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Respondent.

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Sep 11 2013 08:59 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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Counsel for Respondent

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Case No. 62649

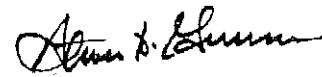
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CLERK OF THE COURT

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2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 JAQUEZ DEJUAN BARBER,

9 Defendant.

CASE NO. C268471

DEPT. NO. XX

10
11 BEFORE THE HONORABLE JEROME T. TAO, DISTRICT COURT JUDGE

12
13 WEDNESDAY, OCTOBER 10, 2012

14 **ROUGH DRAFT**
15 **RECORDER'S TRANSCRIPT OF**
16 **JURY TRIAL - DAY TWO**

17
18
19
20 APPEARANCES:

21 For the State:

HAGAR TRIPPIEDI
Deputy District Attorney

22
23 For the Defendant:

KERRI J. MAXEY
CLAUDIA L. ROMNEY
Deputies Public Defender

24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

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1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 10, 2012, 12:27 P.M.

2 * * * * *

3 [Outside the presence of the jury]

4 THE COURT: All right. We're on the record. State versus Jaquez
5 Barber, C286471. The defendant is present in custody. We're outside the
6 presence of the jury. Is there anything that either side wanted to put on the
7 record?

8 MS. ROMNEY: Yes, please, judge, I think this kind of just falls under
9 some housekeeping matters. When Mr. Barber was booked on this charge he
10 was in custody.

11 THE COURT: Uh-huh.

12 MS. ROMNEY: And his prints were in the AFIS system because of an
13 arrest from March 2009, I believe.

14 THE COURT: Okay.

15 MS. ROMNEY: And so we just wanted to -- and -- and Ms. Trippiedi I
16 think knew this in advance and in pretrialled some of her witnesses, but we just
17 wanted to make sure that there weren't any references made by any of the
18 witnesses, or at least kind of put the Court on notice that they couldn't refer to
19 him being in custody, being arrested previously, or any of the, you know, that he
20 -- with the detective were to say something like, you know, once I got the results
21 of the fingerprint that I went to the prison and booked him on this charge, that
22 there isn't a reference to anything like that.

23 MS. TRIPPIEDI: Yeah, Your Honor. I did pretrial my witnesses and let
24 them know that I was kind of going to be leading around that area just to make
25 sure. But I'll remind them again right before they get on the stand. I just -- the

1 way I'm just going to address it is a couple months after this occurred a hit was
2 made. And then I'm also going to have my chemist explain that people are
3 entered in the system for a number of reasons. It's, you know, I'm just going to
4 -- so it's not just going to say like any time someone's arrested they're entered
5 into the system, you know. So I'm going to try my best to prevent them from
6 saying anything.

7 MS. ROMNEY: Yeah. We just don't -- we don't want there to be an
8 insinuation or a direct reference to, you know, the fact that he --

9 THE COURT: Right.

10 MS. ROMNEY: -- it came about because of an arrest or a prior case.

11 THE COURT: Right. The easiest thing to do is I think what Ms. Trippiedi
12 suggested which is when she gets to that point, just lead the witness and just
13 give "yes" or "no" answers and, you know, obviously I'm going to give her a lot of
14 latitude to do that.

15 MS. TRIPPIEDI: Yeah.

16 THE COURT: So that the witness doesn't blurt anything out hopefully.

17 MS. TRIPPIEDI: And I'll remind him again right before we start too.

18 THE COURT: Okay. I, on the jury instructions, my J.E.A. printed out the
19 second copy of the jury instructions that she was given, but it still says \$7,000 in
20 the copy she has. I don't know if there was another one that she maybe didn't
21 notice, but --

22 MS. TRIPPIEDI: Oh, you know what, maybe I didn't save the right one in
23 my computer when I --

24 THE COURT: Yeah. Because the one that she has, I now have two
25 versions, the one that I had yesterday and the one that she gave me this

1 morning, and they both say 7,000 on it. So that needs to be fixed at some point.

2 MS. TRIPPIED!: Okay. Can she go in and just change it or do you want
3 my secretary to e-mail a new one or what?

4 THE COURT: She can. But I'm actually across the street in the other
5 building so it might be easier for your secretary to do it.

6 MS. TRIPPIED!: Oh, is that where --

7 THE COURT: Yeah.

8 MS. TRIPPIED!: Okay.

9 THE COURT: Because then she has to walk across the street and all
10 that. It might be faster --

11 MS. TRIPPIED!: Yeah, got it.

12 THE COURT: -- if you had someone do it.

13 MS. TRIPPIED!: Okay.

14 THE COURT: And it's my understanding that's the only change, right, just
15 the 6,000? Or was there anything else?

16 MS. ROMNEY: The only other thing that we wanted to put on the record,
17 Judge, was there are a lot of references in this case about the point-of-entry
18 window.

19 THE COURT: Okay.

20 MS. ROMNEY: And we don't -- I don't think they should refer to that
21 window as the point of entry because that's an element. Entering is an element
22 of burglary that they have to meet. So I think -- I don't want -- I don't want
23 anyone to testify as if that's a conclusion. You know, if the officer were to maybe
24 say, you know, I did some investigation and in my opinion, you know, I think that
25 this is the window that someone could have entered in, I think that would be

1 okay. But I wouldn't want the State or the witnesses to conclusively say this was
2 the point of entry or refer -- you can call it the master bathroom window.

3 I think that's drawing a conclusion. And, you know, if the State's
4 referring to it, I think that's kind of vouching for -- for the witness to say that
5 because one of the elements of burglary is entry, you know, with intent. And so I
6 think they have to meet, since that's an element that they have to meet, I don't
7 think that they should refer to and kind of draw the conclusion of a point-of-entry
8 window.

9 THE COURT: Well, I mean-

10 MS. TRIPPIEDI: I have a response to that too.

11 MS. ROMNEY: Conclusively.

12 THE COURT: I'm sorry?

13 MS. TRIPPIEDI: I want to respond to that too.

14 THE COURT: Well, I guess before you even respond, I mean, the
15 practical question is when is she going to tell her witnesses that? Because
16 presumably all five of them are going to testify now one right after the other,
17 when is she going to be able to sit down with them and say, hey, don't refer to it
18 this way; refer to it that way?

19 MS. ROMNEY: Well, if the ones who are here can be told that now before
20 we bring the jury in, I think that would solve that problem.

21 MS. TRIPPIEDI: And, Your Honor, that's purely something that's based
22 on -- that's argument. We have -- we have facts that we believe that that was
23 the window used to make entry. They can certainly argue that -- that it wasn't
24 the window that was used to make entry, but we have actual things that make
25 us, you know, believe that that was the window that was used to make entry. It's

1 not just a conclusive statement not based on anything.

2 And this is completely, you know; the house is going to be the
3 house -- sometimes I'm going to refer to the house as the house that was
4 burglarized, that's our argument, that's our case. So you guys can certainly
5 argue that, you know, during your conclusion that it was not, you know, entered,
6 that the house was not entered, that that window was not the window used to
7 make entry. But as far as, you know, I'm going to ask my witnesses what they
8 believed was the point of entry and they're going to state, and they're going to
9 tell the jury why and the jury'll make whatever, you know, they want to believe
10 out of that.

11 MS. ROMNEY: I think there is a difference between giving an opinion that
12 that's their opinion that perhaps that's where the, you know, point-of-entry might
13 have been made. But I think there is a difference between that and conclusively
14 saying definitively that that's a point-of-entry when that's an element that has to
15 be met. I think the jury could, you know, when someone's saying that the jury
16 then can assume that entry was made.

17 THE COURT: Well, how do you know they're going to say that? Is this in
18 the report somewhere? I'm not sure what you're talking about.

19 MS. ROMNEY: In the finger, for example, on the fingerprint reports when
20 it -- a lot of it will -- sometimes it will say point-of-entry window. Or in the police
21 report from the detective it will say, I received a match of fingerprints to the ones
22 that were found at the point-of-entry window. And, like I said, I think there is a
23 difference between perhaps giving an opinion versus conclusively saying --
24 drawing that conclusion as a, you know --

25 MS. TRIPPIED!: Well, it is conclusive.

1 MS. ROMNEY: -- and leading them to believe that that's, you know, an
2 element that's already established.

3 THE COURT: Well, first of all, I'm not sure the witnesses are going to say
4 that. I have no idea what they're going to say. But, I mean, your objection really
5 is -- is it to the words point-of-entry? I'm not sure what the scope is of what
6 you're objecting to. And you're saying that that implies a conclusion?

7 MS. ROMNEY: Yes.

8 MS. TRIPPIED: Your Honor, I'm going to ask the witness based on his
9 experience as a police officer and his investigation what does he believe is the
10 point-of-entry in this case and what facts lead him to believe so. And he's going
11 to give a answer that is supported by the facts of this case. It is up to the jury to
12 decide whether to consider that the point-of-entry based on the support he
13 provides.

14 THE COURT: Yeah. I mean, I guess that's the thing is if she can -- if her
15 witness can actually establish that there is a reason for believing it's a
16 ~~point-of-entry, why can't you call that the point-of-entry?~~

17 MS. ROMNEY: I think he can. I think there is a problem when a
18 fingerprint analyst calls it a point-of-entry window or when a detective calls it a
19 point-of-entry window then they weren't the ones who did that investigation.

20 MS. TRIPPIED: But they're calling --

21 MS. ROMNEY: So they're drawing a conclusion, they're -- based on what
22 someone else would have said or included, you know, opined they're drawing
23 that as a conclusion. And I don't want the jury to be confused that that element
24 has already been met when entry is one of the elements that the State has to
25 show to prove the burglary.

1 MS. TRIPPIED: And you can certainly argue that during conclusion that
2 we haven't shown that element.

3 MS. ROMNEY: I think that's -- that's the -- when we keep calling it
4 point-of-entry, point-of-entry, point-of-entry though that's something that's
5 going to --

6 THE COURT: Well, if -- I mean, I guess it depends on, I mean, obviously,
7 I'm not sure what the witnesses are going to say, but it depend on the sequence.
8 If you're able to establish, hypothetically, through the first witness that there is a
9 basis for believing that is the point-of-entry, then it seems like if that -- once
10 that's at least been established in a prima facie way, then it almost seems like it
11 would be more confusing to have subsequent witnesses call it something else.

12 The problem -- the problem I think becomes more severe if,
13 depending on the sequence of your witnesses, the first witness is not able to lay
14 a foundation and then refers to it as point-of-entry and you, you know, and then
15 maybe it's a little bit confusing because you haven't actually established it is the
16 point-of-entry. I don't know what witnesses -- what order the witnesses are
17 going to be in and I'm not saying you should call them in any particular, way but
18 it seems like if there is -- if there is a factual basis for believing that that's the
19 point-of-entry, I don't see why the witnesses can't then refer to it as a
20 point-of-entry if for no other reason than it's for consistency sake.

21 But, I mean, obviously, it's going to be the State's, you know, that's
22 one thing they have to establish is that there was an entry and that is the
23 point-of-entry. If they can do that, I don't see why you can't call it a -- why other
24 witnesses can't call is the point-of-entry. But, obviously, that's part of the
25 burden. If you can't prove it, you can't prove it.

1 But what order are your witnesses going to be in?

2 MS. TRIPPIED: Well, I'm going to first have the victims.

3 THE COURT: Okay.

4 MS. TRIPPIED: And then next I actually have an officer that he did make
5 that determination, I mean, he's --

6 THE COURT: Okay. Then if he's able to do that then --

7 MS. TRIPPIED: He's able to do that. He's the first officer at the scene,
8 and he can testify as to how every item was left and what made him, you know,
9 what indicated to him that a certain window was the point-of-entry.

10 THE COURT: All right. If that's the order and if he's able to do that then, I
11 don't I don't see why subsequent witnesses can't also refer to it as the
12 point-of-entry because then the State would have at least established in a prima
13 facie way that it is the point-of-entry.

14 MS. ROMNEY: And, Judge, you're right in the fact that, you know, we
15 don't know what -- we can't always predict what witnesses --

16 THE COURT: Right.

17 MS. ROMNEY: -- are going to say, so I understand that part of it. But I,
18 you know, we're obligated to kind of bring this stuff up and --

19 THE COURT: No, I understand. You've got to -- you've got to --

20 MS. ROMNEY: -- you know, if it becomes a problem later obviously we'll
21 renew an objection if it's warranted, you know, but it's something that at least
22 merited making a record of it beforehand.

23 THE COURT: No, I understand. And, you know, you have to make your
24 objections. And honestly, I generally prefer to have some of these objections
25 brought before the jury's in here because then I can, you know, I have no notice

1 that it's coming and that kind of thing. But, I mean, it sounds like with the way
2 the D.A. is calling the witnesses it may not be an issue. If she was going to call
3 them in some other kind of more creative way, then it might be more of an issue.
4 But I think the risk of confusion is lessened if she's able to establish first that
5 there is a point-of-entry, and then all the other witnesses can be consistent and
6 say that that's -- and use the same language.

7 And so it sounds like it may not be an issue. But obviously, you've
8 made a record of it. And if -- if things go south and the witnesses start saying
9 different things, then we'll have to readdress it if and when that happens.

10 MS. ROMNEY: Okay.

11 THE COURT: All right.

12 MS. ROMNEY: Do you have -- do we have anything else?

13 There is just one more thing.

14 MS. MAXEY: One more thing, Your Honor.

15 MS. ROMNEY: In case we don't get another break.

16 THE COURT: Sure.

17 MS. MAXEY: Before the State has a chance to have their fingerprint
18 analysis start testifying about her opinion and her procedures and everything, I
19 would ask the Court to allow me to voir dire her before she does that, so I just --

20 MS. ROMNEY: As to her qualifications.

21 MS. MAXEY: -- as to her qualifications, yes.

22 THE COURT: You mean, okay, you mean, with the jury there? Or are
23 you talking about outside the presence? I'm not sure what you're asking for.

24 MS. MAXEY: With the jury there, that's fine.

25 THE COURT: Oh, I see what you're saying, all right. I mean, do you have

1 any objection to that, Ms. Trippiedi?

2 MS. TRIPPIEDI: Well, I'm going to be asking her questions about her
3 background, her education, training she periodically receives. Are you saying
4 that at that point you want me to stop and then you want to ask the same type of
5 questions?

6 MS. MAXEY: Yes. I'd like to voir dire her about her training and her
7 experience and her education and everything before --

8 MS. TRIPPIEDI: Okay. I've just never -- I've never had it done that way,
9 but I don't have a problem with that.

10 THE COURT: People don't -- people don't do it so much in criminal cases
11 because I think as a practical matter you get the same experts from Metro all the
12 time. It happens a lot more in civil cases where it may be an expert that you
13 didn't take a deposition of and once you establish their credentials, before they
14 go into the substance of their testimony, the other side gets to voir dire them. So
15 it happens a lot more in civil cases.

16 I've never actually had this request in a criminal case, but, you
17 know, sort of applying the civil analog, I don't know why that would be a problem.
18 I mean, the voir dire doesn't become a free cross-examination on anything --

19 MS. MAXEY: No, no, just --

20 THE COURT: -- before she starts her -- it's just -- it just goes to her
21 credentials and qualification as an expert, right?

22 MS. MAXEY: That is correct. And this is a procedure that we use in the
23 juvenile court a lot, so.

24 THE COURT: Okay.

25 MS. TRIPPIEDI: I'm not going to be, like, asking to qualify the expert as

1 an expert. So that's why I'm just not sure why we need to do that. You know,
2 they're going to still take -- I guess, I mean, they're going to still weigh it with the
3 credibility that they, you know, give it the weight that they want to weigh it. So I
4 don't understand why you wouldn't be able to just ask those questions, you
5 know, on your turn. It kind of just -- it just kind of --

6 THE COURT: Yeah, I guess, my question is --

7 MS. TRIPPIED: -- gives an unnecessary break to the testimony, you
8 know.

9 THE COURT: Well, I guess, here's my question is, you know, normally
10 the reason you do it in civil cases is because somebody's qualifications may
11 become an issue because you have a wide range of experts and who knows
12 what their background is. But I guess my question is in this case, as a practical
13 matter, if Ms. Trippiedi's going to go through, I mean, I guess what are the -- I
14 guess maybe you can make me a proffer, what is it that you think you can
15 establish that Ms. Trippiedi's not already going to have covered in her initial
16 questioning of the qualifications of this person?

17 MS. MAXEY: Reading her CV that this person is a trainee. And that a
18 person who's a trainee, their opinion is -- they don't have the experience or
19 education to give a qualified opinion on fingerprint matching.

20 MS. TRIPPIED: Well, I -- and you can certainly, you know, ask her that
21 during opposition. I have no -- or during your questioning, I have no problem
22 with that. But I'm not going to be trying to qualify her. Recent case law in
23 Nevada states that we're allowed -- we're not permitted to actually have a
24 witness qualified as an expert.

25 MS. ROMNEY: But I think you noticed her as an expert, and she's going

1 to be testifying with expertise in the sense that, you know, with specialized
2 knowledge. So I think we're entitled to be able to ask her questions that go to
3 the basis --

4 THE COURT: Right, but normally --

5 MS. ROMNEY: -- not only of that specialized knowledge, but of her expert
6 opinion is, you know, in terms of the findings.

7 THE COURT: No, I understand that. But normally you would ask those
8 questions on cross-examination. The reason you would do it as a voir dire
9 before she even renders her opinion is if you're going to make a challenge to
10 whether or not she should be allowed to testify as an expert. Is there any
11 reason to believe that she's not going to be able to give testimony in this case?
12 That's the reason you do it is before the jury hears her opinion, Judge, you
13 know, normally the party who's calling the witness, you know, makes a motion,
14 Judge, I move that she be qualified as an expert. The other side says I want to
15 voir dire the witness, maybe so that they can make an argument that, Judge,
16 she doesn't even qualify as an expert under 50.275; and therefore, we ask that
17 you not allow her to testify -- him or her to testify as a witness.

18 Is there any reason, I mean, if you're not going to do it for that
19 purpose, to determine whether or not she is allowed -- she is going to be allowed
20 to testify, then there is no purpose to voir dire other than it just becomes a free
21 cross-examination. So if the point that you're trying to make is you think that
22 there is a question as to her qualifications to testify in this case, then you would
23 be allowed to do voir dire, but if you're just sort of doing it because you want a
24 free cross-examination to find out her weaknesses, that's not really a valid use of
25 voir dire.

1 MS. MAXEY: I understand, Your Honor, but as Ms. Romney stated, the
2 State gave us notice that they would be using her as an expert. So I'm a little
3 surprised to hear that the State's not qualifying her as an expert even though
4 they gave us notice. So my intent was to voir dire her and challenge her
5 expertise.

6 THE COURT: All right. Can you give me a proffer as to why, I don't
7 know -- I don't even know who we're talking about, I haven't seen her CV, well,
8 you know what, I think I have -- let's see, if I have a notice -- have a notice of
9 experts here, so I at least know what's coming, who is this person by the way
10 that we're talking about?

11 MS. ROMNEY: It's the --

12 MS. MAXEY: Kathryn.

13 MS. TRIPPIED: Aoyama.

14 MS. ROMNEY: Aoyama.

15 MS. MAXEY: Aoyama.

16 MS. ROMNEY: She is listed first in the supplemental notice of expert

17 witness. I have a copy if you'd like to see it and I have it handy.

18 THE COURT: I have a notice of witnesses and experts. I have, oh, yeah,
19 I don't have the supplemental one actually.

20 MS. ROMNEY: Would you like, I can approach, Judge you can look at my
21 copy.

22 THE COURT: Yeah, can you?

23 MS. ROMNEY: Her CV is attached.

24 THE COURT: So what is the objection to her qualification to testify?

25 MS. MAXEY: Reading her CV, it doesn't list how she can be qualified as

1 an expert. Reading her CV she has -- she's a trainee, no publications, very little
2 training it looks like in -- in fingerprint comparison, no Court experience, and it
3 just doesn't seem how she can be qualified.

4 MS. TRIPPIED! And, Your Honor, in response --

5 THE COURT: Well, I mean, she's got this whole section here courtroom
6 experience, state of Florida, Ohio, Nevada more than 200 times.

7 MS. MAXEY: I don't think that's the correct one, if you look at the CV that
8 was given to me it states that she has courtroom experience, none.

9 THE COURT: Oh.

10 MS. ROMNEY: There is a second CV that's in that notice, Judge.

11 MS. MAXEY: Yes.

12 THE COURT: Oh, okay, yeah.

13 MS. ROMNEY: For someone separate .

14 THE COURT: I'm looking at someone else's. Right. Okay.

15 MS. TRIPPIED! And again, Your Honor, they can certainly point to that
16 during their cross-examination. But it's just not fair to the State for them to stop

17 in the middle of our testimony and point out the weaknesses, just like you said.

18 MS. MAXEY: Your Honor, we will, you know, defer to the Court to
19 whatever decision the Court wants to make.

20 THE COURT: She's been a trainee since 2007? I mean, how long are
21 you a trainee before you're not a trainee any more?

22 MS. TRIPPIED! When I questioned her, you know, to -- in preparation for
23 her testimony, she didn't indicate to me that she's still a trainee. So that's
24 another thing, Your Honor, I mean, things -- things like this if they're challenging
25 her qualifications, I would have really preferred that to be addressed in a written

1 motion just so I can, you know, be prepared for that and have my answers.

2 THE COURT: Oh, I see.

3 MS. TRIPPIED: You know, the problem is the statement of qualification
4 looks like it was filled out in 2008. So I don't know --

5 MS. TRIPPIED: So --

6 THE COURT: -- if it's not been updated since then.

7 MS. ROMNEY: And, Judge, maybe she'll update it through, you know,
8 some questioning. That's the notice we were given to work off of which was, you
9 know, the question that you asked was exactly one of the questions, you know,
10 was the point of why we're asking, how long is someone a trainee before they're
11 promoted or whatever the --

12 THE COURT: Whatever the -- whatever the next level is, right.

13 MS. ROMNEY: -- the phrase might be. So, I mean, that's the reason why
14 we brought this up, you know, if you prefer for us to do that through our own
15 cross-examination we'll defer to your ruling on that, but that was the reason why
16 this was brought in the first place, you know, to be able to talk about those
17 qualifications in advance of any opinion given.

18 THE COURT: Well, I mean, as I said the idea of doing a voir dire is if
19 someone's truly not qualified to be an expert and to render testimony in the
20 case, then you would voir dire the witness and make an objection to allowing
21 him to testify before the jury gets to hear their opinions. The idea being then
22 once they've expressed their opinions, the cat's sort of out of the bag. So the
23 question is whether or not, and unfortunately we have this 2008 resume,
24 whether or not she's actually qualified as an expert. And, honestly, I don't know
25 because we're using an old resume apparently.

1 MS. ROMNEY: Right. And that was -- that's -- that was kind of our point
2 exactly, that on its face that doesn't provide enough information, at least at this
3 point, in our opinion for her to be qualified. And, I mean, that's all we were given
4 to work off of, so that's why we were raising the issue.

5 The voir dire is going to be limited to qualifications only. So I don't
6 think that it's really going to be disruptive in any way to her then, assuming that
7 she is qualified, to then providing, you know, the remainder of her testimony and
8 whatever opinions she might have. We're not going to go outside of that scope.
9 So I don't think that it's going to be disruptive or harmful. Certainly we're not
10 going to get into any cross that's not allowed.

11 THE COURT: Yeah. I mean, I guess here what I'm going to do, normally,
12 I mean, you know, my concern is if there is legitimate question about the expert's
13 qualification s, that's when you allow voir dire. But you don't allow just as a free
14 cross-examination to taint her before she renders her opinion. But in this case,
15 looking at the fact that her most recent statement of qualifications or at least the
16 one that I have, is dated 2008, I think there is a question of what has she been
17 doing since 2008. So I guess we'll have to hear what she has to say.

18 And I think in this case it's fair to at least allow you to some
19 questioning on what has she been doing since 2008, what -- I'm assuming she is
20 no longer a trainee, but we don't know what she is because we have this
21 four-year-old, you know, resume.

22 MS. TRIPPIED: Alternatively, I would ask that I can just be allowed to
23 call her. I have my her phone number in my cell phone. I can text message her,
24 see if maybe she can e-mail in a -- the most recent CV she has. If I was
25 prepared, you know, if I knew of this issue earlier, I would have certainly have

1 done this earlier. But I just think it's unfair to us in the middle of our examination
2 of perhaps our most important witness to this evidence of this case, stop in the
3 middle, have the defense, you know, take issue with her qualifications, and then
4 immediately after their questioning, you know, we ask her questions regarding
5 the most important part of this entire case. It's just unfair. And then they get
6 another chance yet again to break that part down? So, you know, it just -- it's
7 not fair to break up the testimony like that.

8 MS. ROMNEY: But, Judge, I --

9 MS. TRIPPIED: You know, we would like to ask her qualifications and
10 then immediately after go into what she found in this case and then her
11 conclusions.

12 THE COURT: Well, I mean, in this case --

13 MS. ROMNEY: Judge?

14 THE COURT: -- normally, in this case, normally, when you talk about
15 police experts, the reason you usually people don't ask to even do that is
16 because there is no question about their qualifications. In this case, there is kind
17 as of gap here because we're using an older resume which does indicate that
18 she's a trainee, presumably she's not a trainee any more. And it may be that
19 when she takes the stand and fills in what she's been doing since 2008, it may
20 be that there is no question about her qualifications. And in that event it may be
21 that maybe the defense doesn't even want to question her.

22 But to the extent that in this case we kind of do have this unusual
23 gap because she's using an obviously very old and somewhat outdated resume,
24 I mean, so there is some question about her current qualifications which again
25 presumably are better than they were in 2008. But who knows because we --

1 we don't have any update on it.

2 MS. TRIPPIEDI: Right.

3 THE COURT: So when you have a legitimate question, like I said, the
4 concern is you don't want to just break it up just for the sake of giving them a
5 free shot, but in this case there appears to be some question about what she
6 has been doing since 2008. And so, depending on what she does actually say
7 she's been doing since 2008 and what her current job title is and all those kinds
8 of things that we don't know, you know, I think the fair to do, again, it depends on
9 what she says. If she says, oh, no, I haven't been employed since 2008, then
10 obviously that's something they can bring out.

11 But, I mean, you know, I know that this isn't a procedure that you're
12 used to, but it happens all the time in civil cases because in civil cases because
13 you have a broader range of experts and they're not the same police experts
14 that everybody uses, it's a pretty common procedure. So here's what I'm going
15 to do is if they want to do it, depending on what she says in response to your
16 questioning about her qualifications, they may want to ask questions. And if
17 they do want to ask questions about what she now says which they didn't have a
18 prior opportunity to review because we do have this older resume, I think it's fair
19 to at least allow them to ask some questions and make an objection to her
20 qualifications if they want to depending on what she says. But it's not sort of a
21 free-ranging cross-examination just limited to whatever her qualifications,
22 experience, training under *Higgs versus State* and N.R.S. 50.275. So, you
23 know, unfortunately I know it's not your fault, Ms. Trippiedi, but she did give you
24 a really old resume here. And so there is a question of, well, she lists herself as
25 a trainee, I'm guessing she's not any more, but we don't know what she is. And

1 so --

2 MS. TRIPPIEDI: Right. But you don't think they're -- they're required
3 bring up an issue this important prior to the eve of trial like in a written motion --

4 THE COURT: Well, it --

5 MS. TRIPPIEDI: -- and give me a chance to respond and perhaps include
6 the most recent resume?

7 THE COURT: Well, they're not actually, my understanding is they're not
8 actually making an objection right now, what they want is they want the right to
9 question her to see if there is a basis for making an objection, that's what voir
10 dire is. And I know it's something that D.A.s aren't used because, like I said, it's
11 not -- it doesn't come up all that much. But in civil cases it's done all the time, all
12 the time. And it's not that much of a break in the testimony. It's usually just
13 three or four questions and then if there is an objection, they make the objection.
14 If there is no objection then they sit down and you resume with the questioning.

15 So, I mean, we'll have to see how it goes, obviously, she's going to
16 have to fill in what she's been doing since 2008. And if she fills it in well enough,
17 they may not have any questions. But if she doesn't fill it in well enough, then I
18 think it would be prejudicial to them to say, hey, we gave you a four-year-old
19 resume and you're not even allowed to ask, you know, what have you been
20 doing since 2008, but let's see what she says. So, so what I'll do is I'll take it
21 under advisement, and we'll see, you know, what, you know, what she says
22 that's not included in this resume and go from there.

23 MS. TRIPPIEDI: Okay. What if I were so ask the questions of what she's
24 been doing since 2008?

25 THE COURT: No, I mean, you're going to have to because it's your

1 burden to establish her -- that she's actually qualified to testify. So I would think
2 that's the first thing you would ask is, you know, what's your current job title. But
3 the problem is as we sit here right now, none of us seem to know what it is. It's
4 presumably whatever the next level above trainee is. But -- which I'm -- I think
5 they call it like a latent print examiner level one or something like that, unless
6 they changed it. But we don't actually know that.

7 But, yeah, if you can fill it in you may obviate whatever questions
8 they have. But as we sit here right now, to say, well, we have a gap here but I'm
9 not even going to allow them to -- to ask questions about that, I think is kind of
10 unfair to them. So let's see, you know, if when she comes in here and testifies,
11 you know, obviously, you're going to have to fill in the gap, if you're able to, they
12 may not have any questions. If she says, oh, yeah, I'm, like -- in the four years I
13 forgot to mention I'm like greatest fingerprint examiner ever, I've received every
14 award there is under the sun, I can't imagine that would be, you know, that
15 would leave you very much room to follow up on. But we don't know in the
16 problem.

17 My whole point is we don't know, and so we'll have see what she
18 says and whether she's able to fill it in. And if she is not able to fill it in and they
19 still have questions, I think it's fair to let them at least ask those questions.

20 MS. TRIPPIED: Okay.

21 THE COURT: All right.

22 MS. ROMNEY: Judge, did you want to keep that notice of witnesses so
23 that you can refer to it, if necessary?

24 THE COURT: Yeah, if I -- if I can, yeah.

25 MS. ROMNEY: No problem.

1 THE COURT: All right. Anything else then?

2 MS. ROMNEY: I think that's it.

3 THE COURT: All right. Let's go ahead and bring the jury in. I got about
4 ten or -- well, it depends on how fast I read, 10 or 15 minutes of standard pretrial
5 instruction and then you guys can go ahead with your openings then. All right.

6 The other thing is, I asked -- I asked my -- I just e-mailed my J.E.A.
7 while we were talking, she's going to e-mail the instructions, yeah, so we can
8 print them out here rather than her having to run cross --

9 THE CLERK: Okay. Well, she just sent me the ones that you already
10 have.

11 THE COURT: Yeah, because one of them needs to be changed. That's
12 what we were just talking about, it's got the wrong dollar figure in there.

13 THE CLERK: Right.

14 THE COURT: And I just thought instead of having her print it out and
15 come over here, we'll just print it out here and you can maybe change it on our
16 computer

17 Here's -- hey, on the jury instructions, I just e-mailed my J.E.A. to
18 e-mail the e-mail that you guys sent her to Linda, Linda has it now, so we can fix
19 it here and print it out in back if you want to do that.

20 MS. TRIPPIEDI: Oh, okay. Okay.

21 MS. ROMNEY: Sure.

22 THE COURT: Is that the only change that we have, the 6,000?

23 MS. TRIPPIEDI: Yeah.

24 MS. ROMNEY: As far as I know, yeah.

25 THE COURT: Okay. Let's just -- we'll do that at the next break then

1 rather than keep the jury waiting.

2 MS. ROMNEY: And like I said, Judge, those are the instructions that we
3 agreed on. If something were to change, over the course --

4 THE COURT: Right.

5 MS. ROMNEY: -- of testimony, we may need to revisit the issue. But as
6 of right now, that's what's settled.

7 THE COURT: Okay.

8 THE CLERK: Okay. I changed it. So it's there.

9 THE COURT: Did you? It's the second instruction --

10 MS. ROMNEY: Thank you.

11 THE COURT: -- or it's not numbered, it's just seven to \$6,000. Okay.
12 Might as well print out that page and then we'll get it at the next break, I guess.
13 Thanks. Yeah. Let's bring them in, Randy.

14 [In the presence of the jury].

15 THE COURT: Will counsel stipulate to the presence of the jury?

16 MS. TRIPPIED: Yes, Your Honor.

17 MS. ROMNEY: Yes, Your Honor.

18 THE COURT: All right. Afternoon, ladies and gentlemen, I'm just waiting
19 for Randy to hand out all the pens so that you guys can go ahead and take
20 notes if you want to. All right.

21 Welcome back. I have just about 10 or 15 minutes worth of
22 standard pretrial instructions that I'm going to give you and then the lawyers in
23 this case will give you their opening statements in this case. Everybody ready or
24 do you want me to wait for a minute? All right.

25 Ladies and gentlemen, you are admonished that no juror may

1 declare to a fellow juror any fact relating to this case of his or her own
2 knowledge. And if any juror discovers during the trial or after the jury has retired
3 that he or any other juror has personal knowledge of any fact of controversy in
4 this case, he shall disclose that situation to me in the absence of other the
5 jurors. What that means is we spent some time yesterday going through the list
6 of possible witnesses in this case and nobody seemed to know any of the
7 names that were mentioned. But if, for example, a witness comes in today and
8 testifies and the minutes you see them you realize, oh, I know that person, he
9 lives down the street from me, that would be a fact that is in your personal
10 knowledge that you learned outside of this courtroom.

11 If something like that happens, please raise your hand, write a note
12 in the notepad that you were given, Randy will come over and take the note and
13 bring it to me and then we will address that.

14 During the course of the trial the attorneys for both sides, court
15 personnel, other than marshal, are not permitted to talk to with you. We
16 discussed this had a little bit yesterday, it's not because we are antisocial, it's
17 because you are jurors in this case and we are not allowed to taint you or
18 influence you in any way. Therefore, if you see someone in this courthouse that
19 kind of avoids you and doesn't make eye contact with you, don't take that
20 personally, don't go to that person and ask why they're doing that, assume that
21 they are connected with this case or with someone involved with this case in
22 some way. And you will not be permitted to talk with them until after the trial is
23 over.

24 You are admonished additionally that you are not to visit the scene
25 of any of the acts or occurrences made mention of during the trial unless

1 specifically directed to do so by the Court. The reason we do not want you
2 going to any particular scene involved in this case is not because we're trying to
3 hide information from you, but because in a case in this courthouse typically
4 there is a lapse of time between the occurrence and the time the case goes to
5 trial for all kinds of different reasons. I don't specifically recall how long ago the
6 events in this case were, but sometimes in cases it could be three or four years.
7 And Las Vegas being Las Vegas, we all know there is tons of construction going
8 on all the time, and the scene may not appear to be the same today as it was on
9 the date in question. And if you were to go to the scene and visit it yourself, you
10 may come away with a false impression of what happened.

11 If the appearance of the scene is relevant to any fact in controversy
12 in this case what will happen is you will be allowed to view the scene through
13 photographs or videotapes or any other medium like that that meets the rules of
14 evidence and has been deemed to be reliable and accurate.

15 This case is criminal case commenced by the State of Nevada.
16 Sometimes I may refer to it as the State versus Jaquez Barber. This case is
17 based upon an information. The clerk will now read that information to you and
18 state the plea of the defendant.

19 [The Clerk read the information aloud]

20 THE COURT: This case is based upon the second amended information
21 that has just been read to you by the clerk. In the State of Nevada there are two
22 ways to charge someone with a felony offense. One is called an information.
23 The other is the word that you're probably more familiar with from TV shows, it's
24 called an indictment. Those are the two alternative ways to charge someone.
25 You should distinctly understand that the information is simply a charge and that

1 it is not in any sense evidence of the allegations that it contains.

2 The defendant has pled not guilty to the charges. The State
3 therefore has the burden of proving each of the essential elements of the
4 information beyond a reasonable doubt. The purpose of this trial is to determine
5 whether the State will meet that burden. It is your primary responsibility as
6 jurors to find and determine the facts. Under our system of criminal procedure,
7 you are the sole judge of the facts. You are to determine the facts from the
8 testimony you hear and the other evidence including exhibits introduced in court.
9 It is up to you to determine the inferences which you feel may be properly drawn
10 from the evidence.

11 The parties may sometimes present objections to some of the
12 testimony or other evidence. At times I may sustain those objections or direct
13 that you disregard certain testimony or exhibits. You must not consider any
14 evidence to which an objection has been sustained or which I have instructed
15 you to disregard. It is the duty of a lawyer to object to evidence which he
16 ~~believes may not properly be offered and you should not be prejudiced in any~~
17 way against the lawyer who makes objections on behalf of the party that he or
18 she represents. I may also find it necessary to admonish the lawyers. And if I
19 do you should not show prejudice towards the lawyer or his clients because I
20 found it necessary to admonish them.

21 Throughout the trial if you can't hear a question asked by the
22 attorney or the answer given by a witness, please raise your hand as an
23 indication. If I don't see your hand up, please say, excuse me, I didn't hear that
24 and we will ask that the question be repeated or the answer be repeated.

25 If you wish, you may take notes to help you remember what any

1 witness has said. If you do take notes please keep those notes to yourself until
2 you and your fellow jurors go to the jury room to decide the case. Do not let
3 notetaking distract you so that while you're writing down the answer to one
4 question, three or four more questions are asked and answered and go right
5 past you and you have no recollection of those answers. You should rely upon
6 your own memory of what was said and not be overly influenced by the notes of
7 other jurors when you go back to deliberate.

8 In addition, during this trial I may take notes of what is going on in
9 the trial. However, I am not the judge of the facts. You are. My job to make
10 rulings based on the law; and, therefore, the notes that I take may have nothing
11 to do with whether I believe a witness is testifying truthfully or whether I believe
12 that a particular fact is important or unimportant. Do not let yourselves be
13 influenced by the fact that I either am or am not taking notes while any witness is
14 testifying because the notes that I am taking are for a completely different
15 purpose than the truth of the facts.

16 The case will proceed in the following order: First, the State will
17 make an opening statement outlining it's case. The opening statement is a road
18 map. It is not itself evidence. During the opening statement, the State will be
19 telling you what they expect the evidence will be. After the State opens, the
20 defendant has the right to make an opening statement if he or she wishes to do
21 so. Neither party is required to make an opening statement.

22 After the opening statements the State will first introduce evidence.
23 At the conclusion of the State's evidence, the defendant has the right to
24 introduce evidence. However, please remember that the defendant is not
25 obligated to present any evidence or to prove his innocence. The law never

1 imposes upon the defendant in a criminal case the burden of calling any
2 witnesses or introducing any evidence. The defendant and his attorneys can sit
3 through the trial and do nothing, not ask any questions, not call any witnesses,
4 do nothing at all because the defendant has no burden of proof in a criminal trial.

5 As we discussed, the State has to prove two things to you. First,
6 the State has to prove to you beyond a reasonable doubt that a crime occurred.
7 And secondly, the State has to prove to you also beyond a reasonable doubt
8 that the defendant did it. At the close of the defendant's case, if any, the State
9 may introduce rebuttal evidence.

10 At the conclusion of all the evidence I will instruct you on the law.
11 You must not be concerned with the wisdom of any rule of law stated in the
12 instructions which I will read to you after the evidence is in. Regardless of any
13 opinion you may have as to what the law ought to be, it would be a violation of
14 your oath to base a verdict upon any other view of the law than that given to you
15 by the Court.

16 After the instructions on the law are read to you, each party has the
17 opportunity to argue orally in support of their case. This is called the closing
18 argument or summation. What is said in closing is not evidence. The
19 arguments are designed to summarize and interpret the evidence for you and to
20 show you how the evidence and the law relate one to another. Since the State
21 has the burden of proving the defendant guilty beyond a reasonable doubt, the
22 State has the right to both open and close the arguments. Which means at the
23 end of the trial the State gets to argue to you twice and the defense gets to
24 argue to you once.

25 After the attorneys have presented their argument you will retire to

1 select a foreperson to deliberate and arrive at your verdict. Faithful performance
2 by you of your duties is vital to the administration of justice. It is your duty to
3 determine the facts and determine them from the evidence and the reasonable
4 inferences arising from such evidence. And in doing so you should -- you must
5 not indulge in guesswork or speculation. The evidence which you are to
6 consider consists of the testimony of the witnesses and the exhibits admitted
7 into evidence.

8 You must not consider anything which you may have seen or heard
9 when court is not in session even if what you see or hear is said or done by one
10 of the parties or by one of the witnesses.

11 In every case there are two types of evidence, direct evidence and
12 circumstantial evidence. Direct evidence is testimony by a witness about what
13 person saw or heard or did. Circumstantial evidence is testimony or exhibits
14 which are proof of a particular fact from which, if that fact is proven, you can infer
15 the existence of a second fact. A simple example of the difference is this, if a
16 ~~witness were to come in here and say on July 12, 2010, I was standing outside~~
17 my house and I personally saw it raining that day, that is direct evidence that it
18 did in fact rain on that date.

19 If a witness were to come in here and say, well, I didn't see actually
20 see it rain on July 12th, but when I went to bed the streets were dry and it did not
21 rain that day, when I woke up the next morning the streets were all wet, all the
22 houses were wet, and the temperature was 20 degrees cooler than it was the
23 day before, that is circumstantial evidence that it may have rained the night
24 before. It's not direct evidence because nobody actually saw it rain. But it's
25 circumstantial evidence, the wet streets and all that, from which you can infer the

1 fact that it may have rained the night before.

2 You may consider both direct and circumstantial evidence into
3 deciding this case. The law permits you to give each equal weight to both types
4 of evidence. But it is up to you to decide how much weight to give to any
5 particular piece of evidence.

6 Opening statements and closing arguments are intended to help
7 you in understanding the evidence and in applying the law. But please
8 understand that what the attorneys tell you is not evidence. They are not
9 witnesses. They have no firsthand information. And therefore, what they tell
10 you is not evidence. You are not to concern yourself in any way with the
11 sentence which may receive if you should find him guilty. Your function is solely
12 to decide whether the State has proven to you beyond a reasonable doubt that
13 the defendant is guilty of the crime charged.

14 If, and only if, you find him guilty, then it becomes the duty of the
15 Court at a later date to pronounce sentence. You must not be influenced in any
16 degree by any personal feeling of sympathy for or prejudice against any parties

17 to the case. For each party is entitled to the same fair and impartial
18 consideration.

19 Until this case is submitted to you, do not talk to each other about it
20 or about anyone who has anything to do with the case until the end of the case
21 when go to the jury room to decide your verdict. Do not talk with anyone else
22 about this case or about anyone who has anything to do with the case until the
23 trial has ended and you have been discharged as jurors. Anyone else includes
24 members of your family and your friends and your coworkers. As I mentioned
25 yesterday, those of you who are employed should call your boss and tell them

1 the hours that you will serve and that you have been chosen as a juror in a
2 criminal case. However, you are not allowed to tell them anything more about
3 the case than that.

4 Do not let anyone talk to you about the case or about anyone who
5 has anything to do with it. If someone should try to talk you about this case
6 while you're serving as a juror, please report that to me immediately by
7 contacting our marshal. Do not read any news stories or articles or listen to any
8 radio or television reports about the case or about anyone who has anything to
9 do with it. Do not do any research or make any investigation about the case on
10 your own including any searches on the Internet or -- or through public records
11 in this courthouse.

12 Do not make up your mind about what the verdict should be until
13 after you've gone to the jury room to decide the case and you and your fellow
14 jurors have discussed the evidence. It's important throughout the trial to keep an
15 open mind.

16 ~~At the end of the trial, you'll have to make your discussion based~~
17 upon what you recall of the evidence. You will not have a written transcript to
18 consult. Even though we have a court recorder who records the testimony, it's
19 not typed up into a readable format and it is difficult and time consuming for the
20 recorder to read back or play back lengthy testimony. Therefore, I would urge
21 you to pay close attention to the testimony as it is given.

22 After the attorneys have completed their questioning of any
23 particular witness if there is a factual question you would like answered which
24 wasn't asked or if you need clarification of an answer given by the witness, you
25 may submit such question to the marshal in writing before the witness is

1 excused from the courtroom. The marshal will give me your question. And I will
2 discuss it with the attorneys and determine whether or not your question is
3 proper or if another witness later in the trial might be covering the same issue
4 that you've asked.

5 Since the law requires that any question asked of any witness
6 comply with the rules of evidence, it is possible that the Court will deem your
7 question inappropriate and, therefore, it may not be asked. You are not to draw
8 any inferences or conclusions one way or the other if the question you submit is
9 asked or not asked. If your question is asked and answered you are not to place
10 undue weight on the response given to your question.

11 There are certain questions which you may wish to ask which are
12 never proper or allowed in a trial. These questions involve, for example, the
13 criminal history if any of an accused defendant and questions which ask a
14 witness to relate some fact told to them by someone else. You've probably all
15 heard the word hearsay, what that means is if somebody knows something only
16 because some other person who is not present in this trial told them that
17 information outside of court under circumstances in which they were not, for
18 example, under oath we have no idea of knowing if that other person who is not
19 here was telling the truth, if they were joking, if they were serious, if they were
20 leaving out certain information. Therefore, that type of information constitutes
21 hearsay and is not allowed in a trial.

22 That concludes the Court's pretrial instructions. Does either party
23 wish to invoke the exclusion-of-witness rule?

24 MS. ROMNEY: Yes, Your Honor.

25 MS. MAXEY: Yes.

1 THE COURT: All right. I don't know if any witnesses are in the
2 courtroom. But if any people might be called in this trial are present in the
3 courtroom, please leave the courtroom at this point. It doesn't look like it.

4 All right. Is the State ready to make its opening statement?

5 MS. TRIPPIEDI: Yes, Your Honor.

6 THE COURT: You may proceed, Ms. Trippiedi.

7 MS. TRIPPIEDI: Can I get the board turned on?

8 January 21, 2009, began as an ordinary day for Mrs. Mendoza. On
9 that date she had a meeting scheduled at her child's school. And so she woke
10 up, got ready to leave the house, got her two young kids dressed, and left the
11 house for the short walk from her residence to the kids' school. She returned
12 home approximately an hour later and she noticed that her front door was open.

13 She went into the house. And she saw drawers left open. And she
14 knew immediately at that time that something was wrong. She walked outside
15 with her two kids and called 9-1-1. And she waited outside with her two kids for
16 officers to arrive.

17 At that time she also called her husband, who immediately left work
18 to come home to be with his wife. When officers arrived at the scene they did a
19 preliminary investigation, saw that in almost every single room of the house
20 drawers were open and the house just seemed to be in a general state of
21 disarray. And that indicated to them that the house was broken in to.

22 Now Ms. Mendoza and her husband, they don't have fancy
23 electronics in their home and they don't have expensive jewelry, but they did
24 have \$6,000 in cash in one of dresser drawers hidden that they had been saving
25 for a future trip to Mexico. So as you can tell, January 21, 2009, was a very

1 unfortunate day for Mrs. Mendoza and her husband, not only because of the
2 cash that was stolen from the residence, but because of the house, that for
3 years they have been working to create a home, was no longer a place that they
4 felt safe at.

5 And throughout this trial you're going to hear the specifics of the
6 burglary that occurred. You're going to hear testimony from Officer Shevlin who
7 is the first officer that arrived at the scene and who, upon his examination,
8 determined that a back bathroom window was the entry point of the burglary.
9 The reason he determined this is because a concrete bucket was actually
10 moved --

11 MS. ROMNEY: Objection, Your Honor.

12 MS. TRIPPIED: -- to a place directly --

13 THE COURT: Hang on. There is an objection.

14 MS. ROMNEY: Can we approach please?

15 THE COURT: Sure.

16 [Bench conference -- not transcribed]

17 MS. TRIPPIED: Okay. I apologize for the interruption.

18 So the window that was used to make entry, and there is the reason
19 that Officer Shevlin realized that that was the window used to make entry is
20 because a bucket of concrete was moved to a point directly under the window
21 and also because a water faucet that was directly under the window appeared to
22 be broken which indicated to Officer Shevlin that the suspect had used these
23 two items to pull himself up and gain entry to the residence.

24 Officer Shevlin also noticed that the window was open and that a
25 wall on -- the inside wall of that bathroom had some dirt marks. At that point

1 Officer Shevlin called crime scene analysts to scene to come do an even further
2 amount of investigative work. You're going to hear testimony from crime scene
3 analyst, Robert -- Robbie Dahn, who's going to explain to you the process used
4 to actually pull prints from a crime scene. She's going to tell you that there were
5 prints found at this crime scene and that she submitted those prints to the
6 forensics lab for further testing.

7 Now, you're also going to hear during this -- during this trial that
8 home burglaries in Nevada, in the city there are a large amount of them that
9 occur every month and very rarely do these crimes get solved because it's very
10 rare that a suspect leaves fingerprints at the scene. And if there are fingerprints
11 left at the scene, it's very rare that fingerprints actually are readable. And if they
12 are readable prints that are found at the scene, it's very rare that they actually
13 connect to a certain individual, a suspect.

14 So these cases oftentimes are left open and are unsolved.

15 However, in this case we lucked out. About a month or two after the burglary, a
16 hit was rendered. And what that means is that these prints went into a latent
17 print system, a database. And they connected to a person by the name of
18 Jaquez Barber, which is the defendant sitting at that table. You're going to hear
19 evidence from a forensic scientist that will tell you that not only did the prints
20 determine to be matched by a computer program, but that she also examined
21 the prints side by side manually and determined the prints found at the scene
22 and specifically at the entry point of the burglary were the exact prints of the
23 defendant in this case.

24 And just to be sure, ladies and gentlemen, the lead detective in the
25 case took a photograph of the defendant and he went back to the residence, to

1 the victims, and he questioned them about whether they know Jaquez Barber,
2 whether he's a family member, whether he's a friend, whether he has any
3 reason to be at the residence and to have his fingerprints at the residence. And
4 the answer was no.

5 You're also going to hear, ladies and gentlemen, that no two
6 individuals have the exact same prints not even identical twins which leads us to
7 the conclusion that this individual committed this burglary on February or on
8 January 21, 2009.

9 Now, ladies and gentlemen, as I stated previously, it's very, very
10 rare that these types of crimes get solved. But in this case we all lucked out.
11 We lucked out because there were prints left at the scene, the prints returned
12 back to the defendant. The victims lucked out because they have a person now
13 that they can hold responsible for committing their burglary at their house,
14 breaking into their residence. Us as prosecutors lucked out because we can
15 now bring justice to those victims. You as juries are -- jurors are lucky because
16 you can be part of this criminal justice system and ensure that the two victims in
17 this case are going to get the justice they deserve.

18 Ladies and gentlemen, at the end of the this case we're going to ask
19 that you find the defendant, Jaquez Barber, guilty of all counts. The testimony
20 will prove it. The evidence will confirm it. And justice will demand it. Thank you
21 for your time.

22 THE COURT: Does the defense wish to make an opening statement at
23 this time?

24 MS. ROMNEY: Yes, Your Honor.

25 Hello, everyone. You just heard the government get up and tell you

1 that this case is about burglary and grand larceny, that someone entered a
2 residence and stole money from the people who lived there. That's all true. But
3 this case isn't as open and shut as they might have you believe. You are going
4 to hear testimony from the homeowners. You're going to hear that while Mrs.
5 Mendoza left to take her kids to school someone entered the residence and
6 stole money.

7 The evidence is going to show that neither Mrs. Mendoza or
8 Mr. Martin witnessed this burglary occur and that neither one could provide a
9 description of the person or the people who might have done this. You're going
10 to hear testimony that \$6,000 in cash was taken. But you're not going to hear
11 any other evidence verifying this amount.

12 You are going to hear from Detective Nordstrom of the police
13 department. And what he's going to testify to is that he received a report from a
14 fingerprint analyst and based on that report, identified my client, Mr. Barber, as a
15 person responsible for this. But, again, this isn't just that simple.

16 You are going to hear from the fingerprint analyst herself, she's
17 going to testify that she's an expert in her field. Even in light of this kind of
18 testimony, I urge you to keep an open mind and to not jump to any conclusions
19 until you hear all of the evidence because I think you might be a little bit
20 surprised about what you hear. And this is really important because the
21 evidence is going to show that this expert did not find Mr. Barber's prints
22 anywhere or on any surface inside of the home. And the evidence will show that
23 the expert cannot determine a time or a date of when prints get left behind. And
24 so what the evidence will not show, at least according to fingerprint analysis, is
25 that Mr. Barber was ever inside that home.

1 By the end of this trial you're going to know that Mr. Barber did not
2 commit the crimes of burglary and grand larceny. The evidence is going to show
3 you that the State cannot meet its burden of proving every single element of
4 each of the crimes charged. And I think the evidence will then show you that the
5 State cannot meet its burden of proving this case beyond a reasonable doubt.
6 And so when that happens, if the State cannot prove their case beyond a
7 reasonable doubt, then you have to conclude that Mr. Barber is not guilty.
8 Thank you.

9 THE COURT: All right. State, do you have a witness ready?

10 MS. TRIPPIED: Yes. The State calls -- let me see, her first name is a
11 little hard to pronounce -- Aldegunda Mendoza.

12 THE COURT: Hi, how are you? Can you stand back here by the
13 microphone please. Remain standing, raise your right hand, and face the clerk
14 please.

15 THE INTERPRETER: Albert Valencia, interpreter.

16 THE COURT: All right. Can you tell her to come up and stand next to
17 you? Do we have another chair? Can we move one of those chairs up? Can
18 you tell her to stand up, face the clerk, and raise her right hand?

19 **ALDEGUNDA MENDOZA,**

20 [having been called as a witness and first duly sworn, testified as follows:]

21 THE CLERK: Please be seated please state your name and spell your
22 first and last name for the record.

23 THE WITNESS: Aldegunda Duran Mendoza, Aldegunda,
24 A-L-D-E-G-U-N-D-A, Duran, D-U-R-A-N, Mendoza, M-E-N-D-O-Z-A.

25 THE COURT: All right. Counsel, you may proceed.

DIRECT EXAMINATION OF ALDEGUNDA MENDOZA

BY MS. TRIPPIEDI:

Q Ma'am, where -- where do you live? What is your address?

A Eight -- 1873 Star Sapphire Court, Las Vegas, Nevada.

Q And is this a map of approximately where your house is?

A Yes.

Q And who do you live with your at your home with?

THE RECORDER: Ms. Trippiedi, could you stay closer to the microphone, please ?

BY MS. TRIPPIEDI:

Q Who do you live with at your home?

A I live with my husband, my son who is 12 years old, and my daughter who is 4 years old. Sorry, the daughter is 12 years old. And the boy is 4.

Q And how long have you been living at that house?

A I believe around 13 years.

Q And do you rent the house or do you own it?

A We are purchasing the home. It was purchased. We have the house in mortgage.

Q Okay. I'm going to draw your attention to January 21, 2009. And can you tell me roughly what you did that morning?

A What was it that I did? Or what was it that I found?

Q Well, let's start from the beginning of that morning. Why don't you tell the jury what you had planned to do that day?

A Okay. I had a reunion at school in the morning hours. I went to the

1 reunion. I believe the union was -- the meeting at the school was at 9:00 o'clock,
2 and I was there until about 10:30.

3 Q And did you walk there, or did you drive?

4 A Walking.

5 Q Did you take your two children with you?

6 A No. Only the little boy. The girl was already at the school.

7 Q Okay. And where was your husband at the time?

8 A He was at work.

9 Q Did you lock the doors to your house before you left?

10 A Yes.

11 Q Okay. And you said you returned approximately one hour later?

12 A Yes.

13 Q And what did you discover when you returned to your residence?

14 A I tried to open the door, but the door was ajar. And then I entered,
15 and I noticed front door was open. It was full of water. And I noticed the
16 drawers of my home, they were all ransacked. And then I ran outside. And I
17 called law enforcement.

18 Q Okay. Let's back up a little bit. What do you mean you noticed it
19 was full of water?

20 A In the back, in the yard.

21 Q Okay. And do you mean on the floor?

22 A Yes, in the floor but outside.

23 Q Where did that water come from?

24 A The -- the hose -- the hose -- the water faucet which he stepped on
25 in order to climb on to the window.

1 MS. ROMNEY: Objection, Your Honor.

2 BY MS. TRIPPIEDI:

3 Q Okay. So was there a broken water faucet; is that what you're
4 saying?

5 THE COURT: Hang on, hang on. There is an objection?

6 MS. ROMNEY: Speculation.

7 THE COURT: Well, I mean, objection overruled. You can cover it on
8 cross-examination. And the question was not objectionable.

9 Go ahead, Ms. Trippiedi.

10 BY MS. TRIPPIEDI:

11 Q Was there a broken water faucet?

12 A No. It wasn't broken. He broke it.

13 Q Well, what I'm asking you is did you notice when you returned to
14 your house that the water faucet was broken?

15 A Yes.

16 Q Okay. And prior to that did you notice that it was broken prior to that
17 day?

18 A No. It wasn't broken because I left that morning, and it was -- it was
19 not broken.

20 Q Okay. So you said that you noticed that the house was in disarray;
21 is that -- is that right?

22 A Yes.

23 Q And I'm showing you what is marked as State's Proposed Exhibit 2.

24 MS. TRIPPIEDI: Well, I'm going to show her, then I'm going to move
25 to admit that.

1 BY MS. TRIPPIED:

2 Q So State's Proposed Exhibit 2, can you tell me what's in this
3 photograph?

4 THE INTERPRETER: Give me the question, I didn't hear you.

5 BY MS. TRIPPIED:

6 Q Can you tell me what's in this photograph?

7 THE COURT: Can counsel approach for just ten seconds?

8 THE WITNESS: The drawer to the --

9 THE COURT: Hang on one second.

10 [Bench conference -- not transcribed]

11 THE COURT: I'm sorry, Ms. Mendoza, I interrupted you. Can you repeat
12 your answer?

13 THE WITNESS: It's the drawer of the piece of furniture that we had we
14 have the living room.

15 BY MS. TRIPPIED:

16 Q And when you left the house that morning did you leave the drawer
17 open or closed?

18 A It was closed.

19 Q I'm going to show you another picture. Is that -- is that another
20 version of that same dresser?

21 A Yes.

22 Q And is this in the living room in your residence?

23 A Yes.

24 Q Now, I'm going to show you, can you tell me what room in the house
25 this is?

1 A It's the other living room.

2 Q And the drawers that are open in this picture, were those left open
3 before you left the house?

4 A No.

5 Q And in State's Proposed Exhibit 5, the drawers -- is this a closer
6 picture of the living room at issue?

7 A Yes, it's a closer picture.

8 Q And I'm going to show you State's proposed Exhibit 6. Can you tell
9 me what's in that picture, what room of the house?

10 A That's my bedroom.

11 Q Okay. And again the drawers, were they closed before you left the
12 house?

13 A Yes.

14 Q How about all the clothes on the floor, was it like that when you left
15 the house?

16 A No. He threw that on the floor.

17 Q And I'm going to show you State's Proposed Exhibit 7. Is that
18 another view of your bedroom?

19 A Yes.

20 Q Okay. And was the bedspread like that before you left house?

21 A No.

22 Q And was there this black wallet on top of the bed before you left the
23 house?

24 A No.

25 Q I'm going to show you State's Proposed Exhibit 8. Is that yet

1 another view of your bedroom?

2 A Yes.

3 Q And I'm going to show you State's Proposed Exhibit 9. What room
4 in your house is this?

5 A That's my daughter's bedroom.

6 Q All right. And is this how you left the room before you left the house
7 this morning -- that morning?

8 A No. He also opened up those drawers.

9 Q Okay. And do all the pictures that I just showed you clearly and
10 accurately depict your residence how you found it when you returned home that
11 day?

12 A Yes.

13 MS. TRIPPIEDI: Your Honor, at this time the State moves for admission
14 of State's Proposed Exhibits 1 through 9.

15 THE COURT: Any objection?

16 MS. ROMNEY: No, Your Honor.

17 THE COURT: All right, 1 through 9 are admitted.

18 **[STATE'S EXHIBITS 1 THROUGH 9 ADMITTED]**

19 BY MS. TRIPPIEDI:

20 Q And I'm going to show you what is marked as State's Proposed
21 Exhibit 11. What is that a picture of?

22 THE INTERPRETER: Repeat the question.

23 BY MS. TRIPPIEDI:

24 Q What is that a picture of?

25 A There is where the key, where he stepped on -- that's the water

1 faucet, okay, which --

2 Q Just, you know, without -- I don't want you to draw any conclusions
3 right now. I just want you to tell me what part of your house is shown in the
4 picture.

5 A It's in the back.

6 Q Okay. And you see this can here, what exactly is that a can of?

7 A That's the bucket he put there in order so he get in.

8 Q Well, what's inside that bucket?

9 A He has -- my husband works in the concrete, so my husband has
10 concrete paint inside that bucket.

11 Q Okay. As far as you know, was that bucket there before you left the
12 house that morning?

13 A No.

14 Q Was the window open before you left the house?

15 A No.

16 Q Was the back screen door open before you left the house?

17 A No.

18 Q And you see this little fixture right here in the picture? Is that what
19 earlier you told me was leaking?

20 A Yes. He broke it.

21 Q Okay. Is -- over here on the floor, is that wet water marks?

22 A Yes.

23 Q And is this, I'm going to show you State's Proposed Exhibit 13, is
24 that a closer picture of that water fixture?

25 A Yes.

1 Q Okay. And was it -- it appears to be broken in the photograph, is
2 that how it was when you left it that morning?

3 A No.

4 MS. TRIPPIED: Your Honor, at this time --

5 BY MS. TRIPPIED:

6 Q So are these pictures, 11 and 13 that I showed you, Proposed
7 Exhibits 11 and 13, are these a clear and accurate depiction of the outside of
8 your residence?

9 A Yes.

10 MS. TRIPPIED: Your Honor, the State moves to admit State's Proposed
11 Exhibit 11 and 13 into evidence.

12 THE COURT: Any objection?

13 MS. ROMNEY: No, Your Honor.

14 THE COURT: All right, 11 and 13 are admitted.

15 **[STATE'S EXHIBIT 11 AND 13 ADMITTED]**

16 BY MS. TRIPPIED:

17 Q I'm going to show you what is marked as State's Proposed Exhibit
18 16. Now, ignore the tape on top of the picture because that's obviously, you
19 know, what is used by analysts. But I'm talking about the wall on top of the tape,
20 and specifically the tile under where the tape is, and you can notice dirt marks
21 over in those areas.

22 A Yes.

23 Q Now, is that the condition that you left your bathroom in before you
24 left the residence that day?

25 A No.

1 Q Do you normally clean your bathroom pretty often?

2 A Yes.

3 Q I noticed you seem like a clean person, do you normally make your
4 bed every day?

5 A Yes.

6 Q So is this how you found your bathroom after you returned home?
7 Is this kind of a good picture of how you saw your bathroom?

8 A Yes.

9 Q And I'll wait to actually admit it when the forensic scientist can fully
10 testify. Okay. Let's move on.

11 So what exactly were -- was taken from you after this incident
12 occurred?

13 A This boy what he took was the money, \$6,000.

14 Q Okay. And where did you keep this money in your house?

15 A In my drawers, in the drawers in my bedroom.

16 Q Okay. Did you keep it in a wallet or anything like that?

17 A \$4,000 I had inside a sock. And then the other 2,000 I had there in
18 the -- I had at the same drawer.

19 Q Okay. And why did you have that money in the drawers in your
20 house?

21 A Because 2000 belonged to my brother which he asked me to save
22 for him. And the other 4,000 was for my husband that was going to travel to
23 Mexico on that same day.

24 Q Okay. And at some point, maybe a few months after this all
25 happened, did you receive a visit from police officers about this case again?

1 A Yes.

2 Q And at that point were you told that there was a suspect developed
3 in the case?

4 A I think what he did, that he showed me the picture that they had
5 found him.

6 Q Okay. And did you recognize the person in the picture that you
7 were shown?

8 A No. I did not know him.

9 Q Okay. Did you at some point hire anybody to do any yard work
10 around that time or earlier?

11 A No.

12 Q Do you have any friends that might have been at the residence for
13 any reason?

14 A No.

15 Q Okay. So you don't hire anybody to do any work on the exterior of
16 the house as far as you know?

17 A No.

18 Q Okay. Is there any reason that you can think of why someone
19 would be right at that window on the outside of your house?

20 MS. ROMNEY: Objection, Your Honor. That calls for speculation.

21 THE COURT: Hang on a second.

22 MS. TRIPPIED: And I'm asking her to speculate.

23 THE COURT: Hang on a second. The objection is what? Everyone's talk
24 at the same time. The translator was talking, so I didn't hear your objection.

25 MS. ROMNEY: I'm objecting because her question calls for speculation.

1 THE COURT: And your response, Ms. Trippiedi?

2 MS. TRIPPIEDI: And I'm just asking her to speculate whether there is any
3 reason why she can think of that someone would be out there. Perhaps there is
4 a reason that we all haven't heard yet. So that's why I'm asking.

5 THE COURT: All right. Well, I'm going to allow her to answer the
6 question. I'm not going to -- without speculating, do you know of any reason why
7 someone would have been out there near that window? I'm not asking you to
8 take a guess, but do you know of any particular reason?

9 THE WITNESS: No.

10 BY MS. TRIPPIEDI:

11 Q Now, I'm going to direct your attention to the individual sitting at this
12 table, the defendant in this case. Do you recognize that man?

13 A No. No. No.

14 Q Have you ever seen that man before?

15 A No.

16 Q Does he look familiar to you at all?

17 A No, never seen him.

18 MS. TRIPPIEDI: I'll pass the witness.

19 THE COURT: Cross-examination.

20 **CROSS-EXAMINATION OF ALDEGUNDA MENDOZA**

21 BY MS. ROMNEY:

22 Q Ms. Mendoza, you testified that you left your house at approximately
23 9:00 a.m.; is that correct?

24 A Yes, approximately.

25 Q And then you returned home at approximately 10:30, right?

1 A Yes.

2 Q Okay. And so in that hour and a half, roughly, you noticed that
3 someone had been inside your home, correct?

4 A Uh-huh.

5 Q Is that a "yes"?

6 A Yes. Yes.

7 Q But you didn't see anybody in your house, correct?

8 A Correct.

9 Q And you didn't see anybody near your house or in the immediate
10 area, correct?

11 A That's correct.

12 Q And so you didn't see firsthand whether the person entered through
13 the front door, right?

14 A No.

15 Q And so you don't know whether they entered through the back door
16 that was open?

17 A No, I don't know.

18 Q And so you -- and you don't know whether they came in through the
19 back window that was open, right?

20 A Correct.

21 Q Okay. And because you didn't see anybody, you couldn't provide a
22 description of any kind as to the person or people who might have done this,
23 correct?

24 A Yes.

25 Q And you wouldn't know if it was one person versus multiple people?

1 A That's correct.
2 Q And you wouldn't know whether it was a man or a woman?
3 A Yes.
4 Q Or a group or a combination of men and women?
5 A [No audible response]
6 Q You testified that your house had been ransacked, correct?
7 A Yes.
8 Q Drawers had been opened?
9 A [No audible response]
10 Q Closet doors has been opened?
11 A Yes.
12 Q And a lot of your property was moved around, correct?
13 A Yes.
14 Q And so someone went through and touched a lot of your stuff?
15 A Yes.
16 Q And so it's true that the only thing that was taken from your house
17 was cash, correct?
18 A Yes.
19 Q And you don't have any documents or anything to verify that
20 amount, do you?
21 A No.
22 Q Isn't it true that there were some other items of value in your home?
23 A Just the additional Mexican currency that they took, 10,000 Mexican
24 pesos. Three thousand --
25 THE INTERPRETER: The interpreter is confused.

1 BY MS. ROMNEY:

2 Q I might be able to help out. I don't need an exact match, but is it fair
3 to say that you're saying that there were Mexican pesos in your home?

4 A Yes.

5 Q What about a TV?

6 A Yes, but --

7 Q Or no?

8 A -- but they didn't take it.

9 Q And do you own a camera?

10 A Yes. The camera was there and the computer.

11 Q Did you have a DVD player?

12 A No.

13 Q Do you have any other kind of electronics? Large or small?

14 A No.

15 Q None of your jewelry was taken, correct?

16 A No.

17 Q And so the only thing that was taken was cash, correct?

18 A Yes.

19 Q And I just wanted to clarify something quickly, you indicated that
20 your front door was open; is that correct?

21 A It was ajar.

22 Q Okay.

23 MS. ROMNEY: Court's indulgence, please.

24 THE COURT: Sure.

25 MS. ROMNEY: Judge, we have no further questions.

1 THE COURT: Any redirect?

2 MS. TRIPPIEDI: Yes, Your Honor.

3 **REDIRECT EXAMINATION OF ALDEGUNDA MENDOZA**

4 BY MS. TRIPPIEDI:

5 Q Ma'am, you talked about the Mexican currency that was taken. Did
6 you -- did you -- did you initially tell officers about that money that was taken?

7 A No. Because they gave me a piece of paper for me to fill out. And I
8 was -- and I didn't notice what was actually missing.

9 Q Okay. So it wasn't until later that you noticed that there was also
10 some Mexican currency, some pesos taken; is that right?

11 A That is correct.

12 Q And do you know the approximate American dollar value of this
13 currency?

14 A It would be about \$300 here.

15 Q Okay. And you -- and again, you didn't notice this until after the
16 police had already investigated ?

17 A They told me to come out of the house. And they gave me a piece
18 of paper to fill out. And I filled out this piece of paper that was -- that I had of any
19 value inside the house. That's what I had to fill out outside of the house when I
20 was instructed by law enforcement.

21 Q Okay. So you said that did you have a TV in the residence?

22 A Yeah. But I didn't -- I didn't write that down. I just thought about the
23 money.

24 Q Because was your TV expensive or -- or was it a simple TV?

25 A No. It cost about \$500, but I didn't write that down.

1 MS. TRIPPIEDI: Your Honor, may I approach?

2 THE COURT: You may.

3 BY MS. TRIPPIEDI:

4 Q Is that the TV that you're talking about?

5 A Yes.

6 Q So it's a pretty good-sized TV; is that right?

7 A Yes.

8 MS. TRIPPIEDI: And for the record, I just showed her State's Exhibit 2. :
9 I don't have any further questions for this witness.

10 THE COURT: Any recross?

11 MS. ROMNEY: Just one question, Your Honor.

12 **RECROSS-EXAMINATION OF ALDEGUNDA MENDOZA**

13 BY MS. ROMNEY:

14 Q So out of all of the items that could have been taken from your
15 home, the only thing that was taken was cash, correct?

16 A Yes.

17 MS. ROMNEY: Okay. That's all, Judge.

18 THE COURT: Anything further?

19 MS. TRIPPIEDI: No, Your Honor.

20 THE COURT: All right. Is the witness excused?

21 MS. TRIPPIEDI: Yes.

22 THE COURT: All right, Ms. Mendoza, thank you for your testimony.
23 You're free to go.

24 State, who is your next witness?

25 MS. TRIPPIEDI: The State calls Sergio Martin.

1 THE COURT Yeah, stand, face the clerk and raise your right hand.

2 SERGIO MARTIN,

3 [having been called as a witness and first duly sworn, testified as follows:]

4 THE COURT: Okay. Mr. Interpreter, let me tell you something, okay, if other --
5 if you're translating to him please whisper in his ear because we cannot have her
6 talking and you talking at the same time, it screws up the recording. If you're
7 saying what he says, then you can speak into the microphone. All right?

8 THE INTERPRETER: Okay.

9 THE CLERK: Please be seated. Please state your name and spell your
10 first and last name for the record.

11 THE WITNESS: Sergio Martin, S-E-R-G-I-O, Martin, M-A-R-T-I-N.

12 THE COURT: Go ahead and have a seat.

13 DIRECT EXAMINATION OF SERGIO MARTIN

14 BY MS. TRIPPIED:

15 Q Now, Sergio, I'm just going to draw your attention to an incident that
16 occurred to your house on January 21, 2009. And I've already asked your wife
17 most of the questions, so I'm just going to touch on just a couple things with you.

18 A Okay.

19 Q What was taken from your home that day?

20 A Money.

21 Q And how much?

22 A \$6,000 and 3,000 Mexican pesos.

23 Q Okay. What's the equivalence of 3,000 Mexican pesos in American
24 dollars, approximately?

25 A About \$300.

1 Q Okay. And I'm showing him State's Exhibit 11. Do you see that can
2 of -- that bucket under the window in this picture?

3 A Yes.

4 Q Do you recall that bucket being there that morning before you left
5 the house?

6 A No. Because I have my bucket at the other corner.

7 Q Okay. And I'm going to show you another picture which State's
8 Exhibit 13. Do you see this water fixture in this picture?

9 A Yes.

10 Q Do you see that it appears to be broken in the picture?

11 A Yes.

12 Q When you left the house that morning was it broken?

13 A No, no, because they used that to step on in order to get inside of
14 the house. When I arrived home I noticed that the yard of the house was
15 completely full of water.

16 Q Okay. So when you arrived home you did notice that there was
17 water in your yard that wasn't there before?

18 A Yes. Because it's a complete concrete floor and it was all covered
19 with water.

20 Q Okay. Now, I'm going to ask you another question, do you see this
21 individual at the table that I'm pointing to? For the record I'm pointing to the
22 defendant, Jaquez Barber. Do you recognize that individual?

23 A No, I've never seen him.

24 Q You don't know him at all?

25 A No.

1 Q Okay. Do you have any reason that you can think of why this
2 person would have been at or around your residence?

3 A I don't know. Maybe to the school, maybe he goes to that school or
4 not. I don't know.

5 Q Okay. Is there any reason you can think of why this person would
6 be directly --

7 MS. ROMNEY: Objection, Judge.

8 THE COURT: Hang on. What's the objection?

9 MS. ROMNEY: This is the same issue as before. She's -- her -- she's
10 asking for speculation and --

11 THE COURT: Well, I mean --

12 MS. ROMNEY: -- any reason you can think of is calling for speculation.

13 THE COURT: Well, I mean, she's asking -- well, I'm going to overrule the
14 objection to the extent that the question is does he know of any reason as
15 opposed to having him guess at reasons. So if you can rephrase the question
16 as does he know of any reason.

17 BY MS. TRIPPIED:

18 Q Do you know of any reason that you can think of that that you
19 actually know, have knowledge of, that this person's hands would be on the back
20 window of your residence?

21 A And I'm specifically talking about this window here in State's Exhibit
22 11, any reason why this person's hands would be on that window?

23 MS. ROMNEY: Objection, Judge.

24 BY MS. TRIPPIED:

25 Q That you know of. That you know of.

1 THE COURT: Go ahead and answer.

2 THE WITNESS: To get inside and rob.

3 BY MS. TRIPPIED:

4 Q Well, okay --

5 MS. ROMNEY: Judge, I'd ask to strike that testimony.

6 THE COURT: Yeah, hang on.

7 MS. TRIPPIED: And I have no objection to that.

8 THE COURT: I'm not sure he understood the question, yeah.

9 BY MS. TRIPPIED:

10 Q Okay. Is this person your gardener?

11 A No.

12 Q Is this person your window cleaner that you hire?

13 A No.

14 Q Okay. Is there any reason, any work that this person was hired to
15 do for you that, any reason that he prints would be on this window?

16 MS. ROMNEY: Objection, Judge.

17 BY MS. TRIPPIED:

18 Q That you know of.

19 THE COURT: Hang on, hang on, what's the objection?

20 MS. ROMNEY: There is no foundation for that, Your Honor.

21 THE COURT: I'm not sure what you mean by no foundation.

22 MS. ROMNEY: He doesn't have any personal knowledge of what was on
23 the window or anywhere else on the outside of the house.

24 THE COURT: Well, the question is does he know of any reason, any
25 noncriminal reason, why this person's hand would be on the window, right? So I

1 don't know, I mean, I'm not sure what you mean by foundation, but I'm going to
2 overrule the objection.

3 So do you know of any noncriminal reason why this person's hands
4 would have been on your window?

5 THE WITNESS: Repeat the question, I did not understand the question.

6 THE COURT: Can you ask the question, Ms. Trippiedi?

7 BY MS. TRIPPIEDI:

8 Q Okay. Is there any non-criminal reason, any legitimate reason that
9 this person's hands would be on this window?

10 A What would be the other -- what would the purpose, the other
11 purpose?

12 Q There is no other purpose, is that -- is that correct?

13 MS. ROMNEY: Objection, Judge.

14 THE COURT: Hang on, I think -- I'm not sure he -- hang on -- I'm not sure
15 he understood, maybe it's a translation issue. It was a "yes" or "no" question.
16 Maybe you can rephrase it as a "yes" or "no" question?

17 BY MS. TRIPPIEDI:

18 Q Okay. So I'll rephrase it as a "yes" or "no" question. Do you know
19 of any noncriminal, legitimate reason why this person's hands would be touching
20 that window of your house?

21 A No.

22 MS. TRIPPIEDI: I have no further questions.

23 THE COURT: Cross-examination?

24 MS. ROMNEY: Just a couple.

25 **CROSS-EXAMINATION OF SERGIO MARTIN**

1 BY MS. ROMNEY:

2 Q Mr. Martin, you were not present when this incident took place; is
3 that correct?

4 A No. No one was at home.

5 Q So you didn't see anybody in the house, correct?

6 A Correct.

7 Q And when you arrived it's true that the back window was open,
8 correct?

9 A Yes.

10 Q And it's true that the back door was also open, correct?

11 A Yes.

12 Q And the front door was also open, correct?

13 A When I arrived law enforcement was already there and everything
14 was open.

15 Q Okay. But you don't know firsthand whether someone entered
16 through the back door, correct?

17 A No. Because the only area that I noticed that was forced was just
18 the rear bathroom window and then the water faucet was broken and the can
19 was also there.

20 Q But that's an assumption that you're making. You didn't see that
21 firsthand, correct? "Yes" or "no"?

22 A It was forced, the window was forced open.

23 Q How do you know that it was forced?

24 A It was obvious. It was, you know, there was -- it was shown, it was
25 seen that the window was forced. It was forced with something.

1 Q How do you know that? You didn't -- but you didn't --

2 A Just looking.

3 Q Okay. You didn't see the person open the window with your own
4 eyes, correct?

5 A No.

6 Q And you said that when you arrived at the house the back door was
7 also open, correct?

8 A Yes.

9 Q So isn't it possible that someone could have entered through the
10 back door, right?

11 A Could be.

12 Q Just like it would be possible that someone could have entered
13 through the front door?

14 A Yes. It could be possible. But nothing was forced from those doors.

15 Q Was the window damaged in any way, the back window? Or was it
16 just slid open?

17 A They used something to force the opening of the window. Since it's
18 manufactured out of aluminum, you can notice that it's kind of crooked a little bit.

19 Q Okay. But you don't know that for sure because you were not
20 standing there to see someone open the window, correct? It's just "yes" or "no."

21 A Yes, it's true.

22 MS. ROMNEY: Okay. I don't have any further questions, Judge.

23 THE COURT: Any redirect?

24 MS. TRIPPIED: No, Your Honor.

25 THE COURT: All right. Is the witness excused?

1 MS. TRIPPIEDI: Yes, Your Honor.

2 THE COURT: Thank you, Mr. Martin, you're free to go.

3 THE COURT: State, who is your next witness?

4 MS. TRIPPIEDI: It's going to be Robbie Dahn. May I please go outside
5 just to confirm that she's here and let my witnesses go?

6 THE COURT: Sure.

7 MS. TRIPPIEDI: Just one brief moment.

8 THE COURT: While she's checking on it we have a been going for about
9 an hour and a half. Are you guys okay to keep going or does anyone need a
10 bathroom break right now? Let me see a show of hands if anybody needs a
11 break right now. Okay. Thanks.

12 MS. ROMNEY: Do you want a break?

13 THE COURT: Did you raise your hand? Do you want a break? All right.
14 Let's do -- let me wait for Ms. Trippiedi to get back in here and we'll take a short
15 break then. Sorry, I just I can't do very much without her.

16 MS. TRIPPIEDI: Your Honor, I'm actually going to be calling Officer
17 Shevlin next.

18 THE COURT: Okay. Let's do this, there is an indication that we need to
19 take a very short break, a bathroom break. So before he testifies let's do this,
20 ladies and gentlemen, during this break you are admonished that until you begin
21 your deliberations you are still under oath and have not been discharged. Do
22 not reach any conclusions about this case as you have not heard all of the
23 evidence. Do not talk to anyone about this case. Do not investigate any facts of
24 this case. Do not view any media, press, or Internet reports about this case. Do
25 not talk to anyone who may be involved in any way with this case. Do not

1 discuss the facts of this case with each other.

2 Remember to wear your badge at all times around the courthouse.
3 Please leave your notebooks on your chairs. The notebooks are not to leave the
4 courtroom. And let's try to keep it short maybe just five minutes or so. I'm not
5 even going to leave the bench. So whenever you guys are ready, I'll just have
6 Randy bring you guys back in, all right.

7 Ma'am, you need to leave. Yeah, you have to -- we have to keep all
8 12 of you together, all 14 of you together.

9 [Outside the presence of the jury]

10 THE COURT: All right. We're outside the presence of the jury. Let's take
11 a short break.

12 Officer, you might as well go ahead and have a seat in here that
13 way you're not kind of mingling out in the hallway with them, so. All right,
14 thanks.

15 MS. TRIPPIED: Yeah, just sit here.

16 [Recess at 2:23 p.m.; proceeding resumed at 2:32 p.m.]

17 [In the presence of the jury]

18 THE MARSHAL: Officer, remain standing, raise your right hand, face the
19 clerk, please.

20 **CHAD SHEVLIN,**

21 [having been called as a witness and being first duly sworn, testified as follows:]

22 THE CLERK: Please be seated. Please state your name and spell your
23 first and last name for the record.

24 THE WITNESS: My first names is Chad, C-H-A-D. Last name is Shevlin,
25 S-H-E-V-L-I-N.

1 THE COURT: All right, counsel, you may proceed.

2 DIRECT EXAMINATION OF CHAD SHEVLIN

3 BY MS. TRIPPIED:

4 Q Sir, how are you employed?

5 A By the LVMPD, Las Vegas Metropolitan Police Department.

6 Q What do you do for the police department?

7 A Patrol officer.

8 Q How long have you been a patrol officer?

9 A Four years.

10 Q Okay. And what are your duties as a patrol officer?

11 A We report -- we go to -- we go to -- people call 9-1-1 and call 3-1-1,
12 we'll respond to those calls and preliminary investigations, burglary calls,
13 robberies. We do car stops, we do person stops.

14 Q Okay. So what kind of cases do you typically get assigned to?

15 A Burglary calls, robbery calls, sexual assault calls.

16 Q Okay. Do you have a patrol vehicle?

17 A I do, marked patrol unit.

18 Q Okay. And do you usually wear your uniform like what you're
19 wearing today?

20 A I do. This is the exact uniform that we're in all the time when we're
21 on duty.

22 Q Okay. Do you remember being on duty January 21 of 2009?

23 A I do.

24 Q Okay. And on that date were you dispatched to 1873 Star Sapphire
25 Court?

1 A I was.

2 Q Here in Clark County, Nevada?

3 A Yes, I was.

4 Q Okay. And what was the nature of your dispatch to that residence?

5 A We had gotten a burglary call at that residence reference the back
6 door being opened on that residence that you were speaking of.

7 Q Okay. And you arrived at the scene, what did you notice?

8 A When I arrived on the scene the victim was outside. She had said
9 that somebody came in through the back door, through the slider door of the
10 residence. And we went in and cleared the residence to make sure nobody was
11 inside.

12 Q Okay. Do you know why she told you that someone came in
13 through the back door of the residence or through the back, sliding door of the
14 residence?

15 BY MS. TRIPPIED:

16 Q Okay. Okay. Did you investigate to see whether you thought
17 someone had entered through that back door?

18 A We do that when we go in and check -- check the residence to
19 make sure that there is -- that it's safe for the victim to go back inside.

20 Q Okay. Did you do that in this case?

21 A We did.

22 Q Go in and kind of like do a, is it, like, an initial --

23 A It's a safety sweep to make sure, again, there is no nobody in there
24 and see what has been disrupted or moved around.

25 Q What did you notice when you went in to the residence, if you

1 recall?

2 A I remember seeing the back, the back backslider door open. When
3 I went around to the outside I saw a bathroom window open and a bucket sitting
4 right below the window and a broken water spigot that you hook a hose to.

5 Q And I'm going to show you State's Exhibit 11, is what you're
6 describing right now?

7 A That's exactly what I saw.

8 Q Okay. And what did you determine based on these items being
9 there?

10 A We determined that the smaller window was the point-of-entry,
11 whoever went inside and that they came out the slider. Due to the spigot being
12 broken and being that bucket, that white bucket being pushed over by the
13 bottom of the window. When we went inside we also saw there was marks
14 along the wall and on the tub ring.

15 Q Okay. And so what exactly did that indicate to you?

16 A Whoever came in through the window pushed off the wall with their
17 foot, landed on the tub ring, and that's how they entered the residence.

18 Q Okay. And approximately, how many burglaries have you been
19 called to during your career?

20 A In the past four years I've been on a lot. I couldn't tell you an exact
21 number.

22 Q Would it be fair to say that that amount is over, say, 20?

23 A Easily.

24 Q Easily over 20?

25 A Yeah.

1 Q Okay. Could you give me a range?

2 A I can't.

3 Q Okay.

4 A I go to them every day.

5 Q Okay. Fair enough. And so when you -- when you do investigation
6 during your burglary calls, is that something you typically look for, you know,
7 entry points?

8 A Yes. We look to see if there is any discernible fingerprints that we
9 can see. If there is we'll call out our ID or C.S.A.s, crime scene analysts, to
10 come out and take prints, take pictures of anything that's been disrupted. And
11 then we also get a voluntarily statement from the victim on the time -- the time
12 frames that they were at the home and what was missing.

13 Q Okay. So in this case after you did that initial sweep that you talked
14 about, did you notice anything else actually when you were in the residence that,
15 like, gave you a red flag or anything?

16 A In the bedroom the drawers were all open.

17 Q Okay.

18 A Which typically shows, due my training and experience, shows that
19 someone was rummaging through dressers and things like that.

20 Q Okay. So you see that typically in your burglary calls?

21 A Yes. They make a mess.

22 Q Okay. So you did that sweep, you noticed the drawers open, did
23 you yourself actually take a statement from the victim?

24 A I did.

25 Q Okay. And then you said that you kind of -- did you walk back along

1 the backside of the house and then that's when you noticed a bucket and the
2 broken water faucet?

3 A Yes. During the sweep when we went in we checked those initial
4 rooms, we saw that the drawers were open, and then when we go around the
5 back to make sure they're not hiding in the backyard or anything like that, that's
6 when we saw the bucket, the broken spigot, the open window.

7 Q Okay. And what did you do next?

8 A We called out ID, the C.S.A.s, to come out.

9 Q Okay. What does C.S.A. stand for?

10 A Crime scene analyst. Crime scene analyst.

11 Q Okay.

12 A They come out and they'll take pictures, they'll do fingerprints,
13 anything they can find on windows, any --

14 Q Okay.

15 A -- flat objects.

16 Q Okay. And so at that point you called them out to the scene. Did
17 that pretty much end your involvement in the case?

18 A It does. After -- after the victim filled out the voluntary, we sit there
19 and we wait for C.S.A. to get done. And then once they're safe and they're
20 clear, then we clear the call.

21 MS. TRIPPIED: Okay. I'll pass the witness.

22 THE COURT: Cross-examination?

23 **CROSS-EXAMINATION OF CHAD SHEVLIN**

24 BY MS. ROMNEY:

25 Q Officer, is it true that as part of your investigation the homeowner

1 could not provide a description of who might have done this; is that true?

2 A That is true, yes.

3 Q So it's possible that it could have been one person, two people, a
4 group of people, right?

5 A Of course.

6 Q Okay. When you entered the home and made -- and observed the
7 house did you notice any items of value that were still in the home? A TV? Or
8 camera? Other items like that, did you notice?

9 A I do remember the bedroom, the drawers being open, but, yes, I
10 remember the TV being there.

11 Q Okay.

12 A Items in the living room were still there.

13 Q Okay. And the only item reported to you that was missing was
14 cash, correct?

15 A Yes.

16 Q Okay. And through your investigation it's true that you weren't
17 provided with any documentation or anything verifying that amount; is that
18 correct?

19 A No.

20 Q Okay. And so you stated that when you arrived you found that the
21 master bathroom window was open, correct?

22 A Yes.

23 Q And the back door was open, right?

24 A Yes.

25 Q The front door was open as well?

1 A I don't recall.

2 Q Okay. But I guess, fair to say, that there were multiple windows or
3 doors that were open, right?

4 A The back I do recall being open, yes.

5 Q And you don't know what order those things were open, right, the
6 back door could have been open first then the window second or vice versa,
7 right?

8 A Yes.

9 Q Okay. Now, you indicated that as you look through a home you look
10 for potential prints that could be investigated further by a crime scene analyst,
11 correct?

12 A Yes.

13 Q Did you witness any prints on the back door?

14 A Back doors are hard to see, depending on the color.

15 Q Did you see any; do you remember?

16 A Not that I can recall, no.

17 Q Okay. But that's part of the reason why you have C.S.A. respond,
18 right, because ultimately they're the ones who look for that kind of evidence,
19 right?

20 A Yes.

21 Q Okay. And again, when you entered the house you observed that
22 there was a lot of property that was moved around, correct?

23 A Yes.

24 Q Drawers were open, right?

25 A Yes.

1 Q Closet doors opened?

2 A Yes.

3 Q A jewelry box was opened?

4 A I don't recall that.

5 Q Okay. But, again, in the end lots of stuff moved around, okay, right?

6 A Yep.

7 Q Okay. So you were there when the crime scene analyst responded,
8 right?

9 A Yes, I was.

10 Q Okay. And was it just one person that responded or were there
11 multiple crime scene analysts who responded?

12 A One crime scene analyst responded and then she had some
13 trainees with her.

14 Q Do you remember how many?

15 A I don't recall how many were there.

16 Q Okay. To your knowledge would those trainees have been
17 observing or would they have been active in the process; do you know?

18 A I have no idea what their -- what a C.S.A. does with their trainees,
19 so I couldn't tell you.

20 Q Fair enough. And so while -- while you were there you witnessed
21 the crime scene analyst dust for prints, right?

22 A Yes.

23 Q Okay. Did you see them -- you saw them dust for prints on the back
24 window, correct?

25 A I did.

1 Q Did you see them dust for prints?

2 MS. TRIPPIED!: Your Honor, may we approach?

3 THE COURT: Sure.

4 [Bench conference -- not transcribed]

5 THE COURT: You may want to reask the question.

6 MS. ROMNEY: Right.

7 BY MS. ROMNEY:

8 Q Okay. I think we left off where I had asked you if you saw the
9 C.S.A. dust for prints on the master bathroom window, correct?

10 A Yes.

11 Q Okay. Did you see the C.S.A. dust for prints on the back door?

12 A I don't recall. This was a long time ago.

13 Q Okay. That's fair. Do you remember seeing them dust for prints
14 anywhere on the inside or outside of the house?

15 A I just remember that back window.

16 Q Okay. Is it possible that that master bathroom window was not the
17 point-of-entry?

18 A I couldn't tell you that. Again, the way -- the way -- due to my
19 training and experience, typically subject will enter through a smaller window
20 and then go out a door, a back window.

21 Q In your experience have you responded to these types of calls where
22 someone went in through the front door?

23 A Sure.

24 Q And have you responded to calls where someone went in the back
25 door?

1 A Yes.

2 Q So is it possible that in this case someone could have entered
3 through another point and not that master bathroom window?

4 A The reason why is because the shoe print that was on the white
5 wall --

6 Q I understand in direct, you know, maybe why you came to that
7 conclusion, but is it still fair to say that it's possible that that could have been
8 another point in the house?

9 A Sure.

10 MS. ROMNEY: Okay. Court's indulgence.

11 THE COURT: Sure.

12 MS. ROMNEY: We don't have any further questions at this time, Your
13 Honor.

14 THE COURT: Any redirect?

15 MS. TRIPPIEDI: No, Your Honor.

16 THE COURT: All right. Is the witness excused?

17 MS. TRIPPIEDI: Yes.

18 THE COURT: Thanks, officer, for your testimony. You are free to go.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: State, your next witness?

21 MS. TRIPPIEDI: It's going to be crime scene analyst, Robbie Dahn.

22 THE MARSHAL: Remain standing, raise your right hand, and face the
23 clerk please.

24 **ROBBIE DAHN,**

25 [having been called as a witness and first duly sworn, testified as follows:]

1 THE CLERK: Please be seated. Please state your name and spell your
2 last -- your first and last name for the record.

3 THE WITNESS: My name a Robbie Dahn, first name R-O-B-B-I-E, last
4 name, D-A-H-N.

5 THE COURT: You may proceed, counsel.

6 **DIRECT EXAMINATION OF ROBBIE DAHN**

7 BY MS. TRIPPIED:

8 Q Ma'am, how are you employed?

9 A I am a senior crime scene analyst with the Las Vegas Metropolitan
10 Police Department.

11 Q And how long have you been a senior crime scene analyst?

12 A I was hired in July of 1998, and it's approximately 14 and a half
13 years.

14 Q Wow. And what does a crime scene analyst do?

15 A We go out to calls for service either from detectives or police
16 officers. My primary duties are to photograph, photography for the police
17 department, latent print processing, evidence collection, crime scene
18 diagramming, and anything there and about to document a scene.

19 Q Okay. And what kind of cases do you work on?

20 A I go out to every kind of case. I've been to every type of crime and
21 every type of case.

22 Q Okay. Do you work on a lot of burglaries?

23 A Yes, I do.

24 Q Okay. Approximately how many burglary calls have you been on?

25 A I've been on approximately 1500. I know at the end of 2009 I think

1 it was right around 1200.

2 Q Okay. How do you know that?

3 A We keep stats of our calls.

4 Q Okay. So what do you do? Just walk the jury through a typical
5 burglary call of yours.

6 A I get assigned the call either by dispatch or a supervisor, depending
7 if I'm already in the field or if I'm back at our C.S.I. detail. I respond to the scene,
8 make contact with the officer or detective that's at the scene. They generally will
9 give you a walk-through because they've been there prior to your arriving and
10 they've got a little bit more information. And so we walk through, look at all the
11 disturbed, when it comes to a burglary-type case, what I'm interested in when I
12 arrive is to go through and just be shown areas of disturbance. I mean, some
13 homes, they may look like they were disturbed, but it's just the way the house is.
14 So you need to differentiate that.

15 But what I'm focusing on too is things that I, in my mind, I know I
16 can probably get good fingerprints on. So I want to make sure I focus on those
17 areas, so when I'm doing my photography I document all those items.

18 Q So what are, I'm going to stop you right, there.

19 A Okay.

20 Q What are typical things that you get, you know, that you typically get
21 good fingerprints on?

22 A Well, with fingerprinting there is your porous and your nonporous
23 surfaces. And nonporous would be glass, anything shiny and smooth, car, you
24 know, surface of a car, lacquer furniture, a lot of the items, like, you know, clear
25 boxes.

1 Q And are those items that are more -- more likely to have fingerprints
2 left on or less likely?

3 A Generally speaking, the nonporous surfaces are more likely to get
4 prints than the porous.

5 Q Okay. So what type of items do you most likely not see prints on?

6 A When you start getting things like disturbed leather briefcases,
7 anything that's made of a material, a lot of jewelry-type boxes may have like a
8 velveteen-type surface, those type of things. Anything that's cloth, you're not
9 going to have very good luck with that at all.

10 Q Okay. So, like, clothing do you typically see fingerprints on
11 clothing?

12 A Not typically.

13 Q Okay. And what do you -- so primarily you test items for fingerprints
14 and you take photographs at crime scenes?

15 A Yes. Also at burglary scenes you can look for tool marks, there may
16 be foot wear that I'm looking for, anything that may have been dropped by
17 somebody at the scene. So pretty much you get there and the officer walks me
18 through and then I go back through as I'm my notes and doing my photography,
19 and I'm doing like a scan and, you know, searching the scene myself. And I also
20 utilize my victims as well because a lot of times after the officers leave they calm
21 down a little bit. And on these burglary scenes they're a huge help because I
22 can ask them, well, was this here originally and now it's over on this end of the,
23 you know --

24 Q Sure.

25 A So they help me quite a bit too to point out things that have been

1 just slightly moved or possibly touched by somebody.

2 Q Okay. So you said you were a crime analyst for 13 years, did you
3 receive any training before you became a crime scene analyst?

4 A Well, I got my degree in criminal justice out of U.N.L.V., and then I
5 applied for the job and with Metro they put you through a crime scene analyst
6 academy. It's not a police officer academy, so you're focusing on photography,
7 different types of skills, different types of photography, the fingerprinting,
8 evidence collection. And it's a big focus on that, the academy, when I went, was
9 about 400 hours, 10 weeks, 40 hour weeks in classroom and field exercises.
10 And then after that they put you through a field training program. So that's kind
11 of like a baby steps where you do start out on simple property crimes, burglaries,
12 this type of thing, and then they move you, you know, through the skills of
13 getting to the, you know, more and more, you know, severe crimes that are out
14 there.

15 Q So I noticed that you brought with you a big black, like, it looks like a
16 toolbox. Can you show that to the jury real quick?

17 A Yes, I just brought my -- I brought my kit. This is my fingerprinting
18 kit. I have one that's for blood collection too. So we just typically carry, you
19 know, our own -- we're assigned equipment from the department, and then as
20 well a lot of the equipment in is here is also the department's. But we just make
21 up our own kit, so you have that with you when you're going out to one of these
22 burglaries so you can, you know, process the scene.

23 Q Okay. Now, I'm going to draw your attention to January 21, 2009.
24 On that date do you recall being dispatched to a residence located at 1873 Star
25 Sapphire Court in Clark County, Nevada?

1 A Yes.

2 Q Okay. And do you recall what time you were dispatched?

3 A It was --

4 Q Approximately?

5 A -- approximately, around 11:18, 11:20.

6 Q Okay. And were you -- did you actually drive to that scene yourself?

7 A Yes.

8 Q Were you riding along with anybody else?

9 A Yes. That morning I was assigned -- we have -- we were having

10 some ride-alongs come and spend the day with us. And who these three folks

11 were public service representatives who are department employees and they

12 actually work in the patrol division of our department. And they have been

13 trained in -- they do simple reports for officers, and as well they've been trained

14 in a little bit of photography and fingerprinting, so that they can assist us with,

15 like, more simpler scenes. So all of the P.S.R.s had to come for a ridealong as

16 part of their training. So that particular day my supervisor assigned three of

17 them with me.

18 Q That should have been fun.

19 A To take.

20 Q So who were these three people?

21 A There was a guy, Michael -- there was two females and a male,

22 Michael Palmer, Carol Farris, and Sabrina Steinmetz.

23 Q Okay. And what do you notice when you first arrived at the scene?

24 Like, set the scene for the jury.

25 A The house is a corner house. We pulled up and we all piled out.

1 There were fours of us. And I made contact with Officer Shevlin. And he did a
2 basic walk-through. Of course, right away I'm interested in what we're thinking
3 the point-of-entry might be. So we went ahead and walked outside first and
4 checked out an upper window that I was told was a bathroom window, I hadn't
5 been in the bathroom yet, and noticed that there was a water spigot that was
6 broken below the window and then there was -- there was also a big bucket
7 underneath the window as well. And then basically walked through.

8 As I went through the living room I could see that there was an
9 armoire along the south wall that was -- drawers pulled out, a little bit of
10 ransacking in there, and the living room closet door was open.

11 Q Okay.

12 A And so from there, I went back into the bedrooms and, you know,
13 just looked around at the damage and then the interior side of the point-of-entry
14 which was in the master bathroom.

15 Q Okay. And did you have your camera with you that day?

16 A Yes.

17 Q Did you are you person that took the photographs that were
18 submitted?

19 A I believe that -- I believe between myself and Carol Farris, like, I
20 was allowing her to take some of the photos, but I was present the whole time or
21 -- and I know I took some of the photos as well.

22 Q And again, she's one of those trainees that was with you that day?

23 A Yes.

24 Q Okay. Let's focus on latent print processing and latent print
25 gathering. Did you have the chance to take any prints in this case?

1 A Yes, I did. You always want to really focus on the point-of-entry.
2 And so I did print all around the outside of the bathroom window as well as the
3 inside. It appeared like on the edges of the bathtub there was, like, some marks
4 that were not really of comparison quality, but they appeared to be foot wear
5 marks. So I was pretty convinced that that was the point-of-entry, was this
6 bathroom window. So because the inner side of the bathroom window was that
7 -- it had a little bit of an orange-peel effect, but it was still what I would call
8 porous surface or tile with the grout that's our tub enclosure.

9 Q I'm going to stop you right there.

10 A Okay.

11 Q Is this a picture, and I'm showing her for the record State's Exhibit
12 11. Is this a picture of back window that you're talking about?

13 A Yes.

14 Q Okay. And let me show you a closer picture of that window. I'm
15 showing you now State's Proposed Exhibit 12. Is this a closer picture of that
16 window?

17 A Yes. This is actually a photograph of the window itself, but after I
18 processed the window and actually put the tape lift up on the window.

19 Q Okay. And does that fairly and accurately depict the window as you
20 saw it that day?

21 A Yes.

22 MS. TRIPPIED: Your Honor, at this time I move to admit State's
23 Proposed Exhibit 12.

24 THE COURT: Any objection?

25 MS. ROMNEY: No, Your Honor.

1 MS. MAXEY: No.

2 THE COURT: All right, 12 is admitted.

3 **[STATE'S EXHIBIT 12 ADMITTED]**

4 BY MS. TRIPPIEDI:

5 Q Okay. And now let's talk a little bit about, you said the inside wall of
6 that window, you said it was the master bathroom?

7 A Yes.

8 Q So I'm going to show -- I'm going to show you what is marked as
9 State's Proposed Exhibits 14, 15, 16, and 17. I'll just go through each one. And
10 I just want to you to tell me if these pictures fairly and accurately depict the
11 inside of that --

12 A Yes, that would -- I can see the print powder underneath it. It's a
13 little dark on the dark side.

14 Q 16, another picture?

15 A Yes. These are all, it appears like pictures after it was processed
16 with prints and tape lifts.

17 MS. TRIPPIEDI: At this time I'm going to move to admit State's Proposed
18 Exhibits 14, 15, 16, and 17.

19 THE COURT: Any objection?

20 MS. ROMNEY: No objections.

21 THE COURT: All right. They're admitted.

22 **[STATE'S EXHIBITS 14, 15, 16, AND 17 ADMITTED]**

23 BY MS. TRIPPIEDI:

24 Q Okay. Okay. Can you describe in the photographs that I just
25 showed you, we all noticed that there -- it looked like black marks at some point

1 and, like, tape, could you describe what that is?

2 A Yes. Latent fingerprints are what we -- we call them latent
3 fingerprints because they're invisible. And they're generally put down with either
4 oil from somebody wiping their brow or touching something oily and then placing
5 their finger on a surface. And the ridges on your fingers, the ridges and furrows
6 are going to create a pattern, but we can't see it. And that's why we carry
7 this powder out with us, this dry powder. And as well the hands perspire, but
8 you have no oil glands. So if the hands are perspiring, and also a little bit of a
9 wetness would be there, so then when somebody touches something and then I
10 arrive on the scene in a timely manner, if I arrive three weeks later and it was
11 made from perspiration, it might be dried out because perspiration is a large
12 amount water.

13 But if I show up shortly after something's occurred and I'm able to
14 take my powder, which I carry a black powder which is kind of like a ground
15 down, I like to explain, almost like charcoal briquettes, but very fine black
16 powder. And then we also have this stuff, people sometimes refer to it as
17 graphite, but it's a magnetic powder. But nonetheless, it's dry. I take and put
18 either with a brush, with the black powder or take a magnetic wand and run it
19 across the surface. And the black will catch on any place that's moist. And
20 hopefully, you know, there will be a fingerprint that appears in those areas.

21 Q Okay. So in this case you used your powder on that, you know, that
22 area around that window; and what did you discover when you used your
23 powder?

24 A I did -- I was able to develop some prints, some fingerprints, palm
25 prints and fingerprints.

1 Q Okay. And is that on the inside and outside as well?

2 A Yes.

3 Q Okay. What does that indicate to you that there were prints on that
4 window?

5 A The only thing that seems unusual would be that, you know,
6 normally people are showering and your fingerprints would be, you know, from
7 palm down to fingers up. But in this particular case there were some of the
8 prints that were coming down from the seal downwards, towards the floor of the
9 bathtub. So that would indicate to me that that could possibly be somebody
10 climbing in the window.

11 Q Okay. Could it be possible that those prints belong to the
12 homeowners?

13 A Yes. It could be possible if they ever used that window to climb in
14 because they locked themselves out. I've had that happen in the past, so it could
15 be possible.

16 Q Is there anything you do to rule that out?

17 A The only thing that we'll do at the scene is that we will take
18 elimination prints from victims so that when we turn our packages in, then we
19 have a set of elimination prints. And those are primarily for really super good
20 prints that are good enough to go into the computer so that they can eliminate
21 that person because that process is 45 minutes per each prints. So they want to
22 eliminate anybody that may have made that print from the house first before they
23 would enter those.

24 Q Okay. "Super good prints" that's -- what do you mean by that?

25 A Prints that are -- for the AFIS computer you have to have pretty

1 much a very good amount of the pad of the finger, and in a fingerprint there is a
2 lot of whirls, there can be slants all these different markings. And then there is
3 also what's called a delta which these lines feed out of. So there are certain
4 particular points and different types of things that have to be there before it
5 would qualify to go in the computer. So when I say "really good," I don't mean,
6 like, a teeny small edge of a print, that's not a whole fingerprint. It has to pretty
7 much be a pretty good print laid down.

8 Q How often do you come across a really good print?

9 A Not often. You know, the show that's out there, every time they
10 process something they've got a big fat print that looks like somebody just rolled
11 it from an ink pad on to paper.

12 Q What --

13 A And it's not like that in the real world, so not often.

14 Q Which -- are you talking about C.S.I., like, Miami, all those TV
15 shows?

16 A Any of them.

17 Q Okay. So in the real world, which is the world that you work in,
18 what -- how often would you say you come across a legitimate fingerprint, a
19 really good print?

20 A I worked two burglaries today and one of the burglaries I did have
21 some good prints. So it could happen, you know, every other day you or it's just,
22 it's so random. You know, it's just depends on the case and what was touched
23 and most often than not, things are touched during a commission of a crime
24 where they're applying force or pulling, pushing, doing, and any of this stuff it's
25 not like you're just barely touching it, you know, because your movement is

1 going to cause smearing and, you know, so, so it is always nice when you get
2 them on something that maybe shouldn't have, you know, that you maybe know
3 that wasn't touched by the homeowner and it's a real, real good print. But it's not
4 often.

5 Q Okay. In this case we saw that, like, the dresser drawers were open
6 throughout the house. Did you check any of those points for prints at all?

7 A Yes, we did. Again, the drawers, those wooden drawers are a little
8 bit tougher to get fingerprints, generally speaking, on the majority of all these
9 cases when people come into a house they pull the drawer by, like, a little edge
10 of the handle and purposely never push it back in. So that's why in a lot of, you
11 know, my photos from these scenes, all the drawers are all, like, just hanging,
12 gaping open because the person who has does this doesn't want to push 'em
13 back in because that's when I'm going to get maybe some --

14 MS. MAXEY: Objection. Speculation.

15 THE COURT: All right. She's testifying within her experience. So the
16 objection's overruled.

17 Go ahead, continue.

18 THE WITNESS: So in my experience I've just not seen a lot of them
19 closed up and stuff. So those are a little, when I was describing about porous
20 and nonporous, wood's a little bit iffy, if it has, like, a nice lacquer finish then you
21 might be successful for prints.

22 BY MS. TRIPPIED:

23 Q Okay. So in this case were any prints picked up at any of the
24 dressers?

25 A There was on an a jewelry box in the southeast bedroom I know,

1 but on the dresser drawers, no.

2 Q Okay. And you were talking about how these super good prints are
3 able to be entered into AFIS. What exactly is AFIS? Why don't you just briefly
4 tell the jury what that is.

5 A It's the automated fingerprint identification system. And it's just a
6 database. We have it for Nevada as well as, like, for across the United States.
7 These prints aren't tied in with anybody that hasn't, you know, been through the
8 system like in, you know --

9 MS. MAXEY: Objection.

10 THE COURT: Hang on. So the -- can counsel approach?

11 [Bench conference -- not transcribed]

12 BY MS. TRIPPIED:

13 Q Okay. You're saying that AFIS, do you by chance know what it
14 stands for?

15 A Automated Fingerprint Identification System.

16 Q Okay. How do one's prints get entered into the system?

17 A It would probably be better -- I'm not a latent print examiner, so it
18 probably be better to have a latent print examiner explain it.

19 Q Okay. But it is a general database that's comprised of people such
20 as employees and, you know, work card applicants?

21 A No, it's not.

22 MS. MAXEY: Objection.

23 THE COURT: All right. Can counsel approach?

24 [Bench conference -- not transcribed]

25 THE COURT: All right, ladies and gentlemen, here's what we're going to

1 do, we're going to need you to step outside for just a couple of minutes. During
2 this break you are admonished that until you begin deliberations you are still
3 under oath and have not been discharged. Do not reach any conclusions about
4 this case as you have not heard all of the evidence. Do not talk to anyone about
5 this case. Do not investigate any facts of this case. Do not view any media,
6 press, or Internet reports about the case. Do not talk to anyone who may be
7 involved in any way with this case. Do not discuss the facts of this case with
8 each other.

9 Remember to wear your badges at all times. Please leave your
10 notebooks. Don't go very far away because it may only take a couple of
11 minutes. So let's just have 'em step out in the hallway real quick.

12 [Outside the presence of the jury]

13 THE COURT: All right. Do you want to just talk with her very quickly
14 before we put anything on the record? Or do you want to put something on the
15 record right now?

16 MS. TRIPPIED: Let me talk to her briefly, if that's okay.

17 THE COURT: Okay. Do you want to ask -- maybe you can express to
18 her what's going on here.

19 [Colloquy]

20 THE COURT: Hang on, let's do this, we might as well take advantage of
21 this, there's no objections to the jury instructions? Do you want me to number
22 them now so we can make copies and have them ready, rather than when we
23 get there we have to wait for ten minutes to get copies made or what?

24 MS. ROMNEY: I think I'd rather wait until the close of the State's case.

25 THE COURT: Okay. All right.

1 So, Ms. -- you're Ms. Aoyama?

2 MS. AOYAMA: Yes.

3 THE COURT: You're a latent fingerprint examiner for Metro?

4 MS. AOYAMA: Yes, I am.

5 THE COURT: Let me ask you a quick question, whose fingerprints
6 are in AFIS? Is it only people who've been accused of crimes? Or is it, like,
7 people with security clearances, you know --

8 MS. AOYAMA: Anyone with a work card who's been employed by Metro,
9 all Metro employees.

10 THE COURT: And then other jobs, like, you know, federal government
11 contractors, FBI agents, would they all be in there?

12 MS. AOYAMA: Background investigations.

13 MS. ROMNEY: So I would be in AFIS if I had to leave fingerprints for the
14 bar exam?

15 MS. AOYAMA: Yes.

16 THE COURT: Okay. So, and you're -- let me just -- are you sure of that?

17 MS. AOYAMA: Am I 100 percent sure? No.

18 THE COURT: Okay.

19 MS. AOYAMA: I just know that anyone who's applied for work cards,
20 background investigations, all the Metro employees are definitely in the system.

21 THE COURT: Okay. So, let me ask you this then, Ms. Dahn, based on
22 that, if the D.A. were to ask you a question, and I'm going to allow you to lead
23 and say, you know, are there, you know, the AFIS -- I don't know how you would
24 phrase this, but, you know, is it true that the AFIS system contains fingerprints
25 from people with work cards, people with -- give me some --

1 MS. ROMNEY: Background checks.

2 THE COURT: -- background checks, all those people are in AFIS --

3 MS. ROMNEY: Security clearances.

4 MS. AOYAMA: Uh-huh.

5 THE COURT: What would your answer be?

6 THE WITNESS: I could say I consulted with the, you know, with someone
7 and I found out that I was mistaken and that they have work cards in there,
8 Metro employees, and background.

9 MS. TRIPPIED!: I don't know I want to -- I don't know if I think that -- what
10 if I -- what if I kind of -- I'm going to ask her, did you yourself enter it into AFIS.
11 She's going to say no. And I'm going to say, Can you describe again what AFIS
12 is, and then she can describe it, what she knows now of it. Because I think if I
13 just say, you know, I think it'll draw too much attention --

14 MS. ROMNEY: I think she needs, and I don't mean to be rude in any
15 way --

16 THE WITNESS: No, that's okay.

17 MS. ROMNEY: -- but I think it needs to be pretty clear that it's, like,
18 definitively wrong that only people in AFIS are in the system.

19 MS. TRIPPIED!: And I'll definitely make sure of that. If you have a
20 problem with how I did that, then we can address it then. But I'll definitely clear
21 that up. But I don't want to ask her, did you have a chance to go and look up the
22 answer to the question --

23 THE COURT: Well, yeah, I mean, here's the -- here's the --

24 MS. TRIPPIED!: But I feel like --

25 THE COURT: -- here's the thing, I want to make sure --

1 MS. TRIPPIED: That's going to draw even more attention.

2 THE COURT: -- first of all before we go on, I want to make sure that
3 you're comfortable with what she said, you know, because I know that you --

4 THE WITNESS: Yeah, I may be mistaken, but I've always, I mean, when
5 I'm rolling prints of, like, citizens and stuff out there, and they're saying, oh, we're
6 going to end up in the system, and I never -- I never knew it to be just every
7 average person that had their fingerprints rolled that they were all in the system.
8 But --

9 MS. AOYAMA: Are you speaking of the exemplars that you take yourself
10 on scenes?

11 THE WITNESS: No, no, those aren't going to get in.

12 THE COURT: No, the question is, you know, the question is, I mean, is
13 everybody in AFIS necessarily a criminal really is the question.

14 MS. AOYAMA: No.

15 THE WITNESS: No? Okay.

16 THE COURT: So, if I have a, like, a concealed firearm -- concealed to
17 carry permit --

18 MS. AOYAMA: Then you would be in the system.

19 THE COURT: -- I would be in there? Okay.

20 MS. ROMNEY: Can I --

21 THE WITNESS: Okay, so I'm totally mistaken then.

22 THE COURT: So, the question for you then, ma'am, for you, Ms. Dahn
23 then, I don't want you to, you know, obviously give any kind of testimony that you
24 are not -- that you don't think is truthful. The question is if asked that question,
25 what would your answer be? And I don't want you to just say it because I told

1 you to say, you know, you're a witness --

2 THE WITNESS: Right.

3 THE COURT: -- you're under oath. And I don't want you to commit
4 perjury or anything like that. But if asked the question, this is not how she's
5 going to ask it, but generically, who's in AFIS, what would your answer be under
6 oath? And don't tell -- don't say it just because I'm telling you to say it. I want to
7 know what your actually comfortable saying.

8 THE WITNESS: No, but I feel confident in what Kathryn's saying. And if
9 she's saying that people who have concealed weapons permits, you know,
10 background checks, somebody being printed for the bar, and that type of thing,
11 that they are in AFIS, but I wasn't aware of it when I just said no. But now I'm
12 aware of it, so.

13 THE COURT: Okay. So the witness is indicating that's the testimony she
14 would give. So the next question is how do you want Ms. Trippiedi to phrase the
15 question to fix this?

16 MS. TRIPPIEDI: How about if I just do exactly what I said, if I say, you
17 know, just ask her, can you just tell the jury what exactly AFIS is again, you
18 know, we'll back up. So they don't know why we talked out here, you know.
19 And then during --

20 THE COURT: Right, and don't --

21 THE WITNESS: Well, maybe I can just say that I consulted with you --

22 MS. MAXEY: And in this whole break is -- I think we've just created an
23 elephant that's going to be in the room, I think that --

24 MS. TRIPPIEDI: Right. But then during cross-examination you're
25 welcome to say, does someone have to be a criminal to be in AFIS?

1 MS. MAXEY: You don't understand --

2 MS. TRIPPIEDI: Am I in AFIS? I took the bar exam. You can ask her all
3 those questions.

4 MS. ROMNEY: No, but the hard part -- the hard part is that there comes a
5 point where you can't unsay certain things and you can't -- things like that are
6 prejudicial and there are just some things that you can't just fix that easily.

7 MS. MAXEY: Exactly. And I think that's one of those things. The bell has
8 been rung.

9 MS. TRIPPIEDI: No, there -- this --

10 THE COURT: Right, which is why, hang on, which is why I'm asking you
11 how would you like the question to be phrased? I'm giving you the chance to
12 write a question for Ms. Trippiedi.

13 MS. TRIPPIEDI: And it's not -- I just want to just really -- really quickly, it's
14 not a case where we accidentally said that he is in the system.

15 THE COURT: Right.

16 MS. TRIPPIEDI: This is a case where we're talking generally. So it's
17 something that can definitely be cleared up by you guys and myself.

18 MS. ROMNEY: We can try that, but, like I said, the combination of --

19 MS. TRIPPIEDI: The bell hasn't been rung.

20 MS. ROMNEY: -- who's in the AFIS, you know, who are people in AFIS,
21 people in the system, and then does that include anybody, no, the implication is
22 criminal system only right now, as of right now.

23 THE COURT: But the thing is --

24 MS. ROMNEY: So we have to come up with a question --

25 THE COURT: Right, so she -- but she --

1 MS. ROMNEY: -- to fix it.

2 THE COURT: -- that can be fixed right now by her saying, oh, it's a lot of
3 people, it's work cards, it's, you know, concealed carry permits --

4 MS. TRIPPIED: Uh-huh, and then you can fix it even more.

5 THE COURT: Don't, Ms. Dahn, please don't mentioned criminals, just if
6 you want to give a list --

7 THE WITNESS: Right.

8 THE COURT: -- you know, I mean, it sounds like --

9 MS. TRIPPIED: Well, but it is criminals. You can also mention criminals.

10 THE COURT: Well, but that's, you know, I would, you know, at least now
11 because of the issue, I would advise her not to volunteer criminals, but just
12 mention there's lots of people in AFIS, there's all kinds of people, people have
13 been fingerprinted for all kinds of reasons. But the question is what is the
14 question that you think is the appropriate question to ask?

15 THE WITNESS: Can I just say that I discussed it with our latent print
16 examiner and I was just mistaken on who all was in there or no? Or I'll just say
17 after consideration --

18 MS. ROMNEY: What if you asked -- I think I'd rather it be a leading
19 question, Isn't it true that --

20 MS. TRIPPIED: Okay.

21 MS. ROMNEY: -- AFIS includes people who have been through --

22 THE COURT: And then you can list work cards, concealed carry permits.

23 MS. ROMNEY: -- background checks --

24 THE WITNESS: I think I truly in my mind too was mixed up.

25 THE COURT: FBI agents.

1 MS. TRIPPIED!: Okay.

2 MS. ROMNEY: -- carrying concealed weapons.

3 MS. TRIPPIED!: Okay. I'll lead her.

4 THE WITNESS: And thinking of -- I was thinking of the CODIS system
5 which is DNA, I think that is strictly.

6 THE COURT: Okay.

7 THE WITNESS: You know what I mean, so I think I was mistaken in my,
8 you know, in my thinking because CODIS I think truly does have mostly anybody
9 that's --

10 MS. ROMNEY: Criminal justice.

11 THE COURT: Oh, I'm pretty sure.

12 THE WITNESS: -- yeah, that's been through --

13 THE COURT: Because we don't get DNA tests for, you know --

14 MS. ROMNEY: We don't get --

15 THE WITNESS: Right.

16 THE COURT: -- being D.A.s.

17 THE WITNESS: So I think I misspoke because of thinking of that.

18 MS. ROMNEY: I think it's better if you lead and just say --

19 MS. TRIPPIED!: Okay.

20 MS. ROMNEY: -- isn't it true that people who have had background
21 checks, people who have applied for carrying concealed weapons permits,
22 people who take the bar exam --

23 THE COURT: Whatever, yeah.

24 MS. ROMNEY: -- you know, and other people would also be included in
25 the AFIS system, let her just answer yes and I think --

1 THE COURT: And then move on? Or what?

2 MS. MAXEY: I just -- I just want it on the record that I have -- I don't agree
3 with this, I have major heartburn over this. I think the bell has been rung. And I
4 think it's a mistrial. I just want that on the record.

5 THE COURT: All right. Well, so what is the question that you want asked
6 then? Just, you want to ask -- her ask a leading question listing all these
7 categories and she'll say yes.

8 MS. ROMNEY: Yes.

9 THE COURT: And then move on? Is that what you want or is there a
10 follow-up question then?

11 MS. ROMNEY: I don't know that there's much more to add to that if it's
12 only going to be, you know, through questioning.

13 THE COURT: Oh, okay.

14 MS. ROMNEY: But, you know, I think the jury's --

15 THE COURT: All right, so it sounds like you just want the one question,
16 you'll say yes, and then we'll just kind of move on, right? Is that the idea?

17 MS. MAXEY: But I want my objection to stand.

18 THE COURT: No, I understand your objection. But all right, then let's go
19 ahead and do that.

20 Ms. Aoyama, thanks very much for coming in. We need you to step
21 back outside, and we'll bring the jury back in then.

22 [In the presence of the jury]

23 THE COURT: Please be seated. Will counsel stipulate to the presence of
24 the jury?

25 MS. ROMNEY: Yes.

1 THE COURT: Ms. Trippiedi, do you stipulate to the presence of the jury?

2 MS. TRIPPIEDI: Yes, Your Honor.

3 THE COURT: All right. Ms. Dahn, you are still under oath; do you
4 understand that?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Ms. Trippiedi, you may resume.

7 BY MS. TRIPPIEDI:

8 Q Okay. Back to AFIS, isn't it true that people are entered into that
9 system that apply for Sheriff's cards, background checks, work permits, and
10 several other reasons; is that a correct --

11 A Yes.

12 Q -- statement? Okay. Do you actually enter those prints into AFIS?

13 A No.

14 Q Or does someone else do that?

15 A No, I don't.

16 Q Who does that?

17 A We have latent print examiners that, once we do our report, I then
18 log my latent prints, we put them into a lock box, they're picked up by evidence
19 technicians, and taken next door. And the latent print examiners do that.

20 Q Okay. So let's go back to the scene, you -- tell me the process of
21 actually lifting prints from the scene. In this case you said that you were only
22 able to lift prints from around that entry window and from a jewelry box; is that
23 right?

24 A Yes.

25 Q Okay. What's the process that you use?

1 A Once we've powdered the prints, those can be lifted with a
2 fingerprint tape. I photograph the tape and then lift it, put it on a white card,
3 make labels, and turn that card in to be analyzed. There is a second way that
4 you can -- can recover the prints which is through photography. And I'll go
5 ahead and photograph for comparison, so I set my camera on the raw setting,
6 for those of you that know how to do camera work. And I take the a picture of
7 the print, submit the pictures along with just my regular pictures of the scene.
8 And then when those come up on-base, I can review those and then order up
9 those pictures. And I can submit the picture as a latent card and that can be
10 turned in for next door for them to analyze.

11 Q Okay. So in this case did you do cards or did you do --

12 A This case I did both.

13 Q Okay. Did you bring those cards with you today that you used?

14 A Yes, I did.

15 Q Did you bring those pictures with you today that you used?

16 A Yes.

17 Q Okay. Do you have them with you?

18 A Yes, I do, they're right here.

19 MS. TRIPPIED: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 MS. MAXEY: Your Honor I'm going to approach too.

22 THE COURT: Sure.

23 BY MS. TRIPPIED:

24 Q And it looks like you have these cards in envelopes, what kind of
25 envelopes are these?

1 A These are our latent print envelopes. And I've got one-of-one, I
2 mean, one-of-two and two-of-two. And the reason for the two prints was that I
3 did the report, got the first set of prints which were my tape lifts in this one and
4 turned those in, and then there is a little bit of a delay while you're waiting for
5 those photographs to come up on On-Base, reviewing them, and then ordering
6 them, and receiving them, and getting those turned in.

7 Q I'm going to stop you right there.

8 A Okay.

9 Q How do you know that the two envelopes in front of are you --
10 contain the cards and photographs for this actual case?

11 A I know that because it's got my name and personnel number,
12 Robbie Dahn, 5947. And this is in my handwriting, the second one. The first
13 one I had Carol assisting me with this. But I also had put my -- her name's on
14 the original first one and then my name as well.

15 Q Okay. Who else had the occasion to come into contact with these
16 prints or photographs?

17 A I'm noticing the packages, we always -- at the time I think back in
18 2009, we weren't sealing with any type of tape. They were putting -- our
19 supervisors would review them and they'd put, like, a little sticker on the back.
20 But now we are taping them and submitting them. But the blue tape is an
21 indication that these have been over at the forensic lab in the latent print section,
22 and they both look like they've been reviewed. They both have the blue tape.

23 Q Okay. And you stated that usually when you are called to the scene
24 to investigate burglaries that you can see prints if you're called quickly enough.
25 Can you describe that in further detail?

1 A No, it's not that you can see the prints, but your chances of being
2 able to recover those invisible prints is more likely especially if the prints were
3 put down with perspiration, mainly because, like, if they're outside on a car on a
4 hot summer day, they're going to dry out pretty quickly being that perspiration is
5 like 98 percent water. So when you get to a scene, some of the prints you can
6 see, if somebody's eaten a candy bar and then stuck their fingers on something,
7 you might be able to see that visibly.

8 But what I was referring to was just your likelihood of being able to
9 recover those invisible prints would be a higher, you know, a higher likelihood if
10 the respond to the scene in a timely manner.

11 Q Okay. So if I touch this table with my palm and my fingers, would --
12 and months and months go by, is likely that if you were sweeping this table for
13 prints you would be able to find my fingerprints on the table?

14 A The likelihood would probably be no. There is a lot of other reasons
15 why prints are not there or they're there. Some people have very sweaty hands.
16 Other people's hands are really dry depending on the ambient temperature. But
17 usually, like, if we get called to a scene and somebody's been on vacation and
18 we're called three weeks later once they return from their vacation to allow us to
19 be in their home, it's a less likelihood than if we were able to come out right out
20 that day.

21 Q How does cold weather affect prints? Because this case happened
22 in January, so I just wanted to see, you know.

23 A Well, cold weather, you know, it doesn't, you know, it doesn't call
24 for, like, people really blatantly sweating like they would, like, maybe in July. But
25 cold weather can be very drying as well. So a lot has to do with your surface,

1 the ambient temperature, the condition of the person's hands and whether or not
2 they, you know, had any kind of medium or wiped their brow and maybe picked
3 up a little oil from their forehead. So there is a lot of factors when it comes to
4 having a fingerprint show up with the powder.

5 Q Okay. Now, the prints in this case were -- they were analyzed but
6 someone from the forensics lab, as I'm sure you're aware, and they -- the -- you
7 stated that you did some exclusion prints. Can you go into detail about that?

8 A Yes. At the scene sometimes, depending on the prints that you get,
9 if you have a victim at the scene you'll take what's called elimination prints. So
10 you'll just roll the victims prints, add them into the package.

11 Q Okay. So would it surprise you if any of the prints returned to the
12 victim -- one of the victims in this case, the husband or wife? Would it surprise
13 you?

14 A No. No, it's usually -- it's -- on residential burglaries where people
15 are living in their home, it's very -- it's very usual that you might pick up one of
16 their prints as you're processing.

17 Q Okay. Another instance that -- let me -- let me ask you this way,
18 those trainees that were with you, there were three of them; is that correct?

19 A Yes.

20 Q And they were all in the general area that you were lifting for prints;
21 is that right?

22 A Yes.

23 Q Would it surprise you if one of those three trainees' prints came up
24 when the prints were analyzed?

25 A No. It wouldn't surprise me. I was -- I would be disappointed if they

1 were there, but it wouldn't surprise me.

2 Q Okay. Can you tell us a little bit more about that?

3 A Yes. I was made aware -- it's been a while, but I was made aware
4 that my -- the male trainee, that in trying to get, you know, into the bathroom
5 shower stall it appears like that he balanced himself and put his fingerprints
6 down on one of the walls inside the shower enclosure. And so when I printed
7 and turned in my group of prints, I did find out that some prints came back to
8 Michael Palmer.

9 Q Okay. And you've seen that happen before?

10 A Oh, absolutely, usually -- he may have done it inadvertently and not
11 realized it because it's not a big deal.

12 MS. MAXEY: Objection. Speculation.

13 THE COURT: Hang on, hang on.

14 THE WITNESS: It's not a big deal if somebody --

15 THE COURT: Hang on, there is an objection.

16 THE WITNESS: Oh, I'm sorry.

17 MS. TRIPPIEDI: Okay.

18 THE COURT: The objection is what? Speculation?

19 MS. MAXEY: Yes.

20 THE COURT: Ms. Trippiedi, what's your response?

21 MS. TRIPPIEDI: I guess I'll just restate the question.

22 THE COURT: Okay.

23 MS. TRIPPIEDI: Maybe a more specific way.

24 BY MS. TRIPPIEDI:

25 Q Have you seen, you know, in your 13 years as a crime scene

1 analyst, have you seen it ever occur where, you know, one of the employees
2 with Metro that's actually at the crime scene, their prints turn up?

3 A Yes.

4 Q Okay. Okay. So after -- so you obtain these print cards, you put the
5 tape on them and you do the photographs, what do you next with these cards?

6 A Once I get the cards and pick up the tape lifts, once I return to the
7 lab, if I'm allowed, and this particular day I do recall that we prepared all the print
8 cards and did the report that very day before we ended the shift. Now,
9 sometimes I may run late on a call and I'll come back and lock up the cards and
10 work on them the next day. But once I finish my report, make my labels, put all
11 my signatures on, prepare the envelope, and I turned in my photographs, then I
12 submit the report and the cards to my supervisor. And he reviews everything.
13 And then he would sign the -- I had logged the latent prints, he would sign the
14 log signing them off and then drop them into the box. And then every day,
15 Monday through Friday, a evidence technician comes over to our side, which is
16 the C.S.I. detail, and picks up the cards from the locked box.

17 Q And you followed all of those procedures for securing them into that
18 lock box?

19 A Yes.

20 Q In this case?

21 A Yes.

22 MS. TRIPPIED: At this time I'll pass the witness.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION OF ROBBIE DAHN

25 BY MS. MAXEY:

1 Q You stated that you have 400 hours of training, correct?

2 A Well, we -- the crime scene academy is 400 hours of training.

3 Q Okay.

4 A And then we go through a field training process, which since I've
5 been on four years I'm actually a training officer now. And so that's like another
6 12-week period after that.

7 Q So this isn't 400 hours of training in fingerprint processing, correct?

8 A No. The first 400 is you're a brand new employee, whether you've
9 never touched a camera or not, you're trained in photography, evidence
10 packaging, fingerprinting, you know, how to use -- how to do a basic crime
11 scene diagram, and then how to put it on a computer. So we're trained in a lot of
12 things thrown at you at one time.

13 Q So how many hours of training do you have in finger processing --
14 fingerprint processing?

15 A Well, I've taken quite a few classes since then. I recently just
16 became certified as a senior scene analyst with the International Association for
17 Identification. And in order to do that you have to show in the past five years,
18 like, 150 hours of training classes. And Metro's been very good about always
19 sending us out for training. So -- so, I mean, I've been trained not only in what
20 we call mechanical processing which is what was done at the scene, but a lot of
21 hours in, like, chemical processing as well which --

22 Q So would you estimate about 150 hours; is that what I'm --

23 A Yeah, you could probably say formal training, I would say around
24 100 hours of formal training or --

25 Q Okay.

1 A -- sitting in a classroom.

2 Q Okay. And how long is each classroom? I mean, how long -- is it
3 an hour, two hours for each class?

4 A It just depends, yeah, it just depends. Some classes are two hours
5 and others are, like, a 40-hour class.

6 Q And when was the last time you went to a class?

7 A Specifically for any type of a class?

8 Q For fingerprint, no, for fingerprint class?

9 A You know, I would have to look at my records. I didn't prepare to
10 know the exact month or date.

11 Q So this training you're, of course, you're taught to lift prints, how to
12 look for prints, stuff like that; correct?

13 A Yes.

14 Q Okay. You stated when you -- is wearing gloves one of the
15 prerequisite or, like, one of the things, the major things to do when you analyze a
16 crime scene?

17 A Yes.

18 Q So when you stated you were disappointed in your trainee is that
19 because he didn't wear a glove?

20 A Yes.

21 Q And so he left a print?

22 A Yes.

23 Q So then by him leaving a print, you can testify that he -- he might --
24 there might have been prints underneath the print that he left?

25 A There could have been.

1 Q So he might have distorted some prints?

2 A It could be possible.

3 Q Okay. And so he contaminated the crime scene?

4 A Well, these things happen, I've even had homicide detectives touch
5 something that they weren't supposed to touch. So we're all human beings.

6 And I think people don't really even realize it when they're doing it. And it -- it
7 just does happen, but gloves should have been being worn.

8 Q And so he did contaminate the crime scene?

9 A He did that -- he did put his prints on that one wall, so that area was
10 contaminated.

11 Q Let's talk about the areas or the surfaces you said have good
12 surfaces; is what you talked about, porous surfaces, correct?

13 A Well, we have the shiny, more nonporous surfaces.

14 Q Oh, that was nonporous, thank you.

15 A That are good.

16 Q Nonporous surfaces, and it's the nonporous surfaces that yield the
17 fingerprints, correct?

18 A Yes, in my experience you're more likely to get prints on a
19 nonporous surface than a porous. If I go into a scene and I process all the
20 smooth, shiny surfaces that probably were touched and I didn't get any kind of
21 fingerprints at all, then the chances to go to something that's a porous surface,
22 it's very unlikely you're going to get any fingerprints.

23 Q So you stated that shiny, smooth objects, correct?

24 A Yes.

25 Q Okay. Lacquer furniture, correct?

1 A Yes.

2 Q Windows correct?

3 A Yes.

4 Q Doors?

5 A Some doors.

6 Q Some doors. How about door knobs?

7 A Door knobs.

8 Q Okay. And you stated that drawers are not because they have

9 handles?

10 A Well, it just depends, yeah, the type of handle that it might be,

11 they're very difficult.

12 Q So if a drawer doesn't have a handle then that would be --

13 A You might have a chance, like, on the edge where it was pulled

14 open.

15 Q So a drawer's a good flat surface?

16 A Yes.

17 Q Okay. I also want to talk about you talked latent prints and you

18 called them invisible prints, correct?

19 A Yes.

20 Q Okay. Latent prints are also prints when somebody just touches

21 something, correct?

22 A There may be a latent print there.

23 Q Yes.

24 A After touching.

25 Q Known prints are different from latent prints?

1 A Known prints?

2 Q Known, known, K-N-O-W-N, known?

3 A Yeah, but I'm not sure what you're -- because there is three.

4 Q Are -- but they're different from latent prints?

5 A Known prints would be maybe the elimination prints that I took from
6 my, you know, somebody at the scene, then I would know who those print
7 belonged to.

8 Q So elimination prints, those -- you would say those are known prints
9 then?

10 A Yes.

11 Q Okay. And known prints are not just a touch like that, correct?

12 A No.

13 Q Known prints are when the finger is rolled from one side all the way
14 to the other?

15 A Yes. That's how I take the eliminations.

16 Q So then you would have an extremely good surface of the prints?

17 A Yes.

18 Q As compared to a latent print that's just a touch, correct?

19 A Correct.

20 Q Okay. You stated that when you go to a scene you look for areas of
21 disturbance.

22 A Yes.

23 Q Okay. And are the areas of disturbance where you like to look for
24 fingerprints and process fingerprints?

25 A Yes.

1 Q Okay. In this situation did you process any fingerprints or look for
2 any fingerprints on the drawers that were opened?

3 A Yes.

4 Q You did? Is that in your report? Do you have a report that states
5 that?

6 A I did -- I only report -- I only -- actually Sabrina Steinmetz wrote the
7 report with me sitting there. But we only talked about the areas that we did
8 recover the prints. We didn't talk about all the surfaces that we processed. And
9 that's not generally what we do. We don't say with processed this, this, this, this,
10 this, and this and then we got prints here. We may talk about it, like if you take
11 an item of evidence back to the lab, but I didn't, like, indicate or have her indicate
12 in the report every single surface that we processed.

13 Q The reason why you write reports is to document your -- your
14 investigation, correct?

15 A Yes.

16 Q And so -- and to also help you remind you what you did, correct?

17 A Yes.

18 Q And to also if somebody wanted to review your work they could read
19 your report, correct?

20 A Yes.

21 Q However, you didn't write every single area you processed in your
22 report?

23 A We don't commonly do that, not even on a homicide. We don't write
24 down the hundreds of surfaces maybe on a homicide that we would process.
25 We write down the ones where we have the prints and the evidence from. And

1 those are documented in the report. It's just not something that's done.

2 Q So other than your memory, there is no documentation to show to
3 anybody else that you processed any other --

4 A Well, it's not written in the report, no.

5 Q Okay. How about -- so you just testified that did you process the
6 drawers in the home. Did you process the front door for any fingerprints?

7 A No, I didn't.

8 Q Did you process the sliding glass door in the back?

9 A Yes.

10 Q And glass is good surface, correct?

11 A Yes.

12 Q Okay. And did you process, other than the drawers, was there
13 anything else in the home that you processed?

14 A I believe there was a black wallet that had been opened and thrown
15 on the bed in the master that was processed.

16 Q But that's cloth, correct?

17 A It was kind of a like a shiny, like, faux plastic leather, faux leather.

18 Q And not a good surface to get a lift?

19 A Kind of shiny, and, no, it would have been a good surface.

20 Q Oh, I was under the impression that cloth is not a good surface.

21 A Well, it was more like a -- I thought it was more like a plastic-type,
22 shiny-type material though.

23 Q Oh, and I thought, I was also under the impression that, like, leather
24 is not a good --

25 A It just depends, like I said about the wood, leather, anything that

1 would have, like, a shiny surface to it, there is always an exception to the rule. I
2 mean, yeah it's not good, but if you get a plastic material, you know, it could be
3 good for prints. You get like a flat, plastic surface that has no shine to it, no, you
4 may not get prints -- prints on that type of a wallet.

5 Q You said there is always an exception to the rule?

6 A As far as with fingerprinting, you just never know, I've gotten an a
7 fingerprint on a pomegranate before.

8 Q You never know?

9 A So you never know what you might get a print on, you just need to
10 try.

11 Q When you process the prints, you process the prints two different
12 ways, or just one way? Was it always with the --

13 A I believe --

14 Q -- the powder?

15 A -- I use -- I used both my magnetic and my black powder both at this
16 scene.

17 Q Okay. So you used the magnetic first and then the black powder?

18 A No. Usually the black powder first and then the magnetic to
19 accentuate or to try to clean up and make the print maybe a little bit darker.

20 Q The black powder first or, no, the magnetic first?

21 A It could be one or the other. But generally my method is I use the
22 black to kind of search out of print. It doesn't make that big of a mess because it
23 doesn't drop on the floor. It doesn't drop everywhere.

24 Q Uh-huh.

25 A Where, like when I'm using magnetic powder, I really actually, like,

1 on items I can pick up and move, I actually will usually ask the victim if they have
2 a plastic bag because that's very messy, it drops, like, off your wand after it
3 touches the surface. So on things such as a wall, I would do it with the black
4 first and then go in and clean up the print with the magnetic.

5 Q Okay. Just before we -- I'm going to go a little more into that in just
6 a second.

7 A Okay.

8 Q Just one thing, you said that this is your method, this is how you do
9 it, correct?

10 A Yes.

11 Q There is no standard method?

12 A You have your basics, but everybody, you know, during your
13 experience and your training you know what works for you. A lot of C.S.A.s will
14 -- crime scene analysts will even actually, like, kind of like, if you're not going to
15 collect DNA, breathe on the print a little bit. It adds some moisture on those
16 ridges. It may bring up the print.

17 Q So there is no standard method?

18 A There is a lot of -- there is a lot of different techniques to use,
19 different powders, types of brushes.

20 Q So there is no standard method?

21 A There is no standard method.

22 Q Okay.

23 A As far as, you know, just cut-and-dry steps one through ten,
24 everybody follows the exact same steps, no.

25 Q So people can follow different steps and get the same results,

1 correct?

2 A Yes.

3 Q Or people can follow different steps, I mean, or the same steps and
4 get different results, correct?

5 A Yes.

6 Q Okay. The black powder, it can create distortions?

7 A Yes. It can. If it's real wet or there is some kind of, like, something
8 on the surface that's, like, made the surface dirty, yes, it can cause distortion.

9 Q So in the shower where it's really wet it can cause a distortion?

10 A Yes. If the shower stall is wet, it could. Soap scum, anything like
11 that could cause other things to appear up on the surface too. It just depends
12 on, of course, a cleaner surface is better.

13 Q Okay. And it could also create smudges?

14 A Yes.

15 Q Is that the same with the magnet powder or the magnetic?

16 A They both work basically about the same.

17 Q Okay. So you testified that fingerprints can be affected by the
18 surface from what they're lifted from, correct?

19 A Yes.

20 Q That's why you have good porous surfaces versus nonporous
21 surfaces okay. Dust can distort prints, right?

22 A Absolutely. With dust sometimes you'll get a thickness of dust, and
23 if somebody touches the dust it's very hard to fingerprint with something dry on
24 something dry. So on those type of prints a lot of times we'll choose to just
25 photograph the dust print.

1 Q Have you ever been to a house where there was no dust
2 whatsoever?

3 A Maybe one or two not many.

4 Q Difficult in Las Vegas?

5 A Yes, there is a lot of dust.

6 Q Okay. Now, you talked about --

7 MS. MAXEY: Court's indulgence.

8 BY MS. MAXEY:

9 Q Or, oh, the print powder, you said it makes it -- it can make it really
10 dirty; is that correct? It can leave -- you would ask for a towel to put underneath
11 if you're going to do the black powder?

12 A Yes, the fingerprinting is quite messy, it's very dirty, when I I'm in
13 somebody's home I try to be as respectful as possible. But, yes, when you're
14 dealing with surfaces that are vertical, you want to make sure you have
15 something down because if you're using magnetic powder it could drop on the
16 floor. So when I'm processing small items I usually try to get something to lay
17 out to, you know, be able to process over.

18 Q I am going to show you State's Proposed Exhibit 16. Okay. This
19 right here, this can be caused by the black powder?

20 A Yes. All that residual black that you're seeing there, the shower
21 stall was perfectly --

22 Q And the same with down here?

23 A -- white when I got there.

24 Q Okay. Just, we talked about -- you talked about how prints can be
25 smudged, right; is that correct?

1 A Yes.

2 Q So this right here, like that, would you consider that that's a
3 smudged print?

4 A I can't really see it close enough, like, in this picture, I'd probably
5 have to look at a closer picture of with a loupe. So I don't even know if it's a print
6 because a lot of times you can go over a surface and it just catches some, like,
7 dirty area, some soap scum. So I'm not really, I mean, looking at that one you
8 pointed at, it looks like a little bit narrow and horizontal shaped, it doesn't look
9 like a finger mark to me.

10 Q Uh-huh.

11 A So I'm not sure if it's a finger smudge or if it's just some --
12 something that the powder connected to as far as like something dirty. I'm not
13 really sure.

14 Q And these ones right here, do these look more like prints to you?

15 A This one here, like right on the end there.

16 Q Uh-huh.

17 A That I've got the line underneath, that one may be a print. But I
18 think at the time, if I tape-lifted them, I must have saw some ridge detail of some
19 sort in each one of them so which ridge detail not necessarily a whole rolled print
20 but just any area where there may be some ridge detail which is the lines, you
21 know, from the hand or the fingers or the palms.

22 Q You testified that you believed that this window was the
23 point-of-entry, correct?

24 A Yes.

25 Q And one of the things you testified to is that because of the prints

1 underneath the window look like it's somebody -- the prints were facing
2 downward?

3 A Yes.

4 Q These are not whole prints, correct?

5 A Yes, but the -- I believe the one -- if I tape-lifted, then there had to
6 have been some ridge detail there. So the -- the one that I put the line under I
7 believe that that one looked like it had been, you know, coming from out to in.

8 Q Just from this part right here?

9 A Yes.

10 Q And this could be the bottom of a finger like this?

11 A It could be.

12 Q Which means that if it was like that, that means it would be hands
13 up, not hands upside down?

14 A Yes. I believe that I do remember that they -- it appeared like that
15 they were starting from top to bottom, you know, like upper to lower.

16 Q But there is a possibility?

17 A But, you know, we look at -- I look at prints all the time, you know, at
18 all kinds of scenes like where you -- it's just something that you notate in your
19 mind.

20 Q Okay.

21 A You know, it's for me to say.

22 Q So there is a possibility?

23 A Yeah, there is a possibility, absolutely.

24 Q Okay. Thank you.

25 A Uh-huh.

1 Q You stated also when you look, when you process a scene you look
2 for tool marks, correct?

3 A Yes.

4 Q Did you see any -- do you remember seeing any tool marks?

5 A No.

6 Q You talked a couple of times about timely manner, if I arrived to the
7 scene in a timely manner you will get prints?

8 A Yes. Meaning within a day of, like, I guess what I was making the
9 point of and I said it earlier is if somebody's on vacation and a neighbor's
10 watching the watching the house, well, we can come to the outside of the house.
11 But we're not allowed inside somebody's home until they've given us to
12 permission to come in with that messy powder and do our thing. So if they call
13 us in three weeks, the print is -- the prints, the chances are if the air's running or
14 if it's a car and it's outside, the prints may be dried out by then. So when I say
15 timely manner, I'm not talking about minutes or within an hour, just some time
16 within a day or so where you can get there and process the scene. And that's
17 what I mean by timely manner.

18 Q You cannot determine, like, the date and time when a print is left,
19 correct?

20 A No, you can't.

21 Q Okay. So even, you say there is a likelihood you'll be able to find a
22 print, you cannot testify that this print I found today was left today at a certain
23 time, correct?

24 A No.

25 MS. MAXEY: I'll pass, Your Honor.

1 THE COURT: Redirect?

2 MS. TRIPPIED: Yes, just a few questions.

3 **REDIRECT EXAMINATION OF ROBBIE DAHN**

4 BY MS. TRIPPIED:

5 Q So, Mrs. Dahn, did -- I'm going to show you State's Exhibit 14.
6 Now, I know you can't really see in this picture because it's dark, but I just want
7 to draw your attention to that general wall inside the bathroom under the
8 window. Did you notice any footprints or dirt or anything like that before you had
9 swept for prints that you recall?

10 A There -- I know there was some dirt, like, around the edges of the
11 bathtub and that was one of the indicators that we thought possibly somebody
12 had come in through that window because it just seemed odd that there was
13 some little bit of, like, mud or, like, prints around the edge of the bathtub. They
14 weren't good enough for comparison and they weren't even really footprints, it
15 was just pieces of, you know, like, some muddy areas.

16 Q Okay. Okay. All right. Thanks for clarifying that.

17 MS. TRIPPIED: I don't have any further questions.

18 THE COURT: Any recross?

19 MS. ROMNEY: No, Judge.

20 MS. MAXEY: Nothing.

21 THE COURT: All right, is the witness excused? Thank you.

22 MS. TRIPPIED: Yes.

23 THE COURT: For your testimony, you're free to go.

24 THE WITNESS: And may I ask, are we going to submit these? Because I
25 -- I just need a paper filled out by the court clerk if I leave them.

1 THE COURT: Oh, are we taking the fingerprints into evidence or not?

2 MS. TRIPPIEDI: Yes. Can we?

3 THE WITNESS: Okay. I need her to fill that out.

4 THE COURT: So, is there a -- there is a motion to admit the fingerprints;
5 is there an objection?

6 MS. TRIPPIEDI: I'm actually not moving quite yet, I still have to have
7 the --

8 MS. MAXEY: I was going to object on foundation anyway.

9 THE COURT: All right. So we need to at least fill this out so we're taking
10 custody of the fingerprints. Where are the actual --

11 THE WITNESS: They are right here.

12 THE COURT: Can I have them? All right. For the record I'm now taking
13 custody of the actual fingerprints and I'm giving them to my court clerk.

14 All right, Ms. Trippiedi, your next witness.

15 MS. TRIPPIEDI: The next witness is Kathryn Aoyama.

16 **KATHRYN AOYAMA,**

17 [having been called as a witness and first duly sworn, testified as follows:]

18 THE CLERK: Please be seated. Please state your name and spell your
19 first and last name for the record.

20 THE WITNESS: Kathryn Aoyama, K-A-T-H-R-Y-N, A-O-Y-A-M-A.

21 THE COURT: You may proceed, counselor.

22 **DIRECT EXAMINATION OF KATHRYN AOYAMA**

23 BY MS. TRIPPIEDI:

24 Q Ma'am, how are you employed?

25 A I am a forensic scientist with Las Vegas Metropolitan Police

1 Department's forensic lab.

2 Q And how long have you been a forensic scientist?

3 A Since March of 2007, so a little bit over five and a half years.

4 Q And what does a forensic scientist such as yourself do?

5 A I work in the latent print unit. So it's my job to develop latent prints
6 from evidence or a compare latent prints collected from the field to known
7 exemplar prints.

8 Q Okay. And before we go on about the specifics of that, what kind
9 background and training have you received to get to the point where you're at
10 now?

11 A I have a bachelor's degree from the University of California, San
12 Diego, in biology. We had an extensive two-year, approximately two-year
13 training program in which we went through a series of competency exercises,
14 lectures, training by outside experts in the latent print field, all designed to train
15 my eyes to compare latent prints to known exemplar print.

16 Q And that was a two-year program you said?

17 A One-and-a-half to two-years, yes.

18 Q Okay. And after that program were you considered a trainee? Or
19 what was your title after passing that program?

20 A A forensic scientist. We had level one and level two forensic
21 scientists.

22 Q What level are you right now?

23 A Forensic scientist two.

24 Q Okay. And how do you -- how does one graduate from forensic
25 scientist level one to forensic scientist level two?

1 A It's a progression. So you spend two years as a forensic scientist
2 level one doing, working on non, usually non-person crimes where it's not a
3 sexual assault or a robbery or a homicide.

4 Q Okay. And so how long -- how long ago did you graduate to a level
5 two?

6 A Sorry, approximately a year and a half ago.

7 Q Okay.

8 A Almost two years ago.

9 Q Okay. And is there a level three? Or is the highest you get level
10 two?

11 A Level -- forensic scientist two is the last.

12 Q How many cases would you say you've worked on approximately?
13 If you can give us a number?

14 A I have no idea.

15 Q A lot? A little?

16 A Hundred -- hundreds.

17 Q Okay. And have you testified in court before?

18 A I have.

19 Q Okay. Do you receive, like, training periodically to enhance your
20 knowledge?

21 A We have -- we receive training periodically. Last year I attended the
22 International Association for Identification educational conference. So we get
23 those opportunities once every few years because, of course, budget issues.

24 Q Okay. And so would you confidently say that your training has
25 taught you to make comparisons in fingerprints?

1 A Correct. My training and my job specifically is to compare latent --
2 latent prints or -- that I develop myself or that somebody else collects from the
3 scene to known exemplar fingerprints or palm prints.

4 Q Okay. And have you also received training to determine whether
5 prints are suitable?

6 A That is part of the process. Not every time you touch something
7 you're going to leave an identifiable print. So say you -- when you got dressed
8 this morning because your clothes, you know, you touched your clothing to put it
9 on, take it off, change it, the cloth itself isn't very conducive to receiving
10 fingerprints or latent prints even though you have residue on your hand. It
11 depends on the type of surface, it depends on how receptive a surface is. Like a
12 small paper clip, you can touch that all day long and leave an impression from
13 your fingers on that paper clip, but you're not going to be able to ever identify it
14 because all you have is a small teeny, tiny surface to leave friction ridge
15 impressions upon.

16 Q Okay. So a print actually has to be suitable before -- before what?

17 A To determine whether or not a latent print is suitable for
18 comparison, we're looking for the quality of the print, how much of the skin has
19 been transferred, how much of the impression was transferred on to the surface,
20 whether it's clear, whether it's been distorted, whether -- whether or not it's been
21 affected by weather, how much residue is on your hand affects whether or not
22 you can leave an identifiable print, as well as the condition of your skin. People
23 who do a lot of outdoor labor, landscaper, masons, they work with their hands all
24 day long so they're dried -- dried out and they have a hard time leaving
25 identifying not -- I shouldn't say they have a hard time leaving identifiable prints,

1 but there is the possibility that they would -- they would have a harder time
2 leaving an identifiable print than somebody who, like a massage therapist that,
3 you know, always has their hands moistened and supple, so.

4 Q So what exactly -- how exactly do you examine prints for particular
5 cases? What exactly do you look at?

6 A As I said, we're looking for the overall quantity.

7 Q I might need to restate the question.

8 A Yes.

9 Q Do you compare them based on photographs you're seeing, lift
10 cards, combination of both?

11 A A combination of both, it just depends. Sometimes our crime scene
12 analysts, P.S.R., and cadets go out to crime scenes and they dust for
13 fingerprints and then -- or for latent prints and then lift those, place them on
14 white cards, and submit them to the lab for comparison. Other times --

15 Q You keep saying, I'm sorry to interpret you, but I just want them to
16 know, what's a latent print versus a fingerprint?

17 A A latent print is any print that has to be developed, so it's not visible
18 to the naked eye. A patent print, on the other hand, would be something that is
19 visible like pushing your finger into a little brick of clay, that would leave a patent
20 print or a visible print. And whereas latent print is invisible to the naked eye, you
21 put black powder on it and it becomes visible or treat it with various chemicals.

22 Q Okay. So -- so let's talk more about those latent print cards you
23 were just telling us about. What exactly is a latent print card?

24 A They're usually submitted by officers in the field, our patrol services
25 representatives, our crime scene analysts, or cadets that are -- that are --

1 answer the calls for service and they usually have a black powder in their kits
2 where they dust for any visible friction ridge or fingerprints, partial prints. And
3 they transfer what they develop on to white three-by-five cards and then submit
4 those to the lab for analysis.

5 Q Okay. In this case were you -- were you given cards to analyze?

6 A Yes, I was.

7 MS. TRIPPIED: Court's indulgence briefly.

8 THE COURT: Sure.

9 MS. TRIPPIED: Your Honor, may I approach and --

10 THE COURT: You may. What the numbers of those exhibits?

11 MS. TRIPPIED: It's going to be 19 and 20.

12 THE COURT: 19 and 20. All right.

13 BY MS. TRIPPIED:

14 Q I'm showing you, ma'am, what is marked as State's Proposed
15 Exhibits 19 and 20 can you tell me what these envelopes are that I just handed
16 you?

17 A They are latent print packets submitted by C.S.A. Robbie Dahn from
18 1873 Star Sapphire Court.

19 Q Okay. And are these the cards that you were actually given in this
20 case that you're here testifying for?

21 A It is -- they are.

22 Q How do you know that?

23 A My markings and initials on the front of the packet and on the back
24 of the packet.

25 Q Okay. I'm going to have you go ahead and -- or actually, do you

1 know whether it was you yourself that sealed the envelopes?

2 A I did not.

3 Q Do you know who did?

4 A The person who technically reviewed my work last, which was
5 Marnie Carter.

6 Q Okay. At one point though during this case did you yourself actually
7 review these actual cards?

8 A I did.

9 Q And you know that because your --

10 A My name is on the chain of custody or my initials are.

11 Q Okay. I'm going to have you at this point go ahead and unseal the
12 two envelopes. Let's start with the earlier number one, 19, is it 19 and 20?

13 A Uh-huh.

14 Q And in terms of envelope number 19, can you tell me what is in that
15 envelope?

16 A Ten lift cards.

17 Q And, again, is there any way that you know that these are the actual
18 lift cards used for this case?

19 A They are. They have my initials in the lower left-hand corner and
20 they are initialed and numbered.

21 Q Okay.

22 MS. TRIPPIED: Your Honor, at this time the State moves to admit, for
23 now we'll do 19, Exhibit 19, into evidence.

24 THE COURT: Any objection?

25 MS. MAXEY: I'd like to see what Exhibit 19 looks like, if I may?

1 THE COURT: All right. You may approach if you want to.

2 MS. MAXEY: No objection.

3 THE COURT: All right, it's admitted.

4 [STATE'S EXHIBIT 19 ADMITTED]

5 MS. TRIPPIEDI: Your Honor, may I publish these to the jury at this time?

6 THE COURT: You may.

7 BY MS. TRIPPIEDI:

8 Q I'm going to first show you a card that's -- can you just describe
9 what's on this card for the jury?

10 A A lift from the west wall of the master bedroom or bathroom
11 enclosure below the window labeled number one.

12 Q Okay. Now, do you know the results of this lift?

13 A Just by looking at it, I didn't make any other markings on the card.
14 So when I examined it, I determined that were no latents of value for comparison
15 on this card, present on this card. So there might be parts and pieces of friction
16 ridge transferred on to the surface that they lifted it from, but there is not enough
17 clarity or quantity of detail to identify it or exclude someone as having left it.

18 Q Okay. So when we talked earlier about a print being suitable versus
19 unsuitable, would you say this was unsuitable prints?

20 A Correct. There is not enough detail present in order to identify or
21 exclude someone as having left the print.

22 MS. TRIPPIEDI: Okay. I think we might want to go ahead and mark
23 these?

24 THE COURT: Mark them separately.

25 MS. TRIPPIEDI: Separately.

1 THE COURT: All right.

2 MS. TRIPPIED: Do you want to go ahead and do that now or?

3 THE COURT: Yeah, just so the record's -- so the one we just looked at
4 let's mark that as 19A.

5 BY MS. TRIPPIED:

6 Q Okay. I'm showing you State's Pro -- Exhibit, actually, 19B.

7 A Uh-huh.

8 Q Was this one marked as suitable?

9 A I did, I put arches over what I believed to be fingers or finger marks
10 and labeled them separately A, B, and C. So there are three latent prints that I
11 believed were suitable for comparison. And comparing them against known
12 standards allows me to say that they are excluded or included as having left
13 those prints.

14 THE COURT: And Ms. Aoyama, if you want this screen here is a touch-
15 screen. If you touch it, you can make marks, circles, arrows, whatever you want
16 to if you think it will help highlight things for the jury.

17 THE WITNESS: Thank you. Where I marked A, B, and C. Right there,
18 sorry.

19 THE COURT: If you hit the lower right it will erase it if you want to.

20 BY MS. TRIPPIED:

21 Q Do you know if these were -- based on looking at the card can you
22 tell anything about whose prints these belong to?

23 A Not without doing a side-by-side comparison, no.

24 Q Okay. Did you -- were you given certain names to use in your
25 analysis at all to exclude?

1 A To compare? Yes, I was.

2 Q Yeah. Okay. And any indication of those names here or would we
3 have to like take a look at your report?

4 A I would have to look at my report. But I do recall, I did look at my
5 report earlier today and I do recall that the persons that I compared did not leave
6 any one of those three latent prints.

7 Q Okay.

8 A So they were all excluded as having left those prints.

9 Q Okay. And who were the people that you compared?

10 A I would need to refer to the report for that.

11 Q Okay. Let me grab that. I'm going to show you your latent print
12 report. Can you take a look at it briefly and just say if, after having looked at
13 this, your memory is refreshed as to who the known people are?

14 A Yes.

15 Q Okay.

16 A Mr. Barber and Mr. Martin and Mr. Palmer.

17 Q Okay. Can you tell me who each of these three individuals are?

18 A Mr. Barber is someone that I was asked to compare in this case.
19 Mr. Martin's prints were included in the envelope from Robbie Dahn as two
20 exemplars for elimination purposes. And Palmer is -- Mr. Palmer is someone
21 who another one of our forensic scientists got a positive hit in AFIS too.

22 Q Okay. So let's go back to -- so Michael Palmer you said was an
23 employee; is that correct?

24 A Okay.

25 Q Oh, did you say that?

1 A No.

2 Q Do you know who Michael Palmer is at all?

3 A I imagine he's an employee from what you said, but no.

4 Q Okay. Did you at any time later whether he's employed by Metro?

5 A Just now.

6 MS. MAXEY: Objection, Your Honor. This is asked and answered.

7 THE COURT: Right, I mean, she said she doesn't know, so.

8 MS. TRIPPIEDI: No big deal. Okay.

9 BY MS. TRIPPIEDI:

10 Q Do you know who Sergio Martin is?

11 A One of the victims in this case I would imagine his name is on the
12 packet and his exemplars were included.

13 MS. MAXEY: Objection, Your Honor. She's not testifying by her own
14 knowledge. She's just guessing of who this person is.

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

16 THE COURT: You may. What is it --

17 BY MS. TRIPPIEDI:

18 Q I'm going to show a copy of your report again. Would looking at this
19 report refresh your memory as to who Sergio Martin is?

20 A The victim in this case.

21 Q Okay. And then Jaquez Barber, do you know who that is in this
22 case?

23 A A suspect in this case.

24 Q Okay. Now, based on looking at this card and that's State's Exhibit
25 19B, do you know whether the prints in this card returned to any of these three

1 individuals that we just spoke of?

2 A They did not.

3 Q Okay. And I'll go through the rest of these cards quickly. So I'm
4 showing you State's Exhibit 19C, do you know if any of those three individuals --
5 well, first of all, was this a suitable prints?

6 A Yes, it was.

7 Q Okay. Did it return back to any of those three individuals?

8 A All three individuals were excluded as having left that latent print.

9 Q Okay. And what indicates that to you? How do you know that by
10 looking at this card I mean?

11 A That there was a suitable print, I marked it with an arch over and
12 labeled it A.

13 Q Okay. And then how do you know that those three individuals were
14 excluded?

15 A Our policy at the time was to indicate if we identified it on the card
16 itself.

17 Q Okay. And so there is no indication of that so you know based on
18 that that those three people were excluded; is that correct?

19 A That is how I reported it out, correct.

20 Q Okay. And then I'm going to show you State's Exhibit 19D, was
21 this -- and you can go ahead and press the -- okay. Thanks. Was this, the
22 prints in this card suitable?

23 A There were no latent prints on that card that were suitable for
24 identification or exclusion.

25 Q And then let's go with 19E, were the prints on this card suitable?

1 A No. Again, there were no markings so there are no latent prints that
2 hadn't contained enough information to identify or exclude.

3 Q And then how about 19F?

4 A Yes. One palm that was marked for comparison.

5 Q Okay.

6 A And it was subsequently identified as the left palm of Mr. Barber.

7 Q Okay. And do you know -- do you know where the palm print was
8 located at the residence?

9 A From the latent lift card it says the exterior side of the point-of-entry,
10 master bathroom window.

11 Q Okay. And how did you develop the name Jaquez Barber as the
12 match to this print?

13 A It was actually originally another forensic scientist who was working
14 in our -- who was doing our AFIS at the time and that was Vicki Farnham. She
15 originally got a hit in our AFIS system, did the side-by-side comparison, on and
16 reported it out.

17 Q Okay. And can you tell the jury what AFIS is? What it stands for,
18 what exactly it is?

19 A The automated fingerprint identification system. And it houses --
20 the system that we have houses all of our records, all Metro employees are in
21 there, anyone who's had applied for a C.C.W. through Metro, anyone who has a
22 work card or a special work permit that they needed to have a background check
23 and fingerprints for.

24 Q Okay. And who has access to this AFIS system?

25 A For searching latent prints, just the latent print unit of Las Vegas

1 Metro.

2 Q Okay. And you said that someone else previously before you had
3 the chance to enter this into the system. Did you have a chance to check on
4 that too?

5 A Someone else had previously identified it through the AFIS system.
6 They had a potential match come up with --

7 MS. MAXEY: Your Honor, I'm going to object to this. She's testified not to
8 her own work, she's testifying to somebody else's work.

9 THE COURT: Well, so the objection is what? That it's hearsay? I'm not
10 sure what your objection is.

11 MS. MAXEY: Yes.

12 THE COURT: Well, I'm allowing the question not for the truth of the
13 matter. But the question was how she got that print for comparison. So I'll allow
14 it for those purposes. So on that limited basis the objection is overruled. So
15 were you finished with your answer? Or did you have more?

16 BY MS. TRIPPIED:

17 Q How did you learn that a hit was rendered?

18 A A previous scientist had reported it out.

19 Q Okay.

20 A There is a report on record from her with that identification.

21 Q Did you personally have a chance to review that report?

22 A I looked at the report. But in this case I looked at all the cards and I
23 did the actual comparison of this latent print to Mr. Barber as well.

24 Q Okay. And what -- what do you mean by the actual comparison?

25 A AFIS is just a tool to -- it generates a list of names based on what

1 points that you plot in the system. So looking at your hands they have -- they're
2 textured and they have lines and ridges, they have ridge endings. They have
3 forks in the road just like -- just like as if you were walking on a path and you see
4 it split, that's what we call bifurcations. And so you have a series of ridge
5 endings and bifurcations throughout your fingers and palms. And you mark
6 those, you scan in the latent lift, you mark those. And then the computer will
7 generate the distances, measure the distances between them against known
8 prints in the system and come up with a list. The first person being on the list is
9 what they call their top candidate and then so on down the line.

10 But just because you're a top -- your top candidate will not
11 necessarily be the match. It's not like TV were it flashes 100 percent match. So
12 you still have to look at it, look at the latent print itself, and look at the standard
13 itself to do a side-by-side comparison.

14 Q In this case do you know whether any other names came up other
15 than Jaquez Barber for this print?

16 A I would have no knowledge of it.

17 Q Okay. So what you did in this case was you took the knowledge
18 that he's the very first person that pops up and did do you a side-by-side
19 comparison?

20 A I did a side-by-side comparison of all the latents of value for
21 comparison in this case against the three individuals, Mr. Barber, Mr. Martin, and
22 Mr. Palmer.

23 Q Was there -- what was the result of that side-by-side comparison?

24 A In this case, for this lift card of a palm it does belong to Jaquez
25 Barber.

1 Q Okay. How certain are you?

2 A Very certain.

3 Q Okay. Can you tell the jury a little bit about the uniqueness of
4 fingerprints?

5 A The patterns on your hands and feet develop in utero. And those
6 patterns of ridge endings and bifurcations that I was talking about, once you're
7 born will be permanent and persistent throughout your entire life. So unless you
8 do permanent injury, have some type of skin disease that affects the structure
9 itself, those will be persistent. And those are unique to you and only you. Not
10 even identical twins have the exact same fingerprints.

11 Q And so what -- what exactly told you that the fingerprint you
12 analyzed and Jaquez Barber's fingerprint are not or palm print actually are the
13 same? That this print on this card belongs to Jaquez Barber which is sitting at
14 that table? How sure are you? And how do you know that?

15 A I know that because I took standard -- I looked at standards from his
16 left palm. And I looked at the latent print left in this case and I looked for -- I look
17 for -- I find a target group of, say, ridge endings and bifurcations and then look
18 for that target group in the standard. And then from there you look for more
19 points of commonality and you also look for points of divergence or things that
20 don't match which allows you to eliminate other people as having left that.

21 Q Okay. Is it possible that you were mistaken and it was not a match
22 to that -- that palm print was not a match of Jaquez Barber?

23 A No.

24 Q Why?

25 A This particular print has been looked at by four different scientists,

1 and we all came up with the same conclusion.

2 Q And that's based on your -- your training to actually compare the
3 prints manually?

4 A Yes, ma'am.

5 Q Okay. I'm going to show you State's Exhibit 19G, do you know if the
6 prints in that card were suitable?

7 A There are no markings on it of arches or brackets, so there are no
8 latent prints of value for comparison on the card.

9 Q Now, I'm going to show you 19H, do you know if the prints on that
10 card are suitable?

11 A There was one fingerprint that was identified to Michael Palmer.

12 Q Where was that fingerprint?

13 A The south wall of the master bathtub enclosure below the
14 point-of-entry.

15 Q And I'm going to show you 19I, can you tell me -- can you tell me
16 whether there was suitable prints, and if so, who's they're returned to?

17 A There were two suitable prints on the card marked A and B. And
18 they were both identified to Michael Palmer.

19 Q And where were these prints?

20 A The south wall of the master bathtub enclosure below the
21 point-of-entry.

22 Q I'm going to show you State's Exhibit 19J, what's in that picture?

23 A Nothing identifiable or comparable.

24 Q And then 19K, can you tell me what's in that picture?

25 A The standard exemplars for the fingers of Sergio Martin's right

1 hand.

2 Q And 19L?

3 A The fingerprint exemplars for Sergio Martin's left hand.

4 Q Okay. And again, you didn't see Sergio Martin's prints --

5 A He was not identified in this case.

6 Q Okay. At all, any of the prints that you received in these cards did
7 not return to Sergio Martin; is that correct?

8 A No.

9 Q Okay.

10 A They weren't.

11 Q And then what's -- I'm showing you 19M, what's in that card?

12 A It looks to be a drawing of the scene and the places where the crime
13 scene analyst recovered the latent prints.

14 Q Okay. And let me have you go ahead and open -- or you already
15 opened actually, State's Proposed -- 20 -- Exhibit 20. And what's in that
16 envelope?

17 A Three photographs.

18 Q And how do you know that those are the photographs from this
19 case?

20 A They have the event number, corresponding event number on the
21 back and my initials on the lower, right-hand corner.

22 Q And are those in the same or substantially the same condition as
23 they were last time you had the chance to examine them?

24 A Yes.

25 MS. TRIPPIED: Your Honor, at this time I'm going to ask to admit the

1 items in Number 20.

2 MS. MAXEY: If I may look just real quick before?

3 THE COURT: Sure.

4 MS. MAXEY: Thank you.

5 MS. MAXEY: No objections.

6 THE COURT: All right, so 20, do you want to mark them individually or
7 just a group?

8 MS. TRIPPIED!: Can we please?

9 THE COURT: All right. So that would be 20A, B, and C are admitted.

10 **[STATE'S EXHIBITS 20A, B, AND C ADMITTED]**

11 MS. TRIPPIED!: Permission to publish, Your Honor?

12 THE COURT: Any objection?

13 MS. MAXEY: No objection.

14 THE COURT: You may.

15 BY MS. TRIPPIED!:

16 Q I'm showing you what is marked as 20A, can you tell me what's in
17 that exhibit?

18 A It's a photograph from the crime scene.

19 Q Okay.

20 A With -- and nothing is marked. So I believe in this case those three
21 photographs were photographs of actual latent lifts that were submitted in the
22 previous packet.

23 Q Okay. So they're duplicates essentially?

24 A They're -- correct. They're a photograph of the -- of three of the lifts
25 that were submitted.

1 Q Okay. I'm not going to walk through each individual one.

2 MS. TRIPPIED: I'll pass the witness at this time.

3 THE COURT: Cross-examination.

4 **CROSS-EXAMINATION OF KATHRYN AOYAMA**

5 BY MS. MAXEY:

6 Q Hello. You testified that you have a Bachelor of Arts in biology,
7 correct?

8 A Yes, ma'am.

9 Q And your CV states that it was in animal biology?

10 A That's through the biology department.

11 Q Okay. So then can you determine the difference in paw prints too
12 as well as fingerprints?

13 A Nope. Sorry.

14 Q You know, I just couldn't stop myself, I'm sorry I saw that.

15 So let's talk about -- about International Association of Identification.

16 Have you ever heard of that?

17 A Yes, ma'am.

18 Q It's shortened as I.A.I., correct?

19 A Yes.

20 Q And I think you listed it as in your CV that you belong to this
21 organization?

22 A Correct, I'm a member.

23 Q Okay, and this organization provides guidelines for friction ridge
24 analysis?

25 A Yes, it does.

1 Q Okay. But they're not guidelines that can be enforced by any
2 agency, correct?

3 A Every agent -- every agency has their standard operating.

4 Q So that means your -- your agency has its own procedures?

5 A Correct.

6 Q Okay. As compared to, like, what if we went to Iowa, Iowa, I wonder
7 if they have a Metro, Iowa Metro, Des Moines -- Des Moines' Metro if they have
8 a different standard of procedures than Las Vegas Metro?

9 A It's very possible, yes.

10 Q Okay. And so everybody -- there is no set national standard of
11 procedure to follow?

12 A I'm sorry, can you clarify?

13 Q So because you have your own procedures.

14 A Uh-huh.

15 Q And you stated that everybody else has their procedures, there is
16 no set standard of procedures to follow?

17 A Well, there are guidelines that I would imagine most agencies
18 follow. But as far as every day-to-day standard operating procedures, they're
19 going to vary from agency to agency because some are rather large agencies
20 and some are rather small agencies. But it doesn't change the -- it doesn't
21 necessarily -- it may change the way things are reported but not necessarily the
22 context of whether we identify or exclude someone as having left the print.

23 THE RECORDER: Can she keep her voice up?

24 THE COURT: Yeah, can you --

25 THE WITNESS: Sorry.

1 THE COURT: -- maybe pull of microphone a little closer? That might help
2 too. Thanks.

3 BY MS. MAXEY:

4 Q Do you want me to stand further away? Maybe that will help.
5 Yeah? Is that better? Now you can yell at me. Okay. Have you ever heard of
6 the A.C.E.V. method?

7 A ACEV, analysis, comparison, evaluation and verification.

8 Q Okay. And I heard you were talking, testifying a little bit of what you
9 look for when you do your comparisons and it sounded like you were using the --
10 how do you say it, the ACEV method?

11 A Yes, ma'am.

12 Q Is that the method you use?

13 A Yes, ma'am.

14 Q Okay. So that method, it looks like there is one, two, three, four,
15 five, like a hand, five things you do. First, do you consider condition of the skin?

16 A Uh-huh.

17 Q Okay. Is that correct?

18 A I don't --

19 Q No? You don't consider the condition of the skin? I thought you --

20 A The condition of the skin is a factor in how, I guess, how clear a
21 latent print or how easily a latent print is left on a surface.

22 Q Okay. So the condition of the skin, it would affect the robustness of
23 the --

24 A Correct.

25 Q -- ridge structure, correct? Aging can affect the ridge structure --

1 A Yes, ma'am.

2 Q -- structure, correct? And like you said, permanent damage can
3 affect the ridge structure, right?

4 A Correct. Scars or --

5 Q Like scars? Skin diseases?

6 A Skin diseases, yes.

7 Q And any masking attempt, like somebody puts stuff on their
8 fingertips or their palms to mask.

9 A Uh-huh.

10 Q Would that affect the ridge structure?

11 A It could.

12 Q Okay. And that's something you have to keep in mind while you're
13 comparing fingerprints, correct?

14 A Yes, ma'am.

15 Q Okay. And then residue, right, and we're talking about, like, sweat?

16 A Sweat, oils.

17 Q Blood? Paint?

18 A Blood, paint, grease.

19 Q How much residue, like if it's just light residue compared to --

20 A Correct.

21 Q -- if it's really heavy, that can affect the ridge structure too?

22 A Uh-huh.

23 Q Okay. Where it accumulates on the finger, correct, like where the
24 sweat accumulates on the finger, that can affect the ridge structure, correct?

25 A It can affect the impression that's left on the surface, yes.

1 Q Okay. How about -- how about the type of touch?

2 A The amount of pressure used, yes.

3 Q Yes. So, like, the pressure I believe bones makes a greater

4 impression than -- than not -- places where there is not very many bones, right?

5 A Depends on how much pressure, the direction of the pressure was,

6 whether the hand is twisted or moved because of the surface, yes.

7 Q Okay. So twisted and moved --

8 A Yes.

9 Q -- yes, exactly that's something you have to think about?

10 A Yes, ma'am.

11 Q Twisting can change the ridges, right?

12 A Yes, ma'am.

13 Q And -- and that can pull the ridges apart, right?

14 A It can cause some distortion, but the basic ridge structure is going to

15 be the same.

16 Q It can -- it will compress it, correct?

17 A Uh-huh.

18 Q And then you also have to consider the surface of what was

19 touched, right?

20 A Yes, ma'am.

21 Q If it's smooth, textured, right?

22 A Porous, nonporous, yes.

23 Q Okay. And this is all under this ACEV method, right?

24 A Yes, ma'am.

25 Q The method you use, right?

1 A Uh-huh.

2 Q Okay. And chemicals the type of chemicals that are used to lift the
3 fingerprint, that can affect the ridge structure, right?

4 A The chemicals used to develop the prints illuminate or make them
5 more visible, but they don't change the -- they don't change the structure of the
6 ridges, no.

7 Q It could make the -- it could smear the ridges, no?

8 A I suppose a brush with black powder hard on a surface, when you're
9 dusting it could affect it.

10 Q Okay. And then you also have to consider how the print's captured,
11 if it's lifted, if it's photographed, right? And you had two different types, you had
12 lifted ones and photographed ones, correct?

13 A Yes.

14 Q And that's something that you have to take into consideration,
15 correct?

16 A Yes.

17 Q Okay. And all of these considerations, they're based on your
18 judgment of what you -- when you compare it, correct?

19 A Yes, ma'am.

20 Q Okay. There is no -- no procedure in making these considerations,
21 it's just something you look at and it's based on your judgment; is that correct?

22 A What do you mean there are no procedures?

23 Q There is no -- when you look at it, this is -- nobody can give you a
24 procedure of how your judgment is going to be when you're considering these
25 things, when you're comparing fingerprints?

1 A Well, we have certain standards or guidelines.
2 Q Standards or guidelines.
3 A Per case.
4 Q But not national standards? Correct? Standards from your office,
5 correct?
6 A Yes.
7 Q Okay. So part of your training you have to be up to date on any
8 developments in fingerprints, right?
9 A We try to be, yes.
10 Q You try to be?
11 A Uh-huh.
12 Q It's not required?
13 A Well, we try to keep up with cases -- case studies, yes.
14 Q Okay. So have you heard of the case study what was
15 commissioned by Congress by the National Academy of Science?
16 A Yes.
17 Q And do you know when this case study was?
18 A Off the top of my head, no. But I --
19 Q Okay. If you don't, just no.
20 A -- about -- about 2009.
21 Q Good job, absolutely, good guess. So this case study was they
22 talked about a lot in forensic science, right?
23 A They did.
24 Q And one of the things they did talk about was fingerprint
25 comparison, correct?

1 A Yes, they did.

2 Q And they also did a study on the ACEV method, correct?

3 A Yes.

4 Q And do you know what their -- what the National, I think it's National
5 Academy of Science concluded about the ACEV method?

6 A What exactly they concluded? No.

7 Q No, you don't. So you're not aware that they concluded that the
8 ACEV method does not guard against biasness? You don't -- and you are not
9 aware that it is does not ensure that you can get the same results, it doesn't
10 ensure --

11 MS. TRIPPIED: Objection to her just reading from --

12 THE COURT: Hang on, there is an objection.

13 MS. TRIPPIED: -- I don't know even know what she's reading from, so
14 objection to her basically testifying about some study that I haven't even seen.

15 THE COURT: Right, I mean --

16 MS. MAXEY: I asked my -- I asked Ms. -- I'm sorry --

17 THE WITNESS: Aoyama.

18 MS. MAXEY: -- Aoyama, if -- I know I didn't say that right, I apologize -- if
19 she was aware of the study. She said she was aware of it. She testified she
20 knew exactly what year it came out. She knew exactly that it was by Congress.
21 And I was asking her if she was aware of the conclusions in that --

22 THE COURT: Did you produce a copy of this to the State? Because we
23 have reciprocal discovery here.

24 MS. MAXEY: There they go.

25 THE COURT: Can counsel approach?

1 [Bench conference -- not transcribed]

2 MS. MAXEY: And, Your Honor, I withdraw that last question. Court's
3 indulgence.

4 BY MS. MAXEY:

5 Q In general, are you aware that the understanding of fingerprints has
6 been changed?

7 A I'm sorry?

8 Q In general, in general, the belief and the feeling of fingerprints, are
9 you aware that it's been changed?

10 A How so?

11 Q In the belief that they are an absolute type of study?

12 A It has not changed that fingerprints are unique and persistent and
13 they're -- not even twins have the same fingerprints.

14 Q Do you know of any scientific proof or scientific study that shows
15 that all fingerprints are unique?

16 A No. I have not because we haven't had the opportunity to compare
17 every fingerprint of every person in the world. But the day that that happens, I
18 think everybody would know. And so --

19 Q Well, even -- even if they took a general -- are you aware of any
20 study, scientific study where they took a sample population and compared
21 fingerprints of people?

22 A Just in general, that there have been studies on twins and that no --
23 no two twins have even one finger in common with each other.

24 Q When was that study?

25 A I cannot tell you the year.

1 Q Okay. Or who conducted it?

2 A I cannot think of his name. So I'm sorry, I can't think of his name off
3 the top of my head.

4 Q So there has never been a scientific study on what population of the
5 world has similar fingerprints?

6 A No.

7 Q Let's talk about the difference between latent prints and -- and, like,
8 exemplar prints, I think that's what they are, like, known prints?

9 A Yes, known or exemplar prints, yes.

10 Q Okay. So latent prints you stated that they are invisible prints?

11 A Yes, ma'am.

12 Q Correct? So it's a touching, right, it's just a normal touching?

13 A It's --

14 Q Or it could be like this ?

15 A It's a print developed from a surface that you can't see with the
16 naked eye.

17 Q And it's a touch, right?

18 A Sure.

19 Q I mean, it's not an almost touch or --

20 A Right. It's contact with the surface.

21 Q It's a contact. It's a touch. And exemplar prints are deliberate
22 prints, correct?

23 A Yes, they are.

24 Q And so exemplar prints are prints that when you're person who
25 leaves it, it's deliberate so you get the side to the pad and to the side, correct?

1 A Depending on who is taking the exemplar prints, yes.

2 Q So are -- so you're saying that some exemplar prints are just like
3 that?

4 A Correct.

5 Q Okay. But a latent print, there is no guarantee that you get the
6 whole pad of the finger, correct?

7 A Correct.

8 Q Okay. Latent prints are basically fragments of a fingerprint or even
9 a palm print?

10 A Yes, it's a partial impression.

11 Q And they're easily -- they can easily smear, they can easily, like we
12 talked about all the things that you have to consider, how they can twist and
13 change with the way that the touch has occurred?

14 A Correct.

15 Q And you stated that, in your testimony, that that not all latent prints
16 can be evaluated, correct?

17 A Not all latent prints can be identified or comparable, so they can't be
18 identified or excluded.

19 Q And that's because there is not enough of the print to be left to
20 make --

21 A Correct.

22 Q You also stated that you are 100 percent certain that Mr. Barber left
23 that palm print on that one card, correct?

24 A Yes.

25 Q Okay. You're 100 percent certain?

1 A As certain as I can be, yes.

2 Q So there is a possibility you could be wrong?

3 A Not in this case.

4 Q So then you're 100 percent certain?

5 A Sure.

6 Q Okay. So you have no doubt, correct?

7 A Yes, ma'am.

8 Q Okay. So you're going to say your error rate is zero?

9 A What do you mean error rate?

10 Q Rate of having an error, making an error is zero?

11 A For this particular print I believe it to be left by Mr. Barber.

12 Q So then you would -- then you would testify that your error rate is

13 zero, correct?

14 A I usually don't testify to error rates.

15 Q Well if you're testifying --

16 A So I'm --

17 Q I understand. So, just, I'll just ask one more, if you're testify that

18 you're 100 percent, then mathematically what would your error rate be?

19 A Zero.

20 Q Okay. Have you ever, ever had a chance to calculate your error

21 rate on any other print, any other comparison?

22 A No.

23 Q And you didn't even try to calculate an error rate with Mr. Barber?

24 A Correct.

25 Q Okay. So basically the method you used is always right, correct?

1 A No.

2 Q So there is mistakes?

3 A Well, any identifications or exclusions that we report are reviewed
4 by another examiner in our lab.

5 Q Okay. So --

6 A No, it's not just -- there was somebody else who found the same
7 conclusions that I did in this case.

8 Q Okay. So but, you're saying you're not mistaken in this case
9 because four other people reviewed it and they both say that it's a match?

10 A Yes.

11 Q Okay. Have you ever heard of the Brandon Mayfield case?

12 A Yes.

13 Q And in that case there was a latent print, correct, that was matched
14 to another person?

15 A Yes.

16 Q Okay. And in that latent print it was examined by multiple people,
17 correct?

18 A It was.

19 Q And those multiple people said that that was a match, correct?

20 A It was. But it's my understanding that it was a faxed copy of a copy,
21 it was not -- it was never an examination of the original print.

22 Q But it was -- then -- then you're admitting that it was a mistake, that
23 the Brandon Mayfield case was a mistake?

24 A That those examiners made in that case, yes.

25 Q Okay. So after four multiple examiners said it was a match, there

1 was a mistake, correct?

2 A There was. But as I stated, in that particular case they were
3 examining faxed reproductions of the actual latent print and not examining the
4 latent print themselves.

5 Q When you base and when you make a match of a print, of an
6 exemplar print with a latent print, that match is based on your training and
7 experience, correct?

8 A Yes, ma'am.

9 Q It's not based on any scientific procedure, correct?

10 A Just the standard operating procedures that we have in the lab.

11 Q So it's based on your judgment, correct?

12 A Yes, ma'am.

13 Q You stated that you only compared three known prints in this case?

14 A Three known standards, yes.

15 Q Three known standards. Okay. You only compared three known
16 standards, and that was Michael Palmer, correct?

17 A Uh-huh.

18 Q Jaquez Barber?

19 A Yes.

20 Q And Sergio Martin, correct?

21 A Yes.

22 Q Okay. And in your notes you testified by looking at your notes, after
23 you looked at your notes you testified that you have one victim, as a -- was it a
24 standard print that we said it was?

25 A The exemplars that --

1 Q Exemplar, a known victim, correct?

2 A Uh-huh.

3 Q A known officer, correct?

4 A Yes.

5 Q And only one suspect?

6 A Correct.

7 Q No other suspects?

8 A Correct.

9 Q And you were never -- you never even tried to look at any other

10 suspects?

11 A I was not asked to compare anyone else, no.

12 Q And when you compared the suspect you knew that somebody else

13 had already made that match, correct?

14 A I did. I was aware of it.

15 Q Okay. Have you ever heard of biasness in experiments? It's called

16 expectation biasness, have you ever heard of that?

17 A I have heard of bias.

18 Q You have heard, okay. Was does bias mean?

19 A When something or someone influences your decision.

20 Q So it is possible knowing that other people made this match,

21 influence your decision to make this match too?

22 A No. Because it was my job to reexamine all of the prints in this

23 case.

24 Q But you didn't do a blind comparison?

25 A No. Because I had three persons to compare in this case.

1 Q So if you had done a blind comparison, the biasness might not even
2 come up?

3 A I don't understand what you mean by blind comparison.

4 Q If you compared these prints, not knowing if they had matched, not
5 knowing that other people had made these prints match or not.

6 A Uh-huh.

7 Q That's a blind comparison, correct?

8 A Yes.

9 Q And if you had done a blind comparison, then the possibility of
10 biasness wouldn't be able to come up, correct?

11 A I guess not. But somebody else's conclusions aren't -- it's my job to
12 reexamine the totality of the evidence not just to rubber stamp an answer that
13 was previously reported out.

14 Q And make it a blind comparison doesn't ensure that you're not
15 rubber stamping?

16 A Just because we're asked to compare somebody doesn't mean that
17 they're going to be identified in any instance. So --

18 Q So, are you -- you don't agree that making a blind comparison
19 would eliminate any possibility of rubber stamping?

20 A I don't think it would have made any difference.

21 Q You testified that -- that Mr. Barber's print was a hit on AFIS?

22 A That was reported by someone else. Correct.

23 Q Okay. And did you know about that when you made the
24 comparison?

25 A I did because it was already reported out and that's why I was

1 comparing that person.

2 Q Do you know where he was located at on that list?

3 A No. From what I understand it was --

4 Q No, if you don't know, you don't know. When you determined that
5 the print is suitable that is your judgment, correct?

6 A Yes, ma'am.

7 Q There is no standard in determining what a suitable print is?

8 A In our lab there is, yes.

9 Q But there is no national standard?

10 A No national, but we do have standards in the lab.

11 Q And there is no, like, international standard?

12 A Some countries do use point or minutiae standards, yes. But we
13 don't in the United States. But our lab does have standards.

14 Q But it's not a standard that can be enforced by a national watch
15 group or anything?

16 A No.

17 MS. MAXEY: Court's indulgence.

18 BY MS. MAXEY:

19 Q When you're trained to compare fingerprints you look for points of
20 similarity?

21 A Similarities and difference.

22 Q Oh, you do look for differences?

23 A So we can so we can include or exclude someone as having left
24 that print, yes.

25 Q So how many dissimilarities does there need to be for it not to be a

1 match?

2 A How many?

3 Q Uh-huh.

4 A There is no standard as to how many dissimilarities.

5 Q So one dissimilarity is enough?

6 A No. Because sometimes you can have one dissimilarity in cases
7 where distortion -- a print is left either twisted or --

8 Q Can you have dissimilarities with similarities? With points of
9 similarity?

10 A You can have small sections. But if something -- oh, how can I
11 explain this -- say you have five ridges in -- five ridges in a row and you have
12 one ridge ending at the top, you move down two ridges and you have a
13 bifurcation opening to the left. You may find that small section in any number of
14 latents but you need to go beyond what you're looking at to look for dissimilar --
15 to look for inclusions or exclusions. So maybe up from that ridge ending you'll
16 find another ridge ending which continues off to the right. And then above that
17 you find two -- two more bifurcations that are going away from each other.

18 So you can have small sections that might be similar, but the more
19 you examine the larger the latent print is that you're looking at, the more point of
20 comparison you have to look at, it's easier to determine whether or not
21 something is the same source or exclude it as having left the print.

22 Q So I'm confused, can you have a print that has dissimilarity and
23 similarity?

24 A You could have a small section of a print, but not an entire print, no.

25 Q So did you look for dissimilarities in Mr. Barber's print?

1 A Yes.

2 Q And how many were there?

3 A None that I can recall.

4 Q And you stated you did a side-by side comparison?

5 A Yes.

6 Q Was there a magnifying glass, did you use?

7 A Yes. We use loupes or magnifiers.

8 Q Did you measure the ridge distance or --

9 A We don't measure the ridge distance. We follow it under the loupe

10 with ridge counters or points that allow us to hold our place in one while we track

11 it in --

12 Q So you had ten prints that you compared; is that correct, ten latent

13 prints?

14 A Ten lift cards.

15 Q Ten lift cards. Okay. How long did it take you to do the

16 comparison?

17 A I don't know.

18 Q And you write a report of your results, correct?

19 A Yes.

20 Q Okay. On the State's exhibit, I think it was 20A, B, and C?

21 THE CLERK: I don't know A, B, and C over here. She still has them.

22 MS. MAXEY: You still have them?

23 THE MARSHAL: They're on the podium.

24 BY MS. MAXEY:

25 Q Did you mark those?

1 A I did.

2 Q You did? Where?

3 A On the lower, right-hand corner.

4 Q You didn't make any marks of whether or not, like, on the prints, did
5 you?

6 A I did not because they were photographs of lifts.

7 Q And you don't mark on the photographs you only mark on the lifts?

8 A No. In this case the actual lift cards were better for examination
9 than the photographs. So if you have -- it would be unfair to identify somebody
10 twice on -- once on a photograph and once on a latent lift card when in fact it is
11 only one touch.

12 Q So you only found how many -- you found seven suitable prints,
13 correct? Do you want to look at your report real quick?

14 A Yeah. I believe there are eight. Eight.

15 Q Oh, eight, okay. And of those eight suitable prints three matched
16 Officer Palmer?

17 A Yes.

18 Q And one matched Mr. Barber?

19 A Correct.

20 Q And there was also some that didn't match anybody?

21 A Correct.

22 Q How many was that that didn't match anybody?

23 A Four.

24 Q How many -- how many latent prints did you find that had no match?
25 They were suitable but there was no match?

1 A I believe four.

2 Q Four of them. Okay. So with this match that you testify you're 100
3 percent certain that is this is Mr. Barber's palm print, you can cannot testify at
4 the time or date that this print was left?

5 A No, I cannot.

6 Q Okay. And you cannot testify that this print opened -- that -- that
7 Mr. Barber opened the window?

8 A No, I cannot.

9 Q And with this print you cannot testify that he went inside the house?

10 A No, I cannot.

11 Q Okay.

12 MS. MAXEY: Court's indulgence.

13 BY MS. MAXEY:

14 Q And just to clarify, any of the prints that you were given that were
15 found inside the house, did not match Mr. Barber?

16 A Just, he was only identified to the one print on the window, exterior,
17 window.

18 Q And that wasn't inside the house, correct?

19 A I believe not. It was the exterior side of the window.

20 Q Okay. And the prints that were found inside that matched
21 somebody was Officer Michael Palmer?

22 A Yes.

23 Q And somebody you can't compare to, you knew it was a suitable
24 print but there was no match?

25 A Correct.

1 Q Okay.

2 MS. MAXEY: I'll pass.

3 THE COURT: Any redirect?

4 MS. TRIPPIED: Yes, Your Honor.

5 **REDIRECT EXAMINATION OF KATHRYN AOYAMA**

6 BY MS. TRIPPIED:

7 Q Okay. So let's talk about those four prints that you said they were
8 suitable but there was no match. Could those prints be other individuals?

9 A They belong to somebody unknown to me.

10 Q Okay. Do you know whether those prints were entered into the
11 AFIS system?

12 A They were not.

13 Q Okay. Why not?

14 A Because just because something is -- typically the latent prints that
15 are entered into AFIS are the highest quality prints. So they're usually pretty
16 clear. We know which area of the skin it came from, whether it came from the
17 palm, the hypothenar, and the palm, the interdigital of the palm, or maybe the
18 finger itself. So we usually know where it came from, the generic source of the
19 print. And it's usually a higher quality, lots of robust features that we can mark
20 for the automated system to search and compare.

21 Q So, so how many prints were actually entered into AFIS in this
22 case?

23 A I believe there were two.

24 Q Okay. So one of them we know was the defendant in this case,
25 Jaquez Barber?

1 A Uh-huh.

2 Q And the other one was Michael Palmer, is that correct?

3 A Correct.

4 Q Could the other four prints be Jaquez Barber's?

5 A No, they are not.

6 Q Okay. Could the other four prints be Michael Palmer's?

7 A No. They do not belong to Michael Palmer.

8 Q Okay. Could it be possible that those other four prints belong to the
9 female victim in this case?

10 A It's possible.

11 Q Okay.

12 A But I didn't have any standards to compare, so --

13 Q Okay.

14 A -- I can't say.

15 Q How often does a hit occur? That you see -- is it something that's
16 rare or is it something that you see quite often?

17 A More often than not we have negative returns from AFIS than
18 positive returns.

19 MS. TRIPPIED: Okay. I have no further questions.

20 THE COURT: Any recross.

21 MS. MAXEY: Just two more questions, Your Honor.

22 **RECROSS-EXAMINATION OF KATHRYN AOYAMA**

23 BY MS. MAXEY:

24 Q Just to clarify, the prints that were inside the house did not belong to
25 Mr. Palmer? I mean Mr. Barber, correct?

1 A Correct.

2 Q And -- but -- and you don't know who they belong to, correct?

3 A I don't know who left those prints.

4 Q And, I'm sorry, I meant two different subjects I wanted to touch.

5 And you have no idea how many hits that that print -- that palm print would have
6 given you through AFIS, correct?

7 A The candidate list, it's up to the examiner how many candidates
8 they ask for. The term "hit" is used when it was a match, when they have a
9 potential match between the latent print and the exemplar print.

10 Q Let me -- let me reask the question, do you know how many hits the
11 AFIS printed out when the palm print was entered into the computer?

12 A I believe in this case it was a reverse hit or a latent -- a latent print
13 that was originally entered into the system and there were no hits, so then it was
14 registered to do a reverse hit. So anyone who was fingerprinted after that time
15 would be compared to the latent print that was still in the system. And in those
16 cases we only get one return.

17 Q But you're not for sure on that, correct?

18 A I am relatively sure in this --

19 Q Did you --

20 A -- it was -- it was --

21 Q You didn't enter the --

22 A But I did not enter it, no.

23 Q Okay. So you're not testifying to your own knowledge of what you
24 know, what you saw, what you did?

25 A Correct.

1 MS. MAXEY: Pass the witness.

2 THE COURT: Anything further?

3 MS. TRIPPIEDI: No, Your Honor.

4 THE COURT: All right. Is the witness excused?

5 MS. TRIPPIEDI: Yes.

6 THE COURT: Thank you, ma'am, you're free to go.

7 Ms. Trippiedi, do you have any additional witnesses?

8 MS. TRIPPIEDI: I do have one more witness.

9 THE COURT: All right. Let's, hang on, let's wait for her to leave the
10 courtroom for a second. All right, ladies and gentlemen, here's the situation it's
11 now about ten minutes after 5:00 o'clock. Obviously it's going a little bit slower
12 than we thought, part of it is because, as you guys noticed when you first got
13 here, we started about a half hour late because of the whole courtroom situation.
14 So the two choices -- Ms. Trippiedi, can you tell me how many more witnesses
15 you intend to call?

16 MS. TRIPPIEDI: Just one.

17 THE COURT: Okay. So the choices are we can stay a little bit late
18 tonight and try to work through the case or we can come back tomorrow. So I'm
19 fine either way. If we stay tonight, I'm imagining -- can counsel approach very
20 quickly for just ten seconds? I want to ask you about scheduling.

21 [Bench conference -- not transcribed]

22 THE COURT: So here's the situation, based on what we have left, it's
23 going to be it sounds like in the neighborhood of an hour, hour and a half
24 including I have to read you the instructions on the law which won't take that
25 long, closing arguments. So the question is do you want to stay? If you stay we

1 will buy you dinner. I can't tell you right now what it's going to be, but you get at
2 least a free dinner, or the choices are or we can come back tomorrow.

3 So let me see a show of hands, who wants to stay tonight for at
4 least an hour, hour and a half? So that would be, well, let me do it this way. Is
5 there anybody here who can't stay because of some work commitment or
6 child-care thing? So we have a couple people who can't stay.

7 What time do you have to go?

8 UNIDENTIFIED JUROR: Actually I start a 5:00, and my supervisor is just
9 working for me until I come, and she's very nice about it, but I would have to
10 definitely call her up.

11 THE COURT: Okay. And what time do you have to go? Or the person --
12 who else raised their hand and who has to go?

13 UNIDENTIFIED JUROR: I have to be home at 6:00.

14 THE COURT: Okay. And what time do you have to go?

15 UNIDENTIFIED JUROR: I started class a half hour ago.

16 THE COURT: Oh shoot. And you have, sir, you have to be at 6:00 for
17 what reason?

18 UNIDENTIFIED JUROR: Oh, my girlfriend works, and I have to be home.

19 THE COURT: Okay. Could counsel approach then?

20 [Bench conference -- not transcribed]

21 THE COURT: All right, let's do this, it sounds like we have a couple of
22 people who have to go pretty much now. So it sounds like, you know, I don't
23 want to -- if people have to go, you know, I generally go with the majority vote,
24 but if people have to go they have to go, and sort of the majority almost, you
25 know, I don't want to say it doesn't matter, but if you have to go, you have to go,

1 so let's do this, let's just break for the night. We'll come back tomorrow at 12:00
2 o'clock. I have the courtroom all day tomorrow. So we don't have to wait for
3 another judge tomorrow.

4 If you guys can have an early lunch we'll get started at 12:00
5 o'clock. It sounds like we're pretty close to the end anyway, it would be -- it
6 sounds like the case will be in your hands by early afternoonish depending on,
7 you know, how long closings and all that kind of stuff go. So is that all right? Is
8 there anybody who can't come back tomorrow at 12:00 o'clock? Let's see a
9 show of hands. All right, excellent, then let's do it that way.

10 For the night, you are admonished that until you begin your
11 deliberations you are still under oath and have not been discharged. Do not
12 reach any conclusions about this case as you have not heard all of the evidence.
13 Do not talk to anyone about this case. Do not investigate any facts of this case.
14 Do not view any media, press, or Internet reports about the case. Do not talk to
15 anyone who may be involved in any way with this case. Do not discuss the facts
16 of this case with each other. Remember to wear your badge at all times around
17 the courthouse. Please leave your notebooks on your chairs. I will see you
18 tomorrow at 12:00 o'clock. Thank you very much.

19 [Outside the presence of the jury]

20 THE COURT: All right. Let's -- as soon as the door swings closed, what
21 time did you -- do you have to call your husband? Is that the situation?

22 MS. ROMNEY: No, that was if we were staying tonight. I'm fine.

23 THE COURT: Oh no, okay. So let's do this then. We're now on the
24 record outside the presence of the jury. Let's do a couple of quick things then.

25 Mr. Barber, I need you to stand up and listen to what I'm about to

1 tell you, all right? Since we're reaching the near close of the State's case, you
2 have to decide and you don't have to tell me, just talk with your lawyer about
3 whether you're going to testify. So listen to what I'm about to tell you, all right.

4 You have the right under the Constitution of the United States and
5 under the Constitution of the state of Nevada not to be compelled to testify in
6 this case. That means no one can make you testify and make you answer any
7 questions; do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You may, if you wish, give up this right and you may take
10 the witness stand and testify. If you do, you will be subject to cross-examination
11 by the district attorney as well as by your own attorney and anything that you
12 say, whether it's in response to questions put you to by your attorney or the D.A.
13 will be the subject of fair comment when the D.A. speaks to the jury in final
14 argument; do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: If you choose not to testify the Court will not permit the
17 D.A. to make any comment to the jury concerning the fact that you have not
18 testified; do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you elect not to testify the Court will instruct the jury, if
21 your attorney specifically requests, an instruction which reads substantially as
22 follows, The law does not compel a defendant in a criminal case to take the
23 stand and testify and no presumption may be raised and no inference of any
24 kind may be drawn from the failure of a defendant to testify. Do you have any
25 questions for me about anything that I have just told you about your

1 Constitutional rights?

2 THE DEFENDANT: No, sir.

3 THE COURT: If you choose to testify and if you have been convicted of a
4 felony within the past ten years or have been on parole or probation for a felony
5 within the last ten years, the D.A. will be permitted to ask you on
6 cross-examination if you have been convicted of a felony, what was the felony,
7 and when it happened. No other details may be gone into regarding your prior
8 felony convictions if any. However if you deny having a felony conviction and in
9 fact you do have a felony conviction, the State may impeach your testimony by
10 introducing certified copies of conviction which may contain more information in
11 them than simply what the felony was and when it occurred; do you understand
12 that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Then let me just -- go ahead and have a seat.
15 Thank you very much.

16 Let me ask you guys, do you guys want to do jury instructions
17 tonight or just wait 'til tomorrow? Or what do you want to do? I mean --

18 MS. MAXEY: We'd like to wait until the State closes their case.

19 THE COURT: Okay. Anything that you guys wanted to put on the record
20 or address now then outside the presence of the jury?

21 MS. ROMNEY: I don't think so. Everything was on the record, right,
22 about the whole ID specialist and that whole thing, so --

23 THE COURT: Oh, the whole discussion with the -- yeah, that was all on
24 the record.

25 MS. ROMNEY: Then I don't think so.

1 THE COURT: All right. Anything that Ms. Trippiedi, you want to put on
2 the record?

3 MS. TRIPPIEDI: No, Your Honor.

4 THE COURT: All right. I have a criminal calendar in the morning. I just
5 looked at it. It's not huge. So I should be done before 11:00. I'm having the jury
6 come back at 12:00, so, oh, I guess we're not doing jury instructions until after
7 your witness, right? Let me see --

8 MS. TRIPPIEDI: Oh, yeah, that's right you want to wait 'til --

9 MS. ROMNEY: We just want to wait until the end of the case.

10 THE COURT: Oh, okay. The two changes we have to make are the
11 6,000 and the 250. And then, let's see, anything else that you needed to
12 address before we -- after the last witness before we go into closings or
13 anything? Anything that we need to take care of before 12:00 o'clock?

14 MS. TRIPPIEDI: Probably just going to be --

15 THE COURT: Is what I'm asking.

16 MS. TRIPPIEDI: -- probably just going to be putting them in order is what
17 I'm thinking.

18 THE COURT: Yeah, I mean, they have to be numbered on the record. If
19 you're not really fighting other them, if, you know, if there is not ones that are in
20 contention, then that saves time. But we still have to number them. And then
21 the other thing is after we number them we have to make copies which with the
22 copy machine here, I mean, making 14 copies of, I don't know how many pages
23 this is, but let's say 20 pages, I mean, we're talking a good 15 minutes.

24 So what might happen is we have the jury come back for your one
25 witness, if you're not calling any witnesses, which is totally up to you, then they

1 may hear a short bit of testimony and then have to wait for a half an hour while
2 we number and copy. I mean, that's just going to be the way it is, I guess. All
3 right, then I guess I'll see you guys right at about 12:00 o'clock then unless there
4 is something you guys wanted bring up before we bring the jury in.

5 MS. ROMNEY: I don't think so.

6 MS. TRIPPIED: No.

7 THE COURT: All right. See you guys tomorrow.

8 MS. ROMNEY: Thank you, Your Honor.

9 MS. TRIPPIED: Thanks, Your Honor.

10 PROCEEDING CONCLUDED AT 5:24 P.M.

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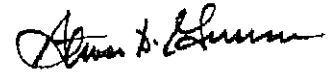
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ATTEST: Pursuant to Rule 3C(9) of the Nevada Rules of Appellate Procedure, I
acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.



SARA RICHARDSON
Court Recorder/Transcriber


CLERK OF THE COURT

1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 JAQUEZ DEJUAN BARBER,

9 Defendant.

CASE NO. C268471

DEPT. NO. XX

10
11 BEFORE THE HONORABLE JEROME T. TAO, DISTRICT COURT JUDGE

12
13 THURSDAY, OCTOBER 11, 2012

14 **ROUGH DRAFT**
15 **RECORDER'S TRANSCRIPT OF**
16 **JURY TRIAL - DAY THREE**

17
18
19
20 APPEARANCES:

21 For the State:

HAGAR TRIPPIEDI
Deputy District Attorney

22
23 For the Defendant:

KERRI J. MAXEY
CLAUDIA L. ROMNEY
Deputies Public Defender

24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

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Recross-Examination by Ms. Romney

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EXHIBITS

PAGE

[None]

1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 11, 2012, 12:05 P.M.

2 * * * * *

3 [Outside the presence of the prospective jury]

4 THE COURT: All right. Let's go ahead and bring -- is there anything that
5 you guys wanted to address before we bring the jury in?

6 MS. ROMNEY: I can't think of anything.

7 THE COURT: All right. Let's bring them in then. Is your detective out
8 there right now?

9 MS. TRIPPIEDI: Is what? Oh, yeah, he's out there.

10 [In the presence of the jury]

11 THE COURT: All right. Will counsel stipulate to the presence of the jury?

12 MS. ROMNEY: Yes, Your Honor.

13 MS. MAXEY: Yes.

14 MS. TRIPPIEDI: Yes, Your Honor.

15 THE COURT: All right. Let's wait a second, you guys are passing out the
16 notebooks and the pens, so let's hang on for just ten seconds.

17 THE MARSHAL: Who needs a pen? Four of you?

18 THE COURT: All right. Does everybody have pens and notebooks? All
19 right.

20 State, your next witness?

21 MS. TRIPPIEDI: It's going to be Detective Nordstrom.

22 **JAYME NORDSTROM,**

23 [having been called as a witness and being first duly sworn, testified as follows:]

24 THE CLERK: Please be seated. Please state your name and spell your
25 first and last name for the record.

1 THE WITNESS: Detective Jayme Nordstrom, J-A-Y-M-E,
2 N-O-R-D-S-T-R-O-M.

3 THE COURT: You may proceed, counselor.

4 DIRECT EXAMINATION OF JAYME NORDSTROM

5 BY MS. TRIPPIED:

6 Q Sir, how are you employed?

7 A I'm currently employed with Las Vegas Metropolitan Police
8 Department as a detective.

9 Q And how long have you been with the police department?

10 A Just shy of nine years.

11 Q Okay. How long have you been a detective?

12 A It will be four years as of November.

13 Q Okay. And are you assigned to any specific unit with Metro?

14 A Yes, the Bolden Area Command, property crimes division.

15 Q Okay. And what are your duties as a detective for that property
16 crimes unit?

17 A In burglaries, slash, property crimes, I -- I'm assigned anything from
18 burglaries to home invasions, damage to property, larceny from person.

19 Q Okay. And what exactly do you do once you're assigned a case?

20 A I receive those cases. I review them. I look for any kind of
21 evidence. I move forward. I contact victims, witnesses, and suspects. And then
22 if the case moves forward and I have evidence, I make an arrest.

23 Q What kind of evidence do you look for in these cases?

24 A Anything from witnesses, video, fingerprints, DNA, items that show
25 up at pawn shops, and I believe that's it.

1 Q Okay. And approximately how many cases would you say you were
2 assigned a month?

3 A On average, every detective is going to be a little different, because
4 we're broken up into sector beats, which is pretty much a grid of the map of Las
5 Vegas. So in my section, I would say, and it can vary, on average, like this week
6 I was assigned 20-some-odd cases. So I'd say on an average maybe 80 to 100
7 cases a month.

8 Q Okay. And out of these 80 to 100 cases a month, how often do you
9 guys actually solve the crimes?

10 A Unfortunately, it's -- that can vary as well depending on each case,
11 but I'd say on average two to four a month.

12 Q Okay. And how often do you come across a lead in one of your
13 cases?

14 A Maybe ten percent of those cases I receive. Those leads could be
15 as simple as a witness stating that they believe they saw somebody in the area
16 to something substantial as fingerprints or DNA or so forth.

17 Q Okay. Can you describe -- can you tell the jury what a solid lead is
18 versus a nonsolid lead.

19 A A solid lead would be something like fingerprints, DNA, property
20 shows up at a pawn shop and you have a suspect's name. The leads that aren't
21 as necessarily as solid, could be something where it may be it's hearsay, where
22 you have a witness that believes somebody was involved because they heard
23 those -- heard something from a neighbor. Those would be the items that
24 weren't necessarily solid evidence.

25 Q Okay. Now, I'm going to draw your attention to a burglary that

1 occurred January 21, 2009, that you were assigned to investigate.

2 A Okay.

3 Q Do you recall when exactly you were assigned to investigate the
4 case that you're here to testify for today?

5 A I believe it was February 9, 2009.

6 Q Okay. And what exactly was your -- so you were assigned as the
7 lead detective of this case; is that correct?

8 A Yes.

9 Q And we already heard evidence about what occurred during the
10 case, the facts of the case, but at some point did you develop a lead for this
11 case?

12 A The lead was actually brought to my attention by the forensic
13 laboratory for Las Vegas Metropolitan Police Department. And that lead was a
14 fingerprint that returned from the scene.

15 Q Okay. And based on this lead that you received, did you do any
16 further investigation?

17 A I did. I went and had a discussion with the victim with a
18 Spanish-speaking translator, and I presented a picture of the defendant to the
19 victim to confirm that that person didn't have a legal reason to be in the
20 residence.

21 Q Okay.

22 MS. ROMNEY: Objection, Judge.

23 THE COURT: Hang on, hang on, there is an objection. What's the
24 objection?

25 MS. ROMNEY: Can we approach, please?

1 THE COURT: Sure.

2 [Bench conference -- not transcribed]

3 THE COURT: All right. Ladies and gentlemen, the detective, and I'm not
4 trying to single him out, but his last statement was that he was informed that the
5 person did not have a legal reason to be in the residence, that's actually one of
6 the ultimate issues in this case. And so I'm going to instruct you to disregard
7 that particular answer because it involves a legal conclusion.

8 And Ms. Trippiedi, if you want to sort of clarify and follow up, that
9 would be great.

10 BY MS. TRIPPIEDI:

11 Q Did they tell you whether they knew the -- actually, let's back up,
12 you showed them a picture of Jaquez Barber who is sitting here today; is that
13 correct?

14 A That is correct.

15 Q Okay. Did they indicate that they knew Jaquez Barber?

16 A They stated that they did not know that person.

17 Q And did that essentially end your involvement in the case?

18 A Yes, it did.

19 MS. TRIPPIEDI: I'll pass the witness.

20 THE COURT: Cross-examination.

21 MS. ROMNEY: Yes.

22 **CROSS-EXAMINATION OF JAYME NORDSTROM**

23 BY MS. ROMNEY:

24 Q Hello.

25 A Hello.

1 Q Okay. So after patrol officers did their initial investigations that's
2 when you inherited this case, correct?

3 A Yes.

4 Q Okay. And at the time that you received the case you were not
5 given a description of a possible -- a physical description of any potential
6 suspect or suspects in this case, correct?

7 A No. We didn't have a witness.

8 Q Okay. And so you mentioned that you received a report from the
9 fingerprint analyst; is that correct?

10 A Yes.

11 Q Okay. And that reported -- that report indicated a fingerprint match
12 to Mr. Barber, correct?

13 A Yes.

14 Q Were his print the only prints found at the residence?

15 A No.

16 Q Okay. And based on that report did that indicate where Mr. Barber's
17 prints were found?

18 A Yes, that report did.

19 Q And what did that say?

20 A It stated the exterior of the bathroom window.

21 Q Okay. And so there wasn't any indication that his prints were found
22 anywhere on the inside of the residence, correct?

23 A No.

24 Q Okay. And nothing in that report indicated when those fingerprints
25 might have been placed, correct?

1 A That's correct.

2 Q Okay. Now, you indicated that after receiving that report and
3 speaking with the victims that that ended your investigation, correct?

4 A Yes.

5 Q You didn't follow up or interview Mr. Barber, correct?

6 A No, I did not.

7 Q And so after that no further investigation was done, right?

8 A That's correct.

9 Q Okay. Earlier you talked about solid leads versus nonsolid leads. Is
10 it possible that even leads that you think are solid to begin with end up not
11 panning out the way you thought they might?

12 A It's possible.

13 Q And even I suppose vice versa?

14 A Absolutely.

15 Q You know, nonsolid leads -- so, is it fair to say that that's one of the
16 reasons why you would potentially have to explore all leads that you get and not
17 select any one in particular?

18 A I'll look into a lead and work all aspects of it if possible.

19 Q Okay. And you would -- you would try to investigate every lead,
20 right, not just the ones that you think initially are solid leads?

21 A Yes.

22 Q Okay.

23 MS. ROMNEY: Court's indulgence.

24 THE COURT: Sure.

25 MS. ROMNEY: We don't have any further questions at this time, Judge.

1 THE COURT: Any redirect?

2 MS. TRIPPIEDI: Yes, Your Honor, just two questions.

3 THE COURT: Sure.

4 **REDIRECT EXAMINATION OF JAYME NORDSTROM**

5 BY MS. TRIPPIEDI,

6 Q Sir, did you have any other leads in this case other than Jaquez
7 Barber?

8 A There were fingerprints returned prior to his that were on the inside
9 of the bathroom, I believe it was on the tile area, probably about a couple feet
10 down from the -- the window.

11 Q Okay. But based on those fingerprints did you have any other
12 suspects in this case?

13 A No.

14 Q Other than Jaquez Barber?

15 A No.

16 MS. TRIPPIEDI: Nothing further.

17 THE COURT: Any recross?

18 MS. ROMNEY: Just a couple.

19 **RECROSS-EXAMINATION OF JAYME NORDSTROM**

20 BY MS. ROMNEY:

21 Q So you said that there were prints that were found on the inside of
22 the master bathroom, I guess, tub enclosure, right?

23 A Yes.

24 Q And those prints still as of yet have yet to be matched to anybody,
25 correct?

1 A No, they have been matched to somebody.

2 Q All of them have?

3 A Well, the only ones I was notified about.

4 Q Okay. Which ones were those?

5 A I was notified on a -- it was a P.S.R. who was in training, and that's
6 a person that takes the reports, processes, or correction -- he actually looks for
7 fingerprints.

8 Q And do you remember his name?

9 A I do not. He worked for Metro at the time.

10 Q Would it refresh your recollection if I showed you a copy of the
11 fingerprint report?

12 A It may.

13 MS. ROMNEY: May I approach the witness, Judge?

14 THE COURT: You may.

15 MS. ROMNEY: And I'll show you -- I'm just showing him the --

16 BY MS. ROMNEY:

17 Q Okay. Do you want to just look at that briefly and just look up at me
18 when you're -- when you're done. Did reading that report refresh your
19 recollection?

20 A Just looking at the top I recognize the name. I believe it was
21 Michael Palmer.

22 Q Okay. And isn't true that that report also indicates that there were
23 prints that excluded Mr. Barber, Mr. Palmer, and Mr. Martin and were not
24 identified to anybody; is that correct?

25 A To be honest, I can't comment on what their prints are -- or I'm

1 sorry, let me rephrase that, what their reports are. I'm just notified when the print
2 does come back to somebody. So I can't explain if they eliminated somebody.

3 Q Okay. So is it fair to say, I mean, let's see, so you're only notified
4 when there is, you know, a name that can be attributed to any prints, correct?

5 A Yes.

6 Q So then it would be possible that there were still prints inside the
7 house that didn't get matched up to a name, right?

8 A I can't answer that because I wasn't there to take the prints and I
9 wasn't in the lab to process them. So I don't know.

10 Q Okay. I guess the point that I'm -- that I'm trying to make is you
11 would -- you wouldn't be necessarily notified if there were prints that didn't come
12 up with a match, so the possibility is that they could exist, you just wouldn't be
13 notified unless there was a name that you could match, right?

14 A I don't know. I -- I don't know if they send that. Or not I don't work
15 in the lab, so I honestly can't answer that.

16 Q But do you communicate with people from the lab and talk to them?
17 Or do you just go off the paper that they give you?

18 A If something in the paper, I have a concern with, I'll contact them or
19 they'll contact myself. But in this case I did not contact them prior.

20 Q So if you're given a name, for instance, you don't follow up to see if,
21 you know, there were any other prints that perhaps weren't identified?

22 A Not in this case.

23 Q So if there were a situation where there were multiple suspects or
24 multiple sets of suspect prints, you'd only investigate if you were given a name?

25 A Let me clarify, we're not sent information, because I wasn't out

1 there, so I don't know if there is more prints or if there weren't. So, therefore, I'm
2 only sent based on the prints they recovered.

3 Q Okay. So you're not given that document as a whole?

4 A I am given that document.

5 Q Okay. And when, you as part of your job, when you read that
6 document you're trying to interpret the evidence that's presented in that
7 document, right?

8 A Yes.

9 Q Okay. So part of that could be, you know, in looking at the results,
10 investigating those results a little bit further, either with communicating with the
11 lab or anybody else, right?

12 A Yes.

13 Q Okay. So in this case, when you received that report did you do any
14 of that follow-up investigation with the fingerprint analyst?

15 A Not with the analyst, with the victim.

16 Q Okay. But in terms of the analyst, you didn't follow up to ask about
17 some of the other information that's contained in that report, correct?

18 A The information was provided in the report and then I contacted,
19 that's how I determined that Michael Palmer was actually not a suspect and
20 actually working for the police department.

21 Q Right.

22 A So I actually made the contacts and verified who he was.

23 MS. ROMNEY: Can I approach, Judge, just so I can look at that
24 document and ask a question about it?

25 THE COURT: Sure.

1 BY MS. ROMNEY:

2 Q Okay. So in this -- in this report, do you see a box under the
3 heading Results and Conclusions with lab number KA2A?

4 A Yes.

5 Q Okay. And what do the results and conclusion -- what are the
6 results and conclusions associated with those prints?

7 A In the descriptions they have one lift card recovered from the west
8 wall of the master bathroom closure below the point-of-entry window labeled
9 number two.

10 Q And the results and conclusions on those prints were?

11 A Three suitable latent prints marked KA2AA, KA2AB, and KA2AC,
12 KA2AC Jaquez Barber, Sergio Martin, and Michael Palmer were -- are excluded.

13 Q Okay. So is it fair to say then that there were prints inside the
14 master bathroom enclosure --

15 MS. TRIPPIEDI: I'm going to object, Your Honor. This is calling for this
16 witness to make a conclusion that he already testified he does not personally
17 have knowledge about.

18 THE COURT: Right, I mean --

19 MS. ROMNEY: Well, let me -- let me rephrase because I guess what I'm
20 trying to ask --

21 THE COURT: Okay.

22 MS. ROMNEY: -- is based on his -- his own interpretation based on this
23 report.

24 BY MS. ROMNEY:

25 Q So when you read that, you didn't interpret that as saying that there

1 were prints recovered in the master bathroom that didn't belong to the three
2 people that you read out?

3 A I do -- I did interpret that. But it's the inside of a bathroom and there
4 could be multiple fingerprints there. I don't know the victims' other family
5 members, children, or anything of that source.

6 Q But it's true that one of the people that you read was the victim from
7 the house, right?

8 A That is correct.

9 Q Okay. All right.

10 MS. ROMNEY: No further questions.

11 THE COURT: Any redirect?

12 MS. TRIPPIEDI: No, Your Honor.

13 THE COURT: All right. Is the witness excused?

14 MS. TRIPPIEDI: Yes.

15 THE COURT: All right. Ms. Trippiedi, your next witness?

16 MS. TRIPPIEDI: Court's indulgence briefly.

17 THE COURT: Sure.

18 MS. TRIPPIEDI: Your Honor, at this time the State rests.

19 THE COURT: All right. Do you guys need a minute? Do you want to
20 take a break right now or what?

21 MS. ROMNEY: Yes, please.

22 THE COURT: All right, ladies and gentlemen, here's what we're going to
23 do, we're going to take a break now. I know it's a little unusual to take a break
24 this quickly. I'm going to ask you a personal favor, some judges just sort of, as I
25 mentioned at the beginning of the trial, just sort of order you around and never

1 explain what's going on, I'm going to give you a little bit of an explanation. This
2 break is going to be a little bit longer and here's the reason why, I've been sitting
3 in this chair pretty much continuously since 8:30 this morning. All I've had to eat
4 is half a bag of Dorito's. I have a sandwich here. So if you guys can give me
5 five or ten minutes or so to eat my sandwich, and then I'll feel a lot better.

6 So, during this break you are admonished that until you begin
7 deliberations you are still under oath and have not been discharged. Do not
8 reach any conclusions about this case as you have not heard all of the evidence.
9 Do not talk to anyone about this case. Do not investigate any facts of this case.
10 Do not view any media, press, or Internet reports about the case. Do not talk to
11 anyone who may be involved in any way with this case. Do not discuss the facts
12 of this case with each other. Remember to wear your badge at all times around
13 the courthouse. Please leave your notebooks on your chairs. And I'll see you
14 in, let's make it 15 minutes or so, that way I won't get indigestion by eating too
15 fast.

16 [Outside the presence of the jury]

17 THE COURT: All right. We're on the record outside the presence of the
18 jury. Go ahead and be seated. So do you guys want to number the jury
19 instructions now or what?

20 MS. ROMNEY: Before we do that, Judge, I have a motion to make.

21 THE COURT: Okay.

22 MS. ROMNEY: Let me just get all this organized a little bit before I -- at
23 this time, Judge, I'm going to make a motion for an advisory instruction asking
24 for a judgment of acquittal. And I know that that might seem a little bit odd, so
25 let me explain why.

1 N.R.S. 175.381 states that if at any time after the evidence on either
2 side is closed, the Court deems the evidence in sufficient to warrant a conviction
3 it may advise the jury to acquit the defendant, but the jury is not bound by such
4 advice. In this case Mr. Barber is charged with the burglary and the grand
5 larceny, as you know, and that the burglary charge in particular requires the
6 State showing that he entered with the intent -- not only that that he entered, but
7 he entered with the intent to commit the larceny inside. And I would submit,
8 Judge, that they haven't done that yet.

9 We heard from a fingerprint analyst who gave information that
10 Mr. Barber's print was recovered from an exterior window. And there wasn't
11 anyone here that testified that his prints were recovered from anywhere or any
12 surface inside the house. And just some of it -- it was highlighted here and kind
13 of want to just highlight it briefly, there's been a change in fingerprint evidence
14 and the way that it has been considered by the courts.

15 The U.S. Supreme Court in, let me find it, in *Melendez Diaz versus*
16 *Massachusetts* recognized the deficiencies of forensic evidence that's used at
17 trial. And I know that some of what I'm arguing is more persuasive than binding,
18 but there have been new developments that fingerprint evidence is not the 100
19 percent reliable, you know, evidence that courts once took as.

20 You heard mention of the National Academy of Sciences coming
21 out with a report in 2009 that basically showed that there is no scientific method
22 behind fingerprint evidence. And that's starting to be recognized in the court
23 systems. There are some Nevada cases that did at one time say, and I will give
24 them to you specifically, in the case of *Geiger versus State*, which is 112
25 Nevada 938, that case was heard in 1996. And at that point they gave the

1 opinion, the Court stated that, let me find it, and they were citing to *Carr v. State*,
2 That we have held that when fingerprints of the defendant are found where the
3 crime was committed and circumstances rule out the possibility that they might
4 have been imprinted at a different time than when the crime occurred, a
5 conviction is warranted.

6 Now this case is different than that case, Judge, because we
7 haven't been provided, you know, a date and time. And so there is a possibility
8 that the fingerprints would have been left at a time other than when the crime
9 occurred. And in another case which is *Matthews v. State*, which is 94 Nevada
10 179, that case is older, it's from 1978. In that case there was someone who
11 entered a home, the victim returned to the home, saw the suspect fleeing the
12 residence, and that suspect was apprehended a short time later. And so in
13 determining that the fingerprint evidence was enough to sustain a burglary
14 conviction, that was based on those facts coming together. And we don't have
15 that here.

16 In this case there was -- no one testified, you know, that they
17 witnessed this occur or that they saw anyone near or around the house when
18 this incident occurred. Obviously, no one was found inside at the time. And
19 Mr. Barber was not immediately apprehended or arrested on this case. In fact, I
20 think it was several months later that that occurred. It was even several months
21 later by the time they got the information as to the fingerprint evidence.

22 And some of the newer cases that we're seeing, I mean, you know,
23 you know that Nevada has some limited case law, so there haven't been new
24 developments here in Nevada, but there have been in other states across the
25 country. And a couple that I wanted to point to are from Colorado. Now what

1 we're seeing, for example, in the case of *People v. Ray* which is 626 Pacific
2 Second Edition 167, the Supreme Court actually sustained the trial court's
3 judgment of acquittal based upon insufficient evidence. In that case a residence
4 was burglarized and property was stolen. And in that case the police
5 investigation showed that there was a milk chute in the back of the house that
6 had been broken into and that's what they determined to be the point-of-entry.

7 It had -- that chute had two doors, one on the outside and one on
8 the inside. And the fingerprints that were recovered were from the outside
9 surface of the inside milk chute door. And one of those prints was positively
10 identified as that of Mr. Ray. And the Court stated in that case, The evidence
11 establishes that the defendant touched the outer surface of the inside door of the
12 milk chute at the Winegar residence. No innocent purpose has been suggested
13 which would be consistent with that activity. There is no evidence, however, as
14 to the time that the fingerprint was left on the door. No evidence placed the
15 defendant inside the Winegar residence on the day of the burglary or at any
16 other time. Because the milk chute was readily accessible to anyone in the
17 Winegar's backyard, the fingerprint could have been impressed at a time other
18 than the time when the crime was committed.

19 And again, Judge, I understand that these Colorado cases are not
20 binding, but I think they're extremely persuasive. And this case is exactly what
21 we had in that case. Where there is no evidence that Mr. Barber was anywhere
22 in the residence. And since entry is a critical element of burglary, I don't think
23 the State's met their burden here. Now here in Nevada, as you know, we don't
24 have a directed verdict, you can't take the case away from a jury, and so what
25 we do have, the vehicle that we do have is asking for the this advisory

1 instruction. And I do have one proposed if you want me to take it out, but it
2 would basically follow the language of the statute and read something to the
3 affect of that you are, you know, instructed that the Court deems the evidence
4 insufficient to warrant a conviction. However, you are not bound by this advice.

5 I think what's important to distinguish is this is something that can
6 be provided to the jury, it's different in terms of the review than if we had a
7 situation where this instruction wasn't given, we went ahead and proceeded with
8 jury deliberations, they returned a verdict of guilty, I think in these cases the
9 Supreme Court has said that under a separate standard of review, you know, we
10 can't overturn, necessarily, maybe what the jury has decided, but this is -- this is
11 different than that because we're here now where you've had the chance to see
12 all of the evidence. And in this case, again, I think this is extremely similar to the
13 Ray case where the judge did give an instruction for a judgment of acquittal and
14 that was ultimately upheld.

15 And I will submit it on that, Judge. And I do have some copies of
16 this case law if you would like to refer to it.

17 THE COURT: All right, Ms. Trippiedi, your response?

18 MS. TRIPPIEDI: Well, Your Honor, without even, you know, without even
19 reading the cases that she refers to, I can tell you that this case is distinguished
20 from at least one of those cases, and that's the case that she just described with
21 the milk chute. She read a line from that case that the milk chute was readily
22 accessible to everyone in the backyard and that is completely distinguished from
23 the case that we have here because the window in this case that was
24 determined to be the point-of-entry by several witnesses, was not readily
25 accessible to everybody in the backyard. It's actually at an elevated height to

1 where someone would actually have to stand on something to reach. We saw
2 pictures where it looks higher than the screen door. So it's not readily
3 accessible.

4 Your Honor, and it's not just the fact that there is prints on an
5 exterior window to the residence, it's the fact that there is prints that are found on
6 the exterior window, that all evidence indicates is the point-of-entry for this
7 burglary, coupled with the fact that there is no other explanation for those prints
8 to be there. We have evidence that the victims resided at the residence for 13
9 years. We have evidence that it was colder climate, so it's more likely that these
10 prints would be recent prints. We have evidence that -- we have evidence that
11 they're not family members with the defendant, they don't know the defendant,
12 they have no reason to believe that the defendant would be at the residence.

13 Your Honor, so while it is true that the only piece of concrete
14 evidence we have to provide is fingerprint evidence, you know very well that
15 circumstantial evidence is a big part of these cases. And we submit that all of
16 these other circumstances taken along with the fingerprints is sufficient to render
17 him guilty. And a jury instruction saying that you, the Court, does not feel that
18 there is enough evidence is completely prejudicial to the State's case. So we're
19 strongly opposed of any type of directed-verdict-type of jury instruction.

20 MS. ROMNEY: Judge, could I respond just briefly?

21 THE COURT: Sure.

22 MS. ROMNEY: Respectfully, I disagree with the State's position in terms
23 of the window being readily accessible, it's outside, anyone could be outside,
24 you know, whether it's high or low doesn't make it necessarily any less
25 accessible in the sense that five people could have gone through that backyard,

1 you know, any one or all of them, you know, could have left some sort of
2 evidence or prints behind. I think the point that that case was highlighting was,
3 you know, that it's not such an exclusive location that it couldn't have been
4 affected by other people or other things.

5 And in addition to that, you know, they -- they highlighted that there
6 is no explanation for some sort of innocent purpose, but that's exactly what the
7 Ray case held. They acknowledged that there was no explanation as to how
8 that print would have gotten there. And, quite frankly, that's not our burden. We
9 don't have to show or prove Mr. Barber's innocence. That's that completely
10 shifts the burden to something that goes against what this is about.

11 You know, we have this vehicle for a reason, Judge, I think, you
12 know, to argue that that kind of jury instruction would be fair would defeat the
13 whole purpose of having it in the first place, you know, this is asking you, you
14 know, to make that legal conclusion and it protects the defendant. And that
15 ultimately here is, you know, what's on the line, it's his liberty. And his, you
16 know, his rights that are at stake here. And I think that's absolutely why we have
17 that kind of instruction codified in our statutes.

18 THE COURT: All right, in this case the State has the burden of proving
19 two things, first of all, whether a crime occurred, and secondly, who did it. It
20 sounds like from your motion nobody's really disputing that the State introduced
21 sufficient evidence that a crime actually occurred. We have testimony from the
22 victims that they both left the house at, I think it was it was as late as 9:00 in the
23 morning, and things were in order. When they came back, the house had been
24 ransacked, doors and windows were open that were not left open by them and
25 money was missing. And I gather that's not even the focus of your motion.

1 You're not saying they haven't introduced evidence -- sufficient evidence that a
2 crime occurred, correct?

3 MS. ROMNEY: Correct.

4 THE COURT: The second thing that the State has to prove is who did the
5 crime. And that really sounds like it's the focus of your motion, your motion
6 alleging that the presence of the palm print on the window is not sufficient
7 evidence for a reasonable jury to conclude that Mr. Barber could have been the
8 person who committed that crime.

9 In this case, what I heard is that there is evidence that Mr. Barber's
10 print was on this bathroom window. I'm not exactly sure how many feet off the
11 ground the window was, I don't recall there being testimony one way or the other
12 of what it was. But there was an -- there was a bucket that had been dragged
13 below the window, there was -- the water spigot below the window, and
14 Mr. Barber's print was on the window.

15 In addition, taking evidence in the light most favorable to the State,
16 which I think is the standard on a motion like this, the print was found on a
17 window which corresponded with footprints and other marks on the inside of the
18 bathroom and on the -- in and around the tub from which the police concluded
19 that that had been the point-of-entry. There was dirt, there were foot marks,
20 there were other marks on the inside of the tub which corresponded to the
21 presence of the fingerprint on the window.

22 There was testimony by the victims that they had no known reason
23 why Mr. Barber's prints would have been on that window. They didn't know him.
24 They'd never seen him before. And again, I'm taking the evidence in the light
25 most favorable to the State which is the standard on a motion like this. And just

1 skimming through my notes here, the police officers did testify based on their
2 training and experience that they concluded the window was the point of
3 entry for the burglary that committed -- that was committed in this residence.

4 On cross-examination you guys did point out that apparently there
5 was some kind of National Academy of Sciences study questioning the validity
6 of certain procedures regarding fingerprints. But the problem in this case is
7 that's not actually in evidence. You didn't actually have a witness who came in
8 here and authenticated that study, it was just sort of questions on
9 cross-examination. So strictly speaking, from an evidentiary standpoint, that
10 study's not actually in evidence right now and so I can't really consider it. I
11 haven't -- I haven't read the report, no one said it's an accurate report. I just
12 don't have it in front of me. I'm not even sure what it says other than the parts
13 that you asked about. And it might have been helpful if I had it, but, I mean, I
14 don't. It's not really in evidence right now. So I can't really give a whole lot of
15 weight one way or the other to that.

16 And so viewing the evidence in the light most favorable to the
17 prosecution, it appears to me that a reasonable and rational jury could find that
18 Mr. Barber was the person who committed the burglary that nobody disputes
19 happened in this case. I understand why you're making the motion but, you
20 know, as I indicated, it appears that a reasonable jury could conclude based on
21 the -- the totality of the evidence in this case that Mr. Barber was the person who
22 perpetrated this offense and, therefore, the motion is denied.

23 All right, so anything else that you guys wanted to address before
24 we go to through the jury instructions then?

25 MS. ROMNEY: Nope, that was it.

1 THE COURT: All right. Let me see here, so technically, okay, the State
2 has -- the State has rested. The defense has not had an opportunity to put on
3 their case, so when we go back on the record I'm going to ask you if have any
4 witnesses, I don't know if you want to talk with Mr. Barber about his right to
5 testify, you know it's -- that's completely his decision and your decision. But
6 want to do the jury instruction right now, then?

7 MS. ROMNEY: Yes.

8 THE COURT: All right. So just for the record were there any objections to
9 the jury instructions, the proposed jury instructions that I have in my hand or
10 were there any other instructions other than the ones that I have in my hand that
11 either side wanted me to consider? Just so the record's clear.

12 MS. ROMNEY: Other than the motion that we made, Judge, which
13 you're -- since you're not going -- I do actually though, now that I think about it, if
14 I could just have it marked as one of our proposed instructions.

15 THE COURT: Sure.

16 MS. ROMNEY: That way it is a part of the file --

17 THE COURT: No, I understand, for the appellate record, of course.

18 MS. ROMNEY: -- for appellate purposes, may I approach the clerk,
19 please?

20 THE COURT: You may.

21 MS. ROMNEY: Do you want to see it before I -- it just has the statutory
22 language in there.

23 MS. TRIPPIED: Okay.

24 MS. ROMNEY: Thank you. Other than that, Judge, we didn't have
25 anything else to propose so we can number them at this point.

1 THE COURT: All right. Does everyone have copies of what I have?

2 MS. ROMNEY: I don't know that I have the updated copy with the
3 changes that were made in court, but assuming that it's just the \$6,000 instead
4 of seven and then the --

5 THE COURT: And then 250.

6 MS. ROMNEY: -- 250 or more then --

7 THE COURT: Yeah, those are the only changes that I had Linda make.
8 So everything should be identical to what you have.

9 MS. ROMNEY: Okay.

10 THE COURT: Unfortunately, I only have one copy with the 6,000 and the
11 250.

12 MS. ROMNEY: That's okay.

13 THE COURT: All right. So instruction number one is, It is now my duty as
14 judge to instruct you on the law. Instruction number two would be -- you guys, I
15 know I go kind of fast, are you guys able to follow along? I'm a really fast talker.

16 MS. ROMNEY: I think so. I'll let you know if I can't, but I think so.

17 THE COURT: Yeah, speak up if one of you can't. I'm happy to slow
18 down.

19 Instruction number two would be, If in these instruction any rule,
20 direction, or idea is repeated or stated. Instruction number three would be, An
21 amended information is but a formal method of accusing a person, and that's the
22 one where we have the \$6,000 at the very end there on line 18.

23 MS. ROMNEY: Uh-huh.

24 THE COURT: Instruction number four would be, To constitute the crime
25 charged there must exist a union or joint operation of an act. Number five would

1 be, The defendant is presumed innocent until the contrary is proved. Number
2 six would be, The evidence which you are to consider in this case consists of.

3 Number seven would be, The credibility or believability of a witness
4 should be determined by his manner. Number eight would be, A witness who
5 has special knowledge, skill, experience, training, et cetera, et cetera.

6 Number nine would be, Every person who by day or night enters
7 any structure. Number ten would be, Larceny is defined as the stealing, taking,
8 and carrying away of the personal goods.

9 MS. TRIPPIED!: Is that a \$250 or more? Did we make that change?

10 MS. ROMNEY: Yeah.

11 THE COURT: Hang on. Yes, in my copy on line four it says, If the value
12 of the personal goods or property taken is \$250 or more it is grand larceny.
13 That's number ten. So number 11 would be, The intention with which entry was
14 made. Number 12 would be, Although you are to consider only the evidence in
15 the case. Number 13 would be, In your deliberation you may not discuss or
16 consider the subject of punishment. Number 14 would be, When you retire to
17 consider your verdict. Number 15 would be, If during your deliberation you
18 should desire to be further informed. Number 16 would be, Now you will listen to
19 the arguments of counsel. And then we have the verdict form. Does everybody
20 have a copy of that? Any objections or proposed changes to the verdict form?

21 MS. ROMNEY: No, Judge.

22 THE COURT: All right, let's go ahead and have Linda make some copies
23 of these. Since they don't have copies of the clean ones, let's make 16 copies
24 or 17 copies actually for everybody, yeah.

25 And then I will step back and eat my lunch and then we can go back

1 in and bring the jury in. Give me just five minutes or so.

2 [Recess at 12:49 p.m.; proceeding resumed at 12:59 p.m.]

3 [Outside the presence of the jury]

4 THE COURT: All right. Does everyone have a copy of these? Have you
5 guys had a chance to look through them and make sure that your copy has all
6 the pages in 'em?

7 MS. ROMNEY: Yes, Judge.

8 THE COURT: All right. Randy, you have the other copies? Let's go
9 ahead and bring them back in then.

10 [In the presence of the jury]

11 THE COURT: All right. Will counsel stipulate to the presence of the jury?

12 MS. ROMNEY: Yes, Your Honor.

13 MS. TRIPPIED: Yes, Your Honor.

14 THE COURT: All right. The State has rested. On behalf of Mr. Barber,
15 does the defense wish to call any witnesses or introduce any evidence?

16 MS. ROMNEY: Your Honor, we're not going to be calling any witnesses
17 at this time. And the defense would rest.

18 THE COURT: All right, ladies and gentlemen, you have now heard all of
19 the evidence in this case. It is now my duty as judge to instruct you in the law
20 that applies to this case. You are each going to be given a written copy of what
21 I'm about to read. So I'm going to wait a couple minutes while Randy hands
22 them all out. You will be allowed to take this written copy into the jury room with
23 you so feel free to make whatever marks you want to on them underline, circle,
24 anything like that, take any notes that you want.

25 And as you guys are handing them out, because you guys have

1 written copies and will be able to follow along when I read them I'm going to go a
2 little bit quickly. If I go too quickly please feel free to raise your hand and let me
3 know. I won't take it personally. I will slow down. The important thing is to
4 make sure that you guys hear and understand what I'm saying as you guys are
5 following along. All right. Does everybody have their written copy then? All
6 right.

7 [The Court read the instructions to the jury.]

8 THE COURT: That concludes the jury instructions. Is the State ready to
9 argue?

10 MS. TRIPPIED!: Yes, Your Honor.

11 THE COURT: You may proceed.

12 MS. TRIPPIED!: Ladies and gentlemen, in every criminal case the State
13 is required to prove two things. That the crime was committed and that the
14 defendant committed the crime. In this case, the defendant, Jaquez Barber, is
15 charged with two crimes, burglary and grand larceny. And it really isn't a
16 question of whether these two crimes occurred. You were just instructed by the
17 judge that a burglary is defined as every person who by day or night enters any
18 structure with the intent to commit a larceny is guilty of a burglary.

19 In this case, you heard the facts, you heard the testimony of the
20 witnesses, there is no question that Mrs. Mendoza returned to her residence,
21 that someone had broken in. Items throughout the house were moved, the
22 house was in a general state of disarray, drawers were left open, windows,
23 doors were open. A burglary occurred because money of hers was stolen.

24 Additionally, you are instructed as to the definition of grand larceny.
25 And a larceny is basically the stealing of someone's belonging. And it's a grand

1 larceny if that amount is \$250 or more. Now, while we weren't there to see
2 whether \$6,000 in cash was actually taken from the residence, there was no
3 video surveillance, there were no eyewitnesses, what we do have though is
4 testimony from the victim and her husband, both of them, took the stand and
5 testified under oath that an amount of cash was taken from their residence and
6 from specifically their bedroom drawers. You can weigh that testimony however
7 you want.

8 But I do want you to keep in mind that these victims have no real
9 reason to lie to you. They didn't get that money back. And they're probably
10 never going to get that money back.

11 Next, the State has to prove that the defendant committed the
12 crime. And let's take a look at the evidence that we have that demonstrates that
13 the defendant, Jaquez Barber, committed this crime. And most importantly, we
14 know that his palm print was on the window that was used to enter the house.
15 We also know that there is no other explanation as to why that print was there.
16 Ladies and gentlemen, as I stated before there is no video surveillance in this
17 case, there is no eyewitness evidence, but that palm print is pretty significant
18 because it was on the window that was used to make entry during the burglary.

19 Now, another instruction that you were just given is an instruction
20 regarding circumstantial evidence. I'm not going to read this whole instruction to
21 you, but I will tell you that what it states essentially is that in every single criminal
22 case there is evidence and there is circumstantial evidence. And circumstantial
23 evidence is comprised of all of the links in the chain that is establish guilt. So
24 here, not only do we have the fact that a palm print was found on a window of
25 the residence right after the burglary, but if you take a look at the fact that that

1 palm print was found and all of the circumstantial evidence in this case which in
2 this case there is several things that you should consider.

3 First, we know that it wasn't just any window that that palm print was
4 found, it was the entry-point window. It wasn't easily accessible to anybody. It
5 wasn't the front door where a solicitor could have knocked and, you know, asked
6 to sell something. It was a back window. We know that that was the entry point
7 during this burglary because you saw the cement bucket that was moved
8 underneath, the victims both told you that it was moved. The water faucet
9 underneath was broken. The windows was actually left open. There was dirt on
10 the inside. All of these pieces of evidence show you that that was the
11 entry-point window. And sure enough, that's where the prints are found.

12 The window again was high, not easily accessible. So it's not a
13 case where, you know, kids could be playing in the street and they kick the
14 soccer ball over the wall and one of them hops the fence, gets the ball, and
15 happens to leave his prints on something on the ground. This is a high window,
16 not accessible to all.

17 We also know that the print was found in the middle of January.
18 Why is that important? Colder climates. You heard the forensic scientist tell you
19 that prints do not -- it's not likely that a print would remain in the cold. They stay
20 most likely in warmer climate that are susceptible to moist. So in this case, the
21 fact that this happened in the middle of January tells us one thing, and that's that
22 these prints are most likely to be recent.

23 We also know that Ms. Mendoza and her husband lived at the
24 residence for 13 years. They didn't just move in there. They weren't renting.
25 She told you she has a mortgage on the house. It's her house. And she's lived

1 there for 13 years with her husband. So it's not as though these could be the
2 previous owners' prints.

3 Ladies and gentlemen, another instruction you were given is the
4 common sense instruction. And I'm not going to read this entire instruction to
5 you. But what this instruction essentially says is that when you come in to report
6 for jury duty, when you came in today and you went downstairs through the
7 metal detectors to get to this courtroom, you are not instructed to leave your
8 common sense behind. You're supposed to bring it with you into this very
9 courtroom and use it, use your common sense. You're instructed by the judge to
10 use your common sense to evaluate the evidence and to make your verdict in
11 this case.

12 What does common sense tell us? We know, ladies and
13 gentlemen, that we've had testimony that burglaries occur pretty often in the
14 valley. The Detective Nordstrom told you that he gets quite a few cases that
15 land on his desk and that hardly any of them are solved. You know, you heard
16 when you were sitting voir dire that people's -- I have friends of mine that their
17 houses were burglarized.

18 MS. MAXEY: Objection, Your Honor, this is not evidence.

19 MS. TRIPPIEDI: It's part of my argument.

20 THE COURT: Hang on a second, hang on a second. What's the
21 objection?

22 MS. MAXEY: Your Honor, she's stating stuff that's not considered
23 evidence in this -- in her case. She didn't present that to them.

24 THE COURT: Right. Can you not make it about your friends.

25 MS. TRIPPIEDI: Okay. We all know people that have been burglarized.

1 I'd be shocked if any of you have never come across someone that's been
2 burglarized. You know, residential burglaries occur quite often. And most of
3 these times police officers arrive at the scene, they take a look, and these
4 crimes are never solved. But in a case such as this where the victims were the
5 victims of a burglary that happened at their house, a fingerprint -- fingerprints
6 were actually left at the scene, and they returned to someone that had no reason
7 to be there, ladies and gentlemen, just think about that for a second.

8 Why are his prints on that window? Obviously that's the person that
9 committed this crime. There is no other reason for those prints to be on that
10 window, ladies and gentlemen. The victims told you that they don't know who he
11 is, he's not a friend, he's not a family member. And we submit to you that the
12 fact that his prints are on that window is sufficient for you to find him guilty. We
13 don't need any other evidence in this case, ladies and gentlemen. We don't
14 need any other evidence.

15 We also know that the prints were an actual match. She told you,
16 the forensic scientist, told you that she's 100 percent certain that they matched.
17 And it came up as a match not only on the computer but when she manually
18 compared it using her training that she received prior to being employed as a
19 forensic scientist.

20 Ladies and gentlemen, at the end of this case we're going to ask
21 that you find the defendant, Jaquez Barber, guilty as charged. Thank you for
22 your time.

23 THE COURT: Is the defense ready to argue?

24 MS. MAXEY: Yes, Your Honor.

25 THE COURT: You may proceed.

1 MS. MAXEY: So you have a cat, a really hungry cat; you have a mouse,
2 a big, fat juicy mouse. You put the cat and the mouse in a box, put a top on top
3 of the box, tie a rope around it just to make it really secure, grab the box, pick it
4 up, put it in a room, walk outside the room, close the door. You leave it alone for
5 30 minutes. After 30 minutes you come back into the room, open the door, untie
6 the rope, take the top off, look inside, and there is only a cat.

7 Common sense would tell you that cat ate that mouse. But when
8 you start really looking at the box you see that the box has a hole on the side of
9 it, a small hole, a hole the size of a mouse. Now you doubt that that cat ate that
10 box, I mean, sorry, ate that mouse. The State, it's their burden to prove that my
11 client, Jaquez Barber, entered a house with the intent to commit a crime, a
12 larceny. And not only did he enter it with that intent, but he stole cash, that's
13 what they have to prove. And the State hasn't proven that.

14 The evidence that the State has shown is that the house, Ms. -- I
15 believe her last name is Menendez, testified that when she came home the
16 house was opened in three place, the front door, the sliding glass back door,
17 and then the window, the bathroom window. And I believe it was detective or no
18 Officer Shevlin that stated all three of those places could be a point-of-entry, that
19 the front door could be a point-of-entry, that the sliding glass door could be a
20 point-of-entry. The State hasn't provided any witnesses. Nobody saw
21 Mr. Barber inside the house. Nobody saw Mr. Barber -- Barber leaving the
22 house. Nobody saw him on the property. Nobody saw him near the property.
23 There are no witnesses.

24 Now the print processor, Ms. Dahn, she testified that she processed
25 the whole house. But remember, she didn't document what she processed.

1 She has no documentation of what she did. She only has the documentation of
2 the certain areas that she felt was important, that the areas that weren't
3 important, she didn't document. She testified that she dusted for prints on the
4 front door. She dusted for prints on the door knobs and the sliding glass back
5 door, but she found no prints. She testified that she even dusted for prints on
6 the wallet where the money was found and had no prints.

7 Mr. Menendez, when he took the stand, he testified that there was
8 tool markings on the window. But yet Ms. Dahn, the scene processor stated she
9 didn't see any tool markings. Now, the State stated the biggest evidence, the
10 one they rely on the most is the palm print, a palm print found on the outside of a
11 window. And she's going to ask you, she has asked you to rely, everything, all
12 your common sense and knowledge, on that palm print. But what you need to
13 remember is there is a couple of things that the person who analyzed the palm
14 print did not testify to.

15 She testified that she has a method she uses but there is no set
16 standard. She didn't testify to the science behind it. She didn't testify as to how
17 many points of similarity she found on the latent print and Mr. Palmer's print to
18 match. We don't know, she never testified to it. Was it 20 points of similarity?
19 Was it two points of similarity? There was no testimony on that.

20 She did testify though that she did check for dissimilarity points.
21 She didn't document it. But she did check for dissimilarity. But she couldn't tell
22 us how many points of dissimilarity there are. She couldn't tell us if it was 5
23 points, 50 points, 70 points. We don't know because there was no testimony to
24 that. You heard her testify that when she made the comparison, she was
25 already aware that Mr. Barber's match was a potential -- Mr. Barber's print was a

1 potential match. To safeguard from any mistakes you would think that she
2 would have ran the latent prints in AFIS herself, created her own list, and then
3 did the comparisons with that list herself, but she didn't.

4 What, not only did she not do that, but she also testified that she
5 didn't do a blind comparison. So there is no guarantee that the comparison
6 while, she was doing the comparison, she wasn't biased already before. Now
7 let's talk about the AFIS. There was no documentation of the list of possible
8 matches that AFIS printed out. We have no documentation. We don't know how
9 long that list was. We don't know how many people were on it. We don't even
10 know where Mr. Barber was at on that list. Was he at the top of that list? Was
11 he at the bottom of the list? We don't know.

12 However, if anything, the thing you really need to consider is
13 whether or not that print proves Mr. Barber went inside the house. The print was
14 found on the outside. It can't be dated. Nobody can say when the print was left.
15 We can't tell you the date or time. That print doesn't -- can't be dated that it did
16 happen at the time of the offense. All they know is that there was a print there,
17 and they want you to jump to that conclusion that it occurred on that time, date
18 and time.

19 As you remember the ID specialist, Ms. Dahn, stated that a good
20 print can last a long time. So that print could have been substantial -- there
21 substantially before the incident occurred. The print doesn't prove that he
22 opened the window. The print doesn't prove that he entered the house. The
23 prints that show people inside the house belong to Officer Palmer. Officer
24 Palmer stated, or Ms. Dahn stated that when Officer Palmer's prints were on -- in
25 the bathroom, it did contaminate the scene. And the only other prints that were

1 found were also in the bathroom, but they're unidentified.

2 What we know is Officer Palmer was inside the house and
3 somebody we don't know was also inside the house.

4 MS. TRIPPIED: Objection. That didn't come out in evidence.

5 MS. ROMNEY: Yes, it did.

6 THE COURT: Well, it's argument. Objection overruled.

7 MS. MAXEY: Mr. Barber's prints were never found inside the house.
8 They weren't found on the drawers. They weren't found on the walls. They
9 weren't found on the front door. They weren't found on the sliding glass back
10 door. They weren't found on the wallet where the money was contained.

11 Basically, the State has handed you a box, a box with a hole in it.
12 And that hole's not the size of a mouse, that hole is the size of an elephant.
13 That hole shows you that there is reasonable doubt. That hole shows you
14 Mr. Barber did not do it. That hole means that there is only one conclusion you
15 as a jury can come to. And that's not guilty. Thank you.

16 THE COURT: Does the State to wish to make a rebuttal argument?

17 MS. TRIPPIED: Just briefly, Your Honor.

18 Just a few quick things. The defense points out the fact that there
19 were -- that Mr. Barber's prints were not found on the wallet that was sitting on
20 the bed or anywhere else in the house. But isn't it strange that not even the
21 victims' prints were found anywhere in the house? You heard the testimony
22 about fingerprints evidence, it's -- fingerprint are hard to come across. They're
23 not discovered in every single case. They swept that house, and they didn't
24 even find a match to the victims' fingerprints. Even though the victims testified
25 that they were there that morning.

1 What does that tell us, ladies and gentlemen, that the prints found
2 on the window are more likely to have been recent prints because as we all
3 know, even the victims' prints were not found on certain surfaces in the house
4 and nowhere in the house that was checked. And she told you that she's
5 hundred percent certain.

6 And, you know, even when during cross-examination of the forensic
7 scientist, the defense attorneys brought up a case where, one case and they
8 asked her if she's ever heard of it, where fingerprint evidence was wrong and
9 she said she might recall the name of the case, well, ladies and gentlemen, don't
10 you think that if fingerprint evidence were flawed, don't you think that we would
11 have heard about a lot more cases where --

12 MS. MAXEY: Objection, Your Honor.

13 MS. TRIPPIED: -- they were wrong.

14 THE COURT: Hang on. What's the objection?

15 MS. MAXEY: She's going way out of the scope of the evidence that was
16 brought into court. She talked about the Brandon Mayfield case and --

17 THE COURT: Yeah, hang on.

18 MS. MAXEY: -- and she's also shifting the burden too, Your Honor. She
19 is trying to say that we should have brought up more cases.

20 THE COURT: All right. Well, the objection's overruled. It's argument. Go
21 ahead.

22 MS. TRIPPIED: Ladies and gentlemen, we all know that there were
23 prints found on an exterior window. It doesn't matter that it was exterior, interior,
24 or side, we know that it was the point that was used to make entry. We know
25 that those prints were 100 percent the prints of the defendant, Jaquez Barber.

1 There is no other explanation for those prints to be on that window the morning
2 after the burglary occurred when the grand larceny occurred, hold him
3 responsible. Make sure that justice is served. Thank you.

4 THE COURT: All right. Is Paula here yet? Oh, excellent. All right.

5 At this time, ladies and gentlemen, I am going to introduce you to
6 Paula Walsh. What's going to happen is I'm going to tell you who the two
7 alternates in this case are. We're going to swear you guys separately to take
8 charge of the jury.

9 Madam Clerk, you can swear Randy and Paula to take charge of
10 the jurors and the alternates.

11 [The Clerk swore in the officers to take charge of the jury during deliberations.]

12 THE COURT: All right. I will now inform you that the two alternates in this
13 case are the juror with Badge Number 13, Sandra Cooper, and Badge Number
14 14, Claudia Iglesias. The two of you are going to go with Paula. She's going to
15 give you further instructions. And the rest of you are going to go with Randy
16 back to the deliberation room.

17 I will tell the two of you, even though you're alternates, I don't know
18 how you feel about that, some people are happy, some people are disappointed,
19 you would be surprised how often we need to call an alternate in. Until the
20 decision has been reached you are under oath, so all the same as
21 admonishments apply. You may be plugged into this case at any time, so don't
22 talk to anybody about this case, don't reach any conclusion about this case.
23 Don't do any investigation. Paula will go over all of that with you.

24 But I need the 12 of you to go with Randy and the two of you to go
25 with Paula.

1 Wait, somebody left a jacket. You guys need to take everything.
2 No, you're not coming back here. Well, eventually you will come back here
3 when a verdict is reached. But I don't know how long that's going to be. So you
4 guys need to take everything just in case.

5 [The jury retired to deliberate at 1:34 p.m.]

6 [Outside the presence of the jury]

7 THE COURT: All right. We are now outside the presence of the jurors
8 and the alternates. Anything that either side wanted to address or put on the
9 record?

10 MS. ROMNEY: I don't believe so, Judge.

11 MS. MAXEY: No.

12 THE COURT: All right, let's make sure that somebody here has your cell
13 phone numbers for whenever they come back. I have no idea how long it's
14 going to be. But --

15 MS. ROMNEY: I know Paula has them.

16 THE CLERK: I think we already have them.

17 THE COURT: Paula has them? Oh, okay, good. All right, then I guess
18 we are off the record then.

19 [Recess at 1:35 p.m.; proceeding resumed at 3:08 p.m.]

20 [Outside the presence of the jury]

21 THE COURT: All right. We're on the record. State versus Jaquez
22 Barber, C268471. We -- the defendant is present in custody. We are outside
23 the presence of the jury.

24 We have a note, unfortunately it's not actually signed even though
25 the instructions say they're supposed to sign it. But presumably it's written by

1 the foreperson. It says, quote, "One juror does not feel well and would like to be
2 excused," end quote. So what we did is out of an abundance of caution, we
3 called the alternate, one of the alternates already and she's on her way in. She
4 should be here, by her estimate, in about ten minutes or so.

5 I don't know exactly what's going on. But normally the procedure
6 would be we'd call the jury in, I'd ask, you know, who is the person with the issue
7 and ask them what the issue is. If it's a legitimate sickness, that's one thing, if
8 it's really she just doesn't want to deliberate, you know, maybe she is the whole
9 lone hold-out, maybe it's six to six and they're kind of stuck, you know, you can't
10 really just use illness as an excuse. But these are the questions I would ask, is it
11 a real physical illness or is it just you don't want to be here, kind of a thing.

12 If -- if there is a legal reason, if she's actually, like, physically sick,
13 obviously, I'm just going to remove her and plug the new the alternate juror in. If
14 her reason is that -- if it's not really a physical illness and she just doesn't want to
15 participate anymore, then that's not a legal reason to excuse her. But at that
16 stage if you guys want to stipulate to replace her then we can do that and not
17 worry about what her reason is. But that's up to you guys obviously and after
18 consultation with your client. But we don't know that, that would be the next step
19 is I'll call them in here and ask exactly what's going on and get an explanation
20 from her.

21 So that's the -- what we're going to do now. What was the issue
22 you wanted to bring up?

23 MS. ROMNEY: On the way over here we were in the elevator and
24 another D.A. got on to the elevator, Jenny Herbert, whatever her new last name
25 is.

1 MS. MAXEY: That's her maiden name, I don't know her --

2 MS. ROMNEY: And she told us, she asked us if we were in trial. We said
3 yes. She asked us what department. We told her. And she said, oh, yeah, one
4 of my friends is on your jury, Lonnie Smith, you know, he told me --

5 THE COURT: Is he one of the jurors?

6 THE CLERK: Yes, number seven.

7 MS. ROMNEY: Yes. And he said, oh, how come you couldn't get me --
8 made some comment about how come you couldn't get me out of this. I don't
9 know when that comment was made to her, but I don't think he actually
10 disclosed when we asked the question if you knew anybody in law enforcement
11 or anybody in the D.A.'s office, I don't -- I'll look, but I don't think he said
12 anything.

13 MS. MAXEY: And I think we would have remembered if he -- if there was
14 mention of a friend being a district attorney working in this building.

15 MS. ROMNEY: I don't --

16 MS. MAXEY: And I think that's something that would have stood out.

17 MS. ROMNEY: So I don't know if you want to ask him questions.

18 MS. TRIPPIED: I do want to make a record though, that Jenny Herbert,
19 or whatever her knew last name is, she's not on my team, she works completely
20 across the entire office from me. I haven't even seen her in probably a month.
21 That's how little we work together. So and I haven't seen her the entire -- or
22 spoken with her, the entire time that this trial has been going on. And I probably
23 haven't seen her or spoken with her in the last month that I recall.

24 MS. ROMNEY: And I'm not necessarily saying that --

25 MS. TRIPPIED: I'm just --

1 MS. ROMNEY: -- you know, like making an accusation that they would
2 have talked about the case or anything, but since he didn't say that up front, I --
3 it was worth -- it's worth mentioning so I don't know, Judge, if you want to
4 question him at all.

5 THE COURT: Yeah, I'm looking at my notes. I didn't write anything one
6 way or the other about him having any friendship with any police officers or law
7 enforcement. So, and I don't have any independent memory one way or the
8 other I just don't recall either way.

9 MS. ROMNEY: We're going to check real quick and see.

10 MS. MAXEY: What was --

11 MS. ROMNEY: Lonnie Smith.

12 MS. MAXEY: What I wrote down -- I don't anything about anything. The
13 story I remember him talking about was he was -- he had a home burglary, it
14 was dismissed, he wasn't happy with the outcome. It actually was heard here in
15 this building.

16 THE COURT: Right, burglarized eventually dismissed. Right, I do
17 remember that he's a construction foreman.

18 MS. MAXEY: Yes, I don't remember anything --

19 MS. ROMNEY: We can't stay for sure, but I think if he would have
20 mentioned that we would have written that down.

21 MS. MAXEY: -- any mention.

22 MS. ROMNEY: So, I don't know.

23 THE COURT: All right. All right, well, what we're waiting for now is the
24 alternate.

25 MS. ROMNEY: Do you want to question him first while we wait for the

1 alternate to get here?

2 THE COURT: Yeah, let's do this, let's bring 'em all in here, and let's figure
3 out who the sick juror is first of all.

4 MS. ROMNEY: Okay.

5 THE COURT: I mean, because the other thing is it could be him, right,
6 and then we kill two birds with one stone but --

7 MS. ROMNEY: I suppose.

8 THE COURT: -- but let's go ahead and bring jury in then, Randy. Unless
9 you guys have anything else you want to address before we do that?

10 MS. ROMNEY: No, I just, I wanted to bring that up because it, you
11 know --

12 THE COURT: Right.

13 MS. ROMNEY: -- the comment was made to us, so.

14 THE COURT: All right, let's bring 'em in here.

15 Do you want me to ask him outside the presence of the other
16 jurors? Or I'm not sure --

17 MS. ROMNEY: Yes.

18 THE COURT: Okay.

19 THE MARSHAL: Judge, you can forget about the note, they said give
20 them about 10 to 15 minutes, and they'll be ready.

21 THE COURT: What does that mean? That means they'll have a verdict?

22 THE MARSHAL: That's what I took from it.

23 MS. ROMNEY: Well, the only issue is --

24 THE COURT: Randy, come over here for one second. Okay. Can you
25 turn on the white noise?

1 [Bench conference -- not transcribed]

2 THE COURT: All right, so you want me to bring Mr. Smith, Juror No. 7 in
3 to follow up on that?

4 MS. ROMNEY: Well, yes, but I --

5 MS. MAXEY: We have a concern that they feel that they're just rushing
6 just to -- because we have a sick juror.

7 MS. ROMNEY: Regardless of what decision they're going to make.

8 MS. MAXEY: Yes.

9 MS. ROMNEY: I mean, someone said they were sick and couldn't
10 continue and now it's, well, give us ten more minutes, I mean, I wouldn't want
11 them to rush to a conclusion either way just for the sake of, well, let's just hurry
12 up and get home so the sick person can leave.

13 THE COURT: Well, I mean, but the problem is I can't, I mean, I'm not
14 sure what you're asking for. I can't call them in here and tell them to slow down.
15 We can't sort of --

16 MS. ROMNEY: No. But you could bring in the sick juror still and ask and
17 make sure that whatever decision she's making is one that she would make
18 regardless of the, you know, of whether she's sick or not and not just rushing to
19 get home because she feels ill.

20 THE COURT: Well, all right, let's do this one at a time, what do you want
21 to do about Mr. Smith then? Do you want me to bring him in and you can ask
22 him or we can --

23 MS. ROMNEY: I want both of them to be asked questions.

24 THE COURT: Well, the problem is we can't bring in more than one at the
25 time because the note does not identify who the juror is. So we have to bring all

1 of them if them in if we're going to do that.

2 THE MARSHAL: Do you want to just bring in the foreperson to address
3 the note about the person which one it is and --

4 MS. ROMNEY: Can we not ask them who's sick?

5 THE MARSHAL: Huh?

6 MS. ROMNEY: Can we not ask them who's sick since they didn't --

7 THE MARSHAL: Well, what I'm saying is if you don't want to bring the
8 whole jury in and ask each individual one, if you want bring the foreperson who's
9 responsible for the jury at this point, she ask identify which one it is and why now
10 -- they continued to deliberate while they're waiting.

11 MS. ROMNEY: Right.

12 THE MARSHAL: She can address why the -- the juror doesn't feel that
13 she needs -- he or she needs to leave now.

14 MS. ROMNEY: Judge, it's up to you how you want to do it, but I just think
15 for the sake of the record it needs to be addressed.

16 THE COURT: Well, I mean, the problem is any time you get these issues
17 and they withdraw their note, you're treading a fine line because you can ask
18 them about the sickness, but you can't ask them, hey, how is it they're back to
19 deliberate, you can't ask them that question.

20 MS. ROMNEY: No. I'm not trying to get at that that. I -- my only concern
21 is I don't want someone to rush through the deliberation process because they
22 feel ill. Regardless of what decision it is that they ultimately make, that's not
23 necessarily my concern, I'm not asking for her to tell me, well, would you have,
24 you know, said not guilty if you were feeling -- I mean, I'm not asking for any of
25 that. I just want --

1 Someone left a note saying that they were so sick that they didn't
2 feel that they continue, I want to make sure that they're not rushing to a decision
3 just for the sake of going home because they don't feel good. If they can come
4 in and say, That didn't make an impact on my decision, then that's what they'll
5 say. But I think it for, like I said, for the sake of the record, it needs to be
6 addressed.

7 THE COURT: All right. Let's bring the foreperson in, Randy. Who is the
8 foreperson by the way, do we know?

9 THE MARSHAL: It's the elderly lady with the short --

10 MS. ROMNEY: Like No. 2 or something?

11 MS. MAXEY: Or No. 3, yeah, the pastor's wife.

12 THE MARSHAL: Yeah.

13 THE COURT: All right, let's bring her -- let's bring the foreperson in here.

14 [Only Juror No. 10 present]

15 THE COURT: Hi, ma'am, can you come up here and stand kind of in the
16 front near that microphone?

17 JUROR NO. 10: Sure.

18 THE COURT: For the record, what is your badge number, ma'am?

19 JUROR NO. 10: Number 10.

20 THE COURT: Number 10, you are Ms. Beller?

21 JUROR NO. 10: Yes.

22 THE COURT: And you are the foreperson of this jury?

23 JUROR NO. 10: Yes.

24 THE COURT: All right. For the record, we have brought Ms. Beller in,
25 she is the only juror right now. I wanted to ask you a question, a little while ago I

1 was given a note that reads, "One juror does not feel well, I would like to be
2 excused." This is a note that you wrote on behalf of the jury?

3 JUROR NO. 10: Yes.

4 THE COURT: What is -- but now I'm being told that apparently this
5 person, well, I'm not exactly sure what's going on, maybe you can tell me what's
6 going on, but it's my understanding that this person is not so ill that they want off
7 the jury any more; is that the situation?

8 JUROR NO. 10: Correct.

9 THE COURT: What --

10 JUROR NO. Yes.

11 THE COURT: Can you explain to me a little bit -- without going in to the
12 substance of any deliberations or anything you've talked about regarding the
13 case, I just want to know about the illness and this juror.

14 JUROR NO. 10: Correct. This person said they had a really bad
15 headache and just wanted to get out of here. So I turned that note in. And then
16 as we waited for an answer or response to that, they seemed to get better and
17 didn't seem to be as upset as they were or as ill as they were and --

18 THE COURT: So is it your understanding that as of right now the juror's
19 physical condition is such that she can continue participate?

20 JUROR NO. 10: Yes.

21 THE COURT: Okay. And it's not that, I just want to make sure, it's not
22 that you're just -- she feels that you're rushing to a verdict just so she can get it
23 over with and because of her illness so I can go home and lie down, she's
24 actually participating, her --

25 JUROR NO. 10: Yes.

1 THE COURT: -- physical condition has improved and all that?

2 JUROR NO. 10: Yes. And is actively speaking with everybody and
3 throwing comments out and so forth.

4 THE COURT: Okay. Does either side want to ask any questions of Ms.
5 Beller?

6 MS. ROMNEY: No, Judge.

7 MS. MAXEY: No, I don't think so.

8 MS. TRIPPIEDI: No, Your Honor.

9 THE COURT: All right. Thank you very much.

10 JUROR NO. 10: Uh-huh.

11 [Outside the presence of the jury]

12 THE COURT: All right. We're now outside the presence of the jury again,
13 so, I mean, does that answer satisfy everybody or no?

14 MS. MAXEY: I'm okay with it, yeah

15 MS. TRIPPIEDI: It satisfies the State.

16 THE COURT: Okay. Then let's go to the second issue, which is on Mr. --

17 MS. MAXEY: Number 7, Lonnie Smith.

18 THE COURT: -- forgot his name, Mr. Smith, who apparently is Badge
19 Number 7; do you want to bring him in here and ask a couple questions?

20 MS. MAXEY: Yes.

21 THE COURT: All, right Randy, let's go get Number 7 then.

22 MS. ROMNEY: Are you going to canvass him a little bit first?

23 THE COURT: Yeah, I'll ask him first so he doesn't know who the
24 information came from.

25 MS. ROMNEY: Okay.

1 MS. MAXEY: Okay.

2 [Only Juror No. 7 present]

3 THE COURT: All right, Mr. Smith, Badge Number 7, for the record he is
4 the only juror in here.

5 Mr. Smith, here's the situation, one of the D.A.s who currently works
6 for the office, indicated that she may know you. Her name is, I'm not sure what
7 her current name is, her maiden name Jennifer Herbert. I know she got married
8 a few months ago. So I don't know her married name. Is that somebody that
9 you know?

10 JUROR NO. 7: I know her husband.

11 THE COURT: Her husband?

12 JUROR NO. 7: Yeah.

13 THE COURT: Okay. Do you know her?

14 JUROR NO. 7: Yeah, we met before.

15 THE COURT: Were you aware that she worked in the D.A.'s office?

16 JUROR NO. 7: I was aware, but I knew she wasn't part of, like, this
17 division.

18 THE COURT: Okay. Well let me ask you this, one of the questions that I
19 asked at the very beginning, and it was really toward the beginning of when we
20 started here was does anybody have any close friends who are involved in law
21 enforcement in any capacity including defense lawyers or the D.A.'s office, you
22 heard me ask the question, right?

23 JUROR NO. 7: Yeah, I did. I didn't really think it relevant because I
24 didn't -- I'm, like I said, I'm friends with her husband. I'm not really friends with
25 her, I mean.

1 THE COURT: Okay.

2 JUROR NO. 7: That's why I didn't even think about it, I mean.

3 THE COURT: Okay. So it was --

4 JUROR NO. 7: I don't have her number or anything like that, I don't -- I
5 don't really talk to her, like I said, I talk to her husband, so.

6 THE COURT: Okay, so --

7 JUROR NO. 7: I wouldn't feel guilty, like --

8 THE COURT: Right. No, I just want to make sure, you know, because
9 jury questioning is done under oath, I want to make sure, so was it because the
10 question that I asked, strictly speaking, was do you have any close friends, is
11 that --

12 JUROR NO. 7: Right.

13 THE COURT: -- is that why you did not answer in the affirmative?

14 JUROR NO. 7: Yes.

15 THE COURT: Okay.

16 JUROR NO. 7: I mean, like, everybody knows something that's, you
17 know --

18 THE COURT: Right. When was the last time you actually spoke with her,
19 just out of curiosity? Give me sort of a range, weeks? Months? Days ago?

20 JUROR NO. 7: I don't know, months ago.

21 THE COURT: Okay. And just to make sure, you've never talked with her
22 about this case?

23 JUROR NO. 7: Oh, no.

24 THE COURT: Has she talked with you about, you know, procedures in
25 the D.A.'s office, cases she's worked on, investigative procedures, anything like

1 that?

2 JUROR NO. 7: No.

3 THE COURT: Is there anything about your relationship with her or her
4 husband -- what does her husband do? He's not a D.A.?

5 JUROR NO. 7: He's salesman.

6 THE COURT: He's a salesman? Okay. Anything about your relationship
7 with her or her husband or anything that you guys have spoken about that would
8 cause you to have any inside information or cause you to be something other
9 than fair and impartial in this case?

10 JUROR NO. 7: No.

11 THE COURT: All right. Does either side have any follow-up questions for
12 Mr. Smith?

13 MS. TRIPPIED: No, Your Honor.

14 MS. ROMNEY: I don't think we have any questions, Judge.

15 THE COURT: All right. Mr. Smith, I appreciate it. I didn't mean to single
16 you out, but as you know when some times --

17 JUROR NO. 7: Yeah, no, that's fine.

18 THE COURT: -- I hear this information, I just have to make sure that it
19 wasn't that you're, you know, and I'm not accusing this of you, but sometimes
20 you get people who, you know, either -- either are not entirely honest because
21 they either want to be on a jury or don't want to be on a jury. And I just wanted
22 to make sure.

23 JUROR NO. 7: I had no desire to be on this jury, so.

24 THE COURT: Okay. No, I just wanted to make sure it wasn't anything
25 like that. So I appreciate your time.

1 JUROR NO. 7: No, no, no.

2 THE COURT: And you can go back in there. And thank you very much.

3 JUROR NO. 7: Okay.

4 [Outside the presence of the jury]

5 THE COURT: All right. So now we're outside the presence of Juror
6 Number 7. So based on that discussion was there any record that either side
7 wanted to make?

8 MS. ROMNEY: I don't think so, Judge.

9 MS. TRIPPIEDI: Not on behalf of the State.

10 THE COURT: All right, then is there anything else either side wanted to
11 address? Otherwise, we'll just, I guess, go off the record and wait for how ever
12 long it takes 'em.

13 MS. ROMNEY: That's it.

14 THE COURT: It'll probably be more than ten minutes now because we
15 just broke up -- we had Number 7 in here, but, all right, then we'll go off the
16 record.

17 [Recess at 3:25 p.m.; proceeding resumed at 3:28 p.m.]

18 [Outside the presence of the jury]

19 THE COURT: All right, well, let's go on the record. Apparently we have a
20 verdict. So let's see here, before we bring the jury in and hear the verdict is
21 there anything that either wanted to address? Or we want to just bring them in
22 since we're all here right now anyway?

23 MS. ROMNEY: We're all here.

24 THE COURT: It's up to you guys. All right. Let's go ahead and bring
25 them in, Randy.

1 [In the presence of the jury]

2 THE COURT: Will counsel stipulate to the presence of the jury?

3 MS. ROMNEY: Yes, Your Honor.

4 MS. TRIPPIED: Yes, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, have you chosen a
6 foreperson and if so who is the foreperson person? All right. Madam
7 Foreperson, have all 12 members of the jury reached a unanimous verdict as to
8 the charges presented to them?

9 JUROR NO. 10: Yes.

10 THE COURT: Please hand the verdict form to the marshal. The clerk will
11 now read the verdict of the jury.

12 THE CLERK: District Court, Clark County, Nevada, the State of Nevada,
13 plaintiff, versus Jaquez Barber, defendant. Case number C10-268471,
14 Department Number 20, verdict. We the jury in the above entitled case find the
15 defendant, Jaquez Barber, as follows: Count 1, burglary, guilty; Count 2, grand
16 larceny, guilty, dated this 11th day of October, 2012, Janet Beller, Foreperson.

17 Ladies and gentlemen of the jury, are these your verdicts as read so
18 say you one so say you all?

19 THE JURY PANEL: Yes.

20 THE COURT: Does either party wish to have the jury individually polled?

21 MS. ROMNEY: Yes, please.

22 THE CLERK: Janet Nakae.

23 JUROR NO. 1: Nakae.

24 THE CLERK: Nakae, is that -- are those your verdicts as read?

25 JUROR NO. 1: Yes.

1 THE CLERK: Judy Barron, are those your verdicts as read?
2 JUROR NO. 2: Yes.
3 THE CLERK: Vicky Kragor, are those your verdicts as read?
4 JUROR NO. 3: Yes.
5 THE CLERK: Rafael Cerros, are those your verdicts as read?
6 JUROR NO. 4: Yes.
7 THE CLERK: Gail Spriggs, are those your verdicts as read?
8 JUROR NO. 5: Yes.
9 THE CLERK: Niki Lawrence, are those your verdicts as read?
10 JUROR NO. 6: Yes.
11 THE CLERK: Lonnie Smith, are those your verdicts as read?
12 JUROR NO. 7: Yes.
13 THE CLERK: Ceasar Fernandez, are those your verdicts as read?
14 JUROR NO. 8: Yes.
15 THE CLERK: Elizabeth Young, are those your verdicts as read?
16 JUROR NO. 9: Yes.
17 THE CLERK: Janet Beller, are those your verdicts as read?
18 JUROR NO. 10: Yes.
19 THE CLERK: Xavier Morales, are those your verdicts as read?
20 JUROR NO. 11: Yes.
21 THE CLERK: Stephen Billets, are those your verdicts as read?
22 JUROR NO. 12: Yes.
23 THE CLERK: The panel has answered affirmative, Your Honor.
24 THE COURT: The verdict of the jury shall now be recorded in the minutes
25 of the court.

1 Go ahead and be seated. Ladies and gentlemen, on behalf of the
2 court and all the parties to this case and the State of Nevada, I thank you for
3 your service, you are now discharged from your duties which means that now
4 you can talk to anyone you wish to about any aspect of this case. Frequently
5 the attorneys in the case may want to come and talk with you, ask you questions
6 about maybe the reasons for your decision, you are free to talk with them if you
7 want to. If you don't want to talk with them, you are not required to.

8 One of the things that I take seriously is, we ask so much of people
9 who are willing to serve on jurors that one thing I don't want happening is that
10 you guys are being harassed either -- I don't think there is a lot of press attention
11 in this case, but sometimes people get calls from reporters and it's just nonstop,
12 or attorneys or someone else that's related to this case. If that happens, please
13 let Randy know and I will take care of it.

14 I do want to thank you, I know that at the beginning of this case I
15 said it would be two days, we're now into three days, and I do apologize for that.
16 There is, as you've heard, I've given you some of reasons, we have this whole
17 courtroom sharing thing and so we can't always start when we want to. And
18 they're are just a lot of things that we have to do outside of your presence that
19 you, by law, are not entitled to hear about.

20 Now that the case is over, you can ask questions if you want of the
21 attorneys of exactly what happened. But again if you don't want to, that's totally
22 up to you. I do thank you for your service.

23 One thing I do ask of my juries is Randy's going to take you back to
24 the room, if I can ask to you to stay for just five more minutes, all I want to do is
25 go back there, shake all of your hands. If you have any questions for me about

1 anything that happened I'm happy to answer them. If you don't want to answer
2 my questions, just shake my hand and leave and I won't take it personally
3 because I know it's been a long day and a long week. But I do thank you.

4 And Randy, if you can take them back and I'll step back there in
5 about a minute and just -- and just do that. If you want to stay and ask any
6 questions, I will be happy to do that, so if not you're free to go after shaking my
7 hand. All right. Thank you very much.

8 [Outside the presence of the jury]

9 THE COURT: All right. We're still on the record outside the presence of
10 the jury. Anything that either wanted to address or put on the record?

11 MS. ROMNEY: No, Judge.

12 MS. MAXEY: No, Judge.

13 THE COURT: All right. This matter is referred to the Department of
14 Parole and Probation for presentence report and is set over for entry of
15 judgment and imposition of sentence on this date and time.

16 THE CLERK: December 13th at 8:30.

17 THE COURT: All right. I don't -- I think -- he's in custody on another
18 matter, right? So there is no issue of bail or anything on this case?

19 MS. TRIPPIED: He should be also in on this case though, right?

20 THE COURT: I actually don't know what his --

21 MS. ROMNEY: He is, but he's serving a sentence at N.S.P. so he'll go
22 back there and come down.

23 THE COURT: Right, it's not like he's -- okay. Gotcha, so they'll probably,
24 I guess they'll have to come and visit him at N.S.P. to do the presentence
25 investigation report then.

1 MS. ROMNEY: And I guess I should make that clear, he was remanded
2 down here to CCDC for the purpose of trial, but now that it's over --

3 THE COURT: Do you want me to keep him or not?

4 MS. ROMNEY: No, no, no, no. I'd ask that you lift that so that he can go
5 back, please.

6 THE COURT: All right. Then you are -- you are no longer ordered to be
7 held at CCDC so you can go back. I know it's much nicer up in Indian Springs
8 anyway. Or are you in Indian Springs or Lovelock? I don't even know, but it's
9 nicer there anyway. CCDC, you know, it's overcrowded and all that kind of stuff.

10 THE DEFENDANT: I'm at High Desert.

11 THE COURT: Although someone told me apparently the food's better
12 down here than it is up there, I don't know if you agree with that or not but not so
13 much? Okay. All right. Then that will be the order I thank all of you. And let me
14 go back there, give me about five minutes with the jury, and then I'll come out
15 there, and you can guys can go back there and visit with them if you want to, all
16 right.

17 MS. ROMNEY: Thank you.

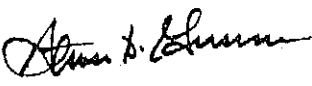
18 PROCEEDING CONCLUDED AT 3:35 P.M.

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21 ATTEST: Pursuant to Rule 3C(9) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
23 proofread, corrected, or certified to be an accurate transcript.

24 

25 SARA RICHARDSON
Court Recorder/Transcriber


CLERK OF THE COURT

1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,

CASE NO. C268471

6 Plaintiff(s),

7 vs.

DEPT. NO. XX

8 JAQUEZ DEJUAN BARBER,

9 Defendant.

10
11 BEFORE THE HONORABLE JEROME T. TAO, DISTRICT COURT JUDGE

12 THURSDAY, DECEMBER 13, 2012

13
14 **ROUGH DRAFT**
15 **RECORDER'S TRANSCRIPT OF SENTENCING**

16 APPEARANCES:

17 For the State:

HETTY O. WONG
Deputy District Attorney

18
19 For the Defendant:

KERRI J. MAXEY
Deputy Public Defender

20
21
22
23
24 RECORDED BY: SARA RICHARDSON, COURT RECORDER

25
Rough Draft - page 1

1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 13, 2012, 8:36 A.M.

2 THE COURT: This is top of page 6, State versus Jaquez Barber, C268471.

3 Mr. Barber was not transported from NSP, so what we need to do is pass the
4 sentencing, and, State, you're going to need to do an order to transport.

5 MS MAXEY: Thank you, Your Honor.

6 THE COURT: So, you probably need at least a couple of weeks to do that.
7 You want to pass it -- well, we're coming in the holidays now, probably January,
8 then, unless you want an earlier date? Does that work for everybody?

9 MS. MAXEY: I'm sorry, I didn't hear the date.

10 THE COURT: I was thinking early January, or do you want it sooner than
11 that?

12 MS. MAXEY: I have a trial on January 4th, so --

13 THE COURT: You want to try a couple of weeks from now, then?

14 MS. MAXEY: Yeah; that's fine.

15 THE COURT: Let's do that, then.

16 THE COURT CLERK: Okay. Will you want it after the 4th or before?

17 MS. MAXEY: That's fine. After the 4th is fine.

18 THE COURT CLERK: Okay. How about January 10th?

19 MS. MAXEY: Perfect. Thank you.

20 THE COURT: All right. That'll give us plenty of time to get him down from
21 NSP then.

22 MS. MAXEY: Okay. Thank you, Your Honor.

23 THE COURT: All right. See you then.

24 ///

25 ///

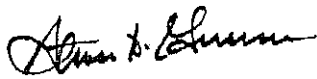
1 PROCEEDING CONCLUDED AT 8:37 A.M.

2 *****

3 ATTEST: Pursuant to Rule 3C(9) of the Nevada Rules of Appellate Procedure, I
4 acknowledge that this is a rough draft transcript, expeditiously prepared, not
5 proofread, corrected, or certified to be an accurate transcript.

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7 SARA RICHARDSON
8 Court Recorder/Transcriber
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CLERK OF THE COURT

1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,

6 Plaintiff(s),

7 vs.

8 JAQUEZ DEJUAN BARBER,

9 Defendant.

CASE NO. C268471

DEPT. NO. XX

10
11 BEFORE THE HONORABLE JEROME T. TAO, DISTRICT COURT JUDGE

12 THURSDAY, JANUARY 10, 2013

13
14 **ROUGH DRAFT**
15 **RECORDER'S TRANSCRIPT OF SENTENCING**

16
17 APPEARANCES:

18 For the State:

HAGAR TRIPPIEDI
Deputy District Attorney

19
20 For the Defendant:

CLAUDIA L. ROMNEY
KERRI J. MAXEY
Deputies Public Defender

21
22
23
24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 10, 2013, 9:53 A.M.

2 THE COURT: Barber, C268471.

3 THE MARSHAL: The DA had to run upstairs, Sir.. She'll be right back.

4 [Matter trailed]

5 [Matter recalled at 10:13]

6 THE COURT: Bottom of 9, State versus Jaquez Barber, C268471. Mr.
7 Barber's present in custody. This is the time set for sentencing. Any legal cause or
8 reason why sentencing should not go forward?

9 All right. Mr. Barber, by virtue of the jury's verdict, I hereby adjudicate you
10 guilty of Count 1, Burglary, and Count 2, Grand Larceny. Both are felonies. For the
11 record, are you a veteran of the United States Armed Forces?

12 THE DEFENDANT: No.

13 THE COURT: All right. State, what is your position at sentencing?

14 MS. TRIPPIEDI: Your Honor, it's -- the Defendant was convicted of burglary
15 and grand larceny for his actions. You sat through the trial. You heard that there
16 were fingerprints found on the window that was used to gain entry during the home
17 burglary. The victims testified that cash was stolen, items were moved. The house
18 was basically ransacked.

19 THE COURT: And I have no restitution amount because they couldn't contact
20 the victim. Do you have anything from VWAC, or no?

21 MS. TRIPPIEDI: I have the restitution amount. It's \$7,000.

22 THE COURT: All right.

23 MS. TRIPPIEDI: So, Your Honor, this Defendant has one prior felony
24 conviction. That's the one that he's serving -- currently serving a sentence for. The
25 conviction was for battery with use. He's also a confirmed gang member. He also,

1 pursuant to the PSI, denies committing this offense. Your Honor, we're going to
2 request that you sentence him to 28 to 72 months per each count that he was
3 convicted of. We have no problem with these two counts running concurrent to
4 each other, since they arise from the same incident. However, we are going to
5 strongly urge that you run these counts consecutive to the Defendant's time that
6 he's currently serving. If you run it concurrent, then he essentially gets a free pass
7 for committing this home burglary, so there's no reason why he shouldn't serve extra
8 time for committing this additional crime from the one that he was sentenced for; so
9 based on that, we'll submit it.

10 THE COURT: All right. Mr. Barber, anything that you want to say prior to
11 sentencing, or do you want to let your attorney speak for you?

12 THE DEFENDANT: No. She can speak.

13 THE COURT: All right. On behalf of your client.

14 MS. ROMNEY: Your Honor, you heard the trial on this case, so I won't
15 necessarily regurgitate the facts, since, in fact, we spent a few days -- we're all
16 about played out, but Mr. Barber has always maintained his innocence on this case.
17 That was one of the reasons why the case went forward with trial. Obviously, we
18 have to respect the jury's decision in this matter, but I don't want that to necessarily
19 be held against him here at sentencing because he hasn't taken responsibility. You
20 know, we put forth some argument and did the best we could to question some of
21 the evidence that was presented by the State, and I think Mr. Barber has kind of
22 stood by that argument.

23 THE COURT: Well, I -- let me just -- let me ask you this, then. Do you have
24 an explanation why his fingerprint is there, and I understand at a trial, you made the
25 argument that fingerprints aren't as reliable as people think they are, but why would

1 -- even if there's some issue with the fingerprint, why would it come back to him, as
2 opposed to any other person in the universe?

3 MS. ROMNEY: Well, Judge, I think -- I think we made all of that argument at
4 trial. You know, they were the finders of fact. We're not -- we respect their decision.
5 That would -- that's exactly the question that's kind of up for the jury. I just don't
6 want it to be held against him that he, you know, has always kind of maintained his
7 innocence and disputed some of those facts and the science that we put forth at
8 trial.

9 He does have one prior felony, technically. However, this case actually
10 predates the case. It was filed after he was in custody on the case that he's
11 currently serving a sentence for, and I think that's certainly something that should be
12 taken into consideration.

13 This was a residential burglary. I'm not necessarily trying to downplay the
14 serious nature of that type of offense, but I would note that, you know, no one was
15 home at the time that this happened. No one was hurt at the time that this
16 happened. This was a nonviolent offense.

17 What I would ask the Court to consider is giving him 14 to 48 months on each
18 count, concurrent to each other, because they did arise out of one incident. I'm also
19 going to ask that you impose this sentence concurrent to what he's serving in light of
20 the fact that this case did predate the case that he's currently serving, and the fact
21 that it also took quite some time for this case to be tried.

22 One of the things that I actually wanted to ask the Court to consider today was
23 giving him some credit that's not in the presentence report. When we were here in
24 January of 2012, we were on -- that was our original trial date, and at that point
25 some issues arose, some medical issues arose, and the State wasn't able to go

1 forward with trial. At that time I was getting ready to go on maternity leave, and the
2 DA was also getting ready to go on maternity leave, and because of that, the next
3 available trial date was the October date that we just had a few months ago.
4 Because that continuance was unrelated to the case itself, and certainly no fault of
5 Mr. Barber's, I was going to ask that you consider giving him credit from that time to
6 be applied towards this case, because that really wasn't his fault that there was
7 quite a considerable delay in his trial going forward, and I have from that day
8 through today is 366 days. I know that's --

9 THE COURT: You know, I'm not -- I'm not -- I understand why you're asking.
10 I'm not sure I can actually legally do that, because he's -- I mean, he's doing the 6 to
11 15 on the other case --

12 MS. ROMNEY: I think it's discretionary, Judge.

13 MS. TRIPPIED: He's not entitled to it. He was convicted on that case in
14 July, so he definitely wouldn't be entitled to it.

15 MS. ROMNEY: He was serving a sentence at that point, Judge, so I
16 understand that he's not entitled to it. I believe it's discretionary; and, like I said, I'm
17 asking for it, because at the time that wasn't -- it's not his fault that the case was
18 continued for such a long period of time for it to be tried, or at least consider giving
19 him some credit, taking that into account.

20 I, you know, I just -- had that not happened, and like I said, that wasn't his
21 fault, the case would have been tried a year ago, and I'll submit on that.

22 MS. TRIPPIED: Your Honor, can I be heard as to that issue?

23 THE COURT: Yeah. I mean the problem is he's doing a 6 to 15 in the other
24 case. Even if this case had never gone to trial, or if the DA just dismissed it, he
25 would have been in custody anyway. It really is -- I'm sure what you're about to say,

1 right?

2 MS. TRIPPIED: Right.

3 THE COURT: Something along those lines.

4 MS. ROMNEY: And I understand that, Judge, but -- and I honestly, I don't
5 know what kind of sentence you're about to impose, but had it been -- had that case
6 been tried, and he'd been sentenced in that same timeframe, and you were inclined
7 to give him a concurrent sentence, he would have started earning credit much
8 earlier, you know, obviously, then he is now, and that continuance wasn't his fault.
9 I'm just asking the Court to use its discretion and take that into consideration. If you
10 don't want to give that full amount of time, you know, I'm just asking for some
11 consideration based on that, because the continuances were not related to the case
12 itself.

13 MS. TRIPPIED: Your Honor -- so, Your Honor, he wasn't even arrested in
14 this case until after he was sentenced in the other case, so he wasn't even -- I mean
15 they -- you know, the prints didn't even come back to him until after --

16 THE COURT: Right. He probably wasn't in the system until then.

17 MS. TRIPPIED: Exactly. So, his entire time that he's been in custody on this
18 case has been pursuant to that conviction, so he's not entitled to any credit for this
19 case.

20 MS. ROMNEY: But he was remanded on this case, in custody on this case as
21 well.

22 MS. TRIPPIED: After he was convicted.

23 MS. ROMNEY: I understand. I'm not trying to give him credit from day one.
24 I'm just asking, because the last trial date was so delayed that has nothing to do
25 with the case. It wasn't a discovery issue or anything like that. I'm just asking for

1 some consideration to be made, Judge. That's all.

2 THE COURT: All right. Mr. Barber, you're 21 years old, and you're already
3 not off to a good start, between a 6 to 15 already in another case, and now the jury's
4 convicted you in this case.

5 In accordance with the laws of the State of Nevada, I assess a \$25
6 administrative assessment fee. Looks like his DNA was ordered in his other case,
7 so I'm going to waive the DNA fee in this case, and sentence him as follows in
8 Count 1, to a minimum of 12 months, maximum term of 30 months. Count 2,
9 minimum of 12 months, maximum term of 30 months. Counts 1 and 2 to be
10 concurrent to each other, but Counts 1 and 2 to be consecutive to Case Number
11 C253779. I also order that Mr. Barber pay restitution in the amount of \$7,000, and it
12 looks like -- I'm not sure what the PSI means here in terms of his credit. They say
13 credit zero, but then on the same line it says 35 days. You're asking for how much
14 more?

15 MS. ROMNEY: Well, from the January trial date that was originally scheduled
16 last year to today is 366 days, so I think that would swallow his --

17 THE COURT: I'm going to give him -- I'm going to give him the 35 days that's
18 in the PSI.

19 MS. ROMNEY: Okay.

20 THE COURT: I mean that's --

21 MS. TRIPPIED: But that 35 days doesn't even -- the September 27th to
22 November 27th --

23 THE COURT: I'm not even sure what that means. I don't know why the PSI
24 would put that.

25 MS. TRIPPIED: Not even 30 -- I really think it's an error.

1 THE COURT: I don't know why it's there. Is that -- now you're saying that's
2 not even 35 days?

3 MS. TRIPPIED: It's not even 35 days.

4 THE COURT: September, October --

5 MS. TRIPPIED: If you add it up, it's 60-something days, but -- it -- regardless
6 of that, he shouldn't get any time, 'cause all this time is after he was convicted.

7 THE COURT: Well at some point, I did remand him. I think I at least
8 remanded him after the jury's verdict, so he's entitled to some time at least since the
9 jury's verdict which would be probably 60 days, right?

10 MS. ROMNEY: Yes. It looks like October 9th was the day that we got our
11 verdict.

12 THE COURT: October 9th, so October -- so it's about -- all right. I'm going to
13 give him -- since the date of the verdict, I'm going to give him 90 days credit then.


14 MS. ROMNEY: Thank you.

15 THE COURT: All right. That'll be the order.

16
17 PROCEEDING CONCLUDED AT 10:23 A.M.

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21 ATTEST: Pursuant to Rule 3C(9) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
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24 SARA RICHARDSON
25 Court Recorder/Transcriber

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No. 62649

VS.

Respondent.

BY 
Employee, Clark County Public Defender's Office