

18 Q And then my next question on that is: Once you are
19 successful in recovering a latent fingerprint, what steps do you
20 take to preserve that fingerprint for examination by a latent
21 print expert?

22 A The fingerprint lifts are placed on a white card and the
23 white cards have a heading on them that say what the event number,
24 the case number is; they've got my name on it, the date, the
25 actual address location and the victim's name; and then they've

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1 speaker and a clear CD case.

2 And then number two, behind the speaker is another CD.

3 Q Okay. And were those items -- did you attempt to get
4 latent fingerprints from those items?

5 A Yes.

6 Q And the ones that you were successful in obtaining, those
7 would be preserved on those fingerprint cards for comparison by a
8 print expert?

9 A Correct.

10 Q Okay. What is item five that we see in the living room
11 area?

12 A Item five right here was a speaker wire and it was just
13 lying on the floor.

14 Q Okay. And it wasn't obviously connected to anything?

15 A No, it was not.

16 Q Okay. Let's move into the bedroom area, which is on the
17 right side of the diagram.

18 On the bed itself, there is a number three.

19 What is that?

20 A That was a sealed envelope with a letter inside of it.

21 Q Okay. And was that actually impounded as evidence?

22 A Yes.

23 Q And it was photographed as well?

24 A Yes.

25 Q And also the bedroom, it looks like there is items seven,

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1 also got the exact description of the item that the fingerprint
2 was recovered from.

3 Q Miss Fletcher, I'm putting on the overhead what's been
4 admitted as State's Proposed Exhibit 2.

5 Do you recognize that?

6 A Yes.

7 Q That's the crime scene diagram that you completed for
8 this case?

9 A Yes.

10 Q On the right side of the diagram, there appears to be
11 kind of a legend and numbers one through 20.

12 A Yes.

13 Q Are those at least various or potentially significant
14 items of evidence that you noted on the diagram?

15 A They are, yes.

16 Q And I assume the numbers on the right correspond to the
17 numbers that we see on the diagram?

18 A They do.

19 Q Okay. I'd like to talk specifically about the living
20 room. As we look at the diagram and in kind of the corner of the
21 living room where items one and two are, can you circle that with
22 your finger on the screen?

23 A (Complies.)

24 Q Okay. What are items one and two on the diagram?

25 A Items one and two, there were two CDs up on top of the

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1 eight and 10 through 13.

2 Can you circle where that is on your diagram.

3 A (Complies.)

4 Q What are those items?

5 A Those items -- number seven was a Gatorade bottle that
6 had a little bit of Gatorade left in it.

7 Eight is probably the liquid sample from the Gatorade
8 bottle. Number nine is from the bottle.

9 Number ten was a pack of peanuts, an open pack of
10 peanuts.

11 Eleven was a pack of beef sticks and cheese; the cheese
12 was still sealed and the beef sticks were gone.

13 Twelve is actually the peanuts from the peanut pack.

14 Q And 13 is like a residue?

15 A Yes.

16 Q Okay.

17 A That was a residue from the beef stick side of the
18 package.

19 Q Okay. Let me start with that one then.

20 When you say it was a residue from the beef stick, what
21 were you checking there? What did you do?

22 A Since the beef stick package was open and the beef sticks
23 were already gone, we just swabbed it for possible DNA.

24 Q And you are not a DNA analyst?

25 A No.

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1 Q You just collect it for later testing?

2 A Correct.

3 Q So you swab this kind of package of beef stick snack and

4 later impounded that?

5 A Yes.

6 Q With regard to the Gatorade bottle, you said you took a

7 liquid sample of it.

8 Do you recall if you tried to recover latent fingerprints

9 off of the Gatorade bottle itself?

10 A Yes, we did.

11 Q And were you successful in obtaining prints from the

12 bottle?

13 A I believe so.

14 Q And those would have been submitted?

15 A Correct.

16 Q What about on the other snack items, like the package of

17 peanuts or the beef and cheese pack?

18 A Yes, I did all of that, and I believe there was prints on

19 both of those.

20 Q Okay. And those were submitted for the print experts?

21 A Yes.

22 Q Let's move into the bathroom area, which is obviously

23 where the victim was in this case.

24 Did you take a sample of the bath water itself?

25 A Yes.

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1 Q Maybe it would have been important potentially in

2 determining the cause of death or something like that?

3 A It's possible, yes. We took a sample from there.

4 Q Do you recall if you attempted to fingerprint any area of

5 the bathroom?

6 A I believe we did. I believe we fingerprinted the whole

7 bathroom.

8 Q Why would you fingerprint the whole bathroom in a case

9 like this?

10 A Well, generally, you know, you are looking for areas that

11 appear to be disturbed in a scene. Obviously, we have the victim

12 in that area, so I believe that we did the whole bathroom. I

13 don't think I did most of it. I think Dave Horn did it, but I'm

14 certain that the bathroom was done.

15 Q Okay. And Dave Horn is one of the other crime scene

16 analysts who responded?

17 A Yes.

18 Q And you sort of divide up the work on collection of

19 latent fingerprints?

20 A Yes, we divide that up. We both did latent fingerprint

21 processing in this case.

22 Q But in this particular case, because the victim is

23 actually located in the bathroom, that would be an area that you

24 concentrated on for fingerprints?

25 A I would think so, yeah. Like I said, we kind of divided

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1 It up, because I wasn't in there myself.

2 Q And any prints would have been submitted to an expert for

3 their review?

4 A Yes.

5 Q You were present at the scene obviously when the victim

6 was still in the bathroom?

7 A Correct.

8 Q And at some point, she is removed?

9 A Yes.

10 Q When she was removed from the bathroom, were you able to

11 observe her clothing at all that was left in the bathroom?

12 A Yes.

13 Q Do you recall what clothing was left in there?

14 A Her clothing initially -- well, even when she was still

15 in there, she initially had a shirt and towel on top of her.

16 There was a hair piece on the floor. There was a bra on the

17 floor. And then there was a pair of jeans on the floor that had a

18 pair of thong panties over them.

19 Q The clothing that was on the floor, the hair piece, the

20 jeans that you mentioned and the bra, when you were collecting or

21 in contact with those items of clothing, did you note whether or

22 not they were wet or dry?

23 A They were all wet, yes.

24 Q Okay. And in terms of impounding it, how do you impound

25 wet clothing?

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1 A When we have wet items, we have what we call a drying

2 closet back at the lab and there is individual lockers in this

3 drying closet, so, normally, if we have wet items, they're hung up

4 in the drying closet to air dry first and then they get impounded

5 once they're dry.

6 Q I'm showing you what's been marked as State's Proposed

7 Exhibits 48 through 50. Could you just look through those three

8 photographs and tell me if you recognize what is depicted in that?

9 MR. PIKE: While she is doing that, they've been reviewed

10 by defense counsel prior to being shown to the witness and we have

11 no objection.

12 THE COURT: They will be admitted.

13 I thought you said 48 to 50, but it looks more than

14 three. What were the numbers?

15 MS. WECKERLY: It's just three.

16 THE WITNESS: Yeah, 48, 49 and 50.

17 Yes, I recognize them.

18 BY MS. WECKERLY:

19 Q And do they depict, I guess, your laying out the clothing

20 and some processing that you did back at the crime lab with regard

21 to certain items of evidence?

22 A Yes.

23 Q And they're a fair and accurate depiction of that?

24 A They are.

25 MS. WECKERLY: The State moves to admit 48 through 50.

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THE COURT: Admitted.

(State's Exhibits 48 through 50 admitted into evidence.)

BY MS. WECKERLY:

Q I'm putting on the overhead what's been admitted as States 49.

In that photograph, what are we looking at?

A What you are looking at here are the items from the bedroom floor and the CD from the living room.

These tabs that you see here, that's the coroner of the fingerprint tape. So each place where you see the tape, those are fingerprint lifts. So that's what you are looking at in that photo.

Q And the tape is put on a card, right?

A Correct.

Q And then a print expert can see the lifts that were taken because the print is on the card?

A Yes.

Q Although we have the photograph of those, those weren't the only items obviously that you attempted to get fingerprints from, but that's just what it looks like?

A That's correct, yes.

Q Now, I'm putting on the overhead State's 48.

What are we looking at in that photograph?

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A In this photograph, you are looking at the jeans and the thong panties that were on the bathroom floor.

As you can see, the thong has been pulled up over the leg of the panties; it's backwards and kind of inside out. You can see the tag right here. So those are the jeans that are on the floor in the bathroom.

Q And you actually noted the positioning of the thong or the panties on the outside of the jeans, backwards, and kind of -- well, the legs are off, right?

A Yes.

Q Not in normal wearing position?

A That's correct.

Q And that's the documentation of this photograph?

A Yes.

MS. WECKERLY: Thank you.

I'll pass the witness.

THE COURT: Questions?

MR. PIKE: Thank you. I just have a few questions.

CROSS-EXAMINATION

BY MR. PIKE:

Q During the course of the investigation, I guess you were working closely with Detective Vaccaro at the scene?

A Yes.

Q Okay. And you were going through and doing the

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fingerprinting.

During that period of time, you were also looking for any shoe prints or shoe marks that may be there?

A That's possible, yes. I don't believe there were any.

Q Okay. You don't recall there being any footprints or anything.

Did you prepare an independent report on this?

A The evidence impound is my report, yes.

Q Okay. So everything that was impounded from everyone?

A Yes. I did all the impounding.

Q Okay. And the items that you impounded and then submitted for review were the items that you felt may have evidentiary value?

A Correct.

Q Based upon the knowledge of the scene that you had; is that correct?

A Yes.

Q And you impounded the panties because you felt that they may have evidentiary value?

A Correct.

Q Panties often have evidentiary value in cases that involve sexual assault, don't they?

A Yes.

Q They also provide information about who may have had sexual intercourse with a person who had worn those panties?

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A It's possible, yes.

Q Okay. Other clothing, similar to panties, may have the same evidentiary value, such as pajamas?

A It's possible.

Q Panties that were worn the night before or earlier that day?

A Correct.

Q And other than the panties that were located or that were associated with the body, which would have been the panties in the photograph that we dealt with here, you didn't recover or impound any other used or worn panties?

A No.

Q During the course of your collecting of items during that, you were not informed by anyone that any sort of a timeline of clothing evidence may need to be collected, were you?

A No. The only evidence I had of anything was a dress that we collected that I believe the mother had said she had been wearing that morning; that was impounded as well.

Q So you were unaware as to what pajamas she may have been wearing or what bottoms she may have been wearing earlier in the day?

A Right, I didn't have any knowledge of that at the time.

Q In going through and processing for fingerprints, you were collecting fingerprints off a number of different surfaces and different textures; is that correct?

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1 A Yes.

2 Q And what sort of equipment did you employ in collecting

3 those fingerprints?

4 A Most of the items that I did were processed, some with

5 super glue and then with powder.

6 I believe Dave Horn did most of the processing of the

7 stationary items at the scene, but most of mine were chemicals and

8 powder.

9 Q And did you collect the fingerprints in the bathroom or

10 was that by CSA Horn?

11 A I did not collect any fingerprints in the bathroom. I

12 don't know if he did or not.

13 Q Okay. He processed that room?

14 A I believe so.

15 Q Okay. So you didn't attempt to process the body for any

16 fingerprints off of the body?

17 A No.

18 Q Did you have the equipment available to you or for you to

19 use that day in order to attempt to obtain fingerprints off of the

20 body?

21 A It's possible to get that equipment out there, depending

22 on what method you wanted to use. We had things we could have

23 used and there is other methods that we would have had to bring

24 stuff out.

25 Q Okay. So maybe, maybe not.

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1 There were other things that would have had to have been

2 brought out?

3 A Yeah.

4 Q Okay.

5 A Normally, yeah.

6 Q And you were successful in collecting fingerprints off of

7 the CD covers?

8 A Yes.

9 Q You were successful in collecting identifiable or clear

10 enough fingerprints off of the CD covers, so that you felt that

11 they may be able to be matched to a known exemplar?

12 A Right.

13 Q And that's what you look for -- you look for -- you have

14 to make a value judgment on that fingerprint and say: I can use

15 that or potentially the individual that is examining it can use

16 it?

17 A Correct.

18 Q And you collect those.

19 And the other ones you think they may have a slight

20 chance of having evidentiary value, you keep what may be of value

21 but you have to make a value judgment?

22 A Yes.

23 Q And in going through and doing that, you also are

24 collecting or looking for any other piece of evidence that may be

25 important.

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1 Now, because you were checking the panties in this case,

2 I assume that there may have been, in the mind of you as an

3 investigator, a sexual component to it?

4 A It's possible, yes.

5 Q And you are trained also in the collection of blood and

6 blood spatter? You indicated that?

7 A Yes.

8 Q Okay. And you can identify bodily fluids, proteins, by

9 light, wands or light equipment; is that correct?

10 A That's possible, yes.

11 Q What kind of equipment was that? What is it called?

12 A Well, there is several different lights that we use;

13 there is the poli-light; there is an omni-chrome; there is hand

14 held lights that we'll use. There is UV lights.

15 Q And were those available to you on that day?

16 A I don't believe we had the lights out there.

17 Q When I say were those available to you, the Las Vegas

18 Metropolitan Police Department, your department, had that

19 equipment but you didn't have it there?

20 A Yes, that's correct.

21 Q So there was not a sweep or a testing of the carpet, the

22 bedspread or anything else for bodily fluids that may not be

23 visible to the eye?

24 A That's correct, there was not.

25 Q But you would have made a visual attempt to locate

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1 something like that?

2 A Yes.

3 Q Okay. Because you are processing the entire scene?

4 A Correct.

5 MR. PIKE: Thank you. I have nothing further.

6 THE COURT: Anything else?

7 MS. WECKERLY: No. Thank you.

8 THE COURT: Thanks, Miss Fletcher. Appreciate it.

9

10 (Witness excused.)

11

12 THE COURT: Call your next witness.

13 MS. LUZAICH: Fred Boyd.

14 THE CLERK: Thank you. Please be seated.

15 State your name, spelling your first and last name for

16 the record.

17 THE WITNESS: My name is Fred Maurice Boyd; F-r-e-d,

18 B-o-y-d.

19 THE COURT: Go ahead.

20 MS. LUZAICH: Thank you.

21

22 FRED BOYD

23 called as a witness on behalf of the State,

24 having been first duly sworn,

25 was examined and testified as follows:

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DIRECT EXAMINATION

1
2 BY MS. LUZAICH:
3 Q Sir, how are you employed?
4 A My job title is forensic scientist; my classification is
5 latent prints examiner, employed with the Las Vegas Metropolitan
6 Police Department, assigned to the latent print detail of the
7 forensic laboratory.
8 Q And how long have you been with the forensic laboratory
9 at Metro?
10 A Twelve and a half years.
11 Q Can you describe for our jury what training and education
12 you have that qualifies you to be a latent print examiner?
13 A I've been associated with the discipline for a little
14 over 40 years. I started my training with the United States Army
15 Criminal Investigation Command, which is the Army CID. I was a
16 field agent for ten years working cases, processing scenes.
17 I then went into the career field, one of them being the
18 crime laboratory, and I chose latent prints as my chosen
19 profession in the Army.
20 I retired with 20 years of service in the Army, in the
21 Army CID, as a chief warrant officer specializing in latent print
22 identification. Most of my additional training was within the
23 United States Army.
24 I attended various FBI schools and things in training and
25 seminars through the Army. I retired in '88, went to Boward

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1 County Sheriff's Office, worked at the crime laboratory there in
2 Fort Lauderdale, Florida, eight and a half years there. And then
3 I was here for 12 and a half years at Metro.
4 I'm currently a member of the International Association
5 for Identification, lifetime member. I take annual proficiency
6 testing through our laboratory and through the quality training
7 service. This is required annual training for us.
8 I'm certified by the Internal Association for
9 Identification. I'm a member of the Nevada chapter of the
10 International Association for Identification. I'm on the
11 certification committee of that organization.
12 Just an accumulation of years of working in the
13 discipline and training.
14 Q Have you testified as an expert in the area of
15 fingerprint identification and comparison in the Eighth Judicial
16 District Court, as well as many other judicial courts?
17 A Yes, ma'am, I have.
18 Q On many occasions?
19 A Yes, I have.
20 Q Thank you.
21 Can you tell our jury what a latent print examiner does?
22 A A latent print examiner, we evaluate latent prints that
23 are submitted to us, usually by crime scene personnel or those
24 latent prints that we may develop ourselves as latent print
25 examiners on the evidence that we process ourselves at the

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1 laboratory.
2 We evaluate those fingerprints to latent prints to
3 determine if they are sufficient for comparison purposes.
4 By that, I mean if there is significant detail that we
5 can make a comparison between that latent print and a set of known
6 prints from a known person.
7 If we classify a print as no value for identification,
8 for insufficient ridge detail, we're saying that that print is of
9 no value for comparison and I cannot make an identification with
10 that no value print, even if I do have a set of known prints from
11 that person.
12 Q What is a latent print?
13 A The word latent means hidden. In our discipline, a
14 latent print basically refers to that fingerprint that you find on
15 a piece of evidence that you usually can't see.
16 Sometimes you can see it and when you can see it, it's
17 called a visible print or maybe a patent print.
18 But the normal print that we find is the invisible print
19 that we can't see and it has to be recovered basically by maybe
20 fingerprint powder or some technique of processing, maybe even
21 chemically, to help make that print visible.
22 Q So if Miss Weckerly is looking somewhere else and I take
23 her purse while she's not looking and I touch something here while
24 picking up her purse, somebody can come over here, dust this and
25 potentially get my latent print?

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1 A That is the normal procedure, although there is times
2 when maybe even though you touch something, you may not
3 necessarily leave a print. There are certain factors why maybe a
4 print might not be on a surface for processing.
5 Q Well, that was going to be my next question because
6 everybody saw me touch that paper.
7 Why might my print not show up on that paper?
8 A Well, we have two different types of surfaces. We have a
9 non-porous surface, which is a flat surface like this, where your
10 latent print residue usually remains on top of the surface.
11 That piece of paper is porous type surface, where any
12 touch of that, any perspiration that you have, it absorbs down
13 inside the paper and you may have to process that chemically,
14 although if you go like that there, you more than likely may not
15 leave a print. There may be a smudge or something like that.
16 You really have to handle the item to some degree,
17 whether it would be -- well, some degree of time that would allow
18 the perspiration or moisture to absorb onto that surface.
19 And it's that medium, that substraat, that we try to
20 process to recover, to make visible.
21 Q Or, for example, if the air conditioning was really low
22 in here and I was freezing and there was no perspiration on my
23 fingers, would that affect my ability to leave a print behind?
24 A That could, yes.
25 Q How?

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1 A Well, not everybody is a secreteer. There are some people
2 who can touch things all day long and they won't sweat. They may
3 not leave an impression on the surface.

4 If it's real hot, if it's sweating all the time, then you
5 may have an item that is more -- or you are more receptive to
6 leaving a print on a surface if you have sweaty hands and then to
7 leave your perspiration on the surface.

8 Q Okay. So if you have a latent print and you want to
9 compare it to a known print, you would go somewhere to get that
10 known print. So because I work for the county, my prints are on
11 file; and when you saw me take it, you went and got my prints on
12 file and compared them to the latent that was found there.

13 And that's what you do on a daily basis, right?

14 A Yes.

15 Q In that capacity, were you employed in June of 2006 doing
16 this at the crime lab?

17 A Yes, ma'am, I was.

18 Q Were you asked to compare some prints from a crime scene
19 where the individual Sheila Quarles was murdered?

20 A Yes, ma'am.

21 Q And were you asked to compare a set of latent prints to a
22 set of known prints or known individuals?

23 A Yes, ma'am.

24 Q Do you remember how many prints were lifted and presented
25 to you for comparison?

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1 they did have workable fingerprints on the cards.

2 Q What did you do in furtherance of trying to make an
3 identification of those nine cards?

4 A I compared those nine cards with fingerprint standards
5 that I had, or exemplars or record prints, there is numerous names
6 for a set of known prints.

7 I compared them to a list of names that I had, to include
8 the victim. I compared those to those people.

9 Q Now, you don't just go out into the phone book and choose
10 names to compare them to, correct?

11 A No, ma'am.

12 Q The detective gives you a list of names?

13 A Yes, ma'am.

14 Q What are the names that we were given to compare the
15 known latents to?

16 A In this particular case, there were two separate requests
17 that were received. The first request that was received had the
18 name of Sheila Quarles, a Qunise Toney, Robert Lewis and Debra
19 Quarles. Those were the names initially that we looked at.

20 And upon my comparison with the known prints that I had
21 to the latent prints, I did make an identification to the victim
22 to two of the print cards.

23 Q How did you go about making identification to the victim?

24 A Identifications are made by using a magnifying glass and
25 finding the same level one, two and three detail in both the known

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1 A I do have that in my notes.

2 Q Would it refresh your recollection to review your notes?

3 A Yes.

4 MS. LUZAICH: Please go right ahead.

5 THE WITNESS: Your Honor, may I read it?

6 THE COURT: Sure.

7 THE WITNESS: There are 21 latent prints that were
8 submitted to me to evaluate. The 21 latent prints were submitted
9 by two crime scene analysts.

10 BY MS. LUZAICH:

11 Q Who were there?

12 A Crime scene analyst Dave Horn and Shawn Fletcher.

13 Q That was the young lady that was just leaving right now,
14 right?

15 A Yes.

16 Q Of the 21 latent prints that were submitted to you, were
17 all of them of sufficient quality for you to be able to do
18 anything with them?

19 A No, ma'am, they are not.

20 Q What was wrong with some of them or all of them and how
21 many of them were you not able to do anything with?

22 A Of the 21, there were 12 of those latent print print
23 cards that were of no value for comparison purposes, meaning that
24 they possess insufficient ridge detail to do a comparison with.

25 That left nine cards that were workable. I mean, that

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1 print and in the record print.

2 And if I may explain just briefly the level one, two and
3 three detail: The level one detail is a basic pattern that you
4 have. Level two detail is the minutia points that you have in the
5 actual latent print. You might hear how many points you need to
6 make an identification.

7 Well, when we refer to this, this is basically what we're
8 referring to as the level two detail.

9 And the level three detail are other things that you find
10 in the prints, such as little incipient ridges, maybe little dots,
11 little things, porous structure, the edges of the ridges. This is
12 the level three detail as we refer to it.

13 And when you find a consistency in the latent print and
14 in the known print, then you have an identification.

15 Q So when you compare them, you visually looked at the
16 latent print compared to the known print?

17 A Yes, ma'am.

18 Q Did you also utilize a computer system to try and
19 identify the unknown prints?

20 A Yes, ma'am.

21 Q Can you describe that for us and explain how it works?

22 A We do have a computer. It's called AFIS. It's an
23 automated fingerprint identification system. Latent prints that
24 are not identified that are suitable quality for the AFIS system,
25 we put into the AFIS system in an attempt to have the computer see

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1 if they could match up any candidates. It gives us a candidate
2 list of people that have similar type fingerprints and patterns.

3 When we encode a latent print into the system, we
4 basically encode the level two detail that we see and it's this
5 feature that the computer responds to in its search.

6 In this case, the latent prints that were not identified,
7 those being of AFIS quality, they were put in the system and they
8 were searched through the system; however, there was no match to
9 those prints.

10 Q So that means that everybody whose prints have been
11 entered into AFIS has been checked against those and those
12 people's prints that have been entered do not match those prints?

13 A That's correct.

14 Q Is it possible for prints to be of value but not of AFIS
15 quality?

16 A Yes, ma'am.

17 Q Why is that?

18 A Well, the computer requires certain criteria in order to
19 have it be put in.

20 For example, when you touched that, you went like that,
21 so your tips would be on there. We don't put tips into AFIS.

22 AFIS basically scans the prints of the person, the center
23 of the pattern, and if you have a print on the side, like maybe a
24 partial on the side here, a partial print or tip, we don't put
25 those in.

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1 Mr. Flowers as to making any of those prints.

2 Q Okay. Now, the prints that you had, the latent prints
3 that were of value and that you were able to compare to the other
4 individuals, where did they come from?

5 That's given to you, a description of the location the
6 prints were lifted from; is that correct?

7 A Yes, ma'am.

8 Q Can you tell me where the prints of value came from that
9 you compared to Norman Flowers?

10 A Yes. The unidentified prints that we have, if I may
11 refer to my notes --

12 Q Go right ahead.

13 A The latent prints that were submitted by crime scene
14 analyst Horn that were not identified, there was a five drawer
15 bureau chest in the southeast bedroom.

16 There was an exterior door jam, north door of the
17 southwest bedroom. That's the wording on the lift card.

18 And this print was AFIS quality and it was put into the
19 AFIS system; it was not matched.

20 This print was entered initially when it came into the
21 crime lab and upon me receiving the subsequent requests later on
22 to Mr. Flowers at that time, since it was still not identified, I
23 researched that at that time and it was still no match. So that
24 print is still outstanding.

25 The known identified prints that were submitted by crime

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1 It's just a matter of what the -- we are under certain
2 guidelines as to what we can put into the system. So the tip,
3 side of the fingers, prints that have a lack of minutia
4 characteristics and points, depending on the clarity, we may or
5 may not put them in, depending on the print itself.

6 Q Okay. So, Mr. Boyd, you said that your original request
7 to compare prints was to compare those prints of value as Sheila
8 Quarles, Qunise Toney, Robert Lewis and Debra Quarles and you only
9 identified Sheila Quarles' prints.

10 A Yes, ma'am.

11 Q On August 22nd of 2006, did you receive another request
12 to compare the latent prints that were found to another
13 individual?

14 A Yes, ma'am, we did.

15 Q Who was that other individual?

16 A The other individual was a Norman Flowers.

17 Q And did you receive prints that were known to be the
18 prints of Norman Flowers to compare those to the latents?

19 A Yes, ma'am.

20 Q And did you make that comparison?

21 A Yes, ma'am, I did.

22 Q What, if anything, did you find?

23 A I compared the remaining and identified latent prints
24 that we had to the known prints of Mr. Norman Flowers and, upon my
25 examination, I found no identification. I did not identify

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1 scene analyst Fletcher is from a compact disk titled Jagged Edge,
2 and one, two, three -- there were four prints from a beef cheese
3 packet from the bedroom floor. And one print was previously
4 identified to the victim from that beef cheese packet.

5 Q Okay. So the fact that his prints were not identified by
6 you doesn't mean he wasn't in the apartment; it just means that he
7 didn't touch the door jam at that location, he didn't touch the
8 compact disk at that location, and he didn't touch the beef and
9 cheese; is that correct?

10 A No. The only thing I can testify to is that the prints
11 that I looked at that were obtained, they were not identified to
12 Mr. Flowers. I can't say whether he was there. I can't say
13 whether he was not there.

14 Q Okay. All you can say is that those prints that you
15 found weren't his?

16 A That is correct.

17 MS. LUZAICH: Thank you. Nothing further.

18

CROSS-EXAMINATION

20 BY MR. PIKE:

21 Q Mr. Boyd, good to see you. I just have a few questions.
22 In reference to the obtaining and examination of
23 fingerprints then, it sounds like it's part art and part science.
24 You have the science in the chemicals that you use, the items that
25 are used; and then there is an art in collecting it, doing the

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1 physical manipulation; and then part of the art in interpreting
2 and examining that latent print or lifted print against an
3 exemplar.

4 Would that be a good description of what you do?

5 A That would be a good description.

6 Q And then going through this, you have certain tools that
7 you can use, which is AFIS, you've indicated.

8 And then the rest of the time, it involves going through
9 and comparing against known exemplars that are obtained or
10 referred to by the submitting detective or somebody that's
11 involved in the case; is that correct?

12 A It is correct.

13 Q An in this case, you were only asked to do that two?

14 A Yes, sir.

15 Q Were never asked to compare this to the fingerprint of a
16 George Brass?

17 A No, sir.

18 Q Or anybody else?

19 A No, just the names that I mentioned.

20 Q And the last time you were asked to do that was in August
21 of 2006?

22 A Yes.

23 Q I think you gave the August 26th date?

24 A Right. The date of examination to Mr. Flowers was 8/31
25 of '06, yes.

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1 If it comes out as a number one or two respondent and it
2 highlights in blue, this is an indicator that, hey, you may have a
3 match.

4 We get so many of these that we don't have -- unless it's
5 requested to go into and search a certain number specifically on a
6 TLI search, you know, to search everything that we have in our
7 system, I could be there a year working one case, searching one
8 latent on the millions of fingerprints that are in the system.

9 But, theoretically, the print that was put in, it was a
10 fairly good print and it should come up pretty decent to within
11 the first two or three respondents, I would say.

12 But, again, too, if there are other fingers in the system
13 that are very similar, it could hit on those other ones first
14 before it hit on this one here.

15 Q Well, I guess my question was more if somebody's prints
16 that matched get entered now, will the machine tell you there is a
17 hit or do you have to go to the machine and keep asking if there
18 has been another hit?

19 A Well, we go in and we check the TLIs that have been for
20 recent arrests and current arrests. We have people that do check
21 those.

22 MS. LUZAICH: Okay. Thank you.

23 THE COURT: Thanks, Mr. Boyd. Appreciate it.

24 MR. PIKE: I've got one question.

25 THE COURT: Go ahead.

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1 Q But you stand ready with the exemplars that you have and
2 you preserve them so that if you were requested to examine any
3 future fingerprints, you could do that?

4 A Yes, sir.

5 Q And you preserved that for how long?

6 A Oh, this is a homicide. These prints will be retained
7 probably forever.

8 MR. PIKE: Thank you. I have no further questions.

9 THE COURT: Anything else?

11 REDIRECT EXAMINATION

12 BY MS. LUZAICH:

13 Q You did your last examination in August of 06.

14 Since the prints have been entered into AFIS by you, if
15 somebody subsequently gets arrested and their prints are entered
16 into AFIS, if it matches the latents that you have entered, would
17 it kick it out automatically or would you actually have to go
18 request it?

19 Do you understand my question?

20 A Yes. If a person is arrested and if it does hit on that
21 particular print, then hopefully it will come out as a number one
22 respondent.

23 If it comes out as a number 10 or 20 respondent, under a
24 TLI search, this would be considered a ten print to latent search;
25 it may not be picked up.

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1 RECROSS-EXAMINATION

2 BY MR. PIKE:

3 Q But the AFIS is just almost like a numerical match and
4 that's where the art of your profession comes in to take what may
5 be a possible hit and then confirm it.

6 Without that confirmation, AFIS is meaningless?

7 A That is correct.

8 THE COURT: Thank you, Mr. Boyd.

10 (Witness excused.)

12 THE COURT: Is that where you want to end, two short
13 witnesses and go home.

14 MS. WECKERLY: Yes, please.

15 Monica Ramirez.

16 MS. LUZAICH: Can the Court instruct for the other
17 incident?

18 THE COURT: Yeah. This next witness or two relates to
19 the incident that doesn't involve Miss Quarles. So, again,
20 evidence of any other crime cannot be considered for you unless
21 you find that that crime that has been proven by clear and
22 convincing evidence and it is only to be considered by you to
23 prove that identity, intent, motive, absence of mistake or
24 accident and not that he's a person of bad character or has a
25 disposition to commit crimes.

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1 And that's the next two witnesses.

3 (Witness sworn.)

5 THE CLERK: Thank you.

6 Please be seated.

7 Please state your name, spelling your first and last name
8 for the record.

9 THE WITNESS: Monica Ramirez; M-o-n-i-c-a, R-a-m-i-r-e-z.

11 MONICA RAMIREZ

12 called as a witness on behalf of the State,
13 having been first duly sworn,
14 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. WECKERLY:

18 Q Miss Ramirez, how were you employed in May of 2005?

19 A I was the property manager for Nevada Hand.

20 Q Like hand? (Indicating)

21 A Like the hand, yes.

22 Q Okay. Did you work at a complex located at 6650 Russell?

23 A Yes.

24 Q And were you the manager of the entire complex?

25 A Yes, ma'am.

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1 Q Did you have other employees who worked for you at the
2 complex?

3 A Yes, ma'am.

4 Q Who was in the office staff?

5 A I had a Micheline Crow; she was my assistant. And I had
6 a Caesar Hernandez, which was my maintenance technician at the
7 time.

8 Q Okay. I'd like to talk to you specifically about May,
9 the 3rd of 2005.

10 On that day, did you receive a request to do what we
11 would call a welfare check on a resident of one of your
12 apartments?

13 A Yes, ma'am.

14 Q Do you recall what time of day it was that you got the
15 request to go do the welfare check?

16 A When I arrived at the office at eight o'clock, the call
17 already came through to my assistant and I would say about 8:15,
18 8:10, we went there.

19 Q You and who?

20 A Micheline Crow, my assistant.

21 Q Do you have a master key that allows you to get into all
22 the apartments?

23 A Yes, ma'am.

24 Q Do you recall what unit it was that you went into?

25 A I believe it was 303 or 301.

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1 Q Third floor?

2 A Third floor, yes.

3 Q Okay. So you and Miss Crow go to this particular
4 apartment?

5 A Yes.

6 Q Do you know who the occupant was on the inside, what that
7 person's name was?

8 A Merilee Hooku.

9 Q Merilee Koot?

10 A There you go, yes.

11 Q Okay. When you and Miss Crow get to the outside of the
12 unit itself, do you knock first before entering?

13 A Yes, ma'am.

14 Q Did you do that?

15 A Yes. We knocked on the door; we knocked hard several
16 times. There was no answer. Then I attempted to see if the door
17 was opened and it was locked.

18 Q The door was locked?

19 A Yes.

20 Q So did you use your master key to get in?

21 A Yes, ma'am.

22 Q Once you got in, what did you see on the inside?

23 A Once we went in, the TV was on. It was very quiet.
24 We just walked in. I announced who I was. I told her
25 who was with me at the time.

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1 We walk in, go in a little further into the living room
2 and that's where I seen Miss Koot laying there.

3 Q You say Miss Koot was laying in the living room.

4 Was she laying on the floor?

5 A Yes, ma'am.

6 Q Did you see whether or not she was wearing any clothing?

7 A There was no clothing.

8 Q Did you see whether or not she was face up or face down?

9 A She was face up.

10 Q When you and Miss Crow went into the living room and saw
11 her in this condition, what did you do next?

12 A At that time, we called 911 from her cell phone.

13 Q Miss Crow's?

14 A Miss Crow's cell phone, yes, ma'am.

15 Q Did anyone else -- well, prior to the police or

16 paramedics getting there, did you see anyone else enter the
17 apartment while you and Miss Crow were there?

18 A The only one that entered after me and Miss Crow was my
19 maintenance technician, which was Caesar Hernandez.

20 Q And when Mr. Hernandez went in there, did you see -- what
21 was his purpose for coming in?

22 A The purpose was because me and Miss Crow were
23 uncomfortable approaching the body, you know, to see if there was
24 any type of vitals, if she was breathing.

25 So, at that time, we contacted my maintenance guy and he

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1 was comfortable with it; and while he was on the phone with the
 2 police, he stood over her to see if she was breathing.
 3 Q So it was as a result of the 911 operator that you three
 4 are checking to see if Miss Koot is breathing or anything like
 5 that?
 6 A Yes, ma'am.
 7 Q And you and Miss Craw are watching as Mr. Hernandez is on
 8 the phone and doing those things?
 9 A Yes.
 10 Q Other than checking to see if she was breathing, did you
 11 see Mr. Hernandez move the body at all or dramatically change the
 12 condition of the body?
 13 A No.
 14 Q And you were there the whole time?
 15 A Yes, ma'am.
 16 Q And then eventually police or paramedics arrive?
 17 A Yes.
 18 Q Do you recall who was the first kind of official unit to
 19 arrive, whether it was paramedics or the police?
 20 A It was the paramedics or the fire department that was
 21 there first.
 22 Q Ma'am, I'm showing you what's been marked as State's
 23 Proposed Exhibit 91.
 24 Do you recognize what's depicted in that photograph?
 25 A Do I recognize what? I'm sorry.

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1 Q Do you recognize what is depicted in that photograph?
 2 A Yes.
 3 Q Is that Miss Koot depicted in her living room as you saw
 4 her that morning?
 5 A Yes, ma'am.
 6 Q Is that a fair and accurate depiction?
 7 A Yes.
 8 MS. WECKERLY: The State moves to admit State's 91.
 9 MR. PIKE: No objection.
 10 THE COURT: Admitted.
 11
 12 (State's Exhibit 91 admitted into evidence.)
 13
 14 THE COURT: Any questions.
 15 MR. PATRICK: Briefly, Your Honor.

CROSS-EXAMINATION

18 BY MR. PATRICK:
 19 Q Good afternoon, Miss Ramirez.
 20 You said that Mr. Hernandez was your maintenance man?
 21 A Yes.
 22 Q Was he the only one or was he like the supervisor?
 23 A He was the maintenance tech supervisor.
 24 Q So there were other maintenance people?
 25 A Not another maintenance. We only had a porter, which

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1 was -- it was Kenneth. I don't remember his last name at this
 2 time.
 3 Q Okay. That's fine.
 4 And you said that Mr. Hernandez entered the apartment
 5 sometime after you and your assistant did?
 6 A Yes, sir.
 7 Q Do you remember about how long after?
 8 A I would say no more than maybe five minutes.
 9 Q Do you remember when the last time that apartment would
 10 have needed servicing or had a service request that Mr. Hernandez
 11 would have had to respond to?
 12 A No.
 13 Q When you walked in, you said that the TV in the living
 14 room was on?
 15 A In the living room in her bedroom.
 16 Q In the bedroom?
 17 A Yes.
 18 Q Okay. Do you remember what was on TV?
 19 A No.
 20 Q And you said that Miss Koot was naked in her living room?
 21 A Yes, sir.
 22 Q Did you notice any clothes nearby her?
 23 A No, sir.
 24 MR. PATRICK: That's all I have, Judge.
 25 MS. WECKERLY: Nothing else.

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1 THE COURT: Thanks. Appreciate it.
 2
 3 (Witness excused.)
 4
 5 THE COURT: Next witness; last for the day.
 6 MS. LUZAICH: Officer Villagrana.
 7 THE COURT: Okay.
 8
 9 (Witness sworn.)
 10
 11 THE CLERK: Thank you. Please be seated.
 12 Please state your full name, spelling your first and last
 13 name for the record.
 14 THE WITNESS: William Villagrana; W-i-l-l-i-a-m,
 15 Villagrana.

WILLIAM VILLAGRANA

17 called as a witness on behalf of the State,
 18 having been first duly sworn,
 19 was examined and testified as follows:
 20
 21

DIRECT EXAMINATION

23 BY MS. LUZAICH:
 24 Q Sir, how are you employed?
 25 A I'm a traffic officer for Las Vegas Metro PD.

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1 Q How long have you been with the Las Vegas Metropolitan
2 Police Department?
3 A Four years. Ma'am.
4 Q And were you a police officer with Metro on May 3rd, 2005
5 as well?
6 A Yes, ma'am.
7 Q And on May 3rd of 2005, were you working patrol?
8 A Yes, ma'am.
9 Q Were you dispatched to the Silver Pines apartments at --
10 I'm sorry. I lost my whole train of thought -- 6650 East Russell,
11 Clark County, Nevada?
12 A Yes, ma'am.
13 Q Were you sent there for a suspicious death?
14 A Yes, ma'am.
15 Q When you got there, what did you see?
16 A When I got there, I made contact with Officer Bevilacqua.
17 I entered the apartment, saw the apartment appear to be clean and
18 organized; a ceiling fan and light were on. The TV was turned on
19 as well. It was tuned to a pay per view channel.
20 Q What about the pay per view channel?
21 A It was showing information on how to access pornographic
22 movies.
23 Q How to access as opposed to actually showing a
24 pornographic movie?
25 A Yes.

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1 Q When you entered the apartment, could you see any sign of
2 forced entry?
3 A No, ma'am.
4 Q And you said that it was very neat and clean, the
5 apartment?
6 A Yes. Ma'am.
7 Q You saw the TV. What else did you see as you entered the
8 apartment, as you walked further in?
9 A I walked in and I saw a black female adult laying on the
10 living room floor.
11 Q When you saw her laying on the living room floor, was she
12 covered?
13 A No, she wasn't.
14 Q Was she naked?
15 A Yes.
16 Q And was she laying face up?
17 A Face up.
18 Q Showing you State's Exhibit 91, can you see that?
19 A Yes, ma'am.
20 Q Is that how she looked and how the room looked as you
21 entered?
22 A Yes.
23 Q Okay. Did you come closer to the body?
24 A Yes.
25 Q What did you notice, if anything, about the body?

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1 A Her legs were spread. She had a gold earring on her
2 right here. There was another gold earring laying next to her.
3 Some of her pubic hair was burned. There was an incense
4 stick, a part of it, in her belly button.
5 Q An incense stick, like something you burn for aroma?
6 A Yes.
7 Q You said part of it was in her belly button.
8 Was it partially burned?
9 A Yes.
10 Q Okay. What else did you notice?
11 A There were some ashes between her legs under her vaginal
12 area.
13 Q When you noticed all of that, did you walk through the
14 rest of the apartment as well?
15 A Yes, I did.
16 Q And what was the purpose of that?
17 A We were checking the rest of the apartment.
18 Q Okay. What did you notice, if anything?
19 A I noticed in the washing machine -- there was a purse,
20 along with its contents inside the washing machine and it appeared
21 to have gone through a cycle. The items were wet and there was
22 residual detergent on the items.
23 Q What else did you notice in the washing machine?
24 A Just a purse, along with contents of it.
25 Q Ice cube trays?

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1 A Ma'am?
2 Q Ice cube trays?
3 A Yes, ma'am.
4 Q Did you go further than the washing machine?
5 A Yes, ma'am. In the master bedroom, the bathtub was full
6 of water. There was some makeup items, jewelry, newspaper in the
7 bathtub and it was all covered up with a blue towel.
8 Q Okay. Makeup items, paper as well?
9 A Yes, ma'am.
10 Q Did you find all of that odd?
11 A Yes, I did.
12 Q What did you all do?
13 A Well, homicide was notified. They responded. We secured
14 the scene, waited for homicide to conduct their investigation.
15 Q Okay. You secured the scene and that would be that only
16 law enforcement personnel could come in?
17 A Correct.
18 Q Is that to preserve the scene so that nothing would be
19 damaged or disturbed?
20 A Yes, ma'am.
21 Q And you called homicide because?
22 A It was suspicious.
23 MS. LUZAICH: Okay. Thank you.
24 THE COURT: Any questions?
25 MR. PIKE: Yes, I do.

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CROSS-EXAMINATION

- 1
2 BY MR. PIKE:
3 Q Officer, when you went into the scene, your duties in
4 going into the scene are, number one, make sure there is nobody
5 else in there, so that you and any other responding personnel are
6 safe. That's one of the things you are supposed to do, right?
7 A Correct.
8 Q And you went through the entire location to make sure
9 that that was, in fact, true?
10 A Yes, sir.
11 Q The other part of your responsibilities was to make a
12 determination whether you should call detectives, if so, which
13 division, and whether or not you should call medical personnel.
14 Would that be an accurate assessment of what your duties
15 were?
16 A Yes, sir.
17 Q Okay. And you've received training in performing those
18 duties and you've also received training in the processing and
19 collection of evidence as part of your training to be a police
20 officer; is that true?
21 A Yes, sir.
22 Q Okay. And in going through that, you would make it a
23 point not to touch anything that may be of evidentiary value?
24 A Yes, sir.
25 Q You left the TV on or did you turn it off?

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- 1 A I did not touch the TV. It stayed on.
2 Q Was there a TV remote that you observed there?
3 A I do not recall seeing a remote.
4 Q Anything like that that may have fingerprints on it, you
5 would not have touched?
6 A Correct.
7 Q When you arrived at the scene, you indicated there was
8 another officer. Could you spell his last name for court
9 reporter, please?
10 A I believe it is Bevilacqua, B-e-v-i-l-a-c-q-u-a. I'm not
11 sure of the spelling.
12 Q It's a whole lot closer than I would have come.
13 And you were the only two officers that were in there?
14 A No. There were three of us.
15 Q Who was the other officer?
16 A Officer Gallagher. He was my training officer.
17 Q Okay. And had you all arrived at the same time or was
18 Officer Gallagher there earlier?
19 A No. Officer Bevilacqua responded at approximately 913
20 hours.
21 Q And then you responded second?
22 A Yes, sir.
23 Q Did you take any statements from any individuals at that
24 time?
25 A No, I did not.

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- 1 Q After the detectives arrived and they took control of the
2 scene, were you then relieved from this responsibility and went
3 about your other duties?
4 A No, I didn't. I stayed until they were done with their
5 investigation.
6 Q Okay. So you were involved in the collection of any
7 statements and the continued investigation of the scene?
8 A Yes, sir.
9 MR. PIKE: Okay. I have no further questions.
10 THE COURT: That's it.
11 MS. LUZAICH: Nothing.
12 THE COURT: Appreciate it, Officer. You are excused.
13
14 (Witness excused.)
15
16 THE COURT: Okay. Well, we're right where we should be
17 tonight so we're right on track.
18
19 (Jury admonished by the Court.)
20 THE COURT: Again, I expect we will probably have an
21 article in the Nevada section tomorrow, so set that section aside
22 or have your significant other take the article out and read the
23 rest of the paper.
24 Don't form or express an opinion on the case until it's
25 submitted to you.

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- 1 Have a good evening. We'll pick up at 9:30 tomorrow.
2 Again, give yourself a little leeway time because the
3 elevators sometimes aren't good in the morning.
4 Have a nice evening.
5 MR. PIKE: Thank you, Your Honor.
6 THE COURT: Your pads and pencils will be on your chair
7 when you get here in the morning. Wear comfortable clothes.
8
9 (Proceedings concluded.)
10
11 * * * * *

ATTEST: Full, true and accurate transcript of proceedings.


 RENEE SILVAGGIO, C.C.B. 122

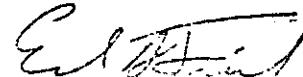
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ACCUSCRIPTS (702) 391-0379

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN KEITH FLOWERS, aka

Defendant.

Case No. C228755

Dept. No. VII

VOLUME 3-B

Before the Honorable Stewart L. Bell
Friday, October 17, 2008, 9:30 a.m.

Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

For the State:

PAMELA WECKERLY, ESQ.
LISA LUZAICH, ESQ.
Deputies District Attorney

For the Defendant:

RANDALL PIKE, ESQ.
CLARK PATRICK, ESQ.
Deputies Special Public Defender

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

RECEIVED

OCT 20 2008

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
Plaintiff,)
vs.) Case No. C228755
NORMAN KEITH FLOWERS, aka) Dept. No. VII
Defendant.) VOLUME 3-B

Before the Honorable Stewart L. Bell
Friday, October 17, 2008, 9:30 a.m.

Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

For the State: PAMELA WECKERLY, ESQ.
LISA LUZAICH, ESQ.
Deputies District Attorney

For the Defendant: RANDALL PIKE, ESQ.
CLARK PATRICK, ESQ.
Deputies Special Public Defender

REPORTED BY: RENEE SILVA GGIO, C.C.R. No. 122

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Las Vegas, Clark County, Nevada
Friday, October 17, 2008, 9:30 a.m.

P R O C E E D I N G S

(The following proceedings were had in open
court outside the presence of the jury panel:)

THE COURT: Case Number C228755, State versus Norman
Keith Flowers.

Let the record reflect the presence of the defendant, his
counsel, counsel for the State; absence of the jury.

Anything else to come before the Court before the jury
comes in?

MR. PIKE: Your Honor, we went through the photographs
that the State anticipates introducing through the witnesses
today. They all involve just crime scene photographs, area
photographs. I've already gone through them, so we stipulate to
their admission.

THE COURT: Great.

MR. PIKE: And we agree that they truly and accurately
represent those areas in which the photograph was taken.

THE COURT: Okay. That saves a lot of time.

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(The following proceedings were had in open
court in the presence of the jury panel:)

THE COURT: Okay. Let's go back on the record in Case
Number C228755, State of Nevada versus Norman Keith Flowers.

Let the record reflect the presence of Mr. Flowers, his
counsel, all counsel for the State; all of the ladies and
gentlemen of the jury are in the box; they've got their note pads
and they're ready to go.

Ready today, Miss Weckerly?

MS. WECKERLY: Yes.

THE COURT: Call your next witness.

MS. WECKERLY: Jeffrey Smink.

(Witness sworn.)

THE CLERK: Thank you. Please be seated.

Please state your full name, spelling your first and last
name for the record.

THE WITNESS: Jeffrey Smink; J-e-f-f-r-e-y, S-m-i-n-k.

JEFFREY SMINK

called as a witness on behalf of the State,

having been first duly sworn,

was examined and testified as follows:

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DIRECT EXAMINATION

BY MS. WECKERLY:

Q How are you employed, sir?

A I'm a crime scene analyst supervisor with the Las Vegas Metropolitan Police Department.

Q You are a supervisor?

A I am now, yes.

Q How long have you worked as a crime scene analyst?

A Roughly 21 and a half years.

Q Did you always work for Metro or another agency prior to that?

A Another agency prior to it.

Q And you've been a supervisor of crime scene analysts now for how long?

A Since March.

Q Back in May of 2005, were you working as a crime scene analyst?

A Yes, I was a senior crime scene analyst.

Q We've had a little bit of testimony about it, but can you describe just generally what your job duties are as a crime scene analyst?

A It entails primarily responding to crime scenes; documenting the scene with photography, notes and diagrams;

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processing the scene for latent prints; impounding evidence; conducting reconstruction, such as blood stain pattern interpretation and related investigative techniques.

Q When you are working as a crime scene analyst, do you typically respond by yourself or do you respond with another analyst?

A It depends on the type of case.

Q With a homicide?

A With the team.

MS. WECKERLY: Your Honor, I haven't told them, but we need to read the admonishment.

THE COURT: Okay. Apparently, he's going to testify about the crime that you have heard a little bit about that is not the crime that you ever here to decide, but it may have some bearing on the crime that you are here to decide.

So, again, I'd advise you that in order for that crime to even be considered, you must find that it was proven by clear and convincing evidence; and then the evidence that the defendant may have committed that crime or any other crime, for which he is not on trial, is only admitted to prove identity, knowledge, intent motive, absence of mistake or accident in the case before you and not that he's a person of bad character or has a general disposition to commit those crimes.

MS. WECKERLY: Thank you.

THE COURT: So let's talk about it now.

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BY MS. WECKERLY:

Q Sir, in May of 2005, did you respond to an apartment located at 6650 East Russell?

A Yes.

Q And that's in Las Vegas, Clark County, Nevada?

A Yes.

Q I want to talk specially -- was this a third floor apartment in a multi-building apartment complex?

A Yes.

Q And I think you said when you respond to homicide scenes, there is a team of investigators or analysts who respond; you just don't go by yourself?

A Correct.

Q Who was with you?

A Crime scene analyst supervisor Randy McLaughlin and crime scene analyst Charity Green.

Q And at that time, Mr. McLaughlin is the supervisor and you are a senior analyst?

A Yes.

Q How did you and Miss Green divide the work in terms of processing this particular crime scene?

A I was responsible for the report, photography, processing for latent prints and searching for evidence.

Miss Green was responsible for the diagram, evidence collection, and evidence search as well.

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Q And when you work as a team, I assume you two are conferring with each other?

A Yes.

Q Throughout the processing?

A Yes.

MS. WECKERLY: For the record, these have been stipulated for admission, but I would like you to quickly look through these photographs and tell me if you recognize what's depicted.

THE COURT: What's the first number and the last number?

MS. WECKERLY: 51.

THE COURT: And the last one is 90?

MS. WECKERLY: The very last one?

THE WITNESS: 90.

THE COURT: 90. 51 through 90 are admitted by stipulation, which means that the parties have agreed there is no objection and it's fair for you to consider them and they will be admitted.

(State's Exhibits 51 - 90 admitted into evidence.)

BY MS. WECKERLY:

Q Do you recognize those photographs?

A The majority of them, yes.

Q Okay. And are they photographs of the crime scene that you responded to in May of '05?

A There is one that I noticed that was one that I did not

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1 take, but all the other ones, I took.

2 Q Okay. We'll talk about that one.

3 I'm putting on the overhead what's been admitted as

4 State's Exhibit 51.

5 What are we looking at in that photograph?

6 A It's a view of the apartment building where the scene was

7 located. The actual scene was the third floor apartment in the

8 middle right area of the photograph.

9 Q Okay. And you just indicated where it is on your screen?

10 A Yes.

11 Q Thank you.

12 When you first approached the scene, did you look at or

13 examine the front door at all to see if there was any signs of

14 forced entry?

15 A Yes, I did.

16 Q And now I'm putting on the overhead State's 52.

17 That would be the front door?

18 A Yes.

19 Q Any signs of a forced entry that you noted when you were

20 there processing the scene?

21 A No.

22 Q Now, I'm putting on the overhead State's 53.

23 What are we looking at in that photograph?

24 A This is a photograph taken during the course of the scene

25 processing and it's a view of the front door after it has been

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1 processed for fingerprints.

2 The dark colored blue-ish and black material on the door

3 is fingerprint powder and the areas where you see tape, as

4 indicated on the right part of the door, are areas where latent

5 prints were recovered.

6 Q So, obviously, you and Miss Green processed the door for

7 latent prints?

8 A Yes.

9 Q And the little pieces of tape that we see on the right

10 side of the photograph, those are what actually picks up the

11 latent print?

12 A Yes. It's latent print tape. Essentially, it's two inch

13 wide masking tape that we use to recover the latent print

14 impressions.

15 Q The apartment itself that you were examining or

16 processing, could you tell the members of the jury your overall

17 impression of how the apartment looked, in terms of if it looked

18 like there was a major struggle in it or if it appeared neat and

19 clean?

20 A Upon entering the apartment, it appeared to be very neat

21 and orderly and I did not see any signs of a struggle.

22 Q I am now putting on the overhead State's 62.

23 What are we looking at in that photograph?

24 A It's an overall view of the kitchen area, which is

25 located in the east middle area of the apartment.

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1 Q Appears very clean?

2 A Very clean.

3 Q State's 64?

4 A It's a photograph taken of the kitchen sink area, just to

5 show the contents of the sink and the dish drainer.

6 Q This is State's 65.

7 A It's an overall view of the dining room area, which is

8 located adjacent to the kitchen, just to show its general

9 condition and the different furnishings that were present.

10 Q Now, I'm putting on the overhead State's 76.

11 What are we looking at in that photograph?

12 A It's the overall view of the southwest bedroom, just to

13 show its general condition and contents when I arrived at the

14 scene.

15 Q So this is the view of the bedroom before any processing

16 or any removal of potential items of evidence took place in the

17 bedroom?

18 A Yes. The normal course of my duties is to take all

19 photographs of the scene when I arrive to show its condition,

20 contents and any other items before processing begins.

21 Q And now I'm putting on the overhead State's 77.

22 Is that also in the bedroom area?

23 A Yes. That's a dresser within the bedroom.

24 Q And that's how the dresser appeared upon entry?

25 A Yes.

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1 Q Now, I'm putting on the overhead State's 80.

2 What are we looking at in that photograph?

3 A It's another overall view in the same bedroom. And

4 things that are noteworthy is this is the hallway leading from the

5 living room, adjacent to the washer and dryer, into the bedroom;

6 and this is a doorway which led into the master bathroom area and

7 this was a doorway which led into the closet of the bedroom.

8 Q Now, I'm putting on the overhead State's 82.

9 What are we looking at in that photograph?

10 A An overall view of the bathroom area when I arrived.

11 Q The vanity area that we're looking at, did that appear to

12 be disturbed at all to you when you were processing the apartment?

13 A No.

14 Q Was there anything unusual in the bathroom that you

15 noticed?

16 A Yes.

17 Q What was that?

18 A Items contained within the bathtub.

19 Q Can you describe what you mean by that?

20 A There was assorted watch cases, ring boxes, necklace

21 boxes, phone books, towels, articles of clothing and other

22 assorted items of value that were located in the bathtub, that

23 were wet and/or damp.

24 Q I'm showing you State's 84.

25 Is that sort of a wider shot of the bathtub that you were

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1 just speaking of?

2 A Yes. And in addition to the things I've described, there
3 were also things as depicted in the photograph on the rug adjacent
4 to the bathtub, as well as a towel hanging on the shower rack for
5 the bathtub.

6 Q Now, I'm putting on the overhead State's 87.

7 That's a closer view of the bathtub and some of the items
8 this were inside of it?

9 A Yes.

10 Q And you said those are items of paperwork in the name --
11 was it in the name of victim, some of that paperwork?

12 A Yes.

13 Q And those items were all wet?

14 A Wet and/or damp or in the process of drying.

15 Q When you were processing the scene on the day that you
16 were there, did you have knowledge that homicide detectives and
17 another crime scene analyst were actually in the apartment a day
18 earlier, on May 3rd?

19 A Yes.

20 Q And was it your understanding that the bathtub was full
21 of water at that time?

22 A Yes.

23 Q So it was drained before you got there?

24 A Yes.

25 Q Could you tell, when you looked at the bathtub, like a

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1 water level at all?

2 A Yes. There was a water line mark on the side of the
3 bathtub.

4 Q Besides the bathtub, was there another room in the
5 apartment that had sort of a similar odd appearance to it -- to
6 the bathtub?

7 A Yes.

8 Q What was that?

9 A That was the laundry area, which was actually a closet
10 area in the section of the living room.

11 Q And can you describe what that looked like.

12 A The washing machine contained various items, including
13 articles of clothing, a purse, a wallet, a daily planner, a knife,
14 another assorted items; and some of those items had partially been
15 removed from the washing machine and some of them were still
16 contained within the washing machine.

17 A number of those items appeared to have been damp; in
18 other words, they had been washed; and also were discolored as a
19 result of, in my opinion, some sort of a reagent or oxidized agent
20 placed in the washing machine.

21 Q And putting on the overhead State's 75, does that depict
22 part of the washing machine area that you were describing?

23 A Yes, it depicts the washing machine with the tub open and
24 then some of the contents that were in the washing machine on top
25 of the dryer.

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1 Q And this is State's 74, sort of a closer view of the
2 washing machine?

3 A Yes. It depicts the contents on the bottom of the
4 washing machine tub after a number of items were removed from the
5 washing machine tub.

6 Q And this is State's 72.

7 Is that the purse that you were speaking of with regard
8 to the washing machine?

9 A Yes. There is a purse, a wallet, a daily planner, some
10 credit type cards and miscellaneous items.

11 Q Now, there appears, on those items, to be a residue on
12 them.

13 Was that consistent with like washing detergent or some
14 sort of agent like that?

15 A In some areas, yes. There is also residue of like when
16 paper gets wet and then gets torn up after being exposed to the
17 water and then breaking up into pieces, then being deposited on
18 the items, such as the white pieces on this black daily planner or
19 a little booklet there.

20 Q So sort of paper kind of disintegrating as a result of
21 water or something like that?

22 A Yes.

23 Q I assume you also were in the living room area of this
24 apartment?

25 A Yes.

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1 Q At the time that you were there, the deceased, obviously,
2 had been removed?

3 A Yes.

4 Q I'm showing you State's 54.

5 Does that depict the living room area of the apartment?

6 A Yes, a portion of it.

7 Q And this is State's 56, another view of the living room?

8 A Yes. This is actually a view from the entryway hallway,
9 as you would enter the living room from the front door.

10 Q Now, I'm putting on the overhead State's 57.

11 That is another view of the living room area?

12 A Yes, yes; specifically, the love seat area adjacent to
13 the dining room.

14 Q In that photograph, did you note or can you see clothing
15 in the photograph?

16 A Yes.

17 Q Can you circle on your screen where the clothing was?

18 A It was on the floor area just west of the love seat.

19 Q And do you remember if the clothing sort of -- or what
20 the condition of it was?

21 A Yes. It was a pair of shorts that were turned inside out
22 and a pair of underwear.

23 Q Now, once you and Miss Green photographed the scene, what
24 did you do next in terms of processing the apartment?

25 A I directed my attention to the carpet area in front of

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1 the love seat.

2 Q And why was it that you were concentrating on that area?

3 A Based on information I had received and based on
4 observations I made of the carpet.

5 Q I'm putting on the overhead State's 58.

6 Is this the area of the carpet that you were
7 concentrating on?

8 A Yes.

9 Q And it's a little bit hard to see on that photograph, but
10 is there actually a scale that you put in the photograph that sort
11 of shows where you are concentrating?

12 A Yes. And what the scale does is it shows the actual size
13 of the item that I'm photographing. If the photograph was to be
14 blown up for a comparison, they could use the scale for
15 measurement and also it advises that I am the person taking the
16 photograph.

17 Q Now, when you were there on the 4th and you were
18 specifically focusing on this area of the carpet, did you have
19 information from detectives or other crime scene analysts as to
20 where the victim was located a day earlier?

21 A Yes.

22 Q And, obviously, that's the area that you were
23 concentrating on?

24 A Yes.

25 Q Did you visually examine the carpet area before doing any

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1 type of processing or evidence collection?

2 A Yes.

3 Q What were your findings visually?

4 A Visually, I saw areas of burned or charred carpet and an
5 area of apparent blood adjacent to that burned carpet area.

6 Q Did you do anything else besides the visual inspection
7 before attempting to collect evidence from that area?

8 A Yes.

9 Q Explain what you did.

10 A After the visual examination, looking for any types of
11 evidence, specifically biological fluid stains, I used an
12 alternate light source, which is a device that emits a specific
13 wave length or color of light; and it's primarily used for
14 searching areas for fluids, primarily semen, vaginal fluids,
15 saliva and urine. It also has applications in fingerprint
16 development.

17 I used this device with this solid wave length of light,
18 which was a violet color with a pair of goggles, in an attempt to
19 locate some biological fluid stains which might have been present
20 on the carpet.

21 Q And did you locate anything?

22 A Yes, I did locate something.

23 Q Okay. Was there a specific stain that you thought you
24 saw, either grossly, visually, or as a result of using the
25 alternate light source?

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1 A Well, visually, with the naked eye, I didn't see any

2 stains. When using the alternate light source with a pair of
3 goggles and with a pair of goggles -- they're colored goggles and
4 they filter out the colored lights, so I can see and visualize
5 what is fluorescing or reflecting with the alternate light source.

6 And what I saw was an area approximately ten inches by
7 ten inches surrounding the burned carpet area and it appeared to
8 be a contaminate of some sort.

9 Q And putting on the overhead State's 60, is that a close
10 up view of that segment of the carpet?

11 A Yes.

12 Q And we see, obviously, the charred area on the carpet?

13 A Yes.

14 Q But you are saying when you use the light source, it kind
15 of fluoresced to a wider portion of the carpet?

16 A Yes. The carpet itself did not react or fluoresce with
17 the use of the alternate light source; however, there was some
18 sort of stain in the areas surrounding the burned and charred area
19 which did fluoresce.

20 As a result of that, I was on my hands and knees during
21 the examination and I was attempting to detect an odor from this
22 area that had this stain. And also, the only area of the carpet
23 that had this type of contaminant type stain was in the area of
24 this burned carpet.

25 Q Okay. Now, when you say there was a contaminant or that

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1 you were getting a reaction or visually seeing something that
2 indicated a contaminant, what sort of things could cause that type
3 reaction?

4 A Generally, it's anything that has some sort of chemical
5 added that will fluoresce under this alternate light source.

6 Typically, I find these items in cosmetic products,
7 cleaning products, products with solvents and/or oxidizers.

8 Q So when you look at this specific area of the carpet, it
9 appears to be visually; and then I think you said you smelled the
10 carpet as well, like a cleaning agent has been used on this area
11 of the carpet?

12 A In my opinion, the odor was a floral type odor; and, to
13 me, it's not unlike a fabric softener type product.

14 Q And once you saw that and detected that odor, did you
15 make a determination about whether or not to actually collect that
16 piece of carpet as evidence?

17 A Well, prior to collecting the -- prior to that point,
18 what I did do is I used a swab and swabbed areas in the
19 contaminant, the area that had that contamination, with a
20 presumptive test, looking for some of the fluid stains.

21 All of these tests came back negative and, at the time,
22 my feeling was that someone had placed a contaminant in this area
23 in an attempt to hide evidence.

24 As a result of that, being prudent and erring on the side
25 of caution, I decided to cut the carpet out for further

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1 examination by the forensic laboratory.

2 Q And I'm putting on the overhead State's 61.

3 Is that a photograph of the carpet that you removed or

4 the segment?

5 A Yes.

6 Q And that was impounded by you?

7 A It was impounded by Miss Green.

8 Q Miss Green.

9 And then it was later -- I mean, you don't do the actual

10 DNA testing?

11 A No, I do not.

12 Q Okay. The segment of carpet that you collected -- well,

13 let me ask it another way.

14 Was that the only portion of the carpet that you cut out

15 of the whole apartment?

16 A Yes.

17 Q In addition to collecting that piece of carpet, did you

18 and Miss Green process the apartment for latent fingerprints?

19 A Yes.

20 Q And what areas, as a crime scene analyst, would you

21 concentrate on for fingerprints?

22 A In general, it's areas where I believe there has been

23 some activity and/or areas that depict areas disturbance.

24 Also included in that are common walkway and areas that

25 people that might have been in the apartment might have touched or

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1 come in contact with.

2 In this case, that would pertain to the doorways, the

3 doors, the area where I found the oddities, such as the bathroom,

4 the bathtub and the washing machine, as well as areas in the

5 living room adjacent to the carpet.

6 Q I'm putting on the overhead State's 78.

7 That's the dresser area in the bedroom?

8 A Yes.

9 Q And it looks like there is some fingerprint tape that's

10 been applied to some of the items there?

11 A Yes.

12 Q So that was obviously processed?

13 A Yes. And just to clarify, myself and crime scene analyst

14 McLaughlin processed the items for latent prints, not Miss Green.

15 Q Okay. Thank you.

16 And this is State's 79.

17 That's sort of a wider view of the dresser area as it has

18 been processed?

19 A Yes.

20 Q Now, you said that you concentrated on areas that

21 appeared odd or where there was possible disturbance.

22 That would include, obviously, the bathtub, which had all

23 those items in it?

24 A Yes.

25 Q I'm putting on the overhead State's 90.

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1 What are we looking at there?

2 A It's an overall view of, basically, the shower stall or

3 bathtub stall, showing basically the results of my processing for

4 latent prints.

5 And what I'm depicting here, in my opinion, are wipe

6 marks or items where a damp cloth has come across, where water has

7 come in contact with this tile, and then I come and process it

8 with fingerprint powder.

9 And what happens is the fingerprint powder would adhere

10 to the streaks left behind as a result of the water or wiping,

11 with some sort of moisture coming in contact with that tile.

12 The streaks, generally, are linear, or go side to side,

13 and were located in the shower area.

14 Q So it appeared to you, based on what's depicted in that

15 photograph, that the shower area -- and that's the bathtub which

16 had all that wet stuff in it -- that it had been wiped down?

17 A Yes.

18 Q No way to tell, I would assume, when that occurred?

19 A Correct.

20 Q I'm also putting on the overhead State's 89.

21 That's the vanity area of the bathroom?

22 A Yes.

23 Q Did that have the same wiped down appearance that the

24 shower area had to you?

25 A Not specifically, no.

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1 Q Okay. Now, I'm putting on the overhead State's 69.

2 This looks like we're back in the laundry room area.

3 A Yes.

4 Q That's fingerprint powder that we see in that photograph?

5 A Yes.

6 Q Anything about how that powder appeared that struck you,

7 as a crime scene investigator?

8 A Yes. In my opinion, there were also wipe marks on the

9 washing machine area, specifically in the upper right area that I

10 circled. Those had the same type of linear wipe marks as I

11 discussed were in the shower. They were side by side and they

12 were streak type marks.

13 And the way these streak marks are made, if you were to

14 spray too much Windex on your mirror at home and wipe across it,

15 you will get streak marks. It's the same type of philosophy in

16 theory.

17 And what happens is then that streak mark will dry and

18 then the fingerprint powder will adhere to those streak marks,

19 which is why I'm able to come to that opinion.

20 Q Did you also process the kind of laundry soap and that

21 sort of thing, that would have also been in the laundry room, for

22 prints?

23 A Yes.

24 Q And I'm putting on the overhead State's 70.

25 Does that photograph depict that sort of processing?

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1 A Yes, it does.

2 Q Do you recall whether or not you were able to recover

3 latent prints from those items?

4 A I don't recall specifically. I would need to refer to my

5 report for that.

6 Q Okay. Safe to say, though, if you did, those would have

7 been submitted for examination by a latent print examiner?

8 A Yes.

9 Q Now, I'm putting on the overhead State's 66.

10 This is back in the kitchen, correct?

11 A Yes.

12 Q And it looks like this is also a photograph depicting the

13 attempt to collect fingerprints from the kitchen?

14 A Yes.

15 Q Do you see evidence or indications of wipe marks, as you

16 described in the laundry room and in the bathtub area, in this

17 kitchen area as well?

18 A Yes.

19 Q Can you point out for members of the jury where you see

20 that?

21 A It may be difficult to see, but there are areas where

22 fingerprints were recovered; but in the corners of the sink, there

23 were those linear wipe type marks, which were developed as a

24 result of the fingerprint powder being applied to the kitchen

25 sink.

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1 Q And based on your review of the bathtub and the laundry

2 room and then the kitchen, as well as the carpeting where you

3 smelled the fabric softener or type of agent, did you have an

4 opinion whether or not, in this apartment, there had been at least

5 the appearance of an attempt to destroy or cover up evidence?

6 MR. PIKE: Objection; calls for speculation. He hasn't

7 been called for interpreting cleaning marks, when they were made.

8 THE COURT: Sustained. The jury can figure out what they

9 want to figure out from that, but earlier, he testified he

10 couldn't tell when the wipe marks occurred.

11 Stained.

12 MS. WECKERLY: Okay.

13 BY MS. WECKERLY:

14 Q In terms of the carpeting in the living room area, were

15 there other areas, beyond the actual stain that you were

16 concentrating on, that had that same smell of detergent?

17 A No, no other areas except for that area of carpet with

18 that stain had that odor.

19 Q Okay.

20 A In addition to the carpet, I did examine the sofa, the

21 love seat, the cushions, the backs of each sofa and love seat. No

22 other area of those type of stains or that odor that we've

23 described.

24 Q Okay. The detergent or fabric softener -- I think you

25 said there was a floral scent that you noted -- was limited to the

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1 area of the stain, rather than throughout the whole living room

2 area?

3 A Correct.

4 Q And this was where the victim happened to be lying?

5 A Based on what I was told, yes.

6 Q Okay. And the wipe marks that you saw in the bathtub

7 area, that's obviously in the bathtub where there had been all

8 those items of paper and personal items associated with the

9 victim?

10 A Yes.

11 Q And that's where you see the wipe marks?

12 A Yes.

13 Q And then the other wipe marks that you see in the laundry

14 room, that's where all those strange items were put through what

15 appeared to be a wash cycle or it looked like they were in the

16 washing machine at least?

17 A Yes.

18 Q And that's where you see wipe marks as well?

19 A Yes.

20 Q And then also along the kitchen sink area?

21 A Yes.

22 Q And throughout the apartment itself, did you ever see any

23 indication or any sign of a forced entry?

24 A No.

25 MS. WECKERLY: Thank you, Mr. Smink.

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1 I'll pass witness.

2 THE COURT: Cross.

3

4 CROSS-EXAMINATION

5 BY MR. PIKE:

6 Q Good morning.

7 A Good morning.

8 Q In reference to the scene that you went to, you indicated

9 that, as you arrived at that scene, that, in fact, you were there

10 upon the information you received the day after detectives had

11 been in before?

12 A Yes.

13 Q And that's not uncommon?

14 A No.

15 Q In fact, when you go over to that scene, was there some

16 sort of a seal or something placed upon the door so that you knew

17 that that crime scene had remained unviolated, or at least where

18 it was sealed, it had not been opened and gone into?

19 A Yes, there was a seal there.

20 I knew it was intact prior to my arrival, but the

21 detectives had broken it prior to my arriving on the scene.

22 Q You don't know that -- from your personal knowledge and

23 whatever information you may have had about was hearsay? It

24 wasn't sealed when you got there?

25 MS. WECKERLY: Your Honor, we may want to approach on

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1 this.

2 MR. PIKE: Okay. Well. Let me rephrase the question.

3 BY MR. PIKE:

4 Q Okay. When you went into this apartment that you

5 processed, that we're talking about today, you went in there and

6 -- were there detectives in there when you went in there?

7 A Yes.

8 Q Okay. That wasn't clear. That's the reason I asked that

9 question before.

10 A Okay.

11 Q So the detectives are in there.

12 Are you working with them and saying: Well, you should

13 check here; you should check there? You are working a

14 collaborative effort to determine what should be examined and how

15 it should be examined?

16 A The collaboration of what should be examined and that

17 type of activity was done more so with the crime scene analyst

18 staff, not with the homicide detective staff.

19 Q And there were three of you that were going in and

20 analyzing the scene?

21 A Yes.

22 Q And you had brought with you the alternate light source?

23 A Yes.

24 Q Is that standard issue, a standard piece of equipment

25 that is available to you and other crime scene analysts to take

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1 Into a scene to determine if there is biological fluid at the

2 scene of a crime?

3 A Yes.

4 Q And going into that scene, then, you use that alternate

5 light source.

6 If you could, explain to the ladies and gentlemen of the

7 JURY how that works.

8 Is it something that you have to get up close to it or

9 can you -- like if you are looking at the floor, the carpet, that

10 you were talking about, do you stand here and just do that and

11 make a determination if you should examine that further?

12 A Well, first off, when using the alternate light force,

13 the environment needs to be dark. You can't do it in daylight

14 because you would not be able to see what the alternate light

15 source, the light with the goggles on, is reacting to.

16 So, first, we have to make the room with the area dark.

17 Then, on a cursory examination, you could examine the area as you

18 described, where you were walking across the floor and looking for

19 any areas which may fluoresce.

20 In this case, I didn't do that. In this case, I focused

21 on the carpet area in front of the love seat when I was on my

22 hands and knees and I was scanning the area.

23 What this alternate light source does is produce a light

24 similar to that of a flashlight, about that intensity of a light

25 and that diameter of a light. And I'm scanning this light across

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1 the carpet, looking for areas that are reacting, or, in other

2 words, fluorescing, as a result of being viewed with the alternate

3 light source.

4 Q And that also is something that is a viable investigative

5 tool over a long period?

6 For instance, let me ask you this question: I assume

7 that you have probably gone to crime scenes where a body has not

8 been discovered for a week or longer periods of time.

9 A Yes, this happens.

10 Q Okay. And in that circumstance, when you go into a scene

11 like that, the protein or the biological fluids will fluoresce

12 even though they may have been there for a long period of time?

13 A With the exception of blood, yes.

14 Q And many of them will survive washing and fluids?

15 A That's a case by case and that's debatable.

16 Q Good enough for President Clinton.

17 But in going through and making a determination, actually

18 even by cutting out that carpet, if it flows through to the

19 concrete or the subfloor, then, oftentimes, you will be able to

20 determine whether or not there was carpet that had been removed,

21 for instance, to remove a biological fluid?

22 A The answer to your question is: It depends on the type

23 of bodily fluid that I'm looking for.

24 Q Okay.

25 A If it's a seminal fluid or vaginal fluid stain, that

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1 would not have enough volume to penetrate through the carpet onto

2 the concrete floor.

3 If you are talking about blood and/or urine, then, yes,

4 that would be possible.

5 Q Okay. And in going through there, you start obtaining

6 the fingerprints from the very point that you walk in the door?

7 A Yes. That area was processed.

8 Q All right. And as you went through and processed this

9 entire scene, how many fingerprints did you actually recover that

10 you felt were of quality for comparison?

11 A Quite a few; and if you want an exact number, I can refer

12 to my report and give you that number.

13 Q If you would do that, please.

14 For the record, the report that you are reviewing is the

15 report that you prepared and you are refreshing your recollection

16 with that report?

17 A Yes.

18 Q Thank you.

19 A Specifically what I am referring to is the attachment

20 that has been -- the labels which were attached to the latent

21 print cards when they were submitted.

22 Q Right.

23 A I recovered 26 latent lifts and Mr. McLaughlin recovered

24 34 latent lifts.

25 Q And by using the alternate light source, you recovered

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1 the portion of the carpeting, correct?

2 You made a determination to harvest; that is the term?

3 A Based on what I saw, I thought it would be prudent to

4 collect that carpet, yes.

5 Q And that would be for later testing that would be done?

6 A Yes.

7 Q Did you go through and -- as we noted in one of the

8 photographs, there was some clothing.

9 Did you use the alternate light source in examining that

10 clothing?

11 A At that time, no.

12 Q Did you impound that clothing for later testing?

13 A I believe Miss Green impounded -- she did all the

14 impounding, so she would have impounded it.

15 Q Okay. But you didn't go over that to determine whether

16 or not it may be a source of biological fluid?

17 A At the time I was there, those articles were still wet

18 and until the items that we examined are dry -- those would have

19 needed to have been dried out before that examination could have

20 taken place.

21 Q So the clothing that was next to the sofa and the love

22 seat was wet?

23 A Oh, I misunderstood your question.

24 Q I'm sorry.

25 A Those items, the pair of shorts and the pair of underwear

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1 were impounded for further eval.

2 Q And now that we're talking about the same pieces of

3 clothing, did you examine them with the alternate light source?

4 A No.

5 Q Had you done that, you could have made the determination

6 as to whether or not there may have been biological fluid on that

7 and to help focus the investigation?

8 A I don't know if it would have focused the investigation.

9 If I would have done that, I would have made a showing if

10 there were stains there, but they are being impounded and that

11 examination wasn't going to be subsequent regardless.

12 Q While you were employing the use of the alternate light

13 source, did you go into the bedroom area?

14 A With the alternate light source?

15 Q Yes.

16 A No.

17 Q Okay. So the bedspread or other areas on the bed were

18 not examined with the alternate light source?

19 A No, they were not.

20 Q Going through the cleaning items that were located, or

21 were photographed by you, did you obtain samples of those cleaning

22 solutions to determine if any of them had a floral scent or if any

23 of them could be identified with what you believed to be cleaning

24 solvent on that portion of the floor?

25 A I recall smelling a few of them, but, no, no samples were

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1 collected.

2 Q In going through the house or the apartment that you went

3 through, it showed that it was fair -- fairly clean, actually

4 quite clean?

5 A Yes.

6 Q And what I want to do is show you -- this is the tub.

7 You went through, processed the tub for fingerprints?

8 A Well, this photograph, I did not take.

9 Q Okay. I'm not saying the photograph, but this is the tub

10 area we're identifying. I'm just showing it to you to indicate

11 that this is the type of a faucet and this is the type of a

12 control that was done on that?

13 A Yes.

14 Q For anyone to turn that on, they would have to grab it

15 and pull it out?

16 A Yes.

17 Q And that area was processed for fingerprints?

18 A Yes, it was.

19 Q Do you know if any fingerprints were obtained from that

20 faucet?

21 A No. And faucets or items that are some sort of

22 manipulation or grasping are a very poor area to recover

23 fingerprints due to the action of the hand.

24 Q That area -- well, let me rephrase the question.

25 This is also a standard tub that has a shower in it. If

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1 the shower had been employed, you would have expected that there

2 may have been water that would have made the streaks on the side

3 go downward?

4 A Yes, that's possible.

5 Q And you did not observe that or see that?

6 A Not that I recall, no.

7 Q And how many fingerprints were obtained from the tub --

8 not the tub -- excuse me -- from the washing machine and the

9 dryer?

10 A Again, I would need to refer to my report.

11 Q If you would do that, please.

12 A A total of 14 lifts were made from either the washing

13 machine or items contained in that general vicinity.

14 MR. PIKE: Thank you.

15 I have no further questions. Thank you very much, sir.

16 THE COURT: Anything else, Miss Weckerly?

17 MS. WECKERLY: No, Your Honor. Thank you.

18 THE COURT: Thank you, Mr. Smink. Appreciate it. You

19 are excused.

20

21 (Witness excused.)

22

23 THE COURT: Next.

24 MS. WECKERLY: Charity Green.

25 THE COURT: Is this witness related to the second

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1 incident?

2 MS. WECKERLY: Yes.

3 THE COURT: Ladies and gentlemen, the same admonition:

4 In order for this to be relevant to the decision you are going to

5 have to make, you have to find that it's proven by clear and

6 convincing evidence. It can't be considered that the defendant is

7 a person of bad character, has a disposition to conduct crimes.

8 This is to related to the absence of mistake or motive on behalf

9 of the defendant in relation to the crime before you.

10 THE CLERK: Thank you. Please be seated.

11 Please state your full name, spelling your first and last

12 name for the record.

13 THE WITNESS: Charity Green; C-h-a-r-i-t-y, G-r-e-e-n.

14

15 CHARITY GREEN

16 called as a witness on behalf of the State,

17 having been first duly sworn,

18 was examined and testified as follows:

19

20 DIRECT EXAMINATION

21 BY MS. WECKERLY:

22 Q How are you employed?

23 A I'm employed as a crime scene analyst supervisor with the

24 Henderson Police Department.

25 Q How long have you worked for the Henderson Police

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1 Department as a crime scene analyst?

2 A Over two years.

3 Q Prior to working for the Henderson Police Department, did

4 you work for the Las Vegas Metropolitan Police Department?

5 A Yes.

6 Q As a crime scene analyst?

7 A As a crime scene analyst.

8 Q Okay. How long did you work for Metro as a crime scene

9 analyst?

10 A Over four years.

11 Q You were working as a crime scene analyst in May of 2005?

12 A Yes.

13 Q Did you respond to a third floor apartment at 6650 East

14 Russell Road for a processing?

15 A Yes, I did.

16 Q And did you respond with Jeff Smink?

17 A Yes.

18 Q He just left the courtroom.

19 Did you respond with any other crime scene analysts or

20 supervisors?

21 A I responded with crime scene analyst supervisor Randy

22 McLaughlin.

23 Q Now, we've heard testimony from Mr. Smink that you were

24 in charge of impounding the evidence.

25 A Yes.

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1 Q Even though you were the one in charge of impounding, did

2 you also participate in processing the apartment for latent prints

3 as well?

4 A Yes, I did.

5 Q And would you have done a walk through with Mr. Smink and

6 Mr. McLaughlin in terms of how to go about processing?

7 A Yes.

8 Q I want to concentrate specifically on the living room

9 area of the apartment.

10 Do you recall that area?

11 A Yes, I do.

12 Q And do you recall having discussions about a specific

13 area of carpet in the living room area?

14 A Yes, I did.

15 Q Did you have opportunity to actually look at or examine

16 that carpet area?

17 A Yes.

18 Q What were your findings when you looked at that carpet

19 area?

20 A Well, I did actually get down on my hands and knees and

21 smell the area because there was a strong floral odor coming from

22 that particular area of carpet.

23 And I also was able to examine it with the orange goggles

24 and the alternate light source. I was able to see the size of the

25 stain.

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1 Q And when you say the orange goggles and the alternate

2 light source, what are you talking about?

3 A I am talking about an alternate light source, also known

4 as a forensic light source, in which there is different waves of

5 light and it distributes different colors; and by putting on the

6 orange goggles -- or yellow or red -- it filters out a certain

7 color of light in which you are able to visualize and see what

8 that light is exciting and it fluoresces.

9 Q What types of things would make that light fluoresce?

10 A It depends on the wave length, but semen, biological

11 fluids, possibly cleaning products.

12 Q So it could be semen or even a cleaning product could

13 make it fluoresce?

14 A That's correct.

15 Q When you looked at the area of the carpet where you are

16 seeing the fluorescence, how big an area in dimension are we

17 talking about?

18 A It was approximately a ten inch by a ten inch area.

19 Q So like a ten inch square, that piece of carpet was cut

20 out of the apartment itself?

21 A Yes, it was.

22 Q And you would have been the person that actually

23 impounded it?

24 A And I did, yes.

25 Q Okay. Did you also have the opportunity to observe a

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- 1 bathtub inside the residence?
- 2 A Yes.
- 3 Q What did that look like to you?
- 4 A When I entered into the bathroom, the bathtub was --
- 5 there was no water in it at the time, but you could see a ring
- 6 line approximately three-quarters of the way up; and inside of
- 7 there, there was phone books, a City Life magazine, newspapers,
- 8 jewelry boxes. There was a toothbrush, a pen. Many miscellaneous
- 9 items were located inside of the bathtub.
- 10 Q Kind of random items?
- 11 A Random.
- 12 Q Would you have been the person that impounded those
- 13 items?
- 14 A Yes.
- 15 Q How did you do that if they were wet?
- 16 A After I recovered them and I brought them back to the
- 17 crime lab, I actually put them inside of our drying cabinets for
- 18 some time to help along the drying process. I had a difficult
- 19 time getting phone books to completely dry.
- 20 Q But you collected the items from the tub?
- 21 A Yes, I did.
- 22 Q What about the laundry room area, what did that look
- 23 like?
- 24 A The laundry area?
- 25 Q Yes.

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- 1 A There was a washing machine and a dryer. The washing
- 2 machine door or lid was up. Inside there was remnants of
- 3 paperwork. There was blue and white granules in there and other
- 4 miscellaneous items, but then on top of the dryer, there were
- 5 items of clothing, a purse, photographs, business cards and other
- 6 items.
- 7 Q You impounded those items as well?
- 8 A Yes, I did.
- 9 Q Did you go through the same drying process for those
- 10 items?
- 11 A Those were not as saturated as those items that I had
- 12 discovered inside of the bathtub.
- 13 Q Okay. I want to ask you about two other items of
- 14 evidence that were collected.
- 15 Do you remember a candy wrapper being at the crime scene
- 16 at all?
- 17 A Yes.
- 18 Q Where was that located?
- 19 A That was located underneath the dining room table, in the
- 20 dining room area.
- 21 Q And did you attempt to recover a latent print from the
- 22 candy wrapper?
- 23 A Yes, I did.
- 24 Q Were you successful in doing that?
- 25 A No, I was not.

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- 1 Q Okay. What about a container of dental floss?
- 2 A Yes, I did recover -- it was like a disposable dental
- 3 floss container.
- 4 Q Where was that located?
- 5 A That was located on top of the coffee table in the living
- 6 room.
- 7 Q And the print that you recovered would have been
- 8 submitted to an expert for comparison purposes?
- 9 A Yes.
- 10 MS. WECKERLY: Thank you.
- 11 I'll pass the witness.
- 12 THE COURT: Any questions?
- 13 MR. PIKE: Very briefly.
- 14
- 15 CROSS-EXAMINATION
- 16 BY MR. PIKE:
- 17 Q The coffee table was a glass top?
- 18 A That's correct.
- 19 Q And glass is usually a good place to recover fingerprints
- 20 from?
- 21 A Yes.
- 22 Q Did you recover fingerprints from the coffee table top?
- 23 A I did not process the coffee table.
- 24 Q Okay. Whoever processed it, they would have given the
- 25 latent prints to you?

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- 1 A I do not impound their latent prints. No, I did not.
- 2 Q So you just performed the investigation that you had just
- 3 advised us of the items that you have described at that point in
- 4 time?
- 5 A Yes.
- 6 Q Were you able to find any cleaning items that smelled or
- 7 reminded you of that floral smell?
- 8 A I did not open -- I personally did not open up any of the
- 9 containers to identify the smell or if it was similar to that
- 10 which we had found on the carpet.
- 11 There were multiple laundry items and such that were
- 12 located on the laundry shelf, but I did not personally smell it.
- 13 Q Okay. During the course of your investigation, did you
- 14 go into the bathroom area to examine the contents of any of the
- 15 cabinets or any personal hygiene items, similar to the dental
- 16 floss that you talked about?
- 17 A I did go in the bathroom. I did see quite a few hygiene
- 18 products throughout the bathroom.
- 19 Q Would that include any sort of female cleansing devices,
- 20 like douches or anything like that?
- 21 A I do not recall seeing that.
- 22 Q You don't recall any of those?
- 23 A No.
- 24 MR. PIKE: All right. Thank you.
- 25 THE COURT: Is that it?

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1 MS. WECKERLY: Could I ask her one question?

2 THE COURT: Sure, sure.

3
4
5 REDIRECT EXAMINATION

6 BY MS. WECKERLY:

7 **Q** If crime scene analyst Smink or McLaughlin recovered
8 latent prints, they would have recovered those themselves?

9 **A** That is correct.

10 MS. WECKERLY: All right. Thank you.

11 THE COURT: Hold on, Miss Green.

12 I'm not sure what this means, but the drying cabinets
13 that you have in the lab, do they, in any way, affect your ability
14 to later determine what might be on those items?

15 In other words, do they effect the -- cause any of the,
16 you know, semen or blood or any of that stuff to disappear or
17 change in any way or cross-contaminate or do they leave it
18 unaffected?

19 THE WITNESS: Our drying cabinets, we actually have an
20 official biohazard cleaning company that comes out and cleans
21 this, so the chance of cross-contamination would not lie on us,
22 but would lie on the cleaning company, because there would really
23 be no chance for there to be that, but, of course, we can always
24 say 99.99 percent, but none of the biological stuff was ever put
25 into a drying cabinet. Only those items that were wet and we were

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1 looking for latent prints on those items.

2 THE COURT: Thank you, Miss Green.

3 MR. PIKE: With that, I just have one follow-up question.

4
5 RECROSS-EXAMINATION

6 BY MR. PIKE:

7 **Q** So even when something is submersed in water, then
8 fingerprints may survive?

9 **A** Well, the types of -- it depends on the item. The types
10 of items that we had, when we would put a powder on it or even
11 certain types of chemicals, it would adhere to the moisture of the
12 item, and that item being submersed in water, it would then
13 just -- the powder would adhere to the whole item itself.

14 I personally did not process those items after they were
15 done drying. I submitted them to our latent lab and they are the
16 ones who actually did the processing on those items.

17 **Q** Okay. And that may be that sometimes because the human
18 oils or biological is not always water soluble and there may be
19 fingerprints that may survive getting wet or if -- if I put
20 fingerprints on something, even though it got wet, that doesn't
21 necessarily mean that the fingerprint would be removed; you could
22 possibly dry it and obtain the fingerprints?

23 **A** It depends on the surface.

24 MR. PIKE: Thank you very much.

25 MS. WECKERLY: May I ask one question more?

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1
2 FURTHER REDIRECT EXAMINATION

3 BY MS. WECKERLY:

4 **Q** What about on a body, a body that had been submerged in
5 water? Do you think you would be able to recover latent prints
6 off body that had been in hot water?

7 **A** Research has shown that it is very, very difficult and,
8 to be honest, I have not heard results of somebody actually
9 getting a fingerprint off of a body that has been submerged in
10 water. And the chemicals that could be used to get a fingerprint
11 off of the item could not be used on a body.

12 MS. WECKERLY: Thank you.

13 THE COURT: Okay. Thanks. Appreciate it, Miss Green.

14
15 (Witness excused.)

16
17 THE COURT: Thank you. Next.

18 MS. LUZAICH: Detective Tremmel.

19 THE CLERK: Thank you. You may be seated.

20 Please state your full name, spelling your first and last
21 name for the record.

22 THE WITNESS: Donald Tremmel; D-o-n-a-l-d, T-r-e-m-m-e-l.

23 THE COURT: Proceed.

24 MS. LUZAICH: Thank you.

25
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1 DONALD TREMMEL

2 called as a witness on behalf of the State,
3 having been first duly sworn,
4 was examined and testified as follows:

5
6
7 DIRECT EXAMINATION

8 BY MS. LUZAICH:

9 **Q** Sir, how are you employed?

10 **A** I'm a homicide detective with Las Vegas Metro.

11 **Q** How long have you been with the Las Vegas Police
12 Department?

13 THE COURT: Is this going to be related to that?

14 MS. LUZAICH: Oh, yes. Sorry.

15 THE COURT: You've got it memorized by heart? Okay.

16 Same admonition applies. And when we give you the
17 instructions on the law, it will actually be in there and you will
18 have it verbatim, word-for-word, and it will sort of -- when
19 lawyers kind of argue their respective positions, it will be very
20 clear exactly what this means and what you are allowed to do.

21 MS. LUZAICH: Thank you.

22 THE COURT: Go ahead.

23 MS. LUZAICH: Thank you.

24 BY MS. LUZAICH:

25 **Q** How long have you been with the Las Vegas Metropolitan

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1 Police Department?

2 A Just shy of 29 years.

3 Q And how long have you been in homicide?

4 A Fourteen and a half.

5 Q As a homicide detective, what do you do?

6 A Investigate homicides, suicides, suspicious deaths.

7 Q How would a case come to you? Somebody dies, how do you

8 get involved?

9 THE COURT: You mean him personally or the Las Vegas

10 Metropolitan Police Department?

11 BY MS. LUZAICH:

12 Q Well, the detectives, the homicide detectives.

13 A If it's during the normal business hours, seven a.m. to

14 five p.m., we are notified in our office by either a supervisor in

15 the patrol division or a patrol officer. If it's after hours, we

16 are notified at our home by our supervisor.

17 Q Does a homicide detective respond to every death in the

18 county?

19 A No.

20 Q What would cause you to not have to respond to a death?

21 A Suicides where there is no suspicious circumstances;

22 natural deaths; deaths where they're undetermined, but no any

23 signs of foul play or of any suspicious nature.

24 Q Okay. So if something is suspicious, homicide shows up?

25 A Sometimes, yes.

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1 Q Okay. Specifically, on May 3rd of 2005, were you working

2 as a homicide detective and asked to appear at the Silver Pines

3 Apartments at 6650 East Russell Road?

4 A I was.

5 Q Did you go to apartment 303?

6 A I did.

7 Q And what did you find when you got there?

8 A When I got there, there were patrol officers there; there

9 was criminalistics people there. They informed us that there was

10 a deceased female in the apartment.

11 Q Did you go in and check out what was there?

12 A Yes.

13 Q What did you see?

14 A I saw a deceased black female lying naked on the floor of

15 her small living room, naked; she was on her back.

16 MS. LUZAICH: May I approach?

17 THE COURT: Yes.

18 BY MS. LUZAICH:

19 Q Showing you what's been marked as State's proposed

20 Exhibit 92, which the defense counsel has seen before?

21 Do you recognize this photo?

22 A I do.

23 Q Does that photo depict what you observed when you walked

24 into Apartment 303 on May 3rd, 2005?

25 A Yes.

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1 MS. LUZAICH: Move it into evidence.

2 THE COURT: Any objection?

3 MR. PIKE: There are other photographs that represent the

4 same information that are less prejudicial. I object.

5 MS. LUZAICH: Well, this isn't up close.

6 THE COURT: Come up and tell me. What seems to be the

7 problem?

8

9 (Sidebar conference at bench, not reported.)

10

11 THE COURT: Objection overruled. It will be admitted.

12 MS. LUZAICH: Thank you.

13

14 (State's Exhibit 92 admitted into evidence.)

15 BY MS. LUZAICH:

16 Q Showing you State's Exhibit 92.

17 Is that how the lady appeared when you arrived in the

18 apartment?

19 A Yes.

20 Q Did you approach the body closer to determine what, if

21 anything, appeared suspicious about it?

22 A I got probably halfway to the body from where this table

23 is.

24 Q Okay. And other than the fact that she is naked in this

25 photograph, what was suspicious about the way she presented?

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1 A There was some, what appeared to be, burning to the pubic

2 hair area. There was like an ash from an incense stick of some

3 sort in her navel; legs were spread a little bit.

4 Q Did you notice anything about her thigh?

5 A I did not, no.

6 Q Not at that point?

7 A No.

8 Q Okay. So what did you do?

9 You saw her lying there like that, what did you do?

10 A Well, we looked around the rest of the apartment, talked

11 to the first responding officers to see how entry was made,

12 because they informed us they were there on a welfare check.

13 The apartment was clean, neat, very organized; didn't

14 appear to be any type of struggle, disturbance.

15 Q Did you notice any sign of forced entry?

16 A No. They informed us that the door was locked.

17 Q When they entered, or at least when somebody entered?

18 A They informed us that the nature of their call was for a

19 welfare check. Management from the complex had entered by using a

20 master or pass key.

21 Q Pass key. Okay.

22 Did you also at least look at the door?

23 A Yes.

24 Q And saw no sign of forced entry?

25 A There was none.

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1 Q How about the sliding glass door?

2 A It was locked, shut. I didn't open the door to see if it

3 was locked, but it was shut.

4 Q It was shut when you got there?

5 A Yes.

6 Q Okay. You looked around the apartment. You said the

7 apartment was neat and orderly.

8 Did you go into each of the rooms?

9 A Yes, I did.

10 Q Did you notice anything in the bathroom?

11 A I did.

12 Q What did you notice?

13 A I noticed the tub was full, there was debris in it,

14 paper, a towel, a whole lot of stuff, that had been in there a

15 while. That paper had started to shred a little bit.

16 Q And was the towel on top of all the paper, yet still in

17 the water?

18 A Yes, the tub was pretty full, about ten inches, eleven

19 inches of water. I don't know how much, but it was full.

20 Q But everything in it was submerged?

21 A Yes.

22 Q Did you also look in the laundry room or laundry area?

23 A Yes.

24 Q What did you see there?

25 A I noticed that there was items in the washing machine

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1 that were damp and it appeared that a cycle had been run through.

2 There was some unusual items in there: Ice cube trays,

3 prescription bottles, some more paper and stuff.

4 Q Okay. Did you find that odd?

5 A I thought it was a little unusual.

6 Q As you looked around and looked at the body, could you

7 see any obvious signs of a cause of death?

8 A No.

9 Q Like no gunshot wound, no stab wound, nothing of that

10 nature?

11 A Nothing.

12 Q Didn't find any notes saying I have cancer and I'm dying.

13 I don't want to die like that? Nothing?

14 A Nothing.

15 Q So what did you all do?

16 A We spoke with the patrol supervisor who was on the scene.

17 It was a patrol sergeant. The coroner had been notified by them

18 and had arrived just prior to our departure and informed them that

19 they needed to do a report; that the body was taken to the

20 coroner's office by the coroner personnel. And that was about the

21 extent of our time there.

22 Q Okay. Did you notice anything about a television?

23 A Yeah. The television was on. There was a screen where

24 the -- it looked as if somebody was going to watch a pornographic

25 movie. It was cued up, but, to my knowledge, it had not been

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1 played because it required probably payment of some sort. But it

2 was still cued up.

3 Q Okay. Is it your understanding that, because it was a

4 death of a suspicious nature, that an autopsy would be performed?

5 A Yes.

6 Q Did you, in fact, attend the autopsy the next day?

7 A Yes.

8 Q Did you discover something during the course of the

9 autopsy that was significant in your investigation?

10 A Yes.

11 Q What did you discover?

12 A That she had been sexually assaulted.

13 Q Did you discover anything further?

14 A There was some slight hemorrhaging in the neck area and

15 petechial hemorrhaging in the eyes.

16 Q And based on your years as a homicide detective, did that

17 indicate something to you?

18 A That indicated that there had been some pressure put on

19 the neck and possibly some air restriction, which, I'm not a

20 doctor, but based on my experience in seeing these, there is some

21 restriction which causes hemorrhaging of the eye, the eye region.

22 Q Would that be consistent with someone who has been

23 strangled?

24 A Yes.

25 Q That is something that you might not be able to see while

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1 you are looking at the body on a floor in an apartment; is that

2 right?

3 A That's correct.

4 Q When you say there was evidence of sexual assault, is

5 that something that -- well, did you you observe the coroner

6 examining the genital area?

7 A Yes.

8 Q And anal area?

9 A Yes.

10 Q And that's something that you would also have not been

11 able to see as the body was lying on the floor in the apartment;

12 is that correct?

13 A That's correct.

14 Q So did that kind of put a different spin on your

15 investigation?

16 A It did.

17 Q Did you go back to the apartment that day?

18 A We did.

19 Q Did you cause crime scene analysts to come with you?

20 A We did.

21 Q When you went to the apartment -- well, actually, I guess

22 the day before, when all of you left the apartment, would the

23 apartment have been sealed?

24 A It was. There was an orange public administrator's

25 sticker that's placed on the door. It's not a permanent way to

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1 keep people out, but it is an orange bright seal, which indicates
 2 that it has been sealed up by the public administrator's office
 3 and that was on there before patrol or anybody left.
 4 Q Okay. Now, when you went back the next day, on May 4th
 5 of 2005, was it sealed?
 6 A It had been broken.
 7 Q Did you make an effort to determine who and why it had
 8 been broken?
 9 A We did.
 10 Q Did you discover how and why it had been broken?
 11 A We contacted the management, wanted to know who had been
 12 in the apartment. They informed us that the decedent--
 13 MR. PIKE: Objection, hearsay.
 14 BY MS. LUZAICH:
 15 Q Okay. Well, did you have a conversation and discover who
 16 had been in the apartment?
 17 A Yes.
 18 MR. PIKE: Objection; hearsay.
 19 THE COURT: Why is it hearsay? That's how he discovered
 20 it.
 21 Sustained.
 22 MR. PIKE: He's saying he discovered something. By
 23 saying what he discovered, they're eliciting the hearsay.
 24 THE COURT: I sustained the objection. You can probably
 25 talk me out of it.

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1 MR. PIKE: I'm sorry. I'm used to being on the other
 2 side. Thank you.
 3 BY MS. LUZAICH:
 4 Q Well, you had a conversation with management?
 5 A Yes.
 6 Q And they told you something?
 7 A Yes.
 8 Q And based on what they told you, did you contact
 9 somebody?
 10 A Yes.
 11 Q Who did you contact?
 12 A The decedent's son.
 13 Q Did you have personal contact with him?
 14 A Actually, I did, yes.
 15 Q Did he come to the apartment?
 16 A Yes, he did.
 17 Q Okay. And did you try to ascertain what he had done in
 18 the apartment?
 19 A Yes.
 20 Q Did it appear to you that he had done any actual cleaning
 21 in the apartment?
 22 MR. PIKE: Objection. The question is whether there was
 23 cleaning done or not. It would be a speculation on his part.
 24 MS. LUZAICH: Well, he was there one day and he was there
 25 the next day.

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1 THE COURT: Okay. I think you can ask him, in your view
 2 of the apartment, was there any distinction in terms of apparent
 3 cleaning or vacuuming or anything like that that occurred between
 4 the first day you were there and the second day you were there?
 5 You can ask him that.
 6 BY MS. LUZAICH:
 7 Q Did it appear to you that there had been any cleaning?
 8 Was there any difference between when you were there on the 3rd
 9 and when you were there on the 4th?
 10 A Other than items being removed, no.
 11 Q Okay. Could you tell which items had been removed?
 12 A No.
 13 Q Were their obvious things, like the TV had not been
 14 removed?
 15 A No.
 16 Q I'm sorry. Did her son actually come to the apartment
 17 and meet with you face-to-face?
 18 A He came with another female. I believe it was her aunt.
 19 Q Is that how you got into the apartment the second day,
 20 with the son?
 21 A No. We got in through the management.
 22 Q When you were at the apartment on the second day, when
 23 you entered, did it look the same as it did the first day?
 24 A Yes.
 25 Q And did you cause crime scene to do anything in

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1 particular?
 2 A Yes.
 3 Q What did you cause crime scene to do?
 4 A We ordered them to remove a section of carpeting, which
 5 was right where she was lying, underneath where she was laying.
 6 Q What is the carpet for?
 7 A To determine if there was any DNA evidence.
 8 Q And the fact that you wanted the part of the carpet that
 9 was under where she was lying would indicate what?
 10 A To determine if she was assaulted in that position where
 11 we found her at.
 12 Q Okay. Did you also cause them to process fingerprints
 13 and things of that nature in the apartment?
 14 A Yes. They fingerprinted the washing machine and dryer
 15 area. They fingerprinted the bathroom. They removed items from
 16 the water. They removed items from the washing machine as well.
 17 Q Okay. Now, as you were investigating this offense on the
 18 3rd and on the 4th, did you learn something on the 3rd about the
 19 car, Merilee Koots' car?
 20 I'm sorry. Was the apartment belonging to Merilee Koot?
 21 A Yes, it was.
 22 Q Did you learn something about Merilee Koot's car?
 23 A We learned later that the car was missing.
 24 Q Does each resident have their own parking spot there?
 25 A Yes.

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1 Q Her car was not in her parking spot?

2 A Yes.

3 Q As the investigation continued, did you discover that the

4 car had been found?

5 A Yes.

6 Q Where was the car found?

7 A It was found in the apartment complex. I believe it was

8 on the north end of the complex, but not in her assigned spot.

9 Q I'm sorry?

10 A I didn't say anything.

11 Q And as you were conducting your investigation on the 3rd

12 and the 4th, did you learn that the -- well, did you develop a

13 suspect that became known to you as Norman Flowers?

14 A Yes, eventually, we did.

15 Q Do you see him here in court today?

16 A I do.

17 Q Did you have personal contact with him at some point?

18 A I did.

19 Q Can you describe where he's sitting, what he's wearing.

20 A He's sitting to my left, wearing a gray suit, gray tie.

21 Q Is he white?

22 A Black man.

23 MS. LUZAICH: Let the record reflect identification of

24 the defendant.

25 THE COURT: Yes.

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1 MS. LUZAICH: From here, I see Mr. Patrick. I didn't see

2 the defendant.

3 BY MS. LUZAICH:

4 Q Did you also learn that people called him Keith as

5 opposed to Norman?

6 A Yes.

7 Q Did you learn, during the course of your investigation,

8 that his girlfriend lived in that same apartment complex?

9 A Yes.

10 Q Next door to Merilee Koot?

11 A Yes, right across the porch or the walkway.

12 Q Did there come a time that you received a buccal sample

13 from the defendant?

14 A Yes.

15 Q Now, how do you do that? Physically, how is it done?

16 A A buccal swab was -- containing DNA. It is a little

17 plastic wand with a small, like spongy type of end on it. It's

18 used for swabbing the cheek and the gum area of the person you are

19 collecting it from. It is then placed into a container and booked

20 into evidence.

21 Q Does it look kind of like a really long Q-Tip?

22 A Yes. I think it looks more like a little tiny

23 toothbrush, but it's skinnier and it's a plastic edge.

24 Q And you obtained that sample from the defendant?

25 A I did.

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1 Q Marked it and placed it into evidence?

2 A Yes.

3 Q At the time the autopsy was conducted on Merilee Koot

4 were swabs obtained from her genital and rectal area?

5 A Yes.

6 Q And did you request that those samples be analyzed and

7 compared?

8 A I did.

9 Q And did you also request that the carpet beneath Miss

10 Koot's vaginal area be analyzed and compared?

11 A Yes.

12 Q In addition to Miss Koot's car later being located, on

13 the day that you were there on the 3rd, did you find any car keys?

14 A No.

15 Q Were her car keys ever located?

16 A I don't believe that they were.

17 MS. LUZAICH: Court's indulgence.

18 BY MS. LUZAICH:

19 Q As you were in the apartment on the 3rd or the 4th, did

20 you ever locate a wallet or any identification of Miss Koot in the

21 apartment?

22 A There were items belonging to her. I believe the contents

23 of her purse and I believe the purse itself was in the washing

24 machine as well.

25 Q But did you find her actual identification in the

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1 apartment?

2 A No, I didn't.

3 MS. LUZAICH: Thank you.

4 THE COURT: Is that it?

5 MS. LUZAICH: Yes.

6 THE COURT: Questions?

7 MR. PIKE: Court's indulgence.

8

9

10 CROSS-EXAMINATION

11 BY MR. PIKE:

12 Q Detective Tremmel, good morning.

13 A Good morning.

14 Q You were the supervising detective that was involved in

15 this investigation?

16 A No, I wasn't the supervisor. I was one of the lead

17 detectives. There was a supervisor out there, but --

18 Q Okay. How many detectives were assigned to this area?

19 A The original time we went out there, there was just

20 myself and my partner at the time.

21 Q Okay. And then when you came back the next day, that's

22 when you came with the CSAs?

23 A The CSAs; and I believe my supervisor was out there as

24 well, the sergeant.

25 Q And who was your supervisor?

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1 A Rocky Alby.
 2 Q E-I-b-y?
 3 A A-I-b-y.
 4 Q I'm sorry. Thank you. All right.
 5 And when you located where the car was at, during the
 6 course of the investigation, did you take the CSAs down to the car
 7 and have them process the car?
 8 A I personally did not. I never saw the car. My partner
 9 handled that.
 10 Q Your partner handled that?
 11 A Yes.
 12 Q Okay. Is that the homicide book?
 13 A Yes, it is.
 14 Q If you were to look in that homicide book, would you be
 15 able to ascertain whether or not the vehicle was processed for
 16 fingerprints?
 17 A Yes.
 18 Q Okay. Do you know without looking at that book?
 19 A It was. I personally didn't have any interaction with
 20 the car, but it was.
 21 Q Okay. If you would look at that. Then I just want to
 22 ask you a few questions about that.
 23 A About the vehicle?
 24 Q About the vehicle?
 25 A Okay.

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1 Q Okay. Have you been able to locate that?
 2 A Yes.
 3 Q All right. Who was the CSI or CSA -- I don't know which
 4 one to use here -- that went out and processed the vehicle?
 5 A I'm reading my partner's report.
 6 We didn't tow the car so we don't have a tow slip on it.
 7 Q And that's not unusual because it was located on the
 8 premises, where it was supposed to be?
 9 A Yes. And it was subsequently released to her family.
 10 Q Right. You had a son there that you could release it to,
 11 so you didn't have to impound it?
 12 A Yes. And I'm trying to find out where that's at.
 13 Q That's okay.
 14 Suffice it to say, in reviewing the report, it was
 15 processed.
 16 Were there any fingerprints lifted from that vehicle?
 17 A No.
 18 MR. PIKE: There were not. Okay. No further questions.
 19 Court's indulgence.
 20 Just one follow-up question in reference to coming back
 21 the second day with the CSAs.
 22 BY MR. PIKE:
 23 Q During the first day in there, was there any processing
 24 done for any fingerprints?
 25 A No, there was not.

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1 MR. PIKE: There was not. Thank you.
 2 THE COURT: Anything else from Detective Tremmel?
 3 MS. LUZAICH: No.
 4 THE COURT: Thanks, Detective. Appreciate your time.
 5
 6 (Witness excused.)
 7
 8 THE COURT: Next.
 9 MS. LUZAICH: Connie Silva.
 10 THE CLERK: Thank you. Please be seated.
 11 State your full name, spelling your first and last name
 12 for the record.
 13 THE WITNESS: Consuelo Silva Henderson; C-o-n-s-u-e-l-o,
 14 S-i-l-v-a, H-e-n-d-e-r-s-o-n.
 15 THE COURT: Go ahead.
 16 MS. LUZAICH: This witness also, Judge.
 17 THE COURT: Okay. Same admonition, ladies and gentlemen:
 18 This relates to a crime for which the defendant is not on trial
 19 and any evidence that relates to that crime is only to be
 20 considered as it may shed light as to the identity, knowledge,
 21 intent, motive or absence of mistake or accident that relates to
 22 this defendant versus the crime before you.
 23 It can't be considered to show that he's a person of
 24 general bad character, has a disposition to commit such crimes.
 25 Go ahead.

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1 MS. LUZAICH: Thank you.
 2
 3 CONSUELO HENDERSON
 4 called as a witness on behalf of the State,
 5 having been first duly sworn,
 6 was examined and testified as follows:
 7
 8 DIRECT EXAMINATION
 9 BY MS. LUZAICH:
 10 Q Good morning.
 11 A Good morning.
 12 Q Do you know a lady named Merilee Koot?
 13 A Yes, I did.
 14 Q How did you know Merilee?
 15 A I used to be her manager back home in El Paso, Texas. We
 16 used to work together.
 17 Q How long did you know her?
 18 A Since, I would say, 1994.
 19 Q 1994?
 20 A Yes, ma'am.
 21 Q And you met in Texas and became friendly in Texas?
 22 A Very good friends, yes.
 23 Q Did there come a time that you left Texas and came here?
 24 A I left Texas, I'm going to say, maybe in 2000.
 25 She called me, I would say, maybe 2003, wanting to move

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1 out here with me.

2 Q Okay. Before you get there, while you were here and she

3 was there, did you all still keep in touch?

4 A Yes, we did.

5 Q Because you were that close?

6 A Yes.

7 Q You said around three, she called you and wanted to move

8 out here?

9 A Wanted to move out here and I told her that I hadn't

10 settled, that for her to give me time before she would move out

11 here with me.

12 Q Okay. Did there come a time that she actually did move

13 out here and be with you?

14 A Yes, she did.

15 Q Do you remember about when that was?

16 A I'm going to say maybe 2004. I'm not too sure.

17 Q Okay. When she moved out here, did you and your family

18 do anything to help her move out here?

19 A Yes. My ex-boyfriend went and picked her up, brought her

20 back down here; and she stayed with us, I'm going to say, maybe

21 six months, seven months.

22 Q So she actually lived with you for a long time here?

23 A Yes, she did.

24 Q When she came out here, did she work?

25 A Yeah. Her first job was working at Castaways. She was

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1 working security. Then she worked at the Boardwalk, which she

2 only worked there for, I'm going to say, maybe two weeks. And

3 then she got a job at the school, Andre Agassi's school.

4 Q Is that where she was working at the time of her death?

5 A Yes.

6 Q You said she worked with you for a period of time.

7 Did she subsequently move out of your home?

8 A Yes, she did.

9 Q Where did she move to?

10 A She moved to some apartments on Russell.

11 Q The Silver Pines Apartments?

12 A Yes.

13 Q Did you go visit her there occasionally?

14 A You know, my kids were the ones that went to go visit

15 her. They stayed with her.

16 Q Oh, your kids stayed with her for a time?

17 A Yes.

18 Q Okay. Helped her move in?

19 A Yes.

20 Q Were you familiar that she lived in Apartment 303?

21 A Yes, ma'am; uh-huh.

22 Q As far as you know, did Merilee have any mental health

23 type issues, things where maybe she did things that were nutty at

24 times?

25 A No.

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1 Q Never had any kind of issue like that that you are aware

2 of?

3 A No.

4 Q As her friend.

5 So you had never seen her put, you know, ice cube trays

6 in a washing machine and run it, or her purse and contents in a

7 washing machine?

8 A No.

9 Q Put all of her bills and paperwork and things in a

10 bathtub full of water?

11 A No.

12 Q Nothing like that? Okay.

13 In all the time that you had known Merilee, did you ever

14 know her to watch pornography?

15 A No, ma'am.

16 Q You guys were pretty close, talked about things?

17 A Yes.

18 Q Never talked about anything like that?

19 A No.

20 Q Did she have a significant other when she was living

21 here?

22 A No.

23 Q And when I say significant other, boyfriend?

24 A No.

25 Q Were you close enough that she would have talked to you

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1 about that?

2 A She would tell me, yes.

3 MS. LUZAICH: Thank you, ma'am.

4 Nothing further.

5 THE COURT: Questions?

6 MR. PATRICK: I don't have anything, Judge.

7 THE COURT: Thanks. Miss Henderson, appreciate your

8 time.

9

10 (Witness excused.)

11

12 THE COURT: Next.

13 MS. LUZAICH: Linda Ebbert.

14 THE COURT: Let her pass, please.

15 THE MARSHAL: Don't block the way.

16 THE CLERK: Thank you. Please be seated.

17 State your full name, spelling first and last name for

18 the record.

19 THE WITNESS: My name is Linda Ebbert; L-i-n-d-a,

20 E-b-b-e-r-t.

21

LINDA EBBERT

22 called as a witness on behalf of the State,

23 having been first duly sworn,

24 was examined and testified as follows:

25

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DIRECT EXAMINATION

BY MS. LUZAICH:

Q Miss Ebbert, what do you do?

A I'm a registered nurse and a sexual assault nurse examiner.

Q Can you explain for our jury what is a sexual assault nurse examiner.

A A sexual assault nurse examiner is a nurse who has experience and is trained to gather forensic evidence and document injuries and care for the patient that is there for the examination.

Q When you say gather forensic evidence, what is forensic evidence as opposed to non-forensic evidence?

A What we do is we do what is called a sexual assault kit, when our patients come in, and there is specific envelopes that tell us what to gather, like the underwear, any debris, look for injuries and take pictures of the patient's injuries and document them accurately.

Q Okay. Now, you said you are, first, a registered nurse, as well as a sexual assault nurse examiner.

What is a registered nurse?

A I went to school in Pennsylvania, a three year program, and became a registered nurse. I've been a nurse for 46 years and I have done sexual assault examinations for the past 13 years.

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education and go to classes and things of that nature?

A I did. As a registered nurse and as a SANE aid, which means I am certified, there are classes required to keep those credentials. And I always have more than enough continuing education hours in order to keep those qualifications.

Q In addition to being the actual nurse who performs the exams, do you also teach others to become sexual assault nurses?

A Yes, I do.

Twice a year, we present a five day seminar to teach other people how to become sexual assault nurse examiners. We also teach counselors, social workers, law enforcement and attorneys. And my partner and myself wrote a book and copyrighted it for teaching that class.

Q Have you testified as an expert in the area of sexual assault examinations and evaluations in the Eighth Judicial District Court?

A Yes, I have.

Q Many, many times?

A Probably between 60 and 70 times.

Q Okay. Have you also reviewed documentation and photographs and testified as an expert based upon that?

A Yes, I have.

Q Do you know approximately how many actual sexual assault examinations you have conducted or participated in?

A Over 4,000.

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Q Okay. And just briefly, during the 40 years that you were a nurse, not a sexual assault nurse, what other things have you done?

A I have done air transport, critical care ground transport. I've worked in the emergency room most of the time. And I've also been in management for several years.

Q In order to be a sexual assault nurse examiner, do you have to go through further training and education?

A Yes, I did. I went to Cabrera College in California, where I took a 40 hour course in the classroom. And then after I finished with that, I needed to come back and I did examinations under the direction of a physician until they felt that I was competent to do them on my own.

I also spent time with law enforcement, with the rape crisis center camp, and with the court system, learning how to work together as a group.

Q And once you finished all of that, did you become certified to be a sexual assault nurse examiner?

A After I had finished my preceptorship, which is doing all the outside things, I took an examination for certification and I passed that examination and I'm certified internationally.

Q When did you become certified?

A I believe it was four years ago.

Q Okay. So during the course of your 13 years being a sexual assault nurse examiner, did you continue to have further

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Q When conducting a sexual assault examination, you do what?

A We do a head to toe -- well, when the patient comes in, the first thing we do is separate them from everybody so that everybody isn't hearing what's said. We take them into our room, which is a specific room for examination of sexual assault victims. We do a head to toe examination, look for any injuries. We talk to them about what has happened to them. We talk to them about their medical history. And then we do the gathering of the evidence.

We provide counseling for them and we also give them medication to prevent sexually transmitted diseases and also to prevent pregnancy, if they desire that.

Q So if somebody comes in alleging a sexual assault has occurred, you examine them head to toe, but, specifically, their genital area and rectal area; is that correct?

A That's correct.

Q And when you do a sexual assault examination, whether or not it is alleged that, for example, there was anal sex, you still examine the rectum, correct?

A Yes.

Q And whether or not it's alleged that there is vaginal sex, you know, if it's only alleged anal sex, you would still examine the vaginal area; is that correct?

A That's correct.

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1 Q So during the course of your 4,000 more evaluations,
2 you generally get to talk to the victim and find out what you are
3 looking for, correct?

4 A That's correct.

5 Q Now, when you do the vaginal examination, is the woman
6 lying down on her back, legs spread?

7 A Yes, they are.

8 Q And you insert something into the vaginal area so that
9 you can get a better look?

10 A What we do is we examine the external genitalia; that's
11 looking at it without using any tools.

12 After we have looked at that and taken pictures, then we
13 insert a speculum, which is like a duckbill type instrument, so
14 that we can see inside the vaginal canal and document what we see
15 there.

16 Q In the course of your thousands of examinations, do you
17 know what, I guess, percentage of them you actually find physical
18 evidence of an assault?

19 A Approximately 65 to 67 percent have injuries; and
20 approximately 35 percent do not have injuries.

21 Q Why is that?

22 A Usually, it's because of the human sexual response. A
23 lot of things can change it. But human sexual response is when,
24 for example, the male gets excited, he has an erection; he's ready
25 to have sex.

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1 When the female is excited, she also lubricates; the
2 clitoris becomes firm; the lips actually swell and kind of fold
3 out so that it's easier to have access to the vaginal canal.

4 The female pelvis actually rises a bit and it makes it so
5 that the vaginal area is sort of like a slide that the penis can
6 go into without trauma.

7 Q And when you say trauma, what do you mean?

8 A Lacerations, abrasions, bruising.

9 Q When you see a laceration or an abrasion or bruising,
10 what does that indicate to you?

11 A Usually, it would indicate that the patient did not have
12 the excitement stage, because when they don't get excited, the
13 pelvis remains very flat and the pushing in of the penis causes
14 lacerations and abrasions.

15 Q Does it generally happen at a certain location in the
16 vagina?

17 A The most common area that we find it is on the introitus,
18 which is a circle that goes right around the vaginal opening.
19 (Indicating)

20 We usually find that at the posterior area, which would
21 mean it's the closest to the anal canal.

22 We find that between five o'clock and seven o'clock is
23 the most common, certainly from three o'clock to nine o'clock; and
24 we're talking about the patient being in stirrups and you are
25 looking at their genitalia, like you would look at a clock.

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1 So at the top where the hair and the fleshy area is would
2 be 12 o'clock; on the side would be three, bottom would be six,
3 and the other area would be nine.

4 Q So if something is inserted into the vaginal area
5 involuntarily, it can leave behind some sort of evidence?

6 A That's correct.

7 Q And the evidence would be? Could be, I should say.

8 A Could be trauma, as I said, abrasions, lacerations,
9 bruising; also there could be sperm or semen found.

10 Q What would be the difference between a laceration and an
11 abrasion?

12 A An abrasion is like roughing of the skin. It's like when
13 you fall down and your knee gets a little bit of the skin roughed
14 up on it; and a laceration is a jagged edge cut type area, opening
15 of the skin, a jagged edge though.

16 Q An actual cut?

17 A Uh-huh.

18 Q Of the skin?

19 A Uh-huh.

20 Q Does it take perhaps more force -- I use that term in
21 quotes -- to cause a laceration than an abrasion?

22 A I would expect it to have more force when I see -- if one
23 laceration, not as much force, but if you have multiple ones, that
24 would indicate that there was larger force used.

25 Q Okay. What about if a finger is inserted into the

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1 vaginal or genital area, would you expect that to leave behind any
2 kind of evidence?

3 A It could. The difference between having a laceration and
4 what I see when somebody has inserted a finger is the fingernail
5 causes what's called a divot, which is a little crescent shaped
6 cut in the skin, while a laceration is more from the force of
7 something going in.

8 But the -- the finger is usually a crescent shape, not a
9 longer laceration.

10 Q If somebody engages in consensual sexual intercourse, do
11 you expect to find bruises or abrasions or lacerations?

12 A I don't.

13 Q Okay. At my request, did you review an autopsy report
14 and autopsy photos pertaining to an individual that I represented
15 to you was Sheila Quarles?

16 A Yes, I did.

17 MS. LUZAICH: May I approach?

18 THE COURT: Uh-huh.

19 BY MS. LUZAICH:

20 Q What's been marked at State's Proposed Exhibit 123, do
21 you recognize this?

22 A Yes, I do.

23 MR. PIKE: For the record, those photographs that are
24 being displayed have been previously shown to counsel.

25 THE WITNESS: They are, in fact, the photographs that

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1 were taken of Sheila Quarles.
 2 MS. LUZAICH: For the record, the next two are going to
 3 be Merilee Koot and are already in evidence. This one is not yet
 4 in evidence.
 5 MR. PIKE: That's right.
 6 MS. LUZAICH: I would move it into evidence since
 7 Mr. Pike knows at this time.
 8 THE COURT: Any objection?
 9 MR. PIKE: No.
 10 THE COURT: It will be admitted.
 11
 12 (State's Exhibit 123 admitted into evidence.)
 13
 14 BY MS. LUZAICH:
 15 Q Did you also view another photograph that was actually
 16 already in evidence pertaining to Sheila Quarles?
 17 A Yes, I did.
 18 Q Did you look at this one and believe that this one just
 19 depicted the injuries better, based on your training and
 20 experience?
 21 A Yes, it did.
 22 Q Okay. Thank you.
 23 Showing you what's been admitted as State's Exhibit
 24 123 -- let's see. Is that oriented?
 25 A Yes.

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1 Q What do you see here?
 2 A Actually, Lisa, it's upside down.
 3 Q Sorry?
 4 A No, it isn't. I'm sorry.
 5 It's much darker on this and it made it a little
 6 difficult to see, but I see it now. Okay.
 7 There is a laceration right here.
 8 Q If you touch the --
 9 A A laceration here, which is a very significant
 10 laceration.
 11 THE COURT: If you touch this, it actually makes a mark
 12 that they can see on the screen. It's kind of like John Madden.
 13 THE WITNESS: There are two right there. There is a very
 14 significant one right here; and then there is smaller ones in this
 15 area. (Indicating)
 16
 17 BY MS. LUZAICH:
 18 Q Okay. Now, when you call one of them very significant,
 19 why is that?
 20 A It's wide and it appears to be deep.
 21 Q Wide and deep.
 22 What, in your opinion, could have caused that?
 23 A Exertion of pressure would normally be what I would
 24 expect to have.
 25 Q Would something have to be inserted into the vaginal area

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1 for that to occur?
 2 A Yes.
 3 Q Is that consistent, in your opinion, with non-consensual
 4 sex?
 5 A Yes, it is.
 6 MS. LUZAICH: Showing you what's -- oh, this is the other
 7 one.
 8 THE COURT: Okay. Again, all this evidence that relates
 9 to Merilee Koot, you are under the same admonishment, that it can
 10 only be considered for the purposes of what I've instructed you on
 11 a dozen times and will instruct you again when I instruct you on
 12 the law.
 13 MS. LUZAICH: Thank you.
 14 BY MS. LUZAICH:
 15 Q Showing you what's been marked and admitted as State's
 16 Exhibit 115 -- I'm sorry.
 17 Did I also ask you to review the autopsy report and
 18 photographs associated with the autopsy pertaining to a lady that
 19 I represented to you as Merilee Koot?
 20 A Yes, you did.
 21 Q And did you do that as well?
 22 A Yes, I did.
 23 Q Okay.
 24 A Sorry.
 25 Q Now, showing you State's Exhibit 115 -- is that upside

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1 down or right side up?
 2 A You are upside down.
 3 Q Okay.
 4 A There you go. Yes.
 5 Q Do you see anything of significance in that photo?
 6 A Yes.
 7 Q Well, for the record, what is it?
 8 A It is the genital area.
 9 Q Okay. And do you see anything significant in that photo?
 10 A I find a laceration right here. I find a laceration here
 11 and a laceration here. (Indicating)
 12 Q Okay. Now, for the record, you are saying here, here and
 13 here.
 14 Where on the clock might that be?
 15 A That would be from five to seven o'clock.
 16 Q Okay. And the lacerations that you see there, are those,
 17 in your opinion, consistent with non-consensual sexual
 18 intercourse?
 19 A Yes, they are.
 20 Q Showing you State's Exhibit 116.
 21 Am I upside down?
 22 A No, you are fine.
 23 Q What is this a photograph of?
 24 A This is the anal area. It's showing spools in the center
 25 and the anal ring on the outside.

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- 1 Q What do you observe on this photograph?
- 2 A I see a laceration at seven o'clock and I see some trauma
- 3 at 11 o'clock.
- 4 Q And what does that indicate to you?
- 5 A That would indicate penetration of the anus.
- 6 Q Actual penetration of the anus?
- 7 A Yes.
- 8 Q And would that be consent with non-consensual
- 9 penetration?
- 10 A Yes.
- 11 Q Now, is the anus different than the vagina when it comes
- 12 to engaging in sexual conduct?
- 13 A It's very difficult.
- 14 Q How is that?
- 15 A When people are having penile/vaginal sex, the muscle
- 16 area in the vaginal area is stretchy and it will dilate more and
- 17 the penis can go in more easily if both persons are ready to have
- 18 sex; whereas, the rectal area, there are two sphincters. There is
- 19 an external sphincter and an internal sphincter. If someone is
- 20 engaging in anal sex with a person without consent, when they're
- 21 pushing in, it will cause trauma. The blunt force will cause
- 22 trauma.
- 23 When people are having consensual anal sex, what would
- 24 really most often happen would be they would lubricate; they would
- 25 also push gently through the first sphincter; and the second

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- 1 sphincter is one that spasms until it can't spasm anymore and it
- 2 opens up into the anal canal. When it is not consensual, they
- 3 normally push right in. That's when you see trauma to the area.
- 4 Q And is that what you observed in that photograph?
- 5 A Yes.
- 6 MS. LUZAICH: Thank you. I have no more questions.
- 7 THE COURT: Questions?
- 8 MR. PIKE: Briefly. Thank you.
- 9
- 10 CROSS-EXAMINATION
- 11 BY MR. PIKE:
- 12 Q During the course of the examinations that you have done,
- 13 when you have the benefit of being able to speak to a live
- 14 patient, you can go through and get an idea as to when they have
- 15 previously had consensual sex prior to the event that brought them
- 16 to speak with you.
- 17 Would that be a fair statement?
- 18 A That would be correct.
- 19 Q And during the course of the information that you gather,
- 20 in fact, you look to gather that information to determine what --
- 21 what you might find during the course of the physical examination.
- 22 A I'm sorry. I didn't understand the question.
- 23 Q Let me rephrase it.
- 24 Getting a sexual history from the patient helps you in
- 25 determining or interpreting the physical injuries or physical

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- 1 results of your examination.
- 2 For instance, you would ask them: Have you had anal sex,
- 3 consensual anal sex within the time frame?
- 4 And then you would know to examine the anus, correct?
- 5 A I normally don't ask them if they've had consensual anal
- 6 sex unless they've been penetrated anally, but I would ask them if
- 7 they had engaged in anal sex previously, yes.
- 8 Q And while you are taking the history of that information
- 9 and you are addressing the patient, how far back do you go in
- 10 their sexual history prior to the time of the event that brought
- 11 them to you? Do you go back a day, two days?
- 12 A Our sexual assault kit represents 72 hours, so that would
- 13 be three days.
- 14 Q Okay. And the 72 hour period, does that have medical
- 15 significance?
- 16 A In that you may find mixed DNA or -- normally,
- 17 the injuries that I see -- I use a dye called toluidine blue dye
- 18 and that dye adheres to red blood cells, which would indicate that
- 19 an injury was new.
- 20 Whereas, an injury that's three days old would be healing
- 21 over and the toluidine blue dye would not adhere to it, so I would
- 22 know whether it's fresh or not fresh.
- 23 Q And that dye test that you just described, would that be
- 24 effective during the course of an investigation that would involve
- 25 a young lady that was deceased?

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- 1 A It would depend on whether there was actual active
- 2 bleeding; and it would depend on how soon after the death that the
- 3 dye was applied.
- 4 Q And so a time from the -- the removal of the body up
- 5 until the time of an autopsy, that may affect whether or not that
- 6 test would be meaningful to you?
- 7 A I don't believe at the coroner's office that they use
- 8 that die.
- 9 Q And would it benefit you if they used that dye during the
- 10 autopsy?
- 11 A I think that the doctors who are doing the pathology
- 12 reports and doing the medical examination, that would be their
- 13 determination of whether they felt it would be helpful in their
- 14 case.
- 15 Q In your examination though, it would be helpful?
- 16 A In my examinations that I do on a regular basis, yes, it
- 17 would be helpful.
- 18 Q And had it been done in these cases, it may have been
- 19 beneficial to you also?
- 20 A I can clearly see the injuries on these pictures without
- 21 the dye.
- 22 What happens with the dye is, at times, there are
- 23 injuries that are small, but you wouldn't see with the naked eye
- 24 and they will outline that injury for you and make it easier for
- 25 you to see it.

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1 Q So, if there -- for instance, if there had been
2 consensual penetration and there was some small abrasions, those
3 that you may not have seen without the dye would be overshadowed
4 or you would not have been able to see those on the photographs
5 that you had and you just concentrated on the ones that were
6 visible from the autopsy photos?

7 A I don't understand what you are -- what your question is.

8 Q Okay.

9 A I mean, I understand what you are saying, that I could
10 see these with the naked eye.

11 Q Right.

12 A These are significant injuries that I would not miss with
13 the naked eye.

14 Q And these types of injuries -- well, you've seen a lot of
15 injuries that have occurred and sometimes these types of injuries
16 can occur during consensual sex?

17 A Injuries can happen during consensual sex, yes, sir.

18 Q Sometimes they may occur because there are insertions of
19 things other than the penis?

20 A That's true, yes, sir.

21 Q Items that are harder, like marital aids, things -- to
22 use the euphemism -- or things like that?

23 A I have not really had -- other than in a severe case
24 where the person was in the trauma center, I have not had injuries
25 with marital aids.

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1 Q Okay. Sometimes injuries like that occur during the
2 course of normal or rough consensual sex?

3 A They could, yes, sir.

4 Q It also depends upon the position of the female during
5 the time of the sexual contact?

6 For instance, if the female is on her stomach, as opposed
7 to being on her back, would that affect the location of the
8 injuries?

9 A It can affect the location of the injuries, but I still
10 most often find injuries even with them on their stomach.

11 Depending on how much their hips are raised, a lot of
12 things depend on that and it depends on the position that the male
13 is in. If he's standing, we would expect that there would be a
14 more pronounced thrust and we might find injuries to the cervix as
15 well as to the vaginal area.

16 Q And the photographs that you have available to you did
17 not give you access to determine if there were injuries to the
18 cervix?

19 A No, I did not see cervix pictures in here.

20 Q Also, during the course of normal sexual contact, or
21 consensual contact between a man and a woman, have you seen
22 circumstances where, during the excitement of the sexual process,
23 that there is an accidental withdrawal of the penis and an
24 insertion into the anus?

25 A I have not had that history.

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1 Q You've never examined anything for that history?

2 A I've not had anyone say that it was an accidental
3 penetration of the anus. The patients that I see usually, there
4 was an intentional insertion of the penis into the anus.

5 Q Okay. So you are looking at specific allegations that
6 sexual assault have occurred, but -- you have received training on
7 human sexuality?

8 A Yes, sir.

9 Q And you received training on the sex act and what happens
10 during the course of that.

11 And so there are circumstances in which there may have
12 been an accidental or unintentional penetration of the anus during
13 sex.

14 A I'm sure that's possible, yes, sir.

15 Q You mentioned that during a part of the sexual assault
16 kit that underwear and debris and other items are collected and
17 those -- what's the significance of having the underwear
18 collected?

19 A The underwear -- when a sexual assault occurs, the way
20 that females are built, all of the secretions go towards the
21 crotch of the panties or towards the back area of the panties, and
22 we collect that so that we can find evidence of penetration.

23 Q Well, evidence of penetration or evidence of distribution
24 of sperm or semen into the vaginal cavity?

25 A Yes.

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1 Q And on cases that involve mixtures, is there any
2 scientific way of telling who was the first person and who was the
3 second person that deposited the semen?

4 A That would be something --

5 MS. LUZAICH: Objection; foundation. I don't think she
6 can testify to that.

7 THE COURT: Well, she can tell us whether she can or not;
8 she's pretty knowledgeable.

9 THE WITNESS: That would be something you would have to
10 speak with the crime lab about.

11 BY MR. PIKE:

12 Q Okay. That would be outside your area of expertise?

13 A Yes, it would.

14 MR. PIKE: Thank you very much. No additional questions.

15 THE COURT: Any more questions?

16 MS. LUZAICH: Just briefly.

17

REDIRECT EXAMINATION

19 BY MS. LUZAICH:

20 Q Miss Ebbert, when you use the toluidine dye, is that
21 because you need the dye to help you see injuries that you could
22 not see with the naked eye?

23 A Yes.

24 Q And is that because in the 65 percent of the cases where
25 there are injuries, most of those the injuries are so slight that

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1 you can't see them with the naked eye?
 2 A That's correct.
 3 Q The injuries that you saw in both of these ladies,
 4 however, were quiet significant?
 5 A Yes, they were.
 6 Q On the scale of injuries?
 7 A Oh, definitely.
 8 Q So when you mentioned that injuries can occur during
 9 consensual sex, you are not talking about the injuries that you
 10 observed in the photos?

11 A No.

12 MS. LUZAICH: Thank you.

13 THE COURT: Okay. Thanks. Good to see you again.

14 MS. LUZAICH: Thank you.

15
 16 (Witness excused.)

17
 18 THE COURT: Call your next witness.

19 MR. PIKE: Can we approach?

20 THE COURT: You may.

21
 22 (Sidebar conference at bench, not reported.)

23
 24 THE COURT: Okay. Apparently, the next witness also
 25 relates to the incident with Miss Koot, so, again, you know, in

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1 order for you to even consider that as it relates to what your
 2 decisions are in this case, you have to find that it has been
 3 proven by clear and convincing evidence and it cannot be
 4 considered to prove that the defendant is a person of bad
 5 character and has a disposition to commit crimes, but only goes to
 6 his identity, knowledge, intent, absence of mistake or accident.

7 THE WITNESS: Good afternoon, Your Honor.

8 THE COURT: How are you?

9 THE WITNESS: Fine.

10
 11 (Witness sworn.)

12
 13 THE CLERK: Thank you. Please be seated.

14 Please state your full name, spelling your first and last
 15 name for the record.

16 THE WITNESS: My name is Edward, common spelling; last
 17 name is Guenther, G-u-e-n-t-h-e-r.

18
 19
 20
 21
 22 EDWARD GUENTHER

23 called as a witness on behalf of the State,

24 having been first duly sworn,

25 was examined and testified as follows:

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DIRECT EXAMINATION

1
 2
 3 BY MS. WECKERLY:

4 Q And how are you employed?

5 A I'm employed with the Las Vegas Metropolitan Police
 6 Department. I work in the forensic laboratory and my area of
 7 specialty is latent print analysis.

8 Q How long have you worked in the area of latent print
 9 analysis?

10 A Well, I've been in the fingerprint business since 1975.
 11 At that time, I was employed by the Federal Bureau of
 12 Investigation in Washington DC. That's where I learned the basics
 13 of fingerprints, classifying, search and so forth.

14 And then in 1977, I entered into a training program with
 15 the state of Ohio to become a latent print examiner; completed
 16 that training program; did routine bench work in Ohio for three
 17 years, followed by 18 years with the Florida Department of Law
 18 Enforcement in their Tampa crime laboratory. And for the past ten
 19 and a half years, I've been employed by the Metro Police
 20 Department here in Las Vegas.

21 Q We've already had one latent print examiner's testimony
 22 in this case, but just in terms of your own personal experience,
 23 you have testified before as an expert in the area of latent print
 24 identification and comparison?

25 A Yes.

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1 Q About how many times?

2 A Over a hundred just in the last ten years here with
 3 Metro.

4 Q Okay. In the course of working as a latent print
 5 examiner, are you typically in a situation where crime scene
 6 analysts have recovered latent prints from a crime scene and you
 7 compare them to known fingerprints of various individuals?

8 A Yes.

9 Q In your work for Metro, have you ever or do you ever
 10 attempt to recover latent prints yourself off of various items of
 11 evidence?

12 A Yes. That's part of our job on occasion -- well, I
 13 wouldn't say on occasion. Frequently, we are asked to process
 14 evidence that is collected by the crime scene analyst and/or
 15 detectives or patrol officers, whatever, in certain situations.
 16 So processing evidence is part of our job at the laboratory also.

17 Q And is there a rule -- or what determines whether you are
 18 the one who develops or attempts to develop the latent print item
 19 of evidence versus the crime scene analyst? Are there any?

20 A I'm not sure exactly what the rules are.

21 Q Okay.

22 A Normally, if it's picked up by a detective or a police
 23 officer, it will just get booked into the evidence vault and then,
 24 normally, we would go ahead in a laboratory situation and process
 25 that.

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1 When it's collected in the field, the majority of the
2 time, the crime scene analyst will process either at the scene or
3 back in their processing area, but there are occasions when
4 decisions are made, maybe by the lead detective or whoever, that
5 some of the evidence would come over to the laboratory for
6 analysis.

7 Q And you were obviously working as a latent print examiner
8 back in August of 2005?

9 A Yes.

10 Q And were you asked to look at some items of evidence
11 booked by crime scene analyst Charity Green?

12 A Yes.

13 Q Can you describe the items of evidence booked by Miss
14 Green that you looked at?

15 A Yes. Well, submitted to the laboratory by Miss Green
16 were three bags. We'll call them, large bags. In the first bag
17 was a phone book, a yellow pages phone book for January through
18 July of 2005. There was a second phone book within the same time
19 frame, January to July of 2005.

20 There was a white pages phone book for the time period of
21 January through December of 2005; newspaper sections from -- I
22 believe it was the Review Journal from April 28th and 29th of
23 2005; a City Life newspaper dated for the week of April 28th
24 through May 4th of 2005; and also a torn corner of a phone book
25 cover. That was in the first package.

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1 Q Okay. What was the second one?

2 A The second package was what I listed as miscellaneous
3 items, to include papers, jewelry boxes, stationary items, pens,
4 household and personal items.

5 Q And the third bag?

6 A The third bag was also described as miscellaneous items,
7 to include multiple credit cards, paper items, photographs, ice
8 cube trays, wallets, daily organizers, a purse and a file
9 organizer.

10 Q Now, with regard to the phone book and the newspaper and
11 the City Life newspaper, did you have the information or did you
12 know, as you were looking at these items of evidence whether or
13 not they had ever been wet?

14 A Well, when I opened the bag -- I guess the best way to
15 describe it would be just to kind of read what my observations
16 were from my notes.

17 Q Okay.

18 A As far as what was labeled at EG2, that would have been
19 the phone books, all the way down to the phone book cover corner.
20 I wrote in my notes, all of these items, with the exception of 2F,
21 which would be the little corner, had been thoroughly saturated
22 with a liquid. The CSA, which would have been Miss Green in this
23 case, indicates that the items were in the bathtub, full of water.

24 Basically, I wrote in my notes: They are a mess to
25 behold as they were just kind of like this old pile -- they

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1 expanded. The phone book that should have been maybe, well, the
2 regular size of a phone book, I would say is the size of a
3 basketball, each one of the phone books. (Indicating)

4 So all of these items, obviously, they've been wet,
5 became fully saturated, making the processing of them quite a
6 challenge.

7 Q And when you have items of evidence like that, in that
8 condition, what do you do to attempt to recover latent prints from
9 them?

10 A When items have been saturated by anything -- I guess,
11 just real briefly, I'll try to explain.

12 Your fingerprint residue, when you touch something, you
13 are leaving behind perspiration, 98, 99 percent water, but in that
14 one to one and a half percent are chemicals, mostly salts and
15 amino acids that are secreted through your pores.

16 The other items that are in fingerprint residue are
17 lipids or fats. Now, we don't secret those, but we pick them up
18 when we touch our hand or head or having potato chips or whatever,
19 and those lipids can also be transferred onto items.

20 In this case, the amino acids in the source are water
21 soluble, meaning that they will sort of float away in water.
22 Lipid fats, on the other hand, are not soluble in water. So the
23 technique to process most of these items is a process which we
24 call physical developer. This is a technique that will adhere to
25 the lipids that would be present and had been absorbed or sitting

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1 on the surface of some of these paper items. So, that kind of
2 directed me, for most of the paper items, to choose this process
3 and technique.

4 Q And given your expertise and educational background, were
5 you hopeful or did you think you would be able to recover latent
6 fingerprints from these items, as you reviewed them?

7 A I thought it was very doubtful, but we always try giving
8 it a good shot. Just based on the condition of the items, that
9 would be very, very doubtful to develop any latent prints on any
10 of the items actually.

11 Q And with regard to the items that you just discussed, the
12 phone books and the newspaper and the torn phone book cover, were
13 you actually able to develop any latent prints from your work with
14 those items of evidence?

15 A No.

16 Q How about with the -- I think you said jewelry boxes,
17 stationary items, pens and other personal items?

18 A Right.

19 Q The second bag?

20 A Right. All of the paper items in that instance also were
21 kind of in the same condition in general. Some of the harder
22 items, like a jewelry box and stuff, I used a little different
23 processing technique with the super glue method and some powdering
24 and so forth.

25 So I was able to use some different techniques on the

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1 surfaces that weren't paper from some of these items that were the
2 miscellaneous jewelry boxes and so forth and what's I did.

3 And, once again, I did complete the processing with all
4 the techniques that were available to us and was not able to
5 develop any latent prints for comparison of any quality or any
6 latent prints at all from the items from EG3.

7 Q And the same would be true for the credit cards, ice
8 cube trays, daily organizer and the purse?

9 A Correct.

10 Q And that was the third bag?

11 A The third bag.

12 Well, also, the same general condition, a lot of the
13 paper items had obviously been wet. I could see water spots on
14 them. With the processing techniques that were conducted, again
15 there were no latent print comparison possible on any of the
16 items.

17 Q And if you can't recover the latent fingerprint,
18 obviously, you can't compare it to any knowns?

19 A Correct.

20 Q Okay. Were you given, submitted from crime scene
21 analysts McLaughlin, Smink and Green, the actual latent print
22 cards collected from a particular crime scene location or a car?

23 A Yes, I was.

24 Q And was the location 6650 East Russell?

25 A Yes, ma'am.

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1 Q And these were collected by the crime scene analysts I
2 just mentioned?

3 A Correct.

4 Q Were you able to -- well, were any of the cards that they
5 submitted -- we've heard of value or not of value?

6 A Correct.

7 Q Can you explain what that is?

8 A Yes. We do an analysis of the cards as they come in and,
9 as an examiner, we use our training and our experience to make a
10 determination as to whether or not the ridge structure or detail
11 that was lifted by the crime scene analyst, whether it's of
12 comparison quality, which is a term that is kind of up to each
13 examiner.

14 There are guidelines, obviously, but we make that
15 determination whether a print -- the material on the print card,
16 we think we can take that material and make a comparison to the
17 individual or whether the material that's on the lift card is just
18 insufficient for whatever reason, it lacks quantity, it lacks
19 quality, it's distorted. There is a multitude of reasons.

20 So we make those decisions, and in this instance, 69 lift
21 cards were submitted to the laboratory by those three crime scene
22 analysts that Miss Weckerly has listed; and of those, 33 of them,
23 I determined were not -- did not have sufficient ridge detail to
24 make any kind comparisons at all. Thirty-six of them, however, I
25 did retain for comparison purposes; and then I did have a list of

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1 individuals that I was asked to make comparisons with.

2 Q Let me ask you about that.

3 When you talk about the list of individuals, those would
4 be people who you had known fingerprints for?

5 A Correct.

6 Q And did that list include the victim, Merilee Koot?

7 A Yes.

8 Q And did it include someone by the name of Keith Flowers
9 or Norman Keith Flowers?

10 A Yes.

11 Q What are elimination prints?

12 A Elimination prints are taken by crime scene officers of
13 people who may have a legitimate reason to be in a residence;
14 maybe they're a maid or someone like that. And when a crime
15 happens, a lot of times, we, as latent print examiners, love to
16 have elimination standards, because it helps us when we're making
17 our comparisons if we know who the people are who were in the
18 house, and if we have those standards, we can basically eliminate,
19 hopefully, some of the latent prints from the crime scene with
20 these people who are known to have access to a crime scene.

21 So once we have done that and we can eliminate that, then
22 it lets us look at the prints that are left over and concentrate
23 those on any suspects that may be developed in the course of the
24 investigation.

25 Q And so elimination prints are taken from people who have

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1 legitimate access to a crime scene?

2 A Correct.

3 Q And did you have elimination prints in this case?

4 A Yes.

5 Q Who were the individuals that you had the elimination
6 prints for?

7 A Elimination standards were from a Dalton Koot and a woman
8 named Marcine Carol.

9 Q Okay.

10 A And later, through the processing -- or through the
11 comparisons and some of the work that we do as we're doing
12 comparisons, developed a third individual, an individual named
13 Paco Hernandez, who was also compared and later was eliminated
14 through the investigative process.

15 Q Now, with regard to the remaining print cards that you
16 said were of value, were you able to make any identification of
17 any of those latents to any of the known prints that you had the
18 standards for?

19 A Yes, I was.

20 Q And what were your findings?

21 A The results of my findings were that there 43
22 fingerprints and seven palm prints within those 36 cards that I
23 looked at, so 50 latent prints that I compared all together. Of
24 those, I was able to identify 37 of them to Merilee Koot. I was
25 able to identify -- these are the fingerprints. We'll talk about

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1 the palm prints in a moment.

2 Thirty-seven fingerprints to Marilee Koot; two
3 fingerprints were identified to Paco Hernandez; one fingerprint
4 was identified to Marcine Carol. So that was 40 of the 43
5 fingerprints were identified to those three individuals.

6 On the palm print arena, there were the seven palm
7 prints, which I described. None of them were identified to Dalton
8 Koot, Marcine Carol or Norman Flowers.

9 And I did not have palm print standards for Paco
10 Hernandez or for Merilee Koot, so I was not able to compare those
11 seven palm prints with those two individuals. So, in essence,
12 what we have left over are three fingerprints.

13 Q Okay. With regard to the print that you identified to
14 Marcine Carol, she was one of the elimination prints?

15 A Yes.

16 Q Where was that latent print located?

17 A That latent print was located on the exterior side door
18 knob into the hall bath.

19 Q And the latent print that you had identified to Paco
20 Hernandez, where was that from?

21 A There were actually two locations for Mr. Hernandez, from
22 the exterior east facing front door and the dead bolt of the
23 exterior east facing door.

24 Q So both of those were exterior to the apartment itself?

25 A Correct, according to the information on the lift cards.

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1 Q Okay. And with regard to the identifications that you
2 made of Merilee Koot, were there quite a number of those?

3 A There were numerous locations within the house and then
4 also from a drinking cup that was inside of a 1999 Suzuki.

5 Q Her vehicle?

6 A Yes.

7 Q What was reported to you as her vehicle?

8 A It's her vehicle, yes.

9 Q Okay. So not probably too surprising that her
10 fingerprints show up in her own apartment or her car?

11 A No, no.

12 MS. WECKERLY: Thank you. I'll pass the witness.

13 THE COURT: Questions?

14 MR. PIKE: Yes.

16 CROSS-EXAMINATION

17 BY MR. PIKE:

18 Q Okay. By count then, there is three unidentified
19 fingerprints?

20 A Yes.

21 Q And those fingerprints, were they of AFIS quality?

22 A No, they were not.

23 There were AFIS quality prints in the case. That's how
24 Mr. Hernandez was included for comparisons, because I did enter
25 one of the latent prints into our automated fingerprint system and

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1 it did produce Mr. Hernandez as the person that we would want to
2 compare. That was the only AFIS quality prints that were in the
3 case.

4 Q Submitted to you?

5 A In the case.

6 The other three latents were not what we call AFIS
7 eligible.

8 Q That doesn't mean that you can't identify that
9 fingerprint. If you have an exemplar of an individual and you can
10 compare it, it's still of a nature and quality where, if you have
11 that known exemplar, you can make that confirmation?

12 A Yes, we do.

13 Q And when was the last time that you were provided any
14 names to conduct in this investigation?

15 A I don't believe -- I had only issued this one report that
16 was dated back in August of 2005.

17 Q Okay. And you hold those remaining fingerprints
18 permanently, I guess, from the testimony of previous officers --

19 A Yes.

20 Q -- and CSIs like yourself, until such time as there is a
21 match made, if there ever is one made?

22 A Yes. Especially in a violent crime cases, the latent
23 lifts are actually kept forever basically.

24 Q And, basically, AFIS just numerically kind of categorizes
25 it and says you should probably look at these?

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1 A Correct. The computer will generate a candidate list for
2 us, a scoring system, which is not really relevant to the
3 identification at all. We will then look on the computer screen,
4 look at the latent print that was entered and the candidate list
5 that has come up and make a determination that: Hey, this guy,
6 this individual, is close. We need to pull the original standard
7 out and make a comparison at that point.

8 So the AFIS just supplies us with a list of people that
9 may have a potential to match this latent print from the crime
10 scene.

11 Q And you've been at this for a while?

12 A Yes, sir.

13 Q Do you remember the old days before AFIS?

14 A Oh, yes.

15 Q In the old days before AFIS, if you were looking through
16 and trying to make an identification, basically, what did you do?

17 A Well, with an AFIS quality print?

18 Q Well, with any print.

19 Would you just go to pretty much the collection of prints
20 that were available to you --

21 A Yes. There were different systems and before the days of
22 AFIS, there was different ways of classifying a really high
23 quality latent print and going into the files, which could,
24 depending on the police agency, could be hundreds to millions, if
25 you were working at the FBI or some place like that, and you can

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1 actually do a physical manual search of -- well, today, we call it
2 a data base. Back then, we just called it fingerprint files.
3 It's very difficult to do and very seldom was successful.

4 Q AFIS is an improvement on that.

5 And during the time that you have been working in your
6 profession, has the ability of AFIS to make identification
7 increased?

8 A Well, as with any technology, the algorithms, which are
9 what is underneath all of the nice pictures that we get on our
10 computer screens have improved tremendously, the software has
11 gotten better. Everything has gotten better, from the very first
12 AFIS system that started coming out in the mid '80s, so you can
13 think about computers in the mid '80s to computers that we have
14 today and we have made those leaps with our systems also.

15 MR. PIKE: Thank you so much.

16 THE COURT: Anything else?

17 MS. WECKERLY: No. Thank you.

18 THE COURT: Thanks. Appreciate your testimony.

19 THE WITNESS: Okay. Thank you, Your Honor.

20
21 (Witness excused.)

22
23 THE COURT: Okay. We'll take our lunch recess at this
24 time.

25 ACCUSCRIPTS (702) 391-0379

1 THE COURT: We'll put him on at one o'clock.

2 What is he, a 20 minute witness?

3 MR. PIKE: If that.

4 THE COURT: So if you want to be here at one o'clock and
5 come in, you can just take him in here right there.

6 OFFICER OHLER: That will be perfect.

7 THE COURT: And he's going back; he's not staying with
8 us.

9 OFFICER OHLER: No, he is taking him back up there.

10 THE WITNESS: We will take him first at one o'clock.

11 OFFICER OHLER: I appreciate it very much.

12 MR. PIKE: Thank you very much.

13 THE COURT: How about your witness?
14 When do you want him?

15 MS. WECKERLY: Two, if you can do it at two.

16 THE COURT: Two o'clock.

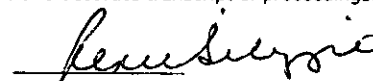
17 THE MARSHAL: Yes, we will do it.

18 THE COURT: All right. Thank you.

19
20 (Proceedings concluded.)

21 * * * * *

22 ATTEST: Full, true and accurate transcript of proceedings.

23
24 

RENEE SILVAGGIO, C.C.R. 122

25 Official Court Reporter

ACCUSCRIPTS (702) 391-0379

1 (Jury admonished by the Court.)

2
3 THE COURT: We will be in recess until one o'clock.

4 Leave everything on your chair. The marshal will lock up
5 the room.

6
7 (The following proceedings were had in open
8 court outside the presence of the jury panel:)

9
10 THE COURT: The record should reflect the jury has
11 exited.

12 Come on up, Officer.

13 Apparently you have some issues. I want the lawyers to
14 hear it too.

15 So what's up? We apparently have a witness from NSP.

16 Go ahead. What can we do to help you?

17 OFFICER OHLER: Officer Ohler.

18 I was told by my partner, who came up here earlier, that
19 he's not going to be seen until 3:30. And I came to see if we
20 could possibly book him in.

21 THE COURT: Anybody care if he goes at one o'clock?

22 THE BAILIFF: If he's going to be seen earlier, that
23 would be great.

24 THE COURT: Anybody care if he goes at one o'clock?

25 MR. PIKE: No. That will be fine.

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CLERK OF DISTRICT COURT

1 CASE NO. C228755

2 DEPT. NO. VII

ORIGINAL

3

4

DISTRICT COURT

5

CLARK COUNTY, NEVADA

6

7 THE STATE OF NEVADA,)
Plaintiff,)

8

Reporter's Transcript
of

9

vs.

Jury Trial

10

Volume 3-B

11 NORMAN KEITH FLOWERS,)
aka NORMAN HAROLD)
12 FLOWERS, III,)
Defendant.)

13

14

15

BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

16

FRIDAY, OCTOBER 17, 2008

17

1:00 P.M.

18

19

APPEARANCES:

20

For the State:

Pamela Weckerly, Esq.
Elissa Luzaich, Esq.
Deputies District Attorney

21

22

For the Defendant:

Randall Pike, Esq.
Clark Patrick, Esq.
Deputies Public Defender

23

24

25

Reported by: JoAnn Orduna, CCR No. 370

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WITNESSES FOR THE DEFENSE:

ANTHONY CULVERSON

Direct Examination by Ms. Patrick 4

WITNESSES FOR THE STATE:

DETECTIVE DAN LONG

Direct Examination by Ms. Weckerly 15

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GEORGE BRASS

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GABRIEL UBANDO

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DEFENSE EXHIBITMARKEDOFFEREDADMITTED

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1 CASE NO. C228755

2 DEPT. NO. VII

3

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
8 Plaintiff,

9 vs.

10 NORMAN KEITH FLOWERS,
11 aka NORMAN HAROLD
12 FLOWERS, III,
13 Defendant.

Reporter's Transcript
of
Jury Trial
Volume 3-B

15 BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

16 FRIDAY, OCTOBER 17, 2008

17 1:00 P.M.

19 APPEARANCES:

20 For the State: Pamela Weckerly, Esq.
21 Elissa Luzaich, Esq.
Deputies District Attorney

22 For the Defendant: Randall Pike, Esq.
23 Clark Patrick, Esq.
Deputies Public Defender

24 Reported by: JoAnn Orduna, CCR No. 370

1 LAS VEGAS, CL COUNTY, NV, FRI, OCT 17, 2008

2 1:00 P.M.

3 -o0o-

4 P R O C E E D I N G S

6 THE COURT: Let's go back on the record
7 in Case C228755. State of Nevada versus Donald
8 Keith Flowers.

9 Let the record reflect the presence
10 of Mr. Flowers with his counsel, counsel for the
11 State. All ladies and gentlemen of the jury are
12 back in the box.

13 Ladies and gentlemen, we have a
14 witness here that is being proffered by the defense.
15 Normally they wouldn't put on any witnesses until
16 the State was completed. This gentleman for reasons
17 that I don't know except that I know it's not
18 related to anything about this case, is in custody
19 in the prison system and these fine officers have to
20 take him back right now as soon as we're done.
21 That's just part of the rules and routines.

22 So to accommodate them, we're gonna
23 call him out of order. It doesn't matter whether
24 somebody's called first, last or otherwise. You can
25 just add it into the process. But this is a defense

1 I N D E X

2 PAGE

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21 Redirect Examination by Ms. Luzaich 102

22 E X H I B I T S

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24 124 69 69
25 125 98 100

26 DEFENSE EXHIBIT MARKED OFFERED ADMITTED
27 A, D 10
28 B 94
29 A 95

1 witness and we'll pick back up with the prosecution.

2 Sir, will you do your best to stand
3 and raise your right hand.

4 (Whereupon, Anthony Darnel
5 Culverson was duly sworn to tell the
6 truth, the whole truth and nothing
7 but the truth.)

8 THE CLERK: Thank you. Please be seated.
9 Please state your full name, spelling your first and
10 last name for the record.

11 THE WITNESS: Anthony Darnel Culverson.
12 A-n-t-h-o-n-y. C-u-l-v-e-r-s-o-n.

13 THE COURT: Go ahead, Mr. Patrick.

14 DIRECT EXAMINATION

15 BY MR. PATRICK:

16 Q. Good afternoon, Mr. Culverson.

17 A. Yeah.

18 Q. I want to talk to you a little bit about
19 an incident that happened on March 24th, 2005.

20 A. Yes.

21 Q. You, you're related to George Brass, Jr.?

22 A. Yes.

23 Q. And how are you related to him?

24 A. That's my mom's twin sister's son.

25 Q. Okay. And you're related to Robert

1 Lewis?

2 A. Yes.

3 Q. And what's your relationship with him?

4 A. That's my mom's brother.

5 Q. Okay. And you knew Sheila Quarles or

6 Pooka?

7 A. I knew of her by her brother, yes.

8 Q. Okay. You knew her brother?

9 A. Yes.

10 Q. Okay. And was Sheila friends with your
11 little sister?

12 A. What, Pudge? Yes.

13 Q. Okay. And you knew that George was
14 dating Sheila?

15 A. Well, not --

16 MS. LUZAICH: Well, objection, leading.

17 You know, this isn't cross-examination. He hasn't
18 asked a direct examination question yet.

19 THE COURT: Leading, sustained.

20 Rephrase. What if anything did you know about any
21 relationship between George and Pooka?

22 BY MR. PATRICK:

23 Q. Did you know -- what if anything did you
24 know about a relationship between George and Pooka?

25 A. I just know that they was seeing each

1 other off and on.

2 Q. Okay. And what if anything did you know
3 about Pooka dating another gentleman?

4 A. Nothing.

5 Q. Now, you, George and Robert Lewis lived
6 in the Palm Village Apartments over on Pecos?

7 A. Yes.

8 Q. And because you knew Sheila, something
9 that would happen to her would be of interest to
10 you?

11 A. What do you mean?

12 Q. Well, what I'm trying to get at I guess
13 is do you remember the day that Sheila died?

14 A. I -- it has came back to mind after
15 everything has been brought back up, yes.

16 Q. Okay. And were you in that area that
17 day?

18 A. Later on that day after everything was
19 all over and done with, I ended up coming over to my
20 grandmother's house.

21 Q. Okay. Do you remember how you got there?

22 A. In a car.

23 Q. In a car?

24 A. Yeah.

25 Q. Did you have a motorcycle at that time?

1 A. Yeah, but I ended up coming over there
2 the next day on the motorcycle.

3 Q. Okay. Now, the day that on March 24th,
4 the day that Sheila died, when you got there, what
5 was going on?

6 A. It was just small talk about what had
7 happened.

8 Q. Okay. Were there any police there?

9 A. No.

10 Q. Did you -- have you ever talked to
11 anybody about this incident?

12 THE COURT: Anybody meaning like?

13 BY MR. PATRICK:

14 Q. Any of your relations, George or Robert?

15 A. No. Cuz at the time it was, it was a
16 hurting feeling.

17 Q. Okay. Have you ever talked to the police
18 regarding this incident?

19 A. Not until a couple of months ago when
20 they came out to Wells.

21 Q. Okay. Now, you remember Mr. Pike and Mr.
22 Perez came out to see you in Wells?

23 A. Yeah, he was one of 'em.

24 Q. Okay. And then the police had come out
25 also?

1 A. No.

2 Q. No. It was just Mr. Pike and Mr. Perez?

3 A. Yup.

4 Q. Okay. Have you talked to anybody else
5 regarding that in the last several months?

6 A. Nope. That was the first time it ever
7 came back up.

8 Q. Do you, do you remember Carlton Fowler?

9 A. Not by that name, no.

10 Q. Okay. If I was to show you a picture,
11 would that maybe help refresh your memory?

12 A. It can.

13 Q. Okay. What about Brandon Bland, do you
14 remember him, do you know him?

15 A. Not by that name.

16 Q. Again, if I was to show you a picture,
17 that might help refresh your memory?

18 A. (Positive nod of the head.)

19 THE COURT: Do you have these marked?

20 MR. PATRICK: Yes, judge.

21 MS. LUZAICH: They've never been shown to
22 the State however.

23 THE COURT: Well, I'm sure he's gonna do
24 that right now.

25 BY MR. PATRICK:

1 Q. Tis is Defense proposed A and D. Okay.
 2 I'm gonna show you what's been marked as Defense
 3 proposed Exhibit A.
 4 Do you recognize that gentleman?
 5 A. No.
 6 Q. No?
 7 A. Not off the top, no.
 8 Q. Okay. And I'm gonna show you what's been
 9 marked as Defense D.
 10 THE COURT: B you mean?
 11 MR. PATRICK: D.
 12 THE COURT: B as in boy?
 13 MR. PATRICK: No. D as in dog, judge.
 14 THE COURT: We've got A and D.
 15 MR. PATRICK: A and D.
 16 BY MR. PATRICK:
 17 Q. Do you recognize him?
 18 MS. LUZAICH: Which one is that?
 19 MR. PATRICK: Mr. Bland.
 20 BY MR. PATRICK:
 21 Q. And how do you recognize Mr. Bland?
 22 A. He had some intimacy with my sister and
 23 they had a baby.
 24 Q. Okay. And is that a true and accurate
 25 depiction of how Mr. Bland looked?

1 A. Yeah.
 2 Q. Last time you saw him?
 3 A. Yeah.
 4 Q. Pretty much?
 5 A. Yeah. Not that rough, though, but.
 6 Q. Okay. Move to admit Defense D, judge.
 7 THE COURT: Any objection?
 8 MS. LUZAICH: What's the relevance?
 9 THE COURT: I'm not sure what it is, but
 10 I'm not sure that it hurts anything.
 11 MS. LUZAICH: Well --
 12 MR. PATRICK: The relevance is the
 13 defense theory of the case and getting to --
 14 THE COURT: Well, I don't want you to
 15 argue it now. I'm gonna conditionally admit it. If
 16 you haven't tied it up before the case is submitted
 17 and goes to the jury, I'll exclude it and it won't
 18 go back.
 19 You're gonna have to tie it up. And
 20 I don't want you just to argue your case and then it
 21 doesn't come that way in the end. Conditionally
 22 admitted.
 23 BY MR. PATRICK:
 24 Q. Now, I think we just talked about you
 25 remember when Mr. Pike and Mr. Perez came up to talk

1 to you in Wells.
 2 A. Yes.
 3 Q. And do you remember Mr. Perez showing you
 4 pictures of Mr. Fowler?
 5 A. I remember the pictures, yeah.
 6 Q. Okay. And he showed you several
 7 pictures?
 8 A. No. He only showed me three or four.
 9 Q. Three or four. And one of them was Mr.
 10 Fowler?
 11 A. Yeah.
 12 Q. And do you remember him showing you a
 13 picture of Mr. Bland?
 14 A. Yes.
 15 Q. And do you remember going back to Mr.
 16 Fowler, do you remember telling him that you had met
 17 him because of --
 18 MS. LUZAICH: Objection. Hearsay.
 19 THE WITNESS: I mean --
 20 THE COURT: Sustained.
 21 THE WITNESS: You're telling me names
 22 that I don't know.
 23 THE COURT: Sustained. He says he
 24 doesn't know Fowler, and Bland used to date his
 25 sister. That's what he knows.

1 MR. PATRICK: Well, I understand that,
 2 judge.
 3 THE COURT: If you want to put your
 4 investigator on to impeach him, no, he told me
 5 something else at any other time, we can do that.
 6 MR. PATRICK: That's fine.
 7 BY MR. PATRICK:
 8 Q. Right now you're housed up at the Wells
 9 Conservation Camp?
 10 A. No, I'm at Indian Springs.
 11 Q. You're at Indian Springs. Where were you
 12 before that?
 13 A. At Wells --
 14 Q. At Wells?
 15 A. -- Camp.
 16 Q. Okay. Why are you there?
 17 THE COURT: Nope.
 18 MR. PATRICK: Nope?
 19 THE COURT: Sustained. That's not
 20 relevant to this proceeding.
 21 MR. PATRICK: Okay.
 22 BY MR. PATRICK:
 23 Q. You have -- have you been convicted of a
 24 felony within the last 10 years?
 25 A. Yes.

1 Q. How many?
 2 A. One.
 3 Q. One. What was that for?
 4 A. What I'm in prison for now.
 5 Q. What other felony you were convicted of,
 6 yes.
 7 A. Well, why is that relevant to this case?
 8 THE COURT: Well, he can ask, he can ask
 9 that and then he can't ask anything more. It could
 10 be possession of cocaine, it could be robbery. Just
 11 what is it?
 12 THE WITNESS: It's a domestic.
 13 THE COURT: Domestic violence?
 14 THE WITNESS: Yes.
 15 BY MR. PATRICK:
 16 Q. Okay. And you've only been convicted of
 17 one felony in the last two years?
 18 A. Yes.
 19 Q. So if --
 20 A. This is my first time up state.
 21 Q. Okay. Was it --
 22 (Whereupon, an off-the-record
 23 discussion was had at the bench.)
 24 BY MR. PATRICK:
 25 Q. Mr. Culverson, isn't it true that you've

14

1 actually been convicted of two felonies in the last
 2 10 years?
 3 A. If I was convicted of two felonies, I
 4 would have been, went to prison more than once.
 5 Q. Okay. Were the two felonies that you've
 6 been convicted of combined into one case?
 7 A. I only got charged with one charge and
 8 that was a domestic.
 9 Q. Okay. I have two judgements of
 10 conviction for felonies in the last 10 years with
 11 different case numbers.
 12 Are you saying that those cases were
 13 combined or that you've only been convicted of one?
 14 A. I've only been convicted of one and
 15 that's all that I've been hit with.
 16 MR. PATRICK: Judge, I'd move to --
 17 THE COURT: Just let me see it. Let me
 18 see it. If you want to admit these for whatever
 19 they're worth. You can admit them was defense
 20 exhibits.
 21 MR. PATRICK: I move to do that.
 22 THE COURT: They'll be admitted next in
 23 order.
 24 MR. PATRICK: That's all I have, judge.
 25 THE COURT: Any questions?

1 MS. LAICH: No.
 2 THE COURT: Thank you, Mr. Culverson.
 3 You can take him back. Thank you, officers.
 4 Appreciate your time.
 5 State, call your next witness.
 6 MS. WECKERLY: Dan Long.
 7 (Whereupon, Detective Dan Long was
 8 duly sworn to tell the truth, the
 9 whole truth and nothing but the
 10 truth.)
 11 THE CLERK: Thank you. Please be seated,
 12 spelling your first and last name for the record.
 13 THE WITNESS: Dan Long. D-a-n. L-o-n-g.
 14 THE COURT: Does this relate to your
 15 first case or second case?
 16 MS. WECKERLY: First.
 17 DIRECT EXAMINATION
 18 BY MS. WECKERLY:
 19 Q. How are you employed?
 20 A. Las Vegas Metropolitan Police Department.
 21 Q. Where are you assigned?
 22 A. I'm a homicide detective.
 23 Q. How long have you been in homicide?
 24 A. Eight years.
 25 Q. And prior to that, where did you work in

16

1 Metro?
 2 A. I was detective for the gang unit.
 3 Q. You were working in homicide on March the
 4 24th of 2005?
 5 A. Yes, ma'am.
 6 Q. Were you asked to respond to an address
 7 at 1001 North Pecos?
 8 A. Yes, I was.
 9 Q. Okay. That's obviously in Las Vegas,
 10 Clark County, Nevada?
 11 A. Yes, ma'am.
 12 Q. Were you the only homicide detective to
 13 respond or did others respond with you?
 14 A. Detective Vacarro was working as our
 15 sergeant at that time. He called us, he also called
 16 the lead Detective George Sherwood, myself, I was
 17 his partner, Detective Wildman and Detective
 18 Wallace. We all responded to the scene that she's
 19 described.
 20 Q. When homicide is called, obviously patrol
 21 or someone else has been there ahead of you?
 22 A. That's correct.
 23 Q. Do you know what time though the 911 call
 24 for this incident came in?
 25 A. Sure. Do you mind if I look?

1 Q. That'll refresh your recollection?

2 A. It was at 14:51 hours which is 2:51 in
3 the afternoon.

4 Q. Okay. So that's what time the 911 call
5 was made to Metro?

6 A. That's correct.

7 Q. About nine minutes to 3:00. When you
8 responded, it was some time after that, though?

9 A. Correct.

10 Q. Okay. Once you arrived at the scene,
11 what is the first thing that you and the other
12 detectives do in terms of starting the
13 investigation?

14 A. We pulled into the parking lot, we saw
15 that there had been a scene established by yellow
16 crime scene tape everybody sees and detective -- or
17 officers were all on the perimeter. They were
18 keeping people away from something. We didn't know
19 what it was at that point.

20 We then huddle up with the first
21 officer on the scene and he gives us a synopsis of
22 what we're looking at, why we're there.

23 The call originally came up out as
24 an unknown trouble call, but then it was updated to
25 a burglary call. We still didn't know why we were

1 called there.

2 We were told by the officers on the
3 scene that they had found a young girl in the
4 bathtub of apartment 633, the mother had found her.
5 There were reports that there may be some trauma and
6 it was just suspicious to the officers on the scene
7 and they wanted homicide to take a look and decide
8 what to do at that point.

9 Q. Let me interrupt you.

10 A. Okay.

11 Q. The place where you respond at this
12 address, it's a, we've heard it's a multi-building
13 apartment complex?

14 A. That's two story, multi-unit apartment
15 complex at the corner of Washington and Pecos.
16 It'll be the northwest corner.

17 Q. So you guys have -- you meet with the
18 patrol officer who's the first one on the scene and
19 then what's the next thing you all decide to do in
20 terms of investigating the case?

21 A. Detective Sherwood would be the lead, he
22 would take the scene. He'd be responsible for
23 taking care of all the evidence, documenting the
24 scene and he'd be in charge of all the CSAs.

25 Detective Vacarro who's gonna be the

1 supervisor would stay as the supervisor. Myself,
2 Detective Wildman and Detective Wallace would start
3 with the witnesses.

4 There were several people that had
5 entered the scene once the mother had discovered her
6 child dead. I was gonna interview those. Detective
7 Wildman was gonna interview the mother and then
8 Detective Wallace was gonna assist with whatever
9 interviews were necessary.

10 Q. Now, even though the investigation was
11 divided in terms of interviewing in crime scenes
12 which I assume that's traditionally how it's divided
13 in homicide investigation?

14 A. Yes, ma'am.

15 Q. And you were on the interviewing part of
16 it, did you walk through the scene at all?

17 A. Yeah. In order to give any kind of or
18 take any kind of a coherent statement from somebody,
19 you have to know what you're looking at.

20 Detective Wildman, I remember
21 specifically Detective Wildman and I walked into the
22 scene just to get some idea of the layout of the
23 apartment and the condition and position of the
24 victim, so we could have some kind of idea what to
25 ask the people that had entered the scene; the

1 mother and anybody else that would be relevant.

2 Q. And so when you walked into the scene, I
3 assume that you observed or had the opportunity to
4 had observe the victim lying in the bathroom?

5 A. Yes, ma'am.

6 Q. Did you also with the other detectives do
7 any kind of assessment or make any kind of
8 determination as to whether or not there was any
9 signs of forced entry into the apartment itself?

10 A. Yes, ma'am.

11 Q. And what was that determination?

12 A. Well, the first thing we heard was that
13 it was a burglary. We, we got the information early
14 on that the apartment had been locked so we wanted
15 to know how entry was made in order to get to the
16 victim.

17 We checked all the windows, the
18 three windows, we checked the door. I remember
19 specifically standing at the door with Detective
20 Wildman looking at the jam and the bolt itself to
21 find out if there had been any force at all through
22 that door. We could find no signs of any kind of a
23 forced entry into that apartment.

24 Q. And I know you probably didn't spend
25 hours in the apartment itself, but in your sort of

1 quick walk-through observations, did you see any
2 signs of obvious disturbance in any of the areas of
3 the apartment itself?

4 A. No signs of a struggle. We couldn't see
5 anything like, you know, major breaking and things
6 tipped over, anything like that.

7 The kitchen counter had a lot of
8 things on it, the bathroom where the victim was, I
9 saw a couple of things on the ground. There was a
10 cord out in the living room, an electrical cord that
11 was stretched out in the living room but no obvious
12 signs of a fight.

13 Q. And I think you said that the patrol
14 officer had kind of kept or asked the people who had
15 actually been inside of the apartment in a
16 particular area for you to start to interview?

17 A. Yes, that's correct.

18 Q. And when you conduct these interviews,
19 are you interviewing these people one by one or in a
20 group?

21 A. One by one. We want their specific
22 knowledge, not everybody's knowledge together. The
23 officers on the scene did a good job. They kept the
24 witnesses away from each other so they couldn't
25 regurgitate any information back and forth.

1 And when we interviewed them, we
2 interviewed them by themselves to get their specific
3 knowledge.

4 Q. And the initial people that you interview
5 at the scene, these are individuals who actually
6 explained or indicated that they had been inside the
7 residence and maybe had contact with the victim?

8 A. That's correct.

9 Q. And are those individuals Ebony Lewis,
10 Elizabeth Tolberg and Marquita Carr?

11 A. That's correct.

12 Q. And so you got information from those
13 ladies about their contact coming into the apartment
14 with the victim?

15 A. Yes.

16 Q. In the course of your interviewing, do
17 you move out from sort of a wider circle then after
18 you contact the initial people that had been in the
19 apartment?

20 A. I do that continuously throughout the
21 investigation. I don't know how to put this. This
22 area is not a -- there's a lot of drug trade going
23 on in this area. There's a lot of distrust of the
24 police because of the drug trade that goes on in
25 that area. There's a lot of people that are afraid

1 to be even seen talking to the police.

2 So what you do is you wander around
3 the building, you wander around in the area, you
4 talk to the people you need to talk to, then you go
5 wander around the area again.

6 And you do this in subsequent days
7 also hoping to catch somebody that will -- I've even
8 had them walk up and stand looking backward away
9 from me at my back so they could talk to me and tell
10 me something. And you try to get whatever
11 information you can get at this point.

12 Somebody will say you need to go
13 look at this apartment or you need to go look and
14 they'll give you a name. So you do these, these all
15 the time.

16 I did the interviews, but between
17 each one, I would wander into the crowd, wander
18 down -- there's three allies that intersect off this
19 apartment, where this apartment is, and you wander
20 down, go between other buildings, see if there's
21 somebody that will say something to you. Try to
22 make your approaches when you can. Sometimes it
23 works, sometimes it doesn't.

24 Q. At some point that evening, though, did
25 you make contact with an individual named Robert

1 Lewis?

2 A. I was actually -- yes, I did.

3 Q. Okay. And when you made contact with Mr.
4 Lewis, was it outside or inside one of the
5 apartments?

6 A. It was inside one of -- his apartment.

7 Q. Okay. So you went into his apartment?

8 A. Yes.

9 Q. Did he answer the door and let you in?

10 A. No. It was answered by somebody else,
11 but he was sitting right there. And I, I said I was
12 a homicide detective, I was doing the investigation,
13 we were doing a door to door. We wanted to know if
14 anybody had any information at all about the crime
15 that we were investigating.

16 They all indicated that they did not
17 have any information. They didn't hear anything,
18 didn't see anything, not at all.

19 I asked if I could come in. Mr.
20 Lewis said I could. I then, I asked the patrol
21 officers near by to take the others outside, so I
22 could talk to Mr. Lewis alone. Which they did.

23 I then asked Mr. Lewis if he would
24 give me a statement at which he said he would not.
25 But I told him that I was interested in getting a

1 DNA sample from him and he said absolutely. You can
2 absolutely have it. He said I just don't want to
3 give you a statement. I said okay, I can understand
4 that. And it was more that he distrusted the police
5 than --

6 MR. PIKE: Objection. Calls for
7 speculation, facts outside of his knowledge. He can
8 say what he did, he can't say why he did it.

9 THE COURT: Okay. Sustained.

10 BY MS. WECKERLY:

11 Q. Let me ask a different question. When
12 you had contact with Mr. Lewis, you indicated to him
13 that you wanted to get a sample of his DNA?

14 A. Yes.

15 Q. And he agreed to provide that to you?

16 A. He immediately said it was not a problem,
17 go ahead and I'll give it to you.

18 MR. PIKE: Objection. Hearsay.
19 Response, it can be answered yes or no.

20 THE COURT: Overruled.

21 BY MS. WECKERLY:

22 Q. When you were in contact with Mr. Lewis,
23 without saying what he said, did you just get the
24 DNA sample and leave or did you have a further
25 conversation with him about information he might

1 know about the crime?

2 A. Yes.

3 Q. And during the time period you were
4 talking to him about the crime, the conversation was
5 not recorded?

6 A. No.

7 Q. That was at his request?

8 A. Yes.

9 Q. Okay. When you were speaking with Mr.
10 Lewis about the crime and what information he may
11 have about it, can you give us an estimate as to how
12 long he and you discussed any information he maybe
13 knew about the crime?

14 A. I was there --

15 MR. PIKE: Objection. Best evidence.
16 Mr. Lewis has already testified.

17 THE COURT: Well, he can testify as to
18 how long the conversation was. Go ahead.

19 BY MS. WECKERLY:

20 Q. How long was that?

21 A. I was there quite a long time. I did the
22 buckle swab and he, he was very forthcoming with me.

23 MR. PIKE: Objection. Nonresponsive.
24 How long were you there, how long did you talk?

25 THE COURT: Okay.

1 BY MS. WECKERLY:

2 Q. How long?

3 A. Approximately an hour.

4 Q. Okay. And while you were there talking
5 to him for an hour, without saying what Mr. Lewis
6 said, was he --

7 MR. PIKE: Objection, Your Honor. Can I
8 take the witness on voir dire for a second?

9 THE COURT: For what purpose?

10 MR. PIKE: I have no written report of
11 the conversation, I have no recording of that
12 conversation and I want to know if that's the normal
13 protocol that's done in this case and whether he
14 should even be admitted and allowed to testify.

15 THE COURT: He said there wasn't a
16 recording because the witness wasn't amenable to
17 record anything and that's the thing.

18 Did you write a report about this
19 conversation?

20 THE WITNESS: I gave my notes to
21 Detective Sherwood.

22 THE COURT: Do you have a report on it,
23 Ms. Weckerly?

24 MR. PIKE: Do you have those notes?

25 MS. WECKERLY: Well, the report, the

1 notes are put into a report and I think there's a
2 reference to speaking to Mr. Lewis in the report.

3 THE COURT: Okay. And you have that?

4 MR. PIKE: I have that. That's a third
5 party report. I don't have his notes.

6 MS. WECKERLY: Well --

7 THE COURT: He gave them to somebody
8 else. He doesn't have them either.

9 MR. PIKE: Do you have those notes?

10 THE WITNESS: No, I do not. I gave them
11 to Detective Sherwood.

12 MR. PIKE: Would they be in the homicide
13 book?

14 THE WITNESS: I think they --

15 MS. WECKERLY: And for the record, Your
16 Honor, we provided the homicide book to the defense
17 to review.

18 THE COURT: Okay. So I'm guessing that
19 you two looked through it together and it wasn't in
20 there, then it probably isn't in there. Fair
21 enough.

22 MR. PIKE: Fair enough.

23 MS. WECKERLY: Fair enough.

24 THE COURT: Then let's move on.

25 BY MS. WECKERLY:

1 Q. But while we're on that topic, there is a
2 report drafted by Detective Sherwood on that case,
3 correct?

4 A. Yes, ma'am.

5 Q. And can you get that?

6 A. Yes, ma'am.

7 Q. And looking at page 10 of that report,
8 the third paragraph?

9 A. Yes, ma'am.

10 Q. And that paragraph references your having
11 contact with Mr. Lewis, correct?

12 A. Yes, ma'am.

13 Q. Okay. So let's talk about your
14 conversation with Mr. Lewis. And again, you can't
15 say what he said, but while you were talking to him,
16 were there questions you asked that he ever refused
17 to answer?

18 A. No.

19 Q. Were there questions that you asked that
20 he was evasive about answering?

21 MR. PIKE: Objection. Hearsay,
22 interpretive.

23 THE COURT: Overruled.

24 MR. PIKE: Thank you.

25 THE WITNESS: No.

1 THE COURT: He can't say what he said,
2 but he can say his observations of the conversation.
3 BY MS. WECKERLY:

4 Q. Was there -- during the interview, did he
5 ever, did he ever indicate that he wanted the
6 interview to stop?

7 A. No.

8 Q. Did he ever -- well, let me ask you this:
9 In your work as a detective, you're trained in
10 interviewing people?

11 A. Absolutely.

12 Q. Is there an interviewing technique where
13 you become more confrontational with the subject of
14 the interview?

15 A. Absolutely. We want their emotions to go
16 up and down. We can catch their footing off guard
17 that way. You don't want somebody comfortable.

18 Q. Did you ever in your conversations with
19 Mr. Lewis attempt to be more confrontational with
20 him to see what his reaction was?

21 A. Absolutely.

22 Q. And when you did that, without saying
23 what he told you, did his demeanor change or did his
24 willingness to provide information at all change?

25 A. No. It really didn't. He got a little

1 angry, but other than that, no.

2 Q. During the course of the hour you spent
3 with him, would you describe him as cooperative?

4 A. Yes.

5 Q. You mentioned that there were other
6 individuals who had been present in the apartment
7 when you initially came out there to talk to Mr.
8 Lewis?

9 A. Yes, ma'am.

10 Q. And you said you had patrol keep track of
11 who those individuals were?

12 A. Yes, ma'am.

13 Q. And those names were kept in the notebook
14 as well?

15 A. Yes, ma'am.

16 Q. After -- well, on the night that you're
17 investigating this murder, did you become aware of a
18 potential burglary that may or may not have occurred
19 in the apartment complex around the same time as the
20 murder?

21 THE COURT: Same time of day or same date
22 or what?

23 MS. WECKERLY: Same date. Well, within
24 36 hours I guess.

25 THE WITNESS: Okay. 36 hours I can go

1 with.

2 BY MS. WECKERLY:

3 Q. Okay. Or should I say -- no, 36 I think
4 would be okay. Within 36 hours of the murder, while
5 you're investigating and talking to these people,
6 was there a reference made to a possibility that an
7 apartment different than the murder had been
8 burglarized?

9 A. Yes.

10 Q. And did you follow-up on that potential
11 lead to see if it had any connection to the murder
12 of Sheila Quarles?

13 A. Yes. I know Detective Wallace went
14 there, I went to the management to ascertain any
15 information we could about a possible burglary. I
16 also checked with LVMPD to find out if anything had
17 been reported, if any officers had responded and if
18 there was anything that we could get ahold of.

19 Q. Okay. Based on your contact with Metro
20 to see if this burglary or alleged burglary had been
21 reported, did you find that there was ever a call to
22 Metro about a burglary?

23 A. No, there was no call, no forensics had
24 been done, no officers had done any officer's report
25 on it. We had nothing that way.

1 Q. And in terms of your conversation with
2 the manager of the apartment, based on your
3 conversation with that person, was there anything
4 that they told you that you thought warranted
5 follow-up in terms of a homicide investigation?

6 A. No, ma'am.

7 Q. And Detective Wallace had contact with
8 the resident who was the alleged victim of the
9 burglary?

10 A. That's correct.

11 Q. And I assume you conferred with Detective
12 Wallace throughout the evening in terms of this
13 investigation?

14 A. Yes, ma'am. We huddle up quite often and
15 find out what each of us is going after, pursuing,
16 and then we, we want to keep the information amongst
17 us.

18 Q. And based on what Detective Wallace
19 learned about this alleged burglary, that's
20 communicated to you?

21 A. Yes, ma'am.

22 Q. And when you learned that information,
23 was there anything that you thought that warranted
24 follow-up in terms of the homicide investigation of
25 Ms. Quarles?

1 A. Not directly, no.

2 Q. Did they seem like unrelated incidents?

3 A. Yes, ma'am.

4 Q. You mentioned that Detective Wildman was
5 the detective who made contact or actually
6 interviewed the victim's mom?

7 A. That's correct.

8 Q. And her name's Debra Quarles?

9 A. Yes, ma'am.

10 Q. You did not interview that lady that
11 night?

12 A. No.

13 Q. In the subsequent investigation, did you
14 have the occasion to interview Sheila's mom about
15 this case?

16 A. Yes, I had actually given her my
17 condolences that night and her son, but later
18 Detective Sherwood told me that we were going down
19 to --

20 MR. PIKE: Objection. Hearsay. The, the
21 question is nonresponsive.

22 THE COURT: Sustained.

23 THE WITNESS: Detective Sherwood and I
24 went and did another interview with Ms. Quarles.

25 BY MS. WECKERLY:

1 Q. And when you spoke to, you and Detective
2 Sherwood spoke to Ms. Quarles in sort of follow-up
3 interviews, was she able to provide you with people
4 that were her daughter's enemies or anything of that
5 nature or was there nothing really to follow-up on
6 in terms of someone having something against Sheila
7 I guess?

8 A. There were no other people that she
9 mentioned in this interview. We were directed -- I
10 don't know. We were directed back to Quince.

11 Q. Okay. And that would be Quince Toney,
12 her name came up in the investigation?

13 A. Yes.

14 Q. And obviously detectives interviewed Ms.
15 Toney?

16 A. Yeah.

17 Q. She was a potential suspect early on in
18 the investigation?

19 A. Absolutely.

20 Q. And for that matter, everybody was a
21 potential suspect early on?

22 A. Everybody was, yes.

23 Q. Okay. But as the investigation
24 progresses, obviously that gets more narrower?

25 A. Yes.

1 Q. Some detectives interviewed Ms. Toney and
2 she gave information about her whereabouts during
3 the time of the murder?

4 A. That's correct.

5 Q. And that was taken into account in terms
6 of further investigation?

7 A. Yes, ma'am.

8 Q. In your conversations with Ms. Quarles,
9 Debra Quarles, do you recall her referencing a
10 neighbor or someone who else lived in the complex
11 that was trying to flirt with or trying to get
12 Sheila, her daughter's attention, do you remember
13 her talking about that?

14 A. Yeah. You're talking about the older man
15 that was staring at her?

16 Q. Right. Darnel?

17 A. Yes.

18 Q. Okay. You know that name?

19 A. Yes.

20 Q. Was Debra Quarles able to give you a last
21 name of that individual?

22 A. No, she was not.

23 Q. Was there any attempt to follow-up or
24 determine if this Darnel had any connection to the
25 murder of Sheila?

1 A. Sure there was. We went back and we did,
2 several different times did knock and talk on as
3 many of the doors in the area as we could, many
4 times bringing up the name Darryl -- Darnel. I'm
5 sorry. Trying to locate who he might be, if he
6 lived there, where he lived.

7 We could never find any relation,
8 anybody that would match that description.

9 Q. I'm sort of going back and forth in time
10 a little bit, but in terms of the first evening
11 after you clear the scene, the first evening of the
12 investigation, not a whole lot of leads to follow-up
13 on at that point?

14 A. No, there was not.

15 Q. Okay. And I think you mentioned that you
16 went back and spoke to Debra Quarles a couple times,
17 yourself or Detective Sherwood?

18 A. Yes.

19 Q. And either yourself and/or Detective
20 Sherwood also just went back to the complex itself?

21 A. Yes.

22 Q. Do you recall approximately how many
23 times you might have gone back to that complex in
24 the early weeks of the investigation?

25 A. Approximately five times Detective

1 Sherwood and I went back. Several times for
2 specific reasons, other times just to, like I said,
3 go back and see if we could catch somebody that
4 would talk to us.

5 Q. And in those times you went back, I take
6 it if there had been any helpful information that
7 you could have followed up on, that would have been
8 noted or you would have followed up on it in some
9 way?

10 A. Yes, ma'am.

11 Q. When a homicide victim is discovered in
12 your experience as a homicide detective, an autopsy
13 is conducted the next day typically?

14 A. Yes, ma'am.

15 Q. And in the course of conducting the
16 autopsy, a sexual assault kit is taken?

17 A. Detective Sherwood asked for it and we
18 obviously have to be there to witness it, yes.

19 Q. Okay. And at some point in terms of this
20 investigation, you become aware of the results of
21 these vaginal swabs taken from the victim Sheila
22 Quarles?

23 A. Yes, ma'am.

24 Q. And at the time that those results come
25 in, you were provided with the name Norman Flowers

1 or Norman Keith Flowers as a source of some of the
2 DNA from the vaginal swabs of Sheila Quarles or he
3 was consistent with?

4 A. Correct. Some of the -- there was two
5 sources of semen and he was one of the depositors.

6 MR. PIKE: Objection. Consistent with is
7 the question.

8 THE COURT: Okay.

9 THE WITNESS: Consistent with.
10 BY MS. WECKERLY:

11 Q. At the time you get those results, were
12 you aware that Mr. Flowers was the suspect in
13 another murder investigation that was being
14 conducted by Detective Tremel?

15 A. Yes.

16 Q. And were you aware that in that
17 investigation the victim had been sexually assaulted
18 as well?

19 A. Yes.

20 Q. Which is similar to your investigation?

21 A. Yes.

22 Q. And you, were you aware that the victim
23 in that case had been strangled?

24 A. Yes.

25 Q. Which ended up being the cause or manner

1 of death for Sheila as well?

2 A. Correct.

3 Q. So there were consistencies that I assume
4 came to your attention as a detective?

5 A. Yes, ma'am.

6 Q. And when you get the DNA results, you're
7 told there's two, there's two semen sources from
8 those vaginal swabs?

9 A. Yes, ma'am.

10 Q. At that point did you consider the
11 possibility that two people may have been committing
12 these crime against her?

13 A. Absolutely.

14 Q. Don't know what happened?

15 A. No.

16 Q. Okay. During -- or once you have those
17 DNA results, at some point do you try to identify
18 who the secondary source of DNA might be?

19 A. Yes.

20 Q. How did you go about doing that?

21 A. There's several ways we could have gone
22 about it. Find out who's the associate of Norman
23 Flowers or find out if Sheila had a boyfriend that
24 could have possibly been one of the depositors.

25 We decided, I decided to start going

1 through the cell phones, talk to all her friends,
2 other co-workers, see if I could find a boyfriend.

3 We also tracked on any possible
4 partners that Norman Flowers might have had. I
5 couldn't find any partners for Mr. Flowers, but I
6 did find through one source that Sheila had been
7 talking to a man by the name of Chicken.

8 I happened to know a man by the name
9 of Chicken and I pulled up everything I could on him
10 and it turned out one of his addresses listed 1001
11 North Pecos.

12 Q. Which is the address?

13 A. The address where Sheila lived and was
14 killed.

15 Q. So you found her associates by calling
16 numbers from her cell phone records?

17 A. Correct.

18 Q. And from conversations with those
19 individuals, you're told the name Chicken?

20 A. Yes.

21 Q. And you happened to know who that is?

22 A. Yes.

23 Q. Okay. Did you make an attempt to contact
24 Chicken?

25 A. Yes. I knew where he was. He was

1 currently residing at the Clark County Detention
2 Center. So I went down and had him brought into an
3 interview room and then I sat down and took a
4 statement from him and also obtained a DNA swab from
5 him.

6 Q. When you went down to the detention
7 center and you talked to Chicken, what's his real
8 name?

9 A. George Brass.

10 Q. Okay.

11 A. B-r-a-s-s.

12 Q. So you go down and you -- Mr. Brass in
13 custody at the time that you made contact with him?

14 A. Yes, ma'am.

15 Q. When you initially have or Mr. Brass is
16 brought to you in the interview room, do you
17 identify yourself as a homicide detective?

18 A. Yes, I do.

19 Q. Did you explain to him what case it was
20 or what you were there for?

21 A. Yes.

22 Q. And did you mention the name Sheila
23 Quarles in your explanation?

24 A. Yes.

25 Q. Without saying what he specifically said,

1 did Mr. Brass agree to speak with you about Sheila
2 Quarles and his relationship with her?

3 A. Yes, he did.

4 Q. Could he have refused to speak with you
5 at that point?

6 A. Absolutely.

7 Q. Could he have told you that I don't want
8 to talk to you at all, I want my lawyer, I don't
9 want to talk to you?

10 A. Yes.

11 Q. He didn't do that?

12 A. No.

13 Q. During the course of your conversation
14 with him, did you ask him pretty specific questions
15 about his relationship with Ms. Quarles?

16 A. Very specific questions about his
17 relationship.

18 Q. Intimate questions?

19 A. Yes.

20 Q. Did he refuse to answer those questions?

21 A. No.

22 Q. At the end of that interview, did -- or
23 maybe it was at the beginning, did you ask him for a
24 DNA sample?

25 A. Yes.

1 Q. And did Mr. Brass agree to give you the
2 sample?

3 A. Yes, he did.

4 Q. Could he have refused?

5 A. Absolutely.

6 Q. Once you got the DNA sample, did you
7 impound that yourself into evidence?

8 A. Yes, I did.

9 Q. And was that -- I mean to your knowledge
10 it was later tested against the vaginal swabs that
11 we had of Sheila Quarles?

12 A. Yes. I actually called over and
13 requested it be rushed. And it was rushed and it
14 was compared and it was matched to one of the
15 depositors in Sheila Quarles.

16 Q. And so based on that investigation that
17 you did, you were able to identify a secondary
18 source or the second source of the semen taken from
19 Ms. Quarles's vaginal swabs?

20 A. Yes, ma'am.

21 MS. WECKERLY: I'll pass the witness.

22 CROSS-EXAMINATION

23 BY MR. PIKE:

24 Q. Thank you very much. Detective Long,
25 during the course of your investigation and while

1 being at the scene and going around, I assume that
2 you were developing a list of the family relations
3 of the witnesses?

4 A. I was not, but it was being done.

5 Q. Okay. And you went to -- you went over
6 to Mr. Lewis's apartment where he was residing --

7 A. Yes.

8 Q. -- is that correct? You personally went
9 into that one?

10 A. Yes. I grabbed a couple of patrol
11 officers and went over.

12 Q. And initially you were told that nobody
13 knew nothing?

14 A. Correct.

15 Q. Okay. And then as part of a standard
16 police technique, you separated all the witnesses,
17 so that they could number one, as you've indicated,
18 feel more comfortable that somebody wasn't looking
19 over their shoulder; and number two, you felt that
20 by the isolation you gather more, you gather
21 information that you could compare against other
22 witnesses' testimony without them over -- or
23 statements without them overhearing that?

24 A. You don't want them regurgitating
25 something they heard. You want their original

1 knowledge. And then you also want to make sure that
2 they -- you know, they're talking to the police.
3 You don't want to label them as a snitch even though
4 they may not be.

5 Q. And during the course of the
6 conversation, did you directly ask Mr. Robert Lewis
7 if he saw any man go into Pooka's apartment from 10
8 o'clock until the time that he went in with the
9 mother?

10 THE COURT: Now, is what Robert Lewis
11 said that you've been objecting to up till now; is
12 that correct?

13 MR. PIKE: No. I'm not asking him what
14 he said. I want to know if he asked that question.

15 THE COURT: Fair enough.

16 THE WITNESS: I asked him if he had gone
17 in, I asked if --

18 BY MR. PIKE:

19 Q. All right. Now my question is did you
20 ask him if he saw anybody go in there? Without
21 saying what he said, did you ask him that question?

22 A. Yes.

23 Q. Okay.

24 A. It's not direct as you're putting it, but
25 yes.

1 Q. Okay. The substance of the question?

2 A. The substance is yes.

3 Q. Okay. And so had, had you received the
4 name of someone that had gone into that apartment
5 from Mr. Lewis or from Ebony Lewis or from any of
6 the Lewises or Brasses that lived right around in
7 that area, that would have been a name that you
8 would have followed up and immediately gone to speak
9 to that person early on in the investigation?

10 A. Having entered, yes.

11 Q. Okay. And you did not go and find anyone
12 other than the individuals that you've told us about
13 at this time?

14 A. We never received any information of
15 anybody entering or being seen entering that
16 apartment.

17 Q. And that, this event occurred in 2005.
18 When was it that you started making the telephone
19 calls that led to the identification of George
20 Brass?

21 A. 2008.

22 Q. And that was at the request of the
23 district attorney?

24 A. Yes, it was.

25 Q. Prior to that time, when you had gone in

1 and started this investigation, did it seem unusual
2 to you that so many members of the same family lived
3 around that area?

4 A. Unusual?

5 Q. Yeah.

6 A. No.

7 Q. Robert Lewis, you knew he was related to
8 George Brass, Sr., who was in the area?

9 A. Yes.

10 Q. You knew they were related to Ebony
11 Lewis?

12 A. Yes.

13 Q. And they lived in another apartment or
14 his mother lived in another apartment that was
15 directly across from where that apartment was?

16 A. Correct. I, I've worked, as Ms. Weckerly
17 found out, I was in the gang unit prior to coming
18 into homicide.

19 In many of the projects and
20 apartments on the west side, you have many families,
21 family members that will congregate if a certain
22 area. It's not uncommon.

23 Q. And in fact, part of it may be for
24 protection in an area?

25 A. Very possible.

1 Q. During the course of your investigation,
2 you tried there -- the two buildings were connected
3 together. There were -- the apartment building
4 where the body of Pooka was found is actually
5 attached to the next building over with a kind of
6 fly-over for the second story apartment.

7 Do you remember that?

8 A. Okay. You're talking about the one to
9 the west. The one to the south is not corrected.

10 Q. Right.

11 A. Okay, yes.

12 Q. Okay. And across that way, you
13 identified the individuals that were in the bottom
14 apartments?

15 A. Yes.

16 Q. And you spoke with them?

17 A. I didn't.

18 Q. You didn't. Another detective did?

19 A. Correct.

20 Q. Did you go upstairs to the apartments on
21 the second floor and, and interview those people?

22 A. Not at that time I didn't.

23 Q. You didn't. Did another detective do
24 that?

25 A. Yes.

1 Q. Which detective did that?

2 A. I believe that would be Wildman and
3 Wallace.

4 Q. And they were individuals that were up
5 there?

6 A. I believe so, yes.

7 Q. Okay. As far as your investigation when
8 you were looking for Dar -- Darnel Sanchez, you had
9 that name?

10 A. Darnel.

11 Q. You had Darnel?

12 A. Yes. That was the one that was with
13 Nicole.

14 Q. It was the name that you gave as the
15 older guy.

16 A. The older black man. The Darnel you're
17 talking about was the young Hispanic man?

18 Q. Okay. So there's two Darnels?

19 A. I don't know. I never found a second
20 one. I knew who the first one is.

21 Q. Okay. So you had a Darnel that was a
22 younger Hispanic man?

23 A. Yes.

24 Q. Did you have any other information, any
25 other identifiers?

1 A. For Darnel Sanchez?

2 Q. Yes.

3 A. I believe we had him.

4 Q. Okay. And having him, did you know which
5 apartment he had been living in? Would you check
6 that, please?

7 A. Sure. I'm thinking Alfonso. I'm sorry.
8 I completely misspoke.

9 Q. That's okay. There's a Darnel, a Darryl
10 and an Alfonso?

11 A. That were with Nicole.

12 Q. No, no. We're getting to Nicole here.

13 A. Okay. I was thinking Alfonso. Alfonso
14 was the one that was arrested at the scene.

15 Q. Okay. Alfonso was arrested at the scene?

16 A. He was originally placed in handcuffs.

17 Q. Okay.

18 A. There was something that happened with
19 patrol.

20 Q. Okay. He was placed in handcuffs, he was
21 identified and he resided upstairs?

22 A. With Natalie, yes.

23 Q. And you didn't interview Natalie, but you
24 knew where she had lived?

25 A. I -- well, after doing the three

1 interviews that I did and what I was looking for, I
2 got some other information, I went in another
3 direction. I later found out about it, yes.

4 Q. Okay. You were -- and that's not unusual
5 for detectives to develop different theories and
6 start the investigation on that theory to see if it,
7 it --

8 A. Pans out.

9 Q. Pans out. Thank you very much. I
10 appreciate that. And one of the theories that you
11 initially were investigating that these, both of
12 these DNAs may have been related to each other in
13 that you, you were going to find out if there was
14 anybody that you knew to be an acquaintance of Keith
15 Flowers and maybe that DNA would come back to that
16 person?

17 A. Related to as in?

18 Q. No, not related to. Like in cousin or
19 something like that, but associated with?

20 A. Yes.

21 Q. A friend, acquaintance, something like
22 that?

23 A. Yes.

24 Q. And that was a theory that you had, that
25 you think you thought that you had to investigate.

1 In fact, you tried to investigate and find friends
2 of Mr. Flowers and then determine whether or not
3 there were DNA samples that you might collect from
4 them?

5 A. Correct.

6 Q. And that proved to be a theory that
7 didn't pan out?

8 A. Correct.

9 Q. You have not been able to establish any
10 relationship between Mr. Flowers and George Brass?

11 A. No criminal relationship.

12 Q. No relationship whatsoever?

13 A. What I'm saying is no criminal
14 relationship. I couldn't find anything where they
15 had done any crimes together.

16 Q. Is that the only place you'd looked to
17 see if they'd done crimes together or if they'd been
18 friends, if they'd known each other?

19 A. Any associations of that type, yes.

20 Q. Okay. You couldn't find any association
21 of any type --

22 A. Correct.

23 Q. -- between the two? Once you had the
24 name of George Brass, and forgive me, but you didn't
25 get the name of George Brass until August of this

1 year?

2 A. Detective Sherwood and I split as
3 partners in 2005. He took this case with him and he
4 was working it. The first time I'd become aware of
5 it is when Detective Sherwood came over and said he
6 had had a DNA hit on a Norman Flowers. That's as
7 much as I knew. He was still carrying this
8 investigation. I specifically got a phone call in
9 2008 asking me to follow-up on the phone.

10 Q. And you -- and as a result of that
11 conversation that you had, you said you had to go
12 out and look for a boyfriend?

13 A. Yes.

14 Q. And that's what you started to do?

15 A. Yes.

16 Q. During the course of the conversation or
17 your investigation during the phone calls, you
18 called relatives of --

19 A. Yes.

20 Q. -- of the Lewises?

21 A. Yes.

22 Q. And you found out that in fact it was a
23 relative -- well, that would call for hearsay. I'm
24 sorry.

25 So during the course of the

1 investigation. Then, you had to revisit relatives of
2 the Lewis family -- that yes, you're nodding yes?

3 A. Yes. Sorry.

4 Q. And as a result of that contact, that
5 telephonic contact with the people that you were in,
6 that you were communicating with, then you got the
7 name of George Brass and you went to go see him over
8 at the Clark County Detention Center?

9 A. No. I got the name Chicken.

10 Q. Okay.

11 A. From a Fuller.

12 Q. Okay. Everybody's got -- he's got a
13 nickname. His nickname is Chicken and you got it
14 from Mr. Fuller?

15 A. No. I got it from Ameia and Amaya
16 Fuller.

17 Q. Ameia and Amaya Fuller. Okay. And
18 they're related to the Lewises also?

19 A. They told me they were, yes. They were
20 related to, cousins to Sheila.

21 Q. Okay. And having done that, then you go
22 over to Clark County Detention Center. Now when you
23 go into the Clark County Detention Center and you're
24 speaking with Chicken, you don't turn on the
25 recorder immediately, do you?

1 A. No.

2 Q. You have a recorder with you?

3 A. Yes. It's in my pocket.

4 Q. And you could have turned that recorder
5 on before you even walked into that room?

6 A. When he saw that I was a detective with
7 Metro, I hadn't even sat down yet.

8 Q. That isn't the question what he saw or --

9 A. Well, I didn't have it out yet. When I
10 sat down and I took it out, I put it on the table, I
11 turned it on.

12 Q. Okay. You work with Henderson police
13 detectives in cases, don't you? Have you ever
14 worked with them?

15 A. Henderson?

16 Q. Yeah. You work them on occasion?

17 A. I once in awhile will confer on
18 something.

19 Q. Henderson detectives have recorders that
20 they wear and record the entire conversation from
21 the time they walk in very often, you're aware of
22 that, aren't you?

23 A. I wasn't, but that's nice.

24 Q. Okay. You have recorders that you --

25 A. Yes.

1 Q. -- carry around with you? You can
2 decide, you decide when it goes on and when it
3 doesn't?
4 A. Absolutely.
5 Q. And on this occasion, you made a
6 determination to not turn it on until after you had
7 had a conversation and decided that it was time to
8 record it and put it out on the table and then start
9 it?
10 A. I didn't want to scare him. Do you
11 understand that?
12 Q. He was already in jail. I understand
13 about being scared.
14 A. Yeah. I didn't want to scare him. I
15 wanted to put him at ease, then sit down and take
16 out the recorder and explain it to him before I
17 turned it on.
18 Q. Because you find that when people are
19 scared, they won't give you information?
20 A. Many times, yes.
21 Q. And that's true when people are afraid
22 for themselves?
23 A. Sure.
24 Q. So you wanted to make him comfortable and
25 say you're not, I'm not going to give you any reason

1 to be afraid of me. That was part of the process
2 that you were going through in order to get the
3 recording, correct?
4 A. Yes. An investigative tool you're using
5 there, yes.
6 Q. And you've been trained in a number of
7 interrogation techniques and investigative tools
8 over the years?
9 A. Yes.
10 Q. And in going through and doing that, part
11 of it is putting them at ease?
12 A. Absolutely.
13 Q. And an easy way -- or let me ask you
14 directly. In this case it was easy to put him at
15 ease if you told him you're not a suspect, we just
16 need to make sure that we can identify your DNA and
17 you're not gonna be charged with this, and you told
18 him something similar to that, what words did you
19 use?
20 A. Okay. We're not here about any case that
21 you have ongoing, I don't want you to be afraid that
22 I'm trying to tie you into something that you've
23 already been charged with. I'm here about something
24 completely different. I'm here about you had an
25 ex -- or a girlfriend in the past by the name of

1 Sheila Quarles, is that correct. He said yes.
2 I said I'm doing the investigation
3 into her death. Do you understand that. Yes.
4 I want to get a statement from you
5 about your relationship with her, if that's okay
6 with you, and I want to get a DNA swab from you
7 because I believe that your semen will be found
8 inside of her. Is that okay. Yes.
9 I said you're not a suspect, you
10 didn't kill her, correct. He said no.
11 I says then you won't have any
12 problem with me taking a statement from you,
13 correct. Yes.
14 Q. Okay. And going through that process,
15 you've effectively told him, don't worry, don't
16 worry, I'm not gonna charge you?
17 A. Unless your DNA -- or yes.
18 Q. Well, the DNA came back to be his, didn't
19 it?
20 A. Well, unless I find other information,
21 but yes, at that point I'm not gonna charge him.
22 I'm not gonna arrest him that day. I know that.
23 Q. During that period of time, this has been
24 a three-year lapse of time that has since the time
25 of the death until the time that you're in there

1 talking to him about the relationship that he had
2 with --
3 A. It's actually more than that, yes.
4 Q. -- with Pooka? And then you had --
5 because it was so late in August, you had to rush to
6 get the DNA processed, get the sample processed, so
7 that it could be available for this court date?
8 A. Because it was late in August?
9 Q. Well, because it was late in the game,
10 the, prior to this trial?
11 A. Well, DNA samples can, if you're put at
12 the bottom of the stack, it can take six months.
13 And I asked the scientist over there to put it at
14 the top of the stack, so that I can get the results
15 quicker. And for homicide they will do that many
16 times.
17 Q. So now you have been able to associate
18 George Brass, Chicken, with the dead body of that
19 young lady three years later?
20 A. Yes.
21 Q. Now, you've been able to associate with
22 the homicide a person that up till this interview in
23 August of this year had been in that apartment at a
24 time close to the death?
25 MS. WECKERLY: I'm gonna object. That

1 misstates his testimony, associate it with a
2 homicide.

3 THE COURT: Sustained. According to his
4 own admission, he had been in that apartment
5 sometime that day.

6 BY MR. PIKE:

7 Q. And he'd been in that apartment and that
8 was a new piece of information that you had?

9 A. Yes.

10 Q. During the time frame that from the
11 identification of Norman Flowers' DNA and the time
12 that you were requested to do this follow-up
13 investigation, you weren't involved in the case and
14 you did no further follow-up?

15 A. I wasn't, no.

16 Q. During an interrogation or when you were
17 taking this, this statement from Chicken --

18 A. Yes.

19 Q. -- and you talked with him and then you
20 decided that he was at ease and agreed a recording,
21 you pulled out the recorder and started it?

22 A. Correct.

23 Q. Then as you start to identify well,
24 here's the people that are in here, I'm Detective
25 Long and with me is this individual, this is the

1 date and this is the time I'm taking a statement, at
2 that point in time did you read him his Miranda
3 warnings?

4 A. No, I did not.

5 Q. That was never a part of it?

6 A. Not at that time, no.

7 Q. Was it read at any time during that
8 interview?

9 A. No, no, no. Not at the time of the
10 interview is what I'm saying.

11 Q. Okay. Did you give it to him, did you
12 give him his warnings what you came in and first
13 talked to him?

14 A. No. I didn't consider him a suspect.

15 Q. Because his DNA didn't match?

16 A. No, it matched.

17 Q. You didn't know that it was gonna match
18 at that point in time?

19 A. No, I didn't.

20 Q. You didn't know what time he'd been in
21 that apartment?

22 A. Right.

23 Q. You just knew that he'd been identified
24 as being a boyfriend?

25 A. Correct.

1 Q. And now you have additional information
2 now that the DNA matches, now you know the name of
3 Chicken and so that has expanded the knowledge in
4 the homicide case.

5 Have you gone in since that time of
6 that investigation and expanded the investigation to
7 include the possible friends or acquaintances of
8 Chicken?

9 A. I did follow-up investigation on Chicken,
10 but I have not gone back into Chicken -- into an
11 interview with Chicken.

12 Q. Okay. In following up with Chicken, did
13 you identify his friends and acquaintances that may
14 have been with him at that apartment that day?

15 A. I followed up on his relationships with
16 other people, but most specifically, I followed up
17 with his work at the Wal-Mart.

18 Q. Okay. You subpoenaed the records of his
19 employment at Wal-Mart?

20 A. Correct. If he was to have -- oh, I'm
21 sorry. Yes, I did.

22 Q. Thanks. And those records may or may not
23 be accurate. As far as the records you received,
24 they're the accurate records from Wal-Mart, aren't
25 they?

1 A. Yes.

2 Q. As far as you know, Wal-Mart hasn't
3 altered them at all?

4 A. Correct.

5 Q. You have no personal knowledge whether
6 they accurately reflect the time that he was there?

7 A. Personal knowledge, no.

8 MR. PIKE: I don't have any further
9 questions.

10 REDIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q. Just a couple. Detective Long, you
13 mentioned that you got the name Chicken or the
14 nickname Chicken from Ameia and Amaya Fuller?

15 A. Correct.

16 Q. And it's your understanding that they are
17 related to the victim Sheila Quarles?

18 A. Correct.

19 Q. They're not related to Chicken or George
20 Brass?

21 A. No.

22 Q. Okay.

23 A. Did I misstate that?

24 Q. I think it was a little bit confusing,
25 but just to be clear they are related to Sheila?

1 A. Sheila. Not to --
 2 Q. Not to the Lewises?
 3 A. Not to the Lewises. And I'm sorry if I
 4 made that impression.
 5 Q. Okay. Let's talk about George Brass.
 6 When you were in contact with him, how long was your
 7 conversation before the tape recorder was turned on?
 8 A. Less than five minutes.
 9 Q. Okay. And you indicated to Mr. Pike that
 10 based on what he told you, you had to do some
 11 follow-up information -- follow-up investigation?
 12 A. Yes, ma'am.
 13 Q. And that, that was going to Wal-Mart and
 14 getting his work records for the day of the
 15 homicide?
 16 A. Correct.
 17 Q. Trying to figure out the time he checked
 18 in?
 19 A. Yes, ma'am.
 20 Q. And Mr. Pike asked you, well, based on
 21 your conversation with Mr. Brass, did you follow-up
 22 on his friends and associates that may have been
 23 there the day of the murder.
 24 Do you recall being asked that?
 25 A. Yes.

1 Q. Based on your conversation with Mr.
 2 Brass, was that something to follow-up on? I mean,
 3 was he telling you I was there with 10 people that
 4 morning?
 5 A. No, no. He, he told us that he had met
 6 Sheila at the apartment that morning, that they did
 7 have sex together and that he then left that
 8 apartment and went to work.
 9 Q. Now, you told Mr. Pike that --
 10 A. When I was talking about the
 11 relationships, the relationships I was looking for
 12 was --
 13 MR. PIKE: There's no question before
 14 him.
 15 THE COURT: Sustained.
 16 BY MS. WECKERLY:
 17 Q. Okay. Based on that, that information
 18 provided to you by Mr. Brass, there weren't
 19 additional people to interview to see if they might
 20 have been there that morning because he indicated he
 21 was by himself with her?
 22 A. Correct.
 23 Q. But the information that he gave you
 24 about his whereabouts at the critical time of
 25 Sheila's death, that was followed up upon?

1 A. Yes.
 2 Q. Because that would have been relevant in
 3 the investigation?
 4 A. Yes.
 5 Q. Now, you told Mr. Pike that you didn't
 6 have any involvement in the investigation
 7 essentially from the time of the DNA results until
 8 you were requested to try to follow-up and find out
 9 who this secondary DNA source might be, correct?
 10 A. That's correct.
 11 Q. Okay. Do you know from the investigation
 12 the name William Kinzy?
 13 A. Yes.
 14 Q. Okay. What is your understanding of how
 15 his name became known in the investigation?
 16 A. Actually it's the first name that we had
 17 that was in an envelope on the bed inside the
 18 apartment that had William Kinzy's name on it.
 19 So we wanted to know who he was, if
 20 he was in jail, if he was our possible suspect. We
 21 went looking to find out who he was. It did turn
 22 out that he was in prison and then we later went and
 23 spoke to him.
 24 Q. He was in custody at the time of the
 25 murder?

1 A. Yes.
 2 Q. Okay. And when you say we went and spoke
 3 with him, that was actually between the DNA results
 4 and the finding out about George Brass?
 5 A. Yes, it was.
 6 Q. Okay.
 7 A. I --
 8 Q. And yourself, Detective Sherwood, myself
 9 and Ms. Luzaich actually went to go speak to Mr.
 10 Kinzy?
 11 A. That's correct.
 12 Q. Was Mr. Kinzy in that meeting willing to
 13 provide any information whatsoever about the murder
 14 or the possible associate -- associates of Ms.
 15 Quarles?
 16 A. No.
 17 Q. And, Your Honor, this is reopening, but I
 18 think it's okay with Mr. Pike. May I approach the
 19 witness?
 20 THE COURT: Sure.
 21 BY MS. WECKERLY:
 22 Q. Sir, I'm showing you what's been marked
 23 as State's proposed 124.
 24 Do you recognize what that document
 25 is?

1 A. Oh, this is the -- yes, yes.
 2 Q. Okay.
 3 A. These are the phone records, cell phone
 4 records for Sheila Quarles.
 5 Q. And if we look -- and this is a record
 6 that was obtained in the course of this
 7 investigation?
 8 A. Yes, ma'am.
 9 Q. And, Your Honor, I believe by stipulation
 10 this can be admitted, 124.
 11 THE COURT: Is that right?
 12 MR. PIKE: That's correct.
 13 THE COURT: Admitted.
 14 BY MS. WECKERLY:
 15 Q. Do you have your own copy?
 16 A. Yes, I do.
 17 Q. Okay. Looking at the records, the
 18 document we have reflects calls made on March the
 19 23rd of '05?
 20 A. Yes, ma'am.
 21 Q. Okay. All the way into the day of the
 22 homicide which is the 24th?
 23 A. That's correct.
 24 Q. Okay.
 25 A. There we go.

1 Q. Can you get to the 24th?
 2 A. I got there. I'm there. I got there.
 3 Q. Okay. I'm gonna put mine on the
 4 overhead. Putting 124 on the overhead. Well,
 5 that's probably too small. Let me zoom in.
 6 Okay. And you have your own set of
 7 records there, correct?
 8 A. Yes, I do.
 9 Q. Looking at the very last call that was
 10 recorded on her cellular phone, that was on March
 11 the 24th of '05 at what time?
 12 A. 1:35 p.m.
 13 Q. Okay. And just prior to that call, the
 14 next to last call was a similar incoming call as
 15 well?
 16 A. Yes, that's correct.
 17 Q. And the last outgoing call from Ms.
 18 Quarles's cell phone was to what phone number?
 19 A. I'm, I'm not sure I'm following you.
 20 Q. It looks like on the records when you
 21 look on the screen here that there's two incoming
 22 calls that come in to her phone on the 24th,
 23 correct?
 24 A. Oh, those two, okay.
 25 Q. These last two calls.

1 A. Yes, see. Yes.
 2 Q. And the one right before that which is an
 3 outgoing call obviously, it's to number
 4 702-245-9401?
 5 A. Correct.
 6 Q. Whose phone number is that?
 7 A. That's Quince.
 8 Q. And Quince -- that is consistent with
 9 information Quince provided?
 10 A. Correct.
 11 Q. And the -- in the records prior to that,
 12 there are several calls, fair to say, to Ms.
 13 Quince's cell phone during the course of that
 14 morning?
 15 A. That's correct.
 16 Q. Were you able to -- well, let me ask you
 17 this: Ms. Quince is the person who provided her
 18 cellular phone.
 19 THE COURT: Ms. Toney you mean?
 20 MS. WECKERLY: I'm sorry.
 21 THE COURT: Ms. Toney?
 22 MS. WECKERLY: Yeah. Sorry.
 23 BY MS. WECKERLY:
 24 Q. Ms. Toney was the one who provided you
 25 with her cell phone number prior to you getting the

1 records?
 2 A. Correct.
 3 THE COURT: It's my understanding that
 4 you went to the county detention center and you
 5 interviewed George Brass once you followed up that
 6 information, but you didn't go back and do a double
 7 interview with him, correct?
 8 THE WITNESS: That's correct.
 9 MS. WECKERLY: I have nothing else, Your
 10 Honor.
 11 THE COURT: Go ahead, Mr. Pike.
 12 MR. PIKE: Thank you.
 13 RECROSS-EXAMINATION
 14 BY MR. PIKE:
 15 Q. Okay. During the course of the
 16 investigation, in reference to the telephone calls,
 17 you or the investigative team obtained the access
 18 code to Pooka's telephone, to her cell phone so that
 19 you could have obtained any messages that were left
 20 on the phone; is that correct?
 21 A. That's correct.
 22 Q. Okay. Was that accessed and did you
 23 record the messages that were on the phone?
 24 A. I believe Detective Wildman took care of
 25 that.

1 Q. You have no personal knowledge about
2 that?

3 A. I do not.

4 Q. During the course of the investigation
5 and in the charging document in this case, it
6 indicates that the allegations are that a stereo was
7 taken?

8 A. I couldn't understand you. I'm sorry.

9 Q. I'm sorry. It's been a Long day. During
10 the course of the investigation, an assessment was
11 made and other personal items are believed to be
12 stolen in this case, including a stereo?

13 A. Oh, yes. Yes, sir.

14 Q. Okay. And that stereo was never
15 recovered?

16 A. That's correct.

17 Q. During the course of the investigation,
18 there also was allegations that a bank card was
19 taken.

20 Are you aware of that?

21 A. No, I'm not.

22 Q. Okay. So you have no knowledge from any
23 of the investigative reports to indicate that there
24 was a bank card that was stolen.

25 If you did have that knowledge,

1 there -- when a bank card is used at an ATM, is that
2 often occasioned by a photograph of an individual
3 trying to use that card or using that card?

4 A. Usually.

5 Q. Usually. And so -- and you don't have
6 any personal knowledge about that either?

7 A. I don't. I'm sorry.

8 Q. It's okay. I'm just trying to make sure
9 I've got a complete view of what you know and don't
10 know about this case.

11 And the information that you have
12 from that time to this time didn't give you
13 information that may have possibly tied that earlier
14 burglary to this offense?

15 A. That's correct.

16 Q. That doesn't mean that they're not
17 connected, but that you didn't have any evidence
18 that connected the two of them together?

19 A. Correct. And I had very, very limited
20 information about the other burglary to begin with.

21 Q. Okay.

22 A. So the ties would be almost impossible to
23 find.

24 Q. All right. But if there was an
25 eyewitness to that burglary and that eyewitness was

1 able to identify an individual and then that
2 individual was then identified as being connected
3 with or associated with a stolen stereo after the
4 time of the death, that is, those facts, that
5 hypothetical as I gave it to you, you would
6 definitely want to investigate those individuals and
7 follow-up on that?

8 A. Sure.

9 Q. That may tie the two of them together?

10 A. Possible.

11 Q. Possible. Okay. Thank you. Nothing
12 further.

13 THE COURT: Thanks, detective.

14 Appreciate your time. Call your next witness. Up
15 here, ma'am.

16 THE CLERK: Remain standing and raise
17 your right hand, please.

18 (Whereupon, Ameia Fuller was duly
19 sworn to tell the truth, the whole
20 truth and nothing but the truth.)

21 THE CLERK: Thank you. Please be seated.
22 Please state your full name, spelling your first and
23 last name for the record.

24 THE WITNESS: Ameia Fuller. A-m-e-i-a.
25 F-u-l-l-e-r.

DIRECT EXAMINATION

2 BY MS. WECKERLY:

3 Q. Ms. Fuller, did you know someone by the
4 name of Sheila Quarles?

5 A. Yes.

6 Q. Were you related to her?

7 A. Yes. She's my cousin.

8 Q. She's your cousin?

9 A. Yes.

10 Q. Did you call her Sheila?

11 A. No.

12 Q. What'd you call her?

13 A. Pooka.

14 Q. I'd like to talk to you just very briefly
15 about the time right before Pooka died.

16 A. Uh-huh.

17 Q. Okay. Can you speak up just a little
18 bit. Your voice is --

19 A. Yes.

20 Q. Okay. Were you and your cousin Sheila
21 close? Would you talk to each other?

22 A. Yes.

23 Q. And did you usually that by phone or in
24 person?

25 A. Yes, by phone.

1 Q. By phone?

2 A. (Positive nod of the head.)

3 Q. And during the period a couple months

4 before she died, did you know of her being involved

5 with someone named Chicken?

6 A. Yes.

7 Q. Did you ever know Chicken's real name?

8 A. No.

9 Q. At some point did detectives call you and

10 ask you if you knew who Sheila might be involved

11 with?

12 A. Just recently.

13 Q. Okay. Yeah?

14 A. Yeah.

15 Q. And what did you tell them about Sheila's

16 relationship with Chicken?

17 A. She told me that they were friends. That

18 was it.

19 Q. Okay.

20 A. Yeah.

21 Q. No more detail than that?

22 A. No.

23 Q. And did you tell that information to the

24 detective that called you?

25 A. Yes.

1 MS. WECKERLY: Thank you. I'll pass the

2 witness.

3 THE COURT: Questions?

4 MR. PIKE: Thank you. Can I have the

5 Court's indulgence?

6 MR. PATRICK: No, judge.

7 THE COURT: Okay. Thanks, Ms. Fuller.

8 Appreciate your time. Call your next witness.

9 MS. LUZAICH: Can we approach?

10 (Whereupon an off-the-record

11 discussion was had at the bench.)

12 THE COURT: Okay. We've got a couple,

13 three more witnesses?

14 MS. LUZAICH: Yes.

15 THE COURT: We're doing fine. We're

16 gonna actually be done a little early today.

17 The State would like to take a break

18 right now. And I think it will be fine in terms of

19 our time. So let's take our afternoon break.

20 During this break, don't talk or

21 converse among yourselves or with anyone else on any

22 subject connected with this trial.

23 Don't read, watch or listen to any

24 report of or commentary on the trial or any person

25 connected with this trial by any medium of

1 information, including, without limitation,

2 newspapers, television, internet and radio.

3 Don't form or express any opinion on

4 any subject connected with the trial until the case

5 is finally submitted to you.

6 We'll pick up at 25 till. The big

7 hand hits seven.

8 (Whereupon, a recess was had.)

9 THE COURT: We're back on the record in

10 Case C228755, State of Nevada versus Norman Keith

11 Flowers.

12 Let the record reflect the presence

13 of the defendant, his counsel, counsel for the

14 State. All ladies and gentlemen of the jury are

15 back in the box.

16 Sir, will you stand and raise your

17 right hand, please.

18 (Whereupon, George Brass was

19 duly sworn to tell the truth, the

20 whole truth and nothing but the

21 truth.)

22 THE CLERK: Thank you. Please be seated.

23 Please state your full name, spelling your first and

24 last name for the record.

25 THE WITNESS: George Brass. G-e-o-r-g-e.

1 Last name B-r-a-s-s.

2 THE COURT: Go ahead, Ms. Luzaich.

3 MS. LUZAICH: Thank you.

4 DIRECT EXAMINATION

5 BY MS. LUZAICH:

6 Q. Mr. Brass, do people also call you

7 Chicken?

8 A. Yes.

9 Q. Did you know a young lady named Sheila

10 Quarles?

11 A. Yes, ma'am.

12 Q. Did you know her by another name as well?

13 A. Yes.

14 Q. What was that name?

15 A. Pooka.

16 Q. Did you know her whole family?

17 A. Yes.

18 Q. Did she have a brother named Ralph?

19 A. Yes.

20 Q. What's your relationship with Ralph?

21 A. Me and Ralph, we've been friends since

22 like '98, since the sixth grade. So we go like way

23 back.

24 Q. Are you guys good friends?

25 A. Good friends.

1 Q. Okay. In fact, was there a time that
 2 Ralph was seeing your sister?
 3 A. Yes.
 4 Q. What's your sister's name?
 5 A. Jasmine.
 6 Q. Do people call her Pudge?
 7 A. Pudge, yes.
 8 Q. And during the time that Ralph was seeing
 9 your sister, were you seeing Pooka?
 10 A. Yes.
 11 Q. And when I say "seeing," did you guys
 12 have a sexual relationship at a point in time?
 13 A. Yes.
 14 Q. I'm gonna take you specifically back to
 15 March 24th of 2005. Do you remember where you were
 16 living then?
 17 A. Yes.
 18 Q. Where was that?
 19 A. 1001 North Pecos.
 20 Q. Were you living with your mom at the
 21 time?
 22 A. Yes.
 23 Q. Is your mom Jannie, J-a-n-n-i-e, Brass?
 24 A. Yes, ma'am.
 25 Q. And did Pooka live in the same apartment

1 complex?
 2 A. Yes.
 3 Q. Doesn't she live like across a little
 4 walkway?
 5 A. Like four or five steps away.
 6 Q. And did you get to see her kind of often
 7 because of that?
 8 A. Yes.
 9 Q. Specifically on March 24th of 2005, did
 10 you see Pooka?
 11 A. Yes.
 12 Q. Did you have sex with Pooka?
 13 A. Yes.
 14 Q. Do you know about what time it was?
 15 A. I'd say about maybe 10:30 in the morning.
 16 Q. Okay. Did you do something that day
 17 after you saw Pooka?
 18 A. Yes, I had to be at work.
 19 Q. Where do you work or where did you work
 20 at the time?
 21 A. At Super Wal-Mart, TLE.
 22 Q. Where is that located?
 23 A. On Craig and Clayton.
 24 Q. What time were you supposed to be at work
 25 that day?

1 A. By 11:45.
 2 Q. Did you actually go to work at Wal-Mart
 3 on March 24th, 2005?
 4 A. Yes.
 5 Q. When you worked there, what area of
 6 Wal-Mart did you work in?
 7 A. In the TLE department, time loop express.
 8 Q. Automotive?
 9 A. Yes.
 10 Q. And when you worked at Wal-Mart, do you
 11 have to like sign in or demonstrate in a particular
 12 way that you're there?
 13 A. We have to clock in.
 14 Q. When you clock in, how do you do that?
 15 A. We swipe our ID badge.
 16 Q. Okay. So it's something that you hold in
 17 your hand, a little plastic thing?
 18 A. Yes.
 19 Q. And each employee has their own?
 20 A. Yes.
 21 Q. You swipe it in and it automatically like
 22 shows the computer what time you're there?
 23 A. Yes.
 24 Q. Do you also swipe out at the end of the
 25 day?

1 A. Yes.
 2 Q. While you're working there, do you get a
 3 lunch break?
 4 A. Yes.
 5 Q. Do you have to swipe out to show you went
 6 to lunch and swipe back in to show you're back from
 7 lunch?
 8 A. Yes, ma'am.
 9 Q. How long did you work at Wal-Mart for?
 10 A. Two years.
 11 THE COURT: You meant cumulatively, not
 12 that day, right?
 13 BY MS. LUZAICH:
 14 Q. Oh, yes, correct, cumulatively you worked
 15 at Wal-Mart for about two years?
 16 A. Yes.
 17 Q. Okay. So that day did you get to work on
 18 time or close to on time?
 19 A. Yes.
 20 Q. And do you know when you left?
 21 A. Probably for lunch break.
 22 Q. You went out for a lunch break?
 23 A. Yes.
 24 Q. Did you go somewhere almost every day for
 25 a lunch break?

1 A. Yes.
 2 Q. At the same place?
 3 A. Yes.
 4 Q. Where'd you go?
 5 A. On Karen and Martin Luther King.
 6 Q. Do you have family there?
 7 A. Yes.
 8 Q. Did you have lunch with your family?
 9 A. Yes.
 10 Q. Is that grandma?
 11 A. Yeah, that's grandma.
 12 Q. And that's not far from the Wal-Mart
 13 branch?
 14 A. No. It's like seven blocks away.
 15 Q. And do you know when you left at the end
 16 of the day or at the end of your work day?
 17 A. Yes, I had got a call at work and that's
 18 when I left.
 19 Q. Do you remember who called you?
 20 A. Yes. My mother.
 21 Q. Your mother Jannie?
 22 A. Yes.
 23 Q. Did you also talk to somebody else while
 24 you were at work?
 25 A. Yes.

1 Q. Who's that?
 2 A. My brother Ralph.
 3 Q. And did Ralph call you on your cell at
 4 work?
 5 A. Yes.
 6 Q. And you found out about what had
 7 happened?
 8 A. Yes.
 9 Q. And did you go from Wal-Mart -- or sorry.
 10 From Wal-Mart where'd you go?
 11 A. Straight to the apartment.
 12 Q. Back to the apartment?
 13 A. Yes. To my mother's house.
 14 Q. When you got back to the apartment, were
 15 the police there?
 16 A. Yes.
 17 Q. When you went back to the apartments and
 18 the police were there, did you talk to the police?
 19 A. Yeah, I got asked question, a few
 20 questions.
 21 Q. You had questions?
 22 A. No. I got asked a few questions.
 23 Q. Somebody asked you a few questions?
 24 A. Yes.
 25 Q. The individuals that asked you questions,

1 do you remember was it somebody in uniform like the
 2 gentleman sitting there or somebody in plain
 3 clothes?
 4 A. Probably a uniform or maybe somebody in
 5 regular clothes. I can't remember.
 6 Q. You can't remember. Did they have a tape
 7 recorder in their hand and show you the tape
 8 recorder?
 9 A. No, ma'am.
 10 Q. Okay. Now, at the apartment earlier that
 11 day when you saw Pooka, do you remember what she was
 12 wearing?
 13 A. Yes. I think some blue jean pants and a
 14 red like shirt. I can't really explain the shirt
 15 so.
 16 Q. Okay. And when you had sex with her, I
 17 know this is intimate and I'm sorry, but that means
 18 you put your penis in a part of her body; is that
 19 right?
 20 A. Yes, ma'am.
 21 Q. What part of her body?
 22 A. Her vagina.
 23 Q. Okay. Did you put your penis in her
 24 rectum?
 25 A. No.

1 Q. Where in the apartment did you have sex?
 2 A. On the floor.
 3 Q. The floor of what room?
 4 A. Living room.
 5 Q. The living room?
 6 A. Yes.
 7 Q. Is that where you generally did it?
 8 A. Yes.
 9 Q. Was anybody else at Pooka's apartment
 10 while you and Pooka were there?
 11 A. No.
 12 Q. Do you have any idea how long you guys
 13 were together in her apartment that day?
 14 A. Maybe 20 minutes at the most.
 15 MS. LUZAICH: Thank you. I have no
 16 further questions.
 17 THE COURT: Cross?
 18 MR. PATRICK: Yes. Thank you.
 19 CROSS-EXAMINATION
 20 BY MR. PATRICK:
 21 Q. Good afternoon, Mr. Brass. Or I'm sorry.
 22 Yeah, Mr. Brass. How are you doing?
 23 A. Yes, hello.
 24 Q. I'm sorry. What time did you say you
 25 first went into Pooka's apartment that morning?

1 A. I don't know exact time, but it was
 2 between 10:30, 11:15.
 3 Q. Okay. And before you went in the
 4 apartment, you saw your uncle Robert Lewis outside?
 5 A. Yes.
 6 Q. And without saying what he said, you two
 7 had a conversation?
 8 A. Yes.
 9 Q. And after that you went into the
 10 apartment?
 11 A. Well, not right after, but yes.
 12 Q. Okay. Now, you went, then you went to
 13 work. I'm sorry. Back up just a minute.
 14 While you were in the apartment with
 15 Sheila, was she receiving or making any phone calls?
 16 A. Not that I know of.
 17 Q. You didn't hear any phone calls?
 18 A. No.
 19 Q. You went to work, you started work
 20 regular day?
 21 A. Yes.
 22 Q. And then later on you got a phone call or
 23 it looks like you got two phone calls, one from your
 24 mother?
 25 A. Yes.

1 Q. And one from Ralph?
 2 A. Yes.
 3 Q. And, and they told you what had happened?
 4 A. Yes.
 5 Q. And you were very concerned so you went
 6 straight back to your mom's house?
 7 A. Yes.
 8 Q. And when you left work, you didn't tell
 9 your supervisor you were leaving or clock out?
 10 A. Well, yes, he knew I was leaving at that
 11 present time.
 12 Q. Okay. Do you remember having a
 13 conversation with Mr. Perez where you told him that
 14 you left without clocking out or telling your
 15 supervisor?
 16 A. No. I believe I told him I did speak to
 17 my supervisor because my supervisor's the one that
 18 acknowledged me that I had an emergency phone call.
 19 Q. Okay. Now, I'm sorry, I'm jumping around
 20 a little bit.
 21 When you left Pooka's apartment to
 22 go to work, your uncle was still outside?
 23 A. Yes.
 24 Q. When you left the apartment, had Pooka
 25 put her clothes back on?

1 A. Yes.
 2 Q. Now, you came back to the apartment.
 3 When you got there, the police were already there?
 4 A. Yes.
 5 Q. Okay. And I think you said you talked to
 6 what you remember as being a uniformed officer?
 7 THE COURT: He said he didn't know.
 8 BY MR. PATRICK:
 9 Q. You didn't know. But an officer asked
 10 you a couple of questions?
 11 A. Yes.
 12 Q. Did he ask to see your driver's license?
 13 A. No.
 14 Q. Okay. So he did not take your driver's
 15 license from you?
 16 A. No.
 17 Q. While you were there at that time, you
 18 saw family members?
 19 A. Yes.
 20 Q. You saw Robert Lewis?
 21 A. Yes.
 22 Q. Did you see any other family members?
 23 A. Yes.
 24 Q. Did you see Anthony Culverson?
 25 A. No.

1 Q. No. What other family members did you
 2 see at that time?
 3 A. Mine or?
 4 Q. Your, your family members.
 5 A. I saw my mother, my sister, my
 6 grandmother, my father.
 7 Q. Okay. When you came back to that scene,
 8 you weren't trying to hide from anybody?
 9 A. No.
 10 Q. You were out, you talked to the police,
 11 you talked to your family members?
 12 A. Yes.
 13 Q. You talked to Robert Lewis?
 14 A. Yes.
 15 Q. Did you see any of your other friends
 16 there at that time? Like Carlton Fowler or Brandon
 17 Bland, were they there?
 18 A. No.
 19 Q. Now you live, if I'm getting this right,
 20 if you walked out of Pooka's apartment door and then
 21 you walked just kind of right across to the next
 22 building, like the five or six steps and that's
 23 where your mom lived?
 24 A. Yes.
 25 Q. So it was not in the same building, it

1 was just next door?

2 A. Well, the buildings, they connect.

3 Q. They had that little breezeway above
4 where the upstairs apartments kind of connected?

5 A. Right.

6 Q. Okay. Did you know the people in your
7 building that lived upstairs from you?

8 A. No, I didn't know them. I've seen them
9 around.

10 Q. You've seen them around? If I were you
11 to give you -- did you ever know them by name?

12 A. No.

13 Q. Would you recognize them if I showed you
14 pictures?

15 A. Yes.

16 Q. Okay. I have defense's proposed B, C, E
17 and F. May I approach?

18 THE COURT: Sure.

19 BY MR. PATRICK:

20 Q. Okay. Mr. Brass, I'm gonna show you, if
21 you'd look at these pictures and see if you
22 recognize these people.

23 THE COURT: If you recognize any of these
24 people as somebody that lived in the apartment
25 complex at that time; is that what you're asking?

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1 MR. PATRICK: Yes.

2 THE COURT: Okay.

3 BY MR. PATRICK:

4 Q. Specifically in the upstairs apartment.

5 A. Yes.

6 Q. You recognize all of them?

7 A. No.

8 Q. No. Which ones do you recognize?

9 A. I recognize him, yes.

10 Q. Do you recognize the lady?

11 A. No.

12 Q. No. Either of these two gentlemen?

13 A. No.

14 Q. Okay. So --

15 THE COURT: You recognize that fellow as
16 having lived in the apartment building at that time?

17 THE WITNESS: His brother did.

18 BY MR. PATRICK:

19 Q. But you saw him around the apartment
20 complex quite a bit?

21 A. Yes.

22 MR. PATRICK: Okay. Move to admit B.

23 MS. LUZAICH: Well, objection, relevance.
24 And I never saw who B was.

25 MR. PATRICK: Oh, sorry. We'll tie it up

1 in our case-in-chief, judge.

2 THE COURT: If you don't tie it up, I'll
3 exclude it.

4 BY MR. PATRICK:

5 Q. Mr. Brass, I'm gonna show you what's been
6 marked as Defense Exhibit D and proposed A.

7 Do you recognize those two
8 gentlemen?

9 A. Yes.

10 Q. Are they friends of yours?

11 A. Yes.

12 Q. And were they at the apartment complex
13 that day?

14 A. No.

15 MR. PATRICK: Admit -- these have been
16 admitted. Move to admit A.

17 MS. LUZAICH: Same objection, relevance.

18 THE COURT: Same ruling.

19 MS. LUZAICH: Although A wasn't there.

20 THE COURT: Well, as far as he knows,
21 they weren't at the apartment building that day.
22 Unless somebody else can tie him into something,
23 I'll exclude it, but they may have a witness who
24 said he was there. I don't know. He wasn't there
25 the whole time. So anything else?

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1 MR. PATRICK: That's all I have jury.
2 Judge.

3 EXAMINATION

4 BY THE COURT:

5 Q. Let's me ask you a question. It was
6 quite some time after Sheila's death that the police
7 talked to you about your sexual relationship with
8 her and having had sex with her on that morning and
9 it was a couple three years, right?

10 A. Yes.

11 Q. Do you have any explanation for that? Is
12 there some reason you didn't go to the police and
13 say this might be of interest to you or?

14 A. No. Well, they never asked. I mean, I
15 got questioned, but it was never question about that
16 authority.

17 Q. And it didn't occur to you that it might
18 be helpful to them?

19 THE WITNESS: No, not at all.

20 THE COURT: Okay, thanks. State all
21 done?

22 MS. LUZAICH: Yes.

23 THE COURT: Okay. You can take him back.
24 Next.

25 MS. LUZAICH: Gabriel Ubando

1 THE COURT: Come on up here, sir.
 2 (Whereupon, Gabriel Ubando was duly
 3 sworn to tell the truth, the whole
 4 truth and nothing but the truth.)
 5 THE CLERK: Thank you. You may be
 6 seated. Please state your full name, spelling your
 7 first and last name for the record.

8 THE WITNESS: My name is Gabriel Ubando.
 9 U-b-a-n-d-o.

10 DIRECT EXAMINATION

11 BY MS. LUZAICH:

12 Q. Sir, how are you employed?
 13 A. I'm employed at Wal-Mart.
 14 Q. What do you do at Wal-Mart?
 15 A. I'm assistant manager of Wal-Mart.
 16 Q. How long have you been at Wal-Mart?
 17 A. Almost three years now.
 18 Q. And as an assistant manager of Wal-Mart,
 19 do you deal with the record keeping of employees?
 20 A. Yes, ma'am.
 21 Q. And the employees -- which Wal-Mart do
 22 you work at?
 23 A. Craig and Martin Luther King.
 24 Q. Okay. The employees at Wal-Mart, how do
 25 they indicate that they are there every day?

1 A. They have a badge that they carry with
 2 them all the time when they come in in the morning.
 3 And that's when they clock in and when they go to
 4 lunch, coming back and going home as well. So they
 5 have to clock in and out four times a day.
 6 Q. Four times a day?
 7 A. Yes.
 8 Q. And when they clock in and out, is that
 9 kept like at a clock and that it goes into a
 10 computer system, so that it can be retrieved at a
 11 later date?
 12 A. Yes.
 13 Q. And have you seen records indicating that
 14 a George Brass, sorry, B-r-a-s-s, was working at
 15 that Wal-Mart in March of 2005?
 16 A. Yes.
 17 Q. May I approach?
 18 THE COURT: Yes.
 19 BY MS. LUZAICH:
 20 Q. Showing you State's proposed Exhibit 125
 21 which for the record has been provided to counsel,
 22 do you recognize that?
 23 A. Yup. This is archived for attendance and
 24 clock in, clock out for associates and it indicated
 25 that yes, the associate was working.

1 Q. And what is the form for -- or the record
 2 of employee George Brass for March 2005?
 3 A. Yes.
 4 Q. Did it indicate that Mr. Brass was at
 5 work at the Wal-Mart on Craig on March 25th, 4th,
 6 sorry, 2005?
 7 A. Yes.
 8 Q. Does it indicate what time he clocked in
 9 at work?
 10 A. He clocked in at 12:04, went to lunch at
 11 4:04, came back at 5:03 and left for work at 7:45.
 12 Q. So that would be 12:04 in the afternoon,
 13 right, afternoon?
 14 A. Yes.
 15 Q. And then 7:45 he left in the evening?
 16 A. Yes.
 17 Q. Okay. Now, is it possible that somebody
 18 could leave Wal-Mart without swiping out and that
 19 somebody could in the future go in and correct that?
 20 A. It is possible, but that is internal
 21 issue and that's automatic termination. He can have
 22 other associates clock you in and out.
 23 Q. Right. No, my question was could
 24 somebody go into the computer and change it, like a
 25 supervisor?

1 A. Yes. If the associates happen to, for
 2 example have emergency and they have to leave,
 3 forgot to clock out and when they come back, they
 4 talk to their associate manager or personnel that
 5 yes, I left that day, forgot to clock out. And they
 6 can put that in the system and it will show in the
 7 system whoever did the transaction.
 8 Q. So if that were to occur, there would be
 9 an indication on the sheet that shows employee, you
 10 know, John Smith went into the computer and changed
 11 it?
 12 A. Yes.
 13 Q. Is there any indication whatsoever on
 14 March 24th of 2005 that anybody had to go into the
 15 system and change it?
 16 A. No, it's not on this record.
 17 Q. So George Brass -- so George Brass's time
 18 card was swiped out at 7:45?
 19 A. Yes.
 20 MS. LUZAICH: Thank you. Move it into
 21 evidence.
 22 THE COURT: Any objection?
 23 MR. PIKE: No objection.
 24 THE COURT: Admitted.
 25 MS. LUZAICH: I have nothing further.

1 THE COURT: Questions?

2 CROSS-EXAMINATION

3 BY MR. PATRICK:

4 Q. Good afternoon, sir. I think you just
5 testified that it is possible for somebody else to
6 swipe out another employee?

7 A. It is possible, yes, sir.

8 Q. And of course I think you said that would
9 be cause for immediate termination?

10 A. Yes, it is immediate termination.

11 Q. As assistant manager of that store, is
12 part of your duties disciplining employees?

13 A. Yes.

14 Q. Hiring, firing?

15 A. Yes, sir.

16 Q. Have you ever fired somebody for clocking
17 in for another employee?

18 A. Not on my area that I haven't found
19 anything yet on that situation.

20 Q. Are you aware of any of the other
21 managers in your Wal-Mart store having to do that?

22 A. Yes.

23 MR. PATRICK: Thank you. Nothing else.

24 THE COURT: Anything else?

25 MS. LUZAICH: Just briefly.

1 REDIRECT EXAMINATION

2 BY MS. LUZAICH:

3 Q. Did Mr. Brass work the next day?

4 A. He was off Friday, Saturday, according to
5 this document.

6 Q. Did he work after that?

7 A. Came back on Sunday, yes.

8 Q. So he continued to work there after?

9 A. Yes.

10 MS. LUZAICH: Thank you.

11 THE COURT: Thanks, Mr. Ubando.

12 Appreciate your testimony, you're excused.

13 THE COURT: What else?

14 MS. WECKERLY: That's it.

15 THE COURT: Okay. And this is the time
16 where we got three or four?

17 MS. WECKERLY: We have three on Monday.

18 THE COURT: I'll coordinate with you guys
19 in terms of -- okay. Here's where we're at. That's
20 the end of the witnesses that they have today. The
21 witnesses that the State has left are not available
22 this week. They're out of town. They can't be here
23 until Monday. And we knew that going in. So we're
24 trying to, you know, coordinate this.

25 And when you time manage a case,

1 which is part of my responsibility, what I try to do
2 is we've got so many days, we need to be here the
3 first day, here the second day here, here the third
4 day. So yesterday it seemed like we were going a
5 little slow, we needed to get what I thought those
6 11 witnesses in. We went a couple minutes longer.
7 You know, you get tired by then, but they've been
8 subpoenaed, they came down.

9 This is where we targeted today and
10 it actually went fairly quickly. We thought we'd be
11 done maybe 3:30, 4:00, but we're right on schedule
12 for the witnesses of the State.

13 We wanted to get everything we could
14 in except for the people who couldn't come in. So
15 we are done for the week, but we are exactly right
16 on schedule.

17 During this break, don't talk or
18 converse among yourselves or with anyone else on any
19 subject connected with this trial.

20 Don't read, watch or listen to any
21 report of or commentary on the trial or any person
22 connected with this trial by any medium of
23 information, including, without limitation,
24 newspapers, television, internet and radio.

25 Don't form or express any opinion on

1 any subject connected with the trial until the case
2 is finally submitted to you.

3 Mr. Harris is here so I rather
4 expect they'll be an article in tomorrow's Nevada
5 section.

6 Have a nice weekend. We'll pick up
7 Monday at 9:30. And what I'm gonna do with them
8 between now and then is find out exactly who the
9 witnesses are, try to coordinate to make sure we do
10 everything we can not to waste a minute of your
11 valuable time.

12 Have a good weekend.

13 (Whereupon, the jury exited the
14 courtroom.)

15 THE COURT: The record should reflect
16 that the jury has exited. Okay. We got three
17 witnesses. At least one of them is gonna be very
18 long I assume?

19 MS. WECKERLY: I mean pretty long. It's
20 all the DNA. So she's --

21 THE COURT: And what else do you have?

22 MS. WECKERLY: Sherwood.

23 THE COURT: He'll be fairly long.

24 MS. WECKERLY: Well, I mean --

25 THE COURT: He'll take all morning for

1 you, two-and-a-half hours total?

2 MS. LUZAICH: Possibly.

3 MS. WECKERLY: Yeah, possible. I guess

4 just plan for that.

5 THE COURT: I would think it probably is.

6 MS. WECKERLY: With the cross it probably

7 is.

8 MR. PIKE: Don't look at Randy.

9 THE COURT: I'm just saying it seems to

10 me that the DNA person is probably gonna be every

11 bit of an hour and Sherwood's probably gonna be

12 close to an hour if not an hour. And I don't know

13 who else is left, but it sounds to me like we take

14 their stuff and we roll, and if it's 11:30, 11:45,

15 we bail out.

16 Now, then what have you got, Randy?

17 MR. PIKE: We're bringing in our expert

18 in reference to the DNA, but he won't be that long.

19 THE COURT: No, because you'll lay all

20 the foundation with theirs, but he's still gonna be

21 30, 40 minutes.

22 MR. PIKE: That's probably a good

23 estimate.

24 MR. PIKE: And then we'll bring in

25 Natalia, unless you're gonna be bringing her in.

1 She was under subpoena for the State, but I guess

2 you decided not to call her so we'll be bringing her

3 in.

4 MS. LUZAICH: (Negative nod of the head.)

5 MR. PIKE: We'll be bringing in Martha

6 Valdez. We'll be bringing in the manager for the

7 apartment complex and --

8 THE COURT: It sounds like an hour and a

9 half.

10 MR. PIKE: An hour and a half to two

11 hours. We anticipated being done Monday.

12 THE COURT: We'll be done even before

13 that.

14 MS. WECKERLY: Do you have another

15 expert?

16 MR. PIKE: Pardon?

17 MS. WECKERLY: Do you have another

18 expert?

19 MR. PIKE: Sherwood, yeah. He's the same

20 one. He's your DNA, too. He's gonna, basically

21 gonna talk about the crime scene and interpreting

22 the DNA.

23 MS. WECKERLY: Oh.

24 MR. PIKE: But the other guy I have --

25 THE COURT: So any chance of arguing it

1 Monday afternoon or no? Tuesday morning.

2 MS. LUZAICH: Tuesday morning if you

3 don't mind.

4 THE COURT: And what are you thinking?

5 It looks to me like the State's arguing is gonna be

6 every bit of an hour, it's fairly complex, and

7 rebuttal is probably gonna be an hour, maybe an hour

8 and a half.

9 So if we do it Monday morning, if

10 we've already read them the jury instructions Monday

11 night, we can give them to it at noon, give them

12 lunch and we got a pretty good chance of them come

13 in with a verdict Tuesday afternoon. Not

14 necessarily. This could be anywhere.

15 MS. LUZAICH: Sure.

16 MS. WECKERLY: Sure.

17 THE COURT: And then is our, starting

18 with the State, if we get to penalty, is the State's

19 penalty people, people you can get on fairly short

20 notice so if they come in Tuesday we can get them

21 Wednesday?

22 MS. WECKERLY: What I'll do, judge, is

23 I'll, I'll have my investigators start kind of

24 rounding them up on Monday.

25 THE COURT: Because it could be Thursday.

1 It could be nothing.

2 MS. WECKERLY: Right.

3 THE COURT: I mean, I'm not sure what the

4 jury's gonna do with this. It could be that they

5 don't come in until sometime Wednesday and we can't

6 use them until Thursday. But if they do come in

7 Tuesday afternoon, I'd like to start Wednesday.

8 What do you think you have?

9 MS. WECKERLY: I don't think we're longer

10 than a day. We may --

11 THE COURT: You've got prior records,

12 you've got alleged killing number three, and you've

13 got victim impact. Is that pretty much it?

14 MS. WECKERLY: (Positive nod of head.)

15 THE COURT: And then how about you,

16 Randy? You know, you've got family, please be good

17 to him and then --

18 MR. PIKE: Estin (phonetic) to testify

19 about the conditions at Nevada State Prison,

20 possibly Ms. Bass to talk about the unlikely hood of

21 parole and I, and I don't think we're gonna bring

22 in --

23 THE COURT: Now, who's Ms. Bass? I mean,

24 I'm going instruct them that if he gets life

25 without, it is not parolable, period. I'm not sure

1 you can go much beyond that.

2 MR. PIKE: Well, it was one of the, one
3 of the members of the parole board.

4 THE COURT: Oh, Tammy Bass?

5 MR. PIKE: Yeah.

6 THE COURT: She used to work for me.
7 You're gonna want her to give her an opinion as to
8 whether he would get parole?

9 MR. PIKE: No. About how difficult it is
10 to parole and what conditions an inmate has to meet
11 before they can, before they would be considered for
12 parole.

13 THE COURT: Boy.

14 MR. PIKE: She's just one of many.

15 MS. WECKERLY: Oh.

16 MR. PIKE: So that's a proffer. If you
17 don't if you feel that your instructions are
18 sufficient.

19 THE COURT: Well, the instruction is
20 gonna be life without means life without and part of
21 the instruction says you have to assume that the
22 death penalty be carried out, life without means
23 life without. I mean, I put an emphasis on that.

24 If they give him life without, they
25 understand it isn't gonna happen. You know, if they

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1 give him life with 20 or 50 to 20, assuming they
2 even get that far and convict him, who knows that
3 far down the road. I mean I'd have a hard time with
4 that.

5 MS. WECKERLY: We might think that's
6 speculative.

7 THE COURT: I mean, she can testify as to
8 facts, but she can't testify as to her opinion. And
9 I'm not sure that the, even the circumstances today
10 wouldn't be dramatically different 20 years from
11 now. It depends on the prison system and parole.

12 I mean, if you want to use her, if
13 you can narrow it down to three or four or five
14 facts, you may be able to get that in, but I'm not
15 gonna let her talk about whether murderers get
16 parole or this kind of thing.

17 MR. PIKE: No, I, I -- the questioning
18 would be you have served as a member of the pardon
19 board or --

20 THE COURT: Parole board.

21 MR. PIKE: Parole board. During the
22 time, the factors that you must consider and
23 determine favorably on behalf of a defendant before
24 they would even be considered for parole are what,
25 da, da, da, da, da, and that would be --

1 THE COURT: Danger to the community,
2 whether they have a job, those kind of things?

3 MR. PIKE: Right. And then that would be
4 it. I'm not gonna ask her to speculate.

5 THE COURT: I think if they have a
6 specific list that they use and not simply a fact,
7 you can do that.

8 MR. PIKE: All right.

9 THE COURT: It sounds to me like we can
10 do that whole thing in a day, both sides. I mean,
11 it sounds like four or five hours, three hours,
12 something like that. It sounds like we can get that
13 in a day.

14 I mean, so I'm not sure we're
15 getting there, but I think tentatively we need to be
16 prepared to start penalty on Wednesday, even though
17 it may not be Thursday. We'll prepare on Wednesday,
18 if we don't get to it until Thursday because the
19 jury's gonna be out quite a bit of time and that
20 gives us time to adjust.

21 And you probably need to be prepared
22 to do your penalty witnesses Wednesday afternoon and
23 your other witnesses, your expert and whatever,
24 we'll start them at 1 o'clock tomorrow.

25 Now, we need to -- if we're gonna

112

1 wait until -- not tomorrow. Monday. But we're
2 gonna wait until Tuesday to do the argument, fair
3 enough, but I want, you know, it takes 30 minutes to
4 read these instructions. Might as well do those
5 Monday afternoon.

6 So I'm prepared to settle them now.
7 If you would rather do them at noon on Monday, I
8 don't mind if you still need some time to play with
9 them, but we're gonna have them settled before we
10 put on the defense case and do it so that when the
11 time comes, we take our afternoon break, and I can
12 spend a half an hour reading them to them when they
13 come in. We argue the case and buy them a pizza.

14 MR. PIKE: We'll be ready to settle them
15 during lunch.

16 THE COURT: Okay. Have you got some good
17 ones for me, Randy, or is it still this stuff?

18 MR. PIKE: I gave you the good stuff.

19 MS. WECKERLY: Wait a minute.

20 THE COURT: You're instructing because
21 the State has failed to test the speaker wire that
22 is rebuttably presumed to have been held by Jessie
23 Nava.

24 Where did that come from?

25 MR. PIKE: It's a corrective instruction

1 because of the poor investigati work done on this
2 case.

3 THE COURT: And who's Jessie Nava?

4 MR. PIKE: Oh, we have a picture of him.

5 THE COURT: Yeah, I know. All right.

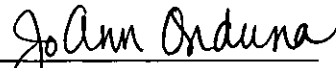
6 Have a nice weekend.

7

8 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
PROCEEDINGS.

9

10


JO ANN ORDUNA
CCR NO. 370

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IN THE SUPREME COURT OF THE STATE OF NEVADA

NORMAN FLOWERS

Electronically Filed
Oct 29 2018 03:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 53159 Consolidated with 55759

Direct Appeal From A Judgment of Conviction.
Amended Judgment of Conviction, and
Order Denying Motion for New Trial
Eighth Judicial District Court
The Honorable Kathy Hardcastle, District Judge
and The Honorable Linda Bell, District Judge
District Court No. C228755

**APPELLANT'S APPENDIX
VOLUME 2 OF 3**

JoNell Thomas
State Bar #4771
Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorneys for FLOWERS

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ORIGINAL

FILED

2009 JAN 16 A 6:49

DISTRICT COURT
CLARK COUNTY, NEVADA

E. J. Smith
CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

-vs-

NORMAN KEITH FLOWERS
aka Norman Harold Flowers III
#1179383

Defendant.

CASE NO. C228755

DEPT. NO. IV

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 - BURGLARY (Category B Felony) in violation of NRS 205.060, COUNT 2 - MURDER (Category A Felony) in violation of NRS 200.010, 200.030, COUNT 3 - SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 4 - ROBBERY (Category B Felony) in violation of NRS 200.380; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 - BURGLARY ((Category B Felony) in violation of NRS 205.060, COUNT 2 - FIRST DEGREE MURDER (Category A Felony) in violation of NRS 200.010, 200.030, COUNT 3 - SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364,

App. 000250

1 200.366; COUNT 4 – FOUND NOT GUILTY; thereafter, on the 13TH day of January,
2 2009, the Defendant was present in court for sentencing with his counsel, RANDY
3 PIKE, Deputy Special Public Defender and CLARK PATRICK, Deputy Special Public
4 Defender, and good cause appearing,
5

6 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
7 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee
8 including testing to determine genetic markers, the Defendant is SENTENCED to the
9 Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 - TO A
10 MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole
11 Eligibility of FORTY-EIGHT (48) MONTHS; AS TO COUNT 2 - TO LIFE WITHOUT THE
12 POSSIBILITY OF PAROLE, to run CONSECUTIVE to COUNT 1; AS TO COUNT 3 -
13 TO LIFE WITHOUT THE POSSIBILITY OF PAROLE with a MINIMUM Parole Eligibility
14 of ONE HUNDRED TWENTY (120) MONTHS, to run CONSECUTIVE to COUNT 2;
15 (Category B Felony) in violation of NRS 205.060, COUNT 2 – MURDER (Category A
16 Felony) in violation of NRS 200.010, 200.030, COUNT 3 – SEXUAL ASSAULT
17 (Category A Felony) in violation of NRS 200.364, 200.366; with SEVEN HUNDRED
18 SIXTY-ONE (761) DAYS credit for time served.
19
20
21
22
23

24 DATED this 15th day of January, 2009

25
26
27
28

KATHY HARDCASTLE
DISTRICT JUDGE

ORIGINAL

1 NOAS
2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar No. 0824
5 RANDALL H. PIKE
6 Deputy Special Public Defender
7 Nevada Bar No. 1940
8 CLARK W. PATRICK
9 Deputy Special Public Defender
10 Nevada Bar No. 9451
11 330 South Third Street, Ste. 800
12 Las Vegas, NV 89155-2316
13 (702) 455-6265
14 Fax: 455-6273
15 rpik@co.clark.nv.us
16 cpatrick@co.clark.nv.us
17 Attorneys for Defendant

JAN 20 3 28 PM '09

E. J. Smith
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13 Plaintiff,

14 vs.

15 NORMAN FLOWERS,
16 Defendant.

CASE NO. C228755
DEPT. NO. IV
DOCKET NO. N/A

NOTICE OF APPEAL

DATE: N/A
TIME: N/A

20 TO: THE STATE OF NEVADA, Plaintiff;

21 TO: DAVID ROGER, DISTRICT ATTORNEY; and

22 TO: DEPARTMENT IV OF THE EIGHTH JUDICIAL DISTRICT COURT
23 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

24 NOTICE is hereby given Defendant NORMAN FLOWERS, presently incarcerated in the
25 Nevada State Prison, appeals to the Supreme Court of the State of Nevada from his conviction
26 and sentence entered from his trial in this matter. (Judgement of Conviction (Jury Trial) was

27 RECEIVED

28 JAN 26 2009

CLERK OF THE COURT

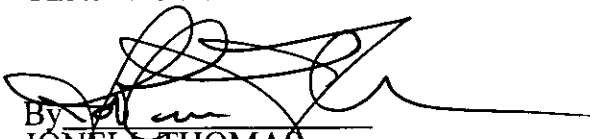
SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 filed on January 16, 2009).

2 DATED this 26th day of January, 2009.

3 DAVID M. SCHIECK
4 CLARK COUNTY SPECIAL PUBLIC DEFENDER

5 
6 By Jonell Thomas
7 JONELL THOMAS
8 DEPUTY SPECIAL PUBLIC DEFENDER
9 NEVADA BAR #4771
330 S. THIRD ST., STE. 800
LAS VEGAS, NEVADA 89155-2316
(702) 455-6265

10 **CERTIFICATE OF MAILING**

11 The undersigned employee with the Clark County Special Public Defender's Office,
12 hereby certifies that on the 26 day of January, 2009, a copy of the Notice of Appeal was
13 deposited in the United States mail at Las Vegas, Nevada, enclosed in a sealed envelope upon
14 which first class postage was fully prepaid, addressed to District Attorney's Office, 200 Lewis
15 Ave., 3rd Floor, Las Vegas NV 89155; the Nevada Attorney General's Office, 100 N. Carson,
16 Carson City, NV 89701; and Norman Flowers, No. 1179383, Clark County Detention Center
17 330 S. Casino Center Blvd., Las Vegas NV 89101, that there is a regular communication by
18 mail between the place of mailing and the place so addressed.

19 DATED: 1/26, 2009.

20 
21 KATHLEEN FITZGERALD
22 An employee of The Special Public Defender
23
24
25
26
27
28

JOC

FILED

2009 FEB 12 A 7 19

DISTRICT COURT
CLARK COUNTY, NEVADA

E. J. Smith
CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

-VS-

CASE NO. C228755

DEPT. NO. IV

NORMAN KEITH FLOWERS
aka Norman Harold Flowers III
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Defendant.

AMENDED JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 - BURGLARY (Category B Felony) in violation of NRS 205.060, COUNT 2 - MURDER (Category A Felony) in violation of NRS 200.010, 200.030, COUNT 3 - SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 4 - ROBBERY (Category B Felony) in violation of NRS 200.380; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 - BURGLARY ((Category B Felony) in violation of NRS 205.060, COUNT 2 - FIRST DEGREE MURDER (Category A Felony) in violation of NRS 200.010, 200.030, COUNT 3 - SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 4 - FOUND NOT GUILTY; thereafter, on the 13TH day of January, 2009, the Defendant was present in court for sentencing with his counsel, RANDY

App. 000254

1 PIKE, Deputy Special Public Defender and CLARK PATRICK, Deputy Special Public
2 Defender, and good cause appearing,

3 THE DEFENDANT WAS ADJUDGED guilty of said offenses and, in addition to
4 the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including
5 testing to determine genetic markers, the Defendant was SENTENCED to the Nevada
6 Department of Corrections (NDC) as follows: AS TO COUNT 1 - TO A MAXIMUM of
7 ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of
8 FORTY-EIGHT (48) MONTHS; AS TO COUNT 2 - TO LIFE WITHOUT THE
9 POSSIBILITY OF PAROLE, to run CONSECUTIVE to COUNT 1; AS TO COUNT 3 -
10 TO LIFE WITHOUT THE POSSIBILITY OF PAROLE with a MINIMUM Parole Eligibility
11 of ONE HUNDRED TWENTY (120) MONTHS, to run CONSECUTIVE to COUNT 2;
12 with SEVEN HUNDRED SIXTY-ONE (761) DAYS credit for time served.

13 THEREAFTER, on the 29th day of January, 2009, the Defendant appeared in
14 court with his counsel, CLARK W. PATRICK, Special Deputy Public Defender, and
15 pursuant to the State's request for clarification of the sentence, and good cause
16 appearing to amend the Judgment of Conviction; now therefore,

17 IT IS HEREBY ORDERED that the Defendant's sentence be amended to reflect:
18 AS TO COUNT 3 - TO LIFE WITH THE POSSIBILITY OF PAROLE with a MINIMUM
19 Parole Eligibility of ONE HUNDRED TWENTY (120) MONTHS, to run CONSECUTIVE
20 to COUNT 2.

21 DATED this 10th day of February, 2009

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KATHY HARDCASTLE
DISTRICT JUDGE

ORIGINAL

FILED

FEB 20 3 03 PM '09

Earl D. Smith
CLERK OF THE COURT

NOAS
DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
RANDALL H. PIKE
Deputy Special Public Defender
Nevada Bar No. 1940
CLARK W. PATRICK
Deputy Special Public Defender
Nevada Bar No. 9451
330 South Third Street, Ste. 800
Las Vegas, NV 89155-2316
(702) 455-6265
Fax: 455-6273
rpik@co.clark.nv.us
cpatrick@co.clark.nv.us
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

NORMAN FLOWERS,
Defendant.

CASE NO. C228755
DEPT. NO. IV
DOCKET NO. N/A

AMENDED NOTICE OF APPEAL

DATE: N/A
TIME: N/A

TO: THE STATE OF NEVADA, Plaintiff;

TO: DAVID ROGER, DISTRICT ATTORNEY; and

TO: DEPARTMENT IV OF THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

NOTICE is hereby given Defendant NORMAN FLOWERS, presently incarcerated in the Nevada State Prison, appeals to the Supreme Court of the State of Nevada from his conviction and sentence entered from his trial in this matter. (Amended Judgement of Conviction (Jury

CLERK OF THE COUNTY
FEB 20 2009

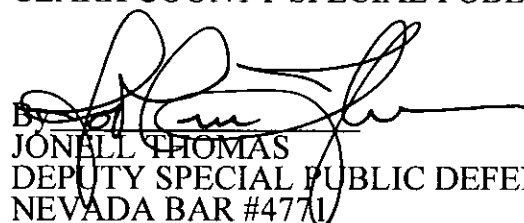
SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 Trial) was filed on February 12, 2009).¹

2 DATED this 19th day of February, 2009.

3 DAVID M. SCHIECK
4 CLARK COUNTY SPECIAL PUBLIC DEFENDER

5 
6 JONALL THOMAS
7 DEPUTY SPECIAL PUBLIC DEFENDER
8 NEVADA BAR #4771
9 330 S. THIRD ST., STE. 800
10 LAS VEGAS, NEVADA 89155-2316
11 (702) 455-6265

12 **CERTIFICATE OF MAILING**

13 The undersigned employee with the Clark County Special Public Defender's Office,
14 hereby certifies that on the 19th day of February, 2009, a copy of the Amended Notice of Appeal
15 was deposited in the United States mail at Las Vegas, Nevada, enclosed in a sealed envelope
16 upon which first class postage was fully prepaid, addressed to District Attorney's Office, 200
17 Lewis Ave., 3rd Floor, Las Vegas NV 89155; the Nevada Attorney General's Office, 100 N.
18 Carson, Carson City, NV 89701; and Norman Flowers, No. 1179383, Clark County Detention
19 Center, 330 S. Casino Center Blvd., Las Vegas NV 89101, that there is a regular communication
20 by mail between the place of mailing and the place so addressed.

21 DATED: 2/19, 2009.

22 
23 KATHLEEN FITZGERALD
24 An employee of The Special Public Defender

25 ¹Judgement of Conviction (Jury Trial) was filed on January 16, 2009. The Notice of Appeal
26 was filed on January 26, 2009. Due to a clerical error in the Judgement of Conviction, the District
27 Attorney's Office requested a hearing to clarify Mr. Flowers sentence and correct the Judgement of
28 Conviction. This appeal is from the Amended Judgement of Conviction.

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

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CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN FLOWERS,

Defendant.

No. C228755

Dept. XIV

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DONALD M. MOSLEY

April 13, 2007

9:00 a.m.

Department XIV

APPEARANCES:

For the State:

MS. LISA LUZAICH

Deputy District Attorney

For the Defendant:

MR. RANDALL PIKE

Special Deputy Public Defender

Reported by:
Joseph A. D'Amato
Nevada CCR #17

RECEIVED
AUG 28 2008
CLERK OF THE COURT

App. 000258

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
 Plaintiff,)
)
 vs.) No. C228755
) Dept. XIV
 NORMAN FLOWERS,)
)
 Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DONALD M. MOSLEY

April 13, 2007
9:00 a.m.
Department XIV

APPEARANCES:

For the State:
MS. LISA LUZAICH
Deputy District Attorney

For the Defendant:
MR. RANDALL PIKE
Special Deputy Public Defender

Reported by:
Joseph A. D'Amato
Nevada CCR #17

1 office.

2 THE COURT: I thought you were the
3 Defendant for a minute. Excuse me.

4 MS. LUZAICH: We informed Judge
5 Bonaventure of the other two, the murder of the two
6 individuals was set for trial when we discovered
7 that the Defendant was linked to the murder of the
8 third victim.

9 We informed Judge Bonaventure about
10 that and we indicated that we were doing a motion to
11 consolidate and we were under the impression that he
12 was then going to accommodate and when we did the
13 motion to consolidate he denied it.

14 We were all, I think, a tad surprised.

15 THE COURT: Well, notwithstanding that,
16 certainly I don't want to suggest any disrespect to
17 Judge Bonaventure. I'm the guy that's got to take
18 care of this now.

19 MS. LUZAICH: Correct.

20 THE COURT: I feel that I have it
21 within my authority to evaluate it in any way I care
22 to.

23 I don't know why you want to have two
24 trials when you could have one. Looks to me like
25 this is -- practically everything about this is

1 THE COURT: C228755, State versus
2 Norman Flowers. There's been a request to hear the
3 Flowers matter, at the outset.

4 It there any problem?

5 MS. LUZAICH: I'm in trial.

6 THE COURT: I know you don't have a
7 problem with it. The record reflects the presence
8 of the defendant, in custody, we have Mr. Pike
9 present for the Defendant, Ms. Luzaich for the
10 State.

11 This matter is on for a Motion to
12 Suppress.

13 I have a couple preliminary questions
14 I'd like to ask. First of all, it's suppressed
15 unless there is a successful motion for bad acts.

16 We have this thing backwards, but
17 regardless, we're here.

18 Why is this matter not consolidated
19 for trial?

20 MS. LUZAICH: That's kind of a good
21 question.

22 MR. PIKE: Judge Bonaventure --

23 THE COURT: We have the defendant, in
24 custody. This gentleman is?

25 MR. PIKE: Clark Patrick from my

1 consistent. Correct me if I misstate something
2 here.

3 Allegedly, there was sexual assault of
4 the three victims. The first murder, allegedly, was
5 the 24th of March. Forty days later, the 3rd of of
6 May, two other murders, again, sexual assault in all
7 three, all three strangulation, all three little
8 pieces of memorabilia, comes, whatever, taken from
9 the victims and the Defendant is now charged with
10 all three, I believe.

11 MS. LUZAICH: Correct.

12 THE COURT: Counsel?

13 MR. PIKE: Well, procedurally, the
14 reason I filed this motion is because when the
15 Indictment came forward and it was not tracked to
16 Department VI and came to your department as a
17 separate case.

18 The State then, within the time limit
19 that they had, filed their notice of intent to seek
20 the death penalty which included reference to the
21 other cases.

22 So because he had invoked his right to
23 a speedy trial in those other cases and this came up
24 it was my impression that the State would bring a
25 repeat motion, and that they also intended to bring

1 in that evidence, if they were successful in
2 obtaining a first degree conviction, in a penalty
3 phase.

4 I needed to find out if we were in a
5 scenario where, in order to protect my Defendant's
6 due process rights from him invoking his right to a
7 speedy trial in Department VI, that the evidence of
8 the other cases as well as this case be tried
9 completely separate and that there not be any
10 cross-reference to those offenses to this offense.

11 And given that situation I thought it
12 was appropriate to bring the Motion in Limine prior
13 to the State bringing the motion, because if the
14 Court was going to deny the Motion in Limine, rather
15 than wait close to the time of trial, if it was
16 denied, I felt it was necessary to preserve that
17 issue so that if subsequent to your ruling that
18 you're going to allow it in anyway, then you're
19 right.

20 Then a consolidated trial -- the taint
21 is going to be there, the difficulty is going to be
22 there and we should at that point in time consider
23 whether or not the defense, in order to avoid the
24 potential prejudice of having two death penalty
25 hearings, death penalty trials -- it would be in

1 Mr. Flowers' benefit to -- for the extraordinary
2 motion for the defense to actually accommodate it
3 and to preview that in front of the jury.

4 The issue that's involved in this as
5 far as the time frame and the facts as the Court has
6 set them forth, there was a connection or knowledge
7 where Mr. Flowers knew these individuals.

8 The DNA specifically excluded him on
9 one of the other two and the only reason that the
10 second one in the Department VI case came to
11 light -- it was dismissed at a preliminary hearing,
12 then the State, through some jailhouse informants,
13 was able to obtain an indictment.

14 This case was brought to the attention
15 of the defense and basically it's just tied in with
16 DNA that was present on the deceased in the case
17 before Your Honor.

18 There is no -- nothing else other than
19 that DNA to suggest that Mr. Flowers was involved in
20 it and so I'm anticipating because of the nature of
21 the other two offenses in the other case, that they
22 would attempted to bring that in to prove identity
23 or motive or common scheme or plan.

24 That's why we're here. We didn't have
25 a ruling on this last time when it was not granted,

1 so we're asking for a ruling on this so we can then
2 evaluate whether or not we'll bring in the motion to
3 join that.

4 Again, we're not conceding these are
5 similar in any way, shape or form. They are only
6 tied together in that Mr. Flowers had knowledge of
7 or new people that knew these other people.

8 THE COURT: Ms. Luzaich, what about
9 this DNA?

10 In the case currently before the Court
11 the March incident, there was DNA?

12 MS. LUZAICH: Yes.

13 The Defendant's DNA is present in the
14 vagina of the victim who was murdered.

15 THE COURT: The other two, what's the
16 status of the DNA there?

17 MS. LUZAICH: In the other two there
18 were two murders committed on the same day in the
19 same apartment complex within hours of each other
20 and they were committed in exactly -- almost exactly
21 the same way.

22 His DNA is present in the vagina and
23 around the body of the first victim. He was -- he
24 was excluded from the second victim, but there were
25 also partial -- there were several different DNA

1 mixtures. However, although his DNA was excluded
2 from her body, after the preliminary hearing several
3 jailhouse informants came to us and testified at the
4 Grand Jury that the Defendant admitted to
5 participating in that murder, but that he did it
6 with another individual, which he also says he did
7 the other murder on that day with another
8 individual.

9 While his DNA is not present in victim
10 number three, in time, there are admissions by the
11 Defendant that he was present at the scene and
12 participated.

13 MR. PATRICK: If I may, the three
14 murders are really not that similar. The first one
15 that happened first in time which we're here for --
16 actually the cause of death was drowning.

17 The coroner did mention there may have
18 been some strangulation involved, but the cause of
19 death was actually drowning.

20 The second one where Mr. Flowers' DNA
21 was found was manual strangulation. The victim was
22 nude. They had had a sexual relationship in the
23 past.

24 The third victim, where Mr. Flowers'
25 DNA was not found, was strangled using ligatures,

1 was fully clothed on her bed. There

2 Is a lot of objection -- there's more
3 dissimilarities in these three cases than
4 similarities.

5 I think the reason why Judge
6 Bonaventure didn't accommodate these is he was
7 looking at Tabish and the fact there was 41 days in
8 between the two incidences is too far in time to
9 make them a part of the same plan or scope.

10 MS. LUZAICH: With all due respect to
11 Judge Bonaventure, ever since he was referenced in
12 Tabish he doesn't accommodate anything anymore and
13 pretty much severs anything.

14 His comment was just because it's a
15 capital case and in an abundance of caution and
16 because of Tabish -- Tabish has nothing to do with
17 this case.

18 Tabish was overturned for completely
19 different reasons than we are seeking to bring in
20 bad acts in this case.

21 THE COURT: The first individual, the
22 indications of drowning; how does that go?

23 MS. LUZAICH: No.

24 She was strangled and she was in a
25 bathtub full of water so while the ultimate cause of

10

1 death was called drowning she was obviously
2 strangled as well.

3 That was a contributing factor to her
4 death, the coroner said.

5 THE COURT: This Court is going to
6 consolidate these matters for trial. That moots the
7 motion.

8 The trial date of the 26th of
9 November, is there a dual date here?

10 MS. LUZAICH: I don't believe so.

11 THE COURT: No, I guess not. Its
12 second on stack.

13 The 26th of November, as far as I'm
14 concerned, is the date. The 20th of November is
15 calendar call.

16 Now, I have a question. Is Mr.
17 Whipple involved in this or not?

18 MR. PIKE: He is.

19 We'd ask it be consolidated in the
20 earlier case which is in Department VI. That's an
21 earlier number and Mr. Whipple is counsel in that
22 case.

23 THE COURT: Well, let me back up back
24 up a minute. In all fairness, we should have

25 Mr. Whipple here and have that as an accommodation,

1 if nothing else.

2 MS. LUZAICH: Procedurally, I don't
3 know if you actually consolidate the cases, because
4 Judge Bonaventure has the lower case number. So if
5 they agree to the consolidation I guess that would
6 waive the actual procedural issue that you can admit
7 the bad acts.

8 THE COURT: You're correct in the sense
9 that, yes, if I'm going to consolidate and he's
10 going to try it, he has the last say in the matter.

11 That's true. We don't know who will
12 be trying it.

13 MS. LUZAICH: It won't be him any
14 longer.

15 THE COURT: That could be a problem.

16 MS. LUZAICH: It's my understanding
17 Mr. -- Judge Villani will be taking over his case
18 load.

19 MS. LUZAICH: That's true.

20 THE COURT: He has been qualified to
21 handle death cases? When did that occur?

22 MR. PIKE: He's already been sworn in.

23 THE COURT: Is he sitting?

24 MR. PIKE: Yes. He was sworn in early
25 by Judge Hardcastle so he could start right away.

12

1 The swearing in will not be for a while, but he's up
2 and going.

3 THE COURT: He's actually in Court
4 doing the business of the Court?

5 MR. PIKE: I was at the swearing in
6 ceremony.

7 MS. LUZAICH: The trial date in
8 District Court VI is in October.

9 MR. PIKE: I suggest we set a status
10 check in about 30 days. I'll file the motion -- if
11 you're denying my Motion in Limine.

12 THE COURT: I'm not.

13 Here is the problem. If I'm going to
14 allow this as a bad act, I'm going to have to have
15 testimony here to establish that it occurred through
16 clear and convincing evidence.

17 That means I'll have two little trials
18 going on here. That doesn't appeal to me.

19 What I'm going to do is remand -- I'm
20 going to not make a decision in this matter
21 currently at this point.

22 I'm going to announce on the record
23 that I consider this moot in that these cases should
24 be consolidated.

25 You are correct, Ms. Luzaich, Judge

1 Villani is going to have to make the decision,
2 because arguably I've got one case here.

3 It makes sense to consolidate them.

4 If he says no, then he's got his problem. I've got
5 mine, I suppose.

6 For judicial economy and for common
7 sense it looks to me like they should be
8 consolidated. I'm going to make no decision in the
9 matter without prejudice, certainly.

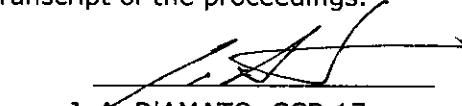
10 We can bring it up as it may come down
11 the pike.

12 No offense, Mr. Pike.

13 I'll remand this or -- I'll ask you,
14 Ms. Luzaich or Mr. Pike or Mr. Patrick, but get it
15 before Judge Villani as early as you can.

16 To be fair to everybody we need to
17 make a decision. You can place this back on
18 calendar at your pleasure, determining on what Judge
19 Villani says.

20
21 ATTEST that this is a true and
22 complete transcript of the proceedings.

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24 
25 J. A. D'AMATO CCR 17

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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

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7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 NORMAN KEITH FLOWERS aka
11 NORMAN HAROLD FLOWERS III,

12 Defendant.
13

CASE#: C228755

DEPT. VII

14 BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE
15 THURSDAY, NOVEMBER 15, 2007

16 **TRANSCRIPT OF PROCEEDING**
17 **STATE'S MOTION FOR CLARIFICATION OF COURT'S RULING**

18 APPEARANCES:

19 For the State:

ELISSA LUZAICH, ESQ.
Chief Deputy District Attorney

20 PAMELA G. WECHERLY, ESQ.
21 Deputy District Attorney

22 For the Defendant:

CLARK W. PATRICK, ESQ.
Deputy Special Public Defender

23 RANDALL H. PIKE, ESQ.
Assistant Special Public Defender

RECORDED BY: RENEE VINCENT, COURT RECORDER

RECEIVED

JUL 30 2008

CLERK OF THE COURT

1 THURSDAY, NOVEMBER 15, 2007 AT 8:42 A.M.

2
3 MR. PIKE: Judge, if we could go to the bottom of page 10 for Mr. Flowers?

4 THE COURT: State of Nevada versus Norman Flowers, case C228755.

5 Flowers present in custody. Mr. Pike --

6 MR. PATRICK: Mr. Patrick from the Special Public Defender's office.

7 THE COURT: Patrick.

8 MS. WECHERLY: Wecherly.

9 THE COURT: Pamela Wecherly. On you on -- this is Elissa Luzaich for the
10 State.

11 This is State's motion for clarification of Court's ruling. Ms. Wecherly,
12 enlighten me. I can't tell whether your motion is a request for reconsideration of the
13 denial by Judge Bonaventure of consolidation or a request to allow bad acts to be
14 admitted in a non consolidated case after a *Petrocelli* hearing. Which is it?

15 MS. WECHERLY: The second one.

16 THE COURT: Okay. Why shouldn't they, at least, have the *Petrocelli* hearing
17 so that we can listen to the bad acts outside the presence of the jury and determine,
18 in accordance with the three prongs of *Petrocelli*, whether they're admissible or not?

19 MR. PATRICK: Well that's what we were going to ask for today, Judge, was
20 that this looked like to us a *Petrocelli*. That's why we had to do a request.

21 THE COURT: Well I couldn't tell. So -- okay. Then the motion -- the motion
22 is granted to the extent that I will have a *Petrocelli* hearing. That doesn't mean that I
23 will admit the bad acts. Obviously, I've got to see what evidence the State's got. I'm
24 thinking that's going to take more than ten or fifteen minutes. Is it going to take a
25 couple of hours?

1 MS. WECHERLY: Yes, Your Honor, because of the -- there's several
2 witnesses in the case that occurred in May. So, I would think we'd probably put on
3 about six or seven witnesses for the hearing alone.

4 THE COURT: Well can we get it in here before -- I mean, this next week or
5 so?

6 MS. WECHERLY: No.

7 MR. PATRICK: Judge, we have some experts that we're going to want to call
8 for this *Petrocelli* hearing, and because of that, we would -- we were going to be
9 asking for a continuance. We'd like to -- we've talked to the State. We don't have a
10 set time when we're all good for trial. But what we'd like to do is keep the calendar
11 call next week to get -- that will give a chance to talk to the State and set a date
12 when we can have this. But because of this *Petrocelli* hearing and some other
13 things, we're not going to be ready to go this month.

14 MS. WECHERLY: That's fine, Your Honor, and whenever the Court wants to
15 set the hearing, we can do it before trial or once we get our new trial date, just
16 before it. But if you prefer to do it sooner --

17 THE COURT: But -- well a lot of times, what we do is just set aside a Friday
18 morning --

19 MS. WECHERLY: Okay.

20 THE COURT: -- and take as long as we need to take and get it done. I think
21 you're both better off doing it sooner or later because you're going to know how to
22 prepare for your trial.

23 MR. PATRICK: That's fine, Judge.

24 THE COURT: So, you know, I wouldn't even mind doing it next Wednesday if
25 you can get your witnesses in, but you can't; right?

1 MR. PATRICK: Yeah, Judge.

2 MS. WECHERLY: I think --

3 THE COURT: Fine. Let's do this. Mr. Flowers, is this all right with you, this
4 approach?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. The Court will vacate the trial date of 11/26. We'll
7 keep the calendar call of 11/20 on not for purposes of calendar call, but it will be for
8 setting a new trial date and setting a *Petrocelli* hearing.

9 You guys get your calendars together and figure out what day for trial,
10 because once we set this again, it's going to be etched in stone. We're going unless
11 one of the five of us dies, and it will be going number one. So, let's just pick a date
12 that we all know is good and then plan on it and move forward.

13 MS. WECHERLY: Thank you, Judge.

14 THE COURT: All right.

15 MR. PATRICK: Thank you, Judge

16 MR. PIKE: Thank you.

17
18 [Proceeding concluded at 8:45 a.m.]
19
20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video recording in the above-entitled case.

23 
24 PATRICIA SLATTERY
25 Court Recorder/Transcriber

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

NORMAN KEITH FLOWERS,

Defendant.

CASE NO. C228755

DEPT. VII

BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE
FRIDAY, AUGUST 1, 2008

**RECORDER'S TRANSCRIPT OF
PETROCELLI HEARING AND
ALL PENDING MOTIONS**

APPEARANCES:

For the State:

ELISSA LUZAICH, ESQ.
Chief Deputy District Attorney
PAM WECKERLY, ESQ.
Deputy District Attorney

For the Defendant:

RANDALL H. PIKE, ESQ.
Special Public Defender
CLARK W. PATRICK, ESQ.
Special Public Defender

RECORDED BY: RENEE VINCENT, COURT RECORDER

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CLERK OF THE COURT

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WITNESS: ***KRISTINA PAULETTE***

DIRECT EXAMINATION BY MS. WECKERLY	4
CROSS-EXAMINATION BY MR. PIKE	10
REDIRECT EXAMINATION BY MS. WECKERLY	24
RECROSS-EXAMINATION BY MR. PIKE	26

1 Friday, August 1, 2008 - 9:03 a.m.

2
3 THE COURT: This is for the *Petrocelli* hearing in Case Number
4 C228755, State of Nevada versus Norman Flowers. Do you have any
5 problem with him sitting at counsel table? Mr. Flowers, why don't you come
6 down here and sit with your lawyers. Mr. Flowers is present along with Clark
7 Patrick and Randy Pike, and Pam Weckerly and Lisa Luzaich for the State.

8 The record should reflect that I have read the preliminary
9 hearing transcripts provided that relate to three homicides, the two cases, the
10 case in this department and the case in -- the double case in Department XI.
11 You know, I'm getting older. Those little four-to-a-page transcripts are real
12 laborious.

13 MS. WECKERLY: So sorry.

14 THE COURT: No, that's all right. They're going to do it, but the
15 bigger ones are a lot easier. But I have read them so I have a general idea of
16 what the evidence is in all the cases. So, Ms. Weckerly, you're up.

17 MS. WECKERLY: Thank you, Your Honor. And the witness we have
18 for testimony is Kristina Paulette.

19 THE COURT: Okay.

20 MR. PIKE: That's correct. And for purposes of the hearing today, we
21 will stipulate to her training and expertise.

22 THE COURT: Okay.

23 MR. PIKE: So that that foundation need not be laid. We'll just direct
24 questions to the DNA analysis.

25 THE COURT: No, I'm familiar with her. I mean, obviously a jury

1 would need to hear that. We don't. So --

2 THE CLERK: Could you please stand and raise your right hand.

3 **KRISTINA PAULETTE,**

4 having been first duly sworn as a witness, testified as follows:

5 THE CLERK: Thank you. You may be seated.

6 THE COURT: State your name, and spell your name for the court
7 recorder.

8 THE WITNESS: Kristina Paulette, K-r-i-s-t-i-n-a, P-a-u-l-e-t-t-e.

9 THE COURT: Go ahead, Ms. Weckerly.

10 MS. WECKERLY: Thank you. And, Your Honor, just one other thing:
11 I believe Mr. Pike will stipulate that we don't need to go through what is DNA,
12 sort of the windup because I'm sure it --

13 THE COURT: Got that.

14 MS. WECKERLY: Okay.

15 **DIRECT EXAMINATION**

16 **BY MS. WECKERLY:**

17 Q Ms. Paulette, you work as a DNA analyst for the Las Vegas
18 Metropolitan Police Department?

19 A I do.

20 Q And in preparation for your testimony today, did you review
21 DNA reports conducted by Tom Wahl and yourself associated with the
22 suspect by the name of Norman Flowers?

23 A I did.

24 Q I'd like to start first with a victim in this case identified -- or
25 actually in another case identified as Marilee Coot.

1 A Okay.

2 Q And in that particular case, that DNA analysis was conducted
3 by Tom Wahl; would that be correct?

4 A Correct.

5 Q Okay. And my understanding is that DNA was detected in
6 vaginal and rectal swabs taken from the victim, Marilee Coot?

7 A Correct.

8 Q And what were -- what are the findings with regard to her?

9 A The source of the semen detected on the vaginal and rectal
10 swabs is Norman Flowers.

11 Q Okay. In addition to those two swabs, was a swab or DNA
12 detected on a carpet stain removed from underneath the victim?

13 A It was.

14 Q And what were the findings with regard to that?

15 A Norman was also the source of the DNA -- the semen detected
16 on the carpet stain.

17 Q Okay. In addition, did Tom Wahl analyze swabs taken from a
18 victim identified as Rena Gonzalez?

19 A Yes.

20 Q And with regard to the vaginal swab taken from Rena Gonzalez,
21 what was the finding?

22 A It was semen positive; however, there were -- the DNA profile
23 came from that was consistent with Ms. Gonzalez.

24 Q Okay. And what does -- I mean, what does that mean in terms
25 of your work as a DNA analyst?

1 THE COURT: Hold on a second, Ms. Weckerly.

2 [Off record.]

3 THE COURT: I'm sorry, Ms. Weckerly. Go ahead.

4 BY MS. WECKERLY:

5 Q With regard to the vaginal swab of Rena Gonzalez, I think you
6 said it tested positive for semen, but the DNA that was tested matched to
7 herself?

8 A Correct.

9 Q Okay. So what does that mean in terms of DNA?

10 A In that particular instance, there were no sperm heads actually
11 detected. And in order to get a DNA profile from the male fraction, there have
12 to be sperm heads present because that's what contains the DNA.

13 Q Okay.

14 A But actually the semen positive is a semen-specific protein that
15 was detected on those swabs.

16 Q Okay. So there was semen, but there's no way to type that
17 DNA?

18 A Correct.

19 Q Okay. And the rectal swabs of Rena Gonzalez, what were the --
20 what were the findings there from Mr. Wahl?

21 A The rectal swabs, there was, in the epithelial fraction, which is
22 just the female portion, it was consistent with Ms. Gonzalez. And in the
23 sperm fraction, the major profile is consistent with Ms. Gonzalez, and then
24 there's a minor DNA -- minor male DNA profile.

25 Q And of that minor DNA profile, was Mr. Flowers excluded as

1 being the source?

2 A He was.

3 Q Okay. In addition, there's a third victim's DNA tied to Mr.
4 Flowers, and that's a victim by the name of Sheila Quarles?

5 A Correct.

6 Q And were you the analyst who did the work on her case?

7 A I was.

8 Q Okay. With regard to Sheila's vaginal swabs, what were your
9 findings?

10 A On the vaginal swabs, I detected a mixture of DNA consistent
11 with Ms. Quarles, and Mr. Flowers could not be excluded as a contributor.

12 Q And were you able to determine or generate any kind of
13 statistical frequency or percentage of the population that could be excluded?

14 A I was.

15 Q And what was that finding?

16 A In approximately 99.9934 percent of individuals are excluded as
17 possible contributors of that mixture of DNA.

18 Q But not Mr. Flowers?

19 A Correct.

20 Q With regard to Sheila Quarles' rectal swabs, what were your
21 findings?

22 A They were semen negative.

23 Q And is that the same situation where -- or, well, if they're
24 semen negative, then obviously there's no sperm and no DNA?

25 A Correct.

1 Q Right. Okay. Now, at a later point in time, did detectives and
2 our office ask you to go back and look at the rectal swabs from Rena
3 Gonzalez that were tested by Tom Wahl?

4 A Yes, and, actually I misspoke on the last thing. The rectal
5 swabs were positive for the presence of semen in the Quarles case; however,
6 again, I could not find sperm. So I wasn't able to do a DNA analysis on that.

7 Q Okay. With regard to Rena Gonzalez, did we ask you to go
8 back and look at a remaining sample or the rectal swabs taken from her, and
9 have you retest that sample essentially?

10 A Yes.

11 Q And did you do that?

12 A I did.

13 Q What were your findings then?

14 A I found that the DNA obtained from the rectal swab cutting was
15 consistent with Ms. Gonzalez, and there was no foreign DNA detected.

16 Q Okay. Now, based on that --

17 THE COURT: What does that mean? The minor DNA profile excluding
18 Flowers was not correct?

19 THE WITNESS: Correct.

20 THE COURT: Okay.

21 BY MS. WECKERLY:

22 Q And once you got that finding, did you take any steps to further
23 investigate how it was that Tom Wahl could've gotten that minor component
24 finding?

25 A I did. The first thing I did, because as any DNA analyst would

1 do, is if there's a foreign DNA present and it's not consistent with any other
2 of the individuals that you're testing, you check to see if there's
3 contamination, obviously. And the first thing you would do is go back and
4 check the person, the analyst who actually performed the DNA analysis. And
5 so I went back and checked Tom Wahl's DNA profile against to this profile
6 and found that they were consistent.

7 Q Okay. So he could've been -- Tom Wahl could've been the
8 foreign DNA in the original testing of the rectal swabs of Rena Gonzalez?

9 A That is correct. And since I went back and retested it and it
10 was no longer there, that seems to be a pretty fair hypothesis.

11 Q Did you analyze any other items of evidence collected in the
12 Rena Gonzalez case besides the rectal swabs?

13 A I did. I actually tested a piece of burnt rolling paper and a
14 Marlboro -- Marlboro cigarette butt.

15 Q And were those both retested by you to see if you could find
16 contamination?

17 A Yes. And those -- the underlying profiles in the original work
18 that was done by Tom was also consistent with the other minor DNA profile,
19 which was consistent with Tom. So when I went back and retested, I found
20 -- I was unable to obtain a DNA profile from the burnt cigarette paper. There
21 just wasn't enough left. And then on the Marlboro cigarette butt, I obtained a
22 partial female profile, and there was no underlying male profile in that one
23 either.

24 Q Again, suggesting possible contamination by the analyst, Mr.
25 Wahl?

1 A Yes.

2 MS. WECKERLY: Thank you. I'll pass the witness, Your Honor.

3 THE COURT: Mr. Pike.

4 MR. PIKE: Thank you.

5 **CROSS-EXAMINATION**

6 **BY MR. PIKE:**

7 Q So in reference to the initial examination that was done by -- by
8 Mr. Wahl, that was done locally here in Metro's lab?

9 A Yes.

10 Q Okay. And you're indicating that the source of contamination
11 may have been from Mr. Wahl. Would that have been just because of
12 procedures? How -- how would that happen?

13 A It can happen in several steps. Obviously, when I went back
14 and retested the evidence, there was no trace of him there. So he didn't
15 actually contaminate the evidence. It was probably in the processing of the
16 samples in which this contamination occurred.

17 Q And that's -- that's kind of an indication of how sensitive the
18 instrumentality that is used and how it may be affected by very small and
19 microscopic contaminants; correct?

20 A That's true.

21 Q In -- there were two findings that -- or two statements that you
22 made in reference to identifications. In relationship to the Marilee Coot, I
23 believe you stated that the DNA was Mr. Flowers?

24 A The semen, yes.

25 Q The semen, right. Okay. As opposed to it could not be

1 excluded. Is that based upon a database that is used by you?

2 A It's based on a statistical calculation, yes.

3 Q Okay. And statistical calculation is based upon the CODIS for
4 the State of Nevada? For the United States? Which database are you using?

5 A It's based off of a program called PopStats that was developed
6 by the FBI. It's their own database that they put together.

7 Q Okay. And that is a database that is -- that you use, but you
8 don't have any personal -- I won't say knowledge. It's -- what training have
9 you received in relationship to that?

10 A It's widely used in the DNA community, and I've been to several
11 classes involving the PopStats, how to use the program and how to interpret
12 the statistical data.

13 Q And -- but you don't have any personal control over that
14 database that is used or the statistics that come to you? You just take -- take
15 the matches, the number of alleles that match, and then you run it against
16 that, and you get a statistical amount where you can say, This is what I -- this
17 database makes it as a -- as a finding?

18 A It's a compilation of all the frequencies of the particular alleles
19 at the locations we're looking at and how often they occur in the population.
20 So I do enter a profile that I find a profile into this database and see how --
21 what the likelihood is that I would see that profile in the population.

22 Q And how many alleles did you need to match in relationship to
23 the Coote case in order to make that determination? How many matched?

24 A There's no limit to the number that you can match or non-match
25 because if you have a partial profile and it matches every location that you

1 have information for, you can enter those into a statistic because, obviously,
2 the more information you have, the more narrowed down your scope is going
3 to be. But in this particular instance, it was a 30 -- it would've been 15 loci,
4 so 30 alleles were entered in. The 15 loci, plus the sex-determining gene,

5 Q And of those how many matched?

6 A All of them.

7 Q Now, you don't have any personal knowledge about whether or
8 not the FBI database has gone through and done any self-checking against the
9 number of locis [sic] that may -- or loci -- which is correct?

10 A It's loci.

11 Q Loci. Okay. The loci that may match in the population, and you
12 don't have any personal knowledge of that, do you?

13 A There are -- that's not what the database is set. The database
14 is not saying --

15 Q That's what I'm ask -- the question I'm asking you is, you don't
16 have any personal knowledge whether or not they have self-checked the
17 number of matches that may arise out of a population?

18 A I don't know that.

19 THE COURT: I think what she's saying is, if it was a population of
20 100,000, that 993 or -- I mean, 99,993 or 99,994 would be excluded. If it
21 was a population of a million, then 999,000 would be excluded
22 mathematically; right? You're not looking at any specific population; you're
23 just saying statistically 99.9934 percent of any population is going to be
24 excluded because they're not going to have one of those 15; they're going to
25 have at least one of those 15 that doesn't match?

1 THE WITNESS: Well, that's in the mixture.

2 THE COURT: Okay.

3 THE WITNESS: In the mixture, it's slightly different.

4 THE COURT: Okay.

5 THE WITNESS: So just in a straight-up single-source profile where I
6 can pull out a major profile or I just have that single-source profile, what the
7 database is telling you is how likely it is that you're going to see that profile in
8 the population at all; not how likely that two profiles are going to match each
9 other. That's not what the statistic is saying.

10 BY MR. PIKE:

11 Q I understand. And in one -- the one on Coote, there was a
12 probable cause match where you had the -- the known donor, and you were
13 matching to a suspect, a scene?

14 A In that particular case, Mr. Flowers was listed as a suspect. On
15 this particular case, his bucal swab was submitted and then compared to the
16 evidence.

17 Q Okay. And that was a probable cause match as opposed to a
18 cold hit which was done on the Quarles matter?

19 A Correct.

20 Q And there's just different statistics, different ways that that
21 matters -- that's determined in that case, as a probable cause as opposed to a
22 cold hit?

23 A No, it's processed the same way.

24 Q Oh.

25 A Because I -- all I do is compare the evidence that I have to a

1 suspect, and once I was given the name Norman Flowers, I processed that. I
2 compared his swab to the other --

3 Q So you didn't -- you didn't take his DNA and then just run it
4 against the database and say, This is a -- this is close enough to it that we
5 need to check and see if he is a suspect?

6 A No. I uploaded the mixture DNA profile obtained from the
7 Quarles case into the database. It then hit to Mr. Flowers.

8 Q Okay. And that came out of Nevada's CODIS?

9 A It did.

10 THE COURT: It -- I mean, you actually then compared a known
11 sample of Flowers to the --

12 THE WITNESS: To the original evidence.

13 THE COURT: -- exemplar?

14 THE WITNESS: And then proceeded --

15 BY MR. PIKE:

16 Q You did the checking, which is a second step to it. You -- the
17 initial hit, and then you take that --

18 A There's a confirmation step to make sure that that, indeed, is
19 the person of interest, and then we have the original set -- sample from Mr.
20 Flowers that I compared to the evidence once more and made my report from
21 the actual physical sample of his DNA.

22 Q And that's the confirmatory step? Is that the term that you
23 use?

24 A There's a confirmatory step done in CODIS, so anytime there's
25 a hit, it's confirmed to make sure that the person that it hit against, that

1 there's no mistake in the data banking as you're processing samples. That
2 confirmation step is done. Then I do a second confirmation to compare it to
3 my DNA results in the case, so essentially there's two confirmations done.

4 THE COURT: Is it kind of like AFIS? You put a fingerprint in there, it
5 gives you something to look at, but then you actually take the fingerprint of a
6 potential suspect and the exemplar that you have and do the process just the
7 same as if you had done it by not having gone through AFIS; you just had a
8 person of interest and you made the comparison?

9 THE WITNESS: Yes.

10 THE COURT: All right.

11 BY MR. PIKE:

12 Q And with that you're relying up CODIS to be self-checking. Are
13 you familiar with Arizona where their CODIS system has -- has actually come
14 up with ten different people that match the same or similar DNA profiles?

15 A I am familiar with that article, and it was similarities between
16 their DNA profiles where there were nine locus matches. We're testing 15
17 loci, and of all -- when we entered this into CODIS, this was the only hit that
18 we came back with. So there were no other even profiles that were close to
19 being included into that particular mixture.

20 Q Well, how close were some? Did you check to see if they were
21 14 that matched?

22 A No, no, no, no, no.

23 Q That ten matched? That 13 matched? You didn't do that. You
24 just said -- you're saying there weren't any that came even close to it, but all
25 you were asked from what you testified was that the 15 matched and that

1 you checked for nothing lower than that.

2 A There's a moderate stringency search that's done in CODIS, and
3 so it doesn't have to have an exact match. It's just asking that we're only
4 matching it certain places. So at moderate stringency, it would kick out
5 anything that comes close to matching essentially, and so this is only profile
6 that was -- had anywhere close to being a contributor to this particular
7 sample.

8 Q But you're saying "anywhere close." Give me a number.

9 A I don't know for certain because I'm --

10 Q Well, then you're characterization as "anywhere close" then is
11 just a characterization; it's not numerically based, statistically based, and you
12 can't give that testimony right now?

13 A Apparently not.

14 Q So -- and with -- with the DNA in the Quarles case, that was the
15 mixture of two male DNA's?

16 A It was.

17 Q Were you able to distinguish between the two different male
18 DNA's and separate them from the female DNA of Sheila Quarles?

19 A I was able to separate out -- separate out the female DNA.

20 Q Now -- so the combination of the two male DNA's, were there
21 two different spermatazoas located within that male DNA, that mixture?

22 A There would've had to have been.

23 Q Okay. Were you able to identify the second male donor?

24 A I was not.

25 Q Were you able to take -- you've indicated that you can request

1 through CODIS a certain criteria of matches in the loci area, and you looked
2 for the highest level of match, so statistically it's higher? Is that -- would
3 that be a fair statement?

4 A We don't look for a specific match criteria. It's -- we leave our
5 CODIS -- everyone has their databases set up the same way, that it searches
6 at a certain criteria to make sure that you're not getting -- you know. Because
7 if you set your search criteria too low, you're going to get hundreds of
8 samples that are consistent with things that you're looking at because it
9 matches it one place or two places, and then you'd have so much data to
10 review.

11 So we set to where it's kicking out legitimate matches or, you
12 know, consistencies. And so I can't tell you as far as -- I mean, we don't go
13 in there and, Hey, I'm going to search this at a really high level because I think
14 that it's this guy. I mean, we don't change it. We leave it the same all the
15 time.

16 Q Well, but you -- but you could change it. If you were going
17 through and doing a -- with a contamination similar to what happened in the
18 first case that we're discussing and this case, if you have a second male DNA,
19 you could actually account for maybe some contamination, lower it down, the
20 criteria down, and potentially do that as a search engine in order to possibly
21 identify suspects that you could then give to the detective who may make a
22 determination whether they're related to it, whether they're in prison, whether
23 they're dead or whatever they are in CODIS, and you can use that actually as
24 an investigative tool in order to locate a suspect?

25 A We do use CODIS as an investigative tool, yes.

1 Q That's how the BTK killer was identified.

2 A I'm not sure.

3 Q So given that circumstance, that search was never done on the
4 second male DNA to your knowledge?

5 A No, that's not true. We uploaded the entire mixture profile, so
6 that second male was, indeed, included in that mixture. So any person in our
7 database that matched was included in that mixture would have been given to
8 us as a potential suspect. However, there wasn't a match, so that tells me
9 that the person who -- the second contributor, the second male contributor is
10 not in our database and -- anywhere, either as a convicted offender or as a
11 match to another forensic unknown, unsolved case.

12 Q Or that there was contamination, so that it didn't match at that
13 higher level, and there was not a search done at the lower level?

14 A No, that is actually not contamination.

15 Q Okay. So -- or it may have been DNA that was acquired, but
16 has not been processed yet?

17 A It's possible that it's still awaiting to be processed, yes.

18 Q And are you familiar with the backlog of CODIS -- or of DNA to
19 be processed in the state of Nevada for inclusion in the CODIS system?

20 A I know there's a backlog. I'm not aware of how many samples
21 exactly.

22 Q But in -- in this case or in all three of these cases, were you ever
23 asked to determine whether or not -- or you or any of the other DNA -- since
24 you're a represent -- a representative of all of them, whether or not there was
25 any fingernail scrapings that were tested for DNA?

1 A There were.

2 Q Did any of those come back positive or did they all come back
3 negative for any foreign DNA from the deceased?

4 A There was no foreign DNA detected.

5 Q So with the identification of the semen positive and the protein
6 identifier that indicates that there was semen present, but no DNA had
7 through any of the spermatozoa or anything like that. Is there to your
8 knowledge a manner in which you can examine or compare the nature of the
9 protein from one person to the next -- to another person to determine whether
10 that protein matches?

11 A There is no protein matching, but there is Y-STR testing, which
12 is a male specific test because it targets the Y chromosome. And in cases
13 where there aren't spermatozoa present, occasionally -- and there is an
14 indication of semen, obviously, it's possible that we could get a Y-STR DNA
15 profile from that and make comparisons as we would with STR testing.
16 However, it's not as sensitive -- well, actually, it is more sensitive, but
17 statistically since the male chromosome is passed down from generation to
18 generation unchanged, it would mean that anybody in the same male line
19 would have the same Y-STR profile.

20 Q And that testing wasn't done in this case? It wasn't requested?

21 A It was not. We don't have that capability at our lab. It would
22 have been sent out to an outsource lab.

23 Q Was there DNA to your knowledge in this case that was sent to
24 an outsource lab for examination?

25 A I'm not aware of any.

1 Q Finally, in reference to the mixture of DNA that was located in
2 the Quarles matter, was there any testing that was done or any confirmatory
3 testing that could have been done to determine whether or not the DNA that
4 was -- that was unmatched, the amount in the mixture was greater than that
5 which actually matched to or came back as not excluding Norman Flowers?

6 THE COURT: I don't understand the question. Do you?

7 MR. PIKE: Okay.

8 THE WITNESS: No. Thank you.

9 BY MR. PIKE:

10 Q It is a long question. I apologize. Could you tell of the two
11 males that are mixed together which -- which was larger and which was the
12 smaller amount?

13 A Actually, it appeared to be about dead even, the mixture, so I
14 can't tell.

15 Q And the DNA testing that you performed cannot generally tell
16 you when that DNA may have been introduced into another person or how old
17 that DNA is?

18 A It wasn't. The only thing about semen that's slightly different is
19 obviously -- and there's been lots of papers written -- that after about 24
20 hours, the odds of actually getting a DNA profile from a vaginal swab or
21 something like that, after -- if it's taken 24 hours after the assault or the
22 sexual encounter decreases tremendously. Semen can be detected usually up
23 to two, maybe three days depending on how active the person is, but -- so, I
24 mean, you can make assumptions that it was within 24 or 36 hours that that
25 semen was left.

1 Q Okay. And part of your training -- if I can ask you if this is a fair
2 question. When there were two -- two male DNA's and two spermatazoas in
3 this, could you possibly tell which was older based upon the activity or the
4 movement of the semen?

5 A Once the semen stain has dried, the semen become inactive.
6 They're no longer -- they usually don't have the tails on them anymore, so
7 they don't move, and when you mount them on the slide, they're completely
8 static. So there is no motility or age or anything we can tell from them.

9 Q The motility or the ability to determine whether or not they are
10 moving, whether it's an old DN -- or old spermatozoa or a newer one, is that
11 affected by a refrigeration of a body prior to the collection of the sample, if
12 you know?

13 A When we get samples in the lab, they're never motile. I mean --

14 Q I understand that.

15 A Okay.

16 Q But as part of your training, have you received any training
17 about what is optimum to collect it, whether -- from a dead body, whether or
18 not it's better to collect it prior to the time that the body is refrigerated and it
19 should be collected prior to the time of the autopsy or prior to the refrigeration
20 and holding the body over for a period and the time of an autopsy?

21 A I don't actually collect DNA evidence in autopsies or anything of
22 that nature. I do know about what's the best way to preserve evidence,
23 what's not a great way to preserve evidence, but as far as refrigeration of a
24 body or preservation of that such, I don't know.

25 Q Okay. And the statistical -- the statistical information that you

1 gathered from a probable cause hit as opposed to a cold hit is what allows
2 you to in one case say it is his spermatozoa and then in another case say it
3 does not exclude it?

4 A No, it has nothing to do with that. It's simply based on the --
5 because there's a mixture in one and there is a single-source major profile in
6 the other, and because there's a major profile, I can do a random match
7 probability statistic on that, which gives me the 1 in 650 billion, which then
8 lets me assume identity.

9 In the mixture, I can only say that this person cannot be
10 excluded, but this is how many -- this is the percentage of the population that
11 can be excluded from -- being a contributor into this mixture. So in that
12 particular instance, because I couldn't pull out a major profile, I can't do a
13 random match probability stat, which means I can't assume identity.

14 Q So -- and of the two mixtures in the Quarles case, were you
15 able to obtain a greater mixture for the as-yet unidentified DNA or were the
16 matches of the same or similar quality?

17 A The -- I believe you're referring to the panties because there's
18 also a mixture of the same two individuals on the panties, and -- [looking
19 through documents]. Sorry. The mixture is relatively the same. It's a pretty
20 even mixture of both male individuals.

21 Q And that was in the panties on the Quarles case?

22 A Yes.

23 Q Was there any DNA that you observed on any other areas or
24 any other items that were requested to examine on that case? On bed,
25 bedding?

1 A I wasn't asked to examine bedding. I examined a Gatorade
2 bottle. I took a swabbing from the mouth of the bottle, and the partial DNA
3 profile obtained from that was actually consistent with Ms. Quarles. But all
4 the rest of the items -- I tested a beef and cheese snack and then a beefsteak
5 residue swab, and both of those were insufficient to yield DNA results.

6 Q And they only -- so the only physical evidence in the Quarles
7 case that you examined -- well, let me correct that and say, does the physical
8 evidence of the panties then have the same mixture that was found -- that
9 was provided to you from what you believe was obtained during the autopsy?

10 A From the vaginal swabs, yes.

11 Q Vaginal swabs. Okay.

12 MR. PIKE: I don't have any further questions.

13 THE COURT: Is that it?

14 MR. PIKE: Sorry. I'm sorry. Just one more question.

15 **BY MR. PIKE:**

16 Q You indicated that you believe that there may have been a
17 contamination by -- during the processing of Mr. Wahl. Did you check -- do a
18 verification against his DNA to determine whether or not that matched to --
19 to --

20 A To the unknown male in the other case?

21 Q No, not the unknown male in the other one. But was there a
22 way on the testing to determine whether or not that -- your suspicion that
23 there may have been some contamination by Mr. Wahl's presence during that,
24 is there any way to double check that to determine whether that's accurate or
25 not?

1 THE COURT: I thought she said that she did, but she actually took
2 that and compared it to Tom Wahl, and it was consistent. Is that --

3 THE WITNESS: By the retest --

4 BY MR. PIKE:

5 Q Okay.

6 A Well, the retesting -- no. Just looking at the data, it was
7 consistent with his profile, but I retested the items, and then there was no
8 underlying male, which leads me to believe that it, in fact, was him. So when
9 I reprocessed the samples, his DNA obviously wouldn't have been in my
10 samples because he didn't contaminate the actual original evidence. It was
11 the extracts or something along the way. We still should have extracts in the
12 lab that he worked, and I could go back and re-run those and confirm that I'm
13 getting the same profile that he got with the contamination still there.

14 Q But did you have his DNA to compare it to that so that you
15 believe it is his?

16 A I did, yes.

17 MR. PIKE: All right. Thanks.

18 MS. WECKERLY: Just a couple of questions.

19 **REDIRECT EXAMINATION**

20 **BY MS. WECKERLY:**

21 Q You mentioned that when you enter unknown -- an unknown
22 DNA profile or a mixture into CODIS, there's a certain stringency that is sort
23 of a lab standard that's used; is that correct?

24 A Yes.

25 Q Can you explain what you mean by that.

1 A There is -- you can do low stringency, mod stringency, which is
2 a medium-sized stringency, and high stringency match. With a high
3 stringency match, basically I would have to have one or more alleles at each
4 locus that match that particular person. Now, if I drop it down to a moderate,
5 it would be less --

6 Q Discriminating?

7 A Less discriminating, and then low, obviously, more
8 discriminating than that.

9 Q But the mixture that was obtained from Sheila Quarles, it
10 wasn't just that one possible male profile that was entered into CODIS; the
11 mixture itself is entered into CODIS, and then CODIS comes back out and
12 says, This person, Norman Flowers, could be a source in that mixture?

13 A Correct.

14 Q Okay. And then after that, you look at the actual evidence and
15 at his actual profile; you just don't depend on CODIS to spit out the right
16 result; you actually take his profile and compare it with the original evidence?

17 A Correct.

18 Q In your analysis of the Sheila Quarles case, was Robert Lewis
19 excluded as a source of this mixture in Sheila?

20 A He was.

21 Q And that was done with a bucal swab sample from Robert
22 Lewis?

23 A Correct.

24 Q And the mixture that was found in Sheila Quarles vaginally, and
25 then also you mentioned on the underwear, was that a -- were those full male

1 profiles meaning there was information at each of the loci or was it like a
2 situation where you only had maybe three loci present on the sample?

3 A No. It was a mixture of -- the first mixture actually in the sperm
4 fraction was a mixture of Ms. Quarles and then two males.

5 Q Correct.

6 A And the second one from the panties was actually just the two
7 males, and in both instances, they were full profiles, the first, a mixture of
8 three people, the second, a mixture of two people.

9 Q Okay. And so when you have the full profile, but you're still in
10 a situation where you have a mixture, it's -- is it the fact of it being a mixture
11 that makes the statistical frequency less -- less discriminating than when you
12 have a single profile? Is it the fact that there's a mixture?

13 A Yes, because in your statistical calculation, instead of at every
14 location entering two alleles for a particular mixture, you're entering anywhere
15 from one to -- for four people it would be -- or two people it would be four at
16 the most. So instead of entering two at every location, you're actually
17 entering four, so obviously that makes the number --

18 Q The numbers are going to --

19 A -- be -- less discriminating, yes.

20 MS. WECKERLY: Thank you. I have nothing further.

21 THE COURT: Anything else, Mr. Pike?

22 MR. PIKE: Oh, no. Yes. I'm sorry.

23 **RECROSS-EXAMINATION**

24 **BY MR. PIKE:**

25 Q Were you ever asked to determine whether or not it matched an

1 Anthony Lewis?

2 A Let me refer to my notes.

3 Q Okay. While you're referring to your notes, maybe you can just
4 -- if there were any names or any individuals whose DNA profiles that you
5 were given to -- as potential suspects, maybe you could just provide those for
6 the record, too.

7 A I was asked to compare Qunese Toney, Robert Lewis --

8 Q And for the court reporter, is that spelled Q-u-i-n-t-e T-o-n-e-y?

9 A It's Q-u-n-i-s-e.

10 Q S-e.

11 A And Toney is T-o-n-e-y.

12 Q Thank you.

13 A You're welcome. [Looking through documents]. I was also
14 asked to compare Alba Jackson, Angel Mendez, Vanessa Mendez and Shane
15 Baker. And Mr. Wahl was also asked to compare profiles on Randy Ureno,
16 Caesar Hernandez, Kenneth Riley, Marsha Parker, and that's all.

17 MR. PIKE: Thank you very much.

18 THE COURT: Okay. Thanks. Appreciate it.

19 MR. PIKE: She can be excused. We won't be recalling her, if you
20 want to get back to the lab.

21 THE WITNESS: Thank you.

22 THE COURT: Okay. She's got to go back and compare Anthony.
23 Okay. What else?

24 MR. PIKE: Your Honor, we don't have any witnesses. Because the
25 Court has read -- has been provided all the transcripts and has read the

1 testimony, we would just like to argue the factual differences and make a
2 proffer in reference to the testimony of the snitches that were involved in this
3 case.

4 THE COURT: Are the snitches the two inmates that actual testified at
5 the Grand Jury?

6 MR. PIKE: Yes.

7 THE COURT: I read that.

8 MS. LUZAICH: There were three inmates who testified.

9 THE COURT: Three inmates. One who testified as a demand by the
10 Defense for exculpatory evidence and two that gave arguably inculpatory
11 evidence. I read that.

12 MR. PIKE: Right. And the proffer would be that we went up and
13 interviewed them, and their statements changed and -- but they are currently
14 located, I think, up in Tonopah and up north also, so if we can do just do that.

15 THE COURT: They are what they are, you know. They're inmates.

16 MR. PIKE: So --

17 THE COURT: Do we need Pamela or --

18 MS. LUZAICH: No, no, we're fine.

19 THE COURT: Okay. What's your pleasure? Do you want to do the
20 *Petrocelli* hearing first and the motions or the motions first and the *Petro* --
21 what are we going to do?

22 MR. PIKE: Let's -- I think as far as finishing up the argument on the
23 *Petrocelli* hearing, if we could just have Mr. Patrick argue that.

24 THE COURT: All right.

25 MR. PIKE: The facts on that.

1 THE COURT: Well, let's hear from Ms. Luzaich.

2 MS. LUZAICH: You know what, it's actually their motion to exclude,
3 not our motion to admit, which is interesting.

4 THE COURT: They have some motions, but isn't this your motion for
5 bad acts?

6 MS. LUZAICH: No, the Defense filed a -- in XIV the Defense filed a
7 motion to exclude the evidence of bad acts, and we opposed their motion to
8 exclude evidence of bad acts. That was my understanding.

9 MR. PIKE: All right. There had been a --

10 MS. LUZAICH: We didn't file a motion to admit. They beat us to it.

11 MR. PIKE: Well, they -- they've already been in another department,
12 and so, you know, I can see that they're writing --

13 THE COURT: Well, let me ask you this. Let me ask you this: In
14 Department XI, apparently Judge Gonzalez granted the bad acts motion, I
15 assume pursuant to 48.045, that said the evidence in the Quarles case can
16 come in in the Coote/Gonzalez trial; correct?

17 MR. PIKE: Yes, sir.

18 MS. LUZAICH: That is correct. That was based on their filing a
19 motion to exclude it --

20 THE COURT: Okay.

21 MS. LUZAICH: -- because they did it before we did.

22 THE COURT: Regardless of which way it goes, what specifically did
23 she find in terms of making that decision?

24 MS. LUZAICH: We did not actually have a *Petrocelli* hearing. We did
25 not put evidence on in that case. She just said that it was relevant that, in

1 her opinion, the --

2 THE COURT: Well, how can you -- under the law, how can you have
3 it admitted without doing a *Petrocelli* hearing?

4 MS. LUZAICH: We hadn't gotten that far yet. A lot of the judges will
5 say it's admitted pending your proving it up. She said it's admitted and then
6 kind of just went on to the next issue. So I expect at some point --

7 THE COURT: That sounds --

8 MS. LUZAICH: -- there will be a *Petrocelli* hearing in Gonzalez'
9 department.

10 THE COURT: Sounds to me like it's -- like if there isn't, it either won't
11 be admitted or it'll be tried twice.

12 MS. LUZAICH: Well, no, it shouldn't impact. The Supreme Court has
13 said that if we don't actually have the *Petrocelli* hearing, that's not fatal if
14 there is sufficient evidence.

15 THE COURT: Well, I mean, sometimes -- for example, you know, even
16 if you didn't have the hearing, if the evidence happens to be a judgment of
17 conviction or something, it's pretty clear that that's clear and convincing or if
18 -- whatever, but --

19 MS. LUZAICH: Well, right. And her -- her trial is after yours, so there
20 will be, hopefully, a guilty verdict.

21 THE COURT: Well, let me ask you -- then let me ask you this: How
22 does the evidence, I guess, in the Coote case because I'm not -- are you
23 seeking to introduce the evidence in the Coote and Gonzalez cases, which is
24 the same case but two incidences, in the Quarles case?

25 MS. LUZAICH: Yes.

1 THE COURT: Right. How is that -- you know, I'm satisfied with the
2 clear and convincing standard, but how is it relevant, how does the probative
3 outweigh the prejudice, and what specifically in NRS 145.045 (2) does it go
4 to prove other than general disposition?

5 MS. LUZAICH: Most specifically, it goes to intent and kind of like
6 absence of mistake or accident or whatever. In this particular case, Sheila
7 Quarles is an 18-year-old lesbian. She is actively involved in a lesbian
8 relationship with Qunise Toney, who you just heard about. She was
9 excluded. She is ill at the time. She has a urinary tract infection.

10 THE COURT: I read that, yes.

11 MS. LUZAICH: She is at home. There is conversation with her, with
12 her mother and Qunise Toney --

13 THE COURT: Phone goes off.

14 MS. LUZAICH: Up until -- right. So there's a two-hour time window
15 where there's no contact, and then she's found dead. When she is found
16 dead, in her -- well, one, she is violently sexually assaulted as was the
17 testimony of Dr. Simms at the Grand Jury; and, two, there is semen in her
18 vagina. I would submit that --

19 THE COURT: By all accounts, it probably isn't there on a normal
20 basis.

21 MS. LUZAICH: Exactly. So we have to prove what is the intent of
22 the individual or individuals who deposited the semen in the vagina, especially
23 in light of not only is there a violent sexual assault, but she is strangled as
24 well and found underwater. You know, recognize that the actual cause of
25 death is drowning, but the significant contributing factor is strangulation.

1 We cannot call Sheila Quarles to the stand to say, I did not
2 consent, so we have to demonstrate it in another way, and specifically -- and I
3 know the motion is not being heard at this moment. In their motion --

4 THE COURT: Well, can you demonstrate that by medical testimony of
5 Dr. Simms?

6 MS. LUZAICH: Well, we can demonstrate it by the medical testimony
7 of Dr. Simms, but the defense at this point has to be consent. And, in fact, in
8 their motion they make a -- in one of the motions that the Court is going to
9 hear in a moment, they actually make a comment about a consensual
10 relationship between the Defendant and Sheila. She obviously can't take the
11 stand and say it was not consensual. So the evidence that he has done it to
12 Marilee Coote, that he has done it to Rena Gonzalez viscerates the consent
13 argument of his or the lack of accident or whatever --

14 THE COURT: Do you think it makes a difference --

15 MS. LUZAICH: -- as well as demonstrates what --

16 THE COURT: Do you think it makes a difference that those two came
17 afterwards?

18 MS. LUZAICH: No.

19 THE COURT: I mean, is this something that runs both ways or just
20 one way? In other words --

21 MS. LUZAICH: I believe the case law says both ways, prior or
22 subsequent bad acts are admissible. I mean, you can't use it to demonstrate
23 that he's got bad character, but what he did before demonstrates what he
24 might do now. But just the same, what he does in the future demonstrates
25 just -- under the same theory what he would have done in the past.

1 THE COURT: So intent. It's there for intent.

2 MS. LUZAICH: Intent, lack of accident, mistake; to demonstrate not
3 consensual. And I would submit that because he has taken the life of Sheila
4 and caused her to not be able to take the stand -- and these are very similar.
5 You know, she is found underwater in the tub. In Marilee Coote's situation --

6 THE COURT: The tub --

7 MS. LUZAICH: -- there is, again, the water and the stuff in there. In
8 both Marilee Coote and Rena Gonzalez property is taken. From Sheila Quarles
9 property is taken as well, her stereo and CD's and things of that nature.
10 Marilee Coote and Rena Gonzalez both know the Defendant through
11 somebody. Sheila Quarles knows the Defendant through her mother, who
12 was previously dating him.

13 So the probative value of the evidence of Marilee Coote's murder
14 and sexual assault and Rena Gonzalez' sexual assault is so huge that it is no
15 way substantially outweighed by the danger of prejudice, and that's what the
16 standard is. It's not, is it prejudicial? I mean, all evidence is prejudicial,
17 obviously.

18 THE COURT: Only inculpatory evidence is prejudicial.

19 MS. LUZAICH: Okay. That is true.

20 THE COURT: Exculpatory evidence is not prejudicial.

21 MS. LUZAICH: Only inculpatory evidence is prejudicial. But the
22 standard the Court must find in order to exclude it is that the prejudice
23 substantially outweighs the probative value, and in this situation, the probative
24 value is just tremendous.

25 THE COURT: Mr. Patrick.

1 MR. PATRICK: Actually, Judge, there is absolutely zero probative
2 value in letting this in. You know, to start off with saying that because in
3 Coote's apartment there was a tubful of water and because Quarles was
4 drowned that obviously shows intent is bizarre. I mean, there is absolutely no
5 evidence that Coote was in that tub of water, no evidence that Coote was
6 drowned. The differences in the three cases are astronomical. One was a
7 drowning, one was manual strangulation, and one was strangulation by
8 ligature.

9 THE COURT: I understand, but when you're talking about modus
10 operandi, aren't we talking about the identity prong of 45 -- 48.045, that it's
11 identity because in each case when the guy did the armed robbery wore a
12 make of Bozo the Clown kind of thing? I mean, isn't that -- I mean, they're
13 arguing it doesn't go to identity. They're saying that the sexual interaction
14 was rape, and the way you know it was rape is there's rape, after rape, after
15 rape.

16 MR. PATRICK: Well, that's not true. First of all, in the Gonzalez case,
17 there's actually -- absolutely no evidence that Mr. Flowers was the one that
18 had sex with her. In the Coote case --

19 THE COURT: That's true.

20 MR. PATRICK: -- we have somebody that he admits to having an
21 ongoing sexual relationship with. And in the Quarles --

22 THE COURT: That would be an exculpatory statement by the
23 Defendant not given in court that probably isn't coming in unless he takes the
24 stand.

25 MR. PATRICK: Well, I understand that, but this is -- you know, a

1 further provider --

2 THE COURT: And I think that the carpet DNA is very damning. I
3 mean, that isn't the same thing as, Yeah, I was over to her house yesterday.
4 I mean, when you put the vaginal swab with the carpet under her, that's --
5 that's pretty powerful evidence that he was the guy there at the time that the
6 -- of the last incident.

7 MR. PATRICK: Well, the carpet --

8 THE COURT: I'm not saying it is, but I'm saying, to me the carpet
9 evidence is the strongest piece of evidence I've seen in any of these three
10 cases.

11 MR. PATRICK: Yes, Judge. But also in the carpet evidence, there is
12 evidence of another male. There's another male's DNA on that carpet, which
13 is the same thing as with Ms. Quarles. There's two males had sex with Ms.
14 Quarles prior to her death. Now, the fact that Mr. Flowers may be one of
15 them because of the DNA evidence that they found, there's another one and --

16 THE COURT: Well, carpet evidence is in the Coote case, not the
17 Quarles case.

18 MR. PATRICK: Well, I understand, but they're saying -- yeah. I mean,
19 they're saying that Ms. Quarles had sex with two men before she died, and,
20 according to the carpet evidence, with two male DNA's --

21 THE COURT: Probably the other way around, Mr. Patrick. Probably
22 two men had sex with her before she died as opposed to she had sex with
23 two men before she died.

24 MR. PATRICK: Well, it's the same thing in the -- in the Coote case.
25 On that carpet sample, there is two male DNA's.

1 THE COURT: So what would you conclude?

2 MS. LUZAICH: Well, actually not.

3 THE COURT: I didn't hear that. I heard there was, you know, a single
4 male -- major profile or something and --

5 MR. PATRICK: No, there was other DNA on that carpet sample that
6 was not --

7 MS. WECKERLY: There's one foreign allele that's foreign to all of
8 them.

9 MR. PATRICK: Well --

10 MS. WECKERLY: But it's not necessarily male. That means there's
11 one other speck of DNA in the carpet.

12 MR. PATRICK: Well, it's another person's DNA, whether it male or
13 female. But the thing is, there's way more differences in these cases than
14 there are -- you know, like I said, we can't even -- there's no evidence that
15 Mr. Flowers ever had sex with Ms. Gonzalez.

16 THE COURT: Well, bad sex -- bad sex. Bad acts based upon
17 commonality or modus operandi really only relates to the State saying, We're
18 going to prove identity in this case by showing that the person that did these
19 other cases where the M.O. was exactly the same is this guy. In other words,
20 he gets caught in a third robbery with the Bozo the Clown mask kind of thing.
21 They're not -- they're not saying that.

22 MR. PATRICK: But --

23 THE COURT: They're not saying that's the case. They're saying, We
24 have other bad acts which show that any sex that was had with Quarles was
25 non-consensual.

1 MR. PATRICK: They can't prove that.

2 THE COURT: Well, they're going to try to have to prove that. I mean,
3 they've charged him sexual assault.

4 MR. PATRICK: But bringing in -- well, first of all, there's no proof that
5 -- like I said, there's no proof that Mr. Flowers ever sexually assaulted Rena
6 Gonzalez, so they can't use that. There's believable evidence because not
7 just Mr. Flowers' words, but Ms. Ragland's words that she was suspecting
8 that Mr. Flowers and Ms. Coote were having a sexual relationship. So that
9 also shows that it's very possible that he did not have -- sexually assault Mrs.
10 Coote. That sex could absolutely have been consensual, not by his words,
11 but by the words of his ex-girlfriend. Ms. Quarles, we have no idea whether
12 or not --

13 THE COURT: Wouldn't that be just speculation on her part?

14 MR. PATRICK: Well, this whole thing is speculation on the State's
15 part, Judge. There's no -- and when we go to Quarles, there's no way to
16 know whether the sex of either men that had sex with Ms. Quarles was
17 consensual or not consensual. The whole --

18 THE COURT: Well, there's some ways to know. I mean, one way, if
19 they don't win, is that the medical examiner and you've got Nurse Ebbert,
20 who is going to say, Look, I've seen 10,000 of these cases, and when you
21 have a tear here and a tear there, it ain't consensual, period. She's a pretty
22 damn good witness. I've had her as a witness dozens of times.

23 MR. PATRICK: Well, there's also that, but there's also other
24 consensual sex acts that could cause that kind of tearing, and I think that you
25 can't say in a case where you have a witness who can't testify to say it was

1 -- I mean, you know, we may not practice it, but there's all kinds of fetishes
2 and marital aids like the one that was found in Ms. Coote's apartment that
3 would cause those exact same tears and damages even though the sex was
4 consensual.

5 THE COURT: Well, I mean, that's -- that's what the Defense does, is
6 point those things out. Whether that's a reasonable doubt or speculation,
7 that's what the jury decides.

8 MR. PATRICK: Yeah. The other thing is, in looking at cases like
9 *Tabish* where the time frame is just way too far to put this into any kind of
10 intent or lack of mistake, we're talking several -- and that's part of the reason
11 why this case wasn't joined when Judge Bonaventure had it. And I think
12 going through the reasons that Judge Bonaventure had when he would not
13 join these two cases is a lot of the very same reasons why the bad acts
14 because all -- all this is is, since it can't be joined, the State is trying to get
15 these bad acts in, which is a *de facto* joinder. If the jury listens to all three of
16 these cases and all those bad acts, it's no different than Judge Bonaventure
17 granting a joinder.

18 And all it's going to do is completely inflame the jury because
19 when they look at the Quarles case by itself, there's some doubt. Maybe not
20 to the height of reasonable doubt, but there is some doubt. If you put in the
21 evidence from Gonzalez and Coote, that's going to erase any chance -- any
22 doubt, any chance Norman will ever have of getting a fair trial on just the
23 Quarles matter. And that's why Judge Bonaventure refused to join them, and
24 I think it's the same reason why we cannot let these bad acts in.

25 It's hugely more prejudicial than probative. The minute the jury

1 hears anything about Gonzalez or Coote, they're going to convict Mr. Flowers
2 on Quarles. There's no way around that, which is why we thought to keep
3 the cases from being joined and why these bad acts shouldn't come in. and
4 why Judge Bonaventure agreed that these cases shouldn't be joined.

5 If you let it in, we're going to do -- what we're going to end up
6 doing is two trials, one here and one in Department XI. They're going to be
7 exactly the same trial. They're going to be a month apart, but we're going to
8 have to go through it twice because looking at the 9th Circuit, if joinder issues
9 and severance issues are constitutional issues where Mr. Flowers, if needed,
10 could have some play on an appeal issue. Bad acts is not. So if you let this
11 in, we cannot agree to join the trials.

12 THE COURT: I don't care whether you join the trials. I'm just not
13 going to --

14 MR. PATRICK: Well, I understand that, Judge, but --

15 THE COURT: That's a strategic decision the Defense has to make
16 because, you know, when it's a death penalty case, if you try -- if both
17 sides -- both judges let it in -- I'm not yet convinced. But if that were to
18 happen, then you've got two juries that hear this evidence, and, you know,
19 the State only has to hit one out of two to get the death penalty; whereas,
20 one out of one is a lot tougher for the State.

21 MR. PATRICK: And that's why it's patently unfair, Judge, is because
22 -- exactly that reason because the State is going to have two bites of the
23 exact same apple.

24 THE COURT: Well, I'm saying -- I'm saying, if, in fact, Judge
25 Gonzalez rules that way, and it sounds like she's leaning there, and, in fact, I

1 were to, and I'm not sure I will yet, then if I were defending him, I might just
2 try this case once and say, I understand I'm giving up something on these
3 joinder issues, but at this juncture, Judge, I'll just stipulate. We'll try it all at
4 once. That is a strategic decision a defense lawyer might want to make, and I
5 probably would, but that doesn't mean that you would.

6 MR. PATRICK: Well, I think you're right, Judge. I think that there's --
7 and I think you're leaning the right way. The prejudice -- the prejudice --

8 THE COURT: I'm not -- I'm not leaning --

9 MR. PATRICK: Well --

10 THE COURT: I'm not leaning either way. What I'm saying right now
11 is, Mr. Patrick, I'm not -- I'm not yet persuaded by the State. I'm not saying
12 I'm leaning not to, but there is some evidence of intent, the medical evidence,
13 the evidence of Nurse Ebbert, the stuff about this is what happens in terms of
14 sexual assault; plus, you've got the woman strangled and drowned in a
15 bathtub in a two-hour window. It is pretty unlikely that somebody came over
16 and had consensual sex and then left, and then somebody else came over and
17 had unconsen -- had no sex, just drowned her, whatever. I mean, pretty
18 much the person that had sex with her killed her, and if he killed her, probably
19 she wasn't having a good time with the sex either.

20 MR. PATRICK: Well, there's no evidence and the State cannot point
21 out which one of those two semen deposits were placed first. It's very
22 probable by your -- the way you just laid it out is that Mr. Flowers could've
23 had consensual sex with her and left, and in that two-hour window, the
24 second donor came in and raped and killed her.

25 THE COURT: I don't think so, Mr. Patrick. Given the fact that she

1 doesn't like sex with men and she likes sex with women, I don't think
2 anybody had consensual sex with her. I mean, it may well have been that
3 two defendants, only one of whom is now before the Court, went in there and
4 had sex and raped her. That sounds like a very probable possibility.

5 MR. PATRICK: Okay. Well, that's still --

6 THE COURT: That's where we're at.

7 MR. PATRICK: That's still doesn't bring us to the intent part because,
8 again, Gonzalez, we don't know who had sex with her, except for the fact we
9 know it wasn't Mr. Flowers. Coote --

10 THE COURT: I don't think we know that yet. Based on what she
11 testified today, I agree with the first part of your statement, we don't know
12 had sex with her. I don't agree with the last part, that we know it isn't Mr.
13 Flowers because what she said was, there was -- it was semen specific, but
14 there were no sperm heads detected, and we need that for DNA, and we
15 don't have anything. And after I went back, the only thing that seemed to be
16 inconsistent with Mr. Flowers now turns out to be Mr. Wahl. So what we
17 really have as to Gonzalez is nothing.

18 MR. PATRICK: Well, that's not --

19 THE COURT: We don't have anything that is inculpatory of Mr.
20 Flowers, and we don't have anything that is exculpatory of Mr. Flowers.

21 MR. PATRICK: That's not entirely true, Judge, because they also did
22 DNA on the ligatures that was around Ms. Gonzalez' neck, and the ligatures
23 had Ms. Gonzalez' DNA on them. They also had a male's DNA on them that
24 wasn't Mr. Flowers. There was no testimony today that that was retested, so
25 we have to assume that it was retested, and it still comes out to be not Mr.

1 Flowers. Or that it wasn't retested, and we have to go with Mr. Wahl's
2 report, which says it wasn't Mr. Flowers. So there is still evidence on Ms.
3 Gonzalez that it wasn't Mr. Flowers who killed her.

4 Going back to Ms. Quarles, Ms. Quarles was sexually active not
5 only with women, but with men. She was absolutely bisexual, and we have
6 that from statements from several witnesses.

7 THE COURT: Okay. Well, Ms. Weckerly is obviously surprised to hear
8 that.

9 MS. LUZAICH: So is Ms. Luzaich because none of them are in
10 evidence.

11 THE COURT: Well, you were facing the other direction, but Pamela
12 was facing me.

13 MR. PATRICK: Well, anyway, Judge, there's not enough here, and
14 the --

15 THE COURT: Well, let me ask you this, Mr. Patrick: You don't have
16 to divulge your defense, but if your defense would be consent, then I think
17 this probably makes a lot of sense that this does come in. But if you are
18 asserting a defense of consent, then I'm not sure it would. In other words, I
19 could see me making a ruling that says it doesn't come in in the State's case
20 in chief until or unless you intimate or put on any evidence that there may
21 have been some consent, in which case it all comes in. I think that is a third
22 possibility.

23 I don't mean the Defendant necessarily has to take the stand
24 and say that. I'm just saying if you ask Nurse Ebbert, Couldn't this have been
25 consensual and blah, blah, blah, blah, blah, then it may come in to show

1 intent and lack of accident. I see that as a real possibility, but I don't -- I
2 don't expect you to disclose your defense to me nor to the State.

3 I'm just saying you're arguing. I got to tell you, I'm not
4 persuaded one way or the other yet. I'm listening. I'm just throwing out
5 stuff. I see that as a possibility as opposed to it's all in or it's all out because
6 if you don't take -- if you never even broach the possibility of consent, then
7 maybe this coming in for the purposes of intent, maybe the prejudice does
8 outweigh the probative value in that sense if you don't -- if you don't contest
9 that issue or if you don't suggest that's a possibility.

10 MR. PIKE: That -- well, that --

11 THE COURT: I'm not telling -- Randy, you don't have to -- you don't
12 have to tell me what it is or what you're doing, and I don't expect you to.

13 MR. PIKE: Right.

14 THE COURT: I'm just saying that is a way in weighing the probative
15 and prejudice to just say hey, you know, if you think -- if you're going to
16 suggest that this is consent in any manner by any question, then by putting
17 this other stuff in, it would certainly have a lot of probative value as to intent.
18 But if you aren't going to even make that suggestion, then maybe the
19 probative isn't as effective as the prejudice.

20 MR. PIKE: And I think that in a kind way, Ms. Luzaich kind of pointed
21 that out in reference to the manner in which it was brought in or ruled by
22 Judge Gonzalez in that case as opposed to this case. The facts -- the facts
23 are very different, the way it may be brought in, whether their statements.
24 And if we open the door, then definitely it puts him in a position where they
25 can exploit that. Unfortunately, that's happened to all of us as defense

1 attorneys on occasion.

2 But to come in and issue a blanket ruling at this point in time
3 would be inappropriate because as the Court indicates, there's a number of
4 scenarios that may make it very probative and -- and then the weighing test
5 may be effected, and we may -- we may open the door, and we may --

6 THE COURT: Let me ask you this, Ms. Luzaich: I mean, if intent is
7 the issue and you have, you know, some fairly good solid evidence on intent
8 with your -- with your medical examiner and SAINT nurse, why wouldn't the
9 probative outweigh the prejudice if you put that evidence on, and they never
10 attack it; they never even suggest it, and they're not going to argue it?

11 MS. LUZAICH: Well, you know, it's not only the murder that he's
12 charged with. He's charged with sexual assault.

13 THE COURT: Right.

14 MS. LUZAICH: We have the burden of proving not only that he
15 strangled her and killed her and that he put his penis in her, but we have the
16 burden of proving --

17 THE COURT: That it wasn't consensual.

18 MS. LUZAICH: -- that it was against her will.

19 THE COURT: And so what you have -- I mean, I'm just asking. What
20 you have is, you have a medical examiner and you have a SAINT nurse who
21 are going to say the vaginal injuries and stuff are consistent with sexual
22 assault, and they are generally -- not 100 percent impossible -- but generally
23 inconsistent with consensual sex.

24 Now, if they are not going to even say, well, it could be that
25 they used a marital aid or they -- they're not even going to even suggest or

1 take the position that consent is a defense, they're not going to ask a
2 question, they're not going to have the Defendant say it on the stand and
3 they're not going to argue it in their argument, why doesn't then the prejudice
4 outweigh the probative?

5 MS. LUZAICH: Well, I'm sorry. I just -- I don't see how they can
6 possibly not mention the word "consent."

7 THE COURT: Well, they might not mention it if, in fact, they think
8 that if by mentioning it, I then think the probative value of this outweighs the
9 prejudice, and I say, Okay, if you say the word "marital aid," if you say the
10 word "consent," if you even question the integrity of Ms. Ebbert or the doctor
11 that pretty much this is a sexual assault, I'm going to let the Coote killing in
12 and --

13 MS. LUZAICH: Well, but there's still -- there's a mixture of two
14 different DNA's, and, unfortunately, try as we might to pick a very intelligent
15 jury, we are not going to get a jury that is as intelligent as the Court.

16 THE COURT: Well, you might.

17 MS. LUZAICH: And a jury is going to see --

18 THE COURT: You might.

19 MS. LUZAICH: -- two different DNA's--

20 THE COURT: Probably on average they got me.

21 MS. LUZAICH: But they're still -- they're going to see two different
22 DNA's in her vagina and very well can say that it wasn't -- that we didn't
23 prove beyond a reasonable doubt that it was him; that it could just very well
24 have been the other person who did the violent part of it and did the killing.
25 So, I mean, I do think that the probative value is huge in this case because

1 you know what? We have here three woman, all of whom were violently
2 sexually assaulted --

3 THE COURT: Let me ask you a second question.

4 MS. LUZAICH: -- and strangled.

5 THE COURT: Let me ask you a second question: You would concede,
6 would you not, that there isn't any DNA evidence that says he sexually
7 assaulted Gonzalez?

8 MS. LUZAICH: Okay. There's no DNA evidence that links the
9 Defendant to Rena Gonzalez --

10 THE COURT: Well, there's the fact that he was in --

11 MS. LUZAICH: You know, what, Judge? I've tried tons of sexual
12 assault cases with no DNA.

13 THE COURT: I'm not saying that.

14 MS. LUZAICH: I don't need DNA.

15 THE COURT: I know that there's the neighbor, and he goes for the
16 drink of water and all that stuff, and I know the jail testimony and all that
17 stuff, but I'm saying as far as DNA evidence. So if it were the case that I
18 thought that additional probative value was there and it outweighed the
19 prejudice, why wouldn't -- why shouldn't it be the order that only the Coote
20 case comes in? I.e., here's a woman who has the same kind of tearings, the
21 same kind of problems, appears to have been sexually assaulted, appears to
22 have been strangled, and it has some value, what is the -- what does the
23 Gonzalez case add in terms of proving intent?

24 I mean, how is it the case that you can draw a line there and
25 say, Well, okay, the Coote case, I can see pretty clear; I mean, this is him. I

1 mean, it's 100 percent him, and it's on the carpet. I mean, he did that one.

2 MS. LUZAICH: Well --

3 THE COURT: The Gonzalez case is him because two women and the
4 same thing, you know, theory that he saw the -- him coming out -- she saw
5 him coming out of the apartment. He's around there all day. You've got the
6 jail stuff, but nothing --

7 MS. LUZAICH: I think that the Gonzalez case is more probative as
8 well in this situation because it demonstrates the lengths to which Norman
9 Flowers will go to avoid detection. You know, in Sheila, he --

10 THE COURT: Wait a minute. That ain't in 48.045. 48.054 says it
11 comes in for proof of motive, opportunity, intent, preparation, plan,
12 knowledge, identity or absence or mistake.

13 MS. LUZAICH: Motive, motive, avoid detection. I mean, you know,
14 he rapes her --

15 THE COURT: Avoiding detection is not motive. Motive is why you
16 commit the crime. Avoiding detection is why you run to California.

17 MS. LUZAICH: If the Court thinks that, you know, just Marilee Coote
18 is more prejudicial -- or more probative and not --

19 THE COURT: We're just -- we're just talking here. I can see a whole
20 bunch of possibilities. I would like to get the right ruling. I would like to make
21 sure that Mr. Flowers has a fair trial and due process. I would like to think
22 that if there is a decision that's favorable to the State, that the Supreme Court
23 agrees with me. You know, my job is to try to apply the law in the way that
24 the law is written. So I'm just talking.

25 I can see distinctions between Coote and Gonzalez. I mean,

1 you're talking about, you know, intent on the sexual assault. Well, again, if
2 you bring in Coote, you've got, you know, similar vaginal findings. I think
3 arguably similar. You've got -- I mean, it is him. That's the guy that did it.
4 When you put it together, there isn't any doubt. You've got a similar manner
5 of death.

6 MS. LUZAICH: Right.

7 THE COURT: But then when you bring in Gonzalez, why isn't that
8 throwing gasoline on the fire where you tip the scales to the point that that is
9 extremely prejudicial without adding a lot of probative value because you can't
10 show other than by inference that he's the person that raped Gonzalez?

11 MS. LUZAICH: Well, I mean, I disagree. I think that we can show
12 circumstantial evidence is just as good as direct evidence. So I think that we
13 can show and we can prove beyond a reasonable doubt --

14 THE COURT: Well, I think you may well -- in the trial --

15 MS. LUZAICH: -- but I don't have DNA.

16 THE COURT: In the trial in Department XI, I think you may well show
17 it when you put all the stuff together and that he's in there and around and
18 getting a drink of water and by the car and all that stuff, and even though
19 they're a little bit inconsistent, what limited value the inmates have and two
20 of the same -- you know.

21 Logically, to me, if I were the trier of fact, I wouldn't have any
22 difficulty with it, but at the same time, it doesn't have the same clear-cut
23 evidentiary value that the Coote would have. And when you pile a third
24 murder on, fourth murder on, fifth murder on, each one becomes more
25 prejudicial to the Defendant in terms of getting a fair shot on Quarles.

1 MS. LUZAICH: Right. I mean, if the Court believes that it's more fair
2 to only allow Marilee Coote's incident into the Quarles case, obviously, we,
3 you know, would accept that, and that's fine.

4 THE COURT: Ms. Luzaich --

5 MS. LUZAICH: However, if they bring in consent in any way, shape
6 or form, I would submit that that allows Gonzalez.

7 THE COURT: But here's the problem. Even -- well, why? I mean,
8 again, they don't -- if you try the whole case and you bring in the neighbor on
9 Gonzalez and you bring in the inmates and you bring in all that stuff, you
10 know, you have something. But, you know, you can just bring in a detective
11 and, you know, your medical examiner and your SAINT nurse on Coote and
12 say, Hey, 50 days later, we found this woman who also has some nexus to
13 this Defendant, you know, raped, and we can tell that by the -- we've got the
14 DNA there that's 100 percent, and she was strangled.

15 MR. PATRICK: Judge, I think that's a little -- a little bit of that goes
16 to the proffer that Mr. Pike was trying to address at the beginning. When we
17 -- when we talked to the two snitches in prison, Shawnta Robinson said that
18 his whole story came word for word from George Dunlap, and he told it to the
19 police because he felt threatened by George Dunlap and that the only way
20 that George Dunlap knew anything about Norman's case was that he
21 happened to get ahold of Norman's discovery while they were in CCDC.

22 George Dunlap is a career snitch. He makes a living out of
23 getting out of trouble by snitching on other cases. I think -- you know, and I
24 think, again, maybe they put that out in the -- in the Gonzalez/Coote trial to
25 try and get a --

1 THE COURT: Yeah, but --

2 MR. PATRICK: It has no place --

3 THE COURT: I'm not -- what I'm saying is, you almost need that if
4 this came in as bad acts to prove arguably that he did the Gonzalez one. But
5 to prove that he did the Coote one, you can put the DNA lady on who's going
6 to testify anyway, you could put the coroner/medical examiner on who's going
7 to testify anyway, Nurse Ebbert and the detective, and those four, without all
8 that other crap or without even the fact that Gonzalez died may, you know,
9 establish intent, and the evidence becomes irrelevant.

10 I mean, you don't even talk about Gonzalez. You don't bring in
11 the inmates, you don't bring in any of that because it doesn't got to that, but
12 they can say, Hey, by the way, we had a very similar rape and killing. She
13 was raped. She was strangled. It's 100 percent him, and, you know, he
14 knew -- he used to date the mother of Victim Number 1, and he dated a lady
15 that was a neighbor of and installed the stereo and blah, blah, blah of Victim
16 Number 2, and you don't even get to that other stuff. Well, that certainly
17 helps them in terms of intent because you've got the similar vaginal damage,
18 and it helps them somewhat on identity because you have 100 percent
19 instead of 99.9934 percent. Where are we?

20 MR. PIKE: Well, the Court's interpretation and the concern over
21 bringing in Gonzalez, I think, is warranted, and as we're just talking through
22 this is all being learned counsel, hopefully, that if the Court is going to make a
23 decision that -- as far as identity or motive, if we open that door, then -- then
24 it would make sense to allow it --

25 THE COURT: Well, these are two different things I'm talking about

1 and the same thing.

2 MR. PIKE: Right.

3 THE COURT: One is, I'm saying I think the State wins, but it's cut off
4 at Coote, and we don't get into the jail snitches or we don't get into Gonzalez
5 and all the evidence and him hanging around. You can tie him to each of the
6 victims. You can talk about the medical vaginal evidence. You can talk about
7 the DNA, and, you know, the detective can talk about the similarities between
8 the two and go no farther. That's one way to do it, and regardless of whether
9 you open the door, don't bring in Gonzalez. I mean, if you want to talk about
10 consent, tee it up.

11 The other thing I was talking about is, there is another way to
12 look at it that says, okay, if it's only for intent, then if you don't dispute intent
13 and -- I mean, if you come in say, in essence, Listen, we agree that she was
14 raped, and so if you think Norman is the guy just because it's 99.9934, go
15 ahead and convict him on the rape because there's no consent here, there's
16 no need to put in those others. See what I'm saying?

17 MR. PIKE: Or -- or if the finding --

18 THE COURT: We're not -- we don't -- or I'm not suggesting there's
19 any consent here, ladies and gentlemen.

20 MR. PIKE: No, but does the finding -- without the finding being of the
21 rape, they would still have to establish the identity of the person who
22 committed the sexual assault.

23 THE COURT: Right.

24 MR. PIKE: Right. Now, the -- which is different than just saying --

25 THE COURT: I mean, what they have -- what they have on Flowers --

1 what they have on Flowers is that he used to date the mother. He's been
2 there, he knows his way around, and in a limited two-hour window, somebody
3 got in and somebody did this and got out, very likely somebody that was let in
4 because they knew the victim.

5 And, you know, it takes a little while to do this and to have sex
6 and to fill the tub and to strangle and drown somebody, and they probably
7 started right when the phone went dead, and it certainly ended before mom
8 came home two hours later, and it's a 99.9934 percent chance it was Mr.
9 Flowers, maybe, and somebody else. Maybe not. And that sort of is the
10 mirror image or the opposite of saying that only six out of any 100,000 people
11 could have done it, and, by the way, one of those happens to be the boyfriend
12 of the ex-mother.

13 MS. LUZAICH: Ex-boyfriend of the mother.

14 THE COURT: Anything else?

15 MR. PIKE: No, Your Honor.

16 THE COURT: All right. I find that as to intent and identity, the
17 evidence in the Coote case is sufficiently similar and nexus in time and
18 otherwise that it is admissible, particularly, in fact, that the DNA is 100
19 percent, and I will allow that to be admitted. As to the Gonzalez case, it is
20 excluded without the DNA. And I'm not going to try that case, and I don't
21 need the snitches, and I don't need any of that.

22 You can put on the Coote case to show intent and to show
23 identity by talking to the detective about the similarities in the case, the nurse
24 and the coroner/medical examiner about the way she died, the similarities in
25 the vaginal tearing, and the DNA profile person, and then that's as far as the

1 State is going.

2 MR. PIKE: Thank you.

3 THE COURT: There's no open the door, nothing. You can -- I mean,
4 since I've made that ruling, you can say anything you want, Randy, in terms
5 of consent. It isn't going to stretch it, but they can do it whether you do it or
6 not.

7 MR. PIKE: All right. Thank you.

8 THE COURT: All right. Motions.

9 MR. PIKE: We brought a motion in limine to admit the evidence of the
10 Crimestopper's report. The State has filed an opposition in reference to that.

11 THE COURT: Yeah, you did. Actually, when you filed it originally, I
12 was kind of intrigued because I thought if it was a report from the victim and
13 she indicated some -- you know, some genuine afraidness of another
14 individual, that you might come within it, but after they -- and I had written
15 down, I need to see the report. Then Ms. Luzaich submitted something, and I
16 had the report, and this is an anonymous third party that had -- I mean --

17 MR. PIKE: It's a hearsay statement from her to an anonymous third
18 party that we can't find.

19 THE COURT: Yeah, but the theory of the catchall in hearsay is
20 inherent credibility, that you find inherently credible something that is
21 otherwise hearsay, and it's fair to bring it in. I mean, somebody is calling the
22 police and talking to them directly, and they give this information to the
23 police. I thought that had some real logic to it, and I might've given it to you.
24 I didn't need to see the report. But an anonymous call has zero inherent
25 credibility. Has zero.

1 Now, they did eliminate Mr. Robert Lewis. As a result of your
2 questioning today, I'm sure by the time we get to trial, they will have also
3 eliminated Mr. Anthony Lewis. But I can't grant that motion after Ms. Luzaich
4 showed me the report because it just isn't what it seemed to me when I read
5 your motion. It is some anonymous call. That couldn't be far from -- any
6 farther from inherently credible. Okay. Now, you've got your motion on
7 the DNA evidence. I've read it and understand --

8 MS. LUZAICH: You know, that was never served on us. I pulled it off
9 the computer this morning, but --

10 THE COURT: That's all right.

11 MR. PIKE: I did. I think the testimony that we had here just indicated
12 the nature of the way in which they took the sample, how she ran it, and she
13 put everything together. And, in all candor, the Court, as I'm required to do,
14 there was -- after I finished and filed the motion, then there was a -- I got
15 notice of a ruling in California that dealt with this cold hit issue altogether.

16 THE COURT: And I think it would be different -- it may be different;
17 maybe not -- but arguably different if all they did was run it, get the cold hit
18 and say, That's our thing. It's like running somebody through AFIS and you're
19 getting a name. But what happens is, that gives them a place to go.

20 Then they actually do the sample from the suspect against the --
21 against the unknown sample just like they take a print from AFIS, and they
22 put it against the exemplar, so the testing is really the same. And it's kind of
23 a like chicken and egg. If you have testing and then it comes up with
24 Defendant X, and Defendant X lives in Hoboken, New Jersey, has never been
25 to Vegas and has no nexus with anything, then you've got to say something

1 is wrong with this testing. But when you do testing and it comes up with a
2 defendant who was at the scene on the day in questioning, off and on,
3 hanging around, acting unusual, knows both of these women, da, da, da, da,
4 da, da, what's the difference whether you have that and then examine his
5 DNA and compare it directly or you examine his DNA, compare it directly, and
6 you have it. I don't think there's any difference. I think that you might be
7 right if they just did the one thing, but that's not what happened here.

8 MR. PIKE: No. And we've got the testimony, and she actually offered
9 the testimony that it could not exclude on the one part where they could
10 match the other one.

11 THE COURT: Right.

12 MR. PIKE: So she made the distinction, and I think so long as she
13 sticks to that distinction, I disagree. Statistically, I don't think she should be
14 able to come in and offer the statistics on the second one because there is the
15 mixture, but she can say it did not exclude him.

16 THE COURT: I thought about -- I thought about that. And when I'm
17 thinking about that, here's what occurs to me. What happens when a victim
18 of a bar robbery goes to a physical lineup and says, It's the guy in the yellow
19 tie; I'm 90 percent sure? Does that mean that they can't testify because
20 they're not 100 percent sure? I mean, it seems to me it goes to weight, and
21 both sides argue.

22 What if she says, Well, you know, it's -- you know, I'd bet my
23 house that it's Norman Flowers, but I'm not allowed to as a scientist say that
24 it is Norman Flowers. They're 99.9934 percent of the people that are
25 excluded, so there aren't very many. And you can say, so, okay, if we have a

1 population of, you know, 10,000 people in prison, there's going to be at least
2 five or six people in the prison that are going to potentially be the same as
3 them, and, you know, I think it just goes to weight.

4 I mean, I think that's what you can do, just like if somebody
5 says, It's the guy in the yellow tie versus somebody saying, It's the guy in the
6 yellow tie; I'm 90 percent sure of that. I think -- I think when you're getting
7 into that category, it doesn't become excluded as a matter of law. It's just
8 becomes a matter of weight, and you've got some ammunition, and Ms.
9 Weckerly has got some ammunition.

10 MR. PIKE: But -- and she's relying upon a database of which she
11 has received some information about, but doesn't have any personal
12 knowledge about, so --

13 THE COURT: But you can -- you can apply this statistical number to
14 any database. In other words, you can say, Okay, if we have a million people,
15 there could be X that would be this. I mean, to me if I were defending him,
16 I'd get -- I mean, there's ten, 12,000 people in prison. I'd say, Well, okay, so
17 six people in the prison system. You know, I mean, that's your number. But
18 it doesn't matter what database you apply it to. That's still the percentage of
19 likelihood that it's Norman Flowers is pretty damn high because most of the
20 people in that database will be excluded.

21 If you apply it to 100 people, it's Norman. You know, if you
22 apply it to 1,000 people, there's -- it's still Norman. If you apply it to 10,000
23 people, now it's still Norman. But if you apply it 100,000 people, there might
24 be another four or five that it could be. If you apply it to a million, it's starting
25 to get up there to 40 or 50, but there's a million people, and those 40 or 50,

1 some of them might be living in China. Some might be living in India, you
2 know.

3 Anyway, you're a good lawyer. You know how to take what
4 you've got, but it just has to go to weight. It can't be the case that you can
5 say that that is so inherently unreliable that it doesn't have value, that a jury
6 can't hear it and that you can't argue it, and a jury can't make it just like an
7 identification where they're percentage sure. It's just got to be the case.

8 MR. PIKE: Thank you, Your Honor.

9 THE COURT: Okay.

10 MS. LUZAICH: Thank you.

11 THE COURT: So we're still dancing; right? We're thinking we're
12 going?

13 MS. LUZAICH: Oh, yeah.

14 MR. PIKE: Yes.

15 THE COURT: And how long is it going to take?

16 MS. WECKERLY: A week.

17 MS. LUZAICH: A week.

18 THE COURT: A week. And that includes penalty?

19 MS. LUZAICH: Well, no.

20 MR. PIKE: No.

21 MS. WECKERLY: Probably a week and a day then.

22 THE COURT: A week and a day? Do you have a lot of penalty
23 evidence or not so much?

24 MS. WECKERLY: Oh, yeah.

25 MS. LUZAICH: Yeah.

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THE COURT: You do?

MS. LUZAICH: Uh-huh.

THE COURT: Norman's a bad guy?

MS. WECKERLY: Yeah.

MS. LUZAICH: A lot of priors.

THE COURT: Okay.

[Proceeding concluded at 10:30 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



RENEE VINCENT, Transcriber
District Court, Dept. VII
(702) 671-4339

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ORIGINAL
DISTRICT COURT
CLARK COUNTY, NEVADA

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Edmund J. F...
CLERK OF THE COURT

STATE OF NEVADA,

Plaintiff,

vs.

NORMAN FLOWERS,

Defendant.

CASE NO. C228755

DEPT. VII

BEFORE THE HONORABLE STEWART L. BELL, DISTRICT COURT JUDGE
MONDAY, SEPTEMBER 15, 2008

**RECORDER'S TRANSCRIPT OF
FURTHER PROCEEDINGS:
STIPULATED CONSOLIDATION**

APPEARANCES:

For the State:

ELISA LUZAICH, ESQ.
Chief Deputy District Attorney

For the Defendant:

RANDALL PIKE, ESQ.
Deputy Special Public Defender
CLARK PATRICK, ESQ.
Deputy Special Public Defender
BRETT WHIPPLE, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER

CLERK OF THE COURT

SEP 16 2008

RECEIVED

Monday, September 15, 2008 - 8:34 a.m.

THE COURT: State of Nevada versus Norman Flowers, Case -- we've got a Norma Flowers also.

MS. LUZAICH: I heard.

THE COURT: Norma and Norman. Case C228755. Flowers present in custody. Mr. Pike and Mr. Whipple, Mr. Patrick; Ms. Luzaich. How are we doing?

MR. PIKE: Your Honor, we went through -- as you know, we prepared the stipulation about that in court last time. Your Honor worked with Defendant Flowers, and Mr. Whipple spent quite a few -- amount of time discussing it with him. He does not desire to have a conjoined trial by stipulation. What we request is that we keep the trial date that's currently set for next month.

THE COURT: For the --

MR. PIKE: For our case.

THE COURT: The October 14th date?

MR. PIKE: Yes. And if there's anything else that comes --

THE COURT: What's the -- what's the other department going to do then?

MR. PIKE: We're going to have to continue that one.

THE COURT: Is that the way you want to do it?

MS. LUZIACH: Yes. That's fine, Judge. And maybe I'll put on a motion to reconsider to the motion to consolidate -- the motion to consolidate on. Potentially. We've just been --

1 THE COURT: I'm not going to force him to do it.

2 MS. LUZAICH: Okay. Fair enough.

3 THE COURT: For two reasons, one is Judge Bonaventure ruled. I sort
4 of, you know, respect that as the law of the case. Secondly, in this case, I
5 didn't find that both of the other cases were cross-admissible. I only found
6 one of the other cases were cross-admissible, so if I force that on him, I'm
7 actually admitting something in the case -- the State's case in chief that I
8 found otherwise wasn't admissible.

9 Now, if I were the Defendant, I'd stipulate to do it because I'd
10 want to only roll the dice once, particularly since in the other case all of it is
11 coming in, and in this case, at the very least, it's all coming in by penalty
12 hearing if he's convicted. But it is his right, and so I'll just try the case the
13 way it's postured, where we have the one cross-admissible case in the State's
14 case in chief, and the other one will come in in penalty if he's convicted.

15 MS. LUZIACH: Okay.

16 THE COURT: October 14th stands, and you'll have to talk to Betsy
17 about the other one.

18 MR. PIKE: Thank you, Your Honor.

19 MS. LUZIACH: Thank you, Your Honor.

20 THE COURT: Thanks, guys. Brett?

21 MR. WHIPPLE: Yes.

22 THE COURT: I certainly don't care -- I mean, we're about a month
23 out. I certainly don't care if he changes his mind and wants to do the whole
24 thing. Lisa may care at some point because she's got to subpoena witnesses
25 and organize her case. But if he changes his mind in the next week or two

1 and it's okay with Lisa, you know, you can just go ahead and sign things up
2 and file it. You don't need to be in open court.

3 MR. WHIPPLE: Okay.

4 THE COURT: I'll sign off on it and --

5 MR. WHIPPLE: Okay.

6 MS. LUZAICH: I'm going to prepare as if it is going to be consolidated
7 in case he does change his mind. If he doesn't --

8 THE COURT: Yeah. Well, at some --

9 MS. LUZAICH: -- I'll try it that way.

10 THE COURT: At some point, you know, day two, three, four, five
11 before trial, everybody's got to strategize and prepare; you can't do it.

12 MS. LUZAICH: Right.

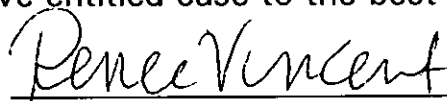
13 THE COURT: But to me, it makes so much sense that we ought to
14 leave the offer open a while.

15 MR. WHIPPLE: Sounds good, Your Honor.

16 THE COURT: All right.

17 [Proceeding concluded at 8:37 a.m.]
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22 ATTEST: I hereby certify that I have truly and correctly transcribed the
23 audio/video proceedings in the above-entitled case to the best of my ability.

24 
25 RENEE VINCENT, Transcriber
District Court, Dept. VII
(702) 671-4339

1 CASE NO. C228755

2 DEPT. NO. VII

ORIGINAL

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4 DISTRICT COURT

Edith
CLERK OF THE COURT

5 CLARK COUNTY, NEVADA

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7 THE STATE OF NEVADA,
Plaintiff,

8
9 vs.

10 NORMAN KEITH FLOWERS,
11 aka NORMAN HAROLD
12 FLOWERS III,
Defendant.

)
)
) Reporter's Transcript
) of
) Proceedings

)
) Volume 1-A

13
14 BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

15 WEDNESDAY, OCTOBER 15, 2008

16 9:30 A.M.

17
18 APPEARANCES:

19 For the State:

Elissa Luzaich, Esq.
Pamela Weckerly, Esq.
Deputies District Attorney

20
21 For the Defendant:

Randall Pike, Esq.
Clark Patrick, Esq.
Deputies Public Defender

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25 Reported by: JoAnn Orduna, CCR No. 370

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Motion for reconsideration
Jury Selection

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1 CASE NO. C228755

2 DEPT. NO. VII

3

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6

7 THE STATE OF NEVADA,)
8 Plaintiff,) Reporter's Transcript
9 vs.) of
10) Proceedings
11 NORMAN KEITH FLOWERS,) Volume 1-A
12 aka NORMAN HAROLD)
13 FLOWERS III,)
14 Defendant.)

15 BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

16 WEDNESDAY, OCTOBER 15, 2008

17 9:30 A.M.

18 APPEARANCES:

19 For the State: Elissa Luzaich, Esq.
20 Pamela Weckerly, Esq.
21 Deputies District Attorney

22 For the Defendant: Randall Pike, Esq.
23 Clark Patrick, Esq.
24 Deputies Public Defender

25 Reported by: JoAnn Orduna, CCR No. 370

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1 LAS VEGAS, CLARK COUNTY, NV, WEDS, OCT 15, 2008

2 9:30 A.M.

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4 P R O C E E D I N G S

5

6 THE COURT: Okay. Let's go on the record
7 in Case No. C 228755, State of Nevada versus Norman
8 Flowers. Let the record reflect the presence of Mr.
9 Flowers with his counsel, Mr. Patrick, Mr. Pike,
10 Ms. Weckerly, Ms. Luzaich for the State.

11 We have a motion for reconsideration
12 prior to the jury coming in. Go ahead, Mr. Pike.

13 MR. PIKE: Thank you very much, Your
14 Honor. It kind of goes hand in glove with the
15 amended indictment that the State has filed in
16 reference to this case.

17 As we came in before the court the
18 last time, the DNA, the second DNA remained
19 unidentified. After our last hearing, it has since
20 become identified. It is identified with someone
21 who has no connection with my client.

22 THE COURT: Whose, the second DNA of
23 whom?

24 MR. PIKE: Okay. With the evidence --
25 the facts basically are the deceased who is pulled

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1 out of the tub by Robert Lewis is during the course
2 of the autopsy --

3 THE COURT: When you say second, you mean
4 the second on this particular victim or second on
5 the next victim?

6 MR. PIKE: Second on this victim.

7 THE COURT: On this victim.

8 MR. PIKE: But there's a mixture of DNA
9 inside of her.

10 THE COURT: Right.

11 MR. PIKE: Their DNA expert indicated
12 that one came positive or identified and would not
13 exclude Mr. Flowers.

14 THE COURT: 99 percent.

15 MR. PIKE: 99 percent. The second one
16 was not specifically identified until after that
17 hearing when the detective went back out, started
18 making some phone calls, finds out that true to our
19 allegations during the time of the hearing she did
20 have another boyfriend and that was a George Brass.
21 George Brass was located at the
22 Clark County Detention Center. He was interviewed
23 by the detective where he admitted to having sex
24 with her that day.

25 In fact, according to his statement

1 to the detective, he had sex with her sometime
2 between 11 o'clock and noon and thereafter he went
3 to work at Wal-Mart.

4 And the State followed up with it,
5 obtained his, his time card or time records from
6 Wal-Mart. We received those, and I assume they're
7 gonna bring in both Mr. Brass as well as his
8 records.

9 THE COURT: And did the time records
10 indicate that somewhere around 1 o'clock he went to
11 work that day?

12 MS. WECKERLY: He worked that -- he was
13 reported into work at noon and he took his first
14 break at 4:00 according to the work card.

15 THE COURT: And the mother's call to the
16 victim was afternoon?

17 MS. WECKERLY: Before 3:00 in the
18 afternoon.

19 THE COURT: Okay. Go ahead.

20 MR. PIKE: The 911 call was at 2:51.
21 There was a call to her girlfriend, Ms. Toni, a
22 conversation that they had at 12:36. So the time of
23 death actually is sometime between 12:30 and 2:00 to
24 2:51.

25 THE COURT: Well, it would be after

1 12:36.

2 MR. PIKE: Right.

3 THE COURT: Because the mother said she
4 was good. So --

5 MR. PIKE: So now and basically --

6 THE COURT: The guy was at Wal-Mart at 1
7 o'clock. So pretty much that's an air-tight alibi
8 on his behalf.

9 MR. PIKE: Well, possible. Now, we go
10 in -- after he's identified, we go and speak with
11 him. He, he indicates that, to us that he did in
12 fact go to work, checked in. He, he left work and
13 came over during, after he received a call
14 indicating that the police were there and it
15 involved something involving the deceased. He tells
16 us he talked to the police. He was there.

17 We, we contact a Mr. Culverson who
18 also indicated that -- Mr. Culverson was there and
19 that he was and that he confirmed that Mr. Brass was
20 there in the afternoon during the time that the
21 police were investigating this and at the same time
22 that they were talking taking this swabbing from his
23 uncle who is Robert Lewis.

24 Robert Lewis was there when Mr.
25 Brass came over and Mr. Brass said that or told us

1 that it was he that told Mr. Brass, Robert Lewis
2 told George Brass that his girlfriend was alone so
3 he could go in and that they had consensual sex on
4 the floor and then he left. And when he left,
5 Robert Lewis was still outside of there.

6 There was a -- so some of the
7 theories upon which the court allowed this second
8 murder to come in that there was a confederate, that
9 there was some unidentified DNA that may have been
10 associated with him as a conspirator, as a
11 co-conspirator or the theories that have now been
12 abandoned have had to be abandoned that changes --

13 THE COURT: I'm sorry, but I wasn't very
14 clear on my thinking, but that wasn't the reasoning.

15 MR. PIKE: Well, if that's not the
16 reasoning, I'm supposing that's the reasoning or
17 interpreting the court's ruling.

18 But now, the evidence has come out
19 differentiates this other case even more and so I
20 think that we have to make a record prior to coming
21 in before the jury.

22 THE COURT: How does it differentiate?
23 You made a good point and I agree with you on what I
24 call the third homicide that it was distinct enough
25 and the prejudice outweighed the probative. But as

1 to the second homicide, it appeared that it was a
2 hundred percent clear that it was your client
3 involved, that the modus operandi was almost
4 identical. You go in, you go have forcible
5 intercourse and then you strangled them and that in
6 that case it's a hundred percent his sperm whereas
7 in this case it is very probable 99, but they didn't
8 have a complete strand or sample so they can't say a
9 hundred percent. So that sort of leaves a little
10 window opened.

11 And what is the relevance of the
12 fact that be this Brass person had consensual sex
13 with his girlfriend three hours earlier? I don't
14 even see what's relevant about that.

15 MR. PIKE: What's relevant about it is
16 that during the course of the examination of the
17 physical evidence that's associated with this, it
18 includes the fact that her panties which she put on
19 and then she removed prior to getting into the
20 bathtub because there's, there's no evidence to
21 indicate that some -- that she was forced into the
22 bathtub or forcibly undressed or anything like that.
23 The panties have the mixture of DNA in it. And the
24 DNA, the mixture could have occurred the day before,
25 the morning before. It, it -- there is no

1 indication that that my client e went into that
2 apartment. There's not fingerprints and there just
3 is the DNA inside of her.

4 Now, if we know the time of the
5 death that was associated with that within a two
6 hour time frame, then we know the family that's
7 around there and it's all the family around George
8 Brass and they're all keeping the information about
9 that relationship away from the police for three
10 years until the detective goes back out to get the
11 information and George Brass is there later that
12 afternoon having left work without checking out, but
13 it somehow shows that he did check out which attacks
14 the veracity of their records and does not make it
15 an air-tight alibi, then it creates an entire
16 another issue about this, this family.

17 This family was in apartments across
18 from his, or across from the deceased in the
19 apartment just looking on to that. And then there's
20 an independent witness who is looking down who
21 identifies Chicken which is George Brass's name as
22 being there later on in the afternoon during the
23 time that this happens. And the investigation is
24 never really fleshed out to -- and there is no
25 indication that the sexual contact between the

10

1 deceased and my client is in any way associated with
2 the burglary, with the robbery.

3 THE COURT: I think that's the State's
4 point. I mean, if the argument from the defense is
5 gonna be this may have been consensual, then you've
6 got another person on the same circumstance who is
7 likewise strangled, it's pretty unlikely. And
8 that's what NRS 45.045 goes to is to show his intent
9 at the time of this sexual interaction. You know,
10 that he was the one that raped and strangled her
11 because he raped and strangled this other woman. It
12 isn't like, you know, five guys have been visiting
13 there and which one did the strangulation.

14 MS. WECKERLY: I mean to me --

15 THE COURT: Plus it also goes to identity
16 because they don't have a hundred percent DNA on
17 this particular case.

18 MS. WECKERLY: Right. I mean, to -- it's
19 the State's position that now that prior or actually
20 it's subsequent event is even more relevant now.

21 THE COURT: Exactly. I think it is.

22 MS. WECKERLY: Because we've eliminated
23 the other source of the DNA. So that's just the
24 question of how did Mr. Flowers' DNA get there and
25 now it's highly probative as to intent, motive,

1 identity and 1 of consent on the part of the
2 victim when he had contact with her.

3 So I mean, I sort of see it as the
4 inverse the fact that this other DNA source has been
5 eliminated makes this subsequent crime even more
6 probative as to what happened between Mr. Flowers
7 and Ms. Quarles on the 24th.

8 THE COURT: Well, I don't see it as more
9 probative that she do it or less probative as Mr.
10 Pike does. I see it as the same. I mean, if the
11 argument from the defense would be that they may
12 have had consensual sex, this other crime really
13 goes to what is his intent is. And because this
14 isn't a hundred percent and the other one is,
15 they're almost identical circumstances, it also goes
16 to, to identity, who actually did have sex. I mean,
17 he can take the position that hey, well maybe it
18 wasn't me, but if you one percent of all the men in
19 the world, that could be a jillion men. But when
20 you have zero percent as in the next case and he has
21 an extra connection to both of these women.

22 All right. The motion's denied.
23 Same rules. The second, what I call the second
24 homicide will come in in the State's case in chief.
25 The third homicide will not.

12

1 If the defendant's convicted, they
2 can bring in the third one. Whatever worth it has
3 or nothing.

4 Anything else?

5 MR. PIKE: Nothing. Well, the State has
6 filed the amended indictment to withdraw certain
7 theories that they previously had on that. We've
8 gone through it. And as has been articulated during
9 this motion for rehearing, we have no objection.

10 THE COURT: Okay.

11 MS. WECKERLY: And can I just ask for one
12 clarification? With regard to the ruling on the
13 subsequent homicide, when I open, am I allowed to
14 explain how the course, like how this case was cold
15 until that second case came in so it explains sort
16 of the lag in the detectives getting George Brass's
17 DNA? Am I allowed to sort of explain how the
18 investigation played out because I think otherwise
19 the jury's gonna be saying well --

20 THE COURT: What's your position on that,
21 Mr. Pike?

22 MR. PIKE: Well, the -- as far as the
23 time frame, the facts are going to show what they're
24 going to show. And the fact that it was a cold case
25 for a time, a period of time until they obtained my

1 client's DNA and then it was col for an even longer
2 period of time until they found Mr. Brass, I think
3 factually they can go in with that.

4 If they are gonna bring in evidence
5 of this other crime during the opening arguments, I
6 think that there has to be a cautionary instruction.

7 THE COURT: Okay.

8 MR. PIKE: That's given prior to the jury
9 hearing the opening arguments.

10 THE COURT: I think you're probably
11 entitled to that cautionary instruction every time
12 it's gonna come up, before every witness and then
13 certainly in part of the jury instructions, but the
14 State's gonna open with, and that's just notice
15 objection from the defense, I will give cautionary
16 instruction before that that they're gonna talk
17 about another crime, they may hear some evidence
18 about that during the trial, but this is the only
19 thing they can consider it for.

20 MR. PIKE: That's correct. And also if
21 then because we brought this motion before and the
22 court has reconsidered it and ruled against us, if
23 we can have a continuing objection so I don't have
24 to raise an objection every time that it comes up.

25 THE COURT: Mr. Pike, I think you've made

1 an excellent record.

2 I have no doubt that Mr. Whipple has
3 made as comparable record in a case in front of
4 Judge Gonzalez who also found this case to be cross
5 admissible to her case. And yes, you can have the
6 continuing objection because I think you've made the
7 point for purposes of any appeal that will follow.

8 MR. PIKE: Thank you very much, Your
9 Honor.

10 THE COURT: Okay. In terms of picking
11 the jury, I'm guessing it's gonna take most of the
12 day. You know, if we get to, you know, 4:30 or
13 5:00, we're not gonna open until tomorrow.

14 If we can tell by noon that we're
15 gonna have a jury at 2 o'clock, will you be ready to
16 open, Ms. Weckerly?

17 MS. WECKERLY: I actually requested that
18 we can open tomorrow.

19 THE COURT: No.

20 MS. WECKERLY: I promise we'll be done on
21 Monday like I said.

22 THE COURT: Okay.

23 MR. PIKE: Thank you.

24 THE COURT: All right.

25 MR. PIKE: Because of the ruling, I guess

1 we'll probably ve to bring up some issues about
2 their willingness to give a death penalty if there's
3 evidence of a second homicide during the selection
4 of the jury and how that would impact them maybe.

5 THE COURT: Well, you know, you're not
6 allowed to ask them if there's ten, will you, if
7 there's one, will you. Basically they're an
8 eligible jury if they will consider all four
9 penalties; 50 years, life with, life without or
10 death.

11 And, you know, if you want to
12 explore a little bit, a little bit, you know, how
13 they're thinking, so that you can decide in terms of
14 using your preemptions, I'll give you a little bit
15 of leeway. This is a death case.

16 In other words, you know, you can
17 say, you know, would it make a great deal of
18 difference to you in determining the penalty if you
19 believe the defendant has had tools to one
20 (phonetic), I'll probably let you have that
21 question. But as long as they keep an open mind
22 there in the hunt, you can use those kinds of things
23 in making your choices.

24 MR. PATRICK: Judge --

25 THE COURT: And we're gonna go right

1 there first. I mean, as soon as we get them in and
2 talk to them for a second, that's the first thing
3 I'm gonna ask them in mass is look, ladies and
4 gentlemen, this is a capital case, it's a death
5 penalty case, the procedure is this, this is what
6 happens, you'll be called upon to do this. Is there
7 anybody that can't consider all four of those
8 penalties and they'll raise their hands and we'll
9 start, we'll identify them and what can you do and
10 what can't you do.

11 Mr. Patrick, Mr. Pike, if when we're
12 doing that, you know, I'm kind of ready to excuse
13 somebody if you want to, you know, ask a question,
14 just say can I ask a question, judge, you're
15 certainly free to.

16 MR. PATRICK: Judge, I think the issue
17 would be if they can keep the Coote murder separate
18 from this and understand that they're only
19 deliberating on Ms. Quarles' homicide. And that was
20 the, more the tact I would look at the jury and say,
21 you know, you may hear about this second homicide,
22 but you have to realize that you're only here for
23 this one.

24 THE COURT: I think that's fair. I think
25 that's fair. And if he gets convicted, they're

1 gonna hear about three homicides. You know, the
2 evidence is certainly stronger in the first two, but
3 that's all they're here to decide is what will be
4 the penalty on this case. If there are other things
5 they think he may have done, that's not for them,
6 that's for another jury. Ask them that. And if
7 they say no, I can't, then they may be ineligible.
8 Then if they say yes, I can, I understand, then
9 they're good. Okay.

10 (Whereupon, the jury entered the
11 courtroom.)

12 THE CLERK: The first 14 in the seat.
13 No. 1, Michael Murray.

14 THE JUROR: Yes.

15 THE COURT: She just has to make sure
16 you're in the right seat.

17 THE CLERK: Keitha Munerlyn.

18 THE JUROR: Present.

19 THE CLERK: Katherine Rice.

20 THE JUROR: Here.

21 THE CLERK: Lisa Eldridge.

22 THE JUROR: Yes.

23 THE CLERK: Wyatt Wulff.

24 THE JUROR: Here.

25 THE CLERK: Javier Mayoral.

1 THE JUROR: Here.

2 THE CLERK: Bayardo Guevara.

3 THE JUROR: Here.

4 THE CLERK: Vicki Ergina.

5 THE JUROR: Yes.

6 THE CLERK: Edward Morken.

7 THE JUROR: Yes.

8 THE CLERK: Ignacio Herrera.

9 THE JUROR: Here.

10 THE CLERK: Shanna Burley.

11 THE JUROR: Here.

12 THE CLERK: Ellen McKinney.

13 THE JUROR: Here.

14 THE CLERK: Miadora Nelson.

15 THE JUROR: Yes.

16 THE CLERK: Guy Stablein.

17 THE JUROR: Here.

18 THE COURT: Great. Just fill in

19 anywhere. Just make sure you move all the way over
20 so that -- we're gonna fill every seat. All the way
21 down to the end because we're gonna fill every seat.
22 There's some over there. There's a few more up
23 here, Chermaine. One there. There's a couple up
24 here. We've got another one up here, Chermaine. Up
25 here. Perfect.

1 right. Okay. Good morning,
2 ladies and gentlemen. This is the time set for the
3 trial in Case No. C228755, State of Nevada versus
4 Norman Flowers.

5 This is Mr. Flowers sitting at this
6 table here in the center in the light blue shirt
7 with his attorneys Mr. Randy Pike, Mr. Clark
8 Patrick. These are prosecutors for the State of
9 Nevada, Pamela Weckerly and Lisa Luzaich.

10 This is a criminal case. Mr.
11 Flowers is charged with several charges, but
12 basically it involves a sexual assault and a murder.

13 My name is Stu Bell. I'm the judge
14 that's been assigned to try this case. You've been
15 summoned here to act as potential jurors in this
16 case.

17 Let me introduce --

18 OFFICER MOON: I'm right here, boss.

19 THE COURT: This isn't the courtroom we
20 usually operate in. We usually operate next door.
21 And we're gonna operate next door starting tomorrow,
22 but it's a smaller courtroom and we can't get all
23 the potential jurors in so I don't know exactly
24 where everybody is.

25 There is our court reporter. She is

1 JoAnn Orduna. Her job is to make sure that
2 everything that is said and by whom is accurately
3 taken down. And the purpose of that of course is
4 that if one side or the other thinks that I didn't
5 do my job right and I didn't make sure that both
6 sides got a fair trial, they could appeal to the
7 Nevada Supreme Court and they would review a
8 transcript prepared from her notes to make their
9 decision.

10 I'm sorry. My regular clerk called
11 in with pneumonia today, but we have a very capable
12 back-up clerk, but I forgot your name. Tia. This
13 is Tia. She's our clerk. Hardest job in the
14 courtroom. She has to keep track of all the
15 evidence, swear the witnesses and keep minutes which
16 are the official record of the proceedings.

17 Mr. Ric Moon, he's our court
18 security officer. His job is the safety of the
19 persons and property in the courtroom, including
20 yourself. He's also the only person in the
21 proceedings that are allowed to talk to jurors or
22 potential jurors during the entire course of the
23 trial. The lawyers and I are not, nobody else is.
24 So if there's anything you need to know, where the
25 restroom is and can I do this, can I do that, where

CASE NO. C228755

FILED

DEPT. NO. VII

ORIGINAL

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DISTRICT COURT

E. J. [Signature]
CLERK OF THE COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

NORMAN KEITH FLOWERS,
aka NORMAN HAROLD
FLOWERS, III,
Defendant.

)
)
) Reporter's Transcript
) of
) Jury Trial
)

) Volume 2-A
)
)
)
)

BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 16, 2008

9:30 A.M.

APPEARANCES:

For the State:

Pamela Weckerly, Esq.
Elissa Luzaich, Esq.
Deputies District Attorney

For the Defendant:

Randall Pike, Esq.
Clark Patrick, Esq.
Deputies Public Defender

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DR. LARY SIMMS

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1 CASE NO. C228755

2 DEPT. NO. VII

3

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8 Plaintiff,)

9 vs.) Reporter's Transcript
10) of
11) Jury Trial

12) Volume 2-A

13 NORMAN KEITH FLOWERS,)
14 aka NORMAN HAROLD)
15 FLOWERS, III,)
16 Defendant.)

17 BEFORE THE HON. STEWART BELL, DISTRICT COURT JUDGE

18 THURSDAY, OCTOBER 16, 2008

19 9:30 A.M.

20 APPEARANCES:

21 For the State: Pamela Weckerly, Esq.
22 Elissa Luzaich, Esq.
23 Deputies District Attorney

24 For the Defendant: Randall Pike, Esq.
25 Clark Patrick, Esq.
Deputies Public Defender

26 Reported by: JoAnn Orduna, CCR No. 370

1 LAS VEGAS CLARK COUNTY, NV, THURS. OCT 16, 2008

2 9:30 A.M.

3 -oOo-

4 P R O C E E D I N G S

6 THE COURT: Okay. Let's go back on the
7 record in Case No. C228755, State of Nevada versus
8 Norman Flowers.

9 Let the record reflect the presence
10 of Mr. Flowers with his counsel, counsel for the
11 State. All ladies and gentlemen of the jury of the
12 jury are back in the box. Good morning, ladies and
13 gentlemen.

14 Everybody ready to proceed?

15 MS. WECKERLY: Yes, Your Honor.

16 MR. PIKE: Yes.

17 THE COURT: In this case under the rules,
18 you're allowed to hear not only evidence about the
19 crimes charged but about some other potential crimes
20 under limited circumstances.

21 And there's gonna be mention of
22 those crimes or at least a crime that is different
23 than the crime that you're here to decide.

24 And the rule says that every time
25 there's some evidence about that or in the abundance

1 I N D E X

2 Opening Statement by Ms. Weckerly PAGE 4
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1 of caution, even if there's an argument about that,
2 then I need to remind you of the limited purpose for
3 which that can be considered. And I know Ms.
4 Weckerly is gonna talk about it in her opening.

5 So evidence of crimes, not the crime
6 before you, cannot be considered by you unless you
7 first find that that crime has been proven by plain,
8 clear and convincing evidence. And if you do, then
9 evidence that the defendant committed offenses other
10 than the one for which he is on trial, if believed,
11 may be considered not to prove that he's a person of
12 bad character or that he has a disposition to commit
13 crimes, but may be considered only for the limited
14 purpose of proving his identity, knowledge, intent,
15 motive or absence or misstated accident in the case
16 before you. And you can consider this evidence like
17 all other evidence.

18 Now, it sounds kind of like
19 gibberish, but I guarantee you after a couple of
20 times of me telling you this and you kind of see how
21 it plays in, then it will make sense to you.

22 Ms. Weckerly.

23 MS. WECKERLY: Good morning. In his play
24 The Merchant of Venice, William Shakespeare once
25 wrote, Murder cannot be hid long, the truth shall

1 come to light.

2 And in a more modern twist in this
3 particular case, the truth about murder came to
4 light as a result of science.

5 Sheila Quarles never made it to her
6 19th birthday. She was killed about three months
7 before she turned 19. Her death wasn't easy and it
8 wasn't quick. She was sexually assaulted at the
9 time she was killed. She was strangled probably
10 manually with someone's hands and it would have
11 taken several minutes for her to die. She was also
12 drowned in the course of her death.

13 What was unusual about her case is
14 that her murder likely would have gone unsolved but
15 for the science of DNA evidence.

16 In March of 2005, Sheila Quarles was
17 living with her mother. Her mother's name is Debra.
18 And Debra had a nickname for Sheila and her nickname
19 was Pooka. Debra and Sheila lived at 1001 North
20 Pecos in a very small modest apartment. It was a
21 one-bedroom apartment.

22 At the time, Sheila was working at a
23 Starbucks in the convention center and Debra her
24 mother was working at the family food store.

25 Sheila had older brothers who lived

1 in town but not at the apartment.

2 During this time period, Sheila was
3 of course just 18 years old and she had a lot of
4 different social contacts. She had friends, she was
5 well liked at her work. She was involved in a
6 sexual relationship with a young man by the name of
7 George Brass.

8 Brass was sort of a friend of the
9 family. Sheila's mother Debra knows George Brass's
10 mother, she also lives at the apartment complex.
11 George Brass was also friends with Sheila's older
12 brother, a young man by the name of Ralph.

13 And George Brass had family members
14 who were also living in the apartment complex. His
15 uncle lived there, his mom lived there as I said and
16 he had a sister living there as well.

17 Now, in addition to seeing George
18 Brass, Sheila also had a sexual relationship with a
19 woman by the name of Quince Toney.

20 Now, as you might imagine or you
21 might understand or it might be not surprising to
22 you, her relationship and the nature of her
23 relationship with Quince Toney wasn't as opened as
24 it was with George Brass. Her mother Debra knew
25 sort of of the relationship, but she didn't know the

1 exact nature of it and Sheila didn't share a lot
2 about that relationship with her friends.

3 Like every other 18 year old young
4 woman, Sheila had a cell phone and she talked on her
5 cell phone quite a bit. And her cell phone becomes
6 important in this case because it sort of provides a
7 time line of the last few hours of her life.

8 In the few days leading up to
9 Sheila's murder, she had a minor health issue. She
10 went to the doctors and she was treated for a
11 bladder type kidney infection. Her mom took her to
12 the doctors, she got some blood work done on her and
13 she was prescribed simple antibiotics for treatment
14 of that infection.

15 On the evening of March the 23rd,
16 2005, which is the night before she was murdered,
17 Sheila left her mom's apartment and actually spent
18 the night at Quince Toney's apartment, the young
19 woman she was involved with. And Ms. Toney lived
20 with her mother.

21 Sheila's mother Debra stayed back at
22 the Pecos apartment on the night of the 23rd. She
23 socialized with other neighbors at the apartment
24 complex. One man in particular by the name of
25 Robert Lewis spent time with Debra Quarles on the

1 night of the 23rd.

2 On the morning of the 24th of 2005,
3 Sheila comes back home. Her friend Quince drops her
4 off at the Pecos apartment and her mom Debra is home
5 and sees Sheila arrive home at 6:00 in the morning.
6 Debra's getting ready for work but she sees her
7 daughter come home. Sheila's in good health, she's
8 in good spirits. Nothing unusual about when she
9 arrives home at 6:00 in the morning.

10 Sheila because she had this medical
11 issue was staying home from work that day. Her mom
12 Debra was going to work which meant that Sheila
13 would be in the apartment alone throughout the day
14 on the 24th of 2005.

15 Debra leaves for work and Sheila
16 with that cell phone is conversing with people
17 throughout the morning. She calls Quince Toney, the
18 young woman that she had spent the night with,
19 several times throughout day. Ms. Toney was at
20 work, but she works as a para transit bus driver so
21 she's driving elderly and disabled people all over
22 town.

23 And during the morning hours of
24 March the 24th of 2005, Ms. Toney speaks on the
25 phone several times with Sheila. At one point Ms.

1 Toney hears -- oops. At one point Ms. Toney hears
2 music playing in the background as she's talking to
3 Sheila. And that wasn't surprising to her because
4 Debra Quarles had recently purchased a new stereo
5 for the apartment. So Sheila's talking to her
6 friends Quince. She also talks to her mother
7 throughout the day a couple of times just checking
8 in with her.

9 The last person who has a
10 conversation with her or the last time Sheila
11 Quarles has a conversation is just a little bit
12 before noon on the 24th. The last time Sheila's
13 cell phone is used is at 1:35 in the afternoon. So
14 about an hour and a half later.

15 And what happens in that case is
16 Quince is called by Sheila's cell phone at 1:35, but
17 when Quince answers the phone, no one is on the
18 other side. And that's the last time that Sheila's
19 cell phone is used.

20 Debra got off at work at about 2:00
21 in the afternoon on the 24th of 2005. So that would
22 have been a little under a half hour after the last
23 time Sheila's cell phone is used.

24 And when Debra gets off work at 2
25 o'clock, she gives a friend a ride somewhere and

1 then she also stops at a grocery store to get some
2 groceries to take home to the Pecos apartment.
3 Debra arrives back at the Pecos apartment at a
4 little before 3:00 in the afternoon. So it takes
5 her just short of an hour after she's off work to
6 get back to the Pecos apartment.

7 And as she arrives at the Pecos
8 apartment, she's got some bags with her and she
9 honks the horn to get help carrying in her bags of
10 groceries. Sheila of course doesn't come out to
11 help her, but a neighbor by the name of Robert Lewis
12 comes down and helps Debra bring her bags into the
13 Pecos apartment.

14 Debra goes up to the door, the front
15 door of her apartment, and the door is closed but
16 it's not locked. And her friend Robert Lewis is
17 following behind her. As Debra walks into her
18 apartment, she notices something unusual, the stereo
19 that she had just bought the brand new stereo is
20 missing.

21 And as she is proceeding into the
22 apartment, she's calling out her daughter by her
23 nickname. She's calling out the name Pooka, but
24 she's getting no response.

25 And Debra will also tell you as

1 she's moving through the apartment, she has a sense
2 of moisture being in the air. She gets no response
3 and she goes inside the apartment further and
4 eventually gets to the bathroom area of the
5 apartment.

6 Once she's in the bathroom, the
7 shower curtain had been pulled shut. Debra pulls
8 the curtain back and finds her daughter submerged in
9 the bathtub with just a little bit of her face
10 outside of the water.

11 Debra falls backwards into Mr.
12 Lewis, she panics, she becomes hysterical and Robert
13 Lewis is actually the man that lists Sheila Quarles
14 out of the bathtub, and he and her mother put a
15 towel and a shirt over her.

16 Debra runs out of the apartment and
17 goes to a neighbor's house to call 911 to get
18 assistance for her daughter. She's so hysterical
19 that it's actually her neighbor who ends up making
20 the call. And then Debra leaves and goes to get
21 Sheila's brother Ralph who's at -- who lives near
22 by.

23 Paramedics arrive at the apartment
24 complex, but it's too late for them to render aid
25 and revive Sheila.

1 What was strange about Sheila's
2 appearance on the afternoon of her death was that
3 she had no apparent external injuries. There was no
4 gunshot wounds that was visible, there was no stab
5 wound that was visible.

6 There was stuff that was knocked
7 over in a very, very small bathroom so there was
8 speculation did she slip and fall and hit her head,
9 maybe she had a reaction to the medication she was
10 on, but that didn't really make sense either because
11 it was just simple antibiotics.

12 Underneath Sheila's body was her
13 clothing which was also a little bit unusual. Her
14 jeans were underneath her, a hair piece was
15 underneath her and her bra and undergarment was
16 underneath her. And those items were wet probably
17 from her getting pulled out of the bathtub and
18 laying on top of them.

19 In particular, her jeans looked
20 strange. Her underwear on her jeans were actually
21 pulled up but on the outside of her jeans. They
22 didn't appear as they would be if someone had taken
23 off their clothing by themselves and gotten into a
24 bathtub.

25 The next day Sheila's body was

1 autopsied and that gave quite a bit more clues about
2 what happened to her and what caused her death.

3 Externally there were two what we
4 would call superficial injuries to her body. She
5 had a bruise on her left abdomen and she had a
6 scrape on her knee.

7 Now certainly these injuries didn't
8 cause her death but they were contemporaneous with
9 her death, meaning they occurred at the same time as
10 her Beth death.

11 Her internal examination at autopsy
12 revealed quite a bit more about how she died. For
13 instance, she had two hemorrhages on her head on her
14 right scalp and she had several injuries to her neck
15 area. She had a hemorrhage on her esophagus. She
16 had a hemorrhage on the right side of her neck. She
17 had hemorrhages in the strap muscles near her neck.
18 She had a hemorrhage near the hyoid bone on her neck
19 and she had a hemorrhage on her larynx, all of which
20 are indicative of strangulation.

21 Her lungs at autopsy had fluid in
22 them which told the doctor that she had drowned and
23 had had water in her lungs before she had died.

24 One other very significant finding
25 at autopsy was that Sheila Quarles had lacerations,

1 multiple lacerations to her introitus which is
2 indicative of being a victim of a sexual assault and
3 those injuries were contemporaneous, meaning at the
4 same time as her death.

5 At autopsy, DNA samples were taken
6 from the vaginal vault of Sheila Quarles and those
7 were collected by crime scene analyst and eventually
8 were entered into a database.

9 Unlike TV, the entry of information
10 in databases in real life unfortunately doesn't
11 occur instantly and it's actually several months
12 before the data or the DNA evidence from Ms. Quarles
13 is actually put into the information database that
14 stores DNA.

15 So the police had this case where
16 they have a perfectly healthy 18 year old girl that
17 they now know was the victim of a sexual assault and
18 a murder at the time she died, but there was
19 certainly no obvious suspect available to the police
20 as they investigated the case.

21 They certainly considered the
22 possibility that Quince her lesbian girlfriend was a
23 potential suspect, but she had an alibi. She was at
24 work at the time that Ms. Quarles was killed.

25 They also even considered well maybe

1 her mother is a possible suspect and maybe she
2 didn't approve of their relationship with Quince,
3 but Ms. Quarles was also at work and had an alibi at
4 the time Sheila was killed. And the fact that there
5 was a missing stereo didn't really seem to fit with
6 a crime committed by her mother.

7 Remember, the mom's friend Robert
8 Lewis who helped take Sheila out of the bathtub,
9 well, he was considered a suspect as well. The
10 police collected a DNA sample from him and
11 ultimately compared it to the DNA collected from
12 Sheila Quarles vaginal vault taken at autopsy and he
13 was eliminated as a source of that DNA. So he was
14 eliminated as a suspect.

15 The police spent time talking to
16 Debra Quarles, Sheila's mother, about who might have
17 done this to her daughter. And really she was an 18
18 year old girl who went to work and she was well
19 liked. Ms. Debra Quarles couldn't identify anyone
20 who might have a grudge against her, any enemies and
21 she wasn't really able to provide them with a
22 suspect.

23 And to be fair at the time,
24 obviously it was a really emotional time for Debra
25 Quarles, but she and the police were unable to

1 really formulate who might be a suspect in the case
2 of Sheila Quarles murder.

3 So the case sort of goes cold for
4 the next several weeks. They know they have DNA
5 evidence and they know that she was sexually
6 assaulted at the time of her death. The analysis of
7 the semen collected from Sheila Quarles's vaginal
8 vault at the time of autopsy indicated that there
9 were two male sources of DNA in her at the time of
10 her death.

11 They contact Debra, did she know of
12 any boyfriends that Sheila had at the time. And,
13 you know, Sheila's like a lot of 18 year olds, maybe
14 isn't telling her mother everything she's doing, and
15 there really isn't a suspect identified by Debra.

16 They pull Sheila Quarles's cell
17 phone records to see who she was in phone contact
18 with. And on the day of the murder, she's in
19 contact with Quince and her mother Debra just as
20 they had indicated to the police.

21 So not much happens in the week
22 following the murder that's productive in terms of
23 identifying who is responsible for Sheila Quarles
24 murder.

25 But about six weeks later on May the

1 3rd of 2005, actually it's about five weeks later,
 2 the police learn about an event that gives them more
 3 information about the identity of the person who
 4 killed Sheila Quarles. It gives them information
 5 about the motive of Sheila Quarles's killer and it
 6 gives them information about the intent of Sheila
 7 Quarles's murderer and also it gives them
 8 information about the nature of the sexual assault
 9 that took place on Sheila Quarles.

10 On May the 3rd of 2005, a 45 year
 11 old woman by the name of Marilee Coote was working
 12 at the Andre Agassi school. She lived at 6650 East
 13 Russell which is obviously an apartment complex.

14 And on the 3rd of May, she didn't
 15 show up for work on time. And her co-workers were
 16 very concerned about that because she was a very
 17 responsible employee. So they called her apartment
 18 managers at the East Russell apartment and they
 19 asked them to do what's called a welfare check. Go
 20 knock on the door, make sure she's okay.

21 The manager of the apartment at that
 22 time is a young woman by the name of Monica Ramirez
 23 and she and another co-worker get the call to go do
 24 this welfare check on Marilee, and she and the other
 25 employee go up to Marilee's apartment. And they

1 have a master key. They knock on the door and get
 2 no response. And they have a master key that let's
 3 them into the apartment.

4 When they go inside Marilee's
 5 apartment, they find Marilee Coote laying on her
 6 living room floor completely naked, face up. They
 7 find her completely unresponsive and they call 911
 8 to get emergency responders to come to the scene.

9 Very similar to Sheila Quarles,
 10 Marilee Coote had no outward signs of injuries. She
 11 certainly didn't have a gunshot wound or a stab
 12 wound.

13 One very unusual thing though about
 14 the condition of Marilee Coote was that her inner
 15 thighs and her pubic hair had been burned. It was
 16 singed and there was incense on top of her, but she
 17 didn't have anything externally that told the police
 18 how she may have died.

19 A couple other odd things in Marilee
 20 Coote's apartment, when they looked into the
 21 bathroom of the master bedroom, they found several
 22 items of paper and personal property of Marilee
 23 Coote submerged in water. In her laundry room, they
 24 found ice cube trays, wallets and other items of
 25 personal property that had looked like they had gone

1 through a wash cycle at her apartment.

2 Marilee Coote was also autopsied the
 3 next day. And similar to Sheila Quarles, her neck
 4 internally, the damage indicated that she had been
 5 strangled. Also similar to Sheila Quarles, she had
 6 injuries to her vaginal area which was indicative of
 7 sexual assault.

8 Now one other piece of evidence that
 9 the crime scene analyst collected at Marilee Coote's
 10 apartment was a piece of carpet underneath which
 11 underneath where her legs would have been, the top
 12 of her legs where she had been laying on the carpet
 13 area of her living room. And of course they also
 14 collected vaginal swabs from the body of Marilee
 15 Coote at autopsy.

16 Through the, through investigation
 17 the police obtained a sample of the DNA of the
 18 defendant Norman Flowers. And from that sample of
 19 DNA, they're able to generate his particular genetic
 20 profile. So they learn what his genetic profile is,
 21 they compare that to the vaginal swabs that were
 22 collected from Marilee Coote and the carpet stain
 23 that was collected from her apartment and he is an
 24 exact match.

25 The frequency or how common his

1 genetic profile is in the population is rarer than
 2 one in 600 billion people. So scientifically or to
 3 a near scientific certainty, he was the source of
 4 the DNA inside of Marilee Coote and he is the source
 5 of the DNA of the carpet stain.

6 So how does that relate to Sheila
 7 Quarles' murder? Well, once they obtained the
 8 defendant's genetic profile, his profile was entered
 9 into that database that stores DNA. And once it was
 10 entered into that database, the database revealed
 11 that his profile was consistent with one of the male
 12 sources of DNA taken from Sheila Quarles at autopsy.

13 They go back to Debra Quarles and
 14 they talk to her and ask her well, do you know
 15 anyone by the name of Norman Flowers. And oddly
 16 enough she did. Debra Quarles, Sheila's mother, had
 17 actually dated Norman Flowers several months before
 18 Sheila's murdered and she also told the police about
 19 some interactions that she had with the defendant
 20 Mr. Flowers after her daughter's murder.

21 For instance, the defendant was very
 22 interested in helping Debra Quarles cope with the
 23 grief of the murder of her daughter. He
 24 specifically helped her find a psychologist and he
 25 would drive her to her appointments with a

1 psychologist where she was meeting with the doctor
2 obviously over the grief of losing her daughter.
3 And he always would ask Debra if -- for updates on
4 the case. Did she they ever find out who killed
5 your daughter, have they ever found out who killed
6 your baby.

7 So once the police had the DNA
8 identified or one of the sources of DNA identified
9 from Sheila Quarles's autopsy from her vaginal
10 swabs, they certainly had a question. Well, who is
11 the other source of the DNA, was there someone else
12 involved in this sexual assault and murder.

13 So the police sort of go back to
14 square one and they start looking at Sheila
15 Quarles's cell phone records and they start calling
16 her girlfriends who obviously are not the source of
17 the DNA, but they start questioning them who is
18 Sheila hanging around with, do you know any of her
19 friends.

20 And some of her girlfriends kind of
21 come clean at that point and say, well, Sheila was
22 actually sleeping with or sort of had a casual
23 sexual assault with George Brass, the young man who
24 the family knew.

25 So the police then go to George

1 Brass, they ask him did you have sexual contact with
2 Sheila Quarles on the morning that she was killed
3 and Mr. Brass says yes, I had sex with her the
4 morning of the 24th and then guess what I did after
5 that, I went to go work at Wal-Mart.

6 Obviously the police at that point
7 want to verify whether or not he was really at
8 Wal-Mart so they go to Wal-Mart and they pull his
9 employment records. And sure enough, George Brass
10 had checked into work at Wal-Mart at about noon on
11 the 24th of 2005 which is before the time of Sheila
12 Quarles's murder. So Brass had an alibi. He wasn't
13 involved in Ms. Quarles's murder.

14 By the end of this investigation,
15 the police were able to determine sort of hour for
16 hour the contact with various people that Sheila
17 Quarles had in the hours leading up to her death.

18 They were able to determine that the
19 sexual assault of her occurred at the same time or
20 contemporaneous with her murder. They were able to
21 find out that the perpetrator of her sexual assault
22 and murder committed a nearly identical crime five
23 weeks later where he sexually assaulted someone and
24 where he strangled someone. And they were able to
25 determine that in both cases a stereo and sort of

1 miscellaneous property was taken from both the
2 victims similar to each other. And of course they
3 were able to determine that the person responsible
4 for these two sexual assaults and murders was the
5 defendant Norman Flowers.

6 And after you hear the evidence in
7 this case, we will ask you to hold him accountable
8 for his conduct

9 THE COURT: Thanks. Mr. Pike.

10 MR. PIKE: Thank you, Your Honor. I'm
11 going to need the, the ease I guess from back
12 there.

13 THE COURT: Sure.

14 THE COURT: By the way, before you start
15 Mr. Pike, you know, I always tell you don't read,
16 watch or listen to any report on the case. In the
17 second row here is David Pierre. He's the
18 courthouse reporter for the R.J. So I'm guessing
19 tomorrow in the Nevada section they'll be an
20 article. So if you just set that section aside,
21 please, you can read the rest of the paper.

22 Go ahead, Mr. Pike.

23 MR. PIKE: Thank you. May it please the
24 court, ladies and gentlemen of the jury, madam
25 prosecutors, Mr. Patrick and Norman. As you've

1 heard in this case, a young woman died. And it's a
2 horrific thing. And she was found by her mother and
3 that was a horrific thing, too.

4 And in cases like this, emotion runs
5 really high and you'll feel that. The facts will
6 show that the emotions ran really high, the facts
7 will show that when Debra came home she screamed,
8 she was yelling, she was concerned. And that
9 emotion is something that will come in into this
10 trial and you'll feel. And we acknowledge it. We
11 acknowledge it right at this point in time, we'll
12 acknowledge it throughout the trial.

13 Emotion sometimes overclouds
14 reasoning. Emotion sometimes prevents a reasoned
15 investigation. And when you jump to a conclusion
16 because of emotion, that conclusion can be, and in
17 this case the facts will tell us what's wrong.

18 The court indicated that you have an
19 obligation in looking at both of the cases. You
20 have to determine number one whether that unproven,
21 just discharged pending case is proven by a clear
22 and convincing evidence and can only be used for
23 identity for motive.

24 Well, if that, if you find that it's
25 proven to that level, then you can consider it. It

1 isn't a full-blown trial. If you don't find that,
2 then you have to not consider it. But you all
3 agreed that you follow the law so that's what you're
4 going to have to do that with that.

5 The facts are gonna show that there
6 were actually four investigations. The first
7 investigation is at the scene. The police come out
8 to the scene, they've got a dead body, a young
9 woman, and they start an initial investigation. I
10 didn't do that.

11 They talk to the people that are
12 there. They talked with Robert Lewis, they talked
13 with Debra Quarles, they talked with Ebony Lewis who
14 is also related.

15 They go to an apartment complex that
16 was located at -- and it was kind of situated like
17 this.

18 For the intense of this, this
19 portion or for the argument, you'll see the
20 photographs, but please allow for my drawings, this
21 is the apartment where Pooka lived with her mother
22 Debra. This is -- we've got the Lewises living over
23 here. Ebony was visiting. They're related to
24 George Brass. George Brass and Robert Lewis are
25 related. Robert Lewis is here. Robert Lewis's

1 relationship with, with Debra Quarles her mother.

2 And so we've got the Lewises here,
3 the Lewises here and then up on the second story and
4 there's a gang, a gang way, kind of a connector that
5 goes across from one building to the next and stairs
6 going down, stairs going down there. We've got the
7 Sanchezes and Ms. Sena. And they were living there
8 and they have some windows right here. So they can
9 look down and see right through that area.

10 There was Alfonso Simms -- Alfonso
11 Sanchez, a cousin Jessie Nava and Natalia. Natalia
12 is interviewed up there. She was looking down.
13 We'll come to her later, but they just interview the
14 people at the scene.

15 At that point in time, Robert Lewis,
16 although he was related to, to George Brass, George
17 Brass, Jr., and George Brass, Sr., and have been
18 there, doesn't tell the police that George Brass was
19 around, had anything to do with it that day. Nor
20 does any other of George Brasses relations who are
21 all of the Lewises.

22 The second investigation with the
23 DNA -- and the DNA comes in as a minor component of
24 a combination DNA and that identifies or does not
25 exclude Norman Keith Flowers. He goes by the

1 nickname Keith.

2 The first investigation at the scene
3 the very brief. You'll see that. The facts are
4 going to show that.

5 The second investigation says okay,
6 well, it doesn't exclude him so that means he's our
7 target. And as the State indicated, the facts will
8 show that happened a couple months later.

9 Nothing happens for three years.
10 Then the police go back and they start making
11 telephone calls. Then based upon a further cousin
12 that's away that doesn't live here, then they get
13 the name of George Brass.

14 The facts are going to show
15 basically for three years George Brass remained
16 hidden from the police's view and hidden by his
17 family.

18 That third investigation then leads
19 to the fourth investigation. And that fourth
20 investigation says well, all right, if George Brass
21 admits to having sex with her, admits to coming
22 over, and admits to having sex with her on the floor
23 that, that morning or afternoon, because the alibis
24 that the State is indicating is not all it seems to
25 be. And the facts will show that it is not in fact

1 a true alibi. But it also shows giving an
2 opportunity well, who is George Brass's friends, who
3 did he associate, who was around there.

4 And when you get some photographs of
5 those people and let's go look and talk to the
6 witnesses, let's, let's start the investigation all
7 over again. Because it didn't start all over again.
8 It started and stopped with George Brass.

9 And the facts are going to show that
10 that basic investigation consisted of the detective
11 going over talking to George Brass for about 10
12 minutes before he turned on the recorder and saying
13 hey, you're not a suspect on this, but your DNA, we
14 think your DNA will match this, but we're not gonna
15 charge you with it. And so then he comes, as they
16 say, clean.

17 And the facts are going to show that
18 often it isn't just the first statement, the
19 statement that the police get. It's a second
20 statement when our investigators go out and talk
21 with him, when other people talk with him. When you
22 compare it against other people's witnesses that
23 you'll, that the truth starts to develop. And
24 that's, you can relate that to common sense. If
25 you've got two kids that are fighting, you want to

1 listen to both sides and you may want to go back and
2 ask additional questions after you find out more
3 information.

4 And the radio. Well, the radio is
5 the basis for the robbery, cell phone, the radio and
6 other personal property. And that investigation
7 goes on.

8 Did the police go in and investigate
9 and go to the pawn detail. Did they check the local
10 pawn shops. Did they go to EZ Pawn. Did they find
11 that Robert Lewis was a frequent individual that
12 would pawn items during that period of time or would
13 drop on. Basically sell items that he didn't intend
14 to get back and often that was women's jewelry.
15 Well, that never happened until the fourth
16 investigation.

17 The neighbors weren't reinterviewed.

18 Now, when you're surrounded by a
19 family and if you're afraid of that family and the
20 facts will show that there may well be reason to be
21 frightened of the Lewises, then, then the police are
22 coming into your apartment and subjecting you and
23 your children or your family or yourself to
24 problems, the first interview at the scene may not
25 be a very good interview. And so you go back. But

1 the police never did. And therein, as Shakespeare
2 would say, therein lies the road.

3 The investigation never continues.
4 So this murder most foul was never brought to light
5 of day and that's what this trial was all about.
6 Because it will.

7 Now, their theory, sexual assault,
8 there's no report filed, murder. They're
9 subscribing or attempting to bring in the motive or
10 the intent by bringing in the Coote case.

11 There is no individual motive that
12 the facts will demonstrate that Keith have towards
13 Pooka. In fact, he showed concern. He took her
14 mother for treatment. He showed concern about the
15 family. They subscribed that as a bad thing, but
16 George Brass who had sex with her that morning
17 didn't do anything except remain hidden. And that's
18 what the facts will show about George Brass.

19 And he remained hidden by Robert
20 Lewis, George Brass, Sr., who was there and he
21 remained on the outskirts. And basically the facts
22 will show that he showed no concern. He did nothing
23 for that family and never came back into.

24 The evidence shows that there was a
25 burglary, there was a robbery. Somebody went in and

1 stole that stereo. Somebody went in and stole those
2 items. The stereo was never found in Norman's
3 possession.

4 The physical evidence, the DNA,
5 you'll hear a lot about that and you're gonna learn
6 a lot. And that will be a very interesting part of
7 the trial. You're gonna learn about acid
8 phosphatase evidence, the amount of DNA that can
9 come in and the report from the CSI or the DNA
10 investigator Paulette that Norman Flowers cannot be
11 excluded as a possible minor contributor. Possible
12 minor contributor has, has impact by the way that is
13 investigated.

14 It shows there was a hot prowl
15 burglary or a robbery. The facts will show that
16 this case is consistent with somebody coming in
17 while she is getting into the tub or somebody came
18 in.

19 And then if, if they believe, if the
20 State believes that there was a sexual assault that
21 occurred in that premises at that time, there's ways
22 to investigate that. We'll talk about that in just
23 a minute. But that didn't happen in this case.

24 The room was disturbed, the radio
25 taken. This unknown fingerprints on these CDs.

1 Because there were a lot of CDs and they were taken.
2 Some latent prints of value remain. That's on the
3 report of Metro Officer Boyd. There were
4 unidentified fingerprints that do not relate to
5 Norman Keith Flowers. The wires were not tested for
6 any DNA to see if somebody went and yanked them out
7 and left any of their skin to determine that.

8 The light testing. If there was a
9 sexual assault that occurred, you notice that the
10 State in explaining or bringing in the Coote case
11 indicated that there was a stain on the carpet that
12 was tested, and that gave them some evidence.

13 In this case, George Brass in his
14 statement to the police and in subsequent statements
15 indicated that he went back into that apartment, the
16 Quarles' apartments and he had sex with Pooka on the
17 carpet, on the floor. There was never any testing
18 done like that, there was nothing done for the DNA
19 on that carpet to determine whether or not that
20 sexual contact had occurred in that apartment with
21 Keith or with anyone other than George Brass.

22 The follow-up investigation three
23 years later as I indicated, the police were given
24 access to the code by Quince Toney of Pooka's cell
25 phone. There was no report in relationship to that.

1 Where there any messages left on the phone. Who may
2 have been calling and left a message because we know
3 that there were other phone calls that were made
4 during that period of time.

5 Other items. Did they check the
6 pawn records, pawn detail, no, sir.

7 The stereo that was stolen was an
8 ITS 001. It was a stereo that had detachable
9 speakers. It is a three-part component. It was
10 never found in Norman's possession. The neighbors
11 were aware of the new stereo because it was new,
12 they were breaking it in, they were turning it up.
13 Actually there had been a number of people listening
14 to it the night before this happened.

15 And who saw it? Who saw it after
16 Sheila's death?

17 Now, these photographs were taken of
18 a search of Keith's apartment where he resided with
19 his sister. Well, as you can see from there,
20 there's his stereo. That's a detective. And they
21 went through. They searched his premises and
22 nothing came from that search that related to this
23 incident. No cell phone, no stereo, no property.
24 Clothing wasn't torn, was there evidence of signs,
25 signs of struggle in the apartment like this. Had

1 been a big fight? The facts don't support that.
2 The pictures don't support that. You'll have to
3 look and determine that.

4 And there was a lack, a certain lack
5 of time for the perpetrator to have done this. She
6 had an enhanced susceptibility to choking because
7 she also suffered from asthma.

8 Now, this is a picture of the
9 bathroom. You've already seen a picture in
10 relationship to that. The fact that her clothing,
11 her hair piece was off, I haven't worn a wig since
12 the '60s when I had to wear a short hair wig for
13 work because I had long hair back in the '60s, so I
14 don't know if a woman takes her hair piece like that
15 off when she is going to take a bath or not. I'd
16 assume so. That's your, that's where your common
17 sense comes in. And you talk with that in the jury
18 room when you're deliberating this.

19 It doesn't necessarily prove that
20 the motive of this crime was a sexual assault at
21 all. The DNA evidence cannot answer this question.
22 The presence of DNA alone does not mean sexual
23 assault. The presence and -- the presence and
24 otherwise, you have a sexual assault on George
25 Brass. With his DNA and with the DNA that they've

1 identified as -- and he admitted is his and that he
2 had sex with her within one to three hours or at or
3 around the time of her death does not mean robbery.
4 The DNA does not mean murder.

5 The DNA in this case doesn't even
6 show where the intercourse occurred because there's
7 no DNA on the floor or tested anywhere else to
8 determine. And it was just never collected.

9 The question to the physical
10 evidence can and you'll answer with this that
11 Quince -- I call her Quince. Maybe I should just
12 call her QT. Was not present. She was making phone
13 calls. The stereo was stolen, the ripped wires that
14 an unknown person or as yet unidentified person
15 handled the CDs.

16 Physical evidence established the
17 last person to be intimate with Sheila would be the
18 presence of the most DNA, presence of the active
19 spermatozoa, I guess spermodal, they still have the
20 tails and they move and the acid phosphatase. And
21 that's from the experts and you will hear about
22 that.

23 As I said, the investigation at the
24 scene, there were not lights that were used to
25 determine where there may have been DNA. The

1 failure to collect potential evidence was destroyed
2 by the manner in which it was not, it was not
3 investigated.

4 And as a result of that, the facts
5 will show that the experts in this case could not
6 reach decisions or important decisions in this.

7 The clothing that was collected was
8 just that DNA or the clothing that was there in the
9 bathroom. And why is that fact important? Well, if
10 they had gone in and collected the dirty clothing
11 the used clothing, then the DNA matches on the
12 panties from the day before, it may have been
13 embarrassing. They didn't take it. We don't know.

14 All we know is that apparent from
15 the physical evidence that we have that as I
16 indicated, that the clothing was not torn, there
17 wasn't any DNA under the fingerprints, the floor
18 wasn't processed. Let's see. I'm sorry. The DNA
19 evidence was done through a match through CODIS.

20 And the family members never told
21 them. Again, they kept him hidden. It's an ongoing
22 investigation.

23 The processed Gatorade bottle and
24 the compact disc, nuts, Slim Jim and except for a
25 relaxing bath, the facts will show this is just as

1 consistent with somebody coming to commit a
2 robbery, finding her in the tub and then reacting to
3 that. So I'm gonna go ahead and commit that robbery
4 and I'm gonna get those items, push her down into
5 the tub and choke her. That -- the facts are just
6 as consistent with that.

7 Now this is George Brass. He gave a
8 recorded statement on August 12th, 2008. As was
9 indicated, he gave that information. He said he
10 left her around noon. He said that Robert Lewis was
11 outside. So Robert Lewis who had spent the night
12 with Debra, who had hung around all day, who lived
13 here and had family here and in fact who had been,
14 had his swabs taken at the scene was outside, at
15 least according to George Brass, when he left. And
16 he saw Robert Lewis before and after he left the
17 apartment.

18 Importantly during the course of
19 that interview, he says that George Brass says I
20 left work without checking out. And amazingly
21 however, his records show that somebody checked in,
22 somebody checked out. We don't know that that's
23 him. We know according to his statement that he
24 didn't check out, but that time frame shows that
25 somebody did. So this whole issue of an alibi is

1 not an airtight, it's not secure and that's -- and
2 you're gonna have to look at that and make the
3 factual decisions based upon that.

4 Who's he related to? Robert Lewis,
5 son of George Brass, Sr., related to Ebony, related
6 to Bland. He said he had long-term relationship
7 with Sheila. He said it was for two years that he
8 had been having sex with her. For two years. His
9 mother didn't know about that. So is that true?
10 That's a fact also that you're gonna have to decide.

11 We talked about the carpet. We'd
12 get a better idea for the movements. The facts are
13 we can't recreate it because that was never taken.

14 Despite the identification of Brass,
15 the facts will show that they never re-evaluated the
16 neighborhood, there was never -- there was never a
17 follow-up to determine whether or not there were
18 witnesses that could determine or could testify that
19 Pooka was having consensual sexual relationships
20 with Keith.

21 But there were, there was in her
22 apartment a letter that she had written to an old
23 boyfriend Will. That letter was impounded. And
24 Will was in the Clark County jail at that time. He
25 wasn't interviewed by the police, but during the

1 time he was interviewed, and he will be brought in
2 and testify, that he had talked with her about that
3 and said that yes, she had a boyfriend by the name
4 of Keith. Will knew about him, but he was never
5 interviewed. The complete cycle never completed.
6 That's the picture of the letter that will be
7 brought in.

8 We've talked about the neighbors
9 before.

10 Afterwards, you see there's some
11 pictures. The police are going around and they're
12 talking to different individuals.

13 The facts are gonna show that while
14 the police were there conducting that investigation,
15 that George Brass came back to the apartment, didn't
16 volunteer, didn't go forward, didn't talk to the
17 police and give them any information about the facts
18 that he had been with her sexually whether
19 consensually or not. And another relative of his,
20 Mr. Culverson, came to the apartment.

21 Now, this is the time line from the
22 phone calls. And they say this was a Post-It, but I
23 didn't think it was gonna be this hard. I didn't
24 know it was gonna be large enough so I put it on
25 here. This is basically the same thing as that.

1 So we've got the time line. There
2 was a party from 9:00 to 10 p.m. That was verified
3 by Ebony. And Robert Lewis, Sr., -- or Robert Lewis
4 was there, George Brass, Sr., was there, other
5 people, that lasted from 9:00 to 10:00.

6 Now, in that same apartment complex,
7 there was a burglary that occurred between 1:00 and
8 2:00 a.m. There were witnesses to that burglary. A
9 Martha Valdez in particular saw the person that
10 committed that burglary. She was never
11 reinterviewed and was never shown any photographs
12 until the fourth stage of the investigation.

13 Sheila spent the night with Quince
14 Toney, Quince, I'm sorry, and she came home
15 according to the telephone conversations at 5:57.
16 She called her mom and said I'm on my way home.
17 That's what we can infer from those facts.

18 She's at home, she's got -- her mom
19 goes work, she has incoming phone calls. And if you
20 just see a time frame that was involved, then it
21 means it was a one minute and either nobody picked
22 up or it just went to the message. And those
23 messages were not preserved so we don't know who
24 called or what left.

25 We know she called her mother,

1 Sheila arrives home at 6:00. Debra had to be at
2 work at 7:00 and the calls start at about 7 o'clock
3 in the morning.

4 We also know from looking at the
5 records from the daycare where, where Keith drops
6 off his son, that he did not drop him off that day.
7 So he was available for if they wanted to meet.

8 Then we go forward in reference to
9 the time frame of that day based upon the framework
10 of the cell phone records. Got an incoming phone
11 call. She's talking to somebody at 8:25. 8:35.
12 She gets a bunch of phone calls from about 9:52, 54,
13 55. Debra was talking with her at that time and so
14 we bring in the individuals to show what the
15 conversation was and who was talking, what they were
16 talking about to con -- compare and confirm. So
17 that was her grandfather calling back because her
18 grandfather was gonna take her over to the doctor.

19 Now, around 11 o'clock, according to
20 George Brass, he, he comes over and he's informed,
21 he's told by Robert Lewis that Pooka is alone, he
22 goes in, sees her and says, he says that at that
23 point in time that they have consensual sex.

24 During that period of time, there's
25 some incoming phone calls. That means there's

1 conversations for four minutes, for 13 minutes that
2 are going on. And about 11:45, Debra indicates that
3 she talked with her and said that Pooka was
4 preparing lunch.

5 George Brass says he leaves sometime
6 during that, that period and Robert Lewis is outside
7 of the apartment.

8 Then Natalia comes home after 12:00
9 noon as opposed to the time when George Brass has
10 supposedly checked into work. She goes up to her
11 apartment which is upstairs, she's looking down the
12 stairs and she sees George Brass. She knows him by
13 the name of Chicken. That's his nickname, and
14 that's how a lot of people know him. She sees him
15 there with another individual by the name of Fowler
16 who is an acquaintance of George Brasses. And she
17 remembers it because he talks with her.

18 She also saw somebody in Sheila's
19 apartment after 12 o'clock. She describes a tall,
20 dark, really dark black man, skinny. Same person
21 she talked to about some weed earlier. She sees a
22 couple of guys around the apartments and one
23 knocking on the door. And that's in her statement
24 to the police on that day at that time.

25 After that, there's some incoming

1 phone calls. We know Quince is talking to her about
2 12:15. And at 12:35, there's a three minute
3 telephone call and the telephone number of 245-9401
4 is Quince Toney's conversation, talks about the
5 grandfather comments. And that fits in with the
6 information that is given by Debra during that
7 period of time.

8 At 1 o'clock Ebony who is across the
9 way leaves her door opened because her children are
10 outside there. And she didn't hear anything. At
11 that time it was when Natalia sees a really dark
12 black guy coming out of the apartment looking around
13 like he doesn't want to be seen. And that's in a
14 statement to the police and the follow-up statements
15 that she also gives.

16 Incoming calls, incoming calls. And
17 then this suspicious telephone call that the State
18 talked about where it's a call to Toney, she heard
19 music in the background, but no one ever talked.
20 And after that, the cell phone drops off. It's
21 gone.

22 At 2 o'clock Debra is, is off work.
23 She's on her way home, she's gonna stop and pick up
24 some groceries. And unfortunately the facts are
25 consistent with the facts or with an interpretation

1 that Pooka was getting ready to take a bath, she
2 knew that her mom was gonna come home from work with
3 groceries and left the door unlocked so she'd be
4 able to get in.

5 And that would have allowed an open
6 avenue for somebody to come in and commit this
7 hostile burglary.

8 And at 2:51, Debra comes home, finds
9 Sheila in the tub.

10 Now what happens is later that day
11 the police come and they arrest Natalia on a
12 completely unrelated offense upstairs.

13 And three days later, Natalia comes
14 back. She's released and she comes back to her
15 apartment. And during her interviews, in the fourth
16 course of the interviews, she is talking about who
17 was around.

18 She came back from town, she was
19 talking to Jessie Nava who is related to her, the
20 husband -- or her common law husband I guess you can
21 say that. And he has a stereo with the separate
22 speakers. And she questions him about that. He
23 told her he got that radio from the girl downstairs.
24 But the police have never come back, they didn't do
25 a lineup, they didn't come back. They talked with

1 him. Maybe they talked with her but didn't listen.
2 They didn't give her an opportunity to tell them
3 everything. But that's what she said.

4 So we get a picture of Jessie Nava
5 and we continue on with the investigation.

6 Well, then what happens is we go
7 back to Marcia Valdez. You saw the person that was
8 going around committing these burglaries, this
9 burglary this night, 1:00 to 2:00 a.m. that day.
10 What was he like. Jessie Nava, we have a photograph
11 of him. That's him, that's him.

12 We go back to the management, you go
13 to the management and ask them do you know this
14 person. Yes, he hung around here. He committed
15 burglaries, he stole things, he threatens people.
16 The manager calls him the devil.

17 The police aren't listening, they're
18 not investigating. They've made their mind up and
19 they made it up with the DNA and the emotional of --
20 emotionality of that other offense.

21 It's a mistake. Don't let it happen
22 to you. Who do we trust? The witness is not
23 related to Flowers, not related to Lewis and Brass.
24 The people don't have any sort of a dog in the
25 fight, the people that are doing what's right.

1 With that trail and with the
2 evidence that's presented, you're gonna have a
3 reason, conclusion and the result of that to find
4 him not guilty. Thank you very much.

5 THE COURT: Thanks. State, call your
6 first witness.

7 MS. LUZAICH: The State will call Dr.
8 Simms.

9 (Whereupon, Dr. Lary Simms was duly
10 sworn to tell the truth, the whole
11 truth and nothing but the truth.)

12 THE CLERK: Please state your full name,
13 spelling your first and last name for the record.

14 THE WITNESS: My first name is Lary
15 spelled L-a-r-y. My last name is Simms, spelled
16 S-i-m-m-s.

17 DIRECT EXAMINATION

18 BY MS. LUZAICH:

19 Q. Sir, how are you employed?

20 A. I'm a forensic pathologist at the Clark
21 County Coroners Office.

22 Q. What is a forensic pathologist?

23 A. Well, pathology is generally just the
24 study of disease. Forensic pathology is -- deals
25 with violent death. That would be homicide, suicide

1 and accident.

2 Q. How long have you been a forensic
3 pathologist?

4 A. I started doing forensic cases in '91 or
5 '92. I can't remember exactly. So it's 16, 16
6 years or so.

7 Q. Okay. Can you describe for the jury,
8 please, the training, education you have that
9 qualifies you to do what you do?

10 A. Well, I'm a licensed physician, been in
11 medicine 30 years. I went through pathology
12 residency training at Michigan State University, and
13 I went through specialized forensic training at the
14 Cook County Medical Examiners Office in Chicago.
15 And I'm board certified in anatomic pathology,
16 clinical pathology and forensic pathology.

17 Q. In the course of your employment with the
18 Clark County Medical Examiners Office, approximately
19 how many autopsies have you conducted and/or
20 participated in?

21 A. That I conducted, at this date probably
22 about 5,000.

23 Q. At the Clark County Medical Examiners
24 Office are there several different forensic
25 pathologists that work there at any given time?

1 A. Yes. The staff usually when I started, I
2 think there was three and then it usually is around
3 four or five.

4 Q. And are you familiar with the other
5 pathologists who are there and their work?

6 A. Yes.

7 Q. Have you testified as an expert in the
8 area of forensic pathology in the Eighth Judicial
9 District Court?

10 A. Yes.

11 Q. On how many occasions?

12 A. Several hundred at least.

13 Q. Okay. Are you familiar with a doctor by
14 the name of Dr. Ronald Knoblock?

15 A. Yes.

16 Q. Was he also employed as a forensic
17 pathologist at the Clark County Medical Examiners
18 Office?

19 A. Yes.

20 Q. Do you recall about when that was?

21 A. That would have been probably between
22 2002 and 2004. Right I think in that area or 2003
23 and 2005. One of those two, two year periods.

24 Q. It could have been 2005?

25 A. Yes, it could have been as late as 2005 I

1 thipk.

2 Q. And did you work with him when he worked
3 at the medical examiners office?

4 A. Yes.

5 Q. Do you know was Dr. Knoblock certified
6 and educated as you are?

7 A. Yes. As a matter of fact, we both went
8 to -- we both were trained at the Cook County
9 Medical Examiners Office in Chicago, and yes, he was
10 board certified.

11 Q. In fact, he would have had to have been
12 to become a Clark County medical examiner?

13 A. No, he doesn't have to be, but I know
14 that he was.

15 Q. Okay. And is it your understanding that
16 Dr. Knoblock performed an autopsy on a decedent
17 known as Sheila Quarles on March 25th of 2005?

18 A. Correct.

19 Q. Does Dr. Knoblock still work with the
20 Clark County Medical Examiners Office?

21 A. No.

22 Q. Has he left a couple of years ago in
23 fact?

24 A. Yes. Yeah, it had -- if this was done in
25 March of '05, he probably left just about three

50

1 months later.

2 Q. Do you know what he left to do?

3 A. He went to specialize training in haemato
4 pathology, blood pathology, and then he works at
5 Sunrise Hospital here in town.

6 Q. So he went to continue his education
7 doing other things?

8 A. Correct.

9 Q. And did you -- is it the practice of the
10 medical examiners at your office to prepare reports
11 right after conducting autopsies?

12 A. Yes.

13 Q. And when autopsies are conducted, are
14 photographs taken in conjunction with those
15 autopsies?

16 A. Yes.

17 Q. And in preparation for coming here today,
18 did you review the report prepared by Dr. Knoblock
19 regarding his autopsy of Sheila Quarles?

20 A. Yes.

21 Q. Did you also review photographs that were
22 taken during the autopsy of Sheila Quarles?

23 A. Yes.

24 Q. Did Dr. Knoblock perform an external
25 examination of Sheila Quarles first?

1 A. Yes.

2 Q. And did he find her to be a black female
3 approximately 18 years of age?

4 A. Yes.

5 Q. And in otherwise, other than the fact
6 that she had was deceased, in otherwise good health?

7 A. Yes. She didn't have any -- at the end
8 of the autopsy, he had not found any natural
9 disease, no.

10 Q. During the course of his conducting an
11 external examination, can you describe for us what
12 he founds?

13 A. He found a number of findings. Indicated
14 that she had been asphyxiated. He also found some
15 bruising on her abdomen, abrasion on her knee, and
16 he also found in the vaginal area some lacerations.

17 Q. You talked about -- well, let me go to
18 the vaginal area first. You talked about
19 lacerations in the vaginal area.

20 Can you please describe what you
21 mean by that?

22 A. There were tears in the lining of the
23 vagina right at the, at the opening.

24 Q. And is that consistent with anything in
25 your opinion?

52

1 A. Sexual assault.

2 Q. Why is that?

3 A. Well, those type of tears in that
4 particular way don't normally happen except in a
5 forcible kind of situation.

6 Q. And when you say that you saw -- were you
7 able to see in the photographs the lacerations?

8 A. Yes.

9 Q. And when you saw the lacerations in the
10 photographs, could you tell whether or not they were
11 inflicted before death or after death?

12 A. They did have some hemorrhages associated
13 with them. So that would indicated to me that it
14 was antemortem or prior to death.

15 Q. And when you say "antemortem or prior to
16 death," in your opinion would it have been
17 contemporaneous with death?

18 A. Yes. There, there -- if, if it would
19 have happened say an hour or so before, there would
20 be swelling and other changes with it. And these
21 particular lacerations didn't have any swelling.
22 They just have had some hemorrhage. So I would say
23 that it was very close to the time of death, yes.

24 Q. And did you say about how -- when
25 lacerations are inflicted, something inserted, is

1 that because something is inserted into the vagina
2 causing laceration?

3 A. Something that would be inserted, coupled
4 with the fact that the vagina was not relaxed.

5 Q. And when something is inserted and causes
6 the lacerations, how long there after does the
7 hemorrhage or bleeding occur? Is it immediate?

8 A. Yes.

9 Q. Okay. So something is inserted, a
10 laceration occurs and is bleeding, how long after
11 that would it be before swelling would occur?

12 A. Well, it can, it can occur within
13 minutes, but usually, usually it takes about 20 or
14 30 minutes for it to be easily visible.

15 Q. And in your opinion as a forensic
16 pathologist, 30 minutes to an hour later would you
17 most certainly have seen swelling?

18 A. Yes.

19 Q. So these lacerations occurred less than
20 an hour before her death?

21 A. Yes.

22 Q. In addition to vaginal injuries, you
23 mentioned injuries around the neck.

24 Can you describe that?

25 A. Well, she had signs of asphyxiation is

1 what I had actually referred to.

2 Q. Sorry. Bad choice of bad words on my
3 part. What signs of asphyxiation did you notice?

4 A. She had multiple petechia on the surfaces
5 of her eyes which are small punctate hemorrhages.
6 She also had some petechia on -- in her lip, on the
7 surface of the lip.

8 Q. You said petechia are small punctate
9 hemorrhages?

10 A. Yes.

11 Q. Did they look kind of like little red
12 dots?

13 A. Yes.

14 Q. And are petechia consistent with or
15 indicative of anything in your opinion?

16 A. Well, when they're in the eyes like that
17 or on the lip or even on the face also, that usually
18 indicates that the -- there was pressure applied to
19 the neck and the pressure caused the build-up of
20 blood in the veins and they burst. So that's,
21 that's the cause of petechia.

22 Q. When you say pressure applied to the
23 neck, what kind of pressure being applied to the
24 neck? Would that be indicative of strangulation?

25 A. Yes.

1 Q. In this particular case, can you tell
2 whether strangulation would be manual strangulation
3 or strangulation by means of something like
4 ligature?

5 A. There wasn't any ligature mark so it
6 would be more likely a manual strangulation or some
7 kind of compression to the neck. Whether it was
8 specifically with the hands or with the arms or with
9 the knees. Things like that.

10 Q. Okay. When you say there's no sign of
11 ligature, even if somebody had used some thing, you
12 know, a lace, a rope, something like that as a
13 ligature, would it have left marks on the neck?

14 A. Yes.

15 Q. Externally?

16 A. Yes.

17 Q. And there were no visible marks
18 externally on the neck?

19 A. No.

20 Q. As you viewed the photos and the report,
21 did you agree with Dr. Knoblock's external
22 evaluation of what was observed?

23 A. Yes.

24 Q. Did he also do an internal examination of
25 Sheila Quarles?

1 A. Yes.

2 Q. And can you describe what was found
3 during the internal examination of Sheila Quarles?

4 A. He found a number, a number of
5 hemorrhages in the front of the neck, in the
6 internal structures of the neck, and he also found
7 hemorrhages in the back of the neck, and he found a
8 couple of small hemorrhages on the right side
9 underneath the skin or the scalp.

10 Q. And I'm gonna go backwards. When you say
11 hemorrhages on the right side underneath the scalp,
12 what does that indicate to you?

13 A. Some kind of blunt force injury.

14 Q. When you say "some kind of blunt force
15 injury," something hit her head?

16 A. Or her head hit something.

17 Q. Okay. And based on what you observed,
18 can you tell was that also contemporaneous with her
19 death?

20 A. It looked fresh, yeah.

21 Q. When you say looked fresh, what causes
22 you to believe that?

23 A. Just the, by the photos that it appeared
24 to be a fresh hemorrhage. It wasn't a healing. One
25 that had, was undergoing changes of healing.

1 Q. And as things like that heal, they change
2 visibly?

3 A. Yeah. They change primarily in color.

4 Q. Okay. And then you had indicated that
5 there were hemorrhages to the front of the neck and
6 the back of the neck.

7 What was significant about those
8 hemorrhages?

9 A. Well, that would indicate traumatic
10 injury to the neck in the form of some kind of
11 compression, fairly significant compression to
12 cause, you know, hemorrhages actually in the soft
13 tissues and muscles of the neck.

14 Q. Can you say anything about the amount of
15 pressure that would have been required to cause the
16 injuries that you observed?

17 A. Well, it's pressure that's in, that's --
18 without going into actual quantitation as far as
19 pressure, it would be pressure that was meant to
20 cause injury or something significant to the neck.

21 Q. If someone were to put their arm around
22 the neck, so that the elbow or the inside of the
23 elbow were around the neck, would that cause the
24 injuries that were observed on Sheila Quarles?

25 A. The pattern of injuries was in a number

1 of different areas. So I would, I would say no,
2 that the pattern of injuries that she had was more
3 indicative of some kind of grip where there were
4 multiple points of pressure on the neck rather than
5 just one point like you're describing there.

6 Q. When you say "multiple points of
7 pressure," does that mean that hands were around the
8 neck, stopped and then moved and were around the
9 neck again so the position was moving? Is that what
10 that's consistent with?

11 A. That would be consistent with that, yes.

12 Q. The injuries that you just described to
13 the neck, inside the neck, were those also
14 contemporaneous with death?

15 A. Yes, they looked fresh.

16 Q. Do you know how long it takes to put your
17 hands around somebody's neck and strangle them into
18 unconsciousness?

19 A. Well, obviously common sense would tell
20 you it depends on where you compress the -- if you
21 compress the carotid arteries when do you that, it's
22 only gonna be about 10 or 15 seconds. If you're to
23 the side of the carotid arteries, you're not doing a
24 good job of it, then it might take a little bit
25 longer, but if it is a good grip right on the

1 carotid, it's only gonna be about 10, 15 seconds.

2 Q. When you say if it's not a good grip on
3 the carotid, it might take a little bit longer,
4 about how much longer?

5 A. It would be impossible for me to say. Of
6 course at the other extreme you never do get a good
7 grip so they never do go unconscious so.

8 Q. So the short is 10, 15 seconds. Then the
9 next logical question. How long would it take to
10 strangle someone to death?

11 A. After you are -- if you are successful at
12 cutting the blood supply off to the carotid
13 arteries, then they're gonna stop suffering brain
14 damage in a few minutes and they're gonna be dead in
15 a few minutes more. So it probably has an average
16 somewhere around four or five minutes. Maybe as
17 short as two minutes, maybe as long as eight or ten
18 minutes.

19 Q. Do you know how many hemorrhages or how
20 many different locations hemorrhages were found in
21 her neck?

22 A. Let me count. Somewhere in the over a
23 dozen range. It doesn't look like it's more than
24 20, but it would probably be somewhere in the 12 to
25 15 range.

1 Q. And you mentioned that -- oh, I'm sorry.
2 Was there anything else found significant pertaining
3 to Sheila's death?

4 A. She did have a frothy fluid in her
5 airways which was interpreted as -- which is a sign
6 of drowning.

7 Q. When you saw "frothy fluid in her
8 airways," on the way to the lungs or around the
9 lungs?

10 A. Correct. In the larger of the trachea
11 and the larger airways.

12 Q. And you mentioned that there were
13 photographs taken at the time of the autopsy. May I
14 approach the witness?

15 THE COURT: Sure.

16 BY MS. LUZAICH:

17 Q. Showing you what's been marked as State's
18 proposed 93 to 108 which have been shown to counsel.

19 MR. PIKE: That's correct.

20 BY MS. LUZAICH:

21 Q. Could you look at these photos and tell
22 me if you recognize them.

23 A. These are photographs of the decedent.

24 Q. And how can you tell specifically that
25 those are photographs of the decedent?

1 A. Well, a number of them have a unique
2 number on a tag at the end of the photo which is the
3 number 052427 which is the autopsy number assigned.

4 Q. Everybody that comes into the Clark
5 County Medical Examiners Office for autopsy is
6 assigned its own number?

7 A. A unique number, correct.

8 Q. And is that the number that's on the
9 autopsy report generated by Dr. Knoblock?

10 A. Yes.

11 Q. And it's also in the photograph before
12 you?

13 A. Yes.

14 Q. Would those photographs assist the jury
15 in seeing and understanding the injuries that Sheila
16 Quarles sustained at the time of her death?

17 A. Yes.

18 MR. PIKE: Objection. It calls for
19 speculation. It's not at issue. We're not
20 challenging the cause of death.

21 THE COURT: Well, it isn't speculation on
22 his part. He knows. He's testified many, many
23 times. And these would help you explain your
24 testimony?

25 THE WITNESS: Yes.

1 THE COURT: Objection overruled. They'll
2 be admitted.

3 MS. LUZAICH: Thank you.

4 MR. PIKE: Your Honor, there are some
5 that I have specific objections to.

6 THE COURT: Okay.

7 MR. PIKE: If we can approach the bench.

8 THE COURT: Sure.

9 (Whereupon, an off-the-record
10 discussion was had at the bench.)

11 THE COURT: Doctor, did you go through
12 all of the photos that were available and pick out a
13 minimum number that could demonstrate each of the
14 points you needed to make?

15 THE WITNESS: Yes, I did do that, sir.

16 THE COURT: Objection will be overruled.

17 MR. PIKE: Thank you very much, Your
18 Honor.

19 THE COURT: These photos are a little bit
20 gory, but we had the doctor pick out the minimum
21 number that can help explain and that's the way we
22 do it.

23 MS. LUZAICH: Permission to publish?

24 THE COURT: Yes.

25 BY MS. LUZAICH:

1 Q. And what --

2 THE COURT: When I say they're admitted,
3 what that means is that under the rules this is a
4 proper piece of evidence for you to consider. So
5 you may see them here, you may see them on the
6 screen, they might pass them around. But at the
7 very least, everything that is admitted is going
8 back with you to the jury room so you can peruse
9 them at your leisure. Go ahead.

10 BY MS. LUZAICH:

11 Q. Dr. Simms, showing you, I'm sorry about
12 that, State's Exhibit 93, and I'm pointing, is that
13 the tag that you mentioned that indicates the unique
14 number?

15 A. Yes.

16 Q. And you can't really see on that screen
17 right there, but for the record can you read the tag
18 number?

19 A. 0502427.

20 Q. Thank you.

21 A. I don't have any picture here just as
22 long as you know that.

23 Q. Oh, really?

24 A. No.

25 Q. Can you see that one?

1 A. I can see that one, yeah.

2 Q. Okay. Can I get there or no?

3 THE COURT: You can, yeah. I don't know.
4 We usually have a court recorder, but because of the
5 requirement of the daily transcript, we have a court
6 reporter who doesn't do courtroom machinery.

7 MS. LUZAICH: I understand. Oh, it
8 needed to be turned on? Thank you.

9 BY MS. LUZAICH:

10 Q. And I'm sorry, is this Sheila Quarles?

11 A. Yes.

12 Q. Okay.

13 A. Then the name, the name tag is this gray
14 tag.

15 Q. Thank you. Showing you State's Exhibit
16 94, what is -- whoops. Upside down. What is
17 depicted in State's 94?

18 A. There's an area of discoloration, faint
19 discoloration which turned out to be a bruise on her
20 the left part of her abdomen there it looks like.

21 Q. Okay. Showing you State's Exhibit 95.

22 A. This is the back of the right knee. It
23 has an abrasion, a linear abrasion there.

24 Q. Showing you State's Exhibit 99 -- and for
25 the record, I'm just showing the more pertinent

1 ones. Whoops. Sorry about that. Exhibit 99.

2 A. This is a little dark. It's actually
3 lighter there, but there are some pinpoint
4 hemorrhages about the size of a pin head in that
5 area there which are, which are petechia.

6 Q. And for the record, when you indicate
7 that those are, it's dark, is that the equipment
8 dark when the jury takes this and looks at it in
9 their hands, is it a lot easier to see on the actual
10 photograph?

11 A. Oh, definitely, yeah, the photo is a
12 pretty good photo.

13 Q. Showing you State's Exhibit 100, what is
14 that?

15 A. This is the eyelid. It's been pulled,
16 pulled back from the eye and, and flapped over. So
17 this is the under surface. And you can see all
18 these, all these little dots. You can count them
19 yourself. You know, there's a number of them there.
20 All those are petechia.

21 Q. The petechia are what you described as
22 being indicative of strangulation?

23 A. Yes.

24 Q. And if she had not been strangled and
25 there were no petechia present, would it just have

1 been white surface for the eye?

2 A. Right. The only thing you would see are
3 the, just the linear, so the blood vessels. You
4 wouldn't see the hemorrhages.

5 Q. Showing you State's Exhibit 102, and this
6 is somewhat gory, what does this depict?

7 A. This is the neck after the skin has been
8 peeled back from the neck and there are, there's a
9 hemorrhage over in this area and there's also
10 hemorrhages in this area here.

11 There is not any hemorrhages --
12 there are no hemorrhages in this area right over
13 that area. They're on the sides.

14 Q. At the sides of the neck?

15 A. Yes.

16 Q. And are those hemorrhages that you've
17 pointed out in this photograph consistent with where
18 finger marks could go?

19 A. Yes.

20 Q. And are they consistent with the size of
21 finger marks?

22 A. Well, they're, they're bigger than just a
23 finger mark, but with them being these discreet
24 hemorrhages, a manual pressure would be the most
25 likely scenario.

1 Q. Showing you State's Exhibit 103, again,
2 not very pleasant, what is depicted in this
3 photograph?

4 A. This is the tongue, this is the tongue
5 right here. It's been, all through here it's been
6 sectioned and there's a hemorrhage here.

7 Q. Showing you State's Exhibit 106, what
8 does that show?

9 A. Now, this is the back of the neck. We
10 were looking at the front of the neck previously.
11 This is the back of the neck. So this is the scalp
12 up here and there's -- so this is right in the back
13 of your neck here. This is a number of hemorrhages
14 right here and the muscles of the back of the neck.

15 Q. So multiple hemorrhages right there in
16 the back of the muscle?

17 A. Yeah, correct.

18 Q. Showing you State's Exhibit 108, am I
19 upside down or right side up?

20 A. That's okay. This is the trachea and
21 then it's splitting to go to each lung. And this
22 photograph was taken to show this frothy fluid that
23 was accumulating in that one area that it was
24 indicative of drowning.

25 Q. And then finally State's Exhibit 107.

1 A. This is a very close-up view and this is
2 the upper part of the vagina. The vagina's right
3 here and then this is the lower part of the opening
4 of the vagina. And there are a number of
5 lacerations that are longitudinal at the opening of
6 the vagina.

7 Q. And that was what you indicated was
8 indicative of sexual assault?

9 A. Yes.

10 Q. As Dr. Knoblock performed this autopsy,
11 did he form an opinion as to the cause of death of
12 Sheila Quarles?

13 A. Yes.

14 Q. What was that opinion?

15 A. Drowning.

16 Q. Did he find anything else to be a
17 contributing factor?

18 A. Yes.

19 Q. What was that?

20 A. Strangulation.

21 Q. Based on what you observed in the
22 photographs and the report, did you agree with his
23 opinion?

24 A. Yes.

25 Q. Did Dr. Knoblock form an opinion as to

1 the manner of death of Sheila Quables?

2 A. Yes.

3 Q. And what was that?

4 A. Homicide.

5 Q. And do you agree with that opinion?

6 A. Yes.

7 Q. While Dr. Knoblock was employed with the
8 Clark County Medical Examiners Office, did he also
9 have the opportunity to perform an autopsy on a
10 decedent known as Marilee Coote?

11 A. Yes.

12 Q. And was that autopsy performed on May 5th
13 of 2005? I'm sorry about that. May 4th of 2005?

14 A. Correct.

15 THE COURT: All right. Again, ladies and
16 gentlemen, if the evidence of crimes other than for
17 which the defendant is on trial today comes in, you
18 have to first determine before you can use it for
19 any purpose that it has been proven by clear and
20 convincing evidence and then it can only be used for
21 the purpose of showing identity, knowledge, intent,
22 motive, absence or mistake in this case and not bad
23 character or disposition to commit the crime.

24 MR. PIKE: Ongoing objection just for the
25 record.

1 THE COURT: That's fine. You're not
2 objecting to me instructing them, are you?

3 MR. PIKE: No.

4 THE COURT: All right. Go ahead.

5 MR. PIKE: Thank you.

6 BY MS. LUZAICH:

7 Q. Thank you. In preparation for coming to
8 court today, did you also review a report that Dr.
9 Knoblock generated reference the autopsy of Marilee
10 Coote?

11 A. Yes.

12 Q. Did you review the photographs that were
13 taken during the autopsy of Marilee Coote?

14 A. Yes.

15 Q. And did Dr. Knoblock find Marilee Coote
16 to be a 45 year old black female, approximately 191
17 pounds?

18 A. Correct.

19 Q. And did he perform an external
20 examination of Ms. Coote?

21 A. Yes.

22 Q. And what significant findings were there?

23 A. Well, he found a number of signs of
24 asphyxiation as, as similar to what you've seen
25 before. Additionally, she had some contusions on

1 her arms, one or actually just on her arms. And
2 then she also had some areas of superficial burning.
3 Thermal injury on her pubic hair and on the skin
4 around her genitals and buttocks.

5 Q. I'll go in the order in which you started
6 describing. You said there were signs of
7 asphyxiation.

8 Could you describe for us what signs
9 of asphyxiation were observed?

10 A. Well, externally there were again a
11 number of petechia hemorrhages on the surface of the
12 eyes. And he also noted that there was some
13 discolorations on the right side of her neck.

14 Q. And are the petechia hemorrhages and the
15 discolorations on the side of her neck also
16 indicative of strangulation like you mentioned
17 earlier?

18 A. Yes.

19 Q. You mentioned that there was contusions
20 to the arm.

21 Was that both arms?

22 A. Yes.

23 Q. And you mentioned superficial burning.
24 Can you describe what you mean by that?

25 A. Well, he described that her pubic hair

1 was singed. And then as I stated before, the skin
2 in the, around the genital area and on the buttocks
3 was damaged. Heat, heat had been applied to it,
4 caused the skin to discolor, desiccate.

5 Q. When you say the genital area and
6 buttocks, would that include the upper thighs as
7 well?

8 A. Yes.

9 Q. And when you say heat source, I mean
10 could it be hot water?

11 A. Well, I'm looking at the photos, no, it
12 didn't have, you know, water would have created an
13 irregular shape, you know, and this actually had
14 somewhat of a shape to it. It looks like it would
15 be more suggestive of some kind of hot surface that
16 was applied to the skin.

17 Q. Like an object, a hot object?

18 A. Correct.

19 Q. As opposed to something like water or as
20 opposed to a chemical?

21 A. Correct.

22 Q. Could you tell was the singeing or the
23 burning contemporaneous with death?

24 A. It didn't have any significant swelling
25 or, or changes that would occur, you know, in the,

1 you know, tens of minutes and hours afterward. It
2 looked, so obviously I would say it was very near
3 death, yes.

4 Q. And can you tell whether it was
5 pre-mortem or post-mortem?

6 A. That's an excellent question. I don't
7 think he took any sections of it. And that would
8 have been about the only way that I could have, you
9 know, that it would have allowed me, you know, to be
10 able to make some comments about that.

11 Q. Okay. So you can't tell one way or
12 another?

13 A. No.

14 Q. In addition to the external
15 examination -- or I'm sorry. Were there other areas
16 that were viewed externally?

17 A. No, I think that was all the ones.

18 Q. Was there a small abrasion noted behind
19 the ear?

20 A. As I recall, there was. I just, I don't,
21 I didn't see it listed here, but as I recall, I
22 thought that there -- oh, actually, you're right.
23 It's under a different part of the autopsy. You are
24 correct. Behind the right ear there was a quarter
25 inch, very small abrasion.

1 Q. Okay. And then internally what if
2 anything did Dr. Knoblock observe?

3 A. There were superficial tears on the
4 opening of the vagina, there was a tear on the
5 opening of the anus, there were some hemorrhages
6 underneath her skin, on the top of her skull and on
7 the back of her skull and then there were a number
8 of hemorrhages in the neck.

9 Q. When you say superficial tears in the
10 vagina area, what do you mean by that?

11 A. From a, from a pathologic point of view,
12 that means just the -- it doesn't mean the tear was
13 deep, that it went all the way, you know, into the
14 deep sup -- underlying tissue. It was just in the
15 surface. The surface, you know, the skin and the,
16 and the -- most of your body surfaces are actually
17 in layers and so this was just the top layer.

18 Q. And when you say a "superficial tear,"
19 was there blood hemorrhage, anything noted?

20 A. He didn't describe it here, but when
21 looking at the pictures, there were areas of
22 hemorrhage that I could see.

23 Q. Does that mean that it was pre-mortem?

24 A. Correct.

25 Q. And what were those tears indicative of

1 to you?

2 A. The same, I would have the same
3 interpretation of those that I have with the other
4 case is that those are indicative of forced
5 intercourse consistent with sexual assault.

6 Q. You mentioned that there was a tear at
7 the opening of the anus.

8 Can you describe that?

9 A. It was a little under a half, half an
10 inch tear.

11 Q. And what would that be consistent with?

12 A. Anal penetration.

13 Q. By some object --

14 A. Correct.

15 Q. -- penetrated into the anus?

16 A. Correct.

17 Q. Was there hemorrhage there?

18 A. He didn't mention it, but again, when I
19 looked at the picture, it looked like to me there
20 was some areas of hemorrhage with it, yes.

21 Q. So would that indicate that it occurred
22 pre-mortem?

23 A. Correct.

24 Q. You mentioned that there were hemorrhages
25 at or about the skull.

1 Can you describe those for us?

2 A. There was one, a one inch hemorrhage on
3 the top of the skull and there was this some small
4 hemorrhages on the back.

5 Q. What is that indicative of?

6 A. Blunt trauma.

7 Q. And could you tell whether that -- well,
8 blunt trauma, her head hitting something or
9 something hitting her head?

10 A. Correct.

11 Q. And because there was more than one,
12 would that be more than one --

13 A. Correct.

14 Q. -- injury?

15 A. Blow or injury, yes.

16 Q. Blow. Thank you. The word wouldn't come
17 out. And could you tell was that contemporaneous
18 with her death?

19 A. Yes, it looks like it was a fresh
20 hemorrhage.

21 Q. You mentioned that there were hemorrhage
22 in the neck.

23 Could you describe what you saw?

24 A. There were hemorrhages on the front of
25 the neck, there was hemorrhages in the back of the

1 neck, and then there were also some internal
2 hemorrhages around some of the internal neck
3 structure.

4 Q. Do you know how many hemorrhages, how
5 many?

6 A. Minimum of 10, possibly a few more.

7 Q. What is that indicative of to you?

8 A. Same, same interpretation as previously,
9 indicates pressure put on the neck in a number of
10 different areas.

11 Q. And can you tell anything about the
12 amount of pressure?

13 A. Same interpretation. That when you get
14 those kinds of hemorrhages, that's pressure induced
15 to hurt, to do some, to have some kind of affect.

16 Q. Does that indicate the intent of the
17 individual who's inflicting the pressure?

18 A. I wouldn't, I wouldn't go to so far as to
19 be able to, you know, talk about somebody else's,
20 what was going on in their mind.

21 Q. That's a bad question then. Could it
22 have been an accident?

23 A. You mean just the hemorrhages of the neck
24 or the whole case?

25 Q. Well, all of the hemorrhages in the neck

1 combined.

2 A. I've never seen that number of
3 hemorrhages in any kind of, you know, accidental
4 death, no.

5 Q. I guess that was also a bad question.
6 Not accidental death. Could somebody accidentally
7 inflict that much pressure in that many different
8 locations?

9 A. I guess there would be a remote
10 possibility, but it would be beyond the normal,
11 normal behavior that I would be familiar with, you
12 know.

13 Q. Okay. Earlier you talked about it would
14 take a minimum of 10 seconds to strangle somebody
15 into unconsciousness.

16 What you observed in the neck of
17 Marilee Coote, would that have been taken more than
18 10 seconds to occur?

19 A. The hemorrhages.

20 Q. That many different hemorrhages in
21 different locations.

22 A. Oh, yeah, it would be hard to believe
23 that you could induce that many different
24 hemorrhages in 10 or 15 seconds. Yeah.

25 Q. And the hemorrhages that you observed in

1 the neck of Marilee Coote, would that also be
2 consistent with manual strangulation as opposed to
3 ligature?

4 A. Yes.

5 Q. And as opposed to just the arm around the
6 neck?

7 A. Yeah. It would be the same
8 interpretation. There are a number of different
9 areas and that it's -- I'm not saying that an armed
10 bar couldn't have been used. It could have been
11 used, but it wouldn't have been the only. There
12 would have to been other, some other types of
13 pressure in addition to that.

14 Q. What is an armed bar?

15 A. That's the one you described as where the
16 person's neck is in the, is in the crook of your
17 elbow. And you could also call it a choke hold if
18 you want to.

19 Q. May I approach the witness?

20 THE COURT: Yeah.

21 BY MS. LUZAICH:

22 Q. Showing you what's been marked as State's
23 proposed Exhibits 109 and through 122 which for the
24 record I went over with counsel before court this
25 morning.

1 MR. PIKE: That's correct, Your Honor.

2 BY MS. LUZAICH:

3 Q. Do you recognize those?

4 THE COURT: And do you represent that
5 before trial you went through the multitude of
6 pictures with Dr. Simms and he picked out no more
7 than what would be necessary to demonstrate his
8 point, correct?

9 MS. LUZAICH: Yes, sir.

10 THE COURT: Okay.

11 THE WITNESS: Yes, these are photographs
12 of the decedent.

13 BY MS. LUZAICH:

14 Q. Marilee Coote?

15 A. Yes.

16 Q. How can you tell?

17 A. Also they have a name tag, an autopsy
18 number tag in there that matches the number of the
19 autopsy.

20 Q. Thank you. Move them into evidence.

21 MR. PIKE: Your Honor, I'd ask that the
22 court review them and determine which, if all of
23 them, meet the probative prejudice.

24 THE COURT: Well, you've gone through
25 many more photos than this. I take it, and you

1 picked out the least number that would be able to
2 demonstrate the point that you're making with the
3 jury; is that right?

4 THE WITNESS: That is correct.

5 MS. LUZAICH: Okay. For the record,
6 there were over a hundred photographs taken from
7 each autopsy.

8 THE COURT: Okay. Understand. They'll
9 be admitted.

10 MS. LUZAICH: Thank you.

11 BY MS. LUZAICH:

12 Q. Dr. Simms, showing you State's Exhibit
13 109, is that Marilee Coote?

14 A. Yes.

15 Q. And can you just for the record read the
16 number on the tag into the record?

17 A. 053537.

18 Q. And that's the number that's on the
19 actual report that Dr. Knoblock generated?

20 A. Yes.

21 Q. Thank you. Showing you State's Exhibit
22 110, can you describe for us what that depicts?

23 A. This is an eye, one of the eyes. And of
24 course the cornea has gotten cloudy because of
25 death, but you can see a number of hemorrhages. And

1 there's also hemorrhage here and also a hemorrhage
2 here right at the edge of where the eyelid's being
3 held back.

4 Q. In this photograph you can see
5 hemorrhages that are quite large. Earlier when you
6 were discussing Sheila Quarles' eyes, they were
7 pinpoint dots.

8 Is there a difference between these
9 hemorrhages and those?

10 A. Well, obviously there is a difference as
11 far as size goes. As far as what they indicate, no.
12 Because in actual facts, some of the other photos
13 are some petechial hemorrhages in addition to these.

14 Q. For example, State's Exhibit 111?

15 A. So here you have combination of these
16 larger hemorrhages and multiple petechia is here.

17 Q. And in the other eye showing you State's
18 Exhibit 112?

19 A. And you can see again these hemorrhages
20 here and here and then you can see at least one
21 petechia there.

22 Q. Showing you State's Exhibit 113, what
23 does this depict?

24 A. This is the pubic area and you can see or
25 there is singeing of the pubic hair in this area and

1 there's also looks like some, some thermal injury
2 on some of the thigh, the surface, skin surface of
3 the thigh.

4 Q. When you say "thermal injury," would that
5 be the burning with the hot --

6 A. Yes.

7 Q. -- items?

8 A. Surface. Some type of hot surface.

9 Q. Thank you. Showing you State's Exhibit
10 114, what does that depict?

11 A. And here you can see the thermal injury
12 from what I consider a hot surface again because if
13 you look at that, it's just a chemical, any kind of
14 liquid or flame or something wouldn't cause those
15 fairly discreet burns. To me that's indicative of a
16 hot surface injury.

17 Q. And for the record, does this photograph
18 depict the buttocks and thighs as in --

19 A. Correct.

20 Q. -- if she's face down?

21 A. Yeah. The head is up this way and the
22 feet is down this way.

23 Q. Showing you State's Exhibit 115, what
24 does that depict?

25 A. This is the vagina and there's -- and

1 this is a fairly dark picture, but there's several
2 tears, small tears along with some purple
3 discoloration which indicates hemorrhage. There is
4 also some purple, purplish areas up here, but it
5 looks like the surface is intact.

6 Q. What does that mean?

7 A. I, I can't really say. You know, what I
8 would have done if I had been doing it, make some
9 small incisions to confirm whether it's hemorrhage
10 in these other areas or not, but there's definitely
11 tears and hemorrhages in the first areas that I
12 pointed to.

13 Q. And the first area that you pointed to
14 where the tear is, if you were to orient the vaginal
15 area by a clock, if she was laying on her back with
16 her legs spread, where on the clock would those
17 tears be?

18 A. Laying on her back, these, these tears
19 are on the, would be in the, somewhere in the 4, 5
20 and the 7, 8 clock.

21 Q. Okay. Thank you. Showing you State's
22 Exhibit 116, what does that depict?

23 A. This is the anus and there's a tear right
24 here. There's also an area of discoloration. It
25 looks a little hemorrhagic there to me also. So

1 there's at least, at least one of trauma,
2 possibly two.

3 Q. Okay. And the tear to the anus is
4 inflicted by something penetrating the anus, an
5 object?

6 A. Forcibly, uh-huh.

7 Q. And can you orient me like upside down or
8 right side up here?

9 A. Well, that's a good question. I believe
10 that this is, this is the, toward the back and that
11 this is toward the front. Oops. I believe. But I,
12 there's not enough, you know, anatomic detail for me
13 to tell which way is which.

14 Q. Okay. Showing you State's Exhibit 118,
15 what does that depict?

16 A. In this particular situation, the arm had
17 its skin dissected and there's a hemorrhage right
18 here.

19 Q. And when you say "right here," for the
20 record, where on the arm is that?

21 A. This would be the elbow and this is the
22 wrist. So it would be in the lower arm. About
23 mid-way in the lower arm.

24 Q. And on the top of the arm?

25 A. Yes.

1 Q. Showing you State's Exhibit 119, what
2 does that depict?

3 A. This is, this is the wrist here, and the
4 elbow's way, way up here. So this is a hemorrhage
5 near the wrist and it's on the, the underside of the
6 wrist. It's a fairly large hemorrhage.

7 Q. Could that be consistent with a defensive
8 wound?

9 A. Definitely.

10 Q. Showing you State's Exhibit 120, does
11 that go that way?

12 A. This, yes. This is the front of the neck
13 here and this, this scalp has been turned down and
14 this is, this is, this would be the forehead area
15 right in here. This is all the way on the top and
16 this is a hemorrhage that comes from the top of the
17 scalp.

18 Q. That's from the top of her head? For the
19 record, you're pointing to the top of your head?

20 A. Correct.

21 Q. And blunt force trauma would cause that
22 to occur?

23 A. Correct.

24 Q. Showing you State's Exhibit 121, what is
25 that?

1 A. These are the neck organs that have been
2 removed and there's a large hemorrhage here and
3 there's a hemorrhage here and there's a hemorrhage
4 here. This also looks like a small hemorrhage here.

5 Q. And can you point on the actual person on
6 yourself where that might be?

7 A. This is the thyroid gland and this is the
8 end of the tongue. So it would be, you know,
9 somewhere in the upper part of the neck like in the
10 front.

11 Q. In the front of the neck?

12 A. Correct.

13 Q. Okay. And then finally showing you
14 State's Exhibit 122, what does that depict?

15 A. This is the back of the neck that's on
16 the other side, and there's multiple hemorrhages in
17 those deep tissues.

18 Q. Thank you. As Dr. Knoblock performed
19 this autopsy, did he note other findings that were
20 significant just in her body, not maybe cause of
21 death but other significant findings?

22 A. Well, she did have some heart disease and
23 she had some benign tumors on her uterus.

24 Q. Would either one of those contribute to
25 cause of death?

1 A. Not, not directly, no.

2 Q. On that particular date?

3 A. No.

4 Q. Did -- oh, and I'm sorry. Did he perform
5 during the course of an autopsy is toxicology noted?

6 A. Yes.

7 Q. And was there anything noted pertaining
8 to Marilee Coote?

9 A. No. A toxicology screen was done. They
10 look for 50 or 60 different drugs and they were all
11 negative.

12 Q. Alcohol as well?

13 A. Correct.

14 Q. Did Dr. Knoblock form an opinion as to
15 the cause of death of Marilee Coote?

16 A. Yes.

17 Q. What was that?

18 A. Strangulation.

19 Q. And based on your review of the report
20 and all the photographs, do you agree with his
21 opinion?

22 A. Yes.

23 Q. Did Dr. Knoblock form an opinion as to
24 the manner of death of Marilee Coote?

25 A. Yes.

1 Q. And what was that?
 2 A. Homicide.
 3 Q. Based on your review of the report and
 4 photographs, do you agree with that?
 5 A. Yes.
 6 Q. And I'm so sorry. Can I take you for one
 7 second back to Sheila Quarles. Was a toxicology
 8 also done on Sheila Quarles?
 9 A. Yes.
 10 Q. And what was found?
 11 A. The same, the same profile was done on
 12 her and there was no alcohol or no drugs.
 13 MS. LUZAICH: Thank you. I pass the
 14 witness.
 15 THE COURT: Cross?
 16 CROSS-EXAMINATION
 17 BY MR. PIKE:
 18 Q. Dr. Simms, in going through and reviewing
 19 these two autopsies, you basically relied on the
 20 information that was provided from your experience
 21 and from the reports and photographs that were given
 22 to you and were kept in the normal course of records
 23 as part of all autopsies; is that correct?
 24 A. Correct, yes.
 25 Q. And during the course of going through

1 and in doing the protocol for, and always correct me
 2 if I use the wrong term, but if you're going to go
 3 through and do an autopsy, and if part of that
 4 autopsy there is an issue or you're going to
 5 determine whether or not there is any DNA present in
 6 the vagina or in the anus, then there are swabs that
 7 are inserted in that; is that correct?
 8 A. That is correct.
 9 Q. And what are those swabs made of?
 10 A. They're cotton-tipped swabs very similar
 11 to or they look very much like a Q-Tip.
 12 Q. And during the insertion of the anal
 13 swab, that may cause a nick, a tear?
 14 A. Yeah, I have seen, seen that happen
 15 before. Usually it can cause a small nick or tear.
 16 Q. And you've also have examined I assume a
 17 lot of bodies that involve an allegation of a sexual
 18 assault or a suspicion of a sexual assault?
 19 A. Yes.
 20 Q. And that's when you go and you look and
 21 examine the vagina and the external part and
 22 internal part to determine whether or not there is
 23 something consistent with a sexual assault?
 24 A. Correct.
 25 Q. And for purposes of our conversation, a

1 sexual assault means the penetration of the vagina?
 2 A. I think what I was talking about before
 3 is penetration to an unrelaxed vagina or a
 4 nonreceptive vagina and that's what causes the
 5 trauma.
 6 Q. Okay. And so unrelaxed, there may or may
 7 not be consent, you don't know, it just was not
 8 relaxed?
 9 A. Again, I think going back to what I said
 10 before, for me to talk about what was going on in
 11 somebody's mind would be probably, it would be, you
 12 know, not, not, not very -- you know, speculative
 13 basically.
 14 Q. So what you found was consistent with
 15 unrelaxed sex or the markings, correct?
 16 A. Are you talking just about the markings
 17 on the vagina?
 18 Q. Yes.
 19 A. I haven't, I was a general practitioner
 20 for 10 years before I went into pathology and I
 21 probably did about 3500 pelvic exams on women for
 22 different reasons and I, I've never seen, you know,
 23 injuries like that in anything but a sexual assault
 24 in my own personal experience.
 25 Q. Okay. And going through and determining

1 that, again, when you're talking about sexual
 2 assault, you're just talking about penetration and
 3 that could be with an object?
 4 A. Well, yes.
 5 Q. It could be with fingers, hands?
 6 A. It could, yes.
 7 Q. Okay. Fingernails may cause lacerations?
 8 A. That is correct.
 9 Q. And in fact, fingernails and the, that
 10 whatever may be located under those fingernails is
 11 often part of the protocol of what you have to
 12 preserve, so that it can be collected for forensic
 13 purposes?
 14 A. Well, I do -- I agree with what you're
 15 saying. As far as the actual protocol, usually the
 16 police process the body prior to the autopsy. So
 17 those samples and fingernail clippings and all hair
 18 with all the other things have been removed from the
 19 body by the time the autopsy is done. That's the
 20 way they do it here in Las Vegas.
 21 Q. So they actually come in, go over the
 22 body before you perform the autopsy, they check it
 23 for any arrant tears?
 24 A. As I understand it, that's, that's not --
 25 we're not involved in that because that's, that's

1 the police.

2 Q. And have you ever, with a number of
3 autopsies you've done, I'm sure you've seen the
4 police do that?

5 A. Oh, yes.

6 Q. Okay. And taking the fingernails, but it
7 is left to the doctor, you performing the autopsy,
8 to collect the DNA swabs from the vagina?

9 A. No, that's done also during that period
10 of time.

11 Q. Who does that?

12 A. Usually the police.

13 Q. And there's, there's no indication in the
14 report as to, that you reviewed as to who did
15 perform that or who collected that swab?

16 A. It's, it's frequently the case that the
17 report that we generate, we don't, you know, detail
18 all those different types of things.

19 So it's not uncommon it won't be in
20 the report, but I'm just talking about my experience
21 of working there as it usually it's, there's usually
22 an actual fact there's the people that are
23 processing the body, it's a combination of forensic
24 technicians who work at the corners office and the
25 police, they kind of work together.

1 So it may very well have been that
2 one of I know them inserted the swab to get that and
3 another one was clipping the nails or visa versa
4 kind of a thing.

5 Q. And you're unaware of the process that
6 they went through or who was involved in that, but
7 your interior results, your medical examination was
8 consistent with a sexual penetration?

9 THE COURT: As to Quarles?

10 BY MR. PIKE:

11 Q. As to Quarles. And I'm just talking
12 about Quarles. If, any questions about Ms. Coote,
13 I'll ask those specific questions, but this is as to
14 Sheila Quarles.

15 A. That's correct, yeah.

16 Q. Okay. Thanks. And in, in your
17 experience in performing autopsies and watching the
18 police go over the body for forensic evidence, have
19 you ever seen the CSAs or the police come in and
20 examine the body to determine whether or not they
21 could obtain fingerprints from the body?

22 A. Yes.

23 Q. Okay. And that process is done here in
24 Clark County?

25 A. Yes.

1 Q. When that process is done, is there any
2 sort of material spray or anything that's on the
3 body that would indicate to you that that was done?

4 A. Well, there's different ways that they
5 lift prints. Sometimes they, you know, they just
6 use ink, you know, and but then there are also
7 various chemicals.

8 We're getting into an area that I
9 don't have, I don't have detailed expertise, but
10 usually there would be some, I think the thrust of
11 your question is there usually is some residue that
12 you would say well, you know, this is, this is what
13 they did.

14 Q. And you did --

15 MS. LUZAICH: I'm sorry. I'm gonna
16 object to foundation. I'm wondering if they're
17 talking about the same thing.

18 I believe Mr. Pike is talking about
19 lifting prints off like the body, the abdomen as
20 opposed to the fingerprints of the --

21 THE WITNESS: No, that's what I
22 understood it to be.

23 THE COURT: -- Both of them.

24 MS. LUZAICH: Okay. I just wanted to be
25 sure.

1 THE COURT: Mr. Pike was asking him do
2 you see anything that would indicate to you that
3 prior to your involvement the police did anything to
4 see if there was a fingerprint on the body. That's
5 his question.

6 THE WITNESS: And the answer was no.

7 THE COURT: Okay. There you go.

8 BY MR. PIKE:

9 Q. And yet during the course of your
10 examination of Sheila Quarles' body, you found what
11 you indicated were a number of contact points where
12 if it was a manual strangulation that there would
13 have been contacts with the hand?

14 A. Yes, there were, as I detailed, you know,
15 10, 12 hemorrhages in there which would indicate
16 different contact points, correct.

17 Q. I'll, I'll -- I think you said a number
18 of different areas?

19 A. And they were in different areas,
20 correct.

21 Q. Do you similar to measuring bite marks or
22 something like that, can you by measuring the type,
23 types of marks on the body or on the neck identify
24 the approximate size of the hand of the individual
25 that is alleged to have committed a strangulation?

1 A. A reasonable question. The --

2 sometimes -- let me -- in my experience, most of the
3 time there's not a specific pattern that they do for
4 them. But every once in awhile you will find a real
5 solid pattern where you can see to make some
6 measurements, but it won't allow you to talk about
7 the person's hands because the fingers can be spread
8 at different widths. So it would be -- even though
9 you could say that this is a finger pattern, it
10 wouldn't really allow you to extrapolate all the way
11 to the sides of the person's hand. Anything that
12 I've ever been involved with or ever read about it.

13 Q. And the marks that you're talking about
14 inside the vagina and the marks that are consistent
15 with the sexual assault don't necessarily have to be
16 associated with penal-to-vagina sex?

17 A. Well, I think for --

18 Q. Penetration?

19 A. Well, you already, you already talked
20 about that and I agreed at that particular point in
21 time.

22 Q. And so if DNA was present inside the
23 vagina, that in and of itself does not indicate that
24 that, the positive or that insertion of, of the
25 semen was part of or contemporaneous with a sexual

1 assault?

2 A. No. There's nothing unique about that,
3 that finding. No, you'd have to put it in the
4 context, but no, there wouldn't be anything unique
5 that would associate it.

6 Q. And in fact when you talk about the body
7 cavity or the vault that we refer to the vagina,
8 when human semen is placed inside the human vagina,
9 it will stay there for a period of time?

10 A. It can. It may or may not. It depends
11 on the laxity of the vagina and whether the person
12 gets up and walks around. So it -- and maybe I'm
13 misunderstanding your question.

14 Will there be traces of it that will
15 stay there, in other words microscopic? Yeah,
16 they'll definitely be microscopic traces that will
17 be there for several days.

18 Is that what you're asking?

19 Q. Yeah, yeah. You've answered. And if
20 there are two males that have sex with the same
21 female over a period of time, what would you look at
22 to determine or could you determine from the semen
23 that is then removed from your autopsy as to who had
24 sex with that female first?

25 A. No. I don't see how scientifically you

1 can determine that, no.

2 Q. Could you determine which spermatozoa is
3 older based upon either the presence or nonpresence
4 of the tail?

5 A. Very interesting question.

6 Q. Do you have an answer for me?

7 A. I don't think -- no, I don't -- I think
8 you got into an area that I, is scientifically
9 reasonable, but I don't, I couldn't really talk
10 about that. I've never even addressed that as an
11 issue before.

12 Q. Okay. And in fact, when you perform an
13 autopsy and you're collecting the semen or the
14 specimen from the vagina, often gravity and the
15 semen being a viscous liquid will leak out from the
16 vagina down towards whichever way the body is
17 facing?

18 A. Correct.

19 Q. And just similar as it may leak out
20 during the time of while an individual's living?

21 A. Correct.

22 MR. PIKE: I have no further questions.
23 Thank you.

24 THE COURT: Anything else, Ms. Luzaich?

25 MS. LUZAICH: Just briefly.

REDIRECT EXAMINATION

2 BY MS. LUZAICH:

3 Q. Dr. Simms, when the swabs are collected
4 at the time of autopsy, the forensic pathologist
5 conducting the autopsy is not physically present; is
6 that correct?

7 A. As a general rule, no.

8 Q. Okay. The police are present however
9 during autopsies generally when there is a
10 specific -- suspicious death. If there's a police
11 investigation done, don't the police detective
12 generally come to the autopsy?

13 A. Generally.

14 Q. Okay. Now, specifically, the tears that
15 you observed in the vagina of Sheila Quarles, those
16 did not appear to have been caused by the swabs that
17 are taken for evidentiary purposes?

18 A. No, no. These were, these were larger
19 tears that I've never seen a swab cause these kinds
20 of tears, no.

21 Q. And in fact, the swabs that are
22 collected, aren't those really long Q-Tips?

23 A. Basically they are, yes.

24 Q. Soft edged?

25 A. Yes.

1 Q. Okay. And should a fingernail be
2 introduced into the vagina, it probably won't leave
3 sperm or semen behind, would it?

4 A. No, no, it wouldn't. Well, I guess
5 unless it had sperm or semen on it prior to it being
6 inserted.

7 Q. Now, if Sheila Quarles was submerged in
8 hot water, if her body, her whole body was submerged
9 in hot water after the sexual assault and after the
10 strangulation, would you be able to lift prints off
11 her body once she is taken out, covered in a bag and
12 brought down to the morgue?

13 MR. PIKE: Objection. Outside of his
14 area of expertise.

15 MS. LUZAICH: Well, he asked about
16 lifting prints.

17 MR. PIKE: I asked about whether or not
18 the information was there.

19 THE COURT: He'll tell us. I mean, as
20 you see him, if it's beyond his area of expertise,
21 he says so. And if he knows, he knows. So, doctor,
22 if you know, tell us. If you don't, tell us.

23 THE WITNESS: Well, the issue you brought
24 up was about residue from evidence and I do, I can
25 tell that, but the issue you're bringing up is a

1 completely reasonable issue that I'm not, I'm not
2 versed on. I would have, I would assume it would,
3 it would dissolve, but that --

4 MR. PIKE: Objection. Speculation.

5 THE COURT: Okay. That objection is
6 sustained.

7 THE WITNESS: I'm sorry. I went too far,
8 Your Honor. I should have stopped when I was ahead.

9 THE COURT: Okay.

10 BY MS. LUZAICH:

11 Q. If evidence had been left behind on her
12 body, would the submersion in hot water have taken
13 away that evidence or --

14 A. Can you restate the question?

15 Q. -- or at least corrupted it if some sort
16 of evidence were left behind on her body?

17 MR. PIKE: Objection. Calls for
18 speculation, nonspecific.

19 THE COURT: Do you know, doctor?

20 THE WITNESS: In that, if it was
21 biological evidence like semen or if it's even
22 nonbiological evidence like fibers, there's no doubt
23 that in my experience and a lot of other forensic
24 pathologists is that that would wash away, have a
25 significant impact on removing that evidence if the

1 answer -- if the question is would it remove all of
2 it for sure, I don't know that, but it definitely
3 could have, it would have a negative impact on that
4 being there, correct.

5 BY MS. LUZAICH:

6 Q. Okay. But submersion in hot water would
7 not affect the sperm or semen that is inside the
8 vaginal vault?

9 A. No. Usually the vagina closes, you know,
10 when it's non -- when it's fully relaxed and it, it,
11 it's -- there's gonna be semen that can come out,
12 but there's usually also residual semen in there
13 also, yeah.

14 Q. Mr. Pike asked you some questions about,
15 you know, can you tell anything about the hand marks
16 on the outside of the skin.

17 I mean, the injuries that you
18 discussed both in Sheila Quarles and Marilee Coote's
19 autopsies, all of those injuries were internal; is
20 that correct?

21 A. Yes. On -- in Ms. Quarles' case, she
22 didn't have any, any signs at all externally. In
23 Ms. Coote's case, there were some linear
24 discolorations on one side. So that was the only,
25 that was the only external findings. All the things

1 that we went over were internal findings.

2 Q. And would it be unusual in your opinion
3 for there not to be any external findings when
4 somebody is strangled with that force?

5 A. No, it can occur. As far as percentage
6 wise, usually you'll pick up a fingernail mark or
7 something, but there is a solid minority of patients
8 who are manually strangled that do not have external
9 findings.

10 Q. If somebody puts their fingers around the
11 neck long enough to, you know, strangle somebody,
12 how long -- do you know how long it might take
13 before there would be some external like bruise or
14 something along those lines?

15 A. Uh --

16 Q. To be visible externally?

17 A. Well, they would have to be alive for
18 some minutes in order to pump the blood out to cause
19 the bruise. So if they're killed, if they die
20 fairly rapidly, then you're not gonna see anything
21 no matter what.

22 Q. Does the color of the skin make a
23 difference?

24 A. If the person is very, very dark skinned,
25 very dark skin, then it does cause problems, but

1 anything short of that, it usually can pick up some,
2 some difference in coloration.

3 Q. If it occurs?

4 A. Yes.

5 Q. But it doesn't always occur?

6 A. No.

7 Q. And then I'm fin -- finally, the vaginal
8 injuries that you discussed in Sheila Quarles, you
9 talked about the lacerations and the fact that there
10 was no swelling, therefore you believed it was
11 within a half an hour of her death?

12 A. That would be a good ballpark figure,
13 correct.

14 Q. And then Marilyn Coote as well, you
15 mentioned the tears, no swelling, would that also be
16 within half an hour of her death?

17 A. Same interpretation, correct.

18 MS. LUZAICH: Thank you.

19 THE COURT: Anything else, Mr. Pike?

20 RE-CROSS-EXAMINATION

21 BY MR. PIKE:

22 Q. In reference to the question regarding
23 the water temperature, you don't know if the body
24 was found in hot water, warm water or cold water?

25 A. No. I just took the question as it was

1 asked.

2 MR. PIKE: No further questions.

3 THE COURT: Does the amount of pressure
4 on the throat, different amount of pressure account
5 for the difference in the petechia or the larger
6 hemorrhages or?

7 THE WITNESS: Excellent question. Yeah,
8 I would, I would -- my interpretation would be is
9 that Mrs. Coote who had larger hemorrhages, if you
10 notice those in there, I've seen that usually when
11 they just put up a stronger fight. There was more
12 violence to it.

13 THE COURT: Okay, thanks. Doc,
14 appreciate your time. Call your next witness.

15 MS. WECKERLY: Officer Cole.

16 THE COURT: Up here, officer.

17 (Whereupon, Officer Brian Cole was
18 duly sworn to tell the truth, the
19 whole truth and nothing but the
20 truth.)

21 THE CLERK: Thank you. Please be seated.

22 THE CLERK: Please state your full name,
23 spelling your first and last name for the record.

24 THE WITNESS: Brian David Cole.

25 B-r-i-a-n. Cole, C-o-l-e.

1 DIRECT EXAMINATION

2 BY MS. LUZAICH:

3 Q. Sir, how are you employed?

4 A. Las Vegas Metropolitan Police.

5 Q. What do you do for the Las Vegas
6 Metropolitan Police?

7 A. I am a police officer.

8 Q. All right. Do you work patrol?

9 A. Not right now.

10 Q. Okay. How long have you been with Metro?

11 A. Eight years.

12 Q. Specifically were you employed on March
13 24th of 2005 with Metro?

14 A. Yes, I was.

15 Q. And at that time were you working patrol?

16 A. Yes, I was.

17 Q. And in March of 2005 when you were
18 working patrol, were you wearing a uniform similar
19 to that you're wearing today in the court?

20 A. Yes, I was.

21 Q. And were you called to an apartment at
22 1001 Pecos?

23 A. Yes.

24 Q. Do you know about what time it was that
25 you were called there or sent there I should say?

1 A. Later in the hour of 2:00 in the
2 afternoon because it was close to end of shift.

3 Q. Okay. What shift were you working at the
4 time?

5 A. Day shift at that time.

6 Q. And day shift is when to when?

7 A. We usually leave secure at 3:30 in the
8 afternoon and start at 7:00 in the morning.

9 Q. Okay. Is it possible that you were
10 called out there around 10 to 3:00 in the afternoon?

11 A. Is sounds correct.

12 Q. Okay. When you went, were you alone or
13 with anybody?

14 A. There were several officers dispatched.
15 I was one of the first ones on scene, though.

16 Q. Okay. And when you were sent there, what
17 was the nature of the call?

18 A. It was more of an unknown situation where
19 there was a female down, unknown on injuries, and
20 not a lot of information coming from the PR at the
21 time.

22 Q. The PR being the person reporting the
23 call?

24 A. Yes.

25 Q. And did you go into apartment number 63?

1 A. Yes.
 2 Q. Is that an apartment that's downstairs?
 3 A. Yes, it is.
 4 Q. When you got there, who was in the area?
 5 A. I remember seeing a couple people
 6 outside, but nobody was at that apartment
 7 specifically.
 8 Q. Okay. Was the door opened when you got
 9 there?
 10 A. Partially opened. It was cracked.
 11 Q. Did you enter?
 12 A. Yes, we did.
 13 Q. And what did we -- did you, did you
 14 enter?
 15 A. Yes, I did.
 16 Q. What did you do?
 17 A. Went to the door, sounded off Metro
 18 police, anybody inside, sound off, so that we know
 19 if anybody was in there and then we made entry to
 20 the apartment and cleared it to make sure there was
 21 no occupants inside the apartment or anything going
 22 on that could be a danger to us or anybody else.
 23 Q. What did you see when you got inside?
 24 A. Once inside, saw a black female laying on
 25 the bathroom floor face up with her feet kind of

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1 still on top of the tub laying length wise next to
 2 the sink on the floor and she was naked and
 3 unresponsive at that time.
 4 Q. Was anything covering her at that time?
 5 A. I don't recall anything covering her.
 6 Q. Were there any other people in the
 7 bathroom area?
 8 A. Not when I made entry, no.
 9 Q. Now, the bathroom area, was it quite
 10 small?
 11 THE COURT: You mean any other people
 12 other than his fellow officers? Was that the
 13 question?
 14 MS. LUZAICH: Yes, sorry.
 15 THE WITNESS: Okay. The bathroom is very
 16 small, yes
 17 BY MS. LUZAICH:
 18 Q. When you say that she was unresponsive,
 19 how could you tell?
 20 A. We tried to say something to her to see
 21 if there was any kind of response. Looked at her
 22 and she was not moving. Didn't appear to be
 23 breathing just by looking at that time.
 24 Q. So when you saw that, what did you did
 25 do?

1 A. Medical was right behind us coming in and
 2 they took over at that point to see if there's
 3 anything they could do for her.
 4 Q. And were you present when medical was
 5 there?
 6 A. I backed out down the hallway because it
 7 was a small bathroom, but yes, I was still present.
 8 Q. And was medical able to do anything for
 9 her?
 10 A. No, they weren't.
 11 Q. Were you there when they left?
 12 A. Yes, I was.
 13 Q. And then what happened?
 14 A. That's when we secured the scene and made
 15 sure nobody else came in the apartment, called for
 16 homicide units to come out.
 17 Q. May I approach?
 18 THE COURT: Sure.
 19 BY MS. LUZAICH:
 20 Q. Showing you what's been marked as State's
 21 proposed Exhibit 38, do you recognize this?
 22 MR. PIKE: No objection to its admission.
 23 THE WITNESS: Yes, I do.
 24 BY MS. LUZAICH:
 25 Q. Thank you. Does that depict essentially

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1 how she looked when you arrived?
 2 A. Essentially other than I don't recall
 3 seeing the towels laying on top of her when I looked
 4 at her originally.
 5 Q. And is there also medical intervention --
 6 A. Yes.
 7 Q. -- obvious in the photo?
 8 A. Yes.
 9 MS. LUZAICH: Move it into evidence.
 10 THE COURT: It will be admitted.
 11 MS. LUZAICH: Thank you. May I publish?
 12 THE COURT: Yes. You can't publish
 13 anything that isn't into evidence.
 14 BY MS. LUZAICH:
 15 Q. Does this kind of depict how small the
 16 bathroom is?
 17 A. Yes.
 18 Q. And also the items that are around, were
 19 they as they are in the picture when you arrived
 20 other than maybe the item that's covering her?
 21 A. Yes, they were.
 22 Q. You said that you came out of the
 23 apartment and notified homicide.
 24 Is that the natural course of what
 25 occurs when things like this happen?

1 A. When we, when I first came outside,
 2 notified my sergeant, notified other units to help
 3 secure the perimeter and then homicide.
 4 Q. Okay. When you say other units to help
 5 secure the perimeter, what do you mean by that?
 6 A. Other patrol officers to come to the
 7 scene to make sure that nobody could get in or out
 8 of that apartment and to talk to anybody in the area
 9 that may or may not have seen anything.
 10 Q. And when you say secure the scene, is
 11 that because as of this time you don't know what the
 12 cause of her death is, whether it's accident or by
 13 means of injury?
 14 A. That is correct.
 15 Q. And it could be potentially a crime
 16 scene?
 17 A. That's why we preserve it.
 18 Q. So when you preserve a crime scene, do
 19 you put up tape so that nobody can enter?
 20 A. Sometimes we do. Not always.
 21 Q. Okay.
 22 A. In this case, it was a contained
 23 apartment so we didn't need to put crime scene tape
 24 right away.
 25 Q. Right at the door?

1 A. That's correct.
 2 Q. Did you or one of the officers with you
 3 at least remain at or near the door to make sure
 4 that nobody else entered other than law enforcement
 5 personnel?
 6 A. Yes. I was actually posted at the door,
 7 the front door.
 8 Q. Did there come a time when you needed a
 9 little more help?
 10 A. Yes. The family was obviously upset,
 11 distraught, and one of them, one of the relatives
 12 was trying to get into the apartment side window.
 13 So we had to have additional units detain family
 14 members to keep them out of the residence.
 15 Q. Did a lot more family members come to the
 16 residence as time went by?
 17 A. Yes, they did.
 18 Q. And were they exceptionally distraught?
 19 A. Yes.
 20 Q. And did you have more officers come to
 21 help, so that --
 22 A. Yes.
 23 Q. -- they remained calm?
 24 A. Yes, we did.
 25 Q. And did homicide arrive on the scene?

1 A. Yes, they did.
 2 Q. Did crime scene also arrive on the scene?
 3 A. Yes.
 4 Q. And did you remain to at least make sure
 5 that nobody else entered the scene that wasn't
 6 supposed to?
 7 A. I did.
 8 MS. LUZAICH: Thank you.
 9 THE COURT: Questions?
 10 CROSS-EXAMINATION
 11 BY MR. PIKE:
 12 Q. Did you take any written statements from
 13 anybody during that period or were you just securing
 14 the scene and preparing it for the investigation?
 15 A. Just securing the scene and preparing it
 16 for investigation. No statements at that time.
 17 Q. When he was trying -- the individual I
 18 assume, it was a he, was trying to get into the
 19 window?
 20 A. Yes.
 21 Q. Was the window unlocked?
 22 A. No, the window wasn't unlocked that I
 23 know of. I didn't go check the window, whether or
 24 not it was unlocked, but he didn't make entry
 25 through it. We stopped him as he was trying to get

1 to the window and open it.
 2 Q. Okay. And was that window into the
 3 living room, kitchen or bedroom I think you said?
 4 A. It would have been a back bedroom.
 5 Q. Back bedroom?
 6 A. Uh-huh.
 7 Q. And there was only one bedroom.
 8 A. Okay. That would be the one then.
 9 MR. PIKE: I don't have anything further.
 10 THE COURT: Thanks, officer. Appreciate
 11 your time. Do you have a 10 minute?
 12 MS. LUZAICH: I actually do have a short
 13 witness.
 14 THE COURT: Bring them on.
 15 MS. LUZAICH: Marquita Carr.
 16 THE COURT: Up here, Ms. Carr. Right
 17 around there, ma'am, and up here.
 18 THE CLERK: Please remain standing and
 19 raise your right hand.
 20 (Whereupon, Marquita Carr was duly
 21 sworn to tell the truth, the whole
 22 truth and nothing but the truth.)
 23 THE CLERK: Thank you. Please be seated.
 24 Please state your full name, spelling your first and
 25 last name for the record.

1 THE WITNESS: Marquita, M-a-r-q-u-i-t-a.

2 Last name Carr, C-a-r-r.

3 THE COURT: Go ahead.

4 DIRECT EXAMINATION

5 BY MS. LUZAICH:

6 Q. Thank you. Marquita, are you a little
7 nervous?

8 A. A little.

9 Q. That's okay. Deep breath. Marquita, do
10 you know a lady named Sheila Quarles?

11 A. Yes, I do.

12 Q. How did you know her?

13 A. She lived next door to my aunt. She's my
14 cousin's friend.

15 Q. Okay. When you say she lived next door
16 to your aunt, who is your aunt?

17 A. My aunt Jeannie.

18 Q. J-e-j-a-n-n-i-e?

19 A. Yes.

20 Q. What's your aunt Jeannie's last name?

21 A. Brass.

22 Q. B-r-a-s-s?

23 A. Uh-huh.

24 Q. And she's very good friends with your
25 cousin you said?

1 A. Yeah.

2 Q. What's your cousin's name?

3 A. Jasmine. Jasmine Brass.

4 Q. You said that they live across from each
5 other.

6 Do they live in the same apartment
7 complex?

8 A. They did live in the same apartment
9 complex.

10 Q. Okay. Let me ask you a better question.
11 On March 24th of 2005, did they live in the same
12 apartment complex?

13 A. Yes.

14 Q. And the apartment that your aunt lived
15 in, is that kind of like across the cement from the
16 apartment that Sheila lived in?

17 A. Across the little walkway.

18 Q. Walkway?

19 A. Yeah.

20 Q. Okay. Did you spend much time at your
21 aunt's apartment?

22 A. Yeah. We, we went -- I went over there a
23 lot, yeah.

24 Q. Periodically?

25 A. Yeah.

1 Q. Okay. Specifically on March 24th of
2 2005, were you at your aunt's apartment?

3 A. Yes, I was.

4 Q. Do you know about what time of day it was
5 that you got there?

6 A. No, I can't say. I might, I might have
7 been around there around noon.

8 Q. Okay. Probably not before noon?

9 A. Yeah.

10 Q. Maybe around noon?

11 A. Yeah.

12 Q. When you got there, what did you do?

13 A. I went over to my grandmother's house and
14 then I went downstairs to my aunt's house. They
15 live in the same apartments.

16 Q. Okay. So your grandmother lives
17 upstairs?

18 A. Different building.

19 Q. But a different building?

20 A. Uh-huh.

21 Q. Okay. Who lives with your grandmother?

22 A. My uncles.

23 Q. Your uncles. What are their names?

24 A. Robert, L.T., Egger.

25 Q. Robert, is that Robert Lewis?

1 A. Yeah.

2 Q. Okay. You went and visited your grandma?

3 A. Uh-huh.

4 Q. Was anybody there when you visited
5 grandma?

6 A. I can't honestly say. I don't, I don't
7 remember.

8 Q. Do you go visit your grandma a lot?

9 A. Yeah. There's always a house full.

10 Q. After you visited grandma, you went down
11 to your aunt's house?

12 A. Yeah.

13 Q. Or apartment?

14 A. Her apartment, right.

15 Q. When you got to your aunt's apartment, do
16 you remember who was there?

17 A. My -- her daughters, both of my cousins.

18 Well, not both of them. My cousin Ebony and I don't
19 remember who else was there.

20 Q. Okay. Ebony, is that Ebony Lewis?

21 A. Yes.

22 Q. And your cousin Ebony Lewis would be
23 Jeannie your aunt's daughter?

24 A. Right.

25 Q. And then Jasmine, is that Jasmine Lewis?

1 A. She's Jasmine Brass.
 2 Q. Oops, I'm sorry. Brass. But Jasmine and
 3 Ebony are sisters, correct?
 4 A. Yes.
 5 Q. So when you went from grandma's to your
 6 aunts, you do not believe you saw Jasmine?
 7 A. No.
 8 Q. Okay. Did you and Ebony visit with each
 9 other?
 10 A. Yeah, pretty much.
 11 Q. Did something happen?
 12 A. While we were in the house?
 13 Q. Yes. Did you hear something?
 14 A. Not at the time, no. Maybe we sat there
 15 and hung out in the living room for a little while,
 16 talking what not.
 17 Q. While you were hanging out in the living
 18 room, tell me what --
 19 A. My uncle came through the front door.
 20 Q. I'm sorry. Who did?
 21 A. My uncle Robert came through the front
 22 door and he said that Pooka needed help. That's
 23 what we called her, Sheila. And he told us to come
 24 out and help us. I went over, across the pathway
 25 into the apartment. I heard her mom screaming and I

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1 went over into the apartment, I went into the
 2 bathroom, she was lying on the floor, no clothes on,
 3 I asked to dial, to dial 911.
 4 Q. Okay. You know what, I'm gonna stop you
 5 for a second. When you and Ebony were visiting
 6 together on the couch in your aunt Jejannie's
 7 apartment, you said your uncle Robert came in
 8 talking about Pooka.
 9 Do you know Sheila Quarles as Pooka?
 10 A. Yes, I do.
 11 Q. And did you know her independent of the
 12 fact that she just lived next door?
 13 A. Yeah. A little bit, yeah.
 14 Q. Okay. Did you do her hair?
 15 A. Yeah, yeah.
 16 Q. Okay. So when uncle Robert indicated
 17 that there was a problem when Pooka, you went, you
 18 said you heard her mother.
 19 Who is her mother?
 20 A. Don't know her mom's name.
 21 Q. Can't remember?
 22 A. No.
 23 Q. But you know her by face and you knew
 24 it --
 25 A. Yeah.

1 Q. -- was her mother?
 2 A. Yeah.
 3 Q. Now, when you say she was upset, can you
 4 describe for me how upset she was?
 5 A. She was screaming, like very shaken up
 6 and she was, she was screaming for help. She was,
 7 you know, screaming my baby, something's wrong with
 8 my baby.
 9 Q. Okay. So you went into the apartment,
 10 the one that Pooka lived in?
 11 A. Right.
 12 Q. And you went into the bathroom and you
 13 saw her you said laying on the floor?
 14 A. Uh-huh.
 15 Q. I'm gonna show you a picture, and I'm not
 16 showing it to you to upset you, State's Exhibit 38,
 17 is that about how Sheila looked when you saw her,
 18 Pooka?
 19 A. Yes, ma'am.
 20 Q. Okay. Now, in State's Exhibit 38, there
 21 are some things covering her.
 22 When you went into the bathroom, was
 23 there anything covering Pooka?
 24 A. No.
 25 Q. Okay. Did you do anything?

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1 A. I did touch her neck to see if she had a
 2 pulse. I put my ear close to her, her mouth to see
 3 if she was breathing and I put a mirror under her
 4 nose.
 5 Q. Okay. Besides that did you cover her at
 6 all?
 7 A. I think I did cover her.
 8 Q. Okay. Were there items laying on the
 9 floor that you used to cover her or at least near
 10 by? You didn't get up, go to another room and --
 11 A. No, no.
 12 Q. -- get something?
 13 A. I didn't get up and go to another room.
 14 I, I think I grabbed something that was there.
 15 Q. Okay. Now, when you went into the
 16 bathroom, there was some things that are laying on
 17 the floor around her.
 18 Were those things also on the floor
 19 whether you got there?
 20 A. I cannot recall.
 21 Q. Okay. Was it very closed in?
 22 A. Small bathroom, yeah.
 23 Q. Okay. How would you describe it as you
 24 saw it?
 25 A. It wasn't a total wreck but a little,

1. little messy. Bathroom's get dirty. You know, you
2 can tell somebody had been in it.

3 Q. A little messy, some things had been
4 knocked --

5 A. Yeah.

6 Q. -- over?

7 A. Yeah.

8 Q. You said that you touched her to see if
9 she was alive, put a mirror under her nose.

10 What caused you to do those things?

11 A. I was talking to emergency assistance.

12 Q. 911?

13 A. Yeah, 911.

14 Q. Somebody called 911?

15 A. Yeah.

16 Q. Do you know who it was who called 911?

17 A. I can't recall who called 911, no.

18 Q. It wasn't you?

19 A. No, it wasn't me.

20 Q. Did Ebony go into the apartment with you?

21 A. Yeah, she was behind me.

22 Q. Did Ebony have a phone with her?

23 A. I'm not sure.

24 Q. Somebody was on the phone with a 911

25 operator?

1 A. Yes, ma'am.

2 Q. And they were relating to you what to do?

3 A. Right.

4 Q. And did you do what you were told to do?

5 A. Pretty much, yeah.

6 Q. And what did you see when you did that?

7 A. Well, I put my ear close to her face to
8 see if I felt any warm air, and then I put the

9 mirror under her nose. It was a little fogged, but
10 not too much, and I didn't feel a pulse.

11 Q. And did you report back to the person
12 that was on the phone with 911, so that they could
13 tell the operator that?

14 A. I could have, yeah. It was a little
15 crazy.

16 Q. Was it upsetting?

17 A. Well, I mean of course, yeah.

18 Q. Okay. Did the police get there while you
19 were there or medical?

20 A. Not right away, no.

21 Q. Did they get there ultimately?

22 A. Yeah. They did get there, though, yeah.

23 Q. Did you leave the apartment when they got
24 there?

25 A. Yeah.

1 Q. So that they could do what they needed to
2 do?

3 A. Yeah.

4 Q. Later did you talk to the police about
5 what you saw, what you knew, what you did?

6 A. Yes, ma'am.

7 Q. Did you give a statement?

8 A. Yes.

9 MS. LUZAICH: Okay. Thank you.

10 THE COURT: Anything?

11 MR. PATRICK: Just briefly, judge.

12 CROSS-EXAMINATION

13 BY MR. PATRICK:

14 Q. Good morning, Ms. Carr.

15 A. Good morning.

16 Q. How are you? You said that Robert Lewis
17 is your uncle?

18 A. Yes, sir.

19 Q. Okay. Do you know George Brass?

20 A. Yes.

21 Q. Senior, junior, both?

22 A. Yes.

23 Q. You know both of them?

24 A. Yes, sir.

25 Q. Okay. Were you aware of that George

1 Brass, Jr., was dating Sheila?

2 A. No.

3 Q. No, okay. Now, when you went into the
4 bathroom and tried to check for a pulse and
5 breathing, was there -- did anybody else go into the
6 bathroom with you?

7 A. Not directly inside the bathroom, but my
8 cousin was behind me.

9 Q. Okay. Kind of in the doorway?

10 A. I was on my knees and she was over me,
11 yeah.

12 Q. And that would have been Ebony?

13 A. Yes.

14 Q. And you were, you were present when the
15 medical personnel arrived?

16 A. Yeah.

17 Q. Okay. And did you watch him go into the
18 bathroom to try and help Sheila?

19 A. No, I didn't.

20 Q. No. Do you remember how many medical
21 people you saw respond?

22 A. No.

23 MR. PATRICK: Okay. That's all I have,
24 judge.

25 THE COURT: Anything else?

1 MS. LUZAICH: Just br...y.
 2 REDIRECT-EXAMINATION
 3 BY MS. LUZAICH:
 4 Q. Is there a difference between dating
 5 someone and having sex with someone?
 6 A. Yeah. I would say so, yeah.
 7 Q. Is it possible to have sex with somebody
 8 without actually dating them?
 9 A. Yes. Yes, ma'am.
 10 Q. Your cousin George Brass, Jr., you've
 11 heard him as Chicken, right?
 12 A. (Positive nod of the head.)
 13 Q. Did he have a girlfriend and a child?
 14 A. Yeah.
 15 Q. And did he stay with his girlfriend and
 16 child periodically at that time?
 17 A. Yeah.
 18 Q. And when you would say stay with, does
 19 that mean live with or just --
 20 A. I wouldn't say live with.
 21 Q. -- or just live with now and then?
 22 A. Kind of an overnight sometime thing,
 23 yeah.
 24 Q. Is it possible -- well, do you know
 25 whether or not Sheila and Chicken were sleeping

1 together or having sex?
 2 A. No.
 3 Q. You don't know?
 4 A. Not that I know of, no.
 5 MS. LUZAICH: Thank you.
 6 THE COURT: Okay, thanks.
 7 MR. PATRICK: Just one quick question.
 8 RECROSS-EXAMINATION
 9 BY MR. PATRICK:
 10 Q. Are you familiar with slang terms that
 11 are used on the street, some of them?
 12 A. Pretty much.
 13 Q. Okay. "Talking to," is that the same as
 14 having sexual relationships with?
 15 A. No. "Talking to" is just a crush.
 16 Q. Just a crush?
 17 A. Yeah.
 18 MR. PATRICK: Okay, thank you.
 19 THE COURT: Okay. Thanks for coming by.
 20 THE WITNESS: Am I excused to go home?
 21 THE COURT: You bet you are. Have a nice
 22 day.
 23 Okay. We'll take our lunch break at
 24 this time.
 25 During this break, don't talk or

1 converse among ourselves or with anyone else on any
 2 subject connected with this trial.
 3 Don't read, watch or listen to any
 4 report of or commentary on the trial or any person
 5 connected with this trial by any medium of
 6 information, including, without limitation,
 7 newspapers, television, internet and radio.
 8 Don't form or express any opinion on
 9 any subject connected with the trial until the case
 10 is finally submitted to you.
 11 We'll pick up at 1 o'clock. Have a
 12 good lunch. Anything you need to know, you can ask
 13 Officer Moon.
 14 (Whereupon, the jury exited the
 15 courtroom.)
 16 The record will reflect the jury
 17 exited.
 18 Anything else?
 19 MR. PIKE: No.
 20 THE COURT: See you at 1:00.
 21 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
 22 PROCEEDINGS.

JoAnn Orduna

JO ANN ORDUNA
 CCR NO. 370