Dept. 1

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

FILED

2006 JUN 16 A 10:30

STATE OF NEVADA, Plaintiff,	District Court Case No.: C223283
vs.	Justice Court Case No.: 06F09863X
NICHOLAS JON EDDARDS, Defendant(s)	6:20 9:00 XVII

CERTIFICATE

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

Dated this June 15, 2006

Justice of the Peace, Las Vegas Township

RECEIVED JUN 16 2006 COUNTY CLERK

Docket 58913 Document 2012-03246

BY MS. GREENBERGER:
Q Based on what you observed was true, my client would tell tall tales?
A Yes.
Q During the time period she lived with you, do you have any personal knowledge of an attack that occurred on her on June 2001?
A No.
Q When you were interviewed by the police, you told the police you heard about an attack in June 2001, correct?
MR. KEPHART: Your Honor, I'm gonna object as to the characterization heard, that's hearsay.
THE COURT: Sustained.
MR. KEPHART: And I'm gonna ask that that be stricken, that question.
THE COURT: Motion granted, so stricken.
BY MS. GREENBERGER:
Q Why did you tell the police their timeline was off?
MR. KEPHART: Your Honor, I'm gonna object as to -- can we approach?
THE COURT: Yes, counsel may approach. Off-record--
(Off-record bench conference from 11:24:42-11:25:50 a.m.)
///

BY MS. GREENBERGER:
Q You mentioned that in June -- June 6, 2001, you stopped the tow truck driver when he was towing Blaise's car. Did you actually bring a copy of that receipt with you at a prior proceeding?
A Yes.
MS. GREENBERGER: May I approach, Your Honor?
THE COURT: Yes.
BY MS. GREENBERGER:
Q Does this appear to be the receipt you were provided with that day?
A Yes, it does.
Q Can you tell the ladies and gentlemen of the jury what day it's dated?
A 6/6/06 -- '01, I'm sorry. 9:00 a.m. -- 9:20 a.m.
JUROR TAI ANDERSON: I'm sorry, I can't -- I'm having trouble hearing him. Number 2.
THE COURT: Okay. He said June 6th --
THE WITNESS: Yeah.
THE COURT: -- 2001. And would you repeat what else you said, please?
THE WITNESS: It was 9:20 a.m. on there.
MR. KEPHART: Yeah.
///

BY MS. GREENBERGER:
Q Can you indicate for the ladies and gentlemen of the jury -- and you can actually touch the screen, it will put an arrow on it -- where the date of the request on the tow receipt is?
MR. KEPHART: Your Honor, objection, foundation.
THE COURT: The record shall reflect that the question came from Tai Anderson in the number 2 chair. Your objection as to --
MR. KEPHART: Foundation. Could I see the tow receipt? I don't think it's been admitted.
THE COURT: You may see it. I don't believe it has been.
MR. KEPHART: Okay. Thank you.
MS. GREENBERGER: Your Honor --
THE COURT: It's been marked. I can see that there's an evidence sticker on it but I don't know how it's been marked.
MS. GREENBERGER: That's correct. It's been previously marked as Defense Exhibit C.
THE COURT: C as in cat?
MS. GREENBERGER: C as in cat.
THE COURT: Okay.
MS. GREENBERGER: And Mr. Pyszkowski has

testified this is the receipt he recognizes as his own.
May I move its admission into evidence?
MR. KEPHART: No objection.
THE COURT: Motion granted. It's admitted.
(Defendant's Exhibit C, admitted)
BY MS. GREENBERGER:
Q Can you now please point to the ladies and gentlemen of the jury where on the receipt it indicates this tow request was made?
A In the upper lefthand corner.
Q Can you actually -- okay. How long do you recall Blaise had been living with you at the time that the tow receipt came into your possession?
A A week. 5 days, 2 weeks, something like that.
MS. GREENBERGER: I don't believe I have anything further.
THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. KEPHART:
Q Mr. Pyszkowski, where you were living, you were living at this time of June 6th, you were living in a house, is that correct?
A Yes.
Q And you testified that you saw that her car was on

1 the tow hook. Do you have knowledge of where the car was
2 picked up from when it was towed?
3 A It was in an apartment complex and it was just
4 coming out of the parking lot.
5 Q It was down the street from where you were?
6 A Yes.
7 Q She wasn't living in the apartment complex, was
8 she?
9 A No.
10 Q She was living with you?
11 A Yes.
12 Q And is it an adjoining parking lot to your house?
13 A My street would have continued straight into their
14 parking lot.
15 Q Okay. Her car was parked in an apartment complex
16 where she wasn't living?
17 A Yes.
18 Q And it was towed away?
19 A Yes.
20 Q Now you said that she had pulled this knife out on
21 occasion while she was living with you. Do you remember
22 using the terminology "fast draw"?
23 A Yeah.
24 Q Okay.

1 A Yes.
2 Q She pulled it out real quick and tried to open it real
3 quick, didn't she?
4 A Yeah.
5 Q Okay.
6 A Showing off like, yeah.
7 Q One handed?
8 A Yeah.
9 Q Obviously she knew how to use it, meaning open it
10 up?
11 A That part, yeah.
12 Q Okay.
13 MR. KEPHART: Court's indulgence, Your Honor.
14 THE COURT: Yes.
15 MR. KEPHART: I have nothing further.
16 Thank you, Mr. Pyszkowski.
17 THE COURT: Recross.
18 **RECROSS EXAMINATION**
19 BY MS. GREENBERGER:
20 Q During the time period you knew Blaise, you had the
21 impression she was a show off?
22 A I don't know really a show off. Maybe somewhat,
23 yeah. That's not a good description I don't believe, no.
24 Q Crying for attention?

1 A Somewhat, yes.
2 Q When -- or prior to the tow incident, do you know
3 why Blaise was keeping her car parked in the parking lot?
4 MR. KEPHART: Your Honor, I'm gonna object as to
5 speculation, and it calls for a hearsay answer as well.
6 THE COURT: Overruled. The question calls for a
7 yes or no answer and you may answer it as such.
8 THE WITNESS: Yes.
9 BY MS. GREENBERGER:
10 Q Was she afraid someone might recognize her
11 vehicle?
12 A Yes.
13 Q What time period was that?
14 A Before June 6th.
15 Q Before June 6, 2001?
16 A Yes.
17 MS. GREENBERGER: Court's indulgence.
18 THE COURT: Yes.
19 MS. GREENBERGER: Nothing further.
20 THE COURT: Redirect.
21 MR. KEPHART: Thank you, Your Honor.
22 **FURTHER REDIRECT EXAMINATION**
23 BY MR. KEPHART:
24 Q Okay. Steve, the defendant was dating an individual

1 by the name of Jeremy Davis, is that right?
2 A When I first met her, right?
3 Q Okay. That's how you met her?
4 A Right.
5 Q And you know Jeremy Davis?
6 A He worked for me.
7 Q Okay. And prior to June the 6th of 2001, her and
8 Jeremy broke up?
9 A Yes.
10 Q Okay. And when the defense asked you whether or
11 not she was worried about her car being recognized, she didn't
12 want Jeremy to find it, did she?
13 A That's what I heard, yes.
14 Q Matter of fact, you went -- went with her and she
15 picked it up from Jeremy's, didn't you?
16 A Yes.
17 Q She drove it to this parking lot?
18 A I drove her to pick up the car and she drove it back,
19 yeah.
20 Q Something was wrong with the car?
21 A One headlight didn't work, it was at nighttime, and
22 we had to prop that one headlight open. And the car had
23 been trashed on the inside.
24 Q On the inside of the car?

A Right.
Q And you don't know if Jeremy did this or not, do you?
A No.
Q You don't know if something happened by the defendant's own hand, do you?
A Right. I just --
Q And then the inside of her car is trashed you're saying, dirty?
A Yeah.
Q Stuff was put in there? Did she clean -- oh, did you say yes?
A Yes.
Q Okay. Did she clean it out?
A I didn't witness -- I don't know, I mean --
Q Did she drive it again?
A I believe she was still using her car, yeah.
Q Do you know an individual by the name of Shoddy Gallaher [phonetic]?
A Yes.
Q Was she ever with you in the presence of the defendant?
A Yes.
Q So is it safe to say that the defendant has met

Shoddy Gallaher?
A Yes.
Q Do you know whether or not Shoddy Gallaher has also used that vehicle?
A I believe that she did use it, yeah.
MR. KEPHART: Pass the witness, Your Honor.
MS. GREENBERGER: Nothing further.
THE COURT: You may step down.
JUROR: I have a question, Your Honor.
THE COURT: Okay. Please remain seated.
Counsel approach.
(Off-record bench conference from 11:36:13-11:45:14 a.m.)
THE COURT: I have four slips out from four different jurors. The first one reads as follows.
"Your Honor, I'm confused as to when we are able to pose a question to the witness. Could you clarify? Please excuse my spelling." The Court will clarify.
At the conclusion of the selection of the jury the Court had some opening remarks for the ladies and gentlemen of the jury, and that included the information about when and how questions can be posed. I know Ms. Anderson had some confusion about that earlier and now we have another juror that's requesting some clarification, so I'm gonna go back over that with the ladies and gentlemen of the jury at this time.

You may recall that I kind of explained to you the way in which a witness is called to the stand. And what the -- the first lawyer that calls a witness to the stand will ask questions, that's called the direct examination of the witness. And after the direct examination the witness is passed to the opposing counsel and the opposing counsel then does the cross-examination. And then it passes back to the original attorney who does redirect examination, and back to opposing counsel who does recross, and back and forth and back and forth until all of the questions have been exhausted by the attorneys.
It is at that point where the jury may ask written questions to any of the witnesses, only after the attorneys have exhausted all of their questions because the questioning is the primary responsibility of the lawyers. However, if the lawyers have completed all of their examination of a witness and you still have any lingering questions that remain unanswered at that time, you may ask them. You need to put it in writing. You need to put your badge number and your name -- and sign your name at the bottom of your question, and then it gets turned over to the bailiff.
The Court also advised you that if you want to ask a question before I let the witness get down from the stand and out the door, it's best to raise your hand to draw our attention

to the fact that you are gonna do a question, and then you can write it out and turn it over to the bailiff.
The Court also instructed you that questions cannot be posed to the Court and questions cannot be posed to the ladies and gentlemen who are seated at either the plaintiff or the defendant's table. The questions can only be posed to the witness who is on the stand, and should be written out as if you are directly asking that question to the witness.
After the bailiff has picked up your question, the question will be turned over to the Court and the Court and counsel will review it at sidebar to determine whether it would result in an unfair trial or if it's legally proper or improper, and no inference should be drawn if the Court does not allow a particular question. If the Court determines that the question may be properly asked, the Court will ask it. And no emphasis should be placed on an answer to the question merely because the question came from the juror and from the jury box area rather than from one of the lawyers out in the audience.
After the Court reads the question from the juror and the witness answers the question then counsel for each side will be given the opportunity to pose followup questions if they believe those to be appropriate.
That particular question will be marked as the Court's next in number.

THE CLERK: Number 8.
THE COURT: The next question is a question that's directed to Court and counsel rather than to the witness. But it's not objectionable, so the Court will accommodate it.
And the question is, "Can I see the picture of the front of the Fiero and zoom in on the front license plate?" That will be marked as Court's number 9. And Mr. Kephart will accommodate that at this time.
MR. KEPHART: Judge, for the record, the rear of the Fiero, this one here, is Exhibit 180, and this is 181.
THE COURT: 181 is the front.
MS. DiGIACOMO: It might be better to pass it.
MR. KEPHART: Maybe I'll just pass it around, Judge, if that would be better.
THE COURT: You want to publish it to the ladies and gentlemen of the jury? That'd be fine.
MR. KEPHART: I'll give them both, that way --
THE COURT: 180 and 181 may be published to the jury.
MR. KEPHART: Thank you.
(Pause in the proceedings)
THE COURT: Okay. The jury is indicating that the two exhibits have been reviewed by all of them and they're now returned to Mr. Kephart who's returning them to the clerk.

The next paper has two questions on it. The Court's gonna ask that if you do wish to ask multiple questions would you please put each question on a separate piece of paper so that I can annotate it for the record properly. That would be helpful. Thank you.
The first question is, "Does Stephen know what type of 'trash', quote unquote, was in the quote unquote 'trashed' car?"
THE WITNESS: I can't say for sure. I mean there was like garbage and maybe beer.
THE COURT: Was it feces or urine?
THE WITNESS: It could've been. I wasn't around the car and examining it close enough to know exactly what it was.
THE COURT: That note will be marked as Court's number 10.
The next note has four questions. The first one is, "Did she move in with Doug or move to Pioche?"
THE WITNESS: Well, she went from our house and stayed at Doug's, and then Doug helped her move back up to Pioche Panaca.
THE COURT: "Why was car towed?"
THE WITNESS: It was -- in the apartment complex it was towed because it was as -- noticed as an abandoned

vehicle. I guess one of the tenants or maintenance workers or someone there noticed that the car hadn't been moved for several days, and they were short on parking there, so they probably watched it for a couple days, probably put a note on it, and then towed it for that reason, being an abandoned vehicle or an unused vehicle. And it probably wasn't registered with the apartment complex as one of the residents. The tow truck -- that's what the tow truck driver told us that that was the reason. The apartment management called it in.
THE COURT: "Why did you stop it from being towed?"
THE WITNESS: I've had my vehicle towed before and it's a hassle to go across town to pick it up and pay the tow charge, the storage charge. For convenience, basically, so we didn't have to go across town to pick up her vehicle. And I was gonna try to see if there was a reduced tow charge for not having to take it across town, so I was able to stop the tow truck driver. I may have pulled out in front of him or something and talked to him and then he pulled over to the side of the street and explained that if we had the owner there to sign for the car and we payed for the tow charge we could get it there and it would save us the storage fees.
THE COURT: That juror's note will be marked as Court's number 11.

Followup questions by the State?
MR. KEPHART: I don't have any, Judge.
THE COURT: Followup questions by the defense?
MS. GREENBERGER: Thank you. Just a couple.
JUROR TAI ANDERSON: I'm sorry, can I ask one more question in a followup to those? Is that possible.
THE COURT: The record shall reflect that that's -- you need to raise your hand to tell us that you wish to ask a question and then we can do that. The bailiff will be approaching you.
Counsel may approach.
(Off-record bench conference from 11:58:15 a.m.-12:01:09 p.m.)
THE COURT: Court's number 12. And the Court reminds the ladies and gentlemen of the jury that you cannot direct questions to the Court nor to the ladies and gentlemen at the tables. The questions can only be posed to the witness and need to be framed as if the question is being asked directly of the witness that's on the stand.
Followup by the State?

FURTHER REDIRECT EXAMINATION

BY MR. KEPHART:
Q Mr. Pyszkowski, when -- you indicated that you went with her to pick up her car from Jeremy's --

1 A Right.
2 Q -- is that right? And she drove her car from
3 Jeremy's?
4 A Yeah.
5 Q She drove it to the parking lot of the apartment
6 complex down the street?
7 A Yes.
8 Q And sometime later you saw that it was being
9 towed?
10 A Yeah, about a week.
11 Q When they unhooked it from the tow truck did she
12 drive it to your house then?
13 A Yes.
14 Q Okay. So it ran?
15 A Yes.
16 Q Okay. It was just not parked, as far as you know
17 from what you were told, in a proper place, is that right?
18 A Yes.
19 Q Okay. It certainly wasn't parked at your house and
20 she wasn't registered as living in that apartment complex, was
21 she?
22 A No.
23 Q Okay.
24 (Off-record colloquy)

1 BY MR. KEPHART:
2 Q After that, after she -- it was unhooked from the tow
3 hook and she drove it to your house, do you recall her
4 continuing to drive the vehicle after that point?
5 A Yes.
6 Q And as a matter of fact, you already testified that
7 you believe, even after that point, Ms. Gallaher may have
8 driven the car?
9 A Yes.
10 MR. KEPHART: Nothing further.
11 THE COURT: Followup questions by the defense?
12 MS. GREENBERGER: Thank you, Judge.
13 **FURTHER RECROSS EXAMINATION**
14 BY MS. GREENBERGER:
15 Q Is it fair to say that she drove the vehicle while she
16 lived with you infrequently?
17 A Infrequently, yes.
18 Q Infrequently?
19 A Yes.
20 Q To clarify the timeline of when Blaise lived with you
21 and moved to Doug's, is it true she lived with you from late
22 May into the third week of June? Is that about accurate?
23 A Yes.
24 Q Thereafter, she moved in with Doug Twining?

1 A Yes.
2 Q Subsequent to that, she headed back to Panaca, and
3 that would've been on July 2nd, is that correct?
4 A Yes.
5 Q You remember that clearly as you sit here today
6 because you never followed through on your plans for July 4th,
7 that's why it sticks out clearly in your mind, is that correct?
8 A Yes.
9 Q And that was the last time you spoke to my client in
10 2001?
11 A Yes.
12 Q In addition to feces and urine in the vehicle, could
13 there have been vomit as well?
14 MR. KEPHART: Your Honor, I'm gonna object. He's
15 testified he didn't know what was in that car. He didn't look in
16 the car, he didn't -- he couldn't testify what it was. He wasn't
17 around the car. And when her pose her question in addition to
18 feces and urine could there be vomit as well, I think that's
19 misstating the evidence.
20 MS. GREENBERGER: I'll rephrase --
21 THE COURT: There's a lack of foundation for this
22 question as well, so the Court sustains the objection.
23 BY MS. GREENBERGER:
24 Q Do you know if there was vomit in the vehicle? Did

1 you ever smell it?
2 A It smelled trashy, nasty. I can't really describe it
3 exactly. And most of what I know was -- I was told from other
4 people.
5 Q By stopping the tow truck driver, did you save
6 money? Did you get a reduced charge?
7 A It saved at least $25, plus the time of going across
8 town, waiting in line, and paying for it and then driving it back.
9 So -- and the time to me at that time was a lot more valuable
10 than the money, the actual money savings. But the
11 convenience was the big savings.
12 MS. GREENBERGER: Nothing further.
13 MR. KEPHART: We have nothing further, Your
14 Honor.
15 THE COURT: You may step down from the stand.
16 THE WITNESS: Okay. Thank you.
17 THE COURT: We'll be taking our lunch recess at this
18 time, resuming at 1:15.
19 Ladies and gentlemen, please be in the hallway at
20 1:15 and the bailiff will meet you there to return you to your
21 seats in the courtroom. During the lunch recess you're
22 admonished not to talk or converse among yourselves or with
23 anyone else on any subject connected with this trial. You're
24 not to read, watch, or listen to any report or commentary on

1 the trial or any person connected with th[illegible]al by any medium
2 of information, including without limitation, newspaper,
3 television, radio, and internet. And you're not to form or
4 express any opinion on any subject connected with the trial
5 until the case is finally submitted to you.
6 Court will be in recess until 1:15.
7 THE BAILIFF: All rise.
8 (Jurors are not present)
9 (Court recessed at 12:06:17 p.m. until 1:26:03 p.m.)
10 (Jurors are present)
11 THE BAILIFF: Department 2 is back in session.
12 Please be seated.
13 THE COURT: The record shall reflect that we're
14 resuming trial in State versus Kirstin Lobato under case
15 number C177394, in the presence of the defendant together
16 with her three counsel. The two prosecuting attorneys are
17 present as are the ladies and gentlemen of the jury.
18 Would counsel please approach.
19 (Off-record bench conference from 1:26:29-1:29:05 p.m.)
20 THE COURT: The record shall reflect that the
21 Court's received a note from the juror in chair number 2, Ms.
22 Anderson, that Court and counsel have reviewed, and a letter
23 is being prepared for your convenience. This will be marked
24 as Court's number 12?

1 THE CLERK: 13.
2 THE COURT: 13. Okay.
3 Proceeding forward with the State's case in chief.
4 The State may call their next witness.
5 MS. DiGIACOMO: Thank you.
6 The State calls Michele Austria.
7 THE CLERK: Please come all the way forward.
8 Remain standing and raise your right hand.
9 **MICHELE AUSTRIA, STATE'S WITNESS, SWORN**
10 THE CLERK: Thank you. Please be seated.
11 State your name and spell it for the record, please.
12 THE WITNESS: Michele Dawn Austria. It's
13 M-I-C-H-E-L-E A-U-S-T-R-I-A.
14 THE COURT: State may proceed.
15 MS. DiGIACOMO: Thank you.
16 **DIRECT EXAMINATION**
17 BY MS. DiGIACOMO:
18 Q Where do you live?
19 A I live in Panaca, Lincoln County.
20 Q How long have you lived there?
21 A Oh, about 8 years now.
22 Q And who do you live with?
23 A I live with Paul Brown and my two children, Justin
24 and Melanie.

1 Q And does Paul go by a nickname?
2 A Rusty.
3 Q How long have you lived with Paul and your two
4 kids?
5 A 8 years.
6 Q Now is there anyone else that lives with you at the
7 residence at this time?
8 A No.
9 Q What about back in July of 2001?
10 A My sister.
11 Q What's your sister's name?
12 A Paula Gilmore [phonetic].
13 Q And do you know a person by the name of Blaise
14 Lobato?
15 A Yes, I do.
16 Q How do you know her?
17 A I met her through my boyfriend, Rusty.
18 Q Do you see her in the courtroom here today?
19 A Yes, I do.
20 Q Would you please point to her and describe an
21 article of clothing she's wearing?
22 A She's wearing a -- light a pink and padded colored
23 blouse. She's sitting right over there.
24 Q Which person? There's --

1 A She's in the middle.
2 MS. DiGIACOMO: Your Honor, would the record
3 reflect identification of the defendant.
4 THE COURT: The record shall so reflect.
5 BY MS. DiGIACOMO:
6 Q Now you said you met her through Rusty?
7 A Yes.
8 Q Would you say you're good friends with her?
9 A Yeah.
10 Q Okay. How long were you pretty good friends with
11 her?
12 A Well, I knew her for about 3 years.
13 Q Now during the summer of 2001 did you hang out
14 with her at all?
15 A Yes, I did.
16 Q How often?
17 A Occasionally. She lived across the street from me.
18 She used to come over and babysit my kids for me while I was
19 working.
20 Q And you said across the street. How far -- how
21 many houses away?
22 A It's -- from my house it's straight across, so I'd say 2
23 houses a way, a street away.
24 Q Okay. Now back in June 2001 was Blaise living in

Panaca?
A Yes.
Q And what about July 2001?
A Yes.
Q Did you ever know her to live -- spend part of her time in Las Vegas?
A Yeah.
Q When was that?
A That was about the same time, in July.
Q Okay. In July?
A She was trying to get a job down in Vegas at that time.
Q And what about June 2001?
A June, July. I'm not sure. Probably.
Q Okay. Is it fair to say that she would go back and forth between Vegas and Panaca at that time?
A Yes.
Q Now did she ever tell you about a job she had regarding fire extinguishers down there?
A Yes.
Q What did she tell you?
A That's pretty much it, that she worked for a company that dealt with fire extinguishers.
Q Did she tell you how she got the job?

A Through her boyfriend, Jeremy --
Q Okay.
A -- or friend.
Q Jeremy -- what's his --
A I don't know his last name.
Q Okay. And you said boyfriend. How long did they date?
A Oh, for about a year or so. I couldn't really tell you.
Q Do you know when they broke up?
A I don't.
Q Okay. When was it that the defendant came back to Panaca from Vegas going back and forth?
A Well, probably the first part of July.
Q And how do you know that?
A Well, because it was around the 4th of July is the only date that I can really specify that she was actually there. She -- like we talked in the beginning, you know, she would go to Vegas and come back and --
Q But you do recall her being up there the week of 4th of July?
A I do.
Q Did you see her on the 4th of July?
A I did.
MS. DiGIACOMO: Your Honor, do you know what

day of the week -- do you have the calendar to take judicial notice of what day of the week 4th of July in 2001 was?
THE COURT: Yes. The Court takes judicial notice that in the year 2001 the 4th of July was on a Wednesday.
MS. DiGIACOMO: Thank you, Your Honor.
BY MS. DiGIACOMO:
Q Now did you see her any other time other than on the 4th of July that Wednesday?
A Any other time? You mean before -- are you talking about the same day?
Q When she was up in Panaca?
A Well, I'd seen her earlier in the day.
Q Okay. What about the rest of that week?
A I seen her after the 4th of July, that weekend after.
Q Okay. What did you see her -- when did you see her after that weekend?
A Let's see, I seen her after the 4th of July weekend -- or that weekend, I know because we went four-wheeling that weekend. And then after that I can't remember anything.
Q Do you remember what day of the week you went four-wheeling with her?
A It was a weekend.
Q Okay. Do you know if it was Saturday or Sunday?
A I couldn't tell you if it was a Saturday or a Sunday.

Q All right. What about the weekend before the 4th of July, did you see her then?
A I did.
Q What day would you have seen her then?
A It was either a Saturday or a Sunday. I can't specify, it's been too long.
MS. DiGIACOMO: And Your Honor, could you look and see what the dates for the Saturday and the Sunday before the 4th of July were, and please take judicial notice?
THE COURT: The Court takes judicial notice that the Saturday proceeding the 4th of July was June 30th, and the Sunday proceeding the 4th of July was the 1st of July.
MS. DiGIACOMO: Thank you.
BY MS. DiGIACOMO:
Q And did you go four-wheeling again that weekend before?
A We did.
Q Now did there come a time when you had a conversation with the defendant regarding an incident that happened to her in Vegas?
A Yes.
Q Do you remember where that conversation took place?
A On my back patio.

Q And that's at the residence you describe that's two houses down from where she lived?
A Yes, my home.
Q And do you know when this conversation took place?
A I don't have a specific date. It was in the vicinity of those two weeks surrounding the 4th of July.
Q Okay.
A I couldn't specify a time, date.
Q And who was present when this conversation took place?
A Just me and her.
Q Okay. Just so you know, we can't talk on top of each other because she's recording everything. So just let me finish the question and then you can answer, okay?
A Okay.
Q So just the two of you were present?
A Yes.
Q Do you know when it took place, what time of the day?
A It was -- I want to say probably in the early afternoon. I think I had just gotten off work.
Q Do you know what the time when you were working, what days?
A I don't remember the days I was working. I know I

used to work the morning shift, that was from 9:00 to 4:00, I think.
Q You're not positive of the date that this occurred?
A I do -- no.
Q But you believe it was sometime around the 4th of July, that's your --
A Yes.
Q And what was the conversation that you had with Blaise?
A Well, she talked to me about going down to Vegas. She was in Vegas and she had been attacked by somebody, and she proceeded to grab onto him and slash at his penis.
Q Did she say how she got a knife?
A She had it on her.
Q And she said this happened in Las Vegas?
A Yes.
Q Do you get more specific about where it happened?
A No.
Q Did she give more specifics about what happened, how she was attacked?
A Just that this guy came onto her and attacked her. It's -- I believe in a parking lot. That's all the information I have. We didn't go into detail about this.
Q Did she tell you when it happened?

A No.
Q Do you recall giving a taped statement to the police?
A Yes, I do.
Q And that was on July 26, 2001?
A As far as I know. I'm not positive.
Q Okay. Well, if I --
A Yes, if you say so.
Q Okay. You wouldn't dispute that that's the date that's on this --
A Right.
Q -- transcription? And do -- if I was to show you --
MS. DiGIACOMO: -- page 9, counsel --
BY MS. DiGIACOMO:
Q -- of your statement would that refresh your recollection whether or not she told you when it occurred?
A Sure.
MS. DiGIACOMO: May I approach, Your Honor?
THE COURT: You may approach the clerk and have it marked.
MS. DiGIACOMO: Oh. Thank you.
THE COURT: 120?
THE CLERK: 195.
THE COURT: Oh, 195. Okay. Proposed.
MS. DiGIACOMO: Okay.

BY MS. DiGIACOMO:
Q Michele, I'm gonna show --
THE COURT: You may approach the witness.
MS. DiGIACOMO: Oh, I'm sorry.
BY MS. DiGIACOMO:
Q Michele, I'm gonna show you what's been marked as State's Proposed Exhibit 195, just for identification purposes only. Do you want to read through that page and let me know if it gives you some idea of -- or refreshes your recollection whether or not Blaise gave you any indication when this happened.
A Okay.
Q Does that refresh your recollection?
A Pretty much. It's what I just told you.
Q Right. But you told me that she didn't indicate when this had happened prior to her coming back to Panaca. After reviewing your statement on page 9, does that refresh your recollection whether or not she did give you an indication of when it happened?
A I was pretty much guessing on a time because that's when -- in there it says I specify nighttime, that's because she was out and about, so that's --
Q Well --
A -- why I specified night.

AUSTRIA - DIRECT

Q Okay. Didn't the police ask you, did she say how long ago it happened prior to her returning to Panaca?"
A Okay.
Q "And you answered like within the first couple of weeks or sometime around that before she had returned, you know".
A Right.
Q Okay. Is that what she told you?
A Yes.
Q Okay. But you said that you were kind of assuming that that's when it happened?
A Yeah.
Q But she didn't give you a definite date?
A Right.
Q Now did she tell you what kind of knife that she used to slash at this man?
A A butterfly knife.
Q Okay. And did you know her to carry a butterfly knife?
A Yes, I did.
Q How often would she carry the knife?
A She always had her knife on her.
Q Okay. In fact, she had a collection?
A Yes.

AUSTRIA - DIRECT

Q How many knives did she have, approximately?
A About 10 or so. I couldn't give an exact number.
Q Now it's not unusual for somebody from Panaca to have a collection of knives, is it?
A No, there's no.
Q Now did she tell you whether -- why she carried the knife all the time?
A For protection, in case --
Q In case?
A If she needed protection or -- it's not an uncommon thing.
Q Okay. And did you know where she would normally carry her -- or carry her knife?
A If she didn't have a purse on her she would carry it in her pocket or in her back, you know.
Q Okay. Was this all that she said about the attack?
A Yes, it is.
Q Did you talk about something else during that conversation as well?
A Not that I can recall.
Q Do you recall anything about her seeing a doctor?
A Yes.
Q Okay. Tell me what you recall about that.
A Well, she was going to see a doctor about dealing

AUSTRIA - DIRECT

with her emotions and stuff. She was going through a rough time, she was very depressed.
Q Okay. And didn't she -- wasn't she specifically depressed after this incident where she was attacked?
A Blaise would go through a period of times where she would be depressed. I mean she was having a hard time living with her family, you know, trying to get out on her own, trying to get things situated for herself, so --
Q Do you recall testifying at a previous hearing in this case?
A Yes.
Q And that was approximately May 2002, does that sound about right?
A Yeah.
Q And if I showed you your prior testimony, would that refresh your recollection regarding specifically why she said she was going to a doctor at that time?
A I can answer that question. I've read over it.
Q Okay.
A I have my testimony.
Q Okay. And what did -- why was she going to a doctor?
A Specifically because she was having a hard time dealing with her conscious.

AUSTRIA - DIRECT

Q Okay. Over this incident?
A Over this incident.
Q And she also told you that she was depressed?
A Yes.
Q And possibly a little suicidal?
A Yes.
Q Okay. But it's your testimony that you've seen her depressed before?
A Yes.
Q But she did tell you specifically that it was this incident that was causing the depression this time?
A Yes.
Q Okay. Did she also tell you whether or not she was on any medication?
A Supposedly the doctor was going to be prescribing her on a medication, but I don't have the name of it or anything.
Q Okay. But she did tell you at the time you talked to her that she was on medication?
A Yes.
Q 'Cause she'd already been to the doctor?
A Yes.
Q Now when you were talking about how she was depressed and possibly suicidal, do you recall her saying why

she was so upset about the attack?
A Yes.
Q And what was that?
A That she didn't know if this person was dead or alive or how bad the situation was.
Q She actually had some fear that maybe she might've killed him?
A Yes.
Q How was her demeanor? How was she acting when she was expressing this to you?
A Very upset, withdrawn.
Q Okay. Did she appear to be somewhat depressed or down to you?
A Yeah.
Q Now you live approximately 2 houses away from where she lives? In fact, your house faces hers but there's a small street in between?
A Right.
Q Okay.
A Right.
Q Now did you see the police when they came to her door?
A No, I had no idea they were there until I went over to talk to her and her mom told me that --

Q Okay. So --
A -- they were there.
Q So there's not like marked patrol units outside her house or anything?
A No, it was just a plain old car, I didn't even recognize it.
Q Okay. Did you actually speak to her parents about this incident later?
A Not until after she had been arrested and taken away.
Q Well, what are you parents' names?
A Larry and Becky Lobato.
Q Okay. How many times did you talk to them about what had happened?
A Once or twice.
Q Did -- when you talked to her parents, did they ever tell you dates of when things had happened?
A No, they had no idea of anything happening until it happened, her being arrested.
Q How do you know they had no idea?
A Because that's their -- that was their reaction.
Q Okay.
A That's how they appeared to me about it.
MS. DiGIACOMO: Court's indulgence.

BY MS. DiGIACOMO:
Q Now when she was down in Vegas, would Blaise tell you where she was staying?
A I know of a guy named Doug. I don't know if she was living with him or not. I cannot remember.
Q Did she tell you who Doug was?
A He was a good friend of hers, a bodyguard.
Q It was her bodyguard?
A Mm-hmm.
Q Is that a yes?
THE COURT: Is that a yes?
THE WITNESS: Yes.
BY MS. DiGIACOMO:
Q Did she tell you anything about their relationship?
A That they were just good friends.
Q Okay. Did she say whether or not he had feelings for her, more than friends?
A I don't remember.
Q Would it refresh your recollection if you looked at your statement given to the police?
A Yeah.
Q Okay.
A Yes. Sorry.
MS. DiGIACOMO: Page 5, counsel.

May I approach, Your Honor?
THE COURT: You may.
MS. DiGIACOMO: Let me make sure I have the right one.
BY MS. DiGIACOMO:
Q Okay. I'm gonna show you page 5 of what's been marked for purposes of identification as State's Proposed Exhibit 195. And read this and let me know if that refreshes your recollection.
A Okay. I wasn't sure if it was either her or him.
Q Okay.
A That's why --
Q All right. So does that refresh your recollection?
A It does.
Q Okay. And so what was the relationship between Doug and Blaise?
A Basically I guess he was very involved in her, wanted to be very involved with her and she wasn't interested in that kind of a relationship.
Q So she told you he liked her as more than friends but she didn't want that?
A Right.
Q Okay. And did she tell you why she needed a bodyguard?

1 A She wanted to get into strip d[illegible]ng.
2 MS. GREENBERGER: Objection, relevance.
3 THE COURT: Sustained.
4 BY MS. DiGIACOMO:
5 Q So it wasn't for protection needing a bodyguard
6 while she was in Vegas --
7 A I don't know how to --
8 Q -- if you know?
9 A I don't know.
10 Q Okay.
11 MS. DiGIACOMO: Pass the witness, Your Honor.
12 MR. SCHIECK: Your Honor, could we approach for a
13 second?
14 THE COURT: Yes.
15 (Off-record bench conference from 1:49:38-11:50:44 p.m.)
16 **CROSS-EXAMINATION**
17 BY MS. GREENBERGER:
18 Q Good afternoon.
19 A Hi.
20 Q Can you recall exactly when you met my client,
21 Blaise Lobato?
22 A Exactly when?
23 Q Approximately 3 years before July 2001?
24 A Let's see, we moved to Panaca at the end of '98.

1 Rusty was working with her and that's how I met her. So I
2 would have to say the beginning of '99 is when I met her.
3 Q Was she living in Panaca at the time?
4 A Yes, she was.
5 Q Was she living with her parents?
6 A Yes.
7 Q Were you neighbors with them from that time period
8 up through July 2001?
9 A I was.
10 Q You testified that she actually babysat your kids.
11 What time period was that?
12 A Well, I worked the day shift at the bar from 9:00 in
13 the morning 'till 4:00 in the afternoon, I believe, so at that
14 time. It was -- I worked 5 days a week, so --
15 Q Did she babysit your kids throughout the time you
16 knew her?
17 A She babysat them when they were home from
18 school in the afternoon for a couple of hours. They get out of
19 school at 2:30, so I get home about 4:35 from work, so in that
20 period.
21 Q How old are your children?
22 A Now? My son is -- will be 15 in January and my
23 daughter is 12.
24 Q And during the time period of '98 through 2001 she

1 babysat for you?
2 A Actually it was only -- I'd say from the time she got
3 arrested, probably 4 to 5 months, throughout that time.
4 Q Okay. Back, so basically --
5 A Back.
6 Q -- February or so --
7 A Yeah.
8 Q -- through July?
9 A Yeah.
10 Q Did she babysit at your house?
11 A She did.
12 Q Did you become aware that she graduated from high
13 school approximately May of 2001?
14 A Yes. I don't -- I'm not sure if she graduated. I
15 know she got her GED. She went to adult education.
16 Q Through a school teacher? We've heard from Dixie
17 Tienken.
18 A Yes.
19 Q Do you recall her heading down to Las Vegas to try
20 to make it on her own during that time period --
21 A Yes.
22 Q -- directly following her graduation?
23 A I don't know when she graduated.
24 Q Okay.

1 A Well, yes, I'd have to say about in that time.
2 Q Is it far to say May 2001 she ventured down to Las
3 Vegas?
4 A I'd say more or less in June, beginning of June.
5 Q All right. Did you see her during the June time
6 period in Panaca, or was she primarily down in Vegas, if you
7 know?
8 A Well, I seen her in Panaca, but primarily she'd be
9 down here in Vegas, so yes.
10 Q You recall her coming back home prior to July 4th, is
11 that correct?
12 A Yes.
13 Q You actually saw her the weekend prior to July 4th, is
14 that correct?
15 A Yes.
16 MS. GREENBERGER: Your Honor, may I approach
17 the witness?
18 THE COURT: Do you have a motion?
19 MS. GREENBERGER: I want to move to admit our
20 next in order, the calendar, which I want this witness to
21 reference and identify some things.
22 THE COURT: And it's proposed --
23 THE CLERK: JJ.
24 THE COURT: -- JJ?

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MS. GREENBERGER: Yes, Your Honor.
THE COURT: No objection?
MS. DiGIACOMO: No, Your Honor.
THE COURT: Granted.
(Defendant's Exhibit JJ, admitted)
THE COURT: The calendar is admitted and you may approach.
MS. GREENBERGER: Thank you. Let me just share my pen with you.
BY MS. GREENBERGER:
Q Can you put your initials on the weekend when you first saw Blaise when she returned to town? [unintelligible].
A That's June 2nd, so I think it would've been June 30th.
Q Oh, okay. We're down here. Sorry.
A That's okay. You got it.
Q Okay. I think it's June 30 -- sorry, June 30, 2001.
A Okay.
Q June 30, 2001.
A Okay. That would've been the first weekend. Why don't you just circle it.
A Okay.
Q -- and then put a line through the other [unintelligible].

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Q So you recall distinctly speaking to Blaise that weekend? The reason why you recall it is because you saw July -- you saw her July 4th?
A Yes.
Q And even though you periodically may have seen her in June, this weekend before July 4th was the first time you guys had a chance to catch up, shall we say?
A Yes.
Q You testified that you went four-wheeling. Had you recently bought a four-wheeler?
A Yes.
Q And what exactly is that?
A A four-wheeler? It's an ATV. We have a Bear Tracker 2000 and we bought it for Christmas for ourselves.
Q Is it something -- an entertainment type --
A It is. You go out in the desert, you go riding and stuff in the hills. There's four-wheeler trailers.
Q Is Panaca a good place to do something like that?
A It is. There's lots of areas that you can -- lots of trails.
Q And it's something that gets you pretty dirty?
A It can.
Q Did you take Blaise out four-wheeling that summer?
A Yes, I did.

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Q Do you remember if you took her out that first weekend that she came back to Panaca?
A Yes.
Q Did you both ride the four-wheeler?
A Yes.
Q Is it something you can ride together or did you take turns?
A Well, we rode together mostly and then we took turns.
Q Did you take it -- where did you take it out?
A Well, we took it -- behind where I live it's -- there's a desert area, it's called Pete's Track. There's the Panaca Springs, which is a warm springs. We have Condor Canyon, which is a -- there's a road that goes all the way through the canyon. You can cross the creek and go on it if you have a four-wheel drive or an ATV. There's the sand dunes, there's -- there's a lot of areas. That's -- mostly those areas are the ones that we went to.
Q At that time did you also go rock climbing together?
A Yes.
Q You guys were pretty energetic and physical?
A We were just messing around.
Q Did you have an accident when you were rock climbing that -- at that time?

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A Well, Blaise was climbing onto a rock and slipped and scratched her belly.
Q You could see the scratches?
A Yes.
Q And that was from rock climbing?
A Mm-hmm. Yes.
Q How about on the four-wheeler, any accidents on that?
A Just -- no major accidents. She tipped it over once, but that was it.
Q Do you remember having a conversation with her during that same period about her being attacked down in Vegas?
A Yes, I do.
MR. KEPHART: Your Honor, I'm gonna object as to foundation when she says "same period". She's spoke about two different dates at this time now.
THE COURT: Sustained.
BY MS. GREENBERGER:
Q The time period I'm referring to is that first weekend when Blaise came back to Vegas, you two were catching up and you went four-wheeling.
A It was --
Q That's the time period I'm speaking about.

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A Throughout that -- from the beginning before July 4th or the beginning after July 4th, I cannot give you a specific time or date on that.
Q You do remember, however, that as indicated by the prosecutor's question, that when you talked about when this attack happened, she told you within the first couple weeks or sometime before she had returned, correct?
A Correct.
Q So if we look at Defendant's JJ, you took that to mean sometime in June 2001 she was the victim of a prior attack?
A Yes.
Q That's accurate?
A Yes.
Q Did she also tell you that she defended herself?
A Yes.
Q And she got away?
A Yes.
Q Isn't it true that she never told you that she actually stabbed him?
A It is true.
Q It is true that she never told you --
A She never specified --
Q -- that she actually stabbed him?

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A -- that she actually stabbed him.
Q She never told you that she punched someone, did she?
A No.
Q She never told you that she stabbed someone in the carotid artery, did she?
A No.
Q She never told you that she brutally beat a man and gave him two black eyes, did she?
A No.
Q She never told you that she cut someone's penis off after the man was dead, did she?
A No.
Q She never told you that she slashed the man's rear that attacked her?
A No.
Q She never told you that she hit the man that attacked her with a baseball bat, did she?
A No.
Q You would remember these things, would you?
A Yeah, I would remember all of those things.
Q And as you sit here today, you can tell the ladies and gentlemen of the jury with certainty that she never told you any of those things, isn't that true?

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A Yes, it is.
Q With regard to a butterfly knife in Panaca, pretty common?
A Yes.
Q In fact, you yourself carry a knife, true, or at the time?
A At the time. I mean pocketknife.
Q For what reason?
A Just to have on you in case you need it, you know. When you're out four-wheeling, you know, you never know if you're gonna need it for something or -- it's just not a -- it's a common thing to have a knife on you.
Q Is it equally common for men and women, as far as you know?
A Yes.
Q Do many girlfriends of yours, or at the time, carried knives?
A As far as I know, yeah.
Q So it's not unusual to you --
A No, it's not unusual.
Q -- that someone would be walking around with a knife?
A No.
Q For the time period that you knew Blaise, those

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three years when you met her up until July, is it your testimony that she suffered from bouts of depression during that entire time period?
A Yes.
Q That was something that was also common?
A For her it was.
Q And in your mind you had the impression that this attack that had occurred sometime in June of 2001, you had the impression it was weighing heavily on her?
A Yes, I did.
Q What gave you that impression?
A Because of how depressed she was, just withdrawn, not herself.
Q She was really scared that she might've hurt someone, even though it was a person that attacked her?
A Yes.
Q She expressed that fear to you?
A In a manner, not in detail.
Q She never told you specifically, I think I might've killed him, that was your impression?
A It was my impression. Can you back up on that one because I mean she had specified that she did not know if she had killed him or not.
Q She was concerned?

A She was concerned.
Q When the police came to speak with you, did they talk to you for a period of time before they recorded you?
A Briefly.
Q Then they did a recording?
A Yes.
Q Do you feel, as you sit here today, that any of the information you gave them or your words were twisted at all?
A No.
Q You saw my client on July 4th?
A Yes, I did.
Q Did you celebrate the 4th of July?
A Yes, I did.
Q Where was that?
A Down in Caliente. They have fireworks every year.
Q Did you proceed to see Blaise the weekend after the 4th of July?
A Yes, I did.
Q Can you indicate that with your initials on the calendar, and tell us what dates those would be?
A That would be July 7th and July 8th.
Q You also went four-wheeling again the second weekend --
A Yes, we did.

Q -- with Blaise? Did you go four-wheeling in the same area?
A Pretty much, yes.
Q Just the two of you?
A Just the two of us.
Q Do you recall four-wheeling with Blaise on July 8th, that afternoon, and her having a beer in her hand?
A I couldn't recall that, no.
Q You don't know one way or the other?
A No.
Q You just remember you went four-wheeling?
A Yeah. Yes.
Q Okay. When she confided in your about the prior attack in June 2001 in Vegas, was anyone else present?
A Not that I am aware of.
Q Isn't it true that when my client confided in you, she told you she had been attacked and she wasn't really sure all of the details?
A No, she -- I -- yeah, that's what I'd say.
Q Did you read any articles in the paper about this case prior to the homicide detectives talking with you on July 26, 2001?
A I have all the articles.
THE COURT: Counsel approach.

(Off-record bench conference from 2:09:33-2:11:45 p.m.)
BY MS. GREENBERGER:
Q Do you have any specific memory of reading an article that came out regarding Blaise's arrest on July 25, 2001, one day before the police came to talk to you?
MS. DiGIACOMO: Objection, relevance.
THE COURT: Overruled.
THE WITNESS: Specific. I mean can you be more -- I'm not understanding what you're asking me.
BY MS. GREENBERGER:
Q Do you remember before the police came to interview you whether you had read anything in the paper about the case?
A I don't remember. I think it was after they took her to trial is when the articles started coming out.
MS. GREENBERGER: Court's indulgence. I don't believe I have anything further.
THE COURT: Redirect.
MS. DiGIACOMO: Yes. Thank you, Your Honor.
May I approach the clerk?
THE COURT: Yes.
MS. DiGIACOMO: Thank you.
///
///

REDIRECT EXAMINATION

BY MS. DiGIACOMO:
Q Okay. Ms. Austria, you stated that you met Blaise because she worked with Rusty?
A Yes.
Q Okay. Did you also work with one of her parents?
A Yeah. Yes.
Q Which one?
A Her father, Larry.
Q And where did you work with him?
A At the Hideaway Bar in Caliente.
Q Did you meet Larry first or Blaise first?
A I met Blaise first.
Q Okay. And you talked about it, I got a little confused. How many four-wheeling treks were there in July? How many times did you go four-wheeling with Blaise in July?
A I couldn't give you a specific number on that.
Q Was it more than one, more than two, more than three?
A Yeah, more than two.
Q More than two times?
A Yeah.
Q Okay. And then when was this rock climbing?
A It was in that period that I've marked on the

1 calendar up here. I cannot give you if it's --
2 Q I can't see from out there. So you've got the first
3 weekend in --
4 A I have June 30th and July 1st, and July 7th and July
5 8th. That's the weekend before the 4th and the weekend after
6 the 4th.
7 Q Okay. So is it fair to say then the rock climbing
8 incident would've had to be one of those two weekends?
9 A Yes.
10 Q Was that connected to a four-wheeling -- when you
11 were four-wheeling with Blaise, or was rock climbing
12 completely separate?
13 A No, we were out on the four-wheeler out in the
14 canyon and we were climbing on the rocks when she slid off
15 the rock.
16 Q And you said you saw an injury on her belly?
17 A Yes, we took a picture of it.
18 Q Okay. Why did you take a picture of it?
19 A Just to take a picture.
20 Q Were there any other injuries or marks on her?
21 A No, not that I can recall.
22 Q All right. So is it fair to say other than those two
23 weekends that you've marked on -- I believe it's Defense
24 Proposed Exhibit -- or Exhibit JJ?

1 THE COURT: Yes.
2 BY MS. DiGIACOMO:
3 Q You didn't go four-wheeling or rock climbing with
4 Blaise any other time during July?
5 A I may have, yes. I can't specify a time or a day,
6 though.
7 Q Okay. Well, did you mainly go four-wheeling on the
8 weekends?
9 A Yes, 'cause those were my days off.
10 Q Okay. The weekend of the 14th and the 15th of July,
11 is it possible you went four-wheeling with her on that weekend
12 as well?
13 A It could be possible.
14 Q I'd ask you to go ahead and put your initials on the
15 14th and the 15th as well then.
16 A When was she arrested? I don't remember the
17 date.
18 Q If I told you she was arrested July 20th, which is the
19 following Friday after the 15th, does that make it more or less
20 likely that you four-wheeled with her on the 14th and 15th?
21 A No, it wouldn't make it less likely.
22 Q Okay. So it's possible you did?
23 A It's possible, yes.
24 Q And this four-wheeler you actually got, you said for

1 Christmas? Was that 2000?
2 A Yes.
3 Q And do you recall the day you gave the taped
4 statement to the police?
5 A I don't recall the specific day.
6 Q If I was to show you State's Proposed Exhibit 195,
7 would that refresh your recollection?
8 A I'd have to go by what it says in there, yes.
9 Q Okay. And it's actually on the tape recording itself
10 what the date is.
11 A Okay. The 26th of --
12 Q July.
13 A -- July.
14 Q And you wouldn't dispute that?
15 A No.
16 Q If you could go ahead and mark on the 26th of July
17 your initials as well as the day you gave the taped statement.
18 Thank you.
19 MS. GREENBERGER: Your Honor, may we request it
20 be with a different color so there's a distinction on what -- if
21 she's just initialing it?
22 MS. DiGIACOMO: Well, the record's clear what she's
23 initialing on those dates.
24 THE COURT: I think the record is clear, but it -- it

1 wouldn't hurt anything if she circled it with a different color
2 pen perhaps.
3 MS. DiGIACOMO: Okay. Do you have a different
4 color marker?
5 THE COURT: You can approach the clerk.
6 MS. DiGIACOMO: Thank you.
7 May I approach the witness, Your Honor?
8 THE COURT: Yes. The record shall reflect that the
9 clerk has provided Ms. DiGiacomo with a blue marker.
10 MS. DiGIACOMO: Yes, Your Honor.
11 Michele, if you would just circle the dates that I
12 asked you to put on there.
13 THE WITNESS: Just your dates?
14 MS. DiGIACOMO: Just my dates.
15 THE COURT: The record shall reflect that the
16 witness has complied.
17 MS. DiGIACOMO: Thank you.
18 BY MS. DiGIACOMO:
19 Q Michele, this incident that Blaise talked to you about,
20 this attack, and she said it was a couple of weeks before she
21 came back to Panaca, or is that just -- that's what you
22 assumed?
23 A That's what I assume, it was before.
24 Q Okay. And at the time that you spoke with her, she

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1 talked to you about the medication she was on?
2 A She didn't -- if she gave me a name I don't
3 remember the name of the medication, but yes, she did talk to
4 me about medication.
5 Q If I showed you your statement, would that refresh
6 your recollection, possibly, as to what you told the police?
7 A Yes.
8 Q Okay. Page 7 and 8.
9 A Okay.
10 Q Okay. Does that refresh your recollection?
11 A Yeah. Yes.
12 Q Okay. When you talked to the police, could you
13 recall the medication that she said she was presently on?
14 A Prozac. Is that what it says in there?
15 Q Okay.
16 A Yes.
17 Q Actually you said that she didn't give you the name
18 of what she was currently on. You said you couldn't
19 remember the name of it, it's a really complicated weird name
20 I've never heard of before. But then she said she also talked
21 to you about Prozac as an additional medication, do you recall
22 that?
23 A Yes.
24 Q Okay. Is that what you told the police?

AUSTRIA - REDIRECT

1 A That's what I told the police.
2 Q Okay. But as you sit here today, do you recall what
3 the medication was she said she was presently on when you
4 talked to her?
5 A I cannot recall.
6 Q Okay. But you do recall something being mentioned
7 about Prozac as well?
8 A Based on reading that, that's the only thing -- the
9 reason why. It's been too long ago. I don't remember all that
10 stuff.
11 Q Okay. And you were provided with a copy of your
12 statement --
13 A I was.
14 Q -- in your prior testimony to refresh your memory
15 before coming in?
16 A I was.
17 Q Okay. Now your testimony is that Blaise told you
18 she slashed the penis, correct?
19 A Slashed, yeah. Yes.
20 Q Okay. She didn't tell you she stabbed the penis --
21 A No.
22 Q -- or cut it off?
23 A No.
24 Q But she did slash the penis?

AUSTRIA - REDIRECT

1 A She slashed at his penis, yes.
2 Q Okay. But your exact words were "slashed the
3 penis"?
4 A Mm-hmm. Yes.
5 Q But it's your testimony now that you don't know if
6 she actually cut the penis?
7 A That is my testimony.
8 Q Okay. And you were talking about that you also
9 carry a pocketknife, that was common back then?
10 A It's common now. I have one in my purse.
11 Q You got into the building --
12 A Not here --
13 Q Oh, I was gonna say --
14 A -- but it's out in the car. I have a couple, I
15 mean --
16 Q I was gonna say, you got into the building with a
17 knife?
18 A No. No.
19 THE COURT: Record shall reflect the Judge sat
20 straight up in her chair.
21 THE WITNESS: No, that's in my purse out in the
22 car, but --
23 BY MS. DiGIACOMO:
24 Q Okay. But you described that you carry it in case

AUSTRIA - REDIRECT

1 you ever need it to, you know, cut boxes or work on
2 something, is that correct?
3 A That is correct.
4 Q So you don't carry it mainly for protection?
5 A Only if I'm out and about on the four-wheeler or
6 something --
7 Q Okay. But --
8 A -- or out in the desert.
9 Q But normal every day --
10 A Normal every day thing. I have it on me at all times
11 when I have my purse.
12 Q All right. Now defense counsel was also asking you
13 about whether or not Blaise knew what had happened. Do
14 you recall her questioning?
15 A Questioning the fact --
16 Q About whether or not Blaise knew exactly what
17 happened with her attack?
18 A I don't know any -- I couldn't give you any answers
19 on that.
20 Q Okay. But do you recall Blaise telling you that she --
21 or do you recall telling the police that Blaise was very scared
22 about what happened?
23 A She was unsure of the situation this person was in.
24 Q What do you mean she was unsure?

A She was concerned 'cause she was unsure, you know, how hurt he was or if he had been killed or not.
Q Okay. And she told you she didn't know what had happened?
A Right.
Q And she also told you though that she was scared that she might've killed somebody?
A Yes.
Q And she wasn't sure if she had killed him or not --
A Correct.
Q -- she told you that?
A Correct.
Q Now the defense counsel asked you about when the police came and talked to you, and you said that they talked to you first before they asked to record you?
A Yes, they did.
Q And then after they asked to turn on a tape recorder, what did they ask you at that point?
A Are you asking me when the tape recorder was going or before?
Q Before.
A They basically went over some questions that they were gonna ask me when the tape was on.
Q Okay. And then when they turned on the tape did

they ask you the same questions?
A Pretty much, yes.
Q Did you feel they left anything out?
A No.
Q Okay.
MS. DiGIACOMO: Court's indulgence.
May I approach the clerk, Your Honor?
THE COURT: Yes.
MS. DiGIACOMO: May I approach the witness?
THE COURT: Yes, you may.
BY MS. DiGIACOMO:
Q I have here what's been marked for identification as State's Proposed Exhibits 196 and 197 that I've just shown defense counsel. Can you look at those and let me know if you recognize --
A Yes.
Q -- what's depicted there? What's depicted in those photographs?
A What's depicted?
Q What's in those photographs? What are they pictures of?
A It's a picture of Blaise and the scratch on her belly from falling off the rock.
Q Okay. And these fairly and accurately depict the

way the scratches look after the rock climbing accident?
A After she slid off the rock, yes.
MS. DiGIACOMO: Your Honor, at this time I would move for admission of State's Proposed Exhibits 196 and 197.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit Nos. 196 and 197, admitted)
MS. DiGIACOMO: May I publish, Your Honor?
THE COURT: You may.
MS. DiGIACOMO: Okay.
BY MS. DiGIACOMO:
Q I'm gonna show you -- hold on. Okay. Is that not -- oh, sorry. Okay. Okay. I'm showing you on the screen, if you can see that, State's Exhibit --
A I can see it.
Q You can see it?
A Mm-hmm.
Q State's Exhibit 196. Is -- are these the scratch marks that you yourself took a picture of after she had her rock climbing accident?
A Yes, it is.
Q And then on State's Exhibit 197. If you can see her -- what portion of her belly is showing there. Do you also see those same scratch marks?

A Yes.
Q Okay.
MS. DiGIACOMO: Court's indulgence.
BY MS. DiGIACOMO:
Q Now with regard to the dates that you've put your initials on there, the 30th, the 1st of July, 7th, 8th, and then we have the 14th and 15th. Those are all dates that you believe you saw Blaise, correct?
A Yes.
Q Okay. Now did you also see her during the week?
A Yes.
Q How many days during the week would you see her each week?
A I couldn't give you a direct answer on that.
Q Did you see her more than once?
A I may have -- I seen her after work a few times, you know. She'd come over and we'd have a couple beers.
Q Okay. Did you -- excuse me. Did you ever hear her talk about going back down to Vegas?
A Yes.
Q While she was in Panaca?
A Yes.
Q Did you ever talk to her when she came back from Vegas?

A Yes.
Q Okay. And some of these times that you talked to her were during the week after work?
MS. GREENBERGER: Objection, vague as to time.
MS. DiGIACOMO: After she --
THE COURT: Sustained.
MS. DiGIACOMO: Okay.
BY MS. DiGIACOMO:
Q After she came -- well, strike that. For the month of July, when you saw her in Panaca, you saw her on the weekends and you also saw her possibly during the week as well?
A Yes.
Q Do you know approximately how many times total you saw her that month?
A No.
Q Okay. Are you positive from looking at this calendar, can you positively say which day it was you had the conversation with her regarding --
A No. No, I cannot.
Q Okay. And that's regarding her attack in Vegas?
A Yes, it is.
Q Okay.
MS. DiGIACOMO: Pass the witness, Your Honor.

THE COURT: Recross.
MS. GREENBERGER: Thank you.

RECROSS EXAMINATION

BY MS. GREENBERGER:
Q Hello again.
A Hi.
Q Just want to clarify what you recall. You definitely remember seeing Blaise when she first came back from Las Vegas the last weekend in June, the beginning of July, correct?
A Correct.
Q And you remember talking with her, catching up on the time she had been gone?
A Yes.
Q Are you pretty certain as you sit here today that it was June 30th or July 1st that she told you about a prior attack in Las Vegas?
A I'm not certain of that date.
Q Are you certain it was the weekend of either before the 4th of July or after the 4th of July?
A I am certain of that.
Q So it definitely was not the weekend of July 14th and 15th?
A I could not be --
Q What you remember. You remember it was the

weekend before, the weekend after the 4th of July?
A I'm pretty much going around the 4th date as far as seeing and talking with her. Other than that, I can't really specify a date or a time.
Q You also recall that when she confided in you, she was discussing an incident that had happened several weeks prior, correct, the first couple weeks after she had gone to Vegas?
A I don't know what -- I don't know what you're asking me.
Q When she described when she had been attacked and you spoke to her during the beginning of July --
A It was --
Q -- you had the distinct impression it had happened several weeks before, correct?
A Maybe not several weeks before, but sometime before that. I can't give you a specific answer on that.
MS. GREENBERGER: Okay. Nothing further.
MS. DiGIACOMO: I do, Your Honor, just briefly.
THE COURT: You may, redirect.
MS. DiGIACOMO: Thank you, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MS. DiGIACOMO:
Q You've testified that you kind of remember the

weekend before the 4th of July and the weekend after the 4th of July as seeing Blaise?
A Yes.
Q If there was testimony by other witnesses that said she was actually in Vegas on June 30th and July 1st, how would that effect whether or not you believe you saw her the weekend before the 4th?
A Because I know I saw her on that weekend 'cause we went four-wheeling on that weekend.
Q Okay. And you also testified that you believe the conversation you had with her was the weekend before or after the 4th?
A It was in that area --
Q Okay.
A -- in that time frame.
Q But is it possible it could've also been either the 14th or the 15th, that weekend?
A It could be possible, yes.
MS. DiGIACOMO: Nothing further.
THE COURT: Further cross?
MS. GREENBERGER: No, Your Honor.
THE COURT: May I have the blue marker?
THE BAILIFF: We have a question.
THE COURT: Yes, we do.

I'm relieved I don't have to ha[illegible] discussion with the front gate bailiffs and the chief of security.

MS. DiGIACOMO: Right.

THE COURT: But we do have apparently some questions coming in from the jurors. I would ask counsel to approach.

(Off-record bench conference from 2:31:37-2:42:16 p.m.)

THE COURT: There's a number of questions that the jury has sent out to be asked of you, so the Court is going to ask those at this time.

"Did you call the police when Blaise told you she slashed off a man's penis?"

THE WITNESS: No.

THE COURT: That will be marked as Court's Number 14.

"Why did you or did you not call authorities for this alleged crime?"

THE WITNESS: Because we were friends and she was reaching out to a friend about an incident about somebody attacking her.

THE COURT: This will be marked as Court's Number 15.

The Court advises you that you are to answer this question with just a yes or a no.

"Did Blaise ever tell you why she needed a bodyguard when she carried a knife for protection?"

THE WITNESS: No.

THE COURT: That will be marked as Court's Number 16.

"You stated during the State's questioning that you couldn't remember if you saw Blaise on Saturday or Sunday before July 4th. But on defense questioning you readily marked on calendar the Saturday and Sunday before July 4th. What made you remember?"

THE WITNESS: I was going by what I know from before, what I testified before.

THE COURT: This will be marked as Court's Number 17.

"During defense questioning you stated that Blaise indicated attack happened within the first couple of weeks, but during State's questioning you stated she gave no indication to when attack happened and that you assumed when attack happened. Did you, in fact, assume, or did Blaise indicate when attack happened?"

THE WITNESS: Blaise did not indicate when it happened, I just assumed.

THE COURT: This will be marked as Court's Number 18.

"Many of your responses are I can't remember or I can't specify or I don't know. Do you suffer any medically diagnosed memory loss?"

THE WITNESS: No, I don't. It's been five years since this incident --

THE COURT: This will be marked --

THE WITNESS: -- and I'm going based on my testimony that I gave five years ago.

THE COURT: This will be marked as Court's Number 19.

"When going four-wheeling with Blaise, was it typically on both Saturday and Sunday, or was it one day or the other?"

THE WITNESS: It was one day or the other. It wasn't specifically Saturday or a Sunday.

THE COURT: This will be marked as Court's Number 20.

Followup questions by the State?

MS. DiGIACOMO: Yes, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MS. DiGIACOMO:

Q With regard to when this conversation took place, you stated you were just going by what your prior testimony was from five years ago?

A Yes.

Q Okay. Now would you agree with me, because you've had a chance to review it, that when the State first asked you --

MS. DiGIACOMO: -- page 148, counsel --

BY MS. DiGIACOMO:

Q -- when -- if you recalled when the conversation took place. Isn't it true you stated that you knew it was in the afternoon but you couldn't recall if it was a weekend or if it was after work?

A Correct.

Q Okay. But then later when questioned by the defense, on page 157, you stated that you knew it was the weekend before the 4th of July or the weekend after, and you specifically stated June 30th, July 1st or July 7th or July 8th, do you recall that?

A Aren't those basically the same questions? I may have -- are you saying that I answered them differently?

Q Well, I'm just saying that when the State first asked you, you knew it was during the week sometime between July 2nd and July 8, do you recall that?

A Yes.

Q Okay. But then when the defense questioned you at the prior hearing you stated it was either June 30th, July 1st, or

July 7th, July 8th, do you recall that?
A I was specifying in between those two weekends.
Q Okay. So do you know if it was on the weekend or if it --
A No, I don't.
Q Is it possible it was during the week?
A I was more or less specifying the times that I seen her that I knew she was in Panaca.
Q Okay. So when you say July [sic] 30th and July 1st, you knew she was in Panaca but she wasn't -- you didn't necessarily see her or --
A I seen her. I don't remember exactly what day it was I seen her. She was going back and forth to Vegas from Panaca.
Q During the month of July?
A During the month of June. And I don't want to say -- I'm assuming that's what she was doing. I don't remember.
Q In June?
A I know in June, but in July, I mean --
Q You don't know if she went back to Vegas or not --
A I don't.
Q -- during that time?
A I don't remember, so --

Q Okay. Is it fair then just to say that you know that you saw her multiple times between June 30th and July 20th?
A That would be fair.
MS. DiGIACOMO: Court's indulgence.
Nothing further.
THE COURT: Followup questions by the defense.
MS. GREENBERGER: Thank you. Just a few quick ones.
THE WITNESS: Okay.

FURTHER RECROSS EXAMINATION

BY MS. GREENBERGER:
Q When my client came back to Panaca in early July, each time you saw her thereafter it was in Panaca, correct?
A Yes.
Q Not Las Vegas?
A No.
Q You distinctly recall seeing her either Saturday or Sunday the last weekend of June or the first weekend of July, correct?
A Yes.
Q And you also distinctly recall seeing her the weekend of the 7th and 8th, correct?
A Yes.
Q And that was in Panaca?

A That was in Panaca.
Q Isn't it true that you have never testified that Blaise told you she cut someone's penis off?
A I never have testified that, that she but the penis off. I testified that she slashed the penis.
Q Do you recall seeing her vehicle in Panaca during the time that she first came back to Panaca on the 30th and 1st through the weekend of the 7th and 8th?
A Yeah, because she had it packed out front -- outside her house in the yard.
Q And you are her neighbor?
A Well, she's right across the street from me, I can see her house, see the cars.
Q Is part of the reason you believed she was staying in Panaca because you saw her car everyday during that time period?
A Yeah. I seen her more or less, I mean --
Q Her and her car?
A Yeah.
MS. GREENBERGER: I don't believe I have anything further.
MS. DiGIACOMO: Nothing further.
THE COURT: Anything further by the State?
MS. DiGIACOMO: No, Your Honor.

THE COURT: You may step down from the stand.
Would counsel approach?
(Off-record bench conference from 2:51:58-2:52:56 p.m.)
THE COURT: The State will be calling their next witness out of order at this time.
MS. DiGIACOMO: Your Honor, the State calls Paul Brown.
THE CLERK: Please come all the way forward. Remain standing and raise your right hand.

PAUL BROWN, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated.
State your name and spell it for the record, please.
THE WITNESS: Paul Russel Brown, P-A-U-L R-U-S-S-E-L B-R-O-W-N.
THE COURT: State may proceed.
MS. DiGIACOMO: Thank you.

DIRECT EXAMINATION

BY MS. DiGIACOMO:
Q Mr. Brown, is there a name that you go by normally?
A Rusty.
Q Rusty. Okay. And your girlfriend, is that Michele Austria?
A Yes.
Q Is that the same person that just left the courtroom?

BROWN - DIRECT

1 A Yes.
2 Q And how long have you known Michele?
3 A Nine years.
4 Q Directing your attention back to June, July of -- or
5 excuse me, of 2001, where were you living?
6 A Panaca, Nevada.
7 Q Where specifically within Panaca?
8 A On the corner of Gentry and Lee.
9 Q Okay. And who did you live with?
10 A My girlfriend, Michele Austria.
11 Q Did you live with anyone else at that time?
12 A I had her sister living with us.
13 Q And what's her name?
14 A Paula Gilmore.
15 Q And do you have any kids?
16 A Yes, we have two.
17 Q And they were living there as well?
18 A Yes.
19 Q Okay. How long had you lived in Panaca?
20 A Off and on all my life.
21 Q And did you know a Blaise Lobato?
22 A Yes.
23 Q How do you know her?
24 A Through her parents. I used to work at a restaurant

BROWN - DIRECT

1 there in Panaca, and that's where we first met.
2 Q Do you see her in the courtroom here today?
3 A Yes, I do.
4 Q Would you please point to her --
5 A Right there.
6 Q -- and describe what she's wearing?
7 A She's wearing purple -- purple shirt with the plaid
8 kinda --
9 MS. DiGIACOMO: Your Honor, would the record
10 reflect identification of the defendant.
11 THE COURT: The record shall so reflect.
12 MS. DiGIACOMO: Thank you.
13 BY MS. DiGIACOMO:
14 Q And you said you met through her parents. Who did
15 you work with?
16 A Becky Lobato.
17 Q Is that her mom or step-mom?
18 A Yes.
19 Q Did you also live nearby them?
20 A Down the street.
21 Q Yeah.
22 A Yes.
23 Q Okay. Could you see their house from your house?
24 A Yes.

BROWN - DIRECT

1 Q How long have you lived -- excuse me. Strike that.
2 As of 2001, how long had you lived in that residence?
3 A We've been there about 7 years.
4 Q Total?
5 A Yes.
6 Q Okay. Now do you recall a conversation between
7 Blaise and Michele that happened during that summer 2001?
8 Is that a yes?
9 A Yes.
10 Q You need to answer out loud for the court recorder,
11 okay? So you recall a conversation?
12 A Yes.
13 Q Do you recall approximately when it happened or
14 when it took place?
15 A No.
16 Q All right. Do you know what the conversation was
17 about?
18 A Just about someone -- or her cutting a man's dick
19 off.
20 Q Okay. Who's her?
21 A Blaise Lobato.
22 Q Okay. So Blaise and Michele were talking and
23 having this --
24 A She wasn't -- it was just in the house, just talking to

BROWN - DIRECT

1 everybody that was there.
2 Q Okay. So who all was there?
3 A Me and Michele and Paula Gilmore.
4 Q Okay. Now do you recall giving a statement to the
5 police back in July of 2001?
6 A Yes.
7 Q And did you tell them that you actually had
8 overheard the conversation between Blaise and Michele?
9 A Yes.
10 Q Okay. So you weren't taking place in the
11 conversation?
12 A No.
13 Q All right.
14 A I was --
15 Q What -- where was this conversation that Blaise and
16 Michele were having take place?
17 A Just right on our back porch.
18 Q Okay. And what specifically did Blaise say?
19 A That she had cut a man's dick off.
20 Q All right. Do you recall anything more specific?
21 A No.
22 Q Okay. If I were to show you the statement that you
23 gave to the police, would that refresh your recollection?
24 A Sure.

Q Okay.
MS. DiGIACOMO: Your Honor, may I approach the clerk?
THE COURT: Yes.
MS. DiGIACOMO: And may I approach the witness?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q Okay. I have here what's been marked for identification purposes only as State's Proposed Exhibit 198.
THE COURT: You may approach the witness.
MS. DiGIACOMO: Thank you.
BY MS. DiGIACOMO:
Q I'm gonna show you page 4. If you could read these first few lines and let me know if after reading that that refreshes your recollection as to what specifically you heard Blaise say?
MS. GREENBERGER: What page, counsel?
MS. DiGIACOMO: Page 4.
THE COURT: 4.
BY MS. DiGIACOMO:
Q Does that refresh your memory?
A Yes.
Q Okay. What specifically did you hear her say?
A She'd reached down and cut a man's penis off.

Q Okay. Did she say grabbed her knife as well?
A I can't remember that far back.
Q Okay. But did you tell the police that she reached down, grabbed her knife and cut the guy's dick off?
A Yes.
Q That's what you told the police? Is that a yes?
A Yes.
Q Is that what you actually overheard Blaise say?
A In 5 years ago, yes, I'd go by that.
Q Okay. Well, is it true -- or is it fair to say that your memory was better back in 2001 when you gave this statement?
A Oh, yes.
Q Okay. And actually you told the police that this conversation had not occurred too much earlier than when you spoke to them, do you recall that?
A Yes.
Q Okay. Do you recall specifically when you told the police the conversation occurred?
A I think it was about a week before she was arrested.
Q Okay. And that's your recollection as you sit here as well today?
A Yes.
Q Do you recall Blaise saying where this attack

happened?
A No.
Q Do you recall telling the police where she said it happened?
A Oh --
Q Would it refresh your recollection if I was to show you her statement?
A Yes.
Q Okay.
MS. DiGIACOMO: Page 3, counsel.
BY MS. DiGIACOMO:
Q Okay. I'm gonna show you what's been marked for identification purposes only as State's Proposed Exhibit 198. If you could read this last bit to yourself and let me know when you're done. Okay. Does that refresh your recollection?
A Yeah.
Q Okay. Where did Blaise say it happened?
A In Las Vegas, Nevada.
Q Did she say when it had happened?
A No.
Q Do you recall why she had to grab -- or cut a guy's dick off or why she grabbed her knife, do you recall that?
A No.
Q Okay. If I was to show you your statement, would

that refresh your recollection?
A You know, I think I just read that before. She had been attacked by someone.
Q Okay. And so she stated she was defending herself with a knife?
A Yes.
Q Did she happen to describe the person at all that she had to ward off?
A No.
Q Did she say anything about what she did after she cut his dick off?
A No, she did not.
Q Now did you hear the entire -- excuse me. Did you overhear the entire conversation?
A I did not.
Q Why not?
A I was on my way out the back porch to go for a four-wheeler ride.
Q Okay. Now you said you lived in Panaca pretty much off and on all your life, is that --
A Yes.
Q Okay. How would you describe Panaca?
A Small town. Everybody knows everybody.
Q Okay. And what about talk in the town?

A Small town, a lot of talk. Yeah.
Q Okay. Was there a lot of talk about Blaise after this?
A Yes, there was.
Q Did you actually see when she was arrested?
A Yes.
Q Okay. How did you do that?
A Out my window, my front yard.
Q And you said that people talked about Blaise?
A Yes.
Q Okay. And as people talked about it, did you hear information that you didn't know before?
A Yes.
Q Okay. And how was -- what's your opinion of all the information that was going around?
MR. SCHIECK: Objection, relevance, Your Honor.
THE COURT: Counsel approach.
(Off-record bench conference from 3:03:25-3:04:18 p.m.)
THE COURT: The objection's being withdrawn and you may answer the question.
THE WITNESS: I'd like to hear it again.
BY MS. DiGIACOMO:
Q Okay. You know, talking about like all the talk that goes on in a small town, everything that you hear going around, is it always accurate?

A No.
Q Okay. What was going on with regard to Blaise? Do you have any opinion whether or not that was all accurate?
A I had no reason to believe that it was.
Q Okay.
MS. DiGIACOMO: Court's indulgence.
BY MS. DiGIACOMO:
Q The four-wheeler that you went out on when you overheard this conversation, do you recall when you got that four-wheeler?
A 2001. I would not know the month.
Q Okay. Is it possible it was during the wintertime?
A No, it was during the summer.
Q During the summer. Do you -- do you have more than one four-wheeler?
A No.
Q Do you and Michele share that four-wheeler?
A Yes.
Q Okay. Did you ever go four-wheeling with Blaise?
A Yes.
Q How many times did you go four-wheeling with her?
A Numbers of time.
Q Okay. Were you ever there when she had an accident?

A No, I was not.
Q When would you guys normally go four-wheeling?
A Where?
Q When?
A When? Well, I had just bought it, so we went all the time.
Q Did you work during the week normally?
A Yes.
Q And would you go after work as well?
A Yes.
Q Where would you go four-wheeling?
A Out in the desert, down towards Panaca Springs, Condor Canyon, around in there.
Q Now actually where you live at the end of the street, or these two streets where they join, is there desert on either side of you?
A My back yard goes out into the desert.
Q Do you go four-wheeling out there?
A Yeah.
Q Do you recall a time when Blaise got injured that summer?
A Yes.
Q Were you there?
A No, I was at home when they come back from the

four-wheeler ride.
Q Okay.
MS. DiGIACOMO: Nothing further.
MS. GREENBERGER: Good afternoon.
THE COURT: You may cross.
MS. GREENBERGER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. GREENBERGER:
Q You first met Blaise through her family?
A Yes.
Q And do you know her whole family that lives up in Panaca?
A I knew Larry and Becky Lobato and Blaise and their daughter --
Q Ashley?
A Ashley.
Q Larry would be her father, Becky would be her step-mother?
A I'm not sure how that goes.
Q And you knew her sister, Ashley?
A Yes.
Q Did you work with Blaise also at Jan's Restaurant, or just her mother, Becky?
A Blaise would come in and help, I mean clean the

tables and --
Q Was that while Blaise was in adult education schooling with Dixie, during that time period?
A No, I think this was -- this was back further. It was back when she was 13 or 14.
Q Blaise babysat for you and Michele's children?
A Yes.
Q What time period was that, if you recall?
A About six years ago.
Q Do you recall after Blaise graduated from her high school program with Dixie Tienken, her heading down to Vegas in the late May, early June time period?
A She went to Vegas quite a few times. I wouldn't know -- I couldn't tell you dates.
Q Do you recall her coming back to Panaca before the July 4th holiday that year of 2001?
A It was in that vicinity. I couldn't say if it was before.
Q Did you see her on the 4th of July, if you recall?
A I'm pretty sure I did, yes.
THE COURT: I didn't hear that, I'm sorry.
THE WITNESS: Yes.
BY MS. GREENBERGER:
Q Do you recall seeing her vehicle sitting in front of her house during that time period?

A Yes, I do.
Q And that would be a red Fiero?
A Yes.
Q Do you recall seeing Blaise the weekend after the 4th of July, the 7th and the 8th, in Panaca?
A Yes.
Q Do you recall seeing her red Fiero still parked in front of her house during that time period?
A Yes.
Q When this conversation occurred, we just heard testimony from Michele that no one was present. How can you explain that?
A I can't. Maybe she had gotten up to go get a drink or something. We were all sitting on the back porch and I was going to a four-wheeler ride, so I got up and left.
Q You were not a participant in this conversation, correct?
A No, I had -- when it started I was just getting ready to leave, so I had more things on my agenda.
Q You didn't think it was significant enough what you heard to call the police, correct?
A No.
Q Why not?
A 'Cause I've heard a lot of wild stories and stuff like

that that didn't prompt me to do that.
Q Are these wild stories that you've heard from Blaise herself?
A Yeah.
Q Did this happen often --
A Well --
Q -- over the years you knew her?
A She's always been a little wild, as in how she talked. She's a young lady, so --
Q Fair to say an exaggerator?
A Yes.
Q You never heard Blaise tell Michele that she beat a man and stabbed him in the throat, did you?
A No.
Q You would've remembered that?
A Yes, I would.
Q You never heard Blaise tell Michele she knocked some man's teeth out, did you?
A No.
Q Would've remembered that?
A I would've.
Q You didn't hear Blaise tell Michele she punched this man and gave him two black eyes, did you?
A No, she didn't.

Q What about dismembering him, cutting off his penis after death. Did she ever tell you that?
A No.
Q Would you remember that?
A Yes, I would.
Q What about slashing him in his rear? Ever heard that from Blaise?
A Did not.
Q Stabbing him in his scrotum, ever hear that from Blaise?
A No, I did not.
Q Never on any occasion?
A No.
Q In fact, when you spoke to Metro, isn't it true that you told them you couldn't even remember the words that she used?
A No, I couldn't.
Q Isn't it true when you spoke to Metro they talked to you for some time before recording your conversation?
A Yes.
Q Do you recall how long?
A Just to tell me who they were and what they were there for.
Q Isn't it true that you read an article about this

1 incident prior to talking to the police?
2 A Yes.
3 Q Isn't it true that as you sit here today, you're not
4 sure in your mind what you read in the paper versus what you
5 overheard in Blaise's conversation?
6 A Yes.
7 Q You're not sure?
8 A I'm not sure.
9 Q It could've been material you learned in the paper?
10 A Yeah. I remember my dad giving me that article at
11 the gas station while we were having coffee that morning.
12 That was before she was arrested.
13 Q That was before you talked to the police for the first
14 time, isn't that true?
15 A Yes.
16 Q You were talking about a small town, how things get
17 mixed up what you hear and what actually happens gets
18 screwed up in some ways. Is that an accurate statement?
19 A Yes.
20 Q Can you explain that to us a little bit more?
21 A Just always a lot of gossip going around about a
22 certain -- certain people and -- if you want to be in that crowd
23 you can hear a lot of things about --
24 Q Blaise didn't like guns, correct?

1 A No, she did not.
2 Q She didn't like hunting, correct?
3 A No, she did not.
4 Q And she didn't like blood, did she?
5 A No.
6 Q How do you know that?
7 A On occasion we would go out shooting rabbits, you
8 know, and -- we were in a small town, that's what kids do
9 when they're -- they gotta -- their dad buys them a new 22 or
10 something and take 'em out shooting rabbits and spotlighting,
11 and she would never want to go.
12 Q You didn't take -- excuse me. You didn't take
13 Blaise's stories too seriously, did you?
14 A No.
15 Q You don't now either?
16 A I really don't -- it's been five years, I really don't
17 know who she is from --
18 Q Well, my question is your opinion about now taking
19 her too seriously, that was your opinion in 2001 --
20 A Yes.
21 Q -- based on your knowledge of her then --
22 A Yep.
23 Q -- the stories she told?
24 THE COURT: I didn't hear an answer.

1 THE WITNESS: Yes.
2 THE COURT: Thank you.
3 BY MS. GREENBERGER:
4 Q You mentioned Michele and Blaise went four-
5 wheeling and you were aware there was some kind of
6 accident? A rock climbing accident?
7 A Yeah, there was a few accidents on that four-
8 wheeler.
9 Q Do you recall seeing the injuries, scratches on
10 Blaise's stomach from a rock climbing incident?
11 A Yeah, I remember her showing them to me.
12 Q Was that after they got back from four-wheeling?
13 A Yes.
14 Q And that was either on the last weekend in June or
15 the first weekend of July?
16 A Yeah, it was in that vicinity.
17 Q Did the police ever suggest any dates to you in this
18 case?
19 A No, not dates.
20 Q Did the police suggest anything to you?
21 A No.
22 MS. GREENBERGER: Court's indulgence for a
23 moment.
24 THE COURT: Yes.

1 MS. GREENBERGER: I have nothing further. Thank
2 you.
3 THE COURT: Redirect.
4 MS. DiGIACOMO: Thank you, Your Honor.
5 **REDIRECT EXAMINATION**
6 BY MS. DiGIACOMO:
7 Q Now defense counsel just asked you about the last
8 week in June and first weekend in July, do you recall that?
9 Yes?
10 A Yes, I do.
11 Q Okay. And what specifically do those dates bring to
12 mind for you?
13 A The 4th of July weekend, Caliente, Nevada.
14 Q Okay. What specifically with regard --
15 A The fireworks and --
16 Q Okay. So there was fireworks on the weekend?
17 A I'm not sure if it was on a weekend that particular
18 time. It's whenever the 4th of July comes around. They have
19 the fireworks on that date.
20 Q Okay.
21 A They usually will have a race, motorcycle race on the
22 weekend prior, after.
23 Q Do you remember if that happened in 2001?
24 A There was a race, yes.

Q Okay. And that was on the w[illegible]nd?
A Yeah.
Q What day of the -- what day was that, Saturday or Sunday?
A It's an all weekend thing, so I'm not sure when the race was.
Q Okay. What --
A I don't keep track of it.
Q Okay. Which weekend, before or after the 4th?
A I think it was before.
Q Okay. And you said that you saw some scratches on Blaise back then? And I'm showing you State's Exhibit 196. Does that look familiar?
A Yep.
Q Okay. Now you weren't with her when she got those scratches?
A No.
Q So you're basing the fact that defense counsel said you saw scratches from rock climbing, you're basing that on what other people have said how she got 'em?
A I'm basing that on what she had told me.
Q Okay. So she told you that's how she got it, but you didn't see it?
A No.

Q Do you know when this accident happened with the rock climbing?
A It had to have been midday. I wouldn't know a date or a time.
Q Okay. So just middle of the day, but you can't say when?
A [No audible response].
Q Okay. And --
THE COURT: I didn't hear an answer.
THE WITNESS: No.
THE COURT: Thank you.
BY MS. DiGIACOMO:
Q The conversation that you overheard, as you sit here today, can you recall whether or not you actually overheard her say she cut some guy's dick off?
A You know, it's -- having a lot of kids around, they talk a lot, so you hear like I'm gonna cut someone's dick off or something like that. You just -- I shrugged it off like that, you know.
Q No, no, I understand you shoved it off, but you actually heard her say "cut a dick off"?
A Yes, I did.
Q Okay. And despite the fact that you heard all these other people talking about the incident and even possibly read

a news article before you gave your statement to the police, when you gave your statement to the police, were you telling them what you had heard yourself or were you telling them just what other people had told you?
A What I had heard myself.
Q Okay. And so what you've testified here to today, it's what you actually heard back then?
A Yes.
Q And it's not what somebody else told you?
A No.
Q It's not what somebody had you read in the paper?
A It's what I had heard.
Q Okay. Now did you know if Blaise had a bodyguard?
A Thinking back, I've heard about it but I didn't know for sure.
Q Okay. But you didn't -- so you don't know for sure?
A No.
Q Now defense counsel also told you or stated that when you talked to the police that you said you can't remember -- you couldn't remember what words she used, do you recall that?
A Yes.
Q And that was just specifically talking about whether or not she said I cut off his dick or cut off his penis, is that

what you're referring to?
A Yes.
Q Okay. Now you've talked about, you know, the small town atmosphere and people after Blaise was arrested were talking about it, correct?
A Yes.
Q Even since the last time you've testified, people still have been talking about it?
A Yes.
Q But what you're testifying to here today is what you actually remember happening when you overheard that conversation?
A Yes.
Q And that was in July 2001?
A Yes.
Q You also mentioned on cross-examination that you knew that Blaise would go to Vegas, would go back and forth between Vegas and Panaca, does that sound fair?
A Yes.
Q And did you know she had a boyfriend in Vegas?
A I've heard about it. Yeah, I heard about -- she told me she had a boyfriend in Vegas.
Q Okay. But you never met him?
A No.

Q You don't know who he was?
A No, I did not.
Q And defense counsel asked you about seeing Blaise the weekend after the 4th of July, do you recall that?
A Yes.
Q When specifically did you see her?
A Well she'd come over off and on. She lived right down the street, so she could just come over to our house.
Q Do you recall specifically what dates?
A No.
Q Okay. Do you just recall when she was home she would come over?
A Yeah.
Q Okay. So you don't know if it was the first weekend in July, the second weekend in July?
A No.
Q Okay. But you do recall seeing her whenever she was home?
A Yes.
Q All right. And with regard to her car, did you know what kind of car she drove?
A It was a -- like an '85 red Pontiac Fiero.
Q And do you recall what her license plate was?
A I think it said "fornicator" on it.

Q All right. And you testified that you had seen that parked in front of her parent's house?
A Yes.
Q Is -- was that in July 2001?
A Yes.
Q Did you ever see her drive it?
A No, I've always seen it just parked there.
Q Okay. When she's home it's parked there?
A Yeah, right in front of the house.
Q But you can't tell the jury whether or not it was moved at all during that time in July 2001?
A No.
MS. DiGIACOMO: Court's indulgence.
Pass the witness.
MS. GREENBERGER: Nothing further, Your Honor.
MS. DiGIACOMO: May I approach the clerk?
THE COURT: You may.
(Pause in the proceedings)
THE COURT: Mr. Brown, you may step down from the witness stand.
Ladies and gentlemen, the Court's gonna ask that counsel remain, but we are gonna take a 10 minute stretch break. Please be in the hallway in 10 minutes. The bailiff will meet you there to return you to your seat in the courtroom.

During the recess you're admonished not to talk or converse among yourselves or with anyone else on any subject connected with the trial. You're not to read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, included without limitation, newspaper, television, radio, and internet. And you're not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you. The jury may exit at this time.
(Jurors are not present)
THE COURT: The record shall reflect that the jury has exited the courtroom. The Court got two notes out from juror in the 8th chair, Robert Graham, that were not questions to the witness but rather were to the Court.
The first one was requesting a potty break. And --
MS. DiGIACOMO: No objection.
THE COURT: -- that one will be marked as the Court's next in number.
THE CLERK: 21.
THE COURT: And the second one was asking for a letter that would permit him to have a test that he has scheduled for Friday, September 22nd, rescheduled. So unless counsel has any objection, I'll go ahead and do him a letter that he's doing jury service.

MS. DiGIACOMO: What time on Friday the 22nd?
THE COURT: He didn't say.
MS. DiGIACOMO: 'Cause that was the day that I have my plane -- oh, is that it?
MR. KEPHART: He'd have to study, you'd think.
MR. SCHIECK: Could be that he didn't have time to study too.
MS. DiGIACOMO: Yeah, that's true.
MS. GREENBERGER: That's what I'm thinking.
MS. DiGIACOMO: Okay.
THE COURT: Friday, December -- or Friday, December 22nd -- Friday, September 22nd is the day that you have --
MS. DiGIACOMO: A flight at 3:00. So really the latest I have to be out of here by is 1:00.
THE COURT: And I -- okay. So you have to leave at 1:00 p.m. And I can't remember, were we gonna proceed forward with --
MS. DiGIACOMO: no, Your Honor.
THE COURT: We were gonna break for the weekend and resume --
MR. KEPHART: Mm-hmm.
MS. DiGIACOMO: Please. Yeah, I can't --
THE COURT: -- on the Monday?

MS. DiGIACOMO: Yeah.
THE COURT: So I can let him know that I guess when we come back, and see if that makes a difference to him or not --
MS. DiGIACOMO: Okay.
THE COURT: -- because we would be breaking at -- well, we could take a late lunch I guess and break at 1:00. Okay.
I'll take us off the record.
(Court recessed at 3:30:50 p.m. until 3:51:58 p.m.)
(Jurors are present)
THE BAILIFF: Department 2 is back in session. Please be seated.
THE COURT: Record shall reflect we're resuming trial in State versus Kirstin Lobato under case number C177934. In the presence of the defendant, her three counsel, the two prosecutors, and the ladies and gentlemen of the jury.
The last juror's note will be marked as the Court's next in number.
THE CLERK: 22.
THE COURT: We'll proceed forward with the State's case in chief.
And before we proceed with the next witness, Court

and counsel have reviewed their calendars and so I have an update for you on the times that we will be commencing the rest of the week.
On Thursday we will be starting at 1:15. And on Friday we will be starting at 10:00 a.m. Friday, however, will be an abbreviated day. We will be recessing by 11:45, and so you will have Friday afternoon open. So that is what the schedule for the rest of this week will consist of.
So tomorrow would be Tuesday at 10:30 -- strike that. Tomorrow is Tuesday. Tuesday at 1:00, Wednesday at 10:30, Thursday at 1:45, and then Friday from 10:00 to 11:45 we'll be in session.
The State will call their next witness out of order.
MS. DiGIACOMO: Thank you, Your Honor.
The State at this time has another witness' testimony that we'd ask to read in at this time. So the State has Christopher Pendelous [phonetic] of our office here to read. And the witness' testimony that we're gonna read in is Jeremy Joseph Davis.
And just for the record, with regard to Mr. Davis' testimony and also with Richard Shott that we read in last week, both of them were sworn in by the clerk, and we were wrong on the date. Both of these testimonies are from May 8, 2002.

THE COURT: Very well.
MS. DiGIACOMO: Thank you, Your Honor.
THE COURT: You may proceed.

JEREMY DAVIS, STATE'S WITNESS, BY DEPOSITION

DIRECT EXAMINATION

BY MS. DiGIACOMO:
Q Stated by the clerk, please state your full name for the record and spell your first name, please.
A Jeremy Joseph Davis, J-E-R-E-M-Y.
Q Mr. Davis, where did you come from before you came to court today?
A Work.
Q Where do you work?
A M.S. Concrete.
Q And where -- what do you do for there?
A R and R.
Q What's that?
A Remove and repair.
Q Okay. So you just go off work?
A Yes.
Q And do you know Kirstin Blaise Lobato?
A Yes.
Q How long have you known her?
A About seven years.

Q Do you see her in the courtroom here today?
A Yes.
Q Would you please point to her and describe an article of clothing she's wearing?
A A green suit.
THE COURT: We'll stipulate she identified the defendant.
MS. DiGIACOMO: Thank you.
BY MS. DiGIACOMO:
Q What was your relationship with the defendant?
A Boyfriend.
Q And approximately how long were you her boyfriend?
A Three years, two years, on and off.
Q Okay. Do you recall telling the police five years?
A Yes.
Q Which is more accurate, five years on and off or three years on and off?
A Three years together and then two years on and off.
Q Okay. And when did this relationship end?
A May of last year.
Q May of 2001?
A Yes.
Q And during the seven year period that you knew the

defendant, did you know her family?
A Yes.
Q Who did she live with?
A Her mother or her father and step-mother.
Q And do you know their names?
A Larry and Becky.
Q How well would you say you knew Larry and Becky?
A Pretty good.
Q And how would you describe Larry and Becky's relationship with the defendant?
A Pretty good.
Q Would Larry and Becky help her out when she needed it?
A Yes.
Q And how did you originally meet the defendant?
A School.
Q Where was the school?
A Panaca, Nevada.
Q And did you live in Panaca?
A No, I lived in Caliente.
Q What school, college, high school?
A High school.
Q And where did you move to -- and when did you move to Vegas?

A Right after graduation.
Q What year did you graduate?
A '96.
Q In May or December?
A May.
Q And where did you live when you moved down in May of '96?
A With my mother.
Q And where was that?
A Trop and Nellis.
Q And where were you living approximately a year ago last April to May or June of 2001?
A In my grandfather's house.
Q Where is that located?
A Trop and Nellis.
Q What is the address?
A 4827 Meredith Avenue.
Q Thank you. And when was the last time before today that you saw the defendant?
A Middle of April last year.
Q 2001?
A Yes.
Q Do you recall telling the police it might've been May of 2001?

A I do not. I don't recall.
Q But to your recollection it was April of 2001?
A Yes, middle of April, end of April.
Q And what were the circumstances of the last time you saw her?
A She was down in Vegas and visiting.
Q Visiting from where?
A Panaca.
Q How long was she here for?
A Couple of days.
Q Did she stay with you?
A No.
Q How often did you see her over that couple of day period?
A Every day.
Q And did she travel back and forth between Panaca and Vegas?
A She had a car.
Q Do you recall what the car was?
A Yeah, a red Pontiac Firebird.
MS. DiGIACOMO: Your Honor, may I approach?
THE COURT: Yes.
MS. DiGIACOMO: I've shown defense counsel previously.

MS. ZALKIN: Stipulate.
BY MS. DiGIACOMO:
Q I'm gonna show you State's Proposed Exhibits 106, 107, and 108. Can you just look at all three and tell me if you recognize what's depicted in these photographs?
A Her red Firebird.
Q Okay. Showing you -- well, are each one of these, are they fair and accurate depictions of the car the defendant drove, all three of these?
A Yes.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibits 106, 107, and 108.
MS. ZALKIN: No objection.
THE COURT: Granted.
(State's Exhibit Nos. 106, 107, and 108, admitted)
BY MS. DiGIACOMO:
Q And you said it's a Firebird. Is it a Fiero or a Firebird, if you know?
A Actually it's a Fiero.
Q Okay. And do you know approximately when she got this car?
A Not approximately.
Q Okay. Well, was it in 2000, 1999, 2001?

A 2001.
Q It was? Was it before you broke up or after you broke up?
A Before.
Q Okay.
MS. DiGIACOMO: Your Honor, may I publish these to the jury?
MS. ZALKIN: No objection.
THE COURT: Yes.
MS. DiGIACOMO: This is number 106, 107, 108. I'm putting up 106. This is 107, and 108.
BY MS. DiGIACOMO:
Q Is there anything unique about the defendant's red Fiero?
A Her license plate.
Q What is her license plate?
MS. ZALKIN: Objection.
THE WITNESS: "Fornicator".
THE COURT: Overruled.
MS. DiGIACOMO: Thank you, Your Honor.
BY MS. DiGIACOMO:
Q When you last saw her in April 2001, did she have this license plate on her car?
A Yes.

Q Do you know how long she had it?
A No.
Q And do you know what kind of shape her car was in? Was it driveable? Did it have engine problems?
A No, it was driveable.
Q Do you know approximately how many times she used this car to travel back and forth to Panaca and Vegas?
A No.
Q Would you -- was it more than one time she came down and saw you in April 2001?
A Yes.
Q Approximately how long of a period would you say she lived in Panaca and you lived in Las Vegas for the duration of your relationship?
A Can you repeat that? I'm sorry.
Q How long during your relationship with the defendant as boyfriend girlfriend off and on, were you having a long distance relationship where she lived in Panaca and you lived in Vegas?
A Three years.
Q And approximately how often would you see her a month?
A Twice.
Q Two times a month?

A Yeah.
Q Would you say you went up there more or she came down to Vegas more?
A I went up there more.
Q Have you ever driven with the defendant from Vegas to Panaca or from Panaca to Las Vegas?
A No.
Q Okay. Do you know approximately how long of a drive it is?
A Two hours.
Q Is there any shortcut or is it always two hours?
A There's a shortcut.
Q Where's the shortcut?
A Rainbow Canyon, halfway between here and Alamo.
Q And this shortcut through Rainbow Canyon, how much time approximately would it chop off of the two hour time period?
A An hour.
Q Are you aware if the defendant knew of this shortcut through Rainbow Canyon?
A Yes.
Q Did she know?
A Yes.
Q Now after April of 2001, you said that it was the last

time you actually saw the defendant. Did you see her car after that time period?
A Yes.
Q And when was that?
A Middle of May.
Q What were the circumstances of when you saw her car next?
A There was no circumstances, it was just parked in front of my house.
Q So you came home one day and her car was parked?
A Yes.
Q Was it parked in front of the house or in the driveway, down the street?
A In the driveway.
Q And where were you living at this time?
A The 4827 Meredith Avenue.
Q Were you living there alone?
A No, I had roommates.
Q And where was -- where -- and where her car was parked in the driveway, could others get in and out of the driveway?
A Yes.
Q Did -- when did you first notice that her car

appeared in your driveway?
A When I came home from work.
Q And was she around?
A No.
Q Did you notice anything unusual about the car?
A No.
Q Do you know why it was left there?
A No.
Q Did the defendant ever give you any indication why it was left there?
A There was a note saying that she had to leave her car here and that she'd be back to get it.
Q And you're familiar with her handwriting?
A Yes.
Q And you recognized the note was from her?
A Yes.
Q Where did she leave the note?
A Above the steering wheel on the dashboard.
Q Did you have to read it through the window?
A No, the window was down enough to where I could reach in and grab it.
Q And is that what you did?
A Yes.
Q Did she leave an extra key for you in case you had

to move the car while it was there?
A No.
Q How long was that car in your driveway?
A About five days.
Q Okay. Do you recall what date it was left there?
A 24th, 25th of May.
Q And what are those dates significant for? How do you remember those dates?
A It was a couple days before Memorial Day.
Q And what were you doing over the Memorial Day weekend?
A I was going out of town for a softball tournament.
Q And where were you going?
A Caliente.
Q And do you recall what day you left, or do you recall what day of the week you left?
A I believe it was the 26th -- 25th of 26th.
Q What day of the week was it? Was it Monday, Tuesday?
A Oh, Friday.
Q It was a Friday?
A Yes.
MS. DiGIACOMO: Your Honor, if you could take judicial notice of the date of the Friday before Memorial Day

weekend last year.
THE COURT: The Court takes judicial notice.
MS. DiGIACOMO: What was the date?
THE COURT: 25th of May was a Friday in the year 2001. The Court takes judicial notice of that. I cannot tell from the calendar when Memorial Day was, however.
MS. DiGIACOMO: It is usually the last weekend, the Monday in May.
THE COURT: The last Monday in May would have been the 28th.
BY MS. DiGIACOMO:
Q And you're nodding your head yes?
A Yes.
Q Does that sound about right?
A Yes, that's correct.
Q And if she left the car a couple of days before you left to go to Caliente on that Friday, approximately the 23rd sound about right?
A Yes.
Q What day did you come back from the softball tournament in Caliente? Or what day --
A Was it Monday the 28th?
Q Yes, that's what the Judge --
A Yes, the Monday, the 28th.

Q So you came back on that Monday after?
A Yes.
Q When you got home to the address on Meredith, was the defendant's car still in your driveway?
A No.
Q Are you positive it wasn't in your driveway when you came back on that date? What makes you remember?
A Came home from the softball tournament and went home to unpack and it was gone.
Q Okay. So it's not possible it was there for another week and a half?
A No.
Q When you came back on the 28th, were you going to continue residing in that location at that time on Meredith?
A Yes, for that time.
Q When was it that you moved?
A Middle of June.
Q Okay. Where did you move to?
A 4750 Illustrious Avenue.
Q And who did you move in with?
A Kim Miller.
Q Who is Kim Miller?
A My girlfriend.
Q And when did you and Kim Miller get together as

1 boyfriend, girlfriend?
2 A Over the Memorial Day weekend.
3 Q In Caliente?
4 A Yes.
5 Q Did you see her when you got back to Vegas on the
6 28th?
7 A Who?
8 Q Kim Miller?
9 A Oh, yes.
10 Q When was it that you saw her?
11 A She came down to my house after I unpacked and
12 everything on the 28th.
13 Q And what did you do with her then?
14 A Nothing.
15 Q Okay. Now between the 28th of May until the middle
16 of June when you moved in with her, would you say you were
17 staying more at her house or you were staying more at your
18 own place?
19 A More at her house.
20 Q Okay. Were you staying nights at her place?
21 A Yes.
22 Q Were you -- how many nights a week would you say
23 you were staying at her place?
24 A Twice.

1 Q Okay. And up until the middle of June, and then
2 you were only at her place, correct?
3 A Correct.
4 Q Okay. When the defendant's car was left in your
5 driveway and you left to go to Caliente, do you remember
6 what shape the car was in?
7 A Yeah, it was in good shape.
8 Q Okay. The outside was fine?
9 A Yes.
10 Q Did you ever look in the interior of the car?
11 A No.
12 Q Did you look at the interior of the car when you
13 grabbed the note on the 23rd?
14 A No. I was a little frustrated, so no, I didn't.
15 Q You were a little frustrated because of what?
16 A Because the car was there.
17 Q You didn't want the car in your driveway?
18 A No.
19 Q At any time while that car was in your driveway, did
20 you go inside her vehicle?
21 A Only to grab the note.
22 Q Other than grabbing the note, did you go inside the
23 vehicle?
24 A No.

1 Q Did you cause any damage to the vehicle?
2 A No.
3 Q Did you take anything out of the vehicle that
4 belonged to the defendant, such as CDs?
5 A No.
6 Q This is gonna sound a little weird, but did you ever
7 urinate or defecate inside that vehicle?
8 A No.
9 Q Did you ever throw up inside the vehicle or vomit?
10 A No.
11 Q At the time the car was left in your driveway, would
12 you consider yourself off and on with the defendant or was the
13 relationship over at that point?
14 A It was over at that point.
15 Q Okay. What caused the ending of the relationship?
16 MS. ZALKIN: Objection, relevance.
17 THE COURT: Overruled.
18 BY MS. DiGIACOMO:
19 Q Do you remember the question?
20 A No.
21 Q What caused the breakup between you and the
22 defendant?
23 A Problems. Just having a bunch of problems.
24 Q Do you recall discussing one of the problems with

1 the detectives you spoke to and with the DA, with myself?
2 A Yes.
3 Q What was the main problem?
4 A Drug use.
5 Q And when you say drug use, what drug use are you
6 referring to?
7 A Methamphetamine.
8 Q And who was using the methamphetamine?
9 A Her and myself.
10 Q Okay. When you and her would use the
11 methamphetamine together, how often would you do that?
12 A Once in awhile.
13 Q Do you know approximately when? Do you recall
14 when you first started doing methamphetamine with the
15 defendant?
16 A No, I don't.
17 Q Okay. Was it more than a year of knowing her or
18 was it towards the end of knowing her? Was it when you first
19 met?
20 A Towards the end.
21 Q Towards the end. And what was so problematic
22 about the drugs that caused the breakup?
23 A Can you repeat that, please?
24 Q What was the defendant's problem with

DAVIS - DIRECT

1 methamphetamine that caused this brea. . ? Well, let me ask
2 you it this way. What was her demeanor like when she was
3 on the methamphetamine? How did she act?
4 A Out of it.
5 Q When you say out of it, can you be more specific?
6 A Not focused, just wasn't herself.
7 Q And how wasn't she herself?
8 A Just wasn't the person that I knew. I can't really tell
9 you, I guess.
10 Q Okay. Well tell me, what was the person you knew
11 when she wasn't on drugs?
12 A Great.
13 Q Can you be a little more specific?
14 A Sweet, caring, just a great person to be around.
15 Q And how did that change when she was on drugs?
16 A Just accusing me of stuff that I did not do and
17 getting mad over simple stuff.
18 Q Was she pushing you away?
19 A No.
20 Q Okay. Do you recall telling the detectives that she
21 just didn't care about anything when she was on drugs?
22 A Yes.
23 Q And do you recall telling them that, I can't
24 remember your exact words, that she would try and get any

DAVIS - DIRECT

1 kind of drugs or get any kind of meth that she could get her
2 hands on?
3 A Yes.
4 Q Are those true, both of those statements?
5 A Yes.
6 Q Okay. Would you -- if you had to write which was
7 more important, the methamphetamine use, I mean getting
8 more drugs, or being with you, how would you rate? Which
9 would be number one, which would be number two?
10 A Getting more drugs, number one.
11 Q Is that part of the reason why it broke off because
12 of the drugs?
13 A Yes.
14 Q Now when you would do drugs with the defendant,
15 did you always supply the drugs?
16 A No.
17 Q Where did the methamphetamine come from then?
18 A I don't know.
19 MS. ZALKIN: Objection. And again, Judge,
20 objection.
21 THE COURT: I've lost the spot. Can you direct the
22 Court?
23 MS. DiGIACOMO: 136.
24 MS. GREENBERGER: 99.

DAVIS - DIRECT

1 THE COURT: Overruled. The answer stands.
2 BY MS. DiGIACOMO:
3 Q When you were doing drugs with the defendant, if
4 you didn't bring them to the table, are you implying that the
5 defendant brought them to the table to do?
6 A Yes.
7 Q Do you know where she got the methamphetamine
8 from? Did she ever tell you?
9 A No.
10 Q Would she ever tell you anything about where the
11 drugs came from?
12 A No.
13 Q Okay. Now do you recall telling me that all she
14 would tell you is that she had sources?
15 A Yeah. Yes.
16 Q Is that true, she would tell you she had sources?
17 A Yes.
18 Q Do you recall her ever telling you the name of one of
19 her sources, a first name?
20 A No.
21 Q Do you know what she was like when she was
22 coming down off of them?
23 A No.
24 Q Why don't you?

DAVIS - DIRECT

1 A Because she'd usually be back in Panaca or
2 somewhere else.
3 Q So when you were done doing drugs together she
4 would leave and go back to Panaca?
5 A Leave my house, yes.
6 Q Okay. Would she tell you where she was going, or
7 you just knew she left your house?
8 A She'd just leave.
9 Q And approximately when you did drugs, would you
10 do it for more than one day? Would you do it just one time
11 over the weekend? What was the time frame?
12 A Couple times a day.
13 Q Okay. For more than one day in a row?
14 A Yes.
15 Q Let's change the subject. Did you ever know the
16 defendant to have a knife or any knives?
17 A Yes.
18 Q How do you know this?
19 A I seen them.
20 Q Where did you see them?
21 A At her house.
22 Q And when you say her house, is that the one in
23 Panaca?
24 A Yes.

Q How many did you see?
A Four or five.
Q Did you -- are you familiar with what a butterfly knife is?
A Yes.
Q Have you ever seen the defendant with a butterfly knife?
A Yes.
Q Okay. Can you explain exactly what a butterfly knife is?
A It's a knife that can be concealed within itself and opened by a flick of the wrist.
Q Okay. So flicking the wrist would open the knife out exposed so the blade's exposed?
A Yes.
Q Did the defendant ever do this in front of you with a butterfly knife?
A Yes.
Q So she knew how to fling it open, a butterfly knife?
A Yes.
Q Did you ever know her to carry a knife on her person?
A Yes.
Q And where would she carry it?

A Pocket, purse.
Q Did you ever see the knife she carried?
A Yes.
Q What did it look like, if you recall?
A Small pocketknife.
Q Okay. So small enough to conceal in her pocket or her purse where she carried it?
A Yes.
Q Do you know why she carried the knife? Did she ever tell you?
A Yes.
Q What did she tell you?
A Protection.
Q Okay. Now going back with regard to her car. Did you ever drive inside her car with her, the red Fiero?
A Did I ever drive?
Q Inside the car with her?
A Yes.
Q Do you know if she had seat covers on the two front seats?
A Can you repeat that, please?
Q Did the two front seats of her car have like slip covers or seat covers over them?
A I don't -- I'm not sure, no.

Q Okay. So you don't recall?
A Right.
Q Have -- after the time when she left the car in your driveway, did you ever speak to her?
A No.
Q Did you ever speak to anyone in her family?
A No.
Q Do you know if she covered -- excuse me -- if she carried a cell phone? Did she have a cell phone?
A Yes.
Q And do you know what that cell phone looked like?
A They all look alike. I'm not sure.
Q Okay. Was it her cell phone, do you know?
A I believe it was her father's.
Q Okay.
MS. DiGIACOMO: Court's indulgence.
Pass the witness, Your Honor.
THE COURT: You may proceed.
MS. ZALKIN: Thank you, Judge.

CROSS-EXAMINATION

BY MS. ZALKIN:
Q Mr. Davis, you said the last time that you saw Blaise was in April, correct?
A Yes.

Q And when you first saw her vehicle it was about May 23rd?
A No. First time I seen her vehicle would be at her house in Panaca.
Q Okay. And this was a vehicle that she had purchased in 2001?
A Yes, I believe so.
Q But the vehicle was not a brand new 2001 model, was it?
A No.
Q It's about a 1984 model?
A Yes.
Q So it's a used car?
A Yes.
Q So the last time you saw that vehicle then was in front of your house in your driveway, correct?
A Yes.
Q And that was around May 23rd of 2001?
A Yes.
Q And then you left for the softball tournament?
A Yes.
Q And that would've been around the 28th?
A No, that would be the 25th.
Q And you returned on the 28th?

A Yes.
Q And when you returned on the 28th of May of 2001 her vehicle was no longer there?
A Yes.
Q While it was there, the window was down?
A Not all the way down.
Q Far enough that you could reach in to get the note?
A Yes.
Q Far enough anybody could reach in?
A Yes.
MS. ZALKIN: I have no further questions, Judge.
MS. DiGIACOMO: I have just one question, Your Honor.
THE COURT: You may proceed.

REDIRECT EXAMINATION

BY MS. DiGIACOMO:

Q Do you know how she kept the car? Do you know how the defendant kept the car, clean, messy?
A Clean.
MS. DiGIACOMO: Nothing further.

RECROSS EXAMINATION

BY MS. ZALKIN:

Q Mr. Davis, you said she kept her vehicle clean. How did she keep a 1984 old used vehicle clean?

A I don't know, kept it tidy, didn't make it messy.
Q Did she use any detergents?
A I don't know.
Q Any cleaning solutions?
A Don't know. I wasn't with her when she washed it.
Q Are you aware that she washed her car at least at some point during the time that she owned it?
A Yes.
MS. ZALKIN: No further questions.
MS. DiGIACOMO: Nothing further.
THE COURT: You may step down.
State may check the hall.
MS. DiGIACOMO: Thank you.
May we approach, Your Honor?
(Off-record bench conference from 4:16:19-4:19:05 p.m.)
THE COURT: Ladies and gentlemen, we're gonna take another stretch recess. In 10 minutes please be in the hallway.
Time out. Record shall reflect that the prosecutor has stepped back to the hallway.
MS. DiGIACOMO: Your Honor, can we approach again?
THE COURT: Yes.
(Off-record bench conference from 4:20:24-4:21:10 p.m.)

THE COURT: Okay. We are gonna take a 10 minute stretch break. In 10 minutes please be in the hallway. The bailiff will meet you there to return you to your seats in the courtroom.
During the recess you're admonished not to talk or converse among yourselves nor with anyone else on any subject connected with the trial. You're not to read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including without limitation, newspaper, television, radio, and internet. And you're not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.
We'll be in recess for 10 minutes.
(Jurors are not present)
(Court recessed at 4:21:45 until 4:52:51 p.m.)
(Jurors are present)
MR. BARRETT: All rise, please. Department 2 is back in session.
Please be seated.
THE COURT: The record shall reflect we're resuming trial in State versus Lobato under C177394. In the presence of the defendant, her three counsel, the two prosecuting attorneys, and ladies and gentlemen of the jury.

Ladies and gentlemen, it was anticipated that the fifth witness called in the case, Dixie Tienken, would be returned here this afternoon to resume her testimony. She reportedly left the Panaca area this morning to travel down to Las Vegas but has not yet arrived. So unfortunately the Court had anticipated her being here to complete the day, but we will not have her available. So we will be taking our evening recess at this time.
The Court also advises you that on Wednesday -- it's Wednesday that we will be breaking a little bit early.
MS. DiGIACOMO: Wednesday?
MR. KEPHART: I thought it was tomorrow.
THE COURT: Wednesday.
MR. KEPHART: Oh, okay.
MS. DiGIACOMO: Oh, okay.
THE COURT: Wednesday. We'll be breaking a little bit early, about 4:30.
During this evening recess you're admonished that you are not to talk or converse among yourselves nor with anyone else on any subject connected with this trial. And you're not to read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, included without limitation, newspaper, television, radio, and internet. And you're not to

1 form or express any opinion on any sub, connected with the
2 trial until the case is finally submitted to you.
3 You all have a good evening and we'll see you
4 tomorrow at -- tomorrow is Tuesday so it will be 1 o'clock.
5 The jury may exit.
6 (Jurors are not present)
7 THE COURT: I was working on the Tuesday
8 calendar, so my mind was already a day ahead, so sorry I
9 confused you about that. It's Wednesday that I need to leave
10 a little bit early.
11 Is there anything that we need to make of record at
12 this time?
13 MR. SCHIECK: No, Your Honor.
14 MS. DiGIACOMO: Your Honor, actually I just have
15 one thing that I wanted to clarify.
16 We -- their -- one of their witnesses, Bodziak that we
17 had stipulated to the report last time. The only clarification
18 the State would have is within the report it mentioned two
19 photographs shown to the exert. It's Q-1 and Q-2. We would
20 only ask that those be admitted as well so that it's clear the
21 jury -- to the jury what he's talking about.
22 MR. SCHIECK: If they're not already admitted.
23 MS. DiGIACOMO: Yeah, I don't know if they are or
24 not.

1 THE COURT: So I'm not sure which ones they are.
2 MS. DiGIACOMO: It's -- he did -- he's the one that
3 did the footwear and determined the size of the footwear
4 impression.
5 THE COURT: Okay.
6 MS. DiGIACOMO: And we looked at Q-1 and Q-2 in
7 his report. I guess question 1 and question 2, I'm not sure.
8 But we just want to make sure that those are a part of his
9 report --
10 THE COURT: So I guess --
11 MS. DiGIACOMO: -- when it comes in.
12 THE COURT: -- the defense will have to look into
13 that and see if they can determine which photographs those
14 are and we'll have to address that.
15 Okay. And we'll go off the record until tomorrow.
16 We'll see everybody at 1:00.
17 COURT ADJOURNED AT 4:57:01 P.M. UNTIL
18 THE FOLLOWING DAY, SEPTEMBER 19, 2006
19 * * * * * * * * * *
20
21
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23
24

AFFIRMATION
Pursuant to C177894

The undersigned does hereby affirm that the preceding Transcript filed in District Court, Case No. A528457 does not contain the social security number of any person.

Kari Riley
Transcriber

5/3/07
Date

* * * * *

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

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CLERK OF THE COURT

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C177394
	)	
vs.	)	
	)	DEPT. NO. II
KIRSTIN BLAISE LOBATO,	)	
	)	
Defendant.	)	Transcripts of Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

JURY TRIAL - DAY 7
VOLUME VII

TUESDAY, SEPTEMBER 19, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS
STATE'S WITNESSES				
Dixie Tienken	--	--	5/29/33	32
Laura Johnson	36	54	62	--
Lary Simms	65	--	--	--

* * * * * *

EXHIBITS

DESCRIPTION:	ADMITTED
STATES'S EXHIBITS	
42-43	124
45-47	124
56-68	90
70-97	91
122	77
199-204	91
205-215	118

* * * * *

LAS VEGAS, NEVADA TUESDAY, SEPTEMBER 19, 2006

PROCEEDINGS

PROCEEDINGS BEGAN AT 1:11:56)

(Jurors are present)

THE BAILIFF: Please be seated.

THE COURT: Good afternoon.

The record shall reflect that we're resuming trial in State versus Kirstin Lobato under case number C177394. The record shall further reflect the presence of the defendant, together with her three counsel, the two prosecuting attorneys, and the ladies and gentlemen of the jury.

We're proceeding forward in the State's case in chief. I'm not sure what the status of the --

MS. DiGIACOMO: She's present.

THE COURT: Okay. So at this time the State will be returning Dixie Tienken to the stand.

MS. DiGIACOMO: That's correct.

THE COURT: Would the bailiff call the hall?

THE BAILIFF: Yes, I would.

THE CLERK: Please come all the way forward.

DIXIE TIENKEN, STATE'S WITNESS, OATH

THE CLERK: Please be seated. State your name and spell it for the record, please.

THE WITNESS: Dixie, D-I-X-I-E, Tienken,

T-I-E-N-K-E-N.

THE COURT: You may resume.

MS. DiGIACOMO: Thank you, Your Honor.

REDIRECT EXAMINATION (Continued)

BY MS. DiGIACOMO:

Q Dixie, on Friday you were asked questions by defense counsel regarding whether or not Blaise carried a knife for protection. Do you remember those questions?

A I do.

Q Okay. And in fact, Blaise did carry a knife for protection?

A That's correct.

Q And was it a butterfly knife?

A I know that she carried a knife. I cannot tell you whether it was a butterfly knife. I would say most of the time, yes.

Q Was it a knife that her -- she had told you her father had given her?

A She never told me who gave it to her.

Q Did she -- well, strike that. You also talk about it's not uncommon for people to carry baseball bats in their car up in Panaca?

A Not necessarily a baseball bat, but like a bat, like truck drivers use or a baseball bat, either one.

Q Okay. And those are also use[illegible] or protection?
A That's correct.
Q Now after Blaise had told you about this attack, you stated that you didn't believe that she had been raped?
A I wasn't sure how much of what she was telling me was completely true and how much was just a figmentation of her mind.
Q Okay. So at the time you weren't sure whether or not what she told you was true?
A That's correct.
Q And based upon that, because you wanted to find out, you went to Laura Johnson, is that correct?
A Yes.
Q In fact, you have a duty to report such things that you learn from your students, don't you?
A Yes, but it didn't happen in my classroom. She came to my home and it was after graduation, so she was no longer a student.
Q Okay. So you didn't have a duty to report then if she had told you about a crime?
A Well, I felt sort of that I did.
Q Now if she had told you that she had actually killed somebody would you have called the police then?
A Yes.

Q And if she had told you that she had stabbed somebody in the neck and killed him would you have called somebody?
A Yes --
Q Would you report that?
A -- I would have. But she never indicated anything like that.
Q Okay. When you went to see Laura to find out -- well, strike that. When you went to see Laura you were trying to find out whether or not anything had happened down in Vegas to any such victim, correct?
A Yes, because we had already searched on the internet, we had already looked back through newspaper files clear back to June 1st.
Q June 1st. That's right. And that was what you and Blaise had done?
A Yes.
Q Okay. And as we established on Friday, never have you mentioned before that you looked all the way back to June 4 -- June 1st when you had previously testified or giving your taped statement to police?
A Nobody ever asked me before.
Q Okay. But you -- then you agree with me you never said it before testifying in this hearing?

A No, because no one ever asked.
Q So you're saying no, but you agree with me that you never said it before? Is that a yes?
MS. GREENBERGER: Asked and answered twice now.
THE COURT: Overruled. It's been asked twice, it hasn't been answered twice.
THE WITNESS: I have not stated previously to meeting with you the last time.
BY MS. DiGIACOMO:
Q Okay. And that was a week ago?
A That's correct.
Q And you didn't tell the jury -- or okay. So before you testified last Friday, it had never been said before?
A No, I told you when you were at my home.
Q You told us last Friday -- a week ago Friday when we were at your home?
A I believe so.
Q Okay. Do you recall that there was an investigator present with Mr. Kephart and I?
A Yes.
Q Now you're saying believe so. Did you tell us or did you not?
A I don't remember, because if nobody asked me a

direct question I wouldn't have answered it.
Q Okay. And so it's possible then you never told us when you met with you over -- about approximately a week and a half ago?
A It's a possibility.
Q Now at the time that you went to talk to Laura about finding out whether or not this had occurred, you were trying to find out whether or not there was ever any incident in Las Vegas with a guy that had a cut penis, correct?
A That's correct.
Q And at the time that you talked to her about it you were pretty upset, weren't you?
A When I talked to Laura?
Q Yes.
A I wasn't really upset because I wasn't even use it had happened because we had been researching it. And I told Laura that in the beginning, but I said I'm not even sure this really happened.
Q Now when the police took a taped statement from you in July 2001, you stated that after they turned the tape on that they turned it off several times and turned it back on, correct?
A That's correct.
Q How many times did they do this?

A I don't know. I didn't count [illegible].
Q Okay. You've had a chance to review the taped statement, correct?
A Yes.
Q And on that statement the police indicate one time that they turned off the tape because they had to switch the tape over, correct?
A That's correct.
Q But it's your testimony that it happened other times?
A That's correct.
Q And what happened when the police officer stopped the tape?
A We would talk about a thing that they were asking me.
Q Okay. Give me an example. What did they talk to you about after they were recording your conversation and they turned the tape off?
A I don't remember.
Q Well, on Friday I believe you were testifying that you thought that the police were trying to influence your testimony?
A Yes.
Q Okay. And that's why they kept turning this tape off and talking to you not on tape?

A That's correct.
Q Okay. What things were they trying to influence your testimony or your statement?
A Just -- well, first of all, they were trying to indicate that it was a later date and -- then what I thought that it was.
Q So it's your testimony you told them what date you thought this was?
A No. If you go back to my statement you'll see that I said that I knew that it happened in early -- the early part of the month. I'm trying to find it. But I do know that it's there.
Q Well, when you get to it please let me know what page you're referring to.
A Okay. If you go back to page 3 you'll see, it says "Can you tell me if you recently were contacted by Blaise?" And I said, "Blaise came to see me either Tuesday night or Wednesday morning, approximately July the 11th. I can't remember the date."
Q Correct. And then their next question was, "You said the 10th or the 11th before when you were looking at the calendar?"
A And --
Q And you said okay.
A Okay.
Q So they were just trying to refresh you as to what--

A But -- and I just said okay because I'm not sure. But I think -- maybe it's in the hearing.
Q Okay. But you would agree that that segment you just showed us, they're not trying to influence when you talked to Blaise or the date, they're just refreshing you of what you had previously said, correct?
A Well, this is a good example. If they're asking me that and saying that, then it sounds like they previously talked to me, doesn't it?
Q Right. But they talked to you off tape before they put you on tape, correct?
A That's correct.
Q All right. And your answer to them was when they said can you tell me if you were recently contacted by Blaise, you stated "I was, mm-hmm. Blaise came to see me either Tuesday night or Wednesday morning approximately July the 11th. I can't remember the date now 'cause I walked away from the calendar", correct?
A That's correct.
Q And then they said well, you said the 10th or the 11th before when you were looking at the calendar and you said okay. But they're not trying to feed you the date, they were going by what you had stated to them previously, correct?
A Yes.

(Pause in the proceedings)
Q Okay. Did you find in your statement where you had told them that they had the wrong date, other than that portion we talked about regarding what date you believe she came to see you?
A You know, I did when I went back over it the other day, but now I don't remember where I saw it. That's what I was just looking for again. And I know that I circled it someplace. But I didn't know that you wanted me to look for it right now. I was looking for something else.
Q Well, look for that right now.
A Okay.
Q Page?
A This, I believe, is at the hearing on page 9.
Q I don't want to know about the hearing, I want to know in the taped statement to the police --
A Oh, no. No.
Q Okay. So --
A I thought you meant any time previously.
Q No, no. Because what we're talking about is how the police tried to influence your testimony --
A Okay. Okay.
Q -- in your -- what you stated in your statement to them. So is there anywhere else in here where they tried to

tell you dates?
A No.
Q Okay. In fact, nowhere in here did they mention exactly when the murder they were investigating occurred, correct?
A No, they did not.
Q Okay. And in fact, there's times on tapes where they tell you we're not trying to put words in your mouth, we're just asking you what you recall from the conversation?
A That's what they said.
Q Okay. And you're smiling. Tell us why you're smiling at that?
A Because I don't feel that that's the way that it was.
Q Okay. But you agree then on tape you agreed with that. You didn't say no, you are trying to put words in my mouth on tape, did you?
A No, I did not, because I really still thought that they were going to do an investigation.
Q So other than the date, what did the police try and influence your statement? How did they try to influence what you put on tape?
A On the place where they said that the crime happened.
Q Okay. How did they influence you there?

A Because when I indicated to them, they asked me if I knew where it happened and I said no, I didn't. I said I just know where it didn't happen. And I said that I knew that it did not happen off of West Sahara, but I did say -- and I did say off one -- a hotel street, but I could not remember what hotel street. And then I just named some hotels, just thinking back to when I used to live here many years ago.
Q Okay. And --
A And then they said to me, could it have been this one or this one? Well, yeah, it could have been any of those. But I didn't say that it was any of those.
Q So the police actually suggested to you the names of the streets?
A Yes.
Q Okay. And where is that in your tape statement?
A I don't know. But I do know that when --
Q Well, if I direct --
A You know, they talked to me for a good hour, an hour and a half before they even taped it. And at that point I'm not sure that I remember. You have the paper in front of you, so do I.
Q Okay. I'm gonna turn -- direct you to page 5. The question posed to you -- are you at page 5?
A I am.

Q Okay. The question posed to you down, almost the -- just below the middle, where this happened. And she told -- and that's what the question by them, and your answer is, "She told me that it -- she did tell me but I don't remember exactly where she said. I just know that she said it was dark and I got the idea that it was between buildings or in an alley or something of that sort. She did not tell me specifically where it was, but she did say the name of a street, and to be completely truthful, I'm not sure. I just it was like West Tropicana, Flamingo, Sahara. I know it wasn't Sahara, but it was one of those streets further up." And their response was "okay". And then you stated, "And I do know it was in that area". And they asked you, "How did you know it was in that area?" And you said, "Because I used to live in that area and we talked about that". Is that exactly what you told the police on tape?
A That's what I told them on tape. That does not mean that's what I told them originally.
Q Okay. So --
A We just mentioned hotel streets.
Q But it's your position that the police are the ones that put in your mind West Tropicana, Flamingo and Sahara?
A Yes. But you also have to know, I lived in Las Vegas up until 1979. I lived off of Oakey, not very far away from

Sahara, and the only other streets that I could remember that even went through was like Desert Inn, Flamingo, you know, Tropicana.
Q So is it -- it's your -- your testimony on Friday though that you know it was in the area of one of the hotel streets, correct?
A That's correct.
Q On the west side of I-15, correct?
A On the west side of I-15.
Q Okay. And so it could be either Tropicana, Flamingo, Desert Inn?
A Could have been any of those. I don't remember.
Q What else did the police try and influence your testimony or what you said on tape about --
A At this point I cannot remember.
Q Okay. You can't remember what they wanted you to say, is that fair?
A Right.
Q And you can't remember how many times they allegedly turned the tape off and back on?
A No.
Q Other than do you remember the one time that's on the statement where they turned -- they flipped over the tape?
A Well yes, because it's written down on that particular

time.
Q Now you had stated on Friday that the incident that Blaise was talking about could've occurred any time after she graduated in 2000 until she came to talk to you in 2001, correct?
A That's -- yes.
Q But you also told the police, page 12 of your statement, that you had the impression it had just happened a day or two before? And that's the top of page 12.
A That's exactly what it says.
Q And that is what you told the police on the taped statement?
A That is correct.
Q Now you talked too about on Friday Blaise and whether or not she liked things dirty. Do you recall that?
A I do.
Q Okay. And you had said that there is no way that she could've cleaned out her car if it had feces or urine in it, correct?
A That's -- yes.
Q What about if there was blood or semen in the car. Could she clean that?
A No, I don't believe so.
Q And also, when talking about when she had to clean

the car after she told you that her ex-boyfriend, Jeremy, had done these things, defecated and urinated inside the car, she also told you that she had to clean the car out at that time, correct?
A It didn't mean that she had to clean it out. She had to have it cleaned out. I was under the impression that her father did it for her.
Q Okay. But she did have to have the car cleaned out after this --
A Yes.
Q -- this incident with Jeremy? And she also stated to you that -- or made to clear to you that the incident with the car with Jeremy was separate than when she was attacked?
A That's correct.
Q Now Blaise also talked to you about how she wasn't afraid anyone saw her at the scene of her attack, but she was afraid somebody saw her car leaving, is that correct?
A Yes.
Q And you mentioned on Friday that she was afraid something about the car could be seen, and it's not something that she could fix or something that somebody would forget, do you remember that?
A Yes.
Q What about it -- about her car was it that was so

memorable?
A It was a red car.
Q Okay.
A It also had a personalized plate.
Q Okay. Now you had never seen the car?
A No, I've never seen the car to this day.
Q But the day that you had the conversation, did Blaise describe her car to you?
A No. All she said was that it was a red car.
Q So she didn't describe what the license plate was?
A No.
Q How did you find out what the license plate was?
A Other kids had asked me if I had ever seen Blaise's license plate.
Q And do you know --
A No, I had not and I still haven't.
Q Do you know what the -- her license plate said?
A I know that it wasn't very ladylike.
Q Okay. And these other kids that asked you about her license plate, was it before or after she came to talk to you about this attack?
A I don't remember. I think it was after, but it could've been before --
Q Okay. You --

A -- because I had never seen the car.
Q But you had heard she'd gotten a new car before she came to see you?
A Yes.
Q And that's why you asked her what car she was driving?
A That's correct. It's a big deal when kids get a car, especially their very own first car.
Q Now you also said on Friday that Blaise is a very sweet girl. Do you recall that?
A Yes.
Q She's also a pretty tough girl though, isn't she?
A I don't know that I would say tough. I think that sometimes people that are hurting put on protective shells.
Q Have you ever heard of her knocking somebody out with a punch before?
A Not that I can recall. I've had a lot of students that have talked a lot about things like that, but I can't remember Blaise ever telling me things like that.
Q Did these other students tell you about things like that with Blaise or just totally separate?
A No, totally separate.
Q Okay. Now since Friday, have you spoken to either myself or Mr. Kephart?

A Since Friday? No, I have not.
Q Have you spoken to any of the attorneys on the defense side?
A No, I have not.
Q Have you spoken to anyone that's related to the defense side, such as anyone in the front row in the courtroom here today?
A No --
Q Okay.
A -- I have not.
Q Have you spoken to any other witnesses in this case?
A I have spoken to them, but nothing to do with this case.
Q And who is it that you spoke to?
A I spoke to Laura because her brother was getting married.
Q Okay. When was it that you spoke to Laura?
A I spoke to Laura Friday to ask when she was leaving to go home. I spoke to Laura to find out if she was coming down here on Monday because I asked her if she did, even though we would be traveling in two vehicles, if we could go at the same time so I wouldn't have to drive alone.
Q Okay. Did you also talk to Laura last Tuesday before

you had to come down here and testify? Did she come to your house that Tuesday?
A Laura came to my house.
Q Did you try and tell her that you did tell her that day in July 2001 that you told her Blaise said a big black man?
A Probably, because I think we've always said that.
Q Okay. But -- who's we?
A When Laura and I've talked.
Q Okay. So it's your testimony that Laura agrees that you told her in July 2001 that it was a big black man?
A I hope that she agrees to that because that's what we talked about.
Q Okay. So you weren't trying to convince her that you actually told her that?
A No. She also told me a lot of things. Laura and I are looking at this from two different sides.
Q Okay. Now have you been provided with any reports in this case?
A Have I been provided with any reports? Yes. You provided me with all of this.
Q Right, I provided you with your two testimonies and your also prior statement. Have you been provided with anything else, such as an autopsy report?
A I did look at an autopsy report.

Q And where did you look at that autopsy report?
A I looked at the autopsy report. I asked you and you also called me and told me later.
Q No, you're not answering my question.
A I did ask.
MS. DiGIACOMO: Objection, Your Honor, it's nonresponsive.
THE COURT: Sustained.
BY MS. DiGIACOMO:
Q I'm asking you, the autopsy report you looked at, where did you get it from?
A In the defense lawyer's office.
Q Okay. Did you also look at some photographs of the decedent as well?
A That's correct.
Q And you told Laura about this on Friday that you had seen these things, correct?
A I don't remember.
Q Now have you ever looked on the internet since the last time you had testified in 2002 until the present date, trying to find information on this case?
A I did only once, and that was after the other trial. But I have not looked at them, but I do know that Laura has looked at a lot of them and even indicated she showed my

grandson where they were, but I did not look at any of them.
Q Okay. So if Laura came in and testified that you had printed things off the internet and you wanted her to come pick 'em up, that's not true?
A To pick up things that I had printed off the internet? I've never printed anything off the internet that I know of. The only thing I had was this. And if I did --
Q Okay. So you never printed anything off the internet regarding this case?
A No, I can't say that.
Q Is there anything that you would've printed off on the internet about this case that you would've asked Laura to come see or pick up copies of?
A I don't recall ever asking Laura. But I know that she showed me some things that she had.
Q I'm asking you only what you did. And is that your answer no, that you didn't?
A I don't recall.
Q Now is it fair to say that your former students and your current students, that you'd call 'em your kids?
A That's correct.
Q And you'd actually do anything for your kids that you could to help them?
A I would do everything I could to help my kids that

was within the law.
Q Correct. And wasn't there a time that you had told us about where you actually went into a crack house trying to find out what one of your kids had taken when he O.D.ed?
A Yes.
Q And -- because you will go above and beyond to try and help them. I'm not saying outside the law, I'm just saying you'll help them?
A Yes.
Q And you love all your kids?
A I do.
MS. DiGIACOMO: Court's indulgence.
I'll pass the witness.
THE COURT: Recross.
MS. GREENBERGER: Your Honor, the defense has nothing further for this witness.
THE COURT: Okay. You may step down from the stand.
MS. DiGIACOMO: There's a jury question.
THE BAILIFF: I do have a note, Your Honor.
MR. KEPHART: Questions over here.
THE COURT: Oh, we need you to stay on the stand for a minute.
Would counsel please approach.

(Off-record bench conference from 1:44:23-1:54:48 p.m.)
THE COURT: The Court has a juror's note that will now be marked as Court's Number 23.
The Court has a juror's note that will now be marked as Court's Number 24.
Ms. Tienken, the ladies and gentlemen of the jury have sent out some questions for you, which the Court is going to read to you. Listen to the question and then give your answer.
The first question asks for just a yes or a no in response, so please limit your answer to just saying yes or just saying no.
"Did you ask Blaise why she didn't go to the police after being assaulted?"
THE WITNESS: Yes.
THE COURT: This second question also calls for just a yes or a no answer.
"If you believed that this attack may have happened around June 1, 2001, did you ask her why she would wait so long to confide in someone?"
THE WITNESS: She never --
THE COURT: Yes or no.
THE WITNESS: No.
THE COURT: "Do you remember what newspaper

or newspapers you subscribed to during July of 2001?"
THE WITNESS: I did not subscribe to any newspaper. We have very little newspaper delivery in Lincoln County.
THE COURT: The first question, yes or no asked, will be marked as Court's Number 25. The second yes or no question will be marked as Court's Number 26. And the most recent question asked will be marked as Court's Number 27.
"How long do you usually keep old or past newspapers around?"
THE WITNESS: Me? Until I need them. Sometimes to start a fire with in the winter, sometimes to use in my garden. Right now I happen to just recently subscribe to the Cedar City newspaper because that's our paper that we get, the only one that's delivered. And I probably have about a month worth of papers sitting there.
THE COURT: This question will be marked as Court's Number 28.
"Could a newspaper from anytime in early June have been found in your home when Blaise visited you on July 11th?"
THE WITNESS: No.
THE COURT: That will be marked as Court's Number 29.

Followup questions by the State.
MS. DiGIACOMO: Court's indulgence.
Thank you, Your Honor.
REDIRECT EXAMINATION (Continued)
BY MS. DiGIACOMO:
Q Dixie, back in July 2001, you said there was little delivery of a paper in Lincoln County?
A That's correct.
Q And in fact, isn't it true that you had to go down to the Y if you wanted to buy a paper?
A That's correct.
Q What is the Y?
A It's gas station, mini-mart.
Q Okay. And in fact, the day that you told Laura about this, didn't you also tell her you were going down to the Y to see if you could get a paper?
A Probably.
Q Do you recall or not?
A I don't recall.
Q Okay. And you said that you did ask Blaise why she didn't go to the police about the attack?
A Yes.
Q What did she tell you?
A She didn't really answer the question. But --

Q She didn't or not?
A She did not really answer the question.
Q You asked her but she didn't give you a response?
A No. We talked about other things.
Q Now back in July 2001, you weren't getting a paper to your house delivered, correct?
A I don't believe so.
Q Okay. And in fact, that's why when Blaise came to talk to you about this that you got on the internet and were trying to look at the papers?
A That's correct. If I did get a paper it would've been the Cedar paper, Cedar City, Utah, not --
Q Not a Las Vegas paper?
A -- Las Vegas.
Q And in fact, at that time, which papers from Las Vegas did you try and look on the internet?
A We looked on the internet under Las Vegas Review Journal and Las Vegas Sun. And then there's a news -- it's like a news release type of thing that you just go in and I think it just says -- I don't remember exactly, but I think it just said Las Vegas News.
Q Okay. And you -- you stated that you never asked her why it took so long for her to confide in somebody about her attack, correct?

A I don't recall. When kids come and talk to me, that's not something that I normally say. I just say, did you try to find out if anything happened. And I do remember that at that time she said she had been looking at the papers.
Q Okay. But part of the reason why you didn't ask her why it took so long was also because you had the impression that it happened fairly recently? In fact, you told the police two to three days before -- or a day or two before?
A Yes. But I also am not sure exactly when she came to see me.
Q Right. I understand that. But you had the impression when she did tell you it was a day or two before?
A That it had happened recently, yes.
Q But you told the police a day or two before she came to see you, correct?
A That's what it says in the statement.
Q Well, you don't dispute what was said in the statement, do you?
A No.
Q Okay.
MS. DiGIACOMO: Hold on. Court's indulgence. Nothing further.
THE COURT: Followup questions by the defense.
MS. GREENBERGER: Thank you, Your Honor. Just a

couple.

RECROSS EXAMINATION

BY MS. GREENBERGER:
Q Good afternoon.
A Hello.
Q When you were doing your research on the computer, you were looking back until June 2001 because you didn't know when it happened, correct?
A That's correct.
Q Were you looking at the Las Vegas Review Journal, the Las Vegas Sun, and the other Las Vegas News Release? Were you looking at all three of those papers on the internet when you were doing your research?
A Yes.
Q And you were looking at all of those papers back through 2001?
A That's correct.
Q Or June 2001.
A June.
Q What articles did Laura Johnson print off the internet to give you?
A I don't remember. I'm really sorry.
Q You just remember some articles?
A Yes. Well, she also -- she did --

MS. DiGIACOMO: Objection, Your Honor. First of all, this is beyond the scope of the followup questions. And also, I'm afraid that she's gonna get into hearsay.
THE COURT: She's already answered the question, so the Court will sustain the objection. There's no question pending before her at this time.
MS. GREENBERGER: I have nothing further.
THE WITNESS: Okay.
THE COURT: Anything further by the State?
MS. DiGIACOMO: Just briefly.

FURTHER REDIRECT EXAMINATION

BY MS. DiGIACOMO:
Q When you got on the internet at -- the day that Blaise came to see you, and you said you looked back at least six weeks, correct?
A That's right.
Q Did you have to subscribe or do anything like that to be able to look back that far on the internet?
A Not.
Q For -- not for the Las Vegas Review Journal?
A Well --
Q Not for the Sun --
A -- we just -- what I did was I did a search for Las Vegas, and then I did a search, and we used different key

words because they just tell you to use [illegible] word, so I put in "severed penis".

Q Okay. You put in "severed penis" into the Las Vegas Review Journal search engine?

A Well, I don't know if it was the Las Vegas Review Journal search engine. We used a Las Vegas search engine.

Q Okay. And that would pull up anything in the Review Journal or the Sun?

A I was under that impression that it would.

Q And you specifically noted the dates that you could search for?

A Yes, because it asks you between what date and what date do you want to look.

Q And what dates did you pick?

A I believe that I put June 1st to probably July 1st or July 8th or something like that. I don't know what I put in, but I know that I put it over a 30 day span.

Q Okay. But you can't remember what the last date was because you can't remember what date you actually talked to Blaise?

A That's correct.

Q Okay.

A That's why I almost wish that they could've gotten my old computer.

MS. DiGIACOMO: Nothing further.

MS. GREENBERGER: Nothing further, Your Honor.

THE COURT: No further questions from the jury. You may step down from the stand.

THE WITNESS: Thank you.

THE COURT: State may call their next witness.

MS. DiGIACOMO: Thank you. The State calls Laura Johnson.

THE CLERK: Please come all the way forward. Remain standing and raise your right hand.

LAURA JOHNSON, STATE'S WITNESS, SWORN

THE CLERK: Please be seated.

State your name and spell it for the record, please.

THE WITNESS: Laura Lynn Connor Johnson.

THE CLERK: Spell your full name, please.

THE WITNESS: L-A-U-R-A L-Y-N-N C-O-N-N-O-R J-O-H-N-S-O-N.

THE COURT: State may proceed.

MS. DiGIACOMO: Thank you, Your Honor.

MR. KEPHART: Your Honor, I went out to see if our next witness was here, it's Dr. Simms, and Dixie had asked me whether or not she is free to leave. I told her as far as the State is concerned she is, but I wanted to make sure with the Court, unless the defense needed her here.

MR. SCHECK: Not today, Your Honor. If we need her we'll call her back.

THE COURT: Then Mr. Kephart can advise her of that.

MR. KEPHART: Thank you.

DIRECT EXAMINATION

BY MS. DiGIACOMO:

Q Ms. Johnson, what is your occupation?

A I'm the juvenile probation officer for Lincoln County.

Q How long have you been so employed?

A Approximately 10 years.

Q And I want to direct your attention to July of 2001. Where were you living?

A In Pioche, Nevada.

Q Is that where you still reside?

A Yes.

Q And you were the probation officer back then?

A Yes.

Q Is there only one Lincoln County probation officer?

A Yes.

Q And how long have you lived in Pioche?

A Approximately 10 years.

Q Now do you know a person, Dixie Tienken?

A Yes, I do.

Q How do you know her?

A She was a teacher in Panaca.

Q And so did you have a lot of contact with her through your job?

A Yes, I did.

Q Did you become friends as well?

A Yes, I did.

Q How long would you say you've been friends with Dixie?

A Probably 9 years.

Q And how would you describe your friendship?

A We're pretty close. We have a very good relationship.

Q Do you talk outside of work?

A Yes, we do.

Q So Dixie could call you at home?

A Mm-hmm.

Q Is that a yes for the record?

A Yes.

Q And you would call her at home too?

A Yes.

Q Now I want to direct your attention back to July 2001, and specifically, do you recall a time when Dixie came to talk to you about one of her former students?

A Yes, I do.
Q Okay. Do you recall the date of that?
A It was July 18th.
Q Okay. Now how are you sure of the date?
THE COURT: Can I ask you what year, please?
MS. DiGIACOMO: Oh, I'm sorry.
THE WITNESS: 2001.
MS. DiGIACOMO: Okay.
BY MS. DiGIACOMO:
Q Do you -- how are you sure of that date?
A Because I made a statement to it and I --
Q Okay. So you -- let's skip ahead. Back in 2001 did you also give a taped statement to the police?
A Yes, I did.
Q Okay. And that taped statement, do you recall what day that was taken on?
A It was -- I believe it was on the 20th.
Q Of July 2001?
A July 2001.
Q And so in relation to when you gave that taped statement, when did you speak to Dixie?
A A couple days before that.
Q Okay. Do you recall what day of the week it was?
A It was a Wednesday.

Q And do you recall approximately what time it was?
A Between 12:30 and 1:00 in the afternoon.
Q And where did this conversation take place?
A In my office at the courthouse in Pioche.
Q Okay. And how did it get started?
A She had come into my office and told me that she had some information regarding a person that we both knew. And she asked me -- she told me --
MR. SCHIECK: Objection, hearsay to what she told her, Your Honor.
THE COURT: Sustained.
BY MS. DiGIACOMO:
Q Okay. Did she -- what was -- well, strike that. What was her demeanor when she -- when you talked to her?
A She was very nervous.
Q Okay.
A Very upset.
Q And how specifically could you tell that she was very nervous and upset?
A Just because I know her and -- I just knew that something was bothering her.
Q So she seemed like something was wrong?
A Right.
Q Did she ask you whether or not you'd seen the

news?
A Yes, she did.
Q Okay. And did she state -- well, strike that. What did she tell you that this person you both knew had told her?
MR. SCHIECK: Objection, hearsay, Your Honor.
MS. DiGIACOMO: Your Honor, is a prior inconsistent statement.
THE COURT: Overruled.
MR. SCHIECK: Could we approach, Your Honor?
THE COURT: Yes.
(Off-record bench conference from 2:11:12-2:12:33 p.m.)
THE COURT: The question is withdrawn. Ms. DiGiacomo will be posing a new question. The Court's received a note, which will be marked as the Court's next in number, which Court and counsel have reviewed at sidebar.
MS. DiGIACOMO: Thank you.
THE CLERK: Number 30.
BY MS. DiGIACOMO:
Q Did Dixie ever tell you who she was talking about?
A Yes.
Q Who was that?
A Blaise Lobato.
Q Okay. And specifically did she tell you when this conversation took place between her and Blaise?

MR. SCHIECK: Objection, Your Honor. There's been no foundation that there was a prior conversation.
THE COURT: Sustained.
BY MS. DiGIACOMO:
Q Okay. Did Dixie tell you how she learned this information she wanted to relay to you?
A Yes.
Q How was that?
A That Blaise had told her.
Q Did she tell you when Blaise had told her?
A It had --
MR. SCHIECK: Objection, hearsay, Your Honor.
THE COURT: Overruled.
BY MS. DiGIACOMO:
Q Did she tell you when?
A She didn't really tell me when. She said that she had just talked to Blaise, so --
Q Okay. So she said she had just talked to her?
A Right.
Q And you said that Dixie was pretty upset about it?
A Yeah.
Q Did Dixie ever tell you what the defendant had said about her car?
A Yes.

Q What'd she tell you?
A She told me that they were hiding the vehicle out in -- that her parents and her were hiding the vehicle out in Panaca and they were gonna get it painted or possibly sell the vehicle.
Q Okay. And what were her exact words, "sell the vehicle"?
A "Sell the vehicle or get it painted".
Q Did they mention -- or did she mention whether or not they were also trying to hide it?
A She told me that they were hiding the vehicle out and they were possibly gonna sell it or get it painted.
Q Okay. And did she tell you what Blaise was doing after this attack?
MR. SCHIECK: Your Honor, are we asking what Blaise told to Dixie and Dixie told to Laura, or are we talking about just what Dixie told to Laura?
MS. DiGIACOMO: We're asking what Dixie told to Laura that Blaise had said.
MR. SCHIECK: And that's it, not just what -- not what Dixie said, but what Dixie thought or what Dixie said Blaise said?
MS. DiGIACOMO: Okay. Well, first of all, anything the defendant said is admission by a party opponent.

Anything Dixie told Laura, it's a prior inconsistent statement.
MR. SCHIECK: Not all of it is inconsistent, Your Honor.
MS. DiGIACOMO: Right. I'm specifically asking her what she said she was doing at her parent's house.
MR. SCHIECK: I just wanted to clarify that this is what Dixie said Blaise said.
MS. DiGIACOMO: That's correct.
THE COURT: You can answer the question.
BY MS. DiGIACOMO:
Q Do you recall the question?
A I'm sorry.
Q Okay. What did Dixie tell you that Blaise had told her about what she was doing in Panaca?
A She was hiding out in Panaca.
Q Did she say where? Or did Dixie indicate to you where Blaise said she was hiding out?
A With her mother and dad, her step-mother and her father.
Q Based on the information that you learned -- well, strike that. Did Dixie tell you other things that the defendant had told her as well?
A Yes, she did.
Q Okay. Told you what specifically the attack was?

A Yes.
Q Now based on the information you learned from Dixie that the defendant had told her, what did you do?
A I went down to the sheriff's office and told Sergeant Maribah Cowley.
Q Okay. And what happened from there?
A She then informed me of --
Q Well --
MR. SCHIECK: Objection, hearsay to what she said.
MS. DiGIACOMO: -- don't tell me what she informed you.
THE COURT: Sustained.
THE WITNESS: Okay. With the information that I learned, I went to my house and started calling the different -- North Las Vegas, all the different police stations in Las Vegas, Henderson, North Las Vegas.
Q Okay. Did you also call Metro?
A Metro also, yes.
Q And when you were calling these divisions, what department were you specifically asking for?
A I believe I was asking for the assault unit.
Q What was your purpose of making all these phone calls?
A To try to find out if what I was told was true.

Q So you were trying to figure out whether or not the incident had occurred?
A Really did happen, yes.
Q And you did this fairly quickly after Dixie told you this. Did you have a time frame of when this might've happened?
A I believe it was the next day when I went home. I believe I talked to Maribah the next day and then I went home Friday morning and started making all the phone calls. When I got up Friday morning I started making the phone calls down to Las Vegas.
Q And what were you asking when you made these calls?
A If there was an incident that occurred, specifically what Dixie had told me.
Q Well, tell me what you were asking, what specifically you were asking?
A I was asking them if they had recently had an incident where a man had had his penis cut off.
Q And at some point were you transferred to a detective?
A I was. I -- when I called Metro I had spoke to a lady, which I believe was a secretary, and she told me that they had --

1 MR. SCHIECK: Objection wh[illegible]e told her.
2 MS. DiGIACOMO: Wait.
3 THE COURT: Sustained.
4 BY MS. DiGIACOMO:
5 Q Just what did she do? Did she --
6 A She connected me to a homicide detective.
7 Q And what was his name?
8 A Thowsen, Detective Thowsen or Thowsen.
9 Q And did you speak to Detective Thowsen about the
10 information you had learned?
11 A Yes, I did.
12 Q And what happened after you hung up with
13 Detective Thowsen?
14 A They came up to my house. They were at my house
15 within three hours.
16 Q And did you give a taped statement at that time?
17 A Yes, I did.
18 Q So the same day you got connected with the
19 detective they actually came to Panaca or Pioche?
20 A They came to Pioche, yes.
21 Q Did you ask Maribah Cowley, the sergeant, to do
22 anything else with reference to this?
23 A Yes, I did. I'd asked her if she could go down to
24 Panaca and get the plate off of Blaise's car.

1 Q And did she do that for you?
2 A Yes, she did.
3 Q Now the day that you talked to Dixie, did she
4 indicate to you whether or not she was going somewhere after
5 talking to you?
6 A She told me she was going to Panaca to the Y
7 Service to pick up a newspaper.
8 Q Okay.
9 A She was going to pick up a newspaper to see if
10 there was anything in the newspaper about this.
11 Q And that was when she left your office?
12 A Yes.
13 Q Okay. And the Y Service, what is that?
14 A That's the gas station in Panaca. They're the only
15 ones in Lincoln County, I believe, that carried the newspaper.
16 Q For Las Vegas?
17 A Yeah.
18 Q Okay.
19 THE COURT: I'm gonna ask for a clarification. You
20 said you asked your sergeant to get the plate off the
21 defendant's car?
22 THE WITNESS: The license plate.
23 THE COURT: Did you mean that you wanted her to
24 physically remove the plate or to copy down the plate number?

1 THE WITNESS: I'm sorry. To get the license plate,
2 copy down the license plate number.
3 THE COURT: And would you spell the sergeant's
4 name please, for the record?
5 THE WITNESS: It's M-A-R-I-B-A-H C-O-W-L-E-Y.
6 THE COURT: Thank you.
7 State may proceed.
8 MS. DiGIACOMO: Thank you.
9 BY MS. DiGIACOMO:
10 Q You testified at a prior proceeding, May 2002. Do
11 you recall that?
12 A Yes, I do.
13 Q Since that time have you and Dixie ever talked about
14 this case?
15 A Yes, we have.
16 Q Was there a point in time that you ever printed off
17 anything on the internet and gave it to Dixie?
18 A Did I print off? No, I didn't.
19 Q Okay. Regarding this case?
20 A No.
21 Q Okay. Was there anything that Dixie did regarding
22 the internet?
23 A She had called me and told me that --
24 MR. SCHIECK: Objection, hearsay to what she told

1 her.
2 THE COURT: Sustained.
3 MS. DiGIACOMO: Well, Your Honor, it's also a prior
4 inconsistent statement. Dixie said that she never printed
5 anything off or called Laura to come pick it up.
6 MR. SCHIECK: I don't recall that, Judge. She said
7 she never printed anything off. I don't recall she was ever
8 asked about any conversations concerning that.
9 MS. DiGIACOMO: I had asked her whether or not
10 she asked Laura to come pick it up or if she ever tried to give
11 it to Laura.
12 THE COURT: The Court's gonna reconsider and
13 overrule the objection.
14 BY MS. DiGIACOMO:
15 Q Okay. Did you -- did you ever talk to Dixie about
16 whether or not she had looked on the internet regarding this
17 case?
18 A Yes, I did.
19 Q Okay. Did she ever ask you to do anything based on
20 that?
21 A Yes, she did.
22 Q What did she ask you?
23 A She asked me to come down to Panaca to the
24 Visitor's Center where she was working and pick up some stuff

that she had printed off the internet.
Q Did you ever do that?
A No, I didn't.
Q Now I want to direct your attention to last Tuesday. Did you have any conversation with Dixie regarding this case?
A Yes, I did.
Q Where did that conversation take place?
A At her home in Panaca.
Q And specifically, did you ever talk about whether or not the attacker in Blaise's incident was big and/or black?
A We did talk about that.
Q Okay. What did Dixie tell you?
MR. SCHIECK: Objection, hearsay, Your Honor.
THE COURT: Counsel approach.
(Off-record bench conference from 2:22:30-2:24:40 p.m.)
THE COURT: Ms. DiGiacomo is going to rephrase.
MS. DiGIACOMO: That's correct, Your Honor.
BY MS. DiGIACOMO:
Q Ms. Johnson, when you talked to Dixie back in July 2001 about this before you started contacting the police, did Dixie ever describe who the person was Blaise had said had attacked her?
A No, she did not.
Q In talking to her over the years about this case, did

she ever describe who the person was?
MR. SCHIECK: I'm gonna object, Your Honor. Talking to her over the years? Do we have some specification as to what conversation we're now talking about?
THE COURT: Sustained.
BY MS. DiGIACOMO:
Q Okay. Between May 2002 and today, did you ever talk to Dixie about the description of this person that may have attacked Blaise?
A Just recently.
Q Okay. When was the first time?
A Last Tuesday.
Q And what was Dixie -- or strike that. Who brought up the description?
A She did.
Q Okay. And why did she bring this up?
MR. SCHIECK: Objection, speculation, Your Honor.
THE COURT: Sustained.
BY MS. DiGIACOMO:
Q Did she tell you why she was bringing this up?
A Yes, she did.
Q And what was that?
A Because she felt that Blaise did not do this.
Q Okay. And so what was -- what was she doing by

bringing this up to you?
A She was trying --
MR. SCHIECK: Objection, speculation, Your Honor.
MS. DiGIACOMO: I'll rephrase.
BY MS. DiGIACOMO:
Q She had never told you until just recently the description of the person that allegedly attacked Blaise?
A No.
Q She never had or she -- that's correct?
A She never -- no --
Q Okay.
A -- she had never told me that.
Q Did she tell you why she was bringing it up last Tuesday?
A Yes, because she felt that Blaise didn't do this because of the description that she gave to me of the man that --
Q Okay. And when she --
A -- this happened to.
Q So did Dixie tell you that she described this person to you back in 2001?
A Yes, she did.
Q Okay. And what was your response?
A I told her no, she didn't.

Q And what --
A And I asked her if she had been reading the internet and if that's where she got this from.
Q Okay. And what did she state?
A She said no.
Q Did you get the feeling she was trying to convince you that she had told you this back in 2001?
A Yes. She was absolutely trying to convince me that she told me this.
Q Okay. Was she trying to influence your testimony?
MR. SCHIECK: Objection, speculation, Your Honor.
MS. DiGIACOMO: I'll rephrase.
BY MS. DiGIACOMO:
Q Did she tell you -- well, did she say anything during this trying to convince you about the description, did she mention your testimony in this case at all?
A I'm not sure what you're -- I'm sorry.
Q Did you -- well, that's okay. Strike that. Did you have any idea before the conversation last week per Dixie what the alleged attacker was supposed to look like?
A I had no idea.
MS. DiGIACOMO: Court's indulgence.
BY MS. DiGIACOMO:
Q At the time that you had this conversation last

1 Tuesday, did you know that you were g... a have to come
2 back and testify?
3 A Yes, I did.
4 Q And when I say back, I mean down to Las Vegas?
5 A Yes.
6 Q Did Dixie as well?
7 A Yes.
8 Q Is that why the conversation came up?
9 A Yes.
10 Q Did you feel that Dixie was trying to influence your
11 testimony?
12 A She was trying to get me to remember that she told
13 me this when I know she didn't tell me this.
14 MS. DiGIACOMO: Pass the witness.
15 **CROSS-EXAMINATION**
16 BY MR. SCHIECK:
17 Q Did you take notes of your conversation with Dixie?
18 A No.
19 Q So you're relying on your recollection?
20 A Yes.
21 Q And she apparently has a different recollection than
22 yours, is that fair?
23 A That's fair.
24 Q And do you know how long she had talked to Blaise

1 when Blaise came over and had this conversation with her?
2 A No, I don't.
3 Q She didn't tell you that it was three hours long?
4 A No.
5 Q Okay. And how long did Dixie talk with you when
6 she came over?
7 A For probably half an hour to 45 minutes.
8 Q Okay. Which is much less than three hours?
9 A Yes.
10 Q So there could've been more information that was
11 discussed in three hours than in half an hour?
12 A Yes.
13 Q And Dixie recalled that she had a description of the
14 attacker of Blaise, correct?
15 A That's --
16 Q That's -- that's her --
17 A That's what she told me, yes.
18 Q Okay. That's her recollection --
19 A Right.
20 Q -- or what she told you?
21 A Right.
22 Q And you don't have that recollection?
23 A No, I don't.
24 Q Okay. And you went over to her house last

1 Tuesday?
2 A Yes, I did.
3 Q Okay. And you already knew you were coming to
4 court to testify?
5 A Yes.
6 Q Okay. And she lives in Panaca?
7 A Yes.
8 Q And you live in Pioche?
9 A Mm-hmm.
10 Q Is that yes?
11 A Yes.
12 Q So you drove from Pioche to her house to go to her
13 house?
14 A Yes.
15 Q Okay. Was that an evening time visit or --
16 A No, it was during the day.
17 Q Part of your work day or --
18 A Yes.
19 Q Okay. While you were out and about on your duties
20 as a probation officer?
21 A Yes.
22 Q You just stopped by to chat?
23 A Yes.
24 Q Okay. Were you aware that she'd already been

1 subpoenaed to come to court also?
2 A Yes.
3 Q Okay. Okay. Now when -- just so I'm clear on the
4 time frames on this. You had a conversation with Dixie at your
5 office there at the Pioche Courthouse, correct?
6 A Yes.
7 Q And your recollection is sometime shortly afternoon?
8 Is that yes?
9 A Yes.
10 Q Okay. And at that point in time the first thing you
11 did or one of the first things you did was contact Sergeant
12 Cowley?
13 A Yes.
14 Q And that would've been on this same day?
15 A I really don't recall if it was the same day or -- I
16 believe it was the next day.
17 Q Okay. So that would've been Thursday then?
18 A That would've been Thursday because, based on her
19 information, is when I started to call.
20 Q Okay. And you started to call the different law
21 enforcement agencies on Friday?
22 A Friday, yes.
23 Q So actually you had a conversation with Dixie on
24 Wednesday --

A Mm-hmm.
Q -- talked to Sergeant Cowley on Thursday, and then called the law enforcement on Friday?
A Right.
Q So two days after your conversation with Dixie?
A Yes.
Q In this conversation you had with Dixie, she had told you that Blaise had related the man had tried to attack her?
A Yes.
Q Okay. In a sexual type of attack, was that your understanding?
A Yes.
Q Because his penis was out of his pants?
A Right, his penis was hanging out of his pants.
Q It's fair to assume that if this individual that wasn't described to you had attacked someone with his penis hanging out, it was probably some type of sexual attack?
A Probably.
Q Okay. And you're a law enforcement officer or a peace officer, correct?
A Yes.
Q Okay. So you have access to records on individuals, is that correct?
A What kind of records?

Q Would you have access to records that indicated Blaise had been the victim of a sexual assault at an early age?
A I was told that, yes.
Q You were aware of that? At what point in time did you become aware of that?
MS. DiGIACOMO: Objection, relevance.
THE WITNESS: Not until after.
THE COURT: Counsel approach.
(Off-record bench conference from 2:33:22-2:34:33 p.m.)
THE COURT: Mr. Schieck's withdrawing the question, therefore, the answer cannot stand and is ordered stricken.
BY MR. SCHIECK:
Q When Dixie talked to you about the car, was she giving you exactly what Blaise had told her or what Dixie assumed was going on with the car?
A She told me that Blaise told her that they were hiding the vehicle out in Panaca and that her parents were aware of what happened and that they were gonna possibly get it painted or sell it.
Q Okay. And it was your understanding that was what Dixie was told as opposed to what Dixie assumed?
A Yes.
Q Okay. Would it -- I mean you've known Dixie for

nine years?
A Right.
Q You've had a lot of conversations with Dixie?
A Mm-hmm.
Q Is that yes?
A Yes.
Q Dixie makes a lot of assumptions in her conversations sometimes, is that a fair statement?
A Yes.
Q Dixie is in her position there in Panaca and her years in Panaca, is privy to a lot of information that gets spread around town. Is that a fair statement?
A Yes.
Q Okay. And not to be unfair to Dixie in her absence, but is prone to sometimes perhaps putting her own spin on things? Would that be a fair statement?
A I don't know about that. I really cannot answer that because I -- I've never, you know --
Q Well, she definitely had her opinions about this case?
A She definitely had her opinions, yes.
Q Okay. And obviously apparently to you would state those opinions --
A Yes.
Q -- of how she feels on the case?

A Yes.
Q Okay. And that's based on a variety of factors?
A Yes.
Q Okay. And she was trying to convey those to you when she talked to you on Tuesday?
A Yes.
Q Okay.
MR. SCHIECK: Court's indulgence for one second, Your Honor.
THE COURT: Yes.
BY MR. SCHIECK:
Q Would it be fair for me to say that you never talked to Blaise about this?
A I've never talked to Blaise.
Q So everything you have would've been secondhand information, correct?
A Correct.
Q Okay.
MR. SCHIECK: Thank you. I have no further questions, Your Honor.
THE COURT: I'm gonna ask for a clarification. Is that you've never talked to Blaise ever, or you've never talked to Blaise about this incident?
THE WITNESS: I've never talked to her about this

incident.

THE COURT: Redirect.

MS. DiGIACOMO: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. DiGIACOMO:

Q Now defense counsel asked you about Dixie and that she makes assumptions. When she talked to you that day in your office about what Blaise had told her, did you think she was making any assumptions?

A No.

Q Okay. What did you think?

A I believed what she was telling me.

Q Okay. And did she seem genuinely concerned?

A Absolutely. Yes.

Q Did she seem to believe that maybe this had happened in Las Vegas?

A Yes.

Q And Dixie's opinions, have they changed, or has she been pretty much the same way she's been sine July 2001 until the present?

A She's been pretty much the same.

Q In fact, when you talked to the police, did they -- you told them something about whether or not they should see Dixie that same day, didn't you?

A I'm sorry.

Q Okay. When you talked to the police and they came to your house on that day, July 20th?

A Right.

Q Did you tell them that they shouldn't go see Blaise that same day -- excuse me, shouldn't go see Dixie that same day?

A I don't recall that. I'm sorry.

Q So you don't recall telling the police not to see Dixie before they talked to Blaise because she might tip her off?

A I really don't recall that. I'm sorry.

Q Is it possible you did say that to the police?

A It's possible I did say that --

Q Is it possible that Dixie --

A -- because it's possible that that could happen.

Q It would've been possible that --

A Yes.

Q -- Dixie would've tipped Blaise off?

A Yes.

Q Now with regard to the conversation you had with Dixie, you said you don't recall any descriptions given to you?

A No, I don't.

Q You do recall that a penis was cut off though?

A Yes.

Q And who brought up when you had -- well, strike that. When you had this conversation as well, did Dixie tell you where Blaise had said she was coming from when the attack occurred?

A She said -- Dixie told me that Blaise was coming out of work.

Q And when you had the conversation with Dixie last Tuesday at her house, which one of you brought up this case and that you were gonna have to come down here?

A I'm not sure. It was --

Q Do you recall who initiated speaking about the facts of the case or your testimony?

A No. I think we just started talking about the case because she made me very angry because I told her she couldn't continue to change her story.

Q Okay. Was it a long conversation?

A Yes.

MS. DiGIACOMO: Court's indulgence.

Pass the witness.

MR. SCHIECK: Nothing further, Your Honor.

THE COURT: You may step down.

State may call the next witness.

MR. KEPHART: State would call Dr. Simms.

Your Honor, before we do that, could I approach the

bench? I've got to arrange photos and stuff, so --

THE COURT: You may approach the clerk. Is that what you want?

MR. KEPHART: Yeah, I gotta look through 'em and make sure I got all the right ones.

THE COURT: You may.

MR. KEPHART: Yeah, if we could.

Could we take a break, Judge? It would be easier.

THE COURT: Why don't you go ahead and get started and then we'll take a break.

MR. KEPHART: Okay.

THE CLERK: Please remain standing and raise your right hand.

DR. LARY SIMMS, STATE'S WITNESS, SWORN

THE CLERK: Please be seated.

State your name and spell it for the record, please.

THE WITNESS: My first name is Lary spelled L-A-R-Y. My last name is Simms, S-I-M-M-S.

DIRECT EXAMINATION

BY MR. KEPHART:

Q Sir, how are you employed?

A I'm a forensic pathologist employed by the Clark County Coroner's Office.

Q What is a forensic pathologist?

SIMMS - DIRECT

A Well, pathology is a general s... y of disease, and forensic pathology is a subspecialty of that that deals mainly with violent injury, which would be like a suicide, accident, or homicide.
Q And in the course of your employment do you -- are you called upon to conduct autopsies?
A Yes.
Q Okay. And that's with the coroner's office here in Las Vegas?
A Correct.
Q How long have you worked as a coroner?
A Here in Las Vegas, it's been a little over eight years.
Q Okay. And when I say coroner, I'm talking about medical examiner. Is that the same thing? Do you understand it?
A Probably not strictly. Medical examiner is a physician.
Q Okay. And with regards to here in Las Vegas, how long again?
A A little over eight years.
Q Anything prior to that?
A Yes. I worked in Chicago for five years.
Q As a medical examiner -- coroner?
A Correct.

SIMMS - DIRECT

Q Anything prior to that?
A Well, I started doing forensic cases just a few years before that while I was in Grand Rapids.
Q Okay. Have you ever testified in any court of law, either in the State of Nevada, Chicago, any other place in the United States with respect to rendering opinion based on medical examination of a human body?
A Yes.
Q Okay. How many times would you say?
A Well, in Clark County here, it'd probably be, you know, 150, 200 times. In Chicago it was probably, and the surrounding area it was probably about 50 or 60 times.
Q Okay. How many autopsies do you believe you've performed?
A Probably somewhere between 4,500 and 5,000.
Q Okay. And what type of training do you have to have in order to enable you to become a medical examiner as a coroner?
A Well, you have to go through medical school and become a license physician, and then you undergo some specialty training in basic pathology, which is a five year program. And then you specialize in forensic pathology, which is a one year program.
Q Okay. And have you ever qualified as an expert in

SIMMS - DIRECT

the field of pathology, examination of bodies, coroner, when you testified?
A So far each time.
Q Okay.
MR. KEPHART: Your Honor, at this time I'll move to offer Dr. Simms as an expert in the field of pathology, examination of dead bodies.
MR. SCHIECK: That's fine, Your Honor.
THE COURT: No objection? Motion granted.
MR. KEPHART: Okay.
BY MR. KEPHART:
Q Doctor, I want to draw your attention back to July 9th of 2001, and ask you if you had an occasion to conduct an autopsy on an individual identified to you as Duran Bailey?
A Yes.
Q Okay. Can you tell the jury what an autopsy is?
A It starts out with an external examination of the body surfaces from the head to the feet. And then there's some incisions made in certain areas of the body and in the head. The internal organs are removed. Those are examined. And also the internal body surfaces are examined.
Q Okay. When was it that you actually conducted -- what -- do you remember what time it was?
A I recorded it at 1200 hours, so it would be 12:00

SIMMS - DIRECT

noon.
Q Okay. Do you recall during this examination whether or not personnel from the Las Vegas Metropolitan Police Department were there during your autopsy examination?
A I don't have an independent recollection of anything about the examination, but I -- I would say, you know, there's a 99.9 percent probability that that would be the case because that's their routine.
Q Okay. And they're there for what reason, do you know?
A Well, there's an evidence technician, which is there to take evidence. And then there's usually homicide detectives there who are, you know, there to get the results of the autopsy, at least the preliminary results.
Q Okay. And the evidence technicians would include taking photographs?
A Yes.
Q Also I've had an opportunity to meet with you in the last couple days prior to your testimony today, is that correct?
A Correct.
Q And the coroner's office also takes photographs as well, is that correct?
A Yes.

Q And you were given all of the photographs that were taken in this case by the coroner and asked to look through those to see if that would assist your testimony for purposes of identifying the injuries that Duran Bailey received, is that correct?
A Correct.
Q Do you remember testifying in a previous hearing as well in this case and talking about the injuries to Duran Bailey?
A I know I testified a couple of times, yes.
Q Okay. Matter of fact, you were provided with your previous testimony in this case, is that correct?
A Yes.
Q Okay. Now during the course of your examination, did you conduct an internal examination -- I mean an external examination?
A Yes.
Q Okay. Can you tell us what significant findings that you made with regard to the external examination?
A Do you want me to go over them individually or just --
Q Yes.
A -- synopsize them?
Q Yes.
MR. SCHIECK: For the record, Your Honor, I believe

he's gonna refer to his report, which we have no objection to.
THE COURT: Very well.
THE WITNESS: On the back of his head there was a two and a half inch area of what looked like bruising. On the left neck there was a superficial incised wound that was four and a half inches in length.
BY MR. KEPHART:
Q Okay. Let me stop you there. What is an incised wound?
A That'd be a slash wound.
Q Okay. And do you have any type of opinion as to what would cause a slashed wound?
A Not as far as a specific weapon, but obviously it'd be a weapon that has a -- or an object that has a very sharp edge.
Q Okay. Go on.
A On the left side of his face there was a broad area of blunt force injury composed of abrasions and contusions. There were also scratches. And then there was a -- one part of it had what appeared to be a patterned abrasion, which would indicate that it came in contact with some kind of pattern surface.
On the right side of the face he had a similar findings of blunt force injury with a number of abrasions and

contusions, and there were scratches. He was bleeding from the nose. There was a stab wound in the right forehead area. There was a number of small incised wounds on the left lateral neck.
Also on the left neck there was a stab wound on his chin. There was a -- on the left side of his chin there was a stab wound. There was a stab wound in the front of the neck.
Q Okay. Doc, let me stop you there. Now I asked you about an incised wound?
A Correct.
Q And now you're terminology you're using is a stab wound. Can you tell me if you have any opinion as to what would cause a stab wound?
A Well, a stab -- a slash wound is longer than it is deep. A stab wound is deeper than it is long. So a stab wound -- in order to cause a stab wound it has to be a sharp instrument like a knife that has a sharp edge that can stab into a depth of tissue.
Q Okay. Okay. Go on.
A Let's see, on the bridge of the nose there was a small abrasion. There was an abrasion on his right lateral forehead associated with a scratch. There was an incised wound above his right eye. And there were multiple incised wounds that were fairly superficial above his left eye, or in

relation to his left eye, not just above it. There were multiple lacerations of the lips with -- associated with fractures of the teeth. There was an incised wound on the left side of the chin and jaw area. There was a previous scar -- or there was a scar from a previous surgery on the left side of his head.
Moving down into the chest and abdomen. There were a number of pressure marks on the body, indicating there was all kinds of edges and objects in contact with his body for a period of time after he died. On the --
Q Well, let me talk to you about that real quick. You said that there was a number of pressure marks and different edges and that that we can't -- showed that something had came into contact with his body?
A A number of -- because they were kind of separate things.
Q Okay. And pressure marks, can you -- can you give us an idea with regards to an individual who dies, receives a pressure mark. Do you have an opinion as to how long something like that would have to be on a person in order to cause a pressure mark?
A Yes. You know, a pressure mark comes from, say somebody dies and they -- they're on a rocky area, and it's an uneven area. And so a lot of those rock surfaces are gonna cause pressure marks. And it usually takes, you know, a

number of hours for those to form and [illegible] some kind of permanent on the body. If you -- you know, if they're just there for a short period of time and you move them off those, then the pressure marks go away. But the more permanent pressure marks take a number of hours.

Q Okay. And you've described just now whether or not the body is laying on a rocky surface. Can you -- can the body receive a pressure mark if something is laying on top of the body?

A Same mechanism, yes.

Q Does it have to be any type of weight or any type of material that has a significant weight to it to cause a pressure mark?

A No. It can be a relatively light piece of plastic, as long as there's something on top of it that's pressing down, you know, there's some kind of weight. You know, you're not gonna get a pressure mark if you just lay a pencil on a deceased person.

Q Okay.

A There has to be some kind of pressure.

Q So if there's a large amount of debris on an individual you would likely see pressure marks after at least two hours?

A Oh, yes.

Q Okay. Debris including garbage?

A Well, as long as it has, again, you know, some kind of edges to it, some kind of surfaces to it. That's what causes a pressure mark.

Q Okay. Okay. Go ahead.

A Let's see. There was a superficial incise wound on his left upper chest. There were a number of abrasions, curvilinear abrasions on the left shoulder. On his left -- his left -- right at the junction between his abdomen and his chest there were four stab wounds. On the back there were a number of superficial abrasions on the upper back.

He had a long irregular slash wound in his rectal area. There was a stab wound in the scrotum, and his penis was amputated at the base. There was a scar on his right knee. There was a superficial incised wound on the inner part of his right lower arm. There was another one on the back of his right hand. There was another one -- or there was several on the inner part of his left lower arm. And then there were several of them on the fingers, the palmar surface of the fingers of the left hand.

Q Okay. With regards to the injuries that you just described on his arm and on his hand, was there injuries to both hands?

A There was an injury to the back of the right hand,

there wasn't any to the palm. But there was an injury -- injuries to the palm, a number of -- several injuries to the palm of the left hand.

Q Okay. And do you have an opinion as to what those type of injuries are?

A Well, those are classic for defense wounds.

Q Okay. And when we say defense wounds, meaning that he's fending off whatever instrument is --

A Whatever -- it comes in a sharp force attack and you get these injuries to your hands when you're trying to defend yourself. That's why I call them defense wounds.

Q Okay. The type of injuries that you saw with regards to his hands, were they consistent with something that was made with a sharp -- by a sharp instrument?

A Yes.

Q Such as a knife?

A Yes.

(Off-record colloquy between Mr. Kephart and the Clerk)

MR. KEPHART: I'd like to have this marked as State's Proposed Exhibit 122.

(Off-record bench conference from 2:56:25-2:57:09 p.m.)

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

THE COURT: You may.

BY MR. KEPHART:

Q Dr. Simms, I'm gonna ask you if you could -- you just testified about a number of injuries that Duran Bailey received. I'd ask you if you could come down here and use this diagram as State's Proposed Exhibit 122.

MR. KEPHART: And for purposes of the record, Your Honor, it's a clean diagram. I'll move to admit State's Proposed Exhibit 122.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit No. 122, admitted)

BY MR. KEPHART:

Q Could you --

MR. KEPHART: Do you have a red marker?

BY MR. KEPHART:

Q Doctor, could you -- with the use of this red marker, would you go ahead and go through the injuries again, pointing out on this diagram what injuries that you noted had occurred with regards to Duran Bailey. And just so we know who we're talking about, can you write the name Duran Bailey in the spot that says Duran -- I mean says name?

A Okay. Let's see, on the back of his head his had a bruise. On the left neck toward the back there was an incised wound. On the -- kinda all around the left side of his face

there were a number of abrasions, contusions, and that was similar on the right side of the face. He had blood coming from his nose. There was a stab wound in the right forehead area.

Q Okay. Just so we know -- the record's clear, when you are identifying actual stab wounds, can you color those in as a line if it's consistent with what you recall?

A Let's see. On the left lateral neck there was a group of incised wounds.

Q What did you write on there?

A A group.

Q A group of incised wounds? Okay.

A Superficial incised wounds.

Q Okay.

A And also on that area here there was a stab wound.

Q Okay.

A There was a stab wound on the left chin area. There was a stab wound on the front of the neck. There was an abrasion on the ridge of the nose. There was an abrasion on the right forehead. Above the right eye there was an incised wound. And there were multiple incised wounds around the left eye. There were multiple lacerations on the lips, along with fractured teeth. There was an incised wound on the left jaw. And there was a scar on his head from an

old --

Q A scar from an old injury or --

A From -- well, either that or an old surgery.

Q Okay.

A Let's see. There were a number of pressure marks then all over the abdominal area.

Q And you're saying that would be consistent with something was placed on the body?

A A number of objects.

Q Okay. Could a pressure mark also be caused by an article of clothing that's on the body and then something's placed on top of that?

A If it was -- as long as it was something hard, like buttons or -- it would have to be something -- it wouldn't be just cloth. Well, I take that back. If the cloth was fairly thick and had a pronounced pattern, like a zipper, something like that it could.

Q Okay. What if the cloth is folded?

A Given enough time and pressure that could cause a linear pressure mark.

Q Okay.

A There was a superficial incised wound in the left chest. There were abrasions on the left shoulder. And there were four stab wounds in this area here. There were multiple

-- there were abrasions over the upper back.

Q And when you say abrasions you're talking about scratches or --

A Right, where the skin was scraped.

Q Okay. Would that be maybe consistent with whether or not the body had moved at some point or he struck -- he fell against something?

A Could be either -- either one of those.

Q Either one of those? Okay. Similar to on his face?

A Yes.

Q And the side of his head? Is that a yes, Doctor?

A Yes.

Q Okay. Thank you. Any other injuries?

A There was a long incised wound in his rectal area. There was a stab wound in his scrotum, and then the penis had been amputated. And he had a defense wound on the right forearm, on the back of the right hand -- that was the left, sorry. Right. On the back of the right hand.

Q Now you put an X -- in the record you put an X through something that you marked in the left arm?

A Yeah. Actually though he's got -- he's got an incised wound over there too, so I'll X out the X --

Q Okay.

A -- and put it back here. There's several of these.

On the fingers of the hand he had incised --

Q Okay. Now you've only marked three fingers?

A Now I think -- oh, yes. It's the first, second, third -- so the first, second, third, I have to mark that one out, and fifth.

Q Of the left hand?

A Of the left hand.

Q Okay. Any of them on the right hand?

A The only one on the right hand is the -- the one on the back.

Q On the back. Okay. Okay. Would that pretty much then -- is there any additional injuries?

A Not external.

Q Okay. What about with regards to the defendant's rectum -- I mean the witness' -- victim's rectum?

A Well, yeah, he had this long incised wound here.

Q Okay. And that was a -- was it connected?

A No, it was a -- I think it was almost six inches long, extending from kind of the top all the way down to the near the base of his scrotum.

Q Okay. Okay, Doc, you can have a seat there. Now you had indicated that -- that you -- this is with reference to your intern -- I mean external examination, is that correct?

A Correct.

SIMMS - DIRECT

1 Q Do you do an internal examination?
2 A Yes.
3 Q And were you able to do one in this particular case?
4 A Correct.
5 Q Okay. Tell me what significant findings, if anything,
6 that you got with regards to this individual, Duran Bailey?
7 A Well, he had a hemorrhage in his tongue. He had
8 had a previous surgical where his skull, a flap of it was actually
9 opened up. Some kind of -- he had some previous, some
10 brain surgery on the left side. There were hemorrhages on
11 both sides of the head underneath the skin.
12 Q Okay. Let me stop you. When you said that he had
13 a previous -- what appeared to be previous surgery or
14 something --
15 A Correct.
16 Q -- and you said brain surgery, that has -- can you
17 give us an opinion as to whether or not that had anything to
18 do with this particular incident here?
19 A No, it would've happened, you know, like years ago.
20 Q Okay. So that's just -- you just saw evidence of
21 some previous --
22 A Of a previous surgery.
23 Q Okay. All right.
24 A He had hemorrhages underneath his skin on his

SIMMS - DIRECT

1 head. He had a large -- large area of hemorrhage very dense
2 on the back of his head. He had blood over the surface of his
3 brain, fairly extensive over both surfaces of the brain. There --
4 on the left side of the skull there was a fracture that went from
5 the back -- or from the side to the back. Like I said, there
6 were hemorrhages in the tongue.
7 His internal organs, his lungs and kidneys were very
8 pale, which is consistent with somebody losing blood, a lot of
9 blood. There were some hemorrhages in the soft tissue in
10 relation to the stab wounds on the left side. Down around his
11 prostate -- internally around is prostate gland and around his
12 internal pelvic structures there were a number of
13 hemorrhages. I did recover some silver paper like fragments
14 from the wound in the -- the opening of the wound in the
15 rectal area. That's all.
16 Q Okay. Reference to the wound to Duran's scrotum,
17 were you able to determine -- well, do you know what -- well,
18 yeah, you do, but postmortem and antemortem, the
19 difference, can you tell us what those mean?
20 A Well, in a -- a postmortem wound indicates that the
21 person was alive when the wound was given to them, or
22 injury. A -- I mean a -- sorry, I'm misleading. An antemortem
23 wound or injury is when the person is alive, it occurs when
24 they're alive. A postmortem wound is after they're dead.

SIMMS - DIRECT

1 Q Okay. Were you able to determine from evidence
2 that showed that there were certain wounds here that was --
3 this individual received after he was dead?
4 A Yes.
5 Q Tell us what those were?
6 A The stab wound in the front of the neck had hardly
7 any hemorrhage associated with it, so that would be a
8 characteristic of a postmortem wound.
9 Q Which one would that be, as you --
10 A Right in the front of the neck.
11 Q Okay.
12 A The one on the front of the neck.
13 Q Okay.
14 A The stab wounds on the left side, one of them went
15 all the way through and into the liver and there was no blood
16 associated with it, and there was just some blood in the
17 subcutaneous tissue underneath the wounds. So I would -- I
18 would have to say that those occurred, you know,
19 postmortem. They didn't have the -- with four major stabs
20 wounds, especially one to the liver, you should have a
21 significant amount of bleeding. There was hardly any.
22 Q When you say went all the way inside, you're talking
23 about the depth?
24 A Yes, it went all the way through -- right -- it actually

SIMMS - DIRECT

1 cut the rib cage right at the edge of it and then went into --
2 and then went all the way into the liver.
3 Q Okay. Can you -- did you measure that? Do you
4 have a -- did you note --
5 A No, I didn't take it because, you know, the
6 abdominal wall is so moveable, you know, it -- you know, it
7 doesn't really reflect, you know, how deep -- how long a knife
8 is or anything, so it's -- it doesn't really help you. But it -- you
9 know, you'd have to say it had some kind of a significant blade
10 in order to go all the way into the liver from that -- from that
11 point.
12 Q Okay. Would you -- were you about to characterize,
13 at least with those injuries, whether or not this particular
14 incident was a one sided to two sided instrument?
15 A Those had a blunt edge and a -- or a blunt edge and
16 a sharp edge. And I think it was on -- on -- I didn't record
17 which ones it were [sic], whether it was on all the wounds or
18 just a few of the wounds, but some of them definitely had
19 that.
20 Q And you're able to determine whether it was a one
21 edge -- one sided or two sided?
22 A Since there's a blunt edge, that would be a one -- a
23 single edged knife or a single edged weapon.
24 Q Okay.

A So there's only one sharp edge and then the other side is blunt, kinda like a -- it would be like a kitchen knife, you know, that has a blunt edge on one side and a sharp edge on the other.

Q Okay. And -- okay. You've talked about the injury to the neck and the injury to the side were postmortem. Any other injuries?

A The wound in the rectum was postmortem.

Q Okay.

A It didn't have any significant bleeding associated with it. The wound in the scrotum was antemortem, but the wound to the penis was postmortem.

Q Okay. So the wound in the scrotum means it happened before he died?

A Correct.

Q And the wound to the penis meant that it happened after he died?

A Correct.

Q Okay. With regards to the wound to the scrotum -- well, let me back up. With regards to the wound to the penis and the rectum, in reference to the area of where the penis would've been, or it was removed from, is that an area that could or does have a reservoir of semen?

A Well, it -- the prostate gland is just inside there.

And it's not uncommon, interestingly enough, after a male dies because the prostate gland has muscle in it, it actually undergoes rigor mortis. And it's not uncommon for small amounts of semen to actually be ejaculated.

Q Okay.

A That's fairly common.

Q Well, that's sometime later though after he dies?

A Yeah, after rigor mortis has set in.

Q I'm talking about when -- if an individual has his penis severed with a knife and then the knife is placed in the rectum, would it be consistent with possibly seeing semen in both areas?

A If it cut anywhere near the prostate gland than it -- semen could be deposited.

Q In this particular case it did, correct?

A It cut down to it. I don't recall actually making an observation where it actually the -- I actually removed the prostate gland and to -- because there was a lot of hemorrhage around it. But it definitely was cut at least near the prostate gland.

Q Okay.

A And there's also another couple glands that are called the seminal vesicles which are very -- they're much smaller. The prostate is about the size of two walnuts

together, where the seminal vesicles are about the size of your little finger. So -- and they also have a reservoir.

MR. KEPHART: Your Honor, may I approach? The Court, could we approach?

THE COURT: Yes.

(Off-record bench conference from 3:14:05-3:14:23 p.m.)

THE COURT: Ladies and gentlemen, we're gonna take a 15 minute recess. At 3:30 please be in the hallway. The bailiff will meet you there to return you to your seats in the courtroom.

During this recess you're admonished not to talk or converse among yourselves nor with anyone else on any subject connected with this trial. You're not to read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including without limitation, newspaper, television, radio, and internet. And you're not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

Court's in recess until 3:30.

THE BAILIFF: All rise, please.

(Jurors are not present)

(Court recessed at 3:15:05 p.m. until 3:35:02 p.m.)

(Jurors are present)

THE BAILIFF: All rise, please. Department 2 is back in session. Please be seated.

THE COURT: The record shall reflect that we're resuming trial in State versus Kirstin Lobato under case number C177394, in the presence of the defendant, together with her three counsel, the two prosecuting attorneys, and the ladies and gentlemen of the jury panel.

Also Dr. Simms is back upon the witness stand, he remains under oath. Mr. Kephart may resume direct examination.

MR. KEPHART: Thank you, Your Honor.

May I approach the witness?

THE COURT: You may.

MR. KEPHART: Okay.

BY MR. KEPHART:

Q Doctor, I'm gonna show you a series of photographs in three separate stacks. The first series is numbered 68 -- oh, I'm sorry, 56 through 68. Could you take a look at those, please? Okay. With regards to photographs 56 through 68, are you familiar with what these are photographs of?

A Those show a number of the external injuries.

Q Okay. With regards to Duran Bailey?

A Yes.

Q And the individual that you just drew the injuries

and pointed out on Exhibit 122, I believe, is? 122.
A Yes.
Q Okay. And do these photographs help you to explain the injuries to the jury more in-depth in reference to just drawing them on the chart here?
A Yes.
Q Okay.
MR. KEPHART: Move to admit Exhibits 56 through 68.
MR. SCHIECK: No objection, Your Honor.
MR. KEPHART: Okay.
THE COURT: Be admitted.
(State's Exhibit Nos., 56-68, admitted)
BY MR. KEPHART:
Q I'm showing you what's been marked as Exhibit No. 70 through 97, and ask you to take a look at those as well. Okay. Do you recognize what these photos are taken of?
A Those show a lot of the external injuries and some of the internal injuries.
Q Okay. And like my last question, with regards to the injuries to Duran Bailey, that would help the jury understand more in-depth versus just the drawing on the --
A Yes.
Q Okay.

MR. KEPHART: Move to admit Exhibits 70 through 97.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit Nos. 70-97, admitted)
BY MR. KEPHART:
Q And once again, Exhibits -- Proposed Exhibits 199 through 204. Do you recognize what these are taken of?
A Yes, those are external injuries.
Q Of the same individual?
A Correct.
Q So more consistent with the previous exhibits that we've just admitted?
A Consistent with it, yes.
Q Okay.
MR. KEPHART: I'll move to admit 199 through 204.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit Nos. 199-204, admitted)
BY MR. KEPHART:
Q Okay. Let's just start with the first stack, Doctor. Can you -- I'm gonna use the screen so we can show the jury what we're talking about. And that screen you can actually touch and it would help to identify certain things. Okay.

Exhibit No. 56 -- let me see if I can lighten that up.
MR. KEPHART: Is there something to lighten it up, Your Honor? Is this over here? Zoom in. Okay.
BY MR. KEPHART:
Q Do you see that there, Doctor?
A Yes.
Q Okay. Now you had testified earlier about an injury to the back of Duran's head, and actually on Exhibit 122 you drew a circle with an X in it. Does this help the jury understand what you're talking about with regards to the injury?
A Well, the location of it would be in this area there.
Q Okay. Is that actually -- that's not actually the injury, that's actually some kind of debris or something that's on his head --
A Correct. Yeah.
Q -- is that right?
A Yes. They would have -- you would have to actually shave the head in order to see that --
Q Okay.
A -- photographically.
Q Now you talked about abrasions on his back. Is there evidence of that with these photographs as well?
A Well, they're gonna be scattered over, you know,

this area here. And then there's a superficial incised wound right there.
Q Okay. The skin that seems to be gone on a portion of -- on his left shoulder blade, in that area, can you tell us what that is or what attributes to that?
A That's early decomposition.
Q Okay. Exhibit No. 57. Can you -- you gotta touch the screen to --
THE COURT: If you touch the lower right corner it will clear.
THE WITNESS: All right.
BY MR. KEPHART:
Q Can you see that okay?
A I can see it.
Q Am I lined up all right or do I need to zoom out? There we go.
MR. SCHIECK: Your Honor, would it be okay to move the chart --
MR. KEPHART: Yeah, I will, Dave.
MR. SCHIECK: -- so that I can see the whole screen?
THE COURT: Yes. Mr. Kephart can take the chart down.
MR. KEPHART: Is that better, Mr. Schieck?

MR. SCHIECK: Yes. Thank you very much.
MR. KEPHART: Okay.
BY MR. KEPHART:
Q Do you see that, Doc?
A Mm-hmm. Yes.
Q Can you show us where -- what the significance of this photo is?
A Well, there's a significant stab wound right there.
Q Okay. Do you see down on his -- on his -- I guess it would be his left shoulder, in the photograph, the right bottom portion of the photo? And do you see what appears to be some lines?
A Correct.
Q Can you tell us what that is?
A That's blood flow.
Q Okay. So it appears that maybe some blood had gotten in a higher area there and flowed away from --
A Correct. Yeah.
Q Okay.
A And flowed down over the shoulder.
Q So it would be from the chest down over the shoulder?
A Correct.
Q Would that be consistent with him possibly laying

down?
A You mean -- oh, if he was down when --
Q Laying down.
A -- when the bleeding occurred?
Q Yes.
A Yes, then it would be --
Q Okay.
A If it bled out then it would go to -- gravity would pull it down over the areas of the body and that would be one of them.
Q Okay. You wouldn't expect it to go down over his chest or up over his chest and down, would you?
A No, that would be a little unusual.
Q Okay. Now with this particular wound here that is shown in Exhibit 57, you said a significant wound?
A Yes.
Q Okay. And that's in a particular area on his body?
A On the left neck.
Q Okay. And is there a major vessel in that area?
A Yes. It went all the way -- it went way into the neck. It severed the carotid artery and actually -- it went all the way -- almost to the midline of the neck into the back of the throat area.
Q Okay. That particular wound would bleed

significantly?
A Yes. The carotid artery is probably about the size of your little finger. So if that was severed, you'd be -- with each pump of your -- each pump of the heart you'd be losing a large amount of blood.
Q Okay. And would it cause any type of -- would it do anything with regards to the blood? Would it spray the blood, would it ooze the blood or --
A No. That kind of wound would pump that blood out. So it would have a -- it'd have a -- depending on certain factors, but it would have a propensity to cause an arterial spray.
Q Okay. And with regards to this wound, you would expect blood to possibly get onto his chest area would be consistent with the blood that flowed down -- flew down from his -- the side there?
A Yeah. Yes. Blood would flow out onto his chest area, definitely.
Q Okay. Even if he's laying down?
A Well, it would tend to -- tend to spray out the side and come out the side, but you know, it could possibly come, you know, in the front of his chest area.
Q Okay. Okay. Exhibit No. 58. Do you see that one, Doctor?

A Yes. That's again on the lateral side -- or the left side of the neck, but it's more toward the back and there's a -- an incised wound. Actually there's actually two of them there.
Q Okay. And when you say incised wound, you're talking about a --
A A slash wound.
Q -- a slash wound?
A Yeah. These are fairly shallow.
Q As if a sharp instrument was drug across the neck?
A Correct.
Q A knife?
A Definitely a possibility, yes.
Q Exhibit No. 59.
A And this is the eye here, and this is the mouth here. So this -- all these are on the left side of the face. We talked about all the bruising and abrasions and everything on the left side of the face.
Q Okay. Now when you say bruising and abrasions, what type of instrument would cause a bruise or an abrasion?
A Any kind of blunt force type of instrument.
Q And so with respect to this photo here, Exhibit No. 59, we're talking about evidence of blunt force?
A Definitely.
Q Okay. Exhibit No. 60.

A Here's the mouth and the nose, and this is the chin area. And there's a stab wound there on the left side of the chin.

MR. SCHIECK: Zoom in, it'll brighten.

THE WITNESS: So here's the mouth and then this is the -- on the left side of the chin.

BY MR. KEPHART:

Q Okay. And that's over at -- this photograph is 4. And what do you call this?

A That was a stab wound, I believe. Let me look and see here. Yes.

Q Okay.

A So this is the chin, and we just got through seeing this wound on that previous photo. This is a mouth up here. So this is on the -- kinda the -- just to the left of that there is a incised wound that actually has a -- kind of a drag mark, a very -- it goes from a deeper wound to this very shallow drag mark.

Q And back here in the back --

THE COURT: That one has not been identified by number.

MR. KEPHART: Oh, I'm sorry, Judge. It's 61.

THE COURT: Thank you.

MR. KEPHART: Okay.

BY MR. KEPHART:

Q Back here in the back of the photo on the lower portion, what is this consistent with here? See my finger?

A This stuff -- that's decomposition change.

Q Okay. Exhibit 62.

A This is kind of the whole face, so you see -- this is obviously the nose here and there's blood in the nose. There's multiple blunt force injuries there, there's blunt force injuries in this area, blunt force injuries in that area. His eyes are swollen.

Q Okay. And 63. Is this --

A Looks like the same kind of --

Q Just has the marker in there?

A -- photograph, yeah.

Q Okay. 64?

A This is kind of just from a different view, but it shows the blunt force injury to the mouth a little bit better, shows the swelling in the mouth, and then all the lacerations.

Q Okay. In this particular case were you also provided with a number of teeth?

A Yes, there were -- that had been knocked out of his jaw, yes.

Q Okay. And that would be consistent with some type of blunt force instrument?

A Correct.

Q Number 65?

A I think this -- everything here is covered in the previous photos.

Q Okay. Number 66?

A So this -- this is more kinda from the forehead down so that you can see a lot of blunt force injury in that area. And then there's also a sharp force injury right there in the eyebrow area.

Q And so the sharp force would be consistent with a sharp instrument, such as a knife?

A Correct.

Q Okay. Exhibit No. 67?

A This is the left lateral neck again, and this is that wound that went all the way to the carotid artery.

Q Okay. What's above it? Can you see that?

A It looks like there's -- I don't know whether that's a shallow wound or not. And there's some discolorations around there, but --

Q You had described certain wounds as like shallow incised wounds?

A Correct.

Q Like a slicing?

A Right. But they were very superficial.

Q Okay. And what do you mean by superficial?

A They just barely, you know, cut the skin. They didn't get down into the deeper fatty areas underneath the skin.

Q And Exhibit No. 68?

A This is the one that's -- this is right on the front of the neck, the one that was on the front of the neck. This is the chin area up here. And this in the one that didn't have any significant hemorrhages associated with it, so I think it was postmortem.

Q Okay. So it'd be your testimony that obviously this wound could not have occurred at the same time the wound in No. 67?

A Well, if you mean by the same time, you know, minutes, I don't think I can differentiate those to --

Q Well, I mean by the same blow, so to speak?

A Oh, no, definitely not by the same blow.

Q Because obviously, one, he was alive, and the other one he was dead?

A Right. So at some point after he had expired was when the wound in the front of the neck was made.

Q Okay. And you know, how do you make that determination about how you can tell that one wound occurred prior to an individual dying and one occurring after an

SIMMS - DIRECT

1 individual dies?
2 A You look at the hemorrhage associated with the
3 wound. If there's very little or no hemorrhage associated with
4 the wound where there should be a lot, a substantial amount
5 of hemorrhage, then you know it's probably postmortem. The
6 wound in the carotid artery, for instance, was antemortem and
7 there was a large amount of hemorrhage in the soft -- in the
8 tissues underneath the skin, so that's indicative of
9 antemortem. The one in the front of the neck had no
10 hemorrhage underneath the skin, that's indicative of
11 postmortem.
12 Q Okay. Thanks, Doctor. I'm gonna skip over a
13 couple photos and go to Exhibit No. 72. And tell me if you can
14 see this thing -- what that is?
15 A These are the stab wounds on the left side of the
16 abdomen, and then this is a large kind of overlapping pressure
17 mark.
18 Q Okay. And you described a pressure mark as
19 something that occurs when a certain object or an object is
20 placed on the body and stays there for a period of time?
21 A Along with pressure.
22 Q Okay. And you -- do you have an opinion as to how
23 long an object would have to be there on a body in order to
24 leave a mark?

SIMMS - DIRECT

1 A Like this with -- that's essentially a permanent mark
2 where there's discoloration and everything, it'd be a number of
3 hours.
4 Q Okay. Could you tell if that mark is a mark that has
5 -- that occurred at the same time that the injuries occurred to
6 this man, or is that something that could've been there
7 previously?
8 A It wouldn't have been there if he was alive.
9 Q Okay. Okay. So it had to have occurred while he
10 was going through this and was killed?
11 A Correct.
12 Q Okay. And so this isn't a stain or something --
13 A No.
14 Q -- blood stain or something like that?
15 A No.
16 Q Okay.
17 MR. KEPHART: That's 72, Your Honor.
18 BY MR. KEPHART:
19 Q 73? Does that ruin it when I zoom out?
20 A Well, this is his umbilicus his, his bellybutton. And
21 here's this pressure mark and here's four stab wounds and
22 here's the area where the penis was previously present.
23 Q Okay. Now on his chest area, you see that up here
24 in the left portion of the photo?

SIMMS - DIRECT

1 A Correct.
2 Q Does it appear that he had blood on his body there?
3 A Correct.
4 Q Does it also show what appears to be blood that had
5 maybe run off --
6 A Correct.
7 Q -- down off of his chest?
8 A Yes.
9 Q And that would be consistent with him laying down
10 and the blood running from his chest?
11 A Right. And it ran this way, which is toward the
12 shoulder. It looks like it ran this way. And also it looks like it
13 ran that way, so --
14 Q Okay. Was there any wounds in that area right
15 there that would cause blood to come up out and then, you
16 know, like a fountain type of thing and then run away from his
17 chest?
18 A No.
19 Q Okay. And your testimony is that the wounds down
20 here in his abdomen, where I'm pointing with my finger, were
21 postmortem?
22 A Yes. There was hardly -- there wasn't anywhere
23 near the amount of hemorrhage I would've expected --
24 especially with it going into the liver --that I would expect it if

SIMMS - DIRECT

1 they were antemortem.
2 Q Okay. And the wound, the significant wound that
3 you testified about that you said would be a type of wound
4 that would spew blood or spray blood --
5 A In the neck.
6 Q -- would've been from the neck, the carotid artery?
7 A Correct.
8 Q And No. 74 is a close up photograph of the wounds
9 to the abdomen, is that correct?
10 A Yes. These are the group four -- group of four stab
11 wounds.
12 Q Okay. Now there's also some lines that appear to
13 come -- that appear on there besides the four wounds, is that
14 correct?
15 A Yeah. There's one there and there's one there.
16 Q Okay. And what do you -- what type -- what are
17 those?
18 A Those are drag marks from the end of the sharp
19 force instrument.
20 Q Okay.
21 A So these are stab wounds and then these are very
22 superficial kind of incised wounds as the tip is dragged off.
23 Q Out of the wound?
24 A Out of the wound.

SIMMS - DIRECT

1 Q Okay. Exhibit No. 76. Can you tell what this is a
2 photo of?
3 A This is the one on the left upper chest that's a
4 superficial -- a very superficial incised wound.
5 Q Okay. Do you have an opinion as to what would've
6 made that?
7 A It'd be a sharp force instrument.
8 Q Similar to a knife?
9 A Yes.
10 Q No. 77? What's this photo show?
11 A This is of his buttocks and back, and there's some
12 silver material that's adherent to the skin. I don't think there's
13 any injuries that you could see on this picture.
14 Q Okay. And that shows actually some personnel --
15 A Yes.
16 Q -- consistent with the coroner's office there?
17 A Right.
18 Q And that's No. 77. This is 78. Is that a similar
19 photo?
20 A Yes.
21 Q But in this photo he actually has a shirt on, is that
22 correct?
23 A Yes.
24 Q Okay. Now when you actually start your autopsy,

SIMMS - DIRECT

1 when you personally start your autopsy, are the individuals, do
2 they have their clothes still on?
3 A No, they've been processed completely by the
4 police, so there's no -- there's nothing on the body.
5 Q Okay. And so this photo here, No. 78, would be a
6 photo that was taken by the police prior to you actually
7 starting to work on --
8 A Correct.
9 Q -- Mr. Bailey? Okay. Now you testified in regards to
10 injuries that he received to the rectum. I'm showing you
11 Exhibit No. 79. Is that what we're seeing here?
12 A Yes. There's -- it kinda starts with a superficial
13 wound and then it gets very deep and goes all the way down
14 to -- this is the scrotum right -- kinda of the base of the
15 scrotum here.
16 Q Okay. With respect to this wound, do you -- did you
17 document whether or not there was actually a penetration into
18 the rectum?
19 A This was a deep slash wound, so there -- it wasn't a
20 stab wound.
21 Q Okay. Would it have penetrated the rectum though?
22 A Oh, it definitely went into the structures underneath
23 there, yes.
24 Q Okay. And do you have an opinion as to what type

SIMMS - DIRECT

1 of an instrument would've caused that?
2 A A sharp force instrument.
3 Q Okay. Now up here on the top where your line
4 starts back here in the back, there appears to be multiple lines
5 there?
6 A Right. Looks like there's one kinda long one over
7 here and then there's a shorter one kinda right there.
8 Q Okay. Does that -- could you say whether or not
9 that's from the one stroke or from multiple --
10 A No, it would have to be from at least two strokes at
11 the minimum, and there might've been three.
12 Q Okay. Now I'm showing you what's been admitted
13 as Exhibit No. 80. Can you tell us what this photo was taken
14 of?
15 A This is the scrotum and there's a stab wound here,
16 and then this is where the penis used to be.
17 Q Okay. With regards to the cut to the penis, it
18 appears to be in like a teardrop?
19 A Correct.
20 Q And which way would it be pointing, the actual --
21 A Well, there's a rounded area up toward the head
22 and then there's kind of a pointed area toward the feet.
23 Q Okay. In the medical profession is there terms that
24 you use with regards to the feet or the head?

SIMMS - DIRECT

1 A The head is called cephalad --
2 Q Okay.
3 A -- and toward the feet is called caudad.
4 Q Okay. So if -- if someone was referring to this
5 particular injury as pointing towards the cephalad, that would
6 be incorrect?
7 A Yeah, that would -- I would have a -- if they just told
8 me that I would have a different idea of -- I would have it
9 reversed.
10 Q Okay. Now this also show -- you actually circled the
11 injury to the scrotum?
12 A Yes.
13 Q And do you have an opinion as to what caused that
14 injury?
15 A It was a stab wound.
16 Q And by what type of instrument?
17 A A sharp force, you know, knifelike instrument.
18 Q Okay. Could -- now you testified that the injury to
19 the severance of the penis was after he had died,
20 postmortem?
21 A Yes.
22 Q And the injury to his scrotum was antemortem?
23 A Correct.
24 Q Okay. Now you also testified about the injury to the

carotid artery that would cause a type o. . spraying type of thing where he'd possibly get blood on his chest. The injury to the scrotum, if he'd received that before he died, would that be a type of injury that would also spray and --

A No, no, it wouldn't -- it wouldn't spray. There's not an artery there big enough. But it would immediately start, you know, oozing blood.

Q Okay. Oozing in the sense, would it bleed, would it --

A Yes.

Q -- if the individual's standing or kneeling to the point where his scrotum is down and he receives that, would he bleed downwards?

A Yes.

Q Just force of gravity?

A Yes.

Q And 81 actually shows a -- is a better view of that actual cut to the scrotum, is that correct?

A Yes. It's a closeup of that, correct.

Q It's down further?

A Yes.

Q I mean it -- coming up from below, it shows how low it is?

A Right.

Q Okay. Is that a type of injury that, assuming his standing or he's kneeling, that someone could make by cutting up if they're using a knife?

A Well, yeah, it would probably -- yeah, it would have to be an upward -- an upward thrust, yes.

Q Okay. Now in respect to Exhibit No. 80, the cut there on the -- where the gentleman's penis was, that would be Exhibit No. 82. Okay. Do you have an opinion as to what type of instrument would've made the cut on the penis?

A A knifelike instrument, you know, with the penis held and then it cut off.

Q Okay. Do you have an opinion as to whether or not scissors would make that type of a cut?

A It would be possible, but the edges are almost completely uniform. And it's also, based on the size of it, the only thing that I could conceive, based on my knowledge of injury, would be something along the line of a head shear. You know, it would have to be something that a tremendous amount of force could be generated. If you're talking about, you know, a handheld set of scissors, I almost -- it's just very improbable for me to concede that they could render a wound like that.

Q Okay. Would you expect to see more of a jagged type of cut?

A If it was conceivably from a handheld set of scissors, then yeah, you would tend to see a much more irregularity, I would expect, at the wound edges.

Q Okay. But it is conceivable, however, that if somebody grabbed the penis with one hand and took a knife to the other, this wound would be consistent with that type of action?

A Definitely.

Q Now Exhibit No. 83. Do you see that, Doc? God, I'm so sorry.

A I don't exactly know -- I think that's on the hand, I think.

MR. KEPHART: Can I approach, Judge?

THE COURT: Yes.

BY MR. KEPHART:

Q I want to show this to you.

A Oh no, this is -- I think this is on the knee area.

Q And what type of injury is that?

A It looks like it's just the -- the skin is kind of sloughed off there. I don't know whether that's decomposition change or -- it doesn't actually look like an antemortem injury, it looks more like just the skin is sloughed off.

Q Okay. So you can't say whether it was an abrasion or anything like that?

A No.

Q All right. Now you testified with regards to defensive injuries, do you remember that?

A Yes.

Q And you described the multiple ones on the gentleman's hand -- hands and arm. I'm gonna go through those now and ask you if you can tell me what -- what the purpose of these photos are, if you know. Exhibit No. 84. Can you tell me what the purpose of that photo would be?

A You can't really see any defense wounds because it's too far away. It just shows a lot of decomposition change.

Q Okay.

A I think that's the right hand, and there's only one injury there on the back of the right hand somewhere. I don't really -- I don't see it right offhand.

Q Okay. You see the manila envelope there?

A Yes.

Q Were you aware that this man's hands actually came in wrapped in manila envelope?

A No, I wasn't aware of that.

Q Okay. Is that something that they do, though? Have you seen that?

A Oh, yes. They frequently -- that's called bagging the hands to preserve trace evidence. Yeah, they do that

frequently.
Q That's for like checking under fingernails and seeing if whether or not he scratched the assailant and that type of thing?
A That's one of the things, yes.
Q Okay. Let's see if Exhibit No. 85 will help you there. Let me zoom in on that. Okay. Can you tell on that, Doc?
A I don't see a specific wound right offhand, no.
Q Okay.
A I think there's some other pictures, you know, where they actually take close ups of --
Q Okay. Let's see, Exhibit No. 86?
A There's so much blood there. You know, 'cause this was taken before they cleaned it up, so I don't -- I really can't tell where they're gonna be at.
Q Okay. We'll move on. Let's go to Exhibit No. 87.
A This is a wound right here on the back of the finger.
Q Can you tell which hand that is?
A No.
Q Let's see if we do this. Let me hand it to you.
MR. KEPHART: May I approach, Your Honor?
THE COURT: You may.
THE WITNESS: I think this is the right hand.
///

BY MR. KEPHART:
Q Okay. Doc, what I'm gonna do is I'm just gonna give you Exhibits 87 through 97 and ask you to go ahead and for the record describe what the photos are taken of.
A Individual --
Q And then tell us what number you're talking about when you do that.
A 87 shows a wound on the back of the -- what appears to be the -- the right hand. Although I'm not specifically sure about that. 88 is some of the wounds on the palmar surface of the fingers. 89, I believe, is just a -- is a picture -- or it's a picture of the back of the thumb of the left hand. 90 is wounds on the palm. 91 is -- from a distance you can't really see anything. And 92 -- or 93 is from a distance, you can't really see anything. Actually I correct that, 92 is from a distance, you can't really see anything.
93 is a picture -- actually two pictures with a paperclip, and one of them is from a distance, you can't really see anything. And I can't really make out the other one. 94 is from a distance, you can't see anything. 95 is on the palmar surface of the hand. 96 is on the side of the finger. And 97, that looks like is a -- actually an older wound that was healing, it wasn't a new wound, on the side of one of his fingers.
Q Okay. Are those photos consistent with what you

described as injuries to Mr. Bailey on his arms as defensive wounds --
A Yes.
Q -- other than the one that you --
MR. SCHIECK: Your Honor, I'm gonna object. He indicated that there were several pictures that he can't see anything in. Can we specify which pictures he's referring to to demonstrate these wounds?
THE COURT: Sustained.
MR. KEPHART: Court's indulgence, Your Honor.
MR. SCHIECK: For the record, Your Honor, my notes say 91, 92, 93, 94 were the pictures he couldn't see.
THE COURT: My notes indicate that it was 91, 92, and 94.
MR. KEPHART: Can I have these marked?
BY MR. KEPHART:
Q Now Dr. Simms --
THE COURT: I'm gonna ask him for a clarification.
93 was the two photos with the paperclip. Was that one at a distance or not?
THE WITNESS: Yes, that was at a distance.
THE COURT: Mr. Schieck was correct.
MR. SCHIECK: Thank you, Your Honor.
///

BY MR. KEPHART:
Q Dr. Simms, you're aware that the -- that the crime scene analysts from the Metropolitan Police Department was present and took photographs and that's what we've been talking about?
A Correct.
Q Coroner's office also takes photographs?
A Correct.
Q And you were asked to look at those photos as well prior to coming here to determine whether or not you would use those?
A I think those were the only ones I actually looked at, yes.
Q Okay.
MR. KEPHART: I'm having some of them marked.
(Pause in the proceedings)
MR. KEPHART: I'm showing you what's been marked State's Proposed Exhibits 205 through 215 to defense.
THE COURT: The record shall so reflect.
MR. SCHIECK: Can we approach, Your Honor?
THE COURT: Yes.
(Off-record bench conference from 4:12:41-4:14:26 p.m.)
MR. KEPHART: May I approach?
THE COURT: You may.

BY MR. KEPHART:
Q Doctor, I'm gonna show you what's been marked as State's Proposed Exhibits 205 through 215 and ask you to take a look at those and tell me if you recognize them.
A They are pictures of a number of the hand wounds.
Q Okay. So we were talking --
MR. KEPHART: Your Honor, I'll move to admit 205 through 215.
MR. SCHIECK: No objection.
MR. KEPHART: Okay.
THE COURT: Granted.
(State's Exhibit Nos. 205-215, admitted)
BY MR. KEPHART:
Q We were talking about the specific injuries and you were having trouble seeing them with the photos taken by the crime lab, is that correct?
A Yes.
Q And these photos are all taken after the -- Duran's body is cleaned up?
A Correct.
Q Inconsistent with the photos that you were looking at earlier, is that -- would that be correct?
A Mm-hmm.
Q Okay.

A Yes.
Q And can you then go through these and tell us if you can identify injuries to -- and tell us -- if you could tell us what hand they're on? And then give us the numbers and stuff that you're looking at.
A 211, 212, 213, 214, and 215 are duplicates.
Q Okay. Of what -- of what I've already provided you?
A Yes.
Q Okay.
A 208 and 209 are photographs of apparent healing, older wounds that were in the process of healing that weren't made at the time of the death. And 210 shows some wounds on the palmar surface, and I can't tell what exactly hand it is.
Q You had documented in your autopsy report that there were no injuries to the right palm?
A Right. So my process of elimination say it would be the left, but I can't tell from the photo. And the same thing with 207, that's the palmar surface, but I can't really tell it from the photo 'cause these are very close up photos. 206 is the back of the first finger. And 205 is the back of the thumb.
Q Okay. And all of these injuries would -- as we've asked earlier, are consistent with defensive wounds, except for what you described as in Exhibit 208 and 209, is that right, these are healing injuries?

A Yes.
Q 208 and 209?
A Yes.
Q Okay. And any of these injuries here that you've described in 210, 207, 206, and 205, do any of those injuries -- are they consistent with a sharp force type of instrument?
A Yes.
Q Is there any evidence that supports that they were made in a snipping type?
A No, they're very -- they look -- most of those look relatively uniform. There's one of them that has a flap of skin coming off that is -- it looks like it was made from an edge of something though rather than a snipping wound.
Q Okay. The wounds that are found in Mr. Bailey's rectum, would you describe any of those wounds to be consistent with snipping?
A No, that was one long incised, very deep wound.
Q Okay. And the wound to Mr. Bailey's carotid artery, could you ever characterize that as a snipping wound?
A No, that was a stab wound. It went into the neck and went deep into the tissues and went all the way across -- you know, almost across the midline, so that was a stab wound.
Q Okay. The wounds that are found in Mr. Bailey's

abdomen, could you characterize those as a snipping type wound?
A Each individual wound?
Q Yes.
A No. Those are stab wounds.
Q Okay. Now you -- Exhibit No. 200, you testified about blood that had come -- evidence of blood had come down his shoulder, over off of the right side of his chest in a photo. Exhibit No. 200, does that show a better photo of it coming down off the left side of his chest?
A Yes. There's a number -- a number of rivulets of blood that are flowing down the left side of the chest and abdomen.
Q And that would be consistent with the possible blood collecting on the chest area and then flowing off?
A Right, and then running off the chest to the side.
Q Okay. And in this photograph you actually see that he had a -- apparently has a shirt on, at least on the left portion of his arm there, is that correct?
A Yes.
Q Okay. And now what does Exhibit No. 202 show?
A Not too much, just his legs, and it shows some areas of decomposition.
Q Okay. From his knees down, or from where the

picture's taken down, do you see any evi[illegible]ce of blood spatter or blood or anything on there --

A Well, it looks like --

Q -- except for maybe his toe?

A Well, it looks like there's some discolorations there that are consistent with blood.

Q Okay.

THE COURT: Record shall reflect he's circled below the knee area --

MR. KEPHART: Okay.

THE COURT: -- on the left side.

THE WITNESS: And maybe some right there. But --

THE COURT: Record shall reflect he's circled the left side --

THE WITNESS: I think it's the right side, Judge.

MR. KEPHART: That's his right toe.

THE COURT: -- the left side of the right foot --

THE WITNESS: Oh, sorry.

THE COURT: -- toward the big toe area.

THE WITNESS: Correct.

MR. KEPHART: Court's indulgence, Your Honor.

THE COURT: Yes.

(Off-record colloquy)

///

BY MR. KEPHART:

Q Now Dr. Sims --

MR. KEPHART: May I approach, Your Honor, the doctor?

THE COURT: With --

MR. KEPHART: Yeah. I've got 42, 43, 45, 46, and 47.

THE COURT: Were they previously admitted?

MR. KEPHART: No, that's why I want to approach the doctor.

THE COURT: You may approach the witness.

MR. KEPHART: Okay.

BY MR. KEPHART:

Q Doctor, I'm showing you what's been marked as State's Proposed Exhibit No. 42, and ask you if you can tell me if you recognize what that photo's taken of?

A This is of the -- just the feet and ankle area where there's some tan pants on. It looks like a white sock that's soaked in blood.

Q Okay. Does it appear to be taken in the coroner's office? Do you see personnel in the background?

A Yes, this is right at the early part of the police processing.

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

State's Proposed Exhibit No. 43 and ask you if you can recognize that as well?

A That's of a similar area, it's a little bit wider shot so you can see more of the pants that are -- it looks like they're crumpled up and right -- they're right at the knee and down, and there's a lot of kind of blood smear on them.

Q Okay.

MR. KEPHART: Your Honor, I'll move to admit State's Proposed Exhibits -- I think it's 43 -- 42 and 43.

MR. SCHIECK: Can I see them quickly?

THE COURT: Yes.

MR. SCHIECK: No objection, Your Honor.

THE COURT: 42 and 43 are admitted.

(State's Exhibit Nos. 42 and 43, admitted)

MR. KEPHART: Your Honor, I have previously also shown defense 45, 46, and 47. I'm gonna move to admit those as well.

MR. SCHIECK: No objection.

THE COURT: Granted.

(State's Exhibit Nos. 45, 46, and 47, admitted)

MR. KEPHART: Okay.

BY MR. KEPHART:

Q Doctor, now you had testified with regards to Exhibit No. 202, and you circled the right toe, right big toe on that, is

that correct?

A Correct.

Q And you said you believed that there was possibly blood on there as well?

A Yeah, it looks like it from the photo.

Q Okay. You didn't see or note any injury to the right toe --

A No.

Q -- is that correct? Okay. I'm showing you what's been admitted as No. 43, and this is what you had testified to earlier as what appeared to be some tan pants down around the -- the lower portion of the legs below the knee, and then the right -- does it have the right toe in there?

A Yes, right here there's blood and then there's also some kind of patterned impression right there also.

Q Okay. And the pants, do they show evidence of blood as well?

A Yes, there's blood that, you know, in kind of an irregular distribution all over the surface.

Q Okay. I'm showing you what's been admitted as Exhibit No. 45. Do you see that photo as well?

A Yes.

Q Do those pants appear to be consistent with the pants that you've described on Duran as No. 43?

SIMMS - DIRECT

A Yes.
Q Okay. And there's other objects there as well that -- are you familiar with Metropolitan Police Department documenting what they are -- what the coroner's office gives to them?
A Yes.
Q Okay. In this particular photo here -- now let me get one step further. 46, does that appear to be his pants as well?
A Yes, after they're taken off of him and stretched out.
Q Okay. And back to 40 -- well, I'll show 47 as well. That's the back of his pants?
A Yes.
Q Okay. 45 is the top portion of his pants?
A Yes.
Q Does there appear to be voids in where blood has collected?
A Well, yes, there's -- you can see there's blood that's kinda soaked in at the waistband and then there's -- it just irregular -- an irregular distribution of blood over the surface of it.
Q Does there also appear to be voids of where blood was?
A Yes, there's -- you can see there's areas that don't

SIMMS - DIRECT

have any blood in it, correct.
Q Is that consistent with his pants being crumpled?
A In my opinion, yeah, that would be consistent with it, yeah.
Q Okay. Now looking at the pants here in Exhibit No. 46 -- can you see that okay or is it too -- I'll zoom in on the upper part. Is there any -- do you see any evidence of any type of -- for lack of better words -- injury to the pants?
A No.
Q Specifically in the groin area where a man's scrotum would be?
A No.
Q You don't see any cuts or anything like that?
A No.
Q Okay. Now you testified with respect to the injury to Duran's scrotum, that when he would bleed, he would bleed from that -- it wouldn't be spewing but it would be oozing out, is that right?
A Briskly oozing would probably be right.
Q Okay. The manner in which the pants are found on Duran Bailey in No. 43 down around his lower portion of his legs, if he was standing or kneeling -- standing, would it be consistent with the blood pattern that you see here as it was coming out of his scrotum?

SIMMS - DIRECT

A Well, yeah, it would be running down. So that would be consistent with the soaking the waistband and everything, yes.
Q Okay. And dripping onto his pants there?
A Yes.
Q And you wouldn't expect to see any on the back, other than maybe in his waistband or someplace down where it's bunched together?
A From the wound to the scrotum, no. It would be more of chance it would be on the front.
Q Okay. So could you say based on that that it's consistent with his pants being down around his knees when he got stabbed in the scrotum area?
A Yes, it would be consistent with that, yes.
Q Okay. Now I skipped these. I'll go back to 'em. Exhibit No. 71. Can you tell me what this photo was taken of?
A Well, this -- this is the top of a head after the -- we made an incision across the top of the head, and then we push the skin forward and backward so you can expose -- this is actually the skull now. And you can see this large amount of hemorrhage here, there's also hemorrhage here, and you can't really see the other side very well.
Q Okay. Which would be his face?
A This would be his face up here --

SIMMS - DIRECT

Q Okay.
A -- and this is the back of his head here.
Q Okay. Now you testified about an injury to the back of the head and we started out with the photograph and it had some leaves on it. Is this what you're talking about right here?
A Right.
Q Okay. And hemorrhaging would mean what?
A Blunt force injury.
Q Okay. Would it mean that he obviously bled there, was alive when he --
A Definitely.
Q -- received that?
A Definitely. That's -- now that's the kind of dense hemorrhage you see when it's an antemortem wound.
Q Okay. And the Exhibit No. 70, can you tell me what that is of? Can you tell from what, Doc?
A You might -- can you -- you might --
THE COURT: Was the last one 69?
MR. KEPHART: 71, Judge.
THE COURT: Thank you.
MR. KEPHART: And this is 70. I'm not offering 69.
THE WITNESS: So this -- this is the back of the head and this -- now this -- this particular one is -- a saw has been used to open the skull and take the skull cap off. So the

1 brain used to be in this area here but it's [illegible]n removed. This
2 is the back of the head, and this is the left side and this is the
3 right side. And there's a skull fracture, it goes right along
4 here.
5 BY MR. KEPHART:
6 Q Okay. Now with respect to the skull fracture, what
7 type of injury would that be called?
8 A That's a blunt force injury.
9 Q Okay. And so you wouldn't expect to see that from
10 a knife?
11 A No.
12 Q All right. Could an individual receive that type of
13 injury from a bat?
14 A Yes.
15 Q Okay. Could an individual also receive that type of
16 injury if he was stuck, let's say in the face and he fell back and
17 struck his head on a curb?
18 A Yes.
19 Q Okay. Which one more likely, or can you tell? Do
20 you have an opinion?
21 A Well --
22 Q Do you have an opinion of that, which one would be
23 more likely?
24 A Well, a bat usually leaves a much more severe injury

1 if it's, you know, swung with --
2 Q Okay.
3 A -- lethal force, you know. And I didn't -- there's -- it
4 usually leaves a depressed skull fracture, and I didn't -- there's
5 not a depressed skull fracture there. So of those two
6 possibilities it would be more possible -- or the more possible
7 one would be that he struck it on the way down.
8 Q Fell down and hit his head?
9 A Correct.
10 Q Okay. Now --
11 A But the head would've had to been kinda turned --
12 Q Okay.
13 A -- because this skull fracture goes from the back of
14 the head to the side on the left side.
15 Q Okay. Let me ask you this. With regards to the
16 injuries that you have described, multiple injuries to Duran's
17 face, that you drew on Exhibit 122. You talked about
18 abrasions as well as blunt force trauma, is that correct?
19 A Yes.
20 Q And you pointed them out in the photographs, you
21 showed which were stab wounds and which were blunt force
22 trauma. Did -- and he -- his teeth were busted out?
23 A Correct.
24 Q Did he receive some blunt force trauma to his face?

1 A Yes.
2 Q Okay. Now the type of injuries that he received to
3 his face, could that be consistent with being struck in the face
4 with a bat?
5 A He didn't have -- again, if we're talking about swung
6 with lethal force, I would expect a little bit more injuries than
7 that --
8 Q Okay.
9 A -- but it's conceivable.
10 Q Okay. Now when you say swung with lethal force, is
11 that dependant on the strength of the individual swinging the
12 bat?
13 A Oh, definitely.
14 Q Okay. And the reason you say that is you would
15 expect to see some type of indention from the bat?
16 A Well, are we talking about the face now or the skull?
17 Q The face.
18 A The face, you'd -- the facial bones are a little bit
19 more delicate than the skull. You'd expect, you know, literally
20 a crush kind of injury --
21 Q Okay.
22 A -- that may actually be in the pattern of a bat.
23 Q Okay.
24 A So you know, so that would be along the lines of

1 what you'd expect.
2 Q But you don't necessarily have to see that?
3 A No. If it's -- it is, as you said, it is based on the
4 amount of force, so --
5 Q Okay.
6 A -- you could have less but --
7 Q And that could be by the strength of the individual?
8 A Yes.
9 Q Or maybe in an area which you couldn't get a full
10 swing from a bat, a confined area?
11 A Definitely another possibility.
12 Q Okay. This type of injury to his face consistent with
13 a weaker person, maybe a female, swinging a baseball bat?
14 A Definitely possible.
15 Q Okay. And is it possible he received a blow to his
16 face, fell back, struck his head on the curb?
17 A Definitely possible.
18 Q Injuries are consistent with that?
19 A Yes.
20 Q Okay. Now can you tell us from the type of injuries
21 that you see, could you tell us what injuries that he received
22 first, other than the postmortem and the antemortem? Could
23 you tell us if he received a stab wound first and then a hit in
24 the head, or a hit in the head first or a stab -- you know, blunt

force and a stab wound, vice versa?
A Not just -- not just from the wounds in the body, no.
Q Okay. Is it a possibility that this man could've received a stab wound to his scrotum before any of the other wounds that he received?
A Definitely possible.
Q Would that put him in a position where it would cause him to be in severe pain?
A I would expect that would be the case, yes.
Q Did you do an actual internal examination of his scrotum?
A Yes.
Q Okay. Can you tell me if you noted any place in your examination from the internal portion of his scrotum whether he had a swelling of his spermatic cord?
A Well, his spermatic cord courses from the top of the testicle up into the pelvic area, and we don't usually, you know, do a detailed dissection of that particular structure. But there was a significant amount of hemorrhage around the testicle, along with injury from the stab wound. That was -- mainly I think I was doing the dissection to make -- to discern whether it was an antemortem versus a postmortem injury --
Q Okay.
A -- because it wasn't gonna be lethal, you know.

Q Uh-huh. Could you tell, Doc, by just the photograph that we've showed here in reference to his scrotum, whether or not the spermatic cord was swollen?
A You can't see the spermatic cord externally. So you couldn't --
Q You would actually have to cut into it and look that way?
A Correct. Yeah. It's a structure that's about half the side of your little finger.
Q Okay. The force that Mr. Bailey received to his head, the blunt force, is there any particular -- any particular one of those that you could characterize would be something that would put him down, I mean knocking him out?
A Oh, the skull fracture indicates, you know, that there was a lateral impact that -- I mean that -- to cause a skull fracture of that size, that's a significant skull fracture. And I think that -- I mean it's a high probability he would be unconscious from that and remain unconscious for awhile.
Q Okay. To a point where maybe he couldn't -- he wouldn't fight?
A Well, the next step was is that he had blood on the surface of his brain and his brain was starting to swell. So you know, obviously that sequence was happening and that indicates he was not gonna be able to move, that he would,

you know, stuporous or comatose.
Q Okay. Let me get back to the stab wound to the scrotum. Would you expect an individual that receives that type of wound to cause him to maybe bend over, hunker over?
A Yes, I would expect that from a medical point of view, yes.
Q How about even crying?
A It might actually hurt so much it's gone past that -- that ability to cry.
Q Okay. In regards to this particular individual, your examination of him, you've examined -- you said what, 4,500 or 4,600 autopsies --
A Right.
Q -- or something like that?
A Mm-hmm.
Q What was the most significant -- most rememberable portion of this autopsy?
MR. SCHIECK: Objection, relevance on what's memorable, Your Honor.
THE COURT: Sustained.
BY MR. KEPHART:
Q Well, significant in the sense of injury, and you've described some pretty bad injuries here. But if you were describing Duran Bailey to your colleagues and the injuries that

he received, what injury comes to mind in this particular case?
A Well, this is what I would classify as a sexual homicide, you know, that you don't -- the only time you start seeing the sexual organs mutilated is when it's a sexually motivated homicide. Obviously the other -- if you took that away, this would be a lot like, you know, any other kind of homicide, but that moves it into kinda that category.
Q Okay. So the -- so correct me if I'm wrong, with the slashing of the penis, the dismembering of the penis is something that would be -- is most remarkable in this case?
A Yes. It's uncommon as far as homicides go, but it's not uncommon as far as sexually motivated homicide.
Q Okay. And you would consider this a sexually motivated homicide?
A With the injuries that he has, definitively, yes.
Q Is it possible, maybe even highly likely, that the first injury that he did receive was to his scrotum?
A Well, I can't put a probability to it, but I can -- I can't rule it out. It definitely could be, but I -- as I think we've talked about before, is that I can't really tell which injury came first as far as just from the wounds themselves go.
Q Okay. And if an individual receives this type of an injury, let's just say to the scrotum, what you saw here, or go one step further, just a cutting of a penis. Do you have an

opinion as to whether or not that individual would require medical attention?

A Well, the scrotal injury would definitely require medical attention. There could be a lot of bad complications. And then you mean penial amputation or you said cutting of the penis or --

Q Yeah. Well, I -- penial amputation I think is a given, you'd have to go to the doctor, wouldn't you?

A I would think that you would.

Q Okay. Just cutting of the penis?

A Well, again, it depends on the length of the cut. But I would think, you know, most people would want -- would seek medical attention because they don't want anything, you know, untoward to happen over a period of time with that kind of a wound.

Q Okay. And would an individual that is say homeless, would he be more apt to --

MR. SCHIECK: Objection, Your Honor. That's pure speculation.

MR. KEPHART: I think the doctor could testify as to a medical -- medical information with regards to a homeless person versus a non-homeless person in this type of a wound, what it could cause.

MR. SCHIECK: Could we qualify him as to his

knowledge of homeless people and living environments and things of that nature?

THE COURT: Sustained.

BY MR. KEPHART:

Q Do you know what a homeless person is?

A Yes.

Q What do you characterize a homeless person?

MR. SCHIECK: Objection, relevance, Your Honor.

MR. KEPHART: He just asked me to qualify him at it.

THE COURT: You wanted him to lay foundation, now you're gonna object to him laying it?

MR. SCHIECK: As an expert in homeless people, yes. Go ahead.

MR. KEPHART: I don't think we --

MR. SCHIECK: No objection, Your Honor.

BY MR. KEPHART:

Q What's your -- what's your understanding of what a homeless person is?

A Someone that doesn't have a home.

Q Okay. And a person living out on the street?

A Would be a homeless person, yes.

Q Person sleeping in a garbage bin?

A Would be a homeless person, yeah.

Q Person that probably doesn't have very many clothing?

A Probably --

Q Homeless person?

A Probably a homeless person, yeah.

Q Doesn't get proper nutrition?

A Yes.

Q Homeless person?

A Probably.

Q Would you have an opinion as to whether or not an individual that was characterized as a homeless person, as we just described, would be more likely than not to be -- catch an infection from an injury to his scrotum or to his penis if he was cut?

A I think yeah, it would definitely be a possibility. That would probably be what would cause that person to seek medical care.

Q Now you testified earlier with regards to the injuries to his abdomen that you checked to see about his -- his liver. And you talked about that his organs were pale?

A Yes.

Q Is that correct, are those your words?

A Yes.

Q And what's that an indication of?

A Blood loss.

Q Okay. That he lost a lot of blood?

A Correct.

Q And that would be a possibility because of the injury to his carotid artery?

A Definitely.

Q Okay. Now did this man die as a result of loss of blood or is there a conjunction?

A No, there would be --

Q Can you -- do you have an opinion as to what caused him -- I mean what -- do you have an opinion as to his cause of death?

A Well, he had several lethal injuries, the head injuries with the severe bleeding on the brain, which I don't think we ever -- we never saw a picture of, but that is by itself enough to kill you. And then the severing the carotid artery is also enough to kill you, so it was a combination of the two.

Q Okay. So it's a combination of blood force trauma as well as stab wounds or sharp force stab wounds?

A In my opinion, yes.

Q Two mechanisms of injury here then?

A Correct.

Q In this type of homicide -- do you characterize it as a homicide?

A Definitely.
Q In this type of a homicide would you expect the assailant to have gotten blood on her?
A I think it would be a very high probability, yes.
MR. KEPHART: Court's indulgence, Your Honor.
(Pause in the proceedings)
BY MR. KEPHART:
Q Doctor, just a few more things. You did characterize this as a sexually motivated homicide, is that correct?
A Yes.
Q And we were talking, discussing -- I was asking questions in regards to the stab wound to the scrotum and the amputation of Mr. Bailey's penis. Anything else in reference to his injuries that would give you a belief that it was a sexually motivated homicide?
A The incised wound on the rectum is another --
Q Okay.
A -- another supportive wound for that.
Q Okay. Now you testified earlier that the autopsy was done on July 9th of 2001, is that correct?
A Yes.
Q Do you recall about what time it was that you conducted the autopsy?
A 12:00 noon.

Q 12:00 noon?
A Right.
Q And before you conduct an autopsy, are you provided with information from -- from the coroner's investigator?
A Correct.
Q Okay. And that information would be what? What type of information would you expect that you'd get from a coroner investigator?
A That'd be a report of the circumstances of death and the examination on a body at the scene.
Q Okay. In this particular case, do you recall the coroner investigator talking about rigor mortis?
A Yes, I believe -- I have the report here. I believe he did say his body was in rigor.
Q Okay. Now you also talked about sloughing off of the skin. Do you remember -- you showed --
A Correct.
Q -- there was some photos in there?
A Yes.
Q And you also talked about decomposition?
A Correct.
Q We used those words, we didn't talk about them. Does the sloughing off of the skin have anything to do with

decomposition?
A Yes.
Q Does sloughing off of the skin and decomposition have anything to do with rigor mortis?
A No, they're two different processes.
Q Okay. Now with regards to rigor mortis, what type of information does that assist you with in reference to when you're investigating or looking at a dead human body?
A Well, it can give you a little bit of an idea about when they died.
Q Okay. Now you examined Duran Bailey noon on the 9th of 2001 of July, is that correct?
A Correct.
Q All right. When you started your examination, was rigor mortis present?
A No.
Q Okay. Tell us about how -- tell us how rigor mortis works, what it does?
A Well, rigor mortis is a stiffening of the muscles after death. It's due to a biochemical. It starts in the small muscles after just a few hours and then it kind of continuously starts involving the larger muscles, so at about 24 hours your body is stiff. And then over the next 12 or 18 hours, as your muscles deteriorate, they lose the stiffness and then you become

flaccid again.
Q Okay. So by the time you looked at Duran Bailey he was flaccid?
A Yes.
Q And do you have in your report at the point in time when the coroner's investigator declared Duran Bailey dead?
A It was 3:50 a.m.
Q The time of death is 3:50 a.m. on what day?
A 7/9, July 9th.
Q July 9th?
A That's what it says here.
Q Okay. And --
THE COURT: Of what year?
THE WITNESS: Of '01.
BY MR. KEPHART:
Q Okay. And then you conducted an autopsy --
A About 8 hours later.
Q -- noon -- 8 hours later?
A Correct.
Q Would you expect to see somebody that's in full rigor mortis to be flaccid within that 8 hours?
A It's definitely possible, yeah. At about 24 hours you're about in full rigor mortis, and then it starts going away, so it's definitely possible.

SIMMS - DIRECT

Q Okay. Could you give us a -- can you calculate or give us a time of when you believe that Duran Bailey was killed?
A Well, just based on the rigor mortis that was present at the scene and the level of decomposition that I saw, I thought a good interval where I would have a good chance of being right would be anywhere from 8 to 24 hours prior to when they did the examination on him.
Q When you say they?
A The coroner investigator.
Q Okay. So that would be 3:50, the time --
A Somewhere in that area --
Q Okay.
A -- you know, because he -- he -- I don't know when he declared the time of death versus when the examination was done, that'd be something you'd have to get from him --
Q Okay.
A -- but just assuming, it would be somewhere around that area. It'd be anywhere from 8 to 24 hours prior to that time --
Q Okay.
A -- that he had passed away.
Q Okay. And that -- you can base that on any type of degree of medical certainty?

SIMMS - DIRECT

A I thought that that was more likely than not. It's a probabilistic statement. I could be too short or too long. And I think I had talked before at the -- you know, that my lower confidence interval was probably about 10 to 18 hours prior to the examination. And I would have lower confidence in that interval --
Q Okay.
A -- but I still feel it's reasonable.
Q Okay. So the more -- you're more confident 8 to 24, less confident 10 to 18?
A Yes.
Q Okay. What type of things would effect rigor mortis?
A One of the most important things is the ambient temperature, the temperature outside. If you have a very cold area, like if it happens in the winter, then rigor mortis, it's gonna take a long time to form, it's gonna stay a long time, and it's gonna take a long time to go away, so it's really drawn out. If you have a very, very warm environment, it can go through those phases very, very rapidly.
Q Okay. Would the manner in which the body is found, let's say out in the open, versus being covered with something, would that effect -- could that effect the rigor mortis?

SIMMS - DIRECT

A Well, it would make it warmer, you know, so that would accelerate the phases of it to some extent.
Q If you're out in the open?
A Then where it would be -- if it was cooler out in the open, by being out in the open if it was cooler, then it would retard it. If being out in the open means you're actually hotter 'cause you're in the sun or something, then that would accelerate it.
Q Okay. That's what I was getting at. If you're -- you know, here in Las Vegas, you've been here how long, how many years?
A 8 years.
Q July is usually one of our hotter months. I mean it's in the summer. We don't know, it could be hot -- it could be, you know, different temperatures. But the -- if you're laying in the sun, that could accelerate rigor mortis?
A Oh, it would accelerate it.
Q Okay. And you didn't have any evidence of that, that he was sunburnt or anything like that?
A No, they didn't have any specific thermal injuries like that, no.
Q Okay. But if he's covered, partially in clothes, partially with objects around him, that could decelerate or slow it down?

SIMMS - DIRECT

A Well, it would maintain heat --
Q Okay.
A -- you know, in the areas, in the area of the body.
Q Okay.
A So that would tend to keep the rigor mortis going, you know, rather than slowing it down.
Q Okay. Now in reference to plastics, like trash bags, plastic trash bags, did you -- do you remember in this particular case you were -- talked about with respect to Mr. Bailey coming in with plastic across his midsection?
A Oh, I remember that they talked about a lot of objects, a lot of, you know, things but --
Q Okay.
A -- that would tend to retain moisture and heat.
Q Okay. And would blood also transfer to plastic?
A Yes.
Q Okay. Okay. We talked about the injury, the carotid artery injury, the stab wound there. Do you have an opinion as to what would've come first, the blunt force injury here or the carotid stab wound?
A Well, the injury to the carotid would've caused him to bleed out very, very rapidly, so that was probably the very last thing.
Q Okay. So the blunt force injury that you've talked

SIMMS - DIRECT

about early, is that -- that would be som. .ıg that would've knocked him out?
A Oh, definitely.
Q Okay. So if he was hit and fell and struck his head on the curb, that would've knocked him of --
A Well --
Q -- if he received that type of injury, the skull fracture?
A Well, the thing that would've knocked him out the most would be all the blood on the surface of his brain and the fact his brain was swelling. Those are things that indicate he had a significant brain injury in addition to the skull fracture, and that would not allow him to remain conscious.
Q Okay. Doctor, there was also a toxology report done with regards to Mr. Bailey, is that correct?
A Yes.
Q Mr. Bailey had a level of alcohol or ethanol?
A Yes.
Q It's a .11?
A Correct.
Q Okay. Are you familiar with the level -- legal level for driving under the influence?
A Yes.
Q Okay. And did this meet that, it was above it?

SIMMS - DIRECT

A It was above it, yes.
Q Okay. Did he have anything else in his system as well?
A He had a breakdown product of cocaine. He didn't actually have cocaine, it was a breakdown product of it.
Q And that's what they call Benzylecgonine?
A Correct.
Q Did I say it right?
A Benzylecgonine.
Q Okay. And that's a metabolite of cocaine?
A A breakdown product, correct, metabolite.
Q In regards to the level of alcohol that he had in his system and this breakdown metabolite of cocaine, would you expect that he would react any differently than a person that's not under the influence of alcohol or cocaine and receiving these type of injuries, like -- I mean the injury to his head that you talked about breaking his skull, would a person that's under the influence of alcohol be able to not stay -- I mean not going unconscious?
A Well, it's a central nervous system depressant, so -- depressant, so it probably -- if you got hit in the head it would probably aid you going into unconsciousness. The Benzylecgonine is at such a small level that it probably wasn't having any pharmacologic effect at all.

SIMMS - DIRECT

Q Okay. Th. alcohol level you said is a depressant, causes -- it effects your reaction to certain things?
A Yes, it would -- it makes you drunk. It slows your reaction down, changes your perceptions.
Q Possibly not allow you to fight?
A He would be impaired.
Q Okay. Doctor, you've told us about you've been a coroner for quite a few years in here Las Vegas and in Chicago. You talked about conducting multiple autopsies in the past and told us the number here. Are you -- as a forensic medical examiner, at least here with Clark County, are you a member of any type of associations that are associated with medical examiners?
A The National Association of Medical Examiners.
Q Okay.
A There's -- really that's the only one that's related to medical examiners directly. There's some other forensic organizations, but that's the medical examiner -- that's the National Association for Medical Examiner.
Q Okay. Are you certified at all?
A Yes, I'm board certified by the American Board of Pathology in anatomic pathology, clinical pathology, and forensic pathology.
Q Okay. Have you ever heard of a -- I guess it's an

SIMMS - DIRECT

association called the American College for Forensic Medical Examiners, you ever heard of that?
A Yes, I believe so, yes.
Q And what is that?
A I think I got a solicitation from them several years ago just to become part of their organization, and it's mostly just kinda pay a fee and become part of their organization.
Q Okay. So there's no real requirement that you know, other than maybe being from the medical profession?
A That's a good question. As I recall, the requirements were very, very minimal. It wouldn't be an organization that I would even take the time to belong to 'cause it -- it doesn't have what I would consider any professional credibility.
Q Okay. With regards to Mr. Bailey's injuries here, do you see any evidence in his injuries that were -- are consistent with a scissors types of injury?
A No, I would -- all the injuries that I saw on the body and that I interpreted, that would've not been on my mind as a possibility, no.
Q Okay. And you told us that with regards at least to his penis, maybe some sheers?
A In order to do that much damage through that much tissue, it would have to be along those lines in my opinion,

1 yes.
2 MR. KEPHART: Court's indulgence, Your Honor.
3 THE COURT: Yes.
4 We have come to the 5 o'clock hour.
5 MR. KEPHART: Okay. Well, I'm -- yeah, I'm passing
6 the witness.
7 THE COURT: We're resuming tomorrow morning at
8 10:30.
9 Dr. Simms, are you available to return at that time?
10 THE WITNESS: I'll be in autopsy, but I can stop and
11 come over here, sure.
12 THE COURT: Okay. You may step down from the
13 stand and we'll see you at 10:30 tomorrow morning.
14 Ladies and gentlemen of the jury, we'll be taking our
15 evening recess at this time. As the Court advised you, we will
16 resume tomorrow at 10:30. Please be in the hallway at that
17 time. The bailiff will meet you there to return you to your
18 seats in the courtroom.
19 During this recess you're admonished not to talk or
20 converse among yourselves nor with anyone else on any
21 subject connected with the trial. And you're not to read,
22 watch, or listen to any report of or commentary on the trial or
23 any person connected with the trial by any medium of
24 information, included without limitation, newspaper, television,

1 radio, and internet. And you're not to form or express any
2 opinion on any subject connected with the trial until the case is
3 finally submitted to you.
4 You all have a good evening and we'll see you at
5 10:30 tomorrow. The jury may exit at this time.
6 (Jurors are not present)
7 THE COURT: Is there anything that we need to
8 make a record on before we recess?
9 MR. SCHIECK: No, Your Honor.
10 THE COURT: No?
11 THE COURT: We'll see everybody at 10:30 and we'll
12 go off the record at this time.
13 MR. KEPHART: Thanks, Judge.
14 COURT ADJOURNED AT 5:01:43 P.M. UNTIL THE
15 FOLLOWING DAY SEPTEMBER 20, 2006
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AFFIRMATION
Pursuant to C177894

The undersigned does hereby affirm that the preceding Transcript filed in District Court, Case No. A528457 does not contain the social security number of any person.

Kari Riley
Transcriber

4/29/07
Date

* * * * *

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

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CLERK OF THE COURT

THE STATE OF NEVADA,	)	
	)	
	)	CASE NO. C177394
Plaintiff,	)	
	)	
vs.	)	
	)	DEPT. NO. II
KIRSTIN BLAISE LOBATO,	)	
	)	
Defendant.	)	Transcripts of Proceedings
	)	

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

JURY TRIAL - DAY 8
VOLUME VIII

WEDNESDAY, SEPTEMBER 20, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS
STATE'S WITNESSES				
Lary Simms	--	5	45/80	73/84
Christopher Carrington	88	105	120/136/140	134/143
Diane Allen	148	163	171	--
Maria Thomas	177	--	--	--

* * * * * *

EXHIBITS

DESCRIPTION:	ADMITTED
STATE'S EXHIBITS	
41	181
48	181
51-53	181
55	181
146-148	53
152	53
217-219	191
220	188
221-225	191

* * * * * *

LAS VEGAS, NEVADA WEDNESDAY, SEPTEMBER 20, 2006

PROCEEDINGS

PROCEEDINGS BEGAN AT 10:45:06 A.M.

(Jurors are present)

THE BAILIFF: All rise, please. Department 2 is now in session, the Honorable Valorie J. Vega presiding. Please be seated.

THE COURT: Record shall reflect that we're resuming trial in State versus Kirstin Lobato under case number C177394. The defendant, Ms. Lobato, is present together with her three counsel, the two prosecuting attorneys are present, and the ladies and gentlemen of the jury have been returned to their seats in the jury box by the bailiff.

The Court notes that Dr. Simms has returned to the witness stand, and we will shortly be resuming with his examination. The Court reminds him that he remains under oath from yesterday.

DR. LARY SIMMS, STATE'S WITNESS, REMAINS UNDER OATH

THE COURT: The Court will ask that counsel and the recorder approach.

(Off-record bench conference from 10:48:48-10:50:19 a.m.)

THE CLERK: On the record.

THE COURT: Okay.

THE CLERK: Counsel may resume.

MR. SCHIECK: I believe the State had concluded their direct, Your Honor.

THE COURT: I think Mr. Kephart was wrapping up and indicated he was about to pass the witness.

MR. KEPHART: Mm-hmm.

THE COURT: Is that correct?

MR. KEPHART: That's correct, Your Honor.

THE COURT: Very well.

MR. SCHIECK: Thank you, Your Honor.

THE COURT: And Mr. Schieck may cross.

CROSS-EXAMINATION

BY MR. SCHIECK:

Q Good morning, Doctor.

A Good morning.

Q We'll try to get you out of here and back to your autopsies that you had scheduled this morning as quickly as we can.

A Thank you.

Q Yesterday you testified and referred to this as being, and correct me if I'm wrong, a sexually motivated homicide?

A That would be how I would characterize it, yes.

Q Okay. And what is your definition of a sexually motivated homicide when you use it in connection with this

SIMMS - CROSS

case?
A That there was a significant aggressive component that was a manifestation of sexual urges I guess would be one way to do it, and as best as I could do it. You know, there would be homicides that would be directed at killing a person, and there would be -- other homicides would be directed at also, you know, sexually mutilating a person. So that's what I'm trying to get at, there was a motive of sexual damage or sexual aggression, at least as part of the component of it.
Q Is that due to the mutilation of the sexual organs of Mr. Bailey?
A Definitely.
Q Okay. That's the factor that keys into you opinion?
A Yes, because obviously I wouldn't have any, you know, knowledge of the actual person, the perpetrator's state of mind, it's a matter of just looking at the injuries.
Q And you've been a coroner here in Las Vegas for how long?
A Eight years.
Q Okay. And this is not what you would call a usual case?
A Not for Las Vegas. In Chicago it was a little bit more common, but definitely in Las Vegas it's uncommon.
Q Are cases like this typically male on male cases?

SIMMS - CROSS

A Definitely.
Q Okay. In your experience have you ever had a case where it was not male on male?
A In my personal experience, I haven't.
Q Okay. And in fact, when you testified previously you indicated that you had looked at some literature and you've never -- at that point in time had never read or been involved in a case where this kind of injury pattern was done by a female?
A To my knowledge still I haven't come across a case. And I'm certainly not trying to say that it couldn't happen, but I'm just saying as far as the weight of history or historical weight, it's by far away male on male kind of crime.
Q Okay. And in this case you were asked a number of questions where is it possible that the two individuals were positioned in a certain fashion, and whether or not the stabbing occurred in an upward motion. Do you recall those questions?
A Most of them, yeah.
Q Certainly all of your answers would be the same whether it was a male or a female, correct?
A Yes, because it was just based on the victim's position, yes.
Q And certainly two males could be in that position?

SIMMS - CROSS

A Definitely.
Q And the fact pattern or the injury pattern in your experience is always male on male?
A In my experience, yes. I've never seen a female on male with this kind of sexual mutilation, no.
Q Okay. With some type apparently of homosexual connotations then?
A Definitely.
Q And in your experience, you've never handled a case where it was a female inflicting these type of injuries?
A Not in my personal experience, no.
Q And not in anything you've read in the literature?
A Well, I haven't reviewed it recently, but you know, based on everything I've reviewed previously, again, I would kind of go back to the same answer I had is is that I can't rule -- I'm sure there may be some rare cases other than -- reported cases of it, but I think the weight of historical evidence is mostly -- is a male on male.
Q And in your position as a medical examiner, it's not your job to go out to the crime scene, is that a fair statement?
A Yes, that's a fair statement.
Q Okay. It's not like Quincy on TV where you're out there, you know, helping collect evidence from the body and things of that nature?

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A No, it doesn't work that way.
Q Okay. You're based there at the medical examiner's office and it's your duty to perform the autopsy on the individual?
A Correct.
Q And determine the cause and manner of death?
A That's my main work product, yes.
Q Okay. But in addition to just having the individual there for the autopsy, you're given some information from other members of the coroner's office that actually do go out to the scene?
A Correct.
Q And in doing that, you get information from them about what was found at the scene?
A Well, it's mostly geared toward the body and then the immediate surroundings. They don't usually go into too much detail about evidence collection 'cause I think they're there for a much shorter period of time. But -- so they try to give a flavor of the circumstances of death, along with the body.
Q And it's not your job to test for DNA or fingerprints or hair combings or things of that nature?
A No, that's part of the processing that goes on prior to the start of the autopsy.

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Q Okay. And there's crime scene analysts should be present in order to collect those items?
A Correct.
Q Okay. And you don't have a specific recollection in this case, but you're 99.9 percent sure there would've been a crime scene analyst there?
A You know, even .9999 because I mean that's a standard practice, and I'm sure there must've been. And I'm sure there's a record of it somewhere.
Q I mean certainly in this case with the type of injuries that you were looking at, if there wasn't a crime scene analyst you probably would've stopped and said --
A Correct.
Q -- where is the crime scene analyst?
A Right. Yes.
Q Okay. You wouldn't necessarily then have been -- have personal knowledge of the amount of blood that was present at the scene where the body was recovered?
A No, I didn't go to the scene so I didn't have personal knowledge of it.
Q You do have some opinions though concerning the amount of blood that would've been spilled as a result of the injuries, correct?
A Definitely.

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Q Okay. And there were a number of places that you indicated the blood was omitting from the body?
A Yes, on the neck and on the scrotum would be two minimal places. Of course, he had other injuries, and it would be also oozing from those, you know, while he was alive.
Q Okay. And you included in that a bloody nose, is that correct?
A Yes, he did have a bloody nose.
Q Did that appear to be a bloody nose prior to death or something that was leaking after death?
A No, it appeared to be an antemortem bleeding 'cause there was some clotting associated with it and everything.
Q And so you would expect at the scene that there would've been blood about the scene of the area where the incident --
A Where he was killed. I don't know whether he was killed and found at the same area or not, but wherever the location that he was killed there should be blood, yes.
Q Now you referred to the injury to the scrotum as briskly oozing, which is a term I hadn't heard before. What is briskly oozing?
A Well, I was trying to show that with an injury of that size it's not gonna just, you know, kinda ooze out like a, you

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know, like a bleeding gum or something, it's going to start coming out. But it's gonna be short of squirting out, but it's going to start draining out continuously.
Q I would imagine that there are a number of blood vessels and veins in that area of the human body?
A Yes.
Q Okay. And that a stab wound or an incised wound to that area is going to cause bleeding at a fairly rapid pace?
A And that's what I was trying to communicate by briskly, yes.
Q Okay. And that certainly, if the individual was standing, would get blood on the ground area around the individual?
A Definitely.
Q Okay. And it would be fair to assume that whoever the other person was would probably have gotten blood on them?
A Just from that wound? From that wound alone, it's kinda hard to say. They definitely have the potential to get it on them, yes.
Q Okay. And certainly if there was blood on the ground as a result of that wound, there would be a possibility of stepping in that blood and leaving bloody footprints?
A Definitely have a possibility, yes.

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Q Now you talked about the blood nose, but can you really say how much blood emitted from the nose prior to death?
A No. No. It's just a matter that there's indication that it was bleeding.
Q Okay. And bloody noses come in different varieties, there's some that are slow and some that are much more?
A Some that are slow and some that briskly ooze.
Q Do you have any opinion on this one whether it was briskly bleeding?
A No, I couldn't go back in time and, you know, give an opinion about that. It was -- you know, there's no signs about exactly how much it was bleeding.
Q And then the injury to the neck that severed the artery or nearly severed the artery, but caused quite a bit of damage to the artery, correct?
A Oh, definitely. It opened the artery up, yes.
Q Okay. And you indicated that there would actually have been some arterial spraying from that?
A There would've been blood that was pumping out of that. And depending on some other factors I think is what I said, is that it actually may have a fairly wide arch. It may be a shorter arch, but it would be pumping out.
Q Okay. And you indicated on the photographs that

there were areas where you could see the blood had run off of the body?

A Yes. When they were talking about what position the body was in, there's no doubt that there would've been some blood on his chest, and then I think there were a number of rivulets of blood that had run down on different parts of the body.

Q You don't have any opinion or do you have any an opinion whether or not it was possible he was still standing at the time he received the wound to his neck?

A That would be -- based on what I've seen in the pictures and everything, that would be kinda difficult to say. I don't know whether he was or wasn't. I think the scene, probably the scene would have a better -- an analysis of the scene would have a better idea about where he was when that wound occurred rather than just the body.

Q Now a number of the injuries to the body were, my term close proximity wounds, such that whoever inflicted those wounds would have to be in close proximity to the body in order to inflict those?

A Probably all the wounds. The blunt force and the sharp force, they're all close proximity wounds.

Q Okay. And that would include the postmortem wounds to the abdomen?

A Yes.

Q The postmortem wounds to the penis area?

A Yes.

Q And the postmortem wounds to the rectum?

A Yes.

Q Okay. I mean that indicates that the individual was right there near the body, within at least arm's reach and if not closer to the body?

A Yes.

Q And certainly with the amount of wounds that we've saw prior to death, there would've been quite a bit of blood around that area?

A Yes, I would say it's a high probability there'd be a significant amount of blood.

Q And so that a person in that area could be expected to step into the blood and leave bloody footprints behind?

A I think that'd probably be more likely than not, yes, that that would happen, yes.

Q Okay. Are you aware of bloody footprints being found at the scene of this homicide?

A I think someone said that there was some -- a footprint on some material, but I didn't -- I didn't review, you know, the scene on a detail by detail basis.

Q When you say someone, would that have been

someone from the coroner's office reporting back to you in conjunction with their job responsibilities --

A Oh, no --

Q -- of describing the scene?

A No, I'm sorry, I meant to say I just learned about that recently. I think it was from the prosecution that told me. I don't recall, you know, ever hearing about that prior to that, that there was an actual footprint somewhere.

Q And there in the coroner's office the investigators prepare a report of investigation, is that correct?

A Right. And there may actually be, you know, in there about a footprint, I just don't recall.

Q Okay. And --

A But they prepare that report after they attend the scene and come back to the office, that's the report that they prepare.

Q Okay. And in this case, would it have been Shelley Pierce Stauffer, the investigator?

A That's correct.

Q And do you have a copy of her report?

A Yes.

Q And she would've been one of the people there at the autopsy that provided you with some information?

A Well, she wouldn't have been at the autopsy, she

would've had -- I would've had the report, at least the preliminary report, that would look a lot like the one that you have. This is the final report 'cause it's signed, but I wouldn't have substantially the same report.

Q As part of your work in this case, did anyone report to you that the bloody footprints found at the scene were consistent with a male athletic shoe?

A At the time of the autopsy or since then?

Q Since then or at the time of the autopsy?

A As I said before, at the time of the autopsy I don't recall even having that knowledge. But I think that I do recall that they said that it was a larger shoe size is what I recall.

Q Okay. And being if it was a male athletic shoe of a larger size, that would be consistent with your description of this as being more of a male on male type of situation?

A That would definitely be supportive of that, yes.

Q Okay. That would corroborate your findings that it's more consistent with male on male?

A Yes.

Q Okay. Was it reported to you the area surrounding where the body was found, a description of it?

A It probably was in the investigator report, so I was aware of the scene as it was described in the investigative report at the time of the autopsy. Now since that time I've

1 been shown various pictures of the scene.
2 Q You're familiar with -- are you familiar with that it
3 was behind a dumpster type area?
4 A Yes.
5 Q That it was a blocked in dumpster enclosure?
6 A I might've been aware of that at the time, but I was
7 remade aware of it just recently by looking at some of the
8 pictures. I didn't recall -- realize in how closed in it was.
9 Q Okay. And if Ms. Pierce Stauffer described it as the
10 cage area is square a made with three block -- excuse me,
11 three brick walls, that would be consistent with your
12 recollection?
13 A Definitely.
14 Q And that the front area is closed with a metal gate?
15 Is that consistent?
16 A I didn't have that recollection, but it's consistent with
17 the pictures that I've seen recently.
18 Q Okay. And if she described the area as 10 foot wide
19 by 14.7 feet deep, does that sound --
20 A Yes.
21 Q The reason I'm asking you those questions is when
22 we talk about the time of death and how quickly rigor mortis
23 would've set in, you're familiar with Las Vegas in July, it's a
24 warm time of year, one of the warmest months of the year?

1 A Definitely.
2 Q Okay. And you'd indicated yesterday that the
3 presence of debris or garbage from this dumpster would have
4 helped keep the heat in on the body so that it would, in fact,
5 progress quicker than if it was just exposed?
6 A By -- if it was exposed, I think what I said yesterday
7 was if the outside temperature is cooler than if it was covered
8 with debris, that would keep heat in. If the outside
9 temperature is hot, very hot, then if it was covered with
10 debris, it would actually kinda keep it from getting too hot is
11 what I was trying to say.
12 Q Okay. But it would keep that heat in the area?
13 A Oh, definitely.
14 Q Okay. And the fact that it's in a three sided brick
15 enclosure, that would tend to keep the heat confined to that
16 area also?
17 A Yeah, it would be a relatively controlled
18 environment, rather than out on a, you know, a windy area.
19 Q And here in the southwest during the daytime the
20 warm sun warms -- actually warms those bricks, is that
21 correct?
22 A That's correct, yes.
23 Q And they tend to keep that heat and keep it
24 enclosed there in that area?

1 A Yes.
2 Q So even after nightfall, the bricks are actually
3 warmer than the ambient temperature?
4 A At least for a short time, based on, you know,
5 having lived here. I mean I've never done any scientific
6 studies on that, but they do emit their heat at night and kinda
7 keep things a little bit warm for awhile anyway.
8 Q Okay. And so that would also increase the speed of
9 which things would decompose?
10 A Yes.
11 Q Okay. And now yesterday you'd indicated that in
12 talking about the time of death, and correct me if I'm wrong
13 on my quotations on this. You said 8 to 24 hours to a high
14 degree of probability, 12 to 18 hours to a reasonable medical
15 certainty?
16 A Correct. Lower probability but probably more -- a
17 reasonable conclusion.
18 Q Okay. And you've been asked questions about that
19 in the past concerning this case?
20 A Oh, I'm sure that I was, yes.
21 Q And you'd indicated that rigor mortis is usually fully
22 formed by 12 to 18 hours?
23 A 12 to 18 to 24. I probably kinda move it out to 24,
24 but you know there's a continuum kinda from when it starts

1 after a few hours to when it finally gets formed. And you
2 know, I don't have any problem with 12 to 24 hours as a good
3 time frame.
4 Q Do you recall previously testifying that it's usually
5 fully formed by 12 to 18 hours?
6 A I'm sure that I've probably said that, yes.
7 Q Okay. Is that still accurate, it's usually formed within
8 12 to 18 hours?
9 A Yes. I would say probably as far as like, you know,
10 when you get into like 60 percent of the cases or, you know,
11 the majority of the cases I would say yeah, yes.
12 Q And that's full rigor mortis?
13 A Yes. Well, including the major muscle groups.
14 Q Okay. And again, if you testified previously that it's
15 usually fully formed by 12 to 18 hours, which means it involves
16 all the muscles, that would be accurate?
17 A Yes.
18 Q Okay. So and that's to a reasonable medical
19 certainty, that 12 to 18 hour period, 8 to 24. You've expanded
20 the time period, which is even more inclusive, but the 12 to 18
21 is still more than likely?
22 A More than likely, yes.
23 Q And your determination of those figures just are
24 based on general literature and general knowledge, correct?

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A They're based specifically on what I was told the rigor mortis was and the level of decomposition of the body, combined with my experience and the literature.
Q And the degree of rigor mortis would've been described to you by the coroner investigator that was on the scene and reported to you?
A Correct.
Q And it would've been her responsibility to declare death?
A Yes.
Q And then make that determination?
A Yes.
Q Okay. And just so -- and you have her report there in front of you, just so we're clear. Is it true that her reports indicates that she was not called to the scene until approximately 3:25 in the morning?
A Correct.
Q And it actually says 0325 hours, which would be 3:25 in the morning?
A Correct.
Q Okay. So she was not called to the scene, according to her report, until 3:25 --
A Correct.
Q -- correct? And so she couldn't have made any

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observations before then clearly?
A Correct.
Q And it indicates in the next paragraph that she arrived at approximately 3:45?
A Correct.
Q So she couldn't make any observations before 3:45, correct?
A Correct.
Q Okay. And then it, I believe on the next page indicates that it was at 3:50 that she described as full body rigor mortis, is that correct?
A Correct.
Q Okay. So that's the time we're going from?
A Yes.
Q Okay. So 12 to 18 hours prior to 3:50 a.m. is the time you're going from?
A Well, I'm not actually -- I want to be clear about this. I'm not actually going from a specific time. I mean I'm assuming -- I would assume that he didn't go into full rigor mortis -- or that he wasn't in full rigor mortis at 3:00 but he was at 3:50, so I'm kinda, you know, going as a general rule sometime in that range, give or take a couple hours.
Q Okay. That's why we have the 12 to 18 hour general range is because there is some leeway on both ends?

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A Not only for that reason though, just for the reason that rigor mortis doesn't -- in every dead body it doesn't propagate in a standard way. It has some generalities to it, but it can be different.
Q And it depends on the environment that the body's in?
A And then the next thing is then the environment. So not only is characteristics of the body, but then it's characteristics in the environment.
Q Okay. And the environment in this case was July in Las Vegas in an enclosed brick area during -- at least partially during sunlight hours, correct?
A So that would tend to accelerate it.
Q That would accelerate it?
A Correct.
Q Okay. So our 12 to 18 before 3:50 is pretty fair to a reasonable medical certainty?
A I believe it is, yes.
Q Okay. And 12 hours prior to 3:50 a.m. would be 3:50 p.m.?
A P.m., right.
Q Okay. Which would be 3:50 in the afternoon?
A Correct.
Q Which would be in Las Vegas, pretty much the

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hottest part of the day?
A Correct.
Q Okay. Which again goes to the acceleration of the process, correct?
A Correct.
Q And then 18 hours before 3:50 a.m. would be 9:50 in the morning, correct?
A Correct.
Q Okay. So again, that's during the daylight hours?
A Correct.
Q Not the warmest part of the day but progressing toward the warmest part of the day?
A Correct.
Q So the 12 to 18 hour time period gives us some time between 9:30 a.m. and 3:50 p.m. on July 8, 2001?
A As a reasonable conclusion, yes.
Q To a reasonable medical certainty?
A Yes.
Q Are you familiar with Panaca, Nevada? Panaca, Nevada, do you know where that's at?
A No, I don't.
Q You don't know how far it is from Las Vegas?
A No.
Q Certainly if someone was in Panaca between 9:50

and 3:50 they wouldn't have been able to commit this homicide?
A Obviously.
Q Now you'd indicated that when the body came into the medic -- the coroner or the medical examiner's office that your recollection was that the hands were probably bagged?
A I didn't even see the body. I think I was asked about -- there was some pictures of manila -- you know, I didn't take part in that, so I just inferred that based on those pictures and the standard operating procedure of the police department.
Q Okay. So to be fair to you, let's establish the condition of the body when you first saw it as part of your responsibilities to perform the autopsy. Was it still clothed?
A No, it was -- it had been completely processed and photographed, cleaned up, photographed, and then that's when I first started seeing the body.
Q Okay. So as the coroner/medical examiner, you don't see the body until it's already been processed by the crime scene analyst, photographed by both the crime scene analyst and the coroner's office, cleaned up by a coroner's assistant?
A Correct.
Q Okay. And by cleaned up, that would be cleaning

off off the excess loose blood, clotted blood, things of that nature?
A Right, so you can see the wounds.
Q Okay. And that would -- if there were things on the body, such as matches or cigarette butts, those would already be removed before you even saw the body?
A Correct. And also any kind of trace evidence that they were interested in, that would've been removed too.
Q Okay. You are familiar, however, with the normal protocol or procedures of the coroner's office when a body comes in?
A Yes, I think so.
Q Usually it comes in in a body bag?
A Yes.
Q Okay. And the body bag is then photographed closed and then opened?
A Correct.
Q Okay. And whatever identifying information is on the body bag is recorded?
A Yes.
Q And then the body is removed from the bag and then it's processed?
A And then it's -- then the police processing starts.
Q Okay. And usually it's brought in on a sterile white

cloth?
A Yes.
Q Okay. And then that's collected also --
A Yes.
Q -- in case any trace evidence has fallen onto that?
A Correct.
Q In this case then you wouldn't have seen any saran wrap or plastic wrap that was on the body when it was brought in?
A No.
Q You wouldn't have seen any paper towels that were shoved into the area where the penis was missing from?
A Unless someone had showed it to me, and you know, then I might've been -- I might've saw it after they removed it. That would definitely be a possibility.
Q Do you recall in this case if anybody showed you any of the evidence after?
A I don't have an independent recollection of it. I know that I found some silver paper kinda things that -- in the rectal area that I remember taking, you know, taking pictures of. And then I remember turning it over or calling attention to the evidence technician about it.
Q Okay. So -- and that was in the rectal area?
A Right.

Q Okay. And that -- you discovered that as part of your autopsy procedures?
A Yes.
Q And I'm looking at your autopsy report on the second page. You indicate the skin demonstrates -- this is under clothing, the second sentence. "The skin demonstrates adherent plant debris".
A Okay.
Q So there was still debris left on the body that hadn't been cleaned off in the cleaning process?
A Yes.
Q Do you have any recollection of what that was --
A No.
Q -- or why -- would it normally have been cleaned off of the body before you saw it?
A Oh, they -- you know, they do a pretty good job, but they don't -- sometimes there's blood left, sometimes there's other things like -- or little rocks or things like that, you know.
Q So when they clean the body off before you begin the autopsy, do they wipe it down or wash it down, or how do they do that, do you know?
A Both.
Q Okay.
A It's a combination of washing and then also wiping.

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Q And your report wouldn't indicate when the body was actually received by the coroner's office?
A No, it just starts when I start. There should be other documents over there and indicate when it was first received by the coroner's office.
Q Okay. And when it's first received by the coroner's office, it's at that point refrigerated to stop any further decomposition?
A Correct.
Q Okay. Or at least to slow any further decomposition?
A Correct.
Q Okay. And so the longer the body would've remained there at the scene where it was discovered, the longer the decomposition would've processed until it was refrigerated?
A Correct.
Q Okay. You had talked about the fracture to the back of the head, and correct me if I'm wrong, but my recollection was is your indicated that if had been a baseball bat you would've expected to seen a depressed fracture?
A I think more likely than not with an instrument like that, you know, wielded in a lethal manner, you would see a more substantial kind of fracture along with depression, yes.

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Q Okay. And you didn't see that in this case?
A No, this was a linear fracture that was on the left side of the head that went to the back of the head on the left side.
Q With no depression?
A No depression.
Q Okay. Was that injury x-rayed?
A Prior to the -- me actually starting the autopsy it was radiographed, and that was recorded in the inventory radiographic findings here on page 2 near the bottom.
Q Okay. Would you have examined the x-rays or is that --
A Yes.
Q Okay.
A I'm the one that dictated this, you know, that wrote this report. What I said that there was an apparent fracture on the left side of the head.
Q Okay. And when you say no other abnormalities are identified, would -- is that where you would have identified the depression?
A That would've helped been able to kinda tune me in on that.
Q So your testimony is it's more likely -- it's less likely than not that a baseball bat was the weapon that caused the

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fracture?
A Yes. The fracture that I'm seeing there is, you know, not suggestive of that, so I wouldn't have -- if somebody would've said, you know, that -- I would've included that as one of the weapons, the possible weapons that would've caused that fracture 'cause it would -- I would've expected a more significant fracture.
Q And there are a whole variety of items that can cause -- of blunt trauma to the head that can cause a fracture, is that a fair statement?
A Well, yeah. Not only are there instruments but also, depending on what the head hits, you know. The head can -- either something can strike the head or the head can strike something to cause this type of a linear skull fracture.
Q In this case would you say it's more likely that the head struck something or something struck the head to cause that fracture?
A That's a good question. There's obviously significant impacts to the head, but I can't really tell. There's no specific pattern to them that would tell me whether the head struck something or whether something struck the head.
Q You had talked yesterday about some abrasions to that area?
A On the side of the head?

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Q Yes. If you recall.
A I don't recall it. There was some abrasions on the left side of the face and the right side of the face.
Q Which would be consistent with rubbing up against something or something being rubbed against the face?
A I think that there was a -- what I called a pattern abrasion I think on the left side, which could be either one of those things. But there was some -- a little bit of a pattern to it, indicating it just wasn't a flat, you know, surface.
Q Do you have any opinion what the pattern was?
A Well, it could've been the surface of cement. You know, it's rough and it'll leave linear scratches. Based on where he was found, that would be the first thing to think of. But then there could be a number of other things that could be equivalent to it.
Q Doesn't necessarily have to be the concrete of the ground, it could be the brick itself --
A Definitely.
Q -- could impact?
A Yes.
Q And while we're talking about the baseball bat, the face itself has a lot of very fine bone structure to it?
A Yes.
Q Okay. That would include the nose, the occipital

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1 orbits of the eye?
2 A Yes.
3 Q Any indication that those areas had been struck with
4 a baseball bat?
5 A No. He had some teeth knocked out, but if it
6 would've been a baseball bat it would've done more damage
7 to the surrounding structures, at least I would expect it to
8 have done more damage to the surrounding structure.
9 Q You would've expected to see a broken nose, for
10 instance?
11 A More of a, kind of a crush injury, you know, rather
12 than just that. I'm not -- that's not to say it couldn't have
13 been, but based on those injuries, his mouth could've been
14 maybe open, but as a probability I would've expected more.
15 Q Same thing to the D-orbits [sic] around the eye?
16 A Correct.
17 Q If there -- I mean if he was struck in the orbital area
18 of either eye you would expect to see some bone damage?
19 A Yes.
20 Q And that's not present in this case?
21 A No.
22 Q And based on those findings, it more likely than not
23 that he wasn't struck with a baseball bat to the face?
24 A That would be a good conclusion. You know, I

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1 would say it's a low probability that it would be a -- that a
2 baseball bat would be an instrument.
3 Q And we've talked about the head. Any other parts
4 of the body that would indicate being struck with a baseball
5 bat?
6 A No.
7 Q Now -- and I may be wrong on this. I don't know
8 where I came up with this. I thought that there had been
9 some testimony that there was an older injury to the head that
10 was several hours old?
11 A Yes.
12 Q Okay.
13 A There -- on the left side there -- I took several
14 sections from different injuries, and one of them appeared to
15 have a little bit more of a cellular reaction than the others, so -
16 - and that was on the left side of the head.
17 Q But the same side as the fracture was?
18 A Yes.
19 Q Okay. How older was it?
20 A Just by several hours, at the most.
21 Q Okay. But it definitely, in your opinion, was not
22 contemporaneous to the fracture?
23 A In my experience, you know, to have that kind of a
24 cellular reaction, you know, there has to be time while a

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1 person's alive in order for the cells to get in there. And that
2 was also corroborated by the fact that he had some swelling in
3 his brain. So there's -- there's no doubt that he was alive for
4 awhile after the head injury because your brain -- it takes
5 some time to swell, so --
6 Q You were able to tell that the swelling was from the
7 injury of -- that was approximately two hours old as opposed
8 to the fracture, or it was from the fracture?
9 A No, that it was just two hours prior to his death.
10 Q Okay.
11 A That would be a good ballpark figure, at least a few
12 hours prior to his death.
13 Q But it wasn't -- that injury wasn't a fatal injury?
14 A Well, it was -- this was just hemorrhage in the tissue
15 underneath the skin. So I mean if you're talking about -- no,
16 that by itself wouldn't be fatal. You know, of course, that
17 might've been the same injury that the baseball -- or that the
18 skull was fractured with, you know. You understand what I'm
19 saying, that -- okay.
20 Q But the fracture could've been two hours old also?
21 A Yes, because it was -- that area was on the same
22 side as the fracture, and if it was on the different side then I'd
23 have a different opinion, but because that area is on the same
24 side as the fracture, it could've been that that was

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1 contemporaneous with the fracture.
2 Q Now the fractured showed quite a bit of bleeding
3 and swelling, that injury itself?
4 A The fracture itself, no. That's in bone so it's not
5 gonna show that. But the underlying brain --
6 Q Right.
7 A -- had a tremendous amount of hemorrhage over it.
8 I don't think we've shown you pictures of that, but it had a
9 significant amount of hemorrhage over it. And then it was --
10 actually had some swelling started in the brain.
11 Q Okay. And it's actually the swelling of the brain that
12 usually is the lethal mechanism of death for a head injury?
13 A It's definitely one of the major components of it.
14 The bleeding on the surface would be another component of it
15 and, you know, and the mechanical injury directly to the brain
16 of the shock of going through the brain, so there's different
17 components. But the swelling definitely is a component.
18 Q Okay. In this case, was the swelling of the brain the
19 cause of death or can you narrow it down to just one cause?
20 A Well, I -- I think there's too much injury to narrow it
21 down to one cause. He had several injuries that were
22 completely competent to cause his death, and that -- the head
23 injury certainly was one of them.
24 Q And the other one would be the stab to the neck?

A Definitely.
Q How long would it take for that stab wound to the carotid artery to cause death for you to bleed out?
A Oh, it would just be minutes.
Q When you say minutes, I had to say, you know --
A Oh, not -- definitely not 30 minutes or something like that, it'd be more like -- you're talking about 2 to 5, maybe 10 minutes at the most, in that range.
Q That wouldn't necessarily cause instantaneous unconsciousness, but eventually it would because of blood loss?
A If you just look at that injury --
Q Yes.
A -- and we disregard the head injuries, then no, that wouldn't cause instantaneous loss of consciousness. A person would be conscious for a short period of time after.
Q And you indicated that the blow to the head that caused the fracture would possibly cause unconsciousness?
A It would definitely possibly cause unconsciousness, yeah.
Q Okay. However, there were defensive wounds to the hands, which would indicate that those were inflicted prior to the blow to the head, is that fair?
A Yes.

Q Okay. But you can't tell us how long before, or can you?
A I can't tell you with any scientific method. I think, you know, from a commonsense we'd probably all agree it was probably just right before, but that's really speculation I think.
Q Okay. You had talked about some markings that would -- had been caused by pressure or impressions left in the body, correct?
A Correct.
Q You didn't see any items adhering to the body when you did the autopsy?
A No.
Q So you don't know what could've been, if anything, pressing against the body prior to you seeing it?
A No.
Q Okay. And you've never seen photographs of the body as the various levels of debris were removed from the body?
A No, I've seen some general photographs that I recall had the body exposed, so I didn't see any -- or get any specific idea of what items were on the body.
Q What about any type of impression type of markings left under the body? Did you note any of those?
A On the back, I don't recall any significant

impressions on the back. I think they were mostly on the front.
Q Okay. Certainly if the body is laying for a period of time on a certain surface, that surface is gonna leave whatever impressions are on the surface?
A Correct.
Q Okay. And if you're wearing a shirt, that might leave an impression, depending on the type of fabric and whether there's a zipper or a button?
A Correct.
Q And if, for instance, saran wrap or a plastic bag is wrapped around a part of the body that's resting on the ground, that could leave an impression?
A If it had irregularities in it.
Q Like if it was bunched or folded?
A Correct.
Q Okay. Twisted?
A Yes.
Q Those could leave impressions?
A Yes.
Q Are you involved at all with the operation of the coroner's office when it comes time to locate and notify the next of kin, or is that done by other people?
A That's done by the investigators.

Q You're not involved in that process at all?
A No.
Q Okay. And you're not involved in any interaction they have with the homicide detectives about what they're doing to notify the next of kin?
A No.
Q Okay. So other people would be better to ask those questions of?
A Yes. I -- in this case I do not have any knowledge at all about any of that process.
Q Now with respect to the wounds to the rectum, I noticed in the photographs that in order to take the photographs of the injuries that there was -- the cheeks had been spread or the buttocks had been spread. Was that necessary in order to see the injuries?
A Well, it showed the extent of the injuries.
Q Would it have been necessary to spread the buttocks in order for those injuries to be inflicted?
A No. It would not be, no.
Q And as part of your autopsy process, do you note the size and weight of the individual?
A Yes.
Q Okay.
A Well actually, I take that back. It's noted for me, let

me put it that way, and I record it in my autopsy report. But I don't take the measurements directly.

Q Okay. But you have no reason to question whether or not those would be accurate?

A Usually I kinda eyeball it, and if they're not accurate I do have 'em take them again. But in this particular situation I think they looked relatively accurate to me and I didn't --

Q And what are they in the autopsy report?

A The height is 70 inches, which would be 5'10", and the weight is 133 pounds.

Q Now the weight is the weight when the body arrives at the medical examiner's office?

A Correct.

Q Okay. And would the loss of blood effect that weight?

A To some extent.

Q And you had indicated that a toxicology had been taken on the body. Do you recall what fluids were used in order to determine the toxicology?

A I recurred blood, and -- which is -- comes from the heart, and vitreous fluid, and it was -- the blood was the sample that was tested.

Q And that was blood drawn directly from the heart?

A Correct.

Q Okay. Would the fact that the individual had basically bled out have effected the percentages of the substances found in the blood?

A No, it should be the same -- you know, the same concentration. Even though there'd been a lot of blood loss, you assume that it was uniformly distributed in his blood so it should be the same concentration.

Q You had talked about the fact that there was -- or were you aware that there was in the sexual assault kit some semen detected?

A I think I was just told about that recently. I was not aware of the results of the -- of any testing done.

Q And you'd offer some possibilities as to how semen could -- Mr. Bailey's semen could've been present due to the trauma he suffered, correct?

A From a transfer of the same weapon that cut the penis off to the rectal area I think was the issue, and it's definitely possible, yes.

Q Okay. Is it also possible it could've been done -- been the result of a recent ejaculation prior to death?

A Yes.

Q Okay. So there's a number of possibilities with respect to the presence of semen?

A Yes.

Q Okay. With respect to the various impression type markings on the body, did you collect any histological slides of those areas to determine age of the wounds -- or the impressions?

A Of the impressions, no.

Q Okay. Did you collect any slides at all of those type of impressions?

A Tissue slides?

Q Yes.

A No, no. To my knowledge, you can't really age an impression. I've never heard -- you can age an injury where there's bleeding in it, but just a surface impression, I wasn't aware that you could age that.

Q Did you take slides, though, of other areas?

A I took tissue samples, yes.

Q Okay. And where did you take those from?

A Under the inventory of histologic sections, I took three sections from the base of the amputated penis, I took a section from the liver where the stab wound was, I took two sections from the back of the head, one section from the left tiperalus [phonetic] muscle, which is on the side of the head. I took one section from the -- next to the voice box in the left neck. I took a section back of the feeding tube in the neck. And I took a section of the carotid artery where it was injured.

Q Have you done any review or examination of those slides?

A Yes, yes. I filed a report, and in that report was where I talked about, as you brought out earlier, that one of the injuries appeared to be slightly older than the other injury.

Q And that would be the injury to the head?

A To the left side of the head, right.

MR. SCHIECK: Okay. Could I have the Court's indulgence for one minute?

THE COURT: Yes.

MR. SCHIECK: Thank you. No further questions. Thank you, Doctor.

THE COURT: Redirect.

MR. KEPHART: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. KEPHART:

Q Doctor, you talked about this injury to the left side of Mr. Bailey's head, and you also talked in conjunction with his skull fracture. The injury that you did the slides -- I guess the microscopic examination, would -- did you have any -- did you -- was there any evidence in that that showed that it was connected to the skull fracture?

A No. What I -- just from an anatomic point of view, you've got the skull and then on top of that you got a lot of

SIMMS - REDIRECT

1 soft tissue. So I took a section from the soft tissue above the
2 skull, and it did have a difference in time. But I can't -- there's
3 nothing that I can tie that to specifically the fracture, except
4 that it's on the same side of the head.
5 Q Okay. So you're -- it's not your testimony today that
6 he received that earlier injury the same time that he received
7 the skull fracture is it?
8 A It's a possibility, but no, I don't have any way to
9 conclude that to a reasonable degree of certainty, no.
10 Q Okay. With respect to what you saw with the injury
11 that was the older injury, would that be what you saw, could it
12 be consistent with somebody just getting punched in the side
13 of the head with a fist?
14 A Definitely.
15 Q Okay. And now we talked about earlier -- in direct
16 and in cross we talked about the skull fracture, the injury to
17 the back of Mr. Bailey's head, and is it your testimony that that
18 could be consistent with him falling back and cracking his head
19 on the curb?
20 A Definitely consistent with it.
21 Q And that's the one that you don't believe that you
22 would -- there was any evidence to support that he was hit
23 with a bat? You would expect to see maybe some indentions
24 or something there?

SIMMS - REDIRECT

1 A In the skull, in the skull part, right.
2 Q Okay. Now with regards to his face area, you talked
3 about his teeth were busted out, is that a yes?
4 A Yes. Sorry.
5 Q Okay. Matter of fact, six teeth and a tooth fragment
6 was brought to the autopsy, is that correct?
7 A Correct.
8 Q Okay. That -- your understanding that was
9 recovered from the scene?
10 A Correct.
11 Q Okay. And also there was all the contusions on his
12 face?
13 A Correct.
14 Q And do you remember questioning yesterday with
15 regards to whether or not there's a possibility that it could be
16 done with a bat, and your testimony was that if it was with --
17 by somebody weaker, maybe not as strong as a grown man
18 would be?
19 A Definitely possible.
20 Q Okay. Now you also said that -- I think you used a
21 low probability with that, but you also said that it is a low
22 probability with respect to this type of injury being something
23 other than a male on a male, based on just your -- your --
24 A Oh, there's definitely a -- I didn't exclude the

SIMMS - REDIRECT

1 probability, if that's what you meant that --
2 Q Okay.
3 A -- right, that it was a female on male. I didn't
4 exclude that, I just said it was a low probability.
5 Q Okay. So you're not saying that women don't
6 commit these kind of crimes?
7 A No, I couldn't -- I wouldn't feel comfortable making
8 an absolute statement like that, no.
9 Q Okay. And you're not testifying today that the
10 injury, the older injury that you saw is definitely what caused
11 the skull fracture?
12 A No, I'm not saying that.
13 Q Okay.
14 A I just said it was on the same side --
15 Q Okay.
16 A -- and it could be, but I have no way to tie those
17 two together.
18 Q Okay. It'd be more consistent in receiving a skull
19 fracture by striking something, such as a curb?
20 A That would be more consistent than a baseball bat
21 causing the skull fracture, right, because this is a typical linear
22 skull fracture that you see with that striking a curb fairly often.
23 Q Okay. Now also the -- the injury -- the older injury,
24 do you remember testifying whether or not you felt that would

SIMMS - REDIRECT

1 be a fatal injury?
2 A I don't remember whether or not I testified about it
3 or not, but I do, you know, have to say that it was
4 hemorrhage in a muscle, and that by itself wouldn't be a fatal
5 injury.
6 Q Okay.
7 A It might be -- you know, the head injury that goes
8 with it, or the brain injury, let me put it that way. The brain
9 injury that goes with it, that might be fatal if that's what
10 happened.
11 Q Okay.
12 A But in and of itself it's not fatal, no.
13 Q Okay. Now the injuries, however, with regards to
14 the skull fracture and the injury to the back of the head, do
15 you have an opinion as to whether or not those could be fatal?
16 A Again, those by themselves wouldn't be fatal. They
17 would -- although the skull fracture would indicate a significant
18 amount of force, it's gonna be the brain injury that's gonna be
19 the fatal aspects.
20 Q Okay. And with respect to the skull fracture, would
21 you expect to see that individual knocked unconscious?
22 A With that significant a skull fracture I would say that
23 there's a really high probability they would be unconscious.
24 Q Okay. And then with respect to the skull fracture

and with respect to the injury to his carotid artery, do you have any opinion as to -- do you have any opinion as to the injury to the carotid artery and whether or not it would be a calculated type of injury?

A In my opinion, yeah, that's what I call a directed violent injury because in a knife fight you're not gonna be able to deliver -- in my opinion, you're not gonna be able to deliver that kind of deep, very directed injury. So that's the type of injury you see after somebody's unable to move, and then it's -- and there's a specific area that's targeted.

Q Okay. In this particular case you testified about a lot of multiple defensive wounds --

A Correct.

Q -- on his hands? So when you say that a person is not able to deliver a directed injury, such as to the carotid artery, that would be consistent with maybe because the person's stopping him with his hands?

A Definitely, resisting.

Q But on the other hand -- on the other case, if he's knocked unconscious it would be very easy to --

A Very easy.

Q -- deliver that type of injury?

A Yes.

Q Okay. Now you testified a little bit about your

limited knowledge of where the body was found, and you were told by the coroner's investigator. And matter of fact, in your report you talked about some plant debris on Duran's body, is that correct?

A Correct.

Q Now you were aware that he was found in the trash?

A Correct.

Q And when -- whenever an individual is found in the trash before you can look at him, that's all removed, supposedly removed from the body?

A Most of it, yes.

Q Okay. And in this particular case though, they weren't successful even doing that. It had some plant debris --

A Correct.

Q -- on him? So you would more than likely expect if a person is found in the trash you would find trash on him?

A You mean when I start the autopsy or when they --

Q When they bring him or when they first see him?

A Oh, definitely, definitely.

Q Okay.

A There would probably be a lot of things that struck to him, yeah.

Q Doc, do you -- you had testified that you saw some photos at a later date with regards to the area of where the body was located, is that correct?

A Correct.

Q And you had some questions by the defense about what you would expect to see in reference to somebody that had as much blood loss as that you -- that you've saw with regards to Mr. Bailey here? Okay.

A Yes.

MR. KEPHART: Your Honor, may I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. KEPHART:

Q Okay. I'm showing you a series of photographs, State's Proposed Exhibit 46, 47, 48, and 52, and ask you if you can take a look at those, and ask you if you remember seeing those photos before?

A Yes, I saw 'em just recently.

Q Okay. Now you weren't -- you weren't at the scene obviously, you've testified to that, is that correct?

A No, I wasn't at the scene.

Q Okay. And so you don't know how the scene looked, other than the photographs that you've seen?

A Correct.

Q Okay. With respect to these photographs, do you believe that those would help you in your explanation to the jury as to whether or not somebody had lost a lot of blood in that area?

A Definitely.

Q Okay.

MR. KEPHART: Your Honor, I'm going to move to admit State's Exhibits 146, 47, 48, and 52.

THE COURT: 1?

MR. KEPHART: I'm sorry. 146 --

THE COURT: 146.

MR. KEPHART: -- 147, 148, and 152.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit Nos. 146, 147, 148, 152, admitted)

BY MR. KEPHART:

Q Now you also aren't aware that there was a lot of trash in the area that had to be removed before they brought Mr. Bailey's body out? You're not aware of that either?

A Well, I saw a lot of the trash in the pictures recently so --

Q Okay.

A -- I'm currently aware of it.

Q I'm gonna show you 148 first. Can you see that

photo? Is that --
A Yes.
Q Okay. Can you tell what is under the -- you see the big area, the big black area in the middle?
A Yes.
Q What do you believe that to be?
A That's blood.
Q Okay. And it's throughout this whole picture, is that correct?
A Yes.
Q It's even down here at the lower portion off of the object?
A Yeah, that's a significant amount of blood, yes.
Q Okay. And there's also -- do you see what appears to be some kind of cardboard object laying on the bottom and the blood's on that?
A Yes.
Q Cardboard is absorbent?
A Yes.
Q And here's a view further away looking in after all the trash has been pulled away. Does that appear to be a significant amount of blood?
A Definitely.
Q Significant enough to be consistent with what you

saw of Mr. Bailey with the loss of his blood?
A Definitely.
Q Okay. If you were -- okay. And here's kind of a closer view of the same area, still a significant amount of blood?
A Yes.
Q Matter of fact, in some areas it's even greater?
A Well, it looks like there's blood splatter, you know, all over this area here.
Q Okay. And you see in the -- would the darker areas be a greater concentration of blood?
A Oh, yeah, it's concentrated significantly in those areas, yeah.
Q Okay. Now in --
MR. KEPHART: Court's indulgence, Your Honor. I'm trying to --
BY MR. KEPHART:
Q Okay. Doctor, I'm gonna show you some photos that have been admitted into evidence previously and ask you to look at them in conjunction to the ones I just -- first of all, Exhibit 152, do you see that, it shows you after the trash has been moved out?
A Yes.
Q Do you see this area down here, this kind of a

smaller, kind of a line in the photo? Yeah, right there.
A Yes.
Q Would that be consistent with blood, consistent with what you see in the back as well?
A It looks like it's a blood trail.
Q Okay. Now I'm showing you what's been admitted as No. 14. You see that -- oh, there we go.
A That same trail is right there.
Q Okay. You see what appears to be Duran's body laying there?
A Correct.
Q And his right arm extended out to the right there?
A Correct.
Q And then you see that trail?
A Yes.
Q Okay.
A I just drew a -- that's the same trail.
Q Okay. And in reference to No. 52 again, that would basically put his body out here, his head just about where the -- that little trail is? His head would be -- yeah, there you -- okay.
A Something like that.
Q All right. So it appears that his body had been maybe drug from the back towards the front, moved?

A Well, you're getting into an area that, you know, that may be out of my expertise.
Q Okay.
A But I mean I think I would probably agree with you. But I'm not sure that I --
Q Okay.
A -- you know, would --
Q That's fine, Doc, I understand.
A Okay.
Q Now 140 --
A I mean 'cause I wasn't at the scene and everything, so --
Q Okay. Clear that off, Doc. 147, you see that photo there? Can you see that clear?
A Yes.
Q You see up on the curb? Does that appear to be some kind of blood transfer as well?
A Definitely, and it looks like some blood splatter. You can see the blood is streaking too.
Q Do you see to the right of that photo, right there. Does it appear to be some kind of blood transfer as well?
A That's a big blood smear.
Q Looks like it was smeared?
A Yes.

Q Consistent maybe that he was drug towards the area I just talked about?
A That's -- actually that's a good thing to show, and I think that definitely lends evidence toward that, yes.
Q Okay. And --
THE COURT: Could you identify that one, please.
MR. KEPHART: It's 147, Judge.
THE COURT: Thank you.
MR. KEPHART: Yes.
BY MR. KEPHART:
Q And then here's a photo of Mr. Bailey when they found him still covered with trash. You see that there appears to be blood on the cardboard there?
A This is his head here?
Q Yes.
A Okay.
Q Can you see that --
A Yes, there's a --
Q -- see down at the bottom, his foot?
A Oh, here?
Q Yes.
A Okay. And yeah, this cardboard here has a significant amount of blood soaked into it.
Q Okay. That'd be consistent with coming into contact

with him and maybe soaking up the blood?
A Definitely.
Q And here's even a better one right here that just shows it straight down. Okay. And you see there's items on his body, cardboard, these little palm tree things, you see those --
A Yes.
Q -- on there? Paper, multiple debris, multiple debris in the garbage?
A Yes.
Q Okay.
MS. GREENBERGER: What exhibit number is that, counsel?
MR. KEPHART: That's No. 5, I'm sorry, No. 5.
BY MR. KEPHART:
Q And so when you talk about pressure marks, items such as these could potentially leave pressure marks on his body?
A Potentially, yes.
Q Now you talked about time frame. You talked about rigor mortis and the degree of decomposition of the body is what you were kinda basing your time frame on --
A Correct.
Q -- is that correct? And you saw -- I mean we went

into a lot of questioning about the area of which the body was found in. And State's Exhibit No. 4 shows that behind the dumpster, and you see that it's open on the top, is that -- can you see that, Doc?
A Correct, yes.
Q And then the front gates are similar to that of what you see up on the top. Did you -- does that also play into part in reference to whether or not something's gonna retain heat or release heat? And you did testify that if it's hot out and you cover the person up, it's more than likely going to prevent it from outside heat getting -- I mean explain that, is that --
A Yeah.
Q Okay.
A If the -- if you assume the outside temperature is cool and you cover somebody up, that's gonna cause them to retain heat. If you assume the outside temperature is very, very hot and you cover them up, it's gonna actually protect it from the really hot outside environment, and obviously it's gonna help -- it's gonna retain heat too, but it's gonna protect it from the much higher heat of the outside environment.
Q Okay. Doc, are you familiar with a swamp cooler?
A Yes.
Q And they work like an evaporated cooler where they work with moisture?

A Correct.
Q In this particular case you saw the tremendous amount of blood that's in that area, you testified about that, that's consistent with him bleeding to the point where you saw it in his body. Could it, in fact, work of somewhat a type of a swamp cooler type of mechanism in the sense that he's covered with moisture?
A No. I -- well, I'm not a physicist and maybe they would say it would to some extent, but I think it would be of such a minimal -- if it did, that it wouldn't have any effect on that.
Q But there's a lot of variables that has an effect on how long somebody's body is laying, is that correct?
A Definitely.
Q Are you familiar with the Hale-Bopp incident that happened in California where all the individuals took -- committed suicide?
A Correct.
Q Are you familiar with the fact that multiple individuals were found dead?
A Yes.
Q And that their bodies were in different degrees of rigor mortis, decomposition, and all that, and there was an assumption that they all died -- or took the poison at the same

1 time?
2 A I wasn't aware of that, but go ahead.
3 Q Okay. I was just asking you, were you aware of
4 that? You weren't?
5 A No, I wasn't aware of that.
6 Q Okay. Do you have any information that tells
7 otherwise?
8 MR. SCHIECK: Your Honor, I'm gonna object. This
9 is beyond the scope of cross and --
10 MR. KEPHART: Judge, we're talking about time
11 frame.
12 MR. SCHIECK: -- relevance.
13 THE COURT: Overruled.
14 THE WITNESS: Well, I would -- if the assumption
15 was that all those people died at once, I would think there
16 would be some variation in rigor mortis and decomposition
17 because, as I've talked about before, that process does have
18 some just built in variation to it. But if -- if it's assumed that
19 they died at different times, then that would support that. So
20 that would be the only way -- they only two ways I could --
21 Q Okay. Okay. Well, my point is is that there was
22 obviously different signs with different individuals with the
23 assumption that they all died at the same time, but --
24 A And it does proceed -- it doesn't proceed -- as I said

1 before, it doesn't proceed uniformly in every dead body.
2 There is variation.
3 Q Okay. So in this particular case the defense asked
4 you in reference to the reasonable degree of medical certainty.
5 You came to a conclusion of 12 to 18 hours. And you said that
6 it's also a high degree of probability that it was between 8 to
7 24 hours?
8 A Yes.
9 Q So in all reality here, we can say that if the coroner's
10 investigator determines the time of death of 3:50, it could go
11 all the way back to 3:50 a.m. the day before?
12 A Yeah, I don't have any problem with that, yeah.
13 That would be a real high confidence interval to be in is one
14 that's that size.
15 Q Okay. You're more comfortable with that than
16 actually the 12 to 18, is that correct?
17 A It has a higher probability, in my opinion, of being
18 correct, so that would make me more comfortable, yes.
19 Q Okay. And that is based partly on the fact that
20 you're not in a controlled environment to test how the rigor
21 mortis or when the rigor mortis is gonna set in or -- is that
22 correct in this case?
23 A Well, it's just based on the fact that any biological
24 process is -- there's a huge number of variables. It's not like

1 a, you know, dropping a ping pong ball or there's not any --
2 but in a biologic process like that there's so many variables,
3 and that's why there's variation in it. And you have to -- if
4 you're gonna talk about a biologic process you have to talk
5 about that variation that's built into it.
6 Q Okay. Now Doctor, you also were asked questions
7 about whether or not you knew that there's a footprint at the
8 scene?
9 A Right.
10 Q And that's not your speciality is a CSA, it's the
11 scenes, right?
12 A That's the correct, yeah.
13 Q Okay.
14 A It wouldn't have anything to do with, you know, the
15 conclusions that I'm gonna come to based on the body.
16 Q Okay. And matter of fact, you said that there's --
17 you would expect that if somebody was involved in this type of
18 killing here what you see, that you would expect that the
19 individual may have stepped in the blood and tracked it?
20 A Well, there was gonna be a lot of blood at the scene
21 and I -- that's how I would infer that, yes.
22 Q Okay. Now if I -- if I put back up on the screen
23 Exhibit No. 14, we're talking about where you see Duran's
24 body, and you kinda drew on the screen how you saw it kind

1 of turn sideways on another photograph. I think it was this
2 photograph here, Exhibit No. 147. You -- wait, like that. You
3 drew on the screen how you perceived the body to be laying,
4 is that right?
5 A I think it was a different photograph than that one.
6 Q It was a different one?
7 A Yeah. It was a wider angle.
8 Q Oh, here. This one.
9 THE COURT: Is that 14?
10 MR. KEPHART: I'm sorry, Judge. That is 152.
11 THE COURT: 152. Okay.
12 MR. KEPHART: Okay. Your Honor --
13 THE WITNESS: Right. Based on the other previous,
14 the head was down here and the body was extended --
15 MR. KEPHART: Okay.
16 THE WITNESS: -- kinda that way.
17 BY MR. KEPHART:
18 Q And in 1 -- I mean in 14, you see how his -- how his
19 arm is -- his right arm is kinda up to his right side there?
20 A Correct.
21 Q And both legs are straight out? And you can't see
22 his left arm here, but you said that that would be consistent
23 possibly him being drug after we looked at other photographs?
24 A Right. I think the -- when you talk about the being

1 drugged possibility, the blood smear and the other stuff -- the
2 other -- in that other photograph, that was definitely
3 corroborative to me for that.
4 Q Okay. And you would probably expect to see if
5 someone stepped in the blood while they were doing this,
6 you'd probably expect to see footprints down in here if
7 someone's dragging him?
8 A One would think so, yes.
9 Q And on the other hand, were you aware from your
10 coroner's -- the coroner investigator's report, you were aware
11 that the actual person that found Duran Bailey's body was an
12 individual -- a homeless individual himself that was dumpster
13 diving?
14 A I think I recall that, yes.
15 Q It actually says that in the report.
16 A Okay.
17 Q Is that something that you would've been privy to?
18 A Yes.
19 THE COURT: Would counsel approach?
20 (Off-record bench conference from 12:02:01-12:02:32 p.m.)
21 THE CLERK: On the record.
22 THE COURT: You can go back on.
23 Ladies and gentlemen, we'll be taking our lunch
24 recess at this time and resuming at 1:15. Dr. Simms may step

1 down from the stand. At 1:15 please be in the hallway, the
2 bailiff will meet you there to return you to your seats in the
3 courtroom.
4 During the recess you're admonished not to talk or
5 converse among yourselves nor with anyone else on any
6 subject connected with this trial. And you're not to read,
7 watch, or listen to any report of or commentary on the trial or
8 any person connected with the trial by any medium of
9 information, including without limitation, newspaper, television,
10 radio, and internet. And you're not to form or express any
11 opinion on any subject connected with the trial until the case is
12 finally submitted to you.
13 Court's in recess until 1:15.
14 (Jurors are not present)
15 (Court recessed at 12:03:16 p.m. until 1:22:09 p.m.)
16 (Jurors are not present)
17 THE BAILIFF: Department 2 is back in session.
18 Please be seated.
19 THE COURT: The record shall reflect that we're
20 resuming trial outside the presence of the jury at counsel's
21 request in State versus Lobato under C177394. The defendant
22 is present, together with her three counsel, the two
23 prosecuting attorneys are present.
24 Mr. Kephart is on his feet, so I assume he has

1 information for the court.
2 MR. KEPHART: Judge, I ask that we have a hearing
3 outside the presence of the jury just to make a record.
4 After lunch when Ms. DiGiacomo and I were coming
5 back into the courthouse we rode the elevators up to the office
6 -- up this courtroom, and during the time when the elevators
7 were first opened when we entered, Ms. Lobato entered with -
8 - I believe it's this lady here in the front row. I don't know
9 who this lady is, but she entered -- they entered together then
10 the lady left and Ms. Lobato stayed in the elevator with us.
11 There was other people in the elevator.
12 At some point in time everyone left the elevator.
13 That would've left just Ms. DiGiacomo and I and Ms. Lobato in
14 the elevator. We left the elevator. I don't want to be in a
15 situation in the event that she testifies that we're accused of
16 any type if misbehavior that occurred in that elevator. So if
17 she has anything like that, I want to hear about it now. Other
18 than that, I've made my record.
19 MR. SCHIECK: Could I have the Court's indulgence
20 for a minute, Your Honor?
21 THE COURT: Yes.
22 MR. SCHIECK: There's no issue, Your Honor.
23 THE COURT: Okay. It appears that just by
24 coincidence they all ended up on the same elevator at the

1 same time.
2 MR. SCHIECK: And I, while we're at it, make a
3 record on this, Your Honor.
4 Unfortunately the elevator situation is not the best in
5 the world. We rode up --
6 THE COURT: I'll take judicial notice of that.
7 MR. SCHIECK: We rode down in the company of
8 your bailiff and the bailiff from Department 5, and there was a
9 juror from our case in the elevator with us after -- when we
10 went to lunch, and we didn't talk. There's been a couple of
11 times when we've intentionally avoided getting on elevators
12 with jurors, and we think those things are gonna happen.
13 MS. LOBATO: Yeah, I --
14 MR. SCHIECK: Just be quiet.
15 And everybody just -- we just gotta -- everybody
16 just remain silent when we're in there. That's how we've been
17 handling it, and I think that's what happened here.
18 THE COURT: Talk about the weather. Okay. Thank
19 you.
20 I'm gonna ask the bailiff to bring the jury into the
21 courtroom at this time.
22 MR. BAILIFF: Yes, Your Honor. Would you like Dr.
23 Simms on the witness stand?
24 THE COURT: Yes, Dr. Simms can return to the

1 witness stand, and when he arrives there, he may be seated.
2 MR. BAILIFF: Jury is now present.
3 (Jurors are present)
4 THE COURT: The record shall reflect that we are
5 now joined by the jury who's been returned to the courtroom
6 and seated by the bailiff.
7 Ladies and gentlemen, we're resuming in the State's
8 case in chief, Dr. Simms remains on the witness stand under
9 oath, and Mr. Kephart may resume his redirect examination.
10 MR. KEPHART: Thank you, Your Honor.
11 **REDIRECT EXAMINATION (Continued)**
12 BY MR. KEPHART:
13 Q Dr. Simms, before we left for lunch I was trying to
14 ask you some questions with regards to specifically I wanted
15 to talk to you about the carotid artery, the injury to the carotid
16 artery. You had indicated that you would expect that type of
17 injury to -- you said blood would be pumping out, and you
18 actually used the word "spray"?
19 A Correct.
20 Q Okay. Now this individual, Mr. Bailey, was 70 inches
21 tall, 5'10" tall, and where the injury was up here on his neck,
22 that -- if he was standing back in the back corner of that
23 enclosure and he received the injury to his carotid artery,
24 you'd expect to see some type of blood on the walls, would

1 you not?
2 A That would be a very high probability, yes.
3 Q And it'd be relatively higher, I mean close to his
4 height?
5 A Yes, because it'd be, you know, around neck level.
6 Q Okay. And if you weren't to see any of that on the
7 walls at that level, it'd be consistent with him being on the
8 ground and bleeding from his neck?
9 A Correct.
10 Q Okay. And that would also be consistent with
11 maybe having the blood up on his chest?
12 A Correct.
13 Q Okay. And that would also be consistent with him
14 possibly receiving the blunt force trauma to the head, which
15 would knock him down?
16 A Correct. You mean prior to the carotid artery injury?
17 Q Yes.
18 A Correct.
19 Q Okay. Now the injury to his scrotum, the stab
20 wound to his scrotum, would you characterize that as an injury
21 that would leave him vulnerable?
22 A What do you mean by vulnerable?
23 Q Well, obviously incapacitated in a sense where he
24 would be hurting?

1 A Yes.
2 Q And you said maybe even bent over or cause some
3 kind of pain there?
4 A Yes, that would be a significant injury that would
5 have his complete attention, yeah.
6 Q Okay. So when I say vulnerable, his complete
7 attention is there, vulnerable to possible attacks around?
8 A Yes.
9 Q Okay. Now you indicated in this particular case
10 there was two mechanisms of injury. We discussed the blunt
11 force trauma and the stab wounds?
12 A Correct.
13 Q Do you have an opinion as to whether or not both of
14 these injuries he received -- both types of injuries he received
15 concurrently?
16 A Well, they could be very close in time, but probably
17 the -- most likely the carotid injury was the terminal, you
18 know, lethal kind of injury 'cause it would've resulted in his
19 death fairly rapidly.
20 Q Okay. Could both of the injuries caused him to die?
21 A Either one of them independently could've caused
22 him to die, yes.
23 Q And in your autopsy report you found that he died
24 as a result of blunt force trauma with contributing factors, the

1 stab wounds?
2 A Correct.
3 Q Okay. Okay. Now you had testified about that he
4 had multiple teeth that were busted out --
5 A Correct.
6 Q -- and that you talked about at least six of them,
7 plus a fragment was provided to you by the crime scene
8 analyst?
9 A As I recall, yes.
10 Q Okay. Would that be consistent with what you
11 reviewed of his mouth without teeth?
12 A Yes. He had significant lacerations to his lips and
13 trauma to his dental -- his teeth, yes.
14 Q Okay.
15 MR. KEPHART: Court's indulgence, Your Honor.
16 Pass the witness, Your Honor. Thank you, Doctor.
17 THE COURT: Further cross.
18 MR. SCHIECK: Thank you, Your Honor.
19 **RECROSS-EXAMINATION**
20 BY MR. SCHIECK:
21 Q What was the general dental condition of Mr. Bailey,
22 do you recall, other than he was missing teeth?
23 A I didn't really make an observation as to his general
24 dental condition.

Q The -- your general dental condition could have an impact on how easily teeth are knocked out?
A Oh, definitely. If you have significant gum disease they could be very easily. Well, they could actually, at the very worst, fall out on their own, so --
Q And we've established that he was a homeless individual, it's fair to assume his dental hygiene was not the best in the world?
A That would be a reasonable assumption.
Q Okay. You'd indicated on -- I believe on cross earlier that in your opinion there wasn't enough trauma to the mouth area to indicate being struck with a bat --
A Yes.
Q -- but you'd expect to see much more trauma?
A On a probabilistic or more likely than not, I would expect to see more trauma if struck with a baseball bat that was being swung, you know, lethally.
Q You were asked some questions about a situation that occurred where there was a mass suicide. And correct me if I'm wrong, you really weren't too familiar with all the details of that?
A No.
Q Okay. And it certainly would've impacted on the information on deterioration of the bodies if they were in

different locations at the time of their death?
A Different locations, and especially if there was different temperatures. Like if one was near an air conditioning duct or one was near a heating source, those will have an effect, yeah.
Q Or some were inside and some were outside?
A Correct.
Q Some were in water and some were exposed to sunlight?
A Definitely.
Q All of those things would play factors?
A Yes.
Q Okay. And would show different time frames of decomposition?
A Yes.
Q Okay. You'd have to factor that into any generalization about that?
A Yes.
Q Okay. In this situation we're only dealing with one individual and one location, correct?
A Correct.
Q Okay. You had been asked some questions about debris found at the scene and I think were even shown a number of crime scene photographs. You weren't at the crime

scene?
A No.
Q Okay. You weren't there as each level of debris was removed from the body?
A No.
Q Okay. You weren't there as the crime scene analyst photographed each level of debris as it was removed from the body?
A No.
Q Okay. You were shown some palm leaves that appeared to be like plastic palm leaves. You don't know whether any of those were pressed against the body or not?
A No.
Q Okay. Crime scene analyst would be the person to ask those questions of?
A Yes.
Q Okay. Because they would've -- if they were there would've photographed them?
A And also observed.
Q The -- you were also asked some questions concerning blood spatter at the creme [sic] -- at the scene. You're not an expert in blood spatter analysis?
A No.
Q Okay. And didn't hold yourself out to be either?

A No, I don't.
Q Okay. You were just looking at some photographs, making some observations?
A Correct.
Q Okay. You would leave an opinion concerning the blood spatter and the meaning of that blood spatter to those that are experts in the area?
A Yes, I would.
Q And in fact, there was one place where they -- you were shown a photograph that looked like a trail of blood I think you refer to it as?
A Correct.
Q That would also be consistent with blood as it ran away from where the body was laying?
A Yes. If there was a downgrade there that would definitely be the case.
Q Okay. And if there was a downgrade and there was debris blocking the path of that, it could account for the directions that that flow took?
A Yes.
Q Okay. Those are all things the crime scene analysts would be better to ask, correct?
A That is definitely correct, yes.
Q Okay. It's really kinda asking you to speculate as to

what you're looking at?
A Especially, yeah, just based on the pictures too.
Q Can you quantify at all on how much blood would have bled out of Mr. Bailey before he got to the coroner's office? Or converse, how much was left?
A Well, in order to make your organs pale, that would be what I would mostly go on 'cause we didn't, you know, measure how much blood was left in his body. But normally -- a normal blood volume is about 5 liters, which is about 5 quarts of blood. And usually to get it pale like that you're gonna be losing at least 40 percent. So it'd be somewhere around -- you've lost at least 2 quarts -- 2 quarts of blood somewhere in that general area to be starting to be pale like that.
Q 2 quarts or 2 liters?
A Well, a quart is about equal to a liter.
Q Okay. And the photographs you saw at the crime scene, would that be generally consistent with about 2 quarts of blood?
A It was a substantial amount, and yes, I would say it's pretty close to that, yes.
Q And you were asked some more questions about time of death, and you gave us the 8 to 24 time period as being higher rate of probability?

A Correct.
Q Okay. But you would agree that the 12 to 18 time period fits within the 8 to 24 time period?
A Oh, definitely. Yes, it does.
Q In fact, fits right in the middle of that time frame?
A Correct.
Q Okay. And the 8 to 24 is really the outside limits of what we're talking about?
A I would say that's probably like a 95 percent confidence interval, so there would actually be a 5 percent chance it would actually be outside of those limits. But it, you know, I would have a much higher confidence in that interval, yes.
Q Is it sort of like a bell curve?
A To --
Q If we were thinking of it in terms of probabilities, a bell curve is the more you get toward the center the greater the chances are?
A That is correct.
Q Okay. And the 12 to 18 is sort of in the middle of that bell curve?
A Correct.
Q Okay.
MR. SCHIECK: Nothing further, Your Honor.

Thank you very much, Doctor.
THE WITNESS: Thank you.
THE COURT: Redirect.
MR. KEPHART: Just a couple, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. KEPHART:
Q Mr. Schieck asked you about the general condition of Mr. Bailey's dental. And he said that maybe -- he asked you if you would agree that maybe if an individual is homeless he would have possibly poor dental hygiene, and therefore, so probably a little less stronger, his teeth wouldn't stay in his mouth?
A Correct.
Q Okay. And then he asked about would it be consistent with being struck with a bat, and you said not a bat that you would see being swung lethally?
A Correct.
Q Okay. That leaves the possibility open that if someone, depending on the size of the person, were to depend on the lethalness of swinging the bat?
A Definitely.
Q Okay. And in this case it's highly possible that the person swinging this bat could've been a woman?
A Yes.

Q And you wouldn't see any injuries consistent with an indention of the bat if it's a weaker person swinging the bat?
A Because it wasn't swung with as much force, yes, that's correct.
Q Okay. And also you saw that the area is kinda confined, you saw that there's -- it's got three walls and a gate and then there's an overhead?
A Correct.
Q And you wouldn't expect to see maybe the bat being swung overhead?
A No. There was actually a dumpster in one of the pictures. If that was there that would actually have confined the area even much more.
Q Okay. Make it even harder to swing the bat --
A Yes.
Q -- with more lethalness?
A Yes.
Q Okay. Also we showed you some crime scene photos and asked you if you could give us an opinion. I was talking with regards to having his body being drug towards where the dumpster was at. Do you remember that testimony?
A Yes.
Q And the defense said that you'd -- basically looking

at that, you'd be speculating on whether or not he was moved or there was blood. It would be better the crime scene analysts would be looking at that?

A I think that would be a good idea, yes.

Q Okay. And do you remember answering that question, saying yeah, just based on looking at the pictures I'd be speculating?

A I don't recall exactly what I said, but I would agree with that statement if I said it, yeah.

Q Okay. Would that also hold true in your very profession as a medical examiner that, is it true -- I mean we sat here and showed you pictures that you actually looked at and said well, they're too far away, I can't really see what this is, and then I had to give you pictures that you took. Would it also be safe to say that just by pictures, could you come to the conclusions that you were able to come to in this case?

A About the crime scene?

Q About the death of the body?

A Oh. I think that since that's something I'm familiar with, and I have been asked to review cases just on picture alone, you know, I have a much greater comfort level and I think most forensic pathologists have a much greater comfort level with just -- with the pictures. Of course, they would use that in conjunction with the report and any other findings, but

there is a greater comfort level that I'd have with that.

Q And you would expect to review the autopsy report?

A Yes, you'd want that with the pictures.

Q Okay. Otherwise you'd just be what, speculating as to what you see?

A Well, yes because there -- you know, there would be maybe further dissections or something that has to be done, and that's recorded in the report. But you know, they didn't take a step by step picture -- set of pictures, so you'll have all the information if you have both.

Q Okay. And with that in regards, the pressure marks that you talk about, the pressure marks that were on Mr. Bailey's upper abdomen area, those weren't stains, were they?

A No, those are pressure marks.

Q Okay. So if someone characterized them as stains, they'd be incorrect?

A In my -- in a forensic -- my forensic opinion, yeah, that would be correct. Those are made not by some kind of pigment staining, those are from a direct pressure on that area by an object.

Q Okay. Would you agree with me, however, if someone was looking at those photographs and wasn't really that familiar with your line of work, could mistake those for stains?

A I think it would be probably really likely, actually.

MR. KEPHART: Nothing further, Your Honor.

Thank you, Doctor.

THE COURT: Recross.

MR. SCHIECK: Just one area, Your Honor.

FURTHER RECROSS EXAMINATION

BY MR. SCHIECK:

Q With regard to the baseball bat, you're not giving us an opinion whether it was a male or female to swing a baseball bat?

A No, there's no basis that I could give that opinion on, so I don't know who the assailant was.

Q Baseball players come in all different sizes?

A That is true.

Q All different sexes?

A That is true.

Q Okay. And women can hit the ball as far as men a lot of times?

A That is true.

Q It has nothing to do with being male or female?

A Not in those situations that you're talking about.

MR. SCHIECK: Thank you. Nothing further.

THE COURT: Redirect.

MR. KEPHART: Nothing further, Your Honor.

THE COURT: You may step down.

THE BAILIFF: I do have a note, Judge.

THE COURT: Oops, we're gonna have some jury questions. You may be seated.

Counsel may approach.

(Off-record bench conference from 1:43:58-1:50:15 p.m.)

THE COURT: Dr. Simms, the Court's going to read to you at this time some questions that have come from members of the jury. After the Court reads you the question then you may answer it as you would any of the questions coming from the counsel. After these questions are read and you give the answers to them, counsel will have the opportunity to followup with additional questions as they deem appropriate.

"Does decomposition and rigor mortis vary with BMI, muscle mass, weight and height?"

THE WITNESS: Yes. And BMI is the body mass index, which is -- it's a function of the height and weight, so --

THE COURT: "Is the rate of decomposition and rigor mortis effected by blood loss?"

THE WITNESS: Not to my knowledge, no.

THE COURT: "What was, or do you remember, the size of Mr. Bailey's foot or shoe size?"

THE WITNESS: I do not know that. I think the -- if

he did have shoes on or socks on that would give you, you know, I would assume that that's in the custody of the police department, so I would assume that they would have some information on that.

THE COURT: "Were there quote 'sawing' type cuts on the severed penis, or was it one single slice?"

THE WITNESS: The wound edges, and I don't think we saw any pictures that really showed it really well, but if you look at the wound edges they're very straight and clean, so I would say there was definitely not any sawing, no.

THE COURT: "You commented that the reason there may not have been an 'crushing' pattern on the smaller bones of the face by a bat could be the result of a weaker individual using the bat. Are the other injuries consistent with a 'weaker individual', including the severed penis and the depth of the neck stab or liver?"

THE WITNESS: I think the weakness -- the weaker -- or the importance of the size of the individual only relates to the blunt force injuries. They don't relate to any of the sharp force injuries. I think that the sharp force injuries could've been made by, you know, any adult. But the blunt force injury, if we are talking about a baseball bat rather than something else, then that's when it comes into play. And the injuries that were present, if somebody was swinging a

baseball bat with a full swing with lethal intent, I would expect a lot more damage than what I saw, so that's where the size of the individual would come into play.

THE COURT: "With regards to the quote 'swamp cooler' effect, is it not true that in addition to liquid/blood you need quote 'moving air', i.e. a fan to get a swamp cooler effect?"

THE WITNESS: Excellent point. I would agree with that. That would be correct.

THE COURT: Followup questions by the State? I should note for the record that these will be marked in the same order as read, Court's 31 through 36.

MR. KEPHART: None by the State, Your Honor.

THE COURT: Any by the defense?

MR. SCHIECK: No, Your Honor.

THE COURT: Okay. You may step down.

The State may call their next witness.

MR. KEPHART: Thank you, Your Honor. State would call Chris Carrington.

THE CLERK: Please come all the way forward. Remain standing and raise your right hand.

CHRISTOPHER CARRINGTON, STATE'S WITNESS, IS SWORN

THE CLERK: Thank you. Please be seated.

State your name and spell it for the record, please.

THE WITNESS: Christopher Carrington, C-H-R-I-S-T-O-P-H-E-R C-A-R-R-I-N-G-T-O-N.

THE COURT: State may proceed.

MR. KEPHART: Thank you.

DIRECT EXAMINATION

BY MR. KEPHART:

Q Mr. Carrington, I want to draw your attention back to the year of July -- I mean the year of 2001, specifically the month of July, and ask you if you recall where you were living during that month?

A In July I was in Panaca with my grandma.

Q Okay. Panaca, Nevada?

A Yes.

Q And your grandma is Diane Allen?

A Yes.

Q And that -- she lived at 625 Callaway, Panaca, Nevada?

A Yes.

Q Okay. Do you know an individual by the name of Blaise Lobato?

A Yes, I do.

Q Okay. Is she in the courtroom now?

A Yes, she is.

Q Just so we know who you're talking about, can you point to her and identify what she's wearing for the record?

A Looks like flowered blouse. She's right there.

Q Okay. There's three women there. Can you tell us--

A She's in the middle.

Q In the middle.

MR. KEPHART: I'd ask the record reflect he's identified the defendant.

THE COURT: The record shall so reflect.

MR. KEPHART: Okay.

BY MR. KEPHART:

Q Prior to July of 2001 had you met the defendant?

A Prior to, yes.

Q Okay. How long had you known her prior to that?

A I'd known her for a few years.

Q Okay. And how did you meet her?

A I'm sorry?

Q How did you meet her?

A We used to date.

Q Okay. High school?

A Yeah.

Q And your grandma's house, 625 Callaway, where is that located in reference to the defendant's house?

A It's just right down the street on the opposite side of

the road, like four or five houses down [illegible], maybe more.
Q Okay. Now do you recall police talking to you July 26th of 2001?
A Vaguely, yeah.
Q Okay. Were you actually prior to today provided you with a copy of your statement that you provided to the police?
A I received a copy of that from you guys.
Q Okay. And you also had testified in a previously hearing here in this court before, haven't you not?
A Yes.
Q And you were also provided that testimony as well?
A Yes.
Q Okay. So my question to you is now, do you remember giving a statement to the police on July 26th of 2001?
A Yes.
Q Okay. Do you remember where you were when you gave this statement?
A I was in my apartment with my mother --
Q Okay. And where was that?
A -- in Caliente.
Q Caliente?
A Yes.
Q Okay. And do you remember what they were ask --

talking to you about?
A They were asking questions about how long I've known her an like if she ever carried a knife with her or how I knew her and stuff like that.
Q Okay. And do you recall talking to them of the last time that you spoke to the defendant was prior to July 26th of 2001?
A Say that again?
Q Do you remember talking to the police about the last time that you spoke to her prior to July 26th of 2001?
A Yes.
Q What did you tell the police?
A They asked me if I'd spoke to her, seen her like 7 or 8 days prior to.
Q And that's what you told her -- told them?
A I said yeah, it was around about 7 or 8 days before then.
Q Well, let -- now let's get this straight. They asked you if you spoke to him [sic] 7 or 8 days, or did they ask you when the last time it was and you told them 7 or 8 days?
A They asked if it had been 7 or 8 days prior to.
MR. KEPHART: Your Honor, I need to have this marked.
THE COURT: You may.

MR. KEPHART: May I approach, Your Honor?
THE COURT: You may.
BY MR. KEPHART:
Q Just for purposes of identification, I'm showing you what has been marked as State's Proposed Exhibit 116.
THE CLERK: 216.
MR. KEPHART: 216, I'm sorry.
BY MR. KEPHART:
Q Can you take a look at that and just tell me if you recognize that as being the statement that you gave to the police?
A Yeah, it looks the same as the one that I have.
Q Okay. Can you take a look at page 3, at the top of page 3? Read that to yourself, then I'm gonna ask you again, I'm gonna ask you where it is where the police told you if you'd see her 7 or 8 days ago?
A It says on here that I said that --
Q Okay.
A -- 7 or 8 days.
Q Can you tell me where the police used those words, telling you that you -- had you seen, or asked you if you'd seen her 7 or 8 days ago?
A I don't see that on here.
Q Okay. You believe, though, that they told you those

dates -- they used those words?
A I'm not sure exactly how it went.
Q Okay.
A But I'm -- it was like 7 or 8 days ago.
Q All right. So prior to July 26th of 2001 you had spoke to the defendant approximately 7 or 8 days before that?
A Approximately, yeah.
Q And where were you when you spoke to her?
A I believe I was in front of the Swallows Drug Store.
Q And where is that?
A In Caliente, Nevada.
Q Okay. And do you know why you were talking to her that day?
A She had just drove by with her friend, I believe, and she'd stopped. She was back in town, that was like my first time seeing her.
Q Okay. So she was back in town from where?
A From Vegas.
Q Okay. So you were a little surprised?
A Yeah, 'cause I wasn't expecting her that earlier.
Q To be --
A 'Cause last time I'd talked to her before that she was coming back down to Vegas.
Q Okay.

A I wasn't sure if she was gonna stay down here or whatnot.
Q Okay. So now you're telling us now, and matter of fact you testified before that you had actually talked to her on a previous occasion prior to what you told the police?
A Before the 7 or 8 days?
Q Yes.
A Yes.
Q Okay. Now I want you to -- I want you -- I'm gonna ask you this. When they spoke to you on the 26th of July of 2001, did you know what they were talking about? Did you know there was something that had occurred with Blaise?
A No, I wasn't.
Q Okay. Did you tell the police that you had actually read the -- read a newspaper article about it?
A Yeah, I believe that's what I said in here --
Q Okay.
A -- I read a paper article about it.
Q Okay. So you knew -- you knew somewhat about the fact that she had been arrested?
A I don't believe I read a paper article about it, though. It was just stuff going around town --
Q Okay.
A -- that I'd heard.

Q Okay. So you heard some information from around town?
A Yeah.
Q Matter of fact, did you have a conversation with the defendant's mother?
A Briefly, not really a conversation.
Q Was that before the police talked to you or after the police talked to you?
A I believe that was after the police had talked to me.
Q Okay. But you knew that she had been arrested prior to July 26th of 2001, is that right --
A Yes.
Q -- before you talked to the police?
A Yes.
Q And you knew what she was arrested for?
A Yes.
Q Okay. Now on page 7 of your statement, do you recall the police asking you if there was anything else that you could talk to them about that would help them in their investigations? Do you see that? It's like the fourth sentence down, starts out with a Q?
A Mm-hmm.
Q Do you remember that?
A Yes.

Q And you told them no --
A Yes.
Q -- is that right? Okay.
A Mm-hmm.
Q Now let me go with just the statements here. You said that the police were asking you about whether or not the defendant had -- you'd seen her with a knife?
A Mm-hmm.
Q Had you ever -- is that a yes?
A Yes.
Q Okay. The -- she's typing this down and we can't take uh-huhs and uh-uhs.
A I understand.
Q Okay. Okay?
A Yes.
Q All right. Did you tell the police whether or not you knew that she carried a knife?
A I've seen her a few times, like maybe once or so, with a knife before.
Q Okay.
A I'm not sure if she carried it on her all the time or whatnot, though.
Q Okay. They asked you about how she got back to -- from Las Vegas. Do you remember telling the police what she

told you?
A Yeah, but that was a mistake in my last testifying.
Q Okay. But what did you tell the police she told you?
A Last time I said that she had drove in her red car back.
Q Okay. And you actually went so far as describing as a Fiero?
A Yeah, they asked me what kind it was and I knew what kind of a car she drove, so yeah.
Q Okay. But you're saying that that was a mistake?
A Yes, it was.
Q Okay. Now you're telling us now that you saw her on a previous occasion prior to you talking to the police on the 26th where you said that you saw her 7 or 8 days prior, is that right?
A Yes.
Q Do you remember what days it was that you saw her?
A I initially seen her on the 3rd of July --
Q Okay.
A -- in Caliente.
Q Okay.
A And then I seen her again back when I was in Panaca at my grandma's on the 5th --

Q Okay.
A -- through the 8th.
Q Okay. And that's what you said before, right?
A Yes.
Q Okay. You say through the 8th?
A Yes.
Q Did you see her on the 5th?
A Yes.
Q Did you see her on the 6th?
A Yes.
Q Did you see her on the 7th?
A Yes.
Q Did you see her on the 8th?
A Yes.
Q Where was she?
A At her house. We were around town in Panaca, we were out in Caliente just for like a few hours each day or whatnot.
Q Okay.
A There was a few times I went to her house and I worked out and --
Q Okay. But you never told the police anything like that, you would agree with me?
A Yeah.

Q Okay. And the first time you said that was the last time you came into this courtroom, is that right?
A Yeah.
Q Okay. Let me ask you this. On the 5th, do you recall the defendant and her mother fighting?
A No, I don't.
Q You don't? Do you remember telling your grandmother, Diane Allen, that she was fighting with her mom?
A No, I don't.
Q Did you go home and come home from her house and she called you, the defendant, and you went back up to see her on the 5th?
A I'm not sure if it was on the 5th, but I vaguely remember something like that happening where I left from her house to my grandma's --
Q And did you tell --
A -- and then went back up.
Q Did you tell your grandma that you left because her and her mom were fighting?
A No, I don't recall that.
Q Okay. On the 6th did you -- were you at her house?
A Yes.
Q Did you leave her house and go home and tell your

grandma that you're not going back because they're fighting?
A No, I don't recall that.
Q Do you remember telling your grandma they were fighting about the fact that she was going back to Las Vegas?
A No.
Q Okay. And you're saying it's your testimony that you saw her on the 7th and the 8th?
A Yes.
Q Okay. And do you remember your -- your grandpa having to go to the hospital?
A No, I don't really remember that.
Q Okay. Your grandpa had -- you don't remember your grandpa having heatstroke and --
A A heatstroke.
Q -- was actually taken to the hospital in an ambulance?
A Mm-hmm.
Q Do you remember that?
A I don't really remember that, no.
Q Okay. You don't remember driving your mom -- I mean your grandma to the hospital because her husband was just taken to the hospital in an ambulance?
A No, I don't remember that.
Q Okay. Do you remember why she came back or

what she told you why she came back from Vegas so soon?
A Blaise?
Q Yes.
A Because her bodyguard pulled a gun on her.
Q She had an issue with her bodyguard?
A Yes.
Q Okay. Now when you -- I just asked you if you had a conversation with the defendant's mother, Rebecca. You said it wasn't a conversation, but she did contact you in reference to this case, didn't she?
A Yes, I was at my grandmother's out in the yard and she had pulled up and she had told me that she had phone records --
MR. SCHIECK: Objection, hearsay to what she told him.
THE COURT: Sustained.
BY MR. KEPHART:
Q With reference to what she said, not telling us what she said, did that help you remember the dates of 7/5, 7/6, 7/7, and 7/8, more specifically 7/8?
A No. I just basically like brushed her off because I'd already gone over everything with my mom.
Q Okay. And you -- so you were saying that you never talked to Ms. Lobato?

A No.
Q Not at all?
A Not about the trial or nothing, no.
Q She didn't say nothing to you at all about this trial?
A She just told me that one little bit about she has--
MS. ZALKIN: Objection, hearsay.
THE COURT: Sustained.
MR. KEPHART: Okay.
BY MR. KEPHART:
Q And you're saying it was not about the trial -- I mean not about the case?
A It was just about that one day.
Q And it's your testimony today that that didn't help you remember the dates of 7/5, 7/6, 7/7, or 7/8?
A No.
Q Okay. Now once again, I want you to go back to your statement.
A Mm-hmm.
Q You said that you -- let's do it this way. Panaca's a small town?
A Yes.
Q Everyone talking?
A Everybody.
Q Everybody talking, right?

A They know what you did before you even do it.
Q Okay. And so in this particular case it's fair to say that you heard and you knew what the defendant was arrested for by the time you talked to the police?
A By the time I talked to the police, no. It was shortly after that.
Q So within 6 days of her arrest the word didn't get around? You just said you know it before the day it happens.
A I didn't know before the day it happened.
Q You just said that. Up there everyone talks so much that you would know before anything even happens?
A I didn't know that, no.
Q My question to you, Chris, is by the time you talked to the police is it your testimony that you did not know what she was arrested for?
A Yes.
Q Well, on the last page, page 7, you go down one, two, three questions. It says did you ultimately read about Blaise being arrested and see it on the news, and your answer is I read about it?
A I just stated earlier that I didn't really read about it, I just heard about it from around the town.
Q Okay. So this is wrong then?
A Yes, sir.

Q This is one of the mistakes --
A Yes.
Q -- that was part of that statement? Okay. Is it also safe to say then also one of the mistakes is that when the officers asked you if you could tell them anything else that would help their investigation about this incident, the dates of 7/5, 7/6, 7/7 and 7/8 were mistakenly left out of your conversation with the officers?
A Yes.
Q Also you -- you've known her for quite some time?
A Yes.
THE COURT: Record shall reflect he pointed to the defendant.
BY MR. KEPHART:
Q Have you ever been with her to see her actually punch somebody?
A Yes.
Q Knock 'em out?
A Yeah.
Q How many occasions?
A Just once.
Q Okay. Was the person she punched a man?
A Yeah.
Q Knocked him out, knocked him out cold?

A Yeah, on his butt.
Q That happened in Panaca?
A I believe it was in Caliente.
Q Okay.
MR. KEPHART: Pass the witness, Your Honor.
THE COURT: Cross.

CROSS-EXAMINATION

BY MS. GREENBERGER:
Q Good afternoon.
A Good afternoon.
Q Do you remember when you first met Blaise?
A Yeah, vaguely.
Q Give us your best recollection.
A When I first met her? I believe it was in Dixie's class, I'm not sure. I went there with my brother when he was going to school with her.
Q Would you have been approximately 14 years old around that time?
A Yeah, approximately. I was in like 10th grade, before -- right before 10th grade started.
Q Dixie's class, would that have been Dixie Tienken, the teacher --
A Yes.
Q -- that lives in Panaca?

A Yes.
Q Would that have been in 1998, approximately?
A Approximately.
Q Did you go through schooling with Dixie to completion?
A Yes.
Q Was Blaise in your class that entire time?
A No.
Q Was she a year ahead of you or so?
A Yeah, I do believe so.
Q Were you born and raised in Panaca?
A No, I was not.
Q Where were you born?
A I was born in California and I was raised here and little bits of everywhere else.
Q Were you living in the Caliente/Panaca area during your high school years?
A I lived there my sophomore year and I moved away my junior year and I moved back my senior year.
Q And does your mom live in that area as well?
A Yeah, she lives in Caliente.
Q And your grandma, Diane Allen, lived in Panaca?
A Yes.
MS. GREENBERGER: I want to just grab one thing.

BY MS. GREENBERGER:
Q Were you living in Panaca or Caliente the summer of July 2001, do you recall?
A I had just moved back.
Q Where had you been prior to moving back?
A In Cedar City.
Q Do you remember what time period you came back to the Panaca/Caliente area?
A I'm not sure if it was the end of June or the beginning of July.
Q And that would be 2001?
A Yes.
MS. GREENBERGER: May I approach, Your Honor?
THE COURT: Yes.
BY MS. GREENBERGER:
Q I'm going to give you a pen, and if you could put your initials on this board -- you can step down from the stand -- when it was that you first remember seeing Blaise in July 2001? And you may sit down for a moment.
THE CLERK: I didn't hear that answer.
THE WITNESS: It was on the 2nd.
BY MS. GREENBERGER:
Q Do you recall where you saw her at that time?
A It was at the Chevron station in Caliente. I'm not

sure, it might've been the Shell station at that time.
Q Do you remember, was she alone or with someone?
A I don't remember.
Q You remember that was the first time you saw her that summer?
A Yes.
Q Where were you living at the time you saw her?
A I think I was still staying with my friend at that time in Caliente, and then it was after that I moved in with my grandma after the 4th of July.
Q Do you recall talking with her when you first saw her?
A Yeah.
Q How long did you talk with her?
A Just for a minute or so.
Q How do you remember -- that's a long time ago -- that particular date of July 2nd?
A Because I was with my brother, my brother just got into town, and we were going to fill up and I ran into a lot of people that I hadn't seen for a long time there at the Shell station, and she was one of the people that I ran into.
Q Did you ever look at a calendar to refresh your recollection on terms of the date that you actually first saw her that summer?

A After all of this had happened and all the dates were starting to get real serious and they're twisting them around, after that my mother and I sat down, we'd looked at it, at a calendar.
Q Who was twisting dates around?
A I don't know about twisting, but the -- is that the defense or the prosecution?
Q The prosecution?
A Yeah, from my last testimony.
Q And you wanted to be clear in your mind when you came into the court of law that you knew exactly what date you were talking about?
A Yeah.
Q Did there come a time after July 2, 2001 that you went to stay with your grandmother in Panaca?
A I'm sorry, say that again?
Q Did there some a time after July 2, 2001 --
A Mm-hmm.
Q -- that you went to stay with your grandmother in Panaca?
A Yes.
Q What time period was that?
A I'm not sure if it was like the 4th or the 5th, 'cause I know my mom wasn't having me staying with my friends

1 anymore after that, so I went and stayed in Panaca with my
2 grandma.
3 Q Do you remember when you next saw Blaise in
4 Panaca after July 2, 2001?
5 A I believe it was on the 5th.
6 Q Can you mark your initials on the calendar? Where
7 was she staying, if you know, when you saw her on July 5th?
8 A At her mom and dad's house.
9 Q Where was that?
10 A It was just down the street from my grandmother's
11 house.
12 Q In Panaca?
13 A Yeah.
14 Q Who was staying there at the house, if you know?
15 A Her little sister.
16 Q What is her name?
17 A I believe her name's Ashley.
18 Q Okay.
19 A And her mom and her dad.
20 Q All right. And do you remember -- did you see her
21 in passing or did you spend time with her on July 5th?
22 A I actually spent time with her.
23 Q Do you remember what you did?
24 A We were just hanging out, going over like the last

1 year previous 'cause I was gone. We were just catching up.
2 Q She was filling you in on details?
3 A Yeah. And at that time I started getting into
4 working out, since she had a Bowflex at her house and
5 punching bags, so I'd work out over there as well.
6 Q Can you speak up a little bit just when you're talking
7 so we can all hear?
8 A Sorry.
9 Q I know I don't speak that loud myself. So you were
10 working out on a Bowflex in her --
11 A Garage.
12 Q -- garage?
13 A Yeah.
14 Q Do you remember seeing her on -- then when's the
15 next day you remember seeing her?
16 A On the 6th, the following day.
17 Q Can you mark your initials on that as well? And
18 while you're up there, when do you remember seeing her after
19 the 6th?
20 A The 7th.
21 Q Can you mark your initials up there? And after the
22 7th, when do you remember seeing her?
23 A On the 8th.
24 Q Can you mark your initials up there? You can come

1 sit down for a minute. So how do you remember that you saw
2 her the 5th, the 6th, the 7th, and the 8th, consecutive days in a
3 row?
4 A Because I'd seen her consecutively since I went to
5 Panaca until she had left and then I left and went up to the
6 mountains to cut wood with my friends.
7 Q Were you staying with your grandmother a few
8 houses down on the 5th, the 6th, 7th, and 8th in Panaca?
9 A Yes.
10 Q Do you -- can you give us some more detail about
11 what you recall doing with her on the 6th and 7th and 8th?
12 A I don't really remember what we did. I know we
13 just drove around. We hung out at her house quite a bit and
14 just talked. Didn't really do too much.
15 Q Do you remember spending time with her in the
16 days or the evenings or both?
17 A It was both.
18 Q Was it just the two of you on those days, or were
19 other people around?
20 A There was other people around.
21 Q Can you identify who?
22 A I remember we seen her aunt, I believe it was, on
23 one of those days. She came over to the house.
24 Q Would that have been on July 8th, a Sunday? Would

1 that have been Shayne Kraft?
2 A She was the pregnant lady, her aunt, yeah.
3 Q do you remember what you did on the 8th of July?
4 Do you remember spending time at her house? That would've
5 been--
6 A Yeah, we were hanging out at her house. I worked
7 out for a little bit. I believe that day I went back to my
8 grandmother's. I believe I had to mow her yard or the
9 neighbor's yard or something to that, and then I'd gone back
10 later on that night and we hung out for a little while until she
11 had to pack and then she sent me to my house 'cause I was a
12 distraction to her.
13 Q Why was she packing?
14 A She was going to Vegas.
15 Q And you recall this was the Sunday night, July 8th?
16 A Yes.
17 Q Are you certain of that?
18 A Yes.
19 Q This was in Panaca?
20 A Yes.
21 Q This was at her parent's house?
22 A Yes.
23 Q Do you remember seeing her the morning of July
24 8th?

A In the early morning?
Q When do you remember seeing her that day?
A I remember seeing her like in the afternoon and then later that night.
Q When is the next time you remember seeing her in Panaca?
A In Panaca?
Q Or Caliente?
A The last time -- or the next time following that I seen her was in Caliente there at the Swallows Drug Store.
Q And do you recall when that was?
A I believe that was the 13th or so.
Q Is that the 7 or 8 days you were referring to --
A Yes, it was.
Q -- when the police came to talk with you?
A Yes.
Q Do you remember when the police came to talk with you, talking with them before they taped your statement?
A A little bit, yes.
Q How old were you at the time? Were you 17 years old?
A I believe that was right before I started my senior year, so yeah, around there.
Q Had you ever been interviewed by the police before?

A No.
Q Were you nervous?
A Yes, I was.
Q Did the police tell you -- or did the police ask you when the last time that you had seen Blaise was?
A Yes, they did.
Q When you answered the 13th you were referring to the last --
MR. KEPHART: Judge, I'm gonna object. She -- he never answered the 13th.
THE WITNESS: I never answered the 13th.
BY MS. GREENBERGER:
Q When you said -- excuse me, I'll rephrase it. When you said 7 or 8 days prior, were you referring to the last time you had seen her?
A Yes, I had just barely recalled it being the 13th the other night when my wife and I were going back over all of this, knowing that I was coming in here today.
Q When you testified at the last proceeding, you clarified in detail that you had been Blaise Lobato on the 2nd of July, correct?
A Yes.
Q And then you also testified you had seen her on the 5th, 6th, 7th, and 8th of July, is that correct?

A Yes.
Q So every time you've testified in a court of law about your recollection and when asked specific questions you've been completely consistent, correct?
A Yes.
Q Do you remember on the 8th of July when you were at Blaise's house, who else was present besides her aunt? For example, do you remember seeing her sister, Ashley?
A Yes, I do believe so. Her mother was there too, and her dad I'd like to say.
Q You recall that?
A Yeah.
Q Do you recall anyone else being present?
A Just seeing her aunt, but that was it.
Q Do you recall why her aunt had come over?
A I think it had something to do with her medication or something 'cause she was poisoned or something. I'm not real sure. She was bringing something over.
Q Do you know if she was getting Tiger Balm for her husband's neck?
MR. KEPHART: Your Honor, I'm gonna object. That's not what he said, he said poison. I don't see what Tiger Balm has anything to do with poison.
THE WITNESS: I'm not sure.

THE COURT: Overruled.
BY MS. GREENBERGER:
Q If you know. That is if you know?
A I'm not sure.
Q Can you describe the circumstances when you saw Blaise punch someone? First of all, when did that happen?
A It was back like when I had first moved to Caliente. I wasn't really living there yet, I was just there visiting my mother.
Q What year would that have been, approximately?
A Oh, I'm not sure. I think it was like my freshman year, so a year previously to me moving there, so like '97.
Q All right. And what were the circumstances, if you remember?
A I believe there was just like a party going on, and he had -- he done something, I don't know. It was out on the balcony and she turned around and punched him.
Q She didn't render him unconscious, did she?
A Knocked him on his butt, yeah.
Q Did she -- was he unconscious?
A I wasn't right next to him to see if he was knocked out cold, but I just seen him fall on his butt.
Q Did you see him get back up?
A Yeah, he got back up.

Q Did you see what had happened prior to her hitting him?
A No, I didn't.
Q Sometime after you were interviewed by the police you sat down with your mother to look at a calendar so you could identify the last dates you had seen Blaise?
A Yes.
Q And that was prior to your testimony from the last proceeding?
A Yes.
Q When Blaise's step-mother came to talk with you, you already knew in your mind the last dates you had seen her, is that true?
A Yeah, that's why I kinda just brushed her off.
Q So you disregarded any conversation she had with you?
A Yeah.
Q Why was that?
A Because at that point I knew what was going on was pretty serious and for me to be talking to everybody about what was going on and it wouldn't be good.
Q You didn't want to talk to anyone 'cause you didn't want to have your testimony influenced one way or another?
A Yeah, 'cause everybody was basically telling me

different things, and so I just stuck with my mom and we went over what happened and where I was at and --
Q No one has influenced your testimony here today? This is what you remember?
A Yes.
Q When you spoke about the vehicle you saw Blaise driving, what time period was it you were referencing?
A I'm sorry?
Q Did you see Blaise driving a red vehicle back to Panaca at any time?
A At any time? I've seen --
Q At any time in the July 2001 area?
A I seen her when -- I'm not sure if she was driving her car when I seen her on the 2nd or not. But I know I seen her car parked in front of her mom's house after that every time I was out in Panaca at her house.
Q And it was parked directly in front of her house?
A Yeah.
Q Did you ever see the car move?
A No, we drove her mom's car.
Q Do you know if the car was having any problems, in terms of --
A Not to my recollection, no.
Q When the police asked you about if you had seen

her driving a red Fiero, were you referring to the July 2, 2001 date?
A I'm sorry, say that again?
Q When the police were talking to you about when you saw her driving a red Fiero, were you referring to the July 2nd date?
A I believe so.
Q You remember the other person, or one of the other people you saw on July 8, 2001 at Blaise's house was a pregnant woman?
A Yes.
MS. GREENBERGER: Court's indulgence.
THE COURT: Yes.
MS. GREENBERGER: Nothing further.
THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. KEPHART:
Q Mr. Carrington, you just wrote on the board the dates of the 2nd of July, 2001, then you skipped the 3rd and the 4th, then you wrote the 5th, 6th, 7th, and 8th, is that correct?
A I'm sorry, I meant for the 3rd --
Q Okay.
A -- not the 2nd.
Q Okay. So when the defense attorney's asking you

dates and you wrote down the 2nd, you said I'm sure it was the 2nd because my brother came back and I remember him coming here, and I've been consistent all along when I've told dates, now it's the 3rd?
A I just wrote it up there wrong. I was meaning to write onto the 3rd.
Q Okay. So every time the defense attorney asked you the 2nd, you meant the 3rd?
A Yes.
Q Okay. So we can mark that one out and probably put down the 3rd then?
A Yes.
Q Okay. And you also said that you were positive prior to your last testimony about these dates because you sat down with your mom and you spoke to your mom about those dates, is that right?
A Yes.
Q Okay. Do you remember testifying in a previous hearing as to the fact that the only time you were positive about the date was after the defendant's step-mother, Rebecca Lobato, discussed the day of July the 8th with you, do you remember that?
A That was a mistake in my last testimony.
Q Okay. Just so we know what we're talking about,

I'm gonna show you that, okay?
A I remember reading that, yes.
Q Let me read you it and ask you if you remember this. It says here, question, page 151, it's line 5. Okay. Well, actually you'll start at the top.
"Did there come a point in time after or maybe even before -- no, after you spoke to the police on July 26th that you spoke with the defendant's mother, Rebecca Lobato?"
Do you remember what answer you gave?
A No, I don't.
Q You said yes in your previous testimony, and this testimony took place in May of 2002, do you remember that?
MS. GREENBERGER: Your Honor, I'm gonna object to the leading form of the question. He's a State witness.
THE COURT: Sustained.
BY MR. KEPHART:
Q Question to you then. Did you also tell -- did you also have -- remember this question. "On that date when you spoke to the defendant's mother, Rebecca Lobato, did you discuss the day of the 8th of July?" Do you remember the answer?
A Yes.
Q What's the answer?
A Yes.

Q Yes.
A She had told me about the 8th of July, yes.
Q Okay. Do you remember this question? "That's the day you figured out that you were at Kirsten's on the 8th of July, is that correct?" Do you remember your answer?
A That was wrong. Yes, I do remember what I read in there.
Q Okay. You said yeah to that question, didn't you?
A That's what I was saying --
Q Okay.
A -- that my words were getting twisted around.
Q The -- your words were getting twisted around?
A Yes.
Q Was that a way of twisting your words around, those questions that were just asked?
A Well, I was scared, and you kept circling around, so I just fell into that.
Q Okay. The next question, I guess circling around, is in the same area.
MS. GREENBERGER: Objection, argumentative and leading.
THE COURT: The Court will sustain the objection as to argumentative and Mr. Kephart may rephrase.
///

BY MR. KEPHART:
Q The next question, do you remember this? I said "Okay. And you got that information from the defendant's mother?" Do you remember your answer?
A I remember reading that, yes.
Q What did you say?
A I said yes.
Q Okay. And now it's your testimony that you remember sitting down with your mom and discussing these dates?
A Yes.
Q And that's how you remember this?
A That's how it was last time too.
Q Tell me what day it was that you sat down with your mom and you discussed these dates?
A I don't remember what day it was for sure. I do believe it was shortly after the detectives came and interviewed me.
Q Okay. On the 26th?
A Yes.
Q Okay. And on the 26th you said that you remember seeing her about 7 or 8 days earlier?
A Yes.
Q Okay. Just so we know what day we're talking

about, can you go down to the board there, right here --
MR. KEPHART: Can I use the blue one? Can I use this black one?
BY MR. KEPHART:
Q And mark on the board -- count back from the 26th of July and mark on there when it was that you told the police 7 or 8 days earlier you saw the defendant?
A It was either the 18th of 19th.
Q It's not working?
MR. KEPHART: Judge, I want the record to reflect that came from the clerk.
THE COURT: The record shall so reflect.
MR. KEPHART: Can I have another one?
BY MR. KEPHART:
Q Okay. So you count back 7 or 8 days from the 26th.
A [unintelligible].
Q Okay. So that's 1, 2, 3, 4, 5, 6, 7, or 8. Okay. Why don't you put your initials underneath there, C.C. Okay. All right. Now but you testified on cross-examination that it was the 13th?
A Yes.
Q Why don't you put your initials there as well. And that you remember because you sat down with your wife --
A My wife.

Q -- prior to coming into today?
A As we were reading over my testimony that I gave and I realized that was another mistake in my testimony from before.
Q Okay.
MS. GREENBERGER: Objection, Your Honor, it's a leading question.
THE COURT: Overruled.
BY MR. KEPHART:
Q Can you tell me how it was that you remember the 13th?
A 'Cause I was sitting down, it was just shortly after, that's why I was surprised she came back so early 'cause it was just over the weekend that she -- I'd seen her that following day, and that was the day that I came back from cutting wood, and that's how I know that that was the day that I had seen her.
Q Okay. Now Mr. Carrington, you said that you've -- well, let me ask you this. Have you read anything about this case?
A Since? No.
Q You haven't read about the 13th? 13th doesn't stick out in your mind in anything, other than you've just now said that that's the date that you recall?

A No.
MS. GREENBERGER: Objection, asked and answered.
THE COURT: Overruled.
BY MR. KEPHART:
Q Your answer is no?
A No.
Q So you've never read anything about the fact that maybe her father went down and picked her up on the 13th?
A No, I haven't.
MS. GREENBERGER: Objection, asked and answered.
THE COURT: Overruled.
BY MR. KEPHART:
Q Now on the 5th, when you said that you saw the defendant, can you tell me how she -- you said that you were working out with a Bowflex?
A With her dad's Bowflex, yes.
Q Okay. And was she working out with you?
A No.
Q What was she doing?
A Just talking with me.
Q Just normal?
A Yeah.

Q And when was it that you saw her? What time of day was it?
A That was later in the afternoon, I do believe.
Q Okay. Do you remember where she was earlier that day?
A No, I wasn't with her earlier.
Q You don't remember telling us before, testimony before what she was doing? Okay. You read it.
MS. GREENBERGER: Objection, argumentative and leading.
BY MR. KEPHART:
Q Did you -- did you --
THE COURT: That's actually not a question. Sustained.
BY MR. KEPHART:
Q Did you read in your statement what you testified about what she was doing before, what you said she was doing?
A I don't remember now.
Q Okay. If I was to tell you that you testified that she just had gotten back from the doctor, would that refresh your memory?
A That sounds familiar, yes.
Q Okay. How was she acting on the 6th?

A She was normal.
Q Normal? What were you doing on the 6th?
A Just hanging out, talking.
Q Where was her mom and dad?
A Her mom was at the house and I'm not sure where her dad was.
Q Okay. And you testimony is is that you never told anybody that her and her mom were fighting?
A I don't remember that, no.
Q What was she doing on the 7th?
A We were just hanging out again.
Q How was she acting?
A She was normal.
Q And what do you characterize as normal?
A Just normal behavior, hanging out. I mean she wasn't schizophrenic or anything like that, if that's what you're asking.
Q No, I didn't ask that.
A Just normal, we were just sitting, talking.
Q Were you guys drinking?
A No.
Q Did you eat lunch there?
A No.
Q How long did you stay there?

A Just for a few hours, maybe.
Q How long is a few hours?
A Like two, maybe three.
Q When did you get there?
A I'm not real sure.
Q You don't know if it was in the morning, the afternoon, the evening?
A I'm not real sure. I believe it was probably like right before afternoon --
Q Okay.
A -- still in the morning --
Q So you don't remember, do you?
A -- 'cause it was shortly after I was done doing all my yard work around Panaca that I go over and hang out with her.
Q On the 7th?
A It depended on when I was done doing my work.
Q On the 7th?
A For that whole week.
Q The 5th, 6th, 7th?
A the 5th, 6th, 7th. That's why I was down at Panaca. I was staying with my grandma and I was doing yard work for everybody else around Panaca as well.
Q Okay. So when would it be that you'd go over

there?
A When I was done and had time.
Q When would you be done?
A Depending on how much work I had for the day.
Q Okay. Is it possible that you -- that you remember seeing her on the 5th and the 6th but you didn't see her on the 7th or 8th? Is it a possibility?
A I seen her on the 7th and 8th.
Q What's that?
A I said I seen her on the 7th and 8th.
Q Okay. What did you do with her on the 8th?
A Same thing that we did all those other dates, we just hung out --
Q Yard work first?
A Mm-hmm.
Q Working out?
THE COURT: I'm not hearing an answer.
THE WITNESS: Yes.
BY MR. KEPHART:
Q Yes? Okay. You didn't go to church or anything?
A No.
Q Okay. How late were you with her on the 8th?
A It was late at night when I left.
Q How late's late?

A I would say like 10:30, 11 o'clock or so.
Q You remember testifying before that it was midnight?
A It was around about that time.
Q Okay. Did you have lunch there on those days?
A No.
Q Who was there on the 5th? Who was there when you were there, besides her mom?
A Her sister.
Q Anyone else?
A And her dad too.
Q Okay. On this 6th?
A It was just her mom and her dad, I believe.
Q Okay.
A Her sister was in and out playing with friends.
Q On the 7th?
A Basically the same.
Q Okay. No one else on those days you were this Blaise was there other than her mom, her dad, and her sister?
A Yes, that I remember.
Q Okay. The 7th? Same?
A The same.
Q And the 8th?
A The same, besides her aunt.

Q Her aunt came?
A Yeah.
Q What day?
A That's the pregnant lady. The 8th.
Q And that's the date that you talked to Ms. Lobato about?
A That's the date that she said she had phone records or whatever.
Q Okay.
A I didn't talk to her about it, no.
Q So your testimony before is a mistake?
A Yes.
Q Your statement to the police is a mistake?
A Parts of it, yes.
Q And you made a mistake here because you meant the 3rd and not the 2nd --
A Yeah.
Q -- is that right? Okay. What did you do for the 4th of July?
A I was in Caliente.
Q What was going on in Caliente?
A They have fireworks at the park.
Q Did you see her there on the 4th?
A I don't believe so.

MR. KEPHART: Nothing furthe...

RECROSS EXAMINATION

BY MS. GREENBERGER:

Q Just so the calendar is accurate, can you cross out July 2nd and put July 3rd if that is the actual date you recall seeing her?

A Yes.

Q Thank you. Isn't it true that when you last testified you stated in open court that you spoke to your mom before you had any interaction from Blaise's step-mother?

A Yes.

Q That is what you testified to previously?

A Yes.

Q That is what you're testifying to today?

A Yes.

Q Nothing has changed?

A No.

Q Do you remember seeing Clint Hohman with Ashley Lobato, Blaise's sister, during the first week of July?

A That's who her sister was hanging out with while I was down there, yeah.

Q So you remember seeing him at the house during those time periods?

A I'm not sure if he came over to the house or not, but

I know that's who her little sister was going out and playing with.

Q Did you see Blaise's vehicle parked in front of her house each time you went over to her house?

A Yes.

Q Did the vehicle seem to be in the same position?

A Yes.

Q Did you ever see the vehicle move?

A No.

Q Do you feel that the prosecution in this case has badgered you, even today?

MR. KEPHART: Your Honor, I'm gonna object as to his feelings.

THE COURT: The question is argumentative and the Court sustains the objection.

BY S. GREENBERGER:

Q Do you feel that the prosecution has been trying to twist your words and dates?

MR. KEPHART: Your Honor, I'm gonna object, the same objection. To his feelings? And it's certainly argumentative.

MS. GREENBERGER: I can rephrase it.

BY MS. GREENBERGER:

Q Have the -- has the prosecution been trying to twist

your words?

A I feel so, yes.

MS. GREENBERGER: I have nothing further.

THE COURT: Redirect.

MR. KEPHART: One question if I could, Judge.

FURTHER REDIRECT EXAMINATION

BY MR. KEPHART:

Q Mr. Carrington, do you remember testifying before about why you were down here testifying and who you were testifying for?

A Say that again?

Q Did you tell us before why you were down here testifying, who you were testifying for?

A I was down here testifying for Blaise I believe I said.

Q Okay. And that's still your feeling today?

A My feeling today is I'm here testifying in court.

Q Okay. And you feel you're testifying for Blaise? You said that before.

A I came to testify for you guys today. That's who I was subpoenaed for. That's how I feel I came into court today.

Q Well, you know, last time you were subpoenaed by us as well, weren't you?

A I don't remember seeing that. I thought I was

subpoenaed by them last time.

Q If I was to tell you that you were called by the State of Nevada and I'm the one that questioned you, would you accept that?

A If that's what that says.

Q That's your testimony?

A Okay.

Q And I asked you then, like I asked you today, if you remember what you told us why you were down here, and you said you were down here testifying for Blaise?

A Yes.

Q Is that still your testimony?

A My testimony is I came in to testify in court today for you guys. That's how I felt today.

MR. KEPHART: Nothing further, Your Honor.

MS. GREENBERGER: Nothing further, Your Honor.

THE COURT: You may step down from the stand. Oh, you may not step down from the stand.

Ladies and gentlemen of the jury, I need to make legal notes on each of the notes that are sent out from the jury for the record, and so I'm getting some that are real small, they're partial pages, and that's making it difficult to preserve them for the record. So I'm gonna add a new request to the jury notes. Would you please put each separate

1 question on a separate regular sized page out of your
2 notebook. Thank you.
3 Would counsel please approach.
4 (Off-record bench conference from 2:48:10-2:54:54 p.m.)
5 THE COURT: One of the notes that came out is a
6 question to the Court rather than to the witness. And in the
7 initial instructions to the jury the Court advised you that should
8 you feel ill or need to utilize the restroom facilities you need to
9 raise your hand to draw our attention to that. And the reason
10 is that Nevada law requires me to give you the admonishment
11 before you recess or leave the courtroom every time we have
12 a break. So that is the procedure that we have to follow. That
13 note will be marked as Court's No. 37.
14 Mr. Carrington, there are a number of questions that
15 have come from the jury that they have written down that the
16 Court will be asking you. Listen to the question and then
17 answer it. After you have completed answering all of the
18 questions the attorneys for both sides will have the opportunity
19 to pose followup questions to you if they deem them
20 appropriate.
21 THE WITNESS: Okay.
22 THE COURT: "To your knowledge did Blaise go
23 four-wheeling on July 7th and/or July 8th?"
24 THE WITNESS: No.

1 THE COURT: That will be marked as No. 38,
2 Court's.
3 "Are you aware of any wounds Blaise received on
4 her abdomen during this time period of July 7 or July 8 to July
5 14 or July 15?"
6 THE WITNESS: Yes.
7 THE COURT: That will be marked as 39, Court's.
8 "Since you stated you were with Blaise on July 7th
9 and July 8th, 2001, do you know who else she was with that
10 day?"
11 THE WITNESS: If she wasn't with me, no, I do not.
12 THE COURT: That will be marked as Court's No. 40.
13 "Would you consider you and Blaise to be close
14 friends and does she confide in you?"
15 THE WITNESS: I consider us to be friends, and
16 confide as in like to tell secrets to? I'm not sure what -- what's
17 the question?
18 THE COURT: That will be Court's No. 41.
19 "When you and Blaise talked about the past year,
20 did Blaise tell you about being sexually assaulted?"
21 THE WITNESS: We've talked about her being
22 sexually assaulted like a number of times. I'm not sure if that
23 came up in the conversation when we were going over or not.
24 THE COURT: That will be marked as Court's No. 42.

1 "Do you know how large, specifically the height and
2 weight of the man she punched and knocked out was?"
3 THE WITNESS: He's bigger than me, so I would say
4 like around 6', probably like 180 pounds or so, approximately.
5 THE COURT: That will be marked as Court's No. 43.
6 "Were you aware of any drug use Blaise could have
7 or was using when you had seen her in early July?"
8 THE WITNESS: Not while I was seeing her, but
9 prior to it looked like she had been, yes.
10 THE COURT: That will be marked as Court's No. 44.
11 Followup questions by the State.
12 **FURTHER REDIRECT EXAMINATION**
13 BY MR. KEPHART:
14 Q Mr. Carrington, we'd asked quite a few questions
15 earlier about who was with you and Blaise when you were at
16 her house. Can we go over that again? Tell me who you were
17 with on the 5th?
18 A It was me, her mom and her dad --
19 Q Okay.
20 A -- and her little sister.
21 Q Okay. And then on the 6th?
22 A Me, her mom and her dad.
23 Q Okay. The 7th?
24 A Me and her mom.

1 Q The 8th?
2 A Me, her mom, I believe her dad was there too.
3 Q Okay. And if you weren't with her you don't know
4 who else was there?
5 A No.
6 Q Okay. Now a question was asked by the jury about
7 whether or not she discussed with you about being sexually
8 assaulted?
9 A Mm-hmm.
10 Q Is that a yes? You understand that question?
11 A We had talked about her being sexually assaulted
12 before. I don't think we had talked about it during this time,
13 no.
14 Q Okay. And that was something that occurred in
15 Panaca though, is your understanding?
16 A Yeah.
17 Q Okay. Now you -- when you talked to the police you
18 never said anything with regards to the police about any type
19 of assault or anything that she talked to you about, is that
20 right?
21 A Yeah.
22 Q Okay. And do you know -- you said that during the
23 time that you were talking to her you don't know whether or
24 not she was doing any drugs or anything, but you believe that

she had before. What kind of drugs are you talking about?
A My assumption would probably be speed because her appearance had changed so much from when I seen her last to this time that I seen her the --
Q Okay. And when we say speed, what is that?
A Methamphetamine.
Q Okay. Now that is an assumption based on what you saw of her?
A Yeah, it's just an assumption.
Q Okay. She didn't talk to you about it --
A No.
Q -- tell you that she was taking methamphetamine or anything like that?
A No.
Q Okay. Now one of the questions by the jury was whether or not you had seen any injuries to her abdomen. Do you remember when it was that you saw the injuries to her abdomen?
A I believe that was in front of Swallows --
Q Okay.
A -- Swallows Drug Store.
Q And that would've been on the 13th --
A I thought the question was --
Q -- or on the 18th and 19th, right?

A When I seen her, it was the 13th, yeah.
Q Okay. So it had been on the 13th? You're talking about this time that you talked to the police about?
A That I seen the scratches, yes --
Q Okay.
A -- on her stomach.
Q Okay. And did you know how she got those?
A She told me it was from a four-wheeler accident.
Q Okay.
A I'm not sure what day that happened on, though.
Q Okay. Okay.
MR. KEPHART: Nothing further.

FURTHER RECROSS EXAMINATION

BY MS. GREENBERGER:
Q Hello again. In response to the question if Blaise went four-wheeling on July 7th or 8th, do you know if she did or not? I just wanted clarification.
A She didn't while I was with her, no. If she did while I wasn't around, I'm not sure. I know she had scratches on her stomach, though, the next time I seen her.
Q Do you know anyone in Panaca that owns a four-wheeler?
A Yeah, lots of people.
Q Have you ever gone four-wheeling with Blaise?

A No, not on a four-wheeler, no.
Q Have you known Blaise to go four-wheeling with Michele Austria?
A I can't picture who Michele Austria is.
Q When Blaise told you about the wounds to her abdomen she said it was from a four-wheeling accident?
A Yes.
Q Did she tell you who she had been four-wheeling with?
A I don't remember that, no.
Q Did you see the scratches?
A Yes, I did.
Q Did they appear to be fresh?
A They were scabbed up, so I don't know how fresh they were.
Q Did you see any other scratches on her besides the ones on her abdomen?
A Not that I remember, no.
Q When is the last time you spoke to Blaise?
A I don't know, it was a long time ago.
Q Over 5 years?
A Or so, yeah.
Q Prior to the last time -- prior to her arrest?
A I think the last time I spoke to her was probably like

on the 13th.
Q Of July --
A Yeah.
Q -- 2001? Do you remember how old you were when you saw Blaise and this other man get in a fight?
A I was young, probably like -- it was my 9th grade year.
Q 9th grade?
A Yeah.
Q Was it at a party?
A Yeah.
Q Had people been drinking?
A Yeah.
Q Had you been drinking?
A No.
Q Had people -- let me ask you this. How quickly did you see the person get up after the hit?
A It was a minute. It took him a second to stand up, like he was -- it stunned him a little bit. But he'd been drinking as much as everybody else. I'm not sure how much he had had to drink or not, so I don't know how much that had to play in it.
Q Did she hurt him?
A I don't remember seeing him after that?

Q Well, you chuckled when you said she knocked him on his butt?
A Yeah.
Q Why did you chuckle?
A 'Cause I thought it was funny 'cause he's like -- you'd have to know the guy, I guess. He probably had it coming, so I just kinda think that's kinda funny that a girl knocked him out -- well, not knocked him out, but yeah.
Q He wasn't hurt, though?
A Not severely or nothing like that, no.
Q He continued partying?
A Yeah.
Q When you saw -- when you first saw Blaise on the 3rd of July, 2001, you said her appearance had changed?
A Yeah.
Q And you attributed that to her drug use?
A Yeah.
Q Did she appear skinny?
A Well, she's always been skinny.
Q Well, can you explain --
A Skinnier? No, she was no skinnier than I remember her --
Q Can --
A -- it was just her appearance.

Q Can you explain in more detail description?
A She went from having like long brown hair, like she has now, to -- it was real, real short and bleached blonde, spiky, and like she turned into a stripper, I guess, and -- she just changed a lot, so I figured it probably had something to do with that.
Q When you were with her during that time period, the first week in July, she was not using drugs with you?
A No. Never around me, no.
Q At any time?
A No.
Q When you were at her house on the 8th, is it your testimony that you were with Blaise, you saw her mother or step-mother, her father, and then did you also see her aunt and Ashley that day?
A Yes. I'm not sure about Ashley, but her aunt, yeah.
Q Okay. During that time period you were working on people's lawns up in Panaca?
A Yes.
Q And so when you were finished with your --
MR. KEPHART: Your Honor, I'm gonna object. This has all been asked and answered. She's recovering the very testimony that he's already testified to, and this is way beyond anything that the jury has asked.

THE COURT: Is this a followup to the jury question?
MS. GREENBERGER: I was just gonna followup on the time, the time period that he returned -- or came over to her house. That was my last question.
THE COURT: I don't believe that was one of the jury questions, so the Court will sustain the objection.
MS. GREENBERGER: I have nothing further.
THE COURT: Anything further from the State?
MR. KEPHART: We don't have anything further. No, Your Honor.
THE COURT: I have no jury hands up. You may step down.
State may call their next witness.
MR. KEPHART: State would call Diane Allen.
THE CLERK: Please come all the way forward. Remain standing and raise your right hand.

DIANE ALLEN, STATE'S WITNESS, IS SWORN

THE CLERK: Thank you. Please be seated.
State your name and spell it for the record, please.
THE WITNESS: Diane Allen, D-I-A-N-E Allen, A-L-L-E-N.

DIRECT EXAMINATION

BY MR. KEPHART:
Q Ms. Allen, do you live in Panaca, Nevada?

A Yes.
Q What's the address that you live at?
A 625 Callaway.
Q Okay. Are you familiar with the -- at some point in time back in 2001 did you know of a family by the name of Lobato that lived on the same address --
A Yeah.
Q -- I mean same street?
A Yes.
Q Okay. And do you know an individual by the name of Chris Carrington?
A Yes.
Q Who is Chris Carrington?
A My grandson.
Q Okay. And do you recall whether or not Chris was living with you back in July of 2001?
A He was staying with me, yes.
Q Okay. Do you remember when it was that he came to stay with you?
A Probably about a week before that weekend.
Q Okay. What weekend are we talking about?
A The 4th of July weekend.
Q Okay. So you remember the 4th of July week -- or weekend?

A Yes.
Q Okay. And why is it that he came to stay with you?
A Probably 'cause he was fighting with his mother.
Q Okay. And when he comes to stay with you, does he come up there specifically to get away from his mom, or does he have jobs and stuff that he has to do when he comes?
A He had jobs, odd jobs helping me out 'cause my husband was sick.
Q Okay. You said your husband was sick at that time?
A Yes.
Q Okay. I want to draw your attention specifically to the day of July the 5th of 2001. Do you have any independent recollection of that particular day?
A Yes.
Q Why is it that you have independent recollection of that day?
A My sister came from California.
Q Okay. And why did she come from California?
A To have a party up at the lake celebrating the 4th of July, but they got there a day late.
Q Okay. So that's why you remember the 5th?
A Yes.
Q Okay. Came to visit?
A Yes.

Q And during that time was Chris staying with you as well?
A Yes, he was.
Q Okay. Now Chris has testified that in July of 2001 he was 17 years old?
A Yes.
Q Was he going to school in Panaca or in that area at that time?
A He was going to, not school but the -- okay. Like an at school -- I'm sorry, I --
Q Do you know what the reason he was going to something other than high school?
A It was probably 'cause he had flunked high school, so he was taking the extra courses through this schooling --
Q Okay.
A -- to get his GED.
Q Okay. So maybe a special program type school --
A Yes.
Q -- for that?
A Yes.
Q Okay. Do you remember talking to Ms. DiGiacomo and I back before May of 2002 --
A Yes.
Q -- in reference to this case?

A Yes.
Q Matter of fact, you gave testimony in a previous hearing, is that correct?
A Right.
Q Okay. How did you characterize Chris to us? What did you use? What words did you use?
A That he was a lame brain.
Q Lame brain?
A Yes.
Q Okay. Did you also indicate that he is slow?
A Yes.
Q Okay. Now drawing your attention back to the 5th of July, you indicated that you remember that Chris was there?
A Yes.
Q Okay. Do you know if Chris went any place that day --
A Yes.
Q -- that is of attention for purposes of your testimony?
A Yes.
Q Okay. What -- where did he go?
A He went up the street to Lobato's house.
Q Okay. When you say Lobato, are you talking about --

A Blaise Lobato's house.
Q Okay. Did you know Blaise Lobato back then?
A Yes.
Q Okay. Is she in the courtroom now?
A Yes.
Q Okay. Just so we know who you're talking about, point to her and tell us what she's wearing?
A Sitting in front of the screen there with the dark hair and a flowery shirt on.
Q Okay.
MR. KEPHART: I'd ask the record to reflect she's identified the defendant, Your Honor.
THE COURT: The record shall so reflect.
MR. KEPHART: Okay.
BY MR. KEPHART:
Q And you knew that she lived right up the street from you?
A Yes.
Q Okay. And do you know who she lived with?
A She lived with her dad and step-mom.
Q Okay. On the 5th do you remember -- you said that Chris went up to her house?
A Yes.
Q Did there come a point in time that day that he

1 came back?
2 A Yes.
3 Q Was there any concern about when he came back?
4 A I just asked him why he came back early and he
5 said that they were -- her and her mother, Becky, were
6 arguing --
7 Q Okay.
8 A -- and he didn't want to be in the middle of it so he
9 came home.
10 Q Okay. Did there come a point in time that he went
11 back up to the Lobato's?
12 A Yes.
13 Q The same day?
14 A Yes.
15 Q Okay. Let's go over to the 6th. Do you remember if
16 Chris was staying with you on the 6th as well?
17 A Yes.
18 Q Okay. And do you know whether or not he went to
19 the Lobato's on the 6th?
20 A During the daytime, no --
21 Q Okay.
22 A -- 'cause we had gone up to the party up at the lake
23 and he didn't go.
24 Q Okay.

1 A But then when I came back probably 4:00 or 5
2 o'clock that evening, he was there and then went back up the
3 street.
4 Q Okay. Did he come home that evening?
5 A Yes.
6 Q Was it the same type of thing the night before?
7 A That I can't remember.
8 Q Okay.
9 A I don't know.
10 Q You don't remember whether or not they were
11 fighting?
12 A Not that day. That's I think the only day he said
13 that they were arguing and he didn't want to be in the middle
14 of it.
15 Q Okay. Do you remember what you testified to as to
16 why they were arguing?
17 A Probably some things about Vegas --
18 Q Okay.
19 A -- and that's all I --
20 Q Do you remember testifying that they were arguing
21 about -- her and her mom were arguing because she was
22 going back to Las Vegas?
23 A Yes.
24 Q Okay. And that would've been on the 6th --

1 A Yes.
2 Q -- that he told you that?
3 A Yes.
4 Q Okay. Now did something happen on the 7th, Ms.
5 Allen, that caused you to have to leave Panaca?
6 A Yes.
7 Q What happened?
8 A My husband had had a heat stroke and the
9 ambulance had taken him to Caliente to the hospital, and
10 Christopher was there. And I was hysterical because I didn't
11 know what was happening to my husband. So anyway, they
12 took him to the hospital and I had made Christopher drive me
13 over to the hospital.
14 Q Okay. And was he there on the 8th as well?
15 A Not at the hospital, no.
16 Q Okay. Was he back home by the 8th?
17 A Yes.
18 Q Okay. Now Chris had told you that he didn't want to
19 deal with the defendant and her mother fighting, is that right?
20 A Right.
21 Q Okay. And he also told you that they were fighting
22 about her going -- that she was leaving and going back to Las
23 Vegas?
24 A That she wanted to, yes.

1 Q Do you believe that Chris was at her house on the
2 7th, based on what you just testified to?
3 A That morning, yes, he could've been.
4 Q Okay. You don't know, though?
5 A Not for sure, no.
6 Q Okay.
7 A He was supposed to be mowing my grass, but I
8 don't recall. I was just upset and --
9 Q Yeah. Okay.
10 A It did get mowed.
11 Q It did or it didn't?
12 A It did.
13 Q Okay. And he's the one that mows your lawn?
14 A Yes.
15 Q Now when he stayed with you did he have a curfew?
16 A Yes.
17 Q What was that?
18 A 11 o'clock at night.
19 Q Okay. So if he testified that he was up at the
20 Lobato's on the 8th until midnight, would you have
21 remembered that?
22 A No, 'cause I would've been in bed.
23 Q Okay.
24 A I wouldn't have known.

Q So he would come home anytime he wanted to?
A No, usually it was be there at 11:00 or you can go home or you're getting locked out.
Q Okay. Do you remember him being locked out that night?
A No.
Q Now you had an opportunity to speak to the police department about what you're testifying to now, April of 2002, is that correct?
A I talked to them, yes. I don't remember the dates.
Q Okay. If I was to tell you that we have a copy of a statement that you made and it's dated April 24th of 2002, would you accept that?
A Yes.
Q Okay. And do you recall telling the police about some concern you had with regards to the defendant's step-mother, Becky, Rebecca Lobato?
A That is the part where she met me at the store.
Q Okay. What was she doing?
A I was at the store and she came in right directly to me and --
MR. SCHIECK: Objection. If she's gonna say anything that said, Your Honor, is hearsay.
///

BY MR. KEPHART:
Q Without telling us what she told you, what was your response to -- she came -- first of all, when she came in, do you remember her demeanor?
THE COURT: Overruled as premature. You may answer.
BY MR. KEPHART:
Q Do you remember her demeanor?
A Yes, she was aggravated.
Q Okay. And without telling us what she told you, what did you tell her?
A I told her I didn't know where Christopher was at the time.
Q Okay. Did you tell her anything else?
A No, other than he wasn't going to be giving false testament for anybody or anything, and she got mad and left.
Q So you were trying to protect Christopher?
A No, I was telling the truth.
Q Okay.
A If he was gonna lie or whatever he was gonna be in trouble.
Q You didn't want him lying for anybody?
A No, I didn't.
Q Okay. And do you believe that -- do you remember

when Christopher had spoken to the police about this particular incident?
A No.
Q Do you remember testifying that you believe the police had talked to her --
MR. SCHIECK: Objection, Your Honor, she said no, she didn't remember.
MR. KEPHART: I'm asking if she remembers, trying to refresh her memory.
MR. SCHIECK: You show her what she testified to the proper way.
THE COURT: The Court sustains the objection to the form of the question.
BY MR. KEPHART:
Q Ms. Allen, when you -- when Ms. Lobato came in and you told her that Chris wasn't gonna be lying for anybody, do you know whether or not Chris had talked to the police by then?
A No, I don't.
Q Okay. Do you ever remember sitting down with Chris and trying to go over any dates?
A No, I didn't.
Q Okay. Did he ever talk to you about dates?
A We actually never really talked about it at all

anymore 'cause so many things had happened in between.
Q Okay.
A I had no reason to talk about it.
Q Okay. You say some many things happened, you're talking about up in Panaca?
A I'm talking about my family, my husband, his cancer, running back and forth to Vegas, all hysterical all the time.
Q Okay.
A So it just never come up to have to tell him to do anything because nothing else was happening at that time.
Q Okay. Now you said that you knew the defendant and you pointed her out. Do you know what connection she has with Chris?
A They were good friends. I think they were at the time going together kinda.
Q Okay.
MR. KEPHART: Court's indulgence, Your Honor.
BY MR. KEPHART:
Q You said that your sister had come down to Panaca from California, is that right?
A Yes.
Q And it was for a party at the lake?
A Yes.
Q And do you remember how your sister -- did she get

ALLEN - DIRECT

to the lake?
A Yes.
Q Do you remember how she got back from the lake?
A In her vehicle.
Q Okay. And who went to get her?
A Christopher and my daughter, Shari [phonetic].
Q When did that happen?
A After my husband was taken to the hospital.
Q Okay. That would've been on the --
A He asked for my sister and so I sent Christopher and he had his mother and they took the back road out to Echo Dam and had them come back to the hospital.
Q That'd been on the 7th?
A Yes, they were driving a motor home --
Q Okay.
A -- pulling a little Geo.
Q Okay. When did your sister leave, do you remember?
A My sister left then on the 8th, the next day.
Q And your sister would be your -- Chris' great aunt--
A Aunt.
Q -- or aunt?
A Just aunt.
Q Okay. And did he get along with her?

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A Yes.
Q Did they socialize?
A Yes.
Q Did they socialize during this time?
A Yes.
Q And she was only there the 5th, 6th, 7th, and 8th?
A Right.
Q For a party at the lake?
A Right.
Q And the whole family was invited?
A Yes.
Q And unfortunately your husband had heat stroke on one of the days?
A Yes.
Q Okay. Okay.
MR. KEPHART: Pass the witness, Your Honor. Thanks, ma'am.

CROSS-EXAMINATION

BY MR. SCHIECK:
Q Good afternoon, Ms. Allen.
A Good afternoon.
Q We'll try to get you out of here as soon as we can.
A Thank you.
Q You drive down from Panaca today?

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A Yes, I did.
Q How far is that drive?
A About 200 miles from where I came from, Eagle Valley.
Q So you're up in Eagle Valley?
A We have a trailer up there, plus a house in Panaca.
Q Is it cooler up in Eagle Valley?
A Yes.
Q So you stay up there during the warm weather?
A We're just up there a lot. We have two dogs and sometimes I work up there.
Q Is that where the party was at was up at Eagle Valley?
A No, it was at Echo Dam.
Q Okay. When you come from Panaca to Las Vegas, how far is it?
A About 178 miles.
Q And how long does it take you to drive there?
A I'll say three hours.
Q If you're driving, I mean --
A Two and a half to three hours.
Q Okay. You have to go out of Panaca to the main highway and then down to Caliente, slow down at Caliente to go through the town?

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A Right.
Q And then you go over the mountain and you end up in Alamo?
A Yes.
Q You gotta slow down in Alamo?
A Yes.
Q And then it's pretty much a straight shot from Alamo into Las Vegas?
A Yes.
Q And you said it takes you about two and a half hours, as some people drive it a little bit quicker?
A Yes.
Q But it's still about 170 miles?
A Yes.
Q Okay. You didn't take the shortcut through Rainbow Canyon?
A I never take the shortcut through Rainbow Canyon.
Q It's kind of a rough road?
A Yes. Most of it's dirt road.
Q About 38 miles of dirt road?
A I couldn't tell you how many miles it is.
Q Okay. Just a few questions. Now you said that you sister was coming for the 4th of July to stay and get together with the family, is that right?

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A Yes.
Q But she didn't make it on time on the 4th?
A That's right.
Q Okay. Was Chris already staying up at your house on the 4th?
A Yes.
Q Do you recall him going to the fireworks show at the park in Caliente on the 4th?
A No.
Q Okay. And they do have a fireworks show in Caliente?
A No.
Q They don't?
A I went to one in Caliente, yes.
Q Okay.
A But he wasn't with me at the fireworks.
Q Was this in 2001?
A Yes.
Q Okay. And so you went to the fireworks show?
A Yes.
Q Just yourself or your and your husband or --
A I don't think my husband went that year, me and the kids --
Q Okay. Did --

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A -- grand kids.
Q Okay. And Chris is one of your grand kids, but he didn't go?
A Well, he could've been there, I just -- he wasn't with me.
Q Okay. He wasn't with you, but he could've been there at the park?
A Right.
Q Is that a pretty big thing in Caliente on the 4th of July, the fireworks at the park?
A Yes.
Q Everybody comes early and picnics and plays softball and things --
A Yes.
Q -- of that nature?
A Yes.
Q And so everybody's sort of mingling around, getting reacquainted?
A Yes.
Q Sort of a get together there in Lincoln County?
A Yes.
Q So Chris could've been there and you didn't see him?
A Yes.
Q In fact, he was just back into the area, or had he

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been living there in Caliente before he --
A He had been there in Caliente.
Q And he was staying with his mom in Caliente?
A Yes.
Q And just for the record, what's his mom's name?
A Shari.
Q But did Chris have his own transportation so he could get around?
A No.
Q Okay.
A He didn't have his driver's license at the time.
Q Okay. But he drove you to the hospital?
A That time he did, yes, because I was hysterical and I made him drive.
Q He was able to drive a car?
A Yes.
Q That's not unusual in small towns, that young men, even before they have driver's license, operate equipment?
A Yes.
Q Okay. And in fact, he drove up to the lake with his mom to get his great aunt?
A His aunt, yes.
Q And so he could've found -- or gotten to the fireworks on the 4th of July, either with friends or any other

ALLEN - CROSS

way?
A I would say with friends, yes.
Q Okay. And you indicated that you knew that he had gone up to Blaise's house on the 5th?
A Yes.
Q Did he have responsibilities in addition to mowing your lawn and mowing other lawns in Panaca?
A Yes, he did.
Q Okay. How many other lawns was he taking care of?
A Probably two more --
Q Okay.
A -- my landlord's and the people that live next door to me.
Q There on Callaway?
A One's on Callaway right next door, and the one behind me is on 6th Street.
Q And you know that he went up to Blaise's house on the 6th also? You recall that?
A Yes.
Q Okay. And then on the 7th was when your husband had the heat stroke?
A Yes.
Q Okay. Was he with you the whole time on the 7th or

was --
A No.
Q Okay. There were times he wasn't with you?
A He could've been up there that morning on the 7th. But in the afternoon, the heat stroke was about 1 o'clock, and from then on he was with me.
Q And he took you down to Caliente and stayed with you?
A Yes.
Q But then on the 8th he was back in Panaca, correct? Do you recall on the 8th?
A No.
Q And it was on the 8th that your sister left and went back home?
A Yes.
Q Now you said that when Chris stayed with you he had a curfew, you wanted him in by 11:00?
A Yes.
Q But sometimes you'd go to bed before 11:00, is that fair to say?
A No, I never went to bed 'till 11:00.
Q Okay. You said on the 8th he could've come in after 11:00 'cause you were already in bed?
A He could've. If he was there, I just -- I'm not

recalling.
Q Okay.
A I'm not saying he was there on the 8th.
Q Okay. It's a long time ago. It's hard to remember all these details.
A I couldn't remember then and it's been four years, five years now.
Q Okay.
MR. SCHIECK: All right. Thank you very much. We'll let you get back on the road. Thank you.
THE WITNESS: Thank you.
THE COURT: Redirect?
MR. KEPHART: I do, Your Honor.

REDIRECT EXAMINATION

BY MR. KEPHART:
Q Ms. Allen, do you recall telling the police officer that was on the 5th and then the next day they were doing it again, and he came back home and he didn't go back down there, as far as you know, on the 6th? Do you remember telling the police that?
A Yes.
Q Is that right?
A Yes.
Q Okay. And then once again, as far as you know

after the 6th, at least what you told the police, is that he did not go back down there because -- because why?
A Because she was going to Vegas.
Q Okay. And did you tell the police because he told you that they were fighting as well?
A Yes.
Q Okay. And then the next day, at least on the 6th, you had all this problem with your husband, is that right?
MR. SCHIECK: It was the 7th.
THE WITNESS: The 7th.
BY MR. KEPHART:
Q I'm sorry, on the 7th you had the problem with your husband?
A Yes.
Q Okay. And you testified that the defendant's step-mother tried to contact you. Where were you when she tried to contact you?
A I was at the grocery store.
Q Okay. And where is that located? Is that in Panaca?
A Panaca on the main street.
Q And she came in and you said that she was agitated?
A Yes.
Q Okay. And you told us that you said something to

her after she said something to you? Do you remember what you told her?
MR. SCHIECK: Object, Your Honor, that's asked and answered and beyond the scope of cross.
THE COURT: Sustained.
MR. KEPHART: Okay. Let me ask one further.
Judge, I would just ask to reopen then with regards to this area.
MR. SCHIECK: To ask the same questions again? Asked and answered, Your Honor.
MR. KEPHART: I'm not asking the same questions again.
THE COURT: The Court will grant the motion to reopen.
MR. KEPHART: Okay.
BY MR. KEPHART:
Q Ms. Allen, when you described Ms. Lobato as being agitated, and you told her some things. What did you tell her?
MR. SCHIECK: Objection, asked and answered, Your Honor.
THE COURT: The question hasn't been concluded.
BY MR. KEPHART:
Q The question is, what did you tell her after she had asked you some things in the supermarket? Without telling us

what she said, what did you tell her?
A I told her that I did not know where Christopher was at that time and that he wasn't going -- she told me what she wanted and I told her then that he wasn't going to be lying to anybody for any reason.
Q Okay. And what -- how did she act or what was her demeanor after that?
A She was ever madder and walked out the door.
Q She was even madder you said --
A Yes --
Q -- and walked out the door?
A -- then when she walked in.
Q And do you know whether or not she ever did talk to Christopher?
A I don't know if she talked to him or not.
Q Okay. You never saw it?
A I never saw it. I never heard about it.
Q Since that point, since that time, do you know whether or not she has tried to talk to you or Christopher?
A No.
Q Okay. You don't know?
A Since that time I seen her probably two months ago, and that's the last time I've seen her. And that conversation was I asked how she was doing --

Q How the defendant was doing?
A -- and she said she -- Blaise was doing fine.
Q Okay.
A I said that's good, and we went on our way.
MR. SCHIECK: Objection, Your Honor, as to any further hearsay evidence.
THE COURT: Sustained.
MR. KEPHART: Okay. Thank you, Ms. Allen.
THE COURT: You passing the witness?
MR. KEPHART: Yes.
MR. SCHIECK: Nothing, Your Honor. Thank you.
Thank you very much, ma'am.
THE COURT: You may step down.
THE COURT: We'll be taking a stretch break at this time. Ladies and gentlemen, in 10 minutes please be out in the hallway. The bailiff will meet you there to return you to your seats in the courtroom.
During the recess you're admonished not to talk or converse among yourselves nor with anyone else on any subject connected with the trial. And you're not to read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including without limitation, newspaper, television, radio, and internet. And you're not to form or express any

opinion on any subject connected with the trial until the case is finally submitted to you.
Court's in recess for 10 minutes.
THE BAILIFF: All rise, please.
(Jurors are not present)
(Court recessed at 3:36:55 p.m. until 3:58:35 p.m.)
(Jurors are present)
THE BAILIFF: All rise, please.
Department 2 is back in session. Please be seated.
THE COURT: The record shall reflect that we're resuming in State versus Kirstin Blaise Lobato under case number C177394, in the presence of the defendant, her three counsel, the two prosecuting attorneys, and ladies and gentlemen of the jury.
Proceeding forward in the State's case in chief. State may call its next witness.
MR. KEPHART: Thank you, Your Honor. The State would call Maria Thomas.
THE CLERK: Please come all the way forward. Remain standing and raise your right hand.

MARIA THOMAS, STATE'S WITNESS, IS SWORN

THE CLERK: Thank you. Please be seated.
State your name and spell it for the record, please.
THE WITNESS: Maria Thomas, M-A-R-I-A T-H-O-M-

A-S.
THE COURT: State may proceed.
MR. KEPHART: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. KEPHART:
Q Ms. Thomas, how are you employed?
A I'm a senior crime scene investigator with the Las Vegas Metropolitan Police Department.
Q I want to draw your attention back to July of 2001, and ask you if you were working in that capacity then?
A Yes.
Q Okay. How long have you been a crime scene investigator?
A Approximately 10 years.
Q What is the basic duties of a crime scene investigator?
A To identify, document, collect, and preserve evidence that will prove or disprove a crime has been committed.
Q Okay. Specifically on July 9th of 2001, do you recall -- well, did you review anything prior to today in anticipation of your testimony in this case?
A Yes, my reports.
Q Okay. Do you recall drafting a report from a date of

July 9th of 2001 involving an autopsy?
A Yes, that's correct.
Q Okay. And that involved -- at that point in time you didn't have the name of the victim, is that correct?
A That's correct, we did not.
Q Okay. And with respect to crime scene investigator at the autopsy in this particular case, is it uncommon for there to be multiple crime scene investigators working throughout the pendency of investigation?
A No, it's quite common actually you'd have more than one investigator involved in a homicide.
Q Matter of fact, in this case there was more than one?
A Yes.
Q Is it quite common that one crime scene investigator may go to an autopsy while other crime scene investigators for the same crime may be at the crime scene?
A That's correct.
Q Okay. In this particular case, is that the case that a crime scene investigator went to the autopsy and other crime scene investigators went to the crime scene?
A In this particular case I was day shift and day shift only responds to autopsies on homicides.
Q Okay. And when you go to a homicide, what are you -- what are your duties with regards to the homicide -- to

an autopsy, I'm sorry?
A Basically an autopsy is considered a continuation of the crime scene, so we're there to document the condition of the body and to collect any evidence.
Q Okay. And how would you go about documenting the condition of the body?
A Photography, reports.
Q Okay. And in this particular case did you do a report in reference to the autopsy evidence?
A Yes, the autopsy report.
Q Okay. And -- excuse me?
A It's an autopsy report.
Q Okay. Did you do an autopsy report in this case?
A Yes, it's an autopsy report assigned to crime scene investigators.
Q Okay. And can you tell me if you had an opportunity to review that report?
A Yes.
Q Okay. And you said that you took photos?
A That's correct.
Q All right. Now I'm gonna show you a series of photos, and a lot of these photos have been admitted, so I'm gonna ask you to look at -- I'm gonna give them to you in two different stacks, the ones that have been admitted, and I'm

gonna give you the ones that haven't been admitted.
MR. KEPHART: Your Honor, just for the record, I'll just call out the numbers for defense and make sure that he's seen these. Kind of -- we're out of order here.
Exhibits 199, 200 --
THE COURT: These are the ones already admitted?
MR. KEPHART: No, that have not.
THE COURT: Okay. I need to make a listing.
MR. KEPHART: Okay.
THE COURT: Would you start over, please?
MR. KEPHART: Okay. 199, 200 -- oh wait, I'm sorry, Judge. Those have been. I'm sorry. Let me start over.
41, 48, 49, 50, 51, 52, 53, 54, 55. Those are the only ones so far that have not been admitted.
THE COURT: Okay. The record shall reflect that they've been turned over to Mr. Schieck for inspection.
MR. KEPHART: Okay.
THE COURT: Mr. Schieck has now returned them to Mr. Kephart.
MR. KEPHART: May I approach, Judge.
THE COURT: Yes.
BY MR. KEPHART:
Q The first stack I'm showing you, which I've read out already as marked as State's Proposed Exhibits 41, 48, 49, 50,

51, 52, 53, 54, and 55. Ask you if you'd take a look at these, tell me if you can recognize or if you've taken those?
A I took these -- these here.
Q Okay. So you recognize Exhibits 41, 48, 51, 52, 53, and 55?
A Yes.
Q And you're saying that you don't recognize 50 -- 49, 50, or 54?
A That's correct.
Q How is it that -- I mean what gives you that indication that you don't recognize these?
A Because according to my property impound, the victim did not have any shoes at time of autopsy on him.
Q Okay. Okay. So this would've been possibly another crime scene?
A Most likely, yes.
Q Okay.
MR. KEPHART: Your Honor, I'll move to admit then 41, 48, 51, 52, 53, and 55.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit Nos. 41, 48, 51, 52, 53, and 55, admitted)
MR. KEPHART: I'll try to get these in order.
///

THOMAS - DIRECT

1 BY MR. KEPHART:
2 Q Okay. I'm showing you what's been marked as --
3 and admitted as 42, 43, 44, 45, 46, 47, 55, 53 --
4 THE COURT: 55 and 53 were just admitted.
5 MR. KEPHART: Sorry, Judge. I know. I want to try
6 to get these in -- 48 --
7 THE COURT: 48 was just admitted.
8 MR. KEPHART: Yeah. 49, 50, 51, 52, 53, 54.
9 THE COURT: 54 was not admitted. It was one she
10 indicated she did not take.
11 MR. KEPHART: Okay. That's right. And 53 --
12 Judge, can you help me out here? I'm sorry.
13 THE COURT: And 55.
14 MR. KEPHART: It was 55? There we go. 54 and
15 55. Okay.
16 THE COURT: Not 54.
17 MR. KEPHART: Right. Those two were not --
18 THE COURT: Yes, 55.
19 MR. KEPHART: Yes, 55. Is there any other ones,
20 Judge?
21 THE COURT: No. 41.
22 MR. KEPHART: Actually -- yeah, 50, 49. All right.
23 I'm just trying to put them in order. Just apologize to the
24 Court.

THOMAS - DIRECT

1 THE COURT: 49, 50 and 54 were the three that she
2 indicated she did not take.
3 MR. KEPHART: All right.
4 BY MR. KEPHART:
5 Q You've already -- you've testified as to 41, but I'm
6 just trying to put these -- keep these in order, okay? Now let
7 me ask you this. You were at the coroner's office, you took
8 photographs of the body before it was being processed by the
9 coroner?
10 A Yes.
11 Q Okay.
12 A Yes.
13 Q And also photographs after it had been processed by
14 the coroner?
15 A Some. In this particular case there was one while
16 the victim was being processed by the coroner that I was
17 asked to take --
18 Q Okay.
19 A -- a photograph of injuries to the head, specifically
20 to the skull.
21 Q Okay. Let me put -- give you these, let you go look
22 through those, and then we're gonna go through number by
23 number, just so -- in addition to those, I want you to take a
24 look at --

THOMAS - DIRECT

1 A You want me to keep these in order, correct?
2 Q Yes. 199, 200, 201, 202, 203, and 204. Just put
3 those right on the back of that. Just take a look at those.
4 (Pause in the proceedings)
5 Q Did you have any opportunity to do that -- look at
6 those?
7 A Yes.
8 Q Okay. And are those consistent with what you recall
9 that you took of the autopsy in this matter?
10 A Yes, with the exception of these two. I did take
11 these photographs, but they've been cut.
12 Q Okay. That's fine. And just for the record, can you
13 identify those, the one that was cut?
14 A Yes.
15 Q For the record, can you identify it? Look at the
16 number.
17 A Oh.
18 Q Okay.
19 A 93 and 93-A.
20 Q Okay. Now those photos there basically depict -- I
21 mean we've had Dr. Simms testify to a number of those. And
22 what are you trying to document when you're taking photos of
23 those nature -- of the nature that you have in your hand
24 there?

THOMAS - DIRECT

1 A The condition of the body when it arrives at the
2 coroner's office --
3 Q Okay.
4 A -- once it's taken out of the bag.
5 Q When Duran Bailey's body arrived at the coroner's
6 office, you said taken out of the bag, what are you talking
7 about?
8 A It's placed in a body bag at the crime scene, it's
9 sealed by the coroner's office, the coroner investigator seals
10 the bag. We make a note of the seal and then the body is
11 transported to the coroner's office. The following day, as I
12 said before, due to the coroner's business hours, the autopsies
13 are conducted during the day. So the following day one of the
14 day shift personnel, crime scene investigator like myself, would
15 show up at the coroner's office. We would then document the
16 seal, showing that the seal is intact.
17 Q Okay.
18 A We document the condition of the bag and then we
19 break that seal. We open the bag and we proceed to
20 document the condition of the body in the bag.
21 Q Okay. And the first time that you see, in this
22 particular case, that you would see Mr. Bailey's body would've
23 been when you opened that bag?
24 A That's correct.

THOMAS - DIRECT

Q Okay. You weren't at the crime scene?
A I was not.
Q So you didn't have anything to do with actually packaging him up in the bag and sending him?
A That's correct.
Q That would be another crime scene analyst?
A Yes.
Q Okay.
A Well, the coroner investigator is actually who --
Q Okay.
A -- is in -- that's their jurisdiction, the body's their jurisdiction.
Q Okay. And in reference to Duran Bailey here, when he arrived at the coroner's office, do you recall whether or not he had any type of clothing on him? Or would it be inconsistent with somebody that comes into the coroner's office to have clothing on? Do you understand my question? Would they take his clothing off at the scene before they send him in or --
A No.
Q Okay.
A No. Typically not.
Q Okay. So he would arrive with his clothing that they found him in?

THOMAS - DIRECT

A Yes.
Q Okay. Did that happen in this case?
A Yes.
Q Okay. And do you recall any specifics about the way he was dressed in this particular case?
A He was wearing a plaid shirt, tan colored pants, and white socks.
Q Okay. And do you recall how -- was he fully clothed in the sense that his clothes were up, were they down --
A No. His --
Q -- was his shirt open, shirt clothed?
A His shirt was open.
Q Okay.
A Down the front was open, so his chest was exposed. His pants were lowered below the groin area, and I could observe what appeared to be blood on his clothing, his person, socks, all articles of clothing he had on.
Q Okay. And you said now that his pants were lowered below his groin area?
A Yes.
Q Is that -- they were up above his knees or below his knees?
A They were right like above his knees.
Q If I was to show you a photograph of that, would

THOMAS - DIRECT

that impress your memory --
A Yes.
Q -- as to whether or not you're correct on that?
A Yes.
MR. KEPHART: May I approach, Your Honor?
THE COURT: You may.
BY MR. KEPHART:
Q Showing you what's been marked as State's Proposed Exhibit 120, and ask you if you can identify that photograph?
A Yes, I can.
Q Is that a photograph accurately depict, as you recall, a photo that you took on that particular day?
A Yes.
MR. KEPHART: Move to admit 120 -- 220.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit No. 220, admitted)
BY MR. KEPHART:
Q Does that also show the way he's dressed, as you've just described?
A Yes.
Q Okay. What else does this photo show?
A His hands had been bagged at the crime scene to

THOMAS - DIRECT

preserve any trace evidence that may be found on his hands. And there was a plastic bag covering the upper legs, for the most part.
Q Okay. Anything else? Does he have pants on in there?
A Well, his pants and shirt and socks, as I indicated before --
Q Okay.
A -- he did have that on, yes.
Q And where are his pants and --
A His pants are about the knees.
Q About the knees?
A Yes.
Q Okay. So not above the knees?
A No, they're more like about the knees.
Q Okay. And you said a plastic bag was covering his mid-section or below his mid-section?
A Below -- below the mid-section.
Q Okay. Actually can you see that on the --
A Yes, it's below -- like below the groin area, so upper legs for the most part.
Q Okay. Actually in this particular photo you can see his genital area, is that correct?
A That's correct.

Q So right below that is where the plastic is?
A Yes.
Q And that plastic, is that something that you recall, what type of -- you said plastic and you said plastic bag?
A Yes. It looked like a garbage bag to me.
Q Okay. Were you given information as to when the -- where the body was found?
A Yes.
Q Were you aware that he was found in a garbage dump area, around a dumpster --
A That's correct, yes.
Q -- in the mixed of a bunch of garbage?
A Yes, that's correct.
Q I want to show you Proposed Exhibits 217, 218, 219 -- we talked about 220 already -- 221, 222, 223, 224, 225, 226, and ask you to look at those. I'm gonna ask you if you remember these five as well, if you -- if the photographs -- if you remember taking the photographs?
A Not this one.
Q Okay. When you say this one, you're talking about 226, and that's another photo of the shoes?
A Right.
Q Okay. You took all the other ones?
A Yes.

Q Those accurately depict items that you photographed on the 9th of July of 2001?
A Yes.
MR. KEPHART: Move to admit Exhibits 217, 218, 219, 221, 222, 223, 224, and 225, Your Honor.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit Nos. 217, 218, 219, 221, 222, 223, 224, and 225, admitted)
BY MR. KEPHART:
Q And you were just testifying about this plastic item, and that is shown in 218, is that correct?
A Yes.
Q Okay. And 219 shows a better look of the way Mr. Bailey was dressed, is that correct?
A Yes.
Q I need to zoom out some. Correct?
A Mm-hmm.
Q Okay.
A Yes.
Q And 217 is the actual plastic that you removed from Mr. Bailey, is that correct?
A Yes.
Q Okay. And what would you call this?

A It looked like a plastic garbage bag --
Q Okay.
A -- with apparent blood and -- don't know what other trace evidence would've been on there.
Q Okay.
A I didn't examine it for that.
Q There's also down here at the bottom like a knot in the -- appear to be a knot in the plastic?
A Yes, that's one of the indicators to me that it could've been a trash bag or a garbage bag.
Q Like when they're putting it into a --
A Container.
Q -- into a container they tie it so it stays?
A Correct.
Q Okay. So this isn't saran wrap or anything like that, is it?
A No.
Q And now besides the photographs, besides taking photos of multiple items at the autopsy you just talk -- I mean talk about god, 60 some photos or so. What else did you do at the autopsy?
A I completed a report, an autopsy evidence form
Q Okay.
A We also collected local swabs from his mouth, we

did a sexual assault kit on him, which basically I observe the coroner investigator assistant do that -- or the coroner's assistant, excuse me. And they conduct the actual sexual assault kit, which consists of various different swabs, including in this particular case, a penial swab, oral, rectal, combed pubic hairs, pulled pubic hairs for any DNA that may have been done on any -- anything involving a sexual assault of any time.
Q And you -- also in the photographs it shows a -- what appears to be a white sheet on him --
A Yes.
Q -- when you open up the bag? What's the purpose of that? How does that get there, do you have any idea?
A Yes. We provide a sterile sheet to the coroner investigator at the crime scene, and what they do is they wrap the body in the sheet to preserve the condition of the body as much as possible. There is going to be movement, shifting of the body obviously because it's being transported. But it tends to minimize that, and also it may collect any trace evidence. So that's why we impound that sheet into custody so that if there's any trace evidence that falls off the body we will check the sheet for it and we also check the bag --
Q Okay.
A -- the body bag.

THOMAS - DIRECT

Q Did you impound that then?
A The sheet?
Q Yeah.
A Yes, I did.
Q Did you impound any other items?
A Yes, quite a few items.
Q Okay. Well, let's just go through your report.
A May I refer to it for --
Q Do you have it there with you?
A Yes, I do have it with me.
Q Okay. Just so we know what you're talking about, is it a three page report dated July 9th of '01, or is there more to it?
A Three pages.
Q Okay. And it's identified as evidence impound report?
A That's correct.
Q Has your name on it?
A Yes.
Q Okay. And at this point in time you actually identified the victim as John Palms Doe, is that correct?
A Yes.
Q All right. And now you indicated that you did a sexual assault kit, DNA kit, impounded those?

THOMAS - DIRECT

A Yes.
Q Wrapped a - the sheet that was wrapped around him, you impounded that?
A That's correct.
Q What else did you impound?
A The clothing he was wearing, which would've been the tan pants, the white socks, the plaid shirt, the clear plastic bag that was covering the section that we discussed previously. There was a men's wristwatch found in his pants pocket.
Q Okay. Before we go any further, with regards to the plastic bag again. Was the plastic bag wrapped around him?
A At time of autopsy, which was my observation of that plastic, it was wrapped just up to the thighs, not wrapped around him.
Q Okay.
A It was not covering the buttocks area at all.
Q Okay.
A It was just over him and it had adhered to his body --
Q Okay.
A -- somewhat.
Q Okay. And do you have any idea of what it caused it to adhere to the body?

THOMAS - DIRECT

A He's in a plastic bag, I'm assuming moisture, the climatic conditions. He's first outside, now he's in a plastic bag and refrigerated at the coroner's office, so I think the climatic conditions may have caused the bag to adhere to the skin if, in fact, it wasn't like that already. Like I said, I was not at the crime scene.
Q Okay. But when you -- when you got it out of the - got him out of the coroner's bag it was on him?
A Yes.
Q And did he appear to have blood on him as well?
A Yes.
Q Okay. And the photo that you showed has blood on the plastic bag?
A Yes.
Q Okay. And -- but it wasn't wrapped around him?
A Not around the buttocks area, no.
Q All right. After the plastic bag, what else did you impound?
A A watch that was found.
Q Where was it found?
A That was in his right front pocket, pants pocket.
Q Okay.
A Several small pieces of what appeared to be plastic with silver colored paper attached to it were given to me

THOMAS - DIRECT

actually by Dr. Simms, who is the coroner --
Q Okay.
A -- or the pathologist, and he recovered that from his rectum, from the victim's rectum.
Q Okay.
A One dollar bill, that was in the left front pocket, pants pocket. The nine cents, which were found in the right leg pocket -- yeah, in the right pocket of the pants. Three cigarette butts, which were found in the body bag, a used match on his upper left thigh, a book of matches with some writing on it.
Q And where was that found?
A And that was in the left rear pocket of -- pants pocket again.
Q Okay.
A An orange matchbook, which was in the left rear pocket, pants pocket. A brown leather bifold wallet, which was in the right rear pants pocket. The -- three pieces of paper with phone numbers and miscellaneous writing, that was in the right rear pocket, pants pocket again. A piece of metal, it looked like a thin strip that was four and three-quarter inches long was found in his left sock. A yellow post-it note with a strip a green paper was found in the body bag with the victim. And a nail cutter -- or clippers were found in the right front

pocket, pants pocket, and that complete... that report.
Q And all those items you had impounded from the coroner investigation, is that correct, at the -- from the coroner's office?
A Yes, at autopsy.
Q At the time of autopsy?
A Right.
Q Okay. And specifically with regards to the victim's clothing, you had testified that you impounded the tan pants, the pair of white socks, and the plaid shirt?
A Yes.
Q Okay. When you --
THE COURT: We'll be taking our recess at this time. Counsel approach.
(Off-record bench conference from 4:29:50-4:30:55 p.m.)
THE COURT: The witness may step down from the stand. And due to a prior scheduling conflict, she will not be able to be with us tomorrow, but will be returning to resume her testimony on Monday at 10:30. The State will be proceeding forward with other witnesses tomorrow. Tomorrow we will resume at 1:15 in the afternoon.
Ladies and gentlemen, during this evening recess you are admonished that you are not to talk or converse among yourselves nor with anyone else on any subject

connected with this trial. And you're not to read, watch, or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including without limitation, newspaper, television, radio, and internet. And you're not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.
You have a good evening and a good morning and we'll see you at 1:15 tomorrow. The jury may exit.
(Jurors are not present)
THE COURT: Everyone have a good evening.
MS. GREENBERGER: You too, Your Honor.
COURT ADJOURNED AT 4:34:36 P.M. UNTIL THE FOLLOWING DAY, SEPTEMBER 21, 2006
* * * * * * * * * *

AFFIRMATION
Pursuant to C177394

The undersigned does hereby affirm that the preceding Transcript filed in District Court, Case No. A528457 does not contain the social security number of any person.

Kari Riley
Transcriber

4/29/07
Date

* * * * *

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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Kari Riley
TRANSCRIBER

4/29/07
DATE

* * * * *

COPY

IN THE SUPREME COURT OF THE STATE OF NEVADA

***

KIRSTIN BLAISE LOBATO, Appellant, vs. THE STATE OF NEVADA, Respondent.	))))))))))	Case No. 58913

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Jan 30 2012 04:51 p.m.
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Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME 2

APPEAL FROM NOTICE OF ENTRY OF DECISION AND ORDER

IN THE EIGHTH JUDICIAL DISTRICT COURT

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Docket 58913 Document 2012-03246

INDEX

VOLUME	DOCUMENT NAME (FILE DATE)	PAGE NO.
9	AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS (5/5/10)	1921-1922
9	AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS SUPPLEMENTAL (6/4/2010)	1924-1935
5	APPELLANT'S OPENING BRIEF (DIRECT APPEAL) (12/26/07)	1048-1111
10	CERTIFICATE OF SERVICE (10/11/10)	2184-2185
10	CERTIFICATE OF SERVICE (10/5/10)	2183
9	CERTIFICATE OF SERVICE OF PETITION FOR WRIT OF HABEAS CORPUS (5/11/10)	1923
5	CERTIORARI DENIED (10/14/09)	1147
1	CLERK'S CERTIFICATE "REVERSED AND REMANDED" (10/5/2004)	126-142
11	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (6/16/11)	2263-2292
5	GRANTING MOTION AND STAYING REMITTUR (05/29/09)	1144
1	INFORMATION (8/9/2001)	1-3
1	INSTRUCTIONS TO THE JURY (10/6/2006) (RELEVANT EXCERPTS)	199-239
2	JUDGMENT OF CONVICTION (2/14/2007)	242-244
1	MOTION IN LIMINE TO EXCLUDE STATEMENTS MADE BY DEFENDANT DURING THE COURSE OF THE JULY 20, 2001 INTERROGATION (10/5/2005)	143-175
5	MOTION TO STAY REMITTITUR (5/26/09)	1141-1143
2	NOTICE OF APPEAL (3/12/2007)	245-246
11	NOTICE OF APPEAL (8/1/11)	2293-2294
11	NOTICE OF APPEARANCE (11/5/10)	2186-2188
11	NOTICE OF ENTRY OF DECISION AND ORDER (8/2/11)	2295
1	NOTICE OF EXPERT WITNESSES (8/21/06)	192-198
1	NOTICE OF EXPERT WITNESSES (9/14/01)	77-103
5	NOTICE OF FILING OF PETITION FOR A WRIT OF CERTIORARI (8/21/09)	1145-1146
11	NOTICE OF MOTION AND MOTION FOR LEAVE TO CONDUCT LIMITED DISCOVERY OF CARDBOARD SHOEPRINT EVIDENCE (12/16/10)	2202-2214

INDEX

VOLUME	DOCUMENT NAME (FILE DATE)	PAGE NO.
11	NOTICE OF MOTION AND MOTION FOR LIMITED DISCOVERY FOR GOOD CAUSE (11/23/10)	2189-2198
1	NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY (08/23/2006)	188-191
11	NOTICE OF STATE'S FAILURE TO TIMELY FILE OPPOSITION TO PETITIONER'S MOTION FOR LIMITED DISCOVERY FOR GOOD CAUSE (12/13/10)	2199-2201
11	ORDER DENYING DEFENDANT'S MOTION FOR LEAVE TO CONDUCT LIMITED DISCOVERY OF CARDBOARD SHOEPRINT EVIDENCE (2/14/11)	2228-2229
11	ORDER DENYING DEFENDANT'S MOTION FOR LIMITED DISCOVERY FOR GOOD CAUSE (3/2/11)	2230-2231
5	ORDER DENYING EN BANC RECONSIDERATION (5/19/09)	1140
5	ORDER DENYING REHEARING (3/27/09)	1128
5	ORDER OF AFFIRMANCE (2/5/09)	1112-1116
5	PETITION FOR RECONSIDERATION EN BANC (4/3/09)	1129-1139
5	PETITION FOR REHEARING (2/12/09)	1117-1127
6	PETITION FOR WRIT OF HABEAS CORPUS – POST CONVICTION AND MOTION FOR APPOINTMENT OF COUNSEL (5/5/10)	1150-1371
7	PETITION FOR WRIT OF HABEAS CORPUS – POST CONVICTION AND MOTION FOR APPOINTMENT OF COUNSEL (5/5/10)	1372-1582
8	PETITION FOR WRIT OF HABEAS CORPUS – POST CONVICTION AND MOTION FOR APPOINTMENT OF COUNSEL (5/5/10)	1583-1782
9	PETITION FOR WRIT OF HABEAS CORPUS – POST CONVICTION AND MOTION FOR APPOINTMENT OF COUNSEL (5/5/10)	1784-1920
10	PETITIONER LOBATO'S ANSWER TO THE STATE'S RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AND MOTION FOR APPOINTMENT OF COUNSEL (10/2/10)	1978-2182
5	REMITTITUR (10/19/09)	1148-1149
11	REPLY IN SUPPORT OF MOTION FOR LIMITED DISCOVERY FOR GOOD CAUSE (1/5/11)	2220-2223
1	REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE STATEMENTS MADE BY DEFENDANT DURING THE COURSE OF THE JULY 20, 2001 INTERROGATION (2/22/2006)	179-182

INDEX

VOLUME	DOCUMENT NAME (FILE DATE)	PAGE NO.
11	REPORTER'S TRANSCRIPT OF HABEAS CORPUS HEARING MARCH 1, 2011 (3/17/11)	2232-2262
1	REPORTER'S TRANSCRIPT OF JURY TRIAL MAY 10, 2002 (8/7/02) (RELEVANT	104-125
4	REPORTER'S TRANSCRIPT OF JURY TRIAL OCTOBER 2, 2006 (5/16/07)	789-857
4	REPORTER'S TRANSCRIPT OF JURY TRIAL OCTOBER 3, 2006 (5/16/07)	858-909
5	REPORTER'S TRANSCRIPT OF JURY TRIAL OCTOBER 4, 2006 (5/16/07)	910-974
5	REPORTER'S TRANSCRIPT OF JURY TRIAL OCTOBER 5, 2006 (5/16/07)	975-1030
5	REPORTER'S TRANSCRIPT OF JURY TRIAL OCTOBER 6, 2006 (5/16/07)	1031-1035
2	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 14, 2006 (5/16/07)	253-293
2	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 15, 2006 (5/16/07)	294-350
2	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 18, 2006 (5/16/07)	351-396
2	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 19, 2006 (5/16/07)	397-436
2	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 20, 2006 (5/16/07)	437-487
3	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 21, 2006 (5/16/07	488-530
3	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 22, 2006 (5/16/07)	531-553
3	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 25, 2006 (5/16/07)	554-608
3	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 26, 2006 (5/16/07)	609-645
3	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 27, 2006 (5/16/07)	646-692
4	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 28, 2006 (5/16/07)	693-748
4	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 29, 2006 (5/16/07)	749-788
1	REPORTER'S TRANSCRIPT OF MOTION HEARING MAY 19, 2006 (6/1/06) (RELEVANT EXCERPTS)	183-187
1	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING AUGUST 7, 2001 (8/31/01)	4-76
5	REPORTER'S TRANSCRIPT OF SENTENCING FEBRUARY 2, 2007 (5/16/07)	1039-1047
5	REPORTER'S TRANSCRIPT OF SENTENCING NOVEMBER 21, 2006 (5/16/07)	1036-1038
2	REPORTER'S TRANSCRIPT OF STATE'S MOTION FOR RECIPROCAL DISCOVERY SEPTEMBER 7, 2006 (5/16/07)	247-252

INDEX

VOLUME	DOCUMENT NAME (FILE DATE)	PAGE NO.
11	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR LIMITED DISCOVERY AND NOTICE OF STATE'S FAILURE TO FILE A TIMELY RESPONSE (12/22/10)	2215-2219
11	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR LIMITED DISCOVERY OF CARDBOARD SHOEPRINT EVIDENCE (1/10/11)	2224-2227
1	STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE STATEMENTS MADE BY DEFENDANT DURING THE COURSE OF THE JULY 20, 2001 INTERROGATION (2/3/2006)	176-178
9	STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) (8/20/10)	1936-1977
2	VERDICT (10/6/2006)	240-241

VER

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- KIRSTIN BLAISE LOBATO, Defendant.	)	CASE NO: C177394 DEPT NO: II

VERDICT

We, the jury in the above entitled case, find the Defendant KIRSTIN BLAISE LOBATO, as follows:

COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

- ☐ Guilty of First Degree Murder With Use of a Deadly Weapon
- ☐ Guilty of First Degree Murder
- ☐ Guilty of Second Degree Murder With Use of a Deadly Weapon
- ☐ Guilty of Second Degree Murder
- ☒ Guilty of Voluntary Manslaughter With Use of a Deadly Weapon
- ☐ Guilty of Voluntary Manslaughter
- ☐ Not Guilty

We, the jury in the above entitled case, find the Defendant KIRSTIN BLAISE LOBATO, as follows:

COUNT 2 – SEXUAL PENETRATION OF A DEAD HUMAN BODY

(please check the appropriate box, select only one)

☒ Guilty of Sexual Penetration of a Dead Human Body

☐ Not Guilty

DATED this 6 day of October, 2006

FOREPERSON

JOC

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FEB 14 11 08 AM '07

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KIRSTIN BLAISE LOBATO
#1691351

Defendant.

CASE NO. C177394

DEPT. NO. II

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT I – MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER) (Category A Felony) in violation of NRS 200.010, 200.030, 193.165, COUNT II – SEXUAL PENETRATION OF A DEAD HUMAN BODY (Category A Felony), NRS 201.450; and the matter having been tried before a jury and on the 18th day of May, 2002, the Defendant having been found guilty of the crimes of COUNT 1 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), in violation of NRS 200.010, 200.030, 193.165, COUNT 2 – SEXUAL PENETRATION OF A DEAD HUMAN BODY (Category

A Felony), in violation of NRS 201.450; thereafter, on the 27th day of August, 2002, the Defendant appeared in court with his counsel for sentencing.

THEREAFTER, on the 7th day of October, 2004, the matter was returned from the Nevada Supreme Court to reset trial date.

SUBSEQUENTLY, the matter again having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT I – VOLUNTARY MANSLAUGHTER WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of NRS 200.080, COUNT II – SEXUAL PENETRATION OF A DEAD HUMAN BODY (Category A Felony), NRS 201.450; thereafter, on the 2ND day of February, 2007, the Defendant was present in court for sentencing with her counsels, DAVID SCHIECK, SHARI GREENBURGER, and SARA ZALKIN, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $800.00 Psycho-Sexual Evaluation Fee, $150.00 DNA Analysis Fee including testing to determine genetic markers, and $1,000.00 Fine, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: AS TO COUNT I - TO A MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY EIGHT (48) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS MINIMUM for the Use of a Deadly Weapon; AS TO COUNT II - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of SIXTY (60) MONTHS, COUNT II TO RUN CONSECUTIVE TO COUNT I, with ONE THOUSAND FIVE HUNDRED FORTY-FOUR (1,544) DAYS credit for time served.

FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is imposed to commence upon release from any term of imprisonment, probation or parole.

ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release from custody.

DATED this 13th day of February, 2007

VALORIE J. VEGA

VALORIE J. VEGA
DISTRICT JUDGE

ORIGINAL

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CLERK OF THE COURT

NOAS
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CLARK COUNTY SPECIAL PUBLIC DEFENDER
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Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA, Plaintiff, vs. KIRSTIN BLAISE LOBATO, Defendant.	CASE NO. C 177394 DEPT. NO. II DATE OF HEARING: N/A TIME OF HEARING: N/A

NOTICE OF APPEAL

TO: THE STATE OF NEVADA, Plaintiff;

TO: Clark County District Attorney, Plaintiff's attorney; and

TO: DEPARTMENT II OF THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:

NOTICE is hereby given that KIRSTIN LOBATO, appeals to the Nevada Supreme Court from the judgement of conviction and sentence entered against said Defendant on the 14th day of February, 2007.

DATED this 1 day of March, 2007.

By_____
DAVID M. SCHIECK
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CLARK COUNTY NEVADA

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 12 day of March, 2007, I deposited in the United States Post Office at Las Vegas, Nevada, a copy of the Notice of Appeal, postage prepaid, addressed to the following:

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Nevada Attorney General
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Kirstin Blaise Lobato, No. 1691351
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330 S. Casino Center Blvd.
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An employee of The Special Public Defender's Office

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EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA, Plaintiff, vs. KIRSTIN BLAISE LOBATO, Defendant.	CASE NO. C177394 DEPT. NO. II Transcripts of Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

STATE'S MOTION FOR RECIPROCAL DISCOVERY
DEFENDANT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY & CUMULATIVE PHOTOGRAPHS

THURSDAY, SEPTEMBER 7, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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LAS VEGAS, NEVADA THURSDAY, SEPTEMBER 7, 2006

PROCEEDINGS

PROCEEDINGS BEGAN AT 11:19:43 A.M.

THE COURT: At the top of 13, State versus Kirstin Blaise Lobato. Case Number C177394. The record shall reflect Mr. Kephart and Ms. DiGiacomo present for the State. Mr. Schieck, local counsel, present for the Defendant, who is present, out of custody, together also with her two California counsel.

MS. GREENBERGER: Good morning, Your Honor.

THE COURT: Good morning.

Unfortunately with Mr. Durham being late and Mr. Juarez having been in custody that case was ahead of you to go, if it was going to proceed and that required me to trail this one. This is now the only case that is left for calendar call.

MR. KEPHART: We're ready. The State's ready, Your Honor.

MR. SCHIECK: The Defense is ready, Your Honor.

THE COURT: Okay.

MS. DiGIACOMO: Your Honor, there is one issue, a housekeeping matter. There are two witnesses that we've been unable to locate, and I got the due diligence from my investigator as I was walking in court this morning. Both of them testified at the prior trial, and so if we can't find them we

are going to be fi[illegible] a motion on Monday to use their prior testimony. And it's Jeremy Davis and Richard Shott. And there's also another witness, Heather McBride, who testified the last time --

THE COURT: Excuse me. Jerry McDavis?

MS. DiGIACOMO: I'm sorry. Jeremy Davis and Richard Shott. Richard Shott, he's no where to be found. He was kind of homeless. He's got warrants out for him since 2004. Nothing current in the system. We've been unable to find him completely.

Jeremy Davis, we've located where he should live in Arizona, but have been unable to find him or had any response to our attempts to locate him.

And then there's another witness, Heather McBride, who we did serve. However, since serving her she's completely avoiding us and it's my understanding she's avoided the defense as well. So I don't know if we're gonna have her for trial and we would probably need to ask to have her testimony read in.

THE COURT: Okay.

MR. SCHIECK: We're looking for the same witnesses, Your Honor. Not so much Mr. Shott, obviously. We'll continue to look, if we find him we'll let the State know.

THE COURT: Okay.

MS. DiGIACOMO: And this will go over several weeks, so we'll continue as well, but I -- you know, we anticipate being done with our case in chief the beginning of the week of the 18th, so.

THE COURT: Okay. I was trying to remember, did it take three weeks to try the first time?

MS. DiGIACOMO: We did it in two, but if you recall we finished late Friday night and the jury stayed Friday night.

THE COURT: Right.

MS. DiGIACOMO: So with the addition of the defense experts, we told you it's probably -- it's gonna go into the third week. I don't know if it will take the full three weeks.

MR. SCHIECK: Our recollection was 8 trial days after jury selection.

MS. DiGIACOMO: Right.

MR. KEPHART: Ended on Friday, so that's --

MS. DiGIACOMO: Yeah, it was a Wednesday through Friday and then the following Monday through Friday.

THE COURT: Okay. I have on calendar today State's motion for reciprocal discovery?

MS. DiGIACOMO: That's correct.

THE COURT: I have not received any opposition.

MR. SCHIECK: We have no opposition to that, Your Honor, to provide any statutory reciprocal discovery. We've

1 given them everything we had. And, in [illegible], I gave some
2 additional materials this morning, an updated sheet of CV on
3 Mr. --or Dr. Laufer, along with an updated report from Dr.
4 Laufer that we just got. In addition, I provided a copy of the
5 report from Mr. Skiero [phonetic], that actually goes back to
6 the first trial. But he had changed the date on it and updated
7 the information of who the attorneys are. I provided that this
8 morning. I believe there's an additional report that we need to
9 send over, that was just a preliminary report from Dr. Wetley,
10 and we'll send that this morning. We're not sure we're going
11 to call Dr. Wetley or not in the case, but we want to be sure
12 that they have everything, so we have complied, as far as we
13 know with evidence.
14 THE COURT: Okay. Then the motion will be
15 granted pursuant to EDCR 3.20, and the Court will ask that the
16 State prepare the order.
17 MR. SCHIECK: Additionally, Your Honor, if I could.
18 Dr. Laufer, if he testifies, is going to be using a PowerPoint
19 presentation that he's Fedexing to us today. We'll provide a
20 copy of that to the State also.
21 THE COURT: Okay. Can you spell Laufer for the
22 Court Recorder?
23 MR. SCHIECK: L-a-u-f-e-r.
24 MS. DiGIACOMO: Your Honor, we have an issue

1 with regard to our coroner, that would rebut Dr. Laufer's
2 testimony. He leaves the 18th -- no, is it the 18th or is that
3 Wednesday the 20th? -- I believe it's Wednesday, the 20th, he
4 leaves and is gone. So depending on where we are, we might
5 ask if they could call their doctor out of order so that our
6 expert can see the testimony to see if there's anything that
7 needs to be rebutted before he leaves. He will not be back
8 before the end of the trial.
9 (Pause in the proceedings)
10 MR. SCHIECK: Assuming that they end their case on
11 the 18th, which I think you indicated you thought you'd
12 probably be done that Monday, we can probably make
13 arrangements to have Dr. Laufer testify at the beginning of our
14 case, so that --
15 MS. DiGIACOMO: Tuesday. But if we're --
16 MR. SCHIECK: -- Dr. Simms would still be available.
17 MS. DiGIACOMO: -- if we're not done, we need to
18 probably take him out of order, 'cause we'll want Dr. Simms to
19 sit through his testimony and be able to recall him if we need
20 too.
21 MR. SCHIECK: We will work with them on that, Your
22 Honor.
23 MS. DiGIACOMO: Okay.
24 MR. SCHIECK: To make sure that they'll be able to

1 call Dr. Simms in [illegible]ttal, if they so desire.
2 THE COURT: Okay. We had floated forward a
3 defendant's motion in limine to exclude inflammatory and
4 cumulative photographs.
5 MS. DiGIACOMO: Your Honor, and there had been
6 information given to the State that possibly our photographs
7 had gotten inked while they were in the evidence vault. I
8 went and looked at them and they looked fine to me. And so
9 the State intends to use, in our case in chief, the same
10 photographs that you had determined the last time could be
11 used by the coroner have --
12 THE COURT: I know they're inked. What happened
13 was --
14 MS. DiGIACOMO: Well --
15 THE COURT: -- the clerk at that time had laid out
16 the photographs and taken a rubber stamp and stamped the
17 back of them. And then put them altogether, so we had --
18 MS. DiGIACOMO: If -- if --
19 THE COURT: -- we have Photograph A, the back of
20 which ended up on top of the front of Photograph B.
21 MS. DiGIACOMO: There's no -- it's my
22 understanding, with talking to the evidence vault, it was a
23 different case because there's no rubber stamp on the back of
24 our photographs and they looked fine. I mean you saw 'em

1 too, didn't you?
2 MR. SCHIECK: I didn't notice any. We went
3 through the evidence vault --
4 MS. DiGIACOMO: It's --
5 MR. SCHIECK: -- and I didn't notice any
6 photographs with ink marks on them and --
7 MS. DiGIACOMO: Right. And, Your Honor, and I
8 specifically looked at the back, because you had said the
9 rubber stamp --
10 MR. KEPHART: The Court's indulgence, Your Honor.
11 (Off-record colloquy of state's counsel)
12 MR. SCHIECK: If they are inked we can reproduce
13 those from the CD from the coroner's office anyway. You
14 know, we can make the same originals available.
15 THE COURT: I'm scratching my head. I --
16 MS. DiGIACOMO: Right. 'Cause I went there with
17 our proof sheet and -- to figure out which ones we used last
18 time, but -- and I forgot the name of the case, but I was
19 informed it was another case. It wasn't our case. It was
20 another one at the same time. But there's no rubber stamp.
21 It doesn't appear there's any ink or any damage to the
22 photographs.
23 THE COURT: Okay.
24 MS. DiGIACOMO: So -- but they did say it did

1 happen in a murder case. But it doesn't appear to be ours. Or
2 at least I couldn't find evidence of that. They looked fine and
3 so we intend to introduce those same ones that you ruled
4 could come in with the coroner the last time. However,
5 regarding their expert --
6 THE COURT: I mean I don't have a perfect
7 memory. And it's been a number of years, but --
8 MS. DiGIACOMO: There is a case --
9 THE COURT: -- perhaps I'm mixing this up with a
10 different case, but I didn't think so.
11 MS. DiGIACOMO: Well, when I had mentioned it
12 they said it was this other case and so -- they looked fine to
13 me and I didn't see a rubber stamp on the back. Only the
14 court exhibit. But, if --with their expert --
15 THE COURT: Okay. So has the defense had the
16 opportunity to inspect?
17 MR. SCHIECK: Yes.
18 THE COURT: I know you went to the evidence vault
19 on a prior occasion when you all were in town and reviewed
20 everything that was there. Right?
21 MR. SCHIECK: Correct, Your Honor.
22 THE COURT: And did they all look fine to you?
23 MR. SCHIECK: We didn't notice any ink marks, Your
24 Honor.

1 THE COURT: Okay. Okay.
2 MR. SCHIECK: And I realize the Court heard the
3 motions for the last trial to exclude the photographs and
4 determine which ones the Court felt were admissible and --
5 MS. DiGIACOMO: They're marked as exhibits and
6 not admitted, the ones that you excluded. They're all in the
7 evidence vault. But I I'd like to bring up though, if they do use
8 their expert, Laufer, then it might cause the need for additional
9 photographs.
10 MR. SCHIECK: In fact, he may use additional
11 photographs. So we don't want to waive the fact that we're
12 objecting to the photographs, however, the ones that are
13 already admitted at the last trial, I think we can agree would
14 probably come in and there may be additional ones that were
15 objected to at the last trial that our expert is gonna want to
16 display for the jury, if he testifies.
17 THE COURT: So you still want the Court to rule on
18 the motion, and I'm gonna need to have the photographs to
19 be able to do that, so we'll have to --we'll have to float this
20 forward to Monday morning, so that the Clerk can bring all the
21 evidence into the courtroom and we can have the photographs
22 here to do that. So we'll -- well, I'm trying to think of my
23 Monday calendar.
24 (Off-record colloquy of the Court and Clerk)

1 THE COURT: I'm going to set the motion for 10
2 o'clock. And the trial for -- you know what, set it at 10:15, and
3 the trial at 10:30. And that will give us fifteen minutes to
4 review the photographs and handle that motion before the
5 bailiff goes to retrieve the jury.
6 MR. SCHIECK: Your Honor, and for our planning
7 purposes, the Court's criminal calendars are Tuesdays and
8 Thursdays, so those will be later starting days. And then
9 Wednesdays and Fridays, is there any estimate of what times
10 we will be starting?
11 MS. DiGIACOMO: Yeah, we -- we have --
12 THE COURT: Generally Mondays and Wednesdays
13 we'll start at 10:30. And Fridays will depend on whether I get
14 any emergency motions in or not.
15 MS. DiGIACOMO: You know, for next week we have
16 quite a few -- I mean all of our witnesses are pretty much out
17 of the county or out of state that we're trying to juggle for next
18 week and some are leaving the country, so do you --
19 THE COURT: I can go look at my calendar if you
20 want me to?
21 MS. DiGIACOMO: If you could. That would be
22 helpful for next week for us. So is it fair to assume we'd start
23 at 1:00 on Tuesdays -- the next Tuesday and Thursday?
24 THE COURT: Unless I happen to have a short

1 calendar, a short -- if I have a short criminal calendar then I'll
2 try to get us some trial time in the morning.
3 MS. DiGIACOMO: Okay.
4 THE COURT: But it would be 10:30 at the very
5 earliest.
6 MS. DiGIACOMO: Okay.
7 THE COURT: Like this last Tuesday we had a real
8 short calendar, but today we didn't, so it varies.
9 MS. DiGIACOMO: Okay.
10 THE COURT: You want to take us off the record for
11 a minute so I can look at next Friday.
12 (Off-record at 11:33:29 a.m., until 11:35:31 a.m.)
13 THE COURT: I did put some motions on order
14 shortening time on Friday morning next week, so we would
15 start probably 10 o'clock.
16 MS. DiGIACOMO: Your Honor, I just also want to
17 remind the Court, when we set this trial date, I informed the
18 Court and Counsel that I was leaving town on the 22nd to go
19 out -- for an out of state wedding and we would need to
20 conclude by noon that day for me to run from here to the
21 airport to catch my flight.
22 THE COURT: If we're not done then Mr. Kephart will
23 have to ride out the rest solo.
24 MS. DiGIACOMO: Well, Your Honor, I have concerns

1 with that because I'm doing the summa. . in this case, so I
2 need to hear the evidence as well. And I did bring it to the
3 Court's attention --
4 THE COURT: If I could predict the future I would
5 have a different job than this one.
6 [Laughter]
7 MS. DiGIACOMO: Right. But I mean if -- if we're
8 not --
9 MR. KEPHART: You'd be a Supreme Court Justice,
10 Judge.
11 MS. DiGIACOMO: Judge, all I'm saying is, if we're
12 not running behind, I'd like to stop at noon that day. We
13 should be well into their case and hopefully just have our
14 rebuttal the beginning of the following week, so I'm just
15 bringing it to the Court's attention. When we set this that was
16 my issue, 'cause I already had the plane ticket, so.
17 MR. SCHIECK: We'll cooperate in scheduling our
18 witnesses to accommodate that, Your Honor. I think that we'll
19 be --we'll have plenty of --
20 THE COURT: The 22nd is a Friday.
21 MS. DiGIACOMO: Right. I'm leaving town just for
22 the weekend, an out of town wedding. So I'm saying if -- on
23 that Friday we'd need to stop by noon so that gives me time to
24 -- I think my flight is at 2:00.

1 THE COURT: Then you'd be back on Monday the
2 25th?
3 MS. DiGIACOMO: Yes. Yes, it's just that day that I
4 had a problem with.
5 THE COURT: Okay. Okay. I totally had forgotten
6 about that, so thank you for reminding me.
7 MS. DiGIACOMO: Right, and that's -- that's why I'm
8 bringing it up now, 'cause it's a flight and I can't change it. It
9 was non-refundable.
10 (Pause in the proceedings)
11 THE COURT: Are there any other dangling
12 participles?
13 MR. SCHIECK: Just one thing from the defense,
14 Your Honor. The State had provided us today a copy of a
15 forensic lab report from Kristina Paulette, who had tested the
16 pubic combings from Mr. Bailey and performed DNA testing on
17 that and we appreciate the fact that they have provided that to
18 us this morning. What we would like to do though is, with the
19 knowledge of the State, is contact Ms. Paulette and see if we
20 can take a look at her lab notes to provide to a possible expert
21 for us, just to advise us on, 'cause we don't really understand
22 everything that's in the report. So if we could just get access
23 to the lab notes by calling her, we'd appreciate it.
24 MS. DiGIACOMO: That's fine. I'll email her when I

1 get back.
2 MR. SCHIECK: Thank you, Your Honor.
3 THE COURT: Okay. Anything else? No. We'll see
4 everybody Monday morning at 10:15.
5 MR. DIGIACOMO: Thank you, Judge.
6 PROCEEDINGS CONCLUDED AT 11:39:35 a.m.
7 **********
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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Transcript filed in District Court, Case No. C177394 does not contain the social security number of any person.

Mandi Garcia
Transcriber

4/29/07
Date

* * * * *

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A **"ROUGH DRAFT"** TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

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CLERK OF THE COURT

THE STATE OF NEVADA,	)	
	)	
	)	CASE NO. C177394
Plaintiff,	)	
	)	
vs.	)	
	)	DEPT. NO. II
KIRSTIN BLAISE LOBATO,	)	
	)	
Defendant.	)	Transcripts of Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

JURY TRIAL - DAY 4
VOLUME IV

THURSDAY, SEPTEMBER 14, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

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INDEX OF WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS
THURSDAY, SEPTEMBER 14, 2006				
STATE'S WITNESSES:				
Richard Shott	54	61	--	--
Lueron Williams	66	71	77	78
Iain Anderson	79	93	97	105
James Testa	108	125	149	152

* * * * *

INDEX OF EXHIBITS

		ADMITTED
THURSDAY, SEPTEMBER 14, 2006		
STATE'S EXHIBITS:		
1	Photograph of Nevada State Bank	81
2	Photograph of patrol vehicle and detectives	117
3	Photograph of crime scene	117
4	Photograph of crime scene	65
5	Photograph of crime scene	117
6	Photograph of foot and garbage	65
7 thru 37	Photographs of crime scene	117
40	Photograph of Duran Bailey	--
116	Photograph of dumpster area	93
117	Photograph of dumpster area	93
118	Photograph of dumpster area	93
119	Photograph of dumpster and Palms	93
120	Photograph of dumpster area, Gold Coast and Rio	93
121	Aerial photograph of crime scene area and surrounding properties	80
137	Photograph of dumpster area	100
139	Photograph of dumpster and planter	100
142	Photograph of camera	121
143	Photograph of camera	121
144	Photograph of foot prints in blood	121

* * * * * *

INDEX OF EXHIBITS

		ADMITTED
THURSDAY, SEPTEMBER 14, 2006		
DEFENDANT'S EXHIBITS:		
A	Photograph of crime scene	145
B	Photograph of crime scene	145
E	Photograph of crime scene	145

* * * * *

1 LAS VEGAS, NEVADA THURSDAY, SEPTEMBER 14, 2006
2 **PROCEEDINGS**
3 (THE PROCEEDINGS BEGAN AT 01:19:26)
4 (Jurors are present)
5 THE BAILIFF: All rise.
6 Department II is now in session, the Honorable
7 Valorie J. Vega presiding. Please be seated.
8 THE COURT: Good afternoon, everyone. The
9 record shall reflect we're resuming trial in State versus Kirstin
10 Lobato under Case Number C177394, in the presence of the
11 defendant, together with her three counsel, the two
12 prosecuting attorneys, and the ladies and gentlemen of the
13 jury who were seated yesterday.
14 Proceeding forward now with the opening
15 statements. The prosecution may proceed.
16 MR. KEPHART: Thank you, Your Honor.
17 **STATE'S OPENING STATEMENT**
18 MR. KEPHART: If it pleases the Court, counsel for
19 the defense, Ms. DiGiacomo.
20 Ladies and gentlemen. thank you for your patience
21 in this last three days, we're here four days now and finally
22 you get to hear what the State intends to prove in this matter.
23 You heard that the State has charged the defendant with
24 murder in the first degree. It's called open murder. And she's

1 also charged with sexual penetration of a dead human body.
2 You heard somewhat of the time frame of when this
3 occurred. This occurred back in July 8th of 2001. It happened
4 here on West Flamingo. You take a look over here. This is the
5 Palms Hotel as it currently is now. This photo was taken back
6 then. Down here is the Gold Coast. This is Flamingo running
7 from your left to right, and Wynn Road here. This is the
8 Nevada State Bank parking lot. You're gonna hear some
9 testimony about how the Palms employees were using that as
10 well. There's a desert area here. It's not desert any longer.
11 It's been developed. Right here where it says "Crime Scene" is
12 a trash dumpster. It's behind the -- behind the Nevada State
13 Bank there.
14 Okay. Around 10:36, 10:30 p.m., on the 8th, it's a
15 Sunday, 2001, a man by the name of Mr. Shott was in the area
16 and dumpster diving. Now you're gonna hear some testimony
17 from previous hearing that he gave. And he went to this area
18 right here and the -- it was unsecured, meaning that the gates
19 weren't locked. He was able to go into the area. And when
20 he walked in, he saw this. Right here is the foot of a man. He
21 saw that. He backed out. And he told us in a previous
22 hearing that he was afraid that somebody might think it was
23 him that he did this. He knew -- he recognized it as a person's
24 foot. And he walked up to a gas station that's located up here

1 on Arville and he waited for a couple hours and then he called
2 the police. The police met him there, and he directed them to
3 this area where officers responded to the area, went in. And
4 you see the dumpster that is here. One of the officers moved
5 that dumpster back out of the way so you could gain entrance
6 in it. He will testify that it was on an angle when he first went
7 in and he had to move it so he could get back in there.
8 The -- what he found was a pile of garbage back in
9 the back of that dumpster. And when they removed portions
10 of that, they found a man by the name of Duran Bailey. It's a
11 forty-four-year-old black male. But you're gonna hear, he's
12 gonna be introduced to you by his cousin and how he was a
13 homeless man, how he lived basically on the streets. But the
14 reason why he was at this area, at the Nevada State Bank, is
15 he actually had an account and he did some banking because
16 he was disabled and received SSI payments, and he had a
17 bank account to keep his account in.
18 Now you're gonna hear a lot of testimony from some
19 crime scene analysts that went out there and recovered this
20 garbage. And if you look back here at this picture, you can
21 see he's basically completely buried. And without moving
22 items of the garbage, they couldn't see him other than his
23 foot.
24 You're gonna hear from a coroner that's gonna tell

1 you that Duran suffered multiple injuries. He suffered blunt
2 force trauma to his head, multiple stab and incised wounds,
3 multiple stab wounds, multiple cut wounds, multiple defensive
4 wounds, head wounds, and he also suffered some postmortem
5 wounds. And what I mean by that is that after he died,
6 additional things were done to him in the -- meaning that they
7 severed his penis and his anus was stabbed. The doctor will
8 tell you that was sexually motivated.
9 Now Duran Bailey, when they tested his body, they
10 found that he obviously uses alcohol 'cause he had a .11 blood
11 alcohol concentrate in his blood. They also found that he uses
12 drugs because he had a cocaine metabolite in his -- in his
13 blood. And you'll also hear that in the past he had actually
14 provided drugs to individuals and he actually traded sex for
15 drugs.
16 Now once they, the police, got involved and
17 homicide arrived and they did what they could with the -- with
18 the crime scene, you'll hear that they fingerprinted practically
19 everything they could fingerprint. They collected multiple
20 pieces of evidence or pieces of garbage to see whether or not
21 they could get some evidence off of it. The police really didn't
22 have much to go on. They really didn't. They didn't have a
23 suspect. They didn't have a -- they didn't catch anybody at
24 the scene. They didn't really know much what to do until the

1 20th of July of 2001. They received a phone call from a lady
2 up in Pioche, Nevada. And keep this in mind, just keep this
3 quote in mind. "I didn't think anybody would miss somebody
4 like that." Keep that in mind, and I'll come back to you and I'll
5 tell you why that's important. Well, they get a phone call from
6 this lady up in Pioche and she tells the -- she calls and asks if
7 there's anything in Las Vegas that involves a man getting his
8 penis cut off. And as unique as that is, homicide quickly
9 traveled to Pioche, contacted her, and that let her -- led them
10 to the defendant.
11 Basically, what the police ended up finding out is
12 there's a lady by the name of Dixie Tienken that -- and you'll
13 get an opportunity to view her and see her and listen to her.
14 And keep in mind that she will tell you that she was basically
15 the defendant's confidante in that town. She was his -- she,
16 the defendant, was one of her kids. She's a teacher from up
17 there and part of the reason this defendant had felt that Dixie
18 was somebody that she could go to and confide in and give
19 her -- tell her about things that bothered her. Well, she ended
20 up telling the police that what she believed was either the 11th
21 or the 18th of July of 2001, the defendant came to her house
22 early in the morning, extremely upset about something that
23 she had done in Las Vegas. Well, they sat down and ended up
24 speaking for about three hours. The defendant was looking

1 through newspapers, trying to find out whether or not there
2 was anything that had been reported in Las Vegas about a
3 man, which she describes to Dixie as an old, smelly, black
4 man, had lost his penis, had his penis cut off. Actually, Dixie
5 will tell you they actually even looked in the Internet to see
6 whether or not they could find anything on the Internet.
7 And Dixie went on to explain to the police that she
8 felt, based on the defendant's demeanor, is that this just had
9 happened, had to happen, she will say, she believed within a
10 week of when this occurred. She said that the defendant was
11 extremely concerned about whether or not this man -- whether
12 or not they found, the authorities, found out anything about
13 this particular man. And she tells Dixie that what had
14 happened is that she had been propositioned by this man,
15 eventually attacked by this man, and she, the defendant, took
16 out her butterfly knife, which you're gonna hear that she has
17 had and many of her friends knew about that she'd used. Her
18 father actually gave it to her. She was proficient with being
19 able to open it with one hand, if any of you ever know what a
20 butterfly knife is, and that she whipped that out of her skirt
21 she was wearing, she reached down, grabbed the man's penis
22 and cut it off.
23 Now she tells multiple friends up in Panaca the same
24 thing on various dates, that she cut a man's penis, she

1 stabbed a man's penis, she cut a man's penis off.
2 Dixie says that before she did this, the defendant
3 says that before she cut this man's penis off is the man tried to
4 put it in her mouth. She said she pulled the knife out and cut
5 his penis. She described, the interesting part is, she described
6 to the police where the defendant told her it had happened.
7 Dixie will tell you that she used to live on the west side of I-15
8 and that when she was talking to the defendant, the
9 defendant told her it was either on the west side of Tropicana
10 or the west side of Flamingo. She said not Sahara, she
11 remembers that, but she remembers those two hotel names.
12 And this happens to be on West Flamingo.
13 She tells Dixie that when she cuts the man's penis
14 off, Dixie's words that she said, "She got ick on her," meaning
15 that she got blood on her. 'Cause she tells, eventually, the
16 police -- the police do talk to the defendant as well. And what
17 they do is they go to her house and she's just getting out of
18 the shower, and it's two homicide detectives and they'll explain
19 to you in detail what they did. When they got to her house,
20 she comes out of that -- out of the bathroom after taking a
21 shower and she is -- they have with her -- their badges, they
22 have with them their shirt and they have a satchel that says
23 "Homicide" on it. They tell her that they're from homicide and
24 they tell her why they're there. She puts her head down and

1 she starts to cry, and she tells the police, "I didn't think
2 anyone would miss him." Before they say anything about --
3 anything about the crime, "I didn't think anybody would miss
4 him." Then within twelve minutes of her getting her Miranda
5 rights and signing a card and saying "I'll talk to them," they
6 start a taped statement, and you're gonna have an opportunity
7 to hear that full taped statement. And in that taped statement
8 she says, "I didn't think anybody would miss anybody like
9 that." And she describes the person like that as, "An older,
10 smelly, black man, a person who smelled like alcohol and dirty
11 diapers."
12 After they show her a picture of the man, she says
13 she was trying to put him out of her mind. While they're at
14 the house, the defendant's mom comes home. And the
15 defendant looks at the mom and says, "Mom, I did it. Now I
16 have to do what I have to do." Her father comes home. And
17 she says, "I'm sorry, Daddy, but I told you I did something
18 awful." Now bear in mind she has spoken to her parents. "I
19 told you, Daddy. I'm sorry, Daddy, I told you I did something
20 wrong." Bear in mind and think about that when you hear
21 other witnesses testifying about the small town of Panaca and
22 about things that maybe her mother had influences over
23 people, things that they may have -- that she may have been
24 saying to people.

On the way back to Las Vegas after the defendant was arrested, she tells the police officers that her father had provided her that knife for Christmas. They get to Las Vegas and she's being booked into the Clark County Detention Center, and she is standing inside of one of the holding cells. And you'll get an opportunity to see the very holding cell. As a matter of fact, she was in a holding cell when she tells the police officers, "This looks just like the place or similar to the place that this happened." And she describes, she describes it as the only difference is that she could see out, as she's looking up, and she says, "I could see the parking structure from inside." The top of this structure you'll see is covered with chainlink fencing and up to the left hand side in this photograph is the parking structure next to it. Notice the bottom of the parking structure, there's a curb that goes all the way around it, and you'll notice the inside of the cell when you get an opportunity to see that.

Now the officers, when they're talking to her, and she explained to them that she got blood on herself and she got in the car. She told Dixie, after she got ick on herself, all she wanted to do was get washed up and get back to Panaca to her father's. She tells the police that she got blood all over her and she threw away her clothes, she threw away the knife, and she had driven by herself in a red Fiero, her little car. She

told Dixie that she was concerned that somebody would have seen her red Fiero. She wasn't concerned about her being seen because she was in an enclosed area, but she was worried about her being seen in her red Fiero and that she'd be caught because of that. But she drove her red Fiero back to Panaca.

Now Laura will tell you Dixie told her that the defendant told Dixie that she went back to Panaca because she needed to hide her car, needed to hide out, and there's a possibility her parents would even help her get it painted.

When the police are talking to her about her car and talking to her about the crime, they ask her is there anything else that you hit him with other than your knife. And her response to that was, "It's possible. I have a bat in the car. I had a bat in the car." And you're gonna get an opportunity to see that bat. You're gonna hear testimony from the medical examiner about the extent of the injuries that Mr. Bailey received and to the degree of the injury that would be consistent with the use of that bat.

The police talked to her about, and like I said you're getting the opportunity to hear that and see those words, the police talked to her about this and she says that it happened late at night or early in the morning. And she corrects herself and says, "No, it happened early in the morning." And you're

gonna hear from the medical examiner that will give you basically a ballpark time figure of when that body was probably killed, when Duran was probably killed. She says, she tells the police on the taped statement, that it happened on the 20th of July, that it happened a couple of weeks ago in Las Vegas. They ask her if there's a dumpster located near where it occurred. And she said, "There is one near but I didn't put him in it. I don't think I could have." But you're gonna have an opportunity to see the actual scene, more so than what I just showed you here, and show you that the body had been moved from the back corner over there towards where the dumpster was.

Now she tells the police that she was on a three-day binge of methamphetamine and she believed that this happened on the third day. You're gonna hear from her friends that tell you that whenever they were together she would bring methamphetamine to the table. You're gonna hear that one of her boyfriends broke up with her because of her methamphetamine use and issues. And they'd also tell you that she would do anything she could do to get her hands on methamphetamine and her attitude changed quite a bit when she was on methamphetamine.

Interestingly, in her statement, she tells the police, "I didn't tell anybody about this." But you're gonna see that

that's not correct. Many of her friends, many people from up in Panaca, were told by her words, Dixie one of them. She tells the police that when she got blood on her that it was smeared on her shoulder and on her clothing, mostly in the mid-section of her body. Her stories that she tells the police, her friends, Dixie, all seem to be consistent about her cutting a man's penis off.

You're also gonna hear about how she met a new boyfriend and that she moved out of one of her friend's house the end of June, the beginning of July, and that shortly after she moved in with her new boyfriend, who you'll hear that she and he did methamphetamine quite often together, that they would do these binging-type episodes, is that she wanted to go to Panaca for the 4th of July celebration. Now bear in mind we're telling you that this occurred on the 8th of July, and that you're gonna hear from some individuals in Panaca that talk about how her and her mother were fighting on the 5th and 6th in Panaca and that the fight was about her leaving and coming back to Las Vegas. Keep in mind she's got a new boyfriend, she's doing methamphetamine, she's up in Panaca with her -- and she's fighting with her mom.

Well, we know that she traveled frequently between Las Vegas and Panaca and she drove her car. But on the 9th of July, after this occurred, her new boyfriend drove to Panaca

1 in his car and picked her up and took her back to Las Vegas,
2 leaving her car there, only to have her father then come down
3 and pick her up later on just on that week.
4 Dates are important here. You heard the defense
5 has indicated that they potentially are addressing and
6 presenting a defense of alibi, so dates are important. I told
7 you that the defendant's mother, there's some interest with
8 the defendant's mother talking to people about dates. Keep
9 that in mind.
10 Dixie will tell you that her family covers for each
11 other. Michele Austria, a friend of the defendant's that will tell
12 you about her conversation with the defendant, will tell you
13 that when she spoke to the defendant, the defendant had
14 indicated to her that she was now taking medication for
15 depression and that she had just gotten on it by the doctor.
16 When the police found her, they also took her car
17 and they impounded her car, brought it down here to Las
18 Vegas. And when they first came into contact with the
19 defendant, that's who they were talking to. And when she
20 explained about the use of her car, and they knew information
21 about her putting her car there or hiding her car, the crime
22 scene analysts, they took her -- took her car and brought it
23 back here to a lab in Las Vegas to process it. Interestingly,
24 you'll hear from the crime scene analysts that will tell you that

1 she had car seats on her car, slip covers on her seats in her
2 car, so it was a -- it's a small Fiero, 2-seater, and that she says
3 she doesn't believe that the seat covers are new because the
4 nature of what she believed -- I mean, seen with them but she
5 believes that they were freshly laundered. And that's gonna
6 play a part in whether or not they can locate or identify
7 substances like blood in that car.
8 Well, they also did -- they fingerprinted her car and,
9 interestingly enough, her car had none of her fingerprints in it.
10 They did certain tests of the car. They -- there's two
11 presumptive tests that they performed. One is what they call
12 a luminol test. And you're gonna get an opportunity to
13 actually see what that luminol showed. The door panel of that
14 car, the driver's seat door panel, the driver's door panel shows
15 what appears to be some type of smudge with leaving a hand
16 print on that door. And bear in mind, she told the police that
17 she had gotten in her car bloody, and she told Dixie she had
18 gotten in her car bloody.
19 The seat cover showed a small, minute trace of what
20 could be consistent with blood. Then when they took the seat
21 cover off, they sprayed it on the seat itself, and you'll get an
22 opportunity to see that as well. That's a presumptive test.
23 Then they did another presumptive test called
24 phenolphthalein, and phenolphthalein is a little more sensitive

1 than the luminol or vice versa. You'll get an opportunity to
2 hear the chemists on that. And the chemist won't come in
3 here and tell you that it's 100 percent blood, but he will tell
4 you --
5 MR. SCHIECK: Objection, Your Honor, that's not so.
6 MR. KEPHART: He will not come in here and say
7 that it's -- he's 100 percent positive that there's blood.
8 MR. SCHIECK: I thought you said it is 100 percent
9 positive.
10 MR. KEPHART: No, I did not say that.
11 MR. SCHIECK: Then I withdraw the objection.
12 THE COURT: Very well.
13 MR. KEPHART: And but he will tell you the effects
14 that cleaning can do to affect blood and even destroy a blood
15 sample. He'll tell you there was certain tests that you have to
16 do to confirm that it's blood and he wasn't able to get what
17 they call hemoglobin out of the blood in that -- out of that test.
18 But you'll get an opportunity to see what they saw.
19 Now you -- we told you it's gonna take
20 approximately three weeks, maybe less. The State's case in
21 chief won't be that long to present. It'll be probably about
22 four or five days. Bear in mind, keep -- you have notes there,
23 keep your notes with regards to what you hear with the
24 witnesses. You're going to -- I'd be real surprised if you didn't

1 hear certain things that were conflicting. But you're going to
2 hear a lot of information at little pieces from more -- from
3 different people, and you need to keep good notes with that
4 so that you can remind yourself as to what you heard from
5 these witnesses.
6 Now the Court tells you that what we say as
7 attorneys is not evidence. Well, I'm not telling you anything
8 other than what you're gonna hear from the evidence, what
9 you're gonna hear from the stand, what people are gonna tell
10 you, what they saw, what they heard when they testify to you.
11 And keep in mind, when you listen and sit here, keep in mind
12 and ask yourself certain questions. Ask yourself is this a mere
13 coincidence that the defendant would be interested in
14 somebody in Las Vegas that's dirty, smelly, old, alcohol-stinky,
15 black man or diaper -- stinky-diaper, black man without a
16 penis. Is it a coincidence that she appears to be depressed
17 shortly after this man is dead, and is it a coincidence that she
18 tells Dixie that she was concerned about her vehicle being
19 seen to the point where she wanted to leave it in Panaca, hide
20 it, clean it up, possibly get it painted, and is it mere
21 coincidence that she just happened to have a bat in her car?
22 Ladies and gentlemen, when you get an opportunity
23 to sit here and listen to this full trial, at the end of the trial Ms.
24 DiGiacomo and I are gonna be asking you to find her guilty of

these charges. You need to make the decision whether or not you believe she did this and you need to base it on what you hear from these witnesses.

Thank you.

THE COURT: Defendant's opening.

MS. GREENBERGER: Thank you, Your Honor.

DEFENDANT'S OPENING STATEMENT

MS. GREENBERGER: Good afternoon, ladies and gentlemen of the jury, Your Honor, defense counsel, counsel, ladies and gentlemen, audience.

As you know from yesterday, my name is Shari Greenberger and I'm one of the attorneys representing Kirstin Blaise Lobato. And I ask you, please keep an open mind until you hear all of the evidence.

As the prosecution stated, this opening statement is not evidence. And I ask you to keep an open mind until you go back to the jury deliberation room. I ask you to not take my word for what I'm saying here in opening statement but to please carefully scrutinize the evidence, analyze the forensic evidence that comes in in this case, pay attention to the science. It is our position that the evidence in this case speaks volumes.

I've prepared a presentation of what the evidence case -- in this case will show, and there is a lot of information

so I'm gonna try to go through it quickly just to give you an overview of what we believe the evidence in this case will show. And, as indicated by the prosecution, the evidence is based on the testimony of witnesses and the evidence that was collected at the scene. This is just a framework for you to see the direction this case is going, so I've tried to summarize it.

My client's name, Kirstin Blaise Lobato. She was named Blaise as a nickname that for -- after a movie actress, was her testimony, and is known as Blaise in the community of Panaca where she lives. The evidence will show that when she was eighteen years old she was wrongly charged with murder. As she sit here today, she is twenty-three years old.

There is no dispute in this case that a terrible crime was committed. And I apologize that in this case there is going to be a lot of gruesome photographs from the crime scene. There is no dispute that Duran Bailey, a homeless man, with crack cocaine in his system and alcohol, was killed. There is also no dispute that Duran Bailey's cause of death was a stab to his carotid artery. There is no dispute that he was dismembered postmortem, after death. There's no dispute on those facts. What there is a dispute about in this case is whether my client, Kirstin Blaise Lobato, committed this crime. And I say to you she never met the victim in this case, Duran

Bailey, and we will demonstrate that through the evidence. The reason we know this is because we have witnesses, a number of witnesses, that will testify she was not in Las Vegas when this crime was committed.

She was raised in the town of Panaca. We've had some discussion in voir dire about Panaca. It's a small town. I think some of you described it as a one-horse town. I've been there myself. One gas station, one convenience store, a very small town, I think maybe 800 people, and it's 160 miles from Las Vegas.

More importantly, or equally significant, in this case is that there is no physical evidence, none, that ties her to this crime. And let me inform you, this was a crime scene that was rich, rich, with physical evidence. All of the physical evidence, and I'm going to get into that further in my presentation, but I'm talking DNA, I'm talking bloody shoe prints, tire tracks, fingerprint analysis, analysis on my client's vehicle, no evidence connecting her. And, ladies and gentlemen, the reason this is so important is because the physical evidence in this case excludes my client. And I want you to listen very carefully because there is gonna be a lot of testimony from homicide detectives, crime scene analysts, forensic scientists, and these people combed through the crime scene and they analyzed it at the lab, and the tests have conclusively come

back showing the physical evidence does not match my client. That's why when I began, I said to you the physical evidence speaks for itself. Please don't just rely on my words but look at the physical evidence. You are the trier of fact. You will make that decision in the jury deliberation room. And consider, because in the prosecution's opening he advised that there's gonna be a number of witnesses that come in, and when you're analyzing the evidence there's a lot of he-said/she-said, she said that, consider that when you're analyzing the physical evidence. And you will weigh this evidence. You will make the final decision.

I'm gonna start with the time line of relevant events. Around Memorial Day, 2001, which is a number of years ago, my client, Kirstin Blaise Lobato, had been living in Las Vegas. She was alone. It was a dark night. She had been staying at a hotel in town, some of you might know it, the Budget Suites. It's on Boulder Highway and East Flamingo. As she got out of her vehicle in a dark parking lot, out of nowhere a man from behind pushed her on the ground. She did not get a good glimpse of her assailant. What she saw, he was big, he smelled, he was over 6 feet, over 200 pounds, and he was exposed. This man was attempting to rape my client. She was on the ground. She had a short skirt on. He pushed up her skirt. Knowing that she was gonna get raped if she didn't

do something and not prepared to be victimized, she was able to remove a knife that she had in her back pocket that she carried for protection. Ladies and gentlemen, she took that knife, she stabbed him and she fled the scene. When she looked back, she saw the man holding himself and standing. This attack occurred on the east side of town, East Flamingo, and it's very important because Duran Bailey, the homeless man in this case that was found in the dumpster, he was found --

MR. KEPHART: Judge, I'm gonna object. He was not found in a dumpster.

MS. GREENBERGER: He was found --

THE COURT: Sustained.

MS. GREENBERGER: -- next to a dumpster, excuse me.

Thank you.

He was found on the west side of Vegas, across from what is now the Palms Hotel, wasn't built yet. Separate parts of town. No dispute that at the time my client was attacked she was using drugs. She had been using methamphetamine for several days, and you will hear testimony about that. She was using methamphetamine. Duran Bailey was found with cocaine in his system, another important distinction.

She was able to flee from the scene and escape her attacker. She was not raped. And she returned to the town of Panaca, where she was -- grown up, July 2nd, 2001. The reason why these dates are important, and you'll hear testimony filling in the time in between, is that she returned to Panaca July 2nd, 2001 and remained in Panaca until July 9th, 2001. And there's not just one or two witnesses. There's gonna be a number of witnesses that come here to testify about seeing her in Panaca during that time period. Duran Bailey was killed July 8th, 2001.

Now, as I mentioned, there's a complicated set of facts in this case, so I want to explain to you a little bit about what's going on on the west side of town in Vegas. There's a woman. Her name is Diane Parker. You will hear her testimony. Diane Parker was raped by a man, Duran Bailey, the victim in this case, exactly, exactly one week before he was found next to the dumpster. Why is that important? Well, Diane Parker knew Duran Bailey. And I'll get into the details of that rape in a minute. But he was found one week after she was raped, one block from where she lived, because the dumpster where he stayed at night, he was homeless, at the Nevada State Bank was one block from Diane Parker's residence. The prosecution says, ladies and gentlemen, let's talk about coincidence. I ask you the same. You are the triers

of fact. Please, please, consider this. And when he was found, another key point, there was plastic wrap around his body, plastic wrap with blood on it. You will see pictures when he was in the autopsy room. This plastic wrap would have been rich with physical evidence. You will hear testimony about it. It was not tested.

Want to talk about another coincidence? Diane Parker, rape victim of Duran Bailey, she was at the crime scene where Duran Bailey was found. Ladies and gentlemen, she identified his body. So when we talk about coincidence, please, please consider that, one block away. This is Diane Parker, attacked July 1st, 2001.

Let me tell you a little bit about Diane Parker. She was a former sexual partner of Duran Bailey. She was outside her apartment on July 1st, having a beer with some friends, acquaintances, at her apartment complex, the same apartment complex that's one block from the crime scene. Duran Bailey came up to her. He wanted to talk with her. And she was having a beer with her friends. We only know them, and forgive me, it may not be politically correct but she testifies to they're -- describes them as Mexicans. She's having a beer with her friends. Duran Bailey comes up to talk to her. She says something to the effect of, no, not now, I'm hanging out with these people. What does he do? He smacks her across

the face in front of her friends, and some of them or one of them gets into a confrontation, verbal, and tells him bug off. He leaves.

She goes to do the laundry. It's July 1st still. It's nighttime. She's washing her laundry, carrying it back to her room, looks over her shoulder as she's putting the key in the door, Duran Bailey is there. She doesn't want anything to do with him. Ladies and gentlemen, at that time he pushes his way into the apartment and punches her, to-wit: the black eye, and begins what you will hear evidence is of a series of rapes and badly, badly beats her. Now this is one week prior to his death. He rapes her on the bed. Then he drags her into the bathroom and he tries to sodomize her multiple times. And just so you know all the evidence, my client, Kirstin Blaise Lobato, never met Diane Parker ever, separate victim, separate incident. And, again, my client has never met Duran Bailey but Diane Parker has. Another coincidence in this case. When he rapes her, he rapes her at knife point at her carotid artery. You want to talk about coincidence. His cause of death, severing carotid artery. Keep note of that, another important point.

She contacts the police. And let me say, she's very, very afraid of this man. She told the police, "Yes, he told me he was going to kill me." The police say where did he hold the

knife. She tells them, "He held it at my neck." He gave her two black eyes, he kicked her in the shoulder, he had the knife on the side of her vein. And you will hear this testimony. He had her down and he had, this is what she told the police and will testify to, "He had me down. He had the knife to my neck, like I said, right by the vein and he said, 'Now I've got to kill you.'" He held it to her throat and threatened her. And she called the police because she was scared because after he did this horrible rape, beating, attempted sodomy to her, he came back and was knocking on her window and she was afraid, rightfully.

Interestingly, when he was found dead at the crime scene, he had on the same clothes he wore, you'll hear evidence of this, when he raped her. That's an important fact to keep note of.

When the police interviewed Diane, she told them the full story, as I'm telling you now, including that when she was earlier in the day having a beer, there were some people that witnessed him slap her. She thought, you know, that was important, there were witnesses that could corroborate this. You're gonna hear testimony that the police did not do any followup investigation on these Mexicans, despite the fact she showed them where these people lived, no investigation done except for running their rap sheets through the system. She

told the police she was afraid. She told the police this would get her killed. And she stated, "If you don't catch him, I will be dead." She was afraid because he had threatened to kill her. She almost didn't tell the police but she did because he came back and she didn't want to go through what she went through on July 1st.

Another coincidence. Two black eyes. What the prosecution didn't tell you when Duran Bailey was found, in addition to his carotid artery being severed, two black eyes. You be the judge of that significance.

She told the police she wanted protection. She said, "I know him." This is July 4th when they're interviewing her. "I know him. I can show you where he lives. I know he's homeless but he lives next to the dumpster, Nevada State Bank, a block away." Because, after all, as indicated, they were having a sexual relationship in the past where they did, you'll hear evidence, exchange -- she would give him sex for cocaine, not methamphetamine that my client had a problem with in the past but cocaine. And when he raped and sodomized her on the 1st, as you can see, not voluntary. So despite the past sexual relationship for drugs, this was not a voluntary, consensual sexual episode. She called the police and she feared for her life.

She told the police, "I'm scared to walk outside my

home, but I can show you where he lives." Did the police follow up on the investigation? She said she could take them to him. "I can show you this is the man that raped me." Ladies and gentlemen, they said we'll get to that later. They wanted to take her to the hospital, get her some treatment. And keep in mind, these pictures are taken days after the rape, so you can only imagine what they looked like at the time. The police said we'll get to that later. Well, you know what, the police never got to it until they were at the crime scene when he was lying there dead on July 8th, had been brutally beaten from head to toe. And, again, you'll see these photos. And after the stab to the carotid artery that killed him and the various other beatings, he was dismembered after death, postmortem. When my client freed herself from her attacker in May, 2001, the man was standing, holding himself. Duran Bailey was dismembered after death, and that is significant.

The police told Diane Parker you gotta do what you gotta do to protect yourself the best you can. She had concern what if he comes back, what if he comes back to my apartment. You're not going to find him. What if he comes back. And she had that serious concern. Now this case is not about Diane Parker. It's about my client, who's being charged with the murder of this homeless rapist who brutally raped,

beat and sodomized Diane Parker. Another injury. There's volume of them. And I don't want to overload you but I want to give you a taste of what the evidence that is coming your way is gonna show.

JUROR ANDERSON: I can't tell what we're looking at. I'm sorry.

MS. GREENBERGER: Oh, I'm sorry. That is the shoulder --

THE COURT: The record shall reflect that Tai Anderson, who is in chair Number 2, spoke.

MS. GREENBERGER: That is her right shoulder, a punch to the right shoulder. And there's also a video-camera up on that end, just so you know, although not the same size.

But so we have her right shoulder, black eyes on her fact, bruising to her arms. The black-and-blue on her neck is where the knife was held, right up there, and then some bruises to her legs. Unfortunately, Diane Parker was not as lucky as my client, was not able to free herself from the victim in this case, Duran Bailey.

What's important, my client was not in Las Vegas July 8th, 2001. That is when Duran Bailey was murdered. She has an alibi. She was 160 miles away. Multiple witnesses saw her in Panaca, Nevada before, during and after his death, and that's why I say July 2nd to July 9th because it's not, oh, she

1 just was there for the night. She was ba...n town, in Panaca,
2 staying with her parents and multiple witnesses saw her.
3 Phone records will confirm it. Again, don't take my word. This
4 is what the evidence is going to show. July 2nd through July 9th
5 are the important dates. And he died on July 8th, 2001.
6 And I'm not certain that I finished with Diane Parker
7 being at the crime scene. She did come to the crime scene,
8 saw Duran Bailey, and then later was able to identify him, said
9 "This is the rapist. Yes, this man that's lying here is the
10 rapist."
11 So let's look at the physical evidence because the
12 physical evidence speaks volumes in this case. DNA found at
13 the crime scene, a piece of chewing gum on top of the blood
14 that surrounded Duran Bailey tested two sources of DNA on
15 the gum, two sources. One matches Duran Bailey. The other
16 one remains unidentified. Just so you know, they took my
17 client's DNA. She gave it to them consensually, and we'll get
18 into that, did not match her DNA.
19 This is extremely interesting. A pubic hair combing
20 was done on the victim, homeless rapist, Duran Bailey's private
21 area. And the forensic lab said there's one hair that doesn't
22 match the others. They were able to determine that. And so
23 they did testing on the hair to see whose it could be. There
24 were two sources of DNA on this hair, one Duran Bailey's, the

1 other remains unidentified. The other excludes my client. And
2 you will hear testimony on this from a number of experts.
3 When the prosecutor showed you pictures of the
4 crime scene, and you will see plenty of them, I find this very
5 interesting, there were two or at least two, let's say multiple,
6 bloody shoe print impressions at the crime scene, one on the
7 concrete, the other on a piece of cardboard. You'll hear
8 testimony from the lead homicide detective in the case that
9 the shoe print impressions appeared to be different and did
10 not match my client. Men's size 9, ladies size 10 equivalent.
11 My client, Kirstin Blaise Lobato, wears a 7 and a half. And
12 don't think they didn't seize her shoes because when the police
13 did come to talk to my client about what she believed they
14 were coming to talk to her about her attack, she said, "Yeah,
15 these are the shoes I'm wearing. Take them, analyze them."
16 She wasn't holding anything back. And they didn't match.
17 But that's not all. As I indicated, fortunately, I
18 believe the crime scene was rich with evidence. There were
19 tire track impressions at the scene. It appears, and you'll see
20 pictures of them, they're directly outside of the gate, outside of
21 the dumpster where he was found, significant enough that
22 homicide crime scene analysts analyzed them. And they
23 seized my client's car. They compared the tire tracks and,
24 again, they exclude her vehicle. Ask yourself how

1 sophisticated is a me... user who's on a three-day binge gonna
2 be. So sophisticated we're gonna recruit someone like this to
3 the special forces, not leave a trace, and evidence of other
4 people that are unidentified? I don't think so. Ask yourself
5 that.
6 MR. KEPHART: Your Honor, I'm gonna object.
7 She's making argument.
8 THE COURT: Sustained.
9 MS. GREENBERGER: Blood. There is no blood or
10 other physical evidence anywhere. Where is the blood? She's
11 covered in blood after she stabs this man. Where's the blood?
12 There's no blood in her car. All of the confirmatory testing was
13 negative. You are gonna hear testimony from a number of
14 experts about luminol, about presumptive testing, about
15 confirmatory testing, and you will hear testimony that you
16 cannot clean up blood with ordinary chemicals that are
17 accessible to us in the public. There was no blood found
18 anywhere, no -- and they -- she voluntarily provided her car to
19 them and said take it. She signed a consent.
20 Fingernail scrapings were done on my client, on the
21 victim, fingerprint examinations were done. And the
22 prosecution says, well, you know, her fingerprints weren't
23 found on her vehicle, leading us to believe maybe there's no
24 fingerprints. But let me tell you, there were plenty of

1 fingerprints in her car, not hers. But you're gonna wipe down
2 the car and keep others but not have yours?
3 And a baseball bat. There's a bat found behind the
4 seat of my client's car, analyzed by professionals. They spend
5 their career trying to collect evidence. No evidence of blood
6 on the baseball bat.
7 Another interesting point to take note of is that my
8 client was attacked around Memorial Day and stabbed the
9 attacker with a knife. You will hear evidence from a leading
10 trauma surgeon from Stanford who has devoted his career to
11 law enforcement in injury reconstruction. For example, when
12 a mother brings her son into the emergency room and says he
13 fell down the steps. Law enforcement comes to him and says
14 check this out. So he began getting interested in forensic
15 pathology, in addition to being a trauma surgeon, because he
16 wanted to understand the nature of injuries, how do they
17 occur. And he has analyzed the evidence in this case very
18 carefully. You will hear testimony that Duran Bailey was not
19 killed with a butterfly knife but scissors. His carotid artery was
20 snipped. There are parallel injuries on his body that match
21 scissor indentions [sic]. And he has measured my client's hand
22 diameter, so he has been able to exclude her from yielding
23 that weapon because the diameter of her hand size is smaller
24 than the minimum width of the injuries on the scissors, so her

1 hand could not have been in the scissors that killed Duran
2 Bailey. And he definitely will testify more eloquently than I
3 explained it based on the science behind it all and his
4 expertise.
5 The state pathologist in this case, Lary Simms, he
6 examined the body. He will testify he says this crime was
7 traditionally male-on-male. He has never been involved in a
8 case involving this injury pattern in a female. Another
9 important point to note.
10 Why are we here? My client was the victim of
11 attempted sexual assault at least thirty days before this crime
12 was committed. She was a victim and she got away. Different
13 victim, different crime, different location, different incident.
14 MR. KEPHART: Judge, I'm gonna object. She's
15 arguing.
16 THE COURT: Sustained.
17 MS. GREENBERGER: She escaped, unlike Diane
18 Parker. No question she was suffering meth addiction at the
19 time.
20 MR. KEPHART: Judge, she is still arguing.
21 THE COURT: Sustained.
22 MS. GREENBERGER: The evidence will show --
23 MR. KEPHART: Judge, I'm gonna ask that she stop
24 making argument, that all of this point right here that she has

1 on the board is argument.
2 MS. GREENBERGER: The evidence will show she
3 told multiple people --
4 THE COURT: Overruled.
5 MS. GREENBERGER: -- inconsistent accounts. The
6 prosecution told you you're gonna hear different stories. Well,
7 that's true, because there's a lot of different stories. And I ask
8 you to factor in meth addiction, how that affects reliability,
9 dependability, consistency.
10 She was struggling with this attack, and she did
11 confide in her school counselor. We'll hear from her, Dixie, as
12 indicated by the prosecutor. She told her what had happened
13 to her. And her counselor called her friend, who was a
14 probation officer, who ultimately called the police. My client
15 told her teacher, "I was the victim of the attack. This is what
16 happened." She did not tell her I stabbed him in the neck.
17 You will not hear that testimony. She said, like I explained,
18 that she was pushed down, she pulled out a knife, she
19 stabbed, fended off her attacker and left, and the man was
20 standing, holding himself.
21 When the police came to talk to my client on July
22 20th, because probation called police and asked are there any
23 injured people in that area, in Las Vegas, the police came to
24 talk to my client. And her teacher said if you go talk to her,

1 she will be honest, you know, with you about what happened.
2 So the police show up at my client's house. She sees homicide
3 detectives, and they ask or tell her, you know, we understand
4 you've been a victim of crime, of assault. She starts to cry,
5 fearing, fearing when she saw homicide detectives that the
6 man that attacked her had died. And while she's crying she
7 does say, "I didn't think someone would miss someone like
8 that, a homeless rapist, a man that tried to rape me." She
9 didn't think someone would miss someone that could do that
10 to her. She did not confess to a crime, and the police never
11 asked her did you kill the man, tell us details, where did it
12 happen, when did it happen. And when she told the police --
13 and the police knew when they came to her. They had been
14 Duran Bailey's crime scene. They knew exactly where it
15 happened and they knew exactly when it happened. And she
16 said to them, and you will hear testimony that was taped out
17 of my client's mouth, "It was over a month ago." Over a
18 month ago. Now she made that taped statement to the police
19 July 20th, 2001.
20 You will hear evidence that the police never
21 continued the questioning at that time but turned the tape-
22 recorder off because she was eighteen years old, her parents
23 were arriving and they did not pursue further questioning. So,
24 ladies and gentlemen, what we have and what the evidence

1 will show is that my client made a voluntary statement
2 explaining the attack. She told them it occurred at the Budget
3 Suites on the east side of Vegas. She described the attacker
4 as over 6 feet and 200 pounds. Duran Bailey, I don't know if I
5 told you his measurements yet, he was 5'10", 130 pounds.
6 Significant contrast in stature and weight. 5'10", 130 pounds
7 is what the victim in this case was. Now when my client went
8 to confide in her teacher she said, and you will hear testimony
9 maybe today, a big man. A big man. Not 5'10" and 130
10 pounds. So what has happened, and you will hear evidence
11 of, is her discussion with the police where she thought they
12 were actually coming to talk to her about her attack has been
13 twisted into a confession.
14 Let's look at what wasn't done. For some unknown
15 reason, the Coroner's Office was told by homicide to stop the
16 investigation, they would handle it, stop the investigation for
17 the next of kin on Duran Bailey, we're doing our own
18 investigation. You'd think and hope as many agencies as
19 possible is gonna try to track down what happened. Ask
20 yourself why was that.
21 Material evidence. Now this man was found next to
22 a dumpster so there was a lot of material, but some of the
23 most important material that was not collected, preserved or
24 tested includes the plastic wrap that's around the man's body

1 in the lower regions, with blood all over it, you'll see pictures
2 of it, and paper towels that were stuffed into his wound, his
3 gaping wound from the postmortem dismemberment. You'll
4 hear testimony from forensic analysts that say it would have
5 had epithelial cells, would have been very, very helpful. Again,
6 a crime scene rich in evidence. Why wasn't it tested? Ask
7 yourself. And then there's some picture you'll see from the
8 autopsy and testimony you'll hear about some cigarette butts
9 on the body, again, not tested or preserved. And keep in
10 mind, again, what was tested and preserved excludes her.
11 I mentioned this previously, but no followup
12 investigation on the rape of Diane Parker. The DNA has never
13 been matched. As we sit here today, five years have gone by
14 since the commission of this crime. DNA has never been
15 matched. The weapon, the murder weapon of Duran Bailey,
16 has never been recovered. The real killer has never been
17 pursued and remains at large.
18 Let's look at motive in this case because that's an
19 important thing to examine. Diane Parker, brutally beaten and
20 raped by Duran Bailey.
21 MR. KEPHART: Judge, I'm gonna object. She's
22 going into argument again.
23 THE COURT: Sustained.
24 MS. GREENBERGER: The evidence will show my

1 client never met Duran Bailey. Diane Parker's rape occurred
2 July 1st. Duran Bailey killed July 8th, one week apart to the
3 day. Location of rape, inside her apartment, a block from
4 where the victim in this case, Duran Bailey's, body was found.
5 Location of murder, a block from Diane Parker's apartment
6 where Duran Bailey raped her. The knife used in the rape was
7 held at Diane's carotid artery, vaginal rape, attempted sodomy.
8 Bailey's cause of death due to severed carotid artery.
9 Dismembered postmortem.
10 In this chart, the prosecution was asking you about
11 coincidence. This chart, you know, illustrates what we think
12 are some coincidences. Diane Parker reported being raped to
13 police, identifies him as the rapist. Diane Parker present at
14 crime scene, identifies body as her rapist. And I put others
15 had motive because I want to remind you that the friends that
16 saw her getting slapped are the same friends that saw her
17 after her attack, cannot ignore the injuries on her.
18 (Pause in the proceedings)
19 MS. GREENBERGER: This may or may not come to
20 fruition.
21 MS. DiGIACOMO: Objection, Your Honor.
22 MS. GREENBERGER: So I'll skip past it.
23 The evidence in this case speaks for itself.
24 THE COURT: The record shall reflect she took it off,

1 so the Court will, however, sustain the objection.
2 MS. DiGIACOMO: Thank you. But I'd just like to
3 note for the record that her entire slide was up long enough
4 for the jury to read some of it and it's not, according to her
5 own statement, showing what the evidence would show.
6 MS. GREENBERGER: The evidence speaks for itself.
7 My client has not motive, no opportunity. The evidence will
8 show she has an alibi, no physical link to this crime.
9 Another important point, the evidence will show no
10 physical injuries associated with this crime. The physical
11 evidence excludes my client. Please look at the science. The
12 scientific evidence will establish my client, Kirstin Blaise Lobato,
13 is not guilty of the crime for which she stands charged.
14 Thank you.
15 THE COURT: The State may call their first witness.
16 MR. KEPHART: May we approach the bench first,
17 Your Honor?
18 THE COURT: Yes, you may.
19 (Off-record bench conference at 14:35:14 until 14:37:42)
20 THE COURT: Ladies and gentlemen, at this time
21 you'll have a ten-minute stretch break. Please be in the
22 hallway in ten minutes. The bailiff will meet you there to
23 return you to your seats in the courtroom.
24 During this recess, you're admonished not to talk or

1 converse amongst yourselves, nor with anyone else, on any
2 subject connected with this trial, and you're not to read, watch
3 or listen to any report of or commentary on the trial or any
4 person connected with the trial, by any medium of information,
5 including, without limitation, newspaper, television, radio and
6 Internet, and you are not to form or express any opinion on
7 any subject connected with the trial until the case is finally
8 submitted to you.
9 We'll see you in ten minutes. You may exit at this
10 time.
11 (Jurors recessed at 14:38:20)
12 THE COURT: The record shall reflect that the jury
13 has exited.
14 From sidebar discussion, counsel wishes to make a
15 motion on the record outside the presence of the jury at this
16 time.
17 MR. KEPHART: Judge, during the defense opening
18 statement, which we objected to numerous times as
19 argument, she actually showed a slide that was entitled "The
20 State's Star Witness." And then she used the name -- I think,
21 actually, it was "Prosecution's Star Witness." And it was on
22 with regards to Korinda Martin. She paused. It sat up there
23 for a period of time. Then she put Korinda Martin's name up
24 there and then put on the rest of her points where -- calling

1 her a pathological liar, other issues involving the previous case
2 that we were -- the previous trial. We didn't mention her in
3 our opening statement. We didn't present that we intended to
4 present her to this jury. Now we're in a situation where it
5 appears to this jury that we're trying to hide something from
6 them, that -- and the problem with this is is the period of time
7 that this took and the way they started their comments to the
8 jury was the event that she was wrongly accused in 2001 and
9 now, here, she's twenty-three years old in 2006, and that's
10 how they started that. And now we've got a situation where it
11 appears that there's a period of time that we've taken over this
12 five years, or whatever, to get her, to prosecute her, and then
13 they put up this star prosecution witness after they went
14 through a whole litany of things that the State didn't do, that
15 the prosecution didn't do, that the cops didn't do. And it sat
16 up in front of this jury. And I can tell you, sitting here
17 watching them, every one of them watched that.
18 And I think at this point in time it has polluted this
19 jury and the State is not gonna be able to get a fair trial here.
20 And I'm gonna ask the Court to grant a mistrial on the actions
21 that the defense presented on their own.
22 MR. SCHIECK: Your Honor, in this case, as the
23 Court will recall, we filed a motion long before trial to include
24 the testimony of Korinda Martin on the basis that she was an

1 incredible witness, an admitted perjurer that has not been
2 prosecuted and was simply not to be believed. The State
3 opposed that motion and argued very strongly that they were
4 going to -- that they could call Korinda Martin, even though
5 she was a perjurer, that that was up to the jury to decide
6 whether or not and what -- whether or not to believe her
7 testimony despite those things. So we had sought to keep her
8 off the stand long ago.
9 And it was the Supreme Court that referred to
10 Korinda Martin as the State's "key witness," I believe is their
11 exact term instead of star witness, but "key witness." And it
12 was because of her importance and the fact that we were not
13 allowed to impeach her at the first trial that they reversed the
14 conviction. But they made a very specific point that without
15 Korinda Martin the State did not have much of a case and,
16 thus, any error was found to be harmful and not harmless.
17 And that's the Supreme Court's language and opinion after
18 reading the first trial.
19 During the reading of witnesses, the State had the
20 option of not reading the name of Korinda Martin to the jury,
21 yet they did to both panels. Her name was read to the jury.
22 THE COURT: To both groups.
23 MR. SCHIECK: To both groups. I missed, during
24 the first group, that they said her name. I questioned and

1 asked co-counsel did they read Korinda Martin's name, and
2 because I don't recall hearing it. Ms. Greenberger asked them
3 here in court whether or not they had read Korinda Martin's
4 name, and they said yes, oh, yes, we read Korinda Martin's
5 name to the jury. And then Ms. DiGiacomo made some
6 comments about how she was their star witness.
7 We had every reason to anticipate, and still don't
8 know that they're not calling Korinda Martin as a witness, to
9 put that slide before the jury. As soon as it became clear, Ms.
10 Greenberger panned through the bullet points that you have to
11 go through in order, and I'm not a PowerPoint expert by any --
12 by any means, each point, bullet point, slides across the
13 screen. You have to push the button that number of times to
14 progress through the screen. And correct me if I'm wrong on
15 the -- on the dynamics of how that happens, but you can't just
16 push a button and make them all go away. You have to go
17 through. And so, yes, it was on, it was on the screen for a
18 period of time and it did say "Star Witness," but the defense
19 had every reason to believe and had inquired that she was
20 going to be a witness in this case and to have that in the
21 PowerPoint presentation.
22 And just because the State didn't mention a witness
23 in their opening statement, certainly, I don't believe means
24 they're not going to call that witness. They did not mention a

1 lot of witnesses that we can anticipate are gonna be called in
2 this case. And so there was certainly nothing intentional to
3 cause a mistrial from the defense standpoint. And if the State
4 feels that somehow the mentioning of Korinda Martin has
5 somehow prejudiced them in the eyes of the jury, the jury can
6 simply be instructed to ignore that slide. It's something they
7 won't hear about for the rest of the case and, I'm sure, by the
8 time this lengthy trial is over will have long forgotten the name
9 Korinda Martin unless the State puts it back before them.
10 So we would oppose the motion for a mistrial.
11 MS. DiGIACOMO: And, Your Honor, if I could just
12 make the record clear with regard to Korinda Martin. First of
13 all, what the Supreme Court said in their opinion, that's the
14 Supreme Court's opinion. They're not the ones trying this
15 case. Yes, yesterday we read the list of all possible witnesses
16 and I said that to both panels. These are witnesses we may
17 call. And they did ask me after the first panel, did you read
18 that name, and I said, yes, I did. Ms. Greenberger asked me
19 so are you calling Korinda Martin. And I looked at her and
20 kind of shrugged my shoulders. And then after a few seconds,
21 I did, and it was sarcastic, said, well, she's our star witness,
22 isn't it -- isn't she, we have to, joking. I never indicated to
23 them we were gonna call her.
24 And with regard to their motion, it's our position with

1 their motion to exclude Korinda all along. It's that it's our
2 position if we call her or not. And at this point, we could call
3 her, we might not. They don't know. That's true. But what
4 happened was when the slide was put up, Ms. Greenberger
5 paused for quite a while looking, almost like a panic, like what
6 do I do now. If they think that we're calling her, she could
7 have gone right on with her slide. If they think we weren't
8 calling her, she has the option with the slide show to turn off
9 the slide or hide it so it doesn't come up. It's the defense
10 actions in front of the jury that makes it look suspicious. And
11 if you recall yesterday, we kind of objected and brought up the
12 fact of her PowerPoint, we didn't get to see it beforehand.
13 And so we'll submit it with that. But, you know, if
14 they really thought we were calling her because we listed her,
15 she could have gone right on with her PowerPoint. But that's
16 not what happened. She stopped and stared and kind of
17 panicked in front of the jury and then flipped through it quickly
18 and didn't know what to say.
19 MR. KEPHART: Your Honor, the concern that we
20 have is it has put us at a disadvantage here. At this point in
21 time in the time frame, as I had said earlier, from the time
22 when she was originally arrested, originally tried and now has
23 been quite a substantial time. We run the risk every time we
24 have these type of retries that the jury is questioning what has

1 happened, what went on before, why has it taken so long to
2 prosecute. Now we have this situation where they sit here and
3 they watch something that was supposedly called the star
4 witness and then now, if we don't call her, they're certainly
5 gonna be wondering what's going on with regards to what was
6 put up there on the -- up there on the screen and what they
7 saw. And it's certainly made it an unfair proceeding for the
8 State here. We're entitled to a fair trial, just like the defense
9 is, and they have not -- they have not given us that. They
10 have made a -- they have caused a problem with this jury that
11 I'm in a situation where I need to ask for a mistrial and we
12 need to start with a new jury.
13 THE COURT: Every single person on the jury knows
14 what today's date is. And the State began their opening
15 statement by stating the date of the offense as July 8th of
16 2001. All of the testimony that's gonna come in through the
17 various witnesses is all going to relate to events that occurred
18 in 2001. So nothing that the defense did is going to cause the
19 jury to have concern there. That's just the facts. Those are
20 just the dates, the way it exists. You know, the jury's told that
21 they're not to speculate about things as to which there is no
22 evidence, and I assume that that instruction will be included in
23 the -- in the standard packet that the parties will be presenting
24 at the close of evidence.

1 It appears to the Court that the State had not told
2 the defense that they were definitely not going to call Korinda
3 Martin. That may have put this situation in a far different
4 posture than the one that the Court finds itself in at this time,
5 where the defense has to -- and both sides when they make
6 their opening statements are trying to anticipate what the
7 evidence will be. And as we all know, in every trial there are
8 always surprises, even in retrials, there are surprises when you
9 get human beings on the witness stand under oath. And in
10 the middle of the trial, some new evidence may come out that
11 didn't come out before.
12 The reason why the Court sustained the objection to
13 the Korinda Martin slide was because of the pathological liar
14 list or bullet point on it, which the Court felt was a conclusion,
15 was argument and was invading the providence that the jury is
16 -- the jury is to determine the weight and the credibility of the
17 witness. And I felt that that was an inappropriate bullet point.
18 The Court finds that the relief sought is extreme and
19 not warranted here and, therefore, denies the motion for a
20 mistrial.
21 And I'm gonna step down and allow the bailiff to
22 reseat the jury, and then the State --
23 MS. DiGIACOMO: Can we have a bathroom break?
24 THE COURT: -- will be able to call their first witness.

1 Mr. Bailiff, if you would -- if you would wait about
2 two minutes before you go get the jury.
3 THE BAILIFF: Yes, I will.
4 THE COURT: Okay. Thank you.
5 We'll go off the record.
6 (Court recessed at 14:51:27 until 15:05:01)
7 (Jurors are present)
8 THE BAILIFF: All rise, please.
9 Department II is back in session. Please be seated.
10 THE COURT: The record shall reflect that we're
11 resuming trial in State versus Kirstin Lobato under Case
12 Number C177394, in the presence of the defendant, her three
13 counsel, the two prosecuting attorneys, and the ladies and
14 gentlemen of the jury panel.
15 We are proceeding forward now with the State's
16 case in chief. And the State may call the State's first witness.
17 MR. KEPHART: Thank you, Your Honor. At this
18 time, Your Honor, we're gonna be calling Richard Shott and
19 we'll be reading his testimony in. A gentleman from my office
20 is present for that.
21 I'd like the record to reflect that this is his testimony
22 that he gave back in April of 2002.
23 THE COURT: Very well.
24 MR. KEPHART: In a previous proceeding.

THE COURT: Could the reader state his name for the record?

MR. STAUDAHER: Michael Staudaher, S-T-A-U-D-A-H-E-R.

THE COURT: Thank you.

MR. KEPHART: Your Honor, it starts out from the transcript, the clerk actually reads the portion of that. So --

THE CLERK: "Please state your name, your full name, for the record and spelling your last name, please.

THE WITNESS: "Richard Shott, S-H-O-T-T."

RICHARD SHOTT, STATE'S WITNESS, BY DEPOSITION

DIRECT EXAMINATION

BY MR. KEPHART:

"Q Sir, I want to draw your attention back to July 8th of last year, 2001, ask you if you were here in Las Vegas on that day.

"A Yes, I was.

"Q Okay. Specifically around 10:00 o'clock that night on July the 8th, did you have an opportunity to be in the area of Flamingo, West Flamingo, near a Nevada State Bank building around that same time?

"A Yes, I was.

"Q Okay. Can you tell us what you were doing?

"A Dumpster diving.

"Q And what is that, so we know?

"A Going through the dumpster, looking for merchandise, recyclable aluminum cans, whatever.

"Q Okay. And do you specifically remember what dumpster it was that you were looking through on that night when something caused you to be here testifying today?

"A Oh, yes. A body, a dead body.

"Q Okay. Tell me where you were when you saw a dead body.

"A I was behind the dumpster, well, behind in back of it.

"Q Behind the dumpster?

"A Yes.

"Q Okay.

"A In back of it.

"Q What drew your attention to the body?

"A I seen there was -- I'd already rotted through the dumpster inside and I noticed that there was a bunch of garbage behind it, not in the dumpster, so I went behind there and moved a box. And I thought I seen a sneaker, but it wasn't. And as I moved, I seen a black stomach of a body.

MR. KEPHART: "Okay. May I approach, Your Honor?

THE COURT: "Yes."

MR. KEPHART: Your Honor, for purpose of the hearing here, I'll just go through and read it.

BY MR. KEPHART:

"Q I'm showing what's been marked as Proposed Exhibit Number 4 and ask you if you'd seen what we're talking about when you're talking about the dumpster and then a bunch of garbage behind the dumpster.

"A That could have been that. Yes.

"Q And I'm going to show you Proposed Exhibit Number 6 and ask you if you can identify that. Take a good look at it. Go ahead. You can hold it.

"A Yes.

"Q Okay. Have you seen that before?

"A No.

"Q Okay. You've never seen this photo before?

"A No.

"Q Okay. This is the area, however, that you described just -- just now about finding a body behind a dumpster. Is that correct?

"A Yes.

"Q Okay. Did you move anything before you actually saw the body?

"A Yes. I believe I moved some papers and a box, a cardboard box, and then that's when I noticed his stomach.

"Q Okay. Is this photo, State's Proposed Exhibit Number 6, does that show a photo of a cardboard box and papers, obviously?

"A Yes.

"Q Okay. And would it be the cardboard box that you're talking about or maybe that you moved?

"A Maybe so.

"Q Okay. And once you saw that there was a body there, what did you do?

"A I say to myself I gotta get out of here.

"Q Okay.

"A Yeah.

"Q Okay. And did you just get out of there or did you do something else?

"A I just left.

"Q Okay. And what was it -- you didn't talk to anybody?

"A No. I went up to the gas station and -- to use the phone. But it took me about two and a half hours --

"Q Okay.

"A -- to make the phone call, 911 call.

"Q Okay. And what gas station did you go to?

"A Terrible Herbst.

"Q Where is that located? Do you know the names of

the streets?
"A Arville and Flamingo. It's like maybe a half a block west.
"Q Okay. And why did it take you two and a half hours to use the phone?
"A 'Cause I didn't know what to do.
"Q Okay. Did you talk to anybody else?
"A No.
"Q Okay. In that area, is there an area that -- that you frequent? Is this an area that you frequent?
"A Yes.
"Q Okay. Did you see anybody else around there when you --
"A No, I didn't.
"Q How is it that you got into the dumpster area?
"A I noticed that the gate was unlocked and open a little bit, and usually it's locked.
"Q Okay. And on this particular night that it was open?
"A I checked it out.
"Q Okay. All right. And when you called the police, what did you tell the police?
"A Well, I called 911 and told them I think I found a dead body.
"Q Okay.

"A And they sent officers to where I was. I told the lady at 911 that I couldn't go nowhere. I'd sit right here and wait for the cops.
"Q And they showed up?
"A Yes.
"Q And you actually walked around in the area where the body was in the -- was, is that right?
"A Walked around.
"Q Well, you were in the area where the body was?
"A Behind the dumpster?
"Q Uh-huh.
"A No.
"Q You weren't in there? How did you move the box?
"A Well, I went behind the -- in back of the dumpster.
"Q That's what I mean.
"A Only right there because there was like a long ways to the end where the box is.
"Q Uh-huh.
"A Where the dumpster is.
"Q Okay.
"A I only got to where -- at the end of the dumpster.
"Q I got you.
"A You know, where there was like 4 to 6 feet to the wall.

"Q Uh-huh.
"A Yeah, I didn't go all the way back there.
"Q Okay. But you moved. Did you move the box enough to where you could see under it?
"A I seen the -- I seen a stomach, yeah.
"Q Okay. And what did you do with the box? Just put it back down?
"A I -- yeah. I dropped everything.
"Q Okay. And got -- got the heck out of there?
"A Yes.
"Q Okay. And you said that you didn't see anybody else in there?
"A No.
"Q Do you know a person by the name of St. Louis or Duran, um, that hung around there?
"A Knew him because a couple of days later I went to a couple of different homeless camps and --
"Q Okay.
"A -- put the word out. And that's how I found out that there was a body. That was the dead body, St. Louis.
"Q Okay. But you did -- you didn't know him to see. If you looked at him, wouldn't you have recognized him or anything?
"A I might have seen him a couple of times coming

from the Gold Coast Casino.
"Q So you've seen him in the area at least?
"A Yes.
"Q Okay. When the police got there, did you tell them everything that you just told us here now?
"A Yes.
"Q Didn't see anybody running from the scene or anything like that?
"A No.
MR. KEPHART: "We'll pass the witness, Your Honor."

CROSS-EXAMINATION

BY MR. SCHIECK:
"Q How are you, Mr. Shott?
"A Oh, a little nervous.
"Q I'm not going to ask you anything hard.
"A Okay.
"Q Mr. Kephart showed you this picture which is marked Exhibit 6. Is that familiar to you?
"A Yes. I've just seen it.
"Q And is that what the body looked like to you when you got there?
"A All I seen was the stomach.
"Q Okay. Now there was a trash can here then, right?

"A Yes.
"Q That's not here in this photo. There's the trash can in State's Number 4. Is that more what it looked like when you got there?
"A No. It was -- this was like this a way, I think, and it was cocked.
"Q It was moved a little bit, to the best of your recollection?
"A Yeah.
"Q Okay. But the scene -- but the -- may I show the jury?"
THE COURT: You want to publish the --
MR. SCHIECK: And at this point, I believe 4 and 6 were admitted into evidence.
MR. KEPHART: Yeah.
MR. SCHIECK: And I can just go to the next question.
BY MR. SCHIECK:
"Q So it looked like that. And the body had some cardboard over it like you've seen, like you described in picture 6?
"A Yes.
"Q Did you at any time go in that back corner, back left corner?

"A No.
"Q On the other side of the body?
"A No.
"Q You didn't go anywhere near there, did you?
"A No.
"Q What did you do for two and a half hours?
"A Debated whether or not to call it, make the phone call and report it. But then to cover myself, you know, if someone were to put me around that area then you'd be looking for me for questioning, you know what I mean, and gave me the body, or whatever, but then do the right thing because I do have a conscience.
"Q You were interviewed by the police that night?
"A Yes.
"Q Were you wearing the exact, same clothes when the police talked to you as when you found the body?
"A Yes.
"Q Did the police look at the bottom of your feet?
"A Yes.
"Q Did they release you?
"A Yes.
"Q They didn't arrest you?
"A No.
"Q Did they take your shoes?

"A Yeah, took an imprint.
"Q Okay. But they didn't take your shoes away from you?
"A No, they did not.
"Q Did you look at your shoes?
"A When I took them off.
"Q Specifically, did you look for blood? Did you see blood on them?
"A I don't think so. I don't think so.
"Q So what did -- was it really two and a half hours? I mean, how do you know it was two and a half hours? It just seemed like it, like that, or was it really that long?
"A It seemed like that.
"Q Because you called around 10:30, right?
"A Yes.
"Q I believe the 911 tape came in, and there will be evidence later, 10:36. Does that make sense to you?
"A Yes. It's been a while. It's been almost like a year.
"Q Right. But when you left, so before you found the body you left the Gold Coast. Do you remember, was it dark out yet, was it dusk, was it light? Do you remember?
"A Was sort of a little dark because I was in there for like five or six hours.
"Q Do you know what I mean when I say dusk, you

know, somewhere, you know, in a twilight, sometimes between, you know, when it's light out and the sun goes down? Could it have been around that time?
"A Um.
"Q If you don't remember, sir.
"A I don't remember.
"Q Did you take anything away from the dumpster area?
"A No, I did not.
"Q Did you leave anything there?
"A If I had anything in my hand, I probably did.
"Q Do you know what it was? What would you have had in your hand?
"A I don't remember.
MR. SCHIECK: "I have no further questions."
MR. KEPHART: Judge, I believe at this time that we had moved to admit 4, 5 and 6, but I haven't got to 5 yet. So I'll move to admit 4 and -- 4 and 6.
Thanks.
MR. SCHIECK: No objection.
THE COURT: 4 and 6 are admitted.
(State's Exhibit Nos. 4 and 6 admitted)
MR. KEPHART: The State would call Leuron Williams, Your Honor.

THE COURT: Would counsel approach?
MR. KEPHART: Oh, okay.
(Off-record bench conference at 15:16:55 until 15:17:55)
THE COURT: Ladies and gentlemen of the jury, before Richard Shott gave the testimony that was just read to you, he was sworn and placed under oath in open court.
The State may proceed with the State's second witness.
MR. KEPHART: Yeah. Lueron Williams, Your Honor.
THE COURT: Okay.
THE CLERK: Please come all the way forward. Remain standing and raise your right hand.

LUERON WILLIAMS, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. State your name and spell it for the record, please.
THE WITNESS: Be seated?
THE COURT: Yes, you may be seated.
THE WITNESS: Lueron Williams, L-U-E-R-O-N.
THE COURT: The State may proceed.

DIRECT EXAMINATION

BY MR. KEPHART:
Q Ms. Williams, do you know an individual by the -- did you know an individual by the name of Duran Bailey?
A Yes, I did.

Q Okay. What's your relationship, if anything, with him?
A He's my cousin.
Q Okay. I'm gonna draw your attention back to July of 2001 and ask you if you were called upon by the Las Vegas Metropolitan Police Department to identify him, if you could -- were called in to identify him.
A Yes, I was.
Q And can you tell me how long, if you know, did he live in Las Vegas prior to July 8th of 2001?
A He moved here in November, 1997 with his mother.
Q Okay. And were you living here in Las Vegas then?
A No. I didn't live here at that time.
Q When was it that you came to Las Vegas?
A I moved here in June, 1999.
Q Okay. And did Duran stay here in Las Vegas during the time that he had moved here initially until his death?
A Yes, he did.
Q Did he also have a nickname? Was he known as St. Louis?
A Not that I knew of.
Q Okay.
A But he was from St. Louis.
Q Now, are you familiar with the Nevada State Bank

building located on West Flamingo across the street from the Palms?
A Yes, I am.
Q Okay. And how is it that you're familiar with that building?
A Well, because I've taken him over there to the bank several times, quite a few times.
Q When you say him, are you talking about Duran?
A Duran. Yes.
Q Okay. And so you had -- he had business at that bank?
A Yes, he did.
Q Okay. And you said that you took him over to that bank. Did he have transportation while he was here in Las Vegas?
A No. He had no transportation. He usually rode the city bus, I guess if what you call it.
Q Okay. And do you know if Duran worked?
A No, he didn't work. He was disabled.
Q Okay. And did he collect disability?
A Yes, he did. It's SSI.
Q And you said that he had business with the bank. What type of business would he conduct with the bank?
A Well, he had a check that was going to -- going to

the bank each month, his social security supplement. So, therefore, he had an account with that bank.
Q Okay. And did you know if Duran carried his license with him, driver's license? Did he have a driver's license?
A No, he had no driver's license but he did have a DMV state I.D. Because when I came in 1999, his mother has asked me to take him down to DMV to get another one. He had one in the past but he was always misplacing it. So, therefore, several things that he had to do when he needed I.D., he didn't have one, so I took him down to DMV one day to get another state I.D.
Q Did you find out that when he was found, before you had to identify his body, that he did not have any I.D. on him?
A Well, I did find out, yes, that he didn't.
Q Was that surprising to you?
A Well, no, because I know that several times I've taken him to the bank, you know, he didn't have I.D. and kind of wondered how he was gonna withdraw without I.D., but he did.
Q He was able to conduct business there without a bank -- without his I.D.?
A Yes, he was because he went there so often, like two and three times a day, that they were -- all of the clerks who worked in there was familiar with him.

Q Do you know or do you remember whether or not he had a stable home where he had a place to stay?
A Well, up until his mother passed away in May, 2000 he did. And the last time that I seen him because, like I say, he had income and he had told me on that day that he was --
MR. SCHIECK: Objection, hearsay, what he said, Your Honor.
THE COURT: Sustained.
BY MR. KEPHART:
Q Without telling us what he had told you, my question is is did he have a place to stay, if you knew, back in July of 2001?
A 2001. No. Not that I knew of.
Q Okay. Ma'am, I need to --
MR. KEPHART: May I approach, Your Honor?
THE COURT: Yes, you may.
BY MR. KEPHART:
Q I need to show you a photograph, and we have it marked as a State's exhibit, Proposed Exhibit Number 40, and ask you if you could take a look at that and tell me if you recognize who that photo was taken of?
A Yes. That's Duran Bailey.
Q Okay. When was the last time that you saw Duran Bailey prior to July 8th of 2001?

A I seen him the month before, on June the 12th. And I remember the exact date simply because I had to go to the social security office because I had misplaced my social security card. And when I arrived there, he was sitting in one of the seats there. And I went over and sat beside him and began to talk to him. A matter of fact, I talked to him all the way up until they called me.
MR. KEPHART: Okay. The Court's indulgence, Your Honor.
(Pause in the proceedings)
MR. KEPHART: Pass the witness, Your Honor.
THE COURT: Cross.

CROSS-EXAMINATION

BY MS. ZALKIN:
Q Good afternoon, Ms. Williams. Where were you residing prior to moving to Las Vegas in 1999?
A Anchorage, Alaska.
Q Did you move here, in part, because you had some family members here?
A No. I moved here because my husband was retiring for a second time.
Q And what was he retiring from?
A From the State of Alaska Department of Corrections.
Q Were you close with -- so Duran Bailey was your

cousin, right?
A Yes.
Q And were you close with his mother? Was that -- that would your aunt then?
A Well, I was close to her but I traveled a lot because we were in the military. So whenever I came back to St. Louis, you know, I got a chance to see her. So we were pretty close.
Q And did you ever, when she was still with us and when Duran was with us, did you ever have holidays together with them that you recall in Las Vegas?
A Oh, yes, we did. Yes, quite a few. All of the holidays, a matter of fact.
Q Had you ever visited either your aunt or your cousin at the Grandview Apartments?
A Yes, I did.
Q And you're aware that the Grandview Apartments were approximately a block away from the Nevada State Bank that you referred to?
A Yes.
Q How often would you estimate that you saw Mr. Bailey? Was it weekly, monthly, if you can recall?
A Well, after I moved here in '99, matter of fact, I would see them probably about every day because we were

waiting for them to finish building the house that we were gonna move in. So we had nothing else to do but just drive down to see them, visit.
Q So you weren't staying with them at the Grandview Apartments that you were --
A No, we weren't staying with them.
Q Did Duran ever stay at your place once the -- once your home was ready?
A No.
Q Did he ever ask to?
A No, because he lived with his mother during that time.
Q And do you recall, do you know why she had to move out of the apartment building, Grandview?
MR. KEPHART: Your Honor, I'm gonna object as to relevance.
MS. ZALKIN: It's --
THE COURT: Counsel, approach.
(Off-record bench conference at 15:28:10 until 15:28:46)
THE COURT: The objection is sustained.
BY MS. ZALKIN:
Q Do you know why he would make several trips in one day to the bank?
A Yes.

Q And why is that?
A Because he'd only withdraw small amount of monies.
Q You testified that you last saw him in June at the social security office, is that correct?
A That's correct.
Q And that was just a coincidence that you ran into him?
A Yes, it's a coincidence. He had an appointment that day, and I just happened to go by there to get an application for a lost social security card.
Q Do you recall what, without telling us the substance, do you recall what the nature of your discussion with him was that day?
A Yes. We talked about he had recently come back from St. Louis, from his home town where he was born, and we talked about that. And then we talked about him getting an application to get on with Section 8 or HUD or whatever the program is.
Q Had you ever met a former girlfriend of his named Debra?
A I can't recall the girl's name. When I came here in 1998, I met a young lady but I don't recall her name.
Q Okay. Do you recall a friend of his at one time named Diane Parker?

A The name doesn't ring a bell.
Q And so you testified that he had a place to live until his mother passed away. So as far as you knew, he was in between residences and was homeless on the date of his death. Is that accurate?
A Well, I do know that I kind of kept in touch with him through a friend who lived next door to my cousin over there in those apartments. His name was Carl. And every day he would check with Carl. He would come by there. And I would tell Carl to have him to call me. So, you know, he came by ironed his clothes and took a shower, and things like that.
Q So was he staying with Carl or just over there during the day, as far as you know?
A Yeah, just over there during the day. He would stop by and do various little things like that and then call my aunt in St. Louis.
Q And so you're aware that he was sleeping in the parking lot area of the bank around the time of his death?
A I didn't know about the parking lot of the bank, but I know sometimes up under that Flamingo bridge, I guess, down up under there. I'd never been down there, of course. But I guess up under there people sleeps and stayed. So I thought at times, you know, that that's where he was because I guess he may have told Carl that.

Q And did he and your husband get along? Did they have any relationship?
A My husband was sick at the time so, therefore, you know, they talked when we by there.
Q You were aware that he had a problem with crack cocaine addiction?
A No, I wasn't aware that he had crack cocaine because if he did, he never used all of his money for that. So I didn't know how he was getting it and I doubt if somebody was giving it to him.
Q Did you know a friend of his named Boogie Man?
A No. I knew none of his friends.
Q You never heard him mention a gentleman who went by the name of Smoke?
A No.
MS. ZALKIN: Court's indulgence. I'm nearly finished.
(Pause in the proceedings)
BY MS. ZALKIN:
Q Do you know, Ms. Williams, why he ended up homeless?
A Well, because the apartment was in his mother's name. It wasn't in his. And it was one of these senior citizen's apartments so, therefore, he wasn't fifty-five so he couldn't live

there.
MS. ZALKIN: The Court's indulgence one more time. Nothing further. Thank you very much.
MR. KEPHART: I do.

REDIRECT EXAMINATION

BY MR. KEPHART:
Q Ms. Williams, the apartment that we're talking about where he was living with his mother, where is that located in reference to the bank that you used to take him to?
A Well, it's been a long time since I've been over in that area and I'm not really that familiar with it anymore. I know it's down past Flamingo. Oh, I don't even know the name of those other streets over in there.
Q Is it adjacent directly behind the bank?
A It's been a long time. I can't even place where it is over on that side of town.
Q Okay. What was the name of the apartments, do you remember? Do you know the --
A The apartments?
Q Do you remember the name of the apartments?
A Yeah, the Grandview, I think it was.
MR. KEPHART: Okay. Nothing further, Your Honor. Okay.
THE COURT: Further cross.

MS. ZALKIN: Just one further question.

RECROSS EXAMINATION

BY MS. ZALKIN:

Q You would agree that the bank is approximately one block from the Grandview Apartments. Is that accurate? Maybe two blocks, a block or two?

A Maybe something like that because I would drop him off like on my way back home, you know, so just around the corner or right out of the area of the apartments where they lived, you know, and then over to the bank. And then I would just go on home.

Q So it was walking distance, certainly?

A Yeah, I would say walking distance.

MS. ZALKIN: Thank you. Nothing further.

THE COURT: Anything further by the State?

MR. KEPHART: Not by the State, Your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: The State may call their next witness.

MR. KEPHART: Thank you, Your Honor. Iain Anderson.

THE CLERK: Please come all the way forward. Remain standing, raise your right hand.

IAIN ANDERSON, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. State your name and spell it for the record, please.

THE WITNESS: Iain Anderson, I-A-I-N A-N-D-E-R-S-O-N.

THE COURT: The State may proceed.

MR. KEPHART: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. KEPHART:

Q Mr. Anderson, I'm gonna draw your attention back to July of 2001 and ask you if you recall whether you were here in Las Vegas during that -- during that month.

A I was, sir.

Q Okay. And how were you employed?

A At the Palms Casino Resort --

Q And --

A -- as security.

Q As what?

A Security. I was an assistant security. Well, I was working for the Human Resources Department at the time.

Q I'm showing what's been marked as State's Proposed Exhibit Number 1. Can you -- can you see that on the -- well, what happened there? Oh, there it goes. Can you see that?

A Yes, sir.

Q Are you familiar with that property right there?

A Sorry?

Q Are you familiar with that property there?

A It's the Nevada State Bank, directly across from the Palms Casino.

Q Okay. And I'm showing you State's Proposed Exhibit Number 121 and ask you if you can just look this way. Can you see that as well, in this one? Do you see that?

A Yes, sir.

Q Okay. Does this have the actual bank building, the parking lot, all the adjoining properties?

A Yes.

Q And does this accurately depict as you recall the property to be --

A At that time, yeah.

Q -- back in July, 2001?

A Yes.

MR. KEPHART: Move to admit 121, Your Honor.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit No. 121 admitted)

BY MR. KEPHART:

Q And on Exhibit Number 1, Proposed Exhibit Number 1 here, that's just basically the front of the bank, is that right?

A Yes.

MR. KEPHART: I'd move to admit --

THE WITNESS: The sign.

MR. KEPHART: -- Proposed Exhibit Number 1.

MR. SCHIECK: No objection.

MR. KEPHART: Okay.

THE COURT: Granted.

(State's Exhibit No. 1 admitted)

BY MR. KEPHART:

Q Now, Mr. Anderson, the -- on the bank of the Exhibit 121 there's a yellow marker there. It says "Crime Scene." And it goes down to an area right at the -- I guess it would be the north end of that parking awning there.

A Yes.

Q Do you see where it's pointing to?

A Yes.

Q Are you familiar with that area?

A There was a dumpster located there.

Q Okay. Showing you what's been marked as State's Proposed Exhibit Number 117. Do you see that?

A Yes, sir.

Q Does that look familiar to you?

A Yes.

Q Does that accurately depict the dumpster area of -- located at that bank?

ANDERSON - DIRECT

A Yes.
Q Okay. 116. Does that also show it from a different angle?
A Yes, sir.
Q 119.
A Yes.
Q It actually shows across to the Palms, is that correct?
A Yes.
Q 118. I show --
A Yes.
Q Does that accurately depict it as well? Okay. And then this 120 shows down towards the Gold Coast and the Rio, is that right?
A Yes.
Q Okay. With regards to Exhibit 117, drawing your attention back to July 8th of 2001, that's -- that was a Sunday. Do you recall whether or not the bank or the business that you were working for security was open on those days, on that day?
A We were closed on the weekend.
Q So Saturday and Sunday you would be closed?
A Yes, sir.
Q Okay. Specifically, did you have anything to do with the bank itself?

ANDERSON - DIRECT

A No.
Q But you had a business located within the bank building, is that right?
A Within the building, yeah.
Q And were you ever -- did you ever use this particular dumpster in that area?
A We shared that with the bank?
Q You shared it with the bank?
A Yes.
Q Okay. And on the photo that's up in front of you, it shows that there is a gate on the bank, on the -- I mean, on the dumpster area. Is that -- do you see that?
A Yes.
Q Okay. Do you recall during that particular weekend, the 7th would be a Saturday, the 8th would be a Sunday, do you recall whether in July of that period of time there was any type of locks or anything like that on the bank to -- I mean, on the -- I keep saying bank, on the gate to the dumpster area?
A Initially, there had been when we first moved into the building. But when we --
Q And when was that?
A June.
Q Okay. A month previous?
A A month prior.

ANDERSON - DIRECT

Q Okay.
A But it had to be -- the lock was removed so that both the bank and the Palms could use the same dumpster.
Q Do you remember how the lock was removed?
A No. I'm not aware of it.
Q Okay. You weren't involved in doing that yourself?
A No.
Q Okay. But you knew that both the bank and Palms used that --
A Yes.
Q -- particular dumpster area?
A Yes, sir.
Q Okay. I'm showing you what's been admitted as State's Exhibit Number 4 and ask you if you recognize what that photo depicts.
A The inside of the enclosure.
Q Okay. And do you see back behind the dumpster there appears to be -- well, what does it appear to you?
A Trash.
Q And now I'm showing you State's Exhibit Number 6. Now, does that also appear to be trash?
A Yes, sir.
Q Okay. Now the -- you said that the particular dumpster area shared both, I guess, dumping garbage for

ANDERSON - DIRECT

both you and the bank?
A Yes.
Q For the Palms --
A Yes.
Q -- Casino and the bank? So I'm showing you what's been marked as State's Proposed Exhibit Number 7 or, actually, it's in this photo right here. Do you see what appears to be some palms right there?
A Yes.
Q So that would be consistent with something, maybe garbage being deposited there from the Palms Casino?
A Yes, sir.
Q Okay. And now I'm showing you State's Proposed Exhibit Number 11. Do you see there appears to be some paperwork there with some writing on it?
A Yes.
Q There's also some looks -- appears to be some paper that's been shredded?
A Yes, sir.
Q Does that appear to be consistent with something that may be deposited there by the bank?
A Most likely.
Q Okay. And you -- had you, yourself, ever deposited any garbage there?

A Yes.
Q Okay. Now with regards to Exhibit Number 6, there appears to a cardboard box, boxes, some air filter or air-conditioning up there on the left, my left.
A Yes.
Q Yeah, the photo's left. Plastic bags or, actually, a cup down here.
MR. SCHIECK: Your Honor, could we ask the witness what is in the picture instead --
MR. KEPHART: I'm --
MR. SCHIECK: -- of Mr. Kephart?
MR. KEPHART: That's fine.
BY MR. KEPHART:
Q Can you kind of tell --
THE COURT: Do you have an objection?
MR. SCHIECK: Yes, objection, Your Honor. I'm sorry.
THE COURT: Sustained.
BY MR. KEPHART:
Q What do you -- what do you think? What does it appear to you is in that photo with regards to garbage?
A A couple of boxes, plastic bags full of trash, the filters for the air-conditioning.
Q Okay. Anything else?

A Well, the -- well, the palm fronds are there.
Q Do you see any cups?
A There may be one on top of the cardboard.
Q That's --
A Oh, yeah.
Q I'll just move it up.
A Okay. Yeah, there's --
Q There's one on the cardboard and --
A Another one down to the -- to the left corner.
Q It's trash?
A Yeah, it's trash.
Q Okay. And the plastic bags here, the clear plastic bags, do you see -- do you see at the -- on the right hand of the corner of the photo there or the right side of the photo?
A Yes, sir.
Q Does that also appear to be plastic bags?
A Yes.
Q Was that consistent with what you knew that was thrown -- used to throw garbage away to -- into that garbage?
A Yes.
Q Okay. And Proposed Exhibit Number 7 shows a closeup of, actually, the bags in that. Is that -- is that right?
A Yes.
Q Now, did you -- did you ever come to know an

individual by the name of Duran Bailey, an individual that may have been living there, staying in that particular dumpster area?
A Not to my recollection.
Q Okay. Now you were security for the Palms Hotel, is that right?
A Yes, sir. At that time, yes.
Q Would it have been your job to keep people from staying in there?
A Yes.
Q Okay. Let me ask you this question. When was the last time that you recall having anything to do with that dumpster, the business?
A It would be Friday night.
Q Okay. So 'cause the -- both the Palms, the Palms division you were working with, and the bank were closed on the weekends?
A I know we were. I don't believe -- I'm not sure if the bank was or not.
Q Okay. Well, do you have anything to do with Friday night there? That's what my question --
A Friday night, yes.
Q What would have been your task?
A I was the last one to leave that day, made sure that

the building was secure, took out the trash.
Q As of Friday night when you threw trash away, did you see anybody in the dumpster area?
A No.
Q Okay. The trash you just saw in the photographs, was it in the dumpster, what you saw in the photograph, was it in the dumpster in the photo or was it on the ground in the photo?
A There was trash in the dumpster, as well as on the ground.
Q Okay. When you threw trash away into that dumpster, do you recall whether or not there was trash out on the ground or was it all in the dumpster?
A There was some on the ground.
Q Okay. So it would have been both places?
A Yes.
Q Okay. The photo that we showed you where you kind of described, well, Exhibit Number 6 you were talking about, you know, what you saw there. When you deposited trash on Friday night in that dumpster, do you recall whether or not the extent of the trash like this was outside the dumpster?
A I know there was trash behind the dumpster and to the side of it. I'm not -- I couldn't be sure how much.

ANDERSON - DIRECT

Q Okay. Do you recall whether or not the dumpster was full?
A I believe it was reasonably full.
Q And I'm showing you Exhibit Number 4. Can you see this photo here?
A Yes.
Q You can actually see the top of the dumpster, is that correct?
A Yes.
Q And you -- can you see any trash inside the dumpster there?
A No.
Q Okay. When you threw trash away on the Friday night, though, you said you believed that it was reasonably full.
A It was --
Q But --
A It was generally full because of both businesses.
Q Okay. So on Friday night, do you believe that the garbage had come to the point where you could see it above the top of the dumpster?
A I believe so.
Q And what is, Exhibit Number 117, what is -- what is this here to the -- to the left?

ANDERSON - DIRECT

A It's covered parking.
Q Covered parking?
A Yeah.
Q And what's covering the trash enclosure area?
A Just looked like a fence. They used the chainlink fence just to cover the top of it.
Q Could you see through it?
A Yes.
Q So if you were standing inside where the dumpster is in this photograph and you looked up out of there, could you see the parking structure next to it?
A Yes.
Q Okay. Do you recall on Friday night whether or not the actual enclosure was locked?
A It -- after the lock was broken off, it was never locked.
MR. KEPHART: The Court's indulgence, Your Honor.
(Pause in the proceedings)
BY MR. KEPHART:
Q Okay. Just one more thing. With respect to Exhibit 116, 117, 118, 119 and 120, which I had shown you. Do you want me to show you again?
MR. KEPHART: May I approach the witness, Your Honor?

ANDERSON - DIRECT

THE COURT: You may.
BY MR. KEPHART:
Q I'll just show you it this way. You want to just look through those real quick?
(Pause in the proceedings)
A Okay.
Q And in regards to Exhibit Number 4 that you've been -- we've been beating it to death here, they appear different, do they not, the photographs that you -- the photographs you have there with regards to these photographs?
A These ones are probably daily.
Q You recall them being taken at a later period of time versus the photographs here, the photograph that's on this? There's no trash in that one?
A Yeah.
Q The dumpster has been moved?
A Yeah, the dumpster was moved.
MR. KEPHART: Okay. Your Honor, I'll move to admit Exhibits, I think it is, 117 through 120.
THE COURT: Not 116?
MR. KEPHART: Oh, I'm sorry. Yeah, 116 through 120. Thanks, Judge.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.

ANDERSON - CROSS

(State's Exhibit Nos. 116 thru 120 admitted)
MR. KEPHART: Pass the witness, Your Honor. Thank you.

CROSS-EXAMINATION

BY MS. ZALKIN:
Q Good afternoon, Mr. Anderson. Do you recall during the relevant time period what days the garbage was picked up?
A Not to my recollection.
MS. ZALKIN: And just so we could be clear with respect to the dates, could we mark this as the next exhibit in order for the defense, please? And this -- I'm just showing it to counsel. This is just a printout of a calendar for July, 2001.
MR. KEPHART: Oh, okay. Okay. Yeah, okay. That's fine.
(Pause in the proceedings)
THE CLERK: It's II.
MS. ZALKIN: II. Thank you.
THE COURT: It's been marked as Defendant's Proposed II.
MS. ZALKIN: Yes. Thank you, Your Honor.
(Pause in the proceedings)
MS. ZALKIN: Thank you.
///

ANDERSON - CROSS

1 BY MS. ZALKIN:
2 Q Mr. Anderson, so the date that you were last in the --
3 at work in the Nevada State Bank parking lot, that was Friday,
4 July 6th?
5 A Yes, ma'am.
6 Q Okay. And did you ever see the lock that previously
7 had been on the dumpster gate?
8 A When I first arrived there, yes.
9 Q And do you have any idea who removed the lock?
10 A No.
11 Q Do you by what means it was removed?
12 A No.
13 Q So you don't know whether it was cut or not?
14 A No.
15 Q Did you ever see any pieces of the lock on the
16 ground that you recall?
17 A Not to my recollection.
18 Q Okay. And the last time that you were at this area
19 before July 8th was July 6th, is that correct?
20 A Yes, ma'am.
21 Q What was the lighting like at night in the dumpster
22 area?
23 A It was reasonably well-lit. You could see.
24 Q Were there overhead sodium lights or --

ANDERSON - CROSS

1 A There were overhead lights and there were lights
2 from the covered parking also.
3 Q And you testified that you didn't see anybody in that
4 enclosure area when you left on July 6th, is that correct?
5 A No, ma'am.
6 Q Did you see if there were any signs of habitation, for
7 example, any bed rolls or anyone's belongings that you could
8 ascertain?
9 A No.
10 Q No. Okay.
11 MS. ZALKIN: And the Court's indulgence just one
12 moment.
13 (Pause in the proceedings)
14 BY MS. ZALKIN:
15 Q What were your hours when you were working for
16 human resources?
17 A It varied, anything from 12:00 until we closed.
18 Sometimes it was 9:00 o'clock.
19 Q And you'd been working there for approximately?
20 A I believe we opened there in June.
21 Q June?
22 A The exact date, I can't remember.
23 Q Sure. June of 2001?
24 A Yes, ma'am.

ANDERSON - CROSS

1 Q And were you aware of any problem with any
2 homeless persons that were in the area at that time?
3 A We had run a few off, but I don't recall any names.
4 Q Were those persons that you had noticed yourself or
5 that someone else had brought to your attention?
6 A That we had noticed.
7 Q And do you recall having a problem with the same
8 person or were they different individuals, if you recall?
9 A They'd be different ones.
10 Q And were those persons loitering in the parking lot or
11 coming inside the bank area?
12 A Loitering.
13 Q And your job at the time was human resources?
14 A I worked with the Human Resources Department but
15 were there as security. We had several hats but --
16 Q Are you still employed with the Palms?
17 A No.
18 Q Would it surprise you to learn that there were broken
19 pieces of the lock outside of that dumpster area?
20 A Not really, no.
21 MS. ZALKIN: The Court's indulgence.
22 (Pause in the proceedings)
23 BY MS. ZALKIN:
24 Q And you testified that the area used to be kept

ANDERSON - REDIRECT

1 locked, as far as you know, until access was needed by both?
2 A Prior. I believe it was -- the lock was removed
3 sometime in July or end of June.
4 Q And so do you know if it was -- any idea if it was the
5 same lock on the ground that had previously been there?
6 A I haven't seen the lock and I don't recall what it
7 looked like. So --
8 MS. ZALKIN: Nothing further. Thank you.
9 THE COURT: Redirect.
10 MR. KEPHART: I do, Your Honor.
11 **REDIRECT EXAMINATION**
12 BY MR. KEPHART:
13 Q Are you familiar with the Terrible Herbst up on Arville
14 and Flamingo?
15 A Yes, sir.
16 Q Could you walk from there to where you --
17 A Yes.
18 Q Okay. And at that point in time, there was a desert
19 area that separated the two, is that right?
20 A Yes.
21 MR. KEPHART: Can I have these marked, Your
22 Honor?
23 (Pause in the proceedings)
24 ///

BY MR. KEPHART:
Q While she's marking those, I'm gonna ask you if you can identify what 136 shows. Does that look familiar to you?
A It looks like the view of the dumpster, possibly, from the street.
Q Would it be from Flamingo or from Wynn?
A Flamingo.
Q Okay. That looks like from Flamingo?
A Off of Wynn.
Q Okay. So it's looking east to west?
A Yes.
Q And you have the dumpster in the background?
A Yes.
Q Okay. Can you see this area on the -- on 121, Exhibit 121?
A I think it's probably about right here somewhere.
COURT RECORDER: I'm not picking that up. Sorry.
BY MR. KEPHART:
Q Probably around where?
A Oh. Right here.
Q Okay. Does it have in the photograph like the planter area surrounded by a curb?
THE COURT: He said probably about right here when he pointed to --

MR. KEPHART: I'll get to that, Judge, when --
THE COURT: The problem he's got his back to the microphone.
MR. KEPHART: Oh, okay.
THE COURT: And so she was drawing your attention to the fact that she's not picking him up.
MR. KEPHART: Okay. Thank you, Judge.
BY MR. KEPHART:
Q Okay. On 121 you pointed in what area?
A Here. There was a -- the curb and there was a planter area right there.
Q So would you agree it's just east of the dumpster area?
A Yes.
Q And it's in a curb and planter area?
A Yes.
Q And then that's what is shown in Proposed Exhibit 137?
A I believe so.
Q Okay. This is taken at night?
A Yes.
Q Does that accurately depict that you recall that area?
A Yes.
MR. KEPHART: Okay. Move to admit 137.

THE COURT: 137? I thought it was 136.
MR. SCHIECK: I thought so. It is 137, Your Honor.
THE COURT: Okay. So it's 137 that -- that was placed before the witness.
MR. KEPHART: Okay.
THE COURT: Any objection?
MR. SCHIECK: No. No objection, Your Honor.
(State's Exhibit No. 137 admitted)
BY MR. KEPHART:
Q And I want to -- I want to show you what's marked as State's Proposed Exhibit 139 and ask you to look at 137 and 139 together, tell me if you can recognize if they're the same area.
A I believe so.
Q Okay. And 139 is taken from the west to the east, as if you're standing near the dumpster. Would that be correct?
A Yes.
MR. KEPHART: Move to admit State's Exhibit 139.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit No. 139 admitted)
BY MR. KEPHART:
Q This is the parking lot area just around the back by the dumpster, is that correct?

A Yes.
Q Okay. Is this -- is that a corner in the parking lot as well?
A Yes.
Q So you would have to go around the end of that planter area, is that right?
A Yes.
Q Exhibit 137, is this -- it's kind of dark. Is this one -- is this the planter area that we're talking about, and that's 139?
A Yes, sir.
Q Okay.
A Yes, sir.
Q What is this right at the bottom? Can you tell, from this photo, can you tell what this is right here where my fingers are?
A Looks like tire tracks.
Q Okay. There's multiple tire tracks there, is that correct?
A Yes.
Q And along the curb itself, can you see where it appears there's tire scuffs as well?
A Yes.
Q And then up here there's a tire track?

A Yeah.
Q And then there's this one here as well?
A Yes.
Q Okay. And that -- and do all these tire tracks seem to track this --
THE COURT: Now you've said this one here as well.
MR. KEPHART: Oh, I'm sorry. I'm sorry, Judge.
THE COURT: And you've switched to -- you said this.
MR. KEPHART: 137.
THE COURT: Thank you.
BY MR. KEPHART:
Q On 137, I said this one here and I'm pointing to the photo and there's a tire track there as well?
A Yes.
Q Do all these tire tracks seem to track around that, the corner there?
A Yes, sir.
Q Okay. And, as a matter of fact, in 139 that's the end of this planter, is that correct?
A Yes.
Q And what is this right here where I'm pointing in the middle of the -- can you tell?
A Gravel.

Q It's all gravel. Is it darker in part of that area?
A Yes, sir.
Q And what's up here where I'm pointing now?
A That --
Q Can you see that?
A That would be a bush.
Q Okay. Do you recall whether or not there was a bush here where it'd be -- this darker area? Do you remember?
A Not to my recollection at this time.
Q Do you -- do you know whether or not one was ever removed from there?
A No.
Q Okay.
THE COURT: Is that no --
THE WITNESS: No, I --
THE COURT: -- one was never removed or, no, I don't know?
THE WITNESS: I don't recollect. I don't recollect.
THE COURT: Thank you.
BY MR. KEPHART:
Q Okay. Do you know of any individuals that ever cut or did you ever see anybody cut the curb a little short and go right across that curb there?
A I don't recall.

Q Okay. You never saw anybody do that?
A No.
Q Do you see here at the end of the curb, does it appear that people cut this curb short there?
A Yeah.
Q Okay. Do you have any independent recollection of the night on the Friday that you were there whether or not you saw the -- saw tire tracks in that area?
A I don't recall, sir.
Q Okay. Nothing that raised your attention or anything like that?
A Nothing out of the ordinary, no.
Q Okay. What -- is this something out of the ordinary you think that would raise your attention?
A Um.
Q No? Yes, no?
A Some -- not really. Some of the ones that were a little thicker maybe, where somebody had laid down some rubber, but --
Q Okay. Would you have done anything with that as a security guard or anything?
A No.
MR. KEPHART: Okay. Pass the witness, Your Honor.

THE COURT: Recross.
MS. ZALKIN: Yes. Thank you, Your Honor.

RECROSS EXAMINATION

BY MS. ZALKIN:
Q Mr. Anderson, were you aware of any crimes that were occurring in the vicinity that you were responsible for?
A We were aware of some but nothing in particular.
Q Can you elaborate to the best of your ability what crimes were brought to your attention?
A We were aware of some robberies in the area that --
Q Robberies of residences?
A No, there had been some at the local bar, some at that place.
Q And were there any measures taken to try to guard against such occurrences?
MR. KEPHART: Your Honor, I'm gonna object as to foundation, what day is she talking about, when was he aware, when he -- you know. I mean, I don't --
THE COURT: Sustained.
BY MS. ZALKIN:
Q In June of 2001, were there any steps taken to try to mitigate against any crime in the area?
A Not as far as we were concerned.
Q And the same question for July of 2001.

A Not as far as we were concerned.
MS. ZALKIN: May I approach, Your Honor? I have a quick question about the aerial.
THE COURT: All right.
BY MS. ZALKIN:
Q Drawing your attention again to State's Proposed Exhibit 121, this -- the top of this blowup, those appear to be apartment buildings?
A Yes, ma'am.
Q And those are the Grandview Apartments?
A I don't recall the name.
Q Does the address 48255 West Viking sound accurate to you?
A I don't even recall the address there.
MS. ZALKIN: The Court's indulgence.
THE COURT: Yes.
(Pause in the proceedings)
MS. ZALKIN: Thank you. Nothing further.
THE COURT: Redirect.
MR. KEPHART: We have nothing further, Your Honor. Thank you.
Thank you, Mr. Anderson.
THE COURT: You may step down.
THE WITNESS: Thank you.

THE COURT: I'm gonna ask that counsel please approach.
(Off-record bench conference at 16:09:47 until 16:15:39)
THE COURT: The Court is marking a calendar for the year 2001 as Court's exhibit next in number.
THE CLERK: 6.
THE COURT: Which will be 6.
(Off-record bench conference at 16:15:56 until 16:16:57)
MS. DiGIACOMO: Your Honor, the State calls James Testa.
THE COURT: Very well.
THE CLERK: Please come all the way forward. Remain standing and raise your right hand.

JAMES TESTA, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. State your name and spell it for the record, please.
THE WITNESS: James Testa, T-E-S-T-A.
THE COURT: The State may proceed.
MS. DiGIACOMO: Thank you, Your Honor.
May I approach?
THE COURT: Yes.
MS. DiGIACOMO: I'm just gonna -- if I may approach the witness.
THE COURT: Yes.

MS. DiGIACOMO: I just don't want to get confused on what's been admitted. Thank you.

DIRECT EXAMINATION

BY MS. DiGIACOMO:
Q Would you please state your occupation and assignment?
A I'm a field training officer at Southwest Area Command at this time.
Q How long have you been with Metro overall?
A A little over seven and a half years now.
Q I want to direct your attention back to July 1st, 2 -- excuse me, July 8th of 2001. Were you still employed and working?
A Yes.
Q What shift were you working at that time?
A I was working graveyard shift at Southwest Area Command.
Q So graveyard shift. What time would you have come on on July 8th?
A We start briefing at 10:00 o'clock p.m. and we get done at 8:00 o'clock a.m.
Q So you would have started the night of July 8th and finished the morning of July 9th?
A Yes, ma'am.

Q Now when you -- after you finish briefing, what do you do then?
A At that point in time we go ahead and log on to our car, into the service, and then we begin patrolling the area or handling calls for service.
Q When you got into your car that night, was there any call that you were dispatched to?
A Shortly after logging on, I got dispatched to a sick or injured person call near the area of Flamingo and Arville.
Q Do you recall what time that was?
A Approximately 10:45 p.m.
Q And what did you do when you got that call?
A I responded to the area to meet up with the person who was reporting the call at the Chevron station on the corner of Flamingo and Arville.
Q Then what happened?
A I made contact with the P.R. and asked him what was going on. He stated that there was a subject who was in a dumpster around the corner, on the same side of the street, and he didn't know if he was back there, he was injured, sick or dead, or what.
THE COURT: Would you please tell the jury what P.R. stands for?
THE WITNESS: Oh, P.R. stands for person

reporting.
BY MS. DiGIACOMO:
Q Thank you. And how long did it take you to get from the station when you left to this call?
A Three, four minutes, roughly.
Q I'm gonna show you what's sitting right behind you. This is State's Exhibit 121. Do you recognize that?
A Yes, ma'am.
Q And how do you recognize that?
A That is part of the area which I patrol and the area in which the call came out on that night.
MS. DiGIACOMO: Your Honor, if I put it here, can you still hear? Okay.
THE COURT: Yes.
BY MS. DiGIACOMO:
Q On State's Exhibit 121, can you see the Chevron station you were referring to at Arville and West Flamingo?
A No, ma'am.
Q Okay. Can you see the area that you responded to?
A It is still just a little bit off of the side of the picture, ma'am.
Q All right. So after you made contact with the person reporting, where did you go?
A We then walked -- or we took our patrol vehicles over

to the bank area in which he stated the subject was behind in a dumpster area.
Q Okay. You're saying we. Did you respond with another officer?
A Yes. Myself and Officer Chavez.
Q Were you in separate cars?
A Yes, ma'am.
Q And when you were working on that date, were you dressed as you are in the courtroom today?
A Yes.
Q Were you also in a marked black-and-white patrol car?
A Yes, ma'am.
Q Do you recall the name of the person that reported?
A I believe his first name was Richard but I do not remember what his last name was at all.
Q Is it on the map, the location of the dumpster you went to?
A Yes, ma'am.
Q Would you please point it out for the jury?
A It would be approximately right about here.
Q Okay. And is that in a parking lot?
A Yes, ma'am.
Q And do you know what parking lot it was?

A It was the Nevada State Bank that's still there now, ma'am.
Q Now, what happened to the person who reported, Richard?
A We had him stay outside of the crime scene and keep the distance away from us. That way, in case there was any type of ambush or anything like that or if there was a crime scene, he would not be inside the crime scene destroying any more of the possible evidence that would be inside.
Q Okay. And you hadn't -- you didn't know anything other than somebody possibly behind the dumpster at this time?
A Correct, ma'am.
Q You can go ahead and sit down. Thank you.
Now when you arrived, what did the area look like?
A It was an empty parking lot. It was very low-lit. There wasn't much light. And the dumpster area was -- the two doors to the dumpster area was closed.
Q Can you describe what the dumpster area looked like?
A The dumpster area was basically a type of a square. On the three sides were brick cement that enclosed it and the front would have been two large doors.
Q All right. And you -- is the two doors you're referring

to when you got there?
A Yes.
Q Okay. And you said they were partially open?
A They were partially open, closed up. I'm not sure exactly if they're locked in place. I can't remember at this time.
Q All right. But could you see through into the dumpster?
A No, ma'am.
Q All right. So what did you do?
A At that time, I had opened up the dumpster area, the two doors, to open it fully wide to see if we could see inside the dumpster area.
Q Now you said it wasn't that well-lit in the area.
A No.
Q Were you able to see very well into the dumpster?
A What we did is or, actually, what I did is I pulled my patrol car right in front of it, faced it towards the dumpster area, turning on my headlights and my side spotlights to help lighten up the area so I could see better.
Q Okay. And then at that time after you -- well, did you do that before or after you --
A Before I approached.
Q Okay. And then what did you do after you

approached?
A Once we approached, I opened up the doors, at which time the dumpster was in full length open -- or, I'm sorry, closed as well of the area to where you could not see around the back side of the dumpster.
Q Okay. Now I'm gonna show you what's been marked and admitted as State's Exhibit Number 4 or -- wrong exhibit. There's a screen in front of you. Okay. Can you see State's Exhibit Number 4 on your screen?
A Yes.
Q Amazing. Does this look familiar to you?
A Yes, it does.
Q Okay. What is this?
A This is the crime scene area.
Q Okay. And is this the way it looked when you first arrived?
A No, ma'am.
Q Okay. How did it look when you first arrived?
A When I first arrived both the doors were closed and the dumpster was not sideways like that. It was facing the opposite direction where each side would be south and north, covering the whole front of the -- of the dumpster area so you could not see behind it.
Q Okay. So when you first opened the door, the

dumpster was in front of you?
A Correct.
Q You're not looking at the side of it as in State's Exhibit Number 4?
A Correct.
Q How did it get to this position?
A In order to see behind it, to see what was behind it, at that time I had to use my baton on the side openings of the dumpster and tried to wheel it off to the side just so that we had more of a clearance, we were able to get back there and see back there without putting ourselves in danger.
Q Okay. Now, did both you and Officer Chavez go into the dumpster area?
A I went inside and I believe Officer Chavez stayed outside of it.
Q When the dumpster, before you had moved it, could you get by on either side?
A It was very thin, that I can remember, to get through it and to be able to try to squeeze myself through it with all the equipment that I was wearing would have been very difficult and it would have put us, what we call, a fatal funnel, which if there was ambush back there it would have been a very dangerous situation to be -- for us to be in.
Q Okay. So for officer safety pretty much is why you

had to move that dumpster?
A Yes, ma'am.
Q What happened when you moved the dumpster?
A I moved the dumpster and I could immediately see several blood spots on the ground.
MS. DiGIACOMO: Now, Your Honor, may I approach?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q Okay. I'm gonna show you what's been marked as State's Proposed Exhibits 2, 3, 5 and 7 through 37. Can you just flip through these and let me know if you recognize them?
(Pause in the proceedings)
A Yes, ma'am, I recognize it.
Q Okay. Are these all photographs of the scene from that night, on July 8th, 2001?
A Yes, ma'am.
Q Do they fairly and accurately depict the scene that you saw at the trash dumpster that night?
A Yes, ma'am.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibits 2, 3, 5, and 7 through 37.
MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.
(State's Exhibit Nos. 2, 3, 5, and 7 thru 37 admitted)
BY MS. DiGIACOMO:
Q Now you -- I'm sorry. You stated when you first went into the dumpster you noticed some blood?
A Yes, ma'am.
Q What specifically did you notice?
A There were a couple of splattered-looking blood spots on the ground and some shoe prints.
Q Did you notice anything else at that time?
A As I approached in further, being very careful where I stepped, I noticed a pair of sandals that were sitting up on the side that were next to each other. And as I looked around, underneath a bunch of garbage I could see what appeared to be a foot sticking out.
Q All right. And what did you do at that point?
A At that time, I made several attempts and calls out very loudly to see if I'd get the individual to answer me, if he happened to be asleep or injured or anything of that effect.
Q And what did you yell out?
A I yelled out that police officer, are you all right, are you okay, wake up, several times.
Q Now you said all you could see was a foot. What --
A At that time, yes.

TESTA - DIRECT

Q What else did you see around the foot?
A Around the foot it looked like the pants may be down a little bit, there was more blood, and there was a lot of looked like miscellaneous trash on top of the rest of the person.
Q So at this point, what did you do? Well, strike that. Did the person respond that you were yelling out to?
A No.
Q What did you do at that point?
A At that time, I asked for medical to be en route.
Q So you, over your radio, called for medical?
A That I can remember, yes, ma'am.
Q And what happened? Did medical arrive?
A An AMR unit and a fire department unit arrived.
Q How long did it take?
A A few minutes. I couldn't tell you for sure.
Q What happened when they arrived?
A When they arrived, I had one of the -- I believe it was the fire department, just one of the gentlemen, come into the crime scene, telling him to be extremely careful where he stepped, light up the areas so that he did not step in any of the blood or try to contaminate any of the scene, to attempt to check on the welfare of the subject.
Q Did you see -- could you see what he was doing?
A Yes.

TESTA - DIRECT

Q What did he do?
A He stepped in, went over towards the front of the cardboard box that was over the top of the -- of the subject. He lifted the cardboard box approximately 6, 8 inches up to look underneath, and at that time he lowered the box, came back out and told me that he would be dead.
Q Okay. What did you do at that point?
A At that time, I moved everybody out, myself and Officer Chavez would have started to put up crime scene tape to keep everybody out that didn't need to be in there and started making notifications to our supervisor and detectives.
Q What do you mean your supervisors and detectives?
A Oh, we would notify our supervisor, our sergeant, of what we had and then we would notify our violent crimes detectives or general assignment detectives, in turn, which homicide would also be notified.
Q All right. So a situation with a body behind a dumpster is not something you would handle as patrol?
A No.
Q Okay. After you did that, did the other detectives arrive?
A They started arriving, yes.
Q All right. What did you do?
A At that time, I kept my distance outside and made

TESTA - DIRECT

sure that we had recontacted the person reporting and that he stood by 'cause the detectives would more than likely want to talk to him and basically tried to keep everybody at the scene until the detectives responded and I.D. -- or the crime scene analysts personnel responded to start processing the scene.
Q Were you -- so you didn't just leave when people, other people, started to arrive?
A No, ma'am. I stayed there the entire shift.
Q Okay. So what time did you leave?
A A little after 7:00 a.m.
Q On July 9th?
A Correct.
MS. DiGIACOMO: Okay. May I approach, Your Honor?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q Officer, I'm gonna show you what's been marked for identification as State's Proposed Exhibits 142, 143 and 144. Would you look at those and let me know if you recognize them?
A Yes. The first two are the -- is the camera that the crime scene analysts would have brought in with them to take their pictures, and the last one is the pictures of the foot prints that we found that were in blood when I first arrived.

TESTA - DIRECT

Q And so these fairly and accurately depict what you saw that night at the dumpster on July 8th, 2001?
A Yes.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibits 142, 143 and 144.
MR. SCHIECK: No objection.
THE COURT: Granted.
(State's Exhibit Nos. 142, 143 and 144 admitted)
BY MS. DiGIACOMO:
Q Now I'm gonna show you State's Exhibit 144. Do you see that?
A Yes, ma'am.
Q Okay. Can you describe for the jury what's depicted here? And if you actually touch the screen in front of you, it'll make a line.
A Okay. In between here and here and these areas were the separate blood splats that we had seen. And from this area here, along here and back through this area would be the foot prints that I saw.
Q And what's located in the back of this photograph?
A The back of the photograph would be the garbage and over here somewhere would be, roughly, the -- I believe the -- or the subject was back there, roughly.

TESTA - DIRECT

Q I'm showing you State's Exhibit Number 2. Do you recognize what's depicted here?
A Yes, sir.
Q What's depicted there?
A That would be my patrol vehicle and it was facing the dumpster area in which we opened, and the patrol vehicle lights would be on lighting up that area, and that would be some of the detectives and the crime scene analysts.
Q Now, is your car in the same spot it was at this -- during this photograph as it was when you first arrived and you said you put on your lights?
A Yes, sir.
Q I'm showing you State's Exhibit Number 6. What's depicted here?
A What is here is when I walked in the back, I could see the foot on the upper right side which was sticking out, and to include the garbage that was covering the body of the person.
Q Now, can you point to where the foot is that you're referring to?
A Roughly, the foot is right there and that's what it looked -- at that time.
Q Okay. So is this the way it looked when you first saw the body?

TESTA - DIRECT

A Yes.
Q Now you said that the medical personnel that arrived went in there and lifted a cardboard box approximately 6 to 8 inches?
A Yes.
Q Do you see the box that you saw them lift here?
A Yes, I do.
Q Where is that?
A It is the main cardboard box right there.
Q Okay. And which end of that cardboard box was lifted up?
A He would have lifted roughly right around here near the head area.
Q Now, were you there -- excuse me. While you were there, could you see what the technicians were doing inside the dumpster area?
A At a point, I tried to keep myself outside so that I did not step inside to contaminate the scene.
Q Okay. So do you -- do you know whether or not the trash was ever removed?
A The trash was slowly removed piece-by-piece by the crime scene analysis person.
Q Did you see anything unusual as they were taking out the trash?

TESTA - DIRECT

A As they were taking out the trash, you could begin to see parts of the body where the subject's pants were removed down towards his ankle area, his genital region appeared to be missing, cut off, and his face and upper body areas appeared to be swollen up and blood-covered.
Q Okay. Now I'm showing you State's Exhibit Number 16. What's depicted there?
A That would be the upper portion of the subject where his face, again, to me appeared to be swollen and it is blood-covered up on his shirt and his face area.
MS. DiGIACOMO: The Court's indulgence.
THE COURT: Was that 116?
MS. DiGIACOMO: That was -- thank you, Your Honor. That was 16.
THE COURT: I don't think 16 has been admitted.
MS. DiGIACOMO: We just admitted 7 through 37.
THE COURT: Yes. Thank you.
MS. DiGIACOMO: Okay.
BY MS. DiGIACOMO:
Q Now I'm gonna show you State's Exhibit Number 12. What's depicted here?
A That would be the lower portion of the subject where his pants are down and his genital area missing.
MR. KEPHART: What number is that?

TESTA - CROSS

MS. DiGIACOMO: That was State's Exhibit Number 12.
BY MS. DiGIACOMO:
Q I'm showing you State's Exhibit Number 28. What's depicted here?
A I believe that would be his genital area that was cut off.
Q And can you point in there 'cause it's kind of dark?
A Right along here.
Q Did you see any other things unusual from the body after the trash was taken out?
A I believe that there were also teeth found in the area, but I can't remember exactly for sure.
MS. DiGIACOMO: Okay. Pass the witness.
THE COURT: Cross.
MR. SCHIECK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SCHIECK:
Q Officer Testa, as of 2001, how long had you been a police officer?
A A little over seven and a half years now, sir.
Q Now. So back then you'd been a couple of years?
A Two and a half, three years, roughly, sir.
Q And now you're a training officer?

TESTA - CROSS

A Yes, sir.
Q Which means you teach other officers how to do the job of a patrol officer?
A Yes, sir.
Q And included in that training would be teaching those officers how to preserve crime scenes that you come upon?
A Yes, sir.
Q That's an important component of your job as a patrol officer, is to preserve crime scenes that you come across, correct?
A Yes, sir.
Q And you were trained in that before you became a patrol officer?
A Yes, sir.
Q And you must be doing it pretty good. They made you a training officer to teach others, correct?
A Yes, sir.
Q Okay. And when you got this call and talked to Richard, and he indicated there was a body behind the dumpster?
A Yes, sir.
Q That was sufficient enough information that you felt it necessary to pull your vehicle up and turn on all your lights to light the area before you even approached the area where

TESTA - CROSS

the body might be?
A Yes, sir.
Q And you wanted to do that so you had sufficient light to make sure you didn't disturb, if indeed this was a crime scene, disturb anything?
A Correct, sir.
Q And also for officer safety?
A Officer safety. Yes, sir.
Q And when you approached, first approached, the dumpster after you pulled your car up, the doors were shut, the gate were shut?
A Yes, sir.
Q Were they completely shut so that they touched or were they gapped a little or do you recall?
A I honestly don't remember completely for sure, sir.
Q But you were able to open those, the swinging doors?
A Outwards. Yes, sir.
Q Okay. Was there one door or two?
A I can remember there were two doors, sir.
Q So you swung the doors open. And now you're confronted with this large green dumpster?
A Yes, sir.
Q And it's a little tight on both ends for you to slide by?

TESTA - CROSS

A Yes, sir.
Q Okay. At this point in time, had you determined whether there was or was not a body behind the dumpster?
A No, sir. We could not see.
Q Did you attempt to go around the sides and look over the top to see if you could see anything back there?
A I was not able to do it. I can't. I'm pretty short, couldn't see the high anyway, sir.
Q Okay. So you determined it would be necessary to move the dumpster at that point in time?
A Yes, sir.
Q Even though you're taught not to move things at a crime scene, sometimes you just have to in order to see what you're looking for, correct?
A Yes, sir.
Q So there was nothing out of your normal procedure that you would have to slightly move that dumpster to gain access to the back?
A No, sir.
Q Okay. And you were very careful and used your baton so as not to leave behind any fingerprints on the dumpster?
A Correct, sir.
Q So that later someone could come along and perhaps

TESTA - CROSS

dust for prints and determine if someone else had touched the dumpster?
A Yes, sir.
Q Now you said you swung the dumpster. Were you able to manipulate it within the confines of the enclosure or did you have to pull it out in order to turn it a little bit?
A I just used the one side, sir, of the dumpster and basically just swung it open so where the back side basically would have pivoted on it.
Q Okay. So you were able to rotate it so that you could get by?
A Yes, sir.
Q And you were the only officer that went back into the back at that point in time?
A Yes, sir.
Q Officer Chavez did not go with you?
A No, sir. He was standing just on the outside, sir.
Q And once you were back there, you were able to see blood and what you perceived to be a human foot?
A Yes, sir.
Q You didn't touch the body in any way at that point?
A No, sir.
Q You called out loudly to the -- to the individual, hoping to get a response and got none?

TESTA - CROSS

A Correct, sir.
Q At that point in time you hadn't done anything to determine whether or not the person was deceased but, clearly, he was not responding?
A Correct, sir.
Q And so at that point the correct thing to do was call for medical?
A Yes, sir.
Q Which you did?
A Yes, sir.
Q And both AMR and the fire department responded?
A That I can remember, yes, sir.
Q You had to wait a few minutes for them to get there?
A Yes, sir.
Q And I would assume that you stayed right there at the dumpster and made sure nobody got back there until medical arrived?
A Yes, sir.
Q Okay. And would it be fair to say no one went back there?
A No, sir.
Q Okay. You didn't leave for any period of time so someone could have got back there --
A No, sir.

TESTA - CROSS

Q -- and disturbed things? And when you went back and called out to the individual, you were careful not to step in any blood?
A Correct, sir.
Q Because you don't want to leave your foot prints behind?
A Correct, sir.
Q But you were able to see there were other foot prints there?
A Yes, sir.
Q That appeared to have been made in blood?
A Yes, sir.
Q So you worked your way around so you wouldn't touch anything to leave any evidence of your being there and then backed out just as carefully?
A Yes, sir.
Q And stood watch, along with Officer Chavez, until medical arrived?
A Yes, sir.
Q Were there any people accumulated in the area as a result of your presence?
A At that time, no, sir.
Q Mr. Shott was there but you had stationed him some distance away and said just hold right here?

TESTA - CROSS

A Yes, sir.
Q When medical, the fire department and AMR arrived, did they pull into the parking area also?
A They pulled in the parking area but we kept them a distance away from the scene, sir.
Q Now we've got State's Exhibit 2, which shows your patrol car and what appears to be probably the detectives and crime scene analysts?
A Yes, sir.
Q Okay. Where did the fire department pull up when -- and AMR pull up when they got there? Is it depicted on there?
A They would have been roughly back around here somewhere, sir. We tried -- I tried to keep them back farther away from the scene so that they didn't have to travel in and out.
Q So you were controlling pretty much the whole parking lot at that point in time?
A Yes, sir.
Q And stopped them before they could come any further?
A Yes, sir.
Q And that's because there could have been evidence or things to be collected within the parking lot area itself, such as tire --

TESTA - CROSS

A Possibly, yes, sir.
Q Such as tire tracks, things of that nature?
A Yes, sir.
Q Where was Officer Chavez's car?
A I believe, if I can remember correctly, he parked back over in this area, sir.
Q Okay. Behind your car sort of?
A Behind my car. The parking lot squared around the building so that you can approach from two different sides --
Q Okay.
A -- of that area.
Q And so the medical personnel exited their vehicles and approached the dumpster area?
A Only one, sir. I had only one come in.
Q Okay. And that was from the fire department?
A Yes, sir.
Q But AMR, the ambulance company, was on scene?
A That I can remember, yes, sir.
Q But you didn't ask them to come back?
A No, sir, just one at that time.
Q At that point in time, did you have a pretty good idea that the individual was probably deceased?
A Possibly, yes, sir.
Q An so you had one individual from the fire

1 department come back. Do you recall who that was?
2 A No, sir, I do not.
3 Q Do you recall what station he responded from?
4 A I don't remember if it's 15, 21, 22. I'm not exactly
5 sure which one there, sir.
6 Q And did you follow him up to the dumpster area?
7 A Yes, sir.
8 Q Did you give him any instructions as you were
9 approaching the dumpster area?
10 A Yes, sir.
11 Q An what did you tell him?
12 A I told him be extremely careful where he steps,
13 watch where he steps, make sure he doesn't step in any of the
14 blood or anything like that, just do the bare minimum that you
15 would need to do to check on the subject's welfare.
16 Q And did he acknowledge that he understood those
17 directions?
18 A Yes, sir.
19 Q Is it fair to say that the Clark County Fire Department
20 trains their fire officers not to disturb crime scenes also?
21 A I do not know for sure, sir, but I think so.
22 Q Did you watch as he entered into the dumpster area?
23 A Yes, sir.
24 Q You indicated that he touched the cardboard and

1 lifted it approximately 6 to 8 inches?
2 A Yes, sir.
3 Q Besides that, did he touch anything else in that area?
4 A No, sir.
5 Q He didn't touch the dumpster?
6 A No, sir.
7 Q And he had on his rubber gloves, I assume?
8 A Yes, sir.
9 Q And he pronounced death based on being able to
10 look upon lifting the cardboard?
11 A Yes, sir.
12 Q He did not touch the body at any point in time?
13 A No, sir.
14 Q And you watched to make sure he didn't step and
15 leave his foot prints behind?
16 A Correct, sir.
17 Q Okay. And I assume he did not?
18 A Correct. He did not, sir.
19 Q At that point in time you knew you had a dead body
20 and, therefore, had probably a homicide scene and took action
21 to tape the scene off, is that correct?
22 A Yes, sir.
23 Q Now in photograph Number 2 that we have on the
24 screen, I don't see any crime scene tape. What -- where was

1 the crime scene tape put when you marked off the area?
2 A There would have been two major areas of the crime
3 scene tape we put up, sir. One would have been off in this
4 direction, over here, and that would be that way no individuals
5 could drive that way or come up that way, and it would have
6 been further down south from that area towards the end of
7 the building to keep yourself a larger crime scene and keep
8 everybody out of that area.
9 Q So you basically roped off the whole parking lot area
10 or --
11 A Pretty much, sir. Yes, sir.
12 Q Now behind in this photograph, looking past where
13 the individuals were positioned, what is beyond? Is there a
14 wall back there?
15 A Yes, sir.
16 Q And what's over the wall, do you know?
17 A It is an apartment complex.
18 Q Were steps taken to make sure nobody came over
19 the wall from the apartment complex and got into that crime
20 scene area?
21 A Standing there, sir, basically making sure that nobody
22 did climb over there. Yes, sir.
23 Q Okay. And you indicated that once you had the
24 pronouncement of a dead body that you started making phone

1 calls to the appropriate other officers, correct?
2 A Yes, sir.
3 Q And one of those would have been to your sergeant?
4 A Yes, sir.
5 Q And can you recall who that was?
6 A No, sir, I do not.
7 Q Did he respond to the scene also?
8 A I cannot remember, sir.
9 Q Would it be normal procedure that he would also
10 respond?
11 A At times, depending on what was going on at that
12 night, whether he was already on another call or was not able
13 to get out at that point in time.
14 Q Do you recall who the first group of responding other
15 individuals were?
16 A No, sir, I do not remember, sir.
17 Q But it would have been -- you would have called your
18 sergeant. Do you recall if you called homicide or if he called?
19 A I don't believe I called homicide. I made sure we
20 called what -- at that time we had general assignment units
21 who would have been on, on graveyard. And if I remember
22 correctly, they would have responded along with I.D. and then
23 they would go ahead and make the notification to homicide,
24 sir.

Q And so the I.D. or the crime scene analysts would respond with the general assignment detectives?
A Wherever they were coming from, sir, they would eventually respond. Yes, sir.
Q And during this period of time while you're waiting for the others to respond, you stayed there by the dumpster?
A Yes, sir.
Q And once they responded you were still there by the dumpster when they came up?
A Yes, sir.
Q Are you in this photograph, by any chance?
A I do not remember, sir.
Q Did you watch as they, these other officers that responded, entered into the dumpster area?
A I believe they would have waited for the crime scene analysis person to get there as well.
Q Do you have any recollection how long that was?
A No, sir, I do not.
Q But at some point they arrived and you -- they began what would be the task of removing item-by-item of the trash from the top of the body, is that correct?
A Yes, sir. That would have been done by the crime scene analysts, sir.
Q And they were pretty meticulous in doing that one

piece at a time. Is that a fair statement?
A Yes, sir.
Q I mean, they just didn't go in there and brush it off and --
A Correct, sir.
Q And you observed them as they would bag things as they removed items from on top of the body?
A Yes, sir.
Q Put them into evidence bags, I mean?
A Correct, sir.
Q And at some point they got down where you could start seeing more of the body, is that correct?
A Yes, sir.
Q And you were still there in the area to watch as the body slowly became revealed?
A Yes, sir.
Q And were able to observe the various items that were on the body?
A Yes, sir.
Q I'm gonna show you what's been marked as --
THE COURT: Has it been --
MR. SCHIECK: Excuse me.
THE COURT: -- marked or has it been admitted?
MR. SCHIECK: Admitted, Your Honor. I'm sorry.

THE COURT: Thank you.
MR. SCHIECK: All of these are the admitted, the 7 through 37.
BY MR. SCHIECK:
Q And you would have been there when the crime scene analysts reached this point, is that correct?
A Yes, sir.
Q And there appears to be some saran wrap around the leg area of the body?
A Yes, sir.
Q And when I say saran wrap, plastic-type wrapping material?
A Yes, sir.
Q And that was there as they removed the items that were on top of it?
A Yes, sir.
Q I'm showing you what's been admitted as State's Exhibit 16. You would have been there to observe when they reached that point?
A Yes, sir.
Q There appears to be a number of white towel-like items over the abdomen area of the body, is that correct?
A Yes, sir.
Q And you would have been there when they removed

those items?
A Yes, sir.
Q Did you notice if they bagged those items or marked them or did anything with those items?
A I do not remember for sure, sir.
Q Were you still there when the body was removed?
A No, sir.
Q Okay. So you stayed until about 7:00 o'clock, is that correct?
A Yes, sir.
Q Which was close to the end of your shift?
A Yes, sir.
Q And as part of your responsibility you have to go back and write up a report and log out and all of that stuff at the end of your shift?
A Yes, sir.
Q Okay. So you would have left about 7:00 o'clock to go be --
A Well, after 7:00 o'clock, once we were -- we were relieved, sir.
Q By the oncoming shift?
A Yes, sir. Day shift units. Yes, sir.
Q And, again, I'm gonna show you State's Exhibit 12. Does that also again show the saran wrap that appears to be

wrapped around the body?
A Yes, sir.
Q And that's around the leg area?
A Yes, sir.
Q Okay. But above where the pants are pulled down?
A Oh, yes, sir.
Q Did you notice anything else that was on the body while you were there other than the saran wrap or the plastic wrap that appeared to be wrapped around the body?
A Not that I can remember, sir.
Q Nothing specific that stands out?
A Not that I can remember at this time, no, sir.
Q And there was a lot of trash, various items from -- that were on the body?
A Yes, sir.
Q But you do recall specifically the cardboard?
A Yes, sir.
Q And the -- and the plastic wrap?
A Yes, sir.
Q Had they completely uncovered the body by 7:00 o'clock when you left or was it still partially covered?
A Roughly, that I can remember, yes, sir, it was pretty much all uncovered, most of the items off the top of the body, sir.

Q So you don't know actually what time the body was transported?
A No, I do not remember, sir.
Q At any point in time did you have contact with the Coroner's Office?
A I remember them coming out, sir, but I did not speak with them that I can remember. No, sir.
Q You didn't, you -- you didn't call them out?
A No, sir, not that I remember.
Q That would have been someone else's responsibility?
A Yes, sir.
Q Did you see anyone, while you were there watching, step in blood and leave bloody foot prints?
A Not that I know. No, sir.
Q And there's no doubt in your mind when you first arrived, the first arriving officer on the scene that gained access, that the bloody foot print was there on concrete?
A Yes, sir.
Q Okay. And those are depicted in photographs that were shown to you?
A Yes, sir.
MR. SCHIECK: The Court's indulgence, please.
THE COURT: Yes.
(Off-record colloquy between Mr. Schieck and Mr. Kephart)

BY MR. SCHIECK:
Q Let me show you three exhibits that have been marked as Defendant's Exhibit A, Defendant's Exhibit B and Defendant's Exhibit E.
MR. SCHIECK: If I may approach, Your Honor.
THE COURT: A, B and E?
MR. SCHIECK: Yes, Your Honor.
THE COURT: Yes, you may.
BY MR. SCHIECK:
Q Ask you to take a look at those and ask if you recognize those from the crime scene.
A Yes, sir. The first one would be a --
Q Don't describe them yet.
A Okay, sir.
Q We have to put them in. Do you recognize those photographs?
A Yes, sir.
Q Do they fairly and accurately depict items that were there at the area when you were there?
A Yes, sir.
MR. SCHIECK: I'd move for the admission of A, B and E.
MS. DiGIACOMO: No objection.
THE COURT: Granted.

(Defendant's Exhibits A, B, and E admitted)
BY MR. SCHIECK:
Q I'm gonna show you or put up Defendant's A. And can you tell us what's depicted there?
A That would be a foot print, sir.
Q Does it appear to be in blood?
A Yes, sir.
Q And just so we're clear on what we're looking at, I'm gonna show you next what's been marked as State's 144 and have you take a look at that. And you've already identified that as being bloody foot prints from the -- from the scene, correct?
A Yes, sir.
Q Would it appear then that the main photograph or the main print on Exhibit A is just a closer photograph of this print on 144?
A Yes, sir.
Q And that clearly -- in your opinion, does that show a shoe print?
A Yes, sir.
Q And, again, no one made that print while you were there. It was there when you arrived?
A Yes, sir.
MR. SCHIECK: For the record, Your Honor, it

1 appears that Defendant's B is a duplicate of State's 142 just
2 admitted so there is some duplication there.
3 BY MR. SCHIECK:
4 Q And I'm gonna show you what's been admitted as
5 Defendant's Exhibit E. You recognize what's depicted on E?
6 A Yes, sir.
7 Q And what is that?
8 A That would be foot prints as well, sir, on the
9 cardboard box.
10 Q Okay. So there were also foot prints on the
11 cardboard box?
12 A Yes, sir.
13 Q Did you see those when you arrived?
14 A Not when I first arrived, no, sir.
15 Q Did you see them at some point?
16 A Yes, sir.
17 Q And when did you see them?
18 A When the crime scene analysts would have been
19 removing the cardboard and checking the box for further
20 evidence and laying it out.
21 Q Was that under some other debris then when you
22 first arrived?
23 A I do not remember for sure, sir.
24 Q But it didn't come to your attention until the crime

1 scene analysts were removing the cardboard?
2 A Correct, sir.
3 Q And I'm -- this is a silly question I know, but you
4 didn't leave this foot print on the cardboard?
5 A No, sir.
6 Q And nobody did while you were there?
7 A No, sir.
8 Q So it must have been there when you arrived?
9 A Yes, sir.
10 Q Okay. You said that the lighting in that area you
11 described as low light?
12 A Yes, sir.
13 Q What type of lighting was there in addition to your
14 car?
15 A If there would have been any other light, I believe
16 there was some from a light pole that was in the parking lot
17 area, sir.
18 Q Just the light pole, no other lighting that you recall?
19 A Not that I can remember, sir.
20 Q Did you notice any skid marks on the ground when
21 you were there?
22 A Not that I can remember, no, sir.
23 Q Do you recall seeing any crime scene analysts taking
24 photographs or other methods to preserve tire tracks that

1 were there at the scene?
2 A Not that I can remember, sir.
3 Q Do you recall whether there was any garbage inside
4 of the dumpster itself, the one that you moved?
5 A I do not remember. No, sir.
6 Q It wasn't overflowing, was it?
7 A No, sir.
8 Q You would have remembered if it was overflowing
9 garbage in there?
10 A Yes, sir.
11 Q Okay. But you have no recollection of how full or
12 empty it may have been?
13 A No, I do not, sir.
14 THE COURT: We've hit the 5:00 o'clock hour.
15 MR. SCHIECK: I have no further questions, Your
16 Honor.
17 THE COURT: Okay.
18 MR. SCHIECK: Thank you very much, officer.
19 THE WITNESS: Yes, sir.
20 MS. DiGIACOMO: Your Honor, I just have a couple.
21 THE COURT: All right.
22 MS. DiGIACOMO: Thank you.
23 ///
24 ///

1 **REDIRECT EXAMINATION**
2 BY MS. DiGIACOMO:
3 Q Now you said that you weren't tall enough to see
4 over the dumpster?
5 A No.
6 Q Okay. And you said it was almost touching either
7 side of the wall. Is it fair to say from where you were by the
8 doors you couldn't see what was going on in the back behind
9 the dumpster?
10 A Correct, ma'am.
11 Q When you first got there and opened the doors, did
12 you notice any blood or foot prints?
13 A Not that I can remember at that time.
14 Q Okay. It wasn't until you actually moved the
15 dumpster?
16 A Correct.
17 Q So if you hadn't have moved the dumpster and tried
18 to make it through the side, would you have known if you
19 were stepping on anything, blood foot prints or anything?
20 A By squeezing through the side?
21 Q Right.
22 A I probably wouldn't have noticed, no.
23 Q Now, how long have you been -- excuse me. Strike
24 that. At the time back in July of 2001, how long had you been

patrolling that area, West Flamingo and A...ue?
A Approximately two years.
Q So you were familiar with the area pretty well back then?
A Yes.
Q Were you aware of any homeless camps or anyone dumpster-diving?
A That occurs generally throughout that area, yes.
Q Where -- are there any homeless camps close to the area of Wynn Road and West Flamingo?
A There is one in a wash area just off Flamingo and Valley View north, correction, I'm sorry, south of there. There's a wash area where there are homeless camps throughout that area.
Q How long do you -- if you recall, how long did it take the crime scene analysts to actually get the trash out and actually uncover the body?
A Through most the shift, that I can remember, ma'am.
Q So hours?
A Yes.
MS. DiGIACOMO: The Court's indulgence.
(Pause in the proceedings)
BY MS. DiGIACOMO:
Q Okay. I'm gonna show you State's Exhibit Number

12. Counsel pointed out some plastic wrap here.
A Yes.
Q Now, do you -- could you tell what that was? He was calling it saran wrap. But can you tell what it is?
A A type of plastic. That's all I really know, ma'am.
Q Is it -- was it consistent with the plastic that the bags were made of that were around the dumpster area?
A Possibly. I couldn't say for sure.
Q The medic that went in there from the fire department, you mentioned the box that he had touched. Did he touch that with his bare hands?
A No, with gloves.
Q All right. What did he do with the gloves that he had on after he was leaving the area?
A He would have disposed them into their biohazard.
MS. DiGIACOMO: The Court's indulgence.
BY MS. DiGIACOMO:
Q Okay. And you had said that you gave the medic personnel directions not -- of where not to step?
A Yes.
Q Would it have been easy if somebody wasn't paying attention to step in those areas they shouldn't have?
A It is possible, yes.
MS. DiGIACOMO: Nothing further.

THE COURT: Recross.
MR. SCHIECK: Thank you, Your Honor.

RECROSS EXAMINATION

BY MR. SCHIECK:
Q You were asked some questions about this plastic, whatever it is, could have been garbage bags or something of that nature. Do you recall that they had to unwrap the plastic wrap from around the body?
A I do not remember, sir.
Q Do you recall testifying at a previous proceeding?
A Yes, sir.
Q Do you recall --
MR. SCHIECK: It's page 91, counsel.
MS. DiGIACOMO: Thank you.
BY MR. SCHIECK:
Q Testifying that Exhibit 14 was an elongated shot of the body as they unwrapped it?
A Yes, sir.
Q Is that a fair description, that they had to unwrap that plastic from around the body?
A Possibly, sir. I really don't remember, sir.
Q Would you like to see your transcript on -- from that?
MS. DiGIACOMO: Do you have a line, counsel?
MR. SCHIECK: It's on line 2.

MS. DiGIACOMO: Thank you.
BY MR. SCHIECK:
Q This would be Exhibit 14. If I showed you your testimony at a previous proceeding, would that refresh your recollection?
A Possibly, sir.
MR. SCHIECK: May I approach, Your Honor?
THE COURT: Yes.
(Pause in the proceedings)
THE WITNESS: Yes, sir.
BY MR. SCHIECK:
Q You did say they unwrapped it?
A Yes, sir.
Q And while you were there, did anyone come up and identify the body, to your recollection?
A Not that I remember. No, sir.
Q Did you have any contact with a lady by the name of Diane Parker?
A Not that I remember. No, sir.
Q Was there any civilians at all that you recall coming over to the area concerning the dead body?
A Not that I know of. No, sir.
MR. SCHIECK: Thank you. No further questions.
MS. DiGIACOMO: Nothing further.

THE COURT: You may step down from the stand.
THE WITNESS: Yes, ma'am.
THE COURT: Ladies and gentlemen, we'll be taking our evening recess and resuming tomorrow morning at 10:30 a.m. At 10:30, please be in the hallway. The bailiff will meet you there to return you to your seats in the courtroom.
During the recess, you're admonished not to talk or converse among yourselves, nor with anyone else, on any subject connected with the trial, and you're not to read, watch or listen to any report of or commentary on the trial or any person connected with the trial, by any medium of information, including, without limitation, newspaper, television, radio and Internet, and you're not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.
You all have a good evening and we'll see you at 10:30 tomorrow.
The jury may exit.
(Jurors recessed at 17:07:26)
THE COURT: The record shall reflect that the jury has exited and that counsel at sidebar agreed that they would have no objection to any of the evidence that's been admitted in this trial being placed upon the ELMO for viewing by the jury without having to do a motion for publication to the jury, and

the Court is accepting that stipulation.
I believe also the parties had stipulated not to use juror notebooks for the purposes of this trial.
MS. DiGIACOMO: I believe we did, Your Honor.
MS. GREENBERGER: What does that mean?
THE COURT: The Nevada Supreme Court in the year 2004 issued an order that the attorneys prepared juror notebooks with all of the exhibits that are going to be admitted into evidence for each member of the jury to have one of those notebooks. It's become somewhat archaic in light of having the ELMO which is a much faster presentation mode. But the order is still out there. So since nobody showed up with juror notebooks, I assumed that that was the case here.
Is that right, Mr. Schieck?
MR. SCHIECK: That's correct, Your Honor.
THE COURT: Very well.
Is there anything that we need to make of record before I take us off?
MR. SCHIECK: No, Your Honor.
THE COURT: No.
MR. KEPHART: Not by the State.
THE COURT: We'll see you tomorrow morning.
MS. DiGIACOMO: Thank you, Your Honor.
MS. GREENBERGER: What time are we starting

tomorrow?
THE COURT: 10:30.
MS. GREENBERGER: Okay. Thank you.
THE COURT: You're welcome.
We'll go off the record at this time.
COURT ADJOURNED AT 17:10:04 UNTIL THE FOLLOWING DAY, SEPTEMBER 15, 2006
****

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Transcript filed in District Court, Case No. C177394 does not contain the social security number of any person.

Lin Dunbar
Transcriber

4/29/07
Date

* * * * *

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A **"ROUGH DRAFT"** TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

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NOV 14 AM '07

CLERK OF THE COURT

THE STATE OF NEVADA,	)	
	)	
	)	CASE NO. C177394
Plaintiff,	)	
	)	
vs.	)	
	)	DEPT. NO. II
KIRSTIN BLAISE LOBATO,	)	
	)	
Defendant.	)	Transcripts of Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

JURY TRIAL - DAY 5
VOLUME V

FRIDAY, SEPTEMBER 15, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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INDEX OF WITNESSES

	DIRECT	CROSS	REDIRECT	RECROSS
FRIDAY, SEPTEMBER 15, 2006				
STATE'S WITNESSES:				
Dixie Tienken	11	58	100	--
Thomas Wahl	139	183	212	217

* * * * *

INDEX OF EXHIBITS

		ADMITTED
FRIDAY, SEPTEMBER 15, 2006		
STATE'S EXHIBITS:		
109	Photograph of seat covers in vehicle	153
110	Photo of left seat cover in vehicle	153
111	Photo Of right seat cover in vehicle	153
112	Photo of seat covers out of vehicle	155
113	Photo of left front seat in vehicle	160
114	Photo of side door panel of vehicle	160
133	Medical records from Caliente Center	10

* * * * *

LAS VEGAS, NEVADA FRIDAY, SEPTEMBER 15, 2006

PROCEEDINGS

PROCEEDINGS BEGAN AT 10:42:41

(Jurors are not present)

THE BAILIFF: All rise.

Department II is now in session, the Honorable Valorie J. Vega presiding. Please be seated.

THE COURT: The record shall reflect we're convened outside the presence of the jury at counsels' request in State versus Lobato under Case Number C177394, in the presence of the defendant, her three counsel, and the two prosecuting attorneys.

MS. DiGIACOMO: Your Honor, it was the State's request for this. What we're asking for here is after hearing defense counsel's opening yesterday and reading back through the prior transcripts from the previous trial, there are a lot of conversations that the defendant had with people up in Panaca. Last time, the defense tried to get those conversations in on -- by themselves, when that is clearly hearsay. We would object on the record. You would sustain it. But then they would also try and backdoor it other ways like, well, just tell us when the conversation was that she told you she was attacked, that kind of thing. They had said in their opening statement yesterday that there's gonna be

witnesses that will say what she told them and when. And we just want to make it clear before we begin so we don't have to continuously object in front of the jury that if the State doesn't bring out the conversation, that the defense can't do it. It's hearsay on their side unless they have some sort of exception to the hearsay rule. And we would ask that they not do that in front of the jury or try and backdoor it in, just mentioning conversations in general.

For example, with Stephen Pyszkowski, prior counsel had alluded to this conversation when you said that she was attacked, trying to get in a tow receipt. They can certainly get in the tow receipt without referencing any conversation that was clearly hearsay, and you did sustain the objections. So we just want to make the record clear that, you know, they cannot get into these conversations that the defendant had with our witnesses unless the State brings it out.

THE COURT: I guess this is kind of an anticipatory objection.

MR. KEPHART: Exactly.

THE COURT: And it's premature but it's perhaps prophylactic. So it's food for thought at this point.

MS. DiGIACOMO: Okay. And also, Your Honor, our first witness we're calling this morning has, what is it called, degenerative? She has a condition, I forgot what it's called,

where she can't drive at night. She needs to be back on the road by 1:00 o'clock p.m. to make it back. And so I just want to let the Court know we should be done with her by noon. But if it takes a few minutes over, she can't come back after the lunch hour. She'd have to come back again next week because it takes her several hours to drive because she can only drive for twenty minutes and then has to stop and take a break and then get back on the road, and she needs to get back to Panaca before dark.

MR. SCHIECK: That's fine, Your Honor.

Are you talking about Dixie?

MS. DiGIACOMO: Yes.

MR. SCHIECK: I think it's macular degeneration.

MS. DiGIACOMO: Yeah, that's it.

MR. SCHIECK: Something like that.

MS. DiGIACOMO: Yeah.

MR. SCHIECK: And I think she said something about cataracts, too, that she couldn't drive at night. We have -- we'll do everything we can to get her in and out.

THE COURT: I have a nonprofit luncheon today, and I've made arrangements to be late for it. You know, it's like we've got a few things juggling. So is Dixie Tienken gonna be your next witness?

MS. DiGIACOMO: Yes, Your Honor.

THE COURT: And she's here and you're ready to call her?

MS. DiGIACOMO: Yes.

MR. KEPHART: Mm-hmm.

THE COURT: Okay. And I will step down and we'll have the bailiff --

MR. SCHIECK: Your Honor, while we're off the bench, may I just bring up one other quick thing, hopefully, quick thing? We're trying to schedule our experts so that they're not sitting around for days and days at a time at public payment while we're getting ready to testify because we are paying out of our budget for the experts. And they wanted Dr. Simms to be available when we had Dr. Laufer testify. So we've made arrangements for Dr. Laufer to fly in Monday and testify on Tuesday so that Dr. Simms could be present and are planning our witnesses, our lay witnesses, that would be coming down from Panaca or wherever else during the course of next week, but that we are certainly looking at finishing with our experts the first part of next week, Monday and Tuesday of next week, and just wanted to make sure that that was okay with the Court and sort of comported with the State's idea of the timing that we're looking at on finishing up.

THE COURT: Well, you -- well, you said he was flying in on Monday but you were gonna put him on the --

MS. DiGIACOMO: A week from Monday.

THE COURT: -- on the stand on Tuesday.

MR. SCHIECK: Tuesday.

MS. DiGIACOMO: The 25th is --

MR. SCHIECK: Fly in the 25th, testify the 26th.

MR. KEPHART: Oh, okay.

MS. DiGIACOMO: Which is fine because the State anticipates our case will go through until next Tuesday-ish.

MR. KEPHART: Tuesday, Wednesday.

MS. DiGIACOMO: Possibly into Wednesday.

MR. SCHIECK: Maybe Wednesday?

MR. KEPHART: Yeah.

MS. DiGIACOMO: Yeah.

THE COURT: So you --

MS. DiGIACOMO: I mean --

THE COURT: You are talking about a week from --

MR. SCHIECK: Yes.

THE COURT: -- Monday and Tuesday. Okay.

MR. SCHIECK: Because Friday is a short day. We're quitting at noon on Friday. And Thursday is a half day. And so we didn't anticipate getting too awful much done on our case during those two days. So that's sort of factored into the experts being able to be available on the week of the 25th, Monday, Tuesday.

THE COURT: Okay. Okay.

MS. DiGIACOMO: Oh, I'm sorry. Wait.

THE BAILIFF: All rise.

MS. DiGIACOMO: One other thing. We, just for the record, we talked -- the custodian of records from the Caliente Center, I believe both sides have agreed that we'll just stipulate to the medical records that were put in the first time instead of making the custodian come down.

MR. SCHIECK: That's fine.

THE COURT: What is that exhibit?

MS. DiGIACOMO: 135 or 136. I'm not sure.

(Pause in the proceedings)

MS. DiGIACOMO: It's 133, Your Honor, according to the exhibit list from last time.

THE COURT: 133, we're showing affidavit of custodian of records, and 133A is showing final sample report, 7/16/01.

MR. SCHIECK: Right.

MS. DiGIACOMO: Right. 133A, the Court excluded as being under the doctor/patient privilege. 133 had the -- the affidavit and the medical records attached that were allowed to be admitted. 133A was not admitted.

THE COURT: Okay. So the parties are at this time stipulating for the admission of 133?

1 MR. SCHIECK: Yes, Your Hon... That's what was
2 admitted last time.
3 THE COURT: Is that correct, State?
4 MS. DiGIACOMO: That is correct. 133.
5 THE COURT: Okay. 133 is stipulated admitted.
6 (State's Exhibit No. 133 admitted)
7 THE COURT: I'll take us off the record.
8 (Court recessed at 10:50:01 until 10:54:59)
9 (Jurors are present)
10 THE BAILIFF: All rise.
11 Department II is now in session, the Honorable
12 Valorie J. Vega presiding. Please be seated.
13 THE COURT: The record shall reflect that we're
14 reconvening in the trial of State versus Kirstin Lobato under
15 Case Number C177394, in the presence of Ms. Lobato,
16 together with her three counsel, the two prosecuting
17 attorneys, the ladies and gentlemen of the jury.
18 Proceeding forward in the State's case in chief, the
19 State may call its next witness.
20 MS. DiGIACOMO: Thank you, Your Honor. Dixie
21 Tienken.
22 THE CLERK: Please come all the way forward. Up
23 here, please. Remain standing and raise your right hand.
24 **DIXIE TIENKEN, STATE'S WITNESS, SWORN**

1 THE CLERK: Thank you. Please be seated. State
2 your name and spell it for the record, please.
3 THE WITNESS: Dixie Tienken, T-I-E-N-K-E-N.
4 THE COURT: Your first name is spelled D-I-X-I-E?
5 THE WITNESS: That's correct.
6 THE COURT: Thank you.
7 The State may proceed.
8 MS. DiGIACOMO: Thank you.
9 **DIRECT EXAMINATION**
10 BY MS. DiGIACOMO:
11 Q Ms. Tienken, do you know a person by the name of
12 Kirstin Lobato?
13 A I do.
14 Q And what do you know her as?
15 A Blaise.
16 Q Do you see her in the courtroom here today?
17 A I do.
18 Q Would you please point to her and describe what
19 she's wearing?
20 A I -- she's -- it looks like a black top and she's got her
21 hair long and she's got a doojie-floppy [sic] on her hair.
22 MS. DiGIACOMO: Will the record reflect
23 identification of the defendant?
24 THE COURT: The record shall so reflect.

1 MS. DiGIACOMO: Thank you.
2 BY MS. DiGIACOMO:
3 Q How long have you known Blaise?
4 A Oh. Probably ten, twelve years now, could be
5 probably closer to twelve years at this point.
6 Q How did you know her?
7 A Well, I knew her because originally her father did
8 some work at my home. However, I got to know her when
9 she was both in middle school and in high school. Then she
10 became my student in high school and graduated from my
11 program in, I believe, the year 2000.
12 Q So you were her high school teacher?
13 A Not only a teacher, I was the director of three
14 programs, alternative high school, English second language
15 and adult high school.
16 Q And you said Blaise was a graduate of one of your
17 programs?
18 A That's correct.
19 Q Which program?
20 A She came in originally alternative, but when they
21 graduate they receive an adult high school diploma.
22 Q And where did all this --
23 A But that's true of all alternative students, by the
24 way.

1 Q Okay. And where did this take place?
2 A In Lincoln County, in Panaca, Nevada.
3 Q Now, is that where you live, is in Panaca?
4 A That's correct.
5 Q And how long have you lived in Panaca?
6 A I have lived in Panaca since 1979 off and on. I left
7 twice to go get my master's and once when I had to go to
8 California to take care of my father.
9 Q Now, are you also familiar with Caliente and Pioche?
10 A That's correct. All of those cities, including even as
11 far down as Alamo and Hiko, I traveled to and taught classes
12 there.
13 Q Is there only one high school for all of those cities or
14 towns?
15 A There's only one alternative and adult high school.
16 But each -- Alamo has a high school called Pahranagat Valley.
17 Lincoln County High School is located in Panaca, and that's for
18 the people usually in Pioche, Caliente and Panaca. And then
19 we have -- at CYC there is Cio [sic] Bastian High School. So
20 there's actually three high schools, plus mine.
21 Q How many students do you have in your high school
22 or back then in your programs?
23 A I probably had about eighty-five.
24 Q Now, how would you describe Panaca for the jury?

A It's a very small farming community, less than a thousand people. The population, as an overall, is a pretty educated area compared to the rest of the county because there's a lot of teachers, policemen and professional people that work at the test site that live in Panaca and travel back and forth to work. But there's also -- the base of the community was originally a farming community.

Q And so there's a thousand just in Panaca or is that including --

A It's a little, that's -- no, that's just in Panaca. There is about five thousand people in all of Lincoln County.

Q I mean, you describe it as a small town. Do people know each other there?

A Everybody knows everybody.

Q Okay.

A And it's really a strange thing because a lot of people know what they think they know more than what they really know.

Q So there's a lot of talk about people even if they don't know them personally?

A That's correct.

Q Now I want to direct your attention to July, 2001. Was there a time during that month that you saw Blaise?

A Yes.

Q When was that?

A I believe that it was about July the 11th but it could have been earlier. I just know for a fact that it was on a Wednesday or if you want to consider it Tuesday night because I know that it was after midnight so I'm saying Wednesday early morning. She came to my house, and it was dark when she got there. She woke me up. And so she came to the door, we talked at the door, she came in. And because I had just -- I wasn't dressed. I was in my nightgown. So she went back out to her vehicle, I believe, or someplace outside for a few minutes so I could go to the bathroom and get dressed, and everything, because she really wanted to talk to me. And that is not uncommon for my students. I also have a degree in social work. And so because there's not a lot of social workers around, I sort of take it upon myself to try to counsel these kids. And when I say kids, these kids can be as young as fourteen or fifteen and they can be as old as sixty-five or sixty-six because I've had students of all ages.

Q So you make yourself accessible to your students no matter what time of day?

A I do because my family's grown up and none of my family lives close by. That's -- that was at that time. At this time, I have a grandson that lives with me.

Q Now you said that you talked for a few minutes

before you went back inside to gather yourself. What was the short conversation you had with her?

A She just said, "I really need to talk to you." And she said that she had some -- a lot of things had happened in her life and that one of the things was a bad thing.

Q So she specifically said to you I did something bad and I need to talk to you?

A That's correct.

Q Now you recall this was on a Wednesday and you said the 11th or possibly earlier?

A That's correct.

Q Do you recall testifying at a prior proceeding that it could have also been the 18th or earlier?

A I did. But after doing some research I realized that that had to have been wrong.

Q And why was it wrong?

A Well, what happened is on the 18th was when I talked to Laura Johnson. But on that first Wednesday that I went to teach up in Pioche, after I finished teaching, I went back and went over to Laura's office. And at that time, I had indicated to Blaise that I was probably going to talk to Laura because while Blaise was at my home, we tried to research some of the things and we looked in back newspapers and we also looked on the Internet at that time. But then I went to

Laura's office after and she was not there the first time.

Q Okay. So is it your testimony now that you did not speak to Laura the same day you spoke to Blaise?

A That's correct.

Q Okay. Now you gave a statement to the police approximately July 26, 2001. Do you recall that?

A I do.

Q And you've also testified at a prior proceeding in May of 2002. Do you recall that?

A That's correct. If you'd like, you can refer back to my statement and I did say at the very beginning when I was interviewed by the police that it happened approximately July 11th, and later I said it could have been earlier than that. And it's on this statement if you look on the voluntary statement.

Q And so what do you have in front of you there?

A That is correct.

Q You have -- you have a copy of your voluntary statement?

A I do.

Q Do you have anything else in front of you?

A I -- yes. They told me that I could. I have my voluntary statement, I have the interview from the hearing, and I have my court statement.

Q Okay.

TIENKEN - DIRECT

A You're the one that gave it to me.
Q No, I understand. I'm just trying to make a record of what you have in front of you. That's all.
A Okay.
Q And you were -- you were provided those so that you could review them before you came to court?
A That's correct.
MS. DiGIACOMO: Okay. Now -- the Court's indulgence.
BY MS. DiGIACOMO:
Q Now you've actually testified at two prior hearings. Do you recall testifying on August 7th, 2001?
A That's -- yes, I do.
Q And so you --
MS. DiGIACOMO: May I approach, Your Honor?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q You can set those aside. I'm gonna show you -- I have copies.
A Okay.
Q So you don't have to thumb through yours. So you've reviewed your testimony from --
A I did.
Q -- August 7, 2001? Okay. Okay. If you could read

TIENKEN - DIRECT

this to yourself right here.
MS. GREENBERGER: What line, counsel?
MS. DiGIACOMO: 9 through 14.
THE COURT: What page?
MS. DiGIACOMO: Page 10. Oh, through 17. Excuse me. Okay.
THE WITNESS: I realize that I said --
BY MS. DiGIACOMO:
Q Well, wait. Wait, wait. I'm sorry.
A Okay.
Q We have to do the procedure. Okay.
A Okay.
Q After reviewing this, does it refresh your recollection whether or not you testified before that you told -- that you stated you told Laura the same day that you talked to Blaise?
A Yes.
Q And --
A It does say that.
Q Okay. But it's your testimony now that it wasn't the same day?
A That it was not. May I offer an explanation?
Q Hold on.
A Okay.
Q We'll get to that. And then page 98 of the May,

TIENKEN - DIRECT

2002.
MS. DiGIACOMO: May I approach?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q Okay. Now I'm gonna show you your testimony from May, 2002. Okay. I'll show it to you.
A Okay.
Q It's quicker. Okay. Lines 12 and 13. Do you see that?
A Yes.
Q Okay.
A I do see that.
Q You also testified on this day that you talked to Laura that day after you got done teaching your class at the jail?
A That's right. I taught a class at the jail almost every Wednesday until that prisoner was released.
Q Okay. And so that's how you know that it was a Wednesday Blaise came and talked to you?
A That's correct.
Q Okay. Now after you gathered yourself up, did you go back to the door and let Blaise in that day, the morning?
A I did.
Q Okay. Did you ask her anything about how she got

TIENKEN - DIRECT

to your house?
A That came up much later when she was leaving because I knew from other people and from friends of both hers and mine and other students that she had bought her own car, and so I asked if I could go see her car. And at that time, she said she did not have her car with her.
Q Do you know what she was driving?
A Her father's truck. I didn't go out and see her father's truck because that was her father's truck.
Q Now after you let her back into your house that morning, approximately how long did you stay and talk with her?
A I would say a good three hours.
Q How was her demeanor when you were talking to her?
A Sometimes she smiled and laughed and sometimes she cried. We talked about an awful lot of things. And she's a very emotional person. And perhaps I should say she was a very emotional person.
Q Well, when she was talking to you about something bad happening --
A She cried.
Q She did cry? Okay.
A And she wasn't sure what all had happened.

Q Okay.
THE COURT: The record shall reflect that she nodded her head up and down.
BY MS. DiGIACOMO:
Q And specifically when you said she wasn't sure, didn't she state to you, "I did something and I could have hurt somebody but I'm not sure what all I did"?
A That's correct.
Q What did she tell you specifically that she did remember about this something bad?
A She said that a man approached her. It was very dark. And I think it scared her. And she did not say why he approached her but she did say that he eventually knocked her down and tried to rape her.
Q And then what did she do in response to this?
A She said that at first she tried to stab up with a knife that she had on her person, and then she couldn't get any leverage but my understanding was that was like one time. The man laughed at her, and that's when it sort of irritated her, I'm sure, as well. And then he tried to sit up on her shoulders, and with that she was able to grab his penis and that she slashed at his penis. She did say at that time that she cut his penis off. However, I didn't really feel that she probably had ever cut it off.

Q But, well, just tell me what she told you, not what you were feeling.
A Okay.
MS. GREENBERGER: Your Honor, she was trying to finish her answer.
MS. DiGIACOMO: Your Honor, it was becoming non-responsive.
MS. GREENBERGER: It was directly responsive.
MS. DiGIACOMO: I asked her what Blaise told her, not what this witness felt.
THE COURT: Sustained.
BY MS. DiGIACOMO:
Q So now she told you that he tried to force her shoulders. Did he try and sit on her shoulders?
A Well, I think he was on top of her and I think he moved the position of his body up more.
Q Okay.
A You know, I think, you know, I don't know that he was on her shoulders but he was up so that he was straddling over her, but somehow she was able to get her arms free.
Q And then what did she do with her arms?
A That's when she was able to grab his penis and she had to have both arms free to do that and slash.
Q Okay. Now you first mentioned that she first tried to

stab up and couldn't?
A That's correct.
Q And you've reviewed your statement to the police that was given on July 26, 2001?
A I have.
Q And you would agree with me that you never told the police that first she tried to stab up and couldn't?
A No, I don't agree because there was a lot of things that came out that -- when they asked the questions to me. They came to my home and talked to me for a long time before they decided to tape this statement.
Q Okay. So then it would be your testimony that you told them while they were there but it just didn't make it into the taped statement. Is that fair?
A I can't be sure of that but I'm -- I know that that's what she told me. It -- I would say, yes, that I probably mentioned it.
Q Okay. But if I told you that it's not in the taped statement --
A It's not in the taped statement.
Q Okay.
A I don't believe.
Q So you'd agree with that?
A That's correct.

Q And then you said that she slashed at his penis?
A That's correct.
Q And you would also agree with me that this -- that the fact that she said she slashed at the penis is not in the taped statement with the police?
A No, because she said that she cut the penis off. However, I just didn't believe that that's probably what really happened.
Q Okay. But I understand your beliefs, but we're just asking you what her --
A That's correct.
Q -- specific words were. And her specific words to you were, "I cut it off."
A That's correct.
Q Okay. Did she also indicate to you what she did with the penis after she cut it off?
A No, she did not.
Q Okay.
A Because she said that, with that, he backed off of her, she was able to get up, she pushed, she was able to get up and she ran back to her car. She also told me that when she got in her car that she saw that he was standing but groping himself.
MS. DiGIACOMO: Okay. May I approach, Your

TIENKEN - DIRECT

1 Honor?
2 Her statement, page 5.
3 BY MS. DiGIACOMO:
4 Q Now I'm gonna show you page 5 of your taped
5 statement with the police, the third answer down.
6 A Right.
7 Q Okay. Does that refresh your recollection as to
8 exactly what she --
9 A Well --
10 Q -- told you?
11 A Yeah.
12 Q Okay.
13 A Well, she said she threw it. But, I mean, when I --
14 you know, you said where did she put it, so I thought you
15 meant where did she throw it.
16 Q No.
17 A I don't know where she threw it.
18 Q Okay. Well, I'm --
19 A She just --
20 Q No. I'm just asking you --
21 A That's correct.
22 Q She told you specifically that a guy tried to rape her,
23 she -- and that she -- that he had shoved her down, pushed
24 her down, was on top of her. Then she said that she got a

TIENKEN - DIRECT

1 knife out of her pocket, she cut off his penis and threw it. Is
2 that what you told the police back in July, 2001?
3 A That is.
4 MS. DiGIACOMO: Okay. 103 to '4 of her prior
5 hearing in May, 2002.
6 MS. GREENBERGER: What page? I'm sorry.
7 MS. DiGIACOMO: 103 to 104, bottom to the top.
8 BY MS. DiGIACOMO:
9 Q Okay. And if you could read -- oh, do you have it
10 there?
11 A Well, I was trying --
12 Q Oh, here.
13 A -- to find out which one it was.
14 Q Here. You can review the bottom here to the top of
15 the next page.
16 (Pause in the proceedings)
17 A Right.
18 Q No. In this -- in your testimony before, you also
19 stated that, you know, when she said she threw it, she kind of
20 made a motion with her hand, is that correct?
21 A That's correct.
22 Q Now, did she tell you what city that this had
23 happened?
24 A She said that it happened in Las Vegas.

TIENKEN - DIRECT

1 Q Okay. Did she tell you what -- approximately where
2 in Las Vegas it occurred?
3 A No. She did not exactly say where it happened.
4 What happened is we were talking about a lot of general
5 areas, and she did indicate to me. When she said it, I just sort
6 of thought that she said one of the hotel streets. And then I
7 said, oh, was it near West Sahara, and she said no. And she
8 said another street, and I knew it was a hotel street but I
9 haven't lived in Las Vegas since 1979.
10 Q Okay. So it's your --
11 A But it was a major hotel street.
12 Q It was a major hotel street. But it's your testimony
13 that she said it was not on the west side?
14 A No, I didn't say that it was not on the west side. I
15 said it was on a west street. It was like a west hotel street,
16 close to that.
17 Q Okay.
18 A West hotel street, but not West Sahara.
19 Q Okay. So I'm confused. So she told you it was -- do
20 you recall in your police statement saying you knew it was like
21 West Tropicana, West Flamingo, but you knew --
22 A West Desert Inn or West -- any of the names of the
23 hotels. I never said which one because I didn't know and I
24 still don't know.

TIENKEN - DIRECT

1 Q Correct. But that is the general area where Blaise
2 told you this occurred in Las Vegas?
3 A That's correct.
4 Q Okay. Now, do you recall whether or not she
5 described the specific area where it happened?
6 A I thought that it was like an alley or someplace
7 where it was -- and I do know that it was dark at the time. It
8 was not daylight. It was -- so it had to have been either early
9 in the morning or late at night, but it was dark.
10 Q Okay. And it was --
11 A And she sort of indicated that she had her car one
12 place and she was going someplace else or coming back from
13 someplace else, and maybe she was just going to her car.
14 Q Okay. But it was -- you said you got the idea it was
15 in an alley. Do you remember telling the police --
16 A Yes.
17 Q -- an alley or between buildings?
18 A Or between buildings or something to that sort.
19 Q Okay. Now, did she describe the person who
20 attacked her at all?
21 A She did.
22 Q What did she say?
23 A She said that he was old, black, smelly and big. And
24 when she said that, we talked about some of my former

TIENKEN - DIRECT

1 students 'cause I was trying to visualize [illegible]. And I said big
2 like Biggs, who was one my students. And she said, "Oh, no,
3 taller." Now Biggs is about 5'9", 5'10", something like that.
4 She said, "Bigger. Big." And Biggs is about 350 pounds but
5 not as heavy as that. So she indicated -- we were using points
6 of reference, people that I knew.
7 Q Okay.
8 A She did say that he was very smelly.
9 MS. DiGIACOMO: Okay. May I approach again?
10 Page 6 of her statement.
11 BY MS. DiGIACOMO:
12 Q When you did your taped statement with the
13 police --
14 A Oh, this -- okay.
15 Q Okay. Do you recall specifically what you told them
16 she said?
17 A Mm-hmm. "Old and smelly."
18 Q Okay. But not big or black?
19 A Well, I think that came out later because they also
20 asked me when we were talking, you'll see a reference, they
21 asked me if she would have called a black man a derogatory
22 statement.
23 Q Okay.
24 A So it does come out in other places.

TIENKEN - DIRECT

1 Q And but they were asking you about whether or not
2 he was some sort of ethnicity?
3 A Trying to get an age kind of thing.
4 Q Okay.
5 A And that was when --
6 Q But you agree with me in your statement nowhere
7 did you describe him as big?
8 A I'm sure that I did state that he was big. Again, you
9 have to remember that the police stopped and started the tape
10 when they were doing the questioning. They also talked to me
11 for, I would say, a good two hours before they ever taped the
12 conversation. And they would just ask you specifically what
13 they wanted to know the answers for.
14 Q Okay. So your testimony is then you did say that it
15 was a big man, regardless of whether or not it's in your taped
16 statement. Is that fair?
17 A That's correct.
18 Q That you did say it to the police?
19 A That's correct.
20 Q Okay. Now as --
21 A Because we talked about different students in
22 reference.
23 Q Okay. Now your hearing testimony from May of
24 2001, page 101 --

TIENKEN - DIRECT

1 A Okay.
2 Q -- when you described the man on line 12.
3 MS. GREENBERGER: What page are we?
4 MS. DiGIACOMO: 101.
5 THE WITNESS: Okay.
6 MS. DiGIACOMO: Line 12. Okay.
7 THE WITNESS: Okay.
8 MS. DiGIACOMO: 102.
9 BY MS. DiGIACOMO:
10 Q How did --
11 THE COURT: May of '02?
12 MS. DiGIACOMO: Yes.
13 BY MS. DiGIACOMO:
14 Q And does that -- how did you describe the person
15 then?
16 A I just said that he was smelly.
17 Q Okay. Now when you testified before that Blaise
18 was on the bottom and you thought that her attacker was
19 straddling her.
20 A That's correct.
21 Q Did she ever describe exactly how she was? Was
22 she laying down, do you recall?
23 A She never said that, I don't believe.
24 Q And did she tell you where she got the knife from?

TIENKEN - DIRECT

1 A She said she pulled it out. She didn't say where she
2 got it out. I would assume she either got it from her boot or
3 her pocket.
4 Q Okay. And why would you make that assumption?
5 A Blaise, like several other women that I know, young
6 women, carry knives.
7 Q Okay. So you --
8 A As a defense.
9 Q So you knew Blaise to carry a knife?
10 A That's correct.
11 Q How long had you known her to carry a knife?
12 A Before she even became my student.
13 Q Okay. And she normally carried it in either her
14 pocket or her boot?
15 A I would say so.
16 Q And when you say pocket, which pocket, back
17 pocket or front pocket, if you recall?
18 A I really don't know.
19 Q Okay. Now after she cut the penis off, you said that
20 she got up and ran?
21 A That's correct.
22 Q Okay. Did she --
23 A Back to her car.
24 Q Back to her car. Did she indicate to you whether or

not she saw what happened to her attack after she ran?
A She said that she saw him stand.
Q Okay. And specifically --
A And he was groping his genital area.
Q Okay. So he's holding himself?
A That's correct.
Q And, specifically, did she tell you that he was stumbling and getting up?
A He was stumbling when he was getting up. But I think you would even if you got kicked there.
Q Did she describe anything about her person after this attack?
A Yes.
Q What did she say?
A She said that all she could think of that she wanted to go someplace where she could take a shower because she had -- and as I've said before, I am not sure what the terminology was. I referred to it as "ick" because I think that's what she said, but I'm not positive. But she indicated that it was like probably wet and sticky.
Q Okay. Would that be blood?
A Could be blood, could be semen.
Q Okay. But she definitely indicated she just wanted to shower and get out of there?

A She wanted to. And you need to know that Blaise was always a very clean person. She couldn't stand to be dirty, almost to the point of being obsessive/compulsive about cleanliness.
Q Did she say how much of this, the term we'll use, "ick" that she had on her?
A No. I -- from what she said, I would say that it was sort of indicated that it would have been, but I'm -- I don't know, I'm only guessing, I would say above her waist.
Q Okay. Now, did you --
A On her hands maybe.
Q Do you recall telling the police that she stated that it got all over her?
A Right. But when I say all over her, I would say, you know, I think you would think that it was all over you, too, if it was all over the top part of you.
Q So like the chest area, where he was possibly straddling her?
A That's correct.
Q Okay. Did she tell you -- I mean, I know she said that all she wanted to do was get washed and get cleaned up.
A She wanted to take a shower.
Q Okay. Did she say what else she wanted to do after that?

A She wanted to go home.
Q And what did she mean by home?
A I'm sure she meant to come back to Panaca.
Q Why are you sure of that?
A I'm not sure of that, but I would assume that's where she would want to go because I do not think that at that point she was living down in Las Vegas.
Q Now, did she tell you what -- I mean, that's what she told you she wanted to do. Did she tell you what she actually did after the attack? I mean, did she go somewhere to clean up?
A Yes, she did.
Q What did she tell you?
A She said she went to a friend's place, and she didn't say whether that place was an apartment or a hotel room, but she went someplace to take a shower.
Q Okay. And change her clothes as well?
A That's correct.
Q And do you know, was that in Vegas or in Panaca?
A That was in Vegas.
Q Now when you were talking to her about this incident, did she ever tell you when it happened?
A She indicated that it happened more than a couple days before because when we were looking at the newspaper,

we went back and looked clear back to July 1st.
Q Okay.
A In newspapers.
Q Okay. But do you recall telling the police that it was your impression, based on how upset she was, it was within a couple of days?
A Well, I think that I thought at first that she did mean that, but then I also believe that -- okay.
Q Okay. Well, it was kind of a yes or no answer.
A A time -- a time factor was there. And I think that they were trying to get me to say that it happened just a couple days before that. And I can't really be sure of that because I do know that we looked back in paper clippings clear back to July 1st. So if it had been a couple days before that, why wouldn't -- why would I be looking clear back to July 1st.
MS. DiGIACOMO: Okay. And I'm gonna approach again, Your Honor, if I may.
Page 12 of her statement.
THE COURT: The taped statement?
MS. DiGIACOMO: Yes, Your Honor.
BY MS. DiGIACOMO:
Q Do you see the question, "Did she say what day it happened on?"

TIENKEN - DIRECT

A And it says that I didn't know exactly what day it happened but I got the impression that it had just happened a few days before that, and I do know that that's what it says. But, on the other hand, it also says in that same statement that we checked newspaper clippings back to July 1st.

Q It says back to July 1st in this statement?

A I think so.

Q If I direct your attention to page 20, would that refresh your recollection? So it was -- before we get to that, you do agree that your statement says it was your impression that it had happened just a day or two before this that you talked to her?

A That's correct. Is that the answer on page 20?

Q Oh, actually, it's the first --

A It's the --

Q Your first answer and your second answer on page 20, if you can read that and let me know if that refreshes your recollection whether or not you told the police back to July 1st.

A It just says in here that I had -- we were checking on the Internet and on the -- and we looked on the Internet at Review Journal and Las Vegas Sun. And it doesn't say when but it does say what we did.

Q Right. And --

A But I also stated that we never even thought about

TIENKEN - DIRECT

looking for anybody that died because she never, ever thought she killed anybody.

Q Okay. But after you had this conversation with her, the two of you got on the Internet to look to see if anything had been reported in Vegas regarding --

A That's correct.

Q -- a man going to the hospital for his penis --

A That's correct.

Q -- being severed? Okay. Or slashed. Now, did you have the impression whether or not Blaise had looked on her own before she came over to your house? Did she tell you whether or not?

A Yes. She did. She said she had looked at the papers.

Q Okay. But didn't find anything?

A No. And that's why I think it really scared her even more.

MR. KEPHART: Sandy. Sandy.

MS. DiGIACOMO: Oh, bailiff, there's a question. Number 2.

We'll wait until we're done but --

THE COURT: The only time for jurors to pose questions is after all of the questioning by counsel has been exhausted. So I don't know if the note has -- if it's a juror

TIENKEN - DIRECT

question or if it's something else but --

JUROR ANDERSON: It's a juror question.

THE COURT: Okay. And --

MS. DiGIACOMO: So we should just wait 'til the end then?

THE COURT: It's the juror in chair Number 2, Tai Anderson.

We have to wait for the attorneys to exhaust all their questioning. And at that time if you still have a question, then that question may be asked.

BY MS. DiGIACOMO:

Q Now we talked a little bit -- we talked a little bit before about you'd asked Blaise about her new car.

A That's correct.

Q Okay. And she was actually driving her dad's truck?

A That's -- yes. Uh-huh.

Q Okay. Do you recall why she told you she wasn't driving her car?

A Yes, I do.

Q Okay. What was that?

A She had been engaged to a young man by the name of Jeremy Davis, and I think at one time she was living with Jeremy Davis. And I don't know what caused it but I do know that they broke up, and when they broke up her car at that

TIENKEN - DIRECT

time was not running and she left her car there. And then later, I think, maybe Jeremy was gonna fix it or something. I don't know why she left her car there. I just know that she had left her car there. And during that time, it was after they broke up that he was supposed to have taken and urinated on it and spread feces on it and done a lot of bad things. And --

Q And that's why she told you she wasn't driving the car that morning?

A That's right, because she wasn't going to get in that car.

MS. DiGIACOMO: Okay. May I approach, Your Honor?

THE COURT: Yes.

MS. DiGIACOMO: I'm gonna go to page 12 of her statement.

BY MS. DiGIACOMO:

Q In the middle of the page your answer. Okay. Isn't it true you told the police that, "When I asked her what she was driving, she said she was driving her dad's truck. She said, 'I'm not driving that car. I don't want anybody to see it,' 'cause she was so afraid." Is that what you said to the police? Yes or no.

A I guess I did because it says that, but it also says someplace on here about the feces and everything else.

TIENKEN - DIRECT

Q We're gonna get to the feces in a minute. We're -- let's just start with this. She told you she didn't want to drive her new car because she was afraid, correct?
A That's correct.
Q Okay. And in fact --
A But I don't think it was because of the feces.
Q Oh, right. Okay. But I'm talking about this day, that's why she told you she was --
A Right.
Q -- afraid of the car. Okay. And in fact the feces and Jeremy incident, it's pretty clear it had nothing to do with this incident with the attacker?
A No.
Q Okay. It had nothing to do with the attacker?
A No.
Q A totally separate incident?
A A totally separate incident.
Q And in fact that's what you say in your statement, as well as --
A Yes.
Q -- your previous testimony. Oh, okay. Now, did she also say to you that she was worried, she didn't want to drive the car, she was worried because she thought somebody may have seen it? Do you recall that?

TIENKEN - DIRECT

A She said that she was afraid that someone may have seen her car when she left.
Q When -- and when she left where the attacker was?
A That's correct.
Q In fact, did you ask her whether or not anyone saw the attack or saw her?
A Yes, I did.
Q And what did she tell you?
A She said she didn't think so but she could -- that someone may have seen her when she left.
Q Okay. When you say may have seen her, seen the car leaving?
A Seen the car leaving.
Q Now, did you give her any advice that morning regarding this?
A I told her she needed to talk to her father and that we needed to find out what really happened if we could.
Q Did you also tell her she needed to talk to the police?
A Yes. But she was afraid.
Q Did she ever tell you whether or not she talked to anybody else about this attack?
A She did not tell me whether she talked to other people. I think it's important to realize that one of the reasons

TIENKEN - DIRECT

she wouldn't go right and talk to her father is because there had been another incident earlier in her life where she did try to talk to her father.
MS. DiGIACOMO: Your Honor, this is non-responsive.
MS. GREENBERGER: Your Honor, let her explain.
THE COURT: Sustained.
MS. DiGIACOMO: I'm gonna go to page 13, counsel.
BY MS. DiGIACOMO:
Q The first answer on page 13.
MS. GREENBERGER: From what? Her statement?
MS. DiGIACOMO: Yes. I'm sorry. Her statement.
THE WITNESS: Oh, yes.
BY MS. DiGIACOMO:
Q Now so you did tell the police after reading your statement that she talked to her friends when she got to her friends' house about, well, about the incident but she didn't say which friend.
A No. And that was where she went to take her shower. She did say she talked to those friends.
Q Okay. So she talked to the friends where she went to take a shower?
A That's correct.
Q So where she went to take a shower she said had

TIENKEN - DIRECT

multiple people there?
A Well, I was under the impression that it was more than one person.
Q Okay.
A She never indicated how many people.
Q Now, did she tell you whether or not that she was under the influence of anything at the time of her attack?
A Yes, she did. That was why she was afraid to go to the police.
Q What did she tell you?
A She said that she had been using drugs.
Q What drug?
A I thought she said meth.
Q And, in fact, didn't she say that at this time, "I'm don't with it, I've got to get clean, I want to get off of it"?
A That's correct.
Q After you had this conversation with -- oh, strike that.
Now the incident that she had talked about with regard to Jeremy and what had happened to her car, did she tell you when that happened?
A I was under the impression -- she did not really actually say when it happened. No, she did not.
Q Okay.

TIENKEN - DIRECT

A I had an impression but I don't think you want to hear what my impression is.
Q No. I just need to hear her words. But she did tell you it was when they were breaking up?
A That's when she left her car there.
Q Okay. And, again, she did make clear to you that the incident with Jeremy's car had nothing to do with the incident with regard to the attacker?
A Yeah.
Q Okay. I mean, she -- no, she didn't make that clear or she did make it clear?
A She didn't really make it clear, but I don't think that she went to Jeremy's house to take the shower so I don't think that it had anything to do with it. But she never did tell me whose house she went to.
Q Okay. But what I'm --
A Or whose apartment or --
Q Well, okay.
A -- hotel, or anything else.
Q What I'm, yeah, what I'm trying to say is, you know, you said that her car was broken down, she left it at Jeremy's and these things happened to the car. And then you said she went to take a shower at another house with regard to the attack and then went home.

TIENKEN - DIRECT

A And I never said it was a house. I just --
Q Or apartment, wherever she went.
A Right.
Q Okay. But talking to her, those were two separate incidents?
A That's correct.
Q Now you talked to another friend about what Blaise had told you, correct?
A Yes.
Q And that was Laura Johnson?
A Yes.
Q How do you know Laura?
A Laura Johnson is the Lincoln County juvenile probation/parole officer. She's been my friend. We work with a lot of the same students because a lot of times the court said that they either have to get their GED or a high school diploma. So because of that, Laura comes into my classroom or came into my classroom on a very regular basis. My students were very much aware of Laura. And we have worked close together on a lot of different things.
Q Now, do you remember specifically what day you talked to Laura if it wasn't the same day you talked to Blaise?
A I believe, after reviewing things that I've looked at, that it was the following Wednesday because I feel that what I

TIENKEN - DIRECT

did was the first Wednesday I went to her office and she was not there. And I believe I left a card and it just said call me. And then she still hadn't called me, so the following Wednesday I went back and talked to her.
Q So if Laura testified or believed that you talked to her on the 18th, then your conversation with Blaise would have been the 11th? Is that fair?
A That's when I believed that it was.
Q And this jail where you went to teach, where is it in relation to Laura's office?
A All of that has changed now. But at the time, the jail is in the basement of Lincoln -- the Lincoln County Courthouse. And I would go take a prisoner and they would let me take one or two prisoners at a time, and I would take them into the County Commissioner's Office because there was a blackboard there and everything where I could teach a class. And Laura Johnson's office is up on the -- not the basement but on the second floor.
Q So it's in the same building?
A The same building.
Q Is that in Pioche?
A That's in Pioche, Nevada.
Q Now when you talked to Laura, did you tell her exactly what Blaise had told you?

TIENKEN - DIRECT

A I did, but I also indicated to Laura that I wasn't sure. Laura and I both knew that Blaise sometimes exaggerated things. And so it may have just been something that she just was doing for attention, for a plea for help. And since I knew that Blaise had a drug problem, I was afraid that it could have been even induced by the drugs because we had not been able to find any evidence of anything like this happening.
Q On -- in the newspapers?
A In the newspaper or even on the Las Vegas news release thing.
Q Okay. So is it -- is it fair to say that one of the reasons you told Laura about it is to try and help, get her help to find out if anything really happened?
A If anything really happened and also that I thought that Laura might be able to help in trying to get some help for Blaise with her -- with the point that she had a drug problem. And she also had asked me for help, but I didn't feel that her parents would help pay for something like that and so I was hoping that maybe Laura knew of some grant money or something that we could have used to help Blaise.
Q So your main purpose in talking to Laura was to try and help Blaise, not to see if something had really happened?
A I would say that it was equal.

Q Okay.
A Because we still hadn't seen that she had really done anything.
Q Now, did you know Blaise's parents?
A I did.
Q And what are their names?
A I know her father's -- her natural father is Larry and her stepmother is Becky.
Q And what kind of a relationship did they have with Blaise, if you know?
A A strange relationship.
Q Okay. Well, would they help out their daughter?
MR. SCHIECK: Objection, Your Honor, that calls for speculation.
MS. DiGIACOMO: Well, she --
THE COURT: Sustained.
BY MS. DiGIACOMO:
Q Okay. You just testified that you didn't know if your -- her parents would help cover the costs of some sort of drug treatment?
A That's correct.
Q Okay. And why do you think that or what was your -- why did you make that statement?
A Because I felt that they were drug users as well.

Q Okay. But it had nothing to do with the fact that -- of their relationship with their daughter?
A Well, yes, it did. Because I told you also that previously she had told her father that a man had raped her, and he didn't want to believe her.
Q And that's when she was younger?
A Yes. Not a lot younger at that point. It was probably when she was about fifteen or sixteen.
Q Okay. Was it your impression that she hadn't talked to her father about this attack?
A I think she probably did, but I'm not sure that he believed it at that time.
Q Well, just tell me, did she tell you that?
A She did not tell me.
Q Okay. So you have -- you have --
A But she had been at her father's house before she came because she was driving her father's truck.
Q Okay. But you have no knowledge whether or not she did tell her father based on what she told you?
A No, I do not.
Q Now, did you tell Laura anything regarding Blaise's parents helping her out with her car?
A Yeah. I think that her --
Q Well, just tell me --

A She thought that her father would at least get her car cleaned, you know, never talked about -- and I know that this has come up but I never said anything about painting --
Q Okay. So you --
A -- or doing mechanical work. I only talked about cleaning the car.
Q Okay. So you told Laura Johnson that Blaise's parents were helping her clean the car?
A That's correct.
Q But you never told Laura that her parents were helping her either get rid of the car, paint it or hide it out?
A No.
Q Okay. Did you tell Laura that her parents, Blaise's parents, were helping her hide out in Panaca?
A I don't think they were helping her hide out. She was --
Q Did --
A -- out in the open.
Q Did you tell Laura Johnson whether or not that Blaise's parents were helping her hide out in Panaca? Yes or no.
A I do not believe so.
Q And when you told Laura about this incident, isn't it true that you told her that Blaise said she cut off a penis, not

slashed it?
A I did say that, but I also told her I -- we, Laura and I, talked about it and I said, you know, Laura, she may not have actually cut it off.
Q But that is you --
A I mean, we talked for a long time, Laura and I.
Q No, I understand. But you did tell Laura that Blaise said cut it off, is that correct?
A That's correct.
Q Okay. Did you also tell Laura where Blaise said she was coming from when she was attacked?
A I told her that it was -- I knew that it was off of a hotel street, exactly what I've told everybody, and I said I don't know which hotel street because I did not remember and I still don't remember. It didn't even seem that important. It was just sort of a general. And I didn't even mean that it was a specific street. We were just talking about neighborhoods when Blaise even told me approximately where. But I don't remember where.
Q No. My question was did you tell Laura where Blaise told you she was coming from when she was attacked, not where the attack occurred? Did Blaise tell you where she was coming from when she got attacked?
A No. She said she was coming -- I had the

1 impression that she was coming -- taking a shortcut, either she
2 had parked her car and was going someplace else and taking a
3 shortcut through this alleyway or the other way around, she
4 was coming from someplace else and going back to her car.
5 Q Okay. So Blaise never told you she was coming
6 from work when she was attacked?
7 A No. We talked about because Laura asked me if I
8 knew where she was working.
9 Q Okay. But you never told Laura that Blaise was
10 coming from work when she was attacked?
11 A No.
12 MS. DiGIACOMO: The Court's indulgence.
13 (Pause in the proceedings)
14 BY MS. DiGIACOMO:
15 Q Dixie, when Blaise was explaining the attack to you,
16 and you said that the gentleman was straddling her, did she
17 say what he was trying to do?
18 A She indicated that he was trying to put his penis into
19 her mouth.
20 Q Okay. And when she first saw the attacker when
21 she was pushed down, did she say whether or not he was
22 exposing himself?
23 A I don't remember that. I think after he approached
24 her and then he backed off, then I think he did. But I'm not

1 positive.
2 MS. DiGIACOMO: Page 7 of her statement.
3 BY MS. DiGIACOMO:
4 Q Dixie, I'm gonna show you page 7 of your
5 statement, see if that will refresh your recollection as to what
6 Blaise told you in July, 2001.
7 MS. DiGIACOMO: Oh. It's the middle answer,
8 counsel, in the middle of the page.
9 THE WITNESS: Well, yes, but that doesn't say that
10 that happened when he first approached her. If he already
11 knew that he was going to try to do something to her, yes, it
12 does say that he did have his penis out. But you have to
13 remember that that wasn't when he first tried to get to her.
14 BY MS. DiGIACOMO:
15 Q Okay. Well, your answer was that, "My
16 understanding, and that's why I think she was able to do what
17 she did, is that he had knocked her down" --
18 A Right.
19 Q -- "and was on top of her, and it sounded to me like
20 he was sitting with -- straddling her. I would assume that he
21 was straddling her because she said that he had his penis out."
22 A Penis out, yes.
23 Q Okay. But --
24 A Out of his pants.

1 Q That's what I'm talking about.
2 A Okay.
3 Q So she did tell you that her --
4 A Yes.
5 Q -- attacker had his penis out?
6 A That's correct.
7 Q Okay. And, again, with regard to the location where
8 she told you this happened, okay, on page 5, that she did tell
9 you the name of the street. But at the time you talked to the
10 police, you just couldn't remember but you knew it was
11 something like West Tropicana or West Flamingo, is that
12 correct?
13 A No. She did not say the name of the street. What
14 she said was it was in -- we were talking about general areas
15 of Las Vegas. Okay. And she named a hotel street, not
16 particularly saying that that's where the incident happened but
17 just as a point of reference.
18 Q A point of reference for what?
19 A Where the thing happened.
20 Q But --
21 A But she didn't say that it was on that street. She
22 just -- it was like near.
23 Q No, no, no. I understand that. But when you --
24 when you asked her or when she told you kind of where it

1 happened --
2 A Where did it happen, yes.
3 Q -- all she did was name a street with a hotel?
4 A Yeah.
5 Q And you --
6 A Well, we talked --
7 Q And it was on the west. Is that fair to say?
8 A Well, those streets are really not on the west. We
9 were talking about like the Strip, the hotel Strip.
10 Q Okay.
11 A Okay. And to the right of the Strip is west and to
12 the left of the Strip is east, not that I'm saying that it was the
13 west side of town, just that it was a west hotel street.
14 Q Okay. So it was just a west hotel street but you're
15 not sure which one. It could have been Tropicana, it could
16 have been Flamingo, could have been D.I.
17 A Could have been any of them.
18 Q But not Sahara 'cause that's where --
19 A But I knew that it was not Sahara.
20 Q Okay. But it was just the west side of the Las Vegas
21 Strip. Fair?
22 A That's correct.
23 MS. DiGIACOMO: Nothing further.
24 THE COURT: Cross.

MS. GREENBERGER: Yeah. Your Honor, I have a lot of questions, and it's approaching the noon hour. Should I get started?

THE COURT: We're gonna have to take a late lunch.

MS. GREENBERGER: Okay.

CROSS-EXAMINATION

BY MS. GREENBERGER:

Q Good afternoon.

A Hello.

MS. GREENBERGER: May we approach for a minute, Your Honor?

THE COURT: Yes, you may.

(Off-record bench conference at 11:56:06 until 11:57:10)

BY MS. GREENBERGER:

Q How long have you been a teacher?

A Actually been teacher, I even taught here in Las Vegas back in the late sixties. I'm retired now from teaching. So total, I've been a teacher since probably about '68.

Q Do you have experience with abused women?

A I do. Previously, while I was living in Las Vegas, I worked with the Women's Crisis Shelter and I also worked with abused children with a group called We Can.

Q Do you have experience with drug use counseling?

A I did, although most of my experience was back

when I was counseling, plus I was certified with the Bureau of Alcohol & Drug Abuse. But I have not kept my certification up on the newer drugs. I just never felt like I -- when I was teaching school, I kept up on it but I didn't really go back to get my certification.

Q Can you tell us how Blaise first became your student?

A Blaise had a hard time fitting in in our community, and I think Blaise felt that she was sort of an outsider. She had a lot of problems with the -- with her peers. They thought that she was too sophisticated.

MS. DiGIACOMO: Objection, hearsay.

THE COURT: Sustained.

BY MS. GREENBERGER:

Q What were the problems, if you know?

MS. DiGIACOMO: Objection again, hearsay.

BY MS. GREENBERGER:

Q If you know.

THE COURT: Overruled.

BY MS. GREENBERGER:

Q You may answer.

A Okay. I do know that Blaise had been sexually abused when she was a young child and --

MS. DiGIACOMO: Objection, Your Honor, this is

based on hearsay.

THE WITNESS: Well, I don't think it's hearsay when it's part of her educational records.

MR. KEPHART: Judge.

THE COURT: Sustained.

MS. DiGIACOMO: And move to strike the answer.

THE COURT: Motion granted.

BY MS. GREENBERGER:

Q You testified she had a hard time fitting in. Can you explain what you know?

A The general population at the time Blaise was in high school that attend the regular high school are pretty straight-laced Mormon girls that say that they don't use drugs and they say they're not sexually active. And at times, they can be very nasty and mean to kids that they think don't fit in to what they believe is what everybody ought to be.

Q When did Blaise first become your student, if you recall?

A I believe that her parents talked to me as early as middle school, and at that time we could not put her into the program until she turned sixteen because of the way that the state laws were.

Q How long was she your student?

A I think what we did was we started to prepare her

for the GED which we could do before she was sixteen so, actually, I could have contact with her and work with her before that. I would say that I actually worked with her as a student a year and a half to two years.

Q How was she as a student?

MS. DiGIACOMO: Objection, relevance.

THE COURT: Sustained.

BY MS. GREENBERGER:

Q Did she graduate from your program?

A She did.

Q Did she graduate early?

A She did. Probably a full year early.

Q Did she --

A Once she decided to go to school, she put her mind down to it, she did her work and she finished four years of credit in about two years of time.

Q Did she receive a high school diploma?

A She did. And it is a standard adult high school diploma, and she did have to take and pass the proficiency test and she did without any problems.

Q During that time period, did you develop a close relationship with her?

A I did.

Q You mentioned on direct examination, but you

weren't given an opportunity to explain, [illegible] made a statement Panaca's a small town, everyone knows everybody, they think they know what they -- but they really don't know. Can you elaborate on what you meant by that?

A In Panaca a young lady is supposed to, by her parents' standards, is supposed to abstain from sex and drugs and alcohol so that she prepares herself to go to the Temple when she goes to get married. It doesn't matter if those girls do those things as long as their parents are not aware of it.

Q You have had a number of students over the years in your education program?

A That's correct.

Q And you mentioned that you often get students' visits at your home. Can you elaborate on that a little bit?

A Sometimes on weekends, if kids didn't have anything to do, we would go rent a video. They'd come to my home. We'd watch a video, have popcorn. Sometimes kids would come and help me. Blaise, for one, came and helped me hang Christmas lights up on the outside of my house. She and another friend came, you know, and did that. I've had boys that have come and helped me mow the lawn. I've had older women that have come and confided with me. You have to realize that I didn't have the normal classroom setting. Kids could come into my classroom and they could be sitting next

to a fifteen-year-old that was studying to take a GED, they could be sitting near a fifty-year-old that was trying to get ready to take the high school proficiency test. The English second language students sometimes attended the English classes because it's good for English second language students to relate to other people so that they can speak. So we had a big mixture of students in this classroom all the time. And all of the students came. I might have a forty-year-old man, a thirty-five-year-old woman, a seventeen-year-old, a fifteen-year-old, and they might have even brought a little sister or a little brother or one of my married students could have brought their children. It just -- we just all got along.

Q And your -- do your relationships with your students often continue after graduation as well?

A 90 percent of them do.

Q Prior to Blaise coming to confide in you about her attack, had she frequented your home on multiple occasions?

A Yes, because of other students that she was friends with. I'm sort of a safe house.

Q People feel comfortable coming to your house, your students?

A Yes.

Q With regard to when Blaise first came to talk to you, you testified you believe it was July 11th, it could have been

earlier, is that correct?

A Yes.

Q When she came to talk with you, you testified she came to talk to you about a number of different things, is that correct?

A That's correct.

Q Was it your opinion that she needed to get a number of things off her chest?

A Yes. We talked about a new program that I was trying to work out, a counseling program where people could get together and work on drug problems or even other problems besides drugs.

Q Besides the attack she described, did you also talk about a number of different subjects?

A Oh, we did. We talked about --

MS. DiGIACOMO: Objection, hearsay.

THE WITNESS: How could it be hearsay?

THE COURT: Overruled.

BY MS. GREENBERGER:

Q You can answer.

A We talked about other students that I knew were down in Las Vegas working, and I asked her in relationship to them if she had seen any of them and we talked about them. And also I think I advised her to stay away from certain people

that I felt that if she really was being honest and wanted to get drug free that she needed to sever her relationships with those people.

Q Did you know how long she had been down in Las Vegas?

A I do not know exactly how long she stayed down in Las Vegas but I knew that she went to Vegas pretty much right after she graduated from high school.

Q When would that have been?

A In 2000.

Q What month?

A May or June. But my impression was that she hasn't stayed the whole time. She was down there at one time living with Jeremy. Other times, she went down and just came back.

Q So she was traveling back and forth during that time, from the time she left 'til the time she returned?

A I believe so.

Q Had you seen her around town?

A I don't know that I directly -- well, I hadn't really talked with her and she hadn't been to my house for a while, so we just had a lot of catching up to do when she came by. I can't say for certain that I hadn't talked to her in between that time but I can't remember that I did.

Q You spoke about an attack that had happened on

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her. And isn't it true that she never told you exactly when the attack happened?
A That's correct.
Q Is it fair to say you knew the attack happened sometime after her high school graduation and before she got to your house? Is that fair?
A That's correct.
Q You had the impression when she came to talk to you she was very upset about that?
A About the attack, yes.
Q However, as you sit here today, you don't know if it was -- she was upset because it had been causing her nightmares, stewing around for a month, or that it had just happened. You don't know?
A I don't know that.
Q When she described her attacker, you testified he was a big man.
A That's correct.
Q You testified you compared his size to that of one of your students?
A Former students. That's correct.
Q Did you also compare his size to that of your grandson?
A I did.

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Q And what are his dimensions?
A My grandson is over 6 foot tall and over 200 pounds.
Q When you asked Blaise does that comport with the size --
A She said yes. Because my grandson graduated the same time, the same year, that Blaise did, but from Cedar, but he went on our senior trip with us. So she and Tyler and several other students, we had a whole bunch of kids that went. So I knew that she had seen Tyler in a bathing suit because we had been to Lagoon, which is an amusement park that also has a water park, and they had swam together so I knew that she knew exactly how big Tyler was. And he's not thin, but he's not obese.
Q Do you specifically recall when you talked about one of your students, Bigg, who is 5'10" --
A That's Biggs.
Q That she told you -- Biggs. Excuse me. Much taller?
A Yeah, taller than Biggs. And he's like about 5'9" and about 350 pounds. He would also be considered, in my world, a big person. So I was just getting a relationship, how big.
Q And she said taller?
A That he was taller than but not as -- not as heavy.
Q And in terms of the heaviness of her attacker, what did you learn?

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A Well, when I spoke with the D.A. people, I kept asking if they could please tell me the size of the attacker. And my understanding is that --
MS. DiGIACOMO: Objection, hearsay.
THE COURT: Sustained.
You may pose your next question.
BY MS. GREENBERGER:
Q Did you learn the size of the victim in this case? Are you aware he was 5'10", 130 pounds?
MS. DiGIACOMO: Objection, hearsay, how she learned it.
THE COURT: Sustained.
THE WITNESS: But you told me. The lady over there.
BY MS. GREENBERGER:
Q Did you learn from my client the body weight of her attacker?
A He was big. If we compare it to my grandson, I would assume that her attacker would have been over 6 foot tall, over 200 pounds.
Q That was the impression you were left with?
A Yes. And she also said he was old. She did not say that he was like the age that her father would be. She referred to him as old.

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Q And how was --
A To Blaise, I'm old. To some of you, I may not be as old. But --
Q How old is her father, if you know?
A I would say in his forties.
Q And when Blaise told you this man was old --
A I thought she meant someone closer to my age.
Q And you interpreted it as that because why?
A She said he was old, big, smelly.
Q If he would have been her father's age --
A She probably would have said like my dad's age.
MS. DiGIACOMO: Objection, speculation.
THE COURT: Sustained.
MS. DiGIACOMO: Move to strike the question and answer.
THE COURT: Granted.
BY MS. GREENBERGER:
Q She told you where she was attacked it was dark?
A That's correct.
Q Did you -- did she tell you whether she got a clear look at her assailant?
A I don't believe so. Because my understanding was that it was -- it was dark. And then I think the only thing that she saw was probably the silhouette of him.

MS. DiGIACOMO: Objection, speculation.
THE COURT: Sustained.
MS. DiGIACOMO: Move to strike the answer.
THE COURT: Granted.
BY MS. GREENBERGER:
Q What did you learn from her that she saw?
A That she saw the person get up and grope at his genital area.
Q Before we get there, you testified that he pushed her down?
A That's correct.
Q That she was able to -- that he was intending to rape her, is that correct?
A I believe so.
Q She was scared?
A Yes.
Q She was able to get a knife out of her pocket that she carried for protection?
MS. DiGIACOMO: Objection, misstates the testimony.
BY MS. GREENBERGER:
Q She was able to get a knife out from somewhere?
A Yes.
THE COURT: You withdrew the question, posed

another question before the Court ruled. I was making a record.
BY MS. GREENBERGER:
Q She fended off her attacker by attempting to stab him one time?
A Yes.
Q Did my client, Blaise Lobato, ever tell you she stabbed her attacker in the neck?
A Never. My understanding was in the abdomen and then she cut his penis. At no time did she ever indicate any other stabs or cuts or slices or anything.
Q As you sit here today, is your memory of this incident vivid?
A As vivid as someone that's had -- I have had several like strokes, and I do get confused sometimes with time, but it's pretty vivid what she said to me and it's pretty vivid how she explained, you know, what she did.
Q Do you have any doubt in your mind whether she ever stabbed him in the neck?
A I have no doubt. She never mentioned stabbing him anywhere other than the abdomen and the penis.
Q Did she ever tell you, did my client ever tell you, she punched this man in both of his eyes and gave him a black eye?

A No.
Q Did she ever tell you that she beat this man and knocked his teeth out?
A No.
Q Did she ever tell you that she smacked him in the head and caused hemorrhaging?
A No.
Q Did she ever tell you she used a baseball bat in this attack?
A She never even said that she had a baseball bat in her hand.
Q Did she ever tell you after she killed him that she cut his penis off when he was dead?
A No. She told me that she saw him stand up. You can't stand up after you're dead.
Q Is it clear in your mind that when she defended herself from her attacker he was alive?
A I'm sorry. Could you repeat that question?
Q When he -- when he attacked her, she told you he was alive, attacking her?
A That's correct.
Q You would remember, wouldn't you, if she told you any of these other things?
A Yes, definitely.

Q And if she told you these things, you wouldn't have waited to talk to Laura Johnson for a week, would you?
A No. If she had told me any of those things, I would have called the police right away.
Q Why didn't you call the police right away?
A I did not think that it was even as serious as what Blaise thought that it was because she sometimes stretched things. I thought someone probably attempted to rape her. Whether they succeeded or not, I was not sure. I did not believe -- she never did say that he raped her.
MS. DiGIACOMO: Objection, Your Honor. It's speculation and it's getting very non-responsive.
THE COURT: The Court will overrule.
BY MS. GREENBERGER:
Q What was the last part of your answer? You never thought that she even was raped?
A No. She said that he tried to rape her and then he tried to sodomize her, basically, not sodomize but actually put his penis in her mouth.
Q Okay. Just so we're clear on that --
A Yes.
Q -- he tried to orally copulate?
A That's correct.
Q Not sodomize?

A Not sodomize.
Q Which would be --
A Not sodomize. Not sodomize.
Q Did she ever tell you she sliced his rectum?
A No. She never even mentioned anything in reference to rectum at all. There was no reference. And, like I said, she was really clear when she talked to me that what she did was that she tried to get him off of her when she tried to stab up, and then she couldn't. And then when he sat up higher on her body, she had her hands free and she was able to grab the penis with one hand and slice with the other hand, cut, slice, whatever you want to say. And, yes, she did say that she cut it off, but I just somehow did not feel that --
MS. DiGIACOMO: Objection, Your Honor.
THE COURT: Sustained.
BY MS. GREENBERGER:
Q Based on your discussions with my client, you never thought she cut a penis off, did you?
A No, I did not.
MS. DiGIACOMO: Objection, Your Honor. It's her -- it's her own feelings. It's not what she was told or what she observed.
BY MS. GREENBERGER:
Q You --

MS. DiGIACOMO: It's not relevant.
MS. GREENBERGER: I'll move on.
THE COURT: Sustained.
MS. DiGIACOMO: And I'll ask that that be stricken from the record.
THE COURT: Motion granted, so stricken.
The jury will disregard the last answer.
BY MS. GREENBERGER:
Q You testified she told you she went to her car right after this happened to escape her attacker?
A That's correct.
Q She told you she saw him getting up, is that correct?
A Yes.
Q She saw him standing there, groping himself?
A That's correct.
Q You testified my client has a tendency to exaggerate. Can you give us an example besides this one?
MS. DiGIACOMO: Objection, relevance.
THE COURT: Overruled.
BY MS. GREENBERGER:
Q You may answer.
A There were other times when kids talked of drinking or --
MS. DiGIACOMO: Objection, Your Honor, this is

other kids. It's non-responsive.
THE COURT: Sustained.
BY MS. GREENBERGER:
Q In your -- in your past knowledge of my client, which is lengthy, were there many times that she would exaggerate stories to you?
A Yes.
Q Do you have any that come to mind?
A Some of the things that went on between Abe and Blaise, both of them were my students and they were very involved with each other. And there were times that Blaise would tell me something that happened and Abe would tell me something that happened, and they didn't -- it didn't match. And I can't specifically remember an exact thing right now, but I do remember that it happened on more than one occasion.
Q So that night or early morning when she came to talk to you, in your mind, you thought she might be exaggerating?
A I did. I knew she had a problem. I knew she had a drug problem and I was really wanting to try to help her with that. We talked about some other therapy and different things.
Q Did you think she came to you, it was a cry for help?
A I did.

Q Do you think she was an attention-seeker?
A I think that she was because so many people shut her out.
Q The police came to talk to you in July of 2001, in July 26, is that correct?
A Yes.
Q The day before they came to talk with you, you had looked in the paper or looked on the computer and read a story about Blaise's arrest. Is that true?
A There's something that I've never really revealed before but I've thought about it, and if I --
MS. DiGIACOMO: Objection, non-responsive.
MS. GREENBERGER: Let her explain her response.
THE COURT: Overruled.
BY MS. GREENBERGER:
Q You may explain it, Dixie.
A Okay. I was going up to pick up the school van, which I drove kids back and forth on. At that time, and I've never said this person's name before because I didn't think it was relevant but at this point I'd really like to say the name, it was Mark Willingham. He was the -- he's the bus -- I don't know what he is. The head mechanic for Lincoln County School District. At that time, Mark and another gentleman were talking and they said to me, oh, did you see --

1 MS. DiGIACOMO: Objection, h... say.
2 THE WITNESS: -- where Blaise got arrested.
3 THE COURT: Sustained.
4 BY MS. GREENBERGER:
5 Q Without saying what anyone else told you, 'cause
6 that's hearsay, you can finish your answer.
7 A Okay. When they said what they said, I said, no,
8 you're wrong. And he said, well, it's in the front page of the
9 paper.
10 MS. DiGIACOMO: Objection, hearsay.
11 THE COURT: Sustained.
12 MS. DiGIACOMO: Move to strike those two
13 responses of what they said.
14 THE COURT: Granted. So stricken.
15 BY MS. GREENBERGER:
16 Q You can continue without describing what someone
17 else told you. You can describe your response.
18 A Okay. So then I went and got a newspaper because
19 that's what they told me.
20 Q This was before the police came to talk to you?
21 A That's correct.
22 Q And there was very specific information in the paper
23 about her arrest and the nature of the crime?
24 A Yes.

1 Q Isn't it true that when the police came to talk with
2 you they also shared many of those details with you?
3 A That's correct.
4 Q They talked to you for at least two hours you said
5 off tape, is that correct?
6 A I would say close to that.
7 Q Did that concern you?
8 A It did.
9 Q Why?
10 A Because if they were really trying to get a statement
11 without -- why did they tell me the things that they told me,
12 why did they wait so long, why didn't they tape it right from
13 the very beginning?
14 Q Did you feel right from the beginning the police were
15 trying to influence your testimony?
16 MS. DiGIACOMO: That's fine. Withdrawn.
17 THE WITNESS: Yes. And I felt very strong that
18 they needed to investigate further, and I indicated that to
19 them, but it never shows up in here. And I'm sure if you
20 called either of those officers here they would have to say that
21 I even sort of presented a scenario to them, two scenarios, as
22 a matter of fact.
23 BY MS. GREENBERGER:
24 Q You've read your Metro statement on July 26 a

1 number of times, haven't you?
2 A I have.
3 Q And are there many, many things you told the police
4 that were left out of your statement?
5 A Well, I think that there were some details that were
6 left out but there were some that were very strong, and I do
7 feel like when they kept trying to pinpoint the street they kept
8 suggesting street names.
9 Q Did the police suggest to you West Tropicana?
10 A Yes, they did. Because I said a hotel street, not
11 West Sahara because that's -- I lived off of West Sahara.
12 Q Did this suggestion occur prior to you being on their
13 tape?
14 A That's correct.
15 Q When the police were taping you, isn't it true they
16 turned on and off their tape-recorder multiple times?
17 A That's correct.
18 Q Did you ask them why they were doing that?
19 A To clarify they said.
20 Q They weren't doing it 'cause the tape ran out on
21 Side A --
22 A Well, no.
23 Q -- and they had to switch to Side B?
24 A They did have to do that as well.

1 Q But in addition to that, they were turning the tape-
2 recorder on and off?
3 A Right. Right.
4 Q Do you remember that vividly?
5 A I do.
6 Q Isn't it true when the police were questioning you
7 and telling you west, west, you said south?
8 A No. I didn't say that at that time. It wasn't even
9 until later that I realized. But when I looked at it, and there's
10 a place where it refers and he said, well, then you're saying
11 that it happened on the west side, and I said, you know, and I
12 never said that it happened on the west side. In fact when I'm
13 thinking when I was talking to Blaise and when I thought
14 about it even later, I never indicated that it was on the west
15 side. I just meant the west side of the Strip. But that would
16 actually be southwest but not -- you know, she didn't say it
17 was out like in the boondocks. And you have to remember I
18 lived in Las Vegas. I moved from here in '79. And although
19 I'm here visiting now, this town has changed a lot since '79.
20 Q It's your testimony, as you sit here today, that the
21 police told you --
22 A Whoops.
23 Q -- West Flamingo Road. Those were not your
24 words?

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1 A No. I mean, I believe that I sa... hotel streets and I
2 may have included Flamingo amongst one of many street
3 names.
4 Q You never said that specifically, however? You
5 never said specifically she told me she was attacked --
6 A No.
7 Q -- on West Flamingo?
8 A No. Because I don't know where she was attacked.
9 Q And you -- is it your desire, as you sit here today, to
10 make sure that none of your statements are taken out of
11 context?
12 A Correct.
13 Q You want the truth to come out?
14 A Yes, I do want the truth to come out.
15 Q When you were doing research on your computer
16 after my client came to talk with you, isn't it true, and I just
17 want to clarify this, that you did research all the way back until
18 June 1st, not July 1st?
19 A I think that's right. I'm sorry. And I do think that I
20 did go all back through June as well.
21 Q 'Cause on your direct examination --
22 A Yes.
23 Q -- you said July 1st.
24 A But I think --

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1 Q But I just wanted to clarify it's --
2 A Right.
3 Q -- June 1st.
4 A It was June 1st because we did go back several
5 months.
6 Q June 1st, 2001?
7 A That's correct.
8 Q The reason why you looked that far back was
9 because you believed the attack could have happened a few
10 weeks before?
11 A Well, I think that just like when you've had TIAs,
12 and that, sometimes time is not good for you. I think that
13 time is also not good for people that are using drugs.
14 Q Can you explain that?
15 A I have worked with other students that have used
16 other drugs and they can confuse dates and time.
17 Q That's something that you have personally had
18 experience with?
19 A Yes, it is.
20 Q That's why you looked all the way back to June --
21 A That's correct.
22 Q -- 1st, 2001?
23 A I mean, I would have gone back, you know, six
24 months except that I felt that it couldn't have been back that

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1 far, but I did not go back that far. I think I did go back
2 through June 1st. And I think someplace there's a reference to
3 June 1st in one of my other testimonies, too.
4 Q Did you feel that the police or the prosecution in the
5 -- in the past was trying to lead your testimony?
6 MS. DiGIACOMO: Compound, Your Honor,
7 objection.
8 THE COURT: Sustained.
9 BY MS. GREENBERGER:
10 Q Did you feel the police were trying to lead your
11 testimony?
12 A I felt very strong that they just wanted to get an
13 answer to a crime and they didn't even care if it was really
14 even the right crime or the right time or anything else.
15 Q Why did you feel like that?
16 A Because I kept saying different things and I made
17 reference to several different things. And I believe that Laura
18 did as well. And nobody would even look at those things or
19 that, you know, time frame or anything.
20 Q When you say Laura, are you referring to --
21 A To Laura Johnson. And I do feel that -- okay. I do
22 know that Laura and I are friends, and I also know that Laura
23 and I at this point are at opposite ends. But I do feel that in
24 the very beginning that we were both at the same side. And

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1 then I --
2 Q Well, let me stop you there for a minute. Do you
3 mean the same side -- explain what you mean by that.
4 A Okay. In the beginning, Laura felt the same way
5 that I did, that we didn't --
6 MS. DiGIACOMO: Objection, hearsay.
7 THE COURT: Sustained.
8 BY MS. GREENBERGER:
9 Q After speaking with Blaise, you didn't believe she
10 committed this crime?
11 MS. DiGIACOMO: Objection, legal conclusion.
12 THE COURT: Sustained. That's the province of the
13 jury.
14 BY MS. GREENBERGER:
15 Q Is it your testimony that Laura Johnson and you
16 both felt equally that that --
17 THE COURT: I'm gonna ask counsel to approach.
18 (Off-record bench conference at 12:35:47 until 12:36:40)
19 THE BAILIFF: I believe we have a note out from
20 one of the jurors, Your Honor.
21 (Pause in the proceedings)
22 THE COURT: The note will be marked as the Court's
23 next in number.
24 We're gonna take a five-minute recess.

Ladies and gentlemen, in five minutes please be in the hallway. The bailiff will meet you there to reseat you.

During the recess you're admonished not to talk or converse among yourselves, nor with anyone else, on any subject connected with the trial, you're not to read, watch or listen to any report of or commentary on the trial or any person connected with the trial, by any medium of information, including, without limitation, newspaper, television, radio and Internet, and you're not to form or express any opinion on any subject connected with the trial until the case is submitted to you.

Five-minute recess.

(Court recessed at 12:38:02 until 12:46:28)

(Jurors are present)

THE BAILIFF: Court is now in session. You may be seated.

THE COURT: The record shall reflect we're resuming trial in State versus Lobato under Case Number C177394, in the presence of the defendant, her three counsel, the two prosecuting attorneys, the ladies and gentlemen of the jury.

And Witness Dixie Tienken remains on the witness stand under oath.

And Ms. Greenberger may resume her cross.

MS. GREENBERGER: Thank you, Your Honor.

BY MS. GREENBERGER:

Q You testified that you knew my client carried a knife?

A That's correct.

Q And also testified that it was common even for your other students. Can you explain that?

A I, myself, have also carried a knife for protection. So I didn't find it that uncommon.

Q What about --

A Other students, other girls, as well, carried knives.

Q Did Panaca -- would you describe it as a rural area?

A A very rural area.

Q Does that account for people carrying knives or is it more of a protection thing for women, if you know?

A A little bit of both. I mean, it's not uncommon to like if you wanted to go pick an apple or a pear or anything, you could and you could peel it. But if you see most of the boys, they have like a little case on their belt. It wasn't until just probably the last four years that they said that they could not have them in school. I mean, never have you ever been allowed to carry a gun but, you know, a lot of boys used to even come to school with -- in their pickup trucks they had rifles that were fastened in and nobody thought anything more about it. It's not like in the city. It's not the same kind of

thing. It doesn't even mean the same kind of thing.

Q What about a baseball bat behind the seat in a car?

MS. DiGIACOMO: Objection, speculation.

BY MS. GREENBERGER:

Q If you know.

THE COURT: I'll overrule.

BY MS. GREENBERGER:

Q You may answer.

A Okay. That's not uncommon. You have to remember that we live long distances between cities, and a lot of the world is starting to catch up with us and so it's not uncommon. My daughter, for one, carries one of those, like it's sort of like a baseball bat in her car, like the truck drivers use, because her husband was a truck driver and he gave her one and she kept it right underneath the front seat. If you're a little person, especially if you are a little woman, and you're a little woman, it's not uncommon to have something close by that you could grab.

Q You mentioned a gentleman named Jeremy Davis.

A Yes.

Q And that was a former boyfriend of Blaise's?

A Yes. And she [sic] had dated Blaise off and on for several years. And I, for one, did not feel that that was a good person for her to even be dating. And I had, I think --

MS. DiGIACOMO: Objection, Your Honor, relevance as to her thoughts as to why they shouldn't have dated.

THE COURT: Sustained.

BY MS. GREENBERGER:

Q When she came to talk with you on that Wednesday, one of the issues you discussed was her relationship with Jeremy, correct?

A Yes.

Q And she told you that fairly recently they had broken up?

A That's correct.

Q Fairly recently, did you interpret that as after graduation but before she came to your house that Wednesday?

A Yes.

Q You also testified that she had left her vehicle at his house?

A Yes.

Q And you discussed with her how he had vandalized her car, intruded her car with -- she told you about that?

A Yes.

Q Did she tell you that was in retaliation to the breakup?

A It was sort of indicated, but I don't think that she

specifically said that. I think that he was [illegible] on -- he had a drug problem as well.

MS. DiGIACOMO: Objection, relevance.

THE COURT: Overruled.

BY MS. GREENBERGER:

Q What kind of drug problem?

MS. DiGIACOMO: Objection, hearsay.

BY MS. GREENBERGER:

Q If you know.

A Multiple.

Q Based on the condition of the vehicle, it was your understanding the vehicle needed to be cleaned out because there was --

A There was supposed to be feces and urine on it. And Blaise is an extra special clean person and she doesn't like to touch those kind of things. I do not think that it was anything that she could have -- it was beyond her capacity. She could not have touched or cleaned something like that because she couldn't stand to be dirty or icky or anything like that.

Q Was that a character trait you associated with Blaise from the time you met her?

A Yes.

Q And how did you learn about that? From her actions

she took or --

A Blaise spent a lot of time. It didn't matter to her whether her hair was curled or not, but she probably shampooed her hair and took showers more often than anybody else that I've ever known, almost to the point of being obsessive/compulsive. She -- if she slept in or something and you wanted her to come right away, and I can give this as an example, there was a government test once. She wasn't in class when the test was supposed to be given. I got really upset with her. I called her on the phone. Kids can tell you that I have gone to their homes on many occasions and pulled them out of bed to come and take a test if I felt that it had to be done at a certain time. I said you've got to come and take this test. Oh, I can't, I've got to get a shower first. I don't care about the shower. You can go back and get a shower later. No, I have to come -- I have to take a shower. She came to school dripping wet, basically, but she got her shower before she came in there. She couldn't stand to be dirty.

Q Did she pass the test?

A Yes.

Q Did you ever tell Laura Johnson that Blaise told you her parents were trying to hide her vehicle?

A I don't feel that I said that they were trying to hide

her vehicle. I said that they had her vehicle because they were going to clean it up for her. And because of some other things that might have made -- but not that they were ever going to do -- paint it, not that they were going to paint or do any repairs or anything, just clean it.

Q So it's your testimony, as you sit here today, that you never on any occasion ever told Laura Johnson that Blaise told you my parents are trying to paint the car?

A No. Not paint the car. I think that Blaise may have been afraid that someone could have seen her at the time that this incident happened. They may not remember the car exactly but there's other things about the car that they would have remembered. And it's not something her parents would have really -- they couldn't fix that problem.

Q Is it your testimony, as you sit here today, that you never told Laura Johnson that Blaise told you her parents were trying to get rid of the vehicle?

A No. Clean it. Clean it. Just clean it.

Q In addition to Blaise being upset that she had been the victim of an attack, she also came to you 'cause she feared maybe she hurt someone. Isn't that true?

A That's right. She never at any time ever thought that the person was dead, but she was afraid that she could have really hurt someone.

Q Even her attacker, she was compassionate towards --

A Yes.

Q -- her attacker?

A She was. I don't think she really wanted to have anything more to do with him.

MS. DiGIACOMO: Objection, Your Honor. This is speculation.

THE COURT: Sustained.

MS. DiGIACOMO: Move to strike.

THE COURT: Granted.

BY MS. GREENBERGER:

Q She was concerned that her attacker might have seen her vehicle and might come after her. Isn't that true?

MS. DiGIACOMO: Objection, misstates the testimony.

THE COURT: Sustained.

BY MS. GREENBERGER:

Q Did Blaise tell you why she was concerned about her car being seen, if you know?

A No. She never said why. I just have a feeling that I knew why.

Q Based on what Blaise told you?

A No. Based upon what I -- I had never seen her

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1 vehicle, but I had heard that she had an unusual license
2 number. Not something that someone would forget.
3 Q Were -- you testified previously that dates were
4 suggested to you in this case, is that correct?
5 A Yes.
6 Q By whom?
7 A Well, when I -- originally, I said to the -- even to the
8 police and to other people I wasn't sure when the date
9 happened, when she first came to talk to me. I wasn't even
10 sure when I really went to talk to Laura. But at that time,
11 Laura had said that she had done --
12 MS. DiGIACOMO: Objection, hearsay.
13 THE COURT: Sustained.
14 BY MS. GREENBERGER:
15 Q Were dates suggested to you by anybody besides
16 the police?
17 A Just Laura.
18 Q What about the prosecution?
19 A Well, that was later, though. But, I mean --
20 Q Well, that's just the question I'm focusing on. So at
21 some point in this case, even up 'til present, there have been
22 dates suggested to you?
23 A Yes. And one of the things that I specifically have
24 said is if we really wanted to get right down to the nitty-gritty,

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1 we could prove when things happened because the student
2 that I was working with got discharged from the jail in Pioche
3 sometime in July. I couldn't have gone to visit him or to teach
4 him if he wasn't even there at that time. And nobody has
5 looked into looking at the court records, which when you go in
6 to work with any prisoner it's recorded.
7 Q Isn't it true that the prosecution has rehearsed your
8 testimony with you previously?
9 A I don't think that you can say rehearsed. But I think
10 that it has -- that everybody has tried to tell me what, you
11 know, the kind of questions that we'll be going over.
12 Q Isn't it true that you believed the conduct in
13 suggesting dates was inappropriate?
14 A Well, I don't quite understand, like I said, why
15 everybody has really pushed so much about the date when, to
16 me, it could have been very quickly cleared up if somebody
17 would have just checked at the jail in Lincoln County.
18 Q Isn't it true that you felt like you were being
19 badgered when you weren't saying things --
20 A Oh, yes.
21 Q -- that people wanted to hear?
22 A Because people wanted me to say that the first time
23 that Laura and I talked was on the 18th. And even that date, I
24 wasn't sure of. I wasn't sure of the date of the 11th or of the

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1 18th. I just knew for sure that Blaise had come to me after the
2 4th of July. I do know it was after the 4th of July.
3 Q Isn't it true at one time prior to your testimony you
4 were isolated in a room for several hours?
5 A Yes.
6 MS. DiGIACOMO: Objection, relevance.
7 THE COURT: Overruled.
8 MS. DiGIACOMO: May we --
9 MS. GREENBERGER: Well --
10 MS. DiGIACOMO: May we approach?
11 THE COURT: Yes.
12 (Off-record bench conference at 13:02:16 until 13:03:17)
13 BY MS. GREENBERGER:
14 Q Prior to your previous testimony --
15 MS. DiGIACOMO: Objection, foundation.
16 THE COURT: Sustained.
17 BY MS. GREENBERGER:
18 Q You testified that you were put in a room for several
19 hours. When was that?
20 A At the last trial.
21 Q Where were you?
22 A In the courthouse, in a room. And it was really
23 funny because in the past at like at the hearing and even
24 today, I was able to sit outside with my friend, Laura. But on

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1 the day of the court hearing, not the hearing but the court
2 date, someone from the prosecution that's not here now, when
3 I went up to sign my vouchers and things with Mary, they took
4 me to a room and they said that I had to stay there and the
5 door was closed. Somehow I got the feeling that it was
6 locked, but I never did get up to see if it was really locked, but
7 I did have to use the restroom and didn't know where -- how I
8 could get out of this room or where I could go. And I was
9 there for several hours.
10 Q And how did that make you feel?
11 A I was very upset. I felt like they were like punishing
12 me for not doing or not saying what they wanted me to say.
13 Q Had you had discussions with the prosecution prior
14 to this occurring?
15 A Yes, I did.
16 Q Did you believe this is in direct retaliation?
17 A I did because right prior to that, I had gone to meet
18 with --
19 Q A prosecutor?
20 A A prosecutor.
21 Q What had you told them?
22 A Basically the same thing that I'm saying now, that I
23 still was not sure of the date, basically that I just did not feel
24 that Blaise was ever capable of doing anything like this. And I

have said that over and over and over ag...
Q Did you also say you were positive that she never told you her parents were trying to hide her car?
A Right. And I feel that they tried to use Laura and I against each other.
Q Why?
A In the beginning, Laura felt the same way that I did. And then, all of a sudden, she started feeling that --
MS. DiGIACOMO: Objection, speculation.
THE COURT: Sustained.
BY MS. GREENBERGER:
Q Do you believe in the past that the prosecution has tried to control the nature of your testimony?
A I do feel that things have been taken out of context and I do feel that they have tried to manipulate things to look differently than what they actually were like.
Q Did they try to scare you a bit?
A I don't think that I could say they tried to scare me. I think they -- it was like indicated that I should tell the truth and that I should be careful of what I said. And it made me angry to think that they were questioning that.
Q Did you feel your testimony was being manipulated in the course of questioning in preparation by the prosecution?
A I believed that both sides want to hear certain things

and so they're trying to draw out those particular things that they do want to have pointed out to the jury. Yes, I do feel. But I do feel that that happens both ways.
Q Were you told by someone of the prosecution they just want a conviction and want to get it over with?
MS. DiGIACOMO: Objection, hearsay.
THE COURT: Sustained.
(Pause in the proceedings)
BY MS. GREENBERGER:
Q Did my client ever tell you that she had any interactions with a homeless man?
MS. DiGIACOMO: Objection, foundation. Ever?
BY MS. GREENBERGER:
Q Did my client ever tell you --
MS. GREENBERGER: I'll rephrase it.
BY MS. GREENBERGER:
Q -- that she had any interaction with a homeless man at the time she described her attack to you?
A No, she didn't mention homeless. No. She mentioned that the person was smelly, but smelly could be somebody that had bad B.O.
MS. GREENBERGER: The Court's indulgence. Nothing further.
THE COURT: Redirect.

MS. DiGIACOMO: May we approach?
THE COURT: Yes.
(Off-record bench conference at 13:11:06 until 13:11:38)

REDIRECT EXAMINATION

BY MS. DiGIACOMO:
Q Did you need something?
A I do.
Q What would you like?
A I really have to leave, and I've explained this many times. I needed to be on the road by 1:00 o'clock. I can come back but I cannot stay much later or I'm not gonna be able to get home before it gets dark. And I can't drive after dark.
MS. DiGIACOMO: Well, Your Honor, it's my understanding from the defense that when she drove down the other day she didn't leave until 3:30.
THE WITNESS: No. I left earlier than 3:30. I left like 3:00 o'clock.
MS. DiGIACOMO: 3:00 o'clock. So as long as we get you out of here by 3:00, which it shouldn't be much longer.
THE WITNESS: But coming down here is a lot different than going back. Going up there, the road -- I'm not afraid of bright lights. I'm afraid of cows and horses on the

road. I mean, coming here it's bright when you come down to Las Vegas. Going there it's dark. And it gets dark, you know, it's getting dark by the time --
MS. DiGIACOMO: Well, Your Honor, if we have to we'll find someone to drive her home. I don't know what to say. We have to finish with this witness.
THE COURT: All right. You may proceed.
THE WITNESS: I can come back. I just have to be there in time to do things.
BY MS. DiGIACOMO:
Q Ms. Tienken, now you established on cross-examination, it's fair to say, that you're not on the side of the State in this case, correct?
A I want to see the truth come out. But in my feelings, I do not feel that Blaise was ever capable of ever killing anyone or really hurting anyone to that extent.
Q And I think you've made that clear.
A Yes.
Q So it's not -- it's fair to say that you're not supporting the State's side in this case, are you?
A No.
Q Okay. Now you've made several allegations about the State here, that we've tried to control your testimony, that we've tried to force dates on you, that you feel like we've

1 retaliated against you. But you do admit ... just asked you to
2 tell the truth?
3 A That's correct. But keeping me in a room for several
4 hours was uncalled for.
5 Q Okay. But you understand, too, it hadn't -- that Mr.
6 Kephart and I, we were in court and knew nothing about that?
7 A I know that because when you came up to interview
8 me, I asked who that man was because I didn't -- and I said,
9 you know, at first I thought it was -- I thought it was the
10 defense lawyer that had taken me to that room.
11 Q Okay. But it was --
12 A But it was not.
13 Q It was in our Victim Witness Advocate Center,
14 correct?
15 A It wasn't in the regular room. No. I mean, it was
16 off of that room.
17 Q Right. It's an interview room or a small like
18 conference room that they have in the Victim Witness Center.
19 A I don't know. I haven't seen the other rooms. But it
20 was definitely not the open room.
21 Q No, not the waiting area when you first come in?
22 A Right.
23 Q Okay. And isn't it fair to say that when you were
24 down here testifying at the prior proceeding that you were

1 pretty upset about testifying? You had some anxiety about it?
2 A Well --
3 MS. GREENBERGER: Objection, leading.
4 THE WITNESS: I don't know that I would say
5 anxiety.
6 MS. DiGIACOMO: Your Honor, she's an adverse
7 witness.
8 THE COURT: Overruled.
9 THE WITNESS: Are we ready?
10 BY MS. DiGIACOMO:
11 Q I'm sorry. Well, I mean, when we talked to you, you
12 expressed to us that you were --
13 A Well, yeah.
14 Q -- had anxiety.
15 A But you have to --
16 Q Correct?
17 A -- remember that --
18 Q I'm sorry, Ms. Tienken. It's a yes or no answer.
19 You did express to us that you had some anxiety about
20 testifying at the prior proceeding, correct?
21 MS. GREENBERGER: Your Honor, I would object
22 and let her explain her answer.
23 THE COURT: Overruled. You --
24 THE WITNESS: I --

1 THE COURT: You get -- you don't get to direct the
2 questions. When the questions come to you, you have to take
3 the question as it's phrased and do your best to respond to it
4 as it is phrased.
5 THE WITNESS: Okay. Yes.
6 BY MS. DiGIACOMO:
7 Q Okay. And so wasn't the reason that you were put
8 in this room so that you could collect yourself and have time to
9 gather yourself?
10 A No.
11 Q So your testimony is that the reason you were put
12 into a small room or a special room in the Victim Witness
13 Center was purely retaliation?
14 A I do feel that.
15 Q Okay. And up until that time, you had -- you had
16 given two prior statements --
17 A That's correct.
18 Q -- regarding this case? And that's fine. Now you
19 talked about how people have tried to force dates on you.
20 Isn't it true that we told you, the State told you, that don't
21 worry about the dates because we -- you had stressed that
22 dates aren't important to you -- or not important, that are hard
23 to remember for you?
24 A Yes. But that was at this time. That was not the

1 way it was the last time.
2 Q But your -- the way you've testified today is
3 consistent with the last two times regarding the July --
4 A Yes.
5 Q -- 11th date, correct?
6 A Yes.
7 Q Now you said today with regard to the dates that
8 there was a student that you were counseling in the jail and
9 somebody could have checked regarding when he was
10 released. Do you recall that?
11 A In the jail.
12 Q Right. That's what I -- in the jail. Do you recall
13 that?
14 A Yes.
15 Q And you just testified to that?
16 A Yes.
17 Q And what was the student's name?
18 A It's Biggs' brother. Jason. I'm sorry. I can't
19 remember his last name.
20 Q That's fine.
21 A But it's Jason's -- I mean, Jason was his name.
22 Q Okay. That's fine. So Jason.
23 A But it's Biggs' last -- it's Biggs' brother. And I can't
24 think of his last name, but if I had my school records I could

tell you.
Q And this is the --
A And there was another student as well.
Q Okay. And this is the person that you were going on Wednesdays to counsel?
A That's correct.
Q How long were you going on those Wednesdays?
A As long as he was in jail.
Q Okay. So how many weeks was that?
A He had started in my program before he got arrested. He was arrested for alcohol. And then I worked with him for several weeks after, you know, while he was still in jail. And then when he got out of jail, he came in and finished his program and did his GED and got his diploma as well.
Q Okay. And now what date did he get out of jail? Is that the date that you're saying is important?
A Well, I felt that if they were trying to say that I worked with him after a certain date, all they had to do was check with the court records and they could see when he got out. I know he was released in July. I have not made any effort to go back to find that out, nor has the court.
Q Okay. Now, would you agree with me that the fact of this student being discharged and that would help with a

certain date, this is the first time that you've notified the State of this fact?
A No.
Q When did you notify the State of this fact previously?
A Well, they've known that all along because in the very, very first statement that was made to the police in July 26th, or whenever it was, I said that I was visiting a student and another student that was in the jail. They knew exactly that I was going to the jail.
Q Right. But when was it that you brought up the fact of when this student was released would help with the date?
A I felt that if they really wanted to do that, since you people are supposed to be involved with the law and you know how jails run a lot more than I do, you would know that they would have to keep records of when someone came in to talk with him or to teach him or to visit him.
Q That's correct. But you also indicated that you had been going for several weeks, talking to this individual.
A Yes.
Q So isn't it more important the fact that you went on Wednesdays to the jail more important than who you saw? Because for you, you already testified that you knew it was a Wednesday 'cause you went to the jail.
A That's correct.

Q But if the police had looked up these records, they would have found a series of Wednesdays, correct?
A Only while that prisoner was in jail.
Q Did --
A I didn't go --
Q Did you --
A Okay. If I worked with a different prisoner at a different jail because there's a -- we have a prison as well, and then we also have CYC which is the youth center, and I did not go to the same, you know, to the same location on Wednesdays. If I didn't have a prisoner at that jail, I would have gone to a different location, either to the prison or to CYC or one of the other locations.
Q So is it --
A So it was important because Laura's office was upstairs and I went to see her the same day.
Q You went to see her the same day that you taught?
A Okay.
Q Or you went to the jail downstairs and counseled?
A I went to the jail downstairs. I did go up to her room. And the first time I went up there she was not there. I left a card. But I didn't make -- you know, I didn't call her or really -- because it just didn't seem all that really important. And then I knew that I would, if she didn't call me back, I

would stop the following Wednesday, which I did. It was just if I happened to be in the same building where a friend is, I would stop. Sometimes we'd go to lunch or go get a soda or something.
Q Okay. So my question was did --
A I didn't always go to that building on a Wednesday. No, I did not.
Q Which building?
A To the courthouse is what I'm trying to say. But I was at the courthouse those two times, one when I left the card and one when I went up to see Laura's --
Q Okay.
A You know, and actually saw her.
Q But you were in the courthouse those two days because that's where the jail was that you were doing your classes?
A That's correct. I just don't know what those dates were.
Q Right. I understand that. And but you just know it was a Wednesday?
A Yes.
Q And it was a Wednesday in July?
A That's correct.
Q And you made that clear to the police?

A Yes.
Q Okay. And in fact when you first talked to the police in your statement, you looked at a calendar and you told them you thought it had been July 8 -- or July 11th?
A That's correct.
Q Okay. But you made very clear you weren't sure of the date?
A That's right.
Q And at that time, how did the detectives force on you the dates?
A The date that I went to visit Laura was forced on -- upon me because she said that she knew it was the date that she had pulled a urinalysis of somebody else.
Q Okay. So you're talking about Laura forcing a date on you?
A That's correct.
Q Okay. But that's not the police.
A Well, because they were the ones that said that she could establish the date.
Q Okay. So what your testimony really is, the police were not concerned about what date you knew because Laura was aware of what date it was you came and talked to her. Is that fair?
A No. I think at first Laura wasn't even sure. And

then she tried to stop --
Q Okay. I'm --
A -- and think about it.
Q Okay. So but that's not my question. When the police -- you've talked about the State forcing this stuff on you. What I'm asking you is, based on what you just said, it was Laura forcing dates on you, not the police.
A I don't think Laura ever meant to force things on me. She just said I know it was this date because I did this urinalysis.
Q Okay. So --
A Okay.
Q Is it fair to say then that maybe Laura is more sure of what date it was you talked to her than you are?
A Yes.
Q Okay. Now you were asked a question about the State rehearsing your testimony. Do you recall that question by the defense?
A Yes.
Q Do you feel the State has rehearsed your testimony?
A Not really rehearsed because --
Q Well, that --
A But --
Q That would entail us saying, okay, here's --

A Okay.
Q -- what you answer to this question, correct?
MS. GREENBERGER: Your Honor, she's cutting --
THE WITNESS: Well, okay.
MS. GREENBERGER: -- the witness off. Can the witness answer her question before the next question is posed?
THE COURT: If the witness is going to be responsive to the question, she may. The Court overrules.
BY MS. DiGIACOMO:
Q Go ahead.
A Okay. I was surprised when, you know, a copy of the transcript was provided to me. I mean, I really was.
Q Well --
A But I've never really testified in a court case like this before and I know that a long period of time has happened. So everybody kept saying now make sure you read what you said before.
Q To refresh your recollection. Well, let's take it another way. It has been several years since you've talked to the police and testified?
A Oh, yes, it has.
Q Okay. And isn't it fair to say that somebody's memory is better closer in time to the event than years later?

A All you have to do is look in a classroom. There's a little thing, an exercise, that's given a lot of times. And, you know, when you say things, things can get out of whack. I'm sure that everybody here has played a little game in school at one time or the other, could have been as early as first or second grade, could be all the way in high school. You can start something with one student, and by the time it gets to the thirtieth student it doesn't even sound like what happened to the first student. And I think that happens over and over again.
Q Right. But, okay --
A But I think that even when I repeat something, I don't want to color anything. I don't want it to be different. But I do feel that when you are exposed to different things you're gonna hear different things and different things are gonna stick in your head, too.
Q Right. But I guess my question is would you agree that when you talked to the police in July, 2001 things were more clear in your mind about your conversations with Blaise, the things you knew, before you heard from other people other things, than it is five years later?
A Yes. That's true.
Q So knowing now five years later you have to recall these events, wouldn't you want your prior testimony and your

TIENKEN - REDIRECT

1 prior statements to read to refresh your recollection as to what
2 you had said before?
3 A I do think so, but I also think --
4 Q So are you saying that you would rather that the
5 State had not have provided you with anything and made you
6 come up on the stand and recall this on your own?
7 A I don't even think that it has to do so much with that
8 as the fact that you came to my home just a week ago, a lot of
9 different things. You know, it's really been a strange thing for
10 me.
11 Q So you do kind of feel that by us providing you with
12 this stuff that you had testified to or stated before you felt like
13 we were forcing upon you what we wanted you to testify to?
14 A Okay. It's not just the things that were provided to
15 me; it's the other things that have been said. And, as you
16 know, I asked you very point blank that I really wanted to --
17 Q Well --
18 A -- know about the person that was dead because I
19 know that at the last hearing that they tried to say it was two
20 different incidents.
21 MS. DiGIACOMO: Okay. Your Honor, I think she's
22 getting beyond what she should be testifying to. I mean, it's
23 starting to get non-responsive.
24 THE COURT: Sustained.

TIENKEN - REDIRECT

1 BY MS. DiGIACOMO:
2 Q Is it fair to say since you had to deal with this back
3 in 2001, 2002, that you've heard a lot of things about this case
4 since that time?
5 A I've tried to not listen to a lot of things.
6 Q But you have heard it?
7 A You do hear it.
8 Q Okay. It's a small town, people talk, correct?
9 A Actually, I can truthfully say that I really haven't
10 heard a lot of people talk about it in Panaca, only because if
11 they bring it up, I haven't wanted to talk to them about it.
12 Q But you do kind of know what's going on with the
13 case more than your small role that you play here, correct? I
14 mean, you were just trying to talk about, you know, two
15 different incidents just a minute ago. You didn't know that
16 when you talked to Blaise in July, 2001.
17 A No, I did not.
18 Q Okay. So it's fair to say you have heard some things
19 since then?
20 A Yes, I have.
21 Q And in fact you've talked to the defense in this case,
22 haven't you?
23 A I have.
24 Q Okay. How many times have you talked to the

TIENKEN - REDIRECT

1 defense?
2 A I met with the defense yesterday for a short time,
3 not nearly as long as I've talked with you.
4 Q Did they ever come to your house?
5 A Not this time but last time.
6 Q Okay. So and let's include last time. I mean, so
7 you've talked to them --
8 A But that's different lawyers this time.
9 Q Right. So it's your testimony that you've never
10 spoken to any of these three lawyers or investigator even for
11 these attorneys except for yesterday regarding this case?
12 A No, that's not true.
13 Q Okay.
14 A I've talked with them. I knew that the case was
15 coming up. But do you know I didn't even know. I thought
16 maybe the thing had been dropped because the last I heard --
17 MS. DiGIACOMO: Your Honor, getting non-
18 responsive again.
19 THE COURT: Sustained.
20 BY MS. DiGIACOMO:
21 Q Okay. So you've talked to them several times?
22 A Well, not directly with them but with other people
23 because at one time you were gonna have the court case --
24 Q Who's the other people if you're not talking to the

TIENKEN - REDIRECT

1 attorneys or their investigator?
2 A I believe it was Mary from the court's office because
3 at one point you were going to have --
4 Q Okay. But --
5 A -- the trial many -- like almost --
6 Q Okay.
7 A -- eight months ago.
8 Q Okay. But --
9 A And I was in a cast. I couldn't have come.
10 Q So you -- I'm not talking about scheduling and who
11 you've talked to about subpoenas. I'm asking you how many
12 times you've talked to the defense attorneys or their
13 investigators or somebody on their team about this case.
14 A I've talked to them several times.
15 Q All right.
16 A But I have only met in real person with them one
17 time.
18 Q And that was yesterday?
19 A I'm trying to think. I think before the last time when
20 we were gonna go to trial, I think I may have met with
21 somebody before that.
22 Q Okay.
23 A At my house.
24 Q Okay. From the defense side?

TIENKEN - REDIRECT

A Yes.
Q Okay. Now, did you learn any new information, not talking to either side, on your own about this case since you've previously been asked about it?
A I've really tried to, without -- without really trying to color it.
Q Okay. So have you, for instance, read newspaper articles about this?
A I can truthfully say I have not read any new newspaper articles because I was asked not to.
Q Okay. Have you --
A And so I have not read any since the last trial.
Q Have you seen any programs, television programs, or newscasts regarding this case?
A No.
Q Have you read anything on the Internet about this case?
A I did read one thing.
Q Okay.
A It's --
Q So --
A I did not read the latest things.
Q Okay.
A Because I was made aware of it and they said did

TIENKEN - REDIRECT

you do this, and I said no.
Q Okay.
A But a long time ago, I did.
Q A long time. Okay.
A It was while --
Q Today you mentioned something about an attempted sodomy.
A I didn't.
Q Do you recall that?
A No. I didn't mean a sodomy. That was my terminology and that was wrong. And I said, no, that's wrong. I said that she -- that they tried -- that the man tried to put his penis in her mouth.
Q Okay.
A And that is my mistake. Sodomy is not the correct terminology.
Q Okay. So you weren't talking about something else; you were talking about the penis in the throat when you meant -- when you said sodomy?
A Yes.
Q So you haven't heard anyone else in this case discuss anything regarding the term "sodomy"?
A No.
Q Okay. Now you had mentioned a few things today.

ENKEN - REDIRECT

When I was asking you questions and about looking on the Internet, you said that you went all the way back to July 1st.
A But I meant June 1st.
Q Okay.
A I'm sorry.
Q In fact it was defense counsel that pointed --
A Yes.
Q -- out your mistake, wasn't it?
A Yes.
Q And you also said that that was referenced before, that you had stated that before?
A Yes.
Q Okay.
A And I think that it is somewhere in here because I think that I read that when I went over this. I didn't make a big study of my past testimony but I did read it through.
Q Okay. So in fact you've had three opportunities to talk about this case. Is that fair to say? You gave a statement to the police July, 2001. You were asked to testify August, 2001 and again in May, 2002. Is that fair to say, you've had three opportunities to talk about this?
A That's correct.
Q Okay. And is it your testimony that somewhere within those three transcripts June 1st is mentioned?

TIENKEN - REDIRECT

A I believe so.
Q Okay. If you could just go ahead and flip through those and let me know when you find it.
A Okay.
(Pause in the proceedings)
A Okay. When -- on page 14.
Q Of your statement?
A Of the voluntary statement. This is one reference to May or June. And that was when I said about -- they asked me, you know, when I thought that she had been in Las Vegas. And I said -- and he -- I said, "I believe it was in June but it could have been in May."
And he said, question, "May or June of this year?"
And I said, "Yes."
"Did she tell you what establishment it was or" --
Q Okay.
A -- "anything like that?"
Q Okay.
A There's that reference. But I know there is --
Q But --
A -- another one --
Q No. But what I'm --
A -- where I say about --
Q Yes.

A -- the Internet use, too.
Q That's what I'm specifically asking you --
A Okay. I'm --
Q -- to find the reference.
A I'm trying to find that.
Q Okay.
A And I don't know where it was. I just thought that I had read that back through again.
(Pause in the proceedings)
A I've read through the testimony up through 102 and I have not found it, and I think that it would have been prior to that. So maybe I was just wrong in thinking that I had that. Maybe when I read that other date of June, that's when I thought it. But I really did feel that I had read it in here.
Q So, well, you would agree with me you've read through the statement you gave to the police on July 26th?
A I've read through the statement on June 26th and I did not see it there, and I've read through the hearing, and I'm now reading through the --
Q The second hearing?
A The trial or whatever you want to call it. There was not two hearings. There was only one hearing that I'm aware of. One was a --
Q Well, there's two times you gave testimony at --

A Yes.
Q -- two prior proceedings?
A Yes. And I do not see it there. But I did, you know, reference to that other thing of June, and so perhaps --
Q Right. When she -- when you thought she had moved down to Vegas or gone down to Vegas?
A Right.
Q Okay.
A But I'm -- I am so sure that we did check back that far. And, again, if this could have been proven by something but now it can't be proven because I don't even have the same computer or anything. And if it had been thought that it was an important factor at that time, it could have been brought out at that time.
Q Okay. But you agree with me it was never mentioned to the police how far back your search was or in either -- any time you've testified?
A I feel confident.
Q Right.
A I feel really confident that I did mention to them, but maybe they did not ask any question about that.
Q Okay. So that would have been --
A In the police statement.
Q That would have been when it wasn't being tape-

recorded?
A Right.
Q Okay.
A Right.
Q And you --
A And, you know, I can only see what was written down, what you gave me a copy of. But there were a lot of things that were discussed with the police and --
Q But not on the tape?
A Right. And although a copy was given to me at the last trial, on the day that I left from, and I think this is important, on the day after I testified at the last court trial, I destroyed those copies. I didn't even take them back home.
Q So before the last proceeding, you were allowed to see copies of your statement and your prior testimony?
A That's correct.
Q Now since you've just kind of looked through your statements and all your testimony --
A Uh-huh.
Q -- did you find anything in there talking about how her attacker was a big man?
A I wasn't looking for that specifically. But I do know that she and I really talked about that because we did this comparison --

Q Well, and I --
A -- with other students.
Q I understand you and her talked about it. But would you agree with me that it's not in the statement to the police, nor either time that you testified previously?
A I don't know that.
Q Okay. Would you like to go through?
A No, I don't.
Q Okay.
A Because the time is really going fast and I really need to leave.
Q Okay. So you won't agree with me that it's not in there?
A No, I won't agree with you because I --
Q Then I'm gonna need to ask you to go through all three again.
A I don't have time. I'm sorry. I cannot. I do not have time to do that at this point.
THE COURT: As I told you, you do not get to direct the questioning. When the question is directed to you, you need to respond to the question.
THE WITNESS: Well, I already responded. No, I won't say that.
THE COURT: You need to go through those three

1 documents and review them for a refere... to "big man."
2 (Pause in the proceedings)
3 THE WITNESS: Okay. Again, I do not see anything
4 in here, and I have not read the whole thing through again but
5 I've tried to go through it, where it says "big." But I do know
6 that Blaise did talk to me and we did compare size and
7 description with people, with students that was there. And I
8 do know that on more than one occasion, I found it was really
9 important to find out if he was a big man.
10 BY MS. DiGIACOMO:
11 Q Okay. So --
12 A And you know that as well because I questioned --
13 Q Okay.
14 A -- you about it.
15 Q Right. When we spoke last Friday.
16 A And I've questioned that before that.
17 Q Okay. But you would --
18 A That was questioned many times before that.
19 Q But you would -- you'd agree with me, though, in
20 the three recorded testimonies or statements we have from
21 you it's not in there?
22 A No, at least I don't see it.
23 Q Okay. So you agree with me then?
24 A I agree that it's not in this, but that doesn't mean I

1 didn't state that many --
2 Q No.
3 A -- times before.
4 Q Okay. Now --
5 A It also said right from the beginning, and I can give
6 reference to that --
7 MS. DiGIACOMO: Your Honor, there's no --
8 THE COURT: You don't have --
9 THE WITNESS: -- that it was an old man.
10 MS. DiGIACOMO: Your Honor.
11 THE COURT: Ms. Tienken, you don't have a
12 question pending. Wait for your next question.
13 THE WITNESS: Okay.
14 BY MS. DiGIACOMO:
15 Q Okay. Now you also talked about the fact you did
16 say that her attacker was old or she said that her attacker was
17 old?
18 A Yes.
19 Q Okay. Now, wouldn't you agree with me that
20 somebody who's eighteen years old, even somebody thirty
21 years old seems old to them?
22 A Sometimes. But I think she would have made more
23 of a reference if he had been like her father's age, if she would
24 have -- she would have made a reference to that. But she

1 said to me older, to me.
2 Q She said older or old?
3 A Old.
4 Q Okay. So and when she -- that's all she said was
5 "old" and didn't describe it anymore?
6 A She also said "smelly."
7 Q No, no, no.
8 A That doesn't mean homeless.
9 Q No, no. I'm sorry. She didn't describe what she
10 meant by "old" any more?
11 A No.
12 Q Okay. But you just interpreted it to be somebody
13 such as your age or older?
14 A Right.
15 Q Okay.
16 A Maybe not even my age but well over her father's
17 age.
18 Q Now you talked about that you have this alternative
19 high school program that you ran?
20 A That's correct.
21 Q What specifically is it? I mean, obviously, instead of
22 going to a regular high school you have this program, but
23 what kind of kids get into your program?
24 A All different kids. I had many students that had

1 been home schooled up through middle school that came into
2 my program that had never attended regular public school but
3 wanted to get a high school diploma. I had students that had
4 been suspended from the high school, and Blaise never was
5 ever suspended, or that had court. If they have been involved
6 with the courts, whether they were on probation or parole,
7 many times they're not allowed to attend the regular high
8 school. But you must realize that there were probably just as
9 many kids that never had any bad problems with the law as
10 there were kids that did have problems with the law. And I
11 think it's really important to realize that.
12 Q Okay. Thank you. That wasn't my question
13 regarding people with the -- that had problems with the law. I
14 was just asking you the different types of people 'cause you
15 said that there was all different ages.
16 A That's correct.
17 Q That was my only question.
18 A Okay.
19 Q Now you had talked about that your house, you
20 know, kids would come over. They felt comfortable coming to
21 your house. It was a safe house.
22 A That's correct.
23 Q And you said that Blaise spent three hours with you
24 that morning?

A That's correct.
Q That you talked to her in July. Is it true to say that when she left your residence that she felt better than when she arrived?
A I would hope so.
Q Well, you saw her and her demeanor. You said when she first came --
A Okay. When she first came to see me, she wasn't crying when she first came there. She just told me that she had done something bad. She did end up crying when she was telling me about the incident but she also laughed about other things.
Q Okay. Well, you know, isn't it true that when she first came she gave you a hug and she said --
A Yes.
Q -- "I need to talk to you, I've done some" --
A "I need to talk to you."
Q You need to let me finish first. We both can't speak over each other. But, yeah, she gave you a hug. She said, "I've done something bad and I need to talk to you."
A That's right.
Q But when she left, she -- is it your opinion she felt better than when she first arrived and needed to get this off of her chest?

A Yes.
Q Now you had talked about different kind of programs with Blaise that morning and you'd mentioned a drug program?
A That's correct.
Q And then you said some other programs. What other programs?
A Anger management.
Q In fact, didn't you start an anger management counseling with her that morning?
A Basically, we did.
Q Isn't it true also that when she was relaying to you what had happened to her with this attack that she told you it started because the gentleman said something to her or propositioned her in some way and she tried to brush him off?
A Okay. When I say proposition, I did not mean sexually proposition at first. I feel that he just tried to talk with her. And Blaise at that time in her life, if she didn't want to be bothered with you, she'd brush you off.
Q Okay. So it's your testimony then that you did use the term "proposition" when you spoke to the police?
A Yes. But I tried to make it quite clear, and I think that you'll see that it says that, too.
Q Right. No. I didn't say anywhere in your testimony

you --
A Okay.
Q -- said sexually proposition.
A Okay.
Q It just says "proposition," correct?
A That's right.
Q Okay. And it's also true that the reason that you had this impression that it might have happened, this attack happened, a couple of days before she came to see you was because she was so upset about it?
A She was upset about it.
Q Right. But it -- but that's the reason why you thought it might have happened a couple of days before. She never told you. You got that impression 'cause she was so upset?
A She never told me.
Q Okay. So is that a correct statement that you got that impression because she was so upset about it?
MS. GREENBERGER: Objection, asked and answered.
MS. DiGIACOMO: It's not been answered, Your Honor.
THE COURT: Overruled.
THE WITNESS: I felt -- I don't know that I could

say a couple of days but I thought that it had happened not a long time ago. It didn't happen like a year ago.
BY MS. DiGIACOMO:
Q Okay. Well --
A I know that you're gonna turn to something and you're gonna say that I said that, and that probably is there. But I'm also stating that after I've given a lot of thought to it, I don't believe that now.
Q Okay. So at the time you talked to the police, you thought it happened and you -- page 12, line 3, "A day or two days before that," because she was so upset?
A And I also say many other places --
Q Well, wait. Well, let's --
A -- throughout the whole testimony --
Q I understand that, but can we just -- that is correct what you said to the police?
MS. GREENBERGER: Your Honor, can the witness finish her answer?
MS. DiGIACOMO: She hasn't answered my question before she's saying her own answer.
THE COURT: Overruled.
BY MS. DiGIACOMO:
Q So it's --
A I'm sorry. Say that again.

Q -- true on page 12 you do say, "I got the impression that it just happened a day or two days before that." And they asked you what gave you that feeling. "Because she was so upset." Is that true that's what you told the police back in July of 2001?

A That's correct what I said to the police at that time.

Q Okay. But you just don't believe that now? Yes or no.

A No, I don't believe that now.

Q Okay. Now today you said that when Blaise was first attacked that she tried to stab up first?

A That's correct.

Q And you said that on direct testimony?

A Yes.

Q Okay. And I pointed out that it's not in your previous statement or your prior testimonies, correct?

A That's right.

Q All right. And then on cross-examination you expanded a little bit further, that she tried to stab up into the attacker's abdomen?

A Well, yes, because that's where he was positioned on her.

Q Well, what I'm asking you is do you recall her saying abdomen or not, or are you just assuming that's where she

tried to stab up?

A I doubt that she would have said abdomen. I think she said probably "stomach."

Q Okay. But you do recall her referencing that area? And do you recall -- is that a yes or no?

A I believe so.

Q All right. And you do recall her --

THE COURT: I'm gonna ask counsel to approach.

(Off-record bench conference at 14:09:27 until 14:10:38)

THE COURT: Ladies and gentlemen, we really did not anticipate that this testimony would be this lengthy and, obviously, we are having to move to plan B. I'm sure that everybody is hungry and so we're gonna take our lunch break at this time. We'll be resuming with this witness at 3:15.

The Court's gonna ask that at 3:15 you please be in the hallway. The bailiff will meet you there to return you to your seats in the courtroom. And I guess the good news is we shouldn't have to wait in line too long to get lunch at this point.

During the recess you're admonished not to talk or converse among yourselves, nor with anyone else, on any subject connected with the trial, and you should not read, watch or listen to any report of or commentary on the trial or any person connected with the trial, by any medium of

information, including, without limitation, newspaper, television, radio and Internet, and you're not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

The jury may exit at this time.

THE WITNESS: Your Honor, I cannot stay.

THE COURT: You need to be quiet.

(Jurors recessed at 14:11:49)

THE COURT: The record shall reflect that the jury has exited.

Counsel at sidebar brought up to the Court's attention that Laura is out in the hallway. I don't believe that anybody has formally invoked the exclusionary rule.

MR. KEPHART: We haven't.

MS. DiGIACOMO: We haven't. But we're invoking it, I guess.

THE COURT: Okay. During this lunch recess, you're not permitted to speak about anything about this case with anyone, not with the attorneys for the State, not with the attorneys for the defense, not with your friend, Laura. You're not allowed to talk about what your testimony has been here today thus far. Somebody from the District Attorney's Office will be escorting you back to Panaca.

We'll be in recess 'til 3:15.

(Court recessed at 14:13:26 until 15:26:15)

(Jurors are present)

THE BAILIFF: Department II is back in session. Please be seated.

THE COURT: The record shall reflect that we're resuming in the trial under Case Number C177394, State versus Kirstin Lobato. She is present, together with her three counsel, the prosecuting attorneys are present, the ladies and gentlemen of the jury are present as well.

We are going to be coming back to Dixie Tienken at a future point.

And the State will call its next witness at this time.

MR. KEPHART: Thank you, Your Honor.

Your Honor, for purpose of the record, I -- we are going to be calling a witness out of order, and it's Tom Wahl.

THE CLERK: Please come all the way forward. Remain standing and raise your right hand.

THOMAS WAHL, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. State your name and spell it for the record, please.

THE WITNESS: My name is Thomas Wahl. The last name is spelled W-A-H-L.

THE COURT: The State may proceed.

MR. KEPHART: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. KEPHART:

Q Mr. Wahl, I want to draw your attention back to August of 2001 and ask you if you were employed here in Las Vegas at that time.

A Yes, I was.

Q And how were you employed?

A I was employed by the Las Vegas Metropolitan Police Department. I worked in the Biology DNA Analysis Unit.

Q How long had you been employed in that capacity?

A In 2001?

Q Yeah.

A In 2001, I'd been employed there for about six and a half years.

Q Okay. And what are you doing currently?

A I am currently the senior forensic analyst with the forensic DNA facility located at North Dakota State University campus in Fargo, North Dakota.

Q Okay. Back in August of 2001, what was your main assignment or main duties as a analyst with the Metropolitan Police Department?

A My primary duties were to examine evidence collected in criminal matters for the presence of biological substances, to conduct -- locate these possible biological

substances and then to perform presumptive and confirmatory testing on the substances to determine if they are indeed human blood or if it's semen or if they're hairs, things of this nature, saliva, and then following that analysis to perform what is now referred to as DNA extraction, to extract and purify human DNA from the biological substances and then perform what is known as DNA profiling to ascertain the DNA profile of the biological substance and then, if a DNA profile is obtained, to compare it to known DNA profiles of victims, suspects or any other human individuals involved in the case. Then I would issue a report regarding my findings and conclusions and then testify in courts of law if necessary.

Q Okay. What type of education and background do you have in order to --

A I hold --

Q -- enable you to do that?

A I hold a bachelor's of science degree in medical technology, with a minor in chemistry. I have twenty-six years experience doing forensic genetics, of which the last eighteen or nineteen years have been strictly with doing DNA analysis, and I'm certified by the American Board of Criminalistics in molecular biology, DNA analysis.

Q Okay. Have you ever testified before in a court of law in your field?

A Yes, I have.

Q Have you ever been qualified as an expert in that field?

A Yes.

MR. KEPHART: Your Honor, at this time I'd offer Mr. Wahl as an expert in the field of, I guess it'd be, detection of biological substances.

BY MR. KEPHART:

Q Would that be --

A Of DNA analysis.

Q Okay.

A Which would include parts of that aspect, yes.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

BY MR. KEPHART:

Q Mr. Wahl, back in August, August 6th of 2001, were you requested by the Las Vegas Metropolitan Police Department to conduct an examination on various items associated with the homicide and the defendant by the name of Kirstin Blaise Lobato?

A Actually, I was -- the request came to the laboratory in July 26th and then I started to do the analysis after that time, and I did issue my first report on August 6th.

Q Okay.

A But yes.

Q When you say first report, are you talking that there's multiple reports with regards to -- that you authored?

A Yes. I issued one other report in addition to the first report.

Q Okay. Also, before I get to this, are you familiar with a laboratory by the name of Myriad? Do --

A Myriad.

Q Myriad?

A Yes, I am.

Q Okay. And how is it that you're familiar with that particular laboratory?

A Well, Myriad is a private company located in Salt Lake City. They do -- they're a biotechnology company that does a lot of work with pharmaceuticals, toxicology, things of this nature. They opened up a forensic division, I'm not sure exactly when, maybe three or four years ago. But as in June of this year, they closed down their forensic division. They no longer do forensics there. But how I'm familiar with that is not only do I know people who work in that laboratory, I've also visited it and toured it. I was also offered a job there at that time. And I do know some people there. And Myriad was chosen by the Las Vegas Metropolitan Laboratory to outsource forensic cases due to our backlog, too, so they received federal

WAHL - DIRECT

1 -- we received federal grant money and [illegible] outsourced cases
2 to Myriad, so that's how I'm familiar with that company.
3 Q Okay. So you're saying that Myriad also conducted
4 tested -- or conducted tests on behalf of the Las Vegas
5 Metropolitan Police Lab or to -- because you were overloaded
6 or too much backlog?
7 A Yes. And they do it for many other government
8 laboratories throughout the country as well.
9 Q Okay. Well, let me draw you back then to your first
10 report that's dated August 6th of 2001. And I want to ask you
11 what items were you asked to examine?
12 A Would you prefer me to state them right from my
13 report one-by-one?
14 Q August 6th of 2001?
15 A Yes.
16 Q Yes. What --
17 A I was asked to examine -- well, there's reference
18 standards from the victim, Duran Bailey. And by reference
19 standards I mean known, a known biological sample, either a
20 blood sample or a scraping of the inside of the mouth, called a
21 buccal swab, in order to obtain a DNA profile from that person;
22 a DNA buccal swab kit from the defendant, Kirstin Lobato; a
23 wad of chewing gum that was stuck or affixed to a piece of
24 cardboard that had apparent blood, and this was recovered

WAHL - DIRECT

1 from the crime scene.
2 Q Does it -- does it indicate who had booked it?
3 A Yes. Booked by -- my report reflects it was booked
4 by CSA Ford.
5 Q Okay. Anything else?
6 A Yes. A torn condom pack with a piece of Kleenex
7 recovered from the crime scene, book by CSA Ford.
8 Q Okay. Now that's a torn condom pack. Is that --
9 does that have the condom in it?
10 A No, it did not have the condom in it. It was just the
11 package that a condom was in that was torn open.
12 Q Okay. Anything else?
13 A A pair of black high-heeled sandals with apparent
14 blood that were reportedly collected from Kirstin Lobato. That
15 was booked by CSA Thomas. A pair of Nike Air shoes, black-
16 and-white in color, reportedly collected from Kirstin Lobato,
17 booked by CSA Carr. One aluminum baseball bat reportedly
18 recovered from a vehicle. This was booked by CSA Renhard.
19 One vehicle slipcover, red with white-and-black floral print
20 design, recovered from the vehicle. A seat cover, two-tone
21 grey, from the front left of the vehicle, recovered from a
22 vehicle. One interior left door panel recovered from a vehicle.
23 That was booked by CSA Renhard. An apparent blood sample
24 and control swab swabbed from below a sandal at the crime

WAHL - DIRECT

1 scene, booked by CSA Ford. An apparent blood sample and
2 control swab swabbed from the sandal at the crime scene,
3 booked by CSA Ford. And another apparent blood sample,
4 control swab, swabbed from the sandal at the scene, booked
5 by CSA Ford. And then there were some small pieces of
6 apparent plastic with silver-colored paper recovered from the
7 rectum of the victim, Duran Bailey, at time of autopsy, booked
8 by CSA Thomas.
9 Q Okay. With regards to that report, what were you --
10 do you recall what you were asked to do?
11 A Yes. With respect to -- with respect to the wad of
12 chewing gum on the cardboard, they requested that I examine
13 the wad of chewing gum and see if I could ascertain any
14 genetic identification profiles from the wad of chewing gum, to
15 ascertain who may have chewed the gum, get some genetic
16 information from it.
17 Q Were you -- were you able to do that?
18 A Well, I was able to get a DNA profile from the wad
19 of chewing gum. The wad of chewing gum was heavily
20 stained with apparent blood. And I -- in order to answer the
21 question regarding if there was any saliva present in the gum
22 and whose saliva was it, I had to wash the blood away under
23 the assumption that the blood was from the victim, Duran
24 Bailey. And there was blood on the cardboard that the

WAHL - DIRECT

1 chewing gum was affixed to, and I actually did do a DNA
2 profiling on that and it was Duran Bailey's blood.
3 Q Okay. Did you --
4 A And --
5 Q Were you able to obtain any type of a mixture of
6 DNA with the -- with the wad of gum?
7 A Well, I ascertained that there was a mixture of DNA.
8 My results determined that there was a mixture of DNA, and
9 the mixture was a major component/minor component
10 mixture. And what I mean by that is one of the sources of the
11 DNA was in a very predominant, large quantity relative to the
12 other source of DNA. The major component DNA was
13 identified as coming from Duran Bailey. And it's unclear
14 whether that DNA profile came from residual blood that was
15 on the chewing gum or from the saliva itself. But there was
16 also several DNA markers that were detected that were foreign
17 to Duran Bailey and could not have originated from him. And
18 those mark -- some of those markers were compared to the
19 DNA profile of Kirstin Lobato and she was excluded as a source
20 of that foreign DNA.
21 Q Okay. Can you explain to the jury what it means to
22 exclude an individual from a source of DNA?
23 A It's when you detect a genetic DNA type that an
24 individual does not possess, they do not have, that it's

genetically impossible for them to have contributed the biological material to a piece of evidence because they simply don't have that DNA profile. And that would be referred to as an exclusion.

Q Okay. With respect to at least the chewing gum, I know we've got quite a bit to go through but at least with respect to the chewing gum, does that exclusion mean then that Kirstin Lobato never came into contact with that gum?

A I would -- I would just say that there is no evidence of her DNA on the gum.

Q Okay. So you can't say whether or not she ever came into contact with that piece of gum or not?

A No, I cannot because there was no genetic material that's consistent with her.

Q Okay. Were you also aware of -- were you provided with any information with regards to where the chewing gum was found?

MR. SCHIECK: Objection, that's hearsay, Your Honor.

MR. KEPHART: Judge, I think with respect to this individual and he is an expert giving his opinions as to what -- whether or not he can exclude certain individuals, I think he has a -- has a right to understand maybe the source of where it came from.

MR. SCHIECK: Your Honor, he's a DNA expert. He can testify to the DNA results and anything that he knows from the -- about the crime scene is gonna come from other individuals, who I assume the State's gonna call to lay a foundation. I understand this witness is out of order and the other individuals that impounded the items will be called as witnesses by the State and they can say where the gum and the other items were found, but Mr. Wahl has no knowledge, no personal knowledge, of that.

MR. KEPHART: I never asked with regards to his personal knowledge. I asked if he had any -- an idea with regards to where it'd come from in reference to my question, a followup question, about whether or not somebody can be excluded from having certain DNA on items.

THE COURT: The Court sustains the objection.

BY MR. KEPHART:

Q Okay. Mr. Wahl, you also looked at -- looked at a torn condom pack with a piece of Kleenex recovered from the scene?

A That is correct. Yes.

Q Okay. Were you able to discover or were you able to get any type of evidentiary value out of that?

A I was asked to determine if there was any semen on the Kleenex.

Q Okay. What'd you find?

A There was no indications of any semen on the Kleenex.

Q Okay. Did you --

A Or the torn condom pack, for that matter.

Q Did you get any type of evidentiary information from that then?

A No.

Q Okay. You were asked to look at some high-heeled sandals with apparent blood reportedly collected from Kirstin Lobato, is that correct?

A That is correct.

Q And what was your finding with regards to that?

A When I examined the sandals, I did detect a human bloodstain in the big toe area of the right high-heeled sandal. I did perform DNA analysis on that and I did obtain a partial DNA profile. What I mean by a partial DNA profile is that in our battery of DNA profiling tests, we have the ability to detect thirteen different types of -- thirteen DNA types, plus the gender region of human DNA. I was only able to obtain, I do believe, three conclusive DNA types out of the thirteen possible. But that information was sufficient enough to exclude Duran Bailey as a source of that blood. It did not originate from him. And of the DNA types, I was able to

conclusively derive they were consistent with the DNA types of Kirstin Lobato and she could be the -- could be the source of that blood.

Q Okay. Did you also look at -- and I'm just following your report, Mr. Wahl. Is that all right?

A That's fine. That's easier for me as well.

Q Okay. Were you also provided or asked to look at an aluminum baseball bat that was recovered from a vehicle?

A Yes.

Q Okay. And did you do that?

A Yes, I did.

Q And tell me what findings, if anything, did you have with regards to the aluminum baseball bat.

A I did not detect the presence of any blood on the aluminum baseball bat.

Q Okay. Since we're talking about you were looking for blood with regards to this baseball bat, can you tell us what type of tests that you would conduct to see whether or not you could find blood on a baseball bat?

A The first thing I do is I do a visual examination with the naked eye. And then I -- if I do not see anything that appears to me to be consistent in appearance with blood, I then take the baseball bat and I place it under a microscope called a stereo microscope which allows me to get a closer

1 look at the surface of the baseball bat, to make sure that I
2 don't miss something with the naked eye. The stereo
3 microscope allows me to zoom in very close. It's not as
4 powerful as a microscope which can actually observe individual
5 cells, things as small as a cell, but it allows me to get in and
6 look at the surface of items to see if there might be residual
7 amounts of possible blood that I didn't see with the naked eye.
8 Q Okay. With regards to the baseball bat, the type of
9 material that it's made up of, obviously, you wrote "aluminum
10 baseball bat," is the aluminum baseball bat that you looked at,
11 is it a type of material that would be absorbent, that would
12 maintain or hold blood, for instance?
13 A The metal portion of the blood -- is basically
14 nonporous. Assuming there's no cracks in it, through the
15 baseball bat, it's nonporous. Something like blood would dry
16 and stay on the surface. It wouldn't soak in.
17 Q Okay. And would you -- with regards that it's not
18 soaking in, would it be easily cleaned away, more so than
19 something that would soak it in?
20 A Yeah. Objects that are nonporous, such as metal,
21 are easier to clean substances off it than something that is
22 porous or absorbent, where something fluid would absorb into
23 the material and be absorbed.
24 Q And in your profession, you're familiar with the fact

1 that you can clean substances like blood away from different
2 items?
3 A Sure. Yes.
4 Q A matter fact, when you -- you indicated that you do
5 DNA in your lab?
6 A Yes.
7 Q Okay. What do you do to ensure that you have a
8 sterile lab so then you would not be picking up somebody
9 else's or some other foreign DNA when you test your DNA?
10 A The workbench area that I use to examine items, I
11 clean the area down with a solution of bleach and ethanol, and
12 then I work on top of clean butcher paper, white clean butcher
13 paper, and then I wear latex gloves. Sometimes I wear a
14 mask, depending upon what the evidence is, sometimes safety
15 goggles. But we try to handle the evidence such that we don't
16 introduce some other biological material on to the back.
17 Q Okay. And is it safe to say with regards to blood at
18 least, I mean, hospitals deal with blood every day?
19 A Yes.
20 Q And you don't walk into hospitals and see blood
21 laying all over the floor all the time, do you?
22 A Well, with the exception maybe at an emergency
23 room or something like that or a surgery, but no.
24 Q So they, obviously, they clean it up?

1 A They should be, yes. They have the strict procedure
2 that they should follow to keep things sterile and clean.
3 Q Okay. Now, were you asked to also look at a vehicle
4 slip cover you described as a red with white-and-black floral
5 print?
6 A Yes.
7 Q Okay. And also you were asked to look at a seat
8 cover you described as a two-tone grey from the front left
9 vehicle, recovered from the vehicle?
10 A Yes.
11 Q And what were you doing with regards to looking at
12 these two items? What was your purpose of looking at those
13 items?
14 A I was asked to examine these items for the presence
15 of blood and specifically to focus on areas that yielded a
16 positive chemiluminescent result with a screening chemical for
17 blood referred to as luminol. And it had been reported to me
18 by the CSAs that there were areas on some of these items
19 where they yielded a positive result. And the CSA had actually
20 circled it with a black Magic Marker. I did look at the entire
21 slip cover but I did focus on those areas that were circled,
22 encircled.
23 Q Okay. When we talk about the slip cover, are we
24 talking about something that you would put over a seat?

1 A Yes. That's my understanding, yes.
2 MR. KEPHART: If I could approach the witness,
3 Your Honor.
4 THE COURT: You may.
5 BY MR. KEPHART:
6 Q Tom, we're showing you what's been marked as
7 State's Proposed Exhibits 109, 110 and 111 and ask you if you
8 recognize what these items are.
9 A They appear to be accurate representations,
10 photographs, of the floral print red with black -- white-and-
11 black floral print slip cover reportedly recovered from the
12 vehicle.
13 MR. KEPHART: Okay. Your Honor, I'd move to
14 admit State's Proposed Exhibits 109, 110 and 111.
15 MR. SCHIECK: No objection, Your Honor.
16 THE COURT: Granted.
17 (State's Exhibit Nos. 109, 110 and 111 admitted)
18 BY MR. KEPHART:
19 Q Now with respect to these -- with 109, this is
20 actually a photo of them on the seat, is that correct?
21 A That appears so, yes.
22 Q Okay. And then you have 110. It actually says
23 that's with them off the seat and it actually has it labeled "Left"
24 on the bottom, is that correct?

A It appears so. Yes.
Q And 111 has it off the seat and it has it labeled "Right" on the bottom. Can you see that?
A Yes.
Q Now you indicated that you were asked to look at the vehicle slip cover, red with white floral cover, recovered from the vehicle. And then you were asked to look at the left vehicle seat cover. Is that right?
A I'd have to check my notes. I don't know if I looked at just one or both. This -- you're talking about the slip cover?
Q Yes.
A Which is item -- 8, Item 4. I only looked at one slip cover with that floral design, according to my notes and my report.
Q Okay.
A But I do not know whether it's the right or left one.
MR. KEPHART: May I approach, Your Honor?
THE COURT: You may.
BY MR. KEPHART:
Q Showing you what's been marked as State's Proposed Exhibit 112 and ask you to tell us what that is.
A It appears to be a photograph of a -- of a pair of positive chemiluminescent reaction from luminol. It appears consistent with that.

Q On one of the slip covers?
A Yes, on one of the slip covers. I see two areas specifically there.
MR. KEPHART: Okay. Move to admit Exhibit 112.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit No. 112 admitted)
BY MR. KEPHART:
Q Now you indicated a positive luminol reaction. Can you tell the jury what luminol is?
A Luminol is a chemical solution that crime scene investigators utilize to try to detect possible blood at a crime scene or on any piece of evidence, blood that cannot be seen with the naked eye. It's a visual aid and a visual tool. And if -- when blood reacts with the luminol chemical, there's a catalytic reaction that occurs and light is emitted, luminescent light. In order to detect a luminescent light, you do have to spray the area of interest and then have the lights out or lights very subdued to be able to see the chemiluminescence. And then if there are any areas that yield a reaction that -- a chemiluminescent reaction, then confirmatory testing needs to be done on those areas to confirm whether it indeed is -- indeed is blood. Luminol is a presumptive test only. It is not a confirmatory test for blood. There are other things that do

cross-react with luminol that are not blood.
Q Okay. Let me show you Exhibit 112 up here on the screen. Can you see on there what we're talking about, how it -- what you're describing as a chemiluminescence?
A I see it. It's a little easier on the -- on the photograph, though --
Q Okay.
A -- to see than here. But --
Q Well, okay. Can you just touch the screen and show us where you're --
A May I use a laser pointer?
Q Well, actually, if you touch the screen in front of you.
A Oh. Will it?
Q It will --
A Oh, okay.
Q It will come up on the screen. Maybe circle it.
A Well, actually, I'd prefer to use a laser point, I think, would be easier.
Q Okay. That's fine.
A From my recollection in looking at the photograph, we're looking at that area right there and that area right there, at least those two for sure. I'm not sure about that one, but my recollection from looking at the photograph was that spot

there and that spot there.
Q Okay. And that -- what you talked about a chemiluminescence, that's some type of chemical that reacts with blood?
A Actually reacts with the iron that's in blood.
Q Okay. And --
A In the hemoglobin in the blood, which is a protein in blood that gives the -- imparts the red color.
Q Tell us how it is that you -- that you go about performing a luminol test.
A I have limited experience actually doing luminol from years -- in my early years of forensics, and I'm talking over twenty years ago. But, generally, there are two dry compounds that you --
MR. SCHIECK: Your Honor, could -- I'm sorry. Did he say he hasn't done luminol for twenty years? I would question whether he's qualified then to give an opinion concerning luminol.
BY MR. KEPHART:
Q Is that -- is that what you said?
MR. SCHIECK: Perhaps he could lay a better foundation.
THE WITNESS: I have experience in it. And if the definition of an expert is having knowledge that a layperson

doesn't have, I do believe I qualify.
THE COURT: It goes to weight rather than admissibility. The Court overrules.
BY MR. KEPHART:
Q Well, before we get any further, these particular tests that you're talking about with your testimony is tests that are conducted by the crime lab?
A The Crime Scene Investigation Unit actually --
Q Okay.
A -- performs the luminol. And I have performed it on evidence myself. I haven't -- but I will admit that I haven't done it for quite a while.
Q Okay. But --
A I leave it up to the crime scene people to do that.
Q Okay. And you're familiar with this case, that you know that the crime lab conducted these tests. You didn't do these tests?
A I did not perform the luminol testing. No.
Q You were asked to conduct a further test beyond the luminol, is that correct?
A I was requested to conduct confirmatory tests to confirm that the areas that gave a positive chemiluminescent reaction are blood and could they be -- could it be human blood and, if it was, then to do a DNA analysis and to see if I

could determine any genetic information from the item.
Q Okay. Now you were asked to look at a seat cover, two-tone grey, from the left front seat recovered from the vehicle, is that correct?
A Yes.
Q And did you actually -- did they actually then take it off the seat so when you got it it was off the seat?
A Yes.
Q Okay. You didn't have the actual seat itself?
A No, I did not.
Q Okay. Let me show you what's been marked as State's Proposed Exhibit 113 and ask you if you can tell me what that appears to be.
A It appears to be a positive chemiluminescent reaction from luminol.
Q Okay. Does that appear to be on a seat?
A Yeah, it appears to be.
Q Okay.
A I can see the outline of the conformity of the seat.
Q Okay. And I'm showing you State's Proposed Exhibit 114 and ask you if you recognize what that is.
A Again, this appears to be a positive chemiluminescent reaction consistent with luminol, a positive luminol.

Q Okay. And what is it on?
A It is on a side panel of a door. It appears to be on like a carpet-type surface.
Q Can you tell from that photo what door it would be, the left or the right?
A It appears, looking at the orientation, it appears to be a left --
Q Okay.
A -- orientation.
Q Now, were you asked to actually look at an actual door panel?
A Yes. It was actually removed and brought to or booked in the evidence vault.
MR. KEPHART: I'd move to admit 113 and 114.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit Nos. 113 and 114 admitted)
BY MR. KEPHART:
Q So the jury knows what we're talking about, I'm showing you 113. And this is what you described as a luminescent reaction to what appears to be the seat?
A Yes. It's consistent with what you would -- you would see in a positive chemiluminescent reaction with luminol.

Q Okay. And Exhibit 114, a luminol reaction that appears to be on a door panel?
A Yes. Similar, yes.
Q Okay. And that -- and what we're talking about the reaction is the lighter area, is that correct, where I'm pointing right -- well, you go ahead and point.
A This area here and these areas right up in here.
Q Okay. Now when you examined -- when you examined the seat cover, which is 113, can you tell us what that material was made of?
A I have to refer to my notes, please. Well, it's made out of some type of a cloth material. That's all I can tell you.
Q Okay. It's not leather?
A It's not leather, no.
Q It's not vinyl?
A No, it was not vinyl.
Q It's a cloth?
A It's some type of a cloth.
Q Okay. Cloth.
A Synthetic cloth maybe.
Q Is it porous?
A Yes, it can be depending on how tight the weave is. But, sure, things absorb into it.
Q Okay. And the door panel, when you examined

that, can you tell me if there's two types of substances there on the door panel itself?

A If I understand your question, I do believe this was some -- this would be some type of plastic, and this was kind of like a synthetic carpet material.

Q Okay. Of the two, what are -- which are the more porous?

A This does have some absorbent qualities but it -- my recollection was it was synthetic and kind of a plastic synthetic, plasticized or synthetic type of fibers. And it's not as porous as a seat cover but it's certainly -- I would not consider it totally nonporous.

Q Okay. And what about the plastic on the door, upper portion of the door itself?

A Again, assuming there is no cracks there, I can -- I would classify that as a nonporous surface.

Q Okay. Of the -- of the two on the door itself, could you tell me if someone wanted to clean those items, say they got something on them, say they got blood on them, what of the two -- which of the two items would be easier to clean?

A In my opinion, it would be anything that's nonporous because if we're talking about blood now, it's a fluid that contains some cellular matter as well. And if it's a nonporous surface, it would not soak through, it would stay on the top.

Q So it'd be similar to the bat?

A Yes.

Q Nonporous. Different materials, obviously, but nonporous?

A Yes.

Q Okay. And so you would expect to see the harder portion to clean would be on the bottom on the -- on the door here. Would that be correct?

A Surfaces that have absorbent properties, I think, would be harder to clean just because you would have to -- you'd have to assume that if there was blood present it would -- some of it would soak in further into the material and it'd be harder to get out.

Q Okay. Now you said that when you were asked to examine this that you were aware that there were certain items that had a reaction to the luminol test, and the actual crime scene analysts had circled the areas and asked you to check them further, is that correct?

A Yes, 'cause you have to understand that the -- as I stated earlier, the chemiluminescent, the luminescence, is only visible in the dark and then it will fade after a while. So when I received the evidence, I can't -- I couldn't visibly see anything that appeared to be consistent with the appearance of blood.

Q Okay.

A So the reason why they circle that area is so that I know when I look at it visibly that this is the areas that they observed a positive chemiluminescent reaction.

Q Okay. So luminol is a presumptive test for the detection of blood?

A It's used as a presumptive test for the presence of blood. Yes.

Q Okay. And in -- with regards to what you've just testified to, there was a positive reaction to the luminol test and you call that chemiluminescence?

A Yes. The luminescent qualities of that test is referred to as chemiluminescence.

Q Okay. And you conducted another presumptive test, is that correct?

A Yes. There are other, are a number of different presumptive tests for blood. Luminol is usually primarily used only in -- for the crime scene investigators but, on occasion, it can be used in the laboratory as well. But in our laboratory when we -- the presumptive test that we use for blood is referred to as phenolphthalein.

Q Okay. Of the two tests, is -- can you characterize one or the other one as more sensitive than the other?

A Yes. There are literature that cites the sensitivity of

the various presumptive tests.

Q Okay. And of these two, which one would be the more sensitive?

A The literature cites the luminol as being more sensitive than phenolphthalein.

Q Okay. And when you -- when you conducted the phenolphthalein test, were you able to get any type of reaction to that test?

A I was only able to get a weak positive result with phenolphthalein on one area of the seat cover and one area of the side door panel, and it was a weak positive.

Q Okay. And what we're talking about is this seat cover here and this door panel?

A Yes.

Q Okay. And when you say a weak positive, what do you mean by that?

A In the phenolphthalein reaction, you take a sterile cotton tip swab, you moisten it with sterile water and then you swab the surface that you want to test or the stain, if there's a visible stain there, and then you add some drops of reagent and you can get an instant pink color that forms. This is a positive result with using phenolphthalein. When I'm referring to a weak result, the intensity of the color was very weak and it formed a little slower than you would normally get on a

1 strong reaction.
2 THE COURT: The record shall reflect that Mr.
3 Kephart before that last question had put two different
4 photographs on the viewer with --
5 MR. KEPHART: I'm sorry, Judge. It was 113. It
6 was the --
7 THE COURT: And it's the grey seat cover rather
8 than the floral one.
9 MR. KEPHART: Right. And 114 was the door panel.
10 THE COURT: Thank you.
11 BY MR. KEPHART:
12 Q Okay. And getting back to where I was, the -- when
13 you -- when you got that reaction in conjunction with the --
14 what you knew from the luminol, the positive luminol test, can
15 you say then you actually got a positive test on the
16 phenolphthalein?
17 A Yes. There was a color change and, based on my
18 many years of experience, I recorded it as a weak positive
19 result.
20 Q Okay. And did you do anything then, anything
21 further, to determine whether or not it was blood? Did you do
22 any type of confirmatory tests?
23 A The areas that gave me a weak positive result with
24 phenolphthalein, I then focused on those areas and performed

1 some very vigorous swabbing in those areas to see if I could
2 transfer whatever may have been on the material to the swab
3 and then performed a confirmatory test for the presence of
4 human blood.
5 Q Okay. And what do you do with that? What type of
6 test is that?
7 A It's a test where we have an antibody that's been
8 developed by a biotechnology company that reacts specifically
9 with an antigenic site on the hemoglobin. In other words, the
10 antibody is looking for a biochemical structure and attaches to
11 it if it is human. And then you get a positive result that's
12 actually visible. You get a visible result.
13 Q Okay. And what -- did you have any result with
14 this?
15 A I got a negative result.
16 Q Okay. Does that mean then that that -- these items
17 here are not blood?
18 A It could mean that it's not blood, it could mean that
19 the substance could be blood but it's animal blood, or it could
20 be human blood but the blood has been altered somehow,
21 been degraded somehow. Cleaning solutions, harsh cleaning
22 solutions, could degrade the proteins in the blood such that
23 the antibody cannot react with the antigen. An analogy I
24 could use is suppose you have a key that opens up a lock in a

1 door, and the key works and it'll unlock a door. But if you
2 then took the key out of the doorknob and took a screwdriver
3 and jammed it into the doorknob and kind of destroyed the
4 tumblers, destroyed the keys inside the knob, and then you
5 put the key in and then the doorknob won't open, it's a similar
6 analogy. The blood proteins could be degraded such that the
7 antibody can't recognize it anymore and so you would get a
8 negative result. That's also a possibility. But which of those
9 three it is, I do not know.
10 Q Okay. And you're indicating that, certainly, certain
11 cleaning agents could affect the presence of blood, could
12 affect your ability to do a -- to do a confirmatory test?
13 A There -- if the cleaning reagents had chemicals in
14 the reagents that were harsh enough to cause degradation of
15 proteins and things of that nature, it's possible, yes.
16 Q And you testified earlier that in your own lab, to
17 sterilize your lab, you use bleach. Would you consider bleach
18 some --
19 MR. SCHIECK: I'm gonna object, Your Honor. He
20 said bleach and another substance.
21 THE COURT: Sustained.
22 BY MR. KEPHART:
23 Q Is that correct, bleach and another substance?
24 A I don't know what he's referring to. Bleach? Are

1 you referring to cleaning the -- sir, are you referring to when I
2 clean the counter tops in the laboratory?
3 MR. SCHIECK: I think that's what he was referring
4 to.
5 THE WITNESS: Yes. Following the bleach we would
6 use ethanol.
7 MR. KEPHART: Okay.
8 THE WITNESS: Which is alcohol, basically, what you
9 drink. Alcohol. Ethanol is what's in booze.
10 BY MR. KEPHART:
11 Q Like rubbing alcohol maybe?
12 A It's not rubbing alcohol. It's actually absolute
13 alcohol.
14 Q Okay. So that's what you use to sterilize, but you
15 use bleach?
16 A Well, it's used to sterilize but it's also used just to
17 remove any possible contaminations that may be on the
18 counter top and we want to remove those before we examine
19 evidence on there to minimize cross-transfer of contaminants.
20 Q Okay. Are you also aware that there's many
21 detergents out there that claim that they clean blood, just
22 household detergents?
23 A Yes.
24 Q Okay. And to the degree of which they clean them,

WAHL - DIRECT

you don't know?
A I'm not an expert in that, but I do know that they can be fairly effective. Sure.
Q Okay. And so with regards to this particular car, with the items that we'd shown you that you -- that you've actually examined, is it your testimony today that you just -- you can't say it's blood but you can't say it's not blood?
A That'd be -- that would be an accurate statement. I can't confirm that what gave a positive chemiluminescent reaction with luminol and a weak positive with phenolphthalein is blood to any absolute certainty. It's one of the possibilities.
Q Okay. Were you also asked to conduct various tests with regards to -- let me turn you, go forward now to -- well, let me back up. I'm sorry. I'll stay where we were. Just so we know, the type of tests that you're talking about, the luminol test and the phenolphthalein test, they also may cause a -- happen from a false positive, is that correct?
A Yes. A false positive would be any substances that would give a positive result but are not blood, not due to blood.
Q Okay. And do the -- each test, is there any significance between the two tests, the effect they may have on each other or the effect they may have on their result if you do them together? Do you understand my question?

V-170

WAHL - DIRECT

A I think I understand what you're saying. There are certain substances that are known to give false positive results with luminol and they also can give false positive presumptive with phenolphthalein testing. There are some substances that give false positives with one and not the other. So when you use them in conjunction, you may eliminate some -- when you use the phenolphthalein and luminol in conjunction with each other as a presumptive test, you may eliminate some things as being false positives but still include others.
Q Okay. And what's the general literature that you're aware of that talks about false positives with both substances?
A What is it?
Q Mm-hmm.
A Copper salts, metallic salts are, like bronze, copper, are known to give false positives with both luminol and phenolphthalein. And some plants that contain peroxidase, plant peroxidase, enzymes, have been known to give false positives, both.
Q Okay. Now I'm gonna jump ahead now. October 15th, 2001, did you do a -- perform a test on certain items on that day as well or draft a report at least as of October 15th, 2001?
A Yes, I did.
Q And what were you asked to do there?

V-171

WAHL - DIRECT

A I was requested to examine the left and right fingernail clippings of the victim, Duran Bailey, and the left and right hand swabbings of Duran Bailey, and these items were collected at time of autopsy by the Medical Examiner's Office, and the purpose was to determine if there was any foreign DNA on the clippings or the swabbings.
Q Okay. And were you able to -- did you come to a conclusion with that?
A I did not detect any foreign DNA. The DNA profile I obtained was consistent with Duran Bailey and he, Duran Bailey, was identified as the source of the DNA in those items.
Q Okay. So he didn't have anything under his fingernails like he scratched somebody or something that got in his fingernails?
A There was blood there but it was Duran Bailey's blood.
Q Now I asked you earlier about a lab by the name of Myriad.
A Yes.
Q Okay. And were you able to -- did you have an opportunity to look over Myriad's report and what was conducted and what they were asked to do?
A Yes. I was requested -- I was requested to look at the report last night in my hotel room.

V-172

WAHL - DIRECT

Q Okay. And what were they doing?
A I don't have the actual request that was submitted to Myriad, but looking at the evidence I could surmise that they were -- Myriad was asked to examine the penile swabs, and these are swabbings of the penis of Duran Bailey and swabbings of the rectal or rectum of Duran Bailey at the time of autopsy to determine if any evidence of semen was present.
Q Okay. And this would have been part of the sexual assault kit?
A The medical examiner's kit, which the medical examiner usually or may collect these swabs. I don't know what their policies are on all deceased individuals but --
Q Okay. And this is something that you have done before yourself in your lab?
A Examined medical examiner's kits?
Q Yes.
A Hundreds and hundreds of times, yes.
Q Okay. So you're familiar with what they're talking about here. And the lab actually sent these out to Myriad?
A That's correct. I'm very familiar with this. This is a typical analysis that crime labs all over the country and the world would do on medical examiner's kits.
Q Okay. Can you tell me what the results and conclusions are of what they did?

V-173

A I'll just read verbatim from the. .-port. "On the results and" --

MR. SCHIECK: Can we identify the date of the report, Your Honor, to make sure I have the same one?

THE COURT: Yes.

THE WITNESS: Okay. The report is dated February 13th, 2006.

MR. SCHIECK: Thank you.

THE WITNESS: On the second page of the report under "Results and Conclusions," the first statement is, "Semen was detected on Items 1B," which were penile swabs, "and Item 2A," rectal swabs, "as evidenced by the detection of protein P30."

BY MR. KEPHART:

Q Okay. Did it go further as to identifying whose semen it is?

A Well, in order to do a DNA analysis, the next step would be to determine if any sperm cells were identified on the smears that are prepared by the medical examiner from the swabs. The medical examiner or an assistant would swab the surface of the penis or swab the anal cavity or the rectum of the victim, and then they will take the swab and roll it over a clean microscope slide, and then the swab is air dried, the slide is air dried, and then you can stain the slide and look at it

for the presence of sperm cells. And so Myriad, it appears that they had examined the slides made from the penile swabs and the rectal swabs and the oral swabs. There were oral swabs collected as well.

Q Were they able to come to any conclusion with regards to that?

A No semen was detected on one of -- there was more than one penile swab. And it says here, "No semen was detected on penile swab A." But they did detect semen on penile swab B. And there was no semen detected on the oral swabs. And it appears that there was only one -- I can't tell from the report whether there was more than one rectal swab. They do cite "rectal swabs" in the plural so --

Q Okay. Were they able to determine the source of the semen?

A They then examined the penile smears and the rectal smears and they did not identify sperm, so they went no further. There was no sperm to identify. There's no sperm cells to get a DNA profile from so they didn't proceed any further at that point.

Q Okay. And you wouldn't be the one to talk to with regards to the presence or lack of presence of semen in a man's penis, would you? Would that be the medical examiner?

A Well, I do know that there was -- there are

reservoirs of semen in the testicles, I do believe, and that that's about all I know. That might be better offer of pathologist. But, yes, there are reservoirs of semen in every male here and it stays there until ejaculation occurs.

Q Was there also a request you know of that they -- in the sexual assault kit they did pubic hair combings and pulled pubic hairs?

A Yes. Those were apparently collected by the medical examiner at time of autopsy.

Q Okay. And were you aware that those weren't analyzed by Myriad but analyzed by another portion of your lab?

A I'm reading from Myriad's report, and it appears that they opened up the packaging from a debris -- an envelope labeled "Debris Collection." They state that, "Four apparent hairs were collected from the debris collection envelope. All apparent hairs were mounted on a hair collection card and repackaged with the evidence." My understanding is that Myriad does not do hair comparisons and they may not have been requested to do DNA in any hairs if they were found.

Q Okay. Do you have any independent knowledge of whether or not the lab that you used to work with -- what's her name? Kristina Paulette, do you know her?

A Yes, I do.

Q Were you aware that she had actually done testing with regards to that, what you just talked about?

A Yes. I was aware when they contacted me regarding the upcoming trial and then they happened to mention that. In fact I talked to Kristina and she was mentioning that she was in the middle of DNA analysis of, I do believe, a pubic hair, apparent pubic hair.

Q And you were also asked and you gave a report on the August 6, 2001 in reference to a small piece of apparent plastic with silver-colored paper recovered from the rectum of Duran Bailey at autopsy.

A Yes.

Q Did you look at that?

A I did examine it both with the naked eye and under a stereo microscope.

Q Were you able to determine what it was?

A All I could say, that it appeared to be composed of wax. And I say appear to be composed of wax, not plastic. And I do believe in my, sorry, in my report I did say that on one side of each piece there is a silver-colored coating which may, and I stress the word "may," be paint, vinyl or foil of some kind and no further examinations were performed by myself.

Q So you couldn't determine what that was?

A No.
Q You hadn't seen it before?
A No.
Q You weren't familiar with it?
A No.
Q Okay. Now I want to go back to the -- your testimony with regards to the luminol and the phenolphthalein. And you said that you did a confirmatory test. And have you heard of the term "hemoTrace"?
A Yes.
Q Did I say that right?
A Yes.
Q What is that?
A It is a diagnostic test used to confirm the presence of blood and human blood.
Q Okay. What's the sensitivity with regards to that in comparison to the luminol or the phenolphthalein presumptive tests?
A Hemotrace is a fairly sensitive test but it is not nearly as sensitive as the presumption tests of luminol or phenolphthalein.
Q Okay. Can you give me some numbers with that?
A Well, I don't know what the numbers are, but the order of sensitivity would be luminol that is the most sensitive,

followed by phenolphthalein, then hemotrace.
Q Of those three?
A Of those three, hemotrace is the least sensitive of those three.
Q Okay. And you indicated that -- well, what are you testing in the hemotrace? Is it the hemoglobin?
A You're testing for the hemoglobin protein in humans or higher primates.
Q Okay. And you're aware that there are certain cleaning agents that break down the hemoglobin?
A Yes. Biological substances can be altered by environmental insult, and it could be harsh chemicals, it could be extreme heat and humidity. There are -- it's a well-known fact and it has been for years in dealing in forensic biological sciences.
MR. KEPHART: The Court's indulgence, Your Honor.
(Pause in the proceedings)
BY MR. KEPHART:
Q Are you familiar with CODIS?
A Yes.
Q What is that so we know what that is?
A CODIS is an acronym that stands for Combined DNA Index System.
Q Okay. And what do you do with it?

A It's a database. CODIS is a database that contains databases of convicted felons in different state jurisdictions. It contains DNA profiles from unsolved crimes. And the purpose for the database is to aid in solving unsolved crimes or non-suspect crimes where DNA laboratories in the country may have a non-suspect case, and I'll use a rape case as the most common example, where they've identified sperm on a case and they have a DNA profile from the sperm donor but they -- it doesn't match any suspects or they have no suspects so they upload this profile into the DNA database system and then this profile is searched on a constant basis, day-to-day, against local DNA databases, state DNA databases and then eventually national databases. And at times, unsolved cases, you get what's referred to as a database hit where an unsolved case, a rape, let's say for example, the sperm DNA profile all of a sudden will match somebody in the database and it may be somebody who is already in prison, it may be somebody who has been released from prison or it may match against another unsolved case in another jurisdiction. So --
Q Kind of like fingerprints?
A Yes. The AFIS system. Yes. It's a database to compare forensic evidence to other forensic evidence or to other individuals to try to solve unsolved crimes or non-suspect crimes.

Q And you were telling us that when you look at DNA there's certain -- there's quite a few aspects to DNA?
A In the DNA profiling systems that are used in the United States and, basically, worldwide they generally comprise anywhere from thirteen to sixteen different DNA typing systems. In other words, individuals have a DNA type in thirteen to sixteen different regions of their human DNA. And so you can actually derive anywhere from thirteen to sixteen DNA types and the combination of DNA types is what's referred to as your DNA profile.
Q Is there any number that you have to meet in order to be able to upload it into the CODIS?
A My recollection was you have to have a minimum of, I do believe, ten DNA types to upload into the national database.
Q Okay. In this particular case with regards to the chewing gum, were you able to upload the foreign DNA in the database?
A No. There was not a sufficient number of -- or on the chewing gum you're referring to?
Q Yes.
A The chewing gum, the major component DNA profile was consistent with the victim so there was no reason to upload that. We identified the victim. The foreign DNA, I only

1 detected foreign DNA in three of the -- three or four of the
2 DNA types. And it's minor component DNA, and that still
3 would not -- you still would not be allowed to upload that in
4 CODIS. It's very -- there is very limited genetic information
5 from the minor component on the chewing gum to be able to
6 upload into CODIS.
7 Q Okay. A couple more questions and then I'll pass.
8 Luminol has been around for over twenty years now, is that
9 correct? How long has it been around?
10 A I don't know offhand, but it's been around awhile. I
11 started out in forensics in 1980 and luminol was around then
12 and for some years prior to that. So it's at least, I would say
13 it's probably around thirty years, give or take a few years, at
14 least.
15 Q Are you familiar with whether or not there's been
16 improvements over those thirty, give or take, years?
17 A Yes. Before I came here to testify, I did some web
18 searches just to see what came up on the web searches, and
19 there are certain companies that have developed reagents that
20 -- to be used for screening blood similar to luminol. And the
21 purpose of this was to develop reagents that may not have as
22 many false positive reactions or may not have false positive
23 reactions. I think that's -- and they may be easier to use,
24 things of this nature.

1 Q Okay. And what --
2 A And they are out there. There's one referred to as
3 HemoGlow [phonetic] I saw, but I know very little about it
4 other than that.
5 Q Okay. What about the phenolphthalein?
6 A Phenolphthalein has been around for a very long
7 time. It's also commonly used in chemistry labs in colleges as
8 a titration end point indicator. Phenolphthalein has been
9 around a long time.
10 Q Okay. And both of those are accepted practices to
11 use for presumptive tests for detection of blood --
12 A Yes. I would --
13 Q -- at least in a crime?
14 A It's safe to say that they are used routinely in many,
15 many laboratories and have been for many years.
16 MR. KEPHART: I'll pass the witness, Your Honor.
17 Thank you.
18 THE COURT: Cross.
19 MR. SCHIECK: Thank you, Your Honor.
20 **CROSS-EXAMINATION**
21 BY MR. SCHIECK:
22 Q Good afternoon, Mr. Wahl.
23 A Good afternoon.
24 Q And we sort of ended with you talking about the

1 gum. Let me talk about the gum for a minute. And correct
2 me if I'm wrong in my understanding of DNA and the tests you
3 performed and correct me if I make any misstatements, okay?
4 You tested this piece of chewing gum which had blood on it
5 that you could visibly see, correct?
6 A Yes.
7 Q And that blood, there was also blood on the
8 cardboard where the gum was adhering to?
9 A Yes.
10 Q You tested the blood that was on the cardboard and
11 it came back as belonging to Mr. Bailey?
12 A That's correct. Yes.
13 Q Did you extract some of the blood from the actual
14 chewing gum and test it to see if that was also Mr. Bailey's?
15 A No, I did not.
16 Q Would it be fair to say you assumed because it was
17 sitting in the blood of Mr. Bailey that the blood on the gum
18 was Mr. Bailey's also?
19 A Yes. That's a strong assumption.
20 Q And then you attempted to clean the blood off of the
21 gum in order to check for other DNA?
22 A Yes, because chewing gum is placed in the oral
23 cavity usually, and I was trying to determine if I could
24 ascertain any generic information from saliva on the gum, who

1 chewed the gum.
2 Q And after you had cleaned the blood off of the gum
3 to the best of your ability, you then performed some further
4 DNA testing on the gum itself?
5 A Yes, I did.
6 Q And it came back as a major hit for Mr. Bailey and a
7 minor on an unknown person, is that correct?
8 A I referred to -- yes. I referred to it as major/minor
9 component, in other words, there is DNA, there's a mixture of
10 DNA, DNA from more than one person, and the predominant
11 source of DNA was attributed to Mr. Bailey, and the minor
12 component DNA was foreign to Mr. Bailey but it was also
13 foreign to the defendant, Kirstin Lobato.
14 Q And there were only three areas of DNA that you
15 were able to extract --
16 A If --
17 Q -- from the minor component?
18 A If I may refer to my notes. I was only able to detect
19 three genetic loci or genetic regions where I detected minor
20 component DNA.
21 Q But those three loci were not Mr. Bailey and not Ms.
22 Lobato?
23 A On two of the loci, there was a DNA marking that is
24 foreign to both Kirstin Lobato and Duran Bailey. Therefore,

both of those individuals are excluded as [illegible]ng the source of the minor component DNA.

Q Does that mean then there's another source for that DNA component?

A In addition to Mr. Bailey, yes.

Q And it's not Ms. Lobato?

A It's not Ms. Lobato.

Q Now, when did you stop working here for the crime lab here in Las Vegas and go to North Dakota?

A I retired from Las Vegas Metropolitan Police Department on December -- or January 1st of 2006.

Q 2000?

A '06. This year.

Q '06. Okay. And during the period of time until you retired, you continued to do the same type of work you were doing in 2001?

A I did not do any bench work. I was doing -- I was actually working for some friends here in Las Vegas in their business, which is not forensic science-related, but I also was doing some consulting for a friend of mine who has a private DNA lab in Florida.

Q And during the period of time that you were working for the Metro crime lab, you would get items to test how? How would they come into your possession to be tested?

A What happens is the investigator or, at times, the District Attorney's Office will issue a request for DNA analysis or an analysis of evidence. And then I take the request and I go to a computer that's our evidence computer, and then I create a list using the computer and submit the list to the evidence vault, and then they go find the evidence in storage and then they bring it up to me, bring it to me usually the next day. And then I sign for the evidence and then the evidence gets put into a temporary storage locker until which time I'm ready to start analyzing it.

Q I'm gonna show you two documents in just a second, just to have you identify if we're on the same page.

MR. KEPHART: May I approach, Your Honor?

THE COURT: You may.

BY MR. SCHIECK:

Q If you could just look at these, tell me if these are the forms you would generate or would have generated there at the crime lab.

A I would not generate these. These would be generated by the requester, whoever that may be. But, yes, it appears to be a representative example of a laboratory request.

Q Okay. So the detective or whoever is making the request would prepare one of these and send it to you. You

would enter the computer and request that the evidence be provided to you so you could test it?

A Yes. It would be -- it would be sent to the DNA lab and then whoever was next, whatever analyst was next up to accept a case, if that happened to be the next request up on line, I would -- it would be assigned to me. It would be assigned to me.

Q And you would test the items that you're requested to test, correct?

A In the vast majority of the times, yes. Sometimes I may have a discussion with a detective and we decided not to examine something, but that would be in consultation with the detective.

Q Would you ever have consultation with the detective and say is there any other evidence that I can test or suggest that you might want to test other evidence?

A At times, there may be if it's -- if I'm made aware of certain things about the case or if the detective takes the time to come and meet with me and sit down and go over what's been collected, then we may decide mutually what to test and what not to test at least initially.

Q Do you recall in this case if the detective ever met with you or consulted with you over what items to test?

A The -- I never -- my recollection was I did not

consult with anybody in person. I did have a phone conversation with Detective Thowsen on July 30th of 2001, and it was just a cursory, a discussion of the initial request, and I got some information about where it was recovered and whether anything needs to be tested or not tested based on the request, written request.

Q And then you would perform your testing and prepare a report as to the results of your tests, correct?

A Yes.

Q Okay. And that report then would typically include the items that were provided for you to test and the results of your testing, correct?

A Typically, yes.

Q And in this case you have a report dated August 6, 2001 that reports those results?

A Yes.

Q Other than those results, did you request to test any other items?

A Did I request?

Q Yes.

A No, I did not.

Q So you only tested those items that the homicide detectives asked you to test?

A Yes.

Q And you're not involved at the crime scene or in the collection of the evidence during a particular case, correct?
A No, I'm not.
Q And you certainly weren't involved in this case in the collection of evidence?
A No, I was not.
Q Okay. And you really don't know what other evidence was available to be tested in this case?
A At that time, I wasn't. No.
Q Later you received another request to perform some additional testing?
A Yes.
Q But until that request was forwarded to you, you didn't know that there was other evidence?
A Oh, I knew there was other evidence that was collected but --
Q You just --
A There was not -- nothing was -- that evidence was not requested to be analyzed by the detective or the D.A.'s office.
Q Okay. So unless you're requested to do it, basically, for the most part, you're not testing anything?
A For the most part, unless I'm made aware of something that I think might need to be tested. But I'd have

to be made aware of it.
Q Now the -- in your conclusions you talk about finding, and this is from the August 6th, 2001 report, that you tested a shoe and found a stain in the big toe area of the right high-heel sandal, is that correct?
A That is correct, yeah.
Q Would it be fair to say that you had both shoes and would have tested both shoes so, therefore, the left shoe would have been negative?
A I'm not sure I understand your question. I did examine both shoes.
Q Okay.
A And I only detected one stain that gave me a positive presumptive test for blood, and then I proceeded to do confirmatory testing, that was positive, and then I went ahead and did DNA testing.
Q And what type of confirmative testing did you do?
A I do believe I did hemotrace.
Q So hemotrace is a confirmatory test?
A For blood, yes.
Q For blood in --
A In conjunction with DNA extraction. If I extract DNA and I get human DNA recovered, that is also considered a confirmatory test for blood in combination with the hemotrace.

Q Would hemotrace give you a confirmatory result if it's blood but not human blood?
A It would. There are two citations, there are literature citations that I'm aware of, higher primates will give a positive result with hemotrace. And by higher primates, I'm talking about gorillas, apes, chimpanzees. And there has been reported in the literature that ferret blood has given false positives. However, I have tested seven or eight different ferret bloods and have not ever seen a positive result, but that's not to say that someone else may have. So but it has been reported in the literature.
THE COURT: I'm gonna request a clarification because there was more than one pair of shoes within the --
MR. SCHIECK: I'll --
THE COURT: -- items to be tested.
THE WITNESS: Yes.
THE COURT: I want the record to be clear as to -- as to which shoes.
THE WITNESS: Defense counsel, are you referring to the -- what I have listed at 5, Item 1, it's a pair of black, high-heeled sandals reportedly collected from Kirstin Lobato? That's what you're referring to, correct?
BY MR. SCHIECK:
Q Correct.

A Okay. But getting back, yes, there are things that can give positive results with hemotrace that are not human blood.
Q And while we're talking about the -- was there another pair of shoes that you did test also?
A A pair of Nike Air shoes, black-and-white color, reportedly collected from Kirstin Lobato. And I did not detect any blood on those shoes.
Q Did you perform any testing or did you just visually inspect those shoes?
A I visually inspected the shoe and I may have tested a couple areas that -- just to ensure that I didn't miss anything if it was on if it wasn't a --
Q The request report on both pair of shoes requests that the photographs be taken of the tread of the shoe. Is that something you would do or someone else would do?
A No, that would go to another area of the laboratory. But if a request has been made to examine a pair of shoes, for example, for the presence of blood, it would go to my section first for my examination. And if blood was detected, I would proceed with the analysis before I would send it over to the individual who does the shoe print.
Q With respect to the condom pack, you had indicated that you had checked for semen, is that correct, on the

Kleenex that was found with the condom pack?
A Yes.
Q And did you check for blood with respect to that item?
A May I refer to my notes? When I -- if I'm asked to request -- if I'm requested to look for -- look at something for semen, if I do see blood on there, I will note it in my report and may do a presumptive. And if I deem it necessary, I will go ahead and perform DNA profiling. But there was no apparent bloodstains observed according to my notes, so I didn't --
Q Okay.
A -- do any further testing.
Q So that it was negative on that item also then?
A There was no -- there's no apparent appearance of blood there so I didn't do any presumptive testing.
Q Okay. Now when you examined the baseball bat, it was an aluminum bat, is that correct?
A Yes.
Q Do you recall what --
A I'm assuming it's aluminum. The only metal bats I know of are aluminum.
Q Do you recall whether or not it had a rubber handle on it where the batter would grip the bat?

A Yes, it did.
Q And that is -- that is not a smooth metal surface. That's more of a porous-type surface so that you can get a grip on the bat, is that --
A My recollection was it was a relatively nonporous surface. It's a smooth surface is my recollection. I'd have to look at the bat again but --
Q It wasn't -- it wasn't metal. It was some --
A It was not metal, no. It was some type of a rubber.
Q Did you check the grip area for the presence of blood also?
A Oh, most definitely, yes.
Q You would have checked the entire bat?
A Exactly. Definitely.
Q Now with respect to the items from the car, you indicated that on the left interior door panel of the vehicle luminol testing had been done and had a presumptive result, is that correct?
MR. KEPHART: Here. It's right here.
THE WITNESS: It was reported to me that it was a positive presumptive result, yes.
BY MR. SCHIECK:
Q Were you provided with photographs at the time?
A At the time, no.

Q So when you got -- when you got the door, I mean, they actually took the whole door and brought it to you, is that correct?
A I think my recollection was they removed the door panel and the door panel came to me or was submitted to the evidence vault.
Q But when you got it, the illumination wasn't there because it fades with time?
A It fades relatively quicker from my -- from what I understand, sir.
Q But, however, the crime scene analysts or whoever had done the luminol testing had circled it with a black ink pen, is that correct?
A Yes.
Q Okay. So you were able to determine the areas they wanted you to look at?
A Yes, without having to respray it myself or take it back to be resprayed.
Q And with respect to the door panel that you -- that you saw and tested, you attempted a confirmatory test on that?
A There was only one area. I took phenolphthalein, I took numerous swabs and swabbed areas within the black encircled area, and there was only one area that gave me a

weak positive result. The other areas that I tested were negative.
Q But phenolphthalein is a presumptive test, correct?
A Yes, it is.
Q It's not a confirmatory test?
A That's correct.
Q Did you do any confirmatory testing on the door panel?
A The only area that I did a confirmatory test would be on the area that gave me a positive, a weak positive presumptive test for blood using phenolphthalein.
Q Okay. And the confirmatory test you did was the hemotrace?
A It was the hemotrace. And I also extracted the swab for DNA to determine if I could get any human DNA from the swabbing as well.
Q Okay. Well, on the confirmatory test it was negative?
A The hemotrace was negative, yes.
Q So you weren't able to confirm through scientific testing that that was in fact blood?
A That's correct.
Q And you attempted, and I think your words were, "vigorously swabbed" the area to try to -- just to extract DNA

from the area?
A The purpose for swabbing it vigorously is to try to increase the efficiency of transfer. When I'm swabbing the area, I'm trying to transfer whatever is there that is giving the positive results onto the swab, and then I extract the swab and test the swab.
Q And on the door panel you were unable to find any DNA?
A There's no detectable human DNA with the swab.
Q Even with the vigorous swabbing that you had done?
A That is correct.
Q Okay. So we have a presumptive test that says it's positive but no confirmatory tests and no finding of DNA?
A That is correct. Human DNA.
Q And we talked about false positives, and you indicated that there were a number of things that could give false positives on the luminol testing, correct?
A Yes.
Q Okay. What are some of those?
A Copper salts, some metal salts, some plants that contain what's referred to as plant peroxidase, which are -- it's an enzyme. Those substances have been cited in the literature as giving false positive results with both luminol and phenolphthalein.

Q Are you familiar at all with the Pioche/Panaca area of Nevada?
A I have been through Panaca and Pioche years ago. I've driven through that, but that's as familiar as I have with that area.
Q Are you familiar with the fact that it was a mining area?
A I'm aware that Pioche was an old mining town at one time.
Q Rich in chemicals in the soil?
A Well, rich in some type of elements that warranted mining, yeah. That'd be an assumption, good assumption.
Q That could include copper?
A Yes. I don't know for sure, but I wouldn't be surprised if copper was mined there.
Q And a variety of salts also?
A Sure. Possible. Sure.
Q And those things could provide false positives?
A Sure.
Q And, again, a confirmatory test on those items would come back negative because it's not human blood?
A Assuming there was no blood in with those items, yes, it would come back negative.
Q And with respect to the car seat, you indicated that

there were -- the presumptive tests came back positive on the left one, is that correct?
A If I may refer to my notes. The seat cover, according to my report, the seat cover was reportedly recovered from the front left of the vehicle. That's what was written on the evidence package.
Q And that's the one where the presumptive test came back positive, the same as on the door of the car?
A Yes. Again, I did a vigorous swabbing of the encircled areas and only one area yielded a weak positive result with phenolphthalein, and then I did vigorous swabbing and treated that area just like I did with the other item evidence. And there was -- it was negative, negative hemotrace result, and no human DNA was detected from the extract.
Q And with respect to the -- to the grey car seat that we've been talking about, did you have even any type of a hit on it when you -- there at the lab?
A Which item are we talking about? Is this on my report, 8, Item 5? I only --
Q Yeah.
A According to my notes, I only examined one seat cover. So if this is 8, Item 4 -- or Item 5, excuse me.
Q All right.

A Yes.
Q Item 5.
A Yes.
Q Okay. Which is a two-tone grey?
A Yes.
Q Okay. Which is separate and distinct from the slip cover which is red-and-white?
A That's correct. Yes.
Q Okay. But they both came from the front left of the vehicle?
A Yes.
Q Okay. And the results of that testing was what?
A I think we just discussed that, didn't we?
Q We talked about the red-and-white one.
A Oh, we did? Oh, I'm sorry.
Q Let's talk about Item 5.
A The -- well, I thought you were talking -- the red-and-white one, I don't think -- that was not detected on the vehicle slip cover, red with white-and-black floral print, so I want to clarify that.
Q Okay.
A And when I was talking about the weak positive phenolphthalein and the positive luminol, that was the two-tone grey seat cover I did that test on. I did test the vehicle

1 slip cover, red with white-and-black flora[illegible]nt, and I tested
2 those areas that supposedly gave a positive luminol result but
3 I got a negative phenolphthalein. I swabbed that area very
4 vigorously and did not obtain any positive results with the
5 phenolphthalein test. Therefore, I didn't go any further.
6 Q Mm-hmm. Now the photograph that's in front of
7 you, and for the record it's State's Exhibit 113 which has been
8 admitted, that shows the luminol while it's still luminescing, is
9 that correct?
10 A Yes. Because it does fade following spraying a
11 surface with luminol, the area is made dark, and then they had
12 their photography equipment ready to go to take a photograph
13 because if something does chemiluminescent, it eventually will
14 fade. And my understanding is it fades, you know, fairly
15 quickly. So they want to be able to take it when it's
16 luminescing at its most intense.
17 Q So they take it as soon as they can, as soon as it
18 fully luminesces, to preserve what they've found?
19 A That is my understanding.
20 Q And just so that I'm correct on this, this car seat,
21 this would be the top of the car seat, to your understanding?
22 A I assume so, yes. The conformity of it and when Mr.
23 Kephart showed me the photograph, it appears that that's the
24 top, the top of the photograph is the top headrest area and

1 then going down.
2 Q So your luminol -- the luminol testing actually comes
3 back with a presumptive positive for clean up on top of the --
4 of the car seat itself?
5 A Clean up? I'm just --
6 Q Well, I mean, as far as we can see on the
7 photograph anyway.
8 A Well, if your -- if I understand your question, you're
9 pointing to that area, that's the top of the car seat. And then
10 it appears that there is chemiluminescence from the top down
11 to the -- to the bottom.
12 Q Okay. And all along the -- what would be the left
13 hand side of that car seat there appears to be like splotchy
14 areas of that appear a little bit darker than the others, is that
15 correct?
16 A It appears so, yes.
17 Q Any explanation for that in your experience with
18 luminol?
19 A I don't know if that's something to do with the way
20 the photograph was taken or whether those areas actually
21 chemiluminesced or not. I don't know.
22 Q You're not familiar at all with the car where the seat
23 was removed from?
24 A I have never seen any -- I have seen photographs of

1 the interior of the car but I haven't actually seen what the car
2 looks like on the outside. I actually know very little about the
3 car.
4 Q So you don't know if there's a sunroof on that car?
5 A I do not know.
6 Q And whether something could be poured through
7 the sunroof inside the car, hitting on the car seat?
8 A I do not know.
9 Q When you do a presumptive test using luminol, does
10 it tell you how old the substance is that it's reacting with?
11 A No.
12 Q How old could it be in your experience?
13 A Well, literature does cite that older bloodstains
14 actually chemiluminesce more intensely than fresher
15 bloodstains. So I have read about bloodstains being as old as
16 fifteen to twenty years old that will still chemiluminesce, will
17 yield a positive reaction with chemiluminescence, a strong
18 reaction.
19 Q A strong reaction to the -- to the luminol as much as
20 fifteen to twenty years after the fact?
21 A Well, if something is fifteen to twenty years old,
22 that's an old bloodstain and the literature does cite that old
23 bloodstains tend to luminesce more intense than fresher
24 bloodstains.

1 Q What about on the confirmatory tests; can you age
2 things based on results you get from confirmative tests?
3 A Not with any absolute certainty, no.
4 Q And with -- we talked about the age of the item that
5 the luminol is reacting with. The luminol test doesn't tell us
6 anything about how that, whatever it's reacting with, got on
7 the seat either or on the -- on the surface, correct?
8 A How it got on there?
9 Q Yes.
10 A No.
11 Q So we don't know when and we don't know how and
12 it could be quite a long time ago as far as the luminol testing is
13 concerned?
14 A Yes, that's possible.
15 Q And without a confirmative test we don't even know
16 it's human blood?
17 A We can't confirm it as so, no.
18 Q Okay. And without the DNA tests we can't confirm,
19 if it is blood, whose blood it is?
20 A That's correct.
21 Q And that's basically what the results of your testing
22 were in this case?
23 A Yes.
24 Q The testing that you did perform?

A Yes.
Q Now, apparently, later there was some additional testing requested in this case?
A While I was still employed at Metro you mean?
Q No. Yes. Yes, while you were still employed at Metro.
A Yes.
Q And that was the testing that you performed on the scrapings, is that correct?
A On the report I issued October 15th of 2001, and I was requested to examine the left and right fingernail clippings of Duran Bailey and the left and right hand swabbings of Duran Bailey.
Q Okay. Now you're familiar with sexual assault kits, correct?
A Yes.
Q Okay. I mean, you test those a lot in your line of work?
A Yes.
Q Okay. The various items that are collected from a sexual assault kit?
A Yes.
Q Okay. There are a number of items that can be tested that are collected from a sexual assault kit?

A Yes.
Q Okay. But in this case, from the sexual assault kit, you were -- the request form that you received from the homicide detective was for fingernail clippings and hand swabs and that's all?
A That's all, yes.
Q You weren't requested to check the combings from the pubic hair, the debris collected from the pubic hair, you weren't asked to check the penile swabs or the rectal swabs, correct?
A That is correct.
Q But those were in the same sexual assault kit that the scrapings were in and the clippings?
A Yes, they were.
Q And, again, those testings came back with just DNA of Mr. Bailey?
A Human blood was identified in those items and the human blood was identified as being Duran Bailey's blood.
Q Did you actually attempt to determine if there were foreign substances besides the DNA, dirt or things of that nature?
A Yes. When I -- when I have fingernail clippings, the first thing I do is I look at the fingernail clippings under the stereo microscope to see if there is any apparent tissue

material adhering to it, fibers, things of that nature.
Q Did you find anything in this case?
A Nothing apparent to me, no.
Q So all you tested was the apparent blood that was under the fingernails?
A That's correct.
Q And on the hand swabs?
A Yes.
Q Okay. In a sexual assault case, where are the hand swabs collected from? It's kind of a vague term.
A Sometimes on the out -- I don't know if they actually swab the entire hand, both the top or bottom. Sometimes they may designate on the envelope where they exactly swabbed them. I could check my notes. I can see what they -- my notes said if you want to hold on a second.
Q If you could, please. Thank you.
A Thank you. The containers contain the swabs, my notes reflect that two plastic vials marked L and R, each containing one swabbing of the left and right hands of the victim, Duran Bailey. So there is no information provided to me exactly how those swabbings were performed. You'd have to ask the person who collected them.
Q All we know is somewhere on the hands?
A Yes.

Q There was additional testing done after your involvement with the case, is that correct, the testing by Myriad?
A To my knowledge, yes. I just recently found out about that. So --
Q And all you've done is review the Myriad report?
A Yes. I -- that's the only report of additional testing that I have reviewed.
Q And that report was dated when, do you recall?
A February 13th, 2006.
Q And so your last testing was done in October of 2001, and then four and a half years later some additional testing was done in February of 2006, is that --
A Yes.
Q And that testing, it appears that on the first page of that report there's a complete description of everything that was in the sexual assault kit, is that correct?
A Yes.
Q And that would have been the same sexual assault kit that was available to you back in 2001?
A That's correct.
Q When you were requested just to test the scrapings and the hand swabs?
A That's correct.

Q What was tested, of all the items that are included in this list that was given to Myriad, what was tested by Myriad?
A They analyzed the penile swabs and the rectal swabs. No DNA was performed on those items because no sperm were found. They collected or they examined the debris collection container and found four apparent hairs. They simply mounted the hairs on a collection card and repackaged the evidence. My understanding was they were informed not to do anything with the hairs by the Metro DNA lab, for reasons to keep costs down. The -- there has to be some limitations on what is sent out to the private labs to analyze based on how much money we have, how much money they have in the grant, the grant fund. They -- and as it says here, "As per client request the Items 5, left hand swab, 6, right hand swab, 7, left hand fingernails and right hand fingernails, pubic hair combings, and pulled pubic hairs and pulled head hairs were not analyzed." I had already analyzed the hand swabs and the fingernail clippings. But the pubic hair combings, the pulled pubic hairs, the pulled head hairs were not -- were requested not to be analyzed by the client, which is Metro. Metro lab.
Q Okay. When you do DNA testing, does information from the -- from the blood samples or the samples of DNA that you have give you an idea of the sex of the person that's

involved?
A Yes. The DNA profiling system does examine the region of the sex chromosomes to determine gender, so we can determine the sex or the gender of a biological source.
Q What about ethnicity?
A There -- our laboratory, Metro laboratory, cannot do that. There are some laboratories that are doing forensic application DNA testing to try to put some type of high probability on what the ethnic or the race or ethnicity of someone is. I'm aware of these labs. I don't know much more than that.
Q And on the -- back to the chewing gum just for a second on that area. Were any of the indications you had on the two unidentified sufficient to tell you the sex of the person's DNA or the ethnicity?
A May I refer to my notes?
Q Sure.
A I need to look at the actual data to answer that question. No, because the major component DNA was from Duran Bailey so there was no way to know, there's no way to know with any certainty whether the gender of the minor component DNA is male or female.
Q Okay. And one last area. Are there other bodily fluids that will give a positive reaction to the luminol tests?

And by that, I'm talking about things such as vomit or feces.
A They will give a positive result if there is blood in those, in the feces and in vomit, and blood can occur in those body fluids.
Q So those body fluids could give a positive reaction to the -- to the presumptive tests?
A If there's blood in those body fluids, yes.
Q And were you provided with any vomit to test in this case?
A No, not -- no, not to my knowledge.
Q Do you see any reports where any was collected?
A Where vomit was collected? No.
MR. SCHIECK: Thank you. That's all I have, Your Honor.
THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. KEPHART:
Q Mr. Wahl, can you -- can you tell me in reference to parts per million how sensitive the luminol test is? Are you familiar with the literature on that?
A I have seen literature cited that it's 1 in, I do believe, 10 million.
Q Okay. So what does that mean, like --
A Some of you may be familiar with parts per million

where, for example, if something is sensitive to 1 in 1 million. For example, let's say you had 1 drop of blood and then you dropped it in a big vat with 1 million drops of water and you stirred it up, you should be able to get a positive presumptive test for blood, if you dilute the blood 1 in a million. 1 in 10 million would mean that it would be more sensitive, the test would be more sensitive. They can detect a more dilute substance.
Q What about phenolphthalein?
A Phenolphthalein, I've seen literature cited at 1 in 1 million.
Q So with regards to the seat covers that we have here, and that's the left seat cover. See down here it says "Left"?
A Mm-hmm.
Q On the bottom. And then you identified this.
MR. KEPHART: That was Exhibit Number 110, Your Honor, for the record.
BY MR. KEPHART:
Q 112, you actually would testify as to being able to identify the luminescence on this seat cover here?
A Yes, I recall that. Yes.
Q And that's on the left, came from the left seat. That is actually Exhibit 113. You see that?

A Mm-hmm.
Q Okay. Now these seat covers are, obviously, removable. You could simply take it off the seat. Would you agree with me there?
A Yes.
Q And the seat covers are of a nature that they are cloth. You could simply throw them in the washing machine.
A Yes, you could do that.
Q Would you agree with me there?
A Yes, I agree.
Q Now, on the other hand, the seat itself, you couldn't throw that in the washing machine.
A Unless it was a big washing machine, but no.
Q Nor could you throw the door panel in a washing machine?
A No. I would say no.
Q So is it surprising to you to see that little of what reacts to luminol on the seat cover versus the reaction to the seat, assuming that the seat cover was on the seat when anything, substance, got on it?
A I'm not sure I understand your question. Could you rephrase it?
Q What I'm saying, is it surprising to you to see the small amount of luminescence on the seat cover from

something that appears to have that large amount of luminescence on the seat?
A Assuming that the seat cover was on that seat?
Q When the -- when anything was deposited on it.
A Well, the seat cover just had a couple small spots, if I recall, with chemiluminescence, at least what I could see in the photograph.
Q Mm-hmm.
A And there's quite a bit there. So --
THE COURT: On the seat?
THE WITNESS: On the seat. So I guess I wouldn't be that surprised if assuming, you know, particularly if the seat cover could be washed.
MR. KEPHART: Okay.
THE WITNESS: And what was on -- if the seat cover was on that seat, and whatever is causing the chemiluminescence on the seat could possibly be on the seat cover, but you could wash the seat cover. I wouldn't be surprised to see a smaller amount of the chemiluminescence on the seat cover.
MR. KEPHART: Okay.
THE WITNESS: Whatever is causing it.
BY MR. KEPHART:
Q Are there certain types of cleaning agents, though,

that could give false positives as well?
A With luminol?
Q Yes.
A Yes, those have been cited in the literature as well.
Q Okay. What about with phenolphthalein?
A I'm not -- I don't recall cleaning reagents causing false positives with phenolphthalein. It's -- I imagine it's possible, but I have done a lot of tests myself using phenolphthalein on cleaning solutions. I have yet to see a positive result. It doesn't mean there couldn't be some type of a cleaning solution out there. It's an oxidation reaction, a chemical oxidation reaction with phenolphthalein. So if there is a cleaning solution out there that has a strong oxidation capability, it's possible it could yield a false positive with phenolphthalein as well.
Q Okay. And now you said that the tests, obviously, you weren't able to positively identify what was on the seats as blood. Are you then saying that it is not blood that caused that?
A I can't, using the tests I used, I cannot confirm it's blood. That doesn't necessarily mean it's not blood but I can't say it is blood on there.
MR. KEPHART: Okay. Thank you. I have nothing further, Your Honor.

MR. SCHIECK: Just a couple, Your Honor.
THE COURT: You may.

RECROSS EXAMINATION

BY MR. SCHIECK:
Q Mr. Wahl, what cleaning solutions give you the false positives with luminol?
A I've read literature that cites some bleaches and some cleaning solutions, but I can't cite a particular brand off the top of my head.
Q What component of bleach would cause a false positive?
A I do believe it's sodium hypochlorite, which is -- which is basically bleach, and it's a very strong oxidizing reagent.
Q You indicated, though, that you use bleach in your lab to clean off the lab top?
A Yes, I do.
Q Aren't you worried you're gonna get false positives from the bleach that you use in your lab when you clean?
A That's why we wipe it off with ethanol and that's why I work on top of a piece of butcher paper that covers the counter top.
Q So but it's only certain bleach products. Is that what you're saying? It's not -- if I went down and got Clorox, am I

gonna get a positive reaction?
A Well, bleach is bleach, sodium hypochlorite.
Q So if bleach is used, any place I use bleach, is gonna give a false positive with luminol?
A It may or may not. It might.
Q I don't understand. Why might it and why might it not?
A Maybe there's certain other chemicals in with the bleach that might cause the positive reaction. I don't know. I'm not a chemist.
MR. SCHIECK: No further questions, Your Honor.
MR. KEPHART: Nothing further.
THE COURT: You may step down from the stand.
Ladies and gentlemen, we'll be taking our evening recess and resuming on Monday at 10:30. At 10:30 Monday morning, please be in the hallway. The bailiff will meet you there to return you to your seats in the courtroom.
During this recess you're admonished not to talk or converse among yourselves, nor with anyone else, on any subject connected with the trial, and you're not to read, watch or listen to any report of or commentary on the trial or any person connected with the trial, by any medium of information, including, without limitation, newspaper, television, radio and Internet, and you're not to form or express any opinion on any

subject connected with the trial until the case is finally submitted to you.
You all have a good weekend and we'll see you at 10:30 Monday.
The jury may exit.
The Court will ask that counsel remain.
(Jurors recessed at 17:07:20)
THE COURT: The record shall reflect that the jury has exited.
When we came back from lunch, the State advised that Dixie Tienken was not returned here at 3:15, that she had gone to a hotel room, and it was unknown why she was not back at 3:15. About 3:30, I saw a gentleman wearing a county badge around his neck come in and clear his throat to catch Ms. DiGiacomo's attention and leaned over and whispered something to her. And I thought that perhaps that was your investigator with some information about the witness.
MS. DiGIACOMO: That's correct. That was the investigator letting us know that Dixie was back, Ms. Tienken was back at that time, just about -- it was about 3:28, I believe, by my watch.
THE COURT: Okay.
MS. DiGIACOMO: So she was just late.

THE COURT: And this particular witness, Mr. Wahl, had the plane to catch tonight to go back to North Dakota. And so --
MS. DiGIACOMO: Right. And he's flying out to go to Columbia tomorrow, I believe.
THE COURT: Is Ms. Tienken in the hallway?
MS. DiGIACOMO: She should be, yes.
THE COURT: Would you ask her to step into the courtroom?
Ms. Tienken, would you please return to the witness stand? The Court reminds you that you remain under oath.

DIXIE TIENKEN, STATE'S WITNESS, REMAINS UNDER OATH

THE COURT: You had been instructed to respond back at 3:15 and, apparently, got back about 3:30. Something held you up and just got you running a little bit late?
THE WITNESS: It was about 3:25. Yes. Trying to get all the way to the hotel after I met with this lady in the purple. She can tell you. And the other lady. And then I had to go to my hotel room and then I came right back.
THE COURT: Okay. Unfortunately, because you were late and we didn't know where you -- where you were or when you'd be arriving, we proceeded forward with the next witness out of order. So we're gonna need to come back to

you next week now. Are you able to be back here on Monday at 10:30?
THE WITNESS: No, I cannot. I can be back Monday afternoon but I cannot possibly be back before late afternoon 'cause I'm working.
THE COURT: Okay.
THE WITNESS: I also -- since I have retired from teaching, I work for Nevada State Parks as a guide.
THE COURT: Okay. I'm not sure what the State's anticipated lineup for witnesses was for the beginning of next week.
THE WITNESS: I would say I could be here, depending on traffic, I could be here by maybe 3:00 o'clock, 2:30, 3:00 o'clock.
MS. DiGIACOMO: That's fine.
THE COURT: Okay. So just as soon as you can on Monday, come in.
And should she report to Victim Witness?
MS. DiGIACOMO: Yes. She's working with the out-of-state desk there.
THE COURT: Oh, okay. And the lady in purple is --
MS. DiGIACOMO: She's here.
THE COURT: -- from Victim Witness. And so when you get back on Monday check in with them and then,

1 depending where we are with the other w...esses, we'll fit you
2 in. Okay?
3 THE WITNESS: Okay.
4 THE COURT: Thank you.
5 Is there anything further that we need to make of
6 record at this time?
7 MR. SCHIECK: No, Your Honor.
8 MR. KEPHART: Not by the State, Your Honor.
9 THE COURT: The Court had admonished her not to
10 talk to anybody about her testimony, including counsel for
11 both sides. The Court's gonna have that admonishment
12 remain in effect until she returns to the witness stand on
13 Monday.
14 THE WITNESS: I won't be available anyways.
15 THE COURT: That will make it easy.
16 You may step down.
17 THE WITNESS: Thank you.
18 THE COURT: We'll be in recess 'til Monday at 10:30.
19 MS. GREENBERGER: Thank you.
20 COURT ADJOURNED AT 17:12:44, UNTIL MONDAY,
21 SEPTEMBER 18, 2006
22 **********
23
24

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Transcript filed in District Court, Case No. C177394 does not contain the social security number of any person.

Lin Dunbar
Transcriber

4/29/07
Date

* * * * *

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A **"ROUGH DRAFT"** TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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CLARK COUNTY, NEVADA

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CLERK OF THE COURT

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C177394
	)	
vs.	)	
	)	DEPT. NO. II
KIRSTIN BLAISE LOBATO,	)	
	)	
Defendant.	)	Transcripts of Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

JURY TRIAL - DAY 6
VOLUME VI

MONDAY, SEPTEMBER 18, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

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INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS
STATE'S WITNESSES				
Stephen Pyszkowski	5	23	37/40/49	39/51
Michele Austria	55	74	89/104/108	103/111
Paul Brown	113	125	133	--
Jeremy Davis	144	168	170	170

* * * * * *

EXHIBITS

DESCRIPTION:	ADMITTED
STATE'S EXHIBITS	
180-181	13
196-197	100
106-108	149
DEFENDANT'S EXHIBITS	
C	37
JJ	78

* * * * *

LAS VEGAS, NEVADA MONDAY, SEPTEMBER 18, 2006

PROCEEDINGS

PROCEEDINGS BEGAN AT 10:45:28

(Jurors are present)

THE BAILIFF: All rise, please. Department 2 is now in session, the Honorable Valorie J. Vega presiding. Please be seated.

THE COURT: Good morning. The record shall reflect that we're resuming trial in State versus Kirstin Lobato under case number C177394. The record shall further reflect that the defendant is present together with her three counsel. The two prosecuting attorneys are present, as are all of the ladies and gentlemen of the jury.

Proceeding forward with the State's case in chief. The Court has a couple of things to advise the jury at this time. Tomorrow morning we will not be in session. We will start trial at 1:00 p.m. tomorrow. We will start at 10:30 a.m. on Wednesday, and that's as far as I know at this juncture. And I will keep you apprized on the future dates as I get more information about the upcoming calendars later in the week.

The witness that we had on the stand on Friday, Dixie Tienken, is not available this morning. She will be returning to the courtroom this afternoon. So we are gonna take the next witness out of order in the State's case in chief,

and the State may call forth that witness at this time.

MR. KEPHART: Thank you, Your Honor.

State would call Stephen Pyszkowski.

THE COURT: The Bailiff is calling the hall.

THE CLERK: Please come all the way forward. Remain standing, raise your right hand.

STEPHEN PSYZKOWSKI, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated.

State your name and spell it for the record, please.

THE WITNESS: My name is Stephen Pyszkowski, S-T-E-P-H-E-N Pyszkowski, P-Y-S-Z-K-O-W-S-K-I.

THE COURT: State may proceed.

MR. KEPHART: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. KEPHART:

Q Mr. Pyszkowski?

A Pyszkowski.

Q Pys --

A Pys -- go ahead.

Q Pyszkowski. Okay. I want to draw your attention back to the year 2001 and ask you if you were living here in Las Vegas then?

A Yes, sir.

Q Okay. Do you know an individual -- did you know an individual by the name of Kirstin Blaise Lobato?
A Yes.
Q Okay. Is she in the courtroom now, just so we know you're talking about?
A Yes, sir.
Q Can you point to her and describe what she's wearing for the record?
A In the defendant's seat, maroon dress or blouse, I'm not sure. I can't really tell. Long blonde hair.
MR. KEPHART: I'd ask the record reflect that -- I guess he said in the defendant's seat.
BY MR. KEPHART:
Q Where's she seated? There's three women sitting there.
A The middle.
Q The middle?
MR. KEPHART: Let the record reflect that he has identified the defendant.
THE COURT: The record shall so reflect.
MR. KEPHART: Thank you.
BY MR. KEPHART:
Q How is it that you know the defendant?
A I met her through a worker of mine, a co-worker.

His name was Jeremy Davis.
Q Okay. Do you remember when it was that you met her?
A Not the exact date. It was early in 2001.
Q Okay. Was there a period of time in 2001 that she actually moved in and lived with you?
A Yes.
Q And who were you living with at that time when she moved in with you?
A Cathy Reininger. Cathy Reininger.
Q Okay. Can you spell the last name?
A I'm really not sure on the exact spelling. R-E-I-N-I-N-G-E-R, I believe.
Q Okay. And do you remember when it was that she moved in with you?
A The month of June I would say.
Q June of 2001?
A Yes.
Q Okay. And how long did she live with you there?
A Three or four weeks. It wasn't a continuous time. She was there, then she left, then she came back, then she left again.
Q Okay. Now you said that you met her through somebody that you worked with, is that right?

A Yes.
Q And you said Jeremy Davis?
A Yes.
Q Okay. Did the defendant ever work with you?
A She rode around with me on occasion, yeah. When she moved in with me she offered to help me out --
Q Okay.
A -- and so she came out with me on the job --
Q Okay.
A -- maybe a week or two.
Q And what was the area that you -- what kind of work did you have?
A I service portable fire extinguishers. I had a franchise. And my territory was basically from Charleston on the north side to Tropicana on south side, Rainbow on the west, and roughly the interstate --
Q Okay.
A -- would be the east side.
Q You said that she helped with you, she worked -- she worked that area with you?
A Yes.
Q Okay. Did she ever drive your vehicle?
A Once or twice, yeah.
Q Was she familiar with that area, as far as you knew?

A Yeah. We just drove on the main streets from business to business, so it was -- it was pretty easy driving, and I would be navigating. I would give her the address and it was just up the street to the right or something.
Q Okay. So the streets that we're talking about from the east -- I mean -- sorry, from the south would be Tropicana --
A Right.
Q -- then the next street would be Flamingo --
A Flamingo was a major street.
Q -- Desert Inn?
A Spring Mountain, Desert Inn, yeah.
Q On down all the way to Charleston?
A Charleston. All the -- up to Charleston and Sahara, right.
Q Okay. And it was on the west side of the freeway?
A Yes.
Q Okay.
A The -- it was marked by zip codes 89102 and 103. Those zip codes was my territory.
Q Okay. But that was the west side in that area that you just described?
A Mm-hmm.
THE COURT: Is that a yes?

THE WITNESS: Yes, sir -- yes, ma'am.
BY MR. KEPHART:
Q Okay. Now you indicated that she lived with you for -- during the month of June. Did there come a point in time where she moved out and moved in with somebody that you knew?
A Yes.
Q And who was that?
A His name was Doug, and I don't know his last name -- didn't know his last name.
Q Okay. Do you remember when it was that she moved out to move in with Doug?
A It was before the 4th of July, I remember that. We had talked about doing something on the 4th of July weekend and she had moved out sometime before the 4th of July. And then it -- a couple days before the 4th of July, around the 1st of so, she had come back with Doug and told us that she was moving back up to Pioche.
Q Okay. Now you actually gave a statement to the police in reference to this case on the 23rd of July, is that correct?
A Yes.
Q Okay. Do you remember anywhere in your statement that you told the police that she was moving back to

Panaca or Pioche?
A Yes, I probably mentioned it to them.
Q Okay. Can you -- do you have that statement with you?
A Yes, I do. And what was the question?
Q The question is is where in this statement did you tell the police that she told you that she was moving back to Panaca or Pioche?
A In this, I don't know if I mentioned that. I may have -- this is from the part they recorded, and I talked with the police for about an hour.
Q Okay.
A They only recorded about 15 minutes of the end of the conversation, so --
Q Okay. So it's your testimony here today that during the whole conversation that you had with the police they only recorded a portion of it?
A Yes.
Q And in that portion is the part that you say that she said that she was moving back to Panaca?
A Yes.
Q Okay. Now there's a portion of your statement where you talk about she moved in with Doug, is that correct?
A Yes.

Q Okay. And while she lived with you, did she have any transportation?
A Yes, she had a personal car.
Q Okay.
MR. KEPHART: May I approach, Your Honor?
THE COURT: Yes.
BY MR. KEPHART:
Q Showing you what's been shown to defense as State's Proposed Exhibits 180 and 182. I'm sorry, let me make sure I have the numbers right. 181. 180 and 181. Can you -- have you seen that vehicle before?
A Yes, this looks like her car.
Q Okay.
A Yeah, the sunroof I remember, the pop up lights, yeah.
Q Okay. A Fiero, red Fiero?
A Small red Fiero.
Q Do you remember telling the police it was a red Fiero?
A Yeah, I do.
Q Okay. Does this -- do these photos accurately depict as you recall that vehicle to be when you seen it?
A Yes.
MR. KEPHART: Move to admit Exhibits 180 and 181.

MS. GREENBERGER: No objection.
THE COURT: Granted.
(State's Exhibit Nos. 180 and 181, admitted)
BY MR. KEPHART:
Q See on the --
(Pause in the proceedings)
THE COURT: One of the improvements that we have in the regional justice center as compared to the old courthouse is that we have a lot more technological devices available to assist us in evidence presentation. But the down side of that is that sometimes there are little glitches. And I know the system was up and working earlier this morning, so I'm not sure why it's not at this time.
(Pause in the proceedings)
MR. KEPHART: Okay. That's better.
THE COURT: Okay.
BY MR. KEPHART:
Q You see that on the screen, Mr. Pyszkowski?
A Yes.
Q Okay. That's the vehicle that you've just identified as being the defendant's?
A Yes.
Q And that's the back of it --
MR. KEPHART: And that's 180, Your Honor.

PYSZKOWSKI - DIREC

BY MR. KEPHART:
Q And this is the front of it, is that correct?
A Yes.
Q Okay. You don't know where it's parked there, do you?
A No. But I -- just when you put it up here I recognized the license plate.
Q Okay. So the license plate is -- has some identifiable features to it --
A Yeah.
Q -- is that correct?
A Yes.
Q Let's see if we can tell what it says right here. That better?
A Yes.
Q Okay. So you recognize the car not only by the car itself but by the license plate?
A Yes, because that -- we made light of it before.
Q You made light of it?
A Yeah, it's funny, "fornicated".
Q Okay. Now you said that she had that car when she was living with you, is that correct?
A Yes.
Q Okay. Did she use the car while she was living with

PYSZKOWSKI - DIRECT

you?
A Yeah.
Q It ran?
A Yes.
Q You didn't do anything with -- help her fix anything on the car, did you?
A A headlight one time is the only thing I --
Q Okay. But for purposes of driving it around, you didn't do anything to help her --
A No.
Q -- with that? Okay. Now while she was living with you, do you recall any time where she actually left and went to Panaca?
A There was times when she said she was going back home and she would be gone for the weekend or something like that, yes.
Q So you knew her to travel between Las Vegas and Panaca pretty regularly?
A Yes.
Q Okay.
A Yeah.
Q And she used that car?
A As far as I know, yes, mm-hmm.
Q Okay. Now you indicated that she left and she

SZKOWSKI - DIRECT

moved in with Doug. Did you do anything to help her move? Did you take clothing or furniture or anything like that to help her move?
A No. She didn't have much -- many personal items with her, so a suitcase would be the most she would have to move.
Q Okay. So she could take pretty much anything that she needed in maybe one trip?
A Yeah.
Q Okay. And you said personal items in reference to a suitcase of clothing?
A Yeah.
Q Was there any furniture, television, or anything like that?
A No.
Q Okay. And she lived with you approximately three weeks?
A Yes.
Q During that time that you lived with her, or she lived with you, you lived with Cathy Reininger?
A Yes.
Q During that time were you aware that she was using methamphetamine?
A Yes.

PYSZKOWSKI - DIRECT

Q Matter of fact, did you do methamphetamine with her?
A Yes.
Q Matter of fact, right now you're a convicted felon for methamphetamine, is that right?
A Yes.
Q Okay. Here in Las Vegas?
A Yes, sir.
Q Okay. When you would do methamphetamine at your house and the defendant was present, do you recall where the methamphetamine would come from?
A Not specifically, no. I mean different people would show up with it.
Q Okay. Did she ever show up with methamphetamine?
A She may have, I don't know for sure.
Q Did you ever see her with any type of weapon --
A Yes.
Q -- specifically a knife?
A Yes.
Q Okay. Can you tell me if she did anything particular with that knife that you recall?
A She would pull it out of her pocket on occasion --
Q Okay.

A -- to show people she had it.
Q Okay. Did she ever do anything with it to give you an idea of what kind of knife it was?
A It seemed -- it seems like yeah, she would pull it out and flip it open, flip the switchblade -- not a switchblade but a pop out blade open.
Q Okay. And what kind of knife do you know that to be? Have you ever heard the term "butterfly knife"?
A Yeah, I've seen those, yeah.
Q Okay. And it's something that has to be flipped open?
A Yeah. I guess the two handles fold around the blade or something like that, yeah.
Q Okay. And you can open it with one hand though?
A I guess, yeah. I've seen people do it, yeah.
Q You've seen her do that?
A I think so, yes. I -- I believe so.
Q Did you see her do that while she was living at your house?
A Yes. That's the only time I could've seen it.
Q Okay. Now how well did you know Doug?
A Not real well. He was a mutual contact. I met him through Cathy.
Q Okay.

A He was Cathy's friend.
Q Did you know him well enough to where you actually had phone numbers for him?
A Yes.
Q And you were asked in a previous proceeding to actually tell us the phone numbers, do you recall that?
A Yes.
Q Okay. And you actually told the police the phone numbers as well?
A Yes.
Q Do you recall doing that?
A Yes.
Q And do you recall the numbers?
A No.
Q Okay.
A I could refer back to them, but --
Q I'd ask you to take a look at page 10 of your statement and ask you to read down, to yourself, about 5 lines down, and I'm gonna ask you if that refreshes your memory as to whether or not you knew the numbers of Doug -- Doug's cell phone and his home number?
THE COURT: Do we have a copy we can mark for identification purposes?
MR. KEPHART: Oh, okay, yeah.

THE COURT: How's it marked?
MR. KEPHART: 194, Your Honor.
THE COURT: Thank you.
BY MR. KEPHART:
Q Do you have that, Mr. Pyszkowski?
A Yes, I believe I do.
Q Is that a copy of the statements that we gave you?
A Yes, sir.
Q Okay. And we talked to you last week, is that right? You came to our office?
A Yes.
Q Okay. And before -- at least before the last proceeding I spoke to you on the telephone, is that correct?
A Yes.
Q Okay. How many pages is the one that you have?
A 18.
Q Okay. And on the front page does it have a date of when you -- turn it to the front page.
A There's two of them together. Okay.
Q Okay. The front page down there, it says after the dark line, see at the bottom --
A Mm-hmm.
Q -- actually has a date of when you gave the statement and what --

A Mm-hmm.
Q -- detectives were present, is that correct?
A Yes.
Q Okay. Has your name on it up at the top with it underlined?
A Yes.
Q Do you see that?
A Right here?
Q Yeah.
A Yes.
Q Okay. If you'd turn to page 10. Do you have that?
A Yes.
Q About 1, 2, 3, 4, 5 lines down, you actually -- you give an answer. There's an A before it --
A Mm-hmm.
Q -- and then you say -- do you remember the question, can you tell me what they were?
A Mm-hmm.
Q And then you said yeah. And then you read off Doug's cell phone number and then the home phone number, is that correct?
A Yes.
Q Does that refresh your memory as to your conversation, at least in that regard, to the police?

PYSZKOWSKI - DIRECT

A Yes.
Q Okay. Can you tell me what the phone numbers are, his cell number?
A Okay. It's 275-9271.
Q And his home number?
A 436-5847.
Q Okay. Now you're just reading that from the statement, is that correct?
A Yes, sir.
Q You don't have any independent recollection of those phone numbers, do you?
A I can't, no. I have no idea.
Q Okay. When is the last time that you actually spoke to Doug?
A The last time was probably July 1st or July 2nd of 2001.
Q Okay. Back in 2001?
A Yes.
Q Okay. Would you characterize Doug as a friend of yours?
A No, an acquaintance.
Q Did you ever do methamphetamine with him and the defendant together?
A Probably, yes.

PYSZKOWSKI - CROSS

Q Well --
A Yes.
Q -- do you remember?
A Well, yes.
MR. KEPHART: Court's indulgence, Your Honor.
THE COURT: Yes.
MR. KEPHART: Judge, here's the statement.
THE COURT: Thank you.
(Off-record colloquy)
MR. KEPHART: I'll pass the witness, Your Honor. Thank you, Mr. Pyszkowski.
THE COURT: Cross-examination.
MS. GREENBERGER: Thank you.

CROSS-EXAMINATION

BY MS. GREENBERGER:
Q Good morning, Mr. Pyszkowski.
A Morning.
Q My client, Blaise Lobato, lived with you during what time period?
A The month of June 2001. Probably most of the month.
Q Do you remember the last time you saw her, approximately?
A 2002, I saw her one time.

PYSZKOWSKI - CROSS

Q What about in 2001 when --
A 2001, I saw her when she was leaving with Doug to -- they said they were -- Doug was helping her move back to Pioche -- Panaca to go back with her dad. She didn't want to stay in Vegas anymore.
Q Do you recall that time period being early July, July 1st or July 2nd --
A Yeah.
Q -- 2001?
A Yeah. Because earlier in the month leading up to the 4th of July, we had made plans for the 4th of July, and we were hoping Blaise would be there for that and --
Q So the July 4th holiday of 2001 --
A Yes.
Q -- is a point of reference?
A Yeah. And we even talked with her as she was leaving that we wanted her to stay 'till then, but she said no, she wanted to go home, so we ended up cancelling out plans, I think, for that weekend for the 4th of July.
Q During the time period that she was living with you, can you explain to us what type of work you were doing?
A Servicing portable fire extinguishers, annual service.
Q What size were the extinguishers?
A Anywhere from 5 pound to 10 pound. They were

PYSZKOWSKI - CROSS

the small extinguishers, the ones you see everywhere in hallways, the ones required by law.
Q Did Blaise assist you on an infrequent basis?
A Yeah. I think when she was staying with me she offered to help me out to help pay for -- or cover her share of the living expenses. And her offering to help was -- I accepted it and took her out. And she also wanted to learn the business, the trade, and you know, see if it was something that she wanted to do for work, and so I showed her.
Q So is it fair to say she helped you a few times?
A Yeah.
Q During those times that you worked together you were familiar with the territory that you covered?
A Right. I've been doing it for years, yes.
Q You actually were the one that was navigating around Las Vegas, is that correct?
A Yeah. I was driving most of the time too. If she drove then I would tell her, you know, it's 3 or 4 blocks up on the right hand side, something like that, pretty simple directions. And they're businesses. I was servicing extinguishers at businesses, so it was just from business to business. They would have a big sign up too usually, you know, to make it convenient. So it wasn't hard driving. The traffic is the worst part.

Q Was -- can you quantify the m. ge within your territory in terms of is it -- was it a 20 mile span or --
A Well, it's probably -- it's not more than 10 miles square. It's pretty much of a square. And I would say between 5 and 10 miles at most, yeah.
Q The police came to interview you in July of 2001, is that correct?
A Yes.
Q You mentioned on direct examination that you spoke with them initially before they recorded you, is that accurate?
A Yes.
Q How long did that conversation occur when you spoke to the police without the recording?
A We talked totally for over an hour, I'm pretty sure, well over an hour, hour, 10, 20 minutes probably.
Q Did it concern you that that portion was not recorded for an hour?
A Not at the time. They just questioned me, took down some notes and everything, and then asked if it would be all right to record, you know, some more questions, or to basically to go back over. They were condensing the whole interview down to a few questions that they wanted recorded on tape, I think.
Q The police were the ones asking the questions?

A Yes.
Q During the recorded portion of the statement when the police interviewed you, and your prior testimony, you told them their timeline was off, is that correct?
A Yes, I mentioned that to them.
Q What did you mean by that?
A Well, they were asking me questions about -- about Blaise -- Blaise staying over at the house, and they had mentioned something that had happened on a certain date. And I said well, you know, Blaise was living with me the month before that happened. And I had mentioned that those two dates didn't line up, that --
Q The police came to talk to you about an incident that happened July 8, 2001, the murder of Duran Bailey, is that correct?
A Yes.
Q You told the police you had heard about an attack on Blaise the month before, correct?
MR. KEPHART: Your Honor, I'm gonna object on hearsay grounds.
THE COURT: Counsel approach.
(Off-record bench conference from 11:13:00-11:15:06 a.m.)
THE COURT: The objection is sustained.
///

BY MS. GREENBERGER:
Q You relayed information to the police when they came to interview you in July, is that correct?
A They didn't interview me -- oh, in July, yes. Right.
Q The information that you relayed to the police was derived, came from information you learned during the time period of June 2001, is that correct?
A They were asking me about --
MR. KEPHART: Judge --
THE COURT: That calls for a yes or no.
THE WITNESS: Okay. Please ask the question again. I'm sorry.
BY MS. GREENBERGER:
Q Certainly. The information that you discussed with the police --
A Mm-hmm.
Q -- was information that came from June 2001, is that correct?
A Yes.
Q Were the police suggesting to you that you might be mistaken on your time period?
MR. KEPHART: Your Honor, I'm gonna object as to hearsay.
THE COURT: Sustained.

BY MS. GREENBERGER:
Q You've had an opportunity to review the statement you made to the police, is that correct?
A Yes.
Q Are there portions missing from that statement that you told the police?
A Yes. I don't believe everything we talked about is in here.
Q Part of what you're basing your recollection on the time period is from a tow receipt when my client, Blaise's car was towed, is that correct?
A Yes.
Q Do you remember what date the car was towed?
A Yeah, I believe it was June 6th.
Q Would it refresh your recollection to look at your prior statement?
A Yes.
Q If it would, you may. I would direct you to page 3 at the bottom.
MS. GREENBERGER: May I approach, Your Honor?
THE COURT: Yes.
THE WITNESS: Yeah, it's 6/6/01, yes.
BY MS. GREENBERGER:
Q So on June 6, 2001, can you describe what

PYSZKOWSKI - CROSS

occurred?
A I was heading off to work and as I'm leaving my street, about a half a block away, I make a turn. Right there there's an apartment complex across the street from that intersection, and there was a tow truck pulling out and it had Blaise's car hooked on the back of it. I was able to stop the tow truck operator and told him that it was a car that belonged to a roommate or a person staying at my house, and I was gonna try to get him not to tow the car.
Q Were you successful in that endeavor?
A Yes. Yes. We had to go back and get Blaise from the house, come back and prove ownership, and we also had to pay for it. We still had to pay for it being towed.
Q So during the time period that Blaise was living at your house, her car was towed?
A Yes.
Q And from the time period that you left on July 4th, you recall that because you had plans on July 4th?
A Mm-hmm.
Q She was gonna leave --
A Before that.
Q -- and she left before that?
A Right. Yes.
Q Did this vehicle have mechanical problems, if you

PYSZKOWSKI - CROSS

know?
A The only ones I know of were the headlights. One of the headlights wouldn't stay open. They had pop up headlights.
Q Did you previously tell the police that a friend of hers, Mitch, may have fixed the car for maintenance problems?
A Yes.
Q You don't know the specifics of what they were?
A Right. Right. I'm not a mechanic, right.
Q You mentioned that Blaise carried a knife around?
A Yes.
Q You testified that she would pull it out of her pocket on occasion and show people. Can you explain that a little bit?
A She would just flip it out and say don't mess with me or I'll cut you, or something like that, and put it away. It was --
(CD malfunction from 11:20:18 to 11:20:32)
A -- putting up like a wall, acting tough, more so than she -- she was actually -- I don't believe she was very scary, she was just trying to act that way.
Q Did this happen on a common occurrence during the time period she lived with you?
A Yes, I would say two, three times, at least.
Q You state it was a defense mechanism. Can you

PYSZKOWSKI - CROSS

explain that?
A Well, Blaise and I --
MR. KEPHART: Your Honor, I'm gonna object as to his speculation as to whether or not that was a defense mechanism.
THE COURT: Overruled.
BY MS. GREENBERGER:
Q You can answer.
A That was my opinion of what she was doing. I didn't take her serious, and it was never directed towards me. And it was -- it was never a big deal made out of it, and the knife went back in her pocket right away. And it was -- it was a show basically. I had had conversations with Blaise earlier.
MR. KEPHART: Your Honor, I'm gonna object to any conversations that she had as hearsay.
THE COURT: Sustained.
BY MS. GREENBERGER:
Q During the time period that Blaise lived with you, did she share various stories with you?
A Yes.
Q On a number of occasions?
A Yes.
Q Did you have a personal opinion that those stories were exaggerated?

PYSZKOWSKI - CROSS

MR. KEPHART: Your Honor, I'm gonna object. He'd asked to his opinion and also speculation. How could he make that determination, Your Honor, based on what, just -- I think it's certainly speculating as to whether or not any of the stories are correct or not.
MS. GREENBERGER: I'll rephrase it.
THE COURT: Withdrawn.
BY MS. GREENBERGER:
Q On the number of occasions my client spoke --
MR. KEPHART: Your Honor, I'm gonna object as to foundation as well. She's talking about on a number of occasions. I mean what are we talking about? He spent three weeks with her.
THE COURT: Sustained.
BY MS. GREENBERGER:
Q Based on what you know of my client's character, did she exaggerate?
A I believe so, yes.
Q Can you explain?
A She had talked about her past, going all the way back --
MR. KEPHART: Your Honor, I'm gonna object to hearsay.
THE COURT: Sustained.