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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APPELLANT'S APPENDIX

VOLUME 3

APPEAL FROM NOTICE OF ENTRY OF DECISION AND ORDER

IN THE EIGHTH JUDICIAL DISTRICT COURT

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Docket 58913 Document 2012-03247

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EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

11 17 AM '07

COPY

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 9
VOLUME IX

THURSDAY, SEPTEMBER 21, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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STATE'S WITNESS				
Louise Renhard	5	107	151	163

* * * * * *

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LAS VEGAS, NEVADA THURSDAY, SEPTEMBER 21, 2006

PROCEEDINGS

PROCEEDINGS BEGAN AT 1:24:24 P.M.

(Jurors are present)

THE BAILIFF: . . . Vega presiding. Please be seated.

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

Ladies and gentlemen, since we recessed yesterday evening an issue developed with Juror Robert Graham, who had been in chair number 8. That has put him in a position where he cannot be attentive and fair with this trial, so he has been excused from jury service, and the attorneys have stipulated to proceed forward one juror short.

We are proceeding with the State's case in chief, and the State may call its next witness.

MS. DiGIACOMO: Louise Renhard.

Your Honor, may I approach the clerk?.

THE COURT: Yes.

THE CLERK: Please come all the way forward.

1 Remain standing and raise your right hand.
2 **LOUISE RENHARD, STATE'S WITNESS, SWORN**
3 THE CLERK: Thank you. Please be seated.
4 State your name and spell it for the record, please.
5 THE WITNESS: Louise Renhard, L-O-U-I-S-E
6 R-E-N-H-A-R-D.
7 THE COURT: State may proceed.
8 MS. DiGIACOMO: Thank you, Your Honor.
9 **DIRECT EXAMINATION**
10 BY MS. DiGIACOMO:
11 Q Would you please state your occupation?
12 A I'm a senior crime scene analyst with the Las Vegas
13 Metropolitan Police Department.
14 Q How long have you been a crime scene analyst with
15 Metro?
16 A Just over 10 years.
17 Q Do you have any experience prior to coming to
18 Metro?
19 A Not as a crime scene analyst, no.
20 Q And what is your training and experience that allows
21 you to be a crime scene analyst?
22 A When they hire us we're required to have a
23 university agree, preferably in a science or police science of
24 police criminal justice field. Mine's in police administration.

1 When we first start we go through an academy, not
2 like a police officer does, but specifically for crime scene
3 analysis. And that academy is geared towards the
4 photography, the documentation, diagraming, collection of
5 evidence, processing for fingerprints of crime scenes. That's
6 the sole point of that academy. It's specifically towards the
7 crime scene investigation.
8 After we finish the academy we go through 10
9 weeks of what's called field training. During that time we start
10 out with -- we train with senior crime scene analysts that have
11 been in the field and are already beyond their probationary
12 period as a senior. So we start out with them and we ride
13 with them. At the beginning of the training we just -- we go,
14 we observe, we take notes. And then one week at a time we
15 advance to where we're taking notes and doing photography,
16 taking notes and processing for fingerprints, taking notes,
17 processing for fingerprints, collecting evidence. And then we
18 continue on through the entire 10 weeks until we're not riding
19 with them, where they come out and follow us to a scene, and
20 we're only doing property calls at this time, basically your
21 burglaries, your larcenies. And then as the weeks progress
22 we're finally at a point where they no longer have to follow us
23 on a property crime.
24 We spend 2 years doing property crimes as a crime

1 scene analyst 1. We then do an intensive practical exam of 8
2 hours where we process a scene, a mock scene for sexual
3 assault homicide. We have 8 hours to process it, recover our
4 prints, do our reports, recover our evidence, do our
5 photography and do a diagram. If we pass that we continue
6 on to be a crime scene analyst 2.
7 As a crime scene analyst 2 we spend 2 years where
8 we do lesser persons crimes, robberies, some sexual assaults,
9 and we will go out with a senior on a homicide and maybe do
10 a diagram. We'll get some exposure to the homicides. After 2
11 years as a level 2 we test, it's a competitive testing, into senior
12 crime scene analysts.
13 At each level we have 1 year probation that we have
14 to go through. If we pass the senior level test, which is your
15 basic written, oral board, practical exam, we continue on to be
16 a senior crime scene analyst with 1 year probation.
17 And during all this time, in our first year we also
18 have to complete the American Institute of Applied Science
19 Forensic Science correspondence course. And in -- at my
20 second level I had to test for in the International Association
21 for Identification as a crime scene analyst, which is a level 2,
22 and their certifications, and I had to be certified for that.
23 And then during the entire time every year we're
24 going to more training, in-service training, training that comes

1 into town. I've done training in practice homicide
2 investigation. latent print recover, latent print processing,
3 latent print identification, buried body recovery, forensic
4 anthropology, blood stain pattern analysis 1 and 2 workshops,
5 shooting reconstruction workshops 1 and 2, and it just
6 continues.
7 Next month I'm going to a photography conference
8 and seminar and training. And so we continue on throughout
9 our entire career every year, picking up more training to keep
10 us updated. The field is changing phenomenally.
11 Q Now you're continuing each year to update. Is that
12 required by Metro or is that required for your -- to be a crime
13 scene analyst?
14 A Metro requires, I believe it's 24 hours of training
15 each year. I don't know that Metro breaks it down as to what
16 that training is. The training -- we have a training coordinator
17 who constantly brings training to us, and if we haven't had it
18 they require us to take it.
19 Q But you can also pick and choose any training you
20 want to do in your field?
21 A Yes, we can to a degree. And if we want to go on
22 our own, for instance, the photography one I'm going to next
23 month -- it could be November actually, I'm not sure. But that
24 was one I requested to be sent to.

Q And you said you're a senior crime scene analyst?
A Yes.
Q How long have you been a senior crime scene analyst?
A 11 -- no, I'm sorry. 6 years.
Q Now I want to direct your --
A Or 5 -- or 7 years.
Q 6 or 7 years?
A Yeah, I'm not --
Q Okay. I want --
A I'm not sure right off the top of my head.
Q Okay. I want to direct your attention to July 8, 2001. Were you working on that date?
A Yes, I was.
Q And what shift would you work?
A I work grave shift and I was working grave shift at that time.
Q Okay. And so on that date, on July 8th, when would -- 2001, when would you have gone into work?
A Our shifts have changed. We now work 10 hour shifts, and I don't know if at that time we were working -- at one time when I started we worked 8 hour shifts and started at midnight. We then went to 9 hour shifts and started at 11:00. And I don't recall which shifts -- or how the -- how it

was organized at that time.
Q Okay. Well, with regard to this incident we're gonna talk about, do you recall what time you got to the scene?
A Yes, I got to the scene at 11:42 --
Q All right.
A -- p.m.
Q So if you got to the scene at 11:42, and that's p.m.?
A Yes.
Q You would've gone to work that night at approximately, anywhere between 10:00 and 11:00?
A Yes.
Q Okay. And when would you shift have ended?
A 8:00 a.m.
Q On July 9th?
A Yes.
Q So did you on July 8, 2001, respond to 4240 W. Flamingo Road?
A Yes, ma'am.
Q And what is that?
A That's a -- it's a bank, the address for a Nevada State Bank, and a parking lot that surrounds the bank.
Q And specifically where were you called to?
A In the northwest corner of the parking area there's a dumpster surround. The big concrete block surrounds the

heavy duty dumpsters, commercial dumpsters are kept, and that was where the scene was located.
Q Is this in Clark County, Nevada?
A Yes.
Q Who else responded from your department?
A From my section?
Q Yes.
A From my section Dan Ford, senior crime scene analyst Dan Ford, and crime scene analyst supervisor, Al Cabrales.
Q Were there any other crime scene analysts out there?
A Yes, there was. Senior crime analyst Teresa Main.
Q At the time that you received this call and went there, did you know what you were responding to?
A I knew I was responding to a dead body call.
Q All right. And is that why only senior crime scene analysts arrived?
A Not necessarily. When I was sent out there we knew we -- it was a dead body call, and it was my turn in the rotation to go, and that's why I was sent specifically.
Q Now is it normal with a homicide or a dead body call for more than one crime scene analyst to respond?
A It's normal with a homicide for more than one to

respond, but with a dead body, a suicide, a fatal accident, natural cause, possibly a overdose or accidental, it's more common for just one to respond. But for homicide cases a team of us will respond.
Q And in this case were you the first to arrive?
A Yes, ma'am.
Q And when you arrived what was it that you discovered, or what was the scene you saw?
A When I arrived there was a police officer, Officer Testa, who was already at the scene. And he had it roped off already with yellow crime scene tape, and he was back at the beginning of the parking lot, or at the south end of the parking lot, and he met me there and explained what the -- you know, what he had.
Q Now was it your call to ask for more crime scene analysts to come out, or how did that come about?
A Yes. In this case the person who had discovered the body called the police officer, the police officer came. He looked at the scene, it determined that it was a dead body, but at that point he did not know the cause of death or whether it might be a homicide or it might be a natural or what the circumstances might be. So he called for -- he roped off the scene, he called for us. And I came out and the general assignment detectives Morgan and Hutchinson also arrived,

1 and between the three of us we made some decisions to try to
2 attempt to discern whether or not it was a homicide or it was a
3 natural.
4 Q And how did you make that decision?
5 A Eventually it came to me to try to -- the body was
6 covered wit a lot of debris, and to try to lift a corner of it,
7 trying to disturb as little as possible of what was there to try to
8 determine whether or not there was any kind of trauma to the
9 body that would indicate a homicide. And I lifted the -- some
10 of it up as gently as possible, I determined that there was
11 trauma to the face, and at that time it was considered a
12 homicide. We all backed out of the scene. I called for a
13 supervisor and other crime scene analysts and the general
14 assignment detectives contacted the homicide.
15 Q How long did it take for homicide detectives and the
16 other crime scene analysts to arrive, if you recall?
17 A I could look in my report real quick, but I don't
18 remember exactly how long. The homicide detectives
19 would've been on-call, they would've been at home in bed, so
20 however long it takes them to get up and get dressed and
21 drive from their home to the location. The other crime scene
22 analysts weren't that far away, they were at the lab, and they
23 would've immediately loaded up -- they would've actually
24 already been loaded up. They would've just got their

1 notebooks and stuff and come straight out to the scene. The
2 crime scene analyst supervisor was on-call because our
3 supervisor was, I believe, on vacation. And so he also had to
4 be called at home, woken up, and get up, get dressed, and
5 drive to the scene.
6 Q So would looking at your report refresh your
7 recollection?
8 A Yes, it would.
9 Q If you -- do you have a copy or did you need --
10 A I do have a copy.
11 Q If you want to pull that out. And are you looking at
12 your crime scene report dated July 8, 2001?
13 A Yes, ma'am.
14 MR. SCHIECK: Could I verify number of pages,
15 please?
16 THE WITNESS: This is three pages.
17 MR. SCHIECK: Thank you.
18 THE WITNESS: CSA Dan Ford arrived at 20 minutes
19 after midnight, along with detective Sergeant Manning,
20 LaRochelle and Thowsen. crime scene analyst supervisor
21 Cabrales arrived shortly after that, and crime scene analyst
22 Main arrived at about 1:40.
23 BY MS. DiGIACOMO:
24 Q Okay. Now when everyone gets to the scene, were

1 there division and duties?
2 A Yes. When everybody gets to the scene after the
3 general assignment detectives responding -- the initial
4 responding officers give us a briefing, the supervisor will assign
5 duties. Homicide scenes require quite a bit of work, and so we
6 split the duties between us.
7 Q And what were your duties at the scene?
8 A Myself, I was responsible for the photography and
9 writing this report that I just referred to.
10 Q What about Dan Ford?
11 A Dan Ford's responsibility was to collect the evidence
12 and to prepare a crime scene diagram.
13 Q And what about your supervisor, Al Cabrales?
14 A He supervised us.
15 Q Okay. And what about Teresa Main when she came
16 out later?
17 A Teresa Main brought out what's called a 4x5 camera,
18 and at that time we used the 4x5 camera, which is a camera
19 that takes a photograph on a negative that's actually 4x5
20 inches. It's a large format camera. And she brought that out
21 to do some photography of the -- of some time impressions
22 that we noted and some footwear impressions that we noted.
23 Q All right. Now can you describe the enclosure of the
24 dumpster area?

1 A As I stated before, it was located at the northwest
2 corner of the parking lot, and it was on the west side of the
3 property. There's a block wall that runs along the property
4 line, along the west property line and the north property of the
5 parking lot. The bank, say, is in the center, and there's
6 parking on the west side, there's parking on the north side,
7 and a block wall along the perimeter of the property. In the
8 northwest corner, or near the northwest corner was where the
9 dumpster surround was. It was backed up to the west wall. I
10 believe there was a foot or two -- two to -- maybe two to three
11 feet between the back of the -- the back wall of the enclosure
12 the west property wall. And it was about 51 feet from the
13 north wall.
14 So it was near the northwest corner but it was just a
15 little bit south. It had a concrete block wall surrounding it. It
16 was -- had one dumpster in it. The dumpster was open. The
17 dumpster was near the south wall of the enclosure. There
18 were two big double metal doors that open outwards on the
19 enclosure. And the enclosure was covered. It had like a
20 cyclone fence cover on it.
21 Q Now what about the inside of the dumpster, what
22 did it look like? Not the actual dumpster itself, the enclosure?
23 A The inside of the enclosure, like I said, the dumpster
24 was up against the south wall towards the east end, towards

the doors, and the two -- the double lids were open. And inside to the west of the dumpster was piled with debris, trash basically. The trash appeared to have come like from the dumpster. Most of it was paper debris.

Q Now did you ever notice whether or not there was any curbing or bumpers inside the enclosure?

A Yes. The enclosure had curbs that ran around all three of the concrete block sides, and then on the south side and the north side there were little bumpers set just inside the curbs. And the north side -- or the west side, the back, did not have any of those bumpers.

Q And the bumpers, what were they made of?

A Concrete.

MS. DiGIACOMO: Your Honor, may I approach?

THE COURT: Yes.

MS. DiGIACOMO: Thank you.

BY MS. DiGIACOMO:

Q I'm gonna show you what's previously been marked and shown to defense counsel as State's Proposed Exhibits 38 and 40. If you could just look at those and let me know if you recognize them.

A Yes, ma'am.

Q Are these photographs you took at the scene on July 8, 2001, into July 9, 2001?

A Yes, ma'am.

MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibits 38 and 40.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

MS. DiGIACOMO: Thank you.

(State's Exhibit Nos. 38 and 40, admitted)

BY MS. DiGIACOMO:

Q Okay. Now I'm gonna show you State's Proposed Exhibits 149, 150, and 151, if you could look at those, and 153. Do you recognize all of these?

A Yes, I do.

Q Are these also photographs you took that night in 2001 at the scene?

A Yes, ma'am.

Q And do they fairly and accurately depict what you saw that night?

A Yes, ma'am.

MS. DiGIACOMO: Your Honor, the State would move for admission of 149, 150, 151, and 153.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit Nos. 149, 150, 151, and 153, admitted)

BY MS. DiGIACOMO:

Q State is now gonna show you State's Proposed Exhibits 138, 140, 141, and 145, if you could look at those. Do you recognize all four of these?

A Yes, ma'am.

Q And are these also photographs you took that night in July 2001 of the scene?

A Yes, ma'am.

Q And they fairly and accurately depict what you saw?

A Yes, ma'am.

MS. DiGIACOMO: Your Honor, the State would move for admission of State's Proposed Exhibits 138, 140, 141, and 145.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit Nos. 138, 140, 141, and 145, admitted)

BY MS. DiGIACOMO:

Q Now the State is gonna show you State's Proposed Exhibits 227 through 246, if you would please look at all of those.

A I'm sorry?

Q 227 through 246. After reviewing these photographs, do you recognize what's depicted in these photographs?

A Yes, ma'am.

Q And are they all taken at the crime scene or items found at the crime scene?

A Yes, ma'am.

Q And they're and accurate depiction of the items that you saw on July 8th into the night 2001?

A Yes, ma'am.

MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibits 227 through 246.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit Nos. 227 thru 246, admitted)

BY MS. DiGIACOMO:

Q Now showing you State's Proposed Exhibit 115 and 183. If you could look at those two photographs. Do you recognize what's depicted in these photographs?

A Yes, ma'am.

Q Okay. And are these actually photographs of a car you processed in relation to this case?

A Yes, ma'am.

Q And that was on July 22, 2001?

A Yes, ma'am.

Q And this fairly and accurately depicts what you found

in the car?
A Yes, ma'am.
Q Both of these?
A Yes.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 115 and 183.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit Nos. 115 and 183, admitted)
BY MS. DiGIACOMO:
Q Okay. At this time the State's gonna show you State's Proposed Exhibits 184 through 193. If you could look at those and let me know when you're done. Do you recognize what's depicted in State's proposed Exhibits 184 through 193?
A Yes, ma'am.
Q Are these all fair and accurate depictions of the car that you processed in relation to this case on July 22, 2201?
A Yes, ma'am.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibits 184 through 193.
MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.
(State's Exhibit Nos. 184 thru 193, admitted)
MS. DiGIACOMO: Thank you.
BY MS. DiGIACOMO:
Q And lastly, showing you State's Proposed Exhibits 247 to 250. If you could look at those, please. After reviewing State's Proposed Exhibit 247 through 250, do you recognize these photographs?
A Yes, ma'am.
Q And are these fair and accurate depictions of items found in the car that you processed on July 22, 2001?
A Yes, ma'am.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibits 247 through 250.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit Nos. 247, 248, 249, and 250, admitted)
MS. DiGIACOMO: May I approach the clerk?
THE COURT: You may.
MS. DiGIACOMO: Thank you.
I'm dropping photos.
BY MS. DiGIACOMO:
Q Now showing you what's been admitted as State's

Exhibit Number 2. Do you recognize what's depicted here?
A Yes, ma'am.
Q What's depicted in this photograph?
A This is a dumpster enclosure, and this photograph was taken in the parking lot from the south -- south of the dumpster enclosure.
Q And that -- does this show the dumpster that you processed that night of July 8th into July 9th, 2001?
A The enclosure with the doors open.
Q Okay. I'm showing you what's been marked and admitted as State's Exhibit Number 4. What's depicted here?
A This is looking into the dumpster enclosure. You see the dumpster there on the south side. And looking down along the north side you can see some of the debris and trash that was piled up. There was also a wood pallet standing on its side on one of the bumpers here next to the curb on the north side as well.
Q And if you actually touch the screen in front of you, you can mark on the photograph.
A Oh, okay. And you can also --
Q Okay.
A Sorry. You can see part of the -- if you slide it down just a tiny tad, you can see part of that cyclone fence cover that was over the top.

Q Can you actually touch the screen so the jury can see what you're talking about?
A Right -- it's not marking.
Q I can't tell it's working.
THE COURT: She may not be pressing hard enough. No, it's not working.
MR. SCHIECK: For the record, Your Honor, ours doesn't work either, so it's -- it looks like system wide.
MS. DiGIACOMO: Does ours do it?
MR. KEPHART: Yeah, ours are supposed to work too, but they don't.
(Off-record colloquy)
THE COURT: Well --
MS. DiGIACOMO: Do we have a pointer?
THE COURT: -- maybe we're back to the old fashioned method with the pointer, yeah.
MS. DiGIACOMO: I didn't bring a pointer.
MR. KEPHART: She's got one.
THE COURT: The recorder has one.
MS. DiGIACOMO: Okay.
Sorry, Louise, if you could step down.
THE COURT: You may.
MS. DiGIACOMO: Thank you, Your Honor.
THE WITNESS: Way up here was that fence --

1 cyclone style fence top. Down in here on the north side is
2 some of the debris, a wood pallet here, and of course the
3 dumpster with the open lid on the south side there.
4 BY MS. DiGIACOMO:
5 Q And is this exactly the way you found it when you
6 got there, or did you have to move the dumpster more to take
7 photographs?
8 A No, this is how it was. The officer indicated to me
9 that he had moved it to go in and verify there was a body
10 there. He had slid it aside. But this was how it was as I found
11 it.
12 Q And you say cyclone fencing across the roof of it. Is
13 that like a chainlink fence?
14 A It's kinda like a chainlink fence with some kind of,
15 like a corrugated metal type of pieces of slats on it. I got that
16 term from Dan Ford, he's from Texas. He called it cyclone
17 fencing. [unintelligible] cyclone fencing.
18 Q But you could see through it?
19 A You couldn't really see through it. You could -- it
20 had some slats and some chain link, but it did have a cover so
21 that the sun didn't beat down into this dumpster enclosure.
22 Q Okay. So it was somewhat see through, but at night
23 while you were there you couldn't see through it?
24 A We wouldn't have been able like to see the clouds,

1 but sun would've made its way through to a degree when the
2 sun came out in the day.
3 Q Okay. And now showing you State's Exhibit Number
4 6. What's depicted here?
5 A Can we change the brightness, or is that too late to
6 do?
7 Q I can. Is that better?
8 A That's a little too dark, I think. That's a little dark.
9 Q Is that good?
10 A Yeah.
11 Q Okay.
12 A This is -- this is the area that you look at initially
13 where the -- from the south -- or the west -- east end down
14 here looking in towards the north side. And then this is what
15 the dumpster actually was blocking from view in that other
16 one. And then the victim was lying -- this is his head and this
17 is part of the area that I had to lift up to see.
18 Q So that cardboard over the head of the victim, is
19 that what you lifted up?
20 A Yes. At this point that this picture was taken, some
21 of the debris had been lifted off the cardboard. There was a
22 little bit more debris on here. These green palm tree like
23 decorations had been slid up a little bit. This blood wasn't
24 actually visible from the paper that was lying on it.

1 Q Showing you State's Exhibit Number 7. Does this
2 show some of the debris that was on there?
3 A Yes, that shows some of the debris. These are
4 those palm tree things that you saw. This is some of the
5 cardboard that covered him.
6 Q And with State's Exhibit Number 6, was the
7 dumpster actually moved out so that this photograph could be
8 taken?
9 A I believe by that time it had been moved out
10 somewhat so that we could take that photograph.
11 Q Okay. I'm gonna show you State's Exhibit Number
12 8. Can you see what's depicted here?
13 A This is more of the debris covering the body. And
14 you'll see down here are the legs and the feet and socks,
15 stocking feet here. And they were pointing in kind of a north,
16 northwest direction.
17 Q How was it that you went about trying to uncover
18 the body?
19 A What we did was we did it basically layer by layer,
20 lifting off the top layers. We were -- it was explained to us by
21 the detectives who interviewed the gentleman who found the
22 body that he had been at the dumpster and he had taken
23 some stuff out and thrown it down on the pile. So we lifted
24 some items, we examined each item. If we found anything

1 that indicated blood we set it aside to be processed later. So
2 basically we just sifted through item by item. When we got
3 closer to the body we started setting aside more and more
4 items that might be of evidentiary value.
5 Q Okay. Now showing you State's Exhibit Number 17.
6 Can you see that? Is it too bright?
7 A Yes, I can see that.
8 Q What's depicted here?
9 A I believe these are gonna be Dan Ford's hands. And
10 this was a hair pick type comb with a long tail that had blood
11 on it that was recovered from within the debris next to the
12 body.
13 Q And is -- what is Dan Ford holding, if you can see
14 that in the photograph, in his other hand?
15 A His flashlight.
16 Q Okay. Showing you State's Exhibit Number 14. Can
17 you see what's depicted there?
18 A Can I take a quick look at this one? Oh, yes. This
19 photograph was probably taken at a slightly different angle.
20 Q Okay.
21 A It's sideways, I think. If you turn -- yeah, turn it
22 that way.
23 Q Turn it this way?
24 A Yes.

Q And what's the purpose of this photograph?
A This is the body of the victim after he had been pretty much uncovered by most of the debris that had been covering him. The cardboard had been removed. He was partially visible. We took -- or I took some photographs at different stages of uncovering.
Q If you could step down --
THE COURT: Can you identify this one by number?
MS. DiGIACOMO: Oh, I'm sorry, Your Honor.
THE COURT: I may have missed it, but --
MS. DiGIACOMO: 14.
THE COURT: Thank you.
MS. DiGIACOMO: State's Exhibit 14.
BY MS. DiGIACOMO:
Q If you could step down and just kinda point out -- it's a dark photo up there. If you can point out to the jury where the body is in relation to some of the trash?
A These are the legs. There's one leg. It's hard to tell, but I think this is gonna be the other leg. Here's one hand. It's -- I'm standing near the feet of the victim and shooting towards his head, so his head is up here. One shoulder is still -- and arm is still partially covered with debris. One shoulder and hand here is laying out to the side. Part of his torso has been uncovered, and then these are -- this looks

like it's gonna be his -- at about knee or -- knee level or thigh level up is where the lense -- was within view of the lense.
Q How long did it take, going layer by layer of the trash, to get to where the body was exposed this much with partial legs and the upper torso.?
A I don't recall. I know we worked well into overtime that day, I'm assuming, but I don't know how long we'd been there at this point.
Q Okay. Do you know how long it took total to uncover the body?
A No, I was thinking about that earlier, and I'm not sure what time we cleared that scene.
Q Okay. But it was after you would've gotten off at 800 a.m.?
A I don't remember if we cleared the scene at around 8:00 a.m. or if we cleared the scene afterwards. I just don't remember.
Q All right. But you know you were there until at least your shift ended?
A Yes.
Q Okay. And showing you State's Exhibit Number 9. Can you see what's depicted there?
A Yes.
Q Okay. What's depicted here?

A This is similar to the over photograph, but I've stepped a little bit to the side. And where the other photo -- the photograph was shot more this direction, I'm standing to the side and you're seeing -- this is about mid-chest and he's lying here down, and these are his feet that you had seen in a previous photograph, and so this is his legs as he was -- at about the same level of being uncovered, I believe.
Q All right. And that's just showing the lower half of the body?
A Yes.
Q Okay. Now I'm gonna show you a closeup of State's Exhibit Number 11. And this is a closeup by his feet. Does that sound right?
A Yes.
Q All right. And I'm gonna point to something right here. Do you know what that is?
A That was a gold chain.
Q And that was found by his foot?
A Yes. It would've been his left foot right here, and see the stocking foot right there and his pants coming up right in here.
Q Okay. Now showing you State's Exhibit Number 15. What's depicted here?
A This is the upper torso. We had removed a little bit

more of the debris at this point. And this is his head, his feet are down here. This is the debris that was still left on this side of him. We moved the debris that was over on this side so that we could move around. And we had set that out to the side, taking it out of the enclosure, put it aside to examine or to collect later. And right here is an apparent footwear impression that was in what appeared to be blood on the enclosure floor.
Q Okay. So is it fair to say that when you were uncovering the trash that you started around the body and then slowly worked to uncover the body?
A Yes. We moved what was out here away that didn't -- if you remember those -- some of those first pictures as we look down past the dumpster, there was some in the corner back in there.
Q And showing you State's Exhibit Number 6. Is that what you're referring to?
A Yes. Even -- yeah. This stuff here, we got and we moved that out. And then we started here moving out until we had uncovered the body.
Q Okay. And at the time you uncovered the body -- and now we're back to State's Exhibit Number 15 -- there's still a whole lot of trash back in the corner. Is that the southwest corner?

A Yes, ma'am, that's what it would be --
Q Okay.
A -- the southwest corner.
Q So at the time that you uncovered the body you still had not processed that trash in the back southwest corner?
A No. The body was actually in the way, so we just moved him one step at a time. And then when we got to a point where the coroner could move around the body, then we called for the coroner to come.
Q Okay. Now in State's Exhibit Number 13, do you recognize what's depicted here?
A Yes.
Q What's depicted?
A There was a plastic bag over the body at the level of the hips impressed, you know, or adhering around the exposed portion of the body, the hips and the lower abdomen and thighs. And as I moved that back it was discovered that the genitals of the victim had been severed or cut off.
Q And is this Dan Ford's hand down here holding back the plastic so you could take a photograph?
A Yes.
Q Okay.
A That would probably be Dan Ford. I'm not positive actually.

Q Well, somebody held back the plastic so you could get that photograph?
A Yes.
Q And this plastic that we're seeing here that's pulled back, was that wrapped all the way around the body or just across the top of the body?
A No, it wasn't wrapped all the way around, it was wrapped around the exposed top and around the sides of the hips, both sides --
Q Okay.
A -- and was sticking to him. As you can see it was kinda damp, it was sticking to him.
Q Was the blood that we see here and on the plastic, was it still wet or was it dried?
A Some of it was starting to dry by this point, but it was still wet where it had been covered by debris. Some of the exposed areas of blood at this time, like that footwear in the previous photograph, that had already dried.
Q Okay. But the things that you were uncovering under the debris still were wet?
A They were still damp.
Q Okay. Okay. Now I'm gonna show you State's Exhibit Number 18. Do you recognize what's depicted here?
A Yes.

Q What's depicted here?
A This is the southwest corner of the dumpster surround and the debris that's in it. You see here a pair of socks, gray -- I think probably they were -- I don't know if they were gray or white, but they were dirty socks with like a red or maroon band on them.
Q Now a lot of what was found around the body or on top of the body, did it look like these separate items here that looked like plastic trash bags full of items?
A Yes. Must of the debris looked like it -- we were talking Sunday night, early Monday morning, looked like it had come -- we were in a parking lot of a bank, looked like it had come from office style trash. Most of it was paper. There wasn't a lot of the organic, like you would find in an apartment complex or residential area. There was a lot of paper debris. But there were, you know, items that would come from say a kitchenette in an office building where there was a coffee maker or --
Q And in fact, showing you State's Exhibit Number 228, you can see items in there, such as coffee cups, soda cans --
A Yes.
Q -- looks like some sort of bag down here. Those all kinda consistent with food items?

A There was some consistent with drink and food items. Some of the bags still had, that were closed, some of the bags that were closed still had like the brown coffee cups, specifically, in 'em. They were still tied in a knot and they were filled with different kinds of coffee cups and such.
Q Okay. Now showing you State's Exhibit Number 231. What's depicted here?
A At this point we've uncovered a good deal of the southwest corner. And I'm not sure who's arm that is. It might be Teresa's arm. And she's pointing to -- there were some teeth found down there in the corner and -- of the enclosure.
Q Okay. I'm showing you State's Exhibit Number 230. Is that just a closer up photograph of State's Exhibit Number 231?
A May I see that first one again real quick? And take -- put it back. I think what this is is not a closer photograph but a photograph with a little bit more of the debris moved.
Q Okay. And what's this dark area here?
A That's blood.
Q Okay. Now was this dried or was it still damp?
A It was still damp. As we worked it began -- and after we uncovered it, it began to flake. And it's on a piece of cardboard that's been flattened.

Q And State's Exhibit Number 2[illegible] what's depicted here?
A This is at a different time during the uncovering. This is -- this is also the cardboard. My orientation is a little off right now. I think this is more towards -- this curb here -- oh, that curb -- can you push it down just a little bit? Okay. That curb there is gonna be the west curb, the back of the enclosure. This is now the back of the enclosure. The previous photograph was taken more up this way towards the southwest corner, up this way is gonna be the northeast -- or northwest corner. And that piece of cardboard would -- the photograph was -- that previous photograph was taken more in this area. This is the same cardboard, but this is down towards the north edge of it.
Q Okay. And now I'm gonna show you State's Exhibit Number 28. What's depicted here?
A That's -- right here is the severed penis.
Q And do you know where specifically this was found?
A This was found -- the best of my recollection -- under the trash. At this point the body had already been removed by the coroner. There was -- under the trash to the left or to the south of the -- where the body was 'cause we had already uncovered the other side of him already, so this was on the other side.

Q And it looks like from the photograph, it's on something brown?
A A piece of cardboard.
Q Okay. Is this the same cardboard that we saw in the earlier photos, such as State's Exhibit Number 231?
A Yes. But I believe we're looking at -- down here, more towards this area in here.
Q Okay. So at the time State's Exhibit 231 was taken you hadn't found the penis yet?
A We may have found the penis by then.
Q Okay. Do you know if it came from the same piece of cardboard that we're looking at that was in the southwest corner?
A Yes.
Q It did?
A But further this way.
Q Okay. And now showing you State's Exhibit Number 29. What's depicted here?
A Okay. I'm sorry, can you --
Q Do you need to see it up close?
A Yeah, that would actually help.
MS. DiGIACOMO: May I approach, Your Honor?
THE COURT: Yes, you may.
///

BY MS. DiGIACOMO:
Q Okay. I'm showing you again State's Exhibit Number 29. Did I have it upside down?
A No, it just --
Q Does it go like this?
A Yeah, that's fine.
Q Do you recall what that marker here was doing, what that was for?
A To the best of my recollection, that's gonna be a tooth.
Q Okay. That it's marking?
A Yes.
Q And then showing you State's Exhibit Number 35.
A Okay.
Q Do you recall what this is?
A Yeah, these are three of the teeth, and one button.
Q Okay. You can show us.
A Okay. This is a tooth here, this is a tooth here, and this one here, a complete tooth with the root, and here is a button.
Q Do you recall how many teeth you found at the scene?
A Six.
Q Okay. Were they all found in the same location?

A No.
Q Okay. These three that you just showed us, where were these found?
A These were found towards the southwest corner near the edge of the cardboard.
Q All right. And where were the other three found?
A They were found more towards the north end of the cardboard.
Q And actually I'm gonna show you State's Exhibit Number 30. Is this more helpful to point it out? What are we looking at here?
A This is -- you can see right here, much of the debris has been moved over to this side of the enclosure, and this appears to be the area where the incident occurred, with most of the other debris moved away from it, and the body, of course, is gone at that time. This here was where the victim's head was, and then his feet were going this direction. This is the piece of cardboard we were looking at right here. That's the southwest corner of the enclosure. And so this is basically the blood from the homicide right there.
Q And where were the three teeth we just saw in State's Exhibit 35 found?
A Those were found over in this area over here.
Q And you said there were three other teeth found?

A Yes. And I -- and I could actually be somewhat off on this, Dan Ford might remember better -- that they were more in this area down here.
Q And where would the penis have been located?
A Over in this area here.
Q And showing you State's Exhibit Number 31.
MR. SCHIECK: I'm sorry, counsel, what was the last number? I missed it.
MS. DiGIACOMO: That was 30.
MR. SCHIECK: Thank you very much.
BY MS. DiGIACOMO:
Q And here's State's Exhibit Number 31. What's depicted here?
A That's a little too bright.
Q Okay. Would it be helpful to see it up close?
A Right.
MS. DiGIACOMO: May I approach, Your Honor?
THE COURT: Yes.
MS. DiGIACOMO: I'm showing the witness State's Exhibit 31.
THE WITNESS: Okay. I did a series of photographs just showing that blood area, and some of the spatter along the curb.
MS. DiGIACOMO: Okay.

THE WITNESS: And the --
BY MS. DiGIACOMO:
Q So do you see any of the spatter you're talking about on the curb?
A Yes. Here, here, up along here, this is spatter --
Q And when -- when you say spatter, what do you mean?
A Droplets of blood that have been projected out. We have several different terms in referring to blood stain patterns. Some are called wipes, some are called swipes. There's different kinds of spatter. Depending on -- different experts will call it high velocity, medium velocity. We're trained in the recognition of patterns and how to document them so that an expert can look at them later and possibly determine sequences of events and what might've caused it. And so sometimes we have a tendency to use the word spatter as a generic for all different kinds of droplets, whether they be a round one or oblong.
Q Here, I'm gonna show you, probably better, State's Exhibit Number 36. Can you see what's depicted here?
A At this point we have -- this is really light up in through here. But you can see a scale across and down this way, and you can see a small scale in the scene here. And there might be more that I can't really see right there. But --

oh, yes. This one here. And in fact, this was that earlier photograph you showed me, I believe. And I think what that -- I thought maybe it was a tooth, but I was incorrect. I believe what that was was just some of the spatter here.
Q Okay.
A So this is actually trying to document some of the spatter. This is so an expert can go and take a look at the distance and the sizes, and then he can actually get another scale in here. And they can -- this was an overall of where they all were, where many of them were. It looks like there's another one in here.
Q Okay. Now showing you State's Exhibit Number 21, and specifically this blood right here on the curb, is that what you're calling spatter?
A Yes.
Q Okay. Now showing you State's Exhibit Number 19, and there's some blood here on the curb?
A Yes.
Q What is that? Is that spatter?
A No, that would be called -- you know, I probably shouldn't say, I'm not an actual expert in this terminology, but it would be a white birth [phonetic] or a swipe or a combination of the two.
Q Okay.

A And then you have a scale here.
Q And then showing you State's Exhibit Number 24.
A This would be the -- a similar photograph showing the different type of movement with the blood and a scale to show a comparative size for somebody to be able to look at.
Q Okay. Now -- you can go ahead and have a seat. I'm gonna show you State's Exhibit Number 3. What's depicted here?
A This is the northwest corner of the parking lot.
Q And where is that in relation to the enclosed dumpster?
A The dumpster enclosure is approximately 51 feet south of this. So it actually goes out this way from there.
Q Okay.
A That's gonna be the -- the back wall there's gonna be your west wall.
Q This wall right here?
A And that's gonna be your north wall.
Q Okay. Showing you State's Exhibit Number 135. I'm not sure if you can see this. What is this depicting?
A There's a bag there with some of those brown cups in it.
Q Is this the southwest corner that we were earlier talking about uncovered?

A Yeah, this is gonna be more towards the west wall.
Q Okay. Now can you see this right here and this over here, what that is, do you recall?
A I can see it here. This may have been --
Q Well, if you could step down --
A I'm sorry.
Q -- I'm sorry, and show the jury?
A If what you're speaking about is this debris on here, on this bag, is that what you're --
Q Is that debris?
A Yeah. I don't know exactly what it is from this photograph.
Q If I was to show it to you closer, would that be easier?
A I don't know.
Q I'll show it to you. 153, specifically this here and this here.
A Yeah. There --
Q I'm showing you again 153.
A This here may be spatter on the wall, and right now I don't know for sure that it is.
Q Okay.
A And this debris that's on this bag, from looking at the photo I'm not sure what it is on it.

Q Okay. Showing you State's Exhibit 150. What's depicted here?
A That's one of the footwear impressions, appeared to be made in blood.
Q And that was found inside the dumpster area?
A It was within the enclosure. There was several of them that went from the trash area, diminishing as they went towards the east out the enclosure.
Q And in fact, showing you State's --
A This has been marked 2-F, so that's probably footwear pattern 2.
Q Okay. So that indicates that somebody took a footwear impression?
A Or photographed it. Teresa Main photographed it.
Q Okay. And showing you 144. Okay. Do you recognize what's depicted here?
A Yes. Do you remember one of the very first photographs that we looked at, there was that dumpster sitting over here and this is a wood pallet, that's a west wall. The victim's body is back under this debris over here, there's a bag sitting here, and then these are the diminishing footwear impressions --
Q And --
A -- going east.

Q Okay. Other than these diminishing footwear impressions here depicted in State's Exhibit 144, was there any other that went outside the dumpster or did you notate whether or not there were any other footwear impressions in blood?
A Yes, there were. When we got some of this debris moved we did find another on the concrete under some of this debris. And Dan Ford found another one on that cardboard that was covering the victim's body.
Q Okay. But as you're walking out of the enclosure, other than what we're looking at in State's 144, were there any other footwear impressions in blood found further east?
A Oh, further east?
Q Sorry.
A No.
Q All right. Now I'm gonna show you State's Exhibit 139. Do you recognize what's depicted here?
A Oh, yes. Yes.
Q Okay. What's depicted here?
A That is -- let me see, how am I gonna explain this?
Q Do you need the aerial? Would that be helpful?
A An aerial or the diagram would help a great deal.
MR. KEPHART: It's 122.
MS. DiGIACOMO: Thank you.

May I approach, Your Honor?
THE COURT: You may.
BY MS. DiGIACOMO:
Q Okay. I'm showing you what's been previously marked and admitted as Exhibit 221. Do you recognize this?
A Yes.
Q Okay. Would this help you explain what is depicted in this photograph?
MR. KEPHART: Sandy, put it over at the end of the--
MS. DiGIACOMO: Right here?
MR. KEPHART: The easel's over there too.
May I help, Your Honor, just to set up the easel?
THE COURT: Yes, you may.
MS. DiGIACOMO: We don't need the easel, she's just using it for this.
MR. KEPHART: I'll just leave it there and then she can go back and forth.
MS. DiGIACOMO: Oh, okay.
MR. KEPHART: Excuse me. There. Does that help?
THE WITNESS: Yes. Can everybody see that?
This is the bank, this area right here, crime scene, that's the actual crime scene. And you'll see that along here there's parking all along the -- around the bank. There's also

parking under this covered parking here as well. And right here, the dumpster is here, and right here, this is the drive lane of the parking lot. Right across the drive lane where this white car is, just to the north of that there's like -- it's a planter median that separates this line of cars from that east-west drive lane that's to the north. So that's what we're looking at here is that planter median, and right here there's a -- you'll see a tire impression that went up over the planter median.

BY MS. DiGIACOMO:

Q Okay. And I'm gonna show you now State's Exhibit 138. What's depicted here?

A This is another --

Q Well, it's kinda dark. There you go, is that better?

A Yeah. This is another angle. You see a tire impression coming up here, one coming up here. Another angle, the same planter median and some tire impressions that went up over it.

Q And showing you State's Exhibit 137.

A Now you can see -- may I look at that original just real quick?

Q Sure. I know it's dark.

MS. DiGIACOMO: May I approach, Your Honor?

THE COURT: Yes.

///

BY MS. DiGIACOMO:

Q Showing you State's Exhibit 137.

A Okay. Yeah.

Q Okay. There you go, State's Exhibit 137.

A I know it's a little difficult to tell here, but the dumpster enclosure is out over here. Do you see this faint line here? That's the dumpster enclosure. So this is the end of the planter median right here, and this is the north side of it. So basically this photograph is looking this way, towards the dumpster area. You see the edge of the dumpster area and you see the end of that median there. So that's the direction we're looking at there. And once again, you'll see these -- this curb of this tire impression that went up over that.

Q Okay. And State's Exhibit 141 is a different angle of that tire impression?

A This is walking in on that tire impression. You can actually see the dark part of the tire impression as it got on top of the curb there.

Q Okay. And showing you State's Exhibit Number 137 again. This line across the middle, is that the police tape?

A Yes.

Q And now showing you State's Exhibit 143. What's depicted here?

A This is the dumpster surround, this is before we had

started to uncover the victim's body. There's some trash out over here, here's the footwear. And this is that big 4x5 camera that I mentioned earlier, and Teresa Main had that set up to document the footwear impressions that were on the concrete there.

Q Okay. Now on State's Exhibit Number 139, do you see that?

A Yes.

Q Okay. And here's the footwear that we were looking at in State's 140 --

A The tire impression.

Q -- or under footwear, the tire impression right here?

A Yes.

Q Now can you see what's depicted down here? Are those multiple tire impressions as well?

A Yes.

Q Okay. Were any of these tire impressions lifted or taken for further processing?

A No, this was a public access area. None of them stood out as being placed on top of the other ones. There was -- it was a bank, multiple use public access drive area.

Q Okay. So at the time -- and I'm showing you now 137 -- that an impression was taken of this tire mark, did you have any notion whether or not it was involved with the crime?

A No, we didn't. It just that -- it stood out from the others as being on top of some of them. It was, as you can tell, was quite dark comparatively and had gone over the median.

Q Right. But you can't say when that happened?

A We have no idea when that happened or what caused it, but it may have been related.

Q Okay. And how far away -- you can have a seat now. How far away was the median from the actual enclosed dumpster area, do you recall?

A I don't know for -- how many feet it was.

Q Okay. If you were to look at your report, would that refresh your recollection?

A It might. I'm not sure if I actually wrote it in my report. Dan Ford would've taken those measurements.

Q Okay.

A And I may have written it down, I may not have.

Q Okay. If you want to look at your report from July 8, 2001, the three page report you looked at earlier? And specifically within the body of your report, you can look and see if you noted how far that median is from the dumpster area.

A Yes. I did write it down. 25 feet, 6 inches east of the northeast corner of the enclosure's concrete pad.

Q Okay. And that would've been an Ford that would've measured it, though?
A Yes.
Q And you did include that in your report?
A Yes, I did.
Q Okay.
MS. DiGIACOMO: Court's indulgence. I just lost the photograph.
THE COURT: Certainly.
BY MS. DiGIACOMO:
Q Okay. I'm gonna show you what's been marked as State's Proposed Exhibit -- or excuse me, what's been marked and previously admitted as State's Exhibit 50. Do you recognize what's depicted there?
A Yes.
Q What's depicted in this photograph?
A That's some -- there's some blood in here.
THE COURT: The clerk is indicating she's not showing 50 admitted.
MS. DiGIACOMO: She is correct. May I approach, Your Honor?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q Let me show what has been marked --

THE COURT: I've got 150 admitted.
MS. DiGIACOMO: This is the actual 50.
BY MS. DiGIACOMO:
Q I'm gonna show you what's been marked as State's Proposed Exhibit 50. Do you recognize that?
A Yes.
Q And what's depicted there?
A That's a sandal with some blood on it.
Q Okay. And is that a photograph you took on July 8th or 9th, 2001?
A Yes.
Q Does it fairly and accurately depict something you found at the scene that night?
A Yes.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 50.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit No. 50. admitted)
MS. DiGIACOMO: Thank you.
(Off-record colloquy)
MS. DiGIACOMO: May I publish, Your Honor?
THE COURT: You may.
///

BY MS. DiGIACOMO:
Q Showing you State's Exhibit Number 50, now admitted as State's Exhibit 50. Go ahead and -- what's depicted on that photograph?
A This is a sandal we found. This is some blood that's on the inside, and on the toe. And it looks like there was a little bit of blood right there on the [unintelligible] sole part of the sandal.
Q And do you know where this sandal was found?
A There was a pair of sandals, and they were found sitting next to each other near the right side of the body towards the center of the enclosure after everything had been removed.
MS. DiGIACOMO: Okay. Your Honor, may I approach again?
THE COURT: You may.
BY MS. DiGIACOMO:
Q Okay. I'm gonna show you what's been marked as State's Exhibit 49, 54. Are those admitted, or not?
THE CLERK: 49 is not.
MS. DiGIACOMO: 54?
THE CLERK: 54 is not.
MS. DiGIACOMO: But 226 is or is not?
MR. KEPHART: Not.

THE CLERK: 226 is not.
MS. DiGIACOMO: Okay.
BY MS. DiGIACOMO:
Q I'm gonna show you State's Proposed Exhibits 49, 54, and 226. If you could look at those. Let me know if you recognize them?
A Yes.
Q And how do you recognize those?
A How do I recognize them?
Q Yes. Did you take those photographs?
A Yes. And these are the sandals.
Q That were found at the scene?
A Yes.
MS. DiGIACOMO: Okay. Your Honor, at this time the State would move --
BY MS. DiGIACOMO:
Q And these fairly and accurately depict the sandals you found that night in July 2001?
A Yes.
MS. DiGIACOMO: Your Honor, the State would move for admission of State's Exhibits 49, 54, and 226.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit Nos. 49, 54, and 226, admitted)

BY MS. DiGIACOMO:
Q Okay. I'm gonna show you State's Exhibit Number 49. Do you recognize this?
A Yes.
Q Okay. What's depicted here?
A This is the pair of sandals.
Q And these were found at the scene?
A Yes.
Q Where specifically were they found?
A They were found towards the middle of the enclosure sitting next to each other, somewhat the way you see them there, to the right or north of the body of the victim.
Q I'm showing you State's Exhibit 4. Would you be able to see where those sandals were found there?
A No, but they were like in this area back under the--
Q Were they actually under -- found under trash?
A Yes.
Q Okay. And how were they found underneath the trash?
A Sitting next to each other.
Q Kind of like the way they're depicted in State's Exhibit 49?
A Yes, with the toe facing towards the southwest.
Q All right. Do you recall if anything was found

underneath either of those sandals?
A There was a drop of blood found underneath the sandals.
Q Do you recall which one?
A I don't recall.
Q Okay. But there was a drop of blood under one of the sandals?
A One of the sandals.
Q You can go ahead and have a seat. Now you had described earlier that there was a piece of plastic that was found wrapped around the torso area of the victim. Do you recall that?
A Yes.
Q Okay. Was there anything underneath that plastic when it was pulled back to take a picture of the victim? There was a photograph that another CSA was pulling back the plastic, and a photograph was taken of the missing genitalia, do you recall that?
A Yes.
Q Okay. Was there anything after that plastic had been lifted up that was there that had to be removed to take a picture?
A Oh, no.
Q Okay. Now I'm gonna show you State's Exhibit

Number 16. Can you see what's depicted here or do you want to see it up close first?
A No. That's the upper torso and head and right arm of the victim.
Q Okay. And there's something white here along the right side of the photograph, what is that?
A That's some of the debris. Right there there was paper towels, like you know, the restroom right out here. When you go to the restroom they have the paper towel dispensers, have those square paper towels for when you wash your hands. It was very similar to those.
Q Okay. And so what you're pointing out here that's white in the photo on the right side, those are like crumpled up bathroom towels, or paper towels?
A That style of paper towel, yes.
Q Were any of these white towels found underneath the plastic that was wrapped around the torso area above the -- where the genital should've been on this victim?
A No, ma'am.
Q Okay. So it was just on top?
A It was on top of the plastic.
Q Okay. Now the southwest corner, the cardboard box that you described that was found flat in that corner, do you recall approximately how big that was?

A I believe it was approximately 3 by 4 feet, but I don't remember exactly. I think I did note it in my report.
Q If you looked at your report would that refresh your recollection?
A That would help.
Q Okay. Let me know when you're done looking at your report.
A Okay.
Q Does that refresh your recollection?
A Yes, it does.
Q Okay. And how big was it?
A 3 by 4 feet.
Q Now we saw the photograph with the blood pooled on the cardboard box. Was there any blood on the concrete ground of the enclosure?
A There was. There was some around the edges of the cardboard, especially towards the north and towards the east. There was a stream almost of drying blood near where the victim's head had been, and there was also some spatter on the edge of the concrete, you know, bits and pieces of spatter along the west edge where the cardboard didn't go quite up to the wall there at the west edge.
Q Okay. I'm gonna show you State's Exhibit Number 16 again. And that shows the upper body of the victim after

the trash had been uncovered?
A Yes.
Q Okay. And looking specifically at his right arm, can you describe how it is?
A He had his elbow flexed and it was basically laying out to the side, palm up. The elbow didn't go straight out from the shoulder, it was dropped slightly down lower level than the shoulder at about chest level with the hand above, more level with the lower portion of the victim's head.
Q And is this the way that you found him when the trash was uncovered?
A Yes, ma'am.
Q Do you recall where his left arm was?
A I don't.
Q Okay. If you were to look at your report, would that refresh your recollection?
A Yes, it would.
Q I don't believe I have a picture to show you.
A The left arm was lying more straight down and -- not next to the body but slightly out along. Instead of being flexed up it was just lying along the edge of the -- slightly away from the torso and down.
Q And the shirt that he's wearing here, do you recall if it was opened or closed?

A It was open.
Q Okay. And do you recall what else he was wearing?
A He was wearing a pair of socks and a pair of pants.
Q And where were the pants located?
A The pants had been pulled down and were around the lower thigh/knee area. But the cuffs of the pants were still above the ankles.
Q Okay. Now other than photographing the scene and helping to remove the trash, did you do anything else while you were there?
A For the most part, my responsibility was the photographing the scene. If Dan needed some assistance with measurements I might hold the end of the tape.
Q Okay. Do you recall if you came into contact with the person who reported the dead body?
A I did.
Q Okay. And what was your role in that?
A He -- excuse me, I'm sorry. I took a set of elimination footwear impressions from him.
Q And what do you mean by elimination footwear impressions?
A What happens is when somebody's entered a crime scene and we find footwear at the crime scene, we need to make sure that the shoes they're wearing aren't the shoes that

left the crime -- that we're finding at the crime scene. They can be paramedics, fire department personnel, police personnel, or in this case the gentleman who discovered the scene. And so what I did was did a adhesive lift of the bottoms of his shoes.
Q Okay. And then you later booked those into evidence?
A I think Dan took those --
Q Okay.
A -- and put them into evidence.
Q Was the scene processed at all for latent prints?
A Yes, it was. Dan Ford and I both did some latent print processing of the scene.
Q Do you know if any latent prints were -- well, first of all, what do you mean by latent print?
A Okay. A latent print. A latent print -- latent basically means hidden. And we use it as a generic term for almost any -- or for any fingerprint left at a scene. Although often times say on glass, a drink glass, you can, especially like if a little kid is drinking some juice, you see those prints right on that glass. And though those are properly called patent prints, meaning visible, we often call 'em -- we generically call all those type of prints latent. So a latent print is any print left at a scene or left behind on an object.

Q Okay.
THE COURT: I'm gonna ask that counsel approach.
(Off-record bench conference from 2:49:40-2:51:42 p.m.)
THE COURT: Ladies and gentlemen, we're gonna take a 10 minute stretch recess and see if we can't get the touch screens operational.
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.
Please be out in the hallway in 10 minutes and the bailiff will return you to your seats. The jury may exit.
(Jurors are not present)
THE COURT: The record shall reflect that the jury has exited.
The phone message note that had come in from Robert Graham's call into chambers, which the Court and counsel reviewed telephonically just before the -- it was about 11:30, 11:40 this morning, I guess, shall be marked as the

Court's next in number.
THE CLERK: Number 45.
THE COURT: There had been some discussion at sidebar previously about a stipulation with regard to the gold chain. Is that gonna come in through this witness?
MS. DiGIACOMO: Yes.
THE COURT: Are you gonna advise the Court at which time you wish the stipulation to be given to the jury?
MS. DiGIACOMO: I was gonna do it at the end of this witness' testimony or we could do it when we come back in from the break.
THE COURT: Okay. I'm gonna take us off the record so -- we're gonna have to take the system down and reboot it apparently to try and get th touch screens operational, and we can have a little bit of a stretch break while all that's occurring. So we'll go off the record at this time.
(Court recessed at 2:54:03 p.m. until 3:12:25 p.m.)
(Jurors are not present)
THE BAILIFF: Department 2 is back in session.
THE COURT: The record shall reflect that we're reconvened outside the presence of the jury -- you may all be seated -- in the case of State versus Lobato under C177394. The defendant is present, together with her three counsel, and

Ms. DiGiacomo is present for the State.
Mr. Schieck wish to make a record, I believe?
MR. SCHIECK: Yes, Your Honor. I'd ask you to just have a brief meeting outside the presence here.
We've got -- in addition to our experts we've got a number of witnesses that have to take off of work and travel from various locations to be here to testify here in our case in chief. I was just trying to get a time frame of Court's schedule when we'll be starting tomorrow and then next week, and an estimate of when the State thinks they're gonna finish their case. I mean we've got --
THE COURT: Tomorrow we'll be in session from 10:00 to 11:30. The Court --
MS. DiGIACOMO: 11;45.
THE COURT: The Court had noted that earlier in the week.
MR. SCHIECK: That was my recollection. I wanted to be sure.
THE COURT: And Monday we'll resume at 10:30, and the State's bringing back --
MS. DiGIACOMO: Ms. Maria Thomas.
THE COURT: -- Maria Thomas at that time.
MR. SCHIECK: And we have two experts that are books to fly in Monday night in anticipation of testifying

Tuesday. And that's the date that's starting to concern me for those experts because --
THE COURT: I think the State had indicated if they had to be called out of order that they would permit that.
MS. DiGIACOMO: That's fine. And also I hopefully -- I believe we'll be done with our case in chief on Monday, so --
MR. KEPHART: We start Monday, what at 10:00 or 10:30, Judge?
MS. DiGIACOMO: 10:30, yeah.
THE COURT: 10:30.
MR. KEPHART: Yeah, we'll be done.
MS. DiGIACOMO: I would think we'll be done with our case in chief Monday.
MR. SCHIECK: Should I have witnesses available on Monday?
MS. DiGIACOMO: I wouldn't.
MR. KEPHART: No.
MR. SCHIECK: Well, with the Court's permission then I won't have anybody come in from out of town for Monday.
MS. DiGIACOMO: Not -- yeah, not unless you had someone quick.
MR. SCHIECK: We do have the reading of Diane

Parker and we could do that --
MS. DiGIACOMO: We could probably do that, Your Honor.
THE COURT: That if we had a little time at the end of the day on Monday we could start the defense's case with the reading of Diane Parker's testimony.
MR. SCHIECK: That would be fine with us, Your Honor, then we can schedule the other people that need to take off of work.
MS. DiGIACOMO: Now do we know next Tuesday if we'll start at 1:00?
THE COURT: I have not looked at the calendar for Tuesday yet.
(Off-record colloquy between the Court and clerk)
MS. DiGIACOMO: Make sure you don't set anything over from Thursday too -- oh no, we've already passed Thursday. Today was Thursday. Never mind.
(Off-record colloquy)
THE COURT: That's still 12 pages. That's a small calendar, so I would -- I would say 10:30 on Tuesday then.
MS. DiGIACOMO: Okay.
THE COURT: It'd be 10:30 on Wednesday too, so 10:30 Monday, Tuesday and Wednesday.
MS. DiGIACOMO: And Your Honor --

(Off-record colloquy between the court and clerk)
THE COURT: The bailiff may return the jury to the courtroom.
MS. DiGIACOMO: And Your Honor, just for the record, the defense had requested Kristina Paulette's note. She had come to court today and brought a copy for the defense, so I'm turning it over right now.
THE COURT: Okay.
MS. DiGIACOMO: Thank you.
THE COURT: The record shall reflect that Ms. Greenberger has received it. You're welcome.
MS. DiGIACOMO: Yeah. And Your Honor, just for the record, they were just requested, and they weren't subpoenaed, so she just brought them with her to court.
MR. SCHIECK: Well, Your Honor, when we received them on September 5th, the calendar call, we asked for those things. It's on the record. We asked and they had indicated they would contact her so we could get those.
THE COURT: And so this is the followup to that?
MS. DiGIACOMO: Right. Well, I guess it's a followup to their phone call too. They did call a request in.
THE COURT: Okay.
The record shall reflect that the --
THE BAILIFF: Jury is now present.

(Jurors are present)
THE COURT: -- witness, Louise Renhard, remains on the witness stand under oath, and the bailiff is now returning the jury to the courtroom.
Ladies and gentlemen, as you return to your seats in the jury box are, you may be seated. The jury has now returned to their seats.
Ladies and gentlemen, as I told you earlier in the week, we're gonna be in short session just tomorrow morning resuming at 10:00. We will not be in session tomorrow afternoon, and we will resume on Monday at 10:30. We will start on Tuesday at 11:00 a.m. and on Wednesday at 10:30. So next week 10:30, 11:00 and 10:30 for Monday, Tuesday, Wednesday. And that's as far as I know right now, but I will let you know when I figure out the end of next week.
We're proceeding forward with the direct examination.
Ms. DiGiacomo, you may resume.
MS. DiGIACOMO: Thank you, Your Honor.
BY MS. DiGIACOMO:
Q Now we left of talking about processing the scene for latents. Do you recall who did that?
A Dan Ford and I both did some latent print processing at the scene.

Q Were you able to lift any latents?
A I recovered one latent print at the scene.
Q Did you recall where?
A It was on the edge of the north door of the enclosure.
Q Do you know if Dan Ford had recovered any latents?
A He did recover latents, but I don't believe he recovered them at the scene. He recovered them on items he took back to the lab.
Q All right. So were there items taken from the scene back to the lap?
A Yes, ma'am.
Q And that was done by Dan Ford?
A Yes, ma'am.
Q Now how do you go about trying to lift a latent fingerprint?
A To begin with, you give the item that you're gonna process a visual inspection, see if you can see anything that's actually visible to your eye. And then you choose a powder or chemical that's conducive to getting any latent prints on that specific item. When we work in the field we primarily use powders. And the two types -- the two basic types are magnetic powders and regular powders. And in this case I probably would've chosen a magnetic powder because it was a

metal door. And I know that sounds a little bit odd, but actually the magnetic powder, even though it clings a little bit to it -- to the surface item, it also develops up fairly nice latent prints.
Q Now you showed us photographs where the amputated penis was found as well as six other teeth. Were those impounded into evidence?
A The penis and the teeth were recovered by Senior Crime Scene Analyst Teresa Main, and she took those. The body had already been removed by the coroner to the coroner's office, and so she took those prior to us leaving the scene, and she took them to the coroner's office and gave them to the coroner's investigator who we had out at the scene. At that time they, to the best of my understanding, they opened the body bag, put the teeth and the penis in, and then resealed the body bag in the presence of Teresa Main.
Q And so those items are something that would go with the body, not be impounded into evidence?
A No, they would not have been impounded into evidence.
Q All right. Now I want to direct your attention to July 22, 2001. Were you employed and working on that date?
A Yes, ma'am.
Q With Metro?

A Yes, ma'am.
Q And what were you asked to do on that date?
A When we got to work Dan Ford and I were informed that we had a vehicle to process in connection with this homicide. And the vehicle had been towed to our lab and was in the garage, and we were asked to process it. And at the direction of the detectives we were asked to look for certain items.
Q Now do you recall what those items were you were looking for?
A We were requested to look for latent prints for blood evidence, for shoes, and for anything that might be considered a weapon.
Q When you got the car was it in a sealed condition?
A Yes, ma'am, it was.
Q And I'm gonna show you State's Exhibit 108. Does that look familiar?
A Yes, ma'am.
Q Okay. What's depicted here?
A This is a 1984 red Pontiac Fiero -- I believe that's how it's pronounced -- in the garage of the police department crime lab. And you'll see here on the back of the vehicle, that's a seal that was placed on it. There's also another one you'll see right down here on this door, that's another sealed,

placed on it by a crime scene analyst who went out to recover the vehicle and have it towed to the lab.
Q All right. And you showed us the seal on the driver's door and on the trunk. Would there have also been a seal anywhere else?
A There would've been one on the passenger door, and more than likely there should've been one on the hood.
Q And what about if there was a sunroof, would there be one placed there?
A I don't know that there was one placed on the sunroof. I don't recall.
Q All right. So the seal is placed there basically to keep anything that could be opened from being opened?
A From the outside, yes.
Q And so when you and Dan Ford processed this car, did you break those seals?
A Yes, ma'am, We did.
Q And I'm gonna show you State's Exhibit Number 188.
MS. DiGIACOMO: And that has been admitted?
THE CLERK: Yes.
MS. DiGIACOMO: Okay. Thank you.
BY MS. DiGIACOMO:
Q What's depicted here?

A This is a photograph of the interior of the vehicle after we broke the seals, looking from the driver's side across to the passenger side.
Q And showing you State's Exhibit 190. What's depicted here?
A This would be the glove box.
Q State's Exhibit 187?
A This would also be the same vehicle, looking from the passenger side across to the driver's side.
Q Okay. And there's some floral print in this photograph. What is that?
A Both of the seats, the front seats of this vehicle had after market removable seat covers placed on them.
Q Okay. Showing you State's 185. What's depicted there?
A This is the same view -- the same view as previously, but pulled back a little bit so that you could see both seats a little bit more.
Q And the previous view is 187, just for the record. And now showing you State's Exhibit 109. What's depicted here?
A This is the center console. This is looking from the driver's side across towards the passenger side, and it -- there's some stains on the driver's side of the center console

right here.
Q Okay. State's Exhibit 186. What's depicted here?
A This is also the interior of the vehicle pulled back a little bit to show both seat covers, the center console, the front floor of the driver's side looking across into the passenger's side in the passenger seat.
Q And State's 184?
A It's gonna be the -- it was the brake release and the front floor.
Q And can you point what you're referring to as the break release? That's for the --
A Or the brake. I guess that's a brake, not the brake -- I guess it's both.
Q Okay.
A I think in those little cars you push the button to release it and pull it up and it sets it.
Q And that's the emergency brake you're referring to?
A Is that an emergency brake or -- I guess that's --
Q Okay. So it's a brake?
A Right.
Q All right. Now showing you State's Exhibit 189. What's depicted here?
A This is the front floor of the vehicle. I believe that's gonna be the driver's floor --

Q Okay.
A -- the left side.
THE COURT: Can I get that number again?
MS. DiGIACOMO: That was 189.
THE COURT: Thank you.
BY MS. DiGIACOMO:
Q Okay. Now showing you State's Exhibit 183. What's depicted in this photograph?
A This is also the floor. This is a seat edge here. And right in here there was some dried vomit under the seat.
Q Now did you take a sample of that dried vomit?
A No.
Q Why not?
A The current thinking at the time with vomit from our DNA lab, Birch Henry [phonetic], was not to collect vomit. Stomach acids in the vomit pretty much destroy anything for the purposes of DNA. If we have reason to believe we need to look for heavy metals, mercury and lead, then vomit would be something to collect. But for the purposes of DNA, they did not want us to collect it.
Q Okay. Now showing you State's Exhibit 115. What's depicted there?
A This is behind the driver or left side seat, and there's an aluminum baseball bat right here.

Q Okay.
MS. GREENBERGER: What number is that?
MS. DiGIACOMO: That was 115.
MS. GREENBERGER: Thank you.
BY MS. DiGIACOMO:
Q State's Exhibit 247. I'm not sure if that's upside down or not. What's depicted here?
A I believe that's gonna be the trunk --
Q Okay.
A -- interior of the trunk.
Q And is there anything of significance in the trunk?
A There was a pair of shoes right here.
Q Okay. And State's Exhibit Number 248. What's depicted here?
A These were items from the glove box, including a multi-tool.
Q And showing you State's Exhibit 249. What's depicted there?
A This is the same items with the multi-tool opened.
Q Okay. When you say multi-tool, what do you mean?
A You know, it has a pair of pliers, this looks like a little bottle opener, a screwdriver, a blade, this looks like another type of bottle opener here. I'm not sure what that other little tool was, but basically it has multiple tools all in one

neat little package that folds up.
Q Okay. Now showing you State's Exhibit 250, what's depicted there?
A These are -- these are the shoes that were in the trunk.
Q And that we previously saw in State's 247?
A Yes.
Q Okay. Now when the car came into the lab, what was the first thing you would've done to process it?
A The first thing would've been to photograph it in the sealed condition that we had it. The next thing would've been to document anything on the exterior of the vehicle that we noted, and then process -- fingerprint process the exterior of the vehicle.
Q Now did you notice anything on the exterior of the vehicle worth documenting?
A There was nothing noteable as far as what we were being asked to look for in reference to the detective's request.
Q Now were you -- did you -- and then you said you actually processed the outside of the car for latents?
A Yes, ma'am.
Q Were you able to find any?
A Yes, ma'am, we did. Dan Ford and I both did some processing and we did recover latent prints on the exterior of

the vehicle.
Q Do you recall where?
A Not without looking at my report. I'm sorry.
Q If you looked at your report would that refresh your recollection?
A I think that would help.
Q Okay. And now you're gonna refer to a report that's dated July 22, 2001, and I believe it's a two page report with an evidence impound attached, is that correct?
A Yes, ma'am.
Q Okay. Okay. Does that refresh your recollection after reviewing your report?
A Yes.
Q Okay. Where did you find fingerprints?
A On the exterior of the left door window, on the hood, and on the trunk.
Q Now after you processed the outside for prints, what did you do then?
A We would open the vehicle, do a photography, a roll of photography interior of the vehicle. At times we might actually open the vehicle, do the photography interior and exterior and everything first, and then close the doors and process the exterior, open it up, and then we would search for any trace evidence.

Q Okay. And did you find any trace evidence inside the vehicle?
A We did find some stains that we thought might be trace.
Q Do you recall where that was?
A On the center console, those stains that I pointed out previously.
Q And that's on State's Exhibit 109?
A Yes.
Q Okay. And when you found those stains, what did you do?
A We have what's called a phenolphthalein test, and a phenolphthalein is a very specific and fairly sensitive test for the presence of human blood -- or for blood, I'm sorry, not necessarily human, but blood. What we would do is dampen a swab, kinda like a Q-tip, it looks like a Q-tip, dampen it with de-ionized or distilled water, and take a small portion of that stain on the Q-tip. And then we have the phenolphthalein, which is a two part test. You drop one drop of part A, wait about 30 seconds, drop one part of part B -- or one drop of part B. And if within 30 seconds the swab turns a bright pink, that's a positive indicator that it may be blood.
Q Okay. When you did the swab of the stain on the center console, what happened?

A We got a negative -- I got a negative response on the phenolphthalein test.
Q Now when you're looking for trace evidence or stains to use the phenolphthalein on, do you only visually do it?
A First we'll visually do it with a good white light to really be able to see. We have what's called Omnichrome or an alternative light source that has an extremely bright white light, and we'll examine the areas with that to see if we can -- if there's anything that, you know, that just lighten it up helps for us to see things. Then we'll also use the same piece of equipment, which when it's called an alternative light source, they have several different frequencies of light or colored filters. And if you look at something through different colored filters wearing different colored goggles, different things will show up.

Probably the one you would be most familiar with is a black light. You can see every piece of lint on your clothing with a black light, and I think we've all experienced that. This is similar. By using different frequencies and different colors of light, we can see different things. Some items fluoresce and some items absorb the light.

So some, for instance, blood may look extremely dark or black, while others will be like a bright glowing green, depending on what it is. And so we examined the interior of

the vehicle with an alternative light source to see if there was anything that was requested by the detectives in the way of the blood evidence specifically, that we could see using the alternative light.
Q Okay. So you were pretty much swabbing the items with phenolphthalein that you could see --
A The stains --
Q -- if there was a stain?
A -- that we could see.
Q Okay. Were there any other items that you had stains you could see that you swabbed with phenolphthalein?
A I don't recall items that -- with visible stains.
Q All right. Were there any other items you'd just swab with the phenolphthalein?
A There were -- we -- or I did a swab of the aluminum baseball bat and the multi-tool, and I tested the swab with phenolphthalein on both of those items.
Q And what were the results?
A The results were negative on those as well.
Q What about the shoes that we've -- that you found in the trunk?
A The shoes I did not attempt any kind of swab. I impounded those. And then later the detectives could request that the -- that the forensic lab could examine those.

Q Okay. And what about the car keys?
A I don't recall the car keys.
Q Okay. Would it refresh your recollection to look at your report on the second page?
A Yes.
Q And referring to the report dated July 22, 2001.
A And I need to -- after looking at the report I do need to correct myself on that previous question.
Q Okay. What previous question?
A About the shoes.
Q Okay. What about the shoes that were found?
A Apparently I did do a swab of the shoes with the phenolphthalein, and the keys as well, and I had negative results on both of those.
Q Okay. And after reviewing your report that refreshed your recollection with regard to those two items?
A Yes.
Q Okay. Now after you had gone through the car looking at -- photographed it, looking for trace evidence, what's your next step in processing the car?
A We would recover any evidence. The detectives asked specifically for weapons and for shoes, so we recovered those that we found that could be used as weapons and the shoes, which were the baseball bat, the multi-tool, and the

shoes in the trunk. So we recovered the[illegible], took them out of the vehicle together.

The next step would've been to choose specific areas of the vehicle to do some latent print processing because at this point we were going to be looking for blood that was hidden that we couldn't see that might've been cleaned up. But at the same time we needed to look for latent prints. And so we chose the areas that we could look for latent prints as -- like the interior of the windows of the vehicle that we knew were fairly conducive to finding latent prints with basic powder processing. But we didn't want to go into a lot of chemical processing on the interior of the vehicle before we did a final search for apparent blood.

Q All right. So were you able to find any other fingerprints in the car?

A I did recover latent fingerprints from the -- I believe it was the interior -- the interior of the windows. I'm not sure if it was both windows or just one.

Q Would looking at your report refresh your recollection?

A Yes, it would.

Q And that's the report dated July 22, 2001?

A Yes. Okay.

Q Does that refresh your recollection?

A Yes, it does.

Q All right. Where did you find any latent prints on the interior of the car?

A The -- there were latent prints recovered from the left -- the threshold of the left door and the interior of both door windows.

Q And that's the right and left door window?

A Yes, right and left.

Q Now the left door threshold where you found a latent, what is that?

A Like near the -- you know the threshold of a door as you go through it, it'd be like the foot area, so it was the lower --

Q I'm showing you State's Exhibit 184. Can you see the left door threshold there?

A Yes, this area in here.

Q All right. So now after you look for the fingerprints, what do you do?

A The next step in this instance was to look for blood that may have been cleaned up and was no longer visible to -- with the alternative light source or with our eyes, naked eyes.

Q And how do you do that?

A We chose to use a chemical called Luminol.

Q All right. Can you explain to the jury how that's

done?

A Okay. Luminol is a three part solution. We get it from the chemist, it's prepackaged. It has -- you use de-ionized or distilled water of 250 milliliters, and there's two vials packaged, A and B. We had A to the water, let that dissolve, add part B to the water, let that dissolve. We put it in a sprayer, a standard household plastic sprayer. Luminol is a -- is -- does what's called luminescence. It -- and it's a chemical luminescence. It glows basically in the presence of what it's -- what it reacts with. It's a very, very, very sensitive test, but it is not very specific. In other words, it will react with blood, it reacts with the iron in the blood or the heme in the red blood cells, the iron, which also means it reacts to other irons. It also reacts to coppers and some household cleaning agents like bleach.

Q Now is this something that you do by yourself?

A No, this is pretty much a two person job. One person applies the Luminol. The glowing or the luminescence of the Luminol is fleeting, it doesn't last a long time. So as one person applies the Luminol the other person has a camera on a tripod and does timed exposures of the -- of the -- any reaction that's recovered.

Q Now do you have to be trained to use the Luminol?

A Yes.

Q How are you trained?

A We are trained in our -- in -- during different types of training courses we have. We also have seniors that are experienced and trained who teach classes, as well as our supervisors. So I've been to classes where I've been taught the reaction of Luminol and how to photograph it, and I've also had individual training, in-service, you know, on squad nights where we've had demonstrations and practice with it.

Q Now do you recall what items you actually tested with the Luminol?

A Basically the interior of the vehicle, and the passenger and the driver's front passenger compartment and door panels in the front -- the entire front of the vehicle. Because it is a spray, it sprays out, and you can cover large areas with it.

Q Okay. Do you recall which items you actually got a reaction with the Luminol?

A I do. We had a glowing reaction on the left front seat cover.

Q And when you say seat cover, are you referring to what -- the floral prints that were over on top of the seat, or are you actually talking about the seat itself?

A We had a positive reaction on the floral seat cover. We took it off at that time and we applied -- or I applied the

1 Luminol, Dan did the photography, on the actual factory
2 installed seat covers, and we had a positive reaction on that as
3 well.
4 Q On the -- which seat cover?
5 A The left front seat cover.
6 Q Okay. I'm gonna show you State's Exhibit 111, and
7 also 110, State's Exhibits 111 and 110. Do you recognize
8 these?
9 A Yes.
10 Q What are these photographs of?
11 A These are the seat covers, the after market seat
12 covers after they were taken off the vehicle. If you see right
13 here, this was the right seat cover, this one down here was the
14 left seat cover.
15 Q Okay. And these feet here that you can see, what
16 are -- what's that?
17 A That would be the tripod that Dan was using.
18 Q Okay. And then showing you State's Exhibit Number
19 112. What are we looking at here?
20 A This is the left seat cover with the Luminol reaction.
21 You'll see this bright blue in here in certain spots. That's a
22 reaction.
23 Q Okay. A positive reaction with the --
24 A A positive reaction with the Luminol.

1 Q All right. Now when you get the positive reaction, is
2 there anything you do with it after you're done?
3 A Once we have a positive reaction, that indicates to
4 us that there's a possibility that there may be blood. It is not a
5 confirmatory for blood, but it's a possibility. So at that time I
6 would package the item, note it in my report, advise the
7 detectives. It would go -- be -- I would impound it as
8 evidence, it would go to the evidence vault, and then it would
9 be kept there until it was called up by the forensic lab, or
10 anybody else that needed to do further testing on that.
11 Q Now after the Luminol reacts, you said it quickly
12 goes away?
13 A Yeah, it doesn't -- yeah, it doesn't glow for a long
14 time, it's fairly fleeting.
15 Q So would you circle any of the areas where you got
16 a positive reaction so that anyone later could test?
17 A I would attempt to do that. One of the problems I
18 did find during this case specifically with circling them is that
19 the sharpie I used didn't always want to write real well on the
20 wet surface.
21 Q All right.
22 A But I did make an attempt to circle the areas of
23 reaction.
24 Q Okay. But you're -- it's possible you weren't

1 successful in circling every area of reaction?
2 A It is possible. If -- we can continue to put Luminol
3 on it to bring the reaction back, we can continue to do that.
4 But with every time we do that we're adding water to a
5 reaction for something that's already not visible to us. So we
6 continue to just add water to it. So I'm -- what I'm gonna try
7 to do is we're gonna try to photograph it and mark it as quickly
8 as possible, but if I can't get 'em all in the time before I lose
9 the reaction, we'll -- I'll spray it again and try to get a -- you
10 know, try to get the rest of the areas. Some of the smaller
11 ones I may have chose not to go for again in order not to put
12 more fluid on that item.
13 Q Okay. But you did try and circle some of these
14 areas?
15 A Yes, I did.
16 Q And what else did you get a positive reaction on?
17 A As I mentioned previously on the factory installed
18 seat covers, we also had a positive reaction.
19 Q And I'm showing you State's Exhibit -- upside down,
20 excuse me -- 113. Okay. Do you recognize what's depicted
21 here?
22 A Yes. That's the left seat or the driver's seat back.
23 Up here is the headrest -- oh.
24 Q Uh-oh.

1 A Up here --
2 THE CLERK: [unintelligible] a little bit too high.
3 THE WITNESS: Oh, is that it?
4 THE COURT: Yeah.
5 THE WITNESS: Okay. Up here is the headrest, here
6 is the exterior or left side of the seat right in this area in here.
7 Over here is the passenger side of the seat right there. And
8 then the seat bottom would be down here at the bottom. And
9 this is a positive reaction, this is the forward facing side of the
10 seat, and this is a positive reaction on that seat.
11 Q All right. What's glowing is the positive reaction?
12 A Yes. That blue you see there is the luminol reaction.
13 Q Okay. And now what else did you get a positive
14 reaction to?
15 A On the left door panel, interior door panel.
16 Q Showing you State's Exhibit 114. Does this look
17 familiar?
18 A Yes. That is the interior of the left door panel.
19 Q And can you show us here where you got a positive
20 reaction with the luminol?
21 A Right down here at the bottom, this blue right here
22 was a positive as well as up in this area here was a positive.
23 Q Was there anywhere else that you got a positive
24 reaction with the luminol?

A I did get a very faint fleeting reaction on the left front floorboard.
Q And showing you State's Exhibit 191. What's this picture depicting?
A Actually it's depicting the floor. It was an attempt to catch that reaction before it dissipated, and obviously the attempt was not successful.
Q Okay. So this is where you attempted to show the luminescent reaction, but you weren't able to get it?
A Correct. And at that time we -- I re-sprayed the luminol and was not able to get a second reaction.
Q Okay. Is that common, not getting the second reaction?
A In this case, because it was so faint to begin with, we weren't able to, and that does happen at times.
Q Now with regard to the floral seat covers that we saw in State's 110 and 111, was there -- did you notice anything about these seat covers when you were processing the car?
A The car itself was -- is an older vehicle, 1984, I believe. As you saw on the floor, there was some gravel and bits and pieces. It wasn't -- it was an older vehicle and it wasn't really clean except for the seat covers were very clean. The after market floral seat covers were quite clean.

Q And how do you know that they were clean?
A How do I know they were clean?
Q Okay. Well, do you recall whether or not they had been laundered?
A My impression was that they were not brand new. They weren't that stiff, you know, feeling of brand new or with the creases in them. There was some very slight fading, but the colors were basically very bright, still, and in good condition. I didn't notice any fraying. But they had that kind of real clean and slightly stiff. You know when you first get clean laundry, it almost reminded me of laundry my mom used to hang when it doesn't -- it actually has a more stiff feel to it than Downey gives it. But it gave me that kind of impression of being clean but not brand spanking new.
Q Okay. And you said you didn't think that they were -- you said a few minutes ago that they were probably fairly new. What gives you that impression?
A They weren't frayed and they didn't have warn out areas where the body sits on the edges where the leg goes over, they weren't worn down through where the seat is or when -- as people sometimes get into their vehicles, on the edges of the seat they sometimes rub. The colors were bright, the print was bright.
Q Okay. And now showing you State's Exhibit 114

again. And this is with the positive luminol reaction on the door, the door panel. Do you recall what kind of material the top part of the door panel was made of?
A That's what you often find in most vehicles, kind of like a vinyl, plasticy, sightly bumpy type of textured. You'll find that often on dashes and on door panels.
Q And what about the bottom portion where you actually had the positive reaction?
A That was like a carpeted type fabric cover.
Q Now is the fabric carpet more absorbent then the vinyl or plastic on the top?
A Yes, much more absorbent.
Q Now when you were viewing this in the lab, did you have any impression as to what these three marks were, what they looked like to you?
A That looked similar to like a hand swipe.
Q Now with regard to all the latent prints that you found at the actual crime scene on July 8th or 9th of 2001 as well as in this car that you processed on July 22, 2001, what would you have done with all of those?
A After we recovered the latent prints, we put 'em on -- we actually -- well, once we process for them we'll put tape over them or microsell [phonetic] or a lifting medium, and then that'll be placed on a white card. A label will be affixed as to

where it is, what the case is, who the victim is, and then I'll put 'em in an envelope. My -- I'll log 'em into a log and my supervisor drops them in a locked box in our temporary evidence hold. The latent print detail people from the forensic lab will come over and they'll unlock the box, take out all the latent packages that have been locked in there over the last day or the weekend, whatever. They'll sign on that same log that they collected them and they take them back to latent print detail where they're then kept as evidence in their locked file area there.
Q And now did you take any tire impressions from the Fiero when you processed it on July 22, 2001?
A Yes, ma'am, I did.
Q Okay. What was the purpose of that?
A As you recall the previous photos of the scene, there were those dark tire impressions going up over the median that -- or not median, but the planter area median across the drive area of the parking lot. And because of that, this being a possible suspect vehicle, we took tire impressions of the tires that were on the vehicle and made a list of what kind of tire it was and where that particular tire was located on the vehicle, and the impressions were impounded as evidence.
Q Okay. And were there other items you impounded as well? I believe you said the baseball bat you impounded, is

that correct?
A Yeah, the baseball -- I impounded the baseball bat, the shoes, the multi-tool, the left floral seat cover, the left interior door panel, and the left seat cover, factory installed seat cover.
Q Now that's the gray one --
A Yes.
Q -- the gray color? How did you actually impound that? Did you impound the whole seat?
A No, I cut the seat cover off.
Q Okay.
MS. DiGIACOMO: Court's indulgence.
Your Honor, may I approach the witness?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q I'm gonna show you what's been marked as State's Proposed Exhibit 128. Can you look at that and let me know if you recognize it?
A Yes, ma'am, I do.
Q How do you recognize this?
A This has my personnel number, my signature, and my personnel number with my initials.
Q Okay. Is this -- and is this one of the items that you impounded and sealed before you placed it in your locked box?

A Oh, this one actually would've gone to the temporary -- been locked into temporary evidence hold to be picked up by the evidence vault.
Q Okay. But this is an item that you did want impounded?
A Yes, I impounded this.
Q Okay. And there's a red seal back here. Do you recognize what this red seal is?
A Yes. That's -- we put a red seal when we seal an item, and then we initial and put the date on it, and that's what this is here.
Q And does that have your initial and date?
A Yes, it does.
Q All right. And what's the date on there that you impounded this?
A 7/22 of 01.
Q And there's a blue seal at the bottom. Do you know how that blue seal got there?
A This one -- this blue seal is from the forensic laboratory. When a detective or somebody asks the forensic lab to examine a specific item, they call it up from the evidence vault, and when they open it, they open it someplace different than where my sea, is, and then they will place their seal on it. And this blue seal is the forensic lab seal.

Q Okay. And is there also a chain of custody on the front part of this form that you filled out?
A Yes, there is.
Q Does it tell you who actually put that blue seal?
A Yes, it does.
Q And who is that?
A I believe it says Mr. Wall, P number 5019.
Q All right. And it also has a orange sticker called bio hazard?
A Yes.
Q What's that for?
A At any time that we suspect that there might be a bodily fluid, semen, blood, or anything that could be hazard to somebody handling the item, we'll put a sticker on saying bio hazard as a warning to anybody that may be handling it later on.
Q And so somebody who handles it should use gloves?
A Yes.
Q Okay. Do you know what is inside State's Proposed Exhibit 128?
A Yes, ma'am.
Q What's inside this?
A Inside this bag is the floral left seat cover from the Fiero, and also the factory installed seat cover from the left

driver's seat of that same vehicle.
Q The gray one?
A Yes.
MS. DiGIACOMO: Okay. Your Honor, at this time the State would move for admission of State's Proposed Exhibit 128 as the bag and its contents.
MR. SCHIECK: No objection, Your Honor.
THE COURT: 128 and it's contents are admitted.
(State's Exhibit No. 128, admitted)
MS. DiGIACOMO: Thank you. May I approach the clerk, Your Honor?
THE COURT: Yes.
MS. DiGIACOMO: May I approach, Your Honor?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q Okay. Now I'm going to show you what's been marked for identification of State's Proposed Exhibit 131. Do you recognize what's here?
A Yes, I do.
Q And how do you recognize this?
A It has my personnel number, my personnel number and initials, as well as my signature.
Q Okay. And what is inside State's Proposed Exhibit 131?

A This is the interior left door panel of the red Fiero.
Q Okay. And does it also have your -- on the red stickers your date and initials?
A Yes, ma'am, it does.
Q Okay. And what was the date that this was impounded?
A July 22nd of 2001.
Q And this is also from the ref Fiero?
A Yes, ma'am.
Q Okay. Is this the door panel that had the positive reaction to luminol?
A Yes, ma'am.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 131 as the box and its contents.
MR. SCHIECK: No objection, Your Honor.
THE COURT: 131 and it's contents are admitted.
(State's Exhibit No. 131, admitted)
MS. DiGIACOMO: Thank you. Court's indulgence.
THE COURT: Yes.
BY MS. DiGIACOMO:
Q I'm gonna show you what has been marked as State's Proposed Exhibit 127. Do you recognize what this is?
A Yes, I do.

Q Okay. How do you recognize that?
A It has my personnel number, my personnel number and initials, and my signature.
Q Okay. And what date was this impounded by you?
A This was impounded on July 22nd of 2001.
Q Okay. And is it fair to say that anytime we see a blue seal, that's from the forensic lab?
A Yes, ma'am.
Q Okay. And what's inside State's Proposed Exhibit 127?
A This is the aluminum baseball bat that was behind the driver's seat of the red Fiero.
Q All right.
MS. DiGIACOMO: At this time, Your Honor --
BY MS. DiGIACOMO:
Q This doesn't have a bio hazard sticker on it, does it?
A No, it doesn't.
MS. DiGIACOMO: Okay. Your Honor, at this time we'd move for admission of State's Proposed Exhibit 127 as the wrapping and contents.
MR. SCHIECK: No objection.
THE COURT: 127 wrapping and contents admitted.
(State's Exhibit No. 127, admitted)
MS. DiGIACOMO: Thank you. Court's indulgence.

THE COURT: Yes.
(Pause in the proceedings)
BY MS. DiGIACOMO:
Q Okay. With regard to the luminol and the phenolphthalein test that you conducted, how long have you been doing phenolphthalein?
A As long as I've been with the department --
Q Okay.
A -- so just over 10 years.
Q Okay. And is it something that you do on a regular basis?
A Yes, ma'am, it is.
Q What about the luminol?
A The luminol -- I've also applied luminol probably since my first or second year on the department. It's not something we do very often. It is an unusual one to use on the average crime scene.
Q Okay. Now with regard to luminol, you're trying to get positive results for -- or you're trying to find if there's any blood, possibly, that could've been cleaned or removed?
A Exactly. It's like used for a search.
Q Okay. Does it make a difference when you're doing the luminol whether or not you're trying to do it on a surface that's very porous or a surface that's very hard?

A In my experience I've used it on concrete, on carpet, in this instance on the vehicle interior. And I -- I don't recall that it made that much of a difference.
Q Okay. So it doesn't matter if it's something that's very absorbent, like cloth versus something, like the upper portion of the door panel that's plastic?
A If there is trace on it then it will react, whether it's on something that's harder or something that's very porous, like a cloth.
Q Now is it easier to clean something off a porous surface or a nonporous surface?
A Off a nonporous surface is easier to clean.
Q Okay. What would be a nonporous surface, with regard to the car?
A The glass. The plastic is more of a nonporous surface than the cloth, but not quite as nonporous as glass.
Q Now what about, for instance the foot pedals? Would that be considered porous or nonporous?
A The foot pedals -- and I don't recollect right off the top of my head, but most foot pedals have like a rubber on 'em, and they're not necessarily -- they're actually -- they're not considered nonporous, but they don't absorb that well.
Q Okay. What about the -- a steering wheel or the steering wheel in the car?

A Once again, I don't recall off the top of my head whether it had a cover or what its --
Q Okay.
A -- material was.
Q Okay. Well, showing you State's Exhibit 188. Can you see that?
A It does look like it has a kind of a -- a cover on it. And you can see the -- you can see the stitching down here. And it looks like it's a factory installed type of cover, but this area in here looks like it might be kind of a rubbery type of fabric or a type of fabric rather than the hard bake-a-light [phonetic] type steering wheels --
Q Okay.
A -- that you sometimes see on older vehicles.
Q So would that be considered porous or nonporous?
A I would consider that porous.
Q All right. And what about the brake handle that we saw that you described, right here in State's Exhibit 184?
A My recollection of that is that it was metal and that would be a nonporous.
Q Okay. What about the baseball bat found in the car? Would that be porous or nonporous?
A That would be nonporous.
Q And what about a review -- rearview mirror? Would

that be porous or nonporous?
A That would be nonporous.
MS. DiGIACOMO: Your Honor, I'll pass the witness.
THE COURT: Mr. Schieck may cross.
MR. SCHIECK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SCHIECK:
Q Good afternoon, Mrs. Renhard. How are you?
A Good. Thanks.
Q I'm gonna hand you what's been admitted into evidence --
MR. SCHIECK: May I approach, Your Honor?
THE COURT: Yes.
MS. DiGIACOMO: I believe it's 127.
BY MR. SCHIECK:
Q I'll have you identify that exhibit.
A Yes, it says 127.
Q Okay. And that should be the baseball bat?
A Yes, sir.
MR. SCHIECK: Could we have this opened Your Honor? May I have a pair of scissors to open it?
THE COURT: You may retrieve those from the clerk.
BY MR. SCHIECK:
Q Handing you a pair of scissors.

A Okay.
Q For the record, you're cutting so it's not to destroy any of the seals on the item, is that correct?
A Yes, that's what I'm attempting to do.
THE COURT: The record shall reflect that in order to remove the wrapping she's had to cut it into two pieces. A piece around the bottom handle and a larger piece from around the head of the bat.
MS. DiGIACOMO: Your Honor, maybe for identification purposes that should be marked as 127-A because I don't think we're gonna get it back into that packaging.
THE COURT: The second piece?
MS. DiGIACOMO: The bat itself.
THE COURT: What's been marked --
MS. DiGIACOMO: Oh, the second piece?
THE COURT: What has been marked as 127 has the sticker on one side, but it's now in two pieces.
MS. DiGIACOMO: That's correct, and plus the bat won't be able to go back inside the packaging.
THE COURT: So can you hand me the two pieces of the packaging, please? What came off around the head of the bat? What has the 127 on it? The --
(Off-record colloquy)

THE COURT: I was gonna have you mark this as 127-A, the small piece from the handle.
THE CLERK: Okay.
THE COURT: And then the bat itself can be marked as 127-B.
MS. DiGIACOMO: Thank you, Your Honor.
MR. SCHIECK: Can I go ahead and question and then we'll mark it after I question, Your Honor?
THE COURT: Yes, you may.
MR. SCHIECK: Thank you very much, Your Honor.
BY MR. SCHIECK:
Q Now the baseball bat, which will be 127-B appears to have some type of handle grip around it, is that correct?
A Yes, sir.
Q Okay. And that's a rubber type surface?
A Yes, that is.
Q And that has, in fact, would it be fair to say a number of knicks or cuts or whatever you want --
A Abrasions, yes, scuffs.
Q It's quite rough in some areas, correct?
A Yes, it is.
Q In fact, some areas go clear down to the metal underneath the rubber?
A Yes, sir, they do.

Q Okay. And you tested this en... bat?
A I took swabs from the end of the bat, the head end of the bat, or --
Q The head end would be --
A The thick end, yes.
Q Okay.
A I did some swabs there, and also at the handle end.
Q Okay. The handle end being down here on the --
A Yes, the grip or handle end.
Q And I'm showing you on the Elmo at this point in time, there's like knicks in there where --
A Yes.
Q -- it actually goes down to the metal?
A Yes.
Q Where if there was -- a liquid would flow under there? Perhaps if there was blood it would be trapped under there, correct?
A Yes.
Q Okay. And then further down there's a number of other knicks and rough spots and abrasions on the bat?
A Yes, sir.
Q Okay. And how much of the bat down here did you test with your phenolphthalein?
A When I did the swabs for the bat, as the gentleman

implies or states, there are a lot of rough areas. And in the other end of the bat there are a lot of dents and scratches. And so I made an attempt to get into some of those areas where blood might get stuck and not be easily wiped off. And I didn't like run a swab over the entire bat, you know, every inch, but I did do the end where -- that you would -- either end where you would expect either the person using a bat to be holding it, or the end where a bat might've been used on something, the end that would've struck something. And so I made an attempt to get into some of those areas and around the -- where the rubber end on the handle end where the rubber meets that aluminum end of the handle end as well.
Q And those were all negative?
A Those were negative.
Q And phenolphthalein is a fairly sensitive test?
A It's a fairly sensitive and very specific test.
Q Very specific for?
A Blood.
Q For the hemoglobin component of blood?
A I'm not sure if it's hemoglobin that phenolphthalein tests for or not. I don't recall right off the top of my head.
Q Did you use the luminol for the bat?
A No, I did not.
Q Okay. Just the phenolphthalein?

A Just the phenolphthalein.
Q And did the bat -- you weren't there when the car was impounded, correct?
A No, sir, I was not.
Q Okay. So the first time you saw the car would've been in the crime lab?
A Yes, sir.
Q Okay. And that's where the bat was located at the crime lab?
A Yes, sir.
Q And when you opened -- or when you got to the car the car was sealed, all the doors?
A Yes, sir, it was.
Q Okay. And that would've been sealed when the car was impounded?
A Yes, sir.
Q So no one could've gotten into the car and moved that bat?
A No.
Q Is it a fair assumption that's where the bat was located when the car was sealed?
A Yes, sir, it is.
Q Okay. How does the crime lab transport a vehicle that's been impounded?

A What happens is the person that does the impounding will go out to the location that the vehicle's at. They'll photograph the vehicle, do all around photographs, photograph the condition of the vehicle. They may or may not do interior photographs, depending on the instructions of the detective involved. They'll then place those seals that we pointed to earlier on the vehicle at the trunk, the hood, and the doors that would commonly be used to open a vehicle. The tow company, whichever tow company is being used to tow the vehicle will come out. They'll give them instructions, make -- you know, be careful of what you touch, be -- make sure you wear gloves when you do handle the vehicle. And then that crime scene analyst will follow the tow truck and the vehicle back to the crime lab, and they will sign off for it when they get it actually in the garage.
Q And the car -- do you know in this case whether the car was placed on one of those tow trucks were you lift the entire car up and put it on the back of the tow truck, or whether it was lifted or sort of drug back?
A I don't know that, sir.
Q Okay. And the reason I ask that is would transporting the vehicle from Panaca, Nevada to the crime lab have effected the tests you did on the tread wear impressions of the tires?

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A I don't know. The tread -- like footwear, tread wear is something that changes every day you use it, every time you step out. If the vehicle was being towed with its wheels rolling from the time it was recovered, which I believe was on the 21st, from the time it was recovered to the time it was brought back, if the wheels were rolling, that would effect the tread wear during that time period. If it was put on a flatbed -- if it was hauled up and put on a flatbed, that shouldn't effect it to a great degree, other than just the movement of the vehicle going onto the flatbed and the movement of the vehicle going off the flatbed.

Q And you indicated that you did collect tire impressions from all four tires on the Fiero?

A Yes, sir, I did.

Q Okay. So that would be the front and the rear tires? So if it was towed there was at least two of the tires that wouldn't have been impacted by the towing distance?

A Correct, sir.

Q And you're not involved at all in the process of comparing those tire impressions to the ones that were collected at the crime scene?

A Correct, sir.

Q That would be someone else?

A That would be somebody in the forensic lab, yes.

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Q Do you know who did that in this case?

A I'm sorry, sir, I do not.

Q Okay. Do you even know if it was done in this case?

A I don't know whether it was done.

Q Okay. Now earlier in your testimony you were asked some questions on things that you tested with the phenolphthalein, and you had indicated that -- or didn't recall that you had originally tested the shoes in the trunk, is that correct?

A Yes, sir.

Q And then you saw your report and you refreshed your recollection?

A Yes, sir.

Q Okay. And you're trained to document and record information so that you can come to court and testify concerning it?

A Yes, sir.

Q Okay. And even someone with your training occasionally will make a mistake or not remember exactly what happened some years ago?

A Yes, sir, that's quite common.

Q It would be common for a lay witness also not to remember exactly what happened five years ago?

A Yes, sir.

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Q And that wasn't any intent on your part to deceive anyone, you just didn't remember?

A I did not recall doing the phenolphthalein on the shoes.

Q Okay. Now you had talked about the door panel and that you had seen on the door panel what you described has a hand swipe or something of that nature, correct?

A That's what it reminded me of.

Q Okay. And again, that appears up in this area?

A Yes, sir.

Q What you're talking about looks like three fingers or something of that nature?

A Yes, sir --

Q Okay.

A -- something of that nature.

Q Okay. You don't see any in your testing with the luminol, you didn't see any other impressions from a hand in any other portion of the car?

A Nothing else had gave me that -- that led me to have that kind of thought or impression, no.

Q So if someone had had a substance on their hand and had touched that area and touched the steering wheel, you didn't see any evidence of that?

A No, sir.

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Q Okay. There are other things that will give you a positive reaction with luminol, correct?

A Yes, sir.

Q Okay. What are some of those things?

A As I've stated before, luminol is a very sensitive but not a very specific test, and it will -- and it reacts to the iron in the blood, the heme in the red blood cells, the iron. And so it does react to iron, it reacts to copper, it reacts to some vegetative matters, and it also reacts to many cleaning supplies, especially bleach.

Q What are some of the vegetative matters that it reacts with?

A I'm not really sure what all vegetative matters it reacts to.

Q Dandelion?

A I don't know.

Q Thistle?

A I really don't know. I just know that it's vegetative matters that it does react to, but I'm not sure exactly which ones.

Q Okay. And you had talked about iron and copper, correct?

A Yes.

Q Any other metals that you can think of?

A Not that I can think of. Probably one of the chemists would be able to better answer that question for you.
Q So I mean your responsibility is basically to prepare the luminol testing, do the testing, and document whatever the results are?
A That's basically my responsibility.
Q Okay. Are you familiar at all with the Panaca area of Nevada?
A I've been through there once and I'm not really familiar with it.
Q Okay. Are you familiar with Pioche, Nevada?
A Once again, I've been through there once and -- but I didn't stay a long time.
Q Do you know what iron pyrite is?
A I believe it's a -- I believe it's a metal -- or a -- it's like little flakes in the soil or ground. Is it the one that's sometimes called false gold?
Q It could be, yes. So you're familiar with that generally?
A Very generally.
Q Okay. And you're familiar that there's gold and silver mines in Pioche and in that area of Lincoln County?
A All through Nevada, I believe.
Q And that the milling process results in what's known

as tailings or the leftovers from once the gold is removed?
A Yes, sir.
Q And the iron would be left behind and the gold removed?
A Yes, sir.
Q And so a substance like that could give a false positive?
A I believe it probably could. I'm not positive. I've never tried the luminol on that myself, but --
Q Have you done any testing for false positives?
A I did. I have done some testing for false positives using cleaning agent, different bleach type cleaning agents.
Q And what did you find?
A I did find that luminol does give false positives with cleaning agents.
Q And when luminol -- I mean that is a test that'll find one drop of blood in one million drops of water, is that correct?
A That's what I've read.
Q Okay. You don't have any reason to dispute that?
A I have no reason to dispute that.
Q Which is a pretty fine test?
A Very, very sensitive, very sensitive.
Q Okay. And of all the luminol you sprayed on the

interior of the car, you've shown us all of the results that you received?
A All the results except for the very fleeting one on the floor board that we weren't able to recreate.
Q Can we even say that was a positive reaction because you couldn't recreate it?
A I can't show it to you, but I don't see that I can -- and that's why I added it in my report. I can't say that it didn't occur just because I wasn't able to document it with photography.
Q And what is a confirmatory test?
A The confirmatory test would be what the people in the forensic lab would do to confirm that something is, in fact, blood. I'm not a chemist or a serologist, but that actually would be a test to confirm positively that it is blood that the presumptives had reacted to.
Q Okay. Are you aware of any confirmatory tests in this case?
A I do believe they were requested. I have not seen any reports on them.
Q You did do the -- now the phenolphthalein is not quite as sensitive as the luminol, is that correct?
A The phenolphthalein is not quite as sensitive as the luminol, but it's much more specific to blood.

Q Okay. And the phenolphthalein was not only negative on the bat but was negative on the shoes in the trunk?
A And the multi-tool.
Q Okay. And the keys in the ignition?
A Yes, and the stain on the --
Q On the console?
A -- center console. Yes.
Q Okay. And the stain on the console was actually a stain you could see, correct?
A Yes, sir, it was.
Q And that alerted you, due to the nature of the stain, that it could possibly be blood?
A Yes. It had sort of a brownish, reddish, brown, more of a brown kind of color.
Q And clearly that was visible to the naked eye?
A Yes, sir, it was.
Q Okay. And when it got to the lab it was clearly visible because you took a photograph of it?
A Dan Ford took a photograph of it.
Q Okay. And there's no reason to believe that stain would've been there after the car was sealed?
A Oh, no, sir.
Q So it must've been there before it was sealed?

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A Yes, sir.
Q And anyone cleaning the car would've seen that stain and cleaned it?
A Yes, sir.
Q But it wasn't -- but it came back negative as on the phenolphthalein test?
A Yes, sir, it did.
Q Now in the front driver's side of the car there is -- that would be where you rest your feet as you're driving, operating the pedals, correct?
A Yes, sir.
Q Okay. And it appears to be a number of loose items of debris laying there in that area?
A Yes, a lot of gravelly soil.
Q Items easily vacuumed up?
A If you had a good vacuum, probably.
Q At least items that could've been brushed out?
A Yes, possibly, yes.
Q And again over here, this would be more in the area where your left foot would rest, correct?
A Yes, sir.
Q And there's a number of debris and stains and things of that nature there?
A Yes, sir.

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Q And those were there when the car was impounded, correct?
A Yes, sir.
Q And those all tested -- or did you test those areas?
A No, sir, I didn't. They didn't appear to be blood.
Q So they weren't tested at all?
A No, sir.
Q Not even with the luminol?
A Oh, yes, the luminol. I'm sorry. I thought we were talking about the phenolphthalein. The luminol was sprayed in this area.
Q Okay. And with negative results?
A Negative except for that quick flash of a reaction that was very fleeting and not able to be recreated.
Q And that fleeting reaction was more toward where the right foot would sit, is that --
A It was actually, to my recollection, was -- may I --
Q I think I have a better photograph. Let me --
A Yeah.
Q This is 189. The one I've just been showing you, for the record, is 184. I can show you 189.
A Yeah. It was actually where the left foot more would've been. And I believe, to the best of my recollection, it was down in this area, down in here.

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Q Okay.
A But it just did not --
Q Again, that's an area with appears to be dirt and dust and --
A Yeah. And --
Q -- little rocks?
A -- rocks, yes.
Q All sorts of things in there?
A Yes.
Q And that was just a fleeting reaction?
A Very fleeting.
Q Now if someone had stepped in blood and then had gotten into this car, you would expect a transfer of the blood onto that surface of the vehicle, if you were the driver, correct?
A I would expect that that would happen.
Q At least to -- at least if it was within one millionth of a degree there would be a reaction with the luminol?
A I would expect that to occur, yes, sir.
Q And the fleeting reaction you got, was it a large size or just a little speck?
A It was more than a little speck, but it was actually quite small. Probably not much more than a very -- just a faint glow over a couple inch section.

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Q And certainly if -- showing you State's Exhibit 143, if we sprayed luminol on that we'd get a reaction, I would guess, huh?
A Yes, sir.
Q And once you've got blood like that on the bottom of your foot, or on the bottom of your shoes, wet blood like that, it tends to say in the little nooks and crannies of your foot 'till you step somewhere else?
A Even after you step somewhere else, if it -- as much as is on here would get up inside the tread somewhat.
Q So if you sat in a car with that pair of shoes on you'd expect some transfer of blood?
A I would expect that there would have been.
Q Now luminol testing doesn't tell us the date of when a stain is deposited, correct?
A It does not.
Q And in fact, does a blood stain become stronger with the passage of time?
A From my training and reading, from what I understand, with the passage of time the iron and the heme oxidizes. And in fact, the luminol can become -- or can actually create a more intense reaction as time passes due to the oxidation of the blood.
Q What type of time frame are we talking about that

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1 blood would oxidize and remain there to be seen by a luminol
2 testing?
3 A I don't know that, sir.
4 Q Years?
5 A I -- that I don't know.
6 Q Okay. You've never done any testing on that or do
7 any reading on that?
8 A I've probably done some reading, but I don't recall.
9 I have not done any testing on it and I haven't done any
10 scenes that were -- this was the longest period or time
11 between a scene and the use of luminol that I've done.
12 Q Okay. Which was from the time you were out on
13 July 8th and 9th until July 22nd?
14 A July 22nd, exactly.
15 Q So the longest you've gone on testing for blood
16 using luminol would've been this case, which would've been --
17 what is that, 13 days?
18 A Yes. I believe Dan Ford has had experience in doing
19 longer periods of time. He might be able to speak a little bit
20 more to that.
21 Q And you're familiar with Mr. Wall, correct?
22 A I know him in passing.
23 Q You know that he does the NDA testing for the --
24 A He did, yes, sir.

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1 Q And he would be better trained in luminol and things
2 of that nature?
3 A He would have -- he would have more -- I believe
4 he would have more experience and the reactions and the
5 times than I have.
6 Q Now you had shown us the photograph of the
7 luminol reacting with the car seat, after the removal of the
8 floral car seat? And this is Exhibit 113.
9 A Yes, sir.
10 Q And so is that pretty much a picture of the entire car
11 seat as it sits in the passenger side of the vehicle?
12 A Yes.
13 MS. DiGIACOMO: Objection, Your Honor. That
14 misstates the testimony.
15 MR. SCHIECK: Excuse me, the driver's side of the
16 vehicle.
17 THE WITNESS: Oh, I'm sorry. Yes, sir. Except for
18 the actual --
19 THE COURT: The question's withdrawn, so it'll be --
20 with it being rephrased the objection's now moot.
21 You may answer.
22 THE WITNESS: I'm sorry. The seat down here
23 doesn't really show up or the -- where would be the bottom
24 edge of the seat part here. So this is -- you can faintly see

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1 over here the edge on the passenger side or the right side, but
2 this is pretty much a good visual of the front portion of the
3 driver's seat back. It doesn't really show the actual cushion or
4 the seat part of it very well in this picture.
5 BY MR. SCHIECK:
6 Q Okay. The part where you actually rest your back
7 side isn't shown very well, but the backrest is shown?
8 A Yes, sir. And headrest.
9 Q Okay. And the upper --
10 THE COURT: Oh, what do you mean by backside?
11 MR. SCHIECK: Let me be a little bit more accurate.
12 I'll come over here. I'm gonna block something one way or
13 the other.
14 BY MR. SCHIECK:
15 Q You would actually be seated here with your legs
16 that direction and your back up here, is that correct?
17 A Yes, sir.
18 Q And your head would be resting up here?
19 A Yes, sir.
20 Q And so you actually had a reaction from luminol
21 where a person's head would normally be resting in this car?
22 A Yes, sir.
23 Q And it's quite a broad area of luminol reaction on the
24 headrest?

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1 A Yes, sir.
2 Q From both sides? I mean is it from side to side of
3 that headrest?
4 A Yes, sir, pretty much it was.
5 Q How wide is that headrest? Do you have any -- how
6 wide it would be?
7 A How wide?
8 Q Yeah.
9 A Oh, I'm sorry, I didn't understand. No, I did not
10 measure that.
11 Q But it appeared to be a normal sized headrest?
12 A Yes, sir.
13 Q And that's all part of one -- the seat, it's one solid
14 seat?
15 A I believe it was but I'm not positive it if was -- if that
16 was a separate headrest or not. It almost looks like it here.
17 But to the best of my recollection, it was one solid piece.
18 Q Did the luminol react all the way up to the top of the
19 headrest portion of that seat?
20 A Yes, sir, slightly over right here.
21 Q Yes.
22 A It's just slightly over the top but not across the
23 actual flat area, the top, but just slightly on this edge here,
24 slightly curving over towards the top.

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Q Almost as if something had been poured down the seat, starting at the headrest and going down?
A I hadn't thought of that, because the side isn't really reacting. I guess that's a possibility, but I hadn't really considered that.
Q Okay. And there's a sunroof on this vehicle?
A Yes, sir.
Q Okay.
A Or a moon roof, I'm not sure which it is.
Q Okay. There's a roof that opens up so you can see whatever --
A Yeah. No, I don't know if it opens.
Q Okay. There's some type of glass there, though?
A There was a glass there. I'm not sure if it was an opening one or not.
Q And do you recall whether or not there was a seal put on it?
A No, I don't recall.
Q And you tested the multi-tool that was found in the glove box, and that was negative, correct?
A That was negative.
Q Okay. And while we're talking about the tool box, you had taken a photograph of that side of the vehicle on the interior, correct?

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A Oh, the glove box?
Q Yes.
A Yes, sir.
Q Showing you what's been admitted as 190. What are those items that appear to be hanging from underneath the glove box there?
A Those were the air fresheners.
Q Okay. Did you count how many air fresheners are hanging there?
A No, sir, I didn't.
Q Is it fair to say there's multiple air fresheners hanging on the passenger side of that vehicle?
A Looks like at least two.
Q Okay. You indicated that you'd recovered -- or photographed some vomit inside the vehicle, correct?
A Yes, sir.
Q And that was under the driver's seat?
A Yes.
Q Same seat where you had the reaction from the luminol?
A Yes, sir.
Q Okay. And you did not collect that vomit?
A Did not.
Q Because it's the policy of the Metropolitan Police

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Department or the crime lab that the acid that is in the human stomach would destroy any DNA that was contained in that vomit?
A That was the prevailing thought at that time, according to our lab. And it didn't react -- it also didn't react when we did the luminol.
Q Okay. So you just left it there, is that --
A Just left it, yes.
Q Okay. But there was, in your opinion, no doubt that that was, in fact, vomit?
A Yes, sir, I was sure that that's exactly what it was.
Q Now was that under the front seat or did you have to slide the seat back in order --
A It was actually more under the front seat. And what was visible, it looked like somebody had moved the seat forward since that occurred. And there was just an edge of it that was visible to see as the seat was when we received the vehicle.
Q This is one of those seats that you slide -- you can slide forward if you need to to make it comfortable for you to drive?
A I don't recall that you could, but that was my -- that's my impression now thinking back on it that it's a seat that moves --

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Q And by moving it back --
A -- would be standard for most vehicles, I think.
Q By moving that back, did that expose the vomit to the naked eye?
A No, that actually -- the photograph we have there is the way it was exposed when we got it. More of it was under the edge of that seat.
Q 'Cause I'm looking at 186 here, and the vomit's -- you can't see the vomit from that angle, is that --
A Not from that angle at all. It would've been back up here a little bit, and you had to get in over the seat a bit more to be able to actually see that little bit of edge that you could see in the one photograph.
Q But if you did that you were able to see it and then --
A Yeah. And then if the seat slid back you could see a lot more of it.
Q Okay. Now I'm gonna show you 183. Is that the edge of the --
A Yeah, the edge of the vomit.
Q Okay. Has the seat been slid back at that point?
A I don't know if it had or not.
Q If you were trying to clean the car out you certainly would've been able to see that vomit?

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A If you were trying to clean the car out, I believe you probably would have.
Q Now let's go back to the crime scene. This would've been on July 8th. You arrived just before midnight and then stayed until the end of your shift, is that correct?
A I'm not sure exactly what time we left, but it was in the morning hours of July 9th.
Q And the body was still there when you left or it had been removed?
A No, the body had been removed by the coroner's office prior to completing the investigation at the crime scene.
Q So you were still there taking pictures after the body was removed?
A Yes, sir.
Q Okay. I'm showing you State's Exhibit 144 again. And that's got a number of the footprints in it, is that correct?
A Yes, sir.
Q Okay. Now one of the footprints you had indicated -- I'm showing you 150. There's actually some writing next to the footprint that was put there by the crime scene analyst, is that correct?
A Yes, sir.
Q Okay. And it's labeled 2-F and we can see it as we zoom in?

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A Yes, sir.
Q Okay. And that's for purposes of when you put the tripod over it and photograph that for comparison purposes you know which one you're talking about?
A Yes.
Q Okay. Being as it says 2-F, I assume there's a 1-F?
A Yes, sir.
Q Do you know where 1-F would've been located?
A I don't recollect off the top of my head where that would've been. They would've been in the black and white photos that Teresa Main took.
Q Okay. Would she have been the one that marked those?
A Yes, sir.
Q Before she took her photographs?
A Yes, sir. And she would've put a scale in for her photography.
Q Okay. I'm gonna turn this -- and again, this is 144.
A Oh, that looks like that might've been 1-F right over here.
Q Okay. And if we zoom back out, then 2-F would be up there at the top?
A Yes, sir.
Q And then 1-F's down there at the bottom?

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A Yes, sir.
Q And you indicated those footprints appeared to have been leaving the -- were headed out of the area?
A Yes, sir, that's -- that is exactly what it appeared, that they were in a easterly direction.
Q Okay. And besides -- when you got there they were -- they weren't still wet, were they, or were they?
A I don't believe they were.
Q They'd already dried?
A I believe they had. I didn't test them, or I mean I didn't touch 'em or anything like that when I first got there. And so whether or not positively they were totally dry, I don't know. But it is my recollection that by the time we started paying attention to them they were dry.
Q Okay. And Dan Ford would've been the one that collected the blood samples from those?
A Yes, sir.
Q Okay. And so he would know better whether they were dry or wet when he collected his samples?
A Yes, sir.
Q Okay. In addition -- excuse me. In addition to seeing those footprint impressions as they're headed eastward out of the garbage bin, there appears to be droplets of blood, is that correct, around those footprints?

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A I'm not sure if that's what that is or not. I don't recollect -- I don't recall off the top of my head if that's what that is or not.
Q Okay.
A But I might -- I don't know if I mentioned that in my report.
Q Would referring to your report help you to recollect that or --
A Yes, sir, it would.
Q If you could do that.
A I don't have in my report that those were drops of blood. Dan -- if they were, Dan Ford may have taken samples. I'm not sure whether he did or not.
Q Okay. So we should ask Mr. Ford?
A He may have a better recollection of that.
Q Okay. Was there -- you said there was another area of footprint impressions that were collected also?
A There was one more that was west of F-2, which was actually not visible at the time this photograph was taken because we hadn't started moving any of the debris off of that area yet. There was one that was under some of the debris.
Q Did you actually take photographs then of the other footprints that were over by -- or under the debris?
A I believe Teresa Main did those -- that photography.

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Q You didn't make any comparison of those footprints to anything?
A No. I don't -- I'm not a comparative analysis expert, and so I don't do any comparative analysis. That would've been done by somebody in the forensic lab.
Q And the only shoes that were found at the scene were the pair of sandals, is that correct?
A Yes, sir, that's correct.
Q And you photographed the bottom of those sandals?
A Yes, sir, I did.
Q And showing you State's Exhibit 54. Did the bottom of those sandals match the footprints that you found at the scene?
A They don't resemble that footwear pattern at all.
Q I mean they're pretty distinctive?
A Yes, sir.
Q They don't look like the footprints that are at the scene?
A No, sir, they didn't.
Q And you had contact with Mr. Shott, who had discovered the body?
A Yes, sir, I did.
Q And you took impressions of his feet -- of his footwear?

RENHARD - CROSS

A Yes, sir, I did.
Q Did you make any comparison of those to the footprints at the scene?
A I did not.
Q As a crime scene analyst I assume that you're taught that one of your responsibilities is not to disturb the crime scene and create any evidence that isn't already there, is that correct?
A Yes, sir.
Q Okay. Is it fair to say that those footprints wouldn't have been left by any of the crime scene analysts that were removing the debris and photographing the body?
A Yes, sir. Those footprints were there -- I was the first one from the crime lab to respond, and those foot prints -- those footwear impressions were there when I arrived. And the officer pointed them out to me, in fact, to make sure that I didn't accidently disturb them when I arrived.
Q And did he inform you that they were there when he arrived?
A Yes, sir, he did.
Q Okay. Did he inform you that he hadn't left them?
A I don't recall that he said that.
Q Other than the fact that they were already there before he got there?

RENHARD - CROSS

A Yes, sir.
Q Process of elimination, they weren't his?
A Yes, sir.
Q Okay. You were shown the aerial photograph -- and we're just about done here -- of where the crime scene was located, where the dumpster was at, and you gave a description that there was block walls that go all the way around?
A Yes, sir, on the -- the block walls of the enclosure or the property?
Q The property.
A Yes, sir. The perimeter walls on the north and west sides.
MR. SCHIECK: Can I approach the chart, Your Honor?
THE COURT: Yes.
BY MR. SCHIECK:
Q If I might, just make it easier for you if I hold this up. There was a wall that went along the west side of the property and then the north side of the property?
A Yes, sir.
Q Okay. And what is this area over here to the north -- direct north of that parking lot --
A Off the top of my head I'm not sure, but I think that

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looks like it's probably gonna be apartment complex.
Q Okay. And with maybe parking structures, parking lot there for the apartment complex?
A These here look like they might possibly be a covered parking structure, yes.
Q Did you ever go over to that apartment complex or find a name of it or anything of that nature?
A No, sir, I did not.
Q You were just focused here at the dumpster --
A At the scene.
Q -- and the tire tracks?
A Yes, sir.
Q What was on the other side, the west side of the wall?
A I don't recall. This also looks like parking lot area in here.
Q But you don't recall specifically what was there?
A No, sir, I don't.
Q While you were still -- thank you very much.
MR. SCHIECK: And for the record, Your Honor, I was referring to Exhibit 121.
THE COURT: Thank you.
BY MR. SCHIECK:
Q While you were there at the scene doing your

processing, did anyone approach you and indicate that they might know the name of the decedent or who the decadent was?

A Nobody approached me. While we're at the scene, nobody from the outside is allowed to come in. And so if somebody has something to say they'll approach the officers on the perimeter of the crime scene tape and speak to them, and then the officers will contact one of the detectives, not one of us.

Q Okay. So no one approached you or attempted to approach you while you were there?

A Not that I recall.

Q Did you see anyone approach Dan Ford while he was there?

A I didn't. I don't recall seeing anybody. If somebody did I was not aware of it.

Q Okay. It'll be easier to ask Mr. Ford that question probably.

A Yeah.

Q The -- you talked about the cardboard that was underneath where the body was located?

A Yes, sir.

Q When you got down to that cardboard, was it still wet?

A Yes, sir, it was.

Q Were areas of it starting to dry, or was it still completely wet?

A Some of the outer areas off the cardboard were starting to get dry and starting to flake when we got down to that area. Some of the areas where the apparent blood wasn't quite as thick.

Q And we've seen photographs, numerous photographs of the garbage and debris that was back where the body was at, but I haven't seen any photographs of what was inside of the dumpster. Do you recall either taking photographs of what was in the dumpster or whether or not you looked in to see what was in there?

A We did look in to see what was in the dumpster, and I -- I don't recall taking photographs. I would've thought I should have taken a photograph of what was in. I do know that Dan Ford got in a bio hazard suit and got in the dumpster and we searched through the items that were in the dumpster, looking for possible weapons that might've been used.

Q Okay. With negative results, I assume?

A Negative results on that.

Q Okay. But he actually was in the dumpster?

A He physically got in the dumpster and went through what was still in the dumpster.

Q Okay. Do you recall anything in the dumpster being impounded or processed for fingerprints?

A I do not. We didn't find any items in the dumpster that had blood on 'em or showed any indication that they were more than having been items disposed of in a normal course of disposing of the trash from the bank or other businesses that would've used that dumpster.

Q You did recover one fingerprint from the outside of the dumpster, however?

A I believe the latent that I recovered was actually on the north door of the dumpster enclosure.

Q Okay. So on the swinging door?

A On the swinging doors.

Q Okay. And you just collected that latent and deposited it, as you've described?

A Yes, sir, I did.

Q Okay. Did you take any photographs with the dumpster put back into place?

A Where it might have been prior to the discovery of the body?

Q Yes.

A No, sir, I didn't.

Q Okay. So the only photographs you took would've shown the dumpster swung into a position that the officer

moved it to gain access?

A Yes, sir.

Q And then after it was moved out of the way so you could process the scene?

A Yes, sir.

Q Okay. Okay. Now you had talked about as you removed the layers of debris that was on the body, you came to a point where you were able to determine that there was some type of plastic around the -- around the leg, or upper leg area of the deceased, is that correct?

A Yes. The upper thighs and hip, lower abdomen.

Q Okay. Was there anything underneath those layers of -- underneath the plastic?

A Other than the victim?

Q Yes.

A There were not. There -- we -- actually at that point when we -- when the plastic was lifted up and it was discovered that the victim had been mutilated the way he had, the plastic was left as it was. At that time the homicide detectives instructed us not to move anything else, not to remove anything else, and that they would -- everything else would be taken, anything else stuck to the body or anything else associated with the plastic would be taken to the morgue and would be recovered by the crime scene analyst that does

1 the autopsy.
2 MR. SCHIECK: May I approach the clerk, Your
3 Honor?
4 THE COURT: Yes.
5 THE COURT: Would counsel approach?
6 (Off-record bench conference from 4:59:04-4:59:36 p.m.)
7 THE COURT: Ladies and gentlemen, is there anyone
8 who can't remain for another 15 minutes to finish up with this
9 witness? If so, please raise your hand. The record shall
10 reflect no response.
11 MR. CICILIANO: The only thing I have to say is that
12 I do have a couple of questions also that have not been
13 answered, so it may be beyond 15 minutes.
14 THE COURT: Okay.
15 Is there anyone who cannot remain 'till 5:30? The
16 record shall reflect no response. Thank you.
17 You may proceed, Mr. Schieck.
18 MR. SCHIECK: May I approach the witness, Your
19 Honor?
20 THE COURT: You may.
21 BY MR. SCHIECK:
22 Q I'm gonna show you what's been marked as LL, KK,
23 and MM, and ask you if you recognize those as photographs
24 you have taken at the scene?

1 THE COURT: The record should reflect that the --
2 that the question came from Thomas Ciciliano in chair number
3 6.
4 THE WITNESS: Yes, sir, they are.
5 MR. SCHIECK: I move for the admission of LL, KK,
6 and MM, Your Honor.
7 MS. DiGIACOMO: No objection.
8 THE COURT: Admitted.
9 (Defendant's Exhibit Nos. LL, KK, and MM, admitted)
10 BY MR. SCHIECK:
11 Q I'll start with showing you what's been marked as
12 MM. Again, this is as you're progressing on, removing layers
13 of items, correct?
14 A Yes. This is at a point where we had a fairly good
15 view of the body, but he wasn't totally uncovered yet.
16 Q And unfortunately I don't think this is gonna show
17 up.
18 THE COURT: The juror, Ms. Moir, who's in chair
19 number 7, has just indicated that she's not seeing the screen
20 because of the aerial photo, so if we could drop that down.
21 MR. SCHIECK: I'll just return this to the clerk.
22 THE COURT: Thank you, Mr. Schieck.
23 BY MR. SCHIECK:
24 Q I think is probably gonna be easier if I just show it

1 to you directly and ask you the question because of the size of
2 the photograph.
3 MR. SCHIECK: May I approach, Your Honor?
4 THE COURT: Yes.
5 BY MR. SCHIECK:
6 Q And what I'm looking at is the plastic that is around
7 the leg area?
8 A Yes, sir.
9 Q And it appears that the plastic is actually over the
10 top of some of the paper that's next to the body in that
11 photograph?
12 A I see what you mean. I'm not really sure that it
13 was, though, if this is a separate type of plastic there. It
14 doesn't look like it's the same sheet.
15 Q So there could've been a second sheet of plastic
16 there?
17 A Or a piece. It's really hard for me to tell from this.
18 To the best of my recollection, there was nothing under that
19 plastic that was against the body.
20 Q I'm gonna show you KK and LL, which are offered
21 for the same purposes, to show the plastic wrap over the top
22 of the paper that was in the area that had been mutilated?
23 A Once again, I'm seeing this crease that goes under
24 that paper there, but there definitely looks like there is some

1 plastic on the paper, but I'm not sure that paper was -- I do
2 see the plastic you're speaking of, but to the best of my
3 recollection there was no paper under the piece of plastic that
4 was against the body. And I'm not sure that that's what I'm
5 seeing here either.
6 Q Okay. Do you recall whether any paper was
7 impounded by Mr. Ford?
8 A He took -- what we did is we got down to those
9 layers. We picked up and examined each and every piece in
10 an attempt to determine whether or not it may have been
11 handled by the perpetrator of the homicide. If it had blood on
12 it or it appeared that it may have had some evidence on it
13 where it was actually a piece that was handled, actually picked
14 up and handled and not just dumped, he took it back to the
15 lab to do processing on it.
16 Q Would he have impounded the plastic wrap then and
17 processed it?
18 A No, sir. As I mentioned a moment ago, when we
19 got to the point where we pulled the plastic back and saw the
20 mutilation, the homicide detectives advised us to stop and
21 anything else that was with the body right then, including the
22 plastic wrap, went with the victim to the coroner's office.
23 Q Okay. Do you know whether it would've been
24 impounded at the coroner's office?

A Yes, it would have been impounded.
Q And then it could've been processed after that for fingerprints or other --
A It probably would've been impounded and then at the request of detectives, the forensic lab would've done any processing of that evidence.
Q Okay. And you can get fingerprints off of plastic wrap, correct?
A You can.
Q And in this case do you know whether that was attempted --
A I --
Q -- either at the scene or later?
A We did not do any processing of the plastic at the scene at all. Somebody else attended the autopsy and recovered that evidence, and I cannot speak to whether she processed the plastic or whether it was submitted and whether or not any detectives requested processing. That's not something I'm aware of.
Q And I'm going to put Exhibit 14 up here, see if we can get a better -- and are you able to determine -- see the legs of the individual --
A Yes, sir.
Q -- and the saran wrap?

A Yes, sir.
Q And --
A Oh, I don't think it was saran wrap.
Q Or plastic wrap, I'm sorry. That's my mistake. Did you determine whether it was from a garbage bag or what it was from?
A I did not because like I said, at the point we pulled it back the homicide detective said stop, and that was the last time I had any affiliation with it.
Q Okay. Do you recall whether any cigarette butts or matches or things of that nature were collected by Mr. Ford and/or tested at the scene?
A I don't recall that they were collected by Mr. Ford. I would have to look at his impound to know that.
MR. SCHIECK: Thank you, Your Honor. That's all the questions I have.
THE COURT: Redirect.
MS. DiGIACOMO: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. DiGIACOMO:
Q I'm gonna put up defense exhibit LL. Okay. Now when Mr. Schieck was talking to you, was he questioning you about these?
A No, sir -- or no, ma'am.

Q What's --
A If you slide it down just a little bit further. Okay. Let me see. There's another one that has it better, the one that he actually was asking me about.
Q Okay. Well, we'll show you MM. Is this the one he was showing you?
A Over -- right here. This piece right here. I believe that's correct, sir [sic].
Q Okay. That's the piece of plastic that was wrapped around the legs and groin area of the victim?
A Yes, sir -- or ma'am. It appears here to be a piece of paper.
Q Okay. Now --
A And he felt that it looked like the plastic was actually over that piece of paper.
Q And that's down over the thigh area?
A Yes, the upper thigh area.
Q Okay. Now at -- I'm gonna show you State's Exhibit 12. Okay. That's a picture of the plastic pulled back with the exposure of the genital area, correct?
A Yes, sir -- I mean ma'am. I'm getting tired.
Q Okay. That's fine. And State's Exhibit 13, that's another picture of it where you can actually see the hand of the person pulling it back?

A Yes.
Q Okay. The piece of paper that Mr. Schieck was referring to, is it possible it's one of these around the body?
A It is possible.
Q Okay. Do you --
A I don't think it would be on this side of the body yet because we weren't taking stuff off and putting it over to that side. We had not actually got into that side.
Q Okay.
A So we were moving stuff over to this side and moving it over to the -- where we were -- to the wall area or where we were gonna -- stuff we were gonna collect to do further -- take back to the lab for further processing.
Q Okay. Do any of these pieces of the white paper towel you've described earlier have any blood or anything on it?
A We went through those. We didn't find any that had any apparent blood that -- on 'em, any -- they didn't seem to have like a bloody hand print or any wipes or that were used or held by somebody who had a bloody hand. They did not.
Q Okay. Now other than this plastic that's pulled down here that you stated before was over the groin area of the victim, when you pulled that back was there anything else over the groin area, that you recall?

A No, ma'am.
Q Okay. So this picture, State's Exhibit 13, was taken when that plastic was pulled back?
A When the plastic was pulled back, at that point and we saw that happened, the homicide detective said stop, we're not gonna remove anymore, we're not gonna finish removing the plastic. And I took a picture of it as it was and we left it basically as it was for the coroner to -- for the coroner to collect as is.
Q Okay. And State's Exhibit 12 shows a different angle. And all the stuff that's lower, on the lower part of the photo here, that's the things that could've been removed from the top of the victim?
A Some of that probably was, some of it is probably stuff that he's laying slightly on top of.
Q Okay. But anything that was removed would've been put on this side of the body, not on the --
A The other side.
Q -- left side of the body?
A That's correct. That's correct.
Q The plastic wrap that Mr. Schieck is talking about, do you know if this plastic was consistent with the other plastic trash bags that were found throughout the trash?
A That was my impression that that's probably what it

was. However, that was the most examination I did of it.
Q Okay. And with regard to State's Exhibit 109, and this shows the stain that you looked at on the console?
A Yes, sir -- ma'am.
Q Do you have any idea if that was a stain that could easily be cleaned?
A It wasn't a stain that came off easily.
Q Okay. So did you have to work at it to even get a sample to do the phenolphthalein?
A Yes, ma'am, I did.
THE COURT: What was the number of that exhibit?
MS. DiGIACOMO: Your Honor, that was State's Exhibit 109.
THE COURT: Thank you.
BY MS. DiGIACOMO:
Q Now you testified before that luminol testing is not something that's -- you normally do every day?
A No, ma'am.
Q Okay. Now is part of the reason why you did it in this case because the car that you processed was found approximately 14 -- or was processed by you approximately 14 days after you had processed the crime scene?
A That was one of the reasons, and also because at the detective's request they wanted us to search for any

possible blood that may have been cleaned up.
Q So they actually requested you to basically do the luminol because it's possible the car had been cleaned --
A Yes.
Q -- or any blood had been cleaned? Now showing you State's Exhibit 113. It may be too bright. Do you recognize what's depicted here?
A Yes, ma'am. That's the left seat -- the factory installed seat cover.
Q Okay. And you had stated during cross-examination that you're basically aware of things that can give a false positive with luminol but to ask the chemist?
A Yes. I'm aware that many things do and some basic types of things, but to say the exact item that can create it, such as the specific vegetative manner, I am not aware of exactly which pieces of vegetative matter will create that false positive.
Q Okay. But you did say that you had done your own testing with cleaning solutions?
A Yes.
Q Okay. Now what kind of reaction when you get a false positive with cleaning solution do you get?
A When I used the cleaning solution I used specifically some bleaches that were poured on concrete. And they

actually sparkled. You know, they had little pops of sparkles. It was somewhat different.
Q Okay. Would it cause a reaction like you're seeing in State's Exhibit 113, like an area this big?
A That I don't know. I didn't attempt to do it on specific items, I was just trying to see what it looked like on -- you know, at that time compared to an actual sample of blood on it.
Q Okay. So when you say it would sparkle, is it a different reaction than what you saw in State's 114?
A Yes.
Q Okay. So this reaction is not consistent with when you've tried to do false positives with cleaning solutions?
A No, that one is not.
Q Okay. Now showing you State's Exhibit Number 144. And talking about the footwear impressions here. Now is it your testimony that this one at the far end of the picture up towards the top, is that the one that was possibly under trash?
A No. To the best of my recollection, there was another partial one under this area right there.
Q Okay. And then I'm gonna show you State's Exhibit Number 143. Is it depicted here?
A I think that's -- is that still the same one? The other one that was under there was so heavy and so thick we didn't

do photography of it. I believe this is s... gonna be F-2.
Q Okay. Let me show you State's Exhibit Number 113 -- or excuse me, State's Exhibit 15 where some of the trash has been removed. Do you see it there?
A Can you zoom in a little bit over in this area?
Q Sure.
A I believe this may be it right in here.
Q Oh yeah, if you could clear the screen. Okay. This where the paper is stuck in it?
A Yeah.
Q Did you take -- do you know if any photographs were taken close up of that area?
A I did not take any, and I believe if they were taken it would've been the 4x5 by Teresa Main.
Q Okay. Now the photograph that we're looking at there shows some paper stuck -- or on top of it?
A Yes.
Q Okay. And it's pretty thick. Is it possible that that wasn't a real good impression?
A Yes, it's -- to the best of my recollection it was not a good impression.
Q Okay. But you could tell it was some sort of blood transfer?
A Yeah, with the shape -- the shoe shape.

Q Okay. And with regards to State's Exhibit 144, there's several impressions walking out, and there's -- is this an impression as well at the very bottom end of the -- oops, let me zoom out, excuse me. Okay. This -- the very bottom down here, is that also a footwear impression, do you know?
A I don't know.
Q Okay. But other than these that we're seeing in State's Exhibit 144, there were no other -- and the one that you mentioned in the back -- there were no other bloody footprints basically, were there?
A No, not that we were able to determine.
Q So they pretty much just stop right here?
A Yes.
Q And you stated that on direct examination of the person who had this shoe, that made these prints had got into a car, you'd expect to see some transfer, correct?
A If -- yes, I would think there would be some.
Q Okay. Now -- but if this person continued to walk and didn't leave any impression as the person's walking to the car, would you still expect that?
A It would be less likely. If they walked far enough that they no longer had a damp, you know ,this much pattern, you know, in the pattern area, the raised pattern area, then it would -- that if they'd eventually walked it off --

Q Okay.
A -- that they wouldn't leave much on the floor of the vehicle.
Q Okay. So it's possible to walk off the blood on the bottom of the shoe?
A To a degree. I mean there would still be some in the treads.
Q Okay. But that's not in essence something that could get transferred to another surface?
A It would be much more difficult.
Q Now with regard to the sunroof on the car, I believe you had stated that you thought it was a moon roof?
A Oh, I don't know whether it is.
Q Okay.
A I don't know if it was a moon roof or a sunroof.
Q Well, tell me, what do you mean by a moon roof?
A A friend of mine has a vehicle and she has a solid window that doesn't really move, and it's called a moon roof.
Q Okay. Does it just kinda pop up?
A I don't think it pops up even. I think it's just like a glass.
Q Okay. And a sunroof, is that the kind that would go back into the roof of the car and actually completely open up?
A I don't know. I suppose that would depend on the

vehicle.
Q Okay. Well, what do you mean by a moon roof then?
A Like I said, a friend of mine has one that she calls a moon roof, and it's basically, it's a fixed window in the roof.
Q All right. And you recall there being glass on the top of this roof?
A Yes.
Q But your testimony you don't recall whether or not it actually opened?
A I don't recall that.
Q Okay. And with regard to the vomit that was found underneath the driver's seat, showing you State's Exhibit 183. To get a clear picture of that vomit or to see it, you didn't have to actually remove the seat and take it out of the car?
A No.
Q Okay. But it's possible if the seat was moved back it could've been viewed?
A It could've been viewed a little bit better, yes.
Q Okay. And I believe you said that you had information when you went to the -- to process the scene that the person who found the body had moved some trash out of the dumpster?
A Yes, ma'am.

Q Okay. And where was that tr... put, if you know?
A We did not -- we weren't given that information as to which pieces he took out, just that he had been going through the dumpster and he had brought some out.
Q Okay. And that when you say brought some out, it came out of the dumpster and was put somewhere in the enclosure floor?
A Yes, ma'am. That was the information as we understood it.
MS. DiGIACOMO: Court's indulgence.
BY MS. DiGIACOMO:
Q All right. When you got to the crime scene and you were processing it, you were made aware of the footprints that we saw in State's Exhibit 144, correct?
A Yes, ma'am.
Q And you were very careful not to step on those?
A Yes, ma'am.
Q And you also stated that the blood back in the southwest corner was still damp --
A Yes, ma'am.
Q -- and started to dry as you lifted the trash out?
A Yes, as we got it exposed to the air.
Q So it would be possible then for someone who's not aware of what's back there to step back there and still make

tracks?
A I think it would be very difficult.
Q Okay. Why so?
A Because most of the blood back in that southwest corner was -- the trash over it was fairly deep.
Q But you don't know how that trash got there?
A No.
Q But it is possible because you did take elimination prints from the person who found the trash?
A We took the elimination prints in the event that they were his and that somehow he had transferred blood to his feet.
Q Okay.
MS. DiGIACOMO: Pass the witness.
THE COURT: Redirect [sic].
MR. SCHIECK: Just a couple.

RECROSS EXAMINATION

BY MR. SCHIECK:
Q You never had any information that he was back there in that back area where all the blood is at, correct?
A No. I don't recall that I had any information as to exactly what part of the enclosure he was. The information I received was that he had been looking through the dumpster and that it was during that time that he had discovered the

body. I didn't do any interviews with him, other than taking the elimination from him, I didn't have any contact with him. The information we got was that he did take some items out of the dumpster and leave them into the enclosure, but exactly where he was, that I don't know.
Q There was a lot of blood around that body?
A There was a lot of blood towards -- on the left of the body or south and southwest of the body. There was less blood on the right hand side. There was some fairly close to the body, and there was some that kind of -- from the head kinda had like a little -- where it had rolled down from the head area.
Q The photographs show all the blood, correct?
A Yes, sir, I think I pretty much got that.
Q Okay. Thank you.
MR. SCHIECK: Nothing further, Your Honor.
MS. DiGIACOMO: Your Honor, and no further questions by the State.
THE CLERK: Would counsel approach?
(Off-record bench conference from 5:26:52-5:27:58 p.m.)
MS. DiGIACOMO: Your Honor, before [unintelligible], the defense and the State have entered into a stipulation, and it's with regard to a gold chain that is shown on State's Exhibit 11. The State and defense would stipulate

that that actually did belong to Duran Bailey, and Lueron Williams identified it as such.
THE COURT: Very well. Thank you.
MR. SCHIECK: That's correct, Your Honor.
THE COURT: Okay. We've had eight questions come out from the jury. Unfortunately we are not gonna be able to finish with this witness. It's now 5:30 and we need to take our evening recess. I'd hoped that we would be done, but that's not going to be possible. We're going to have to address these questions tomorrow.
We're resuming tomorrow at 10:00 a.m. Can you be here at that time?
THE WITNESS: Yes, ma'am.
THE COURT: Very well. You may step down from the stand.
Ladies and gentlemen, during this 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

1 you.
2 You all have a good evening. Thank you for your
3 indulgence with staying, and we will resume tomorrow at
4 10:00.
5 (Jurors recessed)
6 THE COURT: We'll go off the record.
7 COURT ADJOURNED AT 5:32:08 P.M. UNTIL THE
8 FOLLOWING DAY, SEPTEMBER 22, 2006
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EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

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 10
VOLUME X

FRIDAY, SEPTEMBER 22, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

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LAS VEGAS, NEVADA FRIDAY, SEPTEMBER 22, 2006

PROCEEDINGS

(THE PROCEEDINGS BEGAN AT 10:00 A.M.)

(Jurors are present)

THE COURT: Let the record reflect that we're resuming trial in State versus Kirstin Blaise 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.

Ladies and gentlemen, with regard to our scheduling for next week, we will be starting on Thursday at 1:00 o'clock and on Friday at 1:00 o'clock, as well. Dependent upon when the close of evidence occurs and the jury initiates your deliberations, the Court advises you that it's possible that you will be here into the evening hours on Friday. So you should plan accordingly for that.

We are proceeding forward with the testimony of senior crime scene analyst Louise Renhard. And she may be returned to the witness stand at this time. We remain in the State's case in chief.

At the end of the day various questions came out from the ladies and gentlemen of the jury and we will be proceeding with those questions in short order.

///

LOUISE RENHARD, STATE'S WITNESS, SWORN

THE COURT: The Court is going to read to you some questions that are being asked by the ladies and gentlemen of the jury. After I read a question, you may give the answer to the question. After -- there's about eight of them. After I've gone through all of them, then the attorneys will have the opportunity to pose any follow-up questions that they feel is appropriate.

The first question is: The sandals found in the car, are these the same sandals found at the crime scene?

THE WITNESS: They weren't the same. The sandals at the crime scene had already been collected and impounded, and they weren't the same style either.

THE COURT: Did the red Fiero tire impressions match those at the crime scene?

THE WITNESS: That, I don't know. We do have experts who do comparative analysis and they're the ones who would have done that work.

THE COURT: Do you know if hair coloring or other hair supplies would have a reaction with luminol?

THE WITNESS: I don't know. I do know chemicals like bleach do. But a lot of the hair supplies, I believe, have hydrogen peroxide, and I'm not sure whether or not that does. Somebody else, later on, might be able to answer that for you.

THE COURT: If the luminol reaction in the car was caused by iron or copper residue from the area, wouldn't you expect to find residue in other areas of the car, especially the driver's floorboard?

THE WITNESS: Yes, I would.

THE COURT: Did the seams on the factory-installed seat react to the luminol as one might expect a liquid cleaner applied would create or was it more consistent with a substance transferred by being pressed on and not worked into the seams?

THE WITNESS: My recollection is that the actual seams did not react. Whether or not -- I can't answer whether or not it was a transfer pressed on. That, I don't know.

THE COURT: Given that there were blood traces inside the sandals, is it correct that they would not have been worn at the time of the crime?

THE WITNESS: I assume we're speaking about the sandals from the crime scene? Not the ones in the car?

THE COURT: I can only read the question the way it's written.

THE WITNESS: Okay. I'm going to assume that we're speaking -- if that's okay -- I'm going to assume that we're speaking about the sandals that were recovered from the crime scene, and the spatter inside the sandals -- and

that's the reason we documented it -- was consistent with a foot not being inside the sandals at the time that the blood was left.

THE COURT: Did any of the crime scene analysts compare the height of the red curb at the crime scene and the ground clearance of the Fiero?

THE WITNESS: I don't believe we took a measurement of the height of the red curb. I'm -- I don't believe we did. I wasn't doing the measurements but it's my belief that we did not. And I did not take a ground clearance measurement on the red Fiero.

THE COURT: Was there any damage to the front balance on the Fiero where it may have impacted with the red curb at the crime scene?

THE WITNESS: We didn't see any such damage on the Fiero.

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

MS. DiGIACOMO: Court's indulgence. Pass the witness.

THE COURT: Any by the defense?

MR. SCHIECK: Just a couple, Your Honor, to clarify some points.

///

///

FURTHER RECROSS-EXAMINATION

BY MR. SCHIECK:

Q With respect to I believe it was the first question talked about, whether the sandals at the scene were the same type as the sandals found in the car, were -- the sandals that were found in the car actually had a high heel on them, is that correct?

A Yes. The sandals recovered from the car were more like a woman's high-heeled, open-toe-type shoe. The sandals at the crime scene were flat -- they weren't flip-flops but they had -- they had a open toe but with just a cover over them. They were a flat sole.

Q And the -- the shoes that were recovered from the car, those were impounded and tested with negative results?

A Yes.

Q Okay. There was no blood found with the phenolphthalein test on those shoes?

A That's correct.

Q And you were asked a question concerning whether or not hair products could cause a false reaction with luminol. Would that depend on what is contained in the hair product?

A Yes, that would depend on what's contained. And I don't know whether or not any hair products would create that false positive.

Q And we've all heard the term "bleached blonde" hair.
A Yes. I don't think they --
Q That implies --
A Do they use bleach?
Q I don't know. Obviously I --
A I've heard the term but I don't know that they actually use bleach.
Q Okay. They use some type of product that removes the pigment.
A A chemical product. Exactly. And I don't know whether or not that creates a false positive. I'm unsure of that.
Q It would depend on the -- what's contained in the product.
A Exactly.
Q Okay. And there was some questions concerning the Fiero and damage to the Fiero. Would it be fair to say that your examination of that vehicle on July 22nd -- you saw no indication that would link it to the area of the dumpster or that crime scene area?
A I saw no indication on the Fiero, of damage, that would link it to that curb that they spoke about.
Q For instance, that would include -- sometimes -- at

least when I'm driving and I hit a curb with my tire, it leaves a mark on the side of the tire. You didn't see any of that in this case?
A We did not.
Q Okay. Thank you.
MR. SCHIECK: No further questions, Your Honor.
THE COURT: Would counsel approach?
(Off-record Bench Conference)
THE COURT: The juror questions will be marked as Court's 46 through 53, in the same order that the Court read them.
Any follow-up by the State?
MS. DiGIACOMO: No, 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: Your Honor, we would call Dan Ford. And may I approach the Clerk?
THE COURT: Yes. The Court Clerk that's been with us thus far through the trial, Billie Jo Craig, has a vacation day today, and on Monday, and so we have -- Michelle Jerome's with us today, assisting as the courtroom clerk. And Ms. Craig will be back with us on Tuesday.

DANIEL FORD, STATE'S WITNESS, SWORN

THE CLERK: Please state your first and last name. Spell your last name for the record.
THE WITNESS: Daniel Ford, F-O-R-D.
MS. DiGIACOMO: May I, Your Honor?
THE COURT: You may proceed.
MS. DiGIACOMO: Thank you.

DIRECT EXAMINATION

BY MS. DiGIACOMO:
Q How are you employed?
A As a senior crime scene analyst with the Las Vegas Metropolitan Police Department.
Q And how long have you been so employed?
A The 9th of this month was fifteen years.
Q Now, what training and experience do you have that allows you to be a crime scene analyst?
A Forty hours of basic fingerprint classification taught by the California State Department of Justice, forty hours of latent print classification taught by the Federal Bureau of Investigation, forty hours of advanced latent fingerprint techniques taught by the California State Department of Justice, a hundred and twenty hours of field evidence technician training taught by the California State University at Long Beach under the direction of the Orange County Sheriff's

Department, and a total of nineteen years' experience and training.
Q Now I want to direct your attention to either July 8th, 2001, in the late hours, or early hours of July 9th, 2001. Were you so employed and working?
A Yes, ma'am, I was.
Q Were you called to 4240 West Flamingo Road?
A Yes, I was.
Q And what's located there?
A There's a Nevada State Bank building across the street from what is now the Palms Casino. Parking area for the bank building. Both on the west side -- the north side of the building.
Q And at the time that you responded there -- you said -- was the Palms Casino there?
A It was under construction at the time. There was offices in the bank building being used as an employment center for the Palms Casino.
Q When you arrived, what was the scene that you encountered?
A There was a trash dumpster enclosure located in the northwest corner of the parking area. There was -- that was roped off with yellow crime scene tape. There was a patrol officer. General assignment detectives were on scene. Crime

1 scene analyst Louise Renhard was there. Homicide had been
2 notified. They were en route. The -- a lot of the trash that
3 had been in the dumpster had been removed. It was on the
4 ground, to the side of the dumpster. I was given information
5 that there was a deceased male located somewhere
6 underneath the trash.
7 Q At the time that you responded did you have any
8 indication how this person had died?
9 A No, I did not.
10 Q So were there other crime scene analysts also there?
11 A Crime scene analyst Louise Renhard was there.
12 Later on, our on-call supervisor Al Cabrales showed up and
13 then Teresa Main also came out.
14 Q Okay.
15 MS. DiGIACOMO: Your Honor, may I approach the
16 Clerk?
17 THE COURT: You may.
18 MS. DiGIACOMO: Court's indulgence?
19 THE COURT: Yes.
20 BY MS. DiGIACOMO:
21 Q Now, when you were at this crime scene, what was
22 your -- what were your duties?
23 A My duties were to do the crime scene diagram and
24 collect the evidence that we determined was pertinent to the

1 scene at the time.
2 Q And was -- what were Louise Renhard's duties?
3 A She was going to do the photography and write the
4 crime scene report.
5 Q Did you assist her at all at the scene in processing
6 it?
7 A I don't believe I processed for any latent fingerprints
8 at the scene. I did processing back at the crime lab after
9 evidence was returned there.
10 Q Okay. Let's back up. When you first get there --
11 and I apologize. My pictures are out of order. Is -- and I'm
12 showing you State's Exhibit Number 4. Is this what the scene
13 looked like when you arrived? Can you see that? Is that
14 better?
15 A Yes, ma'am, that's better. Yes, ma'am, very similar
16 to that.
17 Q Okay. So when you arrived, no one had gone in
18 there and started to process the scene at all?
19 A No. And I'm -- I don't remember how we received
20 the information that the victim was located there.
21 Q Okay. And then later -- I'm showing you State's
22 Exhibit Number 6. Was the dumpster enclosure -- the
23 dumpster itself actually removed?
24 A We pulled the dumpster out of the enclosure area,

1 yes, ma'am.
2 Q Okay. And then is this what you encountered
3 behind it?
4 A This is -- after removing a lot of the trash and all,
5 yes, ma'am, this is what was behind it.
6 Q And you stated it was your scene to process the --
7 or your duty to process the evidence? Or process --
8 A Yes, ma'am, any evidence that we -- and a lot of
9 things were collected at the scene that we took back for
10 possible fingerprints that we didn't know whether it had any
11 relative bearing on the crime or not. If no fingerprints were
12 developed, then the -- as having no evidentiary value, they --
13 the items were tossed.
14 Q Do you recall the general description of the
15 disclosure?
16 A Cinder block walls on three sides. There was
17 cyclone fencing material across the top. The gates were open.
18 There were cut -- what appeared to be padlock links or chain
19 link -- links on the ground near the gates.
20 Q I'm showing you State's Exhibit Number 4 again.
21 Now, Louise Renhard also testified regarding cyclone fencing,
22 and stated you told her that term. What do you mean by
23 "cyclone" fencing?
24 A It's fencing that's used around the perimeter of

1 property or homes. It's just a -- it's the stuff you see at the
2 top of the screen here.
3 Q Oops. Let me move it down a little bit.
4 A There. This area here.
5 Q Okay. Now, it's a chain link fence with some sort of
6 material through it?
7 A I don't remember if there was any material on it or
8 not.
9 Q All right. Do you recall whether or not you could see
10 through the fencing or -- that was on the roof?
11 A I thought we could, yes, ma'am.
12 Q Now, part of your duties as well -- did you do a
13 crime scene diagram?
14 A Yes, ma'am.
15 MS. DiGIACOMO: May I approach, Your Honor?
16 THE COURT: You may.
17 BY MS. DiGIACOMO:
18 Q I'm going to show you what's been marked as
19 State's Proposed Exhibits 251, 252 and 253 which have been
20 previously shown to defense counsel. Would you look at those
21 and let me know if you recognize them?
22 A Yes, ma'am. It's the diagram that I conducted -- or
23 constructed, rather, after the scene.
24 Q 251, is that the actual diagram you did?

A Yes, ma'am, it is.
Q Okay. And 252 and 253, what are those?
A 252 is an enlargement just of the dumpster enclosure, showing the location of items that were collected and removed. And, then, 253 is a list of those items.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibits 251 through 253.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibits 251, 252, 253, admitted)
BY MS. DiGIACOMO:
Q And do you recall how you went about processing or going through the trash over the body to get to the body?
A We pulled the dumpster container out and then slowly started removing trash that was located on top of the body, towards the outside of the enclosure looking again for items that we felt was pertinent to the scene, until we got down to the body. Louise Renhard would take photographs along the way, documenting whatever we found or whatever was noticed in that pile.
Q Okay. And I'm going to show you, hopefully -- this is State's Exhibit Number 144. Do you recognize what's depicted here?

A Yes, ma'am. It's apparent bloody footwear that starts back by this trash bag -- and then you can see a partial here -- as it comes out it gets less and less, which is common with bloody footwear -- the further you walk the less you have of an impression -- leading towards the front of the enclosure which is down here at the bottom of the screen.
Q Okay. And then there were no more bloody footprints after that?
A No, ma'am.
Q Okay. And when you looked at these, do you recall if they were dry or still wet?
A I want to say it was a mixture of both. There were some dry portions to it but there were still some wet areas as well.
Q Okay. Of these actual footprints?
A Yes, ma'am.
Q Okay. Now, there's a lot of markings around these footprints. Do you know what those are?
A I now know swabs or collections were made from those, so they didn't appear to be blood to us. We didn't collect anything. It appeared to be residue from the trash bags or whatever had been carried out to the dumpster.
Q Okay. So the only blood that was seen in this area were the footwear impressions themselves?

A Yes, ma'am.
Q Okay. Now I'm going to show you State's Exhibit 231. Is that you in that photograph? Do you know?
A No, ma'am. I believe that's Louise Renhard. I was wearing a different shirt that night.
Q Did you -- you recall what shirt you were wearing?
A It's red and white, because I wore it to bring evidence in here the other day and my wife reminded me of the news that was covered -- it was the same thing I wore five years ago. So --
Q Okay.
A Sorry.
Q Now, did you ever look back at -- do you know what area that 231 is depicting?
A It's near the back corner of the dumpster enclosure. You can see because of the low wall here, and also along here.

Q Now, the -- Teresa Main is standing on a curb not down on the ground where this area is shown. Is that correct?
A I believe -- I believe that would be Louise. I don't think that was Teresa. But if -- either one of the two. They are standing on the curb not on the bottom portion of the enclosure, correct.
Q The other -- yeah, another CSA is not standing down

in this.
A Right.
Q Do you recall whether or not this area was still wet?
A To be honest, no, ma'am, I don't.
MS. DiGIACOMO: Court's indulgence.
BY MS. DiGIACOMO:
Q Now, you said that as you brought trash out you'd process it and some you kept and impounded, and others you didn't?
A We would pull stuff out and look to see whether or not there was any blood on the items, blood on the bags or whatever, to see whether blood spatter had gone from the victim onto the other items that appeared -- most of the stuff that we brought out had been placed on top of the victim. There was no blood on the items. It was clean. To us, that had been removed from the dumpster and tossed on top of the victim, and there was no reason to take that for evidence. It was an agreement made and a decision made between the homicide detectives and the four of us crime scene analysts that were there on the scene that night. Other items that we weren't certain about were bagged and then taken back to the lab and processed for possible prints. If prints were located, they were impounded on that list. If not, they were -- their location was noted for later on. But if there were no prints on

it, it was discarded.
Q Okay. So you don't recall blood being on the trash bags that were in the dumpster?
A Not in the dumpster itself, no, ma'am.
Q Okay. What about in the enclosed area, behind -- where the dumpster was?
A There may have been one bag that was up close to a wall that appeared to have had some blood on it or whatever. There was spatter on the wall near that, I think. It was the west wall.
Q And I'm going to show you State's 153. Is that what you're referring to?
A Yes, ma'am.
Q Okay. Can you see in that picture where the spatter was that you're talking about?
A It's -- there's a small amount here on this wall, and what appears to be blood residue or a blood transfer of type on that bag.
Q Okay. As if the bag had touched the wall?
A Touched the wall or someone had come in contact with the bag, yes, ma'am.
Q Did you find any -- at all when processing this scene, any fingerprints left in blood? Any hand prints left in blood? Palm prints? Anything like that?

A No, ma'am, not at all.
Q Did you actually help process the scene there for latents? Aside from the stuff taken back to the lab.
Q I don't remember if I did any processing. I'd have to look at Louise's report. To tell you the truth, I --
Q Would that refresh your recollection?
A Yes, ma'am, it would. I have a copy if you don't.
Q Oh, you do?
A Yes, ma'am.
Q Is that the report that's dated July 8, 2001? It's a three-page document.
A Yes, ma'am.
Q Does that -- go ahead and read it. Let me know when you're done.
A In her report she states latent print processing was conducted by CSAs Ford and Renhard at the scene, with a latent print recovered from the north door of the enclosure. Latent print processing was conducted by CSA Ford at the LVMPD Crime Lab on trash covering the body and evidence with positive results on a box from the trash at the victim's feet, a surge suppressor box from the trash on the victim and the beer can on the sign at the north end of the enclosure.
Q Okay. So you did help process the scene but weren't able to lift any latents at the actual scene?

A At the scene, yes, ma'am.
Q Okay. I'm going to show you what's been admitted as State's Exhibit 252. Do you recognize this?
A Yes, ma'am. It's the enlargement of the enclosure scene with numbers identifying items of evidence.
Q And the numbers that correspond -- on the dumpster area you've drawn here, on 252, they correspond to the legend that's a blowup here on -- in 253, correct?
A That's correct.
Q All right. If you can just go through and point out -- like Item Number 1, what was that?
A Item Number 1 was the -- I think cut chain -- piece of cut chain link that was there on the scene.
Q And Item Number 2?
A Again, cut chain link. Item Number 3 was a piece of cut chain link. Number 4 was a cut padlock hasp, and Number 5 was a cut chain link.
Q Okay. And I'm going to show you State's Exhibit 246. Do you recognize that?
A Yes, ma'am. That's one of the cut chain pieces.
Q Okay. So this is what you're talking about when you're talking about 1 through 5?
A 1, 2, 3 and 5.
Q Okay. Is this the cut -- I'm showing you State's

Exhibit 243. Is that the cut padlock?
A Yes, ma'am, it is.
Q Okay. And that's referring to Number 4?
A Number 4, yes, ma'am.
Q All right. So what would Number 6 be?
A Number 6 was one pair of brown sandals with apparent blood.
Q And do you recall how these were found at the scene?
A I don't remember if we removed trash and found them. I don't think they were in plain view at the time. They could have been. I just don't remember.
Q Do you recall if they were sitting side by side?
A That, I don't remember either, ma'am.
Q Okay. I'm going to show you State's Exhibit 49. Are these the sandals that were found at the scene?
A Yes, ma'am, they are.
Q That's what you're referencing in 6?
A Yes, ma'am, that's correct.
Q What was 7?
A 7 was an apparent blood sample and control taken from below the right sandal. 8 and 9 are also blood samples and control taken from the left sandal.
Q And when you say blood sample and control, what

1 does that mean?
2 A At the time, we were taking a swab of apparent
3 blood from the scene, and then you had to take a second swab
4 with just distilled water on it, that you swabbed an area
5 surrounding -- close to proximity of that item but did not
6 contain any blood, so that the chemist would be able to
7 analyze whether it was on a cement floor, a linoleum floor, a
8 piece of carpet, a painted wall, a piece of glass, so that they
9 would have some markers in the examination to see what was
10 there besides the blood.
11 Q Okay. And where is 7, 8 and 9 located on your
12 diagram? If you can circle -- it's kind of small.
13 A Right in there.
14 Q All right. So right -- right from where the sandals
15 were?
16 A Yes, ma'am.
17 Q Now, what about Number 10?
18 A Number 10 was a torn condom pack with Kleenex.
19 Q And that was found where?
20 A It was found outside the enclosure. To the south of
21 the enclosure.
22 Q Showing you State's Exhibit 235. What's depicted
23 there?
24 A The torn condom pack and Kleenex, back over here

1 against the curb.
2 Q Okay. So this wasn't found within the trash?
3 A No, ma'am.
4 Q Inside the enclosure. Okay. And now what was
5 Number 11?
6 A 11 was an empty pack of Wrigley's Extra chewing
7 gum.
8 Q There was a photograph of that taken as well,
9 correct?
10 A Yes, ma'am. Should have been.
11 Q I'll move on since I can't find it. Number 12, what
12 was that?
13 A 12 was two foil gum wrappers.
14 A And where was that found?
15 A That was, again, outside of the enclosure. Twenty-
16 four feet -- approximately 24' 9" north of the north exterior
17 wall and 9" west of the west wall of the parking area.
18 Q Okay. And is it by kind of like a storm drain gate?
19 A Yes, ma'am.
20 Q Okay. And I'm going to show you State's Exhibit
21 241. Do you recognize this?
22 A That's pictures of that area with the wrappers. Up in
23 the storm area.
24 Q Okay. Now, Number 13, is that another gum

1 wrapper?
2 A 13 was another gum wrapper that was with Number
3 12.
4 Q So both taken in this area?
5 A Yes, ma'am.
6 Q Okay. Number 14?
7 A Number 14 was an ATM receipt dated 07-06-01,
8 22:59 hours. Just before 11:00 o'clock.
9 Q Okay. And you actually impounded that, right?
10 A Yes, ma'am.
11 Q Okay. Now, Number 15 --
12 MS. DiGIACOMO: May I approach the Clerk, Your
13 Honor?
14 THE COURT: You may.
15 MS. DiGIACOMO: May I approach, Your Honor?
16 THE COURT: You may.
17 BY MS. DiGIACOMO:
18 Q What was -- before I approach actually, what was
19 Number 15?
20 A 15 was an empty Milwaukee's Best beer can.
21 Q And do you recall where that was found?
22 A Yes, ma'am. Approximately 6' 7" east of the west
23 wall, and adjacent to the north wall on the leg of a sign that
24 was there in the enclosure.

1 Q So it was found within the enclosure?
2 A Yes, ma'am.
3 Q Okay. And I'm going to go back -- since I actually
4 found the photograph -- Number 11, the chewing gum pack.
5 I'm going to show you State's Exhibit 232. Do you recognize
6 that?
7 A Yes, ma'am.
8 Q Is that the chewing gum pack you found out in a
9 parking area outside the enclosure?
10 A Yes, ma'am, it is.
11 Q Okay.
12 MS. DiGIACOMO: May I approach, Your Honor?
13 THE COURT: Yes.
14 BY MS. DiGIACOMO:
15 Q I'm going to show you what's been marked as
16 State's Proposed Exhibit 254 which I'm currently showing to
17 defense counsel. Do you recognize this?
18 A That's the Milwaukee's Best beer can that was there
19 in the enclosure.
20 MS. DiGIACOMO: Your Honor, at this time I'd move
21 for admission of State's Proposed Exhibit 254.
22 MR. SCHIECK: No objection, Your Honor.
23 THE COURT: Granted.
24 (State's Exhibit 254, admitted)

BY MS. DiGIACOMO:
Q This is after -- this photograph was taken after you'd taken it back from the crime scene?
A Yes, ma'am. It would have been taken at the lab.
Q Okay. And this is one of the items you stated you had gotten a fingerprint off of earlier? A latent?
A Yes, ma'am. There were positive results with Item Number 15.
Q Now, what's Number 16?
A 16 was a wad of chewing gum on a cardboard piece with apparent blood.
Q Was that the cardboard that we see in 231? Is that the cardboard it was from? If you recall.
A Possibly.
Q Number 16 on the diagram is towards the west wall in the back?
A Yes, ma'am, and more towards the center of the enclosure.
Q Okay. Do you recall if there was another piece of cardboard other than the one that was in the southwest corner shown in 231?
A No, ma'am, I don't remember.
Q Did you impound the chewing board and the piece of cardboard?

A Yes, ma'am, I did.
Q Okay. And now, what was Number 17?
A 17 was a small rock with apparent blood that was stuck to the victim's left buttocks when we rolled him over.
Q What about Number 18?
A 18 were two black buttons with torn thread and apparent blood.
Q Okay. And what about Number 19?
A 19 was a pink hair pick with apparent blood.
Q Those are all found inside the dumpster area?
A Yes, ma'am, that's correct.
Q Was that in the trash itself around the victim?
A Around the victim, yes, ma'am.
Q Okay. What was 20?
A 20 was a gold-colored metal link chain approximately 17½" long and 3/4" wide with apparent blood.
Q And that's the one that's found close to the victim's left foot?
A Yes, ma'am, that's correct.
Q And what about -- 21 and 22 are not on your legend. What were they?
A They were flake blood that I took off from Item Number 19. 21 was removed from Number 19, the pink hair pick. And 22 is flake blood that was removed from the gold-

colored metal link chain. Those were removed at the lab and placed into evidence.
Q Okay. And now what is 23?
A It was one pair of grey socks with maroon and red stripes.
Q And that was found in the back southwest corner?
A Yes, ma'am, that's correct.
Q What about Number 24?
A 24 was an August 2000 issue of Gallery Magazine.
Q I'm going to show you State's Exhibit 237. Do you recognize that?
A Yes, ma'am. That -- I believe that was the Gallery Magazine, yes, ma'am.
Q And then 25, what was that?
A Triple X Adult Entertainment Magazine with apparent blood.
Q Where was that found?
A Approximately 7" east of the west wall and 3'11" south of the north wall of the enclosure.
Q So it was found more towards the back west wall?
A Yes, ma'am.
Q And 26, what was that?
A An empty flip-top box of Marlboro Light cigarettes.
Q Where was that found?

A Approximately 9'7" east of the west wall and adjacent to the south wall of the enclosure.
Q So it was on the side where the dumpster had been removed from?
A Yes, ma'am.
Q I'm showing you State's Exhibit 238. Is that that same one or is this a different one?
A No, ma'am, the -- it was a different one. This pallet was on the north wall of the enclosure.
Q Okay. Did you impound this cigarette pack that we're looking at there?
A I don't believe so. It was probably taken back to the lab for processing. It didn't have any prints on it and had no -- determined to have no evidentiary value so we tossed it.
Q Okay. And then Number 27, what is that?
A A piece of cardboard with bloody footwear.
Q And where was that located?
A It was -- there was a piece of cardboard covering the victim and this -- Item 27 was cut from that larger piece of cardboard.
Q Now I'm showing you State's Exhibit 6. Do you see the cardboard where you cut the footwear from?
A We have blood on the -- this corner, but I believe the footwear was on the -- happened to be on the other side

of the -- when we turned the cardboard over.
Q Okay. So it wasn't what we can see in State's Exhibit Number 6. It would have been on the other side touching the victim's body?
A Yes, ma'am.
Q Okay. But this is the cardboard you cut it from?
A Yes, ma'am, it is.
Q And then you stated -- Number 29 -- you stated that you had found fingerprints on a surge suppressor box?
A Yes, ma'am. It was one of the items that was on top -- it was in the trash pile on top of the victim.
Q And that's Number 29?
A Yes, ma'am.
Q Okay. And what was 30?
A 30 was a box bottom for 8½ by 11 paper that was again in the trash pile, at the victim's feet. Produced fingerprints.
Q What about Item 31?
A 31 was a folded cardboard box with apparent blood, at the upper torso of the victim.
Q Okay. The beer can where you found the -- the fingerprint, was that impounded as well?
A Yes, ma'am, it was.
Q Did it have any liquid in it when you found it at the

scene?
A I don't -- I think it did. I just don't remember how much.
Q Was that discarded?
A The liquid, yes, ma'am, was poured out.
Q Okay. Why was that done?
A If we'd have impounded the can with the -- in a paper bag, it would have destroyed the bag and destroyed any possibility of getting latent fingerprints off the side of that can.
Q And do you recall whether or not there were cockroaches in it?
A I believe so, yes, ma'am.
Q So the only two items when you went back to the lab that you actually found prints on, were the surge suppressor box, the beer can, and then -- did you also find it on the cardboard box or is that --
A No, ma'am. Item 30, I did not. Just the -- the beer can and the surge suppressor box.
Q Okay. What other items did you actually process for latent prints?
A There was papers that we picked up, items that had been tossed over -- one of the pictures had some pictures of green palm trees, or whatever, that had been pulled from -- we assume from the trash bin and tossed on the victim. We

processed those for fingerprints. They had a shiny surface to them that should have given us latent fingerprints, and didn't, and those were tossed.
Q What about the torn condom pack which was Number 10 on your diagram? Did you process that? And if you need to refresh your recollection with your report --
A Yes, ma'am, it was.
Q Okay. Negative results?
A And it was negative results, yes, ma'am.
Q What about the empty pack of Wrigley's Extra chewing gum, Item Number 11, that was found outside in the parking lot?
A Number 11 wasn't. Item Number 13 was, which was a paper wrap -- or 10 through 13, I'm sorry. The empty chewing gum pack, the three gum wrappers were processed.
Q All negative results?
A Yes, ma'am.
Q What about the two magazines, the Gallery Magazine and the Triple X Adult Magazine, which are items 24 and 25?
A 24, 25 and 26 were processed with negative results. 29, the surge suppressor, and Item 32 was the U.S. Airways boarding pass bearing the name Cullum [phonetic], Robert, that was processed. And the only items that produced latents

was the beer can and the surge suppressor box.
Q All right. So the items that you processed you did impound. However, the rest of the trash you discarded, as you said earlier?
A Yes -- that we -- now, some of these items that were processed for latent prints didn't have latents but still were kept, that we felt were pertinent to the scene. Items that we thought were just trash we tossed, yes, ma'am.
Q Now, when you were at the scene -- when you first got there, did you even know how this person had died? This -- this body?
A No, ma'am.
Q Okay. Were there any indications of what had happened whatsoever?
A Not until we got to the body itself.
Q Okay. And that's when you discovered what?
A Numerous stab wounds, the penis had been removed. There was a stab wound in the lower groin area. And then once the coroner investigator got there, we examined the body, did a cursory examination at the scene. We noticed an additional stab wound to the rectum area.
Q All right. And so, now, based upon what you have at this point, when you've uncovered the body, you're -- you believe it's some sort of stab wound, and the penis is missing,

what do you do?
A We wanted to try and find -- see whether or not the weapon was still around. The knife was still there. And we wanted to see if we could find the penis.
Q Okay. And what did you do to try and do that?
A Put on a white bunny suit and went inside the dumpster.
Q Okay. Did you locate anything of evidentiary value inside the dumpster itself?
A No, ma'am, we did not.
Q Okay. And eventually was the penis found?
A Yes, ma'am. It was in the -- beyond where the victim was located, underneath some additional trash, and it was transported to the coroner's office.
Q Did you ever find any sort of sharp weapon at the crime scene?
A No, ma'am, not at all.
Q All right. Do you recall approximately how long it take [sic] to take the layers of trash off the victim to get down to the body?
A No, ma'am, I don't. I don't know if Louise put in her report what time the coroner arrived. If I could look at that to see?
Q That's fine.

A She wrote that the coroner's investigator arrived at 3:50 to take custody of the body. So that would have been roughly about three and a half hours of going through the trash pile before we -- we got to the body itself. For --
Q Okay.
A For her to be -- for the investigator to be there, for the body.
Q Was the body removed before you continued to go through the rest of the trash in the southwest area of the dumpster?
A Photographs were done -- 4x5 photographs -- black and white photographs were done by Teresa Main, of the bloody footwear, in the enclosure, and then I think we removed the body after that.
Q All right. And then did you continue with the rest of the trash in the southwest corner?
A Yes, ma'am.
Q How long did it take to find the penis, after the body was removed? If you recall.
A We were at the scene till about 6:30 that morning, and I will say it was somewhere around 6:00 o'clock in the morning or so. Between 5:30 and 6:00 before we located the penis in the trash.
Q And did you also notice anything else that was

identified as being from the body?
A No, ma'am.
Q Okay. You don't recall any teeth being found?
A No, ma'am.
Q Okay. Now, the items that you took back to the lab and processed for fingerprints, did you do anything else with them? Did you process them to see if there was any blood?
A If there was -- if it appeared to be -- what appeared to be blood on the item, such as the sandals, they were tested for the presence of blood using phenolphthalein, and then items were collected from those. The bracelet, the hair pick, those were all tested first before the blood -- the flake blood was removed.
Q Okay. So do you recall which items tested positive with the --
THE COURT: I'm going to ask for a clarification.
MS. DiGIACOMO: Okay.
THE COURT: Did you say a bracelet?
THE WITNESS: It was a gold metal link chain. I may have said bracelet. I meant the chain that -- 17 -- approximately 17 ½" long.
THE COURT: Thank you.
BY MS. DiGIACOMO:
Q Now, do you recall what items tested positive that

had the -- what you believed to be apparent blood?
A The brown sandals. The wad of chewing gum that was on the cardboard piece with apparent blood. The small rock. The two black buttons. The pink hair pick. The metal link chain. The piece of cardboard with the bloody footwear.
Q What about the Triple X Magazine?
A The Triple X Magazine had apparent blood. If the impound stated "apparent blood" in the description, then it had tested positive.
Q All right. And what about the three samples that you took, 7, 8 and 9, from where the sandals were located, that you believe were apparent blood? Did those test positive as well?
A Yes, ma'am, they did.
MS. DiGIACOMO: Your Honor, may I approach the Clerk?
THE COURT: Yes.
MS. DiGIACOMO: May I approach the witness?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q I'm going to show you what's been marked as State's Proposed Exhibit 156. Would you look at that? Let me know if you recognize it.
A The package containing a box bottom for 8½ x 11

1 copy paper. It contains the event number 010708-2410. Has
2 my initials and P number and signature on it.
3 Q Okay. Did you impound whatever's in this package
4 in evidence?
5 A Yes, ma'am, I did.
6 Q And what date would you have done that?
7 A The 9th of July, 2001.
8 Q Do you know what's in -- located in this bag?
9 A A box bottom for 8½ X 11 copy paper.
10 Q Okay. And this was the one that's found where?
11 A Item Number 30 was found near the victim's feet.
12 Q Okay.
13 MS. DiGIACOMO: Your Honor, at this time the State
14 would move for admission of State's Proposed Exhibit 156 and
15 its contents.
16 MR. SCHIECK: No objection, Your Honor.
17 THE COURT: Granted.
18 (State's Exhibit 156, admitted)
19 BY MS. DiGIACOMO:
20 Q Now I'm going to show you what's been marked as
21 State's Proposed Exhibit 155. Do you recognize this?
22 THE COURT: 155?
23 MS. DiGIACOMO: Yes, Your Honor.
24 THE WITNESS: It's a folded cardboard box with

1 apparent blood, Item 31, that was from the trash pile at the
2 upper torso of the victim.
3 BY MS. DiGIACOMO:
4 Q Okay. Is this what you -- you stated that you had
5 cut a piece out that had a bloody footwear impression on it.
6 A Yes, ma'am, that's correct.
7 Q Okay. And there's actually biohazard stickers on
8 this, correct?
9 A That's correct.
10 Q What date did you impound this in evidence?
11 A Again, the 9th of July, 2001.
12 MS. DiGIACOMO: Your Honor, at this time the State
13 would move for admission of State's Proposed Exhibit 155 as
14 the bag and its contents.
15 MR. SCHIECK: No objection, Your Honor.
16 THE COURT: Granted.
17 (State'S Exhibit 155, admitted)
18 MS. DiGIACOMO: May I approach the Clerk again?
19 THE COURT: Yes.
20 MS. DiGIACOMO: May I approach, Your Honor?
21 THE COURT: Yes.
22 BY MS. DiGIACOMO:
23 Q I'm going to show you what's been marked for
24 identification as State's Proposed Exhibit 160. Do you

1 recognize that?
2 A It's Item 23. One pair of gray socks with maroon
3 and red stripes.
4 Q Where were those located at the scene?
5 A Near the southwest corner of the enclosure.
6 Q Okay. And when you mark on here -- on your piece
7 of paper the item number, does that correspond with your
8 diagram that you did?
9 A Yes, ma'am, it does.
10 Q Okay. So Item 23 on State's Proposed 160
11 correlates to the 23 on your diagram?
12 A Yes, ma'am, it does.
13 Q Okay. Did you impound this also on July 9, 2001?
14 A Yes, ma'am, I did.
15 MS. DiGIACOMO: Your Honor, at this time the State
16 would move for admission of State's Proposed Exhibit 160.
17 MR. SCHIECK: No objection, Your Honor.
18 THE COURT: Granted.
19 MS. DiGIACOMO: Thank you.
20 (State's Exhibit 160, admitted)
21 BY MS. DiGIACOMO:
22 Q Showing you what's been marked for identification
23 as State's --
24 MS. DiGIACOMO: And, Your Honor, I'm sorry, to

1 clarify, 160 is the bag and its contents.
2 THE COURT: Still no opposition?
3 MR. SCHIECK: No objection.
4 THE COURT: Still admitted.
5 MS. DiGIACOMO: Thank you.
6 BY MS. DiGIACOMO:
7 Q And now I'm showing you State's Proposed Exhibit
8 174. Do you recognize that?
9 A Yes, ma'am. It's Item 26, the empty flip-top box of
10 Marlboro Light cigarettes.
11 Q Okay. And also impounded on July 9th, 2001?
12 A Yes, ma'am.
13 MS. DiGIACOMO: Your Honor, at this time the State
14 would move for admission of State's Proposed Exhibit 174, the
15 bag and its contents.
16 MR. SCHIECK: No objection, Your Honor.
17 THE COURT: Granted.
18 (State's Exhibit 174, admitted)
19 BY MS. DiGIACOMO:
20 Q Showing you State's Proposed Exhibit 173. Do you
21 recognize that?
22 A Yes, ma'am. It's Item 32 which was a U.S. Airways
23 boarding pass bearing the name Cullum, Robert, dated 12
24 June, and it was impounded on July 9th, 2001.

MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 173, the bag and its contents.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
MS. DiGIACOMO: Thank you.
(State's Exhibit 173, admitted)
BY MS. DiGIACOMO:
Q Showing you what's been marked for identification as State's Proposed Exhibit 172. Do you recognize that as well?
A Yes, ma'am. It's Item 10, the torn condom pack with Kleenex, impounded on the 9th of July.
Q And this also has a biohazard sticker on it.
A That's correct.
Q Okay. Was there any apparent blood or anything found on the torn condom pack?
A Not that I remember. It would have been annotated on the item. But because of what it was we identified it as a -- and with the Kleenex with it, we identified it as a biohazard possibility.
Q Okay.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 172, the

bag and its contents.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit 172, admitted)
BY MS. DiGIACOMO:
Q Showing you what's been marked for identification as State's Proposed Exhibit 169. Do you recognize that?
A Yes, ma'am. It's Number 14, the ATM receipt dated 07-06-01, 22:59 hours, and impounded on the 9th of July.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 169, as the bag and its contents.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit 169, admitted)
BY MS. DiGIACOMO:
Q Showing you State's Proposed Exhibit 171. Do you recognize that?
A It's Item 18, two black buttons with torn thread and apparent blood.
Q And was that also impounded on July 9, 2001, by yourself?
A Yes, ma'am, it was.
Q Okay. In fact, all the items we're going through

were impounded by yourself?
A Yes, ma'am, and they were all impounded on July 9th.
Q And the biohazard sticker on this, is that because of the notation that there was apparent blood?
A Yes, ma'am.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 171 as the bag and its contents.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit 171, admitted)
BY MS. DiGIACOMO:
Q Showing you what's been marked for identification as State's Proposed Exhibit 170. Do you recognize that?
A Yes, ma'am. It's Number 17, the small rock with apparent blood, impounded on the 9th of July.
Q And it's also got the biohazard sticker?
A Yes, ma'am.
MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 170 as the bag and its contents.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.

MS. DiGIACOMO: Thank you.
(State's Exhibit 170, admitted)
BY MS. DiGIACOMO:
Q Showing you what's been marked for identification as State's Proposed Exhibit 168. Do you recognize that?
A Yes, ma'am. It's Item 16, the wad of chewing gum on the cardboard piece with apparent blood, impounded on the 9th of July, 2001.
Q Okay. And this was impounded by you?
A Yes, ma'am, it was.
Q And whenever there's a red evidence sticker, that is from somebody in Metro, such as yourself, that seals it?
A Yes, ma'am, that's correct.
Q Okay. And whoever else opens this after you, signs a chain of custody at the bottom?
A That's correct.
Q Okay. This also has a biohazard sticker as well.
A Yes, ma'am. Correct.
Q And it's got a blue evidence sticker.
A That's correct.
Q Which is indicative of somebody from the lab opening it?
A Yes, ma'am.
Q Okay.

MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 168, as the bag and its contents.

MR. SCHIECK: Can I ask just a couple questions, Your Honor, on voir --

THE COURT: You wish to take the witness on voir dire?

MR. SCHIECK: Yes, Your Honor.

THE COURT: You may.

VOIR-DIRE EXAMINATION

BY MR. SCHIECK:

Q Who opened the bag?

A Thomas A. Wahl, P number 5019, on August 3rd, 2001.

Q And he's a DNA analyst?

A He -- yes, sir, he was.

Q Okay. Thank you.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted. 168 and its contents are admitted.

MS. DiGIACOMO: Thank you, Your Honor.

(State's Exhibit 168, admitted)

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DIRECT EXAMINATION (Continued)

BY MS. DiGIACOMO:

Q Now I'm showing you what's been marked for identification as State's Proposed Exhibit 164. Do you recognize that?

A Yes, ma'am. It's Item 20, gold-colored metal link chain, approximately 17½" long and 3/4" wide with apparent blood. I has a biohazard sticker, and was impounded on July 9th, 2001.

Q By yourself?

A Yes, ma'am.

MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 164 as the bag and its contents.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit 164, admitted)

BY MS. DiGIACOMO:

Q Showing you what's been marked as State's Proposed Exhibit 175, what's -- do you recognize this?

A Yes, ma'am, I do. It's a package containing Items 1 through 5, the four cut chain links and the cut padlock hasp, impounded on July 9th, 2001.

MS. DiGIACOMO: Your Honor, at this time the State

would move for admission of State's Proposed Exhibit 175 as the bag and its contents.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

MS. DiGIACOMO: Thank you.

(State's Exhibit 175, admitted)

BY MS. DiGIACOMO:

Q Showing you what's been marked for identification as State's Proposed Exhibit 177. Do you recognize that?

A Yes, ma'am. It's items 11, 12 and 13. 11 being the empty pack of Wrigleys Extra chewing gum. Item 12 are two foil gum wrappers. Item 13, one paper gum wrapper. Impounded on July 9th, 2001.

Q Thank you.

MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 177 as the bag and its contents.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit 177, admitted)

BY MS. DiGIACOMO:

Q Now, this one -- State's -- State 177, it says on it "chemically processed fingerprint process." They're stamps. What does that mean?

A It means that the items inside were processed for latent fingerprints either with powder or with some chemical means.

Q Okay. Showing you what's been marked for identification as State's Proposed Exhibit 157. Do you recognize that?

A Yes, ma'am. It's Number 15, the empty Milwaukee's Best beer can that was impounded on July 9, 2001. Again, was chemically and fingerprint processed.

Q Okay.

MS. DiGIACOMO: Your Honor, at this time the State would move for admission of State's Proposed Exhibit 157. It's the bag and its contents.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

MS. DiGIACOMO: Thank you.

(State's Exhibit 157, admitted)

BY MS. DiGIACOMO:

Q Showing you State's Proposed Exhibit 158. Do you recognize that?

A Yes, ma'am. It's Items 24 and 25. 24 being the August 2000 issue of Gallery Magazine. Item 25, the Triple X Adult Entertainment Magazine, with apparent blood, the biohazard sticker, and, again, fingerprint and chemical

1 processing, and impounded on July 9th, 2001.
2 MS. DiGIACOMO: Your Honor, at this time the State
3 would move for admission of State's Proposed Exhibit 158 as
4 the bag and its contents.
5 MR. SCHIECK: No objection, Your Honor.
6 THE COURT: Granted.
7 (State's Exhibit 158, admitted)
8 BY MS. DiGIACOMO:
9 Q Showing you what's been marked for identification
10 as State's Proposed Exhibit 159. Do you recognize those?
11 A Yes, ma'am. It's Number 6, one pair of brown
12 sandals with apparent blood, size 10, impounded on July 9th,
13 2001.
14 Q And this also has the blue laboratory seal?
15 A Yes, ma'am, that's correct.
16 Q And a biohazard sticker?
17 A And a biohazard sticker, that's correct.
18 Q And the person at the lab who opened it up? Can
19 you tell from the chain of custody?
20 A Is Joel Geller, P Number 5892, on September 28th,
21 2001.
22 MS. DiGIACOMO: Your Honor, at this time the State
23 would move for admission of State's Proposed Exhibit 159 as
24 the bag and its contents.

1 MR. SCHIECK: No objection.
2 THE COURT: Granted.
3 MS. DiGIACOMO: Thank you.
4 (State's Exhibit 159, admitted)
5 BY MS. DiGIACOMO:
6 Q Showing you what's been marked for identification
7 as State's Proposed Exhibit 162. Do you recognize that?
8 A It's Item 19. It's a pink hair pick with apparent
9 blood, a biohazard sticker, impounded on July 9th, 2001. Has
10 been -- chain of custody signed by Joel Geller on September
11 28th, it appears, on 2001.
12 Q And there's the blue evidence seal that shows Mr.
13 Geller opened it?
14 A Yes, ma'am.
15 MS. DiGIACOMO: Your Honor, at this time the State
16 would move for admission of State's Proposed Exhibit 162, the
17 bag and its contents.
18 MR. SCHIECK: No objection, Your Honor.
19 THE COURT: Granted.
20 (State's Exhibit 162, admitted)
21 BY MS. DiGIACOMO:
22 Q Showing you what's been marked for identification
23 as State's Proposed Exhibit 163. Do you recognize that?
24 A Yes, ma'am. It's Number 27, a piece of cardboard

1 with bloody footwear, impounded on July 9th. It has a
2 biohazard sticker and has been -- has two chains of custody.
3 Here, Joel Geller, 5892, on October 2nd, 2001, and Paula -- P
4 Number 5883 -- I can't read the last name -- on December
5 11th, 2001.
6 Q Thank you.
7 MS. DiGIACOMO: Your Honor, at this time the State
8 would move for admission of State's Proposed Exhibit 163 as
9 the bag and its contents.
10 MR. SCHIECK: I'm sorry for this, Your Honor, but
11 what exhibit number or what impound number was that item?
12 THE WITNESS: Item Number 27, sir.
13 MR. SCHIECK: Thank you. I have no objection,
14 Your Honor.
15 THE COURT: Granted.
16 (State's Exhibit 163, admitted)
17 BY MS. DiGIACOMO:
18 Q Just going back to State's Exhibit 163, the fact that
19 you said Paula -- and you can't read the name. The additional
20 red seal, does that indicate it was somebody at Metro and not
21 the lab, that opened it?
22 A That's what it appears, yes, ma'am.
23 Q Possibly someone at the vault?
24 A Right.

1 Q Okay. Showing you what's been marked for
2 identification as State's Proposed Exhibit 161. Do you
3 recognize that?
4 A Yes, ma'am. It's Item 29, the surge suppressor box
5 that was impounded on July 9th, 2001. It has the fingerprint
6 processing and chemical processing stamps on it.
7 Q Okay.
8 MS. DiGIACOMO: Your Honor, at this time the State
9 would move for admission of State's Proposed Exhibit 161, the
10 bag and its contents.
11 MR. SCHIECK: No objection, Your Honor.
12 THE COURT: Granted.
13 (State's Exhibit 161, admitted)
14 BY MS. DiGIACOMO:
15 Q Now, when you were processing this scene, did you
16 ever find items that might have indicated that somebody was
17 possibly living in the back of the dumpster? Maybe a bag of
18 clothes, any other shoes, anything of that nature?
19 A No, ma'am, we didn't. If we had, those would have
20 been impounded as well.
21 MS. DiGIACOMO: Court's indulgence.
22 BY MS. DiGIACOMO:
23 Q The surge suppressor box that I believe we just
24 looked at, the last -- Exhibit 161, you indicated, before, that

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that was found actually on the body?
A It was from the trash pile on top of the victim, yes.
Q Okay.
A Yes, ma'am.
Q Okay. Let me see if I can find a photograph.
MS. DiGIACOMO: Court's indulgence?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q I'm going to show you State's Exhibit 7. Do you recognize what's depicted here?
A Part of the trash pile that was slowly uncovered as we were going through and removing items there.
Q Okay. Now, the -- and I'm going to show you -- maybe this one helps too -- State's Exhibit Number 10. Do you see the surge suppressor box in any of these photos or was it underneath the cardboard that was across the top of the victim? Do you recall?
A I don't recall. I don't see it in this photograph, no, ma'am.
Q Okay. But you do recall that it was on top of the body of the victim?
A Yes, ma'am.
Q Do you recall specifically what part of the victim?
A Mid torso.

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Q Mid torso. Okay.
MS. DiGIACOMO: Your Honor, at this time I'll pass the witness.
THE COURT: Mr. Schieck may cross.
MR. SCHIECK: May I approach the Clerk briefly?
THE COURT: Yes.
MR. SCHIECK: For the record, I dropped something.
THE COURT: Or something slid.
MR. SCHIECK: That would be Exhibit 159 which is the sandals. I don't believe it would have broken the sandals though.
THE COURT: Thank you, Mr. Schieck.

CROSS-EXAMINATION

BY MR. SCHIECK:
Q While we're talking about the sandals, you indicated that there was a size noted for the sandals?
A Yes, sir.
Q And this is State's Proposed -- or State's Exhibit 159?
MR. SCHIECK: If I may approach the witness, Your Honor?
THE COURT: You may.
BY MR. SCHIECK:
Q And what size were the sandals?
A Size 10.

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Q Okay. Did you note on -- when you impounded these items, whether those were men's size 10 or women's size 10?
A No, sir, I did not. Just size 10.
Q Do you know where that information came from? Is it on the --
A I think it was on the bottom of the sandals, yes, sir.
Q So there's a 10 stamped on the bottom of those sandals?
A Yes, sir.
Q And State's Exhibit 161 -- so I don't have to walk up there -- is the surge suppressor box?
A Yes, sir, that's correct.
Q When you say "surge suppressor box," I'm not real certain what we're talking about.
MR. SCHIECK: May I approach again, Your Honor?
THE COURT: Yes.
BY MR. SCHIECK:
Q It feels kind of light to me. Would you agree with that?
A Yes, sir. It's just the box that the surge suppressor came in. The multi-receptacle unit that you plug your computer and your printer and laptops and all into so that it, again, tries to protect it against electrical surge of power. It

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was just the box, not the item itself.
Q It's like a little plastic box or cardboard box?
A Cardboard box, yes, sir.
Q Okay. So it's not a weapon?
A No, sir.
Q And it's fairly light?
A Yes, sir.
Q It wouldn't leave much of an impression if it was resting on anything?
A No, sir.
Q You were asked whether or not there was any indication of someone living back in that dumpster area, a bag of clothes and things like that, correct?
A That's correct.
Q Do you have any knowledge of homeless people and their habits and their -- where they keep their items at?
A Normally it is in a washer. Not in a dumpster area. Especially with the amount of activity that was going on at Nevada State Bank at that time, with the banking procedures and also the hiring for the Palms Casino.
Q So there was -- to your knowledge, at that time, during business hours, there would have been a lot of traffic in and out of that particular parking lot?
A Yes, sir.

Q Probably not so much on Saturday or Sunday?
A Not during -- and not during the evening hours, no, sir.
Q And would it be fair to say a homeless person isn't going to keep their belongings someplace that might get cleaned out and their belongings get thrown away?
A Exactly.
Q Such that if there was a security officer that worked at the Palms -- in that area, that he might clean out the dumpster area and throw away all the garbage that's back there?
A That's correct. Yes, sir.
Q So if the homeless person's not occupying the area, he might lose his belongings if he keeps it stored in an area where other people that have legitimate business there would have access to?
A Correct.
Q Okay. He very well -- or a person -- a homeless person very well could keep his belongings someplace that it's not going to be cleaned up and thrown away? Correct?
A And a little more hidden probably from the public eye as well.
Q However, at night, and when the bank is closed, it's more likely someone may use that location to sleep perhaps on

the cardboard that's been laid out there?
A That's correct.
Q Are you familiar with whether or not there's an apartment complex directly to the north of that parking lot?
A Yes, sir. North of the compound was an apartment complex, I believe, and west of the complex was a dirt lot, until we get over to a Chevron station -- a gas station, I think.
Q How late did you stay at that scene on July 9th, 2001?
A We left at approximately 6:30 -- 6:34 in the morning.
Q Sun was already up in July, then?
A Yes, sir.
Q Starting to get warm already?
A Yes, sir.
Q It was fairly warm that evening while you were working in the area?
A Correct.
Q And you were working in a confined space with those three brick walls that were 6' or so tall, surrounding you?
A Yes, sir. And then add to the -- the bunny suit that I put on for the dumpster dive as well.
Q You didn't put that on until you actually jumped in the dumpster?

A Until I actually jumped in. And I took it off as soon as I could.
MR. SCHIECK: I need to get a chart from the back. May I go behind your Court Clerk, Your Honor?
THE COURT: Do you know the number?
MR. SCHIECK: Not off the top of my head. It's the aerial photograph.
MS. DiGIACOMO: 121.
MR. SCHIECK: Thank you very much, counsel.
BY MR. SCHIECK:
Q I'm going to set 121 up here just for a second. You indicated there was an apartment complex directly to the north of the scene, is that correct?
A That's correct. Yes, sir.
Q Would that be -- excuse me for pointing, but this -- this area --
A That whole complex area, yes, sir.
Q Okay. That is an apartment complex area?
A Yes, sir.
Q Do you know the name of that apartment complex?
A No, sir, I don't.
Q Did you have any contact that morning before you left the scene, with an individual that lived in that apartment complex by the name of Diane Parker?

A I wouldn't have, no, sir. If someone had come up, we would have referred them to the detectives. Because unlike the TV show, we don't interview witnesses and we don't interview suspects.
Q Do you recall a person coming up to you and indicating something -- that she had some knowledge about the individual, and then you then contacting Detective Thowsen with that information?
A No, sir, I don't remember. It could have happened but I don't recall at this point.
Q If Detective Thowsen and -- is there also a Detective involved in this case, LaRochelle?
A Yes, sir.
Q If their reports indicated that you had contacted them about 6:00 a.m. that morning indicating that you'd been contacted by a Diane Parker, would that be accurate?
A Then it would be if it was in their report, yes, sir.
Q It's not that -- I mean, you've processed a lot of crime scenes since then. Is that --
A Yes, sir.
Q Okay. It's hard to remember every detail that happens.
A Yes, sir, that's correct.
Q And you wouldn't have gathered any evidentiary

1 information from Ms. Parker as opposed to just passing her on
2 to the investigating officers?
3 A No, sir. It's like the telephone game, she tells me
4 something and I tell the detectives something, by the time it
5 gets to -- from LaRochelle to Thowsen, it's changed already,
6 and I didn't want to play that game.
7 Q So you put her in contact with --
8 A Yes, sir.
9 Q Normally you would have -- normal procedure is you
10 put her in contact with Thowsen?
11 A With the detectives right away.
12 Q Now, on -- you indicated your Items Number 24 and
13 25 are two what we would probably refer to as adult type
14 magazines, is that correct?
15 A Yes, sir, that's correct.
16 Q One of them is a Gallery Magazine from the year
17 2000?
18 A Correct.
19 Q That is an adult type magazine with photographs of
20 women in it, I --
21 A Yes, sir.
22 Q Okay. And you checked that for fingerprints?
23 A Yes, sir, it was.
24 Q Okay. And did you get any fingerprints off of the

1 magazine?
2 A No, sir, I did not.
3 Q And that's I guess what you call a glossy type of
4 surface?
5 A Yes, sir, it is.
6 Q Okay. Where fingerprints would be easily left if --
7 A Should be. Yes, sir.
8 Q But you found no fingerprints there?
9 A None.
10 Q And there was a second magazine which would be
11 your Exhibit --
12 A 25.
13 Q -- or your Impound Number 25, which you've got
14 marked as XXX Adult Entertainment Magazine. Is that the
15 same type of magazine as Gallery Magazine?
16 A A little more on the porn side. Yes, sir.
17 Q So a little bit more explicit type?
18 A Yes, sir.
19 Q And that was also found within the dumpster area?
20 A Yes, sir, that's correct.
21 Q 24 was the Gallery Magazine, and that was over next
22 to where the pallet was at, is that correct?
23 A Yes, sir, that's correct.
24 Q Okay. And 25 was over toward the west wall of the

1 enclosure?
2 A Yes, sir, near the northwest corner.
3 Q Did you attempt to lift fingerprints off of the XXX
4 Magazine?
5 A Yes, sir, I did, and again with negative results.
6 Q And again, that's a type of surface that you would
7 expect fingerprints could be found on?
8 A Yes, sir.
9 Q Does that necessarily mean someone went along
10 and wiped all the fingerprints off of those two magazines?
11 A No, sir. It just means that at the time that the
12 person touched it, their hands could have been extremely dry.
13 They wouldn't have left fingerprints. We're led to believe that
14 every time we touch an object we leave fingerprints. It
15 depends on the amount of pressure that we use at the time,
16 how much oil or debris are on our hands when we touch an
17 object, whether or not our hands slide -- our fingers slide
18 across an object, whether they're stationary.
19 Q What about if we touch an item and we leave a
20 print, does that print stay there forever?
21 A No, sir, if you're in Las Vegas with the heat and all.
22 Latent fingerprints are made up of about 98½ percent water,
23 1½ percent oil. So the evaporation of latent fingerprints is
24 almost immediate in the heat here in the valley. The oils will

1 stay, and it takes some chemical processing along with powder
2 processing to develop that. And we weren't -- didn't have any
3 luck in this procedure.
4 Q Okay. And so the fact that it's Las Vegas, in July, in
5 an enclosed area, could have caused fingerprints to dry up
6 very quickly?
7 A Yes, sir.
8 Q It doesn't necessarily mean someone went along
9 and wiped any fingerprints up, is that correct?
10 A No, sir.
11 Q Now, you did find a fingerprint on the beer can
12 though?
13 A Yes, sir, that's correct.
14 Q And you did that back at the lab?
15 A Correct.
16 Q Did you use just regular processing or did you have
17 to use the chemical processing?
18 A They would have been both the chemical and
19 powder processing procedures for that.
20 Q I'm a little confused and perhaps you can clear it up
21 for me. You said the beer can was found, according to your
22 report, on the north wall, on leg, L-E-G, of sign. Can you tell
23 me what that is? What sign there was in there on the inside?
24 I just haven't been able to see one.

A I -- I don't remember what the -- if I may refer to Louise's report?
Q Sure. Anything that would help you answer that question for me.
A No, sir. In her report she identifies the beer can partially filled with a cockroach-infested yellow brown liquid, but she doesn't say what -- what it was on.
Q Okay. And I'm going to try here -- Exhibit 43, which has been admitted -- and the tripod has been set up, I assume, by Teresa Main to take photographs of that footprint, correct?
A That's correct. Yes, sir.
Q If we look over in the right upper section of -- against the wall, is there something else besides the pallet that is sitting there?
A It may have been just on the other side of the pallet, beyond this edge of the pallet, back in here somewhere, is where that sign may have been.
Q Okay. Is that white item that looks like it's leaning against the wall -- was that a sign? Do you recall?
A It could be the -- that you see here. In that area. Yes, sir.
Q Would that have been where the beer can perhaps was located?

A Yes, sir.
Q Okay. So that would have been sitting on the -- it says the "leg" of the sign. And that's what really has me confused is what a leg of a sign is.
A The support for the sign into the ground or -- is my best recollection of that.
Q Would you like to see the photograph as opposed -- on the ELMO? Would that help at all?
A No, that's -- that's fine.
Q Okay. But it's in that area that that beer can, partially filled, was found and there was a fingerprint on it?
A Yes, sir. That's correct.
Q And you collected and preserved that fingerprint and submitted it for further processing?
A Submitted it for -- to the latent print section for examination later on, yes, sir.
MR. SCHIECK: Can I approach the Clerk again, Your Honor?
THE COURT: Yes.
BY MR. SCHIECK:
Q I'm going to show you what's been marked and admitted as Defendant's Exhibit E. Tell us if you recognize what that is.
A It's the piece of cardboard that we cut out that had

the bloody footwear on it.
Q Okay. And would it be fair to say that there's more than one impression there? They're sort of over the top of each other?
A Yes, sir. Here it appears that -- you have an impression here and then you have one that's partially over it, there. You have two impressions here. Two more down here in this area. Something below the scale here.
Q And that's the piece of cardboard that you talked about earlier that was over the top of the body, is that correct?
A Yes, sir, that's correct.
Q And those footprint impressions or -- were face down toward the body, is that correct?
A Yes, sir. That's correct.
Q Okay. So they're not seen when we look at the photographs taken of the body with the cardboard on it?
A No, sir, you can't see them until we turned it over.
Q Turned the cardboard over? When you turned the cardboard over then you could see the footprints? Is that correct?
A Yes, sir.
THE COURT: I'm sorry, Mr. Schieck, I missed the number on that particular photo.
MR. SCHIECK: That's Defendant's E, Your Honor.

THE COURT: Thank you.
BY MR. SCHIECK:
Q And that would be -- correspond to Item Number 27 on your impound?
A Yes, sir. That's correct.
Q Which is shown on your chart, 27, showing --
A The upper chest area of where it was located on the victim, yes, sir.
Q And the only items that you were able to lift latent prints were from Items 15 and 29 which were in fact the beer can and the surge suppressor box?
A That's correct.
Q No fingerprints at all were lifted from the other items?
A No, sir.
Q Were there fingerprints there but they weren't of sufficient quality that you could lift them and do a comparison on them?
A No, sir. In a homicide, even if the prints that we lift are of questionable value, I still submit them because an examiner may be able to eliminate someone with those. There was just nothing there.
Q You were asked a question about whether or not there were any bloody fingerprints found, and your answer

was, no, there were not any bloody fingerprints.
A Not that I recall, no, sir.
Q A bloody fingerprint would be what we call a patent fingerprint?
A Yes.
Q One that you can see without --
A Any development required, yes, sir.
Q There were none of those present?
A No, sir.
Q Did you at any point in time attempt to lift fingerprints from any of the plastic items that were in the area?
A We processed a lot of the -- the plastic bags and all, there, at the scene and, again, nothing was developed and nothing was kept because of that.
Q You processed all the plastic at the scene as opposed to collecting it, transporting it to the lab and attempting to test it at the lab?
A The bags that contained trash still in them, the -- one picture that was up earlier -- a photograph -- showed some green palm trees or whatever -- those were all taken back to the lab. Items like that, that were taken back and processed at the lab -- begin with no prints, and those were tossed back there.

Q Was there any record kept of the items that were collected and transported back to the lab and then discarded?
A No, sir, not that I'm aware of.
Q They weren't logged in or itemized at all when they were collected at the scene? They were just bagged, taken and then tested?
A Yes, sir.
Q And if negative, discarded?
A Yes, sir, that's correct.
Q Not preserved for any future attempts at testing?
A No, sir.
Q And we know that that includes the green palm decoration type things?
A Right.
Q Anything else you recall that was taken, transported, examined and then discarded and there's no record of it?
A No, sir, I don't. I don't remember.
Q All you remember is the palm --
A Yes, sir.
Q You don't recall any of the paper towels or plastic being transported, tested, then discarded?
A The plastic that was around the victim would have been removed at the morgue during the autopsy. And that would have been done by the person that assisted at the

autopsy.
Q When you say the plastic that was around the body, can you describe what you mean by around the body?
A We saw some clear plastic that appeared to be wrapped around the lower extremities -- the legs of the victim. When we got the trash off and saw that, the homicide detectives at that time elected to stop the removal of any more, and the victim was going to be transported with those items attached to the victim for processing either at the morgue or back at the lab by whoever assisted at the autopsy.
Q But they definitely appeared to be wrapped around the legs of the victim?
A I want to say wrapped around or -- at least they appeared to be. That they were -- didn't appear to be laying there.
Q Once the detectives at the scene saw the plastic that was -- your word -- wrapped on the legs of the victim, they said, stop, we're going to take this with the body to the morgue for collection?
A Yes, sir, that's correct.
Q And at the crime scene are those homicide detectives sort of in charge? If they say, stop, we're going to do it this way, you guys --
A We stop.

Q You might have some input, there may be some discussion, but --
A Yes, sir.
Q -- final word is theirs?
A Yes, sir. Even if we -- even if we recommend that we do it otherwise, normally it's -- it's their final decision as to how it goes. And being a civilian, I don't argue with a commissioned officer.
Q So they have veto power. Even if you say one thing, they can veto that and say, no, we're going to --
A Yes, sir.
Q Okay. But they have training in crime scene collection also?
A Oh, yes, sir. Yes, sir. They're not ignorant in that area at all.
Q Were you any further involved in testing or examining the plastic that was taken with the body to the morgue?
A No, sir. Not at all.
Q That would have been someone else's responsibility?
A Yes, sir.
Q When you finally got down to that layer where you saw the body and had it mostly uncovered -- my understanding is that you still didn't know that there had been

1 a dismemberment of the penis until some final point when it's
2 revealed. Is that a fair statement?
3 A I think when the final pieces of material were
4 removed from the victim, I think that's when we saw that
5 there had been a dismemberment to the victim, and of course
6 that got our attention again as well.
7 Q And, obviously, you would have been able to see the
8 dismemberment if all that was in the way was the clear
9 plastic?
10 A Yes, sir.
11 Q What else was in the way -- was the last thing that
12 was in the way that had to be removed before you could see
13 the dismembered area where the penis was supposed to be
14 at?
15 A I want to say once we removed that piece of
16 cardboard, I don't think that there was anything else that was
17 in the way.
18 Q Do you recall any white paper towel type items
19 being over the body at that point in time?
20 A Not over the groin area, no, sir.
21 Q After you left the crime scene what was your next
22 involvement, if any, with this case?
23 A Took the evidence back to the lab, started to
24 process it there, and package it, and then write my impound

1 report. Provided it to Louise Renhard for her -- finish up her
2 crime scene report. And that was my involvement at that
3 time. And then work on the diagram.
4 Q Were you involved in the processing of a car at a
5 later point in time?
6 A Assisted her with some photography that she did on
7 the interior of the car, yes, sir.
8 Q And that would be on a red Fiero?
9 A Yes, sir.
10 Q Did you take any measurements on that red Fiero?
11 A No, sir, I did not. Louise would have. She was the
12 primary person processing that car.
13 Q So she would have prepared the report of the results
14 of the processing?
15 A Yes, sir.
16 Q And were you present when any of the luminol or
17 phenolphthalein testing was done?
18 A When the luminol was done, yes, sir. It's a two --
19 it's normally a two-person project. One person to do the
20 spraying and another person to operate the shutter on the
21 camera to expose the film -- the film at that time.
22 Q Do you use any -- were you using any special type
23 of lighting at the time that you were taking the photographs of
24 the luminol reactions?

1 A With luminol you need to have almost entirely dark
2 or near-dark environment for the blue light to show. So the
3 garage was probably almost pitch black for us -- there would
4 have been some light because you need the light to expose
5 the film, otherwise you don't get any results with the luminol
6 photography at all. The photograph will be just totally black
7 and you won't see anything, even the blue. As long as you
8 have some ambient light in the room you will have the
9 development of the image on the film showing a blue glow
10 that's -- that is a luminol reaction to the presence of blood on
11 whatever that item is.
12 Q Do you use a time-lapse type of photography in
13 order to do that or you just use the slowest shutter speed you
14 can set it at?
15 A We set it at a bulb setting and then I -- I start at 30
16 second exposures and then go 30 seconds to a minute to a
17 minute and a half, 2 minutes and on up, depending on how
18 much light we have and how much of a glow we have and
19 how long it lasts.
20 Q And do you recall what the setting was that you
21 used when you were taking the luminol photographs of the red
22 Fiero in this case?
23 A No, sir, I don't.
24 Q But your normal starting point would have been at

1 30 seconds?
2 A Thirty seconds, yes, sir.
3 Q Which means the shutter is open for 30 seconds in
4 order to gather that light?
5 A Yes, sir.
6 Q And it's obviously on a tripod 'cause you couldn't
7 hold the camera still for 30 seconds?
8 A Correct.
9 MR. SCHIECK: Can I approach the Court Clerk one
10 last time, Your Honor?
11 THE COURT: Yes.
12 BY MR. SCHIECK:
13 Q I'm going to show you some photographs that were
14 admitted yesterday, and these are Defendant's KK, LL and MM,
15 and ask --
16 MR. SCHIECK: Can I approach the witness, Your
17 Honor?
18 THE COURT: You may.
19 BY MR. SCHIECK:
20 Q -- if you could identify these as photographs taken at
21 the scene there on July 9th, 2001?
22 A Yes, sir, they were.
23 Q And they accurately depict the scene as you were
24 removing the various layers of trash?

A Yes, sir, that's correct.
Q And the question I wanted to ask you concerning these items gets back to the paper towel question I was asking, whether you recalled any paper towels being over -- over the area where the lower abdomen or the -- where the penis removal was at. Does this refresh your recollection that there were paper towels over that area?
A Yes, sir, it does.
Q Do you recall whether there were any paper towels under the plastic wrap that was -- the plastic that was wrapped around the leg area?
A This area here -- appears that there's something shiny over what appears to be a white paper of some sort. But I can't make it out any closer than -- any better than that.
Q And those would be the white paper towels that are over his general mid body area, correct?
A Yes, sir. Lower abdomen and the groin area.
Q Okay. And the cardboard has at this point been removed, correct?
A That's correct.
Q So once the cardboard was removed there was still other items that had to be removed before you could see the amputation?
A Yes, sir, that's correct.

Q And putting up KK on the overheard display, does that also seem to indicate that there's a shiny plastic substance over some of the towels?
A Yes, sir. Here.
Q So that there was a layer of plastic over some of the towels on the body as you were removing the layers?
A Yes, sir. Correct.
Q Thank you. That's all the questions I have. Thank you very much, Mr. Ford.
A You're very welcome, sir.
THE COURT: Would counsel approach?
(Off-record Bench Conference)
THE COURT: Upon conferring with counsel, we will be doing the redirect examination of Mr. Ford on Monday at 10:30, as long as he's available to return at that time.
THE WITNESS: Yes, ma'am, I am. It's a day off. I'll be here.
THE COURT: Very good. Thank you.
THE WITNESS: You're very welcome.
THE COURT: Ladies and gentlemen, we'll be taking our weekend recess at this time, resuming on Monday at 10:30. Please be in the hallway at 10:30 Monday morning. The bailiff will meet you there to return you to your seats in the courtroom.

During this recess you're admonished not to converse among yourselves or with anyone else on any subject connected with this trial. You're not to read, watch or listen to any reporter 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. You're not to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.
Everyone have a good weekend and we'll be back in session 10:30 Monday. Court's in recess till that time.
* * * * * * *
COURT ADJOURNED AT 11:45 A.M. UNTIL
SEPTEMBER 25, 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.

Lori Lutz
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

18 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 11
VOLUME XI

MONDAY, SEPTEMBER 25, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

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* * * * * *

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LAS VEGAS, NEVADA MONDAY, SEPTEMBER 25, 2006

PROCEEDINGS

PROCEEDINGS BEGAN AT 10:46:02

(Jurors are present)

THE BAILIFF: Department II is now in session, Honorable Valorie J. Vega presiding.

THE COURT: Good morning, everyone. The record shall reflect that we are resuming trial in State versus Kirstin Blaise Lobato, under Case Number C177394, in the presence of the defendant together with her three counsel. The two prosecuting attorneys are present, as are the ladies and gentlemen of the jury.

Proceeding forward with the State's case in chief. When we recessed, the senior crime analyst Ford was on the stand, and the Court believes that he is returning at this time to resume that testimony?

MS. DiGIACOMO: That's correct, Your Honor.

THE COURT: Would the bailiff call the hall?

DANIEL FORD, STATE'S WITNESS, SWORN

THE COURT: You may be seated.

THE WITNESS: Thank you, ma'am.

THE COURT: As we recessed, the witness had just been passed back to the prosecution for redirect. And Ms. DiGiacomo may proceed.

MS. DiGIACOMO: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. DiGIACOMO:

Q Mr. Ford, defense counsel asked you about, you know, if it's possible somebody could have slept in that area after hours. Do you recall that line of questioning?

A I believe so, yes, ma'am.

Q Do you know how many pairs of shoes were actually found at the scene?

A I believe just the one pair of sandals.

Q That you impounded?

A Yes, ma'am.

Q And also defense counsel asked you about a suppressor box. I believe it was Number 161. Do you recall that?

A Yes, ma'am, I do.

Q Now, was it just that suppressor box that was found on the body?

A There was a large piece of cardboard that was over top of the body that had blood on one corner of it. We turned the piece of cardboard over and it contained bloody footwear on the underside of that piece. We cut part of it out and just impounded the section of cardboard with the bloody footwear and left the remainder of it. We took about a third of that box.

Q Okay. Now I'm showing you State's Exhibit Number 5. Can you see that?

A Yes, ma'am, I can.

Q Okay. The cardboard you're referring to, is it in this photograph?

A Yes, ma'am. It's this piece of cardboard here.

Q At the time you were -- you located the body, this is the way it looked?

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

Q All right. Now, when -- this cardboard that was lifted off of the body, were there other items underneath it?

A Yes, ma'am, there were.

Q All right. Were there multiple items or just the one suppressor box?

A There was additional items there. If I could refer to Louise's report?

Q Okay. If that would refresh your recollection.

A Yes, ma'am. She writes that a piece of cardboard box with apparent blood and a footprint impression in apparent blood covered the face and upper body of the victim. Plastic bags of trash, cardboard boxes, as well as loose trash, was covering the victim's body. A piece of torn plastic was pressed around the victim's hips and wads of paper towels

were pressed over the plastic, and plastic bags of trash were over the paper towels, all underneath the piece of cardboard.

Q Now, State's Exhibit 155, do you recognize this?

A Yes, ma'am.

Q Okay. What is this?

A That's the -- should be the piece of cardboard with the bloody footwear that we cut out.

Q Okay. And if you --

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

THE COURT: You may.

BY MS. DiGIACOMO:

Q Now, is this the entire piece of cardboard?

A No, ma'am, it's about one-third of the -- the piece with the bloody footwear is Item Number 27. That's Item --

Q Oh, 27?

A Yes, ma'am.

Q I have the wrong one. This is Item 31. Item 31 would have been the one found on the ground, then?

A 27 -- that was probably the one on the ground, yes, ma'am.

Q Okay. Now I'm showing you State's Exhibit --

MS. DiGIACOMO: May I approach, Your Honor?

THE COURT: You may.

BY MS. DiGIACOMO:

Q This is actually 163 that shows Item 27.

A Okay.

Q This is the piece that had the cardboard?

A This is a piece of cardboard that says "was cut from the cardboard located on top of the victim."

Q Okay. And this is just a very small portion of what was on top of the victim?

A Correct. Along with Item 31, that you just had, as well. Item 31 was at the upper torso of the victim.

Q So Item 31 in this -- this big box, which is State's Exhibit 155, this was on top of the -- the body as well?

A Victim as well, yes, ma'am.

Q Now, defense counsel also talked to you regarding some paper towels. Do you recall that? This is State's Exhibit Number 9 I'm showing you right now.

A Yes, ma'am.

Q Okay. Now, were any of these paper towels found underneath the plastic on the genital area of the victim?

A No, ma'am, they were not.

Q Okay. So, showing you State's Exhibit Number 13. None of these paper towels here that have been removed were stuffed into the genital opening?

A No, ma'am, they were not.

Q Okay. And you don't see any underneath the plastic here that's been pulled back?
A No, ma'am.
Q And in fact the report you just read from doesn't indicate that there was any paper towels over the genital opening, correct?
A No, ma'am, it does not.
Q And defense counsel also asked you about this plastic that was wrapped -- this right here. And I'm showing you State's Exhibit Number 12, the plastic. And he was saying it was wrapped around the victim's body. Was this piece of plastic wrapped all the way around the victim's body?
A No, ma'am. It stopped at the edges of the -- of the body. At the edges of the legs and the thighs. It didn't go around the back.
Q Okay. So where his body was touching or laying on its back, that paper was not wrapped around?
A No, ma'am.
Q In fact, that's how you were able to find a rock underneath the left buttocks area?
A That's correct.
Q Now, the footprints that came out on the side by the crate, the wood crate on the --
A North wall?

Q -- north wall -- correct -- you'd mentioned that those were partially dry and partially wet.
A Yes, ma'am. There was -- there was one that -- where it started, that was all in blood. I mean it was -- you couldn't see any detail at all to a footwear impression -- was wet. And as they came out, they were more dry until they got to the very edge of the enclosure, and then there was no farther footwear beyond the enclosure.
Q All right. And I'm going to show you State's Exhibit Number 231. Do you recognize what this is?
A It's part of the blood pool that was back in -- in the -- near the southwest corner of that enclosure.
Q All right. Friday you had testified that you believe that this area was dry? The blood.
A That's correct.
Q Is that correct?
MS. DiGIACOMO: May I approach, Your Honor?
THE COURT: Yes.
BY MS. DiGIACOMO:
Q I'm going to show you State's Exhibit 231, up close. If you could look at -- I believe you said that was Teresa Main's glove in the picture?
A Okay.
Q Okay. Do you see anything on her gloves?

A There's blood on -- apparent blood on the fingers of the gloves. Meaning that that blood in that corner was wet.
Q Okay. Now, it's your -- you didn't recall that it was dry or wet, correct?
A No. That's correct.
Q Did you review Ms. Renhard's report?
A Yes, ma'am, I did.
Q Does it state in there whether or not it was wet or dry?
A It says the flat cardboard was wet with pooled blood. So there was a large area of blood pool that was still wet. And that's where the blood came from, on her fingers, of those gloves.
Q Now, there were multiple, multiple items in the back of this trash enclosure, correct?
A Yes, ma'am.
Q All right. And I'm going to show you State's Exhibit Number 9. Do you see that?
A Yes, ma'am, I do.
Q Okay. I don't know if you can see, there's water bottles, coffee cups, Coke cans, I believe there's some half-eaten foot and cigarette butts. Do you see that in there?
A Yes, ma'am.
Q Now, why weren't those items collected?

A We -- after discussing it with the other members of the team that were there, we assumed that they were all from inside the trash bags that had been taken out of the dumpster. We didn't feel that the suspect, whoever that person may be, would have stood around drinking from a water bottle or eating food, or anything else, after killing the victim. They would have left as soon as possible. The water bottles, the drink cups, the food, or whatever, with the -- again, with the employment center for the Palms being handled in that building, we had -- we took it that that was trash all from that employment center.
Q And showing you State's Exhibit 230. In this photograph there's multiple Coke cans and multiple cigarette butts around the area. Those weren't collected either, and impounded?
A No, ma'am, they were not.
Q In fact the items that you impounded are -- seem to be from areas not within the trash heap itself?
A That's correct.
Q Now, with regard to luminol, you were present when Louise Renhard did the luminol, correct?
A Yes, ma'am. At the criminalistic's garage.
Q Right. On the Ford Fiero -- or the Fiero?
A Correct.

Q And how long have you been using luminol?
A Here in Las Vegas, about twelve years now.
Q Do you have any experience with false positives for luminol?
A I -- I set up a training class for the people on our graveyard shift, of taking items and soaking them in blood -- wrenches, screw drivers, a hammer, handprints -- putting them on pieces of carpet and then letting them dry, spraying them with luminol so the people could see what sort of a glow we would get with it. And then taking another piece of carpet that we walked across with bloody footwear and cleaning that with a carpet cleaner to see what we would get. And then also using bleach in the cleaning of that -- of carpet pieces, and tennis shoes, to see what we would get. And you get a bright flash, almost like flash bulbs going off at a rock concert or a football game, baseball game. It's just flashes of light. The -- and then the color dissipates. It doesn't stay --
Q And that would be flashes of lights with regard to the cleaning solutions?
A With the cleaning solutions, yes, ma'am.
Q Okay. Now showing you State's Exhibit 192. Can you see what's located there?
A Yes, ma'am.
Q Okay. Now, this is the positive reaction with the

luminol on the door panel of the Fiero, correct?
A That's correct.
Q All right. Now, is this reaction different than you described with regard to the cleaning supplies with the flashes of light?
A Flashes of light, you're not able to capture with photography because it -- it dissipates immediately. Where the luminol glow remains for a period of time and allows you to capture it with time lapse photography.
Q And this is when the luminol reacts positive for blood?
A Yes, ma'am.
Q And so State's Exhibit 192 is a consistent reaction of a positive for blood?
A Yes, ma'am, that's correct.
Q And the other positive reactions on the floral seat overs and the gray seat, as well, would that be more consistent with being positive for blood or being a false positive?
A Positive for blood.
MS. DiGIACOMO: Court's indulgence. Your Honor, I'll pass the witness.
MR. SCHIECK: Thank you, Your Honor.
///

RECROSS-EXAMINATION

BY MR. SCHIECK:
Q Mr. Ford, you said you had done some training --
MR. SCHIECK: I'm sorry, Your Honor, I didn't wait for you to say go ahead.
THE COURT: You may.
BY MR. SCHIECK:
Q You talked about your tests that you performed with luminol.
A Yes, sir.
Q What is your training background in the use of luminol?
A The first time I was able to use it was here in Las Vegas. It was on a double murder.
Q I want to know your training. Not your experience.
A That was basically my training, was on-the-job training at a scene using it for the first time.
Q Okay. And you're not a chemist, I assume?
A No, sir, I'm not.
Q And you're taught how to prepare the luminol and how to spray it onto a surface?
A Correct.
Q And then you get a luminescence response and you photograph it?

A That's correct.
Q Okay. You're not involved in whatever goes into the luminol? You're given compound A, compound B, mix it with water and spray it? Correct?
A Yes, sir, with directions on a piece of paper.
Q And that's the extent of your training with luminol?
A Correct.
Q Okay. And you said you had done a little testing on your own or put together a little workshop where you had got a false positive with the use of some cleaning items?
A Yes, sir.
Q Okay. And you got those sparkles?
A Yes, sir.
Q Okay. You didn't get any sparkles in this case?
A In this case in the car?
Q Yes.
A Not that I remember seeing. She -- if she had done something later with it, she did -- it wasn't to my knowledge, no, sir.
Q So there's no indication that any cleaning fluid or anything that would react with luminol, if it does react, reacted in this case?
A That's correct.
Q So you found no evidence that there'd been any

1 cleaning with cleaning products on the inside of that car,
2 correct?
3 A Nothing that would react to the luminol, no, sir.
4 Q And when we're talking about cleaning products,
5 we're just talking about one type of false positive, is that
6 correct?
7 A Correct.
8 Q There's a great many types of items that will create
9 false positives, is that correct?
10 A Many. Plant lift, some vegetable products, food
11 stuffs will give the same thing.
12 Q Do you have any recollection or have you read or
13 have any training on what those other items are that create
14 false positives?
15 A Trees that are common to here in this -- this area.
16 Different flowers and all. But I don't remember specifically
17 without looking at some paperwork.
18 Q Dandelions?
19 A Maybe. I'd have to look at -- if I could pull a report
20 out?
21 Q Do you have a report that --
22 A Yes, sir.
23 Q Okay. What report is this?
24 A In fact, after I look at it, you can have it, sir. It's a

1 technical note by -- that a speech was given by a Lieutenant
2 Robin Bratton [phonetic] with the Michigan State Police at an
3 IAI conference in Massachusetts in 1997 regarding Hemoglow
4 which is another commercially luminol type preparation. He
5 compared Hemoglow and luminol for positives and false
6 positives, and indicated whether it's the -- a strong
7 luminescence, a plus and a minus is a slight dot luminescence,
8 which is your false positive, and then just the minus is no
9 luminescence produced. Dandelions, spruce, lamb ears,
10 thistle, pyracantha, burning bush, cotoneaster, creeping
11 myrtle, Boston ivy, hackberry tree, clover --
12 Q I'm just kind of looking up there. It looks like you've
13 got a long list of items --
14 A Yes, sir. It is.
15 Q -- that give false positives. Okay. Thank you very
16 much. So there's a lot of things that give false positives?
17 A Yes, sir, there is.
18 Q Okay. Did you test any of those items in the little
19 testing that you did?
20 A No, sir, I did not. This was -- became available to
21 me just this past week. The -- and the --
22 Q And who -- who provided --
23 A The Hemoglow, it appears, is even going to be a
24 better product than luminol for false positives.

1 Q That's something that might replace luminol because
2 it's more effective?
3 A And it's easier to use and supposedly you don't need
4 as dark a room to photograph.
5 Q But you weren't using that back in 2001 when this
6 car was processed?
7 A Don't believe it was available, sir.
8 Q And in fact with luminol you use a confirmatory test
9 to make sure that you're not getting a false positive?
10 A Exactly. You still have to test for -- to make sure it's
11 blood there that's glowing, and, again, the studies with luminol
12 state that there can or cannot be DNA afterwards.
13 Q But you'd certainly want to see a confirmatory test
14 before you'd call something blood?
15 A Yes, sir.
16 Q Okay. Now, are you aware that there's no
17 confirmatory tests in this case?
18 A I'm not aware of that, no, sir.
19 Q You said I could have a copy of that, though?
20 A That's yours, sir.
21 Q Okay. Thank you. Where did you get that anyway?
22 A Downloaded it the other night. Lightning Powder, a
23 company that produces and provides crime scene investigation
24 equipment out of -- used to be out of Oregon -- has it on their

1 website.
2 Q So you did a little research over the weekend or
3 during the last week --
4 A Last week.
5 Q -- concerning luminol?
6 A To refresh my memory on luminol.
7 Q Now, you were asked some questions about what
8 you found there at the crime scene, and you referred to Mrs.
9 Renhard's report to refresh your recollection, is that correct?
10 A Yes, sir, that's correct.
11 Q She was assigned to be the one to prepare the
12 written report of what's at the scene, correct?
13 A Correct.
14 Q And your assignment was to collect and draw the
15 diagram and document where items were found at?
16 A Correct.
17 Q So it's sort of a division of responsibilities? Is that
18 correct?
19 A Yes, sir.
20 Q Okay. And that's normal with the Metropolitan
21 Police Department to assign different responsibilities at a crime
22 scene?
23 A Yes, sir. It depends on how large the scene is as to
24 whether we use two people or three or four, and then the

1 duties are even smaller.
2 Q Okay. I'm going to ask you a question from her
3 report. The report says a torn piece -- excuse me -- "a piece
4 of torn plastic was pressed around the victim's hips." Is that
5 what she reported there in that paragraph?
6 A Yes, sir. That's correct.
7 Q Okay. So her description was torn plastic pressed
8 around the victim's hips? Correct?
9 A Yes, sir.
10 Q Okay. And it's your recollection it didn't go all the
11 way around but is it fair to say that it went around the hips?
12 A It went around the hips but it did not encircle the
13 body.
14 Q Okay. And then it says "and wads of paper towels
15 were pressed over the plastic." Correct?
16 A Yes, sir, that's correct.
17 Q Okay. And did you impound those paper towels that
18 were pressed over the plastic that was pressed around the
19 victim's hips?
20 A No, sir, I did not.
21 Q Any recollection of how many wads of paper towels
22 were pressed over the plastic?
23 A No, sir, I do not.
24 Q And then she continues in that same sentence, "and

1 plastic bags of trash over the paper towels."
2 A Correct.
3 Q So there was plastic -- according to her report,
4 plastic pressed around the hips, towels pressed against the
5 plastic and then plastic bags on top of that?
6 A Yes, sir. And then the cardboard piece on top of
7 that.
8 Q Okay. And you bring up the cardboard piece.
9 We've talked about Number 27 and Number 31, correct?
10 A Correct. Yes, sir.
11 Q And those are the numbers -- the item numbers you
12 assigned to those at the scene when you collected them,
13 correct?
14 A Correct.
15 Q Okay. And Item 31 says "folded cardboard box with
16 apparent blood from trash pile at upper torso of victim."
17 A Yes, sir.
18 Q Okay. How would you describe upper torso?
19 A From the waist up.
20 Q And how far up? Do you recall?
21 A No, sir, I don't remember.
22 Q And 27 just says "cut from cardboard located on top
23 of victim."
24 A Yes, sir.

1 Q Okay. Now, where would that be when it just says
2 "located on top of victim?"
3 A The -- Item 27 should have been from a piece of
4 cardboard that totally covered the victim. Below 27 would
5 have been 31. It was in the upper portion of the -- upper
6 torso of the victim.
7 Q Okay. And that's from the waist up?
8 A Yes, sir.
9 Q And from the waist up would be above where the
10 penile amputation was at?
11 A Yes, sir.
12 Q Okay. So that piece of cardboard wasn't covering
13 that area?
14 A No, sir.
15 Q Now, you also impounded some pieces of -- or some
16 buttons, is that correct?
17 A Yes, sir, that's correct.
18 Q And those were Items 18?
19 A Yes, sir, they were.
20 Q And you were processing some -- some of the items
21 for latent prints there at the scene?
22 A Yes, sir.
23 Q And I note that -- on page 3 of your report, it
24 doesn't list Item 18 as something that was checked for

1 fingerprints. Is that correct?
2 A No, sir, they weren't, because of their size.
3 Q Okay. And additionally, the -- Number 19, the pink
4 hair pick was not checked for fingerprints there at the scene?
5 A That's correct, sir.
6 Q And you talked on Friday about the fact that you
7 collected a lot of things and took them back to the crime lab,
8 that were never impounded. Is that true?
9 A I -- I -- I did say that, yes, sir.
10 Q Okay. And those items you looked at and tested
11 and then discarded if you didn't find anything at that time?
12 A Correct.
13 Q And there's no listing whatsoever of what those
14 items were?
15 A No, sir. It would have been either trash bags or
16 trash items or, again, the pictures of the palms -- the green
17 palm trees that were there. Nothing that we felt that would
18 have contained DNA or possible biological evidence related to
19 the case.
20 Q And so back at the crime lab who was making the
21 decision on what items were discarded that had been collected
22 at the scene?
23 A It would have been, again, a team effort of the
24 three, four of us that were out there.

1 Q Would that have included the homicide detectives or
2 just the crime scene analysts?
3 A Just -- probably just the crime scene analysts, sir.
4 Unless there was a question on one and then it would have
5 gone to the homicide detectives to see if they wanted to keep
6 it.
7 Q And so the final decision would have been theirs if
8 there was any question?
9 A Yes, sir.
10 Q Now, the -- and, of course, once it's discarded
11 there's no way that it can ever be retested, correct?
12 A No, sir.
13 Q Okay. So if the defense wanted to look at those
14 items it would be impossible to do so?
15 A They're -- they're long gone.
16 Q And you just indicated there's even a new test that's
17 now come out that is better than luminol?
18 A Right.
19 Q Okay. So there's still advancements being made on
20 crime fighting investigative techniques?
21 A Every day.
22 Q Once the items are discarded there's no way to use
23 any new procedures on those items?
24 A Well, my understanding is once an item has been

1 processed with a certain procedure, that any further testing
2 -- unless it's done in a certain line -- is impossible to do with
3 that item.
4 Q What items did you use -- did you test that
5 prevented any further testing from being done?
6 A For example, if we super glue an item and then use
7 silver nitrate, then hydron -- or silver nitrate last and then
8 hydron first -- if it's used out of sequence, they can't be
9 processed with those procedures. If you use silver nitrate first
10 which should be last, you can't use -- and then hydron would
11 -- again at all. It has to be hydron and then silver nitrate. I
12 would believe it would be the same thing with the luminol and
13 the Hemoglow. That once the luminol's been used, the
14 Hemoglow would be ineffective as a testing procedure unless
15 you had a clean new object that hadn't been tested with that
16 procedure at all.
17 Q Were any of the items that were discarded
18 photographed before they were discarded?
19 A No, sir, they wouldn't have been.
20 Q Okay. So there's -- and none of those items had
21 anything that you felt or the team felt was of evidentiary
22 value?
23 A No, sir.
24 Q So they would have all excluded -- would not have

1 had any evidence that could have been used to say someone
2 -- a particular person committed this crime?
3 A No, sir.
4 Q Okay. Now, you indicated that you didn't take a lot
5 of the things that you just characterized as garbage from --
6 either from the bank or from the Palms employment --
7 employment office?
8 A Right.
9 Q You just felt it came from there?
10 A Right. Yes, sir.
11 Q Now, did it appear that those items at one point in
12 time had been inside the larger dumpster and then taken out
13 and put over the body?
14 A Yes, sir. The --
15 Q Wouldn't the person taking them out of the
16 dumpster have had to touch them in order to put them over
17 the top of the body?
18 A Yes, sir. We examined the bags for apparent bloody
19 hand prints or fingerprints; none were located. We processed
20 a lot of the bags for fingerprints there at the scene, and didn't
21 get any positive results, even from the people that would have
22 put those trash bags together and carried them out to the
23 dumpster.
24 Q And we -- I think we talked about this on Friday.

1 That's not unusual in this type of setting, that fingerprints not
2 be there?
3 A Correct.
4 Q Because of the environment and the other things we
5 talked about?
6 A Yes, sir.
7 Q And there were individuals from the coroner's office
8 that arrived at the scene, is that correct?
9 A A deputy coroner investigator, yes, sir.
10 Q Do you recall who that was?
11 A I believe it was Shelly Stauffer.
12 Q And her responsibility is to come out and do the
13 formal declaration of death and transport the body to the
14 coroner's office?
15 A Take control of the body, prepare a report for the
16 pathologist and request a mortuary to transport.
17 Q And you're familiar with their procedures? That they
18 prepare reports of what they do when they come out to pick
19 up bodies?
20 A Yes, sir, that's correct.
21 Q And they receive information from the officers that
22 are at the scene that were there from the very beginning?
23 A Correct.
24 Q And some of that information is important to take

1 back to the coroner so that when he's doing -- or the
2 pathologist when he's doing the autopsy, he has some idea of
3 what he's looking at?
4 A Correct.
5 Q You expect that information to be relayed to others
6 in the information chain?
7 A Correct.
8 Q And was -- Sergeant Manning was out there also,
9 correct?
10 A Yes, sir, he was.
11 Q Okay. And he would have been one of the
12 individuals that would have passed on information as to what
13 was at the scene, to the various individuals that arrived later?
14 A Correct.
15 Q Okay. Are you aware of him describing that there
16 were white paper towels --
17 MS. DiGIACOMO: Objection, Your Honor. Hearsay.
18 THE COURT: Sustained.
19 BY MR. SCHIECK:
20 Q Did you impound any white paper towels?
21 A No, sir, I did not.
22 Q Do you know of any reason why he would indicate
23 they were impounded?
24 A No, sir, I would not.

1 Q But you were the only individual there at the scene
2 impounding items?
3 A Correct.
4 Q And so if white paper towels were impounded, they
5 would have been by you?
6 A If they were located around the body, yes, sir.
7 Q Well, anything at the scene would have been
8 impound -- let's just say in the enclosure where the body was
9 at -- that would have been impounded by you?
10 A Unless it was something that the homicide detectives
11 wanted to stay with the body to go to the morgue and be
12 removed there. Then it wouldn't have been my responsibility.
13 Q That would have been the responsibility of Maria
14 Thomas who responded to the autopsy and collected items
15 there?
16 A Yes, sir.
17 Q Thank you.
18 MR. SCHIECK: No further questions, Your Honor.
19 THE COURT: Redirect?
20 MS. DiGIACOMO: Thank you, Your Honor. May I
21 approach the Clerk?
22 THE COURT: You may.
23 MS. DiGIACOMO: Thank you.
24 ///

1 **FURTHER REDIRECT EXAMINATION**
2 BY MS. DiGIACOMO:
3 Q Mr. Ford, when the luminol tests on the car -- I
4 believe you stated that it was your job to take the photograph
5 as CSA Renhard sprayed --
6 A Correct.
7 Q -- the luminol? Is that correct?
8 A Yes, ma'am.
9 Q All right. Now, do you recall there being a positive
10 reaction on the floorboard? I'm going to show you State's
11 Exhibit 191. Can you see that photograph?
12 A Yes, ma'am, I can.
13 Q Okay. Do you recall there being a positive reaction
14 on the floorboard where State's 191 was taking a picture of?
15 A I don't remember, no, ma'am. But, obviously, the
16 photograph there shows that, yes, ma'am.
17 Q Okay. Does the photograph show the positive
18 reaction or did you miss it?
19 A It could have been I missed it. I don't remember it.
20 Q Okay. Is there any blue --
21 A There's no blue in this photograph though, no,
22 ma'am.
23 Q Okay. So if it had been a flashing like you had
24 talked about with false positives, it's possible that you wouldn't

1 have been able to capture it in a photograph?
2 A Correct.
3 Q Now, you talked about -- and you read the list -- of
4 many vegetative matters that can cause false positive
5 reactions?
6 A Yes, ma'am.
7 Q What do those reactions look like?
8 A It's, again, the flash that I talked about earlier with
9 the Clorox. It's just -- it's like flash bulbs going off, and you
10 can use -- the blue glow doesn't stay. It's a bright flash of the
11 blue glow and then it -- the blue is gone. Q Okay. So it
12 doesn't look like what we saw on the car seats or the door
13 panel?
14 A No, ma'am.
15 Q And the plastic bag that was around the hip area of
16 the victim, was it consistent with the other plastic bags found
17 in the trash, in the enclosure?
18 A Not as a plastic bag as such. Maybe plastic that had
19 wrapped electronic components, or whatever, for shipping.
20 But not -- not a plastic bag.
21 Q So it wasn't a very large piece of plastic?
22 A No, ma'am, not that I remember.
23 Q And the paper towels that we've seen photographs
24 of that weren't impounded, was there any trace evidence on

those paper towels?
A There was no blood on the items at all. Otherwise we would have taken those as evidence.
Q It just appeared to be trash on top of the body?
A Yes, ma'am.
Q And defense counsel talked to you about the information that's relayed to the coroner investigator or other members in the coroner's office so that they can do their investigation.
A Correct.
Q Okay. Is the information that they receive always correct?
A It depends on who it's passed through. Shelly Stauffer was the only coroner investigator at the scene.
Q Okay. So --
A So if information was passed to someone else other than her, I -- I don't know when that would have taken place.
Q Okay. Or how correct it was?
A Correct.
MS. DiGIACOMO: Nothing further.
THE COURT: Recross.

FURTHER RECROSS-EXAMINATION

BY MR. SCHIECK:
Q While we're talking about luminol again, luminol is a

very sensitive test, correct?
A One part of blood to one million will give a reaction, yes, sir.
Q And if an individual walked in blood such as we've seen in the photographs where their entire sole of their shoe was soaked with blood that it left a footprint --
A Should -- it would have left an impression somewhere along the line, yes, sir.
Q That blood would have gotten up inside the treads of the shoe?
A Should have, yes, sir.
Q Especially if it was wet, which it appears --
A Yes, sir.
Q It must have been wet to transfer to the shoe?
A Correct.
Q And would have been up inside the treads?
A Yes, sir.
Q It would have stayed there for a long time?
A Unless it was cleaned off.
Q To one -- one millionth of a particle, though, that's pretty -- pretty hard to clean all of that out of the tread of a shoe, correct?
A Yes, sir.
Q And a shoe can transfer that -- even though you

don't leave a footprint, you -- I mean, a visible-to-the-eye footprint can leave a mark that luminescence will hit on, correct?
A If there's -- if there's blood transfer that takes place, yes, sir. But it would have -- the blood would -- I think would still have to be wet to a point.
Q Would you have -- if you can see the blood, you don't use luminol, correct? You use --
A Correct.
Q Okay. It's only the blood you can't see that you use the luminol?
A It's -- luminol is for invisible blood, yes, sir.
Q So you might not be leaving prints behind as you walk along that are visible to the eye, but luminol can come along and tell, yes, you were there?
A And pick it up. Yes, sir.
Q Especially if you sit in a car for a couple hours with bloody shoes in the car?
A Should have left something, possibly.
Q Thank you.
MR. SCHIECK: Nothing further.
THE WITNESS: Yes, sir.
MS. DiGIACOMO: Just briefly, Your Honor.
THE COURT: You may.

FURTHER REDIRECT EXAMINATION

BY MS. DiGIACOMO:
Q Talking about the bloody footprints coming out of the scene and if that person had gotten into a car, those footprints were only coming away from the direction of the body and where the person was killed?
A That's correct. And it was only the right shoe print.
Q Okay. So it was only one shoe print?
A Correct.
Q Now, are you able to tell if the person who left that bloody right shoe print is the person that actually killed Mr. Bailey?
A I would think not, because --
MR. SCHIECK: Objection. Speculation, Your Honor.
MS. DiGIACOMO: Your Honor, he's gotten into whether or not the footprint would have been left in his client's car. MR. SCHIECK: I didn't say anything about my client's car.
THE COURT: The Court overrules the objection. You may answer.
THE WITNESS: I would feel if the bloody footprints in the scene had been made by the suspect, that there would have been more than just the right shoe print because of all the movement that had taken place inside that scene. with all

the blood in that southwest corner.
BY MS. DiGIACOMO:
Q And there were no other footprints found, other than ones that were documented on the cardboard and on the concrete?
A That's correct.
MS. DiGIACOMO: Court's indulgence. Pass the witness.

FURTHER RECROSS-EXAMINATION

BY MR. SCHIECK:
Q Well, now I'm confused because there are no other bloody footprints. Correct?
A That's -- the only ones are the cardboard and what's on the cement deck of that enclosure, yes, sir.
Q So it must have been possible to be back here without getting any blood on your feet?
A Could be, yes, sir.
Q Or only on one foot.
A Possibly.
MR. SCHIECK: Nothing further.
MS. DiGIACOMO: Nothing further.
THE COURT: The bailiff will approach the jury. Counsel may approach.
(Off-record Bench Conference)

THE COURT: Mr. Ford, the ladies and gentlemen of the jury have sent out two questions for you which the Court is going to read to you. After the Court reads the question, give your answer. After you have answered both questions, the attorneys for both sides may ask you some follow-up questions.
THE WITNESS: Okay.
THE COURT: Were the bloody footwear tracks left on the cardboard from the same type of shoe that were left on the concrete, Number F2?
THE WITNESS: That, I don't remember.
THE COURT: Louise Renhard had said that luminol was not used on the bat found in Kirstin's car. Do you know why this test was not done?
THE WITNESS: No, ma'am, I don't.
THE COURT: The first question will be marked as Court's 54, and the second is Court's 55. Follow-up by the State?
MS. DiGIACOMO: Thank you.

FURTHER REDIRECT EXAMINATION

BY MS. DiGIACOMO:
Q Are you aware of whether or not phenolphthalein was used on the bat?
A No, I'm not. She -- I know she prepared a homicide

follow-up report, but I don't know what's in that follow-up report.
MS. DiGIACOMO: Nothing further.
MR. SCHIECK: Nothing, Your Honor.
THE COURT: You may step down.
THE WITNESS: Thank you.
THE COURT: You're welcome. I believe at this time the State will resume with Maria Thomas, is that correct?
MR. KEPHART: That's correct, Your Honor.
THE COURT: The bailiff will call the hall.
MS. DiGIACOMO: May I approach the Clerk, Your Honor?
THE COURT: Yes.

MARIA THOMAS, STATE'S WITNESS, SWORN

THE CLERK: State your first and last name for the record.
THE WITNESS: Maria Thomas, M-A-R-I-A T-H-O-M-A-S.
THE COURT: State may resume their direct examination of this witness.
MR. KEPHART: Thank you, Your Honor.

DIRECT EXAMINATION (Continued)

BY MR. KEPHART:
Q Ms. Thomas, when you left on -- I guess it was, what, last Wednesday?

A Yes.
Q When we left off with you, we were -- I was just talking to you in reference to your involvement with evidence impound at an autopsy on July 9th of 2001. Do you recall that testimony?
A Yes.
Q We actually went through a number of photographs that you indicated that you recognize as being -- as taking those photographs. Do you remember that as well?
A Yes.
Q Also I was getting into the items that you had indicated that you had actually impounded with reference to that autopsy. Do you remember that testimony?
A Yes.
Q Now, you had indicated that the way that the crime scene -- crime scene analysts work is that if you're working days and you're involved in a homicide, that the day shift individuals would go to the autopsy and take photographs and collect whatever evidence has been sent.
A That's correct.
Q And when we're talking about collecting evidence, you're talking about taking items associated with the body that comes in or do you deal with things from the scene as well?
A No, the body.

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1 Q Okay. So when you get the body, you have it -- it's
2 sealed up in a black bag? And you were talking about the --
3 that it's actually -- it has a clasp on it or something, and you
4 have to open it?
5 A Yes. There's a seal and it's numbered. And the bag
6 can be black, blue. It depends on the coroner's office.
7 Q Okay. So whenever you receive the body that's in
8 this black plastic bag, it's however it was sent to you from out
9 at the scene?
10 A That's correct.
11 Q Okay. In this particular case you testified about
12 what the victim Duran Baily was wearing?
13 A Yes.
14 Q You indicated that he had a shirt on, tan pants, a
15 pair of white socks -- and I believe in reference to clothing,
16 that was the extent of it, is that right?
17 A Yes.
18 Q Okay. He was also wrapped in a sheet?
19 A Yes.
20 Q That's a sheet that's provided by the crime scene
21 analyst, to put his body in, to bring it --
22 A Yes.
23 Q Okay. And you indicated that -- we -- I think we left
24 off -- we were talking about a clear plastic -- in your report it's

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1 identified as a clear plastic bag with apparent blood, and you
2 say it was on the victim's abdomen.
3 A Yes.
4 Q Okay.
5 MR. KEPHART: Court's indulgence, Your Honor. I'm
6 trying to find a photo. I'll just go on.
7 BY MR. KEPHART:
8 Q You also had indicated that you -- that there -- I
9 mean, there was multiple things that you actually impounded,
10 is that correct?
11 A Yes.
12 Q And those were things that were associated with the
13 body?
14 A That's correct.
15 Q Okay. And just so we cover these, I want to --
16 MR. KEPHART: May I approach, Your Honor?
17 THE COURT: Yes.
18 BY MR. KEPHART:
19 Q I'm showing you what's been marked as State's
20 Proposed Exhibit 129, and ask you if you can tell me what this
21 is? Do you recognize that?
22 A Yes. It contains the tan pants that the victim was
23 wearing and a pair of white socks.
24 Q And how is it that you recognize this item as being

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1 that?
2 A My signature, the information as to the case, the
3 case number, the date, the location where I impounded the
4 items -- or where I collected the items, and an itemized list of
5 what the contents are.
6 Q And so if we were to open this, it would have tan
7 pants with apparent blood and a pair of white socks?
8 A Yes. Which also had apparent blood and were
9 soiled.
10 Q Okay. Is this also one that has the biohazard sticker
11 on it?
12 A Yes, because of the apparent blood on it.
13 Q Okay.
14 A And here's the biohazard right here.
15 MR. KEPHART: At this time I'll move to admit
16 State's Proposed Exhibit 129.
17 MR. SCHIECK: No objection, Your Honor.
18 (State's Exhibit 129, admitted)
19 BY MR. KEPHART:
20 Q So 129 is the -- I'm showing you what's been
21 admitted as Exhibit 220. Can you see that where you're at? Is
22 that too light?
23 A Yes, I can see it.
24 Q Okay. So 129 would be these tan pants and these

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1 socks that were on the victim, is that right?
2 A That's correct.
3 Q And that is also shown in Number 46, after they've
4 been removed?
5 A Yes.
6 Q And kind of laid out?
7 A Yes.
8 Q All right. And then we also have Number 45. And it
9 has some items that were where? Found in the pockets?
10 A In the pockets of the pants.
11 Q Okay. We'll get into that later. You actually
12 impounded those items as well?
13 A Yes.
14 Q Okay. In your report do you take note or do you
15 note if there's any type of damage to the pants? Specifically
16 anything that'd be consistent with a puncture maybe made by
17 a knife or some type of sharp object?
18 A As far as defects, yes, I would note any defects that
19 were in the pants.
20 Q Okay. And was there any noted in this particular
21 case?
22 A I didn't observe any.
23 Q Okay. Specifically in the crotch area of the pants,
24 did you notice any type of puncture wound, puncture hole or

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1 something that would be consistent with being made with a
2 sharp object?
3 A No. And if I had, it would be indicated in my report.
4 Q Okay. So no tears or anything like that?
5 A No, I didn't observe any.
6 Q Would you consider a tear to be a defect?
7 A It depends. If it's -- if it's just an obvious tear that
8 has nothing to do with other information, as far as the
9 evidence in the case, I may not -- I would document it
10 photographically but I may not make a note of it in my report.
11 If it even remotely looks like a puncture mark or any type of
12 stab mark, et cetera, I would make a note of that.
13 Q Okay. And there was none in this?
14 A That's correct.
15 Q Okay. Now, see how the pocket is kind of pulled out
16 on the right side there?
17 A Uh-huh.
18 Q Is that a yes?
19 A Yes. I'm sorry.
20 Q And then in Number 45 you have items that you
21 have laying out. Do you recall whether or not you retrieved
22 any type of item from the right front pocket of these pants?
23 A The watch that's observed there by the right front
24 pocket.

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1 Q Okay. And Item Number 46, do you recall whether
2 or not you had already taken the watch out of the pants by the
3 time you took that photo?
4 A I had already taken the watch out of the pants.
5 Q Okay. So the way the pocket is pulled back, could
6 that have been something that you caused?
7 A Yes. In this photograph it's obvious that I've taken
8 the pants off the victim, and I have a sterile sheet underneath
9 the pants, and I've laid out the pants. I have done that. That
10 was not how the pants arrived at the -- at the autopsy.
11 Q Okay. And with respect to the -- it's kind of hard to
12 see in the photo to the jury -- okay, that's better. The darker
13 areas on the pants -- it appears to be spots or -- of something
14 on there. Do you see what I'm talking about?
15 A The stains that appear to be blood?
16 Q Okay. There's areas in there that have actual voids
17 of no blood?
18 A That's correct.
19 Q And would that be consistent with the way the pants
20 were as they were crumpled up on the victim's body?
21 A Yes.
22 Q And that's what you see in Exhibit Number 220, how
23 the pants are pulled down, kind of crumpled up --
24 A Yes.

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1 Q -- on his legs, is that correct?
2 A Yes.
3 Q Okay. Now, this is how you got the body though
4 from -- from -- out at the scene?
5 A That's correct.
6 Q And you have no idea if the pants were up, down or
7 where they were, if they were laying next to the body, do you?
8 A That's correct.
9 Q Okay. Have you ever been involved in a situation
10 where you had to go to the crime scene of a dead human
11 body?
12 A Yes.
13 Q And where you've helped assist put the body in a
14 bag and send it off to the coroner's office?
15 A Yes.
16 Q Okay. And is it safe to say that at times maybe
17 evidence may get moved or disrupted somehow?
18 A Absolutely.
19 Q Meaning maybe his pants would have been down a
20 little further, maybe up a little further?
21 A Yes.
22 Q And on Exhibit Number 220, you actually see he has
23 a shirt on, his hands are bagged, and then you see the plastic
24 around the midsection there? Correct?

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1 A Right.
2 Q And that's how you got it from the crime scene?
3 A Right.
4 Q When I say "it" I mean Mr. Duran's body.
5 A Right.
6 Q Now, I'm showing you what's been marked as
7 State's Proposed 130, and ask you if you can identify that?
8 A Yes. This is a plaid shirt with what I observed to be
9 vegetation and other debris, with apparent blood.
10 Q Okay. And this is -- how do you recognize that? Is
11 that based on the sticker that's on the bag?
12 A Yes. Again, my signature, the report number, the
13 case number, the location where I recovered it from.
14 Q Okay. This one's also biohazard?
15 A Yes.
16 MR. KEPHART: Move to admit 130.
17 MR. SCHIECK: No objection, Your Honor.
18 THE COURT: Granted.
19 (State's Exhibit 130, admitted)
20 BY MR. KEPHART:
21 Q Now, this is the dark-colored shirt that is on Mr.
22 Bailey's body in Exhibit 220? You see it there on his arms?
23 A Yes. Yes.
24 Q A better photo is Exhibit 221, when they roll him up

on his side.
A Yes.
Q You see the shirt there?
A That's correct.
Q I'll show you what's marked as State's Proposed Exhibit 255, and ask you to take a look at that.
A Yes. This is a clear plastic bag with apparent blood.
Q Okay. And that's how you write it, "clear plastic bag with apparent blood?"
A Right.
Q Where did that come from?
A That was over the abdomen area.
Q Okay. And this is also a biohazard?
A Yes. This is a biohazard.
MR. KEPHART: Move to admit 225 [sic], Your Honor.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit 255, admitted)
BY MR. KEPHART:
Q Now, with respect to 225, I'm showing you what's marked as 222. Can you see that or is that too dark, too?
THE COURT: 225 or 255?
MR. KEPHART: Oh, I'm sorry, Judge. 255. I'm

sorry.
THE COURT: Thank you.
BY MR. KEPHART:
Q Is that what is shown in 222?
A Yes, that's the plastic bag.
Q Amongst other things. I mean, the paper bags and there's a sheet there. But this -- this is the white -- I mean the clear plastic bag that you're talking about?
A Right.
Q Okay. Now, if I remember right, when you testified previously, you indicated that it was stuck to his body?
A Yes, it was -- it had adhered to the body somewhat.
Q When we mean adhere -- it means it's sticking to the body?
A Kind of. Yes.
Q Okay. And so when you pulled it off, you had to kind of pull -- use a little bit of --
A Right. To remove it. Yes.
Q Okay. And what was your understanding what was causing it to stick to the body?
A I assumed it -- it could have been moisture from the changes in the temperature from the scene, transported, and then being kept in the refrigerator at the morgue. I just made that assumption.

Q Could the blood have been what helped stick it to the body?
A The blood could have also -- right.
Q Okay. And I'm showing you what's been admitted as Exhibit 217. And you've seen that before, as well?
A Yes.
Q Is that the plastic bag that we're talking about in 255?
A That's the plastic bag.
Q And you actually identified it as a bag by the way that the end was kind of tied?
A Right.
Q Okay. Also in -- in Exhibit 129 -- you talked about socks that were taken off his body?
A Yes.
Q I'm showing you what's been admitted as 224 and -- well, 224, okay, and 225. Those appear to be the same socks just at different angles?
A Yes.
Q Okay. And these would have been something that you took a photo of?
A Yes.
Q Other than the obvious blood spots that are -- that are on -- let me give you 224 back -- up around the toe, and

then a little bit on the other side of the other foot, does it appear that the socks are -- I mean, they're not filthy, are they?
A Well, they're soiled. They're filthy to me.
Q From around the front of the toe area?
A Yes, and the heel.
Q Okay. Now, you didn't see the socks at the scene, right? The other socks?
A That's correct. I didn't -- I was not at the scene.
Q Okay. I'd like to show you what's been marked as State's Proposed Exhibit 165, and ask you to identify that.
A This is the men's wristwatch that was in the pants pocket.
Q That you've already testified about?
A Yes.
Q So if we opened that, that's what we'd find?
A That's correct.
Q Okay. And this is something that you packaged up, and you took out of the pants pocket?
A Yes. It's got -- it has, again, my signature, the case number, where I recovered it from, et cetera.
MR. KEPHART: Move to admit 165.
MR. SCHIECK: No objection.
THE COURT: Granted.

(State's Exhibit 165, admitted)
BY MR. KEPHART:
Q Show you 166.
A This was a piece of metal that was found tucked in his sock, and this also has my signature, the package does, has my signature, my personnel number, where I recovered it from, the case number, the date.
MR. KEPHART: Move to admit 166.
MR. SCHIECK: No objection.
THE COURT: Granted.
(State's Exhibit 166, admitted)
BY MR. KEPHART:
Q 167?
A This -- this was a yellow Post-it note, a strip of green paper and nail clippers or nail cutters that we also found in the pants pockets. And it also -- the package also has my signature, the seals with my initials, the date, where it was recovered from, the case number.
MR. KEPHART: Move to admit 167.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit 167, admitted)
BY MR. KEPHART:
Q And 176?

A This would have the orange matchbook that I also found with the victim, brown leather bi-fold wallet and three pieces of paper with miscellaneous writing on it. And the package also has the case number, where I recovered it from, my signature, my personnel number, the date, et cetera.
MR. KEPHART: I'll move to admit 176, Your Honor.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit 176, admitted)
BY MR. KEPHART:
Q Also showing you what's been marked as -- well, I'll get back to this one. Now, besides the items that you just testified about, you talked about how you -- you documented other items that you actually impounded as well. Let's see, we talked about the shirt, the pants, the socks, the wristwatch, items that you recovered from his pockets. Also were some other items that were actually recovered from the body that you impounded as well?
A Yes.
Q Specifically, I'm talking about Item 13 in your report.
A May I refer to -- to my report?
Q You have that with you now?
A Yes.
Q And what were those?

A They were three cigarette butts which were in the body bag.
Q In the body bag?
A Yes.
Q Were they -- they weren't stuck to him or -- if you know?
A According to my report, it was in the coroner's body bag.
Q Okay. Anything else?
A There was a used match that was found on the victim's upper -- upper left thigh.
Q Okay.
A Did you want me to continue down the list?
Q Yes. Uh-huh.
A A book of matches.
Q Okay, you testified about that, right? That was one of the items?
A Left rear pocket of the pants. An orange matchbook with -- which was also in the pants pocket. A brown wallet which was in the pants pocket -- one of the pants pockets. A piece of paper with miscellaneous writing was in the right rear pocket -- pants pocket again. A piece of metal which was tucked in his left sock. A yellow Post-it note, strip of green paper, which I just testified to, was also in the coroner's body

bag. The nail clippers or nail cutter was in the front right pocket of his pants.
Q And that's it? Is that right?
A Yes.
Q Okay. And with reference to -- to these items and having any further tests done on them, that would be something that you would request or something that would be requested by maybe the DA's office or homicide at a later time?
A That would have been requested by either the detectives or DA's office.
Q Okay. Now, you had another task in this case as well. Do you remember traveling to Panaca, Nevada, on the 20th of July, 2001?
A Yes.
Q Okay. And what was the reason for you going to Panaca, Nevada?
A The homicide detectives assigned to the case had asked me to go with them to take photographs of Ms. Lobato, and also to follow the vehicle back to the crime lab. There was a particular vehicle that the detectives wanted followed and processed. So my job in this particular case was to follow the vehicle back to the lab and turn it over to the crime scene investigator that would have processed that vehicle.

Q Did you travel with the homicide detectives to Panaca or did you drive in your own car?
A I drove in my own car.
Q Okay. Were you requested to come up to Panaca, Nevada, after the detectives were there or did you follow them?
A I followed them.
Q Okay.
A If I remember correctly, I followed them.
Q Okay. And were you aware of any particular information or did you know what you were going to do before you left?
A I don't recall that information.
Q Is it common at times that you're called out by detectives to take photographs or --
A Follow-ups?
Q -- to document certain things?
A Yes. A follow-up to a -- to the crime scene, yes.
Q Does that usually happen after detectives have contact with individuals and determine that they need you to come out or have you went out with them before then?
A Yes. Based on their investigation, they have information that I may not have --
Q Okay.

A -- or wouldn't have, and they would contact us and say we need additional follow up, from our end, which would indicate photography, documentation of what's -- what is found, any additional information they may need, et cetera.
Q Okay. And do you recall going to the Lobato's house in Panaca, Nevada?
A Yes.
Q And that would have been specifically 670 Callaway Street in Panaca, Nevada?
A That's correct.
Q And you indicated that you had a couple different tasks that you were asked to do, is that right?
A Yes.
MR. KEPHART: I'm having trouble finding some photos, Judge.
BY MR. KEPHART:
Q Can you tell me what you did with respect to taking photos? You said "I took photos of the defendant -- or "Ms. Lobato" is the word you used.
A Yes.
Q Tell me about that.
A The detectives had requested that I take photographs of her, showing some injuries that were on her person, and that's -- that's what I did.

Q Okay. And where did that take place?
A At the residence. The 670 Callaway Street in Panaca.
Q Okay. Now --
MR. KEPHART: If I may approach, Judge?
THE COURT: You may.
BY MR. KEPHART:
Q I have a couple photos here, State's Proposed Exhibits 103 and 104. Can you take a look at those?
A Yes.
MS. DiGIACOMO: Your Honor, may I approach the Clerk?
THE COURT: Yes.
MR. KEPHART: May I approach again?
THE COURT: Yes.
BY MR. KEPHART:
Q I'm also showing you what's been admitted as State's Exhibits 196 and 197, and ask you if you recognize those as well?
A Yes. These are photographs that the homicide detectives asked me to take, of Ms. Lobato, showing her abdomen, her hands, and then her -- identification photograph of the face.
Q Okay. With respect to the two exhibits -- Proposed

Exhibits 104 and 103, these are photos that you took?
A Yes.
Q And they accurately depict what you remember of at least the defendant's hands at that time?
A Yes.
MR. KEPHART: I move to admit 103 and 104.
MR. SCHIECK: No objection.
THE COURT: Granted.
(State's Exhibit 103 and 104, admitted)
BY MR. KEPHART:
Q Matter of fact, in Exhibits -- 197 is the photograph of the defendant herself, and she's standing in her living room, is that correct?
A I don't recall if it was the living room but she was in the residence.
Q In her house?
A Yes.
Q Okay. And you said you were asked, as well, to take some photographs of her car and then follow her car back to the crime lab?
A Yes. If I remember correctly, that was her car. And the detectives had asked me to document the condition of the car, place seals on it, and just follow it back to the crime lab, which is what I did. And there was further processing

conducted there by another crime scene investigator.
Q Okay. I'm showing what's been admitted as State's Exhibit 106. Is that a photograph of her car?
A Yes. This was the vehicle.
Q Okay. Now I'm going to show you State's Proposed Exhibits 178, 179 and 182, and ask you if you can identify those as well?
A Yes. This was the vehicle parked in front of the residence.
Q And those accurately depict, as you recall, the car to be on the 20th of July 2001?
A Yes.
Q Okay. And that shows in the background --
MR. KEPHART: Move to admit 178, 179 and 182, Judge.
MR. SCHIECK: No objection.
THE COURT: Granted.
(State's Exhibits 178, 179, 182, admitted)
BY MR. KEPHART:
Q These photos also show basically the layout of her -- the outside of her -- of where she was living at that point, is that correct?
A Yes.
Q Or where her parents were living? Is that correct?

A Yes.
Q Okay. And it has the house that you took pictures of her inside?
A Yes.
Q And then -- that's Exhibit 182. And then 179 would show, what, a photo of the neighbor's house?
A Yes.
Q In the background?
A In the background.
Q And then behind her car was, what, the detective's vehicle? Do you know?
A I don't recall if that was their vehicle or not. Sorry.
Q Did you do anything with regards to -- did you take any additional evidence from the Lobatos on the 20th when you were photographing her car and her in the house?
A Yes. The detectives had asked Ms. Lobato to give me a pair of black shoes, and she gave those to me.
Q Were you present at all during any time of -- type of conversation or statements that the defendant had made to the detectives?
A No.
Q Okay. So based on what the detectives were asking you to do in reference to these shoes, these are something as far as you know, were provided to the detectives by the

defendant?
A Yes.
Q Okay. And it was just one particular pair of shoes? There wasn't, you know, all of her shoes in her bedroom or anything, was it?
A No, one particular pair.
Q Okay. Did you go into a particular room in the house to get them or did she hand them to you?
A She handed them to me, according to my reports. I don't recall -- but according to my report, she handed them to me.
Q I'm showing you also what's -- State's Proposed Exhibit 154, and ask you if you can identify that?
A Yes. It's a pair of black high-heel sandals with apparent blood, and it also has the case number, the location where I recovered the shoes, and the date.
Q Okay. And these are what were provided to you by the defendant at her house?
A Yes.
MR. KEPHART: Your Honor, I moved to admit 154.
MR. SCHIECK: No objection.
THE COURT: Granted.
(State's Exhibit 154, admitted)
///

BY MR. KEPHART:
Q On the bag, as well, there's little blue seals. What's your understanding what those are?
A This would have been additional processing done by the forensic lab, for either DNA or whatever other type of analyses would have been requested.
Q Okay. Now, when you followed the -- when the car was taken back to Las Vegas, was it towed? Did someone drive it? Do you remember?
A It was towed.
Q Was it put up on a trailer or the back of a truck or was it towed by lifting up the front end and towing it --
A I believe that it was lifted.
Q Put up on a trailer or something?
A Yes, I believe so.
Q Okay. And do you recall before it was -- before it was taken to Las Vegas, if you did anything to secure it?
A Yes. We placed seals on the doors.
Q Okay. The trunk as well?
A Yes. There may be photographs of all the seals. I don't --
Q So the orange seals that the -- that Louis -- Louise Renhard --
A Right.

Q -- testified about, would have been your seals?
A Yes. Yes.
Q Okay. And do you recall when you -- did you follow it all the way back to the crime scene lab?
A All -- yes. I was directly behind the vehicle, and I could see it until we arrived at the crime lab. So it never left my sight.
Q Okay. So it was there -- you were there when it actually got rolled into the -- into the bay where they -- where they looked at it?
A Yes, I was.
MR. KEPHART: Court's indulgence, Your Honor?
THE COURT: Yes.
MR. KEPHART: Pass the witness, Your Honor.
THE COURT: Can counsel approach?
(Off-record Bench Conference)
THE COURT: The parties stipulate that all of the evidence bags and envelopes which today have been moved and admitted through this witness into evidence, pertain to those exterior items and their contents.
Ladies and gentlemen, we'll be taking our afternoon recess and resuming at 1:15. The witness may step down from the stand, and we'll resume with you at 1:15
Ladies and gentlemen, during this recess you are

admonished that you are not to talk or converse among yourselves nor within 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.
At 1:15 please be in the hallway. The bailiff will meet you there to return you to your seats in the courtroom. The Jury may exit at this time.
(Jurors recessed at 12:02:57)
THE COURT: We will go off the record and resume at 1:15.
(Court Recessed at 12:03:37 until 13:27:23)
(Jurors are present)
THE BAILIFF: Department II is back in session. Please be seated.
THE COURT: The record shall reflect that we're resuming trial in State versus Lobato, under Case Number C177394, in the presence of the defendant and her three counsel, the two prosecuting attorneys, the ladies and gentlemen of the jury, and the witness Senior Crime Scene

Analyst Maria Thomas remains on the stand. The Court reminds her she remains under oath.
The witness had been passed just as we were taking the lunch recess. So the defense may proceed with cross.
MR. KEPHART: Your Honor, I asked Mr. Schieck if -- I had a couple other -- a couple other -- not ideas but information I needed to get from this witness before I passed her.
THE COURT: You're going to ask to reopen then?
MR. KEPHART: Yes.
MR. SCHIECK: No objection.
THE COURT: Granted. State reopens. Mr. Kephart may proceed.
MR. KEPHART: May I approach, Your Honor, the witness?
THE COURT: Yes.

DIRECT EXAMINATION (Continued)

BY MR. KEPHART:
Q I'm showing you for the record what's been marked as State's Proposed Exhibit 256 and 257. Could you take a look at that for a moment, please? Do you recognize those --
A Yes.
Q -- as photos that you took?
A Yes.

Q And do they fairly and accurately depict what -- do you recall what's depicted on the photos?
A Yes.
MR. KEPHART: Move to admit 256 and 257, Your Honor.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibits 256 and 257, admitted)
BY MR. KEPHART:
Q These photographs here are what are depicted in the exhibit that's on the desk right there in front of you, is that correct?
A Yes.
Q And what's the exhibit that you're looking at now?
A A pair of black high-heel sandals with --
Q And in 256 -- that's what it shows here, is that correct?
A Yes.
Q Now, also at the -- now, this is what you took from the defendant's house. She actually brought them to you and gave them to you?
A Yes.
Q It wasn't the detectives or anything, right? It was her?

A No. They were handed to me by her.
Q She didn't bring any other shoes to you, did she?
A No.
Q Okay. Were you asked to take photos of any other shoes?
A No.
Q And in reference to the autopsy, you had testified about numerous items that were taken during the autopsy. Do you recall whether or not a sexual assault kit was done on the victim?
A Yes, there was a sexual assault kit done.
Q Okay. In conjunction with the sexual assault kit, what is taken?
A If I can read that from my report? Would that be okay?
Q Okay.
A We took blood files, head hairs, combed pubic hairs, pulled pubic hairs, oral, rectal and penile swabs, and fingernail scrapings and hand swabs.
Q Okay. Now, the jury has seen some photographs with the -- with Duran's body laying in -- on the table at the autopsy, and his hands appear to be in manilla envelopes. Is that --
A They were in paper bags.

Q Paper bags?
A Uh-huh. Paper bags.
Q Okay. And that -- what is that called?
A We bag the hands to preserve any evidence that may be -- any trace evidence that may be on the hands.
Q And that would entail the reason for the nail clippings and the hand swabs?
A Yes.
Q Okay. In hopes that maybe you find some evidence involving -- with the assailant?
A That's correct.
Q Okay. And you don't know whether or not anything was found in this case, do you?
A That's correct, I do not know.
Q Okay. That would be for somebody else to testify?
A Yes.
MR. KEPHART: Pass the witness, Your Honor. Thank you, Your Honor.
THE COURT: Mr. Schieck may cross.
MR. SCHIECK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SCHIECK:
Q You were just asked some questions about Exhibits 256 and 257, which are the shoes?

A Yes.
Q I will just display 256 to you. Is that the pair of shoes that you recovered from Ms. Lobato's house in Panaca, Nevada, on July 20th, 2001?
A Yes.
Q There appears to be -- well, let's do it this way. Where was this picture taken at? Do you know?
A At the crime lab.
Q Okay. And let me show you 257 real quick. That's a side view of the same shoes?
A Yes.
Q Now, in 256 we see a -- what appears to be an arrow on some type of sticky type --
A Yes. Yes.
Q Correct?
A Yes, that's correct.
Q What is the purpose for that?
A That's to indicate that I had observed a stain on that shoe.
Q Was it -- you put that sticky on there, then?
A Yes.
Q Is it because of a stain or because it had tested for apparent blood?
A The arrow is to indicate where the stain was. That

was then tested for -- that was then tested for apparent blood. And only a very small minute amount would have been tested for apparent blood because whatever else was on those shoes was submitted for any potential DNA analyses later on by the forensic lab.
Q And that's the only location where you showed any apparent blood, is that correct?
A That's the only location where I visually observed a stain that may possibly be apparent blood.
Q Okay. And that's all that you did, then, on this pair of shoes?
A Yes. Yes, that's it.
Q You didn't observe any blood anywhere else on the -- on the sides of the shoes?
A No, I did not.
Q And even though we only have a photograph of one side of the shoes, we assume that you looked at the other side also?
A Yes. That's correct.
Q And, likewise, no blood there?
A That's correct, no blood.
Q And is the location where you found the small apparent spot of blood -- was that sort of where the big toe of the shoe would normally be?

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A That's correct.
Q So if an individual was wearing that pair of high-heel sandals, their big right toe would be resting where you saw that stain?
A Yes.
Q Are you aware of whether or not that stain was tested for DNA?
A No, I don't recall.
Q What would the normal procedure be if it was to be tested for DNA?
A Normally, homicide detectives or the DA's office would request any DNA analyses be done on any of the evidence.
Q And if they were to test the item of evidence, they would get the evidence bag out of impound, I assume?
A Yes.
Q And then they would take it to their lab to do the testing?
A Yes. They would maintain the chain of custody.
Q And if they opened the bag, they would leave some markings on the bag indicating that they had opened and resealed the bag?
A That's correct.
Q And you would recognize those markings?

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A Yes, I would.
Q I'm going to show you --
MR. SCHIECK: If I may approach, Your Honor?
THE COURT: You may.
BY MR. SCHIECK:
Q -- what's been admitted as State's Exhibit 154, and ask if there's any indication whether or not that bag has been opened?
A Yes.
Q And that is the pair of black shoes we're talking about, correct?
A Yes.
Q Okay. Who's opened that bag?
A Two different people. Thomas Wahl and Joel Geller, who are both in the forensic lab.
Q Okay. Do you know what the speciality of Mr. Wahl is?
A He's -- DNA.
Q So this would indicate that Mr. Wahl tested these shoes?
A It appears to be that way, yes.
Q And that would be the spot of blood on the big toe area that you referred to?
A I'm not quite sure what else may have been tested.

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Q Are you aware that his results show that was the blood of Ms. Lobato?
A I -- I don't recall that information.
Q Okay. And who is Joel Geller?
A He's one of the latent print examiners.
Q Does he also do footwear impression examinations?
A Yes, I believe he does.
Q So if someone were to be comparing this pair of black shoes to footprints found at a crime scene, it would be Mr. Geller that would do that?
A Yes, I believe he would be one of the persons. That would be --
Q Okay. And the condition of the evidence bag tells us that he's done something to these shoes?
A Yes.
Q Do you know the results of his comparisons?
A No, I do not.
Q And you had talked about these shoes as being a pair of shoes that were handed to you by Ms. Lobato, is that correct?
A Yes.
Q And that was there in her house?
A I believe so. They may have been in her car. She gave those to me.

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Q You weren't inside the house while the detectives talked to Ms. Lobato?
A I may have been inside the house but I don't recall any conversation that took place between the detectives and Ms. Lobato, no.
Q Did the detectives request for you to go into her room and look for any other shoes in her house?
A I don't remember them doing that.
Q Did you do that?
A No, I -- I didn't.
Q Were you asked to take any photographs of any shoes that might have been in her room?
A No. No, I was not.
Q Okay. Were you only, then, in the front room area?
A They had requested that I impound the shoes and take photographs of her. So I do not recall what specific areas of the house I was in.
Q So the detectives never asked you to impound any other shoes?
A That's correct, they did not.
Q And you certainly would have had impound bags and been able to impound any shoes they wanted you to, correct?
A That's correct.

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1 Q And you had your camera, you could have
2 photographed any shoes they wanted you to photograph?
3 A That's correct.
4 Q Okay. But they only asked you to impound that one
5 pair of shoes, correct?
6 A Yes.
7 Q Do you recall whether or not Ms. Lobato was
8 wearing a pair of shoes at the time you talked with her and
9 she gave you that black pair of sandals?
10 A I do not -- I do not recall.
11 Q You did not accompany her to the jail, is that
12 correct?
13 A No, I did not.
14 Q And you had no further contact with her and her
15 processing after that point?
16 A That's correct, I did not have any contact.
17 Q And who is Jennifer Carr? Are you familiar with that
18 name?
19 A Jennifer Carr was also a crime scene investigator
20 with our department. And she's no longer with us. She's
21 transferred to another section of the police department, last I
22 heard.
23 Q Okay. Are you aware of her impounding anything in
24 this case?

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1 A No, I'm not aware of that.
2 Q You haven't seen any reports from her?
3 A No.
4 Q Now, you did take photographs of Ms. Lobato there
5 at her house, is that correct?
6 A Yes.
7 Q And that's at 670 Callaway Street in Panaca?
8 A That's correct.
9 Q You took photographs of her hands?
10 A Yes.
11 Q I'm going to display for you what's been marked and
12 admitted as 104. Are those photograph -- a photograph that
13 you took?
14 A Yes.
15 Q Of her hand? Correct?
16 A Yes. Yes.
17 Q And then 103 would be the opposite side or the
18 palm side of her hands?
19 A Yes.
20 Q And she cooperated with you in showing her hands
21 and flipping them over for you?
22 A Yes, she did.
23 Q You also took a -- just a general photograph of
24 Ms. Lobato, marked as 197?

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1 A Yes.
2 Q And that's the way she was dressed when you were
3 there at her house?
4 A Yes.
5 Q You also took some photographs of some injuries to
6 her stomach area?
7 A Yes.
8 Q I'm showing you what's been admitted as State's
9 196. Are those the scrape marks to her stomach area that you
10 photographed?
11 A Yes. Those markings were on her abdomen there.
12 Q Okay. And she pulled up her shirt that she was
13 wearing to display those for you so you could photograph
14 those?
15 A Yes.
16 Q You also took photographs of the red Fiero car that
17 was parked in front of the house there at 670 Callaway,
18 correct?
19 A Yes.
20 Q And the car was there in open view, correct?
21 A Yes.
22 Q Parked right along the side of the street?
23 A Right in front of the residence.
24 Q I'm showing you what's been admitted as Exhibit

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1 178. That is the red Fiero?
2 A Yes.
3 Q And that's the residence where you went in and got
4 the sandals -- the black sandals and took photographs,
5 correct?
6 A Yes.
7 Q And this is an outside shot. It looks like it was a
8 sunny day when you were out there?
9 A I beg your pardon?
10 Q Was it a sunny day?
11 A Yes.
12 Q It appears to be quite bright out.
13 A Yes. Yes, it was.
14 Q And that would be the garage portion of the house
15 that's shown over the top of the red Fiero? Is that correct?
16 A Yes.
17 Q Okay. And it appears there's at least two cars and
18 maybe three in the driveway?
19 A Yes.
20 Q Did you look inside of the garage at all?
21 A No.
22 Q I'm showing you another angle of the vehicle, which
23 would be State's Exhibit 179. That's the same vehicle just
24 from a different angle? Correct?

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1 A Yes. Yes.
2 Q And that shows the front corner portion of the
3 Lobato residence and then the next-door neighbor's house, is
4 that correct?
5 A Yes.
6 Q Okay. We can see the front door and the windows
7 of that house next door?
8 A Yes.
9 Q Did you go over and stand on the front porch of that
10 house and take pictures back toward the red Fiero?
11 A I'd have to review my photographs. I don't recall.
12 Q To your recollection, right now, do you recall?
13 A I -- I don't recall.
14 Q Would it be fair to say that from the front door of
15 that residence next door, the red Fiero would be in open view?
16 A Yes.
17 Q I mean, other than that one little tree that appears
18 to be in the corner of the yard, it's a clear shot to look at that
19 car?
20 A I would say it's probable.
21 Q Nothing obstructing the view?
22 A Not from this angle.
23 Q And both houses appear to have chain-link-type
24 fencing that you can see through easily?

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1 A Yes.
2 Q I'm going to show you 106. Parked in front of the
3 Fiero there's some type of -- I don't want to call it a vehicle,
4 but some type of wheeled item. Are you familiar with what
5 that was or do you recall what it was?
6 A I don't recall.
7 Q Did it have a trailer hitch on it, do you recall?
8 A I believe in the other photograph there was some
9 indication --
10 Q I'm going to show you 179.
11 A I --
12 Q Is that sort of a -- look like a trailer hitch there?
13 A It does look like that to me, yes.
14 Q So that's some type of vehicle or some type of
15 apparatus that's towed by another vehicle? Is that --
16 A Yes.
17 Q Okay. Now, you indicated that you were contacted
18 to go to Panaca by the detectives on the case, is that correct?
19 A Yes.
20 Q And who contacted you?
21 A It would have been either Detective Thowsen or
22 Detective LaRochelle. I don't recall which one specifically
23 contacted me.
24 Q And you followed them up to Panaca?

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1 A Yes.
2 Q And it was your recollection on direct examination,
3 that you were to go up there to take some photographs and
4 then follow a vehicle back to Las Vegas?
5 A Yes.
6 Q You understand that -- you understood that to be
7 your responsibility when they called you and arranged for you
8 to go?
9 A Yes, I believe they had indicated to me something
10 about following the vehicle back. Whether or not that was
11 confirmed at the time before we left or not, I don't recall.
12 Q But certainly they had contacted you and requested
13 you to go with them to Panaca?
14 A Yes.
15 Q Did you go with them when they talked to any other
16 persons up in Panaca?
17 A No, I -- I don't believe having been present during
18 any of their questioning of anyone.
19 Q Did you go to Pioche with them and talk to a lady by
20 the name of Laura Johnson?
21 A No.
22 Q You don't recall that?
23 A No.
24 Q Do you recall them meeting with anyone else in

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1 Panaca before they went to the Callaway residence of the
2 Lobatos?
3 A I don't recall that.
4 Q That was beyond, really, the scope of your
5 responsibilities as a crime scene analyst?
6 A That's correct.
7 Q Now, you also indicated that you were present for
8 the autopsy, correct?
9 A Yes.
10 Q And you did not go to the crime scene?
11 A No, I did not.
12 Q Your responsibility was to be there at the coroner's
13 office during the autopsy and impound any evidence that you
14 found during the autopsy or that was found during the
15 autopsy?
16 A Yes. And the homicide detectives were also present.
17 Q Did they direct you on what items to impound or did
18 you do that on your own?
19 A It was basically discussed amongst us as to what
20 type of evidence we were observing and the type of evidence
21 we should recover based on information they had at the time,
22 regarding the crime.
23 Q And do you recall which detectives were there at the
24 autopsy?

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A I believe Detective Thowsen was there. And I'm not sure if Detective LaRochelle arrived with him or arrived after him, but they were both there at some point during the autopsy.
Q I'm going to show you what's been admitted as State's Exhibit 221. Do you recognize that as a photograph you took during the course of the autopsy?
A Yes.
Q And it appears -- and correct me if I'm wrong -- on the -- what would be the right upper buttock of the individual, there appears to be a silver type of paint or some substance adhering to the skin, is that correct?
A Right.
Q Okay. Did you collect that?
A No, we did not collect that because there is some of the same type of residue on the shirt.
Q Okay. Did you --
A And the shirt was collected and we determined that it appeared to be the same type of substance or residue or whatever it may be. So that's why we collected the clothing.
Q So it was the consensus opinion there at the autopsy that whatever the silver substance on his bare upper right buttock, was the same as was on the shirt that was impounded?

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A It appeared to be of the same type, yes.
Q Okay. Did you obtain any scrapings or swabs or anything of the area that was on the skin to determine what that substance was?
A No.
Q And you did a sexual assault kit where you took swabs and scrapings and other type of things?
A Actually that's collected by the coroner's office. It would have been one of their investigators that would have done that.
Q Did the coroner's office while you were watching and taking photographs, collect any swabs or any other residue from the silver item that's on the skin?
A No.
Q Do you know whether or not the shirt has ever been tested to see what that substance is?
A I do not know if it was tested.
Q That would have been beyond your responsibility?
A That's correct.
Q But you did impound the shirt?
A Yes.
Q And so it would be available for testing?
A Yes. It's here.
Q Okay. I'm going to show you what's been marked

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as State's Exhibit 130, and ask if you can examine that?
A It's a plaid shirt with vegetation and other debris with apparent blood.
Q Is there any indication that that has been opened?
A Yes, it appears to have been opened.
Q Does it show who opened it?
A It would be -- it's Paula -- I don't know how to pronounce her last name. But there is a Paula in the forensic lab, so I'm assuming this would have been done by her.
Q Okay. In parenthesis what does she indicate?
A View.
Q View. What does that mean?
A I don't know.
Q That it was opened in order to view the shirt?
A Possibly.
Q Is there any blue crime scene -- any blue tape on that bag like is on the other bag?
A No, I don't see any blue tape.
Q So on the shoes it had blue tape from the forensic lab when they did the testing but there's no blue tape on this item, is that correct?
A That's correct.
Q Was the silver substance wet to the touch still or was it dry? Do you know?

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A I don't recall.
Q You don't recall?
A No.
Q What about on the shirt? Was it wet on the shirt or do you recall that?
A I believe the shirt was still wet. I don't know if that specific area was still wet but due to the blood the shirt was still --
Q Still damp from the blood?
A Yes.
Q Now, you indicated that it's your responsibility to collect the evidence that comes with the body to the crime lab? And we've got --
A Along with homicide detectives who are also present. And of course the pathologist.
Q Okay. And that's the plastic that is still adhering to the body, is that correct?
A Yes, that's correct.
Q In fact, the white sheet is still partially over the leg area?
A Yes.
Q Would this have been fairly soon after the body was removed from the body bag then?
A Yes.

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Q And so that's the condition that the body was transported to the coroner's office?
A Yes.
Q With that plastic stretched from one hip to the other hip?
A Right. From like the lower -- lower abdomen across the hips there.
Q I believe 222 also shows the plastic from a different angle?
A Yes.
Q You did impound that piece of plastic, correct?
A Yes.
Q And you took a photograph of it before you impounded it?
A Yes.
Q Showing you State's Exhibit 217. Is that the piece of plastic that you impounded at the autopsy?
A Yes.
Q And so -- just so we're clear, this piece of plastic that appears -- as it appears in the photograph, is the same piece of plastic that we see fully stretched and opened across the body in Photograph Number 222?
A Well, there were some folds over the body. It wasn't -- it wasn't taut and nicely placed over the body. There

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were some folds to the plastic.
Q Okay. But it was stretched from hip to hip? Is that fair to say?
A Yes.
Q And then when it got impounded it looked like in this Photograph 217?
A Right. Because it had stuck to the body.
Q And did you do any testing on that plastic there during the autopsy --
A No.
Q -- or before the autopsy?
A No.
Q You just impounded it?
A That's correct.
Q And that was marked into evidence, correct?
A Yes.
Q Okay. And you've been shown that here today?
A Yes.
Q I'm going to show you what's been marked --
MR. SCHIECK: If I may approach, Your Honor?
THE COURT: Yes.
BY MR. SCHIECK:
Q -- State's Exhibit 255.
A It's a clear plastic bag with apparent blood.

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Q Okay. Has that been opened by anybody else?
A No, it has not.
Q And there's no notation on the front side where we would expect to see -- if it had been opened, someone would note that?
A That's correct. And there isn't anything on here.
Q Okay. So there's nothing on the chain of custody indicating this has ever been tested for anything?
A That's correct.
Q And it wasn't tested at the autopsy?
A No. It wouldn't be tested at the autopsy.
Q Were there other items adhering to the body, that you recovered?
A If I may refer to my property impound again?
Q If you would, please.
A Adhering to the body, specifically?
Q Yes.
A Well, his clothing was on him. And the plastic bag. And there was a used match that was on the victim's upper left thigh.
Q That was on the body after the body came out of the body bag?
A Yes. And he had the piece of metal tucked in the left sock.

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Q Now, there were also recovered from inside the body bag, three cigarette butts?
A That's correct.
Q Do you know whether or not those were on the body when it was placed in the evidence bag?
A No, I do not know that.
Q Would you expect the -- either the crime scene analysts or the homicide detectives at the scene to pick up cigarette butts and put them into the body bag if they weren't on the body?
A I'm -- I don't understand the question.
Q Well, usually at the crime scene they're not going to put items of evidence into the body bag that isn't associated with the body, correct?
A That's correct.
Q They would separately impound those items into an evidence bag?
A It depends on -- on the circumstances at the crime scene. Each case is specific. So it would depend on what information they had at the time. What information they had gathered with homicide and other personnel there. So we may or may not send certain items with the body. It also depends on the pathologist. They may have contacted the pathologist. I don't know what was done at the crime scene. I was not

there.
Q So you really can't tell us why those three cigarette butts were in the evidence bag?
A That's correct.
Q Other than it's fair to assume that the evidence bag was clean before they started, and it came from the crime scene?
A Yes.
Q Was there any effort on your part to compare the match that was recovered from the body, to the book of matches that were found in the pocket?
A No. That would be done at the forensic lab.
Q Did you have any difficulty getting the items out of the pockets of that pair of pants?
A I don't recall having any problems with that.
Q You were shown a photograph that indicated that the right-hand upper pocket, in the front, had kind of been pulled out a little bit when you removed --
A Right.
Q -- the watch?
A Right. That's typically the case when we remove things from pockets. We may have that problem.
Q From the left front pocket you'd removed nine cents and a dollar bill, but you didn't leave that pocket out. Was

that easier to get into or --
A It may be that I tucked the white cloth part back. It's possible.
Q So it's possible you did that on the left and not on the right?
A Yes. It was the -- my objective was to photograph the pants.
Q And then you straightened the pants out before you photographed them?
A Yes.
Q Did you have difficulty -- or did you remove the pants from the body or was that the coroner?
A With the assistance of one of their investigators.
Q Did you have difficulty removing the pants?
A Most of the time we do have difficulty removing any clothing from a decedent.
Q Now, as part of the sexual assault kit, you did a pubic combing, is that correct? Or the coroner --
A Well, the coroner's office would have done that, yes.
Q Okay. Can you tell us what that consists of?
A Basically, they place a sterile sheet from a sterilized kit -- sexual assault kit -- they place that underneath the buttocks area, and with a comb that's also included in the sexual assault kit -- that is sterilized also -- they use that comb

to comb the pubic hairs. Anything that falls out of that section, the groin, will be collected by that piece of paper, and then it's folded and preserved for any further analyses of any type that'd be necessary.
Q Then someone else would do the analysis, not you? Correct?
A That's correct.
Q Did you notice or recover at the autopsy, any white paper towels that were in the area of the dismemberment?
A No, I did not.
Q So no white paper towels were transported with the body?
A That's correct. No white paper towels.
Q But three cigarette butts were transported?
A Yes.
Q And when you testified last week I think you indicated that you work day shift, is that correct?
A Yes.
Q So you would have been called out first thing in the morning to go to the autopsy?
A Yes. Well, I wouldn't be called out. I would be assigned the case.
Q Okay. And do you recall whether the body had been refrigerated prior to starting of the autopsy?

A Most of the time the body is refrigerated.
Q But do you recall in this case whether it had been?
A No.
Q Thank you.
MR. SCHIECK: Nothing further, Your Honor.
THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. KEPHART:
Q Ms. Thomas, in your evidence recovery report, you have it set up in two sections. One side says "evidence," one side says "location recovered."
A Yes.
Q Is that correct? And --
THE COURT: The record shall reflect she nodded her head up and down.
THE WITNESS: Yes.
MR. KEPHART: Okay.
BY MR. KEPHART:
Q When you use the term "evidence," that's just something that is in the report already and you write down something that could potentially be evidence?
A That's correct.
Q Okay. In this particular case, in your report, page 3, you talk about Item 20, which is inside of Exhibit 167, a yellow

1 Post-it note, a strip of green paper?
2 A Yes.
3 Q Okay. And it says that was in the coroner's body
4 bag?
5 A That's correct.
6 Q And then the next one, 21, which is also in 167, is a
7 nail cutter which was in the right front pants pocket of Item 5,
8 which is the -- those pants --
9 A Yes.
10 Q -- that he had on?
11 A Yes.
12 Q The yellow Post-it note, strip of green paper, did
13 that have any type of significance as far as you -- I mean, was
14 there anything on it, any kind of writing, anything like that,
15 that -- that you could see with regards to that piece of paper?
16 A I believe there's a copy attached to the report as to
17 that Post-it note.
18 Q Okay.
19 A And, at the time, we did not know what that meant.
20 So it was impounded as evidence. And I'm not sure whether
21 the homicide detectives looked into any of that or what was
22 done with that.
23 Q But this wasn't found in his pocket?
24 A No, the Post-it note was not. No.

1 Q So, as far as you know, it could have been as Mr.
2 Schieck's words, maybe "adhered to his body" when they put
3 him into the bag?
4 A Yes.
5 Q And same with Item 13, the three cigarette butts,
6 Item 14, the used match -- you said that the used match was
7 on his upper left thigh?
8 A Right.
9 Q I'm to assume it was stuck to him or --
10 A It was stuck to him, yes.
11 Q Okay. And you -- you did know some information
12 about the crime scene, didn't you, of where he came from?
13 A Yes.
14 Q That he was in the garbage?
15 A Yes.
16 Q Regardless of that, you still collected all of those
17 items that were with the body, is that correct?
18 A Yes.
19 Q How many homicides since you've been a senior
20 crime analyst, have you been asked to either process the
21 scene or actually take photographs? The homicide scene itself,
22 not the autopsies.
23 A Hundreds.
24 Q Hundreds. How many have you been -- have you

1 been asked to go to the autopsy and do what you did in this
2 case, take photos of everything that was accompanying the
3 body?
4 A The same. This is the fourth year. So --
5 Q Hundreds?
6 A Yes. Four years of autopsies. So --
7 Q Okay. And, now, with respect to documenting
8 evidence that you may find at a scene, is it uncommon for
9 items of evidence that are found at a scene -- which you call
10 evidence -- to have no relationship whatsoever to the actual
11 perpetrator of the crime?
12 A Yes, that's common.
13 Q Similar to that on -- in the autopsy, finding evidence
14 from the autopsy which you deem to be evidence, would be --
15 have no connection whatsoever to the perpetrator?
16 A That's correct.
17 Q That's not uncommon, is it?
18 A It's not.
19 Q Matter of fact, at some crime scenes, you find
20 nothing to do with the perpetrator, do you?
21 A That's correct.
22 Q The shoe that you looked at, that I started redirect
23 with you, these black sandals --
24 A Yes.

1 Q You have no idea when that blood got on the shoe,
2 do you?
3 A I do not.
4 Q You have no idea how the blood got on the shoe
5 other than if we were to tell you it is the defendant's blood, do
6 you?
7 A That's correct.
8 MR. KEPHART: Pass the witness, Your Honor.
9 THE COURT: Recross.
10 MR. SCHIECK: Yes, Your Honor. Thank you.
11 **RECROSS-EXAMINATION**
12 BY MR. SCHIECK:
13 Q It's not your job to determine whether an item of
14 evidence is or is not important in a case, is that correct?
15 A I don't understand that question.
16 Q Well, if something comes to you at the coroner's
17 office and it's in the body bag, you're going to note it,
18 photograph it and impound it, correct?
19 A Yes. Yes.
20 Q And it's up to the DNA analyst or the fingerprint
21 analyst or whoever else has contact with that evidence, to
22 determine what value it is, correct?
23 A Yes.
24 Q Whether it includes or excludes someone in a case?

A That's correct.
MR. SCHIECK: Nothing further, Your Honor.
MR. KEPHART: One more question, Your Honor.
THE COURT: You may.

FURTHER REDIRECT EXAMINATION

BY MR. KEPHART:

Q In reference to Mr. Schieck's question as to it's not your job to determine what evidence is important or not, it's your job though to collect everything, is that right?
A Yes.
Q And oftentimes in your job -- let's use this case for similarity. In reference to collecting bags and bags of trash and finding that there's absolutely no evidentiary value whatsoever with those bags of trash, does that frustrate you sometimes?
A Yes.
Q But you continue to collect everything that you can collect to see whether or not you could find whether -- or have somebody find whether or not it connects to the person who did the killing in a homicide?
A That's correct.
Q And that's -- that's for every case?
A Right.
Q Burglaries, robberies, rapes, on and on and on?

A That's correct.
Q You do everything you can to try to -- try to find out whether or not there's anything to connect -- and oftentimes you don't find any evidence to connect a person to a crime?
A That's correct.
Q Even ones where you know that they were in a building or in a room and you don't find any fingerprints?
A That's correct.
Q Even ones that you know a person was in the car and you find no fingerprints?
A That's correct.
MR. KEPHART: Pass the witness, Your Honor.
THE COURT: Recross.
MR. SCHIECK: Yes, Your Honor.

FURTHER RECROSS-EXAMINATION

BY MR. SCHIECK:

Q You didn't go to the crime scene, though, right?
A I did not.
Q You don't know what they collected and what they didn't collect?
A That's correct.
Q You don't know what they decided wasn't important and what they decided was important?

A That's correct.
MR. SCHIECK: Nothing further.
THE COURT: Redirect?
MR. KEPHART: No, Your Honor.
THE COURT: You may step down from the stand. The State may call their next witness.
MR. KEPHART: Thank you, Your Honor. The State would call Joel Geller.
THE BAILIFF: I'm sorry, who?
MR. KEPHART: Joel Geller.

JOEL GELLER, STATE'S WITNESS, SWORN

THE CLERK: Please state your first and last name, spell your last name for the record.
THE WITNESS: Joel Geller, G-E-L-L-E-R.

DIRECT EXAMINATION

BY MR. KEPHART:

Q Mr. Geller, how are you employed?
A I am a latent print examiner with the Las Vegas Metropolitan Police Department.
Q And how long have you been a latent print examiner with the Las Vegas Metropolitan Police Department?
A Over eight years.
Q And what are your duties as a latent print examiner?
A I examine latent prints that are submitted to the

laboratory. I examine evidence for latent prints. I also conduct footwear and tire track examinations, render reports and testify in court.
Q What is a latent print?
A A latent print is the reproduction of the ridges of an end joint of a finger or thumb, normally in oil or grease, on an object it has touched.
Q Okay. Now, you said that you've been employed with the Las Vegas Metropolitan Police Department for how long? Eight years? Is that --
A Over eight years, sir.
Q Eight years. And how many -- have you been employed in this same field prior to the Las Vegas Metropolitan Police Department?
A Yes, sir.
Q Where was that?
A I was trained by the United States Army Criminal Investigation Laboratory. I also worked at the Florida Department of Law Enforcement, the Kansas Bureau of Investigation, Santa Clara County Police Department, Colorado Springs Police Department, and presently with Las Vegas Metropolitan Police Department.
Q So how many years have you been doing this?
A Approximately twenty-six plus.

Q What training did you receive in reference to latent print examinations?
A I completed the 104-week latent print training course given by the United States Army Criminal Investigation Laboratory. I attended the fingerprint classification course, the advanced latent print techniques course and the administrative advanced fingerprint school given by the Federal Bureau of Investigation. I also attended numerous seminars and training conferences pertaining to latent prints, footwear and tire tracks.
Q Have you previously testified in a courtroom before as a latent print examination?
A Yes, sir.
Q How many times?
A I would estimate over a hundred.
Q And are you a member of any type of professional organizations relating to latent prints?
A Yes, sir. I am a member of the International Association for Identification, and the Nevada Division of the International Association for Identification.
Q Are you a certified latent print examiner?
A Yes, sir.
Q Who certified you as a latent print examiner?
A I was certified by the U.S. Army Criminal

Investigation Laboratory, the Florida Department of Law Enforcement, Metropolitan Police Department in Las Vegas and the International Association for Identification.
Q Now, you've also just testified that you've -- you're involved in footwear and tire track examinations as well.
A Yes, sir.
Q Have you had to do any additional training other than a latent print examine -- examiner?
A Yes. That's part of my training as a latent print examiner with the United States Army Criminal Investigation Laboratory. I also attended numerous symposiums and educational conferences hosted by the Federal Bureau of Investigation and the International Association for Identification.
MR. KEPHART: Your Honor, I'm going to offer Mr. Geller as an expert in latent print examination, as well as footwear and tire track.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
MR. KEPHART: Thank you.
BY MR. KEPHART:
Q Now, Mr. Geller, I want to draw your attention back to September 24th, 2001, and ask you if you authored a report in reference to fingerprint examinations that were conducted

by you in reference to a case with a defendant's name of Kirstin B. Lobato, Case Number 0107082410?
A May I look at my reports?
Q Do you have them there?
A Yes, sir.
Q Okay.
A My original report on Case Number 0107082410, dated September 24th? Is that the one you're referring to?
Q Yes, I am.
A Yes, sir.
Q Okay. And what was -- what were you trying to do in reference to that report?
A I was requested to compare latent prints to the victim, Duran, D-U-R-A-N, Bailey, B-A-I-L-E-Y, and Kirstin B. Lobato, K-I-R-S-T-I-N, L-O-B-A-T-O.
Q Okay. And how many prints did you actually look at? How many lift cards were submitted to you?
A There were 22 latent lift cards that were submitted.
Q Okay. And do you have a report as to the various locations of where they were found?
A It's reflected in my notes.
Q Okay. Can you tell us -- just go down through the 22 and tell us what they were?
A May I ask a question?

Q In reference to what?
A Should I list the lift number that I placed on the individual lift cards first?
Q That's fine. Whatever would help you. I just want to know if you have information as to where the latents were lifted from?
A The latent lift card that I marked JG-1 was recovered from the top of surge suppression box from trash pile on victim. JG-2 was recovered from the side of Milwaukee's Best beer can adjacent to the north wall of enclosure. JG-3 was recovered from the side of box bottom for 8½ by 11 paper from trash pile at victim's feet. JG-4 was recovered from the same location. JG-5 was recovered on the interior of the right door window. JG-6, JG-7, JG-8, JG-9, JG-10, JG-11, JG-12 was recovered from the same location. JG-13 was recovered on the exterior of the left door window. JG-14 was recovered on the interior of the left door window. JG-15, JG-16, JG-17, JG-18 and JG-19 was recovered from the same area. JG-20 was recovered on the left side front hood. JG-21 was recovered on the left door threshold. And JG-22 was recovered on the exterior left side of the trunk area. I see in my notes that there was another lift that was recovered, which I marked JG-23. Was recovered from the south edge of north door of dumpster enclosure.

Q Okay. With reference to your numbers 5 through 22, is it safe to say that those have to do with a vehicle? 5 through 22.
A I believe so, sir.
Q It starts right door window and then you end with exterior trunk as 22?
A According to my notes, they were recovered from a 1984 Pontiac Fiero, F-I-E-R-O, Nevada license I believe 4NIK8ER.
Q Okay. And then in reference to your numbers 1, 2, 3, 4 and 23, those -- or at least safe to say, were taken from some items or something from the crime scene? Or do you know?
A JG-1 through JG-4, according to my notes, was recovered from the ID Lab by CSA Ford.
Q Okay.
A And JG-23 was recovered by CSA Renhard, R-E-N-H-A-R-D, at 4240 West Flamingo Road.
Q Okay. Now, of those 23 fingerprints -- latent prints -- now, this is something that you get that comes to you on a card?
A Yes, sir.
Q Okay. And can you tell me, of those 23, were any of them not useable? And we'll get into that -- if you can tell me

about that.
A The latent lift cards I marked JG-11 and JG-12, on the interior of the right front door window, were not of value for identification. And the lift that I marked JG-23 which was from the south edge of north door of dumpster enclosure, was also not of value for identification.
Q Okay. So of the twenty-three, at least three of them are no good?
A Three of the lift cards had no latent prints of value.
Q Okay. Now, did you have -- were you given any type of prints that were on file? Meaning known fingerprints.
A I was requested to conduct a comparison with the fingerprints of -- one moment, please -- Duran Baily and Kirstin Lobato.
Q Okay. With reference to Duran Bailey, were you able to identify any prints belonging to him throughout these numbers here?
A I did not identify him.
Q And that includes the actual -- Items 1, 2, 3 and 4?
A Yes, sir.
Q And were you able to identify whether or not any of these were identified with Kirstin Lobato?
A None of the latent prints were made by Kirstin Lobato.

Q Now, do you know what -- what is AFIS?
A Excuse me?
Q What is AFIS?
A AFIS stands for Automated Fingerprint Identification System. That is a system where we can encode a fingerprint into the system. It is searched against a database and provides a list of possible candidates. It's up to the examiner who reviews the list of candidates to see if there is a match or not. If it's determined that there is a match, the examiner will sit down and do a one-to-one comparison with the latent fingerprint and the ink print. Once an identification is made, it is subsequently reviewed by another examiner based on our quality control issue before a report is rendered.
Q Okay. Were you able to -- did you have any quality prints, enough to where you could submit them to AFIS?
A According to my report, that they would be submitted into AFIS upon request.
Q Okay. And was that done here?
A Yes. I believe there's a subsequent report in which I did enter latent prints into AFIS.
Q And were you able to find any kind of match with regards to your search through AFIS?
A Yes. In a report that I rendered, Supplemental Report Number 3, Case Number 0107082410, dated April 29th,

2002, I rendered a report where an identification was effected to Shadi, S-H-A-D-I, Gallaher G-A-L-L-A-H-E-R, who was identified on the interior of the left door window of the 1984 Pontiac Fiero.
Q Was that one print?
A One moment, please. There was one latent lift card which I marked JG-16 which identified two fingerprints of Gallaher.
Q And that was found on the interior of the Pontiac Fiero?
A On the interior of the left door window of the Pontiac Fiero.
Q And with exception of the -- Number 11, Number 12 and Number 16, the other items that were associated with the car, Number 5, 6, 7, 8, 9, 10, 13, 14, 15, 17, 18, 19, 20, 21 and 22, you did not find a single match with those, to Kirstin Blaise Lobato?
A No, I did not effect any identifications to Ms. Lobato.
Q And these were all fingerprints that you felt were of use, except for the one found on the dumpster and then the two, 11 and 12?
A That's correct, sir.
Q Now, with respect to footwear impressions or tire track impressions, were you called upon in this particular case

to examine certain footwear impressions taken in this case?
A Yes, sir.
Q Can you tell me what you did with regards to that? Tell me what you looked at.
A In the supplmental report dated October 3rd, 2001, Case Number 0107082410, I looked at a pair of high-heel shoes, a pair of Air Nike athletic shoes, a pair of sandals, a piece of cardboard bearing footwear tracks, two lifts bearing known footwear tracks, four strips of known tire tracks, crime scene photographs by CSA Main, M-A-I-N and CSA Ford, and photographs taken by myself at the forensic laboratory.
Q Okay. And what were you trying to do with regards to that information in reference to this case that you've just talked about, your report being written?
A I was asked to compare the footwear tracks and the tire tracks to footwear crime scene tracks and tire tracks found at the crime scene to see if there was a match or an identification. I conducted comparisons, and I believe I determined that none of the footwear tracks were made by the footwear that was submitted for examination, and none of the crime scene tire tracks were made by any of the known tire tracks that were submitted for examination.
Q Okay. Now, the tire track photographs, are those something that you took?

A No, sir. I believe they were taken by the crime scene analyst.
Q Okay. But then you were asked to compare them to photographs of -- well, let me -- let me back up. Did you take any photos of the actual tires?
A No, sir.
Q Okay. So you were asked to compare photographs of the tires from one vehicle to the tire tracks at a scene? Is that right?
A That's correct.
Q Okay. And you weren't able to make any kind of identification with that, were you?
A No, sir. They were different tire track designs.
Q Okay. Are you able to determine from photographs at what point in time a tire track is left?
A No, sir.
Q So you couldn't tell whether or not the tire tracks you were looking at were fresh tire tracks or something that had been there for a period of time or something that had came after the body was dead?
A I don't have that ability.
Q Okay. You did another report as of October 4th of 2001, is that correct?
A Yes, sir. I think I rendered a -- Supplemental Report

4 on April 30th, 2002, Case Number 0107082410, where I looked at a pair of athletic shoes, a pair of Nike athletic shoes, a pair of brown boots, and a pair of Teva, T-E-V-A, black sandals.
Q Okay. And what report is that? What date?
A April 30th, 2002, Supplemental 4.
Q Okay. I'm asking you about Supplemental 2. I think we jumped ahead of ourselves here. Did you do a Supplemental 2 of October 4, 2001?
A Yes, sir. But it did not pertain to footwear or tires.
Q Okay. All right. I -- I'm sorry, Mr. Geller. That was my fault. I'm just trying to go chronological of when you checked things. So, October 4th of 2001, did you examine something else? Were you asked to examine something else?
A I was requested to examine a hair pick for presence of any latent prints of value.
Q Okay. Were you able to come up with anything there?
A No latent prints of value for identification were present or developed on the hair pick.
Q Okay. And after October did you conduct any additional tests? Any -- at request of -- I guess it would be the detectives.
A On Supplemental 3, dated April 29, 2002, Case

Number 0107082410, I reported the results of the AFIS entry which identified Shadi Gallaher.
Q Okay. Any other reports after that?
A Yes. Supplemental 4, dated April 30th, 2002, Case Number 0107082410.
Q And what did you do with that?
A That's when I compared a pair of athletic shoes, a pair of Nike athletic shoes, a pair of brown boots, Red Wing shoes, a pair of Teva, T-E-V-A, black sandals.
Q You weren't able to get any type of positive findings with that and what was found at the crime scene, is that correct?
A I compared the known footwear with the footwear tracks from the crime scene and no identification was effected. In fact, let me reiterate. They were not made by the footwear submitted.
Q Okay. Do you remember whether or not based on your report, there was more than one footwear track that was submitted to you from the scene?
A There was more than one footwear track but I did determine that the footwear tracks were all similar in design.
Q You couldn't determine whether or not they were all made by the same, just all similar in design, is that correct?
A A similar design.

Q Okay. It's not your opinion that they were made by the same person, are you?
A No, I couldn't say that.
Q Okay.
MR. KEPHART: Court's indulgence, Your Honor?
THE COURT: Yes.
MR. KEPHART: Pass the witness, Your Honor.
THE WITNESS: Your Honor, may I -- may I clarify one of my answers? One of my replies to the prosecutor?
THE COURT: If he wishes to reopen.
MR. KEPHART: That's fine. I -- what question had I asked that you --
THE COURT: Any opposition?
MR. SCHIECK: No. He can go ahead and clarify.
THE COURT: State may reopen.
THE WITNESS: A latent print is the reproduction of the ridges of an end joint of a finger or thumb, normally in sweat or perspiration or an oily substance, on an object that is touched.
MR. KEPHART: Okay.

DIRECT EXAMINATION (Continued)

BY MR. KEPHART:
Q And those are affected by our climate, are they not?
A Yeah, there are three basic factors.

Q And is there certain surfaces versus other surfaces that may render a fingerprint better than others?
A There are three basic factors; subject factors, environmental factors and transposal factors. The subject factors: Whether or not the hands were sweaty or they have any oil on their fingers from touching their forehead or any hairy part of their bodies where they can pick up sebaceous sweat, sebaceous oil or grease; whether or not the fingers are contaminated; whether or not they wore gloves. The environment factors: Was it indoors, outdoors, high humidity, rain, so on and so forth. And transposal factors: What medium or what method was used to recover the latent prints, and the type of surface, was it porous or non porous surface.
Q Okay. Would our climate in the middle of the summer, specifically in July, affect a fingerprint to some degree?
A It might. But again, a latent fingerprint -- it's a chance impression. The variables have to be present when an object gets touched, to leave an impression of the ridge structure on a finger or palms.
Q Okay. So a lot of things basically have to be present before you leave a fingerprint?
A That's correct.
Q Matter of fact, you may not even leave your own

fingerprint in your own vehicle, would you?
A That's correct.
MR. KEPHART: Pass the witness, Your Honor.
THE COURT: Cross.
MR. SCHIECK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SCHIECK:
Q Let me see if I've got these right -- good afternoon.
A Good afternoon, sir.
Q Subject, environment, and transposal?
A Right.
Q Those are the three factors? Okay. And subject, I think you pretty well covered. It depends on what's on your fingers to leave a print or not to leave a print?
A And the type of surface, sir.
Q And there are some surfaces that are much better than other surfaces?
A That's correct, sir.
Q For instance, this wooden podium -- correct me if I'm wrong -- would be a pretty good surface for a print to be left on?
A Yes, sir.
Q Whereas the padded wall behind you, probably not so good?

A Again, it depends whether or not there's any contaminants on the fingers or hands.
Q For the padded surface, it would take some other -- I mean some type of contaminant or something like that to leave a print?
A Yes, sir. Also, if someone's really sweaty, if they just touched their forehead. And again, if the item is processed in a timely basis and if a correct method is used to process that item of evidence.
Q A print can dry up over the passage of time? Is that fair to say?
A That's correct, sir.
Q It's ninety-some-odd percent moisture?
A 98.5 to 99 percent is moisture as a result of your perspire. There's basically three types of sweat: gustatory, thermal and emotional. Gustatory -- if you eat hot peppers you're going to sweat. Thermal is when it's hot you're going to sweat. And emotional, if you're doing something you shouldn't be doing you're going to perspire.
Q But it's the same perspiration?
A Basically, yes, sir.
Q I mean, you can't differentiate between perspiration as to what is causing you to sweat, right?
A No, sir.

Q Hope not. Okay. So if a print is on an exposed location in a hot climate and the wind's blowing, that print is going to disappear quicker than a print in a closed in space with moisture?
A Yes, to a certain degree. And it also depends on how soon you can process the item of evidence and what technique you're going to use on the evidence.
Q The interior of a car has a whole variety of different surfaces?
A That's correct, sir.
Q From carpeting to vinyl padding to gear shift knobs, for instance? They're all different type surfaces usually?
A That's correct, sir.
Q Windows, however, are pretty consistent in all cars, being glass, correct?
A Yes, sir.
Q And that's a pretty good surface to get a print from?
A Yes, sir.
Q And in this case I believe you got -- or you were -- submitted to you, a number of prints from the glass on a vehicle, correct?
A That's correct, sir.
Q Okay. And that would be -- on your numbering system, if I'm correct, is Numbers 13 -- excuse me -- Number

5 through Number 22?
A That's correct, sir.
Q The question -- I may be jumping the gun here, but Number 21, you said on the left door threshold. Was that on a window or was that somewhere else?
A I cannot answer that. That would have to be answered by the CSA that recovered it.
Q CSA recovers it, puts it on a latent print card and that's what you get is whatever description he gives you or she gives you, when you get the card?
A Yes. I have a bad habit -- I reflect verbatim what they put on the lift card. Of course, sometimes I can't read the lift card. So if I write it in my own handwriting I can definitely read it.
Q Okay. But you're trying to recreate exactly what they've written on the print card?
A I transcribe what they wrote on the latent lift card, yes, sir.
Q And in this case none of the prints submitted to you matched Kirstin Lobato's known samples, correct?
A That's correct, sir.
Q And you submitted these samples to AFIS for testing, a much broader database to look for a match, is that correct?

A On a subsequent date I entered the latent prints into AFIS to see if I could make a match.
Q Your initial examination report is dated September 24th, 2001, and the AFIS hit is on a report is April 29th, 2002, is that correct? It will be Supplement 3.
A That's correct, sir.
Q What was the reason for the delay in submitting the request to AFIS to try to get a match on all of those prints?
A The initial request only asked for a comparison with Duran Bailey and Kirstin Lobato.
Q And when was the AFIS request made? And again, does the homicide detective or someone else have to request that you submit it to AFIS?
A Normally, if a suspect is identified initially then we don't enter anything into AFIS.
Q Okay. In this case it was entered into AFIS. Was that upon a request of someone else or did you do it on your own?
A I believe I did it on my own because the request that was dated -- one moment please -- 9/28/01 by Detective LaRochelle, L-A-R-O-C-H-E-L-L-E -- excuse me, that's the wrong one. A request from Detective Thowsen, T-H-O-W-S-E-N, on 4/11/02, Case Number 0107082410, requested that I look at five -- four individuals. And at that time when I did not

make any identification to them, I entered the latent prints into AFIS and effected the identification to Shadi Gallaher.
Q I'm sorry, what date was that request again?
A The request from the detective --
Q Yes.
A -- was on 4/11/02.
Q So, some seven months after the initial request?
A Yes, sir.
Q And that request was on four specific individuals?
A Yes. A Trevor, T-R-E-V-O-R, Adamson, A-D-A-M-S-O-N; a Richard Shott, S-H-O-T-T; Douglas Twining, T-W-I-N-I-N-G; and Diann, D-I-A-N-N, Parker, P-A-R-K-E-R.
Q And all them came up negative and then you got an AFIS hit for Shadi Gallaher?
A That's correct, sir.
Q Okay. And you were requested with respect to the hair pick, to make a comparison -- or to make an examination to see if there was any latent prints on that hair pick? That would be your Supplement Number 2.
A Yes, sir.
Q And there were no prints on the hair pick?
A No prints were present or developed.
Q And when did you get the request to check the hair pick?

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A That request was 9/28/01 from Detective LaRochelle, L-A-R-O-C-H-E-L-L-E.
Q And then you were asked to -- which would be your Supplement 1 -- make some comparisons with respect to tire tracks and footwear impressions, correct?
A Are you referring to the basic supplemental on October 3rd, 2001?
Q Yes.
A Okay. Yes, sir.
Q And do you recall the description of the shoes that you compared? The sandals.
A Yes, sir.
Q Would you recognize them if I showed you a photograph of them or --
A One moment, sir. Yes, I'll probably -- would recognize them.
Q I'm showing you what's been marked and admitted as 256. You can look on the -- actually there's a screen next to you also. I'll show you 257.
A I recognize JG-3, which is the sandals, based on a Xerox copy I made of the outsole. So I'm looking at the bottom. I'm not concerned with the uppers which is the upper portion of a shoe. The outsole is the design on the bottom on a shoe. I did make a photocopy, and I'm -- which I'm looking

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at now in my notes.
Q It appears to match the shoes we're looking at?
A If that is what I marked JG-3, pair of sandals. Again, I'm looking at the outsole which is the bottom of a shoe.
Q You would have had an evidence impound bag that would have your markings on it if you had examined it, correct?
A That's correct, sir.
MR. SCHIECK: May I approach, Your Honor?
THE COURT: You may.
BY MR. SCHIECK:
Q Showing you what's been admitted as State's Exhibit 154. Does that indicate it's a pair of sandals that you tested?
A Black heel sandals with apparent blood. That's marked JG-1. Which, again, I'm looking at the outsoles.
Q Does it show your name on it as --
A Yeah. That's -- that's the item, sir. I have it written up as a pair of black high-heeled shoes, with a label on top surface of shoe which reads Club Zone.
Q Okay.
A Okay.
Q All right. Thank you. And you didn't examine the Fiero yourself?

GELLER - CROSS

A No, sir.
Q You're just relying upon what the crime scene analysts collected?
A I examined what the crime scene analysts submitted.
Q Okay. And so you wouldn't know what surfaces they did and didn't test within the Fiero?
A No, sir, I would not know.
Q Or what testing they used to find fingerprints inside the car?
A No, sir, I wouldn't know.
Q And you wouldn't know whether there was any indications that the car had or hadn't been wiped down at any point in time?
A I would have no knowledge, sir.
Q I mean, it is possible to wipe down a surface so no prints can be recovered, is that correct?
A That is correct, sir.
Q A fingerprint is much different than other trace element in that it can be easily removed?
A If it's on a nonporous surface it could be wiped down, and there's very limited possibility of recovering a latent print after an item's been wiped clean.
Q Such as a window. If I were to take a cloth and

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wipe a window down, I would probably destroy any fingerprint evidence?
A Most likely, sir.
Q Whether I used a cleaning substance or not? Just the actual act of wiping with a porous cloth could obliterate fingerprints?
A That's correct, sir.
Q Now, you'd indicated that on the prints of Shadi Gallaher there were actually two prints on one latent print card?
A That's correct, sir.
Q Is it common that more than one print will be affixed to a single latent print card?
A Again, latent prints are a chance impression. Just by chance a finger or a palm or the sole of a foot comes in contact with a surface and leaves ridge detail. So I can't answer if there's going to be one, two, three, four or more fingerprints on an area that is touched by an individual.
Q Now, the two prints that matched up to Gallaher on Item Number 16, do we know what fingers those were? Are those indicated on the print cards or in your report?
A According to my notes, Finger Number 2, which is the right index, and Finger Number 4, which is the right ring finger, were identified.

Q And they were placed on Number 16, the same latent print card?
A Yes, sir.
Q So when we talk about fingerprints, we're not really talking that a single latent print card might have just one finger impression on it, it could have multiple impressions on it?
A Yes, sir.
Q Thank you.
MR. SCHIECK: That's all I have. Thank you, very much, sir.
THE WITNESS: Thank you.
THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. KEPHART:
Q Mr. Geller, just so we clear this up and there's no confusion, JG-1 in your report of October 3rd, 2001, that's the black high-heel shoes you're talking about in Exhibit Number 154, is that right?
MR. KEPHART: May I approach, Your Honor?
THE COURT: Yes.
THE WITNESS: Yes. I recorded it in my notes as a pair of black high-heel shoes.
///

BY MR. KEPHART:
Q And you also said there was something else on them. "Club" something? You wrote that there was something written on the shoes. "Club" something? Remember saying that?
A One moment, please. Yes. According to my notes, pair of black high-heel shoes, with label on top surface of shoe which reads "Club Zone."
Q I don't think you can see that there. We'll zoom in. Can you read that right there where it says "Club?"
A Yes. That's the label that was on the insole of the shoe.
Q That's Exhibit 256, for the record. So that's the black shoes we're talking about as JG-1?
A Right.
Q And you said you also looked at a pair of Air Nike athletic shoes and a pair of sandals.
MR. KEPHART: May I approach, Your Honor?
THE COURT: You may.
BY MR. KEPHART:
Q With respect to State's Exhibit 159, does this have your seal on it and your name in the chain?
A Yes, sir. This is the item I marked JG-3, Item 6, pair of sandals.

Q Okay.
MR. KEPHART: Court's indulgence, Your Honor?
THE COURT: Yes.
BY MR. KEPHART:
Q Now, you indicated that a print can dry up, is that right?
A Yes, sir.
Q It would go away when it dries up, wouldn't it?
A Well, I have to clarify that. Sometimes you can actually see a visible latent print, which they call patent, P-A-T-E-N-T, and then slowly over a period of time -- it could be hours or days -- it's no longer visible. It becomes invisible. That's where the proper technique must be applied, even though it may be outdoors in the direct sunlight. And if you use the proper technique you may have the opportunity to develop a latent print.
Q Okay. Now, you say "use the proper technique" -- are you familiar with crime scene analysts from the Las Vegas Metropolitan Police Department -- specifically let's talk about Louise Renhard and Dan Ford. Are you familiar with those two?
A Yes, sir.
Q Do you know whether or not they've been taught the proper technique to recover --

MR. SCHIECK: Objection. That calls for hearsay, Your Honor.
MR. KEPHART: Judge, I think in his field as an expert he could testify as to whether or not there's proper techniques or not, and he's testifying to that.
MR. SCHIECK: He's asking him whether or not they have been trained in those techniques. That was his question.
THE COURT: His question was "do you know." He may answer the question yes or no.
BY MR. KEPHART:
Q Do you know whether or not they've been tested -- I mean whether or not they've been trained in the proper techniques of latent print recovery?
A Yes, sir.
Q Okay. And have you also even been involved in possibly giving them continuing training in latent print recovery? Do you discuss it with them?
MR. SCHIECK: Objection. Compound question, Your Honor.
THE COURT: Sustained.
BY MR. KEPHART:
Q Have you been involved in giving them training?
A I have, but basically in footwear and tire track recovery, casting.

Q Okay. Do you feel confident in the -- in their latent print recovery, that you've dealt with them in the past?
A Yes, sir.
Q Now, you also said that -- when I asked can a print dry up -- and you kind of talked about it a little bit, and you said that given -- over a period of time -- may affect it as well? Is that your testimony?
A That's correct, sir.
Q Okay. So maybe the longer the print's there, the better chance it's going it dissipate?
A Yes, sir.
Q Maybe even go away?
A That's correct, sir.
Q And you've already told us that it's fairly easy to wipe a surface to destroy a fingerprint?
A That's correct, sir.
Q Do toes or your feet give prints?
A Yes, sir.
Q Are those consistent with fingerprint impressions?
A The same principle for fingerprint identification applies to palms, toes and soles.
Q Okay. When a latent print is submitted to you -- meaning that they've picked it up with a sticky or whatever they use -- it's been processed -- is that better? Sorry.

A Yes, sir.
Q And they submit it to you, do you know whether or not it is a fingerprint or a toe print? Can you tell?
A Well, basically you can tell the different between a finger, a palm, a sole on a toe. First of all, the difference is the size, even in a partial print that may be recovered. Sometimes it's very easy to see it's from the palm because the type of ridge characteristics that are present, the thickness of the ridge, the flow of the ridge detail.
Q Okay. That's with reference to the palm. Is it that simple to tell the difference between, say, the tip of my finger versus the tip of one of my toes? If all you had was just that given to you. You're the expert.
A It could be difficult based on a partial print, for instance, the tip of a finger to a tip of a toe. But it also depends on the type of surface it's recovered from. For instance, if you recover it on a wall that's eight feet high I doubt very much if I would call it a latent toe print. I'll probably just refer to as a latent fingerprint or latent finger tip.

Q Okay. Now, in the car, you talked about a threshold. Do you remember that? It's in -- I don't know which number it was. One of your GJs -- or JG numbers. You said the left door threshold, is that right?

A GJ-21 was recovered on the left door threshold.
Q Okay. Could you tell there whether or not that -- I mean, obviously, that's not a 9' wall or anything like that. That is a -- the threshold of the door. And we had a crime scene analyst tell us earlier what she meant by that. Could you tell just based on your report -- or what you saw, whether or not that was a fingerprint or a toe print?
A It was a palm print.
Q A palm print. Okay. As if somebody maybe is putting their hand in to -- like this?
A Yes, sir.
Q Okay.
MR. KEPHART: Court's indulgence, Your Honor.
BY MR. KEPHART:
Q One last question. On your report of October 3rd of 2001, you indicated that you looked at a pair of Air Nike athletic shoes, and they're your GJ -- or JG-2? October 3rd.
A May I ask which --
Q October 3rd.
A -- supplemental report it was in?
Q Yeah. The October 3rd supplemental. And you have it as JG-2.
THE COURT: I think he's asking you is it Supplement 1, 2, 3 --

MR. KEPHART: Well, he -- the way it's numbered, Your Honor, he's got the report and then supplemental. And he's got Supplemental 2 --
THE WITNESS: Yes, sir. JG-2, a pair of Air Nike athletic shoes, size U.S. 7.5.
BY MR. KEPHART:
Q And who booked those in?
A CSA Carr, C-A-R-R.
Q Okay. Okay.
MR. KEPHART: Nothing further, Your Honor.

RECROSS-EXAMINATION

BY MR. SCHIECK:
Q Those size 7.5 Nike shoes, those were women's shoes, correct?
A I can't answer that.
Q But it's size 7.5?
A Yes, a pair of Air Nike athletic shoes, size 7.5.
Q When you were examining the footwear impressions that were submitted to you, did you attempt to size those items to see what size they were?
A No, sir.
Q Is there some place that does that type of work, to size shoes?
A If I was requested to do so I could have rendered a

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1 report based on information that I have, as reference material.
2 Give an estimate of the size of the shoe.
3 Q So if you had been asked, you could have
4 determined the size of those shoe print impressions that were
5 submitted to you?
6 A Within a range that is given as a reference material.
7 Q But even though you were given these Nike 7.5
8 shoes, you were never asked to check the impressions to see
9 what size they were?
10 A No, sir.
11 Q You didn't submit those to the FBI or anyplace else
12 for sizing?
13 A I wasn't requested to do so.
14 Q But you did compare the 7.5 shoes to the
15 impressions that you had from the scene, and they didn't
16 match, did they?
17 A That's correct, sir.
18 Q So you didn't really need to size them to know they
19 didn't match because you looked at them and they didn't
20 match?
21 A The crime scene footwear tracks were a different
22 outsole design -- that's the design on the bottom of a shoe --
23 than the footwear that was submitted for examination.
24 Q So we can eliminate that Nike 7.5 pair of shoes?

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1 A We can eliminate all the shoes, sir.
2 Q All the shoes that were submitted to you?
3 A That's correct, sir.
4 Q Now, you indicated that you have been doing some
5 training classes with the crime scene analysts on tire track
6 impressions?
7 A Yes, sir.
8 Q Okay. Which is sort of a specialty sub-field of latent
9 print examiner? Is that a fair statement?
10 A No, sir. It's a sub-discipline assigned to someone
11 who's willing to do it. Or who was trained to do it.
12 Q And you're willing and were trained to do it?
13 A That's right, sir.
14 Q And you had -- they take some type of impression
15 from a tire -- and forgive me for being very simplistic. But you
16 have a tire -- do you just, like, ink it up and roll it on a piece of
17 paper? Or how do you do that to get the impression you're
18 going to compare to what's been recovered?
19 A That is probably the simplest way of doing it, is to
20 put ink on the surface of the tire and roll it on 11 to 15' of
21 white paper to record the complete circumference of a tire so
22 an effective comparison and examination can be conducted.
23 You need the entire circumference of a tire to effect a
24 comparison.

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1 Q Was that done in this case?
2 A I don't believe so. I think they just photographed --
3 provided me with strips, which was sufficient enough to
4 eliminate the tires.
5 Q Okay. When you say "provided you with strips,"
6 what are the strips?
7 A I'm sorry. Film strips which were -- produced prints,
8 and I compared that with the tire tracks at the scene.
9 Q Okay. And when they're taking the photographs
10 from the tire tracks at the scene, they use a tripod and a black
11 and white camera positioned over the tire track in order to get
12 a good photograph? Is that fair?
13 A Actually the camera must be perpendicular and
14 parallel to the plane where the surface of the tire track or
15 footwear track is on. And they normally use -- in the olden
16 days, black and white film or even color film, a .35mm camera
17 or 4 by 5 camera. Now they have since gone to a digital
18 camera, which, again, has to be perpendicular and parallel to
19 the plane of the surface in order to reproduce a one-to-one
20 image of the tire track or footwear track.
21 Q And which was used in this case for the ones that
22 you compared?
23 A I believe, back then, they didn't have any digital
24 cameras. They probably used a .35mm camera.

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1 Q That they used in the olden days? Is that what
2 you're --
3 A Yes, sir.
4 Q And that gives -- they can reproduce a one-to-one
5 photograph, then, that you can compare to --
6 A As long as the camera is perpendicular and parallel
7 to the plane.
8 Q In this case you were able to exclude the Fiero as
9 leaving those prints behind?
10 A Yes. The tire tracks were not made by the tire
11 standards that were submitted for examination.
12 Q And you were asked some questions about whether
13 or not you could tell when those were left. The darker that the
14 -- the skid mark, it's more likely the sooner it's been left? Is
15 that a fair statement?
16 A I can't answer that, sir.
17 Q And I've got to ask this: Were there any toe prints
18 recovered in this case?
19 A None that I was able to recognize, sir.
20 Q Okay. Certainly if you were walking around
21 barefooted I suppose on garbage you could leave toe prints
22 behind?
23 A Yes, you can actually leave footprints behind.
24 Q But there were none submitted to you in this case?

A No, sir.
Q And when an individual is wiping a surface with the intent to remove latent prints, is it easy to remove some and leave others behind?
A That's possible.
Q It's possible but is it easy to do when you're talking about latent prints which can't be seen?
A It all depends on the frame of mind of the person who's rubbing down an item, if they're thorough or not. So it's a hypothetical question. I really can't give a yes or no to that, sir.
Q Is plastic a good surface to lift a print from?
A Yes, sir.
Q Thank you.
MR. SCHIECK: Nothing further.
THE COURT: Redirect.
MR. KEPHART: Court's indulgence, Your Honor.
THE COURT: Yes.
MR. KEPHART: Nothing further, Your Honor.
THE COURT: You may step down.
THE WITNESS: Thank you.
THE COURT: State may call their next witness.
MS. DiGIACOMO: Kristina Paulette.
///

KRISTINA PAULETTE, STATE'S WITNESS, SWORN
THE CLERK: Please state your first and last name and spell your last name for the record.
THE WITNESS: Kristina Paulette, P-A-U-L-E-T-T-E.
THE COURT: Do you spell your first name with a C or a K?
THE WITNESS: With a K.
THE CLERK: Thank you.
THE COURT: State may proceed.
MS. DiGIACOMO: Thank you.

DIRECT EXAMINATION

BY MS. DiGIACOMO:
Q How are you employed?
A I'm a criminalist with the Biology DNA Unit of the Las Vegas Metropolitan Police Department's forensic lab.
Q How long have you been so employed?
A I've been with Metro for about fifteen months.
Q And do you have any experience with regard to DNA prior to coming to Metro?
A Yes, I do. I was employed by Orchid Cellmark in Dallas, Texas, as a DNA analyst for two years.
Q Any experience before that?
A I had an internship with Orchid Cellmark for four months while I was in graduate school, as a DNA analyst. I

also took additional classes at North Carolina State University's Statistical Institute of Genetics for the summer of 2002.
Q Other than what you've already explained, what is your -- the rest of your education and training with regard to DNA?
A I received a bachelor's degree in biology from the University of Texas. I then went on to the University of Alabama at Birmingham and received a master's degree in forensics with a concentration in DNA studies.
Q Have you attended any courses with regard to DNA?
A I have. I just completed a complex mixture interpretation class in Colorado at the end of August. And, additionally, I took a mitochondrial DNA workshop in Dallas, Texas. And I continue to do educational training and workshops at our American Academy of Forensic Sciences meetings every year with -- in the DNA realm.
Q Have you ever testified as an expert regarding DNA analysis before?
A Yes, I have.
Q And where was that?
A In Boise, Idaho, and Jacksonville, Florida.
Q Is this your first time testifying in Nevada?
A Yes, it is.
MS. DiGIACOMO: Your Honor, at this time the State

would offer her as an expert witness with regard to forensic DNA analysis.
MS. GREENBERGER: No --
MR. SCHIECK: No objection.
MS. GREENBERGER: Sorry. No objection.
THE COURT: Granted.
MS. DiGIACOMO: Thank you.
BY MS. DiGIACOMO:
Q Now, directing your attention to this case, were you asked to do any DNA analysis?
A Yes, I was.
Q What was that?
A I was asked to examine a pubic hair combing from the sexual assault kit.
Q And that was taken from a person by the name of Duran Bailey?
A Yes.
Q Okay. Were you asked to test anything else within the kit itself?
A No, I was not.
Q Okay. Do you know why you weren't?
A No, I do not.
Q Okay. You're not aware that the rest of it had already been tested?

1 A Oh, yes, I was aware of that.
2 Q But the only thing that hadn't been tested for
3 possible foreign DNA was the pulled pubic hairs?
4 A Right. And I wasn't asked to retest any of the other
5 items.
6 Q Okay. And explain how you went about your
7 testing.
8 A As I received the evidence I opened it up and
9 examined the pubic hair brushing, and in there was a comb --
10 it was basically a paper towel, wrapped up. There was a comb
11 inside with several pubic hairs. I looked at all the hairs and
12 looked for ones that varied in both texture and color, to
13 identify possible -- possibly any foreign hairs. Once I located a
14 hair that looked to be foreign I further examined it under a
15 stereo microscope and ended up testing this hair.
16 Q Okay. This hair that you ended up testing, did it
17 have any root portion on the hair.
18 A It appeared to have a root.
19 Q And what was the conclusions of your testing?
20 A The -- may I refer to my notes?
21 Q If that would refresh your recollection.
22 A The hair tested ended up being a DNA mixture, and
23 the major portion of the mixture was from the victim and the
24 minor portion of the mixture is from an unknown individual.

1 Q Now, the unknown individual -- are you able to tell
2 what sex this -- the person that had given the foreign DNA is?
3 A No, I can not.
4 Q Are you able to tell any identifiers as to who the
5 person might be?
6 A No, I can not.
7 Q Okay. When -- let's just talk generally. When you're
8 doing DNA analysis, there's thirteen different -- is it loci?
9 A Uh-huh.
10 Q Is that how you make your comparisons?
11 A Yes.
12 Q Okay. Were you able to determine any loci for the
13 foreign DNA?
14 A Yes, I was.
15 Q And how many of those were you able to determine?
16 A Of the thirteen, I was able to locate additional -- or
17 foreign alleles at two different loci.
18 Q All right. Now, were you able to compare what you
19 could extract of the foreign DNA, to the DNA profile of Lobato?
20 A Yes, I was.
21 Q What was your conclusion there?
22 A She is excluded as a contributor to this minor profile.
23 Q And how is it that you can exclude her?
24 A Because she -- in order to -- we make the

1 comparison based on numbers at each locus, and hers do not
2 match the foreign alleles present.
3 Q Okay. So she can be excluded even though you
4 can't determine who the person is?
5 A Yes.
6 Q Were you able to tell what the foreign DNA was
7 from?
8 A Not at all.
9 Q Are you able to tell who the hair belongs to?
10 A As far as we know, it belongs to the victim.
11 Q Okay. But you can't tell what the foreign DNA is,
12 such as blood, saliva, et cetera?
13 A No.
14 Q Now, were you also asked by Kathy Gunther [sic]
15 regarding chewing gum and whether or not it could be uplifted
16 to CODIS? Do you recall that?
17 A Yes, I do.
18 Q Okay. And explain to the jury what CODIS is.
19 A CODIS is a database compiled of convicted offenders
20 -- their DNA profiles, basically. So we enter all these profiles
21 into the database, and then when we have a foreign DNA that
22 we find, we upload it into this database to see if we get any
23 matches. So, basically, to see if any of the foreign DNA we
24 find matches to any other offender that we have already in our

1 database.
2 Q If you upload your foreign DNA that's not from an
3 offender --
4 A Uh-huh.
5 Q -- does it stay in the CODIS system?
6 A No, it does not.
7 Q Okay. And is it possible -- other than offenders
8 being in CODIS -- that there's also DNA that's foreign that's
9 not been identified?
10 A Yes. And actually I misspoke. If there's a DNA
11 profile that is unknown, it can get uploaded if it doesn't match
12 anybody else's. But it has to meet certain criteria. For
13 instance, it can't be a victim profile or anything like that.
14 Q Okay. And when -- what other criteria does it take
15 to upload it?
16 A It must have at least ten loci available to upload it to
17 the national level. Additionally, it must not be victim. It must
18 not be -- if there's a consensual sex partner, it can't be that
19 person. So if they know there's a consensual sex partner --
20 but we can't eliminate them. That can not be uploaded.
21 Q Okay. So, for instance, with regard to the minor
22 foreign DNA on the pulled pubic hair, could that be uploaded
23 into CODIS --
24 A No.

Q -- to see if there's a match?
A There's not enough -- there are not enough loci present in order to upload.
Q Now, are you familiar with a piece of chewing gum that was tested previously by Dave -- or, excuse me, Tom Wahl?
A Yes, I am.
Q Okay. Was the foreign DNA detected in the chewing gum able to be uplifted into CODIS?
A No.
Q And why not?
A Because there were not enough alleles present in order to upload it to CODIS.
Q Now, do you as part of your job, ever have to work with luminol or phenolphthalein?
A I work with phenolphthalein.
Q And how do you work with it?
A I use it as a presumptive test for the identification of blood.
Q Before you would actually try and extract and see if there's DNA?
A Exactly.
Q Are you aware of any false positives that are called [sic] by phenolphthalein?

A Yes.
Q What are they?
A Any item that could possibly be an oxidizing agent could react with phenolphthalein. However, usually just copper.
Q All right. And when you -- you're talking about oxidizing agents. How does that play into the actual test itself, when you do the phenolphthalein?
A The phenolphthalein test that we use is a two-step process. Phenolphthalein is a clear color indicator. And what we do is we usually swab the area of interest that is supposed to have blood on it, and then we drop a drop of the phenolphthalein liquid on it. And then we add hydrogen peroxide. Hydrogen peroxide is also a clear liquid and it is an oxidizing agent. So when it hits the blood, it oxidizes the iron in the blood and then causes the phenolphthalein color reactor to turn pink. So if there's no blood there, you get no reaction and it doesn't turn pink. So if there's another oxidizing agent there, already present, on the application of the phenolphthalein color reagent, it turns pink immediately rather than waiting for the hydrogen peroxide to be added.
Q And would copper be such an oxidizing agent?
A It's such a strong oxidizing agent that most likely when added -- if you added phenolphthalein to it, it would

immediately turn pink rather than waiting for the hydrogen peroxide to be added.
MS. DiGIACOMO: Court's indulgence. Pass the witness.
THE COURT: Cross.
MS. GREENBERGER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. GREENBERGER:
Q Good afternoon. How long have you been working with Metro?
A About fifteen months.
Q And where did you come from before then?
A I was with Orchid Cellmark in Dallas, Texas.
Q What is Orchid Cellmark?
A Orchid Cellmark is a private DNA testing facility.
Q I see in your resume you have a lot of continuing education from -- going back to 2002 to 2006. Is that correct?
A Yes, I do.
Q And how much continuing education is required?
A We are required to have forty hours per year of continuing education.
Q Is most or all of it concentrated in the area of DNA?
A Yes.
Q You have some knowledge of phenolphthalein which

you just mentioned on direct examination, correct?
A Yes.
Q You didn't conduct any phenolphthalein testing in this case, did you?
A No, I did not.
Q You are aware that phenolphthalein is a presumptive test, correct?
A Yes.
Q Not a confirmatory test.
A Right.
Q Can you explain to the ladies and gentlemen the distinction between the two?
A Sure. A presumptive test simply indicates that whatever you are looking for might be there. In our case, with blood. A phenolphthalein positive test indicates that it very well might be blood but we don't know for sure. A confirmatory test is something that is a test that actually goes and confirms that it actually is indeed blood, we know for sure.
Q A confirmatory test would be a hundred percent confirmation?
A Yes.
Q And phenolphthalein is just an indicator that there might be something, but until you do a confirmatory, you can't make that conclusion?

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A Correct.
Q You examined gum in this case that Tom Wahl had analyzed?
A I actually did not examine the gum.
Q You are familiar with the fact there was gum in this case analyzed --
A Yes.
Q -- by Tom Wahl?
A Yes.
Q Are you familiar with the fact that that was analyzed around August 6, 2001?
A Yes.
Q Are you aware that the decedent in this case, Duran Bailey, was killed July 8, 2001?
A I was not aware of when he was killed.
Q The gum -- did you learn that Kirstin Lobato was excluded as a DNA contributor on the gum?
A Yes, I did.
Q Was -- were you aware that the gum was a mixture of saliva and blood?
A No, I was not.
Q Were you aware that the major contributor on the chewing gum was Duran Bailey, the decedent?
A Yes.

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Q And with regard to Kirstin Lobato being excluded as a contributor on the gum, can you explain to the jury how you can exclude someone if there's not enough loci to identify someone else?
A If there are not enough loci to upload into CODIS -- I think that's what you're referring to --
Q Yes.
A -- to where we might be able to get a hit on possibly another offender, we can exclude based on the alleles that are given. And basically when we do our testing we end up with thirteen pairs of numbers, and we compare these numbers, and it's an all or nothing kind of thing. If they all match, it's considered basically an inclusion. If even one allele is off somewhere, or two, you have an exclusion. And in this case the -- there was no matching of alleles from the different loci that we were able to detect.
Q What exactly is an allele?
A And allele is assigned to the -- we separate the DNA based on size. And so according to its size, the DNA's assigned a number, and we call this number that it's assigned, an allele.
Q Following on, on comparisons, I'm going to turn to the pubic hair. You were requested to do analysis on the pubic hair in this case, is that correct?

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A Yes.
Q What day did that request come to your attention?
A The request was actually received on July 7th, 2006.
Q Do you know why it came to you five years after the testing on the gum?
MS. DiGIACOMO: Objection. Calls for speculation.
BY MS. GREENBERGER:
Q Do you have any personal knowledge of why?
THE COURT: Withdrawn and restated.
THE WITNESS: I was just asked by my supervisor to test this item.
BY MS. GREENBERGER:
Q What day did you conduct the test on?
A The date of the examination or the date of the actual DNA?
Q Well, both.
A Okay. The examination was performed on August 12th, 2006, and the DNA test was actually run on August 23rd, 2006.
Q Did you prepare a report in this case?
A Yes, I did.
Q And what date did you prepare your report?
A September 5th, 2006.
Q Did you take a photograph in your analysis of the

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pubic hair combings you were examining?
A Yes, I did.
Q Did you get that photograph with your own camera?
A The camera provided by our lab.
Q What kind of camera is that?
A It's a digital camera. I'm not sure of the model.
Q Did it produce a color photograph?
A Yes.
MS. GREENBERGER: May I approach, Your Honor?
THE COURT: You may.
BY MS. GREENBERGER:
Q Showing you what's been marked as Defendant's next- in-order Proposed NN, do you recognize this?
A Yes, I do.
Q Is this a photograph that you took?
A Uh-huh.
Q Is it a fair and --
THE COURT: Does that mean yes?
THE WITNESS: Yes. Sorry.
BY MS. GREENBERGER:
Q Is it a fair and accurate depiction of what you saw?
A Yes.
Q Is this one photograph or multiple photographs?
A It is multiple.

MS. GREENBERGER: I would move for admission of this exhibit, Your Honor.
MS. DiGIACOMO: No objection.
THE COURT: Granted.
(Defendant's Exhibit NN, admitted)
BY MS. GREENBERGER:
Q Starting at the top corner, can you identify what it is that you photographed?
A Certainly. The top left corner is a photo of the evidence as it was received. When I opened up the pubic hair combing it was, as I stated, a comb with pubic hairs -- and they're black. I don't know that they show up very well on the photo. And then a ruler next to it to show the size.
Q Is the comb provided in the kit that you used to conduct your analysis?
A Yes, it is.
Q It's a sterilized comb? Never been used before?
A Yes.
Q And can you tell us what the second photo depicts?
A It's a closeup of the pubic hairs. As you can see, there are numerous ones present.
Q When you're doing this analysis, are you using a microscope? Or is it a visual examination?
A It's a visual examination at first.

Q Can you tell the ladies and gentlemen of the jury what you're specifically looking for when you're doing this type of examination?
A I'm looking for anything that appears to be foreign DNA, foreign hair. And basically it's just a visual examination of the hairs. As you know, hairs can vary on your head or in the pubic area. But basically we're just looking for something that was foreign.
Q Was there anything specific that caught your attention when you were doing this analysis?
A The color of the particular hair that's in the lower left corner --
Q And can you identify -- you can touch the screen and it will --
A Oh. This one.
Q And can you describe what you saw and why that caught your attention?
A Sure. It seemed to vary slightly in texture and in color. And upon looking at it under the stereo microscope, I confirmed that.
Q So the second portion of your analysis -- once you determined there was something foreign, you looked at it under a microscope?
A Correct.

Q Would that be the fourth picture that's depicted?
A Yes.
Q That's the pubic hair under a microscope?
A Yes.
Q Now, I'm calling it a pubic hair. Did you determine that it appeared to be a pubic hair?
A It appeared to be a pubic hair but I'm not a hair expert so I can't say for sure.
Q Were there any other hairs that you examined that looked different, besides this one?
A This was the only one that appeared to be different?
Q Can you identify by pointing on the screen in your closeup of hairs, if you can see which hair it was that appeared to be different?
A I can't tell in this photo.
Q You testified that it appeared to have a root in it?
A Yes.
Q What does that mean?
A A root is the portion of a hair that is -- attaches it to the head, basically. And this area tends to have nuclear DNA still remaining. Whereas the hair -- the shaft of the hair does not have nuclear DNA in it.
Q How are you able to determine that there were multiple sources of DNA on this hair?

A Based on the DNA results that I obtained.
Q Can you explain what you did to make that determination?
A Sure. When you're looking at a DNA profile we expect to see a certain -- there are -- when we get a DNA profile as I mentioned before, there are pairs of numbers that we're looking at. And when we see more than a pair of numbers at each site, we know that it is in fact a mixture. And because there are more than one allele at -- or more than two alleles at certain places, we know that this was a mixture.
Q Would the major component be the hair itself?
A Yes.
Q What would the minor component be?
A It could be anything from saliva to semen to blood to -- anything.
Q How can you separate the major from the minor?
A When our profiles are presented, they're presented in peak form. And when they're minor alleles, the ratio of the peaks vary greatly. So the major profile, the peak height may be a thousand, the minor profile will be at maybe a hundred. So you'd see a distinct different in the major versus the minor profile.
Q Are there two peaks or one peak for the Y chromosome?

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A There is one peak for the Y chromosome. But two peaks at that -- the sex determining locus.
Q And is -- what does Y represent in your field of study?
A Y represents a male. So if the profile reads XY, it's a male. If it reads just an X peak, it's just female.
Q I want to refer you to page 3 of your report which is entitled -- or this is your lab notes -- identifier, profiler, co-filer. Are you at page 3?
A Yes.
Q I just have a question for you. On the third line from the bottom -- forgive me if I mangle the term -- amelogenin --
A Amelogenin.
Q Amelogenin. What is that?
MS. DiGIACOMO: Counsel, I'm sorry. Could you show me what you're referring to?
(Off-record colloquy)
BY MS. GREENBERGER:
Q Can you define what that is?
A Sure. Amelogenin is the sex-determining locus that we look at. And I mentioned pairs of numbers -- we also get this target area of DNA that we're looking at. And when it is an XY, it's male, and when it's X, it's female.

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Q Next to this you have KP1D. What does that stand for?
A KP1D is the designation I gave to the pubic hair that I tested.
Q And you identified that as XY?
A Correct.
Q Meaning male?
A Male. Yes.
Q And you knew that because -- did you know that because it belonged to the decedent in this case or did you know that from other testing?
A Strictly based on the DNA. Because there's an XY there, it means there is male. But because it's a mixture, we don't know if it's male and female or just male.
Q In the next box over, TAW11D, and you have reference blood Bailey. Is this your comparison chart to see if the major component matched Duran Bailey?
A Correct.
Q And you found it did?
A Yes.
Q And then TAW2, it says reference buccal Lobato. What is that?
A That is the profile from Ms. Lobato. Her DNA profile.
Q Her DNA?

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A Uh-huh.
Q And when you conducted that analysis, can you tell us what you concluded?
A I didn't do any analysis on the reference standards for Bailey or Lobato. I simply took the evidence that had been run earlier by another analyst and compared them to what I found.
Q And what did you find with regard to Kirsten Lobato's DNA? Did it match or not match?
A It was not consistent with what was found in the pubic hair.
Q In fact, you state in your report you were able to exclude her as a possible contributor of the DNA obtained from the pubic hair, is that correct?
A Yes.
Q You can exclude her with certainty?
A Yes.
Q Were you ever asked to test plastic wrap seized in this case, for the presence of DNA?
A I was not.
Q In your own words can you explain exclusion?
A When someone is excluded it means they can't possibly be a contributor to whatever it is we're looking at. Q Is it your testimony that there is no way to determine if

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the minor source of DNA on the pubic hair is male or female?
A Yes, there's no way to determine that.
Q Why is that?
A When there's a mixture of DNA we can sometimes compare the peak height, as I mentioned before, of the X versus the Y and determine if there is a male present or female present. In this case the minor contributor is so minor that we can't use the peak ratios to determine if it is another male or if it's another female.
Q Is the pubic hair combing done from the pubic hair area of the decedent?
A Yes, it is.
Q What is the significance, if any, that a possible root was detected?
MS. DiGIACOMO: Objection, Your Honor. Asked and answered.
MS. GREENBERGER: I don't believe I asked that question, Your Honor.
THE COURT: Overruled. You may answer.
THE WITNESS: By detecting a root, it allows us to determine whether or not we would be able to get a DNA profile from this root.
BY MS. GREENBERGER:
Q Are you familiar with any of the other sexual assault

testing that's been done in this specific case?
A No, I'm not.
MS. GREENBERGER: I don't believe I have anything further.
THE COURT: Redirect.
MS. DiGIACOMO: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. DiGIACOMO:
Q When you say that somebody can be excluded, or even included -- well, let's stick with -- when you say somebody can be excluded, all that means is that they can't be the source of whatever DNA it is you're looking at?
A Correct.
Q You can't say what happened at a crime scene or who a perpetrator was, correct?
A No.
Q Now, with regard to doing the phenolphthalein tests, is it common for you to be able to get a positive reaction for phenolphthalein but then not be able to extract enough to find DNA?
A It is possible.
Q How much do you need to extract to find the DNA?
A We need about .1 nanogram for a full profile, of DNA. So it's a very small amount but --

Q But it is possible that you could --
A It is possible that you can't -- you can get a -- phenolphthalein is very very sensitive. So it's very possible that you'll get a positive phenolphthalein reaction and no DNA whatsoever.
Q Okay. And that's not -- that's not to say it's not blood; it's just that you can't confirm it's human blood?
A Correct.
MS. DiGIACOMO: Nothing further.
MS. GREENBERGER: One moment, Your Honor.
THE COURT: Yes. Recross?
MS. GREENBERGER: Yes.

RECROSS-EXAMINATION

BY MS. GREENBERGER:
Q Would you agree that if you have a positive phenolphthalein test that is not confirmed, you cannot say that it's blood?
A If it's a positive phenolphthalein?
Q Yes. That has not been confirmed as blood. You cannot testify it's blood, true?
A You can say that it's blood. You don't know if it's human -- well, let me take that back. You don't know for sure if it's blood or not.
Q By the phenolphthalein test?

A Just by the phenolphthalein test. Correct.
Q But once a confirmatory test is done, you can conclusively say, if it's negative, that it's not blood?
A Not always. Because --
Q What does that mean?
A If you have a phenolphthalein positive and a confirmatory negative -- is that what you're asking?
Q Yes.
A If the DNA is very broken down or degraded, you may not get a positive confirmatory test -- we use HemaTrace -- even though you get a positive phenolphthalein test. And you can think of it like if a dog gets a hold of a puzzle piece and chews it all up, it's not going to fit right in there. And so you might -- that's kind of like the antibody reaction we get with the HemaTrace test. So you're not going to end up getting a positive on that even though it might still be blood.
Q If there's a false positive and then a confirmatory negative, how does that affect your opinion?
A If it's a false positive phenolphthalein and a -- you would expect it to be a negative HemaTrace or a confirmatory test there. And so then we would go on to test it with DNA to see whether or not there really was something there.
Q And again, we're just talking generically 'cause you haven't done any phenolphthalein type testing in this case?

A Right.
Q And in this case with regard to your assignment, you were specifically asked to analyze the pubic hair comings that were collected from Duran Bailey and to see if they excluded Kirstin Lobato? Is that correct?
MS. DiGIACOMO: Objection, Your Honor. Beyond the scope.
THE COURT: Overruled.
THE WITNESS: I was asked to look for foreign DNA.
BY MS. GREENBERGER:
Q And your conclusion was that there was no match between the pubic hair -- the major and minor source detected on what you examined that appeared different with Kirstin Lobato?
A True.
MS. GREENBERGER: Nothing further.
THE COURT: Redirect?
MS. DiGIACOMO: Court's indulgence. Nothing further.
THE COURT: You may step down.
We're going to take a ten-minute stretch break at this time, ladies and gentlemen. In ten minutes please be out in the hallway. The bailiff will return you to your seats in the courtroom at that time.

1 During the recess you're admonished not to talk or
2 converse among yourselves nor with anyone else on any
3 subject connected with the trial. You're not to read, watch or
4 listen to any report of or commentary on the trial or any
5 person connected with the trial by any medium of information,
6 including, without limitation, newspaper, television, radio and
7 Internet. And you're not to form or express any opinion on
8 any subject connected with the trial until the case is finally
9 submitted to you.
10 Court's in recess for ten minutes.
11 (Court recessed at 3:44:58 to 4:09:53)
12 (Jurors are present)
13 THE BAILIFF: Department II is back in session.
14 Please be seated.
15 THE COURT: The record shall reflect we're
16 resuming trial in State versus Lobato, under C177394, in the
17 presence of the defendant together with her three counsel, the
18 two prosecuting attorneys and ladies and gentlemen of the
19 jury.
20 State's proceeding forward with their case in chief
21 case and may call their next witness.
22 MR. KEPHART: Thank you, Your Honor. The State
23 would Detective Tom Thowsen.
24 ///

1 **THOMAS THOWSEN, STATE'S WITNESS, SWORN**
2 THE CLERK: Please state your first and last name.
3 Spell your last name for the record please.
4 THE WITNESS: Thomas Thowsen, T-H-O-W-S-E-N.
5 **DIRECT EXAMINATION**
6 BY MR. KEPHART:
7 Q Sir, how are you employed?
8 A I'm a homicide detective with the Las Vegas
9 Metropolitan Police Department.
10 Q And how long have you been employed as a
11 homicide detective?
12 A Fourteen and a half years.
13 Q And prior to becoming a homicide detective, what
14 did you do for the police department?
15 A I was a robbery detective for three or four years.
16 Prior to that, I was an investigative surveillance detective for a
17 year. Prior to that, I was in the academy staff for three years.
18 Prior to that, I was in K-9 for four years. And prior to that, I
19 was in patrol.
20 Q How long have you been a police officer?
21 A A little bit -- more than twenty-nine years.
22 Q Draw your attention back to August 9th of 2001, and
23 ask you if you had an occasion to respond to 4240 West
24 Flamingo Road in reference to a homicide there at the Nevada

1 State Bank?
2 A I did.
3 Q Can you tell me how is it -- how does homicide with
4 the Metropolitan Police Department -- back in August of 2001,
5 how did they --
6 MR. SCHIECK: Your Honor, do we mean July? Not
7 August.
8 MR. KEPHART: I'm sorry. I'm sorry. You're right.
9 July 9th. Thank you, Mr. Schieck.
10 BY MR. KEPHART:
11 Q July 9th, 2001. And I apologize to you, Detective.
12 Can you tell me how it was -- or how did the police
13 department work in reference to the homicide investigations?
14 Did you work in a team? Did you have multiple officers or --
15 how did it work? Ho does that work?
16 A Yes. Back in 2001 we worked in a team of two
17 detectives and we'd commonly go with a sergeant.
18 Q Is that how it worked in July of 2001?
19 A Yes, it was.
20 Q On this particular case did you have a partner?
21 A Yes. My partner was Detective James LaRochelle.
22 Q Okay. And when you work with partners how do
23 you divvy up the work, so to speak?
24 A It alternates from case to case so that each time you

1 get to switch and have a different segment of the
2 investigation. What will happen is, one of the detectives will
3 be in charge of interviewing witnesses and/or suspects. The
4 other detective will be in charge of working with the crime
5 scene analyst to analyze the crime scene.
6 Q And what -- in this particular case, what was your
7 assignment?
8 A To interview the witnesses and suspect.
9 Q Okay. Does that mean that you don't go to the
10 crime scene? That you don't get involved with that at all?
11 A It does not mean that. You do go to the crime
12 scene as well.
13 Q Okay. Were you involved in the crime scene with
14 this case?
15 A Yes.
16 Q Okay.
17 MR. KEPHART: May I approach, Your Honor?
18 THE COURT: You may.
19 BY MR. KEPHART:
20 Q I'm showing you what's been admitted as State's
21 Exhibit Number 4, and ask you if you can -- if you can identify
22 this?
23 A Yes.
24 Q Okay. And is that -- what about that that causes

you to remember this particular case?
A This is the dumpster enclosure --
Q Let me -- I'll put it -- I'll put it up on the screen.
A Thank you.
Q Exhibit Number 4.
A Okay.
Q Can you see that okay from where you're at?
A I can.
Q Okay. Maybe I'll zoom in a little bit. Maybe that will help. Okay. All right. Go ahead.
A This is the dumpster enclosure. You can see the doors on both sides here, the actual dumpster, and three walls over here, and then it has a chain link fence laying on top of it, to secure the top.
Q Okay. Did you go into this area to expect it -- to inspect it?
A Yes, I did.
Q When you got there do you recall whether or not the dumpster itself was in the position it's in now?
A I don't recall the exact position the dumpster was in.
Q Did you have some information that it was actually moved?
A Yes.
Q And who was that that moved the dumpster?

A That -- I'd have to refer to the crime scene report.
Q Have you heard the name Officer Jay Testa before?
A Yes. He's the initial officer that arrived.
Q Do you recall whether or not he had moved it or not?
A Yes, that would be the correct name.
Q Okay. Now, you indicated that -- that it has these four door -- these two doors and then the three walls and then the chain link over the top. So we're to assume that if you shut the doors then it -- then it is closed off to the public?
A That's correct. Yes.
Q Unless, of course, the doors are not chained shut or locked shut or anything like that?
A That's correct.
Q The chain link on the top, could you crawl through it? Meaning, get in, if you crawled over the top.
A No. It looked like it was secure enough that it would actually keep you from getting into it.
Q Okay. And could you -- could you see through the chain link at all?
A Yes, you could.
Q Okay. Exhibit 118, does that show the dumpster enclosure during the daylight?
A Yes, it does.

Q And when I say can you see through the top of it, could you see through the chain link here?
A Yes, you can.
Q And what's that to the left of the dumpster enclosure itself?
A This part right here is a covered parking area.
Q Matter of fact there's a car underneath the covered parking area right there when this photo was taken?
A That's correct.
Q Now, you indicated that you actually went into the crime scene -- right here -- that's Exhibit Number 4. Can you tell me what you recall -- what you remember of the crime scene?
A Yes. I remember there was a great deal of blood that was in the far corner of the crime scene. There was a lot of garbage that looked like it had been probably taken out of the dumpster and placed in a huge pile here that was on top of the body and around the body to hide it apparently.
Q And did you actually look in the dumpster itself? Did you?
A I did not, no.
Q Were you aware that crime scene analysts actually got into the dumpster?
A Yes.

Q Okay. Now, in reference to -- to a individual -- you said the body -- that you found an individual in the -- in the area. I'm showing you Exhibit Number 18. Is this consistent with what you meant by all the garbage that was in there on top of the body?
A Yes.
Q Okay. If you look in the back of the photo there, can you see what appears to be a couple items with maybe some red on them?
A Yes.
Q Can you draw a circle around them so I know what we're talking -- yeah.
A Right here.
Q And do you know what those were?
A Those are socks.
Q Okay. Did you have an opportunity to examine the area as they -- as they worked through the garbage?
A Yes.
Q Could you tell, based on what you saw, whether or not it appeared that somebody was probably staying there?
A Yes.
Q Do you have an opinion as to that?
A Yes. That somebody was staying there.
Q Okay. And that's based on what?

A Based on the fact that you had an extra pair of socks here, you had a piece of cardboard that looked like somebody was using as a bed, which is common with homeless people to get off the pavement a little bit so they have a little bit of insulation between them and the hard pavement. There was a pornographic magazine, a pack of cigarettes and a pair of slip-on shoes.

Q Okay. You didn't see any other shoes or anything that was found in that area, did you?

A No.

Q Okay. These particular slip-on shoes, do you remember anything particular about them or where they were found?

A I know they were found closer towards the back area, and I know that they had blood spatter inside of them.

Q Okay. Was there anything particular about the way that they were -- the way they were positioned?

A I believe they were neatly together.

Q Okay. As if they were placed there?

A Yes.

Q Okay. Now, I asked you earlier about whether or not the dumpster had been moved.

A Yes.

Q Do you know if anything had been moved in that

crime scene with the exception of the dumpster and maybe the gates to be open, prior to you arriving?

A Yes.

Q Was something else moved?

A Yes. Apparently -- if I recall correctly from the statement of the individual that discovered the body, he had to move a little bit for him to see that there was actually a person's waist there.

Q Okay. And who was that?

A His name was Ricky Star. He had another name but I believe it was -- Ricky Star was one of them.

Q Okay. Have you had an -- Ricky Star, is that different than Richard Shott?

A That's Richard Shott.

Q Okay. But this is the individual that you knew had -- had actually called in --

A Yes.

Q -- the police? All right. And from your questioning of him, you recall that he had indicated that he had to move --

MR. SCHIECK: Objection, what he indicated, Your Honor. It's hearsay.

THE COURT: Sustained.

MR. KEPHART: Well, Your Honor -- Your Honor, he's

already been subject to cross-examination. I'm just going through his testimony again for the -- to allow the officer to describe what he did in reference to the statements that were made.

THE COURT: You can ask him what he did.

MR. KEPHART: Okay.

BY MR. KEPHART:

Q Based on what he told you -- let me get to this -- id you do anything yourself or do you know of any other people that moved anything in there, before the police got there?

MR. SCHIECK: I'm going to object, Your Honor. He is the police.

MR. KEPHART: Before the police. Before anybody else got there. That's what I'm saying. Do you know if there was anyone else in there that moved anything?

THE COURT: Overruled.

MR. SCHIECK: Objection, unless it's to his personal knowledge, Your Honor. Otherwise it's based on hearsay.

THE COURT: The Court will sustain the objection as to lack of foundation.

BY MR. KEPHART:

Q My question is, you had information about -- from Richard Shott --

A Yes.

Q -- and what he had indicated about moving something to get back in there --

A Yes.

Q -- to see the body?

MR. SCHIECK: I object. Your Honor, he's going to state what he wants in --

MR. KEPHART: Judge, that was testified to. That's part of Richard Shott's testimony.

MR. SCHIECK: His testimony is before the jury, Judge. We don't need his out-of-court statements.

MR. KEPHART: Those aren't out-of-court statements, Judge. They were --

THE COURT: Sustained. You may rephrase the question.

BY MR. KEPHART:

Q My question to you is that -- Richard Shott testified in this hearing about when he went in he had to move something in order to see the body. My question of you is, did anyone else tell you that they were in there and moved anything?

A No.

Q Okay. Did you have any information from anyone else prior to you arriving, other than the dumpster being moved, that other things were moved?

A No.
Q Okay. Now, with respect to the victim himself, did there come a point in time that he was identified as Duran Bailey?
A Yes.
Q Okay. And now I --
MR. KEPHART: That's Exhibit Number 16, Your Honor.
BY MR. KEPHART:
Q And I'm showing you Exhibit Number 18 again. That basically is the same photo as back of the photo of 16, is that correct? Kind of fit like that a little bit?
A That's correct.
Q Okay. And so that shows you the back portion of the -- of the enclosure with Mr. Bailey's body here. He's not covered any longer?
A Correct.
Q When you went in and first viewed this, it wasn't like this, is that correct?
A That's correct.
Q He was covered?
A He was covered.
Q Okay. And when I asked you about whether or not anything had been moved and you told me you didn't have

any other information -- I want to show you -- with regards to 19 -- do you see this photograph? Can you see that?
A Yes.
Q You've been a homicide detective for how long?
A A little more than fourteen years. Fourteen and a half years.
Q How many homicides have you investigated?
A Four to five hundred probably.
Q Okay. With respect to this area here, can you tell me if based on your experience, it appears that something's been moved here?
A Yes.
Q Okay. And in reference to Mr. Bailey's body position in 16, that is away from Exhibit Number 19, is that correct?
A That is correct.
Q Okay. So, furthermore, Exhibit Number 30, that's after the trash has been basically moved away?
A Yes.
Q Does that show -- Exhibit Number 19, here, does that show that in the photo as well?
A Yes. That's right over here.
Q Okay. And what do you see on down, lower on the -- on that curb? Lower in -- coming to the bottom of the picture?

A On the curb?
Q Yes.
A You see additional transfer over here.
Q Okay. And then his -- his head actually --
A His head would be over in this area here. With his body extending this way. I believe.
Q You see the drip? There's the blood down here in the lower --
A This part here?
Q Yes.
A Yes.
Q Seen in conjunction of where his head is here?
A Yes.
Q Where would that be in that photo there?
A That would be -- his head would be right here.
Q Okay. So based on what you have observed and what we've talked about, can you tell me whether or not something else had been moved?
A Yes. In that respect, his body had clearly been moved from the corner where it had laid and bled, to its location where it was found by the police and by Mr. Shott.
Q And in the event that -- when his body was moved from the back area, the back corner, what direction would he be -- was there any particular object he would have been

moved towards?
A Towards the dumpster.
Q And that's what's shown in Exhibit Number4?
A Yes.
Q Okay. Do you recall how long it was that you -- or the Metropolitan Police Department was at the crime scene?
A It was all night long, into the morning. I know they were still there finishing up -- we went back to the office as the sun was coming up, and then received a message from them that they had just located the penis there.
Q Okay.
MR. KEPHART: Can I have Exhibit -- 121, I think it is. Yeah, 121. Approach the witness, Your Honor?
THE COURT: Yes.
BY MR. KEPHART:
Q You have to put on your high-powered glasses, Detective. Can you see that from over there?
A I can.
Q Okay. And you testified in reference to a parking structure in Exhibit 118. Can you see that on the screen there?
A Yes.
Q And 121 is an aerial of the Nevada State Bank. Are you familiar with that area there?

A I am.
Q And you see it says -- already on there, it says "crime scene," and then there's like a yellow arrow that goes down there. Is that consistent with what you remember of the crime scene?
A Yes, it is.
Q And the parking structure I'm talking about in 118, is that visible also in 121?
A It is.
Q Can you tell us where that is? Do you mind going over and pointing that out?
A Certainly. This is the entrance to the parking lot here. As you drive straight back, this is going to be the dumpster enclosure with the gates facing that direction. And this white area here is the covered parking.
Q Okay. Just -- I guess it would be just west of that, the parking structure, that area there, do you know what that was at that time?
A A desert lot.
Q Okay. And if you were to -- could you -- was there an access, if you recall, between the parking lot and the desert lot, like a -- like an opening in the wall or anything like that?
A There was not.
Q There was not.

A There was not.
Q What about to the north of the parking lot of the Nevada State Bank, what is that area there?
A This is an apartment complex with a parking area all around in here, and this would be tennis courts in this area here.
Q For that parking -- for that apartment complex?
A Yes.
Q Do you know the name of the apartment complex?
A I don't recall it now.
Q Okay. And was there access through the wall from the Nevada State Bank into the parking -- I mean into the apartment complex?
A No, there was not.
Q Okay.
A There was a low grate for the water to go through but it had metal bars and a person couldn't get through it. Even a small dog probably wouldn't fit through it.
Q Okay. So in order to go to the dirt area to the west, you would have to walk out onto Flamingo or hop the wall?
A Hop the wall or go around, yes.
Q Okay. And in order to go to the apartment complex you would have to go out on to Wynn Road and go north or hop the wall?

A Correct.
Q Okay. Have a seat. Now, you testified that you had interviewed Richard Shott and that he had given you some information about him being in that area. Did you do anything further with reference to Richard Shott -- and let me kind of back up a little bit. Inside the crime scene area, inside the dumpster area, were you aware or did you see any type of footwear impressions?
A Yes.
Q And that was something that was made in blood?
A Yes.
Q And what generally does that tell you?
A That a shoe has stepped in a source of blood and then transferred that blood onto whatever we're seeing it on.
Q Okay. And when you say a shoe, you're not particularly saying that the killer in this particular case would have been the individual that transferred that particular blood?

A No, it's whoever's shoe stepped in the blood and steps on the surface.
Q Okay. Now, you knew that Richard Shott was back in there?
A Yes.
Q And did you do anything with regards to Richard

Shott to determine whether or not he stepped in the blood?
A Yes.
Q What did you do?
A We examined him from head to toe with flashlights to see if he had any blood spatter anywhere on his person. And we examined his shoes to see what they looked like, and the soles, to see if there was any blood that was in there anywhere, and had the crime scene analyst take an impression to be compared.
Q Okay. Were you -- did you find any evidence that he had stepped in any blood or that he had anything on his clothing or on his hands or anything like that?
A None.
Q But he'd actually told you that he had touched the items and looked to see if he saw the individual laying in there?
MR. SCHIECK: Objection. Hearsay, what he told him, Your Honor.
THE COURT: Sustained.
BY MR. KEPHART:
Q Well, based on what he told you, you looked at his hands, you looked at his clothing, you looked at his shoes?
A Yes.
Q Okay. If I was to tell you that he testified here and

said --
MR. SCHIECK: Objection, Your Honor.
THE COURT: You're objecting to the form of the question?
MR. SCHIECK: Yes, Your Honor.
THE COURT: Sustained.
BY MR. KEPHART:
Q Now, how is it that you went about identifying Duran's body?
A We had information that there was a person at the bank that had an account there, that would come and get money, and we also had information from a relative that he had an account at that particular location. And I believe it was through fingerprints that he was ultimately identified.
Q Okay. Do you remember when it was that he was identified?
A I don't remember the exact date. It would be in the coroner's reports.
Q Okay. Did there ever come a point in time where you told the coroner to stop trying to identify who he was?
A I don't recall having a conversation with the coroner. I mean, they're the ones that identify people so usually we wouldn't have that sort of a conversation with them.
Q Okay. Did you ever tell the coroner to stop doing

any investigations?
A No.
Q Okay. Now, during your course of investigation, did there come a point in time where you came into contact with an individual by the name of Diann Parker?
A Yes.
Q Can you tell how that was? How did that occur?
A That would have been later into the morning of the 9th, after we'd been at the scene throughout the night and then left. We learned that she had come to the scene and contacted a patrol officer and was requesting information and wanted to be contacted in case this was perhaps somebody that she knew. We went to her house -- myself, Detective LaRochelle, and Sergeant Manning -- and made contact with her at her apartment.
Q Okay. And based on your conversation with her you were able to determine that she knew that he'd stayed there occasionally?
A Yes.
Q She also relayed to you some information in reference to her and he from a previous incident?
A Yes.
Q Based on what she had indicated to you, did you do anything -- well, let me ask you this: The previous incident

we're talking about had been reported to the Metropolitan Police Department, is that right?
A That's correct.
Q And had an actual detective involved --
A Yes.
Q -- in the investigation of that case?
A Yes.
Q Okay. And based on information she related to you, did you do anything to determine whether or not she was a suspect in this case?
A Yes.
Q What did you do?
A Several things actually. One of which was actually going to her apartment to speak to her and examine her to see if she had any injuries on her that looked like she might have been in some sort of an altercation with somebody. She allowed us to look in her apartment and at her shoes in her apartment, and to speak with her roommate.
Q Okay. And based on that, did you make any kind of determination whether or not she was involved in this altercation?
A It appeared -- there was nothing to indicate she was involved in this altercation.
Q Okay. But she did have some injuries on her?

A From the previous attack.
Q Okay. You also said that she had a roommate?
A Yes.
Q Okay. Did you also talk to the roommate?
A Yes.
Q Was there anything in reference to their demeanor with you that would give you any reason to believe that they were involved in any type of incident like this?
A Not at all. They were both forthcoming and helpful. In fact, she's the one that sought out the police to begin with to make sure we would contact her to try and give us information.
Q That's not something that you're accustomed to in a homicide investigation, by the suspect, are you?
A No, it is not.
Q Okay. Did you also do any kind of investigation to see -- determine whether or not there was any type of blood or anything like that on them?
A Yes. Visually looking at them.
Q Okay. Anything else?
A I believe we looked throughout their kitchen for any edge weapons that might be there to see if there was anything that looked like it had blood on it or could have any involvement, and there as nothing.

Q Anything else?
A We contacted the apartment complex manager to learn of occupants -- of some neighbors of hers that knew of her incident, and tried to get a feel for whether they might be involved in some sort of way. And all the information that we got was that they were hardworking people. And upon checking them further, found them to be without criminal records and consistent with what we were told.
Q And with regards to Diann Parker's apartment, you indicated that you checked the kitchen for knives to see if there was any kind of blood or anything like that.
A Right.
Q What about clothing? Did you look at any type of clothing or --
A We looked at their clothing and at their shoes in the closet.
Q Okay. Clothing they were wearing or --
A Clothing they were wearing and their stack of clothing that they had.
Q Okay. Anything -- was there any laundry that was still around or --
A There was laundry and we did not find anything with blood.
Q And you had been to the scene and saw that there

was quite a bit of blood in this particular case?
A Yes.
Q Other than that, what you just testified to, about what you saw at the scene, talked to Richard Shott, talked to Diann Parker, checked on some fellow acquaintances of hers, I guess, and her roommate, did you have anything -- other information that would help you with the investigation of this case at that time?
A Not just at that time.
Q Now, when -- when the --
MR. KEPHART: I'm showing what's been marked as 259 to defense.
BY MR. KEPHART:
Q When the Metropolitan Police Department is involved in these type of crimes -- investigating these type of crimes -- do you recall specifically in this case if there was other people at the particular scene on that day?
A Yes.
Q Other people other than police personnel? Do you recall?
A Crime scene analysts. If that's what you're talking about.
Q Okay. Were there any press -- was there any press available -- out there at that time?

A I don't remember if they were right there. Normally, the press shows up at our scenes and is kept back behind the tape to limit their --
Q Okay. Well, maybe that's my -- I didn't ask the question -- not right in the scene, but out -- out and about around the edge. Was there press there that day?
A Yes.
Q Matter of fact, when you spoke to Diann Parker, did you learn some information in regards to her knowledge of this from the -- about the press?
A Yes. Her roommate had actually seen some news clips and had told her about it, and that's how she came to realize that something had gone on over there.
Q Okay.
MR. KEPHART: Your Honor, may I approach the witness?
THE COURT: You may.
BY MR. KEPHART:
Q I'm showing you what's been marked as State's Proposed Exhibit 259, and ask you if you could take a look at that?
A Yes.
Q Okay. Are you familiar with that?
A I am.

Q Is it part of your homicide book?
A This is a media release that was completed by Sergeant Manning. That would be the information provided to the press following our -- beginning of the investigation.
MR. KEPHART: Your Honor, I'll move to admit Exhibit 259.
MR. SCHIECK: No objection.
THE COURT: Granted.
(State's Exhibit 259, admitted)
BY MR. KEPHART:
Q Now, what date is it that it is released?
A July 9th, 2001.
Q Okay. And it's talking about July 8, 2001, when you received a 9-1-1 call?
A Correct.
Q Okay. Now, in regards to Exhibit 259, it basically goes through here and tells us where it occurred?
A Yes.
Q You had at that point, an unidentified black male, 5'8", 5'10", 160 pounds, balding dark hair. Tells what he was wearing. Says he suffered trauma to the head and upper body. He was located behind a dumpster, concealed under debris with a dumpster enclosure. And it says anyone that knows the victim's identity or mode of the circumstances

1 surrounding this crime, please contact secret witness.
2 Now, when you went in there you had an opportunity --
3 you actually saw the body -- and you just testified that on a
4 later time they found they penis.
5 A Yes.
6 Q Okay. And so you were aware that the penis was
7 severed from this -- from Mr. Bailey's body?
8 A Yes.
9 Q Okay. And, now, that's not in this media release.
10 A On purpose.
11 Q Okay. Tell me what that means.
12 A In incidents like this when we have something that's
13 extremely unusual, like a severed penis, we're withholding that
14 information to see if we get feedback back from some other
15 direction, if somebody has information. If they don't know
16 about this penis, then they're probably not telling us the truth.
17 If they do know about it -- the only way they're going to know
18 about it is firsthand knowledge because we haven't put the
19 information out.
20 Q Okay. Now, there came a point in time where you
21 actually arrested somebody for this crime, is that correct?
22 A That is correct.
23 Q And is that person in the courtroom now?
24 A Yes.

1 Q Can you tell us where that person is seated?
2 A At the defense table, the second person from the
3 left, wearing the pinkish-colored top.
4 Q Okay. Do you know her name?
5 A Blaise Lobato.
6 Q Okay. And do you recall when it was that you
7 actually arrested her?
8 A On July 20th, 2001.
9 THE COURT: The record shall reflect identification
10 of the defendant.
11 MR. KEPHART: Thanks, Judge.
12 BY MR. KEPHART:
13 Q Now, when you arrest an individual, you're -- you
14 draft an officer's report, is that correct?
15 A We have an officer's report and we have an arrest
16 report.
17 Q Okay. And what's the arrest report? What's the
18 purpose of the arrest report?
19 A The purpose of the arrest report is to establish a
20 minimum amount of probable cause so that when the
21 individual goes into the court process the judge can look at it
22 and see that the crime represented -- being charged, is
23 covered in the elements mentioned in the arrest report.
24 Q Okay. And when you put somebody in jail, does the

1 arrest report accompany that person when it goes to jail --
2 when he goes to jail?
3 A Yes.
4 Q Okay. And the arrest report at that point in time
5 becomes a public document, is that correct?
6 A Yes, it does.
7 Q Okay. And oftentimes has it been your experience
8 that the media then gets that information --
9 A Yes, they do.
10 Q And that's oftentimes additional information than
11 what you just said is given to the media?
12 A That is correct.
13 Q And the first time that the media would get any
14 information involving him -- Duran Bailey's penis being
15 severed, would have been once the arrest report has been
16 made part of this case? Is that correct?
17 A Yes. Once it's made public record.
18 Q And that would have been at least -- sometime
19 either on the 20th of July of 2001 or sometime after?
20 A Correct.
21 Q Now, July 20th of 2001, you indicated that's when
22 you arrested the defendant here, for --
23 A Yes.
24 Q -- for this murder in this case?

1 A Yes, it is.
2 Q Okay. Can you tell me how it was that you got
3 information in reference to the defendant, cause you to follow
4 up and eventually arrest her?
5 A Yes. I had a telephone call in the office from a
6 Lincoln County probation officer that began asking me
7 questions, if we had a case involving someone that was
8 murdered and their penis was severed. And I immediately told
9 them tell me what you know. And she had information that --
10 MR. SCHIECK: Objection to what -- he's going to
11 say what she said, Your Honor. It's offered for what he did
12 next but not for what she said.
13 MR. KEPHART: Yeah, I'm not offering it for the
14 truth. It's already been testified. They can decide that. But I
15 want him to testify as to what he learned from her to lead him
16 to the next step.
17 MR. SCHIECK: That's hearsay, Your Honor, what he
18 learned from her.
19 MR. KEPHART: I'm not offering it for the truth. It's
20 not being offered for the truth. I'm offering it to have the
21 officer explain why -- what he -- what he did. The jury can
22 decide -- she's already testified. They can decide the truth of
23 it. But I'm not offering it from this officer for the truth.
24 THE COURT: It will come in for the limited purpose

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1 of developing the probable cause for the officer to proceed
2 with the arrest and not for any additional purpose. The Court
3 will overrule the objection with that caveat.
4 BY MR. KEPHART:
5 Q What were you told?
6 A I was told that a teacher in Panaca there had been
7 contacted by one of her former students named Blaise Lobato,
8 and been given information that she had cut off a person's
9 penis in Las Vegas.
10 Q And what did you do when you got that information?
11 A I found out what information I could find on Ms.
12 Lobato, gathered up my partner, and drove to Lincoln County.
13 Q Okay. When you say your partner, you're talking
14 about Jim LaRochelle?
15 A Yes.
16 Q Was there anyone else that went with you at that
17 point to Lincoln County?
18 A In a separate car we had Maria Thomas following as
19 the crime scene analyst.
20 Q Okay. Why is it that you asked Maria Thomas to go
21 with you at this point in time?
22 A Because we felt that if there was any evidence that
23 would be located we would want it properly documented right
24 from the very beginning and have it photographed and

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1 collected properly.
2 Q Okay. And where did you go initially when you went
3 up to -- you said you talked to Laura Johnson who is a Pioche
4 probation officer?
5 A Yes.
6 Q Where is Pioche in relationship to Panaca?
7 A Close by.
8 Q Okay. Caliente, have you heard of that as well?
9 A Yes.
10 Q Okay. Were you told in reference to where Blaise
11 Lobato's parents were living at that time?
12 A We had -- we were given an address, and after
13 speaking and learning the story, we contacted the sheriff's
14 department there and had them actually drive us to Ms.
15 Lobato's parents' house.
16 Q Okay. Did you go to -- what was the first place you
17 went when you went up to that part of Nevada?
18 A I believe we went directly to Laura Johnson's house.
19 And then from there, went to the police station to meet with
20 the deputy that took us over.
21 Q Okay. Where was Laura Johnson living at that time?
22 Do you recall?
23 A It would be on her statement.
24 Q Okay. Do you have that with you?

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1 A I do.
2 Q Can you look at it?
3 A Yes. Since it's a small town in Pioche, her home
4 address is a post office box.
5 Q Okay. And that's Pioche?
6 A Pioche.
7 Q Okay. So my question is, do you recall whether or
8 not you went to Pioche or you went to Panaca where she was
9 living? Do you recall?
10 A Are you talking about Laura Johnson or --
11 Q Laura Johnson.
12 A I believe that we went to Pioche, which she has as
13 her home address.
14 Q Okay. And then you said that you used the sheriff's
15 department to take you or --
16 A Yes.
17 Q -- over to the Lobatos?
18 A Yes.
19 Q Where are they located?
20 A In Pioche. Also at a post office box.
21 Q Okay. Now, you -- it indicated that when you spoke
22 to Laura Johnson over the phone, she told you about a teacher
23 named Dixie that had -- was a teacher for Blaise and that
24 Blaise had went to her and told her what she had done?

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1 A Yes.
2 Q Okay. When you went up and contacted Laura
3 Johnson do you recall whether or not you sat down with her
4 and discussed with her what she had talked to you over the
5 phone?
6 A With Laura Johnson?
7 Q Yes.
8 A Yes.
9 Q Okay. And while you were talking to Laura Johnson
10 do you remember whether or not -- you already said it would
11 be in her statement -- is that a taped statement that you took
12 from Laura Johnson?
13 A Yes, it is.
14 Q Okay. In this particular case you took multiple taped
15 statements, is that correct?
16 A That's correct.
17 Q And is it true that one of them particularly came
18 from Laura Johnson?
19 A Yes.
20 Q Now, she didn't have any problem -- you didn't have
21 any concern with her -- or she didn't have any concern with
22 you -- talking to you on tape?
23 A Not at all.
24 Q Now, when you tape somebody -- interview

somebody on tape, can you tell me how is that you -- how do you go about doing that?

A Normally what we do if we're going to take a taped statement from somebody -- and back then it was on tape with a microscope, now we use digital recorders. But, in any event, what we would do is introduce ourselves -- I know who it is and what we're going to talk about. And we'll usually try and sit down if the situation and time permits, and speak to them for awhile to find out a little bit about them, to let them kind of be at ease with us and get some rapport with them so that they're more likely to speak to us. We've kind of found that if you just walk up to somebody and introduce yourself as a police officer, turn on a tape recorder and hold it in front of them, people tend to get a little bit nervous and can clam up and the story can be very short just because they're nervous and they want to have an end to it.

So what we find is that if we actually take the time to talk with somebody for awhile to find out what the information is, we can kind of get an outline of their information that they have, and then say, okay, you've told us this, we'd like to go back with your permission now and take a taped statement from you so we can document it, in your words, what it is that you have to say.

Q Did you do that here with Laura?

A Yes.

Q Did you do that with all your interviews of the individuals that you had in this particular case?

A Yes.

Q Okay. Now, Detective, you indicated that Laura had told you about Dixie, who Blaise had went to?

A Correct.

Q After you spoke to Laura, you just told us that you had the sheriff's department take you over to the Lobatos.

A Yes.

Q Is there any reason why you didn't go talk to Dixie?

A Yes.

Q Why is that?

A Because in speaking with Laura, it was Laura's feeling that if we talked to Dixie --

MR. SCHIECK: Objection. Hearsay, Your Honor.

THE COURT: Sustained.

MR. KEPHART: Your Honor, I'm not offering that for truth also. I'm offering it for --

THE COURT: Counsel approach.

(Off-record Bench Conference)

BY MR. KEPHART:

Q Okay, Detective. Now, you indicated that you -- you went over to the Lobatos. Why is it that you went to the

Lobatos before you spoke to Dixie?

A I was afraid if we talked to Dixie first she would warn Blaise Lobato.

Q Now, there came a point in time that you -- did you actually get to the Lobatos?

A Yes.

Q I'm showing you what's been admitted as Exhibit 182. Does that look familiar to you, Detective?

A Yes, it does.

Q And what is that?

A In the foreground there's a reddish-orangish-colored Pontiac Fiero. That is Ms. Lobato's vehicle. In the background there is a house that is portrayed. That is her parents' residence.

Q Okay. And this is where you went to talk to the defendant?

A Yes, it is.

Q I'm going to show you what's been marked as State's Proposed Exhibit 258, and ask you if you can identify what this is?

A Yes, I can.

Q What is it?

A This is a photograph of Ms. Lobato on the day that I met her and spoke to her the first time.

Q Does this fairly and accurately depict how she looked on the 20th of -- of July of 2001?

A Yes.

MR. KEPHART: Move to admit 238.

THE COURT: How about 258?

MR. KEPHART: 258. I can't read it right.

MR. SCHIECK: Can I ask a couple questions on voir dire, Your Honor?

THE COURT: Yes.

VOIR-DIRE EXAMINATION

BY MR. SCHIECK:

Q Where was that picture taken?

A That would either be -- it's hard to say because booking photos are shown that way and we also have stand-ups taken by ID. So if compared to my photographs that I have from ID, and it shows a front and side view, it's potentially that. But it could also potentially be a booking photo based on position.

Q Was the photograph taken at her house?

A Some were taken at her house and some were taken at the jail.

Q You took facial photographs of her at her house when she was arrested, correct?

A Correct.

MR. SCHIECK: Nothing furthe... I have no objection, Your Honor.

THE COURT: 258 is admitted.

(State's Exhibit 258, admitted)

DIRECT EXAMINATION (Continued)

BY MR. KEPHART:

Q Obviously, before that photo was taken, you had to meet the defendant, is that correct?

A Yes.

Q Tell me about how that went.

A We arrived at the residence with the Lincoln County Sheriff's deputy. He walked up with us and -- if I believe correctly, the garage door was open and he began talking to the younger sister of Ms. Lobato. And she told him and us that Blaise was in the shower and she'd be out in just a minute. And she invited us to step into the living room to wait.

Q Okay. Now, the sheriff with you from Lincoln County, was he dressed in a uniform?

A Yes, he was.

Q And when you work investigations like this, do you wear a uniform?

A No.

Q How do you dress?

A We wear plain clothes. We'll either wear a suit and tie or sometimes more casual without a tie. Just plain clothes.

Q On this particular day do you remember how you were dressed?

A It was plain clothes. Probably not a suit for a drive to Panaca.

Q Okay. And you said that you were allowed to step inside. Did the sheriff go in with you?

A Initially he did.

Q Okay. So who was all there?

A When we first walked into the living room it was the sheriff's deputy, myself and Detective LaRochelle. And then the sheriff's deputy, I believe, stepped back into the other room or the garage with Ms. Lobato's sister.

Q Okay. And where was the crime scene analyst?

A She was waiting outside in her car, down the road.

Q So she followed you as well?

A Yes.

Q All right. Now, you said the defendant here had been in the shower and had come out from the shower?

A Yes.

Q Do you know how long it was that you were waiting for her to -- before she came out of the shower?

A It was not very long. It was probably less than five minutes.

Q Okay. Was there anyone else there besides her and her sister?

A No, not initially.

Q Okay. And what was your initial contact with her? Did you say anything to her? Tell us how that went. What happened?

A Yes. I should also point out, too, that when I say that we're wearing plain clothes, we would also be armed with a handgun and with a badge identifying us as police, on our waist. I would have a leather notebook that is embossed with a large badge on the front, and it says homicide on it. And when Ms. Lobato first came out I introduced myself as a homicide detective from Metro and then introduced my partner. And I told her that we were here to talk to her about what had happened a short time ago in Las Vegas, a few weeks ago, and that I understood that somebody had attacked her.

Q Okay. And what was her response to that, if anything?

A Initially, she didn't start to say anything, and I mentioned to her that her -- her vehicle and her license plate was very distinct. With that, she started to offer that

somebody could have borrowed her car. And at that point I told her that I knew that she'd been hurt in the past and she lowered her head and started crying. And she made the statement that I didn't think anybody would miss him.

Q You hadn't indicated one way or the other whether or not you were investigating a murder, did you?

A No.

Q You did say you were there as homicide?

A As homicide detectives.

Q And you didn't -- you certainly didn't tell her the sex of the individual that was the victim, did you?

A No.

THE COURT: We're going to be breaking at this time. You may step down from the stand.

THE WITNESS: Thank you, Your Honor.

THE COURT: Ladies and gentlemen of the jury, we'll be resuming tomorrow at 11:00 a.m. At 11:00 a.m. please be in the hallway. The bailiff will meet you there to return you to your seats in the courtroom.

To accommodate a scheduling issue, we will be calling a defendant's witness out of order at 11:00 o'clock and then coming back to Detective Thowsen thereafter.

During the evening recess, the Court admonishes you that you are not to talk or converse among yourselves nor

1 with anyone else on any subject connected with this trial.
2 You're not to read, watch or listen to any report of or any
3 commentary on the trial or any person connected with the
4 trial, by any medium of information, including, without
5 limitation, newspaper, television, radio and Internet. And
6 you're not to form or express any opinion on any subject
7 connected with the trial until the case is finally submitted to
8 you.
9 You all have a good evening. We'll see you at 11:00
10 o'clock. The jury may exit at this time.
11 (Jurors recessed at 17:04:32)
12 THE COURT: Is there anything that needs to be
13 made of record?
14 MS. GREENBERGER: Just briefly, Your Honor.
15 We just want to make sure -- 'cause I know the
16 Court mentioned to the jury they may be staying late on Friday
17 night. And we're just concerned 'cause we do have a number
18 of witnesses and we haven't got to put on our case yet.
19 Everyone, of course, can wait and stay in town, and we'll work
20 with that, but we just wanted to give the Court notice that we
21 just want an opportunity to present our case.
22 THE COURT: Obviously.
23 MS. GREENBERGER: That's all.
24 THE COURT: We'll see everybody at 11:00 o'clock

1 tomorrow.
2 MS. DiGIACOMO: Have a good night.
3 THE COURT: You too.
4 COURT ADJOURNED, PROCEEDINGS CONTINUED TO
5 SEPTEMBER 26, 2006
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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.

Lori Lutz
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

CLERK OF THE COURT

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"

JURY TRIAL - DAY 12
VOLUME XII

TUESDAY, SEPTEMBER 26, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS
DEFENDANT'S WITNESS				
Michael Laufer	16/52	36/114	--	--

* * * * * *

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LAS VEGAS, NEVADA TUESDAY, SEPTEMBER 26, 2006

PROCEEDINGS

PROCEEDINGS BEGAN AT 11:07:31 A.M.

(Jurors are not present)

THE BAILIFF: Department II is now in session. The Honorable Valorie J. Vega presiding. Please be seated.

THE COURT: The record shall reflect that we're convened outside the presence of the jury, at counsel's request, in State versus Lobato, under C177394, in the presence of the defendant, together with Mr. Schieck, and the two prosecuting attorneys are present as well.

Who wishes to be heard?

MR. KEPHART: I do, Your Honor, with regards to the witnesses -- however, they have been excluded from the testimony, and I know -- I mean from the trial, and there's one sitting in here now. This gentleman here. I'd ask that he that be excluded during my argument.

THE COURT: Who is the gentleman?

MR. SCHIECK: It's Dr. Laufer, Your Honor.

THE COURT: Okay.

MR. SCHIECK: He's an endorsed expert.

THE COURT: Okay.

MR. SCHIECK: He's our next witness.

THE COURT: The Court's going to ask that he step

1 to the hallway and while he there wait, he not discuss
2 anything that concerns this case.
3 The record shall reflect that he has complied and
4 exited the courtroom.
5 MR. KEPHART: Your Honor, we received an
6 amended notice of defendant's expert witnesses filed August
7 18th of 2006 -- I'm sorry, August 18th of -- yeah, 2006, and, in
8 that, amongst many of the individuals that they noticed, one of
9 them was Michael Laufer, M.D. I think the Court can -- has a
10 copy of that.
11 The -- what they've noticed him of, as an emergency
12 room trauma surgeon, forensic pathologist, with expertise in
13 injury reconstruction, trauma -- traumatic injury and
14 biomedical engineering. What they say he's expected to testify
15 to is regarding the type of instrument wielded by Duran
16 Bailey's assailant, the manner of affliction of injuries, the
17 positioning of clothing at the time of certain injuries based on
18 the blood stains and cut in the decedent's pants, the
19 sophistication of the attack, and the physical dimensions
20 required of the assailant's hands based on the injury patterns.
21 That's the extent of what they've noticed us on.
22 They -- in the interim, they have provided us with
23 three separate reports. One of them is not dated but I assume
24 it came shortly -- in conjunction with the August 18th notice.

1 Then we received a September 4th report, dated September
2 3rd. And then we received, yesterday, a report dated
3 September 24th, and we got it on the 25th.
4 With regards to the report that was given to us
5 yesterday by the defense, there's quite a few additional areas
6 that this expert is claiming he wants to testify with. He's
7 talking about cause of death, the bloody footprints, the time of
8 death, the rigor mortis, the blood drying, information about
9 meth use and alcohol. He has not -- they have not provided
10 us any information on their notice that that was what his intent
11 was to be testifying about. Matter of fact there's other experts
12 that they've noticed that would be testifying regarding the time
13 of death. They haven't given us -- Turvey -- Brent Turvey has
14 been noticed as being a crime scene -- forensic crime scene
15 reconstructionist. And now this gentleman, here, is going to
16 be coming in here and expected to testify, at least according to
17 his report, in reference to multiple areas outside what they
18 notice us in.
19 So I think it's inappropriate. It's similar to what was
20 attempted in a previous trial with George Schiro. And this
21 Court did not allow the defense to allow Mr. Schiro to testify to
22 things beyond what he was noticed in, and the Supreme Court
23 upheld that and found that it was without merit to object -- to
24 argue that.

1 I think this case here already has precedent.
2 And it's interesting that the very defense attorneys in this case
3 are making the same attempt that they were unsuccessful
4 doing last time. This is sandbagging, what they pulled with us
5 here, and provided us with this report at the late hours
6 yesterday. We had an opportunity to look at it last night, and
7 we're making this motion now, Your Honor, to prevent the
8 defense from being able to proffer testimony from this man in
9 reference to the areas of cause of death, time of death, rigor
10 mortis, blood drying, footprints, alcohol effects and
11 methamphetamine use.
12 MS. GREENBERGER: One moment, Your Honor.
13 (Pause in the proceedings)
14 THE COURT: Last week the State had represented
15 to the Court that the State would be resting its case in chief on
16 Monday, so the Court had believed that the State would be
17 concluding on Monday also the defense. Yesterday, Mr.
18 Kephart informed the Court, during Detective Thowsen's
19 testimony when we had a sidebar, with regard to scheduling
20 for today because the defense had the expert coming in from
21 out of state. Mr. Kephart indicated that Detective Thowsen
22 would be the State's last witness in the State's case in chief.
23 So this most recent report you received on what would have
24 been the last day of your case in chief had the examination not

1 gone a little longer than anticipated, it appears?
2 MR. KEPHART: That's correct, Your Honor.
3 MS. GREENBERGER: Your Honor, just a couple
4 things in response. First of all, we noticed Dr. Laufer as an
5 expert as an emergency room trauma surgeon and a forensic
6 pathologist with expertise in injury reconstruction, traumatic
7 injury and biomedical engineering. And at that time, we
8 indicated to the Court that he would testify regarding the type
9 of instrument wielded by Duran Bailey's assailant, the manner
10 of infliction of injuries, the positioning of clothing at the time of
11 certain injuries based on the blood stains and cut in the
12 decedent's pants, the sophistication of the attack and the
13 physical dimensions required of the assailant's hand based on
14 the injury patterns.
15 Second, prior to the first trial of this case of which
16 we didn't handle -- however, we have a notice of expert
17 witness list from the prosecution. In noticing Larry Simms, the
18 medical examiner that testified, all the prosecution indicated
19 was the witness is a medical examiner and is expected to
20 testify regarding the autopsy of the victim. Likewise, Dr.
21 Laufer is a forensic pathologist, and the cause of death, time
22 of death is with the domain -- within the domain of forensic
23 pathology.
24 Moreover, after the prosecution recently put on

1 evidence, as of Friday, with regard to [illegible]tive Ford testifying
2 about the wet and dry footprints, partially wet, partially dry,
3 and introduced evidence yesterday that they believe another
4 individual, not the assailant, was present in the dumpster area,
5 new material has come up which is in the ambit of all the
6 parameters that we previously noticed Dr. Laufer on, and we
7 will be presenting this testimony as an offer to rebut the
8 evidence that the State has presented. We believe it's
9 completely permissible. We noticed him much more
10 exhaustively than Dr. Simms was noticed. And again, like Dr.
11 Simms, he's forensic pathologist in addition to being an
12 emergency room trauma surgeon that has qualified in the area
13 of forensic medicine which encompasses forensic pathology
14 and injury reconstruction.
15 And we have been repeatedly disclosing our Power
16 Point presentation to them, weeks ago, and every time a new
17 dimension is added into the report based on something that
18 has come up during this trial, we have immediately disclosed
19 that to the prosecution.
20 MR. SCHIECK: Your Honor, if I could just add a
21 couple of things that I noted?
22 THE COURT: The State's not arguing that he's not
23 qualified to testify in all of these areas. They're not getting to
24 that issue. They're saying that they weren't noticed under

1 NRS174.234, that he would be called by the defense to give
2 testimony in all of these areas. Only in those areas that are
3 set forth in that amended notice from August 18th of 2006.
4 MR. SCHIECK: Which notice was timely, Your
5 Honor. The reports were provided as soon as they were
6 available, as they became available. The 24th was a Sunday
7 and unfortunately we don't have the home addresses to go to
8 their house and give them a copy of it. We gave them the
9 next day, Monday, the report, that I didn't see until Monday
10 morning because it was transmitted Sunday night to my office.
11 So they were provided everything as soon as we had it. And
12 for them to accuse us of sandbagging or hiding the ball,
13 speaks volumes toward their own ethics in this case.
14 If we just look at Kristina Paulette and the notice
15 that they gave us on Kristina Paulette, who was to testify
16 concerning the area of DNA technology and scientific opinions
17 related thereto. She's expected to testify regarding DNA
18 profiling, analysis and related procedures. Nowhere do I hear
19 phenolphthalein or luminol testimony which they elicited, that
20 wasn't noticed. So if anybody's been sandbagging the case,
21 it's them.
22 They never had a problem with Dr. Laufer until the
23 very last minute. They come in here this morning knowing
24 he's here today, before they say word one. That's what

1 sandbagging is. [illegible] when we say reconstructionist, what do
2 they think that means if it's not time, manner and method of
3 death? He's noticed as a reconstructionist which goes to the
4 entire incident, Your Honor. And they could have called him at
5 any time --
6 THE COURT: No. It says he has expertise in injury
7 reconstruction but then it says he's expected to testify
8 regarding thus and such. And the thus and such didn't include
9 that.
10 MR. SCHIECK: Your Honor, as this case has
11 progressed, there has been additional testimony that was not
12 anticipated, including Mr. Ford on his bloody footprints and the
13 speed of drying, that opened up new areas, and that's the only
14 thing that --
15 THE COURT: Such is the nature of a trial.
16 MR. SCHIECK: Yes, that's true, Your Honor. And
17 we try to give as much notice as we can to the State. And
18 that's all the legislature and the statute envision, is that we
19 give them everything we have when we have it. And that's
20 what we've done. We haven't played hide the ball with them.
21 THE COURT: The record shall reflect that there was
22 no objection during Ms. Paulette's testimony as to her going
23 into areas that were not on the State's notice. This is the first
24 such motion that the Court has entertained in this trial.

1 MR. KEPHART: Judge, just for the record with
2 regards to Ms. Paulette, though -- however, the testimony that
3 she proffered about the phenolphthalein and the luminol, she
4 talked about the effect that those would have on DNA. So it is
5 in conjunction with her expertise in the area of DNA.
6 Besides that point, Your Honor, with regards to my
7 motion -- State's motion here this morning, they did notice us
8 of a Charles Wetley, M.D., medical examiner, and they say that
9 he'd be testifying regarding opinion about the cause and
10 manner of the victim's death and the estimated time of death.
11 And they provided us with his CV in that area. It's interesting,
12 though, because his CV basically would assist or even comport
13 with Dr. Simms' testimony as to the time of death.
14 However, Michael Laufer, now, in this third report
15 -- bear in mind, there was two reports done. And in the third
16 report, we're told now about -- about time of death. It's
17 drastically different than their own medical examiner that they
18 have noticed on, and they say that he's a forensic pathologist.
19 When you look at his CV, there is absolutely nothing in his CV
20 that says he is a forensic pathologist. I haven't addressed that
21 yet, and the Court pointed that out, but I think that it will
22 come to light in any voir-dire question that I may have of him.
23 However, there's all the additional information about
24 the blood drying, he's talking about alcohol effect on time of

1 death, he's talking about rigor mortis, [illegible] talking about the
2 time of death, and he talks about the footprints in this case.
3 All of that is all new information that was never provided us in
4 any of his report until yesterday. And we did receive it in the
5 afternoon, and we were in our case in chief. We were
6 presenting evidence and presenting our case in chief. We
7 were here late last night reviewing this in order to make
8 -- or determine the -- his arguments and be able to be
9 prepared for cross-examination. And as we were looking, we
10 see he had not noticed us of any of these additional areas.
11 I think it's appropriate that he not be allowed to
12 testify in that area -- in these areas that I've pointed out. And
13 --
14 THE COURT: The Court grants the motion. Dr.
15 Laufer, L-A-U-F-E-R, will be permitted to testify in the areas
16 that were properly noticed on the amended notice of witness,
17 filed August 18th of 2006. The ruling's pursuant to
18 NRS174.234.
19 The bailiff may return the jury to the courtroom at
20 this time.
21 Whichever of defendant's counsel is going to be
22 questioning Dr. Laufer may step to the hallway and once the
23 jury has come into the courtroom, may explain the Court's
24 ruling to him before he comes in to give testimony.

1 MR. KEPHART: Your Honor, in light of your ruling,
2 we have not seen what his Power Point is with regard to these
3 other areas. And similar to the opening of the defense, as we
4 had to make an objection at the -- at certain points during
5 that, I don't want to be in a situation where something goes
6 up in front of the board on his Power Point that goes directly
7 to these areas.
8 THE COURT: I didn't know that Dr. Laufer was
9 going to have a Power Point presentation.
10 MR. KEPHART: They've provided us --
11 MS. GREENBERGER: It hasn't been modified.
12 MR. KEPHART: What's that?
13 MS. GREENBERGER: It hasn't been modified. What
14 we provided you is exactly what that is.
15 MR. KEPHART: What we have been given is -- are
16 photographs. And in those photographs -- we've gotten three
17 sets at various stages. And --
18 (Jurors reconvened at 11:24:43 a.m.)
19 THE COURT: The record shall reflect that the jury is
20 being returned to the courtroom at this time and may be
21 seated as they arrive in their seats in the jury box area.
22 Good morning, ladies and gentlemen. We
23 unfortunately had a legal issue arise that we had to address
24 outside your presence.

1 As the [illegible]rt had advised you yesterday, there's a
2 witness that for scheduling reasons is going to be called out of
3 order. This will be the defendant's first witness. Ms.
4 Greenberger has stepped to the hallway to retrieve the witness
5 and will be back shortly.
6 **MICHAEL LAUFER, DEFENDANT'S WITNESS, SWORN**
7 THE CLERK: State your name and spell it for the
8 record, please.
9 THE WITNESS: My name is Michael D. Laufer,
10 L-a-u-f-e-r, M.D.
11 THE COURT: Ms. Greenberger, you may proceed.
12 MS. GREENBERGER: Thank you, Your Honor.
13 **DIRECT EXAMINATION**
14 BY MS. GREENBERGER:
15 Q Good morning, Dr. Laufer.
16 A Morning.
17 Q Could you kindly introduce yourself to the jury and
18 tell them about your formal education?
19 A Sure. My name is Dr. Mike Laufer. I'm a attending
20 physician at Stanford University Medical Center. I used to
21 work at University Medical Center here, as well, when we were
22 opening the trauma center. I'm an emergency physician
23 trauma surgeon. I've been doing that for longer than I care to
24 remember, over twenty-five years. I've been trained in

1 emergency medicine, as well as trauma, advanced cardiac life
2 support, basic life support. I'm an instructor in advanced
3 cardiac as well as basic life support, and advanced trauma life
4 support and basic life support. Lots of what we call merit
5 badges.
6 I also have taken a specific interest in forensic
7 medicine. Have done several hundreds of autopsies. I've
8 treated a hundred thousand patients in my career. Several of
9 them had various injuries -- penetrating injuries, which
10 includes gunshot injuries, stab wounds, overdoses, drug
11 intoxications, drug withdrawal, pretty much the entire gambit
12 of medicine that emergency medicine incorporates.
13 Q What degrees do you have?
14 A I have a bachelor's degree from the University of
15 Colorado which was actually a combined program -- sort of
16 self-created bioengineering program. My degree is actually in
17 molecular cellular developmental biology but I also had enough
18 credits to get degrees in biochemistry and in electrical
19 engineering.
20 Q What is bioengineering?
21 A Well, at the time, it was still being defined. But,
22 fundamentally, it is the engineering approach of systems,
23 mechanics, electronics, electricity, to the body and biological
24 systems.

1 Q Where did you go to medica[illegible]ool?
2 A At Stanford University.
3 Q When did you graduate?
4 A 1985, with an M.D.
5 Q Have you done postdoctoral training?
6 A I have.
7 Q What does that involve?
8 A I completed a residency in emergency medicine at
9 Harbor-UCLA Medical Center which is I guess the little county
10 hospital in Los Angeles. We have five emergency
11 departments. We treat about a thousand patients in twenty-
12 four hours. And then I went back to Stanford and completed a
13 fellowship in trauma and emergency medicine which included
14 flying around in a helicopter doing emergency care. And also
15 did a fellowship in sort of the business aspects of medicine.
16 Q Have you been practicing medicine -- well, how long
17 have you been practicing medicine?
18 A I was licensed in 1986.
19 Q Where were you licensed?
20 A In California, then. Although when I came out to
21 work at University Medical Center when we opened the trauma
22 center here, I was also licensed in Nevada.
23 Q Can you describe the licenses and certifications that
24 you have?

1 A Well, the licenses are fairly straightforward. It's
2 essentially a license to practice medicine and surgery.
3 Certifications are all those merit badges that I mentioned. But
4 I'm also a fellow of the American College of Emergency
5 Physicians, as well as a fellow in both Forensic Medicine and
6 Forensic Examination.
7 Q Can you describe for the ladies and gentlemen of
8 the jury what a "fellow" is and what it signifies and how you
9 obtain that status?
10 A Well, it all starts with an organization which has
11 actually morphed its name. I was I think one of the first thirty
12 members of what at the time was called the American College
13 of Forensic Examiners. That later became the International
14 College of Forensic Medicine and the International College of
15 Forensic Examiners.
16 Fellowship requires licensure as well as being in
17 good standing in all of the other things of being a member of
18 the college, but, in addition, you have to take an examination
19 and you have to be recommended by various other members,
20 that sort of thing.
21 Q What percent -- if you can quantify -- does a fellow
22 signify -- how many people obtain fellow status?
23 A I'm not completely sure of the number. When I
24 became a fellow, it was less than 10 percent of the members.

1 Q So it's a[illegible]gnificant status that you enjoy?
2 A It's certainly the smaller part of the group.
3 Q Are you a base station physician and, if so, can you
4 describe what that is?
5 A Yes. I've actually been a base station physician in
6 both Santa Clara County, San Mateo County, Los Angeles
7 County and in Clark County. It involves giving direction to the
8 paramedics so when they have a particularly challenging or
9 difficult case they make radio contact with the base. Some of
10 you may remember Rescue 51 or Emergency, that television
11 show where they ring up on the little box and nurse sticks [sic]
12 him a call or somebody comes to the box and then they get
13 Dr. Bracken to come over and give further information about
14 starting IVs or what kinds of procedures to perform. So it's
15 essentially medical direction for paramedics in the field.
16 Q In addition to working with paramedics, do you also
17 have an opportunity to work with law enforcement?
18 A Yes. I'm medical director for the Palo Alto Fire
19 Department which involves doing research, doing teaching,
20 going over cases. But I also work with the Santa Clara County
21 SERT team which is like a SWAT team. It's the Sheriff's
22 Emergency Response Team.
23 Q In the course of your career have you specifically
24 assisted law enforcement with regard to the origin and

1 confirmation of injuries?
2 A That's interesting. A lot of the time the law
3 enforcement groups have their own sort of internal experts.
4 Certainly every once in awhile we end up discussing cases, but
5 I can't say that law enforcement specifically has brought me
6 into cases, with one exception. And that is that my wife is a
7 career federal prosecutor, and on a number of occasions they
8 have cases where they ask me to consult and give them
9 direction and ask them how to build their cases.
10 Q So you've been an emergency room surgeon at
11 Stanford for twenty years?
12 A At least. Yes.
13 Q Can you give us an overview of your experience and
14 activities as a consequence of your employment in surgery and
15 autopsy?
16 A Well, luckily as an emergency physician we don't see
17 too many dead people. You know, most of them come in alive
18 at least. Every once in awhile they die in our care. One of the
19 things we always try to do is, you know, do the best to keep
20 them alive. Sometimes on those occasions when we are
21 unsuccessful for whatever reason, we like to know what
22 happened. Some people sort of have the cases end when the
23 body leaves the emergency department. I actually on a
24 number of occasions have followed the bodies and either done

1 the autopsy or assisted in the autopsy, [illegible]der to find out
2 more about what the circumstances of death were.
3 Q So in the course or your emergency room work, you
4 developed an interest in looking behind injuries, and followed
5 the bodies down to autopsy? Is that how your forensic
6 pathology developed?
7 A It actually even predated that. I mean, I can
8 remember when I was fourteen years old going to the
9 Colorado Bureau of Investigation and learning how they
10 examine evidence and how they tag evidence, how they bag it,
11 how they maintain chain of custody, how they microscopically
12 examine forensic evidence. So it really started then, and then
13 continued through -- throughout medical school. I used to go
14 both to the emergency department where I used to just hang
15 out and study, and also to the autopsy suite where I assisted
16 or did probably a hundred autopsies over the course of four
17 years.
18 Q What is forensic pathology? Can you define it?
19 A Well, it's part of forensic medicine. So maybe I
20 should go one step back and sort of say what forensic
21 medicine is. It encompasses multiple specialities, things like
22 forensic psychiatry or forensic psychology, trying to get into
23 the head of the person. And you've probably heard of the FBI
24 having people who will try to get a specification on what sort

1 of person may have committed these crimes. It involves
2 things like forensic accounting, where -- the old adage of
3 follow the money and you'll find the perpetrator comes into
4 effect. You know, people getting divorces may want to find
5 out where all the money is hidden or where it went. So
6 forensic accounting is part of forensic medicine or forensics in
7 general.
8 Forensic pathology is a part of that as well. And that
9 can include everything from looking at injuries and figuring out
10 time of death and figuring out things about blood spatter
11 patterns, figuring out patterned injuries and what could have
12 caused them, and that then morphs into a further subspecialty
13 of injury reconstruction, sometimes failure reconstruction and -
14 - so it's really a very broad sort of range, and different people
15 have different specialties within that.
16 Q Do you have specific training within the area of
17 forensic pathology?
18 A Well, certainly as far as having done several
19 autopsies under direction, learning how to do them, learning
20 how to look at tissue specimens, seeing different kinds of
21 injuries, you know, seeing thousands of different injuries on
22 dead people. But probably more important, seeing, you know,
23 tens of thousands of injuries on people who are still alive,
24 which is something that's a bit different from what your typical

1 forensic pathologi[illegible]oes. Where I can actually talk to the
2 person and say, you know, did you fall down stairs or did you
3 hit this on a jungle gym or, you know, did you get hit with a
4 billy club or a stick or a belt or a -- you know, was this a stab
5 wound from a butcher knife or a kitchen knife or, you know,
6 was it a .38mm, a .9mm, a 40 caliber, you know, what -- what
7 all of those pieces then -- that come together, as well as
8 talking to other people who were at the scene and can give
9 further information.
10 Q In the course of evaluating over a hundred thousand
11 patients, have you had opportunities to examine and contrast
12 when someone comes into the emergency room with a specific
13 injury and tells you it was caused by a specific instrument and
14 actually deciphering the mechanism of injury?
15 A Yes. And in fact I lecture on that topic. One of the
16 important things in emergency medicine is being able to put
17 together the pattern of injury that you see with the story that
18 you hear. As an example, a child comes in who has a broken
19 arm, and they say that they just fell down, and you say, well,
20 you can't get this kind of an injury just falling down, are you
21 sure something else didn't happen, and then you slowly but
22 surely find out that they didn't fall down, they were thrown
23 down, or they fell off -- or out of a second story window, and,
24 yeah, they fell but it was more than just falling down.

1 So we are actually charged with having a fairly high
2 suspicion in certain kinds of cases. And the charge is to be
3 correct. You have to both know when the injury matches the
4 mechanism, because you don't want to falsely accuse someone
5 of abuse when it didn't happen, and you also have to be right
6 when you see something that doesn't match, because it's our
7 -- you know, we are given the responsibility of protecting the
8 patient from further injury if it's -- if the injury is happening in
9 a household or in an environment. We have to take them out
10 of that environment. So --
11 Q Does your biomedical engineering background assist
12 you in that capacity?
13 A Well, I'd say probably all of my training to some
14 degree, helps. I mean, I think that in some ways I look at
15 some of these things a little bit differently than your average
16 physician does because I've had that rigorous engineering
17 training where you look at the specifics of forces and vectors
18 and direction and torque and all of those sort of mechanical
19 physical properties and apply those to tissues and bones and
20 parts of the body. So it's certainly an extension.
21 Q Excuse me for getting you off -- so unlike a forensic
22 pathologist that devotes all of his time to examining
23 decedents, you enjoy practicing on patients as well as
24 attending autopsies?

A Well, that's right. I mean, I[illegible]s in a way it's broader than just looking at the patients who can't tell you the story and having to figure it out. But you can figure out a lot more by doing both. So, you know, in some cases you have a pretty good idea of what happened and then you go and get the rest of the data from the autopsy or from the family or from the paramedics or the police, and you put the whole picture together. Where, you know, sometimes in forensic pathology, you're stick in the dungeon of the autopsy room and then, you know, two-thirds of your time is spent in court giving testimony. So it's -- it's all part and parcel and both are clearly important. But I've had the good fortune to be able to do both.

Q In addition to your work at the hospital, can you tell us what academic appointments you hold?

A Well, I mean, over the years, I've been assistant professor of medicine at University California, San Francisco, and assistant professor of surgery at Stanford. I don't think I had an academic title when I was in Nevada but -- I can't remember.

Q Have you recently been contacted regarding an adjunct teaching position at any other universities?

A Yeah. Well, actually Harvard has been recruiting me to join their faculty in the department of surgery. In order to

give lectures -- they have a new program of satellite education, and they want me to do satellite programs for them, both on some of these sorts of issues as well as on some of the business aspects of medicine.

Q What hospitals are you affiliated with?

A Currently, I think the only hospital is Stanford. But over the years, obviously, UNLV in Nevada. We actually opened up a new hospital called St. Louise in Morgan Hill, California. I was at Mt. Zion and was the medical director at Mt. Zion for a number of years. So --

Q What did your work -- you mentioned at UNLV -- what did that entail?

A We had actually bid successfully and then received the contract to staff the emergency and trauma center. The trauma center was just being built and we needed physicians to essentially work the shifts there. So I would come over and work as an attending physician, supervising the residents and taking care of patients.

Q Over the years have you held other professional positions and major visiting appointments with other agencies?

A You I guess have my CV in front of you. I -- I don't --

Q Yes. If it would refresh your recollection -- would that refresh your recollection?

A Sure.

MS. GREENBERGER: May I approach, Your Honor?

THE COURT: You may.

THE WITNESS: I guess the one that I left out was Pacific Presbyterian where I ran the occupational medicine department, Chinese Hospital where I also worked as an attending physician.

BY MS. GREENBERGER:

Q You mentioned that you were a medical director for the Palo Alto Fire Department. What does that entail?

A In order to provide state of the art paramedic service, at least in California, the paramedics have to function under the license of a physician. So at the basic level, it's the person who the paramedics essentially work under the license of.

In my case, I started working with the fire department in 1980 actually, when I was a first-year medical student. I started doing ride-a-longs with the paramedics, started doing teaching with regard to drugs and injuries and crime scene maintenance and those sorts of things, and was asked by the fire chief, who was appointed, to become the medical director for them, with the expectation that I would be more active. That I would continue to do ride-a-longs, I would be active in education, and, you know, also help them stock

their ambulances with drugs and do all the other things that medical directors have to do.

One of the big pieces is -- you know, paramedics bring patients to a hospital and then the patient sort of gets taken over by the system at the hospital. And when things go right, they point fingers. And when things go wrong, they point fingers. And you need a liaison that can answer the questions and sort of balance some of the finger pointing so that when there are questions of, for instance, why did it take so long to bring this patient who was in this massive motor vehicle accident with all the metal crushed around him -- why did it take twenty minutes to get him from the scene to the hospital? You know -- well, you know, actually it took about nineteen minutes to get the patient out of that crusted crushed pile of metal and then, you know, in about a minute we traveled the three miles to the hospital to get him to you. So it's a matter of dealing with some of those perceptions and making sure that perception and reality match a little bit more closely.

Q Did you also perform or hold a position of medical director with Bayshore Ambulance and San Francisco Ambulance over the years?

A Yes. I'm still medical director for Bayshore Ambulance. Specifically, they have a critical care transport

1 unit and have nurses that staff that cri care transport unit.
2 In order to have a CCT with nurses, the nurses have to
3 function under a physician's license and so I'm the physician.
4 The job entails reviewing calls, acting as a liaison between the
5 hospitals and the ambulance, as well as the receiving and
6 sending facility, and sometimes just answering questions with
7 regard to should we take this patient or not. If we do take
8 him, should we put him on a ventilator or not, can we give him
9 additional sedation because they seem to be jumping around a
10 lot in the back of the ambulance. Those sorts of questions.
11 And it was a similar situation with San Francisco Ambulance.
12 Q Are you board certified by the American College of
13 Emergency Medicine?
14 A Yes.
15 Q Are you board certified as a forensic medical
16 examiner?
17 A As well as a forensic -- well, this is sort of what I
18 was talking about earlier. Board certified in both forensic
19 medicine and as a forensic examiner.
20 Q And that encompasses the field of forensic
21 pathology, correct?
22 A Correct.
23 Q And also injury reconstruction?
24 A Yes.

1 Q Have you achieved awards and honors over the
2 years? For example, Tau Beta Pi Engineering Honor Society?
3 A Well, I was -- yeah, I was Phi Beta Kappa and Tau
4 Beta Pi. Tau Beta Pi is sort of the engineering equivalent of
5 Phi Beta Kappa.
6 Q And you have received departmental honors in
7 various fields of molecular cellular developmental biology?
8 A Yes.
9 Q Have you authored articles for publication?
10 A Yes.
11 Q What subjects would those be?
12 A Well, I think one of the first ones was with regard to
13 the autopsy which is -- actually goes way back. But it -- it was
14 an article that supported the very difficult but necessary part
15 of medicine which is, you know, when you're a medical student
16 or a resident or an attending physician, and something goes
17 wrong, you have a requirement to figure out what that was,
18 because otherwise you'll just make the same mistake again.
19 This was an article about how residents and medical
20 students can gently but persuasively convince families to allow
21 an autopsy so that they can learn from all of the things that
22 happened both in terms of pathology and disease as well as
23 medical treatment.
24 Q Have you also written chapters in books?

1 A Yes.
2 Q In addition to medicine and the work you do with
3 the hospitals and the paramedics and fire department, have
4 you patented any inventions?
5 A Yes.
6 Q How many?
7 A I have approximately two hundred patents pending,
8 just short of a hundred issued.
9 Q Can you give us a sample of what types of
10 inventions?
11 A Well, one of the first companies that I started is a
12 company that's public now. It's called Venus. One of the
13 procedures that people had was called vein stripping, where if
14 you have a varicose vein that's painful or one that you don't
15 like how it looks, they literally go in with a device that looks
16 like a wire, and attach something on the end of it and then
17 literally rip it out of your leg. That's called vein stripping. And
18 then, you know, they hold a bunch of packs on it for awhile
19 because it bleeds a lot and it takes several weeks to recover
20 from it. And I said, you know, this is sort of barbaric, there's
21 got to be a better way to do it. So I invented a catheter that
22 you can put in through a very small needle puncture at the
23 ankle, after anesthetizing it, and then you put energy from
24 radio frequency generators into that vein, the vein heats up

1 and closes off, and instead of having to rip it out, you just pull
2 the catheter gently down through the vein, it closes the vein
3 and you're back to work the same day in some cases, or the
4 next day.
5 Q Do these patents that you've invented -- are they for
6 all different parts of the body and all types of different injuries
7 and diseases?
8 A Let's see, I've got a vein system, a asthma system,
9 an emphysema system, urinary incontinent system. So I -- I
10 actually literally have one of those visible man sort of skeleton
11 things on the back of my door and I look at, okay, I haven't
12 done anything there yet, why don't we think about something
13 for the heart or something for the lungs or something for the
14 other areas. So it's -- I haven't done anything twice yet except
15 the lungs.
16 Q Have you developed a number of nonprofit and
17 profit entities to raise money for medical purposes?
18 A As far as I know, they're all for profit. They're all
19 companies. Actually for about a ten-year period, I was with a
20 venture capital firm called MedVentures, and eight of the
21 companies that I started, I started essentially while I was
22 there, and they funded them and got them to a certain point
23 and then we raised money from other venture capitalists and,
24 in a couple cases, from the pubic markets as well.

1 Q Have you previously qualified as an expert in
2 forensic medicine?
3 A Yes.
4 Q Have you previously qualified as an expert in injury
5 reconstruction?
6 A Yes.
7 Q Have you given lectures, seminars and oral
8 presentations in those areas?
9 A Yes.
10 Q If you haven't already, can you further describe your
11 expertise in injury reconstruction?
12 A Well, I'll expound a little bit in order to give just a
13 little bit more flavor, if you will. But when there are certain
14 kinds of injuries, you know, it's sort of incumbent upon us to
15 figure out what caused them, as I spoke about earlier. I've
16 sort of taken it a step further, which is to say I've taken
17 various skeletal parts, you know, upper parts of the arm, lower
18 parts of the arm, same with the legs, same with the ribs, same
19 with the head, same with the neck, and actually done testing
20 to determine how much force and which direction it takes in
21 order to injure those kinds of parts.
22 One of the other things that we see frequently is
23 lacerations. So how much force does it take against a sharp
24 edge of a table, for instance, to get a laceration of the

1 forehead versus the check versus the arm. You know, these
2 are all things that come up because -- you know, one of the
3 cases that I was involved with was a 6' tall model who, you
4 know, one person said was sitting on a stool and was drunk
5 and fell off the stool and got a laceration of the forehead, and,
6 you know, other witnesses said that actually what happened
7 was this guy came and said you're in my chair and pushed her
8 out of the chair and she got a laceration. So the question was,
9 could she fall off the chair and get the laceration. And you do
10 the calculations knowing how much force it takes to get that
11 kind of a laceration and you find that in fact she had to be
12 pushed. She couldn't have fallen. So it's that sort of thing.
13 MS. GREENBERGER: Your Honor, at this time we
14 would move to qualify Dr. Laufer in the area of forensic
15 medicine which encompasses forensic pathology, and
16 specifically the field of injury reconstruction, traumatic injury,
17 biomedical engineering.
18 MR. KEPHART: May I take him on voir-dire, Your
19 Honor?
20 THE COURT: Yes.
21 MR. KEPHART: Showing what's been marked as
22 State's Proposed Exhibit 260 to defense.
23 THE COURT: 260?
24 MR. KEPHART: Yes. May I approach, Your Honor?

1 **VOIR-DIRE EXAMINATION**
2 BY MR. KEPHART:
3 Q Doctor, I'm showing you what's been marked as
4 State's Proposed Exhibit 260. Do you recognize what that is?
5 A It looks like a copy of my curriculum vitae.
6 MR. KEPHART: Your Honor, I'll move to admit
7 State's Proposed Exhibit 260.
8 MS. GREENBERGER: No objection.
9 THE COURT: Granted.
10 (State's Exhibit 260, admitted)
11 BY MR. KEPHART:
12 Q Doctor, you have testified here, just now, in
13 reference to your qualifications that you are an emergency
14 room trauma surgeon?
15 A Yes.
16 Q And you've been doing that for how long now?
17 A About -- I started my training in 1980, so -- I was
18 licensed in 1986, finished my residency in 1988.
19 Q Okay. So as a actual trauma surgeon -- or doing
20 trauma surgery and emergency type of medical procedures,
21 was in, according to your CV, 1988?
22 A Actually as an emergency physician, yes.
23 Q Okay. And that was at Stanford University?
24 A I did my residency in Los Angeles.

1 Q Okay. And when you became licensed as a doctor,
2 when was that?
3 A 1986, 1987.
4 Q Okay. So in 1983 you weren't a doctor at that time
5 but you were giving advanced cardiac life support instructions
6 at that time?
7 A Correct. I was a medical student.
8 Q Okay. And your CV's pretty full with regards to life
9 support instructor, trauma life support provider, basic trauma
10 life support instructor, pediac advanced life support provider,
11 certified base station physician, Los Angeles -- is that what
12 we're -- when you testify about that, you're talking about --
13 like you were using Engine 51, that movie Engine 51 -- you're
14 at a base and somebody like a paramedic or emergency
15 medical individual out at a scene would call in and talk to you
16 and you would give them instructions?
17 A Correct. Yes.
18 Q Like when to start IVs and maybe put a supine
19 board on him or put something around his neck or --
20 A Right.
21 Q -- to support his head? Okay. And you said that in
22 1992 you were board certified as American College of
23 Emergency Medicine. Is that correct?
24 A I don't think I said 1992 but that's right.

1 Q Well, that's on your -- on you
2 A Yes.
3 Q Okay. And the American College of Emergency
4 Medicine -- you said that you were kind of part of that when
5 you got started? Is that right?
6 A I'm not sure exactly what you're asking.
7 Q Well, you said in the beginning -- 'cause they were
8 asking about your fellowship, what the percentage was, and
9 you said that you kind of started with this program. You
10 started with them. Is that not true, that you didn't help start
11 them?
12 A I don't think I said that I started the American
13 College of Emergency Physicians. I think what I said was that
14 I was one of the first thirty members -- a charter member of
15 the American College of Forensic Medicine.
16 Q Okay. So, but with regards to what's required to
17 become an American College of Emergency Medicine
18 individual, you have to be a licensed doctor? Is that right?
19 A Yes.
20 Q And you have to do what else?
21 A In the case of that, you have to do a board
22 certification process which involves a written examination as
23 well as an oral examination. And you have to do a residency.
24 And be certified by your residency program as being qualified.

1 Q Okay. Then you say that you're a fellow of the
2 American College of Emergency Physicians. Is that the same
3 program?
4 A It's different actually. In order to become a fellow,
5 you have to be an academic. Essentially you have to write
6 papers, and you have to be in an academic institution and --
7 Q Same program though? Same people, American
8 College, I mean, that's -- if I was looking at that --
9 A It's actually different. The board is the American
10 Board of Emergency Medicine or ABEM. And the fellowship is
11 through the American College of Emergency Physicians. So it
12 is two different organizations.
13 Q Okay. And then there's national advanced life
14 support provider. And then fellow -- American College of
15 Forensic Medical Examiners. Okay. And then you said you
16 were affiliate with the faculty of the Northern California basic
17 trauma life support, California medical license in 1987. And in
18 1990 you got your Nevada medical license?
19 A Correct.
20 Q And then you were talking about UNLV Hospital. Is
21 that -- you're talking about here in Las Vegas?
22 A Yes.
23 Q Okay. UNLV Hospital, would that be the same as
24 the UMC Hospital?

1 A Yes.
2 Q University Medical Center. It's not University of
3 Nevada Las Vegas Hospital, right?
4 A You're right.
5 Q Okay. And I asked you about emergency room
6 trauma surgeon and you said you were. Are you also a
7 forensic pathologist?
8 A I am not, per se, a forensic pathologist, no.
9 Q Okay. Do you know any reason why we would have
10 been told that you were a forensic pathologist?
11 A Sometimes people get caught up in the idea that
12 forensic medicine involves forensic pathology, as I was saying
13 earlier.
14 Q Okay. So you're not a member of the American
15 Board of Pathology?
16 A Correct.
17 Q And so you wouldn't have been involved in a five-
18 year residency requirement in pathology?
19 A Correct. Actually when I was training, it was a
20 three-year requirement. It's changed now. You have to do
21 two years of primary care which obviously I did do.
22 Q And then three years --
23 A And then three years of pathology.
24 Q Okay. And then you have to do a year of fellowship

1 in forensic pathology? Correct?
2 A To be boarded in forensic pathology, yes.
3 Q And you haven't done that?
4 A Correct.
5 Q Now, you say that -- in your curriculum vitae, that
6 from 1999 to present, you were the medical director for
7 California EMS Academy. Is that Emergency Medical Service
8 Academy or something?
9 A It's actually a paramedic school. Right. So it's
10 California Emergency Medical Services Academy.
11 Q Similar to -- I mean, you've kept your line of
12 expertise similar to the base station position type of -- where
13 you're helping or working with emergency medical technicians?
14 A Yes, that's certainly part of what I do.
15 Q Okay. And 2001 you were the medical director for
16 the Bayshore Ambulance. 2005 to the present you're medical
17 director of the Palo Alto Fire Department.
18 A Correct.
19 Q And you indicated in your curriculum vitae that that's
20 actually an administrative responsibility in all three of those --
21 except -- I'm sorry, Palo Alto Fire Department, Bayshore
22 Ambulance and San Francisco Ambulance. You've had
23 administrative positions in them?
24 A That I have administrative responsibilities, yes.

1 Q That's like making sure there iough staff to
2 maybe man the phones when the EMTs are calling in or
3 enough EMTs or --
4 A Yeah. Actually, in my case, it's everything from
5 lecturing -- I give approximately twelve lectures a year. I do
6 an autopsy lab actually for the paramedics and show them
7 injuries and reconstruction, as well as how to place lines, IVs,
8 chest tubes, that sort of thing.
9 Q Doctor, do you do -- in the autopsy labs, are you
10 given -- 'cause in your curriculum vitae you talk about cadaver
11 classes and that. In your autopsy labs are you given a
12 cadaver to use basically as an exhibit to show individuals,
13 EMTs and paramedics --
14 A Yes.
15 Q So you're not actually doing an autopsy in those
16 particular settings, are you?
17 A Well, actually we do. Because we do a number of
18 things to them and then we do the autopsy afterward in order
19 to show what those things that we did to them, did to them.
20 Q Is this something -- is it -- pardon my words, but is
21 it a fresh cadaver? Meaning that no one else has done
22 anything on it.
23 A Yes.
24 Q Okay.

1 A Yeah. In fact, it's fresh frozen, specifically.
2 Q And are those cadavers that are provided to you,
3 individuals that have been subject to murders?
4 A Not in those cases, at least not as far as we know.
5 Q Because that would be more in tune with what a
6 forensic pathologist would be looking at?
7 A Correct. Or a coroner. Even more specifically,
8 coroner medical examiner.
9 Q Okay. You -- you've indicated that you have about
10 200 patents on different devices that help us medically, and
11 you went through a bunch of those. Okay. How long have
12 you been involved in that?
13 A Since -- well, I joined MedVentures in 1993 so that's
14 when it started. But I had a number of inventions probably
15 dating back to the mid-80s.
16 Q Okay. Isn't --
17 THE COURT: I want to make a clarification. I
18 understood the prior testimony to be about a hundred patents
19 and less than 200 pending patents?
20 THE WITNESS: That's correct.
21 MR. KEPHART: Is that right? Okay. I heard 200.
22 So I heard the number but just heard it out of --
23 THE WITNESS: Sure. Yeah. It's -- I think the
24 actual number now is 86 or 88 issued in the U.S. There's

1 another eighty-so... outside the U.S. as foreign patents, sort
2 of going country by country, and then there's another 120 or
3 so, plus or minus, that are pending but haven't had a final
4 office action yet.
5 BY MR. KEPHART:
6 Q And these are devices that will help in medical
7 treatment of individuals?
8 A Diagnosis, treatment -- but, yes, generally they are
9 things that some physician presumably would buy to use on a
10 patient that had some sickness or injury.
11 Q Okay. And you said that your primary activity since
12 1983 involved the creation of the new medical devices to treat
13 patients with common illnesses. Is that still true?
14 A Hard to know what primary activity is because I do a
15 lot of different things. But certainly most of my income derives
16 from doing those things.
17 Q I was just using your words, Doctor. Okay.
18 A Sure.
19 Q Also, you have indicated on direct by the defense
20 attorney, that you are published. You've been involved in a lot
21 of -- a lot of -- you've written chapters, you've written
22 publications. Is that true?
23 A Yes.
24 Q Okay. With respect to your patents and the ones

1 pending, you indicate in your CV -- and I need to ask you why
2 you do this -- you wrote in here, "My work has been the
3 foundation of at least 50 scientific publications." Is that right?
4 A Yes.
5 Q Then your next line is, "I have asked that my name
6 not be listed on these publications in order for the work to
7 stand on its own without hampering its commercial or scientific
8 strength." What do you mean by that, Doctor? Do you mean
9 that if you -- if your name shows up, it's going to affect the
10 publication? Is it going to make it less credible? Is it going to
11 make it more credible? Is it going to affect your reputation?
12 What? What does that mean?
13 A Yeah.
14 Q Is that a fair question though?
15 A It's a fair question. In 1993 when I joined the
16 business world, it was explained to me that having the name
17 of a company on a scientific publication reduces its credibility.
18 And that because I was sort of the founder, in a company
19 sense, that when we had a choice between having the world's
20 experts in pulmonology, in respiratory medicine, in neurology,
21 in neurosurgery, in neurology, writing papers, that they would
22 like the full academic credit, if you will, for those papers, even
23 though in many cases I was the one that wrote the papers. So
24 I pulled back into the background and said, great, go get your

1 academic credibility, and I'm happy to you with that
2 because it helps the company succeed as well.
3 Q That's kind of what you mean also on the report of
4 clinical activities, you say "I have tried to keep a low profile
5 and have shunned the spotlight in favor of the clinical
6 investigators who will make the products commercially
7 successful?"
8 A Correct.
9 Q So you've stayed in the background?
10 A Right.
11 Q Now, you've indicated that -- I remember the
12 defense had asked you if -- do you have any specific training
13 in forensic pathology, and you quite -- you didn't quite answer
14 that question. You kind of went around and said, well, you
15 know, forensic pathology also involves forensic medicine. My
16 question to you, here, is not what it involves. My question is
17 do you have specific training in forensic pathology?
18 A Yes.
19 Q And what is that?
20 A Well, I trained with some of the probably better
21 known names. Tom Noguchi, the folks at the Colorado and
22 California Bureaus of Investigation. With the people who ran
23 the autopsy lab, the anatomic pathologists, as well as the
24 histological and psydological [sic] pathologists. So I spent

1 years learning from them how to do autopsies, how to look at
2 tissues, how to look at injuries, how they look at things, and,
3 you know, I think they would say today that they've also
4 learned from me.
5 Q You also said that -- I think you said from a very
6 young age -- I believe you used the age of 9?
7 A Fourteen.
8 Q Fourteen. That you liked looking at these kind of
9 areas and you were interested in it -- and that was in the area
10 of forensic medicine, I think, when they were asking those
11 questions. And my question to you, is, if you liked it ever since
12 you were fourteen years old, why haven't you specialized in
13 forensic pathology?
14 A Yeah. I was heavily recruited by the pathologists, as
15 well as the folks at the crime labs who wanted me to do
16 exactly that, but I actually like taking care of live people too.
17 So that was really the reason. There were a lot of people
18 wanting me to go into neurosurgery as well, but I decided
19 having a nice general speciality like emergency medicine was
20 the place where I got to do all sorts of things.
21 MR. KEPHART: Court's indulgence, Your Honor.
22 THE COURT: Yes.
23 MR. KEPHART: A couple more questions, Your
24 Honor.

1 BY MR. KEPHART:
2 Q Can you tell me the difference between forensic
3 pathology and forensic medicine?
4 A Well, forensic pathology is sort of part of forensic
5 medicine. As are a bunch of other specialities, as I
6 enumerated earlier. So forensic pathologists work with the
7 accident reconstructionists and the injury deconstructionists
8 and if it works the way it's supposed to, they all put the picture
9 together in order to get the whole picture.
10 Q Okay. You would agree that a cardiac specialist
11 would be part of medical doctor?
12 A Correct.
13 Q So in the big picture, forensic pathology is part of
14 forensic medicine?
15 A Yes.
16 Q But forensic pathology is a specialization in forensic
17 medicine?
18 A Yes.
19 Q Kind of like a cardiac doctor in medicine?
20 A Right. Or even, you know, the anatomic pathologist
21 versus the forensic pathologist, where an anatomic pathologist
22 may do the autopsies for people who die in a hospital but the
23 forensic pathologist because -- you know, let's face it, they
24 spend half their life testifying in court -- have that as part of

1 their speciality as well, and they're looking at bodies who die
2 generally due to some sort of a unexpected event as opposed
3 to perhaps, you know, a medical event.
4 Q Okay. Now, you also testified that you've done -- I
5 think in one part of your testimony you said over a hundred
6 autopsies in four years. And I think you said over a period of
7 your career, about 200 autopsies? Is that right?
8 A Round numbers. Two to three hundred, somewhere
9 in there.
10 Q When you were contacted by the defense to testify
11 in this case and provide a curriculum vitae, you knew that this
12 involved a murder case, is that correct?
13 A Yes. I think at that point I -- I knew a lot about the
14 case.
15 Q Okay. And do you know why you didn't put in your
16 CV that you -- that you've conducted any autopsies? Your
17 curriculum vitae.
18 A I think when I was asked for a CV, I provided the CV
19 that was the most recent CV I had. So I didn't modify it or
20 change it for the purposes of the trial.
21 MR. KEPHART: Your Honor, at this time I'm going
22 to challenge Dr. Laufer in reference to the notice of him being
23 a forensic pathologist.
24 THE COURT: The motion pending that Ms.

1 Greenberger brought was for him to b[illegible]epted as an expert
2 in forensic pathology, is the Court's recollection. That that was
3 the motion brought before Mr. Kephart asked to take the
4 witness on voir-dire.
5 MS. GREENBERGER: That, and the field of injury
6 reconstruction which would both be encompassed by forensic
7 medicine of which he is board certified.
8 THE COURT: Is your motion to accept him as an
9 expert in forensic medicine?
10 MS. GREENBERGER: Which would encompass
11 forensic pathology and the field of injury reconstruction.
12 MS. GREENBERGER: May I respond?
13 THE COURT: Yes.
14 MS. GREENBERGER: Your Honor, my understanding
15 of the standard for qualification is that he has some expertise
16 in the field above and beyond what is possessed by the
17 average juror. And by that standard, we believe this witness is
18 well qualified in both of these fields of forensic pathology and
19 injury reconstruction, which are both encompassed in the field
20 of forensic medicine. He's qualified a number of times in these
21 areas.
22 THE COURT: The Court will grant the motion to
23 accept him as an expert in the area of forensic medicine
24 encompassing injury reconstruction and forensic pathology.

1 MS. GREENBERGER: Thank you, Your Honor.
2 THE COURT: At this time we'll be taking our lunch
3 recess and resuming at 1:30. You may step down from the
4 stand until that time.
5 Ladies and gentlemen, at 1:30 please be in the
6 hallway and the bailiff will return you to the courtroom.
7 During the recess you're admonished not to talk or converse
8 among yourselves nor with anyone else on any subject
9 connected with the trial. You're not to read, watch or listen to
10 any report of or commentary on the trial or any person
11 connected with the trial by any medium of information,
12 including, without limitation, newspaper, television, radio and
13 Internet. And you're not to form or express any opinion on
14 any subject connected with the trial until the case is finally
15 submitted to you. The Court's in recess till 1:30.
16 (Court Recessed at 12:17:20 p.m., until 2:26:17 p.m.)
17 (Recording Malfunction)
18 THE BAILIFF: Department II is again in session.
19 Please be seated.
20 THE COURT: The record shall reflect that we are
21 resuming trial in State versus Lobato, under C177394, again in
22 the presence of the defendant and her three counsel, the two
23 prosecuting attorneys, the ladies and gentlemen of the jury,
24 and the defendant's first witness, Dr. Laufer, who remains on

1 the stand under [illegible].
2 The court recorder has advised me that what we did
3 since coming back from lunch got recorded up until the last
4 bench conference when Mr. Kephart asked to approach the
5 bench, that that did not get recorded, and also the Court's
6 reading of the admonishment to the ladies and gentlemen of
7 the jury did not get recorded.
8 So the Court makes the record at this time that the
9 admonishment was given to the jury at the last recess, the
10 same admonishment that the Court has given throughout the
11 trial was given. And we're proceeding forward, and Mrs.
12 Greenberger may resume.
13 MS. GREENBERGER: Thank you, Your Honor. May I
14 approach the Clerk?
15 THE COURT: You may.
16 MS. GREENBERGER: Thank you.
17 **DIRECT EXAMINATION (Continued)**
18 BY MS. GREENBERGER:
19 Q Dr. Laufer, before we broke, you were discussing
20 that it was your opinion that scissors may have inflicted the
21 injuries in the first photograph we're looking at. Is that
22 correct?
23 A Yes.
24 MS. GREENBERGER: May I approach the witness,

1 Your Honor?
2 THE COURT: Yes.
3 BY MS. GREENBERGER:
4 Q Showing you what's been marked as Defense
5 Proposed Exhibit CCCC. Do these appear to be scissors?
6 A They do.
7 MS. GREENBERGER: Your Honor, could we move
8 for admission of the scissors into evidence at this time?
9 MR. KEPHART: Could I see them?
10 THE COURT: Yes.
11 MR. KEPHART: No objection, Your Honor.
12 MS. GREENBERGER: Thank you.
13 THE COURT: Granted.
14 (Defendant's Exhibit CCCC, admitted)
15 MS. GREENBERGER: May I approach the witness?
16 THE COURT: You may.
17 BY MS. GREENBERGER:
18 Q Can you demonstrate for the jury how these scissors
19 were used to inflict the injury which you described?
20 A Well, there are two points, and if they were partially
21 closed, maybe partially open, either held like this or held in the
22 fingers like this, in sort of a stabbing type motion with the
23 thumb being up and striking the thumb.
24 Q And can you describe for the record since the

1 recorder can't pick up the motions you [illegible]aking, which hand
2 you were holding it in and the --
3 A It sort of doesn't matter really because the defensive
4 injuries that we have here are on the right hand, and the
5 assailant could have been holding them either in the left or the
6 right hand in order to cause these injuries.
7 Q Is it your testimony that the edges of those scissors
8 would be consistent -- consistent with the injury to the thumb?
9 A Not necessarily the edges. I think these were
10 caused more by the tips. And these scissors actually have
11 fairly rounded tips so it's more likely that the scissors that
12 caused this injury were slightly more pointed.
13 Q Is there anything else significant about this
14 photograph?
15 A Only as we described.
16 Q Showing you what's been marked as -- and admitted
17 as Exhibit OO. Can you describe what this is and the
18 significance to you?
19 A This is OO?
20 Q Yes.
21 A So this is again the right thumb. This is now the
22 back of the thumb, again, showing the area between the
23 furthest-out knuckle and the closer knuckle. And what this
24 shows is actually two injuries, one here and another here. And

1 these actually look as though they are more linear, meaning
2 that they have more of a straight character here and here.
3 There's also a bit of a -- a very superficial laceration where I
4 put that last line, right here. And those indicate that the
5 person who was being attacked may have put their thumb in
6 between the scissors and actually caused these injuries now
7 with the edge of the scissors as opposed to the point.
8 Q So you believe that this injury is well -- appears to
9 have been made by a scissor blade?
10 A It's consistent with that, yes.
11 Q Is it consistent with a knife?
12 A It could be although what would make it easier to
13 separate the two, would be seeing the other side of the
14 thumb. Unfortunately that was not photographed.
15 Q Is there anything else significant with this picture
16 with regard to bleeding-type injury?
17 A There does appear to be hemorrhage in both of
18 these lacerations indicating that it's most likely that they
19 preceded death.
20 Q Can you tell whether this injury was inflicted while
21 the decedent was still conscious or not?
22 A It is most likely that he was conscious because it
23 requires some active movement of the hands in order to fend
24 off blows. So they may not have been completely conscious

1 but at least conscious enough to localize a threat and then
2 attempt to defend against it.
3 Q Do you have any opinion how this injury was
4 caused?
5 A Only as I've indicated already.
6 Q Anything else significant about this photo?
7 A No.
8 Q Showing you what's been marked and admitted as
9 Defendant's RR. Can you tell the ladies and gentlemen of the
10 jury the significance of this photograph?
11 A Obviously I apologize for the graphic nature of the
12 photograph. But there are actually several things going on, so
13 let me first talk about the things to exclude. This is -- all of
14 these little areas here that I've circled, are areas where the
15 skin is breaking down. These are all due to the early stages of
16 decomposition.
17 Q Is that called slippage?
18 A Yes. There is also discoloration in this area. Again,
19 without biopsies or histology, difficult to say if that's
20 hemorrhage or if it's just the way his skin is colored. But it
21 could be -- it could be suggestive of a bruise.
22 Q Have you had an opportunity to review the histology
23 slides taken in this case?
24 A I have, yes.

1 Q And was there any histological slides of this
2 particular area?
3 A The slides I reviewed were not marked as to from
4 where they were taken. There were some histological sections
5 of skin but they didn't say where they came from. So I don't
6 know if there was any section from this particular area or not.
7 Then there are these linear sort of areas where the skin
8 has been opened. They appear to be of a similar depth and
9 they appear to be fairly continuous with one another, although
10 as you as see from the two lines, it may be that the first is
11 where I drew the first line and another is where I drew the
12 second line. This is very similar to the kinds of injuries that we
13 see which we call straddle injuries where someone comes
14 down on a fence or someone comes down on a bucking bull,
15 that sort of thing, and it actually causes the skin to split open.
16 It's also consistent with the seam of a pair of pants when
17 someone gets kicked if they're not wearing underwear.
18 Q Have you seen this type of injury in the emergency
19 room?
20 A Several times. Several hundred times probably.
21 Q Is this consistent with a blunt force impact?
22 A Taken together with potential area of bruising here
23 and splitting of the skin, it is consistent with something like a
24 kick or a fall onto a rounded object sort of like the toe of a

1 foot.
2 Q Can you describe for the jury what a blunt force
3 injury is?
4 A It's easiest to describe by saying what it isn't. So a
5 stab or a cut or a gunshot wound would be considered
6 penetrating or lacerating or incising injury, and this is due to
7 force from something that isn't concentrated in one area. It's
8 actually more of a diffuse force.
9 Q We've heard testimony that this injury would be
10 consistent with a knife. Do you agree or disagree?
11 A I think the testimony you're referring to -- and
12 correct me if I'm wrong -- was that it was multiple slashes with
13 a knife.
14 Q Correct.
15 A And it's very difficult to get to different depths of the
16 -- or to the same depth of the skin with multiple slashes of a
17 knife. You tend to go some deeper, some more superficial.
18 It's certainly possible but it's less likely that that's the
19 mechanism.
20 Q Do you recall if you reviewed evidence about
21 whether the decedent in this case had underwear on?
22 A I did not see any photographs of underwear. And I
23 didn't see it described anywhere that he had underwear.
24 Q If the decedent had been kicked, would this injury

1 be more likely to be caused with or without underwear?
2 A Well, it's most likely to be with pants and without
3 underwear.
4 Q And would the seam of the pants make this kind of
5 injury?
6 A Yes. And I've seen that on a number of occasions.
7 The seam is sort of double-rolled fabric, which is then sewn
8 with a bias machine, and that causes a sort of raised edge, if
9 you will, which when it's impacted like with a kick, can cause a
10 concentration of the force on that area and cause the skin to
11 split.
12 Q Are you able to see bleeding under the skin in this
13 picture?
14 A Well, in this area that I circled earlier there is
15 darkness which could be bleeding under the skin. But again,
16 without histology or further evidence, it's impossible for me to
17 say anything more about it.
18 Q Do you see any evidence of a rectal injury?
19 A Not on this picture. The rectum is deep to the anus
20 and so would have to be inside, so I wouldn't be able to see a
21 rectal injury, per se.
22 Q Do you recall in this case with the hundreds of
23 photographs you've reviewed, seeing any evidence of a rectal
24 injury?

1 A I did not see the rectum or intestines shown on any
2 of the pictures that I saw.
3 Q Anything else of significance in this photo?
4 A Well, the one question that I guess you didn't ask
5 which is could it have been caused by scissors, and I suppose
6 it is possible that this one area was caused by one blade and
7 this other area was caused by the other blade, with someone
8 sort of going like this along the surface of the skin.
9 Q Anything else with this slide?
10 A No.
11 Q Showing you what's been marked and admitted as
12 Defendant's QQ. What is the significance of this photograph?
13 A Well, I guess I should first give sort of the lay of the
14 land. So, left leg is here. Right leg is here. The genitals is
15 and were there. The left testicle is in this area, the right is in
16 this area. And there's an injury that's fairly obvious where the
17 penis was removed. There's also a swab that's in the rectum
18 which was presumably placed by crime scene technicians or
19 coroner's technicians. And then there's several findings. You
20 see that there is clotting of blood here, and you see that there
21 is more of a sort of superficial deposition of a dark substance
22 without clots specifically.
23 Q Why is that significant?
24 A Well, typically what happens -- as we've all seen,

1 people draw blood, the blood if it doesn't have a anticoagulant
2 in the tube, forms a clot, and then if you spin it or separate it,
3 the clot goes to one side and the serum which is what's left
4 after the clot, goes to another. And blood is sort of like a
5 match, it only burns once. So if you have clots, it means that
6 it was essentially fresh bleeding from someone who hadn't
7 clotted yet. When you start seeing deposition of large areas of
8 serum, as here, and the area here and in other places, that
9 indicates that the blood had already clotted, presumably in the
10 person or on the ground or on some other object, and then
11 been deposited. So this is kind of a mix of fresh and less fresh
12 blood.
13 Q What do the A and B that are labeled, reflect?
14 A The A -- and I think we have another picture of this
15 coming up -- is a laceration or injury to the scrotum. And B is
16 an area of fullness within the scrotal sack. That area of
17 fullness could represent swelling, could represent some other
18 injury. The thing that's most important to notice here is that
19 the right testicle is actually up higher than the left. And the
20 reason that you can actually move the testicles up and down is
21 a muscle called the cremasteric muscle which when injured,
22 especially by a stab wound or a laceration, doesn't work. So if
23 you get paralysis of that cremasteric muscle, that testicle
24 actually ends up falling. The typical male has a higher right

1 testicle and a lower left testicle. So th consistent with
2 typical normal anatomy. If there had been a stab wound here
3 as opposed to some other injury, I would expect that that
4 normal configuration could be different. This just gives further
5 evidence that it's less likely that there was a stab wound to the
6 area.
7 Q Based on the fact that it's not swollen?
8 A Based on the fact that that testicle hasn't dropped.
9 Q All right. And just for a moment -- going back to the
10 last slide for a minute, which was RR, do you believe that this
11 injury was inflicted before death?
12 A I don't have any way of knowing. My understanding
13 from other testimony is that it was not.
14 Q And you don't have an opinion one way or the
15 other?
16 A Not based on this or the unmarked histology that I
17 saw earlier.
18 Q Moving on to Defense Exhibit SS, is this a blown-up
19 version of Defense QQ?
20 A It certainly shows the same area, in higher
21 magnification.
22 Q And what is the significance of this photo? Is it the
23 injury on the scrotum?
24 A There are really a few things. One is that there's a

1 shape to this area of amputation, where the point of the
2 teardrop, if you will, is down toward the feet, and the wider
3 end of the teardrop is up toward the head.
4 Q What does the teardrop shape signify?
5 A Well, typically when you're cutting something with
6 scissors, you end up compressing the tissue where the scissors
7 meet, and then as you cut through, the tissue ends up
8 spreading. So this signifies that the start of the cut was down
9 in the lower area closer to the testicles and then ended up
10 higher toward the head.
11 Q Would a scissor injury in that area cause a jagged
12 shape?
13 A Well, when you're using scissors as we all know from
14 cutting paper, if you have to take several cuts at it, you end up
15 sometimes with a little jag every time you move the scissors.
16 So depending on how many swipes it took to get through, it
17 could end up with a jagged shape. There actually is one area,
18 right here, that -- and I'll erase the mark just so you can see it.
19 But that looks as though it sort of started and stopped, as
20 though they went through and then kept going. The other
21 significant aspects of this are that it shows this laceration in
22 the scrotum a little bit more clearly because it's spread a little
23 further. And again, has fairly specific wound edges. But in
24 this case there are actually a lot of things that look to be tears.

1 Right there, right re, right there, which to me indicates that
2 it's less likely that it was done with a sharp instrument.
3 The other thing that's significant is you can actually see
4 that this area where the penis was, is somewhat raised. That's
5 significant because it indicates that the tissues -- especially the
6 bulva cavernosus, which is the muscle that allows for an
7 erection -- did not withdraw down into the rest of the tissue.
8 So it's --
9 Q What does that mean?
10 A It's unlikely that when this happened the person had
11 an erection.
12 Q Does this injury appear to be consistent with
13 something that a knife could have inflicted?
14 A If you had a really big knife, it's certainly possible
15 that you could sort of lift up and cut across, but it would have
16 to be something that wouldn't require a sawing action.
17 Remember that there was one question from the jury about
18 whether it required a sawing action to do this. A sawing action
19 is the same sort of hesitation marks as we see here, from
20 repositioning. You end up with a more jagged edge along the
21 tissue. So it would take a fairly large knife where -- you know,
22 knives don't cut very well pushing down, you actually have to
23 move them, and so you'd have to have a long enough blade
24 that you could get all the way through the tissue in order to

1 generate this injury.
2 Q Anything else of significance with regard to this
3 slide?
4 A No.
5 Q Showing you what's been marked as Defense Exhibit
6 UU. Can you describe what we're looking at?
7 A This appears to be the right head of the decedent,
8 sort of the top of the head. The eyebrows in this area. The
9 right eye is here, the nose is here, ear is here. There's
10 obviously a measuring device there. And there are multiple
11 injuries that are shown, in addition to slippage again on the
12 skin.
13 Q The slippage is not injury?
14 A Correct.
15 Q What do the arrows depict in this photo?
16 A There's again a pair of injuries here and here. They
17 are different sizes. The depth of this injury in this area here
18 appears to be slightly deeper than this injury on the other side
19 of the eyebrow. The distance between them is significant.
20 We'll talk about that in a second. But it's -- it's consistent with
21 someone holding scissors sort of like brass knuckles and
22 striking at the forehead in a direction that goes from the top of
23 the head toward the nose.
24 Q Have you seen this type of injury before in the

emergency room?
A Yes. These --
Q You -- go on.
A Sorry. These scissors are actually not ideal -- and we've got pictures of some other scissors which actually match this injury more closely. And the reason for that is that you can see both handles of these scissors are curved. So what you would end up with is an injury that's deeper in the center and sort of smooth out toward the edges. In this particular case there's actually more of a gouging wound, right here, which suggests that the scissors that were used had a little finger rest on the -- the large handle. Again, very common Fiskar-type scissors. But that's what caused this sort of flat and wider injury, is that it actually gouged into the skin there.
Q You mention that the distance was significant between injuries.
A Right.
Q Why is that?
A The space between these lacerations was actually .43 centimeters.
Q How did you measure that?
A I actually cut out this ruler and laid it over the injury on a print of the picture. And that would indicate that the spacing between the handles was 4.3 centimeters when the

injury occurred. So if someone had a bigger hand, the spacing would be larger. And if someone had a smaller hand, the spacing would be smaller. Now, it's certainly possible to cheat. Right? You can put the scissors into the fingers that are closer together and get the -- the injuries closer. But you can't make this wider than your hand because it only spreads so far -- and still have enough force to cause the injury.
Q So, based on these calculations, are you able to in some way discern the width of the hand of the perpetrator?
A Well, it would be very unlikely that the person's hand was less than the distance that was necessary to put these handles in the positions of the incision or the lacerations.
Q And in this case that would be 4.3 centimeters?
A Correct. So the distance between the top of this handle and the top of this handle would be 4.3 centimeters, which is roughly the distance between the center of your index finger and the center of your pinkie.
Q Is there anything else of significance with regard to this picture?
A There's obviously another injury, here, which appears to be a blunt force injury. Again, it looks darker sort of like the one that we saw in that sort of anal area. And there's also area here that's dark, area around this one that's dark, all consistent with bruising.

Q Can you tell if these injuries were made before death?
A Not from these pictures, no. Although with the bruising into the skin, it's more likely that they were done before death.
Q Anything else of significance to you in this photo?
A No.
Q Showing you what's been marked and admitted as Defense Exhibit TT. What is the significance of this photo?
A This laceration here is what we would describe as a distal base flap laceration, meaning that there's a flap of skin, which I've drawn two little blue lines on, and it's actually connected still to the chin down at the further end away, which we call -- you know, you can call it on the chin. So the way that these injuries happen is something catches the skin in this area and starts to tear the skin as it moves through the skin. So it's a blow that occurred in the direction that I just drew with the arrow and it's very consistent with the edge of the scissor handle.
Q Would this be a blunt force injury?
A It's most likely a blunt injury as opposed to a cutting injury just because you do have a fair amount of spread in the tissue here. If it were cutting -- certainly if tissue was under tension, it will spread, but the tissue of the chin is really not

under tension. There's a fair amount of space there. So it's more consistent with a blunt force blow than with a cut.
Q Anything else of significance in this injury -- or photo?
A No.
Q Is this a blowup of a previous photo?
A It is. And the only real significance again is it allows me to measure more accurately, again using the ruler that's in the picture.
Q This would be a blowup of Defense Exhibit VV?
MR. KEPHART: What did you say, ma'am? I didn't hear you.
MS. GREENBERGER: This would be a blowup of Defense Exhibit VV?
MR. KEPHART: What is the exhibit number?
MS. GREENBERGER: VV.
MR. KEPHART: No, the exhibit number.
THE COURT: The one that's up right now, what is its number?
MS. GREENBERGER: It's an -- it's a blowup of what's been marked as VV.
THE COURT: But this one hasn't been marked?
MS. GREENBERGER: I think it was just blown up, and so I don't know that we have a printout of it.

1 BY MS. GREENBERGER:
2 Q Did you blow this image up from what was
3 previously shown to you as Exhibit VV?
4 A Yes.
5 Q It's the same photograph?
6 A Correct.
7 Q And you just used the computer to magnify it?
8 A Yeah. To zoom it in.
9 Q And the purpose was just to show a closer view of
10 the injury?
11 A Correct. And to make the measurement more
12 accurate.
13 Q Showing you Defense Exhibit UU. What is this
14 injury?
15 A This appears to be an injury on the right anterior
16 neck. There's a muscle here called the sternocleidomastoid.
17 It's just on the inside or toward the center of the
18 sternocleidomastoid. And that is where the carotid artery and
19 the jugular vein live. So this is a laceration over and
20 apparently into, according to the autopsy report, those vessels.
21 Q Is it a pathonemonic injury?
22 A This injury because of its characteristics, is strongly
23 suggestive of being caused by scissors. In fact, there's
24 nothing else that I know of or that anyone has described,

1 which will cause this injury. This injury goes like this, comes
2 up, and then comes over, which is what you would expect
3 when you have scissors that stab in and then cut. Because the
4 blades actually shear in the center but don't meet like this.
5 They actually cross over. And so you end up with a stair-step
6 pattern which is what's represented here.
7 Q What is a pathonemonic injury? What is that
8 defined as?
9 A It really means that it's diagnostic of that which you
10 are searching. So, in this case, there's nothing else other than
11 scissors that can cause it.
12 Q Is there anything else significant in this photograph?
13 A There is some obvious bruising along the edges of
14 this, which is consistent with something of a blunt edge.
15 Usually when you stab with a knife, it causes very little actual
16 bruising along the edges because the tip of the knife is very
17 sharp. But with scissors, they're slightly rounded -- maybe less
18 rounded than these but still slightly rounded, and so you get
19 bruising of the skin as the blades puncture through.
20 Q When you first looked at these injuries, were you
21 looking at them with an eye towards whether a knife could
22 have caused these injuries?
23 A When I first started looking at these, I was told that
24 a knife caused these. And when I saw them, I said I don't

1 think a knife caus... these.
2 Q Have you seen numerous injuries to this area in the
3 emergency room, with a knife?
4 A Yes.
5 Q And how does that look distinct from what we're
6 looking at now?
7 A I think we actually have some better pictures of that,
8 later.
9 Q All right.
10 A But generally knives come in two flavors, single edge
11 or double edge. Single-edge knives usually have one sharp
12 edge on them that causes a sort of sharp point of a teardrop
13 and a dull edge which cause a dull side to the teardrop, where
14 a double-edge blade causes more of something like a very
15 narrow diamond shape with a sharp edge at both sides and
16 something wider in the middle.
17 Q Is the significance of this injury, the stair stepping
18 that you called it? Is that significant of a scissor versus a
19 knife?
20 A That's certainly part of it, as well as the bruising
21 around the incision.
22 Q Anything else of significance in this photo?
23 A No.
24 Q Showing you what's been marked as Defense Exhibit

1 WW. Can you tell us what is significant about this injury and
2 what we're looking at?
3 A Sure. So this appears to be a set of fairly superficial
4 abrasions, maybe even laceration on this side where it's a bit
5 deeper, more superficial here. You can see that it's deeper in
6 this corner and in this corner than it is where it starts. And
7 that is consistent with an open pair of scissors coming into the
8 area, and then as the tissue starts to interact with the tip of
9 the scissors it gouges in a little bit and causes the distant parts
10 of these to be deeper than where it starts.
11 Q Is there discontinuity in the center where the arrow
12 is pointing?
13 A There is, yes.
14 Q And what is that due to?
15 A Well, when you hit a round structure -- and I'll use
16 my bottle as sort of a demonstration tool here. So you hit
17 something like the neck, and you can't get all the way in, the
18 center doesn't get touched by the blades, and so that area
19 ends up being untouched and therefore discontinuity.
20 Q Does this appear to be a typical type of attack that
21 you've seen in the emergency room?
22 A Well, this could be one of a couple things. It could
23 be sort of a glancing blow where someone sort of moves away
24 and doesn't get the full force. Or one of the other things that

1 we see sometimes -- it's less common than in it is in, say,
2 South Africa, where someone actually tries to injure the spinal
3 cord by cutting it.
4 Q And where is the spinal cord connected, if you can
5 show us?
6 A The spinal cord is actually right in this area.
7 Q And is that something -- you mentioned in South
8 Africa -- is that a common objective or --
9 A Actually in South Africa, at least during apartheid, it
10 was fairly common to take a bicycle spoke, sharpen one tip of
11 it, and actually jam it down into the spinal canal and sort of do
12 this, like you might pith a frog, and essentially kill the person
13 by causing them to stop breathing because they get a spinal
14 injury.
15 Q Or at least paralyze and immobilize?
16 A Yes. I mean high up, like this, paralyzing respiratory
17 muscles and -- almost certain death.
18 Q Would you characterize this as a directed type of
19 injury?
20 A This one is a bit difficult to say because it could just
21 have been a glancing blow where they were trying to do
22 something and missed. But the fact that someone is hitting on
23 the back of the neck is certainly suggestive that they're trying
24 to cause injury in whatever places they can.

1 Q When you say glancing blow, glancing blow with
2 scissors in hand or glancing blow with a fist? Or a sharp
3 object?
4 A Sharp object consistent with scissors.
5 Q Anything else of significance in this photograph?
6 A No.
7 Q Showing you what's been marked as XX. Can you
8 tell us what we're looking at?
9 A So this is on the left side of the neck. Chin is here,
10 back of the neck is here, shoulder is in this area, the ear is up
11 here. And this is another injury where it's stair stepped.
12 There's a smear of blood right here -- which if we go back to
13 the previous picture for a second -- this injury is actually
14 underneath the measuring device, and so the smear is most
15 likely due to the fact that the measuring device, here, was on
16 top of the blood and then sort of smeared it. So I would
17 suggest --
18 Q A transfer?
19 A Yes. I would suggest sort of ignoring that smear,
20 per se. But the important point is that you have the injury that
21 goes down and like this with a stair step.
22 Q And was this one of the injuries that's been
23 characterized as a fatal injury?
24 A My understanding is that this injury actually cut

1 through the carotid artery on this side.
2 Q And the carotid artery is a major vessel in the neck?
3 A It's one of two major vessels. You have one on the
4 left and one on the right. You of course have vertebrals but
5 the carotids are the ones that provide most of the blood to the
6 front and sides of the brain.
7 Q Would you describe this as a calculated injury?
8 A It certainly appears that it was either a very lucky
9 one or someone knew what they were cutting. The fact that
10 they tried on both sides to get these vessels, indicates that
11 they were probably more good than lucky.
12 Q Anything else of significance? You pointed out that
13 it's a stair-step injury. Do you believe this was caused with
14 scissors?
15 A That is the most likely instrument, yes.
16 Q Anything else on this photo?
17 A Only for -- for reference again to show this is the
18 abrasion that we talked about in the previous picture.
19 Q Moving on to what's been marked as Defense Exhibit
20 YY. What does this depict?
21 A Well, my understanding is that one of the questions
22 that came up is whether the decedent's pants were up or
23 down at the time that the other major injuries to the head and
24 other parts of the body occurred. I think we all would agree

1 that the pants were probably down when the penis was cut
2 off. But prior to that, the question is whether a lot of these
3 other injuries on the head and on the abdomen, occurred with
4 the pants up or down. And what it depicts is that there's a lot
5 of blood with streaking and staining, sort of up here, and then
6 there's actually a place, right there, where it stops. And the
7 pants can certainly act as a dam where the blood when it's
8 running down, hits the pants -- the top of the pants waist and
9 then is redirected downward.
10 Q Is that -- would you call that a line of demarcation?
11 A Well, it certainly appears to be that. Now, if it were
12 just on one side, I'd probably be a little bit more skeptical. But
13 if you can go sort of two forward --
14 Q This is just where you're showing you believe the
15 pants were fastened?
16 A Right. So -- one -- one more.
17 Q Showing you what has been marked as Defense
18 Exhibit YY.
19 A So here now is the other side --
20 Q I'm sorry, ZZ.
21 A Here's now the other side of the victim. And again,
22 you see an area of demarcation, here, where there's blood
23 above it, and there's an area of clearing below it. Now,
24 certainly there's some blood here and here and here, but that

1 looks more as though it was sort of se deposited later.
2 And again, my understanding is that the legs were at least in
3 contact with plastic which would cause this sort of a
4 configuration and look. So at least at the time that the
5 bleeding was active, it seems to have stopped right here, and
6 again consistent with the top of the pants, now on both sides
7 of the body acting as a dam, therefore more consistent with
8 the other injuries happening with the pants up than down.
9 Q And you consider this because you were trying to
10 reconstruct the pattern of injuries in the order the injuries
11 occurred?
12 A Correct.
13 Q Is there anything else of significance in either of
14 these photos?
15 A No.
16 Q And does the yellow line that's inserted, that reflects
17 where you see -- is it a cleaner area than below the yellow
18 line? Is that what --
19 A Correct. As we described, right.
20 Q Showing you Defense Exhibit AAA. What does this
21 reflect?
22 A So my understanding is that these were the trousers
23 that were worn by the decedent at the time of these injuries.
24 And they show several things. One is that there's a general

1 concentration of blood around the fasteners. So around the
2 button and around the zipper.
3 Q Why is that significant?
4 A It suggests at least to me that since we know the
5 pants were pulled down to amputate the penis, that the blood
6 on the hands of the attacker were now trying to unfasten the
7 zipper and the button in order to pull the pants down.
8 MR. KEPHART: Your Honor, I'm going to pose an
9 objection with his conclusionary remark that we know the
10 pants were pulled down in order to amputate his penis. That
11 would be his opinion but we don't know that. The jury
12 certainly doesn't know that from other testimony. So I'm
13 going to object to that form of his answer.
14 THE COURT: Counsel approach.
15 (Bench Conference)
16 THE COURT: He testified to it as if it were a fact
17 rather than -- rather than being asked does he have an opinion
18 as to how it would be done. So I'm going to sustain the
19 objection because of the form of the question and then you
20 can reask it.
21 (End of Bench Conference)
22 THE COURT: The objection's sustained and Ms.
23 Greenberger will rephrase.
24 ///

1 BY MS. GREENBE ER:
2 Q What is your opinion of why the blood in that area is
3 significant in terms of the pants being up or down at the time
4 of the amputation?
5 A Well, let me actually state my answer slightly
6 differently because I think the amputation required -- unless
7 there are holes in the pants that I can't see -- that the pants
8 were down. So it appears because of the concentration of
9 blood around the fasteners, that the hands of whoever was
10 undoing the fasteners were bloody.
11 Q Is blood a sticky substance?
12 A Especially when it's drying, yes.
13 Q Does the blood appear to be crusted?
14 A Well, the -- these pictures, from my understanding,
15 were taken at the autopsy suite several hours after the victim
16 was found. So the blood appears to be dry. And in that
17 sense, yes, it is crusted.
18 Q Does there appear to be a lot of blood or a little
19 blood on the pants?
20 A A lot or a little is all relative. It's more than I would
21 want to have on mine and it's probably more than he wanted
22 to have on his. But it certainly doesn't account for all of his
23 blood loss given that he had other major injuries to the great
24 vessels.

1 Q Were you able to determine whether there were any
2 visible types of cuts in the pants?
3 A I don't see any visible cuts to the pants, no.
4 Q Are the blood that we're -- is the blood that we're
5 seeing consistent with a blood transfer?
6 A Yes.
7 Q And what is that?
8 A It's when blood is on one surface and is transferred
9 on to another surface. So from hands to trousers.
10 Q Anything else of significance with regard to this
11 photograph?
12 A This sort of small pant pocket is folded down and
13 the front pocket appears to be folded a bit as well. That would
14 be consistent with someone using that as leverage to pull the
15 pants down. I don't know who that person is however.
16 Q Anything else of significance?
17 A There are other areas of blood, obviously, on the
18 pants as well. They appear to be at fairly regular intervals
19 suggesting that the pants may have been sort of crumpled up,
20 if you will. It's also possible that these were places of transfer
21 where a person was sort of transferring blood again from the
22 hands or some other object onto the pants. It could have
23 been on the ground where they were transferred but it does
24 not appear that the blood soaked through from the inside of

the pants to the outside. It appears t[illegible] was deposited on the outside.

Q And is it your opinion that the heavy concentration of blood around the fastener is consistent with the hands of the assailant being used to pull the pants down?

A It is consistent with the hands of someone who had blood all over them pulling or at least opening the pants. One other thing that's worthwhile to point out here, that is that -- as I recall, Dr. Simms gave testimony about rapid oozing from the scrotal wound. Rapid oozing to me indicates that you have at least some significant blood loss and that that would presumably deposit if the pants were still on the person, into the pants. I don't see any evidence of any blood soaking through in the area where I would have expected to see that.

Q Do you have an opinion whether the scrotum injury was pre-mortem or postmortem?

A I don't have any independent basis on which to make that assessment. I know that others have testified that it was pre-mortem but I don't have any independent basis on which to make that judgment.

Q Did it appear there was significant blood loss from the scrotum injury?

A Well, again, on the places that you would have

expected to catch the blood, I don't see that much blood, no.

Q Anything else on this photo?

A No.

Q Showing you Defendant's next-in-order, BBB. What is the significance of this injury -- or of this photo?

A This goes back to this question of rapid oozing. And I see that the inside of the pants at least from what I can tell, are fairly clean. So I don't see any evidence of dripping or bleeding into the pants. Remember that at least at some point this victim was found supine, lying on his back, and if there was any bleeding going on you would expect to have seen some bleeding into the pants.

Q Anything else of significance?

A No.

Q Showing you Defendant's next CCC. This appears to be what?

A The back of the pants that the decedent was wearing. And really there's very little blood on the back of the pants. The only significant blood that I see is sort of on this back of the left leg which appears to be transfer as well.

Q What does the absence of blood tell you?

A Well, it doesn't look like the decedent was lying in a pool of blood, for instance. At least not face up. And there's essentially no blood soaking through in this area that we saw

before, of the sc[illegible] injury and the sort of peri-anal injury. There is the seam that we talked about which may well be the thing that caused that peri-rectal injury.

Q You've heard testimony that one of the -- according to Dr. Simms, one of the first injuries was the injury to the scrotum. Do you agree or disagree with that?

A There's certainly a lot more bleeding around the facial wounds than there is around the scrotal injury. So if you go by blood pressure equaling amount of blood loss with the injury that's caused, I would say that the head injuries were more likely to be early. But, again, it may have been within such a short period -- you know, the time interval between one and the other may have been so short that it may be sort of an irrelevant separation of issues.

Q Are you able to determine how quickly blood dries?

A Well, not from this.

MR. KEPHART: Your Honor, objection. Could we approach?

THE COURT: Yes.

(Off-record Bench Conference)

THE COURT: The objection's sustained and you may proceed.

MS. GREENBERGER: Thank you, Your Honor.

///

BY MS. GREENBERGER:

Q Anything else of significance in this photo?

A No.

Q Showing you what's been marked as DDD. What are we looking at?

A This is the lower abdomen of the victim. The belly button is here and the sort of start of the pelvis is on these edges. These appear to be two sets of stab wounds. One, this set. The other, this set. They appear to be in pairs. There appears --

Q Are they connected?

A They are apparently connected by an abrasion through the center, here and here. There is a sharp edge here and here. There's a sharp edge here and here. There's a rounded edge there, there, there and there.

Q Do they appear to be deep punctures?

A They do appear to be deep punctures, yes.

Q Is the spacing between the injuries of significance?

A Yes.

Q Why is that?

A I believe that each of these -- this and this, and this and this, were each caused by one blade of scissors. So this represents two stab wounds with scissors, this time opened, and the abrasion in the center is actually where when you

1 push through the tissue the blades en[illegible] touching the
2 bunched up skin and causing the abrasion.
3 Q Is the shape of the puncture significant?
4 A It's significant in that scissors have a sharp edge and
5 another sharp edge sort of facing each other, and a dull edge
6 and a dull edge facing away from each other. Exactly like
7 these injuries.
8 Q Did you measure the spacing of these injuries?
9 A I did.
10 Q And what was the measurements?
11 A 5.8 centimeters is the minimum separation between
12 entry point and entry point.
13 Q Similar to the previous slide, can you explain why
14 that distance is relevant?
15 A When a person is holding scissors open in their
16 hand, as I'm demonstrating here, the tips of the scissors are at
17 an interval that's spaced exactly at the same place as the web
18 space between the index finger and middle finger, and the
19 web space between the small finger and the ring finger. So
20 the separation of the injuries suggest the separation of the
21 points of the scissors and also therefore suggests the size of
22 the hand holding the scissors.
23 Q Similar to the injury we saw on the neck, with the
24 faint line, is that same faint line evident between these two

1 sets of injuries?
2 A It is.
3 Q And would that be consistent with the inside of the
4 scissors?
5 A Yes. And in fact if you look carefully, right here and
6 right here, you see what appears to be a perpendicular --
7 double line perpendicular to that connecting line. And that is
8 exactly what you get from the place where the scissors cross,
9 what I call the hinge point.
10 Q Anything else of significance in this photo?
11 A No.
12 Q Do you believe these injuries could have been
13 caused by a knife?
14 A It's very unlikely.
15 Q Showing you Defense Exhibit FFF. What's the
16 significance of this photo?
17 A Part of this is what we were talking about earlier,
18 just a better picture of it. And that is that you have clotted
19 blood here and then you have sort of streaky blood here. This
20 is more like serum at B and the clots are more like old blood.
21 Q What is the difference between the two?
22 A If you are alive and bleeding, you'll have clots. If
23 you are dead and oozing, you won't.
24 Q Anything else of significance in this photo?

1 A There [illegible] pattern to the streaking. It goes sort of
2 from the high ground, if you will, to the low ground on the
3 abdomen. There's also some area over in the left side of the
4 abdomen which looks like that serum was compressed by
5 something. That's consistent with the plastic wrap that I think
6 we've talked about -- or you've talked about before.
7 Q Have you seen photographs from the autopsy that
8 have plastic wrap depicted in that area?
9 A Yes.
10 Q And your testimony is that what we're seeing -- that
11 you highlighted in blue -- is consistent with that?
12 A Correct.
13 Q Anything else of significance?
14 A We'll talk about this area I think in just a second, but
15 that is also significant. And there it is.
16 Q This is another picture of the abdomen area?
17 A Correct.
18 THE COURT: Which exhibit is it?
19 MS. GREENBERGER: FFF again.
20 BY MS. GREENBERGER:
21 Q What's the significance of this?
22 THE COURT: So this is a closeup off of FFF?
23 MS. GREENBERGER: One moment, Your Honor.
24 Actually, I'm -- the previous exhibit, I'm sorry, was EEE. And

1 this is FF --
2 THE COURT: Okay.
3 MS. GREENBERGER: This is FFF. So I misspoke.
4 THE COURT: So what was previously designated
5 FFF was an error?
6 MS. GREENBERGER: Yeah. Sorry about that.
7 THE COURT: It was EEE?
8 MS. GREENBERGER: Yes.
9 THE COURT: Thank you.
10 BY MS. GREENBERGER:
11 Q This is Defense FFF. What are we seeing in this
12 picture?
13 A Well, this appears to be a patterned mark, meaning
14 that the thing that left it, left its shape behind.
15 Q What is a pattern mark?
16 A It could be caused by, for instance, a shoe print.
17 That's a pattern mark. If someone stomps a body, it can leave
18 a pattern. If someone's hit by a billy club, it can leave a
19 pattern. In this case it could be that it's a combination of
20 serum, it could be that it's a pressure mark, but, in any event,
21 it's something that's on the skin that was left behind
22 presumably by the attacker.
23 Q And was that visible to you when you looked at this
24 photo?

A Not initially. I actually did a amount of work sort of with everything else, but it was actually probably several weeks after I started looking at this that this sort of became more evident to me.
Q Can you tell us what you're seeing in this picture? Or should I move to the next slide?
A No, this is fine. There appears to be a ring here, a ring here, a handle here, and a blade here.
Q What does that appear to be?
A It looks like at least part of a scissors. In addition, there is an area of clearing here, an area of clearing here, an area of clearing here which is interesting because there's also a mark there. Another area of clearing here. And then there's a further area defined here which appears to be the imprint of the knuckles of the hand.
Q How could that be left on the body?
A If someone had the instrument in their hand and then pushed up on the abdomen as they were standing up, that could leave that mark.
Q Have you seen marks like this in the past?
A It's very unusual to see a complete set like this. I've seen other patterns from coins, from knives, from guns actually in a couple of cases. This is the first sort of complete picture like this. And if you go to the next one, I actually

made an outline around that just to make it a little bit more clear.
Q And what does your outline depict?
MR. KEPHART: Your Honor, for the record, what exhibit is this?
MS. GREENBERGER: This is Defense Exhibit FFF.
MR. KEPHART: No, you just had FFF.
MS. GREENBERGER: This is FFF.
THE COURT: It's FFF which he has drawn on apparently.
MS. GREENBERGER: Right.
THE COURT: So it should be marked separately.
MS. GREENBERGER: Yeah, it wasn't capable of being printed in that format. It just -- 'cause it's a computer --
MR. KEPHART: Your Honor, maybe I can help the defense with what they provided us.
MS. GREENBERGER: Oh, excellent. May I have this marked as next in order?
THE COURT: It could be FFF-1.
MS. GREENBERGER: All right.
BY MS. GREENBERGER:
Q Showing you FFF-1 --
THE COURT: Before you do that, are you moving its admission?

MS. GREENBERGER: Yes, I would move for its admission.
MR. KEPHART: No objection, Your Honor.
THE COURT: Granted.
MS. GREENBERGER: Thank you.
(Defendant's Exhibit FFF-1, admitted)
BY MS. GREENBERGER:
Q What did you draw on this photo?
A I actually attempted just to draw the outline of that darkened area and then put into it the cleared spaces significant or at least consistent with where the knuckles may have been.
Q The cleared spaces would be the inside of the scissors and then the red that you outlined would be consistent with a knuckle?
A The hand, correct.
Q The hand. Anything else of significance -- well, let me ask you this. Which way does it appear that the scissors are pointed?
A Toward the left of the victim. Toward our right. With the pointy side toward our right.
Q And it's your testimony that the outline that we're seeing is an imprint of the actual scissors, in your opinion, that were used to inflict the injury in this case?

A And the hand holding them, yes. The other thing, of course, that I did was to measure this distance and to see if it matched this distance. And it --
Q Did it match?
A It did.
Q And what was that measurement?
A The measurement from the outside of the handle to the outside of the handle is -- is not here -- but the distance from the inside of this webbed space between the little finger and ring finger and the distance from the outside of the index finger is -- I just saw it -- 5.8 centimeters.
Q And is that the same distance that you measured in calculating the distance on the injuries on the abdomen?
A Yes.
Q Anything else of significance in this photo?
A No.
Q What does this depict? This is Defense Exhibit HHH.
THE COURT: I'm sorry, I couldn't hear you. Triple --
MS. GREENBERGER: H.
THE COURT: -- H. Thank you.
THE WITNESS: So this is one of the hands that was reported to me to be the hand of the defendant.
///

1 BY MS. GREENBERGER:
2 Q And have you personally measured her hand as
3 well?
4 A I actually measured both the left and the right side.
5 This actually is the left hand.
6 Q And what is the significance of the measurement?
7 A Well, the question was could her hand have been
8 the one in the scissors, and so when we asked her to measure
9 her hand we didn't tell her why we were asking her to
10 measure it. But I wanted to verify that in fact it was her hand
11 and that the measurements were accurate. So I measured
12 them again today.
13 Q And what was the measurement of her hand that
14 you found?
15 A Actually on the right hand it was 4.4 centimeters
16 from the first webbed space to the inside of the index to
17 middle finger, and 7.9 outside to outside.
18 Q What did you conclude as a result of your
19 measurements?
20 A Her hand is at least 1½" centimeters too small to
21 have caused these injuries.
22 Q Anything else of significance --
23 A No.
24 Q -- in that photo?

1 A No.
2 Q In testing your observations did you have the
3 opportunity to do any experimentation in this case?
4 A I did a test, yes.
5 Q Did you take several photographs with regard to this
6 test that you did?
7 A I did.
8 Q Can you tell us a little bit about what you did?
9 A Sure. Well, one of the things that I wanted to make
10 sure that I could show you was what scissor stab wounds,
11 knife stab wounds, double-edged knife stab wounds actually
12 look like. And so I took some ultrasuede and put it on some
13 foam
14 -- because I didn't want to injure any animals or do anything
15 that was not politically correct -- and stabbed that material and
16 took pictures.
17 Q Did you use several instruments?
18 A I -- well, I used several -- yeah, I used two different
19 kinds of knives and scissors.
20 Q What types of knives did you use?
21 A Actually butterfly knives because my understanding
22 is that that is what some people think was the instrument that
23 caused the injuries.
24 Q And what other instrument did you use?

1 A Scissors.
2 Q And did you pick a particular pair of scissors to test
3 your --
4 A I did. I actually used the kind of scissors that I
5 thought were most likely to have caused the injury, which
6 have that little finger groove that I described earlier.
7 Q Did you take photographs of your experiment?
8 A I did.
9 MS. GREENBERGER: May I approach, Your Honor?
10 THE COURT: Yes, you may.
11 BY MS. GREENBERGER:
12 Q Showing you what's been marked as Defense
13 Proposed III through VVV. Can you take a look at these
14 photos? Do you recognize these photos?
15 A Yes, I do.
16 Q Are these photos that you yourself took?
17 A They are.
18 MS. GREENBERGER: Your Honor, the defense would
19 move for admission of III through VVV at this time.
20 MR. KEPHART: Your Honor, before I agree with
21 that, could I take the witness on voir dire?
22 THE COURT: Counsel approach.
23 (Off-record Bench Conference)
24 ///

1 BY MS. GREENBERGER:
2 Q Can you tell us about how you took these
3 photographs, what these photographs -- what you took them
4 with?
5 A Yes. I went to Walmart, I got some foam, I got
6 some ultrasuede, actually a remnant, I put the foam into the
7 ultrasuede and actually stapled the edges, and then I put it on
8 top of a trash can, took scissors and stabbed it as you might
9 stab like a chair cushion.
10 Q Did you proceed to take a photograph after each
11 stab?
12 A I did.
13 Q Did you -- do these photographs that you reviewed,
14 represent all of the photographs that you took?
15 A Yes.
16 Q What kind of camera did you use?
17 A This was a Canon Elf digital camera.
18 Q Did you conduct this experiment more than once?
19 A No.
20 Q Are these photographs a fair and accurate depiction
21 of your entire experiment?
22 A Yes.
23 MS. GREENBERGER: Your Honor, we would move
24 for admission of these exhibits at this time.

1 MR. KEPHART: Submit it, Y[illegible]onor.
2 THE COURT: Granted.
3 MS. GREENBERGER: Thank you, Your Honor.
4 (Defendant's Exhibits III through VVV, admitted)
5 BY MS. GREENBERGER:
6 Q Did you incorporate these photographs into a power
7 point?
8 A I did.
9 Q Showing you what's been marked as Defense Exhibit
10 KKK and III, can you tell us what we're looking at?
11 A This is a single-edge butterfly knife. It has been
12 stabbed into the cushion through this ultrasuede material, as I
13 described earlier. It was then removed and laid next to the
14 incision that was caused, with the blade in the direction -- so
15 essentially I stabbed in, pulled out, laid the knife down took a
16 picture.
17 Q And so what's being depicted as Defense KKK, in the
18 left-hand corner is the single-edged butterfly knife, and then in
19 the right-hand corner what's being depicted as III is the tip of
20 that same knife and that is below the stab wound?
21 A Correct.
22 Q And what is significant about the shape of that?
23 A This is a very typical configuration of a stab that you
24 would see from a single-edge blade. It has a sharp point on

1 one end, a dull sort of curved edge on the other. It looks sort
2 of like a teardrop shape. And the sharp side is where the
3 sharp edge is and the dull side is where the dull edge is.
4 MS. GREENBERGER: May I approach the witness,
5 Your Honor?
6 THE COURT: Yes.
7 BY MS. GREENBERGER:
8 Q Showing you Defense UUU, is this the single-edged
9 butterfly knife?
10 A It is.
11 MS. GREENBERGER: And the record should reflect
12 that UUU is the picture depicted in the left-hand corner, not
13 KKK. I apologize for that, Your Honor.
14 THE COURT: Very well. Thank you.
15 BY MS. GREENBERGER:
16 Q Anything else of significance in these -- this first
17 slide?
18 A No.
19 Q What's in the left corner -- can you tell us what that
20 is? That instrument.
21 A This is my cushion here with foam underneath, and
22 this is a double-edged butterfly knife, stabbed into it.
23 Q And this would be Defense Exhibit KKK. This is a
24 double-edged butterfly knife. And what is the distinction

1 between a doubl[illegible]ged and a single edged?
2 A It actually has two sharp edges, one on this edge,
3 one on this edge, and then it actually has sort of a beveled cut
4 in the center.
5 Q And what you're encircling is Defense Exhibit LLL.
6 And did you do the same type of experiment with a double-
7 edged butterfly knife as you did in the last slide? You made a
8 stab?
9 A Yes, I did.
10 Q And what is significant about the nature of the
11 incision?
12 A Here we have a sharp edge, actually on both sides,
13 and rather than being a teardrop, it's sort of like a narrow
14 diamond, if you will, that spreads out on both sides.
15 Q And that's based on the sharpness on both sides?
16 A The sharpness and the relatively thicker blade in the
17 center, if you will.
18 Q Anything else of significance in this slide?
19 A No.
20 Q Showing you Defense Exhibit MMM. Are these the
21 scissors we've been talking about?
22 A Yes.
23 Q And what is significant about these particular
24 scissors?

1 A They have this little cutout for the fingers. There's a
2 finger rest there. Other than that, the handle length is
3 essentially equal to the blade length. So when the handles are
4 open an inch, the blades are open an inch.
5 Q And what is significant about the curvature over the
6 left handle of the blade?
7 A This little point here is the thing that's sort of
8 gouged into that eyebrow that I showed you about twenty
9 pictures ago.
10 Q Did you measure the distance of the outside edges
11 of the scissors?
12 A I measured the ratio between the blades and the
13 handles.
14 Q And why is that significant?
15 A Well, if you had scissors that have, say, shorter
16 handles and longer blades, the ratio would be different. Most
17 scissors if -- you know, like you use hedge clippers -- I think
18 those were commented on by Dr. Simms -- they actually have
19 long handles and short blades, so that you can exert more
20 leverage. So if as in this case, the ratio of the blades to the
21 handles is one to one, the distance between the blades and
22 the handles end up being the same as well. That makes the
23 calculations a lot easier.
24 Q And have you actually done any work in comparing

1 the measurements on these scissors to injuries you
2 observed on Duran Bailey?
3 A Yes. So one question is whether the handle
4 separation matches those injures, and it does. In fact the
5 handle separation matches the sharp point separation which
6 leads to a more likely situation that the configuration of the
7 scissors is like this. And then looking at that imprint, it actually
8 matches a ratio of one to one handles to blades. So they -- all
9 three of those facts match each other.
10 Q Did you do any experimentation with the scissors?
11 A I did.
12 Q Showing you Defense Exhibit OOO. What are we
13 looking at?
14 A So this is scissors held with one ring on the index
15 finger, the other ring on the small finger and just stabbing into
16 the cushion. And what it shows is that there's actually
17 bunching up of the tissue in between the scissor blades which
18 results in -- if this were skin, that little connecting abrasion
19 between the two stab wounds.
20 Q Did the material you used in this experiment
21 simulate human skin?
22 A It's thinner. It has different characteristics. But the
23 characteristics that are similar are that it's similarly resilient,
24 similarly elastic. Obviously, it's not skin.

1 Q Did the bunching that occurred -- would it have the
2 same reaction with skin?
3 A Yes.
4 Q How do you know that?
5 A I've seen scissor injuries in the past and they look
6 like these do.
7 Q Anything else of significance in this photo?
8 A No.
9 Q Showing you Defense Exhibit SSS --
10 THE COURT: SSS?
11 MS. GREENBERGER: SSS.
12 BY MS. GREENBERGER:
13 Q -- and NNN. What is the significance of these two
14 photographs?
15 A These are two consecutive stabs into my little
16 cushion with scissors. And it shows that you can get different
17 configurations of those stab wounds, in part because the
18 material can twist a little bit. Sometimes one of the blades
19 goes in first, and then it twists, then the second blade goes in,
20 sometimes they both go in together, that sort of thing. So, on
21 the left, you see that -- you have one incision going one
22 direction, the other incision going at a slightly different
23 direction. On the right, you see them actually going in the
24 same direction. What's significant is that you have sharp point

1 facing each other, both, you have dull edge away from each
2 other, in both, and the spacing between the two of them is the
3 same and actually matches my hand.
4 Q Can you show us how you made the incisions using
5 the scissors?
6 A Yeah. I put them on my hand like this, had the
7 cushion like this, and just pushed down into it.
8 Q And is the twisting -- which is illustrated in Exhibit
9 SSS -- is that consistent with the human body? Something --
10 A It is. Yeah.
11 Q You've seen that before?
12 A Yes. And this is why they tell you not to run with
13 scissors.
14 Q Anything else of significance in this photo?
15 A You can see little scuff marks actually, here and
16 here, between the blades. Again, it's ultrasuede, it's not a
17 perfect material, but it's significant for the material bunching
18 up between the blades.
19 Q So this depicts Defense Exhibit SS, NN, and then
20 photographs of the abdomen which would be DDD. Can you
21 tell us what we're looking at and the significance of it?
22 A In the case of the two test wounds that don't point
23 toward each other, they actually match very closely with the
24 lower stab wound on the abdomen. With the case of the ones

1 that point toward each other, they match very closely to the
2 upper stab wound again connected by that little abrasion.
3 Q And the bunching that you mentioned in the -- on
4 the left-hand photo, Exhibit SSS, is consistent with the linear
5 abrasion on DDD, on the abdomen?
6 A Correct. And here again you see this sort of double
7 abrasion here, and that's significant for this place where the
8 blades actually meet each other.
9 Q Did this comparison confirm your opinions on what
10 the mechanism of injury was in this case?
11 A Certainly consistent with it, yes.
12 Q Showing you Defense Exhibit PPP, QQQ and RRR.
13 Can you tell us what we're looking at?
14 A These are actual sequence photos. The first one in
15 the upper left-hand corner is the first in the sequence.
16 Q Can you identify -- mark that? Okay.
17 A This one.
18 MR. KEPHART: What number is that again, counsel?
19 MS. GREENBERGER: That is Exhibit PPP.
20 THE WITNESS: And the one in the right upper is
21 the next step, which is closing the scissors. And which one is
22 that one?
23 BY MS. GREENBERGER:
24 Q That is QQQ. And then RRR.

1 A And then the bottom -- is?
2 Q Sorry. RRR.
3 A And that's the cut that ensued from closing the
4 scissors. So we have sort of number 1, number 2 and number
5 3, in the sequence. And you can see the stair-stepped pattern
6 which is because the blades cross over each other, cutting
7 here, cutting here, and then cutting in the middle when they
8 actually meet and shear across.
9 Q It would be a slow motion picture, starting with PPP.
10 After you did the snip incision, what you wound up with was
11 RRR, the photo at the bottom --
12 A Right. And that's --
13 Q -- as a direct result?
14 A That's unfortunately why they're a little fuzzy 'cause
15 I was holding the scissors like this and taking the pictures like
16 this, as I was closing and then snipping across.
17 Q Now, this -- you testified you did this only one time.
18 This isn't something you did time and time again to try to
19 replicate. This was just --
20 A Correct. Just one time.
21 Q Adding to this picture, Defense Exhibit XX, tell us
22 what we're seeing.
23 A This is what I understand from the autopsy report,
24 as being the fatal injury to the left neck, which we showed

1 earlier and discussed earlier. But it matches the configuration
2 of my test.
3 Q Does that injury seem to mirror the injury on RRR in
4 terms of the shape?
5 A It does.
6 Q And the stair step?
7 A Correct.
8 Q Does that confirm -- or further confirm your opinion
9 that the injury to the carotid artery was caused by a scissor?
10 A Yes. It's consistent with that.
11 Q Is there anything else of significance in this photo?
12 A No.
13 Q Showing you VV, Defense Exhibit VV, we saw that
14 earlier. What does that depict?
15 A This is actually the injury on the right neck. And
16 here the points were not quite as far apart. Rather than going
17 in wide like this, they went in more narrow like this. So it's a
18 smaller width. But the stair step is still between here and
19 there.
20 Q And this stair step was something that you saw
21 when you did your experiment with the scissors?
22 A Correct.
23 Q Can you get a stair step with a knife?
24 A I've never seen one, and I couldn't figure out how to

1 actually create o[illegible]ithout having the stair step be the same
2 width as the knife blade. Because you'd have to stab, stab,
3 and turn, and stab again, or stab, slice a little bit, and then
4 cut. So this one on the neck would take a very narrow knife in
5 order to create that. The measurement of each of these is less
6 than a centimeter so it's a third of an inch. Q How many
7 stab injuries have you seen approximately? I know you said
8 you've treated a hundred thousand patients. I mean,
9 hundreds --
10 A Yeah. It's on the order of thousands.
11 Q Over thousands. From all kinds of different knives?
12 A Knives, poles, spikes, scissors, yeah, every kind of --
13 rebar, lots of different things.
14 Q And your testimony is that in the thousands of
15 patients you've seen with stab wounds, you've never seen
16 anything that resembles what we're looking at in Defense
17 Exhibit BB?
18 A Remind me which one that is.
19 Q I'm sorry?
20 A Which -- remind me which exhibit that is.
21 Q What we're looking at.
22 A Oh, this one. The only thing that I know that
23 matches this is scissors.
24 MS. GREENBERGER: May I approach the Clerk?

1 THE COURT: Yes.
2 BY MS. GREENBERGER:
3 Q Did you review --
4 MS. GREENBERGER: May I approach the witness?
5 THE COURT: Yes.
6 BY MS. GREENBERGER:
7 Q -- several photographs of Kirstin Lobato in this case?
8 A I think I reviewed three of them, yes.
9 Q Did these photographs appear to be what you
10 reviewed?
11 A Yes.
12 MS. GREENBERGER: Your Honor, we'd move for
13 admission of AAAA, ZZZ and YYY.
14 MR. KEPHART: I have no objection, Judge. They're
15 in.
16 THE COURT: YYY, ZZZ and AAAA will be admitted.
17 (Defendant's Exhibits ZZZ, YYY and AAAA, admitted)
18 BY MS. GREENBERGER:
19 Q Showing you YYY. Did you review the injuries on
20 the abdomen?
21 A Not the injuries but the photograph certainly.
22 Q Or the photographs of the injuries?
23 A Yes.
24 Q What do those injuries appear to be?

1 A Abrasions. Linear abrasions e specifically.
2 Q Do they appear to be -- or can you opine what they
3 could be caused with?
4 A Well, let me describe them first, and then --
5 MR. KEPHART: Your Honor, may we approach the
6 bench?
7 THE COURT: Yes.
8 (Off-record Bench Conference)
9 THE COURT: The objection's sustained as beyond
10 the notice.
11 BY MS. GREENBERGER:
12 Q Do you have an opinion what the penis in this case
13 was amputated with?
14 A Yes.
15 Q What is that?
16 MR. KEPHART: Objection, Your Honor. Asked and
17 answered.
18 THE COURT: Sustained.
19 BY MS. GREENBERGER:
20 Q Are the incisions -- lacerations of the neck, abdomen
21 and fingers of the decedent in this case, consistent with
22 scissors being used as a cutting and stabbing weapon?
23 MR. KEPHART: Your Honor, objection. Asked and
24 answered.

1 THE COURT: Sustained.
2 BY MS. GREENBERGER:
3 Q The skull fracture in this case -- I don't believe we've
4 talked about that. Do you have an opinion whether the skull
5 fracture could have been caused by a bat?
6 A It's very unlikely.
7 Q Why is that?
8 A The skull is really made out of what we call
9 trabecular bone. It's two fairly hard kinds of bone with kind of
10 spongy bone in the middle. The outer part of the skull is a
11 different thickness from the inner part of the skull. And it
12 actually takes about 80 pounds per square foot to fracture the
13 in part of the bone. It only takes about 30 pounds per square
14 foot to fracture the outer part of the bone. And because you
15 have this spongy bone in between, when you apply that
16 amount of force, what ends up happening is that you crush the
17 spongy bone in between and it ends up having a different
18 configuration. This fracture was a linear fracture. What you
19 might get from taking a knife and cracking an egg. Whereas
20 the kind of fracture that you would get with a bat is more like
21 the fracture that you would see on an egg from trying to crack
22 it on a bowl, where the bowl is, you know, sort of a thicker
23 rounder edge, where it actually caves in a little bit, and that's
24 what we call a depressed skull fracture. So if you have

1 enough force fro[illegible] instrument to cause a fracture of the
2 inner part of the skull, it's enough to cause the outer part of
3 the skull to cave in, if you will, and cause a depressed skull
4 fracture. If you -- as some people have said, just hit lightly
5 with a bat, you'll fracture the outer part but not the inner part
6 and it will still cause the caving of the outer part without a
7 fracture that goes all the way through. So you can't with a bat
8 cause a linear skull fracture whether you hit lightly or hard,
9 that doesn't cause the outer surface of the skull to cave in and
10 cause a depressed skull fracture.
11 Q I know you wrote a lengthy report in this case. Is
12 there anything in the report -- so I don't repeat myself -- that
13 was significant in your opinion that we haven't addressed?
14 A The one thing that we didn't talk about was fracture
15 of the teeth which was brought out in I think Dr. Simms'
16 testimony. And I guess that may be something that you may
17 want to ask me about.
18 Q What is your opinion with regard to the teeth
19 fracture?
20 A While it's certainly possible to fracture the teeth with
21 a bat, you know, swinging the bat -- and it doesn't take a lot
22 of force. It actually takes about between 15 and 17 pounds
23 depending on dental condition, to actually cause the teeth to
24 become loose. That usually also causes injuries to the maxilla,

1 meaning the bone holding the teeth, unless the person's
2 mouth is open and it just happens to impact the bat on the
3 tooth itself. Usually you'll see various lip lacerations and things
4 that go along with that. But it's also possible to get those
5 fractures with the back of the scissors being swung in the fist.
6 So I would say it's more likely that this narrow area of the
7 scissor handle hits a tooth than the large surface area of a bat,
8 although it's possible for either to do it in the right
9 configuration.
10 Q Anything further?
11 A No.
12 MS. GREENBERGER: I don't believe I have anything
13 further, Your Honor.
14 THE COURT: We'll be a taking ten-minute stretch
15 break at this time. Ladies and gentlemen, in ten minutes
16 please be in the hallway. The bailiff will meet you there to
17 return to your seats in the courtroom.
18 During the recess you're admonished not to talk or
19 converse amongst yourselves nor with anyone else on any
20 subject connected with this trial. You're not to read, watch or
21 listen to any report of or commentary on the trial or any
22 person connected with the trial by any medium of information,
23 including, without limitation, newspaper, television, radio and
24 Internet. And you're not to form or express any opinion on

1 any subject connected with the trial ul .e case is finally
2 submitted to you. Court's in recess for ten minutes.
3 (The Court recessed at 4:06:49 until 4:25:28)
4 (The jury is present)
5 THE COURT: The record shall reflect that we're
6 resuming trial in State versus Lobato, under Case Number
7 C177394, in the presence of the defendant, her three counsel,
8 the two prosecuting attorneys, the ladies and gentlemen of the
9 jury, and the first defendant's witness, Dr. Laufer, who
10 remains on the stand and under oath.
11 I believe that Ms. Greenberger had passed the
12 witness when we took the stretch break.
13 MS. GREENBERGER: That's correct.
14 THE COURT: So the State may initiate their cross-
15 examination.
16 MR. KEPHART: Thank you, Your Honor.
17 **MICHAEL LAUFER, DEFENDANT'S WITNESS,**
18 **REMAINS UNDER OATH**
19 **CROSS-EXAMINATION**
20 BY MR. KEPHART:
21 Q Dr. Laufer, when is it that you were contacted by the
22 defense in this case?
23 A I don't know the exact date. I'd approximate it at
24 six weeks ago or so.

1 MR. KEPHART: Approach the witness, Your Honor?
2 THE COURT: Yes.
3 BY MR. KEPHART:
4 Q And after you'd been contacted by the defense, you
5 drafted a report, is that true?
6 A Yes.
7 Q And in your report -- well, just so we know what
8 we're talking about, you actually drafted three reports in this
9 case, didn't you?
10 A One report with two revisions subsequently, yes.
11 Q Okay. And in your --
12 MR. KEPHART: If I may approach the witness, Your
13 Honor?
14 THE COURT: Yes.
15 BY MR. KEPHART:
16 Q Can you tell me -- do you recognize what this is?
17 A This looks like the first -- the original.
18 Q Okay. You didn't date this one?
19 A Apparently not, no.
20 Q Okay. And in that report -- do you have a copy of
21 that with you now?
22 A I don't, no.
23 Q Okay. Do you recall -- 'cause, I mean, you just
24 testified about numerous things that you looked at. You

1 testified in direct ... you basically read off numerous items, is
2 that correct?
3 A Yes.
4 Q Okay. And with regards to this first report, did you
5 have an area in that report where you wrote down things that
6 you looked at as well?
7 A I don't recall.
8 MR. KEPHART: May I approach again, Your Honor,
9 to refresh his memory?
10 THE COURT: Yes.
11 BY MR. KEPHART:
12 Q Look at this one, tell me if that's still your report.
13 A Yes.
14 Q Does that appear to be your first report?
15 A Yes.
16 Q Okay. Is there an area in there where you indicate
17 things that you looked at?
18 A Yes.
19 Q Okay. Can you go through that and tell us what you
20 looked at in your -- by your first report?
21 A Yes. Digital images and documents provided on CD
22 ROM and printed. These included images of the decedent
23 initially identified as John Palms Doe, the area where the
24 decedent was apparently found, aerial views of the same area,

1 images of the decedent after transport to what appears to be
2 a morgue, as well as images of the accused and images of
3 another woman with multiple contusions, abrasions and
4 lacerations apparently after a sexual assault and battery.
5 Documents reviewed were written statements by another
6 consulting forensic expert contracted by the defense.
7 Transcripts of trial testimony of the first trial accusing Lobato
8 of inflicting the injuries upon the decedent, as well as the
9 laboratory result summarizing results of samples taken from
10 the decedent at autopsy. I also requested and received
11 images of Lobato's hands measured with calipers across the
12 distal metacarpal-phalangeal joints of the second to fifth
13 fingers.
14 Q Okay. Can you tell me who is the forensic expert
15 that was contacted by the defense, that you looked at
16 statements from them? Who was that?
17 A I believe his name is Brent Turvey.
18 Q Brent Turvey. Okay. Do you have his report with
19 you?
20 A I do not.
21 Q And you didn't look at any other experts that were
22 contacted by the defense as well?
23 A Not that I recall, no.
24 Q You never looked at anything from Mr. -- from Dr.

1 Wetley?
2 A Not that I recall, no.
3 Q And when you testified, earlier, you said in your
4 third report, you now additionally -- and have the third report
5 in front of you, right?
6 A I do, yes.
7 Q You looked at the autopsy report?
8 A Correct. Yes.
9 Q That's in addition to what you looked at before?
10 A Yes.
11 Q Okay. You looked at additional DNA tests done on
12 various samples, including the pubic hair found on the
13 decedent's body?
14 A Correct.
15 Q You looked at video coverage of the trial of Dr.
16 Simms' testimony. And you also said you looked at crime
17 scene coroner's technician testimony. Who would that have
18 been?
19 A My understanding is someone who testified over the
20 last couple of days.
21 Q And your understanding, it was a crime scene
22 coroner's technician?
23 A My understanding was that it was a -- someone from
24 the coroner's office who is a technician, yes.

1 Q Did anyone tell you that?
2 A Yes. I asked specifically what she was, and that's
3 what I was told she was.
4 Q Who told you that?
5 A The defense.
6 Q Did she give you a name?
7 A I think Paulette was the last name.
8 Q Crime scene coroner's technician testimony?
9 A She was someone who apparently did DNA testing.
10 Q And they told you it was a crime scene coroner's
11 technician, though?
12 A That was actually another person who was
13 describing the condition in which they found the body and the
14 plastic wrap and the trash, and the sequence of events.
15 Q Okay. So did you watch or view a crime scene
16 coroner's technician's testimony? That's my question.
17 A I did not watch or view that, no. That was in
18 discussion.
19 Q So that's something that we probably ought to mark
20 out of your report?
21 A This was reviewing that, and I reviewed it with the
22 defense. Their notes on that testimony.
23 Q Once again, a crime scene coroner's technician's
24 testimony?

1 A Correct. That's what I was told that person was,
2 about whose testimony we were conferring.
3 Q Now, if you watched Dr. Simms' testimony, then you
4 recall the questions that were -- matter of fact you even talked
5 about one of the jurors questions.
6 A Yes.
7 Q So you recall that? Okay. One of the questions
8 asked by the State -- me -- was would you expect that if
9 somebody's going to render an opinion about a crime, a
10 person's body, that they would look at an autopsy in
11 conjunction with photographs? Do you remember that?
12 A I do. And as I recall, Dr. Simms said -- well, I
13 reviewed a lot of things, including the autopsy report. Correct.
14 Q His answer was he would expect you to see -- look
15 at both of them.
16 A Right.
17 Q And my question there, then, is, is why is it that you
18 waited until at least September 24th -- well, when you -- or
19 after Dr. Simms' testimony, to then review the autopsy report?
20 A I think that that's a mischaracterization.
21 Q Okay.
22 A We don't have a date of the first. I don't know if
23 you have the second.
24 Q I have the second. I'm going to ask you about that

1 one, too.
2 A Okay.
3 Q Okay.
4 A So it was in that interval between the second and
5 the third that I reviewed it.
6 Q Okay. So you would agree that even in the second
7 report, you hadn't even looked at the autopsy report?
8 A I actually can't recall if I had looked at it at that
9 point or not.
10 MR. KEPHART: May I approach, Your Honor?
11 THE COURT: Yes.
12 BY MR. KEPHART:
13 Q I'm showing you what appears to be a -- one, two,
14 three -- four-page report. Does that appear to be your report?
15 A Yes.
16 Q Okay. And in -- this area says -- right under
17 September 3rd of 2006 -- it's the same area that starts out with
18 what you reviewed. Can you tell me in that area if you see
19 anyplace in there that you reviewed an autopsy report? It'd be
20 that first paragraph, Doctor.
21 A No, it's not listed specifically.
22 Q So we can assume, then, that you had not looked at
23 the autopsy report of Dr. Simms at least by September 3rd,
24 2006? Is that correct?

1 A I certainly didn't list it. I ca member if I
2 reviewed it prior to that or not.
3 Q And you rendered some opinions, however, about
4 your findings, particularly in this case, in all three reports,
5 didn't you?
6 A Yes.
7 Q And it changed actually -- well, let me ask you this.
8 You came here to testify -- and we have marked -- I guess the
9 defense marked into evidence -- I don't know if you have them
10 there with you still, Doctor, but some scissors. Oh, here they
11 are. Exhibit CCCC.
12 MR. KEPHART: Is that right, Judge? Four Cs?
13 THE COURT: Four Cs.
14 BY MR. KEPHART:
15 Q Right here. And you kind of held them and you
16 talked about them in direct examination. Did you bring the
17 scissors with you that you did the tests on?
18 A No.
19 Q Okay. And in your first -- in your first report do you
20 remember characterizing them as the kind commonly used to
21 cut hair by a barber or hair stylist?
22 A Yes.
23 Q And you said that they had a finger hook on them?
24 A Correct.

1 Q Is that correct?
2 A Yes.
3 MR. KEPHART: Can I have this marked, Your
4 Honor? Showing defense State's Proposed Exhibit 261. May I
5 approach, Your Honor?
6 THE COURT: Would you state the number of it
7 again?
8 MR. KEPHART: 261.
9 THE COURT: 261. Yes, you may.
10 BY MR. KEPHART:
11 Q Doctor, I'm showing you what's been marked as
12 State's Proposed 261. Does that appear to be a photograph of
13 scissors?
14 A Yes.
15 Q And those would be -- it says actually styling
16 scissors, is that right?
17 A Correct.
18 Q And there's a --
19 MR. KEPHART: Move to admit 261, Your Honor.
20 MS. GREENBERGER: No objection.
21 THE COURT: Granted.
22 (State's Exhibit 261, admitted)
23 BY MR. KEPHART:
24 Q That's what you're talking about in your first report,

1 aren't you?
2 A Yes.
3 Q 'Cause you say it has a finger hook on it?
4 A Correct.
5 Q And that's what we mean right there at the bottom,
6 a finger hook?
7 A Yes.
8 Q Then in your next report, September 3rd of 2006,
9 you change that, and you're now saying scissors -- here they
10 are
11 -- scissors that are -- the configuration is consistent with
12 Fiskar-like scissors. Is that correct?
13 A Yes.
14 Q And that's what we have here today, somewhat of a
15 Fiskar-like scissor?
16 A Right. Plastic handles as opposed to a metal hook.
17 Q Okay. Now, you -- when you were contacted by the
18 defense -- now, you said in previous testimony, that you have
19 actually testified in previous -- on previous occasions. Matter
20 of fact, your curriculum vitae talks about -- I guess with
21 accident reconstruction, automobile accidents type of thing like
22 that? Is that what we're talking about?
23 A On a few occasions, yes.
24 Q And when you're contacted by the defense do you

1 arrange a negotiation with them as to what it would cost for
2 you to actually come testify?
3 A Not on every occasion, no.
4 Q Did you do that in this case?
5 A I didn't.
6 Q You're doing this for free?
7 A Yes.
8 Q Now, you've had an opportunity to view -- prior to
9 today, view a website in reference to the defendant?
10 A I'm not sure I know what you mean.
11 Q It's your testimony that you would be an objective
12 observer?
13 A Yes.
14 Q And you have -- matter of fact you are here to
15 render an opinion, and you basically if I'm -- get me wrong or
16 not -- are you -- you have rendered three different reports that
17 talk about your opinion in this case? Is that right?
18 A Correct.
19 Q And in your most recent report you even went so far
20 to say, I still intend to do further testing and review prior to
21 testifying that may add to or change my opinions, is that
22 correct?
23 A Yes.
24 Q Your exhibits -- the defense exhibits --

1 MR. KEPHART: Excuse me, Honor.
2 THE COURT: Yes.
3 MR. KEPHART: Is that UUU or VVV?
4 MS. GREENBERGER: I think it's UUU.
5 MR. KEPHART: Okay.
6 BY MR. KEPHART:
7 Q UUU is the one that we were talking about with the
8 -- your test of the use of this knife. This butterfly knife. Is
9 that right?
10 A Yes.
11 Q Okay. And then III -- I guess your Power Point has
12 it a little bit clearer than this. You described -- there, that's
13 better. You described that as a teardrop-type injury. One-
14 sided weapon?
15 A Single edged. Yes.
16 Q Single edge. And the rough side -- I guess the back
17 side of the knife would be to the left of this photograph, the
18 sharp side would be to the right of the photograph? Is that
19 correct?
20 A Correct.
21 Q And Exhibit FFF -- we'll use EEE. See that?
22 THE COURT: So this is EEE rather than FFF?
23 MR. KEPHART: Yes, Your Honor. Defense Exhibit
24 EEE.

1 THE COURT: We seem to keep getting that one
2 mixed up.
3 BY MR. KEPHART:
4 Q See that, Doctor?
5 A Yes.
6 Q Teardrop?
7 A Yes.
8 Q Pretty consistent with what you had talked about in
9 III, isn't it?
10 A Single-edge instrument.
11 Q What's that?
12 A It's a single-edged instrument, yes.
13 Q In fact all those are teardrop, correct?
14 A Correct.
15 Q Now, it's your testimony that with regards to the
16 type of instrument that would have been used here, as in --
17 specifically EEE, is scissors, is that right?
18 A Yes.
19 Q And you had conducted some tests where we saw
20 some bunched up suede in some foam, is that correct?
21 A Ultrasuede, yes.
22 Q Ultrasuede. Okay. And can I ask you this, Doctor:
23 You said that you've invented -- or been involved in inventing -
24 - or you have a hundred patents or a little less than a hundred

1 patents. So you've been involved in -- have you actually been
2 involved in the invention of these type of things?
3 A Yes.
4 Q Okay. So you've tested them?
5 A Correct.
6 Q And you've marketed them?
7 A In some cases.
8 Q And when you test those items in order to market
9 them, do you show your tests? Do you document your
10 tests?
11 A Sure. Yes.
12 Q Because you want to impress upon somebody the
13 purpose of the item that you're -- that you have designed and
14 how it works?
15 A For a variety of reasons.
16 Q Okay. In this particular case you said you were
17 contacted by the defense some six weeks ago, and you
18 conducted these tests I guess after the defense contacted
19 you?
20 A Yes.
21 Q Have you -- did you actually conduct the tests prior
22 to drafting your third report that's dated the 24th of
23 September, and after your report of September the 3rd?
24 A No, it was actually -- that was the test that I was

1 going to conduct when I referred specifically to "I intend to
2 conduct further tests." This was the test.
3 Q So you did it after the 24th?
4 A Correct.
5 Q Okay.
6 A Last Saturday.
7 Q What time?
8 A Last Saturday, specifically.
9 Q Well, today's the 26th. Yesterday was the 25th.
10 Sunday would have been the 24th. But you conducted the test
11 Saturday?
12 A It actually was Sunday. Sorry.
13 Q Okay. So you drafted the report, I guess sent it to
14 the defense, who in turn gave it to us yesterday, and you were
15 conducting the test after you did that?
16 A Correct.
17 Q Okay. And where was it conducted at?
18 A My office.
19 Q And who helped you do the test?
20 A No one.
21 Q Okay. No one witnessed the tests?
22 A Correct.
23 Q Matter of fact you testified that --
24 A Actually that's not completely true 'cause I did show

1 them to someone who happened to b[illegible]king on the
2 weekend, who's our controller.
3 Q Okay. But you actually said that when you did the
4 tests -- when you took a photograph, you were holding the
5 scissors yourself and you took the photograph, is that correct?
6 A Yes.
7 Q And you have no -- no video documentation of this
8 test or anything like that?
9 A Only the video documentation that you see.
10 Q There's actual video or is it just what you put as
11 your Power Point?
12 A It's -- it's video in the sense of still picture video but
13 it's not moving picture video.
14 Q And you have shown us in cross-examination, and
15 multiple times, basically situations where you believe how
16 these scissors were handled?
17 A Yes.
18 Q How they were held?
19 A Correct.
20 Q Show us once again how you believe the scissors
21 were held to -- when the injuries of EEE were made?
22 A [witness demonstrates]
23 Q Okay.
24 MR. KEPHART: Your Honor, for the record, he's got

1 his pointer finger -- he's using his right hand, he's got his
2 pointer finger through the -- one of the holes I guess in the
3 scissors, and his pinky finger on the same hand, through the
4 other hole.
5 THE COURT: The record shall so reflect.
6 MR. KEPHART: Okay.
7 BY MR. KEPHART:
8 Q And you're saying that that would have been in a
9 situation -- maybe he's getting stabbed like that?
10 A Correct.
11 Q Okay. And when you conducted these tests on the
12 ultrasuede -- and you -- show me you how you did it on the
13 ultrasuede. Use your book there or something as your
14 ultrasuede. Just -- don't stab through it obviously but --
15 A This -- this was resting on a trash can, across here,
16 and straight through.
17 Q And you did that with -- two different times?
18 A Correct.
19 Q And that's the two photos that we have here?
20 A Yes.
21 Q Matter of fact -- is this photo here, PPP, is that a
22 photo that you took as you were stabbing into the ultrasuede?
23 A No.
24 Q Who took that photo then?

1 A This w[illegible]r the snip test.
2 Q Okay. Is this the one you took for stabbing into it?
3 A Yes.
4 Q Okay. Now, in reference --
5 THE COURT: Can you identify that one?
6 MR. KEPHART: Oh, I'm sorry, Judge. OOO.
7 THE COURT: Thank you.
8 BY MR. KEPHART:
9 Q And is there another one like that?
10 A No.
11 Q Okay.
12 MR. KEPHART: Court's indulgence, Your Honor.
13 THE COURT: Yes.
14 MR. KEPHART: I'm having trouble here. I'm sorry.
15 THE COURT: Yes.
16 BY MR. KEPHART:
17 Q You said there was only one time that you tested
18 that?
19 A I stabbed the cushion twice.
20 Q Okay.
21 A But I only took a picture of it in the cushion once.
22 Q Did you change the material between stabs?
23 A No. It's all one continuous piece.
24 Q Do you have a photograph of the whole piece so we

1 could see in relation to where you stabbed it?
2 A I don't.
3 Q So you only have a photo of one stab? Is that right?
4 A I have a -- I have two photos of the stabs, which
5 you have, one pointing away, one pointing toward.
6 Q Okay.
7 A But only one picture of the scissors in the foam.
8 Q Okay. So we don't know which one of -- the one
9 that you see here on the screen now, 000 -- I mean OOO, we
10 don't know if it caused SSS or TTT, do we?
11 A Actually we do, only because I remember.
12 Q Okay. Which one did it cause? SSS --
13 A The picture -- this picture is the first stab wound. Q
14 And which one is that?
15 A That was the one where they actually point away
16 from each other.
17 Q So you're talking about --
18 A It's upside down, but --
19 Q SSS?
20 A Yes.
21 Q Right here?
22 A Correct.
23 Q Okay. And then TTT was -- is that upside down too?
24 Was another time?

A That one's -- correct.
Q That's one right now?
A [no audible response]
Q Is that a yes?
A That's a yes.
Q Okay. And so we don't know -- well, at what point in time did you do the second stab? Was it in the -- like I said, was it in the same material?
A Same material -- and actually if you go back to the picture that shows the scissors still in --
Q Yeah.
A -- you'll notice, right here, there's a seam.
Q Okay.
A That's where the second stab wound happened. In that area of the seam.
Q Okay. Can you show me on SSS? I'm sorry, that was your first one. The second one, TTT, where the seam's at?
A Right here.
Q Oh, I thought you said that that was an abrasion caused from the knife.
A Well --
Q I mean the scissors.
A If you -- go back to the one where they point away

from each other.
Q Okay.
A That's the one where I was talking about the abrasion, right here.
Q You see something on there? Is it your testimony that you see something on that photograph that appears to be an abrasion? That's SSS.
A It was certainly visible on the fabric and on the Power Point presentation. This thing as you pointed out earlier, degrades the image.
Q On your Power Point presentation -- okay. Well, let me -- let me give you the photograph, SSS, and you tell me if you can see an abrasion there?
A Well, again, you've printed it at a different resolution. But if we go back to the Power Point, it's easier to see.
Q These are actually your -- the defense's exhibits.
A Yeah, these -- these are prints.
Q Okay. And it's your testimony, though, the Power Point presentation has an abrasion on it?
A It certainly is more clear than on these prints, yes.
Q And then on -- on TTT, you're saying that this mark through the center here, is the seam?
A That's a seam, correct.

Q And it's [illegible] light? Isn't the seam right below that?
A Well, even though it was unintentional when I stabbed, it happened because there was a seam there that the points went into the seam, and resulted in the stabs in the seam. It's not where I would have chosen to stab, and I guess if I wasn't going to be completely direct about it, I would have done it again somewhere else, but I didn't.
Q Can you see this area right here? Appears to be a little darker than any other area, doesn't it? Right above the blue line.
A Yes.
Q Is that your seam?
A It's certainly in the vicinity of the seam, yes. There's a shadow there.
Q Then what's this area right here? Is that your abrasion?
A No. I think what you're seeing is the shadow caused by the seam. If you go back, the seam is actually pointing upward, as I recall, and so the light is casting a shadow down in the area of the line that you drew.
Q So that certainly wouldn't be an abrasion then?
A That is not an abrasion, no.
Q Okay. Now, Doctor, can you show us again how you say that you used -- just held the scissors with regards to the

stab puncture?
A This is the snip.
Q No. Stab.
A The picture you're showing is the snip.
Q Okay. This one here.
THE COURT: That was PPP?
MR. KEPHART: Yes, Your Honor.
THE COURT: And now the one that's up is --
MR. KEPHART: SS.
THE COURT: SS.
MR. KEPHART: May I approach, Your Honor?
THE COURT: You may.
BY MR. KEPHART:
Q You're saying that these here, this is how it would be held --
A The blades.
Q -- to make the stab?
A Yeah.
Q Okay. So you're saying that they -- that they would be more fixed like that than a knife?
A I'm not sure I understand the question.
Q Well, obviously, they're not designed to be held that way, are they?
A No.

1 Q A knife's designed to be hel[illegible] ne palm of the
2 hand. And my question of you, is, are you saying that scissors
3 in that nature, being held like that, are -- would they be able
4 to be moved back and forth? That's what I mean.
5 A You mean open and closed?
6 Q No. Back and forth.
7 A Or do you mean rotated on the hand?
8 Q Uh-huh. Yeah.
9 A Yeah, they're -- they're rotatable.
10 Q Okay. You indicated that -- that with respect to the
11 stab wounds -- you described these ones here in the abdomen
12 of Mr. Bailey, EE -- that it's your opinion that these were
13 caused by scissors?
14 A Correct.
15 Q Okay. And my question to you, is, do you know how
16 deep these were?
17 A No. There was evidence by Dr. Simms that at least
18 one went into the liver.
19 Q Okay. That's pretty deep.
20 A It's pretty deep.
21 Q Did you read the autopsy report?
22 A I did.
23 Q Okay. In this -- these particular pictures, if you were
24 using the very scissors that you have right there, one of them

1 would have to penetrate the liver. How deep is the liver?
2 A It depends on how thick the abdominal wall is. It's
3 certainly on the order of inches.
4 Q Okay. Inches. Would you expect that once the -- a
5 pair of scissors go into the point where they actually penetrate
6 the liver, several inches here, that the injuries would get closer
7 together? Are you saying that they bunch up when you do
8 that?
9 A Yeah, the skin bunches up.
10 Q Human skin is going to bunch up like you have these
11 pictures in -- in Exhibit OOO?
12 A Correct.
13 Q Wouldn't that have a lot to do with the muscular
14 portion of the individual in the abdomen here?
15 A The thickness of that bunch is certainly going to be
16 dependent on the individual, yes.
17 Q And it's your testimony here that these bunched up
18 enough to where it caused that laceration in the center?
19 A The abrasion, correct.
20 Q The abrasion. Would that also be consistent with a
21 stab wound and then the knife being drug across the wound?
22 A You would have to do essentially three things. You'd
23 have to stab, you'd have to drag and rotate the knife, and then
24 stab again. And you'd have to do it at a fixed interval between

1 the two sets of s[illegible] wounds.
2 Q Well, you say fixed interval, you're talking about the
3 distance between here and here?
4 A Well, it's actually the distance of that line connecting
5 between the two. Sorry, that was not a very good one. So --
6 Q Sorry. I'm trying to get it where you can see better.
7 A So the distance -- and it's actually not so much the
8 distance between the sharp edges, it's actually the distance
9 between the puncture and the other puncture, and the
10 puncture and the other puncture.
11 Q Okay. The back side? Would it be the back side?
12 'Cause, obviously, in order to make the back side of that
13 injury, something had to start there, right?
14 A I'm not sure I know what you mean by the back
15 side.
16 Q Well, you talked about a teardrop, and you -- that
17 you expect the sharp portion of the weapon to be at the sharp
18 point of the teardrop.
19 A Correct.
20 Q And that the dull portion of the weapon would be at
21 the back -- at the --
22 A Outside.
23 Q -- dull portion of the teardrop.
24 A Right.

1 Q And in this particular case, wouldn't you expect the
2 weapon to have entered the skin at least at the back portion,
3 meaning the blunt portion of the teardrop?
4 A No, because actually the hole gets bigger as you go
5 down the blade.
6 Q So it'd be right in the middle?
7 A Well, it's not actually in the middle either because if
8 you look at the blade, it's actually along a line that connects --
9 or that actually connects the sharp and the dull. But if you
10 only have one of those edges, it's really along the edge that
11 doesn't cut, which is really the dull edge.
12 Q Where would you start your measurement on these
13 particular -- these particular injuries to tell us that they came
14 from the same weapon?
15 A The only straight edge on the scissors is the dull
16 edge. So you start from there to there, there to there.
17 Q And it's your testimony that these here are
18 consistent?
19 A Yes.
20 Q In what regard? Tell me the measurements. Are
21 they both the same?
22 A Actually I went from the smallest --
23 Q And if you could direct me to your report --
24 A Sure.

Q -- where you're actually talk about the measurements?

THE COURT: Would counsel approach?

(Off-record Bench Conference)

THE COURT: Ladies and gentlemen, we had hoped that Dr. Laufer's testimony would be concluded today but that is not going to be possible due to a scheduling issue tomorrow. He will be returning with us on Thursday at 1:00 o'clock.

He may step down and we will see him back -- the Court orders him to return Thursday at 1:00 p.m.

We will be taking our evening recess. During this recess the Court admonishes you that you are 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.

You have a good evening and we will see you tomorrow at 10:30. Please be in the hallway at that time and the bailiff will meet you there to return you to your seats.

The jury may exit.

(Jurors Recessed at 5:09:34)

THE COURT: The record shall reflect that the jury has exited and the Court's asked counsel to stay to discuss some scheduling issues. And we'll go off the record at this time.

Court Adjourned until the following day,
September 27, 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.

Lori Lutz
Transcriber

5/10/07
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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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 13
VOLUME XIII

WEDNESDAY, SEPTEMBER 27, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

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NAME	DIRECT	CROSS	REDIRECT	RECROSS
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* * * * * *

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* * * * *

LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 27, 2006

PROCEEDINGS

(THE PROCEEDINGS BEGAN AT 10:45:45)

(Jurors are present)

THE COURT: Good morning. The record shall reflect that we're resuming trial in State versus Kirstin Blaise Lobato under case number C-177394. In the presence of the defendant together with her three counsel, the two prosecuting attorneys and the ladies and gentlemen of the jury.

As Dr. Laufer will be returning on Thursday and was not able to be here with us today we are returning to the State's case in chief and resuming with the testimony by Detective Thomas Thowsen at this time. Would the bailiff please call the hall for the detective to return to the witness stand.

(Pause in the proceedings)

THE COURT: Yes, I'll take this opportunity to then discuss scheduling with the jury. The Court and counsel had a discussion at the end of the day yesterday about the pace of the proceedings and where we're at in terms of meeting our timeline to be concluded by this Friday. It appears now that it would be very late Friday evening when all of the testimony would be concluded. After the testimony is concluded, as the

Court advised you at the start of the trial, the Court will then instruct you on the areas of law that you need to be instructed on. Thereafter you would hear the closing arguments from both sides and initiate your deliberations thereafter. I think this would put us into the early morning hours of Saturday if we do that. Detective Thowsen has now arrived so I am going to be speaking with you later this afternoon about that.

The witness may return to the stand and the clerk will be placing him under oath at this time.

THOMAS THOWSEN, STATE'S WITNESS, SWORN

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

THE WITNESS: My name is Thomas Thowsen, T-H-O-W-S-E-N.

DIRECT EXAMINATION (continued)

BY MR. KEPHART:

Q Detective, when we broke during your testimony on Monday we were at the point where you were discussing with the jury that you had contacted the defendant, had identified the defendant in the courtroom and you had contacted her at her parents' residence. Do you recall that testimony?

A Yes, I do.

Q As -- now you indicated that you went there with a sheriff from Pioche, that's the Lincoln County Sheriff's

Department?
A I believe it was a sergeant from the Lincoln County Sheriff's Department.
Q Showing you Exhibit 182, you indicated that this was the house that you went to. Do you also recall testifying that the sheriff actually went into the garage and came into contact who you believed to be the defendant's sister?
A That's correct.
Q Okay. How is that you gained entrance to the house? A I believe once he had a conversation with the sister in the garage that we were invited in the house and followed him through the garage into the house.
Q Okay. And you were with Detective LaRochelle, is that correct?
A Yes, it is.
Q And the sheriff was with you as well?
A Yes.
Q And you said that the crime scene analyst stayed outside?
A Yes, she was sitting in her vehicle just down the road.
Q And was there anybody else with you and LaRochelle and the sheriff?
A No.

Q Okay. And there came a point in time that you said that when you got into the house you waited for a period of time until the defendant came out of the shower, I guess you were told?
A That's --
Q Isn't that another room?
A Yes.
Q And where were you waiting during this period?
A In the livingroom area.
Q Okay. And were you waiting with the sheriff and the sister at that time?
A And Detective LaRochelle.
Q Okay. There came a point in time that the sheriff and the sister left?
A Yes.
Q And went where?
A I believe back into the garage area.
Q Okay.
A It was out of our view.
Q Okay. And at what point in time did that occur?
A Once Ms. Lobato came out from the back.
Q Okay. Tell us what happened once she came out of the back again?
A When she came out of the back I approached her

and introduced myself as a homicide detective from Metro Police and my partner, LaRochelle, as a homicide detective from Metro Police as well.
Q And what happened after you introduced yourself?
A I explained to her that we were there to talk to her about an incident that had recently happened in Las Vegas in which I'd understood that she'd been attacked and had to defend herself and mentioned that I noticed that her car was parked out front and that the license plate was very distinct. At that point she made a comment that somebody could have been borrowing her car. I immediately followed with the statement that I knew that she'd been hurt in the past and with that she began to sob and lowered her head.
Q And what did she say then?
A She said that I didn't think anybody would miss him.
Q And you hadn't said anything to her about who the attacker was or anything like that, had you?
A Nothing at all.
Q You hadn't said anything to her that you were investigating a murder or anything like that, did you?
A No.
Q Now after she had explained to you that she didn't think anybody would miss him, what did you do after that?
A At that point I gave her a "Rights of Person Arrested

card and asked her if she would read it aloud to me, which she did, and then she signed it and dated it. I asked her if she understood and was willing to speak with us and she said that she was.
Q Okay.
MR. KEPHART: May I approach the witness, Your Honor?
THE COURT: Yes.
BY MR. KEPHART:
Q Okay. I'm going to show you what's been marked as State's Proposed Exhibit 123 and I'm also going to leave up here State's Proposed Exhibit 124 because I'm going to talk to you about that in a minute here. But could you look at State's Proposed Exhibit 123 and tell me if you can -- tell me what that is?
A The card at the top is xeroxed copy of the Rights of Person Arrested card that I gave to Ms. Lobato on that date.
Q Okay. How can you recognize that as one that you gave to her?
A It has my signature and P number at the bottom. It has Ms. Lobato's signature as well as the date of 7/20/01, the time of 5:55 p.m., and then I've put the event number of the case below that.
Q Okay. And who wrote in her signature, the time,

and the date?
A Ms. Lobato did.
Q Okay. And you indicated that this is something that you give to individuals to discuss with them or to advise them of their rights?
A That's correct.
Q Okay. At this point in time had she been arrested?
A No.
Q And also on 123 is a series of photographs?
A Yes.
Q And what are those photos taken of?
A Those are pictures of Ms. Lobato's face taken with the camera at the jail.
Q At the jail?
A Yes.
Q Okay.
MR. KEPHART: Your Honor, I'll move to admit Exhibit 123.
MR. SCHIECK: No objection, Your Honor.
THE COURT: Granted.
(State's Exhibit No. 123 admitted)
BY MR. KEPHART:
Q And can you look at 124 as well? Can you tell us what that is?

THE COURT: Is it Proposed 124?
MR. KEPHART: State's Proposed Exhibit 124, Your Honor. Yes.
THE COURT: Thank you.
THE WITNESS: Yes, I can.
BY MR. KEPHART:
Q What is it?
A These are consent to search cards signed by Ms. Lobato.
Q Okay. And when were those executed?
A On 7/20/2001.
Q Okay. Do you recall at what point in time you executed those cards when -- in reference to the Rights of Person Arrested?
A I do.
Q At what time? At what --
A I have -- even though there's not a place for the time I always put the time on here because it's always asked.
Q Okay.
A And it's 18:41 hours which would be 6:41 in the evening.
Q Okay. Now she had written here 5:55 p.m., 7/20. That was when you gave her her Rights of Persons Arrested card --

A Yes.
Q -- or had her read that?
A Yes.
Q And then that one is what, 6:41?
A Yes.
Q Okay. So I take it something transpired in between those and this?
A Yes.
Q And what was that?
A That was a conversation and a taped statement with Ms. Lobato.
Q In between who?
A Between myself, Detective LaRochelle and Blaise Lobato.
Q Okay. In reference to the Rights of Arrested -- Rights of Persons Arrested here on this card that you had --
A Yes.
Q -- her sign, is that something that you provide or is it -- is it a standard card that is provided by, at least in this case, a detective when asking a person giving a person their rights in reference to questioning them?
A Yes, it is.
Q And in this particular case you actually had the defendant sign it and then she dated and put the time in. Is

that -- is the date and time in the correct place?
A No, it's not.
Q Okay. But it is her handwriting that she did --
A Yes, it is.
Q -- you witnessed her do that? Did you ask her whether or not she understood what she was signing here?
A Yes, I did.
Q Okay. Now you indicated that she signed this card. How do you give it to somebody? I mean do you read it to them, do you -- do you have them read it? Does somebody else read it or tell us how it happened?
A The method that I prefer to do is ask the person, you know, if they can read and write the English language. If they can I will present the card to them and ask them to read it to me out loud. This way I know that they're taking their time to read the card, that I didn't read it too quickly for them, they didn't understand something. They can take their time and just read it as many times as they need to to make sure that they're clear on it. Once they have read it I'll ask them if they understand that and they're willing to speak with me. And at that point if they are they will sign the card and date and time it, return it to me, and I'll place it in the file --
Q Okay.
A -- at that point.

Q Okay. So she indicated to you that she understood what she was signing?
A Yes.
Q And she understood that and agreed that she would be speaking with you?
A Yes.
Q Okay. And up to this point you hadn't discussed anything in reference to the actual murder of Duran Bailey, had you?
A No.
Q Okay. After she signed the card was she placed under arrest?
A No, she was not.
Q And --
A I should also point out that as I give this card to someone that I'm going to interview and I explain to them, even though it says Rights of Person Arrested card that they're not under arrest, that they're willing to talk to them [sic] about a serious situation that could possibly result in that, and they need to be aware of these particular rights to begin with.
Q That's what you did here?
A Yes.
Q Okay.
MR. KEPHART: May I approach, Your Honor?

THE COURT: Yes.
MR. KEPHART: Your Honor, I'll move to admit State's Proposed Exhibit 124.
MR. SCHIECK: No objection.
THE COURT: Granted.
(State's Exhibit No. 124 admitted)
BY MR. KEPHART:
Q Now, detective, after the defendant had read her rights and you discussed them with her, did she -- she told you she would talk to you?
A Yes, she did.
Q Did she at any time ever ask that her parents be present or anything like that?
A No, she did not.
Q Okay. You're aware that she was an adult?
A Yes.
Q Okay. And do you recall during any period of time that you -- before you started to question her whether or not her sister came back in the room?
A Not that I recall.
Q Okay. The sheriff, did he come back in the room?
A No.
Q Okay. And where did it take place, the discussion and the signing of the rights within that house? Where was it?

A It was in the livingroom. She was actually sitting, I believe, on the ottoman and I think I was sitting on the couch right next to it.
Q The ottoman would be what? Something that you put your feet on in front of the couch?
A Yes, in front of a chair.
Q Okay. And where was Detective LaRochelle?
A He was off to my right side somewhere behind me.
Q Okay. Before questioning her you realized that she had just come out of the shower?
A That's what we were told and she looked like her hair was still damp, like she'd just come out of a shower.
Q Okay. Did she indicate to you that she had any concerns or anything with her health that would prevent her from being able to talk to you?
A No, not at all.
Q She give you any indication to you at all that would cause you some concern with questioning an individual in -- under the nature of the type of charges that you knew were involved her?
A No.
Q And you had testified earlier that when you talked to Laura Johnson you had actually tape recorded her statement and you have a copy of the tape recorded statement in your

file?
A Yes, I do.
Q Okay. And we talked a little bit that in this particular case your assignment was to interview the witnesses?
A Yes.
Q And that you would tape record statements that they would provide?
A That's correct.
Q Jumping ahead a little bit, do you remember even going back up to Panaca and recording a statement given to you by a Ms. Allen -- Diann Allen?
A Yes.
Q Okay. And you recorded that?
A Yes.
Q Okay. But that was some time later but it was during the same investigation?
A Yes, there were several people back up there that we contacted and took statements from.
Q Okay. In this particular case did you inform the defendant your intention of tape recording her?
A Once I'd spoken with her for a few minutes and she'd explained to me basically what had happened I told her that what I would like to do now is to get a tape recorded statement from her so we have exactly in her words what she

1 wants to express.
2 Q Okay. Can you -- do you have a copy of her tape
3 recorded statement with you?
4 A Of the transcribed part?
5 Q Transcribed portion?
6 A Yes, I do.
7 Q Can you turn to that in your file?
8 A I can.
9 (Pause in the proceedings)
10 Q Are you at it yet?
11 A I am.
12 Q Okay. With respect to the transcription of the
13 statement that's -- this is something provided by the Las Vegas
14 Metropolitan Police Department?
15 A The statement is, yes.
16 Q Yeah. And on the cover of the statement insignia,
17 "Voluntary statement," do you give information as to who the
18 person is that's giving the statement?
19 A Yes.
20 Q Do you have their name?
21 A Yes.
22 Q Other identifiers as well?
23 A Yes.
24 Q Like address, Social Security number, and a date

1 of --
2 A Date of birth.
3 Q -- date of birth and stuff? Okay. And do you also
4 give information or put information on there as to what times
5 the actual statements take place, who's with you, that type of
6 information?
7 A Yes.
8 Q Is that done in this particular case here?
9 A Yes, it is.
10 Q Okay. And can you tell us just what information is
11 presented in -- at least in the heading of this to tell us who
12 was there and who -- at what time did you give this, and what
13 date?
14 A On the first page I can tell that it was on 7/20 of
15 2001 at 18:07 hours, which is 6:07 in the evening. The person
16 giving the statement is Kirsten Blaise Lobato and also present
17 is Detective Jim LaRochelle. And location is at her home
18 address at 670 Calloway in Panaca, Nevada.
19 Q Okay. Detective, with regards to the Exhibit 123
20 you'd indicated that she wrote the time of when she signed
21 that. What time is that?
22 A That time is 5:55 p.m.
23 Q And you've testified that the statement that was
24 recorded is on the same day at 6:07, is that correct?

1 A That's correct.
2 Q So there's approximately 12 minutes in between the
3 portion where she signs this until you tape record it?
4 A That's correct.
5 Q Okay. Tell us what is happening in that 12 minutes
6 with regards to -- now you did say that you discussed some
7 things with her. Tell us what you talked to her about?
8 A Yes. As I explained previously whenever we talked
9 with her -- it's a suspect or a witness, what we will do is before
10 we take a tape recorder and put it in front of them that might
11 make them uneasy is we will talk to them about what
12 information they have. That way we can sort of make an
13 outline as the information they have, it helps us get
14 information from them so that they don't just clam up right
15 away and not want to talk to us. Just in case after we get
16 done asking them they don't want to actually give a tape
17 statement we'll at least have that information from them. And
18 it give us an outline to go by so that we have a feel for in what
19 order we're going to ask certain questions to make sure that
20 everything is explained and if we see a discrepancy we can
21 then mention, previously did you mention "A" to me and now
22 you've said something differently.
23 Q Okay. And in this particular case after discussing
24 things with her for approximately 12 minutes do you feel that

1 you developed that rapport with her that you needed for
2 purposes of getting her to give you a taped statement?
3 A Yes.
4 Q And she agreed to give you a taped statement?
5 A Yes.
6 Q Okay. The tape recorder that you use -- that you
7 used back at least in July of 2001 do you recall was it a
8 handheld type model or can you tell us about that a little bit?
9 A Yes. The tape recorder I would have been using in
10 2001 is a -- Lanier is the brand and it's a small black micro-
11 cassette recorder.
12 Q Is it something that you would put out on the table
13 in front of somebody, something you'd leave concealed in your
14 jacket or what?
15 A My habit would be to hold it in my hand that way I
16 could -- as I'd ask a question, ask them, I would hold it a little
17 bit closer to them to make sure that it would pick up the sound
18 as possible.
19 Q Have you had on occasion situations where you're
20 recording somebody's statement and it's hard to hear the
21 statement given by the other -- by the individual you're asking
22 questions of?
23 A Yes. Sometimes people are talking very quietly or
24 they'll have an air-conditioning sound in the back that makes it

1 difficult to hear.
2 Q In this particular case did you have any of those
3 difficulties with the tape recording the statement given by the
4 defendant?
5 A I don't believe so.
6 Q Okay. And you haven't -- you've had -- you have
7 had an opportunity to review that since then?
8 A Yes.
9 Q And you've heard that tape recording?
10 A Yes.
11 Q Okay.
12 MR. KEPHART: May we approach, Your Honor.
13 THE COURT: Yes.
14 (Off-record Bench Conference)
15 BY MR. KEPHART:
16 Q Detective, prior the case being submitted to the
17 District Attorney's office for prosecution were you involved in
18 generating copies not only the transcriptions but -- and the
19 tapes as well of individuals that had given statements here?
20 A Yes.
21 Q And you're aware that a tape was actually generated
22 with the interview of Kirstin Blaise Lobato?
23 A That's correct.
24 MR. KEPHART: Okay. I move to admit 125A, Your

1 Honor.
2 MR. SCHIECK: Based on discussions at the bench,
3 Your Honor, no objection.
4 THE COURT: Granted.
5 (State's Exhibit No. 125A admitted)
6 MR. KEPHART: Your Honor, at this time we had
7 prepared the actual statement in a scrolling form to allow the
8 jury to hear the full statement and we wanted to present that
9 at this time.
10 THE COURT: You may proceed.
11 MR. SCHIECK: For the record, Your Honor, we
12 reviewed that.
13 THE COURT: Thank you.
14 MR. SCHIECK: No objection.
15 BY MR. KEPHART:
16 Q Detective, I'm going to play a portion of this, I'm
17 going to -- and then I'm going to stop it and ask you if you can
18 identify this, okay?
19 (State's Exhibit No. 125A is played)
20 BY MR. KEPHART:
21 Q Okay. Detective, do you recognize who that voice is
22 in reference to this --
23 A It's sounds like my voice being played a little bit fast
24 on the machinery.

1 Q A little too fast, okay. But that is -- and you had an
2 opportunity to review the transcript as it -- as it played. Was it
3 consistent with the -- what's shown with the words on the
4 transcript as well?
5 A Yes, it is.
6 Q Okay. And that is your voice but going a little fast?
7 A Yes, it is.
8 Q And we're talking about the actual interview of the
9 defendant on July the 20th of 2001 at her house, which you
10 just testified about prior as you were prior -- giving her her
11 Rights of Persons Arrested card?
12 A Yes.
13 Q Okay.
14 MR. KEPHART: Go ahead and play it then, Your
15 Honor.
16 (State's Exhibit No. 125A is played)
17 MR. KEPHART: Your Honor, with respect to 2001
18 would the Court take judicial notice of what I would say two
19 weeks prior to July 20th of 2001 would be -- what the date
20 would be?
21 THE COURT: The clerk has just retrieved the
22 calendar, July 20th, 2001 the Court takes judicial notice was a
23 Friday, two weeks prior would be Friday, July 7th.
24 MR. KEPHART: Okay. And in June what day is

1 Father's Day, if it's the third Sunday in June 2001, Your Honor?
2 THE COURT: Court takes judicial notice that the
3 third Sunday in June of the year 2001 was June 17th.
4 MR. KEPHART: Would the Court also take judicial
5 notice of what day -- Friday the 13th, is there any Friday the
6 13ths in May, June or August?
7 THE COURT: The Court takes judicial notice that
8 there are no Friday the 13ths in the year 2001 during the
9 months of May, June or August.
10 MR. KEPHART: Is there one in July?
11 THE COURT: The Court takes judicial notice that in
12 the month of July of the year 2001 there is a Friday the 13th.
13 MR. KEPHART: Thank you, Your Honor.
14 BY MR. KEPHART:
15 Q Detective, after the defendant finished her
16 statement with you was she placed under arrest?
17 A Yes, she was.
18 Q And this was all right here at the -- at her parents
19 house in Panaca?
20 A Yes.
21 Q Okay. After she was placed under arrest, then what
22 happened?
23 A We had the crime scene analyst, Maria Thomas,
24 drive down to the house, come in and take some photographs

of Ms. Lobato. We then placed her in handcuffs and started to escort her from the house.

Q Okay. Did there come a point in time where you actually showed her a photograph of the -- of the victim in this matter?

A Yes, it was prior to exiting the house, before leaving that room.

Q And what was the photo, where did you get the photo? A It was a photo from police records of the victim in this case, Duran Bailey.

Q It wasn't one of the ones of him at the scene or anything?

A No, it was taken in life.

Q Okay. And do you recall the date of when that photo was taken?

A It would be on the photograph I believe.

Q Do you have that with you?

A I do.

Q Can you -- can you look at that?

A I believe the date of the photo should be 10/18 of 1999.

MR. KEPHART: Approach the witness, Your Honor?

THE COURT: You may.

///

BY MR. KEPHART:

Q I'm showing you State's Exhibit Number 16. Do you recall that photo of Mr. Bailey at the scene?

A Yes, I do.

Q Okay. And the photograph that you have from 1999, that was approximately two years earlier --

A Yes.

Q -- or less -- or a little less than two years?

A Yes.

Q Okay. The photo of the -- at the scene, does he appear -- other than the fact that he's not alive any longer does it appear to be a difference in appearance in him specifically with his hair?

A His hair appears to be quite similar.

Q Okay.

A Especially he has a large -- like a balding area on the side there.

Q Okay. And the photograph that you showed the defendant -- after you showed her the photograph what was her response?

A She looked at the photograph and upon seeing it her eyes began to tear up again because she'd been crying initially during our contact with her and then as time went on, as you heard when she's blowing her nose in the bathroom, she was

laughing a little bit and she'd kind of settled down a little bit. When I showed her the photograph her eyes began to tear up all over again and she said something to the effect, I can't recognize him, I put him out of my mind.

Q Okay. And now you indicated that you had called for the crime scene analyst and she came in and she took photos of the defendant at her house?

A Yes.

Q And did you also have the crime scene analyst take photographs of the car as well?

A Yes.

Q Did you know the car that was going to be towed?

A Yes.

Q Okay. And with respect to the statement that was just given, there were points in there you could hear some clicking and that. At any time were you -- did you turn the tape recorder off other than what you actually -- is actually seen on the tape where you turn the tape over?

A No. As a matter of fact that's why when she asked if she could blow her nose, what happened is she got up from the ottoman, walked down the hallway into the bathroom, and Detective LaRochelle and I got up with her and walked along next to her with the tape recorder hanging out here for two reasons. So we could show the tape recorder was still going in

case there's any conversation and so that we could keep an eye on her because there were so many things on the walls we were concerned about.

Q Okay. Let me -- let me get at that. You said there were so many things on the wall, so you actually walked down the hallway of the house?

A Yes.

Q Matter of fact you got a consent to search from the defendant as to her room of the house, is that correct?

A That's correct.

Q And you got a consent to search from her for the -- for the Firebird?

A Yes.

Q And you got one -- you got a buccal swab from her?

A I believe it's a Fiero rather than a Firebird.

Q Oh, I'm sorry, detective. I said Firebird? A Fiero -- a Pontiac Fiero. Okay. And so you said that you followed her down the hall. Now she had -- she had just -- prior to her blowing her nose she had just indicated about using her knife and cutting this man's penis. Did she -- you'd asked her about the knives and if she was familiar with the butterfly knife, and did you have the indication or sense based on what she was telling you that she knew how to use a knife?

A Yes.

Q Okay. And you said there was some things on the wall and it gave you some concern?
A Yes.
Q Tell us about that?
A The walls of the house were decorated with various straight razors, knives, different martial arts weapons, nunchuku, would be the piece of wood with a chain or a rope in the middle and another piece wood. Like two short batons. tonfa, which is like a side-handled baton, like the police would use only it's shorter and made strictly out of wood. These things were all over the walls in the house.
Q Okay. Something easily accessible?
A You just reach on the wall and grab it.
Q Okay. So you followed her down the hall?
A Yes.
Q All right. And now before you left to come back to Las Vegas, obviously you said that you had arrested the defendant. Did you place her in handcuffs?
A Yes, just prior to walking out to the police car.
Q Okay. Did anything else happen after the taped statement inside the house prior to walking out?
A As we were walking out her mother had come home and spoke briefly -- walked up to us and spoke briefly to us and we'd explained that Blaise was under arrest for a crime

and going back to Las Vegas. And Blaise spoke with her mother in front of us and said something to the effect that she told her she'd done -- did what she did and now she has to pay for it. Something to that effect.
Q Detective, do you have a copy of your police report?
A I do.
Q Could you look at page 17 for a minute? Is it -- you're testifying that she said "something to the effect." I want you to tell us whether or you documented what was said exactly?
A Yes, I have the exact quote here.
Q Can you tell us what was said exactly?
A "Mom, I did it, now I have to do what I have to do.
Q Okay. And what was her demeanor -- the defendant's demeanor when she told her mom that?
A She was upset.
Q What was the -- her mother's demeanor when she was told that?
A Pretty quiet actually.
Q Did she ever say anything to you, the defendant's mother?
A No.
Q She stop you -- try to stop you from taking her daughter?

A No.
Q Never told you anything that would -- that would cause you concern --
MR. SCHIECK: Objection, asked and answered, Your Honor. He said she didn't say anything.
THE COURT: Sustained.
BY MR. KEPHART:
Q Never said anything?
A No.
Q Okay. Were you able to then walk her to the -- to your police vehicle and bring her back to Las Vegas?
A As we walked to the front yard then her father, Mr. Lobato, had arrived at this residence --
Q Okay.
A -- and he asked if he could kiss her goodbye in our presence.
Q And did that happen?
A That did happen.
Q And was there any conversation between the two?
A Yes.
Q Did the defendant say anything?
A Yes, and again I have a quote if you'd like me to refer to the quote.
Q That was on page 18 of your report?

A Yes, it is.
Q Okay. Can you tell me exactly what she told her dad?
A "She began to cry and she said, 'I'm sorry, daddy. Told you I did something awful.'"
Q "I'm sorry, daddy. Told you I did something awful?"
A That's correct.
Q Now in her statement she indicated that she had gotten rid of her clothes, do you remember that?
A Yes.
Q And she indicated however though she had her shoes? A Yes.
Q And that -- were you there when she provided some shoes to the crime scene analyst?
A Yes.
Q And you said that the -- that the crime scene analyst had come in and taken photos of the defendant and we've seen some photos here. Do you -- do you know why she would have been taking pictures of her hands?
A To document any injuries that would be present.
Q I'm showing you Exhibits -- well, 103. See that?
A Yes.
Q And 103 shows the -- her palms of her hands?
A That's correct.

Q And 104 is the back of her hands?
A Yes.
Q Is that right, do you have 104? She wearing any type of jewelry or anything there?
A No, she is not.
Q And she indicated to you that the jewelry and everything that she had nothing had been taken from her or anything like that?
A That's what she said, yes.
Q Okay. Now with respect to leaving the house and taking her to the car and knowing what you had talked about inside the car, you said that you ran into her father?
A Yes.
Q Did you have concerns about her father?
A Yes.
MR. SCHIECK: Objection, relevance, Your Honor.
MR. KEPHART: Can we approach?
THE COURT: Counsel, may approach.
(Off-record Bench Conference)
THE COURT: The objection's overruled.
BY MR. KEPHART:
Q Let me -- let me back up a little bit before that. In listening to the tape there comes a point in time where you come to a conclusion of the tape and you end it. The tape --

the conversation or the discussion with the defendant was relatively short, is that correct?
A Yes.
Q Was there any particular reason at this -- in this juncture that in this particular case this statement was short?
A Yes.
Q Why was that?
A We had concerns that Mr. Lobato would be returning to the household once he figured out the police were in town to speak to his daughter and we tried to prevent the police from having anything to do with her.
Q Okay. And you had indicated going down the hallway you had seen multiple weapons in the house as well. Did you have information that gave you that concern in reference to the father?
MR. SCHIECK: Objection, to hearsay, Your Honor.
THE COURT: Sustained.
BY MR. KEPHART:
Q What was your concern based on?
A Our concern was based on our information and gathering information on who all lived at the house and if there were any potential dangers and if family members would be the type that would be involved.
MR. SCHIECK: Objection, Your Honor, that's all

hearsay. Everything that he asked him is now hearsay as what was told to him.
THE COURT: Sustained.
MR. SCHIECK: I asked that it be stricken.
THE COURT: Motion to strike granted. The jury will disregard it.
BY MR. KEPHART:
Q There came a point in time that you actually left the house?
A Yes.
Q And when you came back to Las Vegas tell us how you were able to -- how did you get back to Las Vegas?
A We drove in my unmarked police vehicle which was a Jeep Grand Cherokee at the time.
Q And when you say "we" who are you talking about?
A Myself driving, Blaise Lobato in the front passenger seat, and Detective LaRochelle riding in the back seat.
Q Detective, you -- I've shown you Exhibit 181, does that have your police vehicle in the back?
A Yes, it is.
Q Okay. And where you've parked, do you recall whether or not you parked in front of the Lobato's house? Are you in front of the neighbor's house?
A It's in front of the Lobato's house I believe.

Q And you said that the defendant sat in the front seat, Detective LaRochelle's in the back seat, and you were driving is that correct?
A That's correct.
Q During the trip back to Las Vegas did you have any further conversation with the defendant?
A Yes.
Q Tell us what she told you.
A She explained at one point that she recalled that the knife that she used was actually a Christmas present that she'd received from her father.
Q Now in her statement she said it came from a friend so that wouldn't be correct?
A That would not be correct.
Q And was there any other discussion with her coming back?
A There was.
Q And what was that?
A I believe she discussed the incident in which she was victimized when she was five years old and she was upset that nothing was ever done about that.
Q Okay. Now prior to leaving you said that you contacted her mother or her mother came to the door as you were leaving, was it -- did she give the defendant anything or

1 ask permission to give her anything?
2 A Yes, she did.
3 Q And what was that?
4 A Medication.
5 Q Okay. And do you know what that medication was?
6 A One was for Prozac and one was for -- it may have
7 been Lorazepam. I have it documented in the file.
8 Q Can you look and see what that was?
9 A I can.
10 (Pause in the proceedings)
11 A Prozac is the one and Lorazepam is the second one.
12 Q Okay. And even to the point when you got back to
13 the jail those came into play as well, is that correct? Do you
14 remember?
15 A At the jail.
16 Q Did she take any medication?
17 A On the way to the jail.
18 Q Okay. So during the time that she was in the car
19 with you?
20 A Yes.
21 Q And how did that -- how did that happen?
22 A It was a certain time of the night as we were driving
23 back and she said that it was the time that she's scheduled to
24 take her Prozac and wanted to know if she would be allowed

1 to do that and she was allowed to do that.
2 Q Did you allow her to take her Prozac?
3 A Yes.
4 Q Okay. Now do you recall when it was that you
5 arrived at the jail?
6 A I don't recall off the top of my head. It would be
7 documented in other reports.
8 Q Okay. That same night?
9 A Yes.
10 Q Be the same night?
11 A Yes.
12 Q Okay.
13 A A couple of hours later.
14 Q Okay. And --
15 THE COURT: I'm going to interrupt counsel here to
16 take a lunch recess. I have a Judges meeting today.
17 We'll be resuming at 1:15. You may step down from
18 the stand and I'll see you at 1:15.
19 THE WITNESS: Thank you, Your Honor.
20 THE COURT: Ladies and gentlemen of the jury,
21 please be in the hallway at 1:15 and the bailiff will return you
22 to your seats in the courtroom.
23 During this lunch recess you are admonished not to
24 talk or converse among yourselves nor with anyone else on

1 any subject connected with the trial. And you're not to read,
2 watch or listen to any report of or commentary on the trial or
3 any person connected with the trial by any medium of
4 information including without limitation newspaper, television,
5 radio, and Internet. And you're not to form or express any
6 opinion on any subject connected with the trial until the case is
7 finally submitted to you.
8 Court's in recess until 1:15.
9 (Court recessed at 11:58 p.m. until 1:28 p.m.)
10 (Jurors are not present)
11 THE COURT: The record shall reflect that we're
12 convened outside the presence of the jury at the request of
13 counsel in State versus Lobato under C-177394 in the
14 presence of the defendant together with her three counsel, the
15 two prosecuting attorneys, and Detective Thowsen is upon the
16 stand under oath. Who -- well, Ms. DiGiacomo is standing so it
17 appears she wished to make a record on something.
18 MS. DiGIACOMO: That's correct, Your Honor. First,
19 with regard to Diann Parker's testimony, and I just spoke to
20 counsel about this, the only thing the State feels that needs to
21 be redacted before it's read in is bottom page 26, line 24 over
22 to page 27, all the way from line 1 to line 14. I just wanted to
23 make a record of that. I don't believe there was any
24 objection.

1 MR. SCHIECK: No, that's fine, Your Honor.
2 THE COURT: Okay.
3 MS. DiGIACOMO: Also, Your Honor, with regard to
4 DNA testing, when defense counsel gave she opening
5 statement and we realized that the cigarette butts found on
6 the body were never tested, which we had thought we'd asked
7 for more than a year ago, we had asked Kristina Paulette if it
8 was possible to do it, she said she'd try to. We don't have a
9 report or anything but she did e-mail me the results this
10 morning so I wanted to put it on the record so the defense
11 would know. There -- it's actually only two cigarette butts,
12 one -- the third piece is a piece that fell off one of the cigarette
13 butts. One of the cigarette butts comes back to an unknown
14 male DNA, if I'm getting this right. The other cigarette butt
15 there's a mixture, major portion is Duran Bailey, the minor
16 portion is someone else. It's not the same as the other
17 cigarette butt. She believes it's a male but can't tell for sure
18 and she didn't state it but I'm assuming Kirsten Blaise Lobato
19 is excluded from both of those. So I just want to put on the
20 record that that has been done. I don't have a finalized report
21 and I'll give it to the defense as soon as they know in case it
22 makes a difference to their case.
23 The last thing, and this is kind of premature, but we
24 got -- before we left on the break we got a new PowerPoint

1 presentation for their expert -- what's his name? Brent
2 Turvey. First of all the State's going to be objecting to the
3 majority of what it appears he's going to testify to and as well
4 as most of his PowerPoint presentation. It doesn't appear that
5 he's coming in to lend any expert opinion. What he appears to
6 be doing is just taking what other witnesses have said and
7 putting his own spin on it, how he concludes that evidence is
8 which is really in the province of the jury. It's up to them to
9 decide what weight to give the fact that -- for instance, and
10 under his finding, "No physical evidence associated with
11 Kirsten Blaise Lobato. The crime scene: Fingernail scrapings,
12 negative for Lobato. Chewing gum, negative for Lobato."
13 He's basically just taking what other witnesses have
14 testified to and trying to conclude it and give legal conclusions
15 to the jury. And that appears to be the majority of his
16 testimony.
17 THE COURT: I don't see that he is a witness on the
18 stand right now --
19 MS. DiGIACOMO: No.
20 THE COURT: -- that we need to leave the jury
21 waiting to --
22 MS. DiGIACOMO: And I agree.
23 THE COURT: -- do this. But, we --
24 MS. DiGIACOMO: It's premature but I figured we're

1 outside the presence, I'd just bring it up now.
2 THE COURT: We're going to need -- we're going to
3 need to address it outside the presence but we don't need to
4 do so right at this particular moment. I appreciate the heads
5 up on it --
6 MS. DiGIACOMO: Okay.
7 THE COURT: -- but the bailiff will bring the jury in
8 and reseat them at this time. I'm going to ask defendant's
9 counsel to let me know before you would call him as a witness
10 so that we can address that.
11 MS. ZALKIN: May we address this at the end of
12 today?
13 THE COURT: Okay.
14 MS. ZALKIN: Thank you.
15 THE COURT: He's not going to be a witness today?
16 MS. ZALKIN: No.
17 MR. SCHIECK: He's not planned to right now, Your
18 Honor.
19 THE COURT: Okay. All right.
20 MR. SCHIECK: You never know.
21 MS. ZALKIN: Yeah, I was just --
22 MR. SCHIECK: I wouldn't anticipate getting to him.
23 THE COURT: Okay. Thank you. I've got to leave
24 right at 5:00 so we may have to do it in the morning.

1 MS. DiGIACOMO: We don't come back until 1:00,
2 do you want to -- or are we coming back at 10:30?
3 MR. KEPHART: No, 1:00.
4 MS. DiGIACOMO: 10:30 on Friday for us.
5 MR. KEPHART: Yeah.
6 THE COURT: No, I haven't had that -- I haven't
7 finished that discussion with the jury yet about time for Friday
8 or into next week. I did leave next week open from the
9 calendar calls on my civil stack this morning. I have the first
10 trial starting the 9th.
11 MS. DiGIACOMO: Oh, okay.
12 (Jurors are present)
13 THE COURT: The record shall reflect that the bailiff
14 is returning the ladies and gentlemen of the jury to the
15 courtroom at this time.
16 Ladies and gentlemen, please return to your seats in
17 the jury box area and when you arrive there you may be
18 seated.
19 Resuming the direct examination of Detective
20 Thowsen. Mr. Kephart, you may proceed.
21 MR. KEPHART: Thank you, Your Honor.
22 **DIRECT EXAMINATION (Continued)**
23 BY MR. KEPHART:
24 Q Detective, before we left for lunch I had just gotten

1 to a point where you had indicated that the defendant had
2 been arrested and then brought back down to Las Vegas.
3 Now was the -- defendant's car was also brought back to Las
4 Vegas?
5 A Yes, it was sealed by the crime scene analyst, it was
6 photographed as it was seen, seals were placed on it, and it
7 was towed back to the crime lab in Las Vegas for processing.
8 Q And was that a tow truck that you had brought up
9 from Las Vegas with you or?
10 A That was one we utilized from one of the local tow
11 truck places.
12 Q In Panaca?
13 A In Panaca.
14 Q Okay. Also the photograph that you were testifying
15 to about the victim, you had a copy of that in your file, is that
16 a color photograph?
17 A Yes.
18 Q Now when you got back to the jail what process do
19 you go through in putting somebody in jail once you get to the
20 jail?
21 A What we would do is we complete some booking
22 paperwork for the jail indicating the person's name, what the
23 charges are going to be, and in a situation like this where
24 someone is arrested for a homicide, we would have the crime

scene analyst oftentimes take photograp... and sometimes even impound their clothing. We would check for any sort of marks or wounds they might have on their person and we would document those.

Q Okay. Were you aware that that was also done at her house?

A Yes.

Q Checking for marks and that type of thing on her?

A And mostly we looked at her hands at the house, we didn't document all of her scrapes and that that she had on her abdomen and that at the house. That was mostly her hands, anything that might be altered or changed by the time we put the handcuffs and drive all the way back to Las Vegas.

Q Okay. And you said that in the -- in the booking process when you go into jail -- I know this jail's got quite a few people in it.

A Yes.

Q I -- what do you do with reference to somebody that like in this case, the defendant, you were -- brought her down here for suspicion of murder. Can you tell me what you -- is there anything you do different with individuals that are arrested for murder?

A As far as?

Q Are they placed in a cell with other people? Are they

-- are they kept separate or do you remember?

A After this Ms. Lobato was photographed and that. When she was actually booked and turned over to the jail we had them place her on suicide watch and place her in an isolated area.

Q Okay. And prior to that you hold them in a holding cell, is that correct?

A That is not actually a place that she was held in. That was a place that she was taken to be photographed.

Q Okay. Well, let me -- could I approach, Your Honor?

THE COURT: Yes.

BY MR. KEPHART:

Q Let me show you which has been marked as Proposed Exhibit 99, 100, 101, and 102. Will you take a look at those? A Yes.

Q Okay. Do these photographs fairly and accurately depict what they -- what is shown in the photographs?

A Yes, they do.

Q And you were there present when they were taken, while she was in the jail?

A Yes.

Q Okay.

MR. KEPHART: Move to admit 99, 100, 101, and 102.

MR. SCHIECK: No objection, Your Honor.

THE COURT: Granted.

(State's Exhibit Numbers 99, 100, 101, 102 admitted)

BY MR. KEPHART:

Q I'm showing you what's been marked as State's Proposed Exhibits 134, 135, and 136 and ask you to take a look at those. Do you recognize what those are taken of?

A Yes, I do.

Q And do those fairly and accurately depict what they're -- what's shown in the photograph?

A Yes.

Q And how it looked on September 20th -- I mean July 20th of 2001?

A Yes.

MR. KEPHART: Move to admit 134, -35, and -36, Your Honor.

MR. SCHIECK: No objection.

THE COURT: Granted.

(State's Exhibit Nos. 134, 135, 136 admitted)

BY MR. KEPHART:

Q Now you indicated that the crime scene analyst at the -- that came there -- was it -- who was it that was at the jail? Do you remember what crime scene analyst it is, was?

A I probably need to look at the crime scene report to

make certain rather than --

Q Could you do that?

A Yes.

(Pause in the proceedings)

A That would be crime scene analyst Jenny Carr.

Q Okay. And now she was also the individual that impounded whatever clothing or whatever shoe -- type of shoes or anything that the defendant had at that time as well, is that correct?

A Yes.

Q Okay. Did she impound her tennis shoes?

A May I refer to the report again?

Q Will that refresh your memory?

A Yes, it would.

Q Yeah.

A Yes, the tennis shoes and a buccal swab kit.

Q Okay. And Exhibit 100, is that a picture -- what does that picture show?

A That shows Ms. Lobato as she's being photographed showing a side profile at the jail.

Q Okay. That better?

A Yes.

Q And what is 101 show?

A That's Ms. Lobato in the same room in the jail being

1 photographed from the front.
2 Q Okay. And 102?
3 A Again, Ms. Lobato in the same area photographed
4 from the rear.
5 Q Okay. And you said in the -- in the holding cell
6 where you take photos at, can you tell by the bench here, is
7 that what you're describing?
8 A Yes.
9 Q Okay. Now I'm showing you what's been admitted
10 as -- well, let me -- let me back up. Okay. Now until the jail
11 actually takes custody of her in this particular case, were you
12 present with her during the process of when they were
13 booking her in?
14 A Yes.
15 Q And that would include these photographs that were
16 taken?
17 A That's correct.
18 Q Okay. Did she have any further discussions with you
19 while at the jail?
20 A She did.
21 Q What did she tell you?
22 A While she was standing in this room getting
23 photographed she looked around at it and she made the
24 comment that this looked similar to the structured area where

1 the attack had occurred and made the comment that she could
2 look up and see the covered parking from the parking lot from
3 the position.
4 Q Okay. Now Exhibit 118 you had testified about that
5 in the beginning of your testimony. Do you recall that when I
6 talk about the crime scene?
7 A Yes, I do.
8 Q And you described the area to the left of this
9 photograph being above the dumpster area as the parking
10 structure?
11 A Yes.
12 Q Okay. You'd been at the scene?
13 A Yes, I had.
14 Q And you had seen that before?
15 A Yes.
16 Q So when she told you that she had -- where she was
17 looking up saying, yeah, you could see the structure, is this
18 what come [sic] to mind with you?
19 A Yes.
20 Q And also the inside of the structure itself, the inside
21 of where the dumpster's at, does it appear -- what's it appear
22 to be down there at the bottom? Do you see my finger down
23 there?
24 A Yes, there's a curbing that runs along the edge.

1 Q Does it go all the way around the whole structure?
2 A I believe that it does. I know it goes at least on two
3 walls cause it is in that corner where the body was originally
4 located.
5 Q Okay. And inside -- I'm showing you what's been
6 marked as Exhibit 134, is this the outside of the holding cell
7 where the defendant was held?
8 A Yes.
9 Q Okay. And then inside -- this would be looking --
10 136 would be looking in through from the door?
11 A Yes, that's correct.
12 Q Okay. Is there any similarities about this
13 photograph with reference to the inside of the jail -- I mean
14 inside of the structure?
15 A Yes. As you're looking at this you'll note that the
16 floor and a lower area here has a painted area that is similar to
17 the look. If you look at the actual crime scene and you see
18 the look of the ground and the curb before the block wall. Q
19 Okay. I'll show you Exhibit 135. Does that show that
20 better?
21 A Yes. If you this area right here where it's similar
22 size and distinct looking as the curbing would be.
23 Q So that'd give you an impression of some kind of
24 curb there or something? I mean --

1 A Yes.
2 Q Okay. In reference to her explanation how it looked
3 similar to the inside of the structure where the dumpster was
4 located and where the --
5 A Yes.
6 Q -- body was found?
7 A Both that and size --
8 Q Okay.
9 A -- was my impression.
10 Q And that was something that she just volunteered to
11 you?
12 A Yes.
13 Q Okay. Now after the defendant was booked into the
14 jail over here then -- does that -- does your investigation stop?
15 A No.
16 Q Did it continue in this case?
17 A Yes, it did.
18 Q And how was it that it continued, what did you do?
19 A We continued back to Panaca and Pioche and
20 interviewed several other witnesses and interviewed other
21 witnesses in town. We submitted items for testing through our
22 crime lab and continued in that manner.
23 Q Okay. Did there come a point in time where you
24 actually spoke to an individual by the name of Dixie Tienken?

A Yes.
Q And you had -- you had testified earlier that you had learned her name through Laura Johnson, is that correct?
A That is correct.
Q Okay. Now the defendant in her statement to you indicated that she had not told anybody else about the attack.
MR. SCHIECK: I'm going to objection, Your Honor, that misstates the evidence. We heard the statement, she said she didn't know, she couldn't remember.
THE COURT: Sustained.
BY MR. KEPHART:
Q Oh, in reference to that did she give you any indication that she had told anybody else other than she didn't remember or she couldn't remember?
A She did not and I believe in her statement she said that she did not tell anybody else.
Q Okay. In addition to "I don't remember?"
A Yes.
Q And -- but you did learn some information from Laura that she had apparently talked to Dixie?
A Yes.
Q Okay. And through your investigation did it lead you to other people?
A Yes, several other people.

Q And that would include Michelle Austria?
A Yes.
Q Paul Brown?
A Yes.
Q And during the period of time that you spoke to those individuals did you -- you've already testified that you did tape them and you have copies of their -- of their transcribed tapes here and matter of fact you have copies of their tapes and you told us the techniques that you use or the standard that you usually follow when you're doing it. Did anything change with regards to talking to other individuals?
A No.
Q Okay. While you were questioning Dixie did you ever stop the tape multiple times during the portion of the time that you were questioning her?
A I didn't stop the tape anytime until the -- towards the end as with the Lanier recorder as you approach the end of the tape there's some sort of sensor that knows you have like a minute, minute and a half left and it'll start a beeping noise to warn you. And you'll hear me stop the tape, turn it over, and restart the tape indicating what the time is still at a certain time meaning that it was less than a minute to just take the tape, put it back over, turn it back on again.
Q As similar to what happened with regards to your

interview with the defendant?
A With the defendant it didn't go long enough that I had to turn the tape over. It went til we though we were at the end, we stopped the tape, and then she mentioned something afterwards that we wanted to go ahead and include on the
tape --
Q Okay.
A -- so we turned it back on and documented that information.
Q Okay. So wit Dixie you had to actually turn the tape over?
A Yes.
Q Okay. Do you recall whether Dixie ever described to you at any point in time during your discussion with her before the tape about the defendant telling her that the attacker was big?
A No.
Q Did you recall any time other than what was on the tape, any time other that the -- that Dixie ever told you that her and the defendant looked through newspapers dating back to June 1st?
A No.
Q Now after talking to Dixie, Laura, Michelle, Rusty,

the defendant and knowing what had occurred here and from being at the crime scene, did you do any further investigation with respect to determining whether or not there was any other individual that had been injured in this way? With his penis being cut off or penis being slashed?
A Yes, I did.
Q Detective --
MR. KEPHART: Well, Your Honor, I'm going to ask the Court to take judicial notice of NRS 629.031 and 629.041. May I approach the witness, Your Honor?
THE COURT: Just a second.
(Pause in the proceedings)
THE COURT: I have the four volumes on criminal law in the -- in the courtroom here but I don't have the full NRS. Those are in chambers. Do you have copies of them?
MR. KEPHART: I'll give you this one, Judge, and I'll just -- based on these.
THE COURT: The Court takes judicial notice of NRS 629.031, a copy of which shall be marked as Court's Number 56; and NRS 269.041 which shall be marked as Court's 57.
MR. KEPHART: Judge, is that 269 or 629?
THE COURT: 629 --
MR. KEPHART: Thank you.
THE COURT: -- .031 and 629.041 if I misspoke.

1 MR. KEPHART: Can I -- can I use the Court's
2 exhibits as well, Your Honor?
3 THE COURT: Yes.
4 MR. SCHIECK: Could we approach, Your Honor?
5 THE COURT: Yes.
6 (Off-record Bench Conference)
7 BY MR. KEPHART:
8 Q Detective, you're familiar with NRS 629.041 which
9 was -- is -- which is called -- entitled, "Provider of Healthcare
10 Report, Persons Having Certain Injuries," are you not?
11 A Yes, I am.
12 Q As a matter of fact you've had discussions with the
13 State about this?
14 A Yes.
15 Q Matter of fact you've even testified specifically about
16 this statute on a previous occasion?
17 A That's correct.
18 Q And in that statute since it is -- The judge has made
19 it Exhibit 57 for the Court, it says:
20 "Every provider of healthcare to whom any person
21 comes or is brought for treatment of an injury which
22 appears to have been inflicted by means of a firearm or
23 knife, not under accidental circumstances, shall promptly
24 report the person's name if known, his location, and the

1 character and extent of the injury to an appropriate law
2 enforcement agency."
3 Is that correct?
4 A That is correct.
5 Q And 629.031 defines provider of healthcare as:
6 "A physician licensed pursuant to this Chapter 630,
7 630A or 633 of NRS, dentist, licensed nurse, dispensing
8 optician, optometrist, practitioner of respiratory care,
9 registered physical therapist, pediatric physician, licensed
10 psychologist, licensed marriage and family therapist,
11 chiropractor, athletic trainer, doctor of Oriental medicine
12 in any form, medical laboratory director or technician,
13 pharmacist or licensed hospital as the employer of any
14 such person."
15 With regards to that, these two, is this basically
16 what they call a mandatory reporting statute that requires the
17 healthcare -- any healthcare provider to report injuries
18 involving, in this case, a knife or firearm or knife? Is that
19 correct?
20 A That is correct.
21 Q Okay. And in respect to that, you had indicated that
22 you had done other investigations with regards to speaking to
23 Dixie and Michelle and Laura; other individuals in this case; the
24 defendant; who gave you her confession, and you -- did you

1 do anything to determine whether or not there was any other
2 report of an injury involving a knife wound to a man's penis?
3 A Yes, I did.
4 Q And what did you do?
5 MR. SCHIECK: Objection, could we have -- I
6 withdraw the objection, Your Honor.
7 THE COURT: okay.
8 BY MR. KEPHART:
9 Q What did you do?
10 A I researched it through police records to locate any
11 sort of documentation on an injury such as that, which would
12 be a stabbing or a severing of a penis or groin area.
13 Q Okay. How far did you research that?
14 A It was a period of time, I don't remember the exact
15 date off the top of my head at this point.
16 Q Okay. Do you recall how far back you went before
17 July 8th?
18 A I don't recall.
19 Q Okay.
20 (Off-record colloquy)
21 Q In reference to -- we're going to look for that.
22 A Okay.
23 Q Do you recall testifying about that in --
24 A Yes. Yes, I do.

1 Q Okay. And in reference to the area where this
2 occurred up off of Flamingo is -- there's other police agencies
3 in the Valley, is that correct?
4 A Yes, there are.
5 Q Okay. This area here up in -- on West Flamingo
6 would have been in Metro's jurisdiction?
7 A Yes.
8 Q Okay. And the area in which the defendant gives
9 you statement about Budget Suites?
10 A Yes.
11 Q You were talking to her and she talks about Boulder
12 Highway and that?
13 A Yes.
14 Q Is that also in Metro's jurisdiction?
15 A Yes, it is.
16 Q And would that have been police records that you
17 had looked at too to determine whether or not any type of
18 injury like this occurred --
19 A Yes.
20 Q -- in any of those records? Do you recall whether or
21 not you did any investigation with regards to other police
22 agencies?
23 A It would be anywhere in -- within Clark County.
24 Q Clark County? Okay. Anywhere?

A Anywhere which would include North Las Vegas, Henderson, Boulder City.
Q Do you recall if you were able to -- were you successful? Did you find any other injury caused by a knife to an individual's penis?
A I found no slashed or severed penis.
MR. KEPHART: Your Honor, may I approach the witness with regards to his previous testimony?
THE COURT: You may. Would you just identify the EM, the date, the page, and the line number?
MR. KEPHART: Okay. It's Volume 3, page 82, Your Honor. And I'm talking about question 5 through -- be on line 5 through line 14. If I may approach, Your Honor?
THE COURT: You may.
BY MR. KEPHART:
Q I'm showing you what appears to be from previous testimony Volume 3, page 82. Would you take a look right here at page -- I mean question number 5 and read through that and tell me whether or not that refreshes your memory as to what you had done before?
A Yes, it does.
Q Okay. Does that refresh your memory as to how far you looked back for purposes to determine whether or not anybody had received an injury, recorded it in the Valley here

or in Clark County?
A Yes.
Q When did you look?
A May, June, and July.
Q Okay. So you looked the three months?
A Yes.
Q Now the defendant had indicated in her statement that she used a butterfly knife?
A Yes.
Q And she talked to you about her father giving it to her for a Christmas present, that type of thing?
A That's correct.
Q Okay. And are you familiar with butterfly knives?
A Yes.
Q Would -- did you -- were you asked by the State to bring one with you today for purposes of demonstration?
A Yes, I was.
Q Okay. And before you came in today, was that deposited with the Court?
A Yes, it was.
MR. KEPHART: Your Honor.
THE COURT: You may approach the clerk.
(Off-record colloquy)
MR. KEPHART: Court's indulgence, Your Honor?

THE COURT: Yes.
BY MR. KEPHART:
Q I'm showing you -- how you describe it, what appears to be a silver chrome type of object. It's in this plastic bag. Now you didn't bring it in a plastic bag, did you?
A No, I did not.
Q Okay. That's something that the court placed it in?
A Yes.
Q Could you take this out and tell me if this the object that you brought to court today?
THE COURT: The clerk did it because it was a difficult item to mark.
MR. KEPHART: Okay. Judge, I'm not making it for -- and admitting it, we're using it for demonstrative purposes only and I'm going to be asking the Court to allow the officer to take it with him when he leaves.
THE COURT: Okay.
MR. SCHIECK: I'm going to ask if it's going to be demonstrated to the jury it be marked and admitted, Your Honor.
BY MR. KEPHART:
Q Do you care about that, officer?
A No, I don't.
MR. KEPHART: Okay. That's fine then. I don't see

any need to have it marked, it's not -- it's not evidence but it is for purposes of demonstration. I guess maybe they might want to deal with it themself back in the jury room so that's fine. We'll mark it then as next in order for the State.
THE CLERK: 262.
MR. KEPHART: Okay. I move to admit 262.
MR. SCHIECK: No objection, Your Honor.
THE COURT: 262 is admitted.
(State's Exhibit No. 262 admitted)
MR. KEPHART: All right.
BY MR. KEPHART:
Q Now 262 that you have with you now that is what you understand to be a butterfly knife?
A Yes, it is.
Q And it is a -- in this particular case a one-sided bladed butterfly knife?
A Yes.
Q And she said that that's what she had when she did this?
A Yes.
Q And for -- now you haven't -- have you used this type of knife before or did -- worked with it before?
A Only for about a day.
Q Okay. Can you -- can you show the jury how it is

that you would open a knife like that?
A Yes. And as you can see it has two handles and in a closed position it keeps the blade from harming you so you could have it in your pocket or in your hand and it won't cut you. To open it -- may I stand up, Your Honor?
THE COURT: Yes.
THE WITNESS: To open it all you do is holding it in your hand spin it around and it's open. You're holding onto both handles and the blade is secure and very rigid.
BY MR. KEPHART:
Q Okay. Now it's --
THE COURT: I'm going to -- I'm going to interrupt. When you walked forward you went off of the camera line.
THE WITNESS: I'm sorry, Your Honor.
THE COURT: So, that's better. Thank you.
THE WITNESS: Yes, ma'am.
BY MR. KEPHART:
Q Okay. Now it's possible to open the knife obviously with both hands?
A Yes.
Q Okay. But the way it's designed to be able to use it with one hand, is that correct?
A It's designed to be used with one hand.
Q Okay. And these knives come in -- some of them

have double sided blades, two -- a double-edged blade?
A Some can have two-sided blades. Some can be curvy. Q Okay.
A They can have serrated edge.
Q Okay. And they come in multiple colors?
A Yes.
Q She described her as blue?
A As the handles as being blue with other colors --
Q Okay.
A -- and a silverish plate.
Q Okay. Do you recall her telling you that she actually used it with her right hand?
A Yes.
Q And when you just demonstrated it you used it with your right hand?
A Yes, I did.
Q Okay. Okay. Detective, thank you. Detective, will you open that again, please? I'm sorry. The knife. Now the blade that -- on there it -- like I was talking or asking you earlier, it's a one-sided blade, right?
A Yes, on this edge over here.
Q The blade is in the center of the piece of metal so to speak of the blade, is that correct? The sharp portion of the blade is in the center of the knife?

A Yes. It's beveled on both edges coming to the edge.
Q As -- would be sharpened on both sides?
A Correct.
Q Okay. There's not a flat side on the back with a sharp side on one side, is there?
A The edge of the blade is beveled on both sides.
Q I'm showing you Defense Exhibit CCCC and ask you if the blades on those scissors are -- they're one-sided blades, is that correct?
A Yes.
Q Their not sharpened in the center are they, like the knife?
A No, it's flat on one side and then bevels on the other side.
Q Okay. And so there's a flat area to the whole face of the -- of the scissor with a beveled area on one side?
A Yes.
Q Okay. Not like the knife itself?
A Not like the knife. The knife is completely different, sharpened from both sides.
Q Okay. Hand that back. Do you want to close that up? Detective, how many homicides have you investigated?
A Probably between -- around 4- and 500.
Q Okay. How many confessions have you taken?

MR. SCHIECK: Objection, relevance, Your Honor.
THE COURT: Counsel approach.
(Off-record Bench Conference)
BY MR. KEPHART:
Q Detective, how many statements have you taken from some -- from individuals that are suspects in homicides?
A Lots.
Q Okay. Give me an estimate?
A That were actually suspects in homicides would have to be in the hundreds.
Q Okay. Do you find it uncommon for an individual to minimize their statements when they're giving you statements in reference to crimes that they've committed?
A It's very common for people to minimize in their statements.
Q Give me an example of what you mean by "minimizing?" Those are words I used.
A What a person will do is if they determine they're going to give a statement and they are telling portions of that statement that show that they have involvement in that particular crime many times they will tell you things that you feel you already know and then they will try to minimize by justifying their actions in why they had to do something like that.

Q Sometimes they're not as detailed as maybe you have learned through your other investigations?
A Correct.
Q And in reference to your investigation of homicides do you know how many statements you've taken from individuals that have claimed that they were under the influence of methamphetamine when they're committing their crime?
MR. SCHIECK: Objection, relevance, Your Honor.
THE COURT: Overruled.
THE WITNESS: Several.
BY MR. KEPHART:
Q Okay. Did you find any -- can you give me an idea of what you see would effect their statement?
A Especially --
MR. SCHIECK: Objection, Your Honor, again. This is outside his scope of expertise.
MR. KEPHART: My question is based on his experience and the number that he has taken with regards to statements.
THE COURT: Overruled.
THE WITNESS: Could you restate your question for me again, please.
///

BY MR. KEPHART:
Q Okay. My question is is what do you see with statements from individuals that claim that they're on methamphetamine at the time that they're committing the crime when they're talking to you about particulars in the crime? Any similarities?
A Yes.
Q And what is it?
A It's not uncommon that they'll jumble things together and take something over it and put it together with something completely unrelated and especially if it's a situation where an individual has been on a binge for several days which is pretty common. That it's not that uncommon for them not to be able to remember certain things and to remember things strangely sometimes.
Q Okay. Now do you remember recalling her statement when she told you that she had blacked out?
A Yes.
Q Remember that? Then after that she was able to give you a little more detailed discussion about certain questions that you asked in reference to let's say the dumpster, whether or not she was near a dumpster. Do you recall that?
A Yes.

Q And she specifically said that she doesn't recall putting anybody -- putting them in it?
A That's correct.
Q Do you recall that? Then she said she didn't think she could?
A That's correct.
Q Okay. Would that appear to be knowledge that somebody would know if they truly blacked out?
A No.
Q Now do you remember asking her whether or not she -- what she did with the knife? Do you recall that?
A Yes.
Q She indicated that she either had -- she didn't remember if she'd thrown it away or if she had sold it for -- trade it --
A Drugs.
Q -- for drugs? Okay. And then do you remember talking her where she offered you the baseball bat?
A Yes.
Q Okay. And then she told you that she didn't know whether either of the items were?
A Yes.
Q That was the knife and the bat?
A Yes.

Q Okay. Do you recall in her statement where she --
(Off-record colloquy)
Q Where she talked about wanting to get cleaned up?
A Yes.
Q And she went to -- said she went to --
MR. SCHIECK: Your Honor, I'd object to the continual reading of questions.
THE COURT: Sustained.
BY MR. KEPHART:
Q Do you remember if she said anything about wanting to get cleaned up in her statement?
A Yes, she did.
Q And do you recall what she said?
A That she got into her car and took off all of her clothing so she was basically naked in her car and drove to her friend's house so she could clean up.
Q Did she indicate where she was going to go after she cleaned up? Do you remember?
A I'm trying to recall from the different conversations and -- I'm trying to recall from what she said and from what I learned from speaking with other witnesses that -- from reading the reports again and again and again and again over the last few days.
Q Okay. Now when you first stated your statement

with her before you talked -- before you started the tape you indicated that you discussed with her for approximately 12 minutes about -- what did you discuss?

A I asked her basic --

MR. SCHIECK: Objection, asked and answered, Your Honor.

THE COURT: Overruled.

BY MR. KEPHART:

Q What did you ask? What did you talk to her about in those 12 minutes?

A Similar things that we'd talked about then when it went on tape as to what happened in Las Vegas.

Q Okay. And in the actual statement you talked about something happened a couple of weeks ago?

A Yes.

Q Okay. And this was on the 20th of July that you were talking to her?

A Yes.

Q Okay. And she answered to you, "yes," and then proceeded to tell you about this attack, is that correct?

A That's correct.

Q Okay. Now when you went to the crime scene you saw Duran Bailey's body, was there anything about the crime scene itself that has significance with you? I mean this was

five years ago. Has significance with you other than the fact that he had his penis severed that reminded you of this particular crime scene?

MR. SCHIECK: Objection, Your Honor. I'm not sure what the question, it's vague and ambiguous.

MR. KEPHART: I think if he --

THE COURT: Overruled.

BY MR. KEPHART:

Q Okay.

A With this particular crime scene and with Mr. Bailey there was something that stood out in my mind with him that became readily apparent as I was speaking with Ms. Lobato. And that was when she made the comment that he had smelled like old alcohol and dirty diapers because different bodies can smell different. Sometimes if someone's been for, you know, several weeks and really in late stages of decomposition there's a certain decomposition smell and sometimes people smell like colognes and that. And she described this alcohol and dirty diaper combination and he had a smell to me that my first thought was like a old smell socks that somebody hadn't changed in two weeks.

Q Okay.

A It was very significant.

Q Okay. And based on your discussion with her, now

you indicated that you gave her an opportunity to give you her statement, when it came to that point when she told you that, did that -- what did that cause you to think with reference to your investigation in this case?

MR. SCHIECK: Objection, relevance of what he thinks.

MR. KEPHART: Your Honor, he's the actual arresting detective here. I think that this is -- this is certain relevant.

THE COURT: Overruled.

THE WITNESS: As I said it was highly significant. Not only had she known this person's penis was severed and that he was a black man and older, that this particular strong odor made it clear in my mind that this was connected to the same incident.

BY MR. KEPHART:

Q Now while you were at the crime scene you had an opportunity to actually view Mr. Bailey's body, is that correct?

A That's correct.

Q And do you recall -- there's been some testimony or questions by the defense about whether or not there was any paper towels up against his penis -- stuffed in his penis underneath the plastic that was across his waist. Do you recall anything like that?

A First off, his penis wasn't in the plastic by his waist,

his penis was several feet from his body.

Q Okay.

A The location of his wound --

Q Oh, I'm sorry. His -- the -- yeah, you're right. Where the penis would have been, okay?

A Where the penis would have been. What happens is the ID personnel are documenting the scene, they're taking photographs and they'll remove a little bit and take photographs, and remove and photograph. I don't recall seeing that and then reviewing photographs I have not seen a photograph showing anything on the wound like that.

Q Okay. You recall the plastic being over top of that area though?

A Yes.

Q Okay. And in this particular crime scene, Exhibit Number 29, we've had the crime scene analyst talk about -- would you have made any decisions as the detective as whether or not you would need to take, for instance, this cup and this bottle and this cup here and this cup and there's other photos with food debris, a can, all these items. Would you have had any decision making with regards to whether or not to collect that?

A That may be something that traditionally we would discuss with the crime scene supervisor on crime scenes and

1 normally when there's so much garbage they're not going to
2 process each individual thing. You try and find something that
3 appears to be connected and of significance. So select items
4 may be chosen that look like it's something that could be
5 connected rather than just routine garbage that has been
6 dumped.
7 Q Okay. And in regards to this here there's a
8 possibility that without taking everything you may have missed
9 something?
10 A That's a possibility if you didn't take every single
11 piece.
12 Q Okay. And when I mean miss something maybe
13 something that had the defendant's DNA on it or something.
14 There's a possibility of that?
15 A There's a possibility of that but there's a possibility if
16 you took everything in here you still wouldn't find the
17 defendant's DNA or our DNA from being there after the
18 defendant.
19 Q And in a lot of the crime scenes that you've been to
20 before has it been -- it's common that you don't find anything
21 connects an individual at that point to the crime, is that
22 correct?
23 A That's correct.
24 Q Matter of fact, many of your crimes are solved by

1 words that are spoken by the defendants themself?
2 A Yes.
3 Q Do you remember the blood spatter in the crime
4 scene itself? Do you remember that?
5 A Yes, I do.
6 Q Okay. Do you recall how high the blood spatter
7 went up?
8 MR. SCHIECK: I'm going to object, Your Honor.
9 Could we approach?
10 THE COURT: Yes.
11 (Off-record Bench Conference)
12 BY MR. KEPHART:
13 Q Detective, did you notice in the crime scene blood
14 droplets, maybe some of them like in teardrops and on any
15 portions of the walls in the back?
16 A Yes.
17 Q Okay. And do you know what terminology that
18 somebody would use to call blood droplets like on the wall or
19 anything like that?
20 A There's different terminology. Basically, it's spatter -
21 - blood spatter.
22 Q Okay. Okay. And did you see that in this case?
23 A I did.
24 Q And how high was it on the wall, do you recall?

1 A It was, I believe, lower than one foot.
2 Q Okay.
3 MR. KEPHART: Court's indulgence, Your Honor.
4 THE COURT: Yes.
5 (Off-record colloquy)
6 MR. KEPHART: Just a couple more questions,
7 Judge, and then I'll pass the witness.
8 BY MR. KEPHART:
9 Q Detective, I am sorry. When I -- when I questioned
10 you earlier I asked you when you spoke to Dixie. I said, do
11 you recall whether the -- whether she ever told you the
12 defendant had told her and described her attacker as big?
13 And I said, do you recall and you said, no. My question is, did
14 Dixie ever tell you that the defendant told her and described
15 her attacker as big?
16 A No, I believe what Dixie told me was --
17 MR. SCHIECK: Objection, hearsay.
18 THE COURT: Sustained.
19 BY MR. KEPHART:
20 Q So her answer's no?
21 A No.
22 Q Okay. And same with -- did Dixie ever tell you that
23 her and the defendant were looking in papers back -- dated
24 back to June 1st?

1 A No.
2 Q Now you indicated that during your trip back to Las
3 Vegas the defendant here had requested of you to allow her to
4 take some medication. Do you recall that testimony?
5 A Yes, I do.
6 Q Okay. And you said that you did allow her to take it.
7 Do you recall specifically what it was and did she describe to
8 you -- were you aware of when she got the prescriptions?
9 Page 18 of your report if you don't recall maybe that will help
10 you refresh your memory?
11 A That would. I remember what the drug was and I
12 know that it's documented in that report so I will get it for you.
13 (Pause in the proceedings)
14 Q Fourth paragraph down on page 18. Can you read
15 that to yourself?
16 A Yes.
17 Q Does that refresh your memory as to one, what
18 were the types of drugs that she was taking?
19 A The two types of drugs; yes, it does.
20 Q Mm-hmm. Okay. What were they?
21 A Lorazepam and Prozac.
22 Q Okay. And when were the prescriptions dated?
23 A July 13th, 2001.
24 Q Did it have the doctor's name as well on the

prescription?
A Yes.
Q Who would that be?
A Dr. Syed Kamal.
THE COURT: Could you spell that, please?
THE WITNESS: Yes. Syed is S-Y-E-D. Kamal is K-A-M-A-L.
THE COURT: Thank you.
THE WITNESS: You're welcome.
BY MR. KEPHART:
Q Now you had just testified that based on the defendant's description of what she remembered of the -- of Duran -- of the attacker as smelling like alcohol and dirty diapers, was there ever any time that she in her -- during her statement that lead you to believe that she was not talking about the same instance that occurred with Duran Bailey?
MR. SCHIECK: Objection, that calls for a conclusion.
THE COURT: Sustained.
MR. KEPHART: Pass the witness, Your Honor. Thank you, detective.
THE WITNESS: You're welcome.
THE COURT: Who will be conducting the cross for the defense?
MR. SCHIECK: I will, Your Honor.

THE COURT: You may proceed, Mr. Schieck.

CROSS-EXAMINATION

BY MR. SCHIECK:
Q And just so I'm clear and we're on the same page, detective, the report that you've been referring is a 28-page report?
A Yes, it is.
Q And that's your officer's report in this case?
A Yes, it is.
Q I'd ask you was -- along with the Detective LaRochelle?
A That's correct.
Q In fact, you both signed off on it so it's sort of a joint report between the two of you?
A It is.
Q The two of you got together and put together the report?
A Yes, that's pretty much standard the way we do it.
Q And you put everything in there that is relevant and that you could remember and that should be in a report in a case like this?
A It actually serves more of an outline for things that we might not remember otherwise but it's certainly not everything.

Q So you leave some things out of it?
A Not that we would leave things out of it but it serves as an outline to us.
Q The things that are in there we can rely upon being an accurate reflection of your recollection?
A I would say yes.
Q Okay. And we'll go to a couple of things in your statement. You had talked about -- excuse me, in your report. You had talked about when you got Ms. Lobato to the jail that she had made some comments concerning the cell she was in or the holding area she was in while she was being photographed?
A Yes.
Q Okay. And that she made some statement about it reminding her of the area of the attack?
A Yes, something to that effect.
Q Didn't she in fact specifically tell you that the area -- the location of the -- of the attack did not have covering?
A Yes.
Q You left that out when you testified before, was that just an error on your part? That she said it did not have covering?
A I don't recall exactly what she said verbatim. That's why I said it was something to that effect.

Q Could you look at your report and tell us --
A Certainly.
Q -- I mean your report would have verbatim what she said, right?
A If it's in quotes it would be verbatim.
Q Okay. Well, this isn't in quotes, it just said -- and this is on page 18, fifth paragraph down, next to the last sentence.
A Yes, that is correct.
Q She said, "did not have covering?"
A "Did not have covering."
Q And there was covering over this area, wasn't it?
A There's a chain-link fence that you can see through, yes.
Q And it covers the entire top of the enclosure, correct?
A That's correct.
Q And when you're in that enclosure it's very obvious that there's a chain-link fence with bars going across over your head, correct?
A It may not be obvious if you're laying on your back looking up at night, you could just see the lighted part above it.
Q So you're saying if you're laying on your back at

night you can't see the covering that's over your head?
A I'm just saying it may not be as apparent as you're pointing out in the photograph.
Q Okay. But if you're standing inside that enclosure it's pretty apparent that there's a chain-link fence over your head?
A If we walked there in the daylight today you'd see that chain-link fence I would say, yes.
Q Okay. And at night it become invisible or is it still visible at night?
A I would assume it would depend on the lighting and various conditions.
Q But in any event she did not describe any type of covering being over the area she was in and specifically said there was no covering?
A In that remark she said there was no covering, that's correct.
Q And she said that you could see the metal covering of a carport area. Okay, from inside of the bin area there what part of the carport can you see?
A Looks like the metal covering.
Q Can't you only see the side of the -- the side of the covering?
A No, I believe you can see the underneath portion of

the covering.
Q You went back and had a picture taken during daylight hours, is that correct?
A That's correct.
Q And that photograph would be the best -- the best reflection of how it looked? Show you what's been marked as State's Exhibit 17. We're talking about the same area, correct?
A Yes.
Q And if we can see, the carport doesn't actually extend over the top of the garbage bin, doesn't it?
A No, it does not.
Q It ends before you get to the garbage bin?
A Yes, it does.
Q And then there's a side to that carport, is that correct, that hangs down?
A What do you mean by a side exactly?
Q A side portion, perpendicular to the ground.
A There's an edge of a carport, is like a foot.
Q And that's visible from inside?
A Yes, as is the underneath.
Q There's a lot of carports in Las Vegas?
A Probably.
Q Probably?
A Yeah.

Q Isn't it more than likely there's more than a lot of carports in Las Vegas?
A I would give you that there are a lot of carports in Las Vegas.
Q There are carports at the Budget Suites?
A Yes.
Q Did you go out to the Budget Suites on the Boulder Highway?
A Yes, I did.
Q Okay. And there are carports out there, correct?
A Yes.
Q That are visible from the parking lot area?
A Yes.
Q Would you describe inside that dumpster with the dumpster across the front as a parking area or a parking lot or would you describe it as a dumpster enclosure?
A I would describe it as a dumpster enclosure in a parking lot.
Q But clearly not an area where a car's parked?
A Clearly not an area where a car's parked, no.
Q Clearly not an area where if you were to park your car and be attacked within a few feet that you would be inside the dumpster area behind the dumpster, correct?
A You'd absolutely if you were attacked a few feet

from the dumpster area, you'd be -- the dumpster's right there.
Q Well, you'd have to go around the dumpster to get behind the dumpster, correct?
A If you were to get behind the dumpster you would, yes.
Q Well, that's where Mr. Bailey was found, correct?
A Yes, that's where he was found after he was killed.
Q You're aware that the first officer on the scene, Mr. Testa, moved the dumpster because it was position in such a manner that he couldn't get around either side, is that correct?

MR. KEPHART: Your Honor, I'm going to object. That's not the testimony. It's incorrect.
MR. SCHIECK: I'll rephrase the question, Your Honor.
THE COURT: Very well, withdrawn.
BY MR. SCHIECK:
Q Are you aware that he moved the dumpster when he arrived?
A Yes.
Q Now you were asked a question about where Ms. Lobato indicated she obtained the knife, correct?
A Yes.

Q And you indicated that a -- it was your recollection that she said a friend gave it to her initially in her statement?
A I believe yes.
Q Do you have the statement there in front of you?
A The report or the statement?
Q Her statement, page 10. Last line.
A Yes.
Q Okay. And in that statement she doesn't say a friend gave it to her, just "somebody gave it to me?"
A Yes. In that sentence, yes.
Q And then later in the car as you were driving back from Panaca she corrected that and told you that she now recalled that her father had given it to her for Christmas?
A She didn't say that she now recalled but she just said the knife was a present from her father at Christmas.
Q So she just volunteered that out of the clear blue sky with no preface to it, just blurted those words out first thing?
A I don't know what the conversation was but I just recall that she added that in there.
Q Okay. She gave you that information voluntarily during this car ride on the way back, correct?
A It was -- certainly we were speaking with her about various different things. I don't remember -- it wasn't a questioning session it was a conversation just on the way back

to Las Vegas.
Q Now you brought a butterfly knife here to court today that's a single edge knife, is that correct?
A That's correct.
Q Okay. Is it your testimony that she told you it was a single edge or a double edge butterfly?
A A single edge butterfly knife.
Q Did she tell you that in the tape recording or is this something that wasn't recorded?
A It would have either been a tape recording or in the portion before the tape started.
Q Okay. So if it's not in the tape statement it would have had to been before the tape was started?
A Yes.
Q That she specified it was a double edge or a single edge?
A Yes.
Q Okay. It's your recollection she said single edge?
A Yes. And not serrated but plain.
Q You were also asked whether or not she had told anyone else about the attack --
A Yes.
Q -- during her taped statement to you? Do you recall being asked that?

A Yes.
Q And do you recall what her answer was?
A That she did not --
Q That she did not tell anyone?
A That she did not tell anyone.
Q Can you turn to page 17 of her voluntary statement? About two-thirds of the way down. Do you recall her telling you, "No," and then in parenthesis, "(crying) not that I can remember. I mean, I -- I -- I really don't know." Is that what her answer was?
A Yes.
Q Not that she didn't tell any anybody that she can't remember and she really don't know?
A Actually she answers first, "No," that she didn't tell anybody and then she changes it and has the other part in there as well.
Q Okay. So the full answer, just so we're clear, is, "No," and then in parenthesis it says, "(crying) not that I can remember. I mean I -- I -- I really don't know." That's the full answer?
A That's the full answer.
Q Okay. She was crying on and off throughout the interview, is that correct?
A At times, yes.

Q Okay. And when you first got there to her house you were -- you had some information already about her, is that correct?
A Yes.
Q That you had pulled some police reports concerning her being a victim?
A Yes, that's correct.
Q Okay. You were aware of that incident?
A Yes.
Q That was an incident that according to reports was when she was a younger child?
A Yes.
Q Okay. And you actually had physical possession of those reports?
A Yes.
Q Okay. And had made the connection that this was the same victim in those reports that you were going to be talking with?
A That's correct.
Q Okay. And very early on in your contact with her you brought up that she had been hurt in the past and you were aware of it?
A Yes.
Q And that was before you had her sign the Miranda

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card, is that correct?
A That is correct.
Q Okay. And as soon as you told her that she started crying?
A Yes.
Q In recalling apparently the events you referenced she started to cry?
A Only in being told, "I know she'd been hurt in the past."
Q And at that point --
A And it involved more than just that incident.
Q Okay. And it was after that you had told her about this information you had about her unfortunate past and that she started crying that you pulled out the Miranda cards and read it her and had her sign it, is that correct?
A I didn't tell her any information about her unfortunate past.
Q You said, "I know you've been hurt in the past?"
A Yes.
Q Okay. And in fact you guys talked about that on the way back from Panaca, is that correct? That she had been a victim of a sexual assault at the hands of her mother's boyfriend?
A Yes, I believe at that point she brought up.

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Q Okay. But it was brought up in the car on the trip back?
A As I said, I believe she brought it up.
Q Okay. And she was emotional when she brought it up then too, wasn't she?
A Yes.
Q How long did that trip take on the way back from Panaca?
A About two and a half hours probably.
Q Okay. And of course you guys are driving the speed limit. That's about average speed if you're -- I mean average time if you're driving the speed limit?
A Yeah.
Q Okay. Were you driving or was Detective LaRochelle? A I was driving.
Q And even on that stretch of road, which is kind of wide open and empty in a lot of places, did you stick right at the speed limit or did maybe you go a little bit faster than the posted speed limit?
A You know, being under oath and sitting here five, six years later, I can't tell you quite how fast I was going --
Q Okay.
A -- that particular night.

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Q A lot of traffic drives that road a little bit faster than the speed limit, is that a fair statement?
A That's probably a fair statement.
Q Okay. So during that two and half hours that you were in the car with Detective LaRochelle you didn't turn on the tape recorder and take any other information from Ms. Lobato?
A No.
Q You certainly could have, you had the recorder still?
A Certainly could have.
Q Okay. So you had two and a half hours without being disturbed that you could have recorded further information if you so desired?
A Yes.
Q Okay. And you didn't?
A No.
Q And when you got to the jail and you were going through this booking process you actually had a crime scene analyst come out and meet you at the jail, correct?
A That's correct.
Q Okay. And for the purpose of taking her shoes and taking photographs?
A And a buccal swab.
Q Okay. And a buccal swab is to match DNA?

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A It's to take a DNA sample to test for DNA, yes.
Q Okay. And certainly once you got to the jail you could have set her down in a room and taken a further statement from her, correct?
A Yes.
Q And you didn't do that?
A No.
Q Okay. The only statement you took for [sic] her was a statement that you took in Panaca in her front room?
A Yes.
Q So there was no follow up questioning by you on tape concerning the events?
A No.
Q Was there any question at all by you or was there just general conversation during the trip and once you got to the jail?
A No conversation.
Q Okay. So you didn't pose any specific questions to her about any information on the case?
A No, she was actually upset and asking to take her Prozac. You know we have a responsibility for her well-being and safety as well. We were mostly trying to make sure she was calm and wasn't going to do anything bad to hurt herself and pretty much told her to wait and let the process take its

course and don't do anything foolish.
Q Okay. Now let's talk about the statement you took from her and you got a lot of information during that statement which typed up is 27 pages?
A Yes.
Q And you started recording at 6:07 p.m. and ended at 6:37 p.m.?
A Yes.
Q So it was a 30-minute statement?
A Yes.
Q And during that statement she described the man that attacked her as being really big, "seemed like a giant" to her, correct?
A Yes.
Q Okay. And you're familiar with the information on Mr. Bailey, he was not what you'd describe as a giant?
A He was not small by any means.
Q But certainly not the description that she would have given you saying he was really big, "seemed like a giant" to her?
A From interviewing victims for 29 years, often people perceive the person as much larger.
Q Okay. And so because her description doesn't match Mr. Bailey you're just saying she perceived him as being much

larger -- the person that attacked her much larger than Mr. Bailey?
A Her description does match Mr. Bailey. And he is older, he was smelly, he was African American, and he was much bigger than her. She was approximately 100 pounds by her count and his records indicated he was normally about 160 prior to being removed of his blood.
Q Okay. That's -- he was 136 at the autopsy?
A Yes.
Q So he lost 24 pounds of blood, is that your --
A No, he didn't lose 24 pounds of blood but I'm sure that he lost some in there.
Q Okay. And so it's your testimony that he was really big and seemed like a giant?
A I don't believe I gave that testimony, no.
Q She told you that she was attacked in a parking lot, correct?
A Yes.
Q Okay. And the incident that caused Mr. Bailey's death occurred in a dumpster, is that correct?
A In a parking lot, yes.
Q In a dumpster area in a parking lot?
A Yes.
Q She didn't describe being attacked in a dumpster

area?
A Not 'til she was at the jail.
Q And at the jail she said this room reminds of where I was attacked?
A Yes.
Q She didn't reference dumpster, she said it reminds me of where I was attacked?
A Yes and it did not look like a parking lot, it looked like a room.
Q Okay. And again, because the wall was painted up a few inches up with the gray paint that they use in the jail for the floor and the wall, you figured that looked like a curb, the same type of curb that was in the -- in the enclosure?
A Yes.
Q When you're inside of those rooms at the jail that have the gray paint that goes up a few inches off the floor, you don't mistake that wall and that gray paint for a curb, do you?
A No.
Q You've never thought, wow, that's a curb there and it turned out it wasn't?
A No.
Q And she told you that this incident happened at the Budget Suites, correct, on Boulder Highway?

A Yes, that's what she believed.
Q Where she was attacked?
A Yes.
Q Okay. And certainly she didn't mention Nevada State Bank?
A She did not mention Nevada State Bank, no.
Q And she didn't mention West Flamingo to you?
A At one portion she couldn't recall what side of town it was and that she was not very good with directions in the town.
Q Okay. She said she wasn't familiar with Las Vegas at all?
A Correct.
Q Pretty much is what she said?
THE COURT: The record shall reflect that the detective nodded his head up and down.
BY MR. SCHIECK:
Q And she talked about two locations, correct? But both of them she said were Budget Suite on Boulder HIGHWAY?
A That's two different comments there, I believe, being taken out of context.
Q Okay. What part am I taking out of context?
A One portion she's talking about two different

1 locations and when she was discussing Budget Suites we were
2 trying to pinpoint which Budget Suites it was because there
3 were two on Boulder Highway and one of them was closer to
4 Sam's Town and she indicated that the Budget Suites that she
5 was referring to, that she stayed at, was closer to Sam's Town.
6 Q But she did talk about two Budget Suites, correct?
7 A Correct.
8 Q Both on Boulder HIGHWAY, correct?
9 A Yes. And actually if I may correct myself not so
10 much that she talked so much about two Budget Suites but
11 when she was talking about Budget Suites on Boulder Highway
12 we were trying to clarify there are two Budget Suites on
13 Boulder Highway, is it closer to Sam's Town or further than
14 Sam's Town.
15 Q But she said it's the one across from Sam's Town?
16 A Or closer to Sam's Town. I don't remember the
17 exact wording.
18 Q And she said that where the attack on her took place
19 was like right around from the fountain at the Budget Suites, is
20 that correct?
21 A That's correct.
22 Q Okay. There's wasn't a fountain anywhere around
23 the Nevada State Bank parking lot?
24 A No, there was not.

1 Q So that description doesn't match the area where
2 Mr. Bailey was found also?
3 A No, that matches where she lived that she couldn't
4 recall the apartment number even after living there for a
5 period of time.
6 Q Well, the question where the fountain came up was
7 specifically where the assault took place and she said, "Right
8 around from the fountain?"
9 A Yes.
10 Q So she was describing where her assault took place?
11 A At that particular question.
12 Q Do [sic] you ask her if she recalled hitting him with
13 anything else besides the knife, correct?
14 A I don't recall if that was me particularly or --
15 Q Okay.
16 A -- Detective LaRochelle.
17 Q It was Detective LaRochelle. That question was
18 asked of her?
19 A Yes, it was asked of her.
20 Q And her answer was, "No," and then she qualified
21 that answer, correct?
22 A Correct.
23 Q Stating, "But it's -- I have a baseball bat that I keep
24 behind my seat or had a baseball bat," correct?

1 A Correct.
2 Q She never said she used the baseball bat?
3 A She did not.
4 Q In fact her first answer was, "No," and then she
5 volunteered that she did have a bat?
6 A Yes, she did.
7 Q And that bat turned out to actually be in her car?
8 A Yes.
9 Q And she indicated to you that the individual that had
10 attacked her that she had used the butterfly knife to repel was
11 still alive when she left, correct?
12 A Yes.
13 Q He was crying when she left?
14 A Yes.
15 Q And you're aware of the facts of -- that have been
16 brought out here in court as in fact that Mr. Bailey was
17 deceased at the time he was dismembered?
18 A That is correct.
19 Q So that doesn't fit the description of what happened
20 to Mr. Bailey, that he would have still be alive and crying when
21 the person left?
22 A No, that would be somebody minimizing.
23 Q Okay. Okay. So every time she says something that
24 doesn't match Mr. Bailey she's minimizing and every time she

1 says something that sort of matches then that verifies, is that -
2 -
3 MR. KEPHART: Your Honor, I'm going to object to
4 argumentative.
5 THE COURT: Sustained.
6 BY MR. SCHIECK:
7 Q She indicated to you that after she was attacked by
8 the individual that she described as a giant, at the Budget
9 Suites near the fountain in the parking lot, after that attacked
10 she left in her red Fiero, correct?
11 A If she left in her red Fiero, that part's correct.
12 Q And she took the car to Jeremy's house, correct?
13 A Yes.
14 Q And you interviewed Jeremy?
15 A Yes.
16 Q And you verified that her car was in fact left at
17 Jeremy's house at one point?
18 A At point it was; yes.
19 Q At one point during the interview she as asked
20 whether or not there was a dumpster, correct?
21 A Yes.
22 Q And she indicated that there were dumpsters that
23 were some distance away and then said, I don't think I could
24 have put someone in a dumpster or words to that effect?

A Words to that effect; yes.
Q Did it seem to you like she thought that this individual had been found in a dumpster and was saying, couldn't have been me that put him in the dumpster?
A I don't know what she was thinking. We certainly had not mentioned anybody being in a dumpster or anything about a dumpster. That was the first time the dumpster was mentioned.
Q Okay. So she brought up "in a dumpster" as opposed to you guys bringing it up?
A That is correct.
Q And that again, there's nothing that was found in the dumpster in this case?
A No, in this case --
Q Other than garbage?
A -- the garbage was removed from the dumpster since apparently the individual couldn't be put into the dumpster.
Q And at the end of the interview, just before you switched the tape off the second time, Ms. Lobato had told you a concern -- told you information concerning a Mumblelina, a young lady that mumbles a lot that had also been attacked in the same area, correct?
A I don't recall if it was the same area but there was

another attack she was talking about by a person by the name of Mumblelina.
Q And she was asked, "How soon was it that you talked to her before you were attacked?" And she said, "It was afterwards already," correct? Do you recall that?
A I recall a conversation, I'm not sure the way you said is what is on there.
Q Can you turn to page 27?
A Thank you.
Q Is that what it says? "It was afterwards already?"
A Yes, that's what it says.
Q And you -- your question was, "After you'd been attacked?"
A Yes.
Q And her answer was, "Yes -- or yeah, this has already been over a month ago?"
A Yes, that's correct.
Q And at that point you asked if there's anything else you can think of, she asked to blow you [sic] nose, and you ended the statement, correct?
A Yes, that's correct.
Q And this statement was on July 20th of 2001 and July 8th was certainly not over a month prior to that?
A That's correct.

Q So clearly she was talking at a -- at a point in time much earlier than July 8th or 9th?
A At that particular sentence, yes.
Q There was no follow up question to that by you?
A No, there was not.
Q And when you started the interview or the tape portion of the interview with her it was actually you that indicated the term, "a couple of weeks ago in Las Vegas," correct?
A Yes, that's correct.
Q That was not what she said on the tape statement, that's what you said, "a couple of weeks ago in Las Vegas?"
A That's correct.
Q And then later on at the end of the interview she's talking about more than a month ago?
A Yes.
Q Those are her words?
A Those are her words.
Q And that's minimizing also?
A Actually, it is. Yes, it is.
Q So she -- by telling you a different place, a different time, a different description, a different location she's minimizing what she's telling you she did?
A Yes.

Q Okay. You talked about what stood out in your mind was that when you were back behind that dumpster that it -- that it was -- I take it, smelled quite a bit?
A Not the dumpster, Mr. Bailey.
Q Okay. Is it uncommon that individuals that are homeless have an odor about them?
A No, it's not.
Q In fact, it's quite common?
A Yes, it is.
Q And it's not uncommon during the summer time in Las Vegas for individuals to -- especially if they're not showering, to have an odor about them?
A Yes.
Q And there are certainly a large number of individuals in Las Vegas besides being homeless over consume alcohol as part of their homelessness?
A Only one with their penis removed though.
Q That wasn't the question I asked you so would you like to answer the question I asked you?
A Could you ask it again for me, please?
Q Okay. There are -- there are quite a number of people in Las Vegas that are homeless and also overindulge in alcohol?
A Yes.

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Q And while we're talking about individuals that have had injuries to their penis, you were shown a statute that's a mandatory reporting statute, is that correct?
A That is correct.
Q Okay. So -- and let's just use the general term, "healthcare provider." We don't need to go through all the different mandatory reporters, let's just say "healthcare providers," okay? Someone comes in and has a gunshot wound, they have to report that?
A Yes.
Q Mandatory?
A Mandatory.
Q What if it's an accidental gunshot wound?
A They have to report it.
Q What if there's a knife wound, a cut?
A If they have a knife wound it's reported.
Q Even if it's accidental?
A I guess it's to be determined whether it's accidental or not.
Q Okay. And so someone at the healthcare provider makes that determination whether it's accidental or not?
A Well, no, generally they would report it and it would be determined whether it was accidental or not.
Q Well --

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A Is my understanding.
Q -- we're talking about generally.
A Okay.
Q Somebody has to make that determination whether or not it was accidental or not?
A My understanding is if someone comes in with a knife wound it would be reported.
Q Every single knife wound?
A That's my understanding.
Q I have to confess that when I cook I tend to quite often cut myself and have even done so to the point that I've needed stitches.
MR. KEPHART: Your Honor, is Mr. Schieck testifying? If he is then we should probably have him sworn in. This is -- I'm objecting to the form of that question if that's a question.
THE COURT: Sustained.
BY MR. SCHIECK:
Q Hypothetically, if a -- if a person is at home cooking and slicing tomatoes and induces themselves to slice a -- not only the tomato but a large piece of their finger that requires stitches and goes to a healthcare provider and says I was cutting tomatoes when I cut my finger, is it your testimony that that is going to be reported to Metro?

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A I cannot tell you what another person is going to think or do. What I am told, according to the statute, is that if a knife wound appears to be non-accidental that it would be reported to the police?
(Off-record colloquy)
Q It's 629.041. Indicates that if you have -- and I'll paraphrase the first part and I'll show this you to be fair, an injury which appears to have been inflicted by means of a firearm or knife, not under accidental circumstances, shall promptly report the person's name, if known; his location; and the character and extent of the injury. So if it's under accidental circumstances according to the statute there's no requirement to report?
A Correct.
Q Okay. And so someone at the healthcare provider must make that determination whether or not it's accidental circumstances?
A Okay.
Q Okay. So is that a fair statement?
A That's fair.
Q Now tell us what you did to determine that there were no reports generated of a knife wound to as Mr. Kephart said the groin area or to the penis during May, June, and July of 2001?

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A I had it researched through the various record sections --
Q Now when you say you had it researched, you had someone else do this research?
A Yes.
Q Okay. It wasn't done by you?
A No, I can't do every single thing. Some things have to be delegated.
Q Okay. So someone else did the research and reported it to you?
A Correct.
Q Okay. Did they --
A I didn't go to each individual hospital and read all of their records, I didn't go to each records and ask if I could read through each of the reports that had come in. It has to be at some point given to other people to report back accordingly.
Q So someone else reported to you that there were no --
A Yes.
Q You didn't personally go out and do this yourself?
A I personally telephoned hospitals. I didn't personally look at every single report but I made the determination through investigation that it was not reported.

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1 Q Okay. You indicated just a minute ago that you had
2 someone else do this and report back to you?
3 A Yes, some things I would do myself; some things I
4 may have the secretary do.
5 Q And she would tell you what her results were?
6 A Yes.
7 Q Okay. And did you prepare a report on the results
8 of this investigation?
9 A I did not. Because it was negative I reported to the
10 District Attorney's office and there was nothing found.
11 Q So you generated no report whatsoever on this
12 additional investigative work you did on this case?
13 A I did not.
14 Q Okay. And besides perhaps your secretary going out
15 and talking to whoever she talked to and reporting back to
16 you, who else was out there doing this?
17 A Well, I also spoke with urologists in the Valley since
18 a urologist would be involved in having to repair and/or
19 replace an individual's penis had they actually survived, and
20 determined that nobody had reported any severed penises that
21 they had reconstructed.
22 Q You talked to every urologist in Las Vegas?
23 A I talked to several of them and asked that they
24 would communicate amongst themselves at their various

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1 conferences and that, yes.
2 Q So your testimony is based on you asking others to
3 go out and ask others whether or not they had seen a severed
4 penis or fixed a severed penis or cut penis?
5 A As far as the urologists go, a town of this size
6 doesn't have all that many urologists.
7 Q How many does it have?
8 A I can't give you an exact number.
9 Q But how do you know that there's not that many?
10 A Because I've probably been to dinner with most of
11 them at the same time.
12 Q Okay. All right. Leaving out your dinner
13 conversations your investigation in this case was to talk to
14 some urologists and ask them to talk to other urologists?
15 A Yes.
16 Q Okay. And --
17 A Because that's something that is -- would be talked
18 about. If somebody's penis was severed and had to be
19 reinstalled it's sort of like Lorena Bobbitt. I think pretty much
20 everybody is familiar with her name because it's an unusual
21 occurrence. It doesn't not happen very often and it's a big
22 deal. If something like that happened and somebody did the
23 surgery, everybody in that business would be knowing about it
24 and talking about it.

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1 Q How often does it happen?
2 A It doesn't. That's why it's a big deal.
3 Q Okay. It's never happened before?
4 A It does not happen often is what I'm saying.
5 Q Okay. Well, you're familiar with how often it has
6 happened?
7 A No.
8 Q Okay. Are you aware of Dr. Simms' testimony that
9 every case he's seen has been male on male amputation?
10 A I was not present for Dr. Simms' testimony.
11 Q Okay. You were never informed of that? No one
12 ever informed you of that?
13 A The ones that he has seen?
14 Q Or read about?
15 A I have not been informed of that, no.
16 Q You haven't done any reading on this type of
17 amputation, you're just basing it on what you've heard and the
18 Bobbitt case?
19 A I base this on my experience as a police officer
20 investigating murders like this that don't involve severed
21 penises and realizing that it doesn't occur but very rarely.
22 Q And as a -- as a veteran homicide officer you know
23 the importance of preparing reports of your investigation,
24 correct?

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1 A I know that it's important to be able to testify to
2 what has been done. In some cases it's done in a report so
3 you can have it outlined. In some cases if it's something that
4 stands out and you've discussed it with the District Attorney's
5 office and it did not come up with any result that indicated
6 there was an actual individual that was a victim with that
7 injury, then no.
8 Q So you do all this investigation and don't document
9 it anywhere?
10 A Well, I think it has been documented in prior
11 testimony.
12 Q Other than coming to court --
13 A Forgive me, Your Honor, I thought this was
14 completely off. (Turns off cellphone) I'm sorry, go ahead.
15 Q Other than coming to court and testifying at a prior
16 proceeding, have you ever documented any of this
17 investigation you did in this case?
18 A Yes, I've documented a lot of this investigation I've
19 done.
20 Q No, on the -- on the penis amputation or severance
21 or lack of any reports being filed?
22 A It's not in a specific document, no.
23 Q Now let's say someone is -- suffers a stab wound,
24 it's not directly to the penis but perhaps it's to the groin area

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1 without impacting the penis, how many ...nose happened
2 during that three-month period?
3 A I don't know. Didn't see any.
4 Q Okay. Well, which ones did you look at?
5 A I asked for anything that would be reportedly attack
6 of the groin.
7 Q Okay. Who did you ask for that information?
8 A The records bureaus of the various locations here in
9 Clark County.
10 Q Okay. And they didn't report back to you in writing?
11 They just called you up and said --
12 A Yes.
13 Q Okay. So it's based on what they told you during
14 what, a phone call?
15 A A phone call or someone looking up on a computer
16 terminal.
17 Q Well, they -- you mean sending you an e-mail saying
18 I didn't get any results?
19 A No, I did not have any e-mails.
20 Q Okay. Well, how did you get the information back
21 that there were no reports filed if it wasn't by phone call?
22 A That's what I'm telling you is that it would have
23 been a conversation in person or on a telephone. There was
24 not an e-mail.

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1 Q Okay. And there's no documentation to tell us who
2 these persons were that gave you this information?
3 A No.
4 Q How many instances were there where someone
5 went to a healthcare provider during that time and indicated
6 that they had accidentally cut themselves in that area?
7 A I have no idea.
8 Q Because the healthcare provider wouldn't have to
9 report that?
10 A I think a severed penis would not be considered a
11 potentially accidental cutting.
12 Q I was indicating the entire -- the area including cuts
13 to the groin or the upper stomach, things of those nature
14 where you go into the doctor and you say, you know, I was
15 using my saber saw and it slipped and I cut myself, and the
16 doctor believed that it was an accidental injury and didn't
17 report it. How many of those happened during that period?
18 A None that I'm aware of.
19 Q But if it was determined to be accidental it wouldn't
20 have been reported so there's no way you'd be aware of it,
21 correct?
22 A No.
23 Q Unless you went to every single doctor in town and
24 asked, you know, that somebody come in with that?

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1 A Correct.
2 Q And you were asking questions concerning paper
3 towels at the scene by Mr. Kephart, some white paper towels
4 stuffed in the open wound in the penis area?
5 A Yes.
6 Q And it's recollection that you didn't see any of those?
7 A Not stuffed in any wounds, no.
8 Q Okay. And Sergeant Manning was there at the
9 scene?
10 A Yes, he was.
11 Q Okay. And he would have various responsibilities at
12 the scene?
13 A His responsibility is to oversee the detectives and/or
14 deal with the media if the media's there, and if we need
15 additional equipment or something like that he'd be the one
16 that would arrange that sort of thing.
17 Q Would he also deal with the coroner's investigator
18 office?
19 A He may at times, yes.
20 Q And you had talked about the fact that when you do
21 a media release on a homicide case that often times you will
22 withhold certain information to verify if someone comes
23 forward that they're telling you something that is true or
24 they're just trying to volunteer so to speak?

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1 A That's correct.
2 Q And would you also give directions to the coroner
3 medical investigator not to release information to the next of
4 kin concerning those type of things?
5 A Yes, that would be consistent as well.
6 Q If the next of kin was contacted and told that there
7 was a severed penis, that information could get out to the
8 public and you'd want to control that?
9 A That's true.
10 Q And so would Sergeant Manning, part of his
11 responsibilities to be to tell the coroner's investigator what not
12 to release to the next of kin or whoever they deal with?
13 A Yes, if in a case like this if we wanted to tell them
14 not to release that the penis was severed he would do that.
15 Or, in a case of somebody that had been shot and not release
16 what caliber it was, things like that so we'd know if somebody
17 was talking about a specific caliber we'd know that we had
18 somebody who knew what they were talking about.
19 Q And that's not uncommon in most homicides,
20 correct? To withhold some information?
21 A That's correct.
22 Q And that certainly would be within Sergeant
23 Manning's duty to make the determination what not to be
24 released?

A Yes.
Q And you've got what's called the homicide file in front of you, is that correct?
A Yes.
Q And that file really should contain all of the reports that are in connection with this case?
A Yes.
Q Generated by the police department?
A Yes.
Q Okay. And that would include the coroner investigator reports and follow up notes?
A We don't have anybody's notes. We have investigator reports, we have a report from the doctor and a pathology report that would have drugs and things like that in the blood.
Q Would you have the follow up notes from William Gaza with the Coroner's Investigator office?
A We would never have the follow up notes of anybody. We would have their generated report that they generate call it investigator's report or investigative report and that would be it from them.
Q Okay. I'm going to show you just to see if this is in your -- in your homicide book or whether or not it's the first time you've seen it.

(Off-record colloquy)
MR. SCHIECK: May I approach, Your Honor? I'm just going to determine if he's got these follow up notes in his book. If he doesn't I'll mark it and --
THE COURT: Very well.
THE WITNESS: Yeah, we don't have anything ever -- this is follow up notes.
BY MR. SCHIECK:
Q So you wouldn't have anything like this in your homicide notebook?
A No.
Q You wouldn't have anything -- if we could have this marked as Defendant's --
(Off-record colloquy)
BY MR. SCHIECK:
Q This is four-page document -- excuse me, five-page document labeled follow up notes from the Clark County's Coroner's office. And you indicate that you do not have that in your detective notebook?
A I do not have that in my notebook. I have never been provided that, that's not something we're normally given.
Q So the Coroner's office doesn't share information with you concerning what they're doing on a case?
A They give us their report -- official report.

Q Would -- I mean do the homicide detectives talk with the coroner's investigators concerning the case as it's progressing?
A No.
Q Do you talk with them concerning notification of next of kin?
A Yes, that is their function is to notify the next of kin. They're responsible for the body. Once we locate a body we can't touch the body or move the body until they get there. They have responsibility for that body until it gets to the Coroner's office and it's processed by the doctor and that and then from that point on. And their function as far as we're concerned is to have a body available and for us to be able to move it and to -- at some point get the person positively identified and have them notify the next of kin.
Q Would there be any reason for the homicide detectives to tell the coroner's investigator not to attempt follow up on last known address or next of kin until the investigation could be worked by homicide?
A I don't know unless they're trying to just keep the part about the severed penis from somebody. I didn't tell anybody that.
Q Do you know whether Detective LaRochelle did?
A I have no knowledge of that.

Q Okay. And do you know whether or not Sergeant Manning told the coroner investigator that there were white paper towels stuffed in the open wound in the penis area?
A I have no knowledge of that either.
MR. KEPHART: Your Honor, I'm going to object as to hearsay.
MR. SCHIECK: We ask if he has no knowledge of it, Your Honor, so.
THE COURT: And the Court's sustains the objection.

MR. KEPHART: And I'm going to ask that it be stricken as well, Your Honor.
THE COURT: Motion granted, stricken. The jury will disregard it.
BY MR. SCHIECK:
Q So Sergeant Manning would be the one to ask that question?
A Yes.
Q Okay. And the coroner investigator that he told it to?
A Yes.
Q Okay. Now prior to having Ms. Lobato sign her waiver of her rights card, the Miranda card, was there any conversation before then? How long did it take?

A Only the part that I described being in the livingroom with her was walking into the room, explaining who I was, who Detective LaRochelle was, and the comments about wanting to talk about what happened in Las Vegas, and understanding that she had been attacked and had to defend herself, and the part about her car. And then when mentioning that I knew that she had been hurt in the past and as soon as she began to sob I took the rights card and said, you know, we're going to talk to you about it and before you do, you need to read this for us, please, out loud.

Q And it was open and obvious from what you described before that you were from homicide?

A Yes. I even had -- actually have my actual notebook that I carry if you'd like to see that? It's got "Homicide" in big letters on it.

Q If you have it, if it's not inconvenient?

A It's right here.

Q That's the one you had back on 2001?

A Yes.

MR. SCHIECK: For the record, Your Honor, he displayed a brownish notebook that appears to say "Homicide" on the front.

THE COURT: The record shall so reflect.

MR. SCHIECK: And his name.

BY MR. SCHIECK:

Q Now when you went up there to Panaca you called and made sure that a crime scene analyst went with you?

A We called before we left. We called the lab and explaining we were going up there, we needed to take somebody with us. We would -- spoke -- spoken to a supervisor at the crime lab. They assigned a crime scene analyst and she got everything she needed, her equipment loaded up in her car, and was ready to follow us out there.

Q Okay. So she followed you up there?

A Yes.

Q And she ended up taking photographs of the red Fiero?

A Yes.

Q Okay. And she put the tape on that sealed the car up, correct?

A That's correct.

Q Okay. And she also went into the house and took some photographs?

A Yes, of Ms. Lobato.

Q Okay. And you had a consent to search Ms. Lobato's room, correct?

A Yes, that's correct.

Q Okay. It wasn't Ms. Lobato's house, it was her

parents' house, is that correct?

A Yes.

Q And you didn't have their consent to search their living portions of the house because they weren't home yet?

A They came home at the very end.

Q Okay. You'd already gotten the consent from Ms. Lobato to search her bedroom though?

A Yes, that's correct.

Q And she in fact took you back into her bedroom?

A Yes, she did.

Q And the crime scene analyst was in the house at some point to take her pictures, correct?

A Yes.

Q Did you have the crime scene analyst take any photographs of shoes that were in her bedroom?

A I don't remember if she took pictures of them there or when she got back.

Q Well, we know about the pair of black high heel sandal shoes --

A Mm-hmm.

Q -- that were impounded. What about other shoes? Were any other shoes impounded?

A I don't believe so at that point, just the shoes she was wearing when we got to the jail.

Q Okay. And no other shoes in her room were impounded or photographed?

A No, I don't believe so.

Q But you had a consent to search, you certainly could have impounded and/or photographed any shoes that were in her bedroom?

A Yes.

Q With her permission?

A Yes.

Q Do you recall what type of tow truck was used to transport the Fiero? Whether it was the kind that tows the car or the kind where you put the car up on the back?

A I know that we request the kind you put the car on top.

Q Do you have a recollection of which kind was used?

A I believe it was the kind you put on top but it's been quite a long time ago.

Q Now on June 9th, after you had cleared the scene there at the Nevada State Bank and gone back to the Homicide office you received a call indicating that there was a person at the scene that was inquiring about the deceased?

A Yes.

Q And that was Diann Parker making the inquiries?

A Yes, it was.

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1 Q And who was it that contacted with that
2 information? A It was one of the patrol officers there at
3 the scene.
4 Q Do you recall whether it could have been Crime
5 Scene Analyst Ford? Would your report reflect it?
6 A Yes, it would.
7 Q Okay. If you could turn to page 13 of your report,
8 last paragraph.
9 A Yes, that's correct. She approached the patrol
10 officer and then Ford had called -- made the phone call.
11 Q And you followed up on that information?
12 A Yes.
13 Q You went out to Diann Parker's apartment and
14 talked with her?
15 A Yes.
16 Q Did you do a tape interview with her?
17 A Not at that particular time.
18 Q You later did though?
19 A Yes.
20 Q Okay. And when you went out to her apartment --
21 well, let's back up a little bit. You had information that she
22 was making inquiries specifically about the deceased person as
23 being someone that she may have had contact with
24 previously?

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1 A Yes.
2 Q Okay. And she was there while the patrol officers
3 and crime scene analysts were still on the scene?
4 A Yes.
5 Q And you determined it would be a good idea to go
6 out and talk with her right away?
7 A Yes.
8 Q Okay. So you did that?
9 A Yes, we did that.
10 Q It was you and Detective La Rochelle and you even
11 took your sergeant, Sergeant Manning, with you, correct?
12 A Yes.
13 Q Did you take a crime scene analyst?
14 A No.
15 Q And when you went into and talked with Diann
16 Parker she let you look around her house, correct?
17 A Yes.
18 Q Okay. Take any photographs of any shoes in that
19 house?
20 A No, we did not.
21 Q Okay. Did you impound any shoes?
22 A No, we did not.
23 Q Take any measurements on any shoes?
24 A No, we did not. We examined the shoes and

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1 nothing appeared to be a Reebok type with the sort of shoe
2 impressions that we could see from the scene. Nothing
3 matched up and nothing had blood on it.
4 Q Did you use Luminal on them -- on the shoes to test
5 for blood?
6 A No, we didn't.
7 Q Just visual inspection?
8 A It was visual inspection. You can visually inspect --
9 when you have a clear-cut pattern, say for example if you
10 have something that has circles on it, on the bottom of the
11 shoe that leaves a pattern, and you're looking at other people's
12 shoes and their shoes all have rather than circles big blocks,
13 you don't need to test it with five different things to be able to
14 tell that didn't make that impression. You can -- you can tell.
15 Q Wouldn't you want to know if any of the other pair
16 of shoes might have blood on them?
17 A We looked at the other shoes.
18 Q You just looked at them?
19 A Yes, we did.
20 Q But you even have a crime scene analyst to do the
21 Luminal test, correct?
22 A If we felt at some point that we needed one because
23 something was leading that direction we would have done
24 that, however, nothing leaned that direction.

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1 Q So it would be fair to say that you had someone that
2 was at the scene within the same 24-hour time period of Mr.
3 Bailey's death inquiring about him and you went out and talked
4 to that person and did not take a taped statement, did not
5 take a crime scene analyst, did not take any photographs but
6 two weeks later you -- when you went to Panaca you took a
7 crime scene analyst and took photographs and impounded
8 evidence, correct?
9 A Correct. That's how big it was that she knew that
10 somebody's penis had been severed.
11 Q And the information that you had when you went up
12 there was actually, according to what you were told, was that
13 Blaise or Ms. Lobato had told Dixie who had told Laura and
14 then Laura had told you?
15 A Yes.
16 Q Okay. That's the only source of information you had
17 when you went up there other than pulling the reports that
18 Ms. Lobato had been a previous victim?
19 A Yes.
20 Q Now where was Ms. Parker -- Diann Parker's house
21 or apartment in relation to the crime scene?
22 A It was an apartment complex that was located a
23 short distance to the north.
24 Q Directly to the north, the apartment complex?

A I don't remember if it was directly but it was in the vicinity.
Q Within walking distance easily?
A Yes.
MR. SCHIECK: If I may approach the clerk, Your Honor?
THE COURT: Yes. Would this be a good point to take a stretch break?
THE CLERK: Yes.
MR. SCHIECK: That's fine, Your Honor.
THE COURT: Okay. Detective Thowsen, you may step down. We're going to take a 10 minute stretch break.
Ladies and gentlemen of the jury, 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 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.
(Court recessed at 3:29 p.m. until 3:51 p.m.)
(Jurors are present)

THE COURT: The record shall reflect we're resuming trial in case number C-177394, State versus Lobato, in the presence of the defendant, her three counsel; the two prosecuting attorneys; the ladies and gentlemen of the jury; and Detective Thowsen who remains on the witness stand and under oath.
Mr. Schieck may resume cross.
MR. SCHIECK: Thank you, Your Honor.
BY MR. SCHIECK:
Q When we stopped I was just getting, I believe, this Exhibit 121 -- 121 which appears to be an aerial photograph of the Nevada State Bank and surrounding area, correct?
A Yes.
Q And do you recognize on there where Diann Parker's apartment would have been at?
A I can recall from going there at the time it was to the north. I don't recall specifically looking at a picture that --
Q This certainly was an apartment complex here just to the north of Nevada State Bank parking lot area?
A Yes.
Q Okay. Was it in that complex somewhere, to your recollection?
A And, again, it's been such a long time ago. I remember, I believe, it was on Viking was the street address

and I remember that we went to the north.
Q But it was somewhere to the north but fairly close?
A Yes. Yes, it was.
Q Okay. And as part of talking to Diann Parker you had indicated that you had also talked to the manager or the people in the office there at the apartment complex?
A Yes.
Q And that was [unintelligible - coughing] some Hispanic individuals that you had reason to believe that might have some knowledge about the case or at least Diann Parker's incident with Mr. Bailey?
A Apparently, according to Diann Parker, the individuals had seen him being rough with her previously.
Q And so you've sort of checked those guys out --
A Yes.
Q -- is that? Okay. Did you make any notations of their names or if you ran them what the results were?
A I do remember running them. I don't have a permanent record of that.
Q Okay. Did you go and talk to any of them?
A Did not.
Q Did you go and look at any of their shoes?
A Did not.
Q Look at any of their footwear at all?

A No.
Q Okay. Did -- so you didn't go to any of their -- any of those apartments?
A No, we did not.
Q Just based it on the information from the manager of the apartment complex as to who those individuals were?
A That's correct.
Q You never even confirmed that the individuals you checked on were in fact the same individuals that Ms. Parker was talking about?
A She knew the exact apartment numbers and the people and so we were confident it was the right individuals from that.
Q She wasn't able to give you the names of the people though, correct?
A I don't recall that she did that; no.
Q And you had talked about in Ms. Lobato's statement that she gave to you, the tape statement, that she said she couldn't remember who she might have told about the assault? Remember I asked you some questions about that?
A Right.
Q I don't recall --
A Yes.
Q -- type of answers?

A Yes.
Q Okay. Did she at any time tell you names of people that she had talked to about her assault?
A Are we talking about Ms. Lobato?
Q Yes.
A No.
Q Okay. And the reason I ask that is on page 22 of your statement you're talking about your trip up to -- your second trip up to Panaca?
A Are you referring to the officer's report?
Q Yes.
A Page 22?
Q Yes.
A And which portion, please?
Q It would be fourth paragraph, last part of it.
(Pause in the proceedings)
A Okay.
Q Okay. And that indicates that Ms. Lobato had listed as individuals she had told about the homicide. The list included the following: Michelle Austria, Rusty Brown, Heather McBride, Shayne Kraft, Chris O'Conner [phonetic], and Chris Carrington. Is that information that Ms. Lobato gave to you or is that from some other source?
A In looking at this I believe this is information that

Ms. Lobato gave to Dixie Tienken that gave it to us.
Q Okay. So you got that information through Dixie -- according to Dixie from Ms. Lobato?
A Yes. Yes.
Q Okay. And did you talk to these individuals?
A Yes.
Q Did you talk to Michelle Austria, Rusty Brown, Heather McBride, Shayne Kraft?
A Yes, I believe we spoke with each of those and took statements from them.
Q When you were out there in Panaca did you interview the neighbors on either side of the Lobato residence?
A No, we did not.
Q You interview anybody across from the Lobato residence?
A Yes.
Q Who was that?
A I think that was Rusty Brown and perhaps Michelle Austria. It was across the street in close proximity.
Q A couple of houses up --
A Yes.
Q -- a side street?
A Yes.
MR. SCHIECK: Thank you. That's all I have, Your

Honor.
THE COURT: Redirect.
MR. KEPHART: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. KEPHART:
Q Now, Detective, when the defendant was talking to you in reference to the inside of the -- when she was in the jail cell and she was talking to you in reference to how it looked like the place where this occurred, what did you take that to mean?
A The dumpster enclosure.
Q Okay. And when she said that it looked like the place where this happened did that lead you to believe that she was talking about the incident which she described earlier in her statement about cutting a man's penis?
A Yes.
Q Okay. Do you have your -- do you have your statement with you? Could you turn to page 18?
A Statement or officer's report?
Q I'm sorry, officer's report, page 18. And down one, two, three, four, five paragraphs where it starts on 7/20/2001, do you see that paragraph?
A Yes, I do.
Q Okay. Now looking at 1/18, when you look in

regards to this photograph you can see the carport, is that correct?
A That's correct.
Q And if you're standing inside the dumpster area you can see the carport?
A Yes.
Q And you can see underneath the carport?
A Yes.
Q Now the carport is covered, correct?
A Yes.
Q Meaning that you cannot see through the carport up into the sky --
A That is correct.
Q -- unlike the covering albeit which is on top of the dumpster enclosure?
A Yes.
Q And she used the same words, she said that the attack didn't -- the location of the attack did not have covering and that she could see the metal covering of the carport area?
A That's correct.
Q So if you put the metal covering over top of the dumpster you wouldn't be able to see through it, would you?
A No, you wouldn't.
Q Mr. Schieck had asked you about whether or not you

were told that the dumpster had to be moved, do you recall that, in order to get back into the back area?
A Yes.
Q Okay. You're aware though that Richard Shott was actually back in the back area?
A Yes.
Q The knife that you had showed her earlier and demonstrated that for the jury, you had indicated that you've practiced with it?
A Yes.
Q Okay. How long do you believe that you had to practice with it in order to open it the way you did?
A I practiced with it for an entire day.
Q Okay. You indicated in your report that the defendant told you that the knife that she got, when she was riding back in the car with you, it was from a Christmas present from her father?
A That's correct.
Q Okay. Look at your report on page 18, the third paragraph down. In that same statement with you did she say anything else in reference to the knife and the Christmas present?
A Would you restate your question again, please?
Q In the same statement where she references the

Christmas present from her father does she say anything else in relation to the knife?
A Yes.
Q What does she say?
A She refers to her sexual assault as a child at the hands of her mother's boyfriend and indicated the police had failed her because the suspect was never arrested and that he had previously molested children.
Q Detective, let me ask the question, listen to my question, okay? In the same statement where she references the Christmas present from her father, I guess it would be the same sentence --
A Sentence.
Q -- does she -- does she reference anything with regards to the knife besides the fact that she got it from her father for a Christmas present? What does she say?
A She said that she had received the knife that she utilized in cutting off the man's penis as a Christmas present from her father.
Q So now she has actually told you beyond the statement that she gave recorded, she told you she cut the man's penis off?
A Yes.
Q When you got back to the jail Mr. Schieck had asked

you about -- or even when you were driving in the car, why didn't you flick on a tape recorder and when you got back to the jail why didn't you flick on the tape recorder. Did you see a need for any additional questioning in this case?
A No.
Q Okay. You indicated that there was a concern though, however, with her hurting herself and was put on suicide watch, is that correct?
A That's correct.
Q Detective, will you -- will you pull open your report with regards to her statement and pull open her statement? Do you have your statement?
A I do.
Q Will you turn to page 21? Prior to the portion in which she talks about the baseball bat is there anywhere else that you talk about anything else that is used in this event -- in this crime?
A No.
Q Matter of fact you asked, "Do you remember hitting," -- or Detective LaRochelle asked, "Do you remember hitting him with anything else besides your knife?" His own words, "hitting." And her response is, "No, but it's possible. I have a baseball bat that I keep behind my seat -- I had a baseball bat." And then she went onto say -- you ask where it

is and she says she doesn't really know. Had you ever discussed any of the type of injuries that this man received?
A No.
Q Just whether or not she hit him with anything else?
A Correct.
Q Can you turn to page 16? On page 16 there's a portion in there where you're asking her about whether or not she remembers the area where this occurred involving a dumpster. Do you see that portion?
A Yes.
Q Is it the bottom?
A Yes.
Q Her answer was, "No -- well, there was a dumpster not far away, it happened -- where it happened but I don't remember putting him in it or anything. I don't think there's any way that I could have." Do you recall the scene in this case?
A I'm sorry?
Q Do you recall the crime scene in this case?
A Yes, I do.
Q Where the dumpster was located?
A Yes.
Q Do you recall your testimony in respect to it appeared that as if Mr. Bailey's body had been moved from the

backside of the dumpster area towards the dumpster?
A Yes.
Q Kind of drug maybe because there was this drag marks across the wall?
MR. SCHIECK: Your Honor, I'm going to object. This is all asked and answered and it's all leading.
THE COURT: Sustained.
MR. KEPHART: It -- to what regard, Your Honor? I don't believe with regards to asked and answer, I wouldn't have a right to recross him --
MR. SCHIECK: Your Honor, he's asking --
MR. KEPHART: -- and redirect him.
MR. SCHIECK: -- him if you recall testifying to this, do you recall testifying to this. Obviously it has been asked and answered or he couldn't ask the question.
THE COURT: The Court has ruled and you may move on.
BY MR. KEPHART:
Q Now when you were talking to her about where she was living she explained to you she was living at the Budget Suites, is that correct?
A That's correct.
Q Okay. And in reference to this attack if she was living in Budget Suites then and this attack happened at

Budget Suites then her statement is is that she got in her car and drove away from where she was living?
A That's correct.
Q Before you taped her statement you talked to her in reference to what you wanted to talk to her about on the tape, is that correct?
A Yes.
Q Okay. And on page 2 of her statement after you read her or have her acknowledge that she had read her rights and you asked her if she understood them, her answer was "Yes" to that, is that correct?
A Yes.
Q And then that is when you asked, "And you were explaining to us what happened a couple of weeks ago in Las Vegas." When you say, "you were explaining," are you talking about the defendant explaining to you an incident that happened a couple of weeks prior to July 20th?
A Yes.
Q And her response was, "Mm-hmm?"
A That's correct.
Q And you went on to talk to her about Las Vegas more thoroughly, is that correct?
A That's correct.
Q Now she had indicated to you that her words were,

"I cut his penis." And she says, "I remember that," didn't she? Page 6.
MR. SCHIECK: Objection, Your Honor. These are all leading questions. He's just reading the statement to the detective.
THE COURT: Sustained.
BY MR. KEPHART:
Q Do you recall whether or not she discussed with you or talked to you on the taped statement about what she had done to this man's penis?
MR. SCHIECK: Objection, asked and answered, Your Honor.
THE COURT: Overruled.
THE WITNESS: Yes.
BY MR. KEPHART:
Q Okay. What did she tell you in her statement in reference to what she did and if she remembered doing anything to this man's penis?
A She said that she cut his penis, that she remembered that, and that she was -- she thinks she was trying to cut it off but didn't know if she actually did.
Q Do you recall what she told you about when she left whether or not the individual was standing or was on the ground?

A And once again, I have comments from her and I also have comments from interviewing the other people that she said so if you want to refer me to the page?
Q Would it refresh -- page 7. Down about two-thirds of the way, her question says -- starts after you got done. Do you see where I'm talking about?
A Yes.
Q Okay. Do you recall what she told you about whether or not the man was standing or was on the ground?
A That he was on the ground.
Q Okay. And she said he was crying?
A That's correct.
Q Now when you spoke to her both on the tape and before the tape, she indicated to you that she didn't --
MR. SCHIECK: Again we're leading.
THE COURT: Sustained.
MR. KEPHART: Okay.
BY MR. KEPHART:
Q What did she indicate to you about this particular individual in both before the tape and after the tape in reference of people remembering her, if you remember?
A In reference to --
Q Or missing him or something like that?
A Basically told me effect of that she didn't think that

1 somebody would miss him or someone miss him.
2 Q Okay. And that's past tense?
3 A Yes.
4 Q And you questioned a lot about whether or not --
5 what you did to determine whether or not this had been
6 reported anywhere else throughout Clark County. Do you
7 remember that --
8 A Yes.
9 Q -- cross-examination? How big's the department?
10 A Around 4,000 employees, around 2,000 police
11 officers.
12 Q Okay. You also testified that this was a big -- it was
13 big information that you received from -- up in Panaca before
14 you left to cause you --
15 MR. SCHIECK: Objection, leading, Your Honor.
16 THE COURT: Sustained.
17 BY MR. KEPHART:
18 Q Okay. Do you remember telling -- testifying about
19 how this was a big situation before you left?
20 MR. SCHIECK: Objection, asked and answered,
21 Your Honor.
22 THE COURT: Overruled.
23 BY MR. KEPHART:
24 Q Do you remember that?

1 A Yes.
2 Q Okay. Why was it so big?
3 A Because we had not put any information out, we'd
4 gone to lengths to make sure that nobody had known that we
5 had a victim that had his penis severed.
6 Q Did you think that a department investigated this
7 type of crime about a penis injury that would get around
8 through the department?
9 MR. SCHIECK: Objection, speculation, Your Honor.
10 THE COURT: Sustained.
11 BY MR. KEPHART:
12 Q How long have you been a police officer now?
13 A Twenty-nine years.
14 Q Is this a big enough incident that that would be
15 something that would be discussed if it was something
16 investigated by the police department?
17 MR. SCHIECK: Question's vague as to who's
18 discussing it, Your Honor. Is it between homicide detectives or
19 the secretary at the --
20 MR. KEPHART: Judge, I said the police department.
21 THE COURT: Sustained.
22 MR. KEPHART: Okay.
23 BY MR. KEPHART:
24 Q Homicide. Would you necessarily discuss an injury

1 to someone's penis unless it was a dead body?
2 A I'm not sure I understand your question there.
3 Q Okay.
4 A Sorry.
5 Q Would the homicide department discuss -- if you
6 learned about information about an individual that got his
7 penis severed would that be a topic of discussion --
8 A Yes, it would.
9 Q -- at the homicide?
10 A Yes, it would.
11 Q Even if he wasn't dead?
12 A Absolutely.
13 Q Within the police department?
14 A Yes.
15 Q So that's a big thing, big deal?
16 A Yes.
17 Q Unique?
18 A Very unique.
19 Q Defendant had indicated to you that she was on a
20 meth binge, at the end of a meth binge and I guess her words
21 were three-day meth bing. Do you remember that testimony?
22 A Yes, I do.
23 Q She indicated -- not testimony, I mean her
24 statement, she indicated multiple times that she --

1 MR. SCHIECK: Objection, leading, Your Honor.
2 THE COURT: Sustained.
3 BY MR. KEPHART:
4 Q She ever tell you that she was -- in her statement,
5 do you recall in her statement that there was -- she did a lot
6 for drugs?
7 A Yes.
8 Q Okay. Do you recall whether or not she told you
9 that she knew that she -- where to get them in Las Vegas?
10 A I don't recall that specifically.
11 Q Could you look to page 15? Do you see the top of it
12 you're talking about the topic of drugs?
13 A Yes.
14 Q And you see about the -- one, two, three, the third
15 answer down? Read that to yourself.
16 A Yes.
17 Q What's she telling you there?
18 A That she basically had to go back to her house in
19 Panaca because when she was in Las Vegas she knew where
20 to get drugs.
21 Q Okay. She needed to go to Panaca to get clean?
22 A Yes.
23 Q Also at -- you knew from her statement she was
24 talking about two different places with respect to the Budget

1 Suites and then the place where Duran Bailey is dead?
2 A Yes.
3 Q On page 15 do you specifically go into that and ask
4 her about that?
5 A Yes.
6 Q Okay. Tell me what you were doing there and tell
7 me what you -- and tell me what her responses were?
8 MS. GREENBERGER: I'm going to object, that's
9 leading, Your Honor, and it misstates the evidence.
10 THE COURT: The Court will sustain the objection as
11 to leading.
12 BY MR. KEPHART:
13 Q Tell me what you were asking her there? Tell me
14 what her responses were?
15 A I was asking her if she was in two different locations
16 on different sides of town, if it's possible that she could be
17 mistaken on her location?
18 Q And were you talking about the Budget Suites there?
19 A Yes.
20 Q Okay. And what was her response?
21 A That it was possible.
22 Q Okay.
23 A That she'd met up with people at both places and
24 that's where they tell her things have happened.

1 Q So she's telling you that she's actually met people at
2 both places?
3 MR. SCHIECK: Objection, leading, Your Honor.
4 MS. GREENBERGER: And vague and ambiguous as
5 to what place.
6 MR. KEPHART: How many -- how many people are
7 going to be objecting from the defense?
8 THE COURT: We should just have one designated
9 and the Court sustains the first objection.
10 BY MR. KEPHART:
11 Q This is the same place in the questioning that you
12 were talking to her about getting drugs, is that correct?
13 MR. SCHIECK: Objection, leading.
14 THE COURT: Sustained.
15 BY MR. KEPHART:
16 Q In this particular area in this -- in your questioning
17 what were you discussing with her?
18 A We had been speaking of drugs.
19 Q And she told you she could be in --
20 MR. SCHIECK: Objection, leading.
21 THE COURT: Sustained.
22 BY MR. KEPHART:
23 Q And what did she tell you in reference to the drugs
24 and locations?

1 MR. SCHIECK: Objection, asked and answered.
2 THE COURT: Overruled. You may answer.
3 THE WITNESS: That she'd been to both places.
4 BY MR. KEPHART:
5 Q Okay. Now you indicated you went and spoke to
6 Diann Parker. On your direct examination you talked about
7 what you had done and cross-examination they had asked
8 you. You did tape a statement from Diann Parker, didn't you?
9 A Yes, I did.
10 Q Okay. And you examined -- what did you do exactly
11 now?
12 A We examined not only Diann Parker but her
13 roommate, Steven King. We were allowed to look through
14 their apartment at their clothing in the hampers and the closet
15 at the shoes that they had in the apartment there. We looked
16 in their kitchen at the knives that they had. Pretty much they
17 were very cooperative with us.
18 Q And did they ever give you any indication that they
19 had any involvement whatsoever with what occurred to Duran
20 Bailey?
21 A Not at all. They were very helpful. They were not
22 anxious in any way. They were very helpful.
23 Q Certainly didn't tell you that they cut anyone's penis
24 off, did they?

1 MR. SCHIECK: Objection, leading.
2 THE COURT: Sustained.
3 BY MR. KEPHART:
4 Q Did they tell you anything about injuring anybody?
5 A They did not.
6 Q Ms. Lobato did though?
7 A Yes, she did.
8 Q Okay. These other individuals that were -- that
9 supposedly seen something happen to Diann Parker, what did
10 you do again to --
11 MR. SCHIECK: Objection, asked and answered.
12 THE COURT: Sustained.
13 MR. KEPHART: That's fine. I don't need to ask any
14 further questions.
15 MR. SCHIECK: I have no questions, Your Honor.
16 MR. KEPHART: I'm done.
17 THE COURT: Did you pass the witness?
18 MR. KEPHART: Pass the witness, Your Honor. Pass
19 the witness.
20 THE COURT: Mr. Schieck has no further questions?
21 It appears that we're going to have some questions come out
22 from the jury.
23 (Pause in the proceedings)
24 THE COURT: Would counsel please approach.

(Off-record Bench Conference)
(Pause in the proceedings)
THE COURT: Detective Thowsen, ladies and gentlemen of the jury have posed various questions to you which the Court will be reading to you. After I read to you a question please answer the question. After the Court has had all of the questions answered then the attorneys for each side will have the opportunity to pose any follow up questions to you which they deem appropriate.
This one will be marked as Court's Number 58. Why specifically were Diann Parker's not at least spoken to?
THE WITNESS: At the time we had done this particular follow up we had very little -- there was no evidence that they were going to be involved. The information -- we wanted to gather a little bit more about their background when we were first there. Once we found out their names we wanted to go back and check them.
As an example, if we find out somebody's name like we do with Ms. Lobato, before we contact them we check on them to see what information we can garner about their past history. We want to go back to the office to check on these individuals.
When we learn that they did not have criminal histories and it did not seem to be a thing that was going to be

involved at that point, it was something we could go back to at a later date. If something else in the chain evidence or the investigation lead in that direction we could do so but in the meantime there was nothing pointing in that direction.
We had been there working all night long through the next morning and into the early part of the morning towards the afternoon and, you know, at some point you get tired and it's time to take a break from it for a little bit.
THE COURT: Court's Number 59. Did you search the area near the Budget Suites for possible witnesses and did you ever locate where Blaise was living?
THE WITNESS: I contacted the Budget Suites and because Blaise did not use her name to register there and she could not give us a name other than I believe it was Michelle as a first name, we had no information. It's a huge place. They had no information on somebody described like Blaise. They had not reports of incidents in their area. So there's no sense looking for a witness to something that we know didn't happen there. We know it happened on West Flamingo.
THE COURT: Court's Number 60. Since the defendant stated that she went to Jeremy's house after the attack, was his house ever searched for evidence?
THE WITNESS: His house was not searched because we were able to tell from other records she also

indicated that she drove her car away from Jeremy's house later on and we know that that's not true because we were given a tow bill that was used to tow her vehicle from the location away from his house. And we spoke to him and his girlfriend and it was not in the same time frame and they had no information and we believe that was accurate.
THE COURT: Court's Number 61. When you interviewed Diann Parker did she reveal that she had been raped by the victim the week before?
THE WITNESS: Yes, she did.
THE COURT: There's a Court's Number 2 marked, follow up by the State?
MR. KEPHART: I do, Your Honor, just one question.
REDIRECT EXAMINATION (continued)
BY MR. KEPHART:
Q Detective, you indicated that the reason why you didn't go interview or speak to these individuals or friends of Diann Parker and you said nothing pointed in the direction of these individuals?
A Correct.
Q And you held information or you held onto that information to see if anything ever did point in that direction?
A Yes.
Q Did anything ever point in that direction?

A No, it did not.
Q Okay. Shortly thereafter it pointed in another direction, is that correct?
A That's correct.
Q And what direction was that?
A To Panaca, to Blaise Lobato.
Q Thank you.
THE COURT: Any follow up by Mr. Schieck?
MR. SCHIECK: Yes, Your Honor.
RECROSS EXAMINATION
BY MR. SCHIECK:
Q You indicated that you'd gone over to Jeremy's Davis' house, correct?
A No, I don't believe I said that.
Q Okay.
A I said we contacted him and his girlfriend.
Q Okay. And was he still living at the same residence?
A He was not living at the residence, no.
Q Okay. You talked to the individual that was living at the residence?
A Yes.
Q And you also had contact with Steve Pyszkowski, correct?
A That's correct.

1 Q And had interviewed him, correct?
2 A That's correct.
3 Q And he had given you a tow receipt, correct?
4 A Correct.
5 Q You were aware that he had been the one that
6 stopped the car from being towed, correct, on the tow receipt?
7 A Either he'd stop it from being towed or he had paid
8 the tow. I know he -- he's the one that had the tow
9 information for us.
10 Q Okay. And you were aware from him that he had
11 helped Blaise retrieve the car from Mr. Davis' home?
12 A Yes.
13 Q Okay. That it wasn't towed from the home, he had
14 helped her retrieve it from the home?
15 A I just -- I just recall a tow receipt indicating that
16 particular date that was removed from her home.
17 Q Do you have page 20 of your report, please? First
18 paragraph.
19 A Wrong report. Yes.
20 Q Okay. Does that refresh your recollection?
21 A Yes, it does.
22 Q Okay. In fact that the car was taken away from Mr.
23 Davis' house and hidden in an apartment complex?
24 A Yes, that's correct.

1 Q And it was towed from that apartment complex, not
2 from Mr. Davis' house?
3 A That is correct.
4 Q And that he provided you with the original copy of
5 the tow receipt dated June 6, 2001?
6 A Yes.
7 Q Okay. And at some point in time did you actually
8 interview -- you said you did interview Mr. Davis, correct?
9 A Yes.
10 Q And he confirmed to you that the car was parked at
11 his house at one point, correct?
12 A That is correct, yes.
13 Q And it was over Memorial Day weekend?
14 A I believe that's correct, yes.
15 Q And he recalled that because he'd gone to Caliente
16 for a softball tournament?
17 A Yes.
18 Q And when he came back the car was gone?
19 A Yes.
20 Q Okay. And then next we see the car when it's being
21 towed by Quality Tow on June 6th?
22 A That's correct, yes.
23 Q Okay. And the incident therefore at Mr. Davis'
24 house you had put in your report had happened a month

1 previously, which would have been in May?
2 A Yes.
3 Q Okay. And you had made a statement that with
4 respect to Budget Suites you had gone to the Budget Suites?
5 A Yes.
6 Q Okay. But you -- and you talked to some people in
7 the manager's office or something like that?
8 A Yes.
9 Q Okay. But you never determined what apartment
10 Blaise was staying in?
11 A Correct.
12 Q Okay. And you never look for any physical evidence
13 on the ground, blood or anything else at the Budget Suites?
14 A I'd asked them if there was anything reported there
15 and they did not have anything. I did not personally go
16 looking on the ground of the Budget Suites.
17 Q Did you get a crime scene analyst out there to look
18 for anything?
19 A No.
20 Q Did you take any photograph of dumpsters?
21 A No, I did not. I had no reason to believe a crime
22 had occurred there.
23 Q Okay. Were there dumpsters there?
24 A Yes, they have dumpster there.

1 Q And near the parking lot area?
2 A Yes, they do.
3 Q And they have -- I think we already established this,
4 parking spaces that are covered?
5 A Yes, they do.
6 Q You take any photographs of those?
7 A I have an overhead photograph.
8 Q You have an aerial but that's --
9 A Yes.
10 Q You didn't take anything from the ground level?
11 A No.
12 Q And you didn't call a crime scene analyst out there?
13 A Did not.
14 Q You just totally rejected that as the crime scene and
15 moved on, is that correct?
16 A There was -- there was no crime scene found there
17 to document.
18 Q And you didn't look for a crime scene. You talked to
19 the manager and that was it?
20 A That's correct.
21 Q Okay. And that's --
22 A And there was --
23 Q -- because you knew that there had been no crime
24 committed there? That's what you just said a little while ago is

1 you knew that there was no crime committed there. You had
2 made that determination. Had you made that determination?
3 A I had made a determination after checking for
4 reported crimes in that location and talking with the
5 management to see if they had any reported crimes in this
6 densely populated apartment complex with lots of people
7 walking and going at all times of night.
8 Q Did you prepare a report on that?
9 A No, I did not.
10 Q Okay. So you didn't prepare a report on the Budget
11 Suites, you didn't prepare a report on the Hispanics you got
12 names of and ran information on SCOPE on, correct? There's
13 nothing to document those?
14 A That's correct.
15 Q Okay. And you just proceeded then -- well, let me
16 ask you this. When was it that you went out to Budget Suites
17 and talked --
18 A I don't know the exact date.
19 Q You don't even know when you went out there?
20 A We're talking 2001, it's been a little while ago.
21 Q Well, was it within first couple of months after you'd
22 arrested Ms. Lobato?
23 A It would have been in very close proximity to
24 arresting Ms. Lobato.

1 Q So closely thereafter?
2 A Within a few days.
3 Q Okay. Well, your report that you prepared, does it
4 reflect that you had been out there within a few days?
5 A I don't believe my report reflects that.
6 Q I mean it reflects things all the way through the end
7 of July, correct, into August? Correct?
8 A It reflects things that we did that we documented
9 evidence, yes.
10 Q Okay. As late as August 2nd you were interviewing
11 someone?
12 A Yes.
13 Q Had you been to the Budget Suites before then and
14 just not put it in this report or was it done afterwards and you
15 just didn't generate a new report or an updated report?
16 A I would believe that I went prior to that.
17 Q Okay. But you didn't -- you went prior to preparing
18 the final report but you didn't put it in the report?
19 A The day of the report is 8/22 so I would say that I
20 would have gone prior to the date of that report, yes.
21 Q But not put it in the report?
22 A Yeah.
23 MR. KEPHART: Your Honor, asked and answered.
24 MR. SCHIECK: Well, I was just trying to establish

1 time.
2 THE COURT: Overruled.
3 BY MR. SCHIECK:
4 Q Your recollection it was prior to August 22nd but you
5 didn't put it in your report?
6 A That's correct.
7 Q At some point in time did you actually run Diann
8 Parker's -- have her fingerprints run to match the fingerprints
9 recovered in this case?
10 A I believe Laura Schell [phonetic] did, he's the one
11 that submitted the request for that.
12 Q Was he submitting all the requests for -- to have
13 testing done?
14 A Yes.
15 Q Okay.
16 A Generally the person that does the scene portion will
17 do that aspect.
18 Q Would you have input into the requests that are
19 made? I mean the two detectives on a case would they talk
20 and decide what's going to be submitted and what's not going
21 to be submitted?
22 A Yes.
23 Q Okay. Is there any reason on the sexual assault kit
24 that the entire kit wasn't tested the first time?

1 A I'm sorry?
2 Q Was there any reason why the entire sexual assault
3 kit wasn't tested the first time?
4 A Which sexual assault kit and tested for --
5 Q The one taken on Duran Bailey at his autopsy?
6 A I'm not sure I understand your question.
7 Q Are you aware of a request being prepared to test
8 the sexual assault kit collected at the autopsy?
9 A Yes.
10 Q Are you aware that the initial request was only to
11 check his hands? His nail scrapings and his hand swabs and
12 nothing else?
13 A No.
14 Q You weren't aware of that?
15 A No.
16 MR. SCHIECK: Nothing further, Your Honor.
17 THE COURT: Any questions by the State?
18 MR. KEPHART: Nothing further, Your Honor.
19 THE COURT: It appears there are no further
20 questions by the jury either. You may step down.
21 THE WITNESS: Thank you, Your Honor.
22 THE COURT: Would counsel approach?
23 (Off-record Bench Conference)
24 THE COURT: Ladies and gentlemen, at this point in

1 time it appears that it will be an impossibility for us to conclude
2 this trial this week as had been anticipated. Is there any one
3 of you who is unable to return next week?
4 JUROR ARIENO: I have appointments set up for --
5 THE COURT: Okay. We're going to have to do just
6 like we did on the voir dire. I've got two hands up and we will
7 be addressing you shortly.
8 The gentleman that was speaking was Mr. Arieno
9 who's in Chair Number 1 and Michelle Moir who's in Chair
10 Number 7 raised her hand as well. The Court's going to ask
11 that the two of you remain the Court's going to excuse the rest
12 of the jury for the evening recess.
13 We'll be resuming tomorrow at 1:00 o'clock and
14 returning to Dr. Laufer, the defendant's first witness to resume
15 with his testimony at that time.
16 Ladies and gentlemen, at 1:00 p.m. tomorrow
17 please be in the hallway. The bailiff will meet you there to
18 return you to your seats in the courtroom. During this evening
19 recess you are admonished that you are not to talk or
20 converse among yourselves nor with anyone else on any
21 subject connected with this trial. And you are 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 including 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. I've got a hand up
5 from Mr. Ciciliano in Chair 6.
6 JUROR CICILIANO: Just a question if you have a
7 schedule for next week or how many days you're thinking?
8 THE COURT: We don't know just yet. I hadn't
9 anticipated that I would have to plan for this trial that far in
10 advance and had to move another trial out for next week. But
11 I do have a long motion calendar in the morning, Monday, and
12 Wednesday and I do have criminal sentencings Tuesday and
13 Thursday mornings but I've not yet looked at those calendars
14 to see how many matters are scheduled or just what the time
15 line would be but we would not be starting in the morning, I
16 don't believe, prior to 10:30.
17 During the recess you're admonished not to talk or
18 converse among yourselves or with anyone else on any subject
19 connected with this trial. You're not to read, watch or listen to
20 any report of or commentary on the trial or any person
21 connected with the trial by any medium of information
22 including without limitation newspaper, television, radio and
23 Internet. And you're not to form or express any opinion on
24 any subject connected with the trial until the case is finally

1 submitted to you.
2 The Court's going to ask that Mr. Arieno and Ms.
3 Moir remain. The rest of you are excused for the evening and
4 we'll see you at 1:00 p.m.
5 (Jury Panel is excused at 4:48 p.m.
6 except for Jurors Arieno and Moir)
7 THE COURT: Mr. Arieno and Ms. Moir remained.
8 The other jurors have now existed.
9 Michelle Moir, would you please wait just outside in
10 the hallway and we'll be with you in a moment. While you
11 wait outside you're under the admonishment from the Court.
12 (Juror Moir exits the courtroom)
13 THE COURT: Mr. Arieno, you started to advise the
14 Court that you have different appointments scheduled for the
15 upcoming week?
16 JUROR ARIENO: Yes, I've pushed back this last
17 three weeks into next week, my whole workload and I had
18 deliveries scheduled, I have service appointments scheduled. I
19 mean I'm losing all kinds of money while I'm doing what I
20 need to do. But to throw me into next week I'm going to end
21 up losing all my customers pretty much.
22 THE COURT: When do you have your deliveries and
23 appointments scheduled? How does that -- how does that
24 work with your business?

1 JUROR ARIENO: I have my service calls are
2 scheduled as I receive them or as I take them from the past
3 couple of weeks and I schedule them pretty much every other
4 hour starting at 9:00 a.m., and I have deliveries in the
5 afternoon for a company called Fitness Beast delivering
6 treadmills and ellipticals and bikes and I've been telling him
7 just wait until next week, just wait until next week, meaning
8 after the 29th.
9 THE COURT: Mm-hmm.
10 JUROR ARIENO: I mean I'm financially going to go
11 broke by -- if I don't get to these appointments I have no
12 income.
13 THE COURT: So you start your appointments in the
14 morning at 9 o'clock and do them until --
15 JUROR ARIENO: Til 5:00, 5:30. I've been doing --
16 trying to do deliveries after court but people don't want you in
17 their house after 7 o'clock at night, 6 o'clock at night. And
18 that's the problem that I'm running into.
19 THE COURT: So it's people that are ordering new
20 equipment that needs to be set up --
21 JUROR ARIENO: Correct.
22 THE COURT: -- and put in place and assembled --
23 JUROR ARIENO: Sure.
24 THE COURT: -- that kind of thing?

JUROR ARIENO: Yes.
THE COURT: Any questions by the State?
MR. KEPHART: No, Your Honor.
THE COURT: Any by the defense?
MR. SCHIECK: No, Your Honor.
THE COURT: Counsel, approach.
(Off-record Bench Conference)
THE COURT: Mr. Arieno, as you're aware we're not going to be in session tomorrow morning nor Friday morning. And we'll be starting at 1 o'clock both of those days. The Court's going to ask that tomorrow morning you see if you cannot rearrange your appointments that you have for Monday, Tuesday, and Wednesday next week and see if you can push them -- push them further out and reset them. And then we'll come back to you to talk to you about that tomorrow, okay?
JUROR ARIENO: All right.
THE COURT: You'll remain under the evening admonishment from the Court. You have a good evening, we'll see you tomorrow at 1:00.
JUROR ARIENO: Thank you.
THE COURT: You're welcome.
(Juror Arieno recessed)
THE COURT: Ms. Moir.

(Pause in the proceedings)
THE COURT: Ms. Moir, you're encountering difficulties for next week?
JUROR MOIR: Actually I just need another letter.
THE COURT: We can do that.
JUROR MOIR: That's all I need, just another letter stating that, you know, you didn't anticipate it to go this long and as long as I have documentation.
THE COURT: Okay. Very good, we can provide that to you.
JUROR MOIR: Okay.
THE COURT: You'll remain under the admonishment from the Court for the evening recess and we will see you at 1:00 o'clock tomorrow.
JUROR MOIR: Okay. Thank you.
THE COURT: Thank you.
(Juror Moir recessed)
(Pause in the proceedings)
THE COURT: I just sent my JEA an e-mail. She leaves at 5:00 so she's probably headed out the door for her to do that letter tomorrow.
(Pause in the proceedings)
THE COURT: It doesn't appear that we're going to be getting to Brent Turvey tomorrow.

MS. ZALKIN: If the Court has a moment I would welcome the opportunity to respond. If the Court needs to go then we can go.
THE COURT: Okay. I do need to go, so.
MS. ZALKIN: Okay.
THE COURT: It appears he's not going to get called tomorrow so we have a little bit of time to come back to the issue.
MS. ZALKIN: Sure.
THE COURT: Okay. Thank you.
MR. SCHIECK: Just so the Court knows, Your Honor, and I know the Court's got to go and we can do this tomorrow also, but we approached the bench and objected to Detective Thowsen testifying concerning the reports of other people that have had cuts in that area and then were reporting. We'd object that it's hearsay and the Court allowed him to testify. We want to renew that motion and make a motion to strike his testimony in that regard because, in our opinion, clearly based completely on hearsay where he's talking to urologists and things like that. We can address that tomorrow. I just wanted to make you totally aware I needed to make a record.
MS. DiGIACOMO: We might be need to address that because if that's the case we do have custodians from every

hospital that were contacted and they had no incidence of a penis being cut. We'll need to call all those witnesses then, which probably would be another 10 witnesses. Because we did go to each hospital emergency room in the Valley, do our own investigation and ask regarding any injury to any penis and there wasn't one, so. I mean we could leave it with Detective Thowsen or we can, you know, go that route. We just need to know.
MR. SCHIECK: Well, there's a lot more --
THE COURT: The --
MR. SCHIECK: -- healthcare providers than 10.
THE COURT: -- objection at sidebar was as to hearsay and we had discussion at sidebar that -- cause my initial impression was that Detective Thowsen himself had called the hospitals and was going to rely what the hospital personnel had told him and Mr. Kephart said, no, that that was not the case. That he had internally reviewed reports from Metro that were negative. And that is what Detective Thowsen initially testified to so I want to go back to my notes.
MS. DiGIACOMO: It was on cross-examination, the rest you know.
THE COURT: And that was solicited by the defense rather than --
MS. DiGIACOMO: That's correct.

THE COURT: -- you can't obj... to what you solicit yourself.

MR. SCHIECK: I solicited his information that he testified to as if it was his own knowledge, was in fact based totally on hearsay.

MS. DiGIACOMO: We didn't ask him about contacting the hospitals.

(Pause in the proceedings)

THE COURT: His testimony on direct was that he looked for reports through May, June, and July anywhere in Clark County and found none. Found no other report.

(Pause in the proceedings)

THE COURT: That was where the State left it. It was on -- it wasn't on cross-examination that he indicated that he had delegated some of the research to the secretary who reported back to him. That he had called hospitals and he had called urologists. That was information that was solicited by the defense so.

MR. SCHIECK: On cross-examination of his statement that he had examined reports and that's what he was basing his testimony. His testimony on cross was he didn't examine any reports, he talked to people. He talked -- he had his secretary talk to people and didn't document any of it, of course, but.

THE COURT: No, he didn't say he didn't refer to any reports. He said he did refer to the reports and he did additional things as well which --

MS. DiGIACOMO: The question was posed generally.

MR. KEPHART: As I recall specifically in that area because I knew what Mr. Schieck was objecting to. His testimony on direct was the searched for reports and that and found -- and within the department and nothing had been reported and it was left at that. Mr. Schieck went into, well, what did you do? Did you make phone calls yourself? Did you talk to hospital personnel? Did -- and then he got to the point where they talking about -- to urologists and how many urologists did you talk to? Do you know all the urologists? That's all cross-examination. That's Mr. Schieck's questions as to what he did in talking to people, but he testified on direct that he found no reports. And my specific direct was aimed as to the statute as to whether or not there was any reports made resulting in information about a person being stabbed or cut with a knife and we talked here specifically about in the groin area slashed with a knife or whatever and he said nothing was reported like that. And now Mr. Schieck said, well, what, did you talk to -- you know, he went on beyond reports based on cross-examination.

THE COURT: The motion to strike is denied. The State limited either examination to avoid the hearsay. The hearsay that was brought out was solicited by the defense so the motion to strike is not appropriate.

MR. SCHIECK: Your Honor, for the record I would note that when we did approach the bench I indicated that the contents of reports would also be hearsay, that those reports in fact are based on hearsay. That's hearsay information that's related in the reports, so it's much broader than just who he talked to --

MR. KEPHART: The testimony --

THE COURT: But the --

MR. SCHIECK: And I'm comfortable with the record as it stands.

MR. KEPHART: Well, I'm not.

THE COURT: The State's position --

MR. KEPHART: The --

THE COURT: -- was that it was a negative. That there were no reports --

MR. KEPHART: Right.

THE COURT: -- that that is not hearsay. So --

MR. KEPHART: That's our position.

THE COURT: Okay. We'll see everybody at 1 o'clock tomorrow.

MS. ZALKIN: Thanks, Your Honor.

THE COURT: Everyone have a good evening.

(Court adjourned at 5:08 p.m. until the following day, September 28, 2006 at 1:00 p.m.)

* * * * * * * * * *

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.

Kay McCrea
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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