

1 A You're seeing the front of Victoria McGee who is
2 Dawson One. She was the one closer to Dawson Road.

3 Q And then what is in State's Exhibit 25?

4 A This is the back of Victoria.

5 Q There appears to be a darkish substance on her back.
6 Do you know what that was?

7 A There is an area of dirt and small rocks on her
8 back. She also has tattoos. Specifically, on her right
9 shoulder there's a dark area that is a butterfly tattoo.

10 Q Is State's Exhibit No. 27 just a close-up of that?

11 A Yes, it is.

12 Q What are we seeing in State's Exhibit No. 28?

13 A This is looking at Charlotte from her left side.

14 MR. PIKE: I'm sorry, counsel, that's 28?

15 MR. LALLI: Yes.

16 MR. PIKE: Thank you.

17 BY MR. LALLI:

18 Q I'm going to show you State's Exhibit No. 34. What
19 is that?

20 A This is the back side of Charlotte's neck. You can
21 see in the center of the photo a flower shaped pendent that
22 was on a chain around her neck.

23 Q Now, I'm going to show you State's Exhibit No. 35.
24 What are we seeing there?

25 A This is from the furthest point away from Highway

1 93/95, looking from the area of the body's back towards the
2 highway.

3 Q So it just gives us kind of a prospective of the
4 distance from where these bodies were located versus the
5 Boulder Highway and Dawson Road and Access Road?

6 A Yes. Access Road is on the top right area of the
7 screen.

8 Q All right. And then if we zoom in somewhat we see
9 some vehicles. What vehicles are those?

10 A Those are the vehicles of the CSAs and the
11 detectives who are out on scene.

12 Q That's law enforcement?

13 A Yes.

14 Q All right. And then if we continue over on State's
15 Exhibit No. 36, do we see those additional law enforcement
16 vehicles as well as your command post?

17 A Yes, that's correct. This is looking from more of
18 the eastern side of the bodies and back towards the area where
19 our command vehicle is in the top left of the photo.

20 Q When law enforcement responds to a remote location
21 such as this, to more precisely document the location of the
22 scene, do you often obtain the GPS coordinates?

23 A Yes, we do for desert type locations.

24 Q Was that done in this case?

25 A Yes, it was.

1 Q And were the GPS coordinates recorded in decimal
2 degrees format?

3 A It was recorded with the north, south, east or west
4 coordinate. And then -- and there's a number for that. And
5 then after that there's a string of numbers that have a
6 decimal between them to indicate the minutes and fractions of
7 minutes.

8 Q All right. Do you know what the GPS coordinates
9 are?

10 A Not off the top of my head. I don't have them
11 memorized.

12 Q Did you bring your report with you, or actually the
13 report of Tammy Barber?

14 A I did, yes.

15 Q Would that refresh your recollection as to the GPS
16 coordinates?

17 A Yes.

18 Q Okay. If you could produce that report and have a
19 look for us.

20 MR. PIKE: We've reviewed those, Your Honor. If you
21 just want to lead the witness in and read them into the
22 record, that's fine.

23 THE COURT: All right. Thank you, Mr. Pike.

24 BY MR. LALLI:

25 Q It's on page 2 of Ms. Barber's report. Do you have

1 that?

2 A I do, yes.

3 Q Okay. What are the GPS coordinates of this
4 location?

5 A It's north 35 degrees, 98.283 minutes, west 114
6 degrees, 92.499 minutes.

7 Q Thank you. I want to direct your attention to an
8 area somewhat away from where the bodies were located. And
9 I'll show you State's Exhibit No. 37. There appears to be a
10 cone there and some shoes. Do you know where -- do you know
11 the area I'm referring to?

12 A Yes, I do.

13 Q Okay. What I'd like to do is go back to an ariel to
14 give our jury some idea of where we're talking about. So if I
15 go to Exhibit 2, and we zoom in. You've already talked to us
16 about the red cones. Let's give it a second to adjust. Okay.
17 I think that's as good as it's going to get, this zoomed in.

18 And you had mentioned that the -- in this photo the
19 bodies of the young ladies would've been to the left of this
20 dirt road, correct?

21 A Correct, yes.

22 Q And then as I zoom out you had mentioned your
23 command post vehicle there. Do you see the area where the
24 information depicted in State's Exhibit No. 37 was located?
25 Or do we need to zoom out more?

1 A No, it's -- it's able to be seen in this view. From
2 this photo it would be up and to the right of where our
3 command vehicle is.

4 Q Can you just take your finger and kind of circle on
5 the screen there approximately where this was? So you drew a
6 rather large circle. Is it -- is it off in the desert area in
7 that location?

8 A Yes, it is.

9 Q Okay. So was there a close-up photograph of that
10 taken? And I'll go back to State's Exhibit No. 37.

11 A This is a closer view of the items that were in that
12 area.

13 Q All right. And then what are we seeing in State's
14 Exhibit No. 38?

15 A This is a close-up photo of one of the shoes that
16 was in that area. And to the right of the shoe by the heel of
17 it there is a used condom.

18 Q Was that collected?

19 A Yes, it was.

20 Q Who collected it?

21 A CSA Barber.

22 Q All right. If we go back to Exhibit No. 2, again,
23 this would be an overview of the entire scene, correct?

24 A Yes, it is.

25 Q And then what I'd like to do is focus in on this

1 area here, which is in the upper right hand portion of that
2 photograph. What are we seeing there?

3 A This is the area where Access Road and Dawson Road
4 meet. And there is a paved parking lot with a small building
5 off the parking lot.

6 Q Did you respond to that area as well?

7 A We did. Not on the same day. We responded on both
8 the 21st and the 22nd of May to that area.

9 Q So both the 21st and the 22nd?

10 A Yes.

11 Q Of May?

12 A Yes.

13 Q So it would've been the day after the bodies were
14 discovered?

15 A Yes, the 21st we went after autopsy, and the 22nd we
16 went in between a couple of search warrants that we were
17 doing.

18 MR. LALLI: Your Honor, I don't believe there's an
19 objection to State's proposed Exhibits 39, 41, 42, 43, and 44.

20 MR. PIKE: That's correct, Your Honor.

21 MR. LALLI: I'd move for their admission.

22 THE COURT: All right. They'll be admitted. Thank
23 you.

24 (State's Exhibits 39, 41-44 admitted)

25 BY MR. LALLI:

1 Q Ms. Ayers, I'm showing you State's Exhibit No. 39.
2 I'm going to zoom out. What is this?

3 A This is a view of that building as taken from Dawson
4 Road looking to the front of that building.

5 Q I'm going to show you State's Exhibit No. 43. What
6 is that?

7 A This is a photo from the area of the front of that
8 building, looking back towards the scene where the bodies were
9 discovered.

10 Q So in this particular image, would that building be
11 to the back of the photographer?

12 A That's correct, yes.

13 Q And in the bottom sort of left hand portion of the
14 photograph do you see a fire hydrant?

15 A Yes.

16 Q And if I go back to State's Exhibit No. 39, right in
17 the front of that photograph are we seeing the same fire
18 hydrant?

19 A Yes, the same fire hydrant taken from the other
20 side.

21 Q The bodies that were discovered at the scene, were
22 they removed?

23 A They were removed by the coroner's office, yes.

24 Q And is that the responsibility of the coroner?

25 A Yes, they are transported by one of the mortuaries,

1 but they are under the care and control of the coroner's
2 office.

3 Q I'd like to direct your attention to May 22nd of
4 2006. Did you respond to 1525 Fremont Street, Apartment No.
5 222?

6 A Yes, I did.

7 Q Are -- is that complex referred to as the South Cove
8 Apartment Complex?

9 A Yes, it is.

10 Q All right. Let's get a picture of the front there.
11 If I show you State's Exhibit No. 47, are those the South Cove
12 Apartments?

13 A Yes, this is a portion of the building.

14 Q And where would 222 be located?

15 A 222 would be on the second floor. And it's actually
16 in the left hand side of the photo, it's the last apartment on
17 that row. And it's -- it's kind of beyond the front face of
18 the building that can be seen in this photo.

19 Q So if I were to indicate with my finger this area
20 here kind of leading into that alcove, is that the area you're
21 talking about?

22 A Yes, that's correct.

23 MR. LALLI: Your Honor, I've shown what we've marked
24 as State's proposed 48 through 67 -- there might be one or two
25 missing in there -- to Mr. Pike. I don't believe there's an

1 objection.

2 MR. PIKE: There's no objection, Your Honor. I've
3 reviewed them.

4 MR. LALLI: And I would move for their admission.

5 THE COURT: All right. Those photographs in that
6 packet will be admitted.

7 (State's Exhibits 48-67 admitted)

8 BY MR. LALLI:

9 Q All right. I'm going to show you State's Exhibit
10 No. 48. What is that?

11 A This is the front of Apartment 222 at that complex.

12 Q And what are we seeing in State's Exhibit No. 50?

13 A This is looking from the area where the first photo
14 of the building, looking into that alcove area at the end of
15 the hallway where this Apartment 222 is located.

16 Q And do we see the numbers, 222, right over here on
17 the side?

18 A Yes.

19 Q Tell us what we're seeing in State's Exhibit 52.

20 A This is the living room area of Apartment 222. This
21 is the first thing that you step into when you step through
22 the doors.

23 Q Do you see the table that's depicted in the
24 photograph?

25 A Yes, I do.

1 Q Is there something on the table?

2 A There are a number of items on the table. One that
3 was of specific interest was a portion of an aluminum can that
4 looked like it was being used as a makeshift ashtray.

5 Q I'm going to show you State's Exhibit No. 53. What
6 is that?

7 A That is the piece of aluminum can that was being
8 used as a makeshift ashtray.

9 Q Was the -- and what is inside of it?

10 A There is a cigarette butt inside of that can.

11 Q Was the cigarette butt collected?

12 A Yes, it was.

13 Q Was that impounded by Crime Scene Analyst Barber?

14 A Yes, it was.

15 Q Was it her package 16, item no. 18?

16 A If I could refer to her report.

17 Q Would -- yes, was -- would that information be
18 contained in her report?

19 A Yes, it would.

20 Q Yeah, if you would.

21 MR. PIKE: And for the record, Your Honor, although
22 it's not her report she can rely upon other people's reports
23 as was demonstrated earlier to refresh her recollection.

24 MR. LALLI: Thank you, Mr. Pike.

25 THE COURT: Thank you, Mr. Pike.

1 THE WITNESS: Yes, that item was CSA Barber's
2 package 16, item 18.

3 BY MR. LALLI:

4 Q I'm going to show you State's Exhibit No. 54. What
5 is that?

6 A That is a bag of items to the right hand side of the
7 couch in the living room.

8 Q In that same area?

9 A Yes.

10 Q And does it appear to contain clothing?

11 A Yes, it does.

12 Q What are we seeing in State's Exhibit 55?

13 A This is looking from the living room area into the
14 bedroom area on the left hand side of the photo and the
15 kitchen area on the right hand side of the photo. You can
16 also see the frame of the door to the bathroom in the center
17 of the photo.

18 Q Now, I'd like to direct your attention to the
19 kitchen area, so over to the right. Are there some items on
20 the countertop?

21 A Yes, there are.

22 Q I'm going to show you State's Exhibit No. 56. What
23 are we seeing there?

24 A This is the sink which has some items of trash in
25 it, a blue plate in the corner that has a golf ball on it, and

1 a loaf of bread.

2 Q Is State's Exhibit No. 57 just a close-up of the
3 golf ball on the blue plate?

4 A Yes, it is.

5 Q I'm going to go back to State's Exhibit No. 55.
6 There appears to be an archway separating the bedroom from the
7 living room.

8 A Yes, there is.

9 Q It's kind of a -- I don't know if it's a window or
10 what that is, some architectural feature. But it has an arch
11 on top of it?

12 A Yes, there are actually two in the apartment. One
13 on either side of the square doorway, rectangular doorway,
14 leading from the living room into the bedroom area.

15 Q So if I zoom in kind of to the middle of this
16 photograph we see kind of a sliver outline of an object. Do
17 you see that?

18 A Yes, I do. That's -- you can see the yellow at the
19 top of a drink cup, and that is sitting on the base of that
20 cutout that's between the kitchen and the bedroom, similar
21 size and shape as the one cut out between the living room and
22 the bedroom.

23 Q If we go to State's Exhibit No. 58, do we see a
24 portion of that cutout and the cup that you've just referred
25 to?

1 A Yes, there on the on the left hand side of the
2 photo.

3 Q What are we seeing in State's Exhibit 59?

4 A This is a photo of the items that are on top of that
5 ledge that is the bottom of the cutout between the kitchen and
6 the bedroom area.

7 Q And I'm going to show you State's Exhibit No. 60.
8 It's a little difficult to see. The photo's a little washed
9 out. But what is that?

10 A That is a piece of jewelry. It is a flower shaped
11 earring and had a clear stone in the center of it.

12 Q Was that item of evidence impounded?

13 A Yes, it was, by CSA Barber.

14 Q Let's see. Do we have gloves?

15 A I have gloves.

16 Q Oh, you brought gloves?

17 A Yes.

18 THE COURT: We may have some -- actually we have
19 also a set of gloves behind the witness.

20 MR. LALLI: All right. Can I approach the witness,
21 Your Honor?

22 THE COURT: Yes.

23 BY MR. LALLI:

24 Q Ms. Ayers, I'm going to show you what we've marked
25

1 as State's proposed Exhibit No. 223. What is that?

2 A This is an item of evidence that was impounded by
3 CSA Barber identified as her item, her package 18, item 20.
4 And it has a description of what that item is.

5 Q What is the item?

6 A It's described as one small silver metallic earring
7 with a clear stone in the center.

8 Q And is it a -- is it the actual earring that we're
9 seeing depicted on the monitor in State's Exhibit 60?

10 A Yes, it is.

11 MR. LALLI: Your Honor, I'm going to move for the
12 admission of State's proposed 223.

13 MR. PIKE: No objection. That would be bag and
14 contents.

15 MR. LALLI: that's correct.

16 THE COURT: That'll be admitted thanks. Sorry.

17 (State's Exhibit 223 admitted)

18 MR. LALLI: You okay?

19 BY MR. LALLI:

20 Q I'm going to throw this up here and just talk a
21 little bit about the evidence envelope. I won't do this for
22 all the evidence we're going to talk about, but what I'd like
23 to do is just -- if you could, Ms. Ayers, explain -- explain
24 what this information is on the envelope.

25 A Okay. What we do when we impound an item of

1 evidence is we create a label for it that has the case number
2 on it, our badge number, with a package number and an item
3 number so that each package has it's own number.

4 We also mark the label with our initials and our
5 badge number and then that label has the description as we
6 enter it into our computer system. That same identifying
7 information is also what is on our report, our evidence
8 impound report.

9 Q Okay. So in this case, the initials we see, TB1173.
10 Who's that?

11 A That's CSA Tammy Barber.

12 Q And it says package no. 18?

13 A Yes, it does.

14 Q And then below that it says -- there is items in
15 this package and it says, 1173-18-20. What is that?

16 A 1173 is Tammy's badge number. 18 is the package
17 number. And 20 is the item number assigned to this item.

18 Q And do the package, badge number, and item number
19 correspond to information that's found in a police report?

20 A Yes, that same information is in our evidence
21 impound report.

22 Q All right.

23 MR. LALLI: Your Honor, I don't know, it's almost
24 noon. I don't know if the Court wants me to go right up until
25 noon, or --

1 THE COURT: You may go a little further.

2 MR. LALLI: Okay.

3 THE COURT: Just go ahead.

4 MR. LALLI: Very good.

5 BY MR. LALLI:

6 Q If you could --

7 MR. LALLI: Do we have a --

8 THE COURT: Actually, Mr. Pike, Mr. Lalli, can you
9 approach just on a scheduling issue?

10 (Bench conference)

11 THE COURT: Since we took the break around 11:00,
12 maybe we'll go until 12:30 and we'll take an hour and 15
13 minute lunch at that time.

14 MR. LALLI: Okay.

15 THE COURT: Okay.

16 (End of bench conference)

17 BY MR. LALLI:

18 Q One other thing I wanted to talk about, Ms. Ayers,
19 and that is some -- some tape and some writing on the back of
20 the envelope. What is that?

21 A That is the way we seal our evidence. We put a
22 piece of evidence tape, red evidence tape over the flap of the
23 envelope. We then mark that with the date and our initials
24 and badge number.

25 Q So at some point in time, State's Exhibit No. 109

1 would've been completely sealed?

2 A Yes.

3 Q Should've been?

4 A Yes.

5 Q And then do you know what this is?

6 MR. LALLI: And actually, I'm sorry, I've referred
7 to this as 109, Your Honor. It's actually State's proposed
8 223.

9 BY MR. LALLI:

10 Q Is -- is that some information -- the 109 there,
11 does that appear to be information that was put on by the
12 Court?

13 A Yes, it does.

14 Q And then we've got this proposed marking over here.
15 Is that also a court item?

16 A Yes, it is.

17 Q All right. So if you could open or remove the
18 staples from -- it's State's Exhibit No. 223.

19 A Would you like me to remove it?

20 Q Yes. If you could remove the contents and describe
21 what you're removing. Actually, I don't think we'll take it
22 out of this inner bag, so.

23 THE CLERK: [Inaudible].

24 MR. LALLI: Yes.

25 MR. PIKE: No objection to its introduction into

1 evidence, Your Honor.

2 THE COURT: All right. The exhibit will be
3 admitted.

4 (State's Exhibit No. 223-A admitted)

5 BY MR. LALLI:

6 Q So if we throw State's Exhibit 223-A up on the door,
7 now that's the actual earring that was removed from apartment
8 222?

9 A Yes, it is.

10 Q Okay. --

11 THE CLERK: [Inaudible]?

12 MR. LALLI: Yes.

13 BY MR. LALLI:

14 Q Now, if we go to State's Exhibit 55, you described a
15 bedroom that was beyond the living room area; is that correct?

16 A Yes.

17 Q What are we seeing in State's Exhibit No. 61?

18 A In the center of the photo is the bed. To the right
19 hand side of the photo is a nightstand with a lamp on top of
20 it.

21 Q Are there some items on the bed?

22 A Yes, there are. There's a bedspread, a green and
23 white plaid bedspread on it. Just a little bit closer to the
24 headboard on the mattress itself is an inhaler and there are
25 some items of clothing.

1 Q What are we seeing in State's No. 62?

2 A This is from the side of the bed looking towards the
3 nightstand. You can see at the very bottom of the photo is
4 the inhaler. You can see an item of clothing and a purse.
5 And you can see the nightstand.

6 Q Was there anything in that purse?

7 A There was not.

8 Q I'm going to show you State's Exhibit No. 65. What
9 is that?

10 A This is the nightstand that's on the side of the
11 bed. At the bottom of the nightstand you can see a paper bag
12 that contained trash. At the front left side of the
13 nightstand you can see a cigarette butt on the floor and then
14 you could see the items on top of the nightstand as well.

15 Q The cigarette butt that was located on the floor,
16 was that impounded?

17 A Yes, it was.

18 Q Was it impounded by Crime Scene Analyst Tammy
19 Barber?

20 A Yes, it was.

21 Q Identified as package 17, item 19?

22 A May I again refer to her report?

23 Q Yes, if you would.

24 A Yes, her package 17, item 19 is a cigarette butt
25 that's depicted in this photo.

1 Q Did this end table or dresser table have a drawer in
2 it?

3 A It does have a drawer at the top of it.

4 Q I'm going to show you State's Exhibit 66. What is
5 that?

6 A This is a photo taken with the drawer open and you
7 can see a number of items within the drawer. To the left hand
8 side you can see a yellow cigarette butt. At the top of the
9 photo you can see a green package of Cool brand cigarettes.
10 And then throughout the drawer there are a number of plastic
11 baggies.

12 Q With respect to the cigarette butt, was that
13 impounded by Crime Scene Analyst Barber?

14 A Yes, it was.

15 Q Did she impound it and identify it as package 15,
16 item 16?

17 A Yes, it is; package 15, item 16.

18 Q And with respect to the Cool cigarettes, the package
19 there that's in the drawer of the nightstand, was that item
20 impounded?

21 A Yes, it was.

22 Q Was that impounded as package 15, item 17?

23 A Yes, it was.

24 Q I'm going to go back and show you State's Exhibit
25 No. 48. You described that earlier as the doorway into

1 Apartment 222.

2 A Yes, it is.

3 Q What kind of a door is that?

4 A It's a sliding glass door, the kind you normally see
5 on patios of homes.

6 Q Was there any processing done on that door?

7 A Yes, it was processed for fingerprints.

8 Q Can you please explain to the jury how that's done?

9 A There are a number of different ways to process
10 items for fingerprints. What we did in this case was we used
11 a black powder. And what we have is a brush that's dipped
12 into the powder and then the excess shaken off. That brush
13 can then be touched against the surface. And if there is any
14 moisture from a fingerprint the powder will adhere to that
15 print.

16 The black powder then makes that print that was
17 previously not visible able to be visualized. At that point
18 we can take a piece of fingerprint tape, adhere it over the
19 top of that now visualized print and be able to lift it off
20 and place it onto a latent lift card so that it can be
21 maintained as evidence.

22 Q Were any -- were any -- I'm going to call them
23 fingerprints. I know they're not -- that's not the
24 appropriate terminology for them, but we'll -- we'll fix that
25 later on.

1 Were there any prints recovered from the doorway
2 there at Apartment 222?

3 A Yes.

4 Q Is it the practice of the Henderson Police
5 Department to actually impound the latent lift cards?

6 A Yes. What we do is, like I said, we place that
7 piece of tape onto the card. And then on the back of the card
8 there's a bunch of information that we fill out regarding
9 where that lift was taken. It includes the case number, it
10 includes the location and often a small drawing as to the
11 object where that print was taken, and a mark as to where on
12 that object the print was lifted from.

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

14 THE COURT: Yes.

15 BY MR. LALLI:

16 Q Ms. Ayers, I'm going to show you what we've marked
17 as State's proposed Exhibit 221, for identification purposes.
18 Does that appear to be an evidence envelope containing two
19 latent lift cards taken from, let's see, 1525 Fremont Street,
20 Apartment No. 22 -- 222?

21 A Yes, it is.

22 MR. LALLI: Your Honor, I'd move for the admission
23 of State's proposed 221.

24 THE COURT: Mr. Pike?

25 MR. PIKE: No objection.

1 THE COURT: All right. It will be admitted.

2 (State's Exhibit No. 221 admitted)

3 BY MR. LALLI:

4 Q Do you have the staple remover? Yes. Okay. If you
5 could remove the contents of 221.

6 MR. PIKE: No objection to the content either, Your
7 Honor.

8 BY MR. LALLI:

9 Q Are there two latent lift cards that are being
10 removed?

11 A There are two.

12 MR. LALLI: All right, Your Honor, what I'm going to
13 ask is that they be marked as A and B.

14 THE COURT: And there is no objection to admission,
15 so A and B will be admitted.

16 (State's Exhibits 122-A and 122-B are admitted)

17 BY MR. LALLI:

18 Q While that's being done, can I ask you if 1525
19 Fremont Street is located in Clark County, Nevada?

20 A Yes, it is.

21 MR. LALLI: Thank you.

22 BY MR. LALLI:

23 Q All right. I will show you now on this door
24 projector State's Exhibit 221-A. What is this?

25 A That is the lift that was taken by CSA Barber. This

1 is the side of the lift card that has the actual tape that was
2 lifted off of the surface after the powder had been applied to
3 the print.

4 Q You indicated that there was more information
5 contained on the back of the card.

6 A Yes.

7 Q So now showing you the back of 221-A, can you please
8 explain for the jury what we're seeing there?

9 A On the left hand side is the information that I
10 discussed, the case number, it has the date that this lift was
11 taken. It has the address of 1525 Fremont, Apartment 222.
12 And it says, on the right outside patio door window at
13 Apartment 222. It has Tammy Barber's signature and her badge
14 number at the bottom.

15 On the right hand side it is a drawing of the patio
16 door. There is an "x" indicating the area where this print
17 was lifted from. And the arrow indicates what the orientation
18 was as to up, so that when you look at the side with the tape
19 there should also be an arrow up on the tape.

20 And the reason that we do that, if for example
21 you're looking at an item like a drink container and you are
22 lifting a print say from this area near the mouth of the
23 glass, if I draw an arrow up and show that this is the
24 orientation of the print on the cup, when a latent print
25 examiner looks at that tape, they can make a determination as

1 to how it would be logical for a person to grip that item and
2 therefore be able to more quickly assess what finger might be
3 responsible for that.

4 And it makes it a time saving effort for them. So
5 by -- by us indicating the up direction on any print, it's
6 just a tool that helps the latent print examiners.

7 Q And on the back of this -- actually the front of the
8 latent lift card we see that arrow that was placed presumably
9 by Crime Scene Analyst Barber?

10 A Yes, that would indicate that up is towards the top
11 of the door.

12 Q I'm going to show you State's Exhibit 221-B. On the
13 front of the card we see some writing. And then on the back
14 of the card we see the diagram of that patio door as you've
15 described it, and an "x" indicating where this lift was taken
16 from?

17 A That's correct. The same information is on the back
18 of this card, only in respect to the print that is on the
19 front of this card.

20 Q Now, you mentioned something earlier in your
21 testimony about responding to an autopsy.

22 A Yes.

23 Q Did you respond to an autopsy in this case?

24 A Yes, I did.

25 Q Whose autopsy was it?

1 A I responded to Charlotte's autopsy.

2 Q Was that on May 21st, 2006?

3 A Yes, it was.

4 Q Who -- oh, I'm sorry. Where did you respond?

5 A To the Clark County Coroner's Office.

6 Q What is the responsibility of a Crime Scene Analyst
7 at autopsy?

8 A We photograph the body and we collect items of
9 evidence off the body.

10 MR. LALLI: Now, I'm sorry, Madam Clerk, can I get
11 the photos from the scene, the --

12 THE CLERK: This [inaudible]?

13 MR. LALLI: No, the ones that were -- have already
14 been admitted. Thank you. Thank you. There should be --
15 should be some after this.

16 THE CLERK: [Inaudible].

17 MR. LALLI: Were those admitted?

18 THE CLERK: [Inaudible].

19 MR. LALLI: Okay. Your Honor, apparently I didn't
20 move to admit 31 through 28. If I didn't, I would now so
21 move.

22 THE COURT: All right. Mr. Pike?

23 MR. LALLI: These are one of the --

24 MR. PIKE: Let me see.

25 MR. LALLI: I might have just not moved them in.

1 Are they moved in?

2 THE CLERK: Yes.

3 MR. LALLI: Okay, they are moved in. No, that's
4 okay. They -- I did move them in.

5 MR. PIKE: You did? Okay.

6 MR. LALLI: Yes.

7 MR. PIKE: They're admitted. They've previously
8 been admitted?

9 MR. LALLI: Yes.

10 MR. PIKE: Okay.

11 BY MR. LALLI:

12 Q Okay. What I would like to do is go back and show
13 you State's Exhibit No. 34. You described that pendent as
14 being around Charlotte's neck.

15 A Yes.

16 Q Was it still around her neck at autopsy?

17 A Yes, we left it in place.

18 Q During the course of the autopsy, before the actual
19 autopsy procedures had begun was that item of evidence
20 collected?

21 A Yes, I collected that item of evidence.

22 MR. PIKE: Thank you, Your Honor. Defense has had
23 an opportunity to review State's proposed Exhibit 222, and we
24 previously reviewed that. So 222 and contents, we have no
25 objection.

1 THE COURT: All right. They'll be admitted.

2 (State's Exhibit 222 admitted)

3 MR. LALLI: May I approach the witness?

4 THE COURT: Yes.

5 BY MR. LALLI:

6 Q Ms. Ayers, what I'd like you to do is I would
7 imagine there's going to be a bag inside of 222, but you may
8 want to use your gloves just in case. But if you could remove
9 the contents of 222.

10 A There is a bag.

11 Q There is? Okay. Describe for us what you're
12 removing.

13 A This is a plastic baggie which contains the flower
14 shaped pendent that I took from Charlotte's neck at autopsy.

15 MR. LALLI: Your Honor, I would ask that that be
16 marked as State's Exhibit 222-A.

17 THE COURT: All right. And it will be. I believe
18 there was no objection to the contents, correct?

19 MR. PIKE: That's correct, Your Honor.

20 THE COURT: All right.

21 (State's Exhibit 222-A admitted)

22 BY MR. LALLI:

23 Q So, Ms. Ayers, showing you State's Exhibit 222-A,
24 describe that for us.

25 A This is the flower shaped pendent that's on a chain.

1 It was around Charlotte's neck. In the center of the flower
2 shaped pendent is a clear colored stone.

3 Q Does that pendent appear to correlate with something
4 that was located in Apartment 222, back at the South Cove?

5 A Yes, the earring that was the flower shaped earring
6 with the clear stone in the center of it.

7 Q In addition to removing items of jewelry that might
8 be found on a decedent is the body itself processed in certain
9 ways?

10 A Yes, it is.

11 Q Can you explain that for the jury?

12 A One of the things that we did in this case was to
13 collect a sexual assault kit. And what that contains is a
14 number of swabs taken from different locations on the body.
15 There are buccal swabs which is a swab of the inner cheek.
16 Those cells are called buccal cells. So it's a swab of the
17 inner cheek to get the DNA of the person.

18 There is an oral swab, which is a swab of the mouth,
19 so that if there is any evidence left behind in the mouth of
20 the person. There are vaginal and rectal swabs that are
21 collected and that's so that if there's any evidence left
22 behind from any type of a sexual assault we can collect that
23 evidence.

24 Q And we refer to these evidence collection kits as
25 sexual assault kits in the criminal justice system here in

1 Clark County, is that -- is that true?

2 A Yes, it is.

3 Q The mere fact that we call them sexual assault kits
4 doesn't mean or shouldn't suggest to anyone that a sexual
5 assault occurred. Would that be fair?

6 A That would be fair. For example, the buccal swabs
7 that I mentioned is a standard practice that we do to collect
8 DNA from any person, regardless of whether or not it's a crime
9 of a sexual nature. But it's included in that kit because we
10 do take the swabs from the other areas that are often areas of
11 evidence if a sexual assault has occurred.

12 MR. LALLI: Your Honor, that completes direct
13 examination.

14 THE COURT: All right. Mr. Pike, we'll take a break
15 in about 10 to 15 minutes if you want to start up. Then we'll
16 take our lunch break.

17 CROSS-EXAMINATION

18 BY MR. PIKE:

19 Q Good afternoon.

20 A Hello.

21 Q In Henderson -- should I call you officer, or CSA
22 Ayers? What would you prefer?

23 A I'm not an officer so you can call me CSA.

24 Q Okay. I appreciate that. When you go to a scene
25 you often go with other individuals. You've indicated during

1 your testimony that you go with another CSA and sometimes with
2 a detective.

3 A That's correct, yes.

4 Q Who is responsible for determining what photographs
5 are taken?

6 A The CSA who is the primary CSA in that case would be
7 the one who takes the photos and is responsible for
8 determining which photos he or she is going to take. Also if
9 the detective or officer on the case has a specific photo that
10 they would like taken, they would mention that to us, as well.

11 But for the most part we know what photos need to be
12 taken and we take them.

13 Q And can you give us a list of all of the locations
14 that you went to either collect evidence or to photograph
15 another CSA taking evidence?

16 A With other CSAs, or --?

17 Q Yeah. In relationship to this case, all the
18 locations you went to.

19 A Okay. In this case, I responded first to the
20 original scene on May 20th. In that scene, CSA Barber was the
21 one who was responsible for the photography and the evidence
22 collection.

23 Q And that's the Dawson scene?

24 A Yes, it is.

25 Q Okay.

1 A The next day on the 21st, I went to autopsy. During
2 Charlotte's autopsy I was responsible for the photography and
3 the evidence collection of her. During Victoria's autopsy,
4 CSA Self was responsible for the photography and the evidence
5 collection.

6 And when we went to the leasing office, which is the
7 building that I spoke about on the corner of Access and
8 Dawson, CSA Barber was the one responsible for the photography
9 and the evidence collection at that scene.

10 On the 22nd, went to South Cove Apartment No. 222
11 and CSA Barber was responsible for the photography and
12 evidence collection at that scene. We then went back to that
13 office at the corner of Access and Dawson and CSA Barber was
14 responsible for the photography and evidence collection there.

15 We then went to Apartment 217 at South Cove and CSA
16 Self was responsible for the photography and evidence
17 collection at that scene.

18 Q What day was that?

19 A That was on the 22nd of May.

20 Q Okay.

21 A On May 24th, we went to a residence on Blankenship.
22 At that scene, I was responsible for the photography and CSA
23 Barber was responsible for the evidence collection.

24 Sometime later in June, on two different occasions I
25 went to Boulder City. On both of those dates I was

1 responsible for the photography and the evidence collection.
2 And then there was one additional time in October of 2009, I
3 believe, that I revisited the original scene and I was
4 responsible for taking photographs.

5 Q And that was the Dawson scene?

6 A Yes, it was.

7 Q Okay. Let's go to the -- when you attended the
8 autopsy. And you prepared an evidence impound report in this
9 case; is that correct?

10 A Yes, I did.

11 Q Do you -- could you get a copy of that and have it
12 present? Because we'll probably be referring to it.

13 During the time that you attended the autopsy for
14 Charlotte, you actually recovered the fingerprints?

15 A Yes, I did.

16 Q At that point in time you did not know the identity?

17 A Correct. One of the reasons that we take finger or
18 palm prints from a person is to try to ascertain their
19 identity.

20 Q Okay. And was that the same time that you recovered
21 the necklace?

22 A Yes, it was.

23 (Pause in the proceedings)

24 BY MR. PIKE:

25 Q I'm going to stretch this out little bit. There you

1 go.

2 You're look -- I'm showing you what has been
3 admitted into evidence as State's Exhibit 222-A. That's the
4 necklace that you recovered?

5 A Yes, I recovered that from Charlotte at autopsy.

6 Q You've indicated that that's a flower shaped
7 pendent. Were you able to determine what flower that is in
8 the shape of, or representative of?

9 A I didn't. It's -- to me it's a standard five petal
10 flower shape. I don't know if it's supposed to be
11 representative of a particular kind of flower.

12 Q And are you familiar with a Hibiscus flower?

13 A Not really, no.

14 Q Were you asked to investigate what type of flower
15 this necklace may be representative of, or follow up on that,
16 or did you just impound it, put it in, and left that to other
17 people?

18 A I was not asked to investigate what type of flower
19 that might represent.

20 Q Okay. And similarly, you weren't asked to do the
21 same thing with the earring?

22 A I did not impound the earring. But no, I was not
23 asked to do that for the earring either.

24 Q And in reference to these two, did you do any
25 metalogical examination to determine if they were of the same

1 type of metal or not?

2 A No, I did not. That's not something we have the
3 capability of doing at our lab.

4 Q Okay. So not -- they appear to be similar flowers,
5 but not the metal. Would that be a fair statement?

6 A I wouldn't know if they were the same metal or not,
7 no.

8 Q So that isn't part of your CSA training is to
9 determine whether or not something is silver, gold, or
10 aluminum or anything that deals with the discoloration of
11 metal over time?

12 A No, that would be something that would have to be
13 sent out to someone who specializes in metallurgy.

14 Q Similarly, the lab for the -- or excuse me,
15 Henderson Police Department does not have their own DNA
16 component to it?

17 A That's correct.

18 Q So you send that out to have it done?

19 A Yes, we do.

20 Q And that is either done to Bexar Labs, which is
21 located in Texas?

22 A Yes, either -- either Bear County or Las Vegas Metro
23 Police Department, their lab also does some of our DNA
24 processing.

25 Q And the determination as to which evidence is sent

1 out for DNA processing is left to you, or is it left to the
2 detective?

3 A The determination as to what is to be processed is
4 left to the detective. We don't necessarily have the
5 information the detective has as to what items collected may
6 be pertinent, may not be pertinent. So once we have impounded
7 it, unless there are additional examinations that need to be
8 done by us, our time with that evidence is done.

9 Q You have specialized training in how to collect
10 specific evidence. Would that be a safe statement?

11 A Yes.

12 Q And specifically you have training in how to collect
13 biological evidence. And you collect that at the autopsy as
14 well as sometimes at the scene?

15 A Yes, that's true.

16 Q And biological evidence would include a condom,
17 wouldn't it? And I'm showing you what has been admitted into
18 evidence as State's Exhibit No. 38. Do you recognize that
19 photograph?

20 A Yes, I do.

21 Q And there is a condom that -- a used condom that was
22 located there?

23 A Correct.

24 Q Can you circle that on the screen? And that's
25 connected to a shoe. Is that a man's or a woman's shoe?

1 A It looks like a woman's shoe to me.

2 Q And what size is that shoe?

3 A I don't know if it's indicated in CSA Barber's
4 report. If I could refer to her report I could --

5 Q Absolutely.

6 A Okay.

7 Q Do you know if that shoe was impounded?

8 A I believe it was, yes. She does not indicate in her
9 report if it's a woman's shoe or what the size is.

10 Q Okay. She does indicate it was impounded though?

11 A Yes, she does.

12 Q And who impounded the condom?

13 A CSA Barber did.

14 Q What's the process that you go through to collect a
15 condom in order to preserve the evidence that it may contain?

16 A Well, it kind of depends on what you have. If it is
17 a condom that is still wet it needs to be dried so that there
18 is not any deterioration of the DNA that's contained in that
19 sample.

20 I have heard different ways depending on who's
21 teaching the course in how to collect it. There are plastic
22 tubes that the condom can be put down into and the lid
23 fastened over the end of the condom so that it's essentially
24 sort of hanging in the middle of this plastic tube device.

25 I have had one person -- one class that I went to

1 that we talked about using gauze and opening up a piece of
2 gauze and placing the condom on it and taking another piece of
3 gauze and placing it inside the condom. And the reason for
4 that is any of the DNA material that might be on the outside
5 of the condom would be collected by the gauze that it's
6 wrapped in. And the gauze that's inserted into the condom
7 would collect any of the DNA material that might be inside the
8 condom.

9 Once that's done then it can be packaged in a paper
10 bag or a paper envelope and that is so that there is no
11 deterioration. It's not something that you want to package in
12 plastic unless it's been dried thoroughly.

13 THE COURT: Mr. Pike, at this time let's take our
14 lunch break. Ladies and gentlemen, we're going to come back
15 at 1:45. It's a little bit before 12:30 right now.

16 During this lunch recess, it is your duty not to
17 converse amongst yourselves or with anyone else on any subject
18 connected with this case, or to read, watch, or listen to any
19 report of or commentary on the trial, or any person connected
20 with the trial, or by any medium of information, including
21 without limitation, newspapers, television, radio or the
22 Internet. You're not to form or express an opinion on any
23 subject connected with this case until the case is finally
24 submitted to you.

25 We'll see you back at 1:45. Have a good lunch.

1 (Court recessed at 12:29 p.m. until 1:50 p.m.)

2 (In the presence of the jury)

3 THE COURT: Good afternoon, Ms. Ayers. You
4 understand you're still under oath?

5 THE WITNESS: Yes, Judge. Thank you.

6 THE COURT: All right. Go ahead, Mr. Pike.

7 MR. PIKE: Thank you very much.

8 CROSS-EXAMINATION (RESUMED)

9 BY MR. PIKE:

10 Q Welcome back. When you go through and are
11 photographing a scene, you try and identify items that may or
12 may not have evidentiary value; is that correct?

13 A We do. What we do with our photography is we start
14 and do kind of an overall view of the scene. So if it's a
15 house it's going to be views of each of the rooms, overall
16 views of everything contained in those rooms. If there are
17 items that are of interest to us, we'll do what's called an
18 orientation photo, which is, for example, if there was an item
19 on this desk I would take a photo of the desk area overall.
20 And then if this notebook was a item of interest, I'd take a
21 photo closer of the notebook itself. So we kind of go from a
22 broad to a more specific range with our photography.

23 Q And a phrase that is often used is, if something is
24 associated with a crime scene, that means that it's there.
25 Whether or not it has any evidentiary value is to be

1 determined at a time of a court proceeding or by a subsequent
2 investigation.

3 A That's true. When we're out there we don't
4 necessarily know what may or may not be of value. So we
5 usually err on the side of caution and collect more than is
6 probably necessary, because we may know whether -- may not
7 know whether it's involved in the scene in the crime or not.

8 Q And that would account for some of the orientation
9 photographs that went on -- that had been taken, such as this,
10 which is Exhibit Number 2 that's been admitted into evidence.

11 A Well, this is actually an aerial photo. So this is
12 showing the overall area in relation to like the major cross-
13 roads as I mentioned earlier with Boulder Highway. And then
14 it goes from the broad range in closer to the area that was of
15 importance to us around the bodies. But it's to get an
16 overall feel of the scene, because it's not a house that we
17 can go through and photograph, here's a bedroom, here's a
18 bathroom and so on. Outside scenes, it's often helpful to
19 have the aerial photos.

20 Q And as part of this aerial view, that would
21 encompass the area where the two women were found. And you
22 photographed that area; is that correct?

23 A It was CSA Self that did the aerial photography.
24 But yes, that was photographed.

25 Q Okay. And it also includes the area where you took

1 the photographs of the shoe and the condom that we talked
2 about a little bit earlier, State's Exhibit 38?

3 A CSA Barber took the photos on the ground at the
4 scene. I didn't do any photography on the original day that
5 the bodies were discovered either at the scene or anywhere
6 else.

7 Q And coming out a little bit further than that in
8 State's Exhibit 37, that also is where the shoe and the condom
9 was located?

10 A Yes, it is.

11 Q And there are other shoes that were located there,
12 or sandals that were located there?

13 A Yes.

14 Q Now, are they sandals?

15 A I believe they were like a Birkenstock-type sandal.

16 Q And did you impound those?

17 A CSA Barber impounded those.

18 Q You impound things like shoes because there may be
19 possible DNA evidence?

20 A Well, and, for example, in this case, because the
21 victims weren't wearing any clothing, we didn't know if the
22 clothing such as shoes that were found at the scene belonged
23 to them or if they just happened to have been thrown there at
24 some other time.

25 Q There was also located out at the Dawson scene a

1 van; isn't that correct?

2 A It was a ways away. But yes, there was a scene -- a
3 van that was near to the scene that appeared abandoned and so
4 it was processed.

5 Q And can you circle on the screen where that van was
6 located.

7 A It is not close enough to be contained in these
8 aerial photos.

9 Q Which area is that closest to going -- well, let me
10 see --

11 A It would be if you took Boulder Highway northbound
12 away from the scene --

13 Q You can go ahead and draw it on the screen.

14 A -- it would be further this way. And I believe it
15 was in the neighborhood of this area, it was Nevada State
16 Drive I believe was where the van was located.

17 Q And that was an area that you went to, also?

18 A No. CSA Self was the one who processed that van.

19 Q So Self processed all of that?

20 A Yes.

21 Q And you didn't take any photographs at that
22 location?

23 A No, I didn't.

24 Q The area that this evidence was processed was on an
25 area that was at the base of a mountain?

1 A Yes.

2 Q And that's known as Black Mountain. Do you know
3 that or not?

4 A I don't.

5 Q Okay. I grew up here. Trust me on that one.

6 A Okay.

7 Q And that's an area that is rocky and there was a
8 dirt road that was associated with the body or nearby the
9 bodies?

10 A Yes, it was.

11 Q Okay. And as you were processing the scene, there
12 are a number of photographs that indicate that there's
13 discolored rock that's there. And that's just a natural
14 discoloration of the rock, because if it was something
15 different you would have collected some of that?

16 A Yes. There was a lot of red coloration in the rocks
17 out at the scene. There was a variation in sizes, shapes,
18 colors of all different kinds of rocks out at the scene.

19 Q And you were looking for rocks that may have had
20 blood on them. And in fact, a number of rocks were impounded
21 into evidence for subsequent processing in this case, wasn't
22 there?

23 A I don't believe there were any collected from the
24 Dawson scene. There were some rocks that I impounded from a
25 later location that were collected because of that red

1 coloration and were later tested.

2 Q So there was no -- so based upon what you're saying,
3 there was no rock located at the scene where the two bodies
4 were located at that had sufficient quantity of blood on them
5 -- or apparent blood on them to collect for subsequent
6 processing?

7 A That's correct.

8 Q And in State's Exhibit Number 29, in reference to --

9 A It's --

10 Q -- that, that would be the discoloration -- I
11 believe that was next to Charlotte?

12 A It's zoomed way in, but I can't tell who it's next
13 to.

14 Q Okay. Well --

15 A Yes, that's Charlotte, yes.

16 Q That's Charlotte. Okay. Ma'am, I'm just trying to
17 get to -- and had this been apparent blood or a belief that it
18 was biological evidence that may be important, there would
19 have been samples collected from that area?

20 A If it was something that we thought that was of
21 evidentiary value, yes, it would be collected. Just because
22 there is blood that has seeped out of the body next to the
23 body and saturated the ground doesn't necessarily mean that
24 that is of evidentiary value. That is a normal course of just
25 the person's blood leaving their body, and so it's not

1 necessarily any evidentiary value to it unless we believe
2 there was another person that had been there and possibly
3 removed that type of a thing, then we would collect some of
4 that soil.

5 Q It would be -- have evidentiary value or would be
6 important if there was evidence or information to suggest that
7 the murder had occurred somewhere else and the bodies had been
8 merely dumped at that location, wouldn't it?

9 A I guess I'm not sure what you're asking about the
10 soil and what that shows --

11 Q Okay.

12 A -- with a body being dumped or not.

13 Q Okay. If someone was killed and they bled out at
14 one location and their body was dumped at another location,
15 there would not necessarily be a lot of blood at the dump
16 location. There may or there may not be. But that may be a
17 significant fact, so you'd want to process that to determine
18 if there was a large collection of blood at or near or under
19 the body, wouldn't you?

20 MR. LALLI: Your Honor, I'm sorry. I'm going to
21 object to the form of the compound question.

22 MR. PIKE: It wasn't compound, it led the predicate
23 facts and now to one answer.

24 THE COURT: Why don't you restate the question, Mr.
25 Pike.

1 BY MR. PIKE:

2 Q If you had reason to believe that someone had been
3 killed at one location and that there had been a great deal of
4 bleeding as a result of the death producing wounds, you would
5 expect that there would be blood located at the scene where
6 that was located, wouldn't you?

7 A I would expect that there would be blood at the
8 location where the person was killed, yes.

9 Q And if they were transported in a car, you would
10 expect that the -- let's say in a trunk of a car, that there
11 would probably be blood that would be contained in the trunk
12 of that car or the back of that car?

13 A There could be. It would depend on how the body was
14 transported of course.

15 Q And so you would process each of those scenes to
16 determine whether or not there was a significant amount of
17 blood that was -- or any blood that was located in either of
18 those scenes?

19 A Well, I guess it depends on what --

20 Q If you don't see --

21 A -- you mean by process.

22 Q That photograph -- I'm -- try and use Luminol, try
23 and do anything that you could to determine if there was
24 biological evidence.

25 A If I was doing the examination of a trunk of a car,

1 the first thing I would do would be a visual examination just
2 with my plain eye to see if there was anything that I could
3 see. If I didn't see anything with my naked eye, I could use
4 a light source to see if there was anything that could be
5 visualized. When you use an alternate light source there are
6 different wavelengths of light that you can use, and certain
7 items will fluoresce. Blood does not. Blood looks very, very
8 dark under the alternate light source. But you can see large
9 -- you know, if there's a stain that appears very dark, that's
10 something that you might want to test for blood.

11 And there's also a very bright white light that I
12 often use, especially like in the interior of a vehicle, to
13 see if I can -- anything that wouldn't be visible just with
14 like a flashlight, for example, if I use this very bright
15 light, often there are things that I can then see that maybe I
16 wasn't able to see before.

17 Q All right. And if there was a large collection of
18 what appeared to be blood, you would put that into a report,
19 wouldn't you?

20 A It would depend on the circumstances and how
21 relevant it was to what happened at the scene.

22 Q But you don't know what happened at the scene. So
23 everything may be relevant or everything may be irrelevant.
24 So you want to err on the side of caution and if it appeared
25 that it may be important just put it in. That's a fair

1 statement, isn't it?

2 A I think -- yes, it is a fair statement.

3 Q So looking at the trailer, which is located at or
4 associated with the Dawson scene, you went out there, didn't
5 you?

6 A I was present, yes.

7 Q And you -- did you take this photograph?

8 A No. CSA Barber took these photographs.

9 Q It appears that there's discoloration in the dirt in
10 front of that location.

11 A I think it's actually a different type of soil. I
12 don't know that it's just discoloration. Without -- out in
13 this area there's a number of different colorations in the
14 dirt, I'm sure because of whatever elements are in the dirt,
15 so it's not necessarily the same type of a thing that you
16 would see from a blood source.

17 Q Okay. So it -- kind of like driving from Boise to
18 Idaho Falls, you pass through farmland, you pass through lava
19 flows, you pass through different kinds of rocks, colors and
20 the rest of that, and if there was something you thought was
21 important at that location you would have identified it?

22 A Yes.

23 Q During the collection process you'd also find it
24 important to go out and collect items of clothing that may be
25 associated with the crime scene, wouldn't you?

1 A Yes.

2 Q In fact, there were a number of items of clothing
3 that were collected out of this location?

4 A I believe so, yes.

5 Q Okay. Referring you to, let's see, Patrick
6 Farrell's report. Do you have that?

7 A I don't know that I have Patrick's report.

8 Q Okay.

9 A I know that he conducted a search in the area beyond
10 the area that we had originally visited on the 20th.

11 Q So if I was to suggest to you that Farrell's report
12 indicated that there were a number of items of clothing that
13 was collected, you would -- you wouldn't find that surprising,
14 in fact you'd expect it?

15 MR. LALLI: Your Honor, I can -- I can inform the
16 Court and Mr. Pike, Mr. Farrell will be testifying. And I
17 guess it would be our position that these questions would be
18 more appropriate directed toward him.

19 MR. PIKE: I wasn't certain whether he was going to
20 be testifying or not. So I'll reserve those for him

21 THE COURT: Okay. Go ahead, Mr. Pike, with that
22 understanding subject to being recalled on this issue if this
23 other gentleman doesn't testify.

24 MR. PIKE: Thank you.

25 BY MR. PIKE:

1 Q In reference to the locations that you went to, you
2 in fact observed the collection of a pair of white socks at
3 the Dawson area?

4 A I don't know that I was present when they were
5 collected -- specifically next to them, I was at the scene
6 when they were collected.

7 Q And they -- and you prepared a -- an actual evidence
8 impound report for the items that were collected at that
9 location?

10 A CSA Barber prepared the report for the items that
11 were collected out of the original Dawson scene.

12 Q Okay. You also went to another scene located out
13 past the Hacienda Hotel; is that correct?

14 A Yes, I did.

15 Q When you were there you observed that a golf club --
16 a shaft of a golf club was recovered?

17 A That is one of the items I recovered, yes.

18 Q And you actually physically recovered that?

19 A Yes, I did.

20 Q Did you impound that?

21 A Yes, I did.

22 Q There was clothing that was associated with that; is
23 that correct?

24 A There were two items of clothing that were in the
25 same area where the items were that I collected in Boulder

1 City, a pair of jeans and a T-shirt I believe.

2 Q Okay. So to be clear, this wasn't in Boulder City,
3 this was out on the way to the dam -- it was closer to -- it
4 was past Hacienda down the road towards the checkpoint --

5 A Yes.

6 Q -- [Inaudible].

7 A That's correct.

8 Q About how far off of the Boulder Highway was that?

9 A How far off the road were the items?

10 Q Off the road were the items.

11 A I know we have the GPS measurements of those, I
12 don't have the measurement in feet to be able to tell you.
13 And they were at varying levels. They were not all next to
14 each other. There were items on the north side of the road,
15 the south side of the road, and they were a ways away from
16 each other.

17 MR. LALLI: Your Honor, may I have the Court's
18 indulgence.

19 THE COURT: Yes.

20 BY MR. PIKE:

21 Q Apparently the State has plans for you to come back.
22 So --

23 A Yes. Yes, I believe they do.

24 Q Okay. Well, I'll just -- then we'll have a chance
25 to meet again, I'll ask you some more questions at that time,

1 but --

2 A About my trip to Boulder City.

3 Q For now, let me ask you -- so I will kind of narrow
4 down the questions I'm going to ask you this time. CSA is
5 trained in the collection of evidence. You've already
6 indicated you have specific training for biological evidence,
7 you actually can lift fingerprints?

8 A Yes.

9 Q Do you also have training in collecting items such
10 as cell phones?

11 A There's not any particular training as to how to
12 collect them. There's specific training as to how to process
13 them for the data that's on them, and I do not have that
14 training.

15 Q Oh, but when you collect the cell phone, don't you
16 want to put it into a specifically lined container so that it
17 isn't interfered with by an other transmissions, and so that
18 any items on that phone may be preserved. And so it's
19 processed in an area where those items on the SIMS or on the
20 cell phone itself have not been destroyed over time, whereas
21 there's a little bit of additional messages?

22 A The only instruction we've been given by our
23 computer forensics people is to remove the battery from the
24 cell phone. And otherwise it is packaged in a regular paper
25 envelope or bag.

1 Q When you went to the location at the South Cove
2 Apartments and you were going through the items that were
3 collected, you specifically were picking up cigarette butts
4 because people put them on their mouths and that may be a
5 source of DNA?

6 A That's correct, yes.

7 Q Also, in those -- in processing that, there were
8 these items that were contained in baggies. Do you remember
9 what was in those baggies?

10 A I do not, no.

11 Q Did you collect those baggies?

12 A I am not --

13 Q Or impound them into evidence?

14 A I am not certain if CSA Barber collected those, I
15 could refer to her evidence report to make certain.

16 Q Okay. She'll be back. We can do that. In addition
17 to putting your -- someone putting their mouth on a cigarette,
18 they -- an inhaler that is contained in State's Exhibit Number
19 64, it indicates that there's an inhaler. Do you know if that
20 inhaler was impounded into evidence?

21 A Yes, it was.

22 Q And that may be a good source of DNA, because people
23 put that in their mouth and they collapse it and inhale
24 deeply?

25 A That's correct.

1 Q Looking at that -- at the same scene, State's
2 Exhibit 65 is also a bottle -- a water bottle and it's more
3 pronounced in -- oops, there's the toilet -- there we go --
4 -- that is contained on that same bed stand. Water bottles,
5 because people put them against their mouth, are also a source
6 of DNA -- well, a potential source of DNA?

7 A Yes, they are.

8 Q And clothing is a potential source of DNA because
9 when people like take a -- pull a shirt on or off -- a collar
10 for instance would rub up against their skin or over their
11 hair, and there may be epithelial cells or hair cells that are
12 caught onto the fabric or attach themselves to the fabric?

13 A That's correct, yes.

14 Q And you are trained in the collection of evidence
15 that may have DNA evidence; correct?

16 A Yes.

17 Q And you know that very small amounts of skin or very
18 small amounts of hair can result in a full DNA --

19 A Profile.

20 Q Thanks.

21 A Yes, they can.

22 Q And even just one hair follicle, you can get a full
23 DNA profile?

24 A Depending on whether there's any tissue on the hair,
25 if there's tissue you can get a nuclear DNA profile. If

1 there's not, then you might to be able to get a mitochondrial
2 DNA profile.

3 Q And as you went through and processed the items that
4 were contained at the location at the 222 apartment in the
5 South Cove, did you have any elimination prints or any prints
6 of people that lived there to exclude any non-evidentiary
7 fingerprints?

8 A I did not personally collect any prints, but it's
9 standard protocol for us. Say there's something that happens
10 at my house, if my house was burglarized, for example, and
11 somebody came out to process the scene for prints, they would
12 certainly want my fingerprints to be able to eliminated the
13 prints that belonged in the house and be able to determine
14 which prints might have been left by the person who committed
15 the crime. So that's something that's a standard thing that
16 we do for fingerprint comparisons.

17 Q And when you're collecting physical evidence such as
18 a shirt, you're looking, also, at the size, because that may
19 give you some indication as to the size of the person that was
20 wearing it?

21 A Yes. I indicate that in my reports, I actually put
22 that in the description of the item. I will put as much
23 information as I can regarding a brand and a size in the
24 actual description so that it would be on the label on the
25 package and in my report.

1 Q And that would include any peculiar items such as a
2 name or a logo on the shirt to see if somebody else had seen
3 that individual wearing that shirt?

4 A Yes. Generally what I do if I collect a shirt from
5 a scene, I'll take a photo of it front and back so that it's
6 something that could be shown to somebody. If it's a question
7 of identity, for example, the photo could be shown without
8 having to take a shirt actually out of evidence and hold it up
9 for somebody to be able to see. In that description that I
10 was talking about that appears both on my label and in my
11 evidence report, if there is something across the front of it,
12 like if it was a T-shirt that said "Nike" across the front of
13 it, I would say with quote, "Nike" on the front chest. So I
14 would include that in my description.

15 Q And in fact you found a black T-shirt that was
16 located or associated with one of the -- either the knife or
17 the golf club. Which was that associated with?

18 A There was a T-shirt that I collected out at Boulder
19 City, but it was not directly next to any other item that I
20 collected.

21 Q That had DHS strings on it?

22 A I could refer to my report.

23 Q You can.

24 A Okay.

25 MR. PIKE: Judge, may I approach.

1 THE COURT: Yes.

2 BY MR. PIKE:

3 Q Your report handy, too?

4 A Yes.

5 Q Okay. You have it -- you've found it?

6 A Yes.

7 Q And similarly you found a pair of denim jeans
8 associated with one of the two items?

9 A I found a pair of denim jeans, it was also out in
10 Boulder City, it was not directly adjacent to any of the other
11 items I collected.

12 Q Well, I'm confused I guess, on your report it says,
13 "that the golf club was located at four tenths of a mile east
14 of Hacienda, north of Roadway 93," and then item 7, "one pair
15 of denim jeans, Axis brand, was found at .4 miles east of
16 Hacienda north of Roadway." It's associated with it. You
17 give the same place --

18 MR. LALLI: I'm want to object. This is
19 argumentative, Your Honor.

20 BY MR. PIKE:

21 Q You, in your report --

22 THE COURT: Okay. Hand on. Hang on, hang on.
23 Okay. I'm going to sustain the objection, but I think we
24 should have clarifications for the jury, I mean, it's up to
25 the counsel as far as what you mean of, as associated with,

1 and perhaps more importantly, what the witness means by,
2 something is associated with.

3 MR. PIKE: I thought we've gone over that, I'll go
4 over it again. Thank you, Your Honor.

5 BY MR. PIKE:

6 Q Associated with -- associated with means it's at or
7 near the same location?

8 A Okay. I guess it would depend on how close of a
9 proximity you mean to be near. Is it 1 foot, 5 feet, 10 feet,
10 100 feet, with those parameters I could tell you whether it
11 was near to the other items.

12 Q It was -- these pair of jeans were close enough to
13 the golf club head that you collected them -- or you
14 photographed somebody collecting them?

15 A I photographed and collected the jeans.

16 Q Okay. So they were close enough in proximity, close
17 enough to each other that you collected and impounded them for
18 testing?

19 A They were in the same general area of Highway 93 on
20 your way out to the dam. The 0.4 miles east of the Hacienda
21 sign is a measurement that I took from a sign that was in that
22 same area as the items that I collected when I was in Boulder
23 City. It was the only landmark reference out there, it said
24 something about tune to a certain station for information, and
25 it was the only landmark I had to be able to take a

1 measurement. And I measured from that sign back to the sign
2 at the Hacienda, and that was where the 0.4 miles came as a
3 reference point.

4 Q And it was the only item of clothing that was close
5 enough to that golf club head and shaft that you collected?

6 A The jeans and the T-shirt were both out in that same
7 area.

8 Q And have you determined whether or not those were
9 male jeans or female jeans?

10 A I do not recall.

11 Q What was the waist and the inseam?

12 A If I could look at my photos. I have a very small
13 photo, because I had numerous to print, but it appears to be
14 possibly 32/30. I could tell better if I had a larger photo
15 or if we put this on the overhead.

16 Q Okay. Well, you'll be back. So if you could look
17 at, I'll ask you that question then. And I'll finish with the
18 cross-examination at that time. Thank you very much.

19 THE COURT: Anything further by the State at this
20 time?

21 MR. LALLI: Just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. LALLI:

24 Q Ms. Ayers, I want to talk to you about the area
25 where Victoria and Charlotte's bodies were found. Did you

1 observe anything out there that would suggest to you that
2 bloodletting occurred at that location?

3 A Yes.

4 MR. LALLI: May I approach the witness.

5 THE COURT: Yes.

6 BY MR. LALLI:

7 Q I'm going to just hand you a number of photographs.
8 Look through them, and if you see something in one of these
9 photos that suggests to you that bloodletting occurred there,
10 let me know, I'll put it on the door and we can talk about it.

11 MR. PIKE: Can I approach the witness while she's
12 going through these.

13 THE COURT: Sure.

14 MR. PIKE: Thank you.

15 BY MR. LALLI:

16 Q All right. Ms. Ayers, I'm going to show you State's
17 Exhibit Number 22 for identification -- well, it's actually
18 been admitted. What is this?

19 A This is a photo of Victoria, looking at the front
20 side of her. And in this photo you can see an area of blood
21 underneath her face next to where her right arm would be under
22 her head.

23 Q In this area right here?

24 A Yes. And there's also blood flow down the top of
25 her right arm.

1 Q What do you mean, blood flow, can you identify that
2 for us.

3 A You can see areas where there is blood that has --
4 because of the way gravity is affecting blood, it's pulling it
5 down in the direction of gravity, so because of the way she's
6 positioned with her being on her side it's flowing from the
7 top of her arm downward towards the ground.

8 Q What about in State's Exhibit 31?

9 A This is a photograph of the head and chest of
10 Charlotte. And specifically what can be seen in this photo
11 are areas of impact spatter on her chest.

12 Q What's impact spatter?

13 A Impact spatter is a stain that's created when a
14 blood source is impacted by an external force.

15 Q And so when that happens, what does it cause the
16 blood to do?

17 A Okay. If I can give you an example, if there's a
18 source of blood in my hand -- and there has to be a great
19 enough source of blood and if there was a force that acts upon
20 that source of blood, the blood will move away from the force
21 and become airborne. It will move away from the source of
22 blood and in the shape of a cone. And if you look at it from
23 above, that blood's going to travel out in a straight line
24 from the point of the blood source out to any object that it
25 hits. If you look at it from the side, when that force takes

1 place the blood travels in a -- it's called a parabolic arch
2 concaved down, the shape like a baseball would take for a fly
3 ball, it's that type of a shape until it hits the surface.

4 And so you can look at the shape and size of and the
5 distribution of the blood at a particular location and be able
6 to do some tests to determine where that -- where the initial
7 source of the impact from the force onto the blood source took
8 place.

9 Q So you see that sort of blood spatter on Christina's
10 chest?

11 A Yes, I do.

12 Q The other photo you identified was State's Exhibit
13 32.

14 A This is a photo of Charlotte, and, although you
15 can't see it in -- on her left leg in this photo, on her right
16 leg there is an injury. There's an injury in this area, and
17 you can see an area of blood that has gone down her leg, which
18 would indicate that she was standing at the time that that
19 blood was running down her leg, because, again, it's going to
20 be pulled by gravity straight down her leg. And then you can
21 also see it come around her calf and flowing down around the
22 side of her calf, which would indicate that she was no longer
23 upright at that point when the blood was flowing out of that
24 wound, that she was now down, and it was running with gravity
25 now pulling it down the side of her calf.

1 Q You had previously described the surface of this
2 desert area as gravelly, I guess rocky --

3 A Yes.

4 Q -- actual dirt out there?

5 A Yes.

6 Q If a person were murdered at another location and
7 then dumped in this dirt -- desert area, would you expect to
8 find actual dirt and debris on their feet? Or let me ask it a
9 different way. If someone was murdered out in this desert
10 area, would you expect to find that at some point they walked
11 or were out there and have dirt on the bottom of their feet?

12 MR. PIKE: Objection, Your Honor. It doesn't assume
13 complete facts, assuming that they were barefoot at the time
14 or whether or not their shoes were removed post mortem.

15 THE COURT: I'm going to sustain --

16 MR. LALLI: Well, let me just --

17 THE COURT: -- sustain the objection.

18 MR. PIKE: Thank you.

19 BY MR. LALLI:

20 Q Let me just ask you this, I'm going to zoom into
21 State's Exhibit Number 26. Does there appear to be dirt on
22 the bottom of Victoria's feet?

23 A It does appear to have dust.

24 Q Thank you. Nothing else.

25 THE COURT: Any further, Mr. Pike?

1 MR. PIKE: Very briefly, Your Honor.

2 RECROSS-EXAMINATION

3 BY MR. PIKE:

4 Q In reference to blood evidence, blood is a liquid --
5 you've been trained, has various properties. And as you've
6 indicated, if I was to take some milk and pour it here and
7 then slap it down like that, it would splash out. And that's
8 when you're talking about blood-splatter evidence; correct?

9 A Well, I was -- I was talking in that instance about
10 impact spatter and the stain that results from that. There
11 are a number of different types of blood stains that result
12 from different types of activities.

13 Q Okay. For instance, if I had blood on my hand and I
14 touched an object and moved it like that, that would be a
15 smear?

16 A Well, it's -- it's --

17 Q What do you call it in blood evidence?

18 A In blood evidence that would be a swipe. When
19 there's a bloodied object that touches against another object,
20 that's called a swipe.

21 Q What do you call it when somebody -- when there's
22 contact made with an individual with enough force so that
23 blood attaches to the instrumentality and it is pulled back?

24 A I believe what you're talking about is cast off. If
25 an object is being swung and it impacts a surface, if there's

1 no blood there you could swing it back and you're not going to
2 have any blood coming off of the object. However, if it -- if
3 the surface has been bloodied -- if there has been an injury
4 so that there's blood on that surface and an object is hit
5 against it again, there will then be blood on the object and
6 when it's swung back it can result in a pattern -- for
7 example, on a ceiling, that's called a cast off pattern.

8 There's also another one when it's swung forward
9 again and it hits against an object, if there's blood on the
10 end and it hits the object there could be what's called a
11 cessation cast off pattern from whatever remaining blood was
12 on that object when it hit the bloodied surface again.

13 Q Okay. And in the blood evidence that we're talking
14 in about in Exhibit Number 31, which was presented -- or was
15 shown to you in reference to that -- let's see if I can get
16 that close, that appears to have come from the location up
17 around the neck area I guess and then came onto the body?

18 A Yeah. If you could zoom out just a little bit --

19 Q Sure.

20 A -- it's awfully close.

21 Q I'm sorry.

22 A Thank you. Yes, the blood that's specifically on
23 the right side of Charlotte's chest appears to be coming from
24 the left side.

25 Q Would it be this location?

1 A Yes, of Charlotte's head.

2 Q And it indicates -- the photo indicates this area
3 which is rather dark and probably had a lot of blood on it at
4 one point in time?

5 A Well, it would depend, because her head could be
6 moving, it could have come from her head, it could have come
7 from her neck. I can't say specifically at this point where
8 that blood would have come from, but would have come from that
9 general direction moving to the right side of her chest.

10 Q Okay. And looking at the leg that we were talking
11 about before -- oops, sorry. Let me zoom in on that. Does
12 that cover the areas that you talked about?

13 A Yes, it does.

14 Q All right. Based upon your testimony then, there
15 appears to be some flow off of the leg to that area and some
16 flow off of the leg down around the calf area -- and I'm
17 pointing at that with my pen; is that correct?

18 A Yes.

19 Q All right. And I don't see any blood underneath
20 there?

21 A No. The blood that is on her calf, the amount of
22 blood that there was was enough to make a trail that went down
23 onto her calf and did not appear to drip off of it.

24 Q And when there is blood that was sufficient enough
25 to pool around that area it would also, as liquids do, tend to

1 combine with other items that were around it. For instance,
2 the rocks would start to stick to the blood which was with the
3 dirt and would also be around -- it would kind of be obvious
4 that they were connected to each other?

5 A Yes. Generally when there's enough blood that
6 there's a saturation, the rocks and dirt could stick together,
7 yes.

8 Q All right. And part of you processing a scene, you
9 need to make a determination of whether or not there were any
10 weather aspects or anything in the weather over the previous
11 few days that would have effected the collection of evidence
12 in this case?

13 A There was nothing that effected whether or not
14 evidence would be altered by any rain or anything like that.

15 Q Okay. That was where the next question was, thank
16 you. You reviewed the weather reports prior to this time and
17 there was no major storm, rain or anything that you felt would
18 impair your collection of the scene or would have altered the
19 scene from the time that the bodies were placed there?

20 A I don't think we reviewed any weather reports, I
21 think we just knew that there had not been any precipitation.
22 We all live and work in the Henderson area and knew that there
23 hadn't been any rain prior to that.

24 Q Thank you. No further questions.

25 THE COURT: Anything further by the state?

1 MR. LALLI: No, Your Honor.

2 THE COURT: Any questions by any of the jurors?

3 Yes. We have three questions.

4 Counsel, approach.

5 (Bench conference)

6 THE COURT: What was the next step?

7 MR. LALLI: Harold Herb.

8 THE COURT: Harold --

9 MR. DiGIACOMO: We'll be here till midnight --

10 THE COURT: That's okay to do it, isn't it?

11 MR. DiGIACOMO: Some departments it's okay, Judge.

12 THE COURT: I think we have five questions.

13 MR. PIKE: They like CSAs because they've seen them
14 on TV.

15 THE COURT: Right. [Inaudible]

16 MR. PIKE: We have somebody coming in to testify
17 about that.

18 THE COURT: Okay. And this one [inaudible]. Any
19 objection on --

20 This one is coming in.

21 MR. PIKE: Witness -- coming in.

22 THE COURT: So both parties agree with me not to ask
23 this question?

24 MR. LALLI: I mean, it doesn't matter. It's going
25 to be addressed later in the trial.

1 THE COURT: This item -- DNA --

2 MR. PIKE: That's not her area of expertise.

3 THE COURT: [Inaudible]

4 MR. PIKE: I suppose you can just read it and say
5 that we have other witnesses coming in.

6 MR. LALLI: Right, other witnesses that are --

7 MR. DiGIACOMO: We'll save this question for the
8 appropriate witnesses.

9 MR. LALLI: Not that lat one. That last one's
10 separate.

11 THE COURT: I'll ask her these. Was there some
12 other questions --

13 MR. LALLI: Questions that were asked that will be
14 answered later in the trial.

15 THE COURT: All right. Sounds good.

16 (End of bench conference)

17 THE COURT: Ms. Ayers, we have a couple questions by
18 our jurors. "Was the condom able to be processed? If so, was
19 there any DNA recovered from the condom that was found?"

20 THE WITNESS: I don't send off any of the evidence
21 to be processed. That would be something that was sent off by
22 the detective. If that was sent off, then we would have a
23 report as to what the findings were, whether there was any
24 evidence of a DNA nature and, if so, what the results were.

25 THE COURT: In your expert opinion is there any

1 evidence to suggest Victoria or Charlotte was killed in the
2 desert where they were found or elsewhere?

3 THE WITNESS: There are a couple of things besides
4 the blood evidence that I mentioned that suggests that they
5 were killed there. One of the things, specifically on the
6 back of Victoria, you can see a lot of rock debris, small
7 little bits of rocks stuck to the back of her, and she was
8 found on her side. So to me that indicates that she had a
9 struggle out there in the dirt while she was on her back and
10 that's when all those rocks and bits of things were imbedded
11 into the skin in her back.

12 Charlotte, who was found on her back, found resting
13 on her back, did not have the same quantity of that kind of
14 debris, and she had been laying with the full weight of her
15 body on the soil. So it would seem to me that, even though
16 Charlotte had been resting that way, Victoria had more of a
17 struggle in order to get those bits of things into her skin.

18 Also, we didn't find any disturbance from the area
19 of the tire tracks to the area of the body -- bodies that
20 would indicate that a body had been drug, for example, from
21 the area of where those tire tracks were out to where the
22 bodies were laying.

23 THE COURT: All right. Thank you. And ladies and
24 gentlemen of the jury, we had some other questions here in
25 that the -- correct me if I'm wrong, counsel -- the attorneys

1 feel that these questions may be answered by future witnesses
2 to be called.

3 MR. LALLI: That's correct. A number of those
4 questions will be addressed later in the trial, Your Honor.

5 THE COURT: You agree, Mr. Pike?

6 MR. PIKE: That's correct. Items were sent out for
7 to be examined and tested and --

8 THE COURT: Okay. All right. Does the State have
9 any followup questions to the -- these last few questions to
10 Ms. Ayers?

11 MR. LALLI: No, Your Honor.

12 THE COURT: Do you have any followup, Mr. Pike?

13 MR. PIKE: Thank you.

14 FURTHER RECROSS-EXAMINATION

15 BY MR. PIKE:

16 Q In offering your opinion in reference to where the
17 final resting place of the women was or if there was any sort
18 of fight that was done in reference to that, you actually went
19 to the autopsy and collected fingernail clippings to determine
20 whether or not there was anybody else's DNA under those
21 fingers -- fingernails; correct?

22 A I did collect fingernail clippings from Charlotte,
23 and that is -- the reason for that is the possibility that
24 there could be DNA evidence from some sort of a fight between
25 her and whoever was harming her.

1 Q And that's a normal protocol, and that would have
2 been done also with Victoria?

3 A Yes. That is a normal protocol, and I would imagine
4 it would done with Victoria, as well.

5 Q And your examination of the bodies, you don't have
6 any expertise in when the specific injuries occurred that
7 occurred on these bodies? You can't offer an opinion as to
8 which -- which wound proceeded another wound can you?

9 A No. That's the job of the medical examiner.

10 Q Nor can you offer an opinion as to whether or not
11 there were injuries at one location and then final death-
12 producing injuries in another location?

13 A I think that would be fair.

14 Q And so the answer would be yes?

15 A The answer would be no, I can't make those
16 determinations.

17 Q Okay. And finally, with the physical evidence that
18 you had in reference to the number of vehicles that may have
19 possibly been at that location, you can't offer an opinion as
20 to whether or not there are one, two, three or four or more
21 individuals?

22 A I'm not sure what you're referencing with the number
23 of vehicles that were in the location.

24 Q Okay. You took tire tracks -- or you observed tire
25 tracks being taken from how many locations?

1 A At the scene, at the original Dawson scene there was
2 one set of tire tracks on the road that was -- would it be --
3 essentially north of the victims.

4 Q And it was hard-packed desert?

5 A It was loose enough soil for there to be an
6 impression left by the tire, depending on how packed the soil
7 is. If it's extraordinarily hard packed, there wouldn't be a
8 tire impression. There has -- the dirt has to be loose enough
9 for the tire to actually embed into it to make an impression.

10 Q And based upon the weight of these young ladies,
11 about 120 -- 128 and I think 115 pounds, they could have been
12 carried by one or more individuals?

13 A I guess it would depend on the individuals who were
14 doing the carrying. It would depend on their physical stature
15 and their abilities whether they'd be able to carry them alone
16 or how many people it would take.

17 Q And based upon the hypothetical that was given to
18 you, you're taking a number -- there are a number of unknown
19 quantities that may affect your opinion or may change it or
20 may confirm it?

21 A Could you restate that for me.

22 Q Sure. As I've suggested, there are things that you
23 just don't know?

24 A That's true.

25 Q And as I've suggested, there are things that if you

1 knew and could confirm may alter or change your opinion?

2 A Yes. That's why we have to look at the evidence
3 that is at the scene. And that is what we use to draw the
4 conclusions, because we can't take the unknown and apply it to
5 the scene.

6 Q So you use a hypothetical and -- based upon your
7 observations, and then you draw an expert opinion?

8 A We create a theory based on the evidence that we
9 find out at the scene.

10 Q Okay. The theory, I don't see anything past the
11 horizon, people go there, they disappear, the world is flat.
12 You're subsequently given additional information, the world is
13 round. That's the same process you're using for this point in
14 time, isn't it? The theory, facts, and you don't have the
15 final answer [inaudible].

16 MR. LALLI: Your Honor, I object to the question.

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

18 MR. PIKE: I'll withdraw the question.

19 THE COURT: All right. Anything further?

20 MR. PIKE: Nothing further.

21 MR. LALLI: No, Your Honor.

22 THE COURT: Any further questions -- we do have
23 another question by the jurors.

24 Counsel, approach.

25 (Bench conference)

1 THE COURT: How long is Herb going to be? How long
2 is -- complicated will it be?

3 MR. LALLI: It shouldn't be too long.

4 THE COURT: What does that mean?

5 MR. LALLI: Well, my direct will probably be about
6 -- my direct will probably be maybe 20 minutes.

7 THE COURT: Okay.

8 MR. PIKE: So we --

9 THE COURT: So 2 hours and 20 minutes?

10 MR. PIKE: No objection.

11 MR. LALLI: No objection.

12 THE COURT: All right. Okay.

13 (End of bench conference)

14 THE COURT: All right. Ms. Ayers, we have an
15 additional question from one of the jurors. "Did you find any
16 blood from the tire tracks to the place where the bodies were
17 located?"

18 THE WITNESS: There was none that we were able to
19 see.

20 THE COURT: All right. Any followup by the State to
21 this question?

22 MR. LALLI: No, Your Honor.

23 THE COURT: Followup by the defense?

24 MR. PIKE: No, Your Honor. Thank you.

25 THE COURT: Any additional questions by the jurors?

1 No additional questions.

2 Thank you, Ms. Ayers, for your testimony. You are
3 excused.

4 THE WITNESS: Thank you.

5 THE COURT: I think you are going to -- you're
6 subject to being recalled --

7 THE WITNESS: Yes.

8 THE COURT: -- by one or more or both the parties.
9 Next witness for the State.

10 MR. LALLI: Harold Herb.

11 THE MARSHAL: Mr. Herb, if you'll remain standing.
12 Please, sir, raise your right hand and face the clerk.

13 HAROLD HERB, STATE'S WITNESS, SWORN

14 THE MARSHAL: If you would, sir, please have a seat.
15 Slide up to the microphone. Now sir, if you would please
16 state and spell your name for the record.

17 THE WITNESS: Harold J. Herb, II., H-A-R-O-L-D, H-E-
18 R-B.

19 DIRECT EXAMINATION

20 BY MR. LALLI:

21 Q Mr. Herb, are you employed?

22 A No.

23 Q What do you do?

24 A I'm retired.

25 Q Where do you live?

1 A I live in Idaho.
2 Q How long --
3 A Kuna, Idaho.
4 Q How long have you lived in Idaho?
5 A Six and a half months.
6 Q Prior to that where did you live?
7 A I lived at 140 Sir Noble Street.
8 Q Is that here in Las Vegas?
9 A In Las Vegas, yes, sir.
10 Q Did you -- do you have any sons?
11 A Yes, I do. I have four.
12 Q I want to direct your attention to May of 2006.
13 Were you living at that Sir Noble address in May of 2006?
14 A Yes.
15 Q You mentioned your sons. Who are your sons?
16 A Donald, David, Chad and Brendan [phonetic].
17 Q Who is the oldest?
18 A Donald.
19 Q And David -- back in May of 2006, did David live
20 with you?
21 A Yes, he did.
22 Q And did Donald live with you also?
23 A Yes, he did.
24 Q Do you -- or do you know an individual by the name
25 of Jason McCarty?

1 A Yes, I do.

2 Q How do you know Mr. McCarty?

3 A He was a friend of my son's for approximately four
4 years.

5 Q Was he known to you by the nickname of Rome, or
6 Romeo?

7 A Yes.

8 Q Can you describe for us how your son, Donny, how did
9 he know Rome? I'll refer to him as Rome.

10 A They were friends, and he lived with Rome and his
11 wife and children for about two and a half years, probably.

12 Q Specifically, in May of 2006, I take it Donny was no
13 longer living with Rome?

14 A Correct.

15 Q Did Rome have any physical disabilities?

16 A Yes, he did.

17 Q What did -- describe those for us.

18 A His -- I believe it was his right arm was
19 handicapped due to cerebral palsy.

20 Q All right. Did you know an individual by the name
21 of D-Roc?

22 A I met him twice.

23 Q Where?

24 A At my house.

25 Q Who brought him to your house?

1 A Donald did.

2 Q Do you see D-Roc in the courtroom?

3 A Yes, I do.

4 Q Can you please point to him and identify something
5 he's wearing today?

6 A He's got a blue shirt on.

7 Q Okay.

8 MR. LALLI: Your Honor, may the record reflect that
9 the witness has identified the defendant?

10 THE COURT: Yes, it will.

11 BY MR. LALLI:

12 Q Did you know D-Roc's actual name?

13 A No, I didn't.

14 Q All right. Do you remember your home phone number
15 back on Sir Noble?

16 A 453-9274.

17 Q Was that area code 702?

18 A Yes.

19 Q Okay. Your son, Don, did he have any vehicles?

20 A He had two.

21 Q Can you describe them for us?

22 A He had a green Alero, and he had a white -- I'm not
23 sure. I think -- I'm pretty sure it was a Toyota but I won't
24 hold to that. I know it was a foreign car.

25 MR. LALLI: Can I approach the witness, Your Honor?

1 THE COURT: Yes.

2 BY MR. LALLI:

3 Q Mr. Herb, I'm going to show you what we've marked as
4 State's proposed 70, for identification purposes. Do you
5 recognize that?

6 A Yes.

7 Q What is it?

8 A That's the Alero.

9 Q Is that a fair and accurate depiction of that
10 vehicle?

11 A Yes, it is.

12 Q And I'm going to show you State's proposed 153 for
13 identification. Do you recognize that vehicle?

14 A Yes, I do. That's --

15 Q What is it?

16 A That's -- I believe it a Toyota. I won't --

17 Q That was your son, Donald's car?

18 A Yeah, that was Donald's second car.

19 Q Is that a fair and accurate depiction of what that
20 vehicle looked like?

21 A Yes.

22 MR. LALLI: Your Honor, I would move for the
23 admission of State's proposed 70 and 153.

24 MR. CANO: No objection, Your Honor.

25 THE COURT: All right. They'll both be admitted.

1 (State's Exhibits 70 and 153 admitted)

2 BY MR. LALLI:

3 Q Let's talk about the Alero first, State's Exhibit
4 70. Can you tell us how long Donald had owned that vehicle?

5 A At that point I believe he only had it a year.

6 Q How did he obtain it?

7 A He bought it at Garden Ford.

8 Q Did Donald work at this time?

9 A Yes, he did.

10 Q Where did he work?

11 A Creel Printing.

12 Q And did Donny have -- did he drive that car?

13 A Yes, he did.

14 Q All right. I'm going to show you State's 153. You
15 identified that as his other vehicle.

16 A Correct.

17 Q Why did Donny buy this white vehicle?

18 A He had planned on fixing it up with Rome and then he
19 was going to give it to Rome.

20 Q In May and April of 2006, was this vehicle in
21 Donny's possession?

22 A No, sir.

23 Q Where was it?

24 A Rome had it.

25 Q Why?

1 A He was using it to haul his family around.

2 Q Was the friendship between Donny and Rome such that
3 he would allow him to use the vehicle?

4 A Yes, it was.

5 Q Did that bother you at all?

6 A Yes, it did.

7 Q Why?

8 A Because it was a fairly new vehicle and I didn't
9 think he should be lending it out to his friends.

10 Q On this Alero, were the tires on it fairly new?

11 A Yes, they were.

12 Q Can you tell us why they were fairly new?

13 A He -- when he bought the car unaware to both of us,
14 the tires were worn and one of them blew out and he had to get
15 all four replaced at the -- at the same time.

16 Q When you're saying "he" I assume you were --

17 A My son, Donald.

18 Q If you could just wait for me to ask the question.

19 A I'm sorry, I apologize, again.

20 Q Just wait for me to ask the question before you
21 answer it so we're not talking over each other, okay?

22 A Okay.

23 Q Thank you. In May of 2006, was Donny involved in a
24 program called Drug Court?

25 A Yes, sir.

1 Q What's Drug Court?

2 A He had to go to court a couple times a week and be
3 tested to make sure he was clean. And it was punishment for
4 messing up again on drugs.

5 Q When you talked about him being clean, was -- would
6 he be tested for drugs in the Drug Court program?

7 A Yes, he was.

8 Q Based upon a positive drug test, would he be
9 punished --

10 A Yes.

11 Q -- more by the Court who was supervising that
12 program?

13 MR. CANO: I'm going to leading at this point in
14 time.

15 MR. LALLI: Well, I'm just kind of getting through
16 it. It's kind of foundational, Your Honor, so the jury has
17 some idea of what's involved.

18 THE COURT: Okay. Are you done with your foundation
19 here?

20 MR. LALLI: I am, actually.

21 THE COURT: All right. Move on.

22 BY MR. LALLI:

23 Q Did Donny attend Drug Court on Wednesday, May 17th,
24 2006?

25 A Yes, he did.

1 Q Did you learn that something had happened that he
2 had been admonished in some way on that date?

3 A Yes, I did.

4 Q What happened?

5 A He had to write, I think it was like 5,000 sentences
6 or something like that before his next court appearances
7 because he tested positive and he missed a court appearance.

8 Q So he attended Drug Court on May 17th, 2006?

9 A Yes.

10 Q And at that hearing he was ordered to write a number
11 of times some sort of sentences by the Judge?

12 A Yes, sir.

13 Q Did you see Donny that evening?

14 A Yes, sir.

15 Q Where?

16 A At home.

17 Q Do you remember that evening?

18 A Yes, I do.

19 Q Can you tell us what happened?

20 A It was a little after 8:00. He come in the door and
21 said he was back because he needed to write some sentences.
22 And went in the kitchen --

23 MR. CANO: Object as to hearsay, Your Honor.

24 THE COURT: Sustained.

25 (Pause in the proceedings)

1 BY MR. LALLI:

2 Q All right. Don't tell us what Donny told you but --

3 A Okay.

4 Q -- were you -- what did you see him doing?

5 A Writing sentences.

6 Q What were you doing at the time?

7 A Watching "Cold Case".

8 Q Describe for us what happens during the course of
9 the evening.

10 A He just kept writing sentences while we were
11 watching TV and talking.

12 Q Did -- did you see him eat anything?

13 A Yes, I did.

14 Q What?

15 A Spaghetti.

16 Q Who fixed that for him?

17 A He did.

18 Q During the span of that evening does your phone
19 ring?

20 A Not the home phone.

21 Q Okay. Does a phone ring?

22 A Yes.

23 Q Tell us about that.

24 A It was his cell phone. He got a phone call.

25 Q Did you hear him answer the phone?

1 A Yes, I did.

2 Q About what time was that, do you recall?

3 A It was around 10:30.

4 Q And do you hear him talking on the telephone?

5 A Yes, I did.

6 Q Do you know who it was who called?

7 A Not until I asked.

8 Q All right. So he told you that somebody had called
9 him?

10 A Yes.

11 Q What happened next?

12 A Just continued on watching television until the news
13 came on and then watched the news a little bit and then I went
14 upstairs, told him I was going to bed.

15 Q What time do you recall going to bed that night?

16 A It was pretty close to 11:30.

17 Q And was your son, Don, still at your house?

18 A Yes, he was.

19 Q What did you do about 11:30?

20 A Put the dogs away.

21 Q You put the dogs away, or --?

22 A Normally, yes. But since he was up, I asked him to
23 do it.

24 Q As far as you know, did he do that?

25 A Yes, he did.

1 Q And then what do you do?

2 A I went to bed and went to sleep.

3 Q As best you can recall, when was the last time that
4 evening that you had any communication with Donny while he was
5 there at your house?

6 A When I yelled back down the steps, "Don't forget to
7 lock the dogs up."

8 Q And that was about 11:30 in the evening?

9 A Yes.

10 MR. LALLI: Your Honor, at this point, I don't know
11 if this is -- this has not been marked yet, but I would ask
12 that it be marked as the State's next in order. It's a
13 certified copy of court minutes for Donald Herb showing that
14 he attended Drug Court on May 17th of 2006.

15 THE COURT: And you're offering it at this time?

16 MR. LALLI: Yes.

17 THE COURT: All right. Mr. Cano?

18 MR. LALLI: Just as the next in order.

19 MR. CANO: Object to relevancy, Your Honor.

20 MR. LALLI: Your Honor, the relevance is that it
21 shows that Donald Herb --

22 MR. CANO: Your Honor, if we could approach.

23 THE COURT: Okay.

24 (Bench conference)

25 MR. LALLI: The relevance, Your Honor, is that it

1 shows that Donald Herb did, in fact, attend Drug Court this
2 particular evening and was ordered to write sentences however
3 many thousands of times. And it corroborates both Harold and
4 it will I think corroborating Donny as well.

5 THE COURT: Response?

6 MR. CANO: I don't think it's relevant.

7 THE COURT: Okay. All right. I'm going to -- I'll
8 admit it.

9 (End of bench conference)

10 THE COURT: And what number is that, Carol?

11 THE CLERK: [Inaudible].

12 THE COURT: I'm sorry?

13 THE CLERK: 224.

14 THE COURT: 224 will be admitted.

15 (State's Exhibit 224 admitted)

16 MR. LALLI: Thank you. Your Honor, for the record
17 this is a certified copy of criminal court minutes pertaining
18 to Donald Herb indicating that on May 17th, 2006, at 5:30
19 p.m., he did attend Drug Court and was ordered to write
20 sentences a number of times.

21 THE COURT: All right.

22 MR. LALLI: So with that, Your Honor, that concludes
23 direct examination.

24 THE COURT: All right. Cross?

25 MR. CANO: Thank you, Your Honor.

CROSS-EXAMINATION

1
2 BY MR. CANO:

3 Q Good afternoon, Mr. Herb.

4 A Good afternoon.

5 Q You said you retired. What'd you used to do?

6 A I retired from the Air Force and then I was a
7 electronic technician/computer tech.

8 Q Okay. And that was your job that you retired from,
9 as well as from the Air Force?

10 A No, I retired from -- medically -- I had to
11 medically retire from working at all.

12 Q Okay. Do you have any law enforcement background?

13 A No, sir.

14 Q From the Air Force?

15 A No.

16 Q Okay. Now, you -- did you have an opportunity to
17 review the statement that you gave to the police prior to
18 testifying today?

19 A Yes, I did.

20 Q Okay. And who gave that to you?

21 A The DA's office.

22 Q The DA's office? These two gentlemen that --

23 A Yes.

24 Q -- are sitting across the table? Would it be Mr.
25 Lalli?

1 A Yes.

2 Q Okay. Have you met with Mr. Lalli before to discuss
3 this case?

4 A Yes, when I got into town.

5 Q Okay. That -- prior to this --

6 A Yes.

7 Q -- this hearing? You also talked to him prior to
8 another trial, correct?

9 A Yes, sir.

10 Q And you testified at that trial?

11 A Yes, sir.

12 Q And were you able to review your statement prior --
13 your testimony then as well?

14 A Yes, sir.

15 Q Okay. And you had met with the DA's at the DA's
16 office as well?

17 A Yes, sir.

18 Q And that was to discuss this case, correct?

19 A Yes, sir.

20 Q All right. Overall, how much time do you think
21 you've spent with the DA's to discuss this case?

22 A Maybe a couple hours.

23 Q Okay. And I think your wife had met with them, as
24 well?

25 A Yes, sir.

1 Q And your wife is Kelly?

2 A Yes, sir.

3 Q Okay. And did you have the opportunity to review
4 your transcript from the prior trial?

5 A Yes, sir.

6 Q And you did that prior to your testimony as well?

7 A Yes, sir.

8 Q And how much time did you spend on reviewing that?

9 A About 45 minutes.

10 Q Now, your -- I want to talk a little bit about your
11 son's arrest, okay?

12 Fair to say that that was in the later part of May
13 of 2006?

14 MR. LALLI: Which arrest are we --

15 BY MR. CANO:

16 Q Do you recall when he was --

17 MR. LALLI: -- referring to?

18 MR. CANO: Okay. Well, all right. Let's get --
19 okay, I'll get a little clarification.

20 THE COURT: Okay. Thank you.

21 BY MR. CANO:

22 Q Your son has a couple prior felonies, correct?

23 A Yes, sir.

24 Q All right. And those felonies were drug related
25 felonies?

1 A Yes, sir.

2 Q All right. And he had been put on probation after
3 his first felony?

4 A Yes, sir.

5 Q All right. And that happened I think in 2004 --
6 2004, 2005?

7 MR. LALLI: Your Honor, I'm going to object as to
8 relevance with respect to this witness.

9 THE COURT: As far as the probation is -- why don't
10 counsel approach.

11 (Bench conference)

12 THE COURT: [Inaudible] ask him about when he was on
13 probation?

14 MR. CANO: Just [inaudible] I was just trying to
15 clarify and get to the [inaudible].

16 MR. LALLI: Well, Donny Herb is going to testify and
17 he can talk to Donny Herb about his priors. I don't think his
18 -- I don't think going into just -- I mean, obviously we have
19 to bring out that he was, you know, in Drug Court. So we have
20 to do that. But unless it's for impeachment, and Donny Herb's
21 not the one who's testifying here.

22 So, I guess, I mean, I'd just like an offer of proof
23 as to where counsel is going because I don't think it's --

24 THE COURT: He's --

25 MR. LALLI: -- relevant.

1 THE COURT: -- he's going to testify?

2 MR. LALLI: Donny Herb?

3 THE COURT: Yeah.

4 MR. LALLI: Yes, he'll be here on Monday.

5 THE COURT: Okay. That's right, you said that
6 already.

7 MR. LALLI: [Inaudible].

8 THE COURT: Okay.

9 (End of bench conference)

10 BY MR. CANO:

11 Q Your son was -- picked up another felony after that
12 first one, correct?

13 A Yes, sir.

14 Q And that was also drug related?

15 A Yes, sir.

16 Q And he was placed on -- and that was in 2006,
17 correct?

18 A I believe so. I'm not sure.

19 MR. LALLI: Your Honor, once again, I'm going to
20 interpose an objection.

21 MR. CANO: Well, I'm going to bring the relevancy,
22 because it was during this time frame, Your Honor.

23 THE COURT: All right.

24 MR. LALLI: But the relevance is to -- is to Donald
25 Herb, not to his father. So, Donald Herb is going to testify.

1 Those -- those questions are legally appropriate for Donald
2 Herb, not for Harold Herb. So I would object as to relevance
3 at this point.

4 THE COURT: Mr. Cano?

5 MR. CANO: He lived with him. He knows whether or
6 not his son was on probation or not.

7 THE COURT: Well, he's going to be here on Monday.

8 MR. CANO: And I'll discuss it with Mr. Herb, as
9 well.

10 THE COURT: Okay. Are you going to a different
11 area?

12 MR. CANO: Yeah, I'm getting there, Your Honor.

13 THE COURT: Okay. Let's get there real quick, all
14 right?

15 MR. CANO: Okay.

16 BY MR. CANO:

17 Q He was on probation from the last felony he had,
18 correct?

19 A Yes, sir.

20 Q And as part of that probation he was also in Drug
21 Court?

22 A Yes, sir.

23 Q And that's the Drug Court that I think the District
24 Attorney's Office was referring to, correct?

25 A Yes, sir.

1 Q Okay. Now, your son was arrested the week of May --
2 I think it was May 24th or May 25th of 2006?

3 A Yes, sir.

4 Q Okay. And you weren't in town?

5 A No, sir, I was not.

6 Q Okay. You were in Idaho, correct?

7 A Yes, sir.

8 Q All right. And you were -- but your son Dave was
9 living with you currently during that time frame, correct?

10 A Yes, sir.

11 Q He was here in town?

12 A Yes, sir.

13 Q Okay. You were in communications with your son,
14 Dave, during that period?

15 A No, sir, I was not.

16 Q Okay. But at some point in time while you were away
17 in Idaho you learned that your son was arrested, correct?

18 A Yes, sir.

19 Q Okay. And you got back into town I think prior to
20 his first court appearance; is that correct?

21 A Yes, sir.

22 Q And that first court appearance was in Henderson?

23 A Yes, sir.

24 Q Now, you were also in telephonic contact with your
25 son while he was in custody?

1 A Yes, sir.

2 Q Okay. And that was after you returned to Las Vegas,
3 correct?

4 A Yes, sir.

5 Q And when you discussed -- when you talked to your
6 son over the phone, would it be fair to say that you discussed
7 the reasons why he was arrested, correct?

8 A Yes, sir.

9 Q As a matter of fact, I think you picked up some
10 information from his court appearance, like the police
11 reports, or the charging instruments while -- when you -- when
12 you went to that court appearance after you returned, correct?

13 A Yes, sir.

14 Q And you discussed that with your son when you talked
15 to him over the phone?

16 A Yes, sir.

17 Q And he was calling you from Henderson jail?

18 A Yes, sir.

19 Q Okay. And in that discussion you told your son
20 that, you know, the charges he was facing was murder?

21 A Yes, sir.

22 Q Okay. And you had an opportunity to discuss some of
23 the police statements that were contained in the information
24 you got from the court?

25 A Yes, sir.

1 Q Okay. And you also told him that his bail was set,
2 I think, at \$2 million?

3 A Yes, sir.

4 Q Okay. And you were -- and you realized that this
5 was a very serious case that your son was charged with?

6 A Yes, sir.

7 Q And that brought great concern to you, correct?

8 A Yes, sir.

9 Q You were also -- I want to talk to you a little bit
10 about Donny's demeanor when you were talking to him over the
11 phone regarding this case.

12 Fair to say that he was pretty anxious?

13 A Yes.

14 Q Okay. Nervous?

15 A Yes.

16 Q Okay. Desperate?

17 A Yes.

18 Q Okay. Also I believe he may have been crying or
19 expressed some type of emotion like that?

20 A Yes, sir.

21 Q And when you heard his demeanor over the phone that
22 even brought greater concern to you regarding your son?

23 A Yes.

24 Q Okay. And Donny didn't like being in jail?

25 A No, sir. He did not.

1 Q And you talked to him about obtaining an attorney
2 for him to represent him in this case?

3 A Yes, sir.

4 Q Okay. And you also talked to him about whether or
5 not you were able to make bail to try to get him out?

6 A Yes, sir.

7 Q All right. But unfortunately due to the means that
8 you had, you didn't have the means to bail -- to post the bail
9 for \$2 million, did you?

10 A That is correct.

11 Q And you love your son?

12 A Yes, I do.

13 Q And you wanted to help him as much as you could?

14 A Yes.

15 Q And if you could afford to give him an attorney, a
16 private attorney, you would do that?

17 A Yes.

18 Q And if you could afford to pay that bail you
19 would've done that as well?

20 A Yes.

21 Q You probably would've done anything you could've to
22 help your son out of this situation; is that a fair statement?

23 A Most anything.

24 Q Okay. Now, you were visited by the police May 31st,
25 2006, correct?

1 A Yes, sir.

2 Q When they came to you, the subject that they came to
3 talk to you about was your son, correct?

4 A Yes, sir.

5 Q All right. By that point in time the cars -- the
6 two cars you talked about earlier, the green Alero and the
7 white Toyota, they were already impounded by the police?

8 A Yes, sir.

9 Q So they weren't at your home, correct?

10 A No, sir.

11 Q Okay. So by the time you got back from Idaho you
12 know that those were gone already?

13 A Yes, sir.

14 Q And the two detectives that were there discussed
15 your -- talked to about your son. Your wife was also present,
16 correct?

17 A Yes, sir.

18 Q And so was your son, Dave?

19 A Yes, sir.

20 Q Okay. And at that point in time was Donny's son
21 living with you as well?

22 A Donny's son was my son. I adopted him.

23 Q Okay. So that's Brendan?

24 A That's Brendan.

25 Q Okay. And at that age -- at that point in time he

1 was nine years old?

2 A Yes, sir.

3 Q Okay. But he was also there in the house as well?

4 A Yes, sir.

5 Q Okay. And now is it your belief that when the
6 police were talking to you they were trying to get your
7 assistance in order to talk to your son?

8 A Yes, sir.

9 Q Okay. And that's because your son had requested
10 a --

11 MR. LALLI: I'm going to object as to anything that
12 Donald Herb requested.

13 MR. CANO: Okay.

14 THE COURT: Hearsay?

15 MR. LALLI: Yes.

16 THE COURT: Sustained.

17 BY MR. CANO:

18 Q And is it your belief after you were discussing with
19 the police -- and don't tell me what the police were saying,
20 okay? I want to know what you thought, okay?

21 Is it your belief that after you had this discussion
22 with the police that they weren't able to talk to your son?

23 A Yes.

24 Q And they were trying to get your assistance in order
25 to talk to your son?

1 A Yes.

2 Q Okay. And they actually -- is it belief [sic] that
3 after you had discussion with your sons, that your son
4 would've been in a better position if he was not a suspect as
5 he was, but they preferred to have him be a witness?

6 MR. LALLI: I'm going to object as to what the
7 police officer said. That's hearsay. Detective Collins will
8 testify in the case, Your Honor.

9 MR. CANO: I'll rephrase, Your Honor.

10 THE COURT: Okay. I'm going to sustain. Sustain.
11 BY MR. CANO:

12 Q All right. You've actually testified at a previous
13 trial that the police had told you that the --

14 MR. LALLI: Objection, hearsay.

15 THE COURT: Sustained.

16 MR. CANO: All right.

17 BY MR. CANO:

18 Q Is it your belief that your son would've been in a
19 better position if he would --

20 MR. LALLI: I'm going to object -- I'm sorry.

21 MR. CANO: I'm asking his belief, Your Honor.

22 MR. LALLI: I'm going to object as to relevance as
23 to what his beliefs are. His beliefs aren't really relevant
24 to these proceedings. What he did, what he saw, those things
25 are relevant.

1 MR. CANO: Well, obviously, Your Honor, it is
2 relevant. Because --

3 THE COURT: Well, let's discuss it --

4 MR. CANO: Okay.

5 THE COURT: -- up at the bench here.

6 (Bench conference)

7 MR. CANO: It's relevant because he's provided an
8 alibi for his son [inaudible]. So I want to know what his
9 beliefs were, not what his son's position was. And
10 [inaudible] try to get there. That's why it's relevant.

11 MR. LALLI: It's also speculative as to what his
12 beliefs are.

13 MR. CANO: It's not speculative. I can ask him if
14 they were [inaudible]. If they weren't, they weren't.

15 MR. LALLI: Well, the things that he assumed, or the
16 -- that's all speculation.

17 THE COURT: Well, how -- how is he establishing an
18 alibi? Because [inaudible] doesn't know what happened.

19 MR. LALLI: He's an alibi up until the point in time
20 that he goes to sleep.

21 THE COURT: Okay. From 6:00 to 11:00 or whatever --

22 MR. LALLI: Correct, to 11:30.

23 THE COURT: -- [inaudible]. So your question -- say
24 your question again.

25 MR. CANO: Is it his belief that his son would be --

1 that it would be better for his son to be a witness in this
2 case as opposed to a suspect.

3 MR. LALLI: Well, that's not the question he asked.

4 MR. CANO: That's the question I was about to ask.

5 THE COURT: Is it his belief --

6 MR. CANO: His belief.

7 THE COURT: -- that it would've been better for his
8 son to be a witness in this case [inaudible].

9 MR. CANO: [Inaudible] suspect.

10 THE COURT: Do you have an objection?

11 MR. LALLI: I don't have an objection to that
12 question.

13 MR. CANO: That's the question I was going to ask.

14 MR. LALLI: Okay. All right.

15 THE COURT: All right.

16 MR. LALLI: I don't have any objection to that.

17 (End of bench conference)

18 THE COURT: Mr. Cano, are you going to rephrase the
19 question or restate it?

20 MR. CANO: Thank you.

21 BY MR. CANO:

22 Q Is it your belief that your son would've been in a
23 better position if he was a witness in this case as opposed to
24 a suspect?

25 A Yes.

1 Q Is it also your belief that if he could move away
2 from being the suspect that he'd be in a -- well, let me
3 withdraw that question.

4 All right. Would it be fair to say that -- let me
5 move forward, Your Honor. Would it be pretty -- fair to say
6 that after your discussion with the police they had really
7 emphasized this point, that they wanted your assistance?

8 MR. LALLI: I'm going to object as to anything the
9 police emphasized --

10 THE COURT: Sustained.

11 MR. LALLI: -- as hearsay.

12 THE COURT: Sustained.

13 BY MR. LALLI:

14 Q Now, your son Donny was in the Drug Court program,
15 correct?

16 A Yes.

17 Q And you weren't aware that he was ingesting drugs
18 during this time period, correct?

19 A Say that again?

20 Q You were not aware that he was ingest -- let me ask
21 you this question. You were not aware during this May time
22 period, April/May of 2006 time period, that your son was
23 ingesting drugs on a regular basis?

24 A No, sir.

25 Q Okay. You were aware of one test that he tested

1 positive for, correct?

2 A Yes, sir.

3 Q Okay. And you weren't aware that your son was
4 selling drugs?

5 A No, sir.

6 Q Okay. If you aware of that, you wouldn't have
7 allowed that to happen from your home, correct?

8 A That is correct.

9 Q And you wouldn't expect that from your son,
10 especially since he was on probation and going through this
11 Drug Court program, correct?

12 MR. LALLI: I'm going to object as to relevance as
13 to what he would expect from his son.

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

15 BY MR. LALLI:

16 Q Now, I want to talk to you a little bit about some
17 of the people that your son knew. Does your son know a person
18 named Trey?

19 A That -- I've heard the name but I don't know.

20 Q Okay. Have you ever met a person named Trey at your
21 house?

22 A No, sir.

23 Q Okay. Did you ever -- did your son know a person
24 named Black?

25 A That I could not tell you.

1 Q Okay. What about a person named Red?

2 A No, sir, not that I'm aware of.

3 Q Okay. Have you heard -- were you aware that your
4 son knew a person named Victoria?

5 A Yes.

6 Q Okay. Was that Victoria McGee?

7 A That I couldn't say. All I knew was Victoria.

8 Q Okay. Had your son brought Victoria over to your
9 residence?

10 A No, sir.

11 Q Okay. What about a person named Christina?

12 A I've heard the name and that's all.

13 Q Okay. And you said that Domonic had been to your
14 house --

15 A Yes.

16 Q -- a couple times. Okay. And how long did Domonic
17 stay when he came to your house?

18 A No more than 3, 4 minutes at the most.

19 Q Okay. So it was pretty much just kind of coming
20 inside your house for a few minutes and then leaving?

21 A Correct.

22 Q And he was with your son at the time?

23 A Yes.

24 Q Okay. Now, I want to talk a little bit about the
25 cars. You said that Romeo is using the green Alero during

1 this time frame?

2 A Yes.

3 Q Okay. But your son had drive than car previously,
4 correct?

5 A Yes.

6 Q Okay. And your son was driving the white Toyota?

7 A Not all the time.

8 Q Okay. And that was because there was problems with
9 emissions needed to get the registration on the car?

10 A Yes, sir.

11 Q Okay. Would it be fair to say that your son would
12 trade the white Toyota with the green Alero off and on with
13 Romeo?

14 A No.

15 Q You never saw that happen during --

16 A Not --

17 Q -- this time frame?

18 A Not that I'm aware of.

19 Q Okay. Now, your son was close to Romeo, correct?

20 A Yes.

21 Q They lived together for two and a half years you
22 said?

23 A Approximately.

24 Q Okay. And they worked together at Creel?

25 A Yes.

1 Q Okay. They would hang out together or -- on
2 practically a daily basis; is that a fair statement?

3 A Yes.

4 Q Okay. And they would be in telephone contact on a
5 daily basis as well?

6 A Yes.

7 Q Okay. Would it be fair to describe them maybe as
8 kind of two peas in a pod?

9 A Just good friends.

10 Q Okay. And because of this close relationship, that
11 was the reason why your son allowed Romeo to use his vehicle?

12 A Yes.

13 Q But that didn't make you happy as you've testified
14 earlier?

15 A No, it did not.

16 Q Now, you said that you went to sleep that evening at
17 11:30?

18 A Yes, sir.

19 Q Okay. And once you went to bed you never got back
20 up?

21 A No, sir.

22 Q You never got back up to check to see where your son
23 was at?

24 A He was old enough to do what he wants to do, when he
25 wants to do it.

1 Q So you never got back up to check on your son?

2 A No, sir.

3 Q Okay. And you don't recall -- your son when he
4 would work at the Creel, he would go in early in the morning;
5 is that a fair statement?

6 A Yes, sir.

7 Q Okay. Do you know what time he would start work?

8 A I believe he was supposed to start at 5:00 in the
9 morning.

10 Q Okay. Would it be fair to say that he would be up
11 and about around, you know, 4:00 in the morning to prepare to
12 go to work?

13 A Yes.

14 Q Okay. And you would be aware of that? Would you
15 hear that sometimes while you were living with him?

16 A Not all the time.

17 Q But on occasions you would?

18 A On occasion.

19 Q Okay. And the night in question that we're talking
20 about, that Wednesday when you went to bed at 11:30, do you
21 remember waking up to any kind of alarms or hearing Donny
22 getting ready to go to work?

23 A No.

24 Q No? All right. Okay. So after you went to bed at
25 11:30, you had no idea what he did or where he went?

1 A No, sir.

2 Q Okay. And you weren't aware that he left the house
3 that night?

4 A No, sir.

5 Q Okay. Now, at the time that you were talking to the
6 police you knew that he was charged with a double homicide,
7 correct?

8 A Yes, sir.

9 Q And you also were aware that if you told the police
10 that he was with you that entire night, that that could
11 possibly assist him in his case?

12 A Yes, sir.

13 Q Okay. But you weren't necessarily aware at what
14 time the two victims were killed in this case, were you?

15 A No, sir.

16 Q You were also aware that obviously your son's cars
17 that were impounded may have had some type of evidentiary
18 value in this case?

19 A Yes.

20 Q Okay. And the police inquired about both vehicles
21 with you, correct?

22 A Yes.

23 Q And when they were inquiring regarding some of the
24 damage to the white Toyota, your wife volunteered that she was
25 the one that caused the damage?

1 MR. LALLI: I'm going to object as to what Mrs. Herb
2 might have said.

3 THE COURT: Sustained.

4 MR. LALLI: It's hearsay.

5 THE COURT: Sustained.

6 BY MR. LALLI:

7 Q Would it be a fair statement that whatever damage
8 happened to the Toyota wasn't Donny's fault?

9 A Yes.

10 Q Okay. You wouldn't consider Domonic to be a close
11 friend of Donny's, would you?

12 A That I couldn't say. Only met the man twice.

13 Q And --

14 A And --

15 Q -- probably for a total of six minutes, correct?

16 A At the very most.

17 Q Okay. At the very most six minutes. And it wasn't
18 a name that wouldn't be floating around your house a lot,
19 correct?

20 A No.

21 Q Unlike Romeo's?

22 A That is correct.

23 Q When the police came and conducted an interview at
24 your house, did they conduct a search of your residence, or
25 Donny's room?

1 A No, sir.

2 Q Okay. Now, you said that Romeo had a handicap to
3 his right arm?

4 A Yes, sir.

5 Q Okay. But despite the fact that he had a handicap
6 to his right arm, was he able to use it in any capacity, or
7 have you ever observed him to use it in any capacity?

8 A Yes, sir.

9 Q Okay. What capacity did you observe him to use it?

10 A He can -- he was able to carry things in that arm.

11 Q Okay. Carry what type of things?

12 A Groceries, stuff like that.

13 Q Okay. So he was able to use it, grip items?

14 A Not grip, but he could set them in his arm and carry
15 them.

16 Q Okay. And would you demonstrate for the jury as to
17 how he would set it in his arms and carry it?

18 A Just set it over here and carry it.

19 Q Okay. So he'd use his entire arm, his hand as well?

20 A (No audible response).

21 Q Okay.

22 THE COURT: Is that a yes?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 THE WITNESS: I'm sorry.

1 THE COURT: Thank you.

2 BY MR. CANO:

3 Q Are you aware whether "Cold Case" was on more than
4 one time during the week at that -- during that time period?

5 A Yes, sir.

6 Q What other days was "Cold Case" on?

7 A Cold Case normally comes on on Sunday.

8 Q Okay. But this week it was on as Wednesday, as
9 well?

10 A No, sir, I had it taped on my DVR.

11 Q Okay. So that's why you were watching Cold Case?

12 A Yes.

13 Q Okay.

14 MR. CANO: Nothing further, Your Honor.

15 THE COURT: Any redirect?

16 MR. LALLI: Just very, very briefly.

17 REDIRECT EXAMINATION

18 BY MR. LALLI:

19 Q Mr. Herb, you were just asked about what days "Cold
20 Case" were on and you indicated that you had had it recorded.

21 A Yes, sir.

22 Q Is there anything that occurred on May 17th of 2006
23 that you did that relates to the recording of that show on the
24 DVR?

25 A Just that I had to back it up a little bit for him

1 to catch the first part.

2 Q Explain that to the jury, if you would.

3 Q I had started to watch it. And he come in the door,
4 and he said, "What are you watching?" And I said, "Cold
5 Case."

6 MR. CANO: Objection as to what he was saying, Your
7 Honor.

8 THE COURT: Sustained.

9 MR. LALLI: Well, it's not offered for the truth of
10 the matter, Your Honor. What are you watching, that's not
11 even -- that doesn't even relay facts. It's just to give some
12 sort of context to what had occurred. So it's not offered for
13 the truth of the matter.

14 THE COURT: I'm going to allow that and just tell us
15 what happened after that, sir.

16 THE WITNESS: Okay. He went out in the kitchen,
17 fixed some spaghetti and came in. And I backed -- backed it
18 up to the beginning so that he could see it from the beginning
19 so he knew what was going on.

20 BY MR. LALLI:

21 Q You testified in Mr. McCarty's trial; is that true?

22 A That is correct.

23 Q Rome's trial?

24 A Yes.

25 Q And you -- in that trial you explained how you had

1 rewinded the -- the DVR so that Donny could watch it --

2 A Yes, sir.

3 Q -- is that true? Mr. Cano asked if you would do
4 anything to help your son, and you qualified that. Do you
5 remember, Mr. Cano asked you, "Would you do anything to help
6 your son?"

7 A Yes.

8 Q And you said, "Almost anything."

9 A Yes.

10 Q Would you create a false alibi for your son?

11 A No, I would not.

12 Q Would you lie to the police for your son?

13 A No, sir.

14 Q Would you come to court and lie under oath to try to
15 help your son?

16 A No, sir, I would not.

17 Q Mr. Cano asked you about conversations that you had
18 with Donny while he was incarcerated in the Henderson jail.
19 Did you talk about Donny giving a statement to the police? Do
20 you remember that?

21 A Yes.

22 Q And what advice did you give your son when he spoke
23 to the police?

24 A I told him that he should tell the truth and don't
25 hold anything back.

1 Q Thank you.

2 MR. LALLI: Nothing else, Your Honor.

3 THE COURT: Mr. Cano, anything further?

4 MR. CANO: Yes, Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. CANO:

7 Q Your son was in custody during this time frame
8 relating to this murder case, correct?

9 A Yes, sir.

10 Q Okay. How long before he got out of custody?

11 A It was like three months or so.

12 Q So he was in custody for only about -- a period of
13 about three months on a double homicide?

14 A Yes, sir.

15 Q All right. And he's been out of custody ever since
16 he --

17 A Yes, sir.

18 Q -- got out? Correct?

19 A Yes, sir.

20 Q So, since 2006, for the last 5, going on 6 years,
21 he's been out and free, correct?

22 A Yes, sir.

23 Q All right. And he's been living with you?

24 A No, sir.

25 Q Okay. He's been -- since that period of time he's

1 moved out because --

2 A Up until we moved to Idaho he lived with us.

3 Q Okay. And you just recently moved to Idaho?

4 A Yes.

5 Q All right. And Donny didn't like jail, did he?

6 A Say that again?

7 Q Donny didn't like going to jail?

8 A No, he did not.

9 MR. CANO: Nothing further, Your Honor.

10 MR. LALLI: Nothing else, Your Honor.

11 THE COURT: Any questions by any of the jurors? We
12 do have a question or two. The Marshal will pick up the
13 question. Counsel, approach.

14 (Bench conference)

15 THE COURT: Is this the last witness for the day?

16 MR. LALLI: Yes.

17 THE COURT: Okay.

18 MR. LALLI: [Inaudible].

19 THE COURT: Okay. All right.

20 MR. LALLI: [Inaudible].

21 THE COURT: All right.

22 (End of bench conference)

23 THE COURT: Mr. Herb, we have some questions from
24 one of our jurors we'd like to ask you.

25 On May 17th, 2006, do you remember or observe Donny

1 driving the green or white car?

2 THE WITNESS: No, sir, I was out of town.

3 THE COURT: Did you see the green or white car, or
4 both, at home on May 17th, 2006?

5 THE WITNESS: No, sir.

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

7 MR. LALLI: Yes.

8 FURTHER REDIRECT EXAMINATION

9 BY MR. LALLI:

10 Q Mr. Herb, I want to focus on May 17th, the same day
11 that Donny had come home from Drug Court and was writing out
12 sentences. What car was he driving on that day?

13 A He didn't have a car -- the car. He was brought
14 home.

15 Q Where was the white car?

16 A Sitting out front.

17 Q All right. So it was at your house?

18 A Yes, sir.

19 Q Was he driving the green car?

20 A No, sir.

21 Q During -- how long had Donny not had the green car
22 before May 17th?

23 A It was approximately four months.

24 Q Thank you.

25 THE COURT: Anything further, Mr. Cano?

1 MR. CANO: Yes.

2 THE COURT: All right.

3 FURTHER RECROSS-EXAMINATION

4 BY MR. CANO:

5 Q Do you remember testifying at the previous trial
6 that you said he didn't have the car for two months?

7 A Yes, but that was clarified.

8 Q So your recollection is that he did have the car for
9 four months now?

10 A I don't remember saying --

11 Q Your recollection --

12 A -- two months at the other trial.

13 Q Now, was the white car in working order on May 17th?

14 A Yes.

15 Q It just didn't have the registration?

16 A That is correct.

17 Q So it could be used and driven?

18 A Not very far.

19 Q Was there some kind of mechanical problems with it?

20 A The engine was pretty much blown on it.

21 Q Okay. So would it surprise you to know that Donny
22 drove that car all the way out to Lake Mead?

23 A Yes, it would've. I wouldn't have thought it
24 would've made it.

25 Q Okay. Just kind of like you would've been surprised

1 that he was selling drugs out of your house under your own
2 nose?

3 A Yes.

4 Q Okay.

5 MR. CANO: Nothing further, Your Honor?

6 THE COURT: Anything further by the State?

7 MR. LALLI: No, Your Honor.

8 THE COURT: Any additional questions by any of our
9 jurors? No additional questions.

10 All right. Mr. Herb, thank you very much for your
11 testimony. You are excused.

12 Ladies and gentlemen, we're going to adjourn for the
13 day today. I hope you have a nice weekend. We're going to
14 come back at 9:30 on Monday. We will have a break Monday, and
15 then we'll have another break at lunchtime, so just -- we're
16 going to try to put a full day in on Monday. So we'll see you
17 back at 9:30 Monday.

18 During this weekend recess -- all right, on -- okay,
19 gentlemen, on Monday we're going to start at 9:30. The plan
20 right now is to adjourn at 5:00. On Tuesday, our best
21 estimate is to start at 10:00 a.m. And I think we're going to
22 plan to adjourn at 5:00. And Wednesday, the best estimate is
23 that we'll plan to start at 9:30, and again adjourn at 5:00.
24 Each day if there's any change I'll update the jurors, all
25 right?

1 Yes, sir?

2 JUROR NO. 8: What'd you say adjourn for Tuesday
3 was?

4 THE COURT: 5:00.

5 JUROR NO. 8: 5:00? So 5:00 all three days?

6 THE COURT: Yes.

7 JUROR NO. 8: Thank you.

8 THE COURT: Okay? Now again, understand that if
9 we're right in the middle of a witness and we have maybe 10
10 more minutes of questions left, we'll probably continue on.
11 But our goal is to stop at 5:00. All right?

12 So, ladies and gentlemen, during this weekend recess
13 it is your duty not to converse amongst yourselves or with
14 anyone else on any subject connected with this case, or to
15 read, watch, or listen to any report of or commentary on the
16 trial, or any person connected with the trial, or by any
17 medium of information, including without limitation,
18 newspapers, television, radio or the Internet. You're not to
19 form or express an opinion on any subject connected with this
20 case until the case is finally submitted to you.

21 We will see you back Monday at 9:30. Have a good
22 weekend.

23 (Jury recessed at 3:37 p.m.)

24 THE COURT: Okay. We're outside the presence of the
25 jury panel. State and defense, can you give me just a ball

1 park idea of when you think the trial phase of this case will
2 be concluded?

3 MR. LALLI: Middle of next -- middle of the week
4 after next.

5 THE COURT: Do you agree, defense?

6 MR. PIKE: Yes, Your Honor.

7 THE COURT: If -- so then I would -- does the State
8 and defense have proposed jury instructions prepared at this
9 time?

10 MR. PIKE: I have my rough draft prepared. I'll
11 submit them to the Court on Monday.

12 THE COURT: Okay. Any -- for both sides any special
13 instructions, please give me case citations, NRS, out of
14 jurisdiction cases, or whatever it may be.

15 MR. PIKE: Thank you, Your Honor.

16 MR. DiGIACOMO: I imagine we'll be submitting the
17 same proposed when we get to that last time period, Judge. So
18 we'll get ours over to you.

19 THE COURT: Okay. Get them to each side, each
20 other's.

21 MR. DiGIACOMO: At the same time.

22 THE COURT: And also if you could --

23 MR. PIKE: Right.

24 THE COURT: -- for both sides if you could email
25 your proposed to my law clerk, all right?

1 MR. LALLI: Yes.

2 MR. PIKE: We'll do, Your Honor.

3 MR. DiGIACOMO: We can take care of that, Judge.

4 MR. PIKE: And we anticipating that the Court had
5 already gone through and approved instructions in Mr.
6 McCarty's case, we're just working off of that. We'll have --
7 I've already prepared my objections for that so that we can
8 settle instructions --

9 THE COURT: The big question is --

10 MR. PIKE: -- if we have a break.

11 THE COURT: -- did the Supreme Court approve the
12 jury instructions. They're still pending.

13 MR. DiGIACOMO: Well, for the most part I think
14 we're going to be pretty close to --

15 MR. PIKE: The Lord only knows what our [inaudible].

16 MR. DiGIACOMO: I mean, the same issues. If there's
17 anything specific legally to this one that wasn't to that one,
18 the law is the law.

19 THE COURT: All right. Officer, we're having the
20 jury come back at 9:30. Excuse me, Officer, I don't know
21 which -- who's going to be in charge on Monday.

22 THE CORRECTIONS OFFICER: Right now, we're
23 [inaudible] bouncing around.

24 THE COURT: Okay. I want to have counsel here at
25 9:15, and the defendant here at 9:15 dressed out at 9:15. The

1 jury's going to come back at 9:30. I want us in the courtroom
2 at 9:15.

3 MR. PIKE: Thank you.

4 THE CORRECTIONS OFFICER: On --

5 UNKNOWN MALE SPEAKER: Monday.

6 THE CORRECTIONS OFFICER: -- Monday?

7 THE COURT: Yes.

8 THE CORRECTIONS OFFICER: Okay.

9 THE COURT: Everyone have a good weekend.

10 (Court recessed at 3:39 p.m., until the following day,

11 Monday, January 23, 2012, at 9:15 a.m.)

12 * * * * *

13

14

15

16

17

18

19

20

21

22

23

24

25

INDEXWITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------	---------------	--------------	-----------------	----------------

STATE'S WITNESSES:

Ryan Noe	2	30	71	74
Jennie Ayers	80	116	145	150, 157
Frank Herb	162	175	199, 204	202, 205

* * * * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
Exhibits 1-38	83
Exhibits 39, 41-44	92
Exhibit 48-67	95
Exhibits 70 and 153	166
Exhibit 221	109
Exhibits 221-A and 221-B	109
Exhibits 222	114
Exhibit 222-A	114
Exhibit 223	100
Exhibit 223-A	104
Exhibit 224	174

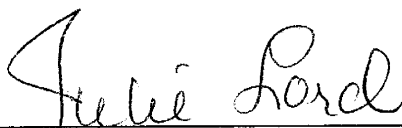
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Verbatim Digital Reporting, LLC
Englewood, CO 80110
(303) 798-0890



JULIE LORD, TRANSCRIBER

1-23-12

DATE

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

DOMONIC MALONE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 61006

Electronically Filed
Jan 14 2013 04:15 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME 11

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michael Villani, District Court Judge
District Court No. C224572

David M. Schieck
Special Public Defender
JoNell Thomas
Deputy Special Public Defender
330 S. Third Street, 8th Floor
Las Vegas, NV 89155

Attorneys for Appellant

Steven Wolfson
District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas NV 89155

Catherine Cortez-Masto
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701

Attorneys for Respondent

I N D E X

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
1	AMENDED INFORMATION (8/30/06)	046-053
18	COURT EXHIBITS ADMITTED AT TRIAL (UNFILED)	3652-3695
19	CRIMINAL COURT MINUTES (UNFILED)	3780-3927
7	DOCUMENTS PER COURT ORDER (6/22/11)	1312-1347
7	EX PARTE COMMUNICATIONS (DEFENDANT MEMORANDUM TO COURT) (PRO PER) (6/29/11)	1348-1353
5	EX PARTE MOTION FOR EXPENSES FOR PRIVATE INVESTIGATORS (PRO PER) (2/1/10)	977-978
1	INFORMATION (8/2/06)	001-008
17	INSTRUCTIONS TO THE JURY (1/31/12)	3431-3492
1	JOINDER WITH CO-DEFENDANT JASON McCARTY'S MOTION TO SEVER (10/25/06)	116-117
6	JUDGMENT OF CONVICTION (JURY TRIAL) (McCARTY) (4/6/11)	1287-1291
18	JUDGMENT OF CONVICTION (JURY TRIAL) (MALONE) (5/8/12)	3772-3776
7	JURY LIST (1/13/12)	1487
14	MALONE'S OBJECTIONS TO THE STATE'S PROPOSED TRIAL PHASE JURY INSTRUCTIONS (1/26/12)	2971-2984

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
7	MOTION FOR COMPLETE ROUGH DRAFT TRANSCRIPT OF (CASE NO. C224572-1) (PRO PER) (6/29/11)	1365-1452
2	MOTION FOR DISCOVERY OF INSTITUTIONAL RECORDS AND FILES NECESSARY TO A FAIR TRIAL (5/24/07)	292-299
7	MOTION FOR DISCOVERY OF PROSECUTION RECORDS FILES AND INFORMATION NECESSARY TO A FAIR TRIAL (PRO PER) (6/29/11)	1354-1364
6	MOTION FOR (FULL TRANSCRIPTION) DISCOVERY OF PROSECUTION RECORDS, FILES AND INFORMATION NECESSARY TO A FAIR TRIAL (PRO PER) (1/8/11)	1276-1277
5	MOTION FOR JUDICIAL DETERMINATION OF STANDBY COUNSELS OBLIGATIONS PURSUANT TO HOLLAWAY V. STATE (5/2/10)	990-997
6	MOTION FOR PARALEGAL; FINANCIAL ASSISTANCE; MEDICAL; PRIVATE INVESTIGATORS(S) (PRO PER) (7/8/10)	1110-1113
6	MOTION FOR PARALEGAL - (REHEARING) (PRO PER) (8/9/10)	1149-1152
5	MOTION FOR TRIAL (SPEEDY) AND OR IN THE ALTERNATIVE MOTION TO WITHDRAW COUNSEL (PRO PER) (12/3/09)	876-878
2	MOTION IN LIMINE TO BAR IMPROPER PROSECUTORIAL ARGUMENT (5/24/07)	265-287
2	MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE AS THE "GUILT PHASE" (5/24/07)	259-261

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
4	MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF HEARSAY STATEMENTS MADE BY CO-DEFENDANT MCCARTY AND OTHERS THAT REFERENCE DEFENDANT MALONE AT THE TIME OF TRIAL (8/20/09)	641-660
5	MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF HEARSAY STATEMENTS MADE BY CO-DEFENDANT MCCARTY AND OTHERS THAT REFERENCE DEFENDANT MALONE AT THE TIME OF TRIAL (3/25/10)	1021-1041
2	MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (5/24/07)	288-291
3	MOTION TO DISMISS COUNSEL (PRO PER) (1/7/09)	607-608
3	MOTION TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE, OR, IN THE ALTERNATIVE, MOTION FOR CORRECTIVE INSTRUCTION (1/31/08)	572-577
5	MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT GROUNDS BRADY VIOLATION OR IN THE ALTERNATIVE THE JURY TO BE INSTRUCTED ON MALONE'S EXACT WHEREABOUTS DURING THE TIME OF THE MURDER(S) (PRO PER) (11/1/10)	1240-1257
6	MOTION TO DISMISS STAND-BY COUNSEL (PRO PER) (1/8/11)	1278
2	MOTION TO FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS FOR THE PROCEEDINGS IN THE ABOVE ENTITLED CASE (5/24/07)	262-264

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
5	MOTION TO PRESERVE AND PRODUCE EVIDENCE INCLUDING POTENTIALLY EXCULPATORY EVIDENCE (PRO PER) (2/1/10)	957-976
18	MOTION TO RECUSE THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE (2/6/12)	3698-3702
3	MOTION TO RECUSE THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE OR IN THE ALTERNATIVE MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF STATEMENTS MADE BY CO-DEFENDANT HERB AT THE TIME OF TRIAL (1/12/09)	609-616
1	MOTION TO SEVER (McCARTY) (10/9/06)	054-071
1	MOTION TO SEVER (MALONE) (10/25/06)	092-115
5	MOTION TO SUPPRESS STATEMENTS OF CORRENA PHILLIPS OR IN THE ALTERNATIVE MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF STATEMENTS MADE BY STATE WITNESSES "PHILLIPS" AT THE TIME OF TRIAL (PRO PER) (8/2/10)	1140-1148
4	MOTION TO SUPPRESS STATEMENTS OF DEFENDANT, OR IN THE ALTERNATIVE, MOTION IN LIMINE (9/18/09)	696-703
2	MOTION TO SUPPRESS STATEMENTS OF DONALD HERB, OR IN THE ALTERNATIVE MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF STATEMENTS MADE BY CO-DEFENDANT HERB AT THE TIME OF TRIAL (5/25/07)	300-317
4	MOTION TO WAIVE TRIAL BY JURY ON ALL COUNTS ALLEGING THE NAMED VICTIM MELISSA ESTORES (10/1/09)	755-763
18	NOTICE OF APPEAL (6/5/12)	3777-3779

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
4	NOTICE OF DEFENDANT'S WITNESSES (10/6/09)	775-783
4	NOTICE OF EXPERT WITNESSES (9/21/09)	704-744
7	NOTICE OF EXPERT WITNESSES (11/16/11)	1469-1470
1	NOTICE OF INTENT TO SEEK DEATH PENALTY (8/30/06)	017-045
4	NOTICE OF WITNESSES (10/02/09)	765-771
5	OPPOSITION TO DEFENDANT MALONE'S MOTION FOR RECONSIDERATION OF WRIT OF HABEAS CORPUS (4/9/10)	1045-1093
3	OPPOSITION TO DEFENDANT MALONE'S MOTION TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE, OR IN THE ALTERNATIVE, MOTION FOR CORRECTIVE INSTRUCTION (2/25/08)	578-592
2	OPPOSITION TO DEFENDANT MALONE'S MOTION TO SUPPRESS STATEMENTS OF DONALD HERB, OR IN THE ALTERNATIVE MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF THE STATEMENT MADE BY THE CO-DEFENDANT HERB AT THE TIME OF TRIAL (6/14/07)	337-351
2	OPPOSITION TO DEFENDANT'S MOTION TO FEDERALIZE ALL MOTIONS, REQUESTS AND OTHER APPLICATIONS FOR THE PROCEEDINGS IN THE ABOVE ENTITLED CASE (6/6/07)	320-323
3	OPPOSITION TO DEFENDANT'S MOTION TO RECUSE THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE, OR IN THE ALTERNATIVE, MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF STATEMENTS MADE BY CO-DEFENDANT HERB AT THE TIME OF TRIAL (1/28/09)	622-625

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
2	ORDER (DENYING PETITION FOR WRIT OF HABEAS CORPUS) (1/18/07)	257-258
2	ORDER (COURT RULINGS ON MOTIONS) (7/24/07)	410-414
3	ORDER DENYING DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE, OR IN THE ALTERNATIVE, MOTION FOR CORRECTIVE INSTRUCTION (3/27/08)	599-600
4	ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS STATEMENTS OF DEFENDANT (10/22/09)	874-875
5	ORDER GRANTING DEFENDANT'S MOTION (2/26/10)	988-989
5	ORDER GRANTING DEFENDANT'S MOTION FOR ACCESS TO LAW LIBRARY (PRO PER) (9/27/10)	1201-1202
18	ORDER GRANTING DEFENDANT'S MOTION TO PRECLUDE EVIDENCE OF OTHER BAD ACTS EVIDENCE ENTITLED MOTION IN LIMINE TO BAR IMPROPER PROSECUTORIAL ARGUMENT (2/3/12)	3696-3697
1	PETITION FOR WRIT OF HABEAS CORPUS (11/6/06)	118-152
16	POINTS AND AUTHORITIES IN OPPOSITION TO THE INTRODUCTION OF THE NON-TESTIFYING CO-DEFENDANT'S RECORDED TELEPHONE CALL (1/27/12)	3173-3200
16	POINTS AND AUTHORITIES IN REPLY TO DEFENDANT'S OPPOSITION TO THE INTRODUCTION OF THE NON-TESTIFYING CO-DEFENDANT'S RECORDED TELEPHONE CALL (1/27/12)	3201-3206
5	RENEWED MOTION TO SEVER (McCARTY) (3/18/10)	929-956
4	REPLY TO OPPOSITION TO MOTION (8/27/09)	683-689

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
3	REPLY TO STATE'S OPPOSITION (1/30/09)	626-630
1	REPORTER'S TRANSCRIPT OF HEARING AUGUST 16, 2006 (5/7/08)	009-016
2	REPORTER'S TRANSCRIPT OF HEARING NOVEMBER 21, 2006 (6/6/08)	218-237
2	REPORTER'S TRANSCRIPT OF HEARING NOVEMBER 30, 2006 (6/6/08)	238-241
2	REPORTER'S TRANSCRIPT OF HEARING DECEMBER 12, 2006 (6/6/08)	242-256
2	REPORTER'S TRANSCRIPT OF HEARING JUNE 22, 2007 (6/6/08)	352-409
3	REPORTER'S TRANSCRIPT OF HEARING SEPTEMBER 11, 2007 (6/6/08)	415-419
3	REPORTER'S TRANSCRIPT OF HEARING NOVEMBER 29, 2007 (6/6/08)	420-571
3	REPORTER'S TRANSCRIPT OF HEARING MARCH 13, 2008 (6/6/08)	593-598
3	REPORTER'S TRANSCRIPT OF HEARING JUNE 24, 2008 (7/2/08)	601-606
3	REPORTER'S TRANSCRIPT OF HEARING JANUARY 20, 2009 (2/17/09)	617-621
3	REPORTER'S TRANSCRIPT OF HEARING FEBRUARY 5, 2009 (2/17/09)	631-640
4	REPORTER'S TRANSCRIPT OF HEARING SEPTEMBER 1, 2009 (9/9/09)	690-695

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
4	REPORTER'S TRANSCRIPT OF HEARING SEPTEMBER 29, 2009 (3/5/10)	744-754
4	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 6, 2009 (3/5/10)	784-797
4	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 8, 2009 (3/5/10)	847-862
4	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 12, 2009 (3/5/10)	865-873
5	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 27, 2009 (3/5/10)	879-886
5	REPORTER'S TRANSCRIPT OF HEARING DECEMBER 15, 2009 (3/5/10)	887-892
5	REPORTER'S TRANSCRIPT OF HEARING JANUARY 8, 2010 (3/5/10)	893-928
5	REPORTER'S TRANSCRIPT OF HEARING FEBRUARY 16, 2010 (3/5/10)	979-987
5	REPORTER'S TRANSCRIPT OF HEARING MARCH 18, 2010 (4/12/10)	998-1005
5	REPORTER'S TRANSCRIPT OF HEARING MARCH 25, 2010 (4/12/10)	1006-1020
5	REPORTER'S TRANSCRIPT OF HEARING APRIL 13, 2010 (4/14/10)	1094-1104
5	REPORTER'S TRANSCRIPT OF HEARING APRIL 29, 2010 (5/18/10)	1105-1109
5	REPORTER'S TRANSCRIPT OF HEARING JULY 20, 2010 (9/22/10)	1124-1128

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
5	REPORTER'S TRANSCRIPT OF HEARING JULY 27, 2010 (9/22/10)	1129-1139
5	REPORTER'S TRANSCRIPT OF HEARING AUGUST 12, 2010 (9/22/10)	1153-1164
5	REPORTER'S TRANSCRIPT OF HEARING AUGUST 26, 2010 (9/22/10)	1170-1172
5	REPORTER'S TRANSCRIPT OF HEARING AUGUST 31, 2010 (9/22/10)	1173-1183
5	REPORTER'S TRANSCRIPT OF HEARING SEPTEMBER 14, 2010 (9/22/10)	1186-1194
5	REPORTER'S TRANSCRIPT OF HEARING SEPTEMBER 21, 2010 (9/22/10)	1195-1200
5	REPORTER'S TRANSCRIPT OF HEARING SEPTEMBER 30, 2010 (10/8/10)	1203-1213
5	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 5, 2010 (10/8/10)	1214-1237
5	REPORTER'S TRANSCRIPT OF HEARING OCTOBER 26, 2010 (1/12/11)	1258-1268
5	REPORTER'S TRANSCRIPT OF HEARING NOVEMBER 9, 2010 (1/12/11)	1269-1275
6	REPORTER'S TRANSCRIPT OF HEARING JANUARY 25, 2011 (2/28/11)	1279-1286
6	REPORTER'S TRANSCRIPT OF HEARING JUNE 9, 2011 (7/25/11)	1292-1297
6	REPORTER'S TRANSCRIPT OF HEARING JUNE 21, 2011 (7/25/11)	1298-1311

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
7	REPORTER'S TRANSCRIPT OF HEARING JULY 19, 2011 (7/25/11)	1453-1459
7	REPORTER'S TRANSCRIPT OF HEARING AUGUST 9, 2011 (9/21/11)	1460-1468
7	REPORTER'S TRANSCRIPT OF HEARING DECEMBER 15, 2011 (12/30/11)	1473-1480
7	REPORTER'S TRANSCRIPT OF HEARING JANUARY 3, 2012 (1/9/12)	1481-1486
8	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 17, 2012 (1/18/12)	1488-1732
9	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 18, 2012 (1/19/12)	1734-2013
10	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 19, 2012 (1/20/12)	2014-2273
11	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 20, 2012 (1/23/12)	2274-2485
12	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 23, 2012 (1/24/12)	2486-2684
13	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 24, 2012 (1/25/12)	2685-2896
14	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 25, 2012 (1/26/12)	2897-2970
15	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 26, 2012 (1/27/12)	2985-3172
16	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 27, 2012 (1/30/12)	3207-3397

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
17	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 30, 2012 (1/31/12)	3406-3430
17	REPORTER'S TRANSCRIPT OF JURY TRIAL JANUARY 31, 2012 (2/1/12)	3493-3630
18	REPORTER'S TRANSCRIPT OF JURY TRIAL FEBRUARY 1, 2012 (2/2/12)	3631-3645
18	REPORTER'S TRANSCRIPT OF PENALTY PHASE FEBRUARY 10, 2012 (2/15/12)	3703-3717
18	REPORTER'S TRANSCRIPT OF HEARING APRIL 10, 2012 (5/24/12)	3743-3747
18	REPORTER'S TRANSCRIPT OF HEARING APRIL 12, 2012 (5/24/12)	3748-3750
18	REPORTER'S TRANSCRIPT OF HEARING APRIL 24, 2012 (5/24/12)	3751-3771
5	RESPONSE TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS STATEMENTS (8/19/10)	1165-1169
1	RETURN TO WRIT OF HABEAS CORPUS (11/22/06)	178-217
4	RECEIPT OF COPY (RAMAAN HALL'S "LYRICS AND ADDITIONAL DISCOVERY) (10/8/09)	800-846
18	SPECIAL VERDICT (2/10/12)	3718-3742
4	STATE OPPOSITION TO DEFENDANT MALONE'S MOTION IN LIMINE TO PROHIBIT INTRODUCTION OF HEARSAY STATEMENTS MADE BY CO-DEFENDANT MALONE AT THE TIME OF TRIAL (8/26/09)	661-682
1	STATE'S OPPOSITION TO DEFENDANT MALONE'S MOTION TO SEVER (11/13/06)	153-177

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
1	STATE'S OPPOSITION TO DEFENDANT MCCARTY'S MOTION TO SEVER (10/23/06)	072-091
2	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY OF INSTITUTIONAL RECORDS AND FILES NECESSARY TO A FAIR TRIAL (6/6/07)	330-333
2	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY OF PROSECUTION RECORDS, FILES AND INFORMATION NECESSARY TO A FAIR TRIAL (6/6/07)	324-326
2	STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO BAR IMPROPER PROSECUTORIAL ARGUMENT (6/6/07)	327-329
2	STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE AS THE "GUILT PHASE" (6/6/07)	318-319
2	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (6/6/07)	334-336
4	STATE'S RESPONSE TO DEFENDANT'S MOTION TO WAIVE TRIAL BY JURY ON ALL COUNTS ALLEGING THE NAMED VICTIM MELISSA ESTORES (10/5/09)	772-774
5	STATE'S OPPOSITION TO MCCARTY'S RENEWED MOTION TO SEVER (4/9/10)	1042-1044
4	SUPPLEMENTAL NOTICE OF WITNESSES (10/7/09)	798-799
4	SUPPLEMENTAL NOTICE OF WITNESSES (10/9/09)	863-864
5	SUPPLEMENTAL NOTICE OF WITNESSES (9/10/10)	1184-1185

<u>Volume</u>	<u>Document Name/File Date</u>	<u>Page No.</u>
5	SUPPLEMENTAL NOTICE OF WITNESSES (10/7/10)	1238-1239
7	SUPPLEMENTAL NOTICE OF WITNESSES (11/30/11)	1471-1472
17	THIRD AMENDED INFORMATION (1/30/12)	3398-3405
18	VERDICT (2/1/12)	3646-3651

COPY

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JAN 23 2012

BY, CAROL DONAHOO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-224572-2
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	
	.	TRANSCRIPT OF
DOMONIC RONALDO MALONE,	.	PROCEEDINGS
	.	
Defendant.	.	
.....	.	

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

JURY TRIAL - DAY 8

FRIDAY, JANUARY 20, 2012

APPEARANCES:

FOR THE PLAINTIFF:	MARC DiGIACOMO, ESQ. CHRISTOPHER LALLI, ESQ. <i>Chief Deputy District Attorneys</i>
--------------------	---

FOR THE DEFENDANT:	RANDALL H. PIKE, ESQ. CHARLES A. CANO, ESQ. <i>Assistant Special Public Defenders</i>
--------------------	---

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 20, 2012, 9:47 A.M.

2 (Court was called to order)

3 (In the presence of the jury)

4 THE COURT: Good morning, everyone. State, please
5 call your next witness.

6 MR. DiGIACOMO: State calls Ryan Noe.

7 THE MARSHAL: Sir, if you will remain standing,
8 please raise your right hand and face the clerk.

9 RYAN NOE, STATE'S WITNESS, SWORN

10 THE MARSHAL: Just come up and have a seat. Slide
11 up to the microphone. Slide up a little bit. There we go.
12 Please, sir, state and spell your name for the record.

13 THE WITNESS: Ryan Noe. R-Y-A-N, N-O-E.

14 THE COURT: Go ahead, counsel.

15 DIRECT EXAMINATION

16 BY MR. DiGIACOMO:

17 Q Mr. Noe, you're currently in custody; is that
18 correct?

19 A Yes, sir.

20 Q And what are you -- where are you in custody?

21 A Texas.

22 Q Texas? Is it state or federal?

23 A Federal.

24 Q And for -- are you convicted of a felony?

25 A Yes, I am.

1 Q And what felony is that?

2 A Importation of a class 1 narcotic across
3 international borders. Drug trafficking.

4 Q Basically drug trafficking? And when were you
5 sentenced?

6 A I want to say about a year ago.

7 Q How much time you got left?

8 A Seven months on a 30-month sentence.

9 Q What type of drug was it?

10 A Marijuana.

11 Q Do you have any other felony convictions, either
12 state or federal, anywhere else?

13 A No, sir.

14 Q I'm going to talk to you a little bit about kind of
15 your life before you wind up going to prison. You've
16 previously testified in the trial of Mr. McCarty; is that
17 correct?

18 A Yes, sir.

19 Q And had you been convicted at that point in time?

20 MR. CANO: Your Honor, can we approach?

21 THE COURT: All right.

22 (Bench conference)

23 MR. CANO: We've been very careful about, you know,
24 [inaudible] the prior trial. He just said, "McCarty's trial."

25 MR. DiGIACOMO: Well, we've been talking about

1 McCarty's trial the whole time, because --

2 MR. CANO: Well, we've been saying testified at the
3 previous hearing --

4 MR. DiGIACOMO: So the [inaudible].

5 MR. CANO: -- previous trial.

6 MR. DiGIACOMO: No.

7 MR. CANO: But did not distinguish.

8 MR. DiGIACOMO: And then we clarified for the jury
9 that it was McCarty's trial, because we didn't want the
10 implication this was a retrial for Mr. Malone.

11 THE COURT: I thought it even came up yesterday. I
12 don't know who was questioning, but they talked about --

13 MR. DiGIACOMO: It's come up almost every witness.

14 THE COURT: Does he know about the --

15 MR. DiGIACOMO: I've instructed him not -- about the
16 conviction or the penalty. He's been instructed, so. That's
17 the only time I'm going to ask the question. I just wanted
18 to --

19 THE COURT: Just to be more cautious, say "the prior
20 trial."

21 MR. DiGIACOMO: Okay.

22 THE COURT: You've already sort of said it once.

23 MR. DiGIACOMO: Yeah. I just wanted to make sure
24 the --

25 THE COURT: And then when we take a --

1 MR. DiGIACOMO: -- jury doesn't [inaudible].

2 MR. CANO: And my recollection --

3 THE COURT: -- break, make your record.

4 MR. CANO: And my recollection isn't that we were
5 saying, the previous trial, but okay.

6 MR. DiGIACOMO: The first time he said it, I stood
7 up and said, and for the record, Judge, so the jury's aware,
8 that was Mr. McCarty's trial. And you instructed the jury the
9 very first time he said --

10 THE COURT: Right, right.

11 MR. DiGIACOMO: -- prior trial.

12 THE COURT: All right. Thank you.

13 (Bench conference ended)

14 THE COURT: Go ahead, Mr. DiGiacomo.

15 MR. DiGIACOMO: Thank you.

16 BY MR. DiGIACOMO:

17 Q And that was back in October of 2010 -- October,
18 November, somewhere in that area; is that correct?

19 A Yes, sir.

20 Q At that time, had you been convicted of a felony?

21 A No, sir.

22 Q Were you still in custody, pending trial of your
23 case?

24 A Yes, sir.

25 Q Before you wound up -- well, I guess I'm assuming at

1 this point you're clean today?

2 A Yeah, two years clean.

3 Q And you've testified previously that you used drugs
4 for a very long time in your life. How old are you today?

5 A 34 years-old.

6 Q When did you start using drugs?

7 A About 15.

8 Q And when did you start -- what kind of drugs did you
9 start with?

10 A It was, you know, pot and hallucinogens when I was
11 in high school. Then I moved onto methamphetamines, you know,
12 onto you know, cocaine, crack. And then ultimately became an
13 IV heroin user the last five years, up until being clean these
14 last two.

15 Q So, I want to talk to you a little bit about the
16 time period in the early part of 2006. Back at that point in
17 time, were you basically a heroin addict?

18 A I'd used it a couple times, but mostly drinking and
19 smoking rock cocaine.

20 Q Smoking rock cocaine? So back then you hadn't yet
21 become a --

22 A No, I wasn't really into heroin.

23 Q -- full-fledged heroin addict?

24 A No, I hadn't used needles at that point or anything.

25 Q Okay. Let's talk a little bit about where you lived

1 the early part of 2006, let's say March, April, and May.

2 Where did you live back then?

3 A I had a house over by the Sam Boyd Silver Bowl, if I
4 recall correctly. And before that I had a house in Henderson.
5 And then for about a year and a half, I had a house there by
6 the Sam Boyd Silver Bowl.

7 Q While you had a house over by the Silver Bowl, did
8 you frequent an area -- or an establishment I guess you'd call
9 it, the Royal Sportsman Manor?

10 A Yes, I was there quite often.

11 Q And what were you doing when you were there?

12 A Smoking and selling rock cocaine, hanging out.

13 Q At that time, did you have a cell phone?

14 A Yes.

15 Q And on May 21st of 2006, did you tell the police
16 your cell phone number was 465-1214?

17 A Yes.

18 Q Did you know an individual by the name of Victoria?

19 A Yes.

20 Q How did you know Victoria?

21 A I had met her there at the Sportsman's, became
22 pretty good friends with her. But I -- you know, I met her
23 through smoking -- smoking and hanging out.

24 Q And how long did you know Victoria before her death?

25 A Before her death?

1 Q Yes.

2 A I want to say -- I want to say it was around six
3 months. It might have been longer, but I want to say about
4 six months.

5 Q And you said you would spend a lot of time down at
6 the Sportsman's. Did you know any of -- any other individuals
7 down at the Sportsman's?

8 A I knew quite a few individuals at the Sportsman's.

9 Q Okay, let's talk about some of them. Did you know
10 an individual by the name of D-Roc?

11 A Yes.

12 Q Will you describe D-Roc for me?

13 A He's sitting here in the courtroom right now.

14 Q So, you see him here? What's he wearing?

15 A A blue shirt and a tie.

16 MR. DiGIACOMO: May the record reflect
17 identification of the defendant?

18 THE COURT: Yes, it will.

19 BY MR. DiGIACOMO:

20 Q Back when you knew D-Roc back in 2006, physically,
21 how would you describe his physical appearance?

22 A He was a lot bigger back then.

23 Q He was a lot bigger?

24 A Yeah.

25 Q Are we talking fat, or muscle?

1 A No, muscle.

2 Q How is it that you met D-Roc?

3 A I met him originally through Victoria, through
4 another group of guys. A guy named Trey Black, you know, and
5 some other guys that, you know, hustled there at the
6 Sportsman's basically.

7 Q And when you use the term "hustled", what do you
8 mean?

9 A Selling rock cocaine.

10 Q Selling rock cocaine? And when you knew D-Roc and
11 Trey Black and that crew, did you know what the relationship
12 was between Trey and D-Roc?

13 A Yeah. I mean, basically, you know, he was --

14 MR. CANO: Your Honor, I'm going to object, and
15 would like a little bit more foundation.

16 THE COURT: All right. Sustain the objection.

17 BY MR. DiGIACOMO:

18 Q Were you present when Trey and D-Roc would have
19 conversations around drugs?

20 A I had been present before.

21 Q And were you present when you had conversations with
22 D-Roc about drugs?

23 A Yes.

24 Q And were you aware of the relationship between Trey
25 and D-Roc back in that time period?

1 A Yes.

2 Q And what was that?

3 A It was a working crew that, you know, sold crack
4 basically, you know.

5 Q Were you part of this crew?

6 A No. I mean, not in the sense that -- you know, I
7 hung out. Maybe towards the end a little bit. But mostly, I
8 was just a customer or somebody to kick it with.

9 Q Okay. How many other people were involved in this
10 crew?

11 A Three other guys. Main -- three other guys that I
12 can remember.

13 Q And who were they; do you remember?

14 A A guy named -- let's see. D-Roc, Trey Black. I
15 want to say the name Fred -- Fred, I think his name was. And
16 it might have just been the three of them. I don't know. I'm
17 having a hard time, you know, recalling at the time.

18 Q Okay. At some point in time, did you meet an
19 individual that was identified to you as Rome?

20 A Yes.

21 Q Or Romeo?

22 A Romeo, yeah.

23 Q Did you know his real name?

24 A No.

25 Q How was it that you met Romeo?

1 A I met him through another working girl there at the
2 Sportsman's, basically.

3 Q And can you describe Romeo for the ladies and
4 gentlemen of the jury?

5 A Mulatto, five-foot, and he had a deformed hand. One
6 of his hands was smaller -- arm was a little shorter than the
7 other one.

8 Q And was there anything about his walk that was
9 different?

10 A Not that I can remember.

11 Q Now, you said you met Romeo through one of these
12 girls. How long before Victoria's death would you say you met
13 Romeo?

14 A A month and a half. Month, month and a half,
15 somewhere around there.

16 Q Now, was Romeo -- did you ever become part of this
17 crew of Trey and D-Roc, or that crew?

18 A No.

19 Q Okay.

20 A No.

21 Q At some point in time, do you see any association
22 between Romeo and D-Roc?

23 A Yeah. They -- you know, he started hanging out with
24 -- you know. D-Roc started hanging out with Romeo. I don't
25 know why, but yeah.

1 Q Okay. Were there times when -- well, let me ask you
2 this. Based upon your knowledge of the inside of this crew,
3 was D-Roc spending less time with Trey and more time with
4 Romeo? Or vice versa, more time -- or less time with Romeo,
5 and more time with Trey by the point that Victoria winds up
6 being killed?

7 A From what I -- from what I remember when I see --
8 you know, it seemed that D-Roc wasn't hanging around with Trey
9 Black and those guys too much anymore. You know. It was --
10 when I seen him, I seen him mostly, you know, with -- with
11 Romeo the last month, month and a half.

12 Q Now, these guys, Romeo and D-Roc, was there anybody
13 else associated with the two of them over at the Sportsman?

14 A No, no.

15 Q What about a guy named Donny?

16 A Oh, wait, excuse me. I seen Romeo with a guy -- a
17 guy by the name of Donny.

18 Q Will you describe Donny for the ladies and gentlemen
19 of the jury?

20 A Dark hair, 5'11, kind of skinny white guy, you know,
21 that's --

22 Q Did Romeo have a car?

23 A No.

24 Q Did Romeo utilize a car?

25 A Yes.

1 Q What kind of car was it?

2 A It was a green GT.

3 Q Do you remember --

4 A Grand Prix or Jeep. I think it was a Grand Prix, or
5 a Grand Am.

6 Q And was it two-door or four-door; do you remember?

7 A I think it was a four-door, but I'm not 100 percent
8 positive on that.

9 Q Whose car to your knowledge was the vehicle?

10 A Donny's.

11 Q Who would you see driving the vehicle?

12 A Donny.

13 Q Have you ever seen Romeo driving it?

14 A I think one time, I seen him driving it.

15 Q Let's talk a little bit about Victoria. What was
16 your relationship with Victoria?

17 A Basically, Victoria and me kind of, you know, hit it
18 off after I initially met her. I knew Victoria was, you know,
19 basically -- she was a working girl. You know, she had a drug
20 problem. You know, but we hit it off pretty good, started
21 hanging out a lot. You know, I didn't really care for the way
22 she was living too much, so I basically let her start staying
23 at my house, you know.

24 Q When you say a working girl, are you talking about
25 prostitution?

1 A Yeah.

2 Q What about a drug habit? Did she have a drug habit?

3 A Yeah.

4 Q And what was her drug of choice?

5 A Rock cocaine.

6 Q So, she winds up staying at your house for a period
7 of time?

8 A Yeah. Probably about two -- I want to say around
9 two months.

10 Q At some point does she wind up leaving your house?

11 A Yeah.

12 Q And how long before her death was it that she left
13 staying at your place?

14 A About a month.

15 Q About a month?

16 A Three weeks to a month.

17 Q Subsequent to her leaving your house, did you see
18 her or become aware of whether or not she had a relationship
19 with Romeo?

20 A Yeah, she was basically staying with Romeo.

21 Q She was staying with Romeo? And have you -- let me
22 ask you this. Have you described Romeo before as a person
23 who --

24 MR. CANO: Objection, leading, Your Honor.

25 MR. DiGIACOMO: I'll rephrase.

1 THE COURT: Okay. Thank you.

2 BY MR. DiGIACOMO:

3 Q Was Romeo a pimp?

4 A No. He thought he was one, but he wasn't.

5 Q Okay. Well, what do you mean by that?

6 A Basically, he just -- he didn't have the
7 personality. He didn't -- he couldn't carry himself proper,
8 you know? He was more of a womanizer type of person than he
9 was -- you know, using drugs and manipulate the situation, you
10 know. He wasn't really a pimp in that sense, you know what
11 I'm saying? I mean, it's --

12 Q I mean, you're saying --

13 A It's hard to say -- you know. When I think of that,
14 I think of, you know, there's gorilla pimping, there's dope
15 pimping, and then there's charisma pimping. You know, there's
16 three different kinds to it, you know. A guy that actually
17 has the capabilities and the personality to have a girl want
18 to work for him, you know, he was not that kind of person. He
19 kept her doped up, you know, and basically preyed on her, you
20 know, to make her do what he wanted her to do.

21 Q Okay. So, you just said there's different types of
22 pimps. And I don't want to go into all the -- what the
23 difference between a gorilla pimp and a charisma pimp, and all
24 that other stuff is. But when you use -- when you say he was
25 using dope to make her do what he want to do, was she

1 providing him money from the services she was performing?

2 A Yes. Yeah, basically she was -- you know. He was
3 keeping the crack flowing for her, and she was giving him
4 money, you know, and he was taking advantage of the situation.

5 Q Money from acts of prostitution?

6 A Yes.

7 Q I'm going to fast-forward now to the last time that
8 you saw Victoria. Can you tell the ladies and gentlemen of
9 the jury how it is that you had communication, or how you
10 wound up seeing Victoria?

11 A The last time?

12 A Yes.

13 Q Well, you know, over that three weeks to a month
14 that she was gone, I was pretty much in constant contact with
15 her, daily. You know, it was always 2, 3 phone calls a day.
16 I'd seen her many times at the Sportsman's. But there was
17 probably three or four occasions where she, you know, came by
18 the house. You know, this was, you know, basically when she
19 would tell me, you know, what was going on. That -- you know,
20 that he --

21 Q Without telling us what she told you --

22 A Um-hum.

23 Q -- did she indicate any concerns about any person?

24 A Yeah. About Romeo basically, you know.

25 MR. CANO: Objection as to hearsay, Your Honor, and

1 I'd ask that it be stricken.

2 THE COURT: Sustain the objection. The jury is
3 instructed to disregard the identification of the person.

4 BY MR. DiGIACOMO:

5 Q That she had concerns --

6 THE COURT: The person's name.

7 BY MR. DiGIACOMO:

8 Q She had concerns about a particular individual?

9 A Yes.

10 Q I'm going to fast-forward to the last time you saw
11 her. How was it that you wind up coming into contact with
12 her?

13 A She called -- she had called me, it was Friday
14 afternoon. Basically, she said she wanted to, you know, meet
15 up. That she, you know, was thinking about wanting to come
16 back to the house, you know.

17 Q And you've -- and in your statement on May 21st, you
18 indicated that it was Friday, correct?

19 A Yeah.

20 Q Okay. And it was the Friday prior to that statement
21 that you were giving the police, correct?

22 A Yeah.

23 Q And you indicated that you believed it was Friday?

24 A Yeah.

25 Q How is it that -- so, you go, and how is it that you

1 come into contact -- where do you come into contact with her?

2 A A place called the Tod Motel, I picked her up from.
3 I want to say maybe about 1:00 o'clock in the afternoon.

4 Q And where did you go?

5 A 7-Eleven. Went and bought a phone card for her, a
6 \$20 phone card. And then we went down to Charleston to, I
7 want to say Sally's Deal's (phonetic) or whatever, and we ate
8 at Carl's Jr. You know, basically just to, you know, see how
9 she was doing.

10 Q Eventually, did you take her back to the Tod Motel?

11 A Yeah.

12 Q And is she staying with anybody there?

13 A Yeah. She was --

14 MR. CANO: Objection as to foundation, Your Honor.

15 THE COURT: Sustained.

16 BY MR. DiGIACOMO:

17 Q Did you go into a room with her, with somebody else
18 being present?

19 A Yes.

20 Q And who else was present?

21 A A guy by the name of Pork Chops or Pig -- I think it
22 was Pork Chops is what the guy's name was.

23 Q Can you describe this guy's name for me?

24 A White fellow, you know, kind of came across as an
25 Aryan -- you know, Aryan brother type dude, you know.

1 Q So, obviously not Romeo?

2 A No.

3 Q And not D-Roc, not Donny?

4 A No. I'd never met this guy before that day.

5 Q Okay. And what was going on in the room.

6 A Basically, they was, you know, cooking rock.

7 Q Cooking crack cocaine?

8 A Yeah.

9 Q Making crack cocaine? Did -- eventually, did you
10 leave her at the Tod Motel?

11 A Yeah.

12 Q Is that a yes?

13 A Yes.

14 Q And when you left her at the Tod Motel, was there
15 any future plans for her and you?

16 A Yeah. Basically, she told me she was going to call
17 me later on.

18 MR. CANO: Objection to hearsay, Your Honor.

19 THE COURT: Sustained.

20 MR. DiGIACOMO: A statement of future intent, Judge.

21 THE COURT: Or you can say what was he going to do
22 with her later and --

23 MR. DiGIACOMO: Okay.

24 THE COURT: -- what contact they were going to have.

25 BY MR. DiGIACOMO:

1 Q What was your plan for you and her later on that
2 evening?

3 A Basically pick her up, move her stuff back over to
4 my place.

5 Q Did you have any other verbal contact with her after
6 this last communication with her?

7 A Not verbal, I don't believe.

8 Q Okay. Did you have any contact with her?

9 A She had texted me.

10 Q And did she text you from her cell phone?

11 A Yeah.

12 Q And on May 21st, did you tell the police her cell
13 phone number -- let me just flip my page over here.

14 MR. DiGIACOMO: Page 10, counsel.

15 BY MR. DiGIACOMO:

16 Q Was it 237-8919?

17 A Yes, I believe so.

18 Q So, the text to your phone -- and I assume you
19 received it on your cell phone, 465-1214?

20 A Um-hum.

21 Q Is that a yes?

22 A Yes.

23 Q That was the last communication that you received
24 from Victoria?

25 A Yes, it was.

1 Q And from that, we should be able to figure out the
2 exact date of the last day that you had contact with Victoria?

3 A Yeah.

4 Q Now, the day before this last contact at the Tod
5 Motel, or two days before, somewhere within a couple of days
6 of that last contact with Victoria, did you have contact with
7 Romeo?

8 A Yes. Two days -- two days prior to that. I think
9 it was a Wednesday. I had ran into him at the Sportsman's.

10 Q And when you ran into him -- well, let me ask you
11 this. How is it that you wound up running into him?

12 A I just dropped Victoria off at the Sportsman's maybe
13 five minutes before. I was pulling around the front of the
14 building, and he was pulling into the property as I was
15 basically starting to leave the property.

16 Q You said he was pulling in. Was he in a vehicle?

17 A Yeah. He was driving the green Grand Prix or Grand
18 Am, GT, whatever it was.

19 Q Now, as you sit here today, your recollection -- or
20 is your recollection that -- how many people were in the car?

21 A I want to say it was just him, you know. I believe
22 it was just him.

23 Q He's in the green car. And do you have a
24 conversation with Romeo?

25 A Yeah. It wasn't so much a conversation as he was

1 just, you know, telling me something.

2 Q Okay. What did he tell you?

3 MR. CANO: Your Honor, could we get a little
4 foundation as to what date this was?

5 MR. DiGIACOMO: It's two days prior to the last --

6 THE COURT: All right. He did lay that foundation.

7 MR. CANO: Okay. I'm sorry, Your Honor.

8 THE COURT: Go ahead, sir.

9 BY MR. DiGIACOMO:

10 Q What is it that Romeo said to you?

11 A Basically, he was looking for Victoria. He was
12 distraught over, you know -- basically saying -- he'd said,
13 you know, where the fuck is Victoria at? You know, the stupid
14 bitch owes me \$80. I'm going to fucking kill this dumb bitch,
15 you know, basically is what his statement ultimately was, you
16 know.

17 Q Now, based on your relationship with -- or your
18 knowledge of Romeo, did you believe him?

19 A No.

20 Q Why not?

21 A No. He was just the type that he was a big talker.
22 He had a big mouth, not a whole lot of action behind it, you
23 know.

24 Q Now, previously, without going into your entire
25 basis for that knowledge, have you described at the last trial

1 -- did you describe the relationship between Rome and D-Roc?
2 Do you remember describing it?

3 A I think so.

4 Q And do you remember describing D-Roc as, "the
5 enforcer?"

6 MR. CANO: Leading, Your Honor. Objection.

7 MR. DiGIACOMO: Judge, may we approach?

8 (Bench conference)

9 MR. DiGIACOMO: At the last trial -- I mean, if he
10 wants me to go into the foundational basis for it, I can. But
11 I did that to protect Mr. D-Roc. Because what he's going to
12 say is, yeah, I've seen him commit a number of violent acts on
13 behalf of McCarty to collect money. I've seen him beat people
14 before, I've seen him beat this girl Jada (phonetic) because
15 they were \$20 short, I was \$20 short one time and McCarty was
16 threatening me, and --

17 MR. CANO: Those are prior bad acts.

18 MR. DiGIACOMO: -- D-Roc was --

19 MR. CANO: And you know, obviously, they can't get
20 into any of that [inaudible].

21 MR. DiGIACOMO: Right. Well, that's the --

22 MR. CANO: [Inaudible] --

23 MR. DiGIACOMO: -- foundation. I don't want to ask
24 him the foundation. The answer, which is "He is the
25 enforcer," after they brought up, you know, this is the

1 shot-caller. Him being the enforcer in this group of
2 individuals is relevant and not a bad act.

3 THE COURT: I think you asked him at the last trial,
4 "Did you refer to him as, the enforcer." There was an
5 objection to leading. How about, how did you --

6 MR. DiGIACOMO: I'm just afraid of what he's going
7 to say, Judge. If he wants me to do it that way, I will.

8 MR. CANO: Well, the situation is, you know --

9 MR. DiGIACOMO: I even told him [inaudible].

10 MR. CANO: -- obviously, those are bad acts.

11 MR. DiGIACOMO: No, being the enforcer is not a bad
12 act. The acts of enforcing --

13 MR. CANO: [Inaudible] I'm saying if he goes into it
14 [inaudible].

15 MR. DiGIACOMO: That's why I'm trying to -- I mean,
16 if he wants me to do it --

17 THE COURT: Right.

18 MR. DiGIACOMO: -- any other way --

19 THE COURT: Why don't you ask -- I mean, ask it
20 clearly. But say, you know -- you know, because we don't know
21 obviously [inaudible]. But say, listen to my question very
22 carefully. You know, yes or no -- I don't know if it's a yes
23 or no, or --

24 MR. DiGIACOMO: I can't make it yes or no, because
25 he won't let me --

1 THE COURT: Right.

2 MR. DiGIACOMO: -- let me lead. It's in the
3 transcript. And 51.035 says if he's on the stand and
4 testified, his prior transcript is admissible. So, the
5 statement itself is just admissible. So, the fact that it's
6 leading wouldn't be a basis to exclude it, because it's in the
7 transcript, admissible.

8 I could just admit the transcript. But what I don't
9 want to do is put all the rest of the stuff about all the
10 violence he talked about without them opening the door. But I
11 think I'm entitled [inaudible].

12 THE COURT: How about if he's -- you know, did you
13 refer to him in this, yes or no? Did you refer to him in a
14 certain way? Does it say -- and at the end of the question,
15 yes or no? Okay. How did you refer to him?

16 MR. DiGIACOMO: Okay.

17 THE COURT: Not, why.

18 MR. DiGIACOMO: Okay.

19 THE COURT: But just -- I'm assuming it might -- see
20 if --

21 MR. DiGIACOMO: All right. [Inaudible] --

22 THE COURT: I don't know how he's going to answer
23 it.

24 MR. DiGIACOMO: -- [inaudible].

25 THE COURT: Okay.

1 (Bench conference ended)

2 BY MR. DiGIACOMO:

3 Q Let me rephrase. At the last trial, did you refer
4 to D-Roc -- in this relationship with Romeo and D-Roc in a
5 particular way, yes or no?

6 A Yes.

7 Q And what is the term that you utilized to describe
8 D-Roc?

9 A I think I used the term "enforcer," you know.

10 Q Enforcer?

11 A Yeah. But I --

12 MR. CANO: There's no question in front of the
13 witness, Your Honor.

14 THE COURT: Wait for the next question, sir. All
15 right? Thank you.

16 BY MR. DiGIACOMO:

17 Q Now, I want to go -- after you saw Victoria for the
18 last time, did there come a point in time when you ran into a
19 woman that you knew as Red?

20 A Yeah.

21 Q Okay. How is it that you came into contact with
22 Red?

23 A The last time that I came into contact with her was
24 late Sunday night, early Monday morning, I think, at the
25 Sportsman's.

1 Q So, if you think your last contact with Victoria was
2 Friday, Saturday; so, two and a half days -- two to two and a
3 half days later, you ran into Red?

4 A Yeah.

5 Q And where did you run into contact -- where did you
6 run into her?

7 A At the Sportsman's.

8 Q And where in the Sportsman's?

9 A If I remember correctly, it was at the -- right by
10 the gas station right out front.

11 Q Were you in a vehicle?

12 A Yeah, I was in my truck.

13 Q And what was Red doing?

14 A I want to say she was out front talking to some
15 friends. I think, you know, in front of the gas station is
16 where I had ran in -- you know. I was -- actually, I think I
17 was leaving, and she was walking out of the store talking to
18 some friends.

19 Q And so you come into contact with Red. Describe Red
20 for the ladies and gentlemen of the jury.

21 A 5-foot Hawaiian girl, long dark hair.

22 Q Did you know her to sell drugs?

23 A Yeah.

24 Q Did you know if she had a relationship at all with
25 either D-Roc, or Romeo, or Donny, or anybody?

1 A She knew D-Roc, you know. They were friends.

2 Q When you came into contact with Red, did she have
3 any injuries on her?

4 A Yes.

5 Q Can you describe those for the ladies and gentlemen
6 of the jury?

7 A She had really bad bruising on her chest.

8 Q Okay. Anything on her face and head too that you
9 recall?

10 A Not that I recall on her face and head, no.

11 Q What -- well, what do you do with Red?

12 A Basically, I had a conversation with her, you know.
13 I said, look, you know, I haven't heard from Victoria in two
14 days. I asked her --

15 Q Without telling us what the response was, but did
16 she respond to that?

17 A Yeah.

18 Q And based on her response, what did you do?

19 A Basically, I said, look, you know, let's go back to
20 my house. If we -- you know, if we don't hear anything by
21 morning, we'll go fill out a missing person's report, is what
22 the game plan was.

23 Q Did you take Red back to your house?

24 A Yes.

25 Q And during the evening, at some point did you see

1 anything that alerted you that there may be a problem, and
2 that you needed to go to the police station?

3 A It was -- it was at like 6:00 o'clock in the
4 morning. She actually woke me up. And she was like, look,
5 Ryan, you know, I just seen --

6 MR. CANO: Objection as to hearsay, Your Honor.

7 MR. DiGIACOMO: Let me ask --

8 THE COURT: Sustained.

9 MR. CANO: To what Red was saying.

10 THE COURT: Sustained.

11 BY MR. DiGIACOMO:

12 Q Let me ask you this.

13 A Um-hum.

14 Q Did you become aware of a news report over the news
15 that morning?

16 A Yes.

17 Q And based upon that news report, did you and Red do
18 anything?

19 A Yes, we went down to the Henderson Police
20 Department.

21 Q And when you went down to the Henderson Police
22 Department, did you give a statement as to the information
23 that you had?

24 A Yes.

25 Q One last question that I forgot to ask you is,

1 during the course of that statement, did you provide -- well,
2 let me ask you this. Did you have a house phone number for
3 D-Roc that you recall?

4 A I believe so.

5 Q And did you provide it as 638-8005?

6 A I believe that was the number.

7 Q And that was the house phone that you were aware he
8 had?

9 A Yeah.

10 Q And did you also give Rome's -- or Romeo's cell
11 phone number as 237-3308?

12 A I mean, I believe so. I don't remember, but I
13 believe.

14 Q Well, let me ask you this. If it's on page 32 of
15 your transcript, that that was the number you gave, do you
16 think that would be accurate?

17 A Yeah, I believe so.

18 MR. DiGIACOMO: Thank you, Judge. I'd pass the
19 witness.

20 THE COURT: All right. Cross.

21 MR. CANO: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. CANO:

24 Q Good morning, Mr. Noe.

25 A How are you doing today?

1 Q I want to talk a little about some of the statements
2 that you gave. You gave a statement to the police, correct?

3 A Um-hum.

4 Q And that was in --

5 THE COURT: Sir, is that a yes?

6 THE WITNESS: Yes, yes.

7 THE COURT: All right. Thank you.

8 THE WITNESS: I'm sorry.

9 MR. CANO: Thank you, Your Honor.

10 BY MR. CANO:

11 Q And that was in Henderson, correct?

12 A Yes, sir.

13 Q And that was on May 21st?

14 A Yes.

15 Q All right. And did you have a chance to review that
16 statement prior to your testimony?

17 A Yes, I did, sir.

18 Q Okay. When did you get that?

19 A This morning.

20 Q This morning?

21 A Um-hum.

22 Q So, you reviewed it this morning, prior to just
23 getting on the stand?

24 A Yes. And one time before.

25 Q At the previous trial?

1 A Yeah.

2 Q You reviewed it prior to testifying --

3 A Yes.

4 Q -- at that trial as well?

5 A Yes.

6 Q Okay. How much time did you spend reviewing it at

7 the last trial?

8 A 15 minutes.

9 Q 15 minutes?

10 A About 15 minutes.

11 Q Okay. And how about this morning, how much time did

12 you spend reviewing it?

13 A Probably about the same.

14 Q Okay. You reviewed the trial transcript from the

15 last trial?

16 A What was that?

17 Q The trial transcript, were you given that as well?

18 A I think it was there, but I don't think I went

19 through that. I think I just went through my statements, the

20 statement packet that was given to me.

21 Q Okay. And who was that given to you by?

22 A By Officer Acuna (phonetic) and his partner.

23 Q Okay. So, officers gave you this statement?

24 A Yes.

25 Q Okay. Now, and you've spoken to me before, correct,

1 and my investigator; do you recall that?

2 A I think -- I think so.

3 Q At your house?

4 A Yeah, out at my house. Okay, yes.

5 Q So, you've talked about this case several times in
6 the past, correct?

7 A Yes.

8 Q Okay. Now, you said you got -- you're currently a
9 convicted felon?

10 A Yes, sir.

11 Q For drug trafficking?

12 A Yes, sir.

13 Q Okay. And that happened -- your conviction happened
14 last year in 2011? Or 2010?

15 A 2011.

16 Q 2011, okay. And that was for transporting drugs
17 over international lines?

18 A Yes, from Juarez, Mexico into El Paso, Texas.

19 Q Okay. And that was a federal charge, correct?

20 A Yes, sir.

21 Q All right. Now, let's talk a little bit about your
22 lifestyle around the time frame that we're talking about here,
23 April and May --

24 A Yes.

25 Q -- of 2006.

1 A Yes, sir.

2 Q Okay. Fair to say that you would frequent the
3 Sportsman's often?

4 A Almost every day.

5 Q Almost every day? You would go there to get drugs?

6 A That was one of the reasons I would hang out there,
7 yeah.

8 Q Okay.

9 A Sell drugs, too.

10 Q You would sell drugs as well?

11 A Yes, sir.

12 Q Where would you get the drugs that you would sell
13 from?

14 A Numerous people. I mean --

15 Q Trey Black?

16 A He was one of the people I'd buy from.

17 Q Okay. But you said you would sell drugs. Would he
18 supply you drugs to sell?

19 A I mean, basically I would buy them myself and then,
20 you know, try to --

21 Q And then resell them?

22 A -- make my own profit. Yeah. Basically is what it
23 was.

24 Q Okay. So, you would buy your drugs from Trey Black,
25 and then resell those?

1 A Yes.

2 Q Okay. Who else would you buy drugs from and resell?

3 A There was --

4 Q Did you do that from Red?

5 A No, not from Red.

6 Q Okay. Did you do that from Domonic?

7 A I'd received -- you know, I'd bought from him
8 before, yeah.

9 Q Okay. Did you do that -- do you know a person named
10 Leonard Black, or Black?

11 A Yes.

12 Q Describe him for me.

13 A He -- I want to say close to 6-foot. At the time,
14 he had a real long goatee. Sometimes, he would keep it in a
15 ponytail. Really dark-skinned.

16 Q African-American?

17 A Yes.

18 Q Okay.

19 A And bald.

20 Q All right.

21 A If I remember correctly.

22 Q Did you get drugs from black and resell those?

23 A There had been a couple occasions, I believe.

24 Q You have?

25 A Yes.

1 Q Okay. Did you ever get any drugs from Sarah
2 Matthews?

3 A I'm trying to picture who she was. I don't --

4 Q To your knowledge, do you know if Sarah Matthews was
5 with Trey Black?

6 A I think I remember the girl. But I can't say for
7 sure.

8 Q Okay. Do you recall if you ever got drugs from
9 Sarah Matthews?

10 A I -- to be honest with you, I mean, I'm having a
11 hard time putting the name to a face right now --

12 Q Okay.

13 A -- is basically what the problem is.

14 Q How about Christina? You know Christina, right?

15 A Yes.

16 Q Did you know her to be -- did you know that her true
17 name was Charlotte Combado?

18 A No. I did not.

19 Q Okay. But you knew her as Christina?

20 A Yeah.

21 Q Okay. Did you get drugs from Christina to resell?

22 A No.

23 Q Okay. What about Victoria? You ever get drugs from
24 Victoria?

25 A Yes.

1 Q And you resold those?

2 A No. I think, you know, sometimes I would -- you
3 know, I would give money to her, she would go pick it up. You
4 know, it wasn't a resell thing with Victoria. It was a
5 personal use thing --

6 Q Okay.

7 A -- between me and Victoria.

8 Q So, when Victoria had drugs, you would use it with
9 her, as opposed to sell those drugs?

10 A There were times, yeah.

11 Q Okay. And these drugs that you would -- did you
12 know a person named Jeff?

13 A I believe so.

14 Q Okay. Remember, we were talking about crews in
15 direct examination for Mr. DiGiacomo?

16 A Yeah, yeah. From the other -- from the crew. Is
17 that --

18 Q Was Jeff part of Trey's crew?

19 A Yes.

20 Q So, would you get drugs from Jeff and resell those?

21 A In all truth and honesty, there might have been one
22 occasion that I bought from him. You know, I had hung out
23 with him. He wasn't around a whole lot. Maybe the first
24 month that I, you know, was hanging out with these guys
25 basically.

1 Q Okay. Do you remember a person named JC (phonetic)?

2 A I mean, the name rings a bell. But you know, you
3 have to understand, it's been a long time, so I'm having a
4 hard time putting faces to these names.

5 Q Okay. Do you recall if JC was part of Trey's crew
6 as well?

7 A I believe so. Or you know, hung out with him.

8 Q Okay. But do you remember if you ever got drugs
9 from JC to resell?

10 A I think I might have bought from him once or twice.
11 I think him and Jeff were hanging out together at the bar. I
12 think I bought from him before.

13 Q Now, would it be fair to say that this crew, as
14 you're describing, had a leader?

15 A I suppose you could put it that way.

16 Q All right. And Trey was the leader of this crew?

17 A I suppose you could put it that way, yeah.

18 Q Now, during this time frame, you said you were
19 buying drugs and selling them, as well as you were buying them
20 for your own personal use?

21 A Yes.

22 Q You were buying crack?

23 A Yeah.

24 Q And you were smoking crack?

25 A Yeah.

1 Q Daily basis?

2 A There were some runs where I'd go, you know, a
3 couple -- 2, 3 days at a time. You know, maybe take a break.
4 You know. But yeah, I mean, there was plenty of times where I
5 would smoke, you know, day after day. Yeah.

6 Q Okay. You were smoking meth as well?

7 A There might have been some in occasions in there.
8 But I -- you know, that -- at that time, that really wasn't a
9 drug of choice of mine.

10 Q Okay. And meth was also known as hard -- or soft?
11 Soft or hard?

12 A No, no. Hard is rock cocaine. Soft is just white
13 powder cocaine.

14 Q Okay.

15 A Meth is crank. You know, dope --

16 Q Okay.

17 A -- is another name for it, you know.

18 Q So, when you would use cocaine, would it be hard or
19 soft? Would you use powder as well as crack?

20 A No. At that time, no. I was just basically
21 smoking.

22 Q Okay. You would drink alcohol as well?

23 A There were occasions, you know, there at the --

24 Q At the bar?

25 A -- Sportsman's.

1 Q Sportsman's?

2 A Yeah.

3 Q Okay. What was your drink of choice?

4 A Probably New Castle, you know. New Castle beer.

5 Q Now --

6 A Occasional vodka.

7 Q How many New Castle's or beer would you drink?

8 A I mean, you know, in all truth and honesty, you
9 know, if we would go to the bar maybe 2, 3 days out of the
10 week, you know, I would have a beer or two. I wasn't real,
11 real big into drinking. You know, it doesn't go with smoking.
12 But you know, I did drink.

13 Q Okay.

14 A You know.

15 Q So, you'd prefer to get high as opposed to get
16 drunk?

17 A Yes.

18 Q All right. And you were taking pills as well?

19 A Yes.

20 Q Medications?

21 A Yes.

22 Q Things of that nature, right?

23 A I mean, basically the way it works, you know,
24 truthfully, is that, you know, when you smoke, you know, hard
25 like that all the time, you know, you tend to get, you know,

1 freaked out, paranoid when you smoke too much, everything like
2 that. So, you use other drugs to compensate. So, you know, I
3 would use the alcohol --

4 Q Tell me the other drugs that you would use to
5 compensate from smoking crack?

6 A A lot of times, you know, to keep it straight, I
7 would use, you know, Lortab's, OxyContin's, basically to
8 counteract the use of the crack.

9 Q Okay. And did you have a prescription for those
10 drugs?

11 A No.

12 Q So, you got -- you were taking -- although legal
13 drugs, they were not prescribed to you?

14 A No.

15 Q Right. And would you get those at the Sportsman's
16 as well?

17 A No. The --

18 Q You'd get that from another source?

19 A Yeah, another -- other people.

20 Q Okay. So, during this time frame, you're taking
21 drugs that would I guess get you sped up like crack?

22 A Um-hum.

23 Q Correct?

24 A Yes, sir.

25 Q In order to compensate to try to get back in

1 control, you would take other drugs that would kind of bring
2 you down?

3 A Yes, sir.

4 Q And you're going from speeding up and slowing down,
5 speeding up and slowing down; that was your lifestyle?

6 A Yeah, I was living it pretty hard.

7 Q Okay. And while you were living this pretty hard
8 lifestyle, fair to say all these drugs affected your
9 perceptions?

10 A That would be fair to say.

11 Q Okay. And you actually described yourself as an
12 addict, correct?

13 A Yes, I'm a drug addict.

14 Q Okay. And all this drug use eventually led you to
15 the use of heroin, correct?

16 A Yes it did, sir.

17 Q All right. And you never stop being an addict,
18 correct?

19 A No. It's a -- it's a lifetime -- unfortunately,
20 it's a lifetime thing.

21 Q Now, while you were living this lifestyle, you said
22 that there are several groups, correct?

23 A Um-hum.

24 Q And one of the groups --

25 MR. DiGIACOMO: I'm sorry. That is a yes, just for

1 the record.

2 THE WITNESS: Yes, yes.

3 MR. DiGIACOMO: I apologize.

4 THE WITNESS: Several -- you know. You mean, groups
5 by other people selling crack; is that what you mean?

6 BY MR. CANO:

7 Q Yeah. I'm talking about drug crews, I guess, or
8 crews.

9 A Yes.

10 Q Okay. Did you know which drug crew or group Red
11 belonged to?

12 A You know, it's hard to say, you know. Everybody,
13 you know, at the Sportsman's --

14 Q It's a yes or a no.

15 A No. You know.

16 Q Okay. Would you see Red associate with Trey?

17 A I seen her around Trey, yes.

18 Q Would you see Red associate herself with Black, the
19 one with the long goatee?

20 A Yes.

21 Q Okay. Do you know a person named Demarco?

22 A I can't say that that rings a bell.

23 Q Would you see Red associate herself with Christina?

24 A Yes.

25 Q Okay. Did you know if Red had sold drugs to

1 Christina?

2 A I believe so.

3 Q Okay. Did you ever see Red associate herself with
4 Victoria?

5 A Yeah.

6 Q Have you seen Red --

7 A Yes.

8 Q -- Red sell drugs to Victoria?

9 A I don't believe so. And the reason why I say this
10 is because Red --

11 Q If you haven't seen it, you don't know --

12 A No.

13 Q -- that's fine. That's your answer.

14 A No.

15 Q So, is it a no?

16 A No.

17 Q Okay. Now, let's talk about Red for a minute. You
18 described her about 5-foot, Hawaiian, and long dark hair,
19 correct?

20 A Yes, sir.

21 Q Fair to say stocky build?

22 A Yes.

23 Q Fair to say she's a pretty tough girl?

24 A Yeah.

25 Q You've seen Red get into fights?

1 MR. DiGIACOMO: Objection to relevance.

2 THE COURT: Mr. Cano?

3 MR. CANO: Just that she knows -- his opinion on her
4 demeanor or character.

5 MR. DiGIACOMO: Judge, I can't offer propensity
6 evidence against the defendant.

7 THE COURT: Right.

8 MR. DiGIACOMO: They can't offer propensity --

9 THE COURT: Right. If we're not talking about --

10 MR. DiGIACOMO: -- against the witnesses.

11 THE COURT: -- a specific situation, I'm going to
12 sustain the objection.

13 MR. CANO: Fair enough, Your Honor.

14 BY MR. CANO:

15 Q Fair to say Red's a tough gal?

16 A Yeah.

17 Q Okay. Now, you knew Red and D-Roc associated
18 together, correct?

19 A Yes.

20 Q Were you aware of their personal relationship?

21 A Yes.

22 Q You knew that they had a dating relationship?

23 A Yes.

24 Q Okay. And now let's talk a little bit about these
25 groups again. Fair to say that Donny and Romeo were a group?

1 A They hung out with each other.

2 Q Okay. And you knew Donny by a different name from
3 the Sportsman's, didn't you?

4 A Now, say that again.

5 Q Did you know Donny by a different name over at the
6 Sportsman's?

7 A No.

8 Q You've never referred to Donny as White Boy?

9 A I -- I mean, I think the way I referred to it is
10 just because he was a white boy. Not I don't think because
11 that was his nickname. I mean, but I don't remember. You
12 know, just -- he was -- you know. There wasn't a whole lot of
13 white boys over there that hung out with these groups of
14 people. You know. I was one of the few white boys that, you
15 know, hung out. It was -- you know.

16 Q Okay. Did anybody call you White Boy?

17 A No.

18 Q Okay. Did you hear other people refer to Donny as
19 White Boy?

20 A I can't recall. To be honest with you, I can't
21 recall.

22 Q All right. Now, fair to say that you saw Donny and
23 Romeo hang out very -- quite often together?

24 A Yeah. They were with each other quite often.

25 Q Daily basis?

1 A There were very few times I didn't see them
2 together, you know.

3 Q Okay. So, when you would be at the Sportsman's --
4 and you said you were there almost every day?

5 A Um-hum.

6 Q If you happened to see Donny and Romeo, they would
7 always be together; is that a fair statement?

8 A Yeah. Nine times out of ten, yes.

9 Q Okay. You've actually described them as like two
10 peas in a pod?

11 A Yeah.

12 Q Is that a yes?

13 A Yes.

14 Q All right. So, fair to say that your opinion of the
15 relationship is that they were very close?

16 A That's how it seemed.

17 Q Okay. And you knew that Romeo sold drugs?

18 A Yes.

19 Q As well as Donny?

20 A I don't know if Donny so much sold drugs, to be
21 honest with you. You know, he was always with them, kind of
22 placating to Romeo all the time, you know. He was Romeo's
23 errand boy it seemed more like than anything else.

24 Q Okay.

25 A Seemed how the relationship was.

1 Q So, you would see Romeo tell him what to do -- Donny
2 what to do, and Donny would do it?

3 A That's how it seemed, yeah.

4 Q Okay. And the nine times out of ten that you would
5 see them together, that's how the relationship would always be
6 in front of you?

7 A Yeah, most the time. I had very few conversations
8 with Donny ever. You know, he was always the one who was
9 standing off to the side.

10 Q Okay. And you said that you remember a green Grand
11 Am, something of that -- do you remember that?

12 A Yes.

13 Q Okay. And you said that you remember Donny was the
14 one that was driving that car?

15 A Yes.

16 Q Okay. And you've only seen Romeo --

17 A I mean, I believe that it was -- I believe that it
18 was his car.

19 Q Okay. But you've seen Romeo drive it, and I think
20 you testified to it, one time?

21 A I think one time, yes.

22 Q Okay. And that was that one time that I guess he
23 ran into you at the Sportsman's?

24 A Yeah, when I was leaving.

25 Q Now, you described Romeo as -- to be something of a

1 bragger or an exaggerator; is that a fair statement?

2 A Yes, sir.

3 Q All right. He would say things to kind of pump
4 himself up?

5 A Yes.

6 Q Okay. And so basically, whatever was coming out of
7 his mouth, you didn't really take it to heart?

8 A No.

9 Q You thought it was untrue most of the time?

10 A Yeah. I believe, you know, that he -- he
11 exaggerated a lot, you know, with the way his lifestyle was.

12 Q Okay. And so when he told you that he was looking
13 for Victoria and that he was going to kill her, you didn't
14 believe that because you felt he was exaggerating?

15 A Yeah. I thought he was just running his mouth.

16 Q Okay. Did you believe that she owed him \$80 for
17 drugs?

18 A I do believe that.

19 Q Okay. All right. Now, you said you believe that
20 Romeo wasn't a pimp?

21 A No.

22 Q Well, you testified that Romeo wasn't a pimp?

23 A No. I don't believe that he's a pimp, no.

24 Q Okay. But you're basically saying that he was using
25 drugs to manipulate Victoria?

1 A Victoria, yes.

2 Q So, Victoria would give him money? Were you present
3 when that happened?

4 A One time, you know.

5 Q One time you saw?

6 A Yes.

7 Q How money did she give him that one time?

8 A I want to say it was maybe 45 bucks.

9 Q Okay. So, that's the only time you've actually
10 physically seen an exchange of money between Romeo and
11 Victoria?

12 A Yeah. For prostitution, yes. You know, I had seen
13 her buy drugs from him before, you know.

14 Q Well, let me -- answer the question. That was the
15 only time that you saw Victoria give money to Romeo?

16 A No.

17 Q You've seen Victoria give money to Romeo other
18 times?

19 A Yeah, probably -- maybe another three occasions.

20 Q Okay. How much money was exchanged in those other
21 three occasions?

22 A I mean, that's -- you know, that's -- it's tough to
23 say, to be honest with you. I mean -- you know, I just -- I
24 remember, you know, times at the Sportsman's at the bar
25 basically, you know, when she was buying rock from him. You

1 know, I wasn't paying so close attention to count exactly
2 money she was, you know, giving to him.

3 Q Okay. So, on several of those occasions, she gave
4 money to Romeo, he gave her drugs?

5 A Yes.

6 Q Correct? And you said on one occasion he gave her
7 \$45. Did you see an exchange of drugs in response to that?

8 A No. There was no exchange of drugs that time.

9 Q Okay. Now, did you stay with them for the rest of
10 that evening to see if they -- he ever gave her drugs at a
11 later point in time?

12 A No.

13 Q Okay. So, you don't know if he would have given her
14 drugs later for those \$45?

15 A No. Basically, you know, I knew, you know, she was
16 giving her money for -- she just got done working, you know.

17 Q Okay. But what you saw, that she gave him money,
18 correct?

19 A Yes.

20 Q But you don't know if at a later point in time he
21 gave her drugs, correct?

22 A If you're intending it for the money, I know that
23 the money was for services, you know. She got done hooking,
24 you know. He -- you know, she was giving him money.

25 Q My question -- listen to my question.

1 A Yes.

2 Q You saw her give --

3 A Maybe later on there was --

4 Q -- her [sic] \$45?

5 THE COURT: Sir, let Mr. Cano ask the question,
6 okay? So you can --

7 BY MR. CANO:

8 Q You saw Victoria give Romeo \$45?

9 A Yes.

10 Q Okay. And you didn't hang out with them the rest of
11 that evening?

12 A No.

13 Q So, you don't know if Romeo ever gave her drugs in
14 exchange for that \$45?

15 A No.

16 Q Okay. I think you described Romeo as a "worthless
17 pile of crap?"

18 A Yes.

19 Q You didn't have a high opinion of that person, did
20 you?

21 A No, I didn't like him at all.

22 Q Okay. And the reason why you didn't like him at all
23 was because you could see that he was giving Victoria a lot of
24 drugs?

25 A I mean, that's not -- that has something to do with

1 it, but that's not the --

2 Q So --

3 A -- main basis.

4 Q Okay, well listen to my question then. Is part of
5 the reason why you didn't like him because you saw that he
6 kept giving -- kept giving or selling Victoria lots of drugs?

7 A I mean, I can't say that that's the reason, no.

8 Q Okay. Did you appreciate the fact that he was
9 giving Victoria drugs?

10 A No.

11 Q Okay. That didn't sit well with you?

12 A No. No, it didn't.

13 Q Okay. As a matter of fact, you cared about Victoria
14 quite a bit?

15 A Yes, I did.

16 Q You didn't like the lifestyle that she was living?

17 A No.

18 Q You didn't like the fact that she was prostituting
19 herself?

20 A No.

21 Q You didn't like the fact that she was taking as many
22 drugs as she was?

23 A No.

24 Q You wanted to save her?

25 A Yeah, I wanted to help her out. You know, give her

1 a better shot at life than she had for herself, yeah.

2 Q Right. And you knew a little about her history?

3 A Yeah.

4 Q You've talked to her?

5 A Um-hum.

6 Q You lived together for a couple of months?

7 A Yes.

8 Q You had an intimate relationship with her?

9 A Yes.

10 Q Okay. And in that intimate relationship and getting
11 to know, you realized that she had been a prostitute for quite
12 a long time?

13 MR. DiGIACOMO: Objection then, foundation.

14 THE COURT: Hang on. Hang on, sir. You said, you
15 knew she had been a prostitute for quite a long time. Can
16 you --

17 MR. CANO: Well, I said --

18 THE COURT: First, be a little more specific on --

19 MR. CANO: Okay.

20 THE COURT: -- quite a long time. Two weeks, or two
21 years.

22 MR. CANO: Yes, Your Honor.

23 THE COURT: Okay.

24 BY MR. CANO:

25 Q During the course of your relationship, you were

1 able to speak to Victoria?

2 A Yes.

3 Q And you were able to speak about her history?

4 A Yes.

5 Q And her past?

6 A Um-hum.

7 Q As you got to know each other?

8 A Yes.

9 Q As you guys were developing your relationship?

10 A Yes.

11 Q All right. Through the course of those
12 conversations, did you come to know that she had been a
13 prostitute for --

14 MR. DiGIACOMO: Objection.

15 MR. CANO: -- an extended period of time?

16 MR. DiGIACOMO: Foundation.

17 BY MR. CANO:

18 Q How long had Victoria been a prostitute?

19 MR. DiGIACOMO: Objection, foundation, Judge.

20 MR. CANO: I thought I laid the foundation already.

21 THE COURT: Counsel, approach.

22 MR. DiGIACOMO: Based on what Victoria says.

23 THE COURT: Hang on, hang on. Counsel, approach.

24 (Bench conference)

25 MR. DiGIACOMO: He can testify to when he was

1 present, and the behavior of her during that six months. But
2 if I tell somebody, hey, ten years ago, I was a drug addict,
3 there isn't any way to ask somebody, hey, he told you once
4 that ten years ago, he was a drug addict, so you know he's
5 been a drug addict for ten years. It's completely -- there is
6 no foundation. He has no personal knowledge, which is what
7 they've been objecting to for all -- for the last two weeks.

8 THE COURT: Mr. Cano?

9 MR. CANO: So, I'll ask him if he has personal
10 knowledge.

11 THE COURT: I'm sorry?

12 MR. CANO: I'll rephrase it, ask him if he has
13 personal knowledge how long she'd been a prostitute.

14 MR. DiGIACOMO: Well, that doesn't solve the
15 problem. He's testified, I knew her for all of six months.
16 So, he can ask her during that six months if she was a
17 prostitute. But he can't ask her (sic) if she's been a
18 prostitute for years, because he didn't know her years before.
19 Unless there is some way he could find out, other than her
20 telling him. I mean, that's the rules of --

21 THE COURT: Okay.

22 MR. DiGIACOMO: -- foundation.

23 THE COURT: I mean, you can ask him during, you
24 know, the time they were living together, [inaudible] or if
25 she was a prostitute from those -- well, he's going to say

1 yes, it sounds like.

2 MR. DiGIACOMO: Right.

3 (Bench conference ended)

4 BY MR. CANO:

5 Q As long as you've known Victoria, you knew she was a
6 prostitute, correct?

7 A Yeah.

8 Q Okay. Would it be fair to -- and to your knowledge,
9 Victoria also sold drugs?

10 A She had on occasion, yes.

11 Q Okay. Fair to call her a hustler?

12 A Yeah.

13 Q Okay. I think you've described Victoria as a person
14 who had mood swings?

15 A Yes.

16 Q Bipolar?

17 A I mean, I can't say for sure if she was. But she
18 definitely --

19 Q Is that how you described her though?

20 A Yes.

21 Q When you talked to the police --

22 A Yes.

23 Q -- on May 21st? She had like, ADHD?

24 A Yeah.

25 Q Okay. Said she was not too bright? That's what you

1 told to the police back on May 21st?

2 A I mean, I don't remember --

3 MR. DiGIACOMO: I'm going to object as to relevance,
4 Judge.

5 THE WITNESS: -- saying that, but if it's in there,
6 then I suppose I did.

7 THE COURT: I'm going allow the question. Did you
8 understand the question, sir?

9 THE WITNESS: Yes. I suppose, you know, if it's in
10 there, then I said it. But I don't recall saying it.

11 THE COURT: So then, if you don't recall, sir, say
12 that. And Mr. Cano may or may not show you something to
13 refresh your memory.

14 BY MR. CANO:

15 Q Would it help to refresh your recollection if I
16 showed you your voluntary statement that you gave to the
17 police?

18 A Yeah, that's fine.

19 MR. CANO: Page 7, counsel. If I could approach,
20 Your Honor.

21 THE COURT: Yes.

22 MR. CANO: Okay.

23 BY MR. CANO:

24 Q Why don't you go ahead and read that to yourself.
25 Start at line 6.

1 A Right here?

2 Q Yeah. Does that help to refresh your recollection?

3 A Yeah.

4 Q You described her as not the brightest person in the
5 world?

6 A Yes.

7 Q Now, during this time frame, you're talking to
8 Victoria, trying to get her to move back in with you, right?

9 A Yes.

10 Q And you weren't happy about the relationship she was
11 having with Romeo?

12 A I didn't like the fact that Romeo was putting hands
13 on her, you know, and treating her like crap and exploiting
14 her. You know. It wasn't -- you know. She could have a
15 relationship with whoever she wanted to. But I knew what
16 Romeo was doing to her, and that's what I didn't like about
17 the situation.

18 Q Were you present when Romeo put hands on her, as you
19 described?

20 A Oh, no.

21 Q So, you don't have any personal knowledge as to
22 that?

23 A No. No, only what she told me.

24 MR. CANO: And Your Honor, I'd ask that it be
25 stricken, just based on hearsay. I didn't elicit that

1 information, he volunteered it. I asked the foundational
2 questions --

3 THE COURT: Mr. DiGiacomo?

4 MR. CANO: -- and there is none.

5 MR. DiGIACOMO: He's objecting to his own question
6 and answer?

7 MR. CANO: No, I'm objecting to his answer. I
8 didn't ask -- he didn't answer my question. He just
9 volunteered that information.

10 MR. DiGIACOMO: That's fine.

11 THE COURT: I'm going to instruct the jury to
12 disregard the statement from the witness as far as Romeo
13 putting hands on her. He didn't have any personal knowledge
14 of that fact. The jury is instructed to disregard that
15 statement.

16 BY MR. CANO:

17 Q Now, let's talk a little bit about your relationship
18 with Domonic. Okay?

19 A Um-hum.

20 Q You met Domonic over at the Sportsman's?

21 A Yes, sir.

22 Q Okay. Domonic had been over to your house?

23 A Yeah, quite a few times.

24 Q Okay. Would it be fair to say that you were getting
25 to know each other on a friendly basis?

1 A In all truth and honesty, I considered him a friend.

2 Q Okay. It wasn't just a business, drug selling
3 relationship?

4 A No. I didn't -- you know, I mean, that was involved
5 with it. But you know, I liked -- I liked D-Roc as a person,
6 yeah.

7 Q Okay. And obviously, you had his home phone number,
8 correct?

9 A Yes.

10 Q All right. And you had his cell number?

11 A Yes.

12 Q All right. And you were aware that Domonic had a
13 car, correct?

14 A I believe that he did have a car.

15 Q But it wasn't working during this time frame?

16 A No, I think it was broke down.

17 Q Okay. And had you given Domonic a ride home to his
18 home before?

19 A I think two or three times, I think.

20 Q So, you actually knew where he lived?

21 A Yes.

22 Q All right. Now, Domonic knew Victoria as well,
23 correct?

24 A Yes.

25 Q All right. But Domonic wasn't Victoria's pimp?

1 A No.

2 Q Okay. You've never seen Domonic lay hands on
3 Victoria?

4 A No.

5 Q Okay. Would you describe their relationship as a
6 very friendly relationship?

7 A Yeah. I mean, you know, they got along.

8 Q Okay. Did you ever see Domonic with Christina?

9 A I don't believe so.

10 Q Now, you said that you've seen Domonic hanging out
11 with Romeo?

12 A Um-hum.

13 Q All right.

14 THE COURT: Is that a yes?

15 THE WITNESS: Yes.

16 THE COURT: Okay.

17 BY MR. CANO:

18 Q But initially, you saw him hanging out with Trey?

19 A Yes.

20 Q And Trey's crew?

21 A Yeah.

22 Q Okay.

23 A That's how I initially met him.

24 Q Okay. And you met -- actually, from that crew, I
25 think you met Trey first, correct?

1 A Yes.

2 Q So, you met Domonic through Trey?

3 A Yes.

4 Q Okay. And then you said, I guess towards -- closer
5 to when this incident happened, you saw him hanging out with
6 Romeo, correct?

7 A Yeah. I think it was more Romeo was hanging out
8 with D-Roc, you know.

9 Q Romeo started hanging out with Domonic?

10 A Yeah.

11 Q Okay. And when you say that, you'd just say that
12 you would see them together at the Sportsman's?

13 A Yes.

14 Q Okay. How many times would you see them together at
15 the Sportsman's?

16 A I want to say maybe there was three -- three or four
17 occasions that I've seen them together.

18 Q So, when you describe that they were hanging out
19 more, it's just the three or four occasions that you would see
20 them?

21 A No, because I had had a conversation with D-Roc
22 once, you know, and he had said that they was hanging out
23 more, you know. So, that basically led to me knowing that
24 they were hanging out more.

25 Q Okay.

1 MR. CANO: Court's indulgence, Your Honor.

2 BY MR. CANO:

3 Q Now, you said that you had spoken to Victoria the
4 Friday before you gave your statement, correct?

5 A Yes.

6 Q Okay. And that's when you had the conversation
7 about her moving back in with you?

8 A Yes.

9 Q And to the best of your knowledge, she was fine on
10 that occasion when you spoke with her?

11 A Yeah. I mean, she was okay. You know. I mean, I
12 know she wasn't happy with her living conditions, you know,
13 with -- but I mean, she wasn't hysterical at that particular
14 time, no.

15 Q Okay. And during that --

16 MR. CANO: I'll withdraw it -- I'll withdraw that
17 question, Your Honor. Okay.

18 BY MR. CANO:

19 Q Now, after that conversation, is that when you went
20 to go pick her up and take her to 7-Eleven? Or did you do
21 that prior to that phone conversation?

22 A Now, say that again. The --

23 Q The phone conversation that you had with her on that
24 Friday, you said you went to go pick her up, correct?

25 A Yeah, I went to go pick her up. Yes. That was

1 before --

2 Q So, was that after the phone call, or was that --

3 A No, it was before --

4 Q Or did you see her before?

5 A -- I went and picked her up. Yeah. She called me,
6 she --

7 THE COURT: Hang on. You guys are starting to talk
8 over each other. Okay. Mr. Cano, why don't you reask the
9 question.

10 MR. CANO: Yes, Your Honor.

11 THE COURT: Wait until he finishes, and answer. And
12 he'll wait until you finish your answer.

13 THE WITNESS: All right.

14 THE COURT: All right? Go ahead, Mr. Cano.

15 BY MR. CANO:

16 Q They're recording everything. So, if we talk at the
17 same time --

18 A I understand.

19 Q -- they won't understand who's saying what. Okay.

20 Now, you got a phone call from Victoria on that Friday before?

21 A Yes.

22 Q Okay. And you gave your statement on the 21st?

23 A Yes.

24 Q Right?

25 A Yes.

1 Q Okay. So, if I told you the 21st was a Sunday, I
2 guess the Friday before would have been the 19th, correct?

3 A Yes.

4 Q All right. After that phone conversation with
5 Victoria, is it then when you saw her in person? Or did you
6 see her in person prior to that phone conversation on the
7 19th?

8 A I seen her after. I went and picked her up after
9 that phone conversation.

10 Q Okay. And then after you picked her up, you said
11 that you spent a little bit of time together, correct?

12 A Yeah, about 2, 3 hours.

13 Q And then you dropped her back off at the Tod Motel?

14 A Yes.

15 Q Okay. And you were supposed to catch up with her
16 again at a later point in time?

17 A Yeah. She basically told me she was going to call
18 me later on, and I'd pick her and her stuff up, take her back
19 to my house.

20 Q Okay. But that never happened?

21 A No.

22 Q Okay. And you said that you left her with some
23 person that was an Aryan type looking person?

24 A Yeah. I mean, he had -- you know, he had -- I don't
25 know. Just the way he carried himself. You know. He'd been

1 in prison. You know, I'd been around him. You know, he was
2 with the Aryan Brotherhood basically type of guy.

3 Q Okay. At what time did you leave her at that motel
4 with that person?

5 A I want to say it was probably about 6:00 o'clock,
6 maybe 5:30, 6:00 o'clock when I left the Tod Motel.

7 Q Now, I want to talk to you a little bit about when
8 you gave your statement to the police. The information that
9 you had as to what had happened to either Victoria or
10 Christina, that was given to you by Red, correct?

11 A As far as --

12 Q Listen to my question. Any information that you had
13 concerning Victoria or Christina or what had happened to them,
14 that information was given to you by Red?

15 A Yes.

16 Q Okay. In addition to whatever you had heard on the
17 news?

18 A Yes, yes, yes.

19 Q Okay. You didn't have any personal knowledge as to
20 what had happened to them?

21 A No.

22 Q Okay. Now, after you gave your statement to the
23 police, they actually put you up at a hotel?

24 A Yeah.

25 Q Along with Red?

1 A Yes.

2 Q They bought you food?

3 A Yes.

4 Q Right? As a matter of fact, I think during your
5 statement, you told them that you were about to pass out?

6 A Yeah.

7 Q Do you recall that?

8 A Yeah.

9 Q They told you to kind of like -- you know, hey, slow
10 down, we can't keep up with you because you're kind of going
11 fast?

12 A Yeah.

13 Q Do you remember that?

14 A Yes, I do.

15 Q And then all the sudden, a few pages later -- or you
16 know, a little bit later, you started slowing down, and you
17 were about to pass out; do you --

18 A Yes.

19 Q -- remember that?

20 A Yeah.

21 Q Okay. Were you under the influence when you were
22 giving your statement to the police?

23 A I don't believe so.

24 Q Okay. Do you recall telling them that you had taken
25 some medication because you couldn't take it no more?

1 A If I recall -- I don't know if I was on
2 antidepressants at the time or not. But I -- you know. I
3 don't remember exactly.

4 Q All right. Would it help to refresh your
5 recollection if I showed you your statement?

6 A Yeah, that's fine.

7 Q All right.

8 MR. CANO: Page 29, counsel.

9 BY MR. CANO:

10 Q Starting at the top [inaudible]. Does that help to
11 refresh your recollection?

12 A Yes, sir.

13 Q So, were you taking some medication?

14 A I believe so.

15 Q Okay. And that was kind of like those things that
16 would calm you down? Kind of like -- do you remember how you
17 were telling us how you would get high, and then take other
18 drugs to compensate?

19 A Well, that's what I'm trying to remember. Because
20 you know, at the time, I had been putting myself through a,
21 you know, program, you know. And although I was using through
22 this program, you know, I -- I don't remember if I was on
23 antidepressants at that time or if it was anxiety medication.
24 Over a ten-month period, I was on probably three or four
25 different kinds of medications. Now, whether I took them like

1 I was supposed to, that's another thing.

2 Q Okay.

3 A But I don't remember if I was referring to, I needed
4 to eat some Lortab's because I was coming down off of crack,
5 or if I was -- I needed my anxiety pill because I was, you
6 know, anxious. I don't recall what was behind that statement,
7 is what I'm saying.

8 Q Okay. But you told them you had to take some
9 medication because you were too anxious at that --

10 A I believe so.

11 Q -- prior to that statement?

12 A Yes.

13 Q Okay. And you also told them you were about to pass
14 out and you needed to get some food, correct?

15 A Yes.

16 Q And then they ended up bringing you some food,
17 right?

18 A Yeah, from Wendy's. Yeah.

19 Q And when they gave you a place to stay that night,
20 they also brought you some food as well? You and Red I
21 believe stayed together, correct?

22 A Yeah, the -- yeah.

23 Q Did they get you some food?

24 A I don't remember -- I don't think they bought us
25 food that night, no.

1 Q Okay. Do you remember the Henderson Police
2 Department giving you some money?

3 A No. In all truth and honesty, you know, after they
4 had moved us from one location to another location, I had to
5 call down there, you know, because they didn't leave any money
6 with us. So, I had to call down to the police station and ask
7 them to notify the next hotel we were staying at, open an
8 account or whatever you want, it was, so we could eat at the
9 café, because they didn't leave any money with us.

10 Q And they did do that?

11 A They did eventually do that, yes.

12 Q Okay. And you said they took you to another
13 location. That was Railroad Pass?

14 A Yes.

15 Q All right. And you stayed there for a couple
16 nights, along with Red?

17 A I only stayed one night.

18 Q One night there?

19 A Yes.

20 Q All right.

21 MR. CANO: Nothing further, Your Honor.

22 THE COURT: Any redirect?

23 MR. DiGIACOMO: Just very briefly.

24 REDIRECT EXAMINATION

25 BY MR. DiGIACOMO:

1 Q Mr. Cano asked you some questions about kind of
2 timing of -- related to the Monday, and the Friday, and the
3 Sunday.

4 A Um-hum.

5 Q Do you recall testifying -- or let me rephrase that
6 question. Do you remember indicating on direct testimony that
7 you thought it was Monday morning that you went down to the
8 police station, correct?

9 A Yes.

10 Q There was a question about D-Roc and Red, and I
11 think it was Mr. Cano's term, dating relationship. How would
12 you describe the relationship between D-Roc and Red?

13 A I know that Red had feelings for D-Roc. I never had
14 a personal conversation with D-Roc about his feelings back
15 towards Red. But I believe there was some type of
16 relationship with feelings involved there, you know. But
17 there was also, you know, a hustling relationship there, too.

18 Q When you say a hustling relationship, what does that
19 mean?

20 A You know, she sold dope, basically, you know. And I
21 was on the -- I was under the pretense that -- you know, that
22 she had gotten dope from D-Roc before.

23 Q Were there -- was there a time prior to the injuries
24 that you saw -- that last time you picked up Red and went to
25 your house, was there a time prior to that where you saw

1 injuries related to her relationship -- on Red, related to her
2 relationship with D-Roc?

3 A I believe that there was, you know, there was some
4 -- that basically, there was some physical things that had
5 gone on before that. You know, maybe I want to say around a
6 month before this whole incident, before Victoria disappeared.

7 Q And then my last question to you is, there was a
8 period of time where you said first it was D-Roc with Trey,
9 and then it was D-Roc with Romeo. Do you remember those
10 questions?

11 A Yes.

12 Q And on cross-examination, I think that he directed
13 your questions back to the group -- the Trey group, and kind
14 of that Trey's either the shot-caller or the leader, or
15 whatever that was. Do you remember those questions?

16 A Yes.

17 Q What was Mr. Malone's role, D-Roc's role in this
18 crew?

19 A I mean, he --

20 MR. CANO: Objection as to foundation, Your Honor.

21 MR. DiGIACOMO: Well, he's aware of Trey's role.
22 We've had a lot of testimony as to who was in the middle of
23 this crew.

24 THE COURT: I'm going to allow the question, and --
25 BY MR. DiGIACOMO:

1 Q What was D-Roc's role in this crew?

2 A You know, like a foreman to a construction company.
3 You know, basically, he would collect money. You know,
4 basically take care of business if something needed to be
5 taken care of.

6 Q Thank you very much.

7 MR. DiGIACOMO: Judge, I have no more questions.

8 THE COURT: All right. Mr. Cano?

9 RE CROSS-EXAMINATION

10 BY MR. CANO:

11 Q D-Roc's relationship with Red, you said it was like
12 a hustle -- a hustle relationship, as well as a personal
13 relationship, correct?

14 A Yes.

15 Q All right. And the hustle relationship you're
16 referring to, like they would sell drugs together?

17 A Yes.

18 Q Okay. You've never known Domonic to pimp Red at
19 all?

20 A No.

21 Q And Red wasn't a hooker --

22 A A prostitute.

23 Q -- or a prostitute, was she?

24 A No.

25 Q She never claimed to be one ever?

1 A Never said that ever.

2 Q Ever, okay. As a matter of fact, she was like --
3 never mind. I'll withdraw that question.

4 MR. CANO: Nothing further, Your Honor.

5 MR. DiGIACOMO: No redirect, Judge.

6 THE COURT: Any questions by any of the jurors? No
7 questions. Sir, thank you for your testimony. You are
8 excused. Ladies and gentlemen, we're going to take a break at
9 this time.

10 During this recess, it is your duty not to converse
11 among yourselves, or with anyone else on any subject connected
12 with this case. Or to read, watch or listen to any report of
13 or commentary on the trial by any person connected with the
14 trial, or by any medium of information, including without
15 limitation, newspaper, television, radio, or the internet.
16 You are not to form or express an opinion on any subject
17 connected with this case until this matter is submitted to
18 you.

19 We'll see you back in a few minutes. Officer, if
20 you can just open the door for the jurors. Just follow the
21 officer out, please.

22 (Jury recessed at 11:04 a.m.)

23 (Outside the presence of the jury)

24 THE COURT: We're outside the presence. Just real
25 quick, a schedule for Monday, I could start at 9:00 or 9:30 on

1 Monday.

2 MR. CANO: I'm not a morning person, so I'm voting
3 for 9:30.

4 MR. PIKE: I need to check my calendar very --

5 THE COURT: Okay.

6 MR. PIKE: -- quickly if I can, Your Honor.

7 (Pause in the proceedings)

8 MR. DiGIACOMO: How about we make it 9:15, Judge?
9 We can split the difference. I have my children in the
10 morning.

11 MR. CANO: I'll be here whenever you tell me to be
12 here, Your Honor.

13 THE COURT: Let's accommodate each other. 9:15
14 Monday morning. We do need to leave pretty close or right at
15 5:00 on Monday.

16 MR. CANO: Okay.

17 THE COURT: Okay? And then today as far as your
18 witnesses, I would like to let the jury go around 4:00 or so.
19 I don't want to keep them right up to 5:00. But if you were
20 in the middle of a witness and there's scheduling issues, then
21 we'll go to 5:00. But --

22 MR. LALLI: Well, here's my thought, Your Honor.
23 We've got -- we're going to have the crime scene analyst
24 testify. She will go up until the noon hour, and end after
25 that. And then we have Harold Herb, who is Donald Herb's

1 father. By gauging the last trial, he -- there was some
2 length of time to his testimony. Then the witness after that
3 would be Donald Herb. And my druthers would be to kind of
4 start fresh with him.

5 And so my recommendation, based upon what time it is
6 now, is that we call the crime scene analyst. Then we call
7 Harold Herb, and just stop there. That will be shy of 4:00
8 o'clock. But my -- if I had to estimate, I would say --

9 MR. DiGIACOMO: 3:15.

10 MR. LALLI: -- we're looking somewhere around
11 3:00-ish at that point.

12 MR. DiGIACOMO: I mean, it just doesn't make a lot
13 of sense to start a five-hour direct, go 45 minutes, and then
14 give the jury two days off. I actually think Mr. Lalli's
15 being way to liberal at the rate we're going that he thinks at
16 3:00 o'clock, we're going to be done with Harold Herb. I
17 think it will be much afterwards. But at the earliest we
18 could be done with Harold would be 3:00 o'clock.

19 THE COURT: All right. Are we on schedule?

20 MR. DiGIACOMO: We are --

21 MR. LALLI: I think we are.

22 MR. DiGIACOMO: -- actually -- I think I had -- at
23 this point, we sped up last time, and it only took six more
24 days of testimony. So, we're probably arguing --

25 MR. PIKE: A week from Monday.

1 MR. DiGIACOMO: -- a week from Monday or Tuesday.

2 THE COURT: Okay.

3 MR. DiGIACOMO: Which gives us an extra two weeks,
4 if we reach --

5 THE COURT: Oh, so --

6 MR. DiGIACOMO: -- penalty. So, that's plenty.

7 THE COURT: Great. I just didn't want to -- I don't
8 want to go over six weeks, because --

9 MR. LALLI: Nor do we.

10 THE COURT: All right. Okay.

11 MR. CANO: I don't think we'll get close to that.

12 THE COURT: All right. So, we'll end up on -- is it
13 Donald Herb?

14 MR. DiGIACOMO: Or Harold Herb.

15 MR. LALLI: Harold Herb will be the --

16 THE COURT: Harold.

17 MR. LALLI: -- last witness.

18 THE COURT: Harold Herb.

19 MR. LALLI: So, this witness, and then one other,
20 Your Honor.

21 THE COURT: Okay. And then Tuesday, my schedule
22 looks like pretty much about 10:00. Next Wednesday, pretty
23 much around 9:30. Starting. That's when --

24 MR. DiGIACOMO: I have a --

25 THE COURT: -- we're starting.

1 MR. DiGIACOMO: I have a 9:00 o'clock I have to make
2 on Tuesday. But I think if the Court sends an email -- it's
3 Judge Ellsworth. So, I'll send the Court the information.

4 THE COURT: Okay, if you could do that.

5 MR. DiGIACOMO: I think it's Judge Ellsworth, it
6 won't be a problem. The only issue will be [inaudible] trial
7 by that point. And so [inaudible].

8 THE COURT: Thank you.

9 (Court recessed at 11:07 a.m. until 11:18 a.m.)

10 (In the presence of the jury)

11 THE COURT: All right. The next witness for the
12 State?

13 MR. LALLI: Your Honor, the State calls Jennie
14 Ayres.

15 THE MARSHAL: If you would please remain standing
16 and raise your right hand facing the Clerk, please.

17 JENNIE AYERS, STATE'S WITNESS, SWORN

18 THE MARSHAL: If you'll have a seat, ma'am. Please
19 slide up to the microphone. If you would, please, state and
20 spell your name for the record.

21 THE WITNESS: Jennie, J-E-N-N-I-E, A-Y-E-R-S. Thank
22 you.

23 THE COURT: Go ahead, counsel.

24 MR. LALLI: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. LALLI:

2 Q Ms. Ayers, how are you employed?

3 A I'm employed with the Henderson Police Department as
4 a Crime Scene Analyst II.

5 Q What is a Crime Scene Analyst II?

6 A It is the highest level of the positions within the
7 crime scene unit. I can respond to any and all types of
8 cases.

9 Q And can you give us some sense of what your job
10 responsibilities are?

11 A When I respond to crime scenes I'm responsible for
12 the documentation of the crime scene through photography,
13 through notes, sketches, diagrams. I also collect evidence
14 from the scenes. On certain types of scenes, I process the
15 scenes for evidence. And then I create reports and diagrams
16 to be used later.

17 Q How long have you been in your current position with
18 Henderson?

19 A I've been with Henderson about five and a half
20 years.

21 Q Did -- were you involved in law enforcement before
22 then?

23 A Yes, I was.

24 Q What did you do?

25 A I worked for two different agencies in Idaho, the

1 Canyon County Sheriff's Office and Idaho State Police, and
2 that was a for a total of five years.

3 Q Do you have any particularized training in order to
4 do your job?

5 A Yes. I have a bachelor's degree in biology and then
6 I have over 1,100 hours of specific training related to crime
7 scene and forensics in things like homicide investigation,
8 blood stain examination, shooting reconstruction and other
9 types of things related to my field.

10 Q Were you working back on May 20th of 2006?

11 A I was, yes.

12 Q On that day did you respond to an area in Henderson
13 in the area of Access Road and Dawson Avenue?

14 A Yes, I did.

15 Q Is that area located in Clark County, Nevada?

16 A Yes.

17 Q Can you explain to the jury why you responded to
18 that location?

19 A We responded to that location because there had been
20 two bodies that had been found out in the desert.

21 Q What was going on when you arrived?

22 A When I arrived there were detectives present. I
23 arrived with CSA Tammy Barber. And the first thing that we
24 did was do a walkthrough of the scene with detectives.

25 Q What's a walkthrough of the scene?

1 A It's when you go through the scene to kind of assess
2 what it is that you have going on. So in this case, because
3 it was out in a desert area, we walked around the area of
4 where the bodies were so that we could see sort of what
5 evidence we might have to deal with.

6 Q All right. You said that part of your
7 responsibilities are to photograph the scene; is that --

8 A Correct.

9 Q -- correct?

10 A Yes.

11 Q Were photographs taken of this particular location?

12 A Yes, they were.

13 MR. PIKE: Your Honor, I -- the defense has had an
14 opportunity to review the photographs, the group of
15 photographs that are being proposed for introduction at this
16 point in time. While some of them are very graphic we -- they
17 are necessary to -- for both sides and we have no objection to
18 them being admitted into evidence.

19 THE COURT: And what's --

20 MR. LALLI: Thank you, Mr. Pike.

21 THE COURT: -- Mr. Lalli, if you can set forth the
22 numbers and --

23 MR. LALLI: Yes, they are 1 through 38, and I
24 believe there is no number 23, or 24. So I would move for the
25 admission of those photos.

1 THE COURT: All right. They will be admitted.

2 (State's Exhibits 1 through 38, except for 23 or 24)

3 BY MR. LALLI:

4 Q All right. I'm going to show you State's Exhibit
5 No. 1. Can you please explain for the jury what we're seeing
6 here?

7 A This is an ariel photo of the crime scene. At the
8 top of the photo is Highway 93/95, which is also called
9 Boulder Highway. Coming off of Boulder Highway is Access
10 Road. And that meets up with Dawson Road.

11 On the left center you can see a large vehicle.
12 That was our command vehicle.

13 Q Let me just zoom into that area for a moment. Is
14 that where you're talking about?

15 A Yes.

16 Q Okay. Now, if we can to the left of the photo --
17 I'm not sure if it'll focus -- can you see some red little
18 smudgy dots?

19 A Yes.

20 Q What is that?

21 A What's now approximately in the center of the screen
22 are some orange cones.

23 Q I'm going to transition to State's Exhibit No. 3.
24 You talked about some cones. Can you describe what we're
25 seeing here?

1 A This is now from the opposite direction this ariel
2 photo is taken. And those orange cones that I mentioned in
3 the previous photo that were in the center are now at the left
4 hand side of the screen.

5 Q The cones that are in the left hand portion of the
6 screen, do they appear to be in a line?

7 A They are, yes.

8 Q Why was that done?

9 A That was done to block that area so that there was
10 no traffic going over that area to protect it.

11 Q All right. What are we seeing in State's Exhibit
12 No. 5?

13 A In State's 5, at the bottom of the photo is a
14 roadway type area. You can see the straight line of cones at
15 the left hand side. And then there are a number of other
16 cones to the right of that line of cones. Above the other
17 cones you can see two bodies.

18 Q Now, with respect to the cones to the right of the
19 cones that are in the line there, so the -- the kind of
20 scattered cones, why were those cones placed there?

21 A Those cones were placed to identify areas of tire
22 tracks.

23 Q So if we transition for a moment to State's Exhibit
24 No. -- I think this is 10 -- it's somewhat difficult to see,
25 but tell us what we're seeing there.

1 A What we're seeing is a couple of different tire
2 tracks. In this view they're in sort of a V-shaped pattern.

3 Q What are we seeing in State's Exhibit 14 now?

4 A This photo was taken after our traffic unit had been
5 out to the scene and they put orange paint markings in the
6 area of the tire tracks. There are also evidence placards A,
7 B, C and D to identify each of the separate tire tracks.

8 Q What's the significance of the orange paint that's
9 down on the dirt there?

10 A The paint was used by traffic to identify the tire
11 tracks so that they could take measurements. They took
12 measurements of a number of things within the scene.

13 Q All right. And would State's Exhibit No. 12 be an
14 example of some of the measurements that were taken?

15 A This is a photo that was taken of the tire track at
16 B, and it was taken with a ruler in place, so that an
17 examination could be made at a later date, if necessary,
18 comparing this tire track to any tire that was possibly
19 recovered as evidence.

20 Q Now, at this point in the investigation was there a
21 tire to compare the impressions to?

22 A No, but so that we have that evidence at a later
23 date, we preserve it at the time that we're at the scene so
24 that if it does become necessary later to do that comparison,
25 we have the evidence.

1 Q All right. I want to go back to State's Exhibit No.
2 4. And we see what appears to be two bodies just to the side
3 of or up from what appears to be a dirt road; is that correct?

4 A Yes, that's correct.

5 Q Now, at the time that the two bodies were discovered
6 did members of law enforcement know their identities?

7 A No.

8 Q How were the two bodies referred to?

9 A We referred to them as Jane Dawson One Doe and Jane
10 Dawson Two Doe. And the reason we do the Dawson is because
11 that was the street that was closest to them. The one who was
12 closer to the street was Dawson One and the one who was
13 further from the street was Dawson Two.

14 Q And did you later learn the identities of these two
15 ladies?

16 A Yes.

17 Q What were they?

18 A Dawson One who was closer to the road is Victoria
19 McGee, and Dawson Two who was further from the road is
20 Charlotte Fountain [phonetic].

21 Q Is -- was she also known as Charlotte Combado?

22 A I believe so, yes.

23 Q Okay. I'm going to show you what we've marked as
24 State's Exhibit No. 21. Can you please describe for us what
25 we're seeing there?