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Supreme Court No. _____
District Court Case No. C250630

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EDWARD A. FRIEDLAND
CLERK OF THE COURT

4 BY KRISTEN BROWN

DEPUTY

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 BRIAN KERRY O'KEEFE,

12 Defendant.

CASE NO. C250630

DEPT. XVII

13
14 BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15 TUESDAY, MARCH 17, 2009

16 **RECORDER'S PARTIAL TRANSCRIPT**
17 **OF THE JURY TRIAL - DAY 2**

18 APPEARANCES:

19
20 For the State:

PHILLIP SMITH, ESQ.,
STEPHANIE GRAHAM, ESQ.,
Deputy District Attorneys

21
22 For the Defendant:

RANDALL H. PIKE, ESQ.,
PATRICIA PALM, ESQ.,
Deputy Special Public Defenders

23
24
25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; TUESDAY, MARCH 17, 2009

2
3 [Prior proceedings - Not transcribed]

4 [Partial testimony of Officer Brian Santarossa

5 on Cross-Examination from 11:09:31 a.m. - 11:09:50 a.m.]

6 BY MS. PALM:

7 Q: Did you get close enough to Mr. O'Keefe to observe whether he was
8 intoxicated or not?

9 A: I got close enough to a point, but I can't remember if he was
10 intoxicated or not.

11 Q: You just don't recall --

12 A: I don't recall.

13 Q: -- if he had any signs?

14 A: I don't.

15 Q: So you wouldn't dispute it if other Officers said that he was?

16 A: No, ma'am, I wouldn't.

17
18 [Prior proceedings - Not transcribed]

19 [Partial testimony of Officer Brian Santarossa

20 on Cross-Examination from 11:11:47 a.m. - 11:12:26 a.m.]

21 BY MS. PALM:

22 Q: As a patrol officer you have training regarding driving under the
23 influence arrest?

24 A: Yes, ma'am.

25 Q: Okay. Do you have a PBT machine in your vehicle?

1 A: No, ma'am.
2 Q: Can you describe for me what that machine is?
3 A: It stands for Portable Breathalyzer Test; it's a test which measures
4 the blood alcohol content and the subject's breathe.
5 Q: Are those commonly in Metro vehicles?
6 A: No, ma'am.
7 Q: Okay, so to have a PBT on the scene you would have to call for one?
8 A: Yes, ma'am.
9 Q: And when the Detectives assume control of the investigation, they
10 didn't direct you to take a PBT of Mr. O'Keefe; did they?
11 A: No, ma'am.

12

13 [Prior proceedings - Not transcribed]

14 [Partial testimony of Officer Brian Santarossa

15 on Redirect Examination from 11:14:20 a.m. - 11:14:40 a.m.]

16 BY MS. GRAHAM:

17 Q: With regard to the breathalyzer testing, have you responded to major
18 crime scenes like this before?

19 A: Yes, ma'am.

20 Q: Would it be protocol to take a breathalyzer test that somebody's
21 agitated and suspected of murdering somebody?

22 A: No, ma'am.

23

24 [Prior proceedings - Not transcribed]

25 [Partial testimony of Officer Jeremiah Ballejos

1 on Direct Examination from 1:43:41 p.m. - 1:44:00 p.m.]

2 BY MS. GRAHAM:

3 Q: What was his demeanor while you were trying to gather this
4 information to help assist Victoria?

5 A: Wouldn't make eye contact. Had kind of an aloof state. You could
6 smell alcohol on his breath and clothes.

7 Q: Okay. He was aloof. What did his face look like?

8
9 [Prior proceedings - Not transcribed]

10 [Partial testimony of Officer Jeremiah Ballejos

11 on Cross Examination from 2:03:41 p.m. - 2:03:52 p.m.]

12 BY MS. PALM:

13 Q: Do you recall testifying at the Preliminary Hearing that Mr. O'Keefe's
14 smelled real heavily of alcohol?

15 A: Yes.

16 Q: And do you recall that he actually fell asleep in the back of the patrol
17 car?

18 A: He did.

19
20 [Prior proceedings - Not transcribed]

21 [Partial testimony of Officer Christopher Hutcherson

22 on Cross Examination from 3:11:03 p.m. - 3:11:15 p.m.]

23 BY MS. PALM:

24 Q: Did it appear to you that Mr. O'Keefe was intoxicated?

25 A: Yes, ma'am. I can smell alcohol coming from him.


1 Q: Okay. And would you agree with the statement that he was
2 obviously intoxicated?

3 A: Yes, ma'am.

4 [Proceedings continued - Not transcribed]
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
22 proceedings in the above-entitled case to the best of my ability.

23 
24 _____
25 Michelle Ramsey
Court Recorder/Transcriber

COPY

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

COPY

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN KERRY O'KEEFE,

Defendant.

.....

. CASE NO. C-250630

. DEPT. NO. 17

. TRANSCRIPT OF
. PROCEEDINGS

FILED

JUL 10 2009

E. J. Smith
CLERK OF COURT

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, MARCH 17, 2009

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 2

APPEARANCES:

FOR THE PLAINTIFF:

PHILLIP SMITH, ESQ.
STEPHANIE GRAHAM, ESQ.
Deputy District Attorneys

FOR THE DEFENDANT:

RANDALL H. PIKE, ESQ.
PATRICIA A. PALM, ESQ.
Special Public Defenders

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Littleton, CO 80120
(303) 798-0890

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 17, 2009, 9:38 A.M.
2 (Outside the presence of the jury)
3 THE MARSHAL: (Indiscernible) Eighth Judicial
4 District is now in session. Honorable Judge Michael P. Villani
5 presiding. Please be seated. Remain in order. Let's make
6 sure our cell phones are turned off, please.
7 THE COURT: We're missing our DAs? Let the record
8 reflect we're outside the presence of the jury panel. I
9 advised counsel that Juror No. 12, Harley McFate or McFate
10 apparently called in left a message last night. Stated that
11 the apartment above his flouded, went into his apartment, and
12 all of his things basically have been ruined, and he was told
13 that he had to stay there all day today to work with the
14 service technicians to solve the problem whether it's bad
15 carpet or ruined personal items.
16 We put a call into the jury commissioner to try to
17 get ahold of him. No luck. He did leave a number on the
18 recorder. However, his speech was so slurred -- not saying
19 intoxicated, just it was hard to understand, and we couldn't
20 get a phone number out of his message. And so we'll be
21 utilizing the other -- at least one of the alternates now. So
22 I guess apparently No. 3 --
23 THE CLERK: Is next in line.
24 THE COURT: -- is next in line.
25 UNIDENTIFIED SPEAKER: Okay.

Page 2

ROUGH DRAFT TRANSCRIPT

1 admonished him again.
2 I would just like to bring that to the Court's
3 attention, because if it happens again, I would like -- ask the
4 Court to admonish him strongly because it prejudices Mr.
5 O'Keefe when we have to look like we're hiding information from
6 the jury because this guy wants to volunteer information. So
7 that's one issue.
8 And the other issue is that we would like any
9 reference to the sexual assault kit not to be called a sexual
10 kit. We'd ask that it be called DNA evidence or something to
11 that effect because there was no evidence of a sexual assault
12 kit or a sexual assault here, and I think it's kind of
13 prejudicial to call it a sexual assault kit.
14 THE COURT: Mr. Smith.
15 MR. SMITH: Judge, in regards to the testimony of Mr.
16 Ballejos, either myself or Ms. Graham will speak with him prior
17 to him getting on the stand and relay the defense attorney's
18 concerns, so we don't anticipate that will be a problem.
19 In regards to calling it a sexual assault kit, Judge,
20 I'll just submit it. If your Honor wants us to instruct the
21 witness to describe it as something else, we will. I mean, I
22 don't really think it makes that much of a difference but --
23 THE COURT: All right. I think -- you know,
24 obviously we use that in a sexual assault case where the
25 defense had stated there wasn't a sexual -- was not a sexual

Page 4

ROUGH DRAFT TRANSCRIPT

1 THE COURT: All right. Anything by the defense or
2 State?
3 MS. PALM: Yes, I have a couple matters that I just
4 want to make a record of from yesterday. Yesterday we
5 approached at the bench and objected to Mr. Smith's voir dire
6 question on the grounds that it was improper and advise the
7 jury that the show CSI was not realistic. The Court overruled
8 our objection but gave Mr. Pipe latitude to inquire if he
9 wanted to into the CSI matter.
10 Also, we objected to a statement from Joyce Toliver
11 that her husband had said to her he done killed that girl,
12 something to that effect. The State made the argument that it
13 was admissible as an excited utterance at the bench. We argued
14 that the basis for excited utterance is that the witness
15 actually saw what happened, and was what gave validity to the
16 statement making it admissible, and Mr. Toliver had not seen
17 any killing. So that statement did not qualify as an excited
18 utterance. The Court overruled our objection and admitted the
19 statement as excited utterance.
20 We have a couple of other matters that we wanted to
21 address. One is Officer Ballejos, who I believe will be
22 testifying for State, during the preliminary hearing a couple
23 of times he had to be admonished when I was cross-examining
24 him. He kept trying to volunteer information that was not a
25 direct answer to the question. The Court admonished him,

Page 3

ROUGH DRAFT TRANSCRIPT

1 assault, and typically the prosecutors will call it a -- or the
2 witness will call it a sexual assault kit. But there's no
3 allegation here of any sex assault; is that correct?
4 MR. SMITH: There is none.
5 THE COURT: Okay. If you could just call it like a
6 DNA or DNA collection kit or --
7 MR. SMITH: We'll find --
8 THE COURT: -- some neutral term.
9 MR. SMITH: We'll find a term of art that gets it
10 across without implicating then that there was a sexual assault
11 --
12 THE COURT: And you might address the issue of the
13 excited utterance.
14 MR. SMITH: Sure, Judge. I will just note that the
15 statute says that an excited utterance is made -- is a
16 statement made in relation to an event soon after or under
17 distress after seeing a startling event. Here we have a
18 situation where Charles Toliver goes upstairs, sees the
19 defendant nearby a dead woman with blood every where. I mean,
20 certainly under any circumstance that could certainly be
21 described as a startling event.
22 We had Joyce Toliver testify that when he came inside
23 the apartment, Mr. Toliver was visibly shaking, upset, and
24 under the stress and excitement of that startling event that he
25 had just seen, i.e., the defendant standing over a dead woman,

Page 5

ROUGH DRAFT TRANSCRIPT

000376

1 he made some statements.
 2 I submit that that clearly satisfies the statute.
 3 And Judge, it's the State's position that the reason for the
 4 excited utterance exception is that it is presumed that a
 5 person will make truthful statements while under the stress of
 6 an event because presumably they have no motive to fabricate or
 7 to lie. So the only thing that the State has to show is that a
 8 startling event happened, and that the person was still under
 9 the stress of that startling event while they made those
 10 statements, and that's exactly what we have here.
 11 THE COURT: All right. I don't think he needs to see
 12 the actual stabbing when he's -- like counsel had mentioned,
 13 this lady that perhaps didn't know if she was dead, blood all
 14 over the place. I think he said the sheets or rags were soaked
 15 in blood.
 16 MR. SMITH: Yes, sir.
 17 THE COURT: The defendant he testified was shaken to
 18 wake up or something like that. So that's why I overruled the
 19 objection. Anything else?
 20 MS. GRAHAM: Nope.
 21 THE COURT: Call the jury in.
 22 THE MARSHAL: Officers and members of the court,
 23 Department 17 jurors.
 24 (In the presence of the jury)
 25 THE CLERK: Roll call. Justin Dettre. Jody

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ROUGH DRAFT TRANSCRIPT

1 turned off, please. All phones are off.
 2 THE COURT: Ladies and gentlemen, just so you know,
 3 Juror No. 12 was involved in an extreme emergency situation,
 4 and so he is no longer part of the jury panel, and that's why
 5 it's important that we have alternates. As I said before, the
 6 alternates have been randomly selected, so it's not necessarily
 7 seats 13 or 14. So I'm sure everyone will pay attention
 8 throughout the trial. State, please call your next witness.
 9 MR. SMITH: Thank you, Judge. Judge, the State calls
 10 Cheryl Morris to the stand.
 11 THE COURT: Also, I don't believe either party's
 12 invoked the exclusionary rule. Does either party wish to
 13 invoke that?
 14 MS. GRAHAM: We do, your Honor.
 15 THE COURT: All right. If there are any witnesses
 16 that are going to be called in this case, they're instructed to
 17 remain outside until called in by the marshal.
 18 UNIDENTIFIED SPEAKER: Your Honor, the head phones
 19 aren't working.
 20 THE COURT: We'll have the marshal check -- or
 21 Michelle, do you have time to --
 22 THE MARSHAL: Ms. Morris, if you'll remain standing,
 23 please. Raise your right hand. Face the clerk.
 24 CHERYL MORRIS, PLAINTIFF'S WITNESS, SWORN
 25 THE WITNESS: Yes.

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ROUGH DRAFT TRANSCRIPT

1 Montonya.
 2 JUROR NO. 2: Here.
 3 THE CLERK: James Eral.
 4 JUROR NO. 3: Here.
 5 THE CLERK: Judy Chelini.
 6 JUROR NO. 4: Here.
 7 THE CLERK: Nancy Mirolock.
 8 JUROR NO. 5: Here.
 9 THE CLERK: Kirk Livernash.
 10 JUROR NO. 6: Here.
 11 THE CLERK: Dawn Fraley.
 12 JUROR NO. 7: Here.
 13 THE CLERK: Araceli Murrieta.
 14 JUROR NO. 8: Here.
 15 THE CLERK: James McCaldin.
 16 JUROR NO. 9: Here.
 17 THE CLERK: Marie Pinillos.
 18 JUROR NO. 10: Here.
 19 THE CLERK: Jose Vasquez.
 20 JUROR NO. 11: Here.
 21 THE CLERK: Robert Clark.
 22 JUROR NO. 13: Here.
 23 THE CLERK: And Martin Villasenor.
 24 JUROR NO. 14: Here.
 25 THE MARSHAL: Let's make sure all cell phones are

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ROUGH DRAFT TRANSCRIPT

1 THE CLERK: Please be seated. State your name and
 2 spell it for the record.
 3 THE WITNESS: Cheryl Morris, C-h-e-r-y-l. Morris,
 4 M-o-r-r-i-s.
 5 THE COURT: Go ahead, Counsel.
 6 MR. SMITH: Thank you, Judge.
 7 DIRECT EXAMINATION
 8 BY MR. SMITH:
 9 Q Good morning, Ms. Morris.
 10 A Good morning.
 11 Q Ms. Morris, do you know a person by the name of Brian
 12 O'Keefe?
 13 A Yes, I do.
 14 Q Do you see Mr. O'Keefe present in court today?
 15 A Yes, I do.
 16 Q Can you point to him for us and identify what he's
 17 wearing.
 18 A He's the gentleman sitting there with his counsel,
 19 and he's wearing a dark suit.
 20 Q What color tie?
 21 A Brown/black tie, dark tie.
 22 MR. SMITH: Judge, can the record reflect the witness
 23 has identified the defendant?
 24 THE COURT: Yes it will.
 25 MR. SMITH: Thank you, Judge.

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ROUGH DRAFT TRANSCRIPT

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1 BY MR. SMITH::
2 Q And Ms. Morris, how do you know Mr. O'Keefe?
3 A I was dating Mr. O'Keefe.
4 Q When would that relationship start?
5 A January 7th of 2008.
6 Q When did that relationship end?
7 A September 6th of 2008.
8 Q Okay. Now, when that relationship ended, where were
9 you residing?
10 A I was residing with a friend.
11 Q Okay. Throughout the course of the relationship that
12 you had with Mr. O'Keefe, did you two ever reside together?
13 A Briefly, which was last part of August of this year
14 or excuse me, of last year and September, actually. We moved
15 into an apartment, but I was only there for four days.
16 Q Okay. Where was that apartment located?
17 A 5001 El Parque Avenue, Apartment 35 --
18 Q Is that --
19 A -- in Las Vegas.
20 Q And was that in Clark County, Nevada?
21 A Yes.
22 Q Now, you just said that you only lived there for four
23 days.
24 A Correct.
25 Q Why did you only stay there for that short period of

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ROUGH DRAFT TRANSCRIPT

1 Q And were you not okay with that?
2 A No.
3 Q Okay. And why not?
4 A Didn't think it was right. Several days prior to him
5 calling me, we had agreed that we weren't going to bring anyone
6 over to the apartment until I was able to move out. We broke
7 up two days before.
8 Q So we being you and Mr. O'Keefe?
9 A Yes.
10 Q Okay. So, is it correct to say that when you guys
11 were living in the El Parque address, you guys being you and
12 Mr. O'Keefe, that you weren't actually in a relationship at
13 that time?
14 A No.
15 Q Okay. And what was the lease agreement?
16 A I'm sorry?
17 Q Whose name was on the lease?
18 A Both of ours.
19 Q Okay. Now, when you moved out of the apartment, did
20 your name remain on the lease?
21 A Yes, but I did not -- I called the apartment owner,
22 and I requested that he take that lease and have Mr. O'Keefe
23 and Ms. Witmarsh sign a brand new lease. I actually kept the
24 apartment keys and the only mailbox key to the apartment so
25 that it would be taken care of.

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ROUGH DRAFT TRANSCRIPT

1 time?
2 A I received a phone call from Mr. O'Keefe stating that
3 he wanted to come home, and he wanted to bring Victoria home
4 with him.
5 Q Victoria who?
6 A Victoria Witmarsh (phonetic).
7 Q Do you know who Victoria Witmarsh is?
8 A Yes.
9 Q And who is Victoria Witmarsh?
10 A A former girlfriend of his.
11 Q How do you know Victoria Witmarsh was a former
12 girlfriend of Mr. O'Keefe's?
13 A Mr. O'Keefe let me know.
14 Q Okay. Had you ever personally met Victoria Witmarsh?
15 A No.
16 Q Now, when you moved into the El Parque address in
17 August 2008, to your knowledge, was the defendant still in a
18 relationship with Ms. Witmarsh?
19 A He had seen her on occasions, yes. But he'd come
20 back and let me know that he was actually more interested in me
21 rather than being with her.
22 Q Okay. Now, you've already testified that you moved
23 out of the El Parque address because the defendant said that he
24 was going to bring Ms. Witmarsh to that address.
25 A Correct.

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ROUGH DRAFT TRANSCRIPT

1 Q Okay. Now, let me ask you this. You've already
2 testified that you moved out of the apartment because Mr.
3 O'Keefe wanted to bring home another woman as it were.
4 A Yes.
5 Q Did you have any ill will towards Mrs. Witmarsh?
6 A No, not at all.
7 Q Did you have any ill will towards Mr. O'Keefe?
8 A I was -- I was upset at the way he had done it.
9 Q Okay.
10 A At the way -- as of the way he approached the
11 situation because I actually informed him that if he wanted to
12 be with her, it was okay. Just let me know, and I'd move out
13 of the way.
14 Q Okay. And did you, in fact, move out of the way?
15 A Yes.
16 Q Okay. Now, you testified that your relationship
17 lasted for several months.
18 A Correct.
19 Q You said it started in January and it ended when?
20 A It ended September.
21 Q Okay. Throughout the course of that relationship did
22 the defendant ever talk to you about his relationship with Mrs.
23 O'Keefe -- excuse me, Mrs. Witmarsh?
24 A Yes.
25 Q Okay. And how often would he speak to you about her?

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ROUGH DRAFT TRANSCRIPT

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1 A Almost all the time. He usually would be more or
2 less on a daily basis. I'd say about three, four weeks a day
3 --
4 Q Okay.
5 A -- or a time.
6 Q What types of things would he tell you about the
7 relationship?
8 MR. PIKE: Objection, your Honor. Hearsay.
9 THE COURT: Sustained.
10 MR. SMITH: Judge, it's a statement of a party
11 opponent offered against that person.
12 THE COURT: Counsel approach.
13 (Bench conference).
14 THE COURT: I'm going to overrule the objection.
15 MR. SMITH: Thank you, your Honor.
16 MR. PIKE: I'd ask for that continuing objection to
17 be placed.
18 THE COURT: All right.
19 BY MR. SMITH::
20 Q Ms. Morris, you can answer the question.
21 A Could you repeat the question, please.
22 Q The question was what types of things would the
23 defendant tell you with regards to his relationship with
24 Victoria Witmarsh?
25 A On occasions he'd actually say that he was upset

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ROUGH DRAFT TRANSCRIPT

1 Q Do you recall giving a statement to the police back
2 on November 20th, 2008?
3 A Yes.
4 Q Do you recall him recording that statement?
5 A Yes, I do.
6 Q If I showed you a copy of that statement, would it
7 refresh your recollection as to whether defendant ever made any
8 statements to you regarding whether he liked Victoria because
9 she was a submissive woman?
10 A Yes.
11 MR. SMITH: May approach the witness --
12 THE COURT: Yes.
13 MR. SMITH: -- Judge?
14 BY MR. SMITH::
15 Q And for the record, Ma'am, I'm showing you Page 18 of
16 a recorded transcript -- of a transcript of a recorded
17 voluntary statement that you gave to you police. I'd ask you
18 to just -- read this portion to yourself, and then let me know
19 when you're done.
20 A Yes.
21 Q Now do you recall whether or not the defendant ever
22 made a statement to you that he liked Victoria Witmarsh because
23 he was submissive?
24 A Yes.
25 Q Did he, in fact, say that?

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ROUGH DRAFT TRANSCRIPT

1 because she put him in prison.
2 Q Okay. What else would he say?
3 A He'd say things like he wanted to kill the bitch.
4 Q So just so the record's clear, Mr. O'Keefe would make
5 statements to you saying he wanted to kill Mrs. Witmarsh
6 because she put him in prison?
7 A Yes.
8 Q And when you say that because he put her in prison,
9 did he indicate that she had actually testified against him?
10 A Yes.
11 Q At a jury trial?
12 A Yes.
13 Q Okay. Did he make any statements as to what kind of
14 person Victoria Witmarsh was?
15 A He would state that Victoria was somewhat a very --
16 she wasn't a strong person.
17 Q Okay.
18 A She -- if you yelled at her, basically, she would
19 cower. So she would be portrayed as a very meek person.
20 Q So the defendant described Mrs. Witmarsh to you as a
21 submissive woman?
22 A Correct.
23 Q Okay. Did he indicate that he liked her because of
24 that?
25 A No, he didn't make any sort of indication.

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ROUGH DRAFT TRANSCRIPT

1 A Yes, he did.
2 Q Now, Ms. Morris, again, throughout your time with Mr.
3 O'Keefe, did he ever make any statements to you indicating his
4 proficiency with weapons?
5 A Yes.
6 Q Specifically what kind of a weapon?
7 A A knife.
8 Q What types of things would he tell you?
9 A That he was capable of killing anyone.
10 Q With a knife?
11 A With a knife, yes.
12 Q Did he ever demonstrate to you how he could kill
13 someone with a knife?
14 A Yes, he did.
15 Q Can you show us.
16 A I'd have to stand up.
17 Q Yes, ma'am.
18 A Mr. O'Keefe would hold me on one shoulder and have a
19 pretend sort of weapon in his hand, and he would stand there
20 and hold me as length's -- arm's length and say he would come
21 at me or could come at a person and shove it through the cage
22 -- rib cage area and then just pull up pretty much --
23 Q And for the --
24 A -- slicing someone open.
25 MR. SMITH: And for the record, the witness is

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ROUGH DRAFT TRANSCRIPT

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1 pointing to her mid section.
2 THE COURT: All right.
3 MR. PIKE: More particularly the sternum area.
4 MR. SMITH: The sternum area.
5 MR. PIKE: Thank you.
6 THE COURT: Okay.
7 BY MR. SMITH:
8 Q Now, while you two were living in the El Parque
9 address for those four days, did you sleep in the same bed?
10 A No.
11 Q What were the sleeping arrangements?
12 A After Mr. And O'Keefe and I had decided that we were
13 no longer going to be with each other, I slept in the room in
14 my bed behind locked door, and he slept on the couch.
15 Q And was that, to your knowledge, consistent with the
16 agreement you two had to be merely platonic?
17 A Correct.
18 Q Did you ever reside with Brian O'Keefe again after
19 you moved out?
20 A No.
21 Q Do you know how long Mr. O'Keefe has known Victoria
22 Witmarsh?
23 A Since 2001.
24 Q And how do you know that?
25 A Mr. O'Keefe has stated that to me.

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ROUGH DRAFT TRANSCRIPT

1 while he was in the Clark County Detention Center a month after
2 this incident had happened, did you ask him what happened?
3 A Yes, I did.
4 Q And what did he tell you?
5 A He said that he and Victoria had come home from
6 somewhere -- I cannot remember the place where he had mentioned
7 --
8 Q Okay.
9 A -- but he and Victoria came home. He was tired. He
10 went into the room, and he proceeded to go to sleep in the
11 darkroom want the next thing he knew he said that he felt a
12 prick or a stabbing on his hand, and he saw Victoria standing
13 over him with a knife.
14 Q Okay.
15 A And then he stated that the next thing he knew was
16 that he was holding her hand, and it went limp, and the knife
17 was at -- in her side.
18 Q Okay. Did he offer anything to explain the gap
19 between the alleged prick and the knife being inside of Mrs.
20 Witmarsh?
21 A He said that they struggled.
22 Q Okay. What was his demeanor while he was telling you
23 this?
24 A Somber.
25 Q Okay. Did he ever -- excuse me, strike that. Did he

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ROUGH DRAFT TRANSCRIPT

1 Q Did Mr. O'Keefe ever make any statements to you
2 regarding any training that he has had in the special forces?
3 A Yes, he said he had training in the Grenada.
4 Q Okay. Now, after you moved out of that apartment in
5 2008, did you ever have an occasion to see Mr. O'Keefe again?
6 A Yes, I did. I'm not exactly sure what date it was.
7 Q Could it have been December 6th, 2008?
8 A Yes.
9 Q So would that have been approximately a month after
10 the incident in question?
11 A Correct.
12 MR. SMITH: Your Honor, we're -- actually, can we
13 approach? Can we --
14 THE COURT: All right.
15 MR. SMITH: -- approach, Judge?
16 THE COURT: (Bench conference).
17 MR. SMITH: May I proceed, Judge?
18 THE COURT: Yes.
19 MR. SMITH: Thank you.
20 BY MR. SMITH:
21 Q Now, Ms. Morris, under what circumstances did you
22 next come into contact with Brian O'Keefe in December of 2008?
23 A It was just that moment when I went to go and visit
24 him at the county jail.
25 Q Okay. Now, when you went to go visit Mr. O'Keefe

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ROUGH DRAFT TRANSCRIPT

1 indicate to you that Mrs. Witmarsh ever struck him during this
2 alleged struggle?
3 A No.
4 Q Going back to the conversations that you had with Mr.
5 O'Keefe regarding his disdain of Mrs. Witmarsh for sending him
6 to prison, did he ever make any statements to you as to the
7 length of time?
8 A In regards to how many times that she'd go and visit?
9 Q No, in regards to her testifying against him and
10 ultimately being incarcerated?
11 A She would go and visit him quite often. I'm sorry --
12 Q Okay.
13 A -- I don't understand.
14 Q My question is, okay, do you recall whether or not
15 the defendant made a statement to you that Ms. Witmarsh took
16 away three years of his life?
17 A Yes, he did. He had mentioned that quite often, and
18 that was in conclusion with, you know, the bitch, I hate her,
19 she's poison, she took three year of my life, I want to kill
20 her.
21 MR. SMITH: Pass the witness, Judge.
22 THE COURT: Cross-examination.
23 CROSS-EXAMINATION
24 BY MR. PIKE:
25 Q Morning --

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ROUGH DRAFT TRANSCRIPT

1 A Good morning.
2 Q -- Ms. Morris. How are you today?
3 A Fine, thank you.
4 Q Now, how did you and Brian meet?
5 A I was at a casino called Arizona Charlie's with a
6 friend, and I happen to go into the Sour Dough Cafe (phonetic)
7 and sit down and eat, and he and another friend had come in and
8 sat down beside me.
9 Q Okay. And that was -- you indicated that was in
10 January of last year.
11 A No, actually that happened in December, and I had
12 left to go to San Diego and I did not return until January.
13 Q Okay. And when you came back in January, did -- was
14 it you that initiated the contact with Brian to say I'm back in
15 town or did mutual friends tell you? What -- how did that work
16 out?
17 A Mr. O'Keefe and I had talked while I was in San
18 Diego. As a matter of fact, he made this comment that he ran
19 up a bill of \$300. We had talked on the phone almost all --
20 several nights, and he asked if he would be able to come and
21 pick me up from the Greyhound Station when I got into town, and
22 that was the arrangement.
23 Q Okay. And he did pick you up?
24 A Yes.
25 Q All right. And so during that period of time while

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ROUGH DRAFT TRANSCRIPT

1 THE WITNESS: No more than he usually did. On
2 occasions he would have a little more, yes.
3 BY MR. PIKE::
4 Q Did you believe during that period of time that Brian
5 had a problem with alcohol?
6 A Yes.
7 Q Did he consume too much alcohol?
8 A Depends on what you call or consider too much.
9 Q Too much -- let me ask the question this way. Did he
10 appear to become intoxicated or drink to the point where he
11 would not -- he would behave differently?
12 A With beer, no.
13 Q With other alcohol beverages, yes?
14 A Correct.
15 Q And you indicated just previously that the
16 questioning that it was Victoria that reinitiated contact with
17 Mr. O'Keefe, correct?
18 A Yes.
19 Q And you talked to Victoria about that.
20 A Yes.
21 Q And you told her -- you told Victoria that it was
22 inappropriate for her to try and get back with him.
23 A I don't recall making that statement.
24 Q Okay. When you talked with Victoria, did you ask her
25 why she wanted to get back with Brian?

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ROUGH DRAFT TRANSCRIPT

1 you're talking on the telephone and you were developing a
2 relationship with each other, you were developing an
3 attraction; would that be an appropriate term to use?
4 A Yes.
5 Q And it became a couple type relationship where it --
6 you could talk with him about intimate details of your life and
7 he could talk to you about intimate details --
8 A Yes.
9 Q -- of his life.
10 A Yes.
11 Q And between the two of you, that relationship where
12 you were talking to each other was a safe relationship where
13 you could share dreams, hopes, aspirations, concerns, past
14 horrors of your life and things like that.
15 A Correct.
16 Q And that went on for a period of time.
17 A Yes.
18 Q During that early part of the relationship, that was
19 before Victoria came back into the -- into Mr. O'Keefe's life,
20 correct?
21 A Correct.
22 Q Did you a marked change when Victoria reinitiated
23 contact? Let me rephrase it. Did Brian start to drink more?
24 MR. SMITH: Objection. Goes to relevance.
25 THE COURT: Overruled.

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ROUGH DRAFT TRANSCRIPT

1 A Yes, I did.
2 Q And what did she tell you?
3 MR. SMITH: Objection, Judge. Calls for hearsay.
4 THE COURT: Sustained.
5 BY MR. PIKE::
6 Q During the time that you talked with Victoria, did
7 you tell her that she wasn't good for Brian?
8 A No.
9 Q Did you tell her that she didn't get back in his
10 life?
11 A No.
12 Q Did you tell him (sic) that she should leave well
13 enough alone and just go on with her life?
14 A No.
15 Q Was Victoria persistent in calling you in and talking
16 with you?
17 A Several times, yes.
18 Q In fact, when she got on the phone with you and she
19 was talking with you, would she yell at you?
20 A She did that one occasion which was the day that Mr.
21 O'Keefe called and said he was bringing Victoria home.
22 Q And how did you get the phone to talk to Victoria
23 during at that period of time?
24 A He handed her the phone.
25 Q And you talked with her, and she was insistent about

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ROUGH DRAFT TRANSCRIPT

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1 coming to your apartment?
2 A Yes, because her statement was he lived there, he
3 paid the rent, why wasn't he able to come back.
4 Q And you took it from that conversation, the other
5 conversations that you had with her that she was coming back
6 into that apartment whether you liked it or not.
7 A No, I took it that they both needed a place to stay
8 that night for one reason or another, and that's where they
9 were going to be.
10 Q During that period of time you became aware that
11 during the conversations that Victoria was no longer welcome at
12 her home with her husband.
13 A That is what she told me.
14 Q And from everything that you had observed during that
15 period of time, you didn't think it was going to be a good idea
16 for Victoria to be back in that house.
17 A In whose house?
18 Q In living back with Brian, Mr. O'Keefe.
19 A No, that's not true. What I actually was stating was
20 that as soon as I moved out, they could be together.
21 Q And so it was your impression during that period of
22 time that both of them wanted to be back together.
23 A Correct.
24 Q And during conversations with Brian about Victoria,
25 Mr. O'Keefe told you that she went to visit him while he was in

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ROUGH DRAFT TRANSCRIPT

1 MR. PIKE: All right, thank you.
2 BY MR. PIKE::
3 Q The fact that you had established a relationship with
4 Mr. O'Keefe for about a nine month period, you had lived with
5 him off and on during that period?
6 A I stayed with him in the trailer.
7 Q And that was located here in Las Vegas, Nevada?
8 A Yes, we -- it was mostly during the night because he
9 was working during the day. I had my school during the day. I
10 did other things, went to appointments.
11 Q And there was a decision that you would become a
12 couple. And in fact, you started to make plans together. You
13 rented an apartment.
14 A Yes.
15 Q You purchased a car together.
16 A Yes.
17 Q He put you on a bank account. You had a joint
18 account together --
19 A Correct.
20 Q -- for awhile.
21 MR. SMITH: Judge, at this point I'm going to object
22 to the relevance of their relationship.
23 THE COURT: I think it can go to bias so --
24 MR. PIKE: Yeah.
25 THE COURT: -- going to overrule the objection.

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ROUGH DRAFT TRANSCRIPT

1 custody over her testimony, didn't he?
2 A Yes.
3 Q And that she would put money on his books.
4 A Yes.
5 Q And do you understand what that means?
6 A Yes.
7 Q That means? Okay, would you describe it for the
8 jury.
9 A It means when you go to the court house or anywhere
10 else, you're allowed to go ahead and put -- the inmate has an
11 expense account where you're able to deposit money so the
12 inmate is allowed to buy things while they are incarcerated.
13 Q And, in fact, at the time of the trial in this
14 matter, she testified on behalf of Mr. O'Keefe.
15 A No, she testified against Mr. O'Keefe.
16 Q Remember him saying that she recanted her testimony?
17 MR. SMITH: Objection, Judge. It calls for hearsay.
18 THE COURT: Sustained.
19 MR. PIKE: It's a complete story, your Honor.
20 They've brought in the hearsay as to what he said. If she
21 recanted that testimony.
22 THE COURT: Well --
23 MR. SMITH: Well, Judge --
24 THE COURT: -- there wasn't any objection at the time
25 so I'm sustain the objection.

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ROUGH DRAFT TRANSCRIPT

1 MR. PIKE: Thank you, your Honor.
2 BY MR. PIKE::
3 Q And you had done all of this, and then Victoria comes
4 out of the blue, somebody that you thought would never come
5 back; is that correct?
6 A No. Victoria was always there. He -- Mr. O'Keefe
7 told me about her the very moment that we'd met. So she was
8 always there in conversation throughout the entire time.
9 Q And then physically she showed up.
10 A She called him in June on Father's Day where Mr.
11 O'Keefe proceeded to first lie to me about it, and then said I
12 can't lie to you, it was Victoria.
13 Q And it appeared that Victoria was reinitiating the
14 relationship, as you've indicated, and then Mr. O'Keefe started
15 to spend more time with Victoria.
16 A Mr. O'Keefe, after that conversation, that following
17 Monday he had left for an entire week without any notice,
18 friends or myself, and stayed with Victoria for that week.
19 Q And that obviously would upset you.
20 A I was more hurt because I had seen in Mr. O'Keefe
21 something different. Something that when we had spoken before
22 that if it ever arose that he would be courteous enough to let
23 me know that that was his intentions.
24 Q Because you and -- you had made plans with him.
25 You'd bought a car with him. You had an account with him. And

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ROUGH DRAFT TRANSCRIPT

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1 that all started to change, yes or no? Yes, it started to
2 change.
3 A It did start to change, yes.
4 Q In fact, you were taken off of the account.
5 A No, I took myself off the account.
6 Q Okay. And you wanted to take yourself off of the
7 car.
8 A Correct.
9 Q And you wanted to take yourself off of the apartment.
10 A Correct.
11 Q At that point in time you wanted to dissociate
12 yourself completely with Mr. O'Keefe because he was involved
13 with Victoria.
14 A He was involved with Victoria --
15 Q And you wanted to go through and because that car had
16 been purchased jointly with you and Mr. O'Keefe, that car was
17 -- the loan was in your name, and you still had a financial
18 responsibility for that.
19 A It was in both Mr. O'Keefe's name and my name.
20 Q And after -- and you maintained a key to the
21 apartment. After you heard about what happened that night, did
22 you go back into that apartment?
23 A It was not until the police cleared us to be able to
24 go back into the apartment.
25 Q And who did you go back in the apartment with?

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ROUGH DRAFT TRANSCRIPT

1 able to get money to him and put them on his books and anything
2 else that needed to be taken care of.
3 Q And in fact, you kept that set of keys you kept, and
4 then you were able to resolve the issues with the car, correct?
5 A I voluntarily gave it back, yes.
6 Q In going through that, during this period of time the
7 police actually didn't contact you. You went and contacted the
8 detectives.
9 A Yes, I did, and the reason why I did that was because
10 I have a friend in Metro, and I spoke with this retired
11 officer, and I asked him what I should do.
12 Q You went in and gave a statement, and then you went
13 over and talked with Mr. O'Keefe at the Clark County Detention
14 Center, and that was done over a monitor; is that correct?
15 A Yes.
16 Q During the time that you had the conversations with
17 him, did you believe that those conversations were being
18 recorded?
19 A He said they were --
20 Q Did you --
21 A -- recorded.
22 Q Did you have a -- did you believe they were being
23 recorded?
24 A Yes, I did.
25 Q Okay. And during that period of time, during that

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ROUGH DRAFT TRANSCRIPT

1 A My son and Victoria's husband David and Victoria's
2 daughter.
3 Q During the time that you went through that apartment
4 did you have Mr. O'Keefe's glasses? Did you pick those up?
5 A Yes, I did.
6 Q And for what purpose?
7 A Mr. O'Keefe had called me some time when he ended up
8 in jail and requested that I -- through his lawyer -- through
9 you as a matter of fact requested that I bring that to you.
10 Q And you and I had some conversations in trying to
11 arrange the exchange of those glasses --
12 A Correct.
13 Q -- and you brought them to the preliminary hearing --
14 A Yes.
15 Q -- in fact, so that he could have those glasses.
16 A Yes.
17 Q In addition to that, you wanted to have a power of
18 attorney to close out the account, try and resolve the issues
19 with the car, and try and resolve the financial issues that you
20 had been encumbered with during your relationship with Mr.
21 O'Keefe.
22 A In regards to that, it was only because of the fact
23 that Mr. O'Keefe, when I did have an account with him and I
24 voluntarily took my name off the account, he would state to me if
25 anything happened to him, I would be able to have access to he

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ROUGH DRAFT TRANSCRIPT

1 jail conversation, your purpose for that visit was to get his
2 side of the story, was it to get a report from him, what was
3 your purpose in going and visiting him?
4 A My purpose was I went to visit Mr. O'Keefe because a
5 mutual friend contacted me stating that Mr. O'Keefe sent a
6 letter to his sister --
7 Q Well, okay, now let me just ask you, did you go there
8 with a specific purpose in mind, yes or no?
9 A Yes, and it was because --
10 Q Did --
11 A -- I needed --
12 Q Let me -- I'll get there. I'll get there, I promise.
13 We're developing a short -- in short segments here. And prior
14 to going over to talk with him at the jail, you had met with
15 the police and you'd given a statement.
16 A Yes.
17 Q You -- at that point in time the police had told you
18 that you were going to testify at a preliminary hear; is that
19 correct?
20 A They said it was a possibility, yes.
21 Q And did any police officer talk with you about going
22 in and having conversations or talking with Mr. O'Keefe and
23 then coming back to them and telling them what he had said?
24 A No.
25 Q Okay. No detective told you not to talk with him?

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ROUGH DRAFT TRANSCRIPT

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1 MR. SMITH: Objection, Judge. Asked and answered.
2 THE COURT: I think it's -- I'm going to allow it.
3 Overruled.
4 THE WITNESS: When I made the statement it was said
5 -- I don't recall them telling me anything about that I wasn't
6 supposed to go and see him. They may have suggested that it
7 was a good idea not to see him or not to have any conversations
8 with him.
9 BY MR. PIKE::
10 Q And regardless of that, then you went in and had that
11 conversation, which you believe to be recorded during that
12 period of time. During the time that you and Mr. O'Keefe were
13 together, did he ever take you to the union to work with him?
14 A To go to work, you mean?
15 Q To go to work with him or to --
16 A No.
17 Q -- go to any social events at the union?
18 A No.
19 Q Did he ever take you to any sort of alcohol
20 counseling or drug counseling?
21 A No.
22 Q Did he ever take you to go over and meet his two
23 minor daughters?
24 A Yes.
25 Q And hoped that that was part of establishing a

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ROUGH DRAFT TRANSCRIPT

1 with emphasis.
2 Q Well, in your --
3 MR. PIKE: May I approach the witness?
4 THE COURT: Yes.
5 BY MR. PIKE::
6 Q Ms. Morris, this is the same statement that you
7 previously looked at.
8 A Um-h'm.
9 Q And if you just kind of look at that area.
10 A Um-h'm.
11 Q Okay.
12 A Right.
13 Q Having looked at your statement and having refresh
14 your recollection with that, you advised the police that when
15 she got on the phone, she did start yelling at you.
16 A Yes.
17 Q And yelling is a loud aggressive type of a voice.
18 A It wouldn't be like something I'd have to hold the
19 phone at here, but here, you know, and she said it a little bit
20 louder than usual, yes.
21 Q It seemed to you during that period of time that she
22 was intent upon or inserting herself into Mr. O'Keefe's life
23 and kicking you out of it.
24 A I didn't think of that.
25 Q You just knew that you were leaving.

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ROUGH DRAFT TRANSCRIPT

1 relationship was to get to meet his daughters?
2 A No.
3 Q You just -- what did you take that as?
4 MR. SMITH: Objection, Judge. Relevance.
5 THE COURT: I'm going to overrule it.
6 BY MR. PIKE::
7 Q If anything.
8 A Just the fact that he was showing me how proud he was
9 of his daughters.
10 Q And how many times did you meet his daughters?
11 A I think maybe once, twice. A couple of times.
12 Q And in going through this relationship you felt that
13 your agreements with Mr. O'Keefe had been violated by him.
14 A Yes.
15 Q You felt that it was inappropriate for him to be back
16 be Victoria.
17 A No, it was inappropriate for him to cheat.
18 Q Did you think, based upon your conversations with
19 Victoria when she was yelling at you, that that was somehow
20 different than this submissive voice that somehow the State
21 indicates that she had? She certainly didn't seem -- let me
22 rephrase the question. It was a bad question.
23 When she was on the phone yelling at you, that didn't
24 sound submissive.
25 A It wasn't really yelling. It was more of a statement

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ROUGH DRAFT TRANSCRIPT

1 A Well, he and I had broken up two days before so it
2 didn't matter what she was doing.
3 Q Well, that's kind of a short period of time to be
4 replaced by somebody coming in two days.
5 A No, because I had understood that during the time
6 that Mr. O'Keefe and I were together, he had feelings for her,
7 and we talked a lot about it. I did a lot of listening. Mr.
8 O'Keefe did a lot of talking, and he had told me that, you
9 know, that he did care about her because she was dying, and he
10 wanted to be with her.
11 And I told him if that's what he wanted, if that's
12 what made him happy, I understood.
13 Q She was dying because of what?
14 A She had Hepatitis.
15 Q Do you recall her having cirrhosis of the liver also?
16 A Cirrhosis of the liver and Hepatitis C, yes.
17 Q She ever talk with -- and didn't you suggest to Mr.
18 O'Keefe that being with her may expose him to health risks?
19 A Yes.
20 Q Did at that seem to concern him?
21 A On an occasion, several occasions, yes, he talked to
22 me about it.
23 Q And he called her poison.
24 A Yes, he did.
25 Q And you wouldn't disagree with that.

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ROUGH DRAFT TRANSCRIPT

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1 A I let him talk.
2 MR. SMITH: Objection, Judge. That's -- to
3 relevance.
4 THE COURT: Sustained.
5 MR. PIKE: I have no further questions.
6 THE COURT: Any further direct?
7 MR. SMITH: Yes, Judge.
8 REDIRECT EXAMINATION
9 BY MR. SMITH::
10 Q Ms. Morris, going back to some of the things that you
11 kind of ended your cross-examination with, specifically about
12 conversations that Mr. O'Keefe had with you indicating that he
13 still had feelings for Mrs. Witmarsh.
14 A Yes.
15 Q But is it still your testimony that there were also
16 occasions where he stated that he hated Mrs. Witmarsh for
17 testifying against him at that trial?
18 A Yes.
19 Q And that she testified against him as a victim.
20 A Yes.
21 Q Now, one over the questions that Mr. Pike asked you
22 about Mr. O'Keefe's propensities when drinking alcohol, I
23 think, based on -- in answering a question that he asked you,
24 you said that his mood didn't change when he drank beer but
25 with other alcohol it did.

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ROUGH DRAFT TRANSCRIPT

1 MR. PIKE: Thank you.
2 BY MR. SMITH::
3 Q Mrs. Morris, are you a jilted ex-girlfriend?
4 A No.
5 Q Do you have any biases towards Mr. O'Keefe as you sit
6 here today?
7 A No, I do not.
8 Q Do you have any biases towards Victoria Witmarsh as
9 you sit here today?
10 A No, I do not.
11 Q Now, Mr. Pike also asked you a question in regards to
12 the conversation that you had with Mrs. Witmarsh with she
13 yelled at you --
14 A Yes.
15 Q -- do you recall that?
16 A Yes.
17 Q And Mr. Pike asked you basically was she being
18 submissive under those circumstances; is that correct?
19 A Correct.
20 Q Okay. Going back to Mr. O'Keefe's statements to you
21 about Mrs. Witmarsh's personality and her being submissive, did
22 he indicate if she was submissive to everyone or submissive to
23 him?
24 A She was submissive to everyone.
25 Q Now, another question that I'm sure is on everyone's

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ROUGH DRAFT TRANSCRIPT

1 A Correct.
2 Q Can you elaborate on that?
3 A He would drink vodka, and when he drank vodka, he
4 would become violent.
5 Q Okay. Now, you've also testified already that you
6 moved out of your own accord.
7 A Correct.
8 Q Did you have any hard feelings upon moving out?
9 A No, I did not.
10 Q And you've also testified on cross-examination that
11 you did several things to dissociate yourself with Mr. O'Keefe;
12 is that correct?
13 A Correct, yes.
14 Q Okay. Then, Ma'am, why are you here today?
15 A Because I was subpoenaed.
16 Q Okay. And are you here today to tell the truth?
17 A Correct.
18 Q Pursuant to the oath you just took?
19 A Yes.
20 MR. PIKE: Objection, your Honor. It's leading. It
21 goes beyond the scope. It's --
22 THE COURT: I'll sustain the objection.
23 MR. PIKE: -- vouching for a witness. I have a
24 motion at the appropriate time.
25 THE COURT: Sustain the objection.

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ROUGH DRAFT TRANSCRIPT

1 mind, Ms. Morris, is why did you go visit Mr. O'Keefe in
2 December of 2008?
3 A Because of a letter he wrote to his sister. His
4 sister contacted a mutual friend, and I wanted to set the
5 record straight with him.
6 Q Have you been back to see him since then?
7 A No.
8 Q Have you spoken with him since then?
9 A No.
10 Q And you've already testified that pursuant to a
11 request by the defense attorney, you in fact, brought Mr.
12 O'Keefe his glasses; is that correct?
13 A Yes, I did.
14 Q Would you have done that if you were biased against
15 him?
16 MR. PIKE: Objection, your Honor. Impermissible.
17 There's nothing to rehabilitate.
18 THE COURT: I'm going to sustain it as it relates to
19 the form of the question.
20 BY MR. SMITH::
21 Q Why did you bring his glasses?
22 A Because he also asked me when I went to go and see
23 him if I could bring his glasses because he needed it, and I
24 said I would do that.
25 MR. SMITH: Court's indulgence.

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: All right.
2 BY MR. SMITH::
3 Q Ms. Morris, how many conversations would you say you
4 had with Victoria Witmarsh?
5 A I would say probably about five.
6 Q And how many times out of those conversations did she
7 yell at you?
8 A Just that one day.
9 Q Just that one time?
10 A Correct.
11 MR. SMITH: No further questions.
12 THE COURT: Any recross?
13 RECROSS-EXAMINATION
14 BY MR. PIKE::
15 Q In relation to the conversations about Mr. O'Keefe
16 (indiscernible) military, did he tell you about his experiences
17 during the Grenada war?
18 A Yes, he did.
19 Q And those had upset him?
20 A Yes.
21 Q And in relationship to what you demonstrated about
22 the knife or said -- testified about the knife, that was what
23 had been -- he'd been trained with in the Army?
24 A Correct.
25 Q And did he tell you anything about what had happened

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: For the record, we received three
2 questions from the jurors, and under the rules of evidence
3 we're not able to ask these questions. All right, thank you,
4 Ma'am, for your testimony. You are instructed not to discuss
5 your testimony with any other witness involved in this case
6 until this matter is finally resolved. Thank you for your
7 time, Ma'am.
8 THE WITNESS: Thank you.
9 THE COURT: State, please call your next witness.
10 MS. GRAHAM: That would be Officer Brian Santarossa.
11 THE MARSHAL: Officer Santarossa, if you'll remain
12 standing, please. Raise your right hand and face the clerk.
13 OFFICER BRIAN SANTAROSA
14 THE CLERK: Please be seated. Will you please state
15 your name and spell it for the record.
16 THE WITNESS: Brian Santarossa, B-r-i-a-n,
17 S-a-n-t-a-r-o-s-s-a.
18 DIRECT EXAMINATION
19 BY MR. GRAHAM::
20 Q Good morning, Officer.
21 A Good morning.
22 MR. PIKE: Your Honor during this testimony and
23 during the testimony of the trial there is a diagram of an area
24 that's been prepared. We've been provided a copy of that and
25 stipulated to its admission at this point in time.

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ROUGH DRAFT TRANSCRIPT

1 in Grenada?
2 MR. SMITH: Objection, Judge. Calls for hearsay.
3 MR. PIKE: Okay, let me rephrase the question.
4 BY MR. PIKE::
5 Q During the course of that time the -- in the
6 conversations that you had with him, you were able to form an
7 opinion that that training and that portion of it was
8 distasteful to him.
9 A Yes.
10 Q And that, in fact, it was those experiences that
11 caused him to start on his road to drinking.
12 A I don't know. No.
13 Q And he was drinking pretty much everyday at the end
14 of the relationship, wasn't he?
15 A Yes.
16 MR. SMITH: Judge, I'd renew my objection to
17 relevant.
18 THE COURT: Overruled.
19 MR. PIKE: Thank you. Nothing further.
20 THE COURT: Anything further, Mr. Smith?
21 MR. SMITH: No, Judge.
22 THE COURT: All right, thank you, Ma'am. Or any
23 questions from the jurors? Yes, we do. Counsel approach,
24 please.
25 (Bench conference).

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Thank you, Mr. Pike. What number is
2 that?
3 MS. GRAHAM: State's Exhibit 1.
4 THE COURT: 1 will be admitted.
5 MS. GRAHAM: Thank you, Judge.
6 MR. SMITH: Is it okay if I just stand up with my
7 co-counsel?
8 THE COURT: Yes.
9 BY MS. GRAHAM::
10 Q Officer Santarossa, how are you employed?
11 A Police officer with the Las Vegas Metropolitan Police
12 Department.
13 Q And how long have you been employed with Metro?
14 A About one and a half years.
15 Q And were you working in your capacity as an officer
16 on November 5th, 2008, this past year?
17 A Yes, I was.
18 Q Approximately 10:00 p.m.ish?
19 A Yes, ma'am.
20 Q Did you respond to a call at a location of 5001 El
21 Parque, Apartment 35 that evening?
22 A Yes, ma'am.
23 Q And what were the details of that call?
24 A The only details we initially got was that there was
25 a female lying in a bedroom and that there was blood every

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ROUGH DRAFT TRANSCRIPT

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1 where.
2 Q Okay. And once you received those details I assume
3 through dispatch?
4 A Yes, ma'am.
5 Q Did you respond to the scene?
6 A Yes.
7 Q And who were you with at that time?
8 A Officer Fombuena (phonetic).
9 Q So both you and Officer Fombuena were riding in a
10 patrol car?
11 A I apologize. We actually arrived together. We were
12 in separate patrol cars.
13 Q Okay. So you were riding solo that night?
14 A Yes, ma'am.
15 Q Were you in a marked car?
16 A Yes, ma'am.
17 Q In full uniform?
18 A Yes, ma'am.
19 Q Once you arrived at the scene, 5001 El Parque, what
20 did you first observe?
21 A The front door was wide open. That's what I first
22 observed of the apartment.
23 Q Okay. When you arrived at the scene as a whole, what
24 was going on --
25 A There were neighbors --

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ROUGH DRAFT TRANSCRIPT

1 the door was open?
2 A Yes, ma'am.
3 Q Okay. And where were all the neighbors at that
4 point?
5 A They were kind of standing around down stairs and on
6 the balcony.
7 Q Okay. And when you and Officer Fombuena entered the
8 apartment, where exactly -- I'm going to put the diagram back
9 up here, what's been marked as -- and entered, stipulated
10 (indiscernible). Officer, I'm going to ask you to go ahead and
11 step down from the witness stand, if I may. I'd like for you
12 to --
13 THE COURT: Mr. Pike or Ms. Palm, if you want to move
14 over there, that's fine.
15 BY MS. GRAHAM::
16 Q -- to show the jury exactly --
17 THE COURT: Ms. Palm, perhaps you can go --
18 MS. GRAHAM: Can everybody see?
19 THE COURT: -- to the other side of the diagram.
20 BY MS. GRAHAM::
21 Q When you make entry into the apartment, where exactly
22 did you make entry?
23 A Entry right here (indiscernible) this way.
24 Q Okay. So when you looked through the apartment door,
25 did you see anybody at that point?

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ROUGH DRAFT TRANSCRIPT

1 Q -- around you?
2 A -- outside, and as we were walking up the apartment,
3 one neighbors (sic) told us he's still in there. And at that
4 point we weren't sure what they meant by that because we
5 weren't told anything about a male being involved.
6 Q Okay. So at that point you had no idea there was a
7 male involved, but somebody said he's still in there?
8 A Yes, ma'am.
9 Q What did you do then?
10 A Myself and Officer Fombuena immediately approached
11 the apartment. We saw doors open. Due to the details of the
12 call, we immediately made entry into the apartment.
13 Q Okay. When you say you made entry into the
14 apartment, were you the only two officers that were on the
15 scene at that point?
16 A That point, yes.
17 Q Okay. Now, I'm showing you what's been marked and
18 entered as Defendant's Exhibit G. Thank you. Does that fairly
19 and accurately depict the location that you were dispatched to
20 at 50011 El Parque?
21 A Yes, ma'am.
22 Q And Apartment 35, can you point to on your monitor
23 which one that -- which apartment that was.
24 A The one with the door open.
25 Q So when you arrived on the scene, you testified that

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ROUGH DRAFT TRANSCRIPT

1 A No.
2 Q Do you recall if the lights were off or on?
3 A I honestly do not really.
4 Q Okay. Did you hear anything when you entered the
5 apartment?
6 A (Indiscernible).
7 Q So what did you do when you entered the apartment?
8 A We just kind of -- we kind of were kind of stopped in
9 the middle of the room at this point. We had identified
10 ourselves as police officers, called out to (indiscernible) in
11 the apartment. We then heard a voice. We were not sure which
12 room it was coming from. I actually initially thought it was
13 coming from this room here.
14 Q Okay. So when you identified yourself as Metro
15 officers, you heard a voice?
16 A Yes.
17 Q And did you recall exactly what that voice said?
18 A It said get in here.
19 Q Okay. Get in here?
20 A Yes.
21 Q And what did you do upon that voice telling you to
22 get in here?
23 A Well, because we thought it was coming from this room
24 initially, we actually took position of cover right here in the
25 kitchen.

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ROUGH DRAFT TRANSCRIPT

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1 Q Okay.
2 A (Indiscernible).
3 Q And when you say we, you're talking about --
4 A Myself and Officer Fombuena.
5 Q And at this point are you still the only two officers
6 in the apartment?
7 A Yes.
8 Q Okay. And you didn't know where the voice was coming
9 from?
10 A No.
11 Q Now, when you said you took cover, what do you mean
12 by that?
13 A Basically we -- because we weren't sure if there was
14 a weapon involved or what exactly the situation was, so we
15 basically stood behind this (indiscernible) in case there was a
16 firearm involved and shots were fired, we would have some cover
17 by the wall.
18 Q Okay. So show me exactly where you and Officer
19 Fombuena were.
20 A Right here at the corner.
21 Q Okay. And as you were standing -- and that's in the
22 kitchen area, for the record?
23 A Yes, ma'am.
24 Q Okay. Now, as you were standing in the kitchen area,
25 what then happened?

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ROUGH DRAFT TRANSCRIPT

1 to want to -- my mind set was that he was waiting for us to go
2 into that room. He was trying to lure us into that room so he
3 could either do something, either attack us with a firearm or
4 another weapon. That's why we didn't immediately go in.
5 Q And is that impression based on his response fuck
6 you?
7 A That impression and the totality of the situation.
8 Q Okay. Did at any time he tell you that he needed
9 your assistance for -- or medical assistance?
10 A No, he just saying get in here.
11 Q Okay. Now, while you and Officer Fombuena were
12 standing in the kitchen, did other officers start to arrive?
13 A Yes, the next officer to arrive was Officer Conn
14 who's a CIT officer.
15 Q Okay, Officer Conn?
16 A Yes.
17 Q And you say a CIT officer. Tell the jury what a CIT
18 officer --
19 A CIT stands for crisis intervention team. These are
20 officers who are specifically trained to deal with persons in
21 mental distress or with specific mental disorders.
22 Q Okay.
23 MS. PALM: Your Honor, could we approach
24 (indiscernible)?
25 THE COURT: All right.

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ROUGH DRAFT TRANSCRIPT

1 A When he called out to come in here or get in here, we
2 said well, come out to the living room.
3 Q You instructed him to come to the living room?
4 A Yes.
5 Q And did he comply with your commands?
6 A No, he said he wouldn't.
7 Q He said he wouldn't?
8 A His reply was no.
9 Q Okay. Did you -- what did you do then
10 (indiscernible)?
11 A We then told him that you need to come out to the
12 living room so we can see you first, and I honestly can't
13 remember the exact dialogue we used, but it was basically we
14 were trying to get him to come out in the living room. And one
15 of his responses was well, fuck you.
16 Q Okay. So after he said fuck you, what did you do?
17 A We initially told him -- we're still -- our goal
18 right now was just to get him out from wherever he was so we
19 could see what it was and what was going on.
20 Q Okay. And Officer, why don't you just tell the jury
21 why you didn't immediately go into the bedroom.
22 A Because due to the details of the call it said that a
23 female was bleeding where ever, and now there's a male
24 involved, we weren't sure what exactly the details were, if
25 there was a firearm involved or if there -- if he was calling

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ROUGH DRAFT TRANSCRIPT

1 (Bench conference).
2 THE COURT: Counsel, can you move the poster board --
3 MS. GRAHAM: Sure.
4 THE COURT: -- from the monitor?
5 MS. GRAHAM: Go ahead and have a seat, Officer.
6 BY MR. GRAHAM::
7 Q Now, Officer, since we do have a diagram, I think
8 (indiscernible) will agree that it may be easier just to show
9 the jury on the diagram so you don't have to stand there and
10 everybody can see at the same point?
11 A Yes, ma'am.
12 Q All right. You indicated that Officer Conn first
13 arrived on the scene after you and Officer Fombuena.
14 A Yes, ma'am.
15 Q And again, a CIT officer stands for crime --
16 A Crisis intervention team.
17 Q Crisis intervention team.
18 A Yes, ma'am.
19 Q And you indicated that crisis intervention team is
20 trained to deal with people that are mentally disturbed?
21 A Yes, ma'am, mental illnesses or persons commonly
22 suicidal subjects.
23 Q Okay. Now, are they used for the purposes of
24 negotiating?
25 A Sometimes.

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ROUGH DRAFT TRANSCRIPT

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1 Q Okay.
2 A Sometimes.
3 Q And in this instance was there a reason that Officer
4 Conn was called as a CIT?
5 A Honestly, I don't think he was called specifically
6 for CIT. He was just coming to the call due to the details,
7 and he was a CIT officer so --
8 Q Okay. And once Officer Conn arrived, where on the --
9 show us on the diagram where Officer Conn positioned himself.
10 A He stood right -- in that area there right against
11 the wall. He used that wall, that corner as cover from that
12 room.
13 Q And you say --
14 A From this room here.
15 Q Okay. So Officer Conn is on the south -- that would
16 be the west wall?
17 A Yes, ma'am, I believe so.
18 Q Okay. And you Officer Fombuena are still in the
19 kitchen at that point?
20 A Yes, ma'am.
21 Q Did any other officers arrive at that point?
22 A At that point not -- they did arrive, but they were
23 still outside because we were relaying what was going on in the
24 apartment to the other officers who were just now just
25 responding and standing outside the balcony just basically

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ROUGH DRAFT TRANSCRIPT

1 A Basically, it's a tactical way that we use to enter a
2 room so we're not all jammed in the doorway all at once.
3 Q Okay. And so at that point there's four stacked up
4 against the west wall, and then you and Officer Fombuena still
5 located in the kitchen area --
6 A Yes, ma'am.
7 Q -- is that correct?
8 A Yes, ma'am.
9 Q And there's six of you officers in there --
10 A Yes, ma'am.
11 Q -- at that point. And at this point the male voice
12 -- you've all identified yourself as officers.
13 A Yes, ma'am.
14 Q And what, if anything -- did anybody go into the
15 bedroom at that point?
16 A They did eventually. We actually stood there for a
17 little bit longer still trying to get him to come out.
18 Q And he never would comply with those commands?
19 A No, he would just keep making different statements.
20 Q And do you know what statements he was making?
21 A A lot of it was unintelligible. It was kind of
22 mumbled. But the one statements he did say, he -- I can't
23 remember the order in which he said these statements, but one
24 statement was she stabbed herself.
25 Q Okay.

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1 forming a plan, okay, what are we going to do next.
2 Q Okay. And what did you determine to do next?
3 A Well, I actually didn't determine it. Sergeant
4 Newberry (phonetic) is the one that arrived, and he, Officer
5 Ballejos, I believe it was Officer Taylor -- I can't remember
6 his name specifically -- and Officer Conn, they actually made
7 entry into the apartment. They stood where Officer Conn was
8 standing against that west wall.
9 Q Okay. Show us on the diagram, then, the line up. So
10 it would be Officer Conn is in the front position on the west
11 wall?
12 A Yes, Officer Conn would be in front followed by --
13 again, this is just to my knowledge. I don't know if this is
14 accurate.
15 Q To the best of your knowledge.
16 A Is Officer Conn. I believe it's Sergeant Newberry
17 right behind him. Followed by Officer Ballejos and then
18 Officer Taylor I think was in the back.
19 Q Okay. And they were all lined up against that west
20 wall --
21 A Yes, ma'am.
22 Q -- there? Okay. Is there a term for that when four
23 officers line up?
24 A That's called stacking up, Ma'am.
25 Q Stacking up. And what's the purpose of stacking up?

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1 A And then (indiscernible) well, then come out so we
2 can get her help --
3 Q And what was his --
4 A -- which he still -- he still refused.
5 Q Okay. So he refused to comply coming out of the
6 bedroom?
7 A Yes.
8 Q And why, then, Officer, was six officers in there
9 didn't you go into the bedroom if you knew somebody needed
10 help?
11 A Because we still couldn't see what was in there. We
12 still weren't sure if he was, in fact, baiting us to just go in
13 there without any -- so he could have the advantage.
14 Q Okay. And when you say bait, you want to tell the
15 jury exactly what you mean by bait.
16 A There have been occasions where subjects will call
17 officers into a situation so they can ambush them for the mere
18 goal of killing that officer.
19 Q And that was a concern that evening?
20 A That was the general consensus. I -- at least my
21 consensus from the situation.
22 Q Based on your observation and experience and --
23 A Yes, ma'am.
24 Q -- being there on the scene at that time when
25 somebody's refusing to comply with commands to come out --

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1 A Yes, ma'am.
2 Q -- you felt there was an ambush in store?
3 A Yes, ma'am.
4 Q Okay. That he was baiting you. All right. At some
5 point was the male subject taken into custody?
6 A Yes, ma'am.
7 Q Okay. And can you tell the jury how that came about.
8 A The officers who were stacked up on that west wall --
9 Sergeant Newberry, they developed a plan that -- well, first,
10 I'm sorry, Sergeant Newberry actually moved up to this wall
11 here and --
12 Q And for the record, you're pointing to the --
13 A The --
14 Q -- living room wall?
15 A Yes.
16 Q Okay.
17 A The west living room wall, correct want.
18 Q The west living room wall that's just adjacent to the
19 north bedroom?
20 A Yes, ma'am.
21 Q So there are two bedrooms located on that diagram.
22 A Yes, ma'am.
23 Q And at some point did you determine what bedroom that
24 male voice was coming from?
25 A Yes. Officer Conn, when he took position here, when

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ROUGH DRAFT TRANSCRIPT

1 A Yes, ma'am.
2 Q And when you say cleared, why don't you tell the jury
3 what that means.
4 A We made sure there was nobody else hiding in that
5 bedroom.
6 Q Because at that point did you know how many people
7 were in the apartment?
8 A No, Ma'am.
9 Q Okay. All right.
10 MS. GRAHAM: Court's indulgence.
11 BY MS. GRAHAM::
12 Q Officer Santarossa, you indicated that the male voice
13 made several statements to you, one of which was get in here.
14 A Yes, ma'am.
15 Q I believe you testified one of which was fuck you.
16 A Yes, ma'am.
17 Q One of which she stabbed herself.
18 A Yes, ma'am.
19 Q Do you recall any other statements that he made to
20 you?
21 A Again, I don't know the order in which the statements
22 were made, I can't remember, but he did make a state your name
23 first that she's breathing.
24 Q She's breathing?
25 A And then he would make a statement that she's dead.

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1 he looked into the bedroom, he could see, I believe it was this
2 portion here of the bed, and he did see blood there. He
3 couldn't see any person, but he saw blood.
4 Q Okay. All right. And again, we were talking about
5 what circumstances that the defendant was taken into custody.
6 A Officer Newberry went up to actually take a look in
7 the room to see if we could see anything before we actually
8 went in, and that's when he said he could see a male or the
9 female lay on the floor and the male on top of her, and then he
10 saw the male's hands --
11 Q Okay.
12 A -- and there were no weapons in the hands -- in his
13 hands.
14 Q So once he determined there were no weapons in his
15 hands, what then occurred?
16 A They then -- went back into the formation.
17 Q And you say he. You're --
18 A I'm sorry, Sergeant Newberry. And then they then
19 made entry into the apartment. Now, at this point as they made
20 entry into the apartment I lost visual of what they were doing
21 because myself and Officer Fombuena made entry into this
22 bedroom immediately to clear that bedroom.
23 Q Okay. So once they made entry into the north
24 bedroom, then you and Officer Fombuena cleared the south
25 bedroom.

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1 Q She's dead?
2 A Yes, ma'am.
3 Q Okay. Any other statements that you can think of?
4 A I cannot remember, No, Ma'am.
5 Q Now, after the scene was mobilized and sealed, did
6 you at some point go back to command and give a voluntary
7 statement?
8 A Yes, ma'am.
9 Q Okay. And who did you give that statement to?
10 A To a detective I don't remember his name.
11 Q Okay. Would it refresh your recollection if I told
12 you it was Detective Bunn?
13 A Yes, ma'am.
14 Q Was that at the homicide detail?
15 A No, Ma'am. That was actually on the scene.
16 Q On the scene --
17 A Yes, ma'am.
18 Q -- you gave the voluntary statement? Okay. And do
19 you recall, Officer, about what time this was?
20 A If I remember right, I believe it was probably at
21 this point maybe midnight.
22 Q Okay. So basically, once the scene -- once
23 everything was under control, then you were debriefed with
24 voluntary statements, basically.
25 A Yes, ma'am.

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1 Q And you were to tell what happened that evening.
2 A Yes, ma'am.
3 Q Okay. And is that always protocol that a detective
4 comes and takes voluntary statements from officers?
5 A Major scenes like that, yes, ma'am.
6 Q And you say a major scene. And what is the -- tell
7 the jury what differentiates any scene from a major scene.
8 A Basically any scene where a substantially bodily
9 injury has occurred or even death.
10 Q Okay. And so you did make that voluntary statement.
11 A Yes, ma'am.
12 MS. GRAHAM: May I approach the witness, your Honor?
13 THE COURT: Yes.
14 BY MS. GRAHAM::
15 Q If I showed you a copy of your voluntary statement
16 that you made --
17 MS. PALM: Your Honor --
18 (Off the record colloquy).
19 THE COURT: Is there an objection?
20 MS. PALM: No.
21 THE COURT: Okay.
22 MS. GRAHAM: May I approach the witness, your Honor?
23 THE COURT: Yes.
24 BY MS. GRAHAM::
25 Q Officer, if I showed you a copy of the voluntary

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1 Q Okay. Did she make the statement that he tried to
2 stab her -- him?
3 A I'm sorry, can you repeat that.
4 Q Did she make the statement that she tried to stab
5 him?
6 A Did she make the statement?
7 Q Did he make the statement.
8 A Yes.
9 Q Okay.
10 MS. GRAHAM: I'll pass the witness at this time.
11 THE COURT: Cross-examination.
12 MS. PALM: Thank you.
13 CROSS-EXAMINATION
14 BY MS. PALM::
15 Q Good morning, Officer Santarossa.
16 A Good morning, Ma'am.
17 Q I believe the question with you started out by
18 referring you to 10:00 o'clock on November 5th.
19 A Yes, ma'am.
20 Q That wasn't actually the time that you were
21 dispatched, though, was it?
22 A I can't recollect the exact time, Ma'am.
23 Q If I showed you a copy of the 911 report, would it
24 refresh your memory?
25 A It should Ma'am, yes.

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1 statement, would it refresh your recollection of any other
2 statements the defendant may have made that evening?
3 A Yes, ma'am.
4 Q Okay. Can you just kind of flip through that, and
5 I'm showing him what's labelled Page 4 of his voluntary
6 statement. And if you can kind of refresh your recollection as
7 to any other statements that he may have made.
8 A Yes, ma'am. Once we -- once he was taken into
9 custody and we got him outside onto the balcony, he did
10 spontaneous state that she tried to stab me.
11 Q That she tried to stab him?
12 A Yes.
13 Q Okay. So if I can just verify, he made a statement
14 that she stabbed herself?
15 A Yes, ma'am.
16 Q He made a statement that she tried to stab him?
17 A Yes, ma'am.
18 Q She's dead?
19 A Yes, ma'am.
20 Q She's still alive?
21 A Yes, ma'am.
22 Q She's still breathing?
23 A Yes, ma'am.
24 Q Fuck you?
25 A Yes, ma'am.

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1 MS. GRAHAM: May I approach, your Honor?
2 THE COURT: Yes.
3 THE WITNESS: The time was about 11:00 o'clock,
4 11:02.
5 BY MS. PALM::
6 Q Can you tell from that document, Officer, what time
7 you personally arrived after being dispatched at 11:02?
8 A Yes, ma'am. I believe it -- 11:06.
9 Q Okay. And can you tell me what time -- I understand
10 that you and the second Officer Fombuena --
11 A Yes.
12 Q -- both arrived about the same time.
13 A Yes, ma'am.
14 Q What time did the remaining officers begin to arrive?
15 If you want to start with Officer Conn, who I believe was next.
16 A I actually can't see it where it shows the officers
17 arrived, but it looks that at 11:11 it looks like Officer Conn
18 was en route to the scene.
19 Q 11:11?
20 A Yes, ma'am.
21 Q And what time does it show that Mr. O'Keefe was
22 actually in custody?
23 A It shows was taken into custody at 11:13.
24 Q So the total length of the stand off after Conn
25 arrived and started negotiating with him would have been a

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1 couple of minutes?
2 A Yes, ma'am.
3 Q Okay. And so the total length of time between the
4 time that you got there and he was in custody would have been
5 about six minutes, seven minutes?
6 A Looks like, Ma'am, yes.
7 Q Okay. So it was a pretty short negotiation.
8 A Yes, ma'am. It didn't seem that way, but yes, ma'am.
9 Q Okay. When you entered the living room, you said you
10 couldn't recall whether the lights were on or off?
11 A No, Ma'am.
12 Q Do you recall any of the lights in the apartment
13 being on?
14 A I know there were lights in the hallway area and in
15 this area here. I'm not sure where -- I can't recall where
16 exactly they're coming from.
17 Q Do you recall if the bedroom was lit?
18 A I believe one of them was. Again, I can't recall
19 which one.
20 Q Okay. When you entered the living room area, kitchen
21 area, did you notice any signs of violence in --
22 A No, Ma'am.
23 Q -- those areas?
24 A No, Ma'am.
25 Q And did you watch Officers Conn, Ballejos, Taylor and

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1 A They put him on his stomach. I don't recall if his
2 face actually hit the ground or not.
3 Q Did you see him get any injury after that?
4 A No, Ma'am.
5 Q Okay. Did you notice any injuries on him when you
6 saw him?
7 A No, Ma'am.
8 Q How long was he on his stomach in the living room?
9 A I don't recall the time of it, Ma'am.
10 Q Okay. He was eventually moved out on to the balcony?
11 A Yes, ma'am.
12 Q What position was he put on in the -- on the balcony?
13 A Originally he was put on his stomach. Then we moved
14 him up on to in the same position.
15 Q Okay. And that's where he said that she tried to
16 stab me?
17 A Yes, ma'am.
18 Q Okay. You also spoke with Jimmy Hatchcos that
19 evening want?
20 A I honestly, Ma'am, I don't remember who that is.
21 Q The neighbor directly to the left of Mr. O'Keefe's
22 apartment.
23 A Yes, ma'am.
24 Q Okay. Do you recall what he told you?
25 A If I remember --

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1 Newberry make entry into that bedroom?
2 A I saw them go in the bedroom, yes, ma'am.
3 Q Okay. You didn't enter yourself, though, did you?
4 A No, Ma'am.
5 Q And so they took him into custody --
6 A Yes, ma'am.
7 Q -- without your presence?
8 A Yes, ma'am.
9 Q Okay. Did you watch them take him into custody?
10 A No, Ma'am.
11 Q Did you see them bring Mr. O'Keefe back out into the
12 living room?
13 A Yes, ma'am.
14 Q Was Mr. O'Keefe ever put on a position -- in a
15 position to injure his face during the time that you saw him?
16 A He was put on his stomach when we put him in the
17 living room, yes.
18 Q Was he thrown on his stomach?
19 A Not that we know of, but the guys, they carried him
20 out and put him on his stomach.
21 Q Okay. Would that have injured him?
22 MR. SMITH: Objection, Judge. Calls for speculation.
23 THE COURT: Sustained.
24 BY MS. PALM::
25 Q Did they put him on his face?

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1 MS. GRAHAM: Objection. Hearsay.
2 MS. PALM: Your Honor, he testified --
3 THE COURT: The real question is does he remember
4 what he told you. The answer calls for a yes or no and then
5 we'll go from there.
6 BY MS. PALM::
7 Q Do you remember what he told you?
8 A Yes.
9 MS. GRAHAM: Objection. Hearsay. Jimmy already
10 testified.
11 THE COURT: She hasn't asked the next question yet.
12 BY MS. PALM::
13 Q Do you recall him telling you that he didn't hear any
14 yelling or screaming?
15 A Yes.
16 Q Did you get close enough to Mr. O'Keefe to observe
17 whether he was intoxicated or not?
18 A I got close enough to a point, but I can't remember
19 if he was intoxicated or not.
20 Q You just don't recall --
21 A I don't recall.
22 Q -- whether he had any signs?
23 A I don't.
24 Q So you wouldn't dispute it if other officers said
25 that he was?

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1 A No, Ma'am, I wouldn't.
 2 Q Were you there when any medical help arrived to check
 3 out Mr. O'Keefe?
 4 A Yes, ma'am.
 5 Q And who was it that arrived?
 6 A I don't remember the unit number, Ma'am.
 7 Q Did you actually see Mr. O'Keefe being checked out?
 8 A No, Ma'am.
 9 Q What did you see when they arrived? Did they come
 10 upstairs, stay down stairs?
 11 A They went upstairs. That's about all I remember,
 12 Ma'am.
 13 Q Did you see how long Mr. O'Keefe was on the steps
 14 before being taken downstairs?
 15 A I don't recall an exact amount of time, Ma'am.
 16 Q Do you recall who transported him to the detective
 17 offices?
 18 A No, I don't, Ma'am.
 19 Q Now, you're trained as an officer not to just go
 20 charging into a situation when there might be some risk to you
 21 personally.
 22 A Yes, ma'am.
 23 Q And so this fear of baiting understandable because
 24 you don't know what situation you're going into.
 25 A Yes, ma'am.

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1 Q Okay. So to have a PBT on the scene, would you have
 2 had to call for one?
 3 A Yes, ma'am.
 4 Q And when the detectives assume control of the
 5 investigation they didn't direct you to take a PBT of Mr.
 6 O'Keefe --
 7 A No, Ma'am.
 8 Q -- did they? Do you know how many patrol cars were
 9 at the scene?
 10 A It's not an accurate estimation, but probably,
 11 because other officers arrived later and left sooner, so I
 12 could probably say maybe about six or seven.
 13 MS. PALM: No more questions, thank you.
 14 THE COURT: Any redirect?
 15 MS. GRAHAM: Just briefly, your Honor.
 16 REDIRECT EXAMINATION
 17 BY MS. GRAHAM::
 18 Q Officer Santarossa, you indicated that the time that
 19 you arrived by the time that the defendant was actually taken
 20 into custody was about six to seven minutes.
 21 A Yes, ma'am.
 22 Q And defense counsel indicated that that was a short
 23 negotiation, and you agreed with that.
 24 A Yes, ma'am.
 25 Q Did the defendant ever come out of that room on his

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1 Q But when you actually looked into the room, Mr.
 2 O'Keefe wasn't doing anything to cause a danger to officers,
 3 was he?
 4 A As far as I -- Sergeant Newberry actually looked into
 5 the room and saw that.
 6 Q Okay. And he didn't have a weapon in his hands,
 7 according to Sergeant Newberry?
 8 A Yes, ma'am.
 9 Q And he was actually laying on the floor?
 10 A Yes, ma'am.
 11 Q And you never saw him in any other position, did you?
 12 A No, Ma'am.
 13 MS. PALM: Court's indulgence.
 14 BY MS. PALM::
 15 Q As a patrol officer you have training regarding
 16 driving under the influence arrests?
 17 A Yes, ma'am.
 18 Q Okay. Do you have a PBT machine in your vehicle?
 19 A No, Ma'am.
 20 Q Have you describe for me what that machine is?
 21 A It stands for a portable breathalyzer test. It's a
 22 test which measures the blood alcohol content in the subject's
 23 breath.
 24 Q Are those commonly in Metro vehicles?
 25 A No, Ma'am.

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1 own accord?
 2 A No, Ma'am.
 3 Q So it wasn't really a negotiation?
 4 A Not really, Ma'am, no.
 5 Q Okay. He had to be tazed, didn't he?
 6 A Yes, ma'am.
 7 Q And he did not come out of that room until he was --
 8 MS. PALM: Objection, your Honor. Leading.
 9 THE COURT: Sustained.
 10 BY MS. GRAHAM::
 11 Q How did he come out of the room?
 12 A The officer had to actually carry him out of the
 13 room.
 14 Q Okay. And how many officers carried him out?
 15 A I believe it was the four of them. All four of them.
 16 Q And what was the defendant's demeanor as he was being
 17 carried out?
 18 A He appeared to be agitated.
 19 Q I'm sorry?
 20 A I'm sorry, he appeared to be agitated.
 21 Q Agitated?
 22 A Yes, ma'am.
 23 Q While they're carrying him out?
 24 A Yes, ma'am.
 25 Q And as they -- how were they carrying him out? Were

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1 there two officers?
 2 A I believe there was one on each arm and then one
 3 controlling the legs, Ma'am.
 4 Q Okay. And as they're carrying him out of room you're
 5 observing this?
 6 A Yes, ma'am, I did see that.
 7 Q And you said he's agitated.
 8 A Yes, ma'am.
 9 Q And you say that they laid him down on his stomach.
 10 A Yes, ma'am.
 11 Q And that's in the living room?
 12 A Yes, ma'am.
 13 Q And the flooring on the living room, is that --
 14 A It's carpet, Ma'am.
 15 Q -- carpet?
 16 A Yes, ma'am.
 17 Q And then once he was taken out of the living room and
 18 placed on the balcony, what is the balcony made of?
 19 A Concrete.
 20 Q Concrete, and he was laid face down on concrete?
 21 A Initially, yes, ma'am.
 22 Q Okay. With regard to the breathalyzer testing, have
 23 you responded to major crime scenes like this before?
 24 A Yes, ma'am.
 25 Q Would it be protocol to take a breathalyzer test that

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1 A Yes, ma'am.
 2 Q Do you know how many bolts of electricity go through
 3 a taser?
 4 A It's 50,000 volts, Ma'am.
 5 Q Okay. And that's for a five second cycle?
 6 A Yes, ma'am.
 7 Q And Mr. O'Keefe actually got two five second cycles
 8 in a row; is that correct?
 9 A I -- I'm not sure, Ma'am. I wasn't in the room when
 10 that happened.
 11 Q Okay. And does your training tell you that a taser
 12 volt can make somebody agitated?
 13 A Depends on the person, Ma'am.
 14 Q It's possible, though?
 15 A Could be, yes, ma'am.
 16 Q Have you seen it?
 17 A Personally, No, Ma'am.
 18 Q Okay. But you weren't the person in charge of tazing
 19 him. That was Officer Ballejos.
 20 A Correct.
 21 Q And -- well, I'll reserve those questions for Officer
 22 Ballejos. Thank you.
 23 THE COURT: Anything further from the State?
 24 MS. GRAHAM: No, Judge.
 25 THE COURT: Any witness -- any questions from the

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1 somebody's agitated and suspected of murdering somebody?
 2 A No, Ma'am.
 3 Q Okay, thank you.
 4 MS. GRAHAM: I have no further questions at this
 5 time.
 6 THE COURT: Recross.
 7 RE-CROSS-EXAMINATION
 8 BY MS. PALM::
 9 Q You said four officers carried out Mr. O'Keefe?
 10 A I believe so, Ma'am, yes.
 11 Q Can you tell me which officers were carrying him?
 12 A I believe it was Officer Taylor, Officer Conn and
 13 Sergeant Newberry. It wasn't Officer Ballejos, I remember,
 14 because he was the one that actually tazed him, so he still had
 15 control of the electronic control device.
 16 Q So actually three officers were carrying him?
 17 A Yes, ma'am.
 18 Q And do you recall who had his arms, who had his legs?
 19 A No, Ma'am, I do not.
 20 Q Can you explain for the jury what a taser is.
 21 A It's -- the (indiscernible) an electronic control
 22 device, and it's a device to override the messages that the
 23 brain sends to the muscles. So basically, the ending result is
 24 it locks up their muscles so they can't move.
 25 Q So the idea is to sort of paralyze them temporarily?

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1 jurors? Yes, we do have a question. Counsel approach, please.
 2 (Bench conference).
 3 THE COURT: Officer, we have a question from one of
 4 the jurors.
 5 THE WITNESS: Yes, sir.
 6 THE COURT: In the diagram there's a taser use
 7 indicated. When was it fired and at whom and why if he was --
 8 and why was it carried out by the officers?
 9 THE WITNESS: The first question was when was it
 10 fired?
 11 THE COURT: Yes.
 12 THE WITNESS: It was fired when they went into the
 13 room. And I didn't actually see it, but I could hear them
 14 command saying let me see your hands or stand up and get away,
 15 comply, and he was refusing to do that.
 16 And from -- again, I didn't observe this, but the
 17 officers relayed that when they went in, it seemed like he
 18 became more animated waving his arms around her, and he still
 19 wouldn't comply. And he was also -- he did also have a lot of
 20 blood on him.
 21 THE COURT: Okay. Any follow-up by the State?
 22 BY MS. GRAHAM::
 23 Q Did the defendant have any injuries on him that you
 24 were aware of?
 25 A Not that I noticed, Ma'am, no.

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1 THE COURT: Anything by the defense?
2 MS. PALM: None, your Honor. Thank you.
3 THE COURT: Thank you, Officer. You're instructed
4 not to --
5 THE WITNESS: Thank you action sir.
6 THE COURT: -- discuss your testimony with any other
7 witnesses involved in this case until this matter is finally
8 submitted to you. Thank you, Officer. Ladies and gentlemen,
9 it's about 11:20. I do need to break around 11:45 because I
10 have a judge's meeting to attend to so we're going to have our
11 lunch break there. Is everyone okay for the next 25 minutes?
12 Next witness by the State.
13 MR. SMITH: Judge, the State calls Officer Todd Conn.
14 That's C-o-n-n for the record.
15 THE MARSHAL: Officer Conn, if you'll remain
16 standing, please. Raise your right hand and face the clerk.
17 OFFICER TODD CONN, PLAINTIFF'S WITNESS, SWORN
18 THE CLERK: Please be seated. Will you please state
19 your name and spell it for the record.
20 THE WITNESS: My name is Todd, T-o-d-d, Conn,
21 C-o-n-n.
22 MR. SMITH: May I proceed, your Honor?
23 THE COURT: Yes.
24 MR. SMITH: Thank you.
25 DIRECT EXAMINATION

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1 the complex. I arrived over on the south side of the parking
2 lot.
3 Q Okay.
4 A And then went into the center of the complex, at
5 which time I could see an open door, and I could see one of the
6 officers run towards the open door, which was Apartment 35.
7 Q Do you know what officer that was?
8 A I do not know which officer that was.
9 Q Okay. Please proceed.
10 A And then ran up the stairs, and as I entered into
11 Apartment No. 35, I observed Officer Santarossa and Officer
12 Fombuena were positioned over onto my right in the kitchen
13 area. Both of them had their firearms drawn and were covering
14 a small outlet that contained a bathroom door and two bedroom
15 doors.
16 Q Okay. I'm going to stop you right there. We've
17 already admitted into evidence State's Exhibit 1, which is an
18 actual crime scene diagram. For the record, I'm going to place
19 for demonstrative purposes a smaller version of that diagram so
20 that you can show the jury exactly what you just testified to.
21 A Okay.
22 Q Okay. So this being the front door.
23 A Correct.
24 Q You entered the front door and do what?
25 A When I came in, I --

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1 BY MR. SMITH::
2 Q Officer Conn, how are you presently employed, for the
3 record?
4 A I'm employed currently in the traffic section of the
5 Las Vegas Metropolitan Police Department.
6 Q How long have you been -- actually, strike that. In
7 what capacity?
8 A As a police officer.
9 Q How long have you been employed as a police officer?
10 A For five and a half years.
11 Q Were you working as a police officer back on November
12 5th of 2008?
13 A Yes, I was.
14 Q Did you have cause to be dispatched to a residence
15 located at 5001 El Parque?
16 A Yes, I did.
17 Q Apartment No. 35.
18 A Correct.
19 Q At approximately 11:00 o'clock p.m.?
20 A Yes, sir.
21 Q Tell us what happened when you arrived at that
22 location on that date at that time.
23 A Originally, I had heard the call come over the radio
24 system so I self-assigned myself to the call. When I arrived,
25 I observed two other patrol vehicles had already arrived inside

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ROUGH DRAFT TRANSCRIPT

1 Q You can actually touch that screen.
2 A Okay. I came in. I stopped initially right inside
3 the doorway, and I could observe that Fombuena and Santarossa
4 were both positioned right here in the kitchen area.
5 Q Yes, sir.
6 A Immediately I could see that the bathroom door was
7 closed, so right here, this was closed.
8 Q Yes, sir.
9 A There was an open door right here to the right which
10 I could see into, and they were covering into this bedroom
11 here. So I immediately placed myself against this wall so that
12 I had a clear visual into the opposite doorway that they
13 couldn't cover.
14 Q Okay. So you're standing right here?
15 A Correct.
16 Q You're looking into that bedroom.
17 A Correct.
18 Q Is the light on in that bedroom?
19 A Yes, it is.
20 Q Is the light in this bedroom?
21 A Yes, it is.
22 Q Is the light on in the living room?
23 A No, it is not.
24 Q Okay.
25 A It's dark.

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ROUGH DRAFT TRANSCRIPT

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1 Q Please proceed.
2 A Immediately when I get there I tell Fombuena that I
3 can see blood on the bed. You could see it actually onto the
4 side and onto a little bit of the top sheets of the bed. I
5 told him that there was quite a bit of blood.
6 Q Can you tell if anyone is inside that bedroom?
7 A Yes, I can hear a male voice coming from the bedroom.
8 Q And what's the male voice saying?
9 A It's not very distinguishable. It was kind of
10 mumbling when I first got there.
11 Q Okay.
12 A So I told Fombuena that I would attempt to
13 communicate with whoever is in the room being that I was part
14 of the crisis intervention team.
15 Q Okay.
16 A So I started to give verbal commands --
17 Q What were those --
18 A -- inside the room.
19 Q -- commands?
20 A One, I asked first off if anybody was harmed or
21 injured inside the room.
22 Q What was the reply?
23 A At first there was no reply. I gave multiple
24 commands, you know, does anybody need help, and after probably
25 about ten seconds of me giving verbal commands, not getting any

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ROUGH DRAFT TRANSCRIPT

1 A So I tried to get the subject's name. I asked him
2 what his name was inside there. Wouldn't give me any response.
3 Q Is this a dynamic situation at this time?
4 A Yes --
5 Q Okay.
6 A -- I believe it's very dynamic.
7 Q Okay.
8 A I'm not sure what weapons are involved. I'm not sure
9 if there's somebody hurt or injured.
10 Q Okay. And you see blood?
11 A Yes.
12 Q Okay. Please continue.
13 A So I attempted to get his name. Wouldn't give me a
14 name. Eventually, he gave me what at the time I believed is
15 the name Veronica --
16 Q Okay.
17 A -- is what I had written down on my statement. And I
18 asked if she was hurt. At one point in time he tells me she
19 stabbed herself.
20 Q Okay. Now you say one point in time he tells you.
21 A Correct.
22 Q Did you actually make contact with this individual?
23 A I never saw him. He was never in any of my visual.
24 The bed had me blocked from seeing anybody in there.
25 Q Okay.

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ROUGH DRAFT TRANSCRIPT

1 reply, finally was told get the fuck in here.
2 Q Okay, let me back up. Had you identified yourself as
3 an officer of the Metropolitan Police Department?
4 A Yes, sir, I did.
5 Q Prior to initiating contact with the individual
6 inside of the bedroom?
7 A When I came up and I posted, as I start out in all my
8 CIT calls, I'm Officer Conn with the Las Vegas Metropolitan
9 Police Department. We're here to help you. I need to know
10 does anybody need any help.
11 Q Okay. And your testimony is that in reply to that
12 the answer was, and I quote, get the fuck in here?
13 A Yeah, after giving -- I gave multiple commands, but
14 after about ten seconds, the only reply I got was get the fuck
15 in here.
16 Q Okay. Can you describe the intonation of that
17 statement? And let me clarify my question. Did you determine
18 that to be get the fuck in here, there is a situation and I
19 need help or something else?
20 A No, I did not want to enter that bedroom at that
21 time. I felt more like it was a subject attempting to bait me
22 --
23 Q Okay.
24 A -- into coming into the room.
25 Q Please continue, Officer.

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ROUGH DRAFT TRANSCRIPT

1 A But during my question, he makes basically just a
2 statement. It wasn't even so much an answer to any of my
3 questions but she stabbed herself.
4 Q Okay. So you heard the male say that she stabbed
5 herself?
6 A Correct.
7 Q Okay. Please proceed.
8 A So I never actually get a good communication with
9 him. There's never a question and then an answer and a return.
10 Just basically statements that he makes.
11 Q Yes, sir.
12 A So one point in time he tells me that she's alive.
13 Q Okay.
14 A And at another time he tells me that she's dead.
15 Q Okay.
16 A So while I'm sitting there and I'm going through
17 these questions, eventually, Sergeant Newberry and Sean and
18 Officer -- I'm trying to think here. We have one more officer
19 comes in. They're all part of our PSU team.
20 Q Would that be Officer Taylor?
21 A Yeah, Sean Taylor and then Jeremiah Ballejos.
22 Q Okay.
23 A They come into the room.
24 Q Okay. Now where are you at when they come into the
25 room?

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ROUGH DRAFT TRANSCRIPT

1 A I'm still -- they're stacking behind me --
2 Q Okay.
3 A -- while I'm still against the wall. I've maintained
4 my position. My firearm's still drawn towards that doorway.
5 Q Okay.
6 A They come up behind me. Sergeant Newberry says we
7 need to formulate a plan to get inside this room.
8 Q Okay.
9 A At which time he withdraws my taser and gives it to
10 Officer Ballejos --
11 Q Okay.
12 A -- so that we can form up an arrest team for the less
13 than lethal option.
14 Q Okay.
15 A Sergeant Newberry then placed himself right here with
16 his back on the edge of the wall.
17 Q Yes, sir.
18 A And he tells me, whatever you guys do cover me, I'm
19 going to look inside. So he's concerned that there's a
20 potential threat to him, so I keep my firearm covered on the
21 doorway. He peeks his head around, at which time he tells me,
22 okay, I can see the subject. He's laying next to the female.
23 I can see both of his hands. There's no weapons.
24 Q Okay.
25 A So at that time I enter through the doorway, gun

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ROUGH DRAFT TRANSCRIPT

1 A Once the taser was deployed, Officer Sean, he grabs
2 one of the subject's hands. I immediately holster my pistol.
3 I can see that there's a lot of blood on the male's hand. So I
4 immediately grab a pair of gloves that I keep on my belt, put
5 them on, tell Sean to give me that hand, and place the handcuff
6 in it.
7 Sean then grabs the other hand, we secure the
8 handcuffs, Sean -- I can't remember, Sean grabs the feet or I
9 grab the hands, but we both pick him up, drag him out of the
10 room, and then set him right in the middle of the living room.
11 Q Okay. Let me back you up for a second. When you
12 walked in the bedroom, did you, in fact, see the female on the
13 floor?
14 A Yes.
15 Q Showing you what's been admitted as State's Exhibit
16 7. Is that a picture of the female and the condition that you
17 observed her in?
18 A Yes.
19 Q Showing you State's Exhibit 8. Is that another
20 picture of the female that you saw and that was the condition
21 she was in?
22 A Yes, sir.
23 Q And then finally, what's been admitted as State's
24 Exhibit 9. Does that show the blood that you observed when you
25 first peeked in that bedroom?

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ROUGH DRAFT TRANSCRIPT

1 drawn, and I'm standing right about -- actually a little bit
2 over. Right basically about middle in between the dresser and
3 the bed.
4 Q Okay.
5 A Officer Ballejos starts giving verbal commands for
6 the subject to remove himself from the female that's laying on
7 her back.
8 Q Does that subject obey those commands?
9 A No, he does not.
10 Q Okay. Then what happens?
11 A Basically, when we come in, I have my gun drawn,
12 immediately go to, I believe to be a threat. The female does
13 not appear to be alive at this point in time. So the subject's
14 still not listening to verbal commands. When we give him the
15 verbal commands, I can see the female's, her clothes are torn.
16 There's blood on them.
17 He's got his right hand on the back of her head and
18 his left hand is across her torso area.
19 Q Okay.
20 A And it's almost like his right hand was kind of
21 caressing her head, and then he gets very agitated and starts
22 waving his left hand up and down and goes do not look at her,
23 do not look at her. So it was at this time that he was getting
24 agitated that Officer Ballejos deployed the taser.
25 Q Okay. And then what happened?

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ROUGH DRAFT TRANSCRIPT

1 A Yes.
2 Q Now, just so the record's clear, Officer Conn, did
3 the first deployment of the taser succeed in allowing officers
4 to apprehend Mr. O'Keefe?
5 A I can't remember if -- I believe it was just one
6 deployment. The amount of time that's on the taser can be
7 unlimited if you wish it to be. So as long as you hold the
8 taser down, you can keep it giving the electrical discharge
9 until you apprehend the subject.
10 Q Okay, let me ask this. Do you know if more than one
11 cycle was deployed?
12 A No, I do not.
13 Q Okay. Officer, how long were you guys posted up and
14 issuing commands to the defendant -- to Mr. O'Keefe --
15 A I'm not --
16 Q -- until you made entry?
17 A I'm not exactly sure because it's a dynamic
18 situation. Your suppress level's pretty high. The amount of
19 time seems to pass. Seems like an eternity.
20 Q Okay. And actually, I believe I did that out of
21 order. Do you see the man that you saw in the bedroom that
22 night present in court today?
23 A Yes, sir, I do.
24 Q Can you --
25 MR. PIKE: We'll stipulate the identity of Brian

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ROUGH DRAFT TRANSCRIPT

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1 O'Keefe.
2 MR. SMITH: Thank you.
3 THE COURT: All right. Thank you.
4 BY MR. SMITH::
5 Q And Officer Conn, another thing I just want to make
6 sure the record's clear about. When you were shouting commands
7 into that bedroom, were you shouting commands that you wanted
8 to provide medical assistance to the person that was in there?
9 A Yes, sir.
10 Q And despite those commands, Mr. O'Keefe still did not
11 let you in the bedroom?
12 A No. When we said that we wanted to give her help,
13 again, the command would come back fuck you, get in here.
14 MR. SMITH: Pass the witness.
15 THE COURT: Cross.
16 MS. PALM: Thank you.
17 CROSS-EXAMINATION
18 BY MS. PALM::
19 Q Good morning, Officer Conn.
20 A Good morning.
21 Q I believe you testified that you arrived at the scene
22 about 11:06.
23 A Yes, ma'am.
24 Q And do you recall that Mr. O'Keefe was in custody
25 within about six minutes?

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ROUGH DRAFT TRANSCRIPT

1 the time in which he was taken into custody.
2 Q Okay. So well it may have seemed like an eternity,
3 it really wasn't, was it?
4 A Correct.
5 Q And when you first arrive and you hear a male yelling
6 from the back bedroom, it was kind of just nonsense at first,
7 wasn't it?
8 A It was -- it was mumbling.
9 Q And if you had said in your statement it was nonsense
10 at first, would you agree with that?
11 A Yes, ma'am.
12 Q Okay. And at that point the only thing that he had
13 said that you recalled was that she stabbed herself?
14 A He's -- there's particular statements that he made
15 that I can recall directly. Fuck you, get in here, she stabbed
16 herself, she's dead, she's alive. That's basically the gist of
17 --
18 Q Okay.
19 A -- statements made.
20 Q And was it about 10, 15 seconds between each
21 communication?
22 A Yeah, there was -- and it wasn't even communication
23 am I wouldn't call it communication. I would ask a question.
24 I would never get a response. It would just be more of a
25 statement just as if he was talking to anybody.

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ROUGH DRAFT TRANSCRIPT

1 A I don't know what the time of custody was.
2 Q Would it refresh your recollection to look at a copy
3 of your dispatch?
4 A Yes, it would.
5 MS. PALM: Approach, your Honor.
6 THE COURT: Yes.
7 BY MS. PALM::
8 Q (Indiscernible).
9 A Let's see here. Okay, one union one was my call sign
10 during that time period. He was taken into custody at 2313
11 hours.
12 Q Okay. So about six, seven minutes after you arrived?
13 A Let's see. I'm not seeing an arrival time for
14 myself. I see an assignment time.
15 Q Do you recall how long it took you to get there after
16 --
17 A 2303 --
18 Q -- you assigned yourself?
19 A -- hours is what I show for my assigned time. But I
20 don't know if I just got on the radio and told her -- sometimes
21 we just send on our MDT en route code, arrived. We don't
22 necessarily get on the radio especially if we already have
23 officers there because we don't want to block radio
24 transmissions if they have something important to say.
25 So I'm in the sure exactly, but 2313 hours would be

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ROUGH DRAFT TRANSCRIPT

1 Q Okay. Now, when the four of you entered the bedroom,
2 it's you first, then Ballejos, Newberry, and who was the other
3 officer?
4 A Sean Thomas. Sean --
5 Q Taylor?
6 A -- Taylor.
7 Q Okay.
8 A Not Thomas.
9 Q And so you testified that you took the position right
10 between the bed and the dresser on that diagram.
11 A Correct want.
12 Q And were you still in front when you entered the
13 room?
14 A I was the very first person into the room. I
15 maintained the front position. The other officers fanned left
16 and right of me in order to approach.
17 Q Did anyone have to go onto that bed at all?
18 A I do not recall. My attention was focused solely on
19 my firearm and the male subject in front of me.
20 Q Okay. Can you point on the diagram to where Officer
21 Ballejos stood when he was firing the taser.
22 A I'm not sure where he was standing because the only
23 person that I can recall their actual position was Sean Taylor
24 when he was doing the handcuffing. He was to my right --
25 Q Okay.

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ROUGH DRAFT TRANSCRIPT

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1 A -- closest to the suspect.
2 Q Well, the suspect was actually on the other side of
3 the body, right?
4 A Correct.
5 Q Can you show -- okay, so he --
6 A That side.
7 Q -- is laying down next to that body?
8 A Correct.
9 Q And who went -- which officers went on the other side
10 of body --
11 A Sean --
12 Q -- next to the suspect?
13 A I know that Sean was forward and to the right
14 crossing over so that he could grab his arms once the taser was
15 deployed.
16 Q Okay, was -- and Sean is Officer Taylor?
17 A Correct.
18 Q And was he over there alone?
19 A I can't recall.
20 Q Okay. At one point you joined him because you said
21 you were helping with the handcuffing.
22 A Correct.
23 Q So at one point the both of you are over there,
24 Officer Taylor and you.
25 A Correct.

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ROUGH DRAFT TRANSCRIPT

1 Q -- as if he's caressing her head.
2 A Correct.
3 Q Okay. And then he became very agitated and was
4 waving his arm up and down --
5 A Left arm.
6 Q -- saying don't look at her?
7 A Correct.
8 Q Okay. So you could see both of his hands at all
9 times while you were in there?
10 A Correct.
11 Q And you never saw him with a weapon?
12 A No, I did not.
13 Q Okay. And he never actually threatened you?
14 A No, he did not.
15 Q And you don't recall at this point how many taser
16 cycles there were, but if I showed you your statement, would it
17 refresh your recollection?
18 A Yes, it would. Okay, so it was two deployments.
19 Q Okay. And actually, when the taser is fired, it's
20 two probes that go into the body, and those probes stay in the
21 body --
22 A Yes, they do.
23 Q -- and you can do repeat cycles.
24 A Correct.
25 Q Okay. And do you know when physical contact was made

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ROUGH DRAFT TRANSCRIPT

1 Q And you don't recall if Officer Ballejos ever went
2 over? Sergeant Newberry?
3 A I don't recall Sergeant Newberry at all --
4 Q Okay.
5 A -- within my peripheral vision.
6 Q To get over on the other side of that body you
7 actually had to either go over the bed or go over the body; is
8 that correct?
9 A Correct, and I would have gone over the body.
10 Q Okay. And is that how Officers Taylor or any other
11 officer would have gotten over there?
12 A I believe that Sean would have had to go over the
13 body due to him being off to my right.
14 Q Okay. There was not actually room between the
15 deceased's feet and the dresser for you to walk around to the
16 right, was there?
17 A He would have had to step over here.
18 Q Okay. And do you know whether anybody bumped into
19 her during that process?
20 A I do not know.
21 Q Okay. Is it possible?
22 A It is possible.
23 Q Now, you testified that Mr. O'Keefe's right hand was
24 on the head of Ms. Witmarsh --
25 A Correct.

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ROUGH DRAFT TRANSCRIPT

1 to take him into custody? Was it during the first cycle or
2 second or --
3 A It -- officers would have approached and began
4 attempting to gain control of him during the first cycle. The
5 whole purpose is to gain control as fast as possible. So as
6 soon as we deploy the taser, you're backup officers are there
7 to immediately go and attempt to place their hands in handcuffs
8 so that you're not having to fight with him.
9 Q Okay. And you had concerns in this case also because
10 you knew there was some biological -- there was a Hepatitis C
11 issue --
12 A Correct.
13 Q -- with the blood that was all over the scene.
14 A Correct.
15 Q So I assume you were taking the precautions with the
16 gloves --
17 A Correct.
18 Q -- even more so. Okay. Do you know if a person's
19 alcohol use would affect the effectiveness of a taser?
20 A I would not. It affects the central nervous system,
21 so alcohol would play little to no effect.
22 Q Now, you testified that just you and Officer Taylor
23 carried Mr. O'Keefe out of the bedroom.
24 A Correct.
25 Q And I assume you had to go back over the body to do

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ROUGH DRAFT TRANSCRIPT

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1 that.
2 A Correct.
3 Q And you carried him into the living room?
4 A Yes, we did.
5 Q Did you set him down at that point?
6 A Yes, we did.
7 Q And how did you set him down?
8 A Basically, from exhaustion he dropped anywhere
9 between a foot to six inches onto the carpet.
10 Q Okay. Did he indicate to you that he was injured by
11 that drop?
12 A No.
13 Q Did you see him get injured?
14 A No, I did not.
15 Q Okay. And was that on his stomach?
16 A No, it was more kind of on his side because we have
17 one arm, so his body's somewhat tilted --
18 Q Okay.
19 A -- because one officer has him almost by an armpit,
20 another officer has him by his legs, so his torso's kind of
21 tilted.
22 Q Okay. So he was actually set down or, you know,
23 drops six inches or so onto his side --
24 A Correct.
25 Q -- but he didn't his face.

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ROUGH DRAFT TRANSCRIPT

1 Q Okay. And was that partially covered by --
2 A By the sheets.
3 Q -- something?
4 A It was kind of just mixed up into the sheets --
5 Q Laying in the bloody --
6 A -- so you just kind of saw it --
7 Q -- sheets.
8 A -- laying there.
9 Q Okay. And you never had any further conversations
10 with Mr. O'Keefe when you were out on the porch?
11 A No.
12 Q Okay. You testified about the fear that Mr. O'Keefe
13 was trying to bait you or being fearful of walking into the
14 situation in the bedroom.
15 A Correct.
16 Q But actually, when you went into the bedroom, again,
17 he wasn't holding a weapon?
18 A No, he did not hold one.
19 Q And he was laying on the floor.
20 A Correct.
21 Q And you never saw him in any other position in that
22 bedroom, did you?
23 A No.
24 MS. PALM: Pass the witness, your Honor.
25 THE COURT: All right, Mr. Smith.

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ROUGH DRAFT TRANSCRIPT

1 A I don't know if he did or not.
2 Q Okay. Were you also one of the officers that moved
3 him onto the balcony?
4 A No, I did not.
5 Q Did you see him get moved onto the balcony?
6 A No, I did not.
7 Q I'm showing you what's been admitted as Defendant's
8 Exhibit HHH. Did Mr. O'Keefe look like this when you first saw
9 him?
10 A I can't recall if he did or not.
11 Q Okay. So do you recall (indiscernible). You don't
12 recall any injuries to his forehead?
13 A I can't recall if he had any or not.
14 Q Okay. Do you recall any other injuries to him?
15 A No, just the blood that I saw on his hand when we
16 were attempting to place him in handcuffs.
17 Q Okay. Did you ever notice a weapon at the scene?
18 A Yes, I did.
19 Q And can you describe where it was?
20 A Kitchen style knife that was laying on the bed.
21 Q And that was not accessible to Mr. O'Keefe as he laid
22 there on the floor, was it --
23 A No.
24 Q -- some distance from him?
25 A Yeah, he couldn't have reached for it.

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ROUGH DRAFT TRANSCRIPT

1 MR. SMITH: Judge, I'll be brief.
2 REDIRECT EXAMINATION
3 BY MR. SMITH::
4 Q Officer Conn, do you recall what time this event was
5 originated with the Las Vegas Metropolitan Police Department?
6 A No, I do not.
7 Q If I showed you the dispatch file, would that refresh
8 your recollection?
9 A Yes, it would.
10 MR. SMITH: May approach the witness, Judge?
11 THE COURT: Yes.
12 BY MR. SMITH::
13 Q I want you to look at that for us, Officer, and see
14 if that refreshes your recollection as to what time this event
15 actually originated.
16 A 2301 hours.
17 Q Okay. And then you testified on cross-examination
18 that it was at approximately -- what time that the defendant
19 was actually taken into custody?
20 A 2313 hours subject's been tazed, taking him into
21 custody at this time.
22 Q So that was approximately 12 minutes after the call
23 originated?
24 A Correct.
25 Q Is that a yes?

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ROUGH DRAFT TRANSCRIPT

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1 A Yes.
2 Q Okay. And then the next question I want today ask
3 you, you assigned yourself we heard on cross-examination at
4 2303 or 11:03 p.m.; is that correct?
5 A Correct.
6 Q And just so the record's clear, when you arrived at
7 the scene, were there already officers there?
8 A Yes, there was.
9 Q Okay.
10 MR. SMITH: No further questions.
11 THE COURT: Any recross?
12 MS. PALM: Nothing, your Honor. Thank you.
13 THE COURT: Any questions from the jurors? No.
14 Thank you, Officer, for your testimony. You're instructed not
15 to discuss your testimony with any other witness involved in
16 this case until this matter is finally resolved. Thank you,
17 sir --
18 THE WITNESS: Thank you, your Honor.
19 THE COURT: -- your time. Ladies and gentlemen,
20 we're going to recess here a little early for lunch. It's
21 about 11:45, and I should be done with the judge's meeting at
22 1:00 so we need to be back outside at 1:00 o'clock, and we'll
23 resume this afternoon.
24 During this lunch recess it is your duty not to
25 converse among yourselves or with anyone else on any subject

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ROUGH DRAFT TRANSCRIPT

1 appropriate because of the critical nature of this witness.
2 THE COURT: All right, Mr. Smith.
3 MR. SMITH: And Judge, it's the State's position that
4 the question that I asked Ms. Morris amounted to was she
5 testifying pursuant to her oath to tell the truth. That's
6 really no different than arguing in closing that you heard the
7 witnesses come in and state the truth. I don't think that it's
8 vouching to the extent that we're asking a jury to, you know,
9 believe Ms. Morris over everyone else.
10 The defense attorney did a fairly good -- a good job
11 even -- at pointing out some possible reasons that would have
12 influenced Ms. Morris' testimony and/or any biases or motives
13 she would have for making the statements that she did, and I
14 submit that the jury can certainly use their own common sense
15 and come to their own determination to whether or not she's
16 telling the truth. And that the State didn't do anything more
17 to bolster that outside of what is clearly permissible under
18 the law.
19 THE COURT: All right. Based upon the nature of the
20 question and the contemporary objection which I sustained I'm
21 going to deny the motion for a mistrial. You ready to go?
22 MR. PIKE: Yes, your Honor.
23 THE COURT: All right.
24 (Off the record colloquy).
25 MR. SMITH: Yeah, we're ready. I'm sorry.

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ROUGH DRAFT TRANSCRIPT

1 connected with the trial or read, watch or listen to any report
2 over commentary on the trial by person connected with the trial
3 or by any medium of information including, without limitation,
4 newspaper, television, radio or the Internet.
5 And you're not to form or express an opinion on any
6 subject connected with this case until this matter is finally
7 submitted to you. We'll see you back at 1:00 p.m.
8 (Court recessed at 11:45 p.m. until 1:10 p.m.)
9 (Outside the presence of the jury)
10 THE COURT: We're on the record now --
11 THE CLERK: Yes.
12 THE COURT: -- Ms. Ramsey (phonetic)?
13 THE CLERK: Yes.
14 THE COURT: Okay. Mr. Pike, you had a motion.
15 MR. PIKE: Yes, your Honor. May it please the Court,
16 outside the presence of the jury, during the course of the
17 testimony of Ms. Morris after the cross-examination and in
18 their attempts to rehabilitate the witness, the State went into
19 examination regarding the oath that she had took and her
20 testimony. I'd bring a motion for a mistrial based upon that
21 approach being a form of impermissible vouching for the
22 witness.
23 And because she was such an important witness in
24 reference to motive and lack of accident or mistake or
25 misinterpretation as to what was happening, I think that it's

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ROUGH DRAFT TRANSCRIPT

1 (Off the record colloquy).
2 MR. PIKE: We have one short employment witness that
3 we're going to call out of order.
4 THE COURT: You're not talking about their height or
5 anything?
6 MR. PIKE: No, just -- just an employment.
7 THE MARSHAL: Officers and members of the court,
8 Department 17 jurors. You may be seated, ladies and gentlemen.
9 Let make sure cell phones are turned off, please.
10 THE COURT: Welcome back, ladies and gentlemen. We
11 are going to -- we're in the presence of the entire jury panel.
12 Ladies and gentlemen, oftentimes in trials there's scheduling
13 conflicts with some of the witnesses, and so we're going to
14 call out of order one of the defendant's witnesses at this
15 time. And you're to consider it as if they had call it had
16 during their case in chief. Ms. Palm.
17 MS. PALM: Thank you, your Honor. Tracy Berger.
18 THE MARSHAL: Just remain standing, please. Raise
19 your right hand and face the clerk.
20 TRACY BERGER, PLAINTIFF'S WITNESS SWORN
21 THE CLERK: Please state your name and spell your
22 name for the record.
23 THE MARSHAL: Just have a seat.
24 THE WITNESS: Oh, okay. Tracy Berger, T-r-a-c-y,
25 first name. Last name B-e-r-g-e-r.

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ROUGH DRAFT TRANSCRIPT

000401

1 THE COURT: Go ahead, Counsel.
2 MS. PALM: Thank you, your Honor.
3 DIRECT EXAMINATION
4 BY MS. PALM::
5 Q Good afternoon Mr. Berger.
6 A Hi.
7 Q Sir, can you tell the jury how you're employed?
8 A I am a labor superintendent for MJ Dean Construction
9 (phonetic) drywall division.
10 Q And where is that company located in?
11 A Las Vegas, Nevada.
12 Q Do you know who Brian O'Keefe is?
13 A I do.
14 Q Do you see him in the courtroom today?
15 A Yes, I do.
16 Q Could you describe where he's seated and what he's
17 wearing.
18 A He's seated right at the end of the table there with
19 a gray suit on.
20 MS. PALM: Your Honor, would the record reflect he's
21 identified Mr. O'Keefe?
22 THE COURT: Yes, it will.
23 MS. PALM: Thank you.
24 BY MS. PALM::
25 Q Did Brian O'Keefe ever work for you?

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1 or put back on whether work picked up.
2 Q Because work was slow at the time?
3 A Very, very.
4 Q Okay.
5 A Yeah.
6 Q And how did you respond to his inquiry?
7 A Well, there was no work at the time, but I told Brian
8 that he was eligible for rehire as soon as work picked up.
9 Q Okay. So he had a --
10 A Basically, yeah.
11 Q -- real -- so Brian had a realistic hope of going
12 back to work for you?
13 A Yes, he did.
14 MS. PALM: Pass the witness, your Honor.
15 THE COURT: Any cross-examination?
16 CROSS-EXAMINATION
17 BY MS. GRAHAM::
18 Q I'm sorry, it's Mr. -- your last name?
19 A Berger.
20 Q Berger. Mr. Berger --
21 A Yeah.
22 Q -- did you see Brian that day on November 5th, 2008?
23 A No, I did not.
24 Q Do you live at the apartment complex near 5001 El
25 Parque?

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1 A Yes, he did.
2 Q And how did he come to be employed for you?
3 A He was dispatched to MJ Dean through the union hall.
4 Actually, through the apprenticeship program.
5 Q Okay. And what union is that?
6 A Local 872.
7 Q And are all your employees union members?
8 A Yes.
9 Q Okay.
10 A Yes.
11 Q And did he work for you from about November of 2007
12 to July of 2008?
13 A Yes, he did.
14 Q And was that full-time work?
15 A Yes, it was.
16 Q Do you recall back on November 5th, 2008 speaking
17 with Mr. O'Keefe on the phone?
18 A Yes. Yes.
19 Q Was that sometime in the afternoon?
20 A Yeah, it was. I was -- I remember -- I can't say
21 exactly, but I know I was on my way home for work, so well, I
22 would say around 3:00 o'clock.
23 Q Okay. And what was the context of that conversation?
24 A Brian was wondering what the work situation was like
25 and wanted to know if there was any likelihood he'd be rehired

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1 A Well, I'm not real sure where El Parque is. I live
2 up by Red Rock Casino.
3 Q Okay. So you don't know where 5001 El Parque is?
4 A No, I do not.
5 Q Okay. Did you happen to be at Brian's apartment on
6 the evening of November 5th, 2008?
7 A No, I was not.
8 Q Did you talk to him any time after November 5th, 2008
9 in the afternoon?
10 A No, I did not.
11 MS. GRAHAM: Nothing.
12 THE COURT: Any redirect?
13 MS. PALM: No. Thank you, your Honor.
14 THE COURT: All right, thank you, sir. You're
15 instructed not to discuss your testimony with any other witness
16 involved in this case until this matter is finally resolved.
17 Thank you for your time, sir.
18 THE WITNESS: Okay.
19 THE COURT: All right. State, call your next
20 witness.
21 MS. GRAHAM: State calls Officer Jeremiah Ballejos.
22 THE MARSHAL: Officer Ballejos, if you'll raise your
23 right hand, please. Face the clerk.
24 OFFICER JEREMIAH BALLEJOS, PLAINTIFF'S WITNESS, SWORN
25 THE MARSHAL: Have a seat, please.

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1 THE CLERK: (Indiscernible) your name and spell it
2 for the record.
3 THE WITNESS: Jeremiah Ballejos, B-a-l-l-e-j-o-s.
4 MR. SMITH: Judge, can we approach?
5 THE COURT: Yes.
6 (Bench conference).
7 MS. GRAHAM: Court's indulgence.
8 THE COURT: All right.
9 DIRECT EXAMINATION
10 BY MS. GRAHAM:
11 Q Good afternoon, Officer Ballejos.
12 A How are you?
13 Q How are you employed?
14 A Been with the Las Vegas Metropolitan Police
15 Department close to five years.
16 Q Close to five years now?
17 A Currently assigned to the (indiscernible) area
18 command problem solving unit as plain clothes officer.
19 Q Okay. And were you assigned to the problem solving
20 unit on November 5th of 2008 last year?
21 A Yes.
22 Q And were you on duty in your capacity as a police
23 officer on that evening?
24 A Yes.
25 Q And approximately, 10:00 p.m. that evening, between

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1 out of the bedroom --
2 Q Okay.
3 A -- so that they could bring medical in.
4 Q All right. Now, when you say challenging, tell the
5 jury what challenging means.
6 A Essentially, in this type of situation our goal is to
7 -- there was a person that was injured. We want -- we need to
8 get in there to make sure that this scene is under control to
9 allow paramedics or AMR to come in and give medical attention.
10 In this situation, the patrol officers were not
11 allowed to have access to the room because they couldn't get
12 compliance from Mr. O'Keefe. So they were -- our goal was to
13 get in there so that Victoria could get medical assistance as
14 soon as possible.
15 MS. PALM: Your Honor, I'm going to object to his
16 answer as non-responsive. The question was what -- describe
17 challenging, and his lengthy discussion wasn't about
18 challenging. It was about what he was thinking.
19 MS. GRAHAM: And Judge, I think that he explained
20 what challenging was and what the goal was of challenging.
21 THE COURT: I'm going to overrule the objection at
22 this time. Officer, just very carefully hear the question,
23 okay.
24 THE WITNESS: Yes, sir.
25 THE COURT: All right. Next question.

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1 10:00 and 11:00 p.m. did you respond to a location of 5001 El
2 Parque, Building C, Apartment 35?
3 A Yes, I did.
4 Q Can you tell the jury what the details that have call
5 were?
6 A It was kind of basic details where there was a -- a
7 neighbor had called in said that he had noticed an open door to
8 the apartment, that there was a body laying in the bedroom of
9 the apartment, there was a lot of blood, and he wasn't sure
10 what it was -- had gone on or occurred.
11 Q And when you responded to that address, were you
12 riding solo or who were you riding with?
13 A There was actually Sergeant Newberry and my partner
14 Sean Taylor.
15 Q So it was you, Officer Taylor and Sergeant Newberry?
16 A That's correct.
17 Q Okay. And when you arrived at the scene, what did
18 you observe?
19 A We had to park -- there were a lot of patrol vehicles
20 in the parking lot, so we parked and went directly to the
21 address that was updated in the call.
22 Q And who was on location at that point?
23 A There were several marked patrol units, officers in
24 uniform, that had already entered the open apartment and were
25 challenging a male, later identified as Brian O'Keefe, to come

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1 BY MS. GRAHAM::
2 Q Okay, so Officer, if you could just -- let's just
3 step by step I'll ask you a question. Just answer the question
4 I ask and then, you know, we'll move on from there, okay? So
5 when you arrived at the scene, you were with you said Sergeant
6 Taylor or Officer Taylor and Sergeant Newberry.
7 A Yes.
8 Q And did you go into the apartment?
9 A Yes.
10 Q Okay. And who went into the apartment?
11 A All three of us.
12 Q All three of you?
13 A Sergeant Newberry, Officer Taylor and myself.
14 Q Did you notice other officers inside the apartment?
15 A I did.
16 Q And do you recall what officers were inside the
17 apartment?
18 A Specifically, Officer Conn, Officer Fombuena and I
19 don't recall his name. (Indiscernible), I think it was.
20 Q Okay. Would Santarossa ring a bell?
21 A Yes.
22 Q Okay. All right. So once you entered the apartment,
23 what was your observation of what was going on?
24 A There was a standoff between the patrol officers and
25 the back bedroom. They were trying to get access to back

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1 bedroom to get medical assistance to Victoria.
2 Q And when you say they were trying to get access, what
3 was happening? What was going on?
4 A In our experience and what I've seen a lot is --
5 MS. PALM: Objection, your Honor. Non-responsive.
6 THE COURT: Sustained. What did you observe --
7 THE WITNESS: Can you repeat the question --
8 THE COURT: -- going on?
9 THE WITNESS: -- please?
10 BY MS. GRAHAM::
11 Q Yes. When you -- with a was going on at that time
12 when you say that they were trying to get -- he was being
13 unresponsive?
14 A Officer Conn was giving commands to Mr. O'Keefe to
15 come out of the apartment or to come out of the bedroom so that
16 medical could come in.
17 Q And when you say he was being unresponsive, what do
18 you mean by that?
19 A I heard several times him say fuck you, you come in
20 here.
21 Q Okay. So you were present the whole time that
22 Officer Conn was giving commands?
23 A Through that portion to hear those statements, yes.
24 Q Okay. And let's -- let me find that diagram. Thank
25 you. Just for clarification and to show the jury, if you'd

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1 A They were -- Officer Conn was trying to get Mr.
2 O'Keefe to come out of the bedroom so that the ambulance could
3 come in.
4 Q Okay. And how was he trying to get him to come out
5 of the bedroom?
6 A Trying to talk to him, reiterating that all they
7 wanted -- his main concern was to get medical attention to
8 Victoria.
9 Q Okay. Was the defendant making any statements in
10 response to Officer Conn's commands?
11 A No, he -- it was difficult for Officer Conn to
12 communicate with him because he was --
13 MS. PALM: Objection, your Honor. Non-responsive.
14 THE WITNESS: He was shouting over --
15 THE COURT: I'm going to sustain the objection.
16 BY MS. GRAHAM::
17 Q You may answer the question.
18 A He was shouting over Officer Conn's instructions and
19 at some point he would say fuck you, fuck you over and over.
20 Q Okay. So fuck you, fuck you over and over?
21 A Yeah.
22 Q And basically he was shouting over Officer Conn?
23 A Exactly.
24 Q Okay. So would it be fair to say that there was kind
25 of shouting match going on for awhile?

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1 look on your monitor here, does that fairly and accurately
2 depict the layout of the apartment as you remember it that
3 night on November 5th, 2008?
4 A Yes, it does.
5 Q Okay. So when you first arrived, show the jury --
6 now, if you touch that screen, you can actually -- it will
7 mark.
8 A Okay.
9 Q So show the jury when you first entered the apartment
10 where you responded to.
11 A They had formed a -- the line to try and look into
12 the bedroom. So the line was stacked here, two officers, and I
13 joined Officer Conn at this location.
14 Q Okay. When you say they had formed a line, who
15 specifically are you talking about?
16 A Officer Conn, Officer Estrada (phonetic) was there
17 also but doing security at the front door, and myself and
18 Officer Taylor.
19 Q Okay. And who was stacked up against that living
20 room wall?
21 A Officer Conn, myself and Officer Taylor.
22 Q In that order?
23 A Yes.
24 Q Okay. All right, and while you were stacked up
25 there, what was going on?

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1 A Yes.
2 Q Okay. And once you determined that -- once it
3 determined that the defendant was not non-compliant, what
4 happened then?
5 A At that point I was deemed that there was an exigent
6 circumstance. We needed to just go in and take him under
7 control.
8 Q Let me stop you right there. Tell the jury what an
9 exigent circumstance is.
10 A In this particular case the longer we were prevented
11 from getting in -- getting Mr. O'Keefe under control, you know,
12 blood loss -- just she was -- there was lots of blood visible,
13 so it was -- there was an immediate -- a necessary -- a
14 necessity to get in that room and make it static or make it --
15 put it under control.
16 Q At that point when they decided that you needed to
17 formulate a plan because of exigent circumstances, had you
18 actually viewed inside that bedroom?
19 A I did.
20 Q You did?
21 A Yes.
22 Q Okay. What did you see when you looked inside the
23 bedroom?
24 A That it had been messed and soiled with blood and the
25 light was on in the bedroom, but I could not see Victoria or

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1 Mr. O'Keefe at that point from our position.
2 Q Okay. So from your position you didn't have line of
3 sight with either the defendant or the woman that was lying on
4 the floor?
5 A No.
6 Q Okay. So what was the plan?
7 A We -- Sergeant Newberry moved to this location to do
8 what is just a quick peek. To look around to see if he could
9 get on eye on Mr. O'Keefe, if he had weapons, if there were
10 weapons, where they were in the bedroom. And then we had one
11 officer who would have a lethal option, his handgun, and I was
12 the non-lethal option, which was the ECD or commonly referred
13 to as a taser.
14 Q So you're assigned a -- Sergeant Newberry assigned a
15 lethal option and then a non-lethal option.
16 A Yes.
17 Q Why don't you explain to the jury what a lethal
18 option and non-lethal option and when you would actually use
19 those options.
20 A A lethal option, just like we set an example would be
21 a shotgun or handgun. If would be used if Mr. O'Keefe were
22 armed, was continued an attempt to maybe injure an officer or
23 Victoria any further. Non-lethal option, it can be used on
24 subject who is not compliant or not following a lawful order
25 where, you know, the outcome is much -- they're not hurt or

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1 non-lethal and that you actually would need to deploy the
2 taser, can you tell the jury what happened then.
3 A We entered the bedroom.
4 Q And when you say we, be real clear --
5 A Officer Conn, myself and Officer Taylor entered the
6 bedroom with Sergeant Newberry following. I could see at that
7 point that Mr. O'Keefe was not armed. He was, however, waving
8 his arms away from us, repeating don't look at her, don't look
9 at her, and was attempting to pull her shirt down over her
10 torso area.
11 Q Okay. So he was saying don't look at her, don't look
12 at her?
13 A Right.
14 Q Did he indicate to you whether she was dead or alive?
15 A He did not.
16 Q Did he ask for help for Victoria?
17 A He did not.
18 Q When he said don't look at her, don't look at her,
19 were there any commands given to him?
20 A Again, there were commands to move away from her or
21 put his hands up or put his hands behind his head and it became
22 a shouting match.
23 Q And then eventually you deployed a taser?
24 A Yes.
25 Q Okay. And did it hit the defendant?

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1 permanently, you know, injured in any way, but we're able to
2 get them under control and make the situation safe.
3 Q And how was it determined that the non-lethal option
4 be used?
5 A Sergeant Newberry, through his quickly peeking into
6 the bedroom, could see that there was a knife on the bed and
7 Mr. O'Keefe was not armed. However, because of his
8 non-compliance to commands, we needed to get him under control.
9 The ECD was selected because of the -- how quickly our taser --
10 because of how quickly it incapacitates the person. We can get
11 them under control, get them out of house, and medical can come
12 in, and you don't contaminate the scene as if, you know, you
13 were to use like say pepper spray or something.
14 Q And how would pepper spray contaminate the scene?
15 A You had -- there was lots of blood so it was safe to
16 assume that there were open wounds. Medical has to treat that
17 victim, and when we did contact Mr. O'Keefe, he was very close
18 proximity of Victoria, so we didn't want to contaminate her
19 injuries and, you know, through which would eventually
20 contaminate any AMR or paramedics that handled her, tried to
21 take care of her.
22 Q At this point did you know whether or not Victoria
23 was dead or alive?
24 A I did not know.
25 Q So once it was determined that you would be the

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1 A Yes.
2 Q Okay. And what happened then?
3 A The taser cycles for five seconds to give you a
4 chance to take that person under control. What -- you would
5 use the taser and then assess how effective it was working at
6 that point during that first five second cycle. Officer Taylor
7 moved in, and they were able to get control of Mr. O'Keefe's
8 right hand, I believe it was.
9 Q Okay.
10 A Or his left hand, excuse me. His right hand was
11 still free at the end of that five second cycle. Because there
12 was lots of blood, you know, he was -- he had blood on his
13 body, it was -- I don't know if it was slippery for them or
14 whatever, but because he was not under control, a second five
15 second cycle was used to get him control of his arms and legs
16 before he was taken out of the bedroom.
17 Q And when you say he wasn't under control after the
18 first taser, what's -- was he --
19 A Tensing his muscles. Tensing his limbs. At one
20 point they even lost control of him out in the living room.
21 Q What was his demeanor?
22 A Struggling, didn't want to be taken out.
23 Q Was he saying anything at that point?
24 A No.
25 Q So once he was taken out of the room -- well, who

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1 actually took him out of the room?
2 A Officer Taylor. I remember Officer Conn, and there
3 was another officer. I can't remember his name right now.
4 Q So you didn't actually physically assist in --
5 A No, I did not.
6 Q -- taking him from the room. Okay. Once he was
7 taken from the room, do you know where he was taken?
8 A He was placed outside the door on the catwalk in
9 front of the apartment.
10 Q Did you have any contact with him after he was taken
11 outside onto the catwalk?
12 A Mr. O'Keefe was crying. I tried to talk to him to
13 solicit information regarding Victoria's information or date of
14 birth.
15 Q Did he answer you?
16 A Not initially. And then after a moment he said you
17 guys are going to be mad at me, and I asked him well, I'm not
18 mad at you, what am I mad at you for? He said because --
19 MS. PALM: Your Honor, if he could just answer one
20 question at a time. She asked did he answer you, and then we
21 get a whole long conversation.
22 THE COURT: Sustained.
23 THE WITNESS: Yes, he answered --
24 BY MS. GRAHAM::
25 Q Officer --

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1 Q He was -- he didn't respond to your actual questions,
2 but he made spontaneous statements to you; is that correct?
3 A That's correct.
4 Q And what statements were those?
5 A You're going to be mad at me.
6 Q And did you ask him why he was going to be mad at
7 you?
8 A He stated, I didn't do this, she attacked me.
9 Q What was his demeanor?
10 A It struck me as odd because he was --
11 MS. PALM: Objection, your Honor. She asked what was
12 his demeanor, not whether it was odd to him or not.
13 THE COURT: Sustained.
14 BY MS. GRAHAM::
15 Q What was your impression of the defendant during your
16 interaction?
17 A Not remorseful.
18 MS. PALM: Objection, your Honor. What his
19 impression is is irrelevant.
20 THE COURT: Sustained.
21 MS. PALM: Speculation.
22 THE COURT: Sustained.
23 MS. GRAHAM: Well, Judge, it's the presence sense
24 impression. He's there at the scene.
25 THE COURT: I sustained the objection.

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1 A -- me.
2 Q He answered you. Okay. Once you were asking --
3 first you asked information about Victoria.
4 A Yes.
5 Q What kinds of information were you wanting to get
6 from him?
7 A Identifying, name, date of birth, social --
8 Q And what purpose do you try to get identifying
9 information from someone?
10 A Because she's going down to the hospital. You know,
11 what they can -- blood type, anything like that, that can help
12 them when they're trying to assist her.
13 Q At this point did you have any idea who that woman
14 was?
15 A No.
16 Q And didn't respond?
17 A No.
18 Q Okay. And you asked him another series of questions?
19 A Yes.
20 Q And what were those questions?
21 A I repeated the same questions and at which point he
22 did not answer, but stated you're going to be mad at me.
23 Q Okay. So he spontaneously made statements to you at
24 that point?
25 A Yes.

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1 MS. GRAHAM: All right.
2 THE WITNESS: He was non-responsive or --
3 MS. PALM: There's no question before him, your
4 Honor.
5 THE COURT: Officer, wait until the next question.
6 BY MS. GRAHAM::
7 Q Okay. So he made these statements to you? Did he
8 make any other statements to you?
9 A When we -- yes, he did.
10 Q And when was that?
11 A When we moved him down stairs away from the crime
12 scene.
13 Q Okay. And what statements did he make at that point?
14 A Gave false information regarding Victoria's actual
15 identity.
16 Q What information did he give you regarding Victoria's
17 --
18 A When I asked her -- when I asked him the name, he
19 gave me two different names. Victoria Whitmore (phonetic).
20 Victoria Witmarsh. Other than that, he was non-responsive, and
21 --
22 Q Did he ask you -- did he give you any other
23 information?
24 A He would later explain to me that they had been
25 dating for several years.

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1 MS. PALM: Your Honor, may we approach?
2 THE COURT: I think it's an appropriate question,
3 Counsel, at this point.
4 MS. PALM: I have another issue.
5 THE COURT: All right.
6 (Bench conference).
7 BY MS. GRAHAM::
8 Q In your duties as an officer, is one of your duties
9 trying to gather information about the descendant or the
10 injured victim at the scene?
11 A Yes.
12 Q Okay. And was there anybody there that you knew of
13 that may have that information for you?
14 A Yes.
15 Q And who was that?
16 A Mr. O'Keefe.
17 Q Okay. So if trying to gather information, I assume
18 to assist in the medical assistance of Victoria --
19 A Yes.
20 Q -- you were trying to gather information about her?
21 A That's correct.
22 Q And in doing so, did you ask the defendant questions
23 to try to gather that information to help assist you in
24 determining who she was?
25 A I did.

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1 Q What was the tone of his voice?
2 A Monotone and real soft spoken.
3 Q And that's a different tone than you heard from all
4 of the shouting upstairs when you were trying to get him out of
5 the bedroom, I assume?
6 A Yes.
7 Q All right. So once you were able to -- were you ever
8 able to determine the identity of, as we now know her as
9 Victoria Witmarsh from the defendant in this case?
10 A No.
11 Q No?
12 A We -- no.
13 Q No, okay. What did you do then when you failed in
14 gathering information from the only person you knew at the
15 scene that was able to give you that information?
16 A We --
17 MS. PALM: Objection, your Honor. States facts not
18 in evidence in the question and argumentative.
19 THE COURT: I'm going to sustain the objection.
20 BY MS. GRAHAM::
21 Q Did you know of anybody else at the scene could give
22 you information regarding Victoria Witmarsh?
23 A No.
24 Q After the defendant indicated that he dated her for
25 over years, is it safe, I assume, to assume that he would be

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1 Q Okay. You indicated, Officer, that he had given you
2 false information at the beginning.
3 A Yes.
4 Q Did you determine at all whether or not he actually
5 knew Victoria?
6 A Yes.
7 Q And how did you determine that?
8 A He stated that they were in a dating relationship for
9 several year.
10 Q For several years. Did he indicate how many years?
11 A No.
12 Q Okay. So he indicated to you that they had been in a
13 dating relationship for several years. Did he give you any
14 other identifying information or did you ask him any other
15 identifying information regarding Victoria?
16 A I don't recall.
17 Q Was there any other information that he volunteered
18 regarding Victoria?
19 A No.
20 Q What was his demeanor while you were trying to gather
21 this information to help assist Victoria?
22 A Wouldn't make eye contact, had kind of an aloof
23 state. I could smell alcohol on his breath and clothes.
24 Q Okay. He was aloof? What did his face look like?
25 A Just kind of like staring out into space.

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1 the one person that could provide all the necessary information
2 on her medical, on her identity, et cetera?
3 A That's correct.
4 Q Next of kin.
5 MS. PALM: Again, argumentative, your Honor.
6 THE COURT: Well, it's calling for speculation. I'm
7 going to sustain the objection.
8 BY MS. GRAHAM::
9 Q Did you ever become aware of the identity of Victoria
10 Witmarsh?
11 A Yes.
12 Q Was that through the defendant?
13 A No.
14 Q Okay. After you tried to elicit the information
15 about Victoria, what did you do then?
16 A I began just looking through our SCOPE records to try
17 and get as much information I could about her and Mr. O'Keefe
18 through our computer terminal.
19 Q And were you able to determine the identity through
20 SCOPE?
21 A Yes.
22 Q Can you --
23 MR. SMITH: Judge, can we approach?
24 THE COURT: Which party are you referring to,
25 Counsel.

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1 MS. GRAHAM: Of the victim.
2 THE COURT: Okay.
3 (Bench conference).
4 BY MS. GRAHAM::
5 Q At this point did you know the identity of Brian
6 O'Keefe when you were talking to him?
7 A Yes.
8 Q And how did you know that?
9 A That was given by Mr. O'Keefe.
10 Q So Mr. O'Keefe actually gave you his identifying
11 information?
12 A Yes, he did.
13 Q Okay. Once you received the information that you
14 need, what did you do then? What part of the investigation did
15 you then participate in?
16 A I -- at that point violent crimes and homicide had
17 responded.
18 Q Okay. Did you leave the scene at that point?
19 A No, I did not. I gave a taped interview to the
20 homicide detective.
21 Q Okay.
22 MS. GRAHAM: Court's indulgence.
23 BY MS. GRAHAM::
24 Q And is that typical to give a taped interview to a
25 homicide detective?

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1 Q Do you recall while you were in the apartment and
2 Officer Conn was trying to negotiate with the defendant whether
3 or not Officer Conn indicated that he wanted to get an
4 ambulance to Victoria?
5 A When I arrived, paramedics and fire department were
6 already standing by.
7 Q And why would they be standing by?
8 A Because of the dynamic situation that they're --
9 they're not permitted to go in until the scene is made safe.
10 Q And when Officer Conn indicated to the defendant that
11 he would like to get Victoria some medical assistance, what was
12 the defendant's response; do you recall?
13 A Again, shouting back and specifically fuck you over
14 and over.
15 Q So really, all he had to say was fuck you?
16 MS. PALM: Objection, your Honor. Argumentative.
17 THE COURT: Sustained.
18 MS. GRAHAM: I'll pass the witness at this time.
19 THE COURT: Cross.
20 MS. PALM: Thank you.
21 CROSS-EXAMINATION
22 BY MS. PALM::
23 Q Good afternoon, Officer Ballejos.
24 A Hi.
25 Q I just want to go back to the conditions of the

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ROUGH DRAFT TRANSCRIPT

1 MS. PALM: Objection, your Honor. Relevance.
2 THE COURT: Overruled.
3 THE WITNESS: Yes, it is.
4 BY MS. GRAHAM::
5 Q Is it typical to do that?
6 A It is typical.
7 Q Okay. On every scene that you're dispatched to?
8 A No, it's not. It would be typical for a homicide
9 investigation.
10 Q At this point was it determined that Victoria was, in
11 fact, deceased?
12 A I (indiscernible) --
13 MS. PALM: Objection. Lack of personal knowledge, it
14 sounds like.
15 MS. GRAHAM: Sounds like. Judge, he hasn't answered
16 the --
17 THE COURT: Did you know, Officer?
18 MS. GRAHAM: -- question.
19 THE COURT: Did you know, Officer, at the scene that
20 she was deceased?
21 THE WITNESS: Once homicide responded, yes, your
22 Honor.
23 THE COURT: Okay.
24 MS. GRAHAM: Court's indulgence.
25 BY MS. GRAHAM::

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ROUGH DRAFT TRANSCRIPT

1 apartment when you entered. I understand there were other
2 officers already there. I just (indiscernible) a couple
3 different things so I want to clarify some things.
4 A Sure.
5 Q Do you recall whether the lights were on or off in
6 the living room when you entered?
7 A Off.
8 Q Do you recall whether the bedroom lights were on?
9 A Bedroom light was on. There was light, yes.
10 Q The bedroom that Mr. O'Keefe was in?
11 A Yes.
12 Q The other bedroom light was off?
13 A I don't know.
14 Q You don't recall?
15 A No, I don't.
16 Q Do you recall whether the kitchen lights were on or
17 off?
18 A There was a dim light. I don't know where -- what
19 the source was in the kitchen.
20 Q Now, you described being stacked up in a four man
21 element outside the hallway before entering the room.
22 A Yes.
23 Q And who was in that stack up?
24 A I know that Officer Conn was in front of me, and
25 Officer Taylor was to the back.

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ROUGH DRAFT TRANSCRIPT

000408

1 Q So the three of you?
2 A There was a fourth officer. Don't know who it was.
3 Q Okay. And as you enter, did you see Ms. Witmarsh's
4 feet showing from the end of the bed?
5 A I did.
6 Q And can you clear the scene? Do you know how to do
7 that? Thank you.
8 A You're welcome.
9 Q Could you point out on the crime scene diagram what
10 position Officer Conn went into when he got into the room.
11 Where was he?
12 A I don't know. My area of responsibility was Mr.
13 O'Keefe.
14 Q Okay. So you don't know where in the room Officer
15 Conn was or Officer Taylor or Sergeant Newberry?
16 A I knew Officer Taylor was off to my right.
17 Q Okay. Could you point out where, then, you and
18 Officer Taylor were.
19 A It would be have been -- excuse me. About there and
20 Officer Taylor off to my right.
21 Q Okay.
22 A At the foot of the bed.
23 Q Okay, so you're kind of in between the bed and the
24 dresser?
25 A Exactly.

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ROUGH DRAFT TRANSCRIPT

1 Q And the whole point of the taser is to disrupt
2 muscular control.
3 A Yes, it is.
4 Q And in effect it causes muscle spasm so that the
5 person tazed is rendered immobile.
6 A Exactly.
7 Q Okay. And the first five second cycle did not cause
8 Mr. O'Keefe to go completely immobile.
9 A That's correct.
10 Q And do you know whether taser shock can -- whether
11 the effectiveness of a taser shock can be altered by the use of
12 alcohol?
13 A Yes, it can.
14 Q So a person might not be tazed as completely if
15 they're drunk?
16 A That's correct.
17 Q Okay. So as you enter there, can you show the jury
18 where Mr. O'Keefe was laying on the screen.
19 A At this location here kind of lateral with Victoria.
20 Q Did you see him touch Victoria while he was laying
21 there?
22 A Only to pull down her shirt.
23 Q Okay. Did you see him rub her head?
24 A No.
25 Q And he's pulling her shirt down, he's saying don't

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ROUGH DRAFT TRANSCRIPT

1 Q Okay. Do you recall if Officer Conn was in front of
2 you or behind you?
3 A He would have been to the side or to the back. Not
4 in front.
5 Q Okay. Now, you testified before that you used the
6 X-26 taser.
7 A Yes.
8 Q As opposed positive the m-26? Those are the two
9 options.
10 A Um-h'm.
11 Q Okay. And do you recall how many volts of
12 electricity comes out of that taser?
13 A There's 2.23 amp years, I believe it is. Voltage is
14 just what the taser operates off of. It's not what the -- is
15 delivered to the subject.
16 Q Okay. Would you dispute that it's 50,000 volts if
17 somebody else had testified to that?
18 A Excuse me?
19 Q 50,000 volts. Would you dispute that that's the
20 voltage? Even whether it's delivered or not, that's the
21 voltage.
22 A That is the voltage.
23 Q Okay. And so you fired two probes, and then they
24 remain intact for the second firing.
25 A Yes.

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1 look at her, don't look at her.
2 A That's right.
3 Q It's fair to say he was acting kind of erratic from
4 some of the things he was saying?
5 A Yes.
6 Q Now, can you describe for me at what point Officer
7 Taylor first made contact with O'Keefe. Was it before, after,
8 during the first taser cycle?
9 A During the five second cycle.
10 Q Okay. And during that cycle he actually had his
11 hands on him?
12 A Yes.
13 Q And because of the difficulty getting his right arm
14 and he was tazed again.
15 A Yes.
16 Q And I assume that that -- the need to not get too
17 close to him is partly due to the Hepatitis C that you were all
18 afraid of.
19 A (Indiscernible) partial.
20 Q It was a concern?
21 A Yes.
22 Q Do you recall how Officer Taylor go over to the other
23 side of Ms. Witmarsh's body to arrest him?
24 A Off to my right, across her feet to get to the side
25 and back of Mr. O'Keefe.

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ROUGH DRAFT TRANSCRIPT

000409

1 Q Do you recall testifying at the preliminary hearing
2 that he did not need to step over her body because there was
3 room to the right of her body?
4 A Yes.
5 Q And at the time at the preliminary hearing you didn't
6 recall that a dresser was there.
7 A No, I did not.
8 Q Okay. Looking at the crime scene, do you dispute
9 that that's accurate?
10 A No, I don't.
11 Q Okay. So he actually did have to step over her body?
12 A He would have, yes, her feet.
13 Q Okay. Who assisted Officer Taylor on the other side
14 of the body?
15 A Officer Hatchet (phonetic).
16 Q Officer Hatchet?
17 A Yes.
18 Q Did Sergeant Newberry ever go over there?
19 A I don't recall him at that location. Just from
20 outside the door.
21 Q Did Officer Conn ever go over there?
22 A I don't recall.
23 Q Did you ever go over there?
24 A No.
25 Q So two officers are on the other side of Ms.

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ROUGH DRAFT TRANSCRIPT

1 Q -- arrest -- you don't recall or it didn't happen?
2 A I don't recall.
3 Q It might have happened?
4 A Maybe.
5 Q Could you tell me again what three officers carried
6 Mr. O'Keefe out of the bedroom?
7 A I remember it had was Officer Hatchet and Taylor, and
8 I don't recall the third person.
9 Q If Officer Conn testified that just he and Officer
10 Taylor carried him out, would he be wrong?
11 A If that -- I don't know what you mean by that?
12 Q Well, if Officer Conn testified that it was only him
13 and Officer Taylor that carried Mr. O'Keefe out, is that
14 incorrect?
15 A It depends on how you're stating that question.
16 There were -- there were four officers once he was taken out of
17 the bedroom --
18 Q I'm asking --
19 A -- that carried him out --
20 Q -- taking out of the bedroom.
21 A -- of -- out of the apartment.
22 Q The question is taking out of the bedroom. You said
23 it was Officer Hatchet and Officer Taylor. If Officer Conn
24 testified that it was him and Officer Taylor, would he be
25 wrong?

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ROUGH DRAFT TRANSCRIPT

1 Witmarsh's body taking Mr. O'Keefe into physical custody?
2 A Yes.
3 Q And those two officers would be Hatchet and Taylor?
4 A Yes.
5 Q Okay. Do you know if they bumped her body at all
6 getting over there?
7 A No.
8 Q You don't know?
9 A They wouldn't have, no.
10 Q They would not have?
11 A No.
12 Q Are you sure they didn't?
13 A Yes.
14 Q Because you're watching her body the entire time?
15 A Because I'm watching them move in. I -- he's still
16 -- he's -- I'm still responsible for my taser wherever it, you
17 know, it may go. If the cartridge falls off or anything like
18 that, so I'm watching them in my line of sight to make sure
19 that I don't mask them with the taser.
20 Q If another officer said it was possible that they
21 bumped her body going over there, would you dispute that?
22 A If they saw it, I couldn't, I guess.
23 Q Okay. Do you recall whether anybody had to go over
24 the bed to get on the other side over to --
25 A I don't.

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ROUGH DRAFT TRANSCRIPT

1 A No.
2 Q So --
3 A If that's his recollection.
4 Q -- you could be incorrect about that?
5 A I would go with it.
6 Q Okay. So Officer Conn would be right?
7 A May I -- I'd like to -- you know, if I'm allowed to
8 answer.
9 Q Well, that --
10 THE COURT: Answer until there's an --
11 BY MS. PALM::
12 Q -- Officer Conn could be right --
13 THE COURT: -- objection.
14 BY MS. PALM::
15 Q -- is a yes or no.
16 A Sure.
17 Q Sure he could be right?
18 A Yes.
19 Q Okay. Did you see Mr. O'Keefe being put in the
20 living room?
21 A Yes.
22 Q Are you aware of any injuries that occurred to Mr.
23 O'Keefe when he was being arrested?
24 A There was a possibility when he was -- he fell and
25 his head was drug across the carpet in the living room.

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ROUGH DRAFT TRANSCRIPT

000410

1 Q If you testified at the preliminary hearing that you
2 did not recall an injury to his forehead, but he was put on his
3 face in the bedroom because he fell, is that correct?
4 A He fell. At what point -- you have to understand
5 it's a very dynamic situation. It was at one point because of
6 his body tensing his muscles, they weren't able to keep control
7 of him, and he fell on his face in -- on the floor. They
8 picked him back up, completed removing him out. I didn't
9 notice any -- you know, I didn't notice the mark until it was
10 shown in the photos.
11 Q My question is did he fall once or twice? Did he
12 fall in the bedroom and the living room or just the bedroom --
13 A Once. Once.
14 Q -- or just the living room?
15 A Where it happened, I don't know.
16 Q Okay. Sir, if you don't know an answer to something,
17 could you tell me you don't know?
18 A Not in the manner that you're asking it, Ma'am. He
19 fell once. The specific location through that -- through this
20 corridor, I'm -- I couldn't tell you if it happened here, here
21 or here, but he did fall -- he did get dropped because of loss
22 of control.
23 Q Okay. So outside on the balcony you testified he
24 said I didn't do this, man. She tried to stab me.
25 A Yes.

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ROUGH DRAFT TRANSCRIPT

1 of the patrol car?
2 A He did.
3 Q Do you recall previously stating that when you asked
4 Mr. O'Keefe for Ms. Witmarsh's name he gave the name Veronica?
5 A Yes.
6 Q And then he changed it to Victoria.
7 A Yes.
8 Q Do you deny that this is the first time you've ever
9 mentioned a different last name?
10 A No.
11 Q You agree that today might be the first time you ever
12 mentioned that he gave a wrong last name?
13 A In court, yes.
14 Q So when you testified at the preliminary hearing you
15 did not say Whitmore?
16 A Maybe I didn't. I don't -- if I can look at the
17 record. I don't recall.
18 Q You don't dispute -- if I tell you that it's not in
19 the preliminary hearing testimony, you don't dispute that?
20 A That's fine.
21 Q If I tell you it's not in your statement that was
22 recorded, you don't dispute that?
23 A That's fine.
24 Q Now, you testified that there was a lot of blood on
25 the bed. You never saw Ms. Witmarsh's body on the bed?

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ROUGH DRAFT TRANSCRIPT

1 Q You also just testified that he said you're going to
2 be mad at me prior to saying that.
3 A That's correct.
4 Q Do you recall that? Your testimony at preliminary
5 hearing was you guys are mad at me, you guys are mad at me.
6 Not you're going to be mad at me. Do you think your
7 preliminary hearing testimony was right or today's testimony is
8 right?
9 A It's word play. He was concerned with us being angry
10 with him.
11 Q Okay. But it's -- you understand this is very
12 important?
13 A Well, yes, ma'am. But you also have to understand I
14 recalled the statement as he was concerned with us being angry
15 with him.
16 Q Okay.
17 A The exact words I'm not --
18 Q But you said an exact quote, and that's why I'm
19 asking you. So you can't remember today what the exact quote
20 was?
21 A No.
22 Q Okay. Do you recall testifying at the preliminary
23 hearing that Mr. O'Keefe smelled real heavily of alcohol?
24 A Yes.
25 Q And do you recall he actually fell asleep in the back

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ROUGH DRAFT TRANSCRIPT

1 A No.
2 Q Just on the floor.
3 A That's correct.
4 Q Does Metro have a policy to call for medical
5 assistance to check the health of somebody who's been tazed?
6 A Yes.
7 Q And do you recall whether anybody checked on Mr.
8 O'Keefe?
9 A I don't.
10 Q If they did, it wasn't at a time when you were
11 attending him?
12 A It would -- exactly.
13 Q Was it your job to stay with him outside?
14 A Not initially, no.
15 Q Did you transport him to the detective's offices for
16 an interview?
17 A I did not.
18 Q Do you know who did?
19 A No, I don't.
20 Q Do you recall testifying at preliminary hearing that
21 you had to do a use-of-force report?
22 A That's correct.
23 Q Can you explain what that is?
24 A Any time force is used on a subject, a reportable
25 force would be where there's some type of injury or, in fact,

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ROUGH DRAFT TRANSCRIPT

1 when a taser was used, you document that incident to basically
2 explain why you used it, what was the outcome, and, you know,
3 the basic premise of the call.
4 Q And is that a written document?
5 A It's now done on computer format.
6 Q Okay. And you did complete a computer form --
7 A Yes.
8 Q -- for the use of force? Would that have been only
9 you that did one because you were the one that used the taser?
10 A Yes.
11 Q And would the case detectives have access to that
12 report if they needed to get it?
13 A They would, yes.
14 Q Now, you were saying in response to questions that as
15 far as you knew, Mr. O'Keefe was the only person who had Ms.
16 Witmarsh's identity.
17 A Yes.
18 Q Were you aware that her purse with her wallet and
19 driver's license was right there on the kitchen sink?
20 A No, I wasn't.
21 Q Were you aware that she had other mail and other
22 items in the house with her name on them?
23 A It was a crime scene. Weren't permitted reenter.
24 Q There were people in the crime scene still. You were
25 outside.

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1 A It's a photo of the bed that was in the bedroom where
2 the Victoria and Mr. O'Keefe were when we arrived.
3 Q Okay. And can you point to the knife that you saw on
4 the bed.
5 A Here.
6 Q Okay. And you testified that Mr. O'Keefe wasn't near
7 the knife; is that right?
8 A That's correct.
9 Q Victoria wasn't near the knife either, was she?
10 A No, she was not.
11 Q Now, you were asked some questions by Ms. Palm about
12 what officers were actually detained and took the defendant
13 into custody. Where was your line of sight when you were
14 looking in the apartment or in the bedroom at that point?
15 A Focused on Mr. O'Keefe.
16 Q Okay. Now, you testified that you had deployed the
17 taser.
18 A Yes.
19 Q Are there two prongs on the taser?
20 A There are.
21 Q Okay. The first time that it was deployed, is that
22 -- am I using the correct term deployed?
23 A Yes.
24 Q Is that what you call it, deploy?
25 A Yes.

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1 A Right. And I'm not going to contaminate it.
2 Q So in speaking about Mr. O'Keefe's demeanor, you had
3 said he was staring out into space and monotone.
4 A That's correct.
5 Q Okay. He never challenged you to fight?
6 A No.
7 Q And you never at any time saw him with a weapon in
8 his hands?
9 A No, I did not.
10 Q Okay. And although there was a knife on the bed, he
11 was some distance from it laying on the floor.
12 A That's correct.
13 MS. PALM: Pass the witness, your Honor. Thank you.
14 THE COURT: Any redirect?
15 MS. GRAHAM: Briefly, Judge.
16 REDIRECT EXAMINATION
17 BY MS. GRAHAM::
18 Q Officer, I'm showing you what's been marked as
19 Defendant's Exhibit U. Is that where you saw the weapon?
20 A I --
21 Q The knife?
22 A Yes.
23 Q Can you tell the jury what that depicts?
24 A Excuse me?
25 Q Tell the jury what that is a photo of.

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ROUGH DRAFT TRANSCRIPT

1 Q Did both prongs hit the defendant?
2 A Yes.
3 Q They both did?
4 A Yes.
5 Q Okay. And you testified on cross that your line of
6 sight was focused on the taser and preserving that -- am I
7 getting that right?
8 A When -- if I can, when we go into a room, my area of
9 responsibility was Mr. O'Keefe.
10 Q Okay.
11 A And my partners are going to assess on their own how
12 they're going to get -- once they see an opportunity to move in
13 and take that person under control.
14 Q Okay.
15 A My entire time is because now I've deployed and used
16 taser is to assess his actions. You know, whether one is going
17 to be good enough or if a second cycle is necessary.
18 Q And once the first round of -- once the taser was
19 deployed the first time, he wasn't able to be under control; is
20 that what you testified to?
21 A That's correct.
22 Q Okay. So would it be fair to say that your line of
23 sight was directly on that area, and you couldn't necessarily
24 recall which officers actually took him into custody --
25 A That's correct.

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ROUGH DRAFT TRANSCRIPT

000412

1 Q -- in the bedroom? Okay. You know what officers
2 were at the scene?
3 A And those specifically officers that had handled him
4 at some point between the bed and outside the door.
5 Q Okay. But are you sure here today what officers
6 actually were able to take his hands and feet and remove him
7 from the bedroom?
8 A No, I'm not.
9 Q Okay. During the preliminary hearing do you ever
10 even recall anybody asking you if the defendant gave you a
11 false last name for Victoria?
12 A No, I don't.
13 MS. GRAHAM: Court's indulgence.
14 BY MS. GRAHAM::
15 Q Once again, why did you decide to deploy the second
16 round of voltage?
17 A Just the totality of the circumstances. Large
18 amounts of blood that was contaminated with communicable
19 disease, subject not being under control in a --
20 Q When you say under control, specifically, what do you
21 mean not under control?
22 A Under control would be at this point now where he
23 can't be spoken to. He's going to be placed in cuffs and
24 removed from the location.
25 Q And why wasn't he under control? What was his

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Yes.
2 MR. SMITH: Thank you.
3 DIRECT EXAMINATION
4 BY MR. SMITH::
5 Q Now, Mr. Taylor, how are you presently employed, sir?
6 A I'm a detective with the Las Vegas Metropolitan
7 Police Department.
8 Q How long have you been working for the Metropolitan
9 Police Department?
10 A Four years.
11 Q Were you working as -- actually, strike that. Were
12 you working for Metropolitan Police Department back on November
13 5th, 2008?
14 A Yes, I was on patrol with problem solving unit.
15 Q Okay. So back then you were a patrol officer?
16 A Yes.
17 Q Recently promoted?
18 A Yes.
19 Q Okay. Did you happen to respond to 5001 El Parque --
20 A Yes, sir, I did.
21 Q -- pursuant to a woman bleeding?
22 A Yes.
23 Q Okay. Why don't you tell us what happened when you
24 arrived at the scene.
25 A I arrived at the scene, went to the second floor. It

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1 demeanor?
2 A It was aggressive, non-compliant.
3 Q Okay. So even after he was tazed, his demeanor was
4 aggressive and non-compliant?
5 A Yes.
6 Q Okay.
7 THE COURT: Any recross?
8 MS. PALM: No more questions, your Honor. Thank you.
9 THE COURT: All right. Any questions from the
10 jurors? All right, thank you, Officer. You're instructed not
11 to discuss your testimony with any other witness involved in
12 this case until this matter is finally resolved. Thank you for
13 your time, sir.
14 THE WITNESS: Thank you, your Honor.
15 THE COURT: Next witness for the State.
16 MR. SMITH: Judge, the State calls Sean Taylor to the
17 stand.
18 THE MARSHAL: Detective Taylor, if you'll remain
19 standing, please.
20 OFFICER SEAN TAYLOR, PLAINTIFF'S WITNESS, SWORN
21 THE CLERK: Please be seated. State and spell your
22 name for the record, please.
23 THE WITNESS: Sean Taylor. Sean is spelled S-e-a-n.
24 Taylor, T-a-y-l-o-r.
25 MR. SMITH: May I proceed, your Honor?

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1 was Building C as in Charlie, Apartment No. 35. We went inside
2 and we -- there were multiple officers inside of a dark living
3 room, and Officer Conn was yelling into the back northwest
4 bedroom talking to a subject that was apparently inside and was
5 yelling back at him.
6 Q Okay. For the record, I'm going to place a copy of
7 what's already been admitted into evidence as State's Exhibit
8 1. Does this appear to be a diagram of the apartment of which
9 you are speak?
10 A Yes, sir, it does.
11 Q Okay. And now, can you kind of just walk us through
12 your involvement in this case.
13 A Yes, sir. I entered the apartment. It was myself
14 and my former partner Officer Ballejos, and my sergeant was
15 with us as well. And I stood behind Officer Conn, who was
16 standing -- I don't know if I can point --
17 Q You can actually touch it.
18 A Oh, okay. He was standing here.
19 Q Okay.
20 A And I stood behind him trying to get a view into the
21 back northwest bedroom.
22 Q Okay. Now, you just testified that you heard some
23 yelling going on.
24 A Yes, Officer Conn was yelling to a male asking him to
25 come out, and there was a male voice saying come on in, come on

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1 in.
 2 Q Okay. Please proceed.
 3 A The male was still yelling for us to come on in, and
 4 Officer Conn was yelling for the male to come on out because we
 5 didn't know if we were being baited inside or what. So for
 6 officer safety reasons, of course, we didn't proceed at that
 7 moment. And then Sergeant Newberry, who was my sergeant at the
 8 time, he stood on the far wall that was here, and he told us to
 9 cover him on the wall while he took what we would call a quick
 10 peek, which is just a quick peek around the corner into the
 11 back northwest bedroom.
 12 Q Okay. Then what proceeded to happen?
 13 A Sergeant Newberry peeked around into the northwest
 14 bedroom. He told us that he could see a male laying on the
 15 floor prone out and that he could see his hands, and that his
 16 hands were empty.
 17 Q Okay. Then what proceeded?
 18 A At that point Officer Ballejos, I don't know how he
 19 got it, but he ended up with Officer Conn's taser, and we
 20 stacked up preparing for entry into the bedroom.
 21 Q Could you see inside the bedroom at this point?
 22 A No, sir, I could only see light coming from the
 23 bedroom. I was behind two officers at the time.
 24 Q Okay. What happened next?
 25 A Officer Conn was first, Officer Ballejos was stacked

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ROUGH DRAFT TRANSCRIPT

1 Q What happened next?
 2 A He continued to give orders. I then holstered, moved
 3 around to the right side near Mr. O'Keefe's legs, and I began
 4 to yell at him giving orders for him to lay on his stomach and
 5 put his hands behind his back.
 6 Q Now, when you say I holstered, what do you mean?
 7 A I had my weapon out when I went into the room.
 8 Q Okay. And then you just testified that you gave
 9 orders to Mr. O'Keefe, and he didn't comply with those orders
 10 either?
 11 A No, sir.
 12 Q Okay. Then what happened?
 13 A Then at that point Officer Ballejos yelled taser,
 14 taser, taser, which obviously means that he was about to use a
 15 taser.
 16 Q Okay. And then did he deploy said taser?
 17 A Yes, he did.
 18 Q And what happened?
 19 A The taser struck Mr. O'Keefe, and he appeared -- the
 20 taser appeared to be getting -- to be painful, however, I could
 21 see he could still move his arms, and I was waiting for him to
 22 tense up completely.
 23 Q Okay. Did that happen?
 24 A No, he was still able to move his arms after the
 25 first cycle of the taser.

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ROUGH DRAFT TRANSCRIPT

1 up behind him, and I was behind Officer Ballejos, and we then
 2 made entry into the room.
 3 Q Okay. When you made entry into the room, what
 4 happened?
 5 A We confronted a male who was later identified as Mr.
 6 O'Keefe. He was laying on the floor. His head was facing to
 7 the west. His feet was facing to the east, and he was laying
 8 on his right hip, and there was a female that was laying next
 9 to him.
 10 Q Okay. Incidentally, Detective, do you see that male
 11 present in court today?
 12 A Yes, I do.
 13 Q Can you point to him and identify what he's wearing
 14 for the record, please?
 15 A It's Mr. O'Keefe. He's wearing a what looks like a
 16 charcoal colored suit.
 17 MR. PIKE: We'll stipulate to the identity.
 18 MR. SMITH: Thank you, Counsel.
 19 THE COURT: All right, thank you, Mr. Pike.
 20 BY MR. SMITH::
 21 Q What happened next, Detective?
 22 A Officer Conn continued to give orders for Mr. O'Keefe
 23 to get away from the female.
 24 Q Did Mr. O'Keefe comply with those orders?
 25 A No, sir, he didn't.

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1 Q Okay. Immediately after the first cycle of the
 2 taser, did you attempt to apprehend him? Or actually, not
 3 apprehend him, but to gain control over him?
 4 A I was still attempting to give orders, and then
 5 Officer Ballejos started a second cycle of the taser, and at
 6 some point during that second cycle I got control of his left
 7 arm that was lingering higher in the air.
 8 Q Okay. Let me just try and make sure that this is
 9 clear. Officer Ballejos deploys the taser once; is that --
 10 A Yes, sir.
 11 Q Okay. And after the taser ceased, then did you issue
 12 commands for him to comply?
 13 A Yes, I issued more commands.
 14 Q And the defendant still did not comply?
 15 A No, sir, he didn't.
 16 Q And at that point a second taser cycle was
 17 administered?
 18 A Yes.
 19 Q Okay. And then that's when you were able to grab his
 20 arm?
 21 A I was able to get control of his left arm.
 22 Q Okay. And then what happened?
 23 A I was yelling for him to give me the other arm during
 24 the second cycle, and I could still see that he could move it.
 25 However, he wouldn't give it to me, and as the cycle ended,

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1 Officer Conn took control of his left arm, and I was able to
2 get control of his right arm and get it into the second
3 handcuff.
4 Q Okay. So is it your testimony that even though the
5 defendant had been tazed twice, you still nevertheless had to
6 use force to completely gain control of the defendant?
7 A I had to twist his arm into a real wrist lock to get
8 it behind his back. I had to pull his arm --
9 Q Okay.
10 A -- to get into the second handcuff.
11 Q Okay. Then what happened, Detective?
12 A The --
13 Q I'm sorry, then what happened, Detective?
14 A We then lifted Mr. O'Keefe, and we carried him out
15 into the living room.
16 Q Did you happen to notice while -- actually, strike
17 that. How long would you say that you were in the bedroom?
18 A I can't recall. It was a -- had to be a matter of
19 seconds.
20 Q Okay. Were you able to kind of get a panoramic view
21 of the bedroom itself or were you mainly focused on the
22 defendant?
23 A I was mainly -- when I was going in, I was focused on
24 the bed because that was the only thing I could see. But when
25 I was there, I was mainly focused on his hands and his waist

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1 A Yes, I'm talking about the bathroom that would be
2 here.
3 Q Okay.
4 A I don't remember if the door was completely open or
5 not, but I remember seeing light coming from that room and in
6 the hallway there was a lot of light.
7 Q And do you recall whether the bedroom was lit with an
8 overhead light or light on a night stand or the bathroom light?
9 A No, Ma'am, I don't recall where the light was.
10 Q Okay. So when Sergeant Newberry looked in, he just
11 took a quick peek, but at that time he saw Mr. O'Keefe laying
12 on the floor and he could see both hands; is that --
13 A Yes, ma'am, I believe so. He told us he could see
14 the male prone out on the floor and both of his hands were
15 empty.
16 Q Okay. And he had no weapons in his hands that
17 Sergeant Newberry could see.
18 A That was my belief at that time based on what he told
19 us.
20 Q And that proved to be true when you went into the
21 room, was it not?
22 A Yes, ma'am.
23 Q Okay. And you never saw him in any other position
24 prior to being taken into custody?
25 A No, Ma'am, he -- when he went in he was still laying

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1 because I was concerned about weapons.
2 Q Okay. And forgive if already testified to this, but
3 was there anything unusual about the bed?
4 A There was blood all over the bed.
5 Q Understood.
6 MR. SMITH: Judge, thank you. I'll pass the witness.
7 THE COURT: Cross-examination.
8 MS. PALM: Thank you.
9 CROSS-EXAMINATION
10 BY MS. PALM:
11 Q Good afternoon, Officer Taylor or Detective Taylor.
12 A Fine, Ma'am. Thank you.
13 Q Let's start with the lights. Can you tell me what
14 lights were on when you came into the apartment.
15 A I believe the living room and kitchen was dark. And
16 although I was focused on the back northwest bedroom, I also
17 believe that the bathroom and the hallway lights were on. The
18 back bedroom and the northwest bedroom that we ended up going
19 to, the lights were definitely on as well.
20 Q So that would mean the bathroom door was open, if you
21 saw the light in the bathroom.
22 A I --
23 Q You're talking about the bathroom --
24 A I don't recall if it was --
25 Q -- between the bedrooms.

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1 on his right hip and his head was facing to the west and his
2 feet were facing --
3 Q Okay.
4 A -- to the east.
5 Q Can you show us on the diagram when you entered the
6 bedroom where Officer Conn took a position of cover.
7 A When we entered the bedroom?
8 Q Yes.
9 A Well, there was really no cover.
10 Q Well, I mean covering, I guess, Mr. O'Keefe with a
11 gun from my understanding.
12 A Yes. Initially, Officer Conn was somewhere here.
13 I'm sorry, I'm trying to get sort of like -- a little bit west
14 of the corner of that bed, he was standing there. I was
15 pointing around him to the left because I'm left handed.
16 Somehow I remember that. And Officer Ballejos was somewhere to
17 the right initially.
18 Q Okay. So where would you have been? Could you mark
19 --
20 A I was --
21 Q -- on the screen.
22 A -- still third in the stack when we went inside, and
23 when we stacked up, Officer Ballejos had less lethal cover with
24 a taser to the right of Officer Conn. I had leaned -- I had
25 reached around -- I was still standing directly behind him, but

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1 I had reached around and was pointing my weapon with my --
2 Q So you're reaching --
3 A -- and that was just for a matter of seconds
4 initially upon entry.
5 Q Would that be reaching over the bed?
6 A I didn't have to lean over the bed. I had an angle.
7 Q Okay.
8 A So I was making sure I wasn't masking Officer Conn's
9 back.
10 Q And at that time Mr. O'Keefe was laying on his left
11 side facing Ms. Witmarsh's body; is that correct?
12 A No, Ma'am. Actually his right hip was on the ground.
13 Q Or his right side, I'm sorry. And so he was facing
14 her body, sort of face to face with her?
15 A He was looking at her, yes.
16 Q Okay. And what was he doing with his hands?
17 A One hand was hovering over her body. The other hand
18 was sort of rubbing the top of her head --
19 Q Okay.
20 A -- back and forth.
21 Q And you could see his face at the time?
22 A I could see -- I didn't look directly at his face,
23 but I could see his face. He was looking at her, and he was
24 still yelling.
25 Q And you never saw him try to hit her or harm her

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1 Q Well, if I -- if I tell you that's a dresser there,
2 were you still standing there?
3 A I'm trying to mark just north of the dresser, I'm
4 sorry, or just west of the dresser. But I was -- there was
5 room for me to stand below her feet and right over his feet.
6 What I recall, the body was not -- the -- her feet were not
7 touching that dresser when I was in there.
8 MS. PALM: Court's indulgence.
9 BY MS. PALM::
10 Q Officer, looking at the State's Exhibit 8, does that
11 help you remember whether you had room to stand below her feet?
12 A Yes, that does help me remember. Her feet were -- I
13 was able to stand there without stepping on her.
14 Q In what area?
15 A I was standing approximately here, and I remember at
16 one point I even straddled Mr. O'Keefe's legs.
17 Q Okay. So did you ever have to step over Ms.
18 Witmarsh's body?
19 A No, I don't remember ever taking any effort to step
20 over her body. I do remember, however, that at one point I did
21 straddle Mr. O'Keefe's, his legs around the shin area.
22 Q So you never had to step over any portion of her body
23 to get to the other side to arrest Mr. O'Keefe?
24 A I don't recall ever stepping over her.
25 Q Okay. Do you recall any other officers stepping over

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ROUGH DRAFT TRANSCRIPT

1 while you were standing there?
2 A No, Ma'am, but I did want him to stop rubbing her
3 head.
4 Q And he never threatened you while you were standing
5 there?
6 A No, Ma'am.
7 Q So as Officer Ballejos deploys the taser, you go to
8 the other side of the body?
9 A Yes, ma'am. Before that when he wouldn't listen to
10 Officer Conn's commands, I knew at some point one of us may
11 have to go hands on, so I holstered up and I moved around.
12 Q Okay. Were you the only one that moved around at
13 that point?
14 A I don't recall what the other officers did, if they
15 stayed stationary or not.
16 Q After the second cycle when you guys were still
17 trying to get him under control, how many people were on the
18 other side of the body?
19 A I don't recall if Officer Ballejos or Officer Conn
20 were on the other side of the body. I know I was standing here
21 just east of the body like --
22 Q Could you mark it?
23 A It's kind of hard with my finger, but I was standing
24 at his feet but below her feet because she was much shorter.
25 So there's no -- but I was standing east of her feet.

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1 her?
2 A I don't know if Officer Conn stepped over her or not
3 to lift Mr. O'Keefe.
4 Q Okay. Do you recall whether any officers had to step
5 over the bed?
6 A I don't recall.
7 Q Okay. Is it possible officers went up onto the bed
8 to get on the other side?
9 A If it occurred, I didn't see it.
10 Q But it's possible?
11 A Well, of course, it's -- all officers --
12 MR. SMITH: Judge, I'm going to object. I'm going to
13 object in that it calls for speculation.
14 THE COURT: Sustained.
15 BY MS. PALM::
16 Q Okay. You don't know whether any officers had to go
17 up over the bed?
18 A No, Ma'am, I didn't see any one step over the bed.
19 Q So in carrying Mr. O'Keefe out of the bedroom, which
20 officers carried him out?
21 A It was myself and Officer Conn.
22 Q Okay. And just you two carried him out of the
23 bedroom and into the living room?
24 A Yes, ma'am.
25 Q Okay. So Officer Hatchet -- was Officer Hatchet ever

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1 in the bedroom?
2 A No, Ma'am, not when I was in there.
3 Q Okay. Do you recall whether Mr. O'Keefe had any
4 injury on his forehead at the time you arrested him?
5 A I don't recall if he had any injuries.
6 Q Okay. And he was not put on his stomach in the
7 bedroom during the arrest process; is that correct?
8 A No, Ma'am.
9 Q He was not?
10 A No, Ma'am.
11 Q Okay. And when you carried him out into the living
12 room, did you lay him on his stomach or sit him up or what did
13 you do?
14 A In the living room he did end up laying on his
15 stomach.
16 Q Okay. Was there ever a time when you dropped him on
17 his face?
18 A No, Ma'am.
19 Q So you never put him in a position where he would
20 have injured his face during the time you had custody of him?
21 A I wouldn't say that. I don't ever remember dropping
22 him --
23 Q Okay.
24 A -- is what I just said.
25 Q Okay. Is it possible he was injured when you were

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1 Q No, I'm saying that could he have been injured before
2 you even got to the scene if he had an injury on his forehead?
3 A It's possible before or after or during.
4 Q And outside he was saying you're mad at me, you're
5 mad at me?
6 A Yes, ma'am, he was saying that to us.
7 Q Okay. And then he said she tried to stab him?
8 A Yes.
9 Q Do you know whether AMR responded to the scene to
10 check him out?
11 A Yes.
12 Q Were you there when they actually checked him out?
13 A No, Ma'am, they were coming up the stairs when I got
14 orders to leave and do some activities on the outer perimeter
15 of the call.
16 Q Okay. So you never actually saw them checking him?
17 A I only saw them approach him and start to talk to
18 him.
19 Q Did you fill out any kind of occupational illness
20 form?
21 A Yes, ma'am, I did.
22 Q Is that because you were bare handed?
23 A Yes, I was bare handed, and I touched quite a bit of
24 blood that was on Mr. O'Keefe.
25 Q Okay. And you were worried about the contamination

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1 carrying him?
2 A Full's a possibility, I just don't recall any
3 injuries.
4 Q Okay.
5 A But there's absolutely -- it's possible.
6 Q After the living room, you carried him out onto the
7 terrace.
8 A Yes, ma'am.
9 Q And you set him up?
10 A Yes.
11 Q Okay. So he was never laid in a position on the
12 terrace to injure his forehead?
13 A No, we put him on the ground and then we sat him up.
14 Q Okay. But he was never in a position to be injured
15 out there; is that correct?
16 A I'm sorry, I really don't understand the question.
17 What is -- there's a lot of positions where someone could get
18 injured.
19 Q Did you put him in a position on the terrace such as
20 would injure his face?
21 A No, Ma'am.
22 Q So any injury he had to his forehead he may have had
23 when you arrived at the scene?
24 A I don't know when he could have gotten it. I left
25 him after out there on the terrace.

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1 from Hepatitis C?
2 A Yes, ma'am.
3 Q All right. Is that form a form that the detectives
4 in the case would have had access to?
5 A To be honest, Ma'am, I don't know if a regular
6 detective would have access to it. I know that the risk and
7 safety department would have access to it.
8 MS. PALM: Thank you, your Honor. No more questions.
9 THE COURT: All right. Any redirect?
10 MR. SMITH: Brief, Judge.
11 REDIRECT EXAMINATION
12 BY MR. SMITH::
13 Q Detective, if we heard testimony today that Officer
14 Conn was giving commands to the defendant to comply so that
15 medical assistance could be rendered to Victoria Witmarsh,
16 would that be consistent with what you observed?
17 A Yes, absolutely.
18 Q And finally, to your knowledge, was anything touched
19 inside that bedroom say for the body of Victoria Witmarsh?
20 Excuse me, not the body of Victoria Witmarsh, but say for the
21 body of defendant Brian O'Keefe?
22 A I'm sorry, can you repeat that?
23 Q Do you know -- my question is, to your knowledge, was
24 anything in the bedroom touched except the body of Mr. O'Keefe
25 when he was being taken into custody?

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1 A No, to my knowledge, Mr. O'Keefe was the only person
2 we -- only thing that was touched, only person that was
3 touched.
4 Q Thank you.
5 MR. SMITH: No further questions.
6 THE COURT: Anything further, Ms. Palm?
7 MS. PALM: No, thank you.
8 THE COURT: Any questions the jurors? All right.
9 Thank you, sir. You're instructed not to discuss your
10 testimony with any other witness involved in this case until
11 this matter is finally resolved. Thank you for your time, sir.
12 THE WITNESS: Thank you, sir.
13 THE COURT: Jurors need a break at this time?
14 THE MARSHAL: Is everybody all right?
15 (Indiscernible).
16 THE COURT: Okay.
17 THE MARSHAL: (Indiscernible).
18 THE COURT: All right. Ladies and gentlemen, we're
19 going to take a break right now. During this recess it is your
20 duty to not to converse among yourselves or with anyone else on
21 any subject connected with the trial or to read, watch or
22 listen to any report over commentary on the trial by person
23 connected with the trial or by any medium of information
24 including, without limitation, newspaper, television, radio or
25 the Internet.

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1 gave. You know, there really hasn't been a showing that any
2 separate report, if it, in fact, exist, would have been any
3 different from the taped statement that the officer gave to the
4 detective that was provided to -- I mean that was provided in
5 discovery. At this stage I don't know that there's been a
6 sufficient showing that that in isolation is a grounds for a
7 mistrial.
8 THE COURT: How soon can you get the report, assuming
9 it exist?
10 MR. SMITH: I mean, I can call the detective and ask
11 him can he check the computer system, but when we -- I presume
12 he's going to tell me the same thing. I can call him right
13 now.
14 THE COURT: Well, tell the -- tell the detective to
15 contact Officer Ballejos because Officer Ballejos said that he
16 prepared a report.
17 MR. SMITH: I'll call him right now, Judge.
18 THE COURT: So it may not be part of the detective's
19 binder, but it may exist some place in Metro's records.
20 MR. SMITH: I have his cell, and I will call him
21 right now.
22 MS. PALM: And I believe that's the way we asked for
23 it, your Honor. We said that he had indicated it existed and
24 we wanted it and then they said it did not exist.
25 THE COURT: Anything else?

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1 You're not no form or express an opinion on any
2 subject connected with this case until this matter is finally
3 submitted to you. We'll you back in just a few minutes. Thank
4 you. We're off the record.
5 (Recess taken).
6 (In the presence of the jury)
7 THE MARSHAL: Department 17 of the Eighth Judicial
8 District (indiscernible). The Honorable Judge Michael P.
9 Villani presiding. Please be seated. Remain in order. Make
10 sure cell phones are turned off.
11 THE COURT: Let the record reflect we're outside the
12 presence of the jury panel. You had what matter to resolve?
13 MS. PALM: Yes, your Honor. We're making a motion
14 for a mistrial based on a discovery violation. We had
15 specifically requested from the District Attorney's Office any
16 use of force report prepared by Officer Ballejos, and we got a
17 response from Mr. Smith, which was a response from Detective
18 Bunn that there was no separate report. There was only his
19 taped statement. And today we clearly heard there is a
20 separate report, and so we are moving for a mistrial because we
21 did not have that report to impeach Officer Ballejos with.
22 THE COURT: Mr. Smith.
23 MR. SMITH: And Judge, I relayed what was provided to
24 us by the detective that there was no separate use of force
25 report, and that there only was the taped statement that he

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1 MR. PIKE: No, your Honor. Thank you.
2 THE COURT: Anything else from the State?
3 (Colloquy off the record).
4 THE COURT: Well, let's get the jury in, then. I'm
5 assuming they're working on this now, is that --
6 MR. SMITH: No, Judge, I'm going to have to call
7 Ballejos, and have Ballejos call his sergeant.
8 THE COURT: Okay. Do you have the next witness or
9 does Ms. Gram?
10 MR. SMITH: I have the next one.
11 MS. GRAHAM: I do, Judge.
12 THE COURT: Who does?
13 MS. GRAHAM: I have Hutcherson, Judge.
14 MR. SMITH: Oh, yeah, you do.
15 MS. GRAHAM: We're skipping --
16 THE COURT: All right. Can you just go out to the
17 the hall to take --
18 MR. SMITH: I can.
19 THE COURT: All right. After the jury comes in,
20 obviously.
21 MR. SMITH: Yes, Judge.
22 THE COURT: Okay.
23 THE MARSHAL: Officers and members of the court,
24 Department 17 jurors. Be seated, ladies and gentlemen. Let's
25 make sure our cell phones are turned off.

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1 THE COURT: Let the record reflect we're back in the
2 presence of the jury panel. And you have Officer Hutcherson?
3 THE MARSHAL: Officer Hutcherson, if you'll remain
4 standing. Please raise your right hand and face the clerk.
5 OFFICER CHRISTOPHER HUTCHERSON, PLAINTIFF'S WITNESS, SWORN
6 THE CLERK: Please be seated. Please state your name
7 and spell your name for the record, please.
8 THE WITNESS: Christopher Hutcherson,
9 c-h-r-i-s-t-o-p-h-e-r, h-u-t-c-h-e-r-s-o-n.
10 THE COURT: Go ahead, Counsel.
11 DIRECT EXAMINATION
12 BY MS. GRAHAM::
13 Q Good afternoon, Officer Hutcherson. Are you employed
14 with the Metropolitan Police Department?
15 A Yes, ma'am.
16 Q And where were you working in your capacity as an
17 officer on November 5th, 20:08 of this past year?
18 A Yes, ma'am.
19 Q Around 10:00, 11:00 p.m.?
20 A Yes, ma'am.
21 Q Were you -- did you respond to a location of 5001 El
22 Parque in Clark County, Nevada?
23 A Yes, ma'am.
24 Q Building C, specifically Apartment 35?
25 A Yes, ma'am.

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1 Q Okay. Once you were told that a subject was
2 detained, what then were you asked to do?
3 A I then walked around to the front of the complex and
4 was instructed to secure the area with crime scene tape.
5 Q And did you do that?
6 A Yes, ma'am.
7 Q And once you completed securing the area with crime
8 scene tape, what did you do then?
9 A I then went back to the front of the residence and
10 one subject that officers had brung (sic) out, he was in
11 handcuffs. I was instructed to watch over him, take him to my
12 patrol car until detectives arrived.
13 Q Okay. So your function then was to watch over the
14 person that they had detained?
15 A That's correct.
16 Q And do you see that person here in the courtroom
17 today?
18 A Yes, ma'am.
19 Q Can you point to him and describe something that he's
20 wearing.
21 THE WITNESS: Gentleman --
22 MS. PALM: We'll stipulate to his identity.
23 THE COURT: All right.
24 MS. GRAHAM: Okay.
25 THE COURT: Record reflect identification of the

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1 Q Once you arrived on the scene, what were you
2 instructed to do?
3 A I was instructed to post up at the rear of an
4 apartment because we had a subject in there. Possibly two
5 subjects. One subject down and one subject refusing to come
6 out want so I was told to post up to the rear to make sure no
7 one came out the back bedroom which had a patio.
8 Q Okay. So basically you never entered into the
9 apartment itself?
10 A No, Ma'am.
11 Q Okay. And so your testimony is that you were outside
12 of the apartment building itself?
13 A Yes, ma'am.
14 Q And you were posted under what would have been the
15 bedroom that the subjects were located in?
16 A That's correct.
17 Q And your duty, again, was to?
18 A Just ensure no one came out of that patio door and
19 tried to flee.
20 Q Okay. Do you recall how long you were outside of the
21 -- posted outside of the building?
22 A Approximately ten minutes.
23 Q Did you eventually receive word that someone had been
24 taken into custody?
25 A Yes, ma'am.

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1 defendant.
2 BY MS. GRAHAM::
3 Q Did you learn the identity of the person that was --
4 you were taking -- that was taken into custody?
5 A Not at the exact time, Ma'am, no.
6 Q Okay. And when you say that your duty was to take
7 control over him, tell me what you did.
8 A I escorted him to my patrol vehicle, which then I did
9 a search incident to arrest. I had him -- had him take a seat
10 in my patrol vehicle and buckled him in.
11 Q Okay. And when you escorted him to your patrol
12 vehicle, what was his demeanor?
13 A Very loud, belligerent.
14 Q And loud and belligerent. Was he making any
15 statements to you?
16 A He was just yelling obscenities while I was escorting
17 him to the vehicle.
18 Q What kind of obscenities?
19 A You know, pretty much, you know, f me, you know. I
20 didn't do anything, what are you doing, where am I going, and
21 that's pretty much to that nature.
22 Q Okay. And as you escorted him to your patrol car,
23 you say that you did a search incident to arrest?
24 A That's correct.
25 Q Okay. And explain to the jury what search incident

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1 to arrest means.
2 A Search incident to arrest is when we place any
3 subject under arrest, before we put them in back of our
4 vehicle, we do search them to make sure no contraband or
5 weapons are on their person.
6 Q And you didn't find any contraband or weapons at that
7 point?
8 A That's correct, Ma'am.
9 Q Okay. And did you place him inside your patrol
10 vehicle?
11 A That's correct.
12 Q And was that in -- what part of the patrol vehicle
13 did you place him in?
14 A Rear passenger seat.
15 Q Okay. And was he compliant with you getting in the
16 vehicle?
17 A I had to forcefully put him in the vehicle.
18 Q So when you say forcefully, why did you need to use
19 force?
20 A He wouldn't get in the vehicle, so I kind of
21 verbally, you know, sir, get in the vehicle, and kind of had to
22 assist him in getting in the vehicle.
23 Q Okay. And eventually you were successful in getting
24 him in the --
25 A That's correct.

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1 Q Okay. And at some point did you make contact with
2 him again?
3 A I did. I waited about five -- between five and eight
4 minutes, and he had pretty much went to sleep, appeared to be
5 sleep. So I went around to the front of my patrol vehicle, sat
6 down, and just pretty much observed him from inside.
7 Q Okay. Now, how long did you say that you were
8 outside of your patrol vehicle?
9 A Between five -- approximately five to eight minutes.
10 Q About five to eight minutes?
11 A Yes, ma'am.
12 Q And you had him in your line of sight the entire
13 time?
14 A Yes, ma'am.
15 Q And at that point you say he slept?
16 A He appeared to be sleeping.
17 Q Okay. And once you got back into your patrol
18 vehicle, what, if anything, occurred between the two of you?
19 A Approximately about two to three minutes after I took
20 a seat, he woke up or became conscious, whatever, and --
21 Q What was his demeanor?
22 A He was -- started being loud and belligerent.
23 Q Okay. And when you loud and belligerent, was he
24 making any statements?
25 A Yes, he did.

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1 Q -- back of the patrol car? Once you placed him in
2 the back of the patrol car, then what happened?
3 A I went around to the front of my patrol vehicle. I
4 sat in the vehicle for a few minutes. He was very loud.
5 Q Was he making any statements?
6 A Not at that time he didn't make any statements. I
7 tried to turn on a little music hoping that will calm him down.
8 Q Did he make any response to that?
9 A He did.
10 Q And what was that?
11 A He told me to pretty much turn that nigger music off,
12 I don't -- I don't listen to nigger music.
13 MS. PALM: Your Honor, may we approach?
14 THE COURT: All right.
15 (Bench conference).
16 BY MS. GRAHAM::
17 Q Officer, Hutcherson, did you have any other
18 interaction with him as for as verbally while you were in the
19 patrol car?
20 A No, Ma'am. He requested the music be turned down, so
21 I turned the music down, and at that time I exited my patrol
22 vehicle.
23 Q Okay. And where was the defendant when you exited
24 your patrol vehicle?
25 A He was in the rear passenger seat buckled in.

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1 Q Okay. And what statements did he make?
2 MR. PIKE: Objection, your Honor. May I take the
3 witness briefly on voir dire?
4 THE COURT: Is this a volunteered statement by the
5 defendant or did you question him, Officer?
6 THE WITNESS: It was a volunteer statement.
7 THE COURT: Anything further, Mr. Pike? I didn't say
8 voluntary, but volunteered statement.
9 THE WITNESS: It was a volunteered statement, sir.
10 THE COURT: Okay.
11 BY MR. PALM::
12 Q And are these statements that were written down on a
13 note and provided to the District Attorney's Office?
14 A That's correct.
15 Q Okay.
16 MR. PIKE: Thank you, your Honor. I apologize, it --
17 THE COURT: No problem.
18 MR. PIKE: -- it's Ms. Palm's witness. I just
19 (indiscernible).
20 THE COURT: No problem.
21 MR. PIKE: Thank you.
22 THE COURT: All right, thank you.
23 BY MS. GRAHAM::
24 Q And, in fact, Officer, Hutcherson, these statements
25 were part of an arrest report on this incident; is that

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1 correct?
2 A That's correct, Ma'am.
3 Q So they were reported in the arrest report that was
4 actually, I believe, approved by Lieutenant Nabrier (phonetic)
5 it appears to be. It's the actual arrest report in this event.
6 And you did brief the officers of these statements -- the
7 detectives of these statements that he made?
8 A That's correct, Ma'am.
9 Q Okay. And what statements did he make to you?
10 A The statements were I swear to God, V, I didn't mean
11 to do this to you. What did I do? Let's go. Let's go. Let's
12 go do the ten years.
13 Q What did you take that to mean?
14 MS. PALM: Objection, your Honor.
15 THE COURT: Sustained.
16 MS. GRAHAM: I'll pass the witness at this time.
17 THE COURT: Okay.
18 CROSS-EXAMINATION
19 BY MS. PALM:
20 Q Good afternoon, Officer Hutcherson.
21 A Afternoon, Ma'am.
22 Q Do you recall writing down a little note with the
23 statements that Mr. O'Keefe made to you?
24 A Yes, ma'am.
25 MS. PALM: May I approach the witness, your Honor?

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1 Q Okay, I don't know what that is so could you give me
2 a time?
3 A I couldn't give you exact time, Ma'am. I would have
4 to --
5 Q Okay. If Officer Ballejos testified that he actually
6 fell asleep in the patrol vehicle, do you dispute that?
7 A No, I don't.
8 Q Did he fall asleep?
9 A Yes, he did, Ma'am.
10 Q How long?
11 A From my recollection between eight to ten minutes.
12 Q And was that before or after these statements?
13 A That was before, Ma'am.
14 Q Now, this little handwritten note is the only report
15 that you ever made of any statements by my client; is that
16 true?
17 A That's correct.
18 Q So you didn't do an officer's report?
19 A No, Ma'am.
20 Q Okay. And you didn't give a recorded statement.
21 A No, Ma'am.
22 Q And in this little handwritten note you never put
23 that he was yelling obscenities.
24 A No, Ma'am.
25 Q And you didn't include his racial slur.

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Yes.
2 BY MS. PALM:
3 Q Does this look like the note that you made?
4 A Yes, ma'am.
5 Q Okay. And could you tell me what statements are
6 actually on that note.
7 A I swear to God, V, I didn't mean to hurt you. What
8 did I do wrong? Let's go. Let's do the ten years.
9 Q What else?
10 A That's why I love you. That's why I love you, V,
11 because you're so crazy.
12 Q Thank you. So he didn't actually say I didn't mean
13 to do that to you, right?
14 A No, Ma'am.
15 Q Okay. And how long after the incident -- he was in
16 custody by 11:13. How long after that did these -- were these
17 statements made?
18 A I would say approximately between 30, 35 minutes of
19 being in my patrol vehicle.
20 Q Is that 30, 35 minutes after being taken into
21 custody?
22 A I would say 30, 35 minutes after being into my patrol
23 vehicle.
24 Q Okay. When did he go into your patrol vehicle?
25 A About 15 minutes after we were given a code four.

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1 A No, Ma'am.
2 Q And you also didn't include his statement I didn't do
3 anything; is that true?
4 A That's true.
5 Q Okay. And in a criminal case do you understand it
6 might be important for a defendant to have exculpatory evidence
7 such as a statement say I didn't do anything?
8 A Indeed.
9 Q Okay. And you didn't include it in your one little
10 note report.
11 A I included what I heard.
12 Q So this was all you heard?
13 A That's what I heard.
14 Q Did it appear to you that Mr. O'Keefe was
15 intoxicated?
16 A Yes, ma'am, I could smell alcohol coming from him.
17 Q Okay. And would you agree with the statement he was
18 obviously intoxicated?
19 A Yes, ma'am.
20 MS. PALM: Pass the witness. Thank you.
21 THE COURT: Any redirect?
22 REDIRECT EXAMINATION
23 BY MS. GRAHAM:
24 Q Was Officer Ballejos with you at your patrol car?
25 A Briefly, Ma'am.

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ROUGH DRAFT TRANSCRIPT

1 Q Briefly?
2 A Yes.
3 Q So he wasn't there the entire time?
4 A No, Ma'am.
5 Q Okay. So it was you who was watching the defendant
6 in your patrol car?
7 A That's correct.
8 Q Would Officer Ballejos have direct knowledge of him
9 sleeping or not?
10 A At that time if he was there when he was asleep, yes.
11 But not the entire time.
12 Q Okay. So you're not sure if he was there while he
13 was sleeping or not?
14 A No, Ma'am.
15 Q That little handwritten note you made, when did you
16 make that?
17 A Inside my patrol vehicle after the defendant had
18 awoken.
19 Q Okay. So you found it important to just dot down on
20 a little note pad a statement that he spontaneously uttered?
21 A Yes, ma'am.
22 Q Okay. Do you recall telling Detective
23 (indiscernible) Bunn that he said I swear to God, V, I didn't
24 mean to hurt you?
25 A Yes, ma'am.

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1 Detective Wildemann in the case.
2 A Yes, ma'am.
3 Q If they are contained in that report, would it be
4 fair to say that you told them that the defendant made those
5 statements?
6 A Indeed.
7 Q Okay.
8 MS. GRAHAM: Nothing further.
9 THE COURT: Ms. Palm.
10 MS. PALM: Just briefly.
11 **RE-CROSS-EXAMINATION**
12 **BY MS. PALM::**
13 Q Officer, did you meet with the deputy district
14 attorneys in court here today prior to your testimony?
15 A No, Ma'am.
16 Q Did you talk to them on the telephone about your
17 testimony?
18 A I did, Ma'am.
19 Q And did you talk about the statements that you were
20 going to tell the court and the jury today?
21 A Yes, ma'am.
22 Q All of them?
23 A Yes, ma'am.
24 Q Including the racial slur?
25 A Yes, ma'am.

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1 Q Okay. And that is in the arrest report.
2 A Yes, ma'am.
3 Q Why wouldn't you have written that down on a piece of
4 paper?
5 A I'm sorry, Ma'am?
6 Q Why was that not written jotted down in your patrol
7 car?
8 A I don't understand the question, Ma'am.
9 Q Well, Ms. Palm asked you on cross-examination about
10 the little note that you jotted down --
11 A Um-h'm.
12 Q -- statements that the defendant made to you while
13 you were in your patrol car --
14 A Yes, ma'am.
15 Q -- but yet there are other statements that are
16 contained in the arrest report, and I'm just wondering why some
17 statements were jotted down and some were not?
18 A If I didn't hear it, I didn't jot it down.
19 Q Okay. And these things that are contained in the
20 arrest report -- and I assume that you have a copy of the
21 arrest report.
22 A I do, Ma'am.
23 Q And you read it, and the paragraph specifically
24 pertaining to you -- and it's a very short one -- indicates
25 some statements that you made it Detective Bunn and/or

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1 MS. PALM: No more questions. Thank you.
2 THE COURT: All right, thank you. Any questions by
3 the jurors? Thank you, Officer, for your testimony. You're
4 instructed not to discuss your testimony with any other witness
5 involved in this case until this matter is finally resolved.
6 Thank you for your time, sir.
7 THE WITNESS: Thank you, sir.
8 THE COURT: Next witness by the State.
9 MR. SMITH: Judge, can we approach?
10 THE COURT: All right.
11 (Bench conference).
12 MR. SMITH: Judge, the State's next witness is
13 Jocelyn Maldonado.
14 THE MARSHAL: If you'll remain standing. Please
15 raise your right hand and face the clerk.
16 JOCELYN MALDONADO, PLAINTIFF'S WITNESS, SWORN
17 THE CLERK: Thank you. Please state and spell your
18 name for the record.
19 THE WITNESS: Jocelyn, J-o-c-e-l-y-n, Maldonado,
20 M-a-l-d-o-n-a-d-o.
21 MR. PIKE: In relationship to this witness, your
22 Honor, because of the blood contamination that was involved in
23 this, the State and the Defense were able to meet prior to the
24 time of the trial. We can stipulate that all of the items that
25 she's going to testify to as they were impounded were properly

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1 correct?
2 A That's correct, Ma'am.
3 Q So they were reported in the arrest report that was
4 actually, I believe, approved by Lieutenant Naberier (phonetic)
5 it appears to be. It's the actual arrest report in this event.
6 And you did brief the officers of these statements -- the
7 detectives of these statements that he made?
8 A That's correct, Ma'am.
9 Q Okay. And what statements did he make to you?
10 A The statements were I swear to God, V, I didn't mean
11 to do this to you. What did I do? Let's go. Let's go. Let's
12 go do the ten years.
13 Q What did you take that to mean?
14 MS. PALM: Objection, your Honor.
15 THE COURT: Sustained.
16 MS. GRAHAM: I'll pass the witness at this time.
17 THE COURT: Okay.
18 CROSS-EXAMINATION
19 BY MS. PALM::
20 Q Good afternoon, Officer Hutcherson.
21 A Afternoon, Ma'am.
22 Q Do you recall writing down a little note with the
23 statements that Mr. O'Keefe made to you?
24 A Yes, ma'am.
25 MS. PALM: May I approach the witness, your Honor?

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1 Q Okay, I don't know what that is so could you give me
2 a time?
3 A I couldn't give you exact time, Ma'am. I would have
4 to --
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6 fell asleep in the patrol vehicle, do you dispute that?
7 A No, I don't.
8 Q Did he fall asleep?
9 A Yes, he did, Ma'am.
10 Q How long?
11 A From my recollection between eight to ten minutes.
12 Q And was that before or after these statements?
13 A That was before, Ma'am.
14 Q Now, this little handwritten note is the only report
15 that you ever made of any statements by my client; is that
16 true?
17 A That's correct.
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19 A No, Ma'am.
20 Q Okay. And you didn't give a recorded statement.
21 A No, Ma'am.
22 Q And in this little handwritten note you never put
23 that he was yelling obscenities.
24 A No, Ma'am.
25 Q And you didn't include his racial slur.

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1 THE COURT: Yes.
2 BY MS. PALM::
3 Q Does this look like the note that you made?
4 A Yes, ma'am.
5 Q Okay. And could you tell me what statements are
6 actually on that note.
7 A I swear to God, V, I didn't mean to hurt you. What
8 did I do wrong? Let's go. Let's do the ten years.
9 Q What else?
10 A That's why I love you. That's why I love you, V,
11 because you're so crazy.
12 Q Thank you. So he didn't actually say I didn't mean
13 to do that to you, right?
14 A No, Ma'am.
15 Q Okay. And how long after the incident -- he was in
16 custody by 11:13. How long after that did these -- were these
17 statements made?
18 A I would say approximately between 30, 35 minutes of
19 being in my patrol vehicle.
20 Q Is that 30, 35 minutes after being taken into
21 custody?
22 A I would say 30, 35 minutes after being into my patrol
23 vehicle.
24 Q Okay. When did he go into your patrol vehicle?
25 A About 15 minutes after we were given a code four.

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1 A No, Ma'am.
2 Q And you also didn't include his statement I didn't do
3 anything; is that true?
4 A That's true.
5 Q Okay. And in a criminal case do you understand it
6 might be important for a defendant to have exculpatory evidence
7 such as a statement say I didn't do anything?
8 A Indeed.
9 Q Okay. And you didn't include it in your one little
10 note report.
11 A I included what I heard.
12 Q So this was all you heard?
13 A That's what I heard.
14 Q Did it appear to you that Mr. O'Keefe was
15 intoxicated?
16 A Yes, ma'am, I could smell alcohol coming from him.
17 Q Okay. And would you agree with the statement he was
18 obviously intoxicated?
19 A Yes, ma'am.
20 MS. PALM: Pass the witness. Thank you.
21 THE COURT: Any redirect?
22 REDIRECT EXAMINATION
23 BY MS. GRAHAM::
24 Q Was Officer Ballejos with you at your patrol car?
25 A Briefly, Ma'am.

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1 impounded and placed into secure evidence of the Las Vegas
2 Metropolitan Police Department and that they need not be
3 brought forward. That photographic evidence depicting the true
4 nature of those items would be more appropriate because of the
5 blood issues that are involved in this.

6 So where as in some cases the actual items would be
7 brought in, we've agreed that it would be appropriate not to
8 bring them in this case and just use photographs.

9 THE COURT: Is that correct, Mr. Smith?

10 MR. SMITH: That is correct, your Honor.

11 THE COURT: All right, and I appreciate the parties
12 working together on this issue. Thank you. Go ahead, Mr.
13 Smith.

14 MR. SMITH: Thank you, Judge.

15 DIRECT EXAMINATION

16 BY MR. SMITH::

17 Q Ms. Maldonado, I just have a couple of questions for
18 you. How are you presently employed, Ma'am?

19 A I am a senior crime scene analyst with the Las Vegas
20 Metropolitan Police Department.

21 Q How long have you worked as a crime scene analyst?

22 A Approximately eight and a half years.

23 Q Were you working as a crime scene analyst back on
24 November 5th, 2008?

25 A Yes, I was.

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1 Q Would looking at that report be able to refresh your
2 recollection as to every item that you impounded?

3 A Yes, it would.

4 Q Okay. Can you tell us what you did.

5 A I recovered and impounded taser paraphernalia
6 including a taser cartridge, taser probe and a taser blast
7 store, also what we call AFID tags from the taser.

8 Q What are AFID tags?

9 A Anti-felon identification tags.

10 Q And what are those used for?

11 A They -- when the cartridge from the taser is
12 discharged, these little confetti like pieces come out, about
13 20 to 30 of them. They contain the serial number from the
14 cartridge of the taser that was fired. It's a way to determine
15 that that taser was fired at that location.

16 Q Okay. Please proceed.

17 A I also recovered a sample of apparent blood.

18 Q Now let me ask you this, where was that blood
19 recovered from?

20 A On the light switch cover on the south wall of the
21 northwest master bedroom.

22 Q Is that's what depicted and what's been admitted into
23 evidence as State's Exhibit 10?

24 A Yes.

25 Q Okay. What else did you recover?

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1 Q Did you respond to a 5001 El Parque?

2 A Yes, I did.

3 Q What did you do when you got there?

4 A I arrived with another crime scene analyst, Ms.
5 Collins, and we met with Homicide Detective Marty Wildemann and
6 Homicide Sergeant Rush Shoemaker (phonetic), along with other
7 numerous uniformed patrol officers in reference to a death or
8 homicide investigation.

9 Q Okay. And what types of things did you do at the
10 scene?

11 A My particular responsibilities at this scene were to
12 recover and impound the evidence and to construct a sketch of
13 the crime scene and prepare a final diagram in the computer
14 program.

15 Q Did you, in fact, recover and impound some evidence
16 in this case?

17 A Yes, I did.

18 Q And why don't you tell us for the record what
19 evidence you recovered and what evidence you impounded.

20 A I recovered and impounded taser paraphernalia --

21 Q Actually, let me ask you this. Did you prepare a
22 report --

23 A Yes, I did.

24 Q -- as to what you recovered?

25 A Yes.

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1 A A Wolfgang Puck eight inch carving knife with a black
2 handle and apparent blood.

3 Q Is that what's depicted and what's been admitted as
4 State's Exhibit 27?

5 A Yes.

6 Q Okay. Please proceed.

7 A And an Armstrong vinyl floor tile with an parent
8 footwear pattern.

9 Q Where was that recovered from?

10 A That was actually in the doorway of the northwest
11 master bathroom adjacent to the door that led into the bedroom.

12 Q And if you can back up for us, where did you recover
13 the knife from?

14 A On top of the bed in the northwest master bedroom.

15 Q What else did you recover?

16 A A jacket. A Silver State silkscreen jacket.

17 Q Where was that recovered from?

18 A That was on the floor on the west side of the bed in
19 the northwest master bedroom.

20 Q Please continue.

21 A Two black ankle socks.

22 Q Where were those recovered?

23 A Those were both recovered from on top of the bed in
24 the northwest master bedroom.

25 Q Please continue?

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1 A A pair of black stretch pants.
2 Q Recovered from where?
3 A The floor in the master bathroom.
4 Q Please continue.
5 A A white and black scarf with fridges or tassels on
6 one end wrapped with a brown elastic hair band bearing apparent
7 blood.
8 Q And where was that recovered?
9 A That was actually attached to the descendant's right
10 wrist with the elastic band and was lying across her right
11 thigh.
12 Q Please continue.
13 A A Penny's Nationwide standard pillowcase with red
14 trim and apparent blood.
15 Q What else?
16 A And a Lady Pepperell queen size flat sheet with
17 apparent blood.
18 Q And finally?
19 A A beige bib hospitality flat sheet with apparent
20 blood.
21 Q And where did you recover those last three items?
22 A On top of the bed in the northwest master bedroom.
23 Q Now, you've already testified that one of your duties
24 was to complete a diagram.
25 A Yes, it was.

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1 the same pertinent information, the address, the event number,
2 the incident, my initials and P number, and the items that are
3 listed inside the package.
4 Q Can you tell us what an event number is.
5 A The event number is -- it's basically a number that's
6 assigned to each crime or each call of the day, and it consists
7 of ten digits. And in this particular case the event number
8 0811005 dash 3918 was the event number assigned to this case.
9 The 08 stands for 2008. The 11 stands for November. The 05
10 stands for November 5th of that month, and the 3918, that was
11 event 3,918 of that particular day.
12 Q So is it accurate to say that everything done
13 reference a particular incident is all done under that same
14 event number?
15 A Yes, it should be.
16 Q Okay. Do you recall whether or not you observed any
17 vertical blinds on the floor in the northwest master bedroom?
18 A Yes, I did.
19 Q Showing you what's been admitted as Defendant's
20 Exhibit Q.
21 MR. SMITH: Actually, if I can approach the witness
22 because you can't quite tell from --
23 THE COURT: Sure.
24 MR. SMITH: Thank you.
25 BY MS. GRAHAM::

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1 Q Did you, in fact, complete a diagram in this case?
2 A Yes, I did.
3 Q Showing you what's already been admitted into
4 evidence as State's Exhibit I. Do you recognize that?
5 A Yes, I do.
6 Q And what is this for the record?
7 A That is the diagram that I completed in reference to
8 this crime scene.
9 Q And all the evidence that you have just testified
10 that you recovered, for the record, what did you do with it?
11 A I impounded that evidence into what we call our
12 evidence vault where it's a secured location within our lab.
13 We have a logbook that we must log that in for chain of custody
14 purposes, and then an evidence custodian from our vault would
15 come pick that up and sign the evidence out in the book.
16 Q Okay. And when you impound evidence, is there some
17 kind of record keeping thing that you do so that any person
18 that looks at that evidence can know what incident that
19 evidence is relevant to?
20 A Yes.
21 Q And how is that done, Ma'am?
22 A I complete an evidence impound report which has the
23 relevant event number and address on it.
24 Q Okay.
25 A And on the actual package itself is a label that has

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ROUGH DRAFT TRANSCRIPT

1 Q I'm showing you what's been marked -- excuse me,
2 what's admitted as Defense Exhibit Q. Can you tell if you can
3 make any observations based on this photograph with regards to
4 the closet doors.
5 A Yes, I can.
6 Q And what are those observations?
7 A They were slightly pushed back. They weren't
8 necessarily on a track, so to speak, which was a little unusual
9 from those closet doors.
10 Q Okay. Thank you.
11 MR. SMITH: Judge, I'll pass the. Thank you.
12 THE COURT: Cross-examination.
13 MS. PALM: Thank you.
14 CROSS-EXAMINATION
15 BY MS. GRAHAM::
16 Q Ms. Maldonado, do you recall what time you arrived at
17 the El Parque residence?
18 A Yes, I do.
19 Q What time was that?
20 A Approximately 0034 hours.
21 Q So at 12:34?
22 A 12:34 a.m., yes.
23 Q Okay.
24 A And that was actually on the 6th, November 6th.
25 Q Okay. And you were actually working with another

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1 CSA? CSA Collins?
2 A Yes, I was.
3 Q Okay. And you had a supervisor on scene?
4 A Yes, I did.
5 Q And that was CSA Supervisor Reed (phonetic)?
6 A Yes, Gary Reed (phonetic).
7 Q Okay. But you and Collins worked together with you
8 actually gathering evidence and her -- she's a female or --
9 A Yes, she is.
10 Q Okay. Taking the photographs of the evidence.
11 A Yes, that's correct.
12 Q And so do you go around together, and as you are
13 going to gather evidence, she's photographing it or how does it
14 work?
15 A Basically, we do a crime scene walk-through with the
16 detectives on the scene initially. They give us the
17 information as to what had occurred at that time, the best
18 information that they have. We all do a walk-through together
19 of the scene. We talk about the various areas of concern, the
20 various items of evidence that may be important in the
21 particular case.
22 Also, the supervisor's usually present for that. At
23 that time the supervisor will make the decision as to what
24 responsibilities the crime scene analyst has at that time. So
25 usually the two crime scene analysts together will get

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ROUGH DRAFT TRANSCRIPT

1 area.
2 Q Okay. So there's some taped off area, but it's just
3 not in this photograph.
4 A Correct. It was on the lower level.
5 Q Okay. Now, I just want to run through the
6 photographs real quick. In is Defendant's Exhibit H. Do you
7 recognize that?
8 A Yes, I do.
9 Q And is that the front door of the apartment?
10 A Yes, it is.
11 Q And that's how it looked when you were there?
12 A Yes.
13 Q And this is Defense Exhibit I. That's (sic) would be
14 the kitchen area?
15 A Yes.
16 Q Is that how it looked when you were there?
17 A Yes.
18 Q And if there had been any disarray, you would have
19 photographed that?
20 A Disarray, I don't understand.
21 Q I mean like chairs knocked over or some signs of --
22 A Yes.
23 Q -- something going on?
24 A Yes.
25 Q Okay. And there doesn't appear to be any of that?

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ROUGH DRAFT TRANSCRIPT

1 together, we'll talk about things, and at that point the crime
2 scene analyst in charge of taking the photographs will go
3 through the entire scene and do overall photographs of the
4 entire scene before anything is moved or touch. That way we
5 have a record of how the scene looked when we arrived.
6 Q And would you be with the photographer at this point?
7 In fact, in this case were you with Officer Collins as she's
8 taking -- or CSA Collins as she's taking photographs?
9 A In this particular case I was not actually inside the
10 apartment only because it is a small area. And when you're
11 taking photographs, you try to not have people in your
12 background. So most likely I would have been outside on the
13 patio area or down below or possibly even at my vehicle
14 gathering supplies.
15 Q Okay. But you would have at some point seen
16 everything that she photographed?
17 A Yes.
18 Q All right. And when you got there, the scene was
19 already secure with the crime scene tape?
20 A Yes, it was.
21 Q And showing you Defense Exhibit G. Can you tell me
22 -- explain where the crime scene tape would have been in that
23 photo.
24 A Actually, in that particular photo I don't see the
25 tape. It was actually on the lower level down in the courtyard

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1 A No.
2 Q So these photographs aren't taken so much to document
3 evidence of a crime but the absence of evidence in this room,
4 maybe.
5 A Possibly, the overall photographs could be used for
6 that.
7 Q Okay. And this is just again a view from the kitchen
8 to the front door, Defense Exhibit J. These blinds that are
9 closed, were they closed when you arrived on the scene?
10 A Yes, they were.
11 Q Okay. So when you arrive on a scene, you don't touch
12 or move anything. You photograph it as it is.
13 A As we find it, yes, we do.
14 Q And this is Defense Exhibit K. That would just be
15 the view from the front door.
16 THE COURT: Can you turn it, the photograph.
17 MS. PALM: Oh, I'm sorry.
18 THE WITNESS: Yes.
19 BY MS. PALM::
20 Q Do you remember that?
21 A Yes.
22 Q And this is just the -- L is the other corner of the
23 living room.
24 A Yes.
25 Q And this is Defense Exhibit M, and that's the view

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1 from the front door into the master bedroom?
2 A Actually --
3 Q As much as can you see.
4 A Correct. You can see the doorway to the master
5 bedroom from that view.
6 Q And in this photograph, the living room light is on.
7 Do you know if it was turned on for the photographs?
8 A I honestly don't know.
9 Q Okay. Is that something you would do, illuminate it
10 so you can take photographs or --
11 A Not necessarily --
12 Q -- (indiscernible).
13 A -- because we have a flash unit on our camera --
14 Q Okay.
15 A -- that would provide enough light.
16 Q Okay. So -- but you can't make any representations
17 as whether the lights are on or off when you got there?
18 A That particular light, no, I don't know.
19 Q Okay. And this is Defense Exhibit N, and this would
20 be the view straight into that hallway showing the bathroom in
21 between the two bedrooms.
22 A Yes.
23 Q This is Defense Exhibit O. That's actually the south
24 bedroom.
25 A Yes.

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1 Q If it looks to me in the closer picture that it's
2 right here, would that be about right?
3 A Possibly, yes, uh-huh.
4 Q Okay.
5 A Thereabouts.
6 Q If I approach and show you, would you be able to see
7 better, maybe?
8 A Possibly. There should be a closer picture, too.
9 THE COURT: Yes. You can approach.
10 BY MS. PALM::
11 Q (Indiscernible) the overall picture. Can you see the
12 knife handle there?
13 A It appears to be.
14 Q This is Defense Exhibit S. Is that how the bed
15 looked from that angle?
16 A Yes.
17 Q Okay. And looking at that bed, you can see that the
18 -- it's not the mattress, but the mattress covers was kind of
19 pulled down toward the end of the bed.
20 A Yes, it was.
21 Q Kind of sliding off the bed, actually.
22 A Yes.
23 Q Okay. And when you looked closer, you actually saw
24 some footprints, didn't you?
25 A Footprints?

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1 Q Okay. And that bedroom just appeared to have kind of
2 exercise stuff in it. No beds.
3 A Correct, no bed.
4 Q Okay. Getting to the master bedroom, Defense Exhibit
5 P. Is this the view from the south or the west wall of the
6 master bedroom into the bathroom?
7 A Yes, it is.
8 Q Okay. And you hadn't rearranged the doors or
9 anything before this photograph?
10 A I did not, no.
11 Q Okay. Do you know if the bedroom light was on when
12 you got there?
13 A When I entered the room the light was on.
14 Q Okay. And the point this photograph was taken Ms.
15 Witmarsh was still in the room. Her --
16 A Yes.
17 Q -- body was still in the room. This is Defense
18 Exhibit R. Is this how -- a view of the bed when you arrived?
19 A Yes.
20 Q Okay. Can you show me where the knife was on the
21 bed?
22 A In this particular photo I don't believe you can see
23 it clearly. I know a general area --
24 Q Okay.
25 A -- but not a specific location.

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1 Q On the bed.
2 A I don't believe I saw a footprint on the bed.
3 Q Okay, well, we'll get to those photographs. Here's
4 another view of the bed of Defense Exhibit T. And there you
5 can kind of see better where the knife is.
6 A Yes.
7 Q Okay. And it's under a wadded up pillowcase.
8 A Yes, it was partially covered, the knife.
9 Q This is Defense Exhibit U. And looking at that, is
10 that how the knife was covered when you arrived?
11 A Yes want.
12 Q With a wadded up bloody pillowcase?
13 A Yes.
14 Q Okay. And a, b and c, do you recall what those are?
15 A Yes, I do.
16 Q What are they?
17 A Those were areas of concern on the sheet in blood. A
18 was some type of unknown pattern. We don't know if it was a
19 transfer pattern, possibly a footwear pattern. B was what
20 appeared to be or what we thought at the time was possibly a
21 patent print or ridge detail in blood on the sheet. And c, the
22 area marked c were linear lines, possibly finger marks with
23 most ridge detail that extended off the bottom of the bed in a
24 downward direction.
25 Q Okay. And this is the closeup of a that you believe

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1 might have been a footprint.
2 A Possibly, yes.
3 (Off the record colloquy).
4 BY MS. PALM::
5 Q Okay. This would be a closeup of b and it's Defense
6 Exhibit -- oh, I'm sorry. This is a proposed exhibit so I'll
7 approach the witness, if that's all right.
8 THE COURT: Yes.
9 BY MS. PALM::
10 Q Do you recognize what this is?
11 A Yes.
12 Q Is it a true and accurate depiction of the photograph
13 you took that day?
14 A Chelsea Collins, yeah, she took the photograph, but I
15 was there, yes.
16 Q Can you look at the rest of these (indiscernible)?
17 A Okay.
18 Q And they're all true and accurate --
19 A Yes, they are.
20 Q -- depictions?
21 MS. PALM: (Indiscernible) Defense Exhibits SSS, VVV,
22 UUU, and TTT.
23 MR. SMITH: No objection, Judge.
24 THE COURT: All right, they'll be admitted.
25 MS. PALM: Thank you.

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1 A No.
2 Q Okay. And they actually appear to be different
3 patterns depicted in the pictures.
4 A Yes.
5 Q Showing you Defense Exhibit W, is that the jacket
6 that you found?
7 A Yes he.
8 Q And the condition of the blinds, were they like that
9 when you arrived at the scene?
10 A Yes, they were.
11 Q Defense Exhibit X. Is that the jacket in an unfolded
12 condition?
13 A Yes.
14 Q And you actually unfolded that or Ms. Collins did to
15 --
16 A Yes, we did together.
17 Q -- take the photograph?
18 A Yes.
19 Q Okay. And Defense Exhibit Z, what does that
20 photograph depict?
21 A Those are the black stretch pants that were located
22 on the floor in the master bathroom.
23 Q Okay. And they were fairly saturated with blood,
24 were they not?
25 A They were wet, yes.

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1 BY MS. PALM::
2 Q Can you tell the jury what Defense Exhibit UUU
3 depicts.
4 A That looks like the impression that was marked A at a
5 different angle, the possible or apparent transfer footwear
6 pattern.
7 Q Actually, if I put them side by side on here, they
8 appear to be two different items. Would it help you to see
9 them up close together if I walked over and showed you?
10 A Not necessarily. It depends also what order those
11 were taken in as to if the overalls were done before the labels
12 were placed on there. There would have been overall pictures
13 of the sheets before the scales were placed on there and also
14 the labels.
15 Q If I tell you UUU, I believe, is a picture of the
16 pillowcase unfolded and a print on the pillowcase --
17 A Okay.
18 Q -- would that make more sense?
19 A It do, yes, uh-huh.
20 Q Okay.
21 MS. PALM: May I approach the witness, your Honor?
22 THE COURT: Yes.
23 BY MS. PALM::
24 Q And in comparing these two together, they don't
25 actually look like a photograph of the same thing, do they?

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1 Q Okay. And went pretty far down. Were they wet at
2 the waist and down?
3 A I honestly couldn't tell you.
4 Q Okay. Defense Exhibit AAA, that is the light switch
5 that you testified about earlier?
6 A Yes, it is.
7 Q There was only light switch with blood --
8 A Yes.
9 Q -- right? And it was in the master bedroom --
10 A Yes.
11 Q -- near the bed? And do you know what that light
12 switch operated?
13 A No, I do not.
14 Q Okay. So if it didn't operate a light, you wouldn't
15 know that?
16 A Correct.
17 Q Okay. So you don't turn it on or off what you're
18 taking the photograph or collecting the blood swab. You just
19 document it?
20 A Correct. I did not turn it on or off.
21 Q And this is Defense Exhibit HH. Do you recognize
22 that?
23 A Yes.
24 Q What is that?
25 A That was the pillowcase that was located on top of

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1 the bed that was partially covering the knife.
2 Q Okay. So unfolded -- you unfolded it for this
3 picture or CSA Collins did?
4 A Yes.
5 Q Okay. And unfolded can you see where the apparent
6 footprint is on the pillowcase?
7 A Yes.
8 Q And where is that? Can you show the jury. Thank
9 you. Okay. Defense Exhibit II. That again is the knife.
10 A Yes.
11 Q And this knife only had blood drops on one side of
12 it; is that correct?
13 A I honestly couldn't tell you if they were blood
14 drops. I just say it's apparent blood.
15 Q Okay. So this is the knife after you've removed it
16 from the bed and turned it over?
17 A Yes.
18 Q Okay. If I told you I could not find a single
19 picture with the bed still or the knife still on the bed after
20 the pillowcase is removed, would that surprise you?
21 A I don't know if it would surprise me, no.
22 Q Okay. Would it be unusual for you to not document
23 how it looked in its original position after something was
24 removed on top of it?
25 A Occasionally it is not documented that way only

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1 because we have other responsibilities and duties. And
2 oftentimes we're interrupted to go do something else in another
3 room or we're called away from our particular duty at that
4 moment. So honestly, it would not be unusual. We do try to
5 get the photo, yes, we do.
6 Q And this is the other side of the knife, Defense
7 Exhibit JJ, and do you know whether that was the side that was
8 facing up covered by the bloody pillowcase?
9 A No, I do not.
10 Q If I show you a picture when it's still covered,
11 would it help you determine?
12 A It may or may not.
13 MS. PALM: May I approach, your Honor.
14 THE COURT: Yes.
15 BY MS. PALM::
16 Q I'm showing you Defense Exhibit OO or OO. And it
17 looks like this is the --
18 A (Indiscernible). Yes, it does appear that way.
19 Q Okay. So Defendant's Exhibit JJ would have been
20 facing up on the bed and then covered immediately by the bloody
21 pillowcase?
22 A It appears that way, yes.
23 Q And if you look at Defendant's Exhibit OO it appears
24 that there's actually blood on the pillowcase right on the part
25 that's touching the knife.

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1 A Yes.
2 Q Showing you a picture of Defendant's QQ. Do you
3 recognize what that is?
4 A Yes.
5 Q What is it?
6 A That's the black and white scarf that was attached to
7 the descendant's right wrist and extended over her right thigh.
8 Q Is there anything in your crime scene experience when
9 you look at that scarf that's inconsistent with it having been
10 used as a tool to or as a compress to stop bleeding?
11 MR. SMITH: Objection, Judge. It's outside the scope
12 of her knowledge and calls for speculation.
13 THE COURT: Sustained.
14 BY MS. PALM::
15 Q As a crime scene analyst do you sometimes look at
16 evidence to determine how it might have been used?
17 A Yes.
18 Q Is looking at something determine whether it had been
19 used to stop bleeding or held up to a body that was bleeding
20 outside the scope of your experience?
21 A I would not make any observation regarding that as to
22 what type of medical attention was possibly given to the
23 descendant, no. In that particular case, no.
24 Q Okay, but would you look at something to tell whether
25 it had been held up to a bleeding surface?

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1 A In this case no.
2 Q But in other cases you might?
3 A Possibly, yes.
4 Q Okay. Same question for the pillowcase. Prior to
5 its being unfolded there seem to be like areas where it had --
6 you could see little triangle marks on there. Does that tell
7 you anything as a crime scene analyst?
8 A It possibly could, yes.
9 Q Okay, what might it tell you?
10 A In this particular case if the knife -- if that was
11 laid on top of the knife somehow or the knife came in contact
12 with that, it could have the appearance of some type of
13 transfer pattern.
14 Q Okay. Might it also tell you whether it had been
15 folded up or not?
16 A It possibly could.
17 Q Were you present during the photographing of Mr.
18 O'Keefe's injuries at the scene?
19 A Yes, I was.
20 Q Showing you Defendant Exhibit SS. What does that
21 photo depict?
22 A That appears to be his right hand, the thumb area.
23 Q And does it appear that there a cut on the top
24 portion of the thumb?
25 A I honestly could not tell. He was not really

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1 cooperative when we were taking the photographs, so it was hard
2 for me to neighboring that determination. I was assisting
3 Crime Analyst Collins trying to get some overalls of him before
4 he left the scene.
5 Q Okay. But you can't say it's not a cut?
6 A I can't say that it's not, no.
7 Q Defense Exhibit UU. Is that how Mr. O'Keefe's hands
8 looked at the scene?
9 A Yes, they did.
10 Q And when you look at his -- it would be his right
11 hand -- do you also see a cut in this area here --
12 MR. SMITH: Judge, I'm going to object to --
13 BY MS. PALM::
14 Q -- index finger?
15 MR. SMITH: -- the characterization that it's a cut.
16 You can't really tell if it's a cut. I think an injury would
17 be more appropriate.
18 THE COURT: Well, I'm going to sustain the objection
19 as to if she knows what that is or what she observed.
20 BY MS. PALM::
21 Q Did you observe any cuts or injuries on Mr. O'Keefe's
22 fingers?
23 A I observed a possible injury, yes. I would not call
24 it a cut, though --
25 Q Okay.

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1 vehicle?
2 A I was not outside when those were taken, no.
3 Q Okay, so that would be CSA Collins?
4 A Yes.
5 Q At the direction of a detective?
6 A Yes.
7 Q Okay. Did you photograph the inside of the medicine
8 cabinet in the master bathroom?
9 A I did not personally, no.
10 Q Did you view the contents of the medicine cabinet?
11 A No, I did not.
12 Q You were present when Mr. O'Keefe was photographed
13 outside, though?
14 A Yes, at the scene, yes.
15 Q Showing you Defense RR. Do you recognize that
16 photograph?
17 A Yes, I do.
18 Q Do you recognize that as Detective Wildemann's arm --
19 A Yes, I do recall.
20 Q -- holding up Mr. O'Keefe's head?
21 A Yes, I do.
22 MS. PALM: Court's indulgence.
23 BY MS. PALM::
24 Q Do you recall whether when you were photographing the
25 closet anyone closed it before the photographs?

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1 A -- due to the hand being covered with the blood.
2 Q Okay. So you couldn't see it well enough?
3 A No.
4 Q Were you present when the search warrant was executed
5 by Detective Shoemaker or was that before all this evidence
6 gathering was done?
7 A The search warrant was executed prior to us entering
8 the apartment.
9 Q So you also were present when photographs were taken
10 of wallets?
11 A I don't know of any wallets. There may have been.
12 Q Showing you Defendant's Exhibit WW. Does that look
13 familiar to you?
14 A Yes, it does.
15 Q Okay. What does that depict?
16 A Those are two wallets on top of the kitchen counter
17 next to a red purse.
18 Q Okay. And Defendant's Exhibit XX, does that appear
19 to be Ms. Witmarsh's driver's license?
20 A Yes, it does.
21 Q The same driver's license that was in the wallet?
22 A It appears to be, yes.
23 (Off the record colloquy).
24 BY MS. PALM::
25 Q Were you present when photographs were taken of a

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1 A Can you repeat the question, I'm sorry.
2 Q When the closet was photographed, at some point was
3 it closed from a partially opened position?
4 A I honestly don't know because I was not present in
5 the room when the original photo was taken of the overall.
6 Q Were you there when the coroner arrived?
7 A Yes, I was.
8 Q And that was about 3:55 in the morning?
9 A Yes, it was.
10 Q And you did the crime scene diagram yourself?
11 A With the assistance of Crime Scene Analyst Collins
12 helping me with measurements, but I did the actual sketch, yes.
13 Q Okay. Showing you Defense Exhibit XXX, that's the
14 crime scene diagram you prepared.
15 A Yes.
16 Q Okay. If some photograph showed the pillow in that
17 location moved, you guys moved it for the photographs; is that
18 correct?
19 A Not necessarily. This is just an illustration or a
20 drawing of the scene -- of the crime scene, which would give
21 distances or spatial relationships between items of evidence or
22 objects. It's a representation.
23 Q Right. But this little square here is a pillow moved
24 down; is that correct?
25 A Correct, it's not centered.

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1 Q Okay. And in some photographs it's down and some
2 photographs it's back up. Somebody moved it during the
3 photographing.
4 A Correct.
5 Q Okay. And the body that's on this diagram does not
6 appear to be to scale. Would you agree with that?
7 A Correct, and it does say that the distance is
8 approximate under the north arrow.
9 Q Right.
10 A That that is approximate.
11 Q So it's approximate five feet, but that
12 (indiscernible) seven feet; would you agree?
13 A It's probably a little bit taller than that, yes.
14 Q Okay. And when you take those photographs, you're
15 photographing the body in a position that you found it; is that
16 correct?
17 A The overall photographs would be correct in the
18 position that it was found.
19 Q And you don't have any knowledge whether they were
20 moved by any officer -- or the body's been moved at all during
21 an arrest or, you know --
22 A Correct.
23 Q -- prior to you gets there, you don't know what
24 happened?
25 A Correct. We --

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1 contact?
2 A Correct. That's the way I found it when I impounded
3 it.
4 Q Can you explain how the knife was collected in order
5 to avoid contamination or smearing of the blood? What do you
6 do?
7 A In this particular case when I recovered the knife,
8 the actual paper bag that it's sitting on, I carefully inserted
9 the knife into the bag as far down as it could possibly go, and
10 I also took another paper bag the same size and put on the
11 other end of the knife.
12 In the apartment we had a general area where we
13 collect evidence where it's secure until we can transport it to
14 our vehicle. The bags that the knife -- that particular knife
15 was in was probably placed inside a larger paper sack, which I
16 then carried to the crime scene vehicle, and that was
17 transported back to our crime lab. And that would have been
18 placed in what we call an evidence hold locker, and it would
19 have been secured in there until I actually physically
20 impounded it.
21 Q Okay. And --
22 A The actual bag that the knife was inserted into, I
23 did use that bag when I impounded the knife to keep any
24 possible trace evidence inside there.
25 Q And then any further testing on the knife is not you?

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1 Q Okay.
2 A -- would not know that.
3 Q The bloodstain patterns, a, b, c on the sheet,
4 there's no indication that they were enhanced. Were they?
5 A Not at the scene or back at our crime lab.
6 Q Okay.
7 A In my particular office. I don't know if the
8 detective requested any further processing in the forensic lab,
9 but in our particular side, no.
10 Q Okay. So if somebody requested further processing,
11 that would not be you?
12 A Correct, it would not be me.
13 Q And you documented -- showing you Defense Exhibit MM,
14 the length of the knife handle and blade. Do you recall that?
15 A Yes, I do, um-h'm.
16 Q Okay. And the blade itself was about eight inches?
17 A Yes.
18 Q Okay. So if we heard testimony -- we all hear
19 testimony that an injury was four and a half inches deep, this
20 drop here that I'm pointing to would be below that this is
21 probably, what, three inches in?
22 A I honestly don't know. I -- I honestly don't know
23 that.
24 Q There's no way to know whether the blood that got on
25 that knife got on that knife from the pillowcase or some other

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1 A Correct, that would have been done by the forensic
2 lab.
3 Q The footwear pattern in the bathroom, were you
4 involved in the collection of that footwear pattern?
5 A I was involved in the actual collection of the floor
6 tile. Did I not physical remove that, but I did impound that.
7 Q I'm sure everyone agrees I have too many photographs.
8 Showing you Defense Exhibit -- Proposed Exhibit -- I think
9 there was no objection.
10 MR. SMITH: Right.
11 MS. PALM: Your Honor, no objection. I'm moving to
12 admit this.
13 THE COURT: That's fine.
14 MS. PALM: It's Defense Exhibit RRR.
15 BY MS. PALM::
16 Q Do you recognize that?
17 A Yes, I do.
18 Q It looks a little weird under that light, but --
19 A Um-h'm.
20 Q -- what is that a photograph of?
21 A That's the apparent footwear pattern that was on the
22 floor tile right inside the master bathroom adjacent to the
23 doorway.
24 Q And that was enhanced how?
25 A That was enhanced using a chemical called leuco

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1 crystal violet.
2 Q Okay. And what helps you see the footprint better or
3 what?
4 A Yes, it would help visualizing any ridge detail or
5 any type of detail within a certain type of pattern so it's
6 easier to photograph and be more visual, basically, yes.
7 Q Okay. And do you know whether this footprint was
8 ever compared with Mr. O'Keefe's shoes?
9 A I do not know that, no.
10 Q So you were not involved in any processing of the car
11 at all?
12 A No, I was not.
13 Q And if anybody had asked for any processing of the
14 car or evidence in the car, would you have participated in
15 that?
16 A Yes, I would have.
17 Q Okay. So the car was just photographed but not
18 processed?
19 A Correct.
20 Q Did you ever check the apartment for containers of
21 alcohol? Did you check the refrigerator, the trash, cupboards?
22 A No, I did not.
23 Q Okay. Do you know if Metro has a protocol for the
24 collection of evidence of a person's intoxication when they
25 murder suspect?

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1 the floor on the west side of the bed. The closet doors,
2 again, were not on the track or on a track, which was, again, a
3 little unusual. The bedding was disturbed slightly on top of
4 the bed. And those are the areas that I recall that were in
5 disarray.
6 Q Was that consistent -- could that be consistent with
7 a struggle?
8 A Yes, it could.
9 Q Now, I just wanted to make sure I was clear about one
10 particular thing. Showing you Defendant's Exhibit U. Can you
11 explain to us what is depicted in picture c. Or excuse me,
12 where the c is. What did you say that --
13 A C appeared to me to be three linear lines or just
14 straight lines with no ridge detail like what would be on your
15 fingerprint. There was no ridge detail. They were just three
16 straight linear lines that actually look like they were moving
17 in a downward direction toward the bottom of the bed.
18 Q Now, in your opinion, could those lines have been
19 made if someone, for instance, had attempted to wipe -- use
20 that knife to wipe the blood off?
21 A It's possible. However, to me they appeared to be
22 more of a finger type mark.
23 Q Okay.
24 A Just in my opinion, yes.
25 MS. PALM: I'd move for admission of Defense Proposed

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1 A I would not know that, no.
2 Q Would you ever participate in that?
3 A Not that I know of. No, I'm not aware of any
4 procedure. I'm civilian, so it may be on the commissioned
5 side.
6 Q Do you ever participate in the collection of DNA
7 evidence?
8 A Yes.
9 Q And --
10 MS. PALM: Court's indulgence. No more questions.
11 THE COURT: Mr. Smith, any follow-up?
12 MR. SMITH: Thanks, Judge.
13 REDIRECT EXAMINATION
14 BY MR. SMITH::
15 Q Ma'am, one of the questions that the defense attorney
16 asked you on cross-examination was if the -- she showed you
17 that picture of the front room, and she asked you was the front
18 room in disarray.
19 A Yes, she did.
20 Q And you recall that you testified no, not really?
21 A Not to my recollection, no.
22 Q Was the bedroom in disarray?
23 A Yes.
24 Q Specifically how was it in disarray?
25 A There were the removed vertical blinds that were on

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1 RR.
2 MR. SMITH: No objection, Judge.
3 THE COURT: It will be admitted.
4 MR. SMITH: RR.
5 BY MR. SMITH::
6 Q Showing you again Defendant's Exhibit RR. And you
7 testified that that was a picture taken where Mr. O'Keefe's
8 head was being held up.
9 A Yes.
10 Q Do you know why his head was being held up?
11 A Yes, I do.
12 Q Why?
13 A He was non-cooperative. He didn't want to stand
14 still or stand up and face forward for the photographs.
15 MR. SMITH: No further questions, Judge.
16 THE COURT: Any recross?
17 RECROSS-EXAMINATION
18 BY MS. PALM::
19 Q Were you close enough to Mr. O'Keefe to determine --
20 to notice whether he appeared to be intoxicated or not?
21 A I was pretty close to him. I don't know if he was
22 intoxicated, but he was uncooperative and not following
23 directions or listening.
24 Q If Detective Wildemann testified he was obviously
25 intoxicated, would you agree with that?

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1 A I would.
2 Q Showing you Defendant's Proposed Exhibit YYY. Do you
3 recognize this photograph?
4 A Yes.
5 Q Does it fairly and accurately depict a scene when you
6 were there?
7 A Yes, after he placed the cones, yes.
8 Q Okay.
9 MS. PALM: Move for admission of Defendant's YYY.
10 MR. SMITH: No objection, Judge.
11 THE COURT: It will be admitted.
12 MS. PALM: Thank you.
13 BY MS. PALM:
14 Q If you could look at the closet door in this
15 photograph. Do you see a closet door?
16 A Yes, I see two closet doors.
17 Q Okay, and does the one closet door appear to be
18 partially open at least several inches?
19 A Yes, and slightly pushed back.
20 Q Okay. And looking at Defense Exhibit Q, is it
21 actually closed in that photograph?
22 A It's still partially open on the left-hand side.
23 Q Is it open as far as it was in the first picture?
24 A I cannot tell because I cannot see the bottom of the
25 door.

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1 MR. SMITH: No further questions.
2 THE COURT: Anything further, Ms. Palm?
3 MS. PALM: No, thank you.
4 THE COURT: Any questions from the jurors?
5 THE MARSHAL: One.
6 THE COURT: Counsel approach, please.
7 (Bench conference).
8 THE COURT: Ms. Maldonado, we have a question from
9 one of the jurors. Do you have any personal knowledge as to
10 whose blood was on the light switch.
11 THE WITNESS: No, I do not.
12 THE COURT: All right. Any follow-up questions to
13 that one, Mr. Smith?
14 BY MR. SMITH:
15 Q Do you know if that blood was tested?
16 A I do not know that.
17 Q So you have no independent knowledge?
18 A No, I do not.
19 Q Okay.
20 MR. SMITH: No further questions from the State.
21 THE COURT: Ms. Palm.
22 MS. PALM: No, thank you.
23 THE COURT: All right, thank you, Ma'am, for your
24 testimony. You're instructed not to discuss your testimony
25 today with any other witness involved in this case until this

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1 Q Okay. So you think it's a picture of the same thing?
2 A I don't know in what order those pictures were taken
3 unless they're on a thumbnail sheet that would show the order
4 that they were taken.
5 Q Okay. But you agree the door could have been closed
6 before the photograph?
7 A It's possible, yes.
8 MS. PALM: No more question. Thank you.
9 THE COURT: Any redirect?
10 FURTHER REDIRECT EXAMINATION
11 BY MR. SMITH:
12 Q Ms. Maldonado, are closet doors typically opened and
13 closed at crime scenes?
14 A Yes, for photographing or documentation purposes,
15 yes, sometimes they are, yes.
16 Q Do you have any independent knowledge as to whether
17 or not that occurred in this case?
18 A I did not physically see that.
19 Q Showing you Defense Exhibit YYY. Was this photograph
20 taken at a different angle than Defense Exhibit Q?
21 A Yes.
22 Q And does that impede your ability to determine
23 whether or not a closet door is open the same amount as can be
24 seen in this photograph?
25 A Yes, it does.

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1 matter is finally resolved. Thank you for your time.
2 THE WITNESS: Yes, sir.
3 THE COURT: Next witness by the State.
4 MR. SMITH: Judge, that would be Daniel Ford.
5 THE COURT: Is the jury okay? Do you need a break
6 now? Are you okay? All right, thank you.
7 MR. SMITH: Judge, can we put a quick stipulation on
8 the record?
9 THE COURT: Sure.
10 MR. PIKE: Thank you, your Honor. There was a
11 reference to a search warrant. It's common practice when a
12 emergency situation is relieved that there's a telephonic
13 warrant where the detectives call in the judge, and the judge
14 gives them permission to go back into the scene. That occurred
15 here, and it was appropriately done, and the police went back
16 in along with the CSAs in order to collect the evidence. And
17 that reference response to that and the protocol that was
18 followed by detectives.
19 THE COURT: Is that correct, Mr. Smith?
20 MR. SMITH: That is correct, your Honor.
21 THE COURT: All right. That will be stipulated to by
22 the parties. Thank you.
23 THE MARSHAL: Mr. Ford, if you'll remain standing,
24 please. Raise your right hand.
25 DANIEL FORD, PLAINTIFF'S WITNESS, SWORN

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1 THE CLERK: Thank you. Please be seated. Please
2 state and spell your name for the record, please.
3 THE WITNESS: Daniel Ford, D-a-n-i-e-l, F-o-r-d.
4 MR. SMITH: May I proceed, your Honor?
5 THE COURT: Yes, Counsel.
6 MR. SMITH: Thank you.
7 DIRECT EXAMINATION
8 BY MR. SMITH::
9 Q Mr. Ford, how are you presently employed, sir?
10 A As a senior crime scene analyst with the Las Vegas
11 Metropolitan Police Department.
12 Q Were you working as a crime scene analyst back on or
13 around November 5th, 2008?
14 A Yes, sir, I was.
15 Q Did you respond to a scene located at a 5001 --
16 actually, strike that question. Did you have any job
17 assignment with regards to an event that took place on November
18 5th, 2008?
19 A Would depend on that event number, sir. I was
20 working graveyard that night.
21 Q Okay. Would event 0811053918 sound familiar?
22 A Yes, sir, it does.
23 Q And what involvement did you have with that
24 particular event?
25 A Was requested to go over to the Detective Bureau on

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1 the request of the detectives. Returned to the office.
2 Photographs the clothing as each individual item was laid out,
3 and then impounded those items.
4 Q Okay, now you say you took swabs from the defendant.
5 Where did you take the swabs from?
6 A If I may refer to my report?
7 Q Would that refresh your recollection, sir?
8 A Yes, sir, it would.
9 Q Then, please do.
10 A Apparent blood swab was taken from the right index
11 finger ever the suspect.
12 Q Okay.
13 A A buccal swab kit was taken from -- which was a swab
14 to the inside of the cheek -- from the suspect.
15 Q And incidentally, what's the purpose of taking a
16 buccal swab from the inside cheek of a suspect?
17 A For DNA comparison at a later date if there is DNA
18 evidence to be compared.
19 Q Okay. And anything else?
20 A And two swabs were taken of the penis of the suspect.
21 Q Okay. And you said you also took photographs.
22 A Yes, sir, I did.
23 Q Of the defendant?
24 A Yes, sir, that's correct.
25 Q Showing you what's been admitted as State's Exhibit

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1 West Oakey to meet with homicide detectives and photograph the
2 defendant in this case and obtain evidence from him at the
3 time.
4 Q Do you see you the person that you ultimately went to
5 and photographed present here in court today?
6 A Yes, sir, I do.
7 Q Can you identify him for the --
8 MS. PALM: We'll stipulate to his identity.
9 MR. SMITH: Thank you.
10 THE COURT: All right.
11 BY MR. SMITH::
12 Q And what exactly did you do when you arrived at the
13 Detective Bureau?
14 A I met with Detective Wildemann and Detective Dean
15 Ratz (phonetic). The suspect at that time was in the interview
16 room being guarded by two police officers or being watched over
17 by two police officers. I went into the room. Detective
18 Wildemann identified or explained to the individual that I was
19 going to take photographs of him. Photographed his clothed
20 with what appeared to be apparent blood on them. There was a
21 red stain. Collected those items of clothing from him, the
22 shoes and socks. Swabbed his -- took photographs, closeup
23 photographs of his hands to show apparent blood on his hands
24 and a cut on his right index finger.
25 Took swabs from his hands, and did penile swabs at

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1 16. Did you photograph those shoes?
2 A Yes, sir, I did. Those were taken -- photographs
3 were taken at the crime lab.
4 Q Also, State's 17?
5 A Yes, sir.
6 Q And 18?
7 A Yes, sir, that's correct.
8 Q Showing you Defense Exhibit ZZ. Is that a photograph
9 that you took?
10 A Yes, sir, it is.
11 Q And Defense Exhibit AAA. Is that a photograph that
12 you took?
13 A Yes, sir, it is.
14 Q Just for the record, these were taken at the
15 Detective Bureau.
16 A That's correct.
17 Q As opposed to at the scene?
18 A At the Detective Bureau, not at the scene. And they
19 were taken in the interview room.
20 Q Thank you.
21 MR. SMITH: Judge, I'll pass the witness.
22 THE COURT: Cross.
23 MS. PALM: Thank you.
24 CROSS-EXAMINATION
25 BY MS. PALM::

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1 Q Sorry are the delay.
2 A Problem, Ma'am.
3 Q Good afternoon.
4 A Good afternoon.
5 Q When you responded to take photographs and collect
6 evidence in Mr. O'Keefe's case, that was about 3:47 in the
7 morning on November 6th?
8 A Yes, ma'am, that's correct.
9 Q And you met there with Detectives Wildemann and Ratz?
10 A That's correct.
11 Q And there were also uniformed officers there?
12 A Officer Hutcherson and Hatchet (phonetic).
13 Q Okay. And I'm just going to run through some of the
14 photographs that have already been admitted. In Defense
15 Exhibit AAA you took that photograph?
16 A Yes, ma'am.
17 Q And who is that holding Mr. O'Keefe up?
18 A It would either have been Officer Hutcherson or
19 Hatchet.
20 Q Okay. And same thing with Defense Exhibit ZZ. Who's
21 holding him up there?
22 A It would have been the same officer.
23 Q Okay. And you took closeups to show where blood was
24 on his clothing?
25 A I photographed the clothing after I had removed him

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1 Q And you also cleaned it up with some water or saline
2 or something?
3 A I used a swab with distilled water to do a swab of
4 that index finger.
5 Q Cleaned it up a little better?
6 A Yes, ma'am.
7 Q Okay. Defense Exhibit III. Is that a photograph
8 showing the injury a little bit better?
9 A Yes, ma'am, it is.
10 Q And what portion of the finger is the injury on?
11 A The first joint.
12 Q Okay. And that's his right hand?
13 A Yes, ma'am.
14 Q Did anybody point out the injury on his thumb to you?
15 A Not that I remember, no, but just a wound to the
16 right index finger, bruising to the right inside biceps,
17 scratches to the back at the belt line.
18 Q Okay. If he appeared to have an injury on his thumb
19 in some other photographs, would you dispute that?
20 A I couldn't say that it was ever pointed out to me
21 that he had an injury on his thumb. The only injury that was
22 pointed out was the injury on the right index finger.
23 Q Okay. So you're just photographing what's pointed
24 out to you?
25 A Yes, ma'am.

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1 -- I photographed the clothing on him, his pants, and then
2 photographed the clothing also at the lab to show where the
3 blood was.
4 Q So this photograph was just a closer view of Mr.
5 O'Keefe?
6 A Just to show the individual, yes, ma'am.
7 Q Okay. And Defense Exhibit DDD is a photograph --
8 A Of the lower legs to show the parent blood on the
9 pants legs of the jeans he was wearing.
10 Q Okay. Defense Exhibit EEE.
11 A Is a closeup of the hands, the backside of the hands.
12 Q Okay. And that's how it looked after or when you
13 arrived at 3:00?
14 A Yes, ma'am. Sometime after 4:00 o'clock, yes, ma'am.
15 Q Okay. So he hadn't had the opportunity to wash his
16 hands off yet?
17 A Not at all, No, Ma'am.
18 Q Okay. And Defense Exhibit FFF.
19 A Is the palmer side of the hand showing the right
20 index finger and the apparent blood on the hands.
21 Q Okay. And when you say showing the right index
22 finger, you, in fact, noted an injury when you were taking
23 those photographs.
24 A Yes, ma'am. I took an additional photograph with a
25 scale to show the size.

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1 Q Okay. Defense Exhibit KKK is just the --
2 A That's the --
3 Q -- photograph that you --
4 A -- (indiscernible) scale, yes, ma'am.
5 Q Scale. Defense Exhibit GGG.
6 A Was the bruising to the forehead.
7 Q And Defense Exhibit HHH.
8 A Same photograph with the scale in place.
9 Q Now, did you also photograph Mr. -- any injuries to
10 Mr. O'Keefe?
11 A Yes, I did. The injuries pointed out were bruising
12 to the right bicep, inside of the biceps, scratches to the back
13 at the belt line, taser marks to the left shoulder and left
14 side, abrasions to the forehead that we just saw.
15 MS. PALM: May I approach the witness, your Honor?
16 THE COURT: Yes.
17 BY MS. PALM::
18 Q (Indiscernible).
19 A Okay.
20 Q See if you recognize them?
21 A That's the right bicep. This is the back. The
22 scratches on the belt line before he -- and that's the -- that
23 a's this one with the scale.
24 Q Are these photographs I just showed you Defense 000
25 (sic), PPP, QQQ, MMM, NNN proposed exhibits, are those pictures

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1 of what you just testified about?
2 A Yes, ma'am, they are.
3 Q And they're true and accurate pictures?
4 A Yes, they are.
5 MS. PALM: Move for admission.
6 MR. SMITH: I'm sorry, which ones were they? Were
7 they the ones you already showed me?
8 MS. PALM: I showed them to you, but you --
9 MR. SMITH: Yeah. Yeah. No objection, Judge.
10 THE COURT: All right. They'll be admitted.
11 BY MS. PALM::
12 Q If you could just tell the jury what these
13 photographs show.
14 A That's bruising to the right inside of the biceps of
15 the right arm of the -- Mr. O'Keefe.
16 Q Okay. And that would be Defense Exhibit NNN and is
17 this another picture of the same thing with the scale?
18 A Same thing with the scale in place.
19 Q And what is shown in Defense Exhibit QQQ?
20 A This is the taser mark to the right upper -- or the
21 -- there's a scratch area on the left -- the right rear
22 shoulder area. It wasn't the taser mark. Taser mark's from
23 the other side of the body.
24 Q And what is depicted in Defense Exhibit OOO?
25 A Scratches just here at the belt line.

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1 Q Okay. And you wouldn't have had any role in
2 comparing the soles of these shoes to any footprints on the
3 bed, would you?
4 A No, Ma'am. I never went to the scene at all.
5 Q Now, you also used a swab to collect biological
6 evidence from Mr. O'Keefe's penis in?
7 A Two swabs, yes, ma'am.
8 Q Okay. Do you recall that Mr. O'Keefe actually
9 collected his own sample after you handed him a swab?
10 A Yes, ma'am. We handed the swabs to Mr. O'Keefe and
11 he did the swabbing himself.
12 Q Okay. And in doing the swabbing, he actually held
13 his penis with his one hand while he used the other hand to
14 collect the --
15 A Yes, ma'am.
16 Q -- sample?
17 A That's correct.
18 Q Okay. Does that not cause a contamination problem
19 with the blood on his hands being mixed with the sample that
20 you're gathering?
21 MR. SMITH: Objection as to relevance at this point.
22 THE COURT: I'm sorry, your objection again?
23 MR. SMITH: The relevance at this point.
24 THE COURT: I'm going to overrule the objection, but
25 also, let's lay the proper foundation whether or not this

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1 Q Okay. And --
2 A Then I had the -- Mr. O'Keefe lower his jeans --
3 Q So you could get a better --
4 A -- and took a better photograph with the scale in
5 place.
6 Q And would that be PPP?
7 A That would be that photograph there, yes, ma'am.
8 Q And you also collected and impounded Mr. O'Keefe's
9 shoes and clothing?
10 A Yes, ma'am.
11 Q Did you photograph the shoes?
12 A Yes, ma'am, I did.
13 MS. PALM: May I approach, your Honor?
14 THE COURT: Yes.
15 BY MS. PALM::
16 Q Showing you Defense Proposed WWW. Do you recognize
17 that?
18 A Yes, ma'am. It's the soles of the shoes that I
19 photographed at the lab.
20 MS. PALM: Move for admission of WWW.
21 MR. SMITH: No objection.
22 THE COURT: Is it will be admitted.
23 BY MS. PALM::
24 Q So these would be the soles of Mr. O'Keefe's shoes?
25 A That's correct, the soles of those shoes, yes, ma'am.

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1 officer has the expertise regarding contamination.
2 BY MS. PALM::
3 Q Are you trained regarding how to collect evidence so
4 that there's no cross-contamination problem?
5 A Yes, ma'am.
6 Q Would you agree that cross-contamination is the
7 unwanted transfer of two or more sources of physical evidence?
8 A Yes, ma'am.
9 Q Okay. And to -- are you trained in the proper method
10 to collect a penile swab or sample?
11 A Believe it or not at that time we were just told to
12 wet a swab with distilled water and either do it ourselves or
13 have the defendant or the suspect do it.
14 Q Okay. But when the suspect has a bleeding hand or
15 blood on his hands from somebody else, is it possible that that
16 could contaminate the sample that you're collecting?
17 A Yes, ma'am, it did, and it was a concern of mine. I
18 asked the detectives about it, and they said go ahead and let
19 the defendant do it himself.
20 Q Okay. And so he actually with his bloody hands
21 touched his penis and gathered the sample with the same bloody
22 hand?
23 A Yes, ma'am. All the blood on his hand at that time
24 was dry. There was no wet blood present.
25 Q Okay. Is it possible that the blood would have

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1 flaked off onto his penis anyway and been gathered up in the
2 sample?

3 A Possibly.

4 Q And might go it have been a better procedure to give
5 him gloves or to have him wash his hands first?

6 A The detectives didn't -- we could have taken him to
7 wash his hands, yes.

8 Q While you were there, was Mr. O'Keefe completely
9 cooperative with your request to collect evidence?

10 A Completely.

11 Q Did you yourself notice any evidence that he appeared
12 to be intoxicated?

13 A I was up close taking the closeup photograph of him.
14 I didn't -- I don't remember smelling anything. He could have
15 been. He could have been under the influence, but I -- he
16 seemed to be upset.

17 Q Okay. Were you present when he was dressed out to
18 give you his clothing?

19 A Yes.

20 Q Do you recall that he had to be steadied by somebody
21 to be dressed?

22 A To put the bloody suit on, yes, ma'am.

23 Q Okay. And do you recall Detective Wildemann helping
24 him put a boot on because he couldn't get it on right?

25 A That I don't remember.

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1 Q Did you observe any contamination on those samples?

2 A No, I did not.

3 MR. SMITH: No further questions.

4 RE-CROSS-EXAMINATION

5 BY MS. PALM::

6 Q When Mr. O'Keefe was swabbing the inside of his cheek
7 with the buccal swab, he doesn't actually stick his finger into
8 his mouth, does he?

9 A No, Ma'am.

10 Q Okay.

11 A No, Ma'am, just the --

12 Q Just the --

13 A It's -- it looks like a tooth brush. It's
14 approximately six inches long, maybe.

15 Q Okay. And as far as blood contamination of the
16 penile swab goes, it's possible that it could be contaminated,
17 but you wouldn't see it because it would be small fleck of
18 blood.

19 A That's correct.

20 MS. PALM: Nothing else.

21 THE COURT: Anything else, Mr. Smith?

22 FURTHER REDIRECT EXAMINATION

23 BY MR. SMITH::

24 Q For the record, can you describe how long the
25 apparatus that's used to obtain the buccal swab from the mouth

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1 Q Are you aware of any policy that Metro has regarding
2 the collection or preservation of a defendant's blood or breath
3 alcohol level?

4 A No, Ma'am, I'm not.

5 Q That would not be your decision?

6 A No, Ma'am, that's not my area.

7 Q And not something you would participate in?

8 A No, Ma'am.

9 MS. PALM: No more questions. Thank you.

10 MR. SMITH: Couple questions, Judge.

11 REDIRECT EXAMINATION

12 BY MR. SMITH::

13 Q CSA Ford, can you tell us the procedure that was used
14 to collect the buccal swab from the defendant's mouth?

15 A Same thing, we gave the -- handed the -- it looks
16 like a small tooth brush -- handed that to the defendant. He
17 -- to swab the inside of his -- there was two of them. To swab
18 the inside of the right cheek. He returned it to us that goes
19 directly into a cardboard box, a small cardboard box. Hand him
20 the second tooth brush type to swab the inside of the other
21 cheek and again, it goes back into the box by himself (sic).

22 Q Did you observe the samples once he had given them
23 back to you?

24 A Just noticed them going back inside the box, that's
25 all. The box was sealed and the package is sealed.

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1 is?

2 A Approximately six inches long, I would say. A rough
3 guesstimate.

4 Q And how long is the business end? That is, the
5 actual surface area that's used to obtain the cells from the
6 inside of the mouth?

7 A Between three quarters of an inch to an inch, and
8 it's probably less than an eighth of an inch wide.

9 Q So when you handed the specimen or the apparatus to
10 obtain a specimen from the defendant, I mean, how did he do it?

11 A We -- it's in a sealed package. We break open the
12 package. We pull the item out holding the handle in and pass
13 it to the individual. They take it from us and scrape the
14 inside of their mouth and drop it in this small box -- in the
15 small box. We hand them the second item. They swab the other
16 side of their mouth and drop it in the box.

17 Q And again, is -- excuse me, as Ms. Palm just asked
18 you, in this case, you didn't see the defendant stick his
19 entire hand in his mouth; is that correct?

20 A No.

21 MR. SMITH: No further questions.

22 THE COURT: Any follow up, Ms. Palm?

23 MS. PALM: No.

24 THE COURT: Any questions from the jurors? No. All
25 right, thank you, sir. You are instructed not to discuss your

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1 testimony with any other witness involved in this case until
2 this matter is finally resolved. Thank you for your type, sir.
3 THE WITNESS: Thank you, your Honor.
4 THE COURT: Next witness for the State.
5 MR. SMITH: Judge, can we approach real fast --
6 THE COURT: All right.
7 MR. SMITH: -- please.
8 (Bench conference).
9 THE COURT: State's next witness, please.
10 MR. SMITH: Judge, the State calls Robbie Dahn.
11 THE MARSHAL: If you'll just remain standing. Raise
12 your right hand, please.
13 ROBBIE DAHN, PLAINTIFF'S WITNESS, SWORN
14 THE CLERK: Please be seated. Will you please state
15 your name and spell it for the record, please.
16 THE WITNESS: Yes. My name is Robbie Dahn. My first
17 name's spelled R-o-b-b-i-e. Last name spelled D-a-h-n.
18 MR. SMITH: May I proceed, Judge?
19 THE COURT: Yes.
20 MR. SMITH: Thank you.
21 DIRECT EXAMINATION
22 BY MR. SMITH:
23 Q Ms. Dahn, how are you presently employed?
24 A I'm a senior crime scene analyst with the Las Vegas
25 Metropolitan Police Department.

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1 swabs, and I took some samples of blood, and I located a hair
2 and also the clothing.
3 Q Can you tell us where you located these items?
4 A On the body of Victoria Witmarsh.
5 Q Okay. Did you prepare any reports pursuant to that?
6 A Yes, we prepare an autopsy report.
7 Q Would looking at your report refresh your
8 recollection as to specifically where you recovered specific
9 items with regards to this case?
10 A Yes.
11 MR. SMITH: May I approach the witness, Judge?
12 THE COURT: Yes.
13 BY MR. SMITH:
14 Q I'm just going to ask you to review your report, and
15 then see if that refreshes your recollection as to specifically
16 where you obtained or retrieved items of evidence in this case.
17 A Yes. In general I collected the items from the body,
18 but a buccal swab kit, that's collected from the mouth. And
19 then I had many different biological swabs that were collected
20 from different areas. Did you want me to go through
21 specifically each item?
22 Q No, I think you've done well enough. And you
23 obtained these items from Victoria Witmarsh?
24 A Yes, I did.
25 Q And what did you do with them after you obtained

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1 Q And how long have you been working in that capacity?
2 A July will be 11 years. 10, 10 and a half years.
3 Q (Indiscernible) does as a crime scene analyst, did
4 you have occasion to respond to a 5001 El Parque on the night
5 or early morning of November 5th or November 6th, 2008?
6 A No, I did not.
7 Q Okay. How did you become involved with the event
8 that transpired at that place?
9 A I work on the day shift. I report to work at 6:00 in
10 the morning. The day shift people are responsible to respond
11 to the autopsies, and that day I was assigned to work an
12 autopsy that was affiliated with this case.
13 Q Okay. And was that an autopsy on a descendant by the
14 name of Victoria Witmarsh?
15 A Yes.
16 Q So where did you respond to fulfill your duties in
17 this investigation?
18 A I went over to the Clark County medical examiner and
19 coroner's office.
20 Q Did you obtain any evidence at that location?
21 A Yes, I did.
22 Q And what did you obtain?
23 A Our duties there are to photograph as well as to
24 collect evidence. I collected a buccal swab kit. I collected
25 many biological swabs such as cervical swab, rectal swab, oral

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1 them?
2 A I took them back to the CSI section of the Las Vegas
3 Metropolitan Police Department and I booked those into
4 evidence.
5 Q Did you impound any clothing pursuant to this?
6 A Yes, I did. The descendant had two items of upper
7 body clothing. A tank top and a small little jacket, and I did
8 impound those.
9 MR. SMITH: Pass the witness, Judge.
10 THE COURT: Cross.
11 CROSS-EXAMINATION
12 BY MS. PALM:
13 Q I missed it if you said it. You collected fingernail
14 clippings from the descendant?
15 A That was one item. I didn't go through every single
16 item in that biological kit, but I did -- the hands had bags
17 over them, and I did collect fingernail clippings.
18 Q Okay. And are those sometimes collected in order to
19 determine whether a deceased person has someone else's DNA
20 under fingernails?
21 A Yes.
22 Q And do you know whether any testing was done on that
23 -- on those fingernails?
24 A I don't have that knowledge.
25 MS. PALM: No more questions. Thank you.

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1 THE COURT: Mr. Smith, anything further?
 2 MR. SMITH: No, Judge, not from this witness.
 3 THE COURT: Any questions from the jurors? All
 4 right. Thank you, Ma'am, for your testimony. You're
 5 instructed not to discuss your testimony with any other witness
 6 involved in this case until this matter is finally resolved.
 7 Thank you for your time.
 8 THE WITNESS: Thank you, sir.
 9 THE COURT: Another witness for the State. All
 10 right. Ladies and gentlemen, we're going to recess at this
 11 time. It's about 4:35 or so. We've had a long day and I
 12 appreciate your patience. I've got a relatively short calendar
 13 tomorrow so we'll come back at 9:30 tomorrow morning.
 14 During this recess it is your duty not to converse
 15 among yourselves or with anyone else on any subject connected
 16 with the trial or read, watch or listen to any report over
 17 commentary on the trial by any person connected with the trial
 18 or by any medium of information including, without limitation,
 19 newspaper, television, radio or the Internet.
 20 You're not to form or express an opinion on any
 21 subject connected with this case until this matter is finally
 22 submitted to you for your deliberation. We'll see you back at
 23 9:30 tomorrow morning. Thank you.
 24 (Jury exits).
 25 (Outside the presence of the jury)

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1 specifically states what we must provide, and the Supreme Court
 2 of the United States has imposed additional requirements up on
 3 us, i.e., exculpatory evidence. This is not exculpatory
 4 evidence.
 5 Furthermore, it's our position that Officer
 6 Hutcherson was noticed well in advance of trial, and had they
 7 -- the defense pretried Officer Hutcherson and asked what he
 8 stated, they could have found this information out. It's my
 9 understanding that in a phone conversation that co-counsel had
 10 with Mr. Hutcherson -- I guess it was today or this morning --
 11 that he relayed those statements.
 12 And it's not discovery because it wasn't
 13 memorialized. That's our position.
 14 THE COURT: Anything further, Ms. Palm?
 15 MS. PALM: Our position is they had knowledge of it.
 16 They supposedly have an open file. We've been communicating
 17 all along so that we could rely on them to tell us if there was
 18 any evidence that was that prejudicial so that we can make an
 19 issue of it and bring it in front of the Court. And I think
 20 they had a duty to bring that issue in front of the Court
 21 themselves because they should know that that word is going to
 22 be extremely prejudicial, and we have some rights to -- with
 23 respect to that.
 24 THE COURT: Mr. Smith, you didn't really address the
 25 issue of the N word.

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1 THE COURT: Let the record reflect we're outside the
 2 presence of the jury panel. Ms. Palm, I think you had a motion
 3 for mistrial.
 4 MS. PALM: Yes, I have a moving for a mistrial, your
 5 Honor. We were surprised by the testimony of Officer
 6 Hutcherson with regard to the additional statements outside of
 7 the statements that were contained in the note we were
 8 provided. And specifically, our client is prejudiced by the
 9 statement referring to nigger music.
 10 Certainly if we had known about that statement, we
 11 might have changed our trial strategy. We might have changed
 12 our voir dire questioning. We had no notice of that, and
 13 Officer Hutcherson testified that he did tell the District
 14 Attorney about his additional statements that he was going to
 15 present today, and we were never informed of it.
 16 We would have done a motion to preclude any reference
 17 to the word nigger because it's certainly not relevant to
 18 anything in this case. And it is highly prejudicial, so we are
 19 moving for a mistrial on the basis of discovery violation and
 20 the prejudice attached to that word.
 21 THE COURT: Mr. Smith.
 22 MR. SMITH: Judge, it's not a discovery violation in
 23 that as we addressed at the bench, the State had no advance
 24 notice of the statement. It wasn't written down. It wasn't
 25 preserved. It wasn't memorialized. The discovery statute

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1 MS. GRAHAM: Well, should I address that, Judge?
 2 THE COURT: Someone.
 3 MS. GRAHAM: Officer Hutcherson was on FMLA leave the
 4 entire time. We didn't have a phone number to contact him.
 5 Although, as co-counsel Smith has indicated, he was noticed,
 6 and the defense had full opportunity to pretrial him
 7 themselves, as they did several of the witnesses.
 8 Last night I got ahold of him probably about 8:00
 9 o'clock. He returned a phone call from me. His wife had just
 10 had a baby. I told him that I did need him here. I told him
 11 that --
 12 THE COURT: I'm not -- I'm not -- I mean, my question
 13 isn't addressed towards the discovery issue. It's to the use
 14 of the racial slur.
 15 MS. GRAHAM: He indicated last night during
 16 conversation I asked him what his involvement was in the case,
 17 and he basically told me exactly his involvement in the case of
 18 being posted outside the door, that he had control over the
 19 defendant.
 20 And I indicated that I needed him to address the
 21 statements that the defendant had made to him while he was over
 22 his watch.
 23 MS. PALM: And that tells me she did not caution him
 24 not to just blurt out the racial slur, and she did not think of
 25 bringing it to the Court's attention or to our attention, but

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1 she knew about it.

2 MR. SMITH: Judge, I will submit that your Honor
3 sustained the objection. If your Honor is duly concerned about
4 it, you can issue a corrective instruction that the jury is to
5 pay no attention to that. But I submit that it's merely not
6 warranted at this juncture.

7 I mean, all they heard was turn off that N music, and
8 I mean, that was it.

9 MS. PALM: And your Honor, if I heard that, it would
10 make me not like somebody. It would make me hold it against
11 them. I would judge them unfairly for it, I'm sure. That
12 would be a hard thing to put out of my mind. I can imagine it
13 would be hard to put out of a juror's mind.

14 THE COURT: As far as discovery violation, I don't
15 find that. There was nothing memorialized that the State
16 withheld. So I don't find a discovery violation, and the
17 officer's statement is immediate objection. I don't feel that
18 that rises to any level of undue prejudice in this case that
19 would warrant a mistrial, so motion of mistrial is denied.
20 Anything else before we start tomorrow morning?

21 MR. PIKE: Yes, your Honor. I'd like to thank the
22 State. They were able to obtain a faxed copy of the use of
23 force report that was prepared in this case. They've provided
24 a copy to me as soon as they received it. I've gone through
25 that, and I -- if there are any issues in relationship to

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1 What we might have -- what we request the Court to do
2 or the defense may request the Court to do is to indicate that
3 the number of photos are inordinate because of the biological
4 issues that were with this and that we can't bring the things
5 in for them to hold and to examine so we've had to put in a
6 large numbers of photographs or we can just argue it at
7 closing. Whatever the Court would prefer.

8 THE COURT: I think it's appropriate that we do put
9 that stipulation on the record, obviously, in front of the jury
10 panel. And if the parties wish, I can make that quick -- you
11 know, the brief statement to the jury that we have so many
12 photos because we have to show these pieces of evidence because
13 we can't bring them into court.

14 MR. PIKE: And it has been a little bit cumbersome
15 because we can't just hold up a shoe or the knife --

16 THE COURT: Right.

17 MR. PIKE: -- or like that. All right, thank you.

18 THE COURT: State agrees for the Court to make that
19 statement to the jury as far as --

20 MR. SMITH: No problem whatsoever, Judge.

21 THE COURT: Anything else?

22 MR. SMITH: Judge, and just if I could supplement the
23 record with regards to Ms. Palm's motion for a mistrial with
24 regarding a potential prejudice against her client because of
25 the testimony that's come out. I will represent to the Court

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1 additional reports or additional testimony that we'll need to
2 introduce at that time, we'll subpoena the appropriate officers
3 to come in.

4 I don't anticipate that we will from my initial
5 review of it. But they obtained it pursuant to the Court's
6 order and got it to me very early on in the afternoon.

7 Another procedural matter is that we have been
8 entering into stipulations with the State, and I don't know the
9 Court's position, but I assume that it's with the Court's
10 permission to try and resolve questions so that we don't have
11 to call in witnesses like with the search warrant and things
12 like that. So I don't mean to intrude upon the Court's
13 protocol --

14 THE COURT: Not at all.

15 MR. PIKE: -- but so long as we're involved with
16 that. Because of the blood evidence, we have an inordinate
17 number of pictures. We are -- we have stipulated that all of
18 the evidence that was collected was maintained within the
19 appropriate change of custody for the people that subsequently
20 tested it. And that for instance, like the shoes, they can't
21 bring them in and hold them because they got blood on them.

22 So we'll -- with the Court's permission, we'd ask an
23 opportunity to again, state that to the jury that the evidence
24 that was photographed was impounded is properly preserved and
25 the testing occurred.

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1 that we will take gave caution not to refer to that material
2 again in either the closing argument or the rebuttal argument.

3 We won't make statements like, you know, you heard
4 what Officer Hutcherson said which would kind of invite them to
5 considered the entirety of what they said, and we'll keep our
6 arguments strictly limited so that there's no inference or, you
7 know, bringing that -- those statements up again.

8 THE COURT: All right. I appreciate that.

9 MR. SMITH: Thank you.

10 THE COURT: Anything else? Perhaps in the afternoon
11 tomorrow at one of the breaks we'll start working on the jury
12 instructions.

13 MR. PIKE: Thank you, your Honor.

14 THE COURT: All right.

15 (Court recessed at 4:47 p.m., until
16 Tuesday, March 18, 2009)

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ACKNOWLEDGEMENT

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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Julie Lord
JULIE LORD, TRANSCRIBER

7-7-09
DATE

COPY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

COPY

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN KERRY O'KEEFE,

Defendant.

.....

.
. CASE NO. C-250630

.
. DEPT. NO. 17

.
. TRANSCRIPT OF
. PROCEEDINGS

FILED

JUL 10 2009

E. M. Smith
CLERK OF COURT

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

WEDNESDAY, MARCH 18, 2009

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 3

APPEARANCES:

FOR THE PLAINTIFF:

PHILLIP SMITH, ESQ.
STEPHANIE GRAHAM, ESQ.
Deputy District Attorneys

FOR THE DEFENDANT:

RANDALL H. PIKE, ESQ.
PATRICIA A. PALM, ESQ.
Special Public Defenders

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Littleton, CO 80120
(303) 798-0890

1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 18, 2009, 9:34 A.M.
2 (Outside presence of the jury)

3 THE COURT: On the record. All right. On the record
4 we're outside the presence of the jury. We had some motions by
5 the defense.

6 MS. PALM: Yes, your Honor. Thank you. And I have
7 given the clerk a copy of what I would like to have made three
8 separate court exhibits. Not so that they go to the jury, but
9 that they're part of the record on appeal in this case. And I
10 understand that those can be marked as court exhibits for that
11 purpose.

12 THE COURT: All right.

13 MS. PALM: Okay. Your Honor, the court exhibit
14 showing the e-mail correspondence between the defense counsel
15 for Mr. O'Keefe and the State and Detective Bunn, which
16 Detective Wildemann was copied on show that prior to the
17 preliminary hearing we --

18 THE COURT: Just so I'm clear, is that the December
19 the?

20 MS. PALM: Well, it's a series of them. There's
21 several of them there.

22 THE COURT: Okay.

23 MS. PALM: And I'll go through what they're intended
24 to show. It shows that on December 9th, 2008 we requested,
25 prior to preliminary hearing a copy of any reports by any other

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1 quote, under the officer's assessment of his condition mentally
2 ill or under the influence. The report further indicates,
3 quote, Mr. O'Keefe appeared extremely intoxicated and continued
4 to be erratic and emotional in his behavior. O'Keefe was not
5 asked questions due to his involvement in a possible homicide.

6 This is the first time we've had any documentation
7 regarding Mr. O'Keefe's extreme intoxication. There was no
8 mention at all of intoxication in the police reports prepared
9 by the detectives in this case. The detectives and the State
10 knew of our theory of defense which depended on his extreme
11 intoxication because we asked about it at preliminary hearing,
12 and we moved to preclude the State from seeking a first degree
13 murder conviction based on the failure to collect evidence and
14 preserve evidence of that intoxication.

15 It is the detective's lie that there was no report
16 that prejudiced us. When he was called yesterday on speaker
17 phone, he no longer said there was no report. He said I can't
18 get it for you. And when the Court ordered him, he got it. If
19 we had known that he wanted a court order, we would have gotten
20 one. So his lie that there was no such report caused us to be
21 prejudice relied on that.

22 Under Madison versus Warden (phonetic), which is 116
23 Nevada, 48, page 67, 993 Pacific 2nd, 25, Page 33, it's a 2000
24 case, quote, the State must disclose evidence if it provided
25 grounds for the defense to attack reliability, thoroughness and

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1 officers aside from the Bunn/Wildemann officers report and
2 arrest report. We were told that they were none. After the
3 preliminary hearing at which Ballejos testified he completed a
4 use of force report, and Detective Bunn indicated that there
5 was no more discoverable evidence for us, we specifically
6 requested on February 23rd, 2009 the use of force report
7 prepared by Officer Ballejos. Mr. Smith forwarded that request
8 to homicide detectives. The response we got on February 25th,
9 2009 from Detective Bunn was not that the evidence could not be
10 obtained without a court order. Instead, it was that there is
11 no separate report. Only taped statement which you guys
12 already have as supplemented by the officer's report.

13 When it became clear from Officer Ballejos' testimony
14 yesterday that he did, indeed, complete a use of force report
15 and upon our motion for a mistrial based on discovery
16 violation, the court ordered the detectives to provide the
17 report, and he did that one minutes.

18 Now having time to review that report, which is
19 another of the court's exhibits that I submitted, I submit that
20 my client's due process rights under the Nevada Constitution
21 and the Federal substitution have been violated because I would
22 have used the information in that report to cross-examine every
23 single one of the many State's witnesses who tried to deny or
24 minimize Mr. O'Keefe's extreme intoxication.

25 The report specifically notes that Mr. O'Keefe was,

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1 good faith ever police investigation to impeach credibility of
2 State's witnesses or to bolster the defense case against
3 prosecutorial facts. This obligation's not limited to evidence
4 that is admissible at trial. Further, the State's attorney is
5 charged with constructive knowledge and possession of evidence
6 held by other state agents, including law enforcement officers.

7 Due process under the state and federal Constitutions
8 and a failure to turn over the evidence will cause a reversal
9 to conviction where the evidence was reasonably possible to
10 lead to a different outcome. That's Roberts versus State, 110
11 Nevada, 112-1881 Pacific 2nd 1, and that's 1994 case.

12 Now, as far as the issue of the due process violation
13 related to Officer Hutcherson's testimony, I have filed for --
14 as for exhibit a copy of the note that we received in discovery
15 that was all we got regarding Officer Hutcherson's, the alleged
16 statements made by Mr. O'Keefe to him.

17 THE COURT: Let me just locate that. Here it is. I
18 do. Thank you.

19 MS. PALM: This and the same references in the arrest
20 or officer's report are the only items of discovery indicating
21 what Officer Hutcherson claimed to have heard. The District
22 Attorney's open file policy creates an obligation for them to
23 turn over all inculpatory and exculpatory evidence in their
24 possession or constructive possession. That's McKey versus
25 State (phonetic), 112 Nevada 642, 917 Pacific 2nd, 940. That's

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1 a 1996 case.

2 We relied on the District Attorney to do this, and at
3 least Mr. Smith has, with respect to additional oral statement
4 by witness Cheryl Morris. The DA mentioned that we could have
5 pretried Officer Hutcherson, but in our experience Metro
6 officers are reluctant to talk to us and will rarely do so if
7 we don't go through the DA. And yesterday Ms. Graham indicated
8 that she could not even pretrial him until Monday night because
9 he was on FMLA leave.

10 We have been very vigilant with respect to keeping
11 out prejudicial evidence with no relevance. For instance, the
12 renaming of the sexual assault kit issue we had yesterday. We
13 would have objected and moved to preclude any evidence of
14 racial slurs as they have no relevance to this case and are
15 extremely prejudicial. Their introduction to apprise Mr.
16 O'Keefe of his due process rights.

17 The introduction of this bad act evidence is not
18 something that be cured in a jury instruction or attempt to
19 deny it would likely remind the jury of the evidence. Our
20 investigator Joe Perez (phonetic) was watching the jury
21 yesterday, and he told us after court that he saw a couple of
22 jurors react to the reference to the N word. Most notably the
23 one black juror that we have who looked at Mr. O'Keefe directly
24 when that statement was made with an expression of disbelief or
25 surprise.

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1 to this court. When the offending words were spoken by Officer
2 Hutcherson, we approached the bench and as we made our
3 objections, Mr. Smith indicated that the State was not aware of
4 the N word statements. Ms. Graham stood right there beside him
5 and said nothing. It was not until after I crossed Officer
6 Hutcherson, and he indicated that he pretried with the DAs in
7 this court, and he told them of the statements that Ms. Graham
8 admitted that she had indeed learned of them the evening
9 previous. That would be Monday night. Yesterday was Tuesday.

10 Officer Hutcherson did not testify until mid, late
11 afternoon Tuesday. Ms. Graham's actions were purposeful,
12 prosecutorial misconduct. She purposely misled this court, the
13 bench, and she purposely introduced bad act testimony. She
14 knew that those statements were claimed to have been made by
15 Mr. O'Keefe, and she repeatedly asked Officer Hutcherson what
16 else did Mr. O'Keefe say.

17 She clearly intended to sandbag us with those
18 statements having never given us the opportunity to address
19 their admissibility before introducing them and undoing all our
20 efforts to eliminate unfair prejudice from this trial.

21 So on the basis of cumulative error related to the
22 discovery violations and prosecutorial misconduct violating Mr.
23 O'Keefe's due process rights to a fair trial, we move for a
24 mistrial and a motion to dismissal with prejudice. If this
25 Court is not inclined to reconsider our motion for a mistrial,

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1 Also, it is important to note that Officer Hutcherson
2 and Mr. Smith, the Deputy DA, trying this case are both
3 African-American, and I believe that such a racial slur is
4 likely to cause the jurors to more closely align themselves
5 with the State out of empathy or common experience or anger as
6 they reject Mr. O'Keefe.

7 The fact that such derogatory statements were alleged
8 to have been made to a black officer just enhances the
9 prejudice. As a person of color and a mother of children of
10 color and a grandchild of color, I can tell you that there is
11 always a fear of secret prejudice such as you don't get a raise
12 that somebody else in the same position you do has. Overt
13 prejudice is even more frightening.

14 Overt prejudice of somebody that is willing to use
15 the N word to a black officer makes me afraid of what that
16 person is capable of doing. I also note that on the jury we
17 have in addition to the one African-American juror, we have I
18 believe three Hispanic jurors who might have had the same
19 experience as in life and might feel the same way and be
20 affected, especially strongly by that evidence. I don't assume
21 that white jurors don't have the same reaction because I don't
22 know what the facts of their life are, and we weren't able to
23 voir dire any jurors on race issues.

24 I believe that Ms. Graham's actions constitute
25 prosecutorial misconduct and also violated her duty of candor

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1 I would like to note just a couple more things.

2 I don't mean to suggest by my argument that I'm
3 afraid of Mr. O'Keefe. I don't believe that he said what he
4 was accused of at all. And if I did, I would be effective
5 counsel in any case. Finally, I want to question what is going
6 on with the pretrial tactics in this case for future use and
7 post-convictions proceedings because we've had several of Ms.
8 Graham's witnesses adding in their testimony additional
9 inculpatory facts that have never before been mentioned. For
10 example, Mr. Toliver's testimony that Mr. O'Keefe had a crazy
11 angry look on his face was not mentioned in his written
12 statement or recorded statement nor did he mention it when we
13 interviewed him.

14 Officer Ballejos who had given a recorded statement
15 and testified at the preliminary hearing had never before
16 mentioned that Mr. O'Keefe was giving a false last name for Ms.
17 Witmarsh as if to give a complete and deliberately false name
18 to frustrate the ability to give aid to her.

19 I want to note this last question just for the
20 future. But as far as a remedy goes, up until this point this
21 court has not even admonished the State regarding their
22 misconduct. Ms. Graham was not even admonished regarding her
23 false representation to this court. And yet, when we came in
24 this morning, this court made a comment about accusing counsel
25 on the opposing side of being unethical. And I don't think

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1 that's fair.

2 I think it's a job requirement of a public defender
3 to be willing to accuse prosecutors of intentional misconduct
4 when we see it. If this court is not inclined to grant our
5 motion, then we are requesting these alternative reliefs: One,
6 we want to prohibit the State from seeking a first degree
7 murder conviction and limit them to the second degree.

8 We also want the court to instruct the jury prior to
9 Detective Wildemann's testimony as follows: On February 23rd,
10 2009, counsel for Mr. O'Keefe specifically requested from the
11 State the use of force report prepared by Officer Ballejos. On
12 February 25th, 2009 the State responded that there was no such
13 report. Yesterday after Officer Ballejos testified in this
14 trial, this court ordered the State to turn over the use of
15 force report. They have now done so.

16 I also want to be able to introduce Ballejos'
17 statements regarding the extreme intoxication in the use of
18 force report through Detective Wildemann and have some latitude
19 to do that. We're also asking for a jury instruction that has
20 conclusively established that Mr. O'Keefe was extremely
21 intoxicated at the time the officers responded to the scene of
22 the incident in question, and they are to consider that as
23 evidence as they deliberate regarding any intent requirements
24 in the charges they are considering.

25 And finally, because of -- instead of preparing my

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1 those types of allegations were made based upon this pretrial
2 conference payment. So it had nothing to do with this case, so
3 -- but I appreciate your comment.

4 Mr. Smith, I'm more concerned about this report
5 coming out now. I don't believe Ms. Palm is accusing you of
6 withholding it. I don't think she's doing that, and I'm not
7 interpreting it in that fashion. But I am concerned that it
8 was not provided to you upon your request because it does
9 appear to have pertinent information that should have been --
10 that would have been used on cross-examination of probably all
11 the officers that testified about being in the apartment.

12 MR. SMITH: Understood. Judge, it's our position
13 that even assuming arguing, though, everything that Ms. Palm
14 has argued with regards to them not getting this report, I
15 mean, the first thing the Court should consider is is there an
16 actual prejudice.

17 I think it's clear to the jury that the defendant's
18 defense is that he was extremely intoxicated that night. And,
19 in fact, through rather effective cross-examination, despite
20 the State's attempts to preclude any of that from coming in
21 during our case in chief and trying to force them, the
22 defendant, to have to get on the stand and testify himself to
23 his level of intoxication, your Honor has allowed Ms. Palm to
24 -- and Mr. Pike to effectively cross-examine each of the
25 State's witnesses and elicit testimony indicating that he was

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1 client to testify and working on things that I should have been
2 working on, we've had to use our evenings with these long trial
3 days to respond to the State's misconduct. And so I would ask
4 that we not be required to close until Friday no matter what
5 time we finish on Thursday because I just haven't had time to
6 prepare an effective closing that responds to the evidence as
7 it has come in.

8 THE COURT: Thank you, Ms. Palm. Just so we're
9 clear, Ms. Palm, I believe at close of yesterday's testimony
10 off the record, I think there was just some banter between
11 counsel and the court regarding a case this court had three or
12 four weeks ago where it became very personal, and that's what
13 the court was referring to. Not this particular case as far as
14 anyone being unfair. And I think Mr. Pike -- at least I
15 thought he acknowledged that he understood what we were
16 referring to as far as the issue of pretrial payments. That's
17 what the court was referring to, and I thought that's what all
18 parties understood that to be.

19 MS. PALM: I did not understand that, so I appreciate
20 that.

21 THE COURT: Okay.

22 MS. PALM: Thank you.

23 THE COURT: And I knew the State was aware of that
24 because what they had mentioned that they had heard about a
25 case three or four weeks -- or actually two weeks prior where

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1 either very intoxicated, highly intoxicated or intoxicated.

2 In fact, when Mr. Ballejos was on the stand, Ms. Palm
3 -- if my memory serves me correctly or whether it was Ms. Palm
4 or Mr. Pike, I don't know who asked them, but they even
5 referred to Mr. Ballejos' testimony at the preliminary hearing
6 that the defendant smelled real heavily of alcohol, quote, end
7 quote.

8 So I don't see where the possible prejudice is in
9 that -- I mean, Ms. Palm is basically trying to argue that the
10 jury has no idea that a, our defense is going to be that this
11 guy was really intoxicated to formulate the intent. And oh, by
12 the way, that's what they argued in the opening argument. And
13 b, that there's no evidence that he was intoxicated. There's
14 clearly evidence that he was intoxicated.

15 Now, the level whether it was extremely, moderate or
16 severe, I mean, to -- really, Judge, we're splitting hairs.
17 That's the State's position. Furthermore, with regards to --
18 and that's with regards to the first highlighted portion where
19 it says officer assessment of citizen condition, mentally ill
20 or under the influence. Judge, that --

21 (Off the record colloquy).

22 MR. SMITH: One officer, but we've heard it from at
23 least two that I can recall that yes, Mr. O'Keefe was under the
24 influence. We had to help him stand up. Yada, yada, yada.
25 Furthermore, I open that when Detective Wildemann gets on the

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1 stand, they're going to do the same thing, ask Detective
2 Wildemann questions that they hope to illustrate the fact that
3 he was intoxicated.
4 Now, with regards to the other statement on Page 4 of
5 the report, O'Keefe appeared extremely intoxicated and
6 continued to be erratic and emotional in his behavior, Judge, I
7 think that's out as well. One of the defense counsels, and
8 forgive for not knowing which one, but I remember one of them
9 asking one of the officers was Mr. O'Keefe behaving
10 erratically, and the answer was yes. It might have been even
11 from a lay witness that Mr. O'Keefe was behaving erratically.
12 So for this to rise to a level of a due process
13 violation, Judge, it just doesn't pass the muster because there
14 really is no prejudice. And I would, for the record, object to
15 an instruction saying that he was under the influence. I think
16 it's up for the jury to determine -- I mean, that's a question
17 of fact whether or not he was intoxicated. Not a question of
18 law. That's a question of fact.
19 This isn't a DUI case where we have evidence that he
20 was intoxicated past a certain level and he's charged with
21 that, and that's why we're here. That's a question of fact.
22 So I steadfastly maintain that there should be no jury
23 instruction saying that he was intoxicated. But we also
24 maintain that there's absolutely -- there just isn't any
25 prejudice. I think it's clear that the defendant was

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1 prejudice here. I mean, it's not like this is -- I think what
2 we're arguing, Judge, is, you know --
3 THE COURT: Well, we're arguing that Metro didn't
4 turn this report over to you. Again, I'm not blaming -- I
5 don't think you or Ms. Graham withheld this report at all.
6 MR. SMITH: Judge, I do submit that there's no
7 prejudice, and I submit that there are things that this Court
8 can do to cure any perceived prejudice or any concern that the
9 Court has short of granting a mistrial.
10 THE COURT: Ms. Palm, why can't we just call these
11 officers you want back on the stand and confront them with this
12 report? It may even have more impact on your case because now
13 you can say well, now we have this report, why didn't you say
14 this the first time?
15 MS. PALM: Well, for a few practical reasons. One, I
16 think we are all acutely aware yesterday that the jury was
17 tired of hearing from the arrest officers. It's not going to
18 be as effective now when they're tired of hearing from them, we
19 bring them back, and it's not in the same -- it's not in the
20 context of their entire testimony. It's going to be
21 bifurcated, and that's hard to put together. And also --
22 THE COURT: Well, let me stop your drive. I don't
23 know that they were tired of their testimony. With all due
24 respect to the State, I think they were tired of okay, who was
25 lined first, who was second, who was third, who was fourth,

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1 intoxicated. Now as to the level of intoxication, that's also
2 a question of fact.
3 Whether one officer says he was extremely intoxicated
4 or that he was kind of intoxicated or he was mentally ill, the
5 evidence is out there. The jury's going to be able to make a
6 determination as to Mr. O'Keefe's ability and/or intent to
7 carry out the acts that the State has charged him with doing.
8 THE COURT: Didn't one of the officers testify that
9 he may have smelled some alcohol, but he didn't really go any
10 further as far as his conduct or maybe he even said I didn't
11 notice, something along those lines.
12 MR. SMITH: That was one officer. But there was also
13 another officer who said he smelled of alcohol. I mean, Judge,
14 this was -- as you've heard testimony, this was a dynamic
15 situation. Not all of the five officers observed Mr. O'Keefe
16 in the same light. I mean, that's a reasonable interpretation
17 under these facts.
18 Some of the officers -- some of the testimony's
19 coming out -- have come out that yes, the guy was intoxicated.
20 I could tell he was intoxicated. Other people like for
21 instance, Detective Shawn Taylor, he said well, I don't know
22 because I really -- you know, I wasn't paying attention to
23 whether he was intoxicated. But again, Officer Ballejos said
24 yes, I -- he smelled of alcohol.
25 So, I mean, I just -- the State just fails to see the

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1 where were you standing, et cetera, et cetera. I think that's
2 -- they heard that five times, and I think at that point they
3 started to roll their eyes. I think that's -- they weren't
4 tired so much of the specifics dealing with your client. It
5 was just more of, you know, going over -- placing everybody
6 over and over. I think that's what they were getting tired
7 about.
8 MS. PALM: Well, even if you don't believe they're
9 tired of hearing from the same witnesses, I think that it's not
10 as effective to have a bifurcated cross-examination about
11 intoxication. Almost every single one of their witnesses
12 minimized the intoxication of Mr. O'Keefe or denied it
13 completely. We've never had before evidence that he was
14 extremely intoxicated.
15 Some people said he smelled of alcohol. Other people
16 thought even saying anything at all. So I don't see how it can
17 be effective cross-examination at this point when it's not going
18 to be at the same time as their testimony was received.
19 THE COURT: Well, you know, many times cases do get
20 tedious. For example, in a civil case when we're dealing with
21 contract issues, you'd be amazed on how many times we have to
22 talk about, you know, paragraph 17 in front of a jury for an
23 entire week. And so, you know, I have a little bit more faith
24 in the jurors than you do. So what I'm going to do is I'm
25 going to deny your motion for mistrial, but I'm going to allow

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1 you to call these officers to confront them with this report.
2 And I'm going to order that the -- we can do it in your case in
3 chief or we can have them come back at this time. Not
4 necessarily, at this morning, but perhaps this afternoon or so,
5 and I'll put the burden on the State to make sure the officers
6 are in attendance so you don't have to go out and try to
7 subpoena them.

8 MS. PALM: Well, here's the other thing want I don't
9 have a transcript of what they said, and I can't remember. I
10 was cross-examining them. We don't take that kind of notes.
11 So unless you have a transcript for me of their testimony from
12 yesterday, I can't be effective in cross-examining them.

13 MR. SMITH: Well, and Judge, I think it would only
14 just be Officer Ballejos --

15 MS. PALM: No.

16 MR. SMITH: -- because he's the originator of the
17 report. I mean, they can't cross-examine other officers about
18 Officer Ballejos' report.

19 THE COURT: That's true. I mean, that would be --
20 unless, you know, they -- well, they can ask him, you know, he
21 said this, do you agree or disagree.

22 MR. SMITH: Yeah, sure, but, I mean, they can't just
23 say isn't it true Officer Ballejos wrote extremely intoxicated.
24 The report clearly says that this was sent from Officer
25 Ballejos to Sergeant Newberry. So those would be really the

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1 same, Judge.

2 (Off the record colloquy).

3 MR. SMITH: Judge, I'm just going to renew my
4 objection that I don't think they should be allowed to recross
5 every officer about this use of force report.

6 THE COURT: Well --

7 MR. SMITH: Only the ones --

8 THE COURT: -- they're not going to be able to give
9 you the necessary -- the report that there was a use of force,
10 but anything regarding intoxication. That's all I'm looking at
11 is, you know, they can confront them with the issue of
12 extremely intoxicated. They're not testifying again about all
13 these locations and what was said or done. Just -- I mean,
14 we're just going to jump right to this issue.

15 MR. SMITH: Well, Judge, here's the problem, though,
16 there's five officers. Each one of them has their own opinion
17 as to Mr. O'Keefe's level of intoxication. There's one officer
18 who apparently had an opinion that it was extreme intoxication.
19 Ms. Pike should -- or excuse me, Ms. Palm should be able to
20 recall, for instance, Officer Sean Taylor and say well, isn't
21 it true that he was extremely intoxicated because --

22 MS. PALM: I had should be able to say if --

23 MR. SMITH: -- Officer Ballejos said -- I'm sorry --

24 MS. PALM: -- another officer said that --

25 THE COURT: Hang on, one at a time.

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1 only two relevant witnesses.

2 THE COURT: Well, there may be others, I don't know.
3 But that's what I'm going to order. So Ms. Palm, Mr. Pike,
4 tell the State which witnesses you want to return this
5 afternoon and they'll have them here.

6 THE COURT: Is there a way to get a transcript of the
7 testimony from yesterday before this afternoon? It would be
8 quite -- there's -- I don't think there's any way to get that
9 completed in time.

10 MS. PALM: Then I'm telling you right now I can't be
11 effective in that cross-examination.

12 THE COURT: Well, that's -- I'm not going to grant
13 the mistrial because I think it can be remedied by this. It's
14 just you --

15 MS. PALM: Well, the other remedy that we're seeking
16 is to preclude them from seeking a first degree murder
17 conviction, that combined with the failure to collect the
18 evidence of his level of intoxication which we will never be
19 able to prove now I think warrants precluding the State from
20 seeking a first.

21 MR. SMITH: And Judge, that's already been litigated.
22 That was litigated in a pretrial motion.

23 MS. PALM: And I'm renewing it based on this -- the
24 combination of errors.

25 MR. SMITH: Yes, ma'am. Our position is still the

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1 MS. PALM: -- would you dispute it?

2 THE COURT: One at a time.

3 MS. PALM: I'm sorry.

4 MR. SMITH: It's okay. It's okay, Trish. Ms. Palm
5 shouldn't be able to put Officer Taylor on the stand and say
6 well, isn't it true my client was extremely intoxicated because
7 Ballejos said so. That's basically what that's going to amount
8 to.

9 THE COURT: Well, I mean, she can -- you know, I
10 mean, this is a typical question. Officer Ballejos testified
11 that he was extremely intoxicated. Officer Jones, do you agree
12 with that? He can say no, I -- or she can say where were you,
13 whatever. We've already gone through most of that. Okay,
14 fine. Next officer.

15 You know, the problem, you know, Mr. Smith, like I
16 said, the problem is that Metro didn't turn this over to you.

17 MR. SMITH: I understand, Judge.

18 THE COURT: You know, that's -- let's place the blame
19 with it belongs. And that's where it belongs.

20 (Off the record colloquy).

21 MR. SMITH: Judge, if I could just put one more thing
22 on the record. It's our position that by the Court allowing
23 Ms. Palm to cross-examine other officers based on a separate
24 officer's opinion of someone, I mean, that -- and I understand
25 your position that the State should have turned this report

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1 over, but just to make a record, it's our position this is
2 going to severely impune all of the other officer's credibility
3 based on this one issue even though they are proffering their
4 own interpretation and their own assessment of Mr. O'Keefe's
5 level of intoxication.

6 And we're concerned that the defense is going to
7 attempt to boot strap this point into saying that all these
8 officers lied about everything they've ever testified to even
9 though none of them have ever -- none of these other officers
10 have ever said that Mr. O'Keefe was extremely intoxicated.

11 THE COURT: Well, I mean, that's what you can say.
12 You know, they can say their point of view that, you know, they
13 had limited contact with them. They were the last one in the
14 room, whatever it may be. They can say they weren't the ones
15 who carried him out, so I don't smell it because I was too far
16 away. I mean, so that can be cleared up very easily. We're
17 just checking right now to see what we can do.

18 Who do we have this morning testifying?

19 MR. SMITH: We have --

20 MS. GRAHAM: I have the list.

21 MR. SMITH: -- Ed Guenther, the fingerprint analysis
22 (sic). Jennifer Bas, the DNA analysis (sic). The
23 coroner, the coroner examiner, and the two homicide detectives.

24 That's who we tentatively had lined up.

25 THE COURT: All right.

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1 And then we'll have one of the DAs, whoever's
2 examining this first witness here. The other DA can go out and
3 contact those officers and have them available for this
4 afternoon.

5 MR. SMITH: All of them?

6 THE COURT: Yes.

7 MS. PALM: Your Honor --

8 THE COURT: And we're not going -- we're not, you
9 know, examining them on all these other issues. Going to jump
10 right to the point on this issue here.

11 MS. PALM: In addition, I think it's impeachment
12 evidence of the detectives in this case that they did not turn
13 this report over when it was specifically requested, so I
14 intend to go into that with Detective Wildemann, and I'd like
15 some litude to do that.

16 MR. SMITH: It was actually Detective Bunn.

17 MS. PALM: Well, he was copied on all the e-mails,
18 unless you want to bring in Detective Bunn.

19 MR. SMITH: They're both coming.

20 THE COURT: Well, you can ask him about that. All
21 right. Okay, Michelle, can you get someone up here, please.
22 (Off the record colloquy).

23 MS. GRAHAM: Judge, can I address the misconduct if
24 we're --

25 THE COURT: We can do that later. Let's get --

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1 MR. SMITH: Judge, one last thing. With regards to
2 one of their court exhibits being the note from Officer
3 Hutcherson, we were actually intending on recalling Officer
4 Hutcherson to actually get this admitted into evidence. Now,
5 since they've already tendered it as a court exhibit because it
6 hadn't been formally admitted into evidence, I don't know if
7 they just want to stipulate to its admission or if they want to
8 make us recall Officer Hutcherson merely for that purpose.

9 MS. PALM: No, there's no point in admitting that.
10 He already testified to the exact contents of it.

11 MR. SMITH: Okay. Well, I'm just putting them on
12 notice, we're going to recall him, and we're going to have this
13 -- we're going to put him on the stand and attempt to get this
14 admitted as a prior recollection recorded.

15 MS. PALM: Well, you know what, that enhances the
16 prejudice, then, from his statements yesterday because his very
17 being on the stand will remind the jury of that testimony.

18 THE COURT: Well, we'll address that when it comes
19 up. What I'm going to do is Michelle's going to call a
20 substitute court recorder who will take over her duties. She's
21 going to review the testimony, make a transcript -- not on the
22 entire testimony -- make a transcript of anything relating to
23 the observations. Anything related to his appearance of
24 intoxication, alcohol smell, et cetera. And then that will be
25 provided.

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1 because right now like I said, I'm not even -- I'm not
2 concerned about that.

3 MS. GRAHAM: There's just something I'd like to put
4 on the record as far as --

5 THE COURT: Well, in is the thing that I didn't want.
6 You know, like when we talked about the other case. I mean,
7 it's just too much back and forth here. I do not -- I'm not
8 considering anyone here committed misconduct, okay.

9 MS. GRAHAM: I understand that, Judge, but there is
10 something for appellate review that I would like to say on the
11 record regarding that particular testimony.

12 THE COURT: All right, go ahead.

13 MS. GRAHAM: Okay.

14 THE COURT: Michelle, are we on still?

15 THE CLERK: Yes.

16 THE COURT: Okay, go ahead.

17 MS. GRAHAM: And Judge, you know, did I pretrial
18 Officer Hutcherson, and as we discussed, I pretried him late.
19 It was Tuesday? Yeah, Tuesday evening. He did --

20 THE COURT: Monday.

21 MS. GRAHAM: I'm sorry?

22 THE COURT: Would have been Monday I'm assuming.

23 MS. GRAHAM: No.

24 THE COURT: Yesterday was Tuesday.

25 MS. GRAHAM: Did he testify yesterday?

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1 THE COURT: Yes.
2 MS. GRAHAM: It was the evening before late he called
3 me at home finally.
4 THE COURT: Right, Monday.
5 MS. GRAHAM: Right.
6 THE COURT: Okay.
7 MS. GRAHAM: Oh, today's Wednesday, Judge.
8 THE COURT: Right. He testified yesterday, and if
9 you pretried him the night before, it would have been Monday.
10 MS. GRAHAM: You're absolutely right, Judge. Okay.
11 I pretried him Monday night. He indicated to me that when I
12 read the arrest report and had the three lines that I was
13 intending to pretrial him on the three lines, I realized his
14 involvement in the case amounted to more than three lines.
15 And we discussed what exactly his involvement and his
16 interaction with whether O'Keefe. Well, Officer Hutcherson,
17 who, by the way, on the record now is an African-American male,
18 indicated to me that he was belligerent, he was loud, he
19 obnoxious, he was calling him racial slurs, and he used the
20 word N. He specifically called Officer Hutcherson the N word.
21 Also, he indicated to me that he asked him to turn the f'ing N
22 music down.
23 Now, yes, it's prejudicial and no, did I instruct him
24 to say that? I instructed him to say that I need the
25 statements that defendant made, and you need to stay away from

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1 THE COURT: How long do you think the testimony will
2 be for these witnesses?
3 MR. SMITH: It may be a while, especially with the
4 DNA expert. I expect Randy's going to have some fun with her.
5 MR. PIKE: Oh, no. It will be move pretty quickly.
6 MR. SMITH: Well, that's presumptuous. It might be
7 --
8 MR. PIKE: (Indiscernible).
9 THE COURT: 3:00 o'clock, is that a good time? Or
10 after the 3:00 o'clock break?
11 MR. SMITH: So after the 3:00 o'clock, okay. I'll --
12 THE COURT: Right.
13 MR. SMITH: I'll make a phone call.
14 MR. PIKE: No, actually, as to the fingerprint and
15 the DNA expert that the State's going to call, I've
16 cross-examined them before. They're qualified. If they want
17 to go into that lightly or in more detail, it's --
18 THE COURT: How long do you think --
19 MR. PIKE: -- their choice.
20 THE COURT: -- you'll be so we can -- I want to do at
21 a good break.
22 MR. PIKE: Very short. Very short.
23 THE COURT: Is 3:00 o'clock a good time as far as the
24 number of witnesses you have?
25 MR. SMITH: I'm sure the 3:00 o'clock will give them

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1 the racial slurs that he called you the N word, your Honor.
2 That's what I instructed him to say.
3 Now, prejudicial, yes. But probative, very probative
4 as to the state -- this is a first degree murder trial. The
5 intent and state of mind of the defendant before, during and
6 after the murder, the stabbing of Victoria, is very important
7 to this case. The fact that he's angry, mean, violent, and is
8 spewing racial slurs is in the State's opinion probative and
9 relevant to the case.

10 I specifically instructed Officer Hutcherson not to
11 mention that Mr. O'Keefe called him the N word over and over
12 and over again in his belligerent state of mind. So yes, is it
13 prejudicial, but does the prejudice outweigh the probative
14 value this angry, loud, obnoxious, violent man who just stabbed
15 a woman? It's relevant, Judge, and probative as to his state
16 of mind.

17 THE COURT: I think the better argument might be that
18 that statement doesn't rise to a level of a mistrial, which I
19 denied, so let's leave it at that. And so we're going to
20 continue on. Let's bring -- is someone coming up Michelle?

21 THE CLERK: Yes.

22 THE COURT: Okay. All right, let's bring the jury
23 in.

24 MR. SMITH: Judge, when do you want those officers
25 here?

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1 a sufficient enough time to all be here. So I'll just have
2 them all here at 3:00 o'clock, Judge.

3 THE COURT: And I'm going to -- Mr. Smith, I'm going
4 to require that you just tell them that there was further
5 questions that have to be asked.

6 MR. SMITH: Okay.

7 THE COURT: Not to be discussed any topic so they
8 won't know why they're coming except further questions.

9 MR. SMITH: Okay. Not that I was planning ongoing
10 into (indiscernible) detail (indiscernible).

11 (In the presence of the jury)

12 THE MARSHAL: Officers and members of the court --

13 MR. SMITH: I got (indiscernible).

14 THE MARSHAL: -- Department 17 jurors. You may be
15 seated, ladies and gentlemen. Let's check to make sure all
16 cell phones were turned off, please.

17 THE COURT: Let the record reflect we're in presence
18 of the jury panel. Ladies and gentlemen, thank you for your
19 patience. As I had mentioned before, we try to resolve, you
20 know, many legal issues as we can before you come in here
21 because we don't have you in for ten minutes, send you out,
22 come back in, et cetera. And we just had some matters to
23 discuss which took a little longer than I expected. So I
24 appreciate your patience. Is everyone situated and
25 comfortable? Got their badge? Okay. State, please call your

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1 next witness.
2 MS. GRAHAM: State calls Ed Guenther, latent print
3 expert.
4 THE MARSHAL: Mr. Guenther, if I can get you to raise
5 your right hand, please.
6 ED GUENTHER, PLAINTIFF'S WITNESS, SWORN
7 THE CLERK: Please be seated.
8 MR. PIKE: Again, your Honor, in relationship to this
9 witness, because the knife had the biological contamination on
10 it, there's a photograph that we'll be admitted into evidence
11 for testimonial purposes --
12 THE COURT: All right.
13 MR. PIKE: -- and evidentiary purposes.
14 THE COURT: If it hasn't already been admitted, it
15 will be admitted at this time. Thank you.
16 MR. PIKE: Thank you.
17 THE CLERK: Can you please state your name and spell
18 it for the record.
19 THE WITNESS: Yes, ma'am. My name is Ed Guenther
20 spells G-u-e-n-t-h-e-r.
21 THE CLERK: Thank you.
22 DIRECT EXAMINATION
23 BY MS. GRAHAM:
24 Q Mr. Guenther, how are you employed?
25 A I'm employed with the Las Vegas Metropolitan Police

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1 course, our laboratory itself requires us to have certain
2 amount of training every year as our laboratory's an accredited
3 laboratory with the Association of Crime Lab Directors.
4 There are standards for all of us for training and so
5 for the. So yes, I always have continuing education. I
6 believe I've had close to 150 hours of continuing education
7 training in the last three years.
8 Q Mr. Guenther, I want you to explain to the jury
9 exactly what is a latent print.
10 A Well, a latent print is a chance impression. It's
11 made by the accidental touching of a surface by the specialized
12 skin on your hands and also could possibly be on your -- from
13 your feet. Your skin as you -- if you look at it on your hand,
14 you see it's quite different than the rest of the skin on your
15 body. It's raised skin, and the skin is not parallel or it's
16 raised into patterns and on top of these ridges you have pores,
17 obviously.
18 And through those pores your body is constantly
19 excreting mostly perspiration, but also chemicals. And also,
20 you can pick up residue on those ridges. By touching your head
21 you pick up oils or you can pick up -- touch other things and
22 get contaminants. And when you -- and then when you touch a
23 surface like with all of those possibilities, you leave behind
24 what could be a latent print which basically means a print
25 that's invisible.

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1 Department. I work in the forensic laboratory, and my area of
2 speciality is latent fingerprints.
3 Q How long have you been a specialist in latent
4 fingerprints?
5 A Well, I have been a fingerprint examiner for a long,
6 long time. I started back in 1975 with the Federal Bureau of
7 Investigation. That is where I learned the basics of
8 fingerprinting of classifying, searching and identifying. And
9 then in 1977 I entered into a training program with the State
10 of Ohio. Completed that training program and did routine
11 casework there for three years followed by 18 years of bench
12 work analysis with the Florida Department of Law Enforcement.
13 And for the last almost 11 years now I've work here with the
14 Metropolitan Police Department.
15 I also along the way acquired my bachelor's degree
16 from the University of South Florida. I'm also a member of the
17 International Association For Identification and am certified
18 by that organization to conduct latent fingerprint
19 examinations.
20 Q And Mr. Guenther, I'm sure that during your years of
21 examining prints, you've also attended many seminars and kept
22 up to date on the current methods in latent print examination.
23 A Yes, as part of our -- as part of the certification
24 process, we have to have continuing education as well as tests
25 that we take every five years, a recertification test. And of

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1 But there are times where these prints are actually
2 visible to you. You can actually see them. So latent print is
3 the generic cover for all of that. But there are couple
4 subcategories, and a visible print is part of the universe of
5 latent prints.
6 Q Is it possible to touch something with the -- your
7 finger tips and not leave a latent print?
8 A Yes, it's very possible to touch a surface. Some of
9 the primary reasons that you can touch a surface and not leave
10 a print behind, or at least a print that we would call a print
11 of comparison quality, would be primarily the pressure.
12 If you look at your fingers again, you'll see, you
13 know, they're not two dimensional. They have movement. They
14 have depth to them. They have width and length and so forth.
15 So when you touch a surface, those ridges are moving and
16 they're flexible. So if you put too much pressure down,
17 instead of the ridges make a nice clear mark on that surface,
18 the pressure is going to push those ridges together, and you
19 can get a big -- like a smudge.
20 Also, you can acquire smudging or things from
21 different methods of distortion. Can you have a twist of your
22 finger. Your finger can move, up, down, left or right. These
23 are distortions that can destroy the fragile ridge structure
24 that can be left on a surface.
25 You also have the substrate that is touched.

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1 Generally speaking, the smoother a surface is, the more
2 receptive it will be to leaving fingerprints on it. What we
3 call the matrix is important. That could be either something
4 like sweat or whether it's blood or whether it's some other
5 kind of contaminate. That can have a factor on it.
6 Other item would be the time factor. Every
7 fingerprint has a life. Once a surface is touched there will
8 come a point where the print is not viable to be developed. So
9 those are some of the factors that can affect whether or not a
10 fingerprint will be left on a surface.
11 Q So just to understand, you can touch a surface and
12 depending on the actual surface that you touch, if there's any
13 liquids like sweat or blood involved, that may prevent a latent
14 print from being --
15 A It could, yes.
16 Q -- visible? And then, of course, there's a life to
17 the print --
18 A Correct.
19 Q -- itself. Okay. What exactly is the function of a
20 latent print examiner?
21 A Well, our --
22 Q What are your duties?
23 A Yeah, well, our main function is to study this ridged
24 structure that comes to us either through the crime scene
25 analyst in the form of a latent lift or in evidence that we

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1 evidence that we ourselves process at the forensic laboratory.
2 Q And once you receive that piece of evidence or latent
3 print, however you receive it from the crime lab or if you have
4 it yourself, you indicated that you compared it to a standard.
5 Can you explain to the jury what you mean by a comparable
6 standard?
7 A Well, in any type of forensic work you have to have a
8 known. When you -- if you just have a latent print -- well, I
9 take that back. You can't have -- search computer databases
10 also. But in most of the work part that we do we need -- we
11 start with a known. You have to have a known to make a
12 comparison with the question. So that's where in fingerprint
13 work the standards come in.
14 Standards, of course, are different than latent
15 prints in that they are controlled known recording of an
16 individual's friction ridge from their hands primarily on -- in
17 today's world their all done electronically. Everything's
18 stored digitally. And people, of course, are fingerprinted for
19 a multitude of reasons. Most of them civil reasons. For work
20 cards and so forth.
21 So we have a large database of standards. And we --
22 that's what we would normally use in our course of business to
23 make a comparison is that -- is those known standards. So it's
24 a two-pronged attack for the most part. The known print and
25 the unknown and to make -- to come up with a conclusion.

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1 actually directly look at ourselves in the laboratory setting.
2 And we make a -- we try to -- we document this ridge detail.
3 We analyze it, and then if there is what we would call a latent
4 print of sufficient quality on the evidence, our job is to make
5 a comparison with known standards of individuals to try to
6 ascertain whether the latent print and the ink print are from
7 the same source or from the same individual. So that in a
8 nutshell is what I do everyday.

9 Q So just to understand your testimony, you receive
10 evidence and if there is lift from those pieces of evidence or
11 the evidence itself, you compare that to a known standard; is
12 that what you --

13 A Yes.

14 Q -- indicated?

15 A Yeah, yeah. Primarily the evidence comes in one of
16 those formats. Move the evidence that we get is in the form of
17 latent lift cards that are generated by crime scene analysts at
18 a scene where they powder items or items that they take back to
19 the crime scene office, and they -- excuse me, and they would
20 process.

21 They also -- we also get photographs a lot of -- on
22 occasion where a piece of evidence or latent print is actually
23 photographed at the scene, and those images are stored and we
24 look at those images. But most of our evidence is either in
25 the form of a latent lift from the crime scene analyst or in

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1 Q Now, there are instances, though, during your
2 experience that you've been given a piece of evidence and you
3 don't have a controlled standard, right? Is that correct?

4 A Yes.

5 Q And then how would you determine who that latent
6 print belonged to?

7 A Well, if -- that's where we would employ our computer
8 database systems. We here locally and of course, linked up
9 through different networks. Almost any fingerprint database,
10 at least in this country, can be searched now either
11 independently or collectively, and we call that an AFIS system.
12 An automated fingerprint identification system.

13 So if we have a case where there are no suspects,
14 let's say, and we have a latent print from a particular case
15 that has a high quality to it, we can enter that latent print
16 into this computerized system and ask the matching algorithm to
17 search all of the knowns that are out there in either a small
18 database or a large one and to give us a possible list of what
19 we call respondents.

20 And then from that list we may be able to make an
21 identification with the prints that the computer has
22 potentially matched for us. So that is the other way that
23 prints can be searched when you don't have a suspect in a case.

24 Q Now, Mr. Guenther, I keep hearing you refer to
25 quality, the comparison quality of a latent print. Now, how

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1 often would you say that you are given a piece of evidence that
2 is of sufficient comparison quality to be compared either to a
3 controlled known print or to be entered into the AFIS system.
4 A Okay. Well, the entries in AFIS system would be a
5 lot fewer than this generic number I'm going to offer up to,
6 but in generally, I would estimate that we -- comparable --
7 excuse me, comparable latent prints are probably only generated
8 in maybe a third of the cases that we would look at. So
9 there's a lot of cases where for those reasons I talked about,
10 the pressure, the distortion, substrate, that the latent prints
11 that eventually make their way to us and are analyzed, they
12 just don't make the grade for us to make a comparison with any
13 individual. We call those prints either of no value or
14 sometimes the prints are compared and they're inconclusive in
15 that we can maybe make a generalization about this -- a
16 particular latent print, but there just isn't sufficient
17 quality or quantity of that ridge structure to go to that step
18 where we could actually make an identification with it.
19 So it's not -- when it's inconclusive sometimes, it's
20 not useless, but it's not to the threshold where you can
21 actually make a identification with an individual.
22 Q So would it be fair to say that in real life you a
23 third of the time get comparable quality lifts or latent prints
24 to actual -- to make a match as opposed to, for instance, the
25 television shows that are very popular today where there's

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1 Do you --
2 A It's really small, isn't it?
3 Q Yeah, it is small. Let's see if I can zoom it in.
4 A Okay.
5 Q Maybe if I place it -- there we go. Let me zoom it
6 more. Do you recognize that photo?
7 A Yes. This is the handle, the black -- the handle of
8 the knife. I believe this would have been on the left side.
9 And this is an image that I actually scanned this image on my
10 desk top on my -- and saved it. And this is the actual image
11 as it appeared before I did any processing to it, did anything
12 to it. And of course, you can see this is our event number.
13 This is my initials.
14 Q And that's what ties that to this --
15 A Correct.
16 Q -- case?
17 A And this is what ties this all together is this tag
18 here with my initials and the exhibit number, item 38 and of
19 course, the event number and my initials. And through above
20 the mark there over the tag where the markings are going
21 through for the centimeter line, you can see a series of
22 partial -- what we call partial ridge detail.
23 And that is what was visualized by the crime scene
24 person, obviously, and why it was submitted for me to look at
25 it in the laboratory setting.

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1 always a match?
2 A Yeah, yes. The reality and television shows, as you
3 are all aware, are quite different. Quite different.
4 Q Okay. Mr. Guenther, I want to talk specifically
5 about why you're here today.
6 A Okay.
7 Q Now, were you given a piece of evidence that is
8 specific to this case, and I'm referring to the case and what
9 you received as a piece of evidence under Event No. 08110503918
10 given to you by a request for you to look at a possible latent
11 print by Detective Wildemann of homicide?
12 A Yes.
13 Q Okay. And what piece of evidence were you given?
14 A The evidence that I was asked to look at, at least
15 from a processing perspective, was a knife. A Wolfgang Puck
16 black handled carving knife bearing what was believed to be a
17 partial latent print -- a partial print and suspected blood.
18 So that was the item that I was asked to analyze for the -- for
19 either the development or to actually look at that partial
20 latent print on the knife to see if it was, in fact, of
21 comparison quality and then to try to, if possible, to either
22 enhance it or to develop additional latent prints on the knife.
23 That was my task that was asked of me by the homicide unit.
24 Q Mr. Guenther, I'm going to show you what's been
25 marked as State's -- and admitted as State's Exhibit No. 65.

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1 Q Now, when you received the knife, you actually
2 handled entire knife --
3 A Yes.
4 Q -- is that correct? Do you -- how big was that
5 knife?
6 A In my notes I indicated that the entire length of the
7 knife was approximately 14 inches. The blade occupying eight
8 inches of that length and the handle approximately six inches
9 of that length.
10 Q Okay. When you were asked to take a look at those
11 latent or what appeared to be latent prints, what was your
12 ultimate determination?
13 A Well, my ultimate determination after doing the
14 visual examinations and then trying processing techniques to
15 enhance and/or develop additional latent prints, in the end the
16 final analysis of this ridge detail was that it was not of
17 comparison quality as far as identify -- to make an
18 identification to an individual.
19 The ridge detail, however, I do believe, probably
20 just the way it -- because of the structure of it, probably
21 came from a palm, and that's really about all that I could
22 really say about at that ridge detail. Even though I couldn't
23 make a comparison with it, I probably -- I probably think I can
24 make a determination that because of the linear -- and if you
25 saw this closer in a better more clarity, you would see that

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1 the lines -- this is the kind of ridge detail that you -- that
2 it --
3 Q You can point to the screen, Mr. Guenther, and it
4 will actually --
5 THE COURT: You can draw on it.
6 THE WITNESS: Just touch it, okay.
7 BY MS. GRAHAM::
8 Q Yeah.
9 A If you -- that wasn't a very good mark, but as you
10 can see, these white areas here, that's probably the ridges.
11 And this is how we actually examine the ridge detail is we
12 follow this with our eye, and we're trying to determine where
13 this ridge flow, this unique ridge structure, where it changes,
14 where it -- where one of these ridges would end, where one
15 would split, like there's one right there where I put that
16 second little dot. That is a place where a ridge is traveling
17 along a path and path diverts.
18 And that is a unique structure to that particular
19 piece of friction ridge skin. So what -- and this is what
20 we're actually looking at to try to make a determination of
21 same source in the end. But in examining all of this structure
22 that you can -- these lines that you can see there, in my
23 opinion, there just wasn't a sufficient amount of information
24 to make any kind of -- as I said, any kind of conclusive
25 comparison to anyone. But I do believe from my experience in

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1 analysis it would have been looked at by another forensic
2 scientist in the laboratory.
3 Q All right. And for purposes of your testimony and
4 the analysis that was done, you followed the appropriate
5 protocol in retrieving it, processing it, and then putting it
6 back into custody with the Las Vegas Metropolitan Police's
7 evidence vault?
8 A Yes, sir.
9 Q Okay. I don't want to disturb this, but you I'm
10 going to show you what's been admitted as Defendant's
11 Exhibit KK, which is a full photograph of the knife.
12 A Yes, sir.
13 Q If you could just turn that around and show it to the
14 jury so that they can kind of -- and you can kind of point to
15 where that was.
16 A Where --
17 Q Where --
18 A -- the corresponding area --
19 Q Right.
20 A -- on the knife was? Yes, sir, I can do that.
21 Q Okay.
22 MS. GRAHAM: Can we put it on the monitor so we can
23 all really see it?
24 MR. PIKE: Okay.
25 THE COURT: Might work better that way, thank you.

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1 looking at lots of latent prints over the years, that this type
2 of structure -- I won't say always, but almost always found in
3 the palm of a hand and usually on this part what we call the
4 hypothenar area of the palm. The outside below the little
5 finger and down the side of the palm.
6 Q Thank you, Mr. Guenther.
7 A Okay.
8 MS. GRAHAM: I'll pass the witness at this time.
9 CROSS-EXAMINATION
10 BY MR. PIKE::
11 Q Morning, Mr. Guenther.
12 A Good morning, sir.
13 Q Good to see you again.
14 A Good to see you, too, sir.
15 Q Okay. Let me see if I can get this back into focus.
16 Okay, here we go. I'm trying to go backwards.
17 A It's hard to do.
18 Q Okay, great. Okay. During the time that this item
19 was given to you, you were able to observe the knife and
20 ascertain that all the proper chains of custody had been
21 observed by the previous people that had processed it, so when
22 it came to you, it came to you in the same condition as when it
23 was first impounded at the scene of the crime.
24 A Yeah, I received it in a sealed box that had been
25 sealed by Jocelyn Maldonado. And also, I believe prior to my

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1 And then, sir, just circle on the monitor --
2 THE WITNESS: Yes.
3 THE COURT: -- where the location is.
4 THE WITNESS: Yes, sir.
5 (Off the record colloquy).
6 BY MR. PIKE::
7 Q All right, there's --
8 A Yes.
9 Q -- the knife. And that's the side that you processed
10 to obtain this photograph?
11 A That's the side that I scanned, yes. You just need
12 to turn that, flip it around so that it --
13 Q Lay that up there.
14 A Like this, yes.
15 Q That's where it was done was up here at the very tip?
16 A Yeah, it would have been -- I'll just circle it right
17 -- it would have been -- generally speaking, that was the area
18 because that little circle that you're seeing on my photograph
19 would correspond with the circle up here towards the knob of
20 the knife.
21 Q Okay. And when it came to you, that is a ridged
22 detail that you would say was associated with blood.
23 A I believe yes, so. Yes, I believe so.
24 Q And, in fact, it was the moisture of the blood that
25 made it visible to the naked eye before you even processed it?

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1 A Correct, yes, sir.
2 Q And processing it any further, did you use any sort
3 of chemical means?
4 A I used quite a few methods to attempt to enhance this
5 print. The first obviously was a visual examination just with
6 my naked eye. And then, of course, he scanned it in before I
7 tried any of the processing techniques just in case it was
8 ruined, which it can happen on occasion. So we try to preserve
9 every step as we go along.
10 So after I had done a visual examination and scanned
11 the print in, I did the several other visual types of
12 examination with -- one of them with is what we call an
13 alternate light source which is kind of like a laser. It's not
14 a true laser. It's a light source that we use in the
15 laboratory to try to develop and enhance what latent prints.
16 And I also used -- and that works in a certain wavelength of
17 the light spectrum, the visible light spectrum.
18 Also, we have a apparatus that operates in the
19 ultraviolet end of the light spectrum. I -- and these are
20 non-invasive type techniques. So they're just scans with these
21 items. And the reason that I would have used that ultraviolet
22 area is that sometimes there's particles of latent print
23 residue that will fluoresce naturally either with a alternate
24 light source or under UV light.
25 So in this case I utilized both of those techniques

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1 THE COURT: Yes.
2 BY MR. PIKE::
3 Q You've identified that possible ridge pattern as
4 being consistent with a specific area of the hand.
5 A Yes.
6 Q And that's in the outside area?
7 A Well, in -- well, maybe not on the --
8 Q (Indiscernible) here.
9 A On the outside we would call this like the writer's
10 area. It's generically called that because this outside is if
11 you were writing or signing something. The ridges flow all --
12 actually extend around the end of your hand a little bit. So
13 if you touch something downward, that would be the writer's
14 area. I don't believe those ridges -- this ridge detail came
15 from that area because normally those ridges start to -- they
16 start to winnow down into a point and then they start to
17 intermingle with the more traditional skin that were used on
18 the rest of our body.
19 I believe that this structure is more found on the
20 flatter portion of the palm. Still on the outside in the
21 hypothenar area, but more in the flatter area of that area of
22 your palm. So not on the outside, but on the outside of the
23 main portion of the palm, yes.
24 Q And that area like finger tips or finger -- flat part
25 of the fingers have a specific pattern ever ridges that are

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1 which were negative. I then attempted to enhance this
2 particular latent -- bloody -- what we thought was a bloody
3 latent print on the knife blade using a blood enhancer. And we
4 have a series of blood enhancers that will react with the
5 proteins that are obviously in blood, and what they will do is
6 stain the blood and make it either enhance it or sometimes it
7 will even develop some fine blood markings that you can't --
8 still you can't see on the surface.
9 So in this particular case I used a process that we
10 call acid yellow seven because in conjunction with the laser it
11 will give a nice glow of yellow under this alternate light
12 source. So I attempted that technique with the blood, the
13 bloody area on the knob of the knife. That that did not help.
14 It did not enhance, it did not develop.
15 So after making those determinations, I then went to
16 a more traditional type of process using the cyanoacrylate, the
17 super glue method on the entire knife surface and followed that
18 up with a chemical that we use in conjunction once again with
19 the alternate light source and scanned that again and once
20 again, it was all negative. Was not able to enhance this
21 particular latent print or to develop any additional latent
22 prints using all of those visual and chemical techniques.
23 Q Okay. And then in going through and based upon your
24 experience --
25 MR. PIKE: If I may approach the witness, your Honor.

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1 done? Each -- let me rephrase that.
2 A Okay.
3 Q Everybody has their own pattern, their own individual
4 --
5 A Yes.
6 Q -- pattern. Even on that portion --
7 A Yes.
8 Q -- of the hand?
9 A The palms, the fingers, soles of the feet. That's
10 where your body has the -- well, all of your skin is actually
11 unique, but the portion that's used for identification is the
12 palms and fingers and soles of the feet.
13 Q And you often or you have on occasion when you've
14 been called upon to examine a print, finger, palm print or
15 anything, have been able to ask for a new known print to
16 examine it or compare it against to make a determination
17 whether or not you can identify it as being consistent with
18 that print or not?
19 A Yes.
20 Q Okay. In this case were you ever provided a known
21 exemplar of a palm print?
22 A Well, I was provided with -- obviously with a name
23 and exemplars were available for comparison with both Brian
24 O'Keefe and Victoria Witmarsh. But I didn't utilize them
25 because the print was not of comparison quality. So there was

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1 no reason to actually go forward beyond the analysis of my --
2 of that portion.
3 Q Understood.
4 A Yes, sir.
5 Q Okay. In addition to this, which you were unable to
6 find of comparable quality, you examined other pieces of
7 evidence that were retrieved from or provided to you in order
8 to determine whether or not there was a identifiable or
9 comparable --
10 A Right.
11 Q -- fingerprint; is that correct?
12 A Yes. The other -- I was also asked -- Crime Scene
13 Analyst Collins had photographed a sheet in the bedroom, the
14 northwest bedroom, the northeast corner of a flat sheet.
15 Apparently there was a transfer of what -- on that sheet of
16 what she thought was ridge structure on the sheet in what she
17 believed, I believe, she thought was blood, and she made four
18 photographs of this same structure area.
19 And I did analyze and examine those also, and I made
20 the determination of those that they were not of comparison
21 quality at all.
22 Q Not being comparison quality, were you able to form
23 an opinion as to whether or not they were finger or hand or
24 palm or foot consistent with those types of ridges?
25 A Let me look. I didn't make a -- I don't believe I

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1 THE COURT: All right.
2 MR. PIKE: -- and use this one. This is the best for
3 testimony purposes.
4 THE WITNESS: You --
5 MS. GRAHAM: What would be best for you to testify?
6 THE WITNESS: Well, that one is probably a little
7 larger. It would probably show up better on the Elmo.
8 THE COURT: We're going to have it marked right now.
9 THE WITNESS: Yes, sir.
10 THE COURT: Any objection by the State for it being
11 admitted?
12 MS. GRAHAM: No, Judge.
13 THE COURT: All right, it will be admitted as --
14 what's the next number in line or letter in line?
15 THE CLERK: It would be (indiscernible).
16 BY MR. PIKE::
17 Q And for purposes of identification, this has been
18 identified to you by the information as photograph of the bed
19 sheet located at the collections scene in this case.
20 A Yeah, the northeast corner of the bottom flat sheet
21 of the bed in the northwest bedroom.
22 Q Okay, great. And then looking at this, were you able
23 to form an opinion as to whether or not that may have been a
24 hand, a palm or a foot --
25 A Well --

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1 made a notation of that in my notes.
2 Q There was --
3 A But I can look at them.
4 Q I didn't see one on the report, but --
5 A I can -- I brought them with me, so I can certainly
6 open up the packet, and we'll take a look at it.
7 Q Thank you.
8 MR. PIKE: May I approach the witness?
9 THE COURT: Yes.
10 THE WITNESS: Well, I -- just looking, perusing here
11 at the larger one, I would -- I'll wait for the --
12 THE COURT: Why don't we have that admitted --
13 MR. PIKE: Okay.
14 THE COURT: -- so we can --
15 THE WITNESS: Yeah. You want to admit one of those,
16 your Honor? Yes, sir. Do you want to admit all of them or do
17 you just want -- they're all the same. They're just some of
18 them are larger. Would you like all of them?
19 THE COURT: Do you need all those --
20 THE WITNESS: I don't need --
21 THE COURT: -- for your testimony?
22 THE WITNESS: I don't need any of them, sir -- your
23 Honor. If you -- if the Court would like to have all of them,
24 they certainly may.
25 MR. PIKE: Okay. We'll just go ahead --

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1 Q -- type of a print?
2 A -- I determined that once again, it really wasn't of
3 comparison value. But -- and I really didn't ventured into the
4 inconclusive portion of this one. It's really a very poor
5 quality. If I had to make a -- venture a opinion on it today,
6 I would say it's probably a palm area again. But where on that
7 palm, I don't -- I mean, I am not sure because it could, once
8 again, come from -- because you have linear lines again, it
9 could come from that same area we described earlier, that
10 hypothenar.
11 But also, sometimes because of this large crease kind
12 of area right here -- your hands have large -- a large crease
13 down here that runs from the what we call the carpal area
14 usually up here below the inner digital area. And oftentimes
15 we see a crease like this down in this area of the hand on what
16 we call the thenar area, the fatty portion of your palm.
17 There's a crease -- and sometimes when a hand comes
18 into contact and a pressure's put down, that crease will kind
19 of spread out and widen. It doesn't always stay this nice
20 little tiny little crease that you might see in a known
21 standard. So it could come from either one of those areas. So
22 I really couldn't say for sure.
23 Q All right. And so this again was insufficient to
24 compare to any known --
25 A Correct, sir.

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000456

1 Q -- (indiscernible) that may have been provided to
2 you?
3 A Yes, sir.
4 Q Okay. And there was one other item that you
5 addressed in your report, I believe.
6 A No, sir. I just addressed the knife, and I also
7 addressed the four lift cards from the --
8 Q Here you go, sir.
9 A From the --
10 Q There you go. All right. And the other portion of
11 your report then is not that you examined anything else, but a
12 reference to the DNA report?
13 A Correct, yes, sir.
14 Q Give your testimony about that later.
15 A Yes.
16 Q So based upon the evidence that you have that was
17 presented to you in collection, then, you were able to find two
18 possible transfers that had no forensic significance insofar as
19 identification?
20 A Correct.
21 Q Thank you.
22 MR. PIKE: Nothing further.
23 MS. GRAHAM: Just briefly.
24 THE COURT: Any redirect?
25 REDIRECT EXAMINATION

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1 JENNIFER BAS, PLAINTIFF'S WITNESS, SWORN
2 THE CLERK: Please be seated. Will you please state
3 your name and spell it for the record.
4 THE WITNESS: Jennifer Bas, j-e-n-n-i-f-e-r. Last
5 name B-a-s.
6 THE CLERK: Thank you.
7 MR. SMITH: May I proceed, your Honor?
8 THE COURT: Yes.
9 MR. SMITH: Thank you.
10 DIRECT EXAMINATION
11 BY MR. SMITH:
12 Q Good morning, Ms. Bas. How are you presently
13 employed?
14 A I currently work for the Las Vegas Metropolitan
15 Police Department in the biology DNA detail, and I'm a forensic
16 scientist specializing this DNA analysis.
17 Q And how long have you been employed in that capacity?
18 A I've worked for Metro for over one and a half years.
19 Q Do you have any qualifications to work in that
20 capacity?
21 A I do.
22 Q Can you tell us about that?
23 A Absolutely.
24 Q Okay.
25 A I have undergraduate degree in genetics and cell

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1 BY MS. GRAHAM::
2 Q And just to be clear, Mr. Guenther, your expertise is
3 only that the latent prints --
4 A Yes.
5 Q -- examination?
6 A Yes.
7 Q You wouldn't get into DNA or --
8 A No.
9 Q -- measuring and trying to determine the width,
10 length of whose hand it was and --
11 A No, that would -- far beyond the scope of my
12 expertise.
13 Q Okay. Thank you.
14 THE COURT: Any recross? Any question from the
15 jurors? No. All right, thank you, sir.
16 THE WITNESS: Thank you, your Honor.
17 THE COURT: Sir, you're not to discuss your testimony
18 with any other witness involved in this case until this matter
19 is finally resolved. Thank you for your time, sir.
20 THE WITNESS: Yes, sir.
21 THE COURT: Next witness by the State.
22 MR. SMITH: Thank you, Judge. The State calls
23 Jennifer Bas.
24 THE MARSHAL: Ms. Bas, if you'll remain standing,
25 please. Raise your right hand and face the clerk.

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1 biology from the University of Minnesota. And I also have a
2 masters degree in forensic molecular biology which concentrated
3 in DNA from George Washington University. Sorry.
4 Q Go ahead.
5 A Prior to this I also worked for three and a half
6 years for the Armed Forces DNA Identification Laboratory in
7 Rockville, Maryland where my job was primarily to do DNA
8 identifications on individuals that died in war conflicts, Iraq
9 and Afghanistan, and my job was to perform DNA to identify
10 those individuals.
11 Q So your work in that capacity, were you often
12 required to identify somebody via DNA where there was no other
13 means of identify identification available?
14 A Yes.
15 Q Okay. How long have you been working in a capacity
16 as a person involved in the collection of DNA material total?
17 A Total --
18 Q Yes, ma'am?
19 A -- I have been a DNA forensic scientist for over five
20 years.
21 Q Okay. And how long have you been here in Clark
22 County?
23 A One -- over one and a half years.
24 Q Can you describe for us generally what the DNA
25 testing process is?

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000457

1 A Absolutely. DNA testing actually involves a lot of
2 steps. You know, it's not a quick procedure. The first thing
3 that I actually have to do is I receive a request from a
4 detective or DA to ask me to look at the evidence. I pull up
5 that evidence. I take photographs of it. I take notes on it.
6 I make general observations. I have to screen that evidence,
7 you know, to indicate to me what type of sample it is that I'm
8 looking at. After I've determined that, then I start going
9 through and I actually do the DNA extraction. Like let's say I
10 swabbed a sample for DNA, then now I have to try and isolate
11 that DNA and get it alone by itself away from everything else.
12 I next will do a quantification step which basically
13 means that I do a test that tells me how much DNA is present.
14 After that I have to do an amplification procedure which just
15 makes millions of copies of the DNA that I'm interested in
16 looking at. And after that I have to put it on an instrument
17 that actually allows me to see the DNA profile.
18 After I get my DNA evidence, I then now have to make
19 comparisons between the evidence that I examined and make
20 conclusions based on that. Finally, I issue a report as to my
21 findings, and then my case file is sent through two forms of
22 review. So it's many, many steps.
23 Q You've just described how the DNA testing process is
24 done.
25 A Um-h'm.

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1 A Yes. A buccal swab is a cheek cell taken from an
2 individual and so that is a sample that I use as their known
3 sample. I know that to be from that person. I go examined the
4 buccal swabs of Victoria Witmarsh and also the buccal swabs of
5 Brian O'Keefe.
6 Q Now let me ask you this. When you examine the buccal
7 swab, are you able to look at the DNA itself to determine
8 whether or not the contributor of that buccal swab was a male
9 or a female?
10 A There is a location that we look at. It's called
11 amelogenin and it tells us if the individual's a male or a
12 female.
13 Q And so is it your testimony that in addition to you
14 being able to identify the buccal swab of say for instance,
15 Brian O'Keefe, you could also look at those cells and tell that
16 it was of a male person of homosapiens? A --
17 A I could tell --
18 Q -- male?
19 A I could tell that it's a male human, yes.
20 Q Okay. And the same with the female?
21 A Correct.
22 Q Okay. Now, did you compare the DNA taken from the
23 buccal swab of the male who you've now identified as Brian
24 O'Keefe --
25 A Um-h'm.

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1 Q Did you do any DNA testing process with regards to
2 Event No. 081105-3918?
3 A I did.
4 Q And what did you do for that case in that event
5 number?
6 A I was asked to examine five different items of
7 evidence, and so -- do you want to be more specific about what
8 I -- do you want me to go through each practice by myself or --
9 Q Yeah, how about let's do this. Did you -- first of
10 all, did you receive some specimens of DNA in order to form a
11 baseline to make comparisons with other items of evidence?
12 A I did. Okay, I was asked to test actually five
13 different packages. The first was a kit collected from
14 Victoria Witmarsh which contained several biological samples.
15 I also was asked to test a swab of a light switch cover. I was
16 asked to examine a swab of a finger, some penile swabs, some
17 buccal swabs which is a cheek cell swab. I was asked to
18 examine a knife and I was also examined to -- or asked to
19 examine pants.
20 Q Okay. Let's talk about the buccal swabs first.
21 A Okay.
22 Q How many buccal swabs samples did you examine?
23 A Two.
24 Q And were you able to determine the identity of the
25 persons who contributed the cheek cells in those buccal swabs?

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ROUGH DRAFT TRANSCRIPT

1 Q -- to any other evidence obtained in this case?
2 A I examined -- every single DNA sample that I tested I
3 compared to both Victoria Witmarsh and Brian O'Keefe.
4 Q Okay. And you've already testified that you examined
5 a knife in -- along with this case.
6 A I did.
7 Q I'm showing you what's been admitted as State's
8 Exhibit 64.
9 A Okay.
10 Q Now, do you recognize this -- these series of
11 photographs, Ma'am?
12 A I do.
13 Q And how do you recognize it?
14 A I recognize it by the fact that my initials are
15 there, JB4. I'm the one that did the writing, and I took those
16 pictures myself.
17 Q Okay. And I'm going to zoom into this first
18 photograph.
19 A Okay.
20 Q What are we looking at here?
21 A We are looking at one side of a Wolfgang Puck knife
22 that I was asked to examine.
23 Q Is there apparent blood on that?
24 A There is.
25 Q Okay. And then what are we looking at here?

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ROUGH DRAFT TRANSCRIPT

000458

1 A You are looking at the other side of that same knife.
2 Q And then over here are we looking at the knife as you
3 received it in a sealed condition?
4 A Correct.
5 Q And I'm showing you what's been entered into evidence
6 as State's Exhibit 62.
7 A Okay.
8 Q What are we looking at here?
9 A Here we're looking at a few things. The first thing
10 that I want to point out is this PT positive up at the top. PT
11 actually stands for a word phenolphthalein, and that's a test
12 that I use to determine if blood is present. To me if I see a
13 stain as red I think blood, and so I actually do a small test
14 to determine whether or not blood is present. So I identified
15 blood, and so I just made a note to myself that I did identify
16 blood on this knife.
17 The second --
18 Q Now --
19 A I'm sorry.
20 Q -- did you test any locations on the knife that you
21 determined were, in fact, blood?
22 A Yes. The areas that I circled in yellow were areas
23 that I personally took samples of for DNA.
24 Q So that would have been four separate areas?
25 A Correct.

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ROUGH DRAFT TRANSCRIPT

1 strike that. Did you do any testing here where we see the
2 location JB4A?
3 A I did. There was a stain there -- I should clarify
4 that some of the reason why I took the stains where I did is
5 because to me I visualize them as stains. You know, if I see a
6 red stain and I think it's blood, it's -- you know, that's why
7 I would target that area even though there is other blood on
8 the knife, I just saw a stain that was noticeable to me, and
9 that's what I tested.
10 And so you want to talk about sample JB4A?
11 Q I want to talk about sample JB4A.
12 A Okay.
13 Q What conclusions did you draw upon testing that blood
14 that you identified at that site and comparing with the known
15 DNA material of Victoria Witmarsh and/or Brian O'Keefe?
16 A The first thing I determined is that it was blood
17 positive. And my second conclusion was that there was a
18 mixture profile.
19 Q What do you mean by a mixture profile?
20 A I'm going to -- can I read to you what my conclusion
21 was?
22 Q Would that refresh your recollection?
23 A Yes, thank you. The DNA profile came from the blood
24 from the middle of the blade stained 4A is consistent with the
25 mixture of two individuals with at least one being male. The

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ROUGH DRAFT TRANSCRIPT

1 Q Now, were there other areas of blood on the knife?
2 A Absolutely.
3 Q And you chose to only test four?
4 A Correct.
5 Q Any particular reason why?
6 A Couple reasons. One, because I felt that there was
7 enough -- I felt that there was a lot of DNA evidence there,
8 but it's not necessary to take everything that's there. And so
9 I feel like I took a representative sample of some of the
10 things that I saw on the knife, which is two-fold. I wanted a
11 representative sample of what was on the knife to help me
12 better decide. You know, I didn't want to take maybe just one
13 sample, let's say. But I didn't want to completely swab the
14 entire knife and take everything because it's not necessary to
15 do that.
16 Q And if you had have swabbed the entire knife and took
17 every --
18 A Um-h'm.
19 Q -- would that have potentially impaired the ability
20 of other crime scene analysts to do other investigation on the
21 piece of evidence such as try and extract fingerprints?
22 A Absolutely.
23 Q Okay. Now, I want to focus on this first picture.
24 A Okay.
25 Q Can you explain to us the significance of -- actually

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ROUGH DRAFT TRANSCRIPT

1 major DNA profile, which means the largest contributor of the
2 DNA there, is Brian O'Keefe, and the estimated frequency of
3 that major profile in the population is rarer than 1 in
4 650,000,000,000 and identity is assumed.
5 Essentially, I had a mixture of Brian O'Keefe as the
6 major contributor, and then my minor contributor was Victoria
7 Witmarsh.
8 Q Okay. Any significance in between who's the major
9 contributor and who's the minor contributor?
10 A Not necessarily.
11 Q Not --
12 A It's just telling me who contributed the most DNA.
13 Q Okay. Now moving onto JB4B?
14 A Okay. Again, it was blood positive. I tested top --
15 what I called the top of the blade. I was basically saying
16 from the tip side over on the left to the top, I indicated the
17 top as where the blade came in contact with the handle.
18 So this stain JB4B was not a mixture, and it was
19 blood positive, and it was -- the source of that DNA sample was
20 Brian O'Keefe.
21 Q Okay. And that's further down the end of the blade
22 where the blade begins and the handle ends?
23 A Yeah, you can actually kind of see inside the circle
24 there where I actually kind of swabbed out a little bit of it.
25 I don't know if you can see -- how close you can see it, but --

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ROUGH DRAFT TRANSCRIPT

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1 Q Yeah.
2 A Yeah.
3 Q Now moving down to spot JB4C, which appears to be on
4 the handle itself.
5 A Okay.
6 Q Any conclusions you draw from that location?
7 A Yes. I again said it was a mixture. The major DNA
8 profile was also Brian O'Keefe. And the frequency of that
9 major profile again was 1 in 650,000,000,000 and identity is
10 assumed.
11 Q Okay.
12 A And I can explain statistics if we'd like to go into
13 that. The other conclusion that I made is that I couldn't make
14 any conclusions about the minor contributor to that.
15 Q Okay. Could you explain the statistical significance
16 of 1 in 650,000,000,000?
17 A 650,000,000,000?
18 Q Yes, ma'am.
19 A Correct. So on this earth, you know, two individuals
20 should not have the same DNA profile with the exception of
21 identical twins. And the number 650,000,000,000 is actually
22 100 times the earth's population. And so if we said that
23 there's approximately -- in 100 earths I'm not expecting to
24 find another DNA profile as this.
25 Q Okay. And then now moving onto spot JB4D which

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1 Q Now, focusing on the second photograph, there appears
2 to be a JB5A, and a JB5B.
3 A Okay.
4 Q Can you now make those out?
5 A JB5A is the top stain that's circled there in the
6 silver marker. And JB5B is the bottom one that is circled.
7 Q Now, where is JB5B actually located on the pants?
8 A It's actually on the left ankle area of the pant.
9 And the pants that I had there were laid out and I actually
10 folded up the ankle so that the way that it's folded you can
11 kind of see that top line is like just that ankle area is
12 actually kind of resting on the abdomen area. Just so that I
13 could show both stains in the same picture.
14 Q And then so is JB5A actually located on the front of
15 the pant?
16 A It's actually located in the abdomen area.
17 Q Okay. What conclusions were you able to draw with
18 regards to this stain located in JB5A?
19 A Again, it was blood positive, and the DNA profile of
20 stain JB5A is Victoria Witmarsh.
21 Q What were you able to determine with regards to the
22 stain located in JB5B?
23 A JB5B is a mixture of two people, again. Both
24 Victoria Witmarsh and Brian O'Keefe were included in that
25 mixture. I could not exclude either of them.

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ROUGH DRAFT TRANSCRIPT

1 appears to be at the very tip of the knife --
2 A Correct.
3 Q -- or towards the -- toward the tip.
4 A Yep.
5 Q What types of conclusion did you draw based on that
6 location?
7 A I again concluded that there was blood there, and the
8 source of the DNA obtained from that section of the knife is
9 Victoria Witmarsh. And again, that statistic was rarer than 1
10 in 650,000,000,000.
11 Q Now, was she the only contributor to the DNA of that
12 location?
13 A Yes.
14 Q Okay.
15 A I did say that additional alleles were detectable of
16 threshold, but the only DNA profile that I saw was her.
17 Q Okay. Now, did you do any DNA testing on any
18 clothing, Ma'am?
19 A Yes, I was asked to examine a pair of black stretch
20 pants.
21 Q Showing you what's been admitted as State's Exhibit
22 63.
23 A Okay.
24 Q Is that the black pants?
25 A That is.

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ROUGH DRAFT TRANSCRIPT

1 MR. SMITH: Court's indulgence.
2 BY MR. SMITH::
3 Q Ms. Bas, I just want to make sure something's clear
4 for the record.
5 A Okay.
6 Q The spot that you just described, which was in JB5B
7 --
8 A Um-h'm.
9 Q -- that was located where?
10 A Front left ankle.
11 Q Front left ankles of the pants?
12 A Correct.
13 Q Thank you.
14 MR. SMITH: Pass the witness, Judge, I'm sorry.
15 THE COURT: All right.
16 MR. PIKE: Thank you very much.
17 CROSS-EXAMINATION
18 BY MR. PIKE::
19 Q Good morning.
20 A Good morning.
21 Q In reference to this and through your work as a DNA
22 chemist or scientist, you've been called upon to testify and
23 offer expert opinions in a number of courts, haven't you?
24 A This is my first testimony.
25 Q This is your first testimony?

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ROUGH DRAFT TRANSCRIPT

1 A Correct.
2 Q In Clark County or in any court?
3 A Any court.
4 Q Okay. And you've had the responsibility of
5 identifying who a person is just strictly by their DNA,
6 important things for people's lives and emotions, and you
7 understand the importance in aspect in the criminal
8 investigation also.
9 A Correct.
10 Q And so you go through efforts to make sure that chain
11 of custody is protected, and in this case, in fact, when you
12 were doing the swabs, I think visually you see that there was a
13 potential ridge imprint upon the upper part of the knife, so
14 you made a choice not to swab there because you wanted to
15 preserve that for fingerprint testing at a later time.
16 A Is that the conversation that we discussed on the
17 phone that I told you?
18 Q Yeah. Do you remember that?
19 A I do remember telling you that, and I actually think
20 that I might have been talking about another piece of evidence.
21 I never made any notes in my report or I looked back through my
22 folder, and when I looked at my notes that I had taken on the
23 knife, I didn't actually note that there.
24 Q And for the record, you were gracious enough to talk
25 with me on the phone about your analysis --

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1 A Um-h'm.
2 Q -- because if you put it in plastic, biological
3 fluids may weep or transfer or move --
4 A Yeah.
5 Q -- and --
6 A If the sample isn't allowed to dry properly, it can
7 have very negative effects for DNA.
8 Q And also, if the collection or in the relationship to
9 this, you're also aware that there may be transfer of
10 biological fluid because of its very nature.
11 A Correct.
12 Q Fluid drops, it weeps, it seeps, and it is a very
13 mobile piece of evidence --
14 A Um-h'm.
15 Q -- at a location many times; isn't that true?
16 A Correct.
17 Q And it can be displaced such as a mixture of blood it
18 can -- if there's blood on one portion of a knife and then
19 there's contact made with somebody else, then there may be that
20 mixture when that occurs. And you don't know when the transfer
21 may have occurred, and you're not able to form any opinions as
22 to a sequence of events as far as when the mixture became a
23 mixture or what kept the separate part separate.
24 A I would never -- in this case I could never speculate
25 on how a stain became a mixture or it wasn't a mixture or how

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1 A Okay --
2 Q -- in this case.
3 A -- I do remember now.
4 Q Okay.
5 A Yep.
6 Q This refreshes your recognize?
7 A It does. You know, I work so many cases that it's
8 hard to remember what I'm talking about sometimes on the phone,
9 and I did -- you're right, I did mention to you that I had
10 possibly seen some sort of ridge detail. I'm not a latent
11 print examiner, but I -- okay, sorry.
12 Q But you also have training in collection techniques
13 and some basics in forensics collects so you were concerned
14 about things such as cross-contamination --
15 A Um-h'm.
16 Q -- possible destruction of evidence, and making sure
17 that whatever may be of evidentiary value that you maintain its
18 integrity for future people to --
19 A Absolutely.
20 Q -- examine? And --
21 A That's one of the reasons why I wouldn't take all of
22 the stains that I did testing on. I would want to leave some
23 for future testing.
24 Q And, in fact, you actually keep the knife stored in
25 paper, I guess --

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1 even the evidence was placed there.
2 Q But there are some circumstances in which you can
3 tell by looking at a piece of evidence where it may appear to
4 you that in that examining that probably the sample that was
5 given to you was probably contaminated through an improper
6 collection technique.
7 A Can you be more --
8 Q Let me give you an example.
9 A Yeah, can you be more specific, please.
10 Q Okay. In going through and collecting and look being
11 at some biological samples, you talked about the swabs from
12 inside the mouth.
13 A Um-h'm.
14 Q Now, you had the small piece that actually goes
15 inside the mouth, and you had examined that portion that's like
16 a too good brush.
17 A Correct.
18 Q That's where you get that from.
19 A Um-h'm.
20 Q Then swabs are taken from different locations on the
21 body. Many times they're taken with a swab that's a lot like a
22 Q-tip.
23 A Correct.
24 Q And so you can tell if that Q-tip is dipped in
25 distilled water and swabbed, then it will have certain evidence

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1 on it that you can see that was meant to be collected. But
 2 there's flexive (phonetic) blood or something that may have
 3 been fallen on that swab, and that would be a contamination.
 4 A I will say that I have never collected evidence from
 5 a person, so I don't have any knowledge of how that might go
 6 about.
 7 Q Okay. But in this case --
 8 A In this case.
 9 Q -- there -- when you were going through it, there --
 10 A Um-h'm.
 11 Q -- there was a penile swab that you examined --
 12 A Yes.
 13 Q -- that -- you noticed that there were small flex of
 14 a mixture profile on that.
 15 MR. SMITH: Judge, at this --
 16 THE WITNESS: Well, let's be clear.
 17 MR. SMITH: -- at this point I'm going to object to
 18 the relevance, and can we approach, please.
 19 MR. PIKE: Okay.
 20 THE COURT: All right.
 21 (Bench conference).
 22 BY MR. PIKE::
 23 Q So if I advised you in this case where you personally
 24 haven't done a collection, but usually when you're doing a
 25 collection or have a collection being done, if you -- if the

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ROUGH DRAFT TRANSCRIPT

1 Q And so while there was a full male profile on the
 2 swab of the right index finger of Brian O'Keefe, there were
 3 other alleles that were not associated with his DNA?
 4 A My exact wording is that there were additional
 5 alleles below threshold, which means that they were not above
 6 my reporting threshold. And in this case when I look at what
 7 his profile is on paper, I'm actually only seeing his profile.
 8 And there's nothing above threshold that I could even begin to
 9 attribute to anybody else.
 10 Q But significant enough to at least put it in the
 11 report that there were other alleles?
 12 A I just always want to be as thorough as possible and
 13 indicate everything that was there.
 14 Q Thank you very much.
 15 MR. PIKE: I don't have any further questions.
 16 THE COURT: Any redirect?
 17 REDIRECT EXAMINATION
 18 BY MR. SMITH::
 19 Q With regards to the comparison that you did in this
 20 case, I want to focus back on the buccal swab.
 21 A Okay.
 22 Q When you receive a buccal swab, what do you do with
 23 it?
 24 A I open it up, I take notes on it, I take a cutting of
 25 the buccal swab. I just take a piece of it, and then I go

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1 collection was done by giving it to someone who had blood on
 2 their hands, then there's a chance that blood may slough off
 3 onto -- dry blood or any type of blood may slough off onto that
 4 swab, and it may become contaminated.
 5 A Correct.
 6 Q And so that may not be the best way to collect
 7 evidence.
 8 A I wouldn't think so.
 9 Q Now, on the right index finger of Brian O'Keefe, that
 10 would be your interpretation on JB3A?
 11 A Um-h'm.
 12 Q In that you indicate that there was a full male
 13 profile, but there were alleles present. When you're
 14 identifying a blood or a DNA type, what is an allele?
 15 A Alleles, okay. An allele is -- it's one form of a
 16 gene. Now --
 17 Q My best example or the way I kind of can understand
 18 it is I believe that when you're talking about DNA, you start
 19 with general and more specific and more specific. Kind of like
 20 a book --
 21 A Yes.
 22 Q -- a chapter, and a page.
 23 A Let me be -- let me give you an example. X and Y.
 24 If you're a female, you have two X chromosomes. Each x is an
 25 allele. It's a very simple explanation, I think.

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1 through those procedures that I told you about before where I
 2 extract the DNA, I quantify it, figure out how much is there, I
 3 amplify it and make millions of copies in the areas that I'm
 4 interested in looking at, and then I run it on the instrument
 5 to get the profile.
 6 Q Okay. Now with regards to the buccal swab that was
 7 given to you that had been identified to you as coming from
 8 Brian O'Keefe --
 9 A Um-h'm.
 10 Q -- when you've initially extracted the DNA from that
 11 buccal swab, if it were contaminated with say the DNA of a
 12 female, would that have been easily identifiable to you?
 13 A Yes.
 14 Q And in this case is it your testimony that the buccal
 15 swab that you received that had been provided to you as
 16 identified as coming from Brian O'Keefe was a male profile and
 17 only a male profile?
 18 A It was a full male profile, meaning I got a full DNA
 19 result at every location that I tested, and there was no
 20 indication of a mixture whatsoever.
 21 Q And then is that the same DNA that you used to
 22 compare to the DNA that you extracted from the knife?
 23 A I always compare my unknown samples, things that I
 24 don't know what they are, to that known sample.
 25 Q Okay. And is that notwithstanding any potential

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1 problems that the defense attorney argued may have existed with
2 regards to the extraction of material from the penile swab?
3 A Can you rephrase that, please?
4 Q Okay. That was kind of a complicated question. My
5 question is was that a separate comparison done -- separate to
6 the DNA that was obtained from the penile swab?
7 A Yes. Every sample is looked at individually.
8 Q Meaning you didn't use the DNA that was obtained from
9 the penile swab to compare to the DNA found on the knife?
10 A Are you suggesting that --
11 Q No, I --
12 A I'm sorry. I'm like -- every sample is done
13 independently. Each analysis is done independently. In fact,
14 those two samples are never by each other when I do them. And
15 I don't make any conclusions until after all the DNA evidence
16 is complete.
17 Q Okay. And just so it's clear. Is the buccal swab,
18 the one that you've just testified to --
19 A Um-h'm.
20 Q -- that was a full male profile --
21 A Um-h'm.
22 Q -- is that the baseline that's used to compare to all
23 the other DNA on the evidence?
24 A Yes.
25 Q Okay.

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1 Q And in relationship to that, that was full female
2 profile?
3 A Correct.
4 Q Okay, that just meant it was her DNA?
5 A My conclusion is that that DNA -- the source of that
6 DNA is Victoria Witmarsh.
7 Q Okay?
8 MR. PIKE: Finally, your Honor, I'd ask that she be
9 qualified as an expert and can testify that she is now
10 qualified as an expert and been allowed to testify to in the
11 court of Clark County. No further questions.
12 THE COURT: The proper foundation has been laid, yes.
13 Anything else from the State?
14 MR. SMITH: No.
15 THE COURT: Any witnesses from the jurors? Any
16 questions, excuse me. Any questions from the jurors? No.
17 Thank you, Ma'am, for your testimony. You're instructed not to
18 discuss your testimony with any other witness involved in this
19 case until this matter is finally resolved. Thank you for your
20 time.
21 THE WITNESS: Thank you.
22 THE COURT: Is the jury okay? Do they need a break
23 right now? Is everyone okay? All right. Next witness by the
24 State.
25 MR. SMITH: Judge, State calls John Stallings. Oh,

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1 A Thank you.
2 MR. SMITH: No further questions.
3 THE COURT: Any recross?
4 MR. PIKE: Yes, very brief, your Honor.
5 RECROSS-EXAMINATION
6 BY MR. PIKE::
7 Q In reference to a determination of what you're
8 processing, you're able to determine what type of a fluid it
9 is; isn't that correct?
10 A I'm able to determine if something is blood or if
11 it's semen. Those are the two big items that I will screen
12 for.
13 Q Okay. What about saliva?
14 A I cannot tell you if something is saliva.
15 Q In reference to the penile swab, there was no
16 evidence of semen?
17 A There was not evidence of semen.
18 Q And in addition to that, you also examined nail
19 clippings from underneath -- that were collected from
20 underneath fingernails.
21 A I did.
22 Q And those were collected from Victoria --
23 A Yes.
24 Q -- Witmarsh?
25 A Um-h'm.

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1 actually, Judge, can we approach before --
2 THE COURT: All right.
3 MR. SMITH: -- he --
4 (Bench conference).
5 THE COURT: Next witness for the State.
6 MR. SMITH: John Stallings, Judge.
7 THE MARSHAL: Follow me, sir. Can I get you to just
8 raise your right hand, please. Remain standing.
9 JOHN STALLINGS, PLAINTIFF'S WITNESS, SWORN
10 THE CLERK: Please be seated. Will you please state
11 your name and spell it for the record.
12 THE WITNESS: My first name is John, J-o-h-n. Last
13 name's Stallings, S-t-a-l-l-i-n-g-s.
14 THE COURT: Go ahead, Counsel.
15 DIRECT EXAMINATION
16 BY MR. SMITH::
17 Q Mr. Stallings, how presently employed?
18 A I'm employed with the Clark County Coroner Medical
19 Examiner's Office.
20 Q And in what capacity, sir?
21 A I'm an investigator.
22 Q What are your job duties?
23 A If we get a report of a death that falls under the
24 jurisdiction of the coroner's office, and I'm assigned this
25 case, I respond to the scene. I examine the body. I pronounce

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1 death. I gather information from the agents that's there, who,
2 when, where, why, how. And I generate a report. I talk to the
3 families, if they're available.
4 We have the body at that time removed and brought to
5 our office to be examined. And then it's a responsibility of
6 our office to contact the legal next to kin. Also to make a
7 positive identification on the deceased.
8 Q Okay. Did you respond to a 5001 El Parque on
9 November 5th -- excuse me, November 6th -- the morning -- early
10 morning hours of November 6th, 2008?
11 A I did.
12 Q Did you come into contact with a descendant who was
13 later identified as Victoria Witmarsh?
14 A Yes.
15 Q Can you describe the condition of the person --
16 actually, why don't you just take us through what you did when
17 you arrived at the scene.
18 A After I got there, I met with the police detectives
19 that were there. They were with Las Vegas Metropolitan
20 homicide division.
21 Q Okay. And did they provide some background
22 information to you?
23 A They did.
24 Q Without going into what they said, what types of
25 things did you do at the scene?

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1 Q What's the significance of rigor mortis and/or
2 lividity?
3 A Rigor mortis will set into the body. That's the
4 stiffening of the muscles. There's a lot of things that effect
5 that whether it would be ambient temperature, what the body is,
6 what they're lying on, you know, say shag carpet as opposed to
7 concrete floor. What they're wearing. Are they wearing just
8 something light, are they nude, are they wearing a parka,
9 something like that. The temperature will affect that quite a
10 bit as well.
11 Q Based on your determinations as to rigor mortis
12 and/or lividity, are there ever any occasions where you're able
13 to formulate an opinion as to how long a person has been
14 deceased prior to you coming into contact with them?
15 A No, I do not.
16 Q Okay.
17 MR. SMITH: Pass the witness.
18 THE COURT: Any cross.
19 MS. PALM: Thank you.
20 CROSS-EXAMINATION
21 BY MS. PALM::
22 Q Good morning, Mr. Stallings.
23 A Good morning.
24 Q I just have a couple of questions for you.
25 A Not a problem.

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1 A What I did, I went in and I examined the descendant.
2 I noted the clothing, any marks, I took photographs --
3 Q Okay.
4 A -- at the scene, you know, for the doctors, the
5 medical examiners, they need to see those. And I pronounced
6 death, and then I just gathered information from the local
7 agency as to what happened.
8 Q Okay. Do you recall what time you pronounced death?
9 A I pronounced death well, November 6th, 2008 at 0415
10 in the morning.
11 MR. SMITH: Court's indulgence.
12 BY MR. SMITH::
13 Q Now, you just testified that you pronounced time of
14 death at 0415. Is that different than the actual time a person
15 dies? It seems like a silly question, but I just want to make
16 sure the record's clear.
17 A Yes. Yes, it is.
18 Q Okay.
19 A That's the time of death I pronounced.
20 Q Okay. Did you actually manipulate the body of the
21 descendant in order to determine if there were any signs of
22 life?
23 A What we do, we feel the body for the skin condition,
24 whether they're cool, cold, warm. I'm also checking for rigor
25 mortis and lividity as well.

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1 Q You prepared a summary of investigation report?
2 A Yes, ma'am.
3 MS. PALM: May I approach the witness, your Honor?
4 THE COURT: Yes.
5 BY MS. PALM::
6 Q Do you recognize (indiscernible) photograph?
7 A Prescription medication, apparently for the
8 descendant.
9 Q And did you actually look at her prescription
10 medications at the scene?
11 A I did.
12 Q And does that appear to be a fair and accurate
13 photograph of what they were?
14 A It appears to be. That's not my photograph, but it
15 appears to be.
16 Q (Indiscernible)?
17 A Yes, uh-huh.
18 MS. PALM: Move for admission of Defense Proposed
19 (indiscernible).
20 THE COURT: State.
21 MR. SMITH: May I see the photograph? No objection,
22 Judge.
23 THE COURT: It will be admitted.
24 MS. PALM: Thank you.
25 BY MS. PALM::

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1 A Yes.
2 Q Do you recall approximately what time you completed
3 the autopsy on Victoria Witmarsh?
4 A I don't have the time of completion. Just the time
5 that the autopsy was started.
6 Q Okay. What time did you start it?
7 A I first viewed the body at 7:48 in the morning when
8 the seal was broken. And then the actual autopsy examination
9 itself was conducted at 10:14 a.m.
10 Q Now, can you describe what you actually do when you
11 conduct an autopsy?
12 A Yes. As I described previously, we do the external
13 examination, and after the external examination a standard Y
14 incision is made, and all the internal organs are removed and
15 examined.
16 Q Do you also perform any testing on the descendant?
17 A Yes, we collect blood vitreous, which is the fluid
18 behind the eyes, and sometimes tissue for toxicology analysis.
19 Q Once you gather all this information, do you use the
20 total body of that information to determine a manner of death?
21 A Yes. The manner's also based on the circumstances.
22 The scene circumstances.
23 Q Okay. And did you conduct an external and internal
24 examination on the person identified in this case?
25 A I did.

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1 A They are, yes.
2 Q Now, can you -- actually let me ask you this. Did
3 you conduct an examination -- an external examination of Mrs.
4 Witmarsh's head and/or scalp area to determine whether or not
5 there was any signs of any injury?
6 A The external examination of the scalp is limited by
7 the presence hair. So if there's bruising that's underneath or
8 in the scalp area where there's hair, we typically do not shave
9 the descendant's head unless there's a reason to do that.
10 On the examination of the head, there was a hematoma,
11 which is blood underneath the soft tissue that elevates the
12 soft tissue above the bone so that you feel an actual bump. So
13 she had a hematoma on the right side of the forehead, and
14 that's all I saw on external examination.
15 Q Can you give us examples of what types of things may
16 cause a hematoma.
17 A A hematoma is caused by blunt trauma. And blunt
18 trauma is just it's a category of trauma that's -- we use -- we
19 -- I don't specifically know what caused that injury. An
20 example of what can cause blunt trauma, a baseball bat, a hand,
21 falling on concrete, things like that will cause blunt trauma.
22 Q Okay. And so the injuries that you -- excuse me, the
23 bruises that you've already testified to, is that pretty much
24 the only significant finding from the external examination
25 along with the inside stab wound?

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1 Q I'd like to first talk to you about the external
2 examination you conducted on Victoria Witmarsh. Can you kind
3 of walk us through that? At least tell us your significant
4 findings?
5 A Yes. The --
6 MR. PIKE: Your Honor, I'm sorry, may we approach the
7 bench?
8 THE COURT: All right.
9 (Bench conference).
10 BY MR. SMITH::
11 Q Can you please proceed. Describe the significant
12 findings with regards to your external examination of Victoria
13 Witmarsh.
14 A Yes. There were a number of bruises on the body. On
15 the head, torso and extremities, and there was also a sharp
16 force injury which on internal examination I determined to be a
17 stab wound that was on the right side of the chest.
18 Q Okay.
19 MR. SMITH: May I approach the witness?
20 THE COURT: Yes.
21 BY MR. SMITH::
22 Q I'm going to show you a series a photographs, and I'm
23 going to ask if they accurately reflect and depict the bruises
24 that you personally observed pursuant to the external
25 examination you conducted of Victoria Witmarsh?

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1 A That's correct.
2 Q Okay. Now let's go to the internal examination. Can
3 you tell us what your significant findings were pursuant to
4 conducting that?
5 A Yes. Internally when I reflected the scalp, she had
6 a bruise on the back of her head that I could only see in the
7 scalp tissue after it was peeled back. She also had 500
8 milliliters of blood in the right chest cavity. About 125
9 milliliters of blood in the abdominal cavity, and a wound that
10 went from the front of her liver to the back of her liver.
11 Q Okay. So just so the record's clear, you testified
12 that the external examination yielded a sign of injury to the
13 front of her head. And the internal injury yielded a sign of
14 injury to the rear of her head as well?
15 A That is correct.
16 Q Please proceed.
17 A Those were the major internal findings.
18 Q Okay. Did you --
19 A I'm sorry, internal traumatic findings. There were
20 other findings of natural disease.
21 Q Okay. Can you talk to us about that?
22 A Certainly. Her liver was cirrhotic, meaning it was
23 hard and very nodular. That was a major natural disease
24 finding.
25 Q Is that common called cirrhosis?

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1 A Yes, that's cirrhosis.
2 Q Okay. Was a toxicology examination done on Victoria
3 Witmarsh as well?
4 A Yes. Toxicology analysis was performed on blood.
5 Q Okay. What were the significant findings with regard
6 to that?
7 A She had ethanol, which is alcohol concentration of
8 a.24 gram percent, and venlafaxine which is an
9 anti-depressants. The other name is Effexor of 990 nanograms
10 per mill.
11 Q Okay. Now, we're hearing that you're saying 990
12 nanograms per milliliter. Is that a significantly high or low
13 number, or do you know?
14 A It is -- it's actually in the therapeutic or norm
15 ranges.
16 Q Okay. So it's your testimony that that's in actually
17 a therapeutic or normal range?
18 A Yes, for the sources that I used for toxicology, it
19 is in the normal range.
20 Q And what sources did you use incidentally, doctor?
21 A There's a source called Winick (phonetic) that is
22 produced by a toxicologist and also the book is called a
23 Distribution of Toxic Drugs and Chemicals in Man, and it's
24 produced by Basalt (phonetic).
25 Q So is it your testimony, then, that you actually

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1 Less effective ways of getting Hepatitis C would be
2 sexual transmission or using the tooth brush or a razor of
3 someone that had Hepatitis C.
4 Q Okay. Did the toxicology examine that was done on
5 Ms. Witmarsh reveal whether or not her blood contained any
6 illegal narcotics?
7 A There were no illegal narcotics on our toxicology
8 analysis.
9 Q Is there any correlation between a person suffering
10 from Hepatitis C and cirrhosis? Specifically, can Hepatitis C
11 actually cause cirrhosis?
12 A Yes, it can.
13 Q Can Hepatitis C affect the body in any other way such
14 as the ability of a person to bruise?
15 A Not the Hepatitis C itself, but its effect on the
16 liver, yes.
17 Q How about cirrhosis?
18 A Yes.
19 Q So is it your testimony that cirrhosis can actually
20 affect how a person bruises?
21 A Yes, it can.
22 Q Can you explain that for us?
23 A Yes. Cirrhosis is -- it is actually just scarring of
24 the liver, and when the liver is scarred, that means it's lost
25 its normal cellular component. And part of the liver's

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1 consulted two different sources?
2 A Yes.
3 Q And arrived at the same conclusion?
4 A Yes.
5 Q And are those two treatises, as they were, that are
6 commonly accepted research materials for the medical community?
7 A Yes, they are.
8 Q Were you able to determine whether or not Mrs.
9 Witmarsh suffered from any other diseases?
10 A On gross examination her other organs appeared normal
11 to my recollection. I'm sorry, with the exception of her
12 spleen which was enlarged.
13 Q Do you know whether or not Mrs. Witmarsh, whether her
14 blood tested positive for the antibodies for Hepatitis C?
15 A It did, yes.
16 Q Okay. Now, are you aware of what -- how a person can
17 contract Hepatitis C?
18 A Yes, I am.
19 Q How?
20 A According to the Centers For Disease Control, the
21 most common way of contracting Hepatitis C is blood borne
22 infection, being exposed to the blood of someone with Hepatitis
23 C, and that's typically in intravenous drug use, from
24 transfusion -- getting repeated transfusions such as
25 individuals with hemophilia would get repeated transfusions.

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1 function is to produce some of the clotting factors that help
2 us heal when we -- or to stop you from bleeding when you are
3 bruises or injured.
4 So with a cirrhotic liver your production of those
5 clotting factors are decreased, so when you as a cirrhotic, a
6 stain an injury, you would bruise easier than someone without
7 cirrhosis.
8 Q Okay, is it your testimony that in order to develop
9 the bruises, notwithstanding suffering from cirrhosis, they
10 still would have to suffer some type of injury?
11 A Yes.
12 MR. SMITH: Judge, at this point -- actually strike
13 that.
14 BY MR. SMITH::
15 Q With regards to the photographs that you've just
16 illustrated -- excuse me, that you've just looked at and we
17 talked about the bruises, do those photographs depict bruises
18 that could be consistent with suffering an injury?
19 MR. PIKE: Your Honor, the continuing objection that
20 was May earlier, the insertive --
21 THE COURT: All right.
22 MR. PIKE: Thank you.
23 THE COURT: Go ahead and answer the question.
24 THE WITNESS: All bruises you can think of as injury,
25 whether it's self-inflicted injury or injury inflicted by

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1 someone else.
2 BY MR. SMITH:
3 Q Okay. So let me ask you this, the injuries that are
4 depicted in this photograph, could they be consistent with
5 blunt force trauma?
6 A Yes.
7 MR. SMITH: Judge, at this point I'd move for
8 admission of State's Proposed 32 through 38, 40, 44 through 48,
9 and 55 through 59, which are all the photographs that Dr.
10 Benjamin has previously reviewed.
11 THE COURT: Can I see those again, please?
12 MR. SMITH: Yes.
13 THE COURT: Are these in order? Yes.
14 MR. SMITH: Yes.
15 THE COURT: All right.
16 MR. PIKE: Thank you, your Honor. I've had a chance
17 to see those, and I previously made the representations to the
18 Court. If I can ask the witness a voir dire question.
19 THE COURT: Sure.
20 BY MR. PIKE:
21 Q Dr. Benjamin, we had an opportunity to meet prior to
22 the preliminary hearing in this case; do you recall?
23 A Yes, I do recall.
24 Q And during that period of time you indicated that
25 individuals that suffer from cirrhosis often bruise just from

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1 THE COURT: Yes.
2 MR. SMITH: And Judge, rather than put them up one by
3 one, can I have her mission to just hand them to the jury and
4 they can look at them or do you want me to --
5 THE COURT: Why don't you put them up.
6 MR. SMITH: Okay.
7 THE COURT: Why don't you publish them up there.
8 BY MR. SMITH:
9 Q Showing you what's now been admitted, doctor, as
10 State's Exhibit 32. What are we looking at right here?
11 A You're looking at the body from the left side, and
12 there's a bruise on the front of the left arm.
13 Q And then State's Exhibit 33. Is that a closer up
14 picture of that bruise?
15 A That is correct.
16 Q State's Exhibit 34, what are we looking at here?
17 A We are look being at a series of bruises on the left
18 arm. One is on the anterior and more medial aspect. And two
19 are on the back of the arm.
20 Q So there's one right there --
21 A Right.
22 Q -- then are there two right there?
23 A Correct.
24 Q State's Exhibit 35, what is that?
25 A That is a closer view of the previous picture with

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1 minimal contact because of the nature of that disease.
2 A Yes.
3 Q And so bruises that were depicted in those
4 photographs have nothing to do with the cause of death, which
5 was a perforation of the liver?
6 A The bruises actually, I have that as contributory to
7 the cause of death.
8 Q None of the bruises were life threatening.
9 A They're not life threatening, but the mechanism of
10 death in this case would be blood loss, exsanguination and
11 bruises causes blood to be out of the vasculature, so that's
12 why it was contributory.
13 Q But in reference to an individual that suffers from
14 cirrhosis, because of the nature of bleeding, like hemophilia,
15 the bruise may not be reflective of the amount of blunt force
16 trauma that you would normally experience with an otherwise
17 healthy person.
18 A That is true.
19 MR. PIKE: So based upon that, your Honor, these are
20 not representative of specific life threatening type injuries,
21 and I request that they be excluded.
22 THE COURT: (Indiscernible) objection, they'll be
23 admitted.
24 MR. SMITH: Thank you, your Honor. Judge, I'd ask
25 for permission to publish.

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1 that bruise on the back of the arm, the left arm.
2 Q And then 36, is that a closer up picture of those
3 other two?
4 A Yes.
5 Q Looking at 37, what can we see there?
6 A That's the left side of the body. There's a faint
7 bruise on the lateral left body wall.
8 Q 38, what are we looking at there, doctor?
9 A We're looking at the same bruise with an L shaped
10 ruler.
11 Q And 40?
12 A It's a bruise on the knee. I'm not sure left or
13 right knee from that photo.
14 Q 44.
15 A Those are two bruises on the upper area of the right
16 side of the abdomen.
17 Q 46.
18 A There's a bruise on the right buttock. There's two
19 on the lateral aspect of the left leg.
20 Q So there's one on the buttock and then two down here?
21 A Correct.
22 Q 47.
23 A This is a posterior surface of the body. We're
24 seeing those bruises on the left arm again that were previously
25 shown.

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1 Q Does there also appear to be apparent redness in her
2 back area?
3 A That's livor.
4 Q Okay. Understood. 48.
5 A That's a closeup of the bruise on the back of the
6 left arm again.
7 Q Okay.
8 A We've seen that one.
9 Q Okay. 55.
10 A That's the hematoma with a bruise on the right side
11 of the forehead.
12 Q 56.
13 A Those are bruising on the lower distal aspect of the
14 legs and on the dorsum of the feet. On the top of the feet.
15 Q 57.
16 A That is a bruise on the medial aspect of the left
17 buttock.
18 Q 58.
19 A It's a closeup of the bruise on right buttock.
20 Q So then there would be a bruise right here and
21 actually a bruise that's right here that we can't see in this
22 photograph?
23 A Correct.
24 Q And finally, 59. We've looked at that one
25 previously. That's on the left arm on the front.

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1 body.
2 Q Does that appear to be a male?
3 A Yes.
4 Q Okay. Notwithstanding that, are you able to draw for
5 demonstrative purposes kind of the location of the wound and
6 the path it took internally inside the body of Mrs. Witmarsh?
7 A Yes, I can.
8 Q Can you do that for us?
9 A Certainly. The arrows are --
10 Q Okay. And this accurately reflects that wound path
11 based on your own external investigation -- or internal
12 investigation, I'm sorry.
13 A Somewhat, yes. The diagram is sort of limited. In
14 general, yes.
15 Q Okay.
16 A Yeah.
17 MR. SMITH: Judge, I'd move for admission of State's
18 proposed Exhibit 66.
19 THE COURT: Let's let defense counsel look at it,
20 first.
21 MR. SMITH: You're right. I'm sorry, Judge. My
22 apologies.
23 THE COURT: Any objections --
24 MR. PIKE: No objection, your Honor.
25 THE COURT: Okay, it will be admitted.

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1 Q Okay. And these depict all the bruises that you saw
2 pursuant to the external investigation?
3 A Yes.
4 Q Now, based on your internal and external
5 investigation, were you able to arrive at a cause of death for
6 Victoria Witmarsh?
7 A I was, yes.
8 Q And what was that?
9 A It was a stab wound of the chest.
10 Q Showing you State's 60. Is that a picture of that
11 stab wound?
12 A Yes, it is.
13 Q Were you able to make any determination as to the
14 path of the wound internally?
15 A Yes. The path was downward, and it was -- I
16 described it as front to back and right to left.
17 MR. SMITH: May I approach the clerk, Judge?
18 THE COURT: Yes.
19 MR. SMITH: May I approach the witness, Judge?
20 THE COURT: Yes.
21 BY MR. SMITH::
22 Q Now, doctor, I'm showing you what's been marked for
23 purposes of identification as State's Proposed Exhibit 66.
24 What does that appear to be to you?
25 A It's a body diagram. The lateral surface of the

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1 MR. SMITH: May I publish, Judge?
2 THE COURT: Yes.
3 BY MR. SMITH::
4 Q Okay. So up here we have the wound itself --
5 A Correct.
6 Q -- is that correct? And then you're saying that the
7 wound went downward?
8 A Right, the path is downward.
9 Q Now, based on your internal and external
10 investigation, were you able to determine a cause of death?
11 A Yes, the cause of death again was a stab wound of the
12 chest.
13 Q I'm sorry, manner of death. Forgive me.
14 A The manner of death was homicide.
15 Q Now, can you explain the significance of the cause of
16 death being a homicide from a medical perspective?
17 A Yes. A manner of death as homicide means that I
18 believe that this injury was caused by someone else. So it --
19 for us it means death at the hands of another. That's what
20 homicide means.
21 Q Okay.
22 MR. SMITH: Court's indulgence.
23 BY MR. SMITH::
24 Q Dr. Benjamin, one final question. Just so that the
25 record's clear, where did you observe the injury to the back of

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1 Mrs. Witmarsh's head and how were you able to observe that?

2 A The injury was on the middle or midline of the

3 parietal/occipital scalp region, and that's after we make an

4 incision behind the ears and peel the scalp back.

5 Q Can you kind of just stand up and demonstrate to the

6 jury --

7 A Sure.

8 Q -- where that a located on the human body?

9 A Certainly.

10 Q Okay, thank you.

11 MR. SMITH: Pass the witness, Judge.

12 THE COURT: Ladies and gentlemen, we're at the noon

13 hour here. We did start a little late. How's the jury as far

14 as food and needing a personal break? Is everybody okay, or --

15 all right, go ahead, Mr. Pike. Thank you.

16 CROSS-EXAMINATION

17 BY MR. PIKE::

18 Q Afternoon, Dr. Benjamin.

19 A Good afternoon.

20 Q Okay. At the time of the preliminary hearing in this

21 matter you hadn't had an opportunity to review the toxicology

22 or the possible effects of the medication that was found in

23 Mrs. Witmarsh's system.

24 A That's correct.

25 Q And then after we had a conversation at the time of

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1 should have had a target daily dose of about 150 milligrams.

2 MR. SMITH: Objection, Judge. Is he saying based on

3 Dr. Christiansen's report?

4 THE COURT: Is that your question, Mr. Pike?

5 MR. PIKE: Yes.

6 MR. SMITH: Then I object.

7 MR. PIKE: Okay. Well, based --

8 MR. SMITH: Because basically he's trying to use her

9 to testify.

10 THE COURT: All right. I --

11 MR. PIKE: Okay, I'll bring in Dr. Christiansen.

12 THE COURT: I'm going to sustain the objection.

13 MR. PIKE: That's fine. We'll go ahead and do that.

14 BY MR. PIKE::

15 Q When you (indiscernible) for these other sources, you

16 certainly found that Effexor which is a name for this

17 anti-depressant does have some counter indications and may

18 affect somebody emotionally and cause them to be in an agitated

19 state, isn't that correct?

20 A Agitation is listed as a side effect of the

21 medication.

22 Q Okay. And along with that, there are other possible

23 side effects such as aggression, and certainly, it's not a drug

24 that should ever be mixed with alcohol.

25 MR. SMITH: Objection, Judge. That's a compound

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1 the preliminary hearing, you had an opportunity to review that

2 -- the nature of that drug and the dosages and get some

3 information on that because it became a question at the time of

4 the preliminary hearing.

5 A Yes.

6 Q You wanted to be prepared for testimony at the trial

7 today. I make representations to you that a full set of the

8 medical records of Mrs. Witmarsh was provided to the District

9 Attorney's Office prior to the trial in this matter. Did you

10 have an opportunity to review those?

11 A The medical records?

12 Q Yes.

13 A No, I did not.

14 Q So you would not be aware of when Mrs. Witmarsh

15 started on the use of this anti-depressant?

16 A I received some information from the deputy district

17 attorney regarding some of her medical history and that she had

18 started on this medication, I believe that was August of 2008.

19 Q August 5th of 2008. And, in fact, what you're

20 referring to is the report that was provided by Dr. Tawny

21 Christiansen (phonetic). Did you receive that?

22 A Yes.

23 Q And in reference to that, from her review of the

24 medical records, then, you wouldn't contest the fact that the

25 amount of drugs that she was supposed to have in her system

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1 question.

2 MR. PIKE: Okay.

3 THE COURT: Sustained.

4 MR. PIKE: Let me ask it in one --

5 BY MR. PIKE::

6 Q The drug should not be taken when somebody has

7 alcohol in their system.

8 A The physician's desk reference does say that the drug

9 is, according to their research and testing, does not affect

10 someone's motor skill. You are not affected if you're using

11 alcohol and Effexor, but they do recommend that you don't use

12 the two in combination.

13 Q But you've got a patient here or a deceased here that

14 has cirrhosis of the liver and Effexor is broken down by the

15 liver and put into the system, so the alcohol which causes the

16 cirrhosis which then affects the ability of -- or somehow

17 affects the ability of Effexor would counter indicate to you

18 that she shouldn't be drinking while she was taking this

19 anti-depressant.

20 A It is recommended that you don't drink and take the

21 anti-depressant.

22 Q Okay, alcohol's a depressant.

23 A Alcohol is known to be a depressant, yes.

24 Q Effexor is an anti-depressant, so we've got counter

25 balancing medications that are being self-administered by Mrs.

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1 Witmarsh.
2 MR. SMITH: Objection, Judge. He's testifying, and
3 it's argumentative.
4 THE COURT: No. Do you understand the question,
5 doctor?
6 MR. SMITH: It's not a question.
7 THE WITNESS: I'm not sure what I'm being asked.
8 THE COURT: Why don't you restate your question.
9 MR. PIKE: All right. Thank you very much. Okay.
10 BY MR. PIKE::
11 Q Without alcohol being a depressant, that reacts
12 adversely in some people, according to what you've read for
13 people that take Effexor.
14 MR. SMITH: Objection, Judge. It's a vague question.
15 She testified that the combination of the two can lead to some
16 problems, but not necessarily that it has an adverse reaction.
17 And, in fact, she said that it's recommended -- that it states
18 that it may or may not affect motor skills. That's what she's
19 testified to.
20 MR. PIKE: Okay, let me -- if I could just lead her
21 and then ask a direct question --
22 THE COURT: Okay.
23 MR. PIKE: -- and we can do that. All right.
24 BY MR. PIKE::
25 Q Some of the side effects of Effexor includes nausea,

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1 A I do not. It's not relevant to my determining cause
2 and manner.
3 Q Well, if someone -- let's take an injection into a
4 vein. That -- and you have an injection of a drug, that could
5 be suicidal or could be homicide.
6 A It --
7 MR. SMITH: Objection, Judge. What's the relevance
8 as opposed to this case?
9 MR. PIKE: Well, she's making a determination whether
10 or not it's suicide or whether or not it's a homicide, but she
11 doesn't have any ever the mechanics of what was going on or
12 what was involved in her mind or Victoria Witmarsh's mind set
13 at the time that this happened. We know she was intoxicated.
14 We know that she --
15 THE COURT: Well, what's the relevance of the
16 injection when there's no evidence in this case that there was
17 any injection?
18 MR. SMITH: And that's my point.
19 MR. PIKE: It's an example to show that there are
20 physical evidence that can be interpreted both as suicide or as
21 homicide.
22 THE COURT: I'm going to sustain the objection.
23 Direct it to the specifics of this case and see if -- you know,
24 we'll see what the doctor's answer is.
25 BY MR. PIKE::

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1 correct?
2 A Correct.
3 Q Sweating, correct?
4 A Correct.
5 Q Trimmer.
6 A Yes.
7 Q Agitation.
8 A Yes.
9 Q Dizziness.
10 A Yes.
11 Q Possible effects towards aggression.
12 A I'm actually not familiar with that. I'm not
13 familiar that side effect. I may have missed that.
14 Q Mental effects towards depression and suicide.
15 A The -- again, the PDR says that their research data
16 does not support that. It increases suicidal behavior if you
17 take this drug in adults 24 years of age or older, but that
18 there is an increase in suicide for teens and adolescents.
19 Q And this is being given to somebody, Mrs. Witmarsh,
20 because she's depressed. That would make sense, wouldn't it?
21 MR. SMITH: Objection, Judge. It's outside the scope
22 of her knowledge. She has no reason to know.
23 BY MR. PIKE::
24 Q You never reviewed her history, so you don't know if
25 Mrs. Witmarsh had a history of suicide attempts, do you?

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1 Q In this case, you were not present in that room when
2 that knife went into that body.
3 A That is correct.
4 Q You don't have any personal knowledge as to how that
5 entry occurred, whose hands were on the knife and how they were
6 on the knife, do you?
7 A I do not, no.
8 Q In going through these bruises to make a
9 determination whether or not they're relevant to this -- or to
10 the time frame that's involved in this, let's talk about a
11 little bit bruises. Bruises tend to be just a discoloration of
12 the skin that is reflected of blood pooling underneath the
13 skin, correct?
14 A Correct.
15 Q And generally they change colors in a predictable
16 fashion.
17 A In a predictable fashion, but not in predictable time
18 and two bruises sustained at the same time can have different
19 coloration.
20 Q So if a bruise initially when it's occurred, then a
21 bruise will be a reddish color, generally.
22 A Typically, yes.
23 Q Okay, the color of the blood under skin, and then
24 after a period of time when the blood cells begin to break
25 down, the bruise will darken and turn to a purplish color; is

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1 that correct?
2 A Yes.
3 Q And then it will go from that to a green period,
4 correct?
5 A Correct.
6 Q And then to a brown or yellow appearance.
7 A Correct.
8 Q Now, do you have your autopsy report with you?
9 A I do.
10 Q Okay, if you could refer to that. Okay. Turn to
11 Page 3 on that, if you would. Okay. Some of the bruising that
12 you noted around the thorax or abdomen and back indicated a
13 faint three-quarter inch green contusion, correct?
14 A Correct.
15 Q Okay. The right side of the abdomen that was one
16 green maroon and the other one was predominantly maroon,
17 indicating that those were older ones.
18 A What --
19 Q Older bruises. They weren't associated to the time
20 or near the time of death.
21 A I can't say that with any certainty.
22 Q The color has changed, and so you don't know --
23 A The color can change in minutes to hours. I don't
24 know how long she was laying on the scene. I don't know, so I
25 can't say that they happened at the same time.

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1 the force applied and also when or when she sustained those
2 bruises, yes.
3 Q And alcoholism also affects -- excuse me. Alcoholism
4 also affects the bruising process?
5 MR. SMITH: Objection, Judge. Relevance.
6 THE COURT: Overruled.
7 THE WITNESS: Alcohol does have some effect on
8 platelets which are involved also in the clotting cascade. So
9 yes, alcohol use long term chronic can have an effect.
10 BY MR. PIKE::
11 Q And the platelets, the blood that is what causes the
12 clotting that you'd indicated during your testimony before.
13 A It's part of a clotting cascade.
14 Q In going through the references in relation to that,
15 the Hep C also causes possible signs and symptoms of liver
16 cirrhosis, which includes an accumulation of fluid within the
17 abdomen; is that correct?
18 A I think we're getting a little mixed up. The
19 cirrhosis of the liver is what would cause accumulation of
20 fluid, not accumulation of blood and cirrhosis can be caused by
21 a number of things singly or in combination. It can be caused
22 by Hepatitis C, Hepatitis B or alcohol use and certain other
23 medical diseases.
24 Q And Hepatitis C or cirrhosis of the liver, can either
25 of those two medical conditions cause impaired cognition of an

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ROUGH DRAFT TRANSCRIPT

1 Q So during -- the bruises change post-mortem?
2 A They don't change post-mortem. I don't know when the
3 sequence of when they were sustained.
4 Q And you have not offered any opinion in relationship
5 to these bruises, so I'm taking that that you don't -- you
6 can't provide an opinion in relationship to those.
7 MR. SMITH: Objection, Judge. That actually
8 misstates the testimony, because she stated that those bruises
9 were a contributory cause to Mrs. Witmarsh's death.
10 MR. PIKE: Certainly --
11 THE COURT: Is your question --
12 MR. PIKE: -- if --
13 THE COURT: Can you date the time of the bruises?
14 THE WITNESS: I cannot date them just by looking at
15 them. And when we do try to date them microscopically, the
16 ranges are pretty broad. It's in days -- usually days, weeks,
17 that sort of thing.
18 THE COURT: Go ahead, Mr. Pike.
19 MR. PIKE: Thank you.
20 BY MR. PIKE::
21 Q And in relationship to this, it's even more difficult
22 because of the number of diseases that she had. The Hep C, and
23 the more particular the cirrhosis of the liver affected how
24 easily she bruised and how extensive the bruising was.
25 A The cirrhosis does make it challenging to determine

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1 individual?
2 A The cirrhosis can cause impaired cognition.
3 Q And cognition is a brain function.
4 A Yes.
5 Q That's the ability to ascertain, interpret and react
6 appropriately to stimuli from the outside?
7 A Correct.
8 Q In relationship to that, alcohol also affects a
9 person's ability to -- or their cognitive facilities, doesn't
10 it?
11 A Of course.
12 Q And the blood alcohol level of Mrs. Witmarsh that you
13 were able to ascertain was a .24. That's in excess of the legal
14 limit?
15 A Yes, it is.
16 MR. SMITH: Objection to the relevance, Judge.
17 THE COURT: Overruled.
18 BY MR. PIKE::
19 Q That's an amount that is sufficient to impair her
20 ability to think clearly.
21 A I cannot say that definitively because I don't know
22 what her drinking history is, and if she is a chronic
23 alcoholic, she may have been operating at a .24 on a regular
24 basis, so it's difficult to say how she would have reacted or
25 responded or what her cognitive abilities would be at a .24 not

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1 knowing her history.
2 Q And this is an individual, then, that probably has a
3 prolonged history of alcohol abuse, based upon the alcohol
4 level and the -- or excuse me, and the cirrhosis of the liver?
5 MR. SMITH: Objection, Judge. Calls for speculation.
6 THE COURT: Are you able to make that determination,
7 doctor?
8 THE WITNESS: My suspicion is that the cirrhosis is
9 caused both. If she did have a history of long-term alcohol
10 use, then it is caused by both the alcohol use and Hepatitis C.
11 Both of those in combination could have caused the cirrhosis.
12 Again, the history of alcohol use is historical. I can't just
13 base it on a one-time laboratory analysis.
14 BY MR. PIKE::
15 Q And if someone has Hepatitis C, you would advise
16 them, if you were a treating physician, to not drink alcohol.
17 A Correct.
18 MR. PIKE: Court's indulgence. Appreciate the
19 Court's indulgence.
20 BY MR. PIKE::
21 Q Thanks. Appreciate your patience. In your
22 examination of the stab wound that was under the arm, you were
23 able to ascertain that the knife did not hit any boney
24 structures?
25 A No, it did not.

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ROUGH DRAFT TRANSCRIPT

1 Q Blunt force trauma.
2 A Correct.
3 Q All of the injuries that you saw?
4 A With the exception of the sharp force injury, the
5 stab wound.
6 Q And incidentally, doctor, what was the length of the
7 knife, if you know?
8 A The length of what I measured at autopsy?
9 Q Yes, ma'am.
10 A One and a quarter inch.
11 Q How far did the wound protrude into the body?
12 A Approximately, four and a quarter inches.
13 Q And finally, if there was any evidence to you that
14 that wound was self-inflicted, would you have still categorized
15 this as a homicide?
16 A Of course not.
17 Q No further questions.
18 THE COURT: Recross?
19 MR. PIKE: Nothing further.
20 THE COURT: All right, thank you, doctor. Thank you
21 for your testimony.
22 THE WITNESS: Thank you.
23 THE COURT: You're instructed not to discuss your
24 testimony with any other witness involved in this case until
25 this matter is finally resolved. Thank you for your time.

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1 Q And it went through and you indicated that it
2 lacerated the liver.
3 A There was an incised wound through the liver, yes.
4 Q Okay. Define incised for me.
5 A It's -- incised wound means that it was made by a
6 sharp instrument. A laceration would be blunt trauma, so --
7 Q And because of the nature of the Hep C, the damage to
8 the blood platelets that imposes, and the injury to the liver
9 itself, this would have been a very profusely, a very quickly
10 bleeding type of a wound?
11 A I suspect it would have been, yes.
12 Q And I don't know a better way to say it, I apologize.
13 Maybe you can help me. So that this would have -- the bleeding
14 -- the amount of bleeding would have caused her to bleed out
15 and pass away rather quickly.
16 A More than likely, yes.
17 Q Thank you.
18 THE COURT: Mr. Smith.
19 REDIRECT EXAMINATION
20 BY MR. SMITH::
21 Q With regards to the description of the bruises and
22 the injuries that you saw, how did you categorize those
23 injuries in your autopsy report?
24 A They're listed under description of blunt force
25 injuries.

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1 Ladies and gentlemen, it's 12:15 now. We'll take our lunch
2 break. I've been advised that the bathrooms are still out of
3 order in the building. Actually, they only work on the first
4 and second floors. Oh, was there any questions, I'm sorry?
5 No. They only work on the first and second floors at this
6 time. They're working diligently to repair them, and so if you
7 do need to go to the restroom, you're going to have to go down
8 to the first and second floor.
9 During this recess it is your duty not to converse
10 among yourselves or with anyone else on any subject connected
11 with this trial, or read, watch or listen to any report over
12 commentary on the trial by any person connected with the trial
13 or by medium of information, including without limitation,
14 newspaper, television, radio or the Internet.
15 You're not to form or express an opinion on any
16 subject connected with this case until this matter is finally
17 submitted to you for deliberations. We'll see you back --
18 who's your next witness, Mr. Smith? Who do you have coming?
19 MR. SMITH: Judge, the State's next witness was going
20 to be either Detective Wildemann or Detective Bunn.
21 THE COURT: All right. We'll see you back at 1:15.
22 (Outside the presence of the jury)
23 Let the record reflect we're outside the presence of the jury.
24 Yes.
25 MR. SMITH: Judge, one thing I wanted to put on the

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1 record real quick. The anticipates during the testimony of
2 either Bunn or Detective Bunn or Detective Wildemann
3 introducing a certified -- actually a copy of a certified copy
4 of the judgment of conviction of Mr. O'Keefe for the crime of
5 battery constituting domestic violence pursuant to the prior
6 bad acts motion that the State has already filed and been
7 granted.
8 In an abundance of caution, the second page of the
9 judgment of conviction actually annotates that he was sentenced
10 to 24 to 60 months consecutive with another case. While the
11 trial was proceeding, Ms. Palm and I kind of came to an
12 agreement as to what we were going to redact, so that part is
13 redacted from that, and by stipulation I guess we're going to
14 -- they're going to accept that we're offering a less than
15 accurate copy of the certified copy of the judgment of
16 conviction.
17 THE COURT: Is that correct, Ms. Palm?
18 MS. PALM: That's correct.
19 THE COURT: I think that's appropriate, and I
20 appreciate counsel working that issue out. Anything else?
21 MS. PALM: We have another issue with respect to that
22 they wanted to in the note of Officer Hutcherson's --
23 MR. SMITH: That's right.
24 MS. PALM: -- statements that he recorded. I don't
25 think that note is admissible, but if you're going to allow

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1 MR. SMITH: And Judge, there -- I respect Ms. Palm's
2 --
3 THE COURT: We're going to have just one person
4 argues for each side.
5 MR. SMITH: I -- okay.
6 THE COURT: So whoever's going to -- whoever wants to
7 take it, it's fine.
8 MS. GRAHAM: Take it.
9 MR. SMITH: Judge, it is a (indiscernible) hearsay in
10 that it's a prior recollection recorded. Ms. Palm -- the
11 questions that Ms. Palm asked made it clear to the jury that
12 this officer doesn't exactly remember accurately what he wrote
13 because she even asked questions like well, it says one thing
14 in the report, but you just testified to something differently.
15 And then on cross -- on redirect examination Ms.
16 Graham was able to get him to say well, whatever's written on
17 that note is what actually happened because that's what I wrote
18 at the time. That's what he said. That makes it admissible as
19 a prior recollection recorded. It's just a piece of paper, and
20 it should come in.
21 THE COURT: Well, he testified what he wrote on the
22 paper, didn't he?
23 MS. PALM: That's correct. And they didn't lay a
24 foundation when he testifying for a prior recollection report.
25 MR. SMITH: Well, we can bring it back in, though.

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1 State to bring in Officer Hutcherson again, I think that would
2 compound the prejudice we've already suffered, so I said if the
3 Court -- you know, if that's the indication that you're going
4 to allow them to even bring him in the courtroom again, then
5 we'll just stipulate to the admission of the note because we
6 don't really have another choice.
7 THE COURT: Well, I don't think that -- I don't think
8 that's part of his report because the defendant didn't write
9 that note. It's the -- Officer Hutcherson wrote that note just
10 to refresh his memory of what the defendant stated. No, that's
11 not -- that's considered a report. And he used it to refresh
12 his memory or he was using cross-examination.
13 MS. GRAHAM: Judge, those were mental impressions at
14 the time. I mean, he keeps an officer's notebook to record the
15 statements of the defendant. He testified to those statements
16 as statements that the defendant made at the time he was in his
17 patrol car.
18 THE COURT: Isn't that the same as just as an
19 officer's report where officer's going to write in his report
20 what a person said to them?
21 MS. PALM: Yes.
22 MS. GRAHAM: No.
23 MS. PALM: And that's hearsay, and he already said
24 the contents of the that report. There's no point in admitting
25 the report.

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1 That's the whole point.
2 THE COURT: At this point the report's not coming in
3 at this point.
4 MR. SMITH: Okay, Judge. Thank you.
5 MS. PALM: Thank you.
6 THE COURT: Now, why don't we stick around for a
7 minute here, and why don't you check with -- Kristen, will
8 check with the status of the transcripts. And I hope for, you
9 know, both sides here -- like I said, if you're going to
10 question each of the officers, you know, weigh the impact of
11 that, please, okay. And then please fine tune your questions
12 so we can just get right to the point.
13 MS. PALM: Well, you know, I don't think that the
14 State should get another opportunity to try and prove their
15 case further through these officers. So what I would request
16 is that they just be called, I allowed to cross them on the
17 intoxication issue, and if they have rebuttal to that, they can
18 to that.
19 At this point I don't know how many of those officers
20 I'm going to need to call because I haven't seen their
21 transcript yet --
22 THE COURT: Okay, but --
23 MS. PALM: -- so I may not want to call them back in
24 here. I don't really want to keep reminding --
25 THE COURT: Right.

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1 MS. PALM: -- you know.
2 THE COURT: I understand.
3 MR. PIKE: And for the --
4 THE COURT: All I'm asking you is please evaluate
5 that carefully.
6 MS. PALM: And will I have some time to do because I
7 have the next witness also.
8 THE COURT: Well, Kristen's going to check on the
9 transcripts right now, and so at least, you know, you guys can
10 share duties in that regard.
11 MR. PIKE: Thank you. And one of other thing for the
12 record is that we had at bench conference when Dr. Benjamin was
13 testifying prior to the photographs coming in. At that time I
14 indicated my concerns about the bruising. Said that they
15 weren't relevant to this. The Court -- and made an objection
16 to them being admitted. The Court listened to argument from
17 counsel, ruled that upon examination of the ME, that if they
18 were relevant -- if the Court felt that they were relevant that
19 they would be allowed to be admitted.
20 I stated an ongoing objection. The Court allowed
21 them over my objection, and I was allowed to cross-examine
22 about the photographs, the nature of the coloring, the timing
23 and the import as to that. So there was an objection made at
24 the bench during the conference. It was overruled, and then it
25 proceeded as I've indicated. I think I'm correctly stating

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1 She has already -- Ms. Palm has already cross-examined --
2 THE COURT: Ms. Graham, I've ruled that they're going
3 to be allowed to call these witnesses to specifically address
4 the issues contained in the use of force report. All right,
5 see everybody back at 1:15.
6 MR. SMITH: I'm sorry. I just want -- I'd rather do
7 this now so we don't have the jury waiting. We intend on
8 getting the defendant's statement -- videotaped statement in
9 through either -- through Detective Wildemann. I have already
10 discussed that with defense counsel, and I want to make sure
11 that they're okay with the version as is so that if they want
12 us to do some redactions, we have time to do it before lunch.
13 THE COURT: Okay. Have you reviewed a copy of the
14 redacted version?
15 MR. SMITH: We expect to try and do it before lunch.
16 I don't know if it's possible, but I did let them know about
17 this --
18 THE COURT: Have you reviewed it?
19 MR. SMITH: -- Monday, I believe.
20 MR. PIKE: There are some long gaps. I think they
21 can speed through those.
22 MR. SMITH: We actually have it --
23 MS. PALM: The one hour break.
24 MR. SMITH: We just actually have it just the
25 transcribed portion, that's it.

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1 that.
2 THE COURT: That's correct. All right. See earn
3 back at 1:15.
4 MS. GRAHAM: Judge, there is one other issue, please.
5 THE COURT: All right.
6 MS. GRAHAM: I mean, we -- the Court instructed us to
7 call all of the officers and have them here at 3:00 o'clock.
8 We've done that, Judge.
9 THE COURT: All right.
10 MS. GRAHAM: So, you know, I -- and Ms. Palm
11 indicates that she doesn't think that that's going to be
12 sufficient time for her to review. We don't even have the
13 transcripts yet.
14 THE COURT: Well, we're checking right now.
15 MS. GRAHAM: Okay.
16 THE COURT: And they're not -- they're not full
17 transcripts of the entire testimony.
18 MS. GRAHAM: Okay.
19 THE COURT: The court recorder's pulling out anything
20 regarding the demeanor, standing -- anything regarding
21 observations.
22 MS. GRAHAM: Okay.
23 THE COURT: So --
24 MS. GRAHAM: And Judge, at this I have to renew the
25 State's objection at least outside of the presents of the jury.

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1 MR. PIKE: Oh, okay.
2 MR. SMITH: So the other stuff is -- the stuff before
3 --
4 MS. PALM: No, we want the stuff before. That's the
5 problem.
6 MR. SMITH: So you want to play the whole thing?
7 MS. PALM: The stuff before and the stuff after. We
8 don't need to play the stuff in the break in between.
9 MR. SMITH: Okay. But either way, you're still fine
10 with it coming in as is?
11 MR. PIKE: Yes.
12 MR. SMITH: And then we'll just have to make -- okay,
13 fair enough.
14 THE COURT: Okay.
15 MR. SMITH: Thank you.
16 THE CLERK: She said five, ten minutes. She's just
17 making sure the times, everything is correct.
18 MR. PIKE: Okay, we'll wait here.
19 THE COURT: Okay, so I would suggest that someone be
20 assigned to the transcripts. Someone be assigned to get
21 prepared for the next witness.
22 (Court recessed at 11:23 a.m. until 1:24 p.m.)
23 (In the presence of the jury)
24 THE MARSHAL: Please remain seated and come to order.
25 Department 17 of the Eighth Judicial District is again in

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1 session. Honorable Judge Michael P. Villani presiding. Let's
2 make sure our cell phones are turned off, please.
3 THE COURT: Good afternoon, ladies and gentlemen.
4 Back in the presence of the jury panel. State, please call
5 your next witness.
6 MR. SMITH: Judge, the State calls Detective
7 Wildemann to the stand.
8 THE MARSHAL: If you'll remain standing, please.
9 Raise your right hand and face the clerk.
10 MARTIN WILDEMAN, PLAINTIFF'S WITNESS, SWORN
11 THE CLERK: Please be seated. Will you please state
12 your name and spell it for the record.
13 THE WITNESS: Martin Wildemann, W-i-l-d-e-m-a-n-n.
14 MR. SMITH: May I proceed, Judge?
15 THE COURT: Yes.
16 DIRECT EXAMINATION
17 BY MR. SMITH:
18 Q Mr. Wildemann, how are you presently employed?
19 A With the Las Vegas Metropolitan Police Department.
20 Q And in what capacity, sir?
21 A I'm a homicide detective.
22 Q How long have you been working at a homicide
23 detective?
24 A Seven years.
25 Q Over those seven years how many homicide cases would

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ROUGH DRAFT TRANSCRIPT

1 table. Looks like a dark gray suit.
2 MR. SMITH: Can the record reflect the witness has
3 identified the defendant?
4 THE COURT: Yes, it will.
5 BY MR. SMITH:
6 Q Do you recall when you conducted this interview?
7 A I conducted it in the early morning hours, I would
8 say, of the 6th at the homicide offices.
9 Q Who was present in that interview?
10 A Myself and Detective Kieger (phonetic).
11 Q Is he also a homicide detective?
12 A Yes.
13 Q Was interview recorded?
14 A Yes, it was.
15 Q And how was it recorded?
16 A I did an audio -- a hand held audio recording and a
17 digital video recording was done also.
18 MR. SMITH: Court's indulgence, Judge.
19 THE COURT: Can I just have one of the defense
20 counsel approach, please, and Mr. Smith?
21 (Bench conference).
22 MR. SMITH: May I approach the witness?
23 THE COURT: Yes.
24 BY MR. SMITH:
25 Q Now, Detective Wildemann, I'm showing you what's been

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ROUGH DRAFT TRANSCRIPT

1 you say you've worked?
2 A Well over 140 I'd say.
3 Q How many of those cases have involved stabbings?
4 A I can't give you an exact number. I would say 40 or
5 50.
6 Q Were you assigned as one of the detectives on a case
7 reference even number 11 -- actually 08110053918?
8 A Yes, I was.
9 Q And was that reference a stabbing that occurred at
10 5001 El Parque?
11 A Yes.
12 Q Was that reference a descendant identified to you as
13 a Victoria Witmarsh?
14 A Yes, it was.
15 Q And what were your assigned duties in this
16 investigation, detective?
17 A Witness/suspect interview.
18 Q Did you conduct a witness/suspect interview?
19 A I conducted an interview, yes, of the suspect.
20 Q Do you see the suspect that you conducted an
21 interview with present here in court today?
22 A Yes, I do.
23 Q Can you point to him and identify for the Court what
24 he's wearing.
25 A He's seated to the far left end of the defendant's

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1 marked for purposes of identification as State's Proposed
2 Exhibit 68. Do you recognize what that is?
3 A Yes, I do.
4 Q And what is that?
5 A It's a digital recording on a compact disc of the
6 video statement of Mr. O'Keefe.
7 Q And is that an item that you prepared or had prepared
8 on your behalf?
9 A I prepared that.
10 Q Okay. You familiar with the contents of this?
11 A Yes.
12 MS. PALM: Your Honor, just for the record, we do
13 have a copy of the videotape, and we don't have any objection
14 of them playing it at this time.
15 THE COURT: All right, thank you.
16 MR. SMITH: Then I'd move for its admission and
17 request permission to publish.
18 THE COURT: All right, it will be admitted, and you
19 can play it for the jury. I'm sorry, Counsel, was this just
20 merely an audio or is it video?
21 MR. SMITH: It's a video.
22 THE COURT: Okay.
23 MR. SMITH: And audio.
24 THE COURT: All right.
25 (Off the record colloquy).

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1 BY MR. SMITH::
2 Q And just for the record, Detective Wildemann, does
3 this appear to start at 1:23 in the morning on November 6th,
4 2008?
5 A Yes, sir.
6 Q Okay.
7 (Thereupon, the videotape was played from 1:35:42
8 p.m. to -- 2:14:05 p.m.).
9 MR. SMITH: And Judge, for the record, I think Ms.
10 Palm has agreed that we can fast forward to the time when the
11 detectives come back in because it's about an hour long break.
12 THE COURT: Okay. Well, let's --
13 MS. PALM: That's correct, and we have that time on
14 the time stamp, 3:06. So it stops at -- the break begins at
15 2:01 and stops at 3:06 when they come back.
16 THE COURT: All right, thank you.
17 (Thereupon the videotape was played from 2:14:56 p.m.
18 to 2:38:08 p.m.)
19 (Off the record colloquy).
20 BY MR. SMITH::
21 Q Now, detective, have you watched the entirety of the
22 recording of the time that Mr. O'Keefe was inside that
23 interview room?
24 A Yes, I have.
25 Q Okay. Is there a time in the recording where Mr.

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Yes.
2 MR. SMITH: Can I approach the witness, Judge?
3 THE COURT: Yes.
4 BY MR. SMITH::
5 Q Showing you what's been marked for purposes of
6 identification as State's Proposed 69. Do you recognize that?
7 A Yes, I do.
8 Q And can you just explain so the record's clear, what
9 is that?
10 A This is just a copy of that video with a shortened.
11 It takes off the beginning part and I believe most of the end
12 part.
13 Q Okay.
14 A The dead space.
15 Q Okay. But is it correct to state that everything
16 that's on the video that's already played on the screen is also
17 on this?
18 A Yes.
19 MR. SMITH: At this point I'd move for admission of
20 State's Proposed 69.
21 MS. PALM: No objection.
22 THE COURT: It will be admitted.
23 MR. SMITH: And permission to publish a portion of
24 State's Proposed -- actually, just permission to publish
25 State's Exhibit 69.

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1 O'Keefe is sitting in there by himself, and he makes a
2 statement outside of earshot of anyone presumably, that there's
3 no way she did this to herself?
4 A I don't recall that, I'm sorry.
5 Q Okay.
6 A I don't recall that.
7 Q If you saw that part of the video, would that refresh
8 your recollection as to whether or not that happened?
9 A Yes.
10 Q Okay.
11 (Off the record colloquy).
12 BY MR. SMITH::
13 Q Do you recall reproducing the entirety of the video
14 specifically to mimic a transcription of the video that you
15 provided to the District Attorney's Office and it was also
16 provided to defense counsel?
17 A Yes.
18 Q When did you provide a copy of that disk?
19 A The shorter copy or the --
20 Q The shorter copy.
21 A The shorter copy, yesterday.
22 Q Okay.
23 MR. SMITH: May I approach the witness?
24 THE COURT: Yes.
25 MR. SMITH: Can I approach the clerk, Judge.

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Yes.
2 BY MR. SMITH::
3 Q And just so the record's clear, detective, does this
4 appear to be a portion of the video where the defendant is in
5 the interrogation room alone?
6 A Yes.
7 (Thereupon, the videotape was played from 2:42:38
8 p.m. to 2:43:50 p.m.)
9 BY MR. SMITH::
10 Q Now, detective, what is it appear that Mr. O'Keefe is
11 doing right here? Can you tell?
12 A It looks to me like he's looking at his hand.
13 (Thereupon, the videotape was played from 2:44:03
14 p.m. to 2:44:10 p.m.)
15 BY MR. SMITH::
16 Q Now do you recall whether or not he made that
17 statement?
18 A Yes, I do.
19 Q Okay.
20 MR. SMITH: Okay, I think I'm actually done with the
21 video.
22 BY MR. SMITH::
23 Q I just have a couple of additional questions for you,
24 detective. Now, we heard on the video Detective Kieger stating
25 that officers checked to see whether or not there were any

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1 phone calls to police originating from Brian O'Keefe regarding
2 the incident that occurred that night.
3 A Yes.
4 Q Do you know if any cell phones were actually
5 retrieved from the O'Keefe residence.
6 A Yes, there were three.
7 Q Did you, in fact, go through those phones to see if
8 there was any outgoing phone calls to 911 or even 311?
9 A Yes, we did, and there were no outgoing calls to 911
10 or police numbers.
11 Q Now, we've heard testimony from a Cheryl Morris that
12 approximately a month after this happened, she had a
13 conversation with the defendant wherein Mr. O'Keefe indicated
14 that he --
15 MS. PALM: Objection, your Honor. I don't know why
16 he's restating Cheryl Morris' testimony.
17 MR. SMITH: To ask him if that testimony's consistent
18 with what Mr. O'Keefe told him happened or if it's inconsistent
19 with it.
20 MS. PALM: Well, the jury can determine that for
21 themselves. They heard Ms. Morris' testimony, and they watched
22 the video.
23 MR. SMITH: Okay.
24 THE COURT: Sustain the objection.
25 MR. SMITH: I'll withdraw the question, Judge. May I

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1 A I believe so, that she was the victim.
2 MR. SMITH: Judge, I'd move for admission of State's
3 Proposed Exhibit 67.
4 MS. PALM: No objection.
5 THE COURT: It will be admitted.
6 MR. SMITH: Judge, I'm pass the witness.
7 THE COURT: All right, any cross-examination?
8 MS. PALM: Yes, thank you.
9 CROSS-EXAMINATION
10 BY MS. PALM::
11 Q Afternoon, Detective Wildemann.
12 A Hello.
13 Q That video, the first video we were watching,
14 actually, there's another break after you walk out of the
15 interview room, and then you come back with CSA Ford. Do you
16 recall that?
17 A I'm sorry, the who?
18 Q The interview room.
19 A Yeah.
20 Q You come back after a break with CSA Ford.
21 A Oh, yes.
22 Q Okay.
23 A Yes, yes.
24 Q And we're just going to play that portion of the
25 videotape now.

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1 approach the clerk?
2 THE COURT: Yes.
3 MR. SMITH: May I approach the witness?
4 THE COURT: Yes.
5 BY MR. SMITH::
6 Q I'm showing you, detective, what's been marked for
7 purposes of identification as State's Proposed Exhibit 67. Do
8 you recognize that do want?
9 A Yes, I do.
10 Q And what is that document?
11 A It is a judgment of conviction in the name of Brian
12 Kerry O'Keefe (phonetic) filed March 9th, 2006.
13 Q And is it a judgment of conviction or the felony
14 offense of battery constituting domestic violence?
15 A Yes, it is. Category C felony.
16 Q Were you able to determine whether or not that
17 conviction was received pursuant to a jury trial?
18 A Yes, I was.
19 Q Were you able to determine as to what testified at
20 that jury trial?
21 A Yes, I did.
22 Q And would that be Victoria Witmarsh?
23 A Yes, it was.
24 Q Were you able to ascertain whether or not Victoria
25 Witmarsh testified as the victim in this case?

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1 MS. PALM: I think it's started at 3:55, and it's
2 already been admitted.
3 (Thereupon the videotape was played from 2:49:18 p.m.
4 to 3:08:01 p.m.)
5 BY MS. PALM::
6 Q Okay. Detective, I just want to go over some of the
7 basic things about that interview first.
8 A Okay.
9 Q The video looks like he was in the room at 1:24 when
10 it starts. Do you agree with that?
11 A Yes.
12 Q So it would be about two hours after the incident was
13 called in.
14 A Yes.
15 Q And then he -- you guys officially start at 1:45 and
16 continue until about 2:01. Does that sound right.
17 A Approximately, yes.
18 Q Okay. So a little less than a half an hour. And
19 then you break for over an hour --
20 A Yes.
21 Q -- is that correct?
22 A Yes.
23 Q Okay. And then you go back in at 3:06. The second
24 portion of the interview goes until you terminate at 3:28.
25 Does that sound correct?

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1 A Yes.
2 Q Okay. And then there was another shorter break until
3 3:55 when you come back in with Dan Ford, as we just saw there.
4 A Correct.
5 Q Okay. So by the time we're watching the part with
6 Dan Ford, that was about five hours after the incident was
7 called in; is that correct?
8 A Correct.
9 Q Okay. And during the initial part of the interview
10 when Brian was asking how he (sic) was, you first had said
11 she's unconscious --
12 A Yes.
13 Q -- do you recall that?
14 A Yes.
15 Q Okay. And then you later tell him, you know, there's
16 no official word yet. We'll let you know when there is,
17 basically.
18 A Yes.
19 Q Okay. And then later you say she's not looking too
20 good. We'll let you know.
21 A Yes.
22 Q Okay. And it's not until near the very end of the
23 interview, 3:21, when you -- it looks like you're making a
24 phone call --
25 A Yes.

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1 assaulted somebody with a deadly weapon and then you found some
2 evidence to support that?
3 MR. SMITH: And Judge, I'm going to object to the
4 relevance.
5 MS. PALM: It's relevant because it's his state of --
6 THE COURT: Will counsel --
7 MS. PALM: -- mind during the interview.
8 THE COURT: -- approach, please. Counsel approach.
9 (Bench conference).
10 THE COURT: I'm going to sustain the objection.
11 BY MS. PALM::
12 Q Okay, you will agree with me for almost the entirety
13 of the time you were interviewing Brian he had information from
14 you that Victoria was still alive?
15 A Yes.
16 Q Did you ever follow up on the information from the
17 interview that Victoria bought bottles of wine the day of the
18 incident, there might be a receipt in her purse?
19 A We attempted to locate the receipts that he was
20 speaking of in her purse and in her apartment, and I can't say
21 we -- Detective Bunn did. He was unable to locate any such
22 receipts.
23 Q Did you attempt to recover the Paris (phonetic) video
24 surveillance tapes that he was asking you to recover?
25 A No.

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1 Q -- discovering the word that she's now deceased.
2 A Yes.
3 Q Okay. So then you tell him that, and it was then he
4 kind of breaks down crying and the interview continues until
5 3:28.
6 A Yes.
7 Q Okay. So about six minutes after he actually know
8 she's dead?
9 A Yes.
10 Q Okay. Would you agree that if Victoria were actually
11 alive and he had told you she had tried to stab him, she
12 assaulted him with a deadly weapon and there was some evidence
13 to support that, she might have faced some criminal liability?
14 A Say that again, I'm sorry. So if there was some
15 evidence to support that?
16 Q In any case.
17 MR. SMITH: Judge, I'm going to object to the form of
18 the question.
19 BY MS. PALM::
20 Q In any case.
21 THE COURT: I'm going to sustain your objection.
22 You're asking for a legal conclusion.
23 BY MS. PALM::
24 Q Well, in your experience, might you have charged
25 somebody if they were reportedly -- they had reportedly

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1 Q Showing you what's been admitted as Defense Exhibit
2 RR, do you recognize that photograph?
3 A Yes, I do.
4 Q And that's actually taken at the scene --
5 A Yes, it is.
6 Q -- is that correct? And that's your arm holding up
7 Mr. O'Keefe's head?
8 A Yes, he's trying to push it back towards me, and I'm
9 just keeping it steady.
10 Q Keeping it steady, okay. Showing you Defense Exhibit
11 EEE, do you recognize that photograph?
12 A Yes, I do.
13 Q What was it?
14 A That's a top view of Mr. O'Keefe's, both of his
15 hands.
16 Q And they're pretty covered with blood --
17 A Yes.
18 Q -- are they not? And that was taken by CSA Dan Ford?
19 A I'm not sure on that one. I thought that photos
20 might have been taken at the scene, but I believe it to be.
21 Q If Dan Ford testified that he had taken these photos
22 --
23 A Okay.
24 Q -- you wouldn't dispute that?
25 A No.

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1 Q Okay. Same with UU, that's a different view of his
2 hands?
3 A Yes.
4 Q Do you recognize that?
5 A Yes.
6 Q And that is blood all over his hands, basically; is
7 that correct?
8 A Yes.
9 Q Okay. And those are the hands with which he did his
10 own penile swab; is that correct?
11 A Yes.
12 Q Showing you Defense AAA, do you recognize that?
13 A Yes, I do.
14 Q That's not actually you there holding him up, is it?
15 A No, that's Officer Hutcherson -- Hutchinson.
16 Q And is that how O'Keefe appeared about five hours
17 after the incident was called in?
18 A Yes.
19 Q Same with this one.
20 A Yes.
21 Q And for the record that's Defense ZZ. And that's
22 again Officer Hutcherson --
23 A I believe so, yes, ma'am.
24 Q -- in the room with him? And going back to the video
25 that we just watched, you were the one in the video holding him

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1 the homicide division by my subpoena to them that there is, in
2 fact, another case from 2007 that that was done.
3 A That's --
4 MR. SMITH: Objection, Judge. Relevance.
5 THE COURT: What's the relevance -- well, I'm going
6 to sustain the objection.
7 BY MS. PALM::
8 Q Detective, are you aware of the possibility of doing
9 that in a murder case?
10 A Of doing what, Ma'am?
11 Q Of collecting a suspect's blood or breath alcohol.
12 MR. SMITH: Judge, I renew my objection.
13 THE COURT: Sustained.
14 BY MS. PALM::
15 Q Detective, you agree that Mr. O'Keefe smelled heavily
16 of alcohol in that interview room?
17 A He smelled of alcohol.
18 Q If you agreed that he smelled heavily of alcohol at
19 the preliminary hearing, would you agree with that now?
20 A If that's what I said, I agree.
21 Q Okay. I can show you your preliminary hearing
22 testimony --
23 A Sure.
24 Q -- or will you accept my word for it?
25 A Sure.

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1 up as he was putting on a little white jump suit?
2 A I was assisting him, yes.
3 Q Okay. And that was you who assisted him with his
4 booty?
5 A Yes.
6 Q Okay. And do you recall testifying at the
7 preliminary hearing in this matter?
8 A Yes.
9 Q And that was last December.
10 A Yes.
11 Q And do you recall me asking you whether you had --
12 whether there was a protocol regarding taking a suspect's blood
13 or breath alcohol evidence, if there was evidence that they
14 appeared to be intoxicated. Do you recall the question?
15 A I recall that question, yes.
16 Q And especially in a murder case. And what was your
17 answer --
18 A No.
19 Q -- do you recall? There's no protocol?
20 A There's no protocol, no.
21 Q Okay. And at that time you weren't aware of any case
22 where it had ever been done; is that correct?
23 A I was not aware of any case, no.
24 Q Okay. And since that time I brought to your
25 attention or the attention of other officers or detectives in

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1 Q Okay.
2 MS. PALM: May I approach, your Honor?
3 THE COURT: Yes.
4 THE WITNESS: It's described by some.
5 BY MS. PALM::
6 Q Well, no I mean I said he smelled heavily of alcohol
7 and you (indiscernible) yes.
8 A Okay.
9 Q So do you agree that he smelled heavily of alcohol in
10 that interview room?
11 A Yes.
12 Q Thank you. He was a little slurred in his speech; is
13 that correct?
14 A At times.
15 Q And it was pretty obvious to you that he had been
16 drinking; is that correct?
17 A I could tell that he had been drinking, yes.
18 Q If you previously testified it was pretty obvious he
19 had been drinking; is that a correct way to state it? Because
20 it sounded like you were restating it.
21 A I just answered your question. I could tell that he
22 had been drinking, yes.
23 Q Okay, was it pretty obvious?
24 A Sure, it was obvious.
25 Q Okay. You did request some forensic testing on the

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1 evidence in this case?
2 A Yes.
3 Q Were you aware the possibility that any of the
4 arresting officers stepped on the bed at the scene?
5 A I did not work the scene personally. I was aware
6 that it was a possibility.
7 Q Okay. And were photographs taken of the bottom of
8 their shoes to compare to the footprints on the bed?
9 A Not that I know of, Ma'am.
10 Q Okay. And so that testing was not done?
11 A No.
12 Q Is that sometimes done when officers' shoe prints
13 kind of get mixed in with the evidence?
14 A We will take comparatives, yes.
15 Q Okay.
16 MR. SMITH: Judge, I'm actually going to object to
17 that question because it assumes facts not in evidence.
18 THE COURT: I think her question was is at that done
19 sometimes, not in this particular case, correct?
20 MR. SMITH: I just want to make sure it's clear that
21 there's no evidence in this particular case that those officers
22 stepped on that bed.
23 MS. PALM: I would dispute that there were two
24 officers who testified that they might have gone over that bed,
25 so that's not --

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1 mean --
2 THE COURT: Counsel approach.
3 (Bench conference).
4 THE COURT: Okay, I'm going to sustain the objection.
5 BY MS. PALM::
6 Q Do you recall talking to Cheryl Morris in November
7 2008?
8 A I recall talking to her. I couldn't tell you the
9 exact date. I haven't looked at that in a bit.
10 Q Did you actually take her statement?
11 A I believe I did, yes.
12 Q Okay. Did you ever ask her to go visit Brian O'Keefe
13 in jail or recommend that she go visit Brian O'Keefe?
14 A I don't recall asking that, no, or stating that, no.
15 Q Okay.
16 MS. PALM: May I approach your Honor?
17 THE COURT: Yes.
18 BY MS. PALM::
19 Q Showing you Defense Proposed Exhibits BB, CC, DD and
20 EE.
21 A Okay.
22 Q Do you recognize those?
23 A I honestly don't only because I never saw that car in
24 the parking lot. I'm going to assume that this is --
25 Q Well, as a homicide detective do you keep the main

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1 THE COURT: Yeah, but there's no --
2 MR. SMITH: Might have.
3 THE COURT: Hang on, hang on.
4 MS. PALM: Your Honor, he --
5 THE COURT: Hang on. I don't believe that any
6 witness has testified that any of the officer's shoe prints are
7 on the bed; is that correct?
8 MS. PALM: That's correct, and my questions are
9 because no testing was done to be able to --
10 THE COURT: Right.
11 MS. PALM: -- determine that.
12 THE COURT: I just want to make sure to the jury that
13 there was no evidence, unless you can correct me, that anyone
14 testified that any marking on the bed was made by an officer
15 shoe print.
16 MS. PALM: There was no testimony as to whoever might
17 have made the apparent footprints on the bed, but there was --
18 THE COURT: We don't know it's a foot -- I don't
19 think.
20 MS. PALM: -- testimony --
21 THE COURT: -- I don't think -- there wasn't any
22 testimony that there was a shoe print.
23 MS. PALM: I believe that the CSA Maldonado agreed
24 that it was an apparent footprint.
25 MR. SMITH: Well, Judge, rather than us argue it, I

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1 file in the case?
2 A I keep the main in the -- yeah, I keep the --
3 Q Do you look at all the crime scene photos as part of
4 your job?
5 A I have looked at the photos.
6 Q And in those crime scene photos is there pictures of
7 that car?
8 A I believe so, yes.
9 Q Okay. And was that car photographed by CSA Collins
10 at the scene?
11 A I don't know that.
12 Q If I showed you an impound report, would it --
13 A I'll take your word for it, but I wasn't at the so
14 you understand.
15 Q Okay, but --
16 A Detective Bunn was kind of directing the scene.
17 Q -- you have seen those photographs before?
18 A I have looked through these photographs briefly
19 months ago, yes.
20 Q And they do belong in this case?
21 A Yes.
22 MS. PALM: Move to admit, your Honor.
23 MR. SMITH: There is an objection. I object to the
24 relevancy of those photographs. If we can approach because I
25 don't --

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1 THE COURT: Yes.
2 MR. SMITH: I'd like to not do a speaking objection.
3 (Bench conference).
4 THE COURT: I'm going to sustain the objection.
5 (Bench conference).
6 THE COURT: Ladies and gentlemen, it's a good time
7 for us to take a break, and I've been advised, as you know
8 we've had the water or the bathroom problem, and I think we've
9 lost some water pressure in the building. So the first floor
10 -- I think if you go outside on the area of the elevators, go
11 straight, there's some restrooms there. Unfortunately, those
12 are the only ones working in the entire building, okay. And so
13 if you need -- if anyone needs to go, go there. Take your time
14 because, you know, as soon as you're -- everyone's back, then
15 we'll resume, but, you know, please take your time.
16 During this recess it is your duty not to converse
17 among yourselves or anyone else on any subject connected with
18 this trial or to read, watch or listen to any report over
19 commentary on the trial by any person connected with the trial
20 or by any medium of information, including without limitation,
21 newspaper, television, radio or the Internet.
22 And you're not to form or express an opinion on any
23 subject connected with this case until it matter is finally
24 submitted to you. Again, you can go down to the first floor,
25 and as soon as you're back then we'll resume. Thank you.

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1 idol conversation is what it was about. High speed chase and
2 talked about him being a motorcycle policeman.
3 THE COURT: Okay, but absolutely nothing about this
4 case.
5 JUROR NO. 3: Absolutely nothing.
6 THE COURT: Any question by the State?
7 MR. SMITH: I don't, Judge. State's satisfied.
8 THE COURT: Questions by the defense?
9 MR. PIKE: Was it a witness that had testified in
10 this case? An officer that testified in this case?
11 JUROR NO. 3: The other day, yeah. That motorcycle
12 patrolman.
13 MR. PIKE: Okay.
14 THE COURT: Any other questions?
15 MR. PIKE: No.
16 THE COURT: You understand we just have to ask, okay.
17 And sir, just admonish you not to even discuss these questions
18 with any other jurors even during deliberations. Okay, it's
19 irrelevant to this case. It's -- only worry about the witness
20 stand and the exhibits, okay. Thank you, sir.
21 JUROR NO. 3: Your Honor, it was -- like I said, just
22 idol conversation, and that's usually what we're talking about
23 --
24 THE COURT: Right.
25 JUROR NO. 3: -- when we're out there is what they're

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1 (Recess taken).
2 (Outside the presence of the jury)
3 THE MARSHAL: Come to order. Department 17 of the
4 Eighth Judicial District is now in session. Honorable Judge
5 Michael P. Villani presiding. Please be seated, remain in
6 order. Make sure all cell phones are turned off, please.
7 THE COURT: Okay, counsel approach, please.
8 (Bench conference).
9 THE COURT: Mr. Eral.
10 JUROR NO. 3: Yes.
11 THE COURT: How you doing? During the breakout in
12 the hallway did you speak with one of the police officers?
13 JUROR NO. 3: I was standing there is all.
14 THE COURT: Okay. And did you overhear police
15 officers speak with one of the other jurors?
16 JUROR NO. 3: Yes.
17 THE COURT: And what was the topic of conversation?
18 JUROR NO. 3: Talking about a high speed chase in
19 California because their -- her brother or somebody was a
20 patrolman in California.
21 THE COURT: Okay, was there any discussion whatsoever
22 about this case?
23 JUROR NO. 3: No -- no, there was nothing.
24 THE COURT: Okay.
25 JUROR NO. 3: That's why I was surprised they just --

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1 doing for a job and --
2 THE COURT: Right.
3 JUROR NO. 3: -- you know.
4 THE COURT: And that's fine, and so you're not in
5 trouble.
6 JUROR NO. 3: Okay.
7 THE COURT: We just got to double check. Okay.
8 JUROR NO. 3: Okay.
9 THE COURT: Thank you, sir.
10 JUROR NO. 3: Yep.
11 THE COURT: Why don't you go out. Good afternoon,
12 Mr. Livernash.
13 JUROR NO. 6: How are you?
14 THE COURT: Just fine. Well, I've been better just
15 because with this fiasco with our building here, but sir,
16 during the break did you speak with or overhear any
17 conversations either between yourself, any other jurors and one
18 of the police officers?
19 JUROR NO. 6: I did.
20 THE COURT: Okay. Did you speak with one of the
21 police officers?
22 JUROR NO. 6: I did.
23 THE COURT: Okay. And what was the topic of the
24 conversation?
25 JUROR NO. 6: I noticed that he had motorcycle boots

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1 and his helmet there, and I ride a Harley Davidson. I just
2 asked are all the motorcycles on the police force Harley
3 Davidsons, and he said yes.
4 THE COURT: Okay. Were there any --
5 JUROR NO. 6: In Metro.
6 THE COURT: Okay. Were there any other jurors around
7 you when you made that comment to the police officer?
8 JUROR NO. 6: Yeah, No. 3 and No. 7. 7 had -- there
9 was a conversation before I arrived about a crazy rider getting
10 in -- getting caught by a police officer who was wearing a suit
11 and tie on a motorcycle. That's --
12 THE COURT: Okay, was it -- all right, were there any
13 discussions regarding this case?
14 JUROR NO. 6: No, sir.
15 THE COURT: Okay. Did you overhear any other jurors
16 speak with any officers regarding this case?
17 JUROR NO. 6: No, sir.
18 THE COURT: Any questions by the State?
19 MR. SMITH: No, Judge.
20 THE COURT: By the defense?
21 MR. PIKE: Is this -- do you recall the name of the
22 officer that you spoke to?
23 JUROR NO. 6: He's been in here before. He's the
24 only one who's a motorcycle officer. He had the boots and the
25 helmet. I want to say Conn, Officer Conn, but I couldn't be

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1 JUROR NO. 7: Hi.
2 THE COURT: During the break did you have any
3 conversations or overhear any conversations with any of the
4 police officers?
5 JUROR NO. 7: Yes.
6 THE COURT: Okay. And did you have a conversation
7 with them?
8 JUROR NO. 7: Yes, about the weather.
9 THE COURT: Okay. Was there any discussion
10 whatsoever about this case?
11 JUROR NO. 7: No, definitely not.
12 THE COURT: Or any testimony about this case?
13 JUROR NO. 7: Definitely not.
14 THE COURT: Did you overhear any other jurors speak
15 with the officers?
16 JUROR NO. 7: Just the one who -- Juror No. 6, and it
17 was about his motorcycle.
18 THE COURT: Okay. Did you hear any other jurors
19 speak with --
20 JUROR NO. 7: No.
21 THE COURT: Okay. And there was nothing regarding
22 this case discussed, correct?
23 JUROR NO. 7: Nothing. And I was sitting there the
24 whole time until Walter had me go down to the other end.
25 THE COURT: Okay. Any questions by the State?

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1 sure.
2 MR. PIKE: All right. No further questions. Thank
3 you.
4 THE COURT: All right. Sir, our questions here have
5 nothing to do with this case. They're not to be discussed
6 during deliberations. You're not to discuss our questions here
7 with any juror in this case.
8 JUROR NO. 6: Okay.
9 THE COURT: Even during deliberations, okay.
10 JUROR NO. 6: Sure.
11 THE COURT: Only worry about the testimony in the
12 case and the exhibits, okay.
13 JUROR NO. 6: Absolutely.
14 THE COURT: No one's in trouble.
15 JUROR NO. 6: Okay, fine.
16 THE COURT: Just gotta double check. All right,
17 thank you, sir.
18 JUROR NO. 6: Thank you.
19 MR. PIKE: Depends on if he rides a Sporster or a
20 Heritage.
21 JUROR NO. 6: It's a Road King.
22 MR. PIKE: A Road King, oh, okay.
23 JUROR NO. 6: Just for the record.
24 MR. PIKE: Record.
25 THE COURT: Good afternoon, Ms. Fraley.

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1 MR. SMITH: No, Judge.
2 MR. PIKE: Yes. Did you initiate the conversation or
3 did the officer initiate the conversation?
4 JUROR NO. 7: You know, I don't recall because I was
5 coming down -- I got cookies, and I was just excited about the
6 cookies, sorry. And so I really can't remember if I did or if
7 he did. It was probably me.
8 MR. PIKE: Do you remember which officer it was?
9 JUROR NO. 7: It was the -- don't know his name. The
10 bald one. And he just left, so -- the motorcycle cop.
11 MR. PIKE: Okay. No further questions. Thank you,
12 Ma'am.
13 THE COURT: Okay, Ms. Fraley, our questions here are
14 not to be discussed with any other jurors. It's irrelevant to
15 this case because we know you only base any decision on the
16 witness stand and exhibits in the case, and it's not supposed
17 to be discussed during deliberations, all right. You're not in
18 trouble. No one's in trouble. We just have to check.
19 JUROR NO. 7: I'm sorry.
20 THE COURT: No problem.
21 JUROR NO. 7: I apologize.
22 THE COURT: No, no one's in trouble, okay.
23 JUROR NO. 7: Oh, I know. I'm just saying I
24 apologize because, you know.
25 THE COURT: Don't worry about it. You're not in

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1 trouble, okay.
2 JUROR NO. 7: All right. All right.
3 THE COURT: All right, thank you.
4 JUROR NO. 7: Thank you.
5 THE COURT: Okay, we are outside the presence of Ms.
6 Fraley. There's no other jurors in the courtroom. I know we
7 have the detective on the stand, but we also have a whole slew
8 of officers out there. Has the defense decided which ones they
9 wish to --
10 MR. PIKE: Yes, your Honor. We released two of the
11 officers.
12 THE COURT: Okay.
13 MR. PIKE: Officers Conn and I'm sorry, I forgot the
14 other officer's name.
15 MR. SMITH: Taylor, I believe.
16 MR. PIKE: Taylor.
17 MR. SMITH: Detective Taylor.
18 MR. PIKE: Yeah, Sean Taylor. Yeah --
19 THE COURT: So how many --
20 MR. PIKE: -- that's right, I knew Detective Taylor.
21 THE COURT: -- do you wish to examine?
22 MR. PIKE: The transcripts indicated Ballejos and
23 Santarossa, and so we've limited it to those two of the
24 handling the examination, and it's fairly quick.
25 THE COURT: Okay.

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1 MS. PALM: And for the record, because I don't think
2 this was on the record, the State did object to my asking
3 Detective Wildemann about apparent footprint on the bed and
4 whether homicide investigation would ever include the
5 comparison of footprints to officers' shoe prints, and the
6 Court sustained the objection.
7 I believe that I'm entitled to inquire about the
8 thoroughness of a police investigation, and I was not able to
9 do that, so I just want to make a record of that.
10 THE COURT: Mr. --
11 MR. SMITH: And Judge, just so the record is
12 complete, it was our contention that at this stage in the
13 proceedings and with no testimony establishing that an officer
14 actually stepped on that bed, that at this point it would be
15 irrelevant. And that the testimony indicated that perhaps
16 someone -- an officer may have stepped on it.
17 And it was our recollection that the -- one of the
18 CSAs even testified that he didn't even think that was a
19 footprint, but rather, it was a depression made by a hand.
20 THE COURT: All right. I did deny the motion or the
21 -- I sustained the objection. And so I'm sorry, do you want to
22 get those officers real quick, because I mean, you're going to
23 talk to Detective Wildemann on this issue, but you said it's
24 real short. Your cross is short or this particular issue with
25 Detective Wildemann will be short?

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1 MR. PIKE: There was --
2 MS. GRAHAM: As far as Sergeant Newberry, do you want
3 to keep him or do you want to -- he did not testify.
4 MR. PIKE: Okay.
5 MS. PALM: No, he can be released.
6 THE COURT: So just --
7 MR. PIKE: He didn't testify, we'll let him go, too.
8 THE COURT: I'm just wondering since we've been
9 holding them, and I don't know if they need to be out in the
10 street --
11 MR. SMITH: Yeah, that's a good point.
12 THE COURT: -- if we could just take them real quick
13 and then have Detective Wildemann come back. Is that okay with
14 the parties?
15 MS. GRAHAM: I think --
16 MS. PALM: Actually, I would -- I'd like to ask
17 Detective Wildemann questions about how he got the use of force
18 report --
19 THE COURT: Okay.
20 MS. PALM: -- prior to --
21 THE COURT: I don't know want to break up his
22 testimony again. Will you be done --
23 MS. PALM: It's going to be brief.
24 THE COURT: Okay. Well, I'm not going to rush you.
25 I'm just wondering, okay.

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1 MS. PALM: No, my remaining cross is just about that,
2 so --
3 MR. SMITH: Well --
4 MS. PALM: Let me verify that.
5 MR. SMITH: And while Ms. Palm is doing that, I just
6 want to make sure I understand what the scope of her
7 cross-examination is going to be. Is it --
8 MS. PALM: Well, can you object if you don't like my
9 cross-examination.
10 THE COURT: Well, and I'm telling you the scope of
11 the cross-examination is strictly the issue of the --
12 MR. SMITH: The actual --
13 THE COURT: -- appearance of intoxication.
14 MR. SMITH: The report itself, and not the discovery
15 --
16 MS. PALM: No, I'm going to -- I have a right to
17 inquire about their withholding much exculpatory evidence.
18 MR. SMITH: Well, Judge, that's a legal issue.
19 THE COURT: Okay, we don't know that -- okay, you're
20 not going to ask anyone if it's exculpatory evidence. You're
21 just going to -- you can ask him about -- because the issue was
22 you didn't have this report. Your report talks about that Mr.
23 O'Keefe appeared to be extremely intoxicated, and your
24 objection was that you didn't have this report to confront them
25 with this.

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1 And so I'm allowing you to be recall -- these
2 witnesses can be recalled so you can develop that particular
3 issue.
4 MS. PALM: So it's the Court's ruling that I cannot
5 inquire when we asked for that report, the fact that they said
6 it did not exist, and the fact that we got it pursuant to --
7 THE COURT: No, that -- but --
8 MS. PALM: -- a court order yesterday, that's what I
9 want to ask him want.
10 THE COURT: Yeah, but who did you ask that from?
11 MS. PALM: It was an e-mail to Phil Smith. It was
12 copied to me, it was copied to Detective Wildemann, it was
13 copied to Detective Bunn. We were all in this big circle of
14 e-mails.
15 THE COURT: I thought we were only calling Ballejos
16 and Santarossa.
17 MR. PIKE: That's the --
18 MS. PALM: No, this is --
19 MR. PIKE: That's to cross-examine them about the
20 report and about their agreement or if they were provided this
21 information, would they agree that -- with that report. No,
22 that's going to be very, very quick.
23 THE COURT: Okay.
24 MR. PIKE: And I'm handling that. And I'm not going
25 to go into how I got it or anything else. It's appropriate.

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1 Department 17 jurors. You may be seated, ladies and gentlemen.
2 Let's make sure our cell phones are turned off, please.
3 THE COURT: Record reflect we're back in the presence
4 of the jury panel. Ladies and gentlemen, we're going to take
5 some witnesses out of order even though we're in the middle of
6 Detective Wildemann's testimony, and we're going to recall --
7 is it were you recalling Mr. -- Officer Ballejos first?
8 MR. PIKE: Brian Santarossa first.
9 THE COURT: Okay.
10 MR. PIKE: Thank you.
11 THE MARSHAL: Raise your right hand, please.
12 OFFICER BRIAN SANTAROSSA
13 THE CLERK: Please be seated. Please state your name
14 and spell it for the record.
15 THE WITNESS: Brian Santarossa, B-r-i-a-n,
16 S-a-n-t-a-r-o-s-s-a.
17 THE COURT: Go ahead, Mr. Pike.
18 MR. PIKE: Thank you very much.
19 RE-CROSS EXAMINATION
20 BY MR. PIKE::
21 Q Officer, you're still under oath as you previously
22 testified in this matter. In your being recalled for a
23 specific short questioning, and what I'd like to ask you is
24 that when a non-lethal option is deployed, a tazor is deployed
25 in a case, there's a report called a use of force report that's

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1 Only through the detective --
2 THE COURT: I'm just talking about the --
3 MR. PIKE: -- and not through these officers.
4 THE COURT: -- two witnesses.
5 MR. PIKE: You bet.
6 THE COURT: Okay.
7 MR. PALM: Okay.
8 THE COURT: And then we can deal with the other ones
9 as the questions arise.
10 MR. SMITH: Fine, we'll deal with it when it comes
11 out.
12 THE COURT: All right.
13 MR. SMITH: That's fine.
14 THE COURT: So let's get them out of the way real
15 quick here, all right.
16 MR. SMITH: Okay.
17 THE MARSHAL: They're going to finish Wildemann
18 first?
19 THE COURT: No. We're going to call Mr. -- Officer
20 Ballejos, if I'm pronouncing that correctly.
21 MS. GRAHAM: Ballejos.
22 MR. PIKE: Ballejos and Santarossa.
23 THE COURT: Let's call the jury in.
24 (In the presence of the jury)
25 THE MARSHAL: Officers and members of the court,

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1 prepared?
2 A Yes, sir.
3 Q And one was prepared in this case, and we received a
4 copy of it yesterday about 2:00 o'clock after you testified.
5 Now, yesterday you testified that you wouldn't dispute if other
6 officers indicated that Mr. O'Keefe was intoxicated at that
7 time.
8 A Yes, sir.
9 Q And as part of the use of force report, the officer's
10 assessment of the citizen's condition is something that's
11 placed onto that report.
12 MR. SMITH: Judge, I hate to do this, but I'm going
13 to object. Technically this is his witness, so he can't lead
14 him.
15 MR. PIKE: It's cross-examination.
16 THE COURT: Well, I'm going to consider this his
17 cross-examination.
18 MR. SMITH: Okay, Judge. Thank you.
19 MR. PIKE: Thank you.
20 BY MR. PIKE::
21 Q You can answer the question. So when the report is
22 prepared, the officer puts down his assessment of what
23 condition the citizen was in.
24 A Yes, sir.
25 Q So the officer who prepared this -- and in this case

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1 it would have been the officer that deployed the tazor -- he
2 would have put that into the report.
3 A Yes, sir.
4 Q So if I told you that he wrote that his assessment
5 was that the citizen, Mr. O'Keefe, was mentally ill or under
6 the influence, you wouldn't object to that.
7 A No, sir.
8 Q And he was the one that was make being the decision
9 whether or not to deploy that non-lethal option.
10 A Yes, sir.
11 Q Okay. So he was focused in, and he'd be in the best
12 position to give that opinion.
13 A Yes, sir.
14 Q And then a review of that additional comment in the
15 report indicated that O'Keefe appeared extremely intoxicated
16 and continued to be eradicate and emotional in his behavior.
17 And certainly, if that was in that report, you wouldn't have
18 anything to oppose to that or object with it.
19 A No, sir.
20 Q Okay. Thank you?
21 MR. PIKE: I have nothing further.
22 THE COURT: Any question by the State?
23 MS. GRAHAM: Just briefly.
24 REDIRECT EXAMINATION
25 BY MS. GRAHAM::

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1 intoxication, so he would have to rely upon the report that was
2 prepared --
3 THE COURT: Is that correct, Officer, or --
4 MR. PIKE: -- by other officers.
5 THE COURT: -- do you have other -- do you have any
6 other -- do you personally have any observations regarding the
7 -- Mr. O'Keefe's demeanor?
8 THE WITNESS: No, sir, not in regards to
9 intoxication, sir, no.
10 THE COURT: Okay.
11 MS. GRAHAM: That's sufficient.
12 THE COURT: Anything further, Mr. Pike?
13 MR. PIKE: No. Thank you very much for coming back,
14 Officer.
15 THE COURT: Thank you, Officer.
16 MR. PIKE: You're released.
17 THE WITNESS: Thank you, sir.
18 THE COURT: And you are excused from --
19 THE WITNESS: Thank you, sir.
20 THE COURT: -- anything further.
21 MR. PIKE: Officer Ballejos. I think I'm close, I
22 hope.
23 MS. GRAHAM: Ballejos.
24 MR. PIKE: Ballejos, thank you.
25 THE MARSHAL: If you'll remain standing. Please

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1 Q Officer Santarossa, based on the fact that Officer
2 Ballejos wrote that in his report, his use of force report,
3 that's protocol, right, to write that report?
4 A Yes, ma'am.
5 Q That would be his perception of the defendant's
6 demeanor at the time he used that force; is that correct?
7 A Yes, ma'am. Yes, ma'am.
8 Q Would that necessarily be everybody's perception?
9 A Not necessarily, Ma'am, no.
10 Q Okay. Given the dynamic situation that was at
11 happened there, there were several officers involved; isn't
12 that true?
13 A Correct, Ma'am.
14 Q And each and every officer that came into contact
15 with the defendant would have their own impression of --
16 MR. PIKE: Objection, your Honor. Calls for
17 speculation.
18 THE COURT: Sustained.
19 BY MS. GRAHAM::
20 Q You had your own impression of the defendant's
21 demeanor and his lack or level of intoxication; is that
22 correct?
23 MR. PIKE: Objection, your Honor. Misstates the
24 fact. At the time of the testimony the officer indicated he
25 got close, but he could not recall if he had any signs of

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1 raise your right hand and face the clerk.
2 JEREMIAH BALLEJOS, PLAINTIFF'S WITNESS, SWORN
3 THE CLERK: Please be seated.
4 THE WITNESS: Thank you.
5 THE CLERK: If you'll please state your name and
6 spell it for the record.
7 THE WITNESS: Officer Jay Ballejos, B-a-l-l-e-j-o-s.
8 MR. PIKE: May I approach the witness, your Honor?
9 THE COURT: Yes.
10 MR. PIKE: Thank you.
11 RECROSS-EXAMINATION
12 BY MR. PIKE::
13 Q Officer, Ballejos, because you were the officers that
14 deployed the non-lethal option in this case, you were required
15 to prepare what's called a use of force document?
16 A That's correct.
17 Q And you prepared one in this case?
18 A Yes.
19 Q There's a fax time on that indicating we received it
20 about 2:00 o'clock after you finished testifying in that
21 matter. And so I just want to ask you a few questions about
22 this and then we'll be done --
23 A Sure.
24 Q -- okay? Thank you very much. During your testimony
25 yesterday you were asked the question by Mrs. Graham about what

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1 Mr. O'Keefe's demeanor was while you were trying to gather
2 information or what his condition was. Do you recall that line
3 of questioning?
4 A I did, yes.
5 Q Okay. And in preparing the use of force report that
6 is done, you have to indicate on that report what your
7 assessment of his condition was at the time you deployed that
8 non-lethal force.
9 A That's correct.
10 Q Okay, and you had to focus in on him because it was
11 between yourself and Officer Conn. Officer Conn was the lethal
12 force and you were the non-lethal force.
13 A That's correct.
14 Q And if it reached a point where you had to deploy the
15 tazor, you were going to warn other officers. I think you
16 would shout out tazor or do something like that.
17 A We knew at that point when there was no weapon seen
18 that then ECD was -- or the tazor was going to be used.
19 Q And in making this determination, then, you had to
20 look at his condition, and on this report you indicated that
21 his assessment at that time that he was either mentally ill or
22 under the influence; isn't that correct? If I was to show you
23 the report --
24 A That's what I --
25 Q -- would that refresh your --

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1 Q All right.
2 MR. PIKE: Nothing further. Thank you very much.
3 THE COURT: Anything from the State?
4 MS. GRAHAM: Just briefly.
5 FURTHER REDIRECT EXAMINATION
6 BY MS. GRAHAM::
7 Q Officer Ballejos, the reason you employed the tazor
8 was not because he was intoxicated; would that be a fair
9 statement?
10 A That's correct.
11 Q Okay. And why did you feel the need to use
12 non-lethal force?
13 MR. PIKE: Objection. Outside the scope of limited
14 reason he's being recalled.
15 THE COURT: Sustained. I think we already addressed
16 those issues.
17 MS. GRAHAM: We did.
18 THE COURT: Anything else?
19 MS. GRAHAM: No.
20 THE COURT: All right, thank you, Officer.
21 THE WITNESS: Thank you, your Honor.
22 THE COURT: Okay. Can the other officers be
23 released?
24 MR. PIKE: They can be released. Hopefully this time
25 for good.

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1 A That -- yes, that's what's highlighted, yes.
2 Q Okay. And also, in that report it indicates that Mr.
3 O'Keefe to be extremely intoxicated and continued to be
4 eradicate and emotional in his behavior. And telling you and
5 reminding you about the contents of that report, that would
6 refresh your recollection as to --
7 A Yes, it would.
8 Q -- what you placed in the report and the condition
9 that Mr. O'Keefe was.
10 A Yes.
11 Q And, in fact, this was prepared on November 6th by
12 yourself and submitted.
13 A Was that the date?
14 THE COURT: You can show him.
15 BY MR. PIKE::
16 Q I can show you. Looks like it was received by them
17 on November 6th.
18 A Okay.
19 Q Okay. So this would have been prepared that next --
20 sometime that next day.
21 A It was actually done after the 12:00 o'clock hour, so
22 early the morning of the 6th.
23 Q Well, the conditions and everything were still fresh
24 in your mind.
25 A Yes.

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1 THE COURT: All right.
2 MR. PIKE: Thank you for returning.
3 THE COURT: All right. Cliff, you can tell the other
4 officers they can go.
5 THE MARSHAL: Okay, Judge.
6 THE COURT: And then we can call Detective Wildemann.
7 And, detective, you understand you're still under oath?
8 THE WITNESS: Yes, sir.
9 THE COURT: Go ahead.
10 RECROSS-EXAMINATION
11 BY MS. PALM::
12 Q Detective Wildemann, one of the reasons that the
13 photographs of Mr. O'Keefe's injuries were recorded is because
14 the State has a duty to preserve exculpatory evidence; is that
15 true?
16 A That's true.
17 Q Okay. And are you aware that the State also has a
18 duty to turn over discovery?
19 A Yes, of course.
20 Q To the defense counsel?
21 MR. SMITH: Judge, I'm going to object to the
22 relevance of this line of questioning.
23 THE COURT: Counsel approach, please.
24 (Bench conference).
25 MS. GRAHAM: Your Honor, may I approach the witness?

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1 THE COURT: Yes.
2 BY MS. PALM::
3 Q Detective Wildemann, do you recognize what this
4 document is, and just the top portion of the e-mail.
5 A Sure.
6 Q And what does it appear to be?
7 A It's a copy of an e-mail that was sent from District
8 Attorney Smith to you, I believe, or --
9 Q To --
10 A Oh, I'm sorry, to Chris Bunn.
11 Q And who is Chris Bunn?
12 A Chris Bunn's my partner.
13 Q And he is the other detective on this case.
14 A Yes.
15 Q And who is cc'd on that e-mail?
16 A Myself, you, and Mr. Pike.
17 Q Okay. And is it fair to say that this e-mail is
18 requesting numerous items of discovery?
19 A Let me read it.
20 Q Or several.
21 A Um-h'm. Yes, it does.
22 Q And are one of those items the use of force report
23 prepared by Officer Ballejos?
24 A Yes.
25 Q And showing you a second --

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1 MR. PIKE: There's no question before the Court.
2 THE COURT: And I think you can -- I'm going to let
3 you --
4 MR. PIKE: It's argument only.
5 THE COURT: -- clear this up on --
6 MR. SMITH: Okay, okay.
7 THE COURT: -- on redirect.
8 BY MS. PALM::
9 Q And are you aware that that report was faxed over to
10 Deputy District Attorney Smith and provided to us last evening?
11 A I believe it -- I had heard that.
12 Q Have you seen that document yourself?
13 A I have not seen it.
14 Q Okay. Moving onto another issue. You were at the
15 scene yourself the night of the incident?
16 A Yes.
17 Q And is it fair to say that where the manager's office
18 is -- do you know where the manager's office is?
19 A I don't know where the manager's office is, No,
20 Ma'am.
21 Q Did you --
22 A I never even made it into the compound. I was in the
23 back parking area outside of the actual -- it's kind of like a
24 square, and all the apartments face inwards. I was never in
25 that -- the actual courtyard area.

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1 THE COURT: Excuse me, Counsel, can you just hold on
2 one second.
3 (Off the record colloquy).
4 THE COURT: Thank you.
5 MS. PALM: Thank you.
6 BY MS. PALM::
7 Q The second document appears to be what?
8 A It's another e-mail sent from District Attorney Smith
9 to Mr. Pike and yourself.
10 Q And who's cc'd on it?
11 A Myself and Detective Bunn.
12 Q And what is it saying about the use of force report
13 that we are requesting?
14 A There is no separate report. Only the taped
15 statement, which you guys already have as supplemented by the
16 officer's report.
17 Q So it's saying the use of force report does not
18 exist?
19 A I -- yes.
20 Q And did you learn yesterday that the Court, after
21 Officer Ballejos testified, actually ordered that the State
22 produce to the defense the use of force report that did exist?
23 A Yes.
24 Q And --
25 MR. SMITH: Judge, I'm going to object again, and --

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1 Q Courtyard?
2 A No.
3 Q Okay. So you never spoke with the witnesses, Robin
4 Colax (phonetic) or Todd Armbruster (phonetic)?
5 A No, Ma'am.
6 Q The camera that recorded the videotaped interview of
7 Mr. O'Keefe that we all just watched.
8 A Yes.
9 Q Is that hidden in a ceiling or is it visible?
10 A It's visible. It's a visible camera.
11 Q Is one that sticks out a wall or is it --
12 A No, it --
13 Q -- flat in the ceiling or --
14 A -- looks very similar to that fire deal there.
15 Q Okay. Is it obviously a camera?
16 A No.
17 Q Okay. Do you recall at the time that the interview
18 terminated you spoke to the officers outside the interview room
19 and you said that Mr. O'Keefe might be a fucking nut you?
20 A I do.
21 Q Okay. And that is not on the transcript, but it's on
22 the video. Can you explain to me why? I mean, it's not on the
23 video, but it's in our transcript. Can you explain why the
24 difference?
25 A I'm thinking that she took the -- we have people that

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1 transcribe our statements, and I'm thinking that my recorder
2 hadn't been off yet, and that the audio portion that picks up
3 in that room wasn't sensitive enough to pick that up.
4 Q Because it was actually made outside of the room?
5 A Possibility, yes.
6 Q Okay.
7 A Just speculating on that.
8 Q Okay. And just to clarify, because there was an
9 objection, so I want to just make sure I'm clear. At the time
10 you testified at the preliminary hearing you were not aware of
11 another case where homicide had taken a blood or breath test?
12 A I was not aware of another case, No, Ma'am.
13 Q Are you aware that the option is available for a
14 blood or breath test if you were to ask for one?
15 MR. SMITH: Objection. Irrelevance, Judge want.
16 THE COURT: Overruled.
17 THE WITNESS: That the option is available to get a
18 blood or breath test?
19 BY MS. PALM::
20 Q If you asked for a breath test to be done on a
21 suspect or if you offered it to a suspect and they wanted to
22 have one done, could you accomplish that?
23 A I could accommodate that, yes.
24 Q Okay. And Mr. O'Keefe was never offered a blood or
25 breath test by you or any other detective in this case.

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1 Q Do you recall that?
2 A Yes.
3 Q And you've already testified on direct examination
4 that you've dealt with many stabbing cases; is that correct?
5 A Yes.
6 Q Now in your training and experience dealing with
7 stabbing homicides in your career, have there ever been
8 situations where a suspect has received cuts on his fingers or
9 hands in the very area that the defendant has?
10 MS. PALM: Objection, your Honor. It's irrelevant
11 what has happened in other cases, and it's beyond the scope of
12 my cross-examination. This is redirect.
13 MR. SMITH: Well, Judge, she brought the issue out on
14 cross-examination.
15 MS. PALM: He's also not an --
16 THE COURT: Counsel approach. Counsel approach,
17 please.
18 (Bench conference).
19 THE COURT: Sustain the -- I mean, overrule the
20 objection.
21 BY MR. SMITH::
22 Q You can answer the question.
23 A Would you mind asking it again, I'm sorry.
24 Q Sure. In your training and experience, have you come
25 across occasions where a suspect in a stabbing has had cuts on

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1 A No.
2 MR. SMITH: No more questions. Thank you.
3 THE COURT: Redirect.
4 FURTHER REDIRECT EXAMINATION
5 BY MR. SMITH::
6 Q Following up, detective, on the question that Ms.
7 Palm just asked you -- actually, let me back up a little bit.
8 You've been a homicide detective now for several years?
9 A Yes.
10 Q How long have you been an officer employed with the
11 Las Vegas Metropolitan Police Department?
12 A 21 years.
13 Q And in that -- those 21 years of experience, under
14 what types of circumstances is a suspect general administered a
15 blood and alcohol breath test?
16 A A blood alcohol breath test?
17 Q Yes.
18 A Okay. It would be under a DUI situation.
19 Q Okay. Generally, is that the only situation?
20 A I haven't been in patrol in many, many years, but
21 that's how I remember it, yes.
22 Q Okay. Now, on cross-examination Ms. Pike -- excuse
23 me, Ms. Palm drew your attention to an alleged injury on the
24 defendant's hand.
25 A Yes.

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1 their fingers in the very area that the defendant does?
2 A Yes, yes.
3 Q How often would you say or --
4 A I can't give you a specific number, but it happens
5 frequently.
6 Q Okay. Now, in regards to your determination as to
7 the intoxication level of Mr. O'Keefe, safe to say that you
8 interacting with Mr. O'Keefe for a number of hours?
9 A Yes.
10 Q In your opinion, did it appear to you that he had a
11 complete lack of control of his faculties?
12 A No, none at all.
13 Q How would you describe his demeanor throughout the
14 time that you interacted with him?
15 A At times it was very controlled, and at times it
16 would get a bit sporadic I found when question got a little bit
17 tighter on him, I asked for more specifics.
18 Q Okay. So it is your testimony that when you
19 attempted to ask for specific information, that's when he got
20 out of control?
21 A That's when his demeanor definitely changed, yes.
22 Q Also, on cross-examination Ms. Palm brought attention
23 to the fact that sometime subsequent to you informing Mr.
24 O'Keefe that Victoria had passed away, she said that he cried.
25 Do you recall that?

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1 A Yes.
2 Q Now, you were actually there observing him when this
3 happened; is that correct?
4 A Yes.
5 Q Can you describe whether or not he was actually
6 crying.
7 A To me, it seemed calculated. He had an outburst that
8 went on like a switch, and it terminated like a switch, and I
9 didn't see tears or any sort of nasal activity that accompanies
10 that.
11 Q And just so the record's clear, you said you did not
12 see any tears.
13 A No.
14 Q Now, with regards to this use of force report that
15 we've heard about, is that something that homicide detectives
16 keep in their file?
17 A Absolutely not.
18 Q And where is that use of force report normally
19 located?
20 A As I understand it, it's an administrative internal
21 report that the department uses to monitor uses of force.
22 Several reasons might exist. One is to keep, of course, a
23 document of it. Number two, is to monitor heavy handedness.
24 Maybe a particular officer that's having more problems than
25 other officers. As to where it's kept, I have no idea. We're

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1 Q Just look those over.
2 A Okay. I'm reading one from you to Mr. Pike and Ms.
3 Palm. Is that where you want me?
4 Q Sure.
5 A Or do you -- okay. And what do you want me to read
6 to you?
7 MR. SMITH: Can I approach the witness, Judge?
8 THE COURT: Yes.
9 THE WITNESS: Or am I on the wrong one?
10 BY MR. SMITH::
11 Q Might be the wrong one. Let me find out.
12 MR. SMITH: May I approach the witness --
13 THE COURT: Yes.
14 MR. SMITH: -- to give him another copy?
15 BY MR. SMITH::
16 Q It's the highlighted portion that I actually quoted,
17 but that quote had originated from Officer -- from Detective
18 Bunn.
19 A Okay. Okay.
20 Q And what was that reply?
21 A There is no separate report, only the taped
22 statement, which you guys already have as supplemented by the
23 officer's report.
24 Q Okay.
25 MR. SMITH: Judge, I'll pass the witness. No further

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1 not entitled access to those reports.
2 Q Okay. So I just want to make sure the record's
3 clear. Ms. Palm showed you some e-mails originating from a
4 representative of the District Attorney's Office, myself. Do
5 you recall that?
6 A Yes.
7 Q Where I had requested on behalf of the defense
8 attorneys a copy of that report. Do you recall that?
9 A Yes.
10 Q And the response was -- actually, do you recall who
11 actually replied to that request from our office?
12 A Detective Bunn replied to it.
13 Q Okay. And that reply was sent also as a cc copy to
14 yourself; is that correct?
15 A Yes.
16 Q And do you recall what Detective Bunn's reply was?
17 A I don't recall exactly what it was. Be glad to look
18 at it again.
19 Q If I showed you the chain of e-mails, would that help
20 refresh your recollection?
21 A Yes, it would.
22 MR. SMITH: May I approach the witness --
23 THE COURT: Yes.
24 MR. SMITH: -- Judge?
25 BY MR. SMITH::

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1 questions.
2 THE COURT: Any further questions, Ms. Palm?
3 MS. PALM: Just a few.
4 FURTHER RECROSS-EXAMINATION
5 BY MS. PALM::
6 Q Does Metro have drug recognition officers who could
7 have examined Mr. O'Keefe for alcohol or drug use?
8 A I would think that a traffic officer would probably
9 be able to do something along those lines.
10 Q And is a nurse maintained 24 hours a day at the jail
11 to collect blood, do you know?
12 A Yes.
13 Q Based on -- a DUI or a stop can be made based on
14 erratic driving, so do you agree that erratic behavior would
15 support the use of alcohol or drugs?
16 A Are you asking me about a traffic stop?
17 Q I'm asking you, I guess, if the use of alcohol or
18 drugs might make somebody behave erratically in your
19 experience?
20 A Sure.
21 Q And you don't know whether Mr. O'Keefe has a history
22 of alcohol abuse or blackouts, do you?
23 A He told me that he was in a program, so I did know
24 that at the time. I have no idea about blackouts.
25 MS. PALM: Nothing further. Thank you.

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1 THE COURT: Any questions from the jurors? We have a
2 question?
3 THE MARSHAL: Write it down.
4 THE COURT: Counsel approach, please.
5 (Bench conference).
6 THE COURT: Officer, this question may not
7 necessarily be directed towards you. The question was from the
8 juror will we be able to read a transcript ever the interview.
9 The transcript has not been admitted in the evidence. The disk
10 of the interview has. It's been admitted in the evidence and
11 will go back with the jury for deliberations. No other
12 questions? Thank you, detective. You're instructed not to
13 discuss your testimony with any other witness involved in this
14 case until this matter is resolved. Thank you, sir.
15 THE WITNESS: Thank you, sir. Thank you.
16 THE COURT: Next witness by the State.
17 MR. SMITH: Detective Chris Bunn.
18 THE MARSHAL: Remain standing, please. Raise your
19 right hand and face the clerk.
20 DETECTIVE CHRIS BUNN, PLAINTIFF'S WITNESS, SWORN
21 THE CLERK: Please be seated. Will you please state
22 your name and spell it for the record.
23 THE WITNESS: Christopher Bunn, B-u-n-n.
24 THE CLERK: Thank you.
25 THE COURT: Go ahead, Mr. Smith.

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ROUGH DRAFT TRANSCRIPT

1 Q Would those be the same observations that you would
2 expect to be included in a use of force report?
3 A Well, when we're talking about use of force report,
4 there's two -- there seems to be some -- there's an officer's
5 report, use of -- officer's use of force report, which would be
6 an officer's report, which is a document that is basically a
7 narrative type document.
8 Q Okay.
9 A Now, the department has an internal tracking system
10 administrative report that's called an officer use of force
11 report, which is separate, and that's conducted by his
12 supervisor. So what I was referring to with you was the
13 officer's report -- officer's report, use of force, which there
14 was not one prepared by Mr. -- Officer Ballejos because I
15 specifically told him not to. That I would document it in his
16 statement, his taped statement that I did with him, and then it
17 would be documented in the officer's report that I would do
18 over the overall incident.
19 Q Okay.
20 A Now, as the administrative report by his supervisor,
21 I have no access to that because I'm not in his chain of
22 command. I would have -- probably never see that report or
23 have access to it.
24 Q Would you even know if that report existed?
25 A No, that's completely done through his chain by his

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ROUGH DRAFT TRANSCRIPT

1 MR. SMITH: Thank you, Judge.
2 DIRECT EXAMINATION
3 BY MR. SMITH::
4 Q Mr. Bunn, how are you presently employed?
5 A Las Vegas Metropolitan Police Department.
6 Q In what capacity?
7 A As a homicide detective.
8 Q Were you assigned to work the case regarding a
9 descendant by the name of Victoria Witmarsh along with a
10 Detective Marty Wildemann?
11 A Yes, sir.
12 Q Okay. I have a couple specific questions for you.
13 Do you recall receiving an e-mail communication from myself
14 regarding a use of force report prepared by an Officer
15 Ballejos?
16 A Yes.
17 Q Do you recall informing myself that, to your
18 knowledge, there was no separate report, but rather, there had
19 been a taped statement that was conducted, pursuant to the
20 overall investigation of this case?
21 A That's basically what I wrote back to you, yes.
22 Q Okay. And to your knowledge, did that taped
23 statement of Officer Ballejos contain observations that Officer
24 Ballejos made about Mr. O'Keefe?
25 A It did.

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ROUGH DRAFT TRANSCRIPT

1 sergeant.
2 MR. SMITH: Court's indulgence.
3 BY MR. SMITH::
4 Q Now, at some point yesterday did you have a
5 conversation with a representative from the District Attorney's
6 Office regarding the actual private, as it were, administrative
7 report?
8 A Yes, sir.
9 Q And what information did you provide?
10 A I basically said that I don't have access to that
11 report. If it was done, it's through his sergeant and through
12 internal affairs. I don't have any way to get that.
13 Q To this date do you have that report?
14 A No, sir, I do not.
15 Q Did you nevertheless become aware that at some point
16 that report was turned over to the District Attorney's Office
17 through a completely separate means?
18 A Yes, sir.
19 MR. SMITH: Pass the witness, Judge.
20 THE COURT: Ms. Palm.
21 MS. PALM: Thank you.
22 CROSS-EXAMINATION
23 BY MS. PALM::
24 Q What was the means that we got that report?
25 A I believe it was through his sergeant.

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ROUGH DRAFT TRANSCRIPT

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1 Q So did you contact his sergeant and say the judge has
2 ordered that you get them the report?
3 A No, I did not.
4 Q Do you know who did?
5 A I believe it was the District Attorney's Office.
6 Q But you knew that we had specifically requested the
7 use of force report.
8 A Use of force report that I was -- I believe what was
9 requested to provide was the officer's report, his narrative
10 statement, which I specifically told Officer Ballejos not to do
11 one of those. That it would be covered in his dictated
12 statement as well as my narrative statement, my officer's
13 report. That was the report I was referring to when I
14 responded to Mr. Smith's request.
15 Q But the request was for the use of force report.
16 A And the use of force report, I believed, that was
17 being requested was the officer's report.
18 Q Are you talking about this voluntary statement?
19 A I -- no, I believed that he was referring to an
20 officer's report for use of force.
21 Q Aren't officer's report entitled officer's report?
22 A Some -- they carry two titles. Just like this would
23 be an officer's report in reference to a homicide, officer's
24 report in reference to use of force, officer's report in
25 reference to -- so it could carry either one of those names.

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ROUGH DRAFT TRANSCRIPT

1 A I assume, yes. I have not seen it. I don't have it.
2 Q Now, did you say that you thought Officer Ballejos'
3 involuntary statement includes the very same things that are in
4 this use of force report?
5 A I believe that the items that would be covered --
6 just what I told Officer Ballejos -- his narrative, his
7 dictated statement to me, the taped interview that I did with
8 him, and the details from my officer's report from the crime
9 scene would be what would be supporting documents for his -- so
10 he would not have to do that.
11 Q So the public document that we would be able to get
12 is this voluntary statement?
13 A And my officer's report.
14 Q Okay. And as far as your officer's report, it does
15 not say Officer Ballejos noted that my client was mentally ill
16 or extremely intoxicated, does it?
17 A I don't -- I don't believe that that's in there, no.
18 Q Okay. And do you know that his voluntary statement
19 does not note that either?
20 A I don't believe that that's stated in his --
21 Q Okay.
22 A -- statement.
23 Q And so really, the only way that there's a record of
24 this is in this private administrative document?
25 MR. SMITH: Objection, Judge. Outside the scope of

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ROUGH DRAFT TRANSCRIPT

1 Q You're aware when there's a use of force against a
2 suspect that officers are required, when they deploy a tazor or
3 a gun, are required to do this administrative document called a
4 use of force report, are you not?
5 A Yes.
6 Q So you're aware there was a document specifically
7 called a use of force report?
8 A Yes.
9 Q And did you look for that document before you passed
10 along the word to us that there was no such document?
11 A No, I did not.
12 Q And did you tell us that I can't -- did you pass
13 along the word that I can't get access to that document, it's
14 private?
15 A I had a conversation with the District Attorney's
16 Office. I've never had a conversation with you.
17 Q Okay. Did you tell Mr. Smith, rather than the
18 document doesn't exist, it's private, I can't get it?
19 A At a later time I did have that same conversation
20 with Mr. Smith and tell him that there was an administrative
21 report that I had no access to.
22 Q And that was yesterday?
23 A I did tell him that yesterday.
24 Q But after the Court ordered that we get a copy of
25 that document, it was able to be provided?

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ROUGH DRAFT TRANSCRIPT

1 his knowledge.
2 BY MS. PALM::
3 Q As far as --
4 THE COURT: If you know.
5 BY MS. PALM::
6 Q If you know as far as this --
7 A I don't know.
8 Q -- case goes.
9 A The system's been changed since I've done a use of
10 force report, and there's been a new documentation system
11 created. I don't know all the questions on the new
12 documentation process. I don't know the contents of that
13 report. I've never seen it.
14 Q Okay.
15 MS. PALM: May I approach, your Honor?
16 THE COURT: Is that the Officer Ballejos --
17 MS. PALM: This is Officer Ballejos' report.
18 THE COURT: No, tape report or the --
19 MS. PALM: His use of force --
20 THE COURT: -- use of force?
21 MS. PALM: -- report.
22 THE COURT: Okay. But this officer's never seen it.
23 MS. PALM: Well, I'm asking him does he -- all right,
24 I'll move along.
25 BY MS. PALM::

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1 Q The only public available document that you provided
2 in discovery was Officer Ballejos' statement. As far as
3 Officer Ballejos' observation goes was his statement, and that
4 statement did not indicate that Mr. O'Keefe was extremely
5 intoxicated and/or mentally ill.
6 A I don't believe that that's in his dictated
7 statement.
8 MS. PALM: Thank you. Nothing further.
9 THE COURT: Anything further, Mr. Smith?
10 REDIRECT EXAMINATION
11 BY MR. SMITH::
12 Q I just want to clear something up, detective. It's
13 your testimony that there are two separate use of force
14 reports; is that correct?
15 A Yes.
16 Q One that is administratively prepared that you would
17 not have any access to; is that correct?
18 A That's correct.
19 Q And is that something, to your knowledge, that is
20 normally discoverable?
21 A To my knowledge, no.
22 Q All right. And then there's also an officer's report
23 of a use of force; is that correct?
24 A Correct.
25 Q Which was not done in this case.

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ROUGH DRAFT TRANSCRIPT

1 A Officer Ballejos or at all?
2 Q At all.
3 A I believe it does indicate that he was intoxicated,
4 but outside of that, no.
5 Q Not to that degree. Okay. And as far as the
6 officer's report that is for a use of force, you testified that
7 you deliberately told Officer Ballejos not to prepare an
8 ordinary report in this case?
9 A It would be an officer's report that we create one
10 officer's report to cover the entire incident, so there was no
11 need for him to do a second report on top of it, so yes, that's
12 correct.
13 Q Thank you.
14 THE COURT: Any questions from the jurors? All
15 right, thank you, sir, for your testimony. You're instructed
16 not to discuss your testimony with any other witness involved
17 in this case until this matter is finally resolved. Thank you,
18 sir.
19 THE WITNESS: Yes, sir.
20 THE COURT: About 15 minutes till. Do you have any
21 other witnesses that would be short or --
22 MR. SMITH: Not for today, Judge.
23 THE COURT: Okay. Ladies and gentlemen, it's 4:45.
24 We've had a long day with some of the breaks and the bathroom
25 problems and everything else, so I've been assured that the

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ROUGH DRAFT TRANSCRIPT

1 A It was included in my description -- details. It's
2 the overall officer's report that was created reference to the
3 homicide, which is the document that I provide in my officer's
4 report reference to it, and we detail the actions of the
5 officers as best we can and as well as all of the other
6 pertinent facts that go into that report.
7 Q Along with the taped statement that you conducted of
8 Detective Ballejos?
9 A Yes.
10 Q Which were, in fact, both provided in discovery?
11 A Yes, sir.
12 Q Okay.
13 MR. SMITH: No further questions am.
14 THE COURT: Anything further, Ms. Palm?
15 RECROSS-EXAMINATION
16 BY MS. PALM::
17 Q None of the discovery actually provided referred to
18 Mr. O'Keefe being extremely intoxicated and/or mentally ill?
19 MR. SMITH: Judge, it's been asked and answered.
20 THE COURT: I'm going to let him answer the question.
21 THE WITNESS: I don't understand the question.
22 BY MS. PALM::
23 Q Is it true that none of the discovery actually
24 provided indicated that Mr. O'Keefe was extremely intoxicated
25 and/or mentally ill?

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ROUGH DRAFT TRANSCRIPT

1 bathrooms are all working now, okay. And we envision them to
2 be working tomorrow, okay.
3 And so during this -- and we'll come back at 9:45
4 tomorrow. During this evening recess it is your duty not to
5 converse among yourselves or with anyone else on any subject
6 connected with this trial or to read, watch or listen to any
7 report over commentary on the trial by any person connected
8 with the trial or by any medium of information, including
9 without limitation, newspaper, television, radio or the
10 Internet.
11 And you're not to form or express an opinion on any
12 subject connected with this case until this matter is finally
13 resolved. See you back at 9:45. Thank you.
14 (Court recessed at 4:45 p.m., until
15 Thursday, March 19, 2009)
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EXHIBITS

DESCRIPTION:	ADMITTED
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ACKNOWLEDGEMENT

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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