

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 \*\*\*

3 KIRSTIN BLAISE LOBATO,

4 Appellant,

5 vs.

6 THE STATE OF NEVADA,

7 Respondent.

) Case No. 58913

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8 APPELLANT'S APPENDIX

9 VOLUME 4

10 APPEAL FROM NOTICE OF ENTRY OF DECISION AND ORDER

11 IN THE EIGHTH JUDICIAL DISTRICT COURT

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COPY

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

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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 14  
VOLUME XIV

THURSDAY, SEPTEMBER 28, 2006

COURT RECORDER:

LISA LIZOTTE  
District Court

TRANSCRIPTION BY:

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XIV-1

000693

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EXHIBITS

ADMITTED

THURSDAY, SEPTEMBER 28, 2006

STATE'S EXHIBITS:

269	Aerial photograph of Budget Suites	161
270	Closeup photograph of Budget Suites	161

DEFENDANT'S EXHIBITS:

I	Photograph of Duran Bailey	8
J	Photograph of Diane Parker's neck	18
K	Photograph of Diane Parker's shoulder	19
L	Photograph of Diane Parker's legs	20
M	Photograph of Diane Parker's arm	21
N	Photograph of Diane Parker's black eyes	22
U	Photo of Budget Suites office and fountain	195
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X	Photograph of Budget Suites office building	195
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\* \* \* \* \*

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DIRECT CROSS REDIRECT RECROSS

THURSDAY, SEPTEMBER 28, 2006

DEFENDANT'S WITNESSES:

Diane Parker	7	29	45/53/62	49/58
Michael Laufer	--	63	140/157	147

STATE'S WITNESS:

Zachory Robinson	159	176	197	208
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\* \* \* \* \*

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1 LAS VEGAS, NEVADA THURSDAY, SEPTEMBER 28, 2006

2 **PROCEEDINGS**

3 PROCEEDINGS BEGAN AT 13:11:22

4 (Jurors are present)

5 THE BAILIFF: Department II is now in session, the  
6 Honorable Valorie J. Vega presiding. Please be seated.

7 THE COURT: Good afternoon. The record shall  
8 reflect that we're resuming in State versus Lobato under  
9 C177394, in the presence of the defendant, her three counsel,  
10 one of the prosecutors.

11 MS. DIGIACOMO: Right here.

12 THE COURT: Oh.

13 MS. DIGIACOMO: I'm sorry, Your Honor. I'm trying  
14 to find a photograph.

15 THE COURT: Okay. Both of the prosecuting  
16 attorneys and ladies and gentlemen of the jury.

17 We received a juror's note which Court and counsel  
18 have reviewed in chambers. It will be marked as the Court's  
19 next in number.

20 THE CLERK: 63.

21 THE COURT: Okay. As we recessed yesterday, the  
22 Court had asked Mr. Arieno who's in chair Number 1 to see if  
23 he could rearrange his schedule for next week.

24 Were you able to accomplish that?

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000694

1 JUROR ARIENO: I need some times and dates, if  
2 possible, for the schedule next week so I can go tomorrow  
3 morning and call the customers and try to reschedule, 'cause  
4 yesterday it was kind of left that it was Monday, Tuesday,  
5 Wednesday, without any times.  
6 THE COURT: All right.  
7 JUROR ARIENO: So if there's a way I can at least  
8 get Monday and Tuesday's times, that would be awesome.  
9 THE COURT: Okay. I'll, on the next -- on the next  
10 break, work with my secretary and my law clerk to go into the  
11 computer and take a look at how many cases we've got  
12 scheduled in the morning on the days for next week and then  
13 I'll let the jury know what the schedule would be.  
14 JUROR ARIENO: Thank you.  
15 THE COURT: Thank you, Mr. Arieno.  
16 As I told you yesterday, a trial is an animal that  
17 sometimes takes on its own characteristics. We had believed  
18 that we would be starting with Dr. Laufer at this time. He's  
19 coming out of the Bay area. They had fog roll in to the airport  
20 which has delayed his arrival. Because of that, we're going to  
21 proceed in calling another witness out of order at this time  
22 until Dr. Laufer arrives.  
23 And this is a prior testimony that was under oath,  
24 preserved in writing from a prior court proceeding that is going

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PARKER - DIRECT

1 to be read at this time. And this witness is being called as a  
2 defendant's witness.  
3 MR. SCHIECK: Ms. Alzora Jackson will be the reader  
4 today, Your Honor.  
5 THE COURT: All right. Ms. Jackson, you may  
6 assume the seat in the witness stand.  
7 MS. DIGIACOMO: Your Honor, I apologize. There's  
8 an exhibit I need but I can't find it.  
9 COURT REPORTER: Can you spell your first name,  
10 please?  
11 MS. JACKSON: A-L-Z-O-R-A.  
12 COURT REPORTER: All right.  
13 THE COURT: Did you find it?  
14 MS. DIGIACOMO: I did, Your Honor. Thank you.  
15 **DIANE PARKER, DEFENDANT'S WITNESS,**  
16 **PREVIOUS TESTIMONY READ INTO RECORD**  
17 **DIRECT EXAMINATION**  
18 BY MS. ZALKIN:  
19 "Q Would you state your name, spelling it for the  
20 record, please?  
21 "A Diane Parker, P-A-R-K-E-R.  
22 "Q Good morning, Ms. Parker. Would you please tell  
23 the jury where do you reside, where do you live?  
24 "A 4255 West Viking Road, Apartment 816.

XIV-7

PARKER - DIRECT

1 "Q And do you live with anyone else?  
2 "A My roommate, Stephen King.  
3 "Q Steven with a V or P-H?  
4 "A P-H, I think.  
5 "Q I'm going to show you what's been marked as  
6 Defense Exhibit I and ask if you recognize this.  
7 MS. ZALKIN: "One moment, please. May I  
8 approach, Your Honor?  
9 THE COURT: "You may."  
10 BY MS. ZALKIN:  
11 "Q Do you recognize this?  
12 "A Yes.  
13 "Q Would you please describe it?  
14 "A He's the one I knew as St. Louis.  
15 "Q Was there also another name that you knew him by?  
16 "A Duran.  
17 "Q And is that how he pronounced it?  
18 "A Yes.  
19 "Q Is that your signature underneath that picture?  
20 "A Yes.  
21 MS. ZALKIN: "Move to admit Defense Exhibit I.  
22 MS. DIGIACOMO: "No objection.  
23 THE COURT: "Granted."  
24 (Defendant's Exhibit I admitted)

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PARKER - DIRECT

1 BY MS. ZALKIN:  
2 "Q Ms. Parker, do you recall what date you signed this  
3 photograph?  
4 "A The 23<sup>rd</sup>.  
5 "Q Of which month?  
6 "A July.  
7 "Q And last year?  
8 "A Yes.  
9 "Q And where did you sign this photograph?  
10 "A At my apartment.  
11 "Q How did you come to get this photograph?  
12 "A From the police detective.  
13 "Q What was your understanding of why they brought  
14 this picture for you to identify?  
15 "A Because they wanted to know if he was the one that  
16 had raped me and that had been murdered.  
17 "Q He wanted to confirm that the man that was raped  
18 was also the man that was murdered?  
19 "A Yes.  
20 "Q And did you confirm that for them?  
21 "A Yes.  
22 "Q When did Duran rape you?  
23 "A On July 1<sup>st</sup>.  
24 "Q Do you remember what day of the week that was?

XIV-9

000695



PARKER - DIRECT

1 "A Sunday.  
2 "Q And where did you first see him on July 1<sup>st</sup>?  
3 "A I think he was outside my apartment building talking  
4 to some Mexicans.  
5 "Q What were you doing?  
6 "A Walking outside. And he called me over there and I  
7 started talking to him.  
8 "Q Did he do anything to you at that moment?  
9 "A Not at that moment. When I went over to one of  
10 the guy's apartment to drink a beer with them, then he walked  
11 over there and he got mad because I was sitting there and  
12 talking to him, to the guy. And he walked in and he slapped  
13 me real hard.  
14 "Q And when he slapped you, where did he slap you?  
15 "A In the face, on the ear.  
16 "Q And was this outside in the courtyard or in one of  
17 the apartments?  
18 "A It was in one of the apartments.  
19 "Q Whose apartment?  
20 "A I don't remember his name.  
21 "Q Can you describe him?  
22 "A He's probably about nineteen years old, about 145  
23 pounds, about 5'7", 8".  
24 "Q Do you know how you described him to the police,

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PARKER - DIRECT

1 what nationality he was?  
2 "A A Mexican.  
3 "Q And so after you were slapped by Duran in the face,  
4 what happened next?  
5 "A The guy talked to him outside and -- and told him,  
6 you know, to -- to leave, and all of that, and -- and not to do  
7 that. I didn't hear everything that he said.  
8 "Q Okay. So you're talking about the young Mexican  
9 man that you were visiting with?  
10 "A Yes.  
11 "Q And did that cause Duran to do anything?  
12 "A He left. And then I -- I left right after that.  
13 "Q And when you left, where did you go?  
14 "A I went back home.  
15 "Q And how did you feel as you were going back to  
16 your apartment?  
17 "A I was scared.  
18 "Q Who were you scared of, the Mexican or Duran?  
19 "A Duran.  
20 "Q Did anyone else know that you were afraid to go  
21 back to your apartment?  
22 MS. DIGIACOMO: "Objection, speculation."  
23 THE COURT: Give me the page and the line.  
24 MS. DIGIACOMO: 14, Your Honor, line 15.

XIV-11

PARKER - DIRECT

1 THE COURT: Page 13?  
2 MS. DIGIACOMO: 14, Your Honor, line 15.  
3 THE COURT: "Sustained."  
4 BY MS. ZALKIN:  
5 "Q Who else was outside when you went back to your  
6 apartment?  
7 "A There were two other Mexican guys. One was  
8 standing at the bottom of the stairs by the tree that's there  
9 and another one was like standing upstairs. They were  
10 watching to make sure I got in the house okay.  
11 "Q When did you see Duran again?  
12 "A On the 4<sup>th</sup> of July.  
13 "Q Okay. Are we talking about the day that he raped  
14 you was July 1<sup>st</sup>?  
15 "A Yes.  
16 "Q After you get back safely to your apartment, did you  
17 ever see Duran again that day?  
18 "A Yes.  
19 "Q And when was that?  
20 "A July 1<sup>st</sup>.  
21 "Q And how did you see him?  
22 "A I went to the Laundromat to do my laundry. And I  
23 was coming back home, and he confronted me. And I told  
24 him he wasn't welcome there anymore and he -- you know, for

XIV-12

PARKER - DIRECT

1 him not to ever come back, and everything. And he just kept  
2 on talking and talking. And then I had to open the door to get  
3 in to, you know, my laundry. And he pushes on, you know,  
4 pushed himself in behind me.  
5 "Q Did he tell you why he was upset?  
6 MS. DIGIACOMO: "Objection, hearsay."  
7 THE COURT: "Sustained."  
8 BY MS. ZALKIN:  
9 "Q After he pushed his way into the apartment, what  
10 happened next?  
11 "A He said he was gonna rape me.  
12 MS. DIGIACOMO: "Objection, Your Honor, as to  
13 what he said. She can't state what Duran did next.  
14 THE COURT: "Sustained."  
15 MS. ZALKIN: "Your Honor, I think the question was  
16 what happened next.  
17 MS. DIGIACOMO: "Right. But the response was  
18 non-responsive.  
19 THE COURT: "Would you repeat the question?  
20 MS. ZALKIN: "Yes."  
21 BY MS. ZALKIN:  
22 "Q After he pushed -- after Duran pushed his way into  
23 your apartment, what happened next?  
24 THE COURT: "It's not what did he say. It's what

XIV-13

000696

## PARKER - DIRECT

1 happened. What did he do.  
 2 THE WITNESS: "He pushed me. He said he was  
 3 gonna rape me and he pushed me down on the bed. And I  
 4 said, you know, I said no to him, and all that, and -- and he  
 5 said, 'Well, I'm gonna get what I want this time.' And so he  
 6 proceeded to rape me. And then when I got up, I ran outside  
 7 and yelled for help, and all of that. And then he came outside  
 8 and he grabbed me by the mouth, and all that, and pulled me  
 9 back in and he threw me in the bedroom -- I mean, in a -- in a  
 10 bathroom, and then he threw me down and started -- he  
 11 kicked me and started beating me up. And then he said what  
 12 he was gonna rape me in three different ways."  
 13 BY MS. ZALKIN:  
 14 "Q Okay. Ms. Parker, when he raped you on the bed,  
 15 did he use any kind of protection?  
 16 "A Yes.  
 17 "Q What did he use?  
 18 "A A condom.  
 19 "Q Did he use any weapon when he was raping you?  
 20 "A Not at that point.  
 21 "Q Did he at any point use a weapon?  
 22 "A Yes.  
 23 "Q What was that?  
 24 "A A knife.

XIV-14

## PARKER - DIRECT

1 (Off-record bench conference at 13:22:36 until 13:23:53)  
 2 BY MS. ZALKIN:  
 3 "Q You said he couldn't perform in the bathroom. What  
 4 do you mean by that?  
 5 "A He couldn't get it hard.  
 6 "Q And so how many times did he attempt to sodomize  
 7 you?  
 8 "A About three or four times.  
 9 "Q Did he make any threats to you?  
 10 "A Yes. He told me he was going to kill me.  
 11 "Q Now that was on July 1<sup>st</sup>. You -- did you go to the  
 12 police right away?  
 13 "A No, I didn't.  
 14 "Q When did you see him again?  
 15 "A I think on the 4<sup>th</sup>.  
 16 "Q And what did he do on the 4<sup>th</sup>?  
 17 "A He banged on the door and the window.  
 18 "Q And how did you react?  
 19 "A I was scared. That's when I called the police.  
 20 "Q Did you open the door or speak to him at all that  
 21 day?  
 22 "A No.  
 23 "Q And did the police eventually come to your  
 24 apartment?

XIV-16

## PARKER - DIRECT

1 "Q And you indicated that you tried to scream and run  
 2 away but he brought you back in?  
 3 "A Right.  
 4 "Q Was there anyone who heard your screams or --  
 5 "A Yes. There was a Mexican lady walking by but she  
 6 just ignored me.  
 7 "Q When he brought you back into the apartment, you  
 8 indicated that he brought you not back on the bed but on a  
 9 different -- in a different area of your apartment?  
 10 "A Yes. In the -- in the bathroom.  
 11 "Q And what happened in the bathroom?  
 12 "A He tried to rape me again and -- but he couldn't  
 13 perform.  
 14 "Q When he tried to rape you that time, was that the  
 15 same way that he raped you on the bed?  
 16 "A No.  
 17 "Q How did he rape you on the bed?  
 18 "A Vaginal.  
 19 "Q Is that that he penetrated you vaginally?  
 20 "A Yes.  
 21 "Q And how did he try to rape you in the bathroom?  
 22 "A Anally."  
 23 MS. DIGIACOMO: Your Honor, may we approach?  
 24 THE COURT: Yes.

XIV-15

## PARKER - DIRECT

1 "A Yes.  
 2 "Q Do you recall when that was?  
 3 "A 4<sup>th</sup> or 5<sup>th</sup>.  
 4 "Q Would it refresh your recollection to take a look at  
 5 your taped statement?  
 6 "A Yes.  
 7 MS. ZALKIN: "May I approach the witness, Your  
 8 Honor?  
 9 THE COURT: "Yes."  
 10 BY MS. ZALKIN:  
 11 "Q Does that refresh your recollection?  
 12 "A 7/05.  
 13 MS. DIGIACOMO: "Counsel, what page was that?  
 14 MS. ZALKIN: "Of the hearing, first page.  
 15 MS. DIGIACOMO: "Thank you."  
 16 BY MS. ZALKIN:  
 17 "Q And what happened when the police came to take  
 18 your statement?  
 19 "A They just asked me the questions, what was -- you  
 20 know, what happened and everything. Then they took me to  
 21 UMC.  
 22 "Q And they took you to UMC, the hospital?  
 23 "A Yes.  
 24 "Q And what happened there?

XIV-17

000697

PARKER - DIRECT

1 "A They took pictures.  
2 "Q I'm showing you what's --  
3 MS. ZALKIN: "Your Honor, may I approach the  
4 witness?  
5 THE COURT: "Yes."  
6 BY MS. ZALKIN:  
7 "Q I'm showing you what's marked as Defense  
8 Proposed Exhibit J. Do you recognize that photo?  
9 "A Yes.  
10 "Q And could you please describe that?  
11 "A My neck, where he had the knife.  
12 "Q Does that adequately represent you and the neck  
13 wound?  
14 "A Yes.  
15 MS. ZALKIN: "Move to admit Defense Exhibit J.  
16 MS. DiGIACOMO: "No objection, or I'll submit it,  
17 Your Honor."  
18 MR. KEPHART: The Court let it in.  
19 THE COURT: "It will be received."  
20 (Defendant's Exhibit J admitted)  
21 MS. ZALKIN: "May I approach, Your Honor?  
22 THE COURT: "Yes."  
23 BY MS. ZALKIN:  
24 "Q Do you recognize what's been marked as Defense

XIV-18

PARKER - DIRECT

1 THE COURT: Very well.  
2 MS. ZALKIN: "May I approach, Your Honor?  
3  
4 THE COURT: "Yes."  
5 BY MS. ZALKIN:  
6 "Q I'm showing you what's marked Defense Exhibit L.  
7 Do you recognize that photo?  
8 "A Yes.  
9 "Q And what does it depict?  
10 "A My leg.  
11 "Q And what's on your leg?  
12 "A Bruises.  
13 "Q And does that adequately reflect your leg and the  
14 bruises?  
15 "A Yes.  
16 MS. ZALKIN: "Move to admit Defense Exhibit L.  
17 MS. DiGIACOMO: "Submit it, Your Honor.  
18 THE COURT: "Granted."  
19 (Defendant's Exhibit L admitted)  
20 MS. ZALKIN: For the record, I'm publishing Defense  
21 Exhibit L.  
22 BY MS. ZALKIN:  
23 "Q And I'm showing you what's marked as Defense  
24 Exhibit M. Do you recognize that?

XIV-20

PARKER - DIRECT

1 Exhibit K?  
2 "A Yes. That's my shoulder. That's where he kicked  
3 me.  
4 "Q I'm sorry?  
5 "A That's where he kicked me.  
6 "Q He kicked you in the shoulder?  
7 "A Yes.  
8 "Q Does this adequately reflect the bruise that you  
9 sustained from him?  
10 "A Yes.  
11 MS. ZALKIN: "Move to admit Defense Exhibit K.  
12 MS. DiGIACOMO: "Submit it, Your Honor.  
13 THE COURT: "K will be received."  
14 (Defendant's Exhibit K admitted)  
15 MS. DiGIACOMO: And, Your Honor, for the record  
16 she's publishing, I know it's not reflected here, but she just  
17 published J and now she's publishing K.  
18 THE COURT: It had been stipulated earlier in the  
19 trial that once an exhibit was admitted that there need not be  
20 a motion to publish so --  
21 MS. DiGIACOMO: No, I understand that, but I'm  
22 just making a record that it's on the screen. She wasn't doing  
23 that.  
24 MS. ZALKIN: I'll do that in the future, Your Honor.

XIV-19

PARKER - DIRECT

1 "A Yes.  
2 "Q Would you please describe it?  
3 "A It's my arm where he beat me up and was bruising  
4 me.  
5 "Q Does that adequately reflect your arm and the  
6 bruises you sustained?  
7 "A Yes.  
8 MS. ZALKIN: "Move to admit Defense Exhibit M.  
9 MS. DiGIACOMO: "Submit it.  
10 THE COURT: "It will be received."  
11 (Defendant's Exhibit M admitted)  
12 MS. ZALKIN: For the record, I'm publishing Exhibit  
13 M to the jury.  
14 BY MS. ZALKIN:  
15 "Q And I'm showing you what's marked as Defense  
16 Exhibit N. Do you recognize that?  
17 "A Yes.  
18 "Q Would you please describe it?  
19 "A That's where he gave me the two black eyes.  
20 "Q Does that adequately reflect the bruises on your face  
21 that he --  
22 "A Yes.  
23 "Q -- inflicted?  
24 MS. ZALKIN: "Move to admit Defense Exhibit N.

XIV-21

000698

PARKER - DIRECT

1 MS. DiGIACOMO: "Submitted.  
2 THE COURT: "Granted."  
3 (Defendant's Exhibit N admitted)  
4 MS. ZALKIN: Your Honor, may I publish these to  
5 the jury?  
6 THE COURT: Yes.  
7 BY MS. ZALKIN:  
8 "Q I'm showing you what's marked as Defense  
9 Exhibit" --  
10 MS. ZALKIN: May we approach, Your Honor?  
11 THE COURT: Yes.  
12 (Off-record bench conference at 13:29:01 until 13:30:49)  
13 MS. ZALKIN: "May I approach the witness, Your  
14 Honor?  
15 THE COURT: "Yes."  
16 BY MS. ZALKIN:  
17 "Q I'm showing you what's marked as Defense Exhibit  
18 J. Would you please describe for the jury what it is that we're  
19 viewing?  
20 "A Where he put the knife to my throat, and he put it  
21 to it like a couple of times, two or three times. But the one  
22 puncture where there is -- where, mainly, where he had the  
23 knife. He had the knife right here on the right side of my vein.  
24 "Q So on the side of your vein, is that your carotid

XIV-22

PARKER - DIRECT

1 BY MS. ZALKIN:  
2 "Q What is that a picture of?  
3 "A My face. It's where he gave me two black eyes.  
4 "Q When the cops came to take your statement, did  
5 you tell them where they could find Duran?  
6 "A I told them whereabouts that he hung around.  
7 "Q And where was that?  
8 "A He usually stayed behind the bank on the back side  
9 of Terrible's.  
10 "Q When you say the bank, what are you -- which bank  
11 are you talking about?  
12 "A Nevada State Bank.  
13 "Q And do you know what any of the streets are, cross-  
14 streets there?  
15 "A Flamingo and Arville.  
16 "Q And about how far away is that from your  
17 apartment?  
18 "A About a half a block.  
19 "Q And did you offer to take the police over there to  
20 that area to show him?  
21 "A Yes.  
22 "Q And what did the police do?  
23 MS. DiGIACOMO: "Objection, Your Honor.  
24 THE WITNESS: "They -- they said later."

XIV-24

PARKER - DIRECT

1 artery?  
2 "A Yeah.  
3 "Q And this picture was taken on the 5<sup>th</sup>, so that was  
4 four days after you actually sustained the injury?  
5 "A Yes.  
6 "Q Showing you Defense Exhibit K. What are we  
7 looking at there?  
8 "A My shoulder.  
9 "Q And how did you sustain that?  
10 "A That's where he kicked me.  
11 "Q Showing you Defense Exhibit L. What is that a  
12 picture of?  
13 "A My legs. The bruises that he --  
14 "Q And did Duran inflict those bruises?  
15 "A Yes.  
16 "Q And this is Defense Exhibit M. What are we looking  
17 at there?  
18 "A My arm.  
19 "Q And what's on your arm?  
20 "A The bruises that he gave me.  
21 "Q And were those bruises inflicted by Duran?  
22 "A Yes.  
23 "Q And this is Defense Exhibit N."  
24 MS. ZALKIN: For the record, I'm publishing N.

XIV-23

PARKER - DIRECT

1 MS. DiGIACOMO: Wait. Am I on the wrong page?  
2 THE COURT: The objection's withdrawn.  
3 MS. DiGIACOMO: Well, I'm not sure where we are  
4 now.  
5 MS. ZALKIN: 24. I asked, "What did the police do?"  
6 MS. DiGIACOMO: "And what did the police do?"  
7 And she says, "They said later."  
8 And I'm objecting, Your Honor, as to what the police  
9 said. The question was, "What the police did."  
10 BY MS. ZALKIN:  
11 "Q Did the police ever take you to ride along?  
12 "A No."  
13 MR. KEPHART: Objection again.  
14 MS. DiGIACOMO: Right. That I -- and then I object  
15 and withdraw it.  
16 BY MS. ZALKIN:  
17 "Q And did you describe to police officers what Mr.  
18 Duran Bailey looked like?  
19 "A Yes.  
20 "Q What did you tell them?  
21 "A That he was missing teeth, that he usually wore a  
22 red hat.  
23 "Q Do you recall what you told them about his missing  
24 teeth? Was it on the top, the bottom?

XIV-25

000699

PARKER - DIRECT

1 "A Both.  
2 "Q Besides his hat, was there any other article that  
3 came up about -- that was unique to him?  
4 "A No.  
5 "Q Were you asked about a watch?  
6 "A Yes.  
7 "Q Did you recall him ever wearing a watch?  
8 "A No.  
9 "Q Did you know where else Mr. Duran Bailey lived?  
10 "A He used to go to a house behind the Palms. I don't  
11 know the address or anything.  
12 "Q Did he have relatives living at that home?  
13 "A No.  
14 "Q Do you know why he went to that home?  
15 "A For drugs.  
16 "Q Did you know him to take drugs?  
17 "A Yes.  
18 "Q What kind of drugs did he use?  
19 "A Crack cocaine, marijuana, alcohol.  
20 "Q Did you ever know him to use methamphetamine?  
21 "A No.  
22 "Q Did you ever know him to be a drug dealer?  
23 MS. DiGIACOMO: "Objection, Your Honor, this is  
24 getting leading and it's not relevant to the proceedings here.

XIV-26

PARKER - DIRECT

1 "Q And both these men, they were watching out for  
2 you, are they both Hispanic?  
3 "A Yes.  
4 "Q When you spoke with police, did you refer to them  
5 as Mexicans?  
6 "A Yes.  
7 "Q Do you know their names?  
8 "A No.  
9 "Q Ms. Parker, do you recall when you first found out  
10 that Duran might have been killed?  
11 "A Yes. When my roommate came home -- come home  
12 from work.  
13 "Q Do you know what day that was?  
14 "A On the 1<sup>st</sup> -- no, I'm sorry. On the 8<sup>th</sup>.  
15 "Q And what was your reaction?  
16 "A Uh, he -- he described what they had said on the  
17 news. And I was curious if it was to him. And I went and I  
18 talked to a policeman and a detective at the crime scene.  
19 "Q So when you went to the crime scene the police  
20 were still there?  
21 "A Yes.  
22 "Q And did you get confirmation at that time from --  
23 without telling me what they said, but did you get confirmation  
24 at that time that they were both the same person?

XIV-28

PARKER - DIRECT

1 THE COURT: "The Court will sustain as to leading."  
2 BY MS. ZALKIN:  
3 "Q While you were with the police, did you speak to any  
4 other individuals, not what they said just did you speak to any  
5 other individuals?  
6 "A While I was with the police? No.  
7 "Q After the police left, did you speak to any of your  
8 neighbors or any other individuals?  
9 "A When the police came over --  
10 "Q When the officer came over?  
11 "A Yes. He told him -- he told me to show him where  
12 the apartments were that -- the apartment that I was at.  
13 "Q And is this the apartment that you were at when you  
14 were slapped?  
15 "A Yes.  
16 "Q And did you show him which apartment it was?  
17 "A Yes.  
18 "Q Was there more than one?  
19 "A Yeah. Well, I showed him that one. And I told him  
20 the other guy that was watching out for me was up on the top,  
21 upstairs.  
22 "Q Okay. So there's two different men watching you  
23 that lived at two different apartments?  
24 "A Right.

XIV-27

PARKER - CROSS

1 "A No.  
2 "Q At what point did you find out that they were both  
3 the same person?  
4 "A When they brought that picture over.  
5 "Q When you say that picture, are you --  
6 "A Yeah.  
7 "Q -- talking about this picture marked Defense Exhibit  
8 I?  
9 "A Yes.  
10 "Q And was that the day that you signed your name?  
11 "A Yes.  
12 "Q And what date was that?  
13 "A The 23<sup>rd</sup>.  
14 MS. ZALKIN: "Pass the witness."  
15 MS. DiGIACOMO: "May I, Your Honor?  
16 THE COURT: "Cross.  
17 MS. DiGIACOMO: "Thank you."  
18 **CROSS-EXAMINATION**  
19 BY MS. DiGIACOMO:  
20 "Q Ms. Parker, before today, have you spoken to either  
21 defense counsel?  
22 "A Yes.  
23 "Q How many times have you spoken to them?  
24 "A Four or five times.

XIV-29

000700

PARKER - CROSS

1 "Q Okay.  
2 "A I'm not sure.  
3 "Q And did they explain to you why they're calling you  
4 as a witness here today?  
5 MS. ZALKIN: "Objection. It would be hearsay.  
6 MS. DIGIACOMO: "I just asked if they explained. I  
7 didn't say what they said.  
8 THE COURT: "Overruled.  
9 THE WITNESS: "Yes."  
10 BY MS. DIGIACOMO:  
11 "Q Now when you talked to the detective who was  
12 investigating this rape, you pointed out some, I guess, some  
13 apartments where some Mexicans lived?  
14 "A Yes.  
15 "Q Okay. How well do you know the Mexicans in that  
16 apartment?  
17 "A I didn't know them all that well.  
18 "Q Now defense counsel stated that they were watching  
19 out for you.  
20 "A After he slapped me.  
21 "Q Okay. After he slapped you. But before that you  
22 didn't know them very well?  
23 "A No.  
24 "Q And --

XIV-30

PARKER - CROSS

1 "A I didn't know them at all.  
2 "Q You didn't know them at all. After the incident, did  
3 you get to know them a little better, the Mexicans?  
4 "A No.  
5 "Q So that's why you don't -- you don't know their  
6 names?  
7 "A Right.  
8 "Q Did you ever talk to these Mexicans about what  
9 happened between you and Duran, the rape?  
10 "A Yes. Well, they saw me.  
11 "Q All right. They saw you. But I'm asking, did you  
12 ever, after the 5<sup>th</sup> of July, ever run into them or after the 1<sup>st</sup> of  
13 July, I'm sorry, and tell them exactly what happened between  
14 Duran and you?  
15 "A Not that I recall.  
16 "Q Okay. So they don't know that you had been rape,  
17 they" --  
18 MS. DIGIACOMO: Excuse me.  
19 BY MS. DIGIACOMO:  
20 "Q So they didn't know that you had been raped by  
21 Duran?  
22 "A No.  
23 MS. ZALKIN: "Objection as to what they know."  
24 ///

XIV-31

PARKER - CROSS

1 BY MS. DIGIACOMO:  
2 "Q Well, they didn't learn from you what -- that you had  
3 been raped by Duran?  
4 "A No."  
5 MS. DIGIACOMO: Your Honor, page 30, line 20.  
6 THE COURT: "Sustained."  
7 BY MS. DIGIACOMO:  
8 "Q Now one of the Mexicans who was looking out for  
9 you, was that the one that talked to the defendant or -- or,  
10 excuse me, Duran after he had slapped you in their  
11 apartment?  
12 "A Yes.  
13 "Q Now when he talked to Duran, you said he -- you  
14 didn't hear what they said?  
15 "A No.  
16 "Q Now, do you know if the Mexican ever did anything  
17 physical towards Duran?  
18 "A No.  
19 "Q You don't know or he didn't?  
20 "A I don't know. Not that I know of.  
21 "Q Now, do you recall telling the police in your  
22 statement that he didn't touch him or he didn't hit him or  
23 nothing?  
24 "A Right. Yeah, he didn't.

XIV-32

PARKER - CROSS

1 "Q So the Mexican never touched Duran?  
2 "A No.  
3 "Q He just kind of told him to leave so that you could  
4 feel safe?  
5 "A Right. Yes.  
6 "Q Now you had actually known Duran for awhile,  
7 hadn't you?  
8 "A Yes.  
9 "Q How long would you say you'd known him before  
10 July 1<sup>st</sup>?  
11 "A About four or five months maybe.  
12 "Q Okay. And you'd actually had consensual sexual  
13 relationship with him before that date?  
14 "A Yeah.  
15 "Q So would you go so far as to characterize the  
16 relationship you had with Duran as dating?  
17 "A No.  
18 "Q How would you characterize it?  
19 "A Just as, you know, partying.  
20 "Q Partying? So drugs?  
21 "A Yeah.  
22 "Q So you knew him through the drug scene?  
23 "A Right.  
24 "Q You did drugs with Duran?

XIV-33

000701

PARKER - CROSS

1 "A Yes.  
2 "Q How often would you say you did drugs with Duran  
3 during that four or five-month period?  
4 "A I couldn't say.  
5 "Q When you were doing the drugs with Duran, how  
6 did you get the -- how did you guys get the drugs?  
7 "A He went and got them.  
8 "Q So he paid for them?  
9 "A Yes.  
10 "Q Did you ever pay for them?  
11 "A No.  
12 "Q You never gave him money?  
13 "A No.  
14 "Q Did you ever trade sex for drugs?  
15 "A Yeah.  
16 "Q How often? Was it every time that you traded sex  
17 for drugs?  
18 "A No.  
19 "Q No. Okay. But more than once?  
20 "A Oh, I'm sorry. I didn't understand that.  
21 "Q All right. When you were doing drugs with Duran  
22 and you said sometimes you gave him sex in exchange for the  
23 drugs because he had paid for them --  
24 "A Yes.

XIV-34

PARKER - CROSS

1 "Q -- did that happen? How many times?  
2 "A I don't know.  
3 "Q More than once?  
4 "A Yeah.  
5 "Q More than probably five times?  
6 "A Yes.  
7 "Q So it happened quite a few times?  
8 "A Yes.  
9 "Q But at the time when he raped you, you were done  
10 with him. You weren't doing -- you weren't doing that  
11 anymore?  
12 "A Right.  
13 "Q How long before he came and raped you did you tell  
14 him no more, I'm done partying with you?  
15 "A After he slapped me.  
16 "Q So that day, on Sunday, was the first time you --  
17 you were like I'm done with him?  
18 "A Yes.  
19 "Q Did you tell him that or --  
20 "A Yes.  
21 "Q Okay. And so then when he came back that night,  
22 that's why you said I don't want you around here anymore?  
23 "A Right. I was coming back from the Laundromat.  
24 "Q Okay. Now you said during the rape he used a

XIV-35

PARKER - CROSS

1 knife?  
2 "A Yes.  
3 MS. DIGIACOMO: "Does counsel have those photos?  
4 Thank you."  
5 BY MS. DIGIACOMO:  
6 "Q Do you know where he got the knife from?  
7 "A From my apartment.  
8 "Q All right. From your kitchen maybe?  
9 "A Yes.  
10 "Q Yeah. Didn't you say that you went to grab for a  
11 knife?  
12 "A I went -- yes. I went to go to get one to try to get  
13 him out of there, and he got -- he --  
14 "Q He used it on you?  
15 "A Yeah.  
16 "Q Okay. So and this is after he'd already raped you?  
17 "A Yes.  
18 "Q All right. And this is after he had already then tried  
19 to sodomize you as well?  
20 "A Yes.  
21 "Q So this was awhile after he had first come into your  
22 apartment?  
23 "A Yes.  
24 "Q All right. A couple of hours after is when the knife

XIV-36

PARKER - CROSS

1 grabbed for?  
2 "A I don't think it was that long.  
3 "Q But it was some time after. He had already raped  
4 you once and tried to rape you another time?  
5 "A Yes.  
6 "Q Now you had been shown Defendant's Exhibit  
7 Number J.  
8 MS. DIGIACOMO: "May I approach, Your Honor?  
9 THE COURT: "Yes."  
10 BY MS. DIGIACOMO:  
11 "Q I'm just gonna refresh your memory. This is the  
12 picture of your neck.  
13 "A Uh-huh.  
14 "Q And you said that it appears that there's bruises  
15 there, but you also --  
16 "A Okay.  
17 "Q -- said there's --  
18 "A Right there is the knife wound.  
19 "Q Okay. I'm sorry. I didn't see that. It was too quick.  
20 "A Oh. Right there.  
21 "Q Okay. That's the knife wound and that's from where  
22 he was holding it against your neck?  
23 "A Yeah. He had me down and he had the knife to my  
24 neck, like I said, right by the vein. And he said, 'Now I've got

XIV-37

000702

PARKER - CROSS

1 to kill you.  
 2 "Q Okay. But he never stabbed you with the knife,  
 3 though, did he?  
 4 "A He poked me, yeah.  
 5 "Q No, no. But I'm asking stabbed you, like this?  
 6 "A No.  
 7 "Q I mean, where it broke skin?  
 8 "A No.  
 9 "Q So he just held it against your throat and threatened  
 10 you. He never stabbed you in the neck?  
 11 "A No.  
 12 "Q He never stabbed you anywhere else on your body?  
 13 "A No.  
 14 "Q He never hit you with anything other than his foot or  
 15 fist. Isn't that true?  
 16 "A True.  
 17 "Q And you also stated that you ran into him on the 4<sup>th</sup>  
 18 and you got scared and that's why you called the police  
 19 "A Yes.  
 20 "Q So he had not come back to your apartment, is it  
 21 fair to say" --  
 22 MS. DiGIACOMO: Excuse me.  
 23 BY MS. DiGIACOMO:  
 24 "Q So if he had not come back to your apartment, is it

XIV-38

PARKER - CROSS

1 fair to say you would never have called the police about the  
 2 rape?  
 3 "A I'm not sure. I was, you know, going both ways.  
 4 "Q But you had waited four days at that point?  
 5 "A Yes.  
 6 "Q All right.  
 7 "A Because I had a warrant and -- and I was scared to  
 8 call.  
 9 "Q Okay. Now that's fine. Now you were talking --  
 10 now you were talking about it was the 8<sup>th</sup> when you found out  
 11 that the person who raped you might be dead.  
 12 "A Might be.  
 13 "Q And you went over to the dumpster area?  
 14 "A No.  
 15 "Q Where did you go?  
 16 "A I went to the police line.  
 17 "Q The police line. But that was surrounding the  
 18 dumpster area behind Nevada State Bank?  
 19 "A No. It was cut off right there at the bank.  
 20 MS. DiGIACOMO: "Your Honor, may I approach the  
 21 clerk?  
 22 THE COURT: "Yes.  
 23 MS. DiGIACOMO: "May I approach --  
 24 THE COURT: "Yes.

XIV-39

PARKER - CROSS

1 MS. DiGIACOMO: "-- the witness?"  
 2 BY MS. DiGIACOMO:  
 3 "Q Okay. I'm gonna show you what's been admitted as  
 4 State's Exhibit Number 121. And this is the Nevada State Bank  
 5 right here.  
 6 "A Yes.  
 7 "Q Can you recognize what's depicted in this aerial  
 8 photograph?  
 9 "A Yeah, the bank and --  
 10 "Q And do you see where your apartments are?  
 11 "A Yes.  
 12 "Q Okay. This would be Wynn Road and Flamingo, just  
 13 to give you some bearings.  
 14 "A They're farther over.  
 15 "Q So this is --  
 16 "A See, that's Sunwood, I think.  
 17 "Q So these apartments right here that abut up to the  
 18 wall of the bank?  
 19 "A That's Sunwood.  
 20 "Q Those aren't your apartments?  
 21 "A No.  
 22 "Q So yours would be farther north?  
 23 "A Further back.  
 24 "Q Okay. And so if you can look at this and tell me

XIV-40

PARKER - CROSS

1 where the police line was that you indicated that you came up  
 2 to.  
 3 "A Right here.  
 4 MS. DiGIACOMO: "Okay. And, Your Honor, for the  
 5 record she pointed to the southwest corner of the parking lot  
 6 at the Nevada State Bank, directly south of where the  
 7 dumpster area is. Your Honor, may the record so reflect?  
 8 THE COURT: "The record shall so reflect."  
 9 BY MS. DiGIACOMO:  
 10 "Q And do you recall what time of day it was when you  
 11 went and talked to somebody that was at the scene?  
 12 "A Yes. I talked to a policeman there and he  
 13 remembered me from the rape.  
 14 "Q Okay. But, no, I asked you what --  
 15 "A Oh.  
 16 "Q -- time of day it was. Was it light out or dark out?  
 17 "A It was light.  
 18 "Q Okay. So it's possible -- you said it was the 8<sup>th</sup> when  
 19 you went over there, but it's possible it was actually the 9<sup>th</sup>?  
 20 "A I -- I don't --  
 21 "Q On Monday morning?  
 22 "A Yes. It was Monday. I think it was Monday  
 23 morning.  
 24 "Q But you know it was in the morning after they had

XIV-41

000703



PARKER - CROSS

1 found the body?  
2 "A Yes, 'cause my roommate had come in from work.  
3 "Q Okay. And the person you talked to, were they  
4 wearing a uniform?  
5 "A Yes. One of them was.  
6 "Q And what was the other one wearing?  
7 "A It was a man and a woman and they were just  
8 wearing regular clothing with gloves on.  
9 "Q Okay. So it's fair to say then that you talked to a  
10 patrol officer and you talked to another woman?  
11 "A To a detective. To a man. And he said that they  
12 were going to have somebody sent over to my house.  
13 "Q But it wasn't the detectives that were investigating  
14 the case that you talked to?  
15 "A No.  
16 "Q Now, do you recall in your statement describing the  
17 victim as a vagrant?  
18 "A Yes.  
19 "Q Do you also recall describing what he was wearing  
20 when he came over to your apartment on July 1<sup>st</sup>?  
21 "A I tried to, yes.  
22 "Q Do you recall what that was?  
23 "A I think it was something like a plaid-looking shirt.  
24 It's been so long ago.

XIV-42

PARKER - CROSS

1 "Q Do you recall a plaid shirt and tan pants?  
2 "A Yes. I think that's what he had on.  
3 "Q Or tan shorts? Does that sound about right?  
4 "A Yes.  
5 "Q And flip-flops?  
6 "A Yes. I don't know.  
7 "Q I'm gonna show you page 6 of your voluntary  
8 statement.  
9 MS. DiGIACOMO: "Your Honor, may I approach?  
10 THE COURT: "Yes."  
11 BY MS. DiGIACOMO:  
12 "Q Okay. I'm gonna show you page 6 of your -- of your  
13 voluntary statement. If you could just read that, let me know  
14 if it refreshes your memory.  
15 "A Yes.  
16 "Q Okay. Now, do you recall, did you tell the police tan  
17 shorts, multi-colored shirt and flip-flops?  
18 "A Yes.  
19 "Q Does that sound about right?  
20 "A Yes.  
21 "Q Do you know, did he wear those flip-flops often?  
22 "A He wore different kind of shoes, tennis shoes and --  
23 "Q Okay. May -- I'm showing you State's Exhibit  
24 Number 49. Those look familiar as the flip-flops?

XIV-43

PARKER - CROSS

1 "A Yes.  
2 "Q Is it possible these are the ones he was wearing  
3 when he came over to your house that night?  
4 "A I can't recall.  
5 "Q But these look familiar --  
6 "A Yes.  
7 "Q -- as to the kind of shoes he owned?  
8 "A Uh-huh. Yeah, because I joked with him.  
9 "Q So you joked around with him about these flip-flops?  
10 "A Yeah. I said they looked like jail shoes.  
11 "Q Okay. And I'm also going to show you State's  
12 Exhibit Number 48 and 47. Now there's some blood on these  
13 items, but do you recognize those being what he was wearing  
14 that night?  
15 "A Yeah. Yes.  
16 "Q So those -- these look familiar as to what he could  
17 have been wearing. You're sure? Now you stated you were  
18 afraid of him?  
19 "A Yes.  
20 "Q Because of what he did to you?  
21 "A Yes.  
22 "Q Did you ever want to get revenge?  
23 "A No. I just wanted him to stay away from me.  
24 "Q Did you ever talk to anybody else about seeking

XIV-44

PARKER - REDIRECT

1 revenge on Duran?  
2 "A No.  
3 "Q Did you ever ask anyone else to hurt Duran?  
4 "A No.  
5 "Q Did you ever ask the Mexicans to hurt Duran?  
6 "A No.  
7 "Q Did you ever ask anyone to kill Duran?  
8 "A No.  
9 "Q Did you ever ask the Mexicans that were watching  
10 and in your neighborhood or your apartment complex to kill  
11 Duran?  
12 "A No.  
13 "Q Did you kill Duran?  
14 "A No.  
15 MS. DiGIACOMO: "Nothing further.  
16 THE COURT: "Redirect.  
17 MS. ZALKIN: "Thank you, Judge."  
18 **REDIRECT EXAMINATION**  
19 BY MS. ZALKIN:  
20 "Q Ms. Parker, the prosecutor asked you if you had  
21 talked to the defense, and you stated you had spoken to us  
22 about four times. Is that right?  
23 "A I think so. It might have been more than that.  
24 "Q And has that been over the course of the one year

XIV-45

000704

## PARKER - REDIRECT

1 since this happened?  
 2 "A Yes. I spoke to different detectives.  
 3 "Q Okay. And you did tell -- you do recall telling the  
 4 police that there was a Mexican woman who heard you  
 5 scream?  
 6 "A Yes.  
 7 "Q When you went outside the door?  
 8 "A Yes.  
 9 "Q And do you recall also saying that there was a  
 10 Mexican man who told you he was sorry about what had  
 11 happened?  
 12 "A Yes. That's when the detective was there, too.  
 13 "Q When you were with the detective?  
 14 "A When I was with the detective.  
 15 "Q Why was he telling you he was sorry about what  
 16 happened?  
 17 MS. DiGIACOMO: "Objection, Your Honor, that's  
 18 speculative.  
 19 THE COURT: "Sustained.  
 20 MS. ZALKIN: "I'll withdraw."  
 21 BY MS. ZALKIN:  
 22 "Q When Duran Bailey slapped you in your neighbor's  
 23 home, the Mexican man's home, do you remember telling the  
 24 police that he confronted him?

XIV-46

## PARKER - REDIRECT

1 will be dead?  
 2 "A Right.  
 3 "Q And you told the police that he had told you he was  
 4 going to kill you?  
 5 "A Yes.  
 6 "Q And the policeman asked you if you wanted him  
 7 prosecuted, and you said you did?  
 8 "A Yes.  
 9 "Q But you also said that you wanted protection?  
 10 "A Yes.  
 11 "Q And do you remember talking about Texas law?  
 12 "A Yes.  
 13 "Q Do you remember what you said to the police  
 14 officer?  
 15 "A It's an old saying, the Texas law. It says, you know,  
 16 if somebody's trying to break into your apartment, and all that,  
 17 you can shoot them and drag them in.  
 18 "Q Was it your understanding that the police officer was  
 19 telling you that you needed to do whatever you have to do to  
 20 protect yourself?  
 21 "A No, I don't. Well, he said, you know, that they  
 22 would take care of it, and everything.  
 23 "Q Would it refresh your recollection to look at your  
 24 taped statement?

XIV-48

## PARKER - REDIRECT

1 "A Yes.  
 2 "Q When the prosecutor was asking you about your  
 3 friendship with Mr. Bailey, you mentioned that you were  
 4 friends, that you had shared drugs?  
 5 "A Yes.  
 6 "Q And that you joked around about his shoes?  
 7 "A Yeah, I had -- I had something about his shoes. I  
 8 said they looked like jailhouse shoes.  
 9 "Q Like jailhouse shoes. But at the --  
 10 MS. ZALKIN: "Your Honor, may the record reflect  
 11 she nodded her head in the affirmative?  
 12 THE COURT: "The record shall so reflect.  
 13 THE WITNESS: "Oh."  
 14 BY MS. ZALKIN:  
 15 "Q The day that you were talking to the police on July  
 16 5<sup>th</sup>, you did not regard Mr. Duran Bailey as a friend any longer,  
 17 did you?  
 18 "A No.  
 19 "Q In fact you stated you were afraid of him?  
 20 "A Yes.  
 21 "Q Do you remember telling the police that 'This is  
 22 going to get me killed'?  
 23 "A Yes.  
 24 "Q And you stated 'Because if you all don't catch him I

XIV-47

## PARKER - RECROSS

1 "A Yes. Okay. Yes.  
 2 "Q Okay. So you recall the police telling you you gotta  
 3 do what you gotta do to protect yourself the best you can?  
 4 "A Yes.  
 5 "Q Do you recall telling the police that you were scared  
 6 to walk outside your home?  
 7 "A Yes.  
 8 "Q Did you drive to the scene of the crime?  
 9 "A No.  
 10 "Q How did you get there?  
 11 "A Walked.  
 12 MS. ZALKIN: "Pass the witness.  
 13 THE COURT: "Recross.  
 14 MS. DiGIACOMO: "Thank you."  
 15 **RECROSS EXAMINATION**  
 16 BY MS. DiGIACOMO:  
 17 "Q Now counsel was asking you about the detective  
 18 saying you've got to do what you gotta do to protect yourself.  
 19 "A Yes. That's in case he tried to break in.  
 20 "Q Okay. Now that's not the entire conversation you  
 21 had with the officers about it, is it?  
 22 "A I don't remember.  
 23 MS. DiGIACOMO: "Okay. Your Honor, may I  
 24 approach?

XIV-49

000705

PARKER - RECROSS

1 THE COURT: "You may."  
 2 BY MS. DIGIACOMO:  
 3 "Q I'm gonna show you page 45 of your voluntary  
 4 statement. Just read that to yourself, from there down.  
 5 "A Yes.  
 6 "Q After reading that, does that refresh your memory as  
 7 to the conversation you had with the detective?  
 8 "A Yes.  
 9 "Q Now when he was talking about you gotta do what  
 10 you gotta do to protect yourself, wasn't he saying that in  
 11 regards until they find Duran, if he comes back you can protect  
 12 yourself?  
 13 "A Yes. He said call the police but, you know, but --  
 14 "Q Right. And your concern was if Duran came back to  
 15 your apartment whether or not you could protect yourself from  
 16 him?  
 17 "A If he tried to break in, yes.  
 18 "Q And that's what this discussion was with the --  
 19 "A Yes.  
 20 "Q -- police? And they, in fact, the detectives told you  
 21 that if he breaks into your house you are under -- you are  
 22 under the law allowed to protect yourself?  
 23 "A Yes.  
 24 "Q But the officer wasn't telling you the Texas law

XIV-50

PARKER - RECROSS

1 "Q No. I'm not saying it broke.  
 2 "A Oh.  
 3 "Q But do you recall telling the police that it left a knot  
 4 on his head?  
 5 "A I don't recall.  
 6 "Q We'll come back to that. With regard to the drug  
 7 use that you and Duran did, what kind of drugs did you use  
 8 with him?  
 9 "A Cocaine and marijuana.  
 10 "Q Okay. But did he use drugs when he wasn't with  
 11 you as well?  
 12 "A Yes.  
 13 MS. ZALKIN: "Objection as to how she would know  
 14 whether or not he did drugs when she was not around.  
 15 THE WITNESS: "Oh.  
 16 THE COURT: "Sustained."  
 17 BY MS. DIGIACOMO:  
 18 "Q Well, let me ask you this question. When you did  
 19 drugs with Duran for the first time, he bought the drugs, didn't  
 20 he?  
 21 "A Yes.  
 22 "Q And was there ever a point in time when you saw --  
 23 when you saw him when he was high on drugs and you hadn't  
 24 been doing them with him?

XIV-52

PARKER - RECROSS

1 thing, about killing outside and dragging them in. That was  
 2 your statement.  
 3 "A That's my statement.  
 4 "Q Now when you said that, you were joking?  
 5 "A Well, it's -- well, it's the truth in Texas.  
 6 "Q Okay. But you weren't being completely serious that  
 7 was your plan?  
 8 "A No, I wasn't serious.  
 9 "Q Okay. And after July 4<sup>th</sup> until you went over to the  
 10 crime scene July 9<sup>th</sup>, you didn't see Duran Bailey, did you?  
 11 "A No.  
 12 "Q And, actually, during the struggle when Duran was  
 13 in your apartment during the rape on July 1<sup>st</sup> --  
 14 "A Yes.  
 15 "Q -- you hit him over the head with a beer bottle,  
 16 didn't you?  
 17 "A Yes.  
 18 "Q And you caused a knot to his head from that hit,  
 19 didn't you?  
 20 "A I don't know.  
 21 "Q Do you recall telling the police that you caused a  
 22 knot in your voluntary statement?  
 23 "A No. I told them that I hit over the head with the  
 24 beer bottle. It didn't break.

XIV-51

PARKER - FURTHER REDIRECT

1 "A Yes.  
 2 "Q Okay. I'm gonna show you page 16 of your  
 3 voluntary statement. If you could just read this and let me  
 4 know if it refreshes your memory.  
 5 "A Yes.  
 6 "Q So you did tell the police that when he -- you hit him  
 7 over the head with a beer bottle it left a knot on his head?  
 8 "A Yes, barely.  
 9 MS. DIGIACOMO: "Nothing further, Your Honor.  
 10 MS. ZALKIN: "May I redirect, Your Honor?  
 11 THE COURT: "Redirect.  
 12 MS. ZALKIN: "Thank you."  
 13 **FURTHER REDIRECT EXAMINATION**  
 14 BY MS. ZALKIN::  
 15 "Q Ms. Parker, you talked to the police. Do you  
 16 remember the name of the police officer you spoke to?  
 17 "A No, I don't.  
 18 "Q When you talked to him about Texas law, after that  
 19 do you recall what was the last thing that you talked to him  
 20 about?  
 21 "A That I wanted to be protected.  
 22 "Q And do you remember what else you said?  
 23 "A No, I don't.  
 24 "Q Did he offer you any protection?

XIV-53

000706

PARKER - FURTHER REDIRECT

1 "A He -- no.  
2 "Q And do you recall the last thing that you said to him  
3 on the taped statement was about driving around? Do you  
4 recall that?  
5 "A Yes.  
6 "Q And what was that?  
7 "A I told him I could show about where he lived or at --  
8 at or stayed at. I didn't know where he lived at. I said stayed  
9 around at.  
10 "Q Did he take you up on that offer?  
11 "A No.  
12 "Q Did you get the feeling that the officer thought you  
13 were being uncooperative?  
14 MS. DIGIACOMO: "Objection, Your Honor.  
15 THE COURT: "Sustained."  
16 BY MS. ZALKIN::  
17 "Q What was the officer's demeanor toward you?  
18 "A Detective, he just said, he goes, 'How do I know you  
19 were raped? It just looks like you've had a bunch -- got a  
20 bunch of bruises.'  
21 "Q So you felt he really didn't believe you?  
22 "A In a way.  
23 MS. DIGIACOMO: "Objection, Your Honor,  
24 speculative.

XIV-54

ER - FURTHER REDIRECT

1 "A Telephone call. That was a phone call. I say yes.  
2 "Q Well, do you recall that conversation?  
3 "A Not on the phone.  
4 "Q Do you recall a conversation with the investigator  
5 about further investigation?  
6 "A Yes.  
7 "Q What was that discussion about?  
8 "A He asked me if he --  
9 MS. DIGIACOMO: "Your Honor, I'm going to object  
10 to what the detective was telling her since it's hearsay.  
11 THE COURT: "The Court will sustain the objection.  
12 Her answer was to the prior question not on the phone, so I'm  
13 not sure what conversation the question is referencing. But  
14 you may ask the next question."  
15 BY MS. ZALKIN::  
16 "Q Whether it was on the telephone or not, was there  
17 some other contact in the future that the investigator and you  
18 discussed?  
19 "A Yes. It wasn't the same investigator, though.  
20 "Q It was a different investigator?  
21 "A Yes.  
22 "Q And what was that conversation about?  
23 "A They were -- asked me questions.  
24 MS. DIGIACOMO: "Well, object.

XIV-56

PARKER - FURTHER REDIRECT

1 MS. ZALKIN: "It's her understanding what her belief  
2 is, her state of mind.  
3 THE COURT: "What her feelings are are different  
4 than what her state of mind is. So the Court will sustain the  
5 objection. Feelings are different from beliefs. Beliefs go to a  
6 mental state."  
7 BY MS. ZALKIN::  
8 "Q Was it your understanding that this investigation was  
9 over or that it was going to continue?  
10 "A It was going to continue.  
11 "Q And when was it going to continue?  
12 "A I don't know.  
13 "Q Was there a telephone call that needed to be made?  
14 "A From them? I don't understand.  
15 "Q Would it refresh your recollection to take a look at  
16 the report?  
17 "A Yes.  
18 "Q I'll have you read to yourself and tell me if that  
19 refreshes your recollection.  
20 "A I didn't become uncooperative. I just --  
21 "Q Okay. Do you remember a conversation with the  
22 investigator?  
23 "A Yes.  
24 "Q About the telephone call?

XIV-55

PARKER - FURTHER REDIRECT

1 THE WITNESS: "And that's when they showed me  
2 the picture.  
3 MS. DIGIACOMO: "Withdrawn."  
4 BY MS. ZALKIN::  
5 "Q Before that, on the 5<sup>th</sup>, there was some talk about  
6 you telling the Mexican or you telling the officers where the  
7 Mexicans lived?  
8 "A Right.  
9 "Q Did you give them any information about those  
10 Mexicans?  
11 "A I told them where they lived.  
12 "Q Did you tell them the exact apartment numbers?  
13 "A I tried to.  
14 "Q Why didn't you tell them anything else about them?  
15 "A What do you mean?  
16 "Q Were you trying to protect them in some way?  
17 "A Well, I didn't want them, you know, 'cause they  
18 were immigrants so I didn't know if -- I didn't want them to  
19 get them in trouble.  
20 "Q Okay. So your understanding was that they might  
21 have been illegal?  
22 "A Right.  
23 "Q And this was from conversations you'd had with  
24 them before?

XIV-57

000707

PARKER - FURTHER RECROSS

1 "A Yes.  
2 "Q And they'd invited you over in the past to have a  
3 beer?  
4 "A Only that one time.  
5 "Q Was it your understanding that the investigation was  
6 not going to go on until the officer contacted you?  
7 MS. DIGIACOMO: "Objection, Your Honor,  
8 speculative. It's kind of roundabout hearsay.  
9 THE COURT: "Overruled. You may answer yes or  
10 no."  
11 BY MS. ZALKIN::  
12 "Q Was it your understanding that the investigation was  
13 not going to continue until he contacted you on July 10<sup>th</sup>?  
14 "A No.  
15 "Q You don't recall that?  
16 "A No.  
17 MS. ZALKIN: "Pass the witness.  
18 THE COURT: "Recross.  
19 MS. DIGIACOMO: "Thank you."  
20 **FURTHER RECROSS EXAMINATION**  
21 BY MS. DIGIACOMO:  
22 "Q Ms. Parker, counsel was asking you about your offer  
23 to the detective to drive around and you thought you could  
24 find Duran?

XIV-58

ER - FURTHER RECROSS

1 you up on driving around looking for Duran at a later time  
2 after he did some more investigation?  
3 "A What he said was, he goes, 'We don't need to do  
4 that right now. We'll just' --  
5 "Q Okay. He said, 'We don't need to do it right now.'  
6 But didn't he say we're not -- he didn't say we're not gonna do  
7 that, did he?  
8 "A No.  
9 "Q And defense counsel showed you some case notes  
10 from the detective who investigated your rape when she  
11 approached, didn't she?  
12 "A Mm-hmm.  
13 "Q And these notes indicated that you weren't very  
14 cooperative in giving up where the Mexicans who might have  
15 seen something lived.  
16 "A Yes, I was. I was cooperative.  
17 "Q But not at first. At first, you didn't want to tell him  
18 where they lived because you didn't want to get them involved  
19 because you said they had immigration problems.  
20 "A Yes.  
21 "Q So that's the reason why you didn't want to point  
22 out to the detective where they lived?  
23 "A Yes.  
24 "Q You weren't trying to hide them from the detectives?

XIV-60

PARKER - FURTHER RECROSS

1 "A I was gonna show him where he kind of hung out.  
2 Yeah.  
3 "Q Okay. But at that time the detective didn't take you  
4 up on that. He said we might find him in that way but we're  
5 just gonna have to wait and see. He wanted to do some other  
6 investigation first.  
7 MS. ZALKIN: "Objection, it's speculative. Very  
8 speculative.  
9 THE COURT: "Sustained."  
10 BY MS. DIGIACOMO:  
11 "Q Okay. He told you that, didn't he, that we'll wait and  
12 see if we're gonna find him that way but there's investigation  
13 that we need to be done first.  
14 MS. ZALKIN: "Still hearsay.  
15 THE COURT: "Sustained.  
16 MS. DIGIACOMO: "Your Honor, I'm just -- this was  
17 brought up by Ms. Zalkin in her redirect examination, Your  
18 Honor. I'm just following up with what was brought out  
19 because she --  
20 THE COURT: "You may ask her what her  
21 understanding was or what her belief was.  
22 MS. DIGIACOMO: "Okay."  
23 BY MS. DIGIACOMO:  
24 "Q Was your understanding the detective might take

XIV-59

PARKER - FURTHER RECROSS

1 "A No.  
2 "Q And that was on July 5<sup>th</sup> when you made the police  
3 report, which was before Duran was murdered, right?  
4 "A Yes.  
5 "Q And didn't you also tell the detective you weren't  
6 sure that you wanted to proceed with prosecution?  
7 "A No.  
8 "Q So -- so his -- it was his -- it was under -- his  
9 understanding he was just gonna do some further  
10 investigation and contact you again?  
11 "A Yes.  
12 "Q So just so we're clear, you wanted the detective to  
13 investigate this rape and find Duran?  
14 "A Yes.  
15 "Q And that's because you were scared of him?  
16 "A Yes.  
17 "Q You weren't trying to dissuade the detective from  
18 investigating so that you could kill him yourself, Duran?  
19 "A No. No.  
20 "Q And you weren't trying to dissuade the detectives  
21 from coming into contact with the Mexicans who might have  
22 seen something so that they could kill Duran and not get  
23 caught?  
24 "A No.

XIV-61

000708

PARKER - FURTHER REDIRECT

1 "Q That wasn't your thinking at the time, to hide the  
2 Mexicans from the investigators, from the detective?  
3 "A Oh, no. No. Huh-uh.  
4 "Q Okay. So you didn't have plans with them at that  
5 time to kill Duran?  
6 "A No.  
7 MS. DIGIACOMO: "Nothing further.  
8 THE COURT: "Redirect."  
9 **FURTHER REDIRECT EXAMINATION**  
10 BY MS. ZALKIN:  
11 "Q When was officer -- when was the detective or  
12 investigator going to contact you next after he spoke to you on  
13 the 5<sup>th</sup>?  
14 "A He didn't say.  
15 "Q You don't recall him telling you when he was going  
16 to contact you?  
17 "A No. He said they'd just be in contact with me.  
18 "Q When was the next time they were in contact with  
19 you?  
20 "A Probably about a week later, I think.  
21 "Q After Duran Bailey was dead?  
22 "A Yes.  
23 MS. ZALKIN: "No further questions.  
24 MS. DIGIACOMO: "Nothing further.

XIV-62

LAUFER - CROSS

1 what you had with you was your third report, is that correct?  
2 A Correct. Yes.  
3 Q And you have that with you now?  
4 A I do.  
5 Q Did you bring anything else back with you?  
6 A My glasses and things like that, but nothing else  
7 pertinent, no.  
8 Q You didn't bring the scissors with you this time or  
9 anything?  
10 A No, I didn't.  
11 Q Okay. When we spoke last, I had asked you about  
12 the difference between your first, your second and last report  
13 as to what items you reviewed. Do you remember that  
14 question?  
15 A Yes.  
16 Q Okay. And the items that you did review, are those  
17 items that were provided to you by the defense?  
18 A I do believe that that was the source. Although,  
19 some of the items like the videos, obviously, were on the  
20 Internet.  
21 Q Okay. And can you tell us, tell the jury, now what  
22 your understanding is the difference between a laceration and  
23 an incised wound?  
24 A Well, they can be the same thing. Lacerations don't

XIV-64

LAUFER - CROSS

1 THE COURT: "You may step down and exit through  
2 the rear door."  
3 MR. SCHIECK: I believe our next witness is here.  
4 THE COURT: Very well.  
5 THE CLERK: Please come all the way forward.  
6 Remain standing and raise your right hand.  
7 **MICHAEL D. LAUFER, DEFENDANT'S WITNESS, SWORN**  
8 THE CLERK: Thank you. Please be seated. State  
9 your name and spell it for the record, please.  
10 THE WITNESS: Michael D. Laufer, L-A-U-F-E-R,  
11 M.D.  
12 THE COURT: Mr. Kephart may resume his cross-  
13 examination at this time.  
14 MR. KEPHART: Thank you, Your Honor.  
15 **CROSS-EXAMINATION (Continued)**  
16 BY MR. KEPHART:  
17 Q Dr. Laufer, yesterday when we -- I guess it was  
18 Tuesday when we concluded in the afternoon and you had to  
19 come back for today, we were talking about the wounds that  
20 were inflicted in Duran Bailey's abdomen area. Do you  
21 remember that testimony?  
22 A Yes, I do.  
23 Q Okay. And I had asked you previously, before that,  
24 if you had brought anything with you for your testimony. And

XIV-63

LAUFER - CROSS

1 necessarily have to be cut with an instrument. Lacerations can  
2 be a tear. So the general term is "laceration," and an incision  
3 or an incised wound is a subcategory of that.  
4 Q Okay. The incised wound is something that is cut --  
5 A Generally, yes.  
6 Q -- or are you saying is not?  
7 A The incised wound is something that it generally cut.  
8 Q Okay. Okay. Now when you left on Tuesday, we  
9 were talking about Exhibit DD. Do you see that in front of you  
10 there, doctor?  
11 A Yes, I do.  
12 Q And do you recall testifying in direct examination  
13 that you believed that these injuries were deep puncture  
14 wounds?  
15 A I don't remember that but that's certainly true. Yes.  
16 Q Okay. You believe that they were deep puncture  
17 wounds?  
18 A Yes.  
19 Q Okay. How can you tell from a photograph that  
20 they're deep puncture wounds?  
21 A It wasn't just from the photograph.  
22 Q Okay.  
23 A It included information from Dr. Simms' testimony,  
24 as well as from the autopsy report.

XIV-65

000709

LAUFER - CROSS

1 Q Okay. And it's your belief from the autopsy report  
2 that all four of these were deep puncture wounds?  
3 A I don't know that each of the four were individually  
4 described. But they certainly have the confirmation and  
5 configuration of deep puncture wounds.  
6 Q Okay. The way you showed us on Tuesday how you  
7 tested the --  
8 MR. KEPHART: Let me see those scissors.  
9 BY MR. KEPHART:  
10 Q How you tested the scissors on the material, is this  
11 correct, you had your pinky in one hole and your -- and your  
12 pointer finger in the other hole of the scissors the right way or  
13 should I turn them around or do you -- or does it matter?  
14 A Actually, the scissors were a little bit different. But it  
15 doesn't matter the --  
16 Q Okay.  
17 A The points go in.  
18 Q Okay. And that you showed us in a demonstration  
19 that you took the scissors and you punched down, as if you're  
20 punching but the scissors are an extension of your hand?  
21 A Correct. Yes.  
22 Q And when they would go into the material or, let's  
23 say, if they go into -- in these, these particular wounds here,  
24 both the blades would be going in roughly the same distance if

XIV-66

LAUFER - CROSS

1 A Correct. But you do need to point out that those  
2 scissors are different from the other ones.  
3 Q Okay. And that is Exhibit MM, is the scissors that  
4 you used as your sample, is that correct?  
5 A Yes.  
6 Q Okay. And in that particular case --  
7 THE COURT: The record shall reflect it's actually a  
8 photo of the scissors used.  
9 MR. KEPHART: Yes, Judge. Thanks.  
10 BY MR. KEPHART:  
11 Q In the particular case with MM, there's a difference  
12 in the way that the scissors are actually bent, is that correct --  
13 A Correct. One of the handles --  
14 Q -- than in --  
15 A -- is actually bent in the blue ones.  
16 Q -- 4C.  
17 A Correct.  
18 Q CCCC. Okay. And but, once again, if both blades of  
19 MM were to hit at the -- simultaneously, in the manner in  
20 which I'm demonstrating here as punching down to exhibit  
21 while you tested them --  
22 A Right.  
23 Q -- if they were both hitting simultaneously they'd  
24 kind of be hitting at an angle. They wouldn't be hitting

XIV-68

LAUFER - CROSS

1 you're punching in this direction like you showed me?  
2 A Roughly the same distance.  
3 Q Okay.  
4 A Not necessarily exactly the same distance.  
5 Q And one of them, basically, the way I have it, one of  
6 them is more straighter than the other one, is that correct?  
7 A Yes.  
8 Q Okay. Unless you turn your hand, then the other  
9 one would be more straight or more straight as it enters the  
10 body or enters the material that you used as a sample?  
11 A It may be better to think of it in terms of which one  
12 touches first.  
13 Q Okay. That's fine.  
14 A Because as soon as one reaches resistance, the  
15 other one evens out and then enters the tissue --  
16 Q Okay.  
17 A -- or the material as well.  
18 Q That's assuming that one of them is touching first,  
19 correct? Is it possible that both of them could hit at the same  
20 time, kind of like what I'm doing right now?  
21 A It is.  
22 Q It is. Okay. But in that event, one of them is more  
23 on an angle than the other one, just because of the nature of  
24 the scissors, correct?

XIV-67

LAUFER - CROSS

1 straight on, is that correct?  
2 A Well, you have to tell me which part of the scissor  
3 you mean is hitting at an angle. There are two edges that are  
4 at different angles to each other. There's a point. So it's  
5 possible that both points hit at the same time and that one  
6 edge of the scissor is more perpendicular to the surface than  
7 the other one.  
8 Q Okay. Now after you had left on Tuesday, Detective  
9 Thowsen came in, concluded his testimony, and he testified  
10 about Exhibit 262 as being a butterfly knife, a single-edged  
11 butterfly knife. And you actually had one of these and you  
12 used in -- for your testimony, is that correct?  
13 A Correct.  
14 Q Okay. Now on a butterfly knife, a single-edge or a  
15 double-edge, would you agree with me that the blades are  
16 different than that of what you see on a pair of scissors?  
17 A Yes.  
18 Q Meaning that there's a -- the sharpness is into the  
19 center of the blade versus the scissors where there's -- the  
20 sharp is on one edge of the blade --  
21 A Correct.  
22 Q -- than the scissors?  
23 A Yes.  
24 Q And that's why with the -- with the knife and your

XIV-69

000710

LAUFER - CROSS

1 example in your material is that's how we get that pretty  
2 symmetrical teardrop-type injury, I mean --  
3 A With which one, with the knife or the scissors?  
4 Q With the knife.  
5 A The knife is more symmetric, yes.  
6 Q Okay. Once again, with regards to the injury to the  
7 abdomen, the stab wounds to the abdomen that you were  
8 characterizing as scissors, would you expect that the scissor  
9 blades, at least as you've talked about MMM, the photograph  
10 showing those scissors, is that if the blades were to enter the  
11 body simultaneously, as you showed us in your sample, that  
12 both the blades would enter to the same depth?  
13 A It depends a little bit on what they hit inside  
14 because, obviously, the scissors, if they hit a piece of bone,  
15 that blade will stop and the other one will go in deeper,  
16 possibly even in a sort of curvilinear direction or route.  
17 Q Okay. And the way scissors are designed to cut, it is  
18 when they work against the other side, is that correct, when  
19 you're using them to cut material?  
20 A That --  
21 Q And they actually --  
22 A That's right. They actually shear across both blades.  
23 Q Okay. And if in fact the blade went in and hit  
24 something and caused it to turn, you would expect to see the

XIV-70

LAUFER - CROSS

1 other wound to be pulled over towards it, wouldn't you?  
2 A Only if the blade of the scissor is sharp enough to  
3 actually cut the tissue in that direction. Otherwise, you'd just  
4 get more bunching on that side and you'd get more of an  
5 abrasion, potentially, even a deeper abrasion or a wider  
6 abrasion on that side.  
7 Q Okay. And you're aware that Dr. Simms' report from  
8 the autopsy is that one of those four puncture wounds, only  
9 one of those four puncture wounds, actually made it all the  
10 way to the liver?  
11 A I'm aware that there was only one wound in the  
12 liver. I'm not aware that the other wasn't deep and simply  
13 missed the liver because it wasn't over the liver.  
14 Q And with your testimony as of Tuesday talking about  
15 these being deep puncture wounds, you didn't put any of that  
16 information in your report, did you, any of your reports, all  
17 three of them?  
18 A Can I refer to the report?  
19 Q Sure.  
20 A I may not have used that terminology, but let me  
21 just see how I specifically described them. I described them  
22 as lacerations, I believe.  
23 Q That's it, right? 'Cause, obviously, you couldn't see  
24 the inside and you weren't at the autopsy to determine the

XIV-71

LAUFER - CROSS

1 depth of them yourself.  
2 A It's a bit like splitting hairs, if you will, because I did  
3 describe them as stab injuries which would suggest that they  
4 were punctures.  
5 Q Okay. And you also testified that, when I asked you  
6 about whether or not these could be stab wounds, you said it  
7 could be but it would require the person stabbing to do three  
8 different things, stab, pull it out, turn the knife and stab again,  
9 correct?  
10 A It was a slightly different question because you  
11 asked if they could have been stab wounds with a knife.  
12 Q Correct.  
13 A And that's what I was describing.  
14 Q Okay. So --  
15 A So they could still be stab wounds with a scissor  
16 blade but not a knife.  
17 Q So it could be with a knife, stab, turn, stab?  
18 A Well, you have to drag across as well.  
19 Q Okay.  
20 A And stab in --  
21 Q So when you --  
22 A -- essentially, two pairs at the same distance apart.  
23 Q So when you stab in and you pull it out, you're  
24 saying that it couldn't have drug across?

XIV-72

LAUFER - CROSS

1 A It's certainly possible. There are other  
2 characteristics of these wounds that make that much less  
3 likely, in particular, the two parallel abrasions which are  
4 perpendicular to the main long abrasion, which are very  
5 characteristic of the hinge point to the scissors, as I described.  
6 Q And, once again, I think I left it off by asking you did  
7 you measure the distance between the two?  
8 A I did.  
9 Q And they're identical?  
10 A They are -- well, the maximum distance is 5.8  
11 centimeters and the minimum distance is 5.7 centimeters, so  
12 they're within a millimeter difference.  
13 Q So you're saying these two injuries here that we can  
14 see right here on the screen, your testimony is there's only 1  
15 centimeter difference?  
16 A A millimeter, actually.  
17 Q 1 millimeter difference?  
18 A Correct.  
19 Q Based on what we can see right here with our naked  
20 eye?  
21 A Right.  
22 Q Okay. Okay. Now I'm showing you what you have  
23 testified to with regards to PP. Can you see that, doctor?  
24 A Yes.

XIV-73

000711



LAUFER - CROSS

1 Q Okay. Now this is a wound to Duran Bailey's thumb,  
2 is that correct?  
3 A Yes. That's my understanding.  
4 Q And you said you couldn't tell by looking at this  
5 picture which thumb it was, his right thumb or his left thumb?  
6 A No. I believe I testified it was the right thumb.  
7 Q Okay. You see this to the left of the photograph  
8 here?  
9 A Yes.  
10 Q That is Duran Bailey's body.  
11 A Correct. His --  
12 Q Do you accept that?  
13 A His neck, I believe, and part of his chin.  
14 Q What is this down here?  
15 A Presumably, part of his arm.  
16 Q Part of his arm?  
17 A Correct.  
18 Q So give us an example how that one would have  
19 been displayed in order to make that his right thumb.  
20 A Arm, thumb, hand.  
21 Q Okay. How in reference to his body? See the sheet  
22 between his arm and his body?  
23 A I can see it.  
24 Q And have a look at the photograph again, doctor.

XIV-74

LAUFER - CROSS

1 A I do see a mark there, yes.  
2 Q Okay. You would think that a little thing like that,  
3 the coroner, the person who looks at the actual body, would  
4 know what hand he's talking about, wouldn't you?  
5 A It's hard to believe he would make that kind of  
6 mistake.  
7 Q Okay. So with that being said, would you accept  
8 that this is his right thumb?  
9 A I believe that the picture --  
10 Q I'm sorry.  
11 A -- you're showing me is his right thumb.  
12 Q Is his left thumb, his left thumb?  
13 A I don't believe that the picture you're showing me is  
14 his left thumb. No.  
15 Q Okay. So he missed this. He took photos of it and  
16 he missed it and didn't -- enough to even report it?  
17 A Apparently so.  
18 Q Couldn't it also be a situation where his body, Duran  
19 Bailey's body, is laying here, they got his arm down laying on  
20 the side of the Gurney, and somebody's pulling his thumb up  
21 like this and holding his web down so you can take a photo of  
22 that? See how my fingers are, doctor?  
23 A I do. But it's going the wrong direction. This is the  
24 index finger.

XIV-76

LAUFER - CROSS

1 Do you see a sheet between his arm and his body?  
2 A I see this white area, which may be sheet,  
3 underneath his body.  
4 Q Okay. So the way you held your hand, though, it  
5 would be putting his hand -- the hand over top of his body and  
6 you wouldn't see that, would you?  
7 A This is simply a gap in between the arm and the  
8 body. It's certain possible to have a gap here between the  
9 arm and the body.  
10 Q Well, and you read his autopsy report. Would you  
11 agree that the --  
12 MR. KEPHART: Could I?  
13 (Pause in the proceedings)  
14 BY MR. KEPHART:  
15 Q In Dr. Simms' autopsy report, he reflected his  
16 autopsy report as to the injuries on Exhibit 122. Can you see  
17 that there, doctor?  
18 A Yes.  
19 Q Do you see any place where he marked on there any  
20 injuries to the thumb of the right hand?  
21 A I don't see any injuries to the thumb of either hand.  
22 Q You don't see the red mark right there on the  
23 thumb, on the inside of the left hand right there, sir? Maybe I  
24 need to show it to you closer.

XIV-75

LAUFER - CROSS

1 Q How do you know that?  
2 A This is the middle finger.  
3 Q How do you know that?  
4 A This is the ring finger and this is the small finger,  
5 and the small finger is a small finger.  
6 Q How do you know that that's his small finger, and so  
7 forth and so on? You're just saying that from all your  
8 experience as a doctor?  
9 A Well, here's --  
10 Q Is that what you're basing that on?  
11 A Here's his chin. Here's the right side of his neck.  
12 And here is his arm on that side.  
13 Q You can tell that that's his chin based on that  
14 photograph?  
15 A Yes.  
16 Q Well, that's kind of interesting because you see a lot  
17 of things in these photographs, don't you, doctor? I mean,  
18 you actually see like the depths of injuries in the photographs,  
19 don't you?  
20 A Certainly in some. In some cases, I said that it was  
21 impossible to say in my report. And I'm sure you read that as  
22 well.  
23 Q Okay. Now you said that with regards to Exhibit  
24 Number PP that these are injuries in pairs, is that correct?

XIV-77

000712

## LAUFER - CROSS

- 1 A Correct.
- 2 Q And I believe you said that there was three pairs and
- 3 they were all consistent with being puncture wounds, is that
- 4 correct?
- 5 A I'm not sure I said three pairs. I see two pairs
- 6 there.
- 7 Q You testified in direct examination there was three.
- 8 You even circled them. You don't remember doing that?
- 9 A I think what I said was this is one pair, this could be
- 10 two, and this could be two.
- 11 Q Okay. So that's three.
- 12 A That's three pairs.
- 13 Q But in your report you actually said two.
- 14 A Well --
- 15 Q Is that why you're testifying --
- 16 A I think --
- 17 Q -- that way now, though?
- 18 A No. I think that it's also very likely that that's one
- 19 pair and this is a second pair.
- 20 Q Okay. And which way would the scissors, as you
- 21 say, be in order to cause those kind of injuries?
- 22 A Relatively closed.
- 23 Q Okay. Not in the knuckles like you -- we were
- 24 talking earlier?

XIV-78

## LAUFER - CROSS

- 1 A Correct.
- 2 Q Okay.
- 3 A As I showed during the demonstration.
- 4 Q Okay. Relatively closed. And how would they be
- 5 holding them?
- 6 A Well, if the hand was stable, I could tell you. All I
- 7 can tell you now is relative to the hand. It's certainly possible
- 8 that the hand was what was moving and that the scissor
- 9 direction was fixed.
- 10 Q Okay. And as the two that you circled there, do you
- 11 see what appears to be linear cuts as well?
- 12 A I see what might be a continuation, I'm sorry, a
- 13 continuation here of what I would describe as a snip, and
- 14 there may be one here as well.
- 15 Q Okay. So now you're calling it a "snip," but you
- 16 won't accept that there's a linear cut?
- 17 A In many ways they're the same thing.
- 18 Q So you would accept there's a linear cut?
- 19 A There potentially is. It's pretty unclear.
- 20 Q And you would agree that these certainly were
- 21 defensive wounds?
- 22 A Most likely, yes.
- 23 Q Okay. So he was more than likely using, in your
- 24 opinion, his left hand or his --

XIV-79

## LAUFER - CROSS

- 1 A No. Right hand.
- 2 Q Okay. I'm sorry. In your opinion, his right hand to
- 3 maybe fend off some type of object, a sharp object, coming
- 4 after him?
- 5 A Correct.
- 6 Q And could that sharp object be a knife?
- 7 A Do you want likelihood or could?
- 8 Q Could it be a knife?
- 9 A It is possible that it could be a knife.
- 10 Q Now you said -- well, let's look at RR, Exhibit RR.
- 11 You see that, doctor?
- 12 A Yes, I do.
- 13 Q Okay. Now you said that this was a result of blunt
- 14 force trauma, is that correct?
- 15 A I said that it is more likely than not to have been
- 16 blunt force trauma. Correct.
- 17 Q Okay. What -- up here at the top, this is -- this is
- 18 his coccyx? Did I say that straight?
- 19 A Coccyx, yeah.
- 20 Q Coccyx.
- 21 A Tail bone.
- 22 Q Okay. Where is it at? Can you circle that? Okay.
- 23 And this -- these lighter-color areas, what did you characterize
- 24 those as?

XIV-80

## LAUFER - CROSS

- 1 A That appears to be slippage.
- 2 Q And do you recall indicating in your report that the
- 3 area above the coccyx was consistent with snipping injuries?
- 4 A I said it certainly could be, yes.
- 5 Q And now you say it's slippage?
- 6 A No. Actually, I think the area above the coccyx is
- 7 this area.
- 8 Q Above that?
- 9 A Superficial to.
- 10 Q What do you mean by that? I don't understand
- 11 that.
- 12 A The coccyx is also deep to the tissue. So above,
- 13 meaning outside of the coccyx.
- 14 Q So a person's tail bone is basically the coccyx?
- 15 A Correct.
- 16 Q And you're saying the area between the tail bone
- 17 and his scrotum is above the coccyx?
- 18 A More superficial to it, yes.
- 19 MR. KEPHART: Oh, okay. Now -- the Court's
- 20 indulgence, Your Honor.
- 21 (Pause in the proceedings)
- 22 BY MR. KEPHART:
- 23 Q Okay. You don't have your first report with you,
- 24 correct?

XIV-81

000713

## LAUFER - CROSS

- 1 A Correct.
- 2 Q Okay. In that report, do you recall saying the skin --
- 3 well, let me, before I ask you this. You testified on Tuesday
- 4 that this was consistent with a blunt force trauma and you
- 5 went so far as to describe it as possibly being a kick to
- 6 somebody that's not wearing underwear or even a saddle
- 7 injury and you said similar to somebody maybe riding a bull.
- 8 A Coming down hard on an object.
- 9 Q Hitting it.
- 10 A Like --
- 11 Q And that --
- 12 A Correct.
- 13 Q So that would tear that open like that?
- 14 A Correct.
- 15 Q Okay. And in your third report, you indicate that it is
- 16 consistent with blunt force skin tearing, is that correct?
- 17 A Is this in the same paragraph where I said that
- 18 these injuries were overlying the coccyx, in that paragraph?
- 19 Q It's Number 8 in your third --
- 20 A Yes. So "The skin injuries overlying the coccyx are
- 21 consistent with blunt force skin tearing."
- 22 Q Okay.
- 23 A That sentence.
- 24 Q And that's what we're talking about right here?

XIV-82

## LAUFER - CROSS

- 1 A Correct.
- 2 Q Okay. Why is it that you -- that you changed that
- 3 from your first one that you said, "The skin injuries overlying
- 4 the coccyx are consistent with blunt force skin tearing, as well
- 5 as sharp snipping"?
- 6 A Probably two reasons. One is that I wanted to make
- 7 the language more clear, as you just pointed out, overlying the
- 8 coccyx or above the coccyx, where it says "overlying the skin
- 9 of the coccyx" was unclear, so I clarified.
- 10 Q Well, yeah. But you're -- in the same paragraph,
- 11 you're saying that the same injury could be either blunt force
- 12 trauma or incised.
- 13 A Correct.
- 14 Q So you're saying it could either be cut or be by blunt
- 15 force trauma?
- 16 A Yes. So what I'm seeing here is what appears to be
- 17 universal thickness laceration of the skin, as I described it.
- 18 Q Okay.
- 19 A Which is consistent with either of those mechanisms.
- 20 Q So --
- 21 A But more consistent with blunt force trauma.
- 22 Q Could be cuts, though?
- 23 A It could be cuts.
- 24 Q Okay.

XIV-83

## LAUFER - CROSS

- 1 A With scissors, as in snipping.
- 2 Q Not with a knife?
- 3 A Correct.
- 4 Q You're saying that couldn't have been caused by a
- 5 knife?
- 6 A I'm saying it's quite unlikely. It's certainly possible.
- 7 I can describe in more careful detail, if you care.
- 8 Q And when you say snipping, you're talking about
- 9 somebody taking and going snip, snip, or maybe even the
- 10 whole area, snip, 'cause this was one cut. You remember Dr.
- 11 Simms' report. One cut.
- 12 A Actually, I think he said it could be as many as six.
- 13 Q One continuous cut? I'm asking you that.
- 14 A Yes. It looks like on this side that could be from one
- 15 blade, step off here, and from the other blade. And they're
- 16 about the same length.
- 17 Q You mean slice, slice?
- 18 A No. Just "whick".
- 19 Q Okay. "Whick".
- 20 A Closing the scissors once.
- 21 Q "Whee." Like this?
- 22 A Just one time. Yes.
- 23 Q And that area there in which you're talking about
- 24 would be one being cut by one blade this way and the other

XIV-84

## LAUFER - CROSS

- 1 blade this way?
- 2 A Correct.
- 3 Q What you're saying, and meeting in the middle?
- 4 A Correct.
- 5 Q So it wouldn't be -- would it be more likely than it
- 6 would be like that, than it would be getting kicked?
- 7 A In the context of both the scrotal injury and this
- 8 injury, either is likely.
- 9 MR. KEPHART: Okay. Now, can I have this marked,
- 10 Your Honor?
- 11 THE COURT: Yes.
- 12 (Pause in the proceedings)
- 13 BY MR. KEPHART:
- 14 Q And you said you haven't been shown any
- 15 photographs of the rectum, is that correct?
- 16 A Correct.
- 17 Q I'm showing you State's Proposed Exhibit 263. Have
- 18 you seen this photograph before?
- 19 A No.
- 20 Q That's certainly the rectum, is that correct?
- 21 A It's certainly the anus.
- 22 Q Okay. And you would agree that that -- that this
- 23 particular photograph shows the anus damaged?
- 24 A Actually, I didn't look at it that closely. I saw that it

XIV-85

## LAUFER - CROSS

1 was externalized. I didn't see an injury to it.  
 2 (Pause in the proceedings)  
 3 A Let me ask you, just to clarify, is that picture without  
 4 any medical intervention? Is that how it was found or is that  
 5 after?  
 6 Q That's the coroner's photograph.  
 7 A So that's after the coroner cut the area --  
 8 Q No.  
 9 A -- in order to externalize --  
 10 Q No.  
 11 A -- the rectum?  
 12 Q No. No, it's not.  
 13 MR. SCHIECK: I'm gonna object, Your Honor, unless  
 14 he's got personal knowledge. They haven't laid a foundation  
 15 for that photograph.  
 16 MR. KEPHART: I'm gonna move to admit 263, Your  
 17 Honor.  
 18 MR. SCHIECK: No foundation, Your Honor.  
 19 MR. KEPHART: That's fine. That --  
 20 THE COURT: The Court sustains the objection.  
 21 MR. KEPHART: That's fine.  
 22 BY MR. KEPHART:  
 23 Q Now your Exhibits SS and --  
 24 MR. KEPHART: What was that? I can't tell what

XIV-86

## LAUFER - CROSS

1 Q The scrotal injury. I'm sorry. Just -- no, not the  
 2 scrotal. The penis area.  
 3 A It does appear to have a sharper-shaped tip at the  
 4 distal aspect or the area toward the feet and a more curved  
 5 area toward the head. Yes.  
 6 Q Okay. And you've heard of the term "cephalad,"  
 7 right?  
 8 A Yes.  
 9 Q That means the head?  
 10 A Toward the head. Yes.  
 11 Q Okay. Can you read what you wrote in your report,  
 12 your last report, September 24<sup>th</sup>, you have it right there, your  
 13 first Number 18?  
 14 A Yes.  
 15 Q Can you read it out loud?  
 16 A "There's a penile amputation with a teardrop-shaped  
 17 laceration at the pelvis, with the point directed cephalad."  
 18 Q Okay. So which side would you call the point?  
 19 A I think you need to either show the other picture  
 20 because this is showing it at an angle.  
 21 Q Okay. Which one would you call the point?  
 22 A I would agree with you that it's pointing more  
 23 downward.  
 24 Q Okay. So not cephalad?

XIV-88

## LAUFER - CROSS

1 that is. What is that?  
 2 MS. GREENBERGER: QQ.  
 3 MR. KEPHART: QQ?  
 4 BY MR. KEPHART:  
 5 Q QQ. You see a photograph of QQ? You testified  
 6 about that on Tuesday on direct.  
 7 A Yes.  
 8 Q This is the photograph of his -- I guess what's  
 9 highlighting is the severed penis.  
 10 A There's also a swab in what appears to the rectum.  
 11 Q Okay. And then SS is a better photograph of that, is  
 12 that -- is that correct, a closeup photo?  
 13 A That seems to highlight the laceration, the scrotum.  
 14 Q Okay. And you talked about in your report, and  
 15 everybody's talked about the teardrop-type effect that this had  
 16 on this, on the -- of the -- in this injury, a teardrop-type injury,  
 17 correct?  
 18 A That everyone has testified to that? I can't answer  
 19 that question.  
 20 Q You actually testified that it has -- appears to be a  
 21 teardrop injury. As a matter of fact, you even have that in  
 22 your -- in your report.  
 23 A I'm sorry. Which injury? The scrotal injury or the  
 24 penile injury?

XIV-87

## LAUFER - CROSS

1 A Correct.  
 2 Q Now it's your testimony that SS, in SS, that that  
 3 shows a laceration to the scrotum, is that correct?  
 4 A It's a tear of the skin, which is consistent with a  
 5 laceration.  
 6 Q You're --  
 7 A Yes.  
 8 Q You're saying a tear of the skin. And you've said  
 9 possibly from a kick or some type of blunt force blow to it?  
 10 A No. I'm saying it's a tear of the skin, laceration as  
 11 opposed to incision.  
 12 MR. KEPHART: Can I have this marked?  
 13 (Pause in the proceedings)  
 14 MR. KEPHART: May I approach, Your Honor?  
 15 THE COURT: Yes.  
 16 BY MR. KEPHART:  
 17 Q I'm showing you what's been marked as State's  
 18 Proposed Exhibit 264. Does that appear to be a photograph of  
 19 the same area?  
 20 A It does.  
 21 Q Have you seen that photograph before?  
 22 A No.  
 23 Q It has a better picture, actually, of opening the --  
 24 what you characterize as a tear, is that correct?

XIV-89

000715

## LAUFER - CROSS

- 1 A They are opening, yeah. I don't know, again, if  
2 there's been intervention that has further spread that incision  
3 laceration injury.
- 4 Q So when you say intervention, you mean like maybe  
5 the doctor cut it open or something further?
- 6 A Correct.
- 7 Q Okay. And can you see from this whether or not  
8 there's any cutting?
- 9 A Maybe I can see it a little bit more closely. And, I'm  
10 sorry, whether there's more cutting by?
- 11 Q Yeah. You said that you don't know whether or not  
12 there's any intervention from like the doctor. So you're  
13 probably -- you're saying there's a possibility that the doctor  
14 could have cut it, went further and cut it open more?
- 15 A Correct.
- 16 Q Correct?
- 17 A Yes.
- 18 Q Do you see that in there?
- 19 A I don't have any comparison of length. I don't have  
20 a ruler in either of these, so I can't provide an opinion with  
21 regard to that.
- 22 Q Okay. So you couldn't say just based on the look  
23 whether or not there appears to be something cut versus torn  
24 open?

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## LAUFER - CROSS

- 1 A Victim's neck.
- 2 Q Or right side of the victim's neck. Okay. And is this  
3 injury here that's shown in VV, is that consistent with blunt  
4 force trauma or consistent with an incised wound?
- 5 A That is more consistent with an incised wound.
- 6 Q Okay. How can you tell from that?
- 7 A There is ecchymosis around the injury, meaning  
8 there's darkening there, and then there is separation of the  
9 skin between it which is consistent with a device which first  
10 injures the skin by striking it and then causes the tissue to  
11 spread. That could be, most likely, an incision.
- 12 Q Okay. Well, back to RR. Darkening of skin around  
13 there, separation of the skin. Yes?
- 14 A Both of those appear to exist, yes.
- 15 Q Okay. And that's consistent with a device that  
16 strikes it and cuts it?
- 17 A Well, here you have not just darkening of the skin  
18 around the incision, you have darkening of the skin much  
19 further than the width of the incision. And so it's more likely  
20 than not that the thing that caused the darkening is not the --  
21 a sharp object. It's, rather, a larger, blunter object. Hence,  
22 the term "blunt force trauma."
- 23 Q You see Exhibit UU? See what that shows?
- 24 A Yes.

XIV-92

## LAUFER - CROSS

- 1 A I could say that it appears to be cut or torn open,  
2 but I don't know if it's cut further than it was in this other  
3 picture.
- 4 Q And you would agree that you're not -- the doctors  
5 aren't gonna tear it open any more?
- 6 A I've seen lots of things, but it's less likely. I agree.
- 7 MR. KEPHART: Okay. Move to admit 264, Your  
8 Honor.
- 9 MR. SCHIECK: No foundation, Your Honor.
- 10 MR. KEPHART: Okay.
- 11 MR. SCHIECK: Can we approach, Your Honor?
- 12 THE COURT: Counsel, approach.
- 13 (Off-record bench conference at 14:40:19 until 14:41:35)
- 14 THE COURT: The objection is sustained as to lack of  
15 foundation.
- 16 BY MR. KEPHART:
- 17 Q Now you had testified previously about the -- about  
18 the individual's trousers that he was wearing. Do you recall  
19 that?
- 20 A Or at least the pictures of the trousers, yes.
- 21 Q Right. And you had indicated that -- let me get to it.  
22 Okay. Let me -- let me go someplace else, doctor. I apologize  
23 on that. And you -- talking about VV. This is the right side of  
24 the victim's head, is that correct?

XIV-91

## LAUFER - CROSS

- 1 Q Darkening around the skin?
- 2 A Yes.
- 3 Q Separation of the skin?
- 4 A Yes.
- 5 Q Incised wound?
- 6 A Blunt force trauma. A large area of darkening, not  
7 simply symmetric around the incision.
- 8 Q Okay.
- 9 A With additional darkening above it in a separate  
10 injury.
- 11 Q And also kind of a teardrop? See it here?
- 12 A Yeah. It's a general term. It's an oblong or  
13 elongated teardrop, if you will.
- 14 Q That injury in UU, nothing else can cause that but  
15 the back of scissors?
- 16 A Which injury?
- 17 Q The injury right here in the left side of the -- right  
18 side of the eye.
- 19 A It's the injury to the lateral side of the right  
20 eyebrow, this one that I'm circling here?
- 21 Q Yes.
- 22 A There are lots of things that could cause that injury.
- 23 Q Knife?
- 24 A Unlikely. Knife handle.

XIV-93

000716

## LAUFER - CROSS

- 1 Q Bat?
- 2 A Knife handle, perhaps.
- 3 Q Bat?
- 4 A Unlikely.
- 5 Q Unlikely. A knife handle but not the bat?
- 6 A Correct.
- 7 Q What about the injury to -- right above his nose to
- 8 the left portion of his right eyebrow?
- 9 A What about it?
- 10 Q What causes that?
- 11 A Again, blunt force trauma with separation of the
- 12 skin.
- 13 Q So there's --
- 14 A So --
- 15 Q -- separation of the skin?
- 16 A Mm-hmm.
- 17 Q Darkening around the skin, similar to an incised
- 18 wound. You say no blunt force trauma?
- 19 A Well, you have to take size into consideration here.
- 20 Q Okay. Doctor, what is -- never mind. I'll come back
- 21 to that. Strike that.
- 22 And that -- those wounds you're saying are caused by an
- 23 individual who you believe put the scissors backwards?
- 24 A Correct.

XIV-94

## LAUFER - CROSS

- 1 that this man, Duran Bailey, received a lot of injuries?
- 2 A Yes.
- 3 Q You'd agree that he went through a lot of, I guess
- 4 you could say, punishment or melee, so to speak, to receive
- 5 those injuries?
- 6 A Hard to characterize that and quantify it. Certainly,
- 7 someone was organized in their approach.
- 8 Q Okay. And with that being said, if he's fighting you
- 9 or doing any type of thing to fight back, you'd probably even
- 10 stab yourself maybe by pulling the knife back, I mean, pulling
- 11 the scissors back if you have -- cut yourself maybe even here
- 12 or in the arms on --
- 13 A Yes.
- 14 Q Okay. And more than likely, that would bleed?
- 15 A More than likely.
- 16 Q Okay. Now you testified with regards to XX. Do you
- 17 see that, doctor?
- 18 A Yes.
- 19 Q Okay. And you said that this was, I believe, in your
- 20 report you said this was consistent with a snipping.
- 21 A Correct.
- 22 Q Okay. Can you show us where the blades of the --
- 23 well, show us where the injury is at. Okay.
- 24 A There's a smear of blood here as well.

XIV-96

## LAUFER - CROSS

- 1 Q And hit with that?
- 2 A Correct.
- 3 Q Okay. So maybe you can show us.
- 4 A So it could be with them closed or open.
- 5 Q Okay.
- 6 A Closed. Open would be like this.
- 7 Q Okay.
- 8 A Sort of dangerous. Closed.
- 9 Q Okay. On the end of your knuckle, the center of
- 10 your knuckle, not back up against the back of your hand like
- 11 brass knuckles would be like?
- 12 A Correct. Yeah. You'd want to be able to keep the
- 13 blade from cutting you. Obviously, if you could injured doing
- 14 that.
- 15 Q You could injured doing that?
- 16 A Yes.
- 17 Q And possibly injured pretty dramatically?
- 18 A Yes. You could injure yourself. I've --
- 19 Q You could break your fingers?
- 20 A Yeah. Cut your wrist.
- 21 Q Maybe cut your wrist with the back of the -- back of
- 22 the scissors?
- 23 A Absolutely.
- 24 Q Maybe even through all the -- I mean, it's obvious

XIV-95

## LAUFER - CROSS

- 1 Q Okay.
- 2 A Which is more difficult to see whether that's just a
- 3 smear or whether there's an injury there as well.
- 4 Q Okay. And do you recall testifying on Tuesday that
- 5 you believed that this was the injury here, here to here? You
- 6 even drew a bunch of lines here and then one like that. Do
- 7 you recall that?
- 8 A I recall trying to characterize it as I just did.
- 9 Q Okay. You don't recall saying this was an injury
- 10 here and here and then 'cause we were talking about this
- 11 scrape up here and then went to -- on direct examination you
- 12 said this was an injury right here?
- 13 A Yeah.
- 14 Q And you called it as a stair-stepping-type of injury?
- 15 A Stair step. Yes.
- 16 Q Okay. So this, you don't recall saying that was an
- 17 injury?
- 18 A You know, I remember in my report I specifically
- 19 described this smear.
- 20 Q Mm-hmm.
- 21 A And I don't recall how I drew the lines.
- 22 Q Okay. Well, show us where you believe that the
- 23 scissors would have started in order to make a snipping injury.
- 24 A One blade here, one blade in this vicinity.

XIV-97

000717

## LAUFER - CROSS

- 1 Q And did you measure that? Were you able to  
2 determine the measurement between those two?  
3 A I don't recall measuring it, no.  
4 Q Okay. And the carotid artery is pretty deep?  
5 A It's all relative, I suppose.  
6 Q What do you mean by that?  
7 A Well, deep superficial, deep to what, superficial to  
8 what?  
9 Q How far would you have to stick something in his  
10 neck there in order to cut his carotid artery?  
11 A About 2 and a half centimeters, maybe less,  
12 depending on whether his head was turned or not.  
13 Q Okay. And to get all the way into his --  
14 A Jugular vein?  
15 Q No, not jugular vein.  
16 A Oh.  
17 Q What's behind it? Went all the way into his -- into  
18 his throat area?  
19 A Oh. Into his larynx?  
20 Q Yeah.  
21 A Deeper.  
22 Q How much deeper?  
23 A Well, again, it depends on which direction you're  
24 going.

XIV-98

## LAUFER - CROSS

- 1 Q Okay.  
2 A From this area, the larynx is approximately here and  
3 the incision is there. So it's within, I can't really see the  
4 measurements on this ruler because it's sort of washed out,  
5 but it appears that it's within 3, 4 centimeters.  
6 Q Okay. How -- what's that in inches?  
7 A Less than 2 inches.  
8 Q Would you agree that in order to make a snipping-  
9 type of action it'd have to be a pretty wide area in order to  
10 snip all the way into the carotid artery?  
11 A Again, it -- I don't know what pretty wide means.  
12 But you would have to be wide enough in order to start where  
13 the arrow is and end where the line is.  
14 Q Well, the deeper you go, the wider the scissors  
15 would have to be in order to snip?  
16 A Well, the harder you push, the deeper you go.  
17 Q Okay.  
18 A So you could actually have the scissors closed and  
19 go in all the way the length of the scissor blade.  
20 Q Okay. But you're not gonna get a snipping then?  
21 A Then you won't get a snipping. So you could be --  
22 Q But here you've got a snipping.  
23 A So you could be slightly open and go all the way into  
24 the depth and still snip.

XIV-99

## LAUFER - CROSS

- 1 Q And you actually looked at the carotid artery in this  
2 case, right?  
3 A No. I never saw a picture of the carotid artery.  
4 Q Okay. But you never looked at it in person either,  
5 did you?  
6 A No, I didn't.  
7 Q Can you -- can you tell me what's the difference,  
8 again, between serum deposit versus blood, or am I using the  
9 wrong terminology?  
10 A Well, serum is what's left over after the blood clots.  
11 So if your circulation stops and your blood clots in your body  
12 and you continue to ooze, what you're oozing is serum. If you  
13 are alive and you're bleeding, what you're bleeding is whole  
14 blood which still has the ability to clot.  
15 Q Is there a difference in color?  
16 A It's a slight difference. Usually, serum is straw-  
17 colored and blood is red.  
18 Q Okay. Can serum cause like a permanent staining,  
19 kind of like what ink would do?  
20 A In what material?  
21 Q On skin.  
22 A It's something that you could probably scrub off.  
23 Q Okay. So it wouldn't permanently stain like ink?  
24 A Well, I mean, you can scrub ink off, too. So it

XIV-100

## LAUFER - CROSS

- 1 depends on what you mean by permanent and stain.  
2 Q So would it stain to the consistency of someone that  
3 took a pen and wrote on their hand or something?  
4 A Well, okay, so material is skin.  
5 Q Mm-hmm.  
6 A I mean, I've certainly had blood sprayed on me and  
7 had that remain as a stain until I washed it off.  
8 Q Okay. And in autopsies they wash the body when  
9 the -- before the doctor starts working on them, don't they,  
10 usually?  
11 A They usually do, yes.  
12 Q Okay. And in this particular case you didn't see any  
13 photos after the -- about the body being washed, did you?  
14 A My understanding is that all the photos of the body  
15 still lying in the body bag are as the body came into the  
16 morgue before it was processed.  
17 Q Well, my question of you is did you see any photos,  
18 did the defense give you any photos to look at when the body  
19 was washed?  
20 A While it was being washed, no.  
21 Q No. After the body was washed.  
22 A I don't know. They weren't labeled as to whether  
23 they were done before or after.  
24 Q Okay. Now you talked about these pants that are

XIV-101

000718

LAUFER - CROSS

1 exhibited in AAA and then BBB, and then the back is CCC. Do  
2 you remember that, testifying about that?  
3 A Yes.  
4 Q Okay. And with regards to BBB, it's just a closeup of  
5 just the top portion of the -- well, here, we'll just use AAA.  
6 Okay. Do you see that? And then we can get to the closeup if  
7 you -- if we need to.  
8 A Okay.  
9 Q You testified about how the pants acted as a dam.  
10 A Yes.  
11 Q As a dam, I guess, stopping blood?  
12 A Correct.  
13 Q That's what it was damming up, was blood?  
14 A Yes.  
15 Q Okay. And the area of what you see in these  
16 photos, AAA and BBB, what would you -- where would you  
17 characterize the dam being? Where would the dam be on his  
18 pants?  
19 A The waistband.  
20 Q Okay. Up here on the top of the waistband?  
21 A Up here on the top of the waistband.  
22 Q Okay. And where would the blood be coming from  
23 based on your knowledge of the injuries to Duran Bailey that  
24 causes this, where this dam would catch?

XIV-102

LAUFER - CROSS

1 A Well, there were streaks of blood coming down from  
2 somewhere. Neck is the most likely since those were the  
3 deepest, apparently, the bloodiest wounds.  
4 Q Okay.  
5 A So that would be the most likely source. It could  
6 also be face, head.  
7 Q Okay. And you recall the testimony with regards to  
8 the injury to the center of his neck being postmortem?  
9 A I tried my hardest to find one to the center of the  
10 neck. I found one to the right. I found one to the left. And I  
11 found one that was described as going through one of the  
12 sides. But it would help to see which one you're describing as  
13 the center of the neck.  
14 Q VV.  
15 A Okay. I would characterize that as the right side of  
16 the neck.  
17 Q Well, his head's turned. The center of his chest is  
18 right below the center of this marker, isn't it?  
19 A Well, this is the sternocleidomastoid muscle, as I  
20 described on Tuesday, which is this big muscle that turns your  
21 head. So given that it was there, I mean, we classify these  
22 injuries by zones, this is a Zone 1 injury, which is the medial  
23 side of the sternocleidomastoid muscle. So it's in the right  
24 side, where as opposed I would call where the windpipe is the

XIV-103

LAUFER - CROSS

1 front or the anterior.  
2 Q So that injury there is not to the right -- is not to the  
3 left side of that muscle you were just talking about?  
4 A It's --  
5 Q Isn't --  
6 A Yeah, it's toward the front but I would -- I mean, the  
7 way that I think of this is on the right side because it's where  
8 those great vessels are on the right side, the right carotid, the  
9 right jugular.  
10 Q Would that injury there then be what would cause  
11 the blood that had to be dammed?  
12 A It's certainly possible that that would have been a  
13 bleeding injury.  
14 Q Even if it was postmortem?  
15 A You know, postmortem and premortem is relative.  
16 It -- I like to think about it in terms of when circulation has  
17 stopped.  
18 Q Circulation stops --  
19 A And so --  
20 Q -- after you're dead?  
21 A Right. Although veins still continue to bleed until the  
22 blood clots. So --  
23 Q Okay. So if you received that injury specifically in  
24 the -- in the right, center right. Will you agree with that at all?

XIV-104

LAUFER - CROSS

1 A Sure.  
2 Q Okay. It would be bleeding and gravity would cause  
3 it to flow down, is that correct?  
4 A Correct.  
5 Q So in order for Duran Bailey to have his pants used  
6 as dam -- as a dam here, that would be caused by blood that  
7 was flowing downwards?  
8 A Right. Now it could have flowed down and then  
9 sideways when he was on the ground, so it's not just one  
10 direction. You can get a change of direction.  
11 Q Okay.  
12 A But that's right.  
13 Q And he would have been possibly standing up when  
14 he received this, the blood got to his pants here?  
15 A Yeah. I mean, but the left one, the other one that  
16 we talked about with the smears, the one that we described as  
17 being a fatal wound, I believe, in Dr. Simms --  
18 Q The carotid artery?  
19 A The carotid on the left.  
20 Q Okay. And you watched Dr. Simms' testimony so  
21 you know what spraying he was talking about when the  
22 carotid arteries break, you expect it to be spraying, is that  
23 correct?  
24 A They certainly do that.

XIV-105

000719



## LAUFER - CROSS

- 1 Q It wouldn't be oozing like that -- would -- where he  
2 described the wound to the scrotum, would it?
- 3 A Well, you know, it depends on what his blood  
4 pressure was at the time. He had a number of other injuries.  
5 So the higher your blood pressure, the more you spray. But,  
6 you know, we frequently have people who have an injury to  
7 carotid that flow blood as opposed to spraying it. And if  
8 there's skin overlying the artery that's cut, then that skin  
9 overlying it tends to stop it from spraying and cause it to flow.
- 10 Q Okay. Doctor, you --
- 11 A But getting back to the pants, as you were asking,  
12 there certainly is more blood on the left side of the pants  
13 consistent with that left side injury than on the right.
- 14 Q Doctor, you had indicated that you didn't see, at  
15 least in these photos, we don't see any blood on the back of  
16 his pants as if he was laying in blood, is that correct?
- 17 A Correct.
- 18 Q And you're aware, though, that his shirt is saturated  
19 with blood?
- 20 A Yes.
- 21 Q So he was -- either it was bleeding down or he was  
22 laying in that. Were you shown photographs of the -- of the  
23 crime scene?
- 24 A Yes.

XIV-106

## LAUFER - CROSS

- 1 A Well, I mean, there are a bunch of pieces there.  
2 One, is that you also wouldn't expect to see much blood on his  
3 shirt. So if, as you said, the shirt was saturated, it required  
4 him to be somewhat upright 'cause if he was just laying there,  
5 the blood would have just run off the sides of his neck and  
6 maybe on to the collar of his shirt but probably not soaked his  
7 shirt. So at some point he was more likely upright than not.  
8 And during that time, if his shirt was indeed saturated as it  
9 appeared to be and as you described it, the blood that didn't  
10 get soaked up by the shirt continues to flow, causes the  
11 streaks on the chest and on the abdomen that we saw and  
12 flows on to the pants. If the pants are down around his  
13 knees, I wouldn't expect there to be blood on the front of the  
14 pants either.
- 15 Q Based on the injuries up above?
- 16 A Well, based on his position, based on the fact that  
17 the blood is now coming, essentially, from the shirt because  
18 that's where it's been, you know, stored up, if you will.
- 19 Q Okay. Now that wasn't an area where he was  
20 laying. The shirt was on his upper torso and he was laying in  
21 an area where there's a big -- there's an area that looks --  
22 appear to be a big concentration of blood above where his  
23 pants were. Wouldn't that also soak into his shirt?
- 24 A Again, above is -- above meaning more up toward

XIV-108

## LAUFER - CROSS

- 1 Q Okay. And with the pants, that if they were down  
2 around his knees, down below his knees, then they would  
3 have been out of the area of where he was bleeding from his  
4 carotid artery if he's laying down?
- 5 A I'm confused.
- 6 Q If he's laying down --
- 7 A I'm sorry. What is the question? Yes, he's laying  
8 down.
- 9 Q Where he's laying down.
- 10 A Right.
- 11 Q And the pants are down around below his knees  
12 where he's laying down, and he's bleeding and the blood --
- 13 A From?
- 14 Q -- basically stops.
- 15 A He's bleeding from?
- 16 Q He's bleeding from his wounds up on his neck. Dr.  
17 Simms says that the penis was cut off after he was dead.
- 18 A Right.
- 19 Q And he says that the injury to his rear end area was  
20 after he was dead. So if he was bleeding from the wounds to  
21 his head and his neck while he's laying down, and the pool of  
22 blood goes into that cardboard that it did, and his pants aren't  
23 even touching the cardboard, you wouldn't expect to see any  
24 blood on the back of his cardboard -- of the pants, would you?

XIV-107

## LAUFER - CROSS

- 1 his chest or --
- 2 Q Yes.
- 3 A So --
- 4 Q To his back area, right where his shirt was, on the  
5 back of his back.
- 6 A Well, it depends on whether that blood was dry at  
7 the point where he was lying in it.
- 8 Q Now, on the other hand, the injury to his scrotum  
9 that we talked about and you showed that as the -- that you  
10 call it a blunt force injury. Dr. Simms calls it a stab wound.  
11 And Dr. Simms also says it happened before he was dead, that  
12 he would bleed from that. Would you agree that if it  
13 happened before he's dead he would bleed from that?
- 14 A Yes.
- 15 Q Okay. And your testimony is, though, that he  
16 probably got that by getting kicked or some type of straddle  
17 injury?
- 18 A That it's more likely, yes.
- 19 Q Okay. And you would expect to see blood in the  
20 crotch of his pants from that type of injury, wouldn't you?
- 21 A I would probably expect to see a cut in the crotch of  
22 his pants as well if it was from a cut.
- 23 Q Okay.
- 24 A But you --

XIV-109

000720

## LAUFER - CROSS

1 Q Unless, of course, doctor, his pants were down when  
2 that was delivered.

3 A Well, more likely off. I think even if they were  
4 down, the blood's still gonna flow down into the pants.

5 Q Okay. So if he has them down and he is standing  
6 with them down, and his -- you would agree that his scrotum  
7 is in -- it's not directly under him, it's out in front of him in  
8 some regard. And if it's oozing down, it's gonna fall down  
9 much like your testimony about the blood that comes from his  
10 head would go down from gravity, is that correct?

11 A Well, keep in mind that the pants are not flat. Right.  
12 The pants encircle his legs. So -

13 Q So in that regard, his legs would then work as a dam  
14 to keep blood from going to the back of his pants. No?

15 A Ooh, that's a stretch.

16 Q Kind of like the scissors stop?

17 A No. I think --

18 MR. SCHIECK: Objection, argumentative, Your  
19 Honor.

20 THE COURT: Sustained.

21 BY MR. KEPHART:

22 Q And --

23 A I think that if the pants are acting as a dam  
24 somehow, they're acting as a dam with the top of the pants,

XIV-110

## LAUFER - CROSS

1 (raise in the proceedings)

2 BY MR. KEPHART:

3 Q Doctor, you don't have your first report, is that  
4 correct?

5 A Not with me, no.

6 Q Okay. And all of your opinions that you've rendered  
7 here, at least in your first report, had to do mainly with the  
8 photographs, is that correct, and what you saw in the  
9 photographs?

10 A Photographs, written information and, essentially,  
11 everything that I could get my hands on at the time.

12 Q Okay. And that didn't include, obviously, the  
13 autopsy report 'cause you weren't provided that, is that  
14 correct? 'Cause you didn't put your autopsy -- the autopsy  
15 report until the last report.

16 A Well, I didn't specifically list it but I did, certainly, list  
17 other written materials which were included in that. I just  
18 didn't want you to have the opportunity to ask a question why  
19 didn't you list the autopsy report specifically, so I specifically  
20 listed it for you.

21 Q Okay. And you put that in the third report?

22 A Well, I specifically listed it. It was --

23 Q Okay. You were --

24 A It was there before.

XIV-112

## LAUFER - CROSS

1 not with the inside of the pants.

2 Q Okay. But wouldn't you expect there to be blood in  
3 the crotch area of the inside of his pants if he received those  
4 injuries that you described as blunt force injuries? Wouldn't  
5 you expect to see blood in there?

6 A As I described in my report, I've never seen a  
7 picture of the inside of the pants or the crotch area.

8 Q Okay. And if you were to look to the inside of his  
9 pants, that would help you?

10 A I think that there were probably lots of things that  
11 would have helped me in this case. That would have probably  
12 been one of them.

13 Q If you were to see the inside of the pants?

14 A Yeah.

15 Q If you were to see the inside of the pants, it would  
16 have helped you?

17 A At the time.

18 Q Okay.

19 A It --

20 Q And also --

21 A It would have been one more piece of evidence, yes,  
22 or a picture of the inside of the pants, frankly.

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

24 THE COURT: Yes.

XIV-111

## LAUFER - CROSS

1 Q You were anticipating being cross-examined in that  
2 area, weren't you?

3 A Well, yes, I was.

4 Q Okay. 'Cause you recall me asking Dr. Simms if it'd  
5 be prudent that somebody who's looking at this would at least  
6 look at the photographs, along with the autopsy report?

7 A Absolutely.

8 Q Okay. Now in your first report, do you recall writing,  
9 "There is what appears to be an incision just anterior to the  
10 left front pant pocket seam of the pants worn by the decedent  
11 at the time of the images and apparently at the time of the  
12 injuries." Do you remember writing that?

13 A Yes.

14 Q And then you took that out of your other reports?

15 A I did.

16 Q Okay. So at least your first view of the pants, you  
17 came to some kind of conclusion that you actually documented  
18 in a report that says that in your opinion there appears to be  
19 an incision in those pants?

20 A Correct.

21 Q And you found that out to be not true.

22 A I --

23 Q There is no incision in the pants.

24 A Yeah. The reason that I have amended opinions is

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LAUFER - CROSS

1 that when I hear information that changes my mind, I change  
2 it in my opinion and make it consistent, just like I did when Dr.  
3 Simms said that the pants, which he apparently saw and at  
4 least looked at, had no incisions. Then that became  
5 inconsistent and became an apparent artifact of the  
6 photograph.

7 Q Well, you have in your report that you actually  
8 reviewed testimony, transcripts of a previous proceeding  
9 involving the defendant being charged with these?

10 A Correct.

11 Q And that includes Dr. Simms' testimony and that  
12 includes CSA's testimony and that includes testifying about the  
13 pants. Did you come to the conclusion that there was no  
14 injury to those pants after you read those?

15 A I came to that conclusion as I just stated, after I  
16 heard Dr. Simms testify to it.

17 Q And he testified in May of 2002, doctor. And you  
18 said you didn't get started on this case until about six weeks  
19 ago.

20 A Correct.

21 Q Doctor, you recall testifying with regards to FFF? Do  
22 you see that there or is that -- can you see that, doctor, or is  
23 that too light? It's too light? Can you see it?

24 A I can see it, yes.

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LAUFER - CROSS

1 consistent with a pressure mark, which is what Dr. Simms  
2 testified to. And I don't know. You may know the number  
3 just to save some time here.

4 Q Well, in your second report, you don't have it with  
5 you, where you're talking about pattern of staining. And then  
6 in the third report it's Number 16 in your summary of findings.  
7 My question to you is that you did not say it's a pattern, a  
8 pattern of staining, did you?

9 A Well, that's --

10 Q Did you say that, doctor?

11 A That's the specific paragraph I'm looking for so I can  
12 answer your question. He called it "an imprint." And I said  
13 that Dr. Simms implied that this was a pressure wound.

14 Q You're looking at --

15 A I said this would --

16 Q Well, let's --

17 A -- still be consistent with my opinion.

18 Q -- stop you. Let me stop you.

19 A Yeah.

20 Q Tell me where you're looking when you said you call  
21 it an imprint.

22 A This is Number 11 in the interpretation of findings.

23 Q Okay. You say, "The imprint of the murder  
24 weapon." Okay. So you never called it --

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LAUFER - CROSS

1 Q Okay. And you had indicated in your testimony that  
2 these were pattern marks?

3 A There appears to be a pattern, yes.

4 Q Okay. And you also --

5 A Let me -- let me be specific since there are lots of  
6 marks here.

7 Q Okay.

8 A It's really this area that --

9 Q Yeah.

10 A -- is a pattern.

11 Q Pattern marks?

12 A Yes.

13 Q And you recall in your report, your second report,  
14 that you said, "There is a pattern of staining on the abdomen  
15 that is consistent with and demonstrative of the imputed  
16 murder weapon and the hand holding that weapon." Do you  
17 recall writing that

18 A Yes.

19 Q But in your -- in your third report, after Dr. Simms  
20 testified, now you say, "There is a patterned injury on the  
21 abdomen." You didn't say staining, is that correct? You took  
22 that out. And that's after Dr. Simms testified that that was not  
23 staining.

24 A Actually, I think what I said was that it was

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LAUFER - CROSS

1 A And on the abdomen of a -- right. "The imprint of  
2 the murder weapon and hand on the abdomen of at least 5.8  
3 centimeters inside width is further corroboration of the  
4 imputed mechanism of the injuries seen on the body in the  
5 images provided. Dr. Simms implied that this was a pressure  
6 wound. This would still be consistent with my opinion.  
7 Cleaning the area and/or histological examination would have  
8 provided further information as to the presence of absence of  
9 hemosiderin, staining, or serum deposition."

10 Q Okay.

11 A "This was not done."

12 Q Okay. Dr. Simms testified that this was not staining;  
13 that this was a pressure mark. So could you -- you wouldn't  
14 accept his testimony in regards to the fact that it would have  
15 been cleaned?

16 A When I look at this, there's still a shirt on the body.  
17 I don't think that that's clean.

18 Q Okay. Well, you're looking at this. That's why I  
19 asked you if you saw the photographs, did the defense provide  
20 you the photographs in regards to -- in regards to the body  
21 after it had been cleaned.

22 A I have not seen pictures of the abdomen where this  
23 was no longer there.

24 Q I never said they washed that away.

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LAUFER - CROSS

1 A Okay.

2 Q But you would expect staining to be washed away,

3 wouldn't you?

4 A It depends on what causes staining. Again, I think

5 we're splitting hairs.

6 Q Are we, though, doctor, when we're talking about a

7 stain versus a pressure mark? A stain, obviously, you would

8 agree could be left there in a short period of time. But a

9 pressure mark, as Dr. Simms testified, would have to take

10 some considerable amount of time to leave it there and that's

11 what his opinion is. So are we splitting hairs, doctor?

12 A Well, a considerable period of time, I think, is the

13 place where we have to focus then. How long would it take to

14 get this pressure mark on a dead body.

15 Q Didn't you watch Dr. Simms' testimony?

16 A I did.

17 Q At least two hours.

18 A I disagree with that.

19 Q Okay. 'Cause you say it could be a matter of just

20 somebody with the scissors in their hand pushing down and

21 standing up and stepping away from the body.

22 A Slightly mischaracterizing it.

23 Q Is it?

24 A But, certainly, with pressure on the abdomen as they

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LAUFER - CROSS

1 A There is not necessarily an impression there. That's

2 why it gets a little tricky. When you have, for instance, a blow

3 with a baseball bat or a billy club, what ends up happening is

4 that you get central clearing in that area and you get abrasion

5 and bruise on the outside of it. So if the force, most of which

6 is on the fingers, is pushing all of that stuff in the skin away,

7 you would get clearing. And then most of the force is not on

8 the scissors. Most of the force is on the person's knuckles as

9 they're standing up.

10 Q Okay.

11 A So it's a relative force distribution.

12 Q So what you're saying is that if you take the

13 knuckles and push down like this to stand up. And in this --

14 and the way I have it, the scissors aren't even touching. But,

15 granted, someone's body is a little bit more pliable than this

16 hard table.

17 A Right.

18 Q So it would give a little bit more, is that correct?

19 A And in fact, as you saw how I was holding the

20 scissors earlier, they were closer to the knuckles.

21 Q Like that or like that?

22 A It may be easier if I showed you.

23 Q Okay.

24 A Just like that.

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LAUFER - CROSS

1 were standing up could leave a mark. Yes.

2 Q Your testimony and your very words, and I quote it,

3 was "just left by pushing up on the body when standing up."

4 A Right. I think that's what I just said, too.

5 Q Just standing up, pushing down and standing up?

6 A Applying pressure with however much weight the

7 person weighs as they were standing up. Correct.

8 Q Okay. Now Exhibit FFF-1, can you see that? Is that

9 too light? You have actually drawn in an actual hand. And I

10 would -- I would say that's probably like the right hand.

11 A Correct.

12 Q 'Cause you've got the thumb up above, up by the

13 ruler.

14 A Yes.

15 Q Okay. And can you explain what -- can you explain

16 to us if these red lines are the fingers, they're somewhat open

17 in areas, is that correct?

18 A Yes.

19 Q Can you explain then if it's open why you would be

20 leaving an impression there? You straddled it with your

21 fingers. You got finger 1, 2, 3, 4, and then the thumb. Why

22 would there be an impression there if nothing's touching it? If

23 you stood up with your fingers open like you have on this

24 picture, why would there be an impression there?

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LAUFER - CROSS

1 Q Okay. So you're leaning the scissors into the body?

2 A Like that.

3 Q But the handle itself, as you show it, don't even

4 touch.

5 A Well, again, as you indicated, the body's more

6 pliable.

7 Q Would you expect then, based on the way that you

8 just demonstrated, that you'd have the further extension of

9 these blades all the way out here to the end? You only have

10 one of them in your picture. What happened to the other one?

11 A See that one is above the other.

12 Q Okay.

13 A So the one that touches is the one that leaves the

14 deeper mark and the other one may not even be touching.

15 Q And you kind of -- you would expect, based on what

16 you just did, this is a twisting in the hand, kind of like what

17 you just did?

18 A I guess twisting of the hand in some way is fair.

19 Q Okay. And the blades that you have, can I see

20 those back? And you show me, doctor, make sure that I don't

21 mischaracterize how you were holding these scissors. Am I

22 holding them right? Am I -- do I have them right? Well, show

23 me. I don't want to --

24 A Let me try again here.

XIV-121

000723

## LAUFER - CROSS

1 Q Okay. Okay.  
 2 A So I have them in the --  
 3 Q Right in the knuckle?  
 4 A Yeah, the --  
 5 Q Okay.  
 6 A The PIP joint, the proximal inter-phalangeal joint.  
 7 Q Okay. So --  
 8 A So it's right in here.  
 9 Q Okay. All right.  
 10 A You push them down.  
 11 Q Okay. Let me -- let me see it again.  
 12 A Be careful with those things. They're dangerous.  
 13 Q Okay. And that's kind of where I have them there.  
 14 Okay. Is that right now? Right --  
 15 A That's pretty close.  
 16 Q Right in the joint.  
 17 A Yeah.  
 18 Q And I'm pushing down like that.  
 19 A Yeah.  
 20 Q Okay. And these are the scissors that you believe,  
 21 not these ones, but Exhibit MM. Okay. And that's kind of the  
 22 way you have it in the photograph, is with the small hole  
 23 upwards and the big one on the bottom. But does it really  
 24 matter how you -- how you would hold it?

XIV-122

## LAUFER - CROSS

1 Q And the scissors that are in the photograph, you say  
 2 that those are consistent with MMM?  
 3 A I'm sorry. The scissors that are in which  
 4 photograph?  
 5 A The scissors that you have drawn in the photograph  
 6 on Exhibit FFF-1 are consistent with MMM. These are the --  
 7 this is the photo that you took.  
 8 A Oh.  
 9 Q And those are the ones you used for your test.  
 10 A Actually, when I drew this on the abdomen, I hadn't  
 11 found those scissors yet. So I simply drew an outline.  
 12 Q Okay. But --  
 13 A What's different is those have straight handles and  
 14 what I've drawn here has at least one curved handle.  
 15 Q Okay. And is there anything else different between  
 16 the scissors that you have drawn in there and the scissors that  
 17 you have on here?  
 18 A Yes.  
 19 Q What is it?  
 20 A The size of the rings.  
 21 Q The size of the rings.  
 22 A The finger rings.  
 23 Q Where you put your fingers?  
 24 A Correct.

XIV-124

## LAUFER - CROSS

1 A Well, it matters more for the injury that happened  
 2 on the forehead for this --  
 3 Q Okay. Turned --  
 4 A -- abdominal.  
 5 Q Turned around, right?  
 6 A Yeah.  
 7 Q Okay.  
 8 A So for this abdominal injury.  
 9 Q Okay. And these are the same scissors that you  
 10 believe would be consistent with that injury?  
 11 A Similar scissors, that these could cause that injury,  
 12 yes.  
 13 Q Okay. And you're talking about how the scissors  
 14 have different -- the different blades. They're actually  
 15 connected with like a rivet?  
 16 A Correct.  
 17 Q And there's nothing in --  
 18 A Or a screw.  
 19 Q -- in the photograph that you saw that shows any  
 20 type of rivet or anything like that in the center where they join,  
 21 do they -- does it?  
 22 A Well, there's a cleared area there.  
 23 Q Okay.  
 24 A But I don't know what that means.

XIV-123

## LAUFER - CROSS

1 Q Anything else?  
 2 A I actually never measured the length of either pairs  
 3 of scissors, but it could be that that's different as well.  
 4 Q Okay. Now you testified that because of the way  
 5 the scissors are designed, they have one blade on top of the  
 6 other blade. Okay.  
 7 A Correct.  
 8 Q And, actually, in this drawing you have one blade  
 9 going over the top of the other blade?  
 10 A Right.  
 11 Q And is this photograph taken backwards?  
 12 A Taken backwards?  
 13 Q Yeah, is it -- you know how sometimes you can take  
 14 a photograph and it -- you put it in the wrong way and it's  
 15 backwards?  
 16 A My understanding is that these are digital so they're  
 17 not film.  
 18 Q Well, you didn't --  
 19 A But --  
 20 Q You didn't change anything with this --  
 21 A No.  
 22 Q -- with this at all? Okay.  
 23 A No.  
 24 Q Then why is it that you're using left-handed scissors?

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000724

LAUFER - CROSS

1 A Yeah. I certainly saw that but, you know, here's a  
2 picture, there are the scissors. So --  
3 Q And we all know that you can buy these type of  
4 scissors pretty easily but that left-handed scissors are -- you  
5 can buy them but they're just not that common, are they?  
6 A No.  
7 Q And why doesn't the imprint or stain mark, or  
8 whatever you call it, why doesn't it go all the way to the end of  
9 the -- end of the blades? 'Cause it's going across his  
10 abdomen. It's not going around the edge of him, is it?  
11 A Well, actually, it is. The bellybutton is in the middle  
12 so this is actually going toward the rim of his pelvis. And you  
13 can see that the silver stain seems to have been sort of  
14 pushed away, as well.  
15 Q Okay. Now you're familiar, though, with pressure  
16 marks. Pressure marks are caused by objects that are placed  
17 on the body and could -- and they're placed there or left there  
18 for a considerable amount of time. You're -- would you agree  
19 with that, at least, thought?  
20 A I don't know what a considerable amount of time  
21 means.  
22 Q Two hours in this case, at least two hours.  
23 A No, I don't agree.  
24 Q You don't agree with that. So you think a pressure

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LAUFER - CROSS

1 facial fractures if someone were hit on the face with a bat.  
2 Q Okay. But it doesn't mean that you would get them?  
3 A No. If you happen to hit the person when his mouth  
4 is open and his lips are out of the way and you only hit the  
5 teeth, the teeth would fracture.  
6 MR. KEPHART: Okay. And so may I approach, Your  
7 Honor? Can I have this marked?  
8 THE COURT: Yes.  
9 (Pause in the proceedings)  
10 THE COURT: How has it been marked?  
11 MR. KEPHART: 263, Your Honor.  
12 MS. GREENBERGER: The same objection, Your  
13 Honor.  
14 THE CLERK: 265.  
15 THE COURT: And it's been shown to the defense.  
16 There's no motion pending.  
17 MR. KEPHART: May I approach?  
18 THE COURT: The objection is premature.  
19 Yes, you may.  
20 BY MR. KEPHART:  
21 Q I'm showing you what's been marked as State's 265.  
22 Have you seen that?  
23 THE COURT: I thought you said 263.  
24 MR. KEPHART: Oh, sorry, Judge.

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LAUFER - CROSS

1 mark can be made instantaneously with just putting your  
2 fingers down and standing up?  
3 A You can certainly make a mark, yes.  
4 Q Pressure mark?  
5 A A mark like this.  
6 Q Pressure mark, doc.  
7 A You're saying this is a pressure mark. I'm saying it's  
8 a mark.  
9 Q No, I am not.  
10 A Well, Dr. Simms said it was a pressure mark.  
11 Q Yes. A pressure mark. Can you leave a pressure  
12 mark by a simple matter of putting your hand on the person  
13 and standing up?  
14 A On a dead body?  
15 Q Yes.  
16 A Yes. Done it lots of times.  
17 Q Okay. Now you had testified that you believe that  
18 it's certainly possible that you can bust somebody's teeth out  
19 by using a metal bat, is that correct?  
20 A Yes.  
21 Q Okay. And but you said in this case you believes it'd  
22 be more so the way that the scissors were held as brass  
23 knuckles and popping him in the mouth?  
24 A I think what I said was that one would expect more

XIV-127

LAUFER - CROSS

1 BY MR. KEPHART:  
2 Q Oh, hold on, doc.  
3 A Oh.  
4 MR. KEPHART: 265. Yeah.  
5 THE COURT: 265.  
6 BY MR. KEPHART:  
7 Q Have you seen that photo before?  
8 A I have not, no.  
9 Q Okay. You indicated that it is your belief that the  
10 skull fracture that Duran Bailey received could not have come  
11 from a baseball bat. I think your words in your report was "a  
12 weak swing of a baseball bat."  
13 A That it was very unlikely that that would be the  
14 mechanism. Yes.  
15 Q And that you would agree, however, that if someone  
16 gets smacked in the mouth with a baseball bat to the point  
17 where it busts his teeth out, even in your scenario with the  
18 mouth open and it hits his teeth, that would cause a  
19 considerable amount of force to his head?  
20 A If you're --  
21 Q I'm not going to say enough to break his skull. I'm  
22 just saying his teeth.  
23 A Well, if you're counting his teeth as part of his head,  
24 yes.

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## LAUFER - CROSS

- 1 Q Okay. And would you expect that that force hitting  
2 him in the mouth would cause not only would his teeth  
3 possibly get busted out but it may cause him to go backwards?  
4 A It's possible. Sure.  
5 Q Okay. And you said in your report that the skull  
6 fracture could likely have happened by striking his head on a  
7 flat wall?  
8 A Yes.  
9 Q And being forced into it with some type of force?  
10 A Correct.  
11 Q And you even testified about the skull fracture  
12 requiring a certain amount of pounds of pressure, or whatever,  
13 to crack --  
14 A Correct.  
15 Q -- to crack his skull. You're aware that in this  
16 particular case there's evidence of an area involving a curb in  
17 the back of the dumpster area where they found Mr. Bailey's  
18 body?  
19 A Yes.  
20 Q Okay. And would you agree then that if he was hit  
21 in the face with sufficient enough force to bust his teeth and  
22 he fell backwards and hit his head on the curb that it could  
23 cause a skull fracture?  
24 A It's possible. It's not consistent with the other

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## LAUFER - CROSS

- 1 Q That's your assumption, correct?  
2 A Well, if we assume that the subdural hematoma  
3 happened at the same time as the skull fracture, then it's  
4 unlikely, according to Dr. Simms' testimony of a two-hour  
5 duration period between the two injuries, that it would have  
6 been the blunt force trauma to the face that then resulted in  
7 the subdural hematoma.  
8 Q Also, you would agree that if you had enough of a  
9 blow to cause a skull fracture, it more than likely would cause  
10 you to become unconscious, maybe knock you out?  
11 A One in this case -- are we talking hypothetically or in  
12 this case?  
13 Q I'm talking about a blow to someone's head, enough  
14 force to cause a skull fracture would be enough to cause  
15 somebody to be knocked out.  
16 A So the hypothetical of a blow sufficient to cause a  
17 skull fracture. And are we specifying where, back of the head,  
18 side of the head, front of the head?  
19 Q Well, let's use this case, skull fracture in this case.  
20 A Okay. So the skull fracture over the temporal region  
21 of the head sufficient -- or a blow sufficient to cause a skull  
22 fracture and the subdural hematoma that we saw in this case  
23 or without that?  
24 Q Let's just use the skull fracture.

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## LAUFER - CROSS

- 1 evidence, however.  
2 Q Other evidence?  
3 A There was evidence which Dr. Simms testified to  
4 that there was a subdural hematoma underlying the --  
5 Q Okay.  
6 A -- skull fracture.  
7 Q Okay.  
8 A And that that had to precede these other injuries.  
9 Q And that'd be -- that may even have been caused by  
10 somebody striking him in the head with a beer bottle?  
11 A There weren't any lacerations that were described.  
12 Q But it could be consistent with being struck in the  
13 head with some type of blunt force instrument like a beer  
14 bottle?  
15 A Well, a beer bottle is rounded like a bat. It --  
16 Q Okay.  
17 A It sort of fits into the same analysis as the bat.  
18 Q Okay. So you're saying, no, that it wouldn't have  
19 caused it?  
20 A Well --  
21 Q Even if it happened sometime earlier?  
22 A Well, the assumptions are that the subdural  
23 hematoma, the bleeding on the brain, happened at the same  
24 time that the skull fracture happened.

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## LAUFER - CROSS

- 1 A Okay. Just the skull fracture. It certainly could  
2 cause someone to be unconscious, but I've seen patients with  
3 skull fractures who had no documented loss of consciousness.  
4 Q But that it's -- you could be knocked out. I mean,  
5 my God, a boxer gets punched in the mouth and he gets  
6 knocked out.  
7 A You don't need to have a skull fracture to be  
8 knocked out.  
9 Q Right. But a blow sufficient enough to cause a skull  
10 fracture would be a considerable blow, wouldn't it?  
11 A Certainly, again, considerable is difficult to define.  
12 But it's a significant-enough injury that it causes a fracture in  
13 the head.  
14 Q Okay. So a blow to the face with a boxing glove  
15 would be -- would you consider that to be as significant as a  
16 blow that causes somebody's skull to fracture?  
17 A It's a different mechanism. There you have a  
18 contrecoup injury where you're actually pushing the brain  
19 around inside the skull and you don't break the skull. So you  
20 can injure the brain without breaking the skull. You can break  
21 the skull without injuring the brain sufficient to cause  
22 unconsciousness.  
23 Q And, doctor, before you left on Tuesday, I had asked  
24 you some questions in regards to being contacted by the

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## LAUFER - CROSS

1 defense in order to give your testimony ... this case. Do you --  
 2 do you remember some line of questioning on that?  
 3 A Yes.  
 4 Q Okay. And you were kind of telling us with respect  
 5 of the time frames, it was about six weeks ago and you were -  
 6 - and you were asked to give an opinion as to the mechanism  
 7 of injury in this case?  
 8 A I don't think I characterized it exactly as that.  
 9 Q Okay.  
 10 A But, certainly, the time frame is correct.  
 11 Q Okay. You're from the Stanford. You work with  
 12 Stanford Medical?  
 13 A Right.  
 14 Q So that's up in the San Francisco area?  
 15 A Yes.  
 16 Q Okay. And your contact would have been with the  
 17 defense here, maybe the two young ladies here?  
 18 A That's it.  
 19 Q Okay. And you're familiar with the law firm that  
 20 they work with?  
 21 A Yes.  
 22 Q And you've testified for them on other occasions?  
 23 A One other occasion, yes.  
 24 Q Okay. And what type of fee do you have an

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## LAUFER - CROSS

1 Q Tissue bridging is when you have the separation of  
 2 the skin and there's certain areas that the tissue bridges across  
 3 the cut or the laceration, correct?  
 4 A So you're talking about a dermal tear with an  
 5 epidermal incomplete tear. Is that what you're describing?  
 6 Q I just want to know if you've ever heard of the term  
 7 "tissue bridging."  
 8 A I've heard of the term in a number of different  
 9 contexts, most of them improperly used.  
 10 Q Okay. So you wouldn't expect in a blunt force injury  
 11 to have connections between the skin. It would be a clean cut  
 12 between the two?  
 13 A No. Actually, in the injury around the perirectal  
 14 area, there are connections.  
 15 Q And just kind of like with the head and everything,  
 16 too?  
 17 A Well, the head is different because there you have  
 18 separate injuries with normal tissue in between.  
 19 Q Doctor, you had indicated in curriculum vitae that  
 20 you have over a hundred patents either existing or pending on  
 21 inventions that you have, is that correct?  
 22 A Yes.  
 23 Q Okay. And would you agree with me that in order to  
 24 be an inventor, to be an inventor -- would you characterize

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## LAUFER - CROSS

1 understanding, what is your fee, your standard fee?  
 2 A I don't have a standard fee.  
 3 Q Do you oftentimes negotiate your fee after you're  
 4 done testifying?  
 5 A No.  
 6 Q So you just come down here on your own, paid for  
 7 your own airline tickets?  
 8 A No.  
 9 Q Okay. Traveled down here, took your time off of  
 10 work, and you're telling us that you do not get paid for  
 11 testifying?  
 12 A The first words that I was told with regard to this  
 13 case is we don't have any money.  
 14 Q Okay. And that's what was told to you. So you're  
 15 saying you're down here testifying and you don't get paid?  
 16 A That's correct.  
 17 Q Can you tell me what tissue bridging is?  
 18 A Perhaps you can give me a context.  
 19 Q You've never heard the term "tissue bridging"?  
 20 A I've heard it in a number of different contexts, yes.  
 21 Q Okay. Tissue bridging is in the context of a blunt  
 22 force injury, a tear in the skin, correct? That's where you see  
 23 it?  
 24 A I'm unfamiliar with that specific terminology.

XIV-135

1 yourself as an inventor?  
 2 A Yes.  
 3 Q You'd have to have a pretty good imagination,  
 4 wouldn't you, doc? Wouldn't you, doc?  
 5 A I don't know what imagination means.  
 6 MR. KEPHART: Pass the witness, Your Honor.  
 7 THE COURT: We're gonna take our afternoon  
 8 stretch break at this time.  
 9 Ladies and gentlemen, in ten minutes, please be in  
 10 the hallway. The bailiff will meet you there to return you to  
 11 your seats in the courtroom.  
 12 During this recess you're admonished not to talk or  
 13 converse among yourselves, nor with anyone else, on any  
 14 subject connected with this trial, and you're not to read, watch  
 15 or listen to any report of or commentary on the trial or any  
 16 person connected with the trial, by any medium of information,  
 17 including, without limitation, newspaper, television, radio and  
 18 Internet, and you're not to form or express any opinion on any  
 19 subject connected with the trial until the case is finally  
 20 submitted to you.  
 21 The jury may exit. We'll see you in ten minutes.  
 22 (Jurors recessed at 15:38:00)  
 23 MR. KEPHART: Oh. Judge, can we leave? I'm  
 24 sorry. I didn't know if you were letting --

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THE COURT: Yes.

MR. KEPHART: Okay. Thank you.

THE COURT: You can step down. I'm sorry. I just wanted to make some notes before I closed this up.

(Court recessed at 15:39:02 until 16:08:18)

(Jurors are not present)

THE BAILIFF: All rise.

Department II is back in session. You may be seated.

THE COURT: The record shall reflect that we're convened outside the presence of the jury in State versus Lobato, under Case Number C177394, in the presence of the defendant, together with her three counsel, the two prosecuting attorneys, and Dr. Laufer remains on the witness stand and under oath.

As we took this break, we received a note from one of the jurors which is advising the Court that there is an individual in the audience who has distracting facial expressions and mannerisms which is uncomfortable. I'm gonna -- I've reviewed this note with counsel in chambers, and it will be marked as the Court's next in number.

THE CLERK: 64.

THE COURT: So the Court's going to advise the ladies and gentlemen in the audience that the jurors should

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LAUFER - REDIRECT

As I told you, ladies and gentlemen, I would check in chambers with regard to the calendars for next week. We would be Monday at 10:30, Tuesday at 1:00, Wednesday at 10:30, and if need be for Thursday, it would be 1:00.

I believe that Mr. Kephart had passed the witness.

Ms. Greenberger may redirect.

MS. GREENBERGER: Thank you.

**REDIRECT EXAMINATION**

BY MS. GREENBERGER:

Q Dr. Laufer, showing you what's been marked as Defense DDD. And I'll just -- I'll show it to you from afar so you can familiarize yourself. Then I'll zoom in on it.

A Mm-hmm.

Q Can you tell us what we're looking at in this picture?

A These are the paired stab wounds that we've been discussing on the abdomen.

Q I'm gonna zoom in a little bit more. Can you tell us what the significance is of the injury, the center part of the injury?

A Yes. So this is an outline of one of the blades of the instrument. And we have one edge here and one edge here. Those are perpendicular to each other. Then we have a longer edge here, and then we have a bevel there. And, unfortunately, my drawing on the screen is not very good, but

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not be distracted from focusing on the evidence and the witnesses' testimony during the presentation of this trial. So please refrain from any expressions or mannerisms that would be drawing their attention to you because they do, of course, need to focus on the evidence. If this continues to be a persisting problem, then the Court will have to ask the individual to leave. If you should find that you're unable to control your emotions, then please step to the hallway.

Thank you.

The bailiff will return the jurors.

THE BAILIFF: The jury is now present.

(Jurors reconvened at 16:10:43)

THE COURT: What was the Court's next in number?

THE CLERK: 65.

THE COURT: 64?

THE CLERK: 65.

THE COURT: The last one was 64?

THE CLERK: Yes.

THE COURT: The one that we just marked?

THE CLERK: Yes.

THE COURT: Okay. The record shall reflect that the ladies and gentlemen have returned to their seats in the jury box area at this time and we will be proceeding forward with the defendant's witness.

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LAUFER - REDIRECT

that exactly matches what you would expect from scissor blades. They are, as Mr. Kephart described, sharpened only on one side with a bevel, and that is the bevel.

Q And is your testimony it's completely consistent with scissors? Is that what you said?

A It is completely consistent and in fact not consistent with any other kind of instrument that I can think of.

Q In your career, have you testified more for the prosecution or the defense?

A It's pretty equal, but I think the prosecution has a slight edge on the number of cases.

Q How much do you get paid in those case where you testify for the prosecution?

A Yeah, they never have any money. I don't think I've been paid in any of those cases.

MS. GREENBERGER: Nothing further.

THE COURT: Recross.

MR. KEPHART: I don't have anything further, Judge. (Pause in the proceedings)

THE COURT: Would counsel approach?

(Off-record bench conference at 16:19:17 until 16:25:50)

THE COURT: Dr. Laufer, there are a number of questions for you that have come from the ladies and gentlemen of the jury which I am going to read to you. After I

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1 read to you a question and you may answer the question, after  
2 all the questions have been read and answered, the attorneys  
3 for each side will have the opportunity to pose any followup  
4 questions to you which they deem appropriate.

5 THE WITNESS: Thank you.

6 THE COURT: If the wound on one abdomen has the  
7 shape of the scissor, why don't the other wounds also look like  
8 that?

9 THE WITNESS: Can we put the picture up?

10 MR. SCHIECK: May we, Your Honor, so he can  
11 explain his answer?

12 THE COURT: Why don't we go ahead and do that.

13 MR. SCHIECK: DDD, counsel, is that --

14 MR. KEPHART: Mm-hmm.

15 MR. SCHIECK: Okay.

16 MR. KEPHART: Yeah, that's our understanding.

17 MR. SCHIECK: I'll show the Court.

18 THE COURT: Okay. Is that the one he's asking for?

19 MR. SCHIECK: Is this the one you're --

20 THE WITNESS: Yes, that's it.

21 THE COURT: Okay. The record shall reflect DDD is  
22 being published at this time.

23 MR. SCHIECK: I'm gonna zoom it out. Is that  
24 sufficient, doctor?

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1 penis cleanly?

2 THE WITNESS: It's really -- I mean, certainly, if you  
3 have something dull it takes more force. You can still shear it.  
4 I don't know if you've ever gone to like Costco and seen them  
5 do the sampling of the little apple sausages, and stuff, and  
6 they take scissors and they just sort of slice it through. It  
7 actually, with a pair of scissors, doesn't take a lot of force. So  
8 it's actually probably easier to do it with scissors because all of  
9 your force from your hand is in opposition, the thumb to the  
10 little finger, so you can apply a lot of force, where with a knife  
11 you really have to sort of go back and forth in sort of a sawing  
12 motion, as someone asked Dr. Simms.

13 THE COURT: That question will be marked as  
14 Court's 67.

15 There is a note that will be marked as Court's 68.

16 Does the condition and age of a person make a  
17 difference on how easily the skin bruises or tears?

18 THE WITNESS: There are a number of things that  
19 change the ability to bruise or tear. Most of the tears that we  
20 saw here, obviously, was -- were from when the tissue was  
21 starting to break down. Those were what we were calling  
22 slippage. But in regular tissue, and we've all probably seen  
23 elderly people who slip and they hit their shin on an edge of  
24 something and it peels all the way up their shin because that

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1 THE WITNESS: Yes. Thank you.

2 So what I presume you're asking is why can you see  
3 this sort of dark area in one of the wounds and not in the  
4 others. This one is -- it appears to be is filled with blood or a  
5 blood clot. These are at an angle so you're looking into the fat  
6 that's in the abdomen wall. If you had the angle right, you  
7 could probably also see the similar hole. Sometimes the holes  
8 close up partially. So if they're in an area where the thickness  
9 of the fat is a little bit more, then it might sort of come closed.  
10 But if you pull the edge apart, then you'll be able to see the  
11 same sort of black area. So it's really more of a function of  
12 how the picture was taken than of how the wound was made.

13 THE COURT: This question will be marked as  
14 Court's Number 65.

15 In previous testimony we were told that the fatal  
16 neck wound was very deep. Could a person cut that deep  
17 through the muscles of the neck with a pair of scissors?

18 THE WITNESS: Absolutely, yes. And, you know, in  
19 depth, I think I testified it's only about an inch to an inch and  
20 a half. So if you know where you're cutting, you don't have to  
21 go in very far to get it.

22 THE COURT: This will be marked as Court's Number  
23 66.

24 Wouldn't it take a very sharp object to cut off a

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1 tissue is very easily torn. It's what we call friable or, you  
2 know, it's just very easy to pull apart. So the thinner the skin  
3 is, the easier it is to tear. Sometimes that's elderly, sometimes  
4 it's patient condition. People are malnourished. They don't  
5 have a lot of fat underneath their skin. Then the bone and the  
6 skin are very close together and so all the force that's  
7 transmitted into the skin between the bone and the thing  
8 that's actually causing the shearing. So, yes, it can make a  
9 difference.

10 THE COURT: This will be marked as Court's 69.

11 Why did you use a garbage can during your  
12 experiment with the foam and ultrasuede rather than placing it  
13 on a hard, flat surface?

14 THE WITNESS: The hardest, flattest surface I had  
15 was my desk and I didn't want to leave marks in it, so I put it  
16 on top of the garbage can so that the blades could actually go  
17 through. The abdominal wall is sort of like that, too, because  
18 you've got this sort of muscular layer with a fairly open surface  
19 underneath that's filled with intestines and organs. So it's  
20 actually more similar, as well, to have the blades have an  
21 ability to go through the surface rather than abruptly stopping.  
22 And I wanted to see what the bunching in the middle would do  
23 and demonstrate that indeed you could get that bunching  
24 rather than getting a cut from the scissor blades all the way

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## LAUFER - RECROSS

1 through and just something that looked like a linear laceration.  
 2 So it was the only way that I could demonstrate or even test  
 3 whether when you went all the way through as far as you  
 4 could go in with the scissors whether you would get two  
 5 separate holes or whether you would get one straight hole,  
 6 and that's why I did it that way.

7 THE COURT: This will be marked as Court's Number  
 8 70.

9 Why did you choose material, like ultrasuede,  
 10 instead of leather?

11 THE WITNESS: Yeah. So we started discussing this  
 12 several weeks ago and I suggested that we get a cadaver and  
 13 just do it on a cadaver. And it was decided that that was too  
 14 expensive. So then I suggested, well, you know, we could  
 15 probably go to an animal lab somewhere and do it on an  
 16 animal that someone else has already used for something else  
 17 but decided that there were enough animal rights issues that  
 18 we probably didn't want to do that, and so the next best thing  
 19 was the material that I could get by going to the Wal-Mart or  
 20 the local fabric store. So what I did is I just looked through  
 21 the bin for remnants and what I found was ultrasuede, which  
 22 they didn't have any leather or I probably would have used  
 23 leather. But ultrasuede was what they had and so that's what  
 24 I used.

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1 Q Okay. You said --

2 MS. GREENBERGER: Going beyond the scope,  
 3 objection.

4 MR. KEPHART: Well, Judge, I'm just laying -- I'm  
 5 getting to that point with regards to they're talking about this  
 6 test that he conducted on ultrasuede.

7 THE COURT: Overruled.

8 BY MR. KEPHART:

9 Q You had indicated that you, in your report, that you  
 10 intended to do further testing to add to or change your  
 11 opinion. And you testified on Tuesday that you did the tests  
 12 with stabbing into the cushions while you were in your office at  
 13 the -- in California, I guess, not during -- it was on the  
 14 weekend, correct?

15 A Correct.

16 Q Okay. And you conducted these particular tests  
 17 before you -- I mean, after you actually typed up this report, is  
 18 that correct?

19 A Yes.

20 Q And but your report actually talks about the -- your  
 21 opinion of the actual stab wounds by a pair of scissors before  
 22 you even did the tests, is that correct?

23 A Yes.

24 Q So what you're saying is that you confirmed your

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## LAUFER - RECROSS

1 THE COURT: That will be marked as Court's 71.

2 You testified that the attacker was organized in their  
 3 approach. What did you mean by organized?

4 THE WITNESS: Well, sometimes you see what I  
 5 would describe as sort of frenzied activity, just random blows,  
 6 just hitting wherever you can hit, you know, just trying to beat  
 7 somebody up. This was a little bit, well, actually, it was a lot  
 8 different from that, where it was pretty clear that when  
 9 someone was cutting at the neck they were cutting in order to  
 10 get to those blood vessels. They did it not just on one side but  
 11 on the other side as well. And so it at least appears that the  
 12 person was thoughtful enough and, in my term, organized  
 13 enough to actually purposefully go for those areas where they  
 14 knew big blood vessels were in order to cut them. So that's  
 15 why I used that term.

16 THE COURT: That will be marked as Court's 72.  
 17 Followup by the State?

18 MR. KEPHART: Can I have these marked? Can I  
 19 have these marked?

**RECROSS EXAMINATION**

20 BY MR. KEPHART:

21 Q Now you indicated that if Monday was the 25<sup>th</sup>,  
 22 Sunday would be the 24<sup>th</sup>. Would you accept that?

23 A Yes.

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## LAUFER - RECROSS

1 opinion with the test?

2 A Correct.

3 Q And you did -- showing 268 -- no, 266, 267 and 268  
 4 to the defense. On Exhibit DDD, in response to some  
 5 questions by the jury, they asked you why doesn't both  
 6 abdomen injuries appear to be the same with regards to what  
 7 you testified here. Do you remember that question?

8 A Yes.

9 Q Okay.

10 A Thanks for granting that there's both, i.e., two as  
 11 opposed to four.

12 Q Yours in regards to both?

13 A Yes.

14 Q Yeah. And can you tell me, you said because they're  
 15 full of blood, and but if you were to see them you would tell  
 16 that they were a -- they were all consistent with that, correct?

17 A I actually think I characterized it as the direction in  
 18 which the picture was taken.

19 Q But you said that -- you said that if you were able to  
 20 see these you would be able -- you would say that they were  
 21 from the same instrument and that you can't see them.

22 A No. I think what I said was that if you looked at  
 23 them in the same direction that they would look similar,  
 24 potentially, unless there was fat or other tissue underneath

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LAUFER - RECROSS

1 that was obscuring the outline of the blade.  
 2 MR. KEPHART: May I approach, Your Honor?  
 3 THE COURT: You may.  
 4 BY MR. KEPHART:  
 5 Q I'm showing you State's Proposed Exhibits 266 and  
 6 267 and ask you if you've seen these before.  
 7 A I have never seen these like this. I don't know if  
 8 they're blowups of these other wounds.  
 9 Q Okay.  
 10 A But they appear like they could have been.  
 11 Q Okay. And you're saying that in --  
 12 MR. KEPHART: The Court's indulgence, Your Honor.  
 13 THE COURT: Yes.  
 14 MR. KEPHART: I need to find this.  
 15 BY MR. KEPHART:  
 16 Q In order to cut off this man's penis that you're  
 17 saying, your testimony is, that it's actually easier with scissors.  
 18 A Than with a knife, yes.  
 19 Q That's your testimony?  
 20 A Correct.  
 21 Q Okay. And then you actually started to say or you  
 22 testified that, well, if you've ever been to the store and you  
 23 had apple sausages and they cut them with scissors. Are you  
 24 saying then that the tissue that is involved or is in the penis,

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LAUFER - RECROSS

1 also that was the motion that the doctor actually made, and I  
 2 was just repeating it, asking him if that was what he did  
 3 earlier, and he said yes.  
 4 THE COURT: The record shall reflect that it was  
 5 demonstrative of the prior motion made by the witness.  
 6 THE WITNESS: And just for clarification, I said I  
 7 could have. I actually don't remember specifically doing it.  
 8 BY MR. KEPHART:  
 9 Q With regards to State's Proposed Exhibits 266 and  
 10 267, these injuries here that you said that you haven't seen  
 11 these photos of before, can you see in there what you  
 12 described as the flat edge on one side and sharp edge and  
 13 then what you were describing earlier that you said that was  
 14 consistent with the way I described scissors? Do you see any  
 15 of that in those photos?  
 16 A Yes.  
 17 Q You do?  
 18 A I do.  
 19 Q Which one?  
 20 A This one.  
 21 Q In which photo?  
 22 A In this one.  
 23 Q Okay. Let me see which.  
 24 A 267.

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LAUFER - RECROSS

1 that that type of tissue is similar to apple-like sausages?  
 2 A It's pretty close.  
 3 Q And --  
 4 Q We --  
 5 A And this particular penis is about the same size  
 6 around as an apple-like sausage. Is that your testimony as  
 7 well?  
 8 A That's not what I testified to. But I --  
 9 Q Well, you're comparing it, sorry, sir, but you're  
 10 comparing it with apple-like sausages.  
 11 A In consistency, yes.  
 12 Q The same size around as well?  
 13 A Don't know.  
 14 Q And do you recall using the words "shearing"?  
 15 A Yes.  
 16 Q And you actually went like this?  
 17 A I probably did, yes. That was on Tuesday?  
 18 Q It's today.  
 19 MR. KEPHART: The Court's indulgence, Your Honor.  
 20 THE COURT: Yes.  
 21 The record shall reflect that Mr. Kephart made a  
 22 motion with his hands out in front of him kind of in a fist,  
 23 bringing them together, out, and back together again.  
 24 MR. KEPHART: Judge, I'd like the record to reflect

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LAUFER - RECROSS

1 Q 267. Okay. In both of them?  
 2 A I'm sorry. Both of the photos?  
 3 Q Both the -- both the injuries.  
 4 A Oh, I can't see it to this one because it's partially cut  
 5 off.  
 6 Q Okay. You don't see it in the other one, though, do  
 7 you?  
 8 A I see that there's a track sort of like what you were  
 9 showing earlier when the blades didn't go in perpendicularly.  
 10 They actually form a track. And there is a track here but, no, I  
 11 don't see that clear outline.  
 12 Q And it's a pretty -- it's a pretty good teardrop injury  
 13 there, correct?  
 14 A On the outside surface, yes.  
 15 Q And inside as well? You won't accept that?  
 16 A Well, on the inside there's actually a track going into  
 17 the plane at an angle, as if the blades were going in at an  
 18 angle not perpendicular to the surface of the skin.  
 19 Q Or as if one was being pulled out and drug across to  
 20 the other side to do the second stabbing?  
 21 A No. I'm actually referring to the inside of the  
 22 wound, not to the abrasion.  
 23 Q Well, I'm not talking about that. I'm talking about  
 24 the hole. You're saying the track, as if the -- as if the blade

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## LAUFER - RECROSS

1 was on an angle, as if maybe the blade was being pulled out  
 2 on an angle to go towards the other wound.  
 3 MR. SCHIECK: I'm gonna object.  
 4 THE WITNESS: No. Actually, this is --  
 5 MR. SCHIECK: Argumentative, Your Honor.  
 6 THE COURT: Overruled.  
 7 THE WITNESS: This track was made with the blade  
 8 going in, not coming out.  
 9 BY MR. KEPHART:  
 10 Q Teardrop, though?  
 11 A Teardropping configuration, yes.  
 12 Q And you haven't seen these photos as well?  
 13 A That's correct, as I stated earlier.  
 14 MR. KEPHART: Well, Judge, just for the record, I  
 15 was discussing, I think I did say it but Sandy said I didn't, so  
 16 266 and 267. 266 was the one he was talking about that he  
 17 says went in on an angle.  
 18 BY MR. KEPHART:  
 19 Q Is that correct, doctor?  
 20 A I think that's right. Yes.  
 21 Q 266. Okay.  
 22 THE COURT: That's correct.  
 23 MR. KEPHART: Okay.  
 24 (Pause in the proceedings)

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## LAUFER - RECROSS

1 the right side of the neck and --  
 2 A Correct.  
 3 Q Is that correct?  
 4 A Yes.  
 5 Q Okay.  
 6 A Versus the front of the neck, I believe.  
 7 Q Okay. Versus the front of the neck. I want to show  
 8 you what's been marked as State's --  
 9 MR. KEPHART: The Court's indulgence.  
 10 BY MR. KEPHART:  
 11 Q 268. I'm showing you 268. Have you seen that  
 12 before?  
 13 A No.  
 14 Q That'd be right in the middle of the neck?  
 15 A Actually, can I see it again?  
 16 Q And while you're looking at it, what is the term  
 17 "anterior"?  
 18 A Front.  
 19 Q Anterior, what does that mean?  
 20 A Front. Sort of on the side of the face.  
 21 Q Okay. Anterior means front?  
 22 A Yes.  
 23 Q Okay. And this would be in the front?  
 24 A It looks like it's in the front. Yes.

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## LAUFER - RECROSS

1 BY MR. KEPHART:  
 2 Q Now you had indicated to the -- to the jury that you  
 3 believed that this was an organized type of attack. And part of  
 4 your, correct me if I'm wrong, part of your testimony was  
 5 because of the movement from the right side of the neck,  
 6 carotid artery, that side, over to the other side, that it would  
 7 seem to be an attempt to get to the carotid artery, is that  
 8 correct?  
 9 A Well, parts of it are correct. I didn't say that the  
 10 reason why it was organized was because he went from one  
 11 side to the other side. I said that the ability to aim toward the  
 12 vessels in this way and to do it not once but twice --  
 13 Q Okay.  
 14 A -- represents organization and thought.  
 15 Q And that would be the carotid artery on the right or  
 16 the carotid artery on the left?  
 17 A I don't know which one he did first or the --  
 18 Q Well, I know that.  
 19 A The perpetrator.  
 20 Q But I'm just talking about the two. There -- is there  
 21 a carotid artery on both sides?  
 22 A Yes.  
 23 Q Okay. So if you're aiming at one side, and we -- you  
 24 and I had some exchange with regards to that injury being on

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## LAUFER - FURTHER REDIRECT

1 Q And you had actually read the autopsy report. And  
 2 when Dr. Simm says "located on the anterior neck," that would  
 3 mean in the front?  
 4 A Correct.  
 5 Q Okay. A stab wound incised and goes on to talk  
 6 about it. Doesn't talk about any wound to the right side of the  
 7 neck, does it?  
 8 A I don't recall.  
 9 Q And you would agree, though, that Exhibit 268  
 10 shows a stab wound to the anterior neck, right in the middle?  
 11 A The way that picture is taken, yes.  
 12 MR. KEPHART: Nothing further, Your Honor. Pass  
 13 the witness.  
 14 THE COURT: Followup questions by the defense?  
 15 MS. GREENBERGER: Just one.  
 16 **FURTHER REDIRECT EXAMINATION**  
 17 BY MS. GREENBERGER:  
 18 Q Do any of the photos that you've been shown today  
 19 change your opinion in any way?  
 20 A Can you be more specific since I have about nine  
 21 pages of opinion here? Any aspects of that in particular? Or, I  
 22 mean, I would not say that my opinion has changed today on  
 23 the basis of additional pictures that I asked to see previously  
 24 but did not see previously.

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## LAUFER - FURTHER REPLY

1 Q So the photos that you've shown have not changed  
2 your opinion with regard to the mechanism of injury in this  
3 case?

4 A No. I mean, I might recharacterize the description  
5 of where that wound is or do some further investigation  
6 because, certainly, that last picture makes it look like it's over  
7 the trachea, like the assailant was trying to actually cut the  
8 windpipe, but that's still consistent with an organized attack.  
9 So in that sense, no.

10 MS. GREENBERGER: Nothing further.

11 MR. KEPHART: Nothing further, Your Honor.

12 THE COURT: You may step down from the witness  
13 stand.

14 THE WITNESS: Thank you.

15 THE COURT: Does counsel wish to approach?

16 (Off-record bench conference at 16:48:43 until 16:49:16)

17 THE COURT: Ladies and gentlemen, we will now be  
18 returning to the State's case in chief and the State is calling  
19 their next witness. Ms. DiGiacomo has stepped to the hall to  
20 bring that witness into the courtroom at this time.

21 THE CLERK: Come all the way forward.

22 MS. DIGIACOMO: And, Your Honor, for the record,  
23 the State's calling Zachory Robinson.

24 THE COURT: Very well.

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## ROBINSON - DIRECT

1 Sam's Town?

2 A Closer.

3 Q What was your job there?

4 A I was the assistant general manager.

5 Q Okay. And what were some of your duties?

6 A Revenue collection, sales marketing.

7 MS. DIGIACOMO: The Court's indulgence. May I  
8 approach?

9 THE COURT: Yes.

10 MS. DIGIACOMO: May I approach the witness?

11 THE COURT: Yes.

12 BY MS. DIGIACOMO:

13 Q I'm gonna show you what's been marked for  
14 purposes of identification as State's Proposed Exhibit 269 and  
15 270. Can you look at those and let me know if you recognize  
16 what's depicted in those photographs? Actually, I gave them  
17 to you upside down.

18 A Yes.

19 Q Is this an aerial view?

20 A Yes, it is.

21 Q Okay. And what are depicted in both of these?

22 A It looks like it is the property, Budget Suites.

23 Q Okay. The one on Boulder Highway, Nellis and  
24 Flamingo?

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## ROBINSON - DIRECT

1 THE CLERK: Remain standing, raise your right  
2 hand.

3 **ZACHORY ROBINSON, STATE'S WITNESS, SWORN**

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

6 THE WITNESS: Zachory Robinson, Z-A-C-H-O-R-Y  
7 R-O-B-I-N-S-O-N.

8 THE COURT: The State may proceed.

9 MS. DIGIACOMO: Thank you, Your Honor.

10 **DIRECT EXAMINATION**

11 BY MS. DIGIACOMO:

12 Q Mr. Robinson, I want to direct your attention back to  
13 May, 2002. Do you recall where you were working at that  
14 time?

15 A It would have been Budget Suites.

16 Q Which Budget Suites?

17 A Flamingo and Nellis.

18 Q Okay. Now, are you familiar with Boulder Highway  
19 as well in that area?

20 A Yes.

21 Q Are there two Budget Suites on Boulder Highway?

22 A There is.

23 Q Would the Boulder -- excuse me, the Budget Suites  
24 you worked at be closer to Sam's Town or further away from

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## ROBINSON - DIRECT

1 A This is Boulder Highway/Nellis. And this one, I can't  
2 tell if it's Boulder Highway and Nellis or if that's the other  
3 property.

4 Q Okay. So the one that you said was Boulder  
5 Highway/Nellis is 270?

6 A Let's see. That's correct.

7 Q Okay. And 269, does it look the same, just zoomed  
8 in on a certain area?

9 A Actually, that is the property 'cause the pool, I  
10 recognize it. Yes, it is.

11 Q Okay. And this is just a closer-up view of the  
12 property, and I'm referring to 269, than is depicted in 270?

13 A That's correct. Yes.

14 MS. DIGIACOMO: Your Honor, at this time the State  
15 would move for admission of State's Proposed Exhibits 269  
16 and 270.

17 MR. SCHIECK: No objection, Your Honor.

18 THE COURT: Granted.

19 (State's Exhibit Nos. 269 and 270 admitted)

20 BY MS. DIGIACOMO:

21 Q Okay. I'm gonna show you first 270. Okay. Can  
22 you describe for the jury what we're looking at here? And just  
23 so you know, the screen in front of you, if you touch it with  
24 your finger it'll kind of draw on it like on a football on Sundays.

XIV-161

000733

ROBINSON - DIRECT

- 1 A Oh, okay.  
 2 Q Okay. So if you can go ahead and describe what's  
 3 depicted in State's Exhibit 270.  
 4 A It's an aerial overview of the property.  
 5 Q Okay. Where is the property, if you could circle it?  
 6 A Yeah. Well, the property itself sits right along there.  
 7 Q Okay. So that entire area?  
 8 A Yep.  
 9 Q And where is the office located?  
 10 A It would be right here.  
 11 Q I'm sorry. Did you touch the screen? I can't see.  
 12 A Yes, I did.  
 13 Q Okay. Could you do it again?  
 14 A Sure.  
 15 Q Circle where the office is.  
 16 A It's right -- the office is right there.  
 17 Q Okay. Now I'm gonna show you State's Exhibit 269.  
 18 Can you see this?  
 19 A Yes.  
 20 Q And this is the more closeup version than in 270?  
 21 A Correct.  
 22 Q Where's the office here?  
 23 A It would be right here.  
 24 Q All right. Now, is there -- we can see the pool in

XIV-162

ROBINSON - DIRECT

- 1 A On the stairs?  
 2 Q Yeah.  
 3 A The walls are rock also, yes.  
 4 Q All right. And this waterfall on the outside, is it rock  
 5 as well?  
 6 A Yes.  
 7 Q So it kind of looks like a cave?  
 8 A That's correct.  
 9 Q And where exactly would this waterfall or the tunnel  
 10 that we've been talking about be on State's Exhibit 269? Can  
 11 you clear that? Here, wait. Actually, let me try this. I don't  
 12 know if it'll work. Let me try zooming in a little. Okay. Can  
 13 you see the area of the office?  
 14 A Yes. It --  
 15 Q All right. And do you see where we're talking about  
 16 the waterfall or the cave, the rock formation?  
 17 A Actually, if you could zoom out a little bit.  
 18 Q Is it blurry?  
 19 A Yeah.  
 20 Q Okay, sorry.  
 21 A Okay. The waterfall is going to be right in this area  
 22 right here.  
 23 Q So it's pretty close to where the office is?  
 24 A Yes, it is.

XIV-164

ROBINSON - DIRECT

- 1 here, but is there a waterfall or a fountain located somewhere  
 2 on this property?  
 3 A Yes, there is.  
 4 Q And where is that? If you want to clear the screen,  
 5 you touch the bottom right.  
 6 A Just touch the bottom right? Oh. It would be right  
 7 in this area there.  
 8 Q And can you describe exactly what we're talking  
 9 about when we say the waterfall or the fountain?  
 10 A It's actually a pond that has a water fountain and  
 11 there's a tunnel that goes through that waterfall.  
 12 Q All right. And the tunnel, can you describe what that  
 13 looks like?  
 14 A It's fake rock. It's probably maybe 3 to 5 feet in  
 15 width, depending on which part of the tunnel you're in  
 16 because it curves. And it's probably 6, 7 feet long, if I  
 17 remember correctly.  
 18 Q And do you recall how tall it is?  
 19 A Probably, I would say, no more than 6 feet.  
 20 Q Okay. And you said that there -- it's made of rock.  
 21 When you walk through the inside of this tunnel, is it rock  
 22 inside?  
 23 A I believe it was concrete on the bottom.  
 24 Q Not on the bottom. I mean the walls.

XIV-163

ROBINSON - DIRECT

- 1 Q Where's the front entrance to the office?  
 2 A Right here.  
 3 Q And approximately how far away is this water  
 4 feature from the front office?  
 5 A 30, 40 feet maybe.  
 6 Q What kind of complex or -- is Budget Suites? Is it a  
 7 hotel, apartment complex?  
 8 A I don't know what it is now. At the time it was a  
 9 weekly, monthly and daily rental.  
 10 Q And you're referring to back in May of 2002?  
 11 A 2002. Correct.  
 12 Q Now, what about throughout the year of 2001?  
 13 A I don't think I was there in 2001.  
 14 Q Right. But do you know if at that time, before you  
 15 got there, it was a daily, weekly, monthly rental place?  
 16 MR. SCHIECK: Objection unless we have foundation  
 17 of his knowledge, Your Honor.  
 18 THE COURT: Sustained.  
 19 BY MS. DIGIACOMO:  
 20 Q Okay. Do you have any knowledge of what it was?  
 21 A Actually, it would have been a daily, weekly, monthly  
 22 rental based on my preview of prior accounting books.  
 23 Q The office area, was it open certain business hours?  
 24 A Twenty-four hours.

XIV-165

000734

ROBINSON - DIRECT

- 1 Q It's twenty-four hours?
- 2 A Correct.
- 3 Q Was the area that we have on the screen here --
- 4 well, and actually let me stop there. You have the office door
- 5 circled and the water feature circled. What's this area right
- 6 here below both of them in the picture?
- 7 A That's a parking lot.
- 8 Q Okay. So those are parking structures?
- 9 A That's correct.
- 10 Q Okay. And if I zoom out and we look more on the
- 11 outside of the pictures, there's kind of white along the edges
- 12 here. What's that?
- 13 A That's the covered parking.
- 14 Q Okay. So there is covered parking?
- 15 A Correct.
- 16 Q In location to where the office is and these front
- 17 parking spots, where is the nearest area where there might be
- 18 a dumpster located?
- 19 A I'm trying to remember. There would have been
- 20 one --
- 21 Q If you could clear the screen.
- 22 A -- if I remember correctly, right about in this area
- 23 here and there would have been one in this area here.
- 24 Q Okay. So now the other area that you circled, I'm

XIV-166

ROBINSON - DIRECT

- 1 twenty-four hours. What was the purpose of having it open
- 2 twenty-four hours?
- 3 A I -- the needs of the tenants warranted that,
- 4 actually.
- 5 Q Okay. So was the office busy all twenty-four hours
- 6 of the day?
- 7 A I would say about twenty of them it was.
- 8 Q Okay. Well, was there any down time in the office?
- 9 A Early morning.
- 10 Q Okay. And what would you qualify as early
- 11 morning?
- 12 A Maybe 1:30, 2:00 o'clock 'til probably right around
- 13 4:00, that time frame.
- 14 Q All right. And when you say it wasn't busy during
- 15 those hours, what do you mean by that? What lessened
- 16 during those hours?
- 17 A Well, it was 839 units. And a lot of the employees
- 18 may have worked in casinos so they had odd shifts. But
- 19 usually by 2:00 o'clock everyone was pretty much home and in
- 20 their units, I guess.
- 21 Q Okay. So did you get a lot of foot traffic in and out
- 22 of the office during twenty of the hours of the day?
- 23 A Yes, we did.
- 24 Q Okay. And what about the area that we were

XIV-168

ROBINSON - DIRECT

- 1 gonna show you 270 'cause it kind of went off screen there.
- 2 A Yeah.
- 3 Q If you can clear the screen. I'm sorry. The
- 4 dumpster that would be closest to the office area here, where
- 5 was that one that you were circling?
- 6 A It would be here. I went too far down. But right
- 7 over in that area there.
- 8 Q All right. Those are the two that would be closest to
- 9 the office?
- 10 A Correct. If --
- 11 Q Okay. And this --
- 12 A That's my memory.
- 13 Q This right here looks like an entrance into the
- 14 parking lot.
- 15 A That's correct.
- 16 Q And then this right here in front of the office, what is
- 17 that?
- 18 A That's just a grass area with a sidewalk.
- 19 Q All right. And so the office is approximately how far
- 20 from the sidewalk of Boulder Highway?
- 21 A I would say probably 100, 125 feet.
- 22 Q Okay. It's within walking distance?
- 23 A Yes.
- 24 Q Okay. And you said this was -- the office was open

XIV-167

ROBINSON - DIRECT

- 1 looking at here with these parking spots in front of the office?
- 2 I mean, was there a lot of activity in this area as well?
- 3 A Yeah.
- 4 Q People coming and going from the office?
- 5 A Yes.
- 6 Q Now, were there any security cameras around the
- 7 office building that would point out to the parking area?
- 8 A We had security cameras inside only. We didn't
- 9 have them outside.
- 10 Q Was there any security that patrolled the area, the
- 11 property?
- 12 A Yes. We had courtesy patrol.
- 13 Q All right. And when you say -- when you say
- 14 courtesy patrol, what do you mean by that?
- 15 A We didn't offer them as security guards. They were
- 16 more of just courtesy patrol to see if anything's happening
- 17 and, if so, call the police.
- 18 Q Did they work for Budget Suites?
- 19 A Yes, they did.
- 20 Q Do you recall what -- how many of these courtesy
- 21 control security that you had working on a day?
- 22 A Average was two. There was a period of --
- 23 MR. SCHIECK: Objection, Your Honor. Are we
- 24 talking about at what time period?

XIV-169

000735



ROBINSON - DIRECT

1 THE COURT: Sustained.  
 2 BY MS. DIGIACOMO:  
 3 Q Okay. Back in 2002 when you worked there.  
 4 A Mm-hmm.  
 5 Q Do you know approximately how many worked  
 6 there?  
 7 MR. SCHIECK: Objection, relevance, Your Honor.  
 8 We're talking about 2001, before he worked there.  
 9 MS. DIGIACOMO: Well, I'm trying to lay foundation  
 10 to get back to 2001.  
 11 THE COURT: The Court will sustain the objection.  
 12 BY MS. DIGIACOMO:  
 13 Q Okay. Do you have any knowledge about the time  
 14 frame of May, June, July of 2001, whether or not there was  
 15 security at that time?  
 16 A There was security at that time, yes.  
 17 Q Okay. The courtesy control, as you call it?  
 18 A Courtesy patrol.  
 19 Q Oh, patrol.  
 20 A Mm-hmm.  
 21 Q Excuse me. There was at that time?  
 22 A Yes, there was.  
 23 Q What were the specific duties of the courtesy patrol;  
 24 just to call the police if anything was needed?

XIV-170

ROBINSON - DIRECT

1 Q Okay. How do you know that?  
 2 A They are kept on file. We have logbooks of them.  
 3 Q Okay. So when you took over this job, it was up to  
 4 the security guards to leave you their reports at the end of  
 5 their shift?  
 6 A That's correct.  
 7 Q And what did you do with those?  
 8 A I reviewed them for any possible tenant issues and  
 9 then I filed them or followed up, depending what was on  
 10 there.  
 11 Q Okay. So were you -- was it your job to keep these  
 12 in the ordinary course of business?  
 13 A Yes.  
 14 Q And did you also keep all the past security records --  
 15 A Yes.  
 16 Q -- as well?  
 17 A Yes, I did.  
 18 Q That was part of your duties?  
 19 A Yes.  
 20 Q Back in 2002 when you were working there, were  
 21 you asked to go and review the records that you kept for May,  
 22 June and July of 2001?  
 23 A Yes, I was.  
 24 Q You -- and did you review all of those security

XIV-172

ROBINSON - DIRECT

1 A That's correct.  
 2 Q Did they make reports?  
 3 A Yes, they did.  
 4 Q Okay. How did the reports work?  
 5 A It was basically an hour-by-hour account of their  
 6 travels. They had to walk the property on an hourly basis and  
 7 then report anything they saw on there.  
 8 Q All right. And so these reports were made as they  
 9 were doing -- working their shifts?  
 10 A That's correct.  
 11 Q At the end of the shift -- and you said there was an  
 12 average of two people. Was that the same back in 2001?  
 13 A Actually, yes, it is.  
 14 Q All right. They made these reports during their shift.  
 15 What happened at the end of their shifts with these reports?  
 16 A They were put on my desk.  
 17 Q Okay. And you were the assistant general manager?  
 18 A That's correct.  
 19 Q Okay. And the person who was the assistant  
 20 general manager before you, was that the same protocol?  
 21 A I do not know that.  
 22 Q Okay. So do you know if the -- back in 2001, May,  
 23 June and July, were security reports turned in on a daily basis?  
 24 A Yes, they were.

XIV-171

ROBINSON - DIRECT

1 reports?  
 2 A Yes, I did.  
 3 Q When you reviewed those, did you notice that you  
 4 were missing a day or two here and there?  
 5 A No.  
 6 Q So you reviewed all of those days?  
 7 A Yes, I did.  
 8 Q So it would have been thirty or thirty-one days for  
 9 each month?  
 10 A That's correct.  
 11 Q For the reports that you reviewed from May, June  
 12 and July, 2001, was there any reports made regarding a man  
 13 with an injured penis either cut or slashed?  
 14 A In 2001?  
 15 Q In 2001.  
 16 A No, there was not.  
 17 Q Were there any reports you reviewed regarding  
 18 blood found on the ground around the area close to the office,  
 19 the fountain area?  
 20 A No, there was not.  
 21 Q Was there any reports by the security generated  
 22 regarding any injured person, possibly a penis slashed, cut,  
 23 anything regarding one of the dumpsters?  
 24 A No, there was not.

XIV-173

000736

## ROBINSON - DIRECT

1 Q In the parking lot?  
 2 A No.  
 3 MS. DIGIACOMO: The Court's indulgence.  
 4 (Pause in the proceedings)  
 5 BY MS. DIGIACOMO:  
 6 Q Was there any reports regarding somebody with a  
 7 cut-off penis?  
 8 A No.  
 9 Q Actually cut off?  
 10 A No, there was not.  
 11 Q Were there any reports of somebody finding a knife  
 12 laying around or a butterfly knife?  
 13 A Not that I can remember, no.  
 14 Q Okay. If somebody had found a weapon on the  
 15 property, would that have been turned in to the office?  
 16 A Yes, it would.  
 17 MR. SCHIECK: Objection, speculation, Your Honor.  
 18 How would he know?  
 19 THE COURT: Overruled.  
 20 BY MS. DIGIACOMO:  
 21 Q That was part of the policies and procedures for  
 22 your security?  
 23 A That is correct.  
 24 MR. SCHIECK: She said if anyone found a knife on

XIV-174

## ROBINSON - CROSS

1 that kind of thing, was found and the police contacted?  
 2 A That's correct.  
 3 MS. DIGIACOMO: Nothing further.  
 4 THE COURT: Cross.  
 5 MR. SCHIECK: May I proceed, Your Honor?  
 6 THE COURT: Yes.  
 7 **CROSS-EXAMINATION**  
 8 BY MR. SCHIECK:  
 9 Q Mr. Robinson, just so I'm clear, when did you start  
 10 working at Budget Suites?  
 11 A In 2002.  
 12 Q When in 2002?  
 13 A I don't remember the specific month.  
 14 Q Can you give us a ballpark?  
 15 A It would have been probably mid, maybe a little bit  
 16 earlier.  
 17 Q So mid-2002 or --  
 18 A Or a little bit earlier, yes.  
 19 Q Okay. And you indicated that you had reviewed  
 20 some accounting reports?  
 21 A Correct.  
 22 Q Regarding whether or not -- or what type of rentals  
 23 were on the property, correct?  
 24 A More specifically, the revenue that's collected off of

XIV-176

## ROBINSON - DIRECT

1 the property, not if the security found it on the property.  
 2 MS. DIGIACOMO: I'll clarify.  
 3 BY MS. DIGIACOMO:  
 4 Q If the security had found a knife or a butterfly knife,  
 5 even more specifically, on the property, would it have been  
 6 turned in?  
 7 A Yes.  
 8 Q You --  
 9 A It's a requirement. Yes.  
 10 Q Or the other assistant manager?  
 11 A That's correct.  
 12 MS. DIGIACOMO: The Court's indulgence.  
 13 (Pause in the proceedings)  
 14 BY MS. DIGIACOMO:  
 15 Q If you had -- well, if a security officer had found  
 16 blood, bloody clothes, evidence of somebody having a cut  
 17 wound, those are things that would be called -- the police  
 18 would be called on?  
 19 A Yes.  
 20 Q Would it indicate in those reports whether or not the  
 21 police was contacted?  
 22 A Yes, it does.  
 23 Q But you didn't have any of those situations either  
 24 where blood or evidence of blood or bloody clothes and items,

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## ROBINSON - CROSS

1 the units.  
 2 Q But you do the books for the Budget Suites?  
 3 A One of the individuals that does, yes.  
 4 Q Okay. So you're an accountant or --  
 5 A No, I'm not.  
 6 Q -- a bookkeeper?  
 7 A I have bookkeeping skills, not a bookkeeper.  
 8 Q But did you keep the books for this Budget Suites?  
 9 A I was one of the persons that did.  
 10 Q Okay. Was that your primary responsibility?  
 11 A It was a portion of it but not primary.  
 12 Q Okay. Were you, when you started in mid-2002,  
 13 were you in charge of the security patrol?  
 14 A No, I was not.  
 15 Q Did you have supervisory capabilities over them?  
 16 A Yes, I did.  
 17 Q Did they report directly to you?  
 18 A In the absence of the general manager, yes.  
 19 Q Okay. Well, when did the general manager work?  
 20 A He worked from usually 6:00 in the morning 'til  
 21 about 4:00 in the afternoon.  
 22 Q And that's after you started there?  
 23 A I'm sorry?  
 24 Q After you started there in mid-2002?

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ROBINSON - CROSS

1 A That's correct.  
 2 Q Okay. Who was the general manager in May of  
 3 2001?  
 4 A I do not know.  
 5 Q And you have no idea who it was?  
 6 A That's correct.  
 7 MS. DIGIACOMO: Objection, asked and answered.  
 8 THE WITNESS: I don't remember. I don't know.  
 9 THE COURT: Overruled.  
 10 BY MR. SCHIECK:  
 11 Q So you never had any conversations with him about  
 12 what happened in May of 2001?  
 13 A With whom?  
 14 MS. DIGIACOMO: Objection, hearsay.  
 15 THE COURT: Well --  
 16 MR. SCHIECK: I didn't ask what the conversations  
 17 were. I said did you have any.  
 18 THE COURT: I'm gonna sustain the objection. You  
 19 may rephrase the question.  
 20 BY MR. SCHIECK:  
 21 Q Well, did you ever meet the manager that was  
 22 working there, the general manager that worked there in May,  
 23 2001?  
 24 A Not that I can recall.

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ROBINSON - CROSS

1 those was back in 2002 or '03, I believe. This is 2006. So I  
 2 can't remember that far back.  
 3 Q Okay. You don't remember any of the names of  
 4 who the security officers were?  
 5 A No.  
 6 Q Security patrol?  
 7 A No, sir.  
 8 Q Was it -- when you started there in mid of 2 -- mid-  
 9 2002, did the security patrol officers at that time live on-site?  
 10 A When I was there, yes, they did.  
 11 Q So they had their own residence there on-site?  
 12 A Yes, sir.  
 13 Q Okay. And you said they walked around the  
 14 property?  
 15 A Yes, they did.  
 16 Q Okay. They didn't have motorized vehicles that they  
 17 drove and patrolled the property, correct?  
 18 A No. They had bicycles for a short period of time.  
 19 Q Well, when did they have bicycles?  
 20 A It would have been right around the holidays of  
 21 December in 2002.  
 22 Q 2002?  
 23 A That's correct.  
 24 Q Okay. You don't know if they had bikes or -- in

XIV-180

ROBINSON - CROSS

1 Q Okay. So if you never met him, you probably didn't  
 2 have any conversations with him?  
 3 A That's correct.  
 4 Q Okay. And in May of 2001, would the security patrol  
 5 officers have been under his supervision then?  
 6 A If the policy was the same, yes.  
 7 Q Do you even know if the policy was the same?  
 8 A As far as supervisory?  
 9 Q Over the security patrol.  
 10 A No, I do not.  
 11 Q Okay. So you don't know what the policy was in  
 12 May of 2001?  
 13 A I was not there. I can't speak to that.  
 14 Q And you don't know who the manager was?  
 15 A That's correct.  
 16 Q Who were the security patrol officers at that time?  
 17 A In 2001?  
 18 Q Yes.  
 19 A I can't speak to that staff.  
 20 Q Well, now you indicated that you had reviewed all of  
 21 these reports back in May, June and July of 2001.  
 22 A That's correct.  
 23 Q Their names must have appeared on them.  
 24 A Yes, but that was -- well, the last time I reviewed

XIV-179

ROBINSON - CROSS

1 2001?  
 2 A I do not know.  
 3 Q So how many security patrol officers were there in  
 4 May of 2001?  
 5 A In 2001? I do not know.  
 6 Q Did they patrol -- well, there could have been one,  
 7 there could have been more than one, correct?  
 8 A That's correct.  
 9 Q Okay. You don't know that information?  
 10 A That's correct.  
 11 Q Okay. And you don't know what hours the security  
 12 patrol officer or officers worked during that period of time, do  
 13 you?  
 14 A That's correct.  
 15 Q Okay. You don't know if they worked, let's say, the  
 16 graveyard shift from 12:00 to 8:00 in the morning. You don't  
 17 know if there was a security patrol officer on duty during that  
 18 period of time or not in May of 2001?  
 19 A That's correct.  
 20 Q There may have been only one shift that was  
 21 worked during that period of time?  
 22 A That's possible.  
 23 Q When were you asked to look at these reports and  
 24 go back and --

XIV-181

## ROBINSON - CROSS

1 A I don't know the date when I was asked.  
 2 Q Okay. Sometime after mid-2002?  
 3 A Correct.  
 4 Q Or roughly mid-2002?  
 5 A Correct.  
 6 Q And you've come to court and testified in a previous  
 7 proceeding, correct?  
 8 A That is correct.  
 9 Q Okay. And if that proceeding was in May of 2002,  
 10 that would have been after you started working at Budget  
 11 Suites?  
 12 A That's correct.  
 13 Q But you had only just recently started. Would that  
 14 be fair?  
 15 A I think, actually, I was there for just a couple  
 16 months before I had to come to court.  
 17 Q You're comfortable with that time frame, a couple  
 18 months before May of 2002?  
 19 A That's correct.  
 20 Q And it was during that time period before, in that  
 21 few months before May of 2002, you were asked to go back  
 22 and look at some reports?  
 23 A That's correct.  
 24 Q Who asked you to go back and look at those

XIV-182

## ROBINSON - CROSS

1 taken?  
 2 A No, I do not.  
 3 Q You don't know if it was taken in 2001, 2002?  
 4 A No, sir.  
 5 Q You've seen this aerial photograph before, though, is  
 6 that correct, or have you?  
 7 A I can't remember.  
 8 Q And you indicated, and correct me if I'm wrong,  
 9 there was, and I don't -- I can't mark on the screen so I have  
 10 to use my pen there. So you're probably gonna have to -- oh,  
 11 you can see it.  
 12 A I can see fine.  
 13 Q Is that -- is that a dumpster area that you were  
 14 talking about right there?  
 15 A The one that I pointed out, no.  
 16 Q Okay. Which one did you point out?  
 17 A I believe, if I remember correctly, it is over in this  
 18 area here. Right along in here.  
 19 Q Okay. So that, to your recollection, was a dumpster  
 20 area?  
 21 A That's correct.  
 22 Q Okay. What about this area over here; would that  
 23 have been a dumpster area also?  
 24 A It does appear to be one.

XIV-184

## ROBINSON - CROSS

1 reports?  
 2 A I can't remember, actually.  
 3 Q Was it the Las Vegas Metropolitan Police  
 4 Department?  
 5 A I don't remember.  
 6 Q Do you recall the police ever being there and asking  
 7 you any questions about May of 2001?  
 8 A I don't believe there were any.  
 9 Q You don't believe any police officers came and  
 10 inquired about that time period?  
 11 A Not that I can remember, no.  
 12 Q Now you were asked some questions concerning  
 13 these fountains, where there's a fountain at the front of the  
 14 property.  
 15 A Yes, sir.  
 16 Q Is that correct?  
 17 A That's correct.  
 18 Q I'm gonna show you what's been marked as State's  
 19 269, which is the aerial view of the property, is that correct?  
 20 A Yes, sir.  
 21 Q Okay. And you indicated that there were some  
 22 dumpster areas there on the property?  
 23 A Yes, sir.  
 24 Q Do you know when this aerial photograph was

XIV-183

## ROBINSON - CROSS

1 Q There's more than one dumpster area there at  
 2 Budget Suites?  
 3 A Yes, sir.  
 4 Q Okay. And from this photograph, this looks like a  
 5 number of cars parked in this area near where that dumpster  
 6 would be at. Is that fair to say?  
 7 A Yes.  
 8 Q Okay. And those would be parking for tenants that  
 9 were staying there or visitors?  
 10 A That's correct.  
 11 Q Is there a special area for visitors and special areas  
 12 for residents or is it just open parking?  
 13 A It is open parking.  
 14 Q Okay. So if you pulled in there and were staying  
 15 there, you just sort of found a spot where you could find it?  
 16 A That's correct.  
 17 Q And, likewise, if you were visiting, the same thing?  
 18 A That's correct. Other than the parking in the very  
 19 front of the office. That was marked for check-in.  
 20 Q Okay. And where is -- where is the check-in parking  
 21 that would have been reserved?  
 22 A That would have been right in this area here.  
 23 Q So that's --  
 24 A Along there.

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000739

ROBINSON - CROSS

- 1 Q -- got the typical signs that say, "check-in only or  
2 something like that on them?  
3 A I believe it said "Budget Suites Registration Parking."  
4 Q Okay. And then everything else, like these white  
5 cars over here, that would be open parking?  
6 A That's correct.  
7 Q Okay. And these here, this would be open parking?  
8 A Yes, sir.  
9 Q Okay. And you had some covered parking for the --  
10 for the people that stayed there or visited there, is that  
11 correct?  
12 A That's correct. But it was not assigned.  
13 Q It was not assigned?  
14 A No, sir.  
15 Q Okay. And was there quite a bit of covered parking?  
16 A I would say for that community, yes.  
17 Q Okay. Can you sort of show me where you recall  
18 covered parking being at?  
19 A On this, on this screen, everything you see with the  
20 white covered right there, that's all covered parking.  
21 Q And that's --  
22 A The same thing down for in here.  
23 Q Okay.  
24 A And there.

XIV-186

ROBINSON - CROSS

- 1 A Yes. One is a sidewalk right along this building, and  
2 the other one is a sidewalk that comes right along and loops  
3 back.  
4 Q Okay. So you can get to that fountain-type area  
5 where the -- where the cave walkway is at from the -- from  
6 the upper portion of the screen also, is that correct?  
7 A From this side over here, right in that area?  
8 Q Up by where the dumpsters are at. Yeah.  
9 A Yes, you can.  
10 Q There's a walkway that goes through there?  
11 A You would cut across the parking lot and there was  
12 a sidewalk that comes right along in the back of the property  
13 and then into the --  
14 Q So if you -- if you had parked your car over there  
15 where you started your squiggly line, you'd actually be in view  
16 of a dumpster and covered parking and not too far of a walk  
17 to where the fountain's at, correct?  
18 A That's correct.  
19 Q Do you know a Mike Tisdale  
20 A Yes.  
21 Q Who is Mr. Tisdale?  
22 A He was my supervisor.  
23 Q Okay. What -- when you started there?  
24 A That's correct.

XIV-188

ROBINSON - CROSS

- 1 Q And that's typical covered parking for the southwest  
2 with sort of the ceilings so you can pull your car underneath  
3 and keep out of the sun?  
4 A That's correct.  
5 Q And those covered parking areas adjoin to where the  
6 dumpsters you've pointed out were at?  
7 A That's correct.  
8 Q Okay. And even though the security patrol might  
9 have changed between 2001 and 2002, is it fair that the  
10 physical layout of the property didn't change during that period  
11 of time, at least to your knowledge?  
12 A Yes.  
13 Q And you talked about this cave area. Okay. Where  
14 is --  
15 A Yes.  
16 Q If you can clear the screen. We've got it all marked  
17 up. Where is -- where in the cave area?  
18 A It would be right in this area here.  
19 Q Okay. And are there various walkways to get to that  
20 cave area?  
21 A There is, actually, coming from this side of the  
22 property, there are two walkways to get to that cave.  
23 Q Okay. And how -- can you show me the walkways  
24 on there?

XIV-187

ROBINSON - CROSS

- 1 Q Do you know if he was there prior to you?  
2 A He was there prior to me, but I do not know from  
3 beginning.  
4 Q Was he the general manager?  
5 A Yes, he was.  
6 Q When you started?  
7 A Yes.  
8 Q But you don't know how far back he was general  
9 manager?  
10 A That's correct.  
11 Q He may have been the general manager in May of  
12 2001?  
13 A He could have been, yes.  
14 Q And you were talking about the office when you  
15 started there was open twenty-four hours a day.  
16 A Yes.  
17 Q And is it your belief that it was open twenty-four  
18 hours a day back in May of 2001 also?  
19 A Yes.  
20 Q Probably just like a desk person, let's say, for the  
21 graveyard shift there'd be a desk person there to answer the  
22 phone and deal with any tenants that came in?  
23 A Would be two night auditors.  
24 Q Night auditors? Is that what --

XIV-189

000740

ROBINSON - CROSS

- 1 A Yes.
- 2 Q -- they're called?
- 3 A Yes.
- 4 Q Instead of desk clerk?
- 5 A Yeah.
- 6 Q Okay. And their job is to stay there at the desk and
- 7 take care of the phones and the people that come in and --
- 8 A That's correct.
- 9 Q Their job is not to go out in the parking lot and do
- 10 the security patrol?
- 11 A That is correct.
- 12 Q They're expected to stay in the office?
- 13 A That's correct.
- 14 Q And the street that runs just to the side, sort of the
- 15 bottom, the little corner of that picture, that's Boulder
- 16 Highway?
- 17 A Yes.
- 18 Q Okay. And there was foot traffic up and down
- 19 Boulder Highway, is that correct?
- 20 A On an average basis or --
- 21 Q On a regular day.
- 22 A Oh, yes.
- 23 Q Now I'll put 270 up there. So that shows a longer
- 24 portion of the Boulder Highway, correct?

XIV-190

ROBINSON - CROSS

- 1 A That's correct.
- 2 Q And that's another reason why you'd keep the office
- 3 open twenty-four hours?
- 4 A That's correct.
- 5 Q Was to deal with your residents that have different
- 6 schedules than just typical 8:00 to 5:00?
- 7 A That's correct.
- 8 Q Did you have problems with people loitering on the
- 9 property or hanging around in the front there, back and forth
- 10 to Sam's -- excuse me, to the casino?
- 11 A I had a few occurrences while I was there.
- 12 Q It wasn't unusual?
- 13 A No, I don't think it was.
- 14 Q Did you ever have to call the police or --
- 15 A Yes.
- 16 Q So there were occasions when the police were called
- 17 out to the property while you were working there?
- 18 A Yes.
- 19 Q Okay. Would they have made it into the logbooks of
- 20 the security patrol because you called or would they not be in
- 21 the logbooks?
- 22 A If security was on duty, it would in their logbooks.
- 23 If not, I would have put it into my calendar.
- 24 Q And if a residence called -- a resident called, that

XIV-192

ROBINSON - CROSS

- 1 A Yes.
- 2 Q And the Boulder Highway is a divided highway at
- 3 that point?
- 4 A Yes.
- 5 Q Okay. But there are sidewalks that walk right along
- 6 the Boulder Highway?
- 7 A Yes.
- 8 Q And where is Sam's Town in connection with this
- 9 photograph? We were -- if we were going to Sam's Town,
- 10 where would we go from the office?
- 11 A You would take Boulder Highway that direction.
- 12 Q Okay. And about how far?
- 13 A I believe it was just on the other side of Flamingo
- 14 Boulevard, which ran down in this way.
- 15 Q Okay. So not too far?
- 16 A No.
- 17 Q And the individuals that you had that stayed there
- 18 for the monthly or weekly rentals, would it be fair to say that
- 19 some of them were casino employees that worked different
- 20 shifts?
- 21 A Yes.
- 22 Q Okay. So you would have people living there that
- 23 some worked graveyard, some worked swing, some worked
- 24 day, that would be coming and going at all hours of the day?

XIV-191

ROBINSON - CROSS

- 1 wouldn't be in your logbook, correct?
- 2 A No, it would not.
- 3 Q It wouldn't be in the security patrol unless they
- 4 responded also?
- 5 A That's correct.
- 6 Q And it's easy to walk from the parking areas on to
- 7 Boulder Highway and leave the area. I mean, there's not a
- 8 fence to jump over or anything like that, is that correct?
- 9 A That is correct.
- 10 MR. SCHIECK: I'm just about done, Your Honor. I
- 11 know we're running just a little long.
- 12 THE COURT: Yes, we are.
- 13 (Pause in the proceedings)
- 14 BY MR. SCHIECK:
- 15 Q While they're looking at those photographs, did you
- 16 when you were going through your search find that there were
- 17 days where logs were not entered for the security patrol back
- 18 in May of 2001?
- 19 A Did I find days missing? No, I did not.
- 20 Q Okay. No days missing?
- 21 A No.
- 22 Q Were there days when there were no reports at all?
- 23 A Not for that period of time, no.
- 24 MR. SCHIECK: May I approach the witness, Your

XIV-193

000741

## ROBINSON - CROSS

1 Honor?

2 THE COURT: Yes.

3 BY MR. SCHIECK:

4 Q I'm gonna show you some exhibits that have been

5 marked for identification and just ask if you can recognize -- I'll

6 ask you first if you recognize them and then what they depict.

7 Do you recognize Defendant's Exhibit Y?

8 A Yes.

9 Q And what is that?

10 A That is the Budget Suites on Nellis and Flamingo.

11 Q Okay. And is the Sam's Town sign also --

12 A Yes, it is.

13 Q Okay. So that would demonstrate the distance

14 between the Budget Suites and Sam's Town?

15 A Yes.

16 THE COURT: Is it Proposed Y?

17 MR. SCHIECK: Yes, Your Honor. I'm sorry.

18 THE COURT: Thank you.

19 MR. SCHIECK: Proposed Y. And I'd move to admit

20 Y, Your Honor.

21 MS. DIGIACOMO: No objection.

22 THE COURT: Granted.

23 MS. DIGIACOMO: And just for the record to speed

24 this up, no objection to any of the photographs he showed us.

XIV-194

## ROBINSON - CROSS

1 fountain area in Derendant's Exhibit U?

2 A Yes.

3 Q Defendant's Exhibit V, what is that?

4 A That is the fountain with the tunnel going through it.

5 Q Say -- I'm sorry. I didn't hear you.

6 A That's the fountain.

7 Q Okay.

8 A And it has the tunnel through it.

9 Q And that's at the Budget Suites we've been talking

10 about?

11 A Yes, sir.

12 Q Exhibit W?

13 A Yes, I do.

14 Q Do you recognize that?

15 A Yes, I do.

16 Q And what is that?

17 A It's one of the trash enclosures on the property.

18 Q And with a couple of dumpsters in there?

19 A I see two.

20 Q And there's no covering over that enclosure?

21 A That's correct.

22 Q And Exhibit X, do you recognize that?

23 A Yes.

24 Q And what is that?

XIV-196

## ROBINSON - CROSS

1 MR. SCHIECK: Thank you, counsel.

2 So I'd move in that case, Your Honor, for the

3 admission of not only Y, but X, W, V and U. I should probably

4 go the other way, U, V, W and X.

5 THE COURT: U, V, W, X and Y are all admitted.

6 (Defendant's Exhibits U, V, W, X and Y admitted)

7 MR. SCHIECK: Thank you, Your Honor.

8 BY MR. SCHIECK:

9 Q Can you clear the -- thank you. So that's the Budget

10 Suites on the Boulder Highway we've been talking about?

11 A Yes, sir.

12 Q And we can barely see in the background the Sam's

13 Town sign?

14 A Yes. That's correct.

15 Q And do you recognize U?

16 A Yes. That is the back of the office and the fountain,

17 tunnel area.

18 Q And when you say the back of the office and the

19 fountain, can you -- where would that be?

20 A It'd be back in this area here.

21 Q So you've circled -- and so that's what's depicted in

22 the smaller photograph?

23 A That's correct.

24 Q And I was showing you 269. So you can see the

XIV-195

## ROBINSON - REDIRECT

1 A That is a view into the property just left of the office

2 building.

3 Q And going back here?

4 A Actually --

5 Q Where is that view at?

6 A It'd be back over looking that way.

7 MR. SCHIECK: Okay. Thank you. That's all the

8 questions I have, Your Honor.

9 THE COURT: Redirect.

10 MS. DIGIACOMO: Yes, Your Honor.

11 (Pause in the proceedings)

12 **REDIRECT EXAMINATION**

13 BY MS. DIGIACOMO:

14 Q All right. Defense counsel asked you when you

15 started and you said mid-2002. Now you did testify at a

16 previous hearing in May, 2002. Do you recall that?

17 A Yes.

18 Q And do you recall testifying approximately when you

19 started in relation to when you testified in May, 2002?

20 A I believe they asked me, yes.

21 Q Okay. If I was to show you a copy of your

22 transcript, would that -- would that refresh your recollection as

23 to approximately how long you had worked there?

24 A Yes.

XIV-197

000742

## ROBINSON - REDIRECT

1 MS. DiGIACOMO: All right. May I approach, Your  
2 Honor?  
3 THE COURT: You may.  
4 MS. DiGIACOMO: It's page 54, counsel.  
5 BY MS. DiGIACOMO:  
6 Q I am going to show you page 54, third question  
7 down. If you can read that to yourself and let me know when  
8 you're done.  
9 A Okay.  
10 Q Okay. After reading this, does that refresh your  
11 recollection as to how long you had worked there when you  
12 testified in May, 2002?  
13 A Yes.  
14 Q And how long was that?  
15 A Three months.  
16 Q All right. So you probably started approximately  
17 February, 2002?  
18 A That is correct.  
19 Q Not mid-2002?  
20 A That's correct.  
21 Q And you, therefore, reviewed the documents and the  
22 reports you were asked to review from 2001 before you  
23 testified in May, 2002?  
24 A That's correct.

XIV-198

## ROBINSON - REDIRECT

1 Q Now you stated you didn't work there in May, June  
2 or July, 2001 and you're not sure what their policy was. But  
3 when you came in and you worked for them in 2002, it was  
4 the policy that you were basically the keeper of all the security  
5 reports?  
6 A That's correct.  
7 Q When you moved into your office, were they already  
8 there for you?  
9 A Yes.  
10 Q Okay. So can you presume that the person who had  
11 your job before you also did that?  
12 A Yes.  
13 Q And you stated that there was security twenty-four  
14 hours on the property?  
15 A No. The office was open twenty-four hours.  
16 Q Okay. And were there security shifts spread out  
17 over the twenty-four-hour period?  
18 A If I remember correctly, they came in early evening  
19 and then went through, I believe it was, either 6:00 or 7:00  
20 the following morning.  
21 Q Do you recall testifying to the hours in May, 2002?  
22 A I was asked questions about it.  
23 Q Okay. Would that refresh your recollection to look?  
24 A Yes.

XIV-199

## ROBINSON - REDIRECT

1 MS. DiGIACOMO: All right. May I approach, Your  
2 Honor?  
3 THE COURT: You may.  
4 MS. DiGIACOMO: This is page 51, counsel.  
5 BY MS. DiGIACOMO:  
6 Q If you could look at your first answer on page 51  
7 and let me know when you're done.  
8 A Yes.  
9 Q Does that refresh your recollection?  
10 A Yes.  
11 Q Okay. What were the security hours or shifts that  
12 were assigned?  
13 A There was -- there was two shifts. And on Fridays  
14 and Saturdays they had three shifts.  
15 Q All right. So what were the two shifts during the  
16 work -- the work week, not Friday, Saturday?  
17 A They had a 5:00 to 11:00, I believe, was one of  
18 them. And I'd have to see that again.  
19 MS. DiGIACOMO: May I approach, Your Honor?  
20 THE COURT: Yes.  
21 THE WITNESS: That is correct.  
22 BY MS. DiGIACOMO:  
23 Q Okay. Does that refresh your memory?  
24 A Yes.

XIV-200

## ROBINSON - REDIRECT

1 Q Okay. What were the two shifts?  
2 A It was 5:00 to 11:00 and then 11:00 to 7:00.  
3 Q Okay. 5:00 to 11:00?  
4 A Mm-hmm.  
5 MS. DiGIACOMO: May I approach again?  
6 THE COURT: Yes.  
7 MS. DiGIACOMO: Thank you.  
8 BY MS. DiGIACOMO:  
9 Q I'm gonna show you that one last time. You said  
10 5:00 to 11:00 in the --  
11 A I'm sorry. 5:00 to 1:00.  
12 Q 5:00 --  
13 A It was 5:00 to 1:00. Yes.  
14 Q Okay. So 5:00 a.m. to -- or, excuse me, 5:00 p.m.  
15 to 1:00 a.m. and 11:00 p.m. to 7:00 a.m.  
16 A Yes, because they had to have a couple hours  
17 overlap time. That's right.  
18 Q All right. And so then you also said you had  
19 additional shifts on Friday and Saturday nights?  
20 A I believe it was Friday and Saturday.  
21 Q So do you recall when that shift was? It overlapped  
22 the other two?  
23 A It did, yes.  
24 Q Okay. When you reviewed the reports back from

XIV-201



## ROBINSON - REDIRECT

1 May, 2001, June and July, 2001, the reports logs that you  
2 looked at for the security officers, did those hours that they  
3 logged correspond to the hours that the security worked while  
4 you were there?

5 A For the most part, yes.

6 Q Now you talked about -- and I'm gonna show you  
7 State's 269. Look at this. You talked about that in front of the  
8 office there was some parking that was reserved for  
9 registration?

10 A Yes, ma'am.

11 Q Okay. Which parking spots would those have been?

12 A It would be all the front ones right in front of the  
13 office.

14 Q Okay. And there's also some parking over here.  
15 And I believe that's depicted in Defense Exhibit U. Is that  
16 correct?

17 A Is that correct?

18 Q Are these -- what's depicted in Defense Exhibit U,  
19 are those these spots here --

20 A That's correct.

21 Q -- right here in front of the cave?

22 A That's correct.

23 Q Okay. And Defense Exhibit U, these spots don't  
24 have a restricted sign in front of them, does it?

XIV-202

## ROBINSON - REDIRECT

1 A Yes. That's correct. And the fountain would have  
2 been right there.

3 Q Okay. So it's closer to the parking lot of the  
4 Walgreens?

5 A Yes, ma'am.

6 Q Okay. And there's no covered parking around there  
7 like we see up at the top of the screen?

8 A That's correct.

9 Q All right. And is there a dumpster around there?

10 A I don't see what appears to be a dumpster in that  
11 area.

12 Q Okay. Now defense counsel showed you Defense  
13 Exhibit W. And this is a trash bin or --

14 A Yes, ma'am.

15 Q -- a trash dumpster enclosed area?

16 A Yes.

17 Q And this, it looks like it's just cement walls on one  
18 side and then the back wall is actually the fenced line of the  
19 property, is that correct?

20 A That is the fence line to the property next to us, yes.

21 Q Okay. And is it chainlink fences that enclose it, well,  
22 if you shut those gates?

23 A Yes.

24 Q This dumpster in W, where would it be on State's

XIV-204

## ROBINSON - REDIRECT

1 A That's correct.

2 Q Okay. So it was just the ones right in front of the  
3 office that were reserved for registration?

4 A Yes, ma'am.

5 Q Did tenants sometimes park in those spots even  
6 though they were reserved?

7 A It happened a couple times, yes.

8 Q I'm showing you State's Exhibit 270. And you -- this  
9 is showing the entire property. Was there only one office for  
10 this property?

11 A Yes, ma'am.

12 Q And how many fountains were there?

13 A There are actually two but one was not working.

14 Q Okay.

15 A We didn't have one of them on.

16 Q All right. So there's one next to the office?

17 A Yes, ma'am.

18 Q Okay. Where would the other one have been on the  
19 property even though it wasn't working?

20 A I would actually need you to move the picture up a  
21 little bit.

22 Q Up.

23 A There we go. I believe this is a drugstore right here.

24 Q The Walgreens?

XIV-203

## ROBINSON - REDIRECT

1 269?

2 A Can you zoom out?

3 Q Oh, zoom out. Sorry.

4 A A little. Oh, let's see. It would -- I can't tell you  
5 which specific --

6 Q Okay.

7 A -- dumpster location, but it would have to be along  
8 this wall.

9 Q Okay. But and you can recognize that from the  
10 neighboring -- what you see over the wall in State's --

11 A Correct. That's Boulder --

12 Q Or, excuse me, Defense W?

13 A Correct. That's Boulder Manor next door.

14 Q Okay. And that's what was located directly north?

15 A That would be north. Correct.

16 Q Okay. Now when you are -- let me zoom in just a  
17 little bit. Defense counsel was asking you all the different  
18 ways that you can get to this fountain area right here.

19 A Yes, ma'am.

20 Q Okay. And there's a parking lot over here and  
21 there's a dumpster there?

22 A Yes, ma'am.

23 Q Okay. If you are over here kind of by this parking  
24 area, and I see a lot of trees here, can you see from when

XIV-205

000744

## ROBINSON - REDIRECT

- 1 you're standing here and you can see the fountain, can you  
 2 also see that dumpster or is it obstructed?  
 3 A I believe you could see it.  
 4 Q Okay. And how far would this dumpster area be  
 5 from where the fountain is?  
 6 A Maybe somewhere between 55, 65 feet.  
 7 Q Okay.  
 8 A 70 feet.  
 9 Q Now you said from the office here to Boulder  
 10 Highway it was about 100 to 125 feet?  
 11 A Mm-hmm.  
 12 Q Are you saying this here is a shorter distance?  
 13 A It doesn't look that way on the picture. But my  
 14 recollection is it was a shorter distance.  
 15 MS. DIGIACOMO: Okay. The Court's indulgence.  
 16 (Pause in the proceedings)  
 17 BY MS. DIGIACOMO:  
 18 Q I'm gonna show you State's Exhibit -- or, excuse me,  
 19 Defense Exhibit V. And that is what?  
 20 A That is the fountain feature on the front and the  
 21 tunnel and walkway that goes through it.  
 22 Q Okay. And where, specifically, is the fountain  
 23 feature?  
 24 A It would be on the opposite side of it.

XIV-206

## ROBINSON - RECROSS

- 1 THE COURT: Recross.  
 2 MR. SCHIECK: Just a couple, Your Honor.  
 3 THE COURT: Okay.  
 4 **RECROSS EXAMINATION**  
 5 BY MR. SCHIECK:  
 6 Q You talked about the front, the reserved parking  
 7 area?  
 8 A Yes, sir.  
 9 Q Can you get to the tunnel area directly from the  
 10 front reserved parking?  
 11 A You would have to go down a sidewalk but, yes, you  
 12 could.  
 13 Q It's a straight shot?  
 14 A To actually get in the tunnel, no, you would have to  
 15 kind of head a little towards the office and then down the  
 16 sidewalk.  
 17 Q And you're aware of whether or not Mr. Tisdale ever  
 18 reviewed the reports for May of 2001?  
 19 A I seem to remember he -- I believe he did.  
 20 Q You're aware that he found --  
 21 MS. DIGIACOMO: Objection, Your Honor, hearsay.  
 22 BY MR. SCHIECK:  
 23 Q Would you be surprised to learn that there were --  
 24 THE COURT: Withdrawn.

XIV-208

## ROBINSON - REDIRECT

- 1 Q Okay. So this water here that's on --  
 2 A Yeah.  
 3 Q -- the fountain picture?  
 4 A Well, no. It comes from there and then also on the  
 5 other side of that rock right there. It'll fall down a little bit.  
 6 Q And you can see this walk. There's the path that  
 7 leads through here. Is that kind of like the cave you were  
 8 talking about before?  
 9 A Yes, ma'am.  
 10 Q When you're standing inside this, I don't know if you  
 11 can see it, I'm gonna lighten it, okay, when you're standing in  
 12 this area here when you're kind of inside the cave area, is it  
 13 completely enclosed over your head?  
 14 A Yes, it is.  
 15 Q Okay. So you couldn't see up into the sky or  
 16 anything else?  
 17 A That's correct.  
 18 Q And when you're standing in here, could you see  
 19 that dumpster area or that parking lot that we were talking  
 20 about that's -- I'm showing you now, 270, that over in this  
 21 area? Oops. Excuse me. This area.  
 22 A I don't believe if you're inside that tunnel you can  
 23 see back that direction.  
 24 MS. DIGIACOMO: Nothing further.

XIV-207

## ROBINSON - RECROSS

- 1 BY MR. SCHIECK:  
 2 Q -- reports missing?  
 3 A From him?  
 4 MS. DIGIACOMO: Objection, Your Honor, it's vague  
 5 and ambiguous.  
 6 BY MR. SCHIECK:  
 7 Q Would you be surprised --  
 8 THE COURT: Overruled.  
 9 MR. SCHIECK: I'm sorry, Your Honor. Go ahead.  
 10 I'll rephrase.  
 11 BY MR. SCHIECK:  
 12 Q So you were aware that he had reviewed reports?  
 13 A If I remember correctly, yes.  
 14 Q Okay. And do you know whether or not he found  
 15 any reports missing?  
 16 A I don't recall.  
 17 Q Do you recall whether or not you testified to that at  
 18 your previous proceeding?  
 19 A I believe I was asked questions about Mr. Tisdale.  
 20 Q Do you recall what your answer was?  
 21 A No, I do not.  
 22 MR. SCHIECK: May I approach, Your Honor?  
 23 MS. DIGIACOMO: Your Honor, I'm gonna object  
 24 because the questions posed before were based on hearsay.

XIV-209

## ROBINSON - RECR

1 THE COURT: Counsel, approach.  
 2 (Off-record bench conference at 17:42:17 until 17:43:46)  
 3 THE COURT: Counsel is gonna lay further  
 4 foundation.  
 5 BY MR. SCHIECK:  
 6 Q Were you present when Mr. Tisdale reviewed the  
 7 reports from May of 2001?  
 8 A Present with him while he did it?  
 9 Q Yes.  
 10 A I don't believe so, no.  
 11 Q Okay. You were work -- were you working there  
 12 when he reviewed the reports?  
 13 A I believe I would have been, yes.  
 14 Q And you weren't present because he was doing it in  
 15 a different room or do you recall?  
 16 A I can't recall, no.  
 17 Q But you were aware that he had reviewed the  
 18 reports?  
 19 A I believe at some time I was. I don't remember if it  
 20 was the same day that he did it. I don't know.  
 21 Q And how did you become aware that he had  
 22 reviewed the reports?  
 23 A I don't really remember.  
 24 Q Could you -- could you have seen him reviewing the

XIV-210

## ROBINSON - RECR

1 reports?  
 2 A I don't -- I don't believe so.  
 3 Q Do you recall anybody coming in to the office? I  
 4 mean, these are kept in the office, correct?  
 5 A That's correct. Yes.  
 6 Q Do you recall anyone coming in the office and asking  
 7 him to review the reports?  
 8 A I really can't remember.  
 9 Q Was this previous to when you reviewed the  
 10 reports?  
 11 A It would have been previous, yes.  
 12 Q So he'd reviewed the reports before you reviewed  
 13 the reports?  
 14 A If I remember correctly, yes.  
 15 Q And were you aware of any missing reports?  
 16 A Not that I can remember, no.  
 17 Q Were you aware of whether or not he found any  
 18 missing reports?  
 19 MS. DIGIACOMO: Objection, Your Honor,  
 20 foundation.  
 21 THE COURT: Sustained.  
 22 MR. SCHIECK: Nothing further, Your Honor.  
 23 THE COURT: Redirect.  
 24 MS. DIGIACOMO: No. Nothing.

XIV-211

1 THE COURT: You may step down.  
 2 THE WITNESS: Thank you.  
 3 THE COURT: Thank you for remaining a little bit  
 4 over the time we thought we would recess today.  
 5 Ladies and gentlemen, we'll be taking our evening  
 6 recess and resuming at 1:00 o'clock tomorrow.  
 7 During this recess you're admonished not to talk or  
 8 converse among yourselves, nor with anyone else, on any  
 9 subject connected with this trial, and you're not to read, watch  
 10 or listen to any report of or commentary on the trial or any  
 11 person 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 any  
 14 subject connected with the trial until the case is finally  
 15 submitted to you.  
 16 You all have a good evening. We'll see you at 1:00  
 17 o'clock tomorrow.  
 18 (Jurors recessed at 17:46:07)  
 19 THE COURT: The record shall reflect that the jury  
 20 has exited.  
 21 Well, that ten-minute examination was three  
 22 minutes short of an hour.  
 23 MR. SCHIECK: Is the State intending to rest so we  
 24 need to have all of our witnesses here beginning tomorrow or

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1 do we need not to have everybody here?  
 2 THE COURT: The State had previously advised that  
 3 Detective Thowsen would be the last witness and then at some  
 4 point --  
 5 MS. DIGIACOMO: During cross-examination.  
 6 THE COURT: -- advised that they were gonna have  
 7 one additional witness to follow him, which the State has now  
 8 called.  
 9 MS. DIGIACOMO: We --  
 10 THE COURT: Are you -- you're conferring so it  
 11 appears that you're considering calling another witness.  
 12 MS. DIGIACOMO: We believe we're gonna rest.  
 13 MR. KEPHART: But we're conferring.  
 14 MS. DIGIACOMO: We're conferring. But, yes, we do  
 15 believe that we're gonna -- we are gonna rest.  
 16 MR. KEPHART: Judge, I would advise the defense  
 17 that they need to have their witnesses present for tomorrow.  
 18 We do -- I do want to check and make sure that all the  
 19 evidence is  
 20 -- that we have marked, that we intend to admit during our  
 21 case in chief. There are some other ones and I will be putting  
 22 on some rebuttal that I'll have to do later. But the -- at this  
 23 point in time, I anticipate that we would be resting and I don't  
 24 believe that we'll be presenting any other evidence. But we

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1 want to -- we want to talk about that to -- when we leave.  
2 MS. DIGIACOMO: And, Your Honor --  
3 THE COURT: Can you come in about 11:30  
4 tomorrow and meet with the clerk to go through the evidence?  
5 MR. KEPHART: Sure.  
6 MS. DIGIACOMO: And I just have one question  
7 'cause we didn't remember. The defense had agreed that we  
8 wouldn't have to call the custodian of records from Caliente for  
9 the medical records, and they're admitted, but I can't  
10 remember. I don't think that we did it in front of the jury. So  
11 we might need to make a record on that unless somebody  
12 remembers. I don't recall doing it in front of the jury.  
13 MR. KEPHART: We didn't.  
14 MS. DIGIACOMO: So that would be one thing. We'd  
15 just need to make a record of it when they come back in.  
16 MR. SCHIECK: We'd probably want, the first thing  
17 in our case, to read Mr. Bodziak's report to the jury as  
18 stipulated.  
19 MS. DIGIACOMO: That's fine.  
20 MR. KEPHART: That's fine, Judge.  
21 MS. DIGIACOMO: As long as the two questioned  
22 documents, Q-1 and Q-2, is admitted by -- and that's fine. So  
23 the jury's clear on what he examined.  
24 MR. SCHIECK: Well, Your Honor, we had entered

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1 issue with that.  
2 THE COURT: I understood Mr. Schieck to say he  
3 doesn't have any problem with having them admitted. So I  
4 don't see -- I don't see that there is an issue that needs to be  
5 argued here.  
6 We'll see everybody at 1:00 o'clock.  
7 Court Adjourned at 17:50:33 until the following day,  
8 September 29, 2006  
9 \*\*\*\*\*

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1 into a stipulation before this case ever started that we would  
2 read the report in. They're now putting conditions on that  
3 stipulation. I've showed them the photographs. We can mark  
4 the photographs and put them into evidence if they want to.  
5 But we had stipulated way before we started trial that there  
6 wouldn't be a problem with Bodziak's report. And if it's gonna  
7 be a problem, then we'll get him on a plane and fly him out  
8 here.  
9 MS. DIGIACOMO: No, it's not a problem, Your  
10 Honor. We're just -- in his report, he references what he  
11 looked at was Q-1 and Q-2. We'd just like it clear for the  
12 record he has the exhibits. That's fine. Just admit them as  
13 what was viewed.  
14 MR. SCHIECK: Well, that wasn't what was done  
15 before that you agreed we would do in this case, that we  
16 would do the same thing that was done before. There was  
17 never any discussion of the photographs until in the middle of  
18 the trial. Suddenly, now you want to know what Q-1 and Q-2  
19 are.  
20 MS. DIGIACOMO: Well, I'm sorry.  
21 MR. SCHIECK: And we showed them to you.  
22 MS. DIGIACOMO: Your Honor, there's nothing more  
23 that we're asking for with this stipulation. I mean, if he  
24 doesn't want to admit it and confuse the jury, then we have an

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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.

Lin Dunbar  
Transcriber

5/10/07  
Date

\* \* \* \* \*

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**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

**COPY**

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MAY 16 11 21 AM '07

*Chris [Signature]*  
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 15  
VOLUME XV

FRIDAY, SEPTEMBER 29, 2006

COURT RECORDER:

LISA LIZOTTE  
District Court

TRANSCRIPTION BY:

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Proceedings recorded by electronic sound recording, transcript  
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1 LAS VEGAS, NEVADA FRIDAY, SEPTEMBER 29, 2006

**PROCEEDINGS**

2  
3 (THE PROCEEDINGS BEGAN AT 1:08:03 P.M.)

4 (Jurors are present)

5 THE BAILIFF: Department II is now in session, the  
6 Honorable Valorie Vega presiding. Please be seated.

7 THE COURT: Good afternoon, everyone.

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

13 We are proceeding forward with the State's case in  
14 chief.

15 MS. DiGIACOMO: Your Honor, at this time we are  
16 gonna rest, however, we wanted to make a record in front of  
17 the jury. Exhibit 133 are certified medical records of the  
18 defendant from July 5<sup>th</sup>, 2001, as well as July 13<sup>th</sup>, 2001. It  
19 was stipulated by defense counsel that they would not make  
20 us bring in the custodian of records and they would agree that  
21 it's certified records of her -- from her medical records. And so  
22 in front of the jury with that, we'll rest.

**STATE RESTS**

23  
24 THE COURT: So 133 is stipulated admitted?

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INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS
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STATE'S WITNESSES

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Shelley Pierce-Stauffer	57	66	79	80
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John Kraft	114	126	--	--

\*\*\*\*\*

EXHIBITS

DESCRIPTION:	ADMITTED
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STATE'S EXHIBITS

133	5
-----	---

DEFENDANT'S EXHIBITS:

HH DD, QQQQ, RRRR, SSSS,	94 137
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\*\*\*\*\*

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1 MR. KEPHART: Correct, Your Honor.

2 THE COURT: Very well.

3 (State's Exhibit 133, by stipulation, admitted)

4 THE COURT: And the State has rested its case in  
5 chief.

6 The case now turns over to defendant's counsel.

7 Ms. Greenberger?

8 MS. GREENBERGER: May we call our next witness?

9 THE COURT: Yes, you may.

10 MS. GREENBERGER: Thank you.

11 (Pause in the proceedings)

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

**JO WUORI, DEFENDANT'S WITNESS, SWORN**

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

16 THE WITNESS: My name is Jo Wuori, J-o W-u-o-r-I.

17 THE COURT: Would you spell your last name again,  
18 please.

19 THE WITNESS: W-u-o-r-I.

20 THE COURT: Thank you.

21 You may proceed.

22 MS. GREENBERGER: Thank you, Your Honor.

23  
24 ///

XV-5

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WUORI - DIRECT

**DIRECT EXAMINATION**

1  
2 BY MS. GREENBERGER:  
3 Q Good afternoon. Where do you live?  
4 A Elko, Nevada.  
5 Q How long have you lived there?  
6 A Five years.  
7 Q Where did you live before you lived in Elko?  
8 A Panaca, Nevada.  
9 Q How long did you live there?  
10 A Approximately five years.  
11 Q Were you living in Panaca, Nevada in 2001?  
12 A Yes.  
13 Q Do you know --  
14 MR. KEPHART: Excuse me, ma'am. Could we  
15 approach the bench?  
16 THE COURT: Yes.  
17 MR. KEPHART: Sorry.  
18 (Off-record Bench Conference)  
19 BY MS. GREENBERGER:  
20 Q Did you recently get married?  
21 A Yes.  
22 Q And what was your name prior to getting married?  
23 A Jo Dennert.  
24 COURT RECORDER: Can you spell Dennert, please.

XV-6

WUORI - DIRECT

1 Lobato residence?  
2 A Blaise, Ashley, Becky and Larry.  
3 Q Did you live -- was your house directly next door to  
4 them?  
5 A Yes.  
6 Q Who were the neighbors on the other side of them,  
7 if you know?  
8 A Bob and Wanda McCroskey.  
9 Q Taking you back to the year of 2001, I know it's  
10 been some time. Do you remember seeing Kirstin Blaise  
11 Lobato in the summer of 2001?  
12 A Yes.  
13 Q Do you remember what time period you saw her?  
14 A July.  
15 Q Do you remember what date specifically?  
16 A July 8<sup>th</sup>.  
17 Q How do you remember that date?  
18 A A very good friend of mine, it was his birthday.  
19 Q What is your friend's name?  
20 A Dale Towery [phonetic].  
21 Q His birthday is exactly July 8<sup>th</sup>?  
22 A Yes.  
23 Q Do you remember when you saw Blaise on July 8<sup>th</sup>?  
24 A During the afternoon, early afternoon.

XV-8

WUORI - DIRECT

1 THE WITNESS: D-e-n-n-e-r-t.  
2 BY MS. GREENBERGER:  
3 Q Do you know Kirstin Blaise Lobato?  
4 A Yes.  
5 Q Do you see her here today?  
6 A Yes.  
7 Q Can you identify what she's wearing for the record.  
8 A Well, white and black shirt, dress.  
9 MS. GREENBERGER: The record should reflect she's  
10 identified Ms. Lobato.  
11 BY MS. GREENBERGER:  
12 Q How do you know Kirstin Lobato?  
13 THE COURT: The record shall so reflect.  
14 THE WITNESS: Lived next door to her.  
15 BY MS. GREENBERGER:  
16 Q Did you live next door to her for a long time?  
17 A No. About a year.  
18 Q Who -- or what street did you live on?  
19 A Callaway Street.  
20 Q Did her family live there also?  
21 A Yes.  
22 Q Did you know her family?  
23 A Yes.  
24 Q Who lived at the residence in Panaca -- in the

XV-7

WUORI - DIRECT

1 Q Can you tell us what you were doing that day?  
2 A It -- I was doing dishes, chores, catching up on  
3 things.  
4 Q And prior to July 8<sup>th</sup> do you recall seeing Blaise  
5 around or is this what sticks out distinctly in your mind?  
6 A It's what sticks out in my mind.  
7 Q Do you know if she had been around that year?  
8 Had she gone down to Vegas, do you have any knowledge of  
9 that?  
10 A [No audible response].  
11 Q You just remember the day of July 8<sup>th</sup> specifically?  
12 A Yes.  
13 Q So what -- tell us what time you saw her  
14 approximately and what you were doing when you saw her?  
15 A Between 11:00 and 1:00 and I was washing dishes  
16 in my kitchen.  
17 Q Do you have a window in your kitchen?  
18 A Yes.  
19 MS. GREENBERGER: May I approach, Your Honor.  
20 THE COURT: You may.  
21 BY MS. GREENBERGER:  
22 Q Does the window face outside of the house directly  
23 onto the street?  
24 A Yes.

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000751



WUORI - DIRECT

- 1 Q I'm gonna show you an exhibit we've marked JJ,  
2 and have you step off the stand to initial the date and time  
3 that you last saw her -- or first saw her.  
4 A (Witness complies).  
5 Q You may resume your seat. You were in your  
6 kitchen washing dishes, tell us what you recall seeing?  
7 A I recall seeing Blaise on a 4-wheeler, she was in the  
8 street and had done like donut in front of my house on the  
9 street and whipped it back around.  
10 Q Is the street a dirt -- was it a dirt road at the time?  
11 A No, it's paved.  
12 Q Do you -- an ATV is a 4-wheeler?  
13 A Mm-hmm. Yes.  
14 Q Was she on it alone?  
15 A Yes.  
16 Q Do you recall what she was wearing?  
17 A A black tank top type shirt, a woman's shirt, and  
18 Levi shorts.  
19 Q Did you have a clear vantage point out of your  
20 window at her on the vehicle?  
21 A Yes.  
22 Q You know for certain it was her?  
23 A Yes.  
24 Q You saw her do a donut, you described?

XV-10

WUORI - DIRECT

- 1 A Yes.  
2 Q Did you see anybody else around?  
3 A I believe I saw one male, tall male, but I don't  
4 specifically know who it was.  
5 Q Do you know if his name was Chris Carrington?  
6 MS. DIGIACOMO: Objection, leading.  
7 THE COURT: Sustained.  
8 BY MS. GREENBERGER:  
9 Q Could you describe him?  
10 A Tall, skinny, kinda blondish hair. But it was just for  
11 an instant.  
12 Q Approximate age?  
13 A Teenager.  
14 Q Had you --  
15 A 18, 19, maybe.  
16 Q Had you seen him around the residence before?  
17 A Not sure.  
18 Q How do you recall that it was exactly that date and  
19 time that you saw her?  
20 MS. DIGIACOMO: Objection, compound.  
21 BY MS. GREENBERGER:  
22 Q You mentioned it --  
23 THE COURT: Sustained.  
24 ///

XV-11

WUORI - DIRECT

- 1 BY MS. GREENBERGER:  
2 Q You mentioned it was your friend Dale Towery's  
3 birthday, do you remember doing anything because of that?  
4 A Emailing him.  
5 Q Do you remember having -- strike that. Is the  
6 reason why you recall seeing Blaise that day because it was  
7 Dale Towery's birthday?  
8 MS. DIGIACOMO: Objection. Leading.  
9 THE COURT: Sustained.  
10 BY MS. GREENBERGER:  
11 Q Why do you -- why do you recall specifically that it  
12 was July 8<sup>th</sup>?  
13 MS. DIGIACOMO: Objection. Asked and answered.  
14 THE COURT: Sustained.  
15 BY MS. GREENBERGER:  
16 Q Who is Dale Towery?  
17 A He was a very good friend of mine that I had a four  
18 year relationship with.  
19 Q Is he an ex-Lincoln County Sheriff?  
20 A Yes.  
21 MS. DIGIACOMO: Objection, leading.  
22 THE COURT: Sustained.  
23 MS. DIGIACOMO: I move to strike.  
24 THE COURT: Motion granted.

XV-12

WUORI - DIRECT

- 1 BY MS. GREENBERGER:  
2 Q How long of a time period did you see Blaise on that  
3 day?  
4 A Maybe 20 minutes.  
5 Q What was she doing during those 20 minutes?  
6 A Riding the 4 -- she did the donut and then kinda  
7 jumped off and laughed and got back on it.  
8 Q Did you ever see her after that date, that you recall?  
9 A No.  
10 Q Do you recall seeing her vehicle parked in front of  
11 her residence?  
12 A No.  
13 Q Did there come a time, after July 8<sup>th</sup>, that you  
14 learned Blaise had been arrested?  
15 A Yes.  
16 Q Did there come a time, after Blaise had been  
17 arrested, that you learned the date that a man was killed in  
18 Vegas for which she was charged?  
19 A Yes.  
20 Q At that time did you realize --  
21 MS. DIGIACOMO: Objection, leading.  
22 THE COURT: Sustained.  
23 BY MS. GREENBERGER:  
24 Q How sure are you that you saw her on July 8<sup>th</sup>,

XV-13

000752

WUORI - CROSS

1 2001?  
2 A Very sure.  
3 MS. GREENBERGER: Your Honor, I don't have  
4 anything further.  
5 THE COURT: Cross?  
6 MS. DIGIACOMO: Thank you.  
7 **CROSS-EXAMINATION**  
8 BY MS. DIGIACOMO:  
9 Q How long did you live next door to the Lobatos?  
10 A I believe less than a year.  
11 Q But you had been friends with them quite some time  
12 before July 2001?  
13 A Acquaintances.  
14 Q You wouldn't say friends with 'em?  
15 A No.  
16 Q Would you talk to them often when you were just  
17 outside in your yard and they were outside in yours -- or in  
18 theirs?  
19 A Yes.  
20 Q Mm-hmm. Did you ever work with either Blaise's  
21 dad or mom?  
22 A No.  
23 Q Now you said that you saw Blaise 4-wheeling outside  
24 your window when you were washing dishes.

XV-14

WUORI - CROSS

1 Q But you don't recall if you had seen it in July 2001?  
2 A No.  
3 Q Okay. Had you ever seen Blaise on a 4-wheeler  
4 before?  
5 A Not that I recall.  
6 Q Do you recall testifying in May of 2002?  
7 A Yes.  
8 Q Okay. If I was to show you that your -- if I was to  
9 show you your testimony, would that refresh your recollection  
10 about whether or not you've ever seen her on a -- had seen  
11 her on a 4-wheeler before?  
12 A Yes.  
13 MS. DIGIACOMO: May I approach?  
14 THE COURT: Yes.  
15 MS. DIGIACOMO: Page 75 and 76, counsel.  
16 THE WITNESS: I need my glasses. "Now you said  
17 that you saw the" --  
18 BY MS. DIGIACOMO:  
19 Q Oh, no, no. To yourself. Thank you.  
20 A Oh, I'm sorry.  
21 (Pause in the proceedings)  
22 Q Now after reviewing your prior testimony, does that  
23 refresh your recollection about whether or not you'd ever seen  
24 Blaise on a 4-wheeler, other than on July 8<sup>th</sup>?

XV-16

WUORI - CROSS

1 A Yes.  
2 Q Okay. And you said that that was between 11:00  
3 and 1:00 p.m.?  
4 A Yes.  
5 Q Okay. Do you recall testifying at a prior hearing in  
6 May 2002?  
7 A Yes.  
8 Q And during your testimony you never mentioned that  
9 it was between 11:00 and 1:00 before, correct?  
10 A Yes. No. I'm sorry. No.  
11 Q But you did not mention it before?  
12 A No.  
13 Q Okay. And in fact you've never mentioned that you  
14 saw her do a donut, jump off, laugh and get back onto the 4-  
15 wheeler, correct?  
16 A Correct.  
17 Q And you never testified previously that she was with  
18 another tall skinny blonde haired teen, correct?  
19 A Correct.  
20 Q Do you know what kind of vehicle Blaise drives or  
21 drove back then?  
22 A Yes.  
23 Q What kind was it?  
24 A A red Fiero.

XV-15

WUORI - CROSS

1 A Yes.  
2 Q Okay. And had you? Had you seen her on a 4-  
3 wheeler?  
4 A Yes.  
5 Q Okay. How many times did you see her on a 4-  
6 wheeler? Do you -- more than once?  
7 A Yes.  
8 Q More than five times?  
9 A No.  
10 Q Okay. If you testified previously that you had seen  
11 her approximately about five time, would that be about  
12 correct?  
13 A Yes.  
14 Q Okay. In fact it's pretty common for people to 4-  
15 wheel in the area where you used to live in -- or Panaca,  
16 correct?  
17 A Yes.  
18 Q 'Cause there's right -- a couple houses down from  
19 you is just desert?  
20 A Yes.  
21 Q And you stated -- you stated you weren't really  
22 friends with the family, just acquaintances?  
23 A Mm-hmm. Yes.  
24 Q Okay. You recall testifying at the prior hearing that

XV-17

000753

## WUORI - CROSS

1 you were friends of the family?  
 2 A No.  
 3 MS. DIGIACOMO: Your Honor --  
 4 BY MS. DIGIACOMO:  
 5 Q Well, if I was to show you your testimony would that  
 6 refresh your recollection?  
 7 A Yes.  
 8 MS. DIGIACOMO: May I approach?  
 9 THE COURT: You may.  
 10 MS. DIGIACOMO: Page 76.  
 11 BY MS. DIGIACOMO:  
 12 Q Okay. Does that refresh your recollection?  
 13 A Yes.  
 14 Q What did you say at the previous hearing of 2002?  
 15 A Yes.  
 16 Q That you were friends of the family?  
 17 A Yes.  
 18 Q You found out that Blaise was arrested the morning  
 19 -- or the day after she arrested, correct?  
 20 A Yes.  
 21 Q And you found out from her mom, Becky, correct?  
 22 A Yes.  
 23 Q And you would actually talk to Becky on a daily  
 24 basis, correct, back then?

XV-18

## WUORI - CROSS

1 A Yes.  
 2 Q And you knew her father as well, back then?  
 3 A Larry?  
 4 Q Yes.  
 5 A Yes.  
 6 Q And you talked to him on regular basis?  
 7 A Yes.  
 8 Q And Becky's the one that told you when she was  
 9 arrested?  
 10 A Yes.  
 11 Q And you actually discussed the July 8<sup>th</sup> date with  
 12 Becky before, correct?  
 13 A Yes.  
 14 Q You only talked to her about it one time?  
 15 A Yes.  
 16 Q The July 8<sup>th</sup> date?  
 17 A Yes.  
 18 Q And that was the day after she was arrested?  
 19 A I believe so, yes.  
 20 Q Okay. Did you also know a person by the name of  
 21 Shayne Kraft when you lived in Panaca?  
 22 A Yes.  
 23 Q And who is that?  
 24 A Blaise's aunt.

XV-19

## WUORI - REDIRECT

1 Q Okay. And so you knew her as well from living in  
 2 Panaca?  
 3 A Yes.  
 4 Q And you never gave a statement to the police,  
 5 correct?  
 6 A Correct. No.  
 7 MS. DIGIACOMO: The Court's indulgence.  
 8 (Off-record colloquy of State's counsel)  
 9 MS. DIGIACOMO: Nothing further.  
 10 THE COURT: Redirect?  
 11 MS. GREENBERGER: Thank you.  
 12 **REDIRECT EXAMINATION**  
 13 BY MS. GREENBERGER:  
 14 Q It's been five years since you last testified in this  
 15 matter, is that correct?  
 16 A Yes.  
 17 Q Pretty long time from today, would you agree?  
 18 A Yes.  
 19 Q Have you ever socialized with the Lobatos outside,  
 20 from seeing them outside your residence?  
 21 A No.  
 22 Q So is it more accurate to say you're friendly with  
 23 them than social friends that get out and go together?  
 24 A Yes.

XV-20

## WUORI - REDIRECT

1 Q You're neighbors?  
 2 A Yes.  
 3 Q Has anyone asked you to lie on behalf of Blaise  
 4 Lobato?  
 5 A No.  
 6 Q You had a discussion on one occasion with Blaise's  
 7 stepmother, Rebecca, about the date of July 8<sup>th</sup> being the date  
 8 the man that she was alleged to have killed died, correct?  
 9 A Correct.  
 10 Q You told her, wait a minute, --  
 11 MS. DIGIACOMO: Objection, leading.  
 12 THE COURT: Sustained.  
 13 BY MS. GREENBERGER:  
 14 Q What did you tell Becky when you talked to her that  
 15 day?  
 16 A I explained to her that I remember that day and I  
 17 remembered seeing Blaise.  
 18 Q You volunteered that information to her?  
 19 A Yes.  
 20 Q Did you also speak to defense investigators and  
 21 attorneys immediately thereafter about that information?  
 22 A No.  
 23 Q How soon after?  
 24 A James Aleman called me, but I don't recall how soon

XV-21

000754

## WUORI - REDIRECT

1 after.  
 2 Q Is he a defense investigator?  
 3 A Yes.  
 4 Q Was it within several weeks?  
 5 A I don't recall.  
 6 Q How clearly do you recall the day of July 8<sup>th</sup>?  
 7 A Very clearly.  
 8 Q Do you recall previously testifying that you saw her  
 9 in the afternoon?  
 10 A Yes.  
 11 Q You didn't specify a specific time but you said in the  
 12 afternoon?  
 13 A Yeah.  
 14 Q How is it that you recall you saw her between 11:00  
 15 and 1:00?  
 16 A That's usually when my daughter would take a nap  
 17 and that's when I would do dishes, do chores, pick up the  
 18 house, those kinds of things.  
 19 Q What dishes were you doing?  
 20 A I believe them to be from the morning.  
 21 Q Your breakfast dishes?  
 22 A Yeah.  
 23 Q Did you send your friend Dale Towery an email right  
 24 after you saw Blaise 4-wheeling that day?

XV-22

## WUORI - REDIRECT

1 THE COURT: Sustained.  
 2 BY MS. GREENBERGER:  
 3 Q Was your contact with the Lobatos as neighbors in  
 4 your yard?  
 5 A No.  
 6 Q Where was it? Where would you see them?  
 7 A They would be in their yard, I would be in mine.  
 8 Sometimes I would go over there to say hi. My dog would  
 9 run. It was just a neighborly type of -- we were right next  
 10 door to each other.  
 11 Q How close were your houses?  
 12 A A fence divided 'em. The driveways. The houses,  
 13 I'm not sure.  
 14 Q Can you give us an approximate distance from your  
 15 kitchen window to where you saw Blaise 4-wheeling?  
 16 A 30 feet, 35 feet.  
 17 Q Was it daylight?  
 18 A Yes.  
 19 Q Do you wear glasses?  
 20 A Yes.  
 21 Q Did you have your glasses on at the time?  
 22 A I didn't wear glasses back then?  
 23 Q Your vision was better than it is today?  
 24 A Yes.

XV-24

## WUORI - REDIRECT

1 MS. DIGIACOMO: Objection, leading.  
 2 THE COURT: Sustained.  
 3 BY MS. GREENBERGER:  
 4 Q Do you remember when you sent your friend and  
 5 email?  
 6 A Yes.  
 7 Q When?  
 8 A Approximately an hour after that.  
 9 Q That would have been on July 8<sup>th</sup>?  
 10 A Yes.  
 11 Q Was the email a happy birthday email?  
 12 A Yes.  
 13 MS. DIGIACOMO: Objection, leading.  
 14 THE COURT: Sustained.  
 15 MS. DIGIACOMO: Move to strike.  
 16 BY MS. GREENBERGER:  
 17 Q What kind of --  
 18 THE COURT: Motion granted.  
 19 BY MS. GREENBERGER:  
 20 Q And what kind of email was it?  
 21 A A happy birthday email.  
 22 Q Did you ever go over to the Lobato house to speak  
 23 with the Lobatos?  
 24 MS. DIGIACOMO: Objection, vague.

XV-23

## WUORI - REDIRECT

1 Q How was it that you were able to identify the person  
 2 on the 4-wheeler as Blaise?  
 3 A Knowing who she was.  
 4 Q You had seen her -- how many times had you seen  
 5 her before that date?  
 6 A I'd known her for approximately seven years before  
 7 I moved to Elko.  
 8 Q I asked you if you had spoken to the defense  
 9 investigator within weeks and you said you weren't sure, you  
 10 didn't recall. Would it refresh your recollection to look at your  
 11 prior testimony?  
 12 A Possibly.  
 13 MS. GREENBERGER: May I approach?  
 14 THE COURT: You may.  
 15 BY MS. GREENBERGER:  
 16 Q Looking at page 81, line 23.  
 17 A Maybe weeks. I'm not sure how many weeks  
 18 though.  
 19 Q Did you talk to Becky Lobato about this date on  
 20 more than one occasion?  
 21 A No.  
 22 Q Do you remember this date like it was yesterday?  
 23 A Yes.  
 24 Q Did you realize, shortly after you saw her, how

XV-25

000755

WUORI - RECROSS

1 important it was you had seen her on July 8<sup>th</sup>?  
 2 MS. DIGIACOMO: Objection, leading.  
 3 THE COURT: Sustained.  
 4 MS. GREENBERGER: Nothing further.  
 5 THE COURT: Recross?  
 6 MS. DIGIACOMO: Thank you, Your Honor.  
 7 **RECROSS EXAMINATION**  
 8 BY MS. DIGIACOMO:  
 9 Q You had talked to Becky Lobato one time about the  
 10 July 8<sup>th</sup> date, correct?  
 11 A Correct.  
 12 Q And the time that you talked to Becky, she knew  
 13 that the crime Blaise had been arrested for happened on July  
 14 8<sup>th</sup>, correct?  
 15 A That's what she was accused of, yes.  
 16 Q Okay. And actually it was the day after Blaise was  
 17 arrested that you spoke to Becky, correct?  
 18 A I believe so.  
 19 Q Okay. You're saying you believe so, do you  
 20 remember?  
 21 A Correct.  
 22 Q If I was to show you your prior testimony would that  
 23 refresh your memory?  
 24 A I remember it was correct.

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WUORI - RECROSS

1 THE COURT: You may step down.  
 2 JUROR: I have a question.  
 3 THE COURT: Whoops, I need you to sit back down.  
 4 (Pause in the proceedings)  
 5 THE COURT: Counsel approach.  
 6 (Off-record Bench Conference)  
 7 THE COURT: A question has come from the jury  
 8 that I'm going to read to you. After I read the question to  
 9 you, you may answer it. And then the attorneys for each side  
 10 will have the opportunity to ask you follow up questions if they  
 11 find that appropriate.  
 12 "Can you please explain how emailing Dale for his  
 13 birthday later, to washing dishes, connects your memory  
 14 to seeing Blaise 4-wheeling?"  
 15 THE WITNESS: All I can recall washing dishes,  
 16 looking out seeing Blaise and then, I don't know if there was  
 17 something on the TV that -- I don't know what reminded me of  
 18 that date. It just sticks in my head and I remembered at that  
 19 time, oh, I better email Dale 'cause it's his birthday today.  
 20 THE COURT: Any questions by the State?  
 21 MS. DIGIACOMO: No, Your Honor.  
 22 THE COURT: Any by the defense?  
 23 MS. GREENBERGER: Yeah, just one.  
 24 ///

XV-28

WUORI - RECROSS

1 Q Okay. It is the day after?  
 2 A Yes.  
 3 Q Okay. And so Becky is the one that brought up the  
 4 July 8<sup>th</sup> date to you, correct?  
 5 A Yes.  
 6 Q And then you said, wait a minute, that's my friend's  
 7 birthday, I know I saw Blaise that day 4-wheeling.  
 8 A Yes.  
 9 Q Okay. And then you didn't contact the police or  
 10 anything, a couple of weeks later a defense attorney -- or  
 11 excuse me, a defense investigator contacted you, correct?  
 12 A Not a couple weeks, I don't recall, but someone did.  
 13 Q Well --  
 14 A Yes.  
 15 Q Okay, but some period of time later you're contacted  
 16 by a defense investigator?  
 17 A Correct.  
 18 Q And so it was Becky that had given your name to the  
 19 defense?  
 20 A Yes.  
 21 Q Okay.  
 22 MS. DIGIACOMO: Pass the witness.  
 23 THE COURT: Redirect?  
 24 MS. GREENBERGER: No, Your Honor.

XV-27

WUORI - FURTHER REDIRECT

1 **FURTHER REDIRECT EXAMINATION**  
 2 BY MS. GREENBERGER:  
 3 Q Do you recall that sequence of events occurring  
 4 within a short time period?  
 5 A Dishes, the emailing, the remembering?  
 6 Q Correct.  
 7 A Just while I was washing dishes, doing my chores  
 8 before my daughter woke up.  
 9 MS. GREENBERGER: Nothing further.  
 10 THE COURT: You may step down.  
 11 This may be marked as Court's 73.  
 12 Defense may call their next witness.  
 13 MR. SCHIECK: Call Phillip Boucher, Your Honor.  
 14 THE COURT: Okay.  
 15 THE CLERK: Come all the way forward. Remain  
 16 standing, raise your right hand.  
 17 **PHILLIP BOUCHER, DEFENDANT'S WITNESS, SWORN**  
 18 THE CLERK: Thank you. Please be seated. State  
 19 your name and spell it for the record, please.  
 20 THE WITNESS: My name is Phil Boucher, that's  
 21 B-o-u-c-h-e-r.  
 22 **DIRECT EXAMINATION**  
 23 BY MR. SCHIECK:  
 24 Q Good afternoon, Mr. Boucher. How are you today?

XV-29

000756

## BOUCHER - DIRECT

1 A Fine.

2 Q How are you employed?

3 A I am a supervisor for the Nevada Department of

4 Transportation and I -- the section that we maintain is

5 basically the northeastern half of Lincoln County.

6 Q And where is your -- your yard that you work out of?

7 A The maintenance station is located in Panaca,

8 Nevada.

9 Q So it's called a maintenance station?

10 A Yes, sir.

11 Q Okay. And that's where you keep the grading

12 equipment and things like that.

13 A Yes, sir.

14 Q Okay. And how long have you worked for the

15 Nevada Transportation?

16 A I have worked there for 23 years, almost the 24 the

17 6<sup>th</sup> of October.

18 Q And how long have you been assigned to that

19 particular maintenance station?

20 A The same amount of time.

21 Q So over 20 years.

22 A Yes, sir.

23 Q Are you familiar with the Panaca, Pioche, Caliente

24 portion of Lincoln County?

XV-30

## BOUCHER - DIRECT

1 A Yes, sir.

2 Q When you -- what area did you say you were

3 responsible for?

4 A I would call it the northeastern portion. Our section

5 divides in Lincoln County, there is an Alamo section that's

6 south of us, but I take the northern half and the east -- north

7 and eastern half of the county.

8 Q And in your job for the last 20 years with the

9 Nevada Department of Transportation are you familiar with

10 most of the roads in Lincoln County?

11 A Yes, sir.

12 Q Both personally and as part of your occupation?

13 A Yes.

14 Q Are you familiar with a road known as the Rainbow

15 Canyon Road.

16 A Yes, State Route 317.

17 Q And could you tell us where State Route 317 is

18 located?

19 A It -- a section of the DOT highway begins at what

20 we call milepost 37.10, it's actually Elgin, a little railroad stop

21 called Elgin and it goes 21 and a half miles north into Caliente.

22 Q So that's the entire length of that state route?

23 A Yes.

24 Q Okay. And it's 21 miles?

XV-31

## BOUCHER - DIRECT

1 A Milepost 37.10 to 58.59.

2 Q Okay. And you remember that?

3 A I have to.

4 Q Okay. The -- what type of road -- what was the

5 road number, 3?

6 A 17.

7 Q 317?

8 A Yes.

9 Q Okay. And what type of surface is State Route 317?

10 A Mmm, it's a --

11 Q Let me qualify that question for you --

12 A Yes.

13 Q -- to be fair. What type of surface was that road in

14 July of 2001?

15 A It was a paved surface, approximately 24 feet wide.

16 Q What type of paving?

17 A Asphalt.

18 Q Can you describe the -- we'll just call it the Rainbow

19 Canyon Road.

20 A Okay.

21 Q Can you describe the terrain of the road?

22 A Yes. It's a very windy road. The speed limit is

23 posted at 45. Most of the curves are posted with the black on

24 yellow advisory speed limits for the curves coming up. There

XV-32

## BOUCHER - DIRECT

1 are five water crossings, which you do not cross water, but in

2 high waters there are cement aprons that dip and come back

3 out. One of those is posted at a 10 mile an hour and the rest

4 are posted at 20.

5 Q So you -- the posted is the speed you're suppose to

6 drive it or the safe speed to drive it?

7 A The posted is the speed limit, the advisories are

8 before these obstacles.

9 Q And you said that there's concrete at the bottom of

10 those?

11 A Yes.

12 Q And why is that?

13 A Because a lot of times we have water, a lot of water

14 come through that canyon and it has a tendency for the water

15 to go over these crossing -- instead of washing the whole road

16 out, the water just crosses and goes on. When water goes on

17 you're back to concrete because the concrete will hold up

18 longer than the pavement.

19 Q Okay. So there were five of those crossings?

20 A Yes.

21 Q One at 10 and the rest at 20 miles per hour?

22 A Yes.

23 Q What would happen if you drove your vehicle faster

24 than the 20 or the 10 posted on those locations?

XV-33

000757

BOUCHER - DIRECT

1 MR. KEPHART: Your Honor, I'm gonna object as to  
2 speculation and what vehicle we're talking about. Are we  
3 talking about a heavy vehicle or a sports car or?  
4 THE COURT: The Court will sustain the objection for  
5 lack of foundation.  
6 MR. SCHIECK: Thank you, Your Honor.  
7 BY MR. SCHIECK:  
8 Q What type of vehicle do you drive in connection with  
9 your employment with Nevada Department of Transportation?  
10 A I drive a Chevy half ton 4 wheel drive pickup.  
11 Q And you drive that pickup over the Rainbow Canyon  
12 Road on occasion?  
13 A Yes, sir.  
14 Q Okay. Have you ever driven it faster than the  
15 posted speed limit over those dips?  
16 MR. KEPHART: Objection, Your Honor, relevance.  
17 THE COURT: Overruled.  
18 THE WITNESS: Over the posted speed limit, no.  
19 BY MR. SCHIECK:  
20 Q What would happen if you did?  
21 MR. KEPHART: Objection, Your Honor, speculation.  
22 MR. SCHIECK: Your Honor, he works for the  
23 Department of Transportation and is familiar with this road for  
24 20 years.

XV-34

BOUCHER - DIRECT

1 knowledge?  
2 A I know that it's a very small low profile. I'm not  
3 positive if it's a two seater, but I know it's a very small low  
4 profile vehicle.  
5 Q Okay. In order to drive that section of road, what  
6 speed limit -- or what speed do you maintain in your truck to  
7 avoid bottoming out?  
8 A I usually stay at the speed limit. I'm never in a  
9 hurry.  
10 Q Besides the areas where there are the dips where  
11 you can bottom out, are there anything else along that road  
12 that would slow you down?  
13 A The sharp corners are very sharp.  
14 Q Okay. When you --  
15 A They are posted signs with reduced -- not reduced  
16 speed but advisory panels on them. There are, in a few places  
17 sheer canyon walls where the rock falls numerous times. The  
18 railroad calls us to take care of these things. We're not down  
19 there 24/7 so we rely on people to let us know when these  
20 situations occur.  
21 Q How many sharp curves are there on that 21 mile  
22 stretch of road?  
23 A I couldn't tell you. To many.  
24 Q More than 10?

XV-36

BOUCHER - DIRECT

1 THE COURT: But if he hasn't done it, I don't see  
2 how he would have knowledge so the Court sustains the  
3 objection.  
4 BY MR. SCHIECK:  
5 Q Have you ever seen anybody go over the road in  
6 those sections faster than the posted?  
7 A No.  
8 Q Have you ever seen any damage to the road?  
9 A Yes.  
10 Q What type of damage have you see to the roadway?  
11 A One section, the 10 mile an hour crossing is basically  
12 -- it comes up on you and you can't see it, unless you know it's  
13 there. I have seen numerous skid marks that do not even  
14 start until near the bottom of the drop. And pieces of concrete  
15 have been broken out, small.  
16 Q From a car bottoming out?  
17 A Yes. Well, I'm assuming.  
18 Q And your vehicle is a 4-wheel drive truck, is that  
19 correct?  
20 A Yes.  
21 Q Okay. Are you familiar with a vehicle known as a  
22 Fiero?  
23 A Yes.  
24 Q Okay. What type of vehicle is that, to your

XV-35

BOUCHER - DIRECT

1 A Yes.  
2 Q And those are posted with the signs to slow down?  
3 A Yes.  
4 Q Okay. Have you ever driven the road past Elgin?  
5 A Yes.  
6 Q Is that part of your jurisdiction to maintain?  
7 A No.  
8 Q Okay. Is there a way that the road connects back to  
9 U.S. -- the U.S. Highway 93?  
10 A Yes.  
11 Q Okay. And what is that section of road?  
12 A I don't think they have a name for it, we call it Kane  
13 Springs Road, it's maintained by the Lincoln County Road  
14 Department.  
15 Q Maintained by Lincoln County Road Department?  
16 A Yes, sir.  
17 Q Which is separate from the Nevada Department of  
18 Transportation?  
19 A Yes.  
20 Q What type of road is that?  
21 A It's gravel.  
22 Q And how long is the stretch from Elgin to U.S. 93?  
23 A Approximately 38 miles.  
24 Q So you have 21 miles of curvy, dipping, paved road,

XV-37

000758

## BOUCHER - DIRECT

1 followed by 38 miles of dirt road on that section?  
 2 A Yes.  
 3 Q Okay. Are you familiar with how far it is if you stay  
 4 on U.S. 93 from Caliente to where the road hooks back up  
 5 from Kane Springs?  
 6 A Yes.  
 7 Q How far is that?  
 8 A You turn off going north, is it [sic] U.S. 93, milepost  
 9 7, and when you enter Caliente you are on U.S. 93 milepost  
 10 93.5.  
 11 Q So what's the difference in mileage taking the paved  
 12 U.S. highway, as opposed to taking Rainbow Canyon to Kane  
 13 Springs Road?  
 14 A Roughly 26 to 27 miles.  
 15 Q So you save 27 miles by taking the -- call it a  
 16 shortcut?  
 17 A Yes.  
 18 Q And have you driven that dirt road section, the Kane  
 19 Springs Section of the road?  
 20 A Yes, I have.  
 21 Q Okay. Can you describe that, the way you recall it  
 22 from July of 2001?  
 23 A Could you rephrase that? In 2001 or when I have  
 24 driven it?

XV-38

## BOUCHER - DIRECT

1 Q When you have driven it.  
 2 A When I have driven it, every time within --  
 3 MR. KEPHART: Your Honor, I'm gonna object as  
 4 relevance, unless we're talking about July of 2001.  
 5 MR. SCHIECK: What -- I'll rephrase, Your Honor.  
 6 THE COURT: Go ahead.  
 7 BY MR. SCHIECK:  
 8 Q When have you driven the road, do you recall?  
 9 A The last time I drove that road was January of 2005,  
 10 and the reason I know that is because that road -- the paved  
 11 part of my section has been completely destroyed since then  
 12 and we had to go around and to get into the back area we had  
 13 to go in that road and come back out. We had no other way  
 14 to get there.  
 15 Q Okay. And previous to January of 2005 had you  
 16 driven that section of road?  
 17 A Yes.  
 18 Q Do you recall when?  
 19 A No, sir.  
 20 Q And how long have you lived in Panaca?  
 21 A I lived in Pioche --  
 22 Q Okay.  
 23 A -- for 36 years.  
 24 Q Okay. How many times would you say you've driven

XV-39

## BOUCHER - DIRECT

1 that -- that road?  
 2 A 15 to 20.  
 3 Q Over what period of time?  
 4 A 15 to 20 years.  
 5 Q You don't drive it on a regular basis?  
 6 A No, sir.  
 7 Q There in the 15 to 20 times that you have driven  
 8 that road has there been any -- and I'm talking about the dirt  
 9 portion, has there been any significant change to the quality of  
 10 the road?  
 11 A No, sir.  
 12 Q It's pretty much the same every time?  
 13 A Yes, sir.  
 14 Q Okay. And that's over the last 15 years?  
 15 A Yes.  
 16 Q And that would include the year 2001?  
 17 A Yes.  
 18 Q Okay. And what -- can you just describe the dirt  
 19 road for us?  
 20 A It -- I call it corduroyed, some people call it  
 21 washboard, but as you head north you kinda have a gradual  
 22 uphill all -- all the way, and what I mean by that is, you get  
 23 little bumps in the road and the faster you go the worse it is to  
 24 hold onto your car. You have tendency for your rear end of

XV-40

## BOUCHER - DIRECT

1 your car to want to pass your front end and as you get farther  
 2 through these areas and to the last five miles before you run  
 3 into the pavement it's -- it is a downhill summit, a winding  
 4 downhill graveled road down to the pavement.  
 5 Q Is it a road that you could maintain a speed limit  
 6 -- a speed of 60 miles an hour?  
 7 A No, sir.  
 8 Q All the time you've been either working on the  
 9 Rainbow Canyon section of the road or the 15 to 20 years  
 10 you've been driving the entire road, do you find -- save any  
 11 time taking that road?  
 12 A No.  
 13 Q Have you ever driven it on a low profile sports car  
 14 type vehicle?  
 15 A No.  
 16 Q Would you?  
 17 A No.  
 18 Q Why not?  
 19 A I don't like changes flat tires.  
 20 Q Thank you.  
 21 MR. SCHIECK: No further questions, Your Honor.  
 22 THE COURT: Can I ask you to spell Kane? Kane --  
 23 THE WITNESS: K-a-n-e.  
 24 THE COURT: K-a-n-e?

XV-41

000759



## BOUCHER - CROSS

1 THE WITNESS: Yes.

2 THE COURT: Thank you.

3 Cross?

4 MR. KEPHART: Thank you, Your Honor.

**CROSS-EXAMINATION**

6 BY MR. KEPHART:

7 Q How do you pronounce your last name, sir?

8 A Boucher.

9 Q Okay. Mr. Boucher, the dirt portion of that road that  
10 goes through from I guess it would be the Alamo side of the  
11 jurisdiction, oftentimes they -- they maintain it -- it's a graded  
12 road, is it not?

13 A Yes.

14 Q Okay. So they have graders out there on occasion,  
15 but probably not that often, do they?

16 A I don't know what their schedule is, but, yes.

17 Q But they do. It's not like a 2 lane dirt path that  
18 you'd see when you're hunting or something?

19 A No.

20 Q Right. Okay. And people do oftentimes travel that  
21 road?

22 A Yes.

23 Q And -- I mean one of the reasons why you have to  
24 maintain the portion that you work with is because people

XV-42

## BOUCHER - CROSS

1 Caliente?

2 A Pioche, yes.

3 Q Okay. Did you drive in your one ton pickup that you  
4 use?

5 A No, sir, I brought a personal vehicle.

6 Q Personal -- is it -- was it a car?

7 A No, sir.

8 Q Pickup?

9 A Yes.

10 Q Okay. And when you traveled that, how fast do you  
11 recall you were driving?

12 A 72.

13 Q Okay. And I take it you pretty much follow the  
14 speed limit?

15 A Yes.

16 Q You have no reason to be in a hurry or anything?

17 A No.

18 Q Okay. Now, are you married, sir?

19 A Yes.

20 Q Did your wife come with you?

21 A No.

22 Q If she had some real nice dinner that you wanted to  
23 get home for, you may drive a little faster than 72?

24 A No.

XV-44

## BOUCHER - CROSS

1 travel that portion of the road, is that right?

2 A Yes, mainly railroad.

3 Q So people have to get in and out of there?

4 A Yes.

5 Q Okay. Short of traveling that particular road, have  
6 you -- let me back up -- have you heard it called a shortcut? I  
7 mean Mr. Schieck even used it as a term "shortcut".

8 A Yes.

9 Q And regardless of that, if you travel from Caliente to  
10 Las Vegas, U.S. 93 is a well kept road, compared -- at least  
11 compared to the other one, is that correct?

12 A Yes.

13 Q And you can travel that one easily 60 miles an hour?

14 A Yes.

15 Q Easily 80 miles an hour?

16 A Yes.

17 Q Okay. And the only difference really is that you've  
18 got to go over that big mountain before you get into Caliente,  
19 is that right?

20 A Yes.

21 Q Okay. Have you -- you drove down today from  
22 Caliente?

23 A No, I've been here for three days.

24 Q Okay. When you drove down you drove down from

XV-43

## BOUCHER - REDIRECT

1 Q You don't like her food?

2 [Laughter]

3 Q But you would agree though that if you were in a  
4 hurry you could certainly drive faster than 72?

5 A On U.S. 93?

6 Q Yes.

7 A Yes.

8 Q Okay. And you really don't have any reason to be in  
9 a hurry though, do you?

10 A No.

11 Q Okay.

12 MR. KEPHART: I'll pass the witness, Your Honor.

13 Thank you, sir.

14 THE COURT: Redirect?

15 MR. SCHIECK: Thank you, Your Honor.

**REDIRECT EXAMINATION**

17 BY MR. SCHIECK:

18 Q U.S. 93 is not 70 mile an hour speed limit all the  
19 way, is it?

20 A No.

21 Q You have to slow down in Alamo?

22 A Yes.

23 Q On more than one occasion?

24 A Yes.

XV-45

000760

## BOUCHER - REDIRECT

1 Q The posted speed limit is what, do you recall?  
 2 A As you come into Alamo it reduces to 50, then when  
 3 you get to what they call Ash Springs, approximately 6 miles  
 4 farther down it reduces to 45.  
 5 Q And how long a stretch is that reduced speed?  
 6 A Each one is approximately a mile.  
 7 Q And there's law enforcement in Alamo?  
 8 A Yes.  
 9 Q Highway Patrol?  
 10 A Yes.  
 11 Q You also would have to -- if you're going to Panaca  
 12 you'd have to go through Caliente, correct?  
 13 A Yes.  
 14 Q And what is the speed limit through Caliente?  
 15 A 25.  
 16 Q And how long of 25 mile an hour speed limit do you  
 17 have going to Caliente?  
 18 A Two miles.  
 19 Q And there's law enforcement in Caliente also?  
 20 A Yes.  
 21 Q Is there any other reduced speed limits along that  
 22 route?  
 23 A Yes.  
 24 Q Where is that?

XV-46

## BOUCHER - RECROSS

1 A As you -- on U.S. 93 as you enter the intersection to  
 2 turn to Panaca, it is reduced to 45 about three-quarters of a  
 3 mile before the junction of SR3-19.  
 4 Q When you planned to come down to Las Vegas, how  
 5 long do you plan for it to take you?  
 6 A About three hours.  
 7 Q Thank you.  
 8 MR. SCHIECK: Nothing further, Your Honor.  
 9 THE COURT: Recross?  
 10 **RECROSS EXAMINATION**  
 11 BY MR. KEPHART:  
 12 Q Sir, you can make the trip easily in two hours  
 13 though?  
 14 A I don't.  
 15 Q You don't, but you can?  
 16 A I guess you could.  
 17 Q Sunday morning, a lot of police officers out around  
 18 7:00 in the morning?  
 19 A That I don't know.  
 20 Q Okay. Have you ever traveled it on Sunday  
 21 morning?  
 22 A No, sir, not much.  
 23 Q Okay. All right.  
 24 MR. KEPHART: Nothing further, Your Honor.

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## HER - FURTHER REDIRECT

1 THE COURT: Redirect?  
 2 MR. SCHIECK: I'm sorry, Your Honor, yes, just one  
 3 question.  
 4 **FURTHER REDIRECT EXAMINATION**  
 5 BY MR. SCHIECK:  
 6 Q How far is it from Panaca to Las Vegas, do you  
 7 know?  
 8 A 165 miles.  
 9 Q Thank you.  
 10 MR. SCHIECK: Nothing further, Your Honor.  
 11 THE COURT: Okay. Anything further by the State?  
 12 MR. KEPHART: No, Your Honor. Thank you.  
 13 THE COURT: You may step down from the stand.  
 14 You may call your next witness.  
 15 MR. SCHIECK: Sergeant Kevin Manning, Your  
 16 Honor.  
 17 THE CLERK: Please come all the way forward.  
 18 Remain standing and raise your right hand.  
 19 **KEVIN MANNING, DEFENDANT'S WITNESS, SWORN**  
 20 THE CLERK: Thank you. Please be seated. State  
 21 your name and spell it for the record, please.  
 22 THE WITNESS: It's Kevin L. Manning, M-a-n-n-i-n-g.  
 23 THE COURT: You may proceed, Mr. Schieck.  
 24 MR. SCHIECK: Thank you.

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## MANNING - DIRECT

1 **DIRECT EXAMINATION**  
 2 BY MR. SCHIECK:  
 3 Q Sergeant Manning, how are you employed?  
 4 A I'm retired. So it's not Sergeant anymore.  
 5 Q Okay.  
 6 A With a caveat, I now do cold case part time for  
 7 Metro.  
 8 Q How were you employed in July of 2001?  
 9 A I was a sergeant with Metro Homicide.  
 10 Q Okay. So you were a supervising officer in the  
 11 homicide division?  
 12 A That's correct.  
 13 Q Okay. Do you recall -- let me rephrase. When there  
 14 was a homicide that would occur within your jurisdiction would  
 15 a sergeant go out on the call typically?  
 16 A That's correct, yes.  
 17 Q Okay. Do you recall going out on a call in July of  
 18 2001, out on West Flamingo at the Nevada State Bank parking  
 19 lot?  
 20 A Yes, I do.  
 21 Q And the assigned homicide detectives, do you recall  
 22 who they were?  
 23 A Yeah, Tommy Thowsen and James LaRochelle.  
 24 Q Okay. And at the scene what would have your

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000761

## MANNING - DIRECT

1 responsibility have been?

2 A If I may?

3 Q Sure.

4 A At that particular time I was substituting for their  
5 original sergeant who was Ken Hefner. Today I can tell you if  
6 he was on vacation or why he wasn't there. And the way it  
7 works is I would have taken the original call from the general  
8 assignment people and would have responded. The  
9 investigative team would have been those two detectives. And  
10 basically I'm there to assist in whatever manner I can. A lot of  
11 times I would draft a search warrant if one was needed and  
12 those types of things when we came to original crime scene.  
13 And basically it's up to the investigators to do the investigation.  
14 One is generally responsible for the crime scene, the other is  
15 responsible for interviewing witnesses. And if there's a scene  
16 where there's a number of witnesses, I might help do some of  
17 the interviews. Those types of things.

18 Q Would you have, as part of your responsibilities,  
19 contact with the coroner investigator that would be at the  
20 scene?

21 A Yeah, in fact typically the supervisor's duty, and  
22 mine that night, was to actually call the coroner's office and to  
23 request the mortuary and an investigator. Once we were to a  
24 point in that crime scene investigation, with the crime scene

XV-50

## MANNING - DIRECT

1 Q Okay. And, but with respect to this case did you  
2 prepare any reports or anything of that nature that would  
3 refresh your recollection as to whether you did or didn't?

4 A No, in this case I don't believe I prepared any  
5 reports.

6 Q That's a responsibility of the investigating officers,  
7 the crime scene analysts and the coroner's office to prepare  
8 their reports of what happens?

9 A That's correct.

10 Q You're just there to supervise?

11 A Yes, sir.

12 Q Okay. And do you recall whether or not specifically  
13 you gave any directions to the coroner's office concerning  
14 release of information concerning the condition of the pants of  
15 the decedent?

16 A No, I do not.

17 Q And I'm gonna ask you several things and --

18 A That's --

19 Q -- and I expect you're probably gonna not recall, but  
20 I need to detail whether or not you do recall. Do you recall  
21 directing that information not be released that the decedent's  
22 penis had been cut off?

23 A Specifically, no, though I would not be surprised if  
24 that would not have been something I would have asked.

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## MANNING - DIRECT

1 analyst to get them to the scene.

2 Q Would you give information to the coroner  
3 investigator that was on the scene when he arrived?

4 A It's --

5 Q He or she arrived?

6 A Sometimes. Sometimes it would up to the guy, the  
7 investigator, the detective who actually had responsibility for  
8 the crime scene. And I believe in this case it was actually Jim  
9 LaRoche was the one that did that briefing with the  
10 coroner's office investigator.

11 Q And you don't recall yourself having briefing with the  
12 coroner's office?

13 A Not on that particular case, no.

14 Q Okay. And do sometimes on the homicide cases like  
15 this, do the homicide officers direct the coroner's office not to  
16 release certain information about the case?

17 A Yes, that's correct.

18 Q And that's so that that information doesn't get out to  
19 the public for a variety of reasons but that the information is  
20 still asked not to be disseminated?

21 A That's correct, yes.

22 Q Okay. And do you recall making any such requests  
23 in this case?

24 A Specifically, no, though I would not be surprised.

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## MANNING - DIRECT

1 Q And we've already had introduced into evidence a  
2 media release --

3 A Mm-hmm.

4 Q -- which specifically did not include that information,  
5 according to Detective Thowsen, concerning the penis being  
6 cut off, that would also be typical, correct?

7 A Yeah, and I believe I drafted that media release that  
8 night.

9 Q Okay. And do you recall whether or not you  
10 directed that it not be release that there were white paper  
11 towels stuffed in the open wound in the area where the penis  
12 had been cut off?

13 A That would have been more specific than anything  
14 that I would have done, and I do not recall that, no.

15 Q And do you recall indicating that those items had  
16 been impounded by the Metropolitan Police Department?

17 A No, I do not.

18 Q And just to go on, that there were teeth that were  
19 later found, along with the penis, at the scene, do you recall  
20 directing that that information not be released by the coroner's  
21 office?

22 A No, sir.

23 Q Okay. And I would -- have the coroner's follow up  
24 report, however you did not author that, correct?

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## MANNING - CROSS

1 A That's correct.  
 2 Q Okay. And so you have no recollection of having  
 3 conversation with Coroner Investigator Shelley Pierce-Stauffer  
 4 concerning the information that I just discussed with you?  
 5 A No, I do not.  
 6 MR. KEPHART: Your Honor, could I ask counsel  
 7 what he's referring to? He just indicated follow up report and  
 8 I'm not -- could I -- I mean you're asking him.  
 9 (Off-record colloquy of counsel)  
 10 BY MR. SCHIECK:  
 11 Q Follow notes, not a follow up report. Follow up  
 12 notes, you've never -- you wouldn't have authored this?  
 13 A I don't know which you're referring to, no.  
 14 Q Okay. Thank you.  
 15 MR. SCHIECK: Nothing further, Your Honor.  
 16 THE COURT: Cross?  
 17 MR. KEPHART: I have one question, Your Honor.  
 18 **CROSS-EXAMINATION**  
 19 BY MR. KEPHART:  
 20 Q Sergeant, we've always known you as sergeant.  
 21 You -- you never talked to Shelley Pierce-Stauffer, did you?  
 22 A You know, I've know Shelley for a number of years  
 23 and have been on a number of murder scenes with her.  
 24 Would I have talked to her, possibly. Specifically in this case I

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## MANNING - CROSS

1 can't say that I had a conversation.  
 2 Q Okay. You recall prior to actually coming in here to  
 3 testify, you had been to -- it had been discussed with you with  
 4 regards to follow up notes, do you recall that?  
 5 A Yes.  
 6 Q Okay. And you don't recall giving her any  
 7 information that would have been made in her follow up notes  
 8 here, you said Jim LaRochelle would have been the one to  
 9 speak to her?  
 10 A Yeah, as I recall specifically that he was the one that  
 11 did the briefing with Shelley Stauffer that morning.  
 12 Q Okay. Do you recall this case at all, from being out  
 13 there?  
 14 A Yes.  
 15 Q Do you recall ever seeing any white paper towels  
 16 stuffed in an open wound of the -- of this man's penis?  
 17 A The words "stuffed" stops me from answering that  
 18 question. It was a trash bin area, outside a dumpster and I  
 19 remember all kinds of debris which you would find in a  
 20 dumpster area that was covering the body. You know the  
 21 reference to "stuffed" I don't recall.  
 22 Q And, Sergeant, how long were you a homicide  
 23 detective?  
 24 A Ten years.

XV-55

## MANNING - CROSS

1 Q How long were you a sergeant in that area?  
 2 A Ten years in Homicide.  
 3 Q Okay. And during that 10 years did there a come  
 4 occasion -- was there times when actually the communication  
 5 between the detectives and what was put in some follow up  
 6 notes by the coroner has been wrong?  
 7 A We've had a few occasions.  
 8 Q As a matter of fact there was an issue that caused  
 9 some change of personnel because of that, do you recall that?  
 10 A Correct.  
 11 MR. KEPHART: Pass the witness, Your Honor.  
 12 MR. SCHIECK: Nothing further, Your Honor.  
 13 THE COURT: Okay. You may step down.  
 14 THE WITNESS: Thank you.  
 15 (Pause in the proceedings)  
 16 MR. SCHIECK: We would call Shelley Pierce-  
 17 Stauffer, Your Honor.  
 18 THE COURT: Very well.  
 19 THE CLERK: Please come all the way forward.  
 20 Remain standing and raise your right hand.  
 21 **SHELLEY PIERCE-STAUFFER, DEFENDANT'S WITNESS,**  
 22 **SWORN**  
 23 THE CLERK: Thank you. Please be seated. State  
 24 your name and spell it for the record, please.

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## PIERCE-STAUFFER - DIRECT

1 THE WITNESS: It's Shelley Pierce-Stauffer, it's  
 2 S-h-e-l-l-e-y P-i-e-r-c-e-hyphen-S-t-a-u-f-f-e-r.  
 3 THE COURT: You may proceed, Mr. Schieck.  
 4 MR. SCHIECK: Thank you.  
 5 **DIRECT EXAMINATION**  
 6 BY MR. SCHIECK:  
 7 Q How are you employed?  
 8 A I'm an investigator with the Clark County Coroner's  
 9 Office.  
 10 Q And how long have you been so employed?  
 11 A Just a little over eight years.  
 12 Q So you would have been employed in that position in  
 13 July of 2001?  
 14 A Yes.  
 15 Q Okay. Do you recall to responding to a crime scene  
 16 on July 9<sup>th</sup>, 2001, on West Flamingo behind the Nevada State  
 17 Bank --  
 18 A Yes.  
 19 Q -- where a body was found behind a dumpster?  
 20 A Yes.  
 21 Q Okay. You recall that scene?  
 22 A Yes.  
 23 Q Okay. There with the Clark County Coroner's Office,  
 24 do you have a format to prepare what's known as follow up

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PIERCE-STAUFFER - DIRECT

1 notes?  
 2 A Yes.  
 3 Q Okay. And is that prepared in the regular course of  
 4 your business or the activity of the coroner's office?  
 5 A Depending on the case. It's not done on every case.  
 6 Q Is it done on every homicide?  
 7 A No.  
 8 Q Is it done on every homicide where there's follow up  
 9 notes that have to be taken?  
 10 A Yes.  
 11 Q Okay. If I were to show you a document could you  
 12 identify it as whether or not it appears to be a copy of some  
 13 follow up notes on this case?  
 14 A Yes.  
 15 Q Okay. I'm gonna show you what's been marked as  
 16 DDDD for identification. If you could just look at that and tell  
 17 me if you recognize it?  
 18 A Yes.  
 19 Q Does that appear to be follow up notes on this  
 20 particular case?  
 21 A Yes.  
 22 Q And let me just ask you some question about the  
 23 preparation of follow up notes. Are they prepared on the --  
 24 THE COURT: Could I ask counsel to approach

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RCE-STAUFFER - DIRECT

1 BY MR. SCHIECK:  
 2 Q Who is WG?  
 3 A William Gaza.  
 4 Q Okay. And who is he?  
 5 A He at that time was my supervisor.  
 6 Q He would be a person -- would he be a person that  
 7 made entries such as you made?  
 8 A Yes.  
 9 Q And who would RCJ be?  
 10 A Richard Jones.  
 11 Q And what was his position in July of 2001?  
 12 A An investigator.  
 13 Q With the coroner's office?  
 14 A Yes.  
 15 Q And KPH?  
 16 A That's Karen Harriford [phonetic], she's an  
 17 investigator there.  
 18 Q And it would normal that these -- would it be normal  
 19 that these individuals would make entries?  
 20 A Yes.  
 21 Q And one last, DPD?  
 22 A Daniel Daniels, he's an investigator there.  
 23 Q Okay. Now if you were going to make a notation  
 24 into follow up notes, where would you normally get the

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PIERCE-STAUFFER - DIRECT

1 please.  
 2 (Off-record Bench Conference)  
 3 THE COURT: The Court apparently is mixing up  
 4 Triple D with quadruple D, so I wanted to get a clarification.  
 5 You may proceed. Thank you, Mr. Schieck.  
 6 MR. SCHIECK: Thank you, Your Honor.  
 7 BY MR. SCHIECK:  
 8 Q When you, there in the coroner's office prepare  
 9 these follow up notes, are the prepared on a computer where  
 10 different investigators can input information in to?  
 11 A Yes.  
 12 Q And you would put your initials at the end of the  
 13 entry where you put if you were making an entry?  
 14 A Yes.  
 15 Q Okay. And your initials are SPS?  
 16 A Yes.  
 17 Q Okay. And there's other people that would make  
 18 entries into these documents, correct?  
 19 A Yes.  
 20 Q And would William -- WG be William Gaza?  
 21 A Yes.  
 22 MS. DIGIACOMO: Objection, leading.  
 23 THE COURT: Sustained.  
 24 ///

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PIERCE-STAUFFER - DIRECT

1 information?  
 2 A Computers, telephone calls, individuals.  
 3 Q Would you note on there the names of the individual  
 4 that you got information from?  
 5 A Yes.  
 6 Q Would this be information that you verified yourself  
 7 or just was relayed to you?  
 8 A It could be related to me.  
 9 Q I'm gonna -- do you recall making any entries into  
 10 the follow up notes in this case on July 9<sup>th</sup>, 2001?  
 11 A Yes.  
 12 Q Specifically with information from Sergeant  
 13 Manning?  
 14 MS. DIGIACOMO: Objection, leading.  
 15 THE COURT: Sustained.  
 16 BY MR. SCHIECK:  
 17 Q Where did you get the information that you inputted  
 18 on July 9<sup>th</sup>, 2001?  
 19 A Say it once more, I didn't quite understand.  
 20 Q From where did you get the information that you  
 21 inputted on July 9<sup>th</sup>, 2001?  
 22 A Sergeant Manning.  
 23 Q Okay. And how did you receive that information  
 24 from Sergeant Manning?

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PIERCE-STAUFFER - DIRECT

1 A He spoke to me and gave me the information.  
 2 Q He spoke to you personally?  
 3 A Yes.  
 4 Q At the scene or?  
 5 A Yes. At the scene.  
 6 Q And had you known Sergeant Manning before then?  
 7 A Yes.  
 8 Q Okay. Is it the same individual that just left the  
 9 courtroom?  
 10 A Yes.  
 11 Q Okay. So he was the individual that gave you this  
 12 information?  
 13 A Yes.  
 14 Q And that information -- how was it -- was that  
 15 information part of your regular duties to receive?  
 16 A Yes.  
 17 Q And do you recall what that information was in this  
 18 case?  
 19 A Well, I specifically recall him not wanting released to  
 20 the public -- do you want me to say exactly what he didn't  
 21 want released?  
 22 Q Yes.  
 23 A That the homicide victim, his penis was no longer  
 24 there. It was cut off.

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PIERCE-STAUFFER - DIRECT

1 Q Okay. You just don't recall it specifically now?  
 2 A Well, I recall specifically what I just said about why  
 3 he -- or what he didn't want released to the public as far as  
 4 the penis. In our case notes, even today we put things  
 5 sometimes there that we don't want families, you know, back  
 6 then the public would just come in and buy reports off the  
 7 street, we would put things, and we still do to this day, in  
 8 different parts so it doesn't show up in our real reports. I  
 9 mean I could give examples if what you wanted of what we  
 10 wouldn't put in there. And this -- the rest of those things I  
 11 have there, definitely fall under something that I wouldn't put  
 12 in something today that I didn't want the family to see.  
 13 Q Wouldn't fall under that heading, is that -- is that  
 14 what you said?  
 15 A I -- the rest of those things in there, in that -- in my  
 16 case notes were put there, not specifically because Sergeant  
 17 Manning didn't want released to the public, you know, as far  
 18 as a couple open wounds I have mentioned in there. There's  
 19 just certain things that we put in our follow notes, depending  
 20 on the case, that we don't want anybody to know about just  
 21 because of it's embarrassing -- I don't know, too brutal. We  
 22 don't want people to see that.  
 23 Q Well, you wouldn't just make up things that you  
 24 didn't want people to see and put in your notes?

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PIERCE-STAUFFER - DIRECT

1 Q Do you recall any other information he requested  
 2 not to be released?  
 3 A No.  
 4 Q Would it refresh your recollection to look at the  
 5 follow up note entry that you made on July 9<sup>th</sup>?  
 6 A No, because I've already looked at it and it doesn't  
 7 make me recall that night of him saying all of those things.  
 8 Q Okay.  
 9 A I don't know if this is something I should say,  
 10 but --  
 11 MS. DIGIACOMO: Objection, Your Honor.  
 12 THE WITNESS: Okay.  
 13 THE COURT: Sustained.  
 14 BY MR. SCHIECK:  
 15 Q I don't know if it is either.  
 16 [Laughter]  
 17 Q So we'll just go on and ask the question. Would you  
 18 put information down on your official follow up notes if it  
 19 wasn't correct?  
 20 A No. If I believed it to be correct, no.  
 21 Q If you indicated in your notes that he had told you  
 22 this information, would that have been correct at the time you  
 23 entered it?  
 24 A Yes.

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PIERCE-STAUFFER - DIRECT

1 A Oh, no. No.  
 2 Q So there must have been a source of putting those  
 3 things into your follow up notes?  
 4 A Well, the thing after the Sergeant Manning, what he  
 5 didn't want released, those are things I saw.  
 6 Q Okay. So you saw the white paper towels stuffed in  
 7 the open --  
 8 MS. DIGIACOMO: Objection, leading?  
 9 THE COURT: Sustained.  
 10 BY MR. SCHIECK:  
 11 Q Did you see white paper --  
 12 MS. DIGIACOMO: Objection, leading.  
 13 MR. SCHIECK: The question is did you.  
 14 MS. DIGIACOMO: She can -- he can ask what'd she  
 15 see.  
 16 THE COURT: Sustained.  
 17 BY MR. SCHIECK:  
 18 Q What did you see?  
 19 A On any particular thing or the whole thing from the  
 20 time I got there?  
 21 Q With respect to white paper towels.  
 22 A I saw, as the garbage was slowly being removed  
 23 from his body, there were white paper towels kinda wadded,  
 24 like squooze [sic] and still not all of them were, but the tops of

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## PIERCE-STAUFFER - C

1 them were still like paper towels. Like on a machine here,  
 2 you know, not like kitchen paper towels. They were -- just --  
 3 not stuffed all the way in, but there was an opening there  
 4 where his penis was, and the towels were partially stuffed in  
 5 there so that you could -- it was obvious to me, once those  
 6 towels were moved, his penis was not there, just the way the  
 7 ends of those paper towels were stuffed in there.

8 Q Okay. And you saw that yourself?

9 A Yes.

10 MR. SCHIECK: Okay. Nothing further, Your Honor.

11 THE COURT: Cross?

12 MS. DiGIACOMO: May I --- may I approach the  
 13 clerk, Your Honor?

14 THE COURT: Yes.

15 (Pause in the proceedings)

16 MS. DiGIACOMO: The Court's indulgence.

17 MR. KEPHART: May I approach, Your Honor?

18 THE COURT: Yes.

19 (Off-record colloquy of state's counsel)

20 (Pause in the proceedings)

**CROSS-EXAMINATION**

21 BY MS. DiGIACOMO:

22 Q The follow up notes that defense counsel was asking  
 23 about, those are things that are internal documents only, not  
 24

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## PIERCE-STAUFFER - CROSS

1 penis had been cut off, is that correct?

2 A Yeah.

3 Q That wouldn't -- that's something that wasn't to be  
 4 released to the public?

5 A Yes.

6 Q Okay. And you talked about that you recall these  
 7 white paper towels wadded up and partially stuffed into the  
 8 wound.

9 A [No audible response].

10 Q Were you -- is that a yes for the record?

11 A Yes.

12 Q Were you taking part in the removal of the garbage?

13 A Yes.

14 Q Okay. And who else was doing it with you?

15 A Crime Scene Analysts.

16 Q Okay. Was there more than one?

17 A I believe so, but I don't remember.

18 Q Okay. It is possibly there were three other Crime  
 19 Scene Analysts?

20 A Oh, yes.

21 Q All right. Now I'm gonna show you State's Exhibit  
 22 Number 16.

23 MS. DiGIACOMO: Your Honor, can I approach to  
 24 move the easel?

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## PIERCE-STAUFFER - CROSS

1 released to the public, correct?

2 A Normally.

3 Q I know in this case they were, but I mean normally  
 4 they're just internal documents?

5 A Yes, yes.

6 Q Okay. And in fact they're not even released to  
 7 Metro, correct?

8 A No.

9 Q But you do do something else and I don't know if  
 10 you can see this?

11 A Mm-hmm.

12 Q I'm showing a three page document where it's your  
 13 coroner's investigative report?

14 A Yes.

15 Q Okay. This is something that you did author that is  
 16 released to the public?

17 A Yes.

18 Q Okay. And so the things that are in the follow up  
 19 notes are things you wouldn't put in this report so that the  
 20 family and the public wouldn't know about it?

21 A Yes.

22 Q Generally?

23 A Generally, yeah.

24 Q Okay. And in this case specifically, the fact that the

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## PIERCE-STAUFFER - CROSS

1 THE COURT: Yes.

2 BY MS. DiGIACOMO:

3 Q Okay. Okay, there you go. Can you see that photo?

4 A Yes.

5 Q Do you see in this photo any of the white paper  
 6 towels that you were kinda talking about were wadded?  
 7 Would it help you if I brought you the photo itself?

8 A Probably, yes.

9 MS. DiGIACOMO: May I approach, Your Honor?

10 THE COURT: Yes.

11 BY MS. DiGIACOMO:

12 Q Okay, I'm gonna show you State's Number 16.

13 A They just look like those.

14 Q Okay.

15 A But I don't see the -- what I'm talking about in this  
 16 picture.

17 Q Okay, and so -- well, I'm gonna show you State's 15  
 18 and then I'll put 'em back on the DORR so we can --

19 A Okay.

20 Q He's looking for the one, but to make sure I did all  
 21 of these. Okay. Now going back to -- let me show you  
 22 actually a different one, State's Exhibit Number 14, this might  
 23 show up better. Okay, can you see what's depicted there?

24 A Mm-hmm. Yes.

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## PIERCE-STAUFFER - CROSS

1 Q Okay. Well, actually I guess... should turn it right  
2 side. Where's the body? You can actually draw on the screen  
3 in front of you.  
4 A Here's his head -- oops.  
5 Q Oh, I'm sorry. It was my fault, a little too high.  
6 A Hit exit. There's his head, there's an arm.  
7 Q Wait, are you drawing on it?  
8 A No.  
9 Q Oh, draw on it.  
10 A There's his head.  
11 Q Okay.  
12 A There's his arm.  
13 Q Okay.  
14 A There's a leg. There's a leg. His other arm's up  
15 there, but there's something covering it.  
16 Q Now do you see some white paper towels -- wadded  
17 white paper towels in this photograph?  
18 A I don't see the wadded ones I'm talking about.  
19 Q I'm not asking you that.  
20 A Oh.  
21 Q I'm asking do you see any wadded paper towels in  
22 this photograph? Okay, specifically right here on the belly  
23 area --  
24 A Yes.

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## PIERCE-STAUFFER - CROSS

1 Q Okay. And there's a lot of white paper towels just to  
2 east of the body. Do you see those on the --  
3 A Yes.  
4 Q -- on the ground? Okay, now the groin area is  
5 exposed here, correct?  
6 A Yes.  
7 Q And do you see that there's some plastic pulled back  
8 here?  
9 A Yes.  
10 Q Okay. In fact that plastic was directly over where  
11 the severed penis was, correct?  
12 A I don't know.  
13 Q Okay. You don't recall that?  
14 A No, I don't recall.  
15 Q Okay. But you do recall a lot of these white paper  
16 towels being there?  
17 A Yes.  
18 Q And I'm showing you State's Exhibit Number 13.  
19 A Yes.  
20 Q And do you recognize this?  
21 A Yes.  
22 Q And what's here?  
23 A The severed penis.  
24 Q All right. And so this open wound right here, is that

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## PIERCE-STAUFFER - CROSS

1 Q -- or actually the groin area?  
2 A Yes.  
3 Q Over here on the side?  
4 A Yes.  
5 Q Down here between the legs?  
6 A Yes.  
7 Q Okay. Showing you State's Exhibit Number 9, could  
8 you see any the -- this is the body from a different angle, do  
9 you see white paper towels here?  
10 A Yes.  
11 Q Okay. And specifically right here on the side?  
12 A Yes.  
13 Q Same thing between the legs?  
14 A Yes.  
15 Q And there are some here on the other side, correct?  
16 A That's what it looks like to me.  
17 Q Now I'm gonna show you State's Exhibit Number 15,  
18 do you recognize what's depicted here?  
19 A Yes.  
20 Q And what's depicted here?  
21 A The deceased.  
22 Q Okay. And what -- at point of the process are we  
23 looking at?  
24 A After -- during the removal of the garbage.

XV-71

## PIERCE-STAUFFER - CROSS

1 where you saw paper towels actually stuffed into it?  
2 A Yes.  
3 Q Okay. And see this plastic down here?  
4 A Yes.  
5 Q Where was that?  
6 A I don't recall.  
7 Q Okay. So you don't recall the body having plastic  
8 over the groin area, kinda wrapped around the body?  
9 A No.  
10 Q Now you said you specifically recall seeing that and  
11 that's why it's in your follow up notes, correct?  
12 A Yes.  
13 Q All right. Also in your follow up notes you put that  
14 these were impounded by the LVMPD, the white paper towels,  
15 correct?  
16 A Yes.  
17 Q Did you actually see the CSAs collect those and  
18 impound them?  
19 A I saw them put them in bags, what they did with  
20 them I don't -- I didn't actually watch them go impound 'em at  
21 the --  
22 Q Okay. So in this part of your follow up notes you're  
23 just assuming that they impounded those towels?  
24 A Oh, yes. Yes.

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000767



PIERCE-STAUFFER - CROSS

1 Q But you don't know if they just processed them and  
2 then maybe discarded them?  
3 A Right. I don't know that.  
4 Q Okay. And you also put in your follow up report that  
5 there was an open circular wound to the left buttock, do you  
6 recall that?  
7 A I don't recall -- I don't remember what the wound  
8 looked like.  
9 Q But you do recall writing that in your follow up  
10 notes?  
11 A No, but if I put it there it's there.  
12 MS. DiGIACOMO: Your Honor, may I approach?  
13 THE COURT: Yes.  
14 MS. DiGIACOMO: Oh, where's the defense exhibit?  
15 DDDD? It's just proposed.  
16 (Off-record colloquy of counsel)  
17 MS. DiGIACOMO: I'm gonna -- may I approach,  
18 Your Honor?  
19 THE COURT: You may.  
20 BY MS. DiGIACOMO:  
21 Q I'm gonna show you what's been marked for  
22 identification purposes only as Defendant's Exhibit DDDD.  
23 A Okay.  
24 Q Do you recognize that?

XV-74

PIERCE-STAUFFER - CROSS

1 you're not -- well, strike that. Regarding the white paper  
2 towels that you saw stuffed in the opening, you're 100 percent  
3 positive you saw that, correct?  
4 A Yes.  
5 Q Okay. There's no way you're mistaken?  
6 A Yes.  
7 Q Okay. Even if no one else at the scene had seen  
8 that, you know you saw that?  
9 A Yes.  
10 Q Now is it fair to say that your reports aren't always  
11 100 percent accurate, even though you try to be accurate  
12 yourself?  
13 A Yes.  
14 Q Okay. Because I mean things you see might turn  
15 out later not to be accurate?  
16 A Yes.  
17 Q Okay.  
18 A And people may tell me inaccurate things that I put  
19 in reports.  
20 Q Okay. So it's -- so part of what you put in your  
21 reports is what other people tell you, not just what you see?  
22 A Oh, sure.  
23 Q Okay. And in fact in this case, do you recall putting  
24 in your report that there were possible ligature marks around

XV-76

PIERCE-STAUFFER - CROSS

1 A Yes.  
2 Q Okay. And I'm gonna show you --  
3 THE COURT: So it was proposed DDDD?  
4 MS. DiGIACOMO: That's correct, Your Honor.  
5 BY MS. DiGIACOMO:  
6 Q Right here, do you recall that?  
7 A No.  
8 Q Okay, when you -- okay. I'm showing you there was  
9 an open circular wound noted to the left buttock, there was a  
10 small piece of unknown material, hard object, possibly a piece  
11 of tooth sticking out of the wound, and you're saying you don't  
12 remember that?  
13 A Uh-uh, I don't remember it.  
14 Q Okay. You don't remember writing it or you don't  
15 remember seeing it now?  
16 A Both.  
17 Q Okay. So that doesn't stick out in your mind?  
18 A No.  
19 Q All right. It's possible that you were incorrect  
20 though that there was a piece of a tooth possibly sticking out  
21 of this wound? I mean you're going by what you saw, you  
22 don't know what they later found?  
23 A Right.  
24 Q Okay. And with regard to the white paper towels,

XV-75

PIERCE-STAUFFER - CROSS

1 the decedent's neck?  
2 MR. SCHIECK: Which page are we on?  
3 MS. DiGIACOMO: Oh, I'm sorry, page 2 of her  
4 summary of investigation.  
5 MR. SCHIECK: Okay. We're looking at a different  
6 document?  
7 MS. DiGIACOMO: Right, I'm looking at her report of  
8 investigation.  
9 BY MS. DiGIACOMO:  
10 Q This is the -- the report that was released to the  
11 public?  
12 A Mm-hmm.  
13 Q Correct?  
14 A Ask me -- I don't -- say that again?  
15 Q Okay. Your 3, 4 page report --  
16 A Yes.  
17 Q -- of investigation document.  
18 A Mm-hmm.  
19 Q Okay. Do you recall writing in there that you saw  
20 possible ligature marks around the decedent's neck?  
21 A I don't recall writing it.  
22 Q Okay. If I was to show you your report would that  
23 refresh your recollection?  
24 A No.

XV-77

000768

## PIERCE-STAUFFER - C

1 Q Okay, so you don't have any collection whatsoever  
2 of seeing the ligature marks or writing it in your report?  
3 A No.  
4 Q But you would agree that it's in your report  
5 regarding this case?  
6 A Oh, yes. And I believe that I saw it that night or I  
7 wouldn't have put it in my report.  
8 Q Okay.  
9 MS. DIGIACOMO: The Court's indulgence.  
10 (Off-record colloquy of state's counsel)  
11 BY MS. DIGIACOMO:  
12 Q Now would it -- okay, you wrote in here that you  
13 believed you wrote what you saw that night, correct?  
14 A Yes.  
15 Q You thought you saw possible ligature marks,  
16 correct?  
17 A Yes.  
18 Q Would it surprise you to learn that were no ligature  
19 marks on his neck when the autopsy was preformed?  
20 A No.  
21 Q Okay. So it is possible that things you see are not  
22 always correct?  
23 A Right. And that's why I put possible. I didn't --  
24 don't know what they were for sure.

XV-78

## PIERCE-STAUFFER - RECROSS

1 BY MR. SCHIECK:  
2 Q Like a brown --  
3 A Yes.  
4 Q -- paper bag?  
5 A Yes.  
6 Q You saw them put the paper towels in the bag like  
7 this, a brown paper bag. And for the record I'm holding  
8 State's Exhibit 130 and contents. The bag looked like this and  
9 they impounded the items?  
10 A It was a brown paper bag, yes.  
11 MR. SCHIECK: Nothing further, Your Honor.  
12 **RECROSS EXAMINATION**  
13 BY MS. DIGIACOMO:  
14 Q These paper towels, how many were there?  
15 A Like a handful. Just -- (cupping hand).  
16 Q Okay. But I mean you saw the picture, there were  
17 paper towels --  
18 A Mm-hmm.  
19 Q -- all over.  
20 A Mm-hmm.  
21 Q And so did they collect all of 'em?  
22 A I don't believe so.  
23 Q Okay. So they collected just a handful that were  
24 stuffed into the opening of the wound?

XV-80

## PIERCE-STAUFFER - REDIRECT

1 Q And based on the facts that your reports are not just  
2 based on what you see but what other people tell you and  
3 what other people told them, it's possible they're not always  
4 accurate?  
5 A Sure. Yes.  
6 MS. DIGIACOMO: Nothing further.  
7 THE COURT: Redirect?  
8 MR. SCHIECK: Thank you, Your Honor.  
9 **REDIRECT EXAMINATION**  
10 BY MR. SCHIECK:  
11 Q But you recall that you did see the paper towels that  
12 you've described?  
13 A Yes.  
14 Q Nobody told you that, you saw that?  
15 A Yes.  
16 Q And you saw the Crime Scene Analysts put them into  
17 bags, correct?  
18 A Yes.  
19 Q Okay. When you say bags, do you mean like these  
20 -- the Court's --  
21 MR. SCHIECK: May I approach over here, Your  
22 Honor --  
23 THE COURT: Yes.  
24 MR. SCHIECK: -- just grab and evidence bag.

XV-79

## PIERCE-STAUFFER - RECROSS

1 A What I saw was just the ones stuffed in the wound  
2 were taken separately -- not -- and what they took after, I  
3 don't know. They could've taken everything after -- they're  
4 there several hours after I leave. They're there hours before  
5 I'm there. They take a lot of things that I don't even know  
6 that they took.  
7 (Off-record colloquy of state's counsel)  
8 BY MS. DIGIACOMO:  
9 Q Okay. What was on the body when it was  
10 transported?  
11 A What was on the body?  
12 Q Right. When the body was placed on the white  
13 sheet and put in your coroner's body bag, what was on the  
14 body?  
15 A Clothes.  
16 Q What clothes?  
17 A I don't specifically recall what he was wearing.  
18 Q Okay. Anything else, other than his clothes?  
19 A If he had any jewelry on or anything like that, that  
20 all would have stayed.  
21 Q And do you specifically remember if any of the trash  
22 went?  
23 A No, I don't specifically remember.  
24 MS. DIGIACOMO: Nothing else. Nothing further.

XV-81

SHAYNE KRAFT - DIRECT

1 MR. SCHIECK: No further questions, Your Honor.  
 2 THE COURT: You may step down.  
 3 You may call your next witness.  
 4 MS. GREENBERGER: Thank you.

(Pause in the proceedings)

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

**SHAYNE KRAFT, DEFENDANT'S WITNESS, SWORN**

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

11 THE WITNESS: Shayne Rochelle Kraft, K-r-a-f-t.

12 THE CLERK: Spell the rest of your name please.

13 THE WITNESS: Oh, Shayne, S-h-a-y-n-e  
 14 R-o-c-h-e-l-l-e.

15 THE COURT: You may proceed.

16 MS. GREENBERGER: Thank you, Judge.

**DIRECT EXAMINATION**

BY MS. GREENBERGER:

19 Q Good afternoon.

20 A Hi.

21 Q Do you see Kirstin Blaise Lobato in the courtroom?

22 A I do.

23 Q Can you please identify her?

24 A She's right there behind the screen.

XV-82

SHAYNE KRAFT - DIRECT

1 Q Did you live near the Lobato residence?

2 A I lived approximately a mile away.

3 Q Do you recall seeing Blaise in the year of 2001?

4 A I do.

5 Q Was there a time that you knew her to graduate  
 6 from school?

7 A Yes, I do.

8 Q What --

9 A I was at her graduation.

10 Q When was that, if you recall?

11 A I don't recall exactly when that was.

12 Q Would it be spring of 2001?

13 A It -- yeah, it should have been.

14 Q You were at her graduation?

15 A Yes, I was.

16 Q Do you know if she went down to Las Vegas after  
 17 graduation?

18 A Yes, she did.

19 Q Do you remember when she came back from Las  
 20 Vegas?

21 A It was approximately the 2<sup>nd</sup> of July, thereabouts.

22 MS. GREENBERGER: May I approach, Your Honor?

23 THE COURT: You may.

24 ///

XV-84

SHAYNE KRAFT - DIRECT

1 Q What is she wearing?

2 A Something kinda striped.

3 MS. GREENBERGER: Please let the record reflect  
 4 she's been identified.

5 THE COURT: The record shall so reflect.

BY MS. GREENBERGER:

7 Q How do you know Blaise?

8 A She is my step-cousin.

9 Q Are you related to her by blood?

10 A No.

11 Q What is the -- how is the relationship of step-cousin?  
 12 Through what relative?

13 A She is my aunt's stepdaughter.

14 Q And what is your aunt's name?

15 A Rebecca Lobato.

16 Q Where do you reside?

17 A I reside in Littlefield, Arizona.

18 Q And how long have you lived there?

19 A Almost two and half years now.

20 Q Where did you live prior?

21 A Before that I lived in Las Vegas for some time, and  
 22 before that I lived in Panaca.

23 Q What time period did you live in Panaca?

24 A From 2000 to about January 2002, I believe.

XV-83

SHAYNE KRAFT - DIRECT

BY MS. GREENBERGER:

2 Q How do you remember that date?

3 A She had come back a couple of days before we had  
 4 our July 4<sup>th</sup> barbeque.

5 Q Can you step down from the stand, and there's a  
 6 pen right here, and put your initials when you recall Blaise  
 7 coming back to Panaca in July.

8 A (Witness Complies)

9 Q You may sit down. You mentioned it was a couple  
 10 of days before a July 4<sup>th</sup> barbeque that you first saw her?

11 A Mm-hmm.

12 COURT RECORDER: Is that a yes?

13 THE WITNESS: Yes. I'm sorry.

14 MS. DiGIACOMO: Objection, it's actually calling for  
 15 facts not in evidence. She asked when she came home, not if  
 16 she saw her.

17 THE COURT: Sustained.

BY MS. GREENBERGER:

19 Q When did you first see her in the month of July?

20 A On the 4<sup>th</sup>.

21 Q Where did you see her?

22 A At the barbeque. At her house.

23 Q Can you step down from the stand again and put  
 24 your initials on that date as well.

XV-85

## SHAYNE KRAFT - DIRECT

1 A (Witness complies).  
 2 Q You went to a barbeque, you mentioned?  
 3 A Yes, we did.  
 4 Q And where was that?  
 5 A At her house.  
 6 Q Who was there?  
 7 A It was Becky, Larry, her, my dad, me, my husband,  
 8 her friend Marilyn, cousin Ashley and I think that was it.  
 9 Q What time did the barbeque start?  
 10 A I'm not 100 percent sure. It was before dark.  
 11 Q How many hours were you there?  
 12 A I was there probably 'til about 9:00, 9:30 that night.  
 13 Q Was Blaise there the full time?  
 14 A Mm-hmm. Yes.  
 15 Q Were there fireworks?  
 16 A There was in Caliente, we didn't have any in Panaca.  
 17 Q Do you remember what the weather was like?  
 18 A It was beginning to storm.  
 19 Q Do you recall seeing her vehicle or do you know  
 20 what time of vehicle she drove --  
 21 A Yes.  
 22 Q -- during that time period?  
 23 A Yes.  
 24 Q And what was that?

XV-86

## SHAYNE KRAFT - DIRECT

1 A No.  
 2 Q How long did you see her on that occasion?  
 3 A I saw -- I left at approximately sunset, so I'm  
 4 guessing about 8 o'clock or so is when I left.  
 5 Q Okay. Why don't you put the time period you saw  
 6 her and initial it please.  
 7 A (Witness complies).  
 8 Q How do you recall specifically that you saw her on  
 9 that date of July 8<sup>th</sup>?  
 10 A What do you mean?  
 11 Q How do you recall that particular date as opposed to  
 12 say, July 9<sup>th</sup>?  
 13 A Oh. Oh, okay. I had went over, because my  
 14 husband had cranked his neck and I was going over to get  
 15 some Tiger balm to rub out his neck.  
 16 Q What is your husband's name?  
 17 A John Kraft.  
 18 Q All right.  
 19 A And I went over -- I was also making chicken fried  
 20 steak that night so I decided to get an electric skillet from my  
 21 aunt to make my steak.  
 22 Q And your aunt is --  
 23 A Becky Lobato.  
 24 Q -- Blaise's mother?

XV-88

## SHAYNE KRAFT - DIRECT

1 A It was a Fiero.  
 2 Q Do you remember seeing her vehicle on that date?  
 3 A Yes.  
 4 Q Where was it?  
 5 A It was parked in the front by the chainlink fence.  
 6 Q The front of?  
 7 A Of her house.  
 8 Q Would that be on the street?  
 9 A Yes.  
 10 Q When did you see her after the July 4<sup>th</sup> barbeque?  
 11 A The next time that I saw her was on the 8<sup>th</sup>.  
 12 Q Of July?  
 13 A Yes.  
 14 Q Do you remember when? What time?  
 15 A I went over there approximately 6:00, 6:30, that  
 16 evening.  
 17 Q Can you kindly get off the stand one last time and  
 18 put your initials and the time that you saw her on July 8<sup>th</sup>.  
 19 A The time?  
 20 Q Please.  
 21 A (Witness complies). From the beginning to the end  
 22 or just at 6:30?  
 23 Q Well, stand -- if you don't mind standing for a  
 24 second.

XV-87

## SHAYNE KRAFT - DIRECT

1 A Yes. And I went over there, like I said between  
 2 6:00 and 6:30 and I stayed there until about 8:00.  
 3 Q Who was there on that occasion?  
 4 A It was myself, Blaise, Becky, Ashley and I think Chris  
 5 Carrington was there, but I'm not 100 percent sure.  
 6 Q How do you know Chris Carrington?  
 7 A I don't, but that was the first day that I had ever  
 8 seen him.  
 9 Q You mentioned Ashley, who is Ashley?  
 10 A My cousin. Blaise's stepsister.  
 11 Q Is that Becky's daughter?  
 12 A Yes.  
 13 Q When you arrived, where did you see Blaise?  
 14 A I'm not sure. I know we all adjourned to the  
 15 garage, but I'm not sure if she was in the house or the garage.  
 16 Q What did you do during the two hour period that  
 17 you were there?  
 18 A We all sat in the garage and talked and laughed and  
 19 we called my mother in Colorado. That was pretty much  
 20 about it.  
 21 Q Why did you call your mother in Colorado?  
 22 A We were having a discussion and my mother would  
 23 know the answer so we just called and -- to get the answer.  
 24 Q Did you use your phone?

XV-89

SHAYNE KRAFT - DIRECT

- 1 A No, I believe Becky used her cellphone.  
 2 Q Did you talk to your mother?  
 3 A Briefly.  
 4 Q Do you know why Becky used her cellphone.  
 5 A I think she said that it would --  
 6 MS. DiGIACOMO: Objection, speculation or hearsay.  
 7 THE COURT: Sustained, as to hearsay.  
 8 BY MS. GREENBERGER:  
 9 Q Why was the cellphone used, if you know?  
 10 A I believe it was because it was on speed dial.  
 11 Q Was there anything unusual about your appearance  
 12 at that time?  
 13 A I was pregnant.  
 14 Q How many months?  
 15 MS. DiGIACOMO: Objection, relevance.  
 16 THE COURT: Overruled. You may answer.  
 17 THE WITNESS: Approximately five or six months.  
 18 BY MS. GREENBERGER:  
 19 Q Did you invite anyone from the house over for  
 20 dinner?  
 21 A I had Ashley come over for dinner.  
 22 Q Did you invite anyone besides Ashley?  
 23 A No.  
 24 Q How did you get to the residence?

XV-90

SHAYNE KRAFT - DIRECT

- 1 on the 8<sup>th</sup>?  
 2 A Yes, he did.  
 3 Q What time?  
 4 A He came over approximately 8 o'clock. That's why I  
 5 left.  
 6 Q How do you know it was July 8<sup>th</sup> and not July 7<sup>th</sup> that  
 7 you saw Blaise in the garage?  
 8 A Because the next day I took my husband over to the  
 9 hospital for his neck.  
 10 MS. GREENBERGER: May I approach the clerk?  
 11 THE COURT: Yes.  
 12 (Pause in the proceedings)  
 13 BY MS. GREENBERGER:  
 14 Q Did you go with your husband to the hospital?  
 15 A Yes, I did.  
 16 Q What hospital was that?  
 17 A Glover C. Deals.  
 18 Q Where is that located?  
 19 A In Caliente.  
 20 Q Do you remember what time you went to the  
 21 hospital?  
 22 A It was first thing in the morning, about 9 o'clock or  
 23 so.  
 24 Q Did you drive him?

XV-92

SHAYNE KRAFT - DIRECT

- 1 A In my car.  
 2 Q Did there come a time when someone else came to  
 3 the residence while you were there?  
 4 A Not that I recall.  
 5 MS. DiGIACOMO: Your Honor, I couldn't hear the  
 6 answer.  
 7 THE COURT: Not that I recall.  
 8 MS. DiGIACOMO: Oh, not that I --  
 9 BY MS. GREENBERGER:  
 10 Q How did you determine when it was time to leave?  
 11 A It was getting pretty late and I was tired.  
 12 Q Where was your husband at that time?  
 13 A He spent most of the time in the front yard with  
 14 Marilyn and I believe Blaise for a time. They were laying on  
 15 the grass watching lighting.  
 16 Q Was this on July 4<sup>th</sup> or July 8<sup>th</sup>?  
 17 A Oh, that -- I'm sorry. That was on the 4<sup>th</sup>. The 8<sup>th</sup>  
 18 he was at home.  
 19 Q Did there come a time that he came over to the  
 20 Lobato residence?  
 21 MS. DiGIACOMO: Objection, leading.  
 22 THE COURT: Sustained.  
 23 BY MS. GREENBERGER:  
 24 Q Did your husband ever come to the Lobato residence

XV-91

SHAYNE KRAFT - DIRECT

- 1 A I did.  
 2 Q Was he seen by a doctor?  
 3 A Yes, he was.  
 4 Q Did you get billed for that visit?  
 5 A We did.  
 6 Q Did you get billed in the form of a statement?  
 7 A Yes, we did.  
 8 MS. GREENBERGER: May I approach the witness?  
 9 THE COURT: Yes.  
 10 BY MS. GREENBERGER:  
 11 Q Showing you what's been marked as Defense  
 12 Proposed HH, do you recognize this document?  
 13 A Yes, I do.  
 14 Q Can you tell us what it is?  
 15 A This is the statement from the hospital.  
 16 Q The same hospital, Grover Deals?  
 17 A Yes, Grover C. Deals.  
 18 Q Can you tell the ladies and gentlemen of the jury  
 19 what day that's dated?  
 20 A 7/9/01.  
 21 Q Is that the statement that you received in response  
 22 to the visit to the hospital with your husband?  
 23 A Yes, it was.  
 24 MS. GREENBERGER: We would move for the

XV-93

## SHAYNE KRAFT - DIRECT

1 admission of Defense Exhibit HH at this time.  
 2 MS. DiGIACOMO: No objection.  
 3 THE COURT: Granted.  
 4 (Defendant's Exhibit HH, admitted)  
 5 BY MS. GREENBERGER:  
 6 Q Is this the same document I just showed you?  
 7 A Yes, it is.  
 8 Q Can you identify on the document where the name  
 9 of your husband is reflected, can you pinpoint on the actual  
 10 screen itself.  
 11 A It's under patient.  
 12 Q Can you point to the screen and --  
 13 A Right there.  
 14 Q And where is the admit date, if you can identify that  
 15 as well?  
 16 A It's right there.  
 17 Q And that reflects July 9, 2001 at approximately  
 18 15:35 hours?  
 19 A [No audible response].  
 20 COURT RECORDER: Is that a yes?  
 21 THE WITNESS: Yes.  
 22 BY MS. GREENBERGER:  
 23 Q And can you kindly show us the discharge date?  
 24 Was he released that same day?

XV-94

## SHAYNE KRAFT - CROSS

1 A No.  
 2 Q Okay. You didn't see her until they had the  
 3 barbeque on the 4<sup>th</sup> of July, correct?  
 4 A Correct.  
 5 Q What day of the week was July 4<sup>th</sup> that year?  
 6 A I don't remember.  
 7 Q When you went over for the barbeque, that was the  
 8 first time you had seen Blaise since she'd graduated from high  
 9 school?  
 10 A I believe so.  
 11 Q How'd she look?  
 12 A She looked sick, but she looked okay.  
 13 Q Now how did she look sick?  
 14 A She was very thin, very pale.  
 15 Q Did you know at the time that she was on drugs?  
 16 A Yes, I did.  
 17 Q Okay. So did you just chalk that up to she's on  
 18 drugs, the way she looked?  
 19 A For the most part, yeah.  
 20 Q Okay. How was her demeanor? How was she  
 21 acting?  
 22 A She was quiet.  
 23 Q Not really outgoing that day?  
 24 A No, she said she wasn't feeling well.

XV-96

## SHAYNE KRAFT - CROSS

1 A Yes, he was.  
 2 Q And what is the discharge date reflect?  
 3 A 7/9/01.  
 4 MS. GREENBERGER: I don't believe I have anything  
 5 further.  
 6 THE COURT: You may.  
 7 MS. DiGIACOMO: Thank you.  
 8 **CROSS-EXAMINATION**  
 9 BY MS. DiGIACOMO:  
 10 Q Good afternoon.  
 11 A Good afternoon.  
 12 Q So if I have this correctly Rebecca or Becky Lobato,  
 13 as we've been calling her, is your aunt by blood?  
 14 A Yes.  
 15 Q Okay. So she's your mother's sister or your  
 16 brother's -- or your father's sister?  
 17 A My mother's sister.  
 18 Q Now you talked about how Blaise had come back to  
 19 Panaca about the 2<sup>nd</sup> of July, is that correct?  
 20 A Yes.  
 21 Q And you learned that information from your Aunt  
 22 Becky?  
 23 A Yes.  
 24 Q But you didn't see her on that day?

XV-95

## SHAYNE KRAFT - CROSS

1 Q Now were her and Becky getting along that day?  
 2 A I -- I'm not sure.  
 3 Q You don't recall if they were fighting?  
 4 A No.  
 5 Q Okay. But they had -- they had fought often in the  
 6 past?  
 7 A Not when I was around.  
 8 Q Okay. But had you heard about it from Becky?  
 9 A Yes.  
 10 Q Okay. And you said that on July 4<sup>th</sup> that there no  
 11 fireworks in Panaca?  
 12 A Not -- Caliente had the firework display and that's  
 13 where most people would go.  
 14 Q Okay. And so is that where you guys went after the  
 15 barbeque to watch the fireworks?  
 16 A No, we just stayed at the house.  
 17 Q So Blaise and you guys were all there the whole  
 18 night? Nobody left?  
 19 A Nobody left.  
 20 Q The fireworks display in Caliente, do you know what  
 21 time of day that started?  
 22 A It normally started at sunset, about, you know, 8:30,  
 23 9 o'clock is when it would normally start.  
 24 Q But there was kinda like a little street festival before

XV-97

## SHAYNE KRAFT - CP

1 the fireworks, correct?  
 2 A I'm not sure. I only went to the fireworks once the  
 3 whole time I lived there.  
 4 Q Okay. And she drove a Fiero. Do you know how  
 5 she got that Fiero?  
 6 A I -- I'm not sure.  
 7 Q Did her parents buy it for her?  
 8 A I believe so, but I'm not a 100 percent.  
 9 Q Do you know how long she'd had it when --  
 10 A Not very long.  
 11 Q Okay.  
 12 A Maybe six months.  
 13 Q She got it in the spring?  
 14 A Something like that.  
 15 Q Okay. So six months, maybe January 2001?  
 16 A Maybe, yeah.  
 17 Q Do you know what her license plate was?  
 18 A Yes.  
 19 Q What was it?  
 20 A Fornicator.  
 21 Q Kinda distinctive plate?  
 22 A Yes.  
 23 Q Okay. Your intention, when stopping by, was to get  
 24 Tiger balm for your husband's neck?

XV-98

## SHAYNE KRAFT - CROSS

1 you had left was because you got tired and so you left, do you  
 2 recall that?  
 3 A No.  
 4 Q Okay. You just a few minutes ago had -- when  
 5 asked by defense counsel why you left --  
 6 A I had confused that day with the 4<sup>th</sup>.  
 7 Q Oh, so it was on the 4<sup>th</sup> of July you got tired and  
 8 left?  
 9 A Yes.  
 10 Q Okay. So that evening, July 8<sup>th</sup>, you took Ashley  
 11 back to your house and you made dinner?  
 12 A Yes.  
 13 Q What time did you eat dinner, approximately?  
 14 A It was about quarter of 9:00, thereabouts.  
 15 Q And at that time was Ashley able to drive a car?  
 16 A No.  
 17 Q So how did she get back home?  
 18 A I drove her home.  
 19 Q All right. And so you -- did you put the Tiger balm  
 20 on your husband's neck?  
 21 A I did.  
 22 Q And then the next morning was his neck any better?  
 23 A No, it was not.  
 24 Q So what happened?

XV-100

## SHAYNE KRAFT - CROSS

1 A Yes.  
 2 Q When did he injure it?  
 3 A He injured it that afternoon, he had fell asleep on  
 4 the couch.  
 5 Q He injured his neck while sleeping on the couch?  
 6 A Yeah.  
 7 Q And how did he just -- just creaked or something  
 8 from the way --  
 9 A Yeah, it was crinked from the couch.  
 10 Q All right. And -- so what day of the week was that  
 11 that he injured his neck?  
 12 A I believe it was Sunday.  
 13 Q And your other intention of stopping by was to get  
 14 an electric skillet to make your dinner?  
 15 A Yes.  
 16 Q So your intention was just to stop by quickly, grab  
 17 your stuff and go back home?  
 18 A Yes.  
 19 Q Okay. And you ended up staying there a little long  
 20 than I think your husband wanted you to?  
 21 A Yes.  
 22 Q Okay. And that's why he came and got you?  
 23 A Yes.  
 24 Q Okay. But you also testified though that the reason

XV-99

## SHAYNE KRAFT - CROSS

1 A I took him to the hospital that morning.  
 2 Q Okay. You went in the morning?  
 3 A I believe so.  
 4 Q But you weren't admitted until -- I think it was 3:35  
 5 in the afternoon, according to your bill receipt.  
 6 A I'm not 100 percent sure. It was a long time ago.  
 7 Q Okay. Do you recall what Blaise was wearing on the  
 8 8<sup>th</sup> when you saw her?  
 9 A She was wearing a pair of jeans and a shirt.  
 10 Q Do you know what color shirt?  
 11 A I do not.  
 12 Q Is that the way she normally would dress?  
 13 A Mostly yes.  
 14 Q Okay. Do you recall, did she have any injuries on  
 15 her, her stomach, some scratches?  
 16 A I didn't see any.  
 17 Q Okay. But she was wearing a top that showed her  
 18 midriff?  
 19 A Not that I recall.  
 20 Q Did you see any other bruising on her or scrapes or  
 21 anything?  
 22 A I did not.  
 23 Q She wasn't complaining of hurting at all?  
 24 A No, she was not.

XV-101

## SHAYNE KRAFT - CP

1 Q And when you saw her that day, in comparison until  
2 the 4<sup>th</sup>, did she still kinda look skinny and pale and not feeling  
3 well?  
4 A She was still skinny, but she wasn't as pale and not  
5 feeling as well as she was on the 4<sup>th</sup>.  
6 Q But -- okay. Let me --  
7 A She was feeling better.  
8 Q She was feeling better but still not -- not herself?  
9 A Yes.  
10 Q Okay. So she was still kinda being quiet that day?  
11 A No, she was little bit more normal on that day.  
12 Q Okay. You're saying a little more normal, but she  
13 still wasn't feeling well?  
14 A No, she wasn't feeling well.  
15 Q So not completely herself that day?  
16 A No.  
17 Q How often would you say that you would talk to  
18 Becky a week?  
19 A A week?  
20 Q Back then?  
21 A Four times a week.  
22 Q So you're fairly close with your aunt?  
23 A Yes.  
24 Q Was your -- were your parents also living in Panaca

XV-102

## SHAYNE KRAFT - CROSS

1 or Caliente or Pioche?  
2 A Not at that time.  
3 Q But your dad was there for the barbeque?  
4 A My dad was up from Vegas, yes.  
5 Q Oh. So your parents had lived in Vegas at the time?  
6 A My parents were divorced, my mom lived in  
7 Colorado, my dad in Vegas.  
8 Q Okay. So just your dad was at the barbeque?  
9 A Yes.  
10 Q And the day after Blaise arrested, you talked to  
11 Becky, correct?  
12 A Yes.  
13 Q All right. And she told you that she had been  
14 arrested for this murder on July 8<sup>th</sup>?  
15 A Yes.  
16 Q And was it at that time that you remembered you  
17 saw her on July 8<sup>th</sup> or was it sometime thereafter?  
18 A I don't recall.  
19 Q Okay. You never called -- you never talked to the  
20 police, correct?  
21 A No, they never spoke to me.  
22 Q Okay. And you did speak to a defense investigator  
23 though, sometime later?  
24 A Yes.

XV-103

## LYNE KRAFT - REDIRECT

1 Q Okay. And you had talked with Becky on several  
2 occasions about Blaise and what she was arrested for, correct?  
3 A Yes.  
4 Q At that time?  
5 A Yes.  
6 Q Back in 2001?  
7 MS. DiGIACOMO: The Court's indulgence. Pass the  
8 witness.  
9 THE COURT: Redirect?  
10 MS. GREENBERGER: Thanks.  
11 **REDIRECT EXAMINATION**  
12 BY MS. GREENBERGER:  
13 Q Did Becky ever suggest any dates to you?  
14 MS. DiGIACOMO: Objection, vague.  
15 THE COURT: Sustained.  
16 BY MS. GREENBERGER:  
17 Q Do you remember the date seeing Blaise on July 4<sup>th</sup>,  
18 is that the produce of your own memory?  
19 A I remembered seeing her the day before I took my  
20 husband to the hospital.  
21 Q That would be on July 8<sup>th</sup>?  
22 A Yes.  
23 Q And that's the product of your own memory?  
24 A Yes.

XV-104

## SHAYNE KRAFT - REDIRECT

1 Q Not someone suggesting that date to you?  
2 A No.  
3 Q What about July 4<sup>th</sup>, is that something that you  
4 remember yourself as well?  
5 A Yes.  
6 Q Not the product of suggestion by someone?  
7 A No.  
8 Q And just -- the District Attorney had asked you what  
9 date July 4<sup>th</sup> falls on, looking at the calendar can you tell us  
10 what -- what day of the week that is?  
11 A A Wednesday.  
12 Q And what day of the week is July 8<sup>th</sup>?  
13 A Sunday.  
14 Q When you saw Blaise on July 4<sup>th</sup> do you know if she  
15 was using drugs on that date?  
16 A I do not know for sure.  
17 Q Do you have an opinion?  
18 A I do have an opinion.  
19 MS. DiGIACOMO: Objection.  
20 THE COURT: Sustained.  
21 Counsel may approach.  
22 (Off-record Bench Conference)  
23 BY MS. GREENBERGER:  
24 Q Did you ever see Blaise use any drugs on July 4<sup>th</sup>?

XV-105



## SHAYNE KRAFT - RED

1 A I did not.  
 2 Q Did you ever use any drugs on July 8<sup>th</sup>?  
 3 A I did not.  
 4 Q The District Attorney asked you on cross-  
 5 examination about her appearance on July 4<sup>th</sup> and you  
 6 described she was very thin and pale and you chalked it up to  
 7 being on drugs. Can you describe what you meant by that  
 8 instance?  
 9 A Well, I knew that she was in Vegas and she had  
 10 been on drugs there.  
 11 Q How did you know that?  
 12 A Becky told me.  
 13 Q When you describe that you saw her and you  
 14 chalked it up to being on drugs, were you referring to the time  
 15 period when she was in Vegas?  
 16 A Yes, I was.  
 17 Q Did she look different when you saw her on July 4<sup>th</sup>  
 18 than she had when she was up in Panaca? Physically, her  
 19 appearance.  
 20 A I'm not understanding? On July 4<sup>th</sup> in Panaca?  
 21 Q Of 2001, did she look different -- was her  
 22 appearance different than when she had previously lived in  
 23 Panaca?  
 24 A Yes.

XV-106

## SHAYNE KRAFT - REDIRECT

1 Q How?  
 2 A She was thinner. She had bleached her hair. Just  
 3 little things.  
 4 Q What was she doing, if you recall, the night of the  
 5 July 4<sup>th</sup> barbeque?  
 6 A I'm not 100 percent sure. I spent a lot of time in  
 7 the garage with Becky and Larry.  
 8 Q You mentioned earlier that she was lying on  
 9 something outside the house or inside the house, can you  
 10 clarify that?  
 11 A Her, my husband and her friend Marilyn were laying  
 12 on the grass in the yard.  
 13 Q Was that at some time during the party?  
 14 A Yes.  
 15 Q When you went to her home on July 8<sup>th</sup>, do you  
 16 remember seeing her Fiero parked there?  
 17 A Yes.  
 18 Q Within the same place you had seen on July 4<sup>th</sup>?  
 19 MS. DIGIACOMO: Objection, leading.  
 20 THE COURT: Sustained.  
 21 BY MS. GREENBERGER:  
 22 Q Where was it parked?  
 23 A In front of the house by the chainlink fence.  
 24 Q Did it look like it was parked in the same place as

XV-107

## AYNE KRAFT - RECROSS

1 July 4<sup>th</sup>?  
 2 A Yes, it did.  
 3 Q When you drove her sister Ashley home after dinner,  
 4 was the Fiero still at the house?  
 5 A Yes, it was.  
 6 Q Did it appear to be in the same place you had seen  
 7 it earlier that day?  
 8 A Yes, it did.  
 9 MS. GREENBERGER: I don't believe I have anything  
 10 further.  
 11 THE COURT: Recross?  
 12 MS. DIGIACOMO: Thank you.  
 13 **RECROSS EXAMINATION**  
 14 BY MS. DIGIACOMO:  
 15 Q I'm sorry, defense counsel just asked you that when  
 16 you drove Ashley home, if Blaise's car was in the same place  
 17 that you'd seen it earlier in that day. Do you recall that  
 18 question?  
 19 A Yes.  
 20 Q Okay. You mean that when you got home from  
 21 taking Ashley home, you took her back to her house, it was  
 22 still there from when you left at 8 o'clock p.m.?  
 23 A Yes.  
 24 Q All right. It hadn't moved in just that hour, hour and

XV-108

## SHAYNE KRAFT - RECROSS

1 a half or so?  
 2 A Not that I'm aware of.  
 3 Q Okay. Now, just so we're clear. You saw Blaise the  
 4 evening of July 4<sup>th</sup>?  
 5 A Yes.  
 6 Q And the evening of July 8<sup>th</sup>?  
 7 A Yes.  
 8 Q Approximately 6:00 to 6:30 to 8 o'clock?  
 9 A Yes.  
 10 Q And that's p.m.?  
 11 A [No audible response].  
 12 Q Okay. Now when you talked to Becky about Blaise  
 13 being arrested the day before, Blaise -- or excuse me, Becky  
 14 told you the date July 8<sup>th</sup> was when the crime she was arrested  
 15 for was committed?  
 16 A Yes.  
 17 Q Correct? And she just didn't bring out July 8<sup>th</sup> out of  
 18 the blue to you?  
 19 A No.  
 20 Q And she didn't try and suggest anything to you, she  
 21 just mentioned the date?  
 22 A Yes.  
 23 Q Okay. At some point thereafter did you tell her, hey,  
 24 wait a minute, I know I was at your house the evening of the

XV-109

SHAYNE KRAFT - REC

1 8<sup>th</sup>?  
 2 A Yes.  
 3 Q Okay. And so then she gave your name to Blaise's  
 4 defense counsel and they contacted you?  
 5 A Yes.  
 6 Q Okay. So you just didn't realize the significance of  
 7 July 8<sup>th</sup> until Becky told you the date of the crime?  
 8 A Correct.  
 9 Q And you said that you knew when Blaise was in Las  
 10 Vegas after she graduated, that she had been on drugs?  
 11 A Yes.  
 12 Q And this was, is it fair to say, approximately  
 13 May/June 2001?  
 14 A Yes.  
 15 Q And you had talked to Becky about that a couple of  
 16 time, the fact that she'd been on -- she was on drugs, correct?  
 17 A Yes.  
 18 Q In fact Becky didn't approve of it, correct?  
 19 A No.  
 20 Q In fact she was upset about it.  
 21 A Yes.  
 22 Q And in fact she wanted to do something to help her  
 23 daughter.  
 24 A We all did.

XV-110

1 Q Okay. And so that's why you'd talked about it?  
 2 A Mm-hmm.  
 3 Q Is that yes?  
 4 A Yes.  
 5 Q And in fact when Blaise came home, that week of  
 6 July 4<sup>th</sup>, Becky tried to help her get off the drugs, didn't she?  
 7 A Yes.  
 8 MS. DIGIACOMO: Nothing further.  
 9 MS. GREENBERGER: Nothing further.  
 10 THE COURT: You may step down from the stand.  
 11 We're gonna take a quick stretch break.  
 12 Ladies and gentlemen in 15 minutes, please be in  
 13 the hallway, the bailiff will meet you there to return you to  
 14 your seats in the courtroom. During this 15 minute stretch  
 15 break, you're admonished not to talk or converse among  
 16 yourselves, nor with anyone else on any subject connected  
 17 with the trial. You're not to read, watch or listen to any report  
 18 or commentary on the trial or any person connected with the  
 19 trial, by any medium of information, including, without  
 20 limitation, newspaper, television, radio and internet. And  
 21 you're not to form or express any opinion on any subject  
 22 connected with the trial until the case is finally submitted to  
 23 you. The Court's in recess for 15 minutes.  
 24 (Court recessed at 3:12:45 p.m. until 3:42:43 p.m.)

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1 (Jurors are not present)  
 2 THE BAILIFF: Department II is back in session.  
 3 Please be seated.  
 4 THE COURT: The record shall reflect that we're  
 5 resuming outside the presence of the jury, at the request of  
 6 counsel in State versus Lobato, under C177394. Defendant is  
 7 present with her three counsel and the two prosecuting  
 8 attorneys are present as well.  
 9 Ms. Zalkin is on her feet.  
 10 MS. ZALKIN: Thank you, Your Honor. In light of  
 11 the State's comment a few days ago that they were seeking to  
 12 exclude the testimony of Defense Expert Brent Turvey, we  
 13 need to address that now because we're planning on calling  
 14 one more lay witness, who should be brief and then hope to  
 15 bring Mr. Turvey in. I want to note a couple of things --  
 16 THE COURT: Would the Bailiff please tell the jury it  
 17 will be another five minutes.  
 18 THE BAILIFF: Yes, I will.  
 19 MS. DIGIACOMO: Your Honor, it's gonna be longer  
 20 than that.  
 21 THE COURT: Well, Mr. Bailiff. Mr. Bailiff.  
 22 MS. DIGIACOMO: I just thought we'd be truthful  
 23 with the Court since we've been wrong on the time frame this  
 24 whole trial.

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1 THE COURT: I don't -- how long is it gonna be?  
 2 MS. DIGIACOMO: This is gonna be a big argument  
 3 and it's gonna entail going through every slide of PowerPoint.  
 4 THE COURT: Then we're not gonna do it right now.  
 5 MS. DIGIACOMO: And I don't -- if they have one  
 6 more lay witness, I -- and it's almost 4 o'clock I'm not sure  
 7 how -- if we would get to him anyway. But it's gonna be an  
 8 extensive argument, Your Honor.  
 9 THE COURT: Would you go ahead and return and  
 10 reseat the jury.  
 11 THE BAILIFF: Yes, I will.  
 12 THE COURT: Thank you.  
 13 (Pause in the proceedings)  
 14 THE BAILIFF: The Jury is now present.  
 15 (Jurors reconvened at 3:45:15 p.m.)  
 16 THE COURT: The record shall reflect that the jurors  
 17 have been returned to their seats in the jury box area and  
 18 seated there by the bailiff. Proceeding forward with the  
 19 defendant's case.  
 20 You may call you next witness.  
 21 MS. GREENBERGER: Thank you.  
 22 THE CLERK: Please remain standing, raise your  
 23 right hand.  
 24 ///

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JOHN KRAFT - DIRECT

**JOHN KRAFT, DEFENDANT'S WITNESS, SWORN**

THE CLERK: Thank you, please be seated. State your name --

THE WITNESS: My name is --

THE CLERK: -- and spell it for the record please.

THE WITNESS: -- John A. Kraft, K-r-a-f-t, like cheese without the royalties.

THE COURT: You may proceed.

**DIRECT EXAMINATION**

BY MS. GREENBERGER:

Q Good afternoon. How are you related to Shayne Kraft?

A She's my wife.

Q And how long have you guys been married?

A Ten years.

Q Where do you live right now?

A We live in Littlefield, Arizona.

Q Did you previously live in Panaca, Nevada?

A Yes, ma'am.

Q For how long?

A We lived there from -- oh, I'd say three years.

Q Do you know Blaise Lobato?

A Yes, ma'am.

Q Can you identify her for the record?

XV-114

JOHN KRAFT - DIRECT

laying there watching spider lighting in the clouds.

Q Where -- where was that at?

A That was at her house.

Q Can you get off the witness stand and use the pen on the table in front of you to put your initials on the date that you first saw her that summer.

A (Witness complies)

Q And you can return to your seat -- oh, sorry.

A I'm sorry, about that.

Q I was gonna say that you can resume your seat. Did you initial that you -- your initials? Okay.

A I'm fourth.

Q Okay. And approximately what time period were you at the Lobato residence?

A It was in evening about dusk, we were watching the lighting come in and we were home just after dark.

Q How many hours were you there?

A Honestly, I think it was about an hour, myself.

Q Who was there when you arrived?

A There was a whole bunch of people in the garage and I'm not really one to mingle that much so I just kinda hung out on the lawn.

Q Can you recall who was there?

A I believe Becky and Larry were there, her parents.

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JOHN KRAFT - DIRECT

A Yes, ma'am, she's right there.

MS. GREENBERGER: The record should reflect he's pointing to --

THE WITNESS: Right behind the monitor.

MS. GREENBERGER: -- Blaise Lobato.

THE COURT: The record shall so reflect.

BY MS. GREENBERGER:

Q How long have you known her?

A I've known her for approximately 10 years.

Q How is it that you know her?

A She is my wife's cousin.

Q When did you first meet?

A I first met her while I was on leave in the military. I was just passing through and we stopped off at their family.

Q When you were living in Panaca, did you live there in the 2001 time period?

A Yes, ma'am.

Q Where did you live in proximity to the Lobatos?

A About a mile south of her. Well, probably a half mile.

Q Taking you back to July of 2001, do you remember seeing Blaise during that time period?

A Yes, I saw her three times that summer. The first time would be on the 4<sup>th</sup> of July, we were on the front lawn,

XV-115

JOHN KRAFT - DIRECT

Marilyn, I don't know her last name, was also kinda hanging out on the lawn with me. Blaise came out for a period, looked at the -- looked at the lighting with us and then went back inside.

Q What did Blaise's appearance look like to you? How did it look?

A She looked like she'd had a rough little spell. She wasn't -- she was -- she'd gone down to Las Vegas and kinda got in some stuff and come back and we were kinda worried about her, but, you know, I think she was starting to recover and I was -- we were --

Q When you say "rough little spell", can you describe her physical appearance?

A She'd lost a lot of weight.

Q Was she pale?

A Yeah, she was pale, she was skinny, you know.

Q After July 4<sup>th</sup> -- well, strike that. When you arrived at the residence, did you see or know if she had a vehicle?

A You know what, honestly I didn't.

Q When was the next time you saw her after July 4<sup>th</sup>?

A The next time I saw her after July 4<sup>th</sup> was on July 8<sup>th</sup> at about 7:00 in the morning, I'd gone over to talk to her father, because I was getting ready to leave for Minnesota for a three month project of WorldCom involving fiberoptic

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000778

JOHN KRAFT - DIRECT

1 relocation. I wanted to talk to her father about checking in on  
2 my family while I was gone. I went to the front door,  
3 knocked, she opened the door. I asked for her father, she  
4 went back to get her father and I move through their three  
5 dogs into the garage and waited for him.

6 Q Can I ask you to get off the witness stand and  
7 identify the time you saw her first on July 8<sup>th</sup> with your initials  
8 next to it.

9 A Mm-hmm. Right in here somewhere?

10 Q Yeah, you could draw an arrow from the 8<sup>th</sup>, maybe,  
11 or just do it real small. Well, don't write it on the right  
12 because that --

13 A I'm sorry.

14 Q -- [unintelligible]. Maybe draw --

15 A Right here?

16 Q Yeah, write it up right there. And please put your  
17 initials next to it. Okay, you can have a seat.

18 So how do you remember that it was that exact day  
19 that you saw her that morning?

20 A Later that afternoon, after I left and got done with  
21 my conversation with Larry and I went home and I fell asleep  
22 on the couch, it was a pretty bad couch we had, it was shorter  
23 than my -- than my length. And my head got stuck to one  
24 side, it kinked and I couldn't lift my head off my shoulder. Get

XV-118

JOHN KRAFT - DIRECT

1 more than one inch and it was excruciatingly painful.

2 Q Had that ever happened to you before?

3 A Never before, never since.

4 Q Did you go get treatment? Did you go to the  
5 emergency room?

6 A The following day, but later that day I sent my wife  
7 over to Lobatos to get Tiger balm, try and help me rub it out.  
8 I kept expecting it to just pop out and it never did.

9 Q Before we go any further can you tell us, what was  
10 the purpose of you going to the Lobato residence that morning  
11 at 7:00 a.m.

12 A The purpose was to go over and talk to Larry about,  
13 you know, looking in after my family while I was gone for  
14 three months, checking in. I went over there basically at 7:00  
15 in morning because I can't get an edge in, word-wise, with  
16 that family. I'm kinda -- I'm not one to talk over another  
17 person and they -- they're back and forth a lot with the talking.  
18 So I basically went over in the morning to get -- get his full  
19 attention.

20 Q Why did you ask Larry to look after your family?  
21 Why Larry?

22 A Larry is the only other male member of the family  
23 around and I, you know, I felt it was a man to man issue that  
24 I wanted to talk to him just to make sure that he checked in

XV-119

JOHN KRAFT - DIRECT

1 on my family.

2 Q Was your wife pregnant at the time?

3 A My wife was pregnant at the time.

4 Q Did you, in fact, leave to Minnesota subsequent to  
5 that date?

6 A Yes, ma'am. We left about three days later and I  
7 was gone -- the three month project turned into a one year  
8 project.

9 Q You were gone from your family for a year?

10 A Yes, ma'am.

11 Q Did Larry watch over the family during that time?

12 A Yes, ma'am.

13 Q Going back to July 8<sup>th</sup>, how long were you there the  
14 morning of July 8<sup>th</sup>, talking with Larry?

15 A It was a short conversation, it was probably five,  
16 maybe 10 minutes at most.

17 Q Do you remember what Blaise was doing when you  
18 arrived?

19 A She let me in through the door and she went back  
20 towards the back of the house to get him. We had that  
21 conversation in the garage and I left back out through the  
22 garage door. So I didn't see her again from that point on.

23 Q Do you recall what she was wearing?

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

XV-120

JOHN KRAFT - DIRECT

1 Q Did she appear to have been sleeping?

2 A Yes, ma'am.

3 Q Did you notice any types of injuries on her?

4 A No, ma'am.

5 Q Would you have?

6 A I think I would've. With 11 years of combat arms  
7 units, something that would generally stand out to me.

8 Q Were her hands and arms visible when you saw her  
9 that morning?

10 A Yes, ma'am. Along with her face.

11 Q When did you come back to the Lobato residence  
12 that day?

13 A I'd sent my wife over to get the Tiger balm,  
14 approximately 6:00, about two hours after that I drove with  
15 my arm -- or my head stuck to my shoulder back over there  
16 and was a little bit upset. Went over, kinda made a bit of  
17 scene.

18 Q Why were you upset?

19 A I was upset because it took her two hours to go get  
20 Tiger balm --

21 Q Were you in --

22 A -- and she was --

23 Q -- were you in pain?

24 A I was her in pain and I was expecting her to, yeah,

XV-121

JOHN KRAFT - DIRECT

1 prioritize me a little higher than the conversation she was  
2 having.  
3 Q Had she driven over there in a separate car?  
4 A Yes, she did, she drove over in her Grand Am, I  
5 followed over in my pickup truck.  
6 Q When you arrived on July 8<sup>th</sup>, what time would you  
7 say you arrived.  
8 A The evening.  
9 Q Can you give us an approximate time period.  
10 A I would say it was dusk, so I'm imagining it was  
11 about 8 o'clock.  
12 Q Did you see Blaise at that time?  
13 A Yes, I did.  
14 Q Who else was present?  
15 A Becky and Larry were there, my wife was there,  
16 Blaise was there and another gentlemen I didn't know.  
17 Q Can you describe him?  
18 A Oh, it was just another gentlemen, I couldn't -- after  
19 five years, remember what he looked like.  
20 Q Do you recall his age?  
21 A About her age.  
22 Q How long did you stay?  
23 A I was there --  
24 THE COURT: I'm gonna ask for a clarification.

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JOHN KRAFT - DIRECT

1 Q Did you get some relief for your neck?  
2 A Yes, I was -- the doctor injected me with two horse  
3 sized shots of muscle relaxer and a pain killer and it instantly  
4 relieved the neck. It just popped right back out. It felt great.  
5 Q Can you initial on the chart what time you saw her  
6 on the 8<sup>th</sup> in the evening?  
7 A Yes, ma'am.  
8 Q Thank you. After July 8<sup>th</sup>, did you see Blaise again?  
9 A No, it's the last time I saw her until probably six,  
10 seven months ago. Later I came home for Christmastime,  
11 right -- and the son of my birth -- the birth of my son, I --  
12 Q That was -- that was next time?  
13 A That was the next time.  
14 Q And when was your son born?  
15 A My son was born in -- oh, you're gonna get me in  
16 trouble here -- December.  
17 Q Of 2001?  
18 A Yes.  
19 Q Did you ever see Blaise using drugs on July 4<sup>th</sup>?  
20 A No, I didn't.  
21 Q Did you ever see her using drugs ever?  
22 A No, I haven't. I've heard rumors, but I, myself, I've  
23 never seen.  
24 Q Did you see her using drugs on July 8<sup>th</sup>?

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JOHN KRAFT - DIRECT

1 When you say about her age, who is her?  
2 THE WITNESS: Her would be the defendant.  
3 THE COURT: Thank you.  
4 BY MS. GREENBERGER:  
5 Q How old was Blaise at the time, if you know?  
6 A About 18.  
7 Q How long did you stay?  
8 A I was there, not very long, again, five minutes.  
9 Q Did you take your own car home?  
10 A Yes, I did.  
11 Q Did you go to the emergency room the next day?  
12 A Yes, I did.  
13 Q Did your wife take you?  
14 A Yes, ma'am.  
15 MS. DIGIACOMO: Objection, leading.  
16 THE COURT: Sustained.  
17 MS. DIGIACOMO: Move to strike.  
18 THE COURT: Granted.  
19 BY MS. GREENBERGER:  
20 Q How did you get there?  
21 A My wife drove me.  
22 Q What hospital did you go to?  
23 A We went to the Caliente Clinic, I think it's Grover C.  
24 Mills [sic] and we called it the clinic.

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JOHN KRAFT - DIRECT

1 A No, I didn't.  
2 Q When she -- did you say she answered the door on  
3 July 8<sup>th</sup> at 7:00 in the morning?  
4 A That would be -- yes, the 8<sup>th</sup> on -- at 7:00 in the  
5 morning.  
6 Q What day of the week was that?  
7 A That would have been a Sunday.  
8 Q Did she appear to be under the influence at that  
9 time?  
10 A No, she appeared sleepy. Like she'd woken up.  
11 Q Do you have any doubt in your mind that July 8<sup>th</sup>, on  
12 the date -- that date and time at 7:00 a.m. that you saw her?  
13 A No doubt.  
14 Q What about in the evening?  
15 A No doubt.  
16 Q Were you an early riser?  
17 A Yes, ma'am.  
18 Q Was Larry Lobato, since I woke him up. Eleven  
19 years of military kinda gets you up early.  
20 A Did you know if Blaise had come back to Panaca to  
21 get off drugs?  
22 MS. DIGIACOMO: Objection, leading.  
23 THE COURT: Sustained.  
24 MS. DIGIACOMO: And hearsay.

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## JOHN KRAFT - CROSS

1 BY MS. GREENBERGER:  
 2 Q Do you know why Blaise had returned to Panaca in  
 3 the July time period?  
 4 A I had heard that she'd come back --  
 5 MS. DiGIACOMO: Objection, non-responsive.  
 6 THE COURT: Sustained.  
 7 MS. GREENBERGER: I don't believe I have anything  
 8 further.  
 9 THE COURT: Cross?  
 10 MS. DiGIACOMO: Thank you, Your Honor.

**CROSS-EXAMINATION**

12 BY MS. DiGIACOMO:  
 13 Q Good afternoon.  
 14 A Good afternoon, ma'am.  
 15 Q You and your wife Shayne have been together for  
 16 ten years?  
 17 A Yes.  
 18 Q So you've known Becky and Larry Lobato  
 19 approximately 10 years?  
 20 A Approximately.  
 21 Q And your wife is pretty close with -- well, let's strike  
 22 that. Back in 2001 your wife was pretty close with Becky  
 23 Lobato when you were living there?  
 24 A Yes, ma'am.

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## JOHN KRAFT - CROSS

1 Q Now you said that --  
 2 A It was a little hard -- I'm sorry.  
 3 Q I'm sorry?  
 4 A It was a little hard to eat as well, it didn't -- it wasn't  
 5 great and it was hard to eat, so.  
 6 Q Did it hurt to chew as well from your neck?  
 7 A It wasn't comfortable.  
 8 Q Okay. Did the Tiger Balm help?  
 9 A No, ma'am.  
 10 Q And that's why you went to the doctor the next day?  
 11 A Actually it just burned my skin is all it did.  
 12 Q Okay. What time did you go to the doctor the next  
 13 day?  
 14 A It was about at 9 o'clock, if I remember right.  
 15 Q All right. So you -- the minute -- well, no, no, you  
 16 said you've said you were an early riser?  
 17 A I am an early riser.  
 18 Q So you got up and it still hurt for awhile before you  
 19 decided to go?  
 20 A Yes, ma'am.  
 21 Q How long were you there?  
 22 A I believe I was there for about an hour, ma'am.  
 23 Q One hour?  
 24 A Yes, ma'am.

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## JOHN KRAFT - CROSS

1 Q And she actually talked to her frequently?  
 2 A Yes, ma'am.  
 3 Q And you said that on the evening of July 8<sup>th</sup>, you'd  
 4 sent your wife over there for some Tiger Balm?  
 5 A Yes, ma'am.  
 6 Q Was there any other reason why she was going over  
 7 there?  
 8 A She was going over there to get a skillet for dinner.  
 9 Q Okay. Did you actually get your dinner?  
 10 A Yes, ma'am.  
 11 Q Who ate the dinner?  
 12 A She ate most of it, I wasn't real fond of it, to be  
 13 honest with you, ma'am.  
 14 Q Okay. You didn't like her skillet chicken?  
 15 A No, ma'am.  
 16 Q Did you make return the skillet to Becky?  
 17 A I'm sure she did. I didn't make her actually return  
 18 it. I don't -- that I can recall.  
 19 Q All right, so -- so after you went over there upset,  
 20 retrieved your wife, went home, she did make you and her  
 21 dinner?  
 22 A Yes, ma'am.  
 23 Q All right. And it was just the two of you?  
 24 A Yes, ma'am.

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## JOHN KRAFT - CROSS

1 Q Okay.  
 2 A My wife generally has to force me to go to a doctor.  
 3 Q And was it -- was it her idea that morning?  
 4 A Yes, ma'am.  
 5 Q Now, you learned after Blaise was arrested that she  
 6 was arrested?  
 7 A I learned while I was in Minnesota.  
 8 Q Okay. Your wife called you the day after she was  
 9 arrested, correct?  
 10 A Yes, ma'am.  
 11 Q And she told you that Blaise had been arrested for a  
 12 murder that occurred on July 8<sup>th</sup>?  
 13 A Yes, ma'am.  
 14 Q Okay. And did you and your wife discuss what you'd  
 15 done on the July -- on July 8<sup>th</sup> at that time?  
 16 A I believe so, and I made it clear to her that I'd be  
 17 willing to come back from Minnesota to testify, although no  
 18 one ever did -- no one ever interviewed me or no one ever  
 19 subpoenaed me.  
 20 Q Okay. So, but you did tell your wife that?  
 21 A Yes, ma'am.  
 22 Q So she had that knowledge to pass on to Becky or to  
 23 the defense?  
 24 A Yes, ma'am.

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JOHN KRAFT - CROSS

1 Q Okay. No one contacted you...

2 A Yes, ma'am.

3 Q When was it that you were first contacted by the

4 defense?

5 A Approximately four weeks ago.

6 Q But up until that time you'd never -- they'd never

7 talked to you before?

8 A No, ma'am.

9 Q And you never initiated a conversation with anyone

10 since you had this knowledge back in 2001?

11 A As far as either --

12 Q I mean defense, police?

13 A No.

14 Q Okay. And you were aware that your wife did testify

15 previously in May 2002?

16 A Yes, ma'am.

17 Q Now, you said that you saw Blaise three times

18 during the summer of 2001, and the calendar is next to you,

19 so between June, July, August 2001, you only saw her on July

20 4<sup>th</sup> and July 8<sup>th</sup>?

21 A Yes, ma'am.

22 Q Okay. How many times did you see her in the

23 spring, May, April, June -- or excuse me, May -- March, April,

24 May of 2001?

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JOHN KRAFT - CROSS

1 A Sorry, I really don't go over there that often, so that

2 was probably the three times I saw her that year.

3 Q Okay. So you weren't at her graduation from high

4 school?

5 A No, ma'am.

6 Q And you said you never would --

7 A I was truck driving up until that point, so I was

8 going over the road most of the time.

9 Q Okay. So you didn't -- well, before July 4<sup>th</sup>, when

10 was the last time you had been at the Lobatos?

11 A Let me rack my brain here. I was driving truck for

12 about six months, then I went back and I was driving -- or

13 working for WorldCom again doing some fiberoptic work. It

14 was seasonal. And I believe I was invited to dinner over there

15 a couple of times, I missed one and made one.

16 Q Okay. So before July 4<sup>th</sup>, 2001, what was the last

17 date that you -- or what was the last time you'd seen Blaise

18 before that?

19 A I couldn't be -- I couldn't honestly answer that.

20 Q Not even the month?

21 A No, ma'am.

22 Q Not even, you know, the season?

23 A The season would have been fall, the previous year.

24 Q Okay. But you can't remember the date?

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JOHN KRAFT - CROSS

1 A No, ma'am.

2 Q Okay. Do you remember how it was that you saw

3 her?

4 A I was invited over to dinner, had dinner and left.

5 Q Okay. And then after July 8<sup>th</sup>, the next time you saw

6 her was the day that your son was born?

7 A No, it was after my son was born.

8 Q Oh, after your son was born. Okay, what date was

9 your son born?

10 A My son was born on the 17<sup>th</sup>, if I -- you're getting

11 me in trouble here, but I think the 17<sup>th</sup>. And we'd come back

12 on a flight and --

13 Q Mmm.

14 A -- it would have been sometime after that 'cause

15 I --

16 Q Did you -- oh, go ahead.

17 A -- 'cause I went back and worked for awhile then

18 came back.

19 Q Okay. Do you recall how old your son was when

20 you saw her?

21 A He would have been under six months.

22 Q Okay. So somewhere between the day he was born

23 until he was six months old, she came and saw the baby?

24 A She was on bail, yes.

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JOHN KRAFT - CROSS

1 Q Okay. The exact dates -- the only reason I

2 remember the 8<sup>th</sup> is because my neck was stuck to my head --

3 or my head stuck to my shoulder as you --

4 A Okay. And then the first time that you got to tell

5 anyone about this was four weeks ago?

6 Q Yes, ma'am.

7 A So it's fair to say you didn't testify at a previous

8 hearing in May 2002?

9 Q It's fair to say that.

10 MS. DiGIACOMO: Nothing further.

11 THE COURT: Redirect?

12 MS. GREENBERGER: Nothing further.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you.

15 THE COURT: Would counsel please approach.

16 (Off-record Bench Conference)

17 (Pause in the proceedings)

18 MS. ZALKIN: Your Honor, we'd like to put on the

19 record, before the ladies and gentlemen of the jury, a

20 stipulation between the parties regarding Exhibit DD, a

21 footwear examination report is admitted into evidence. It's is

22 done by a forensic consultant who is a specialist in the area of

23 shoe impressions and footwear, who has been previously

24 accepted as an expert in prior proceedings and will so be

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000782

1 accepted here at this time. And to read the report into  
2 evidence that's displayed right now on the easel. William J.  
3 Bodziak, Forensic Consultant Services, 1281 Cunningham  
4 Creek Drive, Jacksonville, Florida, 32259.

5 THE COURT: Would you please spell Bodziak for the  
6 record?

7 MS. ZALKIN: Certainly. B-as you boy-o-d-z-i-a-k.

8 The fax number of 904-287-8861, footwear  
9 examination report, March 27<sup>th</sup>, 2002.

10 "Mr. James Aleman, Office of the Special Public  
11 Defender, 309 South Third Street, P.O. Box 552316, Las  
12 Vegas, Nevada 89155-206. Regarding State versus  
13 Kirstin Lobato, Case Number C177394.

14 "Dr. Mr. Aleman: Pursuant to your request, a  
15 detailed examination has been made of the exhibits made  
16 available to me. A description of these items and the  
17 results of the examination follow:

18 "Questioned Q1, a photograph of shoe impressions  
19 in blood.

20 "Q2, a photograph of shoe impression in blood."

21 MR. SCHIECK: For the record, Your Honor, those  
22 are now marked as QQQQ, RRRR.

23 THE COURT: Is QQQQ, Q1?

24 MR. SCHIECK: Yes.

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1 trainer and working athletic footwear in that it has a  
2 separation between a well defined heel area and the well  
3 defined sole area of the shoe. Although the full heel does  
4 not reproduce in the Q1, Q2 impressions, the anterior  
5 reference of the heel, as well as the size of the forward  
6 sole can be compared with comparable types of footwear.  
7 Based on the corresponding dimension of comparable of  
8 other brands of footwear having this generic design it  
9 was determined that Q1, Q2 impressions most closely  
10 correspond to a U.S. men's size 9 athletic shoe of this  
11 type. The American women's size equivalent would be  
12 approximately size 10.

13 "The two inked impressions and tracings of the right  
14 foot of Kirstin Lobato were measured using a standard  
15 brannock device, the length of the Lobato right foot  
16 equates to U.S. men's sizes -- excuse me -- between 6 to  
17 6 1/2, the American women's size equivalent would be  
18 approximately 7 1/2. The right foot size of Kirstin Lobato  
19 would therefore be at least 2 and 1/2 sizes smaller than  
20 the estimated crime scene shoe size. Further  
21 superimposition of the foot impression of Lobato over the  
22 Q1, Q2 crime scene right shoe impressions revealed  
23 Lobato's foot size to be significantly smaller than the  
24 impressions.

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1 THE COURT: Thank you.

2 MS. ZALKIN: Your Honor, for the record I'd ask to  
3 hold these up so they can be in front of the jury?

4 THE COURT: You may.

5 MS. ZALKIN: Or Ms. Greenberger may assist me  
6 with that I can continue.

7 THE COURT: That will be fine.

8 MS. ZALKIN: Thank you.

9 And for the record the first, the photograph Ms.  
10 Greenberger is holding of you at this time is RRR in her left --  
11 I'm sorry, RRRR in her left hand is QQQQ.

12 "Known K1, 2 inked impressions and tracings of the  
13 outline of Kirstin Lobato's right foot."

14 And for the record, Your Honor, I am publishing that  
15 to the ladies and gentlemen of the jury. It was marked as  
16 Proposed Exhibit SSSS.

17 "Services requested. It is requested that the size of  
18 the Q1, Q2, crime scene shoe impressions be determined,  
19 if possible, and whether those shoes would fit the feet of  
20 Kirstin Lobato. Evaluation of crime scene impressions.  
21 Attempts were unsuccessful in locating the brand name or  
22 manufacturer of foot wear with the design of the Q1, Q2  
23 impressions. The general design of the Q1, Q2  
24 impressions is very similar to many designs of cross

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1 Opinion: Based on these observations and  
2 significant size differences it was determined that the Q1,  
3 Q2 crime scene impressions are from considerably larger  
4 shoes than the size that would accommodate Lobato's  
5 feet or that Lobato would normally wear.

6 "A disposition of evidence. The evidence described  
7 above is returned herewith.

8 "William J. Bodziak, Forensic Consultant Services."

9 THE COURT: So it's stipulated that DD be admitted?

10 MS. ZALKIN: Yes, Your Honor.

11 THE COURT: As well as the three photographs,  
12 QQQQ, R and S?

13 MS. ZALKIN: That's correct, Your Honor.

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

15 THE COURT: Very well. Those four items are  
16 received.

17 (Defendant's Exhibits DD, QQQQ, RRRR & SSSS, admitted)

18 MS. ZALKIN: Thank you.

19 And, Your Honor, because they're difficult to project  
20 on the overhead, could those be circulated to the members of  
21 the jury at this time?

22 THE COURT: They may be the good old fashioned  
23 way to the ladies and gentlemen of the jury rather than the --

24 MS. ZALKIN: Thank you very much.

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1 THE COURT: -- the new technological way.

2 (Pause in the proceedings)

3 THE COURT: The bailiff will retrieve the exhibits  
4 which have been circulated through the jury and reviewed by  
5 all of them, so it's published by Ms. Zalkin. The bailiff will  
6 return them to the clerk.

7 Ladies and gentlemen, we kept you over a little bit  
8 yesterday, today you're gonna get an early start on your  
9 weekend. We'll be taking our evening recess at this time and  
10 resuming Monday at 10:30. Please be in the hallway Monday  
11 morning at 10:30, the bailiff will meet you there to return you  
12 to your seats in the courtroom.

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

22 The Court will ask that Mr. Arieno remain, the rest of  
23 you are excused and we'll see you Monday morning.

24 (Jurors recessed at 4:27:39)

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1 you have a good weekend --

2 JUROR ARIENO: Thank you.

3 THE COURT: -- we'll see you Monday morning.

4 (Juror Arieno recessed at 4:28:59)

5 (Pause in the proceedings)

6 THE COURT: When Detective Thowsen returned to  
7 the stand for his second day of testimony, when we returned  
8 from the lunch recess, Ms. DiGiacomo raised an issue about  
9 having seen a PowerPoint presentation, I believe of, a  
10 defendant's expert Brent Turvey and she brought a motion --  
11 she indicated she was going to seek to exclude that testimony.

12 MS. DIGIACOMO: That is correct, Your Honor.

13 THE COURT: Would you refresh the Court on just  
14 what your motion -- just what your motion is in case I have  
15 not covered it or understood it fully?

16 MS. DIGIACOMO: Yes, Your Honor. Basically, after  
17 reading his report and then seeing the most updated  
18 PowerPoint of what he does intend to testify to, it's nothing  
19 that requires and expert opinion. What he's doing is taking all  
20 the testimony that's been presented and telling the jury  
21 basically how they should interpret or what it means. So  
22 basically all his testimony is doing is invading the province of  
23 the jury. You know, his findings for example, summary:

24 No physical evidence associating Kirstin Blaise

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1 (Except for Juror Arieno)

2 THE COURT: The record shall reflect that Mr. Arieno  
3 has remained and the other jurors have exited. I just wanted  
4 to touch bases with you 'cause you asked for the court to give  
5 you the schedule for next week.

6 JUROR ARIENO: Yes, I got that.

7 THE COURT: And you -- you're all good to go?

8 JUROR ARIENO: Hopefully, is it gonna -- I mean we  
9 don't know but, as of right now it's tentatively 'til Wednesday?

10 THE COURT: We're hoping it will concluded by  
11 Wednesday, but I gave you Thursday just in case.

12 JUROR ARIENO: Okay. Yeah, the only thing is,  
13 my wife is leaving to go out of town on Thursday night to go  
14 back to New York, my daughter starts track break Friday, so  
15 I mean --

16 THE COURT: So you need to pick up your daughter  
17 Friday?

18 JUROR ARIENO: Yes, I mean I have to get that  
19 done, so.

20 THE COURT: Okay.

21 JUROR ARIENO: But everything else is taken care  
22 of.

23 THE COURT: Okay, very good. Thank you for your  
24 cooperation. You're under the admonishment of the Court and

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1 Lobato to the crime scene. That's something for the jury to  
2 decide.

3 No physical evidence associating Lobato's vehicle to  
4 the crime scene. Again up to the jury.

5 Potentially exculpatory physical evidence not  
6 examine. DNA evidence from sexual assault kit inconsistent  
7 with Kirstin Blaise Lobato. These are things that have been  
8 presented in evidence and it's within the province of the jury to  
9 decide what they mean. And his entire PowerPoint is like this,  
10 very conclusory, very this is what the evidence is and this is  
11 how you should interpret what you've heard. There's nothing  
12 in here regarding an expert opinion. And in fact, I mean he  
13 talks about luminol results and I'm not sure where he has his  
14 foundation on knowledge on luminol and that's fine, but like  
15 one of his slides is very misleading. It's say, luminol results.  
16 Then is says according to crime scene -- Criminalist Wahl, it  
17 talks about the interior left door panel and vehicle seat cover  
18 yielded weak positive presumptive test for the presence of  
19 blood in one area, he tied 'em [sic]. And basically goes on to  
20 explain to them that that means, you know, there's no physical  
21 evidence linking Lobato to the crime. Well, first of all he's  
22 confusing the fact that this report that he's quoted is talking  
23 about phenolphthalein, not luminol. But he's basically just  
24 taking all the evidence and telling the jury what he thinks of it.

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1 That's not expert opinion.

2 MS. ZALKIN: Anything further?

3 MS. DiGIACOMO: Okay. Go ahead.

4 MS. ZALKIN: Your Honor, first of all it should be --

5 THE COURT: The court wishes to thank Ms. Zalkin  
6 for her patience, she's been -- she's been about trying to jump  
7 out of her seat to respond for --

8 MS. ZALKIN: Thank you, Your Honor.

9 THE COURT: -- a while now.

10 MS. ZALKIN: Thank you very much, Your Honor.

11 So, first of all, this is not a new PowerPoint. What  
12 was provided was -- there's one additional screen that simply  
13 lays out what the scientific method is and he had been notices  
14 timely as a forensic scientist, so that's in no way prejudicing  
15 the state. He also added, in his most recent PowerPoint, some  
16 evidence that had come out about Ms. Lobato's car keys being  
17 tested, with the results being negative. But moreover, more  
18 than the PowerPoint, what's most troubling to the defense is  
19 that the state has had Mr. Turvey's report for approximately 11  
20 months. The defense duly noticed Mr. Turvey well before the  
21 statutorily required period before this trial commenced. The  
22 defense also provided, as a courtesy, well in advance of calling  
23 Mr. Turvey or attempting to call Mr. Turvey, his PowerPoint, as  
24 a courtesy so that these items could be reviewed. It will be

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1 made abundantly clear that the substance of the PowerPoint is  
2 all inexcusably [sic] with Mr. Turvey's opinion. And it can be  
3 presented very strongly to the jury that this is his expert  
4 opinion. They, of course, are the finders of fact.

5 Most troubling, beyond what the defense would  
6 adopt the State's term of sandbagging, they've alleged that the  
7 defense of sandbagging a few days ago with respect to Dr.  
8 Laufer. And I would point out that we wouldn't be taking up  
9 the Court's time in sending the jury home this early, the proper  
10 way to exclude evidence by opposing party, in our opinion,  
11 would be to file a motion to exclude it. We filed approximately  
12 11 motions in limine, if I recall, seeking to exclude certain  
13 testimony that we believed was not relevant, so on and so  
14 forth, that's common before proceeding at trial. And then,  
15 before the defense starts their case, moving to exclude on the  
16 ground that a witness isn't helpful to determination of the  
17 facts. The state has especially more than opened the door,  
18 but presented an absolute necessity to rebut state's testimony.  
19 For example, that blood evidence can be cleaned from a car  
20 such that no blood can be confirmed in the car. According to  
21 Mr. Turvey the evidence that we're prepared to present will  
22 show that there's no evidence that this car was cleaned.  
23 Contrary to the State's characterization. Another very  
24 troubling inference or more than an inference that the state

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1 elicited from Detective Thowsen was that it's possible that  
2 there was physical evidence linking Ms. Lobato to the crime  
3 scene that just wasn't collected, it was missed. It's small  
4 evidence, so they could've missed a spot, in other words. And,  
5 moreover, that it's possible that an assailant would not leave a  
6 trace of physical evidence at a crime scene. Well, that violates  
7 the entire principle of forensic science, as Mr. Turvey is  
8 prepared to testify to, which is Locard's principle of transfer.  
9 The state has presented numerous crime scene analysts.  
10 We've seen numerous photos asking what is this in the coroner  
11 of this photograph. Oh, a bag of garbage. What's in the bag  
12 of garbage? Oh, some coffee cups. Thank you. They have  
13 repeatedly had the same photographs introduced. The same  
14 photographs testified to by numerous different experts. We  
15 are absolutely entitled to present our own forensic scientist to  
16 testify regarding his interpretation of the results.

17 And I think the Court understands the defense's  
18 position and if the court has any -- oh, oh, furthermore, I'm  
19 sorry, Your Honor, I beg your indulgence. We received a  
20 reported dated September 27, 2006, from Kristina Paulette,  
21 Kristina Paulette had testified before September 27. Kristina  
22 Paulette had received a request from Ms. DiGiacomo to test  
23 the cigarette butts in this case, the same cigarette butts the  
24 defense had requested be tested in a motion to dismiss for

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1 failure to gather, collect and preserve potentially exculpatory  
2 evidence, so well after trial was underway, now the State's  
3 submitting these cigarette butts to the laboratory. Ms.  
4 Paulette had some initial results back at the time she took the  
5 stand that exonerate my client, that were not delved into at  
6 all. In fact she doesn't even document in her report when she  
7 received the evidence that we seek to test in this case. This  
8 was never provided by the District Attorney. And Mr. Turvey is  
9 expected to testify the principle of negative documentation  
10 which is related to many items that when they come back not  
11 associating Ms. Lobato, they weren't documented. All the  
12 evidence items that we've heard testimony from Metro, yes,  
13 we gathered -- we gathered items, we didn't necessarily log it  
14 or catalog the items, we just determined they weren't  
15 important and we threw them away. I guarantee the Court  
16 that if the cigarette butt testing had come back linking Ms.  
17 Lobato to this crime, that would have been the hottest part of  
18 their case. That's not the case though, they're trying to sweep  
19 it under, you know, a pile a garbage with the other -- that's  
20 the way that they've presented their case. So I believe that  
21 it's absolutely manifestly necessary that Mr. Turvey be called.  
22 They've never brought this up before. It's an attempt to  
23 sandbag. It's an attempt to frustrate the defense. It's an  
24 attempt at further foot dragging. We had to send the jury

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1 home early so that we could deal with it, instead of being  
2 dealt with when they had his report for almost a year and I  
3 think that the Court gets the issue at this point.

4 THE COURT: I'm looking at the amended notice of  
5 defendant's expert witnesses filed August 18<sup>th</sup>, 2006.

6 MR. SCHIECK: The original report that listed Mr.  
7 Turvey was October of 2005, Your Honor.

8 THE COURT: It lists him as number 2.

9 MS. DiGIACOMO: Yeah, I can tell you his report is  
10 dated October 17<sup>th</sup>, 2005, Your Honor.

11 THE COURT: Mr. Laufer's CV was attached to that  
12 one, but the prior one was filed, when, in 2005?

13 MS. DiGIACOMO: Your Honor, I have it right here.

14 MS. ZALKIN: October.

15 MR. SCHIECK: October 14<sup>th</sup>, 2005.

16 (Pause in the proceedings)

17 THE COURT: Okay. I found that, he's still number  
18 2, it's on page 2.

19 (Pause in the proceedings)

20 THE COURT: And his CV is attached to that October  
21 14<sup>th</sup>, 2005, notice.

22 (Pause in the proceedings)

23 THE COURT: It appears from reviewing the  
24 curriculum vitae that Mr. Turvy has a Bachelors of Science in

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1 history, a second Bachelors of Science of Psychology and a  
2 Masters of Science in Forensic Science. That he's attended  
3 many seminars and written many things having to do with  
4 criminal cases in the criminal arena.

5 MS. DiGIACOMO: Your Honor, if I can just clarify?

6 THE COURT: Mm-hmm.

7 MS. DiGIACOMO: The Stat is not seeking to  
8 preclude him from testifying, which is what I think the defense  
9 is misinterpreting. We're not saying he can't come in her, we  
10 haven't been properly noticed. What we're saying is, what  
11 he's gonna come in here and say from the stand is not expert  
12 testimony. What he's gonna do is he's gonna tell the jury how  
13 they should interpret the evidence. He's basically gonna do  
14 their job for him. And, you know what, there is precedence for  
15 this. In his own CV he lists all kinds of cases he's been  
16 involved with, one of which is State of Kansas versus Cobb,  
17 and that 43 P.3d 855, and if you want to talk about the State  
18 sandbagging, this would probably be considered by the  
19 defense as sandbagging because what the State did in this  
20 case was, they let him get up there and testify and then when  
21 they got to his opinion or his conclusions the State objected  
22 while he was on the stand and the Court ruled that was he  
23 was gonna say was in the province of the jury and excluded it.  
24 We are not saying that this person wasn't properly noticed as

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1 an expert, what I'm saying is -- and you look at his  
2 PowerPoint. Pretty much everything in this PowerPoint is just  
3 drawing his own conclusions, not saying how the evidence  
4 should have been collected or how this should have been  
5 done, or it should have been done this way. He's saying, look,  
6 I'm telling you there's no physical evidence to link her to the  
7 car. He is drawing conclusions that is up to the jury to decide.  
8 That's what this trial is about. It's not for him to pick and  
9 choose what evidence from other witnesses he now wants to  
10 argue to the jury. That's the state's problem. It's not that he's  
11 not properly noticed as an expert. It's just they haven't shown  
12 anything that he's gonna come in here and give an expert  
13 opinion about.

14 And we admit, we did get his report a year ago, but  
15 that -- it was until we saw his PowerPoint that it concluded.  
16 I'm not saying I wouldn't have objected if he had done  
17 something that I felt wasn't an expert opinion, but when I saw  
18 the PowerPoint, we tried to bring this up ahead of time. I'm  
19 not trying to sandbag him. I had not clue. They knew that we  
20 were bringing this up and I thought it would come up before  
21 they even brought him back. I did not wait to do this right  
22 before and waste the jurors time. I brought this up two days  
23 ago.

24 MS. ZALKIN: Your Honor, briefly. We're not in

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1 Kansas and it misstates evidence that we brought him back --  
2 Mr. Turvey's from Alaska, the State's aware of that. Instead of  
3 flying him back and forth, based on their representation, which  
4 of course is always malleable in trial, we expected to have him  
5 testify probably Tuesday of this week. So instead, at the  
6 State's expense, he's been put up that the -- at a nearby  
7 lodging establishment and, again, you know, it's presumptuous  
8 of the State to talk about what he's gonna be testifying to.  
9 The State has, through their witnesses and through their  
10 questioning of experts has been misrepresenting scientific  
11 knowledge with respect to, for example, luminol, the cleaning  
12 up of blood. The ability to clean up blood. And interpretation  
13 of DNA testing. And also proper crime scene preservation,  
14 evidence collection, so on and so forth.

15 So for them to say that the jury doesn't need to hear  
16 from Mr. Turvey, they're suppose to rely on Detective Thowsen  
17 saying, oh, it's possible someone could commit a bloody  
18 heinous crime and not leave a trace, that is precisely why we  
19 need Mr. Turvey.

20 Also -- well, I don't know if I should put this on the  
21 record, but one of the State's witnesses has, you know,  
22 claimed to be a member of a professional organization, of  
23 which is not. Their name --

24 MS. DiGIACOMO: Your Honor, I'm gonna object,

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1 this is going outside the scope of what argument is. Now  
2 they're just trying to throw mud.

3 MS. ZALKIN: It's reasons -- it's further reasons why  
4 Mr. Turvey is a necessary defense witness, especially when  
5 they've called numerous forensic witnesses in their case.

6 MS. DiGIACOMO: And, Your Honor --

7 THE COURT: I have a concern about Ms.  
8 DiGiacomo's representation that -- that one of the slides is  
9 referring to Mr. Wahl's report --

10 MS. DiGIACOMO: I would ask -- I have a --

11 THE COURT: -- which is mixing up whether it was a  
12 luminol test with a phenolphthalein test.

13 MS. ZALKIN: Is that's correct, I have a concern with  
14 that as well and I can certainly address that with Mr. Turvey  
15 over the weekend and that can be corrected. I'm sure it was  
16 oversight, if anything.

17 MS. DiGIACOMO: And, Your Honor, I would just ask  
18 that a copy of this be made of record or you have --

19 THE COURT: I would like to see it. I was going  
20 to --

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

22 THE COURT: -- I was going to ask if I could have a  
23 copy. Is this your only copy, Ms. --

24 MS. DiGIACOMO: No, I made a copy for you.

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1 knowledge and background with the jury, which will be of  
2 assistance to the trier of facts, so he should be permitted to  
3 testify. I just think that some of the slides need to be modified  
4 in the manner that they're currently in would be overreaching  
5 and invade the providence of the jury. So I'm gonna grant the  
6 motion in part to have the slide show redone and deny the  
7 motion in part, he will not be excluded and will be permitted to  
8 testify.

9 MS. ZALKIN: Thank you, Your Honor.

10 MS. DiGIACOMO: And, again, it wasn't the state's  
11 motion to exclude him, it was just the concerns of what he's  
12 testifying to. And, Your Honor, I also have one other issue, on  
13 page 4 of the PowerPoint --

14 THE COURT: Well, basically he said he had nothing  
15 to put forth to the jury that wasn't conclusionary, so I took  
16 that as you did want --

17 MS. DiGIACOMO: No, in his Power --

18 THE COURT: -- you did want him excluded.

19 MS. DiGIACOMO: -- in his PowerPoint. Well, no -  
20 well, no, like he can talk -- I said he could talk about luminol  
21 and its effects but for him to say, you know, the facts show X,  
22 when it could be, well, it could be X or it could Y, and to say  
23 that comes within the providence of the jury. And I would just  
24 also note that on page 4 of the PowerPoint the number 4 slide,

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1 THE COURT: Okay.

2 (Pause in the proceedings)

3 THE COURT: I'm gonna have the PowerPoint  
4 presentation marked as the Court's next in order.

5 THE CLERK: 74.

6 THE COURT: First I think -- I think that Ms. Zalkin  
7 will address the Wahl luminol versus phenolphthalein issue, I  
8 don't want incorrect information to be put up on the screen in  
9 front of the jury. I don't want to confuse them as between Mr.  
10 Wahl's prior testimony was and what the testing that was done  
11 is correctly identified.

12 Number of the slides, the way they are done, there's  
13 like a key on the side and then there's a couple that say  
14 "findings: summary", it is the providence of the jury to make  
15 the findings on the facts, not the providence of the expert  
16 witness. Those should say "opinions: summary", and a  
17 number of the slides seem to be presented as if this is a fact,  
18 rather than that from my assessment of the evidence this is  
19 my opinion, and so I think that they need to be modified so  
20 that it's clear that this is his opinion. And that these are  
21 inference which he believes can be reasonably drawn from the  
22 evidence, but it is the providence of the jury to ultimately  
23 make that determination. But I do believe that he has the  
24 qualifications to bring forth information and share his

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1 where it talks about the white paper towels recovered from the  
2 victim's genitals, he's quoting to something that's not evidence  
3 and he's quoting to it improperly because William Gaza didn't  
4 state that.

5 MS. ZALKIN: And, Your Honor, that -- that's fine,  
6 although I would note that experts can rely on hearsay in  
7 forming their opinion, based on testimony that we heard  
8 today --

9 MS. DiGIACOMO: Correct, but he can form that  
10 differently, that this witness testified, not quote to report --  
11 and he's quoting it improperly because it wasn't William Gaza  
12 that said it, it was Shelley Pierce-Stauffer.

13 MS. ZALKIN: Well, it's follow up notes from the  
14 office by William Gaza --

15 MS. DiGIACOMO: No.

16 MS. ZALKIN: -- but that exhibit was marked today,  
17 this follow up notes was marked and admitted today by --

18 MS. DiGIACOMO: It wasn't marked and admitted,  
19 it's been marked as a proposed exhibit, it has not been  
20 admitted.

21 And actually she's incorrect. There are different  
22 notes by all kinds of different people on there for the follow  
23 up notes and that was pointed out by Mr. Schieck on his  
24 direct of her, that there's notes from somebody, Roland Jones,

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1 from William Gaza, from her, from somebody, so this is  
2 misleading.

3 MS. ZALKIN: That's fine, Your Honor. The  
4 substance of this particular slide is less important and we  
5 can make it more generic and where the information came  
6 from.

7 THE COURT: Yeah, I think you can say follow up  
8 notes from the coroner's office and totally --

9 MS. DiGIACOMO: Or the testimony of --

10 THE COURT: -- or the reference of it being by  
11 William Gaza.

12 MR. SCHIECK: I can clear that up, Your Honor.  
13 William Gaza signed off on the document as the investigative  
14 staff supervisor.

15 THE COURT: He was supervisor --

16 MR. SCHIECK: That's where he got the name.

17 THE COURT: -- of the investigator that testified  
18 today.

19 MS. ZALKIN: And that's fine, Your Honor.

20 THE COURT: Okay. So that can be corrected as  
21 well. Is there anything further that we need to  
22 address outside the presence of the jury.

23 MS. GREENBERGER: Not on the record, but I do  
24 have something I want to address in the presence of the

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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.

Gayle M. Lutz  
Transcriber

5/1/07  
Date

\*\*\*\*\*

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1 District Attorney before everyone leaves, but it doesn't have to  
2 be on the record.

3 THE COURT: Okay. We'll go off the record at this  
4 time.

5 COURT ADJOURNED AT 5:00:08 P.M. UNTIL  
6 OCTOBER 2<sup>ND</sup>, 2006

\*\*\*\*\*

**CERTIFICATION**

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CLARK COUNTY, NEVADA

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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 16  
VOLUME XVI

MONDAY, OCTOBER 2, 2006

COURT RECORDER:

LISA LIZOTTE  
District Court

TRANSCRIPTION BY:

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Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

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INDEX OF WITNESSES

DIRECT CROSS REDIRECT RECROSS

MONDAY, OCTOBER 2, 2006

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\* \* \* \* \*

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1 LAS VEGAS, NEVADA MONDAY, OCTOBER 2, 2006

**PROCEEDINGS**

PROCEEDINGS BEGAN AT 10:38:26

(Jurors are present)

THE BAILIFF: All rise, please.

Department II is now in session, the Honorable

Valorie J. Vega presiding. Please be seated.

THE COURT: Good morning. The record shall reflect that we're resuming trial in State versus Kirstin Blaise Lobato under Case Number C177394, the defendant is present, together with her three counsel, the two prosecuting attorneys are present, the ladies and gentlemen of the jury are present in the jury box having been reseated by the bailiff.

We're ready to proceed forward with the defendant's case in chief. And defendant may call defendant's next witness.

MR. SCHIECK: Your Honor, Robert McCrosky. I'll get him.

THE BAILIFF: Okay.

THE CLERK: Please come all the way forward.

Remain standing and raise your right hand.

**ROBERT MCCROSKY, DEFENDANT'S WITNESS, SWORN**

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

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R. McCROSKY - DIRECT

THE WITNESS: Robert McCrosky from Panaca.

THE COURT: Would you spell your last name, please?

THE WITNESS: M-C, capital C-R-O-S-K-Y.

THE COURT: Thank you.

Mr. Schieck, you may proceed.

MR. SCHIECK: Thank you, Your Honor.

**DIRECT EXAMINATION**

BY MR. SCHIECK:

Q Good morning, Mr. McCrosky.

A Good morning.

Q How are you this morning?

A Good.

Q You reside in Panaca, Nevada?

A That's correct.

Q How long have you lived in Panaca?

A Forty years.

Q Forty years?

A Mm-hmm.

COURT RECORDER: Is that a yes?

THE WITNESS: Yes.

BY MR. SCHIECK:

Q You need to say yes or no. And during those forty years, what was your occupation there in Panaca?

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000790

R. McCROSKY - DIRECT

1 A Mechanic.  
 2 Q For the entire forty years?  
 3 A Yes.  
 4 Q Are you still working?  
 5 A Part-time.  
 6 Q So you're semi-retired?  
 7 A Yes.  
 8 Q And what street do you reside on?  
 9 A Callaway.  
 10 Q In Panaca, do they have mail service for delivery to  
 11 street addresses?  
 12 A No.  
 13 Q Do you really have a street address there in Panaca?  
 14 A No.  
 15 Q Okay. Mail is to a P.O. box?  
 16 A That's correct.  
 17 Q And there on Callaway Street, are you familiar with  
 18 your neighbors?  
 19 A Yes.  
 20 Q I want to take you to July of 2001. Do you recall  
 21 who the neighbors to your immediate right were at that time?  
 22 A Lobatos.  
 23 Q And do you recall who resided there in the Lobato  
 24 household back in July of 2001?

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McCROSKY - DIRECT

1 car in July of 2001?  
 2 A Yes.  
 3 Q And where did you see it parked at?  
 4 A Well, it was parked alongside the fence.  
 5 Q When you say alongside the fence, what fence are  
 6 you talking about?  
 7 A Well, probably more on Lobato's side. It was, I  
 8 don't know, it was probably about even with our fence, the  
 9 back end of it was. I don't -- I don't recall exactly but --  
 10 Q What type of fence in 2001 did you have there in  
 11 front of your house?  
 12 A Chainlink.  
 13 Q Okay. And what -- was there a fence between your  
 14 house and the Lobato house?  
 15 A Yes.  
 16 Q And what type of fence was that?  
 17 A That was chainlink.  
 18 Q Now when you say a chainlink fence, is that the type  
 19 of fence you can see through?  
 20 A Yes.  
 21 Q We have a device here where I can put the pictures  
 22 here and you'll be able to see them on your screen up there in  
 23 front of you. Okay?  
 24 A Yes.

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R. McCROSKY - DIRECT

1 A Yes. It's Mr. and Mrs. Lobato and the two girls.  
 2 Q And do you recall the two girls' names?  
 3 A The one girl, yes, Blaise. And I think the other one  
 4 was Ashley.  
 5 Q Okay. Would you say that you were close to the  
 6 Lobato family or just neighbors?  
 7 A Just neighbors.  
 8 Q And you indicated you did know Blaise?  
 9 A No. I knew who she was.  
 10 Q Okay. In July of 2001, do you know what kind of  
 11 car she drove?  
 12 A It was a little Chevy. I'm without words right now.  
 13 It --  
 14 Q What color was the car?  
 15 A I think it was red.  
 16 Q Okay. If I showed you a photograph of the car, you  
 17 think you'd recognize it?  
 18 A Yes.  
 19 MR. SCHIECK: The Court's indulgence, please.  
 20 THE COURT: Yes.  
 21 (Pause in the proceedings)  
 22 BY MR. SCHIECK:  
 23 Q While I'm looking through these photographs, and  
 24 we'll find the one to show you, do you recall seeing that red

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R. McCROSKY - DIRECT

1 Q I'm gonna show you what's been admitted as State's  
 2 Exhibit 179. Do you recognize what's depicted in that  
 3 photograph?  
 4 A Yes. Uh-huh.  
 5 Q And what is that?  
 6 A It's a Fiero.  
 7 Q Okay. Is that the car we were referring to?  
 8 A Yes.  
 9 Q In that photograph, is your house in there?  
 10 A Yes. It's right directly, well, I mean, kind of catty-  
 11 corner right there. But it's the house that you can see in the  
 12 picture.  
 13 Q You can actually touch that screen. If you could  
 14 touch the screen and show us where your front door is at.  
 15 Okay. And that's the chainlink fencing that we've been talking  
 16 about?  
 17 A Yeah. Yes.  
 18 Q Okay. And that's the way it appeared in July of  
 19 2001?  
 20 A Uh-huh. Yes.  
 21 Q Okay. I'm gonna show you what's been admitted as  
 22 State's Exhibit 178. Do you recognize what's depicted in that  
 23 photograph?  
 24 A Yes.

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000791



R. McCROSKY - DIRECT

- 1 Q And what is that?
- 2 A That's a Fiero.
- 3 Q And whose house is that directly -- that the Fiero is
- 4 parked in front of?
- 5 A That's Lobato's.
- 6 Q Do you recall when you first saw that car in July of
- 7 2001 parked in front of the Lobato house?
- 8 A Yes, I do.
- 9 Q Okay. And what do you recall that date being?
- 10 A Well, I just assumed that, I mean, she was home.
- 11 But, I mean --
- 12 Q Okay. Do you recall what exact date the car first
- 13 appeared there?
- 14 A No, I don't.
- 15 Q Okay. But at some point in time the car was there?
- 16 A Yes.
- 17 Q Okay. When you first saw the car parked there in
- 18 July of 2001, did you ever see the car moved?
- 19 A No.
- 20 Q Did you ever see anyone driving the car?
- 21 A No.
- 22 Q Did the car remain parked there for a while?
- 23 A Yes.
- 24 Q Okay. And did you see the car when it was

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McCROSKY - DIRECT

- 1 until you saw the car being towed away, had the car been
- 2 moved at all?
- 3 A No.
- 4 Q Okay. And how long a period was it sitting there in
- 5 front of the Lobato house on the street?
- 6 A Well, I don't know exactly but, you know, probably a
- 7 couple weeks.
- 8 Q That was during July of 2001?
- 9 A Yes.
- 10 Q Okay. And what is -- do you recall how early in July
- 11 it was parked there?
- 12 A What do you mean early?
- 13 Q The first part of July?
- 14 A Yes, it was the first part of July. I think we were
- 15 gone around the 4<sup>th</sup> but I'm not -- I don't really remember
- 16 that.
- 17 Q Okay. But your best recollection is the first part of
- 18 July?
- 19 A Yes.
- 20 Q And during that period of time in July of 2001, did
- 21 you have a regular daily morning schedule that you kept?
- 22 A Yes. I walked --
- 23 Q And what was it?
- 24 A I walked up that street every morning.

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R. McCROSKY - DIRECT

- 1 removed?
- 2 A I just looked out the door when they were, I guess,
- 3 they was hooking -- there was too many cars and things out
- 4 there. I didn't go out but --
- 5 Q What were they doing to the Fiero?
- 6 A They was hooking it up. I mean, they were gonna
- 7 haul it off, I guess.
- 8 Q Okay. And you've worked as a mechanic for forty
- 9 years. Was it a tow truck type of device that was being
- 10 hooked up to the car?
- 11 A You know -- you know, I didn't -- I really didn't see
- 12 what it was.
- 13 Q Okay. You saw them doing something with the car?
- 14 A Yes. I just looked out the door, and they said they
- 15 was taking the -- I mean, we had company. And they said
- 16 that they were hauling the car off. And I looked out but I
- 17 didn't pay any attention to what they was hauling it off with.
- 18 Q Did you see any law enforcement type vehicles
- 19 around at that time?
- 20 A Yes. There was quite a few.
- 21 Q Okay. That would include Lincoln County Sheriff or
- 22 do you recall?
- 23 A I didn't -- I really didn't pay any attention.
- 24 Q And from the time the car was first parked there

XVI-11

R. McCROSKY - DIRECT

- 1 Q So you would walk past the car?
- 2 A Yes.
- 3 Q And it was open and easy to see from the street, is
- 4 that correct?
- 5 A Oh, yes. I walked right by the car.
- 6 Q While you were living there in 2001, did anyone
- 7 from the police department come over and ask you any
- 8 questions about the car?
- 9 A You mean from the local police?
- 10 Q Yes.
- 11 A No.
- 12 Q What about from Las Vegas police?
- 13 A Yes. There was, I think, the -- not the police. I
- 14 didn't -- it was the -- I think the D.A. or the -- I think they -- I
- 15 don't know when they -- they didn't come then, though.
- 16 Q Was it quite a bit of time later?
- 17 A Yes.
- 18 Q Okay. That somebody came to interview you?
- 19 A Mm-hmm.
- 20 Q Is that yes?
- 21 A Yes.
- 22 Q And you told them basically what you're telling us
- 23 here today?
- 24 A Yes.

XVI-13

000792

R. McCROSKY - CROSS

McCROSKY - CROSS

1 MR. SCHIECK: Thank you. That's all the questions I  
2 have, Your Honor.

3 THE COURT: Cross.

4 **CROSS-EXAMINATION**

5 BY MR. KEPHART:

6 Q How you doing, Mr. McCrosky?

7 A Okay. Nervous.

8 Q What's that? You're nervous?

9 A I said I'm nervous.

10 Q Relax. There's nothing to be nervous about. Now,  
11 can you tell me, you said that you thought you were gone  
12 around the 4<sup>th</sup> of July?

13 A I believe we were but, you know, I'm not positive.

14 Q Do you know where you went?

15 A No.

16 Q Was it just for the 4<sup>th</sup> or did you go for some other  
17 time?

18 A Well, we usually -- you know, I don't know whether  
19 we went to Fallon to visit the kids or not, but that's probably  
20 where we had been if we had have been gone.

21 Q Okay. And you're talking about Fallon, Nevada?

22 A Yes.

23 Q Would you go up for the day and come back or is it  
24 too far to do?

XVI-14

R. McCROSKY - CROSS

1 A No. Usually, when we went up we spent two or  
2 three days.

3 Q Okay. And so, obviously, during that time that you'd  
4 been gone, if you were gone, you couldn't have known  
5 whether or not that car had moved or not?

6 A Well, not when we was gone, no.

7 Q Okay. And now do you recall, I guess, probably  
8 about maybe a month ago Ms. DiGiacomo and myself and an  
9 investigator came out and talked to you?

10 A Yes.

11 Q Okay. And we talked about what you had indicated  
12 before about where the car was parked?

13 A Yes.

14 Q Okay. And you testified here today that you believe  
15 the car was kind of more in front of the Lobato's but kind of in  
16 front of your fence that separated the property?

17 A Well, it was -- well, I -- I kind of assumed it was a  
18 little bit closer to our fence, but it's been quite awhile. I don't  
19 remember.

20 Q Okay. Well, when we show you Exhibit 179, your  
21 fence is that one right there that separates the two properties,  
22 is that right?

23 A Yeah, that's correct.

24 Q So you kind of assumed that the car was a little bit

XVI-15

1 closer to the fence.

2 A Well, it's kind of hard to tell right there where the  
3 car was at, but I'm sure that's where it was.

4 Q Do you remember telling us that you even had some  
5 concerns about it being there because you wanted it moved?  
6 You remember telling us that?

7 A No, I didn't. I don't remember saying that, no.

8 Q You had some concerns as to where it was parked.  
9 It was parked right in front of your -- in front of your fence.  
10 You don't remember telling us that?

11 A No.

12 Q Well, do you remember telling us that you thought it  
13 was parked in front of the fence and somebody from your  
14 family had talked about it there?

15 A Well, yes. I --

16 Q Okay.

17 A I didn't say anything about where it was parked.

18 Q Okay.

19 A I can --

20 Q But --

21 A I think it was my wife did.

22 Q Okay. About it being parked in front of your  
23 property?

24 A Yeah, she said. But I don't believe -- I think that's

XVI-16

R. McCROSKY - CROSS

1 where it was all the time.

2 Q Okay. But, obviously, if you're not there you  
3 wouldn't know if it was there?

4 A Well, I was gone, you know, during the day so --

5 Q Okay.

6 A I mean, if it --

7 Q Okay.

8 A If it was moved, but yet --

9 Q Now the defense when they were questioning you  
10 asked you about July. Is there any particular reason why you  
11 remember it being July or it could have been June, it could  
12 have been May?

13 A Well, I know it was July because, you know, the car  
14 hadn't been there for a couple months and then the car  
15 showed up.

16 Q Okay. And then you remember it being taken away  
17 by the police?

18 A Yes.

19 Q Okay. Now after the police took the car away, did  
20 you have an opportunity to speak with the Lobatos?

21 A I didn't, no.

22 Q Your wife did?

23 A Yes.

24 Q Okay. And you spoke to your wife, though, about

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000793

R. McCrosky - CROSS

1 what she talked to the Lobatos about, didn't you?  
 2 A I think she told me. She told me about it.  
 3 MR. SCHIECK: Objection to what she told him, Your  
 4 Honor. It's hearsay.  
 5 MR. KEPHART: I am not asking him for what she  
 6 said. But I'm sorry, Judge.  
 7 THE COURT: The objection is premature and  
 8 overruled.  
 9 BY MR. KEPHART:  
 10 Q You can't really tell us what your wife told you. But  
 11 you did speak to your wife after she spoke to the Lobatos, is  
 12 that correct?  
 13 A Yes. She told me what had happened.  
 14 Q Okay. Had anything changed -- no, strike that.  
 15 Did you see the defendant at all during the time that her  
 16 car was there in July that you say? Did you see her?  
 17 A I believe I saw her once but, you know, and waved  
 18 at her but I believe that's all. I don't remember seeing her  
 19 around.  
 20 Q Okay. You didn't talk to her then?  
 21 A No.  
 22 Q Okay. When you saw her, was there anything  
 23 different about her appearance then that you see her here  
 24 today? Do you see her here today?

XVI-18

McCrosky - DIRECT

1 M-C-C-R-O-S-K-Y.  
 2 **DIRECT EXAMINATION**  
 3 BY MR. SCHIECK:  
 4 Q Good morning.  
 5 A Good morning.  
 6 Q Where do you reside?  
 7 A Panaca, Nevada.  
 8 Q And how long have you lived there in Panaca?  
 9 A Seventy-five years.  
 10 Q So you've lived there all your life?  
 11 A Right.  
 12 Q And do you recall where you resided in July of 2001?  
 13 A Yes.  
 14 Q Okay. And where was that or what street was it on?  
 15 A It's on Callaway.  
 16 Q And in Panaca they just have the post office boxes  
 17 for mail service?  
 18 A Yes.  
 19 Q Do you recall who your neighbors were in July of  
 20 2001?  
 21 A Yes.  
 22 Q Okay. And as you're looking out your front door,  
 23 who would your neighbor on the right have been back in July  
 24 of 2001?

XVI-20

R. McCrosky - CROSS

1 A Yes. I see her.  
 2 Q Okay.  
 3 A No. No.  
 4 Q Nothing different?  
 5 A Other than she was a lot younger.  
 6 Q Okay.  
 7 THE COURT: The record shall reflect that he  
 8 pointed toward the defendant.  
 9 MR. KEPHART: Thank you, Mr. McCrosky.  
 10 I'll pass the witness, Your Honor.  
 11 THE COURT: Redirect.  
 12 MR. SCHIECK: The Court's indulgence.  
 13 THE COURT: Yes.  
 14 MR. SCHIECK: Nothing further, Your Honor.  
 15 THE COURT: You may step down from the stand.  
 16 Defendant may call defendant's next witness.  
 17 MR. SCHIECK: We would call Jeanette McCrosky.  
 18 (Pause in the proceedings)  
 19 THE CLERK: Please come all the way forward.  
 20 Remain standing and raise your right hand.  
 21 **WANDA McCROSKY, DEFENDANT'S WITNESS, SWORN**  
 22 THE CLERK: Thank you. Please be seated and state  
 23 your name and spell it for the record, please.  
 24 THE WITNESS: Wanda McCrosky, W-A-N-D-A

XVI-19

W. McCrosky - DIRECT

1 A Larry and Becky Lobato.  
 2 Q And are you familiar with anyone else that was living  
 3 there at the house at that time?  
 4 A Blaise and Ashley, the girls.  
 5 Q And those are the children?  
 6 A Yes.  
 7 Q Okay. And do you recognize Blaise here in court  
 8 today?  
 9 A Yes.  
 10 Q And she's seated over here between the two ladies?  
 11 A Yes.  
 12 MR. SCHIECK: May the record reflect identification  
 13 of the defendant, Your Honor?  
 14 THE COURT: The record shall so reflect.  
 15 BY MR. SCHIECK:  
 16 Q And you're married to Robert?  
 17 A Yes.  
 18 Q Who was just in here?  
 19 A Yes.  
 20 Q Okay. I want to ask you some questions about July  
 21 of 2001. Do you recall what car Blaise was driving back in  
 22 2001, in July?  
 23 A Yes. I know what it looks like. I'm not --  
 24 Q What's it look like?

XVI-21

000794

W. McCROSKY - DIRECT

1 A It's red. It was red. And I don't know if it was a  
2 Fiero or a small car.  
3 Q Real small and low to the ground?  
4 A I think so.  
5 Q Would you recognize a picture of it?  
6 A Yes.  
7 Q I'm showing you State's Exhibit 179. You can look  
8 on the screen right there.  
9 A Yes.  
10 Q Is that the car?  
11 A Yes.  
12 Q Okay. And you recognize the house behind the car?  
13 A Yeah. It's my house.  
14 Q Now in July of 2001, for a period of time, was that  
15 car parked there on Callaway Street?  
16 A Yes.  
17 Q Okay. How long was it parked there, do you recall?  
18 A I don't recall the day that she came home but I  
19 know it was there awhile, a couple of weeks maybe.  
20 Q After it -- after it came back to Panaca, did you ever  
21 see it moved?  
22 A No.  
23 Q It was always in the same position?  
24 A Yes.

XVI-22

McCROSKY - DIRECT

1 Q Okay. And then you noticed when it came back?  
2 A Mm-hmm.  
3 Q Is that yes?  
4 A Yes.  
5 Q That sort of stands out in your mind?  
6 A Well, yeah, 'cause we -- we knew she was home.  
7 Q Okay. Then once you knew she was home, the car  
8 didn't move until the police took it?  
9 A Not that I saw.  
10 Q And your husband indicated to us that every  
11 morning he would go out for a walk. Did you have a regular  
12 routine in the mornings?  
13 A No.  
14 Q Were you a stay-at-home wife?  
15 A Yes.  
16 Q Okay. So you would have been home most of the  
17 day?  
18 A Yes.  
19 Q During that period of time?  
20 A Yes.  
21 Q Okay. And would you go out in your yard on  
22 occasions during the regular day?  
23 A Yeah. I'm sure I went out every day.  
24 Q And you would have seen the car then?

XVI-24

W. McCROSKY - DIRECT

1 Q And in this photograph here it looks like you can --  
2 it's a straight view from the car to your front door?  
3 A Well, it's not in a straight view but you -- kind of an  
4 angle.  
5 Q Okay. It's at an angle. But you can see -- you can  
6 see your front door from the car?  
7 A Yes.  
8 Q Okay. To your recollection, is that where it was  
9 parked the entire time that it was there?  
10 A I think -- I'm sure it was. I thought it was parked --  
11 that the back of it was a little bit on our property, you know,  
12 but I could see it everyday, you know.  
13 Q Did you ever see it being driven?  
14 A No.  
15 Q Did you ever see anyone moving it?  
16 A No.  
17 Q Do you recall where you went or did you go  
18 anywhere for July 4<sup>th</sup> of that year? Do you remember?  
19 A I don't remember.  
20 Q And do you have any recollection of the first date  
21 that you saw the car parked there in July of 2001?  
22 A No, I don't. I don't know the date, no.  
23 Q Had the car been gone for awhile?  
24 A Yes.

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W. McCROSKY - CROSS

1 A Yes.  
2 MR. SCHIECK: Okay. Thank you. That's all the  
3 questions we have, Your Honor.  
4 THE COURT: Cross.  
5 MR. KEPHART: Thank you, Your Honor.  
6 **CROSS-EXAMINATION**  
7 BY MR. KEPHART:  
8 Q Hi, ma'am. How you doing?  
9 A Good.  
10 Q Okay. Mrs. McCrosky, you said that the car was  
11 there and your words were "a couple of weeks before they  
12 took it." So you remember seeing it at least a couple of weeks  
13 before it was taken?  
14 A As far as I can remember. I know it was a while.  
15 Q Okay. And were you there when the car was  
16 actually taken?  
17 A Yes.  
18 Q Okay. You saw the police vehicles there and they  
19 loaded the car up and hauled it off?  
20 A Yes.  
21 Q And was there anyone at your house the day that it  
22 was taken besides your husband?  
23 A Yes.  
24 Q Now you said that you never saw it moved?

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W. McCROSKY - CROSS

1 A No.  
2 Q Okay. You believe, however, based on at least the  
3 photo here that you believe that -- this is Exhibit 179. Can you  
4 see that, ma'am?  
5 A Yes.  
6 Q You believe that it was back further, closer to your  
7 fence?  
8 A Well, I don't know exactly where it was parked. But  
9 as I look out my window, it looks like it's, you know, the back  
10 of it was kind of, well, across the fence but I'm not sure.  
11 Q Okay.  
12 A It's been a long time.  
13 Q I know. And you never saw it drive in, though, did  
14 you?  
15 A No.  
16 Q Okay. And your husband said that sometimes  
17 during this holiday you would leave and go to Fallon to see  
18 your family?  
19 A Yes. Some -- I can't recall if we were gone that --  
20 the 4<sup>th</sup> of July or not.  
21 Q Okay.  
22 A But sometimes we do go on holidays.  
23 Q Okay. Obviously, if you were gone you wouldn't  
24 have been able to see if the car had moved. Would you agree

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McCROSKY - CROSS

1 left and was gone?  
2 A No. I wouldn't. In the night, I wouldn't know. I --  
3 Q Okay. Did you see the defendant at all during that  
4 time while her car was there?  
5 A I think I saw her maybe once or twice maybe out in  
6 the yard, or whatever, but --  
7 Q Okay. Did you talk to her?  
8 A I don't think so.  
9 Q Maybe wave or something like that?  
10 A No.  
11 Q Okay. She never came over to your house or  
12 anything like that?  
13 A No.  
14 Q Okay. You saw her today. You've identified her  
15 today. Anything different about her today than back then?  
16 A No. Maybe her hair's a little longer.  
17 Q Okay. Anything else?  
18 A No.  
19 MR. KEPHART: Pass --  
20 THE WITNESS: A little older.  
21 BY MR. KEPHART:  
22 Q A little older?  
23 A A little older.  
24 MR. KEPHART: Okay. Thank you, ma'am.

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W. McCROSKY - CROSS

1 with me there? If you weren't there you couldn't have seen it  
2 moved?  
3 A No.  
4 Q Okay. It's just you just don't remember if you were  
5 gone or not?  
6 A No, I don't.  
7 Q Okay. Are you -- when do you usually go to bed?  
8 What time?  
9 A 11:30, 12:00.  
10 Q Sleep 'til early in the morning or --  
11 A Mm-hmm.  
12 Q -- are you a late sleeper or --  
13 A Well, no. 7:00 or 8:00.  
14 Q Okay. Your husband go to bed about the time you  
15 go to bed?  
16 A No. He goes to bed earlier.  
17 Q Okay. Sleep all through the night until --  
18 A Yes.  
19 Q -- the next day? When you're sleeping, you would  
20 agree with me that you couldn't see whether the car was  
21 gone, could you?  
22 A No. Not if I'm asleep, no.  
23 Q Okay. So there are times, you would agree, that  
24 maybe you didn't notice whether or not the car had actually

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W. McCROSKY - REDIRECT

1 I'll pass the witness.  
2 THE COURT: Redirect.  
3 MR. SCHIECK: Thank you, Your Honor. Just one  
4 question.  
5 **REDIRECT EXAMINATION**  
6 BY MR. SCHIECK:  
7 Q Mr. Kephart had asked you questions about whether  
8 you could see the car when you were asleep.  
9 A Yeah.  
10 Q Do you usually sleep between the hours of 9:50 in  
11 the morning to 3:50 in the afternoon on a Sunday?  
12 A No.  
13 MR. SCHIECK: Thank you. Nothing further.  
14 THE COURT: Anything further by the State?  
15 MR. KEPHART: No. No, Your Honor. No.  
16 THE COURT: You may step down, please, ma'am.  
17 The record shall reflect that defendant's counsel are  
18 conferring.  
19 MR. SCHIECK: Kristina Paulette, Your Honor.  
20 THE COURT: Defendant's next witness will be  
21 Kristina Paulette, who is being recalled, I believe.  
22 MS. GREENBERGER: We're calling her as our  
23 witness.  
24 MR. SCHIECK: Yes, Your Honor.

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000796

PAULETTE - DIRECT

1 THE COURT: She's being called as a defendant's  
2 witness at this time, but it's the same Kristina Paulette who did  
3 testify earlier in the trial.

4 MR. SCHIECK: Yes, Your Honor.

5 THE COURT: Very well.

6 MR. SCHIECK: Your Honor, could I check the  
7 hallway for status on other witnesses real quickly?

8 THE COURT: Yes, you may.

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

11 **KRISTINA PAULETTE, DEFENDANT'S WITNESS, SWORN**

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

14 THE WITNESS: Kristina Paulette, K-R-I-S-T-I-N-A  
15 P-A-U-L-E-T-T-E.

16 **DIRECT EXAMINATION**

17 BY MS. GREENBERGER:

18 Q Good morning, Ms. Paulette.

19 A Good morning.

20 Q Thank you for coming back. You previously testified  
21 that you're a criminalist, is that correct?

22 A Correct.

23 Q Is that a type of forensic scientist?

24 A Yes, it is.

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PAULETTE - DIRECT

1 involved with crimes figure out exactly what happened and by  
2 what manner.

3 Q That testing can point towards a subject,  
4 individual's, guilt that you're testing against?

5 MS. DIGIACOMO: Objection, leading, calls for a  
6 legal conclusion.

7 THE COURT: The Court sustains as to leading.

8 BY MS. GREENBERGER:

9 Q Why do you test for trace evidence?

10 A We test for -- test for trace evidence the same  
11 reason we test for any other sort of evidence. I mean, trace  
12 evidence is evidence. So we're looking for DNA on any sort of  
13 item to help us make a conclusion, I guess.

14 Q Do you test to prove associations between evidence  
15 and a crime?

16 MS. DIGIACOMO: Objection, leading.

17 THE COURT: Sustained.

18 BY MS. GREENBERGER:

19 Q What is a DNA backlog?

20 A What is it?

21 Q Yes.

22 MS. DIGIACOMO: Objection, relevance.

23 THE COURT: Overruled.

24 ///

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PAULETTE - DIRECT

1 Q As a forensic scientist, do you agree that objectivity  
2 is important in your methods?

3 MS. DIGIACOMO: Objection, leading.

4 THE COURT: Sustained.

5 BY MS. GREENBERGER:

6 Q Is objectivity important in your methods?

7 A Yes, it is.

8 Q Is impartiality important in your methods?

9 A Yes.

10 Q Is honesty important in your methods?

11 A Yes.

12 Q As a forensic scientist, are you here to help one side  
13 over the other?

14 A No.

15 Q Is forensic science an important part of a criminal  
16 investigation?

17 A Yes.

18 Q Can testing evidence resolve the issue of that  
19 evidence's involvement in a crime?

20 MS. DIGIACOMO: Objection, leading.

21 THE COURT: Sustained.

22 BY MS. GREENBERGER:

23 Q Why does your lab test DNA?

24 A We test DNA to help investigators and other people

XVI-31

PAULETTE - DIRECT

1 BY MS. GREENBERGER:

2 Q You may answer.

3 A A DNA backlog is the number of DNA cases that  
4 have yet to be worked that are basically on -- have been  
5 requested to have been marked.

6 Q Do you have a DNA backlog at your office?

7 A We do.

8 Q Can you afford to test every item of evidence that is  
9 submitted?

10 A Not in every case.

11 Q Who makes those decisions?

12 A It's made by the analysts and the supervisors. We  
13 talk about cases that are current and level of importance that  
14 we have in our backlog.

15 Q So is it fair to say you only test items that you deem  
16 are of importance, your lab?

17 A Not necessarily. We test items that are requested  
18 by investigators and by a D.A. Depending on the case and the  
19 relevance that it has in the case and when that case is going  
20 to trial or if it has been adjudicated already, it -- there's so  
21 many factors in determining what gets tested when.

22 Q How does when a case is going to trial affect your  
23 testing?

24 A Those cases get prioritized. So anything that's

XVI-33

000797

PAULETTE - DIRECT

1 coming up to trial has a quick trial date rather than further out,  
 2 we put those in the front of the pile.  
 3 Q Did you or do you consider this case you're here  
 4 testifying on a priority?  
 5 A Yes.  
 6 Q You're employed by the Las Vegas Metropolitan  
 7 Police Department Crime Lab. Is that accurate?  
 8 A Yes, I am.  
 9 Q Your lab is part of the police department?  
 10 A Yes, it is.  
 11 Q It is not independent from that, is it?  
 12 A No, it's not.  
 13 Q Do you recall when you previously testified being  
 14 asked whether you were -- you were or had done any DNA  
 15 analysis?  
 16 A Yes.  
 17 Q Do you recall your answer?  
 18 A Yes. No, I don't recall the exact answer.  
 19 Q Were you asked to do any DNA testing other than  
 20 the pubic hair prior to your testimony in the last proceeding?  
 21 A Yes, I was.  
 22 MS. DIGIACOMO: Objection, Your Honor, vague as  
 23 to what she means by the last proceeding.  
 24 ///

XVI-34

PAULETTE - DIRECT

1 A September 14<sup>th</sup>.  
 2 Q Were you aware that was one day after opening  
 3 statements?  
 4 MS. DIGIACOMO: Objection, leading.  
 5 THE COURT: Sustained.  
 6 BY MS. GREENBERGER:  
 7 Q Were you aware that was one day after the trial  
 8 started?  
 9 MS. DIGIACOMO: Objection, leading.  
 10 THE COURT: Sustained.  
 11 BY MS. GREENBERGER:  
 12 Q Were these the cigarette butts that were found  
 13 under the plastic that covered Duran Bailey's body?  
 14 MS. DIGIACOMO: Objection, leading.  
 15 THE COURT: Sustained.  
 16 BY MS. GREENBERGER:  
 17 Q Do you know where those cigarette butts were  
 18 seized from?  
 19 A No.  
 20 Q What were you asked to test for?  
 21 A I was asked to test for DNA.  
 22 Q Did you have the results of that DNA testing prior to  
 23 testifying?  
 24 A I had data but it hadn't been looked at or reviewed.

XVI-36

PAULETTE - DIRECT

1 BY MS. GREENBERGER:  
 2 Q Last week. At the time you testified last week, isn't  
 3 it true you were involved in other DNA testing in this case that  
 4 you did not mention when you testified?  
 5 MS. DIGIACOMO: Objection, leading.  
 6 THE COURT: Sustained.  
 7 BY MS. GREENBERGER:  
 8 Q At the last time you testified you only testified  
 9 regarding your analysis on the DNA of the pubic hair, correct?  
 10 A Correct.  
 11 Q You had been asked to test additional items of  
 12 evidence in this case prior --  
 13 MS. DIGIACOMO: Objection, leading.  
 14 MS. GREENBERGER: I can rephrase it.  
 15 THE COURT: All right.  
 16 BY MS. GREENBERGER:  
 17 Q Were you asked to test additional items of forensic  
 18 evidence in this case after this trial was underway?  
 19 A Yes.  
 20 Q What items were those?  
 21 A May I refer to my notes?  
 22 Q Please.  
 23 A I was asked to test cigarette butts.  
 24 Q What date was that request made?

XVI-35

PAULETTE - DIRECT

1 Q Why not?  
 2 A Because there was not time.  
 3 Q What date did you say you got the initial request to  
 4 test the cigarette butts?  
 5 A The 14<sup>th</sup>.  
 6 Q Of September?  
 7 A Yes.  
 8 Q 2006?  
 9 A Yes.  
 10 Q Who submitted that request?  
 11 A Ms. DiGiacomo.  
 12 Q Is that the prosecutor in this case?  
 13 A Yes.  
 14 Q What day did you start your examination and testing  
 15 of the cigarette butts?  
 16 A I began the examination on September 17<sup>th</sup>.  
 17 Q Do you know what day you received the cigarette  
 18 butts?  
 19 A I received them on September 15<sup>th</sup>.  
 20 Q Where did the items come from?  
 21 A They were from the vault, the evidence vault.  
 22 Q In the custody of Las Vegas Metro?  
 23 A Yes.  
 24 Q What day did you cut samples from the cigarettes?

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000798

## PAULETTE - DIRECT

- 1 A September 17<sup>th</sup>.  
 2 Q What day did you extract DNA from the samples?  
 3 A September 18<sup>th</sup>.  
 4 Q What day did you quantify the DNA?  
 5 A September 19<sup>th</sup>.  
 6 Q Can you explain to us what quantifying the DNA is?  
 7 A Quantification of the DNA is just determining how  
 8 much DNA is present after we extract. We have to have a  
 9 certain amount of DNA in order to be able to get some sort of  
 10 analysis of that DNA, to be able to tell that there's DNA there  
 11 and to characterize it.  
 12 Q Was there enough to test or did you have to amplify  
 13 the DNA?  
 14 A DNA always has to be amplified before it can be  
 15 analyzed.  
 16 Q Can you explain to us what amplification is?  
 17 A Amplification is targeting the DNA, the areas of  
 18 interest that we're interested in, making millions and millions  
 19 of copies of it so that we can separate the DNA by size and get  
 20 base sizing for that.  
 21 Q What day did you amplify the DNA samples you had  
 22 extracted from the cigarette butts?  
 23 A September 20<sup>th</sup>.  
 24 Q What day did you load the amplified samples for

XVI-38

## PAULETTE - DIRECT

- 1 A There was data there but the review of the data had  
 2 not gone through.  
 3 Q What does that mean?  
 4 A It means that I knew that there was data present. I  
 5 knew that there was DNA present. But I didn't know exactly --  
 6 I didn't have time to sit down and analyze the DNA and see  
 7 exactly what it meant.  
 8 Q On Monday morning, that would be the 25<sup>th</sup>, did you  
 9 go to work?  
 10 A Yes.  
 11 Q And what time did you get there?  
 12 A Approximately 7:00 a.m.  
 13 Q Was that the day you were gonna testify here?  
 14 A Yes, it was.  
 15 Q Did you look at the results of the DNA testing prior  
 16 to your testimony?  
 17 A I had looked at it on Friday to see that there was  
 18 DNA there but I hadn't done any sort of analysis or have time  
 19 to write out my tables or anything like that.  
 20 Q Did you know you would be testifying in this case on  
 21 that day?  
 22 A Yes, I did.  
 23 Q Why didn't you continue your analysis?  
 24 A I didn't have time.

XVI-40

## PAULETTE - DIRECT

- 1 DNA testing?  
 2 A September 21<sup>st</sup>.  
 3 Q What did you do the day after you loaded the  
 4 samples?  
 5 A I checked my run. I wasn't actually working that  
 6 day. I was off. I thought I was going to have to testify so I  
 7 came in for just an hour and checked to make sure the run  
 8 had actually worked.  
 9 Q And what --  
 10 A That --  
 11 Q What does that mean?  
 12 A It means that there was data present and that the  
 13 controls, basically, that the instrument had run properly.  
 14 Q Did you determine it had?  
 15 A Yes.  
 16 Q And would -- September 21<sup>st</sup>, what day would that  
 17 have been, what day of the week, if you know?  
 18 A The 21<sup>st</sup>?  
 19 Q Yes.  
 20 A It's a Thursday.  
 21 Q So that Friday, the 22<sup>nd</sup>, is the day you checked the  
 22 run?  
 23 A Right. Correct.  
 24 Q At that time, did you have the results?

XVI-39

## PAULETTE - DIRECT

- 1 Q Why not?  
 2 A I have about fifteen or sixteen other cases going at  
 3 one time.  
 4 Q When asked by the prosecution whether or not you  
 5 performed any other DNA testing in this case, did you omit any  
 6 mention of the testing you had just completed?  
 7 MS. DIGIACOMO: Objection, leading and  
 8 argumentative.  
 9 THE COURT: Sustained.  
 10 BY MS. GREENBERGER:  
 11 Q Have you, since the time that you previously  
 12 testified, September 25<sup>th</sup>, actually reviewed the results of the  
 13 DNA test you performed on the cigarette butts?  
 14 A Yes.  
 15 Q What day did you reach your conclusions?  
 16 A The report was issued on the 27<sup>th</sup>, which was  
 17 Wednesday.  
 18 Q You wrote a report in this case?  
 19 A Yes.  
 20 Q Did you provide that report to the defense in this  
 21 case upon our request?  
 22 A Yes.  
 23 Q What day was that?  
 24 A The 27<sup>th</sup>.

XVI-41

000799



PAULETTE - DIRECT

- 1 Q Did you take notes?
- 2 A Yes.
- 3 Q Did you provide notes to the defense in this case?
- 4 A Yes.
- 5 Q On what date?
- 6 A Today. They were available on Friday.
- 7 Q Can you explain to us the results of the DNA testing?
- 8 A Yes.
- 9 Q Please do.
- 10 A There were two cigarette butts containing DNA.
- 11 One contained DNA from an unknown male and the other butt
- 12 contained DNA from -- it was a mixture. The major profile was
- 13 consistent with Duran Bailey and the minor profile was an
- 14 unknown individual.
- 15 Q So one of the cigarette butts collected from the body
- 16 is associated with Mr. Bailey's DNA, is that correct?
- 17 A Yes.
- 18 Q And one is not?
- 19 A Correct.
- 20 Q The one that is not belongs to an unknown male?
- 21 A Correct.
- 22 Q Were you able to do any further testing on that
- 23 unknown male?
- 24 A Further testing meaning?

XVI-42

PAULETTE - DIRECT

- 1 BY MS. GREENBERGER:
- 2 Q Showing you what's been marked as Defense Exhibit
- 3 TTTT, do you recognize that report?
- 4 A Yes, I do.
- 5 Q Is that your report on the cigarette butts in this
- 6 case?
- 7 A Yes, it is.
- 8 Q And what date is it dated?
- 9 A The 27<sup>th</sup> of September, 2006.
- 10 MS. GREENBERGER: Your Honor, we would move
- 11 for admission of the report at this time.
- 12 MS. DiGIACOMO: Your Honor, that's hearsay.
- 13 THE COURT: Objection sustained.
- 14 MS. GREENBERGER: The Court's indulgence.
- 15 (Pause in the proceedings)
- 16 BY MS. GREENBERGER:
- 17 Q Do you have any information regarding what year
- 18 the cigarettes were impounded?
- 19 A No, I do not.
- 20 MS. GREENBERGER: I don't believe I have anything
- 21 further.
- 22 THE COURT: Cross.
- 23 MS. DiGIACOMO: Thank you, Your Honor.
- 24 ///

XVI-44

PAULETTE - DIRECT

- 1 Q DNA to identify.
- 2 A No references, other references, were submitted so,
- 3 no, we didn't do any comparisons.
- 4 Q Were you able to exclude Kirstin Blaise Lobato as a
- 5 possible contributor of DNA obtained from the cigarette that
- 6 had the mixture?
- 7 A Yes.
- 8 Q Were you able to determine that the cigarette that
- 9 had the mixture of DNA, the minor source, belonged to a
- 10 male?
- 11 A No. I was unable to determine that.
- 12 Q You were only able to exclude my client, Blaise
- 13 Lobato's, DNA?
- 14 A Correct.
- 15 Q Is there any other evidence that you have tested in
- 16 this case?
- 17 A No.
- 18 Q Is there any other evidence that you are currently
- 19 testing in this case?
- 20 A No.
- 21 Q Did you prepare a written report?
- 22 A Yes, I did.
- 23 MS. GREENBERGER: May I approach, Your Honor?
- 24 THE COURT: Yes.

XVI-43

PAULETTE - CROSS

**CROSS-EXAMINATION**

- 1 BY MS. DiGIACOMO:
- 2 Q Ms. Paulette, just so we're clear, I was the one that
- 3 requested that you test the cigarette butts, correct?
- 4 A Correct.
- 5 Q And that was after the trial had begun, correct?
- 6 A Yes.
- 7 Q Now at the time that you were testing the cigarette
- 8 butts, did you believe when we were calling you in that you
- 9 were gonna testify regarding what you were doing with the
- 10 cigarette butts?
- 11 A No.
- 12 Q Because you knew that it's something that could not
- 13 possibly get done in time before you testified?
- 14 A Correct.
- 15 Q And you are not allowed to testify to something until
- 16 you've actually generated a report and it's actually been
- 17 reviewed by your supervisor?
- 18 A Correct.
- 19 Q But the minute that your report was complete it was
- 20 turned over to the defense and the State, correct?
- 21 A Correct.
- 22 Q Now defense counsel asked you about a DNA
- 23 backlog. Did you know what she meant by that?
- 24

XVI-45

000800

## PAULETTE - CROSS

- 1 A Yes.
- 2 Q Okay. There's more than one kind of DNA backlog,
- 3 isn't there?
- 4 A Correct.
- 5 Q Okay. There's DNA backlog with regard to convicted
- 6 felons who have to submit their sample and they have to get
- 7 uploaded into CODIS, correct?
- 8 A Correct.
- 9 Q And how far back is that backlog?
- 10 A Thousands of samples.
- 11 Q Okay. In fact, doesn't your lab have grant money to
- 12 help get the backlog in that area up to speed?
- 13 A Yes.
- 14 Q What about with regard to actually requests for
- 15 cases that are coming up for trial; is there a big backlog there?
- 16 A Yes.
- 17 Q Okay. How long is that backlog?
- 18 A I can't be certain.
- 19 Q And when you say backlog, there's just a lot of
- 20 requests pending?
- 21 A Correct.
- 22 Q Okay. It doesn't mean that you're missing trial
- 23 dates getting your work done, correct?
- 24 A Absolutely not.

XVI-46

## AULETTE - CROSS

- 1 A Yes.
- 2 Q Now, are you a certified lab?
- 3 A We're accredited.
- 4 Q Or accredited lab?
- 5 A Yes.
- 6 Q Now that accreditation, where does it come from?
- 7 A Our accreditation is from ASCLD Lab, which stands
- 8 for the American Society of Crime Lab Directors Lab
- 9 Accreditation Board. And, basically, their accreditation states
- 10 that we meet standards and qualifications to ensure that the
- 11 data we provide is both reliable and accurate and that we're
- 12 standardized among other labs in the country.
- 13 Q And that has nothing to do with whether or not
- 14 you're connected to a police agency, correct?
- 15 A No, it does not.
- 16 Q Okay. When you testified before when the State
- 17 brought you in, you had actually been here a couple of days
- 18 and not gotten on the stand?
- 19 A Correct.
- 20 Q And when you finally did testify, the only thing that I
- 21 asked you about was the pubic hair pullings?
- 22 A Correct.
- 23 Q Now with regard to the testing you did with the
- 24 cigarette butts, were there three cigarette butts in the pack?

XVI-48

## PAULETTE - CROSS

- 1 Q In fact, aren't you right now working on some DNA
- 2 analysis for a case, Remy [phonetic], that doesn't go to trial
- 3 until June -- excuse me, January, 2007?
- 4 A True.
- 5 Q So there's a backlog of requests but that doesn't
- 6 mean you can't get work done in a timely manner?
- 7 A Absolutely not.
- 8 Q Now with regard to the purpose of DNA, it's to look
- 9 for DNA to help make conclusions, I believe is what you said,
- 10 your testing?
- 11 A Yes.
- 12 Q Okay. Now the fact that you find a person's DNA on
- 13 an item you tested, that doesn't tell you whether or not they
- 14 did the crime, correct?
- 15 A Absolutely not.
- 16 Q It only tells you whether or not their biological
- 17 matter is on the piece of evidence you tested?
- 18 A Correct.
- 19 Q So the conclusions you draw are just whether or not
- 20 somebody touched something or drank from something, not
- 21 whether or not they've committed a crime?
- 22 A Absolutely.
- 23 Q And your lab is a part of the Metropolitan Police
- 24 Department, correct?

XVI-47

## PAULETTE - CROSS

- 1 A There were two cigarette butts and an additional
- 2 piece of filter paper which looked to have broken off from the
- 3 second cigarette butt. The second cigarette butt didn't appear
- 4 to have even been smoked. It had tobacco in it that was not
- 5 burned.
- 6 Q Okay. So there -- even though the packet contained
- 7 what was called three cigarette butts, it was really only two?
- 8 A It was simply two. And just to be safe, I went
- 9 ahead and tested that piece of filter paper to see if there was
- 10 any DNA there, and there was not.
- 11 Q Okay.
- 12 A And I could see that on my quantification records.
- 13 There showed no DNA presence.
- 14 Q Of the two that you did test, you said one of them
- 15 was just a complete unknown male, correct?
- 16 A Correct.
- 17 Q And then the other cigarette butt, the major
- 18 component was our victim in this case and the minor is an
- 19 unknown?
- 20 A Correct.
- 21 Q And you can't even tell if it's male or female?
- 22 A Not for certain.
- 23 Q Okay. But you can exclude the defendant in this
- 24 case from both of those cigarette butts?

XVI-49

000801

## PAULETTE - CROF

1 A Yes.  
 2 Q All right. Now, were you able to take those  
 3 unknowns on both of those cigarette butts and upload into  
 4 CODIS?  
 5 A We were able to do a local search. In order to  
 6 upload into CODIS it takes a while. There's -- it has to be  
 7 approved, and things like that. But upon a local search there  
 8 were no hits on either item.  
 9 Q All right. Now, can you tell from your testing  
 10 whether or not the cigarette butt that had the unknown male  
 11 and the cigarette butt that had the major as the victim and a  
 12 minor unknown, could you tell if the unknown on the first one  
 13 and the unknown on the minor were the same?  
 14 A They were not the same.  
 15 Q So we're talking about two different DNA profiles on  
 16 both of the cigarette butts?  
 17 A Yes.  
 18 Q Okay. Were you able to test those two unknowns  
 19 that you found from the cigarette butts against the DNA  
 20 profile, the minor portion that you got on the pulled pubic  
 21 hair?  
 22 A Yes, I was.  
 23 Q Okay. Did any of those match?  
 24 A No.

XVI-50

## PAULETTE - REDIRECT

1 BY MS. GREENBERGER:  
 2 Q Correct?  
 3 A Yes, I did testify about phenolphthalein.  
 4 Q When you previously testified, do you recall the  
 5 prosecution asking you whether you tested anything within the  
 6 sexual assault kit itself besides the pubic hair?  
 7 A Yes, I do.  
 8 Q Do you recall your answer?  
 9 A Yes.  
 10 Q What was it?  
 11 A I only tested the pubic hair combing.  
 12 Q Do you also recall testifying that you weren't asked  
 13 to retest any other items?  
 14 A Yes.  
 15 Q If a request was submitted to your lab in 2005,  
 16 would that test have been completed by September 1<sup>st</sup>, 2006?  
 17 A It may or may not have been, depending on the  
 18 case and when it's going to trial and other -- there are so  
 19 many circumstances surrounding when a case gets worked  
 20 that it's impossible to tell.  
 21 Q You're not a member of the American Academy of  
 22 Forensic Science. True?  
 23 MS. DIGIACOMO: Objection, Your Honor, outside  
 24 the scope.

XVI-52

## PAULETTE - REDIRECT

1 Q And so --  
 2 A They were all from three different sources.  
 3 Q All right. Now, what about the minor component  
 4 found on the chewing gum that was tested by Dave Wahl;  
 5 were you able to compare the -- all the unknowns between the  
 6 pulled pubic hair and the two cigarette butts?  
 7 A Yes. And they were all inconsistent with one  
 8 another, which means they're from four different sources.  
 9 MS. DIGIACOMO: Okay. The Court's indulgence.  
 10 (Pause in the proceedings)  
 11 MS. DIGIACOMO: Pass the witness.  
 12 **REDIRECT EXAMINATION**  
 13 BY MS. GREENBERGER:  
 14 Q You were also here testifying about phenolphthalein.  
 15 Isn't that true?  
 16 A Yes.  
 17 MS. DIGIACOMO: Objection, outside the scope, Your  
 18 Honor.  
 19 BY MS. GREENBERGER:  
 20 Q The prosecution asked you whether the only thing  
 21 you testified about was with regard to the pubic hair on  
 22 September 25<sup>th</sup>. You also testified about phenolphthalein,  
 23 correct?  
 24 THE COURT: The Court overrules.

XVI-51

## PAULETTE - RECROSS

1 THE COURT: Sustained.  
 2 MS. DIGIACOMO: Move to strike the answer.  
 3 MR. KEPHART: There was no answer.  
 4 THE COURT: Motion to strike granted.  
 5 MS. GREENBERGER: The Court's indulgence.  
 6 (Pause in the proceedings)  
 7 BY MS. GREENBERGER:  
 8 Q Isn't it true you're listed as an applicant --  
 9 MS. DIGIACOMO: Objection, leading.  
 10 THE COURT: Sustained.  
 11 BY MS. GREENBERGER:  
 12 Q Are you a member of the American Academy of  
 13 Forensic Science?  
 14 MS. DIGIACOMO: Objection, outside the scope.  
 15 MS. GREENBERGER: Your Honor, the prosecution  
 16 got into accreditation issues with regard to the lab.  
 17 THE COURT: That's with regard to the lab. The  
 18 Court sustains the objection.  
 19 MS. GREENBERGER: Nothing further.  
 20 THE COURT: Recross.  
 21 MS. DIGIACOMO: Thank you.  
 22 **RECROSS EXAMINATION**  
 23 BY MS. DIGIACOMO:  
 24 Q How long have you been with Metro's lab?

XVI-53

000802

## PAULETTE - RECROSS

1 A Just about fifteen months.  
 2 Q Okay. Are you aware of a point in time where the  
 3 lab was kind of overhauled sometime?  
 4 A Yes.  
 5 Q All right. And a lot of the work at that time had to  
 6 be farmed out?  
 7 A Yes. It was sent to outside agencies --  
 8 Q Okay. What --  
 9 A -- for work.  
 10 Q Okay. And that was because the lab itself couldn't  
 11 handle the requests at that time?  
 12 A Yes.  
 13 Q And it --  
 14 A That's correct.  
 15 Q Okay. The lab was in between criminalists. Is that  
 16 fair to say?  
 17 A Yes.  
 18 Q And you weren't asked to retest anything else in the  
 19 sexual assault kit, correct?  
 20 A Correct.  
 21 Q And the reason was because everything else before  
 22 you were asked to do the pulled pubic hairs had been done?  
 23 A Yes, it had already been tested.  
 24 MS. DIGIACOMO: Nothing further.

XVI-54

## McBRIDE - DIRECT

1 A Approximately nine.  
 2 Q So for that nine-month period your lab was shut  
 3 down, basically?  
 4 A [No audible response]  
 5 MS. GREENBERGER: Nothing further.  
 6 COURT RECORDER: I didn't hear an answer.  
 7 THE WITNESS: Yes.  
 8 COURT RECORDER: Thank you.  
 9 MS. DIGIACOMO: Nothing further.  
 10 THE COURT: You may step down.  
 11 Defendant may call defendant's next witness.  
 12 MS. GREENBERGER: Heather McBride.  
 13 THE CLERK: Please come all the way forward.  
 14 Remain standing and raise your right hand.  
 15 **HEATHER McBRIDE, DEFENDANT'S WITNESS, SWORN**  
 16 THE CLERK: Thank you. Please be seated. State  
 17 your name and spell it for the record, please.  
 18 THE WITNESS: My name is Heather McBride,  
 19 H-E-A-T-H-E-R-M-C-B-R-I-D-E.  
 20 **DIRECT EXAMINATION**  
 21 BY MS. GREENBERGER:  
 22 Q Good morning, Ms. McBride.  
 23 A Good morning.  
 24 Q How are you?

XVI-56

## PAULETTE - FURTHER REDIRECT

1 THE COURT: Redirect.  
 2 **FURTHER REDIRECT EXAMINATION**  
 3 BY MS. GREENBERGER:  
 4 Q Can you tell us what this lab overhaul was all about,  
 5 what time period?  
 6 A Exactly what are you referring to, lab overhaul?  
 7 A What you just referenced in cross-examination. You  
 8 said the lab was overhauled. What does that mean?  
 9 A There were -- we moved into a new facility so the  
 10 lab was down at that point in time. We weren't doing any  
 11 case work. And there was a transition with old analysts  
 12 leaving and new analysts coming in.  
 13 Q What time period was this, approximately?  
 14 A Between August of 2005 and May of 2006,  
 15 approximately.  
 16 Q How did this affect the business at your lab?  
 17 A Our case work was shut down, so any cases that  
 18 were going to trial or needed to be worked immediately were sent  
 19 out with grant money to outside private labs to be analyzed.  
 20 And aside from that, it was just a matter of getting everything  
 21 moved into the new lab, getting everything set back up again  
 22 to start case work and getting the new people trained.  
 23 Q How many months is it between August, 2005 and  
 24 May, 2006?

XVI-55

## McBRIDE - DIRECT

1 A Good.  
 2 Q Okay. Where do you reside?  
 3 A In Caliente, Nevada.  
 4 Q How far is Caliente from Panaca?  
 5 A About 15 miles.  
 6 Q How long have you lived there?  
 7 A I have lived in Caliente for about six years now,  
 8 seven.  
 9 Q Were you living in Caliente in the year of 2001?  
 10 A Yeah.  
 11 Q Do you know someone named Kirstin Blaise Lobato?  
 12 A Yes.  
 13 Q Do you see her here today?  
 14 A Yes, I do. She's right there.  
 15 Q Can you identify what she's wearing?  
 16 A A flowered shirt.  
 17 Q When did you first --  
 18 THE COURT: The record shall reflect identification  
 19 of the defendant.  
 20 MS. GREENBERGER: Thank you.  
 21 BY MS. GREENBERGER:  
 22 Q When did you first meet?  
 23 A Oh, me and --  
 24 Q You and Blaise.

XVI-57

000803

McBRIDE - DIRECT

1 A Oh. When I was in high school, when I was about  
2 sixteen.  
3 Q Were you living in Caliente in July, 2001?  
4 A Yes.  
5 MS. GREENBERGER: May I approach, Your Honor?  
6 THE COURT: Yes.  
7 BY MS. GREENBERGER:  
8 Q Do you remember seeing Blaise in July of 2001?  
9 A Yes, I do.  
10 MS. GREENBERGER: May I approach with a pen?  
11 THE COURT: You may.  
12 BY MS. GREENBERGER:  
13 Q Do you recall when you first saw her in July, 2001?  
14 A I'm not exactly sure on the exact day but I know it  
15 was before the 4<sup>th</sup> of July.  
16 Q Do you know it was after the end of June?  
17 A Yes.  
18 Q So sometime before July 1<sup>st</sup> and 3<sup>rd</sup>?  
19 A Yeah. It was one of those three days.  
20 Q Can you get off the witness stand and put your  
21 initials on those dates?  
22 (Pause in the proceedings)  
23 Q How do you know that you saw her before July 4<sup>th</sup>?  
24 A I know that because her father, Larry, had invited us

XVI-58

McBRIDE - DIRECT

1 A At -- she came to my house in Caliente.  
2 Q Did she come alone?  
3 A Yeah.  
4 Q How long did she stay?  
5 A She was there probably about an hour, maybe two,  
6 visiting.  
7 Q Do you remember what time it was that she came  
8 over, approximately?  
9 A I know it was nighttime, at night. I don't recall the  
10 exact time.  
11 Q Was that the first time you had seen her in a while?  
12 A Yes, it was.  
13 Q Do you know if she had just returned from Las  
14 Vegas?  
15 MS. DiGIACOMO: Objection, hearsay.  
16 THE COURT: Sustained.  
17 BY MS. GREENBERGER:  
18 Q Did you have a conversation with Blaise?  
19 A Yes, I did.  
20 Q How long did the conversation last?  
21 A Ten, fifteen minutes.  
22 Q Did she --  
23 THE COURT: Counsel, approach.  
24 (Off-record bench conference at 11:48:33 until 11:55:14)

XVI-60

McBRIDE - DIRECT

1 to a barbecue on the 4<sup>th</sup>, our family, and I had seen Blaise  
2 before that.  
3 Q A 4<sup>th</sup> of July barbecue?  
4 A Yeah.  
5 Q Where was that being held?  
6 A It was being held at her parents' house in Panaca.  
7 Q And what date was the party being held on?  
8 A I couldn't say for sure. He'd called my boyfriend at  
9 that time and invited him.  
10 Q What date was the party, though? What date was  
11 the barbecue?  
12 A The 4<sup>th</sup>.  
13 Q The 4<sup>th</sup> of July?  
14 A Yeah.  
15 Q Prior to seeing Blaise in July of 2001, had you seen  
16 her in June, 2001?  
17 A Oh, no.  
18 Q Did you see her anytime after July 4<sup>th</sup>, 2001?  
19 A No.  
20 Q Is today the first time you've seen her since July 1<sup>st</sup>,  
21 2<sup>nd</sup> or 3<sup>rd</sup> of 2001?  
22 A Other than at the court last time, yeah.  
23 Q Did you -- well, strike that.  
24 Where did you see Blaise in early July?

XVI-59

McBRIDE - DIRECT

1 BY MS. GREENBERGER:  
2 Q Sometime on July 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> Blaise came to your  
3 house, correct?  
4 A Yes.  
5 Q And how long, just to clarify, did you speak to her  
6 for?  
7 A The whole night or the -- I mean, it was probably  
8 about an hour, maybe two. I don't --  
9 Q She was at your house for --  
10 A Yeah.  
11 Q -- an hour or two?  
12 A Yeah.  
13 Q During that time period you two had a conversation?  
14 A Yes. Yes.  
15 Q Can you describe how Blaise appeared?  
16 A Down and out, just kind of --  
17 Q What do you mean by down and out?  
18 A Could have been depressed. I mean, she just -- just  
19 kind of down and out, not cheerful or just kind of --  
20 Q Did she seem depressed to you?  
21 A Well, I don't know. Just not the normal, you know,  
22 happy Blaise. I don't know. Just she could have been tired. I  
23 don't know. She was just kind of down and out.  
24 Q How did she normally appear?

XVI-61

000804

McBRIDE - DIRECT

1 A Happy, fun to be around, you...now, just bounce -- I  
2 don't know, full of life, just --  
3 Q Did she appear to be anxious?  
4 MS. DiGIACOMO: Objection, leading.  
5 THE COURT: Sustained.  
6 BY MS. GREENBERGER:  
7 Q Without telling us what was said during your  
8 conversation, can you tell us what the subject of the  
9 conversation was?  
10 MS. DiGIACOMO: Objection, hearsay.  
11 THE COURT: Sustained.  
12 BY MS. GREENBERGER:  
13 Q Did Blaise confide in you?  
14 A Yeah.  
15 Q Do you recall that conversation as you sit here  
16 today?  
17 A Yes, I do.  
18 Q Are you certain this conversation occurred before  
19 July 8<sup>th</sup>, 2001?  
20 A I'm positive.  
21 Q Did you contact the police after she confided in you?  
22 MS. DiGIACOMO: Objection, leading.  
23 THE COURT: Sustained.  
24 ///

XVI-62

McBRIDE - DIRECT

1 been committed?  
2 A Yes.  
3 Q When did you learn the crime had been committed?  
4 MS. DiGIACOMO: Objection, leading.  
5 THE COURT: Sustained.  
6 BY MS. GREENBERGER:  
7 Q Do you know when the crime had been committed?  
8 MS. DiGIACOMO: Objection, it's gonna call for a  
9 hearsay basis. And also vague as to what crime.  
10 MS. GREENBERGER: I can rephrase it.  
11 THE COURT: All right.  
12 BY MS. GREENBERGER:  
13 Q What did the police come talk to you about?  
14 MS. DiGIACOMO: Objection, hearsay.  
15 THE COURT: Sustained.  
16 BY MS. GREENBERGER:  
17 Q Did you make a statement to the police?  
18 A They recorded. There was a recorded statement  
19 made.  
20 Q Did you tell them everything you knew about this  
21 conversation you had with Blaise?  
22 A Yes, I did.  
23 Q Did you previously --  
24 MS. DiGIACOMO: Objection, leading.

XVI-64

McBRIDE - DIRECT

1 BY MS. GREENBERGER:  
2 Q Did you contact anyone after she confided in you?  
3 A No.  
4 Q Why not?  
5 A Just because I didn't know if it was the truth --  
6 MS. DiGIACOMO: Objection, Your Honor.  
7 THE WITNESS: -- or not.  
8 MS. DiGIACOMO: She's trying to get into hearsay  
9 again with this answer.  
10 MS. GREENBERGER: I'm not asking about the  
11 nature of the conversation. I'm asking why she didn't contact  
12 anyone.  
13 MS. DiGIACOMO: Your --  
14 THE COURT: She answered the question and then  
15 started to go on to give additional information. So the answer  
16 as given will stand, and you may move on to your next  
17 question.  
18 MS. GREENBERGER: Thank you.  
19 BY MS. GREENBERGER:  
20 Q Did the police come talk to you in this case?  
21 A Yes.  
22 Q Was that on July 26<sup>th</sup>, 2001?  
23 A Yeah.  
24 Q Did they come talk to you about a crime that had

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1 THE COURT: Sustained.  
2 BY MS. GREENBERGER:  
3 Q Did you testify in a proceeding in this matter?  
4 MS. DiGIACOMO: Objection, leading and relevance.  
5 THE COURT: Sustained.  
6 BY MS. GREENBERGER:  
7 Q As you sit here today, are you certain this  
8 conversation occurred sometime between the 1<sup>st</sup> of July and  
9 the 3<sup>rd</sup> of July?  
10 MS. DiGIACOMO: Objection, asked and answered.  
11 THE COURT: Sustained.  
12 MS. GREENBERGER: Nothing further.  
13 THE COURT: Cross.  
14 MS. DiGIACOMO: Thank you, Your Honor.  
15 **CROSS-EXAMINATION**  
16 BY MS. DiGIACOMO:  
17 Q Good morning. The conversation that you're  
18 referencing with the defense counsel, you talked about how  
19 Blaise confided in you during this conversation. Do you recall  
20 that?  
21 A Yes.  
22 Q Okay. And you wouldn't exactly say that she  
23 confided in you, would you?  
24 A Well, you could call it that. I -- you know --

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McBRIDE - CROSS

1 Q But that's not what you would call it, is it?

2 A I could call it that.

3 Q All right. Do you recall testifying at a prior

4 proceeding in May, 2002?

5 A Yes.

6 Q Okay. Do you recall being asked how you would

7 describe her demeanor when she told --

8 A Yes.

9 Q -- you or you had this conversation?

10 A Yes.

11 Q Do you recall what your answer was?

12 A I asked what demeanor meant. I wasn't quite sure.

13 Q Okay. And when it was explained to you, do you

14 recall what you said?

15 A Down. She didn't seem herself.

16 Q Okay. If I was to show you your prior testimony,

17 would that refresh your recollection as to what you said?

18 A Yeah, 'cause that was five years ago.

19 MS. DIGIACOMO: Okay. May I approach, Your

20 Honor?

21 THE COURT: You may.

22 MR. SCHIECK: Page number, please.

23 MS. DIGIACOMO: Bottom of page 135 into the top

24 of page 136.

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McBRIDE - CROSS

1 bragging. I don't think she was confiding. I don't know the

2 word for it, though." Do you remember that?

3 A Right.

4 Q Okay. So is it fair to say then this conversation you

5 had, Blaise wasn't confiding in you?

6 A Yeah.

7 Q You marked off July 1<sup>st</sup>, July 2<sup>nd</sup> and July 3<sup>rd</sup>, 2001

8 on the calendar which is --

9 MS. DIGIACOMO: May I approach, Your Honor?

10 THE COURT: Yes.

11 BY MS. DIGIACOMO:

12 Q Defense Exhibit JJ. Okay. You didn't actually see

13 Blaise each one of those days, correct?

14 A It was before the 4<sup>th</sup>. It was one of those three

15 days. No.

16 Q One of those three days?

17 A I seen her on one day.

18 Q Okay. One of those three days before the 4<sup>th</sup>?

19 A Mm-hmm.

20 Q Okay. And --

21 THE COURT: Does that mean yes?

22 THE WITNESS: Yes.

23 BY MS. DIGIACOMO:

24 Q Okay. And you are absolutely, 100 percent positive

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1 THE WITNESS: You were asking me --

2 BY MS. DIGIACOMO:

3 Q Well, but don't --

4 A -- about her demeanor, though.

5 Q Right. Read it to yourself.

6 A So -- oh.

7 Q Read it to yourself. Okay. And then I was

8 explaining it. And what was your response? Just read that to

9 yourself.

10 A Is that about the demeanor

11 Q Yes.

12 A Where? Oh, right here, the demeanor.

13 Q Right. And then keep going and then read this right

14 here.

15 A "She seemed upset." Okay.

16 Q Read it to yourself.

17 A Right.

18 Q Does that refresh your memory?

19 A Right. Right.

20 Q So after reading your prior testimony, you wouldn't -

21 - the right word isn't that she was "confiding" in you regarding

22 this conversation, correct?

23 A After reading that, I don't know how --

24 Q I mean, you testified before, "I don't think she was

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1 you know you saw her before the 4<sup>th</sup>, correct?

2 A Yes, I am.

3 Q Okay. Now the police statement that you gave or

4 when they tape-recorded you. Do you recall that?

5 A Yes, I do.

6 Q Okay. Do you recall telling them that it was July 5<sup>th</sup>

7 or 6<sup>th</sup>?

8 A I think --

9 Q It was after the 4<sup>th</sup>?

10 A I told them I thought. I wasn't sure on the dates.

11 But, yeah, I remember telling them that 'cause I wasn't sure

12 on the dates.

13 Q Okay. So at the time you talked to the police --

14 A Right.

15 Q -- on July, 2001 --

16 A Right.

17 Q -- you actually thought it was after the 4<sup>th</sup> of July,

18 not before?

19 A But then I remembered how her dad had invited us

20 to the 4<sup>th</sup> of July barbecue and I'd seen her before that, and

21 that's when she had told me.

22 Q Okay. At the time that you saw Blaise during this

23 conversation either July 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup>, you believed that she

24 was on drugs, didn't you?

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000806

## McBRIDE - CROSS

1 A No, I couldn't say.  
 2 Q Okay. You thought that she was --  
 3 A I'm not one to say that.  
 4 Q -- had been previously doing drugs, correct?  
 5 A Well, previously, she could have been.  
 6 Q Okay.  
 7 A I'm not --  
 8 Q But in fact the reason why you didn't see her again  
 9 after that date was because you didn't want to be around her  
 10 and you didn't want drugs around your family, correct?  
 11 A Just the lifestyles or whatever was going on. I'd just  
 12 had a son and I didn't want to be around her.  
 13 Q Okay. So after you had this conversation --  
 14 A Right.  
 15 Q -- July 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup>, you wanted nothing to do with  
 16 her again?  
 17 A Well, I wouldn't say again.  
 18 Q Well, I mean --  
 19 A But not at the time, no.  
 20 Q You did not want to see her again?  
 21 A Not at that time, no.  
 22 Q And you did not see her again?  
 23 A No.  
 24 Q Did you ever speak to anyone in her family after she

XVI-70

## McBRIDE - REDIRECT

1 Q And you would agree that the 5<sup>th</sup> or 6<sup>th</sup> of July is  
 2 before July 8<sup>th</sup>?  
 3 A I agree. Yes, it is.  
 4 Q You have never told anyone anything other than  
 5 that, have you?  
 6 A No. No, that's --  
 7 Q You didn't have a calendar when the police came  
 8 and talked to you?  
 9 A No, I didn't. It was --  
 10 MS. DiGIACOMO: Objection, leading.  
 11 THE WITNESS: -- on the spur of the moment.  
 12 THE COURT: Sustained.  
 13 BY MS. GREENBERGER:  
 14 Q Did you have a calendar when the police came to  
 15 talk to you?  
 16 A No.  
 17 Q Did you have time to think about the actual last date  
 18 you saw her when they --  
 19 A No.  
 20 Q -- came and talked to you on July 26<sup>th</sup>?  
 21 A No.  
 22 Q Prior to your testimony at the last proceeding, you  
 23 did have time to look?  
 24 A Yeah. In fact it was that like same day I realized

XVI-72

## McBRIDE - REDIRECT

1 was arrested?  
 2 A I've seen them on the streets. I'll say hi or  
 3 whatever. We live in a small town and --  
 4 Q But you never talked --  
 5 A No.  
 6 Q -- to them about --  
 7 A No.  
 8 Q -- Blaise getting arrested?  
 9 A No.  
 10 Q Okay. So you did not learn through the Lobato  
 11 family that Blaise had been arrested?  
 12 A I don't remember exactly where I learned from.  
 13 That was five years ago.  
 14 MS. DiGIACOMO: The Court's indulgence.  
 15 (Pause in the proceedings)  
 16 MS. DiGIACOMO: Nothing further.  
 17 MR. SCHIECK: Your Honor, could we approach?  
 18 THE COURT: Yes.  
 19 (Off-record bench conference at 12:06:43 until 12:07:41)  
 20 **REDIRECT EXAMINATION**  
 21 BY MS. GREENBERGER:  
 22 Q When you were interviewed by the police, you told  
 23 them you thought it was the 5<sup>th</sup> or 6<sup>th</sup>, true?  
 24 A Yeah.

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## McBRIDE - REDIRECT

1 how he'd called us for the barbecue, and I know that I'd seen  
 2 her before that, the 4<sup>th</sup> of July barbecue. So --  
 3 Q So the same day the police were there, you realized  
 4 that that same day?  
 5 A Yeah, like just hours later or something it hit me,  
 6 you know, 'cause that's what had happened.  
 7 Q The 4<sup>th</sup> of July sticks out in your mind?  
 8 A Yeah.  
 9 Q Why?  
 10 A Because we were invited to that barbecue and we  
 11 didn't go, but yeah.  
 12 Q In your own words, if you can characterize what  
 13 Blaise was doing in that conversation if it's not confiding. In  
 14 your own words, what was she doing?  
 15 A Tell --  
 16 MS. DiGIACOMO: Objection, Your Honor.  
 17 THE WITNESS: Telling me about her life in Vegas.  
 18 MS. DiGIACOMO: Hearsay.  
 19 THE COURT: Sustained.  
 20 MS. DiGIACOMO: And move to strike.  
 21 THE COURT: Granted.  
 22 BY MS. GREENBERGER:  
 23 Q Do you, as you sit here today, believe she was  
 24 confiding in you?

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000807



1 A I don't know.  
 2 COURT RECORDER: I didn't hear that.  
 3 THE WITNESS: I said I don't know.  
 4 THE COURT: I don't know.  
 5 BY MS. GREENBERGER:  
 6 Q Was she talking to you about something personal?  
 7 MS. DIGIACOMO: Objection, hearsay.  
 8 THE COURT: Sustained.  
 9 MS. DIGIACOMO: And leading.  
 10 THE COURT: Also sustained.  
 11 MS. GREENBERGER: Nothing further.  
 12 THE COURT: Redirect -- or recross.  
 13 MS. DIGIACOMO: The Court's indulgence.  
 14 (Pause in the proceedings)  
 15 MS. DIGIACOMO: Nothing further.  
 16 THE COURT: You may step down.  
 17 We'll be taking our lunch recess at this time. Ladies  
 18 and gentlemen, at 1:15 please be out in the hallway. The  
 19 bailiff will meet you there to return you to your seats in the  
 20 courtroom.  
 21 During the recess you are admonished not to talk or  
 22 converse amongst yourselves, nor with anyone else, on any  
 23 subject connected with this trial, and you're not to read, watch  
 24 or listen to any report of or commentary on the trial or any

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1 statement given by a witness, the opposing party is able to  
 2 bring out any other portion of the statement they wish to bring  
 3 out. And by inquiring concerning the date and whether or not  
 4 she told the police that the conversation that they objected to  
 5 coming in was heard on May 5<sup>th</sup> or the 6<sup>th</sup>, according to what  
 6 she told to Detective Thowsen, that allowed us to come back  
 7 and ask her what that conversation was about, which was in  
 8 fact about a stabbing that happened in Las Vegas before July  
 9 8<sup>th</sup>, which corroborates the information that she had given to  
 10 Detective Thowsen which is a central aspect of the defense in  
 11 this case, that the reference to a stabbing by Ms. Lobato when  
 12 she talked to Detective Thowsen on July 20<sup>th</sup> was in fact  
 13 referring to an incident previous to July 8<sup>th</sup>, which this witness  
 14 would have testified she was told that statement to Detective  
 15 Thowsen she said July 5<sup>th</sup> or 6<sup>th</sup>, but and now she recalls it  
 16 before July 4<sup>th</sup>. But, in either event, it was prior to July 8<sup>th</sup> or  
 17 July 9<sup>th</sup> of 2001.

18 THE COURT: Do we have a copy of the voluntary  
 19 statement --

20 MS. GREENBERGER: Many.

21 THE COURT: -- of Heather McBride?

22 MS. GREENBERGER: Yes.

23 THE COURT: That we can have marked as the --

24 MS. GREENBERGER: Right here.

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1 person connected with the trial, by any medium of information,  
 2 including, without limitation, newspaper, television, radio and  
 3 Internet, and you're not to form or express any opinion on any  
 4 subject connected with the trial until the case is finally  
 5 submitted to you.

6 The jury may exit. We'll see you at 1:15.

7 (Jurors recessed at 12:11:10)

8 THE COURT: The record shall reflect that the jury  
 9 has exited.

10 Mr. Schieck wished to place on the record some of  
 11 the sidebar discussions --

12 MR. SCHIECK: Your Honor, could we do this after  
 13 the break?

14 THE COURT: -- from the testimony of Ms. McBride.

15 MR. SCHIECK: I want --

16 THE COURT: No, because I'm not gonna have  
 17 the jury come back at 1:15 and then stand there for half an  
 18 hour --

19 MR. SCHIECK: I just want to --

20 THE COURT: -- out in the hallway waiting.

21 MR. SCHIECK: I just wanted to pull the citation,  
 22 Your Honor. That's all.

23 What we're talking about is the doctrine of  
 24 completeness. And once a party goes into the contents of a

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1 THE COURT: -- Court's exhibit. Court's next in  
 2 number?

3 THE CLERK: 75.

4 THE COURT: Counsel approached the bench at two  
 5 different times during Heather McBride's testimony. The  
 6 second time was to -- was with regard to the completeness of  
 7 the statement, which Mr. Schieck just argued the first time was  
 8 as to NRS 51.035.

9 MR. SCHIECK: And 51.105, Your Honor. And if the  
 10 Court desires, I can make a quick record on that.

11 THE COURT: Yes, please. Might as well have you  
 12 place your full argument on the record.

13 MR. SCHIECK: Thank you, Your Honor.

14 We first proffered that the contents of the statement  
 15 from Heather McBride, which I have just described in  
 16 argument with respect to her statement which has to do with  
 17 the prior stabbing incident in Las Vegas, during the testimony  
 18 of Detective Thowsen he related testimony concerning the  
 19 Budget Suites and the fact that he did not believe that there  
 20 had been a previous incident at Budget Suites, as related by  
 21 Ms. Lobato in her statement to him on July 20<sup>th</sup>. It's our  
 22 position that that fits within, although not the exact definition  
 23 of prior consistent statement under statute, within the -- within  
 24 the meaning of the statute, and that is if they're going to

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000808

1 accuse someone of fabricating a situation when there are prior  
2 consistent statements that show that it was not a recent  
3 fabrication, as Detective Thowsen asserted, happened on July  
4 20<sup>th</sup>, then the individual should be able to admit those prior  
5 consistent statements. And in this case, the prior consistent  
6 statement to Heather McBride.

7 The statute does talk about that the declarant is  
8 required to testify at trial, which under a technical reading of  
9 the statute would preclude it as admissible hearsay. However,  
10 we would assert that the conditions and circumstances under  
11 which this consistent statement was given makes it inherently  
12 reliable and, therefore, also admissible.

13 We further offered under NRS 51.105 that the  
14 statement of Ms. Lobato to Heather McBride was in fact a  
15 statement of then existing mental, emotional or physical  
16 condition which is described in the actual language of the  
17 statute as "a statement of the declarant's then existing state of  
18 mind, emotion, sensation, physical condition, such as intent,  
19 plan, motive, design, mental feeling, pain and bodily health."  
20 It is our position that Ms. Lobato was making a statement to  
21 Ms. McBride that goes to her mental feeling, to the fact that  
22 she had been attacked previously and was not doing well as a  
23 result of that situation. And whether we want to call it  
24 confiding, or what other word that Ms. McBride could not put

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1 that you just have now. Mr. Schieck had been making the  
2 argument at sidebar with regard to her mental and emotional  
3 status.

4 MS. DiGIACOMO: And might -- that I was giving an  
5 example at the bench. The fact that she says she might have  
6 cut somebody in the abdomen months before does not give  
7 you an idea of -- into her then state of mind. If she had said I  
8 think I'm gonna commit suicide right now, then that would be  
9 different and that probably would come in under the exception  
10 they're trying to use. The fact that she may have said in a  
11 previous time she's been suicidal in the past, I don't -- past, I  
12 don't think that comes in as a state of mind either. That was  
13 what -- I was making an example, but that's not what we had  
14 here. They were trying to get in the defendant's prior  
15 statements for the truth of the matter asserted to show it was  
16 some other guy back a couple of months before that she had  
17 cut. That's the sole purpose why they were trying to get it in,  
18 be it through prior consistent statements, which is improper, or  
19 this existing state of mind which they might try and get it in  
20 through that way but it doesn't show her state of mind, the  
21 fact that she attacked somebody.

22 MS. GREENBERGER: Well, just so the record is  
23 thorough and complete, I just want to memorialize the fact  
24 that the prosecution did illicit this very testimony on direct

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1 her finger on to describe what it was, she said it wasn't  
2 confiding and it wasn't bragging but she couldn't come up with  
3 her own word for it, was in fact a statement of the mental  
4 feeling of Ms. Lobato and should have been admitted as such.

5 We wouldn't necessarily have needed to argue that  
6 it was offered for the proof of the matter -- for the truth of the  
7 matter asserted as opposed to simply show that the -- that  
8 that's how Ms. Lobato was feeling at the time at the first part  
9 of July when she talked to Ms. McBride.

10 MS. GREENBERGER: I would also note for the  
11 record, Your Honor, just that the prosecution brought up at  
12 the bench, well, it's not as if she's testifying to Blaise being  
13 suicidal. And in her prior testimony, page 141, it was the third  
14 volume, during examination she testified she has known she's  
15 been suicidal at times.

16 THE COURT: The suicide argument was not made  
17 at sidebar. That's new information.

18 MS. GREENBERGER: Maybe you didn't hear it. The  
19 prosecutor did reference it's not as if she's saying that she was  
20 suicidal.

21 MS. DiGIACOMO: Well, I was giving --

22 THE COURT: You didn't --

23 MS. DiGIACOMO: -- an example of.

24 THE COURT: You didn't respond to it in the way

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1 examination at the prior trial in this case. And it is, you know,  
2 our contention we just want the truth to get out there. The  
3 prosecution subpoenaed her. She was gonna come testify for  
4 the prosecution. They chose not to use her. And we feel  
5 that's precluding us from presenting a full and complete  
6 scenario to the jury of what happened. All we're seeking for is  
7 to get the truth out there through every and any witness that  
8 can provide any information.

9 MS. DiGIACOMO: Well, Your Honor, if it's -- they  
10 do --

11 THE COURT: A new trial is a new trial.

12 MS. DiGIACOMO: Right.

13 THE COURT: I mean, there has been a lot of  
14 changes in this trial as compared with the first trial.

15 MS. DiGIACOMO: Right. And they have the  
16 opportunity to get her statements out through their client if  
17 she wishes to testify again. But also, too, at the last trial  
18 setting, just so the record is clear, Heather McBride's testimony  
19 was tied to her boyfriend at the time, Chris Collier, who would  
20 have put that conversation later, after July 8<sup>th</sup>, and he didn't  
21 show up. We had spoken to him and he didn't show up so we  
22 had to go forward without him. Obviously, Ms. McBride's  
23 testimony, and it's our option if we want to bring in a  
24 defendant's statement, it's our option to use it or not use it.

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000809

1 But without Chris Collier to say, no, that conversation  
2 happened after the 8<sup>th</sup>, we have that right not to call him.

3 MS. GREENBERGER: Well, it's unfortunate that the  
4 rules of evidence in this case prevent the truth from coming  
5 out.

6 MS. DIGIACOMO: No, they don't. Her client can  
7 take the stand. There's no rules preventing it.

8 THE COURT: That's not accurate.

9 And the Court found that under NRS 51.035 the  
10 statement did not fall under any of the subsections that would  
11 take it out of being a hearsay statement. It was not non-  
12 hearsay. It is, therefore, hearsay. And that what was seeking  
13 to be brought in was covered under the demeanor testimony  
14 and date, time, location were foundational, that the extent of  
15 the statement that the defense wanted to bring in does not fall  
16 under the exception to the hearsay rule under 51.085, and the  
17 testimony put forth did not open the door for the entire  
18 voluntary statement made to the police officers to be then -- to  
19 become the admissible at this trial.

20 We will be in recess 'til 1:15.

21 (Court recessed at 12:22:34 until 13:21:00)

22 (Jurors are not present)

23 THE BAILIFF: Department II is back in session. You  
24 may be seated.

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1 THE COURT: Okay. Thank you, Ms. Zalkin.

2 MS. DIGIACOMO: And, Your Honor, just for the  
3 record, we've never received an updated version of the  
4 PowerPoint so at this point we're assuming there is not gonna  
5 be one.

6 MS. ZALKIN: Well, there is one and it comports with  
7 anything that the Court -- do you have an extra copy of this?

8 MS. GREENBERGER: No.

9 MS. DIGIACOMO: Well, we're gonna object until we  
10 get a chance to review it.

11 THE COURT: Do you have a copy of it for the State  
12 to review?

13 MS. ZALKIN: She can look at my copy. It -- we  
14 changed everything from the front page to opinions instead of  
15 findings, and we took out the language from the Gaza report,  
16 the report attributed to Gaza at least, and we changed where  
17 it said luminol and there were -- it was referring to those  
18 presumptive blood tests. We just changed it to presumptive  
19 blood test results because the photo showed luminol in both  
20 testing were utilized in the car.

21 MS. DIGIACOMO: All right.

22 (Pause in the proceedings)

23 THE BAILIFF: The jury is now present.

24 (Jurors reconvened at 13:24:50)

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1 THE COURT: The record shall reflect that we're  
2 resuming trial in State versus Lobato under C177394, in the  
3 presence of the defendant, her three counsel, and the two  
4 prosecuting attorneys. The record shall reflect that we're  
5 outside the presence of the jury at the Court's request.

6 I wanted the record to be clear that the Court had  
7 sustained the objections at sidebar on the basis of hearsay  
8 objections. And I wanted counsel to understand fully that this  
9 trial is a search for the truth. It is, however, a search for the  
10 truth in a courtroom, before a jury, a jury of one's peers who  
11 have been selected through a lengthy voir dire process. It is  
12 not a trial on the front steps of the courthouse to the public at  
13 large. It is a trial that is a search for the truth within the  
14 provisions of the law and within the provisions of the rules of  
15 evidence, as are all trials.

16 The hearsay rule and the exceptions to the hearsay  
17 rule have longstanding precedent in this jurisdiction and in fact  
18 throughout the United States, in both Federal and State  
19 Courts. And counsel is fully aware of that.

20 We proceed forward with the calling of the  
21 defendant's next witness as the jury is going to be seated at  
22 this time.

23 MS. ZALKIN: And, Your Honor, the defense will be  
24 calling Brent Turvey.

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1 THE COURT: The record shall reflect that the bailiff  
2 is returning the jury to the courtroom.

3 Ladies and gentlemen, as you arrive in your seats  
4 you may be seated.

5 MS. DIGIACOMO: We need to approach.

6 THE COURT: Ladies and gentlemen of the jury have  
7 now been seated.

8 Counsel wishes to approach?

9 MS. DIGIACOMO: Yes, Your Honor.

10 THE COURT: You may.

11 (Off-record bench conference at 13:25:43 until 13:27:34)

12 (Pause in the proceedings)

13 MR. SCHIECK: Could I approach, Your Honor?

14 THE COURT: Counsel may approach.

15 (Off-record bench conference at 13:28:23 until 13:29:31)

16 (Pause in the proceedings)

17 THE COURT: We have a little clerical issue to take  
18 care of and we'll be with you momentarily.

19 (Pause in the proceedings)

20 MS. GREENBERGER: I'm still waiting for the copies.

21 MR. KEPHART: Oh, okay. Thank you.

22 (Pause in the proceedings)

23 THE COURT: Would counsel approach?

24 (Off-record bench conference at 13:33:37 until 13:33:50)

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000810

TURVEY - DIRECT

1 THE COURT: Ladies and gentlemen, we're  
2 proceeding forward in the defendant's case in chief. And  
3 defendant will call defendant's next witness at this time.  
4 MS. ZALKIN: Thank you, Your Honor. That would  
5 be Brent Turvey.  
6 THE COURT: The bailiff will call the hall.  
7 THE CLERK: Just come all the way forward.  
8 Remain standing and raise your right hand.  
9 **BRENT TURVEY, DEFENDANT'S WITNESS, SWORN**  
10 THE CLERK: Thank you. Please be seated. State  
11 your name and spell it for the record, please.  
12 THE WITNESS: My name is Brent Turvey,  
13 T-U-R-V-E-Y.  
14 THE COURT: You may proceed, Ms. Zalkin.  
15 MS. ZALKIN: Thank you, Your Honor.  
16 **DIRECT EXAMINATION**  
17 BY MS. ZALKIN:  
18 Q Good afternoon, Mr. Turvey.  
19 A Good afternoon.  
20 Q Where do you currently reside?  
21 A I live in a small island called Sitka, Alaska.  
22 Q And what is your occupation?  
23 A I am a forensic scientist.  
24 Q Please describe for us your formal education.

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TURVEY - DIRECT

1 A I hold a bachelor's of science in psychology, a  
2 bachelor's of science in history, and I hold a master's of  
3 science in forensic science, with about sixty undergraduate  
4 credits in things like biology, chemistry, and other hard  
5 sciences, mathematics, those areas.  
6 Q And where did you obtain your master's of science?  
7 A I obtained my master's of science in forensic science  
8 at the University of New Haven.  
9 Q And what year was that?  
10 A In 1996.  
11 Q Are you presently affiliated with any universities?  
12 A Yes, I am.  
13 Q And what are those?  
14 A I'm affiliated with Bond University in the Gold Coast  
15 of Australia, their graduate criminology department. I teach as  
16 an adjunct lecturer there and am invited over to give forensic  
17 science conferences and symposium issues relating to forensic  
18 science, crime reconstruction and criminal profiling. I'm also  
19 affiliated with Oklahoma City University as an adjunct professor  
20 where I teach courses each term on subjects related to  
21 forensic science, crime reconstruction, criminal profiling, serial  
22 homicide investigation, criminal motivation and other areas. I  
23 think there are a couple more but I can't recall them off the  
24 top of my head.

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TURVEY - DIRECT

1 Q And those would be contained in your curriculum  
2 vitae?  
3 A They should, yes.  
4 Q And have you at this point in your career published  
5 anything in your field?  
6 A Yes, I have.  
7 Q What have you published to date?  
8 A I've published quite a bit in the area of textbooks,  
9 textbook chapters and research articles in various publications.  
10 Q I see you have some what appear to be textbooks  
11 before you. Are those examples of some of your publications?  
12 A Correct. They are.  
13 Q And which ones do you have here with you today?  
14 A I brought the second edition of my first textbook,  
15 "Criminal Profiling And Introduction To Behavioral Evidence  
16 Analysis." This one is a little old and tattered but I bought hit  
17 at the Bond University Book Shop so it holds a special place in  
18 my heart. I'm not gonna let go of this copy. And then that  
19 was authored by myself. I wrote twenty out of the twenty-five  
20 chapters, approximately, with five other contributors. And  
21 then also I brought a copy of "The Rape Investigation  
22 Handbook," of which I am a co-editor contributing, I think,  
23 more than 60 percent of the chapters on issues related to  
24 crime scene, evidence collection, crime scene processing, rape

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TURVEY - DIRECT

1 investigation, motivation. And my co-author is Detective John  
2 Savino [phonetic] with the NYPD's Special Victims Squad, their  
3 Sex Crime Squad.  
4 Q And, Mr. Turvey, do you have an additional textbook  
5 that's forthcoming?  
6 A I do. Myself and Jerry Chisholm [phonetic] co-edit  
7 and contribute more than 70 percent of the chapters to a  
8 textbook called "Crime Reconstruction." Jerry Chisholm is a  
9 retired criminalist with the Department -- the California  
10 Department of Justice. He served there for, in that system, as  
11 lab director and criminalist and providing crime reconstruction  
12 education and training to various law enforcement agencies for  
13 approximately thirty-eight years. He retired in 1999, and I've  
14 been mentoring under him ever since. And this textbook that  
15 we've published, "Crime Reconstruction," which will be  
16 available, I think, next week, is sort of the culmination of that  
17 mentorship process. I've learned so much from him over the  
18 years and he's really been a guiding influence over my -- the  
19 way I think and the way I practice.  
20 Q And is it accurate to say that you've published over  
21 fifteen articles in addition to the textbooks?  
22 A Many more than that. Again, these are -- these  
23 textbooks are peer reviewed, as well as the textbook  
24 contributions, and the vast majority of the articles listed are

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## TURVEY - DIRECT

1 also peer reviewed and peer -- published -- peer reviewed  
2 presentations, and at least more than -- more than twenty or  
3 so, I think.

4 Q And what is the significance of peer review in the  
5 scientific community?

6 A The significance of peer review is that you're putting  
7 your ideas out there to be examined by the professional  
8 community, to be criticized and critiqued, to be pulled apart.  
9 And if you're lucky enough to be referenced in other future  
10 work, what you're trying to do is lay a foundation that others  
11 will build upon and you want other people to review it and  
12 beat you up and make you better.

13 Q I'm gonna read not all of your articles but a couple  
14 of them, and please indicate after I read each title if that's one  
15 of the peer reviewed. "Academy of Behavioral Profiling,  
16 Criminal Profiling Guidelines" from "The Journal of Behavioral  
17 Profiling." Was that peer reviewed?

18 A It is. It's -- yes.

19 Q Okay. And just for the sake of brevity, I'd like to  
20 hear about each one, I don't think we'll be able to do so.

21 A Right.

22 Q But what about "Evidence Dynamics, Locard's  
23 Exchange Principle and Prime Reconstruction" from the same  
24 periodical?

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## TURVEY - DIRECT

1 the physical and behavioral evidence and determine the  
2 methods and motives of a particular type of criminal in order  
3 to suggest something about their personality or who they  
4 might be, to help narrow down a suspect pool. That's the first  
5 capacity. And the second capacity would be as that of a  
6 forensic scientist, to come in and assist with reconstruction  
7 issues and to assist with deciding what evidence -- what's been  
8 tested, what hasn't been tested and what can still be tested,  
9 and what that might tell us about the nature of the crime. So  
10 it depends. It depends on what law enforcement needs. And  
11 there is a rare occasion, rare occasion that's happened twice  
12 now, where I've been called by law enforcement to run an  
13 investigation. And so that would be another role.

14 Q And when and where did that occur?

15 A The first time that happened was in Sitka, Alaska. It  
16 was before I moved there. I was asked to work on a rape  
17 homicide and prepare a profile. And in the profile at the end, I  
18 had a very long list of things that I suggested needed to be  
19 done from a forensic and investigative standpoint. And they  
20 didn't feel that they had anyone on-site who could do any of  
21 these things because they didn't -- they lacked the skill and the  
22 knowledge and the ability. So they asked if I would come up  
23 and do it. And so I agreed with the caveat that I would be  
24 bringing somebody with the Manhattan Special Victims Squad,

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## TURVEY - DIRECT

1 A Yes. Co-authored by myself and Jerry Chisholm.

2 Q And going to a different publication, "The  
3 Encyclopedia of Forensic Science, London Academic Press,  
4 Autoerotic Death." Is that peer reviewed?

5 A It is.

6 Q And in the same publication, "Encyclopedia of  
7 Forensic Science, Criminal Profiling." The same question.

8 A Yes, it's peer reviewed.

9 Q The same publication, the same question, with the  
10 title of "Modus Operandi."

11 A Yes, it is.

12 Q And, again, with the same publication, "Offender  
13 Signature."

14 A Yes, it is peer reviewed.

15 Q And that's just a sampling of some of these peer  
16 reviewed publications?

17 A That's just a very small sampling.

18 Q Mr. Turvey, have you ever consulted with law  
19 enforcement in your career?

20 A Many times.

21 Q In what capacity?

22 A In two capacities, typically. One would be in the  
23 investigator capacity where you are asked to come in and work  
24 as a criminal profiler. In my situation, I'm asked to examine

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## TURVEY - DIRECT

1 a retired detective from there, to assist. And they gave us  
2 sworn police commissions and we ran the investigation for  
3 about a year.

4 Another instance was in Barbados. The Royal Barbados  
5 Police Force asked me to assist them with running a task force  
6 involving, basically, I was involved in a task force where they  
7 had a series of rapes that were occurring to women who were  
8 visiting the island. And they had, I think it was, seventeen,  
9 eighteen plus victims, and they wanted me to come down.  
10 And while I was down there, I was given the instruction that  
11 all my -- all my advice was to be followed and everything I  
12 need should be provided for, so all the detectives in the rape --  
13 Serial Rape Task Force wound up underneath my authority for  
14 the time period that I was there until we apprehended the  
15 suspect.

16 Q Were you consulted by Las Vegas law enforcement  
17 in this case?

18 A I was not consulted by Las Vegas law enforcement  
19 in this case.

20 Q Did you review materials in this matter just  
21 generically, for the purpose of qualification as an expert  
22 witness, did you review materials in this matter?

23 A I did. I reviewed case material related to this, this  
24 crime.

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TURVEY - DIRECT

1 Q Did you visit the crime scene?

2 A I did.

3 Q And did you document the crime scene

4 independently of the materials reviewed?

5 A Yes, I did.

6 Q And what did that include?

7 A It includes two levels. One would be photographs

8 that I took on my own, and two would be the scale that I

9 introduced into there. They had some measurements in the

10 crime scene photos, but I wanted -- I took pictures of myself

11 and defense counsel in the -- in the enclosure so I'd know how

12 far my head was from the top. Of course, my head was only a

13 few inches from the top. Shorter people were a little bit

14 beneath me. I wanted to document the spacial relationships

15 better than I felt had been done.

16 Q Thank you. I'm going to seek to qualify you in the

17 following areas, and in order to do that I'm gonna ask you to

18 please give a brief definition of each one of the three areas:

19 The first one is going to be as an expert in the field of

20 forensic science. Can you please tell us what forensic science

21 is?

22 A Forensic science is the application of science and

23 scientific principles to the law and to the resolution of legal

24 questions.

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TURVEY - DIRECT

1 Q Have you qualified previously as an expert in

2 forensic science in a court of law?

3 A I have.

4 Q And how many times? You can approximate if you'd

5 like.

6 A It'd be approximately more than -- probably around

7 at least ten, probably more than that.

8 Q In how many different jurisdictions, approximately?

9 A Oh, I'd have to count. More than five.

10 Q Okay. And as for crime reconstruction, same

11 questions, have you previously so qualified?

12 A Yes, I have.

13 Q On more than one occasion?

14 A Yes.

15 Q And for crime scene analysis, same question?

16 A Yes, I have previously qualified and on more than

17 one occasion.

18 Q And in all of these areas, would those be in differing

19 jurisdictions?

20 A Yes.

21 Q Okay. And it appears that you've prepared a

22 PowerPoint.

23 MS. ZALKIN: Oh, before we get into that, my

24 apologies. Your Honor, at this time I would offer Mr. Turvey

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TURVEY - DIRECT

1 Q What is crime reconstruction?

2 A Crime reconstruction is the determination of the

3 actions and events surrounding the commission the -- of a

4 crime. I am a forensic generalist. I am not a -- I'm someone

5 who has a broad knowledge of forensic sciences and how they

6 -- and how those -- the results of the forensic sciences may be

7 interpreted and applied to different types of evidence. I'm not

8 an expert in all areas but I have a broad enough knowledge to

9 be a big-picture person and put them together in the form of a

10 crime reconstruction.

11 Q And how is that different from the third category of

12 crime scene analysis?

13 A Crime scene analysis is a more inclusive process

14 where you examine not just the physical evidence but the

15 behavioral evidence, what occurred at the crime and

16 surrounding the crime and things like the victimology, who the

17 victim was, what danger they were in in their regular life, how

18 they -- how danger approached them, what regular contact

19 they may have had with things like crime, with things like

20 violence, what was their overall level of risk. So these are the

21 kinds of questions a crime analyst would ask. They are more

22 interested in a larger picture of the crime so that it may be

23 determined what exactly happened and not just what

24 happened but why.

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TURVEY - DIRECT

1 as an expert in the following fields:

2 Forensic science, crime reconstruction and crime

3 scene analysis.

4 MS. DIGIACOMO: Your Honor, may I take him on

5 voir dire?

6 THE COURT: Yes.

7 **VOIR DIRE EXAMINATION**

8 BY MS. DIGIACOMO:

9 Q Mr. Turvey, you said that you got your master's of

10 science in 1996?

11 A Master's of science in forensic science in 1996,

12 approximately.

13 Q When did you get your bachelor's of science in

14 psychology and history?

15 A Let's see. I believe one of them was received in

16 1993 and one of them was received in 1994, from Portland

17 State University.

18 Q Once you graduated in 1996 with your master's of

19 science and forensic science, you had started your own

20 business, correct?

21 A I started my own business before I graduated. Yes.

22 Q Okay. You started your own business. And what

23 was the purpose of your business?

24 A To continue my consulting work. While I was

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## TURVEY - DIRECT

1 studying as a -- as a graduate student, and an internship on a  
2 serial rape task force in Upstate New York. And because of my  
3 work on that case, my phone just wouldn't stop ringing so I  
4 decided to go private rather than work for the state.

5 Q Okay. And so, actually, you started your own  
6 business and you deemed yourself at that time, in January of  
7 1996, as a criminal profile --

8 A Deem --

9 Q -- profiler?

10 A I'm not sure I understand the question.

11 Q Well, when you started your business, you gave  
12 yourself the title criminal profiler?

13 A I gave myself the title. I began preparing criminal  
14 profiles before --

15 Q But you didn't --

16 A -- I started my business. So it would important to  
17 refer to myself in that fashion, yes.

18 Q Okay. So you did, that's the way you referred to  
19 yourself, is a criminal profiler?

20 A Yes.

21 Q All right.

22 A Because I was preparing criminal profiles, so it  
23 would be irresponsible not to refer to myself any other way.

24 Q Right. And within this business, what was the name

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## TURVEY - DIRECT

1 that business because Owen was doing so many other things  
2 related to digital evidence and computer crime. He wasn't  
3 doing the high-end murder case that I was doing.

4 Q So since you've gotten your master's of science, is it  
5 fair to say you've basically been a consultant, an adjunct  
6 professor and an author?

7 A I've been those things and more, yes.

8 Q Okay. Now you don't have any employment history  
9 of being a criminalist with a department or --

10 A Gosh, no.

11 Q -- working in a lab?

12 A No. I'm not a criminalist. A criminalist is a very  
13 specific type of forensic scientist who works in a lab, examining  
14 pieces of evidence, sometimes out of context, doesn't often go  
15 to the crime scene. It's not a -- it's not the life that I wanted.

16 Q You never worked as a crime scene analyst, the  
17 person who goes to the crime scene, documents it, collects  
18 evidence?

19 A No. Typically, those aren't forensic scientists. Those  
20 are people who work under the direction of the police. And  
21 that's not something I wanted either.

22 Q All right. And so, basically, your job is, other than  
23 the two cases you talked about with -- when you were  
24 consulted by police agencies, is after the fact to go back

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## TURVEY - DIRECT

1 of it?

2 A Knowledge Solutions.

3 Q Knowledge --

4 A LLC.

5 Q Okay. And you were a full partner, instructor,  
6 course developer and case -- did case consultations as well?

7 A That's correct.

8 Q And the purpose of your business was develop -- to  
9 develop online courses?

10 A One of the purposes. We do teach online courses,  
11 yes.

12 Q And what was the other purpose then?

13 A Again, research and case work.

14 Q All right. So that falls under being your -- a criminal  
15 profiler, the second part, not to -- instructor on one side, a  
16 consultant/criminal profiler on the other side of your business?

17 A I wouldn't call them sides. I'd call them  
18 components.

19 Q And the business that you have, you actually started  
20 it with your wife, as well as another individual?

21 A Yes. Owen Casey. And we dissolved that  
22 partnership, I think, in 2001, 2002.

23 Q With just Mr. Casey or with your wife as well?

24 A We all -- we all went our separate ways in terms of

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## TURVEY - DIRECT

1 through, review all the evidence and to see, basically, what  
2 was missed?

3 A I would liken it to -- that's a oversimplification of  
4 what it is that I do. I think that's true in some cases. It's not  
5 true in every case.

6 Q Is it fair to say that you usually get involved after  
7 the cases has already been investigated?

8 A I would say in the majority of the cases that's true.

9 Q Okay. Well, you mentioned two where you actually  
10 got involved when the investigation was ongoing. Are there  
11 any other than those two?

12 A There are many, and there are too many to list and  
13 remember.

14 Q Are they, the ones that you were involved in, were  
15 they for private?

16 A No.

17 Q They were law enforcement as well?

18 A Law enforcement or, for example, I recall  
19 responding with a public defender to a crime scene the day  
20 after the police had released it, to reprocess it for evidence.

21 Q But that would be not working for the state. That  
22 would be working for the defense.

23 A I'm afraid that working for the defense is working for  
24 the state when you're working for the public defender.

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## TURVEY - DIRECT

1 Q Okay. Again, my question is what would be working  
2 for the defense. You're not being hired by the state in a case  
3 like that.

4 A I am being hired by the state when I work for the  
5 defense. They get -- the paychecks come from the same  
6 county.

7 Q So you would consider the prosecutor and the  
8 defense the same when we call, when --

9 A They're -- you guys consider yourself different, but  
10 in terms of where the paychecks come from and who's hiring  
11 you it's still the state.

12 Q Okay. Well, I'm not asking you who's paying the  
13 check. I'm asking you whether or not it was law enforcement,  
14 what we call in the court system, which you're aware of, the  
15 State that hired you in those cases?

16 A You're using the words differently than I would and  
17 you're trying -- you're serving a different purpose than I am, I  
18 guess.

19 Q Okay. Well, if it was the public defender and the  
20 defense who hired you, is it fair to say you weren't  
21 investigating for law enforcement?

22 A In those cases I was not, and I think I've made that  
23 clear, I was not investigating for law enforcement.

24 Q Okay. Now, what is the Academy of Behavioral

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## TURVEY - DIRECT

1 A That's correct.

2 Q And then your other three all relate to this Academy  
3 of Behavioral Profiling. Is that fair to say?

4 A Let me just take a look.

5 Q You're secretary, you're a board member and you're  
6 the editor of the Journal of Behavioral Profiling.

7 A Let's see. I've got that here. On -- in that  
8 particular, you're picking that particular section. So, yes, in  
9 that particular section of --

10 Q Right. I'm --

11 A In that particular section, yes.

12 Q Right. And I'm going under, "Mr. Turvey is currently  
13 involved with the" --

14 A Yes.

15 Q -- "following professional activities." Correct?

16 A Yes.

17 Q And the majority of your background is actually in  
18 criminal profiling?

19 A No. I think you're making the distinction where  
20 there isn't one. Criminal profiling is a specialized area, a form  
21 of crime reconstruction that is specialized. The way we  
22 practice, the way I was trained to practice criminal profiling, is  
23 heavily evidence-based and crime reconstruction -based. It is  
24 not statistical and it does not involve the guesswork of what

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## TURVEY - DIRECT

1 Profiling?

2 A That is an organization that myself and four other  
3 experts, I suppose I should -- I'm sorry, forensic scientists and  
4 investigators, police investigators and law enforcement,  
5 forensic scientists started back in 1998, dedicated to  
6 behavioral evidence analysis, which is essentially crime  
7 reconstruction as it relates to criminal profiling.

8 Q And within that, the general behavior profiling, that's  
9 the publications that's put out by the Academy of Behavioral  
10 Profiling?

11 A That's correct.

12 Q And you've been the editor of that, that Journal of  
13 Behavioral Profiling since its inception?

14 A I've been the senior editor, which means I sit on top  
15 and delegate out the peer review process. I don't actually  
16 review very many articles myself. A lot of those duties are  
17 shared by the other co-editors.

18 Q But it is fair to say that you've had an article in each  
19 one of the publications since its inception?

20 A Yes, I have. I've done more than one.

21 Q And so on your resume you state that you're  
22 currently involved with professional activities, that you're a  
23 member of Criminology Advisory Board for Bond University in  
24 Australia?

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## TURVEY - DIRECT

1 might be in the mind of the monster or what you might see on  
2 television. The criminal profiling aspect is very heavily oriented  
3 towards the physical evidence and the reconstruction of the --  
4 of the crime, as dictated by the forensic evidence. So, no,  
5 there is no -- there is not a distinction there that you're  
6 making.

7 Q There isn't. So the fact that you are a criminal  
8 profiler, that entails everything that you're being qualified as  
9 an expert here today?

10 A No, because criminal profiling is a very specific result  
11 based on a very specific process. Forensic science, for  
12 example, answers questions about what occurred at the crime  
13 or what kind of evidence exists for the -- at the crime scene or  
14 related to the crime. Crime reconstruction is based on forensic  
15 science. Then crime scene analysis is based on the  
16 reconstruction, the forensic science, the victimology, the  
17 motivation, and then the final component, criminal profiling, is  
18 a result of analyzing all of that.

19 Q Okay.

20 A So, no, they're not -- it's separate segments along  
21 the chain.

22 Q So is it kind of building blocks?

23 A I would say that's accurate.

24 Q Okay. And your real hands-on experience, you

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TURVEY - DIRECT

1 testified, comes from studying under G. Olm, is it, your --  
2 the criminalist, the former criminalist?

3 A My real --

4 Q You said that just finished your mentorship with  
5 him?

6 A I didn't say I'd finished it. I would say, I mean, I  
7 still speak to him this day and get advice and have long  
8 conversations and look up to him as a mentor. I think  
9 mentorship is not a process that ends, one would hope. But  
10 he is not the limit of my applied knowledge or applied  
11 experience, no.

12 Q Is he the majority of your basis?

13 A Since I graduated, yes. However, while we studied  
14 under -- at the University of New Haven, I would consider my  
15 mentor to be Henry Lee, studying under him for two years,  
16 taking the majority of my classes from him, learning his  
17 philosophies and the way that he reconstructs crime and  
18 applies criminal profiling methodology from crime  
19 reconstruction. That was a great education and it was all a  
20 very hands-on program.

21 Q When you say hands-on, are you actually going out  
22 to crime scenes and analyzing them or are you doing, in class,  
23 here's the crime scene, how do we go through this?

24 A There is no actual involvement in real case work.

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TURVEY - DIRECT

1 What you do is you are involved in lab work, the same as a  
2 criminalist would be involved in, you are involved in creating  
3 mock crime scenes and you are involved in lessons, and then  
4 you do an internship. And my internship was involved in  
5 examining actual cases. The -- I think it was, I think there  
6 were nine cases in the pattern that we investigated in Upstate  
7 New York, and one of them was a rape homicide, actually, so  
8 eight rapes and one homicide or seven rapes and one  
9 homicide. I can't recall the exact number off the top of my  
10 head.

11 Q Were you going out to the crime scenes or were you  
12 looking at it after the fact?

13 A I don't know of any investigator that doesn't look at  
14 a crime scene after the fact, until after the fact. So when I  
15 was working with law enforcement on the -- on that task force,  
16 we were going to the crime scenes after the crimes had been  
17 committed. We couldn't very well go before they'd been  
18 committed.

19 Q Well, I guess what I mean, are you there when the  
20 police are there trying to impound evidence, trying to take  
21 photographs, trying to process the crime scene, or do you  
22 come in after?

23 A Oh, goodness. No, absolutely not. That would be  
24 so improper as to be destructive to the evidence that would be

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TURVEY - DIRECT

1 there. That wouldn't be my role. My role would -- that would  
2 be for the people who had a job in the scene to do, to do the  
3 processing. In fact the majority of crime scenes have too  
4 many people in them as it is, not -- just wandering around, not  
5 doing anything.

6 Q So if you had an opportunity to go to a crime scene  
7 you'd say, whoa, no, not my job, I'll catch it after?

8 A Oh, absolutely. You would have no role whatsoever  
9 inside that crime scene. You don't need to be inside the tape.  
10 Just to walk around and look around? No. That would be  
11 inappropriate. And anybody who's doing that should be  
12 roundly criticized.

13 MS. DiGIACOMO: Nothing further.

14 MS. ZALKIN: Your Honor, if I may very briefly follow  
15 up with a few additional qualifying questions.

16 THE COURT: You may.

**DIRECT EXAMINATION (Continued)**

18 BY MS. ZALKIN:

19 Q Mr. Turvey, you have -- is it -- have you done any  
20 presentations, other than Australia, outside of the United  
21 States?

22 A I have indeed.

23 Q And who were those presentations to?

24 A I have given a lecture, I've been invited twice by the

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TURVEY - DIRECT

1 government of China to teach the People's Police University in  
2 Beijing, to teach at the Police Bureaus in Wuhan, Beijing,  
3 Shanghai, Honshu [phonetic]. And in my 1995 trip we did not  
4 only Beijing but also Shehaun [phonetic], so the police bureaus  
5 there. And the police bureaus there are -- it's difficult to  
6 describe. They're much larger than they are here in the United  
7 States. We're talking cities of 10, 15, 20 million people, so  
8 they're very large groups of detectives and investigators,  
9 teaching forensic science and crime reconstruction and criminal  
10 profiling. Also they, in 2004, adopted my textbook, the second  
11 edition that I showed earlier, and they translated this into  
12 Chinese and published it in 2005. So that relationship has  
13 been fairly strong and fairly -- a vital part of my career.

14 Q And when was the last time that you traveled to  
15 China?

16 A It was in 2005, last year.

17 MS. ZALKIN: Your Honor, I would Mr. -- I would  
18 offer Mr. Turvey as an expert as previously noted, forensic  
19 science, crime reconstruction and crime scene analysis.

20 MS. DiGIACOMO: Submitted, Your Honor.

21 THE COURT: Motion granted.

22 MS. ZALKIN: Thank you, Your Honor.

23 BY MS. ZALKIN:

24 Q Mr. Turvey, you have a remote control up there that

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## TURVEY - DIRECT

1 gives you the ability, hopefully, to present the PowerPoint that  
2 you have compiled, when you believe it's appropriate to move  
3 on.

4 A I do.

5 Q And the first screen, please. And that's gonna be  
6 directed to the laptop at defense counsel's table.

7 A Over there?

8 Q Yes.

9 A All right. As you can see, this is my presentation. I  
10 prepared this and submitted it last week to the Court and to  
11 my clients, the defense attorneys.

12 Okay. That was interesting. What happened? When you  
13 closed it, you -- okay.

14 Your Honor, may I stand?

15 THE COURT: Yes.

16 THE WITNESS: Thank you.

17 I created this presentation to accurately summarize  
18 the opinions that I reached after examining the evidence that I  
19 reviewed in this case.

20 THE COURT: There's only one problem with where  
21 you're standing, which is that you're off -- you're off camera.  
22 So if you could maybe come in front of where the chair is and  
23 slide the chair back a little bit.

24 THE WITNESS: Out.

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## TURVEY - DIRECT

1 THE COURT: You are on camera. However, you are  
2 cut off about the Adam's Apple.

3 THE WITNESS: Okay.

4 THE COURT: So that's the problem with standing.

5 THE WITNESS: I'm not --

6 THE COURT: But the camera is fixed.

7 THE WITNESS: Okay. I'm not that vain. I'll try to  
8 do as best I can from being seated, but please bear with me.  
9 I'm used to being able to stand, so I apologize.

10 The scientific method --

11 MS. DiGIACOMO: Objection, Your Honor.

12 THE WITNESS: Oh.

13 MS. DiGIACOMO: There's no question pending.

14 THE WITNESS: Oh, I'm sorry.

15 BY MS. ZALKIN:

16 Q And, Mr. Turvey, it appears that there's only the first  
17 line of this slide.

18 A That's correct.

19 Q Okay. What is the scientific method?

20 A The scientific method is a way of building or gaining  
21 knowledge about a problem or a situation, and it is the method  
22 that is the most widely accepted by -- in the scientific  
23 community for doing that. And there is no better way of trying  
24 to, again, build knowledge or gain knowledge about a problem

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1 or a phenomenon.

2 Q And, generally speaking, what is the reason for  
3 collecting and testing physical evidence?

4 A The reason for collecting and testing physical  
5 evidence is to service the scientific method. What you're  
6 trying to do with each item of evidence that you collect,  
7 examine and test is to either prove or disconfirm a theory,  
8 prove or refute some connection between the evidence and  
9 the scene, the evidence and the crime, the evidence and a --  
10 in this case let's, well, let's use the example of a vehicle.  
11 You're try -- you have a theory, a hypothesis, about the case,  
12 about the way the crime was committed, and you use the  
13 evidence to either prove or refute that theory. It is the most  
14 objective and reliable form of information about the crime, so  
15 that's why it's useful. And the scientific method itself is all  
16 about creating tests that will allow you to disconfirm your  
17 hypotheses. Anyone could come up with theories that you can  
18 prove to yourself and say, ah, I agree with that and just go  
19 through all the evidence and pick out the things that agree  
20 with your theory and ignore all the stuff that refutes it.  
21 Anybody can do that. The scientific method is exactly the  
22 opposite of that. You take a look at your theory and you look  
23 for ways to beat it up. And any theory that survives that  
24 process, that's the one you stay with and that's the purpose of

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1 the scientific method as it's applied in not just forensic science  
2 but all sciences.

3 Q And is this all that you wanted us to see on this  
4 screen?

5 A No, it is not.

6 Q Whenever you're ready. The scientific -- does the  
7 scientific method have -- how many components does a  
8 scientific method have?

9 A Some say three, others say four. I think it's  
10 important to this to go with three, which is observation of the  
11 phenomenon, observation of the evidence that you're looking  
12 at, for example, in forensic science, and then you create a  
13 hypothesis about that piece of evidence, either it's connected  
14 to the crime or it's not, and then you design a test to prove it.  
15 In this case, a very common test we're using are things like  
16 luminol, phenolphthalein or DNA tests to confirm or refute the  
17 involvement of the evidence in the crime or, for example, a  
18 footwear impression, to compare it to known standards of  
19 footwear to see whether or not it matches someone who you  
20 think was involved in the crime.

21 The fourth step that's not on there is like defining the  
22 problem or defining and predicting an outcome, which I think  
23 is assumed by the creation of a good hypothesis. So --

24 Q And what is the purpose of crime scene

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1 investigation?

2 A Well, the purpose of crime -- crime scene  
3 investigation or crime scene investigation is to recognize,  
4 document, collect, and log and submit and deliver pieces of  
5 physical evidence to the lab for testing. You are trying to  
6 service the scientific method. You are performing the scientific  
7 aspect of the -- of the criminal investigation. If you are failing  
8 to collect evidence, if you are deciding what occurred already,  
9 if you go to the scene and decide what already happened,  
10 there's no reason to even collect because you've already  
11 decided. You're just gonna go through the prove things. The  
12 purpose of collecting is because you don't know, you want to  
13 question the evidence at some point against either what you  
14 think you know or what you don't yet know about the crime,  
15 because one of the things that needs to happen is to approach  
16 it with humility. You've got to approach the crime scene and  
17 the evidence with humility. Do I know everything yet? No.  
18 So I'm gonna collect as much as I can, document as much as I  
19 can, to make sure that later on I can answer questions that  
20 may come up with the evidence. So the purpose of the -- of  
21 the crime scene investigation is to service the scientific  
22 method.

23 Q And is there anything further before moving on to  
24 the next?

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1 A Yes. There is. Again, to serve the scientific method.  
2 You're trying very hard to make sure that you can have  
3 enough information to form competent hypotheses about what  
4 might have occurred, what associations might exist in the  
5 crime scene between the victim, the offender and the scene  
6 itself and any secondary scenes, like vehicles or other locations  
7 that may be involved that you don't know about.

8 Q And what is the fundamental principle of forensic  
9 science?

10 A I think that's on the next slide.

11 Q Is there anything further to note at this --

12 A About the scientific method? There may be. As we  
13 come to it, we can talk about it. I don't -- I want to get back  
14 to one very important point which may not be -- may get lost  
15 in this, and that is you're designing tests to disprove your  
16 theories. You're not trying to prove them. You don't come up  
17 with a theory and go I'm in love, I'm sticking with this theory  
18 no matter what comes my way. What you say is as soon as  
19 there is something that comes along that disproves this theory  
20 that I've got that I love so much, it's gone. You cannot be  
21 precious with your theories. Once the evidence disproves it or  
22 refutes it, it's gone. You have to let it go. You can't then go  
23 back and try to resuppose and recreate and hope that you --  
24 you're just not seeing pieces. You've -- either you've got the

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1 evidence or you don't.

2 Q Thank you.

3 A There we go.

4 Q And so this screen assists your explanation of the  
5 main principle of forensic science?

6 A It does. The primary and guiding principle of  
7 forensic science and crime reconstruction, the cornerstone of  
8 crime reconstruction, is Locard's Exchange Principle, which he  
9 started writing about in the 19 -- late 1920s and early 1930s.  
10 He was a French man who was looking, well, he went around  
11 the world searching through police labs for evidence of  
12 scientific criminal investigation. He read Sherlock Holmes. He  
13 thought, oh, my gosh, this is the greatest thing ever, I want to  
14 see how police agencies are incorporating science into their  
15 investigations. And what he found was they weren't. So when  
16 he got back to France, he went to the police there in Lyon,  
17 France and he was given permission to start the world's first  
18 police crime lab. It is not the world's first crime lab but it is  
19 the world's first police crime lab. There have been -- crime  
20 labs have been around for more than 100 years prior to that,  
21 unrelated to the police. So law enforcement and forensic  
22 science didn't come together officially, really, until Locard, one  
23 might argue.

24 And he came up with the notion, eventually, after much

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1 research, study and publication and case work, that between  
2 every -- whenever two objects come in contact there's an  
3 exchange of evidence, and that is the fundamental and guiding  
4 principle of forensic science. That's the reason that we do  
5 crime scene investigations. It's the reason why we test  
6 evidence. It's the reason why those results are very important  
7 to the outcome of criminal proceedings. And stated simply, his  
8 exchange principle is that every contact leaves a trace. In fact  
9 I think there's a very popular book out right now by someone  
10 who wrote a book with the title "Every Contact Leaves A Trace"  
11 about physical evidence and forensic science.

12 Q Mr. Turvey, are you aware that at least two State  
13 witnesses testified that a perpetrator may not always leave  
14 physical evidence at the scene of a crime?

15 A I would say that we don't know that. What we know  
16 is right now our ability to detect certain levels of physical  
17 evidence isn't always on par with what's there. Additionally,  
18 there's also the issue of just not finding stuff. Even though  
19 you look, you don't see it. So I don't know that that -- that  
20 that -- that the experience and the testimony of those  
21 examiners actually disproves Locard's Exchange Principle.

22 Q And is the Locard's Exchange Principle relevant to  
23 crime reconstruction?

24 A It actually is. It's relevant to both forensic science

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1 and crime reconstruction. It is a fundamental and guiding  
2 principle of forensic science that every contact leaves a trace.  
3 That's why we look to using various tests. And you can see in  
4 this case, we will talk about in this case extensive effort was  
5 gone through to look for evidence. But then it's also the  
6 cornerstone of crime reconstruction. You can't reconstruct a  
7 crime without understanding that every contact will leave a  
8 trace. That's the absolute cornerstone of the -- of the method  
9 that we use.

10 Q What happens in a situation where there is no  
11 evidence linking a particular individual with a particular crime  
12 scene?

13 A Again, this right here, again, we talk about this  
14 issue. It goes round and round and round. Whenever you  
15 don't have any evidence, you have no proof of contact. You  
16 can't then go back and presume. Well, let me put it to you  
17 this way. If you're looking for evidence on an object and you  
18 find none, you can't presume, oh, well, it must have been  
19 cleaned away. If you -- if you are gonna say it must have  
20 been cleaned away, that's a new hypothesis about what the  
21 evidence says, so you've got to go back and you've got to  
22 prove it. You can't just cling to that and believe that that's  
23 what occurred. You've got to prove the cleaning actually took  
24 place. So if there's no evidence of cleaning, you can't actually

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1 say that cleaning took place. You could theorize and  
2 hypothesize all you want but it's not a conclusion. It's a  
3 hypothesis that's awaiting verification through testing. So if  
4 you have no evidence, then you have no proof of contact and  
5 that's as far as you can take it. I talked earlier about humility  
6 before the evidence, and that's part of it, understanding the  
7 limits of what you're saying, the limits of the evidence. And  
8 whether or not we like a particular theory has nothing to do  
9 with how true it's -- how true it is and it certainly doesn't have  
10 anything to do with whether or not we've proven it. If we've  
11 got a theory that cleaning or something like that has taken  
12 place, you've got to show evidence that the cleaning has taken  
13 place. So no evidence means there's no proof of contact.

14 Q And do you have a number of opinions regarding the  
15 materials that you've reviewed in this case?

16 A I do and I've summarized them starting on the next  
17 slide, I believe. The first opinion that I have is that there is  
18 absolutely no physical evidence associating Kirstin Blaise  
19 Lobato to the crime scene in this case that we've reviewed.

20 The second opinion is that there is no physical evidence  
21 associating Kirstin Lobato with the vehicle -- excuse me, to the  
22 Lobato vehicle, the red Fiero, to the crime scene. She's got a  
23 vehicle. It's a red Fiero. There's no physical evidence  
24 whatsoever that associates it with the crime scene in this case.

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1 The third opinion is that in this case we have a mountain  
2 of potentially exculpatory physical evidence that was not  
3 examined, so there are many items that in my report, in my  
4 original report that I wrote, and we'll discuss that later, that I  
5 requested be tested that had not been.

6 And on the next page are my two final conclusions, is  
7 that, first of all, there's DNA evidence from the sexual assault  
8 kit which is inconsistent with Kirstin Blaise Lobato. That's an  
9 important finding, too, which bootstraps the other finding.

10 And then, finally, this is where the crime scene analysis  
11 component comes in. As you aggregate all these things and  
12 you look at the evidence in this case, the physical evidence,  
13 the crime scene, the behavioral evidence, the reconstruction,  
14 without even having to look at the victimology, you can infer  
15 that the primary motive is directed anger expressed in the  
16 form of brutal injury, overkill, and sexual punishment to the  
17 victim's genitals. This is not at all like the opinion -- and I'm in  
18 agreement with Dr. Simms, the medical examiner in this case,  
19 about his interpretation of the overkill and the injury and the  
20 anger that's evident and how it's directed at the genitals, how  
21 it's sexually oriented.

22 Q Do you also agree with Dr. Simms' testimony that --  
23 MS. DIGIACOMO: Objection, leading.

24 THE COURT: Sustained.

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1 BY MS. ZALKIN:

2 Q Did you have an opportunity to review Dr. Simms'  
3 testimony?

4 A Yes, I did.

5 Q And do you recall whether or not he testified as to  
6 this crime being typically associated with male-on-male  
7 offender?

8 MS. DIGIACOMO: Objection, leading.

9 THE COURT: Sustained.

10 BY MS. ZALKIN:

11 Q Was there anything that you disagreed with in Dr.  
12 Simms' testimony as it pertains to the type of offender?

13 A No, not that I could -- not that I could see. He  
14 stated that, essentially, this was a more commonly male-on-  
15 male crime. And that what I would -- what I would add is  
16 when it's a homicide. When it's not a homicide, it's more  
17 commonly a domestic situation.

18 Q Would an example of that be the infamous Lorena  
19 Bobbitt case?

20 A I think so. I think the first thought that comes to  
21 one's mind when you see a penis removal any more in this  
22 country would be Lorena Bobbitt. And but this is not at all  
23 similar. That's where the similarity ends. In this case you  
24 have a homicide. The Bobbitt case was not a homicide. It's a

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1 very different dynamic, a very different type of crime. So  
2 when you have a homicidal situation where the penis has been  
3 removed, it's more common that it's a male-on-male crime.  
4 When it's not removed -- or, excuse me, when it's not a  
5 homicide, it's more commonly a domestic.

6 Q And while --

7 A But that would be a place where you'd start, not a  
8 place where you'd finish.

9 Q And while we're on this, the top of Dr. Simms'  
10 testimony, is there anything else or what else do you agree  
11 with that was contained in his testimony?

12 A Again, I hesitate to go much further because he's a  
13 medical examiner and I'm not. There is all these issues of  
14 wounds. And I'm in -- I'm in agreement with much of his  
15 testimony about cause and manner of death. But once you  
16 get down to the individual wound patterns and how they were  
17 caused, I think it starts to get pretty speculative. So --

18 Q That's fine. Turning now to the substance of these  
19 opinions that we've seen summarized.

20 A Yes. These are just the summary, just the summary  
21 of the opinion, but actually I've gone through and I've tried to  
22 make certain that I have the explanation for why my opinion is  
23 in each -- at each step of the way.

24 For opinion number one, again, we're looking at all the

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1 items of physical evidence that were found and that were  
2 collected and tested in this case. You have some pretty  
3 important ones. And one cannot underestimate the  
4 importance of the bloody footwear patterns in this case leading  
5 away from the body, concealed behind the dumpster. The  
6 dumpster, as it was found, was closed off. The police had to  
7 actually open it up to get inside.

8 MS. DIGIACOMO: Objection, Your Honor, he's  
9 misstating the testimony.

10 THE COURT: Sustained.

11 MS. DIGIACOMO: And I'd move to strike his answer.

12 THE COURT: Granted.

13 BY MS. ZALKIN:

14 Q Mr. Turvey, why is or why are the bloody footwear  
15 impressions so significant to your opinion?

16 A Because they are strongly associated with the crime  
17 and the actual area of the crime scene.

18 Q And are you aware of whether or not those footwear  
19 impressions were linked to Ms. Lobato?

20 A They were not. They -- there's a report by a former  
21 FBI footwear print examiner, and he was very clear in the fact  
22 that the footwear patterns were much too large to have been  
23 left by her and they weren't associated with any of the  
24 footwear that was seized from Ms. Lobato. So that's no match

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1 for the footwear to the footwear patterns found at the scene.

2 Q Can we move to the next screen, please? Why are  
3 fingernail scrapings of the victim significant, if at all?

4 A Because in a case where there's a victim who is  
5 conscious while they're being attacked, as in this case, and  
6 that's something, again, that I agree with Dr. Simms on, that  
7 Mr. Bailey had defensive injuries indicating that he's  
8 responding to being attacked, very often the defendant -- or,  
9 excuse me, defendant, the victim will get tissue underneath  
10 their fingernails from defending themselves, from scratching  
11 and clawing at the person who's attacking them or even hair  
12 and fiber evidence, for that matter, all manner of trace may  
13 transfer. So when you have this negative finding, when you  
14 have this negative finding of DNA underneath the skin, that  
15 actually is important to show that there's a lack of association,  
16 a lack of connection between the fingernails and the -- and the  
17 connecting the victim to the -- to any suspect.

18 Q And what is your opinion with respect to the  
19 chewing gum that was recovered and submitted for analysis?

20 A Again, it's the same type of situation. You have a  
21 piece of evidence that the police deemed important enough to  
22 collect and test for DNA, and it was negative. Every single  
23 time we're collecting a piece of evidence, it's going to be --  
24 they're not collecting -- they didn't collect everything. There

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1 was many things out there to collect. They were very careful  
2 about what they collected. But everything they did collect  
3 came back negative. And this is one of the items that they at  
4 the scene deemed important at the time. They examined it for  
5 DNA and they found it did not match Lobato.

6 Q And just to clarify, briefly, you're not saying that the  
7 gum was necessarily left there by the assailant, or are you?

8 A I can't say that. All I can say is the police were in a  
9 better position than I am today to determine what was  
10 important, did collect this item of evidence. They did test it,  
11 theorizing that it might have been connected, and they did  
12 prove their connection to be false.

13 Q And what else was tested from the scene?

14 A Again, the sandal, not again, but the sandal was  
15 another item on this list of things that they deemed important  
16 enough to collect. You would expect there to -- I think they  
17 thought there might have been some blood on it. And then  
18 also the wearer would have deposited sweat and skin transfer.  
19 So in that -- inasmuch as that's true, you're testing it and  
20 you're looking for evidence of the wearer. And if the wearer  
21 were to have -- if this would have come back consistent with  
22 Blaise Lobato, it would be -- any one of these items coming  
23 back consistent with Blaise Lobato, they would have been the  
24 most important piece of -- pieces of evidence at the trial, but

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1 they all came back negative.

2 Q Okay. The next screen, please.

3 A Yes.

4 Q And the first diamond point entry here, can you  
5 please elaborate on the fingerprints at scene not matching Ms.  
6 Lobato?

7 A Yes. I think there was at least one good print  
8 collected from the scene, according to CSA Renhard, and it did  
9 not match Kirstin Blaise Lobato.

10 Q And we had just mentioned the footwear. Oh, I'm  
11 sorry. This is different footwear. Are you aware of whether or  
12 not any footwear was collected from Ms. Lobato?

13 A Yes, I am.

14 Q And do you recall what footwear items or item  
15 was --

16 A Yeah, I think I -- oh, excuse me. Yes. There was a  
17 pair of black high heels, generic. I'm a male so I don't know  
18 what the appropriate term to call them are. But they're a pair  
19 of black high heels that were collected by detectives in this  
20 case.

21 Q And --

22 A And they were negative for Duran Bailey's blood. If  
23 you -- if you're walking around in that scene, it's possible but  
24 entirely unlikely, it's possible but very unlikely, that you're

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1 Wahl who testified regarding how he keeps his area clean in  
2 terms of cleaning it off with both bleach and then ethanol and  
3 then putting down a piece of wax paper before he starts his  
4 next procedure because of the potential for transfer. If you  
5 bleached it down and you examined this baseball bat with  
6 luminol, you might get a positive reaction. If you -- and  
7 phenolphthalein is not as -- not as sensitive but it's more  
8 specific. And I think Criminalist -- excuse me, CSA Renhard  
9 testified she worked very hard, even in the grooves and in the  
10 cracks and the chips that were in the bat, the actual metal  
11 part, to try to find evidence of using the phenolphthalein test,  
12 and she was not successful. But then on top of that, you have  
13 the handle, too. The handle is not nonporous. It's actually  
14 rubber. Rubber is very porous. And the rubber on the handle  
15 in this case is also cracked. So these are excellent surfaces  
16 through which blood can seep and collect. It would be  
17 extremely difficult to clean using commonly available  
18 household items.

19 Q And turning to -- is there anything else that I didn't  
20 ask you about relevant to this screen or can we move on to  
21 the vehicle?

22 A I think we can move on to the vehicle.

23 Q Okay, please. Now your opinion is that there is no  
24 physical evidence associating the Lobato vehicle to the scene.

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1 going to be able to get through there without getting blood on  
2 your clothes and specifically on your feet. So to test it for  
3 blood of any kind, it was -- it's a very important exclusion.

4 Q And, generally speaking, when police collect items of  
5 evidence, is that because they believe that those items would  
6 have evidentiary import or that they're trying to ascertain  
7 whether or not they will?

8 A I think both are true. I think they don't collect  
9 things that they think are unimportant, and I think they don't  
10 waste the crime lab's time and resources testing things that  
11 they think are not going to bear fruit because it's simply the  
12 resources are just too strained these days.

13 Q Was there another item collected that's relevant to  
14 this first opinion?

15 A Yes, there was. There's a baseball bat, I believe.  
16 The aluminum baseball bat was collected from, I think, the  
17 back of her vehicle, and that was also negative for Bailey's  
18 blood or for any blood, for that matter.

19 Q Well, if the aluminum baseball bat was nonporous  
20 then if there was no blood on it, wouldn't that indicate  
21 anything to you that no evidence -- that evidence may have  
22 been cleaned up?

23 A It's very difficult to clean away blood evidence on  
24 that level. I'm in agreement with, I think it was, Criminalist

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1 And what is that opinion based on?

2 A Well, the first issue is the issue that was covered, I  
3 think, by Crime Scene Analyst Joe Geller, and he stated that he  
4 did an examination of the tire treads and he was able to  
5 exclude these patterns that they documented at the scene  
6 from being associated with Lobato's vehicle. The reason that  
7 that's important, he said he couldn't put a time on it but,  
8 depending on what that is, if that's wet material there, that  
9 would have dried up in a very shorter -- in a short period of  
10 time. I can't tell you how short a period that time is because  
11 I'm not a -- I'm not out there timing it and performing tests,  
12 but it's not -- it's more closely associated than any of the other  
13 patterns that we might find out there, if it is indeed in a wet  
14 surface or in a wet substance.

15 Q And are there some other photographs associated  
16 with the crime scene that we've discussed that we can -- we  
17 can look at later? In essence, I'm --

18 A Yes.

19 Q -- awkwardly asking you to remind me at the  
20 conclusion of the PowerPoint to discuss a couple of  
21 photographs on this topic, if you would.

22 A Absolutely, there are other photographs related to  
23 this topic.

24 Q Okay.

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1 A And specifically, again, it comes back to the same  
2 thing. These tire tracks at the scene were examined and  
3 compared against the tire tracks from -- that could be made by  
4 the vehicle and they were found to be from a different tread.  
5 That's important because, basically, what we're saying is we  
6 don't have any evidence of the vehicle driving through that  
7 parking lot. That becomes important.

8 Q And do you know if whether or not law enforcement  
9 were prepared to impound Ms. Lobato's vehicle when they first  
10 contacted her?

11 A I believe they did very shortly afterwards.

12 Q And is there anything else at this portion of your  
13 presentation with respect to the tire tracks or should we move  
14 on to the luminol?

15 A I think we can move on. The next -- oh, there's not  
16 a question. So --

17 Q Well, if you can just -- we've heard a lot of  
18 testimony with respect to luminol. Can you just give us your  
19 overview of, briefly, of how luminol is utilized in the  
20 investigation of a suspected crime?

21 A Yes. Luminol is a -- again, it's a presumptive test for  
22 blood. It's not conclusive. If you have a positive luminol  
23 result, you might have blood, you don't know for sure. It  
24 reacts with the iron in the -- in the blood. Luminol also reacts

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1 with many other different substances. It is very important to  
2 recognize that just 'cause you've got some glow there of any  
3 different kind, doesn't mean that you have blood. It means  
4 that now you're ready for the next round of testing. If you get  
5 a negative result, it's very likely that you not only do not have  
6 blood but blood was not ever there. That's an important  
7 feature of that, the negative documentation.

8 Q Would it -- when you say negative documentation,  
9 can you elaborate on what that term means in your field?

10 A I can. Negative documentation is documenting not  
11 just what you found but what you didn't find. A good example  
12 would be on a -- on a victim of a crime, they've been shot.  
13 You take a picture not only of the bullet wound but of every  
14 other part of their body where there isn't injury, to show that  
15 there is no injury in those areas. It's a very important feature  
16 of that. The negative documentation would extend to the idea  
17 of crime scene investigation. You're not only gonna document  
18 where there is evidence but where there isn't evidence. You're  
19 gonna document where things were and where things weren't.  
20 You're gonna document not only what you found but they --  
21 but areas where you found nothing. So a negative finding is  
22 actually a finding and you must document it in your reports.  
23 And if you're not documenting it in your reports, you're leaving  
24 out vital information that can contextualize the evidence that

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1 you collect later on. So it's crucial to both the concept of  
2 forensic science, Locard's Exchange Principle and crime  
3 reconstruction.

4 Q And would the presence or application of a cleaning  
5 solvent, such as bleach or ammonia, prevent luminol from  
6 reacting with suspected blood?

7 A It would prevent it from reacting with blood but it --  
8 but the cleaning agent itself might react with the luminol. So,  
9 again, this is one of those issues where if you've got a theory  
10 that the evidence was cleaned away, you have to find proof of  
11 that cleaning effort. You can't just theorize it and leave it  
12 there.

13 Q What type of proof would you expect to find?

14 A Well, a couple things specific to the vehicle that  
15 we're gonna talk about. First of all, you're gonna -- if you're  
16 gonna let somebody use bleach to clean up the blood, you're  
17 gonna find -- you've got to find the bleach. Where was the  
18 bleach? Did the person who you're saying cleaned it up have  
19 access to bleach, did they have bottles of bleach, was bleach  
20 found in the car, was there an odor of bleach, was there any  
21 positive reaction of the luminol that's consistent with bleach,  
22 were there -- and was there evidence of wiping down, was  
23 there evidence of a -- of a cloth being wiped over a surface or  
24 wipe patterns on the surface, or did you actually find a vehicle,

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## TURVEY - DIRECT

1 as in this case, where there's grime and dirt all over it and they  
2 actually took fingerprints off of it.

3 Q And we'll come back to the vehicle.

4 A Sure.

5 Q But continuing with the luminol.

6 A I guess it's extremely sensitive. That's the next part  
7 of that. And, again, 1 parts per million. Like we already talked  
8 about, it works despite bleach or ammonia. It will still -- you  
9 can use bleach but you've got to use many applications. You  
10 can't just do it once and wipe it down. Most people don't  
11 realize this but it takes many times, many efforts to -- and  
12 you've got to get in there deep. And it matters in terms of the  
13 -- excuse me. It matters in terms of the substance. On a --  
14 on a smooth substance or a nonporous substance, it would  
15 actually be easier to get off than a nonporous substance  
16 because you could wipe it off the surface, but it would still take  
17 many different applications. In a porous surface, it's almost  
18 impossible to clean out blood. It's gonna get in there, get in  
19 deep, and you can wipe as many times as you want. It's very  
20 unlikely you're gonna be able to clean it all away to the point  
21 where luminol can't detect it. That's one of the great things  
22 about it. It's so very sensitive and it works, again, despite a  
23 single application of bleach or ammonia to an effected area  
24 that you want to clean up.

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## TURVEY - DIRECT

1 Q So when you -- when one obtains a positive result,  
2 what can be said?

3 A When you've got a positive result with luminol, as I  
4 already suggested, there might be blood. Now you're ready  
5 for that next round of testing. You're ready for the  
6 confirmatory test. You don't -- you can't say, oh, well, in my  
7 years of experience I just know it's blood, I just know. That's  
8 not how it works. You have to actually test it and then that  
9 test has to come back positive. You can't use your experience  
10 to suggest that you just think you know. That's one of the  
11 great dangers in the difference between a scientific  
12 interpretation and a non-scientific interpretation. The  
13 literature is very clear on this. If you get a negative result with  
14 luminol, it's very likely that unless you have evidence of  
15 extensive cleaning with commercial-grade cleaners and  
16 multiple applications, unless you have evidence of that, there  
17 was very likely never any blood at this location.

18 Q Can we have the next screen, please?

19 A Yes.

20 Q We have heard testimony of both luminol and  
21 phenolphthalein test results with respect to this vehicle.

22 A Yes.

23 Q And how is that testimony, if it is, relevant to your  
24 opinion?

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## TURVEY - DIRECT

1 A It is because in this case they worked very hard with  
2 both luminol and phenolphthalein to search this vehicle for  
3 blood, and they got a couple of positive reactions. And these  
4 photographs show the areas of positive reaction with the  
5 luminol tests. But the -- and what they say, weak positive  
6 presumptive tests for presence of blood on one area of each  
7 item. Human blood cannot be confirmed from either item.  
8 Human DNA was not detected in extracts prepared for swab  
9 and collected from both items. So what we have is a positive  
10 presumptive test that's weak but still positive, might be blood,  
11 and then a negative confirmatory test. Whatever this is that  
12 we're looking at is no proof it's blood.

13 Q In your opinion, is it appropriate for a scientist to  
14 allege that the DNA in the blood might have simply been  
15 cleaned away?

16 A Not without any proof of it. Again, it's a theory. It's  
17 an interesting hypothesis with no proof or evidence  
18 whatsoever. It's a -- if you want to hold on to the theory that  
19 this is blood and ignore all the science, that's what you would  
20 say. But if you're being an objective forensic scientist you'd  
21 say I have no evidence of that. There is no evidence that this  
22 is blood and there is no evidence that blood was cleaned  
23 away. Because it's not just important that this photograph not  
24 only shows positive documentation of where luminol reacted, it

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## TURVEY - DIRECT

1 shows negative documentation of where luminol didn't react.  
2 If somebody gets in there with a bloody hand and closes that  
3 door, where should it be, where should the luminol have  
4 reacted? On the handle. And, well, it's on the next slide,  
5 actually, if we just -- if you don't mind.

6 Q I believe it's, yes, maybe one after the next.

7 A Oh, actually, it is one after. Let's just go --

8 Q But we'll -- okay.

9 A Well, you're right. Okay. My apologies.

10 Q That's all right. We'll be brief on this one.

11 A Yeah.

12 Q What's depicted in this slide?

13 A In this particular -- in this particular photograph, we  
14 have the seat cover that was eventually collected and  
15 examined and tested with luminol. It was negative for Duran  
16 Bailey's blood, so Duran Bailey's blood is not found, the  
17 victim's blood is not found associated with the seat cover.

18 Q And, briefly, in that photograph we're seeing that  
19 the seat covers appear to be red, white, and there may have  
20 been black in there we've heard. In your expert opinion, if  
21 bleach or another strong cleaning solvent were applied, would  
22 you expect to find discoloration or not?

23 A That's been my experience when you're working  
24 with a color like red or any other deep color and you apply an

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## TURVEY - DIRECT

1 extensive cleaning agent to it. In fact many of them have  
2 warnings on the labels not to use them on these colored items.  
3 Believe me, I've done it and destroyed many an outfit.

4 Q Okay. Next screen, please. What are necessary  
5 transfer sites?

6 A Well, in this particular case we're talking about -- we  
7 talked, again, just previously, we have positive documentation  
8 of something that might have been blood but then it was  
9 tested and shown there's no evidence that it's blood. We have  
10 other sites in the interior, on the exterior of the vehicle, where  
11 there -- where we would expect to find blood if somebody with  
12 bloody feet and bloody hands got into the vehicle, as we would  
13 expect in this case. The necessary transfer sites, this is a very  
14 -- this is a short list of things that were tested that tested  
15 negative for blood. That includes the exterior door handle, the  
16 interior door handle, the keys, the steering wheel, the gear  
17 shift knob, the lights and the peddles. My understanding from  
18 testimony and from the reports that I read is that extensive  
19 phenolphthalein and luminol tests were done, the luminol  
20 being very sensitive, the phenolphthalein very -- being very  
21 specific. And so we -- and we found nothing or that the crime  
22 scene analysts found nothing. It's absolutely critical to the  
23 interpretation of whether or not this vehicle is involved in this  
24 crime.

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## TURVEY - DIRECT

1 Q And before we move on, briefly, are you aware of  
2 another biological substance located anywhere in the  
3 passenger compartment?  
4 A I am.  
5 Q What was that?  
6 A There was some vomit located under one of the  
7 seats.  
8 Q And do you agree with testimony we've heard that  
9 DNA cannot be detected in vomit because of the stomach  
10 acids?  
11 A No, I do not.  
12 Q Why is that?  
13 A When I was trained in 1996, they were talking about  
14 how the stomach lining was the -- the stomach was the best  
15 place to get DNA because the cells were of a particular high  
16 quality in the stomach. But, in particular, within vomit the --  
17 the cells, the cells that shed off the interior wall of the stomach  
18 are trapped in that mucous that's in your stomach and that  
19 protects it. So but then there's also a possibility of blood in  
20 vomit. So you have the blood possibility and then you have  
21 the shielded cells in the mucous membrane which are both  
22 excellent sources for DNA.  
23 Q Thank you. Moving on to a different subject area.  
24 If we could have the next slide, please.

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## TURVEY - DIRECT

1 A And, again, the findings are negative for all these  
2 items as I was talking about.  
3 Q Now with respect to this slide, is this --  
4 A I think these are the same.  
5 Q Is this element of your opinion from your original  
6 report?  
7 A It is indeed.  
8 Q And when was that report authored?  
9 A My original report in this case was authored -- if I  
10 may refresh my memory by looking at my report for the date.  
11 Q Yes, you may.  
12 A I have a copy of it here. It was authored on and  
13 submitted on October 17<sup>th</sup>, 2005, so almost a year ago.  
14 Q Is this still the state of the evidence as we know it?  
15 A No, it is not.  
16 Q Please explain.  
17 A I recently received information this week, excuse  
18 me, not this week, last week that the cigarette butts had  
19 actually been examined after the trial began. And I asked to  
20 speak with Criminalist Kristina Paulette regarding her analysis  
21 since I had just received her report, I think it was, last  
22 Wednesday, I think, on the 27<sup>th</sup>. I spoke with her several  
23 times about that, about her examination, and reviewed her  
24 testimony and was wondering why it didn't get mentioned in

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## TURVEY - DIRECT

1 her original testimony when she knew the results.  
2 MS. DIGIACOMO: Objection, Your Honor,  
3 speculation.  
4 THE COURT: Sustained.  
5 BY MS. ZALKIN:  
6 Q Let me ask you this, Mr. Turvey, why, if at all, is it  
7 significant whether or not she mentioned cigarette butts in her  
8 testimony if testing had not been completed?  
9 A Well, it's a serious omission because she was asked  
10 whether or not --  
11 MS. DIGIACOMO: Objection, Your Honor. May we  
12 approach?  
13 THE COURT: The Court sustains the objection.  
14 There's no need to approach.  
15 MR. KEPHART: Okay.  
16 MS. ZALKIN: No, I'll withdraw.  
17 THE COURT: You may proceed on --  
18 MS. ZALKIN: I'll withdraw.  
19 BY MS. ZALKIN:  
20 Q Mr. Turvey, that -- you selected a photograph from  
21 the photographs provided to you. Why did you select this  
22 particular photograph for this portion of your opinion?  
23 A This particular photograph was taken at the crime  
24 scene by the crime scene analysts at the scene or the

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## TURVEY - DIRECT

1 coroner's investigator, one of the two, I don't recall, and it  
2 shows in context the cigarette and the match of the -- that are  
3 associated with this collection. Right underneath the plastic  
4 there's a photo -- if we were expand the photograph out, it  
5 would be the one where the detectives have pulled back the  
6 plastic and there is just the picture of the genital as it has been  
7 -- the genitals as they have been shorn off. So it's beneath  
8 the plastic and associated directly with the crime. That's why  
9 this is so very important. It's protected underneath that layer  
10 of plastic and connected with the -- the naked body. So we  
11 have the body being naked at the point that this cigarette butt  
12 and match come in contact with it, and then the plastic going  
13 on over the top of that and keeping it associated with the  
14 crime.  
15 Q Does the fact that there was a significant amount of  
16 trash present at this crime scene in any way change or inform  
17 your opinion that this particular evidence was associated with  
18 the crime?  
19 A Well, again, this -- this item of evidence is  
20 transferred on to the body after the pants have come down  
21 but before the plastic gets put down over top of it. And the  
22 plastic isn't just dropped on top of the body; it's actually  
23 tucked underneath the thighs on both sides. This is not a --  
24 MS. DIGIACOMO: Objection, Your Honor.

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## TURVEY - DIRECT

1 THE WITNESS: -- accidental.

2 MS. DIGIACOMO: That misstates the testimony as

3 well.

4 MS. ZALKIN: No, it doesn't. I can --

5 THE COURT: Counsel, approach.

6 (Off-record bench conference at 14:39:57 until 14:40:53)

7 THE COURT: The objection is sustained.

8 BY MS. ZALKIN:

9 Q Mr. Turvey, whether or not the plastic was wrapped

10 around the body or not, is it fair to say that the plastic was in

11 direct contact with the body? Would that be your testimony?

12 A With certain parts of it, yes.

13 Q Certain parts. Okay. And if we can move on to the

14 next screen. Now, again, you prepared this. Did you prepare

15 this presentation in connection with your original report of

16 October, 2005?

17 A I did indeed.

18 Q And is there anything that you've learned within the

19 last few days that would change or modify any portion of this

20 screen?

21 A Yes.

22 Q What was that?

23 A It's that, I think it was, Criminalist Susan Schafer

24 [sic], Criminalist Coroner's Investigator Susan Schafer [sic]

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## TURVEY - DIRECT

1 evidence number, on an evidence log, it has not been

2 "collected" in the sense that it was collected professionally and

3 competently. It may have been collected and lost but that's

4 not really collecting an item in the way that we understand it.

5 Q And why would paper towels be examined as a

6 source of evidence, if at all?

7 A Well, several things. First of all, you don't know

8 where the paper towels came from. If they're -- first of all,

9 they're associated directly with the body and with the genitals.

10 They're underneath that plastic, again, just like the cigarettes.

11 You can physically match up a paper towel back to the original

12 roll, if you find the original roll, so you might be able to

13 connect it with a paper towel roll at some other location. You

14 can get fingerprints off of it, either bloody fingerprints from the

15 transfer of bloody fingers touching the paper towels, which

16 would be possible in this particular case and even likely. You

17 can also examine the paper towels for latent prints using a

18 Super Glue fuming method just simple -- or a simple ninhydrin

19 wand. So there are -- and then also you might be interested

20 to find any other transfer of evidence that might be on it, any

21 other, oh, like hairs or fibers and things of that nature that can

22 be connected to somebody else. So there's all manner of

23 physical evidence that could be collected from something like

24 this. And it becomes especially important, again, because it's

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## TURVEY - DIRECT

1 testified that she observed the objects, the paper towels, being

2 collected from the areas of the genitals and put into a paper

3 bag by investigators at the scene.

4 Q Mr. Turvey, would it -- would it refresh your

5 recollection it was -- if it was Witness Shelley Pierce-Stauffer

6 from the Coroner's Investigator's Office?

7 A Rebecca Schafer. That's the stalking case, isn't it?

8 Yes. It is Shelley Stauffer. My apologies. It is Shelley

9 Stauffer, not Rebecca Schafer. Rebecca Schafer is a stalking

10 victim.

11 Q And did you -- did you come -- did you learn

12 anything about whether or not these white paper towels were

13 in fact collected in the same evidence bags that we have seen

14 in this courtroom?

15 A They --

16 Q The same type of evidence bags.

17 A My understanding is that her -- well, of what I saw

18 of her testimony, is that she indicated that they were collected

19 into the same types of evidence bags. But I might add that

20 the term "collection" is a term of art. In my opinion, if we do

21 not have an evidence number, if the items are not logged in

22 and if they are not submitted for some kind of examination,

23 they're not actually collected. If we don't have the item in

24 front of me -- if I don't have the item in front of me with an

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## TURVEY - DIRECT

1 associated directly with the body.

2 Q And if we can --

3 A And the injury.

4 Q I'm sorry. I didn't mean to cut you off.

5 A And the injury to the body, that specific injury that

6 the offender took time to make.

7 Q If we could go to the next screen. We've heard a lot

8 about this plastic sheet or wrap. It's been characterized as

9 being different substances. But regardless of what the

10 composition was, are you aware of whether or not this plastic

11 on the body was examined in the laboratory?

12 A I have not seen a report that says it has been

13 examined. I'm not aware that it was examined at all. I'm not

14 examined that it was -- or I'm not aware that it was examined

15 for fingerprints or for trace evidence or any other transfer

16 evidence. And I'm not aware that there was any instruction by

17 anyone to make these examinations. It's just -- what I am

18 aware of is that it was sent with the body to the coroner's

19 crime lab.

20 Q Is that what your screen refers to with M.E.? Can

21 you elaborate on that?

22 A Yes. With the medical examiner, yes. It was sent to

23 -- the body with the medical examiner.

24 Q And what would have been the purpose of

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TURVEY - DIRECT

1 submitting that item for analysis?  
 2 A As with everything, we are talking about Locard's  
 3 Exchange Principle. You are submitting an item of evidence to  
 4 demonstrate the association of this item of evidence with the  
 5 potential suspects or the crime itself. You already know it's  
 6 associated with the crime 'cause it's wrapped around the body  
 7 or however it's around the body, however we're characterizing  
 8 it. It's on the body. It's associated with the body. You are  
 9 trying to connect it to a particular suspect by virtue of the  
 10 transfers that exist. And any failure to make that connection is  
 11 a failure to prove that theory, is a refutation of the theory. So  
 12 not only is the positive documentation important but whether  
 13 or not there were any -- if there's nothing on there, we'd want  
 14 to know that as well.  
 15 Q And is there anything that you've learned since trial  
 16 has commenced with respect to this portion of your opinion?  
 17 A I haven't.  
 18 Q Is there anything else further on this screen that  
 19 may not be apparent on the screen?  
 20 A No.  
 21 MS. ZALKIN: May I approach the witness, Your  
 22 Honor?  
 23 THE WITNESS: Sorry.  
 24 THE COURT: Yes.

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TURVEY - DIRECT

1 Q And what item are you specifically referring to?  
 2 A The -- there are multiple items in the sexual assault  
 3 kit, the majority of which were tested and all came back  
 4 negative to associate them with the defendant, Blaise Lobato.  
 5 However, there were items that were not examined.  
 6 Q At the time you wrote your report?  
 7 A At the time that I wrote my report in October 17<sup>th</sup>,  
 8 2005. And, as I do in the majority of my cases, I note those  
 9 items of evidence that I think have significant evidentiary value  
 10 and say these are items of evidence I would like to see tested.  
 11 And in my report, and this is language directly from my  
 12 original report back in 7 -- 10/17/05, "At the very least, the  
 13 penile swab and any pubic combings should be tested for DNA  
 14 in order to confirm or refute the theory that any particular  
 15 person had sexual contact with the victim prior to death."  
 16 You'd want to know that. It's absolutely vital. They -- and the  
 17 medical examiner knew this when he collected the evidence  
 18 from the body. He understood this. This was very important.  
 19 Q And can we move on to the next screen?  
 20 A We can.  
 21 Q Now you have, on this screen, indicated that there is  
 22 DNA evidence from the sexual assault kit. How does that  
 23 relate to Ms. Lobato, if at all?  
 24 A In this particular case, according to the report and

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TURVEY - DIRECT

1 THE WITNESS: Yes. There is one final item. The --  
 2 my understanding is that there were many items in this case  
 3 that were given a cursory exam at the scene and then  
 4 discarded because they were -- there was no evidentiary  
 5 value. I cannot stress how improper this is and how great a  
 6 dirth of information this presents us with in terms of knowing  
 7 the full context of the evidence. I cannot imagine the crime  
 8 scene school that somebody would go to that would teach  
 9 them to look at evidence and then throw it away without  
 10 logging it in and, certainly, without making note of their  
 11 findings. It's jaw-dropping.  
 12 BY MS. ZALKIN:  
 13 Q And if we can move on to the next screen. And  
 14 what's the relevance of this opinion to your testimony?  
 15 A Well, in this particular instance we have a piece of  
 16 evidence that was examined very late, very -- excuse me, very  
 17 -- only very recently, right before the beginning of the trial.  
 18 MS. DiGIACOMO: Objection, again, misstates the  
 19 testimony.  
 20 THE COURT: Sustained.  
 21 BY MS. ZALKIN:  
 22 Q You -- are you talking about the sexual assault kit?  
 23 A I'm talking about the -- one particular item in the  
 24 sexual assault kit.

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TURVEY - DIRECT

1 testimony of Criminalist Kristina Paulette last week, no, excuse  
 2 me, the report of about three or four weeks ago, four weeks  
 3 ago, and the testimony last week, the DNA excludes Kirstin  
 4 Lobato as a potential contributor. There is a -- a hair was  
 5 found that she thought was a foreign hair. The hair had  
 6 turned out to indeed be Duran Bailey's, but there was material  
 7 on the outside of the hair, biological material of some kind,  
 8 that did not belong to him, that belonged to somebody else.  
 9 And that's important because if you're going to -- if there was -  
 10 - it refutes the idea that there was any sexual contact between  
 11 those two.  
 12 Q So, Mr. Turvey, and again to clarify, you're not  
 13 saying that the source of that pubic hair is necessarily the  
 14 assailant?  
 15 A No, I am not.  
 16 Q Just is -- would you say that that's simply a part of  
 17 the investigation or how would you -- how would you articulate  
 18 why that evidence should be tested if it's not a direct link to  
 19 the actual perpetrator?  
 20 A Well, there's a couple of reasons. The first of all is  
 21 you want to establish whether or not there's been any sexual  
 22 contact. Two, there are -- there's a sexual component to this  
 23 crime, which is that the penis itself was removed, so that's  
 24 gonna be an area of evidence that you're gonna want to look

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## TURVEY - DIRECT

1 at to see what kind of contact was there -- it could be vaginal  
2 epithelial cells that could be this biological material. It could  
3 be sweat from a person who is sweating on to the body as  
4 they're removing the penis. It can be saliva from someone  
5 who is performing fellatio on Mr. Bailey. There's all manner of  
6 potential transfer sources for biological material. You want to  
7 know who that person is. It remains an unanswered question.  
8 It's extremely important.

9 Q And is there anything else that you would include  
10 with this slide that would --

11 A Yes, I would. In this particular case, it was ST&R.  
12 It was a mixed sample. Obviously, I talked about this before.  
13 The hair is from Duran Bailey, the victim, and then there's an  
14 unknown. It was not linked to Blaise Lobato whatsoever.

15 Q Okay. And anything further before we move on?

16 A As I said, this language comes directly from Kristina  
17 Paulette's report which is that he's excluded -- Kirstin Lobato is  
18 excluded as the possible contributor.

19 Q Thank you.

20 A And, again, what I'm -- what I'm doing with these  
21 findings is I'm not showing --

22 MS. DIGIACOMO: Objection, there's no question  
23 pending.

24 THE COURT: Sustained.

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## TURVEY - DIRECT

1 BY MS. ZALKIN:

2 Q Could we move on to the next screen, please?

3 A We can.

4 Q This may have been what you were desiring to  
5 explain.

6 A Yes.

7 Q Please explain the relevance of this portion of your  
8 presentation?

9 A In this particular case, a sexual assault protocol was  
10 conducted and it's not a random examination or as random of  
11 a collection as you would find at a crime scene where you're  
12 walking around and seeing things and looking at them and  
13 picking them up. It's a very specific protocol that's been  
14 developed over the years to look for very specific items of  
15 evidence at very specific potential transfer sites. So you can't  
16 just go in and go, oh, well, I don't want to collect -- I don't  
17 want to test everything. You have to test it all because every  
18 area is agreed upon that it is something that's potentially  
19 important. And in this particular case, all of the other items  
20 should have been tested, to include the penis as well. I'm not  
21 sure that that's been tested yet.

22 Q Well, let me ask this. Is inadequate funding a good  
23 reason to not process all pertinent physical evidence?

24 A Well, it is a good reason not to test. I think it is a

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## TURVEY - DIRECT

1 good reason not to test. I think you can use that. It's saying  
2 we didn't have enough money to do it. I think you can say  
3 that. But that's not where the explanation ends. What is  
4 important to note is you can't then go into court with that  
5 evidence and say we didn't have enough money to do it but  
6 we're gonna bring this evidence in anyway and suggest that it  
7 is and suggest that we can use it to put somebody away for  
8 the rest of their life and take away their liberty.

9 MS. DIGIACOMO: Objection, Your Honor. It's  
10 improper.

11 THE COURT: Sustained.

12 MS. DIGIACOMO: Move to strike his answer.

13 THE COURT: Granted.

14 BY MS. ZALKIN:

15 Q Moving on to your next slide in order then. I'd like  
16 to finish this and then have a couple of additional questions for  
17 you.

18 A Of course.

19 Q What is primary motive?

20 A Primary motive is meant to suggest that there is a  
21 motive that is more evident than any other motive in the  
22 crime. There may be other motives that you can't see. There  
23 may be other things that are going on that you can't see. But  
24 the primary one that you can see, that you have evidence of,

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## TURVEY - DIRECT

1 is what we're talking about. The motive that you can see the  
2 most of, that you have evidence of, the greatest evidence of,  
3 that's the primary motive, the motive that runs thematically  
4 throughout the crime.

5 Q And in your line of work, are motives evidenced in  
6 the crime scene or how does this fit into your opinions in this  
7 case?

8 A I try to stay very objective to the issue of motive  
9 and not sort of get into the speculation of what goes on in  
10 someone's head. I try to stick with the evidence that I have at  
11 the crime scene of the behavior and not try to guess who the  
12 are or what their fantasies are, or anything like that. I'm  
13 trying to figure out in general what motives are at work. Is it  
14 profit, is it power, is it some sexual motive, is it anger? In very  
15 rare but obvious cases, if there's evidence of sadism where  
16 you are getting sexual gratification from victims suffering, the  
17 rarest of the rare and the worst of the worst. In this particular  
18 case we're talking about a very common, a very common  
19 motive but a very specific motive.

20 Q And what is that?

21 A Directed rage, directed anger.

22 Q And how do you -- why do you know that? Why are  
23 you saying that?

24 A In this particular case it is evidenced in my opinion

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## TURVEY - DIRECT

1 by the brutal level of force, the lethal level of the force, the  
2 evidence of overkill, the time spent inflicting superficial injuries  
3 and the time spent performing sexual mutilation. All these  
4 things, when you put them together across the commission of  
5 the crime, they show a level of directed anger. More  
6 importantly, or most importantly perhaps, oh, this is just the  
7 definitions of those terms. If you will allow me.

8 Q Yes.

9 A A brutal and lethal force would be repeated injuries  
10 that inflict tremendous damage until death results, and this is  
11 evidenced by the cumulative blunt force trauma, stab wounds  
12 and incised wounds to the victim's face, neck and head.

13 Q So just to -- okay. Well, I believe your next screen  
14 will answer my question.

15 A I'm sorry. Oh. An overkill is, apart from the brutal  
16 level of force, is injury that goes beyond what is necessary to  
17 kill someone. In this particular case the victim's already dead  
18 and you have a postmortem removal of the genitals, you have  
19 an incised wound to the rectum, incised wound to the  
20 perineum, you have stab wounds to the upper abdomen. It's  
21 more than what was necessary to kill the victim.

22 Q Okay. And moving on to your final screen then. Do  
23 you -- have you previously had experience with  
24 dismemberment homicide?

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## TURVEY - DIRECT

1 A With many dismemberment homicides, yes.

2 Q And what has your experience consisted of?

3 A I've worked many cases involving dismemberment  
4 as it serves a function in the scene, to disarticulate a body and  
5 transport it somewhere else or to disarticulate a body and  
6 deliver different parts to different regions of a -- of a vicinity or  
7 a county or a state or the country to prevent identification, and  
8 I've worked on cases involving sexual and genital mutilation  
9 from females who have had their vaginas literally skinned and  
10 removed and objects inserted, to having breasts removed and  
11 used for various fetishistic purposes, to cases involving victims  
12 who have had their feet removed and involved in fetishistic  
13 practices. And I've had one case involving a murder of three  
14 eight-year-old boys, one of whom had their penis removed,  
15 penis and testicles removed.

16 Q And what, based on your experience with case work  
17 and your review of the literature, can you tell us with respect  
18 to these types of crimes?

19 A Well, like I was saying earlier, genital injury in non-  
20 homicides is most commonly associated with female offenders  
21 and genital removal in homicides is most commonly associated  
22 with one or more male offenders. And my experience and my  
23 review of the literature found that of the -- of the cases that  
24 exist in terms of homicide and genital -- male genital removal,

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## TURVEY - DIRECT

1 the suspect or the offender has always been male.

2 Q And does that conclude your PowerPoint?

3 A Yes, it does.

4 Q I have -- you've answered almost all of my  
5 questions. I do have a couple of more and I'd like to show  
6 you just a photograph or two. But before I do that, in your  
7 past experience, is it common for items of evidence to be  
8 tested four or five years after they were impounded?

9 A It's common in cold cases when you don't have a  
10 suspect right away. It's common when the time between the  
11 case, the processing of the crime scene, and the arrest of the  
12 suspect are, you know, five -- four or five years later. It is not  
13 common in cases where the suspect is immediately identified  
14 and arrested within, say, a month's period of time.

15 MS. ZALKIN: And may I approach the clerk, Your  
16 Honor?

17 THE COURT: Yes.

18 BY MS. ZALKIN:

19 Q I have previously marked for identification purposes  
20 two photographs. I'm gonna approach and ask you to identify  
21 them after showing them to opposing counsel. And one of  
22 those is Proposed Exhibit BBBB, as in boy.

23 MS. DiGIACOMO: They already have that one in.

24 MR. KEPHART: Those are all in.

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## TURVEY - DIRECT

1 MS. ZALKIN: Not the -- these size ones.

2 MR. KEPHART: Not the big ones but they already  
3 are.

4 MS. DiGIACOMO: But you already have those in.

5 MR. KEPHART: That's fine. That's fine.

6 MS. ZALKIN: May I approach the witness, Your  
7 Honor?

8 THE COURT: Yes.

9 BY MS. ZALKIN:

10 Q I'm showing you what's been marked first as  
11 Defense Proposed Exhibit BBBB. Have you seen that  
12 photograph before?

13 A I have, yes.

14 Q And can you describe what is reflected thereon?

15 A This is the interior of the garbage dumpster area  
16 where the body was found, and the body is still in it in this  
17 photograph and the dumpster has been turned sideways to  
18 allow people access in. You can see the garbage piled up on  
19 top of Mr. Bailey's body. You can see bloody footwear  
20 impressions on the concrete. You can see a box which I  
21 presume belongs to the crime scene analysts, next to a tripod  
22 that has a --

23 MS. DiGIACOMO: Your Honor, I'm gonna object at  
24 this point. These photographs that he's looking at are not in

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## TURVEY - DIRECT

1 evidence and he's testifying to them.  
 2 MS. ZALKIN: Well, let me -- let me --  
 3 THE COURT: I'm gonna sustain the objection. You  
 4 may pose your next question.  
 5 MS. ZALKIN: Okay. Thank you.  
 6 BY MS. ZALKIN:  
 7 Q Do you -- do you identify this photograph as  
 8 something that has been provided to you along with the other  
 9 materials in this case?  
 10 A It was, yes.  
 11 Q And does this appear to be a photograph from the  
 12 crime scene in this case?  
 13 A It does, yes.  
 14 MS. ZALKIN: I would at this time move to admit  
 15 Defense Proposed Exhibit BBBB.  
 16 MS. DIGIACOMO: Well, I mean, I -- the State -- I  
 17 mean, objection as to foundation. He can't lay it other than he  
 18 says he's seen the photographs before. He doesn't know  
 19 where they're from. And they're already in evidence.  
 20 MS. ZALKIN: Your Honor, if they're already in  
 21 evidence and this is simply a larger version of the same  
 22 photograph, I don't see why it would be problematic.  
 23 THE COURT: It would be cumulative. But you may  
 24 find the one that's identical to it that's already in evidence.

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## TURVEY - DIRECT

1 MS. DIGIACOMO: His entire PowerPoint was about  
 2 that.  
 3 THE COURT: He may answer.  
 4 THE WITNESS: No, I have not found any evidence  
 5 whatsoever associating her with this crime.  
 6 BY MS. ZALKIN:  
 7 Q And are you aware of testimony that physical  
 8 evidence linking Ms. Lobato may have been present but not  
 9 collected?  
 10 MS. DIGIACOMO: Objection, asked and answered.  
 11 MS. ZALKIN: Again, Your Honor, I don't believe that  
 12 that was directly posed to the witness.  
 13 THE COURT: Overruled.  
 14 MS. DIGIACOMO: Well, his slides and his PowerPoint  
 15 and everything he's testified to in his report, plus more, has  
 16 already come out. So unless she's asking him something  
 17 additional, he's already testified to the items that should have  
 18 been collected at the scene and tested.  
 19 THE COURT: Overruled. You may answer.  
 20 THE WITNESS: Can you ask the question again,  
 21 please?  
 22 BY MS. ZALKIN:  
 23 Q Certainly. Are you aware of any physical evidence  
 24 associating -- oh, wait. I'm sorry. Now I've gotten confused.

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## TURVEY - DIRECT

1 MS. ZALKIN: Okay. Thank you, Your Honor.  
 2 BY MS. ZALKIN:  
 3 Q And, Mr. Turvey, while I'm doing that, perhaps we  
 4 can have the assistance of counsel in that respect, is it  
 5 common -- is it common practice for a number of individuals to  
 6 be present in an enclosed crime scene area before all the  
 7 evidence has been collected?  
 8 MS. DIGIACOMO: Objection, leading and  
 9 foundation.  
 10 THE COURT: Sustained.  
 11 BY MS. ZALKIN:  
 12 Q Let me ask you this question, going to a different  
 13 topic while we're looking for the photographs. In this  
 14 particular crime, are there any items of evidence that you  
 15 would expect to find linking a particular assailant?  
 16 MS. DIGIACOMO: Objection, foundation.  
 17 THE COURT: Sustained.  
 18 BY MS. ZALKIN:  
 19 Q Are you aware of any physical evidence associating  
 20 Ms. Lobato with this crime scene?  
 21 MS. DIGIACOMO: Objection, asked and answered.  
 22 MS. ZALKIN: I don't believe that exact question has  
 23 been answered.  
 24 THE COURT: Overruled.

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## TURVEY - DIRECT

1 Is it -- are you aware of testimony that physical evidence  
 2 linking Ms. Lobato may have been present, yet not collected?  
 3 A I think that the inference from the majority of the  
 4 people who have testified on this issue is that they just missed  
 5 it or there should have been something but they didn't find it,  
 6 and that's the sense that I got from the investigators who  
 7 testified.  
 8 MS. ZALKIN: And I'm holding what's been admitted  
 9 as State's Exhibit 2. May I approach the witness, Your Honor?  
 10 THE COURT: Yes.  
 11 BY MS. ZALKIN:  
 12 Q Actually, I'm going to display that.  
 13 A Okay.  
 14 Q Mr. Turvey, have you seen this photograph before?  
 15 A I have.  
 16 Q Can you please describe briefly what it reflects?  
 17 A It reflects the crime scene the night that it was  
 18 being processed. You have a bunch of detectives and scene  
 19 investigators standing around inside the scene, with the  
 20 vehicle providing light so that the collection efforts can be  
 21 engaged in. And I don't see any other light sources other than  
 22 the lamps that are in the parking lot. So they don't have their  
 23 own light source. They're using the vehicle to shine light in  
 24 there. And they're all standing around in the area where there

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TURVEY - DIRECT

1 might be other bloody footwear impressions.  
 2 Q And how big of an area would you expect to find  
 3 there's a possibility of evidence?  
 4 A Well, proper crime scene procedure suggests that  
 5 there should be at least three stages of crime scene barrier  
 6 tape, not just one. You have the barrier tape that goes around  
 7 the primary scene so that anyone who has a job to collect and  
 8 document and preserve should be inside that tape. The  
 9 second layer that the -- the secondary layer should be where  
 10 staging efforts are being conducted. That's where you keep  
 11 your bags, that's where you keep your materials, that's where  
 12 you keep your compounds, your preparations, your tools, and  
 13 your film and batteries and your vehicle, maybe. Maybe. And  
 14 your third layer is that's where you keep -- how you keep out  
 15 the media from them coming in and spoiling the scene, the  
 16 media and the public.  
 17 In this particular case there no discrimination made  
 18 whatsoever. We should have had barrier tape around much  
 19 tighter in, at least -- at least around where the police car is.  
 20 The back of the police car is where I would have put the tape.  
 21 I wouldn't even -- but I would not have put the police car in  
 22 the scene on top, potentially, on top of evidence. It's a little  
 23 disturbing.  
 24 Q Thank you. And I'm holding what has been

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TURVEY - DIRECT

1 previously admitted as Defendant's Exhibit B, as in boy. I will  
 2 ask you to please identify what you see here.  
 3 A This is the -- of the small version of the photograph  
 4 that I was originally shown, describing the interior of the  
 5 dumpster area. It's not very visible here, but you can see the  
 6 wheels on the bottom of the dumpster on the projector. You  
 7 can see the silver box I was referring to. This is, no, this is not  
 8 the same photograph that I was shown. This is a different  
 9 photograph. In this photograph the tripod is in a different  
 10 location. In the photograph you showed me before, the tripod  
 11 was underneath in -- was near the box. This is another  
 12 photograph with the tripod directly over another of the  
 13 footwear impressions or, excuse me, footwear patterns, bloody  
 14 footwear patterns.  
 15 Q And in your training and experience, is that  
 16 advisable to have items directly on top of physical evidence?  
 17 A Well, you would not have the -- the silver box is  
 18 entirely improper. That shouldn't be anywhere even inside this  
 19 area. It should -- it's --  
 20 Q Why?  
 21 A Because it could be on top of evidence.  
 22 Q And what --  
 23 A And it could be smearing around and smudging  
 24 evidence. You're dealing with bloody transfer that some of

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TURVEY - DIRECT

1 which may be visible, some of which may be not. You --  
 2 Q Some of which may be wet?  
 3 A Latent or invisible to the naked eye. You don't know  
 4 what's in there until you've processed it. You would not put  
 5 that stuff in there. You don't process the scene from on top of  
 6 the other evidence. That's a very bad policy. However, when  
 7 you are taking a one-to-one photograph of something that you  
 8 are going to make a comparison to, such as a fingerprint or a  
 9 footwear pattern or a tire tread, this particular type of  
 10 photography is entirely important. In fact it telegraphs to us  
 11 how important this piece of evidence was that they brought in  
 12 this particular type of equipment to take these particular types  
 13 of photographs because at the scene they determined how  
 14 important this evidence was and that it should be compared to  
 15 any and all suspects who came along, which they did.  
 16 Q Okay. And finally, Mr. Turvey, when you discussed  
 17 in the course of your presentation the plastic wrap, is -- and  
 18 this is, for the record, this is admitted as State's Exhibit 217,  
 19 can you please describe what appears on the screen?  
 20 A It appears to be the plastic wrap that may have  
 21 been removed from the body. I can't -- I can't be certain. I  
 22 can't vouch for the fact that this is that plastic wrap but I know  
 23 it's plastic wrap removed from the -- from the scene that's  
 24 covered in blood. It appears to be the plastic wrap but I can't

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TURVEY - CROSS

1 be certain.  
 2 Q And this is the same -- assuming this is the same  
 3 plastic wrap --  
 4 A Yes.  
 5 Q -- that was recovered from the body --  
 6 A Yes.  
 7 Q -- you have -- have you seen any evidence that this  
 8 was submitted for testing or not?  
 9 A Not to my knowledge, no.  
 10 Q Okay.  
 11 A And it's covered with blood. It would be rich. This  
 12 would be an excellent surface off of which to get latents and  
 13 be -- and plastic is a -- can be very -- can be very static and  
 14 attract, is a great attracter of hair and fibers, so it would have  
 15 the possibility of that as well.  
 16 MS. ZALKIN: Thank you. I'll pass the witness.  
 17 THE COURT: Cross.  
 18 MS. DIGIACOMO: Thank you, Your Honor.  
 19 **CROSS-EXAMINATION**  
 20 BY MS. DIGIACOMO:  
 21 Q Okay. Showing you State's Exhibit 217, where you  
 22 just looked off -- with defense counsel. This is the plastic  
 23 wrap, correct?  
 24 A Again, I can't vouch for the fact that this is the stuff

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## TURVEY - CROSS

1 that was taken off the body but this is --

2 Q Well, let's just assume this was what was taken off

3 the body and this is what you've been discussing as being an

4 important piece of evidence that should have been tested,

5 correct?

6 A Should have been, yes.

7 Q Okay. And in fact you've got in your report, I don't

8 have your actual PowerPoint, but this is the screen that you

9 had showed from your PowerPoint. Does this look familiar,

10 opinion Number 3, potential exculpatory physical evidence not

11 examined?

12 A Yes.

13 Q Plastic sheet wrap recovered from crime scene,

14 correct? This is what you just went through in your

15 PowerPoint?

16 A That's correct.

17 Q All right. Now this is such a critical piece of

18 evidence, correct, the --

19 A It is. It is an important piece of evidence, yes.

20 Q All right. And in fact you had testified that you gave

21 your or did your report back in October, 2005?

22 A That's correct.

23 Q Okay. And you tested -- or, excuse me, some of the

24 -- you listed things in your report that you use to draw your

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## TURVEY - CROSS

1 conclusions?

2 A That's correct.

3 Q All right. And you -- if we just go through this, Las

4 Vegas Metropolitan Police Department crime scene evidence

5 list, is that correct?

6 A That's correct.

7 Q Las Vegas Metropolitan Police Department crime

8 scene diagram?

9 A That's correct.

10 Q The Metro arrest and incident reports?

11 A That's correct.

12 Q The Metro crime scene and evidence reports?

13 A That's correct.

14 Q Metro investigators' reports?

15 A That's correct.

16 Q And when you say investigator reports, what do you

17 mean by that?

18 A They are investigators who write their own reports

19 about what occurred at the scene, their actions, their activities,

20 that sort of thing.

21 Q Okay. Well, which -- what investigators are you

22 talking about here?

23 A In this particular case you have, for example,

24 Detective Thowsen wrote a report, I believe, you have the

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## TURVEY - CROSS

1 crime scene analysis who wrote their own reports, you have

2 the coroner investigators who wrote reports, things of that

3 nature.

4 Q All right.

5 A Investigators of that nature.

6 Q Okay. And then you've got Metro voluntary

7 statements of witnesses. What do you mean by these?

8 A Witnesses who would have been related to the crime

9 or the crime scene. I'm not so concerned about, say, for

10 example, alibi witnesses or people looking to talk about

11 suspects, things unrelated to the case. I'm talking about

12 people who are witnesses to the crime or who are at the crime

13 scene.

14 Q What witness statements did you review?

15 A Diane Parker and her roommate. And I can't

16 remember his name at the moment.

17 Q Stephen King?

18 A I can't remember at this moment. I'd have to --

19 Q Okay. Did --

20 A -- refresh my memory.

21 Q Did you look at a report by Richard Shott?

22 A Yes, I did.

23 Q All right. So --

24 A A statement by him as well, I think.

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## TURVEY - CROSS

1 Q All right. Any other statements you looked at?

2 A Off the top of my head, I can't recall any. That

3 doesn't mean there weren't. But, again, I would confine my

4 examination to those things relative to the crime scene.

5 Q All right. And then you looked also at Metro forensic

6 laboratory reports of examination that were available to you

7 back in October, 2005?

8 A That's correct.

9 Q Well, actually, let me strike that. When did you get

10 hired by the defense?

11 A I was first contacted by the defense in August of

12 2005.

13 Q So when was it that they got you all these things for

14 you to review?

15 A I'd say within a couple weeks, maybe three weeks at

16 the most, I think.

17 Q So is it fair to say you'd have all the reports up and

18 through September, 2005?

19 A I can't say that with certainty. I only know what

20 they -- I only know what they gave me, and I can't say that

21 they had everything. So, no, I can't say that I had everything.

22 Q But you, when you made your report, and you just

23 kind of went through in your -- in your PowerPoint what you

24 had and what you didn't have?

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## TURVEY - CROSS

1 A That's correct.  
 2 Q So everything that you testified to today you had,  
 3 other than the additional stuff, you had by your report of  
 4 October 17<sup>th</sup>, 2005?  
 5 A Yes.  
 6 Q You looked at crime scene and autopsy photos?  
 7 A Yes. That's correct.  
 8 Q And the autopsy report that Dr. Simms did of Duran  
 9 Bailey?  
 10 A That's correct.  
 11 Q The autopsy evidence form. Is that all the evidence  
 12 collected at the time of autopsy?  
 13 A Yes. That would be correct.  
 14 Q You looked at the toxicology report from the  
 15 autopsy?  
 16 A That's correct.  
 17 Q You've got preliminary hearing testimony?  
 18 A Let's see. Yes. That's correct.  
 19 Q Would you have looked at the entire preliminary  
 20 hearing testimony?  
 21 A No. Again, I would try to confine my reading to  
 22 those things that are relative to people that have to do with  
 23 the crime scene or the body. So the detectives, the  
 24 investigators, the medical examiner, anything that was related

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## TURVEY - CROSS

1 to that, anything that was related to somebody that saw  
 2 something at the scene, not anything extraneous to that.  
 3 Q So only the detectives or medical examiner?  
 4 A No. Again, maybe if there was a witness.  
 5 Q Well, let me just -- well, let's phrase it this way.  
 6 A Sure.  
 7 Q There was a lay witness, a detective and a medical  
 8 examiner that testified at preliminary hearing. Which would  
 9 you have read?  
 10 A The detective and the medical examiner.  
 11 Q All right.  
 12 A Yeah.  
 13 Q So you would not read the testimony of somebody  
 14 by the name of Dixie Tienken?  
 15 A No, I would not.  
 16 Q And you next refer to the trial testimony of Dr. Lary  
 17 Simms?  
 18 A That's correct.  
 19 Q And that would have been from the prior  
 20 proceeding?  
 21 A That's correct.  
 22 Q Clark County Coroner's investigation reports. What  
 23 do you mean by that?  
 24 A I had reports that were labeled "Clark County

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## TURVEY - CROSS

1 Coroner's Investigator," and there were reports by  
 2 investigators from the Clark County Coroner's Office.  
 3 Q But these are the notes that we've been referring to.  
 4 They're called followup notes?  
 5 A I'd have to look through the documents that I've  
 6 got. But if you can see it's in capital -- it's capitalized there,  
 7 "Clark County Coroner's Investigation Reports," it's taken right  
 8 off the top of the report, just to be clear. So it wouldn't be a  
 9 note, no, wouldn't be their notes.  
 10 Q Okay. So later in your report where you reference  
 11 followup notes from the Clark County Coroner's Office, that  
 12 would be different than these investigator reports?  
 13 A Precisely right.  
 14 Q All right. You also looked at reports and testimony  
 15 of Criminalist Tom Wahl?  
 16 A That's correct.  
 17 Q Report and testimony of Joe Geller, fingerprint  
 18 examiner?  
 19 A That's correct.  
 20 Q Important testimony of another expert witness at  
 21 the first trial?  
 22 A Yeah. George Schiro from Louisiana. Yes.  
 23 Q That's correct. And then it says, "Metro reports and  
 24 witness statements related to the sexual assault with the

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## TURVEY - CROSS

1 weapon of Diane Parker." So you looked at not only her  
 2 statement but all of the reports surrounding that incident?  
 3 A That's correct.  
 4 Q Anything else back then that you looked at?  
 5 A Again, that's why I put included but limited to. I'm  
 6 sure that I looked at other items and I'm sure that I reviewed  
 7 other documents.  
 8 Q But you --  
 9 A But they --  
 10 Q Well, you did testify you took your own photographs  
 11 at the scene. You would have considered those?  
 12 A I would have.  
 13 Q All right. Now since you've given your additional  
 14 report, have you also, and I believe we've gone through this,  
 15 you looked at a report from Kristina Paulette regarding the  
 16 pulled pubic hair?  
 17 A One, yes. Yes, I have, regarding --  
 18 Q And --  
 19 A One report regarding the pulled pubic hair.  
 20 Q And last Wednesday you also saw another report  
 21 from Kristina Paulette regarding the cigarette butts?  
 22 A Yes, I did.  
 23 Q Now, did you look at the report from Myriad  
 24 regarding the testing of the rest of the sex assault kit?

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## TURVEY - CROSS

1 A Yes, I did.  
 2 Q Okay. When would that have been looked at?  
 3 A I'm imagining that would have been looked at at the  
 4 same time as I reviewed the other items of evidence that I  
 5 got, unless I got it at a later time which I can't imagine that  
 6 I --  
 7 Q Well, if --  
 8 A Which I may have.  
 9 Q Okay. If that report was done the beginning of this  
 10 year, would you have gotten it then?  
 11 A No.  
 12 Q Okay. So you could have done it close to trial?  
 13 A I could have. Yeah, I would have gotten it. I would  
 14 have gotten it as soon as defense got it and they got it to me.  
 15 And I could, I probably -- if I had the report in front of me, I  
 16 could look at my fax and see the date that I received it. But if  
 17 I don't list it, I would be surprised if I had it if I didn't list it  
 18 here.  
 19 Q Okay.  
 20 A Because that was an important report.  
 21 Q And before testifying today, what have you reviewed  
 22 of this trial?  
 23 A I made certain to get the CD, the copies of the CDs  
 24 that were being given to defense counsel, of the Court TV

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## TURVEY - CROSS

1 coverage and looked at only, and I made a list if you'll -- if I  
 2 may refresh my memory with my notes.  
 3 Q That's fine if that will refresh your recollection.  
 4 A Yes. I watched the testimony of Dr. Simms, the  
 5 medical examiner, coroner, of Shelley Stauffer, who's name I  
 6 previously messed up, the coroner investigator, of Detective  
 7 Thowsen from Metro, of CSA Louise Renhard, of CSA Joe  
 8 Geller, of Criminalist Wahl, and both -- I was -- I watched  
 9 Criminalist Paulette's testimony on DVD, and then I was in  
 10 court this morning and watched her testify the second time.  
 11 And I may have seen other portions of other testimony, and I  
 12 think I might have watched Ms. Mains [sic] testify as well. And  
 13 I think there was another, Ford, CSA Ford.  
 14 Q And you're saying Mains. Do you mean Maria  
 15 Thomas?  
 16 A Maria. My apologies. Maria Thomas, the -- from the  
 17 coroner's office. Yes.  
 18 Q Anything -- anyone else?  
 19 A There may have been. Like I said, I may have  
 20 watched other portions but I didn't specifically take notes on  
 21 them.  
 22 Q What about testimony of a Dr. Michael Laufer?  
 23 A You know, I didn't actually watch Dr. Laufer's  
 24 testimony.

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## TURVEY - CROSS

1 Q Now, why not?  
 2 A Well, he wasn't of interest to me. He is opining  
 3 about wound patterns and that sort of thing. It really wasn't  
 4 related to my particular findings in this case and I had other  
 5 testimony to watch that was more vital, more important.  
 6 Q Well, you watched the testimony of Dr. Simms.  
 7 A Yes.  
 8 Q Okay. That was important to you?  
 9 A Yes. But I read Dr. Laufer's report so I knew what  
 10 he was gonna testify to.  
 11 Q Oh, you did read his report?  
 12 A Yeah.  
 13 Q When did you do that?  
 14 A I got it just about a couple weeks, oh, maybe a  
 15 week before I testified, maybe two weeks ago.  
 16 Q So a week ago, two weeks ago?  
 17 A Yeah, very, very recently.  
 18 Q Okay. Now, do you know which version of his report  
 19 you got? There's --  
 20 A I don't.  
 21 Q Did you know there were three different reports?  
 22 A I -- no.  
 23 Q But you were provided with one?  
 24 A I was provided with one. And let me -- let me

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## TURVEY - CROSS

1 correct that and say I may have been provided with a previous  
 2 version of it. But, again, I would know that it was preliminary  
 3 and would be waiting for a final report. So I may -- it may --  
 4 that's entirely possible. I work a lot of cases, so it's entirely --  
 5 Q Would it change your mind if I told you that none of  
 6 his prior reports were labeled preliminary?  
 7 A No. Like I said, I may have gotten a previous  
 8 version. I -- but I somehow doubt it.  
 9 Q Now --  
 10 A I'm just trying not to mislead anyone here about  
 11 what I got and when I got it.  
 12 Q No, that's fine.  
 13 A I only recall getting the one report. If I got another  
 14 one, I don't recall it.  
 15 Q Okay. But you know you looked at one of his  
 16 reports?  
 17 A Just the one, yes.  
 18 Q And --  
 19 A Not looked at. I read.  
 20 Q You read?  
 21 A Yes.  
 22 Q Did you see any photographs associated with his  
 23 report?  
 24 A I was allowed to, not allowed to, I was given the

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## TURVEY - CROSS

1 opportunity to review his PowerPoint presentation before he  
 2 testified.  
 3 Q So the one that was done right before he testified?  
 4 A That's --  
 5 Q Last week?  
 6 A That's correct.  
 7 Q Okay. Now, did his -- reviewing his PowerPoint or  
 8 reading his report change any opinions you formed in this  
 9 matter?  
 10 A Oh, it made them stronger.  
 11 Q How so?  
 12 A He just -- it was very impressed with the way he  
 13 was able to demonstrate his and sort of show his very  
 14 compelling theory that scissors were involved in the  
 15 commission of the crime and it sort of showed the -- sort of  
 16 the disinterest that there was in this case of attention to  
 17 reconstruction issues. And so I was impressed by that. And  
 18 then also the issue of how the injury to the head was received,  
 19 being hit against a hard surface rather than being beaten with  
 20 a baseball bat. I'm very much -- I'm very much in support of  
 21 that theory. I think that theory was very well borne out by his  
 22 findings.  
 23 Q Did you also support his theories that some of the  
 24 wounds are actual blunt force trauma instead of incise

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## TURVEY - CROSS

1 wounds?  
 2 A I'm not -- I'm not a medical doctor so I don't really -  
 3 - I don't know the qualify of that interpretation. You'd have to  
 4 ask somebody else.  
 5 Q Well, here's another page from your PowerPoint,  
 6 opinion 3, potential exculpatory physical evidence not  
 7 examined. You talk about the cigarette butts, correct?  
 8 A That's correct.  
 9 Q And at the time that you said that you did this, you  
 10 had no knowledge that the cigarette butts had been tested at  
 11 the time you did your PowerPoint?  
 12 A That's correct. There was no report indicating that  
 13 they had been tested.  
 14 Q Okay. You did not get the report until last  
 15 Wednesday, correct?  
 16 A Yes, that's correct.  
 17 Q September, actually --  
 18 A 27<sup>th</sup>.  
 19 Q 27<sup>th</sup>. Thank you.  
 20 A Yeah. I think we're there.  
 21 Q And then you also have this page of your  
 22 PowerPoint, potential exculpatory evidence not examined, and  
 23 you talk about the sexual assault kit that wasn't tested.  
 24 A Well, wasn't fully tested. It was -- there was only --

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## TURVEY - CROSS

1 there were two items that -- other items in the sexual assault  
 2 kit that weren't tested.  
 3 Q What items weren't tested?  
 4 A Again, we're talking about the pulled pubic hair and  
 5 the penile swab.  
 6 Q Okay.  
 7 A That's -- it's from my quote right there, I think.  
 8 Q But the penile swab and the pubic hair combings  
 9 have been tested, correct, by --  
 10 A At this point, yes.  
 11 Q At this point. But you're saying at the time that you  
 12 made your PowerPoint they hadn't been tested yet, right?  
 13 A Not to my knowledge, no.  
 14 Q Not to your knowledge. So when you made your  
 15 PowerPoint, when was it?  
 16 A I made the PowerPoint, I made the -- well, let me --  
 17 let me correct this and say that I made two PowerPoint  
 18 presentations in this case, one that I made about a few days  
 19 before I testified to summarize my findings, and then I  
 20 submitted that and I was asked to change it for purposes of  
 21 evidence by the --  
 22 Q And you --  
 23 A -- by the Judge.  
 24 Q And you were asked to change it last Friday,

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## TURVEY - CROSS

1 correct?  
 2 A I think that's correct.  
 3 Q And you actually had to change every slide,  
 4 something on every slide in your PowerPoint, correct?  
 5 A I changed the header. Instead of just putting  
 6 Number 1, I put opinion. I added -- I added the single word  
 7 "Opinion" to every slide.  
 8 Q Right. So you did have to go in and change every  
 9 slide, including the introductory slide?  
 10 A Yes.  
 11 Q Okay. And at the time that you went in and  
 12 changed it over the weekend, you didn't change the fact that  
 13 the cigarette butts were not examined even though you had  
 14 those findings?  
 15 A I certainly did not.  
 16 Q Okay.  
 17 A Because I had already submitted it as a final  
 18 PowerPoint presentation previously and I didn't want to -- I  
 19 didn't want to change the content or the flavor of it and the  
 20 tempo to surprise anybody. I wanted to make sure that it was  
 21 consistent with what I had handed in before.  
 22 Q Even though you were gonna -- you planned on  
 23 testifying regarding the findings?  
 24 A Certainly.

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## TURVEY - CROSS

1 Q Okay. And the same with the sexual assault kit.  
 2 You had the opportunity to update this with regard to  
 3 everything you viewed. Over the weekend, you chose not to?  
 4 A No, I did update it. I think you're looking at only  
 5 one slide. And if you look at the next slide, you'll see that. I  
 6 wanted to point out the fact that I had noticed up that this  
 7 was an issue.  
 8 Q Okay.  
 9 A Earlier, that I had noticed up this was an issue a  
 10 year ago and it is just now being resolved. And I think that's  
 11 pretty important.  
 12 Q Okay.  
 13 A So in the -- in fairness to what my original report  
 14 said and what was being done now, I wanted to make sure  
 15 that there was no -- that the jury understood that there was  
 16 an original finding and that there is a current finding.  
 17 Q Okay. And --  
 18 A So I wasn't trying to surprise anybody.  
 19 Q And that's what you're talking about here as well  
 20 with the plastic sheet wrap recovered from the crime scene  
 21 was never examined for latent or bloody prints?  
 22 A My original finding, yes.  
 23 Q Your original finding?  
 24 A Mm-hmm.

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## TURVEY - CROSS

1 MS. DIGIACOMO: Okay. Your Honor, may I  
 2 approach?  
 3 THE COURT: Approach the witness, approach the  
 4 clerk?  
 5 MS. DIGIACOMO: Yes. May I approach the witness?  
 6 I'm sorry.  
 7 THE COURT: Yes, you may approach the witness.  
 8 MS. DIGIACOMO: Okay.  
 9 MS. ZALKIN: Counsel, may I see that since I did the  
 10 direct on this witness? Thank you. Thank you.  
 11 MS. DIGIACOMO: May I approach?  
 12 THE COURT: Yes.  
 13 BY MS. DIGIACOMO:  
 14 Q I'm gonna show you your original report dated  
 15 October 17<sup>th</sup>, 2005.  
 16 A That seems to be a copy of the one I have right  
 17 here.  
 18 Q Okay. So if you could go ahead and turn to the  
 19 page in your report where you talk about the plastic wrap that  
 20 should have been tested.  
 21 A This may take a moment.  
 22 Q That's fine.  
 23  
 24 THE COURT: Ms. DiGiacomo, has a copy of that

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## TURVEY - CROSS

1 report been marked for identification purposes?  
 2 MS. DIGIACOMO: No. Would you like one, Your  
 3 Honor?  
 4 THE COURT: Yes, please.  
 5 MS. DIGIACOMO: May I approach?  
 6 THE COURT: Yes.  
 7 MS. DIGIACOMO: State's -- and, Your Honor, for the  
 8 record this will be State's Proposed Exhibit, for identification  
 9 purposes only, as 271.  
 10 May I approach the witness again?  
 11 THE COURT: Yes.  
 12 BY MS. DIGIACOMO:  
 13 Q I'm gonna ask you if you could look at it on State's  
 14 Proposed Exhibit 271 so the record is clear.  
 15 A Oh, certainly.  
 16 Q Thank you.  
 17 A All right. This one's highlighted, just to be clear.  
 18 Q Okay. That's the --  
 19 A It's not an original.  
 20 Q That's the only copy I have that's not written on.  
 21 A I just wanted to note that I didn't highlight it.  
 22 Q No. That's correct. It was me.  
 23 A Okay.  
 24 (Pause in the proceedings)

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## TURVEY - CROSS

1 A I mentioned the plastic bag on page 6. The first  
 2 time I'm seeing it is page 6, third paragraph down, "As evident  
 3 in photograph" --  
 4 Q Well, hold on a second. Let me catch up to you.  
 5 A Certainly.  
 6 Q Page 6. Third paragraph where?  
 7 A Third paragraph. "As evident in photograph  
 8 40400009, JPEG, these cigarette butts were located under a  
 9 plastic bag that shielded them from the garbage that was  
 10 subsequently placed on top of the body. This associates them  
 11 more directly with the crime and any related activity."  
 12 Q Right. And you're just talking about the cigarette  
 13 butts should have been tested. You don't have in here that  
 14 the plastic wrap itself should have been tested for fingerprint  
 15 or latent prints, correct?  
 16 A Not in that section. And I may not have said it in  
 17 this report. In fact I'm not seeing that I did.  
 18 Q Okay. So is it possible you were mistaken that this  
 19 was one of the your original findings?  
 20 A Did I say that it was an original finding or did I say  
 21 that --  
 22 Q You just -- you just testified it was one of your  
 23 original findings.  
 24 A Again, original findings back at the time of this

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TURVEY - CROSS

1 report. That doesn't mean I actually put in the report. That  
2 doesn't mean that I actually -- 'cause there are a lot of  
3 evidence items that could have been included. We could have  
4 spent days listing all the things that were not tested in this  
5 scene, but I --  
6 Q So but --  
7 A By mentioning it, I think we bring it up, we notice it  
8 up in saying this is a plastic bag, it associates things with the  
9 body, therefore, it's associated with the suspect. It's not  
10 unimportant.  
11 MS. DIGIACOMO: Okay. May I approach?  
12 THE WITNESS: Certainly.  
13 BY MS. DIGIACOMO:  
14 Q All right. But you have to agree with me that within  
15 your report when you're talking about items that should have  
16 been tested, there's subheadings, "Sexual Assault Kit."  
17 A That's correct.  
18 Q "Cigarette Butts."  
19 A That's correct.  
20 Q And "White Paper Towels."  
21 A Those are, again, three taken from hundreds.  
22 Q Okay. But you found it important enough, though,  
23 to put this in your PowerPoint about the plastic sheet and wrap  
24 that should have been tested?

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TURVEY - CROSS

1 A I think you've -- let's take a look at the front of that  
2 report there. I think you'll find that I -- yeah, hold on a  
3 second here. The reason why that was important is 'cause I  
4 got the -- well, no, that was the paper towels. My apologies.  
5 Absolutely. Absolutely, this is subheadings and these are three  
6 items taken from hundreds that could have been mentioned.  
7 Q Okay. When was it that you decided to put in your  
8 PowerPoint this plastic sheet or wrap?  
9 A Well, I didn't make the PowerPoint presentation until  
10 just before the -- just before testimony, a few days before  
11 testimony. But I had been talking with defense counsel many  
12 times about the various different items of evidence that could  
13 be tested.  
14 Q Well, is it fair to say that you learned that it's  
15 important about the plastic sheet or wrap to their defense and  
16 that's why you included it?  
17 A It is not fair to say that, no. Because, again, I  
18 mentioned it in my report. It's in at least two places, so --  
19 Q Where is the second place?  
20 A I think it's right down at the bottom of the page  
21 there, right after the --  
22 Q Okay. But where you mention it, you've mentioned  
23 it with respect to the cigarette butts, not that it needs to be  
24 tested.

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TURVEY - CROSS

1 A Yeah, but I mentioned it as an item that associates  
2 things with the scene which means it's something that the  
3 offender, in my view, would have put over the body. Anything  
4 the offender touched is gonna be important. Now --  
5 Q So -- I'm sorry. You don't specifically say in your  
6 report --  
7 A No.  
8 Q -- that it needed to be tested. But you're saying  
9 now you're including it because anything that the offender  
10 should have touched should have been tested?  
11 A I think so. But we have -- this item is particularly  
12 associated with covering up items at the body. And --  
13 Q Right.  
14 A And because of its -- because of its context in this  
15 crime, it's absolutely vital. There is no -- there's no cherry  
16 picking going on here. I could go through and list off  
17 hundreds of things in the scene.  
18 Q But if it's absolutely vital, you have to agree with  
19 me, sir, you did not include it in your report.  
20 MS. ZALKIN: Objection, asked and answered, Your  
21 Honor.  
22 THE COURT: Sustained.  
23 THE WITNESS: It's in there, just not the way you  
24 like it.

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TURVEY - CROSS

1 THE COURT: The objection was sustained.  
2 THE WITNESS: Oh. My apologies.  
3 BY MS. DIGIACOMO:  
4 Q Now you said that the primary motive with a  
5 scientific method is to prove or refute a theory or confirm or  
6 refute a theory?  
7 A I did not use the word "motive."  
8 Q No. I said the primary -- oh, okay. What is the --  
9 what are you saying then with the scientific method? What's  
10 the primary purpose of it?  
11 A The primary purpose of the scientific method.  
12 Q Is to confirm or refute a theory?  
13 A It is actually the primary purpose of the scientific  
14 method to develop hypotheses that you're going to try to  
15 refute, that you're gonna try to beat up. And the ones that are  
16 the strongest will survive that process.  
17 Q All right. So when you look at a case such as this  
18 when you're giving all the evidence, the reports, the  
19 photographs, what is your theory or hypothesis you're starting  
20 with?  
21 A I don't start with one, typically. I'm just reading to  
22 learn. It's like the -- it's like reading a book. You don't know  
23 what the ending's gonna be. You start out, you read it. You  
24 may have ideas, you may have thoughts, but you're gonna go

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TURVEY - CROSS

1 all the way to the last page before you figure out what exactly  
2 happened. And that's the discipline.

3 Q All right. So where is this hypothesis that you come  
4 up with that you're either gonna confirm or refute?

5 A In this particular case, you're -- the hypothesis is  
6 that somehow there is a connection between Kirstin Blaise  
7 Lobato, the defendant, and the crime scene or the vehicle and  
8 the crime scene. And I think the police and the medical  
9 examiner and the crime lab did a good job of disconfirming  
10 that theory. There is no evidence whatsoever connecting  
11 either the car or Kirstin Lobato herself or her clothing or her  
12 possessions to the crime scene or to the crime in general.

13 Q All right.

14 A So that's the theory that we start out with, is there  
15 an association. And if there's no association, there's no proof  
16 of it, then you have to say that hypothesis has been  
17 disconfirmed.

18 Q So the only hypothesis here is whether or not the  
19 defendant had any connection to the crime scene?

20 A That's -- no. You asked me what did I -- what was I  
21 -- what was I asked to look at. And in this particular case  
22 that's one of the issues I was looking at. Then another issue  
23 would be what are the possible motives here. And we -- like  
24 we talked about, there are multiple motives for the type of

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TURVEY - CROSS

1 crime. Is it profit? Well, there's no evidence that any -- I  
2 mean, anything was stolen from this person, there's no  
3 evidence that he had any valuables, anything that anyone  
4 would have wanted to take, there's no evidence that the -- a  
5 person was necessarily sexually, well, there's no evidence that  
6 they were -- that this was all about power or anything like --  
7 any of the other motives that I listed off. The most consistent  
8 motive for all the behavior is anger. So, again, you're trying to  
9 -- you come up with all these possibilities and you beat off the  
10 ones that don't fit.

11 Q Okay. So you cannot sit here today and say -- you  
12 cannot exclude the defendant as being the person who  
13 committed this crime?

14 A I'm not here to testify who committed this crime at  
15 all. That is a legal question. It's a question for the jury. I  
16 would never intrude on that, not for any reason.

17 Q Okay. All you can say is there is no physical  
18 evidence in your opinion that links the defendant to the crime  
19 scene?

20 A That's correct. Or her vehicle.

21 Q Okay. Now with regard to looking at a crime scene  
22 and doing reconstruction and looking at Locard's Exchange  
23 Principle, explain what you mean by evidence dynamics.

24 A Evidence dynamics is the way that evidence changes

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TURVEY - CROSS

1 from the moment that it is transferred to the scene and it is  
2 ultimately disposed of after a case is done. There -- it goes  
3 through changes, whether those changes be chemical,  
4 biological, there would be whether there would be failure to  
5 collect. The item of evidence maybe gets bags in and then  
6 they're lost. It's a -- I mean, evidence in its own state is  
7 dynamic. It suffers influences as time goes forward.

8 Q In fact there's approximately fifteen different things  
9 that can affect the evidence?

10 A I'd say there -- I'd say there are thousands. But if  
11 we --

12 Q That you list?

13 A I think we -- I think we list fifteen.

14 Q Okay.

15 A We give fifteen examples in the -- in the -- Jerry and  
16 I talk about fifteen common examples.

17 Q All right. And the most common or the one you  
18 listed first is offender actions?

19 A Yes. That's correct.

20 Q What do you mean by offender actions?

21 A Well, sometimes offenders attempt to either conceal  
22 their involvement in a crime, well, they attempt to conceal  
23 their involvement in a crime by either moving a body from a  
24 primary scene to a disposal site because they're associated

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TURVEY - CROSS

1 perhaps with the primary scene and they -- if the body's found  
2 there, they're going to be thought of as a suspect so they  
3 move the body. That's one way. Another way would be -- so  
4 that's moving evidence. Another way would be to try to clean  
5 it up, to try to get rid of evidence that the crime occurred or  
6 their involvement in the crime. Yet another way is crime scene  
7 staging where they try to make it look like something  
8 happened that didn't happen. All of these are theories that  
9 must be tested against the evidence. You can't just go and  
10 say, ah-ha, it must be this one 'cause I didn't find this or it  
11 must be this one 'cause I like this one. You come up with  
12 these theories and you must try to examine them in light of  
13 the evidence that you have. And the less evidence you have,  
14 the harder that is.

15 Q So it's possible sometimes persons who commit  
16 homicides can try and confuse, hamper or defeat investigative  
17 or forensic efforts in order to conceal their identity or the crime  
18 itself?

19 A I've seen that many times, yes.

20 Q All right. And in this case you're aware that there  
21 was pound -- or mounds and mounds of trash that covered the  
22 body, correct?

23 A I wouldn't say mounds and mounds 'cause the body  
24 itself wasn't actually concealed. You could see the sock, you

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## TURVEY - CROSS

1 could see portions of the body through that. I'd say there was  
2 some trash. There was trash that was put on it. I've seen  
3 cases where the body's just been buried under trash.

4 Q Okay. But there --

5 A And this isn't that.

6 Q There was enough trash here where the entire back  
7 of the dumpster area was covered in trash?

8 A I'd say that's a fair statement.

9 Q All right. How does this play into your opinions  
10 regarding why there's so physical evidence linking the  
11 defendant to the crime?

12 A It doesn't.

13 Q So it doesn't affect whatsoever the fact that this  
14 person tried to conceal what they did or the body in trash?

15 A Just throwing trash on top of evidence doesn't make  
16 the evidence go away.

17 Q Okay. So it's your opinion that there was evidence  
18 there that would have linked whoever did it to the crime  
19 scene?

20 A I think we have it, yes.

21 Q We do? What is it?

22 A I would say we would start with the -- with the  
23 bloody footwear patterns. And I think that the police were in  
24 agreement with that theory the moment they started collecting

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## TURVEY - CROSS

1 A I know.

2 Q -- how do you know that those tire tracks are  
3 connected to that crime scene?

4 A Because they're at the crime scene and they're wet.  
5 So they're proximal.

6 Q Where are you getting that they're wet?

7 A From the photographs I looked at, they appear to be  
8 wet to me. But that's just my opinion.

9 Q Okay. So you think the -- they're wet?

10 A They appear to be in my opinion. They -- like I said,  
11 I'd like to have more evidence and I'd like to have that looked  
12 at more thoroughly. I'd be -- I'd be pleased if it were better  
13 documented.

14 Q So because they're wet the --

15 A Because they might be wet.

16 Q Because they might be wet, it's possible they're  
17 connected to the crime scene?

18 A It's more likely that they're connected.

19 Q Okay. But it's possible they're not connected to the  
20 crime scene?

21 A That is a possibility.

22 Q Okay. And it's also possible that whoever left the  
23 footwear impression is not the killer?

24 A And, again, the police were diligent enough to

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## TURVEY - CROSS

1 those things. And the tire tracks. Those are things that would  
2 link back.

3 Q How do you know when you can date those things?

4 A When you can date them? You can't.

5 Q You can't. So it's very possible those bloody  
6 footprints had nothing to do with the actual killing?

7 A I'd say possible but so unlikely as to I would -- I  
8 would probably -- I would be embarrassed to mention the  
9 possibility.

10 Q Well, you're aware that the footprints were not  
11 completely dry when the body was found?

12 A I'm aware that some of them weren't. I don't think  
13 they made an accurate record of that. I think some of the  
14 thicker areas of blood were wet and some of the thinner areas  
15 were dried up and had blown away. Some areas were dry and  
16 some areas weren't. And we're going off, I think, the guy's  
17 recollections. Some of them were, some of them weren't.

18 Q Right. And with regard to the tire tracks, how do  
19 you know that that was actually connected to the crime scene?

20 A Well, I think we proved that it -- that it wasn't  
21 connected to Blaise Lobato and that's --

22 Q No, that's not my question.

23 A -- the important question.

24 Q My question is --

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## TURVEY - CROSS

1 collect these items of evidence. So that means in their minds  
2 it was very important at the time. So I'm willing to -- I'm  
3 willing to go along with that and go with what they collected.

4 Q Okay. But my question was, sir, it's possible that  
5 whoever left the bloody footwear impressions is not connected  
6 to the killing?

7 A Again, it's possible but I'm embarrassed to mention  
8 the possibility.

9 Q But it's possible?

10 A It's possible.

11 Q Now when you were going through the things that  
12 you looked at, you said you wouldn't have looked at any alibi  
13 witnesses, as you mentioned, but you would only care about  
14 people who had knowledge of the crime scene itself or claimed  
15 to be at the crime scene, correct?

16 A Or claimed to be associated with the crime of that or  
17 an associated -- a potentially associated crime.

18 Q Okay. Now if every contact leaves a trace at a crime  
19 scene, does that mean that you always have to find proof of  
20 whoever the suspect is at a crime scene?

21 A I think that in many cases it's been borne out that  
22 that does not happen.

23 Q Okay. So it is possible that you can have a crime  
24 scene where there's not physical evidence linking the person

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TURVEY - CROSS

1 who committed the crime to it?

2 A I would not agree with that. I would agree that  
3 there -- it is possible that there are types of physical evidence  
4 that are left behind that, for whatever reason, get missed by  
5 the investigation either because they don't have the competent  
6 training, the competent skills, the right experience, the right  
7 knowledge or it's a type of evidence that we just can't detect.  
8 It's at a level that we can't detect it.

9 Q Okay. So it's possible in this case that the defendant  
10 left physical evidence at the scene and we just don't know  
11 about it?

12 A Just to be clear, you're asking me to ignore the  
13 mountain of physical evidence that excludes Lobato, the --

14 Q No, what I meant --

15 A -- mountain of evidence that we did find, we're  
16 ignoring all that and saying there's some other evidence that  
17 was not -- that was there?

18 Q Well, you're just -- you testified earlier that there's  
19 evidence that was missed, there's evidence that should have  
20 been collected, there were --

21 A Yes.

22 Q -- things that were not done.

23 A Absolutely.

24 Q What I'm saying is it is possible that those things

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TURVEY - CROSS

1 as a hypothetical question to an expert.

2 THE WITNESS: I will not assume that she was  
3 there. And since I cannot assume that she was there, the  
4 answer to your question is, no, it is not possible. Unless I had  
5 proof -- if I had proof that she was there, if I had proof that  
6 she was there and you were to ask me she was there, Mr.  
7 Turvey, everybody knows that, is it possible there's evidence  
8 that she might have been there, yes, then it would be possible.  
9 I mean, without any evidence that she was there, without any  
10 proof that shows that she's at the location, I can't assume that  
11 for the purposes of your hypothetical. That would be not just  
12 inappropriate. It would be borderline unethical.

13 BY MS. DIGIACOMO:

14 Q Okay. So without somebody saying or without her  
15 saying I was there, you're not gonna even assume that there's  
16 possible physical evidence that would have linked her to the  
17 scene there that was missed?

18 A That would be what we call reductive reasoning,  
19 working back through the facts to find things that you like.  
20 Again, we already warned against that. That's a real problem  
21 in this kind of work. You can't decide on a theory and then  
22 just go, well, just 'cause I didn't find it doesn't mean it wasn't  
23 there. You've got to prove it. This is -- and you lawyers do it  
24 differently than forensic scientists do. We are not allowed to

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TURVEY - CROSS

1 you're saying that weren't done, that her evidence or her  
2 physical evidence could have been left with, her physical trace  
3 or whatever you want to call it, her contact?

4 A I don't know that's the case 'cause I don't know that  
5 she was ever there. I have no evidence that she was there.

6 Q I'm asking you, sir, is it possible?

7 A I really don't like the way you phrased the question.  
8 And I think it -- I think it misleads the issue. So I don't think I  
9 can answer it in the way that you like.

10 Q Okay. I'm not asking you to give me an answer I  
11 like. I'm asking you --

12 A No.

13 Q -- is it possible since we have -- that the police in  
14 this case missed collecting evidence and/or testing it, is it still  
15 possible that some of that evidence, if it had been collected or  
16 had been tested, could lead to the defendant?

17 A You're asking me to assume that she was there and  
18 I can't do that.

19 MS. ZALKIN: Your Honor, I'm gonna object as this  
20 line of questioning assumes facts not in evidence, that it's  
21 posed as a hypothetical, so be it, but it doesn't appear to be --

22 MS. DIGIACOMO: This is a hypothetical, Your  
23 Honor.

24 THE COURT: The Court will overrule the objection

XVI-199

TURVEY - CROSS

1 assume facts for the purposes of our analysis. In fact I have a  
2 very specific ethical guideline in my canon of ethics which  
3 states that very -- that very thing. We are not allowed to  
4 assume facts for the purpose of analysis, and that's what  
5 you're asking me to do. I would not do that.

6 Q But aren't you making an assumption when you say  
7 that she's not at the scene because there's no physical  
8 evidence that links her there?

9 A I'm saying there is no physical evidence that links  
10 her to the scene. I'm not saying that that means that she was  
11 never there. I'm saying you -- we have not shown it. I'm  
12 saying there is no evidence that links her to the crime scene.  
13 That is an accurate statement.

14 Q Okay. So you're just saying there's no evidence that  
15 links her there. You're not saying that she couldn't have been  
16 there?

17 A That's a whole other area of questioning that has  
18 nothing to do with physical evidence. That's -- you're, again,  
19 you're asking me to assume something that's not in evidence  
20 or assume a fact that's not there. The evidence that has been  
21 tested, which has been everything that we've asked -- or,  
22 excuse me, it's been everything that's been tested so far has  
23 excluded her.

24 Q As being at the scene?

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000839



## TURVEY - CROSS

1 A As being at the scene and as her car being at the  
2 scene. And those are the --  
3 Q Okay.  
4 A Those are the issues that I testified here today.  
5 Q But if we were to assume that she said she was at  
6 the scene, then you could answer the question? If she said I  
7 was at that scene, 'cause you just said a minute ago that you  
8 couldn't answer the fact that it's a possibility --  
9 A Right. Oh, okay.  
10 Q -- unless you knew she was there. So if I say, okay,  
11 let's assume she said she was there, doesn't that change your  
12 opinion?  
13 A Yes.  
14 Q Okay. How so?  
15 A If she was at the scene, inside of it, I would expect  
16 to find her footwear patterns in blood all over the place.  
17 Q Okay. 'Cause you're assuming that whoever did this  
18 killing had to get their feet wet in blood?  
19 A I don't know how they couldn't have. Looking at  
20 that crime scene, looking at these photographs, with my  
21 education, training and experience, I don't see how they could  
22 have gotten anywhere near that body without getting blood all  
23 over their feet.  
24 Q All over both feet?

XVI-202

## TURVEY - CROSS

1 Q Okay.  
2 A At least.  
3 Q And you're saying that because you know that there  
4 was only right footwear impressions found at the scene?  
5 A I know that's what was testified to, but I don't know  
6 that that's the case 'cause I didn't do the examinations myself  
7 and I didn't -- I didn't see Bodziak doing them. So I know  
8 that's what was testified to, but I don't necessarily agree with  
9 it.  
10 Q Okay. You --  
11 A I don't necessarily know. I know that that's what  
12 was testified to.  
13 Q I was gonna say you don't agree 'cause I thought  
14 you made all of your deductive reasoning from what you found  
15 at the scene, the --  
16 A I did?  
17 Q -- crime scenes. You said Bodziak's report.  
18 A I did? Bodziak's report, yes, talked about shoe size.  
19 Q But you say you don't necessarily agree?  
20 A I don't necessarily agree that it's only right feet  
21 'cause I haven't seen it. I haven't seen the actual comparison  
22 of each individual shot and made an analysis to say that it was  
23 only right feet. I don't know that to be the case.  
24 Q Okay.

XVI-204

## TURVEY - CROSS

1 A Well, it depends on how they stepped through it or  
2 how careful they were. But getting blood all over their feet,  
3 but not -- it's not always transfer on the concrete. There was  
4 no luminol applied. I wouldn't --  
5 Q Oh, wait, wait. Let's back up.  
6 A Well, sure.  
7 Q So you would expect that they would, because of  
8 the bloody crime scene, in the back southwest corner --  
9 A Yes.  
10 Q -- where all the concentration of blood was, it wasn't  
11 -- it wasn't to the east of the body?  
12 A Yes.  
13 Q You'd expect that whoever did the killing would have  
14 blood all over their feet, both feet?  
15 A I said at least one. That's what I said.  
16 Q No, you didn't say it. You said both feet.  
17 A Well, I corrected myself but you're not listening to  
18 that. So --  
19 Q Okay. So now you're saying they would have --  
20 A Well, I'm not.  
21 Q No. Okay. Well, let's say, because of the amount of  
22 blood in your experience at the crime scene, they would have  
23 to have blood at least on one shoe now?  
24 A Yes.

XVI-203

## TURVEY - CROSS

1 A Bodziak's report has -- is specific to the footwear  
2 size, the brannock device that he used, the measurements he  
3 made.  
4 Q Right. But you saw Joe Geller's testimony?  
5 A Yes, I did.  
6 Q And the CSA's testimony and the detective's  
7 testimony?  
8 A Right.  
9 Q Okay. So if they all said it was only a right foot  
10 impression, you still wouldn't agree?  
11 A I'd like to be shown myself. I'd like to see pictures  
12 myself that of -- of every footwear pattern that was collected.  
13 We're getting lots of surprises in this case, lots of last minute  
14 stuff, lots of reports coming out at the last minute. It wouldn't  
15 shock me to find that there was other evidence that we're  
16 missing here.  
17 Q Oh, okay.  
18 THE COURT: I'm gonna interrupt counsel to allow  
19 the jury to have a stretch break at this time.  
20 You may step down from the stand.  
21 We're gonna take a ten-minute stretch break.  
22 Ladies and gentlemen, you're admonished not to  
23 talk or converse among anyone, not amongst yourselves, nor  
24 with anyone else, on any subject connected with the trial, and

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## TURVEY - CROSS

1 you're not to read, watch or listen to any report of or  
2 commentary on the trial or any person connected with the  
3 trial, by any medium of information, including, without  
4 limitation, newspaper, television, radio and Internet, and  
5 you're not to form or express any opinion on any subject  
6 connected with the trial until the case is finally submitted to  
7 you.

8 In ten minutes, please be out in the hall and the  
9 bailiff will meet you there to reseal you.

10 Court's in recess.

11 THE BAILIFF: All rise.

12 (Court recessed at 15:48:03 until 16:11:21)

13 (Jurors are present)

14 THE BAILIFF: All rise, please.

15 Department II is back in session. Please be seated.

16 THE COURT: The record shall reflect that we're  
17 resuming trial in State versus Lobato under C177394, in the  
18 presence of the defendant, her three counsel, the two  
19 prosecuting attorneys, and ladies and gentlemen of the jury,  
20 and the witness, Mr. Turvey, who remains on the witness  
21 stand under oath.

22 Resuming with cross. Ms. DiGiacomo, you may  
23 proceed.

24 MS. DIGIACOMO: Thank you, Your Honor.

XVI-206

## TURVEY - CROSS

1 I'll ask the witness to listen to the question and do  
2 his best to answer it as phrased.

3 BY MS. DIGIACOMO:

4 Q You're not aware of any evidence that the State has  
5 that shows physical proof that she was at the scene, correct?

6 A That's correct.

7 Q Okay. So what you're coming in here and testifying  
8 to is with regard to no physical evidence linking her is nothing  
9 new?

10 A I can't know that.

11 Q Okay. Well, you didn't -- there's nothing in any of  
12 the documents you reviewed, any of the crime scene  
13 photographs, any of the expert opinions that contradict that,  
14 correct, what you just testified to?

15 A That's correct. The -- of the reports that we have at  
16 this moment.

17 Q And, again, you're assuming there might be more  
18 reports coming?

19 A The way this has been going, I have no idea.

20 Q Well, let's talk about the --

21 A I'm not assuming anything.

22 Q -- way this has been going. Your report was dated  
23 October 17<sup>th</sup> in 2005, correct?

24 A That's correct.

XVI-208

## TURVEY - CROSS

1 BY MS. DIGIACOMO:

2 Q Now you stated your opinion is that there's no  
3 physical evidence linking Blaise Lobato to the crime scene,  
4 correct?

5 A That's correct.

6 Q Okay. And, in reality, you haven't told the jury  
7 anything that that State's case didn't already present, correct?

8 MS. ZALKIN: Objection, argumentative and assumes  
9 that he reviewed the entire State's case.

10 THE COURT: The Court sustains the objection as to  
11 argumentative.

12 BY MS. DIGIACOMO:

13 Q Okay. Well, you're aware that there was -- there  
14 has not been any testimony in the State's case or in any of the  
15 reports that there's any physical evidence linking Lobato to the  
16 crime scene?

17 A I'm glad to hear you say it out loud, but yes.

18 MS. DIGIACOMO: Your Honor, I'd ask to move his  
19 response -- strike it for being non-responsive and a little  
20 argumentative himself.

21 THE WITNESS: It was not intended that way, Your  
22 Honor.

23 THE COURT: The Court will grant that request.  
24 Would you please restate the question?

XVI-207

## TURVEY - CROSS

1 Q There's three things in your report that you said  
2 should have been tested, correct?

3 A Well --

4 Q That you had big headers for. The sexual assault  
5 kit, the cigarette butts that were in the body bag and the white  
6 paper towels, correct?

7 A That's correct.

8 Q Okay. So is your complaint now that the DNA kit  
9 and the cigarette butts have been tested?

10 A Not at all.

11 Q All right.

12 A My --

13 Q So --

14 A My complaint is the timing and the withholding of  
15 that testimony from -- by Ms. Paulette, that she withheld it  
16 when she knew that there were -- there were tests being  
17 performed.

18 Q Okay. How --

19 A That's improper.

20 Q Oh, it's improper? So now you're --

21 A Entirely improper.

22 Q You're commenting on what another witness has  
23 done in this case?

24 A I'm commenting on the fact that a witness, an

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## TURVEY - CROSS

1 expert witness, was on the stand, a forensic scientist who  
2 purports to be objective, and withheld the fact of -- that there  
3 were actual results that could have been known that were, yet  
4 again, exculpatory that they didn't.

5 Q You're assuming, sir, that she withheld that  
6 information?

7 A She did withhold the information because she did  
8 not tell anyone that the tests were being done. That  
9 information was not given until the 27<sup>th</sup>, two days after her  
10 testimony. I'm assuming nothing.

11 Q Okay. Well, you -- it's true when a witness is called  
12 to the stand they have to testify to what they're being asked.

13 A They have to testify to what they're being asked.  
14 But if they know of -- but there's a -- see, there's ethical  
15 guidelines out there that they're very clear about --

16 Q Okay. But, you know what, sir --

17 A -- withholding exculpatory evidence.

18 Q Sir, because she knew how to answer a question  
19 that was posed to her and didn't just give narratives, you're  
20 holding it against her?

21 MS. ZALKIN: Objection, argumentative, Your Honor.

22 MS. DIGIACOMO: That's fine.

23 THE COURT: Overruled.

24 MS. DIGIACOMO: I'll withdraw it.

XVI-210

## TURVEY - CROSS

1 physical evidence at the scene that links her there, correct?

2 A It makes it stronger. It makes it all the more  
3 stronger.

4 Q Okay. What if we tested every piece and there's one  
5 piece in there that did have the defendant's DNA on it?

6 A That would be a problem.

7 Q Okay. Would that change your opinion?

8 A It absolutely would.

9 Q Right. Because your only opinion here is there's no  
10 physical evidence linking her to the crime scene.

11 A That's not my only opinion I gave.

12 Q But what we're talking about right now.

13 A Oh, in this particular line of questioning?

14 Q Right.

15 A Yes.

16 Q Okay. So all it would do is change your opinion to  
17 there was physical evidence linking her to the crime scene,  
18 correct?

19 A That's correct.

20 Q But it has no effect on whether or not she  
21 committed the crime, correct?

22 A It does not.

23 Q Talking about -- we already kind of talked about the  
24 footwear. You -- that's a big point for you because whoever

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## TURVEY - CROSS

1 THE WITNESS: Not at all. I'm not holding that  
2 against her at all.

3 BY MS. DIGIACOMO:

4 Q Well, it sounds like it. You're --

5 A No.

6 Q You're commenting on the credibility of another  
7 witness which you know is improper, correct?

8 A That's entirely proper. Actually, it's required. In fact  
9 this will be a point of issue in future discussions in the  
10 professional community about this particular witness.

11 MS. ZALKIN: Objection, Your Honor, he's not  
12 commenting on credibility.

13 THE COURT: Overruled.

14 BY MS. DIGIACOMO:

15 Q All right. You said there's a mountain of potentially  
16 exculpatory evidence that was not admitted, not examined,  
17 correct?

18 A All the garbage from the scene and the interior of  
19 the garbage bin itself was not processed. That's correct.

20 Q Okay. If the police department and lab and all the  
21 outside labs, if they had tested every piece of evidence and  
22 found no fingerprints and found no DNA evidence, okay, that  
23 linked the defendant to the stand [sic], then it doesn't change  
24 your opinion what you're testifying today, there's just no

XVI-211

## TURVEY - CROSS

1 did this should have gotten blood on at least one of their feet,  
2 correct?

3 A At least one and likely two. But that doesn't mean  
4 they would have necessarily transferred it into the scene in a  
5 visible fashion. It could be there. That scene wasn't  
6 processed very well with luminol or with phenolphthalein on  
7 the ground or anything like that, so there could be bloody  
8 footwear impressions that could have been missed, which the  
9 vehicle was likely parked right on top of.

10 Q Okay. Why do you say that?

11 A Because the vehicle was parked right on top of the  
12 path that the footwear was walking.

13 Q Okay.

14 A And people have two feet, most of them.

15 MS. DIGIACOMO: Let's see. Okay. The Court's  
16 indulgence while I try to find a better picture.

17 (Pause in the proceedings)

18 BY MS. DIGIACOMO:

19 Q Okay. I'm gonna show you State's Exhibit Number  
20 2.

21 A Yep.

22 Q Okay. This is one that you reviewed earlier, correct?

23 A That's correct.

24 Q Okay. Where in this picture would the assailant's car

XVI-213

000842

## TURVEY - CROSS

1 have been parked?  
 2 A We can't know that for certain. But, again, the --  
 3 you have the footwear impressions walking in the direction of  
 4 the police vehicle.  
 5 Q You know you can touch the screen.  
 6 A I didn't know that.  
 7 Q Yes. You can touch the screen.  
 8 A I saw the witnesses doing it but I didn't know how  
 9 they were doing it.  
 10 Q Yeah.  
 11 A I thought it was magic.  
 12 Q No. If you touch the screen, you can draw a line for  
 13 the jury where you're talking about.  
 14 A Okay. What if -- how do I erase it?  
 15 Q Bottom right corner.  
 16 A What happens at the bottom right? Oh, there, it  
 17 goes away. Hey.  
 18 Q Okay. So --  
 19 A This is great.  
 20 Q All right. So now put where the car would have  
 21 been.  
 22 A I can't. Like I said, I don't know where the car  
 23 would have been. I do know the -- that the police vehicle is  
 24 parked directly pointing their beams into the interior of the

XVI-214

## TURVEY - CROSS

1 enclosure to give light because they have no other light  
 2 sources out there. And it's parked right over in a direct line to  
 3 where the footwear impression was walking, the direction it  
 4 was walking.  
 5 Q All right.  
 6 A They were walking out of the -- and this is very  
 7 crude, but the footwear is walking out of the enclosure.  
 8 Q Okay. Now I'm showing you State's Exhibit 144.  
 9 A Oh, wow.  
 10 Q Okay. Do you recognize that?  
 11 A Yes, I do.  
 12 Q Okay. This shows the footwear walking out.  
 13 A Well, this one might be walking in like -- but I'm not  
 14 a footwear analyst. I don't know. I -- there's a footwear  
 15 pattern here, there's a footwear pattern and there's footwear  
 16 patterns here, and they're in a -- in this fashion that way.  
 17 Q And you said you're not an expert?  
 18 A I'm not an expert. That's why I was relying on  
 19 Bodziak's report.  
 20 Q Okay. Well, the crime scene analyst testified they  
 21 were all leading out.  
 22 A I --  
 23 Q And there's one down here.  
 24 A Yeah, I see it.

XVI-215

## TURVEY - CROSS

1 Q Okay.  
 2 A I'm just not convinced.  
 3 Q Okay.  
 4 A I'm not convinced.  
 5 Q Okay. You're not convinced. But that is --  
 6 A But that doesn't matter. It's irrelevant to my  
 7 opinion.  
 8 Q Okay. So the footwear impressions come out and  
 9 they stop right here. There are none past this point, according  
 10 to the testimony of a crime scene analyst and the detectives.  
 11 A Well, there are none that they saw.  
 12 Q Okay. You're saying --  
 13 A But you can't testify with certainty that there are  
 14 none because you didn't do any chemical tests to see if there  
 15 were any that had been --  
 16 Q So if they had done luminol that might have shown  
 17 it?  
 18 A Or any other of the chemicals. There's all kinds of  
 19 bloody -- blood enhancement reagents out there, not just  
 20 luminol. Luminol is just the sexy one of the moment.  
 21 Q Okay.  
 22 A There's a lot more out there.  
 23 Q So they could have done some sort of presumptive  
 24 blood tests with a spray that would illuminate what they saw?

XVI-216

## TURVEY - CROSS

1 A Yes.  
 2 Q Okay. So you have to agree, though, there is only  
 3 bloody footwear impressions that you can see with the naked  
 4 eye up until this point?  
 5 A I can't agree with that. I can only agree that it's in  
 6 this photo. I don't know what we can see with the naked eye  
 7 because we have a flash exposure here that is -- that is  
 8 whiting out a lot of the area. So I can't agree to that. I  
 9 wasn't --  
 10 Q Okay.  
 11 A I wasn't there. I only know what the photo shows.  
 12 Q All right. Well, the testimony by the CSAs that they  
 13 could only see with the naked eye up until these footwear  
 14 impressions.  
 15 A Again, that's not really true because they're out  
 16 there, they're not looking with natural light. They're out there  
 17 in the dark, with the high beams on, and they're walking.  
 18 There's a bunch of them walking around in the scene. So I'm  
 19 not, again, I'm not at all impressed by that interpretation.  
 20 Q If there had been them walking around the scene  
 21 and this is still partially wet, wouldn't you expect to see more  
 22 blood transfer from their footprints?  
 23 A I'm assuming they took great caution to get around  
 24 it.

XVI-217

## TURVEY - CROSS

1 Q Okay.  
 2 A But --  
 3 Q But you just told me a minute ago that they couldn't  
 4 see what they were doing and they could have been walking  
 5 on it?  
 6 A That's not what I said at all. You're misstating what  
 7 I said.  
 8 Q Okay. So you're -- well, then tell me, what am I  
 9 missing here?  
 10 A You're miss --  
 11 Q Are you saying that they would have missed what  
 12 couldn't be seen with the naked eye?  
 13 A That's one. They are -- they're gonna miss what  
 14 couldn't be seen with the naked eye and, two, they are not  
 15 working with natural light. So their observations at the scene  
 16 are made with a great deal of light. That doesn't mean that --  
 17 well, their observations are not made with natural light. I  
 18 would have been more happy to see photographs of this  
 19 during the day without washed-out photos. That would have  
 20 made me happier.  
 21 Q But you understand that when somebody discovers a  
 22 crime scene they have to process it when it's found?  
 23 A Oh, absolutely, but that doesn't mean they can't  
 24 keep it for a few hours and stick around and take some

XVI-218

## TURVEY - CROSS

1 pictures in natural light. In fact that's required.  
 2 Q Okay.  
 3 A You've got to go back and do it again or you gotta  
 4 hold on to it until the natural light is available, especially an  
 5 outdoor scene.  
 6 Q Okay. So that's what they should have done and  
 7 they didn't do that here?  
 8 A Undoubtedly.  
 9 Q You said with regard to the fingernail scrapings  
 10 that --  
 11 A Yes.  
 12 Q -- the victim should have had foreign DNA from his  
 13 assailant underneath his nails?  
 14 A No. I didn't say they should have had. I said it's an  
 15 expected finding, so we always look. And they did in this case.  
 16 They were hoping to find some. They didn't. And so it's a  
 17 negative finding.  
 18 Q But you said earlier that you would assume that  
 19 somebody that's being attacked with defensive wounds would  
 20 have been, I wrote, scratching and clawing.  
 21 A I did not assume. I said I would expect.  
 22 Q You would expect?  
 23 A I would expect that. And because there is that  
 24 expectation, there is that potential for transfer.

XVI-219

## TURVEY - CROSS

1 Q Okay.  
 2 A And that doesn't mean that it had to happen but  
 3 there's a potential for it, so that's why we look.  
 4 Q All right. But --  
 5 A We didn't find any.  
 6 Q No finding here. But it is possible or could be  
 7 expected that somebody who's being attacked with a knife  
 8 would not possibly get that opportunity to actually physically  
 9 touch their assailant?  
 10 A That's certainly possible.  
 11 Q And with regard to the chewing gum, you wouldn't  
 12 necessarily expect that the person who did the killing spit out a  
 13 piece of gum at the crime scene, would you?  
 14 A No. But, again, these are items I'm selecting  
 15 because they were collected by detectives at the scene. They  
 16 thought they were important enough to collect. They didn't  
 17 collect everything. They thought they were important enough  
 18 to test. They didn't test everything. This is what they thought  
 19 was important enough to collect and test. Everything else they  
 20 were throwing away.  
 21 Q Well, you --  
 22 A So this is what was important to them.  
 23 Q Right. And you understand at the time that they're  
 24 processing this crime scene they had no idea even how the

XVI-220

## TURVEY - CROSS

1 person had been killed, let alone who did it or any leads,  
 2 correct?  
 3 A All the more important. Yes, I do. All the more  
 4 important to collect everything and be very meticulous.  
 5 Q All right. So you -- it's your opinion that every piece  
 6 of trash should have been collected?  
 7 A Oh, absolutely. I would have been there for days.  
 8 Q And so they should have collected every piece of  
 9 trash and tested every piece of trash?  
 10 A If they were interested in solving the crime, yes.  
 11 Q Okay. How would that help them solve the crime?  
 12 A Because you might find a piece of evidence that  
 13 links back to a suspect and --  
 14 Q You might?  
 15 A You might.  
 16 Q Did --  
 17 A And that's the whole purpose of doing this sort of  
 18 examination, if you really care. I remember --  
 19 Q If you really cared. So now you're testifying to what  
 20 the investigators thought that night?  
 21 A No, I'm testifying to what they did.  
 22 Q Okay. But you said if they really cared.  
 23 A I meant to say if I really cared, and I do really care  
 24 so that's what I would do.

XVI-221

000844

TURVEY - CROSS

1 Q Okay. So you would test ever, place of evidence  
2 and collect it all because you might find the suspect?  
3 A Yeah, it's --  
4 Q Or something linking it to them.  
5 A If you're gonna put --  
6 Q But --  
7 A If you're gonna put somebody away, that's what you  
8 gotta do.  
9 Q Okay. But that was your word, "might"?  
10 A Yeah, you might.  
11 Q So it's very possible that even if processing every  
12 piece that you wouldn't find anything linking a suspect to the  
13 crime scene?  
14 A But you did.  
15 Q Excuse me?  
16 A You did in this case. The footwear impressions, the  
17 footwear patterns.  
18 Q Oh, the footwear. No, but that's not what my  
19 question was, sir. I said if you look at every physical piece in  
20 the trash and you --  
21 A Yes.  
22 Q -- collect it all, 'cause you said that you might find  
23 somebody connected, but you also might find that the suspect  
24 didn't leave a physical trace?

XVI-222

TURVEY - CROSS

1 A No. You might have a problem because of evidence  
2 dynamics, that it might blow away, the blood might dry up and  
3 blow away, you might -- the fingerprints might evaporate  
4 before you get to the item. Your analytical methods might  
5 destroy the object of evidence for a particular type of testing.  
6 I'm not saying you wouldn't find a trace. I'm saying you might  
7 not be able to find it because of the methods of collection, the  
8 timing and because of other evidence dynamic issues that we  
9 talked about.  
10 Q Okay. So it's possible then that you could have a  
11 suspect but no physical evidence at the crime scene linking  
12 them to the crime?  
13 A After all --  
14 Q Based on what you said.  
15 A Based on --  
16 Q About those things that could get --  
17 A Because of evidence dynamics, not because it wasn't  
18 left behind and not because of --  
19 Q And I'm not saying that I disagree with Locard's  
20 theory.  
21 A Right.  
22 Q I'm saying that it's possible we might not find it  
23 based on what you said, it could be destroyed, it could blow  
24 away, it could be tampered with, it could be transferred, it

XVI-223

TURVEY - CROSS

1 could be taken away by the assailant, whatever physically link  
2 them.  
3 A It could be collected and lost by investigators. As  
4 I --  
5 Q Okay.  
6 A I think I already -- I think I covered this area when  
7 we first started the cross.  
8 Q Well, you never answered my question, so that's  
9 why we're back.  
10 A Oh, okay.  
11 Q So it is possible then that whatever was left by the  
12 assailant might not be able to be found by detectives or --  
13 A Not that it's not there but that -- but they don't find  
14 it for whatever reason. There's a -- I think I listed a myriad of  
15 reasons why they might not find it.  
16 Q Okay. So it's possible that there's physical evidence  
17 at the scene linking, for instance, Lobato to the crime scene  
18 but it was never found, never tested, never located?  
19 A It's possible that there -- there's a -- there are a  
20 huge universe of possibilities and you're focusing on Lobato.  
21 I'm not. I would not focus in on one person. I'd say that we  
22 don't know and that's where we're at today in this  
23 proceedings. We do not know.  
24 Q We do not know who physically was at that scene?

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TURVEY - CROSS

1 A We haven't found them yet.  
2 Q Well, you said him. Don't we have multiple people's  
3 DNA --  
4 A I mean -- I mean him in the generic.  
5 Q -- found at the scene?  
6 A I mean -- I mean him in the generic sense. Found  
7 them is what I should say, be more cautious with my  
8 language.  
9 Q When -- okay. Wait a minute. When you're saying  
10 them or him, who are you referring to?  
11 A I'm not here to play word games. I'm just saying --  
12 I said the word "generic." I mean generically, them, the  
13 suspect, the person who --  
14 Q Okay. And that's what I'm saying.  
15 A -- actually committed.  
16 Q You're saying --  
17 A The person who committed the crime.  
18 Q You're saying we haven't found the suspect who  
19 committed the crime?  
20 A We have not found -- we have not linked any  
21 physical evidence to anyone who's committed this -- to anyone  
22 related to this crime.  
23 Q Right. Now even the DNA that we do have, this  
24 foreign DNA that was found at the --

XVI-225

000845

## TURVEY - CROSS

- 1 A That's correct.
- 2 Q -- crime scene, doesn't necessarily mean there are
- 3 other suspects.
- 4 A It's enough that people want to put it into CODIS so
- 5 they're putting it into the suspect CODIS database. But then,
- 6 on top of that, they're testing it so they think it's important
- 7 enough to make a link. So the criminalists at the crime lab,
- 8 the detectives that are collecting it, the criminalists who are
- 9 testing it, and everybody's agreeing it's important enough to
- 10 test and spend resources, but then when the result comes
- 11 back against the theory of the State everybody pretends like
- 12 it's no big deal. That's a problem.
- 13 Q But every -- okay. You're saying everyone's
- 14 agreeing it's important to test. The testimony earlier was that
- 15 I was the one that put in for the cigarette butts to be tested,
- 16 and that was based on your report. So are you still gonna
- 17 hold that against the detectives and the crime scene analysts
- 18 that they --
- 19 A No, I'm --
- 20 Q -- thought it was important?
- 21 A I'm really not holding it against them. You're
- 22 characterizing it that way. I'm not. I'm saying they thought
- 23 enough of the evidence, they thought enough to collect it, they
- 24 thought enough to submit it. And the crime lab clearly agreed

XVI-226

## TURVEY - CROSS

- 1 with you that it was important enough to test. So everybody is
- 2 in agreement that this is important. But when the finding
- 3 comes back negative, all of a sudden it's not important. And
- 4 that's the problem that I'm having.
- 5 Q Well --
- 6 A It's a little dishonest.
- 7 Q Well, wait. Who's saying it's not important?
- 8 A Well, you're saying it's not important because you're
- 9 asking me to ignore it in your hypotheticals.
- 10 Q If it's so -- okay.
- 11 A You're asking me to ignore it in your hypotheticals.
- 12 You're saying it's unimportant.
- 13 Q No. You're here to testify as an expert. I'm giving
- 14 your hypotheticals and asking you what the different
- 15 possibilities are, correct?
- 16 A I'm hoping.
- 17 Q Yes or no, sir.
- 18 A That appears to be what's going on, but it also
- 19 appears something else is going on, too.
- 20 Q Okay. If you'd just answer my questions, we can
- 21 get through this so much easier. Now the cigarette butts that
- 22 you felt were very important, okay, have you -- have you ever
- 23 been to a crime scene when it's processed?
- 24 A Yes, I have.

XVI-227

## TURVEY - CROSS

- 1 Q Okay. And do you understand the way it works
- 2 when they bag a body and it's taken to the coroner's office?
- 3 A Yes, I do.
- 4 Q Okay. And do you understand that there's a crime
- 5 scene analyst on the other side waiting for the body?
- 6 A In this case, I understand that was the case. It's
- 7 not always the case.
- 8 Q Sometimes --
- 9 A But it was here.
- 10 Q Sometimes it's the same crime scene analyst that
- 11 goes, but there's always a crime scene analyst at the other
- 12 end?
- 13 A Not always. Sometimes it's the medical examiner.
- 14 It depends on the size of the county and the resources that
- 15 they have.
- 16 Q Okay.
- 17 A It depends.
- 18 Q Well, would you believe me that when I say in Clark
- 19 County that it's a crime scene analyst?
- 20 A Yes, I would.
- 21 Q Okay. And you know it's the job of whoever the
- 22 crime scene analyst is that gets the body to just impound
- 23 everything that's with the body, correct?
- 24 A Yes.

XVI-228

## TURVEY - CROSS

- 1 Q Okay. So the fact that this crime scene analyst
- 2 impounded what appeared to be three cigarette butts in the
- 3 body bag, that was because she was impounding everything
- 4 that was with the body, not because a detective told her
- 5 impound that, correct?
- 6 A That's not correct. In fact the testimony is very
- 7 clear that once they found, underneath the layer of plastic,
- 8 items they put the plastic back and they said stop. That was
- 9 the testimony. It was very --
- 10 Q Well --
- 11 A -- clear about how important all the objects beneath
- 12 that plastic was.
- 13 Q Oh. Are you saying that it was -- it was because of
- 14 the objects underneath the plastic or it was the fact that his
- 15 penis had been severed why they decided to stop and to bag
- 16 the body?
- 17 A I think the testimony was very clear on the fact that
- 18 they thought anything beneath that plastic was gonna be
- 19 important so they put it back up and they put it back in the
- 20 bag.
- 21 Q But that's the way you're remembering it?
- 22 A I'm not -- I guess, yes, that's the way I'm
- 23 remembering it based on having watched it again last night.
- 24 Q Okay. So but you understand it is up to the jury to

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000846

TURVEY - CROSS

1 make their call?  
 2 A Absolutely.  
 3 Q Okay.  
 4 A It's not up to me to make the call.  
 5 Q Just to testify to it.  
 6 A To give my opinions about it.  
 7 Q And you also testified that -- that the investigators  
 8 and the crime scene analysts, they're not gonna waste their  
 9 time collecting or testing items that are not gonna prove to be  
 10 helpful to the case, correct? You just testified to that.  
 11 A I would hope that's not the case, and I'm gonna -- I  
 12 would be willing to operate on not that assumption but that  
 13 belief based on their education, training and experience as I  
 14 heard it.  
 15 Q Okay. Well, you made it as a general statement, not  
 16 about the people in this case. You said generally that they're  
 17 not -- that there's limited resources, there's limited resources  
 18 for testing, that they're not gonna waste their time collecting  
 19 or testing items that are not gonna prove to be valuable.  
 20 A Let me correct that then. I didn't mean it as a  
 21 general statement. I meant it as a specific statement in this  
 22 case based on the testimony and reports that I read. So I  
 23 mean it as a specific statement.  
 24 Q So you do understand that police agencies have

XVI-230

TURVEY - CROSS

1 limited resources?  
 2 A Some do, some do not.  
 3 Q Okay. Well, you have to understand in Clark  
 4 County, if you don't, that they do have limited resources here.  
 5 A Which is why we need to approach the evidence  
 6 with a lot of humility.  
 7 Q Was that a yes?  
 8 A It is a yes. I'm agreeing.  
 9 Q Thank you. Now when talking about other -- well,  
 10 let's -- the tire tracks at the scene. Again, you're -- they're  
 11 valuable to your analysis because it's possible that whoever  
 12 committed the crime made those tire tracks?  
 13 A Well, yes. And not only that but because the  
 14 detectives deemed them important enough to collect and  
 15 document. There were other --  
 16 Q Well --  
 17 A -- patterns in the scene that they didn't document.  
 18 So --  
 19 Q Right. But they're doing the best they can without  
 20 having any information of what had occurred, correct?  
 21 A They have the information at the scene. They have  
 22 the scene itself. They have the results of their investigation to  
 23 that point. They don't have nothing. And they have their  
 24 education, training and experience.

XVI-231

TURVEY - CROSS

1 Q Right. But what I'm saying is --  
 2 A They're not out there with a rubber band and a  
 3 pencil, you know.  
 4 Q At the time that they're processing this crime scene,  
 5 they don't know what had happened, they don't know what  
 6 evidence is linked to the crime, correct?  
 7 A I think that's fair, yes.  
 8 Q Okay.  
 9 A Of course not.  
 10 Q And in a lot of cases like that, that's the -- that's  
 11 what holds true. They go out to -- they've got a dead body,  
 12 they've got a crime scene. They don't know anything about  
 13 who did it, what happened, right?  
 14 A Yes. That's correct.  
 15 Q That's very common. Isn't it very common also to  
 16 collect evidence that you think might be pertinent and it turns  
 17 out not to be?  
 18 A I think that's true.  
 19 Q Now with regard to the car, you stated that there's  
 20 no physical evidence linking Lobato's car to the crime scene.  
 21 Did I state that correctly?  
 22 A Yes, you did.  
 23 Q That is your conclusion?  
 24 A Yes.

XVI-232

TURVEY - CROSS

1 Q Okay. The only way to have physical evidence that  
 2 linked Lobato to the crime scene would be if you found the  
 3 victim's DNA in the car, correct?  
 4 A I don't think that's correct. I think there are other  
 5 ways.  
 6 Q How?  
 7 A But in this -- well, there are other ways.  
 8 Q Okay.  
 9 A But in this case, I think that's the best way.  
 10 Q Okay. What --  
 11 A That's one of the best and most obvious ways.  
 12 Q What are some other ways? Possibly the tire  
 13 impressions?  
 14 A Possibly the tire. Well, they're not impressions.  
 15 They're tire marks. But, yes, possibly the tire marks. I would  
 16 -- I would have to, again, I was asked not to give this list  
 17 before. You objected to it. But there are other things that we  
 18 would be looking for. We're looking for potential hair and fiber  
 19 transfer from the victim on to the suspect and then into the  
 20 vehicle.  
 21 Q But that would be assuming that they came into  
 22 some sort of contact.  
 23 A Right.  
 24 Q Okay.

XVI-233

000847



TURVEY - CROSS

1 A I'm not -- I'm not willing to make that assumption.  
 2 I'm just saying you're asking me what we would look for.  
 3 Q Well, in this case --  
 4 A That's what really needs to be looked for.  
 5 Q In this case, really, with what we tested with the  
 6 luminol and the phenolphthalein.  
 7 A And also fingerprint examination. There was -- this  
 8 finger -- this car was given the thorough once-over in terms of  
 9 fingerprints, luminol and phenolphthalein. It was very  
 10 thoroughly examined in that respect.  
 11 Q Okay. But the only way really to link, with regard to  
 12 the luminol and the phenolphthalein, the only way to link the  
 13 defendant's car to the crime scene would be if there was  
 14 testing positive of the victim's blood in her car, correct?  
 15 A Because those are, yes, because those are specific  
 16 tests for, presumptive tests, for blood. And fingerprints would  
 17 be if the guy had --  
 18 Q Okay, wait.  
 19 A -- contact with the car.  
 20 Q Let's stay on the blood evidence, okay?  
 21 A Okay.  
 22 Q We'll talk about fingerprints in a minute, I promise.  
 23 A Sure.  
 24 Q The blood evidence.

XVI-234

TURVEY - CROSS

1 A Yes.  
 2 Q Luminol is a presumptive test for blood?  
 3 A That's correct.  
 4 Q Okay. The next step when they got the presumptive  
 5 test for blood, the DNA analysts or criminalists tested those  
 6 items with phenolphthalein, another presumptive test for  
 7 blood, correct?  
 8 A That's correct.  
 9 Q And both of those yielded positive results?  
 10 A The -- yes.  
 11 Q Okay.  
 12 A Positive presumptive results.  
 13 Q Positive presumptive results for blood. But those  
 14 two positive presumptive results cannot tell us whether or not  
 15 there was blood in that car, correct?  
 16 A Absolutely not.  
 17 Q Okay. Can't tell us whether or not there was not  
 18 blood in that car, correct?  
 19 A Doesn't tell us anything other than another test  
 20 needs to be performed.  
 21 Q Okay. Now the fact that this other test couldn't be  
 22 performed because DNA couldn't be extracted, that's where  
 23 you base your opinion that there's not physical evidence  
 24 regarding the blood linking the defendant's car to the scene?

XVI-235

TURVEY - CROSS

1 A You're assuming that cells were present from which  
 2 DNA could be extracted, and I won't make that assumption.  
 3 What I will say is that a test for DNA was performed and it  
 4 came back negative. They couldn't find any cells there. So,  
 5 no, it's not that there weren't -- it's not that there were cells  
 6 and we couldn't extract the DNA from them. It's that there  
 7 were no cells found whatsoever. So let's be very clear about  
 8 that.  
 9 Q Okay. So you're saying that there were no cells  
 10 found there?  
 11 A That's my understanding of the -- that they -- not  
 12 that there were no cells, no biological cells that had DNA in  
 13 them.  
 14 Q Right. Right. It was -- it was possible they were  
 15 there but they couldn't extract them. That was the testimony  
 16 of Tom Wahl.  
 17 A Yeah, that was very helpful.  
 18 MS. DIGIACOMO: Your Honor, would you please  
 19 admonish the witness not to comment on all the other  
 20 testimony by the other witnesses? That's improper, and he's  
 21 been doing it the entire time.  
 22 THE COURT: The Court sustains the objection.  
 23 THE WITNESS: My apologies, Your Honor. It will  
 24 not happen again.

XVI-236

TURVEY - CROSS

1 THE COURT: Okay.  
 2 THE WITNESS: Will you repeat the question,  
 3 please?  
 4 BY MS. DIGIACOMO:  
 5 Q Sure. Okay. With regard to the blood evidence, it's  
 6 possible that there was DNA there that couldn't be detected on  
 7 the -- on the items that tested positive in the car?  
 8 A It's -- it's possible but, again, very unlikely.  
 9 Q Okay.  
 10 A And then I would be -- it would be irresponsible to  
 11 start suggesting that kind of thing. That's a theory. It's a very  
 12 interesting theory but there's no proof of it. So it would be  
 13 irresponsible to suggest it in court as an opinion.  
 14 Q Okay. Are you a DNA criminalist?  
 15 A No, I am not a criminalist.  
 16 Q Have you ever done DNA testing?  
 17 A No.  
 18 Q Have you ever done luminol testing?  
 19 A I have done it in a -- at the -- when we were trained  
 20 to do it originally, but I've never done it at a crime scene.  
 21 Q Okay. Have you done phenolphthalein testing?  
 22 A Not --  
 23 Q Other than in an in-class testing?  
 24 A At a -- at mock crime scenes, yes, but not in a --

XVI-237

000848

## TURVEY - CROSS

- 1 Q Okay.
- 2 A Not in a crime scene, no. That would, again, that
- 3 would not be my role. I'm not a crime scene technician.
- 4 Q Okay. So but it's your role here to testify what DNA
- 5 could possibly still be there after a positive presumptive test,
- 6 two positive presumptive tests?
- 7 A You're asking me. I didn't ask the question.
- 8 Q No. I asked you, it's possible because you have the
- 9 two presumptive blood tests that there was DNA that was so
- 10 broken down it couldn't be extracted.
- 11 A Again, that's -- again, that's a theory. It's possible
- 12 but there's no proof of that theory. So it would be
- 13 irresponsible for me to mention that in a forensic context.
- 14 Q I'm just asking you what's possible, sir. I'm not
- 15 asking you if it's your opinion. But it is possible?
- 16 A It is. It is possible. But, again --
- 17 Q It's also possible the other way that, I mean,
- 18 assuming he could have extracted the DNA, it's possible that
- 19 there could have been DNA and it could have been extracted?
- 20 A Again, it's possible but I would hate to put these
- 21 theories forward as my own or as ones that are legitimate.
- 22 Q I think it's clear to the jury it's not your own, sir.
- 23 Just answer the questions. It's possible?
- 24 A Yes. Extremely unlikely but possible.

XVI-238

## TURVEY - CROSS

- 1 Q Now with regard to the luminol, you had two
- 2 pictures. You had -- I'm gonna show you what's State's 114.
- 3 You had a picture like this in your PowerPoint, correct?
- 4 A I believe that it was either this picture or one very
- 5 much like it because there are multiple pictures like this. So I
- 6 can't say it's --
- 7 Q Okay. But it was --
- 8 A -- the exact same.
- 9 Q It was of the door?
- 10 A Yeah.
- 11 Q The left door frame. Okay.
- 12 A The interior door. Right.
- 13 Q And then you also had in a similar picture to State's
- 14 Exhibit 112, and that is the floral seat cover?
- 15 A Can you zoom out so I can see the whole thing?
- 16 Q Oh, I'm sorry.
- 17 A That's okay. I'm not sure I used this picture but it
- 18 was a picture like this.
- 19 Q Okay. Well, you're aware that they only got a
- 20 positive test from one of the floral seat covers?
- 21 A Yes.
- 22 Q Okay. And then State's Exhibit 113, do you
- 23 recognize that?
- 24 A Yes.

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## TURVEY - CROSS

- 1 Q Okay. What's that?
- 2 A It's -- again, it's a picture of the underside of the --
- 3 after the -- after it's been taken off.
- 4 Q Right. This is the --
- 5 A After the seat cover has been taken off.
- 6 Q Right. This is the positive luminescence on the grey
- 7 seat cover?
- 8 A That's correct.
- 9 Q All right. Now it's your testimony that there should
- 10 be certain places where blood should be found in the car if the
- 11 person who did this got in the car, correct?
- 12 A Yes.
- 13 Q All right. And one of those is the door handle?
- 14 A That's correct. Underneath the door handle as they
- 15 open the door.
- 16 Q Okay. Where's the door handle here?
- 17 A It's not pictured.
- 18 Q Okay. This isn't the door handle right here?
- 19 A That's the interior door handle. I meant the --
- 20 Q Oh, you --
- 21 A I thought we were starting in linear fashion. The
- 22 exterior door handle is what I really meant.
- 23 Q Okay.
- 24 A And then the --

XVI-240

## TURVEY - CROSS

- 1 Q And it should have been --
- 2 A And then the interior one.
- 3 Q But that -- now that assumes that whatever handle,
- 4 hand they used to open the door, had blood on it?
- 5 A Yes, it does.
- 6 Q It's possible that there's blood on one and not the
- 7 other?
- 8 A Blood on one what?
- 9 Q One hand and not the other when leaving this crime
- 10 scene.
- 11 A Again, that's really unlikely.
- 12 Q Okay.
- 13 A With so much blood and this so -- so much involved
- 14 in removing and/or whether or it's a knife or scissors, or
- 15 whatever it was, to do that.
- 16 Q Well --
- 17 A To do that --
- 18 Q Well --
- 19 A -- you're gonna get it on both.
- 20 Q Okay.
- 21 A You're gonna -- you're gonna have transfer.
- 22 Q Now you're aware that the penis was cut off
- 23 postmortem?
- 24 A Yes.

XVI-241

000849

## TURVEY - CROSS

1 Q So there was no bleeding after... was cut off.  
 2 A There was still blood coming out. It doesn't mean  
 3 there was like -- there wasn't any spurting is what you're  
 4 getting at. There wasn't any just --  
 5 Q No, there was no hemorrhaging whatsoever with  
 6 that wound.  
 7 A I understand what you're saying, but there's blood  
 8 all over the inside of the scene. It's so unlikely that they didn't  
 9 get anything on their hands. I'm just -- I would be very --  
 10 Q Unlikely.  
 11 A I would be very hesitant.  
 12 Q But possible?  
 13 A Unlikely but possible, again, as with all these.  
 14 Q Now these three marks right here.  
 15 A Yes.  
 16 Q How do you explain those?  
 17 A I don't. I don't have to explain them.  
 18 Q Okay. And you don't --  
 19 A They're not blood. They're not -- there's no  
 20 evidence that they're blood.  
 21 Q Okay. But --  
 22 A They're just marks.  
 23 Q But you're --  
 24 A On the door.

XVI-242

## TURVEY - CROSS

1 Q But they -- it tested positive for a presumptive test  
 2 for blood.  
 3 A That's what a presumptive test means. We don't  
 4 know. It means -- and then when you do the confirmatory  
 5 test and nothing comes back, then you don't -- then you'd  
 6 have to say it's not consistent.  
 7 Q So because you have no confirmatory tests in this  
 8 case, any luminol evidence means absolutely nothing to you?  
 9 A In terms of blood, yes. Well, it means -- it means  
 10 that luminol is usually used to search for other evidence.  
 11 You're using it to try to direct your investigation. And if you  
 12 get a positive result it means you gotta do that confirmatory  
 13 test. That's what it means. And when the confirmatory test  
 14 comes back negative, you've got to let go of your theory that  
 15 it's blood. It's time to let it go. The failure to let that go  
 16 means that you're not really acting in a scientific manner.  
 17 Q Okay. So you're saying that Tom Wahl is not acting  
 18 in a scientific manner now.  
 19 MS. DiGIACOMO: Your Honor, I'm asking that that  
 20 be stricken.  
 21 THE WITNESS: I didn't say that.  
 22 MS. DiGIACOMO: He's, again, commenting.  
 23 THE WITNESS: No, I -- that's not what I said.  
 24 MS. DiGIACOMO: I'll withdraw it.

XVI-243

## TURVEY - CROSS

1 BY MS. DiGIACOMO:  
 2 Q You're not a DNA criminalist?  
 3 A I believe I've asked and answered that question  
 4 several times.  
 5 Q And --  
 6 A Yes.  
 7 Q Okay.  
 8 A I'm not a DNA criminalist.  
 9 Q And you've never tried to extract DNA?  
 10 A No, that would not be my function.  
 11 Q So you would have to defer to somebody like Tom  
 12 Wahl or Kristina Paulette that do that on a daily basis whether  
 13 or not it's possible to still have blood in there but it cannot be  
 14 extracted for confirmatory tests?  
 15 A I don't know that I would defer necessarily to them  
 16 in specific but I would defer to a senior crime scene -- excuse  
 17 me, a senior criminalist with education, training and experience  
 18 that meets a certain threshold. But I have no reason to doubt  
 19 their findings in this case.  
 20 Q Now you looked at the crime scene photos and  
 21 there's trash on top of the body. Do you have an opinion how  
 22 that trash got there?  
 23 A Well, the trash would have to be put there  
 24 subsequent to the body coming down. So anything that gets

XVI-244

## TURVEY - CROSS

1 put on to the body is going to be potentially associated back to  
 2 the person who is piling it on it. And that person is most likely  
 3 going to be the person who committed the crime.  
 4 Q Okay. But the --  
 5 A So that's my opinion.  
 6 Q Okay. But you're aware there were no bloody hand  
 7 prints or bloody fingerprints found on any of the trash?  
 8 A I am not aware of that. What I'm aware is that  
 9 there was not a -- that there was not any reported. That's  
 10 what I'm aware.  
 11 Q Okay. Well, and you saw the testimony of Dan Ford.  
 12 He went through everything piece-by-piece. He didn't find any  
 13 obvious bloody hand prints on anything, did he?  
 14 A Right. But you can still leave latents that you can't  
 15 see with the naked eye, which is why it's --  
 16 Q I'm --  
 17 A -- improper to throw stuff away.  
 18 Q Right. I'm not talking about latents. I'm talking  
 19 about something left in blood.  
 20 A Right.  
 21 Q Okay. And there was nothing left on the trash.  
 22 A That he found. That's correct.  
 23 Q Okay. So you're saying possibly it was there and  
 24 they just missed a bloody hand print?

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000850

TURVEY - CROSS

1 A Very possible.  
 2 Q Because the assailant would have had to have blood  
 3 on their hands?  
 4 A I'm saying that's the most likely and most plausible  
 5 scenario in my opinion.  
 6 Q Have you seen the pictures from after all the trash  
 7 had been removed, the back portion of the dumpster with no  
 8 trash where you just see the pool of blood in the back  
 9 southwest corner?  
 10 A I'm sorry. Could you ask that question again. I was  
 11 distracted there for a moment by some communication that  
 12 was going on.  
 13 MR. KEPHART: Your Honor, just for the record since  
 14 he's noted that, Juror Number 1 held his hand up, so I got the  
 15 bailiff's attention. And I just don't want to be in a situation  
 16 where this man here on the stand is making any kind of  
 17 gestures that I'm communicating with the jury.  
 18 THE COURT: The --  
 19 THE WITNESS: He was.  
 20 THE COURT: -- Court saw Mr. Kephart point to the  
 21 bailiff to draw his attention to something. I wasn't sure what  
 22 the something was because I hadn't -- I hadn't noticed that  
 23 the juror, Juror Number 1, Mr. Arieno, had something that he  
 24 wanted to turn over.

XVI-246

TURVEY - CROSS

1 Would counsel please approach?  
 2 THE WITNESS: Your Honor --  
 3 (Off-record bench conference eat 16:46:15 until 16:47:17)  
 4 THE COURT: The answer is yes and the note will be  
 5 marked as the Court's next in number.  
 6 THE CLERK: 76.  
 7 BY MS. DIGIACOMO:  
 8 Q All right. We're back to the crime scene  
 9 photographs.  
 10 A Oh, yes.  
 11 Q After all the trash is removed.  
 12 A Yes.  
 13 Q Okay. And you see the concentration or pooling, the  
 14 blood pool in the back southwest corner?  
 15 A There's a pool, a blood pool, and there's also blood  
 16 spatter back there as well.  
 17 Q And blood spatter. And there's also, where the body  
 18 was found, some runoff from the body, from the head?  
 19 A That's fair to characterize, yes.  
 20 Q But that's where all the concentration of blood was.  
 21 A There's that.  
 22 Q Back there.  
 23 A And then there's some along the side that looks like  
 24 it's been smeared, like somebody walking or maybe some --

XVI-247

TURVEY - CROSS

1 Q Or a drag mark.  
 2 A Something.  
 3 Q Okay.  
 4 A Something like that. That something has passed  
 5 over the surface of the blood to move it.  
 6 Q But that's still in the back southwest corner?  
 7 A In the same general area, yes.  
 8 Q Okay. And you're aware that these footwear  
 9 impressions that we've noted start some feet away from where  
 10 the bloody pool was, from looking at the crime scene  
 11 photographs?  
 12 A I'm not aware of that because there is actually  
 13 bloody footwear prints on the underside of the -- on the  
 14 underside of the cardboard that's on top of the body. So we  
 15 don't know where they actually start. They could --  
 16 Q Okay.  
 17 A And if you flip that over, you find all these blood  
 18 footwear marks, and we don't know where that starts. So to  
 19 suggest that it starts right at that point, that would incorrect.  
 20 Q Okay. Let me -- let me rephrase then. There's no  
 21 bloody footwear impressions on the concrete until you get to  
 22 State's Exhibit 144. I believe they start back here.  
 23 A I think that's about accurate, yes.  
 24 Q Okay. But the pool of blood is all over on this area?

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TURVEY - CROSS

1 A What would be in that area, yeah.  
 2 Q Okay.  
 3 A If there were pictures there, yes.  
 4 Q So there is some void between where the blood pool  
 5 is and where the bloody footwear impressions start on the  
 6 concrete?  
 7 A I don't think, again, I don't think that's fair to  
 8 characterize it that way. That void might be filled by that  
 9 piece of --  
 10 Q Right. But I'm just talking about the void on the  
 11 concrete.  
 12 A Oh, yeah. Yes. Okay. My apologies.  
 13 Q Okay. I'm not --  
 14 A Not a void in general, just a void specifically on the  
 15 concrete.  
 16 Q That's why I specifically limited it to that.  
 17 A Okay.  
 18 Q Now the other places that there should have been  
 19 blood on the interior of the car is the steering wheel, correct?  
 20 A That's correct.  
 21 Q The gear shift?  
 22 A Yes.  
 23 Q Driver's side floor pads?  
 24 A Yes.

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## TURVEY - CROSS

1 Q And the foot pedals, correct?

2 A Yes.

3 Q Okay. And these are all places that are nonporous

4 surfaces. Well, maybe with the --

5 A Oh, I don't know.

6 Q -- exception of the driver's side floor pads.

7 A I think that there are -- I think some of those areas

8 are more porous than others, but they -- I think some are

9 more porous than others.

10 Q Okay. Well, the exterior door handle. That's a

11 nonporous surface.

12 A No, that's not a porous surface.

13 Q Okay. The interior door handle. That's a nonporous

14 surface.

15 A Largely, yes.

16 Q Okay.

17 A I'm just saying there's a possibility that it's a little

18 more porous than the metal.

19 Q Okay. And the steering wheel would have been the

20 same kind of material as the door handle?

21 A I'd have to look at it, but I don't -- I'm not sure. I'm

22 not sure that that's accurate. I'd have to look at again to

23 refresh my memory.

24 MS. DiGIACOMO: The Court's indulgence.

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## TURVEY - CROSS

1 THE COURT: Yes.

2 BY MS. DiGIACOMO:

3 Q Here's a copy of the steering wheel or, excuse me,

4 here's a photo, 186, which shows the steering wheel.

5 A Yes. It's the same type of material, yes. I would

6 agree.

7 Q Okay. And the gear shift. So you can see that here

8 in State's Exhibit 187. Is that like a hard --

9 A Yeah, a hard --

10 Q -- plastic?

11 A Yeah, hard rubber.

12 Q Okay. So --

13 A And, again, with the steering wheel there may be

14 cracks and imperfections in there that blood would have gotten

15 in, could have gotten into, rather.

16 Q Okay.

17 A So it's --

18 Q Down here at the baseboards, this leather material?

19 A No, not there. I'm talking about the actual steering

20 wheel itself, looking at it from this angle.

21 Q Oh, the steering wheel.

22 A There might be -- it might be a little less perfect

23 than we're -- than we are seeing where there might be cracks

24 and imperfections in it that blood could have gotten into.

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## TURVEY - CROSS

1 Q Okay. And --

2 A But it -- and this one is far more nonporous, the --

3 Q The steering?

4 A The steering -- the gear shift knob there. Right.

5 Q Or the gear shift. Okay.

6 A Yeah.

7 Q And the driver's side floor pads. I don't have -- oh,

8 here we go. State's Exhibit 184. This area here would be

9 porous, correct, where the carpet is?

10 A Absolutely.

11 Q And then this area here could be nonporous but it

12 looks like there could be some cracks and grooves in there?

13 A That's correct.

14 MS. DiGIACOMO: Okay. The Court's indulgence.

15 (Pause in the proceedings)

16 BY MS. DiGIACOMO:

17 Q Now when the person, the assailant, left this crime

18 scene, how much blood would be on their hands?

19 A There's no way of knowing. I'm just saying there

20 would be some.

21 Q Okay. It's possible it's a very small amount?

22 A It's possible. It's less likely that it's a small amount.

23 But I -- for example, next to the footwear impressions or

24 footwear patterns, we see drops of bloods, drops of what

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## TURVEY - CROSS

1 could be blood.

2 Q Okay. So you're --

3 A If you take a look.

4 Q You're assuming --

5 A Something could be dripping off of them. Take a

6 look right there. You can see them right in a row, right along

7 with it, there's blood dripping.

8 Q Oh, okay. So you -- these marks here you're

9 assuming are blood drops?

10 A Not assuming. I'm looking in the photographs, that

11 when I was looking at them they were the same color and

12 consistency and looked like drops, where they have the --

13 Q Okay. I'm confused. Which one are you looking at?

14 A In the -- in this area here. Like there's one that's

15 shaped like a --

16 Q You can circle it before I --

17 A Okay.

18 Q Thanks.

19 A It could be --

20 Q 'Cause I moved the picture on you.

21 A Again, actually, again, without looking at the better

22 pictures, I can't tell which ones are which but there are --

23 inside the footwear pattern or footwear patterns, you can see

24 drops, droplet areas.

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000852

## TURVEY - CROSS

- 1 Q Okay. Now if there was --
- 2 A That's dripping blood.
- 3 Q If there was testimony from people who were there
- 4 that that just appeared to be staining in the concrete that had
- 5 been there from like the trash, would that change your opinion
- 6 that it wasn't blood drops?
- 7 A It might. But in the photographs I looked at, it
- 8 looked like it was blood.
- 9 Q Okay.
- 10 A So it might change my opinion.
- 11 Q But if it wasn't blood drops, then that would just
- 12 change your opinion possibly how much blood was on the
- 13 assailant's hands?
- 14 A There wouldn't be -- it wouldn't be the amount that
- 15 was dripping.
- 16 Q Okay.
- 17 A But it still would be some.
- 18 Q If there --
- 19 A In this particular case there appears to be blood that
- 20 was dripping off the assailant as they were walking out.
- 21 Q Okay. But that's based on what you see in the
- 22 photographs?
- 23 A That's correct.
- 24 Q But you'd have to agree that somebody who was

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## TURVEY - CROSS

- 1 Q Okay. So until we disprove that to you, you're just
- 2 gonna assume it's blood drops?
- 3 A No, I'm not assuming it. I'm looking at it and it's
- 4 most consistent with it in my opinion. I'm not assuming
- 5 anything.
- 6 Q But you don't have confirmatory tests that that's
- 7 blood.
- 8 A But it's within the pattern that's already there. It's --
- 9 I mean, we can parse words all day, but it's -- that's my
- 10 opinion.
- 11 Q Okay. I'm just -- I'm confused. I thought you said
- 12 that --
- 13 A I'm sorry.
- 14 Q -- you couldn't make assumptions --
- 15 A I'm not.
- 16 Q -- in making your -- you're just -- but you're going
- 17 by is blood droppings 'cause that's what it looks like to you.
- 18 You're not assuming it. You're like I see it, those are blood
- 19 drops.
- 20 A That's correct.
- 21 Q But it's very possible that they're not?
- 22 A I didn't say it was very -- no, I don't think it's very
- 23 possible that they're not. The shape, size, orientation, with the
- 24 other things, leads me to believe that they are.

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## TURVEY - CROSS

- 1 there might have a better, clearer idea of that than you do?
- 2 A They might have a different idea. I don't know if it
- 3 would be better or clearer or more accurate.
- 4 Q Okay. You don't think that somebody who's
- 5 physically there and can -- and get real close to the stains and
- 6 even take blood swabs wouldn't have a better understanding
- 7 of whether --
- 8 A Well --
- 9 Q -- or not there is blood droppings?
- 10 A If they took blood swabs, yes. If they were just
- 11 visually looking at it, no.
- 12 Q Okay.
- 13 A Because people miss that kind of stuff all the time.
- 14 Q So you're more qualified looking at a picture than
- 15 they are looking in person?
- 16 A I didn't say that. I said I'd be -- I would -- if they
- 17 had done physical tests and excluded that as blood, then that
- 18 would be more important to me.
- 19 Q Okay. But so your opinion, are you basing it on
- 20 assumptions that that's blood droplets?
- 21 A I'm not assuming it's blood drops. It looks like blood
- 22 droplets to me. Until I see a report saying it's not, I think it's
- 23 most consistent with blood drops than inside the footwear
- 24 pattern.

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## TURVEY - CROSS

- 1 Q Okay.
- 2 A And if there was a -- but if there were confirmatory
- 3 tests that came back and said, no, this is grapefruit juice that's
- 4 dropped in this pattern because the assailant was carrying
- 5 grapefruit juice and that dripped out, that would be important
- 6 to me.
- 7 Q Okay. So is it possible then, probably not with your
- 8 opinion, that the person who did this didn't have blood
- 9 dripping off of their hands?
- 10 A It's possible.
- 11 Q Is it possible it was a small enough amount that they
- 12 could have just wiped it on their clothing before getting into
- 13 the car?
- 14 A Yeah, and that's a good theory. And I'd want to see
- 15 the clothing before I --
- 16 Q So it's possible until you see the clearing [sic] to
- 17 disprove it, to refute it?
- 18 A Right.
- 19 Q But you understand then with crimes it's -- a lot of
- 20 times evidence is discarded?
- 21 A In this case, yes, I'm understanding that.
- 22 Q I'm not asking you in this case. Okay. I'm asking
- 23 you in crime scenes in general, when you're -- when police are
- 24 investigating, a lot of times assailants take evidence from the

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000853

## TURVEY - CROSS

1 crime scene and discard it.

2 A Oh, that's not what I thought you asked. I thought  
3 you asked whether or not the crime scene processing people  
4 discarded evidence.

5 Q No. That's not what I asked.

6 A Oh.

7 Q I'm asking you, in general, isn't it true that assailants  
8 take evidence away from crime scenes and discard it?

9 A Some evidence of some types. But, typically, if  
10 they're gonna discard something it's gonna be something like a  
11 weapon.

12 Q Well, in fact in this case there's no weapon found at  
13 the scene, is there?

14 A There's no weapon found at all in this case that I'm  
15 aware of. Yes.

16 Q I'm not asking you at all or what you're aware of. I  
17 said at the crime scene. If you'd please just answer my  
18 questions.

19 A My apologies. There was no weapon found at this  
20 crime scene.

21 Q Okay. Now you said there's no evidence that a  
22 weapon is found at all?

23 A Not a weapon associated with the crime, no.

24 Q Okay. How do you have that knowledge?

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## TURVEY - CROSS

1 A Because of you.

2 Q Is that what the defense -- go ahead. How do you  
3 know there's no weapon ever found?

4 A There is no report provided to me that a criminalist  
5 or a crime scene analyst collected an object that was then  
6 connected with this crime or with the homicide of Duran  
7 Bailey.

8 Q Okay. So you're just --

9 A There are weapons that were collected but none of  
10 them have been associated with the crime.

11 Q What weapons were collected?

12 A I believe there were a couple knives collected from a  
13 couple homes. There was a baseball bat collected from the  
14 back of the Fiero. I believe there was a fire -- a couple  
15 firearms collected, at least one that I recall, things of that  
16 nature. Nothing was associated back to the crime.

17 Q Okay. Now there's, in your opinion, no evidence  
18 linking the defendant's car to the crime scene, correct, 'cause  
19 there's --

20 A That's correct.

21 Q Okay. Now, is it possible that this was blood in her  
22 car from the two presumptive tests that were given positives?

23 A It's a very extremely remote possibility given this --  
24 a very remote possibility.

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## TURVEY - CROSS

1 Q Why a remote possibility?

2 A Because we have done a confirmatory DNA test and  
3 it came back negative. If there was blood there or -- if there  
4 was blood there, there would be leucocytes. The leucocytes  
5 would have DNA in them and we would have been able to  
6 extract them. We were not.

7 Q Okay. Now, were you provided a copy of a twenty-  
8 seven-page statement given by the defendant to detectives  
9 back in 2001 to review?

10 A I was not provided anything in 2001.

11 Q No. My question is were you provided a twenty-  
12 seven-page statement to review that was given by the  
13 defendant to detectives in 2001?

14 A I was given a statement. I was given several  
15 statements made by the defendant, but I read none of them.  
16 I never read suspect confessions or statements, as a -- as a  
17 rule.

18 Q Okay. So it would have no bearing on your opinion  
19 at all that the defendant testified previously in a --

20 MR. SCHIECK: Objection, Your Honor. Can we  
21 approach?

22 THE COURT: Yes.

23 (Off-record bench conference at 16:59:10 until 17:01:56)

24 THE WITNESS: Your Honor, I truly need to use the

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1 restroom. This is not --

2 THE COURT: We'll be taking a break.

3 THE WITNESS: Thank you.

4 THE COURT: We will be resuming at 1:00 o'clock  
5 tomorrow. And the Court expects you back at that time.

6 You may step down from the stand and exit the  
7 courtroom at this time.

8 THE WITNESS: Thank you, ma'am.

9 THE COURT: Ladies and gentlemen of the jury,  
10 would you please be in the hallway at 1:00 o'clock tomorrow  
11 afternoon? The bailiff will meet you there to return you to  
12 your seats in the courtroom.

13 During this evening recess you're admonished not to  
14 talk or converse among yourselves, nor with anyone else, on  
15 any subject connected with the trial, and you're not to read,  
16 watch or listen to any report of or commentary on the trial or  
17 any person connected with the trial, by any medium of  
18 information, including, without limitation, newspaper,  
19 television, radio and Internet, and you're not to form or  
20 express any opinion on any subject connected with the trial  
21 until the case is finally submitted to you.

22 You all have a good evening and we'll see you at  
23 1:00 o'clock.

24 The jury may exit at this time.

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000854

1 The Court will ask that counsel remain.  
 2 (Jurors recessed at 17:02:52)  
 3 THE COURT: The record shall reflect that the jury  
 4 has exited.  
 5 Counsel asked to approach the bench, and Mr.  
 6 Schieck indicated that he was concerned that the State may be  
 7 commenting on the defendant's right to remain silent.  
 8 MR. SCHIECK: That's correct, Your Honor. During  
 9 the cross-examination, and I'm sure the Court will correct me if  
 10 I'm wrong, that Mr. Turvey indicated he had seen, I believe he  
 11 said, three statements of the defendant. And the prosecutor  
 12 at that point referenced whether or not he had read her  
 13 testimony from a prior proceeding, which clearly indicates that  
 14 she gave a sworn testimony, a sworn testimony, and  
 15 references the waiver of her Fifth Amendment rights. And if  
 16 she chooses not to testify in this case, I think that's a comment  
 17 on the fact that she wouldn't be testifying even if she testified  
 18 previously, which I think we're getting into territory that I'm  
 19 not familiar enough if there's ever been a case quite like this  
 20 one we're in [unintelligible].  
 21 With respect to his reference to other statements,  
 22 the record has already been established that Ms. Lobato not  
 23 only gave a statement to Detective Thowsen but made a  
 24 statement to Michelle Osterling.

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1 MS. DIGIACOMO: Austria.  
 2 MR. SCHIECK: To the State --  
 3 THE COURT: Austria.  
 4 MR. SCHIECK: Austria. That she testified to which,  
 5 although not a formal statement, is a statement attributed to  
 6 the defendant in this case, and that Paul Brown had overheard  
 7 that statement. There's also statements that have been  
 8 attributed to the defendant that Dixie testified to. And so  
 9 there are other statements. They don't have to necessarily  
 10 be --  
 11 THE COURT: And Heather McBride also.  
 12 MR. SCHIECK: Heather McBride. Although the  
 13 contents of that statement, there was a conversation so I  
 14 suppose we could call that a statement also. And so her  
 15 statements have been brought before this jury by the State.  
 16 And I don't know exactly what Mr. Turvey was referring to  
 17 when he said three statements, but that could be the  
 18 statements contributed that she made to Dixie and that she  
 19 made to Michelle or maybe the statement made to Heather.  
 20 So there are other statements, just not taped statements to  
 21 policemen. So we don't have to call it testimony, which is --  
 22 which is the phrase that really caused me this concern in this  
 23 case. And I would prefer they do not reference prior  
 24 testimony by the defendant any further as opposed to

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1 referring to he's aware that she has made statements. In fact  
 2 there's a lot of people that she's made statements to.  
 3 MS. DIGIACOMO: Well, Your Honor, I didn't hear  
 4 three statements. I just heard, when I was asking specifically  
 5 about her twenty-seven-page statement, that he said I got -- I  
 6 thought it was several or multiple statements and I didn't  
 7 review any of them. So at that point, I was just trying to ask  
 8 him about what else he reviewed. I shouldn't have used  
 9 testimony, I guess. If that's what they're objecting to, then  
 10 that's fine. I won't use that. I'll use prior statement when I  
 11 cross him. But I think the State has a right to ask him whether  
 12 or not he had reviewed those and where she had testified or  
 13 where she had said in her statements that she had gotten  
 14 blood on her after her attack, whether that would change his  
 15 opinion that there couldn't possibly be blood in the car, with  
 16 the positive luminol and the positive phenolphthalein. That's  
 17 what the point was I was trying to get at.  
 18 THE COURT: I'm gonna sustain the objection as to  
 19 testimony. The jury should not be informed of prior testimony,  
 20 at least not at this juncture in the proceedings. And I don't  
 21 know if it will ever become appropriate. It depends on what  
 22 happens down the road. But at least at this juncture, the  
 23 State should avoid referencing the defendant's prior testimony.  
 24 MS. DIGIACOMO: That's fine. I will.

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1 THE COURT: I'm gonna --  
 2 MS. DIGIACOMO: But I should be able to cross him  
 3 on it.  
 4 THE COURT: I'm gonna ask the recorder to take us  
 5 off the record and back up the tape so that we can listen to  
 6 that part of the question and the answer again so that we're  
 7 clear on just what he did testify to.  
 8 (Off record at 17:07:54 until 17:10:27)  
 9 COURT RECORDER: On the record.  
 10 THE COURT: Okay.  
 11 MR. KEPHART: Your Honor, I understand the Court  
 12 is sustaining of the objection that defense raised on this, but  
 13 could I re-raise this issue tomorrow? I want to do some  
 14 research on this. I think that the fact that the defendant has  
 15 waived her right to a -- in a previous proceeding, her Fifth  
 16 Amendment right, and comes in here and has an expert  
 17 testifying as to the presence or her ability to be there, and she  
 18 talked directly to that issue, I think is certainly fair game. To  
 19 say now that she gets to hide behind her Fifth Amendment  
 20 right, and since we're not saying anything about her not  
 21 waiving it or doing anything, she has that right, she can do  
 22 whatever she wants, but in a previous proceeding where she  
 23 has in fact waived her right to the -- her Fifth Amendment  
 24 right and gave testimony, I think that it is certainly something

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1 that can be explored with a witness who, talking to the  
2 evidence in this particular case.  
3 I want to -- I mean, we're not gonna go forward  
4 with that based on the Court's sustaining of the objection, but  
5 I'd like to be able to research that tonight and give you some  
6 case law on that. And I think Mr. Schieck has also indicated  
7 he's not real familiar with that area as well. But I don't want  
8 to be forestalled from that at this point.  
9 THE COURT: Then I'm gonna ask counsel to come  
10 back at 11:30 with --  
11 MR. KEPHART: Okay.  
12 THE COURT: -- any such research and further  
13 argument on this issue.  
14 MR. KEPHART: Okay. Thanks.  
15 THE COURT: I think that the State can make inquiry  
16 of this particular witness as to -- I think Ms. DiGiacomo had  
17 indicated at sidebar that she could clean it up and say, you  
18 know, I'm referencing statements given by the defendant and  
19 have you read any of them, do you know the content of any of  
20 them. And I think he's gonna say no, from where we're at at  
21 this point in time.  
22 MR. KEPHART: Okay.  
23 THE COURT: I think he said it's kind of his standard  
24 operating procedure to never read defendant's statements, so

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1 you can explore why that is. And I don't think the State needs  
2 to -- needs to delve into the prior testimony for any legitimate  
3 purpose, really, but --  
4 MS. DIGIACOMO: Well, the problem is, Your Honor,  
5 the statement is before the jury, the defendant's statement is  
6 before the jury, and she does reference getting blood on her a  
7 little bit. But in her prior trial testimony, three different times  
8 she testified that she had blood on her, on her upper chest  
9 area. And so, I mean, I don't know how to reference the  
10 second statement without the jury going why didn't we get  
11 that one. That's the problem it leads to.  
12 THE COURT: Well, you can make the point with the  
13 one that was played and scrolled to the jury.  
14 MS. DIGIACOMO: Okay.  
15 MR. SCHIECK: And I think -- I think in that  
16 statement she did make a reference to the fact that she got it  
17 on her or she got it on her clothes, that she had discarded her  
18 clothes. And so I think the jury has already heard that one, so  
19 I think they can phrase the question based on that statement  
20 and get the same point they're trying to make, which is she  
21 said she had blood on her and got in the car on a previous  
22 occasion.  
23 MR. KEPHART: Well, she didn't necessarily say  
24 previous occasion, Your Honor. We're not gonna -- we're not

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1 gonna tone it that way either.  
2 THE COURT: I would -- I'd be happy to take a look  
3 at any research that you might find between now and  
4 tomorrow at 11:30. I think we all know what the status of the  
5 case law is. If somebody -- if somebody waives at the prelim  
6 and gives testimony in the case and then is bound up to trial,  
7 that that is prior testimony under oath in the case. But when  
8 there's a -- when there's a retrial and the Supreme Court  
9 sends it back to -- basically, wipes the slate clean and you start  
10 all over again, I would think that that would be a different  
11 situation. But I --  
12 MR. KEPHART: Okay.  
13 THE COURT: I don't know of any cases right off the  
14 top of my head that have dealt with this exact scenario.  
15 MR. KEPHART: I --  
16 THE COURT: So --  
17 MR. SCHIECK: There are --  
18 MR. KEPHART: The reason I asked the Court, Your  
19 Honor, is 'cause there is because the issue is when she swears  
20 in to tell the truth, that kind of over -- forestalls everything  
21 because she's waived it at one point in time. It's almost like  
22 it's set in concrete because she has exercised that right and  
23 she has waived that right. And the whole purpose and the  
24 whole issue --

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1 THE COURT: Well, I'm saying she didn't.  
2 MR. KEPHART: -- and the belief --  
3 THE COURT: She didn't exercise it. She waived it.  
4 MR. KEPHART: That's what I mean, is that -- is that  
5 the whole purpose is to believe that sworn testimony is telling  
6 the truth. And so -- and she was subject to cross-examination,  
7 she was subject to being directed by her attorney. And so I  
8 think the courts are speaking to say, no, that's basically  
9 testimony. You don't -- you don't get to take it back. That's  
10 why we're allowed to present it in our case in chief, 'cause it's  
11 a statement made by her. But I'd like to look at it because I  
12 believe that there is some case.  
13 THE COURT: We did have a motion in limine that  
14 asked that it be --  
15 MR. KEPHART: Admitted in our case in chief.  
16 THE COURT: No, that it be discarded.  
17 MR. KEPHART: Right.  
18 MS. DIGIACOMO: Right. They did a --  
19 THE COURT: Which --  
20 MS. DIGIACOMO: -- motion to suppress.  
21 THE COURT: Which it -- what the Court denied  
22 because that was the testimony. But the question now is I  
23 don't know whether she's gonna exercise or waive in this  
24 retrial. That's the Court's concern.

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1 MR. SCHIECK: My whole spin this is, Your Honor,  
2 is there have been cases that have been reversed and  
3 remanded where the defendant testified and the Court has  
4 indicated that the State can't present that prior sworn  
5 testimony in its case in chief against the defendant, which is  
6 not a Fifth Amendment right to keep out that testimony from a  
7 -- from a subsequent proceeding. And that has been litigated  
8 in the Byford case and some other cases since then that the  
9 Supreme Court says, no, that can be used by the State in their  
10 case in chief. The State elected not to use it in their case in  
11 chief in this instance.

12 Now the question is does she still have the Fifth  
13 Amendment right to refuse to testify. Can the State now  
14 compel her to take the stand because she waived in the last  
15 trial? I would say the answer to that is no. And so it's now  
16 commenting, after they've elected not to use that testimony in  
17 their case in case, that they reference her testimony. It is a  
18 comment that she may now be reinvoking her right. And I  
19 think if she says I'm not going to testify, you can't compel me  
20 under the Fifth Amendment to testify, that they can't then do it  
21 because they waived that when they didn't use it in their case  
22 in chief.

23 MR. KEPHART: Judge, we're not --

24 MR. SCHIECK: That's where we're getting to

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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.

Lin Dunbar  
Transcriber

5/15/07  
Date

\*\*\*\*\*

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1 uncharted territory.

2 MR. KEPHART: Judge, we're not compelling her to  
3 do anything at all. We have never done that here. What  
4 we're saying is that once she testifies, she has waived that and  
5 she's shown that. And that's why they give us the opportunity  
6 to be able to admit it.

7 But I'd like to bring in -- I know the Byford case.  
8 Dave and I did it together. We know what that case is  
9 involved with. But I'd like to bring it in and bring in the cases.  
10 I'm pretty sure there's a case that talks about -- I know in  
11 some jurisdictions once you waive it, you've always waived it  
12 for purposes of statements. And I'm not sure exactly how  
13 Nevada is addressing that in light of the fact that we -- that  
14 the only time I've ever had it come up is when we're  
15 presenting it in our case in chief, and we've always been  
16 permitted to do that. So I'd like to address that tomorrow if  
17 we could.

18 THE COURT: Very well. We'll see everybody at  
19 11:30.

20 And we'll go off the record until that time.  
21 COURT ADJOURNED AT 17:18:04, UNTIL THE  
22 FOLLOWING DAY, OCTOBER 3, 2006  
23 \*\*\*\*\*

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**CERTIFICATION**

I (WE) CERTIFY THAT THE FOREGOING IS A "ROUGH  
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EIGHTH JUDICIAL DISTRICT COURT  
CIVIL/CRIMINAL DIVISION  
CLARK COUNTY, NEVADA

FILED

OCT 11 24 AM '07

*Cheryl R. S.*  
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 17  
VOLUME XVII

TUESDAY, OCTOBER 3, 2006

COURT RECORDER:

LISA LIZOTTE  
District Court

TRANSCRIPTION BY:

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Proceedings recorded by electronic sound recording, transcript  
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000858

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1 LAS VEGAS, NEVADA TUESDAY, OCTOBER 3, 2006

2 **PROCEEDINGS**

3 PROCEEDINGS BEGAN AT 11:38:30 A.M.

4 (Jurors are not present)

5 THE COURT: That concludes the morning calendar.

6 We do have the trial matter that we set for 11:30 this  
7 morning. And I see the defendant's present but I don't see  
8 her counsel. I do see the two prosecutors present. So --

9 MS. DIGIACOMO: They're outside.

10 MR. KEPHART: Defense counsel's in the hall.

11 THE COURT: Oh, okay.

12 MR. KEPHART: May I approach, Your Honor?

13 THE COURT: Yes.

14 Defendant's counsel is now present.

15 State versus Lobato, C177394. Record shall reflect  
16 the defendant's present with her three counsel, the two  
17 prosecuting attorneys are present. And this was the time set  
18 for counsel to do some legal research with regard to the  
19 testimony issue and taking of the Fifth, which arose at the end  
20 of yesterday's proceedings.

21 Mr. Kephart has just provided the Court with a copy  
22 of the decision in Supreme Court of Nevada, Robert Byford,  
23 Appellant, versus State of Nevada, Respondent. Rehearing  
24 denied June 1, 2000. Decision entered February 28, 2000,

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\*\*\*\*\*

EXHIBITS

DESCRIPTION:	ADMITTED
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STATE'S EXHIBITS

None.

DEFENDANT'S EXHIBITS

None.

\*\*\*\*\*

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1 which I'm gonna take a minute to read through. I've read this  
2 before, but it's been some time, so I want to read it through  
3 anew.

4 Did Mr. Schieck have any that he wanted the Court  
5 to read as well?

6 MR. SCHIECK: I do have the case that Byford cited  
7 to, Your Honor --

8 THE COURT: Okay.

9 MR. SCHIECK: -- on this issue, which is Funches  
10 versus State. And the citation in Byford on this issue is  
11 actually a pretty short citation because of the factual pattern in  
12 there. This is the Funches case, which --

13 THE COURT: F-U-N-C-H-E-S?

14 MR. SCHIECK: Yes, Your Honor, which I think spells  
15 out clearly what is admissible, I guess the defendant has  
16 previously testified.

17 THE COURT: Okay. I'm gonna take us off the  
18 record while I read these through.

19 (Court recessed at 11:41:32 a.m. until 11:57:48 a.m.)

20 (Jurors are not present)

21 THE CLERK: On the record.

22 THE COURT: The Court's now reviewed both the  
23 Byford case and the Funches case. The Funches case is in 113  
24 Nevada and is from the year 1997. But I don't have the first

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000859

1 page of it, so I'm not sure what that citation.

2 MR. KEPHART: It's 113 Nevada 916.

3 THE COURT: Thank you.

4 MR. KEPHART: I'm quoting from the Byford  
5 decision, Your Honor.

6 THE COURT: Oh, where it was cited in Byford?

7 MR. KEPHART: Yes.

8 THE COURT: Thank you. I see that.

9 MR. KEPHART: Okay.

10 THE COURT: That's correct. Okay.

11 State?

12 MR. KEPHART: Your Honor, basically the issue here  
13 is what do we call the statement that the defendant made in  
14 this particular case when we're talking to this expert and we're  
15 referencing his purpose and what he's looking at. And the  
16 only thing that we could think of is what it is called, it's his --  
17 her prior testimony. The interesting point about the Byford  
18 decision is that the very argument that Mr. Schieck made  
19 yesterday he made in the Byford decision and the Supreme  
20 Court said no to that.

21 He contended in the Byford decision that the use of  
22 Robert Byford's prior testimony constituted an improper  
23 comment on his decision not to testify at the second trial, and  
24 the Supreme Court said no. And he made that same argument

XVII-6

1 here is that the use of the word "prior testimony" with this  
2 expert is common -- is commenting on her Fifth Amendment  
3 right here not to testify, and that's incorrect.

4 Under the statute as cited in the Byford decision,  
5 which is interesting that they -- the way it was used, you  
6 understand that in reading this, is that typically the statements  
7 or the prior testimonies being introduced by the State, in this  
8 particular case the co-defendant introduced it. And they found  
9 that it nevertheless their -- his introduction versus the State's  
10 introduction that his prior testimony was admissible under 51-  
11 325, and they showed how it fit. And certainly here you can't  
12 argue that it's not admissible here.

13 But the issue that we have here is that in the Byford  
14 decision the Supreme Court asked the decision as to whether  
15 or not the term referred to "prior testimony" is being used by  
16 the State -- 'cause that would be us trying to introduce this --  
17 as a way of commenting on the defendant's silence in the  
18 second trial, and they found not.

19 And I'll tell you, the term "prior testimony" was used  
20 throughout that trial when -- after he testified. But  
21 commenting would be getting up and saying well, she didn't  
22 testify here. You know, why don't we hear from it now, why  
23 didn't we hear from her here, that type of thing. And that  
24 didn't happen.

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1 Matter to fact, I was involved in both trials, like Mr.

2 Schieck, and the reason it came back was because the way the  
3 Supreme Court interpreted our comment in closing argument  
4 in the first trial as commenting on the Fifth Amendment right  
5 to failure to testify.

6 But the concern that the State has here is that in  
7 reference to -- we talked to the bench about whether or not  
8 we would consider this as a prior statement. Well, her prior  
9 statement has been presented to the jury. Her prior statement  
10 that she gave to the police department.

11 THE COURT: The tape recorded voluntary  
12 statement?

13 MR. KEPHART: Yes. And what we're talking about  
14 here with the use of her expert is her prior testimony,  
15 statements that she gave her and testified to and was subject  
16 to cross-examination and directed by the defense -- I mean by  
17 her attorney, and it's prior testimony. And under the statute,  
18 prior testimony is admissible if you fit within those guidelines,  
19 as pointed out here in the Byford decision, but also under the  
20 statutory provisions. And then Funches is the one that actually  
21 discussed that any further.

22 So we -- we're of the position that if you -- if we're  
23 not allowed to call it what it is, then we're in a situation where  
24 I believe it would be confusing, may even be misleading to the

XVII-8

1 jury and questions were gonna be -- will be by the jury of  
2 what other statement is she talking -- are you talking about?  
3 And the statement is her prior testimony, so --

4 And the defense provided that to their expert. He  
5 has it in his report that he reviewed the prior testimony of the  
6 previous trial. So -- and we would hope that in their -- his  
7 expert opinion, if he's reviewing these things he would've at  
8 least looked at -- I mean he put it in his report. How come we  
9 cannot cross on that? He termed it that, he used those words.  
10 And he went one step further and said prior testimony from  
11 the previous trial.

12 So we're just trying to use the words that are  
13 appropriate here and what it is being called. And we've  
14 already -- I think we've already overcome any requirement of  
15 whether or not it's admissible or not. It's just now I think the  
16 issue is what do we call it?

17 And I appreciate the Court giving me an opportunity  
18 to address the Court again on this, and I'll submit it based on  
19 that.

20 THE COURT: Okay.

21 MR. SCHIECK: Thank you, Your Honor.

22 I think the important point to be made is we're not  
23 at this stage contesting that her prior testimony was not  
24 admissible in the State's case in chief. They chose, for

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000860

1 whatever reason, not to attempt to admit that testimony. So  
2 that has not been heard by the jury by their choice.

3 Clearly under Byford and Funches, that previous  
4 testimony could've been presented during the cases -- State's  
5 case in chief. They didn't do that. So to refer to something  
6 that is not in evidence before this jury is because they didn't  
7 put it in evidence.

8 Secondly, if -- now that they've rested their case in  
9 chief they can't supplement the evidence that's been presented  
10 to this jury until such time as there's any rebuttal testimony.

11 If Ms. Lobato elects, as is her right, to not testify  
12 under the Fifth Amendment, she cannot be compelled both  
13 under the Fifth Amendment and by statute to testify, and  
14 invokes that right, then the question's going to arise whether  
15 or not the State can use that testimony in their rebuttal case.  
16 Whether or not they can seek to read that to the jury in their  
17 rebuttal case, to which we would take the position they can't  
18 because it's not rebuttal, anything the defense has presented.

19 And so by referring to prior testimony in previous  
20 proceedings, and Dr. -- excuse me, Mr. Turvey said that he  
21 had read the testimony of Dr. Simms, and was very clear that  
22 he has not read either the testimony or the statement of the  
23 defendant in this case, and that he doesn't read their  
24 statements when he's examining the information that's given

XVII-10

1 to him to examine, that his job is to look at the crime scene  
2 collection, the crime scene process and the reconstruction, the  
3 areas that he's qualified to testify about. If they want to ask  
4 him questions about whether or not it would make a difference  
5 in his opinion because the defendant has said previously that  
6 she was in the car and had blood on her, whether that would  
7 effect his discussion of luminol or phenolphthalein, that's one  
8 thing. But to specifically refer to the fact that she testified in  
9 the previous proceeding, if she doesn't testify in this  
10 proceeding is going to clearly implicate that she invoked her  
11 Fifth Amendment right as a comment on that invocation.

12 And Byford, when it was reversed the first time was  
13 for a Fifth Amendment violation, even though the defendant  
14 testified in this case. There can still be a Fifth Amendment  
15 violation because there was a comment made concerning that  
16 he had never testified before. And so it's very slippery slope  
17 that we have when we start talking about testimony of the  
18 defendant in a certain proceeding and whether he testifies  
19 here didn't testify here or testified before.

20 So I think the prudent course is to simply refer to it  
21 as previously stated or previous statement, and not refer to as  
22 testimony from a previous proceeding that is not in evidence  
23 before this jury because the State chose not to put it in their  
24 case in chief.

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1 MR. KEPMART: Your Honor, it's interesting that Mr.  
2 Schieck talks about the position of what time the State has to  
3 introduce this type of evidence because in the original  
4 Supreme Court opinions that dealt with the use of prior  
5 testimony under the Harris decision and the Edmonds rule, is  
6 that they were -- it was being used systematically as a rebuttal  
7 device. And not until 1982 when the State of Nevada  
8 addressed that very issue after it was used in a case called  
9 Turner versus State as rebuttal, they went ahead and said can  
10 it also be used in the case -- the State's case in chief. And  
11 that's at the point in time where they said yes, it could  
12 because it is prior testimony and it's admissible as basically  
13 non-hearsay if you fit the rules that are required under NRS 51  
14 through 25.

15 And so for Mr. Schieck to say oh, we can't even use  
16 it in rebuttal, I disagree with that. I think it can be used at a  
17 point -- at any point in time by -- in this particular case it  
18 would be if the declarant is unavailable, if she's choosing not  
19 to testify obviously the rules are is that she's unavailable. If  
20 the proceeding was different the party again assume the  
21 former testimony's offer was a party or is imprivity with one of  
22 the former parties and issues and statute are the same, we're  
23 using it.

24 But they provided that information to their expert.

XVII-12

1 And when their expert's up here talking about physical  
2 evidence and that type of thing and how he's interested in  
3 people that are at the crime scene, but yet he can't even say  
4 that he even looked at the defendant's own statement I think  
5 is good for rebuttal. And we're also talking about a statement  
6 where she clarifies her original statement to the police when  
7 she testified, and talks in depth about how she got in the car  
8 with blood on her clothes and goes in further with our cross-  
9 examination.

10 So to call it something other than previous testimony  
11 is in an event -- in light of the strategy the defense has been  
12 going through in this trial, that the State hadn't done certain  
13 things, hadn't collected certain things. Their own expert got  
14 up there to say oh, the way the trial's going none, I don't  
15 know if I'm gonna see -- what I'm gonna see tomorrow.

16 By that strategy, that's basically telling the jury  
17 there's things that we're hiding from them. And when I gotta  
18 stand up there and say another statement which they do not  
19 have, then what are we doing? Are we inviting their argument  
20 that we -- that something additional that we're preventing  
21 them from seeing? This is her previous testimony, and I think  
22 that the jury can make the finding that it's previous testimony  
23 and there's no obligation that she has to testify. She's gonna  
24 be instructed -- the jury's gonna be instructed on that. And

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000861

1 I'm not saying anything about us violating or her -- we're  
2 trying to violate her Fifth Amendment right here. She doesn't  
3 have to testify if she doesn't want to, but she did give a  
4 previous testimony and it -- I think it's appropriate that the  
5 jury knows where that's coming from in the context of this  
6 expert.

7 THE COURT: If she elects to testify in the retrial,  
8 the prior testimony would be available for impeachment  
9 purposes should she testify to anything different than what her  
10 prior testimony had been. In such a situation the examination  
11 of Mr. Turvey would not then be a comment on her electing to  
12 use her right to remain silent. If in this retrial she, however,  
13 decides to take the Fifth and remain silent, then she becomes  
14 unavailable under this case law and the statement comes in in  
15 rebuttal.

16 So it appears that the testimony is going to be  
17 utilized in the trial in one way or another. It's not clear to the  
18 Court at this juncture whether she's going to take the Fifth or  
19 waive. But in either event, the testimony is going to become  
20 available to the jury.

21 So it appears that it is not an impermissible  
22 comment. However, we have tried to not tell the jury that it is  
23 a retrial, so it can be referred to as testimony from prior  
24 proceedings in this case.

XVII-14

1 The Court -- in light of the Court's review today of  
2 the Byford and Funches matters reconsiders its ruling at the  
3 end of the day yesterday. And the State may proceed with  
4 that cross-examination at 1:00 p.m.

5 We'll go off the record at this time and see everyone  
6 at 1 o'clock.

7 (Court recessed at 12:12:18 p.m. until 1:14:41 p.m.)  
8 (Jurors are present)

9 THE BAILIFF: . . . Honorable Valorie J. Vega  
10 presiding. Please be seated.

11 THE COURT: Good afternoon. Record shall reflect  
12 resuming trial in State versus Lobato under C177394, in the  
13 presence of the defendant, her three counsel, the two  
14 prosecuting attorneys, and the ladies and gentlemen of the  
15 jury.

16 THE COURT: Mr. Turvey has returned to his seat on  
17 the witness stand. The Court reminds him that he remains  
18 under oath, and we proceed forward with his cross-  
19 examination.

20 Ms. DiGiacomo, you may proceed.

21 MS. DIGIACOMO: Thank you, Your Honor.

22 ///

23 ///

24 ///

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TURVEY - CROSS

**BRENT TURVEY, DEFENDANT'S WITNESS,  
REMAINS UNDER OATH  
CROSS-EXAMINATION**

4 BY MS. DIGIACOMO:

5 Q All right. Mr. Turvey, you were hired back in August  
6 of 2005 by the defense, correct?

7 A I was originally contacted back in August of 2005. I  
8 don't remember the exact date the materials were sent to me.  
9 I'm often contacted by people inquiring about cases, and that -  
10 - the date that we made contact is not the date of hire. So  
11 within about three weeks I would say that I was hired.

12 Q So by September 2005?

13 A I would say that's accurate, yes.

14 Q Okay. And when you were hired what were you  
15 asked to do?

16 A I was asked to do two things, to at the very least.  
17 One was to examine the physical evidence in the case to  
18 determine what, if anything, could be made of it. What had  
19 been done, what had not been done in terms of testing, and  
20 what could still be done. And then probably most importantly,  
21 determine what could be said about the crime, based on the  
22 evidence that we had at the moment. And then also I was  
23 asked to look at the issue of the motivation and examine what  
24 motive might be present.

XVII-16

TURVEY - CROSS

1 Q And yesterday we spent quite a long time discussing  
2 the actual crime scene and basically your conclusion that you  
3 can draw from that as there's no physical evidence at the  
4 crime scene that links Lobato there, correct?

5 A That's correct.

6 Q All right. Then we discussed the car. And it's your  
7 opinion that there -- because there's no blood in -- confirmed  
8 in the car, that there's no physical evidence that links that car  
9 to the crime scene?

10 A That's part of it, yes.

11 Q All right. And so you say that's part of it. What's  
12 the other part?

13 A I think as we talked about yesterday, we'd be  
14 looking for other items of trace and transfer evidence like hairs  
15 and fibers that would associate either the suspect or the scene  
16 or the victim to the vehicle. So it's not just blood, it's the  
17 absence of any other evidence as well. And again, including  
18 fingerprints as well. We're not finding fingerprints that  
19 associate Mr. Bailey with the vehicle. We're not finding --  
20 there's three things we're looking at, the victim, the suspect,  
21 and the crime scene. And then the fourth thing, the fourth  
22 issue being the vehicle, and you're trying to find connections  
23 between all of them. And you're not just looking at blood,  
24 you're looking at any sort of transfer evidence, any sort of

XVII-17

000862

## TURVEY - CROSS

- 1 trace evidence. So blood's part of it.  
 2 Q Okay. So there's no fingerprints of the victim found  
 3 in her car?  
 4 A That's correct.  
 5 Q Which tells us what?  
 6 A That the victim did not have contact with the  
 7 vehicle.  
 8 Q And there's actually no fingerprints of the defendant  
 9 found in the car either. What does that tell us?  
 10 A It's not uncommon for people to not leave  
 11 fingerprints in their own car for them over time, especially in  
 12 this climate, for the fingerprints, the oils and the water to  
 13 evaporate and made them not collectable. However, they did  
 14 find fingerprints on the car.  
 15 Q So the fact that they didn't find her fingerprints, it's  
 16 not the same conclusion that she didn't have contact with that  
 17 car?  
 18 A No, I'm saying there's no evidence of contact.  
 19 Q Okay. But there's no evidence of contact with the  
 20 victim either, but you can draw the conclusion that the victim  
 21 had no contact with that car. Isn't it really that the victim --  
 22 we can't show the victim had contact with the car?  
 23 A You certainly cannot.  
 24 Q Okay. And you can't show the defendant had

XVII-18

## TURVEY - CROSS

- 1 contact with the car?  
 2 A But she had possession of the vehicle, so that's the  
 3 contact. And plus, it was in front of her home, so I think you  
 4 can. I think there are levels, other things that we can  
 5 investigate to show that contact.  
 6 Q Okay. Like what?  
 7 A Not using fingerprints. I just --  
 8 Q With -- so you're not making an assumption that she  
 9 had because --  
 10 A No.  
 11 Q -- the vehicle was found in front of her house, are  
 12 you?  
 13 A That's not an assumption, that's an examination, an  
 14 interpretation. I'm looking at it. I don't have to assume. The  
 15 vehicle was found out in front of her home, the vehicle  
 16 contained her possessions, the vehicle had her keys in it, but  
 17 it's not an assumption.  
 18 Q Well, that only tells you that she had contact with it  
 19 at some point, correct?  
 20 A That's correct.  
 21 Q Okay. Doesn't tell you when she had contact with  
 22 it?  
 23 A That's correct.  
 24 Q It doesn't tell you that she had contact with it on a

XVII-19

## TURVEY - CROSS

- 1 certain day?  
 2 A That's correct.  
 3 Q But you're saying that she did have some contact  
 4 with it just 'cause her belongings are in there and it's found in  
 5 front of her house?  
 6 A That would be -- that would be evidence of contact,  
 7 yes.  
 8 Q Okay. So if something from the victim was found in  
 9 the car, that would be evidence of contact?  
 10 A I think we could agree to that, yes.  
 11 Q All right. Now you base the fact that there's no  
 12 blood in the car because there's no confirmatory test that was  
 13 performed?  
 14 A That's correct.  
 15 Q So no confirmatory test, you cannot say that there  
 16 was blood?  
 17 A You cannot.  
 18 Q Okay. But at the crime scene, even though there's  
 19 no confirmatory test on what you call the blood droplets by the  
 20 footprints, you can say that those are blood droplets?  
 21 A I think you can. And I think it really stretches the  
 22 imagination to suggest that they're not. There's some really  
 23 good photographs that show the size, the association, and the  
 24 nature of the drops and the color. I think the jury will -- I

XVII-20

## TURVEY - CROSS

- 1 don't think I need to explain that -- excuse me, I don't think I  
 2 need to interpret that for the jury. I think they'll see it for  
 3 themselves as blood.  
 4 Q Okay. But --  
 5 A It's very clear to me.  
 6 Q Okay. And that's what -- I'm trying to ask you a  
 7 question --  
 8 A And I just did.  
 9 Q -- I just want an answer. So --  
 10 A The shape -- I just said the shape, the association,  
 11 the proximity, the size, all these factors and the color and the  
 12 texture, all these factors make it more consistent with blood  
 13 than anything else. I would love to hear any other theories  
 14 about what it might be, however, I would be very surprised at  
 15 anyone who would look at those photos and say it's not blood.  
 16 Q Okay.  
 17 A There's some very clear photos that show it's blood.  
 18 To suggest otherwise is almost irresponsible.  
 19 Q But you're basing it just on the photographs. You  
 20 weren't there?  
 21 A Yes, that's correct, but the photographs are pretty  
 22 compelling.  
 23 Q Okay. So you weren't at the crime scene that night,  
 24 correct?

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000863



## TURVEY - CROSS

1 A No, I was not.

2 Q Okay. And so the fact that somebody else was at

3 the crime scene did not believe they were blood. You're

4 saying that based on the photographs he was wrong?

5 A I would be very interested to see any testimony or a

6 report from somebody saying the drops that I'm talking about

7 are not blood. That person would be in a lot of trouble, I

8 think.

9 Q They'd be in a lot of trouble with you because they

10 conflict with your opinion?

11 A No, they'd be in a lot of trouble with the IEI. I think

12 anybody else -- any other reasonable person looking at that

13 saying it's not blood or not possibly blood, I think it defies

14 belief.

15 Q Well, you saw the testimony in this case from Dan

16 Ford?

17 A That's correct.

18 Q Okay. And so you disagree when he said that it was

19 not blood droplets?

20 A I don't think that he said that. I don't think we went

21 through and looked at each individual drop that we're talking

22 about here. I think we'd have to have him come back, and I'm

23 sure -- I hope that he does come back and confirm exactly

24 what he's talking about, because there are very clear areas

XVII-22

## TURVEY - CROSS

1 where there are blood droplets right next to and within the

2 footwear patterns. I think it's very clear.

3 Q Okay. But you're basing that solely on what you

4 saw, there's no confirmatory tests that was done?

5 A Yeah, I don't think it's -- just like there's no

6 confirmatory test on the fact that it's blood on the footwear

7 impressions, I don't think it's really necessary. It's pretty

8 obvious it's blood. And to suggest otherwise is sort of

9 irresponsible.

10 Q Okay. So -- but the fact that there's positive luminol

11 tests in the car, positive reaction in the car for luminol and a

12 positive phenolphthalein test, which are both presumptive tests

13 for blood, that you cannot say that it's possible there was

14 blood there?

15 A You're really inappropriately comparing apples and

16 oranges here. We're not looking at a physical stain that has a

17 shape, size, color and an evident texture and an association

18 with other bloody areas. You're talking about a luminol test

19 which creates a false presumptive positive with many items.

20 So you're inappropriately making a comparison where there

21 isn't one to be made.

22 Q How many tests with luminol have you conducted?

23 A Again, I don't conduct luminol tests myself, but I

24 have conducted them for the purposes of training, but I don't

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## TURVEY - CROSS

1 do them on live crime scenes.

2 Q Okay. How many tests have you conducted

3 regarding false positives, what gives false positives?

4 A I have maintained currency with the literature, but I

5 do not -- I have not made the test myself.

6 Q So everything you're testing about -- or excuse me --

7 -- testifying about regarding the luminol and the

8 phenolphthalein is just based on what you've read?

9 A No, it's based on what I -- my education, my

10 training, and my experience.

11 Q Okay. So your education, what you learned in the

12 classroom?

13 A No. Again, you're mischaracterizing my testimony.

14 My formal education, getting my masters of science in forensic

15 science was not just a classroom program, it was very much a

16 heavily intensive applied program. So to say it's just a

17 classroom program, that's -- that really misstates what I said.

18 Q Okay. But you just said you're basing it mostly in

19 the literature?

20 A No, I did not. You're misstating my testimony. I

21 said it was based on my education, my training, and my

22 experience, which includes not just my conversations with

23 other criminalists that I've had over the years, not just my

24 review of the literature, not just my many hours of training in

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## TURVEY - CROSS

1 the classroom and in mock scenes, but also in cases that I've

2 worked where luminol has been used and applied by others in

3 my presence or as a part of the case record. So it's a little

4 more extensive than what you're suggesting.

5 Q Okay. Now with regard to the luminol and the

6 phenolphthalein, it's your testimony that you cannot say that

7 the car was cleaned, correct?

8 A I think there's evidence that it wasn't because

9 there's an absence of indication of cleaning. And I testified to

10 what those elements were yesterday.

11 Q Okay. What is the absence? Tell me again.

12 A Again, it would be the absence of evidence of

13 bleach, the absence of a false positive reaction with the

14 luminol with a substance that can be identified as bleach, it

15 would be the absence of -- the presence of dirt and grime on

16 the surfaces of the vehicle, an absence of wiping patterns, and

17 no indication from any of the people who testified who

18 examined the vehicle that there was evidence of cleaning.

19 Q What about the testimony that it appeared that the

20 floral seat cover had been laundered, had been recently

21 laundered?

22 A I'm interested to know how that was determined. I

23 -- it's an interesting opinion or theory, but I don't see how it

24 was established.

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## TURVEY - CROSS

1 Q So is it your testimony then the only way to clean  
2 blood out of a car would be to use bleach?

3 A No. I'm certain that there are a number of ways to  
4 clean it visibly. But to clean it to the level that would be  
5 required for luminol to fail to detect and phenolphthalein to  
6 detect it would be -- require extensive, repeated, with bleach,  
7 with ethanol, other -- or other similar intensive industrial  
8 cleaners that are not readily available. And I think I testified  
9 to that yesterday as well.

10 Q Okay. So the fact that we had a positive luminol  
11 reaction here, that's a failed attempt?

12 A You're mischaracterizing what I said. I said it's a  
13 failed --

14 Q Well, you said that --

15 A No, I did not.

16 Q No. Okay. You said that the fact that there was  
17 failed attempts at luminol and phenolphthalein would show  
18 that the cleaning -- okay, you tell me.

19 A That's not -- you keep changing my words around  
20 here.

21 Q I'm just trying to clarify, sir.

22 A I don't think that's the case. Let me --

23 MS. DIGIACOMO: Your Honor, I'd move to strike his  
24 last comment.

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## TURVEY - CROSS

1 strong cleaning agent to clean the car to the point there was  
2 no reaction -- excuse me, that it would be a false positive for  
3 luminol and phenolphthalein and no blood?

4 A I think you're mixing up two elements in my  
5 testimony. I don't think that's what I said. If you could ask it  
6 maybe a little -- a little more slowing and not compound, one  
7 question at a time, it would be easier for me.

8 Q Okay. Well, do you understand what I'm asking  
9 you?

10 A I really don't, that's why I'm asking you to clarify.

11 Q Okay. What type of cleaning agent would it take to  
12 clean blood out of a car so that it doesn't react with luminol or  
13 phenolphthalein?

14 A Again, I've answered this question I think about six  
15 times now and --

16 Q Sir --

17 A -- I'll answer it again, it's not gonna change.

18 MS. DIGIACOMO: Your Honor, would you instruct  
19 the witness please to just answer my questions and not to  
20 comment?

21 THE COURT: You need to listen to the question as  
22 it's posed to you and do your best to answer.

23 THE WITNESS: I'm really -- I really am trying, Your  
24 Honor.

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## TURVEY - CROSS

1 THE COURT: Motion granted.

2 THE WITNESS: I apologize, Your Honor.

3 BY MS. DIGIACOMO:

4 Q Okay. So explain what you mean by the cleaning  
5 and how you -- you get a negative result for luminol and  
6 phenolphthalein. What were you trying to say?

7 A I've said this a number of times, I think, and that is  
8 that -- I hope I'm being perfectly clear here. You can get a  
9 false positive, it can be something other than blood, and  
10 phenolphthalein and luminol can get a false positive for these  
11 items. It's already been testified to me and everyone else who  
12 sat in this chair. And then you come along looking for blood  
13 and you don't find any, because again, it's a false positive.  
14 That's how that happens, because it's not blood. When you do  
15 the confirmatory test and you don't get a reaction, it's not  
16 blood and you have to let theory go. The idea that it's blood,  
17 it's gone. You gotta let it go. You gotta move on to  
18 something else. It was a false positive.

19 Q And -- okay. So the fact that -- again, the couldn't  
20 complete a confirmatory test, meaning extract DNA, means it's  
21 not blood in your mind?

22 A Yes.

23 Q Okay. Now you were talking about the fact that  
24 cleaning the car, something that you'd have to have a pretty

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## TURVEY - CROSS

1 BY MS. DIGIACOMO:

2 Q Well, if you've answered it before, sir, you should be  
3 able to answer it again.

4 A I certainly can. There needs to be multiple repeated  
5 attempts at cleaning with heavy cleaners, such as a  
6 combination of bleach and ethanol -- excuse me -- and other  
7 industrial level cleaners, and it has to be repeated to multiple.  
8 Now on a hard surface or nonporous surface, that may do the  
9 job. On a porous surface, it's unlikely that even that level of  
10 cleaning will get it out enough to the point where luminol  
11 would fail to detect it. Again, we're talking one parts per  
12 million. And I --

13 Q SO in this case it is not even an option that the car  
14 might've been cleaned and there might've been some blood  
15 there that reacted with the luminol or the phenolphthalein but  
16 couldn't be confirmed?

17 MS. ZALKIN: Your Honor, I'm gonna object, asked  
18 and answered.

19 THE COURT: Overruled. You may answer.

20 THE WITNESS: That is my opinion. And again, the  
21 level of cleaning that's required is not small or minor.

22 BY MS. DIGIACOMO:

23 Q Now with regard to the bat found in the car, and  
24 you said that there's no blood on it whatsoever, based on the

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## TURVEY - CROSS

1 fact that they could not do any sort of even presumptive  
 2 positive test regarding the phenolphthalein?  
 3 A That's correct.  
 4 Q Okay.  
 5 A Not only was there no blood there, there likely was  
 6 no blood there at any time.  
 7 Q Okay. So the only thing you can say about that bat  
 8 is that at no time did it have any blood on it, correct?  
 9 A That's correct.  
 10 Q Okay. Can't say whether or not it was used in a  
 11 crime, correct?  
 12 A That's correct. Maybe --  
 13 Q Can't say whether or not it might've been some  
 14 other bat used in a crime, correct?  
 15 A That's correct.  
 16 Q All you can say is that bat does not connect the  
 17 defendant to the crime scene because there's no victim's blood  
 18 found on it?  
 19 A That's correct.  
 20 Q Now you said that you had been provided with the  
 21 defendant's 27 page taped statement, but you discarded it,  
 22 you --  
 23 A I didn't discard it, I just did not review it or examine  
 24 it or read it.

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## TURVEY - CROSS

1 more reliable or who is not. That is not really I feel my  
 2 function.  
 3 Q Okay.  
 4 A So I'm not trying to beat up someone's statement  
 5 with my -- with the evidence.  
 6 Q Right. But that's -- but the reason you review it is  
 7 it's just trying to go into factors of how you can read the  
 8 evidence and what might possibly have happened at the  
 9 scene?  
 10 A Well, that's another interesting issue, because if  
 11 you're reading a statement that might contain a confession or  
 12 that might contain a statement about what occurred --  
 13 MS. DiGIACOMO: Your Honor, I'm gonna object at  
 14 this point as nonresponsive. It was a yes or no answer.  
 15 THE COURT: Sustained.  
 16 MS. DiGIACOMO: And move to strike.  
 17 THE COURT: Motion granted.  
 18 BY MS. DiGIACOMO:  
 19 Q Okay, sir, so it's important to you to just review  
 20 those statements of people that might've effected the crime  
 21 scene?  
 22 A No, that's an -- that misstates what I testified to.  
 23 Q Okay. It's important for you to reveal -- or to review  
 24 those persons who might have some connection to either the

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## TURVEY - CROSS

1 Q Okay. But you testified yesterday that it is important  
 2 for you to review those statements by persons who are at the  
 3 crime scene or associated with some crime scene, correct?  
 4 A Yes.  
 5 Q You don't care about alibi witnesses or people who  
 6 are not associated with either the primary or the secondary  
 7 crime scenes?  
 8 A I don't care about the alibi witnesses, no.  
 9 Q Okay. So all you care about are those associated  
 10 with the primary or the secondary crime scenes?  
 11 A That's correct.  
 12 Q Anything else that doesn't relate to those crime  
 13 scenes would be unimportant to your --  
 14 A It's not that they're unimportant, it's I try very hard  
 15 to eliminate as many biasing factors as I can, and that's a very  
 16 heavily biasing factor.  
 17 Q Okay.  
 18 A But more importantly, more importantly on this very  
 19 issue, it is not my place to get into the truthfulness of people's  
 20 statements. And very often when you try to compare what  
 21 you find at the crime scene as a forensic scientist to what  
 22 somebody says, there are many courts that will not allow you  
 23 to do that. So as a practice I simply don't. I don't want to  
 24 invade the province of the jury and try to tell them who is

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## TURVEY - CROSS

1 primary or the secondary crime scene?  
 2 A Yes, but that answer's incomplete as it stands. It  
 3 needs an explanation.  
 4 Q Okay. Go ahead, explain.  
 5 A The explanation is that when you are looking at the  
 6 evidence you are trying to be as objective as possible. And  
 7 when someone is giving you a version of events about what  
 8 happened in terms of a suspect statement, it is a terribly  
 9 biasing influence if you know them.  
 10 Q And I'm sorry, sir, if I could just clarify. I'm not  
 11 talking about suspect statements, I'm talking about witnesses  
 12 who give statements. You talked about yesterday Richard  
 13 Shott, Diane Parker --  
 14 A That's correct.  
 15 Q -- that's what I'm talking about here. I didn't say  
 16 suspect statements.  
 17 A I understand that.  
 18 Q Okay. So if you want to explain now with regard to  
 19 those kind of witnesses.  
 20 A With regard to those kind of witnesses, those are  
 21 important.  
 22 Q And why?  
 23 A Because they can provide information about the  
 24 placement of evidence or where possible trace evidence may

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## TURVEY - CROSS

1 have been left behind or where one might want to look  
 2 investigatively for trace evidence.

3 Q Now you also said, you know, that you did review  
 4 Diane Parker's statement and her roommate's statement that  
 5 were given to the detectives investigating this homicide?

6 A Yes, I did.

7 Q And you also said yesterday that you reviewed  
 8 reports and witness statements related to the sexual assault of  
 9 Diane Parker that happened on July 1, 2001, correct?

10 A Yes, I did.

11 Q Okay.

12 A Quite awhile ago, but I did.

13 Q Okay. And that -- those reports regarding a sexual  
 14 assault the week before prior, how does that relate to your  
 15 doing your analysis of the crime scene?

16 A Again, the question came up as to whether or not  
 17 there were similarities between the attack in Mr. Bailey and the  
 18 attack on Ms. Parker. And an issue of motive and modus  
 19 operandi, again, crime scene analysis, comparing one crime to  
 20 the other, it became an issue.

21 Q And that was an issue that the defense proposed to  
 22 you?

23 A They asked me if I would look at it and see if I could  
 24 find any similarities.

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## TURVEY - CROSS

1 there's a connection?

2 A They just asked a general question, so they weren't  
 3 asking me anything specific because they wanted to know of  
 4 there was a -- if there was any connection between the two.  
 5 If there was any evidentiary connection, any behavioral  
 6 connection, they wanted to know. They were in a state of not  
 7 knowing and what could I tell them?

8 Q Okay. But you didn't tell them anything?

9 A I didn't give a firm finding, no.

10 Q Okay. You did read the 28 page officer's report in  
 11 this case, though?

12 A Which one?

13 Q The -- there's only one officer's report. It's authored  
 14 by Detective Thowsen and LaRochelle. It's 28 pages.

15 A Yes, I did.

16 Q All right. Now there's statements made by the  
 17 defendant in that report itself?

18 A Yes, there were.

19 Q Did you look at those?

20 A I skipped over them --

21 Q You skipped over those?

22 A -- purposely.

23 Q So it wouldn't be important to you in your analysis  
 24 with regard to whether or not the -- there might have been

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## TURVEY - CROSS

1 Q And there's nothing in your report regarding  
 2 similarities, is there?

3 A I didn't feel like that was the area that I wanted to  
 4 get into. I didn't feel comfortable with that area of testimony  
 5 and I didn't know if that would be admissible, so I decided to  
 6 focus my report on things that I felt were more important.

7 Q Okay. But you did review those things?

8 A Certainly did.

9 Q Okay. But you -- now we'll talk about, you did not  
 10 review a 27 page statement that was given by the defendant  
 11 to detectives back in July 2001?

12 MS. ZALKIN: Asked and answered, Your Honor.

13 Object.

14 THE COURT: Sustained.

15 MS. DIGIACOMO: Okay.

16 BY MS. DIGIACOMO:

17 Q When you were reviewing the reports regarding the  
 18 rape of Diane Parker a week before, did that come into play  
 19 with regard to your statement that there was directed anger  
 20 motives here?

21 A No.

22 Q Okay. So the defense didn't ask you that well,  
 23 there's directed anger here, can you look to see if there's  
 24 similarities between the rape and this crime scene to see if

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## TURVEY - CROSS

1 blood in her car if she admitted during that statement that she  
 2 had blood on her when she got in her car?

3 A That could be important, certainly.

4 Q Okay. But you chose not to look at that?

5 A Again, now maybe I can answer this question. This  
 6 is the issue. When you have again, a biasing influence, such  
 7 as a suspect statement, you want to try to be as objective and  
 8 as clean as possible with respect to your interpretation of the  
 9 evidence. So you try to look very hard at what the physical  
 10 evidence says without any biasing influence from the  
 11 statements of the suspects. There's a great mass amount of  
 12 literature on this with respect to crime or construction. Try to  
 13 keep very specific to the crime scene, very specific to the  
 14 evidence, very objective to your findings. And at some point  
 15 you will have a report and that will be compared by someone  
 16 else to the statement, so that you're not influenced one way or  
 17 the other by what a suspect may or may not have said that  
 18 they touched or did. I try to keep -- again, I'm trying to keep  
 19 objective as to my analysis.

20 Q So the fact that she may have admitted there was  
 21 blood in her car, that would not change your opinion regarding  
 22 the fact that there is no blood in the red Fiero?

23 MS. ZALKIN: Objection, Your Honor, misstates  
 24 testimony. There was blood on her clothes, not in her car, I

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## TURVEY - CROSS

1 believe.

2 THE COURT: Overruled.

3 THE WITNESS: It certainly would not. And the  
4 reason why is you can't change the testing. There is no  
5 suspect or witness statement on the plant that can change the  
6 results of the forensic testing. The physical evidence comes  
7 first. It is the most objective record of what occurred at the  
8 scene. Does not matter what witnesses may or may not have  
9 said.

10 MS. DiGIACOMO: Okay. So --

11 THE WITNESS: Only the physical evidence -- the  
12 physical evidence comes first.

13 BY MS. DiGIACOMO:

14 Q Even if she admitted there was blood in her car, the  
15 fact that they could not confirm it means that no blood could  
16 be in that car?

17 A The physical evidence comes first. Her -- what she  
18 may or may not have said about blood in her car does not  
19 change the results of the evidence. You can't change the  
20 science. Doesn't work that way.

21 Q Right. And you said before that once you come to  
22 that conclusion, no blood in the car because it couldn't be  
23 confirmed, you have to throw that out the window, right?

24 A I would say you have to let it go.

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## TURVEY - CROSS

1 crime scene --

2 Q Right.

3 A -- there would be a link to the crime scene?

4 Q Right.

5 A Yes, there would.

6 Q Right. But if we don't have those clothes to test we  
7 don't know if there was any link there, correct?

8 A If we do not have the clothes to test, we do not  
9 know --

10 Q Right.

11 A -- that is correct.

12 Q Same with the knife. We don't have the knife that  
13 she said she had, so we have no idea whether or not that  
14 would link her back, correct?

15 A We do not have a knife in this case that links her to  
16 the crime, that's correct.

17 Q But is it possible that there could've been a knife  
18 that was discarded by the assailant and we don't have it?

19 A It would be extremely inappropriate to suggest that  
20 without any evidence of any knife.

21 Q Well, don't we have evidence that the victim  
22 suffered incised wounds? That's in your report.

23 A I'm talking about a knife associated with the  
24 defendant. You're asking me to accept a hypothetical based

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## TURVEY - CROSS

1 Q You have to -- that's right, you have to let it go --  
2 oops, and I let my pen go.

3 A There you go. Exactly so.

4 Q So you let it go? So it makes no difference whether  
5 or not it was her car and she admitted there was -- or she  
6 could've admitted there was blood in the car? Makes no  
7 difference, gone, no blood in the car?

8 A Again, there's no suspect or witness statement that  
9 can change the evidence.

10 Q All right. And so it wouldn't have made any  
11 difference to either the fact that she had discarded -- she had  
12 stated she discarded the clothes she was wearing as well as  
13 the knife?

14 A I can't comment on evidence that I don't have.

15 Q Right. And we don't have that. So if we had it and  
16 it could've been tested, then maybe you could say there was  
17 physical evidence or no physical evidence linking her to the  
18 crime scene?

19 A I don't think I understand that question.

20 Q Well, let's just say clothes were found in her car with  
21 blood on it. If that blood come be linked back to the crime  
22 scene, then there would be something linking her to the crime  
23 scene?

24 A If there was blood in the car linking her back to the

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## TURVEY - CROSS

1 on the existence of a knife that doesn't exist.

2 Q Well, she said in her statement that there was a  
3 knife that she discarded?

4 A That may be the case, but we don't have it. Again,  
5 the physical evidence comes first.

6 Q Right. And if we had it and it could've been tested,  
7 that may or may not have changed your opinion?

8 A This building may move 2 inches in the next 5  
9 minutes, that's possible too, but we don't have -- we can't  
10 comment on these things that look into the future like a crystal  
11 ball, doesn't work that way.

12 Q Well no, I'm asking you, based on the evidence you  
13 did see, there's evidence you didn't see, correct?

14 A I can't comment on evidence I didn't see. I don't  
15 know if it exists if I didn't see it.

16 Q So you're just here to basically tell us what the other  
17 witnesses already testified to then?

18 MS. ZALKIN: Objection, asked and answered, Your  
19 Honor.

20 THE COURT: Sustained.

21 BY MS. DiGIACOMO:

22 Q Now you -- you come in after the fact and you look  
23 at all the evidence and you look at the witness statements that  
24 you choose to look at and you look at the testimony you

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## TURVEY - CROSS

1 choose to look at in making your determinations about your  
2 crime reconstruction?  
3 A Is that a question?  
4 Q Yes. You come in after the fact, correct?  
5 A I don't know of a case when anyone comes in before  
6 the fact. Everybody comes in after the fact, from law  
7 enforcement on down. We all do, yes.  
8 Q Well -- okay. Well, when I'm talking about after the  
9 fact, I'm talking about you're not at the crime scene, correct,  
10 after the body is found?  
11 A I'm not at the crime scene during the interval in  
12 which it's being processed. Even if I'm working with the  
13 police, I would not do that, no.  
14 Q Okay. And you -- in the majority of your cases  
15 you're hired by private persons to do that?  
16 A That is -- in almost no cases am I hired by private  
17 persons. I think I've been hired by private persons maybe a  
18 couple times in my entire career.  
19 Q So you're not hired in this case to come in here?  
20 A Not by a private person, no.  
21 Q Who hired you in this case?  
22 A I'm working for the State's -- I'm appointed as an  
23 expert by the special public defender's office, which is the  
24 State.

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## TURVEY - CROSS

1 Q But you said you're being paid by the special public  
2 defender's office?  
3 A By the State, yes.  
4 Q Okay. You're saying the State. Is the public -- the  
5 special public defender's office, that is a state entity to you?  
6 A It certainly is.  
7 Q Okay. Even though it's actually a county entity  
8 here?  
9 A It's -- the state being a term of art to mean any  
10 state -- anything working for the State government or local  
11 government.  
12 Q Okay. So when we use the term in this courtroom  
13 that State refers to prosecution, that's not the way you're  
14 using it?  
15 A No, it certainly is not.  
16 Q Okay. So how much are you getting paid to be  
17 here?  
18 A Previously -- to be here? I don't --  
19 Q Well, how much have you gotten paid total in this  
20 case from the special public defender's office?  
21 A Let's see, my previous bill was for around \$4,000.  
22 That was to the date of my report. And then I guess the  
23 longer I'm here, the more my bill grows. I bill by the hour,  
24 so --

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## TURVEY - CROSS

1 Q Okay. So it wasn't Ms. Greenberger that hired you?  
2 A She brought me into the case early on, but that's not  
3 who's paying me.  
4 Q Okay. Okay. The special public defender's office is  
5 paying your fees?  
6 A That's correct.  
7 Q But you were hired by the private attorney?  
8 A A private attorney, yes, but they are not a private  
9 individual, they're an officer of the court. That's a very --  
10 great distinction. It's not like someone who has no legal  
11 authority or obligations of our case. You said a private  
12 individual. I've worked -- I have worked on occasion for  
13 private individuals and I don't care for it. Maybe once or twice  
14 in my career. But working for attorneys I would not call  
15 working for a private individual, so maybe that's where the  
16 misunderstanding is occurred.  
17 Q Okay. Well, in this case were you hired by the  
18 prosecution?  
19 A I certainly was not.  
20 Q Okay. In this case were you hired by the defense?  
21 A Yes, I was.  
22 Q Okay. And it was a private attorney that brought  
23 you into this case?  
24 A Initially, yes.

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## TURVEY - CROSS

1 Q And how long have you been here for?  
2 A I've been here for 9 days waiting to testify.  
3 Q All right. And so have you had to pay for your own  
4 hotel?  
5 A No, they put me up at the Four Queens.  
6 Q Okay. And have you -- they've been paying for your  
7 meals as well?  
8 A They give me a \$50 per day per diem.  
9 Q And so you've been here for 9 days. Are they gonna  
10 -- did they pay for your plane ticket out here and back?  
11 A They did. They gave me a round trip ticket.  
12 Q And how much do you pay -- are you getting paid  
13 hourly?  
14 A Well, I tried to work that out. I wanted to make  
15 sure I wasn't over billing. I'm not like a million dollar expert or  
16 even a \$100,000 expert, or even a \$50,000 expert. I -- it's  
17 gonna be right now just under \$7,500.  
18 Q Well, how much is that an hour? Is it different hours  
19 in court versus out of court?  
20 A It -- no, it is not. I'm billing the same because it's  
21 part of traveling and doing pretrial prep work and work on site,  
22 so it's about 195 an hour. It's not about 195 an hour, I  
23 apologize, it is 195 an hour. For some of the days I've billed 3  
24 or 4 hours, and for some of the days I've only billed for 2

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## TURVEY - CROSS

1 hours.

2 Q Okay. So you're only billing while you're here when

3 you're working on the case?

4 A While I'm here, when I'm working on the case. I'm

5 not billing for the time that I took my wife out to dinner or

6 things like that.

7 Q Oh, so your wife came with you?

8 A I got lonely waiting 9 days. I brought my wife

9 down. I got --

10 Q Is that a yes then?

11 A That's a yes. I paid to bring her down.

12 Q Okay. And how long ago did she come and join

13 you?

14 A She joined me on the third day when it became clear

15 that I wasn't gonna be coming back anytime soon.

16 Q And when you're doing this objective analysis of all

17 the evidence and reports and everything you review, you kinda

18 get to pick and choose what you agree with and what you

19 don't, correct?

20 A I don't think that's the case at all.

21 Q Well, I mean there's been testimony that there

22 wasn't blood droplets on the ground by the footwear

23 impressions, but you disagree. I mean you're the expert,

24 right?

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## TURVEY - CROSS

1 Q Right. but you understand, you're a part of this

2 whole process, you're an expert witnesses in cases like this.

3 This isn't the first time you've testified in court. You're aware

4 that there's legal rules that control what evidence comes in

5 and comes out, correct?

6 Q I certainly am.

7 Q Okay. But you're still gonna sit here and make your

8 opinions without any knowledge of what rulings there might

9 have been or what rules of evidence might effect things?

10 A I'm not a legal scholar, ma'am, I'm really not. I'm a

11 forensic scientist and I'm just giving my opinion to questions

12 that I'm asked.

13 Q I didn't ask you that. You went above and beyond

14 the question. You're not answering just the question, sir. If

15 you'd answered just the questions, it would've been yes or no.

16 MS. ZALKIN: Objection, argumentative, Your Honor.

17 MS. DiGIACOMO: That's fine. I'll withdraw.

18 BY MS. DiGIACOMO:

19 Q Now you also -- you do kinda pick and choose what

20 you agree with when you're looking at the evidence, and more

21 specifically, let's talk about the white paper towels. You know

22 what I'm talking about there?

23 A I am -- I do know what you're talking about there.

24 Q Okay. And you picked and choosed [sic] who you

XVII-48

## TURVEY - CROSS

1 A I don't think that states the testimony accurately,

2 that's the first thing. But the second thing is I don't see a

3 report from anyone saying that that's the case. I think

4 somebody was asked that on the stand and didn't look very

5 closely at the pictures. We don't have a full blow by blow

6 analysis of that concrete area in the enclosure looking for

7 exactly how many footwear patterns were there, looking for

8 exactly how many blood drops were there, what was

9 distributed to who. This is all very fast and loose for my taste.

10 So no, I don't necessarily agree with those opinions.

11 Q Fast and loose for your taste?

12 A A little too fast and loose for my taste, yes.

13 Q In fact, you have been giving quite a few comments

14 that you disagree with the way this investigation has run,

15 correct?

16 A I certainly do.

17 Q Okay. And you disagree with the way the witnesses

18 have come in and testified?

19 A I disagree with the way -- we talked about one

20 witness yesterday that has testified in a manner that withheld

21 potentially exculpatory evidence, and that is completely

22 improper --

23 Q Okay. But --

24 A -- no matter what rules you're operating under.

XVII-47

## TURVEY - CROSS

1 believed regarding those white paper towels, didn't you?

2 A No, I certainly did not. I picked and choosed [sic]

3 who was believable, based on what the evidence says. The

4 evidence, to me, there's several photographs that are very

5 clear that there looks to be something that appears to be a

6 paper towel there, then you have a coroner who's saying that

7 they saw one removed and packaged away.

8 Q No. Excuse me, if I can correct you. Not a coroner.

9 A A coroner's investigator, my apologies.

10 Q Okay. Right. So the two CSAs who were at the

11 scene said that they did not see white paper towels stuffed in

12 the opening, correct, they testified to and you watched their

13 testimony, correct?

14 A I did. I did watch that testimony.

15 Q And it's in CSA Renhard's report that there were no

16 paper towels?

17 A No, there's an absence of a reference to paper

18 towels. There's not a statement that says there is no paper

19 towels. That misstates the report.

20 Q Well, it says that there's white paper towels on top

21 of the plastic found on the body, correct?

22 A That's correct.

23 Q So it's your belief that they just skipped right over

24 the white paper towels that were stuffed into the opening?

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000870

## TURVEY - CROSS

1 A No, it's not belief of that. Again, we're looking at  
2 photographs that actually show what I believe to be the paper  
3 towels are. And we have them admitting to throwing away  
4 mountains of other evidence. So it's not just -- we're not just  
5 looking at one thing out of context, we're looking at a total  
6 procedural problem.

7 Q So you're judging the credibility of these witnesses  
8 when you're making your decisions, correct?

9 A No, I'm judging the credibility of the evidence and  
10 their examination of it.

11 Q You just said that you thought that the coroner's  
12 investigator was more believable, correct?

13 A Because her opinions are based on things that we  
14 can see in the evidence that's -- that are --

15 Q So you got a picture with white paper towels stuffed  
16 into the opening?

17 A We have a picture with white paper towels  
18 underneath the plastic.

19 Q Right. I asked you, did you see a picture of white  
20 paper towels stuffed into the opening?

21 A No, but for the purposes of --

22 Q Thank you. You answered by question. Now you  
23 come in -- you came into this case four years after, correct?

24 A Let's see, 2000 -- yes, that's correct.

XVII-50

## TURVEY - CROSS

1 under. I'm not out to prove anyone guilty, anyone in this --  
2 I'm looking at everything as potentially exculpatory.

3 Q Right. And yesterday you also testified the sexual  
4 assault kit, the cigarette butts, the white paper towels  
5 should've all been collected and tested a long time ago,  
6 correct?

7 A It should have.

8 Q As well as the plastic sheet, which is in addition to  
9 your report, correct?

10 A It should have, yes.

11 Q And you said that DNA -- Thomas Wall, the DNA  
12 criminalist Thomas Wall, should've been able to extract DNA  
13 after positive phenolphthalein tests, correct?

14 A If it was there.

15 Q If it was blood there. You said that the vomit  
16 should've been collected and tested, correct?

17 A It should've been, yes.

18 Q You said that the sense you got from the  
19 investigators is that the evidence -- that evidence was missed  
20 or not found, correct?

21 A I'm not sure if that's correct. Could maybe you ask  
22 that in a different way? I don't recall that specific --

23 Q I wrote down a --

24 A -- seems sort of general.

XVII-52

## TURVEY - CROSS

1 Q And pretty much all you -- you're testifying to is the  
2 mistakes that the investigators, as well as other witnesses,  
3 have made?

4 MS. ZALKIN: Objection, misstates the testimony.

5 THE COURT: Sustained.

6 MS. DIGIACOMO: Okay.

7 BY MS. DIGIACOMO:

8 Q Well, yesterday you said big mistake, jaw dropping  
9 that all the evidence in this case was not collected, correct?

10 A I did.

11 Q And you also said mountains of potentially  
12 exculpatory evidence was not examined, correct?

13 A I did.

14 Q Now you're an objective observer in all of this,  
15 correct?

16 A I try to be as objective as possible, yes.

17 Q So why would you use the term "exculpatory"?

18 A Because it's -- I said "potentially exculpatory" is what  
19 I said.

20 Q Potential exculpatory, it could be potentially  
21 inculpatory too, couldn't it?

22 A It is, it could be potentially inculpatory.

23 Q But you said potentially exculpatory?

24 A Because that's the burden of evidence that I operate

XVII-51

## TURVEY - CROSS

1 Q I wrote down a quote that you said the sense you  
2 got from the investigators or investigation is that evidence was  
3 missed or not found?

4 A That doesn't sound right. And I'd have to see the  
5 context of that before I agree to it. I apologize.

6 Q You did say that the police should have put up  
7 police tape where the police car was in the photograph?

8 A Absolutely.

9 Q And just worked in the dark, correct?

10 A No, they should've brought in alternate lighting.

11 There's many options for alternate lighting available to law  
12 enforcement and to anyone else. Anyone who's seen  
13 construction working at night, they have the big lights out  
14 there. They can just get them and set them up, or wait 'till  
15 the morning.

16 Q Should've taken --

17 A Secure it and wait 'till the morning.

18 Q Okay. And they should've taken the photographs of  
19 the footprints after the sun came up, when the sun was out,  
20 correct?

21 A They should've taken photographs of everything --

22 Q The silver --

23 A -- after the sun came up.

24 Q The silver box should not have been in the crime

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000871



## TURVEY - CROSS

1 scene for the analysis?  
 2 A Certainly should not have been, that's correct.  
 3 Q Right. The luminol should not have been done at  
 4 the crime scene? Or excuse me, the luminol testing should've  
 5 been done at the crime scene?  
 6 A Certainly.  
 7 Q Okay. And that you made several comments too  
 8 yesterday about the credibility of some of the State's  
 9 witnesses, as well as the defense witnesses, you agree with  
 10 that?  
 11 A No.  
 12 MS. ZALKIN: Objection, misstates testimony.  
 13 MS. DIGIACOMO: Your Honor, you had to admonish  
 14 him yesterday.  
 15 THE COURT: I'm gonna overrule that objection.  
 16 THE WITNESS: Can you give me a specific  
 17 example?  
 18 BY MS. DIGIACOMO:  
 19 Q Well, for example, you just testified again about  
 20 Kristina Paulette and how unprofessional she was?  
 21 A You asked me and I told you. I agree that -- not  
 22 just -- not unprofessional, it's unethical.  
 23 Q Okay. Excuse me --  
 24 A It's not unprofessional, it's unethical.

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## TURVEY - CROSS

1 Q Sir, can you --  
 2 MS. DIGIACOMO: Your Honor, I'd move to strike.  
 3 He did not answer my question.  
 4 THE COURT: Motion granted. Please listen to the  
 5 question and do your best to answer it.  
 6 THE WITNESS: I apologize, Your Honor. I really  
 7 am.  
 8 BY MS. DIGIACOMO:  
 9 Q You stated several times that you thought Kristina  
 10 Paulette was unprofessional, correct?  
 11 A I don't believe that was my testimony at all. I  
 12 believe I stated that it was unethical --  
 13 Q Okay. Well, yesterday --  
 14 A -- not unprofessional.  
 15 Q If I wrote down unprofessional from yesterday, that  
 16 would be incorrect?  
 17 A I'm not saying that I'm saying that I don't recall  
 18 saying unprofessional, that she was an -- unethical would be  
 19 the word.  
 20 Q Okay.  
 21 A And I guess -- I guess they're synonyms.  
 22 Q Okay. And you can make that call that she's  
 23 unethical, correct?  
 24 A Her behavior telegraphs it. I don't -- it's not about

XVII-55

## TURVEY - CROSS

1 making a call, it's so evident that -- to not notice it up is --  
 2 would be unprofessional on my part. This is --  
 3 Q So even though you realize you're invading the  
 4 province of the jury when you comment on the credibility of  
 5 other witnesses, it's your duty to bring that up?  
 6 A In this particular instance when you have a forensic  
 7 scientist withholding potentially exculpatory evidence, it's  
 8 absolutely vital that we know that this is something that  
 9 professionally is unacceptable. In the community there's  
 10 specific ethical guidelines that must be followed, and one of  
 11 them has been broken in this case.  
 12 Q Okay. And that's your opinion, correct?  
 13 A Yes.  
 14 Q And you've also commented on the credibility of a  
 15 defense witness in this case, correct?  
 16 A I have.  
 17 Q Dr. Laufer?  
 18 A No, I have not.  
 19 Q Didn't you commend him yesterday for -- yeah, you  
 20 recall now?  
 21 A Negatively -- I thought you meant negatively.  
 22 Q No. No. You commended him for the work he did  
 23 in this case yesterday in front of the jury.  
 24 A No, I don't think I commended him, I thought -- I

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## TURVEY - CROSS

1 said I thought his opinion strengthened my findings. I didn't  
 2 say -- I didn't commend him.  
 3 Q You did use the word his findings were impressive or  
 4 you found him impressive?  
 5 A Yes, I did say his findings were impressive. I didn't  
 6 say he was impressive --  
 7 Q Okay.  
 8 A -- I said his findings were impressive.  
 9 Q His findings were impressive. And that would be a  
 10 positive comment on that witness, correct?  
 11 A On his findings, not necessarily on his character or  
 12 his credibility. I'm commenting on whether or not I believed  
 13 his findings were impressive, and his findings were impressive  
 14 to me.  
 15 Q Sir, isn't it true really what you've been testifying to  
 16 for the last two days, it's what we call Monday morning quarter  
 17 backing?  
 18 A No, it is not.  
 19 Q Why not?  
 20 A Because it is absolutely vital that when crime scene  
 21 processing is done it be done with the mind set that at some  
 22 point a third party is going to review processing effort and ask  
 23 questions of it, a judge, a jury, attorneys for the defense or  
 24 the prosecution, other investigators or other forensic scientists.

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000872

## TURVEY - CROSS

1 That's the purpose of it. If there was no -- the whole purpose  
2 of doing the crime scene processing is to provide for the type  
3 of analysis that I do. So it's not Monday morning quarter  
4 backing, it's part of the process.

5 Q But you're not there on the field making the calls,  
6 correct?

7 A I certainly am not.

8 Q Okay. You're not there for any of the tough  
9 decisions, what do we collect, what do we don't collect,  
10 correct?

11 A I certainly am not.

12 Q You're coming in on Monday morning and you're  
13 making the calls what you think should've been done on  
14 Sunday, correct?

15 A I think that's a gross mischaracterization and a gross  
16 oversimplification of what I've done in this case.

17 Q So you're not coming in after the fact and making  
18 your critiques and/or criticisms about what -- how this case  
19 has been handled?

20 A Well, certainly that's been part of the things -- of the  
21 testimony that I've given, but it's not the sum of the testimony  
22 that I've given. It's not the only thing I've done. To say that  
23 that's what I've done and that's all that I've done is a  
24 misrepresentation.

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## TURVEY - CROSS

1 Q What else have you done?

2 A Again, I think I gave an entire report yesterday  
3 talking about the evidence that I examined and the  
4 conclusions that I reached, 1 through 5 based on that  
5 evidence. So that's more than just --

6 Q Right. But that --

7 A -- Monday morning quarter backing.

8 Q Well, did you test any of the evidence yourself?

9 A I made an examination of the evidence in terms of  
10 what was provided to me, and then I gave an interpretation. I  
11 did not perform physical or chemical tests on the evidence, if  
12 that's what you're asking.

13 Q Okay. So you took everything that was done in this  
14 case and after the fact you made a call what you thought  
15 should've been done or how it should've been handled?

16 A That's part of it, but I also made an interpretation  
17 based on what had been done, and that's absolutely -- and  
18 you make -- you may characterize it as Monday morning  
19 quarter backing, but that's also called independent review, and  
20 it's a vital part of the court process, in my view.

21 Q Right. But isn't that the jury's job to do independent  
22 review, look at everything that's been presented and they get  
23 to make the call --

24 A Not in expert areas.

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## TURVEY - CROSS

1 Q -- how to view the evidence?

2 A Not in expert areas. In expert areas, what we're  
3 talking about alternative interpretations or what the evidence  
4 may -- what evidence may be tested or collected. I'm not here  
5 to tell them the facts, I'm here to tell him what my opinions  
6 are about the nature of the evidence, and then they can take  
7 that into consideration when they deliberate.

8 Q So you believe every contact leaves a trace, correct?

9 A That is the fundamental premise of forensic science.

10 Q Okay. But it is possible that there are times when a  
11 contact will leave a trace and it's not found or it has been  
12 disrupted, correct?

13 A That's correct.

14 MS. ZALKIN: Objection, compound, Your Honor,  
15 and asked and answered.

16 THE COURT: The Court will sustain the objection as  
17 to compound.

18 BY MS. DiGIACOMO:

19 Q So there are times when a contact will leave a trace  
20 and it's not found?

21 A That's correct.

22 Q All right. Let me give you a hypothetical. Think  
23 about a lake with a long pier at the end of it. And this person  
24 Bob knows about this pier, he's been out there many, many

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## TURVEY - CROSS

1 times fishing, it's not a well traveled area, correct -- or I mean  
2 think about it, okay?

3 A Okay.

4 Q So then you've got his buddy Joe that comes in, and  
5 Joe's gonna sell him drugs at the end of that pier. And they  
6 go out to the end of that pier because they know no one's  
7 gonna see 'em. There's nobody else around, it's only Joe and  
8 Bob at the end of that pier.

9 A Okay.

10 Q Joe changes his mind, he just doesn't want to sell  
11 him the drugs, wants all of Bob's money, just wants to rip him  
12 off. Bob gets mad. Bob pushes Joe over into the water.

13 A Okay.

14 Q So again, the only two of them that were down  
15 there are Bob and Joe. Bob pushes Joe into the water. Three  
16 days later Joe's body washes up on the shore, and it's been  
17 degraded and decomposed and partially eaten. And the  
18 coroner rules it as a drowning, okay. So at this point we don't  
19 even have necessarily a homicide, do we?

20 A That's correct.

21 Q All right. Now Bob's conscious is getting to him, and  
22 within a week or so of knowing what he did, because he just  
23 left and never tried to help Joe, it's getting to him, so he tells -  
24 - he confides in one of his friends what he possibly had done.

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## TURVEY - CROSS

- 1 He eventually goes to the police and tells him what he's done.  
 2 A Okay.  
 3 Q Now is there any way to prove that Bob was at the  
 4 end of that pier and pushed Joe into the water?  
 5 A Not at the end of the pier. But I think you would go  
 6 back through the entire story, frame by frame. You'd get the  
 7 entire story in a long movie-like sequence, frame by frame,  
 8 and then you would look to establish and investigate the  
 9 components of that story and be assured that every  
 10 component that could be established was established.  
 11 Q Now if it was several weeks before this came to light  
 12 that Bob was at the end of the pier and you're the investigator  
 13 out there, how do you go about investigating what had  
 14 happened when the body washes up?  
 15 A I would think this is criminal investigation 101.  
 16 You're gonna take a look at the statement and you're gonna  
 17 go through it again frame by frame, and look for every place  
 18 that the person --  
 19 Q Okay. I'm --  
 20 A -- claims to have had a contact with, and look at the  
 21 forensic evidence that would've been available to establish that  
 22 contact.  
 23 Q But you're assuming that the investigation's being  
 24 done after Bob comes to the police and tells them what he did,

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## TURVEY - CROSS

- 1 lake?  
 2 A This really isn't my way, this is again, NIJ, the  
 3 National Investigation -- National Institute of Justice --  
 4 Q Well, what if --  
 5 A -- came out with guidelines in 1999, very clear, very  
 6 specific, every scene, every time. Not my guidelines, the  
 7 guidelines.  
 8 Q These are these guidelines, but you do agree that  
 9 there are times where you're at a scene and you can't possibly  
 10 follow every guideline?  
 11 A I think that's fair. I think there's a lot of room for  
 12 judgment.  
 13 Q Right. I mean let's think if it was Lake Mead. Are  
 14 you gonna drown [sic] the entire Lake Mead?  
 15 A Drain the lake? No, certainly not. Again, like I said,  
 16 depends on the size of the lake, it depends on the context.  
 17 You might send divers down --  
 18 Q What if this pier --  
 19 A -- might drag the lack.  
 20 Q Okay. What if this pier is at the end of the ocean?  
 21 Are you gonna send divers in there?  
 22 A Certainly.  
 23 Q What are the divers gonna be looking for if there's  
 24 no evidence of any wounds or foul play on the body?

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## TURVEY - CROSS

- 1 and they have the statement, correct?  
 2 A You could still go back and redo it.  
 3 Q You could still go back and redo it. But at the time  
 4 that the police find the body and it washes up, do they have  
 5 any of this information?  
 6 A No, they don't, which is why you gotta -- which is  
 7 why the guidelines for processing crime scenes, the national  
 8 wide NIJ guidelines state every scene, every time has to be  
 9 done the exact same way with the exact same level. You  
 10 gotta assume it's a homicide every time. If you don't do it that  
 11 way you're operating against national guidelines.  
 12 Q So even though the body washes up you're just  
 13 gonna assume it's a homicide. Okay. Let's say they assumed  
 14 it was a homicide, they processed the scene because the body  
 15 washed up a mile down shore from where the pier is. When  
 16 they investigate that body and they find it, what crime scene  
 17 are they gonna process?  
 18 A Well, your first thing you're gonna do is you're  
 19 gonna secure the lake and you're gonna secure access to the  
 20 lake, then you're gonna drain it, you're gonna look for any  
 21 possible weapons or maybe send divers in. There's a myriad  
 22 of things we can talk about. Do we want to do the whole  
 23 investigation?  
 24 Q So if we're doing it your way, we would drain the

XVII-63

## TURVEY - CROSS

- 1 A It's like a crime scene, I mean you don't know what  
 2 you're looking for until you find it. You're -- but then at the  
 3 same time I wasn't just talking about the water. There's the  
 4 body of water, then there's the area around the body of water,  
 5 and there's the area that gives you access to the body of  
 6 water. All these areas that must be traversed by the person.  
 7 Then on top of that, how did he get out to the lake? Did he  
 8 get out, did he walk, did he take a vehicle? If he took a  
 9 vehicle, is there an association, any evidence between -- that  
 10 associates the vehicle with the crime? I've worked cases  
 11 where you can make that association right away, I've worked  
 12 cases where you gotta work hard to make that association.  
 13 But you --  
 14 Q And so in --  
 15 A -- you gotta put in the time.  
 16 Q -- in every case that you've worked, have you  
 17 always found the trace from the contact?  
 18 A No.  
 19 Q I mean so it is possible that you have those times  
 20 where you can't find the contact -- or the trace regarding the  
 21 contact, but you do have that the suspect did the crime?  
 22 MS. ZALKIN: Objection, asked, answered, and  
 23 argumentative.  
 24 THE COURT: Overruled.

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## TURVEY - CROSS

1 THE WITNESS: Yes.

2 BY MS. DIGIACOMO:

3 Q Now you said that one of the things you were asked  
4 to do here is to examine the motive of the person who did this  
5 killing, is that fair?

6 A The general motive. Not the specific like sort of  
7 psychological state of mind or that sort of thing, but a general  
8 motivation.

9 Q All right. And you mentioned four types of  
10 motivation yesterday, profit, power, sexual, and anger?

11 A And there's also, like I said, sadistic, which would be  
12 a fifth kind.

13 Q Okay. What do you mean by profit?

14 A Profit means somebody's killing something for a  
15 gain.

16 Q And what do you mean by power?

17 A By power it means that the whole purpose of the  
18 crime is committed to validate or reenforce a sense of  
19 inadequacy on their part. It's very common among rapists, for  
20 example, who demean and degrade their victims while they're  
21 committing the rape, or who demean and degrade themselves  
22 while they're committing the rape.

23 Q What is a sexual motive then?

24 A That would be simply to gratify sexual desires or

XVII-66

## TURVEY - CROSS

1 didn't need to spend doing. They took extra time to do this  
2 particular act. That's pretty important.

3 Q Now you can't tell us why the person was angry,  
4 though?

5 A Well, I don't think so. I think that would be  
6 inappropriate. That's what I was talking about, getting into a  
7 specific state of mind. I wouldn't do that.

8 Q Okay. So all you can tell is this person was angry.  
9 You can't tell us why?

10 A I don't think I can, no.

11 Q You can't tell if it was in response to any previous  
12 experience or identity or anger, that it's just a directed anger  
13 killing, that's it?

14 A Well, sexual in nature, but yes.

15 Q This is a sexual killing?

16 A It certainly is.

17 Q Okay. I'm sorry. You said that within the motives,  
18 though, it's an -- it's a directed anger motive?

19 A Right, but the motive has a sexual component. And  
20 I testified to this yesterday. The sexual component would be  
21 the removal of the genitals, the area -- the time -- now I  
22 don't know -- I can't extrapolate that back to a particular  
23 event, so --

24 Q Right. But that could just be the directed anger to

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## TURVEY - CROSS

1 needs or urges.

2 Q And the anger I mean we kinda talked about  
3 yesterday. So what would be sadistic?

4 A Sadistic is any crime that's committed that gives  
5 sexual gratification to the offender based on victim's suffering.  
6 Has to be a victim suffering, has to be alive, and has to be  
7 getting sexual gratification of some kind. So you gotta show  
8 all those components. You can't assume them, you gotta  
9 show 'em.

10 Q Is that kind of a sub-component of the sexual  
11 motive?

12 A I think so, but it's a very specialized kind because it's  
13 so rare.

14 Q And you said now in this case it's an angry -- or an  
15 anger motive?

16 A Anger, yes, directed anger.

17 Q And you said directed anger?

18 A Yes.

19 Q What's the difference between just anger and  
20 directed anger?

21 A Well, it's not like this individual was just -- just  
22 beaten, they were beaten and had their penis removed, the  
23 penis and the testicles removed. So that's directed right at  
24 that area of the body. It's time spent doing something they

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## TURVEY - CROSS

1 the person who's doing this?

2 A It's a sexual anger, if that makes sense.

3 Q It's possible.

4 A Yeah. It's a sexual act.

5 Q I mean they did ask you to look at whether or not  
6 there's --

7 A Yes.

8 Q -- similarities between this case and the rape of  
9 Diane Parker?

10 A Yes, they did.

11 Q You testified yesterday that when you have this  
12 postmortem sexual mutilation that it's usually male on male?

13 A That's correct.

14 Q Okay. But you're not saying it's not possible it was a  
15 woman?

16 A I certainly am not. I would not exclude that  
17 possibility.

18 Q And you said that in your report, I don't recall if you  
19 testified to it yesterday, that there's certain reasons why the  
20 sexual mutilation is done? I believe you listed three reasons in  
21 your report?

22 A No. May I clarify by looking at my report?

23 Q Sure.

24 MS. DIGIACOMO: And Your Honor, I'm referring to

XVII-69

## TURVEY - CROSS

1 page -- I'm not sure, page 8.  
 2 THE WITNESS: Page --  
 3 MS. DIGIACOMO: And I believe it was State's  
 4 Proposed Exhibit 271, marked for identification purposes only  
 5 yesterday.  
 6 THE CLERK: Yes.  
 7 MS. DIGIACOMO: It's 271. Oh, I'm looking at the  
 8 wrong page.  
 9 THE WITNESS: Yeah, I think it's page 7 is what  
 10 you're talking about.  
 11 MS. DIGIACOMO: Yeah, it is page 7. Thank you.  
 12 THE WITNESS: Yeah. That's four.  
 13 MS. DIGIACOMO: Oh, you listed four --  
 14 THE WITNESS: Yeah.  
 15 MS. DIGIACOMO: -- four. Okay.  
 16 BY MS. DIGIACOMO:  
 17 Q And what are the four different reasons why the  
 18 sexual mutilation is done postmortem?  
 19 A If I may read from my report, since the language is  
 20 better?  
 21 Q If that would help you, yes.  
 22 A It does. To satisfy jealousy, spite, or rage relating  
 23 to a real or perceived sexual rivalry. To punish or torture the  
 24 victim for a real perceived wrong, in other words, retribution.

XVII-70

## TURVEY - CROSS

1 To collect a trophy. To feminize a victim in attempt to  
 2 normalize a sexual assault.  
 3 Q And what do you mean by the last one?  
 4 A Well, I've had a number of cases and there's a  
 5 number of cases cited in the literature where you have  
 6 offender -- male offenders who are attacking male victims, and  
 7 it's essentially a homosexual act, maybe against a child, maybe  
 8 against an adult. But they don't want to think of themselves  
 9 as being homosexual, so they cut off the victim's genitals to  
 10 give them the appearance or so they can simulate a sexual act  
 11 with a more female looking person. It's a fantasy component.  
 12 Q Well, these four reasons that you've listed here, this  
 13 is -- this isn't exclusive only to males, is it, it's just --  
 14 A It is not.  
 15 Q -- when these crimes are committed, these are the  
 16 four basic reasons why the genitals are mutilated post-  
 17 mortem?  
 18 A They're not the basic reasons, but they're the most  
 19 common I would say.  
 20 Q The most common?  
 21 A In my experience.  
 22 MS. DIGIACOMO: Court's indulgence.  
 23 Pass the witness, Your Honor.  
 24 THE COURT: Redirect.

XVII-71

## TURVEY - REDIRECT

1 MS. ZALKIN: Thank you, Your Honor. I will be  
 2 brief.  
 3 THE WITNESS: Thank you.  
 4 **REDIRECT EXAMINATION**  
 5 BY MS. ZALKIN:  
 6 Q Mr. Turvey, you testified with respect to some  
 7 footwear pattern evidence at the scene. I just want to make  
 8 sure that this is what you're referring to.  
 9 THE COURT: Would you identify what you're putting  
 10 up?  
 11 MS. ZALKIN: I'm sorry, Your Honor, this is Exhibit E.  
 12 BY MS. ZALKIN:  
 13 Q Can you see that on the screen, or would you like  
 14 me to approach?  
 15 A I -- is that the whole picture that I'm seeing on the  
 16 screen, or is part of it -- okay. Yeah. That's better. Thank  
 17 you. I can see it perfectly.  
 18 Q Can you identify what that photograph shows?  
 19 A Yes, I can.  
 20 Q What is that?  
 21 A This is a section that was -- of cardboard that was  
 22 found at the scene. The investigators collected it by cutting  
 23 away a portion of it and collecting this portion. This cardboard  
 24 was, to my understanding and testimony and looking at the

XVII-72

## TURVEY - REDIRECT

1 reports, this cardboard was found on top of the victim's body.  
 2 Q And does this photograph in any way influence of  
 3 change or in any way effect your opinion as --  
 4 A Certainly.  
 5 Q -- testified on cross-examination?  
 6 A It does.  
 7 Q And how so?  
 8 A In this particular case, I associate the footwear  
 9 patterns with the offender, or with the act of the crime itself.  
 10 In this particular case, whoever flipped over -- this indicates  
 11 that the footwear impressions occurred and then at some point  
 12 -- then the cardboard was put on top of the body. So in terms  
 13 of being good temporal evidence, evidence of timing, this  
 14 shows that whoever put the stuff on top of the body then  
 15 walked out of the scene, because we already have bloody  
 16 footwear patterns at the scene once the body is being covered  
 17 with debris. So temporally this associates the footwear  
 18 patterns with the crime.  
 19 Q Is there, or is there not, a spacial association with  
 20 respect to this being found on the body?  
 21 A I believe so. I believe this is found in the area  
 22 preceding the footwear impressions that leave the opening.  
 23 Q Thank you. And to clarify the prosecutor's  
 24 hypothetical, at least in part, is there a difference between

XVII-73

## TURVEY - REDIRECT

1 cause of death and manner of death which you're talking about  
 2 drowning  
 3 A There absolutely is.  
 4 Q And what would that be?  
 5 A A cause of death is the way that a body interacted  
 6 with its environment in such a way that caused its demise.  
 7 And that's typically a medical finding, although there are  
 8 coroners who do that who are not medical doctors. And that's  
 9 the -- like a gunshot wound, or a -- it would be gunshot wound  
 10 to the heart, causing the brain to stop or causing the heart to  
 11 stop beating, or a gunshot wound to the head, causing the  
 12 brain to stop. That would be a cause of death.  
 13 A manner of death, as I believe there's already been  
 14 testimony, is a homicide, suicide, natural, accidental, or  
 15 undetermined. That's a more of a forensic determination.  
 16 Q So finding out that someone had, for example,  
 17 drowned isn't relevant at all to the manner in which they died?  
 18 A Right. There could be a homicidal or non-homicidal  
 19 drownings.  
 20 Q Okay. Thanks. Moving on to another area. Are you  
 21 aware of any cases, recent or otherwise, where statements  
 22 were made by an individual incriminating statements, and yet  
 23 there was no physical evidence?  
 24 MS. DIGIACOMO: Objection, relevance.

XVII-74

## TURVEY - REDIRECT

1 MS. ZALKIN: Court's indulgence, Your Honor.  
 2 THE COURT: Yes.  
 3 BY MS. ZALKIN:  
 4 Q Finally, Mr. Turvey, you testified on cross that Ms.  
 5 Greenberger contacted you but that Ms. Greenberger did not  
 6 hire you?  
 7 A Well, she didn't actually -- well, not that day. It  
 8 wasn't that day, and there wasn't a fee agreement between  
 9 me and Ms. Greenberger at that point on that day.  
 10 Q And you -- was there eventually a fee agreement  
 11 with Ms. Greenberger or --  
 12 A With the special public defender's office. And I  
 13 believe Mr. Schieck was on the phone with yourself at the time  
 14 I was originally contacted.  
 15 Q And why is it that Ms. Greenberger did not hire you  
 16 without the special public defender?  
 17 MS. DIGIACOMO: Objection, speculation.  
 18 BY MS. ZALKIN:  
 19 Q If you know?  
 20 A I don't actually know. I mean I'm not privy to that  
 21 necessarily.  
 22 Q Okay.  
 23 MS. ZALKIN: I have nothing further, Your Honor.  
 24 THE COURT: As she added, if you know, the Court

XVII-76

## TURVEY - REDIRECT

1 MS. ZALKIN: It was gone into at length on cross,  
 2 Your Honor.  
 3 THE COURT: Overruled.  
 4 THE WITNESS: Yes, I am.  
 5 BY MS. ZALKIN:  
 6 Q And what case was that?  
 7 A I believe recently --  
 8 Q What cases?  
 9 A -- recently there's heavily publicized case by an  
 10 individual named Karr who confessed to the murder of  
 11 JonBenet Ramsey while living in a foreign country, ultimately  
 12 was found that the physical evidence did not match his  
 13 statement whatsoever. He gave all manner of phony  
 14 statements. This is a fairly common occurrence in the realm of  
 15 homicide investigation. People make false statements quite  
 16 regularly.  
 17 Q And in your expert opinion, was there anything  
 18 wrong with the way that the prosecuting authorities handled  
 19 that? Do you have any desire to critique them, as the  
 20 prosecutor might ask?  
 21 A I wouldn't feel comfortable.  
 22 MS. DIGIACOMO: Objection, Your Honor, relevance.  
 23 That's outside the scope.  
 24 THE COURT: Sustained.

XVII-75

## TURVEY - RECROSS

1 overrules the objection as it was -- the question was  
 2 rephrased.  
 3 MS. ZALKIN: Thank you, Your Honor.  
 4 MS. DIGIACOMO: The --  
 5 THE COURT: Recross.  
 6 MS. DIGIACOMO: Thank you, Your Honor.  
 7 **RECROSS EXAMINATION**  
 8 BY MS. DIGIACOMO:  
 9 Q The Karr case that you mentioned that was tied to  
 10 the JonBenet Ramsey case, you talked about he falsely  
 11 confessed, and that's because the DNA evidence didn't connect  
 12 him to the crime?  
 13 A I think that's fairly well established, yes.  
 14 Q Okay.  
 15 A But that's not just because of that. His story was at  
 16 some point meticulously examined and it was shown that he  
 17 was confessing to be at locations where he was elsewhere.  
 18 There's all manner of problems, but the DNA was pretty  
 19 conclusive right up front.  
 20 Q Right. But you realize he had a pretty big motive to  
 21 make that false confession because he was trying to escape  
 22 child molestation charges in the country he was in.  
 23 MS. ZALKIN: Objection, speculation, Your Honor.  
 24 MR. KEPHART: He just answered it.

XVII-77

## TURVEY - RECROSS

1 THE COURT: Overruled.  
 2 THE WITNESS: I think that would be a speculation.  
 3 I don't know enough about why he confessed. I think there's  
 4 a lot of public speculation as to why. I only know what the  
 5 evidence is.  
 6 BY MS. DIGIACOMO:  
 7 Q Okay. So you've looked at the evidence in this case  
 8 yourself?  
 9 A No, I've seen what's been published and made  
 10 publically available.  
 11 Q Okay. So you haven't seen the -- it made publically  
 12 available the reasons why he had motives to get out of that  
 13 country?  
 14 A It may be.  
 15 Q Maybe you have?  
 16 A No, it may be publically available. I have not read it.  
 17 Q Okay. So you haven't read any news reports?  
 18 A I have read news reports about -- that show a lot of  
 19 commentators speculating as to why they think this might  
 20 have benefitted them or not, but certainly that's not evidence.  
 21 Q The DNA would be evidence?  
 22 A The DNA would be the strongest evidence.  
 23 Q And you said that the section of cardboard that was  
 24 found flipped over on top of the body that had the bloody

XVII-78

## TURVEY - RECROSS

1 A Yes, it is possible it was one person.  
 2 Q Okay. Now do you do your own footwear  
 3 impression comparisons?  
 4 A No, I do not.  
 5 Q Do you do your own tire impression or tire mark  
 6 comparisons?  
 7 A No, I do not.  
 8 Q So you have to rely on other people who actually do  
 9 that?  
 10 A As a generalist, I rely on a great many forensic  
 11 scientists for their input on various issues.  
 12 Q Now you looked at Geller's testimony in this trial,  
 13 correct?  
 14 A Yes, I did.  
 15 Q And he actually says that he can't say that it's the  
 16 same footwear? Similar out soles, but he can't say it's the  
 17 same footwear that left the marks on the cardboard that left  
 18 the marks on the concrete walking out, correct?  
 19 A Because they were partials, yes.  
 20 Q Okay. But it's your belief that it is one person's  
 21 footprint?  
 22 A I'm saying that it's consistent. I mean I'm agreeing  
 23 with Geller, it's difficult to say, but we have bloody footwear  
 24 impressions, and that's why I say there could be more than

XVII-80

## TURVEY - RECROSS

1 footwears --  
 2 A Yes.  
 3 Q Okay. You said that that strongly associates with  
 4 the killer because you have those footwear impressions and  
 5 then you have the impressions leading out of the dumpster  
 6 area?  
 7 A And the other items being put on top of the body.  
 8 Q Okay. So --  
 9 A On top of the cardboard.  
 10 Q So is it your belief from looking at the evidence that  
 11 the person who didn't kill him was the one that put all the  
 12 other items on top of the body?  
 13 A Well, let me just clarify at this point and say I don't  
 14 know how many people were involved in this crime. I couldn't  
 15 say. All I know is that we have a lot of -- there are people that  
 16 are involved -- one or more persons involved with the  
 17 commission of this homicide, and those people would've been  
 18 involved in turning the cardboard over, putting the objects on  
 19 top of the body, and then closing it off and walking -- walking  
 20 out and closing it off.  
 21 Q But it is possible it was just one person --  
 22 A Yes.  
 23 Q -- that did this, left their bloody footprint, flipped it  
 24 over, left the trash, and left?

XVII-79

## TURVEY - RECROSS

1 one person. I think I've qualified that very carefully.  
 2 Q But that's not my question. You're basing the fact  
 3 that you think it's one person walking out, that's what you just  
 4 testified to, based on the fact you're -- you believe that it's the  
 5 same footwear or shoe that made the impression on the  
 6 cardboard, the made the impression on the --  
 7 A I see what you're getting at. What I'm saying is the  
 8 offender flipped it over. And we have somebody with bloody  
 9 footwear then walking out. Geller didn't exclude them, he said  
 10 he couldn't say that they were a match, so we don't know if  
 11 they're a match or not.  
 12 What I'm saying is it's unlikely that you have  
 13 somebody walking around with all these bloody footwear  
 14 patterns and somehow they got out of the enclosure. There's  
 15 only one way out. You can't go out through the top, you can't  
 16 go out through three sides, you gotta go out through the front.  
 17 We know somebody's walking around, they're on the  
 18 cardboard with bloody footwear, and then somebody walks out  
 19 with bloody footwear.  
 20 Q Okay. So my question now was, you'd said when  
 21 the defense counsel asked you that you believe that the  
 22 person who made the footwear impression on the cardboard is  
 23 the same person that walked out and left the footwear  
 24 impressions on the concrete --

XVII-81

## TURVEY - RECROSS

- 1 A I do.  
 2 Q -- correct?  
 3 A I do.  
 4 Q And you're basing that just because it's consistent  
 5 with Geller's report, even though he can't say it's a match?  
 6 A That, and there is no other alternative theory for the  
 7 person getting out of there with those bloody footwear  
 8 impressions. There's no other way out.  
 9 Q Okay. But isn't it possible that these footwear  
 10 impressions could've been made by somebody else who  
 11 stumbled upon the body and decided to get the heck out of  
 12 there?  
 13 A How else were they gonna get out? How were they  
 14 gonna get out without leaving bloody footwear impressions  
 15 through that front door -- through that front area? There's no  
 16 other way out. This is not Star Trek, you can't beam people  
 17 out, spaceships can't come down. There is only one way out.  
 18 Q Okay. Now my question is again, isn't it possible  
 19 that those footwear impressions left on the cardboard, left on  
 20 the concrete were not left by the killer but were left by  
 21 somebody else who came along -- came upon the dead body  
 22 sometime later?  
 23 A And then reburied the body under all the trash?  
 24 Q Yes.

XVII-82

## TURVEY - RECROSS

- 1 A I'm not agreeing to that, no.  
 2 Q You're saying reburied the body in the same way.  
 3 How do you know what way the killer did it?  
 4 A You're right, I don't.  
 5 Q So it's possible that maybe there was some other  
 6 trash and that cardboard was face up when somebody else  
 7 went back there and stepped in the blood and stepped on that  
 8 cardboard and hightailed it out of there?  
 9 A I have no evidence of that. That would be sheer  
 10 speculation.  
 11 Q But it's possible?  
 12 A It's possible but terribly unlikely. So terribly unlikely.  
 13 Q Terribly unlikely?  
 14 A Unlikely.  
 15 Q Okay. Unlikely that anybody but the killer could've  
 16 left those bloody footwear?  
 17 MS. ZALKIN: Objection, Your Honor, asked and  
 18 answered.  
 19 THE COURT: Sustained.  
 20 BY MS. DIGIACOMO:  
 21 Q That's why whoever left the bloody footwear  
 22 impressions would've had to have it in the floorboard of their  
 23 car or on the accelerator?  
 24 A We would expect to find some transfer at some

XVII-84

## TURVEY - RECROSS

- 1 A I find that possibility -- I think it's possible but again,  
 2 we have so thinly stretched the realm of possibility that I'm  
 3 embarrassed to agree to it. It's embarrassing for me to agree  
 4 to that, but it is possible.  
 5 Q Well, you did not testify that the officers were wrong  
 6 in taking a footwear impression of Richard Shott, the person  
 7 who discovered the body, correct?  
 8 A Of course not.  
 9 Q Okay. So you read his testimony where he stated he  
 10 took hours to call because the only reason he called is he  
 11 thought maybe he might be caught for the crime, somebody  
 12 might've seen him in there, correct?  
 13 A Certainly.  
 14 Q So he testified he wasn't gonna call even when he  
 15 found the dead body?  
 16 A But he did call. But I understand what you're  
 17 saying.  
 18 Q He did. So isn't it possible that somebody else had  
 19 gone in there dumpster diving and made the same discovery  
 20 and hightailed it out of there?  
 21 A Again, and reburied the body in the same way and  
 22 closed it off? Again, we're so thinly stretching, without leaving  
 23 another --  
 24 Q You're -- okay.

XVII-83

## TURVEY - RECROSS

- 1 point in the vehicle from the footwear impression -- from the  
 2 footwears, yes.  
 3 Q That's assuming whoever did it got into a car?  
 4 A Yes. And in this case everything suddenly stops,  
 5 according to the crime scene investigator, so that would be  
 6 consistent with somebody getting into a vehicle.  
 7 Q Right.  
 8 A Unless we're assuming again they got beamed away.  
 9 Q It would also be consistent with walking off what  
 10 traces of blood you had on your shoe, correct?  
 11 A But it would get -- instead of going from like a lot of  
 12 blood to nothing, it would be slowly diminished, and we don't  
 13 have slowing diminishing in this case, we have -- it just goes  
 14 from almost several full patterns to nothing.  
 15 (Off-record colloquy)  
 16 MS. DIGIACOMO: Court's indulgence.  
 17 THE COURT: It was Defendant's D.  
 18 MS. DIGIACOMO: Yeah -- no, that's not the one.  
 19 I'm sorry, Your Honor.  
 20 BY MS. DIGIACOMO:  
 21 Q I can't find the one I'm looking for, but I did find  
 22 State's Exhibit 142. And I know the camera's in the way --  
 23 A It is.  
 24 Q -- but can you see that?

XVII-85



## TURVEY - RECROSS

1 A I can.  
 2 Q Okay. And can you see where this footprint ends  
 3 right there?  
 4 A I can.  
 5 Q Okay. And then do you see where the next  
 6 impression is?  
 7 A No.  
 8 Q Okay. So that person would've gotten into a car?  
 9 That's consistent?  
 10 A I'm not saying that. I'm saying that we have it -- it's  
 11 more consistent that they get into a car at some point. I'm  
 12 saying it goes from that to nothing, so --  
 13 Q Okay. But if it goes from that to nothing, wouldn't  
 14 they have had to get in the car right where the dumpster is?  
 15 They wouldn't have walked it off?  
 16 A If that's all that was there.  
 17 Q Okay. And you're referring to the luminol?  
 18 A That's right. I'm referring to the possibility that we  
 19 have other areas in here that we could've sprayed and  
 20 examined. We don't know.  
 21 Q All right. But based on just the ones that are in  
 22 blood, you agree that it -- it stops there, and as you said, it  
 23 doesn't walk off?  
 24 A I can't physically see any further ones that are as

XVII-86

## HOHMAN - DIRECT

1 Q Do you see her here today?  
 2 A Yes.  
 3 Q Can you identify what she's wearing for the record?  
 4 A A black shirt.  
 5 Q When did you --  
 6 THE COURT: Record shall reflect identification of  
 7 the defendant.  
 8 MS. GREENBERGER: Thank you, Your Honor.  
 9 BY MS. GREENBERGER:  
 10 Q When did you first meet, if you can remember,  
 11 approximately?  
 12 A 9 years ago, about.  
 13 Q At that time where was she living?  
 14 A On -- her same house that she's always been at.  
 15 Q And where, what part of town?  
 16 A In Panaca.  
 17 Q When you first met her, were you living there also?  
 18 A Yes.  
 19 Q Taking you to the year of 2001, do you recall seeing  
 20 her in Panaca in July?  
 21 A I do.  
 22 Q Do you remember the first time that you saw her?  
 23 A In July?  
 24 Q In July 2001.

XVII-88

## HOHMAN - DIRECT

1 complete as those.  
 2 Q Okay. And that's what you're referring to it doesn't  
 3 walk off?  
 4 A That's correct.  
 5 MS. DiGIACOMO: Pass the witness.  
 6 THE COURT: Redirect.  
 7 MS. ZALKIN: Nothing further, Your Honor.  
 8 THE COURT: You may step down from the stand.  
 9 THE WITNESS: Thank you, Your Honor.  
 10 THE COURT: You're welcome.  
 11 Defendant may call defendant's next witness.  
 12 THE CLERK: Please come all the way forward.  
 13 Remain standing and raise your right hand.  
 14 **CLINT HOHMAN, DEFENDANT'S WITNESS, SWORN**  
 15 THE CLERK: Thank you. Please be seated.  
 16 State your name and spell it for the record, please.  
 17 THE WITNESS: Clint Hohman, C-l-i-n-t  
 18 H-o-h-m-a-n.  
 19 THE COURT: Ms. Greenberger may proceed.  
 20 MS. GREENBERGER: Thank you.  
 21 **DIRECT EXAMINATION**  
 22 BY MS. GREENBERGER:  
 23 Q Good afternoon. Do you know Blaise Lobato?  
 24 A I do.

XVII-87

## HOHMAN - DIRECT

1 A Would've been around the 2<sup>nd</sup>, I believe.  
 2 Q Did you see her in Panaca at that time?  
 3 A Yes.  
 4 Q Can you get off the witness stand and just put your  
 5 initials on the date that you recall seeing her, the first date in  
 6 July of 2001? You can sit down. When do you recall seeing  
 7 her after that day?  
 8 A It would've been the 8<sup>th</sup>, Sunday.  
 9 Q Can you kindly get down again and put your initials  
 10 on that date?  
 11 A Sure.  
 12 Q Do you recall where you saw her on July 8<sup>th</sup>?  
 13 A It was on the Panaca Springs Dirt Road.  
 14 Q Do you remember approximately what time?  
 15 A It would've been around 11:30ish 'cause I went to  
 16 church that morning.  
 17 Q You went to church that morning?  
 18 A Mm-hmm.  
 19 MS. DiGIACOMO: Is that a yes?  
 20 THE WITNESS: Yes.  
 21 BY MS. GREENBERGER:  
 22 Q What time did you go to church, approximately?  
 23 A At 9 o'clock a.m.  
 24 Q What were you doing when you first saw her?

XVII-89

HOHMAN - DIRECT

1 A I was riding my horse.  
 2 Q Were you alone?  
 3 A Yes.  
 4 Q Can you describe what you saw her doing?  
 5 A She was riding a four-wheeling with Michele Austria  
 6 and they were drinking. I remember seeing a beer.  
 7 Q You remember seeing a beer?  
 8 A Yeah.  
 9 Q Where?  
 10 A In Michele's hand.  
 11 Q This was at 11:30 a.m. --  
 12 A Mm-hmm. Yes.  
 13 Q -- on July 8<sup>th</sup>? How do you remember the day of  
 14 July 8<sup>th</sup> specifically?  
 15 A The 7<sup>th</sup> is actually my little brother's birthday.  
 16 Q Did you talk with her on that day?  
 17 A I didn't.  
 18 Q How long did you see her for?  
 19 A Just briefly, for --  
 20 Q Was she on the four-wheeler?  
 21 A Yes.  
 22 Q Can you describe where this place is that you saw  
 23 her?  
 24 A Just right outside of town. We're surrounded by

XVII-90

HOHMAN - DIRECT

1 BY MS. GREENBERGER:  
 2 Q When did you see Blaise again after the date of July  
 3 8<sup>th</sup>?  
 4 A After July 8<sup>th</sup>? I don't remember.  
 5 Q Do you remember seeing her any other time after  
 6 July 8<sup>th</sup> in the month of July, 2001?  
 7 MR. KEPHART: Objection, Your Honor, asked and  
 8 answered. He said he doesn't remember.  
 9 THE COURT: Overruled.  
 10 MS. GREENBERGER: You can answer.  
 11 THE WITNESS: What was that again?  
 12 BY MS. GREENBERGER:  
 13 Q I was asking you, do you remember seeing her any  
 14 other date after July 8<sup>th</sup> in the month of July, 2001?  
 15 A No.  
 16 Q How certain are you as you sit here today, that you  
 17 saw her on July 8<sup>th</sup>?  
 18 A 100 percent certain.  
 19 Q 100 percent?  
 20 A Mm-hmm.  
 21 MS. DIGIACOMO: Is that a yes?  
 22 THE WITNESS: Yes.  
 23 BY MS. GREENBERGER:  
 24 Q Did you spend July 7<sup>th</sup> with your little brother for his

XVII-92

HOHMAN - DIRECT

1 desert. It was just right --  
 2 Q And what was it called, the location?  
 3 A Panaca Springs Dirt Road.  
 4 Q Panaca Springs Dirt Road?  
 5 A Yeah.  
 6 Q Is that -- well, strike that. Do you know where  
 7 Blaise was living at the time you saw her?  
 8 A At her parents' house.  
 9 Q Is Panaca Spring Road close to her parents' house?  
 10 A Mm-hmm. Yes.  
 11 Q How close?  
 12 A They link the dirt road.  
 13 Q They're connected?  
 14 A Yeah.  
 15 Q Were Michele and Blaise on the same four-wheeler?  
 16 A Yes.  
 17 Q Riding it together?  
 18 A Mm-hmm. Yes.  
 19 Q How do you know Michele?  
 20 A Just -- everybody knows everybody, it's a small  
 21 community.  
 22 Q Did you see her --  
 23 MR. KEPHART: Objection, Your Honor, leading.  
 24 THE COURT: Sustained.

XVII-91

HOHMAN - DIRECT

1 birthday?  
 2 A I did.  
 3 Q Did you see Blaise any time in between July 2<sup>nd</sup> and  
 4 July 8<sup>th</sup>?  
 5 MR. KEPHART: Judge, objection. He -- she had  
 6 asked was the first time the 2<sup>nd</sup> and when was the next time,  
 7 and he said the 8<sup>th</sup>. Asked and answered.  
 8 THE COURT: Sustained.  
 9 BY MS. GREENBERGER:  
 10 Q Do you remember where you saw Blaise on July 2<sup>nd</sup>?  
 11 A I think it was at the mini mart.  
 12 Q Where would that be?  
 13 A In Panaca.  
 14 Q Did you two go to school together?  
 15 A No.  
 16 Q How did you know Blaise?  
 17 A Just friends with -- I actually knew her little sister  
 18 more, but just everybody knows everybody.  
 19 BY MS. GREENBERGER:  
 20 Q I don't believe I have anything further, except one  
 21 thing. Can you just put the time that you saw her on July 8<sup>th</sup>  
 22 on the exhibit --  
 23 A Sure.  
 24 MS. GREENBERGER: And that's Defense Exhibit JJ

XVII-93

## HOHMAN - CROSS

1 for the record.  
 2 Nothing further.  
 3 THE COURT: Cross.  
 4 MR. KEPHART: Thank you, Your Honor.  
 5 **CROSS-EXAMINATION**  
 6 BY MR. KEPHART:  
 7 Q Mr. Hohman, how old are you?  
 8 A 21.  
 9 Q Okay.  
 10 THE COURT: Would counsel approach?  
 11 (Off-record bench conference from 2:33:13-2:33:30 p.m.)  
 12 BY MR. KEPHART:  
 13 Q You indicated you're 21 years old, so 9 years ago  
 14 you would've been 12?  
 15 A About, yeah. Yes.  
 16 Q And that's about the time that you met the  
 17 defendant?  
 18 A 12 years -- no, 'cause I was 11, 11 or 10, 'cause I  
 19 was in the fifth grade.  
 20 Q Okay. And when you were living there, you were  
 21 living with your mom?  
 22 A Yes.  
 23 Q Okay. And you said you believe that your little sister  
 24 was more -- knew the defendant more than you?

XVII-94

## HOHMAN - CROSS

1 Q You were working at where?  
 2 A The mini mart.  
 3 Q The mini mart?  
 4 A Yes.  
 5 Q And who was she with?  
 6 A I don't recall that.  
 7 Q By herself then?  
 8 A Could've been.  
 9 Q Okay. Maybe with a whole bunch of friends?  
 10 A Maybe.  
 11 Q Okay.  
 12 A I just briefly remember seeing her.  
 13 Q Okay. Did you sell her anything?  
 14 A I didn't.  
 15 Q Okay. Were you working where you could sell stuff?  
 16 A Yes.  
 17 Q Okay. Did she -- do you know if she bought  
 18 anything from the counter?  
 19 A I don't know.  
 20 Q Did she come inside?  
 21 A No, she went -- I don't think so.  
 22 Q How did she get to the mini mart?  
 23 A I don't know.  
 24 Q Okay. And is this the mini mart in downtown

XVII-96

## HOHMAN - CROSS

1 A I don't have a little sister.  
 2 Q Okay. You knew her little sister more?  
 3 A Yes.  
 4 Q You have an older sister though, don't you?  
 5 A Yes.  
 6 Q Okay. And you indicated that the first time that you  
 7 saw the defendant in July of 2001 was on the 2<sup>nd</sup> of July?  
 8 A Yes.  
 9 Q Okay. What time?  
 10 A It would've been later on in the evening.  
 11 Q Okay. And you have a watch on right now?  
 12 A I don't.  
 13 Q What time is it right now?  
 14 A About 3 o'clock.  
 15 Q Okay. And that's from sitting outside waiting to  
 16 come in here, you know what time it is, right? Or are you just  
 17 really good at the time, real good?  
 18 A Yeah.  
 19 Q Okay.  
 20 A Yes.  
 21 Q And you said in the evening. What time?  
 22 A Probably around 4:00ish, about.  
 23 Q Okay. And --  
 24 A I was working that night.

XVII-95

## HOHMAN - CROSS

1 Panaca, or is it the mini mart out at the intersection?  
 2 A It's the one that's in Panaca. There's two of them,  
 3 actually.  
 4 Q Okay.  
 5 A But it's the -- the one on the outside of town, but it's  
 6 not at the junction.  
 7 Q Okay. She -- did she drive a quad there or a four-  
 8 wheeler?  
 9 A I don't know.  
 10 Q You don't know? So you don't know who she's with,  
 11 how she got there?  
 12 A Mm-hmm. Yes.  
 13 Q Is that a yes?  
 14 A Yes.  
 15 Q Okay. What days of the week did you work?  
 16 A I don't remember.  
 17 Q Okay.  
 18 A It kind of all varied.  
 19 Q Kinda varied?  
 20 A Yeah.  
 21 Q What time did you start, usually? Varied?  
 22 A That varies.  
 23 Q Okay. You remember when you started on Monday,  
 24 the 2<sup>nd</sup>?

XVII-97

## HOHMAN - CROSS

1 A Uh-uh. No.  
 2 Q Okay. Do you remember -- you do remember  
 3 working, though, right?  
 4 A Yes.  
 5 Q Did you work on the 3<sup>rd</sup>?  
 6 A I was just helping out around there.  
 7 Q Did you guys work on the 4<sup>th</sup> of July?  
 8 A Yeah. Yes.  
 9 Q Did you work on the 5<sup>th</sup>? Do you remember?  
 10 A I don't.  
 11 Q Long time ago?  
 12 A Yeah. It's kind of the family business, so I mean I'm  
 13 there on and off.  
 14 Q Kinda go, come and go when you want to?  
 15 A Yeah.  
 16 Q Okay. Now you said that you -- you saw her on the  
 17 8<sup>th</sup> was the next time that you saw her, is that right?  
 18 A Yes.  
 19 Q And you remember you were out on the Panaca  
 20 Springs Dirt Road, you said you were riding your horse?  
 21 A Yes.  
 22 Q And you said that you had went to church that  
 23 morning?  
 24 A Yes.

XVII-98

## HOHMAN - CROSS

1 A No.  
 2 Q So you went home from church?  
 3 A No.  
 4 Q No? Oh, you went to your horse?  
 5 A From church I went to my horse and rode my  
 6 horse.  
 7 Q Okay. And where's your horse, it's kept at some  
 8 stall or something up there?  
 9 A It's probably two buildings down from the church.  
 10 Q Okay. And then you headed out onto Panaca  
 11 Springs?  
 12 A Just around.  
 13 Q Okay. And that's when you saw the defendant  
 14 riding a four-wheeler?  
 15 A Yes.  
 16 Q Do you have a four-wheeler?  
 17 A Not of my own, no.  
 18 Q Okay. What kind of four-wheeler were they riding?  
 19 A I don't remember.  
 20 Q Okay. They were riding together?  
 21 A Yes.  
 22 Q And you remember the young lady that was with her  
 23 drinking a beer or holding a beer?  
 24 A Yes.

XVII-100

## HOHMAN - CROSS

1 Q And after church then you went riding? Is that a  
 2 yes?  
 3 A Yes. Yes.  
 4 Q Okay. Did you see Blaise at church with you?  
 5 A No.  
 6 Q Okay. And you believe it was around 11:30 in the  
 7 morning?  
 8 A Yes.  
 9 Q And you weren't wearing a watch then, were you?  
 10 A No.  
 11 Q But you remember 'cause you got out of church, and  
 12 church gets out around what?  
 13 A Yes, 11:00.  
 14 Q 11 o'clock? So you went home, saddle up your  
 15 horse --  
 16 A No.  
 17 Q -- or you rode your horse to church?  
 18 A No. I went --  
 19 Q Okay.  
 20 A -- from church right to my horse. I was still in my  
 21 church --  
 22 Q Okay.  
 23 A -- shirt and everything.  
 24 Q Okay. So you -- did you ride your horse to church?

XVII-99

## HOHMAN - CROSS

1 Q Who was driving?  
 2 A Blaise was.  
 3 Q And you remember that because the day before was  
 4 your brother's birthday?  
 5 A Correct.  
 6 Q Blaise bring a birthday present over to your brother?  
 7 A I don't think so.  
 8 Q Okay. Blaise come over for birthday cake?  
 9 A No.  
 10 Q Okay. But because it was your [sic] birthday, that  
 11 reminds you of Blaise -- or your brother's birthday?  
 12 A No.  
 13 Q Okay. What was she wearing, Blaise?  
 14 A It was a darker shirt.  
 15 Q Okay. A shirt? A swimsuit top?  
 16 A No, not a shirt shirt, but it was kinda like a girl's  
 17 darker shirt.  
 18 Q Okay.  
 19 A A smaller one.  
 20 Q What about for pants?  
 21 A I think she had shorts on.  
 22 Q Shorts? Do you remember what kind of shoes she  
 23 was wearing?  
 24 A No.

XVII-101

## HOHMAN - CROSS

- 1 Q Did she have a helmet on?
- 2 A No.
- 3 Q Okay. Is there anything different about her today
- 4 that you remember her back then?
- 5 A Say that one more time?
- 6 Q Is there anything different about her today than you
- 7 remember her when you saw her back then?
- 8 A Yeah, she's gotten grown up.
- 9 Q Okay. Okay. Now you said that you don't
- 10 remember ever seeing her after the 8<sup>th</sup>?
- 11 A No.
- 12 Q Okay. And you said that it's a small community and
- 13 everybody knows everybody?
- 14 A Yes.
- 15 Q That's how you knew who Blaise was riding with at
- 16 the time?
- 17 A Yes.
- 18 Q Okay. Have you ever driven that four-wheeler?
- 19 A No.
- 20 Q And everybody's kinda talked about this case since
- 21 this -- since she got arrested, haven't they?
- 22 A Yes.
- 23 Q Okay. Matter of fact, you were aware that
- 24 somebody actually talked to your mom?

XVII-102

## HOHMAN - REDIRECT

- 1 Q Okay. That's what, at least three years after a
- 2 previous proceeding and four years after the arrest?
- 3 A Yes.
- 4 Q And you say you're 100 percent positive that you
- 5 saw her on the 8<sup>th</sup> --
- 6 A Yes.
- 7 Q -- at 11:30 in the morning? Couldn't have been
- 8 11:00 -- I mean 11:40 or 12 o'clock or 12:30 or 1 o'clock?
- 9 A No, it was some -- it was right around 11:30, right
- 10 around there.
- 11 Q And you're positive that you saw her on the 2<sup>nd</sup>?
- 12 A Yes. I --
- 13 Q Okay. So you don't know what she was doing
- 14 between the 3<sup>rd</sup> and the morning that you saw her?
- 15 A No.
- 16 MR. KEPHART: Court's indulgence, Your Honor.
- 17 I'll pass the witness. Thank you, sir.
- 18 THE COURT: Redirect.
- 19 **REDIRECT EXAMINATION**
- 20 BY MS. GREENBERGER:
- 21 Q You testified that there's been a lot of gossip about
- 22 this case where you live?
- 23 A Yes.
- 24 Q Is there a lot of gossip about many things?

XVII-104

## HOHMAN - CROSS

- 1 A No.
- 2 Q You're not? Your mom never told you that
- 3 somebody went up there and talked to her?
- 4 A No.
- 5 Q Okay. And --
- 6 MS. GREENBERGER: Objection, hearsay.
- 7 MR. KEPHART: I didn't ask for him what anything
- 8 needs to be said.
- 9 THE COURT: Overruled.
- 10 BY MR. KEPHART:
- 11 Q Okay. You -- did you ever talk to the defendant's
- 12 mom?
- 13 A In --
- 14 MS. GREENBERGER: Objection, vague.
- 15 BY MR. KEPHART:
- 16 Q Since the defendant was arrested, did you ever talk
- 17 to the defendant's mom?
- 18 A Yes.
- 19 Q And that's Becky Lobato, right?
- 20 A Correct.
- 21 Q Okay. And are you aware that the first time that
- 22 your name appeared as a witness in this case is October 20,
- 23 2005?
- 24 A Yes. Now -- I am now.

XVII-103

## HOHMAN - REDIRECT

- 1 A Yes.
- 2 Q Has any of that gossip in any way influenced your
- 3 testimony as you sit here today?
- 4 A No.
- 5 Q You mentioned that you had spoken to Blaise's
- 6 mother about this case, correct?
- 7 A Correct.
- 8 Q Has speaking to her in any way influenced your
- 9 testimony here today?
- 10 A No.
- 11 Q Are you testifying right now based on what your
- 12 memory is?
- 13 A Yes.
- 14 Q Has anyone put any pressure on you to testify in any
- 15 certain way?
- 16 A Not at all.
- 17 Q Is your memory of seeing her on July 8<sup>th</sup> completely
- 18 clear in your mind as you sit here today?
- 19 A Yes.
- 20 MS. GREENBERGER: I don't believe I have anything
- 21 further.
- 22 MR. KEPHART: Couple questions if I could, Your
- 23 Honor.
- 24 THE COURT: Yes, sir, you may.

XVII-105

## HOHMAN - RECROSS

1 MR. KEPHART: Yes. Yes. Thank you, Your Honor.

**RECROSS EXAMINATION**

2 BY MR. KEPHART:

3 Q Okay. Sir, you said that you talked to the  
4 defendant's mom, and that was after the defendant was  
5 arrested, is that right?

6 A Before and after.

7 Q Okay. You talked to the defendant's mom about this  
8 case after the defendant was arrested, though?

9 A Yes.

10 Q Okay. When was the last time that you talked to the  
11 defendant's mom before coming in here today and testifying?

12 A Today. Just talking, yes, today.

13 Q And when was it that you told the defendant's mom  
14 that you had seen the defendant on the 8<sup>th</sup> at 11:30 in the  
15 morning? Was that around October 20<sup>th</sup> of 2005?

16 A No.

17 Q When was it?

18 A Way before, like --

19 Q Way before?

20 A Yeah.

21 Q Okay. Like --

22 A In the first trial.

23 Q Okay. Before that?

XVII-106

## HOHMAN - RECROSS

1 Q Sing happy birthday to him?

2 A Yes.

3 Q What did you buy him for a birthday present?

4 A A Mongoose bike.

5 MS. GREENBERGER: Objection, relevance.

6 BY MR. KEPHART:

7 Q What's that?

8 A A bike.

9 Q He have any friends over?

10 A No.

11 Q And was your sister there?

12 A No.

13 Q Was she even living in Panaca at that time?

14 A I -- she kinda was on and off.

15 Q She went to Florida sometime though, didn't she?

16 A Yeah, and then she moved back and --

17 Q Okay. Was she in Florida at that time?

18 A I don't know.

19 Q You don't remember?

20 A I don't remember that.

21 Q Okay. In July of 2001, how old were you?

22 A 6 -- no, July 2001?

23 Q Yes.

24 A I would've been 15 or 16.

XVII-108

## HOHMAN - RECROSS

1 A Before the first one?

2 Q Mm-hmm.

3 A I don't know if it was before or after that. I don't  
4 really remember when that was, but it was kind of --

5 Q The person you told was the defendant's mom?

6 A Yes.

7 Q And then you became a name on this list?

8 A Yes. Well, I told I mean other people too. Like I  
9 told a few people that I'd seen her.

10 Q Okay. And how old was your brother back in July 7,  
11 2001?

12 A He would've been 7.

13 Q Okay.

14 A Or ??

15 Q Did you guys go anywhere for a birthday party?

16 A No.

17 Q Did your mom make a cake?

18 A Yes.

19 Q Do you remember what kind of cake it was?

20 A No.

21 Q You don't remember? Did you have any of it?

22 A Probably.

23 Q Did your brother blow out candles?

24 A Yes.

XVII-107

## HOHMAN - RECROSS

1 Q Okay. How old was your sister?

2 A 20 -- no, 2001, I don't know.

3 Q Okay. But you do know that she had traveled back  
4 and forth to Florida?

5 A Mm-hmm. Yes.

6 Q Is that a yes?

7 A Yes.

8 Q And you don't know if she was home on that date,  
9 do you, on July 2<sup>nd</sup>?

10 A I don't.

11 Q You don't remember her singing happy birthday to  
12 your brother?

13 A No.

14 Q You don't remember her eating any cake or anything  
15 with your brother?

16 A No. I don't think she was there.

17 Q You don't think she's there now? Okay. Are you  
18 sure?

19 A Yeah. I'm not 100 percent she was there or not.  
20 She was just kinda --

21 Q Okay.

22 A -- coming and going. She was going through a  
23 rough time, so --

24 Q Okay.

XVII-109

## HOHMAN - RECROSS

1 MR. KEPHART: Pass the witness.  
 2 MS. GREENBERGER: Court's indulgence.  
 3 MR. KEPHART: Thank you.  
 4 THE WITNESS: Mm-hmm.  
 5 THE COURT: Redirect?  
 6 MS. GREENBERGER: Nothing further with this  
 7 witness.  
 8 THE COURT: You may step down from the stand.  
 9 The defense may call defendant's next witness.  
 10 MR. SCHIECK: We'd call Kendre Thunstrom, Your  
 11 Honor.  
 12 THE COURT: Okay.  
 13 THE CLERK: Please come all the way forward.  
 14 Remain standing and raise your right hand.  
 15 **KENDRE THUNSTROM, DEFENDANT'S WITNESS,**  
 16 **SWORN**  
 17 THE CLERK: Thank you. Please be seated.  
 18 State your name and spell it for the record, please.  
 19 THE WITNESS: Kendre Lynn Thunstrom,  
 20 K-e-n-d-r-e L-y-n-n T-h-u-n-s-t-r-o-m.  
 21 THE COURT: You may proceed.  
 22 MS. GREENBERGER: Thank you, Your Honor.  
 23 ///  
 24 ///

XVII-110

## HUNSTROM - DIRECT

1 A Ely State Prison.  
 2 Q And what time period?  
 3 A '96.  
 4 Q What occupation?  
 5 A Correctional officer.  
 6 Q Did you live down in Ely during that time period?  
 7 A I lived in Caliente, Nevada at the time.  
 8 Q You testified your fiancé worked with Blaise's  
 9 father --  
 10 A Yes.  
 11 Q -- at Ely State Prison?  
 12 A Yes.  
 13 Q Through your relationship with her father, is that  
 14 how you came to meet Blaise?  
 15 A Correct.  
 16 Q How old were your children at the time that she was  
 17 babysitting?  
 18 A One was a year and my son was six.  
 19 Q During 2001 where were you living?  
 20 A 2001 I was here in Las Vegas, Nevada.  
 21 Q In July 2001, where were you living?  
 22 A Here in Las Vegas, Nevada. Oh, I'm sorry, in 2001?  
 23 I was living in Panaca.  
 24 Q Would you have been living there from -- in January

XVII-112

## THUNSTROM - DIRECT

**DIRECT EXAMINATION**

1 **DIRECT EXAMINATION**  
 2 BY MS. GREENBERGER:  
 3 Q Good afternoon. Where do you reside?  
 4 A Panaca, Nevada.  
 5 Q How long have you lived there?  
 6 A Off and on for 11 years.  
 7 Q Do you know Blaise Lobato?  
 8 A Yes, I do.  
 9 Q Do you see her here today?  
 10 A Yes, I do.  
 11 Q Can you please identify what she's wearing for the  
 12 record?  
 13 A A black shirt.  
 14 MS. GREENBERGER: Please let the record reflect  
 15 she has been identified.  
 16 THE COURT: The record shall so reflect.  
 17 BY MS. GREENBERGER:  
 18 Q How did you first meet Blaise?  
 19 A She babysat my children for me.  
 20 Q When was that, approximately?  
 21 A '96, '97.  
 22 Q How did you come to meet her?  
 23 A Her father and my ex-fiancé worked together.  
 24 Q When was that?

XVII-111

## THUNSTROM - DIRECT

1 2001?  
 2 A No, I lived in Caliente, Nevada, and then I moved up  
 3 to Panaca, Nevada.  
 4 Q And how close are those two towns?  
 5 A 15 minutes, or 14 miles.  
 6 Q So in July 2001 you were living in Panaca, Nevada?  
 7 A Correct.  
 8 Q Small town?  
 9 A Yes.  
 10 Q When do you recall first seeing Blaise in 2001 in  
 11 July?  
 12 A My ex-boyfriend and I, we lived together. We were  
 13 driving around the block, which the Lobatos had lived on the  
 14 other side of us, and the truck had broke down right in front of  
 15 their house and she was standing in the driveway.  
 16 Q Do you remember what date that was?  
 17 A It was Sunday the 8<sup>th</sup>.  
 18 Q Of July?  
 19 A Yes.  
 20 Q Do you remember what time it was?  
 21 A It was right before the sunset.  
 22 Q Would that be -- can you give us an approximation?  
 23 A It could've been anywhere between 5 o'clock to 6  
 24 o'clock in the evening.

XVII-113

## THUNSTROM - DIRECT

1 Q Can you kindly get off the witness stand, using the  
2 pen, and indicate on Defense Exhibit JJ the time and day you  
3 saw her with your initials? Just put your initials and the time  
4 you saw her.

5 A Right here.

6 Q And you can put an arrow from the 8 to maybe --  
7 onto the left side if there's not enough room there. And the  
8 time that you saw her, approximately. You may sit down.  
9 Had you seen her in Panaca prior to July 8, 2001?

10 A No, I don't recall.

11 MS. DiGIACOMO: Objection --

12 MR. KEPHART: Oh, she answered it.

13 MS. DiGIACOMO: That's fine. Withdrawn.

14 BY MS. GREENBERGER:

15 Q Where -- what street were you living on at the time?

16 A Rowan.

17 Q And what street were the --

18 THE COURT: Can you spell that, please?

19 THE WITNESS: R-o-w-a-n, I believe, is how they  
20 spelled it.

21 BY MS. GREENBERGER:

22 Q And what street were the Lobatos living on at the  
23 time?

24 A Oh, my goodness, I don't remember the name of the

XVII-114

## HUNSTROM - DIRECT

1 Ken to go to work the next day, which he worked Monday  
2 through Friday.

3 Q Do you have that same memory?

4 A Yes.

5 Q How long did you stay and talk with Blaise?

6 A It was probably 30 minutes, 45 minutes at the very  
7 most.

8 Q Was that the first time you had seen her in Panaca  
9 that summer?

10 A Correct.

11 Q How certain are you that you saw her on that exact  
12 date and time?

13 A I'm very certain.

14 Q Is methamphetamine prevalent in Panaca?

15 MS. DiGIACOMO: Objection, relevance.

16 THE COURT: Sustained.

17 MS. DiGIACOMO: And move to strike the answer.

18 THE COURT: Granted.

19 BY MS. GREENBERGER:

20 Q Did you know if Blaise was using methamphetamine  
21 when you saw her?

22 MS. DiGIACOMO: Objection, foundation.

23 THE COURT: Sustained.

24 MS. GREENBERGER: Court's indulgence.

XVII-116

## THUNSTROM - DIRECT

1 street.

2 Q How far away from their house was your house?

3 A Right around the block. A small town block, not a  
4 city block.

5 Q You were with your boyfriend at the time?

6 A Correct.

7 Q And what is his name?

8 A Ken Hefner.

9 Q And what were you doing at the time his truck broke  
10 down?

11 A His truck broke down, my son and I got out of the  
12 truck and was talking to Blaise, and he went back to the house  
13 to get gasoline for the truck.

14 Q How is it that you remember that particular day?

15 A Well, I had -- after we were -- as soon as he got the  
16 truck started we had to go back to the house to fix dinner so  
17 that he can go to work the next day.

18 Q So you remember it was a weekend?

19 A Mm-hmm. And he was fixing the truck that  
20 weekend. And I know it was after 4<sup>th</sup> of July.

21 Q And how do you know it was Sunday versus  
22 Saturday?

23 A My son and I were talking and my son said that he  
24 remembers having to go home to fix dinner and get ready for

XVII-115

## THUNSTROM - CROSS

1 I don't believe I have anything further.

2 THE COURT: Cross.

**CROSS-EXAMINATION**

4 BY MS. DiGIACOMO:

5 Q Good afternoon. You said that you saw -- and I  
6 believe you wrote it on the calendar -- Blaise on July 8<sup>th</sup> at  
7 approximately sunset or right before sunset?

8 A Before the sun had set. When the sun sets up there  
9 it's really dark 'cause there's not lights and streetlights and  
10 stop lights, so it was prior to sunset.

11 Q So the entire time you talked to her for  
12 approximately 45 minutes it was still light out?

13 A Correct, just starting to get dark.

14 Q Do you know approximately what time that would've  
15 been?

16 A I would say it was probably about 5:00 or 6:00,  
17 somewhere in there.

18 Q So evening time --

19 A Mm-hmm.

20 Q -- like almost dinner time?

21 A Yes.

22 MS. DiGIACOMO: Court's indulgence.

23 Nothing further. Thank you.

24 MS. GREENBERGER: Nothing further.

XVII-117



## A. LOBATO - DIRECT

1 THE COURT: I heard a sound like a piece of paper  
2 ripping out of the notebook, so I'm looking at the jury, but it  
3 appears that nobody's raising their hand. So you may step  
4 down from the stand.

5 Defendant may call defendant's next witness.

6 MR. SCHIECK: Ashley Lobato, Your Honor.

7 THE CLERK: Please come all the way forward.

8 Remain standing and raise your right hand.

9 **ASHLEY LOBATO, DEFENDANT'S WITNESS, IS SWORN**

10 THE CLERK: Please be seated.

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

12 THE WITNESS: Ashley Lobato, A-s-h-l-e-y

13 L-o-b-a-t-o.

**DIRECT EXAMINATION**

14 BY MS. ZALKIN:

15 Q Good afternoon.

16 A Afternoon.

17 Q How old are you right now, Ashley?

18 A I'm 19.

19 Q And where do you currently reside?

20 A In California --

21 Q What part of --

22 A -- Ontario.

23 Q I'm sorry?

XVII-118

## A. LOBATO - DIRECT

1 Q Can you please describe what she's wearing?

2 A A black shirt. She's got long dark hair over there.

3 MS. ZALKIN: Would the record reflect witness has  
4 identified Ms. Lobato?

5 THE COURT: The record shall so reflect.

6 MS. ZALKIN: Thank you, Your Honor.

7 BY MS. ZALKIN:

8 Q Taking us back to July of 2001, where were you  
9 living at that time?

10 A At my house on 670 Callaway Street.

11 Q And do you recall whether or not Blaise graduated  
12 high school?

13 A She had graduated before July 2001.

14 Q Do you know when she graduated?

15 A Not the exact date.

16 Q Do you know if it was in the spring or before that in  
17 the winter?

18 A I think it was in the spring.

19 Q Okay. And what did Blaise do after she graduated  
20 high school?

21 A She moved to Vegas.

22 Q After she moved to Las Vegas, when do you first  
23 recall seeing her back in Panaca?

24 A A couple days before the 4<sup>th</sup> of July.

XVII-120

## A. LOBATO - DIRECT

1 A Ontario.

2 Q Onseriado [sic]?

3 A Ontario.

4 Q Ontario. Sorry. I misheard you. Are you in school  
5 or employed right now?

6 A Yes, I'm in college and --

7 MS. DIGIACOMO: Objection, relevance.

8 MS. ZALKIN: Foundation.

9 THE COURT: Overruled.

10 THE WITNESS: I'm in college.

11 BY MS. ZALKIN:

12 Q And are you missing college right now to be here  
13 with us?

14 A Yes, I am.

15 Q Before Ontario, where did you reside?

16 A In Panaca, Nevada.

17 Q And how long had you lived in Panaca?

18 A About 10 years or so.

19 Q And for most of those 10 years, who did you live  
20 with in Panaca?

21 A My parents and my sister, Blaise.

22 Q Your sister, Blaise? Do you see Blaise in the  
23 courtroom?

24 A Yes.

XVII-119

## A. LOBATO - DIRECT

1 Q And how do you remember that?

2 A I just know that it was before the 4<sup>th</sup> of July, but it  
3 wasn't -- it was still -- it was in July.

4 Q We have a calendar over here. It's Exhibit JJ. Do  
5 you mind stepping down and putting your initials on whichever  
6 day in July you believe you first saw her, whether or not it was  
7 the 2<sup>nd</sup> or the 3<sup>rd</sup>, whichever date you believe you saw her?  
8 And if you need to draw an arrow to the space above, that's  
9 fine.

10 A Just the date that I first saw her?

11 Q Yes. I might have you get down again at some  
12 point, but for now that's great. Were you home when Blaise  
13 arrived back in Panaca?

14 A Yes, I was.

15 Q And how did she get back home?

16 A She pulled up in her car.

17 Q And what was her car?

18 A It was a red Fiero.

19 Q Was she by herself?

20 A Yes.

21 Q Who else was home when she got home, if you  
22 recall?

23 A My parents.

24 Q Do you recall what you did on her first night home?

XVII-121

## A. LOBATO - DIRECT

1 A No, I don't.  
 2 Q Where was Blaise sleeping during her visit home?  
 3 A She was sleeping in the living room on a futon on  
 4 the floor.  
 5 Q And why was she sleeping there?  
 6 A Because my parents had moved back into her room  
 7 'cause she moved out.  
 8 Q Where were you sleeping when she got home?  
 9 A In my room.  
 10 Q Do you recall whether or not you would be with  
 11 Blaise when she was going to sleep that night?  
 12 A Yes, I slept with her about almost every night while  
 13 she was home.  
 14 Q And why is that?  
 15 A She was having nightmares and she just -- she was  
 16 really cuddly and she just wanted to sleep with her little sister.  
 17 Q Did you sleep next to her on the futon the entire  
 18 night, or just until she fell asleep?  
 19 A No. Usually I'd get up in the middle of the night and  
 20 I'd just move to my room.  
 21 Q Was the futon comfortable or not?  
 22 A No, not really.  
 23 Q Was your own bed more comfortable than the  
 24 futon?

XVII-122

## A. LOBATO - DIRECT

1 a cold or flu or how-- why do you say she was sick?  
 2 A She was sleeping a lot and she just wasn't -- she  
 3 couldn't eat very well, and she just was sick.  
 4 Q Do you know whether or not she sought medical  
 5 attention?  
 6 A Yes, she was going to the doctor with my mom  
 7 during the week.  
 8 Q And where would she have been seeing a doctor?  
 9 MS. DIGIACOMO: Objection, speculation unless she  
 10 was with her.  
 11 THE COURT: Sustained.  
 12 BY MS. ZALKIN:  
 13 Q Do you know where she went to see the doctor?  
 14 A In Caliente at the medical clinic.  
 15 Q Do you remember whether or not Blaise was  
 16 interacting at the barbeque on the 4<sup>th</sup> of July?  
 17 A A little bit, not too much. She was inside a lot or out  
 18 in the garage if people were out in the garage with her.  
 19 MS. DIGIACOMO: And Your Honor, I hate to  
 20 interrupt. I can't hear the witness. I don't know if it's the air  
 21 or what.  
 22 THE WITNESS: Okay.  
 23 MS. DIGIACOMO: If she could speak closer to the  
 24 microphone.

XVII-124

## A. LOBATO - DIRECT

1 A Yeah, I love my bed.  
 2 Q Did you invite Blaise to come and fall asleep in your  
 3 bedroom at any time?  
 4 A Not that I can recall.  
 5 Q Was she more comfortable on the futon?  
 6 A I --  
 7 MS. DIGIACOMO: Objection, speculation.  
 8 THE COURT: Sustained  
 9 BY MS. ZALKIN:  
 10 Q Do you recall the 4<sup>th</sup> of July, 2001?  
 11 A Yes, I do.  
 12 Q Did you spent the 4<sup>th</sup> of July with your family or not?  
 13 A Yes.  
 14 Q Do you recall where you spent the day?  
 15 A At our house.  
 16 Q And do you recall what you did on the 4<sup>th</sup>?  
 17 A There was a barbeque and it was just a family get  
 18 together with a couple friends.  
 19 Q Do you remember who all was there?  
 20 A Shayne, John, Marilyn Parker, her kids, my parents,  
 21 Blaise, me, and that's about all I can remember for sure.  
 22 Q Was Blaise in good health around the 4<sup>th</sup> of July?  
 23 A She was sick.  
 24 Q When you say she was sick, do you know if she had

XVII-123

## A. LOBATO - DIRECT

1 THE WITNESS: I can speak up. Sorry.  
 2 MS. DIGIACOMO: I didn't hear the last answer at  
 3 all.  
 4 BY MS. ZALKIN:  
 5 Q I believe I had asked you if Blaise was interacting  
 6 with the guests or not?  
 7 A She was a little bit. She'd come out and she was  
 8 just interacting with everybody, but they hung out in the  
 9 garage a lot. I was out in the front yard.  
 10 Q Do you recall July 5<sup>th</sup> of 2001?  
 11 A No.  
 12 Q Were you in any kind of summer school during that  
 13 month, or what were you -- how old were you back then?  
 14 A I was 14. I was getting ready to start my freshman  
 15 year.  
 16 Q Do you remember seeing Blaise on the 6<sup>th</sup> of July?  
 17 A I most likely did. I don't remember any specific  
 18 times.  
 19 Q Did you see Blaise's car on the 6<sup>th</sup> of July?  
 20 A Yes. I was always in and out and it -- I never saw it  
 21 move.  
 22 Q And where was her car --  
 23 A It was --  
 24 Q -- on the 6<sup>th</sup> of July?

XVII-125

## A. LOBATO - DIRECT

1 A It was in the front, right next to the fence.  
 2 Q And who were your neighbors as you're -- back in  
 3 July of 2001, as you're standing with your back to the front  
 4 door of your house, who are the neighbors on your left?  
 5 A On the left it would be Bob and Wanda McCrosky.  
 6 Q And same question but to the right of your house.  
 7 Who are you neighbors to the right?  
 8 A Jo Dennert.  
 9 Q Would you -- strike that. At any time between July  
 10 2<sup>nd</sup> and July 7<sup>th</sup> did you see Blaise's car move?  
 11 A No.  
 12 Q But you testified you weren't home every minute of  
 13 every day?  
 14 A Yeah, I was out a lot with Clint usually.  
 15 Q But --  
 16 A In and out all day.  
 17 Q But when you were home the car was there as well?  
 18 A Yeah, it was in where it was --  
 19 MS. DiGIACOMO: I can't hear the witness, Your  
 20 Honor.  
 21 MS. ZALKIN: If you could, the microphone there  
 22 may be somehow --  
 23 THE COURT: She can scoot the chair in a little bit  
 24 closer.

XVII-126

## A. LOBATO - DIRECT

1 Q And do you know the birthday date that Kyle has?  
 2 A It was July 7<sup>th</sup>.  
 3 Q And did you celebrate your friend's brother's  
 4 birthday or not with him?  
 5 A Yes.  
 6 Q On -- drawing your attention to July 8<sup>th</sup> of 2001. Do  
 7 you recall seeing Blaise when you woke up in the morning --  
 8 MS. DiGIACOMO: Objection, leading.  
 9 MS. ZALKIN: -- or not?  
 10 THE COURT: Sustained.  
 11 BY MS. ZALKIN:  
 12 Q Do you -- what time did you get up that morning,  
 13 approximately?  
 14 A Probably around 7:00 or 7:30.  
 15 MS. DiGIACOMO: And I'm sorry, what date?  
 16 MS. ZALKIN: On July 8<sup>th</sup>.  
 17 MS. DiGIACOMO: I can't hear.  
 18 MS. ZALKIN: July 8<sup>th</sup>.  
 19 MS. DiGIACOMO: Thank you.  
 20 BY MS. ZALKIN:  
 21 Q Do you know whether or not anyone not living in the  
 22 house came over that morning?  
 23 A No.  
 24 Q Did you see your sister Blaise at some point on the

XVII-128

## A. LOBATO - DIRECT

1 MS. ZALKIN: Thank you.  
 2 BY MS. ZALKIN:  
 3 Q Do you recall whether or not Blaise had any friends  
 4 that were over at the house that week?  
 5 A Chris Carrington was there all week.  
 6 Q When you say all week, did he move in with your  
 7 guys or --  
 8 A No, he was just over a lot. He was staying at his  
 9 grandmother's house down the street.  
 10 Q We heard testimony from a gentleman who was  
 11 friends with you who had a horse. Were you hanging out with  
 12 a particular friend -- just first name only -- during that week?  
 13 A Clint.  
 14 Q Were you with your friend Clint on July 7<sup>th</sup> or not?  
 15 MS. DiGIACOMO: Objection, leading.  
 16 MS. ZALKIN: Do you -- I'll rephrase.  
 17 THE COURT: Sustained.  
 18 MS. ZALKIN: I'm sorry, Your Honor.  
 19 BY MS. ZALKIN:  
 20 Q Do you recall what you were doing on July 7<sup>th</sup>?  
 21 A Not the whole day, just parts.  
 22 Q Do you know whether or not your friend Clint has  
 23 any younger siblings?  
 24 A Yes, Kyle.

XVII-127

## A. LOBATO - DIRECT

1 8<sup>th</sup>?  
 2 A Yes, I did.  
 3 Q Can you please initial on the board, Exhibit JJ, on  
 4 July 8<sup>th</sup> at this time? And you can draw any arrow out to the  
 5 left. And while you're still down there, do you recall  
 6 approximately what time you saw Blaise on the 8<sup>th</sup>?  
 7 A Do I just write it?  
 8 Q Yes. And answer out loud, I'm sorry.  
 9 A It was sometime in the late afternoon.  
 10 Q And for the record, what time did you note up  
 11 there?  
 12 A I put about 3:00 or 4:00 p.m. I know the sun was  
 13 just about to go down or it was getting ready to go down.  
 14 Q At 3:00 or 4:00 p.m.?  
 15 A Well, it was -- you know how it gets kind of in the  
 16 high up in the air, that's --  
 17 Q So the sun was beginning it's --  
 18 A Yeah  
 19 Q -- decent? Okay. And where did you see Blaise?  
 20 A She was in the garage.  
 21 Q And who else, if anyone, was with her?  
 22 A Chris Carrington.  
 23 Q And was it just the two of them when you first saw  
 24 her?

XVII-129

## A. LOBATO - DIRECT

- 1 A Yes, at the time.  
 2 Q And do you recall what Chris was doing?  
 3 A He was using the Bowflex.  
 4 Q Do you recall what your sister was doing?  
 5 A She was sitting, probably -- she was just sitting in  
 6 the chair next to the counter.  
 7 Q Did you have any conversation with her? Yes or no,  
 8 without getting into what you said.  
 9 A Yes.  
 10 Q And how long were you in the garage with Blaise  
 11 and Chris, approximately?  
 12 A A couple hours.  
 13 Q And what happened next?  
 14 A Shayne came over, she was picking up something,  
 15 and -- well, she was picking up a pan and some tiger balm and  
 16 I was going to her house for dinner.  
 17 Q Is that Shayne Kraft?  
 18 A Yes.  
 19 Q And what's your relationship with Shayne?  
 20 A She's my cousin.  
 21 Q And when Shayne came over did you interact with  
 22 Shayne directly?  
 23 A Yes.  
 24 Q And was Shayne interacting with Blaise or not?

XVII-130

## A. LOBATO - DIRECT

- 1 THE COURT: That is rephrased. Overruled.  
 2 MS. DIGIACOMO: Thank you, Your Honor.  
 3 THE WITNESS: Until about midnight.  
 4 BY MS. ZALKIN:  
 5 Q And how did you get home?  
 6 A Shayne dropped me off.  
 7 Q And how long does it take by vehicle to get from  
 8 Shayne's house to your house?  
 9 A About a minute and a half.  
 10 Q And when you got home was there anyone else at  
 11 your house?  
 12 A Blaise.  
 13 Q And what was Blaise doing?  
 14 A She was getting ready to go to Vegas.  
 15 Q And was that -- did you testify that was around  
 16 midnight?  
 17 A Yeah.  
 18 Q Who else was home, if anyone?  
 19 A I don't remember.  
 20 Q And can you describe when you said she was getting  
 21 ready to go to Vegas, what did that involve?  
 22 A She was out in the garage and she was packing and  
 23 she was standing next to the Bowflex. That's all I remember.  
 24 Q Did you know how she was going to get to Las

XVII-132

## A. LOBATO - DIRECT

- 1 A Yes.  
 2 Q Do you recall for how long Shayne was over at your  
 3 residence that day?  
 4 A A couple hours.  
 5 Q Do you recall at what time Shayne left your house  
 6 that day?  
 7 A It was getting dark.  
 8 Q And when Shayne left, what did you do?  
 9 A I went with her.  
 10 Q And why were you leaving with her?  
 11 A Her husband had come over and was yelling at her  
 12 because she was taking too long, and we needed to hurry up  
 13 and go home and make dinner and he wanted the tiger balm  
 14 for his neck.  
 15 Q And did you go home and make dinner with her?  
 16 A Yeah, I was there while she was making dinner.  
 17 Q Did you assist in the preparations?  
 18 A Not that I can remember.  
 19 Q Did you get the recipe --  
 20 MS. DIGIACOMO: Objection, leading.  
 21 MS. ZALKIN: -- or not?  
 22 THE WITNESS: No, not that I can remember.  
 23 BY MS. ZALKIN:  
 24 Q How long did you stay at the Krafts?

XVII-131

## A. LOBATO - DIRECT

- 1 Vegas?  
 2 A Her friend, Doug, was coming to pick her up.  
 3 Q And how long did you stay with Blaise while she was  
 4 packing?  
 5 A Probably about 15 minutes. Long enough to say  
 6 goodbye, and then I went to bed.  
 7 Q And hopefully for the last time, do you mind  
 8 stepping down and just noting the time that you said goodbye,  
 9 which, just to clarify, would that have been still on the 8<sup>th</sup> or  
 10 the early hours?  
 11 A It would be probably around 12:20.  
 12 Q Okay. So technically that would be on the 9<sup>th</sup>?  
 13 A It was the 9<sup>th</sup>.  
 14 Q To your knowledge, did Blaise, in fact, leave  
 15 sometime on the 9<sup>th</sup>?  
 16 A Yes.  
 17 Q Was her car still in front of your residence?  
 18 A Yes.  
 19 Q So from July -- is it your testimony that from July 2<sup>nd</sup>  
 20 to July 8<sup>th</sup> she was in Panaca every one of those days?  
 21 A Yes.  
 22 Q And did you see the car move from July 2<sup>nd</sup> to July  
 23 8<sup>th</sup>?  
 24 A No.

XVII-133

A. LOBATO - DIRECT

1 Q And if you recall, was Chris Carrington over every  
2 day that week?

3 MS. DiGIACOMO: Objection, Your Honor. She  
4 already stated she can't remember the 6<sup>th</sup> and the 7<sup>th</sup>.

5 MS. ZALKIN: I'll withdraw, Your Honor.

6 BY MS. ZALKIN:

7 Q Do you recall where Chris Carrington was residing at  
8 that time, that particular week?

9 A That particular week he was at his grandmother's  
10 house, and they hung out a lot during the week.

11 Q And how far away was his grandmother's house  
12 from your house?

13 A It was about four houses down on the opposite side  
14 of the street.

15 Q Going back briefly to July 7<sup>th</sup>, did you help your  
16 sister fall asleep that night?

17 A I believe so.

18 Q And did you see your sister when you got up on the  
19 8<sup>th</sup>?

20 A I don't remember not seeing her.

21 Q When you got home from the Krafts the night of the  
22 8<sup>th</sup>, did you see your sister's car?

23 A Yes.

24 Q And can you describe exactly where it was parked,

XVII-134

A. LOBATO - DIRECT

1 THE COURT: Sustained.

2 BY MS. ZALKIN:

3 Q When did you next see Blaise after saying goodbye  
4 to her early on July 9<sup>th</sup>, if you recall?

5 A I don't remember. It was a couple weeks later.

6 Q Do you recall any Las Vegas Police Officers coming  
7 to your home?

8 A Yes.

9 Q Do you recall on what date that occurred?

10 A No, I don't know the exact date.

11 Q Where were you when police arrived at your house?

12 A I was in the garage with Clint.

13 Q Did you let the police in or --

14 A No, I made them stand in my driveway until she got  
15 out of the shower.

16 Q Did the police ask you any questions?

17 A No.

18 Q Were you willing to speak with them?

19 MS. DiGIACOMO: Objection, relevance.

20 THE COURT: Overruled.

21 BY MS. ZALKIN:

22 Q Were you willing to speak with the police at that  
23 time?

24 A Yes.

XVII-136

A. LOBATO - DIRECT

1 to the best of your ability?

2 A It was behind this trailer in front of our house, kind  
3 of -- the butt was kind of in the beginning of the McCroskys'  
4 yard.

5 Q And that was the house to the left?

6 A To the left of my house.

7 Q Did you know -- let me ask you this. Would you  
8 have remembered if you had not seen Blaise?

9 MS. DiGIACOMO: Objection, leading.

10 THE COURT: Sustained.

11 BY MS. ZALKIN:

12 Q Was July 2<sup>nd</sup> -- strike that. After Blaise left for Las  
13 Vegas, when was the first time that you saw her again?

14 MS. DiGIACOMO: Objection, vague.

15 BY MS. ZALKIN:

16 Q After Blaise graduated high school and left for Las  
17 Vegas--

18 MS. DiGIACOMO: Objection, asked and answered.

19 THE COURT: Sustained.

20 BY MS. ZALKIN:

21 Q Where you awake when Blaise left on the early  
22 morning hours of July 9<sup>th</sup>?

23 A No.

24 MS. DiGIACOMO: Objection, asked and answered.

XVII-135

A. LOBATO - DIRECT

1 Q Was there any time subsequently that you've been  
2 unwilling to speak with the police?

3 A No.

4 Q Have the police ever contacted you with respect to  
5 your sister's situation?

6 A No.

7 Q Going back to your family home at the time, was the  
8 home decorated?

9 A Yes.

10 Q Were there decorations on the hallway walls or not?

11 A Yes, there were.

12 Q And how would you describe those items on the  
13 walls?

14 A There was a sombrero hat, like a Zoro outfit, and it  
15 had a sword across it with a little ball on the end of it, and  
16 there was wooden pieces of -- like the sticks that the cops  
17 carry, and a horn that was actually a canteen hanging on the  
18 wall.

19 Q Were any of those items ever used as weapons, to  
20 your knowledge?

21 A No.

22 Q Were those items there for decoration or use?

23 A They were decoration.

24 MS. ZALKIN: Court's indulgence, Your Honor.

XVII-137

## A. LOBATO - DIRE/

1 THE COURT: Yes.  
 2 MS. ZALKIN: I'll pass the witness.  
 3 THE COURT: We're gonna take our afternoon  
 4 stretch break at this time. You may step down from the stand.  
 5 In 10 minutes please be in the hallway and the  
 6 bailiff will return you to your seats in the courtroom.  
 7 During the recess you're admonished not to talk or  
 8 converse among yourselves nor with anyone else on any  
 9 subject connected with the trial. And you're not to read,  
 10 watch, or listen to any report of or commentary on the trial or  
 11 any person connected with the trial by any medium of  
 12 information, including without limitation, newspaper, television,  
 13 radio, and internet. And you're not to form or express any  
 14 opinion on any subject connected with the trial until the case is  
 15 finally submitted to you.  
 16 Court's in recess for 10 minutes.  
 17 (Court recessed at 3:25:05 p.m. until 3:51:19 p.m.)  
 18 (Jurors are present)  
 19 THE BAILIFF: Please be seated.  
 20 THE COURT: The record shall reflect that we're  
 21 resuming trial in State versus Lobato under C177394, in the  
 22 presence of the defendant, her three counsel, the two  
 23 prosecuting attorneys, and ladies and gentlemen of the jury.  
 24 Coming back from the stretch break the bailiff

XVII-138

## A. LOBATO - DIRECT

1 MS. DiGIACOMO: Objection, relevance to ever and  
 2 vague.  
 3 THE COURT: Sustained.  
 4 BY MS. ZALKIN:  
 5 Q Did you see your sister use methamphetamine the  
 6 week of July 2<sup>nd</sup>.  
 7 A No.  
 8 Q Can you describe your sister's demeanor that week?  
 9 MS. DiGIACOMO: Objection, vague.  
 10 BY MS. ZALKIN:  
 11 Q Was your sister --  
 12 MS. DiGIACOMO: Objection, leading.  
 13 BY MS. ZALKIN:  
 14 Q How did your sister look physically the week of July  
 15 the 2<sup>nd</sup>?  
 16 A She was -- she looked very pale, she was very sick,  
 17 she was - -she just slept a lot.  
 18 THE COURT: The first two questions were  
 19 withdrawn.  
 20 MS. ZALKIN: Yes, Your Honor.  
 21 BY MS. ZALKIN:  
 22 Q Was she talkative that week?  
 23 MS. DiGIACOMO: Objection, leading.  
 24 THE COURT: Sustained.

XVII-140

## A. LOBATO - DIRECT

1 provided me with two jurors' notes, which the Court will have  
 2 marked collectively as the Court's next in number.  
 3 THE CLERK: 77.  
 4 THE COURT: After review with Court and counsel in  
 5 chambers, the way the deliberations are presided upon is  
 6 dependant upon the ladies and gentlemen of the jury and  
 7 whom is selected to be the foreperson who is in charge of that  
 8 process. That is not under the control of the Court, but rather  
 9 it is under the control of the ladies and gentlemen of the jury.  
 10 The -- one of the notes references a Thursday  
 11 afternoon appointment. That will need to be moved. You will  
 12 be in this trial through Thursday.  
 13 Proceeding with Ashley Lobato's testimony. She has  
 14 been returned to the witness stand and remains under oath.  
 15 MS. ZALKIN: Your Honor, may -- would the Court  
 16 grant permission to briefly reopen direct for a few questions?  
 17 I had passed the witness before the break.  
 18 MS. DiGIACOMO: There's no objection.  
 19 THE COURT: All right.  
 20 MS. ZALKIN: Thank you very much.  
 21 **DIRECT EXAMINATION (Continued)**  
 22 BY MS. ZALKIN:  
 23 Q Ms. Lobato, have you ever seen your sister use  
 24 methamphetamine?

XVII-139

## A. LOBATO - CROSS

1 BY MS. ZALKIN:  
 2 Q Did your sister appear different to you the week of  
 3 July 2<sup>nd</sup> than she previously had been or not?  
 4 A Yes.  
 5 Q And in what way did she appear different to you?  
 6 A She wanted me around. She was --  
 7 MS. DiGIACOMO: Objection, nonresponsive. The  
 8 question was how she looked.  
 9 THE COURT: Sustained.  
 10 MS. DiGIACOMO: And move to strike.  
 11 THE COURT: Granted.  
 12 BY MS. ZALKIN:  
 13 Q How did she appear different with respect to her  
 14 personality traits?  
 15 MS. DiGIACOMO: Objection, assumes facts not in  
 16 evidence. She said she looked --  
 17 THE COURT: Sustained.  
 18 MS. ZALKIN: Nothing further.  
 19 THE COURT: Cross.  
 20 MS. DiGIACOMO: Thank you.  
 21 **CROSS-EXAMINATION**  
 22 BY MS. DiGIACOMO:  
 23 Q You said that the week of July 2<sup>nd</sup> that your sister  
 24 looked pale, sick, slept a lot?

XVII-141

## A. LOBATO - CROSS

- 1 A Mm-hmm.  
 2 Q Is that a yes for the record?  
 3 A Yes. Sorry.  
 4 Q She was like that the entire week she was there?  
 5 A Yes, pretty much.  
 6 Q So even on Sunday night, July 8<sup>th</sup>, when you said  
 7 you saw her, she was also pale and sick then?  
 8 A Oh, oh, no. She was getting better as she was  
 9 going to the doctor.  
 10 Q Okay. So she -- is it fair to say then that she was  
 11 pale and sick July 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and the 5<sup>th</sup> when she went to  
 12 the doctor?  
 13 A Yes.  
 14 Q And then after July 5<sup>th</sup> she got better?  
 15 A She was getting better.  
 16 Q Getting better? So she wasn't completely herself by  
 17 July 8<sup>th</sup>?  
 18 A No.  
 19 Q At the time of this week in July 2001, you were on  
 20 school break?  
 21 A Yes.  
 22 Q You were actually in between schools?  
 23 A Yes. Yes. There was a junior high and then a high  
 24 school, I was going into high school.

XVII-142

## A. LOBATO - CROSS

- 1 A We were out around town a lot. We never just  
 2 stayed at each other's houses. Just in and out of both.  
 3 Q Where would you hang out with him?  
 4 A We would go out like horseback riding, we'd ride our  
 5 bikes, we'd go -- there's desert everywhere, so we'd just  
 6 always be out and around.  
 7 Q Would you ever hang out with him when he was  
 8 working at the mini mart?  
 9 A Sometimes.  
 10 Q And you said that -- I believe what you marked on  
 11 the calendar, and correct me if I'm wrong, you saw your sister  
 12 on July 2<sup>nd</sup> when she came home? You know --  
 13 A Well, I think -- I know it was a couple days before  
 14 the 4<sup>th</sup> of July.  
 15 Q Okay. So you know it was a couple of days before  
 16 the 4<sup>th</sup> of July that she came home?  
 17 A Mm-hmm.  
 18 Q Is that a yes?  
 19 A Yes. Sorry.  
 20 Q And she drove her red Fiero home?  
 21 A Yes.  
 22 Q Do you know when she got the car?  
 23 A I don't. I just remember cleaning it with her. I  
 24 don't know exactly -- the exact day when she got it.

XVII-144

## A. LOBATO - CROSS

- 1 Q Okay. So you were gonna be starting high school in  
 2 the fall?  
 3 A Yes.  
 4 Q And you had graduated from your junior high?  
 5 A Yes.  
 6 Q So at this time, you weren't working, were you, in  
 7 July 2001?  
 8 A No.  
 9 Q You were just hanging out with your friends and  
 10 enjoying the summer break?  
 11 A I had a babysitting job, actually.  
 12 Q Okay. What was your babysitting job?  
 13 A I babysat three days a week for Marilyn Parker most  
 14 of the summer.  
 15 Q In that week of July 2001, that first week in July,  
 16 were you babysitting that week?  
 17 A I actually had her kids the 4<sup>th</sup> of July and I was  
 18 watching them on the 4<sup>th</sup> of July while like everybody was  
 19 partying for the barbeque. But I don't -- I didn't have them  
 20 that weekend after, like the weekend of the 9<sup>th</sup>.  
 21 Q But -- and most of that week you said from the 5<sup>th</sup>,  
 22 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, you were spending it a lot with Clint?  
 23 A Yes.  
 24 Q At his house?

XVII-143

## A. LOBATO - CROSS

- 1 Q When did you clean it with her?  
 2 A Well, I remember cleaning it with her when she got  
 3 it. I don't remember exactly when.  
 4 Q Oh, you mean when she first got the car?  
 5 A Yeah.  
 6 Q Okay. So it -- was it around the time she  
 7 graduated?  
 8 A Yes. I think it was a graduation present or  
 9 something.  
 10 Q From your parents?  
 11 A Yeah.  
 12 Q Are you aware of the license plate she had on her  
 13 car?  
 14 A Yes. It was -- it was a --  
 15 Q A personalized plate?  
 16 A Yeah, it was a personalized plate.  
 17 Q Was that a gift as well, or was that what she did to  
 18 the car herself?  
 19 A I think she picked it out.  
 20 Q And she drove that car to Vegas when she moved  
 21 there?  
 22 A Yes.  
 23 Q And you testified that your parents moved back into  
 24 her room after she moved to Vegas?

XVII-145

## A. LOBATO - CROSS

- 1 A Yes.
- 2 Q How long, from the time she graduated 'till she
- 3 came home July 2<sup>nd</sup>, had she been gone? Was it like a couple
- 4 of weeks, a couple of months?
- 5 A It wasn't -- I don't think it was that long. I wouldn't
- 6 -- I don't even know 'cause I didn't -- I don't even remember
- 7 when she graduated, so --
- 8 Q Okay.
- 9 A -- I don't know about how long it is at all.
- 10 Q Well, do you recall seeing her in the month of June,
- 11 2001?
- 12 A No.
- 13 Q Do you --
- 14 A I don't --
- 15 Q Well, is it -- okay. Let me do it this way. You know
- 16 she moved to Vegas --
- 17 A Mm-hmm.
- 18 Q -- correct?
- 19 A Yes.
- 20 Q And you know you saw her when she came back
- 21 around the 4<sup>th</sup> of July 2001?
- 22 A Yes.
- 23 Q Did you see her any other time in -- any other time
- 24 between when she moved to Vegas and came home for the 4<sup>th</sup>

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## A. LOBATO - CROSS

- 1 A I don't know. I didn't know my way around Vegas.
- 2 I just know she was on the other side.
- 3 Q Okay. So Shayne was there -- you were there with
- 4 Shayne?
- 5 A Mm-hmm.
- 6 Q Shayne knew her way around Vegas?
- 7 A Yes.
- 8 Q And all you remember is that your sister was too far
- 9 away to go see?
- 10 A Yes.
- 11 Q But you almost did go see her?
- 12 A Almost.
- 13 Q Did you call her to tell her you were in Vegas?
- 14 A Yes.
- 15 Q You called your sister?
- 16 A Yes.
- 17 Q Do you know how you called her? Did she have a
- 18 cell phone?
- 19 A I don't remember if she had a cell phone or not. I
- 20 don't know how I got a hold of her.
- 21 Q Did you have a cell phone back in 2001?
- 22 A No.
- 23 Q Did your parents have cell phones?
- 24 A Not that I can remember.

XVII-148

## A. LOBATO - CROSS

- 1 of July?
- 2 A No.
- 3 Q And you can't recall how long that was? Was it
- 4 more than a couple of weeks?
- 5 A She graduated in the springtime, so I'm saying May
- 6 -- all of June probably, a little bit of May, until the July.
- 7 Q Do you recall --
- 8 A That's what I can assume.
- 9 Q Okay. And you're assuming --
- 10 A Yeah.
- 11 Q -- but you're not sure?
- 12 A Yeah. 'Cause that's when usually the graduations
- 13 happen is in the spring, so --
- 14 Q Do you have a memory though of not seeing her for
- 15 quite some time?
- 16 A Yes. I remember going to Vegas and she was there
- 17 and not being able to see her and just -- just for instances.
- 18 Q You mean after she moved to Vegas?
- 19 A Yeah.
- 20 Q You actually went down to Vegas yourself?
- 21 A I went to Vegas with my cousin, Shayne, and I
- 22 almost went to visit her, but we didn't get a chance to, she
- 23 was on the other side of town, but --
- 24 Q What side of town did you go to?

XVII-147

## A. LOBATO - CROSS

- 1 Q Okay. So it's not possible that you and your sister
- 2 could borrow your parent's cell phones back then?
- 3 A Well, I know they had cell phones. I know at one
- 4 point they were Verizon, they were small, but I don't
- 5 remember when they had them exactly.
- 6 Q Okay. But it's possible it was in 2001?
- 7 A Yeah, it is.
- 8 Q When they had the cell phones were you or your
- 9 sister ever able to borrow it?
- 10 A Yes.
- 11 Q Okay. And both of your parents had cell phones or
- 12 they had just one?
- 13 A I believe both of them had one.
- 14 Q So they shared one?
- 15 MS. ZALKIN: Objection, Your Honor. This is beyond
- 16 the scope of direct.
- 17 MS. DiGIACOMO: It's cross-examination. I'm
- 18 testing her memory. And actually they did ask when she had
- 19 seen her between the time she moved down and the time that
- 20 she saw her in July. And so she brought up and she tried to
- 21 see her in Vegas. I'm just following up.
- 22 THE COURT: Overruled.
- 23 BY MS. DiGIACOMO:
- 24 Q Did you see your sister around Mother's Day in May

XVII-149



A. LOBATO - CROSS

1 2001 that year?  
 2 A I don't remember.  
 3 Q Okay. So you don't remember if she had come  
 4 home?  
 5 A I don't think she came home.  
 6 Q Your parents moved into Blaise's room when she  
 7 moved out?  
 8 A Yes.  
 9 Q Okay. What happened to Blaise's stuff that was in  
 10 her room when your parents moved in?  
 11 A She had actually moved it, most of her stuff to  
 12 Caliente, all of her stuff. Her -- yeah, I don't remember what  
 13 happened with most of her stuff.  
 14 Q So her clothes, her --  
 15 A Well, I think she had her clothes.  
 16 Q Okay. She had her clothes with her in Vegas. Okay.  
 17 Is that fair?  
 18 A Yes.  
 19 Q And her other belongings she moved to Caliente?  
 20 A I just -- I remember her living in Caliente at one  
 21 point and her entertainment wall unit and all that stuff was  
 22 gone, so I don't know what happened to it after that.  
 23 Q Okay. So in her bedroom she had an entertainment  
 24 wall center --

XVII-150

A. LOBATO - CROSS

1 A I didn't consider them weapons. They were just  
 2 hanging there.  
 3 Q Okay. But somebody else might consider them  
 4 weapons, is that fair to say?  
 5 MS. ZALKIN: Objection, speculation, move to strike.  
 6 THE COURT: Sustained.  
 7 BY MS. DIGIACOMO:  
 8 Q You didn't consider them weapons, why?  
 9 A Because they were just hanging on the wall as  
 10 decoration and there -- they just have always been that way.  
 11 I've never seen 'em used.  
 12 Q Not even in the movies --  
 13 A No.  
 14 Q -- as weapons?  
 15 A I know that they are used, you know, in the  
 16 Japanese movies or Chinese movies, but I've never watched  
 17 them, so --  
 18 Q Okay. So you know that it's possible they can be  
 19 used as weapons, but to you they were just decoration?  
 20 A Yes. But when I bump into them and stuff they  
 21 were like wooden plastic things.  
 22 Q Okay. So they weren't real weapons?  
 23 A I didn't --  
 24 Q Now your sister has -- had a knife collection,

XVII-152

A. LOBATO - CROSS

1 A Mm-hmm.  
 2 Q -- while she lived there?  
 3 A Yes.  
 4 Q But after she moved out it was gone?  
 5 A Yeah, I don't remember what happened to it.  
 6 Q Okay. But then your parents moved their furniture  
 7 into her bedroom and it became their bedroom?  
 8 A Yes.  
 9 Q Was this house a three bedroom or a two bedroom?  
 10 A It was a two bedroom.  
 11 Q Where did your parents sleep before Blaise moved  
 12 out?  
 13 A In the living room.  
 14 Q Where she slept on the futon?  
 15 A Yeah, but they had their bed out there.  
 16 Q Okay. Now you talked about some stuff that was  
 17 hanging on your wall that was for decoration?  
 18 A Yes.  
 19 Q Weapons, Zoro outfit, correct?  
 20 A Mm-hmm. It was a Zoro outfit. I didn't -- I don't  
 21 consider them weapons.  
 22 Q Okay. The -- were there nunchucks?  
 23 A Yes.  
 24 Q Okay. But that's not a weapon to you?

XVII-151

A. LOBATO - CROSS

1 correct?  
 2 A Yes, I think so.  
 3 Q How many knives did she have?  
 4 A Not very many.  
 5 Q Did she have 10?  
 6 A She was working on her collection at the time. I  
 7 don't know how many she had.  
 8 Q What kind of knives did she collect?  
 9 A Any kinds that people would get her.  
 10 Q Did she know how to use the knives that she was  
 11 collecting?  
 12 A Not that I know of.  
 13 Q Did you ever see her with a butterfly knife?  
 14 A When my dad gave it to her, yes.  
 15 Q And what did -- when did you see your dad give her  
 16 that?  
 17 A I don't remember the exact date.  
 18 Q Wasn't a gift for Christmas?  
 19 A I can't really say that it was for Christmas.  
 20 Q All right. But it was a gift from your dad to your  
 21 sister?  
 22 A Yes.  
 23 Q Did you know how to work a butterfly knife yourself?  
 24 A No.

XVII-153

## A. LOBATO - CROSS

- 1 Q Did your sister know how to work one?  
 2 A No, I don't think so.  
 3 Q Did you dad teach her how to maneuver it, get it out  
 4 with one hand?  
 5 A I don't know. I didn't see him do that.  
 6 Q So you never saw your sister with this knife, other  
 7 than when your dad gave it to her as a gift?  
 8 A Yeah, and it was -- she just carried it.  
 9 Q So she did carry this knife, the butterfly knife?  
 10 A Yeah, that I -  
 11 Q Where would she carry it?  
 12 A In her bag usually sometimes.  
 13 Q I can't hear you.  
 14 A In her bag.  
 15 Q In her bag, her purse? Did you ever know her to --  
 16 is that a yes for the record?  
 17 A Yes.  
 18 Q Did you ever know her to carry it in her pocket or  
 19 boot?  
 20 A No.  
 21 Q How long did she carry it?  
 22 A I really can't say.  
 23 Q How long before she graduated did she get this gift  
 24 from your dad? Was it a year, was it a month?

XVII-154

## A. LOBATO - CROSS

- 1 know what the bat looked like that was in her car?  
 2 A I don't know what the bat looked like exactly.  
 3 Q But you knew she carried a bat?  
 4 A I just remember seeing a bat behind her seat in her  
 5 car.  
 6 Q When was that?  
 7 A When she had the car. I don't --  
 8 Q Was that before she left to move to Vegas?  
 9 A It was between the time that she got the car and  
 10 she left for Vegas.  
 11 Q When she came back to Vegas on July 2<sup>nd</sup> or  
 12 somewhere around there before the 4<sup>th</sup>, did you ever ride in  
 13 her car with her?  
 14 A No.  
 15 Q And you testified that she pulled it in front of your  
 16 house but partially over the fence line to where the  
 17 McCroskys's property is?  
 18 A Yeah, right outside on the street.  
 19 Q Okay. So it's on the street but it's half on your side  
 20 of the fence line, your parents' house, and half on the  
 21 McCrosky's?  
 22 A Well, yeah. The back end of the car was slightly in  
 23 front of McCroskys's yard.  
 24 Q Okay. So just part of her back end was in front of

XVII-156

## A. LOBATO - CROSS

- 1 A I really can't say.  
 2 Q After she got it did she carry it in a regular basis?  
 3 A Not that I know of.  
 4 Q You just saw her carry it sometimes?  
 5 A Well, usually when we go out of town, it's like  
 6 protection. We don't really have to carry anything around  
 7 Panaca.  
 8 Q Okay. So when she would leave Panaca she'd carry  
 9 it for protection?  
 10 A Yes.  
 11 Q And that wasn't uncommon for girls from Panaca to  
 12 do?  
 13 A Yeah. Most people carried bats or something in  
 14 their car, something like that.  
 15 Q Did your sister ever carry a bat in her car?  
 16 A She had a bat in her car, yes.  
 17 Q What did it look like?  
 18 A A wooden baseball bat. Or maybe it was a metal  
 19 one. I don't know. I have a wooden one. I don't know what  
 20 she has.  
 21 Q I'm sorry. I cannot hear you. You have a --  
 22 A I don't know what it looked like. I think it was a  
 23 metal one.  
 24 Q Okay. But -- so you're guessing then, you don't

XVII-155

## A. LOBATO - CROSS

- 1 their yard?  
 2 A Yeah. Not very far, just enough because the trailer  
 3 was parked kind of in front of our house.  
 4 Q And the car stayed in that same position until the  
 5 police came on July 20<sup>th</sup>?  
 6 A From what I saw, yes.  
 7 Q From what you saw? But you weren't there every  
 8 minute of the day?  
 9 A Not every minute. I was in and out throughout the  
 10 day.  
 11 Q So it's possible it could've gotten moved and you  
 12 wouldn't have known?  
 13 A Yes, it is.  
 14 Q That week you said you'd been -- you were in and  
 15 out every day. Did you sleep there at the residence every  
 16 night?  
 17 A Yes.  
 18 Q On the 4<sup>th</sup> of July, the barbeque that your parents  
 19 had at the residence, what time did that start usually -- or  
 20 what time did it start that day in 2001?  
 21 A I really can't say about what time it started. I don't  
 22 know.  
 23 Q Okay. Was it afternoon, was it getting dusk, was it  
 24 dark?

XVII-157

## A. LOBATO - CROSS

1 A Well, it was about -- it was late afternoon, you  
2 know. It was -- it was in the afternoon, I know that, like after  
3 12:00.  
4 Q Did you and the other people there watch fireworks?  
5 A I went to the fireworks, but it wasn't until later.  
6 Q Okay. You said you went to the fireworks? Is there  
7 only one fireworks display up there?  
8 A Yeah, there was fireworks in Caliente. You had to  
9 go to Caliente to watch them. We lived in Panaca.  
10 Q And when would you have gone to watch the  
11 fireworks in Caliente?  
12 A They start at 9:00, so probably around 8:30 or 8:00.  
13 Q So you'd go shortly before?  
14 A Yeah.  
15 Q And as part of this, was there also like booths set up  
16 where you could get food and drink and everything in Caliente  
17 where the fireworks were?  
18 A Yes. There's a concession stand that's always open.  
19 Q Oh, okay. So it's not just for the fireworks, or is it  
20 the concession stand for the fireworks?  
21 A Well, there's -- they have softball tournaments too  
22 during the day sometimes, and -- yeah, there's concessions  
23 stand, it's at the park and they open the concession stand to  
24 serve food.

XVII-158

## A. LOBATO - CROSS

1 Q So that's open at the park where they have the  
2 fireworks?  
3 A Yes.  
4 Q Okay. Did you go by yourself to the fireworks?  
5 A No.  
6 Q Who went with you?  
7 A Clint.  
8 Q So you and Clint went alone?  
9 A Mm-hmm.  
10 Q Is that a yes?  
11 A Well, no, he didn't have a license. I don't remember  
12 who took us, though. But neither of us had a license back  
13 then. I just know I went to the fireworks.  
14 Q So you and Clint went to the fireworks, but you're  
15 not sure how you got there?  
16 A No.  
17 Q No, you didn't go?  
18 A I'm not sure how I got there.  
19 Q Okay. But you and Clint did go?  
20 A Yes.  
21 Q Is it possible that your sister drove you down there?  
22 A Yes.  
23 Q Okay. Well, you're kind of --  
24 Q Well, it's possible that she drove me. I don't

XVII-159

## A. LOBATO - CROSS

1 remember her driving me, though.  
2 Q Did she go to the fireworks with you?  
3 A No.  
4 Q So she wasn't there to watch the fireworks?  
5 A I don't remember her being there to watch the  
6 fireworks.  
7 Q Okay. So you don't remember her there, you know,  
8 where this park is, watching the fireworks, or being at the  
9 softball games --  
10 A No.  
11 Q -- or anything like that? And you said that that  
12 night, 4<sup>th</sup> of July, that your sister was kind of pale, withdrawn,  
13 sleeping a lot?  
14 A She was sick. She was starting to get better, but  
15 she was sick.  
16 Q On the 4<sup>th</sup> of July she was still --  
17 A Yeah. She was kind of eating a little bit and she was  
18 kinda talking, but a lot of the time she was in the house.  
19 Q So she was in the house, or I think you said in the  
20 garage, for the barbeque?  
21 A Yeah, or in the garage, yeah.  
22 Q Did you hang out with her a lot at the barbeque?  
23 A I spent most of my time in the front yard with  
24 Marilyn's kids, and I saw her whenever I'd go in the garage or

XVII-160

## A. LOBATO - CROSS

1 whenever I'd go in the house. But I was around, I just -- I  
2 didn't spend any like direct time with her.  
3 Q So she wasn't hanging out with you in the front yard  
4 with the kids?  
5 A She was, you know, we were all around. I just -- I  
6 don't remember, you know, just sitting there hanging out with  
7 just her --  
8 Q Okay.  
9 A -- you know it was everybody.  
10 Q But she was around the whole party?  
11 A Yeah, area.  
12 Q Now you marked also on the calendar that you saw  
13 your sister not just the 4<sup>th</sup> of July but also on the late  
14 afternoon of July 8<sup>th</sup>?  
15 A Yes.  
16 Q And if I -- correct me if I'm wrong, but I believe  
17 what you said, the July 5<sup>th</sup>, July 6<sup>th</sup>, July 7<sup>th</sup>, and July 8<sup>th</sup>, up  
18 until when you saw her late afternoon, you're not saying that  
19 you saw her on those days, but you just can't remember not  
20 seeing her?  
21 A Yes.  
22 Q Okay. So you were in and out the 5<sup>th</sup>, the 6<sup>th</sup>, the  
23 7<sup>th</sup>?  
24 A Yes.

XVII-161

## A. LOBATO - CROSS

- 1 Q Okay. So were you spending the majority of your  
2 time away from the home?  
3 A Yes.  
4 Q Do you recall your mom, Becky, and your sister  
5 fighting on any of those days?  
6 A No.  
7 Q So if there was fighting going on you weren't there  
8 for it?  
9 A I wasn't there.  
10 Q And when would you get up and leave during --  
11 A Usually it was early in the mornings, between 7:00  
12 and 8:00.  
13 Q And why was that?  
14 A I just -- I didn't like being at home all the time  
15 during the summertime. I always just wanted to go out and  
16 hang out with Clint, so I was gone a lot of the day.  
17 Q Okay. And were you -- would you consider yourself  
18 more of an early riser?  
19 A Yes.  
20 Q So you weren't sleeping in late?  
21 A Well, I wasn't --  
22 Q Well, I mean during the time you were getting up  
23 and leaving by -- between 7:00 and 8:00, so you weren't  
24 sleeping in 'till noon?

XVII-162

## A. LOBATO - CROSS

- 1 the time.  
2 Q Okay. And that went for July 8<sup>th</sup> as well? You got  
3 up early and left and came back in the late afternoon?  
4 A Mm-hmm.  
5 Q Is that a yes?  
6 A Yes.  
7 Q So you wouldn't know what your sister did earlier in  
8 the day on July 8<sup>th</sup>?  
9 A No.  
10 Q You didn't see her at any time until the later  
11 afternoon on July 8<sup>th</sup>?  
12 A Well, I know for a lot of the week, you know, I'd get  
13 up and she'd be, you know, in and out of the house. Well,  
14 she'd go out in the garage a lot, you know, like smoke a  
15 cigarette or something, and then she'd be in. But she was  
16 inside a lot, and I'd see her whenever I'd come in.  
17 Q But I'm asking you specifically on July 8<sup>th</sup>?  
18 A Specifically on July 8<sup>th</sup>, I don't know what she did in  
19 the early morning.  
20 Q Okay. But you got up that morning, left between  
21 7:00 and 8:00, came back in the late afternoon, you said when  
22 the sun was kind of starting to come down, and that's -- you  
23 know you saw her then?  
24 A Yes.

XVII-164

## A. LOBATO - CROSS

- 1 A No, I wasn't sleeping in. I don't sleep in.  
2 Q What time would you normally get home at night,  
3 for -- and be in for the night?  
4 A Usually a little after dark, maybe while it was getting  
5 dark.  
6 Q Did you have a curfew?  
7 A Not exactly. It depended on where I was going.  
8 Q On July 7<sup>th</sup>, that was Kyle's birthday?  
9 A Yes.  
10 Q And you went over to the house, Clint's house, and  
11 helped his brother celebrate his birthday?  
12 A I can probably say I did, you know, but I don't  
13 remember the exact, you know, what we did for his birthday  
14 or anything.  
15 Q Well, you did spend all of your days with Clint,  
16 though?  
17 A Yes, and it's just hard to remember what we did,  
18 you know, on the days.  
19 Q All right. Well, so if he said that he was at the party,  
20 would you assume that you were with him?  
21 A Yes.  
22 Q I mean 'cause you weren't at home on the afternoon  
23 -- or the day of the 7<sup>th</sup>?  
24 A Not that I know of. I mean I was just in and out all

XVII-163

## A. LOBATO - CROSS

- 1 Q She was hanging out in the garage with Chris  
2 Carrington?  
3 A Yes.  
4 Q Okay. But you can't specifically remember what  
5 days you saw her --  
6 A Yes.  
7 Q -- in the morning?  
8 A Yeah. I just know that I've seen her throughout the  
9 week, you know, at different times of the day for different  
10 reasons.  
11 Q But you can't be more specific than that, other than  
12 you saw her throughout the week?  
13 A Yes.  
14 Q On the night of July 8<sup>th</sup> you were going back with  
15 Shayne to her house to have dinner?  
16 A Yes.  
17 Q And what did she make?  
18 A Chicken fried steak.  
19 Q And who else was present for the dinner?  
20 A John.  
21 Q Her husband, John?  
22 A Yes.  
23 Q So the three of you sat down and had dinner?  
24 A Yes. That's what I can remember.

XVII-165

## A. LOBATO - CROSS

1 Q Well, that's what you can remember? So you do  
2 remember the three of you having dinner?  
3 A Yes.  
4 Q Do you remember whether or not you liked the  
5 chicken fried steak?  
6 A I liked it. John didn't. He said the gravy was burnt.  
7 Q Okay. Was there anyone else present for dinner?  
8 A Not that I can remember.  
9 Q They don't have any other kids? At that time I know  
10 she was pregnant, but they didn't have any other kids?  
11 A No.  
12 Q When you saw Blaise on July 8<sup>th</sup> in the afternoon,  
13 what was she wearing?  
14 A I don't remember what she was wearing.  
15 Q Do you remember if she had any injuries to her?  
16 A No.  
17 Q After July 8<sup>th</sup>, Blaise left sometime in the late hours  
18 or the early morning hours of July 9<sup>th</sup>, correct?  
19 A Yes.  
20 Q When was the next date that you saw her?  
21 A I don't know.  
22 Q But she didn't take her own car back to Vegas?  
23 A No.  
24 Q But you know that Doug was coming to take her

XVII-166

## A. LOBATO - CROSS

1 Q Okay. But they didn't tell you why they were there  
2 when you first met them outside the house?  
3 A No.  
4 Q They just asked to speak to your sister?  
5 A Yes.  
6 Q All right. And you eventually let them in to speak to  
7 your sister after she got done with a shower?  
8 A Yes.  
9 Q Okay. And did you tell her who was there to see  
10 her?  
11 A I -- I just told her that Cary Lee was outside with a  
12 couple people in suits, and I went and like told her. I didn't  
13 know who they were.  
14 Q Okay. So -- and who's Cary Lee?  
15 A He's the -- a local cop.  
16 Q And so you knew him?  
17 A Yes.  
18 Q After your -- the police spoke with her, did your  
19 sister end up leaving that night?  
20 A Yes.  
21 Q With the police?  
22 A Yes.  
23 Q Okay. And after the police left did you talk to your  
24 mom about what was going on?

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## A. LOBATO - CROSS

1 back to Vegas?  
2 A Yes.  
3 Q So the next time that you can say you recall seeing  
4 your sister is the date that the police came over?  
5 A Yes, for sure.  
6 Q Now before the police came over, did you -- do you  
7 know if you saw her any other day between the time she left  
8 on the early morning hours of July 9<sup>th</sup> until the police came  
9 over?  
10 A I can't name any specific days. I don't --  
11 Q Did you know she was back in Panaca?  
12 A Yes. I know my dad went to pick her up --  
13 Q Okay.  
14 A -- and she came home.  
15 Q How was she looking at that time?  
16 A She seemed okay.  
17 Q Okay. So --  
18 A Normal.  
19 Q She seemed normal? Didn't seem sick or need to go  
20 to the doctor?  
21 A Not that I can remember. I don't remember.  
22 Q Now when the police came you said you were willing  
23 to speak to the police?  
24 A Yes.

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## A. LOBATO - CROSS

1 A No.  
2 Q You never asked why -- what happened?  
3 A I actually heard what was happening when the  
4 police were questioning her. I already knew what was going  
5 on.  
6 Q Okay. So you heard what she was telling the police,  
7 what your sister told the police?  
8 A Yes. I was in my room, I heard.  
9 Q All right. And then after she was arrested you and  
10 your mom never talked about whether or not she was home  
11 on July 8<sup>th</sup>?  
12 A No. I -- I didn't know what was going on. We didn't  
13 -- we just assumed that, you know, what she had said was the  
14 truth and that maybe she had killed somebody, I don't know.  
15 Q Okay. So did you overhear your sister actually say  
16 she'd killed somebody?  
17 A When they were questioning her, she didn't say that.  
18 She said -- she just basically told her story, that --  
19 Q Okay. Well, you don't have to tell me.  
20 A Well, yeah.  
21 Q But I mean, so you didn't hear her say I killed  
22 somebody?  
23 A I didn't hear her say that.  
24 Q Okay. And it wasn't a very long conversation that

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A. LOBATO - CROSS

1 she had with the detectives?  
 2 A It was.  
 3 Q It was a long conversation?  
 4 A They questioned her once and then they questioned  
 5 her again with the tape on the second time. And then they sat  
 6 around and waited for my dad to get there and then they left.  
 7 They were there for a long time.  
 8 Q Well, no, but I'm asking the actual questioning when  
 9 she was telling her story. That wasn't very long?  
 10 A I don't think so. I don't --  
 11 Q Okay. But you don't recall?  
 12 A I don't recall.  
 13 Q So at no time did you talk to your mom about any  
 14 information you had after she was -- after Blaise was arrested?  
 15 A Yes.  
 16 Q Okay. So you never talked to your mom?  
 17 A I never talked to my mom.  
 18 Q You never talked to my dad?  
 19 A No.  
 20 Q Okay. And in fact, you weren't even noticed as an  
 21 alibi witness in this case until October of 2005, correct?  
 22 A Actually I was noticed the first time.  
 23 Q Okay. You -- it's your testimony that you were  
 24 noticed the first time?

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A. LOBATO - CROSS

1 Q Okay. So if you weren't with Clint you would've just  
 2 been out and about on your own?  
 3 A No, I would've been home.  
 4 Q Okay. So if you weren't with Clint on the 8<sup>th</sup> then  
 5 you would've been home?  
 6 A Yes.  
 7 Q Did Clint ever come over and hang out at your  
 8 house?  
 9 A Not very often.  
 10 MS. DIGIACOMO: Nothing further.  
 11 THE COURT: Redirect.  
 12 MS. ZALKIN: Nothing further, Your Honor.  
 13 THE COURT: You may -- hold on a second.  
 14 Counsel approach.  
 15 (Off-record bench conference from 4:26:33-4:29:47 p.m.)  
 16 THE COURT: Ms. Lobato, the ladies and gentlemen  
 17 of the jury have two questions that they wish to ask you. I'm  
 18 gonna read each question to you and after I read it you may  
 19 answer it. After you've answered the questions then the  
 20 attorneys for each side will have an opportunity to pose  
 21 followup questions to you if they deem them appropriate.  
 22 "When Blaise came back to visit the first week of  
 23 July, did you help clean her car from when it had been  
 24 allegedly vandalized by Jeremy Davis?"

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A. LOBATO - CROSS

1 A I was -- yes. I was subpoenaed the first court date,  
 2 I just never -- I never testified.  
 3 Q But -- okay. You were subpoenaed, but you -- did  
 4 you even come down to --  
 5 A Yes, I sat outside the courtroom.  
 6 Q Okay. But nobody ever told you whether or not you  
 7 were noticed as a witness?  
 8 A I was a witness. I was questioned by the -- I don't  
 9 know, I guess the defense team the last time, and they said I  
 10 was going to testify but I never testified.  
 11 Q Okay.  
 12 MS. DIGIACOMO: Court's indulgence.  
 13 BY MS. DIGIACOMO:  
 14 Q When -- okay. On the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup>, when you  
 15 weren't home you were normally hanging out with Clint?  
 16 A Yes.  
 17 Q Okay. Do you recall specifically on -- I know you  
 18 don't remember the 7<sup>th</sup>, the birthday party, but on the 8<sup>th</sup> do  
 19 you recall being with Clint on that day --  
 20 A No.  
 21 Q -- before you came home?  
 22 A No, I don't recall actually being with him, I just  
 23 assumed I was because he was my only friend and that's who  
 24 I hung out with every day.

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A. LOBATO - CROSS

1 THE WITNESS: No.  
 2 THE COURT: That will be marked as Court's next in  
 3 number.  
 4 THE CLERK: 78.  
 5 THE COURT: "Where were you exactly when Las  
 6 Vegas Police were talking to your sister? What room?"  
 7 THE WITNESS: I was in my bedroom, which is kind  
 8 of down the hall.  
 9 THE COURT: That will be marked as Court's 79.  
 10 Any followup by the State?  
 11 MS. DIGIACOMO: No, Your Honor.  
 12 THE COURT: Any followup by the defense?  
 13 MS. ZALKIN: No, Your Honor.  
 14 THE COURT: You may step down from the stand.  
 15 Defendant may call --  
 16 MS. DIGIACOMO: Your Honor, what we discussed at  
 17 the bench, do you want the State to wait?  
 18 THE COURT: It's up to you how you wish to  
 19 proceed in that regard.  
 20 MS. DIGIACOMO: Your Honor, we'd ask you to take  
 21 judicial notice that Ashley Lobato was not noticed as an alibi  
 22 witness until October 20, 2005. She wasn't even noticed as a  
 23 witness until that time.  
 24 THE COURT: October 20, 2005?

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L. LOBATO - DIRECT

MS. DIGIACOMO: That's correct.

(Pause in the proceedings)

THE COURT: The Court takes judicial notice that on October 20, 2005, amended notice of alibi witness was filed in this case, which for the first time listed Ashley Lobato. The Court takes judicial notice of that.

Defendant may call defendant's next witness.

MS. GREENBERGER: Larry Lobato.

THE CLERK: Please come all the way forward.

THE WITNESS: This way?

THE CLERK: Remain standing and raise your right hand.

**LORENZO LOBATO, DEFENDANT'S WITNESS, SWORN**

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

THE WITNESS: Lorenzo Lobato, L-o-r-e-n-z-o L-o-b-a-t-o.

THE COURT: Ms. Greenberger may proceed.

**DIRECT EXAMINATION**

BY MS. GREENBERGER:

Q Good afternoon.

A Hi.

Q Are you related to Blaise Lobato?

A Yes, I am.

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L. LOBATO - DIRECT

Q Was your daughter, Blaise, in school at that time?

A In 2001, I believe she was.

Q What kind of school?

A She went to adult education.

Q Who was her teacher?

A Dixie Tienken.

Q Did she graduate?

A Yes, she did.

Q Were you at her graduation?

A Yes, I was.

Q Do you know when that was?

A I'm not really sure what the date was, whether it was around the same time as regular graduation or a little bit before, so it could've been April or May.

Q Of 2001?

A Yes.

Q Did she get a car around that time?

A She got it a little after graduation.

Q What kind of car?

A It was an '84 Pontiac Fiero.

Q Who were your neighbors at the time directly next to your house on both sides?

A On the right side was Jo Dennert and her son and daughter, and on the left side were the McCroskys.

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L. LOBATO - DIRECT

Q How are you related?

A I'm her father.

Q Where do you live?

A I live in Ontario, California.

Q How long have you lived there?

A 3 years now.

Q Where did you used to live?

A I lived in Panaca, Nevada.

Q How long did you live there?

A 10 years.

Q Do you remember your address?

A Well, we really didn't have an address on the street, so we kinda made up our own 'cause everything was P.O. Box. But the street address was 670 Callaway Street.

Q Did you have mail delivery to the house?

A No.

Q Just --

A Everything went to the post office.

Q Going back to the year 2001, let's say the beginning of the year, January 2001, who was living in your household?

A Well, myself and my wife, and my two daughters, Ashley and Blaise.

Q What is your wife's name?

A Becky.

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L. LOBATO - DIRECT

Q Did there come a time after graduation that your daughter, Blaise, went anywhere?

A Yes, she went to Las Vegas.

Q How did she get thee?

A She took her car.

Q How long was she gone?

A She was gone, you know, a few weeks at a time and then she'd come home for a little while. She wasn't sure what she was wanting to do, I don't think.

Q Did you see her while she was in Las Vegas?

A Yes, I did.

Q Do you recall when?

A I saw her towards the end of June when she was staying at a house that her friends Steve and Cathy had.

Q Can you describe how she looked?

A Well, she didn't look too good to me. She looked like she'd been up for a few days.

Q How could you tell?

A Well, I'm a recovering drug addict of my own, and I know what it looks like, I know what the symptoms are.

Q Did you do anything with her when you saw her?

A Yes, I took her out to eat, we went to the Galleria Mall. I had her mother's wedding band, the diamond in it was loose, so I had it repaired at a jewelry store there, and we

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## L. LOBATO - DIRE

1 went out to eat.  
 2 Q Did she confide in your --  
 3 MR. KEPHART: Your Honor, I'm gonna object to  
 4 leading.  
 5 THE COURT: Sustained.  
 6 BY MS. GREENBERGER:  
 7 Q Did you have a conversation over lunch?  
 8 A We had a conversation over lunch about a variety of  
 9 different things.  
 10 Q Did she confide in you?  
 11 A Not until later in the evening when I was getting  
 12 ready to go home.  
 13 Q Without telling us the nature of your discussion,  
 14 were you concerned?  
 15 A Yes, I was.  
 16 Q Concerned about her well-being?  
 17 A Yes.  
 18 Q Was there a time that she returned to Panaca after  
 19 being in Las Vegas?  
 20 A Yes. Actually the night that we had a conversation  
 21 before I came back home, I told her she could always come  
 22 back home. And she came home about a week later on the  
 23 2<sup>nd</sup> of July.  
 24 Q Can I ask you -- well, strike that. Do you remember

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## L. LOBATO - DIRECT

1 A Probably goofing around in my garage.  
 2 Q Do you spend a lot of time there?  
 3 A Yes.  
 4 Q Why is that?  
 5 A Well, it was like the centerpiece of my basic life. I  
 6 had my tools for working on cars out there, I had my gym out  
 7 there, I had a TV out there, the phone, so I didn't have to go  
 8 in the house much. And we didn't let anybody smoke in the  
 9 house, so that was basically the smoking spot.  
 10 Q How did Blaise look when she arrived home?  
 11 A She looked happy to be home.  
 12 Q Do you recall where she first parked the car?  
 13 A Well, right directly in front of my house. I have a  
 14 driveway that comes right up to the garage, on the left side  
 15 there's a fence that goes down the front of the yard. And it  
 16 was right to the lefthand side of the fence, right next to the  
 17 McCrosky house.  
 18 Q So the fence you're describing separates your house  
 19 from the McCroskys?  
 20 A Yes.  
 21 Q And your testimony is that her car was parked in  
 22 front of your house on the side closer to the McCroskys?  
 23 A Well, the McCrosky house and my house sits side by  
 24 side, and there's a fence that separates the two yards of

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## L. LOBATO - DIRECT

1 approximately what time she came home?  
 2 A It was sometime in the afternoon. The sun was still  
 3 bright, so I'm not really sure exactly what the time was.  
 4 Q Were you home?  
 5 A Yes.  
 6 Q Can I ask you to get off the witness stand and initial  
 7 on the calendar with your initials -- there's a pen right in front  
 8 of you -- when you saw her on July 2<sup>nd</sup>. And if there's not  
 9 enough room, maybe draw an arrow from the 2 upwards  
 10 and --  
 11 A Is this kind of a time indicator or --  
 12 Q If you could put the time and just your initials.  
 13 Maybe do it above the M on the 2<sup>nd</sup>.  
 14 A Right here?  
 15 MS. ZALKIN: May I approach, Your Honor?  
 16 THE COURT: Yes.  
 17 THE WITNESS: Above the HMM right here?  
 18 MS. ZALKIN: Sure. You could -- oh, yeah, I see  
 19 what you're saying. You could put your initials there and  
 20 maybe put what approximate time you think it was.  
 21 THE WITNESS: It was about 4 o'clock in the  
 22 afternoon.  
 23 BY MS. GREENBERGER:  
 24 Q What were you doing at the time?

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## L. LOBATO - DIRECT

1 course. But then I had a fence in the front right by the street.  
 2 And right at the corner where the fence makes the corner is  
 3 where she parked on the street.  
 4 Q How long did she remain in Panaca after July 2<sup>nd</sup>, as  
 5 far as you know?  
 6 A She was there until about -- approximately 1:00 in  
 7 the morning on the morning of the 9<sup>th</sup>.  
 8 Q During that time period do you recall ever seeing her  
 9 car being driven?  
 10 A No.  
 11 Q Do you know if the car was ever moved?  
 12 A It wasn't moved.  
 13 Q How do you know that?  
 14 A I saw it every day and it was -- it had some  
 15 mechanical problems, that's why she came home so that I  
 16 could fix it.  
 17 Q Did you have -- strike that. What did you do on the  
 18 4<sup>th</sup> of July?  
 19 A We had a barbeque at my house.  
 20 Q Who was there?  
 21 A My niece and my nephew, Shayne and John, Marilyn  
 22 Parker and her two little kids, Marilyn's mom came by, Kendra  
 23 and Ken had come by, my wife of course was there, and --  
 24 Q Was Blaise there?

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L. LOBATO - DIRECT

1 A Excuse me?  
 2 Q Was Blaise there?  
 3 A Yes, but Blaise really wasn't active outside, she was  
 4 inside laying down.  
 5 Q Where was she lying down inside?  
 6 A In our living room. We have a big futon by the  
 7 fireplace.  
 8 Q How long did the 4<sup>th</sup> of July barbeque last?  
 9 A Oh, probably 'till about 8 o'clock. We were all gonna  
 10 go down and watch the fireworks, however, there was a nice  
 11 lightening storm, so we just stayed and watched that instead.  
 12 Q Did Blaise stay with you?  
 13 A Yes.  
 14 Q Do you recall her going to see the doctor that week?  
 15 A I know that she had went with her mother to the  
 16 doctor.  
 17 Q Do you know when?  
 18 A I believe they went on the morning of the 5<sup>th</sup>.  
 19 Q Do you know why?  
 20 Yes. She believed that she had --  
 21 MR. KEPHART: Your Honor, I'm gonna object.  
 22 Unless he knows for sure why he's asking her -- no. It's  
 23 hearsay and he's speculating. Plus he knows. I mean you're  
 24 talking about he went -- she went with the mom.

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L. LOBATO - DIRECT

1 THE COURT: The Court sustains the objection as to  
 2 hearsay and lack of foundation.  
 3 BY MS. MS. GREENBERGER:  
 4 Q Do you have personal knowledge why she went to  
 5 the doctor?  
 6 A Yes, I do.  
 7 Q Can you tell us what that is?  
 8 MR. KEPHART: Objection, foundation.  
 9 THE COURT: Overruled.  
 10 MS. GREENBERGER: You may answer.  
 11 THE WITNESS: Yes. She went to the doctor  
 12 because she believed that --  
 13 MR. KEPHART: Objection, hearsay.  
 14 THE COURT: Overruled.  
 15 THE WITNESS: She thought she was being  
 16 poisoned while she was in Las Vegas.  
 17 BY MS. GREENBERGER:  
 18 Q Do you know a poison from what?  
 19 THE COURT: The Court will reconsider and sustain  
 20 the objection.  
 21 MR. KEPHART: I'd ask that it be stricken, Your  
 22 Honor.  
 23 MR. SCHIECK: Your Honor, can we approach?  
 24 THE COURT: Counsel may approach.

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L. LOBATO - DIRECT

1 (Off-record bench conference from 4:44:45-4:45:55 p.m.)  
 2 BY MS. GREENBERGER:  
 3 Q Do you know how she was feeling the week of July  
 4 2<sup>nd</sup> through the 9<sup>th</sup>?  
 5 A Yes, she was -- she was very tired, feeling ill. She  
 6 was in bed for most of the time.  
 7 Q What were you doing at the time employment wise?  
 8 A I was working -- I worked for myself. I did some  
 9 construction work for a local dentist and on Friday, Saturday,  
 10 and Sunday nights I tended bar in Caliente.  
 11 Q During the time period of the 2<sup>nd</sup> through the 9<sup>th</sup>,  
 12 were you in Panaca that entire time?  
 13 A Not the entire time, no, 'cause I was in Caliente  
 14 working for some of it.  
 15 Q Did you come home from work every night and  
 16 sleep at home during that time period?  
 17 A Yes.  
 18 Q Do you remember seeing your daughter each night?  
 19 A Yes.  
 20 Q What time do you normally get up in the morning?  
 21 A Well, I normally get up about 6:30 or 7 o'clock in the  
 22 morning on the days that I'm working construction type work.  
 23 And then on the weekends I get up a little later 'cause  
 24 sometimes I wouldn't get home until a little later at night. We

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L. LOBATO - DIRECT

1 normally close the bar about 12:00 and some nights I wouldn't  
 2 get out of there until, you know, 1:00 or 2 o'clock in the  
 3 morning.  
 4 Q When Blaise came back to town on the 2<sup>nd</sup>, where  
 5 was she sleeping at your place?  
 6 A She slept on the futon in the living room.  
 7 Q Did you see her there every morning when you got  
 8 up from the time period of July 2<sup>nd</sup> through July 9<sup>th</sup>, 2001?  
 9 MR. KEPHART: Objection, leading.  
 10 THE WITNESS: Yes.  
 11 THE COURT: Sustained.  
 12 MR. KEPHART: Move to strike.  
 13 THE COURT: Motion granted.  
 14 BY MS. GREENBERGER:  
 15 Q Can you tell us when you got up each morning what  
 16 you saw?  
 17 A Well, every morning when I got up I usually, you  
 18 know, go into the kitchen. And to get into the kitchen I'd have  
 19 to come down the hallway and the hallway opened up. I'd go  
 20 into the kitchen, I'd come out of the kitchen, and either going  
 21 or coming from anywhere in the house I'd have to pass  
 22 through the living room, and I'd see Blaise there sleeping.  
 23 Q Do you recall if you worked the evening of July 7,  
 24 2001?

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## L. LOBATO - DIRECT

1 A Yes, I did work.  
 2 Q And where would that be?  
 3 A At the Hideaway Club in Caliente, Nevada.  
 4 Q What were your business hours?  
 5 A I went to work at 4 o'clock and we were to stay  
 6 open until midnight, unless of course, because it's a gaming  
 7 community, we had gamblers, then I'd stay open until they all  
 8 left, and normally that would be no later than 2 o'clock in the  
 9 morning.  
 10 Q Is July 7<sup>th</sup> a special day in your family?  
 11 A Yes, it is. It's my father's birthday.  
 12 Q Okay. Did you speak to him on his birthday?  
 13 A Yes, I did.  
 14 Q Were you present when Blaise spoke to him?  
 15 A No. But when I talked to my dad he told me that he  
 16 had spoken to her.  
 17 MR. KEPHART: Objection, hearsay, Your Honor.  
 18 THE COURT: Sustained.  
 19 MR. KEPHART: And I'll move to strike that.  
 20 THE COURT: Motion granted.  
 21 BY MS. GREENBERGER:  
 22 Q Did you see Blaise the night of July 7<sup>th</sup> while you  
 23 were at work?  
 24 A Yes.

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## L. LOBATO - DIRECT

1 Q -- or outside the bar?  
 2 A Yes.  
 3 Q She remained outside in your car the entire time?  
 4 A Yes.  
 5 Q And what time did your wife come to get her?  
 6 A I would say it was around 7 o'clock.  
 7 Q What time did you get home from work that  
 8 evening?  
 9 A It could've been between midnight and 1 o'clock in  
 10 the morning, somewhere in that area.  
 11 Q Was that the standard time you would get home?  
 12 A Yes.  
 13 Q And how many miles is the bar from your house?  
 14 A 14.  
 15 Q When you got home that evening did you see  
 16 Blaise?  
 17 A Yes.  
 18 Q What was she doing?  
 19 A Sleeping.  
 20 Q Where?  
 21 A Same futon that she'd been sleeping on.  
 22 Q Is there any way to enter the home without going  
 23 through the living room?  
 24 A When my garage door is open, sometimes we come

XVII-188

## L. LOBATO - DIRECT

1 Q What time would that have been?  
 2 A I would say it was probably around 6 o'clock in the  
 3 evening. It was still light out.  
 4 Q And how did that come about?  
 5 A She came and knocked on the door of the bar since  
 6 she wasn't old enough to come in, and I went out and spoke  
 7 to her.  
 8 Q How long was she there?  
 9 A I would say she was there approximately 45 minutes  
 10 or so.  
 11 Q What was she doing there?  
 12 A After she talked to me she was waiting in my truck  
 13 until her mom came to pick her up.  
 14 Q Do you know how she got there?  
 15 A She rode down there with Rusty and Michele, friends  
 16 of hers.  
 17 Q And how old was your daughter at that time?  
 18 A I believe she was 18.  
 19 Q There's a 21 year old drinking age there?  
 20 A Yes.  
 21 Q Were Michele and Paul in your bar that night?  
 22 A No, they didn't come in my bar.  
 23 Q Did your wife come pick Blaise up from the bar --  
 24 A Yes.

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## L. LOBATO - DIRECT

1 in through there.  
 2 Q Do you have dogs?  
 3 A Yes.  
 4 Q Do the dogs bark?  
 5 A Yes.  
 6 Q What entryway did you come into the house that  
 7 night, if you recall?  
 8 A I believe that my garage door was three-quarters of  
 9 the way closed. We did that so the cat could get in and out. I  
 10 went in through the front door.  
 11 Q Did you normally leave the garage door like that for  
 12 the cat?  
 13 A Yes.  
 14 Q What did you do when you got home from work that  
 15 night?  
 16 A Most probably I went in and changed my clothes, I  
 17 talked to my daughter.  
 18 Q Which daughter?  
 19 A I talked to Blaise 'cause she was right there in the  
 20 living room when I first came in, then I changed my clothes. I  
 21 normally check on Ashley to make sure that she's okay in her  
 22 room. And my routine was to go out into the garage and  
 23 unwind, watch TV.  
 24 Q Do you recall if you did that that night?

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## L. LOBATO - DIRECT

1 A No, I don't recall, but it was standard for me to do  
2 that.  
3 Q Did you usually have a snack?  
4 A Pretty much so.  
5 Q Is the -- did you get the snack from your kitchen?  
6 A Yes.  
7 Q Is your kitchen adjacent to the living room?  
8 A Yes.  
9 Q Was Ashley in bed that night?  
10 A Yeah, she was.  
11 Q Was your wife home?  
12 A I believe she was.  
13 Q Recall seeing the vehicle that night when you got  
14 home, the Fiero?  
15 A Yeah, it was parked in front of my house.  
16 Q Is there any time that you don't recall the Fiero  
17 being parked into your -- front of your house during that time  
18 period?  
19 A No.  
20 Q Do you know what time you went to bed that  
21 evening?  
22 A I don't know exactly what time I went to bed, but I  
23 usually unwind for half an hour, 45 minutes, and then I went  
24 to bed, so probably around 2 o'clock.

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## L. LOBATO - DIRECT

1 asked me to, you know, man to man kinda thing to watch out  
2 for her.  
3 Q Did he subsequently leave town?  
4 A Yes, he did.  
5 Q For how long?  
6 A Almost 8 months.  
7 Q Did you do what he asked and watch over his  
8 family?  
9 A I was gonna do that anyway 'cause she's my niece,  
10 but yes, I did.  
11 Q Do you remember what Blaise was wearing when  
12 she woke you?  
13 A No, I don't remember what she was wearing, but  
14 she was probably wearing pajamas.  
15 Q Did you notice any injuries on her?  
16 A No.  
17 Q Where did you go talk with your nephew?  
18 A We went out in the garage.  
19 Q How long did he stay?  
20 A Oh, 10, 15 minutes.  
21 Q Did you see what Blaise was doing during that time  
22 period?  
23 A She went back to bed after she talked to me.  
24 Q Where?

XVII-192

## L. LOBATO - DIRECT

1 Q Did you pass by your daughter when you went to  
2 bed that night?  
3 A Yes.  
4 Q What was she doing?  
5 A Sleeping.  
6 Q Did you sleep that night?  
7 A Yes.  
8 Q What time did you get up the next morning?  
9 A I got up pretty early. Blaise woke me up.  
10 Q What time?  
11 A I'd say it was about 7 o'clock in the morning.  
12 Q Why did she wake you up?  
13 A My nephew was knocking on the door.  
14 Q What is his name?  
15 A John.  
16 Q What is his last name?  
17 A Kraft.  
18 Q Why did he come over?  
19 A Well, he was moving -- well, he was going to work in  
20 Minnesota with the telecommunications company that he was  
21 working with, and he'd come over to talk to me about  
22 watching out for his wife, Shayne, she was pregnant at the  
23 time. And she had concerns because she had lost a child the  
24 year before. So he was really concerned about her and he

XVII-191

## L. LOBATO - DIRECT

1 A Same spot in the futon in the living room.  
2 Q Were you home that day?  
3 A Off and on I was home during the day. It was  
4 Sunday, so there's no telling what I was doing. I was probably  
5 fooling around in the garage or the backyard.  
6 Q Did you work that evening?  
7 A Yes, I did.  
8 Q Where at?  
9 A The same place. the Hideaway Club in Caliente.  
10 Q What were your hours?  
11 A 4:00 to midnight.  
12 Q Did you see Blaise before you went to work?  
13 A Yes, I did.  
14 Q What was she doing?  
15 A I guess she had been out four-wheeling with  
16 Michele.  
17 Q Why do you say that?  
18 A Well, that's what she told me she was gonna do, and  
19 she looked -- her hair was all windblown, so she looked like  
20 she had been out and about.  
21 Q Was anyone else at the house before you went to  
22 work that day?  
23 A Could've been. You know, there was people in and  
24 out all the time. I don't know.

XVII-193

## L. LOBATO - DIRECT

1 Q Did there come a time on that date when you  
2 learned she was returning to Las Vegas?  
3 A Later in the evening.  
4 Q That's when you found out?  
5 A Yes.  
6 Q And how did you find out?  
7 A My wife talked to me on the phone.  
8 Q How did you feel about that?  
9 A Oh, I wasn't real thrilled about that.  
10 Q Why?  
11 A Well, with everything that had already happened  
12 and some of the choices that she had been making, I wasn't  
13 real thrilled about that idea. I was wanting her to stay home.  
14 Q Did you know how she planned to get to Las Vegas?  
15 A Yeah, she told me that Doug was gonna come and  
16 pick her up.  
17 Q Had you met Doug before?  
18 A Yes, I had. I'd been to his house.  
19 Q What time did you get home from work that night?  
20 A I got home about 12:30.  
21 Q Was Blaise there?  
22 A She was waiting in the garage and she had been  
23 talking with Doug and was expecting him at any time.  
24 Q Was she packed?

XVII-194

## L. LOBATO - DIRECT

1 A Talked to him for a few minutes, helped to put  
2 Blaise's stuff in the car, and then helped him put the  
3 convertible top up on his car 'cause it was down and it was  
4 getting pretty cool at night.  
5 Q What time did they depart your house for Las  
6 Vegas?  
7 A Little after 1 o'clock in the morning.  
8 Q Can I ask you to get off the stand again --  
9 A Okay.  
10 Q -- and notate on the calendar the times that you saw  
11 your daughter on July 8<sup>th</sup>, with your initials next to them. And  
12 you may want to just draw --  
13 MS. GREENBERGER: May I approach, Your Honor?  
14 THE COURT: Yes.  
15 BY MS. GREENBERGER:  
16 Q -- an arrow from the 8<sup>th</sup> into the margin here so you  
17 can write it so that there would --  
18 A I saw her about 7:00 in the morning.  
19 Q Will you put a.m.?  
20 A Okay. I put military time, 0700.  
21 Q Okay. And then put your initials.  
22 A Okay. And I saw her again midday, around noonish.  
23 And then I saw her about 3:30 before I left for work. And  
24 after midnight it would be the 9<sup>th</sup>, right? You want me to go

XVII-196

## L. LOBATO - DIRECT

1 A Yes.  
2 Q You saw her luggage?  
3 A Yes.  
4 Q What did you do? Did you go to bed or did you stay  
5 up?  
6 A No, I stayed up and talked with her. Becky was in  
7 the garage with her, so you know --  
8 Q At some point did Doug come to your house?  
9 A He did.  
10 Q Did he have trouble finding his way there?  
11 MR. KEPHART: Objection, Your Honor.  
12 THE WITNESS: Yes, he did.  
13 MR. KEPHART: Withdrawn.  
14 BY MS. GREENBERGER:  
15 Q What time did he come to your house?  
16 A He got to my house about quarter to 1:00 I think it  
17 was.  
18 Q Were you home at the time?  
19 A Yes, I was.  
20 Q Who all was there?  
21 A Just Becky, Ashley was sleeping, and me.  
22 Q And Blaise?  
23 A And Blaise of course, yes.  
24 Q What did you do when he arrived?

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## L. LOBATO - DIRECT

1 ahead and mark that too?  
2 Q Yes. So you could put the 9<sup>th</sup>, I guess, in the a.m.  
3 A Okay.  
4 Q The last time you saw her and she --  
5 A And she left a little after 1:00.  
6 Q You may return to the seat.  
7 A Hmm?  
8 Q I said you may sit.  
9 A Thanks.  
10 Q Did you speak to your daughter when she returned  
11 to Las Vegas?  
12 A Yes, I talked to her, made sure she got there okay.  
13 Q Did she?  
14 A Yeah, she got there just fine. And then I didn't talk  
15 to her for a couple of days 'cause that wasn't unusual, and --  
16 Q When did you talk to her next?  
17 A She -- I talked to her on the morning of the 13<sup>th</sup>.  
18 Q How do you remember that day?  
19 A 'Cause it was Friday the 13<sup>th</sup>, and it was my nephew's  
20 birthday.  
21 Q And as a result of that discussion, did you do  
22 something?  
23 A Yes. She told me she was ready to come home, so I  
24 drove down and picked her up.

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## L. LOBATO - DIRE

1 Q Did you bring her back to Panaca?  
 2 A Yes, I did.  
 3 Q Did she remain in Panaca until July 20<sup>th</sup> when she  
 4 was arrested?  
 5 A Yes.  
 6 Q Did you see her each day during that time period?  
 7 A Yes, I did.  
 8 Q In the morning when you got up?  
 9 A In the morning when I got up, at night when I went  
 10 to bed, and periodically during the day sometimes. And we  
 11 spent a little time, you know, doing -- we like to call it the  
 12 father son thing, but it's just me and Blaise.  
 13 Q Did there come a time --  
 14 THE COURT: We have hit the 5 o'clock hour.  
 15 MS. GREENBERGER: Should we break?  
 16 THE WITNESS: Excuse me, Your Honor?  
 17 THE COURT: We'll be taking our evening recess and  
 18 resuming tomorrow morning at 10:30.  
 19 THE WITNESS: Okay. I wasn't sure if you were  
 20 talking to me.  
 21 THE COURT: You may step down --  
 22 THE WITNESS: Thank you.  
 23 THE COURT: -- from the stand at this time. We'll  
 24 see you tomorrow morning.

XVII-198

1 THE WITNESS: Okay.  
 2 THE COURT: Ladies and gentlemen, please be in  
 3 the hallway tomorrow at 10:30. The bailiff will meet you there  
 4 to return you to your seats in the courtroom.  
 5 During this evening recess you are admonished not  
 6 to talk or converse among yourselves nor with anyone else on  
 7 any subject connected with the trial. And you're not to read,  
 8 watch, or listen to any report of or commentary on the trial or  
 9 any person connected with the trial by any medium of  
 10 information, including without limitation, newspaper, television,  
 11 radio, and internet. And you're not to form or express any  
 12 opinion on any subject connected with the trial until the case is  
 13 finally submitted to you.  
 14 You all have a good evening. We'll see you at 10:30  
 15 tomorrow. The jury may exit.  
 16 (Jurors recessed)  
 17 THE COURT: We'll see everyone at 10:30 in the  
 18 morning.  
 19 MR. SCHIECK: Your Honor, can we make a quick  
 20 record, two things at the bench?  
 21 THE COURT: Yes.  
 22 MR. SCHIECK: The first has to do with we have  
 23 approached concerning -- asking Mr. Lobato concerning the  
 24 reason that Blaise went to the Caliente Medical Center. State

XVII-199

1 had objected on the basis of hearsay. And I'd indicated that  
 2 our basis was an existing mental, emotional, physical  
 3 condition, which is in our S-51.105, which states that a  
 4 statement of declarant's then existing state of mind, emotion,  
 5 sensation, or physical condition, such as intent, plan, motive,  
 6 design, mental feeling, pain and bodily health was not  
 7 inadmissible under the hearsay rule. I just want to make a  
 8 record. We were offering it under it under that exception to  
 9 the hearsay rule.  
 10 THE COURT: Where's Ms. DiGiacomo?  
 11 MR. KEPHART: Sandy.  
 12 MS. DIGIACOMO: Yes, Your Honor.  
 13 THE COURT: Ms. DiGiacomo was the one who made  
 14 the argument contrary?  
 15 MS. DIGIACOMO: Right, Your Honor. They were  
 16 just trying to get out that she thought she was being poisoned,  
 17 which really doesn't go to her mental state. They weren't  
 18 trying to say she told me she wasn't feeling well. They're  
 19 trying to get out through this witness the defendant thought  
 20 she was being poisoned, which doesn't really go to her mental  
 21 state. It's not a statement of her physical condition, what she  
 22 thought was happening.  
 23 It would be different if she said to him, you know  
 24 what, I'm not feeling good, I think I took something bad. But

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1 the way that they posed the question and the response that  
 2 they were listening, it didn't fall within that exception.  
 3 THE COURT: Okay. So the Court sustained the  
 4 objection.  
 5 MR. SCHIECK: The next is the State had requested  
 6 the Court make judicial notice that Ashley Lobato was not  
 7 listed in the original -- or in the notice of alibi or alibis. I'm not  
 8 sure whether or not more than one was filed previous to the  
 9 first trial, that she was not listed as an alibi witness on those  
 10 two filings.  
 11 We objected because there is no requirement that a  
 12 defendant list every possible known witness to an alibi, only  
 13 those alibi witnesses they intend to introduce at the time of  
 14 trial. The Court indicated that the objection would be  
 15 overruled and allowed the State's request and did take judicial  
 16 notice of that filing, which omitted Ashley Lobato. She was  
 17 listed in the filing that we filed nearly a year ago now, listing  
 18 her as an alibi witness.  
 19 THE COURT: The request was to take judicial notice  
 20 that she was first noticed as a defendant's witness on October  
 21 20, 2005.  
 22 MS. DIGIACOMO: And that's correct. That's  
 23 because she volunteered on the stand that she was outside  
 24 ready to testify last time but not called, and it's the State's

XVII-201

1 position that she couldn't have even been called because she  
2 had never been noticed as a witness before, let alone an alibi  
3 witness. They do have to give us notice of that, and so that's  
4 why the State asked the Court to take judicial notice that she  
5 was not noticed until a year ago.

6 MR. SCHIECK: That doesn't mean she wasn't  
7 outside in the hallway and subpoena, Your Honor. And we are  
8 gonna make inquiries and possibly we'll be calling a witness to  
9 testify that she was under subpoena and was here to testify to  
10 corroborate her testimony. It's not her fault whether or not  
11 she was listed as a witness, as somehow she was hiding from  
12 coming forward to testify, which is not the case.

13 MS. DIGIACOMO: Well Your Honor, we went  
14 through this the last trial and they tried to give late notice of  
15 the McCroskys and the Court excluded their testimony because  
16 we were well into the defense case when they tried to give us  
17 notice.

18 There's no way that Ashley Lobato could've been  
19 called to the stand the last time because she had not been  
20 noticed as a witness. They didn't even try as she was sitting  
21 out in the hallway to notice her as a witness like they did with  
22 the McCroskys. Doesn't matter what the attorney's intent was,  
23 they didn't notice her, they couldn't call her.

24 MR. SCHIECK: It doesn't mean she wasn't here

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**AFFIRMATION**  
Pursuant to C177394

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

Kari Riley  
Transcriber

5/8/07  
Date

\*\*\*\*\*

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1 under subpoena under the belief she was gonna testify, and I  
2 think we're entitled to rehabilitate her on that basis.

3 MS. DIGIACOMO: I'm not denying, Your Honor, we  
4 didn't deny that she wasn't here or wasn't ready to testify. All  
5 we were stating is that we wanted the Court to take judicial  
6 notice of when the State first learned that she was gonna be a  
7 witness. 'Cause I'll tell you right now, and you know that, we  
8 were here last time, we never knew that she was outside  
9 waiting to testify, because first, we had no notice of her,  
10 second, they never attempted to give us notice of her during  
11 the trial.

12 THE COURT: Okay. We'll see everybody at 10:30.  
13 COURT ADJOURNED AT 5:07:05 P.M. UNTIL  
14 THE FOLLOWING DAY, OCTOBER 4, 2006


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**CERTIFICATION**

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

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