

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4 **BRIAN KERRY O'KEEFE,**)

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DISTRICT COURT
CLARK COUNTY, NEVADA

Ann L. Johnson
CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,
vs.
BRIAN KERRY O'KEEFE,

Defendant.

CASE NO. C-250630

DEPT. NO. 17

Transcript of
Proceedings

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 6

MONDAY, AUGUST 30, 2010

APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER LALLI, ESQ.
Assistant District Attorney

STEPHANIE GRAHAM, ESQ.
Deputy District Attorney

FOR THE DEFENDANT:

PATRICIA PALM, ESQ.
Special Deputy Public Defender

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

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

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1 LAS VEGAS, NEVADA, MONDAY, AUGUST 30, 2010, 9:42 A.M.

2 (Outside the presence of the jury)

3 MS. PALM: Sorry, Your Honor.

4 THE MARSHAL: Are we waiting (indiscernible) outside
5 the presence?

6 MS. PALM: There were just a couple things outside
7 the presence. One would be that I wanted to address on the
8 record the lack of a limiting or cautionary instruction with
9 regard to the testimony of Cheryl Morris, and the bad acts
10 therein.

11 I did request that the Court give a cautionary or
12 limiting instruction ahead of her testimony. During her
13 testimony, I did not bring it up. I was -- confess -- I
14 confess I was a little bit perplexed by the new testimony that
15 we've never heard before, and trying to look through her
16 statements at the time. So I didn't bring it up on the spot.

17 But we talked about it afterwards, and it was my
18 request that a delayed limiting instruction not be given,
19 because I thought it would overly emphasize her testimony when
20 she was not on the stand again. So that's where things stand,
21 I just want to make a record of that.

22 THE COURT: And specifically, what was her testimony
23 regarding other bad acts?

24 MS. PALM: Her testimony was with regard to that Mr.
25 O'Keefe said he wanted to kill Victoria repeatedly, that he

1 demonstrated how he would kill somebody with a knife by slicing
2 upward from the sternum. And then there was the new testimony
3 about how he would kill somebody by slicing their throat with a
4 knife.

5 THE COURT: All right, thank you. Mr. Lalli?

6 MR. LALLI: Your Honor, we have never opposed the
7 giving of a limiting instruction. So we're -- I mean, we would
8 not have opposed it then. We don't oppose giving one now. You
9 know, that's kind of a decision for counsel. I guess her
10 preference as she has stated is that one not now be given.

11 I can tell the Court we anticipate Detective
12 Wildemann testifying at some point later today, and he will
13 testify as to the defendant's prior conviction. And at that
14 time certainly we would not oppose the giving of a limiting
15 instruction. And the instruction that I would propose is the
16 same one that we proffered to the Court as a proposed jury
17 instruction with respect to bad acts.

18 MS. PALM: And with respect to that, Your Honor, I
19 would submit that their instruction is insufficient, because
20 the Court is supposed to make it specific to the facts of the
21 case and what that evidence is being admitted for, the exact
22 purpose, not just generally citing the statute. We did propose
23 a limiting instruction. And I would submit our limiting
24 instruction would cover her bad acts, as well as the prior
25 conviction, and the limited use thereof.

1 THE COURT: Do you have a copy -- an extra copy of
2 their limiting instruction? And do you object to giving Ms.
3 Palm's instruction, Mr. Lalli?

4 MR. LALLI: I didn't think I've seen it. But I don't
5 --

6 THE COURT: Well Ms. Palm, if you can just provide
7 that to me at the next break.

8 MS. PALM: I did provide it to your clerk via email
9 if that's -- I don't know if I have my instructions with me
10 (indiscernible).

11 THE COURT: Or don't need it for this morning; is
12 that correct?

13 MR. LALLI: No, it will be later for --

14 THE COURT: Okay.

15 MR. LALLI: -- Detective Wildemann.

16 THE COURT: All right. We'll get it over the lunch
17 hour.

18 MS. PALM: Okay.

19 THE COURT: All right. Let's bring the jury, unless
20 there's any other matters.

21 MS. PALM: There is one other matter, Your Honor. I
22 would like the stipulation to be admitted before we start our
23 case in chief with regard to Ms. Whitmarsh's medical records.
24 There's been plenty of time for everybody to look at the edits
25 that I made to it.

1 MR. LALLI: I don't have a problem with the edits
2 that she made. I think they're consistent --

3 THE COURT: All right.

4 MR. LALLI: -- with the Court's ruling.

5 THE COURT: I'll read -- unless you want to read the
6 stipulation to Ms. Palm, I'm more than happy to do it. And if
7 you want to do it, that's fine.

8 MS. PALM: I'd actually like it to come in as an
9 exhibit also.

10 THE COURT: Okay.

11 MR. LALLI: I would object to it coming in as an
12 exhibit.

13 THE COURT: Right.

14 MR. LALLI: Stipulations are normally read to the
15 jury.

16 MS. PALM: Well on the ground that we were required
17 not to submit the actual records because of other things that
18 were contained in those records, and it's not the same to have
19 the jury just be read something that they can't necessarily
20 retain, as look at it.

21 If we had been allowed to present the medical
22 records, which were already very limited, they would have had a
23 piece of paper in their hand to look at what exactly was said.
24 And we think that's an important piece of evidence in this
25 case.

1 MR. LALLI: Well the problem with admitting the
2 exhibit of the stipulation is it overly emphasizes it. If the
3 jury has a question about it, they can request a read-back, or
4 they have a vehicle to recall specifically what is in the
5 stipulation if they have a question about it. But under the
6 circumstances, I would certainly object to the stipulation
7 being in the form of writing and as an exhibit.

8 THE COURT: Ms. Palm, I'm not going to -- we'll make
9 it a Court's exhibit. Or if you want to -- you know, he can
10 offer it. And I'm not going to admit it into evidence. We
11 have -- there's various testimony throughout this trial without
12 any document for the jury. For example, the Tolivers. There
13 isn't any document for their testimony, and we expect the jury
14 to recall their testimony.

15 If need be, we can have a playback, and they can
16 request the same with the stipulation. I'm more than happy to
17 read it, Ms. Palm. If you prefer to read it as a stipulation
18 by the parties, I have no objection to do that. Which do you
19 prefer?

20 MS. PALM: I'd rather it come from the Court.

21 THE COURT: All right. And just tell me when you
22 want it read, and I'll read it.

23 MS. PALM: Thank you.

24 THE COURT: All right. Anything else?

25 MS. PALM: No, Your Honor.

1 THE COURT: State?

2 MR. LALLI: Not on behalf of the State --

3 THE COURT: All right.

4 MR. LALLI: -- Your Honor. Thank you. Your Honor,
5 just to I guess remind the Court, we're taking Dan Ford out of
6 order because of his graveyard shift.

7 THE COURT: That's fine.

8 MR. LALLI: Thank you.

9 (Pause in proceedings)

10 THE MARSHAL: Officers and members of the Court,
11 Department 17 jurors.

12 (In the presence of the jury)

13 THE MARSHAL: You may be seated, ladies and
14 gentlemen. Let's make sure all cell phones are turned off,
15 please.

16 THE COURT: Good morning, ladies and gentlemen. Hope
17 you had a good weekend. On Friday when we adjourned, we had
18 CSA Maldonado on the witness stand, and she was completing her
19 testimony. Due to some scheduling issues, we're going to have
20 another witness called at this time, then Ms. Maldonado will
21 finish her testimony. State, your next witness?

22 MS. GRAHAM: Thank you, Judge. Calling out of order
23 crime scene analyst, Dan Ford.

24 THE MARSHAL: Mr. Ford, if you would remain standing.
25 Please sir, raise your right hand.

1 DANIEL FORD, STATE'S WITNESS, SWORN

2 THE MARSHAL: You can have a seat, please. Slide up
3 to the microphone. Sir, if you would please state and spell
4 your name for the record.

5 THE WITNESS: Daniel Ford. D-A-N-I-E-L, F-O-R-D.

6 THE COURT: All right. Go ahead, State.

7 DIRECT EXAMINATION

8 BY MS. GRAHAM:

9 Q Mr. Ford, how are you employed?

10 A As a senior crime scene analyst with the Las Vegas
11 Metropolitan Police Department criminalistics bureau.

12 Q How long have you been a crime scene analyst?

13 A It will be 19 years September.

14 Q Okay. And were you on duty as a crime scene analyst
15 on the early morning hours of November 6, 2008?

16 A Yes ma'am, I was.

17 Q Approximately 3:30-ish, were you contacted by the
18 detective bureau to respond to the homicide bureau?

19 A Yes ma'am, I was.

20 Q And who requested you to respond?

21 A It was Detective Raetz and Detective Wildemann.

22 Q And did you report to the detective bureau?

23 A Yes, ma'am. I arrived around 3:47 that morning.

24 Q And what was the purpose of you being called to the
25 bureau.

1 A There was a defendant -- or a suspect, defendant, in
2 the homicide case that was presently being worked at the
3 detective bureau. They wanted photos of the individual, the
4 clothes collected, and the evidence collected from the
5 individual.

6 Q Okay. And as a crime scene analyst, basically what
7 are your general duties?

8 A We respond to the scene of a crime when requested by
9 patrol officers or detectives, document that scene as it exists
10 upon our arrival, take photographs of the scene, collect
11 evidence. And come back impound that evidence, and write
12 report related to what our actions were.

13 Q Okay. And when you arrived at the request of
14 Detective Wildemann, where did you report?

15 A To the third floor of the detective bureau, and met
16 with the two detectives.

17 Q Okay. And was the suspect that you were asked to
18 process present?

19 A He was in an interview room, in a holding interview
20 room with two patrol officers.

21 Q Okay. And what if anything happened once you got
22 there?

23 A Detective Wildemann explained to me that -- what we
24 wanted. Photographs of the suspect, the suspect's clothes
25 collected, swabs of his hands because of a cut on the right

1 index finger, and then swabs of the suspects penis. And then
2 he -- Detective Wildemann took me to the interview room.

3 Q Okay. And was the suspect with you at that point?

4 A No, ma'am. The suspect was in the interview room.

5 Q Okay. So Detective Wildemann took you to the
6 interview room. Once you got to the interview room, what
7 happened?

8 A Detective Wildemann explained to the suspect what was
9 going to take place, had him stand. He had a problem standing
10 on his own, so one of the uniformed patrol officers stepped
11 into the room and assisted with him standing. I took
12 photographs of all four sides of the individual. And then he
13 --

14 Q Okay, let me just --

15 A Okay.

16 Q Let me just stop you right there. Okay. So once you
17 -- did all of this happen inside the interview room?

18 A Yes ma'am, it did.

19 Q Okay. So the first thing you did when you got there,
20 what did you do?

21 A Took photographs of the individual, again all four
22 sides to show his condition and the condition of the clothes
23 that he was wearing.

24 Q Okay.

25 MS. GRAHAM: May I approach the witness?

1 THE COURT: Yes.

2 MS. GRAHAM: I'm showing defense what's been marked
3 as State's Exhibit 59 -- proposed Exhibit 59, what's already
4 entered into evidence as State's Exhibit 60, 61. And then
5 State's proposed Exhibits 62 through 76.

6 (Pause in proceedings)

7 MS. GRAHAM: May I approach the witness?

8 THE COURT: Yes.

9 BY MS. GRAHAM:

10 Q Mr. Ford, I'm handing you what's been marked as
11 State's proposed 59, entered into evidence as State's proposed
12 60, what's already been entered into evidence as State's
13 Exhibit 61, State's proposed 62 through 76. Could you just
14 take a look at those sir, and flip through those and see if you
15 recognize those?

16 A Yes, ma'am.

17 Q Are those photos that you took of the scene?

18 A 59 through 64 were taken at the interview room at the
19 detective bureau. 65 through 76 were taken at the
20 criminalistics bureau.

21 Q Okay. And do those -- are those the photos that you
22 yourself took?

23 A Yes ma'am, they are.

24 Q Okay. And do they fairly and accurately depict all
25 of the photos and the suspect and the evidence that you

1 photographed that evening?

2 A Yes, ma'am.

3 MS. GRAHAM: Your Honor, I'd move for admission at
4 this time for State's proposed 59, and 63 through 76.

5 MS. PALM: No objection.

6 THE COURT: 59, 63 through 76 will be admitted.

7 (Exhibits 59, 63 through 76 admitted)

8 THE COURT: You may publish.

9 MS. GRAHAM: Thank you.

10 BY MS. GRAHAM:

11 Q So Mr. Ford, you indicated that you took photos of
12 the suspect standing up, and all four sides. Do you recognize
13 the suspect that you took photos of in the courtroom today?

14 A Yes ma'am, I do.

15 Q Can you point to him and describe something that he's
16 wearing?

17 A He's sitting at the defense to the right of the
18 attorney.

19 Q Okay. Can you describe a piece of clothing that he's
20 wearing?

21 A A green shirt, a brownish coat.

22 Q Okay.

23 MS. PALM: Stipulate to identity, Your Honor.

24 MS. GRAHAM: Thank you.

25 THE COURT: All right. The record reflect defendant

1 -- I'm assuming the witness has identified the defendant.

2 BY MS. GRAHAM:

3 Q In addition to -- well let me just show you what's
4 been entered into evidence as State's 59. Is that a photo of
5 the defendant that you took that evening?

6 A Yes ma'am, of the left side of the defendant. He's
7 being assisted by one of the uniformed officers that was
8 present.

9 Q Okay. State's Exhibit 60 I'm showing you?

10 A This was a frontal view of the defendant after his
11 clothing had been removed.

12 Q Okay. In addition to taking photos of all four
13 sides, what other photos did you take of --

14 A Took close-ups of the right hand to show the injury
15 to the right index finger. Took photos with the scale and
16 without to show size.

17 Q Okay. Did you photograph any other injuries on the
18 defendant's body?

19 A There was a reddish mark on his forehead, there was a
20 mark on the upper left shoulder, scratches on the lower back
21 above the waistline. There was another mark on the left upper
22 chest area.

23 Q Okay. And you took photos of all of those --

24 A Yes ma'am, I did.

25 Q -- injuries? Okay. Showing you what's been entered

1 into evidence as State's Exhibit 61. What's that a photo of?

2 A It's a photo of the reddish marks on the forehead
3 with the scale in place to show the size.

4 Q Showing you what's been entered as State's Exhibit
5 62?

6 A It's the laceration of the right index finger with
7 the scale to show -- again, to show the size.

8 Q Once you took photos of the defendant and his
9 injuries, what then did you do?

10 A I collected a swab of blood from the right index
11 finger, around the area of the laceration.

12 Q Okay. And what's the process of that collection?

13 A We take a clean swab. You drop two to four drops of
14 distilled water on the end of the swab to wet it. And then
15 move the swab back and forth across the area where you're
16 trying to collect the blood with the swab. Again, gets a
17 reddish color.

18 We cap the swab, place it into an envelope marking
19 where that item came from, the evidence came from, and what the
20 evidence is, if we know. In this case, apparent blood. Seal
21 the envelope, and put it into another package.

22 Q Okay. And do you mark that package with that would
23 identify that particular swab with this particular case?

24 A Yes, ma'am. It's identified with the event number,
25 my initials and P number, the date that it was collected. And

1 then an evidence seal is put onto it, the package is sealed.

2 Q Okay. I want to talk about the other photos you
3 took. What other sorts of photos did you take that evening
4 after you took suspect of -- photos of the defendant himself?

5 A Once I left the detective bureau, I returned to the
6 criminalistics bureau with the clothing and the swabs. I laid
7 the defendant's clothing out on brown butcher paper in the
8 criminalistics bureau, with scales in place to show the size
9 again of the clothing, the size of the shirt and the pants, the
10 jeans. And then took photographs of the -- each individual
11 items, to include the shoes and the socks, showing where
12 reddish stains were located on each of those items.

13 Q Okay. And can you tell the jury the process and when
14 those items were removed from the defendant?

15 A We were in the interview room after photographs were
16 taken of the defendant on all four sides. I opened an evidence
17 bag, same size as a grocery bag that we're familiar with from
18 the stores. And had the defendant remove his t-shirt and put
19 it into a bag, folded that bag closed.

20 Took a secondary bag, opened it up. Had the
21 defendant remove his jeans and put the jeans in that bag,
22 closed that up. Removed -- opened a third bag, and had the
23 defendant drop his shoes and socks into that bag.

24 Q Okay. And once that was completed, what did you do
25 with the bag?

1 A Again, set them to one side. And then when I left
2 the detective bureau, they went with me to the criminalistics
3 bureau.

4 Q Okay. All right. What then did you do?

5 A The detectives had request the penile swabs be
6 collected from the individual. And at that time, I wet two
7 more swabs with two to four drops of distilled water, and
8 handed the swabs to -- one swab at a time to the defendant, and
9 had him do the swabbing of his penis before taking him back
10 into my custody, and placing them into an envelope.

11 Q And did you observe the defendant taking the swabs of
12 his penis?

13 A Yes ma'am, I did.

14 Q Okay. And what's the purpose of these swabs that
15 you're taking?

16 A To try and collect any biological evidence that may
17 be on the individual.

18 Q Okay. Let me ask you this. Had you -- were you
19 aware at the time that you asked the defendant to take his own
20 penile swabs that he insisted on going to the bathroom, and he
21 was allowed to do so --

22 A No, ma'am.

23 Q -- prior to the swabbing?

24 A No ma'am, I did not.

25 MS. PALM: Your Honor, may we approach?

1 THE COURT: All right.

2 (Off-record bench conference)

3 THE COURT: Objection's overruled.

4 BY MS. GRAHAM:

5 Q Do you remember the question? Were you aware that
6 the --

7 A Yes ma'am, I remember the question. And no, I had
8 not been informed.

9 Q That he had gone to the bathroom --

10 A That's correct.

11 Q -- prior to swabbing -- okay. All right. How many
12 swabs did you take?

13 A There was one swab on the apparent blood on the hand,
14 and then the two swabs of the defendant's penis.

15 Q Okay. And you had testified earlier there was a
16 buccal swab taken?

17 A And buccal -- two buccal swabs were taken of the
18 defendant's mouth, the interior of the mouth.

19 Q Okay. And all of those swabbings, what did you do
20 with those?

21 A Those are again placed in envelopes, the envelopes
22 are sealed. Evidence labels are attached to those packages,
23 and then they're dropped into the evidence hold at our
24 criminalistics bureau.

25 Q Okay. I'm showing you what's been marked as State's

1 Exhibit 65.

2 A That's a view of the defendant's t-shirt with scales
3 on the brown butcher paper at the criminalistics bureau.

4 Q Okay. So that's after you took the clothing back to
5 the criminalistics bureau?

6 A Yes, ma'am.

7 Q Showing you what's been entered as State's Exhibit
8 66, can you describe that for the jury?

9 A That's a view of the defendant's jeans that he was
10 wearing, again with scales, and laying on brown butcher paper
11 at the criminalistics bureau.

12 Q Showing you what's State's Exhibit 67, can you
13 explain to the jury what that photo is?

14 A The view of the jeans showing the areas of apparent
15 blood on the jeans, the right and left leg.

16 Q Showing you State's Exhibit 68, can you describe for
17 the jury what that photo is?

18 A The bottom of the jeans legs, again showing apparent
19 blood on the left and right leg of the jeans.

20 Q Okay. Showing you State's Exhibit 69. Let's see,
21 I'm going to turn it this way Mr. Ford, so you can see the
22 entire photo. Can you tell the jury what that photo is?

23 A It's a view of the back of the jeans that the
24 defendant was wearing.

25 Q Showing you State's Exhibit 70?

1 A It's a view of the tennis shoes that the -- or
2 athletic shoes that the defendant was wearing.

3 Q Showing you State's Exhibit 71?

4 A It's a view of the soles of the shoes. Is that in
5 focus, ma'am, or am I going blind?

6 Q It could be -- let's see.

7 A Oh, thank you.

8 Q Okay. Is that better?

9 A Yes, ma'am. The soles of the shoes, showing there's
10 apparent blood on the -- near the toe of both shoes. And then
11 also near the instep of both shoes.

12 Q Showing you State's Exhibit 62?

13 A That's showing the side of the shoe, and apparent
14 blood.

15 Q And what shoe is that --

16 A That would be the --

17 Q -- just for the record?

18 A That would be the right shoe, I believe.

19 (Indiscernible), I think that's the left shoe.

20 Q State's Exhibit 73, showing you.

21 A Showing the outside of the shoe with the stains.

22 Q State's Exhibit 74?

23 A Again, the view of the shoe with the staining near
24 the sole.

25 Q And for the record, what shoe is -- does that appear

1 to be?

2 A That would be the -- that should have been then the
3 right shoe, if the other was the left.

4 Q Showing you State's Exhibit 75, can you describe to
5 the jury what that is?

6 A Views of the socks that the defendant was wearing.

7 Q And State's Exhibit 76?

8 A The other side of the socks with apparent blood near
9 the heel of one -- on both socks.

10 Q Now after you photographed the clothing with the
11 apparent blood, did you do anymore presumptive testing on
12 clothing or shoes?

13 A All of the clothing that was collected from the
14 defendant was tested using phenolphthalein, which is a field --

15 Q Let me stop you right there. What were you testing
16 for?

17 A To confirm that the reddish stains were in fact
18 blood.

19 Q Okay. And what's the process that you do for the
20 presumptive test?

21 A We take a clean swab, put two to four drops of
22 distilled water on the end of the swab. We touch the swab to
23 the reddish stain, and then there's a two-step process with
24 phenolphthalein. We apply one drop to the tip of the swab, we
25 wait ten seconds. Apply a second drop from the second vial to

1 the tip of the swab. And if it's blood, the swab will turn
2 pink immediately.

3 Q And do you know, Mr. Ford, which articles of clothing
4 or shoes that you took swabs from?

5 A The --

6 Q Or did presumptive testing on for blood?

7 A The socks, the shoes, the shirt, and the jeans.

8 Q And do you know the results of the presumptive
9 testing for blood?

10 A They were all positive for blood.

11 Q Okay. And where was the presumptive testing done?

12 A At the criminalistics bureau.

13 Q Okay. And was that before or after you took photos
14 of the clothing?

15 A After.

16 Q Okay. What then did you do with the articles of
17 clothing?

18 A They were placed back into the bags that they had
19 been removed from. The bag was sealed. The evidence label was
20 placed to the outside of the bag. Evidence tape was placed
21 across the seal of the bag, sealing that. My initials and date
22 -- initials and P number and date were attached to those seals.
23 And then the items were placed inside the evidence hold.

24 Q Okay. And specifically do you recall the item number
25 for those impounded --

1 A If I could refer to my evidence impound.

2 Q Did you write a report --

3 A Yes ma'am, I did.

4 Q -- in this case?

5 A Yes, I did.

6 Q Okay. Would it refresh your recollection to refer to
7 your report?

8 A Yes ma'am, it would.

9 THE COURT: Go ahead.

10 THE WITNESS: Package number 4244 slash 1 contained
11 the one pair of white GRX athletic shoes, size 9H with apparent
12 blood. And item 2 was one pair of white socks with apparent
13 blood. Package 4244 slash 2 contained a black Fruit of the
14 Loom short-sleeved t-shirt, size extra large with apparent
15 blood.

16 Package 4244 slash 3 contained one pair of Arizona
17 Jeans Company blue jeans, size 34 by 32, with apparent blood.
18 And the last package, 4244 slash 4 contained apparent blood
19 swab, which was item 5. Item 6 was the penile swabs, and item
20 was the buccal swab kit.

21 BY MS. GRAHAM:

22 Q And once you seal all of -- impound that evidence and
23 seal it, what then happens to that bag?

24 A Those bags are placed in the evidence hold room with
25 the copy of the evidence impound report. They were picked up

1 by the evidence vault the next day, or at the next work day for
2 them, and then logged into the evidence inventory at the
3 evidence vault.

4 Q Okay. And do you know where they go from they're?

5 A They're held at the evidence vault until they're
6 called for court.

7 Q Okay. Showing you what's been entered as State's
8 Exhibit 62. Mr. Ford, in your experience, is it uncommon to
9 see injuries --

10 MS. PALM: Objection, Your Honor.

11 MS. GRAHAM: -- similar to this --

12 MS. PALM: For one, it's a leading question. For
13 two, she's going to be asking for a lay opinion. And we don't
14 have any notice of lay opinions for this witness. We've
15 litigated this issue already.

16 THE COURT: Counsel approach, please.

17 (Off-record bench conference)

18 THE COURT: I'm going to sustain Ms. Palm's
19 objection.

20 MS. GRAHAM: Court's indulgence. I'll pass the
21 witness at this time.

22 THE COURT: Cross-examination

23 MS. PALM: Thank you. You can leave the pictures up
24 there.

25 MS. GRAHAM: Oh, sure.

CROSS-EXAMINATION

BY MS. PALM:

Q Good morning -- is it Officer, or Mr.?

A No, ma'am. I'm a civilian.

Q Mr. Ford?

A Yes ma'am, that's correct. Used to say Mr. Ford -- it was Dan, because Mr. Ford (indiscernible), but he's since passed on.

MS. PALM: Court's indulgence. I thought my pictures were (indiscernible). I'm trying not to duplicate pictures, but it's a little hard to keep track because we both have similar pictures. I'm just going to go ahead and use my pictures because I know --

THE WITNESS: That's fine.

MS. PALM: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MS. PALM:

Q Do you mind taking a look at all these and see if you recognize them?

A Okay. Okay.

Q So for the record, that is defendant's proposed MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, and DD, AA, EE, GG, CC, and FF. And do you recognize what's contained in those photographs?

A Yes ma'am, I do.

ROUGH DRAFT TRANSCRIPT

001814

1 Q Are those photographs that you took?

2 A Yes ma'am, they are.

3 Q Were they taken in the detective's bureau?

4 A In the interview room at the detective bureau, yes,
5 ma'am.

6 Q And they were the photographs you were talking about
7 that you took of my client, Mr. O'Keefe?

8 A That's correct.

9 MS. PALM: Your Honor, I would move for admission of
10 those exhibits.

11 THE COURT: Any objection?

12 MS. GRAHAM: No objection.

13 MS. PALM: Thank you.

14 THE COURT: They will be admitted.

15 (Exhibits MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY,
16 DD, AA, EE, GG, CC, and FF are admitted)

17 MS. PALM: All right.

18 BY MS. PALM:

19 Q I just want to go over some of the photographs of my
20 client's injuries. Could you recognize NN?

21 A Yes, ma'am.

22 Q Defense Exhibit NN?

23 A It's to the -- I believe looking at my report, it was
24 a bruising to the right inside biceps.

25 Q Okay, thank you. And OO, is that the same picture

1 with a scale?

2 A Yes ma'am, that's the same one with a scale.

3 Q PP?

4 A The scratch to the upper back, upper right rear

5 shoulder I think.

6 Q Defense QQ?

7 A Scratch marks along the belt line on the lower back.

8 Q Okay. RR?

9 A That's a view with the jeans not being pushed down

10 there at the lower back.

11 Q And without the scale?

12 A And without the scale. Yes, ma'am.

13 Q SS?

14 A Another view of the reddish marks or bruising on the

15 forehead.

16 Q UU?

17 A That was a frontal view of the defendant that night

18 in the interview room.

19 Q And this is subsequent to the interview?

20 A That I don't know. That was taken shortly after I

21 arrived at the bureau, so I don't know when the interview was

22 done.

23 Q Okay. Was it about 3:47 in the morning?

24 A Yes, ma'am. That's when I arrived. Yes, ma'am.

25 Q And what is this picture of?

ROUGH DRAFT TRANSCRIPT

001816

1 A A view of the back of the defendant holding on to the
2 bar there in the interview room.

3 Q Okay. And WW?

4 A That's a view of the lower legs, the trousers of the
5 jeans, showing the apparent blood.

6 Q Okay. And is this with him standing in the interview
7 room?

8 A Yes, ma'am.

9 Q And XX?

10 A The view of the left side of the defendant being
11 assisted with one of the uniformed officers.

12 Q And who was that holding him up?

13 A It was either Officer Hatchet (phonetic) or
14 Hutcherson. I don't -- I couldn't say which one.

15 Q Okay. And defense YY?

16 A A view of the front of the defendant, again being
17 assisted by the uniformed officer.

18 Q Okay. And that's either Hatchet or Hutcherson again?

19 A Yes, ma'am.

20 Q Defense Exhibit DD?

21 A View of the palm side of the hand, showing the
22 apparent blood on the hands.

23 Q Okay. And he had not washed his hands at that point?

24 A That's correct, had not washed his hands.

25 Q And AA?

1 A View of the right index finger, showing the area of
2 the laceration near that first joint.

3 Q Okay. And I'm sorry. GG, that another view?

4 A That's the view of the laceration with the scale.

5 Q Okay. And defense CC?

6 A Views of the backs of the hands.

7 Q And is that apparent blood on the hands?

8 A Yes ma'am, here in the crook of the left hand, and
9 also on the -- or the right hand rather. And the left thumb
10 area.

11 Q Okay. Now you identified some photographs for the
12 State, 63 and 64. Do you remember those?

13 A I would have to see -- I remember the numbers, yes,
14 ma'am. That's again a view of the right hand.

15 Q Okay.

16 A Showing the area of the laceration on the finger
17 here.

18 Q Right. Okay. And State's 64?

19 A A closer shot of that same hand in the same position.

20 Q Do those pictures not indicate an injury on the
21 thumb?

22 A It's hard to say if that's an injury on the thumb, or
23 if it's just a large amount of blood there that's on the thumb.

24 Q Was it possible these photographs, these last two
25 photographs were actually taken at the scene, and not by you in

1 that room?

2 A Possibility, yes ma'am.

3 Q Okay. And do recall previously testifying that no
4 injury was pointed out on a thumb to you while you were in the
5 room documenting injuries?

6 A That's correct. The only thing was the laceration to
7 the right index finger.

8 Q Okay. So if there are photographs apparently
9 documenting a thumb injury, they wouldn't have been taken by
10 you?

11 A No, ma'am.

12 Q So when you go into the interview room, you're just
13 documenting what's pointed out to you in there?

14 A That's correct.

15 Q Okay. You don't independently look for your own
16 evidence?

17 A After the defendant removed his shirt, I did,
18 confirming what had been pointed out to me. I didn't see any
19 additional.

20 Q Okay. If you had only taken injuries (sic) of the
21 right index finger injury, that would be because that was what
22 was pointed out to you?

23 A Yes, ma'am. That's correct.

24 Q Okay. And if you had been trying to document an
25 injury on the thumb, you would have used a scale also; is that

1 correct?

2 A That's correct. We're required or trained to take
3 photographs with and without a scale.

4 Q Okay. And they take -- other CSA's sometimes take
5 pictures at a scene of an arrestee?

6 A Yes, ma'am. That's correct.

7 Q Okay. Did you also document taser marks on my
8 client?

9 A Yes ma'am, there were two.

10 Q Okay. You wouldn't have had any role in comparing
11 the soles of the shoes that you photographed to any apparent
12 footprints at the crime scene, would you have?

13 A No, ma'am. That's the footwear examiner over at the
14 forensic lab.

15 Q Okay. And you testified that Mr. O'Keefe was
16 actually asked to collect his own sample of DNA from his penis?

17 A That's correct.

18 Q Okay. And can you explain to the jury what
19 cross-contamination is?

20 A Cross-contamination is when we have -- we've
21 collected evidence, such as a blood swab, and we end up with
22 more than just blood in that swab. Or we collect semen stains
23 of the sexual case, and we end up with more than just semen
24 stains on that swab.

25 Q Okay. So would it be the unwanted transfer of two or

1 more sources of physical evidence?

2 A Yes, ma'am.

3 Q Okay. And you're trained -- are you trained in the
4 proper method to collect a penile swab?

5 A At the time, no ma'am, there was no training. And I
6 examined our CSI training manual this past weekend, and still
7 there is nothing in that training manual.

8 Q Okay. But if a suspect has bleeding hands as in
9 defense Exhibit DD, has blood on his hands, would it -- is it
10 possible that he could contaminate a sample if he uses those
11 hands to manipulate his own penis and collect the penile
12 sample?

13 A In this situation it would have already happened
14 because of his being allowed to go to the bathroom.

15 Q Okay.

16 A Had I known that, I would have identified -- or
17 notified the detective that we probably had a
18 cross-contamination issue already.

19 Q Okay. But you didn't know that?

20 A Correct.

21 Q Okay.

22 A And I didn't feel that the blood on his hands was
23 going to cause a cross-contamination issue.

24 Q Okay. If you previously testified it was a concern
25 of your's and you told the detective about it, do you remember

1 that?

2 A No ma'am, I don't.

3 Q Would it refresh your recollection to look at your
4 testimony?

5 A Yes ma'am, it would.

6 MS. PALM: (Indiscernible) transcript, page 241. May
7 I approach?

8 THE COURT: Yes.

9 MS. PALM: Thank you.

10 THE WITNESS: Okay. Yes ma'am, I do.

11 BY MS. PALM:

12 Q Okay. So when I asked you about the possibility of
13 cross-contamination, did you say, "Yes, ma'am, it was a concern
14 of mine. I asked the detectives about it, and they said go
15 ahead and let the defendant do it himself?"

16 A That's correct.

17 Q Okay. And so with his bloody hands he touched his
18 penis, and gathered the penile sample with the same hands?

19 A Yes ma'am, with the two swabs. Yes, ma'am.

20 Q Okay. And he wasn't gloved?

21 A No, ma'am.

22 Q Okay. And in doing that sample collection, he had to
23 manipulate his penis with the one bloody hand, and collect it
24 up and down with the other hand?

25 A Well he basically had to hold his penis up with the

1 one hand, and run the swab up and down the shaft of the penis
2 with the other.

3 Q Okay. So collecting under those circumstances, is it
4 possible that any blood on his hands might have flaked off onto
5 the swab?

6 A Possibly. Yes, ma'am.

7 Q And it might be a better procedure to give him gloves
8 first?

9 A Or to take it at the scene before allowing the
10 suspect or the arrestee to leave the scene at all.

11 Q Okay. But assuming you didn't take it at the scene
12 and you're stuck in a situation with a suspect with bloody
13 hands, is it a better procedure to either have him wash his
14 hands or put on gloves?

15 A Or not let him do it all, have the CSA do it.

16 Q Okay. And do you recall Mr. O'Keefe having to be
17 steadied by somebody to be dressed?

18 A To but the bunny suit on, yes ma'am, I do.

19 Q Okay. And do recall Detective Wildemann helping him
20 put it on because he couldn't put it on right?

21 A Correct. It's not easily assessable piece of paper.

22 Q And do you recall in your crime scene report you only
23 documented the fact that you took photographs of the right
24 index finger?

25 A Yes ma'am, that's correct.

1 Q Okay. So you didn't document taking photographs of
2 any thumb?

3 A No, ma'am. For injuries, no, ma'am.

4 MS. PALM: Court's indulgence. Thank you, sir. I'll
5 pass the witness.

6 THE COURT: Any redirect?

7 MS. GRAHAM: Just one question briefly.

8 REDIRECT EXAMINATION

9 BY MS. GRAHAM:

10 Q Mr. Ford, the --

11 MS. GRAHAM: Sorry, I'll wait for Ms. Palm to --

12 MS. PALM: Sorry.

13 BY MS. GRAHAM:

14 Q Mr. Ford, the buccal swab of -- that was taken of
15 defendant's mouth, did you take that yourself?

16 A I don't remember, ma'am. If I took that -- I may
17 have, because of the defendant's inability to stand by himself.

18 Q Okay.

19 A So I would have had to have him just open his mouth,
20 and then I would have rubbed the swab inside the cheek on the
21 right side with one swab, and the inside of the cheek of the
22 left swab.

23 Q Okay.

24 A Or inside the left cheek, rather.

25 Q All right. And how long is that swab? How -- can

1 you describe that?

2 A Approximately six inches. And the cotton end is
3 maybe three quarters of an inch long.

4 Q Okay. And what's the purpose of swabbing the inside
5 of the mouth?

6 A To obtain the person's DNA.

7 Q Okay.

8 MS. GRAHAM: Nothing further.

9 THE COURT: Any recross?

10 MS. PALM: No, Your Honor. Thank you.

11 THE COURT: Any -- thank you. Any questions from any
12 of the jurors? No questions. Mr. Ford, thank you for your
13 testimony. You are --

14 THE MARSHAL: Oh, hold on. We got a question.

15 THE COURT: Oh, we did? I'm sorry. Counsel
16 approach, please.

17 (Off-record bench conference)

18 THE COURT: Mr. Ford, we have a question from one of
19 the jurors. "Where was the blood located on the t-shirt?"

20 THE WITNESS: It was on the front of the t-shirt.
21 There was none on the back.

22 THE COURT: Any follow up questions by the State?

23 THE MARSHAL: I believe we do. Oh, sorry.

24 (Indiscernible).

25 THE COURT: Yes, ma'am?

1 UNKNOWN FEMALE SPEAKER: (Indiscernible) --

2 THE MARSHAL: Just write it down.

3 UNKNOWN FEMALE SPEAKER: Oh, I'm sorry.

4 THE COURT: (Indiscernible) another question? All
5 right. At this point, is there any follow up questions by the
6 State to this question?

7 MS. GRAHAM: Not from the State.

8 THE COURT: Ms. Palm?

9 MS. PALM: No, thank you.

10 THE COURT: All right. We may have another question
11 from the juror. Counsel approach again. Just going to review
12 the question.

13 (Off-record bench conference)

14 THE COURT: Sir, one of the attorneys is going to
15 place up on the monitor the photograph of the shirt.

16 THE WITNESS: Okay.

17 THE COURT: And the question is, "Could you point out
18 -- point it out on the shirt?"

19 THE WITNESS: Okay.

20 MS. GRAHAM: Ms. Palm, do you have the exhibits?

21 MS. PALM: I gave them to the clerk.

22 (Pause in proceedings)

23 MS. GRAHAM: Based on a juror question, I'm showing
24 you Mr. Ford what's been entered as State's Exhibit 65. Let's
25 see. Let me try to -- can you point to the blood on the

1 t-shirt?

2 THE WITNESS: Down near the bottom, bottom left.

3 THE COURT: Okay. Any other question, Ms. Graham?

4 MS. GRAHAM: Yes.

5 FURTHER REDIRECT EXAMINATION

6 BY MS. GRAHAM:

7 Q Based on the juror question, Mr. Ford, did you do a
8 presumptive test of that blood?

9 A Yes ma'am, I did.

10 Q Okay. And what were the results of the presumptive
11 test?

12 A It was positive for apparent blood.

13 Q Okay.

14 THE COURT: Any other question, Ms. Graham, relating
15 to that question?

16 MS. GRAHAM: No, Judge.

17 THE COURT: All right. Ms. Palm?

18 MS. PALM: No, thank you.

19 THE COURT: All right. And in the interim we
20 received another question. So can we have counsel approach,
21 please?

22 (Off-record bench conference)

23 THE COURT: The last question from the juror, the
24 Court's not at liberty to ask that question. Anything else by
25 the State?

1 MS. GRAHAM: Nothing.

2 THE COURT: By the defense?

3 MS. PALM: No, Your Honor.

4 THE COURT: All right. Thank you sir, for your
5 testimony. You are excused. Next witness for the State? Are
6 we going to recall Ms. Maldonado?

7 MR. LALLI: Yes.

8 THE COURT: All right.

9 MR. LALLI: We're going to resume that testimony,
10 Your Honor.

11 THE MARSHAL: Ms. Maldonado, if you will remain
12 standing. Please raise your right hand.

13 JOCELYN MALDONADO, STATE'S WITNESS, RE-SWORN

14 (Pause in proceedings)

15 MR. LALLI: All right.

16 DIRECT EXAMINATION

17 BY MR. LALLI:

18 Q Ms. Maldonado, when we were talking last on Friday,
19 we were discussing various items of evidence that you impounded
20 from the crime scene. Do you recall that?

21 A Yes.

22 Q The last item I believe we spoke about was a knife,
23 and you described for us how you had impounded that, correct?

24 A Yes.

25 Q All right. Now I'm going to show you what we've

1 marked as State's Exhibit 23. There appears to be an item of
2 cloth of some sort on Victoria's leg?

3 A Yes.

4 Q What was that?

5 A That was a scarf. It had fringe and tassels on the
6 end. And also there was an elastic band kind of intertwined
7 with some of the tassels on one of the ends.

8 Q Did you impound that item?

9 A Yes.

10 Q What are we seeing in State's Exhibit number 50?

11 A That is a picture of the same scarf with the elastic
12 band that is around the decedent's hand, wrist area.

13 Q And how about 51?

14 A The same scarf with the elastic band on the hand
15 area.

16 Q So this is a top picture of the -- or I'm sorry, a
17 photo of the top of the hand?

18 A Yes.

19 Q And then what about State's Exhibit number 52?

20 A That is a picture of the actual scarf with the
21 elastic band attached at one end, laid out on the paper sacks
22 for photographs.

23 Q Approximately how long is that scarf?

24 A I would say approximately around five feet long.

25 Q All right.

1 MR. LALLI: May I approach the witness, Your Honor?

2 THE COURT: Yes.

3 BY MR. LALLI:

4 Q Ms. Maldonado, showing you what's been marked as
5 State's proposed 132 for identification purposes, is that a
6 fair and accurate photograph of the elastic band on the end of
7 the scarf?

8 A Yes.

9 MR. LALLI: Move for the admission of State's
10 proposed 132.

11 MS. PALM: No objection.

12 THE COURT: 132 will be admitted.

13 (Exhibit 132 admitted)

14 BY MR. LALLI:

15 Q So what are we seeing there?

16 A That is a close up view of the elastic band that's
17 attached to the end of the scarf.

18 Q Okay.

19 (Pause in proceedings)

20 MR. LALLI: May I approach?

21 THE COURT: Yes.

22 BY MR. LALLI:

23 Q Ms. Maldonado, if I were to show you State's proposed
24 Exhibit 124 for identification, what do you believe to be
25 contained in that bag?

1 A One white and black scarf with the fringe and tassels
2 on one end, wrapped around a brown elastic hair band, and with
3 apparent blood.

4 Q Same one we're seeing in the photograph?

5 A Yes.

6 MR. LALLI: Your Honor, move for the admission of
7 State's proposed 124.

8 MS. PALM: No objection.

9 THE COURT: 124 will be admitted.

10 (Exhibit 124 admitted)

11 BY MR. LALLI:

12 Q Now I'm going to show you State's Exhibit number 1 --
13 I'm sorry, 31. Now I'm going to direct your attention to kind
14 of this bloody sheet that appears to be under the comforter.
15 Do you see that?

16 A Yes, I do.

17 Q Did you -- well strike that. There appears to be
18 something on top of the bloody sheet that also has apparent
19 blood on it?

20 A Yes.

21 Q What is that?

22 A There's a pillow case on top of the sheet.

23 Q And you impounded the pillow case?

24 A Yes.

25 Q What about the sheet underneath?

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1 A Yes, I did.

2 Q Okay. Can you explain for us what we're seeing in
3 State's Exhibit number 45?

4 A These were some areas of bloodstain patterns that
5 were observed on top of the bottom sheet that was on top of the
6 mattress, toward the northeast corner of the bed.

7 Q So this is the actual -- this actually came from the
8 bed itself that we just saw?

9 A Yes.

10 Q Okay. And then there are the letters A, B and C on
11 the exhibit.

12 A Yes.

13 Q What are those?

14 A Those are just notating the different areas that were
15 observed that were of interest on the sheet.

16 Q Okay. Let's look at State's Exhibit 46. What is
17 that?

18 A That is an area labeled A, which is a possible
19 contact transfer pattern impression on the sheet.

20 Q Okay. Do you have -- well what is that, a possible
21 contact -- pattern contact --

22 A A contact transfer -- excuse me, I'm sorry. It's a
23 contact transfer pattern impression. It's when something
24 bloody comes in contact with something else.

25 Q Kind of like if you have a big -- you know, maybe a

1 rubber stamp, and you stamped in blood, and then you stamped on
2 the sheet, there would be a transfer of that pattern?

3 A Yes.

4 Q Do you have any idea what that is?

5 A No, I do not.

6 Q Was it described in the crime scene report as a shoe
7 print impression?

8 A No, it was not.

9 Q Okay. Do you know what it is?

10 A I do not know what it is.

11 Q Is it possible that it's a shoe print?

12 A Yes.

13 Q Is it possible that it is part of the wadded up
14 pillow case that came into contact with the sheet?

15 A Yes.

16 Q What about State's Exhibit 47?

17 A That is a closer view of the area labeled B.

18 Q And what was B?

19 A B is a possible patent print that was observed on the
20 sheet.

21 Q I'm going to show you State's Exhibit number 48. Is
22 that a close up of the same area?

23 A Yes.

24 Q Can you explain for us what a patent print is?

25 A A patent fingerprint is usually visible. It's not

1 from residue of perspiration, but from another substance such
2 as grease or blood. If grease or blood comes in contact with
3 your fingertip and you touch another surface, it's possible
4 that you may leave a fingerprint on the other surface due to
5 the ridges, which are the raised portions of skin of your
6 finger. It's possible to leave that behind with the substance
7 that was on the finger.

8 Q Okay. And what about State's Exhibit number 49?

9 A That's an area labeled C, which were basically three
10 linear lines that were observed on the sheet.

11 Q Do you know what those are?

12 A No, I do not.

13 Q Now with respect to that sheet itself, did you
14 impound it along with another sheet on the bed?

15 A Yes, I did.

16 MR. LALLI: May I approach?

17 THE COURT: Yes.

18 BY MR. LALLI:

19 Q Are those sheets contained in what we've marked as
20 State's proposed 127 for identification purposes?

21 A Yes.

22 MR. LALLI: Move for the admission of State's
23 proposed 127.

24 MS. PALM: No objection.

25 THE COURT: 127 will be admitted.

1 (Exhibit 127 is admitted)

2 BY MR. LALLI:

3 Q Two last photos apparently I missed on Friday.
4 State's proposed 158 for identification. And I would also like
5 you to look at State's proposed 131. Do you recognize those?

6 A Yes, I do.

7 Q Are those photos taken from the crime scene?

8 A Yes.

9 Q Do they fairly and accurately depict various areas --
10 well 131, does that show an area in the kitchen?

11 A Yes.

12 Q Is that a fair and accurate depiction of it?

13 A Yes.

14 MR. LALLI: Move for the admission of State's
15 proposed 131.

16 MS. PALM: No objection.

17 THE COURT: 131 will be admitted.

18 (Exhibit 131 admitted)

19 BY MR. LALLI:

20 Q And then what are we seeing in State's proposed 58?

21 A That is a photograph as a subject identified to me as
22 Mr. Brian O'Keefe.

23 Q Is that how he looked back on November 6th of 2008?

24 A Yes, when I saw him.

25 MR. LALLI: Your Honor, move for the admission of

1 State's proposed 158.

2 MS. PALM: No objection.

3 THE COURT: 158 will be admitted.

4 THE CLERK: No, just 58.

5 MR. LALLI: I'm sorry, 58.

6 THE COURT: 58 will be admitted.

7 (Exhibit 58 admitted)

8 BY MR. LALLI:

9 Q Now showing you 58, do there appear to be two cell
10 phones in that photograph down at the bottom right hand side of
11 the photograph?

12 A Yes.

13 MR. LALLI: Your Honor, that concludes direct
14 examination.

15 THE COURT: All right. Cross-examination.

16 MS. PALM: Your Honor, I have quite a few photographs
17 that I need to have marked, because I wasn't sure what he was
18 going to put in. It might take a minute.

19 THE CLERK: (Indiscernible) is this going to take a
20 while?

21 THE COURT: Ladies and gentlemen, why don't we just
22 take a five-minute break at this point. We're going to mark
23 some more exhibits for your consideration.

24 During this recess, it is your duty not to converse
25 among yourselves, or with anyone else on any subject connected

1 with this case. Or to read, watch or listen to any report of
2 or commentary on the trial by any person connected with the
3 trial, or by any medium of information, including without
4 limitation, newspaper, television, radio, or the internet. You
5 are not to form or express an opinion on any subject connected
6 to this case until this matter is submitted to you. We'll see
7 you back in approximately five minutes.

8 (Court recessed at 10:54 a.m. until 11:07 a.m.)

9 (Outside the presence of the jury)

10 (Pause in proceedings)

11 THE MARSHAL: Officers and members of the Court,
12 Department 17 jurors.

13 (In the presence of the jury)

14 THE MARSHAL: You may be seated, ladies and
15 gentlemen. Let's make sure our cell phones are turned off,
16 please.

17 THE COURT: All right. Ms. Maldonado, do you
18 understand you're still under oath?

19 THE WITNESS: Yes, I do.

20 THE COURT: All right. Go ahead, Ms. Palm.

21 CROSS-EXAMINATION

22 BY MS. PALM:

23 Q Good morning, Ms. Maldonado. This is going to be a
24 little bit choppy because we are waiting for the clerk to
25 finish marking exhibits. So I'm going to just start with some

1 of the photographs. So if you could look at them and see if
2 you recognize them.

3 A I don't know what this is. Okay.

4 Q Thank you.

5 (Pause in proceedings)

6 BY MS. PALM:

7 Q Ms. Maldonado, do you recognize what's depicted in
8 those photographs?

9 A Yes, I do.

10 Q And what are the photographs generally?

11 A Of the residence area, and a few other photographs at
12 5001 El Parque Avenue, number C35.

13 Q Okay. I'm just going to go through the photographs a
14 little bit, one by one. Defense proposed Exhibit BB.

15 MR. LALLI: Your Honor, I don't -- for the record, I
16 don't oppose their admission.

17 MS. PALM: Oh, I'm sorry.

18 MR. LALLI: That's okay.

19 MS. PALM: I'd move to admit the photographs.

20 THE COURT: Okay. And can you identify them again
21 for --

22 MS. PALM: Oh, I'm sorry.

23 THE COURT: -- the record, please?

24 MS. PALM: It is BB, defense BB. Defense Z, defense
25 Y, defense E.

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1 THE CLERK: That's not right.

2 MS. PALM: Oh, that's not right? Is it on the back?

3 Oh, I'm -- okay.

4 THE CLERK: ZZ, AA, triple (indiscernible).

5 MS. PALM: May I approach the clerk?

6 THE COURT: Yes.

7 (Pause in proceedings)

8 MS. PALM: Starting over. Defense BB, and these are
9 proposed. 2 -- or Z, Y, B, triple A, triple B, triple C,
10 triple D, triple E, triple F, triple G, triple H, triple I,
11 triple J, triple K, triple L, triple M, triple N, triple O,
12 triple P, triple R, triple S, triple T, triple U, triple V,
13 triple W, triple X, triple Y, and triple Z. Move to admit.

14 THE COURT: And those will be admitted.
15 (Exhibits BB, Z, Y, B, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH,
16 III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP, RRR, SSS, TTT, UUU,
17 VVV, WWW, XXX, YYY, and ZZZ admitted)

18 MS. PALM: Thank you.

19 BY MS. PALM:

20 Q Okay. Showing you first defense proposed BB. Do you
21 recognize what that photograph depicts?

22 A Yes, I do.

23 Q And what is it?

24 A That is the right hand of Mr. O'Keefe.

25 Q Okay. And were those -- or was that photograph taken

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1 at the scene?

2 A Yes.

3 Q Okay. And who took the photograph?

4 A CSA Chelsea Collins.

5 Q Okay. Did you and CSA Collins go together through
6 the scene, documenting various pieces of evidence?

7 A Not the entire scene, no.

8 Q Okay. The apartment? Inside?

9 A Mostly yes. However, I'm not standing side by side
10 with her when she takes the photographs.

11 Q Okay.

12 A And there may be areas that she photographs while I'm
13 not present.

14 Q For instance, the car in this case; you weren't
15 present for the car?

16 A Correct.

17 Q Okay. This is Mr. O'Keefe's apparent thumb injury at
18 the scene?

19 A That's just a photograph of his right hand, yes.

20 Q Okay. And these are going to be a little bit out of
21 order. But this is defense triple A. And what does that
22 depict?

23 A That is a photograph if you were standing in the
24 living room looking into the hallway, the north-south hallway
25 inside the residence.

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1 Q So that would be the hallway in between the two
2 bedrooms that are on either side of that bathroom?

3 A Yes.

4 Q Okay. And it appears that the light is on in that
5 bathroom, would you agree?

6 A I honestly can't tell in the photograph.

7 Q Okay. If I approach, would it help you if you saw
8 the picture up close?

9 A Yes.

10 MS. PALM: May I approach, Your Honor?

11 THE COURT: Yes.

12 THE WITNESS: I honestly can't tell. It appears to
13 be, but I can't see the actual light fixture.

14 BY MS. PALM:

15 Q Okay. Well I guess my question is when you're
16 documenting the scene, do you generally leave things as you
17 found them, or do you turn lights on and off?

18 A Usually we try to leave things as we find them.

19 Q Okay. And defense proposed -- or defense triple B is
20 what?

21 A That is another photograph of the living room area.

22 Q And that is as you found it that evening?

23 A Yes.

24 Q Defense triple C?

25 A Just another view, a different view of the same

1 living room area.

2 Q Okay, another corner of the living room?

3 A Yes.

4 Q Defense triple D?

5 A Again another view, just a different view inside the
6 living room.

7 Q Okay. And defense triple E?

8 A That is a photograph of the table that was at the
9 south end of the sofa that was along the east wall.

10 Q Is that right next to the front door?

11 A Yes, very close.

12 Q And defense triple F?

13 A That is just a photograph of the kitchen area, the
14 counter.

15 Q Okay. Now in defense triple J, is that the same
16 kitchen area?

17 A That's a different view of the kitchen, that's a
18 different counter.

19 Q Okay. Do you know if that purse was moved from
20 anywhere to be put there?

21 A Yes, I believe so.

22 Q Okay. So when you go through the scene, do you
23 generally take photos to document how it was, and then move
24 things around that you think are of evidentiary value?

25 A Yes, eventually.

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1 Q Okay. So this photograph depicts what?

2 A That's a red purse and two wallets.

3 Q Okay. And can you tell what's in the wallets from
4 looking at the photograph?

5 A I believe they appear to be some type of
6 identification.

7 Q Okay. Do you know if that was the drivers license of
8 Ms. Whitmarsh and Mr. O'Keefe?

9 A I believe so, yes.

10 Q And that was defense triple J. And defense triple G,
11 what is that showing?

12 A That is the view from the living room looking into
13 the kitchen area.

14 Q Okay. And now defense triple H, do you recognize
15 what that is?

16 A Yes.

17 Q Okay. Can you explain what the picture is showing?

18 A That is showing the floor area in the northwest
19 master bedroom, adjacent to the sliding glass door or the
20 vertical blinds.

21 Q And is that the bedroom that the body was found in?

22 A Yes.

23 Q Okay. Now if the light appears to be off in that
24 picture, was it because you turned it off, or because it was
25 off?

1 A I honestly don't know. I never touched the light
2 switch --

3 Q Okay.

4 A -- for -- to turn the light on or off.

5 Q Okay. The blinds that are on the floor, were they in
6 that condition when you found them?

7 A Yes.

8 Q Okay. And what is that next to the blinds on the
9 floor?

10 A That's a black jacket.

11 Q Okay. Defense triple I, is that the jacket in an
12 unfolded condition?

13 A Yes.

14 Q Okay. Defense triple K, what is this?

15 A That is the photograph in the northwest master
16 bedroom looking toward the bathroom that's inside the bedroom.

17 Q Okay. And is that red purse that's there the same
18 purse that was later in the kitchen?

19 A Yes, I believe so.

20 Q And the lights on in the bathroom, would you have
21 turned them on, or do you believe they were on?

22 A That's how I saw it when I entered the scene.

23 Q Okay. And defense triple L, what is that?

24 A That is a photograph of the other bedroom, the south
25 bedroom.

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1 Q Okay. And that bedroom didn't have a bed in it, did
2 it?

3 A No, it did not.

4 Q Okay, just basically exercise equipment and a desk,
5 and some other miscellaneous items?

6 A Yes.

7 Q And defense triple M. That -- is that again the
8 bedroom where the body was found?

9 A Yes, it is.

10 Q Okay. And I believe that might have been the same
11 photograph that Mr. Lalli was showing you earlier where the
12 closet door was off-track?

13 A Yes.

14 Q Okay. Is that what you were attempting to document?

15 A No. Crime scene analyst Chelsea Collins was doing
16 her overall photographs. And that just happens to be what
17 appears in the photograph in the overall view.

18 Q Okay. Defense triple N, what's that?

19 A That is a photograph of the top of the bed in the
20 northwest bedroom.

21 Q Okay. And what is the measurement tape surrounding
22 it for, what's the purpose of that?

23 A The scales are placed in there later on during the
24 scene in case there needs to be an reconstruction done to give
25 approximate size and distance of items.

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1 Q Okay. And if that blue pillow was up in this
2 photograph and down in other ones, is that because you moved
3 it?

4 A It had to be moved, yes, in order to place the tape
5 later on during the scene. Yes.

6 Q Okay. Do you know if the blue pillow started down
7 further on the bed, or if it started in that condition?

8 A I believe it started down further.

9 Q Okay. And then you moved it up to take this
10 photograph?

11 A Yes, to lay the tape and take the photograph.

12 Q Defense triple O, is that the possible apparent
13 footwear pattern that you were talking about on the bed?

14 A That's the --

15 MR. LALLI: I'm going to object, Your Honor. That
16 assumes facts not in evidence.

17 THE COURT: Sustained.

18 BY MS. PALM:

19 Q Didn't -- did you testify that could possibly be a
20 footwear pattern?

21 A Yes.

22 Q Okay. And is that what you had testified to earlier?
23 With this picture here, you're documenting that apparent
24 pattern on the bed?

25 A Yes, the contact transfer pattern impression. Yes.

1 Q And defense triple S. Is that how the pillow case
2 was laying on the knife when you found it?

3 A Yes.

4 Q Okay. Does it appear that the bloody portion of the
5 pillow case is actually laying on the blade of the knife?

6 A Yes.

7 Q And defense triple X. Is this that pillow case
8 unfolded?

9 A Yes.

10 Q Okay. And what is the scale here trying to do?

11 A That's just indicating another area of a bloodstain
12 pattern, possibly again another contact transfer pattern
13 impression.

14 Q Okay. And possibly a footwear pattern?

15 A Possibly, yes.

16 Q And defense triple Y, is this just a picture without
17 the scale of the same thing?

18 A Yes.

19 Q And defense triple Z, is this the other side of the
20 pillow case?

21 A I believe so, yes.

22 Q Okay. And defense Z, does this appear to be an
23 overview of the A, B and C that you had testified about
24 earlier?

25 A Yes.

1 Q And defense B. Can you tell the jury what that is?

2 A Those are prescription medication bottles.

3 Q Okay. And do they appear to be for Ms. Whitmarsh?

4 A Yes.

5 Q Okay. And do you look at the bottles to determine
6 whether they have been taken as prescribed?

7 A No, I do not.

8 Q That would be the coroner's job?

9 A I honestly don't know if they make that evaluation.

10 I do know that they look at the medication bottles, and they do
11 some sort of count.

12 Q Okay. But that's not your job?

13 A No.

14 Q Okay.

15 (Pause in proceedings)

16 BY MS. PALM:

17 Q If you could look at these.

18 MS. PALM: May I approach the --

19 THE WITNESS: Sure.

20 MS. PALM: -- witness?

21 THE COURT: Yes.

22 THE WITNESS: Okay.

23 (Pause in proceedings)

24 BY MS. PALM:

25 Q All right. And for the record, I have just shown you

1 defense quadruple V, quadruple U, quadruple S, quadruple Q,
2 quadruple P, quadruple O, quadruple N, quadruple M, quadruple
3 K, quadruple I, quadruple E, quadruple H, quadruple G,
4 quadruple W, quadruple F, quadruple D, quadruple C, quadruple
5 B, and quadruple A. Did you recognize those photographs?

6 A Yes, I did.

7 Q And were they additional pictures taken at the crime
8 scene?

9 A Yes.

10 Q Okay. Showing you -- oh, I think we've done this
11 one.

12 MS. PALM: I would move to admit the photographs,
13 Your Honor.

14 MR. LALLI: No objection.

15 THE COURT: They will be admitted.

16 (Exhibits VVVV, UUUU, SSSS, QQQQ, PPPP, OOOO, NNNN, MMMM, KKKK,
17 IIII, EEEE, HHHH, GGGG, WWWW, FFFF, DDDD, CCCC, BBBB,
18 AAAA admitted)

19 MS. PALM: Thank you.

20 BY MS. PALM:

21 Q Showing you defense quadruple C, is that the apparent
22 pattern on the pillow case, a close up view?

23 A Yes.

24 Q Okay. And defense quadruple W, is that the knife
25 prior to your impounding of it?

1 A Yes.

2 Q Okay. And with the scale around it?

3 A Yes.

4 Q And defense quadruple G, does that appear to be the
5 other side of the knife?

6 A Yes.

7 Q And defense quadruple E, what does that appear to be?

8 A That is a photograph of the pair of black stretch
9 pants that were located on the floor in the bathroom in the
10 northwest bedroom.

11 Q Okay. And that's after you unfolded them to take a
12 photograph?

13 A Yes.

14 Q Okay, do you know if that's the front or the back of
15 the pants?

16 A I don't know that.

17 Q All right. Defense quadruple I. Is that another
18 view of the same pants?

19 A Yes.

20 Q And it appears to be a different view of the same
21 pants?

22 A Yes, it would be the opposite side.

23 Q Okay. Were those pants fairly saturated with blood?

24 A They appeared to be saturated, yes.

25 Q Okay. And would that be on both sides of the pants?

ROUGH DRAFT TRANSCRIPT

001850

1 A I honestly don't remember that.

2 Q Okay. Would it help you if you looked at the
3 pictures close up?

4 A Possibly, yes.

5 MS. PALM: May I approach?

6 THE COURT: Yes.

7 THE WITNESS: Yes, there appears to be apparent blood
8 on both sides of the pants.

9 BY MS. PALM:

10 Q Thank you. And defense quadruple K, who is that
11 holding my client's head?

12 A I believe that's Homicide Detective Wildemann's arm.

13 Q Okay. So he was at the scene?

14 A Yes, he was.

15 Q And defense quadruple M, is that a close up of the
16 kitchen counter view that we saw earlier?

17 A Yes.

18 Q Okay. And do you know if anything had been removed
19 at this point?

20 A I honestly don't know.

21 Q Defense quadruple N, is that a close up view of the
22 knife block in the corner of that kitchen?

23 A Yes.

24 Q Okay. Defense quadruple O, can you explain what this
25 photograph is documenting?

ROUGH DRAFT TRANSCRIPT

001851

1 A That's a photograph of the floor in the living room
2 area. And the cones depict the wire that was attached to the
3 taser cartridge located in the hallway area. It's just showing
4 the general direction and extent of the wire.

5 Q Okay. Was this photograph taken before the other
6 photographs of the living room which don't have the cones?

7 A No, this would have been later in the scene.

8 Q Okay. And it would appear as that bedroom light is
9 off. You don't know whether anybody turned it on or off, do
10 you?

11 A I do not know that, no.

12 Q Defense quadruple P, is this a close up of the knife
13 as it was found --

14 A Yes

15 Q -- on the bed? Okay. And defense quadruple B, is
16 this an even closer up view of the knife?

17 A Yes, it is.

18 Q Now when you were walking through the scene, you were
19 walking through with Detective Bunn also?

20 A I know he was present at the scene. I don't recall
21 if he was actually inside the apartment when I was doing my
22 walk-through.

23 Q Okay. If there had been any kind of disarray,
24 meaning things knocked over or on the floor in the living room
25 or kitchen area, would you have documented that?

1 A Yes, that would have been photographed.

2 Q Okay. Okay. When you're determining what to take
3 photographs of, do you independently use your imagination to
4 determine how things might have been used?

5 A I don't understand the question.

6 Q Okay. Do you determine what to take photographs of
7 on your own sometimes?

8 A Yes.

9 Q Okay. Does doing that require you to consider how
10 things might have been used?

11 A Not necessarily, no.

12 Q Okay. So is there any imagination at all involved in
13 what you do?

14 MR. LALLI: I would object, Your Honor. This is the
15 third time she's asked the same question, and each time the
16 witness has answered the same way, no.

17 MS. PALM: Well I think the first question --

18 MR. LALLI: I object. It's asked and answered, and
19 she's badgering.

20 THE COURT: Ms. Palm?

21 MS. PALM: I think the first time she said she didn't
22 understand. I'm just trying to clarify the question.

23 THE COURT: Okay, last time. Let's ask the question.

24 MS. PALM: Okay.

25 BY MS. PALM:

1 Q Do you use your imagination at all in assessing the
2 evidence at a crime scene?

3 A I don't know what you mean by imagination.

4 Q Okay. I'll move on. Okay. Did you -- were you part
5 of impounding any of the documentary evidence at the scene?

6 A What do you mean specifically by documentary
7 evidence?

8 Q What I'm referring to is -- did Detective Shoemaker
9 searched pursuant to a warrant; do you know that?

10 A I don't know what specifically that is. I know I
11 entered the apartment after he secured the search warrant.

12 Q Okay. And you were part of taking the photographs or
13 -- of the wallets on the counter?

14 A No, I was not.

15 Q Okay. So would CSA Collins know the answer to what
16 might have been obtained from the wallets?

17 A She possibly could. She would have been the one
18 actually photographing them.

19 Q Okay. So if there was a note or receipt taken from
20 my client's wallet, it wouldn't have been you that would have
21 impounded that?

22 A Possibly. If the detective would have notified me
23 that there was something else that they needed recovered, yes.

24 Q Okay. But if they didn't notify you, would they have
25 just impounded it?

ROUGH DRAFT TRANSCRIPT

001854

1 A I honestly don't know. They may have.

2 Q Okay. And you don't recall impounding any receipts
3 in this case?

4 A No, I do not.

5 Q When you were documenting the evidence of clothing,
6 did you find any underwear at the scene?

7 A No, I did not.

8 Q Okay. And looking at your crime scene -- you're the
9 one that did the crime scene diagram?

10 A Yes.

11 Q Okay. And that's not to scale, is it?

12 A No, it is not.

13 Q Okay. Does the body appear to be about two feet
14 taller than it actually is in your crime scene diagram?

15 A It is -- appears to be taller than what the body
16 actually was, yes.

17 Q Okay. Did you do any further testing on the knife?

18 A No, I did not.

19 Q Okay. Did you do any further testing on the footwear
20 pattern in the bathroom?

21 A No.

22 Q Were you the one that enhanced it?

23 A I did not actually physically apply the chemical. I
24 recovered the tile after that had been done, and after it was
25 photographed.

ROUGH DRAFT TRANSCRIPT

001855

1 Q Okay. And who did the actual enhancement?

2 A I don't know. It could have possibly been my
3 supervisor, Gary Reed (phonetic).

4 Q Okay.

5 A Or it could have also been CSA Collins.

6 Q Okay. And you didn't do any kind of enhancement or
7 further handling of the patterns on the bed either, did you?

8 A No, I did not.

9 Q And you -- when you photographed the body or CSA
10 Collins did, that's the condition it was in when you arrive at
11 the scene?

12 A Originally, yes. There are some overall views of the
13 body, yes.

14 Q And would you agree from your contact with my client
15 at the scene that he was obviously intoxicated?

16 A I could not make that determination, no.

17 Q Okay. If you previously testified you would agree to
18 that, do you disagree now?

19 A No, I do not.

20 Q Would you like to see your prior testimony? Would it
21 help you remember?

22 A Sure.

23 MS. PALM: May I approach?

24 THE COURT: Yes.

25 MS. PALM: Rough draft transcript, page 225.

ROUGH DRAFT TRANSCRIPT

001856

1 BY MS. PALM:

2 Q I'll show you. The question is the bottom of 225,
3 and the answer is the top of 226.

4 A Okay. Okay. I believe that's what I just said.

5 Q Okay. So you would agree he was obviously
6 intoxicated?

7 A Based on Detective Wildemann's observation, yes.

8 Q Okay.

9 MS. PALM: Court's indulgence. Thank you. Pass the
10 witness.

11 THE COURT: All right. Any redirect?

12 REDIRECT EXAMINATION

13 BY MR. LALLI:

14 Q That was never your observation, that was somebody
15 else's

16 A Correct.

17 Q Okay. Thank you.

18 MR. LALLI: Nothing else.

19 THE COURT: Any recross?

20 MS. PALM: No, Your Honor. Thank you.

21 THE COURT: Any questions from any of the jurors? We
22 do have a question from a juror. Counsel, approach.

23 (Off-record bench conference)

24 THE COURT: Ms. Maldonado, we have a question from
25 one of the jurors. "Where is the blood on the women's pants?"

ROUGH DRAFT TRANSCRIPT

001857

1 THE WITNESS: The blood covered the front side of the
2 pants and the backside of the pants in various areas.

3 THE COURT: Any follow up questions by the State to
4 that question?

5 MR. LALLI: Yes.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. LALLI:

8 Q Ms. Maldonado, do you recall whether there was any
9 blood down along the bottom of the pant leg? Do you recall?

10 A I don't recall.

11 Q Okay, very good. Thank you.

12 MR. LALLI: Nothing else.

13 THE COURT: Ms. Palm?

14 MS. PALM: Thank you.

15 RECROSS EXAMINATION

16 BY MS. PALM:

17 Q Ms. Maldonado, would it help you answer questions
18 about the pants to look at the photographs again?

19 A Yes.

20 Q Okay.

21 MS. PALM: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MS. PALM:

24 Q Showing you defendant's quadruple I and quadruple E.
25 Can you tell from looking at those photographs whether the

1 blood started on the waist, and kind of tapered down the legs?

2 A I can't say where it started. I can say where it
3 appears to be located.

4 Q Okay.

5 A There does appear to be apparent blood at the waist
6 level and towards the bottom of the pants, towards the bottom
7 of the pant leg.

8 Q Okay. And is there more at the waist and less toward
9 the knees?

10 A I really can't say.

11 Q Okay. And is your testimony the same with respect to
12 the front and the back of the pants, as far as you can tell?

13 A It appears on one side of the pants that there is
14 less blood toward the waist area. But I don't know if that's
15 the front or backside of the pants.

16 Q Okay. Thank you.

17 THE COURT: Anything further, Ms. Palm?

18 MS. PALM: No, thank you.

19 THE COURT: Any other questions from any of the
20 jurors? No other questions. Thank you, Ms. -- oh.

21 MR. LALLI: Can I just ask one more?

22 THE COURT: Sure.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. LALLI:

25 Q Ms. Maldonado, you impounded the pants, correct?

1 A Yes.

2 Q And they are admitted as an exhibit. You were shown
3 those pants I believe on Friday; is that true?

4 A Yes.

5 Q Okay. So if somebody wanted to look at them, they're
6 in evidence?

7 A Yes, they are.

8 Q Thank you.

9 THE COURT: Anything further, Ms. Palm?

10 MS. PALM: No, Your Honor.

11 THE COURT: All right. Thank you, Ms. Maldonado, for
12 your testimony. You are excused. Next witness for the State?

13 MS. GRAHAM: State calls CSA Robbie Dahn.

14 THE MARSHAL: What was the last name?

15 MS. GRAHAM: Robbie Dahn.

16 THE MARSHAL: Ma'am, if you will remain standing,
17 please. Raise your right hand and face the clerk.

18 ROBBIE DAHN, STATE'S WITNESS, SWORN

19 THE MARSHAL: Have a seat, please. Slide up to the
20 microphone. Ma'am, if you would please state your name and
21 spell it for the record.

22 THE WITNESS: My name is Robbie Dahn. My name is --
23 first name is spelled, R-O-B-B-I-E. And my last name is
24 spelled, D-A-H-N.

25 DIRECT EXAMINATION

ROUGH DRAFT TRANSCRIPT

1 BY MS. GRAHAM:

2 Q Ms. Dahn, how are you employed?

3 A I'm employed as a senior crime scene analyst for the
4 Las Vegas Metropolitan Police Department.

5 Q How long have you been a crime scene analyst?

6 A July was 12 years for me.

7 Q Okay. I want to draw your attention to November 7th
8 of 2008. Were you asked to report to the coroner's office to
9 perform duties as a crime scene analyst during the autopsy of a
10 Victoria Whitmarsh?

11 A Yes, I was.

12 Q Okay. And can you tell the jury basically what
13 happens when you are called to -- as a crime scene analyst with
14 regard to an autopsy? Can you just generally explain --

15 A Yes, I can.

16 Q -- what's -- thank you.

17 A We're assigned to go down. I'm usually assigned a
18 coroner's tech. And what we do is we do all the preliminary
19 work on the body prior to the medical examiner doing the
20 internal cutting, like we know an autopsy to be. And that
21 preliminary work includes doing photography, many sets of it,
22 pre-clothed, unclothed, of any injuries, of the condition of
23 the hands, and this type of thing.

24 On top of that, we also collect the clothing. We do
25 finger and palm prints. And we also take different types of

ROUGH DRAFT TRANSCRIPT

1 swabs, collect trace evidence, fingernail clippings, and that
2 type of thing.

3 Q Okay. When you arrived for the autopsy of Victoria
4 Whitmarsh, do you recall the condition -- or the condition of
5 her body? How was she clothed?

6 A When I arrived there, the bags are sealed. So once
7 we did open the bag, her body was naked from the waist down,
8 and then she had two pieces of upper body clothing on her.

9 Q Okay. And did you take photos as the way she
10 appeared once the body bag was unzipped?

11 A Yes, I did.

12 Q Okay. Did you take photos of your observations as
13 the coroner in the case, or the medical examiner in the case
14 also documented injuries?

15 A Yes. A lot of it's kind of a dual photography. I do
16 my photography, as well as the coroner technician also does.
17 They do a little bit more internal, like taking close pictures
18 of the eyes in that beginning stage.

19 Where I have a tendency on the other side of things
20 to take maybe a few more pictures of -- you know, a lot more
21 of the pictures of injuries, and you know, the injuries that
22 are shown clothed and pre-clothed. Where for them, they are
23 more concentrating on the injuries once the body is clean, and
24 just to show quickly the injures.

25 Q Okay. And prior to the autopsy being conducted --

ROUGH DRAFT TRANSCRIPT

1 and do you recall the medical examiner that conducted the
2 autopsy in this case?

3 A Yes, I do.

4 Q And who was that?

5 A It was a Doctor Jacqueline Benjamin.

6 Q Okay. Prior to her performing the autopsy in the
7 case, was clothing removed from the body?

8 A Yes, it was.

9 Q Okay. And who removes that clothing?

10 A Myself, and the coroner technician in this particular
11 case was Suzanne Mealy (phonetic). So it was Suzanne and I.

12 Q Okay.

13 MS. GRAHAM: I'm showing defense counsel what's been
14 marked as State's proposed 77 through 80.

15 MS. PALM: Thank you.

16 BY MS. GRAHAM:

17 Q And once that clothing is removed from the body, what
18 happens with that clothing?

19 A Generally what we'll do is take a sheet, lay the
20 sheet out. And then we'll lay the clothing out so it can start
21 to dry. Because sometimes it may be, you know, wet in certain
22 situations. So we lay it out, it starts to dry.

23 And that way it's there for the medical examiner to
24 come over and view prior to the post starting, as well as I'll
25 go ahead and document it with photography. And if there's any

ROUGH DRAFT TRANSCRIPT

1 material defects in the clothing, you know, I'll use arrow
2 markers and rulers and scales to document that as well.

3 Q Okay. And did you do that in this case when the
4 clothing was removed from the body?

5 A Yes, I did.

6 MS. GRAHAM: Your Honor, may I approach the witness?

7 THE COURT: Yes.

8 BY MS. GRAHAM:

9 Q Ms. Dahn, I'm showing you what's been marked as
10 state's proposed 77 through 80. If you could just flip through
11 those photos, and tell me if you recognize those photos.

12 A Yes, I do. These are my photos. A couple of them
13 have my scale in it with my initials and P number as well. So
14 these are the pictures that I took.

15 Q And those are the photos that you took at the autopsy
16 that day --

17 A Yes.

18 Q -- of the clothing? And they fairly and accurately
19 depict the way the clothing was at the time?

20 A Yes.

21 Q Okay.

22 MS. GRAHAM: Your Honor, move for admission of
23 State's 77 through 80.

24 MS. PALM: No objection.

25 THE COURT: 77 through 80 will be admitted.

ROUGH DRAFT TRANSCRIPT

1 (Exhibits 77 through 80 admitted)

2 BY MS. GRAHAM:

3 Q Showing you what's State's Exhibit 77, can you --
4 let's see. Oh, got to (indiscernible). Can you explain to the
5 jury what that is a photo of?

6 A It's a photo of the clothing that was on the body.
7 And the piece to the left was like a ribbed undershirt, or a
8 black ribbed undershirt. And then there was an -- this was
9 like a hooded over jacket that was over the top. I've got
10 arrow markers in the photo marking a material defect on either
11 side on that -- it would be like the right side. This is
12 actually -- this view here is where I have the photos -- I
13 mean, the clothing actually flipped. This isn't the front
14 view.

15 Q So that's the back view of the --

16 A Yes. You can see how the -- on the jacket, the
17 hood's coming up from the back. So this is -- when I'm taking
18 photographs, I take photographs of one side of the clothing,
19 and then we flip the clothing and always show the backside as
20 well. So this is a back view.

21 Q Thank you. And the sheet that you mentioned, you lay
22 that sheet on the ground?

23 A Yes.

24 Q Prior -- and then the clothing on top of it?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

1 Q Showing you State's 78, I'm going to kind of zoom out
2 a little bit. Can you tell the jury what that is a photo of?

3 A That's a photo of the jacket on the front -- the
4 jacket laying on the front side. And it appears I've moved the
5 sleeve slightly a little bit to show that arrow marker.

6 Q Okay. And again, what's the significance of that
7 arrow?

8 A There was a material defect in the clothing --

9 Q Okay.

10 A -- at that point.

11 Q Showing you State's 79. Oh, I have that upside down.
12 Let's try to -- this way. There we go. And what is that a
13 photo of?

14 A This is a scaled photo of the material defect that I
15 was highlighting in this picture. It looks like it's a little
16 tiny bit dark. Do you want me to mark around where that's --

17 Q Yeah, if you could mark the --

18 A -- at, or circle it, or?

19 Q -- material defect. And for the record, your -- what
20 piece of -- what article of clothing specifically is this?

21 A I would have to probably see.

22 Q If I --

23 A It's hard to tell right there.

24 Q Okay. Let me show you State's 78.

25 A Okay.

ROUGH DRAFT TRANSCRIPT

1 Q Is that the photo of the jacket?

2 A Yes, that's the jacket.

3 Q Okay.

4 A Both items are black, so that's the reason I want to

5 --

6 Q Okay. And again, State's 79. Does that appear to be
7 the material defect in the jacket?

8 A It does appear to be the material of the jacket.

9 Q Okay. That defect -- I can actually see the defect
10 when I stand up like this, but it's just the glare of the
11 screen. But it's basically right around there.

12 Q Okay. And what -- when you say material defect, what
13 do you mean by that?

14 A It's where the material has broken open. In this
15 particular case, I had a little bit of background about what
16 type of injuries she had. So we were told that it could be a
17 possible knife wound, so I'm assuming that this defect was made
18 from that after seeing the injuries on the decedent.

19 Q Okay. And showing you what's been marked as -- or
20 admitted as State's 80, what is that a photo of?

21 A This is a photo of the ribbed shirt that was -- she
22 was wearing closest to her body. And I have highlighted again
23 the material defect on that.

24 Q Now if I zoom in closer, can you see the material
25 defect and can you circle that so the jury can observe where

ROUGH DRAFT TRANSCRIPT

1 that is?

2 A Yes. These photos are a tiny bit dark. But I think
3 I'm seeing it right there.

4 Q Okay. So once you photograph the clothing, what then
5 do you do with that?

6 A The clothing, I in this particular case dried the
7 clothing. After I cleared the coroner's office -- we have a
8 crime scene investigation lab and section. And we also have a
9 biohazard drying room. So I took this clothing and put it
10 under lock and key to dry. And then what we do is, once it's
11 dry and we're able to wrap it and get it inside bags, and then
12 I impounded it into evidence.

13 Q Now when you take the clothing to dry, how do you
14 transport it?

15 A It's wet. But down at the coroner's office, we have
16 rolls -- we have a roll of butcher paper that we've taken and
17 made into sections. So all the clothing is usually a piece of
18 butcher paper on either side. And then I'm able to roll it
19 kind of onto itself, and then put it into double, triple bag,
20 depending on the saturation level of the clothing.

21 Q Okay. And at that point is it impounded, or is that
22 after the drying process?

23 A I impound after the drying process.

24 Q Okay. In addition to taking photos of the clothing,
25 do you do any presumptive testing regarding any of the blood?

ROUGH DRAFT TRANSCRIPT

1 A At the point when we're there, we don't take
2 phenolphthalein down. As far as viewing the body, I know what
3 blood looks like. So I don't believe that there's any reason
4 for me to have to do a presumptive test when I see it actually
5 coming from the body. We usually do the presumptive test when
6 we're out in the field and we have a reddish spot, and we have
7 no idea where that came from. So in this case, no, I didn't
8 take phenolphthalein, or any of our presumptive tests to test
9 the blood.

10 Q And the reason for that is you're in an autopsy, and
11 your --

12 A And I physically -- I mean, my eyes saw it.

13 Q Okay.

14 A You know, so I had no question it was blood or not.

15 Q All right. Once that clothing is dried, then what do
16 you do with it?

17 A The clothing, I transport it back to the lab, put it
18 inside the drying cabinet if it's necessary. Some clothing
19 we'll recover we don't need to dry. So I can go ahead and
20 impound that right away. In this particular case I did dry the
21 clothes for like an overnight drying. And then I impounded
22 them into evidence.

23 Q Okay. And the evidence that you impound in this
24 case, did you impound the jacket and the tank-top, or the
25 little top that came off the body of Victoria Whitmarsh?

ROUGH DRAFT TRANSCRIPT

1 A Yes, ma'am.

2 Q And when you impound items, do you mark them in such
3 a way as to identify them with this specific case?

4 A Yes, I do. They're labeled with a specific case
5 number. And on my impound -- we label our packages. My p
6 number is 5947. So I label with, you know, my packages, 5947
7 dash 1, 2, 3; in that type of order.

8 Q Okay. And did you do that in this case?

9 A Yes.

10 Q Okay. Once you've photographed the body and the
11 clothing, what other sorts of evidence do you collect with
12 regard to the body, in this case, with regard to Victoria
13 Whitmarsh at the autopsy?

14 A On this particular case, when we -- when I did unzip
15 the bag -- at certain scenes, the crime scene analysts that
16 work the case through conferring with the detectives, they'll
17 decide if it's a situation where they need to bag the hands.
18 And in this particular case, her hands were covered.

19 So what I did in this case was I collected -- at one
20 point when we're ready, myself and the coroner tech will say,
21 okay, we're ready to do the hands. Then I'll collect those
22 bags, and we'll photograph the hands, the condition they are as
23 they come out of the bag. And then we'll go ahead and collect
24 the fingernails, depending if we need to. In some cases, the
25 nails are too short. We might have to swab. In this case, we

ROUGH DRAFT TRANSCRIPT

1 did collect the fingernail clippings.

2 And other swabs that we took were buccal swabs, trace
3 evidence lifts from the bottom her feet. There was several
4 other swabs taken, cervical, vaginal, mouth swabs, that type of
5 thing.

6 Q And did you clip her fingernails in this case?

7 A Whenever I work down there, I always let -- anything
8 that's cutting onto the body, the coroner tech does, and I do
9 the assisting. So I'm standing there with my glassine paper.
10 As Suzanne cut them, each one -- we collected them together.
11 But I was the one receiving, and she was actually doing the
12 clipping.

13 Q Okay. And did you impound those?

14 A Yes, I did.

15 Q Okay. With regard to any swabbing, can you describe
16 to the jury what exactly you swabbed in this particular case?

17 A Again, when it comes to the buccal swabs, that's
18 taking like little skin cells, the epithelial cells from inside
19 the mouth. I generally always do my own buccal swabs. There
20 were some other swabs that were put in different orifices of
21 the body. And in that case, I always have the coroner tech
22 take care of those type of swabs.

23 And then she'll go ahead and insert them. They
24 usually leave them in place for about ten minutes to do a
25 collection. Then we'll dry them, and then I receive those from

ROUGH DRAFT TRANSCRIPT

1 Suzanne. And I impounded those as well.

2 Q Okay. Did you -- upon impounding all the evidence
3 that was collected during the autopsy, did you do an impound
4 report?

5 A Yes, I did.

6 Q Evidence impound report?

7 A Yes, I did.

8 Q Okay. And that was in conjunction with -- as you
9 were collecting the evidence?

10 A Yes.

11 Q Okay. Would it refresh your recollection to look at
12 your report to explain to the jury exactly what evidence you
13 collected and impounded in this case?

14 A Yes, it would. I have my impound in front of me, so
15 if I could refer to that, I'd like to.

16 THE COURT: Go ahead.

17 THE WITNESS: Thank you.

18 BY MS. GRAHAM:

19 Q Okay. If --

20 A Did you want me just to --

21 Q If you --

22 A -- do a basic, general --

23 Q If you could --

24 A -- just through the impound report?

25 Q -- just do a basic what you impounded in this

ROUGH DRAFT TRANSCRIPT

1 particular case.

2 A Yes. When I do an impound from an autopsy, generally
3 speaking I always put the buccal swab first. So that is my
4 first item. It's in it's own package, the buccal swab.

5 Q And that buccal swab came from?

6 A From Victoria Whitmarsh's mouth.

7 Q Okay.

8 A And I collected that myself. Then I have another
9 package where we've got some vaginal swabs, rectal swab, buccal
10 swab, oral swab, pubic hair combings, fingernail clippings.
11 And I -- that came from the body of Victoria Whitmarsh. And
12 that's my second package.

13 Q And just for the record, could you (indiscernible)
14 the package number and --

15 A Yes.

16 Q Okay.

17 A The buccal swab was in 5947 dash 1, and that was the
18 first package number. The second package number is 5947 dash
19 2. That's the one with the numerous different types of swabs,
20 and fingernail clippings and combings.

21 Q Okay.

22 A And then my 5947 dash 3, Dr. Benjamin did something
23 kind of unique. I had never seen it done before, but I had
24 never -- she was new. And she, you know, came to our county
25 with certain ways that she did stuff. So she actually did some

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1 like liquid washes of the mouth and the vaginal area, so I
2 collected those from her. I did have to freeze those items, so
3 I put them in a separate package. And those are my 5947 dash
4 3.

5 Q Okay.

6 A And then I collected those two drawstring bags that
7 were covering her hands. That's in the 5947 dash 4.

8 Q And those are the hands that were covering the body
9 (sic) once they were -- the body was unzipped, that were -- the
10 hands were covered at the crime scene?

11 A Yes.

12 Q Okay.

13 A They took, and just covered the hands with these --
14 we have these hand protection bags, or little drawstring bags
15 that we put on.

16 Q Okay.

17 A And that was my item 4. Then in -- prior -- you
18 know, and during the course of photographing, sometimes you
19 will end up seeing some pieces of trace evidence here or there.
20 And we did notice that there was like a long black hair on the
21 body, so I collected that. And that's in my package, 5947 dash
22 5.

23 Q And exactly where was that long hair found?

24 A It was on the left side of the torso of Victoria
25 Whitmarsh.

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1 Q Okay. And in this case, you're familiar with what
2 type of hair Victoria Whitmarsh has?

3 A Yes.

4 Q Did it seem consistent with --

5 A It did, it did. She had long dark hair, and this
6 hair was a long dark human hair. I mean, and at the time, we
7 did believe that it was Victoria Whitmarsh's hair.

8 Q Okay. And anything else that you impounded?

9 A Yes. In viewing the body, also there were a couple
10 of unusual what appeared to me and to Suzanne both like swipe
11 type marks, or just unusual blood marks. So I did collect a
12 swab of those of these swipe areas, and I impounded those as
13 well.

14 Q Okay. And where did those -- where did you observe
15 those unusual swipes of blood from?

16 A The one was on the left side of the torso, and the
17 other one was on the inner side of the right thigh.

18 Q Okay. And once you collect this evidence and --
19 let's see. Okay. And the next package that you --

20 A On the bottom of the feet were -- there was some
21 trace type -- you know, some fuzz, and this and that. And
22 there was also blood. And so we made the decision that we were
23 -- and with -- the detectives were right there too, that we
24 thought it might be a good idea to do some trace lifts on her
25 feet.

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1 So it's this -- it's a big piece of like and-a-half
2 by 11 adhesive paper. And we just put it on the bottom and
3 peel it up, and then secure it. And that's what we generally
4 use to collect trace with. And that's in my package, 5947 dash
5 7, these two adhesive lifts from her feet.

6 Q Okay. And what else did you impound?

7 A At the scene the night before, they always use a
8 sterile sheet, in order to collect any trace that might fall
9 from the body. So we always at every autopsy, we collect these
10 sterile sheets and impound those into evidence. So my next
11 package, which was the 5947 8, is that sheet that was under the
12 body inside the bag. I actually collected that and got that
13 dried, and I impounded that.

14 Q Okay. Now just for clarification, that white sheet
15 is originally at the crime scene; is that what I'm
16 understanding?

17 A Whenever we have these major cases like this where
18 we're going to have a sealed body bag, we always line the
19 inside of the body bag with a sterile sheet. And that sterile
20 sheet's purpose is, like I had said, anything trace, fibers,
21 anything that might fall from the bag, this is like a place for
22 it to all catch. So we always impound those.

23 Q Okay. And that's what was in package 5947 dash 8?

24 A Yes.

25 Q Okay. And again, you impounded both the tank-top and

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1 the long sleeved jacket that Victoria was wearing?

2 A Yes. And in the final package were those two items
3 of clothing.

4 Q Okay. Now incidently, when you indicated that Dr.
5 Benjamin was new, do you mean she was new to Clark County?

6 A It was the first time I had -- new to me, I should
7 say.

8 Q Okay.

9 A Because I think she -- she had been working there,
10 but this was the first occasion for me to -- I worked several
11 cases with her. But new in the fact of a case in this
12 particular way that I had never seen that done before. So I'm
13 not really sure of the time line. But I know she was at the
14 Clark County Coroner's Office for a short period of time. She
15 came, was hired, worked there I believe a year or two. I don't
16 know the time line.

17 Q Okay. But you're not aware of her background prior
18 to coming to --

19 A Oh, no. I don't know.

20 Q Okay, Clark County? All right.

21 MS. GRAHAM: Court's indulgence.

22 THE WITNESS: May I pour myself a glass of water,
23 please?

24 THE COURT: Sure.

25 THE WITNESS: Thank you.

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1 MS. GRAHAM: I'll pass the witness at this time.

2 MS. PALM: Your Honor, can we approach?

3 THE COURT: All right.

4 (Off-record bench conference)

5 CROSS-EXAMINATION

6 BY MS. PALM:

7 Q Morning, Ms. Dahn.

8 A Hi.

9 Q The fingernail clippings that you collected from the
10 decedent, you personally collected those?

11 A I did. Suzanne clipped them, and I was standing
12 there. And I personally collected those, yes.

13 Q Okay. And is that because sometimes there might be
14 DNA under a deceased person's fingerprints -- or under their
15 fingernails?

16 A Yes.

17 Q If they happen to scratch somebody, or somehow
18 otherwise collected it?

19 A Yes, ma'am.

20 Q Okay. And you don't know whether any further testing
21 was done on that?

22 A I do know that some testing was done. I found that
23 out through Mr. Lalli.

24 Q Okay.

25 A And so I do know that there was some testing done on

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1 the nails.

2 Q Okay. But you weren't part of the testing on the
3 nails?

4 A No, I was not.

5 Q Okay. And do you remember in this case that my
6 investigator attempted to serve you with subpoenas for the
7 other CSA's in the case?

8 A Yes, I do.

9 Q Okay. And there was a little conflict at the time?

10 A Yes, there was.

11 Q Okay. And is that because there was a policy issue?

12 A Yes. I was acting supervisor. And I actually
13 deferred to another supervisor that was on for like about 20
14 years. And there was like a policy issue, or something to that
15 effect. I do have to say I didn't even realize at the time
16 when those were trying to be served that it had anything to do
17 with the case. And I actually just spoke to the investigator
18 about that, that I had no clue that it was the same case.

19 Q Okay. The same case that you were on, but you didn't
20 know the other CSA's --

21 A I didn't realize, because I didn't check the event
22 number. I had no idea.

23 Q Okay.

24 MS. PALM: No further questions. Thank you.

25 THE WITNESS: Okay.

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1 THE COURT: Any redirect?

2 MS. GRAHAM: no, Judge.

3 THE COURT: Any questions from any of the jurors? No
4 questions. All right. Thank you, ma'am, for your testimony.
5 You are excused. Ladies and gentlemen, let's take our lunch
6 break at this time. We'll come back at 1:15.

7 During this recess, it is your duty not to converse
8 among yourselves, or with anyone else on any subject connected
9 with this case. Or to read, watch or listen to any report of
10 or commentary on the trial by any person connected with the
11 trial, or by any medium of information, including without
12 limitation, newspaper, television, radio, or the internet. You
13 are not to form or express an opinion on any subject connected
14 with this case until this matter is submitted to you. We'll
15 see you back at 1:15. Counsel approach, please.

16 (Off-record bench conference)

17 (Court recessed at 12:11 p.m. until 1:22 p.m.)

18 (Outside the presence of the jury)

19 THE CLERK: Yes, we are.

20 THE COURT: All right. Ms. Palm, we're outside the
21 presence of the jury panel. You had a matter to bring to my
22 attention?

23 MS. PALM: Thank you, Your Honor. I just wanted to
24 address a concern that Edward Guenther I noticed is out there
25 waiting to testify. The notice with respect to him says that

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1 he will give scientific opinions related to the collection and
2 analysis of (indiscernible) latent prints that he -- collection
3 and analysis of various latent prints that he performed in the
4 case.

5 The only report we have from him as to anything he
6 performed is the examination of the Wolfgang Puck black handled
7 carving knife. I just wanted to make sure that that's what his
8 testimony is limited to, because I don't want to have to be
9 objecting with regard to anything else if it goes beyond the
10 knife, because that's what we had notice of.

11 MS. GRAHAM: Well actually, Judge --

12 THE COURT: Did you ask Mr. Lalli or Ms. Graham?

13 MS. GRAHAM: -- the report indicates also, that Ms.
14 Palm has a copy of, that he did examine a photograph of the
15 fingerprint that CSA Collins took of the flat sheet on the bed,
16 and it was not of comparison quality. So he will be testifying
17 to that.

18 MS. PALM: And that's correct, Your Honor. I was
19 just concerned, I don't want him going into footprints, we
20 don't have any notice of footprints. And I didn't want the
21 question being asked so I don't have to object in front of the
22 jury.

23 THE COURT: Well feel free to ask the deputy DA's if
24 they're going to do that, then bring it to my attention.

25 MS. PALM: Well --

1 THE COURT: They're approachable.

2 MR. LALLI: I'm approachable.

3 MS. PALM: I would disagree, Your Honor.

4 THE COURT: Okay.

5 MS. PALM: I would like to make a record of these
6 things before we go into it, and I have to object in the middle
7 of it.

8 THE COURT: All right. Let's bring them in.

9 (Pause in proceedings)

10 THE MARSHAL: (Indiscernible).

11 THE COURT: All right.

12 THE MARSHAL: (Indiscernible).

13 (Pause in proceedings)

14 (In the presence of the jury)

15 THE MARSHAL: Officers and members of the Court,
16 Department 17 jurors. You may be seated, ladies and gentlemen.
17 Let's make sure all cell phones are turned off, please.

18 THE COURT: All right. State, your next witness?

19 MR. LALLI: Well Your Honor, before we call our next
20 witness, I would move for the admission of State's proposed 125
21 and State's proposed 128.

22 MS. PALM: No objection, Your Honor.

23 THE COURT: Those two exhibits will be admitted.

24 (Exhibits 125 and 128 admitted)

25 MS. PALM: Thank you.

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1 THE COURT: And your next witness?

2 MS. GRAHAM: Yes, Judge. State calls latent print
3 examiner, Ed Guenther.

4 THE WITNESS: Hi, Your Honor.

5 THE COURT: Good afternoon.

6 THE MARSHAL: Mr. Guenther, if you will remain
7 standing. Please raise your right hand and face the clerk.

8 EDWARD GUENTHER, STATE'S WITNESS, SWORN

9 THE MARSHAL: Please have a seat. Sir, if you will
10 please state your name and spell it for the record.

11 THE WITNESS: Yes. My name is Edward Guenther. The
12 last name is spelled G-U-E-N-T-H-E-R.

13 THE COURT: Go ahead, counsel.

14 MS. GRAHAM: Thank you.

15 DIRECT EXAMINATION

16 BY MS. GRAHAM:

17 Q Mr. Guenther, how are you employed?

18 A I'm employed with the Las Vegas Metropolitan Police
19 Department. I work in the forensic laboratory. And my area of
20 speciality in the laboratory is latent fingerprint
21 examinations.

22 Q Can you give the jury an idea of your education and
23 experience --

24 A Yes.

25 Q -- in latent prints?

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1 A Yes. I began my career in latent -- well in the
2 field of fingerprinting way back in 1975. I was employed by
3 the Federal Bureau of Investigation in Washington, DC. That's
4 where I learned the basics of fingerprinting, classifying,
5 searching, and identification.

6 In 1977, I entered into a training program with the
7 State of Ohio. Was trained by three qualified examiners, and
8 eventually released to do my own independent case work, which I
9 did for three years in Ohio. And then followed that up with
10 more years of bench work for the Florida Department of Law
11 Enforcement in their forensic laboratory.

12 In 1998, I moved to Las Vegas and took my current
13 position with the Las Vegas Metropolitan Police Department.
14 Along the way, I acquired my bachelors degree in criminal
15 justice from the University of South Florida. I'm also a
16 member of the International Association for Identification, and
17 am certified by that organization to conduct latent fingerprint
18 examinations.

19 Q And total, Mr. Guenther, how many years of experience
20 have you had?

21 A Well that's 35 years in the field, and 32 years as a
22 latent fingerprint examiner.

23 Q Okay. And through the course of your duties as a
24 latent fingerprint examiner, are you required to complete any
25 kinds of continuing education in the field of latent

1 fingerprint examination?

2 A Yes. As part of maintaining my certification with
3 the IAI, or the International Association, I have to -- I test
4 every five years for that. And I also have to have education
5 credits prior to them letting me test every five years. And
6 also, our laboratory system is accredited by the American
7 Society of Crime Lab Directors.

8 And within the confines of the accreditation process,
9 every analyst in the laboratory system is tested every year at
10 proficiency testing. It goes on every year. At some
11 (indiscernible) in the laboratory, it goes on more than once a
12 year.

13 And also we have to have continuing education credits
14 per the ASCLD regulations. So every year we probably get
15 approximately 40 hours of either in-service, or going to a
16 class outside of the laboratory setting.

17 Q In addition to that and your educational background,
18 are there seminars that you often attend with -- in -- with
19 relation to the latent fingerprints?

20 A Yes, that would be, you know, going out to the --
21 primarily to the international meeting, international
22 association of identification meeting, which is held annually
23 somewhere, usually in America. Sometimes it's held overseas.
24 So attending that is our primary vehicle for information
25 sharing with our colleagues. But we also, you know, attend

1 various seminars on computer programs that we're operating, and
2 so on and so forth.

3 Q Okay. Mr. Guenther, I'm going to ask you to explain
4 to the jury exactly what a latent print is.

5 A Okay. A latent print is really a very simple
6 concept. It is a chance impression. It's made by the
7 accidental touching of a surface with the specialized skin on
8 your hands and or on your feet. Your -- the skin on this area
9 of your body is quite different than the rest of your skin.
10 It's raised into what are known as rows or ridges.

11 And of course you're constantly perspiring through
12 those -- the pores that are at the summits of those ridges.
13 And when you touch a surface, you're going to leave a deposit
14 on that surface of not only the outline of the ridges
15 themselves, but also there's going to be -- perspiration and
16 chemicals are going to be deposited on that surface.

17 Now at times, these prints are visible. And but most
18 of the time, they're not. They're invisible, therefore being
19 latent. There's also another category of latent prints that's
20 called a patent print, beginning with a "P." And that refers
21 to a print that's in a substance. It could be like grease,
22 blood, paint. So even though it's visible, we call it a patent
23 print, and so but it's a part of the family of latent
24 fingerprints.

25 Q Is it possible to touch a surface and not leave a

1 latent print, whether patent or --

2 A Right.

3 Q -- visible or invisible?

4 A Yes. The answer --

5 Q Can you explain to the jury how that's possible?

6 A Yes, ma'am. Well there are many factors that go into
7 whether or not a latent print is going to be left on a surface.
8 The primary one of whether it will or won't be, at least in my
9 experience, is the amount of pressure that's applied to that
10 surface. These ridges are not -- they're three-dimensional,
11 and they're pliable.

12 So if I touch something and I put too much pressure
13 down with my hand, those ridges are going to have a tendency to
14 just -- to smear. And especially if I'm adding motion, up,
15 down, left, right, or a twist to them. So that is the primary
16 ruination of friction ridges on a surface.

17 We also have the substrate that's touched. That's
18 very important. Whether something is smooth or not smooth can
19 have a big affect on whether a latent print is left behind.
20 Generally speaking, something smoother, it's more receptive to
21 latent prints. It doesn't mean irregular surfaces don't retain
22 latent prints, but the smoother ones are more receptive. So
23 pressure and the substrate.

24 Also what the print is left in is important, whether
25 it's a like we said before, a residue print of a perspiration,

1 or whether it's in the paint, or grease, or whatever. So
2 that's also an important factor in whether or not the prints
3 will be left behind. The skin condition that a person has,
4 some people are occupationally plumbers, carpenters. Their
5 skin condition is going to be rough and tough, as opposed to,
6 well, my soft hands of a guy who works in an office all day.
7 So that can also have an effect on the quality of the print.
8 And also the processing technique that's used, whether it was
9 processed with powder, chemicals, so on and so forth.

10 So those are the main reasons that a surface can be
11 touched, and latent prints just simply won't be left behind.
12 And it's much more common than you would think. Probably our
13 only recovering latent prints and maybe one-third of the cases
14 that are coming into the laboratory.

15 Q Okay. So specifically then, would blood have an
16 affect on whether a patent print is visible or invisible, and
17 left on a surface?

18 A Yes. All those factors which I have just described.
19 If you have -- if there is contact with blood on the hand,
20 depending would be how much -- what the volume of that blood is
21 on the hand, did it soak into the ridges or the furrows between
22 the ridges on those fingers. So that would be a primary
23 factor.

24 And then of course all those other factors, mostly
25 how much pressure was placed on that surface. Because if

1 there's too much -- if there's a large volume of blood, or
2 paint or so forth, it's going to basically leave a smear that's
3 not going to be recognizable. But if there's the right amount
4 and a surface is touched, you will get what we call the ridge
5 paths and the ridge flow showing up on that surface.

6 Q Okay. And is there a life to a fingerprint?

7 A Well we can't age latent -- we can't age
8 fingerprints. So we like to say that the life expectancy of a
9 fingerprint is the amount of time that it can be developed for
10 some sort of probative value. And that time could be from
11 seconds to years.

12 Fingerprints have been developed on items many, many
13 -- that are many, many years-old. And then of course if you
14 have a situation where it's -- something's touched and it's
15 pouring down rain, it's probably not going to last but a few
16 seconds.

17 Q Okay. Well specifically then, what are your duties
18 as a latent fingerprint examiner, generally?

19 A Yeah. Well these duties are to examine friction
20 ridge detail that comes to us either through our own
21 processing, or is generated by our field unit, our crime scene
22 unit, to make an analysis of that ridge detail, and to make
23 comparisons with a known finger, palm, and sole prints of
24 individuals.

25 Q And what's a known comparison?

1 A Well a known is a standard. Every function in the
2 laboratory -- well almost -- well every function in the
3 laboratory needs a standard. We are -- especially in my area
4 of expertise, we are in the comparison business. So we have to
5 have a standard to make a comparison with -- to, with between
6 the latent print and something to look at with it to try to
7 make an association. So in fingerprints, we call those known
8 fingerprints or standards.

9 Q And how do you receive known standards? Generally,
10 how do they come to you?

11 A Well in our situation here with Metro, we are the
12 repository for the -- all of the local records are stored
13 within Metro. And if I need a record file from an individual
14 who may -- that the detective may want me to look at, I would
15 basically on my computer generate that record from the archive.

16 All of our records are electronically stored now,
17 everything's digitized. So I'm able to call the record up
18 electronically and print it out, and work from it right there
19 at my desk.

20 Q Okay. And in what form do those come in? Are you
21 talking about fingerprints that are on cards, or how do those
22 -- the standards?

23 A Oh. Well no, we don't print them up on cards
24 anymore. They would just be printed up on a regular sheet of
25 -- on a sheet of paper that -- but it would have the record of

1 that person, the name, and all then of their fingerprints. And
2 then what we call the slaps (phonetic), which is another
3 marking on the bottom of the card. So it would look like a
4 fingerprint card, only it would be printed up onto a regular
5 sheet of paper.

6 Q Okay. And specifically related to this case, were
7 you requested by Detective Wildemann to look at pieces of
8 evidence in this case to see if you could find a latent print
9 of comparison quality?

10 A Yes, it was.

11 Q And what piece or pieces of evidence were those?

12 A Well the first piece of evidence that I was asked to
13 look at, submitted by a Jocelyn Maldonado, was a Wolfgang Puck
14 black handled carving knife. And visible on the knife was a
15 partial print and suspected blood.

16 Q Okay. Let me -- I'm showing you what's been entered
17 as State's Exhibit 43.

18 A Yes, ma'am.

19 Q Zoom in on it a bit. Does that look familiar to you?

20 A Well, I don't see any of my markings on there, if
21 that's what you're asking. Because (indiscernible) are on the
22 backside, or that I may have just left them on the -- it was in
23 a different container at one time (indiscernible).

24 Q Okay. So when you received the piece of evidence,
25 did you actually view the knife itself?

1 A Yes, I did.

2 Q Okay. So you actually handled the piece of evidence?

3 A Yes.

4 Q The knife in this case?

5 A Yes, I did.

6 Q Okay. Can you explain to the jury the process that
7 you have to go through when you receive a piece of evidence and
8 -- that's already been impounded?

9 A Right.

10 Q How does it come to you, and --

11 A Well generally, the knife would be -- or any evidence
12 would be impounded at our vault. When the request from the
13 detective is received in the laboratory, it would be up to me
14 as the analyst to make an electronic request to the vault.

15 And then to our in-house delivery system, the piece
16 of evidence is delivered to the laboratory. There is a
17 signature transfer, and I would physically take possession of
18 it. And it would be my responsibility to -- custody and
19 control of that item for the length of time that I had it. And
20 then it eventually would make it's way back to the vault.

21 I believe in this particular case, I -- the evidence
22 kind of was in my possession two times, because I did make a
23 visual examination of the evidence while it was in the custody
24 of another analyst in the laboratory. And then later I did
25 personally receive it for later examination done on my part, or

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1 I should say additional examinations done by myself.

2 Q Okay. And when you receive that knife, what were you
3 asked to do with it?

4 A Well I was asked to make a visual -- well to do an
5 examination of the knife, to determine if the -- if there could
6 be any latent fingerprints either noted, or later developed on
7 the particular knife.

8 On the knife itself in the handle area, there was a
9 transfer of blood onto the handle. And there was some what we
10 call ridge -- there was ridge detail, what we would classify as
11 what I -- in my opinion and my experience, determined that
12 probably was ridge detail on the knife.

13 So I was asked to look at this knife to see if there
14 was any way that that -- to see if that material on there, the
15 blood-like substance on the knife was in fact going to be of
16 comparison quality. And if it wasn't, could I then enhance it
17 in some fashion, or could I develop additional prints that were
18 not visible to the naked eye.

19 Q Okay. And you said comparison quality. What exactly
20 does comparison quality mean?

21 A Well there's a range of quality and quantity in the
22 work that we do. Just because there's a touch does not mean
23 that there's what we would call sufficiency to make an actual
24 comparison with an individual. There has to be a -- well it's
25 -- when we look at latent prints, we look at different -- we

1 look at the flow, what we call the flow of the print on the
2 pattern. Now does it flow like in a wave, does it flow in a
3 circle, or does it flow in a loop pattern.

4 Then we also -- after that, we make a determination
5 of that, we're then looking at we call the ridge paths. And
6 this is where the identification process actually beings. Now
7 ridge paths are where the ridges actually separate, or they
8 end. Sometimes there's a little short ridge in there, and
9 sometimes there's little dots. These are the features that
10 make each and every one of our fingerprints unique, and make
11 them our's.

12 So this is what we are trying to quantify and qualify
13 before we move forward and make a comparison. And sometimes
14 there are several of these on a piece of evidence. But they're
15 just not enough to make any kind of conclusion at all.
16 Sometimes there are enough to make a limited conclusion.

17 And sometimes there is enough to actually make an
18 identification, stating the same source, that the latent print
19 and the ink print that we look at did originate from the same
20 source. So that's what we kind of mean by comparison quality.
21 It's kind of a continuum across the spectrum.

22 Q And when you were asked to look at the knife for
23 comparison quality prints, whose standards were you to compare
24 those to?

25 A Well I -- the person listed in the request for

1 comparison is Brian O'Keefe.

2 Q Okay. And ultimately, did you analyze that knife for
3 latent prints?

4 A Yes, I did. I analyzed it both visually, and then
5 additionally with various chemical processes and so forth.

6 Q Okay, and we'll talk about those steps. But
7 ultimately, what conclusion did you come to with regard to the
8 knife?

9 A Well ultimately, the conclusion that I came to with
10 the knife was that the ridge detail that was on there was not
11 of -- was not of comparison quality. And all of the processing
12 techniques I used did not enhance or develop any additional
13 latent prints. So essentially, the ridge detail that was on
14 there was insufficient for comparison purposes. And as I said,
15 I was not able to develop any fingerprints or palm prints to
16 make additional comparisons, or I should say to make any
17 comparisons.

18 Q Okay. Mr. Guenther, can you tell the jury
19 specifically what steps you went through when determining that
20 there was nothing of comparison quality on the knife?

21 A Okay. Well the first thing we always do is to do a
22 visual examination. As I said, these prints are invisible most
23 of the time. But there are occasions if you turn an object --
24 as we all know, if you turn an object under a light, you can
25 see a reflection if something's been touched, and those -- and

1 the ridges will be visible.

2 So we always do a visual just with our eyes, and
3 under a light source first. Because sometimes latent prints
4 will kind of pop up, and then we take steps to photograph
5 those, and to document and preserve them.

6 Q On the visual inspection, did you see anything of
7 comparison quality?

8 A No, I did not.

9 Q Okay, then what did you do?

10 A Okay. The second -- well after I did a visual, I
11 believe that I did a scan of the blood area on the knife
12 itself, on the handle. I scanned that using a Photoshop in our
13 laboratory, and saved that and -- because I wanted it
14 documented before I conducted any other type of examinations.
15 So now I've preserved the material that was on the handle of
16 the knife.

17 So the next step that I used, we have a couple
18 techniques that we use that are noninvasive techniques. They
19 involve different kinds of light sources. We used what's
20 called an alternate light source, which in the old days was
21 called a laser.

22 And we don't really use lasers in our part of the
23 laboratory. An alternate light source just is going to operate
24 in the middle spectrum of the light wave, that starts at
25 ultraviolet and goes to infrared. And then we also use another

1 light source in the ultraviolet and -- called the ruvu
2 (phonetic).

3 So sometimes print residue will glow all by itself
4 either because of the touch, the residue of the touch, or maybe
5 a contaminate on that touch. And these light sources,
6 sometimes you can -- the ridge detail will pop. And then if it
7 does, we go ahead and photograph it, and use that developed
8 latent in that fashion.

9 I did both of those techniques in this case, and
10 neither one of them proved productive. So there were no latent
11 prints noted with either one of the light sources.

12 Q What did you do then?

13 A Well my net procedure was to try to process the
14 handle of the knife to see if I could enhance that blood that
15 was on the knife.

16 So in this particular case, I chose a chemical that
17 we call acid yellow 7 (phonetic). And this is chosen in this
18 particular case because the handle is black. And this acid
19 yellow under the presence of the alternate light source gets
20 kind of a yellow glow. So what it does, it's going to attach
21 itself to the proteins that are in that blood. And then when
22 the light hits it, it's going to glow.

23 So I did that technique on the knife handle, trying
24 to either enhance the blood that was there, or possibly even
25 develop some very faint blood that I couldn't see visually, or

1 through these other processing techniques. So that's the
2 choice that I made on the handle of the knife. I used the acid
3 yellow 7, applied the alternate light source, all with negative
4 results. No enhancement, no additional latent prints were
5 developed.

6 Q So the bottom line is, there were no latent prints
7 available to you for comparison on the knife?

8 A On the handle itself.

9 Q On the handle itself.

10 A Right. And then on the smooth blade portion of the
11 knife, I decided to use a very common processing technique
12 that's used in the laboratory now, the super glue method, or
13 the sinoacolate (phonetic) method.

14 I think we've probably all seen this on TV, where the
15 item is put in a box or inside of a cabinet, and the glue is
16 put onto a heating element, and there's a big cloud of smoke.
17 Well this actually -- this is what we actually kind of do. And
18 then these fumes will actually adhere to the ridge detail if
19 it's present on a -- well on a lot of surfaces, but primarily
20 on these smooth surfaces that we work with, which a knife blade
21 would be one of them.

22 So the latent -- so the knife would have then been
23 placed in the super glue cabinet, exposed to the super blue
24 fumes. I would have done a visual exam at that point to see if
25 any ridges developed. I did not see any.

1 At that point, I then applied another chemical just
2 to the blade portion that we use in conjunction with our
3 alternate light source again, and took it back into the dark
4 room with the alternate light source and scanned it again.
5 Once again, did not develop any latent prints on the knife
6 blade itself.

7 Q Okay. And upon visual examination of the knife, did
8 you see any visible palm impressions at all?

9 A Well the impression that was left on the knife, the
10 one that was in blood, when -- there was enough on it there
11 that I knew I could eliminate the ridge detail that was on the
12 knife as being a fingerprint. Because the flow, what we -- as
13 I talked earlier, we talked about the flow of the ridges. It
14 was kind of a broad flow, it was probably maybe several inches
15 long. So that automatically eliminated the fingers.

16 And just through my experience and so forth and the
17 way that these ridges flowed, it was my opinion that the ridge
18 flow probably came from the palm of the hand. And more than
19 likely, because of where they were and how ridges flow in your
20 palm, came from this area which we call the hypothenar, which
21 is this fatty pad on the outside of your hand, below this big
22 old crease that everybody running through there, called -- this
23 big fat pad here, it's called a hypothenar.

24 So that's the area of the palm that I -- that in my
25 opinion, that touch more than likely came from. Now I couldn't

1 tell if it was a left or a right, but it just -- that's all I
2 could say, that it appeared to be a palm area with a touch in
3 the hypothenar area.

4 Q But it wasn't of comparison quality?

5 A No, it was not of comparison quality.

6 Q Okay. Were you given any other piece of evidence in
7 this case to examine for possible latent print exam?

8 A Yes.

9 Q And what was that?

10 A Well also received in the laboratory from a CSA
11 Chelsea Collins was a small packet. And inside this packet
12 were four photographs that she had taken of the crime scene,
13 which is -- I believe was at 5001 El Parque Avenue, number C35.

14 And I was asked to look at these photographs that she
15 had taken. I believe they were from a corner of the bed, just
16 let me double-check here. They were all indicated as being
17 from the northeast corner of the bottom flat sheet of the bed
18 in the northwest bedroom. So there was a transfer of what she
19 believed I believe she thought was blood, onto the bed sheet,
20 onto the corner of the bed.

21 And she -- the request was for us in the laboratory
22 to take a look at this transfer to see if it was ridge detail.
23 And if it was, was there any way that we could develop it or --
24 I should say if there was any way it could be of comparison
25 quality.

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1 Q And Mr. Guenther, I'm going to show you what's been
2 entered as State's Exhibit 48. Does that appear to be a photo
3 of the transfer that you were asked to examine?

4 A Yes, it is.

5 Q Can you just kind of point to the screen and --

6 A Yes. Yeah. Well this is our -- the area right here,
7 of course this is the mark that -- Chelsea Collins, here is her
8 initials. And her P number, her employee identification
9 number.

10 So this is her photograph, and this is one of the
11 four photographs that -- this is an enlargement of it. But
12 this is one of the four photographs that was submitted to the
13 laboratory for my analysis. And I believe this is her B
14 photograph over here of the four that she took.

15 And the touch area is right in there, that actually
16 had some -- as you can see, some ridge flow -- ridges flowing
17 through that -- now we know this is a transfer because if you
18 look at the sheet itself, you can see that the thread count of
19 the sheet is going definitely north and south, and east and
20 west. Where the flow of these ridges is more from an angular
21 -- across that.

22 So I didn't -- at that point, I didn't believe it was
23 just the thread count being stained, and coming through to me.
24 Because sometimes you can see that when there's a touch, and
25 it's just a crosshatch. We don't really have that here, we

1 actually have some ridges flowing through here.

2 But an analysis of this, under magnification that we
3 use on our desk, I determined that this area here that I'll
4 make a smaller circle around in particular, did not contain any
5 ridged paths that we talked about, those things that make your
6 finger and palm prints unique. Did not have any or enough in
7 this area to make any kind of conclusion, or any kind of
8 comparison whatsoever.

9 About the only thing I could say about this was that
10 it's probably from a palm. Where on that palm, I do not know.
11 It could be from this hypothenar area, because it's kind of
12 linear. And then once again, it could be down -- it could have
13 come from this area, down way at the bottom that we call the
14 carpal delta area. Most people have a big formation right down
15 there at the bottom center of their hand. It's called the
16 carpal delta area.

17 So because of some of the striations and these voids
18 here between these areas of touch, you sometimes see that in
19 the carpal delta area. But I can't be sure. So it was really
20 not of -- it's not of comparison quality. That's all I could
21 really say, that it was probably a touch from a palm.

22 Q And you talked about four photographs. Was it four
23 photographs of the same visual image that you received?

24 A Yes. All four --

25 Q And this was that visual image?

1 A Yes. All four photographs were of the same.

2 Q Okay. So no other photographs, just different images

3 --

4 A Yes.

5 Q -- of this particular photograph, which is State's
6 Exhibit 48?

7 A Correct.

8 Q And your conclusion was that it was not anything of
9 comparison quality?

10 A Correct.

11 Q Okay.

12 MS. GRAHAM: Court's indulgence.

13 BY MS. GRAHAM:

14 Q I'm showing you what's been -- let's see, where's the
15 mark.

16 MS. GRAHAM: May I approach, Judge?

17 THE COURT: Yes.

18 BY MS. GRAHAM:

19 Q I'm showing you what's been entered into evidence as
20 State's Exhibit 125. And Mr. Guenther, without opening it, if
21 you could just take a look at this box.

22 A Yes, ma'am.

23 Q And see if you recognize that.

24 A Yes, I do recognize --

25 Q How do you recognize it?

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1 A Well I recognize it because my initials are -- or my
2 identifying mark, EG1, is slapped right here on the front of
3 it. And also, this piece of blue tape that runs across the
4 center portion where the box is folded, that would have been my
5 -- and on the ends here, that would have been my seal, where I
6 was done processing the evidence.

7 I would have sealed this with the blue tape, wrote
8 the date and my initials on it, prior -- before I turned it
9 back into our evidence receiving area. So that's how I
10 recognized it also. It has our laboratory event number,
11 081105398 -- 3918, excuse me. And it's -- item is identified
12 as the same -- or as a Wolfgang Puck eight-inch carving knife,
13 which I of course have in my notes as the knife that I
14 examined.

15 Q And that's the box that you received from the crime
16 scene analyst?

17 A Yeah, well I would have received it from the vault.
18 From our --

19 Q In the vault?

20 A From our internal vault, yes.

21 Q Okay.

22 A But yes, this would have been what the item was
23 placed in by the crime scene analyst.

24 Q Okay. And when you received that, there was a seal
25 on that box?

1 A Yes, yeah. All evidence that arrives at the lab
2 unsealed goes back. We don't receive anything in our
3 laboratory that hasn't been sealed by a police officer or our
4 crime scene people, or whosoever making the submittal into the
5 laboratory, or into the vault itself, the main evidence vault.

6 Q Okay, thank you.

7 MS. GRAHAM: Court's indulgence. I'll pass the
8 witness at this time.

9 THE COURT: All right, thank you. Ms. Palm?

10 MS. PALM: Thank you.

11 (Pause in proceedings)

12 CROSS-EXAMINATION

13 BY MS. PALM:

14 Q Good afternoon, Mr. Guenther.

15 A Good afternoon, Ms. Palm.

16 Q Is it Guenther, or Guenther?

17 A Guenther.

18 Q Okay. The photograph that the State showed you,
19 their State's Exhibit 44.

20 A Yes, ma'am.

21 Q You don't necessarily recognize that, do you?

22 A Well I'm 99 point 9 percent sure that this is the
23 knife that I looked at, because I can see the blood on it. And
24 when it was flipped over or there -- if you would scroll into
25 the handle area, I think I can actually see maybe where the

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1 blood-palm transfer occurred, either on this side or on the
2 flip-side. I'm not -- I don't recall.

3 Q Perhaps if I approach, it might be easier for you to
4 look at the actual photographs?

5 A That might be helpful, yes.

6 Q And I'm going to approach with State's 43 and 44.

7 MS. PALM: May I approach the witness?

8 THE COURT: Yes.

9 MS. PALM: Thanks.

10 THE WITNESS: Thank you. Yes, I believe that the
11 area that I examined would be on State's Exhibit 4 4 on the
12 handle portion, between the middle rivet and the rivet that's
13 towards the terminal end of the handle.

14 BY MS. PALM:

15 Q Well I'll put it up on the screen, and maybe you
16 could circle the area that you believe that you --

17 A Yes, ma'am.

18 Q -- you're examining. And this is State's 44. All
19 right.

20 A Yes. Could you enlarge that please, just a little
21 bit? Okay. See if it will stay focused.

22 Q There you go.

23 A Oh. Maybe that's not the area. Could you put the
24 up? Well I can't recognize the area as it looks in these
25 photographs right now, to be quite honest with you.

1 Q Okay. Did you make a notation as to which side of
2 the knife you were examining?

3 A No, I don't believe I did. I just put that the area
4 was scanned. I mean, I have my photo shop (phonetic) scan with
5 me. Of course, that doesn't do the Court much good right now.
6 But no, I did not put down exactly which side it was on.

7 Q Okay. Well just for -- so I can understand what
8 you're talking about when you were describing the areas of the
9 knife, if it were on this side or the other side, what portion
10 of the knife -- could you circle what portion of the knife --

11 A Yes.

12 Q -- it was on?

13 A Yes. It would have been up in this area here.

14 Q Okay. So sort of in the middle of that, or toward
15 the butt of it, of the end of the knife?

16 A Towards the terminal end over here where I just
17 marked.

18 Q Okay.

19 A Or you mean towards where the -- or the blade joins
20 the handle, like over there?

21 Q Oh, I'm -- yes. I'm calling -- you're calling this
22 --

23 A That --

24 Q -- the terminal end?

25 A You're going to call that the butt end? Okay.

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1 Q Yes.

2 A I believe the majority of the print would have been to
3 the left of the -- as we're looking at this photograph, to the
4 left of the knob, down towards the center portion.

5 Q Okay.

6 A There may have been some bleed over into the butt
7 area. But the majority of it would have been in the main
8 center portion of the handle.

9 Q Okay. So sort of in between the two rivets? Am I
10 understanding you correctly?

11 A Yeah. That is what my recollection is, yes.

12 Q Okay. And do you recall previously testifying that
13 the entire length of the knife was 14 inches?

14 A I believe I -- as in my notes here, I have that the
15 blade is eight inches long, and the handle is approximately
16 six.

17 Q Okay. And if other testimony had said it was a
18 12-inch knife total, would you agree with that, or do you think
19 it was 14 inches?

20 A Well I can only have -- I only have what's in my
21 notes here. So I don't know.

22 Q Okay.

23 A If there was testimony to 12 inches. In my notes, I
24 wrote that the blade was eight and the handle was six. I mean,
25 I could have mis-measured. It's certainly possible.

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1 Q Okay. Okay. Now when you were asked to examine --
2 compare the knife with known exemplars, you were also asked to
3 compare it to Victoria Whitmarsh's exemplars; is that correct?

4 A Yes. She was listed on the request as -- which would
5 be typical in this -- in any investigation, to look at all of
6 the people who may have access to a particular item.

7 Q Okay.

8 A Elimination -- of these elimination standards. So
9 her listing was also on the request.

10 Q Okay. Now you had said that the area of the hand, I
11 believe that's called the writer's area; is that the term for
12 it?

13 A Well the writer's area would actually -- the writer's
14 -- what we call the writer's palm would actually be out a
15 little further than what I've described to the jury today.

16 Q Okay.

17 A Because in the writer's palm, what we call a writer's
18 palm is this blade, or the end. And it's called that in the
19 vernacular. Because if you put your hand down to sign
20 something, that's the portion of the hand that's going to touch
21 something, as if you're writing.

22 But normally what happens on that area of the hand is
23 that the ridges begin to get skinnier and skinnier and
24 skinnier, and they eventually kind of blend into the rest of
25 your skin. And I didn't see any of that in this particular

1 touch. So that's why I believe that the print was more in this
2 hypothenar, this area on the fatty part of the hand, as opposed
3 to that writer's blade.

4 Q Okay. And it was in blood? It was a --

5 A Well in --

6 Q -- patent print?

7 A It was a patent print. Now it appeared to be blood
8 to me. I am not a DNA or a blood expert, that the print did
9 appear to be in what I would call suspected blood.

10 Q Okay. And before you subjected the knife to the
11 various means of enhancement, was DNA already collected from
12 it?

13 A Yes.

14 Q Okay. So when you did the final enhancement where
15 you subject the entire knife surface to the super glue method?

16 A Only the blade would have been subjected to the super
17 glue process. And the handle would have subjected to the acid
18 yellow process.

19 Q Okay. If you had previously testified that you use
20 the super glue method on the entire knife surface, would that
21 be incorrect?

22 A Oh.

23 Q I can approach if it would --

24 A Well the entire --

25 Q -- help you remember.

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1 A Well I suppose the entire knife would have been
2 placed into the super glue tank.

3 Q Okay.

4 A The primary area of my interest though would have
5 been the blade. Because the acid yellow at that point, by
6 applying this liquid over the handle. If there had been any
7 residue left there that would have been developed by super
8 glue, it would have been gone, because it would have been
9 simply rinsed away.

10 So even though I processed -- may have processed the
11 whole item with the glue, and maybe with -- and even maybe
12 dipped it with the -- as I said, that chemical that we use the
13 ALS (phonetic) with, my primary emphasis was on looking at the
14 blade for additional latent prints.

15 Q Okay. Once you performed the super glue -- you know
16 --

17 A Yes.

18 Q -- method of analysis, would that have corrupted any
19 DNA that was left there? Or would it have ruined the ability
20 to collect other DNA?

21 A Additional DNA?

22 Q Additional DNA.

23 A I believe there has been -- have been -- and maybe
24 the witness who comes after me next can explain this better.
25 But I believe that there still are some -- there is still some

1 ability to collect DNA from items even after they have been
2 glued, super glued, is what my recollection is from some
3 articles that I've read.

4 Q Okay.

5 A We don't like to do it that way. We like to collect
6 -- obviously collect the blood sample, or anything from the
7 item prior to latent fingerprint processing.

8 Q Okay. And that's why you do the DNA first?

9 A Absolutely. It goes through a sequential system
10 through the laboratory, starting with DNA, and moving it's way
11 through the laboratory in an organized manner.

12 Q Could the blood on the knife handle have been caused
13 from dripping, and then laying a hand on the knife? From blood
14 dripping onto the knife, and then a hand resting on it?

15 MS. GRAHAM: Objection. It's beyond his scope of
16 knowledge.

17 THE COURT: Sustained.

18 BY MS. PALM:

19 Q Are you familiar with how fingerprints are caused?

20 A Yes.

21 Q And you're familiar with that fingerprints can be
22 imposed on a bloody surface?

23 A Correct.

24 Q Okay. Would you -- is it -- are you able to
25 determine if a fingerprint might have been caused by blood

1 dripping on a surface, and then --

2 MS. GRAHAM: Objection, Judge. She --

3 MS. PALM: -- a hand resting on it?

4 MS. GRAHAM: He's not a blood spatter expert. He's a
5 fingerprint expert analysis.

6 THE COURT: Ms. Palm, why don't you ask him if he --
7 if Mr. Guenther has that expertise to answer that question.

8 BY MS. PALM:

9 Q Do you have the expertise to answer that question,
10 sir?

11 A Well I'm certainly not a blood spatter expert by any
12 stretch of the imagination. I mean, could give a layman's
13 opinion based on the blood that I've seen on evidence. That
14 would be it.

15 Q Okay. Well can you give an opinion on a fingerprint
16 might be placed in blood because blood had somehow gotten onto
17 that surface?

18 A I could give a generality.

19 Q Okay.

20 A What we normally -- what was normally observed is if
21 the print -- if the blood is on the fingers, and there is not
22 too much pressure applied, what you'll see is that the ridge
23 detail will be in blood. Often if the blood is on a surface,
24 and the hand or finger touches it, and it's -- and once again,
25 (indiscernible) a very small amount of blood. And the hand

1 would pull the blood away from that surface, then the ridges
2 would be in what we call a reversed position.

3 So in other words, they're not as you would normally
4 visualize them. They're going to be kind of flipped backwards,
5 because the ridges actually pulled that blood away, as opposed
6 to the blood being deposited on that surface. Generally
7 speaking, that's the only way you can tell.

8 Q Okay. And in this situation, there just was not
9 enough clarity for you to be able to determine either way?

10 A I would not like to venture a guess. There is a --
11 it's a small area there.

12 Q Okay. Thank you very much.

13 A Okay.

14 MS. PALM: No more questions.

15 THE COURT: Any redirect?

16 MS. GRAHAM: No, Judge.

17 THE COURT: Any questions from any of the jurors? No
18 questions. Thank you, Mr. Guenther, for your testimony. You
19 are excused.

20 THE WITNESS: Thank you, Your Honor.

21 MS. GRAHAM: Thank you, Mr. Guenther.

22 UNKNOWN MALE SPEAKER: (Indiscernible).

23 THE COURT: All right. Do we have a question? Oh,
24 we did have a question.

25 THE WITNESS: Sorry.

1 THE COURT: Counsel, approach.

2 (Off-record bench conference)

3 THE COURT: Mr. Guenther, we have a question from one
4 of the jurors.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: "Is it possible and or likely prints will
7 wipe off the knife?"

8 THE WITNESS: Well in my analysis of the knife prior
9 to the collection that Jen Bas did, because I did examine the
10 knife in her presence prior to her collection, and then my
11 subsequent processing, I did not see any indication on the
12 knife anywhere of any kind of wipe marks.

13 Now when I got the knife eventually and I did process
14 it, there were some rub areas on the knife itself. And those
15 were caused by Ms. Bas and her collection technique, where they
16 -- and she will explain all of this, how it's -- how blood is
17 swabbed off of a surface.

18 But when I did that initial visual examination in her
19 presence at her work area, I did no see any indicated that the
20 blood -- that the knife had been wiped in any fashion
21 whatsoever.

22 THE COURT: All right, thank you. Ms. Graham, do you
23 have any follow up questions to that question?

24 MS. GRAHAM: Judge one, Judge.

25 REDIRECT EXAMINATION

1 BY MS. GRAHAM:

2 Q Will you always find evidence of a wiping if a wiping
3 occurred?

4 A No. No.

5 THE COURT: Ms. Palm, any follow up?

6 RECROSS-EXAMINATION

7 BY MS. PALM:

8 Q Would you have expected to find some evidence of
9 wiping if a wiping occurred?

10 A It's hard to say. I -- it's very difficult to say.
11 Sometimes if there's moisture on the blood or if there's
12 moisture on the hand, or if there's -- if say a cloth is used
13 to actually wipe it, or if a hand is used to wipe that surface,
14 these are all variables that come into whether -- you know,
15 whether you can actually visualize these things.

16 So it's really difficult to make an assertion about
17 things -- about that. It truly is. But you can definitely
18 tell when it's not. But you're asking me if I can tell if it
19 is, it's hard.

20 Q Okay.

21 A It's really difficult.

22 Q Okay. Well there was -- there was the blood that's
23 on the handle of the knife that you looked at?

24 A Yes.

25 Q Okay. Did that appear to have wipe marks in it?

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1 A No.

2 Q Okay. And the knife blade that you examined had some
3 blood on it?

4 A Yes.

5 Q Okay. And there was nothing to indicate to you that
6 it had been wiped off?

7 A No. When I -- as I explained to the jury, when I saw
8 that knife the very first time in the presence of the DNA
9 analyst, Jen Bas, and I looked at it, there was no indication
10 of a wipe -- of any wipe marks on that blade at that time.

11 Q Thank you.

12 MS. GRAHAM: Just briefly, Judge.

13 FURTHER REDIRECT EXAMINATION

14 BY MS. GRAHAM:

15 Q And you say indication of any wipe marks. That
16 doesn't mean that there -- the knife was not wiped off before
17 it was given to you for analysis?

18 MS. PALM: Asked and answered, Your Honor.

19 THE COURT: No, overruled.

20 BY MS. GRAHAM:

21 Q You can answer.

22 A Oh. Well as I said, when I got the -- when I
23 eventually received the knife from Jennifer Bas, then,
24 especially after when I did my visual examinations and so
25 forth, I could see where her collection technique had made some

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1 wipe marks on the blade especially, because she was in the
2 process of collecting those blood swabs that were on the blade.

3 So yes, at that point I did see some wipe marks from
4 -- caused by the solution and the movement that they use in
5 collecting blood.

6 Q Um-hum. But my question specifically Mr. Guenther
7 was, just because you didn't see wipe marks that would indicate
8 somebody actually took a knife and wiped it off with a sheet
9 doesn't necessarily mean that didn't happen?

10 A No. It doesn't necessarily mean that, no.

11 Q Okay.

12 THE COURT: Ms. Palm?

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

14 THE COURT: Any other questions by the jurors? No
15 questions. Thank you sir, for your testimony. You are
16 excused.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Next witness for the State?

19 THE WITNESS: Jennifer Bas.

20 THE MARSHAL: Ma'am, raise your right hand and face
21 the clerk.

22 JENNIFER BAS, STATE'S WITNESS, SWORN

23 THE CLERK: Please be seated.

24 THE WITNESS: Thank you.

25 THE CLERK: Pull up to your mic. And state and spell

1 your name for the record.

2 THE WITNESS: My name is Jennifer Bas.

3 J-E-N-N-I-F-E-R, B-A-S.

4 DIRECT EXAMINATION

5 BY MR. LALLI:

6 Q Ma'am how are you employed?

7 A I work for the Las Vegas Metropolitan Police
8 Department. I'm the DNA technical leader of the biology DNA
9 detail.

10 Q Okay.

11 A Sorry.

12 Q That's okay. You indicate that you're a technical
13 leader?

14 A That's correct.

15 Q What is a technical leader?

16 A I am technically responsible for everything that
17 comes out of the DNA lab. I'm responsible for everybody's
18 training, all of our quality control procedures. I am
19 responsible for following the federal -- the FBI's quality
20 assurance standards that set forth what it means to be an
21 accredited DNA lab. Prior to this, for the six last years, I
22 was also a forensic scientist specializing in DNA testing.

23 Q So I take it the position of being a technical
24 director is kind of a supervisory position?

25 A It's a position that's mandated by the Federal Bureau

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1 of Investigation. I do not supervise people. However, I do
2 have the authority to shut down the laboratory if I felt there
3 was any issues. I am responsible for everybody that's in
4 training and the quality of their work that leaves the
5 laboratory as well.

6 Q So it's kind of a quality assurance manager-type
7 position?

8 A Exactly.

9 Q Am I getting closer?

10 A Yes.

11 Q Okay, thanks. Now you indicated that in addition to
12 that position, at least at one point, you also did analysis?

13 A Yes.

14 Q Do you still do analysis?

15 A I do.

16 Q What kind of analysis?

17 A Since 2004, I've been a forensic scientist
18 specializing in DNA testing. Over the course of that six
19 years, I've processed over 500 cases and thousands of samples
20 for DNA. So I am expected to be a fully trained DNA analyst.
21 That means that I examine evidence, I make comparisons, I issue
22 reports and do all of the things that other DNA examiners do.

23 Q Okay. Can you tell us about your formal education?

24 A Yes. I have a bachelor of science degree in genetics
25 and cell biology from the University of Minnesota. And then I

1 also have a masters in forensic science specializing in
2 molecular biology from George Washington University. As I
3 mentioned, I've been employed in the forensic DNA testing field
4 for over six years.

5 And prior to working at Metro, I worked at the Armed
6 Forces DNA identification laboratory in Rockville, Maryland,
7 where my primary job responsibilities were to identify soldiers
8 that had lost their lives in previous work conflicts, or
9 current work conflicts like Iraq and Afghanistan.

10 Q Did you do that using DNA?

11 A Yes.

12 Q Okay. So how long have you been at Metro?

13 A Over three years.

14 Q Have you ever testified in the courts of Nevada as an
15 expert in the area of DNA analysis?

16 A I have.

17 MR. LALLI: Your Honor, at this point I would ask
18 that Ms. Bas be allowed to testify as to her opinions in the
19 area of DNA analysis.

20 THE COURT: Yes, she can testify in that field.

21 BY MR. LALLI:

22 Q Ms. Bas, can you explain to us what is DNA, and how
23 is it used to assist in criminal investigations?

24 A I like to think of DNA as kind of the blueprint for
25 the human body. It's a molecule that's found in the cell, and

1 it's what makes each of us unique from the person sitting next
2 to you. With the exception of identical twins, no people on
3 this planet have the same DNA profile.

4 And so it's very useful in investigative situations
5 to try and identify the source of the DNA of who could have
6 been contributing to certain pieces of evidence that I'm
7 examining. And so more generally what I do is I take evidence
8 from crime scenes, and I generate DNA profiles from that.

9 And I also generate DNA profiles in the form of a
10 buccal swab, which is a swab from the inside of a cheek, for a
11 known individual. And then I can compare those DNA profiles
12 from the unknown samples to the known individual to determine
13 who may be included or excluded as contributing to that DNA.

14 Q Without getting too much into nitty gritty, can you
15 just explain in very general terms how you make a DNA
16 comparison?

17 A Yeah. There's a few steps in the laboratory that I
18 have to do. Typically, an item is examined for DNA and a
19 sample is collected, whether I swab that piece of evidence, or
20 a crime scene investigator takes a collection at the scene and
21 gives it to me.

22 I take that piece of evidence into the laboratory,
23 and I do four basic steps to it. The first thing that I want
24 to do is extract the DNA. It essentially means that I'm going
25 to isolate the DNA and get it by itself so that I can do

1 further testing on it.

2 The next thing that I do is, it's called
3 quantitation. And basically I'm just trying to figure out how
4 much DNA is present. The third thing that we do is to amplify
5 the DNA, which basically means I want to go in and look at
6 certain regions of the DNA, and make millions of copies of it
7 so that I can interpret it on the fourth stage, which is
8 analysis on the instrument.

9 So from start to finish, I go in the lab and I do
10 that extraction, the quantitation, the amplification. Thank
11 you. Thank you.

12 Q You're welcome.

13 A And analyze it on the instrument. And then the DNA
14 profile is generated in a format that I can visualize. Once
15 I've generated a profile from a piece of evidence, and I can
16 generate another profile from a known contributor, I compare
17 those visually. So --

18 Q So --

19 A Yeah so --

20 Q I'm --

21 A No, go ahead.

22 Q That's okay. So the analysis that you were just
23 talking about deals with unknown biological fluid, such as
24 blood, at a crime scene; is that correct?

25 A That's correct.

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1 Q And you compare it with a known sample from an
2 individual?

3 A Yes.

4 Q You used the terminology, a buccal swab. Oftentimes
5 are buccal swabs used as a known?

6 A Yes. Buckle swabs are almost exclusively used as a
7 known reference sample for an individual.

8 Q How is a buccal swab generally collected?

9 A We just take a swab and scrape the inside of the
10 mouth. You know, hopefully this is a really good source of
11 your own DNA. I wouldn't expect anybody else's DNA to be
12 lingering in your mouth. And so that generates a nice profile
13 that we can compare to the evidence items.

14 Q Is that profile sometimes referred to as a standard?

15 A It is.

16 Q Okay. Did -- in this particular case, what standards
17 or known samples of DNA did you use, and for whom?

18 A May I refer to my case file?

19 Q Did you create a case file --

20 A I did.

21 Q -- as part of your analysis?

22 A I did.

23 Q Did you prepare your notes at or near the time of
24 your comparison?

25 A I did.

1 Q And as you did so, did you accurately record the
2 information in your notes?

3 A I did.

4 Q You may do so.

5 A Thank you. Two buccal swab standards were submitted
6 to me as known references. The first was from Victoria
7 Whitmarsh, and the second was from Brian O'Keefe.

8 Q Okay. Let's talk about the buccal swab from Brian
9 O'Keefe. Were you able to obtain a DNA profile from that?

10 A I did. I generated a full male profile, which means
11 that I was able to obtain DNA results at all of the locations
12 that I test.

13 Q Okay. And with respect to Victoria Whitmarsh, was
14 that a buccal swab collected at autopsy in an evidence
15 collection kit?

16 A I believe so, yes.

17 Q Okay. And were you able to obtain a full DNA profile
18 from that buccal swab?

19 A I was. It was a full profile consistent with a
20 female.

21 Q All right. Now let's talk about some of the things
22 that you compared. Just for the benefit of the jury, I'm going
23 to publish State's Exhibit number 26. And then State's Exhibit
24 number 29, Crime scene analyst Maldonado testified that she
25 impounded a swab of what appears to be a red substance on a

1 light switch. Did you have the occasion to analyze that swab?

2 A I received a swab from Jocelyn Maldonado. It was a
3 swab from a light switch cover. I tested it for blood, and it
4 was blood positive. And then I developed a full male profile
5 from that blood.

6 Q How do you test it to determine whether it is blood
7 positive?

8 A We do a presumptive test in the laboratory, it's call
9 phenolphthalein. And when it reacts positively, it's a
10 presumptive test, meaning that it indicates that blood is
11 present. And then when I generate a human DNA profile, in this
12 case the full male profile, that's confirming that that was
13 blood.

14 Q Did you compare that full male profile with the
15 profile of the defendant, Brian O'Keefe?

16 A I did.

17 Q And what were your results.

18 A I'm going to refer to my report specifically.

19 Q Okay.

20 A Thank you. The DNA profile that was obtained from
21 the blood on the light switch cover was consistent with Brian
22 O'Keefe. We generate a statistic associated with it, and I'll
23 read that to you.

24 Q Well before you read that --

25 A Oh.

1 Q -- can you explain to the jury -- I'm not a math
2 person. But can you explain to them -- you indicate that it's
3 consistent. And but you also associate a statistic with that?

4 A That's correct.

5 Q Explain what that statistic means.

6 A Okay. The statistic that I'm going to tell you
7 about, it's called an identity statement. When we have a
8 sample of evidence match or be consistent with a known
9 reference standard, we generate a statistic. The statistic
10 that I generated here is rarer than 100 times the entire
11 Earth's population.

12 So if you were to take 100 Earths, all of the people
13 on the Earth 100 times over, the statistic was more rare than
14 that. And so we cap it off at 100 times the Earth's
15 population, and we call it an identity statement, meaning that
16 the identity of the blood is assumed to have originated from
17 that person.

18 Q Okay. To a degree of certainty more than 100 times
19 the population of our Earth?

20 A Yes.

21 Q And whose blood was that?

22 A Brian O'Keefe's.

23 Q All right. Now we had some testimony about what is
24 depicted in State's 35, which are some stretch pants located in
25 a bathroom. Did you create some diagrams to help explain areas

1 of evidence that were in fact tested?

2 A I did.

3 Q All right. Did you create a diagram specifically for
4 some black stretch pants?

5 A I did.

6 MR. LALLI: May I approach?

7 THE COURT: Yes.

8 MR. LALLI: Thank you.

9 BY MR. LALLI:

10 Q Showing you what we've marked as State's proposed 123
11 for identification purposes, do you recognize that?

12 A I do.

13 Q What is it?

14 A This is a picture that I took in the laboratory of a
15 pair of black stretch pants.

16 Q And is there also some arrows and some diagraming on
17 the photographs?

18 A Yes.

19 Q Would this exhibit assist you in explaining the
20 results of your analysis to the jury?

21 A It would.

22 MR. LALLI: Your Honor, move for the admission of
23 State's proposed 123.

24 MS. PALM: No objection.

25 THE COURT: It will be admitted.

1 (Exhibit 123 admitted)

2 MR. LALLI: Okay.

3 BY MR. LALLI:

4 Q What I will do is -- well why don't you explain,
5 there's some labeling up at the top of this?

6 A Sure.

7 Q What is that?

8 A The labeling at the very top is the event number
9 under which I analyzed the evidence. The JB5 is my initials
10 for Jennifer Bas, and 5 meaning it was the 5th item of evidence
11 that I examined. We always create a unique identifier for a
12 piece of evidence. And then in the yellow --

13 Q Well let's go to the left side first.

14 A Sure.

15 Q And I'll zoom in there. What is that?

16 A Okay. So this is a picture of one side of the black
17 stretch pants. And here you see my labeling -- oh. Right
18 there you see the labeling of the event number, that unique
19 identifier that I just mentioned, as well as the date that I
20 examined it.

21 Q Let's move over to the lefthand side now. What is
22 this?

23 A Okay. This is a picture that I took where it might
24 be kind of hard to see what I had done. But right there, I had
25 the pants laying flat out, and then I took the pant leg, and I

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1 folded it up so that it was laying on top of the top of the
2 pants over here. And so these two circled areas are indicating
3 the areas that I took samples of on the pants.

4 Q Okay. So I'm going to zoom in to the lower of those
5 two.

6 A Okay.

7 Q Does that -- well what is it? Is that a blood spot
8 at the bottom of the pants?

9 A This is. I noticed a blood spot on the front side of
10 the pant, on the lower left ankle area. And as I had mentioned
11 before, if I see something that appears to look like blood, I
12 do that presumptive test to let me know that it is blood.

13 Q Did you do that in this case?

14 A I did.

15 Q And what were your results?

16 A It was presumptively positive for blood.

17 Q So did you perform an analysis on that area of the
18 pants?

19 A I did. So I took a sample of that bloodstain, and I
20 took it on to DNA testing.

21 Q And what did you find?

22 A The profile that was generated from this particular
23 stain was a mixture, meaning that more than one person's DNA
24 was present in that specific location.

25 Q So let me just ask you this. We looked at the swab

1 taken from the light switch. Is that different from this DNA
2 result?

3 A That was. The swab that was taken from the light
4 switch was consistent with a single source, meaning that it
5 originated from one individual. This particular DNA profile
6 generated from this stain is a mixture.

7 Q Okay. Are you able to make comparison statements or
8 conclusions with respect to DNA mixtures?

9 A Yes.

10 Q Okay. Did you compare this particular bloodstain
11 against the DNA profiles of the defendant and the DNA profile
12 of Victoria Whitmarsh?

13 A I did.

14 Q And can you tell us what you found?

15 A The DNA that was obtained from this particular stain
16 was consistent with a mixture of two individuals. And those
17 two individuals that could not -- that were included in that
18 mixture were Brian O'Keefe and Victoria Whitmarsh.

19 Q So you could not exclude them?

20 A No, I could not exclude either of them.

21 Q All right. Do -- now you mentioned in the previous
22 example a statistical number associated with your comparison?

23 A Yes.

24 Q Do you also receive statistical numbers with respect
25 to the comparison of mixtures?

1 A I generate statistics.

2 Q You generate those?

3 A Yes.

4 Q Do they work a little differently?

5 A They do. So this is a different type of scenario.

6 Because it's a mixture of two people, I have to generate a
7 statistic that is consistent with a mixture. So the statistic
8 that I generate in essence is saying, what percentage of the
9 population could be excluded from this mixture. And so the
10 statistic was that greater than 99 point 99 percent of other
11 individuals in the population could be excluded from this
12 mixture profile.

13 Q Could be excluded?

14 A Yes.

15 Q Okay. Are you able to put that number in the
16 inverse, like the identity statement we talked about in the
17 last example? Are you able to give us in other words a
18 frequency of inclusion for that --

19 A Yes.

20 Q -- mixture?

21 A I can generate -- it's called a combined probability
22 of inclusion. It's slightly different, because again it's a
23 mixture. So the inclusion's statement is basically saying,
24 what percentage of individuals in the population could be
25 included in that mixture.

1 Q Okay. And what number did you reach for that
2 statistic?

3 A I'm just going to refer to that --

4 Q If you would.

5 A -- statistic page, please. The statistic was that
6 approximately 1 in 21,000,890 people could be included. So one
7 out of every 21,000,890 individuals.

8 Q Okay. So if you take a group of what, 21 million --
9 over 21 million people, two of those people would be --

10 A One --

11 Q Or one of those people --

12 A I would expect one person to be included for every
13 million.

14 Q Got it. Thank you.

15 A You're welcome.

16 Q Now that wasn't the only area on these pants that you
17 looked at, was it?

18 A No.

19 Q In addition to at the bottom cuff area of the pants,
20 did you also look at another stain on the pants?

21 A Yes.

22 Q And does that -- am I correct that we're looking at
23 almost the very top of the pants, or?

24 A Yeah, this is the top. It's kind of the front panel
25 of the pant, underneath the waist drawstring area, or the waist

1 -- elastic waist area.

2 Q Okay. Did you perform an analysis of the blood in
3 that area?

4 A Yes. Again I saw red, which indicated blood to me.
5 I did a presumptive test for blood, and it was positive. From
6 this sample, I generated a single source profile, and that was
7 consistent with Victoria Whitmarsh, meaning she is the source
8 of the blood that was at that location.

9 Q Okay. Did you analyze a DNA collection kit that was
10 collected at autopsy?

11 A I examined an evidence collection kit from Victoria
12 Whitmarsh.

13 Q All right. Can you tell the jury what kinds of
14 things are in a DNA collection kit?

15 A One of the first things that is collected is a buccal
16 swab. As I mentioned earlier, that's used as the standard
17 known of the individual, where this kit was collected from. I
18 also received some vaginal swabs, some cervical swabs, rectal
19 swabs, an oral swabs (sic), which just means from the mouth,
20 the oral cavity. I received a pubic hair brushing, and some
21 nail clippings from the right and the left hands.

22 Q Okay. Did you analyze the vaginal swabs, the
23 cervical swabs, the rectal swab, the oral swab for the presence
24 of semen?

25 A I did.

1 Q And what were your results.

2 A The vaginal swabs, the cervical swabs, and the rectal
3 swabs were all semen negative, meaning I did not detect any
4 semen at all. And the oral swabs, they were negatively
5 presumptive for semen.

6 Q Okay.

7 A I think I had mentioned earlier that I kind of do --
8 I do a presumptive test, and then I can do a confirmatory test.
9 So for the first three, the vaginal, cervical and oral, I was
10 able to confirm that semen was not there. For the oral swabs,
11 I did that first presumptive test. It was negative, and I
12 stopped testing at that point.

13 Q Okay. Now did you also have the occasion to analyze
14 nail clippings?

15 A I did.

16 Q And when those are collected, are they designated as
17 from the right hand and from the left hand?

18 A In this case, they were.

19 Q All right. What if anything did you find with regard
20 to the right hand nail clippings of Victoria Whitmarsh?

21 A There was blood in the right hand fingernail
22 clippings, it was positive for blood. And the profile
23 generated from that was a full female profile, and it was
24 Victoria Whitmarsh.

25 Q What about the left hand nail clippings?

1 A Again, there was also blood on the fingernails. And
2 the DNA from that blood was Victoria Whitmarsh as well.

3 Q Okay. I'm going to show or publish for the just
4 State's Exhibit number 62. Did you analyze a swab that was
5 collected by Dan Ford (phonetic) from the right index finger of
6 the defendant?

7 A I did.

8 Q Okay. And you subjected it to the same sort of
9 analysis that we've been -- oops, I can't really tell what that
10 is. What if anything did you find in that analysis?

11 A The swab that was submitted to me was from the right
12 index finger of Brian O'Keefe. That was positive for blood.
13 And I generated a full male profile, and the source of that
14 blood was Brian O'Keefe.

15 Q In your report, you indicated that there were
16 additional alleles below threshold which were detected.

17 A Okay.

18 Q Is that correct?

19 A That's correct.

20 Q And I don't want to get overly technical here, but
21 can you explain to us what that means?

22 A Sure. The DNA profile that I generate is essentially
23 made up of alleles. And what I like to think of alleles as is
24 different forms of a gene. And so maybe you might have heard
25 that if you're a female, you have X and X chromosomes, and

1 maybe you've heard that males have an X and a Y.

2 And so I -- that's a really good example of what an
3 allele is. Even though they're from the same location or in
4 the same general area, they're two different forms of the same
5 gene. So males are X and a Y, and females are X and X.

6 And so the alleles are the profile that I generated
7 of Brian O'Keefe, you know, that's what his alleles are or his
8 DNA profile. And in this case, there was an indication that
9 there was some other DNA there. But it wasn't above my
10 threshold, so I couldn't make any determinations about it one
11 way or the other.

12 Q So for you to make a conclusion with respect to
13 biological fluid, am I correct that there has to be enough
14 information there for you to do it?

15 A That's correct.

16 Q Mr. Guenther just testified that he was able to find
17 a partial patent print on the knife, and there just wasn't
18 enough information there for him to conduct an analysis. Is
19 that kind of the same situation here?

20 A That's correct. I do not -- the DNA that I talking
21 (sic) to you about in court has to meet a certain threshold for
22 me to report it. So the DNA profile that I obtained, Brian
23 O'Keefe's profile met that threshold, and it exceeded that
24 threshold. There was a little bit of something else there, but
25 it didn't meet that threshold that I need to determine what

1 else it was.

2 Q That something else there, is it -- can you tell
3 whether it's human DNA?

4 A I would have to look at the profile. I mean -- yes.
5 Because the markers that we amplify are human specific, it's
6 just not there at a level that I can make any conclusive
7 statements about it one way or the other.

8 Q Okay.

9 MR. LALLI: May I approach the witness?

10 THE COURT: Yes.

11 BY MR. LALLI:

12 Q Ms. Bas, I want to show you what we've marked as
13 State's proposed --

14 (Pause in proceedings)

15 BY MR. LALLI:

16 Q -- State's proposed 121 and 122. Do you recognize
17 those?

18 A I do.

19 Q Are those similar explanatory diagrams, except with
20 respect to a knife?

21 A Yes.

22 MR. LALLI: Your Honor, I would move for the
23 admission of State's proposed 121 and 22.

24 MS. PALM: No objection.

25 THE COURT: They will be admitted.

1 (Exhibits 121 122 admitted)

2 BY MR. LALLI:

3 Q During the course of this trial, Ms. Bas, there's
4 been a lot of discussion about a knife that was recovered from
5 the crime scene.

6 A Okay.

7 Q And so I want to show you your diagram, State's
8 Exhibit 121. What is that?

9 A These are some pictures of the knife that I take for
10 my own recollection, and I keep these pictures in my case file.
11 Up at the top again, you see the event number under which the
12 knife was collected. And then the initials, JB4, again JB for
13 my name, and 4 being that it was the fourth item of evidence
14 that I examined.

15 Q Okay. Let's zoom in to the lefthand photo.

16 A This is a picture of how the knife was packaged
17 inside the box at the time that I received it.

18 Q And there appear to be the initials JM, and the P
19 number in between. Do you see that?

20 A Yeah, that Jocelyn Maldonado's P number and initials.

21 Q Have you analyzed items impounded by Ms. Maldonado
22 before?

23 A Quite frequently.

24 Q Okay. And let's move to the top lefthand photo.
25 What's that?

1 A This is a picture of one side of the knife.

2 Q And is there -- what appears to be a ruler type
3 device above it?

4 A Yes.

5 Q Okay. So on one side of the knife, do you see any
6 biological -- what you later confirmed to be biological fluid
7 on that side of the knife?

8 A Well I can see there's some, you know, red staining
9 up here. And I also see a little bit over here. And this is
10 just based on this picture.

11 Q Sure. Okay. Now let me just go down to right below
12 it. What's that?

13 A And this is the other side of the knife. And here I
14 can see some, you know, more distinct stains.

15 Q Did you analyze both sides of the knife?

16 A I analyzed different areas of the knife. I would
17 rather look at the picture with the circled items.

18 Q Okay. Let's do that. Let's move to State's Exhibit
19 number 121. And I'll zoom out just for a moment so we can get
20 some perspective. And I'll go over to the lefthand side.

21 A Okay.

22 Q Okay. What are we looking at there?

23 A The areas that are in yellow are specific areas that
24 I tested on the knife. I think when you look at it, if you can
25 see as I can see, you know, there's other areas where there was

1 some red-brown staining.

2 However, I don't test every single area where there's
3 staining on a knife. I want to make sure that I'm getting a
4 representative sample of what's there, but also leaving enough
5 evidence in case, you know, there ever needs to be testing in
6 the future.

7 So I chose to test four areas on this knife. The
8 first three are indicated right here. This is the first --
9 this one over here is the first sample that I took, and I
10 designated that as JB4A.

11 Q Okay. Tell us about your analysis on that spot.

12 A I noticed that there was blood at this location of
13 the knife, and I tested it, and it was positive for blood. And
14 I actually -- in my report, I call this the middle of the
15 blade. I call this the top of the blade, and down here was the
16 tip of the blade. So in the middle area on this one side of
17 the knife, it was positive for blood, and it was a mixed
18 profile. Again, it was DNA from more than one person there.

19 Q Did you compare that mixture profile with the
20 standard profiles from the defendant and Victoria Whitmarsh?

21 A I did.

22 Q What did you find?

23 A In this case, there was a major DNA profile. What
24 that means is that one person had the majority of the DNA that
25 was present. You know, maybe one person had this much DNA --

1 and I'm just giving you a visual here with my hands. Maybe
2 somebody else contributed a little bit. So --

3 Q And just for the record, you're holding one hand up
4 higher than the other hand?

5 A Exactly. I'm just demonstrating that somebody is
6 contributing more DNA here. So the major DNA profile was Brian
7 O'Keefe.

8 Q And were you able to create a statistical statement
9 associated with that?

10 A Yes.

11 Q What was it?

12 A The statistic associated with that was that the
13 frequency of that major profile was rarer than 100 times the
14 Earth population, or it's rarer than one in 650 billion.

15 Q So you can without any question say that's Brian
16 O'Keefe's blood?

17 A He is the source of that major profile.

18 Q Okay. What about a minor profile? Were you able to
19 come to any conclusions in that regard?

20 A Yes. And then Victoria Whitmarsh could not be
21 excluded as the minor contributor to that mixture.

22 Q And were you able to reach any statistical statements
23 with that finding?

24 A Yes. Greater than 99 point 99 percent of individuals
25 in the population could be excluded as as contributor to that

1 mixture.

2 Q Okay. Now the next area that you looked at, just
3 kind of following your photograph across --

4 A Um-hum.

5 Q -- from left to right is -- oh --

6 A Whoa.

7 Q -- now you're screwing up our -- okay.

8 A I didn't do it.

9 Q Okay. You want to try one more time? There you go.
10 Okay. Is that JB4B?

11 A That is my JB4B.

12 Q Okay.

13 A And you can see I had swabbed a little stain right
14 there at the top of the blade. And again, it was blood
15 positive. And this one was a single source, full male profile.
16 And the source of that blood was Brian O'Keefe.

17 Q All right. What about JB4C?

18 A This sample, I called it the bottom of the handle. I
19 was actually swabbing on the underside of the handle. Again,
20 this was positive for blood, and it was a mixture profile. The
21 mixture again had a major contributor, and the major
22 contributor was Brian O'Keefe. And again the statistic was
23 rarer than one in 650 billion. However in this instance, the
24 minor profile was so low that I couldn't make a conclusion
25 about it at all.

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1 Q Okay. So someone else's DNA was there, but you can't
2 tell us anything about that person?

3 A Because it didn't meet that threshold that I had
4 talked about previously.

5 Q Let me ask you this. Mr. Guenther testified that
6 there was what he called a patent print on the handle.

7 A Okay.

8 Q Is that what you swabbed, or did you swab something
9 else?

10 A No, I did not swab the print.

11 Q Okay.

12 A In my experience, if I see something that looks like
13 a print, even though I'm not a latent print examiner, I know
14 enough to leave it alone and let the latent print examiners
15 handle that.

16 Q All right. Now all three of those samples came from
17 the same side of the knife?

18 A 4A and 4B did. 4C is the underside of the handle.

19 Q Fair enough, fair enough. Okay. Now I believe on
20 the other side of the knife, (indiscernible) the top photo, you
21 have an area near the tip that you analyzed?

22 A That's correct.

23 Q What did you find in that regard?

24 A Again, the staining here on the tip of the knife, it
25 was positive for blood. And I generated a full female profile,

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1 and the source of that blood was Victoria Whitmarsh.

2 Q Was there a statistical number associated with the
3 frequency of Victoria Whitmarsh having been the donor of the
4 blood if you will on the tip of that knife?

5 A Yes. Again, it did meet that identity statement
6 threshold. It was rarer than one in 650 billion.

7 Q So can you tell us without any question at all
8 whether that was Victoria Whitmarsh's blood?

9 A Yes. Yes.

10 Q It was her blood?

11 A She's the source of the blood on the tip of the
12 knife.

13 MR. LALLI: Your Honor, that concludes
14 cross-examination.

15 THE COURT: All right. Ms. Palm?

16 MS. PALM: Thank you.

17 CROSS-EXAMINATION

18 BY MS. PALM:

19 Q Good afternoon, Ms. Bas.

20 A Good afternoon.

21 Q When you --

22 (Pause in proceedings)

23 MS. PALM: Court's indulgence.

24 (Pause in proceedings)

25 BY MS. PALM:

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1 Q When you swabbed the JB4B and -- in State's Exhibit
2 121, was that -- did that actually look like a drop of blood,
3 and you swabbed the middle of it out?

4 A Yes.

5 Q Okay. So what you see there isn't what it actually
6 looked like before you swabbed it, that's after the swabbing?

7 A That is correct.

8 Q Okay.

9 A Yes.

10 Q Okay. And as to mixtures, you have no idea how two
11 sources became mixed, do you?

12 A No.

13 Q Okay. And you don't make any statement about that in
14 your report?

15 A No. I only make statements about what the source of
16 that mixture is.

17 Q Okay. And the ankle on the stretch pants, that was
18 the front ankle?

19 A The front left ankle.

20 Q Okay. And the other portion where you took the
21 cutting from, is that -- what part of the pants was that?

22 A The first sample?

23 Q Yes, the --

24 A JB5A?

25 Q Yes.

ROUGH DRAFT TRANSCRIPT

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1 A Was the front of the pant.

2 Q Okay. Did you take any from the back side?

3 A I did not.

4 Q Okay. So those were the only two you took from the
5 pants?

6 A That's correct.

7 Q Were you able to tell if those pants were contained a
8 lot of blood at one point?

9 A They did.

10 Q Okay.

11 A I could see quite a bit of blood on them.

12 Q Okay. So but you chose to test two different areas,
13 not because that's the only areas that were there?

14 A That's correct.

15 Q When a knife -- or a print on a knife is enhanced,
16 for example the knife in this case, by super glue, can you
17 still collect DNA afterwards, or does that compromise your
18 ability to?

19 A In my experience, I've never done that, because it's
20 not a best practice to do that. Typically the items are
21 examined for DNA first, and then they're moved on to the other
22 area of the laboratories.

23 Q Okay.

24 A So I've never done it.

25 Q And in the storage of items that are bloody, are

ROUGH DRAFT TRANSCRIPT

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1 precautions taken to store them so that fluids don't seep to
2 other places?

3 A Typically, samples that are wet or have wet fluid on
4 them should be dried, and then packaged appropriately so that
5 it maintains the dryness.

6 Q Okay.

7 A Yes.

8 Q And I wasn't sure if I heard -- I note, correct me if
9 I'm wrong, these swabs, the oral swabs, and the vaginal swabs,
10 and the rectal swabs were all negative for semen?

11 A That's correct.

12 Q Okay. And the pubic hair brushing, was that negative
13 for pubic hair also?

14 A There were no pubic hairs present in the pubic hair
15 brushing. So I did not -- there was nothing to test.

16 Q Okay. And I just want to talk a little bit about
17 alleles. You had mentioned that alleles were present on the
18 wound that was swabbed. Can you explain how alleles transfer
19 from one person to another.

20 A It really could be anything. You know, if I had
21 touched this glass, and then you had touched this glass, both
22 -- the chances are that both of our DNA would be present here.

23 Q Okay.

24 A So how an allele gets there, I can't say, much like
25 we had just described, I can't say how it gets there.

1 Q Okay. So if I touch somebody, they might have my
2 alleles on them?

3 A Yes.

4 Q Okay. And that would not be uncommon at all?

5 A No, it's quite frequent to see mixtures in a lot of
6 samples that I test.

7 Q And the DNA under Ms. Whitmarsh's fingernails was
8 only her DNA?

9 A That is correct.

10 MS. PALM: Court's indulgence. Pass the witness.
11 Thank you.

12 THE COURT: Any redirect?

13 THE WITNESS: Okay.

14 MR. LALLI: Just one area, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. LALLI:

17 Q Ms. Bas, with respect to the DNA profile that you
18 obtained in State's Exhibit 121 from the tip of the knife, were
19 there any other alleles in that sample?

20 A No.

21 Q No indication that anybody else's --

22 A Oh, I'm sorry. I'm sorry. Let me rephrase that.
23 Yes, there were additional alleles below threshold detected on
24 that (indiscernible).

25 Q Okay. On the -- in the tip of the knife?

1 A Yes, my sample JB4D.

2 Q Okay. Thank you very much.

3 MR. LALLI: Nothing further.

4 MS. PALM: Nothing further, thank you.

5 THE COURT: Any questions from any of the jurors? We
6 do have a question. Counsel, approach.

7 (Off-record bench conference)

8 THE COURT: Ms. Bas, we have a question from one of
9 the jurors. "Was there DNA skin cells of the defendant under
10 Victoria's nails?"

11 THE WITNESS: Under the fingernails, there was blood,
12 and that blood was Victoria Whitmarsh's. I have no way of
13 knowing if there was skin cells under there. I don't have a
14 test for skin cells. I just know that there was blood under
15 her fingernails, and that was her blood.

16 THE COURT: Mr. Lalli, anything follow up -- any
17 follow up?

18 MR. LALLI: No, Your Honor.

19 THE COURT: Ms Palm?

20 MS. PALM: No, Your Honor.

21 THE COURT: Any follow up question by any of the
22 jurors? All right, no questions. Thank you, Ms. Bas, for your
23 testimony. You are excused.

24 THE WITNESS: Thank you.

25 THE COURT: Ladies and gentlemen, we're going to take

1 a quick recess before our next witness.

2 During this recess, it is your duty not to converse
3 among yourselves, or with anyone else on any subject connected
4 with the trial. Or to read, watch or listen to any report of
5 or commentary on the trial by any person connected with the
6 trial, or by any medium of information, including without
7 limitation, newspaper, television, radio, or the internet. You
8 are not to form or express an opinion on any subject connected
9 with this case until this matter is submitted to you. We'll
10 see you back in 5 or 10 minutes.

11 (Outside the presence of the jury)

12 THE COURT: Now we are outside the presence of the
13 jury panel. Mr. Lalli, with this next witness, or your prior
14 or subsequent thereto, are you going to be admitting the
15 conviction into evidence?

16 MR. LALLI: I am, Your Honor.

17 THE COURT: Okay. Well at what point, so I can --
18 and have you reviewed the limiting instruction that Ms. Palm
19 has proposed?

20 MR. LALLI: I will.

21 THE COURT: Okay. Okay. Well give me enough time to
22 -- you know, if we need to discuss it if you have any
23 objection. Do you know which one it is?

24 MS. PALM: You've got it?

25 THE COURT: Yeah, I have it.

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1 MS. PALM: Okay.

2 (Pause in proceedings)

3 (Court recessed at 2:58 p.m. until 3:12 p.m.)

4 (Outside the presence of the jury)

5 THE COURT: All right, let's bring the jury in.

6 MS. GRAHAM: Are we going to bring Juror 2 in?

7 MR. LALLI: Oh, yeah. What do you want to do about
8 the procedural --

9 MS. GRAHAM: Are we going to bring Juror 2 in?

10 THE COURT: I'm sorry?

11 MR. LALLI: What about --

12 MS. GRAHAM: Are we going to bring Juror 2 in?

13 MS. PALM: Yeah, we should probably find out what
14 that procedural thing is.

15 THE COURT: Oh, that's right. Can you -- Ms.
16 Graham, if you can catch the marshal.

17 MS. GRAHAM: Sure.

18 THE COURT: There was a note from one of the jurors.
19 Maybe he's going to discuss proper techniques for DNA.

20 MS. GRAHAM: Bringing Juror number 2 in.

21 THE COURT: Sir, you can just have a seat in the
22 front here. Or just anyplace. Take a seat wherever you're
23 comfortable.

24 JUROR NO. 2: Okay.

25 THE COURT: All right. Sir, the marshal advised me

ROUGH DRAFT TRANSCRIPT

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1 that you had a question for me regarding some procedural
2 matter.

3 JUROR NO. 2: Yeah, I don't know if it's important.
4 But on witness Ed Guenther, I don't remember any questions
5 about his notes, and him being a fair representative, like they
6 do on every other witness.

7 THE COURT: So --

8 JUROR NO. 2: It didn't seem like his notes -- he
9 could use his notes.

10 THE COURT: Okay. As far as admitting the notes into
11 evidence; is that what you're referring to?

12 JUROR NO. 2: Well usually it's -- and I have no
13 legal expertise. But in every other witness, they've
14 established -- they've asked the witness if the notes are a
15 fair and accurate representation of their reports, and they did
16 not do that.

17 THE COURT: Well I don't think it goes so much to
18 reports. It's been typically the photographs that one of the
19 attorneys would ask, does this photograph appear to be a fair
20 and accurate depiction of the scene of the crime, a car
21 accident, whatever it may be. That's what you're referring to,
22 sir?

23 JUROR NO. 2: No. It seemed like they did that with
24 the notes as well.

25 THE COURT: Okay.

1 JUROR NO. 2: Something to that effect.

2 THE COURT: They only do that when something's
3 actually being admitted into evidence. And so his notes were
4 not admitted into evidence.

5 JUROR NO. 2: Okay.

6 MR. LALLI: Well, can we approach?

7 THE COURT: Sure.

8 MR. LALLI: I think I understand what he's saying.

9 (Off-record bench conference)

10 THE COURT: Sir, actually I think we do understand
11 what you're saying. That matter that bring up is a part of
12 evidentiary foundation that you need not be concerned about.

13 JUROR NO. 2: Okay.

14 THE COURT: All right. Thank you, sir.

15 JUROR NO. 2: Thank you.

16 THE COURT: Why don't you go out with the marshal,
17 and then we'll bring you back in together.

18 JUROR NO. 2: Okay.

19 THE COURT: But thank you very much, sir.

20 THE MARSHAL: All rise for the presence of the jury.

21 (In the presence of the jury)

22 THE MARSHAL: Please be seated.

23 THE COURT: All right. State, your next witness?

24 MR. LALLI: Your Honor, State calls Detective Martin
25 Wildemann.

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: All right.

2 THE MARSHAL: Step up to the witness stand. Raise
3 your right hand, face the clerk, and remain standing.

4 MARTIN WILDEMAN, STATE'S WITNESS, SWORN

5 THE CLERK: Please be seated. And state and spell
6 your name for the record.

7 THE WITNESS: Marti Wildemann. W-I-L-D-E-M-A-N-N.

8 THE COURT: (Indiscernible).

9 MR. LALLI: Your Honor, before I begin this witness,
10 I intend to elicit evidence admitted pursuant to NRS 48045.
11 And so I would just ask that the Court read the requisite
12 admonishment to the jury.

13 THE COURT: And that was the instruction you
14 previously approved of?

15 MR. LALLI: Yes, sir.

16 THE COURT: All right.

17 MR. LALLI: Thank you.

18 THE COURT: Ladies and gentlemen, evidence that Brian
19 O'Keefe committed the felony offense of domestic battery or is
20 alleged to have made statements indicating an intent to harm
21 Victoria Whitmarsh, and evidence that he is alleged to have
22 indicated an ability to kill with a knife by cutting a person
23 in the sternum area was not received, and my not be considered
24 by you to prove that he is a person of bad character, or to
25 prove that he has a propensity to commit any crime.

ROUGH DRAFT TRANSCRIPT

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1 Such evidence was received, and may be considered by
2 you only for the limited purpose of determining the issue of
3 whether or not Brian O'Keefe had a motive or intent to commit
4 the crime occurred. Neither the felony conviction nor other
5 acts if believed necessarily establish proof of motive or
6 intent to commit the crime charged. You must weigh this
7 evidence in the same manner as you do all other evidence."
8 Thank you, Mr. Lalli.

9 MR. LALLI: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. LALLI:

12 Q Sir, can you please tell our jury how you're
13 employed?

14 A I'm a detective with the Las Vegas Metropolitan
15 Police Department.

16 Q Do you have a specific assignment within Metro?

17 A I am currently assigned to homicide for the last
18 eight and-a-half years.

19 Q How long total have you been with Metro?

20 A Almost 23 years.

21 Q In the -- is it almost eight years, or just over
22 eight years in homicide?

23 A Almost nine years, coming up on nine.

24 Q Okay. In the almost nine years that you've been a
25 homicide detective, can you give us a sense of the number of

ROUGH DRAFT TRANSCRIPT

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1 cases that you've investigated?

2 A I would estimate well over 200 cases.

3 Q And approximately how many of those involve stabbing?

4 A I would say roughly 25 percent of them.

5 Q Okay. Now Detective Wildemann, I want to direct your
6 attention to November, actually probably the 6th of 2008. Were
7 you assigned the investigation of a homicide on that early
8 morning?

9 A Yes, I was.

10 Q Where was the homicide located?

11 A It was at an apartment complex on El Parque. I'm not
12 exactly sure of the exact numbers.

13 Q 5001?

14 A 5001 is it, yes.

15 Q Okay. And do you travel to that location --

16 A Yes.

17 Q -- for a crime?

18 A Yes. I leave my house, and travel directly there.

19 Q Okay. Is there a person in custody when you arrive?

20 A Yes.

21 Q Who is that?

22 A Brian O'Keefe.

23 Q Do you see Mr. O'Keefe in the courtroom?

24 A Yes, I do.

25 Q Can you please point to him and identify something

ROUGH DRAFT TRANSCRIPT

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1 he's wearing today?

2 A He's wearing a green sports jacket, seated at the
3 defense table.

4 MR. LALLI: Your Honor, may the record reflect the
5 witness has identified the defendant?

6 THE COURT: Yes, it will.

7 BY MR. LALLI:

8 Q Did I ask you, or were you asked to research whether
9 the defendant had ever been convicted of an offense of domestic
10 battery?

11 A Yes.

12 Q Did you do that?

13 A Yes.

14 MR. LALLI: May I approach the witness?

15 THE COURT: Yes.

16 BY MR. LALLI:

17 Q Detective Wildemann, does that appear to be a
18 judgment of conviction?

19 A Yes, sir.

20 Q Okay. And is that marked as State's proposed Exhibit
21 number 133 for identification purposes? Down at the bottom.

22 A Oh, I'm sorry. Yes.

23 Q Okay.

24 MR. LALLI: Your Honor, move for the admission of
25 State's proposed 133.

ROUGH DRAFT TRANSCRIPT

001958

1 MS. PALM: No objection.

2 THE COURT: It will be admitted.

3 (Exhibit 133 admitted)

4 BY MR. LALLI:

5 Q Who is the person who is the subject of that
6 conviction?

7 A Brian Kerry O'Keefe.

8 Q And what is the conviction for?

9 A Battery, (indiscernible) or --

10 Q Constituting?

11 A Constituting, sorry, domestic violence, a category C
12 felony.

13 Q What was the date that the document was filed?

14 A March 9th, 2006.

15 Q And was that conviction pursuant to a jury trial?

16 A Yes.

17 Q And did you learn who the victim in that case was?

18 A Yes, I did.

19 Q Who was that?

20 A Victoria Whitmarsh.

21 Q Was that the same person you investigated as a victim
22 as least in the homicide that you're here to testify about?

23 A Yes, sir.

24 Q When you investigate a homicide case, do you do that
25 alone, or do you have a partner?

1 A I have a partner assigned with me.

2 Q Who was your partner on this day?

3 A On this day is was Detective Christopher Bunn.

4 Q And is it uncommon for detectives to divide
5 responsibilities with respect to an investigation?

6 A Not at all.

7 Q How were responsibilities divided in this case?

8 A Detective Bunn worked the actual scene itself with
9 crime scene analysts, and I was assigned to interview Mr.
10 O'Keefe.

11 Q What would the responsibilities be associated with
12 investigating a scene?

13 A He would go through, they would investigate the
14 scene. They would make sure that the proper evidence was
15 collected, photographed, preserved, and work hand in hand with
16 the crime scene analyst.

17 Q In this particular case, that was not your primary
18 responsibility, true?

19 A No, sir.

20 Q You indicated that your's was to interview the
21 suspect?

22 A Yes.

23 Q Okay. Did you in fact interview him?

24 A Yes, I did.

25 Q Where did that interview occur?

ROUGH DRAFT TRANSCRIPT

001960

1 A It took place at the homicide offices located at
2 Oakey (phonetic) and Decatur.

3 Q So at some point obviously, you left the crime scene
4 and traveled to the homicide office?

5 A Yes.

6 Q How was the defendant brought to the homicide office?

7 A He was transported by a patrolman in a black and
8 white patrol vehicle.

9 Q Okay. While you were at the scene and perhaps again
10 at the homicide office, did you notice any cut marks on the
11 defendant's hand?

12 A Yes, I did.

13 Q I'm going to show you what we've marked and admitted
14 as State's Exhibit 62. Does that appear to you to be the
15 defendant's -- believe it's his right hand?

16 A Yes.

17 Q What are we seeing there?

18 A You're seeing a cut on the meaty part of the right
19 index finger.

20 Q You mentioned that about 25 percent of the 200 or so
21 cases you've investigated were stabbing cases?

22 A Yes, sir.

23 Q Is it uncommon for people to get cut while stabbing
24 others?

25 A No, it's not uncommon.

ROUGH DRAFT TRANSCRIPT

001961

1 Q How does that happen?

2 A It occurs when -- depending on their grip of the
3 knife and how they're gripping it. But usually they encounter
4 some sort of resistance when the knife hits the body, and their
5 fingers will slide up the handle and hit the blade.

6 Q Okay. Now I want to talk to you a little more about
7 your interview of the defendant. Specifically where in the
8 homicide office was the interview conducted?

9 A We have interview rooms that are equipped for doing
10 such interviews as we did.

11 Q And you said that they're equipped?

12 A Yes.

13 Q How are they equipped?

14 A They're equipped with audio and video equipment for
15 taping, and for restraints if necessary.

16 Q Was Mr. O'Keefe in restraints?

17 A Yes.

18 Q Why?

19 A He was combative at the scene, is what I was told
20 before I arrived, and then at my briefing. And he was placed
21 in restraints, it was (sic) in restraints the whole time, and
22 left in restraints when we got to the homicide office.

23 Q And was this interview videotaped?

24 A Yes.

25 Q And does the video also contain audio?

ROUGH DRAFT TRANSCRIPT

001962

1 A Yes.

2 Q In addition to the video and the audio, do you also
3 have a separate recorder?

4 A I do, yes.

5 Q And why the redundancy?

6 A Just as a back up, just in case we have some sort of
7 an electronic failure.

8 Q Okay. And in the videotape, are you able to see the
9 defendant restrained?

10 A Yes.

11 Q Okay, what does that look like?

12 A He's seated at a table. Along the wall is a bar, in
13 which his right hand is handcuffed to that bar.

14 Q Okay. Is that uncommon?

15 A No.

16 Q All right. Now at some point, you begin your
17 recording of your statement with the defendant; is that true?

18 A Yes.

19 Q But obviously you had been in the room with him a
20 time before that your recorder actually clicked on?

21 A Yes.

22 Q Can you please describe for us his demeanor before
23 your recorder clicked on?

24 A He was extremely argumentative, sarcastic,
25 unconcerned.

ROUGH DRAFT TRANSCRIPT

001963

1 Q Okay. Were you assisting him in some regard? Or
2 were you offering items that would assist in -- specifically
3 with regard to his hand?

4 A I provided him with some medical wipes for his hand
5 to stop the blood.

6 Q Okay. Prior to the tape coming on, did you ever make
7 any threats to him?

8 A No.

9 Q Any physical or verbal threats or gestures in any
10 way?

11 A None.

12 Q Did you ever pull your gun on the defendant to force
13 him to speak to you?

14 A No.

15 Q Did you advise him of his rights pursuant to Miranda
16 vs. Arizona (phonetic)?

17 A Yes, I did.

18 Q And was that done on recording?

19 A Yes.

20 Q Did the defendant eventually acknowledge that he
21 understood those rights?

22 A Eventually, yes.

23 Q Okay. Now during the course of your interview with
24 the defendant, did it ever appear to you that he had consumed
25 alcohol at some point earlier in the evening?

ROUGH DRAFT TRANSCRIPT

001964

1 A Yes.

2 Q Can you describe what you saw for us?

3 A He smelled of alcohol. He -- his eyes were
4 bloodshot. He was comprehending what I was saying, but I could
5 smell an overall odor of alcohol about his person.

6 Q Was the alcohol that you smelled, based upon your own
7 observations, something that prevented him from understanding
8 his Miranda warnings?

9 A No.

10 Q Let me ask you this. Did you ever collect a sample
11 of his blood?

12 A No.

13 Q Why not?

14 A During the course of the interview, it became
15 apparent that he was in full comprehension of what I was asking
16 and talking about. He was able to answer questions about prior
17 events to the event in detail. He was able to recall names of
18 people who called him and he called during that day, phone
19 numbers. He was able to also limit his answers at times that
20 he needed to.

21 Q Okay. And what do you mean, at times that he needed
22 to?

23 A When it was during recollection of like I said,
24 events prior to the day, he was very detailed. But when it
25 came time to --

ROUGH DRAFT TRANSCRIPT

001965

1 MS. PALM: And Your Honor, I'm going to object to the
2 detective's opinion on what the meaning of his statements was.
3 I think the jury can watch the video and determine for
4 themselves.

5 MR. LALLI: Well he was there, Your Honor. I think
6 he can --

7 MS. PALM: That's opinion testimony.

8 MR. LALLI: It's consciousness of guilt.

9 THE COURT: I'm going to overrule the objection.

10 MR. LALLI: Okay.

11 BY MR. LALLI:

12 Q Continue with your answer, please.

13 A When we spoke specifically about the murder, the
14 defendant would not speak and answer questions. He would go
15 off on tangents not related, or step back to events that were
16 prior in the day.

17 Q Okay. You mentioned that you have a partner,
18 Detective Bunn, who was responsible for the scene.

19 A Yes, sir.

20 Q Did someone else assist you with the interview of the
21 defendant?

22 A Yes.

23 Q Who was that?

24 A Detective Kyger is another detective who is on my
25 squad who -- we have two detectives present on suspect

1 interviews, and who assisted me.

2 Q Is Detective Kyger depicted in the video?

3 A Yes, she is. It's the other female in the room.

4 Q Okay. And you just anticipated my next question.
5 She is a female detective?

6 A Yes, sir.

7 Q Can you describe if you would the treatment that she
8 received by the defendant during the course of the interview?

9 MS. PALM: I'm going to object again, Your Honor, to
10 opinion testimony. The jury can watch the video and determine
11 themselves how he's treating her.

12 BY MR. LALLI:

13 Q Well I'm not asking for your opinion. I'm asking
14 specifically, how did he address her?

15 THE COURT: Well that's a different question. So --

16 MR. LALLI: Yeah. So I'll withdraw that question.

17 THE COURT: Okay.

18 BY MR. LALLI:

19 Q I'll ask, how did he address her?

20 A As, young lady.

21 Q Would he direct her to do things?

22 A Yes, frequently.

23 Q Can you give us an example?

24 A Ask for coffee, ask her to write things down as he
25 was talking.

1 Q Okay. I take it during the course of your interview
2 with him you spoke about Victoria Whitmarsh?

3 A Yes.

4 Q Did he, meaning the defendant, refer to her by a
5 certain name?

6 A Yes, he would call her V as a short name for her.

7 Q And did you at one point during the course of your
8 interview attempt to refer to her as, V?

9 A Yes.

10 Q And was that acceptable to him?

11 A No.

12 Q What happened?

13 A He stated that he was the only one that was able to
14 call her V.

15 Q During the course of the interview, does the
16 discussion of the defendant having placed a phone call to 9-11
17 arise?

18 A Yes.

19 Q You discussed that with him?

20 A Yes.

21 Q And what did he tell you?

22 A Eventually he says that he did call 9-11.

23 Q He did call 9-11?

24 A That's what he says.

25 Q During the course of your interview?

ROUGH DRAFT TRANSCRIPT

001968

1 A Yes.

2 Q At some point during the course of the interview, did
3 the defendant say something to the effect of, I've given you
4 enough information?

5 A Yes.

6 Q Is that common?

7 A Not very, no.

8 Q Okay.

9 A Depends on the circumstances of the interview.

10 Q Okay. Is it uncommon for defendants to try to
11 control interviews?

12 A No, that is not uncommon.

13 Q Okay. Did you experience that during the course of
14 this interview.

15 A Several times. He would try to over-speak me, or use
16 his volume over mine, kind of a bully tactic.

17 Q Okay. During the course of your interview with him,
18 did the notion or the subject of Victoria Whitmarsh being
19 deceased come up?

20 A Yes.

21 Q Can you tell us about that?

22 A He asked me I believe three times during the course
23 of the interview the status of Ms. Whitmarsh.

24 Q And what happened?

25 A The first two times, I told him that we were -- that

ROUGH DRAFT TRANSCRIPT

001969

1 she was being worked on. And I believe the second time I said
2 she was in extremely bad shape. And then I told him that she
3 was deceased.

4 Q And what was his response to being informed that she
5 was deceased?

6 A A short pause, and then he asked for a cup of coffee.
7 And then he went about some rantings.

8 Q Okay.

9 MR. LALLI: Your Honor, I've marked a copy of the
10 videotape as State's proposed 134 for identification purposes.
11 I'd move for it's admission.

12 MS. PALM: No objection.

13 THE COURT: All right. 134 will be admitted, and you
14 can play it.

15 (Exhibit 134 admitted)

16 MR. LALLI: Okay.

17 (Video of defendant's statement played for jury, not
18 transcribed)

19 BY MR. LALLI:

20 Q Now Detective Wildemann, at some point during the
21 video that we just saw, kind of a black screen comes up almost
22 in the middle of what we saw?

23 A Yes.

24 Q Do you have any idea what that is? Not the black
25 screen, but what occurs during that period of time?

1 A We took a break. I think we were out of the room for
2 approximately an hour.

3 Q Okay. During the course -- particularly in the
4 second half of the video, the defendant is making noises as
5 though he's crying. Can you tell us what you saw?

6 A I saw him doing exactly that, making noises like he
7 was crying. To me it didn't look sincere, there was no tears,
8 there was no runny nose. Kind of came on and off with -- when
9 he wanted it to.

10 Q Earlier in the interview, we talked about how he had
11 indicated that he had called 9-11. And at the end of the
12 interview, he is informed by Detective Kyger that you had
13 checked, the two of -- either she or you, or you collectively
14 had checked, and there was no 9-11 call made by him?

15 A That's correct.

16 Q What did you do to ascertain whether he had ever
17 called 9-11?

18 A Detective Bunn at the scene looked at his phone at
19 the outgoing, incoming calls. There was no calls to 9-11.

20 Q His phone, meaning who's his?

21 A I'm sorry. Brian O'Keefe's phone.

22 Q Okay. We checked the Cad (phonetic) system, which is
23 a computer assisted dispatch which logs all the calls coming in
24 from your persons reporting of crimes. And there was no phone
25 number or name of Brian O'Keefe there.

ROUGH DRAFT TRANSCRIPT

001971

1 Q Were you aware of any neighbor who indicated that the
2 defendant had told them to call 9-11?

3 A No, I was not aware.

4 MR. LALLI: Your Honor, that concludes direct
5 examination.

6 THE COURT: All right. Ms. Palm?

7 MS. PALM: Thank you.

8 CROSS-EXAMINATION

9 BY MS. PALM:

10 Q Good afternoon, Detective.

11 A Good afternoon.

12 Q Your Mirandized (phonetic) interview starts about
13 1:45 in the morning? Do you agree with that?

14 A Approximately?

15 Q Okay. It's about two hours, 45 minutes or so after
16 the incident's reported, --

17 A Yes.

18 Q -- does that sound about right?

19 A Yes.

20 Q Okay. And then it continues until approximately 2:01
21 a.m., which would be the first break?

22 A Yes.

23 Q Or the break?

24 A Yes.

25 Q Okay. So about 15 minutes, the first section of it?

ROUGH DRAFT TRANSCRIPT

001972

1 A Correct.

2 Q Then you take an hour-long break?

3 A Correct.

4 Q And then it goes from 3:06 to 3:28 a.m., about you
5 know, roughly 20 minutes?

6 A Correct.

7 Q Okay. And when you come back in later on, do you
8 come back in with CSA Dan Ford?

9 A After the interviews, I do come back in with Dan
10 Ford, yes.

11 Q Okay. Do you know how much later that was?

12 A I don't know off-hand.

13 Q Okay. If I told you it was about 3:55, would that
14 sound about right to you?

15 A Yes.

16 Q Okay. If I understood your testimony, you were
17 saying before the video that Brian O'Keefe was kind of bossing
18 Detective Kyger around?

19 A Yes.

20 Q Okay. Detective Kyger is a pretty experienced
21 detective, isn't she?

22 A Yes.

23 Q Can she handle her own?

24 A Yes.

25 Q Okay. And when you say he's bossing her around, he's

ROUGH DRAFT TRANSCRIPT

001973

1 really saying, please, please write this down?

2 A He's making commands that she write things down, yes.

3 Q Okay. But she's the one sitting there with a
4 notepad?

5 A Yes.

6 Q Okay. She is the one writing things down?

7 A I had a notepad in front of me, but he keeps
8 referring to her, yes.

9 Q Okay. But at one point, he says, you wouldn't
10 understand, she does; is that correct?

11 A Yes.

12 Q Okay. And do you ever find that it's not uncommon
13 with a male interviewee that he might not want to cry in front
14 of a female detective?

15 A I don't know that I could answer that. I don't find
16 that uncommon.

17 Q Okay. Well it seemed like you were implying
18 something by the fact that Mr. O'Keefe asked for a coffee,
19 sending Detective Kyger out of the room before he broke down
20 crying when you told him Ms. Whitmarsh was dead.

21 A Yes.

22 Q Okay. Can you understand a situation where a male, a
23 middle-aged male might not be comfortable crying in front of a
24 female?

25 A He cried several times in front of her.

ROUGH DRAFT TRANSCRIPT

001974

1 Q Okay. So you don't understand that situation ever?

2 A I'm not understanding it in this situation, because
3 he did cry in front of her before, he whimpered before. And at
4 that time, he wanted a cup of coffee.

5 Q Okay. And that would be your interpretation of it?

6 A Yes.

7 Q Now if I understand your testimony on the, it's no
8 uncommon to have wounds on a hand because a hand slides on a
9 blade when it's wet?

10 A Could be when it's wet. It could be --

11 Q Or --

12 A -- because you encounter resistance. There's several
13 reasons why that could happen.

14 Q In this case, are you aware that the knife did not
15 hit any bones?

16 A I am aware of that, yes.

17 Q Okay. And is there any evidence that it would have
18 been wet before Ms. Whitmarsh was cut?

19 A I have no idea of the status of the knife, or the
20 status of his hands as sweating. I have no idea.

21 Q Do you have nay forensic training? Are you trained
22 in forensic sciences?

23 A I've attended classes.

24 Q Okay, how many?

25 A I don't know. It's been a long career, several.

ROUGH DRAFT TRANSCRIPT

001975

1 Q Okay. Well can you identify any forensic classes
2 you've attended?

3 A Crime scene preservation. I'd have to pull up my
4 resume.

5 Q But right now you can't recall any specific class?

6 A Crime scene preservation.

7 Q When was that class?

8 A Oh, years ago. I don't know.

9 Q Okay. And you're not a medical doctor?

10 A No.

11 Q When you were in the room directing Mr. Ford to
12 document my client's hand injury?

13 A Yes.

14 Q Okay. And you only pointed out to him a injury to
15 the finger at the time; is that correct?

16 A Correct.

17 Q Okay. Then how is it that you are able to look at
18 the injuries and determine what they mean if you didn't even
19 see the thumb injury at the time?

20 A I saw the finger injury, and that's the injury that I
21 was interpreting.

22 Q Okay. So you didn't personally examine the thumb
23 injury?

24 A I didn't.

25 Q Okay. And Mr. O'Keefe told you he's right-handed?

1 A I don't recall.

2 Q And at the time of the interview, you were a homicide
3 detective for about seven years?

4 A Yes.

5 Q Okay. And when you got Mr. O'Keefe's telephone
6 records, did they show that he had made roughly 30 calls the
7 day before the incident?

8 A I didn't look at his telephone records.

9 Q Okay. You didn't subpoena them?

10 A No.

11 Q Was that Detective Bunn?

12 A Detective Bunn looked at his phone. And I don't know
13 if he -- I don't believe that he subpoenaed the records.

14 Q Okay. If I show you some phone records, would you
15 recognize whether they came from your detective's file?

16 A Yes. I -- well, I don't know. If they're marked.

17 MS. PALM: May I approach the witness?

18 THE COURT: Yes.

19 MS. PALM: I'm sorry (indiscernible).

20 BY MS. PALM:

21 Q Does that look familiar to you?

22 A It doesn't look familiar to me, no. But I do
23 recognize it as a call detail record.

24 Q Okay.

25 A If that's what you're asking.

1 Q And does it look like calls dialed out from a certain
2 number, and in?

3 A Yes.

4 Q Okay, and what is the number that's in common?

5 A 702-6958.

6 Q Okay. And --

7 A I'm not sure how to interpret these records here
8 though, but -- because (indiscernible) seem to have a standard
9 number, destination number, number dialed. So I'm not sure how
10 to interpret that.

11 Q Okay. Can you tell the date of the phone calls?

12 A 11-5 through 11-5.

13 Q Okay. And can you tell about how many calls there
14 are there?

15 A There's several. There's a page-full.

16 Q Okay, thank you. Did you happen to follow up on the
17 information about the Paris Hotel?

18 A No.

19 Q Okay. So you never attempted to obtain a video from
20 Paris (phonetic)?

21 A No.

22 Q Now do you recall testifying previously in this case
23 that you had never heard of a homicide investigation where
24 blood or breath alcohol tests were taken from a suspect?

25 A Yes, I do recall that.

ROUGH DRAFT TRANSCRIPT

001978

1 Q Okay. And are you aware of any cases at this time?

2 A There is a single case that I'm aware of, yes.

3 Q Okay. And it was one that occurred before Mr.

4 O'Keefe's case?

5 MR. LALLI: I'm going to object, Your Honor, as to
6 relevance.

7 THE COURT: Counsel approach, please.

8 (Off-record bench conference)

9 THE COURT: I'm going to sustain the objection by the
10 State.

11 (Pause in proceedings)

12 BY MS. PALM:

13 Q And Detective, you also testified previously in this
14 case that there's no protocol with the Metropolitan Police
15 Department for taking blood or breath tests from a suspect?

16 A Protocol is different than policy. So I don't know
17 what you're asking.

18 Q Well I'm asking if you testified that there was no
19 protocol.

20 A I believe I testified there was no protocol.

21 Q Okay. So are you familiar with Metro -- that Las
22 Vegas Metropolitan Department manual, section 52221?

23 A Yes, I am.

24 Q Okay. And are familiar with the document to the
25 extent that it allows non-consensual searches in a felony case

1 that is being investigated where there is probable cause to
2 believe that a felony has been committed?

3 A I'm familiar that that's a part of it, yes.

4 Q Okay. And are you familiar that it gives example
5 where a homicide suspect is arrested on probable cause
6 immediately after their crime, appears slightly intoxicated; a
7 blood sample can be taken to show the degree of intoxication,
8 which may become an important issue for the State or the
9 defense?

10 MR. LALLI: Is this a question? I object to the form
11 of the question, Your Honor.

12 THE COURT: Is there?

13 MS. PALM: Well Your Honor --

14 THE COURT: What's the question?

15 MS. PALM: -- I've marked this is defendant's
16 proposed Exhibit L, and I would move to admit it. Do you want
17 to see it?

18 MR. LALLI: I've seen it.

19 MS. PALM: It's a certified record from the Las Vegas
20 Metropolitan Police Department.

21 MR. LALLI: No objection.

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

23 (Exhibit L admitted)

24 MS. PALM: Okay.

25 THE COURT: I'm sorry, was that L?

1 MS. PALM: L.

2 THE COURT: Okay.

3 MS. PALM: Yes.

4 BY MS. PALM:

5 Q Are you familiar with that policy?

6 A I'm familiar -- you've left out some words, but I am
7 familiar with it.

8 Q Okay. What have I left out?

9 A You left out I believe a "can," you've left out an
10 "if," and a couple other words that I can't recall.

11 Q Okay. Would you like to show me where I left it out?

12 A Sure.

13 MS. PALM: May I approach?

14 THE COURT: Yes.

15 THE WITNESS: "Can," right there. "Can." And I
16 thought there was an "if." I don't see an "if," but two
17 "can's."

18 BY MS. PALM:

19 Q Okay. So this section actually tells you that when
20 you're doing an investigation, you can collect a blood sample,
21 and that it may be an important issue for the State or the
22 defense?

23 A Yes. It says, "I can." Yes.

24 Q Okay. And that policy was in existence at the time
25 of my clients interview with you?

1 A I believe so.

2 Q And so when I -- if I'm understanding you right
3 today, you're saying that you testified there was no protocol
4 earlier because you considered that a policy?

5 A Correct.

6 Q Okay. So that's not a protocol, it's a policy?

7 A Correct.

8 Q And did the district attorney tell you I had
9 subpoenaed that document?

10 A I believe so, yes.

11 Q There's a nurse maintained at the jail 24 hours a day
12 to collect blood?

13 A Yes.

14 Q So you could have done it in Mr. O'Keefe's case?

15 A I could have, yes.

16 Q Okay. And you never offered Mr. O'Keefe the choice?

17 A No.

18 Q And Mr. O'Keefe smelled heavily of alcohol?

19 A Yes.

20 Q He was slurring his speech?

21 A Slightly.

22 Q It was pretty obvious he had been drinking?

23 A I could tell that he had been drinking.

24 Q You testified before it was obvious, would you
25 dispute that now?

ROUGH DRAFT TRANSCRIPT

001982

1 A No.

2 Q Okay. And you're aware during your investigation
3 there was a possibility that an arresting officer stepped on
4 the bed at the scene?

5 A I was aware that -- in our initial briefing, that a
6 struggle had occurred in that room. I thought that that could
7 have been a possibility, but I learned throughout the
8 investigation that that hadn't happened.

9 Q Okay. But early on you were aware it was a
10 possibility?

11 A At the initial briefing, at the scene shortly after
12 the crime.

13 Q Okay.

14 MS. PALM: Court's indulgence.

15 BY MS. PALM:

16 Q Do you recall that early on in this case, I had
17 asked for the use of force report prepared by Officer Ballejos?

18 A Yes.

19 Q Okay. Do you recall the existence of the document
20 being denied?

21 A I recall Detective Bunn had testified regarding that,
22 yes.

23 Q Okay. And said basically there is no such document?

24 A At the time, we didn't know about any such document.

25 Q Okay. But it was -- it's existence was denied at one

1 point?

2 A Yes.

3 Q Okay. And then ultimately, it was turned over?

4 A Not by ourselves, we're allowed no access to those
5 documents.

6 Q Okay.

7 A So it was turned over, not by us.

8 Q Okay. Do you know that was pursuant to court order?

9 A I believe it was, but I'm not sure on that.

10 Q Okay. Would you agree that it's the only written
11 documentation in this entire case that shows Mr. O'Keefe was
12 extremely intoxicated?

13 MR. LALLI: Objection, assumes facts not in evidence,
14 and it misstates the testimony. This detective has already
15 testified numerous times that he knew he was intoxicated, and
16 he preserved it on the video.

17 MS. PALM: And Your Honor, my question was extremely
18 intoxicated. And this detective is familiar with the use of
19 force report, because he's testified about it before.

20 THE COURT: Well is your question is if the word
21 "extremely" is in the report? Or if this officer has prepared
22 a report with the word "extremely" in it?

23 MS. PALM: My question was, is he aware that that's
24 the only document in the entire case that shows that Mr.
25 O'Keefe was extremely intoxicated.

1 MR. LALLI: I object, that misstates the evidence.

2 THE COURT: Counsel approach, please.

3 (Off-record bench conference)

4 THE COURT: I'm going to overrule the objection.

5 MS. PALM: Thank you.

6 BY MS. PALM:

7 Q Detective, are you aware that the report, the use of
8 force report is the only document that states that Mr. O'Keefe
9 is extremely intoxicated?

10 A I've never seen that document.

11 Q You haven't seen it yourself?

12 A No.

13 Q All right. Is there another document that states
14 that Mr. O'Keefe is extremely intoxicated?

15 A I don't know of one.

16 Q So none of the police reports state that issue?

17 A No.

18 Q State that he's extremely intoxicated?

19 A Not one that I've seen.

20 Q Okay. In fact, do any of them even say he's
21 intoxicated?

22 A There's several reports. I'm not sure on that.

23 Q You're not aware of one that does though, are you?

24 A No.

25 Q And it's not mentioned in your officer's report or

1 arrest report, is it?

2 A I don't believe so, no.

3 Q Are you familiar with coroner investigator Staling's
4 (phonetic) report?

5 A I have not looked at that in years.

6 Q Okay. Is it part of your case file in the homicide
7 files?

8 A I believe so, yes.

9 Q Okay. Did you -- do you recall his notation that Ms.
10 Whitmarsh --

11 MR. LALLI: I'm going to object as to hearsay.

12 MS. PALM: Well --

13 THE COURT: Sustained.

14 MS. PALM: It's not offered for the truth of the
15 matter. It's offered for the thoroughness of the
16 investigation, Your Honor.

17 MR. LALLI: It's hearsay.

18 THE COURT: Counsel, approach again.

19 (Off-record bench conference)

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

21 BY MS. PALM:

22 Q Did you personally look into whether Ms. Whitmarsh
23 was taking her meds or not?

24 A I didn't personally look into that, no.

25 Q Okay. Did you recall any information that made that

1 relevant to you?

2 A I don't know of any information at this point that
3 made that relevant at the time.

4 Q Okay. Would you consider that a relevant issue in a
5 homicide investigation?

6 A If she was taking her meds?

7 Q Yes.

8 A It could be.

9 Q Okay. Did you look into Ms. Whitmarsh's mental
10 health history?

11 A I did not personally, no.

12 Q Okay. Mr. O'Keefe pointed you towards Monte Vista
13 (phonetic) though, did he not?

14 A Yes.

15 Q Okay. Did you just not consider that relevant
16 information?

17 A I believe that detective Bunn documented all the
18 meds, and everything that went on with that. And I'm not sure
19 if he pulled up information regarding Monte Vista.

20 Q Okay. In determining whether to proceed with the
21 charges or not, then you did not know Ms. Whitmarsh's
22 psychiatric history?

23 A No.

24 Q Okay. When you're doing the video of the interview,
25 there's a camera in the room?

1 A Yes.

2 Q Is it an obvious camera?

3 A No.

4 Q All right. So going back to the -- where you say my
5 client was ordering Detective Kyger around, and I guess you
6 didn't like it that he was calling her young lady either?

7 A That's how he addressed her.

8 Q Okay. He also addressed her as ma'am at one point;
9 is that correct?

10 A I believe so.

11 Q Okay. And he also apologized and said, I'm sorry,
12 Detective, when he said young lady one time; is that correct?

13 A Yes.

14 Q Okay. And so the ordering her around was saying,
15 please, please, write this down, write this down, please write
16 this down?

17 A Pretty sure there wasn't a "please" every time.

18 Q Okay. Would you dispute if there's only one time he
19 didn't say, "please?"

20 A I have no idea, we would have to go through the thing
21 again. I'd gladly count them with you.

22 Q Would you like to?

23 A We could.

24 MS. PALM: May I approach the witness?

25 THE COURT: Yes.

ROUGH DRAFT TRANSCRIPT

001988

1 BY MS. PALM:

2 Q Do you remember where they were?

3 A Where every one is that he asked to --

4 Q Where he was asking to do something?

5 A Oh, no I don't.

6 Q It's relatively short.

7 MR. LALLI: I'm sorry. I can't hear the question,
8 Your Honor.

9 MS. PALM: I asked him if he recalled which pages he
10 asked her to do something (indiscernible).

11 THE WITNESS: Please can I start over?

12 MS. PALM: Sure. (Indiscernible).

13 THE COURT: Ms. Palm, is there a question? Because
14 it's not being picked up by the microphone.

15 MS. PALM: No, it was just --

16 MR. LALLI: Your Honor, I'm not sure what we're doing
17 here. But unless there's an --

18 MS. PALM: Do you want to come and join us? I'm just
19 asking him to look at --

20 MR. LALLI: No.

21 THE COURT: No, I mean what --

22 MR. LALLI: I just would respectfully ask that
23 counsel be directed to ask a question.

24 MS. PALM: Well, he's looking through the statement
25 at this point.

1 THE COURT: Okay. So you've asked the -- asked
2 Detective Wildemann to look for what specifically?

3 MS. PALM: Places where Mr. O'Keefe orders Detective
4 Kyger around without saying please.

5 THE COURT: Okay. All right.

6 THE WITNESS: If I miss one, can you let me know?

7 MS. PALM: I will.

8 MR. LALLI: Your Honor, again, I'm going to interpose
9 an objection. I think this is a waste of the Court's time.
10 The video is in evidence. The jury can clearly see if he says
11 please or not. Counsel certainly has the right to argue this
12 in summation. I'm just not sure this is the best use of our
13 time, so I would object.

14 MS. PALM: Well --

15 THE COURT: Ms. Palm?

16 MS. PALM: -- I'm sorry to take up the Court's time.
17 But this is Mr. O'Keefe's trial, and it's very important they
18 characterized him as ordering somebody around. And I have
19 every right to say, where did he order her around, can you show
20 me where he ordered her around.

21 THE COURT: Okay. Why don't we take a -- just a
22 quick break for the officer to review the report.

23 Ladies and gentlemen, during this recess, it is your
24 duty not to converse among yourselves, or with anyone else on
25 any subject connected with the trial. Or to read, watch or

1 listen to any report of or commentary on the case by any person
2 connected with the trial, or by any medium of information,
3 including without limitation, newspaper, television, radio, or
4 the internet. You are not to form or express an opinion on any
5 subject connected with this case until this matter is submitted
6 to you.

7 We'll see you in approximately five or ten minutes.
8 The marshal will escort you out.

9 (Outside the presence of the jury)

10 THE COURT: All right, we're outside the presence of
11 the jury panel. Detective, here's some post-it's if you --

12 THE WITNESS: Thank you.

13 THE COURT: -- (indiscernible).

14 (Pause in proceedings)

15 (Court recessed at 4:45 p.m. until 4:58 p.m.)

16 (In the presence of the jury)

17 THE MARSHAL: Please be seated.

18 THE COURT: Detective Wildemann, do you understand
19 you're still under oath?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. Go ahead, Ms. Palm.

22 MS. PALM: Thank you.

23 BY MS. PALM:

24 Q Detective Wildemann, did you have a chance to look
25 through the transcript of Mr. O'Keefe's statement?

1 A Yes, I did.

2 Q Okay. And you flagged four areas that you thought
3 were statements of Mr. O'Keefe directed to Detective Kyger that
4 were commands?

5 A Yes.

6 Q And the first one, would you agree was, "Why didn't
7 you call 9-11?" And he response (sic), "Check the phone."

8 A Yes.

9 Q Okay. And the second one is when you say, "Where
10 were the stab wounds? No, look at me." And he says, "Monte
11 Vista. Write this down, Monte Vista." And you say, "No, she's
12 not writing it down." That's the second one?

13 A Yes.

14 Q Okay.

15 THE COURT: Which page is that so the State can
16 follow along?

17 MS. PALM: I'm sorry, State. It is --

18 MR. LALLI: I've got it, Your Honor. Thank you.

19 THE COURT: Okay.

20 MS. PALM: Page 20.

21 BY MS. PALM:

22 Q The third one is when you tell him that she's passed
23 away, and he says, "Could I have some coffee?"

24 A Yes.

25 Q And then the final one is, you say, "And you said,

1 yes, you didn't." And he says, "Listen to me?" Do you recall
2 flagging that? I think that's --

3 A I don't know. I don't know if that's --

4 MS. PALM: May I approach?

5 THE WITNESS: -- my flag or your flag.

6 MS. PALM: May I approach?

7 THE COURT: Yes.

8 MS. PALM: Thank you.

9 BY MS. PALM:

10 Q I thought that you had put this here (indiscernible).
11 This is not you?

12 A No, that's not me. I didn't (indiscernible) --

13 Q Oh, okay.

14 A -- that color.

15 Q Okay. So there's basically three of them, and those
16 are the three?

17 A I thought there were four yellow ones on there.

18 Q Did I miss something? Oh, you know what? Well,
19 you're correct. You did have two yellows ones on the same
20 page, so -- on the page (indiscernible) the Monte Vista. You
21 said, "You were with her, where were the stab wounds?" And he
22 said, "Do me a favor." That was one?

23 A Okay. Yes.

24 Q Do you recall that?

25 A Yes.

1 Q Okay. So those are the four commands. And was Mr.
2 O'Keefe talking to both of you, or just Kyger during those?

3 A I believe he's directed at Kyger.

4 Q Okay. Did you have it in your mind when you said,
5 "Don't order her around," that you were trying to document
6 somehow that my client was being domineering?

7 A Not at all. I was trying to control the interview.

8 Q Okay. But he was saying the same things to you, and
9 you didn't tell him, don't order me around.

10 A He didn't say it so much to me. Everything that he
11 wanted written, or requested to drink or whatever was directed
12 at Detective Kyger.

13 Q Okay.

14 A I was the one asking the questions at the time, and
15 that was him deflecting to her. And that's why I said, don't
16 order her around. I was trying to control the interview, and
17 get him to answer my questions.

18 Q Okay. But he had told you, you don't understand
19 also, right?

20 A Way back, yes.

21 Q Okay. Have you had any classes on how alcohol --
22 excuse me, affects a person's emotions?

23 A I haven't had a formal class, no.

24 Q Okay. So you don't know whether it affects a
25 person's ability to tear up?

1 A No, I never heard that.

2 Q Are you familiar with the documents that were
3 obtained during the search warrant by doctor -- or by Officer
4 Shoemaker?

5 A I'm not familiar with all the papers that were
6 recovered, no.

7 Q Okay. Well --

8 A I wasn't there for that.

9 Q Are all those -- are all the -- is the paperwork in
10 your detective's file?

11 A I would -- yes, I would believe so.

12 Q Are you familiar with your detective's file?

13 A Yes.

14 Q Okay. I'm going to show you what's been marked as
15 defendant's ZZ.

16 MS. PALM: May I approach?

17 THE COURT: Yes.

18 BY MS. PALM:

19 Q Do you recognize what these items are?

20 A I'm sorry. This is a contact information thing for
21 incase of emergency. And this looks like a sales receipt from
22 A1 Vacuum and Sewing.

23 Q Okay. And those -- do you recognize those from your
24 detective's file?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

001995

1 Q Okay. And does the vacuum receipt indicate a time on
2 it of a sale?

3 A 5:46 p.m.

4 Q Thank you.

5 MS. PALM: Your Honor, I'm going to move to admit
6 defense Exhibit ZZ.

7 MR. LALLI: Can I just see it one more time, please?

8 BY MS. PALM:

9 Q And Detective --

10 THE COURT: Hang on. Any objection by the State?

11 MR. LALLI: No.

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

13 (Exhibit ZZ admitted)

14 MR. LALLI: There's been -- Your Honor, I would just
15 note there's been now no foundation for it, and it's hearsay.
16 But I don't oppose it being admitted.

17 THE COURT: All right.

18 BY MS. PALM:

19 Q Detective, is it your understanding that those
20 documents came from the search of my client's apartment?

21 A I can't be positive on that. I haven't looked at
22 that section of the file in quite some time. But that's -- I
23 believe it to be, yes.

24 Q Okay. Thank you. And did you check the DMV
25 registration on the Hyundai that was allegedly driven by Ms.

1 Whitmarsh and my client?

2 A I believe that I did.

3 Q Okay. Is a registration part of your detective's
4 file in this case?

5 A I'm not sure. I'd have to look through. I don't
6 recall seeing it in quite some time.

7 Q Do you have it with you?

8 A I have it right here.

9 Q If I show you the document, could you check if it's
10 in there?

11 A Sure.

12 MS. PALM: Do you want to look at it before I show it
13 to him?

14 MR. LALLI: No, I've seen it.

15 MS. PALM: May I approach?

16 THE COURT: Yes.

17 THE WITNESS: Okay.

18 BY MS. PALM:

19 Q Do you recognize that?

20 A Yes.

21 Q Does it indicate when the car was registered?

22 A Oh, this is different type of registration from
23 (indiscernible). One second. That's when it was ran. No. Is
24 that it? Okay. It has an effective date of the plates, and
25 plates listed. And it shows an effective date of 3-8-2008.

1 Q Okay. And who was it registered to?

2 A Cheryl Morris and Brian O'Keefe.

3 Q Thank you. Detective, do you know how the police
4 responding to the scene learned of Ms. Whitmarsh's hepatitis C?

5 A No, I don't.

6 Q Were you aware that they had learned of it?

7 A I believe it came out at our briefing, so I would
8 think that they knew about it. But I'm not sure how.

9 Q Okay. Did you write the officer's report in this
10 case?

11 A No.

12 Q Do you contribute to it?

13 A Yes.

14 Q Do you review it?

15 A Yes.

16 Q Okay. Do you recall that it was documented in the
17 report that --

18 MR. LALLI: Your Honor, I'm sorry. I object to --
19 we're reading reports. I mean, we've got information coming
20 off of a DMV record. I would object to all of this hearsay
21 without any foundation coming in. I think that the --
22 respectfully, counsel can just ask the question, did you learn
23 this, did you learn that, without eliciting the hearsay. It's
24 not -- we're not making a clean record.

25 THE COURT: Because if he didn't -- I mean, well the

1 report is hearsay document, isn't it?

2 MS. PALM: Well he contributes to it, and he reviews
3 it. And it's his and Bunn's collaborative effort as far as my
4 understanding.

5 THE COURT: Well if someone tells someone else
6 something, they put it in the report, it's still hearsay. So
7 I'm going to sustain the objection. You can ask some
8 specifics, but.

9 MS. PALM: Okay.

10 BY MS. PALM:

11 Q Detective, did you have information that Mr.
12 O'Keefe, when officers responding, demanded that officers enter
13 to help her?

14 A Did I have information about that?

15 Q Yes.

16 A I believe so.

17 Q Okay. And did you have information that he complied
18 with officers after the second tase?

19 A Yes.

20 Q And did you have information that the noises didn't
21 begin until 10:00 --

22 A I believe so.

23 Q -- at the apartment?

24 A Yes.

25 Q And did you have information at some point that Mr.

1 O'Keefe was attempting to lift Ms. Whitmarsh around the waist?

2 A I'm sorry, I missed part of that. That he was
3 attempting to lift her?

4 Q From the waist.

5 A From the waist. I believe so, yes.

6 MR. LALLI: Your Honor, again, this is all -- this is
7 all hearsay. I would object. We've had testimony about all of
8 this.

9 THE COURT: I'm waiting for the objection. I'm going
10 to sustain the objection.

11 MS. PALM: I'm just about done. Court's indulgence.
12 Okay. No more questions. Thank you, Detective.

13 THE WITNESS: You're welcome.

14 THE COURT: Any redirect?

15 MR. LALLI: Yes.

16 REDIRECT EXAMINATION

17 BY MR. LALLI:

18 Q Detective, Ms. Palm asked you whether you obtained
19 video from the Paris?

20 A Yes.

21 Q And you indicated that you didn't?

22 A No.

23 Q Why not?

24 A I didn't think it was relevant or important to obtain
25 video footage of them walking through the Paris.

ROUGH DRAFT TRANSCRIPT

002000

1 Q Why?

2 A It wasn't really part of the crime that I was
3 investigating, and I believed what he said.

4 Q Okay. Would the fact that the defendant went to the
5 Paris make it any less or more likely that he murdered Victoria
6 Whitmarsh?

7 A No.

8 Q During the interview, at about the time you're
9 advising the defendant of his Miranda rights, do you make a
10 comment about his intoxication?

11 A I believe I asked him, have you been drinking.

12 Q Did you give him the opportunity -- did you give him
13 the opportunity to say something about that while on the
14 recording?

15 A Yes.

16 Q Were you trying to hide the fact that he had been
17 drinking that day?

18 A No.

19 Q Were you trying to suppress the fact that you
20 believed he had been drinking that day?

21 A No.

22 Q Did you try to make it so that defense counsel could
23 not learn that in any way?

24 A No.

25 Q Ms. Palm asked you whether you checked into

1 Victoria's Medical history before you decided to proceed with
2 charges. Do you remember that question?

3 A Yes.

4 Q Tell us why you decided to proceed with charges
5 against Mr. O'Keefe.

6 A I believed that there was probable cause to arrest
7 him for the murder of Victoria Whitmarsh at the end of the --
8 conclusion of the interview.

9 Q Okay.

10 MR. LALLI: Your Honor, that concludes redirect.

11 THE COURT: All right. Any recross?

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

13 THE COURT: All right. Any questions from any of the
14 jurors? No questions. Thank you, Detective. You are excused.

15 THE WITNESS: Thank you.

16 THE COURT: Next witness for the State?

17 MR. LALLI: Your Honor, at this point the State and
18 the defense have entered into a stipulation with respect to
19 certain records with respect to Ms. Whitmarsh. And I'd ask
20 that that stipulation be placed on the record.

21 THE COURT: You are stipulating, Ms. Palm?

22 MS. PALM: We are, Your Honor.

23 THE COURT: All right.

24 MS. PALM: Thank you.

25 THE COURT: Ladies and gentlemen, the parties have

1 prepared a stipulation. I'm going to read this into the
2 record. An instruction will tell you that if the parties
3 stipulate to a particular fact, you are to accept that fact as
4 true.

5 "Records from October 2001, admission to Monte Vista
6 Hospital show that Victoria Whitmarsh was admitted," in quotes,
7 "because she had tried to cut her wrist in an attempt to hurt
8 herself," close quote. "When Victoria Whitmarsh was brought to
9 Sunrise Hospital prior to transfer to Monte Vista, documents
10 indicate," in quotes, "patient comes in by EMS with bilateral
11 wrist cuts.

12 "Patient states, had fight with husband, got
13 depressed, and tried to cut wrist with a knife. Patient
14 stated, was trying to kill myself," close quote. It's from the
15 triage nursing assessment sheet. "She was diagnosed with
16 laceration on both wrists. Psychiatric evaluation by Dr.
17 Dakay," D-A-K-A-Y, "shows, the patient was brought in after she
18 tried to cut her wrist in an attempted suicide. This has been
19 her fourth suicide attempt, and I was just recently made aware
20 of this."

21 "Records from September 2006, admission to Monte
22 Vista Hospital show that Victoria Whitmarsh has self-inflicted
23 wrist laceration. Admission certification by Dr. Slagel
24 (phonetic) reports, Ms. Whitmarsh had made at least three
25 suicide attempts. Recent attempt could have been lethal."

ROUGH DRAFT TRANSCRIPT

002003

1 This is the emergency admission form.

2 "Discharge summary by Dr." -- I'll spell this, A-D-
3 E-K-U-N-I, (indiscernible), A-J-A-Y-A, MD, states, "She had to
4 be intubated after she overdosed with morphine after an
5 argument with her estranged husband. She has been self-
6 mutilating for the past 15 years, and stated that she cuts
7 herself when she is angry. And the last time she cut her left
8 wrist was with a pair of scissors on September 22nd, 2008. She
9 complained" --

10 MS. PALM: Your Honor, I'm sorry. It was 2006.

11 THE COURT: 2006. That's correct, Ms. Palm. Thank
12 you. "She complained of irritability, mood swings, difficulty
13 sleeping at night because of racing thoughts, poor appetite,
14 anxiety, low energy, and difficulty sleeping, and difficulty
15 concentrating. She also reports episodic euphoria, anger
16 outbursts, and decreased need for sleep."

17 Discharge summary. "Victoria Whitmarsh reported that
18 in October 2001, admission to Monte Vista Hospital occurred
19 because she was angry, screaming, and she went berserk after an
20 argument with her husband, and overdosed on pills and cut her
21 wrist." "Doctor" -- do you know how to pronounce that, Ms.
22 Palm? Or anyone know how to pronounce that? It's the same Dr.
23 --

24 MS. PALM: I do not, Your Honor.

25 THE COURT: -- (indiscernible), MD, "evaluated

1 Whitmarsh, and noted that she has a long history of poor anger
2 management, and very impulsive behavior. That's from a
3 discharge summary.

4 "Monte Vista Hospital assessment and referral
5 screening, dated October 29, 2006, indicates, chief complaint
6 in patients own words, why are you here today? Answer, I've
7 been depressed. I cut myself when I am depressed. I also got
8 angry with my husband. That is why I took the pills. Under
9 heading of precipitating events which occurred in previous 72
10 hours which prompted assessment."

11 This is in quotes, "Patient also admits to a history
12 of self-mutilation. Most recently, she stabbed herself on her
13 hands, October 22nd, 2006, because I am not happy with myself.
14 Patient admits poor impulse control as evidenced by, cuts self
15 when angry." And that's the extent of the stipulation.

16 MS. PALM: Thank you.

17 THE COURT: And the State has rested, correct?

18 MR. LALLI: Your Honor, we now rest.

19 THE COURT: Okay. And Ms. Palm, I believe you have a
20 witness this afternoon?

21 MS. PALM: I do have one witness.

22 THE COURT: All right.

23 MS. PALM: I will make sure she's out there, Your
24 Honor.

25 THE COURT: Okay.

ROUGH DRAFT TRANSCRIPT

002005

1 MS. PALM: Your Honor, the defense calls Dorothy
2 Robe.

3 THE COURT: Robe? All right.

4 THE MARSHAL: Step up here to the witness stand.
5 Remain standing, raise your right hand, and face the clerk.

6 THE WITNESS: Okay. Who's the clerk?

7 THE MARSHAL: Right there.

8 THE WITNESS: Oh, okay.

9 DOROTHY ROBE, DEFENSE'S WITNESS, SWORN

10 THE CLERK: Okay, please sit down.

11 THE WITNESS: Okay.

12 THE CLERK: And pull our chair up to the microphone.
13 And state and spell your name for the record.

14 THE WITNESS: This is a microphone?

15 THE COURT: Yes.

16 THE CLERK: Yes, ma'am.

17 THE WITNESS: My name is Dorothy Robe. And it's
18 spelled -- excuse me. D-O-R-O-T-H-Y. And the last name is
19 Robe, R-O-B-E.

20 THE COURT: Go ahead, counsel.

21 MS. PALM: Thank you.

22 DIRECT EXAMINATION

23 BY MS. PALM:

24 Q Good afternoon, Ms. Robe. Are you a little bit
25 nervous?

1 A Oh, I feel like I'm having a total attack.

2 Q Do you have a stress problem with testifying?

3 A I do, but I'll try to get through it. Okay?

4 Q Okay. What's your age?

5 A 70.

6 Q And where do you live?

7 A 424 (indiscernible) Lane.

8 Q Is that in Clark County, Nevada?

9 A Yes, it's in Las Vegas.

10 Q How long have you lived there?

11 A Nine years.

12 Q How long have you lived in Clark County?

13 A 42 years.

14 Q Okay. And what do you do for a living, if anything?

15 A I'm a retired school teacher.

16 Q Okay. Was -- how long were you a school teacher?

17 A 30 years.

18 Q Is that here in Clark County also?

19 A 25 years in Clark County, and five in Montana.

20 Q Okay. And do you know Brian O'Keefe?

21 A Yes, I do.

22 Q Is he the gentleman sitting at the table to my right?

23 A I can't see him very well.

24 MS. PALM: Can you stand up, Brian?

25 THE WITNESS: Is that Brian?

ROUGH DRAFT TRANSCRIPT

002007

1 BY MS. PALM:

2 Q Can you see him okay from there?

3 A Yeah, he looks a little different.

4 Q Okay. That is Brian.

5 A Okay.

6 MS. PALM: Would the Court reflect the
7 identification, Your Honor?

8 THE COURT: Yes, it will.

9 MS. PALM: For the record.

10 BY MS. PALM:

11 Q And do you also know a woman named Cheryl Morris?

12 A Yes, I do.

13 Q Okay. Was Cheryl Morris living with you at some
14 point?

15 A Yes. She lived with me -- I don't know, it seemed
16 like years. But maybe it was about a year, I don't know.

17 Q Okay, was that in 2008?

18 A I think so.

19 Q Okay. Was there a time that she lived with you with
20 Brian O'Keefe?

21 A Yes, for about three months.

22 Q Okay. And how often did you see them?

23 A Every day.

24 Q Okay.

25 MR. LALLI: Can we approach, Your Honor?

ROUGH DRAFT TRANSCRIPT

002008

1 THE COURT: All right.

2 (Off-record bench conference)

3 MS. PALM: Okay.

4 BY MS. PALM:

5 Q So when -- for the three months or so that you lived
6 with Brian and Cheryl, you saw them every day?

7 A Oh, yes.

8 Q Okay. And did you ever hear Brian say that he wanted
9 to kill Victoria?

10 A Never.

11 Q Okay. Did you ever see Brian demonstrate how he
12 would kill somebody with knives?

13 A No. Not at all.

14 Q Okay. Did you want -- did you ever tell Brian you
15 wanted him out of the house?

16 A No.

17 Q Did you ever tell Cheryl you wanted Brian out of the
18 house?

19 A No, I didn't.

20 Q When Brian actually moved out of the house and got
21 the apartment, did he do that on his own?

22 A Yes.

23 Q And then did Cheryl follow him to the apartment?

24 A Well she -- they went together, as far as I can
25 remember.

ROUGH DRAFT TRANSCRIPT

002009

1 Q Okay. Did you ever come to know Victoria Whitmarsh?

2 A I met her twice.

3 Q Okay. What were the circumstances of that?

4 A Well one day -- I think it was twice. They came
5 over, and Brian washed clothes all day. And I visited with
6 Victoria. And I can't remember the other time. But I think it
7 was twice that they were over there.

8 Q Okay. From the time that you spent with her, would
9 you consider her to be a meek person?

10 A Not at all.

11 Q Did you have -- were you able to form an opinion
12 whether she was a submissive person?

13 A Definitely not.

14 Q Did you ever see Brian threaten her when she was with
15 him.

16 A No, he treated her --

17 Q No --

18 A -- great.

19 Q Okay. Are you still friends with Brian today?

20 A Yes.

21 Q Thank you, Dorothy.

22 MS. PALM: No more questions.

23 THE WITNESS: That's all?

24 THE COURT: Oh, just --

25 MS. PALM: That's all for me.

1 THE COURT: -- hang on, ma'am.

2 THE WITNESS: Oh.

3 THE COURT: The district attorney may have -- the
4 deputy district attorney --

5 THE WITNESS: Okay.

6 THE COURT: -- may have some questions for you.

7 THE WITNESS: Okay.

8 CROSS-EXAMINATION

9 BY MR. LALLI:

10 Q Ms. Robe, just one question. Were you aware that Mr.
11 O'Keefe actually was convicted and sent to prison for battering
12 Victoria? Did you know that? And just --

13 A Yes.

14 Q -- yes or no. Okay. Does that --

15 A Yes.

16 Q Does that change your opinion about how he treated
17 her?

18 A No.

19 Q Okay, thank you.

20 MR. LALLI: Nothing else.

21 THE COURT: Any redirect?

22 MS. PALM: No.

23 THE COURT: Any questions from any of the jurors? No
24 questions. All right. Thank you, ma'am. You are excused.

25 THE WITNESS: Okay.

ROUGH DRAFT TRANSCRIPT

002011

1 THE COURT: Thank you very much.

2 THE WITNESS: Now can I be in the audience?

3 THE COURT: No, you need to --

4 THE WITNESS: Oh.

5 THE COURT: -- leave the courtroom.

6 THE WITNESS: Okay. And sit out there

7 (indiscernible).

8 THE COURT: Be careful.

9 THE WITNESS: Okay. (Indiscernible) very shaky
10 today.

11 (Pause in proceedings)

12 THE COURT: Do you have any other witnesses for
13 today, Ms. Palm?

14 MS. PALM: I do not, Your Honor. My witnesses -- the
15 rest of them are lined up for tomorrow morning.

16 THE COURT: Okay. Ladies and gentlemen, I've been
17 advised by the attorneys that they will complete the
18 evidentiary portion of this trial tomorrow. We will have
19 deliberation tomorrow as well. But there are a couple -- some
20 more evidence that will be presented to you as part of this
21 trial.

22 Because of your service last week and this week, and
23 we should be getting into closing arguments tomorrow, the Court
24 will provide your lunch for tomorrow. Okay.

25 During this evening recess, it is your duty not to

ROUGH DRAFT TRANSCRIPT

002012

1 converse among yourselves, or with anyone else on any subject
2 connected with this trial. Or to read, watch or listen to any
3 report of or commentary on the trial by any person connected
4 with the trial, or by any medium of information, including
5 without limitation, newspaper, television, radio, or the
6 internet. You are not to form or express an opinion on any
7 subject connected with this case until this matter is submitted
8 to you.

9 Before I give you the exact time, can I have counsel
10 approach, please?

11 (Off-record bench conference)

12 THE COURT: All right. Ladies and gentlemen, we'll
13 resume tomorrow at 9:45. I do have a lengthy calendar
14 tomorrow, and I hope to be able to get it through for a -- we
15 may be a few minutes late. But I'm shooting for 9:45 tomorrow.
16 So we'll see you back 9:45. Please have a safe drive home.

17 (Outside the presence of the jury)

18 THE COURT: All right. We're outside the presence of
19 the jury panel. And State, I think you say you just need to go
20 run back to your office to get your jury instructions?

21 MR. LALLI: Yes, sir.

22 THE COURT: And Ms. Palm, do you have those with you
23 today?

24 MS. PALM: I do, Your Honor.

25 THE COURT: All right. As soon as everyone's ready,

1 we can hash out the instructions.

2 MR. LALLI: Thank you. You want to do that in
3 chambers first? Or how does -- I'm not sure how --

4 THE COURT: Yeah, let's do that.

5 MR. LALLI: -- the Court does that.

6 THE COURT: And we can --

7 MS. PALM: I'm sorry, how much time do we have before
8 we do that?

9 THE COURT: Whatever you need. Whatever --

10 MS. PALM: No, I mean --

11 THE COURT: -- both sides need.

12 MS. PALM: I'm just going to talk to her for a minute
13 outside.

14 THE COURT: How long will it take you?

15 MS. PALM: He has to go get his instructions, right?

16 THE COURT: About ten minutes, Mr. Lalli?

17 MR. LALLI: Yeah, at the most.

18 MS. PALM: Okay.

19 THE COURT: All right.

20 (Court recessed at 5:27 p.m., until Tuesday,

21 August 31, 2010)

22

23

24

25

INDEXWITNESSES

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* * *

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ACKNOWLEDGMENT

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, TRANSCRIBER

11-15-10

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002016