

1 Q Do you recall testifying at the preliminary hearing
2 that he did not need to step over her body because there was
3 room to the right of her body?
4 A Yes.
5 Q And at the time at the preliminary hearing you didn't
6 recall that a dresser was there.
7 A No, I did not.
8 Q Okay. Looking at the crime scene, do you dispute
9 that that's accurate?
10 A No, I don't.
11 Q Okay. So he actually did have to step over her body?
12 A He would have, yes, her feet.
13 Q Okay. Who assisted Officer Taylor on the other side
14 of the body?
15 A Officer Hatchet (phonetic).
16 Q Officer Hatchet?
17 A Yes.
18 Q Did Sergeant Newberry ever go over there?
19 A I don't recall him at that location. Just from
20 outside the door.
21 Q Did Officer Conn ever go over there?
22 A I don't recall.
23 Q Did you ever go over there?
24 A No.
25 Q So two officers are on the other side of Ms.

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ROUGH DRAFT TRANSCRIPT

1 Q -- arrest -- you don't recall or it didn't happen?
2 A I don't recall.
3 Q It might have happened?
4 A Maybe.
5 Q Could you tell me again what three officers carried
6 Mr. O'Keefe out of the bedroom?
7 A I remember it had was Officer Hatchet and Taylor, and
8 I don't recall the third person.
9 Q If Officer Conn testified that just he and Officer
10 Taylor carried him out, would he be wrong?
11 A If that -- I don't know what you mean by that?
12 Q Well, if Officer Conn testified that it was only him
13 and Officer Taylor that carried Mr. O'Keefe out, is that
14 incorrect?
15 A It depends on how you're stating that question.
16 There were -- there were four officers once he was taken out of
17 the bedroom --
18 Q I'm asking --
19 A -- that carried him out --
20 Q -- taking out of the bedroom.
21 A -- of -- out of the apartment.
22 Q The question is taking out of the bedroom. You said
23 it was Officer Hatchet and Officer Taylor. If Officer Conn
24 testified that it was him and Officer Taylor, would he be
25 wrong?

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ROUGH DRAFT TRANSCRIPT

1 Wimarsh's body taking Mr. O'Keefe into physical custody?
2 A Yes.
3 Q And those two officers would be Hatchet and Taylor?
4 A Yes.
5 Q Okay. Do you know if they bumped her body at all
6 getting over there?
7 A No.
8 Q You don't know?
9 A They wouldn't have, no.
10 Q They would not have?
11 A No.
12 Q Are you sure they didn't?
13 A Yes.
14 Q Because you're watching her body the entire time?
15 A Because I'm watching them move in. I -- he's still
16 -- he's -- I'm still responsible for my taser wherever it, you
17 know, it may go. If the cartridge falls off or anything like
18 that, so I'm watching them in my line of sight to make sure
19 that I don't mask them with the taser.
20 Q If another officer said it was possible that they
21 bumped her body going over there, would you dispute that?
22 A If they saw it, I couldn't, I guess.
23 Q Okay. Do you recall whether anybody had to go over
24 the bed to get on the other side over to --
25 A I don't.

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ROUGH DRAFT TRANSCRIPT

1 A No.
2 Q So --
3 A If that's his recollection.
4 Q -- you could be incorrect about that?
5 A I would go with it.
6 Q Okay. So Officer Conn would be right?
7 A May I -- I'd like to -- you know, if I'm allowed to
8 answer.
9 Q Well, that --
10 THE COURT: Answer until there's an --
11 BY MS. PALM:
12 Q -- Officer Conn could be right --
13 THE COURT: -- objection.
14 BY MS. PALM:
15 Q -- is a yes or no.
16 A Sure.
17 Q Sure he could be right?
18 A Yes.
19 Q Okay. Did you see Mr. O'Keefe being put in the
20 living room?
21 A Yes.
22 Q Are you aware of any injuries that occurred to Mr.
23 O'Keefe when he was being arrested?
24 A There was a possibility when he was -- he fell and
25 his head was drug across the carpet in the living room.

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ROUGH DRAFT TRANSCRIPT

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1 Q If you testified at the preliminary hearing that you
2 did not recall an injury to his forehead, but he was put on his
3 face in the bedroom because he fell, is that correct?
4 A He fell. At what point -- you have to understand
5 it's a very dynamic situation. It was at one point because of
6 his body tensing his muscles, they weren't able to keep control
7 of him, and he fell on his face in -- on the floor. They
8 picked him back up, completed removing him out. I didn't
9 notice any -- you know, I didn't notice the mark until it was
10 shown in the photos.
11 Q My question is did he fall once or twice? Did he
12 fall in the bedroom and the living room or just the bedroom --
13 A Once. Once.
14 Q -- or just the living room?
15 A Where it happened. I don't know.
16 Q Okay. Sir, if you don't know an answer to something,
17 could you tell me you don't know?
18 A Not in the manner that you're asking it, Ma'am. He
19 fell once. The specific location through that -- through this
20 corridor, I'm -- I couldn't tell you if it happened here, here
21 or here, but he did fall -- he did get dropped because of loss
22 of control.
23 Q Okay. So outside on the balcony you testified he
24 said I didn't do this, man. She tried to stab me.
25 A Yes.

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ROUGH DRAFT TRANSCRIPT

1 of the patrol car?
2 A He did.
3 Q Do you recall previously stating that when you asked
4 Mr. O'Keefe for Ms. Wimarsh's name he gave the name Veronica?
5 A Yes.
6 Q And then he changed it to Victoria.
7 A Yes.
8 Q Do you deny that this is the first time you've ever
9 mentioned a different last name?
10 A No.
11 Q You agree that today might be the first time you ever
12 mentioned that he gave a wrong last name?
13 A In court, yes.
14 Q So when you testified at the preliminary hearing you
15 did not say Whitmore?
16 A Maybe I didn't. I don't -- if I can look at the
17 record. I don't recall.
18 Q You don't dispute -- if I tell you that it's not in
19 the preliminary hearing testimony, you don't dispute that?
20 A That's fine.
21 Q If I tell you it's not in your statement that was
22 recorded, you don't dispute that?
23 A That's fine.
24 Q Now, you testified that there was a lot of blood on
25 the bed. You never saw Ms. Wimarsh's body on the bed?

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ROUGH DRAFT TRANSCRIPT

1 Q You also just testified that he said you're going to
2 be mad at me prior to saying that.
3 A That's correct.
4 Q Do you recall that? Your testimony at preliminary
5 hearing was you guys are mad at me, you guys are mad at me.
6 Not you're going to be mad at me. Do you think your
7 preliminary hearing testimony was right or today's testimony is
8 right?
9 A It's word play. He was concerned with us being angry
10 with him.
11 Q Okay. But it's -- you understand this is very
12 important?
13 A Well, yes, ma'am. But you also have to understand I
14 recalled the statement as he was concerned with us being angry
15 with him.
16 Q Okay.
17 A The exact words I'm not --
18 Q But you said an exact quote, and that's why I'm
19 asking you. So you can't remember today what the exact quote
20 was?
21 A No.
22 Q Okay. Do you recall testifying at the preliminary
23 hearing that Mr. O'Keefe smelled real heavily of alcohol?
24 A Yes.
25 Q And do you recall he actually fell asleep in the back

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ROUGH DRAFT TRANSCRIPT

1 A No.
2 Q Just on the floor.
3 A That's correct.
4 Q Does Metro have a policy to call for medical
5 assistance to check the health of somebody who's been seized?
6 A Yes.
7 Q And do you recall whether anybody checked on Mr.
8 O'Keefe?
9 A I don't.
10 Q If they did, it wasn't at a time when you were
11 attending him?
12 A It would -- exactly.
13 Q Was it your job to stay with him outside?
14 A Not initially, no.
15 Q Did you transport him to the detective's offices for
16 an interview?
17 A I did not.
18 Q Do you know who did?
19 A No, I don't.
20 Q Do you recall testifying at preliminary hearing that
21 you had to do a use-of-force report?
22 A That's correct.
23 Q Can you explain what that is?
24 A Any time force is used on a subject, a reportable
25 force would be where there's some type of injury or, in fact,

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1 when a taser was used, you document that incident to basically
2 explain why you used it, what was the outcome, and, you know,
3 the basic premise of the call.
4 Q And is that a written document?
5 A It's now done on computer format.
6 Q Okay. And you did complete a computer form --
7 A Yes.
8 Q -- for the use of force? Would that have been only
9 you that did one because you were the one that used the taser?
10 A Yes.
11 Q And would the case detectives have access to that
12 report if they needed to get it?
13 A They would, yes.
14 Q Now, you were saying in response to questions that as
15 far as you knew, Mr. O'Keefe was the only person who had Ms.
16 Wilmarsh's identity.
17 A Yes.
18 Q Were you aware that her purse with her wallet and
19 driver's license was right there on the kitchen sink?
20 A No, I wasn't.
21 Q Were you aware that she had other mail and other
22 items in the house with her name on them?
23 A It was a crime scene. Weren't permitted reenter.
24 Q There were people in the crime scene still. You were
25 outside.

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ROUGH DRAFT TRANSCRIPT

1 A It's a photo of the bed that was in the bedroom where
2 the Victoria and Mr. O'Keefe were when we arrived.
3 Q Okay. And can you point to the knife that you saw on
4 the bed.
5 A Here.
6 Q Okay. And you testified that Mr. O'Keefe wasn't near
7 the knife; is that right?
8 A That's correct.
9 Q Victoria wasn't near the knife either, was she?
10 A No, she was not.
11 Q Now, you were asked some questions by Ms. Palm about
12 what officers were actually detained and took the defendant
13 into custody. Where was your line of sight when you were
14 looking in the apartment or in the bedroom at that point?
15 A Focused on Mr. O'Keefe.
16 Q Okay. Now, you testified that you had deployed the
17 taser.
18 A Yes.
19 Q Are there two prongs on the taser?
20 A There are.
21 Q Okay. The first time that it was deployed, is that
22 -- am I using the correct term deployed?
23 A Yes.
24 Q Is that what you call it, deploy?
25 A Yes.

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ROUGH DRAFT TRANSCRIPT

1 A Right. And I'm not going to contaminate it.
2 Q So in speaking about Mr. O'Keefe's demeanor, you had
3 said he was staring out into space and monotone.
4 A That's correct.
5 Q Okay. He never challenged you to fight?
6 A No.
7 Q And you never at any time saw him with a weapon in
8 his hands?
9 A No, I did not.
10 Q Okay. And although there was a knife on the bed, he
11 was some distance from it laying on the floor.
12 A That's correct.
13 MS. PALM: Pass the witness, your Honor. Thank you.
14 THE COURT: Any redirect?
15 MS. GRAHAM: Briefly, Judge.
16 REDIRECT EXAMINATION
17 BY MS. GRAHAM:
18 Q Officer, I'm showing you what's been marked as
19 Defendant's Exhibit U. Is that where you saw the weapon?
20 A I --
21 Q The knife?
22 A Yes.
23 Q Can you tell the jury what that depicts?
24 A Excuse me?
25 Q Tell the jury what that is a photo of.

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ROUGH DRAFT TRANSCRIPT

1 Q Did both prongs hit the defendant?
2 A Yes.
3 Q They both did?
4 A Yes.
5 Q Okay. And you testified on cross that your line of
6 sight was focused on the taser and preserving that -- am I
7 getting that right?
8 A When -- if I can, when we go into a room, my area of
9 responsibility was Mr. O'Keefe.
10 Q Okay.
11 A And my partners are going to assess on their own how
12 they're going to get -- once they see an opportunity to move in
13 and take that person under control.
14 Q Okay.
15 A My entire time is because now I've deployed and used
16 taser is to assess his actions. You know, whether one is going
17 to be good enough or if a second cycle is necessary.
18 Q And once the first round of -- once the taser was
19 deployed the first time, he wasn't able to be under control; is
20 that what you testified to?
21 A That's correct.
22 Q Okay. So would it be fair to say that your line of
23 sight was directly on that area, and you couldn't necessarily
24 recall which officers actually took him into custody --
25 A That's correct.

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ROUGH DRAFT TRANSCRIPT

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1 Q - in the bedroom? Okay. You know what officers
2 were at the scene?
3 A And those specifically officers that had handled him
4 at some point between the bed and outside the door.
5 Q Okay. But are you sure here today what officers
6 actually were able to take his hands and feet and remove him
7 from the bedroom?
8 A No, I'm not.
9 Q Okay. During the preliminary hearing do you ever
10 even recall anybody asking you if the defendant gave you a
11 false last name for Victoria?
12 A No, I don't.
13 MS. GRAHAM: Court's indulgence.
14 BY MS. GRAHAM:
15 Q Once again, why did you decide to deploy the second
16 round of voltage?
17 A Just the totality of the circumstances. Large
18 amounts of blood that was contaminated with communicable
19 disease, subject not being under control in a --
20 Q When you say under control, specifically, what do you
21 mean not under control?
22 A Under control would be at this point now where he
23 can't be spoken to. He's going to be placed in cuffs and
24 removed from the location.
25 Q And why wasn't he under control? What was his

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Yes.
2 MR. SMITH: Thank you.
3 DIRECT EXAMINATION
4 BY MR. SMITH:
5 Q Now, Mr. Taylor, how are you presently employed, sir?
6 A I'm a detective with the Las Vegas Metropolitan
7 Police Department.
8 Q How long have you been working for the Metropolitan
9 Police Department?
10 A Four years.
11 Q Were you working as -- actually, strike that. Were
12 you working for Metropolitan Police Department back on November
13 5th, 2008?
14 A Yes, I was on patrol with problem solving unit.
15 Q Okay. So back then you were a patrol officer?
16 A Yes.
17 Q Recently promoted?
18 A Yes.
19 Q Okay. Did you happen to respond to 3001 El Parque --
20 A Yes, sir, I did.
21 Q -- pursuant to a woman bleeding?
22 A Yes.
23 Q Okay. Why don't you tell us what happened when you
24 arrived at the scene.
25 A I arrived at the scene, went to the second floor. It

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ROUGH DRAFT TRANSCRIPT

1 demeanor?
2 A It was aggressive, non-compliant.
3 Q Okay. So even after he was tazed, his demeanor was
4 aggressive and non-compliant?
5 A Yes.
6 Q Okay.
7 THE COURT: Any recross?
8 MS. PALM: No more questions, your Honor. Thank you.
9 THE COURT: All right. Any questions from the
10 jurors? All right, thank you, Officer. You're instructed not
11 to discuss your testimony with any other witness involved in
12 this case until this matter is finally resolved. Thank you for
13 your time, sir.
14 THE WITNESS: Thank you, your Honor.
15 THE COURT: Next witness for the State
16 MR. SMITH: Judge, the State calls Sean Taylor to the
17 stand.
18 THE MARSHAL: Detective Taylor, if you'll remain
19 standing, please.
20 OFFICER SEAN TAYLOR, PLAINTIFFS WITNESS, SWORN
21 THE CLERK: Please be seated. State and spell your
22 name for the record, please.
23 THE WITNESS: Sean Taylor. Sean is spelled S-e-a-n,
24 Taylor, T-a-y-l-o-r.
25 MR. SMITH: May I proceed, your Honor?

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ROUGH DRAFT TRANSCRIPT

1 was Building C as in Charlie, Apartment No. 35. We went inside
2 and we -- there were multiple officers inside of a dark living
3 room, and Officer Conn was yelling into the back northwest
4 bedroom talking to a subject that was apparently inside and was
5 yelling back at him.
6 Q Okay. For the record, I'm going to place a copy of
7 what's already been admitted into evidence as State's Exhibit
8 1. Does this appear to be a diagram of the apartment of which
9 you are speak?
10 A Yes, sir, it does.
11 Q Okay. And now, can you kind of just walk us through
12 your involvement in this case.
13 A Yes, sir. I entered the apartment. It was myself
14 and my former partner Officer Baltejos, and my sergeant was
15 with us as well. And I stood behind Officer Conn, who was
16 standing -- I don't know if I can point --
17 Q You can actually touch it.
18 A Oh, okay. He was standing here.
19 Q Okay.
20 A And I stood behind him trying to get a view into the
21 back northwest bedroom.
22 Q Okay. Now, you just testified that you heard some
23 yelling going on.
24 A Yes, Officer Conn was yelling to a male asking him to
25 come out, and there was a male voice saying come on in, come on

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ROUGH DRAFT TRANSCRIPT

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1 in.
2 Q Okay. Please proceed.
3 A The male was still yelling for us to come on in, and
4 Officer Conn was yelling for the male to come on out because we
5 didn't know if we were being baited inside or what. So for
6 officer safety reasons, of course, we didn't proceed at that
7 moment. And then Sergeant Newberry, who was my sergeant at the
8 time, he stood on the far wall that was here, and he told us to
9 cover him on the wall while he took what we would call a quick
10 peek, which is just a quick peek around the corner into the
11 back northwest bedroom.
12 Q Okay. Then what proceeded to happen?
13 A Sergeant Newberry peeked around into the northwest
14 bedroom. He told us that he could see a male laying on the
15 floor prone out and that he could see his hands, and that his
16 hands were empty.
17 Q Okay. Then what proceeded?
18 A At that point Officer Ballejos, I don't know how he
19 got it, but he ended up with Officer Conn's taser, and we
20 stacked up preparing for entry into the bedroom.
21 Q Could you see inside the bedroom at this point?
22 A No, sir, I could only see light coming from the
23 bedroom. I was behind two officers at the time.
24 Q Okay. What happened next?
25 A Officer Conn was first, Officer Ballejos was stacked

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ROUGH DRAFT TRANSCRIPT

1 Q What happened next?
2 A He continued to give orders. I then holstered, moved
3 around to the right side near Mr. O'Keefe's legs, and I began
4 to yell at him giving orders for him to lay on his stomach and
5 put his hands behind his back.
6 Q Now, when you say I holstered, what do you mean?
7 A I had my weapon out when I went into the room.
8 Q Okay. And then you just testified that you gave
9 orders to Mr. O'Keefe, and he didn't comply with those orders
10 either?
11 A No, sir.
12 Q Okay. Then what happened?
13 A Then at that point Officer Ballejos yelled taser,
14 taser, taser, which obviously means that he was about to use a
15 taser.
16 Q Okay. And then did he deploy said taser?
17 A Yes, he did.
18 Q And what happened?
19 A The taser struck Mr. O'Keefe, and he appeared -- the
20 taser appeared to be getting -- to be painful, however, I could
21 see he could still move his arms, and I was waiting for him to
22 tense up completely.
23 Q Okay. Did that happen?
24 A No, he was still able to move his arms after the
25 first cycle of the taser.

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ROUGH DRAFT TRANSCRIPT

1 up behind him, and I was behind Officer Ballejos, and we then
2 made entry into the room.
3 Q Okay. When you made entry into the room, what
4 happened?
5 A We confronted a male who was later identified as Mr.
6 O'Keefe. He was laying on the floor. His head was facing to
7 the west. His feet was facing to the east, and he was laying
8 on his right hip, and there was a female that was laying next
9 to him.
10 Q Okay. Incidentally, Detective, do you see that male
11 present in court today?
12 A Yes, I do.
13 Q Can you point to him and identify what he's wearing
14 for the record, please?
15 A It's Mr. O'Keefe. He's wearing a what looks like a
16 charcoal colored suit.
17 MR. PIKE: We'll stipulate to the identity.
18 MR. SMITH: Thank you, Counsel.
19 THE COURT: All right, thank you, Mr. Pike.
20 BY MR. SMITH:
21 Q What happened next, Detective?
22 A Officer Conn continued to give orders for Mr. O'Keefe
23 to get away from the female.
24 Q Did Mr. O'Keefe comply with those orders?
25 A No, sir, he didn't.

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ROUGH DRAFT TRANSCRIPT

1 Q Okay. Immediately after the first cycle of the
2 taser, did you attempt to apprehend him? Or actually, not
3 apprehend him, but to gain control over him?
4 A I was still attempting to give orders, and then
5 Officer Ballejos started a second cycle of the taser, and at
6 some point during that second cycle I got control of his left
7 arm that was lingering higher in the air.
8 Q Okay. Let me just try and make sure that this is
9 clear. Officer Ballejos deploys the taser once, is that --
10 A Yes, sir.
11 Q Okay. And after the taser ceased, then did you issue
12 commands for him to comply?
13 A Yes, I issued more commands.
14 Q And the defendant still did not comply?
15 A No, sir, he didn't.
16 Q And at that point a second taser cycle was
17 administered?
18 A Yes.
19 Q Okay. And then that's when you were able to grab his
20 arm?
21 A I was able to get control of his left arm.
22 Q Okay. And then what happened?
23 A I was yelling for him to give me the other arm during
24 the second cycle, and I could still see that he could move it.
25 However, he wouldn't give it to me, and as the cycle ended,

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1 Officer Conn took control of his left arm, and I was able to
2 get control of his right arm and get it into the second
3 handcuff.
4 Q Okay. So is it your testimony that even though the
5 defendant had been tazed twice, you still nevertheless had to
6 use force to completely gain control of the defendant?
7 A I had to twist his arm into a real wrist lock to get
8 it behind his back. I had to pull his arm --
9 Q Okay.
10 A -- to get into the second handcuff.
11 Q Okay. Then what happened, Detective?
12 A The --
13 Q I'm sorry, then what happened, Detective?
14 A We then lifted Mr. O'Keefe, and we carried him out
15 into the living room.
16 Q Did you happen to notice while -- actually, strike
17 that. How long would you say that you were in the bedroom?
18 A I can't recall. It was a -- had to be a matter of
19 seconds.
20 Q Okay. Were you able to kind of get a panoramic view
21 of the bedroom itself or were you mainly focused on the
22 defendant?
23 A I was mainly -- when I was going in, I was focused on
24 the bed because that was the only thing I could see. But when
25 I was there, I was mainly focused on his hands and his waist

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ROUGH DRAFT TRANSCRIPT

1 A Yes, I'm talking about the bathroom that would be
2 here.
3 Q Okay.
4 A I don't remember if the door was completely open or
5 not, but I remember seeing light coming from that room and in
6 the hallway there was a lot of light.
7 Q And do you recall whether the bedroom was lit with an
8 overhead light or light on a night stand or the bathroom light?
9 A No, Ma'am, I don't recall where the light was.
10 Q Okay. So when Sergeant Newberry looked in, he just
11 took a quick peek, but at that time he saw Mr. O'Keefe laying
12 on the floor and he could see both hands; is that --
13 A Yes, ma'am, I believe so. He told us he could see
14 the male prone out on the floor and both of his hands were
15 empty.
16 Q Okay. And he had no weapons in his hands that
17 Sergeant Newberry could see.
18 A That was my belief at that time based on what he told
19 us.
20 Q And that proved to be true when you went into the
21 room, was it not?
22 A Yes, ma'am.
23 Q Okay. And you never saw him in any other position
24 prior to being taken into custody?
25 A No, Ma'am, he -- when he went in he was still laying

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1 because I was concerned about weapons.
2 Q Okay. And forgive if already testified to this, but
3 was there anything unusual about the bed?
4 A There was blood all over the bed.
5 Q Understood.
6 MR. SMITH: Judge, thank you. I'll pass the witness.
7 THE COURT: Cross-examination.
8 MS. PALM: Thank you.
9 CROSS-EXAMINATION
10 BY MS. PALM:
11 Q Good afternoon, Officer Taylor or Detective Taylor.
12 A Fine, Ma'am. Thank you.
13 Q Let's start with the lights. Can you tell me what
14 lights were on when you came into the apartment.
15 A I believe the living room and kitchen was dark. And
16 although I was focused on the back northwest bedroom, I also
17 believe that the bathroom and the hallway lights were on. The
18 back bedroom and the northwest bedroom that we ended up going
19 to, the lights were definitely on as well.
20 Q So that would mean the bathroom door was open, if you
21 saw the light in the bathroom.
22 A I --
23 Q You're talking about the bathroom --
24 A I don't recall if it was --
25 Q -- between the bedrooms.

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ROUGH DRAFT TRANSCRIPT

1 on his right hip and his head was facing to the west and his
2 feet were facing --
3 Q Okay.
4 A -- to the east.
5 Q Can you show us on the diagram when you entered the
6 bedroom where Officer Conn took a position of cover.
7 A When we entered the bedroom?
8 Q Yes.
9 A Well, there was really no cover.
10 Q Well, I mean covering, I guess, Mr. O'Keefe with a
11 gun from my understanding.
12 A Yes. Initially, Officer Conn was somewhere here.
13 I'm sorry, I'm trying to get sort of like -- a little bit west
14 of the corner of that bed, he was standing there. I was
15 pointing around him to the left because I'm left handed.
16 Somehow I remember that. And Officer Balicjos was somewhere to
17 the right initially.
18 Q Okay. So where would you have been? Could you mark
19 --
20 A I was --
21 Q -- on the screen.
22 A -- still third in the stack when we went inside, and
23 when we stacked up, Officer Balicjos had less lethal cover with
24 a taser to the right of Officer Conn. I had leaned -- I had
25 reached around -- I was still standing directly behind him, but

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1 I had reached around and was pointing my weapon with my --
 2 Q So you're reaching --
 3 A -- and that was just for a matter of seconds
 4 initially upon entry.
 5 Q Would that be reaching over the bed?
 6 A I didn't have to lean over the bed. I had an angle.
 7 Q Okay.
 8 A So I was making sure I wasn't masking Officer Conn's
 9 back.
 10 Q And at that time Mr. O'Keefe was laying on his left
 11 side facing Ms. Witmarsh's body; is that correct?
 12 A No, Ma'am. Actually his right hip was on the ground.
 13 Q Or his right side, I'm sorry. And so he was facing
 14 her body, sort of face to face with her?
 15 A He was looking at her, yes.
 16 Q Okay. And what was he doing with his hands?
 17 A One hand was hovering over her body. The other hand
 18 was sort of rubbing the top of her head --
 19 Q Okay.
 20 A -- back and forth.
 21 Q And you could see his face at the time?
 22 A I could see -- I didn't look directly at his face,
 23 but I could see his face. He was looking at her, and he was
 24 still yelling.
 25 Q And you never saw him try to hit her or harm her

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1 Q Well, if I -- if I tell you that's a dresser there,
 2 were you still standing there?
 3 A I'm trying to mark just north of the dresser, I'm
 4 sorry, or just west of the dresser. But I was -- there was
 5 room for me to stand below her feet and right over his feet.
 6 What I recall, the body was not -- the -- her feet were not
 7 touching that dresser when I was in there.
 8 MS. PALM: Court's indulgence.
 9 BY MS. PALM:
 10 Q Officer, looking at the State's Exhibit 8, does that
 11 help you remember whether you had room to stand below her feet?
 12 A Yes, that does help me remember. Her feet were -- I
 13 was able to stand there without stepping on her.
 14 Q In what area?
 15 A I was standing approximately here, and I remember at
 16 one point I even straddled Mr. O'Keefe's legs.
 17 Q Okay. So did you ever have to step over Ms.
 18 Witmarsh's body?
 19 A No, I don't remember ever taking any effort to step
 20 over her body. I do remember, however, that at one point I did
 21 straddle Mr. O'Keefe's, his legs around the shin area.
 22 Q So you never had to step over any portion of her body
 23 to get to the other side to arrest Mr. O'Keefe?
 24 A I don't recall ever stepping over her.
 25 Q Okay. Do you recall any other officers stepping over

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1 while you were standing there?
 2 A No, Ma'am, but I did want him to stop rubbing her
 3 head.
 4 Q And he never threatened you while you were standing
 5 there?
 6 A No, Ma'am.
 7 Q So as Officer Ballejos deploys the taser, you go to
 8 the other side of the body?
 9 A Yes, ma'am. Before that when he wouldn't listen to
 10 Officer Conn's commands, I knew at some point one of us may
 11 have to go hands on, so I holstered up and I moved around.
 12 Q Okay. Were you the only one that moved around at
 13 that point?
 14 A I don't recall what the other officers did, if they
 15 stayed stationary or not.
 16 Q After the second cycle when you guys were still
 17 trying to get him under control, how many people were on the
 18 other side of the body?
 19 A I don't recall if Officer Ballejos or Officer Conn
 20 were on the other side of the body. I know I was standing here
 21 just east of the body like --
 22 Q Could you mark it?
 23 A It's kind of hard with my finger, but I was standing
 24 at his feet but below her feet because she was much shorter.
 25 So there's no -- but I was standing east of her feet.

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1 her?
 2 A I don't know if Officer Conn stepped over her or not
 3 to lift Mr. O'Keefe.
 4 Q Okay. Do you recall whether any officers had to step
 5 over the bed?
 6 A I don't recall.
 7 Q Okay. Is it possible officers went up onto the bed
 8 to get on the other side?
 9 A If it occurred, I didn't see it.
 10 Q But it's possible?
 11 A Well, of course, it's -- all officers --
 12 MR. SMITH: Judge, I'm going to object. I'm going to
 13 object in that it calls for speculation.
 14 THE COURT: Sustained.
 15 BY MS. PALM:
 16 Q Okay. You don't know whether any officers had to go
 17 up over the bed?
 18 A No, Ma'am, I didn't see any one step over the bed.
 19 Q So in carrying Mr. O'Keefe out of the bedroom, which
 20 officers carried him out?
 21 A It was myself and Officer Conn.
 22 Q Okay. And just you two carried him out of the
 23 bedroom and into the living room?
 24 A Yes, ma'am.
 25 Q Okay. So Officer Hatcher -- was Officer Hatcher ever

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1 in the bedroom?
 2 A No, Ma'am, not when I was in there.
 3 Q Okay. Do you recall whether Mr. O'Keefe had any
 4 injury on his forehead at the time you arrested him?
 5 A I don't recall if he had any injuries.
 6 Q Okay. And he was not put on his stomach in the
 7 bedroom during the arrest process, is that correct?
 8 A No, Ma'am.
 9 Q He was not?
 10 A No, Ma'am.
 11 Q Okay. And when you carried him out into the living
 12 room, did you lay him on his stomach or sit him up or what did
 13 you do?
 14 A In the living room he did end up laying on his
 15 stomach.
 16 Q Okay. Was there ever a time when you dropped him on
 17 his face?
 18 A No, Ma'am.
 19 Q So you never put him in a position where he would
 20 have injured his face during the time you had custody of him?
 21 A I wouldn't say that. I don't ever remember dropping
 22 him --
 23 Q Okay.
 24 A -- is what I just said.
 25 Q Okay. Is it possible he was injured when you were

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1 Q No, I'm saying that could he have been injured before
 2 you even got to the scene if he had an injury on his forehead?
 3 A It's possible before or after or during.
 4 Q And outside he was saying you're mad at me, you're
 5 mad at me?
 6 A Yes, ma'am, he was saying that to us.
 7 Q Okay. And then he said she tried to stab him?
 8 A Yes.
 9 Q Do you know whether AMR responded to the scene to
 10 check him out?
 11 A Yes.
 12 Q Were you there when they actually checked him out?
 13 A No, Ma'am, they were coming up the stairs when I got
 14 orders to leave and do some activities on the outer perimeter
 15 of the call.
 16 Q Okay. So you never actually saw them checking him?
 17 A I only saw them approach him and start to talk to
 18 him.
 19 Q Did you fill out any kind of occupational illness
 20 form?
 21 A Yes, ma'am, I did.
 22 Q Is that because you were bare handed?
 23 A Yes, I was bare handed, and I touched quite a bit of
 24 blood that was on Mr. O'Keefe.
 25 Q Okay. And you were worried about the contamination

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1 carrying him?
 2 A Full's a possibility, I just don't recall any
 3 injuries.
 4 Q Okay.
 5 A But there's absolutely -- it's possible.
 6 Q After the living room, you carried him out onto the
 7 terrace.
 8 A Yes, ma'am.
 9 Q And you set him up?
 10 A Yes.
 11 Q Okay. So he was never laid in a position on the
 12 terrace to injure his forehead?
 13 A No, we put him on the ground and then we sat him up.
 14 Q Okay. But he was never in a position to be injured
 15 out there, is that correct?
 16 A I'm sorry, I really don't understand the question.
 17 What is -- there's a lot of positions where someone could get
 18 injured.
 19 Q Did you put him in a position on the terrace such as
 20 would injure his face?
 21 A No, Ma'am.
 22 Q So any injury he had to his forehead he may have had
 23 when you arrived at the scene?
 24 A I don't know when he could have gotten it. I left
 25 him after out there on the terrace.

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1 from Hepatitis C?
 2 A Yes, ma'am.
 3 Q All right. Is that form a form that the detectives
 4 in the case would have had access to?
 5 A To be honest, Ma'am, I don't know if a regular
 6 detective would have access to it. I know that the risk and
 7 safety department would have access to it.
 8 MS. PALM: Thank you, your Honor. No more questions.
 9 THE COURT: All right. Any redirect?
 10 MR. SMITH: Brief, Judge.
 11 REDIRECT EXAMINATION
 12 BY MR. SMITH:
 13 Q Detective, if we heard testimony today that Officer
 14 Conn was giving commands to the defendant to comply so that
 15 medical assistance could be rendered to Victoria Witmarsh,
 16 would that be consistent with what you observed?
 17 A Yes, absolutely.
 18 Q And finally, to your knowledge, was anything touched
 19 inside that bedroom say for the body of Victoria Witmarsh?
 20 Excuse me, not the body of Victoria Witmarsh, but say for the
 21 body of defendant Brian O'Keefe?
 22 A I'm sorry, can you repeat that?
 23 Q Do you know -- my question is, to your knowledge, was
 24 anything in the bedroom touched except the body of Mr. O'Keefe
 25 when he was being taken into custody?

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1 A No, to my knowledge, Mr. O'Keefe was the only person
2 we -- only thing that was touched, only person that was
3 touched.

4 Q Thank you.

5 MR. SMITH: No further questions.

6 THE COURT: Anything further, Ms. Palm?

7 MS. PALM: No, thank you.

8 THE COURT: Any questions the jurors? All right.

9 Thank you, sir. You're instructed not to discuss your
10 testimony with any other witness involved in this case until
11 this matter is finally resolved. Thank you for your time, sir.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Jurors need a break at this time?

14 THE MARSHAL: Is everybody all right?

15 (Indiscernible).

16 THE COURT: Okay.

17 THE MARSHAL: (Indiscernible).

18 THE COURT: All right. Ladies and gentlemen, we're
19 going to take a break right now. During this recess it is your
20 duty to not to converse among yourselves or with anyone else on
21 any subject connected with the trial or to read, watch or
22 listen to any report over commentary on the trial by person
23 connected with the trial or by any medium of information
24 including, without limitation, newspaper, television, radio or
25 the Internet.

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1 gave. You know, there really hasn't been a showing that any
2 separate report, if it, in fact, exist, would have been any
3 different from the taped statement that the officer gave to the
4 detective that was provided to -- I mean that was provided in
5 discovery. At this stage I don't know that there's been a
6 sufficient showing that that in isolation is a grounds for a
7 mistrial.

8 THE COURT: How soon can you get the report, assuming
9 it exist?

10 MR. SMITH: I mean, I can call the detective and ask
11 him can he check the computer system, but when we -- I presume
12 he's going to tell me the same thing. I can call him right
13 now.

14 THE COURT: Well, tell the -- tell the detective to
15 contact Officer Ballejos because Officer Ballejos said that he
16 prepared a report.

17 MR. SMITH: I'll call him right now, Judge.

18 THE COURT: So it may not be part of the detective's
19 binder, but it may exist some place in Metro's records.

20 MR. SMITH: I have his cell, and I will call him
21 right now.

22 MS. PALM: And I believe that's the way we asked for
23 it, your Honor. We said that he had indicated it existed and
24 we wanted it and then they said it did not exist.

25 THE COURT: Anything else?

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1 You're not to form or express an opinion on any
2 subject connected with this case until this matter is finally
3 submitted to you. We'll you back in just a few minutes. Thank
4 you. We're off the record.

5 (Recess taken).

6 (In the presence of the jury)

7 THE MARSHAL: Department 17 of the Eighth Judicial
8 District (indiscernible). The Honorable Judge Michael P.
9 Villani presiding. Please be seated. Remain in order. Make
10 sure cell phones are turned off.

11 THE COURT: Let the record reflect we're outside the
12 presence of the jury panel. You had what matter to resolve?

13 MS. PALM: Yes, your Honor. We're making a motion
14 for a mistrial based on a discovery violation. We had
15 specifically requested from the District Attorney's Office any
16 use of force report prepared by Officer Ballejos, and we got a
17 response from Mr. Smith, which was a response from Detective
18 Bunn that there was no separate report. There was only his
19 taped statement. And today we clearly heard there is a
20 separate report, and so we are moving for a mistrial because we
21 did not have that report to impeach Officer Ballejos with.

22 THE COURT: Mr. Smith.

23 MR. SMITH: And Judge, I relayed what was provided to
24 us by the detective that there was no separate use of force
25 report, and that there only was the taped statement that he

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1 MR. PIKE: No, your Honor. Thank you.

2 THE COURT: Anything else from the State?
3 (Colloquy off the record).

4 THE COURT: Well, let's get the jury in, then. I'm
5 assuming they're working on this now, is that --

6 MR. SMITH: No, Judge. I'm going to have to call
7 Ballejos, and have Ballejos call his sergeant.

8 THE COURT: Okay. Do you have the next witness or
9 does Ms. Gram?

10 MR. SMITH: I have the next one.

11 MS. GRAHAM: I do, Judge.

12 THE COURT: Who does?

13 MS. GRAHAM: I have Hutcherson, Judge.

14 MR. SMITH: Oh, yeah, you do.

15 MS. GRAHAM: We're skipping --

16 THE COURT: All right. Can you just go out to the
17 the hall to take --

18 MR. SMITH: I can.

19 THE COURT: All right. After the jury comes in,
20 obviously.

21 MR. SMITH: Yes, Judge.

22 THE COURT: Okay.

23 THE MARSHAL: Officers and members of the court,
24 Department 17 jurors. Be seated, ladies and gentlemen. Let's
25 make sure our cell phones are turned off.

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1 THE COURT: Let the record reflect we're back in the
2 presence of the jury panel. And you have Officer Hutcherson?
3 THE MARSHAL: Officer Hutcherson, if you'll remain
4 standing. Please raise your right hand and face the clerk.
5 OFFICER CHRISTOPHER HUTCHERSON, PLAINTIFF'S WITNESS, SWORN
6 THE CLERK: Please be seated. Please state your name
7 and spell your name for the record, please.
8 THE WITNESS: Christopher Hutcherson.
9 c-h-r-i-s-t-o-p-h-e-r, h-u-t-c-h-e-r-s-o-n.
10 THE COURT: Go ahead, Counsel.
11 DIRECT EXAMINATION
12 BY MS. GRAHAM:
13 Q Good afternoon, Officer Hutcherson. Are you employed
14 with the Metropolitan Police Department?
15 A Yes, ma'am.
16 Q And where were you working in your capacity as an
17 officer on November 3rd, 2006 of this past year?
18 A Yes, ma'am.
19 Q Around 10:00, 11:00 p.m.?
20 A Yes, ma'am.
21 Q Were you -- did you respond to a location of 5001 El
22 Parque in Clark County, Nevada?
23 A Yes, ma'am.
24 Q Building C, specifically Apartment 357?
25 A Yes, ma'am.

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1 Q Okay. Once you were told that a subject was
2 detained, what then were you asked to do?
3 A I then walked around to the front of the complex and
4 was instructed to secure the area with crime scene tape.
5 Q And did you do that?
6 A Yes, ma'am.
7 Q And once you completed securing the area with crime
8 scene tape, what did you do then?
9 A I then went back to the front of the residence and
10 one subject that officers had brought (sic) out, he was in
11 handcuffs. I was instructed to watch over him, take him to my
12 patrol car until detectives arrived.
13 Q Okay. So your function then was to watch over the
14 person that they had detained?
15 A That's correct.
16 Q And do you see that person here in the courtroom
17 today?
18 A Yes, ma'am.
19 Q Can you point to him and describe something that he's
20 wearing?
21 THE WITNESS: Gentleman --
22 MS. PALM: We'll stipulate to his identity.
23 THE COURT: All right.
24 MS. GRAHAM: Okay.
25 THE COURT: Record reflect identification of the

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1 Q Once you arrived on the scene, what were you
2 instructed to do?
3 A I was instructed to post up at the rear of an
4 apartment because we had a subject in there. Possibly two
5 subjects. One subject down and one subject refusing to come
6 out want so I was told to post up to the rear to make sure no
7 one came out the back bedroom which had a patio.
8 Q Okay. So basically you never entered into the
9 apartment itself?
10 A No, Ma'am.
11 Q Okay. And so your testimony is that you were outside
12 of the apartment building itself?
13 A Yes, ma'am.
14 Q And you were posted under what would have been the
15 bedroom that the subjects were located in?
16 A That's correct.
17 Q And your duty, again, was to?
18 A Just ensure no one came out of that patio door and
19 tried to flee.
20 Q Okay. Do you recall how long you were outside of the
21 -- posted outside of the building?
22 A Approximately ten minutes.
23 Q Did you eventually receive word that someone had been
24 taken into custody?
25 A Yes, ma'am.

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1 defendant.
2 BY MS. GRAHAM:
3 Q Did you learn the identity of the person that was --
4 you were taking -- that was taken into custody?
5 A Not at the exact time, Ma'am, no.
6 Q Okay. And when you say that your duty was to take
7 control over him, tell me what you did.
8 A I escorted him to my patrol vehicle, which then I did
9 a search incident to arrest. I had him -- had him take a seat
10 in my patrol vehicle and buckled him in.
11 Q Okay. And when you escorted him to your patrol
12 vehicle, what was his demeanor?
13 A Very loud, belligerent.
14 Q And loud and belligerent. Was he making any
15 statements to you?
16 A He was just yelling obscenities while I was escorting
17 him to the vehicle.
18 Q What kind of obscenities?
19 A You know, pretty much, you know, f me, you know. I
20 didn't do anything, what are you doing, where am I going, and
21 that's pretty much to that nature.
22 Q Okay. And as you escorted him to your patrol car,
23 you say that you did a search incident to arrest?
24 A That's correct.
25 Q Okay. And explain to the jury what search incident

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1 to arrest means.

2 A Search incident to arrest is when we place any
3 subject under arrest, before we put them in back of our
4 vehicle, we do search them to make sure no contraband or
5 weapons are on their person.

6 Q And you didn't find any contraband or weapons at that
7 point?

8 A That's correct, Ma'am.

9 Q Okay. And did you place him inside your patrol
10 vehicle?

11 A That's correct.

12 Q And was that in -- what part of the patrol vehicle
13 did you place him in?

14 A Rear passenger seat.

15 Q Okay. And was he compliant with you getting in the
16 vehicle?

17 A I had to forcefully put him in the vehicle.

18 Q So when you say forcefully, why did you need to use
19 force?

20 A He wouldn't get in the vehicle, so I kind of
21 verbally, you know, sir, get in the vehicle, and kind of had to
22 assist him in getting in the vehicle.

23 Q Okay. And eventually you were successful in getting
24 him in the --

25 A That's correct.

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1 Q Okay. And at some point did you make contact with
2 him again?

3 A I did. I waited about five -- between five and eight
4 minutes, and he had pretty much went to sleep, appeared to be
5 sleep. So I went around to the front of my patrol vehicle, sat
6 down, and just pretty much observed him from inside.

7 Q Okay. Now, how long did you say that you were
8 outside of your patrol vehicle?

9 A Between five -- approximately five to eight minutes.

10 Q About five to eight minutes?

11 A Yes, ma'am.

12 Q And you had him in your line of sight the entire
13 time?

14 A Yes, ma'am.

15 Q And at that point you say he slept?

16 A He appeared to be sleeping.

17 Q Okay. And once you got back into your patrol
18 vehicle, what, if anything, occurred between the two of you?

19 A Approximately about two to three minutes after I took
20 a seat, he woke up or became conscious, whatever, and --

21 Q What was his demeanor?

22 A He was -- started being loud and belligerent.

23 Q Okay. And when you loud and belligerent, was he
24 making any statements?

25 A Yes, he did.

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1 Q -- back of the patrol car? Once you placed him in
2 the back of the patrol car, then what happened?

3 A I went around to the front of my patrol vehicle. I
4 sat in the vehicle for a few minutes. He was very loud.

5 Q Was he making any statements?

6 A Not at that time he didn't make any statements. I
7 tried to turn on a little music hoping that will calm him down.

8 Q Did he make any response to that?

9 A He did.

10 Q And what was that?

11 A He told me to pretty much turn that nigger music off,
12 I don't -- I don't listen to nigger music.

13 MS. PALM: Your Honor, may we approach?

14 THE COURT: All right.

15 (Bench conference).

16 BY MS. GRAHAM::

17 Q Officer, Hutcherson, did you have any other
18 interaction with him as far as verbally while you were in the
19 patrol car?

20 A No, Ma'am. He requested the music be turned down, so
21 I turned the music down, and at that time I exited my patrol
22 vehicle.

23 Q Okay. And where was the defendant when you exited
24 your patrol vehicle?

25 A He was in the rear passenger seat buckled in.

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1 Q Okay. And what statements did he make?

2 MR. PIKE: Objection, your Honor. May I take the
3 witness briefly on voir dire?

4 THE COURT: Is this a volunteered statement by the
5 defendant or did you question him, Officer?

6 THE WITNESS: It was a volunteer statement.

7 THE COURT: Anything further, Mr. Pike? I didn't say
8 voluntary, but volunteered statement.

9 THE WITNESS: It was a volunteered statement, sir.

10 THE COURT: Okay.

11 BY MR. PALM::

12 Q And are these statements that were written down on a
13 note and provided to the District Attorney's Office?

14 A That's correct.

15 Q Okay.

16 MR. PIKE: Thank you, your Honor. I apologize, it --

17 THE COURT: No problem.

18 MR. PIKE: -- it's Ms. Palm's witness. I just
19 (indiscernible).

20 THE COURT: No problem.

21 MR. PIKE: Thank you.

22 THE COURT: All right, thank you.

23 BY MS. GRAHAM::

24 Q And, in fact, Officer, Hutcherson, these statements
25 were part of an arrest report on this incident; is that

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1 correct?
 2 A That's correct, Ma'am.
 3 Q So they were reported in the arrest report that was
 4 actually, I believe, approved by Lieutenant Naberier (phonetic)
 5 it appears to be. It's the actual arrest report in this event.
 6 And you did brief the officers of these statements -- the
 7 detectives of these statements that he made?
 8 A That's correct, Ma'am.
 9 Q Okay. And what statements did he make to you?
 10 A The statements were I swear to God, V, I didn't mean
 11 to do this to you. What did I do? Let's go. Let's go. Let's
 12 go do the ten years.
 13 Q What did you take that to mean?
 14 MS. PALM: Objection, your Honor.
 15 THE COURT: Sustained.
 16 MS. GRAHAM: I'll pass the witness at this time.
 17 THE COURT: Okay.
 18 CROSS-EXAMINATION
 19 BY MS. PALM:
 20 Q Good afternoon, Officer Hutcherson.
 21 A Afternoon, Ma'am.
 22 Q Do you recall writing down a little note with the
 23 statements that Mr. O'Keefe made to you?
 24 A Yes, ma'am.
 25 MS. PALM: May I approach the witness, your Honor?

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1 Q Okay, I don't know what that is so could you give me
 2 a time?
 3 A I couldn't give you exact time, Ma'am. I would have
 4 to --
 5 Q Okay. If Officer Baljeos testified that he actually
 6 fell asleep in the patrol vehicle, do you dispute that?
 7 A No, I don't.
 8 Q Did he fall asleep?
 9 A Yes, he did, Ma'am.
 10 Q How long?
 11 A From my recollection between eight to ten minutes.
 12 Q And was that before or after these statements?
 13 A That was before, Ma'am.
 14 Q Now, this little handwritten note is the only report
 15 that you ever made of any statements by my client; is that
 16 true?
 17 A That's correct.
 18 Q So you didn't do an officer's report?
 19 A No, Ma'am.
 20 Q Okay. And you didn't give a recorded statement.
 21 A No, Ma'am.
 22 Q And in this little handwritten note you never put
 23 that he was yelling obscenities.
 24 A No, Ma'am.
 25 Q And you didn't include his racial slur.

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1 THE COURT: Yes.
 2 BY MS. PALM:
 3 Q Does this look like the note that you made?
 4 A Yes, ma'am.
 5 Q Okay. And could you tell me what statements are
 6 actually on that note.
 7 A I swear to God, V, I didn't mean to hurt you. What
 8 did I do wrong? Let's go. Let's do the ten years.
 9 Q What else?
 10 A That's why I love you. That's why I love you, V,
 11 because you're so crazy.
 12 Q Thank you. So he didn't actually say I didn't mean
 13 to do that to you, right?
 14 A No, Ma'am.
 15 Q Okay. And how long after the incident -- he was in
 16 custody by 11:13. How long after that did these -- were these
 17 statements made?
 18 A I would say approximately between 30, 35 minutes of
 19 being in my patrol vehicle.
 20 Q Is that 30, 35 minutes after being taken into
 21 custody?
 22 A I would say 30, 35 minutes after being into my patrol
 23 vehicle.
 24 Q Okay. When did he go into your patrol vehicle?
 25 A About 15 minutes after we were given a code four.

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1 A No, Ma'am.
 2 Q And you also didn't include his statement I didn't do
 3 anything; is that true?
 4 A That's true.
 5 Q Okay. And in a criminal case do you understand it
 6 might be important for a defendant to have exculpatory evidence
 7 such as a statement say I didn't do anything?
 8 A Indeed.
 9 Q Okay. And you didn't include it in your one little
 10 note report.
 11 A I included what I heard.
 12 Q So this was all you heard?
 13 A That's what I heard.
 14 Q Did it appear to you that Mr. O'Keefe was
 15 intoxicated?
 16 A Yes, ma'am, I could smell alcohol coming from him.
 17 Q Okay. And would you agree with the statement he was
 18 obviously intoxicated?
 19 A Yes, ma'am.
 20 MS. PALM: Pass the witness. Thank you.
 21 THE COURT: Any redirect?
 22 REDIRECT EXAMINATION
 23 BY MS. GRAHAM:
 24 Q Was Officer Baljeos with you at your patrol car?
 25 A Briefly, Ma'am.

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1 Q Briefly?
 2 A Yes.
 3 Q So he wasn't there the entire time?
 4 A No, Ma'am.
 5 Q Okay. So it was you who was watching the defendant
 6 in your patrol car?
 7 A That's correct.
 8 Q Would Officer Ballejos have direct knowledge of him
 9 sleeping or not?
 10 A At that time if he was there when he was asleep, yes.
 11 But not the entire time.
 12 Q Okay. So you're not sure if he was there while he
 13 was sleeping or not?
 14 A No, Ma'am.
 15 Q That little handwritten note you made, when did you
 16 make that?
 17 A Inside my patrol vehicle after the defendant had
 18 awoken.
 19 Q Okay. So you found it important to just dot down on
 20 a little note pad a statement that he spontaneously uttered?
 21 A Yes, ma'am.
 22 Q Okay. Do you recall telling Detective
 23 (indiscernible) Bunn that he said I swear to God, V. I didn't
 24 mean to hurt you?
 25 A Yes, ma'am.

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1 Detective Wildemann in the case.
 2 A Yes, ma'am.
 3 Q If they are contained in that report, would it be
 4 fair to say that you told them that the defendant made those
 5 statements?
 6 A Indeed.
 7 Q Okay.
 8 MS. GRAHAM: Nothing further.
 9 THE COURT: Ms. Palm.
 10 MS. PALM: Just briefly.
 11 RE-CROSS-EXAMINATION
 12 BY MS. PALM:
 13 Q Officer, did you meet with the deputy district
 14 attorneys in court here today prior to your testimony?
 15 A No, Ma'am.
 16 Q Did you talk to them on the telephone about your
 17 testimony?
 18 A I did, Ma'am.
 19 Q And did you talk about the statements that you were
 20 going to tell the court and the jury today?
 21 A Yes, ma'am.
 22 Q All of them?
 23 A Yes, ma'am.
 24 Q Including the racial slur?
 25 A Yes, ma'am.

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1 Q Okay. And that is in the arrest report.
 2 A Yes, ma'am.
 3 Q Why wouldn't you have written that down on a piece of
 4 paper?
 5 A I'm sorry, Ma'am?
 6 Q Why was that not written jotted down in your patrol
 7 car?
 8 A I don't understand the question, Ma'am.
 9 Q Well, Ms. Palm asked you on cross-examination about
 10 the little note that you jotted down --
 11 A Um-h'm.
 12 Q -- statements that the defendant made to you while
 13 you were in your patrol car --
 14 A Yes, ma'am.
 15 Q -- but yet there are other statements that are
 16 contained in the arrest report, and I'm just wondering why some
 17 statements were jotted down and some were not?
 18 A If I didn't hear it, I didn't jot it down.
 19 Q Okay. And these things that are contained in the
 20 arrest report -- and I assume that you have a copy of the
 21 arrest report.
 22 A I do, Ma'am.
 23 Q And you read it, and the paragraph specifically
 24 pertaining to you -- and it's a very short one -- indicates
 25 some statements that you made to Detective Bunn and/or

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1 MS. PALM: No more questions. Thank you.
 2 THE COURT: All right, thank you. Any questions by
 3 the jurors? Thank you, Officer, for your testimony. You're
 4 instructed not to discuss your testimony with any other witness
 5 involved in this case until this matter is finally resolved.
 6 Thank you for your time, sir.
 7 THE WITNESS: Thank you, sir.
 8 THE COURT: Next witness by the State.
 9 MR. SMITH: Judge, can we approach?
 10 THE COURT: All right.
 11 (Bench conference).
 12 MR. SMITH: Judge, the State's next witness is
 13 Jocelyn Maldonado.
 14 THE MARSHAL: If you'll remain standing. Please
 15 raise your right hand and face the clerk.
 16 JOCELYN MALDONADO, PLAINTIFF'S WITNESS, SWORN
 17 THE CLERK: Thank you. Please state and spell your
 18 name for the record.
 19 THE WITNESS: Jocelyn, J-o-c-e-l-y-n, Maldonado,
 20 M-a-l-d-o-n-a-d-o.
 21 MR. PIKE: In relationship to this witness, your
 22 Honor, because of the blood contamination that was involved in
 23 this, the State and the Defense were able to meet prior to the
 24 time of the trial. We can stipulate that all of the items that
 25 she's going to testify to as they were impounded were properly

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1 impounded and placed into secure evidence of the Las Vegas
2 Metropolitan Police Department and that they need not be
3 brought forward. That photographic evidence depicting the true
4 nature of those items would be more appropriate because of the
5 blood issues that are involved in this.

6 So where as in some cases the actual items would be
7 brought in, we've agreed that it would be appropriate not to
8 bring them in this case and just use photographs.

9 THE COURT: Is that correct, Mr. Smith?

10 MR. SMITH: That is correct, your Honor.

11 THE COURT: All right, and I appreciate the parties
12 working together on this issue. Thank you. Go ahead, Mr.
13 Smith.

14 MR. SMITH: Thank you, Judge.

15 DIRECT EXAMINATION

16 BY MR. SMITH:

17 Q Ms. Maldonado, I just have a couple of questions for
18 you. How are you presently employed, Ma'am?

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

21 Q How long have you worked as a crime scene analyst?

22 A Approximately eight and a half years.

23 Q Were you working as a crime scene analyst back on
24 November 5th, 2008?

25 A Yes, I was.

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1 Q Would looking at that report be able to refresh your
2 recollection as to every item that you impounded?

3 A Yes, it would.

4 Q Okay. Can you tell us what you did.

5 A I recovered and impounded taser paraphernalia
6 including a taser cartridge, taser probe and a taser blast
7 score, also what we call AFID tags from the taser.

8 Q What are AFID tags?

9 A Anti-felon identification tags.

10 Q And what are those used for?

11 A They -- when the cartridge from the taser is
12 discharged, these little confetti like pieces come out, about
13 20 to 30 of them. They contain the serial number from the
14 cartridge of the taser that was fired. It's a way to determine
15 that that taser was fired at that location.

16 Q Okay. Please proceed.

17 A I also recovered a sample of apparent blood.

18 Q Now let me ask you this, where was that blood
19 recovered from?

20 A On the light switch cover on the south wall of the
21 northwest master bedroom.

22 Q Is that what depicted and what's been admitted into
23 evidence as State's Exhibit 10?

24 A Yes.

25 Q Okay. What else did you recover?

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1 Q Did you respond to a 5004 El Parque?

2 A Yes, I did.

3 Q What did you do when you got there?

4 A I arrived with another crime scene analyst, Ms.
5 Collins, and we met with Homicide Detective Marty Wildstrom and
6 Homicide Sergeant Rush Shoemaker (phonetic), along with other
7 numerous uniformed patrol officers in reference to a death or
8 homicide investigation.

9 Q Okay. And what types of things did you do at the
10 scene?

11 A My particular responsibilities at this scene were to
12 recover and impound the evidence and to construct a sketch of
13 the crime scene and prepare a final diagram in the computer
14 program.

15 Q Did you, in fact, recover and impound some evidence
16 in this case?

17 A Yes, I did.

18 Q And why don't you tell us for the record what
19 evidence you recovered and what evidence you impounded.

20 A I recovered and impounded taser paraphernalia --

21 Q Actually, let me ask you this. Did you prepare a
22 report --

23 A Yes, I did.

24 Q -- as to what you recovered?

25 A Yes.

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1 A A Wolfgang Puck eight inch carving knife with a black
2 handle and apparent blood.

3 Q Is that what's depicted and what's been admitted as
4 State's Exhibit 27?

5 A Yes.

6 Q Okay. Please proceed.

7 A And an Armstrong vinyl floor tile with an parent
8 footwear pattern.

9 Q Where was that recovered from?

10 A That was actually in the doorway of the northwest
11 master bathroom adjacent to the door that led into the bedroom.

12 Q And if you can back up for us, where did you recover
13 the knife from?

14 A On top of the bed in the northwest master bedroom.

15 Q What else did you recover?

16 A A jacket. A Silver State silkscreen jacket.

17 Q Where was that recovered from?

18 A That was on the floor on the west side of the bed in
19 the northwest master bedroom.

20 Q Please continue.

21 A Two black ankle socks.

22 Q Where were those recovered?

23 A Those were both recovered from on top of the bed in
24 the northwest master bedroom.

25 Q Please continue?

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1 A A pair of black stretch pants.
 2 Q Recovered from where?
 3 A The floor in the master bathroom.
 4 Q Please continue.
 5 A A white and black scarf with fringes or tassels on
 6 one end wrapped with a brown elastic hair band bearing apparent
 7 blood.
 8 Q And where was that recovered?
 9 A That was actually attached to the decedent's right
 10 wrist with the elastic band and was lying across her right
 11 thigh.
 12 Q Please continue.
 13 A A Peany's Nationwide standard pillowcase with red
 14 trim and apparent blood.
 15 Q What else?
 16 A And a Lady Pepperell queen size flat sheet with
 17 apparent blood.
 18 Q And finally?
 19 A A beige bib hospitality flat sheet with apparent
 20 blood.
 21 Q And where did you recover those last three items?
 22 A On top of the bed in the northwest master bedroom.
 23 Q Now, you've already testified that one of your duties
 24 was to complete a diagram.
 25 A Yes, it was.

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1 the same pertinent information, the address, the event number,
 2 the incident, my initials and P number, and the items that are
 3 listed inside the package.
 4 Q Can you tell us what an event number is.
 5 A The event number is -- it's basically a number that's
 6 assigned to each crime or each call of the day, and it consists
 7 of ten digits. And in this particular case the event number
 8 0811003 dash 3918 was the event number assigned to this case.
 9 The 08 stands for 2008. The 11 stands for November. The 03
 10 stands for November 3th of that month, and the 3918, that was
 11 event 3,918 of that particular day.
 12 Q So is it accurate to say that everything done
 13 reference a particular incident is all done under that same
 14 event number?
 15 A Yes, it should be.
 16 Q Okay. Do you recall whether or not you observed any
 17 vertical blinds on the floor in the northwest master bedroom?
 18 A Yes, I did.
 19 Q Showing you what's been admitted as Defendant's
 20 Exhibit Q.
 21 MR. SMITH: Actually, if I can approach the witness
 22 because you can't quite tell from --
 23 THE COURT: Sure.
 24 MR. SMITH: Thank you.
 25 BY MS. GRAHAM::

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1 Q Did you, in fact, complete a diagram in this case?
 2 A Yes, I did.
 3 Q Showing you what's already been admitted into
 4 evidence as State's Exhibit I. Do you recognize that?
 5 A Yes, I do.
 6 Q And what is this for the record?
 7 A That is the diagram that I completed in reference to
 8 this crime scene.
 9 Q And all the evidence that you have just testified
 10 that you recovered, for the record, what did you do with it?
 11 A I impounded that evidence into what we call our
 12 evidence vault where it's a secured location within our lab.
 13 We have a logbook that we must log that in for chain of custody
 14 purposes, and then an evidence custodian from our vault would
 15 come pick that up and sign the evidence out in the book.
 16 Q Okay. And when you impound evidence, is there some
 17 kind of record keeping thing that you do so that any person
 18 that looks at that evidence can know what incident that
 19 evidence is relevant to?
 20 A Yes.
 21 Q And how is that done, Ma'am?
 22 A I complete an evidence impound report which has the
 23 relevant event number and address on it.
 24 Q Okay.
 25 A And on the actual package itself is a label that has

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1 Q I'm showing you what's been marked -- excuse me,
 2 what's admitted as Defense Exhibit Q. Can you tell if you can
 3 make any observations based on this photograph with regards to
 4 the closet doors.
 5 A Yes, I can.
 6 Q And what are those observations?
 7 A They were slightly pushed back. They weren't
 8 necessarily on a track, so to speak, which was a little unusual
 9 from those closet doors.
 10 Q Okay. Thank you.
 11 MR. SMITH: Judge, I'll pass the. Thank you.
 12 THE COURT: Cross-examination.
 13 MS. PALM: Thank you.
 14 CROSS-EXAMINATION
 15 BY MS. GRAHAM::
 16 Q Ms. Maldonado, do you recall what time you arrived at
 17 the El Parque residence?
 18 A Yes, I do.
 19 Q What time was that?
 20 A Approximately 0034 hours.
 21 Q So at 12:34?
 22 A 12:34 a.m., yes.
 23 Q Okay.
 24 A And that was actually on the 6th, November 6th.
 25 Q Okay. And you were actually working with another

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1 CSA? CSA Collins?
 2 A Yes, I was.
 3 Q Okay. And you had a supervisor on scene?
 4 A Yes, I did.
 5 Q And that was CSA Supervisor Reed (phonetic)?
 6 A Yes, Gary Reed (phonetic).
 7 Q Okay. But you and Collins worked together with you
 8 actually gathering evidence and her -- she's a female or --
 9 A Yes, she is.
 10 Q Okay. Taking the photographs of the evidence.
 11 A Yes, that's correct.
 12 Q And so do you go around together, and as you are
 13 going to gather evidence, she's photographing it or how does it
 14 work?
 15 A Basically, we do a crime scene walk-through with the
 16 detectives on the scene initially. They give us the
 17 information as to what had occurred at that time, the best
 18 information that they have. We all do a walk-through together
 19 of the scene. We talk about the various areas of concern, the
 20 various items of evidence that may be important in the
 21 particular case.
 22 Also, the supervisor's usually present for that. At
 23 that time the supervisor will make the decision as to what
 24 responsibilities the crime scene analyst has at that time. So
 25 usually the two crime scene analysts together will get

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1 area.
 2 Q Okay. So there's some taped off area, but it's just
 3 not in this photograph.
 4 A Correct. It was on the lower level.
 5 Q Okay. Now, I just want to run through the
 6 photographs real quick. In is Defendant's Exhibit H. Do you
 7 recognize that?
 8 A Yes, I do.
 9 Q And is that the front door of the apartment?
 10 A Yes, it is.
 11 Q And that's how it looked when you were there?
 12 A Yes.
 13 Q And this is Defense Exhibit I. That's (sic) would be
 14 the kitchen area?
 15 A Yes.
 16 Q Is that how it looked when you were there?
 17 A Yes.
 18 Q And if there had been any disarray, you would have
 19 photographed that?
 20 A Disarray, I don't understand.
 21 Q I mean like chairs knocked over or some signs of --
 22 A Yes.
 23 Q -- something going on?
 24 A Yes.
 25 Q Okay. And there doesn't appear to be any of that?

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1 together, we'll talk about things, and at that point the crime
 2 scene analyst in charge of taking the photographs will go
 3 through the entire scene and do overall photographs of the
 4 entire scene before anything is moved or touch. That way we
 5 have a record of how the scene looked when we arrived.
 6 Q And would you be with the photographer at this point?
 7 In fact, in this case were you with Officer Collins as she's
 8 taking -- or CSA Collins as she's taking photographs?
 9 A In this particular case I was not actually inside the
 10 apartment only because it is a small area. And when you're
 11 taking photographs, you try to not have people in your
 12 background. So most likely I would have been outside on the
 13 patio area or down below or possibly even at my vehicle
 14 gathering supplies.
 15 Q Okay. But you would have at some point seen
 16 everything that she photographed?
 17 A Yes.
 18 Q All right. And when you got there, the scene was
 19 already secure with the crime scene tape?
 20 A Yes, it was.
 21 Q And showing you Defense Exhibit G. Can you tell me
 22 -- explain where the crime scene tape would have been in that
 23 photo.
 24 A Actually, in that particular photo I don't see the
 25 tape. It was actually on the lower level down in the courtyard

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1 A No.
 2 Q So these photographs aren't taken so much to document
 3 evidence of a crime but the absence of evidence in this room,
 4 maybe.
 5 A Possibly, the overall photographs could be used for
 6 that.
 7 Q Okay. And this is just again a view from the kitchen
 8 to the front door, Defense Exhibit J. These blinds that are
 9 closed, were they closed when you arrived on the scene?
 10 A Yes, they were.
 11 Q Okay. So when you arrive on a scene, you don't touch
 12 or move anything. You photograph it as it is.
 13 A As we find it, yes, we do.
 14 Q And this is Defense Exhibit K. That would just be
 15 the view from the front door.
 16 THE COURT: Can you turn it, the photograph.
 17 MS. PALM: Oh, I'm sorry.
 18 THE WITNESS: Yes.
 19 BY MS. PALM:
 20 Q Do you remember that?
 21 A Yes.
 22 Q And this is just the -- L is the other corner of the
 23 living room.
 24 A Yes.
 25 Q And this is Defense Exhibit M, and that's the view

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1 from the front door into the master bedroom?
 2 A Actually --
 3 Q As much as can you see.
 4 A Correct. You can see the doorway to the master
 5 bedroom from that view.
 6 Q And in this photograph, the living room light is on.
 7 Do you know if it was turned on for the photographs?
 8 A I honestly don't know.
 9 Q Okay. Is that something you would do, illuminate it
 10 so you can take photographs or --
 11 A Not necessarily --
 12 Q -- (indiscernible).
 13 A -- because we have a flash unit on our camera --
 14 Q Okay.
 15 A -- that would provide enough light.
 16 Q Okay. So -- but you can't make any representations
 17 as whether the lights are on or off when you got there?
 18 A That particular light, no, I don't know.
 19 Q Okay. And this is Defense Exhibit N, and this would
 20 be the view straight into that hallway showing the bathroom in
 21 between the two bedrooms.
 22 A Yes.
 23 Q This is Defense Exhibit O. That's actually the south
 24 bedroom.
 25 A Yes.

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1 Q If it looks to me in the closer picture that it's
 2 right here, would that be about right?
 3 A Possibly, yes, uh-huh.
 4 Q Okay.
 5 A Thereabouts.
 6 Q If I approach and show you, would you be able to see
 7 better, maybe?
 8 A Possibly. There should be a closer picture, too.
 9 THE COURT: Yes. You can approach.
 10 BY MS. PALM:
 11 Q (Indiscernible) the overall picture. Can you see the
 12 knife handle there?
 13 A It appears to be.
 14 Q This is Defense Exhibit S. Is that how the bed
 15 looked from that angle?
 16 A Yes.
 17 Q Okay. And looking at that bed, you can see that the
 18 -- it's not the mattress, but the mattress covers was kind of
 19 pulled down toward the end of the bed.
 20 A Yes, it was.
 21 Q Kind of sliding off the bed, actually.
 22 A Yes.
 23 Q Okay. And when you looked closer, you actually saw
 24 some footprints, didn't you?
 25 A Footprints?

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1 Q Okay. And that bedroom just appeared to have kind of
 2 exercise stuff in it. No beds.
 3 A Correct, no bed.
 4 Q Okay. Getting to the master bedroom, Defense Exhibit
 5 P. Is this the view from the south or the west wall of the
 6 master bedroom into the bathroom?
 7 A Yes, it is.
 8 Q Okay. And you hadn't rearranged the doors or
 9 anything before this photograph?
 10 A I did not, no.
 11 Q Okay. Do you know if the bedroom light was on when
 12 you got there?
 13 A When I entered the room the light was on.
 14 Q Okay. And the point this photograph was taken Ms.
 15 Witmarsh was still in the room. Her --
 16 A Yes.
 17 Q -- body was still in the room. This is Defense
 18 Exhibit R. Is this how -- a view of the bed when you arrived?
 19 A Yes.
 20 Q Okay. Can you show me where the knife was on the
 21 bed?
 22 A In this particular photo I don't believe you can see
 23 it clearly. I know a general area --
 24 Q Okay.
 25 A -- but not a specific location.

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1 Q On the bed.
 2 A I don't believe I saw a footprint on the bed.
 3 Q Okay, well, we'll get to those photographs. Here's
 4 another view of the bed of Defense Exhibit T. And there you
 5 can kind of see better where the knife is.
 6 A Yes.
 7 Q Okay. And it's under a wadded up pillowcase.
 8 A Yes, it was partially covered, the knife.
 9 Q This is Defense Exhibit U. And looking at that, is
 10 that how the knife was covered when you arrived?
 11 A Yes want.
 12 Q With a wadded up bloody pillowcase?
 13 A Yes.
 14 Q Okay. And a, b and c, do you recall what those are?
 15 A Yes, I do.
 16 Q What are they?
 17 A Those were areas of concern on the sheet in blood. A
 18 was some type of unknown pattern. We don't know if it was a
 19 transfer pattern, possibly a footwear pattern. B was what
 20 appeared to be or what we thought at the time was possibly a
 21 patent print or ridge detail in blood on the sheet. And c, the
 22 area marked c were linear lines, possibly finger marks with
 23 most ridge detail that extended off the bottom of the bed in a
 24 downward direction.
 25 Q Okay. And this is the closeup of a that you believe

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1 might have been a footprint.
 2 A Possibly, yes.
 3 (Off the record colloquy).
 4 BY MS. PALM:
 5 Q Okay. This would be a closeup of b and it's Defense
 6 Exhibit -- oh, I'm sorry. This is a proposed exhibit so I'll
 7 approach the witness, if that's all right.
 8 THE COURT: Yes.
 9 BY MS. PALM:
 10 Q Do you recognize what this is?
 11 A Yes.
 12 Q Is it a true and accurate depiction of the photograph
 13 you took that day?
 14 A Chelsea Collins, yeah, she took the photograph, but I
 15 was there, yes.
 16 Q Can you look at the rest of these (indiscernible)?
 17 A Okay.
 18 Q And they're all true and accurate --
 19 A Yes, they are.
 20 Q -- depictions?
 21 MS. PALM: (Indiscernible) Defense Exhibits SSS, VVV,
 22 UUU, and TTT.
 23 MR. SMITH: No objection, Judge.
 24 THE COURT: All right, they'll be admitted.
 25 MS. PALM: Thank you.

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1 A No.
 2 Q Okay. And they actually appear to be different
 3 patterns depicted in the pictures.
 4 A Yes.
 5 Q Showing you Defense Exhibit W, is that the jacket
 6 that you found?
 7 A Yes he.
 8 Q And the condition of the blinds, were they like that
 9 when you arrived at the scene?
 10 A Yes, they were.
 11 Q Defense Exhibit X. Is that the jacket in an unfolded
 12 condition?
 13 A Yes.
 14 Q And you actually unfolded that or Ms. Collins did to
 15 --
 16 A Yes, we did together.
 17 Q -- take the photograph?
 18 A Yes.
 19 Q Okay. And Defense Exhibit Z, what does that
 20 photograph depict?
 21 A Those are the black stretch pants that were located
 22 on the floor in the master bathroom.
 23 Q Okay. And they were fairly saturated with blood,
 24 were they not?
 25 A They were wet, yes.

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1 BY MS. PALM:
 2 Q Can you tell the jury what Defense Exhibit UUU
 3 depicts.
 4 A That looks like the impression that was marked A at a
 5 different angle, the possible or apparent transfer footwear
 6 pattern.
 7 Q Actually, if I put them side by side on here, they
 8 appear to be two different items. Would it help you to see
 9 them up close together if I walked over and showed you?
 10 A Not necessarily. It depends also what order those
 11 were taken in as to if the overalls were done before the labels
 12 were placed on there. There would have been overall pictures
 13 of the sheets before the scales were placed on there and also
 14 the labels.
 15 Q If I tell you UUU, I believe, is a picture of the
 16 pillowcase unfolded and a print on the pillowcase --
 17 A Okay.
 18 Q -- would that make more sense?
 19 A It do, yes, uh-huh.
 20 Q Okay.
 21 MS. PALM: May I approach the witness, your Honor?
 22 THE COURT: Yes.
 23 BY MS. PALM:
 24 Q And in comparing these two together, they don't
 25 actually look like a photograph of the same thing, do they?

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1 Q Okay. And went pretty far down. Were they wet at
 2 the waist and down?
 3 A I honestly couldn't tell you.
 4 Q Okay. Defense Exhibit AAA, that is the light switch
 5 that you testified about earlier?
 6 A Yes, it is.
 7 Q There was only light switch with blood --
 8 A Yes.
 9 Q -- right? And it was in the master bedroom --
 10 A Yes.
 11 Q -- near the bed? And do you know what that light
 12 switch operated?
 13 A No, I do not.
 14 Q Okay. So if it didn't operate a light, you wouldn't
 15 know that?
 16 A Correct.
 17 Q Okay. So you don't turn it on or off what you're
 18 taking the photograph or collecting the blood swab. You just
 19 document it?
 20 A Correct. I did not turn it on or off.
 21 Q And this is Defense Exhibit HH. Do you recognize
 22 that?
 23 A Yes.
 24 Q What is that?
 25 A That was the pillowcase that was located on top of

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1 the bed that was partially covering the knife.
 2 Q Okay. So unfolded -- you unfolded it for this
 3 picture or CSA Collins did?
 4 A Yes.
 5 Q Okay. And unfolded can you see where the apparent
 6 footprint is on the pillowcase?
 7 A Yes.
 8 Q And where is that? Can you show the jury. Thank
 9 you. Okay. Defense Exhibit II. That again is the knife.
 10 A Yes.
 11 Q And this knife only had blood drops on one side of
 12 it; is that correct?
 13 A I honestly couldn't tell you if they were blood
 14 drops. I just say it's apparent blood.
 15 Q Okay. So this is the knife after you've removed it
 16 from the bed and turned it over?
 17 A Yes.
 18 Q Okay. If I told you I could not find a single
 19 picture with the bed still or the knife still on the bed after
 20 the pillowcase is removed, would that surprise you?
 21 A I don't know if it would surprise me, no.
 22 Q Okay. Would it be unusual for you to not document
 23 how it looked in its original position after something was
 24 removed on top of it?
 25 A Occasionally it is not documented that way only

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1 A Yes.
 2 Q Showing you a picture of Defendant's QQ. Do you
 3 recognize what that is?
 4 A Yes.
 5 Q What is it?
 6 A That's the black and white scarf that was attached to
 7 the descendant's right wrist and extended over her right thigh.
 8 Q Is there anything in your crime scene experience when
 9 you look at that scarf that's inconsistent with it having been
 10 used as a tool to or as a compress to stop bleeding?
 11 MR. SMITH: Objection, Judge. It's outside the scope
 12 of her knowledge and calls for speculation.
 13 THE COURT: Sustained.
 14 BY MS. PALM::
 15 Q As a crime scene analyst do you sometimes look at
 16 evidence to determine how it might have been used?
 17 A Yes.
 18 Q Is looking at something determine whether it had been
 19 used to stop bleeding or held up to a body that was bleeding
 20 outside the scope of your experience?
 21 A I would not make any observation regarding that as to
 22 what type of medical attention was possibly given to the
 23 descendant, no. In that particular case, no.
 24 Q Okay, but would you look at something to tell whether
 25 it had been held up to a bleeding surface?

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1 because we have other responsibilities and duties. And
 2 oftentimes we're interrupted to go do something else in another
 3 room or we're called away from our particular duty at that
 4 moment. So honestly, it would not be unusual. We do try to
 5 get the photo, yes, we do.
 6 Q And this is the other side of the knife, Defense
 7 Exhibit JJ, and do you know whether that was the side that was
 8 facing up covered by the bloody pillowcase?
 9 A No, I do not.
 10 Q If I show you a picture when it's still covered,
 11 would it help you determine?
 12 A It may or may not.
 13 MS. PALM: May I approach, your Honor.
 14 THE COURT: Yes.
 15 BY MS. PALM::
 16 Q I'm showing you Defense Exhibit OO or OO. And it
 17 looks like this is the --
 18 A (Indiscernible). Yes, it does appear that way.
 19 Q Okay. So Defendant's Exhibit JJ would have been
 20 facing up on the bed and then covered immediately by the bloody
 21 pillowcase?
 22 A It appears that way, yes.
 23 Q And if you look at Defendant's Exhibit OO it appears
 24 that there's actually blood on the pillowcase right on the part
 25 that's touching the knife.

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1 A In this case no.
 2 Q But in other cases you might?
 3 A Possibly, yes.
 4 Q Okay. Same question for the pillowcase. Prior to
 5 its being unfolded there seem to be like areas where it had --
 6 you could see little triangle marks on there. Does that tell
 7 you anything as a crime scene analyst?
 8 A It possibly could, yes.
 9 Q Okay, what might it tell you?
 10 A In this particular case if the knife -- if that was
 11 laid on top of the knife somehow or the knife came in contact
 12 with that, it could have the appearance of some type of
 13 transfer pattern.
 14 Q Okay. Might it also tell you whether it had been
 15 folded up or not?
 16 A It possibly could.
 17 Q Were you present during the photographing of Mr.
 18 O'Keefe's injuries at the scene?
 19 A Yes, I was.
 20 Q Showing you Defendant Exhibit SS. What does that
 21 photo depict?
 22 A That appears to be his right hand, the thumb area.
 23 Q And does it appear that there's a cut on the top
 24 portion of the thumb?
 25 A I honestly could not tell. He was not really

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1 uncooperative when we were taking the photographs, so it was hard
2 for me to neighboring that determination. I was assisting
3 Crime Analyst Collins trying to get some overalls of him before
4 he left the scene.

5 Q Okay. But you can't say it's not a cut?

6 A I can't say that it's not, no.

7 Q Defense Exhibit UU. Is that how Mr. O'Keefe's hands
8 looked at the scene?

9 A Yes, they did.

10 Q And when you look at his -- it would be his right
11 hand -- do you also see a cut in this area here --

12 MR. SMITH: Judge, I'm going to object to --

13 BY MS. PALM::

14 Q -- index finger?

15 MR. SMITH: -- the characterization that it's a cut.

16 You can't really tell if it's a cut. I think an injury would
17 be more appropriate.

18 THE COURT: Well, I'm going to sustain the objection
19 as to if she knows what that is or what she observed.

20 BY MS. PALM::

21 Q Did you observe any cuts or injuries on Mr. O'Keefe's
22 fingers?

23 A I observed a possible injury, yes. I would not call
24 it a cut, though --

25 Q Okay.

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1 vehicle?

2 A I was not outside when those were taken, no.

3 Q Okay, so that would be CSA Collins?

4 A Yes.

5 Q At the direction of a detective?

6 A Yes.

7 Q Okay. Did you photograph the inside of the medicine
8 cabinet in the master bathroom?

9 A I did not personally, no.

10 Q Did you view the contents of the medicine cabinet?

11 A No, I did not.

12 Q You were present when Mr. O'Keefe was photographed
13 outside, though?

14 A Yes, at the scene, yes.

15 Q Showing you Defense RR. Do you recognize that
16 photograph?

17 A Yes, I do.

18 Q Do you recognize that as Detective Wildemann's arm --

19 A Yes, I do recall.

20 Q -- holding up Mr. O'Keefe's head?

21 A Yes, I do.

22 MS. PALM: Court's indulgence.

23 BY MS. PALM::

24 Q Do you recall whether when you were photographing the
25 closet anyone closed it before the photographs?

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1 A -- due to the hand being covered with the blood.

2 Q Okay. So you couldn't see it well enough?

3 A No.

4 Q Were you present when the search warrant was executed
5 by Detective Shoemaker or was that before all this evidence
6 gathering was done?

7 A The search warrant was executed prior to us entering
8 the apartment.

9 Q So you also were present when photographs were taken
10 of wallets?

11 A I don't know of any wallets. There may have been.

12 Q Showing you Defendant's Exhibit WW. Does that look
13 familiar to you?

14 A Yes, it does.

15 Q Okay. What does that depict?

16 A Those are two wallets on top of the kitchen counter
17 next to a red purse.

18 Q Okay. And Defendant's Exhibit XX, does that appear
19 to be Ms. Wimarsh's driver's license?

20 A Yes, it does.

21 Q The same driver's license that was in the wallet?

22 A It appears to be, yes.

23 (Off the record colloquy).

24 BY MS. PALM::

25 Q Were you present when photographs were taken of a

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1 A Can you repeat the question, I'm sorry.

2 Q When the closet was photographed, at some point was
3 it closed from a partially opened position?

4 A I honestly don't know because I was not present in
5 the room when the original photo was taken of the overall.

6 Q Were you there when the coroner arrived?

7 A Yes, I was.

8 Q And that was about 3:55 in the morning?

9 A Yes, it was.

10 Q And you did the crime scene diagram yourself?

11 A With the assistance of Crime Scene Analyst Collins
12 helping me with measurements, but I did the actual sketch, yes.

13 Q Okay. Showing you Defense Exhibit XXX, that's the
14 crime scene diagram you prepared.

15 A Yes.

16 Q Okay. If some photograph showed the pillow in that
17 location moved, you guys moved it for the photographs; is that
18 correct?

19 A Not necessarily. This is just an illustration or a
20 drawing of the scene -- of the crime scene, which would give
21 distances or spatial relationships between items of evidence or
22 objects. It's a representation.

23 Q Right. But this little square here is a pillow moved
24 down; is that correct?

25 A Correct, it's not centered.

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1 Q Okay. And in some photographs it's down and some
2 photographs it's back up. Somebody moved it during the
3 photographing.
4 A Correct.
5 Q Okay. And the body that's on this diagram does not
6 appear to be to scale. Would you agree with that?
7 A Correct, and it does say that the distance is
8 approximate under the north arrow.
9 Q Right.
10 A That that is approximate.
11 Q So it's approximate five feet, but that
12 (indiscernible) seven feet; would you agree?
13 A It's probably a little bit taller than that, yes.
14 Q Okay. And when you take those photographs, you're
15 photographing the body in a position that you found it; is that
16 correct?
17 A The overall photographs would be correct in the
18 position that it was found.
19 Q And you don't have any knowledge whether they were
20 moved by any officer -- or the body's been moved at all during
21 an arrest or, you know --
22 A Correct.
23 Q -- prior to you gets there, you don't know what
24 happened?
25 A Correct. We --

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1 contact?
2 A Correct. That's the way I found it when I impounded
3 it.
4 Q Can you explain how the knife was collected in order
5 to avoid contamination or smearing of the blood? What do you
6 do?
7 A In this particular case when I recovered the knife,
8 the actual paper bag that it's sitting on, I carefully inserted
9 the knife into the bag as far down as it could possibly go, and
10 I also took another paper bag the same size and put on the
11 other end of the knife.
12 In the apartment we had a general area where we
13 collect evidence where it's secure until we can transport it to
14 our vehicle. The bags that the knife -- that particular knife
15 was in was probably placed inside a larger paper sack, which I
16 then carried to the crime scene vehicle, and that was
17 transported back to our crime lab. And that would have been
18 placed in what we call an evidence hold locker, and it would
19 have been secured in there until I actually physically
20 impounded it.
21 Q Okay. And --
22 A The actual bag that the knife was inserted into, I
23 did use that bag when I impounded the knife to keep any
24 possible trace evidence inside there.
25 Q And then any further testing on the knife is not you?

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1 Q Okay.
2 A -- would not know that.
3 Q The bloodstain patterns, a, b, c on the sheet,
4 there's no indication that they were enhanced. Were they?
5 A Not at the scene or back at our crime lab.
6 Q Okay.
7 A In my particular office. I don't know if the
8 detective requested any further processing in the forensic lab,
9 but in our particular side, no.
10 Q Okay. So if somebody requested further processing,
11 that would not be you?
12 A Correct, it would not be me.
13 Q And you documented -- showing you Defense Exhibit MM,
14 the length of the knife handle and blade. Do you recall that?
15 A Yes, I do, um-hm.
16 Q Okay. And the blade itself was about eight inches?
17 A Yes.
18 Q Okay. So if we heard testimony -- we all hear
19 testimony that an injury was four and a half inches deep, this
20 drop here that I'm pointing to would be below that this is
21 probably, what, three inches in?
22 A I honestly don't know. I -- I honestly don't know
23 that.
24 Q There's no way to know whether the blood that got on
25 that knife got on that knife from the pillowcase or some other

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1 A Correct, that would have been done by the forensic
2 lab.
3 Q The footwear pattern in the bathroom, were you
4 involved in the collection of that footwear pattern?
5 A I was involved in the actual collection of the floor
6 tile. Did I not physical remove that, but I did impound that.
7 Q I'm sure everyone agrees I have too many photographs.
8 Showing you Defense Exhibit -- Proposed Exhibit -- I think
9 there was no objection.
10 MR. SMITH: Right.
11 MS. PALM: Your Honor, no objection. I'm moving to
12 admit this.
13 THE COURT: That's fine.
14 MS. PALM: It's Defense Exhibit RRR.
15 BY MS. PALM:
16 Q Do you recognize that?
17 A Yes, I do.
18 Q It looks a little weird under that light, but --
19 A Um-hm.
20 Q -- what is that a photograph of?
21 A That's the apparent footwear pattern that was on the
22 floor tile right inside the master bathroom adjacent to the
23 doorway.
24 Q And that was enhanced how?
25 A That was enhanced using a chemical called kudo

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1 crystal violet.
 2 Q Okay. And what helps you see the footprint better or
 3 what?
 4 A Yes, it would help visualizing any ridge detail or
 5 any type of detail within a certain type of pattern so it's
 6 easier to photograph and be more visual, basically, yes.
 7 Q Okay. And do you know whether this footprint was
 8 ever compared with Mr. O'Keefe's shoes?
 9 A I do not know that, no.
 10 Q So you were not involved in any processing of the car
 11 at all?
 12 A No, I was not.
 13 Q And if anybody had asked for any processing of the
 14 car or evidence in the car, would you have participated in
 15 that?
 16 A Yes, I would have.
 17 Q Okay. So the car was just photographed but not
 18 processed?
 19 A Correct.
 20 Q Did you ever check the apartment for containers of
 21 alcohol? Did you check the refrigerator, the trash, cupboards?
 22 A No, I did not.
 23 Q Okay. Do you know if Metro has a protocol for the
 24 collection of evidence of a person's intoxication when they
 25 murder suspect?

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1 the floor on the west side of the bed. The closet doors,
 2 again, were not on the track or on a track, which was, again, a
 3 little unusual. The bedding was disturbed slightly on top of
 4 the bed. And those are the areas that I recall that were in
 5 disarray.
 6 Q Was that consistent -- could that be consistent with
 7 a struggle?
 8 A Yes, it could.
 9 Q Now, I just wanted to make sure I was clear about one
 10 particular thing. Showing you Defendant's Exhibit U. Can you
 11 explain to us what is depicted in picture c. Or excuse me,
 12 where the c is. What did you say that --
 13 A C appeared to me to be three linear lines or just
 14 straight lines with no ridge detail like what would be on your
 15 fingerprint. There was no ridge detail. They were just three
 16 straight linear lines that actually look like they were moving
 17 in a downward direction toward the bottom of the bed.
 18 Q Now, in your opinion, could those lines have been
 19 made if someone, for instance, had attempted to wipe -- use
 20 that knife to wipe the blood off?
 21 A It's possible. However, to me they appeared to be
 22 more of a finger type mark.
 23 Q Okay.
 24 A Just in my opinion, yes.
 25 MS. PALM: I'd move for admission of Defense Proposed

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1 A I would not know that, no.
 2 Q Would you ever participate in that?
 3 A Not that I know of. No, I'm not aware of any
 4 procedure. I'm civilian, so it may be on the commissioned
 5 side.
 6 Q Do you ever participate in the collection of DNA
 7 evidence?
 8 A Yes.
 9 Q And --
 10 MS. PALM: Court's indulgence. No more questions.
 11 THE COURT: Mr. Smith, any follow-up?
 12 MR. SMITH: Thanks, Judge.
 13 REDIRECT EXAMINATION
 14 BY MR. SMITH:
 15 Q Ma'am, one of the questions that the defense attorney
 16 asked you on cross-examination was if the -- she showed you
 17 that picture of the front room, and she asked you was the front
 18 room in disarray.
 19 A Yes, she did.
 20 Q And you recall that you testified no, not really?
 21 A Not to my recollection, no.
 22 Q Was the bedroom in disarray?
 23 A Yes.
 24 Q Specifically how was it in disarray?
 25 A There were the removed vertical blinds that were on

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1 RR.
 2 MR. SMITH: No objection, Judge.
 3 THE COURT: It will be admitted.
 4 MR. SMITH: RR.
 5 BY MR. SMITH:
 6 Q Showing you again Defendant's Exhibit RR. And you
 7 testified that that was a picture taken where Mr. O'Keefe's
 8 head was being held up.
 9 A Yes.
 10 Q Do you know why his head was being held up?
 11 A Yes, I do.
 12 Q Why?
 13 A He was non-cooperative. He didn't want to stand
 14 still or stand up and face forward for the photographs.
 15 MR. SMITH: No further questions, Judge.
 16 THE COURT: Any recross?
 17 RECROSS-EXAMINATION
 18 BY MS. PALM:
 19 Q Were you close enough to Mr. O'Keefe to determine --
 20 to notice whether he appeared to be intoxicated or not?
 21 A I was pretty close to him. I don't know if he was
 22 intoxicated, but he was uncooperative and not following
 23 directions or listening.
 24 Q If Detective Wildemann testified he was obviously
 25 intoxicated, would you agree with that?

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1 A I would.
 2 Q Showing you Defendant's Proposed Exhibit YYY. Do you
 3 recognize this photograph?
 4 A Yes.
 5 Q Does it fairly and accurately depict a scene when you
 6 were there?
 7 A Yes, after he placed the cones, yes.
 8 Q Okay.
 9 MS. PALM: Move for admission of Defendant's YYY.
 10 MR. SMITH: No objection, Judge.
 11 THE COURT: It will be admitted.
 12 MS. PALM: Thank you.
 13 BY MS. PALM::
 14 Q If you could look at the closet door in this
 15 photograph. Do you see a closet door?
 16 A Yes, I see two closet doors.
 17 Q Okay, and does the one closet door appear to be
 18 partially open at least several inches?
 19 A Yes, and slightly pushed back.
 20 Q Okay. And looking at Defense Exhibit Q, is it
 21 actually closed in that photograph?
 22 A It's still partially open on the left-hand side.
 23 Q Is it open as far as it was in the first picture?
 24 A I cannot tell because I cannot see the bottom of the
 25 door.

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1 MR. SMITH: No further questions.
 2 THE COURT: Anything further, Ms. Palm?
 3 MS. PALM: No, thank you.
 4 THE COURT: Any questions from the jurors?
 5 THE MARSHAL: One.
 6 THE COURT: Counsel approach, please.
 7 (Bench conference).
 8 THE COURT: Ms. Maldonado, we have a question from
 9 one of the jurors. Do you have any personal knowledge as to
 10 whose blood was on the light switch.
 11 THE WITNESS: No, I do not.
 12 THE COURT: All right. Any follow-up questions to
 13 that one, Mr. Smith?
 14 BY MR. SMITH::
 15 Q Do you know if that blood was tested?
 16 A I do not know that.
 17 Q So you have no independent knowledge?
 18 A No, I do not.
 19 Q Okay.
 20 MR. SMITH: No further questions from the State.
 21 THE COURT: Ms. Palm.
 22 MS. PALM: No, thank you.
 23 THE COURT: All right, thank you, Ma'am, for your
 24 testimony. You're instructed not to discuss your testimony
 25 today with any other witness involved in this case until this

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1 Q Okay. So you think it's a picture of the same thing?
 2 A I don't know in what order those pictures were taken
 3 unless they're on a thumbnail sheet that would show the order
 4 that they were taken.
 5 Q Okay. But you agree the door could have been closed
 6 before the photograph?
 7 A It's possible, yes.
 8 MS. PALM: No more question. Thank you.
 9 THE COURT: Any redirect?
 10 FURTHER REDIRECT EXAMINATION
 11 BY MR. SMITH:
 12 Q Ms. Maldonado, are closet doors typically opened and
 13 closed at crime scenes?
 14 A Yes, for photographing or documentation purposes,
 15 yes, sometimes they are, yes.
 16 Q Do you have any independent knowledge as to whether
 17 or not that occurred in this case?
 18 A I did not physically see that.
 19 Q Showing you Defense Exhibit YYY. Was this photograph
 20 taken at a different angle than Defense Exhibit Q?
 21 A Yes.
 22 Q And does that impede your ability to determine
 23 whether or not a closet door is open the same amount as can be
 24 seen in this photograph?
 25 A Yes, it does.

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1 matter is finally resolved. Thank you for your time.
 2 THE WITNESS: Yes, sir.
 3 THE COURT: Next witness by the State.
 4 MR. SMITH: Judge, that would be Daniel Ford.
 5 THE COURT: Is the jury okay? Do you need a break
 6 now? Are you okay? All right, thank you.
 7 MR. SMITH: Judge, can we put a quick stipulation on
 8 the record?
 9 THE COURT: Sure.
 10 MR. PIKE: Thank you, your Honor. There was a
 11 reference to a search warrant. It's common practice when a
 12 emergency situation is relieved that there's a telephonic
 13 warrant where the detectives call in the judge, and the judge
 14 gives them permission to go back into the scene. That occurred
 15 here, and it was appropriately done, and the police went back
 16 in along with the CSAs in order to collect the evidence. And
 17 that reference response to that and the protocol that was
 18 followed by detectives.
 19 THE COURT: Is that correct, Mr. Smith?
 20 MR. SMITH: That is correct, your Honor.
 21 THE COURT: All right. That will be stipulated to by
 22 the parties. Thank you.
 23 THE MARSHAL: Mr. Ford, if you'll remain standing,
 24 please. Raise your right hand.
 25 DANIEL FORD, PLAINTIFF'S WITNESS, SWORN

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1 THE CLERK: Thank you. Please be seated. Please
2 state and spell your name for the record, please.
3 THE WITNESS: Daniel Ford, D-a-n-i-e-l, F-o-r-d.
4 MR. SMITH: May I proceed, your Honor?
5 THE COURT: Yes, Counsel.
6 MR. SMITH: Thank you.
7 DIRECT EXAMINATION
8 BY MR. SMITH:
9 Q Mr. Ford, how are you presently employed, sir?
10 A As a senior crime scene analyst with the Las Vegas
11 Metropolitan Police Department.
12 Q Were you working as a crime scene analyst back on or
13 around November 5th, 2008?
14 A Yes, sir, I was.
15 Q Did you respond to a scene located at a 5001 -
16 actually, strike that question. Did you have any job
17 assignment with regards to an event that took place on November
18 5th, 2008?
19 A Would depend on that event number, sir. I was
20 working graveyard that night.
21 Q Okay. Would event 0811053918 sound familiar?
22 A Yes, sir, it does.
23 Q And what involvement did you have with that
24 particular event?
25 A Was requested to go over to the Detective Bureau on

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1 the request of the detectives. Returned to the office.
2 Photographs the clothing as each individual item was laid out,
3 and then impounded those items.
4 Q Okay, now you say you took swabs from the defendant.
5 Where did you take the swabs from?
6 A If I may refer to my report?
7 Q Would that refresh your recollection, sir?
8 A Yes, sir, it would.
9 Q Then, please do.
10 A Apparent blood swab was taken from the right index
11 finger over the suspect.
12 Q Okay.
13 A A buccal swab kit was taken from - which was a swab
14 to the inside of the cheek - from the suspect.
15 Q And incidentally, what's the purpose of taking a
16 buccal swab from the inside cheek of a suspect?
17 A For DNA comparison at a later date if there is DNA
18 evidence to be compared.
19 Q Okay. And anything else?
20 A And two swabs were taken of the penis of the suspect.
21 Q Okay. And you said you also took photographs.
22 A Yes, sir, I did.
23 Q Of the defendant?
24 A Yes, sir, that's correct.
25 Q Showing you what's been admitted as State's Exhibit

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1 West Oakley to meet with homicide detectives and photograph the
2 defendant in this case and obtain evidence from him at the
3 time.
4 Q Do you see you the person that you ultimately went to
5 and photographed present here in court today?
6 A Yes, sir, I do.
7 Q Can you identify him for the --
8 MS. PALM: We'll stipulate to his identity.
9 MR. SMITH: Thank you.
10 THE COURT: All right.
11 BY MR. SMITH:
12 Q And what exactly did you do when you arrived at the
13 Detective Bureau?
14 A I met with Detective Wildemann and Detective Dean
15 Ratz (phonetic). The suspect at that time was in the interview
16 room being guarded by two police officers or being watched over
17 by two police officers. I went into the room. Detective
18 Wildemann identified or explained to the individual that I was
19 going to take photographs of him. Photographed his clothes
20 with what appeared to be apparent blood on them. There was a
21 red stain. Collected those items of clothing from him, the
22 shoes and socks. Swabbed his - took photographs, closeup
23 photographs of his hands to show apparent blood on his hands
24 and a cut on his right index finger.
25 Took swabs from his hands, and did penile swabs at

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1 16. Did you photograph those shoes?
2 A Yes, sir, I did. Those were taken -- photographs
3 were taken at the crime lab.
4 Q Also, State's 17?
5 A Yes, sir.
6 Q And 18?
7 A Yes, sir, that's correct.
8 Q Showing you Defense Exhibit ZZ. Is that a photograph
9 that you took?
10 A Yes, sir, it is.
11 Q And Defense Exhibit AAA. Is that a photograph that
12 you took?
13 A Yes, sir, it is.
14 Q Just for the record, these were taken at the
15 Detective Bureau.
16 A That's correct.
17 Q As opposed to at the scene?
18 A At the Detective Bureau, not at the scene. And they
19 were taken in the interview room.
20 Q Thank you.
21 MR. SMITH: Judge, I'll pass the witness.
22 THE COURT: Cross.
23 MS. PALM: Thank you.
24 CROSS-EXAMINATION
25 BY MS. PALM:

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1 Q Sorry are the delay.
 2 A Problem, Ma'am.
 3 Q Good afternoon.
 4 A Good afternoon.
 5 Q When you responded to take photographs and collect
 6 evidence in Mr. O'Keefe's case, that was about 3:47 in the
 7 morning on November 6th?
 8 A Yes, ma'am, that's correct.
 9 Q And you met there with Detectives Wildermann and Ratz?
 10 A That's correct.
 11 Q And there were also uniformed officers there?
 12 A Officer Hutcherson and Hatchet (phonetic).
 13 Q Okay. And I'm just going to run through some of the
 14 photographs that have already been admitted. In Defense
 15 Exhibit AAA you took that photograph?
 16 A Yes, ma'am.
 17 Q And who is that holding Mr. O'Keefe up?
 18 A It would either have been Officer Hutcherson or
 19 Hatchet.
 20 Q Okay. And same thing with Defense Exhibit ZZ. Who's
 21 holding him up there?
 22 A It would have been the same officer.
 23 Q Okay. And you took closeups to show where blood was
 24 on his clothing?
 25 A I photographed the clothing after I had removed him

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1 Q And you also cleaned it up with some water or saline
 2 or something?
 3 A I used a swab with distilled water to do a swab of
 4 that index finger.
 5 Q Cleaned it up a little better?
 6 A Yes, ma'am.
 7 Q Okay. Defense Exhibit III. Is that a photograph
 8 showing the injury a little bit better?
 9 A Yes, ma'am, it is.
 10 Q And what portion of the finger is the injury on?
 11 A The first joint.
 12 Q Okay. And that's his right hand?
 13 A Yes, ma'am.
 14 Q Did anybody point out the injury on his thumb to you?
 15 A Not that I remember, no, but just a wound to the
 16 right index finger, bruising to the right inside biceps,
 17 scratches to the back at the belt line.
 18 Q Okay. If he appeared to have an injury on his thumb
 19 in some other photographs, would you dispute that?
 20 A I couldn't say that it was ever pointed out to me
 21 that he had an injury on his thumb. The only injury that was
 22 pointed out was the injury on the right index finger.
 23 Q Okay. So you're just photographing what's pointed
 24 out to you?
 25 A Yes, ma'am.

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1 -- I photographed the clothing on him, his pants, and then
 2 photographed the clothing also at the lab to show where the
 3 blood was.
 4 Q So this photograph was just a closer view of Mr.
 5 O'Keefe?
 6 A Just to show the individual, yes, ma'am.
 7 Q Okay. And Defense Exhibit DDD is a photograph --
 8 A Of the lower legs to show the parent blood on the
 9 pants legs of the jeans he was wearing.
 10 Q Okay. Defense Exhibit EEE.
 11 A Is a closeup of the hands, the backside of the hands.
 12 Q Okay. And that's how it looked after or when you
 13 arrived at 3:00?
 14 A Yes, ma'am. Sometime after 4:00 o'clock, yes, ma'am.
 15 Q Okay. So he hadn't had the opportunity to wash his
 16 hands off yet?
 17 A Not at all, No, Ma'am.
 18 Q Okay. And Defense Exhibit FFF.
 19 A Is the palmer side of the hand showing the right
 20 index finger and the apparent blood on the hands.
 21 Q Okay. And when you say showing the right index
 22 finger, you, in fact, noted an injury when you were taking
 23 those photographs.
 24 A Yes, ma'am. I took an additional photograph with a
 25 scale to show the size.

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1 Q Okay. Defense Exhibit KKK is just the --
 2 A That's the --
 3 Q -- photograph that you --
 4 A -- (Indiscernible) scale, yes, ma'am.
 5 Q Scale. Defense Exhibit GGG.
 6 A Was the bruising to the forehead.
 7 Q And Defense Exhibit HHH
 8 A Same photograph with the scale in place.
 9 Q Now, did you also photograph Mr. -- any injuries to
 10 Mr. O'Keefe?
 11 A Yes, I did. The injuries pointed out were bruising
 12 to the right bicep, inside of the biceps, scratches to the back
 13 at the belt line, taser marks to the left shoulder and left
 14 side, abrasions to the forehead that we just saw.
 15 MS. PALM: May I approach the witness, your Honor?
 16 THE COURT: Yes.
 17 BY MS. PALM:
 18 Q (Indiscernible).
 19 A Okay.
 20 Q See if you recognize them?
 21 A That's the right bicep. This is the back. The
 22 scratches on the belt line before he -- and that's the -- that
 23 a's this one with the scale.
 24 Q. Are these photographs I just showed you Defense 000
 25 (sic), PPP, QQQ, MMM, NNN proposed exhibits, are those pictures

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1 of what you just testified about?
2 A Yes, ma'am, they are.
3 Q And they're true and accurate pictures?
4 A Yes, they are.
5 MS. PALM: Move for admission.
6 MR. SMITH: I'm sorry, which ones were they? Were
7 they the ones you already showed me?
8 MS. PALM: I showed them to you, but you --
9 MR. SMITH: Yeah. Yeah. No objection, Judge.
10 THE COURT: All right. They'll be admitted.
11 BY MS. PALM:
12 Q If you could just tell the jury what these
13 photographs show.
14 A That's bruising to the right inside of the biceps of
15 the right arm of the -- Mr. O'Keefe.
16 Q Okay. And that would be Defense Exhibit NNN and is
17 this another picture of the same thing with the scale?
18 A Same thing with the scale in place.
19 Q And what is shown in Defense Exhibit QQQ?
20 A This is the laser mark to the right upper -- or the
21 -- there's a scratch area on the left -- the right rear
22 shoulder area. It wasn't the laser mark. Laser mark's from
23 the other side of the body.
24 Q And what is depicted in Defense Exhibit OOO?
25 A Scratches just here at the belt line.

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1 Q Okay. And you wouldn't have had any role in
2 comparing the soles of these shoes to any footprints on the
3 bed, would you?
4 A No, Ma'am. I never went to the scene at all.
5 Q Now, you also used a swab to collect biological
6 evidence from Mr. O'Keefe's penis in?
7 A Two swabs, yes, ma'am.
8 Q Okay. Do you recall that Mr. O'Keefe actually
9 collected his own sample after you handed him a swab?
10 A Yes, ma'am. We handed the swabs to Mr. O'Keefe and
11 he did the swabbing himself.
12 Q Okay. And in doing the swabbing, he actually held
13 his penis with his one hand while he used the other hand to
14 collect the --
15 A Yes, ma'am.
16 Q -- sample?
17 A That's correct.
18 Q Okay. Does that not cause a contamination problem
19 with the blood on his hands being mixed with the sample that
20 you're gathering?
21 MR. SMITH: Objection as to relevance at this point.
22 THE COURT: I'm sorry, your objection again?
23 MR. SMITH: The relevance at this point.
24 THE COURT: I'm going to overrule the objection, but
25 also, let's lay the proper foundation whether or not this

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1 Q Okay. And --
2 A Then I had the -- Mr. O'Keefe lower his jeans --
3 Q So you could get a better --
4 A -- and took a better photograph with the scale in
5 place
6 Q And would that be PPP?
7 A That would be that photograph there, yes, ma'am.
8 Q And you also collected and impounded Mr. O'Keefe's
9 shoes and clothing?
10 A Yes, ma'am.
11 Q Did you photograph the shoes?
12 A Yes, ma'am, I did.
13 MS. PALM: May I approach, your Honor?
14 THE COURT: Yes.
15 BY MS. PALM:
16 Q Showing you Defense Proposed WWW. Do you recognize
17 that?
18 A Yes, ma'am. It's the soles of the shoes that I
19 photographed at the lab.
20 MS. PALM: Move for admission of WWW.
21 MR. SMITH: No objection.
22 THE COURT: Is it will be admitted.
23 BY MS. PALM:
24 Q So these would be the soles of Mr. O'Keefe's shoes?
25 A That's correct, the soles of those shoes, yes, ma'am.

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1 officer has the expertise regarding contamination
2 BY MS. PALM:
3 Q Are you trained regarding how to collect evidence so
4 that there's no cross-contamination problem?
5 A Yes, ma'am.
6 Q Would you agree that cross-contamination is the
7 unwanted transfer of two or more sources of physical evidence?
8 A Yes, ma'am.
9 Q Okay. And to -- are you trained in the proper method
10 to collect a penile swab or sample?
11 A Believe it or not at that time we were just told to
12 wet a swab with distilled water and either do it ourselves or
13 have the defendant or the suspect do it.
14 Q Okay. But when the suspect has a bleeding hand or
15 blood on his hands from somebody else, is it possible that that
16 could contaminate the sample that you're collecting?
17 A Yes, ma'am, it did, and it was a concern of mine. I
18 asked the detectives about it, and they said go ahead and let
19 the defendant do it himself.
20 Q Okay. And so he actually with his bloody hands
21 touched his penis and gathered the sample with the same bloody
22 hand?
23 A Yes, ma'am. All the blood on his hand at that time
24 was dry. There was no wet blood present.
25 Q Okay. Is it possible that the blood would have

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1 flaked off onto his penis anyway and been gathered up in the
2 sample?
3 A Possibly.
4 Q And might go it have been a better procedure to give
5 him gloves or to have him wash his hands first?
6 A The detectives didn't -- we could have taken him to
7 wash his hands, yes.
8 Q While you were there, was Mr. O'Keefe completely
9 cooperative with your request to collect evidence?
10 A Completely.
11 Q Did you yourself notice any evidence that he appeared
12 to be intoxicated?
13 A I was up close taking the closeup photograph of him.
14 I didn't -- I don't remember smelling anything. He could have
15 been. He could have been under the influence, but I -- he
16 seemed to be upset.
17 Q Okay. Were you present when he was dressed out to
18 give you his clothing?
19 A Yes.
20 Q Do you recall that he had to be steadied by somebody
21 to be dressed?
22 A To put the bloody suit on, yes, ma'am.
23 Q Okay. And do you recall Detective Wildemann helping
24 him put a boot on because he couldn't get it on right?
25 A That I don't remember.

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1 Q Did you observe any contamination on those samples?
2 A No, I did not.
3 MR. SMITH: No further questions.
4 RECROSS-EXAMINATION
5 BY MS. PALM:
6 Q When Mr. O'Keefe was swabbing the inside of his cheek
7 with the buccal swab, he doesn't actually stick his finger into
8 his mouth, does he?
9 A No, Ma'am.
10 Q Okay.
11 A No, Ma'am, just the --
12 Q Just the --
13 A It's -- it looks like a tooth brush. It's
14 approximately six inches long, maybe.
15 Q Okay. And as far as blood contamination of the
16 penile swab goes, it's possible that it could be contaminated,
17 but you wouldn't see it because it would be small fleck of
18 blood.
19 A That's correct.
20 MS. PALM: Nothing else.
21 THE COURT: Anything else, Mr. Smith?
22 FURTHER REDIRECT EXAMINATION
23 BY MR. SMITH:
24 Q For the record, can you describe how long the
25 apparatus that's used to obtain the buccal swab from the mouth

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1 Q Are you aware of any policy that Metro has regarding
2 the collection or preservation of a defendant's blood or breath
3 alcohol level?
4 A No, Ma'am, I'm not.
5 Q That would not be your decision?
6 A No, Ma'am, that's not my area.
7 Q And not something you would participate in?
8 A No, Ma'am.
9 MS. PALM: No more questions. Thank you.
10 MR. SMITH: Couple questions, Judge.
11 REDIRECT EXAMINATION
12 BY MR. SMITH:
13 Q CSA Ford, can you tell us the procedure that was used
14 to collect the buccal swab from the defendant's mouth?
15 A Same thing, we gave the -- handed the -- it looks
16 like a small tooth brush -- handed that to the defendant. He
17 -- to swab the inside of his -- there was two of them. To swab
18 the inside of the right cheek. He returned it to us that goes
19 directly into a cardboard box, a small cardboard box. Hand him
20 the second tooth brush type to swab the inside of the other
21 cheek and again, it goes back into the box by himself (sic).
22 Q Did you observe the samples once he had given them
23 back to you?
24 A Just noticed them going back inside the box, that's
25 all. The box was sealed and the package is sealed.

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1 is?
2 A Approximately six inches long, I would say. A rough
3 guessimate.
4 Q And how long is the business end? That is, the
5 actual surface area that's used to obtain the cells from the
6 inside of the mouth?
7 A Between three quarters of an inch to an inch, and
8 it's probably less than an eighth of an inch wide.
9 Q So when you handed the specimen or the apparatus to
10 obtain a specimen from the defendant, I mean, how did he do it?
11 A We -- it's in a sealed package. We break open the
12 package. We pull the item out holding the handle in and pass
13 it to the individual. They take it from us and scrape the
14 inside of their mouth and drop it in this small box -- in the
15 small box. We hand them the second item. They swab the other
16 side of their mouth and drop it in the box.
17 Q And again, is -- excuse me, as Ms. Palm just asked
18 you, in this case, you didn't see the defendant stick his
19 entire hand in his mouth; is that correct?
20 A No.
21 MR. SMITH: No further questions.
22 THE COURT: Any follow up, Ms. Palm?
23 MS. PALM: No.
24 THE COURT: Any questions from the jurors? No. All
25 right, thank you, sir. You are instructed not to discuss your

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1 testimony with any other witness involved in this case until
2 this matter is finally resolved. Thank you for your type, sir.

3 THE WITNESS: Thank you, your Honor.

4 THE COURT: Next witness for the State.

5 MR. SMITH: Judge, can we approach real fast --

6 THE COURT: All right.

7 MR. SMITH: -- please.

8 (Bench conference).

9 THE COURT: State's next witness, please.

10 MR. SMITH: Judge, the State calls Robbie Dahn.

11 THE MARSHAL: If you'll just remain standing. Raise
12 your right hand, please.

13 ROBBIE DAHN, PLAINTIFFS WITNESS, SWORN

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

16 THE WITNESS: Yes. My name is Robbie Dahn. My first
17 name's spelled R-o-b-b-i-e. Last name spelled D-a-h-n.

18 MR. SMITH: May I proceed, Judge?

19 THE COURT: Yes.

20 MR. SMITH: Thank you.

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q Ms. Dahn, how are you presently employed?

24 A I'm a senior crime scene analyst with the Las Vegas
25 Metropolitan Police Department.

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1 swabs, and I took some samples of blood, and I located a hair
2 and also the clothing.

3 Q Can you tell us where you located these items?

4 A On the body of Victoria Witmarsh.

5 Q Okay. Did you prepare any reports pursuant to that?

6 A Yes, we prepare an autopsy report.

7 Q Would looking at your report refresh your
8 recollection as to specifically where you recovered specific
9 items with regards to this case?

10 A Yes.

11 MR. SMITH: May I approach the witness, Judge?

12 THE COURT: Yes.

13 BY MR. SMITH:

14 Q I'm just going to ask you to review your report, and
15 then see if that refreshes your recollection as to specifically
16 where you obtained or retrieved items of evidence in this case.

17 A Yes. In general I collected the items from the body,
18 but a buccal swab kit, that's collected from the mouth. And
19 then I had many different biological swabs that were collected
20 from different areas. Did you want me to go through
21 specifically each item?

22 Q No, I think you've done well enough. And you
23 obtained these items from Victoria Witmarsh?

24 A Yes, I did.

25 Q And what did you do with them after you obtained

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1 Q And how long have you been working in that capacity?

2 A July will be 11 years. 10, 10 and a half years.

3 Q (Indiscernible) does as a crime scene analyst, did
4 you have occasion to respond to a 5001 El Parque on the night
5 or early morning of November 5th or November 6th, 2008?

6 A No, I did not.

7 Q Okay. How did you become involved with the event
8 that transpired at that place?

9 A I work on the day shift. I report to work at 6:00 in
10 the morning. The day shift people are responsible to respond
11 to the autopsies, and that day I was assigned to work an
12 autopsy that was affiliated with this case.

13 Q Okay. And was that an autopsy on a descendant by the
14 name of Victoria Witmarsh?

15 A Yes.

16 Q So where did you respond to fulfill your duties in
17 this investigation?

18 A I went over to the Clark County medical examiner and
19 coroner's office.

20 Q Did you obtain any evidence at that location?

21 A Yes, I did.

22 Q And what did you obtain?

23 A Our duties there are to photograph as well as to
24 collect evidence. I collected a buccal swab kit. I collected
25 many biological swabs such as cervical swab, rectal swab, oral

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1 them?

2 A I took them back to the CSI section of the Las Vegas
3 Metropolitan Police Department and I booked those into
4 evidence.

5 Q Did you impound any clothing pursuant to this?

6 A Yes, I did. The descendant had two items of upper
7 body clothing. A tank top and a small little jacket, and I did
8 impound those.

9 MR. SMITH: Pass the witness, Judge.

10 THE COURT: Cross.

11 CROSS-EXAMINATION

12 BY MS. PALM:

13 Q I missed it if you said it. You collected fingernail
14 clippings from the descendant?

15 A That was one item. I didn't go through every single
16 item in that biological kit, but I did -- the hands had bags
17 over them, and I did collect fingernail clippings.

18 Q Okay. And are those sometimes collected in order to
19 determine whether a deceased person has someone else's DNA
20 under fingernails?

21 A Yes.

22 Q And do you know whether any testing was done on that
23 -- on those fingernails?

24 A I don't have that knowledge.

25 MS. PALM: No more questions. Thank you.

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1 THE COURT: Mr. Smith, anything further?
 2 MR. SMITH: No, Judge, not from this witness.
 3 THE COURT: Any questions from the jurors? All
 4 right. Thank you, Ma'am, for your testimony. You're
 5 instructed not to discuss your testimony with any other witness
 6 involved in this case until this matter is finally resolved.
 7 Thank you for your time.
 8 THE WITNESS: Thank you, sir.
 9 THE COURT: Another witness for the State. All
 10 right. Ladies and gentlemen, we're going to recess at this
 11 time. It's about 4:35 or so. We've had a long day and I
 12 appreciate your patience. I've got a relatively short calendar
 13 tomorrow so we'll come back at 9:30 tomorrow morning.
 14 During this recess it is your duty not to converse
 15 among yourselves or with anyone else on any subject connected
 16 with the trial or read, watch or listen to any report over
 17 commentary on the trial by any person connected with the trial
 18 or by any medium of information including, without limitation,
 19 newspaper, television, radio or the Internet.
 20 You're not to form or express an opinion on any
 21 subject connected with this case until this matter is finally
 22 submitted to you for your deliberation. We'll see you back at
 23 9:30 tomorrow morning. Thank you.
 24 (Jury exits).
 25 (Outside the presence of the jury)

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1 specifically states what we must provide, and the Supreme Court
 2 of the United States has imposed additional requirements up on
 3 us, i.e., exculpatory evidence. This is not exculpatory
 4 evidence.
 5 Furthermore, it's our position that Officer
 6 Hutcherson was noticed well in advance of trial, and had they
 7 -- the defense pretrial Officer Hutcherson and asked what he
 8 stated, they could have found this information out. It's my
 9 understanding that in a phone conversation that co-counsel had
 10 with Mr. Hutcherson -- I guess it was today or this morning --
 11 that he relayed those statements.
 12 And it's not discovery because it wasn't
 13 memorialized. That's our position.
 14 THE COURT: Anything further, Ms. Palm?
 15 MS. PALM: Our position is they had knowledge of it.
 16 They supposedly have an open file. We've been communicating
 17 all along so that we could rely on them to tell us if there was
 18 any evidence that was that prejudicial so that we can make an
 19 issue of it and bring it in front of the Court. And I think
 20 they had a duty to bring that issue in front of the Court
 21 themselves because they should know that that word is going to
 22 be extremely prejudicial, and we have some rights to -- with
 23 respect to that.
 24 THE COURT: Mr. Smith, you didn't really address the
 25 issue of the N word.

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1 THE COURT: Let the record reflect we're outside the
 2 presence of the jury panel. Ms. Palm, I think you had a motion
 3 for mistrial.
 4 MS. PALM: Yes, I have a moving for a mistrial, your
 5 Honor. We were surprised by the testimony of Officer
 6 Hutcherson with regard to the additional statements outside of
 7 the statements that were contained in the note we were
 8 provided. And specifically, our client is prejudiced by the
 9 statement referring to nigger music.
 10 Certainly if we had known about that statement, we
 11 might have changed our trial strategy. We might have changed
 12 our voir dire questioning. We had no notice of that, and
 13 Officer Hutcherson testified that he did tell the District
 14 Attorney about his additional statements that he was going to
 15 present today, and we were never informed of it.
 16 We would have done a motion to preclude any reference
 17 to the word nigger because it's certainly not relevant to
 18 anything in this case. And it is highly prejudicial, so we are
 19 moving for a mistrial on the basis of discovery violation and
 20 the prejudice attached to that word.
 21 THE COURT: Mr. Smith.
 22 MR. SMITH: Judge, it's not a discovery violation in
 23 that as we addressed at the bench, the State had no advance
 24 notice of the statement. It wasn't written down. It wasn't
 25 preserved. It wasn't memorialized. The discovery statute

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1 MS. GRAHAM: Well, should I address that, Judge?
 2 THE COURT: Someone.
 3 MS. GRAHAM: Officer Hutcherson was on FMLA leave the
 4 entire time. We didn't have a phone number to contact him.
 5 Although, as co-counsel Smith has indicated, he was noticed,
 6 and the defense had full opportunity to pretrial him
 7 themselves, as they did several of the witnesses.
 8 Last night I got ahold of him probably about 8:00
 9 o'clock. He returned a phone call from me. His wife had just
 10 had a baby. I told him that I did need him here. I told him
 11 that --
 12 THE COURT: I'm not -- I'm not -- I mean, my question
 13 isn't addressed towards the discovery issue. It's to the use
 14 of the racial slur.
 15 MS. GRAHAM: He indicated last night during
 16 conversation I asked him what his involvement was in the case,
 17 and he basically told me exactly his involvement in the case of
 18 being posted outside the door, that he had control over the
 19 defendant.
 20 And I indicated that I needed him to address the
 21 statements that the defendant had made to him while he was over
 22 his watch.
 23 MS. PALM: And that tells me she did not caution him
 24 not to just blurt out the racial slur, and she did not think of
 25 bringing it to the Court's attention or to our attention, but

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1 she knew about it.

2 MR. SMITH: Judge, I will submit that your Honor
3 sustained the objection. If your Honor is duly concerned about
4 it, you can issue a corrective instruction that the jury is to
5 pay no attention to that. But I submit that it's merely not
6 warranted at this juncture.

7 I mean, all they heard was turn off that N music, and
8 I mean, that was it.

9 MS. PALM: And your Honor, if I heard that, it would
10 make me not like somebody. It would make me hold it against
11 them. I would judge them unfairly for it, I'm sure. That
12 would be a hard thing to put out of my mind. I can imagine it
13 would be hard to put out of a juror's mind.

14 THE COURT: As far as discovery violation, I don't
15 find that. There was nothing memorialized that the State
16 withheld. So I don't find a discovery violation, and the
17 officer's statement is immediate objection. I don't feel that
18 that rises to any level of undue prejudice in this case that
19 would warrant a mistrial, so motion of mistrial is denied.
20 Anything else before we start tomorrow morning?

21 MR. PIKE: Yes, your Honor. I'd like to thank the
22 State. They were able to obtain a faxed copy of the use of
23 force report that was prepared in this case. They've provided
24 a copy to me as soon as they received it. I've gone through
25 that, and I -- if there are any issues in relationship to

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1 What we might have -- what we request the Court to do
2 or the defense may request the Court to do is to indicate that
3 the number of photos are inordinate because of the biological
4 issues that were with this and that we can't bring the things
5 in for them to hold and to examine so we've had to put in a
6 large numbers of photographs or we can just argue it at
7 closing. Whatever the Court would prefer.

8 THE COURT: I think it's appropriate that we do put
9 that stipulation on the record, obviously, in front of the jury
10 panel. And if the parties wish, I can make that quick -- you
11 know, the brief statement to the jury that we have so many
12 photos because we have to show these pieces of evidence because
13 we can't bring them into court.

14 MR. PIKE: And it has been a little bit cumbersome
15 because we can't just hold up a shoe or the knife --

16 THE COURT: Right.

17 MR. PIKE: -- or like that. All right, thank you.

18 THE COURT: State agrees for the Court to make that
19 statement to the jury as far as --

20 MR. SMITH: No problem whatsoever, Judge.

21 THE COURT: Anything else?

22 MR. SMITH: Judge, and just if I could supplement the
23 record with regards to Ms. Palm's motion for a mistrial with
24 regarding a potential prejudice against her client because of
25 the testimony that's come out. I will represent to the Court

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1 additional reports or additional testimony that we'll need to
2 introduce at that time, we'll subpoena the appropriate officers
3 to come in.

4 I don't anticipate that we will from my initial
5 review of it. But they obtained it pursuant to the Court's
6 order and got it to me very early on in the afternoon.

7 Another procedural matter is that we have been
8 entering into stipulations with the State, and I don't know the
9 Court's position, but I assume that it's with the Court's
10 permission to try and resolve questions so that we don't have
11 to call in witnesses like with the search warrant and things
12 like that. So I don't mean to intrude upon the Court's
13 protocol --

14 THE COURT: Not at all.

15 MR. PIKE: -- but so long as we're involved with
16 that. Because of the blood evidence, we have an inordinate
17 number of pictures. We are -- we have stipulated that all of
18 the evidence that was collected was maintained within the
19 appropriate change of custody for the people that subsequently
20 tested it. And that for instance, like the shoes, they can't
21 bring them in and hold them because they got blood on them.

22 So we'll -- with the Court's permission, we'd ask an
23 opportunity to again, state that to the jury that the evidence
24 that was photographed was impounded is properly preserved and
25 the testing occurred.

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1 that we will take great caution not to refer to that material
2 again in either the closing argument or the rebuttal argument.

3 We won't make statements like, you know, you heard
4 what Officer Hutcherson said which would kind of invite them to
5 considered the entirety of what they said, and we'll keep our
6 arguments strictly limited so that there's no inference or, you
7 know, bringing that -- those statements up again.

8 THE COURT: All right. I appreciate that.

9 MR. SMITH: Thank you.

10 THE COURT: Anything else? Perhaps in the afternoon
11 tomorrow at one of the breaks we'll start working on the jury
12 instructions.

13 MR. PIKE: Thank you, your Honor.

14 THE COURT: All right.

15 (Court recessed at 4:47 p.m., until
16 Tuesday, March 18, 2009)

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* * *

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ATTEST: Pursuant to Rule 3C(d) 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.

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Julie Lord

JULIE LORD, TRANSCRIBER

7-7-09

DATE

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FILED

JUL 10 2009

DISTRICT COURT
CLARK COUNTY, NEVADA

[Signature]
CLERK OF COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN KERRY O'KEEFE,

Defendant.

CASE NO. C-250630

DEPT. NO. 17

TRANSCRIPT OF
PROCEEDINGS

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

MONDAY, MARCH 16, 2009

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 1

APPEARANCES:

FOR THE PLAINTIFF:

PHILLIP SMITH, ESQ.
STEPHANIE GRAHAM, ESQ.
Deputy District Attorneys

FOR THE DEFENDANT:

RANDALL H. PIKE, ESQ.
PATRICIA A. PALM, ESQ.
Special Public Defenders

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

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ROUGH DRAFT TRANSCRIPT

CLERK OF THE COURT

RECEIVED
JUL 10 2009

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1 LAS VEGAS, NEVADA, MONDAY, MARCH 16, 2009, 10:22 A.M.
2 (In the presence of the prospective jurors)

3 THE MARSHAL: All rise and come to order. Department
4 17 of the Eighth Judicial District is now in session. The
5 Honorable Judge Michael P. Villani presiding. Please be
6 seated. Remain in order. Make sure all cell phones are turned
7 off, please.

8 THE COURT: Good morning, ladies and gentlemen. I am
9 Judge Michael Villani. I am the presiding judge of Department
10 17, and you've been summoned here as potential jurors for this
11 case. This is a criminal case, and it's us I mentioned State
12 of Nevada versus Brian O'Keefe.

13 First off I'd like to thank all of you for showing
14 up. My staff has heard this numerous times, but I think it's
15 important that I tell all of you that, you know, jury service
16 is very important whether it's a civil or criminal case. Our
17 system of justice does not work unless we have people willing
18 to sit as a juror to hear our cases.

19 This last week we had an automobile accident case,
20 and we needed a jury for that case. This is a criminal case,
21 and we need a jury for this particular case. And I hope all of
22 you accept it as your civic duty. I'm very mindful that all of
23 you either have a job or are looking for a job and you have
24 family activities, maybe you have some social activities that
25 you rather attend to, but please understand that we need to

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1 But I tell you that because I had to serve and
2 actually, there's another judge in this court, Judge Toglietti,
3 who received a summons I think about three or four years ago,
4 and she was selected. Actually, she was the foreperson of that
5 particular jury. It was a civil case as well. And so we're
6 not exempted and during those two and a half weeks I had to
7 continue all my cases. I had get -- on certain matters I had
8 to have a senior judge come in and hear my calendar, certain
9 matters that had to go forward, some trials. Other judges had
10 to pick that up.

11 And I tell you that because it may not have been that
12 convenient for me -- well, it wasn't, but it was my civic duty
13 and it was important that I serve as a juror. And again, it
14 went two and a half weeks long. It was a civil case. It was
15 two doctors suing each other on some business matters, and so I
16 hope all of you take into consideration when I ask you if it
17 would be an extreme hardship for you to serve.

18 Because again, you know, it's almost like look to
19 your right, look to your left, if it's not you, then you're
20 saying well, the other person should do it, not me. In this
21 courtroom, I think it was last year we had a construction
22 defect case, which is -- you may have seen it in the newspaper
23 where, you know, there's problems with roofs or whatever an
24 entire development. The trial went six months. We had jurors
25 for the six-month trial, okay. This is a one week trial, so

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1 have juries for our system to work. As you know, many
2 countries around the world don't even allow -- don't allow
3 juries. They actually don't allow trials, as you know
4 unfortunately.

5 All of you received a jury summons in the mail, and
6 I'm sure all of you jumped for joy and said great, I get to be
7 on a jury panel, right? Let me see a show of hands. Well,
8 this jury summons has Michael Villani on it. Judges are not
9 exempt from jury summons. They're not exempt from serving on a
10 jury. And I made it -- as you know, you had to call the night
11 before to see if your number was low enough, and all of you,
12 your numbers were low enough. I had to do the same and my
13 number was low enough and I had one of the badges you're
14 wearing. And this jury summons was for October 6th of last
15 year. I went down there, I think 7:30 or 8:00 in the morning,
16 and they told me and as well as a couple hundred people to come
17 back at 1:00 o'clock to see if we -- you know, if they needed
18 some more jurors. I came back at 1:00 o'clock. They called my
19 number and they said well, we need you to go to Department, was
20 it? To Department 3, and along with 50, 60 other people I
21 was in the second row of the gallery and various jurors were
22 excused. I made it into the jury box, and low and behold on a
23 civil case I case I was selected as a juror. The trial went
24 two and a half weeks long, okay. And so this case is not two
25 and a half weeks long, okay.

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1 all you should be happy that we're not asking you to serve for
2 six months.

3 And I've got a trial coming up at the end of this
4 year that's going to go six weeks. And so if you're not picked
5 here we'll be more than happy to call you back for that jury.
6 No, I'm just kidding. Won't do that. All right.

7 So at this point I'm going to -- we've done a roll
8 call. I'm going to have my clerk swear all of you in, because
9 we're going to through a question process to see if you would
10 be best suited to hear this particular case.

11 THE CLERK: Please stand. And raise your right hand.
12 (Swearing in the prospective jurors).

13 THE CLERK: Please be seated.

14 THE COURT: The reason why we put you under oath,
15 ladies and gentlemen, is we go through a process called voir
16 dire, and that's where we seek to find out just use some of
17 your background, your personal information. No one here is
18 trying to delve too deep in your personal background or to
19 embarrass you on any issues. But it's important that the
20 parties get an understanding of your background and your
21 feelings on certain topics to see if you would be suited for
22 this type of case. And maybe you're suited for a civil case or
23 maybe you are suited for this type of case.

24 So there's no right or wrong answers. The right --
25 the only good answer is a truthful answer. The process we'll

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1 go through as follows: That I will ask the panel general
2 questions, and if you're going to answer yes to the question,
3 you just raise your hand, I'll call upon you, and we need you
4 to stand up. And every time you're called upon, please give us
5 your full name and the last three numbers on your badge. As
6 you can see, I think we have about 60 people here, and so it's
7 hard for all of us to try to memorize your names in a short
8 amount of time.

9 So you may be called upon ten times. Please every
10 time please stand up, give us your name and the three numbers
11 of your badge. When I direct the questions to the panel here,
12 we'll go first to the jury box area, the gallery here on my
13 right or sort of in front of me, and the gallery to the my
14 left. And so if you're going to answer yes, raise your hand.
15 wait for me to call you, stand up and then we'll go through the
16 process. If at any time you cannot hear one of the questions,
17 just say I didn't hear you or sometimes we'll go through
18 halfway through the panel and someone in the gallery, in the I
19 didn't remember box area says oh, I meant to say yes. I meant
20 to -- you know, I am going to answer in the affirmative in a
21 particular question. Just raise your hand and, you know, we'll
22 come back and call upon you, okay. Again, there's no wrong
23 answer. The only wrong answer is one that's not truthful. So
24 we hope all of you will be truthful.

25 And at this point I'm just going to have the

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1 is a homicide detective for Metro. Dan Newberry, who's a
2 sergeant in the homicide division of Metro. Jocelyn Maldonado,
3 who is a crime scene analyst. Brian Santarossa who's a patrol
4 officer with Metro. Todd Corn, also a patrol officer with
5 Metro. Jeremiah Ballojos, again a patrol officer with Metro.
6 Sean Taylor, who's also a patrol officer for Metro. An
7 individual named Charles Thriver, his wife Joyce Thriver. Todd
8 Ambruster, a Jimmy Hathcox, Cheryl Morris, a John Stallings,
9 who is a coroner investigator for the coroner's office. Robbie
10 Dahn who is a crime scene analyst for Metro. Jennifer Bas who
11 is a forensic scientist at Metro. And Edward Guenther who is
12 also a forensic scientist for Metro. And I believe that is it.
13 Thank you.

14 THE COURT: All right, thank you. Mr. Pike or Ms.
15 Palm.

16 MR. PIKE: Thank you very much, your Honor. I'm kind
17 of trapped in here. Let me come around. May it please the
18 Court, counsel, prospective jurors, my name's Randy Pike. I'm
19 with the Clark County Special Public Defender's Office. This
20 is my co-counsel Patricia Palm who's a deputy with my office.
21 And this is my client Brian O'Keefe. Brian O'Keefe stand up so
22 jury can -- and part of this is -- thank you very much.

23 And part of this process is to find out if you know
24 any of us or if you know any of the witnesses, so that's the
25 reason that we're doing this. And Ms. Palm and myself are

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1 attorneys introduce themselves. One of deputy district
2 attorneys here will give you a very brief statement of the type
3 of case we have. They're not going to argue the case right
4 now. Just a very brief statement. They'll introduce their
5 co-counsel and any potential witnesses that may be called in
6 this case. Please listen very carefully to these names because
7 I'm going to ask you if you know any of these individuals, and
8 we'll do the same with the defense here. They'll do the same.
9 So please listen very carefully.

10 MR. SMITH: Good morning, everyone. My name is
11 Philip Smith. This is Stephanie Graham. We are the deputy
12 district attorneys assigned to prosecute this case on behalf of
13 the State of Nevada. To give you guys a brief synopsis of this
14 case, it's a homicide case. The State of Nevada has charged
15 the defendant with a crime of murder.

16 We have alleged that on November 5th, 2008 at
17 approximately 11:00 o'clock p.m., the defendant killed his on
18 again, off again girlfriend. Pursuant to that duty we have a
19 bunch of witnesses, and there's about 20 of them that we
20 anticipate calling throughout the course of this trial. They
21 are a Dr. Jacqueline Benjamin, who is one of the Clark County
22 coroners. A Chris Hutcherson who is an officer from Metro.
23 Russell Shoemaker, who is a sergeant with Metro. Marty
24 Wildemann, who is a homicide detective with Metro. Daniel
25 Ford, who is a crime scene analyst for Metro. Chris Bunn, who

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1 fortunate to have been assigned this case and to represent
2 Brian in this case.

3 These are a list of the witnesses that the defense
4 may be calling during the time of this trial. You'll notice
5 that some of the witness names are the same as the State's
6 The witnesses are our witnesses and they may be called by us or
7 by the State, and it's a testimony that we are important, so
8 forgive me if I say some of the same names. And the potential
9 witnesses for the defense are Todd Ambruster, Jeremiah
10 Ballojos, Jacqueline Benjamin, Keith Valasco (phonetic),
11 Christopher Bunn who is with Metro. Chelsea Collins, also with
12 Metro. Tracy Berger, Todd Corn, Custodian of records, they
13 may either be called in person or just by way of an affidavit
14 to verify documentation. That would be the custodian of
15 records of Las Vegas Metropolitan Police Communications.
16 Custodian of records of Las Vegas Metropolitan Police records,
17 Custodian of records of Monte Vista Hospital, and custodian of
18 records of Clark County Detention Center and custodian of
19 records of Southern Nevada Adult Mental Health Services.
20 Officer Daniel Ford, Officer Richard Fennhagen, Jimmy Hathcox,
21 Christopher Hutcherson, custodian of records of HNEW Plus
22 Credit Union, Officer Travis Ivy (phonetic), Officer Teresa
23 Kieger (phonetic), Robin Kutzle (phonetic), I'm probably
24 pronouncing that wrong. Elaine Lumlennep (phonetic), Jocelyn
25 Maldonado, Detective Clifford Mogg, Cheryl Morris, USA George

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1. Schiro, Dr. Tawnu Christensen, an ER physician here in Las
2. Vegas, Nevada. Officers Kate Murphy (phonetic), Daniel
3. Newberry, Dean O'Kelly (phonetic), Officers Eduardo Pases
4. (phonetic), Dean Reyes, Brian Santarossa, Russell
5. Shoemaker and Sean Taylor, Robert Paisano, a counselor here in
6. Las Vegas, Norma Tenio (phonetic), the Tloivers. You've heard
7. Charles and Joyce. Martin Wildermann, a Detective Wildermann,
8. Robert Wilson, Natalie Austin (phonetic), Elizabeth O'Keefe,
9. Shawn O'Keefe, Thomas O'Keefe, Patricia O'Keefe, and Joseph
10. Perez who's an investigator from our office.

11. As I read that list it seemed long. We anticipate
12. that the trial is not going to last any longer than a week in
13. relationship (Indiscernible). As I indicated we'll be
14. defending Mr. O'Keefe in this tragic case. Thank you.

15. THE COURT: Thank you, Mr. Pike. Ladies and
16. gentlemen, through this process you may answer yes to certain
17. questions that may relate to bias or prejudice or some of your
18. background information. And all of us have a bias or a
19. prejudice. We're not just talking about, you know, race or sex
20. or sexual orientation or just, you know, there's a myriad of
21. other areas of things that we like or dislike. Maybe you have
22. a bias against a green shirt or a blue shirt.

23. And I just mention that as -- because if you are
24. selected in the questioning process we'll go through, whether
25. or not if you do have a particular bias, can you put that aside

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1. fair trial? That's what -- that's all we're seeking here.
2. A lot of times potential jurors will say well, I
3. don't have any faith in the system. Well, if you have faith in
4. yourself, perhaps you'll have faith in the system if you're
5. selected as a juror, that you'll make sure everything's done
6. properly and that you'll base a decision on the evidence, all
7. right. So I just wanted to give you that preliminary statement
8. here.

9. First off, does anyone here know any of the
10. attorneys, the parties involved, or any of the potential
11. witnesses? And I'll ask the jury box area first. Any hands?
12. Nope. The gallery to my right or in front of me. Nope. And
13. to my left. Okay, no one's answered in the affirmative.

14. This case is scheduled to go between four or five
15. days. Is there anyone here that would have an extreme hardship
16. serving on this jury? All right, we will go to the back row.
17. First, Yes, ma'am.

18. PROSPECTIVE JUROR NO. 609: Jody Monroya, 609. I'm
19. self-employed, Judge, so if I'm chosen for this jury, I'll lose
20. the current project that I have proposed for this month, which
21. will mean I lose income for this month.

22. THE COURT: Okay. And what type of work do you do,
23. Ma'am?

24. PROSPECTIVE JUROR NO. 609: I do (Indiscernible).

25. THE COURT: I'm sorry.

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1. for this particular case? If you are selected as a juror in
2. this case, can you base a decision, if any you may make on the
3. case, on the evidence you hear from the witness box and any
4. exhibits that will be admitted in the evidence?

5. So if you have a bias or prejudice then the Court as
6. well as the attorneys will delve into that, but the bottom line
7. is can you put that aside and base a decision on evidence you
8. hear in this case only? I can tell you in the trial I had last
9. week, which was an automobile accident, as you know, in the
10. newspapers a lot of things about our rates go up, whether
11. that's true or not, there's frivolous lawsuits, whether or not
12. that's true or not, you know, it's not for us to debate here
13. today.

14. We had a potential juror said he thought there was
15. too many frivolous lawsuits. Well, we asked that potential
16. juror well, can you put that aside, and you know, not every
17. lawsuit's frivolous, and this individual said that's true. You
18. know, he doesn't know. He wants to hear the facts of the case.
19. And, in fact, I think ended up being on the jury, and there was
20. an award for the plaintiff around \$200,000, so clearly that
21. juror was able to put his bias aside and listen to the evidence
22. of the particular case we had last week and then, you know,
23. ruled in favor of the plaintiff. So that's what we ask you in
24. this case. If you do have any bias or prejudice, you know, the
25. bottom line is can you put that aside and give both sides a

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ROUGH DRAFT TRANSCRIPT

1. PROSPECTIVE JUROR NO. 609: I'm a producer of TV
2. commercials.

3. THE COURT: All right. Do you have any assistance or
4. anyone else that can help with your --

5. PROSPECTIVE JUROR NO. 609: No, sir, I'm the only
6. one.

7. THE COURT: Okay. All right, thank you, Ma'am.
8. Anyone else in the back row? Or in the second row? I think we
9. saw -- yes, ma'am.

10. PROSPECTIVE JUROR NO. 649: I'm a single woman --

11. THE COURT: And your name and badge number.

12. PROSPECTIVE JUROR NO. 649: Patricia Salinas, 649.

13. THE COURT: All right.

14. PROSPECTIVE JUROR NO. 649: I have one income. I'm
15. barely making it right now. If I was to serve on this jury, I
16. wouldn't be able to pay my rent.

17. THE COURT: What type of work do you do, Ma'am?

18. PROSPECTIVE JUROR NO. 649: I work for a doctor. And
19. not only that, but I am a convicted felon so I don't know --

20. THE COURT: Okay.

21. PROSPECTIVE JUROR NO. 649: (Indiscernible)

22. THE COURT: Actually, I was going to ask that
23. question as well. Because a lot of times your employers will
24. -- if you are selected on a jury, will continue to pay you.

25. That's up to the employers. Even if you work for a government

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1 agency, I think they typically do. But some private employers
2 will also do that if you ask them because they know you're
3 doing your civic duty, all right, so keep that in mind.
4 And also, if anyone's selected on the jury, if they
5 feel they need a letter to their employer -- most employers
6 will believe you hopefully, but if you need a letter, I'll be
7 more than happy to provide that for you, all right. And there
8 was someone else in the second row -- Yes, ma'am.
9 PROSPECTIVE JUROR NO. 655: Christy Dalo, 655.
10 THE COURT: All right.
11 PROSPECTIVE JUROR NO. 655: I also am -- I come from
12 a single income family of seven. So if I were to serve, I
13 would not be able to bring home a paycheck.
14 THE COURT: Okay, and what type of work do you do,
15 Ma'am?
16 PROSPECTIVE JUROR NO. 655: I work in retail at
17 Target.
18 THE COURT: Okay. Is there another -- other shifts
19 you can do like can they double up for you or --
20 PROSPECTIVE JUROR NO. 655: No.
21 THE COURT: -- start up on the weekend?
22 PROSPECTIVE JUROR NO. 655: I am a lead in the
23 department that I work in, and there are only three of us, and
24 we don't work the full store hours, so what hours would --
25 THE COURT: We typically would go 9:30 to 5:00.

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ROUGH DRAFT TRANSCRIPT

1 any excused absences to give in school right now, and I'll end
2 up losing my grade.
3 THE COURT: All right, thank you, sir. Anyone else
4 in the second row? Anyone in the back row? Yes, ma'am.
5 PROSPECTIVE JUROR NO. 761: Chelsea Horton, 761. I'm
6 also a full-time student.
7 THE COURT: Where are you a student at?
8 PROSPECTIVE JUROR NO. 761: Nevada State.
9 THE COURT: Okay. Thank you, Ma'am. Anyone in the
10 gallery to my left. Front row. We've got two people on the
11 second row. Yes, sir.
12 PROSPECTIVE JUROR NO. 813: James Fraser, 813. I'm
13 self-employed. I'm the only -- I'm a one-man job.
14 THE COURT: What type of work do you do, sir?
15 PROSPECTIVE JUROR NO. 813: I custom fabricate
16 medical devices.
17 THE COURT: Already, thank you. And there was
18 someone else in the second row I thought I saw. Yes, ma'am.
19 PROSPECTIVE JUROR NO. 805: Sigrid Fischer, 805. I
20 have a child that I have no one to take him to school or to
21 stay with him during the week.
22 THE COURT: Normally during the week do you take him
23 to school?
24 PROSPECTIVE JUROR NO. 805: I walk him up to school.
25 yes, at 8:00 o'clock.

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1 PROSPECTIVE JUROR NO. 655: Yeah, and my department
2 closes at 9:00 so it would only -- if I left here, it would
3 probably give me three hours a week a day.
4 THE COURT: All right. All right, thank you, Ma'am.
5 PROSPECTIVE JUROR NO. 655: Thank you.
6 THE COURT: Anyone else in the second row? Anyone in
7 the front row? All right, front row of the -- yes.
8 PROSPECTIVE JUROR NO. 674: Marie Finiles, 674. I'm
9 the lead secretary, I'm the only secretary in the
10 (indiscernible) right now.
11 THE COURT: Okay. Who do you work for?
12 PROSPECTIVE JUROR NO. 674: (Indiscernible)
13 THE COURT: All right. That's Malmom (phonetic) and
14 associates, right?
15 PROSPECTIVE JUROR NO. 674: Yes, Yes.
16 THE COURT: Okay. I'm sure Mr. Halmom will
17 understand, okay. All right, thank you, Ma'am.
18 PROSPECTIVE JUROR NO. 674: Um-h'm.
19 THE COURT: Anyone in the gallery in the front row to
20 my right? Second row? Yes, sir.
21 PROSPECTIVE JUROR NO. 727: Robert Wilt, 727. I'm a
22 full-time student and I'm kind of in the middle of mid terms
23 right now.
24 THE COURT: What school do you go to, sir?
25 PROSPECTIVE JUROR NO. 727: UNLV. And I don't have

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Okay. Well, like I said, we wouldn't --
2 if you are selected, typically we start at 9:30 --
3 PROSPECTIVE JUROR NO. 805: Okay.
4 THE COURT: -- in the morning, Okay.
5 PROSPECTIVE JUROR NO. 805: Okay.
6 THE COURT: All right, thank you, Ma'am. Was there
7 another hand? Yes, in the back row.
8 PROSPECTIVE JUROR NO. 748: I'm also a single mom of
9 two kids and I --
10 THE COURT: Your number and your name.
11 PROSPECTIVE JUROR NO. 748: Oh, I'm sorry. Carrie
12 Bundy, 748.
13 THE COURT: Yes.
14 PROSPECTIVE JUROR NO. 748: I'm a single mother with
15 two kids, and I don't believe I'm getting paid for this, and a
16 whole week of low wages is a huge chunk of my mortgage
17 payment.
18 THE COURT: Okay. Well, did you get paid.
19 PROSPECTIVE JUROR NO. 748: 40 bucks a day or
20 something?
21 THE COURT: Somewhere around there, right? Okay.
22 PROSPECTIVE JUROR NO. 748: (Indiscernible).
23 THE COURT: All right. Thank you, Ma'am. And as I
24 mentioned before, none of the questions here are to embarrass
25 anyone, but is there anyone here in a convict felon? Who has a

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1 felony conviction? All right, we'll go to the back row. Yes.
2 Ma'am. Hang on one second. Yes, Ma'am.
3 PROSPECTIVE JUROR NO. 614: 614. And I don't know if
4 I'd be able to serve because I'm kind of hard of hearing.
5 THE COURT: All right.
6 PROSPECTIVE JUROR NO. 614: And what if I can't hear
7 what's going on in the courtroom?
8 THE COURT: All right. Well, we have some headphones
9 that will be provided to you, and they work excellent. Okay.
10 All right, we'll get them to you right now. Ma'am, have you
11 heard all of the questions so far?
12 PROSPECTIVE JUROR NO. 614: Well, I've been hearing
13 bits and pieces because I -- I just --
14 THE COURT: Okay, we had -- I had the attorney
15 identify themselves --
16 PROSPECTIVE JUROR NO. 614: Well, I heard the
17 witnesses.
18 THE COURT: Okay.
19 PROSPECTIVE JUROR NO. 614: I don't know any of the
20 witnesses. (Indiscernible).
21 THE COURT: Okay. Ma'am, can you hear me okay.
22 Thumbs up. All right, was there anyone in the jury box area
23 has been convicted of a felony? Yes, Ma'am, and your name
24 again.
25 PROSPECTIVE JUROR NO. 649: Patricia Solinas.

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1 register.
2 THE COURT: Because you may have been charged --
3 PROSPECTIVE JUROR NO. 649: No, I had to register.
4 Yeah, I had pay the \$6 to register. And every time I move, I
5 have to go fill out a form.
6 THE COURT: All right. We're just checking
7 something, Ma'am. Okay, Ma'am, and that was back in 2005?
8 PROSPECTIVE JUROR NO. 649: (Indiscernible).
9 THE COURT: Okay. The official court records show --
10 PROSPECTIVE JUROR NO. 649: I know it went on for a
11 couple years.
12 THE COURT: Right. It does show -- it was for a
13 gross misdemeanor, Ma'am.
14 PROSPECTIVE JUROR NO. 649: Then why am I having to
15 go down and do the convicted felon thing?
16 THE COURT: You may need to check with your attorney
17 because it was a gross misdemeanor.
18 PROSPECTIVE JUROR NO. 649: No, that wasn't the --
19 this was something else. I've been doing it for ten years now.
20 THE COURT: Was the other one in this state as well?
21 PROSPECTIVE JUROR NO. 649: Um-hm, I had -- well, I
22 had to go down there to the -- in the (indiscernible) to the
23 city.
24 THE COURT: Well, I understand that, but the
25 conviction was it in this state, in Clark County? Here in Las

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ROUGH DRAFT TRANSCRIPT

1 THE MARSHAL: Stand up, please.
2 THE COURT: Okay. Was that here in Nevada, Ma'am?
3 PROSPECTIVE JUROR NO. 649: Yes.
4 THE COURT: In Clark County? Okay. And how long ago
5 was that?
6 PROSPECTIVE JUROR NO. 649: About a year ago.
7 THE COURT: Ma'am, do you have a middle initial?
8 PROSPECTIVE JUROR NO. 649: A.
9 THE COURT: A? Ma'am, do you remember which judge
10 you were in front of?
11 PROSPECTIVE JUROR NO. 649: No.
12 THE COURT: A female judge or a male judge?
13 PROSPECTIVE JUROR NO. 649: It was a male. Actually,
14 the judge I was supposed to see was not there that day, so at
15 the last minute I saw someone else.
16 THE COURT: Do you remember who your attorney was,
17 Ma'am? We're just trying to make sure we have the right
18 person.
19 PROSPECTIVE JUROR NO. 649: Andrew Leavin (phonetic).
20 THE COURT: Okay, Ma'am, that was a gross
21 misdemeanor.
22 PROSPECTIVE JUROR NO. 649: But now I have a
23 convicted felon thing. I just couldn't find it today.
24 THE COURT: Okay.
25 PROSPECTIVE JUROR NO. 649: Because I had to

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1 Vegas?
2 PROSPECTIVE JUROR NO. 649: I think Clark County. It
3 was in the city area.
4 THE COURT: Okay.
5 PROSPECTIVE JUROR NO. 649: Because I had to go down
6 to the city hall over there and register.
7 THE COURT: The other one we have is a gross
8 misdemeanor as well, Ma'am. We'll double check that, okay.
9 PROSPECTIVE JUROR NO. 649: No, I -- I have to go
10 down there --
11 THE COURT: All right. We'll double --
12 PROSPECTIVE JUROR NO. 649: -- every time I --
13 THE COURT: -- check that. All right, anyone else in
14 the jury -- second row of the jury box? Front row? Anyone in
15 the gallery to my right? Gallery to my left? Okay. Is there
16 anyone here that has any type of physical hardship meaning
17 language issue, bad back or some people are diabetic,
18 hypoglycemic, anything along those lines? Okay, we'll go to
19 the jury box area. Yes, Ma'am.
20 PROSPECTIVE JUROR NO. 622: Clara Romero, 622.
21 THE COURT: Yes.
22 PROSPECTIVE JUROR NO. 622: I had a serious head
23 injury in 1991 with a cognitive dysfunction, but it has
24 corrected itself somewhat, but I do have some short-term --
25 short-term memory issues.

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1 THE COURT: And that's a condition you have now,
2 Ma'am?
3 PROSPECTIVE JUROR NO. 622: Yes.
4 THE COURT: Okay. So that would in effect that if
5 someone testified today and we asked you about that person on
6 Wednesday, you might not remember everything they said?
7 PROSPECTIVE JUROR NO. 622: Very possibly not.
8 THE COURT: Okay. All right, thank you, Ma'am.
9 Anyone else in the jury box area? Second row: Yes, ma'am.
10 We'll go second row: Yes.
11 PROSPECTIVE JUROR NO. 649: Patricia Salinas, 649. I
12 just had surgery on my shoulder on my rotary cuff.
13 THE COURT: Rotary cuff, yeah. Okay. Are you under
14 medication right now?
15 PROSPECTIVE JUROR NO. 649: Yes.
16 THE COURT: What type of medication?
17 PROSPECTIVE JUROR NO. 649: Percocet and Lorabid
18 (indiscernible).
19 THE COURT: Okay, did you take -- did you take that
20 today, Ma'am?
21 PROSPECTIVE JUROR NO. 649: I have to everyday.
22 THE COURT: Okay.
23 PROSPECTIVE JUROR NO. 649: Every four hours.
24 THE COURT: All right, and someone else? Yes, ma'am.
25 PROSPECTIVE JUROR NO. 672: Terry Hunter, 672.

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3 correction officers.
4 THE COURT: With Metro?
5 PROSPECTIVE JUROR NO. 609: Yes, sir.
6 THE COURT: Okay. And the fact that you have some
7 friends with Metro -- well, none of the witnesses identified
8 here is quite a few Metro officers, you don't know them?
9 PROSPECTIVE JUROR NO. 609: No, sir, I don't.
10 THE COURT: Okay. The fact that you have some Metro
11 friends, would that in any way cause you to be biased or
12 prejudiced against either side in this case?
13 PROSPECTIVE JUROR NO. 609: No, sir.
14 THE COURT: Okay. You wouldn't feel that you'd be --
15 they would look down upon you if you voted a certain way in
16 this case?
17 PROSPECTIVE JUROR NO. 609: No, sir.
18 THE COURT: All right. Thank you, Ma'am. Anyone
19 else in the back row? Okay, second row? Yes, sir.
20 PROSPECTIVE JUROR NO. 633: Kirk Livemash, 633. I
21 have a brother-in-law and sister-in-law that are both jailers.
22 THE COURT: Here in Clark County?
23 PROSPECTIVE JUROR NO. 633: No, in Washington State.
24 THE COURT: Okay. Same question to you, sir, the
25 fact that you have some relatives that are involved in law
enforcement, would that cause you to be biased or prejudiced
for either side in this case?

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1 have IBS that I control with medication.
2 THE COURT: Okay. And Ma'am, if at any time you need
3 a break, if you are selected, just raise your hand, and we
4 accommodate our jurors, okay. Thank you, Ma'am. Anyone in the
5 gallery to my right? And gallery to my left? All right.
6 Does anyone here have a problem with the English
7 language as far as understanding and being able to read the
8 English language? Anyone in the jury box area? No. Anyone in
9 the gallery to my right? No. Gallery to my left? No. All
10 right, thank you.
11 PROSPECTIVE JUROR NO. Excuse me, Judge.
12 THE COURT: Yes.
13 PROSPECTIVE JUROR NO. He said he doesn't understand
14 English.
15 THE COURT: Okay. What's your name, sir?
16 PROSPECTIVE JUROR NO. Fernando.
17 PROSPECTIVE JUROR NO. 710: 710.
18 THE COURT: You speak Spanish, sir? All right, thank
19 you. All right, is there anyone here, either yourself, a
20 family member or anyone closely associated with you work in any
21 type of law enforcement? Again, yourself, a family member or
22 anyone closely associated with you involved in law enforcement?
23 Okay, we'll go to the back row first. Yes, ma'am.
24 PROSPECTIVE JUROR NO. 679 Jody Montoya, 679. I have
25 several friends that are either detectives, officers or

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1 PROSPECTIVE JUROR NO. 633: I don't believe so.
2 THE COURT: Okay, well, that was --
3 PROSPECTIVE JUROR NO. 633: Well, I'll say no.
4 THE COURT: Okay, well, let's make sure, okay.
5 PROSPECTIVE JUROR NO. 633: No.
6 THE COURT: Okay. You hesitated initially, sir.
7 Because your relatives, they don't know anything about this
8 case and they're not going to know any of the evidence of the
9 case --
10 PROSPECTIVE JUROR NO. 633: No.
11 THE COURT: -- so do you feel any pressure one way or
12 the other if you were selected to vote a certain way?
13 PROSPECTIVE JUROR NO. 633: No.
14 THE COURT: Okay. Thank you, sir. Anyone else in
15 the second row? Yes, ma'am.
16 PROSPECTIVE JUROR NO. 654: Dawn Fraley, 654. My
17 nephew's a California highway patrolman.
18 THE COURT: Okay. Is he a patrol officer on the
19 highways?
20 PROSPECTIVE JUROR NO. 654: Um-hm.
21 THE COURT: Actually a highway? Okay. Same question
22 to you Ma'am, do you have any bias or prejudice against either
23 side in this case?
24 PROSPECTIVE JUROR NO. 654: No.
25 THE COURT: Would you feel compelled to vote a

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1 certain way if you were selected as a juror?
2 PROSPECTIVE JUROR NO. 654: No.
3 THE COURT: Okay. Thank you. And I think we had
4 someone back here. Yes, ma'am.
5 PROSPECTIVE JUROR NO. 626: Nancy Mirolock, 626. I
6 have an ex-brother-in-law that's -- does this back in Illinois,
7 though. And a niece and a nephew and a friend that's a highway
8 -- Nevada Highway Patrol.
9 THE COURT: Okay, the niece and nephew, are they in
10 --
11 PROSPECTIVE JUROR NO. 626: That's back in Illinois.
12 THE COURT: Okay. And are they patrol officers or
13 are they detectives? Do you know what type of work they --
14 PROSPECTIVE JUROR NO. 626: My brother-in-law's
15 retired. My ex-brother-in-law is retired, and my nephew's in
16 -- I forgot the initials, but it's alcohol and --
17 THE COURT: ATF, alcohol, tobacco, firearms?
18 PROSPECTIVE JUROR NO. 626: That, thank you.
19 THE COURT: Okay.
20 PROSPECTIVE JUROR NO. 626: And my niece is a lawyer
21 assistant.
22 THE COURT: Okay. Like a DA or --
23 PROSPECTIVE JUROR NO. 626: I'm not sure back in
24 Illinois, I'm really not sure. I just know she's involved
25 with the jury.

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1 PROSPECTIVE JUROR NO. 622: Yeah.
2 THE COURT: Same question to you Ma'am, do you have
3 any bias or prejudice towards anyone in law enforcement?
4 PROSPECTIVE JUROR NO. 613: No.
5 THE COURT: You might have that with your ex-husband.
6 I don't know, but --
7 PROSPECTIVE JUROR NO. 622: Actually, no.
8 THE COURT: Okay, good. It's always best to be
9 amicable. Anyone else in the second row? Anyone in the front
10 row? Gallery over there to my right, front row? Anyone? No.
11 Second row, yes, sir.
12 PROSPECTIVE JUROR NO. 717: Robert Richardson, 717.
13 My niece is a key attendant for Metro.
14 THE COURT: I'm sorry, your number again, sir?
15 PROSPECTIVE JUROR NO. 717: 717.
16 THE COURT: Okay. I'm sorry, your niece is what with
17 Metro?
18 PROSPECTIVE JUROR NO. 717: Key attendant for Metro.
19 Handing the keys out to the cars, I think she just got the
20 job.
21 THE COURT: Oh, okay. All right. Same question to
22 you, sir, again, you don't know any of the officers that have
23 been identified here?
24 PROSPECTIVE JUROR NO. 717: No.
25 THE COURT: Okay. And do you have any bias or

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1 THE COURT: All right, and then you said that there
2 was here had --
3 PROSPECTIVE JUROR NO. 626: A friend that's a highway
4 patrol.
5 THE COURT: Here in Nevada?
6 PROSPECTIVE JUROR NO. 626: Yes.
7 THE COURT: Okay. How often do you see that friend?
8 PROSPECTIVE JUROR NO. 626: Off and on. Actually,
9 she's the wife of my son's best friend, so --
10 THE COURT: Once a month? Once -- twice a year?
11 PROSPECTIVE JUROR NO. 626: About three months at
12 least.
13 THE COURT: Okay. Again, same question to you,
14 Ma'am, would you feel any pressure on you to be biased or
15 prejudiced towards either side or --
16 PROSPECTIVE JUROR NO. 626: No.
17 THE COURT: Okay. You wouldn't feel any pressure if
18 you were selected to vote a certain way in this case?
19 PROSPECTIVE JUROR NO. 626: No.
20 THE COURT: All right, thank you, Ma'am. Anyone else
21 in the second row? Yes, ma'am.
22 PROSPECTIVE JUROR NO. 622: Clara Romero, 622. I was
23 married to a police officer. Now divorced.
24 THE COURT: Okay. Was that an officer here in Clark
25 County?

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1 prejudice against either --
2 PROSPECTIVE JUROR NO. 712: No.
3 THE COURT: -- side? And would you feel compelled in
4 any way, sir, or pressure --
5 PROSPECTIVE JUROR NO. 717: No.
6 THE COURT: -- because your spouse works for Metro?
7 PROSPECTIVE JUROR NO. 717: (Indiscernible).
8 THE COURT: All right, thank you. Anyone else in the
9 second row? Yes, ma'am.
10 PROSPECTIVE JUROR NO. 719: Giselle Moreno, 719. My
11 husband's a policeman for Metro.
12 THE COURT: In Metro here? Is a patrol officer?
13 PROSPECTIVE JUROR NO. 719: Patrol.
14 THE COURT: Okay. And again, did you -- do you know
15 any of the officers that have been identified in this case?
16 PROSPECTIVE JUROR NO. 719: No, sir.
17 THE COURT: And I would tell everyone here, if you
18 are selected as a juror, Ma'am, if anyone ask you about, you
19 know, what you're doing, the most anyone can state is that I am
20 a juror, and I'm a juror in a criminal case, and that's the
21 extent you can tell anyone about your service here. When the
22 case is over then you can talk about the case. Would you feel
23 compelled in any way to -- or I'm sure your husband would
24 understand the rules, but we would put you -- we would order
25 you, Ma'am, that you would be precluded from talking to your

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1 husband about the case. Would you be able to follow that
2 order?
3 PROSPECTIVE JUROR NO. 719: Yes, sir.
4 THE COURT: Okay. And would you feel pressured in
5 any way to -- if you were selected to vote a certain way in
6 this case because your husband is with Metro in.
7 PROSPECTIVE JUROR NO. 719: No.
8 THE COURT: All right, thank you, Ma'am. Anyone in
9 the second row? At the far end.
10 PROSPECTIVE JUROR NO. 730: Catherine Bertles, 730.
11 I have a brother that's a corrections officer but in the city
12 and county of Denver and a brother (indiscernible) highway
13 patrol in Colorado.
14 THE COURT: All right. Same question to you, Ma'am,
15 do you feel any bias or prejudice for or against either side in
16 this case in.
17 PROSPECTIVE JUROR NO. 730: No.
18 THE COURT: And would you feel any pressure to vote a
19 certain way if you were selected?
20 PROSPECTIVE JUROR NO. 730: No.
21 THE COURT: All right, thank you, Ma'am. Anyone else
22 in the second row? We'll go to the back row far left. Yes,
23 sir.
24 PROSPECTIVE JUROR NO. 777: Oh, my name is Ismael
25 Ruiz, 777, and my cousin is a correctional officer up in

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1 normal like officers (indiscernible).
2 THE COURT: Okay. So you don't know what specific --
3 what department they're involved in?
4 PROSPECTIVE JUROR NO. 785: No.
5 THE COURT: Okay. And again, same question to you,
6 do you have any bias or prejudice toward either side in this
7 case --
8 PROSPECTIVE JUROR NO. 785: No.
9 THE COURT: -- because your uncles are involved?
10 PROSPECTIVE JUROR NO. 785: No.
11 THE COURT: You have a correction officer? Would you
12 feel any pressure to vote a certain way if you were selected?
13 PROSPECTIVE JUROR NO. 785: No.
14 THE COURT: All right, thank you, Ma'am. Anyone else
15 in the front row? Anyone in the back row? Yes, sir.
16 PROSPECTIVE JUROR NO. 813: James Fraser, 813. My
17 brother's a police officer in Madera, California. Patrol
18 officer.
19 THE COURT: Sir, would you have any bias or prejudice
20 against either side in this case?
21 PROSPECTIVE JUROR NO. 813: No, sir.
22 THE COURT: Would you feel any pressure because your
23 brother's in law enforcement to vote a certain way?
24 PROSPECTIVE JUROR NO. 813: No, sir.
25 THE COURT: All right, Thank you, sir. Is there any

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1 Tahachapi (phonetic).
2 THE COURT: Okay. And how close are you to those
3 individual because they live out of state, correct?
4 PROSPECTIVE JUROR NO. 777: Yeah, they live out of
5 town.
6 THE COURT: Okay. Would you feel any -- do you have
7 any bias or prejudice for or against either side in this case?
8 PROSPECTIVE JUROR NO. 777: No, not at all.
9 THE COURT: And would you feel any pressure, sir, if
10 you were selected to vote a certain way?
11 PROSPECTIVE JUROR NO. 777: No, not at all.
12 THE COURT: Okay. Thank you, sir. And how did you
13 get that number 777?
14 PROSPECTIVE JUROR NO. 777: (Indiscernible).
15 THE COURT: All right, anyone else in the back row?
16 I thought I saw a hand. Nope. Gallery in my left? Front row,
17 yes, ma'am.
18 PROSPECTIVE JUROR NO. 785: Ashleigh Whalen, 785. I
19 have (indiscernible) police officers and one that was in --
20 THE COURT: I'm sorry, I missed the first part.
21 PROSPECTIVE JUROR NO. 785: Oh, I have two uncles
22 that officers in California and one that works in the prison.
23 THE COURT: Okay. The two uncles, do you know what
24 -- are they patrol officers, are they detectives, sergeants?
25 PROSPECTIVE JUROR NO. 785: No, they're just like

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1 other hands? Is there anyone here, again, either yourself, a
2 family member or anyone closely associated with you ever been a
3 victim of a crime? All right, yes, ma'am, second row.
4 PROSPECTIVE JUROR NO. 622: Clara Romero, 622. I
5 personally was a victim, and I had a first cousin who was
6 murdered.
7 THE COURT: Okay, you say you were personally a
8 victim.
9 PROSPECTIVE JUROR NO. 622: Yes.
10 THE COURT: And what type of crime was that, Ma'am?
11 PROSPECTIVE JUROR NO. 622: Sexual.
12 THE COURT: Okay. Was that here in Clark County?
13 Ma'am?
14 PROSPECTIVE JUROR NO. 622: No, it wasn't.
15 THE COURT: About how long was that?
16 PROSPECTIVE JUROR NO. 622: That was in 1991.
17 THE COURT: All right. And then you said there was
18 one other.
19 PROSPECTIVE JUROR NO. 622: Yes, I had a cousin who
20 was murdered.
21 THE COURT: Was that here in Clark County?
22 PROSPECTIVE JUROR NO. 622: No, it wasn't.
23 THE COURT: About how long ago was that?
24 PROSPECTIVE JUROR NO. 622: Sometime before '91.
25 THE COURT: All right, Thank you, Ma'am. Anyone

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1 else in the -- yes, sir.
 2 PROSPECTIVE JUROR NO. 633: Kirk Liversash, 633. I
 3 have been -- my house have been broken into three different --
 4 on three different occasions.
 5 THE COURT: All right. Burglary at your home, yes?
 6 PROSPECTIVE JUROR NO. 633: Burglary at the home.
 7 THE COURT: All right, sir, and were those situations
 8 reported to the police?
 9 PROSPECTIVE JUROR NO. 633: Yes.
 10 THE COURT: Okay. Were you satisfied with the work
 11 the police did on that case.
 12 PROSPECTIVE JUROR NO. 633: Yes.
 13 THE COURT: Okay. And no, right? All right. I
 14 sense some no. The fact you perhaps were not satisfied with
 15 the work the police did, would that cause you to hold that
 16 against any officers that may testify in this case?
 17 PROSPECTIVE JUROR NO. 633: No.
 18 THE COURT: Or against either side in this case?
 19 PROSPECTIVE JUROR NO. 633: No.
 20 THE COURT: All right, because you understand that's
 21 a separate incident?
 22 PROSPECTIVE JUROR NO. 633: Absolutely.
 23 THE COURT: Nothing to do with this case?
 24 PROSPECTIVE JUROR NO. 633: Yes.
 25 THE COURT: All right. Thank you, sir. And sir, how

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1 THE COURT: All right, thank you, sir. Anyone else
 2 in the second row? Yes, ma'am.
 3 PROSPECTIVE JUROR NO. 649: Patricia Salinas, 649.
 4 In 2000 my husband was murdered by his sister's roommate.
 5 THE COURT: Okay. You talked about that before.
 6 correct? No, 2004, okay.
 7 PROSPECTIVE JUROR NO. 649: In, in 2000. The year
 8 2000.
 9 THE COURT: When?
 10 PROSPECTIVE JUROR NO. 649: Year 2000.
 11 THE COURT: All right. Anyone else in the jury box
 12 area? In the gallery to my right, third row, yes, sir, with
 13 the black shirt.
 14 PROSPECTIVE JUROR NO. 685: Jose Vasquez, 685. My
 15 cousin was murdered in '03. (Indiscernible).
 16 THE COURT: I'm sorry, sir, your number again?
 17 PROSPECTIVE JUROR NO. 685: 685.
 18 THE COURT: Oh, okay, there we go. You said your
 19 cousin was murdered?
 20 PROSPECTIVE JUROR NO. 685: Yeah, in 2003.
 21 THE COURT: Okay. And was that here in Clark County,
 22 sir?
 23 PROSPECTIVE JUROR NO. 685: Yes, it was.
 24 THE COURT: I'm assuming the police officers were
 25 contacted in that case?

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1 long ago were those burglaries.
 2 PROSPECTIVE JUROR NO. 633: One was eight months, and
 3 the other one was two years ago.
 4 THE COURT: Okay. Did you ever have to go to court
 5 on any of those cases, sir?
 6 PROSPECTIVE JUROR NO. 633: No.
 7 THE COURT: All right, thank you, sir. Anyone else
 8 in the second row? Yes, sir, at the end.
 9 PROSPECTIVE JUROR NO. 656: Brian Keith Snyder,
 10 senior. Badge No. 656. I was -- my house was broken into four
 11 times back in 1984 in San Bernardino, California.
 12 THE COURT: You said four time as soon as.
 13 PROSPECTIVE JUROR NO. 656: Four times.
 14 THE COURT: All right. And were the police -- were
 15 the authorities called --
 16 PROSPECTIVE JUROR NO. 656: Yes.
 17 THE COURT: -- on those cases, sir? And were you
 18 satisfied with the work they did?
 19 PROSPECTIVE JUROR NO. 656: Yes, at least I got my
 20 gun back.
 21 THE COURT: Okay. All right. And do you have any --
 22 would that cause you to have any bias --
 23 PROSPECTIVE JUROR NO. 656: No.
 24 THE COURT: -- or prejudice against either side?
 25 PROSPECTIVE JUROR NO. 656: No.

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1 PROSPECTIVE JUROR NO. 685: Yeah.
 2 THE COURT: All right.
 3 PROSPECTIVE JUROR NO. 685: Yes.
 4 THE COURT: Did that matter go to trial, sir?
 5 PROSPECTIVE JUROR NO. 685: I believe it did, but
 6 actually, it went to trial for (indiscernible). I guess, who
 7 murdered his wife, so that's what he went to trial for. He
 8 never got to the point of my cousin, because I guess he
 9 committed suicide in prison or something. So he never got
 10 convicted for my cousin's murder, but he did get arrested for
 11 it.
 12 THE COURT: Okay. Well, we have a similar charge in
 13 this case, sir. Would you -- do you have any bias or prejudice
 14 against the defendant in this case?
 15 PROSPECTIVE JUROR NO. 685: No.
 16 THE COURT: And sir, if you were selected, you would
 17 base any decision not on what happened in your family but what
 18 occurred in this case --
 19 PROSPECTIVE JUROR NO. 685: (Indiscernible).
 20 THE COURT: -- and any witnesses testifying.
 21 PROSPECTIVE JUROR NO. 685: (Indiscernible) is that a
 22 yes or no?
 23 THE COURT: Right. I just want to know, sir, is that
 24 PROSPECTIVE JUROR NO. 685: (Indiscernible).
 25

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1 THE COURT: Well --
2 PROSPECTIVE JUROR NO. 685: Can you (indiscernible),
3 THE COURT: Sure, sure. I just want to make sure
4 that if you are selected in this case, sir, that the situation
5 involving your family member would not come into play in this
6 particular case.
7 PROSPECTIVE JUROR NO. 685: No.
8 THE COURT: Are you positive, sir?
9 PROSPECTIVE JUROR NO. 685: Positive.
10 THE COURT: All right, thank you, sir. Anyone else
11 in the front row? Yes, sir.
12 PROSPECTIVE JUROR NO. 687: My name is Gary Obata.
13 My badge number is 687. I had actually a -- I had a cousin
14 that was shot and killed by a (indiscernible) in Fresno,
15 California, and (indiscernible) caught the person.
16 THE COURT: How long ago was that, sir?
17 PROSPECTIVE JUROR NO. 687: That was about 20 years
18 ago.
19 THE COURT: Okay, and same question to you, sir,
20 because you had someone that was killed, do you -- would that
21 cause to you have any bias or prejudice against the defendant
22 or State in this case?
23 PROSPECTIVE JUROR NO. 687: No.
24 THE COURT: Can you put that matter aside if you are
25 selected in this case?

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1 PROSPECTIVE JUROR NO. 687: I have a lot of
2 (indiscernible). I had an associate when I worked
3 for Albertsons (indiscernible) murder.
4 THE COURT: And when was that, sir?
5 PROSPECTIVE JUROR NO. 687: I can't even remember.
6 MR. SMITH: That was in the 90s.
7 PROSPECTIVE JUROR NO. 687: It was probably ten years
8 ago.
9 MR. SMITH: In the 90s.
10 PROSPECTIVE JUROR NO. 687: (Indiscernible).
11 THE COURT: Okay.
12 MR. PIKE: Your Honor, can we approach?
13 THE COURT: All right.
14 MR. PIKE: Thank you.
15 (Off-record bench conference).
16 THE COURT: Anything else, Mr. Obata?
17 PROSPECTIVE JUROR NO. 687: No, that was it. Thank
18 you.
19 THE COURT: All right, thank you, sir. Yes, sir, in
20 the second row.
21 PROSPECTIVE JUROR NO. 686: Brian Keith Snyder.
22 senior. Badge 656. (Indiscernible) my brother --
23 ex-brother-in-law. That's what I call him.
24 THE COURT: Okay.
25 PROSPECTIVE JUROR NO. 686: His name is Brian Main

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1 PROSPECTIVE JUROR NO. 687: Yes.
2 THE COURT: All right. Thank you, sir. Anyone else
3 in the front row?
4 MR. SMITH: Judge, I think you got some --
5 THE COURT: Oh, you have one more, sir?
6 MR. SMITH: You had some others.
7 THE COURT: I'm sorry, sir.
8 PROSPECTIVE JUROR NO. 687: I had a neighbor that was
9 murdered by Richard Ramirez in southern California.
10 THE COURT: About how long was that, sir?
11 PROSPECTIVE JUROR NO. 687: (Indiscernible).
12 THE COURT: And wasn't that the Hillside (phonetic)
13 or something?
14 MR. SMITH: Yeah.
15 MS. GRAHAM: Yes.
16 MR. SMITH: That's him.
17 PROSPECTIVE JUROR NO. 687: (Indiscernible).
18 THE COURT: Okay. And again, the same question,
19 Would that have any impact on your ability to perform your
20 services here, sir?
21 PROSPECTIVE JUROR NO. 687: No.
22 THE COURT: All right, thank you, sir.
23 PROSPECTIVE JUROR NO. 687: And then I had one last
24 one.
25 THE COURT: Oh, one more? Okay.

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1 (phonetic). He held up a couple back in, I think it
2 was Corona, California. I think it was ten years ago, and he
3 was on PCP, and he was -- what was called out (indiscernible)
4 and what was called out, and he was shooting at the what. That
5 was like -- I think it was like 10, 11 years ago back in
6 California.
7 THE COURT: Back in California, okay.
8 PROSPECTIVE JUROR NO. 686: Yeah.
9 THE COURT: All right, thank you, sir.
10 PROSPECTIVE JUROR NO. 686: Um-hm.
11 THE COURT: Is there anyone else in the front row?
12 - Yes, sir.
13 PROSPECTIVE JUROR NO. 698: My name is Robert. 698.
14 My brother was killed in '92.
15 THE COURT: Was that here in Clark County, sir?
16 PROSPECTIVE JUROR NO. 698: Yes, it was.
17 THE COURT: Was that situation investigated by the
18 police?
19 PROSPECTIVE JUROR NO. 698: Yes, it was.
20 THE COURT: All right. Were they able to catch the
21 perpetrator?
22 PROSPECTIVE JUROR NO. 698: They caught him for
23 another murder.
24 THE COURT: Okay. Did that case go to trial, sir as
25 if.

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1 PROSPECTIVE JUROR NO. 698: I believe so.
 2 THE COURT: All right. Did you have to testify in
 3 that case?
 4 PROSPECTIVE JUROR NO. 698: (Indiscernible) my niece
 5 did.
 6 THE COURT: Okay. And the fact that your — you said
 7 it was your brother?
 8 PROSPECTIVE JUROR NO. 698: Yes.
 9 THE COURT: All right, was the victim of that crime.
 10 Would that cause you to be bias or prejudice against either
 11 side in this case?
 12 PROSPECTIVE JUROR NO. 698: Oh, no, revenge is God's
 13 hands.
 14 THE COURT: I'm sorry?
 15 PROSPECTIVE JUROR NO. 698: Revenge is in God's
 16 hands.
 17 THE COURT: I can't hear.
 18 MR. SMITH: He said revenge is in God's hands.
 19 PROSPECTIVE JUROR NO. 698: I said revenge is in
 20 God's hands.
 21 THE COURT: Okay. All right. Thank you, sir.
 22 PROSPECTIVE JUROR NO. 698: Um-hm.
 23 THE COURT: Anyone else in the front row? Anyone in
 24 the second row? Yes, sir.
 25 PROSPECTIVE JUROR NO. 727: I've been jumped, my

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1 all investigated by the police department?
 2 PROSPECTIVE JUROR NO. 727: When I was jumped, yeah
 3 they were gotten and taken to jail. My vehicle being jacked up
 4 all the time, nothing's come of it because there's not really
 5 anything, they couldn't find anything and they've all been in
 6 different locations.
 7 THE COURT: All right, sir.
 8 PROSPECTIVE JUROR NO. 727: And my mom — but my mom
 9 being mugged in a casino, it's (indiscernible) the guy at all.
 10 THE COURT: And how long was that involving your
 11 mother?
 12 PROSPECTIVE JUROR NO. 727: That was last year, about
 13 middle of last year.
 14 THE COURT: And sir, those various situations, were
 15 you satisfied with the work that law enforcement did on those
 16 cases?
 17 PROSPECTIVE JUROR NO. 727: I'm going to say more
 18 frustrated.
 19 THE COURT: All right.
 20 PROSPECTIVE JUROR NO. 727: So no.
 21 THE COURT: Okay. The fact that you may be
 22 frustrated with law enforcement, would that cause you to have
 23 any bias or prejudice against police officers that may testify
 24 —
 25 PROSPECTIVE JUROR NO. 727: It will make —

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1 car's been broken into it.
 2 THE COURT: Your name and —
 3 MR. SMITH: What's your badge number?
 4 PROSPECTIVE JUROR NO. 727: Robert Wilk, 727.
 5 THE COURT: Yes, sir.
 6 PROSPECTIVE JUROR NO. 727: I've been jumped, I've
 7 had my car broken into six times, my mom's been
 8 (indiscernible). And yeah —
 9 THE COURT: Okay.
 10 PROSPECTIVE JUROR NO. 727: (Indiscernible) my car's
 11 been broken into probably three times this year. Once every
 12 month.
 13 THE COURT: Okay. You said you were jumped once.
 14 PROSPECTIVE JUROR NO. 727: Yes.
 15 THE COURT: When was that?
 16 PROSPECTIVE JUROR NO. 727: That was three years ago.
 17 THE COURT: Was that here in Clark County?
 18 PROSPECTIVE JUROR NO. 727: Yes. Right off the
 19 spaghetti bowl.
 20 THE COURT: Okay. You had someone just trying to
 21 take your wallet or —
 22 PROSPECTIVE JUROR NO. 727: No. They sideswiped my
 23 truck on the freeway and then off the side road
 24 (indiscernible) basically they jumped me.
 25 THE COURT: And sir, were those situations, were they

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: — in this case?
 2 PROSPECTIVE JUROR NO. 727: -- (indiscernible) yes,
 3 I'll say that.
 4 THE COURT: I'm sorry?
 5 PROSPECTIVE JUROR NO. 727: Yes, it will affect my
 6 judgment.
 7 THE COURT: And why is that, sir?
 8 PROSPECTIVE JUROR NO. 727: Because like I've always
 9 felt like I've been on the short end of the stick, and
 10 everybody in my family always feel that way, so it's kind of
 11 engrained in how we've been living.
 12 THE COURT: Well, if you were selected in this case,
 13 sir, you wouldn't want either side to feel that they got the
 14 short end of the stick, would you?
 15 PROSPECTIVE JUROR NO. 727: This is true, but I'm
 16 going to be honest, there is (indiscernible) at the very bottom
 17 of my stomach or whatever.
 18 THE COURT: As far as —
 19 PROSPECTIVE JUROR NO. 727: It's just like decision
 20 making, and like there's always going to be something in the
 21 back of my mind thinking — like I would always try my best to
 22 be impartial, but there's always lingering feeling in my mind.
 23 THE COURT: Do you feel because of a lingering
 24 feeling that you have a bias against the State or against the
 25 defendant?

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ROUGH DRAFT TRANSCRIPT

000593

1 PROSPECTIVE JUROR NO. 727: I would say it would be a
2 bias against the State.

3 THE COURT: Okay. And sir, if you were selected as a
4 juror in this case, what we would ask you to do is base any
5 decision you may make in this case upon the evidence and the
6 witness' testimony in this case and any exhibits into evidence.
7 Could you do that, sir?

8 PROSPECTIVE JUROR NO. 727: I could definitely do
9 that, yes, sir.

10 THE COURT: Okay. Are you sure, because you say you
11 had some bias --

12 PROSPECTIVE JUROR NO. 727: I mean, (indiscernible)
13 but (indiscernible) look (indiscernible) right here, is so
14 (indiscernible) I can try that. It's kind of
15 conflicting, yes, but --

16 THE COURT: Well, we just want to make sure that both
17 sides, if you are selected, will have a fair trial from you.

18 PROSPECTIVE JUROR NO. 727: From me, yes. I'll go
19 with that, yes. I will look at what's right here at this time.
20 not from (indiscernible) or so. Whatever's back there has to
21 be in my past.

22 THE COURT: All right, thank you, sir. Anyone else
23 in the second row? Well, we'll go back to the left. Yes, sir.

24 PROSPECTIVE JUROR NO. 717: Robert Richardson, 717.
25 When I first met my brother-in-law he was a prisoner with the

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: I'm sorry?

2 PROSPECTIVE JUROR NO. 771: Fractured
3 (indiscernible).

4 THE COURT: Okay. And how long ago was that, sir?

5 PROSPECTIVE JUROR NO. 771: 11/11/2002.

6 THE COURT: Was that situation investigated by law
7 enforcement?

8 PROSPECTIVE JUROR NO. 771: Yes.

9 THE COURT: Okay. Were you satisfied with the work
10 they did on that case?

11 PROSPECTIVE JUROR NO. 771: No.

12 THE COURT: Okay, and why weren't you satisfied?

13 PROSPECTIVE JUROR NO. 771: I think fingerprints
14 should have been taken (indiscernible).

15 THE COURT: And the fact that you weren't satisfied
16 with the work that the California authorities did, sir, would
17 that have any impact on you if you were selected in this case?

18 PROSPECTIVE JUROR NO. 771: Not at all.

19 THE COURT: All right, thank you, sir. Anyone else
20 in the back row? In the gallery to my left? Front row? Half
21 the front row? Okay, we'll start here on the far right. Yes.
22 ma'am.

23 PROSPECTIVE JUROR NO. 785: Ashleigh Whalen, 785. My
24 ex-boyfriend right now is actually being tried for murder.

25 THE COURT: Here in Clark County?

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ROUGH DRAFT TRANSCRIPT

1 State of Nevada. And then about 15 years ago my home was
2 robbed.

3 THE COURT: Okay, about 15 years ago there was a
4 burglary?

5 PROSPECTIVE JUROR NO. 717: My home was robbed, yes.

6 THE COURT: Okay. Was that here in Clark County?

7 PROSPECTIVE JUROR NO. 717: Yes.

8 THE COURT: Okay. And was that investigated by the
9 police department?

10 PROSPECTIVE JUROR NO. 717: Yes.

11 THE COURT: Okay. Were you satisfied with the work
12 they do?

13 PROSPECTIVE JUROR NO. 717: Yes.

14 THE COURT: All right. The fact that you've been a
15 victim of a crime, would that cause you to have any bias --

16 PROSPECTIVE JUROR NO. 717: No.

17 THE COURT: -- for either side?

18 PROSPECTIVE JUROR NO. 717: (Indiscernible).

19 THE COURT: Thank you, sir. Anyone else in the
20 second row? Anyone in the back row? Yes, sir.

21 PROSPECTIVE JUROR NO. 771: David Brunelle, 771.

22 THE COURT: Yes, sir.

23 PROSPECTIVE JUROR NO. 771: I was a victim by trying
24 to stop a burglary in Sacramento (indiscernible) suspect hit me
25 and fractured my eye (indiscernible).

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ROUGH DRAFT TRANSCRIPT

1 PROSPECTIVE JUROR NO. 785: No, in like in
2 California.

3 THE COURT: Okay. Are you a witness in that case?

4 PROSPECTIVE JUROR NO. 785: Not that I know of, no.

5 THE COURT: Okay. Are you still have a -- I know

6 he's an ex-boyfriend, but are you still have contact with him?

7 PROSPECTIVE JUROR NO. 785: I do.

8 THE COURT: Okay. The fact that your ex-boyfriend's
9 charged with murder presently in I guess is it a pending case?

10 PROSPECTIVE JUROR NO. 785: Um-hm.

11 THE COURT: Is that a yes?

12 PROSPECTIVE JUROR NO. 785: They're going to trial
13 (indiscernible).

14 THE COURT: Okay. Would that cause you to be -- have
15 any bias or prejudice against either side in this case?

16 PROSPECTIVE JUROR NO. 785: I don't know, to be
17 honest with you.

18 THE COURT: Okay. Why do you think it might?

19 PROSPECTIVE JUROR NO. 785: I just being with him,
20 and like being like because he was always like -- like in
21 trouble with the police, that I just always had like a negative
22 attitude towards the police.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 785: I've had to deal with
25 them for so long.

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ROUGH DRAFT TRANSCRIPT

000594

1 THE COURT: So you felt he was being treated unfairly
2 in the past?
3 PROSPECTIVE JUROR NO. 785: Right, sometimes, yeah.
4 THE COURT: And that situation's in another state,
5 correct?
6 PROSPECTIVE JUROR NO. 785: Yes.
7 THE COURT: Okay. And you don't know any of the
8 officers in this case, correct?
9 PROSPECTIVE JUROR NO. 785: No, not at all.
10 THE COURT: Okay. And so do you think you have a
11 bias or prejudice against any officers that may testify here?
12 PROSPECTIVE JUROR NO. 785: No.
13 THE COURT: Okay. So you could put -- can you put --
14 PROSPECTIVE JUROR NO. 785: I could put aside, yeah.
15 THE COURT: Okay. Can you be fair to both sides?
16 PROSPECTIVE JUROR NO. 785: Yes, I can.
17 THE COURT: Okay. Without any hesitation?
18 PROSPECTIVE JUROR NO. 785: No, I can.
19 THE COURT: Okay. All right, thank you, Ma'am. And
20 there was -- yes, ma'am.
21 PROSPECTIVE JUROR NO. 788: Carol Murakowski, 788. I
22 had property stolen out of my front yard.
23 THE COURT: Okay. About how long ago was that,
24 Ma'am?
25 PROSPECTIVE JUROR NO. 788: About a month.

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Okay. And you've understood everything
2 here so far?
3 PROSPECTIVE JUROR NO. 789: Yes.
4 THE COURT: Okay, great. And Ma'am, your previous
5 situation, can you put that aside if you were called to be a
6 juror in this case?
7 PROSPECTIVE JUROR NO. 789: I will be honest,
8 probably I can do that, but I always have that fear in me.
9 THE COURT: Okay. Well, and I'll tell you this,
10 Ma'am, and it applies to everyone here. We can't erase our
11 past, you know, things that have happened to us as a child or
12 as an adult, but what the question is, you know, can you put
13 that aside if you're selected here and base any decision you
14 may make in this case on the evidence, the testimony you hear
15 from the witness stand, and any exhibits?
16 Because if you are called as a juror, that's where
17 your decision needs to be made based upon testimony and
18 exhibits in this case. Could you do that, Ma'am?
19 PROSPECTIVE JUROR NO. 789: Yes, sir.
20 THE COURT: Okay. All right. Without hesitation?
21 PROSPECTIVE JUROR NO. 789: Yes.
22 THE COURT: Okay. All right, thank you. Anyone else
23 in the front row? I thought I saw a third hand. No. Second
24 row? No. Okay.
25 PROSPECTIVE JUROR NO. 622: Your Honor --

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Okay. Was that investigated by the
2 police.
3 PROSPECTIVE JUROR NO. 789: No, it was a grazing ball.
4 THE COURT: Okay. Okay.
5 PROSPECTIVE JUROR NO. 788: Yeah.
6 THE COURT: All right.
7 PROSPECTIVE JUROR NO. 788: It wouldn't affect this.
8 THE COURT: That would not affect this, okay. Thank
9 you, Ma'am. Yes, ma'am.
10 PROSPECTIVE JUROR NO. 789: Juliette Congleton, No.
11 789. I was a victim of a crime (indiscernible) so in 1996 we
12 went to court. He got five year probation.
13 THE COURT: Okay. And was that here in Clark County?
14 PROSPECTIVE JUROR NO. 789: No, Washington State.
15 THE COURT: Okay. And were you satisfied with the
16 work the law enforcement did in your case?
17 PROSPECTIVE JUROR NO. 789: Yes.
18 THE COURT: Okay.
19 PROSPECTIVE JUROR NO. 789: (Indiscernible). I
20 wasn't quite satisfied with their judgment, but I was like
21 paranoid for like a year because that was a second year I was
22 in America, and I was speaking English -- speaking a little
23 bit, but not really (indiscernible) and I had (indiscernible)
24 situation. It was -- I was having a difficult time for like
25 (indiscernible).

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Yes.
2 PROSPECTIVE JUROR NO. 622: -- can I ask you a
3 question?
4 THE COURT: Sure.
5 PROSPECTIVE JUROR NO. 622: Clara Romero, 622. I
6 remember the charge, but I don't remember who it was -- who it
7 happened to. Could you refresh my memory on that?
8 THE COURT: As far as?
9 PROSPECTIVE JUROR NO. 622: The charge that we're
10 going to be judging.
11 THE COURT: It's a charge of murder.
12 PROSPECTIVE JUROR NO. 622: Against who? Was it a
13 spousal thing?
14 THE COURT: Okay, we're getting --
15 MR. PIKE: On again, off again girlfriend.
16 THE COURT: Okay.
17 PROSPECTIVE JUROR NO. 622: Well, then I think I need
18 to disclose the fact that the -- what happened to me was the
19 same thing.
20 THE COURT: Okay. All right, thank you, Ma'am.
21 Anyone else? Anything else? The next question is either
22 yourself, a family member or anyone closely associated with you
23 ever been accused of a crime? And we're not talking about
24 traffic matters, but anyone accused of a crime? Anyone in the
25 jury box area? Okay, we'll go over here. Yes, ma'am.

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ROUGH DRAFT TRANSCRIPT

000595

1 PROSPECTIVE JUROR NO. 622: My nephew served seven
2 years with drug issues, but that doesn't effect me in any way.
3 THE COURT: Okay. All right, how long ago was that?
4 PROSPECTIVE JUROR NO. 622: He's still on probation,
5 I don't remember the year, your Honor, but he's still on
6 probation.
7 THE COURT: Okay, was that here in Nevada?
8 PROSPECTIVE JUROR NO. 622: No, sir.
9 THE COURT: Okay, thank you, Ma'am. Anyone -- yes,
10 ma'am.
11 PROSPECTIVE JUROR NO. 655: Christy Dale, 655. When
12 I was really on my dad -- this was back in Hawaii -- he
13 actually served time for stabbing someone. And then I have two
14 brothers who one is currently incarcerated in California for
15 drug charges, and then the other one is back in Hawaii. He was
16 sent back to be tried there for drug charges as well, and --
17 I'm sorry.
18 THE COURT: Go ahead.
19 PROSPECTIVE JUROR NO. 655: Oh, the one that's in
20 Hawaii, when we first moved here, he was charged with, I don't
21 know, attacking someone with a friend of his in (indiscernible)
22 somewhere. I don't really know the details.
23 THE COURT: You said the situation with your father,
24 how long ago was that, Ma'am?
25 PROSPECTIVE JUROR NO. 655: Very long. Probably

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Yes.
2 PROSPECTIVE JUROR NO. 655: What do you want me to
3 tell you?
4 THE COURT: No, I mean, what -- were they -- do you
5 think they were treated fairly in those cases? Were you a
6 witness in any of those cases?
7 PROSPECTIVE JUROR NO. 655: I wasn't a witness, and
8 yes, I think they were treated fairly.
9 THE COURT: Okay. Do you have any, you know, bias or
10 any ill feelings towards prosecutors or the police department
11 --
12 PROSPECTIVE JUROR NO. 655: No.
13 THE COURT: -- because of that?
14 PROSPECTIVE JUROR NO. 655: No.
15 THE COURT: Okay.
16 PROSPECTIVE JUROR NO. 655: In fact, my father was
17 recently a corrections officer, and he was also in police
18 academy, so --
19 THE COURT: Okay. All right, thank you, Ma'am.
20 PROSPECTIVE JUROR NO. 655: Okay.
21 THE COURT: Anyone else? Yes, sir.
22 PROSPECTIVE JUROR NO. 656: Brian Keith Snyder.
23 Senior, 656. I don't know how long, but my uncle, he was
24 served in the Maryland State penitentiary for 25 years for
25 selling drugs to an undercover agent back in Maryland.

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ROUGH DRAFT TRANSCRIPT

1 around 1980. No, before 1980. Like maybe around '78, '76.
2 THE COURT: Okay. So he was charged?
3 PROSPECTIVE JUROR NO. 655: Yes.
4 THE COURT: Or he was accused of the crime? Did he
5 go to court?
6 PROSPECTIVE JUROR NO. 655: Yes, and he actually
7 served time in Hawaii.
8 THE COURT: Okay.
9 PROSPECTIVE JUROR NO. 655: As (indiscernible).
10 THE COURT: And was he charged with murder?
11 PROSPECTIVE JUROR NO. 655: No, the guy didn't die.
12 It was a well known guy, and they got into an argument over a
13 pool game, and my dad stabbed him in the stomach.
14 THE COURT: All right. And were you involved in any
15 way in that prosecution? Were you a witness or --
16 PROSPECTIVE JUROR NO. 655: Oh, no, I was very young.
17 THE COURT: Okay. The fact that your father had been
18 accused of that crime, would that cause you to have any bias or
19 prejudice against the State who prosecutes crimes?
20 PROSPECTIVE JUROR NO. 655: No.
21 THE COURT: Or how about the defense?
22 PROSPECTIVE JUROR NO. 655: No.
23 THE COURT: Okay. And the other situations, tell us
24 a little bit about those.
25 PROSPECTIVE JUROR NO. 655: With my brothers?

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ROUGH DRAFT TRANSCRIPT

1 (Indiscernible) to California he was also caught
2 selling drugs. But I guess the person that he was selling
3 drugs to kind of got even with him and killed him and so
4 (indiscernible).
5 THE COURT: Well, based upon those situations, sir,
6 do you feel under the circumstances that he was treated fairly?
7 PROSPECTIVE JUROR NO. 656: My uncle?
8 THE COURT: Yes.
9 PROSPECTIVE JUROR NO. 656: He got what he -- he got
10 what he was asking for.
11 THE COURT: Okay. All right.
12 PROSPECTIVE JUROR NO. 656: Let's put it that way,
13 I'm just being honest.
14 THE COURT: No, that's all we want you to do sir, for
15 anybody here. Would that cause you to favor either side in
16 this case?
17 PROSPECTIVE JUROR NO. 656: No.
18 THE COURT: What happened to your uncle?
19 PROSPECTIVE JUROR NO. 656: No.
20 THE COURT: All right, thank you, sir. Anyone else
21 in the second row? Front row? Yes, ma'am.
22 PROSPECTIVE JUROR NO. 679: Diamond Rozek, 679.
23 THE COURT: Yes.
24 PROSPECTIVE JUROR NO. 679: My mum (indiscernible)
25 felon.

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ROUGH DRAFT TRANSCRIPT

000596

1 THE COURT: All right.
2 PROSPECTIVE JUROR NO. 679: And my (indiscernible)
3 drug charges (indiscernible).
4 THE COURT: Now, you say your boyfriend. Has he been
5 arrested? Has he been charged? Has he gone to court --
6 PROSPECTIVE JUROR NO. 679: Yes.
7 THE COURT: -- on those charges?
8 PROSPECTIVE JUROR NO. 679: Yeah.
9 THE COURT: Okay. Is he a felon?
10 PROSPECTIVE JUROR NO. 679: No.
11 THE COURT: Okay. But he had a gross misdemeanor or
12 a misdemeanor?
13 PROSPECTIVE JUROR NO. 679: I'm not sure.
14 THE COURT: Okay. Is that here in Clark County?
15 PROSPECTIVE JUROR NO. 679: Um-hm.
16 THE COURT: Is that a yes? You got to --
17 PROSPECTIVE JUROR NO. 679: Yes.
18 THE COURT: You got to pick up your name. You have a
19 very low voice. I want to make sure we pick it up. Okay.
20 about how long ago was that, Ma'am?
21 PROSPECTIVE JUROR NO. 679: Like three or four years
22 ago.
23 THE COURT: Okay. Was he prosecuted by the District
24 Attorney's Office?
25 PROSPECTIVE JUROR NO. 679: I'm not sure. It was

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ROUGH DRAFT TRANSCRIPT

1 (indiscernible).
2 THE COURT: Okay.
3 PROSPECTIVE JUROR NO. 679: And it was on
4 (indiscernible).
5 THE COURT: All right. And there's one other you
6 had. There was another relative.
7 PROSPECTIVE JUROR NO. 679: Her roommate.
8 THE COURT: Yes.
9 PROSPECTIVE JUROR NO. 679: I don't know her.
10 THE COURT: Okay. Does she have a felony conviction?
11 PROSPECTIVE JUROR NO. 679: Yeah. I don't know if
12 it's on that charge, though.
13 THE COURT: All right.
14 PROSPECTIVE JUROR NO. 679: But I know she's a felon
15 now.
16 THE COURT: Okay. She's on probation now?
17 PROSPECTIVE JUROR NO. 679: No.
18 THE COURT: Okay. Was she prosecuted here in Clark
19 County?
20 PROSPECTIVE JUROR NO. 679: I don't know.
21 THE COURT: All right. Do you have any ill will
22 towards law enforcement or the deputy district attorneys in
23 this case?
24 PROSPECTIVE JUROR NO. 679: No.
25 THE COURT: All right, thank you, Ma'am. Anyone else

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ROUGH DRAFT TRANSCRIPT

1 before I met him.
2 THE COURT: Okay. But he was prosecuted here in
3 Clark County? Did he go to prison?
4 PROSPECTIVE JUROR NO. 679: No, he just went to jail.
5 THE COURT: Do you know if he had to go on probation?
6 PROSPECTIVE JUROR NO. 679: I don't think so.
7 THE COURT: Okay. The fact that your brother --
8 excuse me, your boyfriend was -- had some charges against him
9 and they may have been -- he may have been prosecuted by the
10 District Attorney's Office. I don't know, maybe a city
11 attorney's office, but do you feel you have any ill will
12 towards the DAs in this case or the DAs' office?
13 PROSPECTIVE JUROR NO. 679: No.
14 THE COURT: Okay. And you said there was your mother
15 and --
16 PROSPECTIVE JUROR NO. 679: Yeah, my mother and my
17 roommate (indiscernible) felonies.
18 THE COURT: Okay. Here in Clark County? I mean,
19 from cases arising out of Clark County or Nevada?
20 PROSPECTIVE JUROR NO. 679: I'm not sure. I know my
21 mom -- I don't know why she's gotten arrested (indiscernible).
22 THE COURT: Okay. About how long ago was her
23 conviction?
24 PROSPECTIVE JUROR NO. 679: I'm not sure if this was
25 the right one, but I think she was in Idaho (indiscernible)

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ROUGH DRAFT TRANSCRIPT

1 in the jury box area? Anyone in the gallery to my right?
2 Front right? We'll go to the second row.
3 PROSPECTIVE JUROR NO. 717: Robert Richardson, 717.
4 When I met my wife her brother was a prisoner, and I have a
5 nephew right now in jail.
6 THE COURT: Your brother-in-law, was he prosecuted
7 here in Nevada?
8 PROSPECTIVE JUROR NO. 717: Oh, yeah, Yes.
9 THE COURT: Okay. Was he prosecuted by the District
10 Attorney's Office, if you know?
11 PROSPECTIVE JUROR NO. 717: I'm not sure. That was
12 before I met her.
13 THE COURT: And you said there was another family
14 member?
15 PROSPECTIVE JUROR NO. 717: Yeah, he have a nephew in
16 jail right now.
17 THE COURT: In Nevada?
18 PROSPECTIVE JUROR NO. 717: Yeah.
19 THE COURT: Okay. Was he prosecuted here in Clark
20 County or --
21 PROSPECTIVE JUROR NO. 717: Yes.
22 THE COURT: Okay. And more than likely he was
23 prosecuted by the District Attorney's Office, sir. Does that
24 cause you to have any ill will --
25 PROSPECTIVE JUROR NO. 717: No.

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ROUGH DRAFT TRANSCRIPT

000597

1 THE COURT: -- towards the DAs here in this case?
 2 Without hesitation?
 3 PROSPECTIVE JUROR NO. 717: Without hesitation.
 4 THE COURT: All right, thank you, sir. Anyone else
 5 in the second row? We'll go to the back row. Yes, ma'am, in
 6 the corner.
 7 PROSPECTIVE JUROR NO. 748: Come Bundy, 748. I
 8 don't know if I need to mention it, but my ex-husband has a
 9 bench warrant out for his arrest.
 10 THE COURT: Okay.
 11 PROSPECTIVE JUROR NO. 748: (Indiscernible).
 12 THE COURT: Okay. You need a number for secret
 13 witness or anything? Actually, you know, putting that aside,
 14 is it a bench warrant out of Nevada or out of -- you said the
 15 another state.
 16 PROSPECTIVE JUROR NO. 748: I think it's out of Clark
 17 County, so be honest with you.
 18 THE COURT: Okay. Is that for a criminal case or --
 19 because you can get a bench warrant from civil cases.
 20 PROSPECTIVE JUROR NO. 748: He wrote a bad check, and
 21 I guess the amount was such that it turned into a bigger deal.
 22 THE COURT: Okay. And do you know if that's being
 23 prosecuted by the District Attorney's Office?
 24 PROSPECTIVE JUROR NO. 748: I don't know, I think --
 25 I don't think anybody can find him.

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ROUGH DRAFT TRANSCRIPT

1 PROSPECTIVE JUROR NO. 803: Deborah Swick, 803. I
 2 have a cousin in prison in California for three strikes you're
 3 out.
 4 THE COURT: Okay.
 5 PROSPECTIVE JUROR NO. 803: (Indiscernible).
 6 THE COURT: All right. And how close are you to that
 7 cousin?
 8 PROSPECTIVE JUROR NO. 803: I was before he went in.
 9 THE COURT: Okay.
 10 PROSPECTIVE JUROR NO. 803: (Indiscernible) family
 11 members (indiscernible).
 12 THE COURT: Okay. And you had mentioned the three
 13 strikes law, and some situations may or may not be fair --
 14 PROSPECTIVE JUROR NO. 803: Right.
 15 THE COURT: -- on that third strike. Does that cause
 16 you to have an ill feeling towards prosecutors in general or --
 17 PROSPECTIVE JUROR NO. 803: No.
 18 THE COURT: -- prosecutors in this state?
 19 PROSPECTIVE JUROR NO. 803: No, he's actually
 20 (indiscernible).
 21 THE COURT: Okay. All right.
 22 PROSPECTIVE JUROR NO. 803: (Indiscernible).
 23 THE COURT: That's not going to cause you to favor
 24 the prosecution in this case, is it?
 25 PROSPECTIVE JUROR NO. 803: No, no, no.

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Okay. But more than likely it is, Ma'am,
 2 because if it's over a certain amount. Would that cause you to
 3 have any ill will or ill feeling towards the DAs in this case
 4 or the DA's Office in general?
 5 PROSPECTIVE JUROR NO. 748: No.
 6 THE COURT: Okay. All right, thank you, Ma'am.
 7 Anyone else in the gallery to my right? Anyone to the left?
 8 All right, yes, sir.
 9 PROSPECTIVE JUROR NO. 797: Bryan Linford, 797. My
 10 dad is a convicted felon about 15 years ago, two different
 11 felonies for monetary reasons.
 12 THE COURT: All right. Like theft charges?
 13 PROSPECTIVE JUROR NO. 797: Yeah.
 14 THE COURT: Okay, was that here in Nevada, sir?
 15 PROSPECTIVE JUROR NO. 797: No, it was in Dallas,
 16 Texas.
 17 THE COURT: Okay. About how long was that, sir?
 18 PROSPECTIVE JUROR NO. 797: About 16 years ago. I
 19 think.
 20 THE COURT: Okay. Do you have any ill will or ill
 21 feelings towards prosecutors in general or the prosecutor's
 22 office in this case?
 23 PROSPECTIVE JUROR NO. 797: No.
 24 THE COURT: All right, thank you, sir. There was
 25 someone else in the front row. Yes, ma'am.

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: All right, you'll be fair to both sides?
 2 Great. Thank you, Ma'am. Anyone else in the front row?
 3 Anyone in the second row? I thought I saw a hand. Yes, ma'am.
 4 PROSPECTIVE JUROR NO. 805: Sigrid Fischer, 805. I
 5 have a brother-in-law in federal prison.
 6 THE COURT: Was that for any crimes committed in
 7 Nevada?
 8 PROSPECTIVE JUROR NO. 805: Yes.
 9 THE COURT: Okay. Was he prosecuted down the
 10 southern part or northern Nevada?
 11 PROSPECTIVE JUROR NO. 805: Southern.
 12 THE COURT: Okay. And you said a brother-in-law?
 13 PROSPECTIVE JUROR NO. 805: Yes.
 14 THE COURT: Okay. And about how long ago was he
 15 convicted?
 16 PROSPECTIVE JUROR NO. 805: I think he's been in for
 17 at least two years.
 18 THE COURT: All right. Do you know what the charges
 19 were?
 20 PROSPECTIVE JUROR NO. 805: It had to do with Crazy
 21 Horse Too and all the stuff that went on there.
 22 THE COURT: Okay. All right, do you have any ill
 23 will or ill feelings towards prosecutors in general or the
 24 prosecutor's office in this case?
 25 PROSPECTIVE JUROR NO. 805: No.

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ROUGH DRAFT TRANSCRIPT

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1 THE COURT: All right.
2 PROSPECTIVE JUROR NO. 805: (Indiscernible).
3 THE COURT: Okay, thank you, Ma'am. Anyone else in
4 the second row gallery to my left? Anyone else? Yes, ma'am.
5 PROSPECTIVE JUROR NO. 679: Diamond Rozek, 679.
6 THE COURT: Yes, ma'am.
7 PROSPECTIVE JUROR NO. 679: I forgot one. I have a
8 friend (indiscernible).
9 THE COURT: You mean Springs?
10 PROSPECTIVE JUROR NO. 679: Yeah. He was a part of
11 -- he wasn't like (indiscernible), but he was a part of like a
12 similar case where (indiscernible).
13 THE COURT: Okay. More than likely, Ma'am, that case
14 was prosecuted by the Clark County District Attorney's Office.
15 Because of that fact, do you have any feelings towards the DAs
16 in general or the DAs in this particular case? All right.
17 Thank you, Ma'am. Anyone else?
18 (Has anyone here had any prior jury service whether
19 it's a grand jury or a jury for a trial? Anyone in the jury
20 box area? We usually get at least one in there. Okay, how
21 about in the gallery to our right? Okay, we'll go to the
22 second row.
23 PROSPECTIVE JUROR NO. 730: Catherine Bertles, 730.
24 THE COURT: And Ma'am, I've got a question. This
25 would apply to -- you said 730, okay. The question is if

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: All three of those?
2 PROSPECTIVE JUROR NO. 730: Yeah, all three of them
3 were prior to (indiscernible).
4 THE COURT: Okay. All right, thank you, Ma'am.
5 Anyone else in the second row? Back row? Well, there's one
6 more second row. Red top. Yes, ma'am.
7 PROSPECTIVE JUROR NO. 728: Linda Tijerina, 728. I
8 did civil, and I was not the foreperson, and we did come to a
9 resolution.
10 THE COURT: Okay. Was that here in Clark County?
11 PROSPECTIVE JUROR NO. 728: Yes, it was.
12 THE COURT: About how long ago was that?
13 PROSPECTIVE JUROR NO. 728: 14 years ago.
14 THE COURT: Okay. Do you remember what type of case
15 besides civil? Was it like a contract case, medical
16 malpractice, automobile accident?
17 PROSPECTIVE JUROR NO. 728: Yes, it was regarding
18 insurance.
19 THE COURT: Okay.
20 PROSPECTIVE JUROR NO. 728: And it was a little bit
21 of a malpractice suit.
22 THE COURT: All right, Okay, thank you, Ma'am.
23 Anyone else in the gallery area to my right? Yes, ma'am in the
24 back row.
25 PROSPECTIVE JUROR NO. 743: Megan Trenkler, 743.

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ROUGH DRAFT TRANSCRIPT

1 you've been -- had prior jury service, and let me go through
2 the question. Was it a civil or criminal case? Were you the
3 foreperson of the case? And without telling us what the
4 verdict was, did that jury reach a verdict? So civil or
5 criminal case, were you the foreperson, did they reach a
6 verdict?
7 PROSPECTIVE JUROR NO. 730: One was criminal. Two
8 were civil. (Indiscernible) and --
9 THE COURT: Did they reach a verdict? Did she reach
10 a decision?
11 PROSPECTIVE JUROR NO. 730: Every time, yes.
12 THE COURT: Okay. And you were not the foreperson?
13 PROSPECTIVE JUROR NO. 730: No, (indiscernible).
14 THE COURT: Okay. So there was two or three civil
15 and one criminal?
16 PROSPECTIVE JUROR NO. 730: Two civil and one
17 criminal.
18 THE COURT: Okay. Were they all here in Clark
19 County?
20 PROSPECTIVE JUROR NO. 730: No, this was in Adams
21 County, Colorado.
22 THE COURT: Okay. And about how long ago were those
23 -- how long ago was that jury service?
24 PROSPECTIVE JUROR NO. 730: Well, it was over 18
25 years ago.

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1 Approximately three year ago, criminal case and we did reach a
2 verdict.
3 THE COURT: Were you the foreperson?
4 PROSPECTIVE JUROR NO. 743: Yes.
5 THE COURT: Okay. And was that here in Clark County?
6 PROSPECTIVE JUROR NO. 743: Yes.
7 THE COURT: Okay. Was that prosecuted did I the
8 District Attorney's Office, do you know?
9 PROSPECTIVE JUROR NO. 743: Yes.
10 THE COURT: Okay. You don't any of the DAs here in
11 this case?
12 PROSPECTIVE JUROR NO. 743: No.
13 THE COURT: Okay. All right, thank you, Ma'am.
14 Anyone in the gallery to my left prior jury service? Yes, sir.
15 in the blue shirt.
16 PROSPECTIVE JUROR NO. 813: James Fraser, 813. I was
17 on a jury, served on a civil malpractice case, Fresno County.
18 THE COURT: Okay, and about how long ago was that,
19 sir?
20 PROSPECTIVE JUROR NO. 813: About 15 years ago.
21 THE COURT: Okay. And were you the foreperson?
22 PROSPECTIVE JUROR NO. 813: No, sir.
23 THE COURT: And did that jury reach a decision?
24 PROSPECTIVE JUROR NO. 813: Yes, sir.
25 THE COURT: Okay. Thank you, sir. And there was

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1 evidence in this case?
2 A Yes.
3 Q Were you aware the possibility that any of the
4 arresting officers stepped on the bed at the scene?
5 A I did not work the scene personally. I was aware
6 that it was a possibility.
7 Q Okay. And were photographs taken of the bottom of
8 their shoes to compare to the footprints on the bed?
9 A Not that I know of, Ma'am.
10 Q Okay. And so that testing was not done?
11 A No.
12 Q Is that sometimes done when officers' shoe prints
13 kind of get mixed in with the evidence?
14 A We will take comparatives, yes.
15 Q Okay.
16 MR. SMITH: Judge, I'm actually going to object to
17 that question because it assumes facts not in evidence.
18 THE COURT: I think her question was is at that done
19 sometimes, not in this particular case, correct?
20 MR. SMITH: I just want to make sure it's clear that
21 there's no evidence in this particular case that those officers
22 stepped on that bed.
23 MS. PALM: I would dispute that there were two
24 officers who testified that they might have gone over that bed,
25 so that's not --

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ROUGH DRAFT TRANSCRIPT

1 mean --
2 THE COURT: Counsel approach.
3 (Bench conference).
4 THE COURT: Okay, I'm going to sustain the objection.
5 BY MS. PALM:
6 Q Do you recall talking to Cheryl Morris in November
7 2008?
8 A I recall talking to her. I couldn't tell you the
9 exact date. I haven't looked at that in a bit.
10 Q Did you actually take her statement?
11 A I believe I did, yes.
12 Q Okay. Did you ever ask her to go visit Brian O'Keefe
13 in jail or recommend that she go visit Brian O'Keefe?
14 A I don't recall asking that, no, or stating that, no.
15 Q Okay.
16 MS. PALM: May I approach your Honor?
17 THE COURT: Yes.
18 BY MS. PALM:
19 Q Showing you Defense Proposed Exhibits BB, CC, DD and
20 EE.
21 A Okay.
22 Q Do you recognize those?
23 A I honestly don't only because I never saw that car in
24 the parking lot. I'm going to assume that this is --
25 Q Well, as a homicide detective do you keep the main

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Yeah, but there's no --
2 MR. SMITH: Might have.
3 THE COURT: Hang on, hang on.
4 MS. PALM: Your Honor, he --
5 THE COURT: Hang on. I don't believe that any
6 witness has testified that any of the officer's shoe prints are
7 on the bed, is that correct?
8 MS. PALM: That's correct, and my questions are
9 because no testing was done to be able to --
10 THE COURT: Right.
11 MS. PALM: -- determine that.
12 THE COURT: I just want to make sure to the jury that
13 there was no evidence, unless you can correct me, that anyone
14 testified that any marking on the bed was made by an officer
15 shoe print.
16 MS. PALM: There was no testimony as to whoever might
17 have made the apparent footprints on the bed, but there was --
18 THE COURT: We don't know it's a foot -- I don't
19 think.
20 MS. PALM: -- testimony --
21 THE COURT: -- I don't think -- there wasn't any
22 testimony that there was a shoe print.
23 MS. PALM: I believe that the CSA Maldonado agreed
24 that it was an apparent footprint.
25 MR. SMITH: Well, Judge, rather than us argue it, I

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1 file in the case?
2 A I keep the main in the -- yeah, I keep the --
3 Q Do you look at all the crime scene photos as part of
4 your job?
5 A I have looked at the photos.
6 Q And in those crime scene photos is there pictures of
7 that car?
8 A I believe so, yes.
9 Q Okay. And was that car photographed by CSA Collins
10 at the scene?
11 A I don't know that.
12 Q If I showed you an impound report, would it --
13 A I'll take your word for it, but I wasn't at the so
14 you understand.
15 Q Okay, but --
16 A Detective Bunn was kind of directing the scene.
17 Q -- you have seen those photographs before?
18 A I have looked through these photographs briefly
19 months ago, yes.
20 Q And they do belong in this case?
21 A Yes.
22 MS. PALM: Move to admit, your Honor.
23 MR. SMITH: There is an objection. I object to the
24 relevancy of those photographs. If we can approach because I
25 don't --

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1 THE COURT: Yes.
 2 MR. SMITH: I'd like to not do a speaking objection,
 3 (Bench conference).
 4 THE COURT: I'm going to sustain the objection.
 5 (Bench conference).
 6 THE COURT: Ladies and gentlemen, it's a good time
 7 for us to take a break, and I've been advised, as you know
 8 we've had the water or the bathroom problem, and I think we've
 9 lost some water pressure in the building. So the first floor
 10 -- I think if you go outside on the area of the elevators, go
 11 straight, there's some restrooms there. Unfortunately, those
 12 are the only ones working in the entire building, okay. And so
 13 if you need -- if anyone needs to go, go there. Take your time
 14 because, you know, as soon as you're -- everyone's back, then
 15 we'll resume, but, you know, please take your time.
 16 During this recess it is your duty not to converse
 17 among yourselves or anyone else on any subject connected with
 18 this trial or to read, watch or listen to any report over
 19 commentary on the trial by any person connected with the trial
 20 or by any medium of information, including without limitation,
 21 newspaper, television, radio or the Internet.
 22 And you're not to form or express an opinion on any
 23 subject connected with this case until it matter is finally
 24 submitted to you. Again, you can go down to the first floor,
 25 and as soon as you're back then we'll resume. Thank you.

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1 idol conversation is what it was about. High speed chase and
 2 talked about him being a motorcycle policeman.
 3 THE COURT: Okay, but absolutely nothing about this
 4 case.
 5 JUROR NO. 3: Absolutely nothing.
 6 THE COURT: Any question by the State?
 7 MR. SMITH: I don't, Judge. State's satisfied.
 8 THE COURT: Questions by the defense?
 9 MR. PIKE: Was it a witness that had testified in
 10 this case? An officer that testified in this case?
 11 JUROR NO. 3: The other day, yeah. That motorcycle
 12 patrolman.
 13 MR. PIKE: Okay.
 14 THE COURT: Any other questions?
 15 MR. PIKE: No.
 16 THE COURT: You understand we just have to ask, okay.
 17 And sir, just admonish you not to even discuss these questions
 18 with any other jurors even during deliberations. Okay, it's
 19 irrelevant to this case. It's -- only worry about the witness
 20 stand and the exhibits, okay. Thank you, sir.
 21 JUROR NO. 3: Your Honor, it was -- like I said, just
 22 idol conversation, and that's usually what we're talking about
 23 --
 24 THE COURT: Right.
 25 JUROR NO. 3: -- when we're out there is what they're

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ROUGH DRAFT TRANSCRIPT

1 (Recess taken).
 2 (Outside the presence of the jury)
 3 THE MARSHAL: Come to order. Department 17 of the
 4 Eighth Judicial District is now in session. Honorable Judge
 5 Michael P. Villani presiding. Please be seated, remain in
 6 order. Make sure all cell phones are turned off, please.
 7 THE COURT: Okay, counsel approach, please.
 8 (Bench conference).
 9 THE COURT: Mr. Eral.
 10 JUROR NO. 3: Yes.
 11 THE COURT: How you doing? During the breakout in
 12 the hallway did you speak with one of the police officers?
 13 JUROR NO. 3: I was standing there is all.
 14 THE COURT: Okay. And did you overhear police
 15 officers speak with one of the other jurors?
 16 JUROR NO. 3: Yes.
 17 THE COURT: And what was the topic of conversation?
 18 JUROR NO. 3: Talking about a high speed chase in
 19 California because their -- her brother or somebody was a
 20 patrolman in California.
 21 THE COURT: Okay, was there any discussion whatsoever
 22 about this case?
 23 JUROR NO. 3: No -- no, there was nothing.
 24 THE COURT: Okay.
 25 JUROR NO. 3: That's why I was surprised they just --

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ROUGH DRAFT TRANSCRIPT

1 doing for a job and --
 2 THE COURT: Right.
 3 JUROR NO. 3: -- you know.
 4 THE COURT: And that's fine, and so you're not in
 5 trouble.
 6 JUROR NO. 3: Okay.
 7 THE COURT: We just got to double check. Okay.
 8 JUROR NO. 3: Okay.
 9 THE COURT: Thank you, sir.
 10 JUROR NO. 3: Yep.
 11 THE COURT: Why don't you go out. Good afternoon,
 12 Mr. Livernash.
 13 JUROR NO. 6: How are you?
 14 THE COURT: Just fine. Well, I've been better just
 15 because with this fiasco with our building here, but sir,
 16 during the break did you speak with or overhear any
 17 conversations either between yourself, any other jurors and one
 18 of the police officers?
 19 JUROR NO. 6: I did.
 20 THE COURT: Okay. Did you speak with one of the
 21 police officers?
 22 JUROR NO. 6: I did.
 23 THE COURT: Okay. And what was the topic of the
 24 conversation?
 25 JUROR NO. 6: I noticed that he had motorcycle boots

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1 and his helmet there, and I ride a Harley Davidson. I just
2 asked are all the motorcycles on the police force Harley
3 Davidsons, and he said yes.

4 THE COURT: Okay. Were there any --

5 JUROR NO. 6: In Metro.

6 THE COURT: Okay. Were there any other jurors around
7 you when you made that comment to the police officer?

8 JUROR NO. 6: Yeah, No. 3 and No. 7. 7 had -- there
9 was a conversation before I arrived about a crazy rider getting
10 in -- getting caught by a police officer who was wearing a suit
11 and tie on a motorcycle. That's --

12 THE COURT: Okay, was it -- all right, were there any
13 discussions regarding this case?

14 JUROR NO. 6: No, sir.

15 THE COURT: Okay. Did you overhear any other jurors
16 speak with any officers regarding this case?

17 JUROR NO. 6: No, sir.

18 THE COURT: Any questions by the State?

19 MR. SMITH: No, Judge.

20 THE COURT: By the defense?

21 MR. PIKE: Is this -- do you recall the name of the
22 officer that you spoke to?

23 JUROR NO. 6: He's been in here before. He's the
24 only one who's a motorcycle officer. He had the boots and the
25 helmet. I want to say Conn, Officer Conn, but I couldn't be

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ROUGH DRAFT TRANSCRIPT

1 JUROR NO. 7: Hi.

2 THE COURT: During the break did you have any
3 conversations or overhear any conversations with any of the
4 police officers?

5 JUROR NO. 7: Yes.

6 THE COURT: Okay. And did you have a conversation
7 with them?

8 JUROR NO. 7: Yes, about the weather.

9 THE COURT: Okay. Was there any discussion
10 whatsoever about this case?

11 JUROR NO. 7: No, definitely not.

12 THE COURT: Or any testimony about this case?

13 JUROR NO. 7: Definitely not.

14 THE COURT: Did you overhear any other jurors speak
15 with the officers?

16 JUROR NO. 7: Just the one who -- Juror No. 6, and it
17 was about his motorcycle.

18 THE COURT: Okay. Did you hear any other jurors
19 speak with --

20 JUROR NO. 7: No.

21 THE COURT: Okay. And there was nothing regarding
22 this case discussed, correct?

23 JUROR NO. 7: Nothing. And I was sitting there the
24 whole time until Walker had me go down to the other end.

25 THE COURT: Okay. Any questions by the State?

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ROUGH DRAFT TRANSCRIPT

1 sure.

2 MR. PIKE: All right. No further questions. Thank
3 you.

4 THE COURT: All right. Sir, our questions here have
5 nothing to do with this case. They're not to be discussed
6 during deliberations. You're not to discuss our questions here
7 with any juror in this case.

8 JUROR NO. 6: Okay.

9 THE COURT: Even during deliberations, okay.

10 JUROR NO. 6: Sure.

11 THE COURT: Only worry about the testimony in the
12 case and the exhibits, okay.

13 JUROR NO. 6: Absolutely.

14 THE COURT: No one's in trouble.

15 JUROR NO. 6: Okay, fine.

16 THE COURT: Just gotta double check. All right,
17 thank you, sir.

18 JUROR NO. 6: Thank you.

19 MR. PIKE: Depends on if he rides a Sporster or a
20 Heritage.

21 JUROR NO. 6: It's a Road King.

22 MR. PIKE: A Road King, oh, okay.

23 JUROR NO. 6: Just for the record.

24 MR. PIKE: Record.

25 THE COURT: Good afternoon, Ms. Fralcy.

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ROUGH DRAFT TRANSCRIPT

1 MR. SMITH: No, Judge.

2 MR. PIKE: Yes. Did you initiate the conversation or
3 did the officer initiate the conversation?

4 JUROR NO. 7: You know, I don't recall because I was
5 coming down -- I got cookies, and I was just excited about the
6 cookies, sorry. And so I really can't remember if I did or if
7 he did. It was probably me.

8 MR. PIKE: Do you remember which officer it was?

9 JUROR NO. 7: It was the -- don't know his name. The
10 bald one. And he just left, so -- the motorcycle cop.

11 MR. PIKE: Okay. No further questions. Thank you,
12 Ma'am.

13 THE COURT: Okay, Ms. Fralcy, our questions here are
14 not to be discussed with any other jurors. It's irrelevant to
15 this case because we know you only base any decision on the
16 witness stand and exhibits in the case, and it's not supposed
17 to be discussed during deliberations, all right. You're not in
18 trouble. No one's in trouble. We just have to check.

19 JUROR NO. 7: I'm sorry.

20 THE COURT: No problem.

21 JUROR NO. 7: I apologize.

22 THE COURT: No, no one's in trouble, okay.

23 JUROR NO. 7: Oh, I know. I'm just saying I
24 apologize because, you know.

25 THE COURT: Don't worry about it. You're not in

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1 trouble, okay.
 2 JUROR NO. 7: All right. All right.
 3 THE COURT: All right, thank you.
 4 JUROR NO. 7: Thank you.
 5 THE COURT: Okay, we are outside the presence of Ms.
 6 Friley. There's no other jurors in the courtroom. I know we
 7 have the detective on the stand, but we also have a whole slew
 8 of officers out there. Has the defense decided which ones they
 9 wish to --
 10 MR. PIKE: Yes, your Honor. We released two of the
 11 officers.
 12 THE COURT: Okay.
 13 MR. PIKE: Officers Conn and I'm sorry, I forgot the
 14 other officer's name.
 15 MR. SMITH: Taylor, I believe.
 16 MR. PIKE: Taylor.
 17 MR. SMITH: Detective Taylor.
 18 MR. PIKE: Yeah, Sean Taylor. Yeah --
 19 THE COURT: So how many --
 20 MR. PIKE: -- that's right, I knew Detective Taylor.
 21 THE COURT: -- do you wish to examine?
 22 MR. PIKE: The transcripts indicated Ballejos and
 23 Santarossa, and so we've limited it to those two of the
 24 handling the examination, and it's fairly quick.
 25 THE COURT: Okay.

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 ROUGH DRAFT TRANSCRIPT

1 MS. PALM: And for the record, because I don't think
 2 this was on the record, the State did object to my asking
 3 Detective Wildemann about apparent footprint on the bed and
 4 whether homicide investigation would ever include the
 5 comparison of footprints to officers' shoe prints, and the
 6 Court sustained the objection.
 7 I believe that I'm entitled to inquire about the
 8 thoroughness of a police investigation, and I was not able to
 9 do that, so I just want to make a record of that.
 10 THE COURT: Mr. --
 11 MR. SMITH: And Judge, just so the record is
 12 complete, it was our contention that at this stage in the
 13 proceedings and with no testimony establishing that an officer
 14 actually stepped on that bed, that at this point it would be
 15 irrelevant. And that the testimony indicated that perhaps
 16 someone -- an officer may have stepped on it.
 17 And it was our recollection that the -- one of the
 18 CSAs even testified that he didn't even think that was a
 19 footprint, but rather, it was a depression made by a hand.
 20 THE COURT: All right. I did deny the motion or the
 21 -- I sustained the objection. And so I'm sorry, do you want to
 22 get those officers real quick, because I mean, you're going to
 23 talk to Detective Wildemann on this issue, but you said it's
 24 real short. Your cross is short or this particular issue with
 25 Detective Wildemann will be short?

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 ROUGH DRAFT TRANSCRIPT

1 MR. PIKE: There was --
 2 MS. GRAHAM: As far as Sergeant Newberry, do you want
 3 to keep him or do you want to -- he did not testify.
 4 MR. PIKE: Okay.
 5 MS. PALM: No, he can be released.
 6 THE COURT: So just --
 7 MR. PIKE: He didn't testify, we'll let him go, too.
 8 THE COURT: I'm just wondering since we've been
 9 holding them, and I don't know if they need to be out in the
 10 street --
 11 MR. SMITH: Yeah, that's a good point.
 12 THE COURT: -- if we could just take them real quick
 13 and then have Detective Wildemann come back. Is that okay with
 14 the parties?
 15 MS. GRAHAM: I think --
 16 MS. PALM: Actually, I would -- I'd like to ask
 17 Detective Wildemann questions about how he got the use of force
 18 report --
 19 THE COURT: Okay.
 20 MS. PALM: -- prior to --
 21 THE COURT: I don't know want to break up his
 22 testimony again. Will you be done --
 23 MS. PALM: It's going to be brief.
 24 THE COURT: Okay. Well, I'm not going to rush you.
 25 I'm just wondering, okay.

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 ROUGH DRAFT TRANSCRIPT

1 MS. PALM: No, my remaining cross is just about that,
 2 so --
 3 MR. SMITH: Well --
 4 MS. PALM: Let me verify that.
 5 MR. SMITH: And while Ms. Palm is doing that, I just
 6 want to make sure I understand what the scope of her
 7 cross-examination is going to be. Is it --
 8 MS. PALM: Well, can you object if you don't like my
 9 cross-examination.
 10 THE COURT: Well, and I'm telling you the scope of
 11 the cross-examination is strictly the issue of the --
 12 MR. SMITH: The actual --
 13 THE COURT: -- appearance of intoxication.
 14 MR. SMITH: The report itself, and not the discovery
 15 --
 16 MS. PALM: No, I'm going to -- I have a right to
 17 inquire about their withholding much exculpatory evidence.
 18 MR. SMITH: Well, Judge, that's a legal issue.
 19 THE COURT: Okay, we don't know that -- okay, you're
 20 not going to ask anyone if it's exculpatory evidence. You're
 21 just going to -- you can ask him about -- because the issue was
 22 you didn't have this report. Your report talks about that Mr.
 23 O'Keefe appeared to be extremely intoxicated, and your
 24 objection was that you didn't have this report to confront them
 25 with this.

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1 And so I'm allowing you to be recall -- these
2 witnesses can be recalled so you can develop that particular
3 issue.
4 MS. PALM: So it's the Court's ruling that I cannot
5 inquire when we asked for that report, the fact that they said
6 it did not exist, and the fact that we got it pursuant to --
7 THE COURT: No, that -- but --
8 MS. PALM: -- a court order yesterday, that's what I
9 want to ask him want.
10 THE COURT: Yeah, but who did you ask that from?
11 MS. PALM: It was an e-mail to Phil Smith. It was
12 copied to me, it was copied to Detective Wildemann, it was
13 copied to Detective Bunn. We were all in this big circle of
14 e-mails.
15 THE COURT: I thought we were only calling Ballejos
16 and Santarossa.
17 MR. PIKE: That's the --
18 MS. PALM: No, this is --
19 MR. PIKE: That's to cross-examine them about the
20 report and about their agreement or if they were provided this
21 information, would they agree that -- with that report. No,
22 that's going to be very, very quick.
23 THE COURT: Okay.
24 MR. PIKE: And I'm handling that. And I'm not going
25 to go into how I got it or anything else. It's appropriate.

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ROUGH DRAFT TRANSCRIPT

1 Department 17 jurors. You may be seated, ladies and gentlemen.
2 Let's make sure our cell phones are turned off, please.
3 THE COURT: Record reflect we're back in the presence
4 of the jury panel. Ladies and gentlemen, we're going to take
5 some witnesses out of order even though we're in the middle of
6 Detective Wildemann's testimony, and we're going to recall --
7 is it were you recalling Mr. -- Officer Ballejos first?
8 MR. PIKE: Brian Santarossa first.
9 THE COURT: Okay.
10 MR. PIKE: Thank you.
11 THE MARSHAL: Raise your right hand, please.
12 OFFICER BRIAN SANTAROSSA
13 THE CLERK: Please be seated. Please state your name
14 and spell it for the record.
15 THE WITNESS: Brian Santarossa, B-r-i-a-n,
16 S-a-n-t-a-r-o-s-s-a.
17 THE COURT: Go ahead, Mr. Pike.
18 MR. PIKE: Thank you very much.
19 RECROSS EXAMINATION
20 BY MR. PIKE:
21 Q Officer, you're still under oath as you previously
22 testified in this matter. In your being recalled for a
23 specific short questioning, and what I'd like to ask you is
24 that when a non-lethal option is deployed, a tazer is deployed
25 in a case, there's a report called a use of force report that's

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1 Only through the detective --
2 THE COURT: I'm just talking about the --
3 MR. PIKE: -- and not through these officers.
4 THE COURT: -- two witnesses.
5 MR. PIKE: You bet.
6 THE COURT: Okay.
7 MR. PALM: Okay.
8 THE COURT: And then we can deal with the other ones
9 as the questions arise.
10 MR. SMITH: Fine, we'll deal with it when it comes
11 out.
12 THE COURT: All right.
13 MR. SMITH: That's fine.
14 THE COURT: So let's get them out of the way real
15 quick here, all right.
16 MR. SMITH: Okay.
17 THE MARSHAL: They're going to finish Wildemann
18 first?
19 THE COURT: No. We're going to call Mr. -- Officer
20 Ballejos, if I'm pronouncing that correctly.
21 MS. GRAHAM: Ballejos.
22 MR. PIKE: Ballejos and Santarossa.
23 THE COURT: Let's call the jury in.
24 (In the presence of the jury)
25 THE MARSHAL: Officers and members of the court,

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1 prepared?
2 A Yes, sir.
3 Q And one was prepared in this case, and we received a
4 copy of it yesterday about 2:00 o'clock after you testified.
5 Now, yesterday you testified that you wouldn't dispute if other
6 officers indicated that Mr. O'Keefe was intoxicated at that
7 time.
8 A Yes, sir.
9 Q And as part of the use of force report, the officer's
10 assessment of the citizen's condition is something that's
11 placed onto that report.
12 MR. SMITH: Judge, I have to do this, but I'm going
13 to object. Technically this is his witness, so he can't lead
14 him.
15 MR. PIKE: It's cross-examination.
16 THE COURT: Well, I'm going to consider this his
17 cross-examination.
18 MR. SMITH: Okay, Judge. Thank you.
19 MR. PIKE: Thank you.
20 BY MR. PIKE:
21 Q You can answer the question. So when the report is
22 prepared, the officer puts down his assessment of what
23 condition the citizen was in.
24 A Yes, sir.
25 Q So the officer who prepared this -- and in this case

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1 it would have been the officer that deployed the tazer -- he
2 would have put that into the report.
3 A Yes, sir.
4 Q So if I told you that he wrote that his assessment
5 was that the citizen, Mr. O'Keefe, was mentally ill or under
6 the influence, you wouldn't object to that.
7 A No, sir.
8 Q And he was the one that was make being the decision
9 whether or not to deploy that non-lethal option.
10 A Yes, sir.
11 Q Okay. So he was focused in, and he'd be in the best
12 position to give that opinion.
13 A Yes, sir.
14 Q And then a review of that additional comment in the
15 report indicated that O'Keefe appeared extremely intoxicated
16 and continued to be erratic and emotional in his behavior.
17 And certainly, if that was in that report, you wouldn't have
18 anything to oppose to that or object with it.
19 A No, sir.
20 Q Okay. Thank you?
21 MR. PIKE: I have nothing further.
22 THE COURT: Any question by the State?
23 MS. GRAHAM: Just briefly.
24 REDIRECT EXAMINATION
25 BY MS. GRAHAM::

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1 intoxication, so he would have to rely upon the report that was
2 prepared --
3 THE COURT: Is that correct, Officer, or --
4 MR. PIKE: -- by other officers.
5 THE COURT: -- do you have other -- do you have any
6 other -- do you personally have any observations regarding the
7 -- Mr. O'Keefe's demeanor?
8 THE WITNESS: No, sir, not in regards to
9 intoxication, sir, no.
10 THE COURT: Okay.
11 MS. GRAHAM: That's sufficient.
12 THE COURT: Anything further, Mr. Pike?
13 MR. PIKE: No. Thank you very much for coming back,
14 Officer.
15 THE COURT: Thank you, Officer.
16 MR. PIKE: You're released.
17 THE WITNESS: Thank you, sir.
18 THE COURT: And you are excused from --
19 THE WITNESS: Thank you, sir.
20 THE COURT: -- anything further.
21 MR. PIKE: Officer Ballejos. I think I'm close, I
22 hope.
23 MS. GRAHAM: Ballejos.
24 MR. PIKE: Ballejos, thank you.
25 THE MARSHAL: If you'll remain standing. Please

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1 Q Officer Santarossa, based on the fact that Officer
2 Ballejos wrote that in his report, his use of force report,
3 that's protocol, right, to write that report?
4 A Yes, ma'am.
5 Q That would be his perception of the defendant's
6 demeanor at the time he used that force; is that correct?
7 A Yes, ma'am. Yes, ma'am.
8 Q Would that necessarily be everybody's perception?
9 A Not necessarily, Ma'am, no.
10 Q Okay. Given the dynamic situation that was at
11 happened there, there were several officers involved; isn't
12 that true?
13 A Correct, Ma'am.
14 Q And each and every officer that came into contact
15 with the defendant would have their own impression of --
16 MR. PIKE: Objection, your Honor. Calls for
17 speculation.
18 THE COURT: Sustained.
19 BY MS. GRAHAM::
20 Q You had your own impression of the defendant's
21 demeanor and his lack or level of intoxication; is that
22 correct?
23 MR. PIKE: Objection, your Honor. Misstates the
24 fact. At the time of the testimony the officer indicated he
25 got close, but he could not recall if he had any signs of

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1 raise your right hand and face the clerk.
2 JEREMIAH BALLEJOS, PLAINTIFF'S WITNESS, SWORN
3 THE CLERK: Please be seated.
4 THE WITNESS: Thank you.
5 THE CLERK: If you'll please state your name and
6 spell it for the record.
7 THE WITNESS: Officer Jay Ballejos, B-a-l-l-e-j-o-s
8 MR. PIKE: May I approach the witness, your Honor?
9 THE COURT: Yes
10 MR. PIKE: Thank you.
11 RECROSS-EXAMINATION
12 BY MR. PIKE:
13 Q Officer, Ballejos, because you were the officers that
14 deployed the non-lethal option in this case, you were required
15 to prepare what's called a use of force document?
16 A That's correct.
17 Q And you prepared one in this case?
18 A Yes.
19 Q There's a fax time on that indicating we received it
20 about 2:00 o'clock after you finished testifying in that
21 matter. And so I just want to ask you a few questions about
22 this and then we'll be done --
23 A Sure.
24 Q -- okay? Thank you very much. During your testimony
25 yesterday you were asked the question by Mrs. Graham about what

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1 Mr. O'Keefe's demeanor was while you were trying to gather
2 information or what his condition was. Do you recall that line
3 of questioning?
4 A I did, yes.
5 Q Okay. And in preparing the use of force report that
6 is done, you have to indicate on that report what your
7 assessment of his condition was at the time you deployed that
8 non-lethal force.
9 A That's correct.
10 Q Okay, and you had to focus in on him because it was
11 between yourself and Officer Conn. Officer Conn was the lethal
12 force and you were the non-lethal force.
13 A That's correct.
14 Q And if it reached a point where you had to deploy the
15 tazor, you were going to warn other officers. I think you
16 would shout out tazor or do something like that.
17 A We knew at that point when there was no weapon seen
18 that then ECD was -- or the tazor was going to be used.
19 Q And in making this determination, then, you had to
20 look at his condition, and on this report you indicated that
21 his assessment at that time that he was either mentally ill or
22 under the influence; isn't that correct? If I was to show you
23 the report --
24 A That's what I --
25 Q -- would that refresh your --

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1 Q All right.
2 MR. PIKE: Nothing further. Thank you very much.
3 THE COURT: Anything from the State?
4 MS. GRAHAM: Just briefly.
5 FURTHER REDIRECT EXAMINATION
6 BY MS. GRAHAM:
7 Q Officer Ballejos, the reason you employed the tazor
8 was not because he was intoxicated; would that be a fair
9 statement?
10 A That's correct.
11 Q Okay. And why did you feel the need to use
12 non-lethal force?
13 MR. PIKE: Objection. Outside the scope of limited
14 reason he's being recalled.
15 THE COURT: Sustained. I think we already addressed
16 those issues.
17 MS. GRAHAM: We did.
18 THE COURT: Anything else?
19 MS. GRAHAM: No.
20 THE COURT: All right, thank you, Officer.
21 THE WITNESS: Thank you, your Honor.
22 THE COURT: Okay. Can the other officers be
23 released?
24 MR. PIKE: They can be released. Hopefully this time
25 for good.

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1 A That -- yes, that's what's highlighted, yes.
2 Q Okay. And also, in that report it indicates that Mr.
3 O'Keefe to be extremely intoxicated and continued to be
4 erratic and emotional in his behavior. And telling you and
5 reminding you about the contents of that report, that would
6 refresh your recollection as to --
7 A Yes, it would.
8 Q -- what you placed in the report and the condition
9 that Mr. O'Keefe was.
10 A Yes.
11 Q And, in fact, this was prepared on November 6th by
12 yourself and submitted.
13 A Was that the date?
14 THE COURT: You can show him.
15 BY MR. PIKE:
16 Q I can show you. Looks like it was received by them
17 on November 6th.
18 A Okay.
19 Q Okay. So this would have been prepared that next --
20 sometime that next day.
21 A It was actually done after the 12:00 o'clock hour, so
22 early the morning of the 6th.
23 Q Well, the conditions and everything were still fresh
24 in your mind.
25 A Yes.

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1 THE COURT: All right.
2 MR. PIKE: Thank you for returning.
3 THE COURT: All right. Cliff, you can tell the other
4 officers they can go.
5 THE MARSHAL: Okay, Judge.
6 THE COURT: And then we can call Detective Wildemann.
7 And, detective, you understand you're still under oath?
8 THE WITNESS: Yes, sir.
9 THE COURT: Go ahead.
10 RECROSS-EXAMINATION
11 BY MS. PALM:
12 Q Detective Wildemann, one of the reasons that the
13 photographs of Mr. O'Keefe's injuries were recorded is because
14 the State has a duty to preserve exculpatory evidence; is that
15 true?
16 A That's true.
17 Q Okay. And are you aware that the State also has a
18 duty to turn over discovery?
19 A Yes, of course.
20 Q To the defense counsel?
21 MR. SMITH: Judge, I'm going to object to the
22 relevance of this line of questioning.
23 THE COURT: Counsel approach, please.
24 (Bench conference).
25 MS. GRAHAM: Your Honor, may I approach the witness?

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1 THE COURT: Yes.
2 BY MS. PALM::
3 Q Detective Wildermann, do you recognize what this
4 document is, and just the top portion of the e-mail.
5 A Sure.
6 Q And what does it appear to be?
7 A It's a copy of an e-mail that was sent from District
8 Attorney Smith to you, I believe, or --
9 Q To --
10 A Oh, I'm sorry, to Chris Bunn.
11 Q And who is Chris Bunn?
12 A Chris Bunn's my partner.
13 Q And he is the other detective on this case.
14 A Yes.
15 Q And who is cc'd on that e-mail?
16 A Myself, you, and Mr. Pike.
17 Q Okay. And is it fair to say that this e-mail is
18 requesting numerous items of discovery?
19 A Let me read it.
20 Q Or several.
21 A Um-h'm. Yes, it does.
22 Q And are one of those items the use of force report
23 prepared by Officer Ballejos?
24 A Yes.
25 Q And showing you a second --

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1 MR. PIKE: There's no question before the Court.
2 THE COURT: And I think you can -- I'm going to let
3 you --
4 MR. PIKE: It's argument only.
5 THE COURT: -- clear this up on --
6 MR. SMITH: Okay, okay.
7 THE COURT: -- on redirect.
8 BY MS. PALM::
9 Q And are you aware that that report was faxed over to
10 Deputy District Attorney Smith and provided to us last evening?
11 A I believe it -- I had heard that.
12 Q Have you seen that document yourself?
13 A I have not seen it.
14 Q Okay. Moving onto another issue. You were at the
15 scene yourself the night of the incident?
16 A Yes.
17 Q And is it fair to say that where the manager's office
18 is -- do you know where the manager's office is?
19 A I don't know where the manager's office is, No,
20 Ma'am.
21 Q Did you --
22 A I never even made it into the compound. I was in the
23 back parking area outside of the actual -- it's kind of like a
24 square, and all the apartments face inwards. I was never in
25 that -- the actual courtyard area.

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1 THE COURT: Excuse me, Counsel, can you just hold on
2 one second.
3 (Off the record colloquy).
4 THE COURT: Thank you.
5 MS. PALM: Thank you.
6 BY MS. PALM::
7 Q The second document appears to be what?
8 A It's another e-mail sent from District Attorney Smith
9 to Mr. Pike and yourself.
10 Q And who's cc'd on it?
11 A Myself and Detective Bunn.
12 Q And what is it saying about the use of force report
13 that we are requesting?
14 A There is no separate report. Only the taped
15 statement, which you guys already have as supplemented by the
16 officer's report.
17 Q So it's saying the use of force report does not
18 exist?
19 A I -- yes.
20 Q And did you learn yesterday that the Court, after
21 Officer Ballejos testified, actually ordered that the State
22 produce to the defense the use of force report that did exist?
23 A Yes.
24 Q And --
25 MR. SMITH: Judge, I'm going to object again, and --

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1 Q Courtyard?
2 A No.
3 Q Okay. So you never spoke with the witnesses, Robin
4 Colax (phonetic) or Todd Amburster (phonetic)?
5 A No, Ma'am.
6 Q The camera that recorded the videotaped interview of
7 Mr. O'Keefe that we all just watched.
8 A Yes.
9 Q Is that hidden in a ceiling or is it visible?
10 A It's visible. It's a visible camera.
11 Q Is one that sticks out a wall or is it --
12 A No, it --
13 Q -- flat in the ceiling or --
14 A -- looks very similar to that fire deal there.
15 Q Okay. Is it obviously a camera?
16 A No.
17 Q Okay. Do you recall at the time that the interview
18 terminated you spoke to the officers outside the interview room
19 and you said that Mr. O'Keefe might be a fucking nut you?
20 A I do.
21 Q Okay. And that is not on the transcript, but it's on
22 the video. Can you explain to me why? I mean, it's not on the
23 video, but it's in our transcript. Can you explain why the
24 difference?
25 A I'm thinking that she took the -- we have people that

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1 transcribe our statements, and I'm thinking that my recorder
2 hadn't been off yet, and that the audio portion that picks up
3 in that room wasn't sensitive enough to pick that up.
4 Q Because it was actually made outside of the room?
5 A Possibility, yes.
6 Q Okay.
7 A Just speculating on that.
8 Q Okay. And just to clarify, because there was an
9 objection, so I want to just make sure I'm clear. At the time
10 you testified at the preliminary hearing you were not aware of
11 another case where homicide had taken a blood or breath test?
12 A I was not aware of another case, No, Ma'am.
13 Q Are you aware that the option is available for a
14 blood or breath test if you were to ask for one?
15 MR. SMITH: Objection. Irrelevance, Judge want.
16 THE COURT: Overruled.
17 THE WITNESS: That the option is available to get a
18 blood or breath test?
19 BY MS. PALM:
20 Q If you asked for a breath test to be done on a
21 suspect or if you offered it to a suspect and they wanted to
22 have one done, could you accomplish that?
23 A I could accommodate that, yes.
24 Q Okay. And Mr. O'Keefe was never offered a blood or
25 breath test by you or any other detective in this case.

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1 Q Do you recall that?
2 A Yes.
3 Q And you've already testified on direct examination
4 that you've dealt with many stabbing cases; is that correct?
5 A Yes.
6 Q Now in your training and experience dealing with
7 stabbing homicides in your career, have there ever been
8 situations where a suspect has received cuts on his fingers or
9 hands in the very area that the defendant has?
10 MS. PALM: Objection, your Honor. It's irrelevant
11 what has happened in other cases, and it's beyond the scope of
12 my cross-examination. This is redirect.
13 MR. SMITH: Well, Judge, she brought the issue out on
14 cross-examination.
15 MS. PALM: He's also not an --
16 THE COURT: Counsel approach. Counsel approach,
17 please.
18 (Bench conference).
19 THE COURT: Sustain the -- I mean, overrule the
20 objection.
21 BY MR. SMITH:
22 Q You can answer the question.
23 A Would you mind asking it again, I'm sorry.
24 Q Sure. In your training and experience, have you come
25 across occasions where a suspect in a stabbing has had cuts on

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1 A No.
2 MR. SMITH: No more questions. Thank you.
3 THE COURT: Redirect.
4 FURTHER REDIRECT EXAMINATION
5 BY MR. SMITH:
6 Q Following up, detective, on the question that Ms.
7 Palm just asked you -- actually, let me back up a little bit.
8 You've been a homicide detective now for several years?
9 A Yes.
10 Q How long have you been an officer employed with the
11 Las Vegas Metropolitan Police Department?
12 A 21 years.
13 Q And in that -- those 21 years of experience, under
14 what types of circumstances is a suspect general administered a
15 blood and alcohol breath test?
16 A A blood alcohol breath test?
17 Q Yes.
18 A Okay. It would be under a DUI situation.
19 Q Okay. Generally, is that the only situation?
20 A I haven't been in patrol in many, many years, but
21 that's how I remember it, yes.
22 Q Okay. Now, on cross-examination Ms. Pike -- excuse
23 me. Ms. Palm drew your attention to an alleged injury on the
24 defendant's hand.
25 A Yes.

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1 their fingers in the very area that the defendant does?
2 A Yes, yes.
3 Q How often would you say or --
4 A I can't give you a specific number, but it happens
5 frequently.
6 Q Okay. Now, in regards to your determination as to
7 the intoxication level of Mr. O'Keefe, safe to say that you
8 interacting with Mr. O'Keefe for a number of hours?
9 A Yes.
10 Q In your opinion, did it appear to you that he had a
11 complete lack of control of his faculties?
12 A No, none at all.
13 Q How would you describe his demeanor throughout the
14 time that you interacted with him?
15 A At times it was very controlled, and at times it
16 would get a bit sporadic I found when question got a little bit
17 tighter on him, I asked for more specifics.
18 Q Okay. So it is your testimony that when you
19 attempted to ask for specific information, that's when he got
20 out of control?
21 A That's when his demeanor definitely changed, yes.
22 Q Also, on cross-examination Ms. Palm brought attention
23 to the fact that sometime subsequent to you informing Mr.
24 O'Keefe that Victoria had passed away, she said that he cried.
25 Do you recall that?

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1 A Yes.
 2 Q Now, you were actually there observing him when this
 3 happened; is that correct?
 4 A Yes.
 5 Q Can you describe whether or not he was actually
 6 crying.
 7 A To me, it seemed calculated. He had an outburst that
 8 went on like a switch, and it terminated like a switch, and I
 9 didn't see tears or any sort of nasal activity that accompanies
 10 that.
 11 Q And just so the record's clear, you said you did not
 12 see any tears.
 13 A No.
 14 Q Now, with regards to this use of force report that
 15 we've heard about, is that something that homicide detectives
 16 keep in their file?
 17 A Absolutely not.
 18 Q And where is that use of force report normally
 19 located?
 20 A As I understand it, it's an administrative internal
 21 report that the department uses to monitor uses of force.
 22 Several reasons might exist. One is to keep, of course, a
 23 document of it. Number two, is to monitor heavy handedness.
 24 Maybe a particular officer that's having more problems than
 25 other officers. As to where it's kept, I have no idea. We're

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1 Q Just look those over.
 2 A Okay. I'm reading one from you to Mr. Pike and Ms.
 3 Palm. Is that where you want me?
 4 Q Sure.
 5 A Or do you -- okay. And what do you want me to read
 6 to you?
 7 MR. SMITH: Can I approach the witness, Judge?
 8 THE COURT: Yes.
 9 THE WITNESS: Or am I on the wrong one?
 10 BY MR. SMITH:
 11 Q Might be the wrong one. Let me find out.
 12 MR. SMITH: May I approach the witness --
 13 THE COURT: Yes.
 14 MR. SMITH: -- to give him another copy?
 15 BY MR. SMITH:
 16 Q It's the highlighted portion that I actually quoted,
 17 but that quote had originated from Officer -- from Detective
 18 Bunn.
 19 A Okay. Okay.
 20 Q And what was that reply?
 21 A There is no separate report, only the taped
 22 statement, which you guys already have as supplemented by the
 23 officer's report.
 24 Q Okay.
 25 MR. SMITH: Judge, I'll pass the witness. No further

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1 not entitled access to those reports.
 2 Q Okay. So I just want to make sure the record's
 3 clear. Ms. Palm showed you some e-mails originating from a
 4 representative of the District Attorney's Office, myself. Do
 5 you recall that?
 6 A Yes.
 7 Q Where I had requested on behalf of the defense
 8 attorneys a copy of that report. Do you recall that?
 9 A Yes.
 10 Q And the response was -- actually, do you recall who
 11 actually replied to that request from our office?
 12 A Detective Bunn replied to it.
 13 Q Okay. And that reply was sent also as a cc copy to
 14 yourself, is that correct?
 15 A Yes.
 16 Q And do you recall what Detective Bunn's reply was?
 17 A I don't recall exactly what it was. Be glad to look
 18 at it again.
 19 Q If I showed you the chain of e-mails, would that help
 20 refresh your recollection?
 21 A Yes, it would.
 22 MR. SMITH: May I approach the witness --
 23 THE COURT: Yes.
 24 MR. SMITH: -- Judge?
 25 BY MR. SMITH:

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1 questions.
 2 THE COURT: Any further questions, Ms. Palm?
 3 MS. PALM: Just a few.
 4 FURTHER RECROSS-EXAMINATION
 5 BY MS. PALM:
 6 Q Does Metro have drug recognition officers who could
 7 have examined Mr. O'Keefe for alcohol or drug use?
 8 A I would think that a traffic officer would probably
 9 be able to do something along those lines.
 10 Q And is a nurse maintained 24 hours a day at the jail
 11 to collect blood, do you know?
 12 A Yes.
 13 Q Based on -- a DUI or a stop can be made based on
 14 erratic driving, so do you agree that erratic behavior would
 15 support the use of alcohol or drugs?
 16 A Are you asking me about a traffic stop?
 17 Q I'm asking you, I guess, if the use of alcohol or
 18 drugs might make somebody behave erratically in your
 19 experience?
 20 A Sure.
 21 Q And you don't know whether Mr. O'Keefe has a history
 22 of alcohol abuse or blackouts, do you?
 23 A He told me that he was in a program, so I did know
 24 that at the time. I have no idea about blackouts.
 25 MS. PALM: Nothing further. Thank you.

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1 THE COURT: Any questions from the jurors? We have a
2 question?

3 THE MARSHAL: Write it down.

4 THE COURT: Counsel approach, please.
5 (Bench conference)

6 THE COURT: Officer, this question may not
7 necessarily be directed towards you. The question was from the
8 juror will we be able to read a transcript over the interview
9 The transcript has not been admitted in the evidence. The disk
10 of the interview has. It's been admitted in the evidence and
11 will go back with the jury for deliberations. No other
12 questions? Thank you, detective. You're instructed not to
13 discuss your testimony with any other witness involved in this
14 case until this matter is resolved. Thank you, sir.

15 THE WITNESS: Thank you, sir. Thank you.

16 THE COURT: Next witness by the State.

17 MR. SMITH: Detective Chris Bunn.

18 THE MARSHAL: Remain standing, please. Raise your
19 right hand and face the clerk.

20 DETECTIVE CHRIS BUNN, PLAINTIFFS WITNESS, SWORN

21 THE CLERK: Please be seated. Will you please state
22 your name and spell it for the record.

23 THE WITNESS: Christopher Bunn, B-u-n-n.

24 THE CLERK: Thank you.

25 THE COURT: Go ahead, Mr. Smith.

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1 Q Would those be the same observations that you would
2 expect to be included in a use of force report?

3 A Well, when we're talking about use of force report,
4 there's two -- there seems to be some -- there's an officer's
5 report, use of -- officer's use of force report, which would be
6 an officer's report, which is a document that is basically a
7 narrative type document.

8 Q Okay.

9 A Now, the department has an internal tracking system
10 administrative report that's called an officer use of force
11 report, which is separate, and that's conducted by his
12 supervisor. So what I was referring to with you was the
13 officer's report -- officer's report, use of force, which there
14 was not one prepared by Mr. -- Officer Ballejos because I
15 specifically told him not to. That I would document it in his
16 statement, his taped statement that I did with him, and then it
17 would be documented in the officer's report that I would do
18 over the overall incident.

19 Q Okay.

20 A Now, as the administrative report by his supervisor,
21 I have no access to that because I'm not in his chain of
22 command. I would have -- probably never see that report or
23 have access to it.

24 Q Would you even know if that report existed?

25 A No, that's completely done through his chain by his

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1 MR. SMITH: Thank you, Judge.

2 DIRECT EXAMINATION

3 BY MR. SMITH::

4 Q Mr. Bunn, how are you presently employed?

5 A Las Vegas Metropolitan Police Department.

6 Q In what capacity?

7 A As a homicide detective.

8 Q Were you assigned to work the case regarding a
9 descendant by the name of Victoria Wiunash along with a
10 Detective Marty Wildemann?

11 A Yes, sir.

12 Q Okay. I have a couple specific questions for you.

13 Do you recall receiving an e-mail communication from myself
14 regarding a use of force report prepared by an Officer
15 Ballejos?

16 A Yes.

17 Q Do you recall informing myself that, to your
18 knowledge, there was no separate report, but rather, there had
19 been a taped statement that was conducted, pursuant to the
20 overall investigation of this case?

21 A That's basically what I wrote back to you, yes.

22 Q Okay. And to your knowledge, did that taped
23 statement of Officer Ballejos contain observations that Officer
24 Ballejos made about Mr. O'Keefe?

25 A It did.

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1 sergeant.

2 MR. SMITH: Court's indulgence.

3 BY MR. SMITH::

4 Q Now, at some point yesterday did you have a
5 conversation with a representative from the District Attorney's
6 Office regarding the actual private, as it were, administrative
7 report?

8 A Yes, sir.

9 Q And what information did you provide?

10 A I basically said that I don't have access to that
11 report. If it was done, it's through his sergeant and through
12 internal affairs. I don't have any way to get that.

13 Q To this date do you have that report?

14 A No, sir, I do not.

15 Q Did you nevertheless become aware that at some point
16 that report was turned over to the District Attorney's Office
17 through a completely separate means?

18 A Yes, sir.

19 MR. SMITH: Pass the witness, Judge.

20 THE COURT: Ms. Palm.

21 MS. PALM: Thank you.

22 CROSS-EXAMINATION

23 BY MS. PALM::

24 Q What was the means that we got that report?

25 A I believe it was through his sergeant.

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ROUGH DRAFT TRANSCRIPT

1 Q So did you contact his sergeant and say the judge has
2 ordered that you get them the report?
3 A No, I did not.
4 Q Do you know who did?
5 A I believe it was the District Attorney's Office.
6 Q But you knew that we had specifically requested the
7 use of force report.
8 A Use of force report that I was -- I believe what was
9 requested to provide was the officer's report, his narrative
10 statement, which I specifically told Officer Ballejos not to do
11 one of those. That it would be covered in his dictated
12 statement as well as my narrative statement, my officer's
13 report. That was the report I was referring to when I
14 responded to Mr. Smith's request.
15 Q But the request was for the use of force report.
16 A And the use of force report, I believed, that was
17 being requested was the officer's report.
18 Q Are you talking about this voluntary statement?
19 A I -- no, I believed that he was referring to an
20 officer's report for use of force.
21 Q Aren't officer's report entitled officer's report?
22 A Some -- they carry two titles. Just like this would
23 be an officer's report in reference to a homicide, officer's
24 report in reference to use of force, officer's report in
25 reference to -- so it could carry either one of those names.

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1 A I assume, yes. I have not seen it. I don't have it.
2 Q Now, did you say that you thought Officer Ballejos'
3 involuntary statement includes the very same things that are in
4 this use of force report?
5 A I believe that the items that would be covered --
6 just what I told Officer Ballejos -- his narrative, his
7 dictated statement to me, the taped interview that I did with
8 him, and the details from my officer's report from the crime
9 scene would be what would be supporting documents for his -- so
10 he would not have to do that.
11 Q So the public document that we would be able to get
12 is this voluntary statement?
13 A And my officer's report.
14 Q Okay. And as far as your officer's report, it does
15 not say Officer Ballejos noted that my client was mentally ill
16 or extremely intoxicated, does it?
17 A I don't -- I don't believe that that's in there, no.
18 Q Okay. And do you know that his voluntary statement
19 does not note that either?
20 A I don't believe that that's stated in his --
21 Q Okay.
22 A -- statement.
23 Q And so really, the only way that there's a record of
24 this is in this private administrative document?
25 MR. SMITH: Objection, Judge. Outside the scope of

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1 Q You're aware when there's a use of force against a
2 suspect that officers are required, when they deploy a tazer or
3 a gun, are required to do this administrative document called a
4 use of force report, are you not?
5 A Yes.
6 Q So you're aware there was a document specifically
7 called a use of force report?
8 A Yes.
9 Q And did you look for that document before you passed
10 along the word to us that there was no such document?
11 A No, I did not.
12 Q And did you tell us that I can't -- did you pass
13 along the word that I can't get access to that document, it's
14 private?
15 A I had a conversation with the District Attorney's
16 Office. I've never had a conversation with you.
17 Q Okay. Did you tell Mr. Smith, rather than the
18 document doesn't exist, it's private, I can't get it?
19 A At a later time I did have that same conversation
20 with Mr. Smith and tell him that there was an administrative
21 report that I had no access to.
22 Q And that was yesterday?
23 A I did tell him that yesterday.
24 Q But after the Court ordered that we get a copy of
25 that document, it was able to be provided?

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1 his knowledge.
2 BY MS. PALM::
3 Q As far as --
4 THE COURT: If you know.
5 BY MS. PALM::
6 Q If you know as far as this --
7 A I don't know.
8 Q -- case goes.
9 A The system's been changed since I've done a use of
10 force report, and there's been a new documentation system
11 created. I don't know all the questions on the new
12 documentation process. I don't know the contents of that
13 report. I've never seen it.
14 Q Okay.
15 MS. PALM: May I approach, your Honor?
16 THE COURT: Is that the Officer Ballejos --
17 MS. PALM: This is Officer Ballejos' report.
18 THE COURT: No, tape report or the --
19 MS. PALM: His use of force --
20 THE COURT: -- use of force?
21 MS. PALM: -- report.
22 THE COURT: Okay. But this officer's never seen it.
23 MS. PALM: Well, I'm asking him does he -- all right,
24 I'll move along.
25 BY MS. PALM::

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1 Q The only public available document that you provided
2 in discovery was Officer Ballejos' statement. As far as
3 Officer Ballejos' observation goes was his statement, and that
4 statement did not indicate that Mr. O'Keefe was extremely
5 intoxicated and/or mentally ill.

6 A I don't believe that that's in his dictated
7 statement.

8 MS. PALM: Thank you. Nothing further.

9 THE COURT: Anything further, Mr. Smith?

10 REDIRECT EXAMINATION

11 BY MR. SMITH::

12 Q I just want to clear something up, detective. It's
13 your testimony that there are two separate use of force
14 reports; is that correct?

15 A Yes.

16 Q One that is administratively prepared that you would
17 not have any access to; is that correct?

18 A That's correct.

19 Q And is that something, to your knowledge, that is
20 normally discoverable?

21 A To my knowledge, no.

22 Q All right. And then there's also an officer's report
23 of a use of force; is that correct?

24 A Correct.

25 Q Which was not done in this case.

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1 A Officer Ballejos or at all?

2 Q At all.

3 A I believe it does indicate that he was intoxicated,
4 but outside of that, no.

5 Q Not to that degree. Okay. And as far as the
6 officer's report that is for a use of force, you testified that
7 you deliberately told Officer Ballejos not to prepare an
8 ordinary report in this case?

9 A It would be an officer's report that we create one
10 officer's report to cover the entire incident, so there was no
11 need for him to do a second report on top of it, so yes, that's
12 correct.

13 Q Thank you.

14 THE COURT: Any questions from the jurors? All
15 right, thank you, sir, for your testimony. You're instructed
16 not to discuss your testimony with any other witness involved
17 in this case until this matter is finally resolved. Thank you,
18 sir.

19 THE WITNESS: Yes, sir.

20 THE COURT: About 15 minutes till. Do you have any
21 other witnesses that would be short or --

22 MR. SMITH: Not for today, Judge.

23 THE COURT: Okay. Ladies and gentlemen, it's 4:45.
24 We've had a long day with some of the breaks and the bathroom
25 problems and everything else, so I've been assured that the

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1 A It was included in my description -- details. It's
2 the overall officer's report that was created reference to the
3 homicide, which is the document that I provide in my officer's
4 report reference to it, and we detail the actions of the
5 officers as best we can and as well as all of the other
6 pertinent facts that go into that report.

7 Q Along with the taped statement that you conducted of
8 Detective Ballejos?

9 A Yes.

10 Q Which were, in fact, both provided in discovery?

11 A Yes, sir.

12 Q Okay.

13 MR. SMITH: No further questions am.

14 THE COURT: Anything further, Ms. Palm?

15 RECROSS-EXAMINATION

16 BY MS. PALM::

17 Q None of the discovery actually provided referred to
18 Mr. O'Keefe being extremely intoxicated and/or mentally ill?

19 MR. SMITH: Judge, it's been asked and answered.

20 THE COURT: I'm going to let him answer the question.

21 THE WITNESS: I don't understand the question.

22 BY MS. PALM::

23 Q Is it true that none of the discovery actually
24 provided indicated that Mr. O'Keefe was extremely intoxicated
25 and/or mentally ill?

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1 bathrooms are all working now, okay. And we envision them to
2 be working tomorrow, okay.

3 And so during this -- and we'll come back at 9:45
4 tomorrow. During this evening recess it is your duty not to
5 converse among yourselves or with anyone else on any subject
6 connected with this trial or to read, watch or listen to any
7 report over commentary on the trial by any person connected
8 with the trial or by any medium of information, including
9 without limitation, newspaper, television, radio or the
10 Internet.

11 And you're not to form or express an opinion on any
12 subject connected with this case until this matter is finally
13 resolved. See you back at 9:45. Thank you.

14 (Court recessed at 4:45 p.m., until
15 Thursday, March 19, 2009)

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ACKNOWLEDGEMENT

ATTEST: Pursuant to Rule 3C(d) 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.

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(303) 798-0890

Julie Lord

JULIE LORD, TRANSCRIBER

7-7-09

DATE

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

THE STATE OF NEVADA,
Plaintiff,
vs.
BRIAN KERRY O'KEEFE,
Defendant.

CASE NO. C-250630

DEPT. NO. 17

TRANSCRIPT OF
PROCEEDINGS

FILED

JUL 10 2009

[Signature]
CLERK OF COURT

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, MARCH 17, 2009

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 2

APPEARANCES:

FOR THE PLAINTIFF:

PHILLIP SMITH, ESQ.
STEPHANIE GRAHAM, ESQ.
Deputy District Attorneys

FOR THE DEFENDANT:

RANDALL H. PIKE, ESQ.
PATRICIA A. PALM, ESQ.
Special Public Defenders

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Littleton, CO 80120
(303) 798-0890

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 17, 2009, 9:38 A.M.
2 (Outside the presence of the jury)

3 THE MARSHAL: (Indiscernible) Eighth Judicial
4 District is now in session. Honorable Judge Michael P. Villani
5 presiding. Please be seated. Remain in order. Let's make
6 sure our cell phones are turned off, please.

7 THE COURT: We're missing our DAs? Let the record
8 reflect we're outside the presence of the jury panel. I
9 advised counsel that Juror No. 12, Harley McFate or McFate
10 apparently called in left a message last night. Stated that
11 the apartment above his flooded, went into his apartment, and
12 all of his things basically have been ruined, and he was told
13 that he had to stay there all day today to work with the
14 service technicians to solve the problem whether it's had
15 carpet or ruined personal items.

16 We put a call into the jury commissioner to try to
17 get ahold of him. No luck. He did leave a number on the
18 recorder. However, his speech was so slurred -- not saying
19 intoxicated, just it was hard to understand, and we couldn't
20 get a phone number out of his message. And so we'll be
21 utilizing the other -- at least one of the alternates now. So
22 I guess apparently No. 3 --

23 THE CLERK: Is next in line.

24 THE COURT: -- is next in line.

25 UNIDENTIFIED SPEAKER: Okay

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1 admonished him again.

2 I would just like to bring that to the Court's
3 attention, because if it happens again, I would like -- ask the
4 Court to admonish him strongly because it prejudices Mr.
5 O'Keefe when we have to look like we're hiding information from
6 the jury because this guy wants to volunteer information. So
7 that's one issue.

8 And the other issue is that we would like any
9 reference to the sexual assault kit not to be called a sexual
10 kit. We'd ask that it be called DNA evidence or something to
11 that effect because there was no evidence of a sexual assault
12 kit or a sexual assault here, and I think it's kind of
13 prejudicial to call it a sexual assault kit.

14 THE COURT: Mr. Smith,

15 MR. SMITH: Judge, in regards to the testimony of Mr.
16 Ballejos, either myself or Ms. Graham will speak with him prior
17 to him getting on the stand and relay the defense attorney's
18 concerns, so we don't anticipate that will be a problem.

19 In regards to calling it a sexual assault kit, Judge.
20 I'll just submit it. If your Honor wants us to instruct the
21 witness to describe it as something else, we will. I mean, I
22 don't really think it makes that much of a difference but --

23 THE COURT: All right. I think -- you know,
24 obviously we use that in a sexual assault case where the
25 defense had stated there wasn't a sexual -- was not a sexual

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1 THE COURT: All right. Anything by the defense or
2 State?

3 MS. PALM: Yes, I have a couple matters that I just
4 want to make a record of from yesterday. Yesterday we
5 approached at the bench and objected to Mr. Smith's voir dire
6 question on the grounds that it was improper and advise the
7 jury that the show CSI was not realistic. The Court overruled
8 our objection but gave Mr. Pipe latitude to inquire if he
9 wanted to into the CSI matter.

10 Also, we objected to a statement from Joyce Toliver
11 that her husband had said to her he done killed that girl.
12 something to that effect. The State made the argument that it
13 was admissible as an excited utterance at the bench. We argued
14 that the basis for excited utterance is that the witness
15 actually saw what happened, and was what gave validity to the
16 statement making it admissible, and Mr. Toliver had not seen
17 any killing. So that statement did not qualify as an excited
18 utterance. The Court overruled our objection and admitted the
19 statement as excited utterance.

20 We have a couple of other matters that we wanted to
21 address. One is Officer Ballejos, who I believe will be
22 testifying for State, during the preliminary hearing a couple
23 of times he had to be admonished when I was cross-examining
24 him. He kept trying to volunteer information that was not a
25 direct answer to the question. The Court admonished him.

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1 assault, and typically the prosecutors will call it a -- or the
2 witness will call it a sexual assault kit. But there's no
3 allegation here of any sex assault; is that correct?

4 MR. SMITH: There is none.

5 THE COURT: Okay. If you could just call it like a
6 DNA or DNA collection kit or --

7 MR. SMITH: We'll find --

8 THE COURT: -- some neutral term.

9 MR. SMITH: We'll find a term of art that gets it
10 across without implicating them that there was a sexual assault
11 --

12 THE COURT: And you might address the issue of the
13 excited utterance.

14 MR. SMITH: Sure, Judge. I will just note that the
15 statute says that an excited utterance is made -- is a
16 statement made in relation to an event soon after or under
17 duress after seeing a startling event. Here we have a
18 situation where Charles Toliver goes upstairs, sees the
19 defendant nearby a dead woman with blood every where. I mean,
20 certainly under any circumstance that could certainly be
21 described as a startling event.

22 We had Joyce Toliver testify that when he came inside
23 the apartment, Mr. Toliver was visibly shaking, upset, and
24 under the stress and excitement of that startling event that he
25 had just seen, i.e., the defendant standing over a dead woman,

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1 he made some statements.
 2 I submit that that clearly satisfies the statute.
 3 And Judge, it's the State's position that the reason for the
 4 excited utterance exception is that it is presumed that a
 5 person will make truthful statements while under the stress of
 6 an event because presumably they have no motive to fabricate or
 7 to lie. So the only thing that the State has to show is that a
 8 startling event happened, and that the person was still under
 9 the stress of that startling event while they made those
 10 statements, and that's exactly what we have here.
 11 THE COURT: All right. I don't think he needs to see
 12 the actual stabbing when he's -- like counsel had mentioned,
 13 this lady that perhaps didn't know if she was dead, blood all
 14 over the place. I think he said the sheets or rags were soaked
 15 in blood.
 16 MR. SMITH: Yes, sir.
 17 THE COURT: The defendant he testified was shaken to
 18 wake up or something like that. So that's why I overruled the
 19 objection. Anything else?
 20 MS. GRAHAM: Nope.
 21 THE COURT: Call the jury in.
 22 THE MARSHAL: Officers and members of the court,
 23 Department 17 jurors.
 24 (in the presence of the jury)
 25 THE CLERK: Roll call. Justin Dettre. Jody

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 ROUGH DRAFT TRANSCRIPT

1 turned off, please. All phones are off.
 2 THE COURT: Ladies and gentlemen, just so you know,
 3 Juror No. 12 was involved in an extreme emergency situation,
 4 and so he is no longer part of the jury panel, and that's why
 5 it's important that we have alternates. As I said before, the
 6 alternates have been randomly selected, so it's not necessarily
 7 seats 13 or 14. So I'm sure everyone will pay attention
 8 throughout the trial. State, please call your next witness.
 9 MR. SMITH: Thank you, Judge. Judge, the State calls
 10 Cheryl Morris to the stand.
 11 THE COURT: Also, I don't believe either party's
 12 invoked the exclusionary rule. Does either party wish to
 13 invoke that?
 14 MS. GRAHAM: We do, your Honor.
 15 THE COURT: All right. If there are any witnesses
 16 that are going to be called in this case, they're instructed to
 17 remain outside until called in by the marshal.
 18 UNIDENTIFIED SPEAKER: Your Honor, the head phones
 19 aren't working.
 20 THE COURT: We'll have the marshal check -- or
 21 Michelle, do you have time to --
 22 THE MARSHAL: Ms. Morris, if you'll remain standing,
 23 please. Raise your right hand. Face the clerk.
 24 CHERYL MORRIS, PLAINTIFF'S WITNESS, SWORN
 25 THE WITNESS: Yes.

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1 Montoya.
 2 JUROR NO. 2: Here.
 3 THE CLERK: James Enal.
 4 JUROR NO. 3: Here.
 5 THE CLERK: Judy Chelini.
 6 JUROR NO. 4: Here.
 7 THE CLERK: Nancy Mirolock.
 8 JUROR NO. 5: Here.
 9 THE CLERK: Kirk Livemash.
 10 JUROR NO. 6: Here.
 11 THE CLERK: Dawn Fraley.
 12 JUROR NO. 7: Here.
 13 THE CLERK: Araceli Murrieta.
 14 JUROR NO. 8: Here.
 15 THE CLERK: James McCaldin.
 16 JUROR NO. 9: Here.
 17 THE CLERK: Marie Pinillos.
 18 JUROR NO. 10: Here.
 19 THE CLERK: Jose Vasquez.
 20 JUROR NO. 11: Here.
 21 THE CLERK: Robert Clark.
 22 JUROR NO. 13: Here.
 23 THE CLERK: And Martin Villaseñor.
 24 JUROR NO. 14: Here.
 25 THE MARSHAL: Let's make sure all cell phones are

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1 THE CLERK: Please be seated. State your name and
 2 spell it for the record.
 3 THE WITNESS: Cheryl Morris, C-h-e-r-y-l. Morris,
 4 M-o-r-r-i-s.
 5 THE COURT: Go ahead, Counsel.
 6 MR. SMITH: Thank you, Judge.
 7 DIRECT EXAMINATION
 8 BY MR. SMITH:
 9 Q Good morning, Ms. Morris.
 10 A Good morning.
 11 Q Ms. Morris, do you know a person by the name of Brian
 12 O'Keefe?
 13 A Yes, I do.
 14 Q Do you see Mr. O'Keefe present in court today?
 15 A Yes, I do.
 16 Q Can you point to him for us and identify what he's
 17 wearing?
 18 A He's the gentleman sitting there with his counsel,
 19 and he's wearing a dark suit.
 20 Q What color tie?
 21 A Brown/black tie, dark tie.
 22 MR. SMITH: Judge, can the record reflect the witness
 23 has identified the defendant?
 24 THE COURT: Yes it will.
 25 MR. SMITH: Thank you, Judge.

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 ROUGH DRAFT TRANSCRIPT

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1 BY MR. SMITH:
2 Q And Ms. Morris, how do you know Mr. O'Keefe?
3 A I was dating Mr. O'Keefe.
4 Q When would that relationship start?
5 A January 7th of 2008.
6 Q When did that relationship end?
7 A September 6th of 2008.
8 Q Okay. Now, when that relationship ended, where were
9 you residing?
10 A I was residing with a friend.
11 Q Okay. Throughout the course of the relationship that
12 you had with Mr. O'Keefe, did you two ever reside together?
13 A Briefly, which was last part of August of this year
14 or excuse me, of last year and September, actually. We moved
15 into an apartment, but I was only there for four days.
16 Q Okay. Where was that apartment located?
17 A 5001 El Parque Avenue, Apartment 35 --
18 Q Is that --
19 A -- in Las Vegas.
20 Q And was that in Clark County, Nevada?
21 A Yes.
22 Q Now, you just said that you only lived there for four
23 days.
24 A Correct.
25 Q Why did you only stay there for that short period of

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ROUGH DRAFT TRANSCRIPT

1 Q And were you not okay with that?
2 A No.
3 Q Okay. And why not?
4 A Didn't think it was right. Several days prior to him
5 calling me, we had agreed that we weren't going to bring anyone
6 over to the apartment until I was able to move out. We broke
7 up two days before.
8 Q So we being you and Mr. O'Keefe?
9 A Yes.
10 Q Okay. So, is it correct to say that when you guys
11 were living in the El Parque address, you guys being you and
12 Mr. O'Keefe, that you weren't actually in a relationship at
13 that time?
14 A No.
15 Q Okay. And what was the lease agreement?
16 A I'm sorry?
17 Q Whose name was on the lease?
18 A Both of ours.
19 Q Okay. Now, when you moved out of the apartment, did
20 your name remain on the lease?
21 A Yes, but I did not -- I called the apartment owner,
22 and I requested that he take that lease and have Mr. O'Keefe
23 and Mr. Witmarsh sign a brand new lease. I actually kept the
24 apartment keys and the only mailbox key to the apartment so
25 that it would be taken care of.

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1 time?
2 A I received a phone call from Mr. O'Keefe stating that
3 he wanted to come home, and he wanted to bring Victoria home
4 with him.
5 Q Victoria who?
6 A Victoria Witmarsh (phonetic).
7 Q Do you know who Victoria Witmarsh is?
8 A Yes.
9 Q And who is Victoria Witmarsh?
10 A A former girlfriend of his.
11 Q How do you know Victoria Witmarsh was a former
12 girlfriend of Mr. O'Keefe's?
13 A Mr. O'Keefe let me know.
14 Q Okay. Had you ever personally met Victoria Witmarsh?
15 A No.
16 Q Now, when you moved into the El Parque address in
17 August 2008, to your knowledge, was the defendant still in a
18 relationship with Ms. Witmarsh?
19 A He had seen her on occasions, yes. But he'd come
20 back and let me know that he was actually more interested in me
21 rather than being with her.
22 Q Okay. Now, you've already testified that you moved
23 out of the El Parque address because the defendant said that he
24 was going to bring Ms. Witmarsh to that address.
25 A Correct.

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ROUGH DRAFT TRANSCRIPT

1 Q Okay. Now, let me ask you this. You've already
2 testified that you moved out of the apartment because Mr.
3 O'Keefe wanted to bring home another woman as it were.
4 A Yes.
5 Q Did you have any ill will towards Mrs. Witmarsh?
6 A No, not at all.
7 Q Did you have any ill will towards Mr. O'Keefe?
8 A I was -- I was upset at the way he had done it.
9 Q Okay.
10 A At the way -- as of the way he approached the
11 situation because I actually informed him that if he wanted to
12 be with her, it was okay. Just let me know, and I'd move out
13 of the way.
14 Q Okay. And did you, in fact, move out of the way?
15 A Yes.
16 Q Okay. Now, you testified that your relationship
17 lasted for several months.
18 A Correct.
19 Q You said it started in January and it ended when?
20 A It ended September.
21 Q Okay. Throughout the course of that relationship did
22 the defendant ever talk to you about his relationship with Mrs.
23 O'Keefe -- excuse me, Mrs. Witmarsh?
24 A Yes.
25 Q Okay. And how often would he speak to you about her?

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1 A Almost all the time. He usually would be more or
2 less on a daily basis. I'd say about three, four weeks a day
3 --

4 Q Okay.

5 A -- or a time.

6 Q What types of things would he tell you about the
7 relationship?

8 MR. PIKE: Objection, your Honor. Hearsay.

9 THE COURT: Sustained.

10 MR. SMITH: Judge, it's a statement of a party
11 opponent offered against that person.

12 THE COURT: Counsel approach.

13 (Bench conference).

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

15 MR. SMITH: Thank you, your Honor.

16 MR. PIKE: I'd ask for that continuing objection to
17 be placed.

18 THE COURT: All right.

19 BY MR. SMITH::

20 Q Ms. Morris, you can answer the question.

21 A Could you repeat the question, please.

22 Q The question was what types of things would the
23 defendant tell you with regards to his relationship with
24 Victoria Witmarsh?

25 A On occasions he'd actually say that he was upset

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ROUGH DRAFT TRANSCRIPT

1 Q Do you recall giving a statement to the police back
2 on November 20th, 2008?

3 A Yes.

4 Q Do you recall him recording that statement?

5 A Yes, I do.

6 Q If I showed you a copy of that statement, would it
7 refresh your recollection as to whether defendant ever made any
8 statements to you regarding whether he liked Victoria because
9 she was a submissive woman?

10 A Yes.

11 MR. SMITH: May approach the witness --

12 THE COURT: Yes.

13 MR. SMITH: -- Judge?

14 BY MR. SMITH::

15 Q And for the record, Ma'am, I'm showing you Page 18 of
16 a recorded transcript -- of a transcript of a recorded
17 voluntary statement that you gave to you police. I'd ask you
18 to just -- read this portion to yourself, and then let me know
19 when you're done.

20 A Yes.

21 Q Now do you recall whether or not the defendant ever
22 made a statement to you that he liked Victoria Witmarsh because
23 he was submissive?

24 A Yes.

25 Q Did he, in fact, say that?

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1 because she put him in prison.

2 Q Okay. What else would he say?

3 A He'd say things like he wanted to kill the bitch.

4 Q So just so the record's clear, Mr. O'Keefe would make
5 statements to you saying he wanted to kill Mrs. Witmarsh
6 because she put him in prison?

7 A Yes.

8 Q And when you say that because he put her in prison,
9 did he indicate that she had actually testified against him?

10 A Yes.

11 Q At a jury trial?

12 A Yes.

13 Q Okay. Did he make any statements as to what kind of
14 person Victoria Witmarsh was?

15 A He would state that Victoria was somewhat a very --
16 she wasn't a strong person.

17 Q Okay.

18 A She -- if you yelled at her, basically, she would
19 cower. So she would be portrayed as a very meek person.

20 Q So the defendant described Mrs. Witmarsh to you as a
21 submissive woman?

22 A Correct.

23 Q Okay. Did he indicate that he liked her because of
24 that?

25 A No, he didn't make any sort of indication.

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1 A Yes, he did.

2 Q Now, Ms. Morris, again, throughout your time with Mr.
3 O'Keefe, did he ever make any statements to you indicating his
4 proficiency with weapons?

5 A Yes.

6 Q Specifically what kind of a weapon?

7 A A knife.

8 Q What types of things would he tell you?

9 A That he was capable of killing anyone.

10 Q With a knife?

11 A With a knife, yes.

12 Q Did he ever demonstrate to you how he could kill
13 someone with a knife?

14 A Yes, he did.

15 Q Can you show us.

16 A I'd have to stand up.

17 Q Yes, ma'am.

18 A Mr. O'Keefe would hold me on one shoulder and have a
19 pretend sort of weapon in his hand, and he would stand there
20 and hold me as length's -- arm's length and say he would come
21 at me or could come at a person and shove it through the cage
22 -- rib cage area and then just pull up pretty much --

23 Q And for the --

24 A -- slicing someone open.

25 MR. SMITH: And for the record, the witness is

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1 pointing to her mid section.
2 THE COURT: All right.
3 MR. PIKE: More particularly the sternum area.
4 MR. SMITH: The sternum area.
5 MR. PIKE: Thank you.
6 THE COURT: Okay.
7 BY MR. SMITH:
8 Q Now, while you two were living in the El Parque
9 address for those four days, did you sleep in the same bed?
10 A No.
11 Q What were the sleeping arrangements?
12 A After Mr. And O'Keefe and I had decided that we were
13 no longer going to be with each other, I slept in the room in
14 my bed behind locked door, and he slept on the couch.
15 Q And was that, to your knowledge, consistent with the
16 agreement you two had to be merely platonic?
17 A Correct.
18 Q Did you ever reside with Brian O'Keefe again after
19 you moved out?
20 A No.
21 Q Do you know how long Mr. O'Keefe has known Victoria
22 Witmarsh?
23 A Since 2001.
24 Q And how do you know that?
25 A Mr. O'Keefe has stated that to me.

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ROUGH DRAFT TRANSCRIPT

1 while he was in the Clark County Detention Center a month after
2 this incident had happened, did you ask him what happened?
3 A Yes, I did.
4 Q And what did he tell you?
5 A He said that he and Victoria had come home from
6 somewhere -- I cannot remember the place where he had mentioned
7 --
8 Q Okay.
9 A -- but he and Victoria came home. He was tired. He
10 went into the room, and he proceeded to go to sleep in the
11 darkroom and the next thing he knew he said that he felt a
12 prick or a stabbing on his hand, and he saw Victoria standing
13 over him with a knife.
14 Q Okay.
15 A And then he stated that the next thing he knew was
16 that he was holding her hand, and it went limp, and the knife
17 was at -- in her side.
18 Q Okay. Did he offer anything to explain the gap
19 between the alleged prick and the knife being inside of Mrs.
20 Witmarsh?
21 A He said that they struggled.
22 Q Okay. What was his demeanor while he was telling you
23 this?
24 A Somber.
25 Q Okay. Did he ever -- excuse me, strike that. Did he

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ROUGH DRAFT TRANSCRIPT

1 Q Did Mr. O'Keefe ever make any statements to you
2 regarding any training that he has had in the special forces?
3 A Yes, he said he had training in the Grenada.
4 Q Okay. Now, after you moved out of that apartment in
5 2008, did you ever have an occasion to see Mr. O'Keefe again?
6 A Yes, I did. I'm not exactly sure what date it was.
7 Q Could it have been December 6th, 2008?
8 A Yes.
9 Q So would that have been approximately a month after
10 the incident in question?
11 A Correct.
12 MR. SMITH: Your Honor, we're -- actually, can we
13 approach? Can we --
14 THE COURT: All right.
15 MR. SMITH: -- approach, Judge?
16 THE COURT: (Bench conference).
17 MR. SMITH: May I proceed, Judge?
18 THE COURT: Yes.
19 MR. SMITH: Thank you.
20 BY MR. SMITH:
21 Q Now, Ms. Morris, under what circumstances did you
22 next come into contact with Brian O'Keefe in December of 2008?
23 A It was just that moment when I went to go and visit
24 him at the county jail.
25 Q Okay. Now, when you went to go visit Mr. O'Keefe

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ROUGH DRAFT TRANSCRIPT

1 indicate to you that Mrs. Witmarsh ever struck him during this
2 alleged struggle?
3 A No.
4 Q Going back to the conversations that you had with Mr.
5 O'Keefe regarding his disdain of Mrs. Witmarsh for sending him
6 to prison, did he ever make any statements to you as to the
7 length of time?
8 A In regards to how many times that she'd go and visit?
9 Q No, in regards to her testifying against him and
10 ultimately being incarcerated?
11 A She would go and visit him quite often. I'm sorry --
12 Q Okay.
13 A -- I don't understand.
14 Q My question is, okay, do you recall whether or not
15 the defendant made a statement to you that Mrs. Witmarsh took
16 away three years of his life?
17 A Yes, he did. He had mentioned that quite often, and
18 that was in conclusion with, you know, the bitch, I hate her,
19 she's poison, she took three year of my life, I want to kill
20 her.
21 MR. SMITH: Pass the witness, Judge.
22 THE COURT: Cross-examination.
23 CROSS-EXAMINATION
24 BY MR. PIKE:
25 Q Moming --

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1 A Good morning.
 2 Q -- Ms. Morris. How are you today?
 3 A Fine, thank you.
 4 Q Now, how did you and Brian meet?
 5 A I was at a casino called Arizona Charlie's with a
 6 friend, and I happen to go into the Sour Dough Cafe (phonetic)
 7 and sit down and eat, and he and another friend had come in and
 8 sat down beside me.
 9 Q Okay. And that was -- you indicated that was in
 10 January of last year.
 11 A No, actually that happened in December, and I had
 12 left to go to San Diego and I did not return until January.
 13 Q Okay. And when you came back in January, did -- was
 14 it you that initiated the contact with Brian to say I'm back in
 15 town or did mutual friends tell you? What -- how did that work
 16 out?
 17 A Mr. O'Keefe and I had talked while I was in San
 18 Diego. As a matter of fact, he made this comment that he ran
 19 up a bill of \$300. We had talked on the phone almost all --
 20 several nights, and he asked if he would be able to come and
 21 pick me up from the Greyhound Station when I got into town, and
 22 that was the arrangement.
 23 Q Okay. And he did pick you up?
 24 A Yes.
 25 Q All right. And so during that period of time while

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ROUGH DRAFT TRANSCRIPT

1 THE WITNESS: No more than he usually did. On
 2 occasions he would have a little more, yes.
 3 BY MR. PIKE:
 4 Q Did you believe during that period of time that Brian
 5 had a problem with alcohol?
 6 A Yes.
 7 Q Did he consume too much alcohol?
 8 A Depends on what you call or consider too much.
 9 Q Too much -- let me ask the question this way. Did he
 10 appear to become intoxicated or drink to the point where he
 11 would not -- he would behave differently?
 12 A With beer, no.
 13 Q With other alcohol beverages, yes?
 14 A Correct.
 15 Q And you indicated just previously that the
 16 questioning that it was Victoria that reinitiated contact with
 17 Mr. O'Keefe, correct?
 18 A Yes.
 19 Q And you talked to Victoria about that.
 20 A Yes.
 21 Q And you told her -- you told Victoria that it was
 22 inappropriate for her to try and get back with him.
 23 A I don't recall making that statement.
 24 Q Okay. When you talked with Victoria, did you ask her
 25 why she wanted to get back with Brian?

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ROUGH DRAFT TRANSCRIPT

1 you're talking on the telephone and you were developing a
 2 relationship with each other, you were developing an
 3 attraction; would that be an appropriate term to use?
 4 A Yes.
 5 Q And it became a couple type relationship where it --
 6 you could talk with him about intimate details of your life and
 7 he could talk to you about intimate details --
 8 A Yes.
 9 Q -- of his life.
 10 A Yes.
 11 Q And between the two of you, that relationship where
 12 you were talking to each other was a safe relationship where
 13 you could share dreams, hopes, aspirations, concerns, past
 14 horrors of your life and things like that.
 15 A Correct.
 16 Q And that went on for a period of time.
 17 A Yes.
 18 Q During that early part of the relationship, that was
 19 before Victoria came back into the -- into Mr. O'Keefe's life,
 20 correct?
 21 A Correct.
 22 Q Did you a marked change when Victoria reinitiated
 23 contact? Let me rephrase it. Did Brian start to drink more?
 24 MR. SMITH: Objection. Goes to relevance.
 25 THE COURT: Overruled.

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ROUGH DRAFT TRANSCRIPT

1 A Yes, I did.
 2 Q And what did she tell you?
 3 MR. SMITH: Objection, Judge. Calls for hearsay.
 4 THE COURT: Sustained.
 5 BY MR. PIKE:
 6 Q During the time that you talked with Victoria, did
 7 you tell her that she wasn't good for Brian?
 8 A No.
 9 Q Did you tell her that she didn't get back in his
 10 life?
 11 A No.
 12 Q Did you tell him (sic) that she should leave well
 13 enough alone and just go on with her life?
 14 A No.
 15 Q Was Victoria persistent in calling you in and talking
 16 with you?
 17 A Several times, yes.
 18 Q In fact, when she got on the phone with you and she
 19 was talking with you, would she yell at you?
 20 A She did that one occasion which was the day that Mr.
 21 O'Keefe called and said he was bringing Victoria home.
 22 Q And how did you get the phone to talk to Victoria
 23 during at that period of time?
 24 A He handed her the phone.
 25 Q And you talked with her, and she was insistent about

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ROUGH DRAFT TRANSCRIPT

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1 coming to your apartment?
 2 A Yes, because her statement was he lived there, he
 3 paid the rent, why wasn't he able to come back.
 4 Q And you took it from that conversation, the other
 5 conversations that you had with her that she was coming back
 6 into that apartment whether you liked it or not.
 7 A No, I took it that they both needed a place to stay
 8 that night for one reason or another, and that's where they
 9 were going to be.
 10 Q During that period of time you became aware that
 11 during the conversations that Victoria was no longer welcome at
 12 her home with her husband.
 13 A That is what she told me.
 14 Q And from everything that you had observed during that
 15 period of time, you didn't think it was going to be a good idea
 16 for Victoria to be back in that house.
 17 A In whose house?
 18 Q In living back with Brian, Mr. O'Keefe.
 19 A No, that's not true. What I actually was stating was
 20 that as soon as I moved out, they could be together.
 21 Q And so it was your impression during that period of
 22 time that both of them wanted to be back together.
 23 A Correct.
 24 Q And during conversations with Brian about Victoria,
 25 Mr. O'Keefe told you that she went to visit him while he was in

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1 MR. PIKE: All right, thank you.
 2 BY MR. PIKE:
 3 Q The fact that you had established a relationship with
 4 Mr. O'Keefe for about a nine month period, you had lived with
 5 him off and on during that period?
 6 A I stayed with him in the trailer.
 7 Q And that was located here in Las Vegas, Nevada?
 8 A Yes, we -- it was mostly during the night because he
 9 was working during the day. I had my school during the day. I
 10 did other things, went to appointments.
 11 Q And there was a decision that you would become a
 12 couple. And in fact, you started to make plans together. You
 13 rented an apartment.
 14 A Yes.
 15 Q You purchased a car together.
 16 A Yes.
 17 Q He put you on a bank account. You had a joint
 18 account together --
 19 A Correct.
 20 Q -- for awhile.
 21 MR. SMITH: Judge, at this point I'm going to object
 22 to the relevance of their relationship.
 23 THE COURT: I think it can go to him so --
 24 MR. PIKE: Yeah.
 25 THE COURT: -- going to overrule the objection.

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1 custody over her testimony, didn't he?
 2 A Yes.
 3 Q And that she would put money on his books.
 4 A Yes.
 5 Q And do you understand what that means?
 6 A Yes.
 7 Q That means? Okay, would you describe it for the
 8 jury.
 9 A It means when you go to the court house or anywhere
 10 else, you're allowed to go ahead and put -- the inmate has an
 11 expense account where you're able to deposit money so the
 12 inmate is allowed to buy things while they are incarcerated.
 13 Q And, in fact, at the time of the trial in this
 14 matter, she testified on behalf of Mr. O'Keefe.
 15 A No, she testified against Mr. O'Keefe.
 16 Q Remember him saying that she recanted her testimony?
 17 MR. SMITH: Objection, Judge. It calls for hearsay.
 18 THE COURT: Sustained.
 19 MR. PIKE: It's a complete story, your Honor.
 20 They've brought in the hearsay as to what he said. If she
 21 recanted that testimony.
 22 THE COURT: Well --
 23 MR. SMITH: Well, Judge --
 24 THE COURT: -- there wasn't any objection at the time
 25 so I'm sustain the objection.

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ROUGH DRAFT TRANSCRIPT

1 MR. PIKE: Thank you, your Honor.
 2 BY MR. PIKE:
 3 Q And you had done all of this, and then Victoria comes
 4 out of the blue, somebody that you thought would never come
 5 back; is that correct?
 6 A No. Victoria was always there. He -- Mr. O'Keefe
 7 told me about her the very moment that we'd met. So she was
 8 always there in conversation throughout the entire time.
 9 Q And then physically she showed up.
 10 A She called him in June on Father's Day where Mr.
 11 O'Keefe proceeded to first lie to me about it, and then said I
 12 can't lie to you, it was Victoria.
 13 Q And it appeared that Victoria was reinitiating the
 14 relationship, as you've indicated, and then Mr. O'Keefe started
 15 to spend more time with Victoria.
 16 A Mr. O'Keefe, after that conversation, that following
 17 Monday he had left for an entire week without any notice,
 18 friends or myself, and stayed with Victoria for that week.
 19 Q And that obviously would upset you.
 20 A I was more hurt because I had seen in Mr. O'Keefe
 21 something different. Something that when we had spoken before
 22 that if it ever arose that he would be courteous enough to let
 23 me know that that was his intentions.
 24 Q Because you and -- you had made plans with him.
 25 You'd bought a car with him. You had an account with him. And

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1 that all started to change, yes or no? Yes, it started to
2 change.

3 A It did start to change, yes.

4 Q In fact, you were taken off of the account.

5 A No, I took myself off the account.

6 Q Okay. And you wanted to take yourself off of the
7 car.

8 A Correct.

9 Q And you wanted to take yourself off of the apartment.

10 A Correct.

11 Q At that point in time you wanted to dissociate
12 yourself completely with Mr. O'Keefe because he was involved
13 with Victoria.

14 A He was involved with Victoria --

15 Q And you wanted to go through and because that car had
16 been purchased jointly with you and Mr. O'Keefe, that car was
17 -- the loan was in your name, and you still had a financial
18 responsibility for that.

19 A It was in both Mr. O'Keefe's name and my name.

20 Q And after -- and you maintained a key to the
21 apartment. After you heard about what happened that night, did
22 you go back into that apartment?

23 A It was not until the police cleared us to be able to
24 go back into the apartment.

25 Q And who did you go back in the apartment with?

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1 able to get money to him and put them on his books and anything
2 else that needed to be taken care of.

3 Q And in fact, you kept that set of keys you kept, and
4 then you were able to resolve the issues with the car, correct?

5 A I voluntarily gave it back, yes.

6 Q In going through that, during this period of time the
7 police actually didn't contact you. You went and contacted the
8 detectives.

9 A Yes, I did, and the reason why I did that was because
10 I have a friend in Metro, and I spoke with this retired
11 officer, and I asked him what I should do.

12 Q You went in and gave a statement, and then you went
13 over and talked with Mr. O'Keefe at the Clark County Detention
14 Center, and that was done over a monitor, is that correct?

15 A Yes.

16 Q During the time that you had the conversations with
17 him, did you believe that those conversations were being
18 recorded?

19 A He said they were --

20 Q Did you --

21 A -- recorded.

22 Q Did you have a -- did you believe they were being
23 recorded?

24 A Yes, I did.

25 Q Okay. And during that period of time, during that

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1 A My son and Victoria's husband David and Victoria's
2 daughter.

3 Q During the time that you went through that apartment
4 did you have Mr. O'Keefe's glasses? Did you pick those up?

5 A Yes, I did.

6 Q And for what purpose?

7 A Mr. O'Keefe had called me some time when he ended up
8 in jail and requested that I -- through his lawyer -- through
9 you as a matter of fact requested that I bring that to you.

10 Q And you and I had some conversations in trying to
11 arrange the exchange of those glasses --

12 A Correct.

13 Q -- and you brought them to the preliminary hearing --

14 A Yes.

15 Q -- in fact, so that he could have those glasses.

16 A Yes.

17 Q In addition to that, you wanted to have a power of
18 attorney to close out the account, try and resolve the issues
19 with the car, and try and resolve the financial issues that you
20 had been encumbered with during your relationship with Mr.
21 O'Keefe.

22 A In regards to that, it was only because of the fact
23 that Mr. O'Keefe, when I did have an account with him and I
24 voluntarily took my name off the account, he would state to me if
25 anything happened to him, I would be able to have access to be

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ROUGH DRAFT TRANSCRIPT

1 jail conversation, your purpose for that visit was to get his
2 side of the story, was it to get a report from him, what was
3 your purpose in going and visiting him?

4 A My purpose was I went to visit Mr. O'Keefe because a
5 mutual friend contacted me stating that Mr. O'Keefe sent a
6 letter to his sister --

7 Q Well, okay, now let me just ask you, did you go there
8 with a specific purpose in mind, yes or no?

9 A Yes, and it was because --

10 Q Did --

11 A -- I needed --

12 Q Let me -- I'll get there. I'll get there, I promise.

13 We're developing a short -- in short segments here. And prior
14 to going over to talk with him at the jail, you had met with
15 the police and you'd given a statement.

16 A Yes.

17 Q You -- at that point in time the police had told you
18 that you were going to testify at a preliminary hear, is that
19 correct?

20 A They said it was a possibility, yes.

21 Q And did any police officer talk with you about going
22 in and having conversations or talking with Mr. O'Keefe and
23 then coming back to them and telling them what he had said?

24 A No.

25 Q Okay. No detective told you not to talk with him?

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1 MR. SMITH: Objection, Judge. Asked and answered.
 2 THE COURT: I think it's -- I'm going to allow it.
 3 Overruled.
 4 THE WITNESS: When I made the statement it was said
 5 -- I don't recall them telling me anything about that I wasn't
 6 supposed to go and see him. They may have suggested that it
 7 was a good idea not to see him or not to have any conversations
 8 with him.
 9 BY MR. PIKE::
 10 Q And regardless of that, then you went in and had that
 11 conversation, which you believe to be recorded during that
 12 period of time. During the time that you and Mr. O'Keefe were
 13 together, did he ever take you to the union to work with him?
 14 A To go to work, you mean?
 15 Q To go to work with him or to --
 16 A No.
 17 Q -- go to any social events at the union?
 18 A No.
 19 Q Did he ever take you to any sort of alcohol
 20 counseling or drug counseling?
 21 A No.
 22 Q Did he ever take you to go over and meet his two
 23 minor daughters?
 24 A Yes.
 25 Q And hoped that that was part of establishing a

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1 with emphasis.
 2 Q Well, in your --
 3 MR. PIKE: May I approach the witness?
 4 THE COURT: Yes.
 5 BY MR. PIKE::
 6 Q Ms. Morris, this is the same statement that you
 7 previously looked at.
 8 A Um-hm.
 9 Q And if you just kind of look at that area.
 10 A Um-hm.
 11 Q Okay.
 12 A Right.
 13 Q Having looked at your statement and having refresh
 14 your recollection with that, you advised the police that when
 15 she got on the phone, she did start yelling at you.
 16 A Yes.
 17 Q And yelling is a loud aggressive type of a voice.
 18 A It wouldn't be like something I'd have to hold the
 19 phone at here, but here, you know, and she said it a little bit
 20 louder than usual, yes.
 21 Q It seemed to you during that period of time that she
 22 was intent upon or inserting herself into Mr. O'Keefe's life
 23 and kicking you out of it.
 24 A I didn't think of that.
 25 Q You just knew that you were leaving.

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1 relationship was to get to meet his daughters?
 2 A No.
 3 Q You just -- what did you take that as?
 4 MR. SMITH: Objection, Judge. Relevance.
 5 THE COURT: I'm going to overrule it.
 6 BY MR. PIKE::
 7 Q If anything.
 8 A Just the fact that he was showing me how proud he was
 9 of his daughters.
 10 Q And how many times did you meet his daughters?
 11 A I think maybe once, twice. A couple of times.
 12 Q And in going through this relationship you felt that
 13 your agreements with Mr. O'Keefe had been violated by him.
 14 A Yes.
 15 Q You felt that it was inappropriate for him to be back
 16 be Victoria.
 17 A No, it was inappropriate for him to cheat.
 18 Q Did you think, based upon your conversations with
 19 Victoria when she was yelling at you, that that was somehow
 20 different than this submissive voice that somehow the State
 21 indicates that she had? She certainly didn't seem -- let me
 22 rephrase the question. It was a bad question.
 23 When she was on the phone yelling at you, that didn't
 24 sound submissive.
 25 A It wasn't really yelling. It was more of a statement.

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1 A Well, he and I had broken up two days before so it
 2 didn't matter what she was doing.
 3 Q Well, that's kind of a short period of time to be
 4 replaced by somebody coming in two days.
 5 A No, because I had understood that during the time
 6 that Mr. O'Keefe and I were together, he had feelings for her,
 7 and we talked a lot about it. I did a lot of listening. Mr.
 8 O'Keefe did a lot of talking, and he had told me that, you
 9 know, that he did care about her because she was dying, and he
 10 wanted to be with her.
 11 And I told him if that's what he wanted, if that's
 12 what made him happy, I understood.
 13 Q She was dying because of what?
 14 A She had Hepatitis.
 15 Q Do you recall her having cirrhosis of the liver also?
 16 A Cirrhosis of the liver and Hepatitis C, yes.
 17 Q She ever talk with -- and didn't you suggest to Mr.
 18 O'Keefe that being with her may expose him to health risks?
 19 A Yes.
 20 Q Did that seem to concern him?
 21 A On an occasion, several occasions, yes, he talked to
 22 me about it.
 23 Q And he called her poison.
 24 A Yes, he did.
 25 Q And you wouldn't disagree with that.

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1 A I let him talk.
 2 MR. SMITH: Objection, Judge. That's -- to
 3 relevance.
 4 THE COURT: Sustained.
 5 MR. PIKE: I have no further questions.
 6 THE COURT: Any further direct?
 7 MR. SMITH: Yes, Judge.
 8 REDIRECT EXAMINATION
 9 BY MR. SMITH:
 10 Q Ms. Morris, going back to some of the things that you
 11 kind of ended your cross-examination with, specifically about
 12 conversations that Mr. O'Keefe had with you indicating that he
 13 still had feelings for Mrs. Witmarsh.
 14 A Yes.
 15 Q But is it still your testimony that there were also
 16 occasions where he stated that he hated Mrs. Witmarsh for
 17 testifying against him at that trial?
 18 A Yes.
 19 Q And that she testified against him as a victim.
 20 A Yes.
 21 Q Now, one over the questions that Mr. Pike asked you
 22 about Mr. O'Keefe's propensities when drinking alcohol, I
 23 think, based on -- in answering a question that he asked you,
 24 you said that his mood didn't change when he drank beer but
 25 with other alcohol it did.

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1 MR. PIKE: Thank you.
 2 BY MR. SMITH:
 3 Q Mrs. Morris, are you a jilted ex-girlfriend?
 4 A No.
 5 Q Do you have any biases towards Mr. O'Keefe as you sit
 6 here today?
 7 A No, I do not.
 8 Q Do you have any biases towards Victoria Witmarsh as
 9 you sit here today?
 10 A No, I do not.
 11 Q Now, Mr. Pike also asked you a question in regards to
 12 the conversation that you had with Mrs. Witmarsh with she
 13 yelled at you --
 14 A Yes.
 15 Q -- do you recall that?
 16 A Yes.
 17 Q And Mr. Pike asked you basically was she being
 18 submissive under those circumstances; is that correct?
 19 A Correct.
 20 Q Okay. Going back to Mr. O'Keefe's statements to you
 21 about Mrs. Witmarsh's personality and her being submissive, did
 22 he indicate if she was submissive to everyone or submissive to
 23 him?
 24 A She was submissive to everyone.
 25 Q Now, another question that I'm sure is on everyone's

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1 A Correct.
 2 Q Can you elaborate on that?
 3 A He would drink vodka, and when he drank vodka, he
 4 would become violent.
 5 Q Okay. Now, you've also testified already that you
 6 moved out of your own accord.
 7 A Correct.
 8 Q Did you have any hard feelings upon moving out?
 9 A No, I did not.
 10 Q And you've also testified on cross-examination that
 11 you did several things to dissociate yourself with Mr. O'Keefe;
 12 is that correct?
 13 A Correct, yes.
 14 Q Okay. Then, Ma'am, why are you here today?
 15 A Because I was subpoenaed.
 16 Q Okay. And are you here today to tell the truth?
 17 A Correct.
 18 Q Pursuant to the oath you just took?
 19 A Yes.
 20 MR. PIKE: Objection, your Honor. It's leading. It
 21 goes beyond the scope. It's --
 22 THE COURT: I'll sustain the objection.
 23 MR. PIKE: -- vouching for a witness. I have a
 24 motion at the appropriate time.
 25 THE COURT: Sustain the objection.

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1 mind, Ms. Morris, is why did you go visit Mr. O'Keefe in
 2 December of 2008?
 3 A Because of a letter he wrote to his sister. His
 4 sister contacted a mutual friend, and I wanted to set the
 5 record straight with him.
 6 Q Have you been back to see him since then?
 7 A No.
 8 Q Have you spoken with him since then?
 9 A No.
 10 Q And you've already testified that pursuant to a
 11 request by the defense attorney, you in fact, brought Mr.
 12 O'Keefe his glasses; is that correct?
 13 A Yes, I did.
 14 Q Would you have done that if you were biased against
 15 him?
 16 MR. PIKE: Objection, your Honor. Impermissible.
 17 There's nothing to rehabilitate.
 18 THE COURT: I'm going to sustain it as it relates to
 19 the form of the question.
 20 BY MR. SMITH:
 21 Q Why did you bring his glasses?
 22 A Because he also asked me when I went to go and see
 23 him if I could bring his glasses because he needed it, and I
 24 said I would do that.
 25 MR. SMITH: Court's indulgence.

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 ROUGH DRAFT TRANSCRIPT

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1 THE COURT: All right.
2 BY MR. SMITH:
3 Q Ms. Morris, how many conversations would you say you
4 had with Victoria Wainwright?
5 A I would say probably about five.
6 Q And how many times out of those conversations did she
7 yell at you?
8 A Just that one day.
9 Q Just that one time?
10 A Correct.
11 MR. SMITH: No further questions.
12 THE COURT: Any recess?
13 RECROSS-EXAMINATION
14 BY MR. PIKE:
15 Q In relation to the conversations about Mr. O'Keefe
16 (indiscernible) military, did he tell you about his experiences
17 during the Grenada war?
18 A Yes, he did.
19 Q And those had upset him?
20 A Yes.
21 Q And in relationship to what you demonstrated about
22 the knife or said -- testified about the knife, that was what
23 had been -- he'd been trained with in the Army?
24 A Correct.
25 Q And did he tell you anything about what had happened

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1 THE COURT: For the record, we received three
2 questions from the jurors, and under the rules of evidence
3 we're not able to ask these questions. All right, thank you,
4 Ma'am, for your testimony. You are instructed not to discuss
5 your testimony with any other witness involved in this case
6 until this matter is finally resolved. Thank you for your
7 time, Ma'am.
8 THE WITNESS: Thank you.
9 THE COURT: State, please call your next witness.
10 MS. GRAHAM: That would be Officer Brian Santarossa.
11 THE MARSHAL: Officer Santarossa, if you'll remain
12 standing, please. Raise your right hand and face the clerk.
13 OFFICER BRIAN SANTAROSSA
14 THE CLERK: Please be seated. Will you please state
15 your name and spell it for the record.
16 THE WITNESS: Brian Santarossa, B-r-i-a-n,
17 S-a-n-t-a-r-o-s-s-a.
18 DIRECT EXAMINATION
19 BY MR. GRAHAM:
20 Q Good morning, Officer.
21 A Good morning.
22 MR. PIKE: Your Honor during this testimony and
23 during the testimony of the trial there is a diagram of an area
24 that's been prepared. We've been provided a copy of that and
25 stipulated to its admission at this point in time.

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ROUGH DRAFT TRANSCRIPT

1 in Grenada?
2 MR. SMITH: Objection, Judge. Calls for hearsay.
3 MR. PIKE: Okay, let me rephrase the question.
4 BY MR. PIKE:
5 Q During the course of that time the -- in the
6 conversations that you had with him, you were able to form an
7 opinion that that training and that portion of it was
8 distasteful to him.
9 A Yes.
10 Q And that, in fact, it was those experiences that
11 caused him to start on his road to drinking.
12 A I don't know. No.
13 Q And he was drinking pretty much everyday at the end
14 of the relationship, wasn't he?
15 A Yes.
16 MR. SMITH: Judge, I'd renew my objection to
17 relevant.
18 THE COURT: Overruled.
19 MR. PIKE: Thank you. Nothing further.
20 THE COURT: Anything further, Mr. Smith?
21 MR. SMITH: No, Judge.
22 THE COURT: All right, thank you, Ma'am. Or any
23 questions from the jurors? Yes, we do. Counsel approach,
24 please.
25 (Bench conference).

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1 THE COURT: Thank you, Mr. Pike. What number is
2 that?
3 MS. GRAHAM: State's Exhibit 1.
4 THE COURT: I will be admitted.
5 MS. GRAHAM: Thank you, Judge.
6 MR. SMITH: Is it okay if I just stand up with my
7 co-counsel?
8 THE COURT: Yes.
9 BY MS. GRAHAM:
10 Q Officer Santarossa, how are you employed?
11 A Police officer with the Las Vegas Metropolitan Police
12 Department.
13 Q And how long have you been employed with Metro?
14 A About one and a half years.
15 Q And were you working in your capacity as an officer
16 on November 5th, 2008, this past year?
17 A Yes, I was.
18 Q Approximately 10:00 p.m.ish?
19 A Yes, ma'am.
20 Q Did you respond to a call at a location of 3001 El
21 Parque, Apartment 35 that evening?
22 A Yes, ma'am.
23 Q And what were the details of that call?
24 A The only details we initially got was that there was
25 a female lying in a bedroom and that there was blood every

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1 where.
 2 Q Okay. And once you received those details I assume
 3 through dispatch?
 4 A Yes, ma'am.
 5 Q Did you respond to the scene?
 6 A Yes.
 7 Q And who were you with at that time?
 8 A Officer Fombuena (phonetic).
 9 Q So both you and Officer Fombuena were riding in a
 10 patrol car?
 11 A I apologize. We actually arrived together. We were
 12 in separate patrol cars.
 13 Q Okay. So you were riding solo that night?
 14 A Yes, ma'am.
 15 Q Were you in a marked car?
 16 A Yes, ma'am.
 17 Q In full uniform?
 18 A Yes, ma'am.
 19 Q Once you arrived at the scene, 5001 El Parque, what
 20 did you first observe?
 21 A The front door was wide open. That's what I first
 22 observed of the apartment.
 23 Q Okay. When you arrived at the scene as a whole, what
 24 was going on --
 25 A There were neighbors --

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ROUGH DRAFT TRANSCRIPT

1 the door was open?
 2 A Yes, ma'am.
 3 Q Okay. And where were all the neighbors at that
 4 point?
 5 A They were kind of standing around down stairs and on
 6 the balcony.
 7 Q Okay. And when you and Officer Fombuena entered the
 8 apartment, where exactly -- I'm going to put the diagram back
 9 up here, what's been marked as -- and entered, stipulated
 10 (indiscernible). Officer, I'm going to ask you to go ahead and
 11 step down from the witness stand, if I may. I'd like for you
 12 to --
 13 THE COURT: Mr. Pike or Ms. Palm, if you want to move
 14 over there, that's fine.
 15 BY MS. GRAHAM:
 16 Q -- to show the jury exactly --
 17 THE COURT: Ms. Palm, perhaps you can go --
 18 MS. GRAHAM: Can everybody see?
 19 THE COURT: -- to the other side of the diagram.
 20 BY MS. GRAHAM:
 21 Q When you make entry into the apartment, where exactly
 22 did you make entry?
 23 A Entry right here (indiscernible) this way.
 24 Q Okay. So when you looked through the apartment door,
 25 did you see anybody at that point?

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ROUGH DRAFT TRANSCRIPT

1 Q -- around you?
 2 A -- outside, and as we were walking up the apartment,
 3 one neighbors (sic) told us he's still in there. And at that
 4 point we weren't sure what they meant by that because we
 5 weren't told anything about a male being involved.
 6 Q Okay. So at that point you had no idea there was a
 7 male involved, but somebody said he's still in there?
 8 A Yes, ma'am.
 9 Q What did you do then?
 10 A Myself and Officer Fombuena immediately approached
 11 the apartment. We saw doors open. Due to the details of the
 12 call, we immediately made entry into the apartment.
 13 Q Okay. When you say you made entry into the
 14 apartment, were you the only two officers that were on the
 15 scene at that point?
 16 A That point, yes.
 17 Q Okay. Now, I'm showing you what's been marked and
 18 entered as Defendant's Exhibit G. Thank you. Does that fairly
 19 and accurately depict the location that you were dispatched to
 20 at 5001 El Parque?
 21 A Yes, ma'am.
 22 Q And Apartment 35, can you point to on your monitor
 23 which one that -- which apartment that was.
 24 A The one with the door open.
 25 Q So when you arrived on the scene, you testified that

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ROUGH DRAFT TRANSCRIPT

1 A No.
 2 Q Do you recall if the lights were off or on?
 3 A I honestly do not really.
 4 Q Okay. Did you hear anything when you entered the
 5 apartment?
 6 A (Indiscernible).
 7 Q So what did you do when you entered the apartment?
 8 A We just kind of -- we kind of were kind of stopped in
 9 the middle of the room at this point. We had identified
 10 ourselves as police officers, called out to (indiscernible) in
 11 the apartment. We then heard a voice. We were not sure which
 12 room it was coming from. I actually initially thought it was
 13 coming from this room here.
 14 Q Okay. So when you identified yourself as Metro
 15 officers, you heard a voice?
 16 A Yes.
 17 Q And did you recall exactly what that voice said?
 18 A It said get in here.
 19 Q Okay. Get in here?
 20 A Yes.
 21 Q And what did you do upon that voice telling you to
 22 get in here?
 23 A Well, because we thought it was coming from this room
 24 initially, we actually took position of cover right here in the
 25 kitchen.

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1 Q Okay.
2 A (Indiscernible).
3 Q And when you say we, you're talking about --
4 A Myself and Officer Fombuena.
5 Q And at this point are you still the only two officers
6 in the apartment?
7 A Yes.
8 Q Okay. And you didn't know where the voice was coming
9 from?
10 A No.
11 Q Now, when you said you took cover, what do you mean
12 by that?
13 A Basically we -- because we weren't sure if there was
14 a weapon involved or what exactly the situation was, so we
15 basically stood behind this (indiscernible) in case there was a
16 firearm involved and shots were fired, we would have some cover
17 by the wall.
18 Q Okay. So show me exactly where you and Officer
19 Fombuena were.
20 A Right here at the corner.
21 Q Okay. And as you were standing -- and that's in the
22 kitchen area, for the record?
23 A Yes, ma'am.
24 Q Okay. Now, as you were standing in the kitchen area,
25 what then happened?

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1 to want to -- my mind set was that he was waiting for us to go
2 into that room. He was trying to lure us into that room so he
3 could either do something, either attack us with a firearm or
4 another weapon. That's why we didn't immediately go in.
5 Q And is that impression based on his response fuck
6 you?
7 A That impression and the totality of the situation.
8 Q Okay. Did at any time he tell you that he needed
9 your assistance for -- or medical assistance?
10 A No, he just saying get in here.
11 Q Okay. Now, while you and Officer Fombuena were
12 standing in the kitchen, did other officers start to arrive?
13 A Yes, the next officer to arrive was Officer Conn
14 who's a CIT officer.
15 Q Okay, Officer Conn?
16 A Yes.
17 Q And you say a CIT officer. Tell the jury what a CIT
18 officer --
19 A CIT stands for crisis intervention team. These are
20 officers who are specifically trained to deal with persons in
21 mental distress or with specific mental disorders.
22 Q Okay.
23 MS. PALM: Your Honor, could we approach
24 (indiscernible)?
25 THE COURT: All right.

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ROUGH DRAFT TRANSCRIPT

1 A When he called out to come in here or get in here, we
2 said well, come out to the living room.
3 Q You instructed him to come to the living room?
4 A Yes.
5 Q And did he comply with your commands?
6 A No, he said he wouldn't.
7 Q He said he wouldn't?
8 A His reply was no.
9 Q Okay. Did you -- what did you do then
10 (indiscernible)?
11 A We then told him that you need to come out to the
12 living room so we can see you first, and I honestly can't
13 remember the exact dialogue we used, but it was basically we
14 were trying to get him to come out in the living room. And one
15 of his responses was well, fuck you.
16 Q Okay. So after he said fuck you, what did you do?
17 A We initially told him -- we're still -- our goal
18 right now was just to get him out from wherever he was so we
19 could see what it was and what was going on.
20 Q Okay. And Officer, why don't you just tell the jury
21 why you didn't immediately go into the bedroom.
22 A Because due to the details of the call it said that a
23 female was bleeding where ever, and now there's a male
24 involved, we weren't sure what exactly the details were, if
25 there was a firearm involved or if there -- if he was calling

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ROUGH DRAFT TRANSCRIPT

1 (Bench conference).
2 THE COURT: Counsel, can you move the poster board --
3 MS. GRAHAM: Sure.
4 THE COURT: -- from the monitor?
5 MS. GRAHAM: Go ahead and have a seat, Officer.
6 BY MR. GRAHAM::
7 Q Now, Officer, since we do have a diagram, I think
8 (indiscernible) will agree that it may be easier just to show
9 the jury on the diagram so you don't have to stand there and
10 everybody can see at the same point?
11 A Yes, ma'am.
12 Q All right. You indicated that Officer Conn first
13 arrived on the scene after you and Officer Fombuena.
14 A Yes, ma'am.
15 Q And again, a CIT officer stands for crime --
16 A Crisis intervention team.
17 Q Crisis intervention team.
18 A Yes, ma'am.
19 Q And you indicated that crisis intervention team is
20 trained to deal with people that are mentally disturbed?
21 A Yes, ma'am, mental illnesses or persons commonly
22 suicidal subjects.
23 Q Okay. Now, are they used for the purposes of
24 negotiating?
25 A Sometimes.

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ROUGH DRAFT TRANSCRIPT

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1 Q Okay.
2 A Sometimes.
3 Q And in this instance was there a reason that Officer
4 Conn was called as a CIT?
5 A Honestly, I don't think he was called specifically
6 for CIT. He was just coming to the call due to the details,
7 and he was a CIT officer so --
8 Q Okay. And once Officer Conn arrived, where on the --
9 show us on the diagram where Officer Conn positioned himself.
10 A He stood right -- in that area there right against
11 the wall. He used that wall, that corner as cover from that
12 room.
13 Q And you say --
14 A From this room here.
15 Q Okay. So Officer Conn is on the south -- that would
16 be the west wall?
17 A Yes, ma'am, I believe so.
18 Q Okay. And you Officer Fombuena are still in the
19 kitchen at that point?
20 A Yes, ma'am.
21 Q Did any other officers arrive at that point?
22 A At that point not -- they did arrive, but they were
23 still outside because we were relaying what was going on in the
24 apartment to the other officers who were just now just
25 responding and standing outside the balcony just basically

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ROUGH DRAFT TRANSCRIPT

1 A Basically, it's a tactical way that we use to enter a
2 room so we're not all jammed in the doorway all at once.
3 Q Okay. And so at that point there's four stacked up
4 against the west wall, and then you and Officer Fombuena still
5 located in the kitchen area --
6 A Yes, ma'am.
7 Q -- is that correct?
8 A Yes, ma'am.
9 Q And there's six of you officers in there --
10 A Yes, ma'am.
11 Q -- at that point. And at this point the male voice
12 -- you've all identified yourself as officers.
13 A Yes, ma'am.
14 Q And what, if anything -- did anybody go into the
15 bedroom at that point?
16 A They did eventually. We actually stood there for a
17 little bit longer still trying to get him to come out.
18 Q And he never would comply with those commands?
19 A No, he would just keep making different statements.
20 Q And do you know what statements he was making?
21 A A lot of it was unintelligible. It was kind of
22 mumbled. But the one statements he did say, he -- I can't
23 remember the order in which he said these statements, but one
24 statement was she stabbed herself.
25 Q Okay.

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ROUGH DRAFT TRANSCRIPT

1 forming a plan, okay, what are we going to do next.
2 Q Okay. And what did you determine to do next?
3 A Well, I actually didn't determine it. Sergeant
4 Newberry (phonetic) is the one that arrived, and he, Officer
5 Ballejos, I believe it was Officer Taylor -- I can't remember
6 his name specifically -- and Officer Conn, they actually made
7 entry into the apartment. They stood where Officer Conn was
8 standing against that west wall.
9 Q Okay. Show us on the diagram, then, the line up. So
10 it would be Officer Conn is in the front position on the west
11 wall?
12 A Yes, Officer Conn would be in front followed by --
13 again, this is just to my knowledge. I don't know if this is
14 accurate.
15 Q To the best of your knowledge.
16 A Is Officer Conn. I believe it's Sergeant Newberry
17 right behind him. Followed by Officer Ballejos and then
18 Officer Taylor I think was in the back.
19 Q Okay. And they were all lined up against that west
20 wall --
21 A Yes, ma'am.
22 Q -- there? Okay. Is there a term for that when four
23 officers line up?
24 A That's called stacking up, Ma'am.
25 Q Stacking up. And what's the purpose of stacking up?

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ROUGH DRAFT TRANSCRIPT

1 A And then (indiscernible) well, then come out so we
2 can get her help --
3 Q And what was his --
4 A -- which he still -- he still refused.
5 Q Okay. So he refused to comply coming out of the
6 bedroom?
7 A Yes.
8 Q And why, then, Officer, was six officers in there
9 didn't you go into the bedroom if you knew somebody needed
10 help?
11 A Because we still couldn't see what was in there. We
12 still weren't sure if he was, in fact, baiting us to just go in
13 there without any -- so he could have the advantage.
14 Q Okay. And when you say bait, you want to tell the
15 jury exactly what you mean by bait.
16 A There have been occasions where subjects will call
17 officers into a situation so they can ambush them for the mere
18 goal of killing that officer.
19 Q And that was a concern that evening?
20 A That was the general consensus. I -- at least my
21 consensus from the situation.
22 Q Based on your observation and experience and --
23 A Yes, ma'am.
24 Q -- being there on the scene at that time when
25 somebody's refusing to comply with commands to come out --

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ROUGH DRAFT TRANSCRIPT

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1 A Yes, ma'am.
 2 Q -- you felt there was an ambush in store?
 3 A Yes, ma'am.
 4 Q Okay. That he was baiting you. All right. At some
 5 point was the male subject taken into custody?
 6 A Yes, ma'am.
 7 Q Okay. And can you tell the jury how that came about.
 8 A The officers who were stacked up on that west wall --
 9 Sergeant Newberry, they developed a plan that -- well, first,
 10 I'm sorry, Sergeant Newberry actually moved up to this wall
 11 here and --
 12 Q And for the record, you're pointing to the --
 13 A The --
 14 Q -- living room wall?
 15 A Yes.
 16 Q Okay.
 17 A The west living room wall, correct want.
 18 Q The west living room wall that's just adjacent to the
 19 north bedroom?
 20 A Yes, ma'am.
 21 Q So there are two bedrooms located on that diagram.
 22 A Yes, ma'am.
 23 Q And at some point did you determine what bedroom that
 24 male voice was coming from?
 25 A Yes. Officer Conn, when he took position here, when

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ROUGH DRAFT TRANSCRIPT

1 A Yes, ma'am.
 2 Q And when you say cleared, why don't you tell the jury
 3 what that means.
 4 A We made sure there was nobody else hiding in that
 5 bedroom.
 6 Q Because at that point did you know how many people
 7 were in the apartment?
 8 A No, Ma'am.
 9 Q Okay. All right.
 10 MS. GRAHAM: Court's indulgence.
 11 BY MS. GRAHAM:
 12 Q Officer Santarossa, you indicated that the male voice
 13 made several statements to you, one of which was get in here.
 14 A Yes, ma'am.
 15 Q I believe you testified one of which was fuck you.
 16 A Yes, ma'am.
 17 Q One of which she stabbed herself.
 18 A Yes, ma'am.
 19 Q Do you recall any other statements that he made to
 20 you?
 21 A Again, I don't know the order in which the statements
 22 were made, I can't remember, but he did make a state your name
 23 first that she's breathing.
 24 Q She's breathing?
 25 A And then he would make a statement that she's dead.

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ROUGH DRAFT TRANSCRIPT

1 he looked into the bedroom, he could see, I believe it was this
 2 portion here of the bed, and he did see blood there. He
 3 couldn't see any person, but he saw blood.
 4 Q Okay. All right. And again, we were talking about
 5 what circumstances that the defendant was taken into custody.
 6 A Officer Newberry went up to actually take a look in
 7 the room to see if we could see anything before we actually
 8 went in, and that's when he said he could see a male or the
 9 female lay on the floor and the male on top of her, and then he
 10 saw the male's hands --
 11 Q Okay.
 12 A -- and there were no weapons in the hands -- in his
 13 hands.
 14 Q So once he determined there were no weapons in his
 15 hands, what then occurred?
 16 A They then -- went back into the formation.
 17 Q And you say he. You're --
 18 A I'm sorry, Sergeant Newberry. And then they then
 19 made entry into the apartment. Now, at this point as they made
 20 entry into the apartment I lost visual of what they were doing
 21 because myself and Officer Fombuena made entry into this
 22 bedroom immediately to clear that bedroom.
 23 Q Okay. So once they made entry into the north
 24 bedroom, then you and Officer Fombuena cleared the south
 25 bedroom.

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ROUGH DRAFT TRANSCRIPT

1 Q She's dead?
 2 A Yes, ma'am.
 3 Q Okay. Any other statements that you can think of?
 4 A I cannot remember. No, Ma'am.
 5 Q Now, after the scene was mobilized and sealed, did
 6 you at some point go back to command and give a voluntary
 7 statement?
 8 A Yes, ma'am.
 9 Q Okay. And who did you give that statement to?
 10 A To a detective I don't remember his name.
 11 Q Okay. Would it refresh your recollection if I told
 12 you it was Detective Burn?
 13 A Yes, ma'am.
 14 Q Was that at the homicide detail?
 15 A No, Ma'am. That was actually on the scene.
 16 Q On the scene --
 17 A Yes, ma'am.
 18 Q -- you gave the voluntary statement? Okay. And do
 19 you recall, Officer, about what time this was?
 20 A If I remember right, I believe it was probably at
 21 this point maybe midnight.
 22 Q Okay. So basically, once the scene -- once
 23 everything was under control, then you were debriefed with
 24 voluntary statements, basically.
 25 A Yes, ma'am.

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1 Q And you were to tell what happened that evening.
 2 A Yes, ma'am.
 3 Q Okay. And is that always protocol that a detective
 4 comes and takes voluntary statements from officers?
 5 A Major scenes like that, yes, ma'am.
 6 Q And you say a major scene. And what is the -- tell
 7 the jury what differentiates any scene from a major scene.
 8 A Basically any scene where a substantially bodily
 9 injury has occurred or even death.
 10 Q Okay. And so you did make that voluntary statement.
 11 A Yes, ma'am.
 12 MS. GRAHAM: May I approach the witness, your Honor?
 13 THE COURT: Yes.
 14 BY MS. GRAHAM:
 15 Q If I showed you a copy of your voluntary statement
 16 that you made --
 17 MS. PALM: Your Honor --
 18 (Off the record colloquy).
 19 THE COURT: Is there an objection?
 20 MS. PALM: No.
 21 THE COURT: Okay.
 22 MS. GRAHAM: May I approach the witness, your Honor?
 23 THE COURT: Yes.
 24 BY MS. GRAHAM:
 25 Q Officer, if I showed you a copy of the voluntary

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ROUGH DRAFT TRANSCRIPT

1 Q Okay. Did she make the statement that he tried to
 2 stab her -- him?
 3 A I'm sorry, can you repeat that.
 4 Q Did she make the statement that she tried to stab
 5 him?
 6 A Did she make the statement?
 7 Q Did he make the statement.
 8 A Yes.
 9 Q Okay.
 10 MS. GRAHAM: I'll pass the witness at this time.
 11 THE COURT: Cross-examination.
 12 MS. PALM: Thank you.
 13 CROSS-EXAMINATION
 14 BY MS. PALM:
 15 Q Good morning, Officer Santarossa.
 16 A Good morning, Ma'am.
 17 Q I believe the question with you started out by
 18 referring you to 10:00 o'clock on November 5th.
 19 A Yes, ma'am.
 20 Q That wasn't actually the time that you were
 21 dispatched, though, was it?
 22 A I can't recollect the exact time, Ma'am.
 23 Q If I showed you a copy of the 911 report, would it
 24 refresh your memory?
 25 A It should Ma'am, yes.

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ROUGH DRAFT TRANSCRIPT

1 statement, would it refresh your recollection of any other
 2 statements the defendant may have made that evening?
 3 A Yes, ma'am.
 4 Q Okay. Can you just kind of flip through that, and
 5 I'm showing him what's labelled Page 4 of his voluntary
 6 statement. And if you can kind of refresh your recollection as
 7 to any other statements that he may have made.
 8 A Yes, ma'am. Once we -- once he was taken into
 9 custody and we got him outside onto the balcony, he did
 10 spontaneous state that she tried to stab me.
 11 Q That she tried to stab him?
 12 A Yes.
 13 Q Okay. So if I can just verify, he made a statement
 14 that she stabbed herself?
 15 A Yes, ma'am.
 16 Q He made a statement that she tried to stab him?
 17 A Yes, ma'am.
 18 Q She's dead?
 19 A Yes, ma'am.
 20 Q She's still alive?
 21 A Yes, ma'am.
 22 Q She's still breathing?
 23 A Yes, ma'am.
 24 Q Fuck you?
 25 A Yes, ma'am.

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1 MS. GRAHAM: May I approach, your Honor?
 2 THE COURT: Yes.
 3 THE WITNESS: The time was about 11:00 o'clock,
 4 11:02.
 5 BY MS. PALM:
 6 Q Can you tell from that document, Officer, what time
 7 you personally arrived after being dispatched at 11:02?
 8 A Yes, ma'am. I believe it -- 11:06.
 9 Q Okay. And can you tell me what time -- I understand
 10 that you and the second Officer Fombuena --
 11 A Yes.
 12 Q -- both arrived about the same time.
 13 A Yes, ma'am.
 14 Q What time did the remaining officers begin to arrive?
 15 If you want to start with Officer Conn, who I believe was next.
 16 A I actually can't see it where it shows the officers
 17 arrived, but it looks that at 11:11 it looks like Officer Conn
 18 was en route to the scene.
 19 Q 11:11?
 20 A Yes, ma'am.
 21 Q And what time does it show that Mr. O'Keefe was
 22 actually in custody?
 23 A It shows was taken into custody at 11:13.
 24 Q So the total length of the stand off after Conn
 25 arrived and started negotiating with him would have been a

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1 couple of minutes?
 2 A Yes, ma'am.
 3 Q Okay. And so the total length of time between the
 4 time that you got there and he was in custody would have been
 5 about six minutes, seven minutes?
 6 A Looks like, Ma'am, yes.
 7 Q Okay. So it was a pretty short negotiation.
 8 A Yes, ma'am. It didn't seem that way, but yes, ma'am.
 9 Q Okay. When you entered the living room, you said you
 10 couldn't recall whether the lights were on or off?
 11 A No, Ma'am.
 12 Q Do you recall any of the lights in the apartment
 13 being on?
 14 A I know there were lights in the hallway area and in
 15 this area here. I'm not sure where -- I can't recall where
 16 exactly they're coming from.
 17 Q Do you recall if the bedroom was lit?
 18 A I believe one of them was. Again, I can't recall
 19 which one.
 20 Q Okay. When you entered the living room area, kitchen
 21 area, did you notice any signs of violence in --
 22 A No, Ma'am.
 23 Q -- those areas?
 24 A No, Ma'am.
 25 Q And did you watch Officers Corn, Ballejos, Taylor and

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1 A They put him on his stomach. I don't recall if his
 2 face actually hit the ground or not.
 3 Q Did you see him get any injury after that?
 4 A No, Ma'am.
 5 Q Okay. Did you notice any injuries on him when you
 6 saw him?
 7 A No, Ma'am.
 8 Q How long was he on his stomach in the living room?
 9 A I don't recall the time of it, Ma'am.
 10 Q Okay. He was eventually moved out on to the balcony?
 11 A Yes, ma'am.
 12 Q What position was he put on in the -- on the balcony?
 13 A Originally he was put on his stomach. Then we moved
 14 him up on to in the same position.
 15 Q Okay. And that's where he said that she tried to
 16 stab me?
 17 A Yes, ma'am.
 18 Q Okay. You also spoke with Jimmy Hatchers that
 19 evening want?
 20 A I honestly, Ma'am, I don't remember who that is.
 21 Q The neighbor directly to the left of Mr. O'Keefe's
 22 apartment.
 23 A Yes, ma'am.
 24 Q Okay. Do you recall what he told you?
 25 A If I remember --

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1 Newberry make entry into that bedroom?
 2 A I saw them go in the bedroom, yes, ma'am.
 3 Q Okay. You didn't enter yourself, though, did you?
 4 A No, Ma'am.
 5 Q And so they took him into custody --
 6 A Yes, ma'am.
 7 Q -- without your presence?
 8 A Yes, ma'am.
 9 Q Okay. Did you watch them take him into custody?
 10 A No, Ma'am.
 11 Q Did you see them bring Mr. O'Keefe back out into the
 12 living room?
 13 A Yes, ma'am.
 14 Q Was Mr. O'Keefe ever put on a position -- in a
 15 position to injure his face during the time that you saw him?
 16 A He was put on his stomach when we put him in the
 17 living room, yes.
 18 Q Was he thrown on his stomach?
 19 A Not that we know of, but the guys, they carried him
 20 out and put him on his stomach.
 21 Q Okay. Would that have injured him?
 22 MR. SMITH: Objection, Judge. Calls for speculation.
 23 THE COURT: Sustained.
 24 BY MS. PALM:
 25 Q Did they put him on his face?

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1 MS. GRAHAM: Objection. Hearsay.
 2 MS. PALM: Your Honor, he testified --
 3 THE COURT: The real question is does he remember
 4 what he told you. The answer calls for a yes or no and then
 5 we'll go from there.
 6 BY MS. PALM:
 7 Q Do you remember what he told you?
 8 A Yes.
 9 MS. GRAHAM: Objection. Hearsay. Jimmy already
 10 testified.
 11 THE COURT: She hasn't asked the next question yet.
 12 BY MS. PALM:
 13 Q Do you recall him telling you that he didn't hear any
 14 yelling or screaming?
 15 A Yes.
 16 Q Did you get close enough to Mr. O'Keefe to observe
 17 whether he was intoxicated or not?
 18 A I got close enough to a point, but I can't remember
 19 if he was intoxicated or not.
 20 Q You just don't recall --
 21 A I don't recall.
 22 Q -- whether he had any signs?
 23 A I don't.
 24 Q So you wouldn't dispute it if other officers said
 25 that he was?

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1 A No, Ma'am, I wouldn't.
 2 Q Were you there when any medical help arrived to check
 3 out Mr. O'Keefe?
 4 A Yes, ma'am.
 5 Q And who was it that arrived?
 6 A I don't remember the unit number, Ma'am.
 7 Q Did you actually see Mr. O'Keefe being checked out?
 8 A No, Ma'am.
 9 Q What did you see when they arrived? Did they come
 10 upstairs, stay down stairs?
 11 A They went upstairs. That's about all I remember.
 12 Ma'am.
 13 Q Did you see how long Mr. O'Keefe was on the steps
 14 before being taken downstairs?
 15 A I don't recall an exact amount of time, Ma'am.
 16 Q Do you recall who transported him to the detective
 17 offices?
 18 A No, I don't, Ma'am.
 19 Q Now, you're trained as an officer not to just go
 20 charging into a situation when there might be some risk to you
 21 personally.
 22 A Yes, ma'am.
 23 Q And so this fear of baiting understandable because
 24 you don't know what situation you're going into.
 25 A Yes, ma'am.

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1 Q Okay. So to have a PBT on the scene, would you have
 2 had to call for one?
 3 A Yes, ma'am.
 4 Q And when the detectives assume control of the
 5 investigation they didn't direct you to take a PBT of Mr.
 6 O'Keefe --
 7 A No, Ma'am.
 8 Q -- did they? Do you know how many patrol cars were
 9 at the scene?
 10 A It's not an accurate estimation, but probably,
 11 because other officers arrived later and left sooner, so I
 12 could probably say maybe about six or seven.
 13 MS. PALM: No more questions, thank you.
 14 THE COURT: Any redirect?
 15 MS. GRAHAM: Just briefly, your Honor.
 16 REDIRECT EXAMINATION
 17 BY MS. GRAHAM:
 18 Q Officer Santarossa, you indicated that the time that
 19 you arrived by the time that the defendant was actually taken
 20 into custody was about six to seven minutes.
 21 A Yes, ma'am.
 22 Q And defense counsel indicated that that was a short
 23 negotiation, and you agreed with that.
 24 A Yes, ma'am.
 25 Q Did the defendant ever come out of that room on his

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1 Q But when you actually looked into the room, Mr.
 2 O'Keefe wasn't doing anything to cause a danger to officers,
 3 was he?
 4 A As far as I -- Sergeant Newberry actually looked into
 5 the room and saw that.
 6 Q Okay. And he didn't have a weapon in his hands,
 7 according to Sergeant Newberry?
 8 A Yes, ma'am.
 9 Q And he was actually laying on the floor?
 10 A Yes, ma'am.
 11 Q And you never saw him in any other position, did you?
 12 A No, Ma'am.
 13 MS. PALM: Court's indulgence.
 14 BY MS. PALM:
 15 Q As a patrol officer you have training regarding
 16 driving under the influence arrests?
 17 A Yes, ma'am.
 18 Q Okay. Do you have a PBT machine in your vehicle?
 19 A No, Ma'am.
 20 Q Have you describe for me what that machine is?
 21 A It stands for a portable breathalyzer test. It's a
 22 test which measures the blood alcohol content in the subject's
 23 breath.
 24 Q Are those commonly in Metro vehicles?
 25 A No, Ma'am.

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1 own accord?
 2 A No, Ma'am.
 3 Q So it wasn't really a negotiation?
 4 A Not really, Ma'am, no.
 5 Q Okay. He had to be tazed, didn't he?
 6 A Yes, ma'am.
 7 Q And he did not come out of that room until he was --
 8 MS. PALM: Objection, your Honor. Leading.
 9 THE COURT: Sustained.
 10 BY MS. GRAHAM:
 11 Q How did he come out of the room?
 12 A The officer had to actually carry him out of the
 13 room.
 14 Q Okay. And how many officers carried him out?
 15 A I believe it was the four of them. All four of them.
 16 Q And what was the defendant's demeanor as he was being
 17 carried out?
 18 A He appeared to be agitated.
 19 Q I'm sorry?
 20 A I'm sorry, he appeared to be agitated.
 21 Q Agitated?
 22 A Yes, ma'am.
 23 Q While they're carrying him out?
 24 A Yes, ma'am.
 25 Q And as they -- how were they carrying him out? Were

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1 there two officers?
 2 A I believe there was one on each arm and then one
 3 controlling the legs, Ma'am.
 4 Q Okay. And as they're carrying him out of room you're
 5 observing this?
 6 A Yes, ma'am, I did see that.
 7 Q And you said he's agitated.
 8 A Yes, ma'am.
 9 Q And you say that they laid him down on his stomach.
 10 A Yes, ma'am.
 11 Q And that's in the living room?
 12 A Yes, ma'am.
 13 Q And the flooring on the living room, is that --
 14 A It's carpet, Ma'am.
 15 Q -- carpet?
 16 A Yes, ma'am.
 17 Q And then once he was taken out of the living room and
 18 placed on the balcony, what is the balcony made of?
 19 A Concrete.
 20 Q Concrete, and he was laid face down on concrete?
 21 A Initially, yes, ma'am.
 22 Q Okay. With regard to the breathalyzer testing, have
 23 you responded to major crime scenes like this before?
 24 A Yes, ma'am.
 25 Q Would it be protocol to take a breathalyzer test that

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1 A Yes, ma'am.
 2 Q Do you know how many bolts of electricity go through
 3 a taser?
 4 A It's 50,000 volts, Ma'am.
 5 Q Okay. And that's for a five second cycle?
 6 A Yes, ma'am.
 7 Q And Mr. O'Keefe actually got two five second cycles
 8 in a row; is that correct?
 9 A I -- I'm not sure, Ma'am. I wasn't in the room when
 10 that happened.
 11 Q Okay. And does your training tell you that a taser
 12 volt can make somebody agitated?
 13 A Depends on the person, Ma'am.
 14 Q It's possible, though?
 15 A Could be, yes, ma'am.
 16 Q Have you seen it?
 17 A Personally, No, Ma'am.
 18 Q Okay. But you weren't the person in charge of tazing
 19 him. That was Officer Ballejos.
 20 A Correct.
 21 Q And -- well, I'll reserve those questions for Officer
 22 Ballejos. Thank you.
 23 THE COURT: Anything further from the State?
 24 MS. GRAHAM: No, Judge.
 25 THE COURT: Any witness -- any questions from the

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1 somebody's agitated and suspected of murdering somebody?
 2 A No, Ma'am.
 3 Q Okay, thank you.
 4 MS. GRAHAM: I have no further questions at this
 5 time.
 6 THE COURT: Recross.
 7 RE-CROSS-EXAMINATION
 8 BY MS. PALM:
 9 Q You said four officers carried out Mr. O'Keefe?
 10 A I believe so, Ma'am, yes.
 11 Q Can you tell me which officers were carrying him?
 12 A I believe it was Officer Taylor, Officer Conn and
 13 Sergeant Newberry. It wasn't Officer Ballejos, I remember,
 14 because he was the one that actually tazed him, so he still had
 15 control of the electronic control device.
 16 Q So actually three officers were carrying him?
 17 A Yes, ma'am.
 18 Q And do you recall who had his arms, who had his legs?
 19 A No, Ma'am, I do not.
 20 Q Can you explain for the jury what a taser is.
 21 A It's -- the (indiscernible) an electronic control
 22 device, and it's a device to override the messages that the
 23 brain sends to the muscles. So basically, the ending result is
 24 it locks up their muscles so they can't move.
 25 Q So the idea is to sort of paralyze them temporarily?

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1 jurors? Yes, we do have a question. Counsel approach, please.
 2 (Bench conference).
 3 THE COURT: Officer, we have a question from one of
 4 the jurors.
 5 THE WITNESS: Yes, sir.
 6 THE COURT: In the diagram there's a taser use
 7 indicated. When was it fired and at whom and why if he was --
 8 and why was it carried out by the officers?
 9 THE WITNESS: The first question was when was it
 10 fired?
 11 THE COURT: Yes.
 12 THE WITNESS: It was fired when they went into the
 13 room. And I didn't actually see it, but I could hear them
 14 command saying let me see your hands or stand up and get away,
 15 comply, and he was refusing to do that.
 16 And from -- again, I didn't observe this, but the
 17 officers relayed that when they went in, it seemed like he
 18 became more animated waving his arms around her, and he still
 19 wouldn't comply. And he was also -- he did also have a lot of
 20 blood on him.
 21 THE COURT: Okay. Any follow-up by the State?
 22 BY MS. GRAHAM:
 23 Q Did the defendant have any injuries on him that you
 24 were aware of?
 25 A Not that I noticed, Ma'am, no.

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1 THE COURT: Anything by the defense?
 2 MS. PALM: Noze, your Honor. Thank you.
 3 THE COURT: Thank you, Officer. You're instructed
 4 not to --
 5 THE WITNESS: Thank you action sir.
 6 THE COURT: -- discuss your testimony with any other
 7 witnesses involved in this case until this matter is finally
 8 submitted to you. Thank you, Officer. Ladies and gentlemen,
 9 it's about 11:20. I do need to break around 11:45 because I
 10 have a judge's meeting to attend to so we're going to have our
 11 lunch break there. Is everyone okay for the next 25 minutes?
 12 Next witness by the State.
 13 MR. SMITH: Judge, the State calls Officer Todd Conn.
 14 That's C-o-n-n for the record.
 15 THE MARSHAL: Officer Conn, if you'll remain
 16 standing, please. Raise your right hand and face the clerk.
 17 OFFICER TODD CONN, PLAINTIFF'S WITNESS, SWORN
 18 THE CLERK: Please be seated. Will you please state
 19 your name and spell it for the record.
 20 THE WITNESS: My name is Todd, T-o-d-d, Conn,
 21 C-o-n-n.
 22 MR. SMITH: May I proceed, your Honor?
 23 THE COURT: Yes.
 24 MR. SMITH: Thank you.
 25 DIRECT EXAMINATION

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1 the complex. I arrived over on the south side of the parking
 2 lot.
 3 Q Okay.
 4 A And then went into the center of the complex, at
 5 which time I could see an open door, and I could see one of the
 6 officers run towards the open door, which was Apartment 35.
 7 Q Do you know what officer that was?
 8 A I do not know which officer that was.
 9 Q Okay. Please proceed.
 10 A And then ran up the stairs, and as I entered into
 11 Apartment No. 35, I observed Officer Santarossa and Officer
 12 Fombuena were positioned over onto my right in the kitchen
 13 area. Both of them had their firearms drawn and were covering
 14 a small outlet that contained a bathroom door and two bedroom
 15 doors.
 16 Q Okay. I'm going to stop you right there. We've
 17 already admitted into evidence State's Exhibit 1, which is an
 18 actual crime scene diagram. For the record, I'm going to place
 19 for demonstrative purposes a smaller version of that diagram so
 20 that you can show the jury exactly what you just testified to.
 21 A Okay.
 22 Q Okay. So this being the front door.
 23 A Correct.
 24 Q You entered the front door and do what?
 25 A When I came in, I --

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1 BY MR. SMITH:
 2 Q Officer Conn, how are you presently employed, for the
 3 record?
 4 A I'm employed currently in the traffic section of the
 5 Las Vegas Metropolitan Police Department.
 6 Q How long have you been -- actually, strike that. In
 7 what capacity?
 8 A As a police officer.
 9 Q How long have you been employed as a police officer?
 10 A For five and a half years.
 11 Q Were you working as a police officer back on November
 12 5th of 2008?
 13 A Yes, I was.
 14 Q Did you have cause to be dispatched to a residence
 15 located at 5001 El Parque?
 16 A Yes, I did.
 17 Q Apartment No. 35.
 18 A Correct.
 19 Q At approximately 11:00 o'clock p.m.?
 20 A Yes, sir.
 21 Q Tell us what happened when you arrived at that
 22 location on that date at that time.
 23 A Originally, I had heard the call come over the radio
 24 system so I self-assigned myself to the call. When I arrived,
 25 I observed two other patrol vehicles had already arrived inside

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1 Q You can actually touch that screen.
 2 A Okay. I came in. I stopped initially right inside
 3 the doorway, and I could observe that Fombuena and Santarossa
 4 were both positioned right here in the kitchen area.
 5 Q Yes, sir.
 6 A Immediately I could see that the bathroom door was
 7 closed, so right here, this was closed.
 8 Q Yes, sir.
 9 A There was an open door right here to the right which
 10 I could see into, and they were covering into this bedroom
 11 here. So I immediately placed myself against this wall so that
 12 I had a clear visual into the opposite doorway that they
 13 couldn't cover.
 14 Q Okay. So you're standing right here?
 15 A Correct.
 16 Q You're looking into that bedroom.
 17 A Correct.
 18 Q Is the light on in that bedroom?
 19 A Yes, it is.
 20 Q Is the light in this bedroom?
 21 A Yes, it is.
 22 Q Is the light on in the living room?
 23 A No, it is not.
 24 Q Okay.
 25 A It's dark.

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1 Q Please proceed.
2 A Immediately when I get there I tell Fombuena that I
3 can see blood on the bed. You could see it actually onto the
4 side and onto a little bit of the top sheets of the bed. I
5 told him that there was quite a bit of blood.
6 Q Can you tell if anyone is inside that bedroom?
7 A Yes, I can hear a male voice coming from the bedroom.
8 Q And what's the male voice saying?
9 A It's not very distinguishable. It was kind of
10 mumbling when I first got there.
11 Q Okay.
12 A So I told Fombuena that I would attempt to
13 communicate with whoever is in the room being that I was part
14 of the crisis intervention team.
15 Q Okay.
16 A So I started to give verbal commands --
17 Q What were those --
18 A -- inside the room.
19 Q -- commands?
20 A One, I asked first off if anybody was harmed or
21 injured inside the room.
22 Q What was the reply?
23 A At first there was no reply. I gave multiple
24 commands, you know, does anybody need help, and after probably
25 about ten seconds of me giving verbal commands, not getting any

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1 A So I tried to get the subject's name. I asked him
2 what his name was inside there. Wouldn't give me any response.
3 Q Is this a dynamic situation at this time?
4 A Yes --
5 Q Okay.
6 A -- I believe it's very dynamic.
7 Q Okay.
8 A I'm not sure what weapons are involved. I'm not sure
9 if there's somebody hurt or injured.
10 Q Okay. And you see blood?
11 A Yes.
12 Q Okay. Please continue.
13 A So I attempted to get his name. Wouldn't give me a
14 name. Eventually, he gave me what at the time I believed is
15 the name Veronica --
16 Q Okay.
17 A -- is what I had written down on my statement. And I
18 asked if she was hurt. At one point in time he tells me she
19 stabbed herself.
20 Q Okay. Now you say one point in time he tells you.
21 A Correct.
22 Q Did you actually make contact with this individual?
23 A I never saw him. He was never in any of my visual.
24 The bed had me blocked from seeing anybody in there.
25 Q Okay.

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1 reply, finally was told get the fuck in here.
2 Q Okay, let me back up. Had you identified yourself as
3 an officer of the Metropolitan Police Department?
4 A Yes, sir, I did.
5 Q Prior to initiating contact with the individual
6 inside of the bedroom?
7 A When I came up and I posted, as I start out in all my
8 CIT calls, I'm Officer Conn with the Las Vegas Metropolitan
9 Police Department. We're here to help you. I need to know
10 does anybody need any help.
11 Q Okay. And your testimony is that in reply to that
12 the answer was, and I quote, get the fuck in here?
13 A Yeah, after giving -- I gave multiple commands, but
14 after about ten seconds, the only reply I got was get the fuck
15 in here.
16 Q Okay. Can you describe the intonation of that
17 statement? And let me clarify my question. Did you determine
18 that to be get the fuck in here, there is a situation and I
19 need help or something else?
20 A No, I did not want to enter that bedroom at that
21 time. I felt more like it was a subject attempting to bait me
22 --
23 Q Okay.
24 A -- into coming into the room.
25 Q Please continue, Officer.

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1 A But during my question, he makes basically just a
2 statement. It wasn't even so much an answer to any of my
3 questions but she stabbed herself.
4 Q Okay. So you heard the male say that she stabbed
5 herself?
6 A Correct.
7 Q Okay. Please proceed.
8 A So I never actually get a good communication with
9 him. There's never a question and then an answer and a return.
10 Just basically statements that he makes.
11 Q Yes, sir.
12 A So one point in time he tells me that she's alive.
13 Q Okay.
14 A And at another time he tells me that she's dead.
15 Q Okay.
16 A So while I'm sitting there and I'm going through
17 these questions, eventually, Sergeant Newberry and Sean and
18 Officer -- I'm trying to think here. We have one more officer
19 comes in. They're all part of our PSU team.
20 Q Would that be Officer Taylor?
21 A Yeah, Sean Taylor and then Jeremiah Ballejos.
22 Q Okay.
23 A They come into the room.
24 Q Okay. Now where are you at when they come into the
25 room?

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1 A I'm still -- they're stacking behind me --
 2 Q Okay.
 3 A -- while I'm still against the wall. I've maintained
 4 my position. My firearm's still drawn towards that doorway.
 5 Q Okay.
 6 A They come up behind me. Sergeant Newberry says we
 7 need to formulate a plan to get inside this room.
 8 Q Okay.
 9 A At which time he withdraws my taser and gives it to
 10 Officer Ballejos --
 11 Q Okay.
 12 A -- so that we can form up an arrest team for the less
 13 than lethal option.
 14 Q Okay.
 15 A Sergeant Newberry then placed himself right here with
 16 his back on the edge of the wall.
 17 Q Yes, sir.
 18 A And he tells me, whatever you guys do cover me, I'm
 19 going to look inside. So he's concerned that there's a
 20 potential threat to him, so I keep my firearm covered on the
 21 doorway. He peeks his head around, at which time he tells me,
 22 okay, I can see the subject. He's laying next to the female.
 23 I can see both of his hands. There's no weapons.
 24 Q Okay.
 25 A So at that time I enter through the doorway, gun

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1 A Once the taser was deployed, Officer Sean, he grabs
 2 one of the subject's hands. I immediately holster my pistol.
 3 I can see that there's a lot of blood on the male's hand. So I
 4 immediately grab a pair of gloves that I keep on my belt, put
 5 them on, tell Sean to give me that hand, and place the handcuff
 6 in it.
 7 Sean then grabs the other hand, we secure the
 8 handcuffs, Sean -- I can't remember. Sean grabs the feet or I
 9 grab the hands, but we both pick him up, drag him out of the
 10 room, and then set him right in the middle of the living room.
 11 Q Okay. Let me back you up for a second. When you
 12 walked in the bedroom, did you, in fact, see the female on the
 13 floor?
 14 A Yes.
 15 Q Showing you what's been admitted as State's Exhibit
 16 7. Is that a picture of the female and the condition that you
 17 observed her in?
 18 A Yes.
 19 Q Showing you State's Exhibit 8. Is that another
 20 picture of the female that you saw and that was the condition
 21 she was in?
 22 A Yes, sir.
 23 Q And then finally, what's been admitted as State's
 24 Exhibit 9. Does that show the blood that you observed when you
 25 first peeked in that bedroom?

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1 drawn, and I'm standing right about -- actually a little bit
 2 over. Right basically about middle in between the dresser and
 3 the bed.
 4 Q Okay.
 5 A Officer Ballejos starts giving verbal commands for
 6 the subject to remove himself from the female that's laying on
 7 her back.
 8 Q Does that subject obey those commands?
 9 A No, he does not.
 10 Q Okay. Then what happens?
 11 A Basically, when we come in, I have my gun drawn,
 12 immediately go to, I believe to be a threat. The female does
 13 not appear to be alive at this point in time. So the subject's
 14 still not listening to verbal commands. When we give him the
 15 verbal commands, I can see the female's, her clothes are torn.
 16 There's blood on them.
 17 He's got his right hand on the back of her head and
 18 his left hand is across her torso area.
 19 Q Okay.
 20 A And it's almost like his right hand was kind of
 21 caressing her head, and then he gets very agitated and starts
 22 waving his left hand up and down and goes do not look at her,
 23 do not look at her. So it was at this time that he was getting
 24 agitated that Officer Ballejos deployed the taser.
 25 Q Okay. And then what happened?

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1 A Yes.
 2 Q Now, just so the record's clear, Officer Conn, did
 3 the first deployment of the taser succeed in allowing officers
 4 to apprehend Mr. O'Keefe?
 5 A I can't remember if -- I believe it was just one
 6 deployment. The amount of time that's on the taser can be
 7 unlimited if you wish it to be. So as long as you hold the
 8 taser down, you can keep it giving the electrical discharge
 9 until you apprehend the subject.
 10 Q Okay, let me ask this. Do you know if more than one
 11 cycle was deployed?
 12 A No, I do not.
 13 Q Okay. Officer, how long were you guys posted up and
 14 issuing commands to the defendant -- to Mr. O'Keefe --
 15 A I'm not --
 16 Q -- until you made entry?
 17 A I'm not exactly sure because it's a dynamic
 18 situation. Your suppress level's pretty high. The amount of
 19 time seems to pass. Seems like an eternity.
 20 Q Okay. And actually, I believe I did that out of
 21 order. Do you see the man that you saw in the bedroom that
 22 night present in court today?
 23 A Yes, sir, I do.
 24 Q Can you --
 25 MR. PIKE: We'll stipulate the identity of Brian

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1 O'Keefe.
 2 MR. SMITH: Thank you.
 3 THE COURT: All right. Thank you.
 4 BY MR. SMITH:
 5 Q And Officer Conn, another thing I just want to make
 6 sure the record's clear about. When you were shouting commands
 7 into that bedroom, were you shouting commands that you wanted
 8 to provide medical assistance to the person that was in there?
 9 A Yes, sir.
 10 Q And despite those commands, Mr. O'Keefe still did not
 11 let you in the bedroom?
 12 A No. When we said that we wanted to give her help,
 13 again, the command would come back fuck you, get in here.
 14 MR. SMITH: Pass the witness.
 15 THE COURT: Cross.
 16 MS. PALM: Thank you.
 17 CROSS-EXAMINATION
 18 BY MS. PALM:
 19 Q Good morning, Officer Conn.
 20 A Good morning.
 21 Q I believe you testified that you arrived at the scene
 22 about 11:06.
 23 A Yes, ma'am.
 24 Q And do you recall that Mr. O'Keefe was in custody
 25 within about six minutes?

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1 the time in which he was taken into custody.
 2 Q Okay. So well it may have seemed like an eternity,
 3 it really wasn't, was it?
 4 A Correct.
 5 Q And when you first arrive and you hear a male yelling
 6 from the back bedroom, it was kind of just nonsense at first,
 7 wasn't it?
 8 A It was -- it was mumbling.
 9 Q And if you had said in your statement it was nonsense
 10 at first, would you agree with that?
 11 A Yes, ma'am.
 12 Q Okay. And at that point the only thing that he had
 13 said that you recalled was that she stabbed herself?
 14 A He's -- there's particular statements that he made
 15 that I can recall directly. Fuck you, get in here, she stabbed
 16 herself, she's dead, she's alive. That's basically the gist of
 17 --
 18 Q Okay.
 19 A -- statements made.
 20 Q And was it about 10, 15 seconds between each
 21 communication?
 22 A Yeah, there was -- and it wasn't even communication
 23 am I wouldn't call it communication. I would ask a question.
 24 I would never get a response. It would just be more of a
 25 statement just as if he was talking to anybody.

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1 A I don't know what the time of custody was.
 2 Q Would it refresh your recollection to look at a copy
 3 of your dispatch?
 4 A Yes, it would.
 5 MS. PALM: Approach, your Honor.
 6 THE COURT: Yes.
 7 BY MS. PALM:
 8 Q (Indiscernible).
 9 A Let's see here. Okay, one union one was my call sign
 10 during that time period. He was taken into custody at 2313
 11 hours.
 12 Q Okay. So about six, seven minutes after you arrived?
 13 A Let's see. I'm not seeing an arrival time for
 14 myself. I see an assignment time.
 15 Q Do you recall how long it took you to get there after
 16 --
 17 A 2303 --
 18 Q -- you assigned yourself?
 19 A -- hours is what I show for my assigned time. But I
 20 don't know if I just got on the radio and told her -- sometimes
 21 we just send on our MDT on route code, arrived. We don't
 22 necessarily get on the radio especially if we already have
 23 officers there because we don't want to block radio
 24 transmissions if they have something important to say.
 25 So I'm in the sure exactly, but 2313 hours would be

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1 Q Okay. Now, when the four of you entered the bedroom,
 2 it's you first, then Ballejos, Newberry, and who was the other
 3 officer?
 4 A Sean Thomas. Sean --
 5 Q Taylor?
 6 A -- Taylor.
 7 Q Okay.
 8 A Not Thomas.
 9 Q And so you testified that you took the position right
 10 between the bed and the dresser on that diagram.
 11 A Correct want.
 12 Q And were you still in front when you entered the
 13 room?
 14 A I was the very first person into the room. I
 15 maintained the front position. The other officers fanned left
 16 and right of me in order to approach.
 17 Q Did anyone have to go onto that bed at all?
 18 A I do not recall. My attention was focused solely on
 19 my firearm and the male subject in front of me.
 20 Q Okay. Can you point on the diagram to where Officer
 21 Ballejos stood when he was firing the taser.
 22 A I'm not sure where he was standing because the only
 23 person that I can recall their actual position was Sean Taylor
 24 when he was doing the handcuffing. He was to my right --
 25 Q Okay.

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1 A - closest to the suspect.
 2 Q Well, the suspect was actually on the other side of
 3 the body, right?
 4 A Correct.
 5 Q Can you show - okay, so he -
 6 A That side.
 7 Q - is laying down next to that body?
 8 A Correct.
 9 Q And who went - which officers went on the other side
 10 of body -
 11 A Sean -
 12 Q - next to the suspect?
 13 A I know that Sean was forward and to the right
 14 crossing over so that he could grab his arms once the taser was
 15 deployed.
 16 Q Okay, was - and Sean is Officer Taylor?
 17 A Correct.
 18 Q And was he over there alone?
 19 A I can't recall.
 20 Q Okay. At one point you joined him because you said
 21 you were helping with the handcuffing.
 22 A Correct.
 23 Q So at one point the both of you are over there,
 24 Officer Taylor and you.
 25 A Correct.

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1 Q - as if he's caressing her head.
 2 A Correct.
 3 Q Okay. And then he became very agitated and was
 4 waving his arm up and down -
 5 A Left arm.
 6 Q - saying don't look at her?
 7 A Correct.
 8 Q Okay. So you could see both of his hands at all
 9 times while you were in there?
 10 A Correct.
 11 Q And you never saw him with a weapon?
 12 A No, I did not.
 13 Q Okay. And he never actually threatened you?
 14 A No, he did not.
 15 Q And you don't recall at this point how many taser
 16 cycles there were, but if I showed you your statement, would it
 17 refresh your recollection?
 18 A Yes, it would. Okay, so it was two deployments.
 19 Q Okay. And actually, when the taser is fired, it's
 20 two probes that go into the body, and those probes stay in the
 21 body -
 22 A Yes, they do.
 23 Q - and you can do repeat cycles.
 24 A Correct.
 25 Q Okay. And do you know when physical contact was made

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1 Q And you don't recall if Officer Ballejos ever went
 2 over? Sergeant Newberry?
 3 A I don't recall Sergeant Newberry at all -
 4 Q Okay.
 5 A - within my peripheral vision.
 6 Q To get over on the other side of that body you
 7 actually had to either go over the bed or go over the body; is
 8 that correct?
 9 A Correct, and I would have gone over the body.
 10 Q Okay. And is that how Officers Taylor or any other
 11 officer would have gotten over there?
 12 A I believe that Sean would have had to go over the
 13 body due to him being off to my right.
 14 Q Okay. There was not actually room between the
 15 deceased's feet and the dresser for you to walk around to the
 16 right, was there?
 17 A He would have had to step over here.
 18 Q Okay. And do you know whether anybody bumped into
 19 her during that process?
 20 A I do not know.
 21 Q Okay. Is it possible?
 22 A It is possible.
 23 Q Now, you testified that Mr. O'Keefe's right hand was
 24 on the head of Ms. Witmarsh -
 25 A Correct.

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1 to take him into custody? Was it during the first cycle or
 2 second or -
 3 A It - officers would have approached and began
 4 attempting to gain control of him during the first cycle. The
 5 whole purpose is to gain control as fast as possible. So as
 6 soon as we deploy the taser, you're backup officers are there
 7 to immediately go and attempt to place their hands in handcuffs
 8 so that you're not having to fight with him.
 9 Q Okay. And you had concerns in this case also because
 10 you knew there was some biological -- there was a Hepatitis C
 11 issue --
 12 A Correct.
 13 Q - with the blood that was all over the scene.
 14 A Correct.
 15 Q So I assume you were taking the precautions with the
 16 gloves -
 17 A Correct.
 18 Q - even more so. Okay. Do you know if a person's
 19 alcohol use would affect the effectiveness of a taser?
 20 A I would not. It affects the central nervous system,
 21 so alcohol would play little to no effect.
 22 Q Now, you testified that just you and Officer Taylor
 23 carried Mr. O'Keefe out of the bedroom.
 24 A Correct.
 25 Q And I assume you had to go back over the body to do

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1 that.
 2 A Correct.
 3 Q And you carried him into the living room?
 4 A Yes, we did.
 5 Q Did you set him down at that point?
 6 A Yes, we did.
 7 Q And how did you set him down?
 8 A Basically, from exhaustion he dropped anywhere
 9 between a foot to six inches onto the carpet.
 10 Q Okay. Did he indicate to you that he was injured by
 11 that drop?
 12 A No.
 13 Q Did you see him get injured?
 14 A No, I did not.
 15 Q Okay. And was that on his stomach?
 16 A No, it was more kind of on his side because we have
 17 one arm, so his body's somewhat tilted --
 18 Q Okay.
 19 A -- because one officer has him almost by an armpit,
 20 another officer has him by his legs, so his torso's kind of
 21 tilted.
 22 Q Okay. So he was actually set down or, you know,
 23 drops six inches or so onto his side --
 24 A Correct.
 25 Q -- but he didn't hit his face.

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1 Q Okay. And was that partially covered by --
 2 A By the sheets.
 3 Q -- something?
 4 A It was kind of just mixed up into the sheets --
 5 Q Laying in the bloody --
 6 A -- so you just kind of saw it --
 7 Q -- sheets.
 8 A -- laying there.
 9 Q Okay. And you never had any further conversations
 10 with Mr. O'Keefe when you were out on the porch?
 11 A No.
 12 Q Okay. You testified about the fear that Mr. O'Keefe
 13 was trying to bait you or being fearful of walking into the
 14 situation in the bedroom.
 15 A Correct.
 16 Q But actually, when you went into the bedroom, again,
 17 he wasn't holding a weapon?
 18 A No, he did not hold one.
 19 Q And he was laying on the floor.
 20 A Correct.
 21 Q And you never saw him in any other position in that
 22 bedroom, did you?
 23 A No.
 24 MS. PALM: Pass the witness, your Honor.
 25 THE COURT: All right, Mr. Smith.

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1 A I don't know if he did or not.
 2 Q Okay. Were you also one of the officers that moved
 3 him onto the balcony?
 4 A No, I did not.
 5 Q Did you see him get moved onto the balcony?
 6 A No, I did not.
 7 Q I'm showing you what's been admitted as Defendant's
 8 Exhibit HHH. Did Mr. O'Keefe look like this when you first saw
 9 him?
 10 A I can't recall if he did or not.
 11 Q Okay. So do you recall (indiscernible). You don't
 12 recall any injuries to his forehead?
 13 A I can't recall if he had any or not.
 14 Q Okay. Do you recall any other injuries to him?
 15 A No, just the blood that I saw on his hand when we
 16 were attempting to place him in handcuffs.
 17 Q Okay. Did you ever notice a weapon at the scene?
 18 A Yes, I did.
 19 Q And can you describe where it was?
 20 A Kitchen style knife that was laying on the bed.
 21 Q And that was not accessible to Mr. O'Keefe as he laid
 22 there on the floor, was it --
 23 A No.
 24 Q -- some distance from him?
 25 A Yeah, he couldn't have reached for it.

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1 MR. SMITH: Judge, I'll be brief.
 2 REDIRECT EXAMINATION
 3 BY MR. SMITH:
 4 Q Officer Conn, do you recall what time this event was
 5 originated with the Las Vegas Metropolitan Police Department?
 6 A No, I do not.
 7 Q If I showed you the dispatch file, would that refresh
 8 your recollection?
 9 A Yes, it would.
 10 MR. SMITH: May approach the witness, Judge?
 11 THE COURT: Yes.
 12 BY MR. SMITH:
 13 Q I want you to look at that for us, Officer, and see
 14 if that refreshes your recollection as to what time this event
 15 actually originated.
 16 A 2301 hours.
 17 Q Okay. And then you testified on cross-examination
 18 that it was at approximately -- what time that the defendant
 19 was actually taken into custody?
 20 A 2313 hours subject's been tazed, taking him into
 21 custody at this time.
 22 Q So that was approximately 12 minutes after the call
 23 originated?
 24 A Correct.
 25 Q Is that a yes?

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1 A Yes.
2 Q Okay. And then the next question I want today ask
3 you, you assigned yourself we heard on cross-examination at
4 2303 or 11:03 p.m.; is that correct?
5 A Correct.
6 Q And just so the record's clear, when you arrived at
7 the scene, were there already officers there?
8 A Yes, there was.
9 Q Okay.
10 MR. SMITH: No further questions.
11 THE COURT: Any recess?
12 MS. PALM: Nothing, your Honor. Thank you.
13 THE COURT: Any questions from the jurors? No.
14 Thank you, Officer, for your testimony. You're instructed not
15 to discuss your testimony with any other witness involved in
16 this case until this matter is finally resolved. Thank you,
17 sir --
18 THE WITNESS: Thank you, your Honor.
19 THE COURT: -- your time. Ladies and gentlemen,
20 we're going to recess here a little early for lunch. It's
21 about 11:45, and I should be done with the judge's meeting at
22 1:00 so we need to be back outside at 1:00 o'clock, and we'll
23 resume this afternoon.
24 During this lunch recess it is your duty not to
25 converse among yourselves or with anyone else on any subject.

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1 appropriate because of the critical nature of this witness.
2 THE COURT: All right, Mr. Smith.
3 MR. SMITH: And Judge, it's the State's position that
4 the question that I asked Ms. Morris amounted to was she
5 testifying pursuant to her oath to tell the truth. That's
6 really no different than arguing in closing that you heard the
7 witnesses come in and state the truth. I don't think that it's
8 vouching to the extent that we're asking a jury to, you know,
9 believe Ms. Morris over everyone else.
10 The defense attorney did a fairly good -- a good job
11 even -- at pointing out some possible reasons that would have
12 influenced Ms. Morris' testimony and/or any biases or motives
13 she would have for making the statements that she did, and I
14 submit that the jury can certainly use their own common sense
15 and come to their own determination to whether or not she's
16 telling the truth. And that the State didn't do anything more
17 to bolster that outside of what is clearly permissible under
18 the law.
19 THE COURT: All right. Based upon the nature of the
20 question and the contemporary objection which I sustained I'm
21 going to deny the motion for a mistrial. You ready to go?
22 MR. PIKE: Yes, your Honor.
23 THE COURT: All right.
24 (Off the record colloquy).
25 MR. SMITH: Yeah, we're ready. I'm sorry.

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1 connected with the trial or read, watch or listen to any report
2 over commentary on the trial by person connected with the trial
3 or by any medium of information including, without limitation,
4 newspaper, television, radio or the Internet.
5 And you're not to form or express an opinion on any
6 subject connected with this case until this matter is finally
7 submitted to you. We'll see you back at 1:00 p.m.
8 (Court recessed at 11:45 p.m. until 1:10 p.m.)
9 (Outside the presence of the jury)
10 THE COURT: We're on the record now --
11 THE CLERK: Yes.
12 THE COURT: -- Ms. Ramsey (phonetic)?
13 THE CLERK: Yes.
14 THE COURT: Okay. Mr. Pike, you had a motion.
15 MR. PIKE: Yes, your Honor. May it please the Court,
16 outside the presence of the jury, during the course of the
17 testimony of Ms. Morris after the cross-examination and in
18 their attempts to rehabilitate the witness, the State went into
19 examination regarding the oath that she had took and her
20 testimony. I'd bring a motion for a mistrial based upon that
21 approach being a form of impermissible vouching for the
22 witness.
23 And because she was such an important witness in
24 reference to motive and lack of accident or mistake or
25 misinterpretation as to what was happening, I think that it's

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1 (Off the record colloquy).
2 MR. PIKE: We have one short employment witness that
3 we're going to call out of order.
4 THE COURT: You're not talking about their height or
5 anything?
6 MR. PIKE: No, just -- just an employment.
7 THE MARSHAL: Officers and members of the court,
8 Department 17 jurors. You may be seated, ladies and gentlemen.
9 Let make sure cell phones are turned off, please.
10 THE COURT: Welcome back, ladies and gentlemen. We
11 are going to -- we're in the presence of the entire jury panel.
12 Ladies and gentlemen, oftentimes in trials there's scheduling
13 conflicts with some of the witnesses, and so we're going to
14 call out of order one of the defendant's witnesses at this
15 time. And you're to consider it as if they had call it had
16 during their case in chief. Ms. Palm.
17 MS. PALM: Thank you, your Honor. Tracy Berger.
18 THE MARSHAL: Just remain standing, please. Raise
19 your right hand and face the clerk.
20 TRACY BERGER, PLAINTIFF'S WITNESS SWORN
21 THE CLERK: Please state your name and spell your
22 name for the record.
23 THE MARSHAL: Just have a seat.
24 THE WITNESS: Oh, okay. Tracy Berger, T-r-a-c-y,
25 first name. Last name B-e-r-g-e-r.

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1 THE COURT: Go ahead, Counsel.
2 MS. PALM: Thank you, your Honor.
3 DIRECT EXAMINATION
4 BY MS. PALM:
5 Q Good afternoon Mr. Berger.
6 A Hi.
7 Q Sir, can you tell the jury how you're employed?
8 A I am a labor superintendent for MJ Dean Construction
9 (phonetic) drywall division.
10 Q And where is that company located in?
11 A Las Vegas, Nevada.
12 Q Do you know who Brian O'Keefe is?
13 A I do.
14 Q Do you see him in the courtroom today?
15 A Yes, I do.
16 Q Could you describe where he's seated and what he's
17 wearing.
18 A He's seated right at the end of the table there with
19 a gray suit on.
20 MS. PALM: Your Honor, would the record reflect he's
21 identified Mr. O'Keefe?
22 THE COURT: Yes, it will.
23 MS. PALM: Thank you.
24 BY MS. PALM:
25 Q Did Brian O'Keefe ever work for you?

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1 or put back on whether work picked up.
2 Q Because work was slow at the time?
3 A Very, very.
4 Q Okay.
5 A Yeah.
6 Q And how did you respond to his inquiry?
7 A Well, there was no work at the time, but I told Brian
8 that he was eligible for rehire as soon as work picked up.
9 Q Okay. So he had a --
10 A Basically, yeah.
11 Q -- real -- so Brian had a realistic hope of going
12 back to work for you?
13 A Yes, he did.
14 MS. PALM: Pass the witness, your Honor.
15 THE COURT: Any cross-examination?
16 CROSS-EXAMINATION
17 BY MS. GRAHAM:
18 Q I'm sorry, it's Mr. -- your last name?
19 A Berger.
20 Q Berger. Mr. Berger --
21 A Yeah.
22 Q -- did you see Brian that day on November 5th, 2008?
23 A No, I did not.
24 Q Do you live at the apartment complex near 5001 El
25 Parque?

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1 A Yes, he did.
2 Q And how did he come to be employed for you?
3 A He was dispatched to MJ Dean through the union hall.
4 Actually, through the apprenticeship program.
5 Q Okay. And what union is that?
6 A Local 872.
7 Q And are all your employees union members?
8 A Yes.
9 Q Okay.
10 A Yes.
11 Q And did he work for you from about November of 2007
12 to July of 2008?
13 A Yes, he did.
14 Q And was that full-time work?
15 A Yes, it was.
16 Q Do you recall back on November 5th, 2008 speaking
17 with Mr. O'Keefe on the phone?
18 A Yes. Yes.
19 Q Was that sometime in the afternoon?
20 A Yeah, it was. I was -- I remember -- I can't say
21 exactly, but I know I was on my way home for work, so well, I
22 would say around 3:00 o'clock.
23 Q Okay. And what was the context of that conversation?
24 A Brian was wondering what the work situation was like
25 and wanted to know if there was any likelihood he'd be rehired

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1 A Well, I'm not real sure where El Parque is. I live
2 up by Red Rock Casino.
3 Q Okay. So you don't know where 5001 El Parque is?
4 A No, I do not.
5 Q Okay. Did you happen to be at Brian's apartment on
6 the evening of November 5th, 2008?
7 A No, I was not.
8 Q Did you talk to him any time after November 5th, 2008
9 in the afternoon?
10 A No, I did not.
11 MS. GRAHAM: Nothing.
12 THE COURT: Any redirect?
13 MS. PALM: No. Thank you, your Honor.
14 THE COURT: All right, thank you, sir. You're
15 instructed not to discuss your testimony with any other witness
16 involved in this case until this matter is finally resolved.
17 Thank you for your time, sir.
18 THE WITNESS: Okay.
19 THE COURT: All right. State, call your next
20 witness.
21 MS. GRAHAM: State calls Officer Jeremiah Ballesos.
22 THE MARSHAL: Officer Ballesos, if you'll raise your
23 right hand, please. Face the clerk.
24 OFFICER JEREMIAH BALLEJOS, PLAINTIFF'S WITNESS, SWORN
25 THE MARSHAL: Have a seat, please

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1 THE CLERK: (Indiscernible) your name and spell it
2 for the record.
3 THE WITNESS: Jeremiah Ballejos, B-a-l-l-e-j-o-s.
4 MR. SMITH: Judge, can we approach?
5 THE COURT: Yes.
6 (Bench conference).
7 MS. GRAHAM: Court's indulgence.
8 THE COURT: All right.
9 DIRECT EXAMINATION
10 BY MS. GRAHAM:
11 Q Good afternoon, Officer Ballejos.
12 A How are you?
13 Q How are you employed?
14 A Been with the Las Vegas Metropolitan Police
15 Department close to five years.
16 Q Close to five years now?
17 A Currently assigned to the (indiscernible) area
18 command problem solving unit as plain clothes officer.
19 Q Okay. And were you assigned to the problem solving
20 unit on November 5th of 2008 last year?
21 A Yes.
22 Q And were you on duty in your capacity as a police
23 officer on that evening?
24 A Yes.
25 Q And approximately, 10:00 p.m. that evening, between

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1 out of the bedroom --
2 Q Okay.
3 A -- so that they could bring medical in.
4 Q All right. Now, when you say challenging, tell the
5 jury what challenging means.
6 A Essentially, in this type of situation our goal is to
7 -- there was a person that was injured. We want -- we need to
8 get in there to make sure that this scene is under control to
9 allow paramedics or AMR to come in and give medical attention.
10 In this situation, the patrol officers were not
11 allowed to have access to the room because they couldn't get
12 compliance from Mr. O'Keefe. So they were -- our goal was to
13 get in there so that Victoria could get medical assistance as
14 soon as possible.
15 MS. PALM: Your Honor, I'm going to object to his
16 answer as non-responsive. The question was what -- describe
17 challenging, and his lengthy discussion wasn't about
18 challenging. It was about what he was thinking.
19 MS. GRAHAM: And Judge, I think that he explained
20 what challenging was and what the goal was of challenging.
21 THE COURT: I'm going to overrule the objection at
22 this time. Officer, just very carefully hear the question,
23 okay.
24 THE WITNESS: Yes, sir.
25 THE COURT: All right. Next question.

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1 10:00 and 11:00 p.m. did you respond to a location of 5001 El
2 Parque, Building C, Apartment 35?
3 A Yes, I did.
4 Q Can you tell the jury what the details that have call
5 were?
6 A It was kind of basic details where there was a -- a
7 neighbor had called in said that he had noticed an open door to
8 the apartment, that there was a body laying in the bedroom of
9 the apartment, there was a lot of blood, and he wasn't sure
10 what it was -- had gone on or occurred.
11 Q And when you responded to that address, were you
12 riding solo or who were you riding with?
13 A There was actually Sergeant Newberry and my partner
14 Sean Taylor.
15 Q So it was you, Officer Taylor and Sergeant Newberry?
16 A That's correct.
17 Q Okay. And when you arrived at the scene, what did
18 you observe?
19 A We had to park -- there were a lot of patrol vehicles
20 in the parking lot, so we parked and went directly to the
21 address that was updated in the call.
22 Q And who was on location at that point?
23 A There were several marked patrol units, officers in
24 uniform, that had already entered the open apartment and were
25 challenging a male, later identified as Brian O'Keefe, to come

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1 BY MS. GRAHAM:
2 Q Okay, so Officer, if you could just -- let's just
3 step by step I'll ask you a question. Just answer the question
4 I ask and then, you know, we'll move on from there, okay? So
5 when you arrived at the scene, you were with you said Sergeant
6 Taylor or Officer Taylor and Sergeant Newberry.
7 A Yes.
8 Q And did you go into the apartment?
9 A Yes.
10 Q Okay. And who went into the apartment?
11 A All three of us.
12 Q All three of you?
13 A Sergeant Newberry, Officer Taylor and myself.
14 Q Did you notice other officers inside the apartment?
15 A I did.
16 Q And do you recall what officers were inside the
17 apartment?
18 A Specifically, Officer Conn, Officer Fombuena and I
19 don't recall his name. (Indiscernible), I think it was.
20 Q Okay. Would Santarossa ring a bell?
21 A Yes.
22 Q Okay. All right. So once you entered the apartment,
23 what was your observation of what was going on?
24 A There was a standoff between the patrol officers and
25 the back bedroom. They were trying to get access to back

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1 bedroom to get medical assistance to Victoria.
 2 Q And when you say they were trying to get access, what
 3 was happening? What was going on?
 4 A In our experience and what I've seen a lot is --
 5 MS. PALM: Objection, your Honor. Non-responsive.
 6 THE COURT: Sustained. What did you observe --
 7 THE WITNESS: Can you repeat the question --
 8 THE COURT: -- going on?
 9 THE WITNESS: -- please?
 10 BY MS. GRAHAM:
 11 Q Yes. When you -- with a was going on at that time
 12 when you say that they were trying to get -- he was being
 13 unresponsive?
 14 A Officer Conn was giving commands to Mr. O'Keefe to
 15 come out of the apartment or to come out of the bedroom so that
 16 medical could come in.
 17 Q And when you say he was being unresponsive, what do
 18 you mean by that?
 19 A I heard several times him say fuck you, you come in
 20 here.
 21 Q Okay. So you were present the whole time that
 22 Officer Conn was giving commands?
 23 A Through that portion to hear those statements, yes.
 24 Q Okay. And let's -- let me find that diagram. Thank
 25 you. Just for clarification and to show the jury, if you'd

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1 A They were -- Officer Conn was trying to get Mr.
 2 O'Keefe to come out of the bedroom so that the ambulance could
 3 come in.
 4 Q Okay. And how was he trying to get him to come out
 5 of the bedroom?
 6 A Trying to talk to him, reiterating that all they
 7 wanted -- his main concern was to get medical attention to
 8 Victoria.
 9 Q Okay. Was the defendant making any statements in
 10 response to Officer Conn's commands?
 11 A No, he -- it was difficult for Officer Conn to
 12 communicate with him because he was --
 13 MS. PALM: Objection, your Honor. Non-responsive.
 14 THE WITNESS: He was shouting over --
 15 THE COURT: I'm going to sustain the objection.
 16 BY MS. GRAHAM:
 17 Q You may answer the question.
 18 A He was shouting over Officer Conn's instructions and
 19 at some point he would say fuck you, fuck you over and over.
 20 Q Okay. So fuck you, fuck you over and over?
 21 A Yeah.
 22 Q And basically he was shouting over Officer Conn?
 23 A Exactly.
 24 Q Okay. So would it be fair to say that there was kind
 25 of shouting match going on for awhile?

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1 look on your monitor here, does that fairly and accurately
 2 depict the layout of the apartment as you remember it that
 3 night on November 5th, 2008?
 4 A Yes, it does.
 5 Q Okay. So when you first arrived, show the jury --
 6 now, if you touch that screen, you can actually -- it will
 7 mark.
 8 A Okay.
 9 Q So show the jury when you first entered the apartment
 10 where you responded to.
 11 A They had formed a -- the line to try and look into
 12 the bedroom. So the line was stacked here, two officers, and I
 13 joined Officer Conn at this location.
 14 Q Okay. When you say they had formed a line, who
 15 specifically are you talking about?
 16 A Officer Conn, Officer Estrada (phonetic) was there
 17 also but doing security at the front door, and myself and
 18 Officer Taylor.
 19 Q Okay. And who was stacked up against that living
 20 room wall?
 21 A Officer Conn, myself and Officer Taylor.
 22 Q In that order?
 23 A Yes.
 24 Q Okay. All right, and while you were stacked up
 25 there, what was going on?

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1 A Yes.
 2 Q Okay. And once you determined that -- once it
 3 determined that the defendant was not non-compliant, what
 4 happened then?
 5 A At that point I was deemed that there was an exigent
 6 circumstance. We needed to just go in and take him under
 7 control.
 8 Q Let me stop you right there. Tell the jury what an
 9 exigent circumstance is.
 10 A In this particular case the longer we were prevented
 11 from getting in -- getting Mr. O'Keefe under control, you know,
 12 blood loss -- just she was -- there was lots of blood visible,
 13 so it was -- there was an immediate -- a necessary -- a
 14 necessity to get in that room and make it static or make it --
 15 put it under control.
 16 Q At that point when they decided that you needed to
 17 formulate a plan because of exigent circumstances, had you
 18 actually viewed inside that bedroom?
 19 A I did.
 20 Q You did?
 21 A Yes.
 22 Q Okay. What did you see when you looked inside the
 23 bedroom?
 24 A That it had been messed and soiled with blood and the
 25 light was on in the bedroom, but I could not see Victoria or

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1 Mr. O'Keefe at that point from our position.
 2 Q Okay. So from your position you didn't have line of
 3 sight with either the defendant or the woman that was lying on
 4 the floor?
 5 A No.
 6 Q Okay. So what was the plan?
 7 A We -- Sergeant Newberry moved to this location to do
 8 what is just a quick peek. To look around to see if he could
 9 get on eye on Mr. O'Keefe, if he had weapons, if there were
 10 weapons, where they were in the bedroom. And then we had one
 11 officer who would have a lethal option, his handgun, and I was
 12 the non-lethal option, which was the ECD or commonly referred
 13 to as a taser.
 14 Q So you're assigned a -- Sergeant Newberry assigned a
 15 lethal option and then a non-lethal option.
 16 A Yes.
 17 Q Why don't you explain to the jury what a lethal
 18 option and non-lethal option and when you would actually use
 19 those options.
 20 A A lethal option, just like we set an example would be
 21 a shotgun or handgun. If would be used if Mr. O'Keefe were
 22 armed, was continued an attempt to maybe injure an officer or
 23 Victoria any further. Non-lethal option, it can be used on
 24 subject who is not compliant or not following a lawful order
 25 where, you know, the outcome is much -- they're not hurt or

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1 non-lethal and that you actually would need to deploy the
 2 taser, can you tell the jury what happened then.
 3 A We entered the bedroom.
 4 Q And when you say we, be real clear --
 5 A Officer Conn, myself and Officer Taylor entered the
 6 bedroom with Sergeant Newberry following. I could see at that
 7 point that Mr. O'Keefe was not armed. He was, however, waving
 8 his arms away from us, repeating don't look at her, don't look
 9 at her, and was attempting to pull her shirt down over her
 10 torso area.
 11 Q Okay. So he was saying don't look at her, don't look
 12 at her?
 13 A Right.
 14 Q Did he indicate to you whether she was dead or alive?
 15 A He did not.
 16 Q Did he ask for help for Victoria?
 17 A He did not.
 18 Q When he said don't look at her, don't look at her,
 19 were there any commands given to him?
 20 A Again, there were commands to move away from her or
 21 put his hands up or put his hands behind his head and it became
 22 a shouting match.
 23 Q And then eventually you deployed a taser?
 24 A Yes.
 25 Q Okay. And did it hit the defendant?

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1 permanently, you know, injured in any way, but we're able to
 2 get them under control and make the situation safe.
 3 Q And how was it determined that the non-lethal option
 4 be used?
 5 A Sergeant Newberry, through his quickly peeking into
 6 the bedroom, could see that there was a knife on the bed and
 7 Mr. O'Keefe was not armed. However, because of his
 8 non-compliance to commands, we needed to get him under control.
 9 The ECD was selected because of the -- how quickly our taser --
 10 because of how quickly it incapacitates the person. We can get
 11 them under control, get them out of house, and medical can come
 12 in, and you don't contaminate the scene as if, you know, you
 13 were to use like say pepper spray or something.
 14 Q And how would pepper spray contaminate the scene?
 15 A You had -- there was lots of blood so it was safe to
 16 assume that there were open wounds. Medical has to treat that
 17 victim, and when we did contact Mr. O'Keefe, he was very close
 18 proximity of Victoria, so we didn't want to contaminate her
 19 injuries and, you know, through which would eventually
 20 contaminate any AMR or paramedics that handled her, tried to
 21 take care of her.
 22 Q At this point did you know whether or not Victoria
 23 was dead or alive?
 24 A I did not know.
 25 Q So once it was determined that you would be the

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1 A Yes.
 2 Q Okay. And what happened then?
 3 A The taser cycles for five seconds to give you a
 4 chance to take that person under control. What -- you would
 5 use the taser and then assess how effective it was working at
 6 that point during that first five second cycle. Officer Taylor
 7 moved in, and they were able to get control of Mr. O'Keefe's
 8 right hand, I believe it was.
 9 Q Okay.
 10 A Or his left hand, excuse me. His right hand was
 11 still free at the end of that five second cycle. Because there
 12 was lots of blood, you know, he was -- he had blood on his
 13 body, it was -- I don't know if it was slippery for them or
 14 whatever, but because he was not under control, a second five
 15 second cycle was used to get him control of his arms and legs
 16 before he was taken out of the bedroom.
 17 Q And when you say he wasn't under control after the
 18 first taser, what's -- was he --
 19 A Tensing his muscles. Tensing his limbs. At one
 20 point they even lost control of him out in the living room.
 21 Q What was his demeanor?
 22 A Struggling, didn't want to be taken out.
 23 Q Was he saying anything at that point?
 24 A No.
 25 Q So once he was taken out of the room -- well, who

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1 actually took him out of the room?
 2 A Officer Taylor, I remember Officer Conn, and there
 3 was another officer. I can't remember his name right now.
 4 Q So you didn't actually physically assist in --
 5 A No, I did not.
 6 Q -- taking him from the room. Okay. Once he was
 7 taken from the room, do you know where he was taken?
 8 A He was placed outside the door on the carwalk in
 9 front of the apartment.
 10 Q Did you have any contact with him after he was taken
 11 outside onto the carwalk?
 12 A Mr. O'Keefe was crying. I tried to talk to him to
 13 solicit information regarding Victoria's information or date of
 14 birth.
 15 Q Did he answer you?
 16 A Not initially. And then after a moment he said you
 17 guys are going to be mad at me, and I asked him well, I'm not
 18 mad at you, what am I mad at you for? He said because --
 19 MS. PALM: Your Honor, if he could just answer one
 20 question at a time. She asked did he answer you, and then we
 21 get a whole long conversation.
 22 THE COURT: Sustained.
 23 THE WITNESS: Yes, he answered --
 24 BY MS. GRAHAM:
 25 Q Officer --

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1 Q He was -- he didn't respond to your actual questions,
 2 but he made spontaneous statements to you, is that correct?
 3 A That's correct.
 4 Q And what statements were those?
 5 A You're going to be mad at me.
 6 Q And did you ask him why he was going to be mad at
 7 you?
 8 A He stated, I didn't do this, she attacked me.
 9 Q What was his demeanor?
 10 A It struck me as odd because he was --
 11 MS. PALM: Objection, your Honor. She asked what was
 12 his demeanor, not whether it was odd to him or not.
 13 THE COURT: Sustained.
 14 BY MS. GRAHAM:
 15 Q What was your impression of the defendant during your
 16 interaction?
 17 A Not remorseful.
 18 MS. PALM: Objection, your Honor. What his
 19 impression is is irrelevant.
 20 THE COURT: Sustained.
 21 MS. PALM: Speculation.
 22 THE COURT: Sustained.
 23 MS. GRAHAM: Well, Judge, it's the presence sense
 24 impression. He's there at the scene.
 25 THE COURT: I sustained the objection.

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1 A -- me.
 2 Q He answered you. Okay. Once you were asking --
 3 first you asked information about Victoria.
 4 A Yes.
 5 Q What kinds of information were you wanting to get
 6 from him?
 7 A Identifying, name, date of birth, social --
 8 Q And what purpose do you try to get identifying
 9 information from someone?
 10 A Because she's going down to the hospital. You know,
 11 what they can -- blood type, anything like that, that can help
 12 them when they're trying to assist her.
 13 Q At this point did you have any idea who that woman
 14 was?
 15 A No.
 16 Q And didn't respond?
 17 A No.
 18 Q Okay. And you asked him another series of questions?
 19 A Yes.
 20 Q And what were those questions?
 21 A I repeated the same questions and at which point he
 22 did not answer, but stated you're going to be mad at me.
 23 Q Okay. So he spontaneously made statements to you at
 24 that point?
 25 A Yes.

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1 MS. GRAHAM: All right.
 2 THE WITNESS: He was non-responsive or --
 3 MS. PALM: There's no question before him, your
 4 Honor.
 5 THE COURT: Officer, wait until the next question.
 6 BY MS. GRAHAM:
 7 Q Okay. So he made these statements to you? Did he
 8 make any other statements to you?
 9 A When we -- yes, he did.
 10 Q And when was that?
 11 A When we moved him down stairs away from the crime
 12 scene.
 13 Q Okay. And what statements did he make at that point?
 14 A Gave false information regarding Victoria's actual
 15 identity.
 16 Q What information did he give you regarding Victoria's
 17 --
 18 A When I asked her -- when I asked him the name, he
 19 gave me two different names. Victoria Whitmore (phonetic).
 20 Victoria Witmarsh. Other than that, he was non-responsive, and
 21 --
 22 Q Did he ask you -- did he give you any other
 23 information?
 24 A He would later explain to me that they had been
 25 dating for several years.

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1 MS. PALM: Your Honor, may we approach?
 2 THE COURT: I think it's an appropriate question,
 3 Counsel, at this point.
 4 MS. PALM: I have another issue.
 5 THE COURT: All right.
 6 (Bench conference).
 7 BY MS. GRAHAM::
 8 Q In your duties as an officer, is one of your duties
 9 trying to gather information about the descendant or the
 10 injured victim at the scene?
 11 A Yes.
 12 Q Okay. And was there anybody there that you knew of
 13 that may have that information for you?
 14 A Yes.
 15 Q And who was that?
 16 A Mr. O'Keefe.
 17 Q Okay. So if trying to gather information, I assume
 18 to assist in the medical assistance of Victoria --
 19 A Yes.
 20 Q -- you were trying to gather information about her?
 21 A That's correct.
 22 Q And in doing so, did you ask the defendant questions
 23 to try to gather that information to help assist you in
 24 determining who she was?
 25 A I did.

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1 Q What was the tone of his voice?
 2 A Monotone and real soft spoken.
 3 Q And that's a different tone than you heard from all
 4 of the shouting upstairs when you were trying to get him out of
 5 the bedroom, I assume?
 6 A Yes.
 7 Q All right. So once you were able to -- were you ever
 8 able to determine the identity of, as we now know her as
 9 Victoria Witmarsh from the defendant in this case?
 10 A No.
 11 Q No?
 12 A We -- no.
 13 Q No, okay. What did you do then when you failed in
 14 gathering information from the only person you knew at the
 15 scene that was able to give you that information?
 16 A We --
 17 MS. PALM: Objection, your Honor. States facts not
 18 in evidence in the question and argumentative.
 19 THE COURT: I'm going to sustain the objection.
 20 BY MS. GRAHAM::
 21 Q Did you know of anybody else at the scene could give
 22 you information regarding Victoria Witmarsh?
 23 A No.
 24 Q After the defendant indicated that he dated her for
 25 over years, is it safe, I assume, to assume that he would be

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1 Q Okay. You indicated, Officer, that he had given you
 2 false information at the beginning.
 3 A Yes.
 4 Q Did you determine at all whether or not he actually
 5 knew Victoria?
 6 A Yes.
 7 Q And how did you determine that?
 8 A He stated that they were in a dating relationship for
 9 several year.
 10 Q For several years. Did he indicate how many years?
 11 A No.
 12 Q Okay. So he indicated to you that they had been in a
 13 dating relationship for several years. Did he give you any
 14 other identifying information or did you ask him any other
 15 identifying information regarding Victoria?
 16 A I don't recall.
 17 Q Was there any other information that he volunteered
 18 regarding Victoria?
 19 A No.
 20 Q What was his demeanor while you were trying to gather
 21 this information to help assist Victoria?
 22 A Wouldn't make eye contact, had kind of an aloof
 23 state. I could smell alcohol on his breath and clothes.
 24 Q Okay. He was aloof? What did his face look like?
 25 A Just kind of like staring out into space.

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1 the one person that could provide all the necessary information
 2 on her medical, on her identity, et cetera?
 3 A That's correct.
 4 Q Next of kin.
 5 MS. PALM: Again, argumentative, your Honor.
 6 THE COURT: Well, it's calling for speculation. I'm
 7 going to sustain the objection.
 8 BY MS. GRAHAM::
 9 Q Did you ever become aware of the identity of Victoria
 10 Witmarsh?
 11 A Yes.
 12 Q Was that through the defendant?
 13 A No.
 14 Q Okay. After you tried to elicit the information
 15 about Victoria, what did you do then?
 16 A I began just looking through our SCOPE records to try
 17 and get as much information I could about her and Mr. O'Keefe
 18 through our computer terminal.
 19 Q And were you able to determine the identity through
 20 SCOPE?
 21 A Yes.
 22 Q Can you --
 23 MR. SMITH: Judge, can we approach?
 24 THE COURT: Which party are you referring to,
 25 Counsel.

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1 MS. GRAHAM: Of the victim.
 2 THE COURT: Okay.
 3 (Bench conference).
 4 BY MS. GRAHAM:
 5 Q At this point did you know the identity of Brian
 6 O'Keefe when you were talking to him?
 7 A Yes.
 8 Q And how did you know that?
 9 A That was given by Mr. O'Keefe.
 10 Q So Mr. O'Keefe actually gave you his identifying
 11 information?
 12 A Yes, he did.
 13 Q Okay. Once you received the information that you
 14 need, what did you do then? What part of the investigation did
 15 you then participate in?
 16 A I -- at that point violent crimes and homicide had
 17 responded.
 18 Q Okay. Did you leave the scene at that point?
 19 A No, I did not. I gave a taped interview to the
 20 homicide detective.
 21 Q Okay.
 22 MS. GRAHAM: Court's indulgence.
 23 BY MS. GRAHAM:
 24 Q And is that typical to give a taped interview to a
 25 homicide detective?

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1 Q Do you recall while you were in the apartment and
 2 Officer Conn was trying to negotiate with the defendant whether
 3 or not Officer Conn indicated that he wanted to get an
 4 ambulance to Victoria?
 5 A When I arrived, paramedics and fire department were
 6 already standing by.
 7 Q And why would they be standing by?
 8 A Because of the dynamic situation that they're --
 9 they're not permitted to go in until the scene is made safe.
 10 Q And when Officer Conn indicated to the defendant that
 11 he would like to get Victoria some medical assistance, what was
 12 the defendant's response; do you recall?
 13 A Again, shouting back and specifically fuck you over
 14 and over.
 15 Q So really, all he had to say was fuck you?
 16 MS. PALM: Objection, your Honor. Argumentative.
 17 THE COURT: Sustained.
 18 MS. GRAHAM: I'll pass the witness at this time.
 19 THE COURT: Cross.
 20 MS. PALM: Thank you.
 21 CROSS-EXAMINATION
 22 BY MS. PALM:
 23 Q Good afternoon, Officer Ballejos.
 24 A Hi.
 25 Q I just want to go back to the conditions of the

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1 MS. PALM: Objection, your Honor. Relevance.
 2 THE COURT: Overruled.
 3 THE WITNESS: Yes, it is.
 4 BY MS. GRAHAM:
 5 Q Is it typical to do that?
 6 A It is typical.
 7 Q Okay. On every scene that you're dispatched to?
 8 A No, it's not. It would be typical for a homicide
 9 investigation.
 10 Q At this point was it determined that Victoria was, in
 11 fact, deceased?
 12 A I (indiscernible) --
 13 MS. PALM: Objection. Lack of personal knowledge, it
 14 sounds like.
 15 MS. GRAHAM: Sounds like. Judge, he hasn't answered
 16 the --
 17 THE COURT: Did you know, Officer?
 18 MS. GRAHAM: -- question.
 19 THE COURT: Did you know, Officer, at the scene that
 20 she was deceased?
 21 THE WITNESS: Once homicide responded, yes, your
 22 Honor.
 23 THE COURT: Okay.
 24 MS. GRAHAM: Court's indulgence.
 25 BY MS. GRAHAM:

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1 apartment when you entered. I understand there were other
 2 officers already there. I just (indiscernible) a couple
 3 different things so I want to clarify some things.
 4 A Sure.
 5 Q Do you recall whether the lights were on or off in
 6 the living room when you entered?
 7 A Off.
 8 Q Do you recall whether the bedroom lights were on?
 9 A Bedroom light was on. There was light, yes.
 10 Q The bedroom that Mr. O'Keefe was in?
 11 A Yes.
 12 Q The other bedroom light was off?
 13 A I don't know.
 14 Q You don't recall?
 15 A No, I don't.
 16 Q Do you recall whether the kitchen lights were on or
 17 off?
 18 A There was a dim light. I don't know where -- what
 19 the source was in the kitchen.
 20 Q Now, you described being stacked up in a four man
 21 element outside the hallway before entering the room.
 22 A Yes.
 23 Q And who was in that stack up?
 24 A I know that Officer Conn was in front of me, and
 25 Officer Taylor was to the back.

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1 Q So the three of you?
 2 A There was a fourth officer. Don't know who it was.
 3 Q Okay. And as you enter, did you see Mr. Wimarsh's
 4 feet showing from the end of the bed?
 5 A I did.
 6 Q And can you clear the scene? Do you know how to do
 7 that? Thank you.
 8 A You're welcome.
 9 Q Could you point out on the crime scene diagram what
 10 position Officer Conn went into when he got into the room.
 11 Where was he?
 12 A I don't know. My area of responsibility was Mr.
 13 O'Keefe.
 14 Q Okay. So you don't know where in the room Officer
 15 Conn was or Officer Taylor or Sergeant Nowberry?
 16 A I knew Officer Taylor was off to my right.
 17 Q Okay. Could you point out where, then, you and
 18 Officer Taylor were.
 19 A It would be have been -- excuse me. About there and
 20 Officer Taylor off to my right.
 21 Q Okay.
 22 A At the foot of the bed.
 23 Q Okay, so you're kind of in between the bed and the
 24 dresser?
 25 A Exactly.

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ROUGH DRAFT TRANSCRIPT

1 Q And the whole point of the taser is to disrupt
 2 muscular control.
 3 A Yes, it is.
 4 Q And in effect it causes muscle spasm so that the
 5 person tazed is rendered immobile.
 6 A Exactly.
 7 Q Okay. And the first five second cycle did not cause
 8 Mr. O'Keefe to go completely immobile.
 9 A That's correct.
 10 Q And do you know whether taser shock can -- whether
 11 the effectiveness of a taser shock can be altered by the use of
 12 alcohol?
 13 A Yes, it can.
 14 Q So a person might not be tazed as completely if
 15 they're drunk?
 16 A That's correct.
 17 Q Okay. So as you enter there, can you show the jury
 18 where Mr. O'Keefe was laying on the screen.
 19 A At this location here kind of lateral with Victoria.
 20 Q Did you see him touch Victoria while he was laying
 21 there?
 22 A Only to pull down her shirt.
 23 Q Okay. Did you see him rub her head?
 24 A No.
 25 Q And he's pulling her shirt down, he's saying don't

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1 Q Okay. Do you recall if Officer Conn was in front of
 2 you or behind you?
 3 A He would have been to the side or to the back. Not
 4 in front.
 5 Q Okay. Now, you testified before that you used the
 6 X-26 taser.
 7 A Yes.
 8 Q As opposed positive the m-26? Those are the two
 9 options.
 10 A Um-h'm.
 11 Q Okay. And do you recall how many volts of
 12 electricity comes out of that taser?
 13 A There's 2.23 amp years, I believe it is. Voltage is
 14 just what the taser operates off of. It's not what the -- is
 15 delivered to the subject.
 16 Q Okay. Would you dispute that it's 50,000 volts if
 17 somebody else had testified to that?
 18 A Excuse me?
 19 Q 50,000 volts. Would you dispute that that's the
 20 voltage? Even whether it's delivered or not, that's the
 21 voltage.
 22 A That is the voltage.
 23 Q Okay. And so you fired two probes, and then they
 24 remain intact for the second firing.
 25 A Yes.

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1 look at her, don't look at her.
 2 A That's right.
 3 Q It's fair to say he was acting kind of erratic from
 4 some of the things he was saying?
 5 A Yes.
 6 Q Now, can you describe for me at what point Officer
 7 Taylor first made contact with O'Keefe. Was it before, after,
 8 during the first taser cycle?
 9 A During the five second cycle.
 10 Q Okay. And during that cycle he actually had his
 11 hands on him?
 12 A Yes.
 13 Q And because of the difficulty getting his right arm
 14 and he was tazed again.
 15 A Yes.
 16 Q And I assume that that -- the need to not get too
 17 close to him is partly due to the Hepatitis C that you were all
 18 afraid of.
 19 A (Indiscernible) partial.
 20 Q It was a concern?
 21 A Yes.
 22 Q Do you recall how Officer Taylor go over to the other
 23 side of Ms. Wimarsh's body to arrest him?
 24 A Off to my right, across her feet to get to the side
 25 and back of Mr. O'Keefe.

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1 received hers.
 2 Q Okay, just so we're on the same page, are you
 3 referring to the first paragraph?
 4 A Yes, first paragraph, and then the line after that
 5 says he could have received his injuries just prior to her
 6 injury, at the same as her injury or shortly after her injury.
 7 Q Right, and we understand the possibilities, but the
 8 conclusion that you drew in your paragraph was that it is most
 9 likely that he received these injuries around the same time
 10 that Mrs. Witmarsh received her injury; would you agree?
 11 A Yes, given --
 12 Q Okay.
 13 A -- the time frame just before, just after or during.
 14 Q Okay.
 15 A Yes.
 16 Q So just so the record's clear, the conclusion you
 17 reach in your first paragraph is that it's most likely they
 18 received the injury at the same time?
 19 A No, no, no, no. Around the same time.
 20 Q Around the same time?
 21 A Yes. Yes.
 22 Q So clearly that means not before and not after?
 23 A Yes, it could be before or after, as I state at the
 24 end of the first paragraph.
 25 Q Okay, but when you first talk about it, you actually

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1 what it says right there; is that correct?
 2 A Correct.
 3 Q It doesn't say before, right?
 4 A The next -- the next sentence does.
 5 Q Okay, the next sentence says he could have received
 6 his injuries just prior, at the same time or shortly after.
 7 A Correct.
 8 Q But the sentence before then you conclude that it is
 9 most likely that he received them around the same time; would
 10 you agree?
 11 A Again, around the same time being just before, just
 12 after or during.
 13 Q Okay. So are you saying that that's what you meant?
 14 Is that basically what you're saying?
 15 A I think that's what I stated in the report.
 16 Q Okay. Now, there's another part in your report where
 17 you talk about defensive wounds, and you say that their
 18 commonly found on the palms of the hand, correct?
 19 A Correct.
 20 Q Okay. Have you ever actually been a CSA in the field
 21 collecting evidence yourself?
 22 A Yes.
 23 Q How long ago?
 24 A Well, like I said, we continue to route the crime
 25 scenes now, but when I was with Louisiana State Police Crime

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1 delineate those three choices.
 2 A Correct.
 3 Q Let me finish, right?
 4 A Yes.
 5 Q Before, around the -- at the same time --
 6 MS. PALM: Objection, your Honor.
 7 BY MR. SMITH::
 8 Q -- or after.
 9 MS. PALM: Argumentative. He's answered the
 10 question.
 11 THE COURT: Well, he's going for clarification.
 12 Overruled. I don't think it's argumentative at this time.
 13 THE WITNESS: Could you repeat that?
 14 BY MR. SMITH::
 15 Q Okay. So when you first talk about it, you outline
 16 three choices; before --
 17 A Correct.
 18 Q -- same time --
 19 A Correct.
 20 Q -- or after.
 21 A Correct.
 22 Q Correct? So that's three choices?
 23 A Yes.
 24 Q And then in the first paragraph you determine it is
 25 most likely that he received them around the same time. That's

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1 Lab, as I said earlier, I was part of the crime scene
 2 investigation team, and we would get called out anywhere in the
 3 state, any hour, to go work a crime scene. And we would
 4 collect the evidence, gather it, document it, and bring it back
 5 and sometimes interpret what we found.
 6 Q How often would you say that forensic chemists, who
 7 are charged with collecting DNA evidence at your present
 8 occupation, actually go out and collect evidence?
 9 A We probably get called out once -- about once every
 10 other month or so, and it's not always me that will go out. It
 11 usually depends on who's available or, you know --
 12 (Recording was corrupted from 3:44:13 p.m. to 3:44:55
 13 p.m.)
 14 A -- and so we can kind of put certain things together
 15 and perhaps sequence certain events.
 16 Q Now, showing you what's been admitted as Defendant's
 17 Exhibit quadruple H. Do you recall seeing this photograph?
 18 A Yes.
 19 Q And do you recall making some conclusions based upon
 20 the type of blood that was apparent on this side of the knife
 21 by what was apparent on the other side of the knife?
 22 A Yes.
 23 Q Okay. And this being the other side of the knife,
 24 correct?
 25 A Yes.

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1 Q And you'd agree that there's still some blood, in
2 fact, on this side of the knife, correct?
3 A Oh, absolutely, yes.
4 Q And it looks like it's apparently been smeared,
5 correct?
6 A Yes.
7 Q Okay. And then you'd agree that this appears to be
8 the photograph of the knife in its initial position upon police
9 becoming involved with it?
10 A Yes.
11 Q Okay. With the blanket laying on top of it?
12 A The pillowcase on top of it.
13 Q Excuse me --
14 A Yes.
15 Q -- the pillowcase laying on top of it?
16 A Yes.
17 Q And the other edge apparently laying against in
18 sheet.
19 A Which edge are you talking about?
20 Q The edge that's opposite the side that's facing up.
21 A Yes.
22 Q Okay. Would you agree that that could certainly
23 explain how the blood appears on either side of the knife?
24 A I'm -- I don't understand what you're asking.
25 Q Okay. Let me get the picture. My question is would

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1 Your reconstruction merely consisted of the photographs; is
2 that correct?
3 A Photographs, as well as the documentation, autopsy
4 report, and a DVD that was provide.
5 Q Okay. And speaking of the autopsy report, you also
6 tried to demonstrate what you interpreted the wound path was.
7 Do you recall that?
8 A Yes.
9 Q Okay. Did you happen to like maybe get a mannequin
10 or something when you were reconstructing the scene and try and
11 do some experiments to see if they corroborated what your
12 opinion was?
13 A No, I didn't use a mannequin, but, you know, I used
14 my imagination as to how, you know -- I mean, I had a knife in
15 hand to demonstrate how the knife would be in the person's hand
16 that received the cuts in that position, and, you know, just
17 used my imagination as to how someone was standing.
18 Q And it is entirely possible that -- actually, strike
19 that.
20 MR. SMITH: Judge, I'll pass the witness.
21 THE COURT: Redirect.
22 MS. PALM: Thank you.
23 REDIRECT EXAMINATION
24 BY MS. PALM:--
25 Q Mr. Schiro, in addition to your education, and I

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1 you agree that one side of the blade facing down apparently
2 resting against the sheet that's underneath it --
3 A Okay.
4 Q -- could that explain why the blood on one -- on that
5 side of the knife might look different than the other side?
6 A I think it's possible.
7 Q Okay. And that based on that, your conclusions that
8 you draw based on the DNA that was actually obtained from the
9 side that was tested might be speculation?
10 A Well, there's no doubt that Mr. O'Keeffe's blood was
11 found on the other side of the knife, because that's shown in
12 the DNA report.
13 Q Agreed.
14 A It appears that on the other side there are no
15 distinct spots, and I believe they tested the tip end of the
16 knife, and only Ms. Wilmarsh's blood was found. That's what I
17 recall from the DNA reports.
18 Q Right. But you -- didn't you testify on direct that
19 the lack of blood spots on one side of the knife you relied on
20 that in determining the sequence of events?
21 A Yes.
22 Q Okay. Did you go out to the crime scene in this
23 case?
24 A No.
25 Q Okay. And you talk about crime scene reconstruction.

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ROUGH DRAFT TRANSCRIPT

1 believe you that have a master of science in industrial
2 chemistry and a bachelor's of science in microbiology; is that
3 correct?
4 A Yes. My master's also is a forensic science degree
5 as well.
6 Q Okay. In addition to that formal education, your
7 continuing education classes, does your experience in the field
8 also help you form opinions as to the mechanism of injury?
9 A Absolutely, yes.
10 Q Okay. I just would like to talk about that
11 experience a little bit again. How long did you work for
12 Jefferson Parish Sheriff's Office Crime Lab?
13 A I was there for about three and a half years.
14 Q And what did you do for them?
15 A For them again, it was general criminalistics,
16 marijuana analysis, arson analysis, gunshot residue detection,
17 and then I moved into the serology area. In the interim I was
18 also assisting working crime scenes at Jefferson Parish.
19 Q And in the -- did you analyze biochemical -- using
20 biochemical and chemical techniques?
21 A Yes.
22 Q Okay. And then how long did you work for the
23 Louisiana State Police Crime Lab?
24 A I was there for about 14 years.
25 Q And what did you do for them?

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1 A Again, it was primarily serology, but also doing a
2 lot of crime scene investigation, crime scene reconstruction,
3 bloodstain pattern analysis, latent fingerprint development. A
4 lot of what we did when he would go to crime scenes and bring
5 back the evidence is we would do the follow up on the evidence
6 as well.
7 Q And in that job did you interpret blood spatter?
8 A Yes.
9 Q Did you train other personnel?
10 A Yes.
11 Q You were a supervisor?
12 A Not at the Louisiana State Police Crime Lab, I
13 wasn't.
14 Q Okay. So after 14 years there, you went to the --
15 your current job which is --
16 A Acadiana.
17 Q Acadiana.
18 A Acadiana crime lab, yes.
19 Q Criminalistics, right? Okay.
20 A Yes.
21 Q And in your current job you are a supervisor?
22 A Yes.
23 Q And you do train other people?
24 A Yes.
25 Q And you're also still doing analysis of crime scenes?

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1 Q After they stabbed her, correct?
2 A That's a possibility, yes.
3 Q Okay. And your ultimate conclusions in this case are
4 -- they're basically just your opinion, correct?
5 A My opinion based on having reviewed the autopsy
6 information, crime scene information, photographs, et cetera.
7 Q And it's an opinion that you came to at the request
8 of the defense; is that correct?
9 A They asked me to examine the items and evaluate them.
10 Q And are you being paid for that?
11 A Yes.
12 Q Okay.
13 MR. SMITH: No further questions.
14 MS. PALM: No more questions, Judge.
15 THE COURT: We did receive a question from one of the
16 jurors. Under rules of evidence we're not allowed to ask the
17 witness those particular questions. Were there any other
18 questions from the jurors? All right, thank you, sir, for your
19 testimony.
20 THE WITNESS: Thank you.
21 THE COURT: You're instructed not to discuss your
22 testimony with any other witness involved in this case until
23 this matter is finally resolved. Thank you for your time, sir.
24 THE WITNESS: Thank you.
25 THE COURT: Next witness for the defense.

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1 A Yes.
2 Q And crime scene reconstruction?
3 A Yes.
4 Q Do you have any other accomplishments that I failed
5 to ask you about?
6 A I have publications on collection preservation of
7 evidence, some on crime scene reconstruction. I've trained
8 people internationally in aspects of forensic science and
9 collection of preservation of evidence.
10 Q And with regard to Mr. Smith's final questions, the
11 knife on blood -- the knife on the blood, he asked about why on
12 one side it might be cleaner on the other and asked whether it
13 could be because it was laying on the bed. You said that's
14 possible.
15 A Yes.
16 Q But what are the other possibilities?
17 A The other possibility is as it's being withdrawn from
18 Ms. Wismarsh the blood smeared.
19 MS. PALM: No more questions. Thank you.
20 THE COURT: Recross.
21 RE-CROSS-EXAMINATION
22 BY MR. SMITH:
23 Q Another possibility is if the person who stabbed Ms.
24 Wismarsh wiped the knife off; isn't that correct?
25 A That's a possibility.

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ROUGH DRAFT TRANSCRIPT

1 MS. PALM: May I approach the bench, your Honor?
2 THE COURT: All right.
3 (Off-record bench conference).
4 THE COURT: All right, Mr. Pike, please call your
5 next witness.
6 MS. PALM: Brian O'Keefe.
7 THE MARSHAL: If you'll remain standing. Raise your
8 right hand and face the clerk, please.
9 BRIAN O'KEEFE, DEFENDANT'S WITNESS, SWORN
10 THE CLERK: Please be seated. Will you please state
11 your name and spell it for the record.
12 THE WITNESS: Brian O'Keefe, B-r-i-a-n, O, apostrophe
13 capital K-e-e-f-e.
14 THE CLERK: Thank you.
15 DIRECT EXAMINATION
16 BY MS. PALM:
17 Q Good afternoon, Brian.
18 A Good afternoon, Ms. Palm.
19 Q Can you tell the jury how old you are today?
20 A Yes, I'm 46.
21 Q And we heard a little testimony earlier in the day
22 that you started drinking at age 17, do you recall that?
23 A Yes.
24 MR. SMITH: What was the question?
25 THE COURT: There was testimony that was drinking

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ROUGH DRAFT TRANSCRIPT

1 since age 17.
 2 MR. SMITH: Oh, okay.
 3 MS. GRAHAM: I can't hear.
 4 MS. PALM: Okay.
 5 BY MS. PALM:
 6 Q You recall that testimony?
 7 A Yes.
 8 Q And at what age did you go into the military?
 9 A 17.
 10 Q And what branch of the military was that?
 11 A 82nd Airborne.
 12 Q And when you went into the military, did you receive
 13 any kind of training from them?
 14 A Yes.
 15 Q Did they train you in the area of self-defense?
 16 A Yes.
 17 Q Did they train you how to treat wounds in a battle
 18 field?
 19 A Yes.
 20 Q And did you actually serve in combat?
 21 A Yes.
 22 Q Where was that?
 23 A In Grenada.
 24 Q In Grenada?
 25 A Yes.

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ROUGH DRAFT TRANSCRIPT

1 military?
 2 A I started drinking more frequently.
 3 Q Did you eventually leave the armed forces service?
 4 A I'm sorry, I --
 5 Q Did you leave the --
 6 THE MARSHAL: You're going to have to speak up
 7 because we can't even hear --
 8 MS. PALM: You can't hear me?
 9 MS. GRAHAM: I can't hear Counsel.
 10 THE MARSHAL: -- him (indiscernible) hear you.
 11 MS. GRAHAM: I can't hear Counsel.
 12 BY MS. PALM:
 13 Q When did you end up leaving the arms forces service?
 14 A 1987.
 15 Q Okay. And how did you end up leaving?
 16 A I left active duty honorably, but I went into the
 17 reserves also.
 18 Q At some point did you and Pamela Sue (phonetic) get
 19 divorced?
 20 A Yes, we did.
 21 Q What year was that?
 22 A 1993.
 23 Q And was that in Ohio?
 24 A Yes. Fairfield County (indiscernible) my home town.
 25 Q And at the time what was your drinking pattern like?

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1 Q And were you decorated for that service?
 2 A Yes.
 3 Q And what was that decoration?
 4 A Bronze star. It was the highest award. I received
 5 also an arms forces expeditionary metal, multiple awards. They
 6 -- (indiscernible).
 7 Q During your service in the military, did you marry
 8 anybody?
 9 A Yes, I did.
 10 Q And what was her name?
 11 A Pamela.
 12 Q And how old were you when you got married?
 13 A I just turned 20.
 14 Q Okay. And did you and Pamela have children together?
 15 A Yes, ma'am, three. My first, Desiree (phonetic),
 16 Desiree Nicole (phonetic). She was born in 1983, a week before
 17 I was deployed to Grenada. Kyle Christopher (phonetic), 1987.
 18 And Trevon Michael (phonetic), 1989.
 19 Q Okay. When you were in the military, we heard
 20 testimony today that a medical report says that you some time
 21 reported having gone wild in the military or gone crazy or
 22 something with your drinking. Is that a correct
 23 interpretation?
 24 A Yes.
 25 Q Did you start drinking a lot when you were the

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ROUGH DRAFT TRANSCRIPT

1 A Excessive.
 2 Q After the divorce, you end up in Las Vegas. Can you
 3 tell us how you got here.
 4 A Yes, I came out to visit my father. I went to junior
 5 high school out here, and after my divorce I came out and
 6 visited family and met Elizabeth.
 7 Q And who is Elizabeth?
 8 A She was my wife, my second wife.
 9 Q Okay. When did you marry Elizabeth?
 10 A In 1997.
 11 Q And did you and Elizabeth have children?
 12 A Yes, we did. We had two children. Valheta Jamel
 13 (phonetic) in 1999, and Merlana Marie (phonetic) in 2000.
 14 Q Both daughters?
 15 A Yes, ma'am.
 16 Q At some point was there trouble in that marriage?
 17 A Yes.
 18 Q And what was the problem?
 19 A Alcohol.
 20 Q Your alcohol or her alcohol?
 21 A My alcohol.
 22 Q Okay. And how did you address it?
 23 A I sought some treatment, but it was kind of too late
 24 in the marriage.
 25 Q Did your problem continue?

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1 A Yes.
 2 Q And did you eventually get divorced?
 3 A Yes, I did.
 4 Q When did you get divorced?
 5 A 2001 it was finalized I do believe.
 6 Q Okay. Had you been living separately before that?
 7 A Yes.
 8 Q Was it an amicable divorce between the two of you?
 9 A Yes, we did -- we did our own divorce. Took the
 10 class together and just parted ways.
 11 Q Did you both agree that divorce was the best thing?
 12 A Yes, we did.
 13 Q And why did you agree that it was the best thing?
 14 A My alcohol. It was best for her to have the kids.
 15 I'm just being honest. It just --
 16 Q Are you saying you did not want your children exposed
 17 to your alcohol problem?
 18 A Yes.
 19 Q And at the time you couldn't keep it under control?
 20 A That's correct.
 21 Q And after the divorce, you ended up meeting Victoria
 22 Witmarsh.
 23 A Yes, that's correct.
 24 Q Where did you meet her?
 25 A I met Victoria after my divorce. I voluntarily went

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1 THE COURT: And understand, sir, the microphones that
 2 we have throughout the courtroom, they do not amplify. They
 3 only record. So a lot of people think they amplify when they
 4 don't.
 5 THE WITNESS: Okay, your Honor.
 6 THE COURT: Okay?
 7 THE WITNESS: Yes, sir.
 8 BY MS. PALM:
 9 Q And I will try to speak up also. Okay, what were you
 10 in Monte Vista Hospital for?
 11 A For alcohol recovery.
 12 Q And was the Victoria there at the same time as you?
 13 A Yes, she was. She was in a different ward.
 14 THE COURT: Okay, sir, the question was was she there
 15 at the same time. Yes or no.
 16 BY MS. PALM:
 17 Q Just, again, try and listen real careful to my
 18 questions, okay. And do you remember when that was,
 19 specifically?
 20 A October 2001.
 21 Q Okay. And so the two of you meet there. Did you
 22 establish a relationship?
 23 A Yes, we did.
 24 Q While you were both in the hospital?
 25 A Yes.

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ROUGH DRAFT TRANSCRIPT

1 to Monte Vista (phonetic). It's --
 2 Q Can you stop just a second.
 3 MR. SMITH: Objection, Judge.
 4 BY MS. PALM:
 5 Q Let me ask you a question at a time.
 6 THE COURT: Sustained. Non-responsive?
 7 MR. SMITH: Yes.
 8 THE COURT: Sustained.
 9 BY MS. PALM:
 10 Q Just answer the -- if you can just -- I know it's
 11 difficult, but if you could just listen real carefully to my
 12 question and just respond to that question, and I'll ask you
 13 more questions after that, okay. All right. You said you met
 14 Victoria at Monte Vista. Is that Monte Vista Hospital?
 15 A It's --
 16 Q Just a yes or no. Is that Monte Vista --
 17 A Yes.
 18 Q -- Hospital? Okay. And what is Monte Vista
 19 Hospital?
 20 MR. SMITH: Objection, Judge. Can we approach?
 21 THE COURT: All right.
 22 (Off-record bench conference).
 23 THE COURT: Sir, if you can just speak up. Some of
 24 the jurors are having difficulty hearing you.
 25 THE WITNESS: Sorry.

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1 Q And how long were you in the hospital together?
 2 A About ten days.
 3 Q When you got out, where did you go to reside?
 4 A To my home.
 5 Q Where did Victoria go?
 6 A To my home.
 7 Q And at the time had you begun a romantic
 8 relationship?
 9 A No.
 10 Q Why did she go to your home?
 11 A I had a house.
 12 MR. SMITH: Objection. Irrelevance, Judge.
 13 THE COURT: It's foundation. I'm going to allow it.
 14 Overruled.
 15 THE WITNESS: I had a house. I lived alone, and she
 16 needed a place, I needed a roommate.
 17 BY MS. PALM:
 18 Q And during this time that you're living together did
 19 you begin confiding in each other regarding your past
 20 experiences?
 21 A Absolutely.
 22 Q And without telling me what the problems were, did
 23 Victoria tell you about any problems she had?
 24 A Yes, she did.
 25 Q Do you know whether she was separate from her husband?

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1 at the time she went into Monte Vista?
2 A Yes.
3 Q She was?
4 A Not legally.
5 Q Okay. While you were living together, what was
6 Victoria like from day to day when you first started living
7 together?
8 MR. SMITH: Objection, Judge. Irrelevant.
9 THE COURT: Are you talking from --
10 MS. PALM: I'm talking about --
11 THE COURT: -- early 2000?
12 MS. PALM: -- 2001.
13 MR. SMITH: I mean, that's a really vague question,
14 Judge.
15 THE COURT: And also --
16 MS. PALM: I'll wait until we get --
17 THE COURT: All right.
18 MS. PALM: -- to later in time.
19 THE COURT: Sustained.
20 BY MS. PALM::
21 Q Did anything happen in May of 2002?
22 A Yes, it did. I had to take her to the hospital.
23 Q Okay. And without telling me what for, were you
24 aware of reason for taking her to the hospital?
25 A The incident happened in my house.

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ROUGH DRAFT TRANSCRIPT

1 Q While you were incarcerated in prison?
2 A Not in prison, no. In jail.
3 Q I'm asking just about the prison time, so try and
4 listen to the question, okay?
5 A Yes, ma'am.
6 Q All right. When were you released to parole?
7 A Around the end of -- April, 2007.
8 Q So you spent about a year -- a little over a year in
9 prison?
10 A Yes.
11 Q And how did you feel about Victoria when you got out
12 of prison?
13 A I felt that chapter was closed. I was angry some
14 sometimes, I'm -- but as far as she was out of my mind. I
15 mean, out of sight, out of mind. It was just best to move on.
16 Q Okay, so when you got out, you had planned to go on
17 with your life --
18 A Yes, absolutely.
19 Q -- without Victoria in it?
20 A Yes, I did.
21 Q Then you got out. What did you do about finding
22 work?
23 A I applied all over town. I was fortunate enough to
24 be able to apply at the Northern Pipeline Construction,
25 simultaneously applying at the union hall.

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ROUGH DRAFT TRANSCRIPT

1 Q Okay.
2 A Yes.
3 Q Now, you had some felony convictions that the DA
4 addressed one of them, and that was a conviction for felony
5 domestic battery in March of 2006. Do you recall that?
6 A Yes, I do.
7 Q Okay. And do you have another earlier conviction in
8 the Clark County courts for burglary in 2005?
9 A Yes, I do.
10 Q And did you get a probationary sentence in that case?
11 A Yes, I did.
12 Q And in April of 2006, were you convicted in Ohio of a
13 fifth degree felony for failure to pay child support?
14 A Yes, I did.
15 Q And did that crime carry a year in jail in Ohio?
16 A Yes, it did.
17 Q The conviction that we heard about yesterday
18 involving Victoria, you actually went to prison for a time on
19 that one, did you not?
20 A Yes, I did.
21 Q Okay. And do you remember when you went into prison?
22 A April, 2006.
23 Q And did you have any contact with Victoria while you
24 were incarcerated?
25 A Yes.

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1 Q And when you say applied at the union hall, are you
2 talk being about the union apprenticeship?
3 A Yes, ma'am, I am.
4 Q Okay. And was that a program -- do they have a
5 rehabilitation program?
6 A Yes, they do. They offer a fantastic program to
7 rehabilitate, train yourself.
8 Q And so you participate in that. And through them,
9 you ended up working for whom?
10 A I was dispatched immediately, I was fortunate and
11 started working for MJ Dean Construction?
12 Q And is MJ Dean the same company that Tracy Berger
13 works for that we heard from on Tuesday?
14 A Yes, it is.
15 Q And did you start a new relationship after you got
16 out?
17 A With?
18 Q Did you start a love relationship?
19 A Yes, I did.
20 Q Who was that with?
21 A With Cheryl Morris.
22 Q And when did you two start dating?
23 A Actual dating might have been around March, 2008.
24 Q Did you tell her about Victoria when you met her?
25 A In some aspects, yes, I did.

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1 Q Okay. You heard her testimony before this jury. Did
2 you ever tell her that you wanted to kill Victoria?
3 A No.
4 Q Did you tell her you were angry with Victoria?
5 A Yes, I did.
6 Q Did you tell her you wanted to hurt Victoria?
7 A No.
8 Q We also heard her say you demonstrated to her how you
9 could kill somebody with a knife.
10 A Yes.
11 Q Did you ever do that?
12 A Not demonstrate, no.
13 Q What interfered with your relationship with Cheryl
14 Morris?
15 A Victoria.
16 Q Did you cheat on Ms. Morris with Victoria?
17 A Yes.
18 Q And you weren't honest about that at first, were you?
19 A No.
20 Q And did that hurt Cheryl Morris?
21 MR. SMITH: Objection, Judge. Calls for speculation.
22 THE COURT: Sustained.
23 BY MS. PALM:
24 Q Did Ms. Morris express to you that that hurt her?
25 MR. SMITH: Objection, Judge. Calls for hearsay.

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1 hearsay. Jury's instructed to disregard the last answer from
2 the witness.
3 MS. PALM: Well, I'm offering it for his state of
4 mind why he would meet with her, not for the truth of the
5 matter.
6 MR. SMITH: Then objection, Judge. What's the
7 relevance of that at this point?
8 THE COURT: I'm going to sustain the objection.
9 BY MS. PALM:
10 Q Did you meet with Victoria?
11 THE COURT: Ms. Palm, I'm having difficulty hear you.
12 BY MS. PALM:
13 Q Did you meet with Victoria?
14 THE COURT: So I don't know if the jury is as well.
15 THE WITNESS: Yes, I did.
16 BY MS. PALM:
17 Q Okay. And did you meet about her on Father's Day of
18 2008?
19 A It was like a day later I --
20 Q Just not Father's Day, a day later is fine.
21 A Yeah. It was like a day or two later.
22 Q Okay. So when you met, what happened?
23 A We went up into a friend's condo and --
24 Q Did you talk?
25 A Yeah. She confided in me and --

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Sustained.
2 BY MS. PALM:
3 Q Tell me about how you and Victoria began talking
4 again. When did that happen?
5 A I received a phone call on Father's Day 2008.
6 Q Okay. Tell me about that phone call.
7 A She was very distraught and said that she had to see
8 --
9 MR. SMITH: Judge, I'm going to object and ask that
10 another question be posed. I'm going to object to the
11 narrative form of the question.
12 MS. PALM: Okay.
13 MR. SMITH: Under these circumstances.
14 THE COURT: All right, sustained.
15 BY MS. PALM:
16 Q So Victoria called you and said that she had to see
17 you?
18 A Yes, she said she had something very important to
19 tell me, and she said she was going to kill herself.
20 MR. SMITH: Objection. Objection, Judge.
21 MS. PALM: Just wait and answer my --
22 MR. SMITH: Move to strike.
23 MS. PALM: We heard the same testimony already, I
24 think.
25 THE COURT: Well, he's objecting now that it is

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ROUGH DRAFT TRANSCRIPT

1 MR. SMITH: Objection, Judge. Non-responsive. It's
2 hearsay.
3 THE COURT: Sustained.
4 BY MS. PALM:
5 Q After talking with Victoria, did you spend a little
6 more time with her?
7 A Yes.
8 Q Okay. Did Cheryl express that she was upset by that?
9 MR. SMITH: Objection, Judge. Calls for hearsay.
10 THE COURT: Sustained.
11 BY MS. PALM:
12 Q Did you observe that she Cheryl was upset with that
13 when you returned back home?
14 A Yes.
15 Q Because you and Cheryl continued a relationship after
16 that; is that true?
17 A Yes.
18 Q Just -- you can say yes or no.
19 A Yes.
20 Q Don't try and -- okay. Did you and Cheryl purchase a
21 car together?
22 A Yes.
23 Q And it was on her credit?
24 A Yes.
25 Q That's because your credit was not good at the time.

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1 A Yes.
2 THE COURT: Sir --
3 BY MS. PALM::
4 Q Okay, speak up a little bit louder --
5 A Yes.
6 Q -- so the jury can -- I'm trying, too. And you and
7 Cheryl eventually moved into the El Parque apartment together?
8 A Yes.
9 Q How did that come about?
10 A We lived with a mutual friend, and I put money down,
11 I looked around, and moved into a place, and I mean, it's as
12 simple as that. I mean --
13 Q Okay. At the time that you moved in, when was that
14 that you moved into the El Parque apartment?
15 A I put down a payment in August, and we moved in
16 September 1st of 2008.
17 Q And were you and Cheryl still dating at that time?
18 A Yes, kind of. It's --
19 Q Did Cheryl know you were still seeing Victoria at
20 that time?
21 A Yes.
22 Q And by the time that you had moved into that
23 apartment, were you released from parole on your prison case?
24 A Yes, I received an honorable discharge in June of
25 2008, I do believe.

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1 said she wanted to move in there.
2 A Yes.
3 MR. SMITH: And again, Judge, that misstates the
4 testimony.
5 THE COURT: Counsel approach, please.
6 (Off-record bench conference).
7 BY MS. PALM::
8 Q Brian, how did it happen that Victoria ended up
9 moving in there? Tell me about the phone call, who called
10 whom.
11 A I called Cheryl, and I said I want to come home to my
12 place after five days. I mean, she was out. She into I was
13 with her --
14 MR. SMITH: Objection, Judge. Non-responsive.
15 THE COURT: Sustained.
16 BY MS. PALM::
17 Q Okay, try and listen to my question, okay. So you
18 called Cheryl because Cheryl had been at the apartment?
19 A She wasn't at the apartment.
20 Q Okay. But you called her and said I want to go to
21 the apartment?
22 A I was checking to see if she was there, what her
23 intentions were.
24 Q Okay. And did she express that she was going to
25 leave?

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1 Q Okay. And were you off probation in your other case?
2 A I received another honorable discharge in -- I think
3 it was September 11th.
4 Q And we heard during Ms. Morris' testimony that about
5 four or five days after you two moved into El Parque that
6 Victoria called her because she wanted to come live there with
7 you. Do you remember that testimony?
8 A Yes.
9 Q Is that how it happened?
10 MR. SMITH: And Judge, I'm going to object.
11 Actually, that wasn't the testimony. She said that the
12 defendant called Cheryl Morris and said Victoria's coming to
13 live with us.
14 MS. PALM: That's --
15 MR. SMITH: Not that --
16 MS. PALM: That's correct, the defendant called and
17 then she -- he put --
18 THE COURT: I'm going to sustain the objection.
19 MS. PALM: Okay.
20 THE COURT: Just restate the question --
21 MS. PALM: Okay.
22 THE COURT: -- so we're clear.
23 BY MS. PALM::
24 Q You hear the testimony that you called and then you
25 handed Victoria the phone, and Victoria spoke with Cheryl and

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1 A Yes.
2 MR. SMITH: Objection, Judge. Calls for hearsay.
3 THE COURT: I'm going to allow that because I -- she
4 did testify to that.
5 BY MS. PALM::
6 Q Yes, she did?
7 A Yes, she did.
8 Q Okay. And then you end up bringing Victoria home
9 with you?
10 A Yes.
11 Q And were you aware at the time that you and Victoria
12 began residing together that she had Hepatitis C?
13 A That's what she called me for that she wanted to tell
14 me when she first contacted me.
15 Q Okay. So you were aware --
16 A Yes.
17 Q -- she had it. Were you aware that that can be
18 sexually transmitted?
19 MR. SMITH: Objection, Judge, to the relevance.
20 THE COURT: Sustained.
21 BY MS. PALM::
22 Q Did you -- did you have a sexual relationship with
23 Victoria?
24 A Yes.
25 Q Were you aware that you could have gotten Hepatitis C

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1 from her?
 2 A Yes.
 3 Q So you understood that you were risking your health
 4 by going into this relationship?
 5 A Yes.
 6 Q At the time that Victoria moved in, what was going on
 7 in your working? Were you working for JD still or MJ Dean
 8 still?
 9 A I was -- I was working for MJ Dean working on the
 10 Eastside Cannery, what we completed. We built it. It was
 11 completed. I was temporarily laid off, put on the out-of-work
 12 list, and I was reassigned to the city center with a new
 13 company Perini (phonetic).
 14 Q Okay.
 15 A And I was working at Perini city center, and that's
 16 where I was when this -- in September.
 17 Q So you were still working?
 18 A Yes.
 19 Q Okay. When did you get involved in the MINDS
 20 treatment. Do you remember what time it was?
 21 A Late, mid September, late September. I want to --
 22 September, maybe, 19th. September 20th.
 23 Q Okay. And why did you end up doing that?
 24 A I needed some help.
 25 Q Problem getting bad or had it remained bad?

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1 Q Okay, let me stop you there. So you talked to your
 2 boss, and you told him you were having problems, and he helped
 3 you get into the detox?
 4 A No, she did. She told me to get ahold of Lou and --
 5 Q Okay.
 6 A -- they laid me off so I could qualify for -- because
 7 of the work I did for them and --
 8 Q Okay. Try and not do a run on response to me, all
 9 right. I just want you to focus on the question and just try
 10 and limit your answers to answering the question, okay.
 11 A Yes.
 12 Q Take a second to think. And Victoria was your
 13 sponsor when you were doing the after-care after detox?
 14 A Yes, she was.
 15 Q Was she still drinking at that time?
 16 MR. SMITH: Objection, Judge. What's the relevance?
 17 THE COURT: Sustained.
 18 BY MS. PALM:
 19 Q Did you have a history of drinking with Victoria?
 20 A Yes.
 21 Q And she was going to your group meetings?
 22 A Yes, she was.
 23 Q But the only focus of the group meeting was to
 24 address your problem?
 25 A Yes.

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1 A Yes. I was -- one woman this, one woman that to
 2 drinking to working six days a week. The woman I loved and
 3 want to be with --
 4 MR. SMITH: Objection, Judge.
 5 MS. PALM: Just --
 6 THE COURT: Sustained.
 7 MR. SMITH: Move to strike all after yes as
 8 non-responsive.
 9 MS. PALM: Just listen to the question, Brian.
 10 THE COURT: The jury's instructed to disregard all
 11 answers after his answer of yes.
 12 BY MS. PALM:
 13 Q So you had some stress going on in your life at the
 14 time? Yes?
 15 A Yeah.
 16 Q And you decided to seek treatment on your own?
 17 A Yes.
 18 Q Okay. So you go to MINDS, and then they put you in a
 19 detox?
 20 A Yes, I -- I admit I missed three days in a row, and I
 21 was drinking really heavily and had a lot of things going on,
 22 but, you know, I called late again, and then I had talked to my
 23 boss, and we had a great relationship, and I reported the truth
 24 that I had a lot going on and all the hours, and I was working
 25 six and seven days a week for two, three months, and --

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1 Q So during the relationship, you're doing the
 2 after-care counseling. We heard testimony that you also took
 3 her to meet your friends, some union people?
 4 A Yes, that's correct.
 5 Q Okay. Who did she meet?
 6 A Oh, I've introduced her to about five big bosses and
 7 friends at the union hall.
 8 Q How did you introduce her?
 9 A She had moved in, and I was done counseling, and I
 10 was out of work. I was volunteering because I was trying to
 11 keep myself busy.
 12 Q Okay, Brian, we're going to draw an objection. How
 13 did you introduce her? Do you -- how did you refer to her at
 14 the time?
 15 A The union allowed me to take her to -- for some
 16 volunteer work, and I was able to introduce her.
 17 Q I mean, by a term. Did you say this is my
 18 girlfriend, this is my wife? How did you introduce her to your
 19 friends?
 20 A I'm not quite sure, my girl. My -- they assumed she
 21 was my -- the way -- my significant other.
 22 Q During this time period did you bring Victoria over
 23 to see your daughters that live here in Las Vegas?
 24 A Yes. Yes, I did.
 25 Q Okay. And how old are those daughters?

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1 A One just turned ten and the other one's -- will be
2 turning nine.
3 Q Without telling me what they were -- did Victoria
4 confide in you about any problems she had while you were in
5 prison?
6 A When we got back together, yes she --
7 Q Okay.
8 A -- told me she had multiple --
9 Q You don't need to say what it is Just yes. Okay.
10 So by November of 2008 what did you know about -- your Honor,
11 since the Court is limiting me, he doesn't know I've been
12 limited, so may I approach him for a minute?
13 THE COURT: Why don't we have counsel approach here.
14 MS. PALM: Okay.
15 THE COURT: Make sure we're on the same page.
16 (Off-record bench conference).
17 THE COURT: Ladies and gentlemen, we're just -- I'm
18 just going to meet with counsel in the hallway in the back room
19 in my chambers here, so you can stay there. If you want to
20 stand up and stretch or whatever, I'll just read you the
21 admonishment.
22 During this recess it is your duty not to converse
23 among yourselves or with anyone else on any subject connected
24 with the trial or to read, watch or listen to any report over
25 commentary on the trial by any person connected with the trial

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1 newspaper, television, radio or the Internet.
2 You're not to form and express an opinion on any
3 subject connected with this case until this matter is finally
4 resolved. I think all of you can memorize that or can state
5 that back to be tested later. All right. Thank you, we'll see
6 you back tomorrow at 9:00.
7 You know what, actually if we can have you come back
8 at 9:30. Just give us a little extra time, 9:30. You can go
9 back down there, sir, with your attorney. We're outside the
10 presence of the jury panel. We're off the record.
11 (Court recessed at 4:52:28 p.m. to 4:53:17 p.m.)
12 (Outside the presence of the jury)
13 THE COURT: Okay, at 8:00 o'clock tomorrow morning
14 I'm -- both couple need to provide the Court with any case law
15 regarding the self-defense issue that we've discussed. Must be
16 received in my chambers by 8:00 a.m. tomorrow or I won't be
17 able to consider it.
18 MS. GRAHAM: Judge, can we settle jury instructions
19 tonight so we can do our closing?
20 MR. SMITH: I think that's why we're coming back at
21 8:00.
22 THE COURT: Right. That's why I'm giving an extra
23 hour and a half. It's not going to take an hour and a half to
24 resolve this self-defense issue. Okay.
25 THE CLERK: All right, 8:00 o'clock.

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1 or by any medium of information, including without limitation,
2 newspapers, television, radio or the Internet.

3 And you're not to form or express an opinion on any
4 subject connected with this case until this matter is finally
5 submitted to you. Again, if you need to stand up and stretch
6 or the marshal will get you some water if you need that.

7 (Court recessed at 4:53:44 p.m. until 4:50:36 p.m.)

8 (In the presence of the jury)

9 THE COURT: We're back in the presence of the entire
10 jury panel. Ladies and gentlemen, we have some legal issues
11 that need to be resolved. I don't want to have you sit there,
12 and I want to move the case along as expeditiously as possible.
13 It won't be fair to you just to have you sit there. We've got
14 to resolve some certain things, so -- before we go any further.
15 So we're going to adjourn for the day. I think we can come
16 back at 9:00 o'clock tomorrow morning.

17 I do not have a calendar tomorrow, so we will start
18 -- I'm going to probably meet with counsel at 8:00 in the
19 morning, so we'll be done with our issues. So if we can have
20 you here at 9:00 o'clock.

21 During this recess it is your duty not to converse
22 among yourselves or with anyone else on any subject connected
23 with the trial or to read, watch or listen to any report over
24 commentary on the trial by any person connected with the trial
25 or by any medium of information, including without limitation,

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1 THE COURT: 8:00 o'clock.
2 THE CLERK: Off the record.
3 (Court recessed at 4:53 p.m., until,
4 Friday, March 20, 2009.)
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* * *

EXHIBITS

DESCRIPTION:	ADMITTED
Exhibit aaaa-jjjj	9
Exhibit bb, ee, cc, dd	7
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ACKNOWLEDGEMENT

ATTEST: Pursuant to Rule 3C(d) 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.

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Littleton, CO 80120
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Julie Lord

JULIE LORD, TRANSCRIBER

7-7-09

DATE

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

ORIGINAL

THE STATE OF NEVADA,
Plaintiff,
vs.

BRIAN KERRY O'KEEFE,
Defendant.

CASE NO. C-250630

DEPT. NO. 17

TRANSCRIPT OF
PROCEEDINGS

FILED

JUL 10 2009

E. J. A. P.
CLERK OF COURT

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

WEDNESDAY, MARCH 18, 2009

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 3

APPEARANCES:

FOR THE PLAINTIFF:

PHILLIP SMITH, ESQ.
STEPHANIE GRAHAM, ESQ.
Deputy District Attorneys

FOR THE DEFENDANT:

RANDALL H. PIKE, ESQ.
PATRICIA A. PALM, ESQ.
Special Public Defenders

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Littleton, CO 80120
(303) 798-0890

1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 18, 2009, 9:34 A.M.
2 (Outside presence of the jury)

3 THE COURT: On the record. All right. On the record
4 we're outside the presence of the jury. We had some motions by
5 the defense.

6 MS. PALM: Yes, your Honor. Thank you. And I have
7 given the clerk a copy of what I would like to have made three
8 separate court exhibits. Not so that they go to the jury, but
9 that they're part of the record on appeal in this case. And I
10 understand that those can be marked as court exhibits for that
11 purpose.

12 THE COURT: All right.

13 MS. PALM: Okay. Your Honor, the court exhibit
14 showing the e-mail correspondence between the defense counsel
15 for Mr. O'Keefe and the State and Detective Bunn, which
16 Detective Wildermann was copied on show that prior to the
17 preliminary hearing we -

18 THE COURT: Just so I'm clear, is that the December
19 the?

20 MS. PALM: Well, it's a series of them. There's
21 several of them there.

22 THE COURT: Okay.

23 MS. PALM: And I'll go through what they're intended
24 to show. It shows that on December 9th, 2008 we requested,
25 prior to preliminary hearing a copy of any reports by any other

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1 quote, under the officer's assessment of his condition mentally
2 fit or under the influence. The report further indicates,
3 quote, Mr. O'Keefe appeared extremely intoxicated and continued
4 to be erratic and emotional in his behavior. O'Keefe was not
5 asked questions due to his involvement in a possible homicide.

6 This is the first time we've had any documentation
7 regarding Mr. O'Keefe's extreme intoxication. There was no
8 mention at all of intoxication in the police reports prepared
9 by the detectives in this case. The detectives and the State
10 knew of our theory of defense which depended on his extreme
11 intoxication because we asked about it at preliminary hearing,
12 and we moved to preclude the State from seeking a first degree
13 murder conviction based on the failure to collect evidence and
14 preserve evidence of that intoxication.

15 It is the detective's lie that there was no report
16 that prejudiced us. When he was called yesterday on speaker
17 phone, he no longer said there was no report. He said I can't
18 get it for you. And when the Court ordered him, he got it. If
19 we had known that he wanted a court order, we would have gotten
20 one. So his lie that there was no such report caused us to be
21 prejudice relied on that.

22 Under Madison versus Warden (phonetic), which is 116
23 Nevada, 48, page 67, 993 Pacific 2nd, 25, Page 33, it's a 2000
24 case, quote, the State must disclose evidence if it provided
25 grounds for the defense to attack reliability, thoroughness and

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1 officers aside from the Burns/Wildermann officers report and
2 arrest report. We were told that they were none. After the
3 preliminary hearing at which Ballejos testified he completed a
4 use of force report, and Detective Bunn indicated that there
5 was no more discoverable evidence for us, we specifically
6 requested on February 23rd, 2009 the use of force report
7 prepared by Officer Ballejos. Mr. Smith forwarded that request
8 to homicide detectives. The response we got on February 25th,
9 2009 from Detective Bunn was not that the evidence could not be
10 obtained without a court order. Instead, it was that there is
11 no separate report. Only taped statement which you guys
12 already have as supplemented by the officer's report.

13 When it became clear from Officer Ballejos' testimony
14 yesterday that he did, indeed, complete a use of force report
15 and upon our motion for a mistrial based on discovery
16 violation, the court ordered the detectives to provide the
17 report, and he did that one minutes.

18 Now having time to review that report, which is
19 another of the court's exhibits that I submitted, I submit that
20 my client's due process rights under the Nevada Constitution
21 and the Federal Constitution have been violated because I would
22 have used the information in that report to cross-examine every
23 single one of the many State's witnesses who tried to deny or
24 minimize Mr. O'Keefe's extreme intoxication.

25 The report specifically notes that Mr. O'Keefe was,

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1 good faith ever police investigation to impeach credibility of
2 State's witnesses or to bolster the defense case against
3 prosecutorial acts. This obligation's not limited to evidence
4 that is admissible at trial. Further, the State's attorney is
5 charged with constructive knowledge and possession of evidence
6 held by other state agents, including law enforcement officers.

7 Due process under the state and federal Constitutions
8 and a failure to turn over the evidence will cause a reversal
9 to conviction where the evidence was reasonably possible to
10 lead to a different outcome. That's Roberts versus State, 110
11 Nevada, 112-1881 Pacific 2nd 1, and that's 1994 case.

12 Now, as far as the issue of the due process violation
13 related to Officer Hutcherson's testimony, I have filed for -
14 as for exhibit a copy of the note that we received in discovery
15 that was all we got regarding Officer Hutcherson's, the alleged
16 statements made by Mr. O'Keefe to him.

17 THE COURT: Let me just locate that. Here it is. I
18 do. Thank you.

19 MS. PALM: This and the same references in the arrest
20 or officer's report are the only items of discovery indicating
21 what Officer Hutcherson claimed to have heard. The District
22 Attorney's open file policy creates an obligation for them to
23 turn over all inculpatory and exculpatory evidence in their
24 possession or constructive possession. That's McKey versus
25 State (phonetic), 112 Nevada 642, 917 Pacific 2nd, 940. That's

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1 a 1996 case.

2 We relied on the District Attorney to do this, and at
3 least Mr. Smith has, with respect to additional oral statement
4 by witness Cheryl Morris. The DA mentioned that we could have
5 pretried Officer Hutcherson, but in our experience Metro
6 officers are reluctant to talk to us and will rarely do so if
7 we don't go through the DA. And yesterday Ms. Graham indicated
8 that she could not even pretrial him until Monday night because
9 he was on FMLA leave.

10 We have been very vigilant with respect to keeping
11 out prejudicial evidence with no relevance. For instance, the
12 renaming of the sexual assault kit issue we had yesterday. We
13 would have objected and moved to preclude any evidence of
14 racial slurs as they have no relevance to this case and are
15 extremely prejudicial. Their introduction to apprise Mr.
16 O'Keefe of his due process rights.

17 The introduction of this bad act evidence is not
18 something that be cured in a jury instruction or attempt to
19 deny it would likely remind the jury of the evidence. Our
20 investigator Joe Perez (phonetic) was watching the jury
21 yesterday, and he told us after court that he saw a couple of
22 jurors react to the reference to the N word. Most notably the
23 one black juror that we have who looked at Mr. O'Keefe directly
24 when that statement was made with an expression of disbelief or
25 surprise.

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1 to this court. When the offending words were spoken by Officer
2 Hutcherson, we approached the bench and as we made our
3 objections, Mr. Smith indicated that the State was not aware of
4 the N word statements. Ms. Graham stood right there beside him
5 and said nothing. It was not until after I crossed Officer
6 Hutcherson, and he indicated that he pretried with the DAs in
7 this court, and he told them of the statements that Ms. Graham
8 admitted that she had indeed learned of them the evening
9 previous. That would be Monday night. Yesterday was Tuesday.

10 Officer Hutcherson did not testify until mid, late
11 afternoon Tuesday. Ms. Graham's actions were purposeful,
12 prosecutorial misconduct. She purposely misled this court, the
13 bench, and she purposely introduced bad act testimony. She
14 knew that those statements were claimed to have been made by
15 Mr. O'Keefe, and she repeatedly asked Officer Hutcherson what
16 else did Mr. O'Keefe say.

17 She clearly intended to sandbag us with those
18 statements having never given us the opportunity to address
19 their admissibility before introducing them and undoing all our
20 efforts to eliminate unfair prejudice from this trial.

21 So on the basis of cumulative error related to the
22 discovery violations and prosecutorial misconduct violating Mr.
23 O'Keefe's due process rights to a fair trial, we move for a
24 mistrial and a motion to dismissal with prejudice. If this
25 Court is not inclined to reconsider our motion for a mistrial,

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1 Also, it is important to note that Officer Hutcherson
2 and Mr. Smith, the Deputy DA, trying this case are both
3 African-American, and I believe that such a racial slur is
4 likely to cause the jurors to more closely align themselves
5 with the State out of empathy or common experience or anger as
6 they reject Mr. O'Keefe.

7 The fact that such derogatory statements were alleged
8 to have been made to a black officer just enhances the
9 prejudice. As a person of color and a mother of children of
10 color and a grandchild of color, I can tell you that there is
11 always a fear of secret prejudice such as you don't get a raise
12 that somebody else in the same position you do has. Overt
13 prejudice is even more frightening.

14 Overt prejudice of somebody that is willing to use
15 the N word to a black officer makes me afraid of what that
16 person is capable of doing. I also note that on the jury we
17 have in addition to the one African-American juror, we have I
18 believe three Hispanic jurors who might have had the same
19 experience as in life and might feel the same way and be
20 affected, especially strongly by that evidence. I don't assume
21 that white jurors don't have the same reaction because I don't
22 know what the facts of their life are, and we weren't able to
23 voir dire any jurors on race issues.

24 I believe that Ms. Graham's actions constitute
25 prosecutorial misconduct and also violated her duty of candor

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1 I would like to note just a couple more things.

2 I don't mean to suggest by my argument that I'm
3 afraid of Mr. O'Keefe. I don't believe that he said what he
4 was accused of at all. And if I did, I would be effective
5 counsel in any case. Finally, I want to question what is going
6 on with the pretrial tactics in this case for future use and
7 post-convictions proceedings because we've had several of Ms.
8 Graham's witnesses adding in their testimony additional
9 inculpatory facts that have never before been mentioned. For
10 example, Mr. Toliver's testimony that Mr. O'Keefe had a crazy
11 angry look on his face was not mentioned in his written
12 statement or recorded statement nor did he mention it when we
13 interviewed him.

14 Officer Bailejos who had given a recorded statement
15 and testified at the preliminary hearing had never before
16 mentioned that Mr. O'Keefe was giving a false last name for Ms.
17 Witmarsh as if to give a complete and deliberately false name
18 to frustrate the ability to give aid to her.

19 I want to note this last question just for the
20 future. But as far as a remedy goes, up until this point this
21 court has not even admonished the State regarding their
22 misconduct. Ms. Graham was not even admonished regarding her
23 false representation to this court. And yet, when we came in
24 this morning, this court made a comment about accusing counsel
25 on the opposing side of being unethical. And I don't think

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1 that's fair.

2 I think it's a job requirement of a public defender
3 to be willing to accuse prosecutors of intentional misconduct
4 when we see it. If this court is not inclined to grant our
5 motion, then we are requesting these alternative reliefs: One,
6 we want to prohibit the State from seeking a first degree
7 murder conviction and limit them to the second degree.

8 We also want the court to instruct the jury prior to
9 Detective Wildermann's testimony as follows: On February 23rd,
10 2009, counsel for Mr. O'Keefe specifically requested from the
11 State the use of force report prepared by Officer Ballejos. On
12 February 25th, 2009 the State responded that there was no such
13 report. Yesterday after Officer Ballejos testified in this
14 trial, this court ordered the State to turn over the use of
15 force report. They have now done so.

16 I also want to be able to introduce Ballejos'
17 statements regarding the extreme intoxication in the use of
18 force report through Detective Wildermann and have some latitude
19 to do that. We're also asking for a jury instruction that has
20 conclusively established that Mr. O'Keefe was extremely
21 intoxicated at the time the officers responded to the scene of
22 the incident in question, and they are to consider that as
23 evidence as they deliberate regarding any intent requirements
24 in the charges they are considering.

25 And finally, because of -- instead of preparing my

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1 those types of allegations were made based upon this pretrial
2 conference payment. So it had nothing to do with this case, so
3 -- but I appreciate your comment.

4 Mr. Smith, I'm more concerned about this report
5 coming out now. I don't believe Ms. Palm is accusing you of
6 withholding it. I don't think she's doing that, and I'm not
7 interpreting it in that fashion. But I am concerned that it
8 was not provided to you upon your request because it does
9 appear to have pertinent information that should have been --
10 that would have been used on cross-examination of probably all
11 the officers that testified about being in the apartment.

12 MR. SMITH: Understood. Judge, it's our position
13 that even assuming arguing, though, everything that Ms. Palm
14 has argued with regards to them not getting this report, I
15 mean, the first thing the Court should consider is is there an
16 actual prejudice.

17 I think it's clear to the jury that the defendant's
18 defense is that he was extremely intoxicated that night. And,
19 in fact, through rather effective cross-examination, despite
20 the State's attempts to preclude any of that from coming in
21 during our case in chief and trying to force them, the
22 defendant, to have to get on the stand and testify himself to
23 his level of intoxication, your Honor has allowed Ms. Palm to
24 -- and Mr. Pike to effectively cross-examine each of the
25 State's witnesses and elicit testimony indicating that he was

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1 client to testify and working on things that I should have been
2 working on, we've had to use our evenings with these long trial
3 days to respond to the State's misconduct. And so I would ask
4 that we not be required to close until Friday no matter what
5 time we finish on Thursday because I just haven't had time to
6 prepare an effective closing that responds to the evidence as
7 it has come in.

8 THE COURT: Thank you, Ms. Palm. Just so we're
9 clear, Ms. Palm, I believe as close of yesterday's testimony
10 off the record, I think there was just some banter between
11 counsel and the court regarding a case this court had three or
12 four weeks ago where it became very personal, and that's what
13 the court was referring to. Not this particular case as far as
14 anyone being unfair. And I think Mr. Pike -- at least I
15 thought he acknowledged that he understood what we were
16 referring to as far as the issue of pretrial payments. That's
17 what the court was referring to, and I thought that's what all
18 parties understood that to be.

19 MS. PALM: I did not understand that, so I appreciate
20 that.

21 THE COURT: Okay.

22 MS. PALM: Thank you.

23 THE COURT: And I knew the State was aware of that
24 because what they had mentioned that they had heard about a
25 case three or four weeks -- or actually two weeks prior where

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1 either very intoxicated, highly intoxicated or intoxicated.

2 In fact, when Mr. Ballejos was on the stand, Ms. Palm
3 -- if my memory serves me correctly or whether it was Ms. Palm
4 or Mr. Pike, I don't know who asked them, but they even
5 referred to Mr. Ballejos' testimony at the preliminary hearing
6 that the defendant smelled real heavily of alcohol, quote, end
7 quote.

8 So I don't see where the possible prejudice is in
9 that -- I mean, Ms. Palm is basically trying to argue that the
10 jury has no idea that a, our defense is going to be that this
11 guy was really intoxicated to formulate the intent. And oh, by
12 the way, that's what they argued in the opening argument. And
13 b, that there's no evidence that he was intoxicated. There's
14 clearly evidence that he was intoxicated.

15 Now, the level whether it was extremely, moderate or
16 severe, I mean, to -- really, Judge, we're splitting hairs.

17 That's the State's position. Furthermore, with regards to --
18 and that's with regards to the first highlighted portion where
19 it says officer assessment of citizen condition, mentally ill
20 or under the influence. Judge, that --

21 (Off the record colloquy).

22 MR. SMITH: One officer, but we've heard it from at
23 least two that I can recall that yes, Mr. O'Keefe was under the
24 influence. We had to help him stand up. Yada, yada, yada.
25 Furthermore, I open that when Detective Wildermann gets on the

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1 stand, they're going to do the same thing, ask Detective
2 Wildemann questions that they hope to illustrate the fact that
3 he was intoxicated.

4 Now, with regards to the other statement on Page 4 of
5 the report, O'Keefe appeared extremely intoxicated and
6 continued to be erratic and emotional in his behavior. Judge, I
7 think that's out as well. One of the defense counsels, and
8 forgive for not knowing which one, but I remember one of them
9 asking one of the officers was Mr. O'Keefe behaving
10 erratically, and the answer was yes. It might have been even
11 from a lay witness that Mr. O'Keefe was behaving erratically.

12 So for this to rise to a level of a due process
13 violation, Judge, it just doesn't pass the muster because there
14 really is no prejudice. And I would, for the record, object to
15 an instruction saying that he was under the influence. I think
16 it's up for the jury to determine -- I mean, that's a question
17 of fact whether or not he was intoxicated. Not a question of
18 law. That's a question of fact.

19 This isn't a DUI case where we have evidence that he
20 was intoxicated past a certain level and he's charged with
21 that, and that's why we're here. That's a question of fact.
22 So I steadfastly maintain that there should be no jury
23 instruction saying that he was intoxicated. But we also
24 maintain that there's absolutely -- there just isn't any
25 prejudice. I think it's clear that the defendant was

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1 prejudice here. I mean, it's not like this is -- I think what
2 we're arguing, Judge, is, you know --

3 THE COURT: Well, we're arguing that Metro didn't
4 turn this report over to you. Again, I'm not blaming -- I
5 don't think you or Ms. Graham withheld this report at all.

6 MR. SMITH: Judge, I do submit that there's no
7 prejudice, and I submit that there are things that this Court
8 can do to cure any perceived prejudice or any concern that the
9 Court has about granting a mistrial.

10 THE COURT: Ms. Palm, why can't we just call these
11 officers you want back on the stand and confront them with this
12 report? It may even have more impact on your case because now
13 you can say well, now we have this report, why didn't you say
14 this the first time?

15 MS. PALM: Well, for a few practical reasons. One, I
16 think we are all acutely aware yesterday that the jury was
17 tired of hearing from the arrest officers. It's not going to
18 be as effective now when they're tired of hearing from them, we
19 bring them back, and it's not in the same -- it's not in the
20 context of their entire testimony. It's going to be
21 bifurcated, and that's hard to put together. And also --

22 THE COURT: Well, let me stop your drive. I don't
23 know that they were tired of their testimony. With all due
24 respect to the State, I think they were tired of okay, who was
25 lined first, who was second, who was third, who was fourth,

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1 intoxicated. Now as to the level of intoxication, that's also
2 a question of fact.

3 Whether one officer says he was extremely intoxicated
4 or that he was kind of intoxicated or he was mentally ill, the
5 evidence is out there. The jury's going to be able to make a
6 determination as to Mr. O'Keefe's ability and/or intent to
7 carry out the acts that the State has charged him with doing.

8 THE COURT: Didn't one of the officers testify that
9 he may have smelled some alcohol, but he didn't really go any
10 further as far as his conduct or maybe he even said I didn't
11 notice, something along those lines.

12 MR. SMITH: That was one officer. But there was also
13 another officer who said he smelled of alcohol. I mean, Judge,
14 this was -- as you've heard testimony, this was a dynamic
15 situation. Not all of the five officers observed Mr. O'Keefe
16 in the same light. I mean, that's a reasonable interpretation
17 under these facts.

18 Some of the officers -- some of the testimony's
19 coming out -- have come out that yes, the guy was intoxicated.
20 I could tell he was intoxicated. Other people like for
21 instance, Detective Shawn Taylor, he said well, I don't know
22 because I really -- you know, I wasn't paying attention to
23 whether he was intoxicated. But again, Officer Balicjos said
24 yes, I -- he smelled of alcohol.

25 So, I mean, I just -- the State just fails to see the

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1 where were you standing, et cetera, et cetera. I think that's
2 -- they heard that five times, and I think at that point they
3 started to roll their eyes. I think that's -- they weren't
4 tired so much of the specifics dealing with your client. It
5 was just more of, you know, going over -- placing everybody
6 over and over. I think that's what they were getting tired
7 about.

8 MS. PALM: Well, even if you don't believe they're
9 tired of hearing from the same witnesses, I think that it's not
10 as effective to have a bifurcated cross-examination about
11 intoxication. Almost every single one of their witnesses
12 minimized the intoxication of Mr. O'Keefe or denied it
13 completely. We've never had before evidence that he was
14 extremely intoxicated.

15 Some people said he smelled of alcohol. Other people
16 thought even saying anything at all. So I don't see how it can
17 be effective cross-examination at this point when it's not going
18 to be at the same time as their testimony was received.

19 THE COURT: Well, you know, many times cases do get
20 tedious. For example, in a civil case when we're dealing with
21 contract issues, you'd be amazed on how many times we have to
22 talk about, you know, paragraph 17 in front of a jury for an
23 entire week. And so, you know, I have a little bit more faith
24 in the jurors than you do. So what I'm going to do is I'm
25 going to deny your motion for mistrial, but I'm going to allow

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1 you to call these officers to confront them with this report.
2 And I'm going to order that the -- we can do it in your case in
3 chief or we can have them come back at this time. Not
4 necessarily, at this morning, but perhaps this afternoon or so,
5 and I'll put the burden on the State to make sure the officers
6 are in attendance so you don't have to go out and try to
7 subpoena them.

8 MS. PALM: Well, here's the other thing want I don't
9 have a transcript of what they said, and I can't remember. I
10 was cross-examining them. We don't take that kind of notes.
11 So unless you have a transcript for one of their testimony from
12 yesterday, I can't be effective in cross-examining them.

13 MR. SMITH: Well, and Judge, I think it would only
14 just be Officer Ballejos --

15 MS. PALM: No.

16 MR. SMITH: -- because he's the originator of the
17 report. I mean, they can't cross-examine other officers about
18 Officer Ballejos' report.

19 THE COURT: That's true. I mean, that would be --
20 unless, you know, they -- well, they can ask him, you know, he
21 said this, do you agree or disagree.

22 MR. SMITH: Yeah, sure, but, I mean, they can't just
23 say isn't it true Officer Ballejos wrote extremely intoxicated.
24 The report clearly says that this was sent from Officer
25 Ballejos to Sergeant Newberry. So those would be really the

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1 same, Judge.

2 (Off the record colloquy).

3 MR. SMITH: Judge, I'm just going to renew my
4 objection that I don't think they should be allowed to recross
5 every officer about this use of force report.

6 THE COURT: Well --

7 MR. SMITH: Only the ones --

8 THE COURT: -- they're not going to be able to give
9 you the necessary -- the report that there was a use of force,
10 but anything regarding intoxication. That's all I'm looking at
11 is, you know, they can confront them with the issue of
12 extremely intoxicated. They're not testifying again about all
13 these locations and what was said or done. Just -- I mean,
14 we're just going to jump right to this issue.

15 MR. SMITH: Well, Judge, here's the problem, though,
16 there's five officers. Each one of them has their own opinion
17 as to Mr. O'Keefe's level of intoxication. There's one officer
18 who apparently had an opinion that it was extreme intoxication.
19 Ms. Pike should -- or excuse me, Ms. Palm should be able to
20 recall, for instance, Officer Sean Taylor and say well, isn't
21 it true that he was extremely intoxicated because --

22 MS. PALM: I had should be able to say if --

23 MR. SMITH: -- Officer Ballejos said -- I'm sorry --

24 MS. PALM: -- another officer said that --

25 THE COURT: Hang on, one at a time.

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1 only two relevant witnesses.

2 THE COURT: Well, there may be others, I don't know.
3 But that's what I'm going to order. So Ms. Palm, Mr. Pike,
4 tell the State which witnesses you want to return this
5 afternoon and they'll have them here.

6 THE COURT: Is there a way to get a transcript of the
7 testimony from yesterday before this afternoon? It would be
8 quite -- there's -- I don't think there's any way to get that
9 completed in time.

10 MS. PALM: Then I'm telling you right now I can't be
11 effective in that cross-examination.

12 THE COURT: Well, that's -- I'm not going to grant
13 the mistrial because I think it can be remedied by this. It's
14 just you --

15 MS. PALM: Well, the other remedy that we're seeking
16 is to preclude them from seeking a first degree murder
17 conviction, that combined with the failure to collect the
18 evidence of his level of intoxication which we will never be
19 able to prove now I think warrants precluding the State from
20 seeking a first.

21 MR. SMITH: And Judge, that's already been litigated.
22 That was litigated in a pretrial motion.

23 MS. PALM: And I'm renewing it based on this -- the
24 combination of errors.

25 MR. SMITH: Yes, ma'am. Our position is still the

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1 MS. PALM: -- would you dispute it?

2 THE COURT: One at a time.

3 MS. PALM: I'm sorry.

4 MR. SMITH: It's okay. It's okay, Trish. Ms. Palm
5 shouldn't be able to put Officer Taylor on the stand and say
6 well, isn't it true my client was extremely intoxicated because
7 Ballejos said so. That's basically what that's going to amount
8 to.

9 THE COURT: Well, I mean, she can -- you know, I
10 mean, this is a typical question. Officer Ballejos testified
11 that he was extremely intoxicated. Officer Jones, do you agree
12 with that? He can say no, I -- or she can say where were you,
13 whatever. We've already gone through most of that. Okay,
14 fine. Next officer.

15 You know, the problem, you know, Mr. Smith, like I
16 said, the problem is that Metro didn't turn this over to you.

17 MR. SMITH: I understand, Judge.

18 THE COURT: You know, that's -- let's place the blame
19 with it belongs. And that's where it belongs.

20 (Off the record colloquy).

21 MR. SMITH: Judge, if I could just put one more thing
22 on the record. It's our position that by the Court allowing
23 Ms. Palm to cross-examine other officers based on a separate
24 officer's opinion of someone, I mean, that -- and I understand
25 your position that the State should have turned this report

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1 over, but just to make a record, it's our position this is
2 going to severely impugn all of the other officer's credibility
3 based on this one issue even though they are proffering their
4 own interpretation and their own assessment of Mr. O'Keefe's
5 level of intoxication.

6 And we're concerned that the defense is going to
7 attempt to boot strap this point into saying that all these
8 officers lied about everything they've ever testified to even
9 though none of them have ever -- none of these other officers
10 have ever said that Mr. O'Keefe was extremely intoxicated.

11 THE COURT: Well, I mean, that's what you can say.
12 You know, they can say their point of view that, you know, they
13 had limited contact with them. They were the last one in the
14 room, whatever it may be. They can say they weren't the ones
15 who carried him out, so I don't smell it because I was too far
16 away. I mean, so that can be cleared up very easily. We're
17 just checking right now to see what we can do.

18 Who do we have this morning testifying?

19 MR. SMITH: We have --

20 MS. GRAHAM: I have the list.

21 MR. SMITH: -- Ed Guenther, the fingerprint analysis
22 (sic). Jennifer Bas, the DNA analysis (sic). The
23 coroner, the coroner examiner, and the two homicide detectives.

24 That's who we tentatively had lined up.

25 THE COURT: All right.

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1 And then we'll have one of the DAs, whoever's
2 examining this first witness here. The other DA can go out and
3 contact those officers and have them available for this
4 afternoon.

5 MR. SMITH: All of them?

6 THE COURT: Yes.

7 MS. PALM: Your Honor --

8 THE COURT: And we're not going -- we're not, you
9 know, examining them on all these other issues. Going to jump
10 right to the point on this issue here.

11 MS. PALM: In addition, I think it's impeachment
12 evidence of the detectives in this case that they did not turn
13 this report over when it was specifically requested, so I
14 intend to go into that with Detective Wildemann, and I'd like
15 some latitude to do that.

16 MR. SMITH: It was actually Detective Bunn.

17 MS. PALM: Well, he was copied on all the e-mails,
18 unless you want to bring in Detective Bunn.

19 MR. SMITH: They're both coming.

20 THE COURT: Well, you can ask him about that. All
21 right. Okay, Michelle, can you get someone up here, please.

22 (Off the record colloquy).

23 MS. GRAHAM: Judge, can I address the misconduct if
24 we're --

25 THE COURT: We can do that later. Let's get --

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1 MR. SMITH: Judge, one last thing. With regards to
2 one of their court exhibits being the note from Officer
3 Hutcherson, we were actually intending on recalling Officer
4 Hutcherson to actually get this admitted into evidence. Now,
5 since they've already tendered it as a court exhibit because it
6 hadn't been formally admitted into evidence, I don't know if
7 they just want to stipulate to its admission or if they want to
8 make us recall Officer Hutcherson merely for that purpose.

9 MS. PALM: No, there's no point in admitting that.
10 He already testified to the exact contents of it.

11 MR. SMITH: Okay. Well, I'm just putting them on
12 notice, we're going to recall him, and we're going to have this
13 -- we're going to put him on the stand and attempt to get this
14 admitted as a prior recollection recorded.

15 MS. PALM: Well, you know what, that enhances the
16 prejudice, then, from his statements yesterday because his very
17 being on the stand will remind the jury of that testimony.

18 THE COURT: Well, we'll address that when it comes
19 up. What I'm going to do is Michelle's going to call a
20 substitute court recorder who will take over her duties. She's
21 going to review the testimony, make a transcript -- not on the
22 entire testimony -- make a transcript of anything relating to
23 the observations. Anything related to his appearance of
24 intoxication, alcohol smell, et cetera. And then that will be
25 provided.

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1 because right now like I said, I'm not even -- I'm not
2 concerned about that.

3 MS. GRAHAM: There's just something I'd like to put
4 on the record as far as --

5 THE COURT: Well, in is the thing that I didn't want.
6 You know, like when we talked about the other case. I mean,
7 it's just too much back and forth here. I do not -- I'm not
8 considering anyone here committed misconduct, okay.

9 MS. GRAHAM: I understand that, Judge, but there is
10 something for appellate review that I would like to say on the
11 record regarding that particular testimony.

12 THE COURT: All right, go ahead.

13 MS. GRAHAM: Okay.

14 THE COURT: Michelle, are we on still?

15 THE CLERK: Yes.

16 THE COURT: Okay, go ahead.

17 MS. GRAHAM: And Judge, you know, did I pretrial
18 Officer Hutcherson, and as we discussed, I pretrial him later.
19 It was Tuesday? Yeah, Tuesday evening. He did --

20 THE COURT: Monday.

21 MS. GRAHAM: I'm sorry?

22 THE COURT: Would have been Monday I'm assuming.

23 MS. GRAHAM: No.

24 THE COURT: Yesterday was Tuesday.

25 MS. GRAHAM: Did he testify yesterday?

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1 THE COURT: Yes.
 2 MS. GRAHAM: It was the evening before late he called
 3 me at home finally.
 4 THE COURT: Right, Monday.
 5 MS. GRAHAM: Right.
 6 THE COURT: Okay.
 7 MS. GRAHAM: Oh, today's Wednesday, Judge.
 8 THE COURT: Right. He testified yesterday, and if
 9 you pretried him the night before, it would have been Monday.
 10 MS. GRAHAM: You're absolutely right, Judge. Okay.
 11 I pretried him Monday night. He indicated to me that when I
 12 read the arrest report and had the three lines that I was
 13 intending to pretrial him on the three lines, I realized his
 14 involvement in the case amounted to more than three lines.
 15 And we discussed what exactly his involvement and his
 16 interaction with whether O'Keefe. Well, Officer Hutcherson,
 17 who, by the way, on the record now is an African-American male,
 18 indicated to me that he was belligerent, he was loud, he
 19 obnoxious, he was calling him racist slurs, and he used the
 20 word N. He specifically called Officer Hutcherson the N word.
 21 Also, he indicated to me that he asked him to turn the f---ing N
 22 music down.
 23 Now, yes, it's prejudicial and no, did I instruct him
 24 to say that? I instructed him to say that I need the
 25 statements that defendant made, and you need to stay away from

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1 THE COURT: How long do you think the testimony will
 2 be for these witnesses?
 3 MR. SMITH: It may be a while, especially with the
 4 DNA expert. I expect Randy's going to have some fun with her.
 5 MR. PIKE: Oh, no. It will be move pretty quickly.
 6 MR. SMITH: Well, that's presumptuous. It might be
 7 --
 8 MR. PIKE: (Indiscernible).
 9 THE COURT: 3:00 o'clock, is that a good time? Or
 10 after the 3:00 o'clock break?
 11 MR. SMITH: So after the 3:00 o'clock, okay. I'll --
 12 THE COURT: Right.
 13 MR. SMITH: I'll make a phone call.
 14 MR. PIKE: No, actually, as to the fingerprint and
 15 the DNA expert that the State's going to call, I've
 16 cross-examined them before. They're qualified. If they want
 17 to go into that lightly or in more detail, it's --
 18 THE COURT: How long do you think --
 19 MR. PIKE: -- their choice.
 20 THE COURT: -- you'll be so we can -- I want to do at
 21 a good break.
 22 MR. PIKE: Very short. Very short.
 23 THE COURT: Is 3:00 o'clock a good time as far as the
 24 number of witnesses you have?
 25 MR. SMITH: I'm sure the 3:00 o'clock will give them

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1 the racial slurs that he called you the N word, your Honor.
 2 That's what I instructed him to say.
 3 Now, prejudicial, yes. But probative, very probative
 4 as to the state -- this is a first degree murder trial. The
 5 intent and state of mind of the defendant before, during and
 6 after the murder, the stabbing of Victoria, is very important
 7 to this case. The fact that he's angry, mean, violent, and is
 8 spewing racial slurs is in the State's opinion probative and
 9 relevant to the case.
 10 I specifically instructed Officer Hutcherson not to
 11 mention that Mr. O'Keefe called him the N word over and over
 12 and over again in his belligerent state of mind. So yes, is it
 13 prejudicial, but does the prejudice outweigh the probative
 14 value this angry, loud, obnoxious, violent man who just stabbed
 15 a woman? It's relevant, Judge, and probative as to his state
 16 of mind.
 17 THE COURT: I think the better argument might be that
 18 that statement doesn't rise to a level of a mistrial, which I
 19 denied, so let's leave it at that. And so we're going to
 20 continue on. Let's bring -- is someone coming up Michelle?
 21 THE CLERK: Yes.
 22 THE COURT: Okay. All right, let's bring the jury
 23 in.
 24 MR. SMITH: Judge, when do you want those officers
 25 here?

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1 a sufficient enough time to all be here. So I'll just have
 2 them all here at 3:00 o'clock, Judge.
 3 THE COURT: And I'm going to -- Mr. Smith, I'm going
 4 to require that you just tell them that there was further
 5 questions that have to be asked.
 6 MR. SMITH: Okay.
 7 THE COURT: Not to be discussed any topic so they
 8 won't know why they're coming except further questions.
 9 MR. SMITH: Okay. Not that I was planning ongoing
 10 into (indiscernible) detail (indiscernible).
 11 (In the presence of the jury)
 12 THE MARSHAL: Officers and members of the court --
 13 MR. SMITH: I got (indiscernible).
 14 THE MARSHAL: -- Department 17 jurors. You may be
 15 seated, ladies and gentlemen. Let's check to make sure all
 16 cell phones were turned off, please.
 17 THE COURT: Let the record reflect we're in presence
 18 of the jury panel. Ladies and gentlemen, thank you for your
 19 patience. As I had mentioned before, we try to resolve, you
 20 know, many legal issues as we can before you come in here
 21 because we don't have you in for ten minutes, send you out,
 22 come back in, et cetera. And we just had some matters to
 23 discuss which took a little longer than I expected. So I
 24 appreciate your patience. Is everyone situated and
 25 comfortable? Got their badge? Okay. State, please call your

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1 next witness.
2 MS. GRAHAM: State calls Ed Guenther, latent print
3 expert.
4 THE MARSHAL: Mr. Guenther, if I can get you to raise
5 your right hand, please.
6 ED GUENTHER, PLAINTIFF'S WITNESS, SWORN
7 THE CLERK: Please be seated.
8 MR. PIKE: Again, your Honor, in relationship to this
9 witness, because the knife had the biological contamination on
10 it, there's a photograph that we'll be admitted into evidence
11 for testimonial purposes --
12 THE COURT: All right.
13 MR. PIKE: -- and evidentiary purposes.
14 THE COURT: If it hasn't already been admitted, it
15 will be admitted at this time. Thank you.
16 MR. PIKE: Thank you.
17 THE CLERK: Can you please state your name and spell
18 it for the record.
19 THE WITNESS: Yes, ma'am. My name is Ed Guenther
20 spells G-u-e-n-t-h-e-r.
21 THE CLERK: Thank you.
22 DIRECT EXAMINATION
23 BY MS. GRAHAM::
24 Q Mr. Guenther, how are you employed?
25 A I'm employed with the Las Vegas Metropolitan Police

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1 course, our laboratory itself requires us to have certain
2 amount of training every year as our laboratory's an accredited
3 laboratory with the Association of Crime Lab Directors.
4 There are standards for all of us for training and so
5 for the. So yes, I always have continuing education. I
6 believe I've had close to 150 hours of continuing education
7 training in the last three years.
8 Q Mr. Guenther, I want you to explain to the jury
9 exactly what is a latent print.
10 A Well, a latent print is a chance impression. It's
11 made by the accidental touching of a surface by the specialized
12 skin on your hands and also could possibly be on your -- from
13 your feet. Your skin as you -- if you look at it on your hand,
14 you see it's quite different than the rest of the skin on your
15 body. It's raised skin, and the skin is not parallel or it's
16 raised into patterns and on top of these ridges you have pores,
17 obviously.
18 And through those pores your body is constantly
19 excreting mostly perspiration, but also chemicals. And also,
20 you can pick up residue on those ridges. By touching your head
21 you pick up oils or you can pick up -- touch other things and
22 get contaminants. And when you -- and then when you touch a
23 surface like with all of those possibilities, you leave behind
24 what could be a latent print which basically means a print
25 that's invisible.

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1 Department. I work in the forensic laboratory, and my area of
2 speciality is latent fingerprints.
3 Q How long have you been a specialist in latent
4 fingerprints?
5 A Well, I have been a fingerprint examiner for a long,
6 long time. I started back in 1975 with the Federal Bureau of
7 Investigation. That is where I learned the basics of
8 fingerprinting of classifying, searching and identifying. And
9 then in 1977 I entered into a training program with the State
10 of Ohio. Completed that training program and did routine
11 casework there for three years followed by 18 years of bench
12 work analysis with the Florida Department of Law Enforcement.
13 And for the last almost 11 years now I've work here with the
14 Metropolitan Police Department.
15 I also along the way acquired my bachelor's degree
16 from the University of South Florida. I'm also a member of the
17 International Association For Identification and am certified
18 by that organization to conduct latent fingerprint
19 examinations.
20 Q And Mr. Guenther, I'm sure that during your years of
21 examining prints, you've also attended many seminars and kept
22 up to date on the current methods in latent print examination.
23 A Yes, as part of our -- as part of the certification
24 process, we have to have continuing education as well as tests
25 that we take every five years, a recertification test. And of

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1 But there are times where these prints are actually
2 visible to you. You can actually see them. So latent print is
3 the generic cover for all of that. But there are couple
4 subcategories, and a visible print is part of the universe of
5 latent prints.
6 Q Is it possible to touch something with the -- your
7 finger tips and not leave a latent print?
8 A Yes, it's very possible to touch a surface. Some of
9 the primary reasons that you can touch a surface and not leave
10 a print behind, or at least a print that we would call a print
11 of comparison quality, would be primarily the pressure.
12 If you look at your fingers again, you'll see, you
13 know, they're not two dimensional. They have movement. They
14 have depth to them. They have width and length and so forth.
15 So when you touch a surface, those ridges are moving and
16 they're flexible. So if you put too much pressure down,
17 instead of the ridges make a nice clear mark on that surface,
18 the pressure is going to push those ridges together, and you
19 can get a big -- like a smudge.
20 Also, you can acquire smudging or things from
21 different methods of distortion. Can you have a twist of your
22 finger. Your finger can move, up, down, left or right. These
23 are distortions that can destroy the fragile ridge structure
24 that can be left on a surface.
25 You also have the substrate that is touched.

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1 Generally speaking, the smoother a surface is, the more
2 receptive it will be to leaving fingerprints on it. What we
3 call the matrix is important. That could be either something
4 like sweat or whether it's blood or whether it's some other
5 kind of contaminate. That can have a factor on it.

6 Other item would be the time factor. Every
7 fingerprint has a life. Once a surface is touched there will
8 come a point where the print is not viable to be developed. So
9 those are some of the factors that can affect whether or not a
10 fingerprint will be left on a surface.

11 Q So just to understand, you can touch a surface and
12 depending on the actual surface that you touch, if there's any
13 liquids like sweat or blood involved, that may prevent a latent
14 print from being --

15 A It could, yes.

16 Q -- visible? And then, of course, there's a life to
17 the print --

18 A Correct.

19 Q -- itself. Okay. What exactly is the function of a
20 latent print examiner?

21 A Well, our --

22 Q What are your duties?

23 A Yeah, well, our main function is to study this ridged
24 structure that comes to us either through the crime scene
25 analyst in the form of a latent lift or in evidence that we

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1 evidence that we ourselves process at the forensic laboratory.

2 Q And once you receive that piece of evidence or latent
3 print, however you receive it from the crime lab or if you have
4 it yourself, you indicated that you compared it to a standard.
5 Can you explain to the jury what you mean by a comparable
6 standard?

7 A Well, in any type of forensic work you have to have a
8 known. When you -- if you just have a latent print -- well, I
9 take that back. You can't have -- search computer databases
10 also. But in most of the work part that we do we need -- we
11 start with a known. You have to have a known to make a
12 comparison with the question. So that's where in fingerprint
13 work the standards come in.

14 Standards, of course, are different than latent
15 prints in that they are controlled known recording of an
16 individual's friction ridge from their hands primarily on -- in
17 today's world their all done electronically. Everything's
18 stored digitally. And people, of course, are fingerprinted for
19 a multitude of reasons. Most of them civil reasons. For work
20 cards and so forth.

21 So we have a large database of standards. And we --
22 that's what we would normally use in our course of business to
23 make a comparison is that -- is those known standards. So it's
24 a two-pronged attack for the most part. The known print and
25 the unknown and to make -- to come up with a conclusion.

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1 actually directly look at ourselves in the laboratory setting.
2 And we make a -- we try to -- we document this ridge detail.
3 We analyze it, and then if there is what we would call a latent
4 print of sufficient quality on the evidence, our job is to make
5 a comparison with known standards of individuals to try to
6 ascertain whether the latent print and the ink print are from
7 the same source or from the same individual. So that in a
8 nutshell is what I do every day.

9 Q So just to understand your testimony, you receive
10 evidence and if there is lift from those pieces of evidence or
11 the evidence itself, you compare that to a known standard, is
12 that what you --

13 A Yes.

14 Q -- indicated?

15 A Yeah, yeah. Primarily the evidence comes in one of
16 those formats. Move the evidence that we get is in the form of
17 latent lift cards that are generated by crime scene analysts at
18 a scene where they powder items or items that they take back to
19 the crime scene office, and they -- excuse me, and they would
20 process.

21 They also -- we also get photographs a lot of -- on
22 occasion where a piece of evidence or latent print is actually
23 photographed at the scene, and those images are stored and we
24 look at those images. But most of our evidence is either in
25 the form of a latent lift from the crime scene analyst or in

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1 Q Now, there are instances, though, during your
2 experience that you've been given a piece of evidence and you
3 don't have a controlled standard, right? Is that correct?

4 A Yes.

5 Q And then how would you determine who that latent
6 print belonged to?

7 A Well, if -- that's where we would employ our computer
8 database systems. We here locally and of course, linked up
9 through different networks. Almost any fingerprint database,
10 at least in this country, can be searched now either
11 independently or collectively, and we call that an AFIS system.
12 An automated fingerprint identification system.

13 So if we have a case where there are no suspects,
14 let's say, and we have a latent print from a particular case
15 that has a high quality to it, we can enter that latent print
16 into this computerized system and ask the matching algorithm to
17 search all of the knowns that are out there in either a small
18 database or a large one and to give us a possible list of what
19 we call respondents.

20 And then from that list we may be able to make an
21 identification with the prints that the computer has
22 potentially matched for us. So that is the other way that
23 prints can be searched when you don't have a suspect in a case.

24 Q Now, Mr. Guenther, I keep hearing you refer to
25 quality, the comparison quality of a latent print. Now, how

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1 often would you say that you are given a piece of evidence that
2 is of sufficient comparison quality to be compared either to a
3 controlled known print or to be entered into the AFIS system.

4 A Okay. Well, the entries in AFIS system would be a
5 lot fewer than this generic number I'm going to offer up to,
6 but in generally, I would estimate that we -- comparable --
7 excuse me, comparable latent prints are probably only generated
8 in maybe a third of the cases that we would look at. So
9 there's a lot of cases where for those reasons I talked about,
10 the pressure, the distortion, substrate, that the latent prints
11 that eventually make their way to us and are analyzed, they
12 just don't make the grade for us to make a comparison with any
13 individual. We call those prints either of no value or
14 sometimes the prints are compared and they're inconclusive in
15 that we can maybe make a generalization about this -- a
16 particular latent print, but there just isn't sufficient
17 quality or quantity of that ridge structure to go to that step
18 where we could actually make an identification with it.

19 So it's not -- when it's inconclusive sometimes, it's
20 not useless, but it's not to the threshold where you can
21 actually make a identification with an individual.

22 Q So would it be fair to say that in real life you a
23 third of the time get comparable quality lifts or latent prints
24 to actual -- to make a match as opposed to, for instance, the
25 television shows that are very popular today where there's

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1 Do you --

2 A It's really small, isn't it?

3 Q Yeah, it is small. Let's see if I can zoom it in.

4 A Okay.

5 Q Maybe if I place it -- there we go. Let me zoom it
6 more. Do you recognize that photo?

7 A Yes. This is the handle, the black -- the handle of
8 the knife. I believe this would have been on the left side.
9 And this is an image that I actually scanned this image on my
10 desk top on my -- and saved it. And this is the actual image
11 as it appeared before I did any processing to it, did anything
12 to it. And of course, you can see this is our event number.
13 This is my initials.

14 Q And that's what ties that to this --

15 A Correct.

16 Q -- case?

17 A And this is what ties this all together is this tag
18 here with my initials and the exhibit number, item 38 and of
19 course, the event number and my initials. And through above
20 the mark there over the tag where the markings are going
21 through for the centimeter line, you can see a series of
22 partial -- what we call partial ridge detail.

23 And that is what was visualized by the crime scene
24 person, obviously, and why it was submitted for me to look at
25 it in the laboratory setting.

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1 always a match?

2 A Yeah, yes. The reality and television shows, as you
3 are all aware, are quite different. Quite different.

4 Q Okay. Mr. Guenther, I want to talk specifically
5 about why you're here today

6 A Okay.

7 Q Now, were you given a piece of evidence that is
8 specific to this case, and I'm referring to the case and what
9 you received as a piece of evidence under Event No 08110503918
10 given to you by a request for you to look at a possible latent
11 print by Detective Wildemann of homicide?

12 A Yes.

13 Q Okay. And what piece of evidence were you given?

14 A The evidence that I was asked to look at, at least
15 from a processing perspective, was a knife. A Wolfgang Puck
16 black handled carving knife bearing what was believed to be a
17 partial latent print -- a partial print and suspected blood.
18 So that was the item that I was asked to analyze for the -- for
19 either the development or to actually look at that partial
20 latent print on the knife to see if it was, in fact, of

21 comparison quality and then to try to, if possible, to either
22 enhance it or to develop additional latent prints on the knife.
23 That was my task that was asked of me by the homicide unit.

24 Q Mr. Guenther, I'm going to show you what's been
25 marked as State's -- and admitted as State's Exhibit No. 65.

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1 Q Now, when you received the knife, you actually
2 handled entire knife --

3 A Yes.

4 Q -- is that correct? Do you -- how big was that
5 knife?

6 A In my notes I indicated that the entire length of the
7 knife was approximately 14 inches. The blade occupying eight
8 inches of that length and the handle approximately six inches
9 of that length.

10 Q Okay. When you were asked to take a look at those
11 latent or what appeared to be latent prints, what was your
12 ultimate determination?

13 A Well, my ultimate determination after doing the
14 visual examinations and then trying processing techniques to
15 enhance and/or develop additional latent prints, in the end the
16 final analysis of this ridge detail was that it was not of
17 comparison quality as far as identify -- to make an
18 identification to an individual.

19 The ridge detail, however, I do believe, probably
20 just the way it -- because of the structure of it, probably
21 came from a palm, and that's really about all that I could
22 really say about at that ridge detail. Even though I couldn't
23 make a comparison with it, I probably -- I probably think I can
24 make a determination that because of the linear -- and if you
25 saw this closer in a better more clarity, you would see that

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1 the lines -- this is the kind of ridge detail that you -- that
2 it --

3 Q You can point to the screen, Mr. Guenther, and it
4 will actually --

5 THE COURT: You can draw on it.

6 THE WITNESS: Just touch it, okay.

7 BY MS. GRAHAM::

8 Q Yeah.

9 A If you -- that wasn't a very good mark, but as you
10 can see, these white areas here, that's probably the ridges.
11 And this is how we actually examine the ridge detail is we
12 follow this with our eye, and we're trying to determine where
13 this ridge flow, this unique ridge structure, where it changes,
14 where it -- where one of these ridges would end, where one
15 would split, like there's one right there where I put that
16 second little dot. That is a place where a ridge is traveling
17 along a path and path diverts.

18 And that is a unique structure to that particular
19 piece of friction ridge skin. So what -- and this is what
20 we're actually looking at to try to make a determination of
21 same source in the end. But in examining all of this structure
22 that you can -- these lines that you can see there, in my
23 opinion, there just wasn't a sufficient amount of information
24 to make any kind of -- as I said, any kind of conclusive
25 comparison to anyone. But I do believe from my experience in

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1 analysis it would have been looked at by another forensic
2 scientist in the laboratory.

3 Q All right. And for purposes of your testimony and
4 the analysis that was done, you followed the appropriate
5 protocol in retrieving it, processing it, and then putting it
6 back into custody with the Las Vegas Metropolitan Police's
7 evidence vault?

8 A Yes, sir.

9 Q Okay. I don't want to disturb this, but you I'm
10 going to be show you what's been admitted as Defendant's
11 Exhibit KK, which is a full photograph of the knife.

12 A Yes, sir.

13 Q If you could just turn that around and show it to the
14 jury so that they can kind of -- and you can kind of point to
15 where that was.

16 A Where --

17 Q Where --

18 A -- the corresponding area --

19 Q Right.

20 A -- on the knife was? Yes, sir, I can do that.

21 Q Okay.

22 MS. GRAHAM: Can we put it on the monitor so we can
23 all really see it?

24 MR. PIKE: Okay.

25 THE COURT: Might work better that way, thank you.

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1 looking at lots of latent prints over the years, that this type
2 of structure -- I won't say always, but almost always found in
3 the palm of a hand and usually on this part what we call the
4 hypothenar area of the palm. The outside below the little
5 finger and down the side of the palm.

6 Q Thank you, Mr. Guenther.

7 A Okay.

8 MS. GRAHAM: I'll pass the witness at this time.

9 CROSS-EXAMINATION

10 BY MR. PIKE::

11 Q Morning, Mr. Guenther.

12 A Good morning, sir.

13 Q Good to see you again.

14 A Good to see you, too, sir.

15 Q Okay. Let me see if I can get this back into focus.

16 Okay, here we go. I'm trying to go backwards.

17 A It's hard to do.

18 Q Okay, great. Okay. During the time that this item
19 was given to you, you were able to observe the knife and
20 ascertain that all the proper chains of custody had been
21 observed by the previous people that had processed it, so when
22 it came to you, it came to you in the same condition as when it
23 was first impounded at the scene of the crime.

24 A Yeah, I received it in a sealed box that had been
25 sealed by Jocelyn Maldonado. And also, I believe prior to my

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1 And then, sir, just circle on the monitor --

2 THE WITNESS: Yes.

3 THE COURT: -- where the location is.

4 THE WITNESS: Yes, sir.

5 (Off the record colloquy).

6 BY MR. PIKE::

7 Q All right, there's --

8 A Yes.

9 Q -- the knife. And that's the side that you processed
10 to obtain this photograph?

11 A That's the side that I scanned, yes. You just need
12 to turn that, flip it around so that it --

13 Q Lay that up there.

14 A Like this, yes.

15 Q That's where it was done was up here at the very tip?

16 A Yeah, it would have been -- I'll just circle it right
17 -- it would have been -- generally speaking, that was the area
18 because that little circle that you're seeing on my photograph
19 would correspond with the circle up here towards the knob of
20 the knife.

21 Q Okay. And when it came to you, that is a ridged
22 detail that you would say was associated with blood.

23 A I believe yes, so. Yes, I believe so.

24 Q And, in fact, it was the moisture of the blood that
25 made it visible to the naked eye before you even processed it?

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1 A Correct, yes, sir.
 2 Q And processing it any further, did you use any sort
 3 of chemical means?
 4 A I used quite a few methods to attempt to enhance this
 5 print. The first obviously was a visual examination just with
 6 my naked eye. And then, of course, he scanned it in before I
 7 tried any of the processing techniques just in case it was
 8 ruined, which it can happen on occasion. So we try to preserve
 9 every step as we go along.
 10 So after I had done a visual examination and scanned
 11 the print in, I did the several other visual types of
 12 examination with -- one of them with is what we call an
 13 alternate light source which is kind of like a laser. It's not
 14 a true laser. It's a light source that we use in the
 15 laboratory to try to develop and enhance what latent prints.
 16 And I also used -- and that works in a certain wavelength of
 17 the light spectrum, the visible light spectrum.
 18 Also, we have a apparatus that operates in the
 19 ultraviolet end of the light spectrum. I -- and these are
 20 non-invasive type techniques. So they're just scans with these
 21 items. And the reason that I would have used that ultraviolet
 22 area is that sometimes there's particles of latent print
 23 residue that will fluoresce naturally either with a alternate
 24 light source or under UV light.
 25 So in this case I utilized both of those techniques

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1 THE COURT: Yes.
 2 BY MR. PIKE:
 3 Q You've identified that possible ridge pattern as
 4 being consistent with a specific area of the hand.
 5 A Yes.
 6 Q And that's in the outside area?
 7 A Well, in -- well, maybe not on the --
 8 Q (Indiscernible) here.
 9 A On the outside we would call this like the writer's
 10 area. It's generically called that because this outside is if
 11 you were writing or signing something. The ridges flow all --
 12 actually extend around the end of your hand a little bit. So
 13 if you touch something downward, that would be the writer's
 14 area. I don't believe those ridges -- this ridge detail came
 15 from that area because normally those ridges start to -- they
 16 start to winnow down into a point and then they start to
 17 intermingle with the more traditional skin that were used on
 18 the rest of our body.
 19 I believe that this structure is more found on the
 20 flatter portion of the palm. Still on the outside in the
 21 hypothenar area, but more in the flatter area of that area of
 22 your palm. So not on the outside, but on the outside of the
 23 main portion of the palm, yes.
 24 Q And that area like finger tips or finger -- flat part
 25 of the fingers have a specific pattern over ridges that are

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1 which were negative. I then attempted to enhance this
 2 particular latent -- bloody -- what we thought was a bloody
 3 latent print on the knife blade using a blood enhancer. And we
 4 have a series of blood enhancers that will react with the
 5 proteins that are obviously in blood, and what they will do is
 6 stain the blood and make it either enhance it or sometimes it
 7 will even develop some fine blood markings that you can't --
 8 still you can't see on the surface.
 9 So in this particular case I used a process that we
 10 call acid yellow seven because in conjunction with the laser it
 11 will give a nice glow of yellow under this alternate light
 12 source. So I attempted that technique with the blood, the
 13 bloody area on the knob of the knife. That that did not help.
 14 It did not enhance, it did not develop.
 15 So after making those determinations, I then went to
 16 a more traditional type of process using the cyanoacrylate, the
 17 super glue method on the entire knife surface and followed that
 18 up with a chemical that we use in conjunction once again with
 19 the alternate light source and scanned that again and once
 20 again, it was all negative. Was not able to enhance this
 21 particular latent print or to develop any additional latent
 22 prints using all of those visual and chemical techniques.
 23 Q Okay. And then in going through and based upon your
 24 experience --
 25 MR. PIKE: If I may approach the witness, your Honor.

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1 done? Each -- let me rephrase that.
 2 A Okay.
 3 Q Everybody has their own pattern, their own individual
 4 --
 5 A Yes.
 6 Q -- pattern. Even on that portion --
 7 A Yes.
 8 Q -- of the hand?
 9 A The palms, the fingers, soles of the feet. That's
 10 where your body has the -- well, all of your skin is actually
 11 unique, but the portion that's used for identification is the
 12 palms and fingers and soles of the feet.
 13 Q And you often or you have on occasion when you've
 14 been called upon to examine a print, finger, palm print or
 15 anything, have been able to ask for a new known print to
 16 examine it or compare it against to make a determination
 17 whether or not you can identify it as being consistent with
 18 that print or not?
 19 A Yes.
 20 Q Okay. In this case were you ever provided a known
 21 exemplar of a palm print?
 22 A Well, I was provided with -- obviously with a name
 23 and exemplars were available for comparison with both Brian
 24 O'Keefe and Victoria Witmarsh. But I didn't utilize them
 25 because the print was not of comparison quality. So there was

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1 no reason to actually go forward beyond the analysis of my --
2 of that portion.

3 Q Understood.

4 A Yes, sir.

5 Q Okay. In addition to this, which you were unable to
6 find of comparable quality, you examined other pieces of
7 evidence that were retrieved from or provided to you in order
8 to determine whether or not there was a identifiable or
9 comparable --

10 A Right.

11 Q -- fingerprint, is that correct?

12 A Yes. The other -- I was also asked -- Crime Scene
13 Analyst Collins had photographed a sheet in the bedroom, the
14 northwest bedroom, the northeast corner of a flat sheet.
15 Apparently there was a transfer of what -- on that sheet of
16 what she thought was ridge structure on the sheet in what she
17 believed, I believe, she thought was blood, and she made four
18 photographs of this same structure area.

19 And I did analyze and examine those also, and I made
20 the determination of those that they were not of comparison
21 quality at all.

22 Q Not being comparison quality, were you able to form
23 an opinion as to whether or not they were finger or hand or
24 palm or foot consistent with those types of ridges?

25 A Let me look. I didn't make a -- I don't believe I

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1 THE COURT: All right.

2 MR. PIKE: -- and use this one. This is the best for
3 testimony purposes.

4 THE WITNESS: You --

5 MS. GRAHAM: What would be best for you to testify?

6 THE WITNESS: Well, that one is probably a little
7 larger. It would probably show up better on the Elmo.

8 THE COURT: We're going to have it marked right now.

9 THE WITNESS: Yes, sir.

10 THE COURT: Any objection by the State for it being
11 admitted?

12 MS. GRAHAM: No, Judge.

13 THE COURT: All right, it will be admitted as --
14 what's the next number in line or letter in line?

15 THE CLERK: It would be (indiscernible).

16 BY MR. PIKE:--

17 Q And for purposes of identification, this has been
18 identified to you by the information as photograph of the bed
19 sheet located at the collections scene in this case.

20 A Yeah, the northeast corner of the bottom flat sheet
21 of the bed in the northwest bedroom.

22 Q Okay, great. And then looking at this, were you able
23 to form an opinion as to whether or not that may have been a
24 hand, a palm or a foot --

25 A Well --

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1 made a notation of that in my notes.

2 Q There was --

3 A But I can look at them.

4 Q I didn't see one on the report, but --

5 A I can -- I brought them with me, so I can certainly
6 open up the packet, and we'll take a look at it.

7 Q Thank you.

8 MR. PIKE: May I approach the witness?

9 THE COURT: Yes.

10 THE WITNESS: Well, I -- just looking, perusing here
11 at the larger one, I would -- I'll wait for the --

12 THE COURT: Why don't we have that admitted --

13 MR. PIKE: Okay.

14 THE COURT: -- so we can --

15 THE WITNESS: Yeah. You want to admit one of those,
16 your Honor? Yes, sir. Do you want to admit all of them or do
17 you just want -- they're all the same. They're just some of
18 them are larger. Would you like all of them?

19 THE COURT: Do you need all those --

20 THE WITNESS: I don't need --

21 THE COURT: -- for your testimony?

22 THE WITNESS: I don't need any of them, sir -- your
23 Honor. If you -- if the Court would like to have all of them,
24 they certainly may.

25 MR. PIKE: Okay. We'll just go ahead --

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1 Q -- type of a print?

2 A -- I determined that once again, it really wasn't of
3 comparison value. But -- and I really didn't ventured into the
4 inconclusive portion of this one. It's really a very poor
5 quality. If I had to make a -- venture a opinion on it today,
6 I would say it's probably a palm area again. But where on that
7 palm, I don't -- I mean, I am not sure because it could, once
8 again, come from -- because you have linear lines again, it
9 could come from that same area we described earlier, that
10 hypothenar.

11 But also, sometimes because of this large crease kind
12 of area right here -- your hands have large -- a large crease
13 down here that runs from the what we call the carpal area
14 usually up here below the inner digital area. And oftentimes
15 we see a crease like this down in this area of the hand on what
16 we call the thenar area, the fatty portion of your palm.

17 There's a crease -- and sometimes when a hand comes
18 into contact and a pressure's put down, that crease will kind
19 of spread out and widen. It doesn't always stay this nice
20 little tiny little crease that you might see in a known
21 standard. So it could come from either one of those areas. So
22 I really couldn't say for sure.

23 Q All right. And so this again was insufficient to
24 compare to any known --

25 A Correct, sir.

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1 Q -- (indiscernible) that may have been provided to
2 you?
3 A Yes, sir.
4 Q Okay. And there was one other item that you
5 addressed in your report, I believe.
6 A No, sir. I just addressed the knife, and I also
7 addressed the four lift cards from the --
8 Q Here you go, sir.
9 A From the --
10 Q There you go. All right. And the other portion of
11 your report then is not that you examined anything else, but a
12 reference to the DNA report?
13 A Correct, yes, sir.
14 Q Give your testimony about that later.
15 A Yes.
16 Q So based upon the evidence that you have that was
17 presented to you in collection, then, you were able to find two
18 possible transfers that had no forensic significance insofar as
19 identification?
20 A Correct.
21 Q Thank you.
22 MR. PIKE: Nothing further.
23 MS. GRAHAM: Just briefly.
24 THE COURT: Any redirect?
25

REDIRECT EXAMINATION

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1 JENNIFER BAS, PLAINTIFF'S WITNESS, SWORN
2 THE CLERK: Please be seated. Will you please state
3 your name and spell it for the record.
4 THE WITNESS: Jennifer Bas, j-e-n-n-i-f-e-r. Last
5 name B-a-s.
6 THE CLERK: Thank you.
7 MR. SMITH: May I proceed, your Honor?
8 THE COURT: Yes.
9 MR. SMITH: Thank you.
10 DIRECT EXAMINATION
11 BY MR. SMITH:
12 Q Good morning, Ms. Bas. How are you presently
13 employed?
14 A I currently work for the Las Vegas Metropolitan
15 Police Department in the biology DNA detail, and I'm a forensic
16 scientist specializing this DNA analysis.
17 Q And how long have you been employed in that capacity?
18 A I've worked for Metro for over one and a half years.
19 Q Do you have any qualifications to work in that
20 capacity?
21 A I do.
22 Q Can you tell us about that?
23 A Absolutely.
24 Q Okay.
25 A I have undergraduate degree in genetics and cell

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1 BY MS. GRAHAM:
2 Q And just to be clear, Mr. Guenther, your expertise is
3 only that the latent prints --
4 A Yes.
5 Q -- examination?
6 A Yes.
7 Q You wouldn't get into DNA or --
8 A No.
9 Q -- measuring and trying to determine the width,
10 length of whose hand it was and --
11 A No, that would -- far beyond the scope of my
12 expertise.
13 Q Okay. Thank you.
14 THE COURT: Any recross? Any question from the
15 jurors? No. All right, thank you, sir.
16 THE WITNESS: Thank you, your Honor.
17 THE COURT: Sir, you're not to discuss your testimony
18 with any other witness involved in this case until this matter
19 is finally resolved. Thank you for your time, sir.
20 THE WITNESS: Yes, sir.
21 THE COURT: Next witness by the State.
22 MR. SMITH: Thank you, Judge. The State calls
23 Jennifer Bas.
24 THE MARSHAL: Ms. Bas, if you'll remain standing,
25 please. Raise your right hand and face the clerk.

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1 biology from the University of Minnesota. And I also have a
2 masters degree in forensic molecular biology which concentrated
3 in DNA from George Washington University. Sorry.
4 Q Go ahead.
5 A Prior to this I also worked for three and a half
6 years for the Armed Forces DNA Identification Laboratory in
7 Rockville, Maryland where my job was primarily to do DNA
8 identifications on individuals that died in war conflicts, Iraq
9 and Afghanistan, and my job was to perform DNA to identify
10 those individuals.
11 Q So your work in that capacity, were you often
12 required to identify somebody via DNA where there was no other
13 means of identify identification available?
14 A Yes.
15 Q Okay. How long have you been working in a capacity
16 as a person involved in the collection of DNA material total?
17 A Total --
18 Q Yes, ma'am?
19 A -- I have been a DNA forensic scientist for over five
20 years.
21 Q Okay. And how long have you been here in Clark
22 County?
23 A One -- over one and a half years.
24 Q Can you describe for us generally what the DNA
25 testing process is?

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1 A Absolutely. DNA testing actually involves a lot of
2 steps. You know, it's not a quick procedure. The first thing
3 that I actually have to do is I receive a request from a
4 detective or DA to ask me to look at the evidence. I pull up
5 that evidence. I take photographs of it. I take notes on it.
6 I make general observations. I have to screen that evidence,
7 you know, to indicate to me what type of sample it is that I'm
8 looking at. After I've determined that, then I start going
9 through and I actually do the DNA extraction. Like let's say I
10 swabbed a sample for DNA, then now I have to try and isolate
11 that DNA and get it alone by itself away from everything else.

12 I next will do a quantification step which basically
13 means that I do a test that tells me how much DNA is present.
14 After that I have to do an amplification procedure which just
15 makes millions of copies of the DNA that I'm interested in
16 looking at. And after that I have to put it on an instrument
17 that actually allows me to see the DNA profile.

18 After I get my DNA evidence, I then now have to make
19 comparisons between the evidence that I examined and make
20 conclusions based on that. Finally, I issue a report as to my
21 findings, and then my case file is sent through two forms of
22 review. So it's many, many steps.

23 Q You've just described how the DNA testing process is
24 done.

25 A Um-h'm.

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1 A Yes. A buccal swab is a cheek cell taken from an
2 individual and so that is a sample that I use as their known
3 sample. I know that to be from that person. I go examined the
4 buccal swabs of Victoria Witmarsh and also the buccal swabs of
5 Brian O'Keefe.

6 Q Now let me ask you this. When you examine the buccal
7 swab, are you able to look at the DNA itself to determine
8 whether or not the contributor of that buccal swab was a male
9 or a female?

10 A There is a location that we look at. It's called
11 amelogenin and it tells us if the individual's a male or a
12 female.

13 Q And so is it your testimony that in addition to you
14 being able to identify the buccal swab of say for instance,
15 Brian O'Keefe, you could also look at those cells and tell that
16 it was of a male person of homoplans? A --

17 A I could tell --

18 Q -- male?

19 A I could tell that it's a male human, yes.

20 Q Okay. And the same with the female?

21 A Correct.

22 Q Okay. Now, did you compare the DNA taken from the
23 buccal swab of the male who you've now identified as Brian
24 O'Keefe --

25 A Um-h'm.

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1 Q Did you do any DNA testing process with regards to
2 Event No. 081105-3916?

3 A I did.

4 Q And what did you do for that case in that event
5 number?

6 A I was asked to examine five different items of
7 evidence, and so -- do you want to be more specific about what
8 I -- do you want me to go through each practice by myself or --

9 Q Yeah, how about let's do this. Did you -- first of
10 all, did you receive some specimens of DNA in order to form a
11 baseline to make comparisons with other items of evidence?

12 A I did. Okay, I was asked to test actually five
13 different packages. The first was a kit collected from
14 Victoria Witmarsh which contained several biological samples.
15 I also was asked to test a swab of a light switch cover. I was
16 asked to examine a swab of a finger, some penile swabs, some
17 buccal swabs which is a cheek cell swab. I was asked to
18 examine a knife and I was also examined to -- or asked to
19 examine pants.

20 Q Okay. Let's talk about the buccal swabs first.

21 A Okay.

22 Q How many buccal swabs samples did you examine?

23 A Two.

24 Q And were you able to determine the identity of the
25 persons who contributed the cheek cells in those buccal swabs?

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1 Q -- to any other evidence obtained in this case?

2 A I examined -- every single DNA sample that I tested I
3 compared to both Victoria Witmarsh and Brian O'Keefe.

4 Q Okay. And you've already testified that you examined
5 a knife in -- along with this case.

6 A I did.

7 Q I'm showing you what's been admitted as State's
8 Exhibit 64.

9 A Okay.

10 Q Now, do you recognize this -- these series of
11 photographs, Ma'am?

12 A I do.

13 Q And how do you recognize it?

14 A I recognize it by the fact that my initials are
15 there, JB4. I'm the one that did the writing, and I took those
16 pictures myself.

17 Q Okay. And I'm going to zoom into this first
18 photograph.

19 A Okay.

20 Q What are we looking at here?

21 A We are looking at one side of a Wolfgang Puck knife
22 that I was asked to examine.

23 Q Is there apparent blood on that?

24 A There is.

25 Q Okay. And then what are we looking at here?

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1 A You are looking at the other side of that same knife.
 2 Q And then over here are we looking at the knife as you
 3 received it in a sealed condition?
 4 A Correct.
 5 Q And I'm showing you what's been entered into evidence
 6 as State's Exhibit 62.
 7 A Okay.
 8 Q What are we looking at here?
 9 A Here we're looking at a few things. The first thing
 10 that I want to point out is this PT positive up at the top. PT
 11 actually stands for a word phenolphthalein, and that's a test
 12 that I use to determine if blood is present. To me if I see a
 13 stain as red I think blood, and so I actually do a small test
 14 to determine whether or not blood is present. So I identified
 15 blood, and so I just made a note to myself that I did identify
 16 blood on this knife.
 17 The second --
 18 Q Now --
 19 A I'm sorry.
 20 Q -- did you test any locations on the knife that you
 21 determined were, in fact, blood?
 22 A Yes. The areas that I circled in yellow were areas
 23 that I personally took samples of for DNA.
 24 Q So that would have been four separate areas?
 25 A Correct.

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1 strike that. Did you do any testing here where we see the
 2 location JB4A?
 3 A I did. There was a stain there -- I should clarify
 4 that some of the reason why I took the stains where I did is
 5 because to me I visualize them as stains. You know, if I see a
 6 red stain and I think it's blood, it's -- you know, that's why
 7 I would target that area even though there is other blood on
 8 the knife. I just saw a stain that was noticeable to me, and
 9 that's what I tested.
 10 And so you want to talk about sample JB4A?
 11 Q I want to talk about sample JB4A.
 12 A Okay.
 13 Q What conclusions did you draw upon testing that blood
 14 that you identified at that site and comparing with the known
 15 DNA material of Victoria Witmarsh and/or Brian O'Keefe?
 16 A The first thing I determined is that it was blood
 17 positive. And my second conclusion was that there was a
 18 mixture profile.
 19 Q What do you mean by a mixture profile?
 20 A I'm going to -- can I read to you what my conclusion
 21 was?
 22 Q Would that refresh your recollection?
 23 A Yes, thank you. The DNA profile came from the blood
 24 from the middle of the blade stained 4A is consistent with the
 25 mixture of two individuals with at least one being male. The

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1 Q Now, were there other areas of blood on the knife?
 2 A Absolutely.
 3 Q And you chose to only test four?
 4 A Correct.
 5 Q Any particular reason why?
 6 A Couple reasons. One, because I felt that there was
 7 enough -- I felt that there was a lot of DNA evidence there,
 8 but it's not necessary to take everything that's there. And so
 9 I feel like I took a representative sample of some of the
 10 things that I saw on the knife, which is two-fold. I wanted a
 11 representative sample of what was on the knife to help me
 12 better decide. You know, I didn't want to take maybe just one
 13 sample, let's say. But I didn't want to completely swab the
 14 entire knife and take everything because it's not necessary to
 15 do that.
 16 Q And if you had have swabbed the entire knife and took
 17 every --
 18 A Um-h'm.
 19 Q -- would that have potentially impaired the ability
 20 of other crime scene analysts to do other investigation on the
 21 piece of evidence such as try and extract fingerprints?
 22 A Absolutely.
 23 Q Okay. Now, I want to focus on this first picture.
 24 A Okay.
 25 Q Can you explain to us the significance of -- actually

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1 major DNA profile, which means the largest contributor of the
 2 DNA there, is Brian O'Keefe, and the estimated frequency of
 3 that major profile in the population is rarer than 1 in
 4 650,000,000,000 and identity is assumed.
 5 Essentially, I had a mixture of Brian O'Keefe as the
 6 major contributor, and then my minor contributor was Victoria
 7 Witmarsh.
 8 Q Okay. Any significance in between who's the major
 9 contributor and who's the minor contributor?
 10 A Not necessarily.
 11 Q Not --
 12 A It's just telling me who contributed the most DNA.
 13 Q Okay. Now moving onto JB4B?
 14 A Okay. Again, it was blood positive. I tested top --
 15 what I called the top of the blade. I was basically saying
 16 from the tip side over on the left to the top, I indicated the
 17 top as where the blade came in contact with the handle.
 18 So this stain JB4B was not a mixture, and it was
 19 blood positive, and it was -- the source of that DNA sample was
 20 Brian O'Keefe.
 21 Q Okay. And that's further down the end of the blade
 22 where the blade begins and the handle ends?
 23 A Yeah, you can actually kind of see inside the circle
 24 there where I actually kind of swabbed out a little bit of it.
 25 I don't know if you can see -- how close you can see it, but --

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1 Q Yeah.
2 A Yeah.
3 Q Now moving down to spot JB4C, which appears to be on
4 the handle itself.
5 A Okay.
6 Q Any conclusions you draw from that location?
7 A Yes. I again said it was a mixture. The major DNA
8 profile was also Brian O'Keefe. And the frequency of that
9 major profile again was 1 in 650,000,000,000 and identity is
10 assumed.
11 Q Okay.
12 A And I can explain statistics if we'd like to go into
13 that. The other conclusion that I made is that I couldn't make
14 any conclusions about the minor contributor to that.
15 Q Okay. Could you explain the statistical significance
16 of 1 in 650,000,000,000?
17 A 650,000,000,000?
18 Q Yes, ma'am.
19 A Correct. So on this earth, you know, two individuals
20 should not have the same DNA profile with the exception of
21 identical twins. And the number 650,000,000,000 is actually
22 100 times the earth's population. And so if we said that
23 there's approximately -- in 100 earths I'm not expecting to
24 find another DNA profile as this.
25 Q Okay. And then now moving onto spot JB4D which

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1 Q Now, focusing on the second photograph, there appears
2 to be a JB5A, and a JB5B.
3 A Okay.
4 Q Can you now make those out?
5 A JB5A is the top stain that's circled there in the
6 silver marker. And JB5B is the bottom one that is circled.
7 Q Now, where is JB5B actually located on the pants?
8 A It's actually on the left ankle area of the pant.
9 And the pants that I had there were laid out and I actually
10 folded up the ankle so that the way that it's folded you can
11 kind of see that top line is like just that ankle area is
12 actually kind of resting on the abdomen area. Just so that I
13 could show both stains in the same picture.
14 Q And then so is JB5A actually located on the front of
15 the pant?
16 A It's actually located in the abdomen area.
17 Q Okay. What conclusions were you able to draw with
18 regards to this stain located in JB5A?
19 A Again, it was blood positive, and the DNA profile of
20 stain JB5A is Victoria Witmarsh.
21 Q What were you able to determine with regards to the
22 stain located in JB5B?
23 A JB5B is a mixture of two people, again. Both
24 Victoria Witmarsh and Brian O'Keefe were included in that
25 mixture. I could not exclude either of them.

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1 appears to be at the very tip of the knife --
2 A Correct.
3 Q -- or towards the -- toward the tip.
4 A Yep.
5 Q What types of conclusion did you draw based on that
6 location?
7 A I again concluded that there was blood there, and the
8 source of the DNA obtained from that section of the knife is
9 Victoria Witmarsh. And again, that statistic was rarer than 1
10 in 650,000,000,000.
11 Q Now, was she the only contributor to the DNA of that
12 location?
13 A Yes.
14 Q Okay.
15 A I did say that additional alleles were detectable of
16 threshold, but the only DNA profile that I saw was her.
17 Q Okay. Now, did you do any DNA testing on any
18 clothing, Ma'am?
19 A Yes, I was asked to examine a pair of black stretch
20 pants.
21 Q Showing you what's been admitted as State's Exhibit
22 63.
23 A Okay.
24 Q Is that the black pants?
25 A That is.

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1 MR. SMITH: Court's indulgence.
2 BY MR. SMITH:
3 Q Ms. Bas, I just want to make sure something's clear
4 for the record.
5 A Okay.
6 Q The spot that you just described, which was in JB5B
7 --
8 A Um-h'm.
9 Q -- that was located where?
10 A Front left ankle.
11 Q Front left ankles of the pants?
12 A Correct.
13 Q Thank you.
14 MR. SMITH: Pass the witness, Judge, I'm sorry.
15 THE COURT: All right.
16 MR. PIKE: Thank you very much.
17 CROSS-EXAMINATION
18 BY MR. PIKE:
19 Q Good morning.
20 A Good morning.
21 Q In reference to this and through your work as a DNA
22 chemist or scientist, you've been called upon to testify and
23 offer expert opinions in a number of courts, haven't you?
24 A This is my first testimony.
25 Q This is your first testimony?

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1 A Correct.
 2 Q In Clark County or in any court?
 3 A Any court.
 4 Q Okay. And you've had the responsibility of
 5 identifying who a person is just strictly by their DNA,
 6 important things for people's lives and emotions, and you
 7 understand the importance in aspect in the criminal
 8 investigation also.
 9 A Correct.
 10 Q And so you go through efforts to make sure that chain
 11 of custody is protected, and in this case, in fact, when you
 12 were doing the swabs, I think visually you see that there was a
 13 potential ridge imprint upon the upper part of the knife, so
 14 you made a choice not to swab there because you wanted to
 15 preserve that for fingerprint testing at a later time.
 16 A Is that the conversation that we discussed on the
 17 phone that I told you?
 18 Q Yeah. Do you remember that?
 19 A I do remember telling you that, and I actually think
 20 that I might have been talking about another piece of evidence.
 21 I never made any notes in my report or I looked back through any
 22 folder, and when I looked at my notes that I had taken on the
 23 knife, I didn't actually note that there.
 24 Q And for the record, you were gracious enough to talk
 25 with me on the phone about your analysis --

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1 A Um-h'm.
 2 Q -- because if you put it in plastic, biological
 3 fluids may weep or transfer or move --
 4 A Yeah.
 5 Q -- and --
 6 A If the sample isn't allowed to dry properly, it can
 7 have very negative effects for DNA.
 8 Q And also, if the collection or in the relationship to
 9 this, you're also aware that there may be transfer of
 10 biological fluid because of its very nature.
 11 A Correct.
 12 Q Fluid drops, it weeps, it seeps, and it is a very
 13 mobile piece of evidence --
 14 A Um-h'm.
 15 Q -- at a location many times; isn't that true?
 16 A Correct.
 17 Q And it can be displaced such as a mixture of blood it
 18 can -- if there's blood on one portion of a knife and then
 19 there's contact made with somebody else, then there may be that
 20 mixture when that occurs. And you don't know when the transfer
 21 may have occurred, and you're not able to form any opinions as
 22 to a sequence of events as far as when the mixture became a
 23 mixture or what kept the separate part separate.
 24 A I would never -- in this case I could never speculate
 25 on how a stain became a mixture or it wasn't a mixture or how

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1 A Okay --
 2 Q -- in this case
 3 A -- I do remember now.
 4 Q Okay.
 5 A Yep.
 6 Q This refreshes your recognize?
 7 A It does. You know, I work so many cases that it's
 8 hard to remember what I'm talking about sometimes on the phone,
 9 and I did -- you're right, I did mention to you that I had
 10 possibly seen some sort of ridge detail. I'm not a latent
 11 print examiner, but I -- okay, sorry.
 12 Q But you also have training in collection techniques
 13 and some basics in forensics collects so you were concerned
 14 about things such as cross-contamination --
 15 A Um-h'm.
 16 Q -- possible destruction of evidence, and making sure
 17 that whatever may be of evidentiary value that you maintain its
 18 integrity for future people to --
 19 A Absolutely.
 20 Q -- examine? And --
 21 A That's one of the reasons why I wouldn't take all of
 22 the stains that I did testing on. I would want to leave some
 23 for future testing.
 24 Q And, in fact, you actually keep the knife stored in
 25 paper, I guess --

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1 even the evidence was placed there.
 2 Q But there are some circumstances in which you can
 3 tell by looking at a piece of evidence where it may appear to
 4 you that in that examining that probably the sample that was
 5 given to you was probably contaminated through an improper
 6 collection technique.
 7 A Can you be more --
 8 Q Let me give you an example.
 9 A Yeah, can you be more specific, please.
 10 Q Okay. In going through and collecting and look being
 11 at some biological samples, you talked about the swabs from
 12 inside the mouth.
 13 A Um-h'm.
 14 Q Now, you had the small piece that actually goes
 15 inside the mouth, and you had examined that portion that's like
 16 a too good brush.
 17 A Correct.
 18 Q That's where you get that from.
 19 A Um-h'm.
 20 Q Then swabs are taken from different locations on the
 21 body. Many times they're taken with a swab that's a lot like a
 22 Q-tip.
 23 A Correct.
 24 Q And so you can tell if that Q-tip is dipped in
 25 distilled water and swabbed, then it will have certain evidence

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1 on it that you can see that was meant to be collected. But
2 there's flexive (phonetic) blood or something that may have
3 been fallen on that swab, and that would be a contamination.

4 A I will say that I have never collected evidence from
5 a person, so I don't have any knowledge of how that might go
6 about.

7 Q Okay. But in this case --

8 A In this case.

9 Q -- there -- when you were going through it, there --

10 A Um-h'm.

11 Q -- there was a penile swab that you examined --

12 A Yes.

13 Q -- that -- you noticed that there were small flex of
14 a mixture profile on that.

15 MR. SMITH: Judge, at this --

16 THE WITNESS: Well, let's be clear.

17 MR. SMITH: -- at this point I'm going to object to
18 the relevance, and can we approach, please.

19 MR. PIKE: Okay.

20 THE COURT: All right.

21 (Bench conference).

22 BY MR. PIKE::

23 Q So if I advised you in this case where you personally
24 haven't done a collection, but usually when you're doing a
25 collection or have a collection being done, if you -- if the

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1 Q And so while there was a full male profile on the
2 swab of the right index finger of Brian O'Keefe, there were
3 other alleles that were not associated with his DNA?

4 A My exact wording is that there were additional
5 alleles below threshold, which means that they were not above
6 my reporting threshold. And in this case when I look at what
7 his profile is on paper, I'm actually only seeing his profile.
8 And there's nothing above threshold that I could even begin to
9 attribute to anybody else.

10 Q But significant enough to at least put it in the
11 report that there were other alleles?

12 A I just always want to be as thorough as possible and
13 indicate everything that was there.

14 Q Thank you very much.

15 MR. PIKE: I don't have any further questions.

16 THE COURT: Any redirect?

17 REDIRECT EXAMINATION

18 BY MR. SMITH::

19 Q With regards to the comparison that you did in this
20 case, I want to focus back on the buccal swab.

21 A Okay.

22 Q When you receive a buccal swab, what do you do with
23 it?

24 A I open it up, I take notes on it, I take a cutting of
25 the buccal swab. I just take a piece of it, and then I go

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1 collection was done by giving it to someone who had blood on
2 their hands, then there's a chance that blood may slough off
3 onto -- dry blood or any type of blood may slough off onto that
4 swab, and it may become contaminated.

5 A Correct.

6 Q And so that may not be the best way to collect
7 evidence.

8 A I wouldn't think so.

9 Q Now, on the right index finger of Brian O'Keefe, that
10 would be your interpretation on JBJA?

11 A Um-h'm.

12 Q In that you indicate that there was a full male
13 profile, but there were alleles present. When you're
14 identifying a blood or a DNA type, what is an allele?

15 A Alleles, okay. An allele is -- it's one form of a
16 gene. Now --

17 Q My best example of the way I kind of can understand
18 it is I believe that when you're talking about DNA, you start
19 with general and more specific and more specific. Kind of like
20 a book --

21 A Yes.

22 Q -- a chapter, and a page.

23 A Let me be -- let me give you an example. X and Y.

24 If you're a female, you have two X chromosomes. Each x is an
25 allele. It's a very simple explanation, I think.

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1 through those procedures that I told you about before where I
2 extract the DNA, I quantify it, figure out how much is there, I
3 amplify it and make millions of copies much the areas that I'm
4 interested in looking at, and then I run it on the instrument
5 to get the profile.

6 Q Okay. Now with regards to the buccal swab that was
7 given to you that had been identified to you as coming from
8 Brian O'Keefe --

9 A Um-h'm.

10 Q -- when you've initially extracted the DNA from that
11 buccal swab, if it were contaminated with say the DNA of a
12 female, would that have been easily identifiable to you?

13 A Yes.

14 Q And in this case is it your testimony that the buccal
15 swab that you received that had been provided to you as
16 identified as coming from Brian O'Keefe was a male profile and
17 only a male profile?

18 A It was a full male profile, meaning I got a full DNA
19 result at every location that I tested, and there was no
20 indication of a mixture whatsoever.

21 Q And then is that the same DNA that you used to
22 compare to the DNA that you extracted from the knife?

23 A I always compare my unknown samples, things that I
24 don't know what they are, to that known sample.

25 Q Okay. And is that notwithstanding any potential

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1 problems that the defense attorney argued may have existed with
2 regards to the extraction of material from the penile swab?
3 A Can you rephrase that, please?
4 Q Okay. That was kind of a complicated question. My
5 question is was that a separate comparison done -- separate to
6 the DNA that was obtained from the penile swab?
7 A Yes. Every sample is looked at individually.
8 Q Meaning you didn't use the DNA that was obtained from
9 the penile swab to compare to the DNA found on the knife?
10 A Are you suggesting that --
11 Q No, I --
12 A I'm sorry. I'm like -- every sample is done
13 independently. Each analysis is done independently. In fact,
14 those two samples are never by each other when I do them. And
15 I don't make any conclusions until after all the DNA evidence
16 is complete.
17 Q Okay. And just so it's clear. Is the buccal swab,
18 the one that you've just testified to --
19 A Um-h'm.
20 Q -- that was a full male profile --
21 A Um-h'm.
22 Q -- is that the baseline that's used to compare to all
23 the other DNA on the evidence?
24 A Yes.
25 Q Okay.

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1 Q And in relationship to that, that was full female
2 profile?
3 A Correct.
4 Q Okay, that just meant it was her DNA?
5 A My conclusion is that that DNA -- the source of that
6 DNA is Victoria Witmarsh.
7 Q Okay?
8 MR. PIKE: Finally, your Honor, I'd ask that she be
9 qualified as an expert and can testify that she is now
10 qualified as an expert and been allowed to testify to in the
11 court of Clark County. No further questions.
12 THE COURT: The proper foundation has been laid, yes.
13 Anything else from the State?
14 MR. SMITH: No.
15 THE COURT: Any witnesses from the jurors? Any
16 questions, excuse me. Any questions from the jurors? No.
17 Thank you, Ma'am, for your testimony. You're instructed not to
18 discuss your testimony with any other witness involved in this
19 case until this matter is finally resolved. Thank you for your
20 time.
21 THE WITNESS: Thank you.
22 THE COURT: Is the jury okay? Do they need a break
23 right now? Is everyone okay? All right. Next witness by the
24 State.
25 MR. SMITH: Judge, State calls John Stallings. Oh,

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1 A Thank you.
2 MR. SMITH: No further questions.
3 THE COURT: Any recross?
4 MR. PIKE: Yes, very brief, your Honor.
5 RECROSS-EXAMINATION
6 BY MR. PIKE::
7 Q In reference to a determination of what you're
8 processing, you're able to determine what type of a fluid it
9 is; isn't that correct?
10 A I'm able to determine if something is blood or if
11 it's semen. Those are the two big items that I will screen
12 for.
13 Q Okay. What about saliva?
14 A I cannot tell you if something is saliva.
15 Q In reference to the penile swab, there was no
16 evidence of semen?
17 A There was not evidence of semen.
18 Q And in addition to that, you also examined nail
19 clippings from underneath -- that were collected from
20 underneath fingernails.
21 A I did.
22 Q And those were collected from Victoria --
23 A Yes.
24 Q -- Witmarsh?
25 A Um-h'm.

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1 actually, Judge, can we approach before --
2 THE COURT: All right.
3 MR. SMITH: -- he --
4 (Bench conference).
5 THE COURT: Next witness for the State.
6 MR. SMITH: John Stallings, Judge.
7 THE MARSHAL: Follow me, sir. Can I get you to just
8 raise your right hand, please. Remain standing.
9 JOHN STALLINGS, PLAINTIFF'S WITNESS, SWORN.
10 THE CLERK: Please be seated. Will you please state
11 your name and spell it for the record.
12 THE WITNESS: My first name is John, J-o-h-n. Last
13 name's Stallings, S-t-a-l-l-i-n-g-s.
14 THE COURT: Go ahead, Counsel.
15 DIRECT EXAMINATION
16 BY MR. SMITH::
17 Q Mr. Stallings, how presently employed?
18 A I'm employed with the Clark County Coroner Medical
19 Examiner's Office.
20 Q And in what capacity, sir?
21 A I'm an investigator.
22 Q What are your job duties?
23 A If we get a report of a death that falls under the
24 jurisdiction of the coroner's office, and I'm assigned this
25 case, I respond to the scene. I examine the body. I pronounce

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1 death. I gather information from the agents that's there, who,
2 when, where, why, how. And I generate a report. I talk to the
3 families, if they're available.

4 We have the body at that time removed and brought to
5 our office to be examined. And then it's a responsibility of
6 our office to contact the legal next to kin. Also to make a
7 positive identification on the deceased.

8 Q Okay. Did you respond to a 5001 El Parquet on
9 November 5th -- excuse me, November 6th -- the morning -- early
10 morning hours of November 6th, 2008?

11 A I did.

12 Q Did you come into contact with a descendant who was
13 later identified as Victoria Wimarsh?

14 A Yes.

15 Q Can you describe the condition of the person --
16 actually, why don't you just take us through what you did when
17 you arrived at the scene.

18 A After I got there, I met with the police detectives
19 that were there. They were with Las Vegas Metropolitan
20 homicide division.

21 Q Okay. And did they provide some background
22 information to you?

23 A They did.

24 Q Without going into what they said, what types of
25 things did you do at the scene?

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1 Q What's the significance of rigor mortis and/or
2 lividity?

3 A Rigor mortis will set into the body. That's the
4 stiffening of the muscles. There's a lot of things that effect
5 that whether it would be ambient temperature, what the body is,
6 what they're lying on, you know, say shag carpet as opposed to
7 concrete floor. What they're wearing. Are they wearing just
8 something light, are they nude, are they wearing a parka,
9 something like that. The temperature will affect that quite a
10 bit as well.

11 Q Based on your determinations as to rigor mortis
12 and/or lividity, are there ever any occasions where you're able
13 to formulate an opinion as to how long a person has been
14 deceased prior to you coming into contact with them?

15 A No, I do not.

16 Q Okay.

17 MR. SMITH: Pass the witness.

18 THE COURT: Any cross.

19 MS. PALM: Thank you.

20 CROSS-EXAMINATION

21 BY MS. PALM:

22 Q Good morning, Mr. Stallings.

23 A Good morning.

24 Q I just have a couple of questions for you.

25 A Not a problem.

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1 A What I did, I went in and I examined the descendant.
2 I noted the clothing, any marks, I took photographs --

3 Q Okay.

4 A -- at the scene, you know, for the doctors, the
5 medical examiners, they need to see those. And I pronounced
6 death, and then I just gathered information from the local
7 agency as to what happened.

8 Q Okay. Do you recall what time you pronounced death?

9 A I pronounced death well, November 6th, 2008 at 0415
10 in the morning.

11 MR. SMITH: Court's indulgence.

12 BY MR. SMITH:

13 Q Now, you just testified that you pronounced time of
14 death at 0415. Is that different than the actual time a person
15 dies? It seems like a silly question, but I just want to make
16 sure the record's clear.

17 A Yes. Yes, it is.

18 Q Okay.

19 A That's the time of death I pronounced.

20 Q Okay. Did you actually manipulate the body of the
21 descendant in order to determine if there were any signs of
22 life?

23 A What we do, we feel the body for the skin condition,
24 whether they're cool, cold, warm. I'm also checking for rigor
25 mortis and lividity as well.

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1 Q You prepared a summary of investigation report?

2 A Yes, ma'am.

3 MS. PALM: May I approach the witness, your Honor?

4 THE COURT: Yes.

5 BY MS. PALM:

6 Q Do you recognize (indiscernible) photograph?

7 A Prescription medication, apparently for the
8 descendant.

9 Q And did you actually look at her prescription
10 medications at the scene?

11 A I did.

12 Q And does that appear to be a fair and accurate
13 photograph of what they were?

14 A It appears to be. That's not my photograph, but it
15 appears to be.

16 Q (Indiscernible)?

17 A Yes, uh-huh.

18 MS. PALM: Move for admission of Defense Proposed
19 (indiscernible).

20 THE COURT: State.

21 MR. SMITH: May I see the photograph? No objection,
22 Judge.

23 THE COURT: It will be admitted.

24 MS. PALM: Thank you.

25 BY MS. PALM:

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1 Q And you indicated in your report that you had
2 reviewed her prescription medications, did you not?
3 A Yes, ma'am.
4 Q In your report, if you could look at Page 2 under the
5 narrative, second paragraph. You indicated that just prior to
6 basically 10:55, five minutes before 11:00 o'clock p.m. on
7 11/5, the descendant and her boyfriend were having some sort of
8 domestic problem as the down stairs neighbor could hear
9 thumping noises. Did you yourself speak with the down stairs
10 neighbor?
11 A I did not.
12 Q So you got that time from whom?
13 A As it says in the report, I met with this homicide
14 detective, Sergeant R. Shoemaker (phonetic) and a Detective
15 Buns, and they related that information to me. I put they
16 related the following information to me.
17 Q Okay.
18 MS. PALM: No more questions. Thank you.
19 THE COURT: Any redirect?
20 MR. SMITH: Court's indulgence, your Honor. No. No
21 further questions.
22 THE COURT: All right, thank you, sir, for your
23 testimony. You are instructed not to discuss your testimony
24 with any other witness involved in case until this matter is
25 finally resolved thank you for your time, sir. Actually, any

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1 Q Can you tell us about your education and job
2 training?
3 A Yes. I graduated from medical school which is four
4 years. I did a one year internship in internal medicine, three
5 years of an anatomic pathology residency, and one year of a
6 forensic pathology residency.
7 Q How long had you been working in the forensic
8 pathology discipline?
9 A Approximately, four years.
10 Q How long have you been working here in Clark County?
11 A Two years.
12 Q How many autopsies with you conducted?
13 A I've conducted a total of 1,800 examinations. 1,200
14 of which were full autopsies.
15 Q And when you conduct an autopsy, can you kind of walk
16 us through the procedure?
17 A Certainly. The autopsy consists of both an external
18 and an internal examination. On the external examination we
19 note certain identifying features. Hair, eye color, any
20 bruises, scars, tattoos and also any traumatic injury.
21 Q What is the ultimate goal of an autopsy?
22 A The ultimate goal is to determine the cause and
23 manner of death.
24 Q Are there multiple possible causes and/or manners of
25 death?

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1 questions by the jurors? No? All right, thank you, sir. Next
2 witness for the State.
3 MR. SMITH: Judge, the State calls Dr. Jacqueline
4 Benjamin.
5 THE MARSHAL: Dr. Benjamin, if you'll remain
6 standing, please. Raise your right hand and face the clerk.
7 DR. JACQUELINE BENJAMIN, PLAINTIFF'S WITNESS, SWORN
8 THE CLERK: Please be seated. Please state your name
9 and spell it for the record.
10 THE WITNESS: Jack Lynne Benjamin.
11 J-a-c-q-u-e-l-i-n-e, B-e-n-j-a-m-i-n.
12 MR. SMITH: May I proceed, Judge?
13 THE COURT: Yes. Yes, Counsel.
14 MR. SMITH: Thank you.
15 DIRECT EXAMINATION
16 BY MR. SMITH:
17 Q Ms. Benjamin, how are you presently employed?
18 A I'm employed as a medical examiner with the Clark
19 County Coroner's Office.
20 Q Is that also commonly known as a forensic
21 pathologist?
22 A It is.
23 Q Did you have to secure some education in order to get
24 that employment?
25 A I did.

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1 A Yes, there are.
2 Q Can you explain what the different causes and/or
3 manners are?
4 A There are a multiplicity of causes of death. It
5 could be a gunshot wound of the head. It could be
6 atherosclerotic cardiovascular disease, it could be stab
7 wounds. So there are a lot of reasons for a person to die. A
8 manner of death is how the cause came about. Was this a
9 natural disease process such as coronary artery disease? Was
10 this from traumatic injury such as a gunshot wound, which a
11 gunshot wound can be self-inflicted, which would mean it's a
12 suicide. Or it can be inflicted by someone else, which would
13 make it a homicide. Or it could be an accidental discharge of
14 the weapon so that manner in that case would be an accident.
15 And also, when we're not sure of what happened, we
16 can use undetermined as manner of death.
17 Q So there would be five different manners of death
18 acceptable in the medical community?
19 A There are five, but we currently use four.
20 Q Okay. Specifically did you conduct an autopsy on a
21 person identified to you as a Victoria Whitmarsh?
22 A Yes, I did.
23 Q When did you conduct that autopsy?
24 A The autopsy was conducted on November 7th, 2008.
25 Q And was that pursuant to Coroner Case No. 08-08747?

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1 A Yes.
2 Q Do you recall approximately what time you completed
3 the autopsy on Victoria Witmarsh?
4 A I don't have the time of completion. Just the time
5 that the autopsy was started.
6 Q Okay. What time did you start it?
7 A I first viewed the body at 7:48 in the morning when
8 the seal was broken. And then the actual autopsy examination
9 itself was conducted at 10:14 a.m.
10 Q Now, can you describe what you actually do when you
11 conduct an autopsy?
12 A Yes. As I described previously, we do the external
13 examination, and after the external examination a standard Y
14 incision is made, and all the internal organs are removed and
15 examined.
16 Q Do you also perform any testing on the descendant?
17 A Yes, we collect blood vitreous, which is the fluid
18 behind the eyes, and sometimes tissue for toxicology analysis.
19 Q Once you gather all this information, do you use the
20 total body of that information to determine a manner of death?
21 A Yes. The manner's also based on the circumstances.
22 The scene circumstances.
23 Q Okay. And did you conduct an external and internal
24 examination on the person identified in this case?
25 A I did.

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1 A They are, yes.
2 Q Now, can you -- actually let me ask you this. Did
3 you conduct an examination -- an external examination of Mrs.
4 Witmarsh's head and/or scalp area to determine whether or not
5 there was any signs of any injury?
6 A The external examination of the scalp is limited by
7 the presence hair. So if there's bruising that's underneath or
8 in the scalp area where there's hair, we typically do not shave
9 the descendant's head unless there's a reason to do that.
10 On the examination of the head, there was a hematoma,
11 which is blood underneath the soft tissue that elevates the
12 soft tissue above the bone so that you feel an actual bump. So
13 she had a hematoma on the right side of the forehead, and
14 that's all I saw on external examination.
15 Q Can you give us examples of what types of things may
16 cause a hematoma.
17 A A hematoma is caused by blunt trauma. And blunt
18 trauma is just it's a category of trauma that's -- we use -- we
19 -- I don't specifically know what caused that injury. An
20 example of what can cause blunt trauma, a baseball bat, a hand,
21 falling on concrete, things like that will cause blunt trauma.
22 Q Okay. And so the injuries that you -- excuse me, the
23 bruises that you've already testified to, is that pretty much
24 the only significant finding from the external examination
25 along with the inside stab wound?

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1 Q I'd like to first talk to you about the external
2 examination you conducted on Victoria Witmarsh. Can you kind
3 of walk us through that? At least tell us your significant
4 findings?
5 A Yes. The --
6 MR. PIKE: Your Honor, I'm sorry, may we approach the
7 bench?
8 THE COURT: All right.
9 (Bench conference).
10 BY MR. SMITH:
11 Q Can you please proceed. Describe the significant
12 findings with regards to your external examination of Victoria
13 Witmarsh.
14 A Yes. There were a number of bruises on the body. On
15 the head, torso and extremities, and there was also a sharp
16 force injury which on internal examination I determined to be a
17 stab wound that was on the right side of the chest.
18 Q Okay.
19 MR. SMITH: May I approach the witness?
20 THE COURT: Yes.
21 BY MR. SMITH:
22 Q I'm going to show you a series a photographs, and I'm
23 going to ask if they accurately reflect and depict the bruises
24 that you personally observed pursuant to the external
25 examination you conducted of Victoria Witmarsh?

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1 A That's correct.
2 Q Okay. Now let's go to the internal examination. Can
3 you tell us what your significant findings were pursuant to
4 conducting that?
5 A Yes. Internally when I reflected the scalp, she had
6 a bruise on the back of her head that I could only see in the
7 scalp tissue after it was peeled back. She also had 500
8 milliliters of blood in the right chest cavity. About 125
9 milliliters of blood in the abdominal cavity, and a wound that
10 went from the front of her liver to the back of her liver.
11 Q Okay. So just so the record's clear, you testified
12 that the external examination yielded a sign of injury to the
13 front of her head. And the internal injury yielded a sign of
14 injury to the rear of her head as well?
15 A That is correct.
16 Q Please proceed.
17 A Those were the major internal findings.
18 Q Okay. Did you --
19 A I'm sorry, internal traumatic findings. There were
20 other findings of natural disease.
21 Q Okay. Can you talk to us about that?
22 A Certainly. Her liver was cirrhotic, meaning it was
23 hard and very nodular. That was a major natural disease
24 finding.
25 Q Is that common called cirrhosis?

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1 A Yes, that's cirrhosis.
 2 Q Okay. Was a toxicology examination done on Victoria
 3 Witmarsh as well?
 4 A Yes. Toxicology analysis was performed on blood.
 5 Q Okay. What were the significant findings with regard
 6 to that?
 7 A She had ethanol, which is alcohol concentration of
 8 a .24 gram percent, and venlafaxine which is an
 9 anti-depressants. The other name is Effexor of 990 nanograms
 10 per mill.
 11 Q Okay. Now, we're hearing that you're saying 990
 12 nanograms per milliliter. Is that a significantly high or low
 13 number, or do you know?
 14 A It is -- it's actually in the therapeutic or norm
 15 ranges.
 16 Q Okay. So it's your testimony that that's in actually
 17 a therapeutic or normal range?
 18 A Yes, for the sources that I used for toxicology, it
 19 is in the normal range.
 20 Q And what sources did you use incidentally, doctor?
 21 A There's a source called Winick (phonetic) that is
 22 produced by a toxicologist and also the book is called a
 23 Distribution of Toxic Drugs and Chemicals in Man, and it's
 24 produced by Baselt (phonetic).
 25 Q So is it your testimony, then, that you actually

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1 Less effective ways of getting Hepatitis C would be
 2 sexual transmission or using the tooth brush or a razor of
 3 someone that had Hepatitis C.
 4 Q Okay. Did the toxicology examine that was done on
 5 Ms. Witmarsh reveal whether or not her blood contained any
 6 illegal narcotics?
 7 A There were no illegal narcotics on our toxicology
 8 analysis.
 9 Q Is there any correlation between a person suffering
 10 from Hepatitis C and cirrhosis? Specifically, can Hepatitis C
 11 actually cause cirrhosis?
 12 A Yes, it can.
 13 Q Can Hepatitis C affect the body in any other way such
 14 as the ability of a person to bruise?
 15 A Not the Hepatitis C itself, but its effect on the
 16 liver, yes.
 17 Q How about cirrhosis?
 18 A Yes.
 19 Q So is it your testimony that cirrhosis can actually
 20 affect how a person bruises?
 21 A Yes, it can.
 22 Q Can you explain that for us?
 23 A Yes. Cirrhosis is -- it is actually just scarring of
 24 the liver, and when the liver is scarred, that means it's lost
 25 its normal cellular component. And part of the liver's

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1 consulted two different sources?
 2 A Yes.
 3 Q And arrived at the same conclusion?
 4 A Yes.
 5 Q And are those two treatises, as they were, that are
 6 commonly accepted research materials for the medical community?
 7 A Yes, they are.
 8 Q Were you able to determine whether or not Mrs.
 9 Witmarsh suffered from any other diseases?
 10 A On gross examination her other organs appeared normal
 11 to my recollection. I'm sorry, with the exception of her
 12 spleen which was enlarged.
 13 Q Do you know whether or not Mrs. Witmarsh, whether her
 14 blood tested positive for the antibodies for Hepatitis C?
 15 A It did, yes.
 16 Q Okay. Now, are you aware of what -- how a person can
 17 contract Hepatitis C?
 18 A Yes, I am.
 19 Q How?
 20 A According to the Centers For Disease Control, the
 21 most common way of contracting Hepatitis C is blood borne
 22 infection, being exposed to the blood of someone with Hepatitis
 23 C, and that's typically in intravenous drug use, from
 24 transfusion -- getting repeated transfusions such as
 25 individuals with hemophilia would get repeated transfusions.

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1 function is to produce some of the clotting factors that help
 2 us heal when we -- or to stop you from bleeding when you are
 3 bruised or injured.
 4 So with a cirrhotic liver your production of those
 5 clotting factors are decreased, so when you as a cirrhotic, a
 6 stain an injury, you would bruise easier than someone without
 7 cirrhosis.
 8 Q Okay, is it your testimony that in order to develop
 9 the bruises, notwithstanding suffering from cirrhosis, they
 10 still would have to suffer some type of injury?
 11 A Yes.
 12 MR. SMITH: Judge, at this point -- actually strike
 13 that.
 14 BY MR. SMITH:--
 15 Q With regards to the photographs that you've just
 16 illustrated -- excuse me, that you've just looked at and we
 17 talked about the bruises, do those photographs depict bruises
 18 that could be consistent with suffering an injury?
 19 MR. PIKE: Your Honor, the continuing objection that
 20 was May earlier, the insertive --
 21 THE COURT: All right.
 22 MR. PIKE: Thank you.
 23 THE COURT: Go ahead and answer the question.
 24 THE WITNESS: All bruises you can think of as injury,
 25 whether it's self-inflicted injury or injury inflicted by

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1 someone else.
 2 BY MR. SMITH:
 3 Q Okay. So let me ask you this, the injuries that are
 4 depicted in this photograph, could they be consistent with
 5 blunt force trauma?
 6 A Yes.
 7 MR. SMITH: Judge, at this point I'd move for
 8 admission of State's Proposed 32 through 38, 40, 44 through 48,
 9 and 55 through 59, which are all the photographs that Dr.
 10 Benjamin has previously reviewed.
 11 THE COURT: Can I see those again, please?
 12 MR. SMITH: Yes.
 13 THE COURT: Are these in order? Yes.
 14 MR. SMITH: Yes.
 15 THE COURT: All right.
 16 MR. PIKE: Thank you, your Honor. I've had a chance
 17 to see those, and I previously made the representations to the
 18 Court. If I can ask the witness a voir dire question.
 19 THE COURT: Sure.
 20 BY MR. PIKE:
 21 Q Dr. Benjamin, we had an opportunity to meet prior to
 22 the preliminary hearing in this case: do you recall?
 23 A Yes, I do recall.
 24 Q And during that period of time you indicated that
 25 individuals that suffer from cirrhosis often bruise just from

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1 THE COURT: Yes.
 2 MR. SMITH: And Judge, rather than put them up one by
 3 one, can I have her mission to just hand them to the jury and
 4 they can look at them or do you want me to --
 5 THE COURT: Why don't you put them up.
 6 MR. SMITH: Okay.
 7 THE COURT: Why don't you publish them up there.
 8 BY MR. SMITH:
 9 Q Showing you what's now been admitted, doctor, as
 10 State's Exhibit 32. What are we looking at right here?
 11 A You're looking at the body from the left side, and
 12 there's a bruise on the front of the left arm.
 13 Q And then State's Exhibit 33. Is that a closer up
 14 picture of that bruise?
 15 A That is correct.
 16 Q State's Exhibit 34, what are we looking at here?
 17 A We are looking at a series of bruises on the left
 18 arm. One is on the anterior and more medial aspect. And two
 19 are on the back of the arm.
 20 Q So there's one right there --
 21 A Right.
 22 Q -- then are there two right there?
 23 A Correct.
 24 Q State's Exhibit 35, what is that?
 25 A That is a closer view of the previous picture with

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ROUGH DRAFT TRANSCRIPT

1 minimal contact because of the nature of that disease.
 2 A Yes.
 3 Q And so bruises that were depicted in those
 4 photographs have nothing to do with the cause of death, which
 5 was a perforation of the liver?
 6 A The bruises actually, I have that as contributory to
 7 the cause of death.
 8 Q None of the bruises were life threatening.
 9 A They're not life threatening, but the mechanism of
 10 death in this case would be blood loss, exsanguination and
 11 bruises causes blood to be out of the vasculature, so that's
 12 why it was contributory.
 13 Q But in reference to an individual that suffers from
 14 cirrhosis, because of the nature of bleeding, like hemophilia,
 15 the bruise may not be reflective of the amount of blunt force
 16 trauma that you would normally experience with an otherwise
 17 healthy person.
 18 A That is true.
 19 MR. PIKE: So based upon that, your Honor, these are
 20 not representative of specific life threatening type injuries,
 21 and I request that they be excluded.
 22 THE COURT: (Indiscernible) objection, they'll be
 23 admitted.
 24 MR. SMITH: Thank you, your Honor. Judge, I'd ask
 25 for permission to publish.

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1 that bruise on the back of the arm, the left arm.
 2 Q And then 36, is that a closer up picture of those
 3 other two?
 4 A Yes.
 5 Q Looking at 37, what can we see there?
 6 A That's the left side of the body. There's a faint
 7 bruise on the lateral left body wall.
 8 Q 38, what are we looking at there, doctor?
 9 A We're looking at the same bruise with an L shaped
 10 ruler.
 11 Q And 40?
 12 A It's a bruise on the knee. I'm not sure left or
 13 right knee from that photo.
 14 Q 44.
 15 A Those are two bruises on the upper area of the right
 16 side of the abdomen.
 17 Q 46.
 18 A There's a bruise on the right buttock. There's two
 19 on the lateral aspect of the left leg.
 20 Q So there's one on the buttock and then two down here?
 21 A Correct.
 22 Q 47.
 23 A This is a posterior surface of the body. We're
 24 seeing those bruises on the left arm again that were previously
 25 shown.

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1 Q Does there also appear to be apparent redness in her
2 back area?
3 A That's livor.
4 Q Okay. Understood. 48.
5 A That's a closeup of the bruise on the back of the
6 left arm again.
7 Q Okay.
8 A We've seen that one.
9 Q Okay. 55.
10 A That's the hematoma with a bruise on the right side
11 of the forehead.
12 Q 56.
13 A Those are bruising on the lower distal aspect of the
14 legs and on the dorsum of the feet. On the top of the feet.
15 Q 57.
16 A That is a bruise on the medial aspect of the left
17 buttock.
18 Q 58.
19 A It's a closeup of the bruise on right buttock.
20 Q So then there would be a bruise right here and
21 actually a bruise that's right here that we can't see in this
22 photograph?
23 A Correct.
24 Q And finally, 59. We've looked at that one
25 previously. That's on the left arm on the front.

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1 body.
2 Q Does that appear to be a male?
3 A Yes.
4 Q Okay. Notwithstanding that, are you able to draw for
5 demonstrative purposes kind of the location of the wound and
6 the path it took internally inside the body of Mrs. Witmarsh?
7 A Yes, I can.
8 Q Can you do that for us?
9 A Certainly. The arrows are --
10 Q Okay. And this accurately reflects that wound path
11 based on your own external investigation -- or internal
12 investigation, I'm sorry.
13 A Somewhat, yes. The diagram is sort of limited. In
14 general, yes.
15 Q Okay.
16 A Yeah.
17 MR. SMITH: Judge, I'd move for admission of State's
18 proposed Exhibit 66.
19 THE COURT: Let's let defense counsel look at it,
20 first.
21 MR. SMITH: You're right. I'm sorry, Judge. My
22 apologies.
23 THE COURT: Any objections --
24 MR. PIKE: No objection, your Honor.
25 THE COURT: Okay, it will be admitted.

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1 Q Okay. And these depict all the bruises that you saw
2 pursuant to the external investigation?
3 A Yes.
4 Q Now, based on your internal and external
5 investigation, were you able to arrive at a cause of death for
6 Victoria Witmarsh?
7 A I was, yes.
8 Q And what was that?
9 A It was a stab wound of the chest.
10 Q Showing you State's 60. Is that a picture of that
11 stab wound?
12 A Yes, it is.
13 Q Were you able to make any determination as to the
14 path of the wound internally?
15 A Yes. The path was downward, and it was -- I
16 described it as front to back and right to left.
17 MR. SMITH: May I approach the clerk, Judge?
18 THE COURT: Yes.
19 MR. SMITH: May I approach the witness, Judge?
20 THE COURT: Yes.
21 BY MR. SMITH:
22 Q Now, doctor, I'm showing you what's been marked for
23 purposes of identification as State's Proposed Exhibit 66.
24 What does that appear to be to you?
25 A It's a body diagram. The lateral surface of the

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1 MR. SMITH: May I publish, Judge?
2 THE COURT: Yes.
3 BY MR. SMITH:
4 Q Okay. So up here we have the wound itself --
5 A Correct.
6 Q -- is that correct? And then you're saying that the
7 wound went downward?
8 A Right, the path is downward.
9 Q Now, based on your internal and external
10 investigation, were you able to determine a cause of death?
11 A Yes, the cause of death again was a stab wound of the
12 chest.
13 Q I'm sorry, manner of death. Forgive me.
14 A The manner of death was homicide.
15 Q Now, can you explain the significance of the cause of
16 death being a homicide from a medical perspective?
17 A Yes. A manner of death as homicide means that I
18 believe that this injury was caused by someone else. So it --
19 for us it means death at the hands of another. That's what
20 homicide means.
21 Q Okay.
22 MR. SMITH: Court's indulgence.
23 BY MR. SMITH:
24 Q Dr. Benjamin, one final question. Just so that the
25 record's clear, where did you observe the injury to the back of

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1 Mrs. Witmarsh's head and how were you able to observe that?

2 A The injury was on the middle or midline of the
3 parietal/occipital scalp region, and that's after we make an
4 incision behind the ears and peel the scalp back.

5 Q Can you kind of just stand up and demonstrate to the
6 jury --

7 A Sure.

8 Q -- where that is located on the human body?

9 A Certainly.

10 Q Okay, thank you.

11 MR. SMITH: Pass the witness, Judge.

12 THE COURT: Ladies and gentlemen, we're at the noon
13 hour here. We did start a little late. How's the jury as far
14 as food and needing a personal break? Is everybody okay, or
15 all right, go ahead, Mr. Pike. Thank you.

16 CROSS-EXAMINATION

17 BY MR. PIKE::

18 Q Afternoon, Dr. Benjamin.

19 A Good afternoon.

20 Q Okay. At the time of the preliminary hearing in this
21 matter you hadn't had an opportunity to review the toxicology
22 or the possible effects of the medication that was found in
23 Mrs. Witmarsh's system.

24 A That's correct.

25 Q And then after we had a conversation at the time of

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1 should have had a target daily dose of about 150 milligrams.

2 MR. SMITH: Objection, Judge. Is he saying based on
3 Dr. Christiansen's report?

4 THE COURT: Is that your question, Mr. Pike?

5 MR. PIKE: Yes.

6 MR. SMITH: Then I object.

7 MR. PIKE: Okay. Well, based --

8 MR. SMITH: Because basically he's trying to use her
9 to testify.

10 THE COURT: All right. I --

11 MR. PIKE: Okay, I'll bring in Dr. Christiansen.

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

13 MR. PIKE: That's fine. We'll go ahead and do that.

14 BY MR. PIKE::

15 Q When you (indiscernible) for these other sources, you
16 certainly found that Effexor which is a name for this
17 anti-depressant does have some counter indications and may
18 affect somebody emotionally and cause them to be in an agitated
19 state, isn't that correct?

20 A Agitation is listed as a side effect of the
21 medication.

22 Q Okay. And along with that, there are other possible
23 side effects such as aggression, and certainly, it's not a drug
24 that should ever be mixed with alcohol.

25 MR. SMITH: Objection, Judge. That's a compound

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1 the preliminary hearing, you had an opportunity to review that
2 -- the nature of that drug and the dosages and get some
3 information on that because it became a question at the time of
4 the preliminary hearing.

5 A Yes.

6 Q You wanted to be prepared for testimony at the trial
7 today. I make representations to you that a full set of the
8 medical records of Mrs. Witmarsh was provided to the District
9 Attorney's Office prior to the trial in this matter. Did you
10 have an opportunity to review those?

11 A The medical records?

12 Q Yes.

13 A No, I did not.

14 Q So you would not be aware of when Mrs. Witmarsh
15 started on the use of this anti-depressant?

16 A I received some information from the deputy district
17 attorney regarding some of her medical history and that she had
18 started on this medication, I believe that was August of 2008.

19 Q August 5th of 2008. And, in fact, what you're
20 referring to is the report that was provided by Dr. Tawny
21 Christiansen (phonetic). Did you receive that?

22 A Yes.

23 Q And in reference to that, from her review of the
24 medical records, then, you wouldn't contest the fact that the
25 amount of drugs that she was supposed to have in her system

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1 question.

2 MR. PIKE: Okay.

3 THE COURT: Sustained.

4 MR. PIKE: Let me ask it in one --

5 BY MR. PIKE::

6 Q The drug should not be taken when somebody has
7 alcohol in their system.

8 A The physician's desk reference does say that the drug
9 is, according to their research and testing, does not affect
10 someone's motor skill. You are not affected if you're using
11 alcohol and Effexor, but they do recommend that you don't use
12 the two in combination.

13 Q But you've got a patient here or a deceased here that
14 has cirrhosis of the liver and Effexor is broken down by the
15 liver and put into the system, so the alcohol which causes the
16 cirrhosis which then affects the ability of -- or somehow
17 affects the ability of Effexor would counter indicate to you
18 that she shouldn't be drinking while she was taking this
19 anti-depressant.

20 A It is recommended that you don't drink and take the
21 anti-depressant.

22 Q Okay, alcohol's a depressant.

23 A Alcohol is known to be a depressant, yes.

24 Q Effexor is an anti-depressant, so we've got counter
25 balancing medications that are being self-administered by Mrs.

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1 Witmarsh.
2 MR. SMITH: Objection, Judge. He's testifying, and
3 it's argumentative.
4 THE COURT: No. Do you understand the question,
5 doctor?
6 MR. SMITH: It's not a question.
7 THE WITNESS: I'm not sure what I'm being asked.
8 THE COURT: Why don't you restate your question.
9 MR. PIKE: All right. Thank you very much. Okay.
10 BY MR. PIKE:
11 Q Without alcohol being a depressant, that reacts
12 adversely in some people, according to what you've read for
13 people that take Effexor.
14 MR. SMITH: Objection, Judge. It's a vague question.
15 She testified that the combination of the two can lead to some
16 problems, but not necessarily that it has an adverse reaction.
17 And, in fact, she said that it's recommended -- that it states
18 that it may or may not affect motor skills. That's what she's
19 testified to.
20 MR. PIKE: Okay, let me -- if I could just lead her
21 and then ask a direct question --
22 THE COURT: Okay.
23 MR. PIKE: -- and we can do that. All right.
24 BY MR. PIKE:
25 Q Some of the side effects of Effexor includes nausea.

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1 A I do not. It's not relevant to my determining cause
2 and manner.
3 Q Well, if someone -- let's take an injection into a
4 vein. That -- and you have an injection of a drug, that could
5 be suicidal or could be homicide.
6 A It --
7 MR. SMITH: Objection, Judge. What's the relevance
8 as opposed to this case?
9 MR. PIKE: Well, she's making a determination whether
10 or not it's suicide or whether or not it's a homicide, but she
11 doesn't have any over the mechanics of what was going on or
12 what was involved in her mind or Victoria Witmarsh's mind set
13 at the time that this happened. We know she was intoxicated.
14 We know that she --
15 THE COURT: Well, what's the relevance of the
16 injection when there's no evidence in this case that there was
17 any injection?
18 MR. SMITH: And that's my point.
19 MR. PIKE: It's an example to show that there are
20 physical evidence that can be interpreted both as suicide or as
21 homicide.
22 THE COURT: I'm going to sustain the objection.
23 Direct it to the specifics of this case and see if -- you know,
24 we'll see what the doctor's answer is.
25 BY MR. PIKE:

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1 correct?
2 A Correct.
3 Q Sweating, correct?
4 A Correct.
5 Q Trimmer.
6 A Yes.
7 Q Agitation.
8 A Yes.
9 Q Dizziness.
10 A Yes.
11 Q Possible effects towards aggression.
12 A I'm actually not familiar with that. I'm not
13 familiar that side effect. I may have missed that.
14 Q Mental effects towards depression and suicide.
15 A The -- again, the PDR says that their research data
16 does not support that. It increases suicidal behavior if you
17 take this drug in adults 24 years of age or older, but that
18 there is an increase in suicide for teens and adolescents.
19 Q And this is being given to somebody, Mrs. Witmarsh,
20 because she's depressed. That would make sense, wouldn't it?
21 MR. SMITH: Objection, Judge. It's outside the scope
22 of her knowledge. She has no reason to know.
23 BY MR. PIKE:
24 Q You never reviewed her history, so you don't know if
25 Mrs. Witmarsh had a history of suicide attempts, do you?

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1 Q In this case, you were not present in that room when
2 that knife went into that body.
3 A That is correct.
4 Q You don't have any personal knowledge as to how that
5 entry occurred, whose hands were on the knife and how they were
6 on the knife, do you?
7 A I do not, no.
8 Q In going through these bruises to make a
9 determination whether or not they're relevant to this -- or to
10 the time frame that's involved in this, let's talk about a
11 little bit bruises. Bruises tend to be just a discoloration of
12 the skin that is reflected of blood pooling underneath the
13 skin, correct?
14 A Correct.
15 Q And generally they change colors in a predictable
16 fashion.
17 A In a predictable fashion, but not in predictable time
18 and two bruises sustained at the same time can have different
19 coloration.
20 Q So if a bruise initially when it's occurred, then a
21 bruise will be a reddish color, generally.
22 A Typically, yes.
23 Q Okay, the color of the blood under skin, and then
24 after a period of time when the blood cells begin to break
25 down, the bruise will darken and turn to a purplish color, is

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1 that correct?
 2 A Yes.
 3 Q And then it will go from that to a green period,
 4 correct?
 5 A Correct.
 6 Q And then to a brown or yellow appearance.
 7 A Correct.
 8 Q Now, do you have your autopsy report with you?
 9 A I do.
 10 Q Okay, if you could refer to that. Okay. Turn to
 11 Page 3 on that, if you would. Okay. Some of the bruising that
 12 you noted around the thorax or abdomen and back indicated a
 13 faint three-quarter inch green contusion, correct?
 14 A Correct.
 15 Q Okay. The right side of the abdomen that was one
 16 green maroon and the other one was predominantly maroon,
 17 indicating that those were older ones.
 18 A What --
 19 Q Older bruises. They weren't associated to the time
 20 or near the time of death.
 21 A I can't say that with any certainty.
 22 Q The color has changed, and so you don't know --
 23 A The color can change in minutes to hours. I don't
 24 know how long she was laying on the scene. I don't know, so I
 25 can't say that they happened at the same time.

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1 the force applied and also when or when she sustained those
 2 bruises, yes.
 3 Q And alcoholism also affects -- excuse me. Alcoholism
 4 also affects the bruising process?
 5 MR. SMITH: Objection, Judge. Relevance.
 6 THE COURT: Overruled.
 7 THE WITNESS: Alcohol does have some effect on
 8 platelets which are involved also in the clotting cascade. So
 9 yes, alcohol use long term chronic can have an effect.
 10 BY MR. PIKE:
 11 Q And the platelets, the blood that is what causes the
 12 clotting that you'd indicated during your testimony before.
 13 A It's part of a clotting cascade.
 14 Q In going through the references in relation to that,
 15 the Hep C also causes possible signs and symptoms of liver
 16 cirrhosis, which includes an accumulation of fluid within the
 17 abdomen; is that correct?
 18 A I think we're getting a little mixed up. The
 19 cirrhosis of the liver is what would cause accumulation of
 20 fluid, not accumulation of blood and cirrhosis can be caused by
 21 a number of things singly or in combination. It can be caused
 22 by Hepatitis C, Hepatitis B or alcohol use and certain other
 23 medical diseases.
 24 Q And Hepatitis C or cirrhosis of the liver, can either
 25 of those two medical conditions cause impaired cognition of an

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1 Q So during -- the bruises change post-mortem?
 2 A They don't change post-mortem. I don't know when the
 3 sequence of when they were sustained.
 4 Q And you have not offered any opinion in relationship
 5 to these bruises, so I'm taking that that you don't -- you
 6 can't provide an opinion in relationship to those.
 7 MR. SMITH: Objection, Judge. That actually
 8 misstates the testimony, because she stated that those bruises
 9 were a contributory cause to Mrs. Witmarsh's death.
 10 MR. PIKE: Certainly --
 11 THE COURT: Is your question --
 12 MR. PIKE: -- if --
 13 THE COURT: Can you date the time of the bruises?
 14 THE WITNESS: I cannot date them just by looking at
 15 them. And when we do try to date them microscopically, the
 16 ranges are pretty broad. It's in days -- usually days, weeks,
 17 that sort of thing.
 18 THE COURT: Go ahead, Mr. Pike.
 19 MR. PIKE: Thank you.
 20 BY MR. PIKE:
 21 Q And in relationship to this, it's even more difficult
 22 because of the number of diseases that she had. The Hep C, and
 23 the more particular the cirrhosis of the liver affected how
 24 easily she bruised and how extensive the bruising was.
 25 A The cirrhosis does make it challenging to determine

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1 individual?
 2 A The cirrhosis can cause impaired cognition.
 3 Q And cognition is a brain function.
 4 A Yes.
 5 Q That's the ability to ascertain, interpret and react
 6 appropriately to stimuli from the outside?
 7 A Correct.
 8 Q In relationship to that, alcohol also affects a
 9 person's ability to -- or their cognitive facilities, doesn't
 10 it?
 11 A Of course.
 12 Q And the blood alcohol level of Mrs. Witmarsh that you
 13 were able to ascertain was a .24. That's in excess of the legal
 14 limit?
 15 A Yes, it is.
 16 MR. SMITH: Objection to the relevance, Judge.
 17 THE COURT: Overruled.
 18 BY MR. PIKE:
 19 Q That's an amount that is sufficient to impair her
 20 ability to think clearly.
 21 A I cannot say that definitively because I don't know
 22 what her drinking history is, and if she is a chronic
 23 alcoholic, she may have been operating at a .24 on a regular
 24 basis, so it's difficult to say how she would have reacted or
 25 responded or what her cognitive abilities would be at a .24 not

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1 knowing her history.

2 Q And this is an individual, then, that probably has a
3 prolonged history of alcohol abuse, based upon the alcohol
4 level and the -- or excuse me, and the cirrhosis of the liver?

5 MR. SMITH: Objection, Judge. Calls for speculation.

6 THE COURT: Are you able to make that determination,
7 doctor?

8 THE WITNESS: My suspicion is that the cirrhosis is
9 caused both. If she did have a history of long-term alcohol
10 use, then it is caused by both the alcohol use and Hepatitis C.
11 Both of those in combination could have caused the cirrhosis.
12 Again, the history of alcohol use is historical. I can't just
13 base it on a one-time laboratory analysis.

14 BY MR. PIKE::

15 Q And if someone has Hepatitis C, you would advise
16 them, if you were a treating physician, to not drink alcohol.

17 A Correct.

18 MR. PIKE: Court's indulgence. Appreciate the
19 Court's indulgence.

20 BY MR. PIKE::

21 Q Thanks. Appreciate your patience. In your
22 examination of the stab wound that was under the arm, you were
23 able to ascertain that the knife did not hit any bony
24 structures?

25 A No, it did not.

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1 Q Blunt force trauma.

2 A Correct.

3 Q All of the injuries that you saw?

4 A With the exception of the sharp force injury, the
5 stab wound.

6 Q And incidentally, doctor, what was the length of the
7 knife, if you know?

8 A The length of what I measured at autopsy?

9 Q Yes, ma'am.

10 A One and a quarter inch.

11 Q How far did the wound protrude into the body?

12 A Approximately, four and a quarter inches.

13 Q And finally, if there was any evidence to you that
14 that wound was self-inflicted, would you have still categorized
15 this as a homicide?

16 A Of course not.

17 Q No further questions.

18 THE COURT: Recross?

19 MR. PIKE: Nothing further.

20 THE COURT: All right, thank you, doctor. Thank you
21 for your testimony.

22 THE WITNESS: Thank you.

23 THE COURT: You're instructed not to discuss your
24 testimony with any other witness involved in this case until
25 this matter is finally resolved. Thank you for your time.

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1 Q And it went through and you indicated that it
2 lacerated the liver.

3 A There was an incised wound through the liver, yes.

4 Q Okay. Define incised for me.

5 A It's -- incised wound means that it was made by a
6 sharp instrument. A laceration would be blunt trauma, so --

7 Q And because of the nature of the Hep C, the damage to
8 the blood platelets that imposes, and the injury to the liver
9 itself, this would have been a very profusely, a very quickly
10 bleeding type of a wound?

11 A I suspect it would have been, yes.

12 Q And I don't know a better way to say it. I apologize.
13 Maybe you can help me. So that this would have -- the bleeding
14 -- the amount of bleeding would have caused her to bleed out
15 and pass away rather quickly.

16 A More than likely, yes.

17 Q Thank you.

18 THE COURT: Mr. Smith.

19 REDIRECT EXAMINATION

20 BY MR. SMITH::

21 Q With regards to the description of the bruises and
22 the injuries that you saw, how did you categorize those
23 injuries in your autopsy report?

24 A They're listed under description of blunt force
25 injuries.

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1 Ladies and gentlemen, it's 12:15 now. We'll take our lunch
2 break. I've been advised that the bathrooms are still out of
3 order in the building. Actually, they only work on the first
4 and second floors. Oh, was there any questions, I'm sorry?

5 No. They only work on the first and second floors at this
6 time. They're working diligently to repair them, and so if you
7 do need to go to the restroom, you're going to have to go down
8 to the first and second floor.

9 During this recess it is your duty not to converse
10 among yourselves or with anyone else on any subject connected
11 with this trial, or read, watch or listen to any report over
12 commentary on the trial by any person connected with the trial
13 or by medium of information, including without limitation,
14 newspaper, television, radio or the Internet.

15 You're not to form or express an opinion on any
16 subject connected with this case until this matter is finally
17 submitted to you for deliberations. We'll see you back --
18 who's your next witness, Mr. Smith? Who do you have coming?

19 MR. SMITH: Judge, the State's next witness was going
20 to be either Detective Wildepman or Detective Burn.

21 THE COURT: All right. We'll see you back at 1:15.
22 (Outside the presence of the jury)

23 Let the record reflect we're outside the presence of the jury.
24 Yes.

25 MR. SMITH: Judge, one thing I wanted to put on the

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1 record real quick. The anticipates during the testimony of
2 either Burn or Detective Burn or Detective Wildemann
3 introducing a certified -- actually a copy of a certified copy
4 of the judgment of conviction of Mr. O'Keefe for the crime of
5 battery constituting domestic violence pursuant to the prior
6 bad acts motion that the State has already filed and been
7 granted.

8 In an abundance of caution, the second page of the
9 judgment of conviction actually annotates that he was sentenced
10 to 24 to 60 months consecutive with another case. While the
11 trial was proceeding, Ms. Palm and I kind of came to an
12 agreement as to what we were going to redact, so that part is
13 redacted from that, and by stipulation I guess we're going to
14 -- they're going to accept that we're offering a less than
15 accurate copy of the certified copy of the judgment of
16 conviction.

17 THE COURT: Is that correct, Ms. Palm?

18 MS. PALM: That's correct.

19 THE COURT: I think that's appropriate, and I
20 appreciate counsel working that issue out. Anything else?

21 MS. PALM: We have another issue with respect to that
22 they wanted to in the note of Officer Hutcherson's --

23 MR. SMITH: That's right.

24 MS. PALM: -- statements that he recorded. I don't
25 think that note is admissible, but if you're going to allow

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1 MR. SMITH: And Judge, there -- I respect Ms. Palm's
2 --

3 THE COURT: We're going to have just one person
4 argues for each side.

5 MR. SMITH: I -- okay.

6 THE COURT: So whoever's going to -- whoever wants to
7 take it, it's fine.

8 MS. GRAHAM: Take it.

9 MR. SMITH: Judge, it is a (indiscernible) hearsay in
10 that it's a prior recollection recorded. Ms. Palm -- the
11 questions that Ms. Palm asked made it clear to the jury that
12 this officer doesn't exactly remember accurately what he wrote
13 because she even asked questions like well, it says one thing
14 in the report, but you just testified to something differently.

15 And then on cross -- on redirect examination Ms.
16 Graham was able to get him to say well, whatever's written on
17 that note is what actually happened because that's what I wrote
18 at the time. That's what he said. That makes it admissible as
19 a prior recollection recorded. It's just a piece of paper, and
20 it should come in.

21 THE COURT: Well, he testified what he wrote on the
22 paper, didn't he?

23 MS. PALM: That's correct. And they didn't lay a
24 foundation when he testifying for a prior recollection report.

25 MR. SMITH: Well, we can bring it back in, though.

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1 State to bring in Officer Hutcherson again, I think that would
2 compound the prejudice we've already suffered, so I said if the
3 Court -- you know, if that's the indication that you're going
4 to allow them to even bring him in the courtroom again, then
5 we'll just stipulate to the admission of the note because we
6 don't really have another choice.

7 THE COURT: Well, I don't think that -- I don't think
8 that's part of his report because the defendant didn't write
9 that note. It's the -- Officer Hutcherson wrote that note just
10 to refresh his memory of what the defendant stated. No, that's
11 not -- that's considered a report. And he used it to refresh
12 his memory or he was using cross-examination.

13 MS. GRAHAM: Judge, those were mental impressions at
14 the time. I mean, he keeps an officer's notebook to record the
15 statements of the defendant. He testified to those statements
16 as statements that the defendant made at the time he was in his
17 patrol car.

18 THE COURT: Isn't that the same as just as an
19 officer's report where officer's going to write in his report
20 what a person said to them?

21 MS. PALM: Yes.

22 MS. GRAHAM: No.

23 MS. PALM: And that's hearsay, and he already said
24 the contents of the that report. There's no point in admitting
25 the report.

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1 That's the whole point.

2 THE COURT: At this point the report's not coming in
3 at this point.

4 MR. SMITH: Okay, Judge. Thank you.

5 MS. PALM: Thank you.

6 THE COURT: Now, why don't we stick around for a
7 minute here, and why don't you check with -- Kristen, will
8 check with the status of the transcripts. And I hope for, you
9 know, both sides here -- like I said, if you're going to
10 question each of the officers, you know, weigh the impact of
11 that, please, okay. And then please fine tune your questions
12 so we can just get right to the point.

13 MS. PALM: Well, you know, I don't think that the
14 State should get another opportunity to try and prove their
15 case further through these officers. So what I would request
16 is that they just be called, I allowed to cross them on the
17 intoxication issue, and if they have rebuttal to that, they can
18 to that.

19 At this point I don't know how many of those officers
20 I'm going to need to call because I haven't seen their
21 transcript yet --

22 THE COURT: Okay, but --

23 MS. PALM: -- so I may not want to call them back in
24 here. I don't really want to keep reminding --

25 THE COURT: Right.

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1 MS. PALM: -- you know.
 2 THE COURT: I understand.
 3 MR. PIKE: And for the --
 4 THE COURT: All I'm asking you is please evaluate
 5 that carefully.
 6 MS. PALM: And will I have some time to do because I
 7 have the next witness also,
 8 THE COURT: Well, Kristen's going to check on the
 9 transcripts right now, and so at least, you know, you guys can
 10 share duties in that regard.
 11 MR. PIKE: Thank you. And one of other thing for the
 12 record is that we had at bench conference when Dr. Benjamin was
 13 testifying prior to the photographs coming in. At that time I
 14 indicated my concerns about the bruising. Said that they
 15 weren't relevant in this. The Court -- and made an objection
 16 to them being admitted. The Court listened to argument from
 17 counsel, ruled that upon examination of the ME, that if they
 18 were relevant -- if the Court felt that they were relevant that
 19 they would be allowed to be admitted.
 20 I stated an ongoing objection. The Court allowed
 21 them over my objection, and I was allowed to cross-examine
 22 about the photographs, the nature of the coloring, the timing
 23 and the import as to that. So there was an objection made at
 24 the bench during the conference. It was overruled, and then it
 25 proceeded as I've indicated. I think I'm correctly stating

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1 She has already -- Ms. Palm has already cross-examined --
 2 THE COURT: Ms. Graham, I've ruled that they're going
 3 to be allowed to call these witnesses to specifically address
 4 the issues contained in the use of force report. All right,
 5 see everybody back at 1:15.
 6 MR. SMITH: I'm sorry. I just want -- I'd rather do
 7 this now so we don't have the jury waiting. We intend on
 8 getting the defendant's statement -- videotaped statement in
 9 through either -- through Detective Wildemann. I have already
 10 discussed that with defense counsel, and I want to make sure
 11 that they're okay with the version as is so that if they want
 12 us to do some redactions, we have time to do it before lunch.
 13 THE COURT: Okay. Have you reviewed a copy of the
 14 redacted version?
 15 MR. SMITH: We expect to try and do it before lunch.
 16 I don't know if it's possible, but I did let them know about
 17 this --
 18 THE COURT: Have you reviewed it?
 19 MR. SMITH: -- Monday, I believe.
 20 MR. PIKE: There are some long gaps. I think they
 21 can speed through those.
 22 MR. SMITH: We actually have it --
 23 MS. PALM: The one hour break.
 24 MR. SMITH: We just actually have it just the
 25 transcribed portion, that's it.

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1 that.
 2 THE COURT: That's correct. All right. See you
 3 back at 1:15.
 4 MS. GRAHAM: Judge, there is one other issue, please.
 5 THE COURT: All right.
 6 MS. GRAHAM: I mean, we -- the Court instructed us to
 7 call all of the officers and have them here at 3:00 o'clock.
 8 We've done that, Judge.
 9 THE COURT: All right.
 10 MS. GRAHAM: So, you know, I -- and Ms. Palm
 11 indicates that she doesn't think that that's going to be
 12 sufficient time for her to review. We don't even have the
 13 transcripts yet.
 14 THE COURT: Well, we're checking right now.
 15 MS. GRAHAM: Okay.
 16 THE COURT: And they're not -- they're not full
 17 transcripts of the entire testimony.
 18 MS. GRAHAM: Okay.
 19 THE COURT: The court recorder's pulling out anything
 20 regarding the demeanor, standing -- anything regarding
 21 observations.
 22 MS. GRAHAM: Okay.
 23 THE COURT: So --
 24 MS. GRAHAM: And Judge, at this I have to renew the
 25 State's objection at least outside of the presents of the jury.

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1 MR. PIKE: Oh, okay.
 2 MR. SMITH: So the other stuff is -- the stuff before
 3 --
 4 MS. PALM: No, we want the stuff before. That's the
 5 problem.
 6 MR. SMITH: So you want to play the whole thing?
 7 MS. PALM: The stuff before and the stuff after. We
 8 don't need to play the stuff in the break in between.
 9 MR. SMITH: Okay. But either way, you're still fine
 10 with it coming in as is?
 11 MR. PIKE: Yes.
 12 MR. SMITH: And then we'll just have to make -- okay,
 13 fair enough.
 14 THE COURT: Okay.
 15 MR. SMITH: Thank you.
 16 THE CLERK: She said five, ten minutes. She's just
 17 making sure the times, everything is correct.
 18 MR. PIKE: Okay, we'll wait here.
 19 THE COURT: Okay, so I would suggest that someone be
 20 assigned to the transcripts. Someone be assigned to get
 21 prepared for the next witness.
 22 (Court recessed at 11:23 a.m. until 1:24 p.m.)
 23 (In the presence of the jury)
 24 THE MARSHAL: Please remain seated and come in order.
 25 Department 17 of the Eighth Judicial District is again in

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1 session. Honorable Judge Michael P. Vittari presiding. Let's
2 make sure our cell phones are turned off, please.
3 THE COURT: Good afternoon, ladies and gentlemen.
4 Back in the presence of the jury panel. State, please call
5 your next witness.
6 MR. SMITH: Judge, the State calls Detective
7 Wildemann to the stand.
8 THE MARSHAL: If you'll remain standing, please.
9 Raise your right hand and face the clerk.
10 MARTIN WILDEMAN, PLAINTIFF'S WITNESS, SWORN
11 THE CLERK: Please be seated. Will you please state
12 your name and spell it for the record.
13 THE WITNESS: Martin Wildemann, W-i-l-d-e-m-a-n-n
14 MR. SMITH: May I proceed, Judge?
15 THE COURT: Yes
16 DIRECT EXAMINATION
17 BY MR. SMITH:
18 Q Mr. Wildemann, how are you presently employed?
19 A With the Las Vegas Metropolitan Police Department.
20 Q And in what capacity, sir?
21 A I'm a homicide detective.
22 Q How long have you been working at a homicide
23 detective?
24 A Seven years.
25 Q Over those seven years how many homicide cases would

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ROUGH DRAFT TRANSCRIPT

1 table. Looks like a dark gray suit.
2 MR. SMITH: Can the record reflect the witness has
3 identified the defendant?
4 THE COURT: Yes, it will.
5 BY MR. SMITH:
6 Q Do you recall when you conducted this interview?
7 A I conducted it in the early morning hours, I would
8 say, of the 6th at the homicide offices.
9 Q Who was present in that interview?
10 A Myself and Detective Kieger (phonetic).
11 Q Is he also a homicide detective?
12 A Yes.
13 Q Was interview recorded?
14 A Yes, it was.
15 Q And how was it recorded?
16 A I did an audio -- a hand held audio recording and a
17 digital video recording was done also.
18 MR. SMITH: Court's indulgence, Judge.
19 THE COURT: Can I just have one of the defense
20 counsel approach, please, and Mr. Smith?
21 (Bench conference).
22 MR. SMITH: May I approach the witness?
23 THE COURT: Yes.
24 BY MR. SMITH:
25 Q Now, Detective Wildemann, I'm showing you what's been

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ROUGH DRAFT TRANSCRIPT

1 you say you've worked?
2 A Well over 140 I'd say.
3 Q How many of those cases have involved stabbings?
4 A I can't give you an exact number. I would say 40 or
5 50.
6 Q Were you assigned as one of the detectives on a case
7 reference even number 11 -- actually 08110053918?
8 A Yes, I was.
9 Q And was that reference a stabbing that occurred at
10 5001 El Parque?
11 A Yes.
12 Q Was that reference a descendant identified to you as
13 a Victoria Witmarsh?
14 A Yes, it was.
15 Q And what were your assigned duties in this
16 investigation, detective?
17 A Witness/suspect interview.
18 Q Did you conduct a witness/suspect interview?
19 A I conducted an interview, yes, of the suspect.
20 Q Do you see the suspect that you conducted an
21 interview with present here in court today?
22 A Yes, I do.
23 Q Can you point to him and identify for the Court what
24 he's wearing.
25 A He's seated to the far left end of the defendant's

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ROUGH DRAFT TRANSCRIPT

1 marked for purposes of identification as State's Proposed
2 Exhibit 68. Do you recognize what that is?
3 A Yes, I do.
4 Q And what is that?
5 A It's a digital recording on a compact disc of the
6 video statement of Mr. O'Keefe.
7 Q And is that an item that you prepared or had prepared
8 on your behalf?
9 A I prepared that.
10 Q Okay. You familiar with the contents of this?
11 A Yes.
12 MS. PALM: Your Honor, just for the record, we do
13 have a copy of the videotape, and we don't have any objection
14 of them playing it at this time.
15 THE COURT: All right, thank you.
16 MR. SMITH: Then I'd move for its admission and
17 request permission to publish.
18 THE COURT: All right, it will be admitted, and you
19 can play it for the jury. I'm sorry, Counsel, was this just
20 merely an audio or is it video?
21 MR. SMITH: It's a video.
22 THE COURT: Okay.
23 MR. SMITH: And audio.
24 THE COURT: All right.
25 (Off the record colloquy).

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ROUGH DRAFT TRANSCRIPT

000495

1 BY MR. SMITH:
2 Q And just for the record, Detective Wildemann, does
3 this appear to start at 1:23 in the morning on November 6th,
4 2008?
5 A Yes, sir.
6 Q Okay.
7 (Thereupon, the videotape was played from 1:35:42
8 p.m. to 2:14:05 p.m.).
9 MR. SMITH: And Judge, for the record, I think Ms.
10 Palm has agreed that we can fast forward to the time when the
11 detectives come back in because it's about an hour long break.
12 THE COURT: Okay. Well, let's --
13 MS. PALM: That's correct, and we have that time on
14 the time stamp, 3:06. So it stops at -- the break begins at
15 2:01 and stops at 3:06 when they come back.
16 THE COURT: All right, thank you.
17 (Thereupon the videotape was played from 2:14:56 p.m.
18 to 2:38:08 p.m.)
19 (Off the record colloquy).
20 BY MR. SMITH:
21 Q Now, detective, have you watched the entirety of the
22 recording of the time that Mr. O'Keefe was inside that
23 interview room?
24 A Yes, I have.
25 Q Okay. Is there a time in the recording where Mr.

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Yes.
2 MR. SMITH: Can I approach the witness, Judge?
3 THE COURT: Yes.
4 BY MR. SMITH:
5 Q Showing you what's been marked for purposes of
6 identification as State's Proposed 69. Do you recognize that?
7 A Yes, I do.
8 Q And can you just explain so the record's clear, what
9 is that?
10 A This is just a copy of that video with a shortened.
11 It takes off the beginning part and I believe most of the end
12 part.
13 Q Okay.
14 A The dead space.
15 Q Okay. But is it correct to state that everything
16 that's on the video that's already played on the screen is also
17 on this?
18 A Yes.
19 MR. SMITH: At this point I'd move for admission of
20 State's Proposed 69.
21 MS. PALM: No objection.
22 THE COURT: It will be admitted.
23 MR. SMITH: And permission to publish a portion of
24 State's Proposed -- actually, just permission to publish
25 State's Exhibit 69.

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ROUGH DRAFT TRANSCRIPT

1 O'Keefe is sitting in there by himself, and he makes a
2 statement outside of earshot of anyone presumably, that there's
3 no way she did this to herself?
4 A I don't recall that, I'm sorry.
5 Q Okay.
6 A I don't recall that.
7 Q If you saw that part of the video, would that refresh
8 your recollection as to whether or not that happened?
9 A Yes.
10 Q Okay.
11 (Off the record colloquy).
12 BY MR. SMITH:
13 Q Do you recall reproducing the entirety of the video
14 specifically to mimic a transcription of the video that you
15 provided to the District Attorney's Office and it was also
16 provided to defense counsel?
17 A Yes.
18 Q When did you provide a copy of that disk?
19 A The shorter copy or the --
20 Q The shorter copy.
21 A The shorter copy, yesterday.
22 Q Okay.
23 MR. SMITH: May I approach the witness?
24 THE COURT: Yes.
25 MR. SMITH: Can I approach the clerk, Judge.

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ROUGH DRAFT TRANSCRIPT

1 THE COURT: Yes.
2 BY MR. SMITH:
3 Q And just so the record's clear, detective, does this
4 appear to be a portion of the video where the defendant is in
5 the interrogation room alone?
6 A Yes.
7 (Thereupon, the videotape was played from 2:42:38
8 p.m. to 2:43:50 p.m.)
9 BY MR. SMITH:
10 Q Now, detective, what is it appear that Mr. O'Keefe is
11 doing right here? Can you tell?
12 A It looks to me like he's looking at his hand.
13 (Thereupon, the videotape was played from 2:44:03
14 p.m. to 2:44:10 p.m.)
15 BY MR. SMITH:
16 Q Now do you recall whether or not he made that
17 statement?
18 A Yes, I do.
19 Q Okay.
20 MR. SMITH: Okay, I think I'm actually done with the
21 video.
22 BY MR. SMITH:
23 Q I just have a couple of additional questions for you,
24 detective. Now, we heard on the video Detective Kingler stating
25 that officers checked to see whether or not there were any

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ROUGH DRAFT TRANSCRIPT

000496

1 phone calls to police originating from Brian O'Keefe regarding
2 the incident that occurred that night.
3 A Yes.
4 Q Do you know if any cell phones were actually
5 retrieved from the O'Keefe residence.
6 A Yes, there were three.
7 Q Did you, in fact, go through those phones to see if
8 there was any outgoing phone calls to 911 or even 311?
9 A Yes, we did, and there were no outgoing calls to 911
10 or police numbers.
11 Q Now, we've heard testimony from a Cheryl Morris that
12 approximately a month after this happened, she had a
13 conversation with the defendant wherein Mr. O'Keefe indicated
14 that he --
15 MS. PALM: Objection, your Honor. I don't know why
16 he's restating Cheryl Morris' testimony.
17 MR. SMITH: To ask him if that testimony's consistent
18 with what Mr. O'Keefe told him happened or if it's inconsistent
19 with it.
20 MS. PALM: Well, the jury can determine that for
21 themselves. They heard Ms. Morris' testimony, and they watched
22 the video.
23 MR. SMITH: Okay.
24 THE COURT: Sustain the objection.
25 MR. SMITH: I'll withdraw the question, Judge. May I

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ROUGH DRAFT TRANSCRIPT

1 A I believe so, that she was the victim.
2 MR. SMITH: Judge, I'd move for admission of State's
3 Proposed Exhibit 67.
4 MS. PALM: No objection.
5 THE COURT: It will be admitted.
6 MR. SMITH: Judge, I'm pass the witness.
7 THE COURT: All right, any cross-examination?
8 MS. PALM: Yes, thank you.
9 CROSS-EXAMINATION
10 BY MS. PALM:
11 Q Afternoon, Detective Wildemann.
12 A Hello.
13 Q That video, the first video we were watching,
14 actually, there's another break after you walk out of the
15 interview room, and then you come back with CSA Ford. Do you
16 recall that?
17 A I'm sorry, the who?
18 Q The interview room.
19 A Yeah.
20 Q You come back after a break with CSA Ford
21 A Oh, yes.
22 Q Okay.
23 A Yes, yes.
24 Q And we're just going to play that portion of the
25 videotape now.

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ROUGH DRAFT TRANSCRIPT

1 approach the clerk?
2 THE COURT: Yes.
3 MR. SMITH: May I approach the witness?
4 THE COURT: Yes.
5 BY MR. SMITH:
6 Q I'm showing you, detective, what's been marked for
7 purposes of identification as State's Proposed Exhibit 67. Do
8 you recognize that do want?
9 A Yes, I do.
10 Q And what is that document?
11 A It is a judgment of conviction in the name of Brian
12 Keny O'Keefe (phonetic) filed March 9th, 2006.
13 Q And is it a judgment of conviction or the felony
14 offense of battery constituting domestic violence?
15 A Yes, it is. Category C felony.
16 Q Were you able to determine whether or not that
17 conviction was received pursuant to a jury trial?
18 A Yes, I was.
19 Q Were you able to determine as to what testified at
20 that jury trial?
21 A Yes, I did.
22 Q And would that be Victoria Wismarsh?
23 A Yes, it was.
24 Q Were you able to ascertain whether or not Victoria
25 Wismarsh testified as the victim in this case?

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ROUGH DRAFT TRANSCRIPT

1 MS. PALM: I think it's started at 3:55, and it's
2 already been admitted.
3 (Thereupon the videotape was played from 2:49:18 p.m.
4 to 3:08:01 p.m.)
5 BY MS. PALM:
6 Q Okay. Detective, I just want to go over some of the
7 basic things about that interview first.
8 A Okay.
9 Q The video looks like he was in the room at 1:24 when
10 it starts. Do you agree with that?
11 A Yes.
12 Q So it would be about two hours after the incident was
13 called in.
14 A Yes.
15 Q And then he -- you guys officially start at 1:45 and
16 continue until about 2:01. Does that sound right.
17 A Approximately, yes.
18 Q Okay. So a little less than a half an hour. And
19 then you break for over an hour --
20 A Yes.
21 Q -- is that correct?
22 A Yes.
23 Q Okay. And then you go back in at 3:06. The second
24 portion of the interview goes until you terminate at 3:28.
25 Does that sound correct?

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ROUGH DRAFT TRANSCRIPT

000497

1 A Yes.
 2 Q Okay. And then there was another shorter break until
 3 3:55 when you come back in with Dan Ford, as we just saw there.
 4 A Correct.
 5 Q Okay. So by the time we're watching the part with
 6 Dan Ford, that was about five hours after the incident was
 7 called in, is that correct?
 8 A Correct.
 9 Q Okay. And during the initial part of the interview
 10 when Brian was asking how he (sic) was, you first had said
 11 she's unconscious --
 12 A Yes.
 13 Q -- do you recall that?
 14 A Yes.
 15 Q Okay. And then you later tell him, you know, there's
 16 no official word yet. We'll let you know when there is,
 17 basically.
 18 A Yes.
 19 Q Okay. And then later you say she's not looking too
 20 good. We'll let you know.
 21 A Yes.
 22 Q Okay. And it's not until near the very end of the
 23 interview, 3:21, when you -- it looks like you're making a
 24 phone call --
 25 A Yes.

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 ROUGH DRAFT TRANSCRIPT

1 assaulted somebody with a deadly weapon and then you found some
 2 evidence to support that?
 3 MR. SMITH: And Judge, I'm going to object to the
 4 relevance.
 5 MS. PALM: It's relevant because it's his state of --
 6 THE COURT: Will counsel --
 7 MS. PALM: -- mind during the interview.
 8 THE COURT: -- approach, please. Counsel approach.
 9 (Bench conference).
 10 THE COURT: I'm going to sustain the objection.
 11 BY MS. PALM:
 12 Q Okay, you will agree with me for almost the entirety
 13 of the time you were interviewing Brian he had information from
 14 you that Victoria was still alive?
 15 A Yes.
 16 Q Did you ever follow up on the information from the
 17 interview that Victoria bought bottles of wine the day of the
 18 incident, there might be a receipt in her purse?
 19 A We attempted to locate the receipts that he was
 20 speaking of in her purse and in her apartment, and I can't say
 21 we -- Detective Bunn did. He was unable to locate any such
 22 receipts.
 23 Q Did you attempt to recover the Paris (phonetic) video
 24 surveillance tapes that he was asking you to recover?
 25 A No.

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 ROUGH DRAFT TRANSCRIPT

1 Q -- discovering the word that she's now deceased.
 2 A Yes.
 3 Q Okay. So then you tell him that, and it was then he
 4 kind of breaks down crying and the interview continues until
 5 3:28.
 6 A Yes.
 7 Q Okay. So about six minutes after he actually know
 8 she's dead?
 9 A Yes.
 10 Q Okay. Would you agree that if Victoria were actually
 11 alive and he had told you she had tried to stab him, she
 12 assaulted him with a deadly weapon and there was some evidence
 13 to support that, she might have faced some criminal liability?
 14 A Say that again, I'm sorry. So if there was some
 15 evidence to support that?
 16 Q In any case.
 17 MR. SMITH: Judge, I'm going to object to the form of
 18 the question.
 19 BY MS. PALM:
 20 Q In any case.
 21 THE COURT: I'm going to sustain your objection.
 22 You're asking for a legal conclusion.
 23 BY MS. PALM:
 24 Q Well, in your experience, might you have charged
 25 somebody if they were reportedly -- they had reportedly

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 ROUGH DRAFT TRANSCRIPT

1 Q Showing you what's been admitted as Defense Exhibit
 2 RR, do you recognize that photograph?
 3 A Yes, I do.
 4 Q And that's actually taken at the scene --
 5 A Yes, it is.
 6 Q -- is that correct? And that's your arm holding up
 7 Mr. O'Keefe's head?
 8 A Yes, he's trying to push it back towards me, and I'm
 9 just keeping it steady.
 10 Q Keeping it steady, okay. Showing you Defense Exhibit
 11 EEE, do you recognize that photograph?
 12 A Yes, I do.
 13 Q What was it?
 14 A That's a top view of Mr. O'Keefe's, both of his
 15 hands.
 16 Q And they're pretty covered with blood --
 17 A Yes.
 18 Q -- are they not? And that was taken by CSA Dan Ford?
 19 A I'm not sure on that one. I thought that photos
 20 might have been taken at the scene, but I believe it to be.
 21 Q If Dan Ford testified that he had taken these photos
 22 --
 23 A Okay.
 24 Q -- you wouldn't dispute that?
 25 A No.

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 ROUGH DRAFT TRANSCRIPT

000498

1 Q Okay. Same with UU, that's a different view of his
2 hands?
3 A Yes.
4 Q Do you recognize that?
5 A Yes.
6 Q And that is blood all over his hands, basically; is
7 that correct?
8 A Yes.
9 Q Okay. And those are the hands with which he did his
10 own penile swab; is that correct?
11 A Yes.
12 Q Showing you Defense AAA, do you recognize that?
13 A Yes, I do.
14 Q That's not actually you there holding him up, is it?
15 A No, that's Officer Hutcherson -- Hutchinson.
16 Q And is that how O'Keefe appeared about five hours
17 after the incident was called in?
18 A Yes.
19 Q Same with this one.
20 A Yes.
21 Q And for the record that's Defense ZZ. And that's
22 again Officer Hutcherson --
23 A I believe so, yes, ma'am.
24 Q -- in the room with him? And going back to the video
25 that we just watched, you were the one in the video holding him

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ROUGH DRAFT TRANSCRIPT

1 the homicide division by my subpoena to them that there is, in
2 fact, another case from 2007 that that was done.
3 A That's --
4 MR. SMITH: Objection, Judge. Relevance.
5 THE COURT: What's the relevance -- well, I'm going
6 to sustain the objection.
7 BY MS. PALM:
8 Q Detective, are you aware of the possibility of doing
9 that in a murder case?
10 A Of doing what, Ma'am?
11 Q Of collecting a suspect's blood or breath alcohol.
12 MR. SMITH: Judge, I renew my objection.
13 THE COURT: Sustained.
14 BY MS. PALM:
15 Q Detective, you agree that Mr. O'Keefe smelled heavily
16 of alcohol in that interview room?
17 A He smelled of alcohol.
18 Q If you agreed that he smelled heavily of alcohol at
19 the preliminary hearing, would you agree with that now?
20 A If that's what I said, I agree.
21 Q Okay. I can show you your preliminary hearing
22 testimony --
23 A Sure.
24 Q -- or will you accept my word for it?
25 A Sure.

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ROUGH DRAFT TRANSCRIPT

1 up as he was putting on a little white jump suit?
2 A I was assisting him, yes.
3 Q Okay. And that was you who assisted him with his
4 booty?
5 A Yes.
6 Q Okay. And do you recall testifying at the
7 preliminary hearing in this matter?
8 A Yes.
9 Q And that was last December.
10 A Yes.
11 Q And do you recall me asking you whether you had --
12 whether there was a protocol regarding taking a suspect's blood
13 or breath alcohol evidence, if there was evidence that they
14 appeared to be intoxicated. Do you recall the question?
15 A I recall that question, yes.
16 Q And especially in a murder case. And what was your
17 answer --
18 A No.
19 Q -- do you recall? There's no protocol?
20 A There's no protocol, no.
21 Q Okay. And at that time you weren't aware of any case
22 where it had ever been done; is that correct?
23 A I was not aware of any case, no.
24 Q Okay. And since that time I brought to your
25 attention or the attention of other officers or detectives in

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ROUGH DRAFT TRANSCRIPT

1 Q Okay.
2 MS. PALM: May I approach, your Honor?
3 THE COURT: Yes.
4 THE WITNESS: It's described by some.
5 BY MS. PALM:
6 Q Well, no I mean I said he smelled heavily of alcohol
7 and you (indiscernible) yes.
8 A Okay.
9 Q So do you agree that he smelled heavily of alcohol in
10 that interview room?
11 A Yes.
12 Q Thank you. He was a little shuddered in his speech; is
13 that correct?
14 A At times.
15 Q And it was pretty obvious to you that he had been
16 drinking; is that correct?
17 A I could tell that he had been drinking, yes.
18 Q If you previously testified it was pretty obvious he
19 had been drinking; is that a correct way to state it? Because
20 it sounded like you were restating it.
21 A I just answered your question. I could tell that he
22 had been drinking, yes.
23 Q Okay, was it pretty obvious?
24 A Sure, it was obvious.
25 Q Okay. You did request some forensic testing on the

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ROUGH DRAFT TRANSCRIPT

000409

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 **BRIAN K. O'KEEFE,**
 Appellant,
4 vs.
5 **THE STATE OF NEVADA**
 Respondent.

Supreme Court No.:
District Court Case No.: 08C250630

Electronically Filed
Dec 01 2015 10:51 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

6
7 **APPELLANT'S APPENDIX – VOLUME III – PAGES 0400-0599**

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O'Keefe, Brian

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"Evidentiary Hearing Request" (Amended Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive 1 Based on Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since) filed on 10/03/14	4995-5007
"Reply" to State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Prsuant to NRS 34.360 filed on 10/27/14	5052-5061
"True Pretrial Detainee's" Reply to State's Opposition(s) Admitting the State has a Jurisdictional Defect by the Aung of a Notice of Appeal Which Diveste Jurisdiction of the Matter Appealed; i.e., O'Keefe's Pretrial Habeas Matter Appealed to the 9 th Circuit on the Subject Matter of the Amended Information Already Named a Double Jeopardy Violation filed on 10/01/14	4989-4994
Affidavit of Matthew D. Carling, Esq. filed on 06/29/15	5447-5453
Affidavit of the Honorable Michael P. Villani filed on 09/24/14	4981-4983
Amended Information filed on 02/10/09	0175-0177
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6	Defendant's Brief on Admissibility of Evidence of Alleged Victim's History of Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation (With Knives and Scissors), and Erratic Behavior filed on 03/20/09	0293-0301
7	Defendant's Motion to Require Court to Advise the Prospective Jurors as to the Mandatory Sentences Required if the Defendant is Convicted of Second Degree Murder filed on 03/04/09	0196-0218
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9	Defendant's Proposed Jury Instructions filed on 03/20/09	0302-0316
10	Defendant's Proposed Jury Instructions filed on 08/23/10	1335-1393
11	Defendant's Submission to Clark County District Attorney's Death Review Committee filed on 12/31/08	0021-0027
12	Defendant's Supplemental Proposed Jury Instructions filed on 03/20/09	0290-0292
13	Defendant's Supplemental Notice of Witnesses filed on 08/16/10	1294-1296
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27	Ex-Parte Motion for Reimbursement of Incidental Costs Subsequent the Court Declaring Defendant Indigent and Granting Forma Pauperis filed on 01/21/14	4722-4747
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1	Ex-Parte Motion to Extend Prison Copywork Limit filed on 01/28/14	4764-4767
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4	Information filed on 12/19/08	0001-0003
5	Instructions to the Jury (Instruction No. 1) filed on 09/02/10	1399-1426
6	Instructions to the Jury filed on 03/20/09	0246-0288
7	Judgment of Conviction (Jury Trial) filed on 09/05/12	4623-4624
8	Judgment of Conviction filed on 05/08/09	0327-0328
9	Judicial Notice Pursuant NRS 47.140(1)-NRS 47.150(2) Supporting Pro-Se Petition Pursuant NRS 34.360 filed on 03/12/15	5082-5088
10	Jury List filed on 06/12/12	3456
11	Jury List filed on 08/25/10	1396
12	Letters in Aid of Sentencing filed on 05/04/09	0324-0326
13	Motion by Defendant O'Keefe filed on 08/19/10	1329-1334
14	Motion for Complete Rough Draft Transcript filed on 04/03/12	3430
15	Motion for Judicial Notice the State's Failure to File and Serve Response in Opposition filed on 02/24/14	4800-4809
16	Motion for Judicial Ruling filed on 05/24/10	1028-1030
17	Motion for Leave to File Supplemental Petition Addressing All Claims in the First Instance Required by Statute for Judicial Economy with Affidavit filed on 06/15/15	5420-5422
18	Motion for Relief from Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals has not Issued any Remand, Mandate, or Remittitur filed on 07/23/14	4871-4889
19	Motion to Continue Trial filed on 06/01/12	3450-3455
20	Motion to Dismiss Counsel filed on 10/03/11	3164-3168
21	Motion to Modify and/or Correct Illegal Sentence filed on 01/27/14	4749-4759
22	Motion to Place on Calendar filed on 10/26/11	3169-3182
23	Motion to Place on Calendar filed on 11/28/11	3184-3192
24	Motion to Withdraw as Counsel filed on 04/29/11	3044-3047
25	Motion to Withdraw Counsel filed on 11/28/11	3193-3198
26	Motion to Withdraw Counsel for Conflict and Failure to Present Claims when I.A.C. Claims Must be Raised Per Statute in the First Petition Pursuant Chapter 34 filed on 06/08/15	5148-5153
27	Motion to Withdraw filed on 09/14/10	1434-1437
28	Notice of Appeal filed on 03/13/14	4843-4849
	Notice of Appeal filed on 04/11/14	4858-4861
	Notice of Appeal filed on 05/21/09	0332-0333
	Notice of Appeal filed on 07/31/15	5467-5472
	Notice of Appeal filed on 08/11/15	5478-5483
	Notice of Appeal filed on 08/29/14	4923-4924
	Notice of Appeal filed on 10/21/15	5552-5553
	Notice of Appeal filed on 11/03/15	5569-5571

1	Notice of Appeal filed on 11/21/14	5067-5069
2	Notice of Change of Address filed on 06/06/14	4864-4865
3	Notice of Defendant's Expert Witness filed on 02/20/09	0180-0195
4	Notice of Defendant's Witnesses filed on 03/06/09	0224-0227
5	Notice of Entry of Findings of Fact, Conclusion of Law and Order filed on 10/06/15	5537-5546
6	Notice of Expert Witnesses filed on 03/05/09	0222-0223
7	Notice of Motion and Motion by Defendant O'Keefe for a Reasonable Bail filed on 09/24/10	1441-1451
8	Notice of Motion and Motion by Defendant O'Keefe for Discovery filed on 08/02/10	1211-1219
9	Notice of Motion and Motion by Defendant O'Keefe for Evidentiary Hearing on Whether the State and CCDC have Complied with Their Obligations with Respect to the Recording of a Jail Visit Between O'Keefe and State Witness Cheryl Morris filed on 08/02/10	1220-1239
10	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 07/21/10	1064-1081
11	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 07/21/10	1099-1116
12	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Showing LVMPD Homicide Detectives Have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/02/10	1199-1210
13	Notice of Motion and Motion by Defendant O'Keefe to Dismiss on Grounds of Double Jeopardy Bar and Speedy Trial Violation and, Alternatively, to Preclude State's New Expert Witness, Evidence and Argument Relating to the Dynamics or Effects of Domestic Violence and Abuse filed on 01/07/11	2785-2811
14	Notice of Motion and Motion by Defendant O'Keefe to Preclude Expert Testimony filed on 08/16/10	1284-1291
15	Notice of Motion and Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 07/21/10	1047-1063
16	Notice of Motion and Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 07/21/10	1082-1098
17	Notice of Motion and Motion by defendant O'Keefe to Preclude the State from Introducing at Trial Improper Evidence and Argument filed on 01/03/11	1682-2755
18	Notice of Motion and motion by Defendant O'Keefe to Suppress his	

1	Statements to Police, or, Alternatively, to Preclude the State from	
2	Introducing Portions of his Interrogation filed on 08/02/10	1152-1198
3	Notice of Motion and Motion for Leave of Court to File Motion for	
4	Rehearing – Pursuant to EDCR, Rule 2.24 filed on 08/29/14	4914-4921
5	Notice of Motion and Motion in Limine to Admit Evidence of Other Bad	
6	Acts Pursuant to NRS 48.045 and Evidence of Domestic Violence	
7	Pursuant to 48.061 filed on 01/06/11	2762-2784
8	Notice of Motion and Motion to Admit Evidence of Other Crimes filed on	
9	02/02/09	0150-0165
10	Notice of Motion and Motion to Admit Evidence of Polygraph	
11	Examination Results filed on 03/29/12	3412-3415
12	Notice of Motion and Motion to Dismiss based Upon Violation(s) of the	
13	Fifth Amendment Component of the Double Jeopardy Clause,	
14	Constitutional Collateral Estoppel and, Alternatively, Claiming Res	
15	Judicata, Enforceable by the Fourteenth Amendment Upon the States	
16	Precluding State's Theory of Prosecution by Unlawful Intentional	
17	Stabbing with Knife, the Alleged Battery Act Described in the Amended	
18	Information filed on 03/16/12	3201-3224
19	Notice of Motion and Motion to Seal Records filed on 03/22/12	3416-3429
20	Notice of Motion and Motion to Waive Filing Fees for Petition for Writ of	
21	Mandamus filed on 12/06/13	4695-4697
22	Notice of Motion and Motion to Withdraw as Attorney of Record filed on	
23	09/23/15	5517-5519
24	Notice of Motion and Motion to Withdraw as Attorney of Record filed on	
25	09/29/15	5525-5527
26	Notice of Motion filed on 01/13/14	4721
27	Notice of Motion filed on 01/21/14	4748
28	Notice of Motion filed on 01/27/14	4760
	Notice of Motion filed on 02/24/14	4810
	Notice of Motion filed on 03/04/14	4833
	Notice of Motion filed on 06/08/15	5154-5160
	Notice of Motion filed on 07/23/14	4890
	Notice of Motion filed on 08/29/14	4922
	Notice of Motion filed on 09/15/14	4953
	Notice of Witness and/or Expert Witnesses filed on 02/03/09	0166-0167
	Notice of Witnesses and/or Expert Witnesses filed on 02/17/09	0178-0179
	NV Supreme Court Clerks Certificate/ Judgment Affirmed filed on	
	02/06/15	5072-5081
	NV Supreme Court Clerks Certificate/Judgment Affirmed filed on	
	07/26/13	4653-4661
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	
	06/18/14	4866-4870
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	
	03/12/15	5089-5093
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	

1	09/28/15	5520-5524
2	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on 10/29/14	5062-5066
3	O'Keefe's Reply to State's Opposition to Motion to Admit Evidence Showing LVMPD Homicide Detectives have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/13/10	1256-1265
4	Opposition to State's Motion to Admit Evidence of Other Bad Acts filed on 02/06/09	0169-0172
5	Order Authorizing Contact Visit filed on 03/04/09	0219-0220
6	Order Authorizing Contact Visit filed on 08/12/10	1253-1254
7	Order Denying Defendant's Ex Parte Motion to Extend Prison Copywork Limit filed on 08/13/15	5486-5488
8	Order Denying Defendant's Ex-Parte Motion for Reimbursement of Incidental Costs Declaring Defendant Ingigent and Granting Forma pauperis filed on 03/11/14	4840-4842
9	Order Denying Defendant's Motion for Relief From Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issues any Remand, Mandare or Remittature filed on 09/04/14	4927-4929
10	Order Denying Defendant's Motion to Dismiss filed on 04/11/12	3434-3435
11	Order Denying Defendant's Motion to Seal Recoreds and Defendant's Motion to Admit Evidence of Plygraph Examination filed on 05/24/12	3448-3449
12	Order Denying Defendant's Petition for Writ of Mandamus or in the Alternative Writ of Coram Nobis; Order Denying Defendant's Motion to Waive Filing Fees for Petition for Writ of Mandamus; Order Denying Defendant's Motion to Appoint Counsel filed on 01/28/14	4761-4763
13	Order Denying Defendant's Pro Per Motion for Judifical Notice- The State's Failure to File and Serve Response in Opposition filed on 04/01/14	4855-4857
14	Order Denying Defendant's Pro Per Motion for Leave to File Supplemental Petition Addressing all Claims in the First Instance Required by Statute for Judicial Economy with Affidavit filed on 07/15/15	5464-5466
15	Order Denying Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 03/25/14	4852-4854
16	Order Denying Defendant's Pro Per Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 07/15/15	5461-5463
17	Order Denying Matthew D. Carling's Motion to Withdraw as Attorney of Record for Defendant filed on 11/19/15	5574-5575
18	Order Denying Motion to Disqualify filed on 10/06/14	5037-5040
19	Order filed on 01/30/09	0149
20	Order filed on 11/06/10	1462-1463
21	Order for Petition for Writ of Habeas Corpus filed on 10/15/14	5051
22	Order for Production of Inmate Brian O'Keefe filed on 05/26/10	1032-1033
23	Order for Return of Fees filed on 11/10/11	3183

1	Order for Transcripts filed on 04/30/12	3442
2	Order Granting and Denying in Part Defendant's Ex-Parte Motion for Production of Documents (Specific) Papers, Pleadings, and Tangible Property of Defendant filed on 02/28/14	4818-4820
3	Order Granting Ex parte Motion for Defense Costs filed on 07/01/10	1044-1045
4	Order Granting Request for Transcripts filed on 01/20/11	2966-2967
5	Order Granting Request for Transcripts filed on 04/27/11	3043
6	Order Granting Request for Transcripts filed on 09/14/10	1430-1431
7	Order Granting Request for Transcripts filed on 09/16/10	1438-1439
8	Order Granting, in Part, and Denying, in Part, Motion by Defendant O'Keefe for Discovery filed on 08/23/10	1394-1395
9	Order Granting, in Part, and Denying, in Part, Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 09/09/10	1427-1429
10	Order Granting, in Part, the State's Motion to Admit Evidence of Other Bad Acts filed on 03/13/12	3199-3200
11	Order Releasing Medical Records filed on 04/08/11	3039-3040
12	Order Requiring Material Witness to Post Bail or be Committed to Custody filed on 03/10/09	0230-0231
13	Order Shortening Time filed on 08/16/10	1283
14	Petition for a Writ of Mandamus or in the Alternative Writ of Coram Nobis filed on 12/06/13	4663-4694
15	Petition for Writ of Habeas Corpus or in the Alternative Motion to Preclude Prosecution from Seeking First Degree Murder Conviction Based Upon the Failure to Collect Evidence filed on 01/26/09	0125-0133
16	Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive 1 Based On Subject-Matter of Amended Information Vested in Ninth Circuit by notice of Appeal Then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since filed on 09/15/14	4940-4949
17	Petitioner's Supplement with Exhibit of Oral Argument Scheduled by the Ninth Circuit Court of Appeals for November 17, 2014, Courtroom #1 filed on 10/01/14	4984-4988
18	Pro Se "Reply to State's Opposition to Defendant's Pro Se Motion to Modify and/or Correct Illegal Sentence filed on 03/04/14	4821-4832
19	ProSe "Reply" to State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/24/14	4792-4799
20	Receipt of Copy filed on 01/03/11	2761
21	Receipt of Copy filed on 01/12/11	2812
22	Receipt of Copy filed on 01/12/11	2813
23	Receipt of Copy filed on 01/18/11	2876
24	Receipt of Copy filed on 01/27/09	0134
25	Receipt of Copy filed on 01/30/09	0146
26	Receipt of Copy filed on 02/06/09	0168
27		
28		

1	Receipt of Copy filed on 03/04/09	0221
2	Receipt of Copy filed on 03/24/09	0323
3	Receipt of Copy filed on 05/24/10	1031
4	Receipt of Copy filed on 06/13/11	3163
5	Receipt of Copy filed on 06/30/10	1036
6	Receipt of Copy filed on 08/02/10	1240
7	Receipt of Copy filed on 08/02/10	1241
8	Receipt of Copy filed on 08/02/10	1242
9	Receipt of Copy filed on 08/02/10	1243
10	Receipt of copy filed on 08/13/10	1255
11	Receipt of Copy filed on 09/14/10	1432
12	Receipt of Copy filed on 09/17/10	1433
13	Receipt of Copy filed on 09/21/10	1440
14	Receipt of File filed on 07/01/10	1046
15	Reply in Support of Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on 08/25/15	5500-5510
16	Reply to State's Response to Defendant's Pro Per Post-Conviction Petition for Habeas Corpus filed on 06/16/15	5423-5432
17	Reply to State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus filed on 08/24/15	5489-5499
18	Request for Rough Draft Transcripts filed on 10/21/15	5549-5551
19	Request for Rough Draft Transcripts filed on 07/17/12	3458-3460
20	Request for Certified Transcript of Proceeding filed on 09/09/09	0772-0723
21	Request for Rough Draft Transcript filed on 05/21/09	0329-0331
22	Request for Rough Draft Transcripts filed on 11/20/12	4629-4631
23	Return to Writ of Habeas Corpus filed on 01/29/09	0135-0145
24	Second Amended Information filed on 08/19/10	1326-1328
25	State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/07/14	4768-4791
26	State's Opposition to Defendant's Motion for a Reasonable Bail filed on 09/27/10	1452-1461
27	State's Opposition to Defendant's Motion for Judicial Notice - The State's Failure to File and Serve the Response in Opposition filed on 03/10/14	4834-4839
28	State's Opposition to Defendant's Motion to Dismiss filed on 03/21/12	3407-3411
29	State's Opposition to Defendant's Motion to Preclude the State from Introducing at Trial Improper Evidence and Argument filed on 01/12/11	2814-2871
30	State's Opposition to Defendant's Motion to Seal Records filed on 04/05/12	3431-3433
31	State's Opposition to Defendant's Motion to Suppress his Statements to Police, or, Alternatively, to Preclude the State from Introducing Portions of his Interrogation filed on 08/17/10	1306-1319
32	State's Opposition to Defendant's Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be	

1	Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 06/25/15	5442-5446
2	State's Opposition to Defendant's Pro Per Motion for Leave of Court to File Motion. . .Rule 2.4 filed on 09/12/14	4935-4939
3	State's Opposition to Defendant's Pro Per Motion to Chief Judge to Reassign Case to Jurist of Reason Based on Pending Suit Against Judge Michael Villani for Proceeding in Clear "Want of Jurisdiction" Thereby Losing Immunity, Absolutely filed on 09/12/14	4930-4934
4	State's Opposition to Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 02/24/14	4811-4817
5	State's Opposition to Motion for Evidentiary Hearing on Whether the State and CCDC have Complied with their Obligations with Respect to the Recording of a Jail Visit Between O'Keefe and State Witness Cheryl Morris filed on 08/10/10	1244-1247
6	State's Opposition to Motion to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 08/16/10	1277-1282
7	State's Opposition to Motion to Admit Evidence Showing LVMPD Homicide Detectives Have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/10/10	1248-1252
8	State's Opposition to Motion to Dismiss and, Alternatively, to Preclude Expert and Argument Regarding Domestic Violence filed on 01/18/11	2908-2965
9	State's Opposition to Motion to Preclude Expert Testimony filed on 08/18/10	1320-1325
10	State's Response and Motion to Dismiss Defendant's Motion for Relief from Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issued any Remand, Mandate or Remittature of filed on 08/07/14	4891-4902
11	State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive based on Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal Then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since (Post Conviction), Amended Petition and Accompany Exhibits, Opposition to Request for Evidentiary Hearing, and Opposition to Pro Per Motion to Appoint Counsel filed on 10/10/14	5041-5050
12	State's Response to Defendant's Motion to Preclude the State from Introducing at Trial Other Bad Acts or Character Evidence and Other Evidence that is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 08/16/10	1268-1276
13	State's Response to Defendant's Petition for a Writ of Mandamus or in the Alternative Writ of Coram and Response to Motion to Appoint Counsel filed on 12/31/13	4708-4713
14	State's Response to Defendant's Pro Per Post-Conviction Petition for Writ of Habeas Corpus filed on 06/02/15	5145-5147
15	State's Response to Defendant's Pro Per Supplemental Petition for Writ	

1	of Habeas Corpus and Evidentiary Hearing Request, "Motion for Leave to	
2	File Supplemental Petition Addressing all Claims in the First Instance	
3	Required by Statute for Judicial Economy with Affidavit," "Reply to	
4	State's Response to Defendant's Pro Per Post Conviction Petition for	
5	Habeas Corpus," and "Supplement with Notice Pursuant NRS 47.150(2);	
6	NRS 47.140(1), that the United States Supreme Court has Docketed (#14-	
7	10093) the Pretrial Habeas Corpus Matter Pursuant 28 USC 2241(c)(3)	
8	from the Mooting of Petitioner's Section 2241 Based on a Subsequent	
9	Judgment Obtained in Want of Jurisdiction While Appeal Pending" filed	
10	on 07/09/15	5455-5458
11	State's Response to Defendant's Reply in Support of Supplemental Post-	
12	Conviction Petition for Writ of Habeas Corpus filed on 09/03/15	5511-5516
13	State's Response to Defendant's Supplement to Supplemental Petition for	
14	Writ of Habeas Corpus (Post-Conviction) filed on 07/31/15	5473-5475
15	State's Supplemental Opposition to Motion to Seal Records filed on	
16	04/17/12	3436-3437
17	Stipulation and Order filed on 02/10/09	0173-0174
18	Substitution of Attorney filed on 06/29/10	1034-1035
19	Supplement to Supplemental Petition for Writ of Habeas Corpus (Post-	
20	Conviction) filed on 07/13/15	5459-5460
21	Supplement with Notice Pursuant NRS 47.150 (2); NRS 47.140 (1), That	
22	the United State's Supreme Court has Docketed (#14-10093) The Pretrial	
23	Habeas Corpus Matter Pursuant 28 U.S.C. § 2241 ©(3) From the Mooting	
24	of Petitioner's Section 2241 Based on a Subsequent Judgment Obtained in	
25	Want of Jurisdiction While Appeal Pending filed on 06/17/15	5433-5437
26	Supplemental Appendix of Exhibits to Petition for a Writ of Habeas	
27	Corpus Exhibits One (1) Through Twenty Five (25) filed on 06/12/15	5161-5363
28	Supplemental Notice of Defendant's Expert Witnesses filed on 07/29/10	1117-1151
	Supplemental Notice of Expert Witness filed on 05/17/12	3443-3447
	Supplemental Notice of Expert Witnesses filed on 01/03/11	2756-2760
	Supplemental Notice of Expert Witnesses filed on 08/13/10	1266-1267
	Supplemental Notice of Expert Witnesses filed on 08/16/10	1297-1305
	Supplemental Notice of Witnesses filed on 01/14/11	2872-2875
	Supplemental Notice of Witnesses filed on 03/10/09	0228-0229
	Supplemental Notice of Witnesses filed on 03/11/09	0237-0238
	Supplemental Petition for Writ of Habeas Corpus (Post Conviction) filed	
	on 04/08/15	5094-5144
	Supplemental Petition for Writ of Habeas Corpus filed on 06/15/15	5364-5419
	Verdict filed on 03/20/09	0289
	Verdict filed on 06/15/12	3457
	Verdict Submitted to the Jury but Returned Unsigned filed on 09/02/10	1397-1398
	Writ of Habeas Corpus filed on 01/30/09	0147-0148

TRANSCRIPTS

Document	Page No.
Transcript – All Pending Motions and Calendar Call filed on 02/04/11	2996-3038
Transcript – All Pending Motions filed on 07/10/09	0351-0355
Transcript – All Pending Motions filed on 08/30/12	3461-3482
Transcript – All Pending Motions filed on 11/23/10	1464-1468
Transcript – All Pending Motions on 07/10/09	0348-0350
Transcript – Calendar Call filed on 02/04/11	2968-2973
Transcript – Calendar Call filed on 08/30/12	3520-3535
Transcript – Continued Hearing: Motion in Limine to Present Evidence of Other Bad Acts filed on 08/30/12	3483-3509
Transcript – Defendant's Petition for Writ of Habeas Corpus (Post Conviction) filed on 10/29/15	5560-5564
Transcript – Defendant's Pro Per Motion to Dismiss Based Upon Violation(s) filed on 08/30/12	3510-3519
Transcript – Defendant's Motion to Settle Record filed on 07/10/09	0342-0345
Transcript – Entry of Plea/Trial Setting filed on 07/10/09	0356-0358
Transcript – Jury Trial – Day 1 filed on 10/14/09	0724-1022
Transcript – Jury Trial – Day 1 filed on 07/10/09	0582-0651
Transcript – Jury Trial – Day 1 filed on 07/10/09	0652-0721
Transcript – Jury Trial – Day 1 filed on 09/04/12	4278-4622
Transcript – Jury Trial – Day 1 filed on 11/23/10	1579-1602
Transcript – Jury Trial – Day 2 filed on 07/10/09	0515-0581
Transcript – Jury Trial – Day 2 filed on 11/23/10	1603-1615
Transcript – Jury Trial – Day 2 on 09/04/12	4001-4227
Transcript – Jury Trial – Day 3 filed on 07/10/09	0462-0514
Transcript – Jury Trial – Day 3 filed on 11/23/10	1616-1738
Transcript – Jury Trial – Day 3 on 09/04/12	3779-4000
Transcript – Jury Trial – Day 4 filed on 07/10/09	0408-0461
Transcript – Jury Trial – Day 4 filed on 11/23/10	1739-2032
Transcript – Jury Trial – Day 4 on 09/04/12	3600-3778
Transcript – Jury Trial – Day 5 filed on 07/10/09	0359-0407
Transcript – Jury Trial – Day 5 filed on 09/04/12	3538-3599
Transcript – Jury Trial – Day 5 filed on 11/23/10	2033-2281
Transcript – Jury Trial – Day 6 filed on 11/23/10	2282-2507
Transcript – Jury Trial – Day 7 filed on 11/23/10	2508-2681
Transcript – Jury Trial – Day 8 filed on 11/23/10	1469-1470
Transcript – Jury Trial – Day 9 filed on 11/23/10	1471-1478
Transcript – Matthew D. Carling's Motion to Withdraw as Attorney of Record for Defendant filed on 10/29/15	5557-5559
Transcript – Motions Hearing – August 17, 2010 filed on 11/23/10	1479-1499
Transcript – Motions Hearing – August 19, 2010 filed on 11/23/10	1500-1536
Transcript – Motions Hearing – August 20, 2010 filed on 11/23/10	1537-1578

1	Transcript – Notice of Motion and Motion by Defendant O'Keefe to	
2	Preclude the State from Introducing at Trial Improper Evidence and	
3	Argument filed on 02/04/11	2974-2989
4	Transcript – Partial Transcript of the Jury Trial - Day 2 filed on 03/18/09	0240-0244
5	Transcript – Petrocelli Hearing filed on 05/19/11	3049-3162
6	Transcript – Proceedings filed on 01/02/09	0028-0124
7	Transcript – Sentencing August 16, 2012 filed on 12/03/12	4632-4635
8	Transcript – Sentencing August 28, 2012 filed on 12/03/12	4636-4652
9	Transcript – Sentencing filed on 07/10/09	0337-0341
10	Transcript – Status Check: Availability of Dr. Benjamin for Trial filed on	
11	02/04/11	2990-2995

1 nobody was saying yeah, yeah, he was bad off. We didn't have
2 any evidence of that until we got the use of force report. And
3 that use of force report said that Officer Ballejos' impression
4 of Brian at the scene were that he was -- I want to make sure I
5 get the words right. I think it was extremely intoxicated
6 slash mentally ill. That was his impression. We didn't have
7 one document telling us that. There was not one report telling
8 us that until we obtained that use of force report. And then
9 the other officers came to the stand, and when asked about
10 that, they said oh, yeah, we don't disagree with him.

11 Todd Ambruster, luckily we had the State's 911 call
12 when he calls 911. And they ask him is -- they're asking well,
13 is the suspect intoxicated. He says very much so. So we know
14 that he was. And he admitted on cross that he's disoriented
15 and he's stumbling around and unsteady on his feet.

16 What is clear from all of that is that Brian's
17 ability to perceive, to relate and to remember was severely
18 impaired at the time of the incident and later when he's
19 talking about the officers. And I don't know if you noticed,
20 but there were quite a few inconsistencies between the
21 statements of the arresting officers because we had a morning
22 of officers coming, all the ones that entered the apartment,
23 and they're telling you different things about the lies, who
24 went into the room, who carried him out. And I don't fault
25 them for that because when you have that many people telling

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ROUGH DRAFT TRANSCRIPT

1 MS. PALM: Prescription drugs, I said.
2 THE COURT: All right, prescription drugs.
3 MS. PALM: I think Dr. Christensen testified that it
4 was an overdose.
5 THE COURT: Okay. Go ahead. I'm going to allow --
6 MS. PALM: Thank you.
7 THE COURT: -- your argument.

8 MS. PALM: Her blood alcohol level was a .24. And
9 that is three times the legal limit for driving. She had high
10 levels of Effexor in her blood, and you heard from Dr.
11 Christensen about the risks and side effects of that kind of
12 dosing. It can lead to seizures. It can lead to confusion,
13 anxiety, and agitation. These substances aren't meant to be
14 combined. Alcohol alone has its own toxic effects.

15 Brian told you what affected his ability to give a
16 statement to the detectives when they were questioning him.
17 And you know, Detective Wildemann was extremely patient in that
18 questioning. That was a hard and difficult thing. And Brian
19 is an obnoxious drunk. You watched that video, and you're
20 thinking stop being so obnoxious. But he was also just about
21 drunk, and some people are like that when they're drunk. And
22 he couldn't remember, and he was trying to remember. And you
23 could see parts over the video where he's trying to remember.
24 He's saying he's trying to think. He's saying just wait, just
25 wait.

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1 the same story, you're going to get inconsistencies.

2 These people were sober. But this was a highly
3 exciting event, and these trained officers still got the
4 details wrong. Well, what is Brian, who is drunk out of his
5 mind supposed to do, and he's being faulted because he doesn't
6 -- didn't have perfect recall when they were questioning him
7 when he was still drunk out of his mind.

8 No one is questioning or faulting the behavior of the
9 arresting officers in this case. Brian was acting nuts, and
10 they had every right to take him, and he knows that. And
11 nobody's saying that they did anything wrong by their actions.
12 Thank God that there's brave men and women who are willing to
13 go into situations that are bloody and they don't know what
14 they're walking into. Thank God for them. We're not saying
15 that they did anything wrong. We're just pointing it out that
16 it was a chaotic situation, and to the extent that anybody had
17 anything to say other than he was extremely intoxicated, it's
18 because there's so many people in the room and so much going
19 on, and it was that way for Brian, too.

20 We also know that Victoria abused both alcohol and
21 prescription drugs that evening. Her blood alcohol level was
22 --

23 MR. SMITH: Objection, Judge. That misstates the
24 evidence. There's no evidence that she abused drugs that
25 evening.

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1 So they can't now come in here and deny that he's
2 confused. When they took advantage, they knew he was confused
3 because they were because they were telling him she's still
4 alive. They had to think he was confused enough to believe
5 that she was still alive because they kept that out through the
6 entire interview until the very end when they told him she's
7 dead, and then he breaks down crying.

8 That's alcohol, ladies and gentlemen. That's not any
9 intent to deceive. And so in summary, I submit to you that the
10 State has not proved their burden of proving beyond a
11 reasonable doubt and overcoming the presumption of innocence
12 that Brian committed any kind of intentional killing whether
13 that's first or second degree murder or voluntary manslaughter.

14 If you think he's negligent in anything he did that
15 morning night, that's involuntary manslaughter. That's not a
16 murder. It's not voluntary manslaughter. Victoria started the
17 actions that led to her death, and this was an accident and a
18 tragic ending and that's all. Thank you.

19 THE COURT: Thank you, Ms. Palm. Mr. Smith.

20 MR. SMITH: Well, we're almost done. I just want to
21 thank all of you guys for your patience, and I know it's been a
22 long week, and we've asked you to consider a lot of evidence.
23 And it's kind of my job to kind of address some of the points
24 that Ms. Palm raised without taking too long and addressing
25 every little point because I'm going to trust that you 12 -- 13

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1 reasonable men and women can figure out some of the things
2 yourself.

3 The important things I do have to address, so please
4 bear with me if I take a little bit longer than you
5 (indiscernible). Folks, one of the things that I
6 first want to talk about is, you know, the State of Nevada
7 doesn't have the luxury of picking who the victims of a crime
8 are. And it's important for you guys to realize that because
9 here we have a woman who has admittedly a .24 blood alcohol
10 level in her system. And as we've heard, that's three times
11 the legal limit.

12 But let me qualify that. That's three times the
13 legal limit if you're driving. If you're sitting in your
14 house, you can have whatever type of liquor that you want or as
15 long as you're not behind the wheel of a car. That brings me
16 to the picture that Ms. Palm just placed to try and get you to
17 believe that Victoria was driving that car simply because one,
18 the seats was laid back. There's no evidence as to who was
19 actually driving that car. Keep that in mind.

20 Pictures do say a thousand words. Sometimes they
21 don't say what the defendant want you to think they say. Now,
22 the only people who have a choice against -- with regards to
23 the people that they commit crimes against are the people that
24 commit the crimes, like this man right here. He had a choice
25 that night.

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1 We've heard she had a .24. We heard she was taking
2 anti-depressants. But, I mean, does that alone that she
3 deserved to have what happened to her on this night? Of
4 course, not. Does that mean that because of that, the
5 defendant is absolved from criminal liability? Of course, not.
6 Now, I'm by no means trying to suggest that we still don't have
7 the burden of proof.

8 But what I want to import upon you is that Victoria
9 Witmarsh's condition is irrelevant so long as we prove that the
10 defendant committed a crime against her. She's still a victim
11 of a crime.

12 Now, got some common sense for you. And I call this
13 things you don't do if you kill someone in self-defense and/or
14 you're in the guilty of murder. And I have a little asterisk.
15 And that asterisk say no matter how much you've had to drink,
16 just bear with me. It's not long.

17 Number one, say she stabbed herself initially, but
18 then change your name and said well, no she attacked me.
19 Number two, refuse to allow medical assistance to be provide to
20 that person. Number three, resist arrest. Number four, fall
21 asleep after you've just killed them. Number five, decline to
22 call 911, but then lie to the police when they're interviewing
23 you and say well, yeah, I did. The next one, say tack someone
24 who's trying to provide assistance. The next one, say let's
25 go, let's do the ten years. Another one, no way possible she

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1 This case is about choices, folks. He want you to
2 give him a pass because he's an alcoholic. But he's testified
3 that I acknowledge that I fell off the wagon. This case is
4 about choices. It's about the choice that Brian O'Keefe made
5 on November 5th, 2008. He wants you to believe that he was so
6 drunk that night there is no way he could have intentionally
7 taken his life -- or taken Victoria Witmarsh's life. And we'll
8 talk a little bit more about that in a second.

9 But what he wants you to believe is not supported by
10 common sense. And because we don't have a witness who can say
11 I saw Mr. O'Keefe stab Victoria Witmarsh, you have to use a lot
12 of your common sense. And that's no different -- I mean, think
13 about it, folks, in a murder trial it's not really important
14 that we have a witness because a lot of the murders are
15 committed outside the view of another person except the person
16 that's killed. That's why the law allows you to take into
17 consideration circumstantial evidence.

18 And let's talk about common sense. And I apologize,
19 folks. I don't have the Power Point. But it says you must
20 bring to the consideration of the evidence your everyday common
21 sense and judgment as reasonable men and women. Thus, you're
22 not limited to what you see in here, but you can kind of figure
23 things out yourself. The evidence is going to point you in the
24 right direction.

25 And let's talk a little bit about Victoria Witmarsh.

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1 did this to herself. Now, remember, he says that when he
2 police are not inside that room. He's sitting inside that room
3 by himself thinking nobody's paying attention to him. He says
4 there's no way possible she did this to herself. It is at 2:06
5 a.m. on that video.

6 Now, we're asking you to make a really important
7 decision, folks. And I really hope that because this has been
8 a long trial that you don't rush through some of the important
9 decisions that we're asking you to make. That video's going to
10 be available to you. That video also tells you a lot of
11 things. It also speaks a thousand words because it shows the
12 demeanor. And you can see on that video that he might be a
13 little tipsy, but he's not completely drunk that you would
14 forget how you killed somebody.

15 Let me continue. Give the police false information
16 about the victim. Take her pants off while she's bleeding like
17 a stuffed pig. Leave the person looking like this, meaning the
18 pictures that we've shown. And I don't want to belabor the
19 point by keep on showing you guys the photos. You guys can --
20 you guys are going to have that to look back.

21 Tell the police come and get her, she's dead. Tell
22 anybody come and get her she's dead. Wait two to three minutes
23 while they lay there injured and bleeding. These are things
24 that you don't do when you unlawfully take the life of another,
25 no matter how drunk you are.

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1 Now speaking of self-defense, the defendant wants you
2 to believe that this small woman, after they've just been out
3 celebrating, for some reason she decides to wait until they get
4 home, and then she tries to come at him with a knife and tries
5 to stab him repeatedly. But the only thing they has to show
6 for is two, I submit to you, superficial cuts on the sides of
7 his fingers.

8 Now, may I borrow your ruler, Ms. Palm? Now, he said
9 that when she came at him with that knife, he grabbed it but
10 didn't get a good hold of it and she snapped it. Well, the
11 blade is resting — presumably the blade would be against the
12 fingers, and let me make sure I do it right because she said it
13 was in his right hand, and he grabs it like this. But when
14 they snatches it, you would expect the front cuts along the
15 entirety of his hand, not just right here, right there and
16 right there. You're going to have those pictures, and you're
17 going to see that that's where those cuts are.

18 Now, an alternate theory, obviously, is that when
19 you're holding the knife and you stab somebody, it might get in
20 between there and there. That's certainly an alternate theory,
21 and it's one that's supported by the evidence.

22 Furthermore, he's told you he's a trained combat
23 veteran. He's been in Grenada. He got a bronze star for valor
24 some 20 something years ago. I mean, this is like David versus
25 Goliath here, folks. She's an itty bitty woman. His story

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1 the reasonableness of his story or the fact that it may or may
2 not comport with some of the photographs you've seen.

3 And let's talk about what he told the police during
4 that interview night after this happened. And I don't want to
5 misquote him, so please bear with me while I find it. Here we
6 go. He didn't stab her. She stabbed herself. Back then he
7 had no idea how he got the cuts on his hand.

8 Now, from that statement he said he walked into the
9 bedroom and said what the F are you doing. That's what he
10 said. He said that's what precipitated this argument. Watch
11 that video, it's on there. He walked in the bedroom and said
12 what the F are you doing, and then he grabs knife.

13 But on the stand he says he walks to the bedroom to
14 hang up his coat, and she comes out, surprised attack, I'm
15 going to get you this time. Those are two completely
16 inconsistent stories. Furthermore, people usually, I'm submit
17 to you, folks, don't remember facts better after several months
18 have passed, whether you're drunk or not. That's actually an
19 incident like this, which I submit to you is what's called
20 sobering experience. It's sobering.

21 Meaning when something like this happens, you kind of
22 get your faculties, back. Perfect example, if you go out and
23 have a couple of drinks —

24 MS. PALM: Your Honor, may we approach.

25 MR. SMITH: Is there an objection?

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1 does not make sense. It doesn't add up.

2 Now, Victoria isn't here to tell her side of the
3 story, so it's easy for the defense to get up here and say it's
4 self-defense. She can't tell you that there's no way I tried
5 to stab him with a knife that night or each on the night of her
6 birthday where he tried to tell you where she came at me two
7 days before when she drank some wine.

8 But you heard him say that despite the fact that she
9 allegedly tried to stab him two days before, he lets her go
10 drink some more. Now does that make sense? You're home with
11 your significant other and for some reason they have a couple
12 of bottles to drink. He said she had two bottles. Then they
13 try and kill you or try and stab you. Two days later they say
14 honey, I'm going out to get something to drink. Are you going
15 to say okay? Doesn't add up, folks. Doesn't add up to
16 self-defense drunk or sober.

17 Now, he knows you wouldn't believe that she stabbed
18 herself. So he falls to a plan b, the self-defense plan. He
19 he abandoned that she stabbed herself defense a long time ago.
20 Now, don't forget, folks, he's had some time to think about
21 this. He's been here through the this whole trial, and, in
22 fact, he's the only person who's had the benefit to hear what
23 every other witness had to say. No other witness has been able
24 to do that.

25 So take that into consideration when you think about

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1 THE COURT: Quickly, please. Yes.

2 MS. PALM: Yes, there is.

3 (Off-record bench conference).

4 MR. SMITH: Common sense tells you that something
5 like this would be a sober experience, and you'd be able to
6 remember more when it actually happened. An example being if
7 you go out and have a couple of drinks, you're a little tipsy,
8 you don't think you're drunk, too drunk to drive, but you get
9 in your car anyway, and you start driving home. And the next
10 thing you know, you said red and blue lights behind you.
11 Sobering experience. You're like, I need to get myself
12 together. I need to make sure I'm going to be okay. Sobering
13 experience.

14 Now, if you would agree that that's a sobering
15 experience, wouldn't the night that you killed the woman that
16 you love be a sobering experience? You would expect that you
17 would be able to remember every single detail. Now, you've
18 heard evidence that the defendant suffered from blackouts.
19 That's what he said on the stand. But those medical records
20 that you have in evidence said that he also told people that he
21 was trying to get treatment that he never suffered from
22 blackouts. So if he tells you this now, when it would help
23 him, but he doesn't tell you — he doesn't tell people that you
24 would think he would be honest with.

25 Ms. Palm wants you to believe that when he's told

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1 that she's dead, Mr. O'Keefe breaks down and cries. The video
2 didn't support that. What it showed was a person who sat there
3 for several seconds and then began to kind of whine. And you
4 heard the testimony from the detective who was actually there,
5 that he saw no tears, he saw no welling up of her eyes, he saw
6 no reaction. That's because he already knew she was dead. He
7 was just kind of playing a game.

8 Now let's talk about credibility. They've already
9 said the credibility instruction, and we're talking about
10 Cheryl Morris. Now, the defense attorney wants you to believe
11 that Cheryl Morris came in here and basically told you a lion
12 the stand because she was a jilted ex-girlfriend. But this is
13 the same ex-girlfriend that the defense attorney called and
14 said hey, you know, we think that Mr. O'Keefe's -- you still
15 have Mr. O'Keefe's glasses, can you bring them. She brought
16 them.

17 Does that sound like the woman who has an ax to
18 grind? She brought the man's glasses. When asked on the stand
19 well, why are you here, because I was subpoenaed. She's
20 subpoenaed, she gets on the stand, she's take an oath where
21 she's asked questions, she tells the -- she provides the
22 answers. She certainly didn't seem like a woman scorn. They
23 want you to believe that this is hell hath no fury like a
24 woman scorned simply because the defendant cheated on her
25 sometime ago.

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1 on direct examination, did you ever demonstrate on her how you
2 could kill somebody with a knife? He said well, no, I didn't
3 demonstrate. Well, certainly that can infer that he admits
4 that he at least told her.

5 Why would she make that up? Because she hates him?
6 I don't think so. And let's talk about the testimony of Joyce
7 and Todd and the timing here. The evidence certainly supports
8 that there was noise coming from that apartment for an
9 extensive period of time. Not five minutes, not ten minutes,
10 but for an extensive period of time. And at some point it got
11 to loud that Mr. Toliver went upstairs to find out what was
12 going on. And we all know what happened after that, the police
13 were called.

14 This brings me to circumstantial evidence. You heard
15 Joyce Toliver talk about how she could hear the woman crying
16 during the time that she heard that noise. Some of you might
17 be thinking well, this whole scenario could have been avoided
18 if Ms. Toliver had called the police. That might be true, but
19 that doesn't change the facts of this case, folks. And it
20 doesn't get the defendant off the hook.

21 You got a woman crying, you got loud noises, you have
22 signs of disturbance inside that apartment, inside that
23 bedroom, and you have a woman looking like the way she looks in
24 those photographs with all those bruises. You have an injury
25 to the front of her head. You have an injury to the back of

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1 But you also heard that Ms. Witmarsh stopped dealing
2 with Mr. O'Keefe in August when she moved out. And now some
3 six or seven months later he want you to believe that she still
4 has this pinned up aggression that she would craft this
5 preposterous story about -- they want you to believe it's
6 preposterous, but that she would make up this story about what
7 the defendant told her about his underlying disdain or enmity
8 towards Victoria Witmarsh because what had happened.

9 Now, some of you may say but yeah, they were together
10 at the time. Sure, but that doesn't mean that he didn't have
11 some deep seeded disdain for what happened during that time she
12 testified against him in front of a jury of people like you.
13 It doesn't change the fact because there could be an alternate
14 scenario as to what happened that night, and I'll get to that
15 in a second.

16 You heard Ms. Witmarsh say that the defendant told
17 her that he wanted to kill the bitch because she took away
18 three years of his life by testifying against him. Take into
19 consideration that her testimony is corroborated by the
20 evidence. The judgment of conviction that's been admitted into
21 evidence, folks, read it.

22 The defendant said that he served about two years,
23 but I'd ask you this, how would Cheryl know this information
24 unless the defendant told her? Cheryl testified that the
25 defendant told her he was proficient with knives. When asked

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1 her head. That's certainly circumstantial evidence of a
2 battery or something that precipitated a stabbing.

3 Now, if he started this, he can't now claim
4 self-defense because the law says the initial aggressor does
5 not have the right to self-defense. That's the law. Ms. Pike
6 -- excuse me, Ms. Palm also said that doubt Cheryl Morris'
7 credibility because she called the police. Well, it's
8 reasonable to infer it's because she learned what had happened
9 in that apartment, and she had some relevant information to
10 provide. That's not unlike something that anyone would do
11 under those circumstances. Not just a person who had an ax to
12 grind.

13 The night in question the defendant never said look,
14 this is where I got injured. But not some several months
15 later, he wants to fall back on that as some evidence
16 corroborating that this little woman trying to kill him that
17 night. Folks, it's unreasonable under these circumstances.

18 Now, with regards to the testimony about the DNA, you
19 can't really conclude anything from that but except that two
20 people came into contact with knife, Victoria Witmarsh and
21 Brian O'Keefe. And the reason why is because the defendant
22 doesn't even know what happened to that knife after she got
23 stabbed, and you can see on the pictures that there's
24 pillowcases laying on top of it. There's an indication that
25 the blade may have been wiped off. I mean, you can't just --

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1 you can't really just trust the testimony of Dr. Schiro and
2 that his interpretation means that these wounds are totally
3 defensive because I've shown how they aren't.

4 Now, briefly allow me to talk about the defendant's
5 testimony on the stand. He tells you about his military
6 service some 25 years ago. We know since then some things have
7 happened in his life. The law says that you can take, for
8 instance, his felony convictions as evidence in assessing his
9 credibility, especially when combined with the fact that he's
10 -- the story's he's given today is inconsistent with the story
11 he told Cheryl Witmarsh (sic), and it's inconsistent with the
12 story he gave on that videotape.

13 Folks, I'm almost done. Ms. Palm wants you to
14 consider the defendant's actions after this happened as
15 evidence that he didn't mean anything to happen on the night in
16 question, but that's not what the law says. The law says you
17 determine a person's intent at the moment they commit the act.
18 And that makes sense because sure, a lot of times people are
19 sorry that they kill somebody after it's happened and/or before
20 they get caught. But it doesn't mean -- it doesn't make the
21 underlying act any less criminal.

22 Now, in talking about reasonable doubt, the
23 instruction tells you exactly what reasonable doubt is. It
24 says doubt to be reasonable must be actual, not mere
25 possibility or speculation. I submit to you the story that the

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1 (Swearing in the marshal)

2 (Outside the presence of the jury)

3 THE COURT: Let the record reflect we're outside the
4 presence of the jury panel. I just want to put on the record
5 when I read the jury instructions, instruction number 3, as was
6 provided to counsel, actually I read it as is, but it was
7 retyped because if you look at line 11, the word instructions
8 was broken up on the line, and that was just retyped. And so
9 the corrected -- or the typed version is provided to the jury.

10 Instruction 42 that was original provided to the
11 attorneys at line 7 and line 8 it says read backs, and I had
12 that -- I read it as play back, but it's originally typed for
13 both counsel and read backs, and so that was fixed.

14 And instruction 43, which you had copies of, was just
15 the instruction that I signed, and the signature line was moved
16 up. So three changes were made and those changes were included
17 in the packet of jury instructions provided to the jury panel.
18 And everyone has provided their cell phone numbers to the
19 clerk, and please within 15, 20 minutes of the court house to
20 be called. It's my understanding is that they wish to
21 deliberate tonight and --

22 MR. PIKE: I plan on staying here --

23 THE COURT: Okay.

24 MR. PIKE: -- until (indiscernible).

25 MS. PALM: Yes, I'll be here, too.

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1 defendant gave does not comport with the evidence, and I'm
2 talking about the story he gave today and yesterday on the
3 stand. He said that she fell backwards, he fell on top of her,
4 and somehow she ends up stabbed.

5 Now, folks, if you land on -- I submit to you that if
6 you land on somebody with all your body weight and you weigh
7 180 something pounds and you land on them and a knife goes into
8 them because your entire body weight is on them and they only
9 weigh a hundred pounds, the blade is going to go in a lot
10 further than four inches. It's going to go all the way in
11 because all your weight is on there.

12 But here, the length of the wound was four inches,
13 which is consistent with an intentional stabbing, but
14 consistent with an accidental stabbing where you fall on top of
15 the person holding the knife. That's another part of common
16 sense. So what we're asking you to do here is to use some
17 common sense, realize that the credibility of the State's
18 witnesses shouldn't be questioned under the circumstances of
19 this case, take into the fact -- take in fact that the State's
20 evidence has corroboration. Go ask me to convict him. We've
21 met our burden. The burden is beyond a reasonable doubt. It
22 says that if you feel an abiding conviction and the truth of
23 the charge, there is no reasonable doubt. Thank you.

24 THE COURT: Thank you, Mr. Smith. The clerk will now
25 swear in the marshal to take charge of the jury panel.

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1 THE COURT: All right.

2 MS. GRAHAM: Judge, (indiscernible).

3 MR. SMITH: I'll be here but no guarantee I'll be
4 sober.

5 THE COURT: Okay.

6 MS. PALM: Yeah, me either.

7 THE COURT: That's off the record, Michelle.
8 (Court recessed at 4:02:58 p.m. until 7:12:55 p.m.)
9 (In the presence of the jury)

10 THE COURT: You may be seated. I understand that we
11 have a verdict, and Mr. Livemash, are you the foreperson?

12 JUROR NO. 6: Yes, sir.

13 THE COURT: Please hand the verdict form to the
14 marshal. The clerk will now read the verdict.

15 THE CLERK: District Court, Clark County, Nevada.
16 State of Nevada, plaintiff versus Brian Kerry O'Keefe,
17 defendant. Case No. C2566 -- 250630, Department No. 17.
18 Verdict. We the jury in the above-entitled case find the
19 defendant, Brian Kerry O'Keefe, as follows: Count one, murder
20 with use of a deadly weapon, open murder, guilty of second
21 degree murder with use of a deadly weapon. Dated this March
22 20th, 2009. Signed by the foreperson, Kirk Livemash. Ladies
23 and gentlemen of the jury, is this your verdict as read? So
24 see you one, so say you all.

25 THE JURY: Yes.

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1 THE COURT: Either party which to have the jury
2 polled?

3 MR. PIKE: Defense does not, your Honor.

4 THE COURT: Okay. All right, at this time the clerk
5 will record the verdict in the court minutes. The defendant is
6 remanded to custody. We'll refer this matter to Department of
7 Parole and Probation for preparation of pre-sentence
8 investigation report imposition of sentence on the following
9 day:

10 THE CLERK: That will be May 5th at 8:00 a.m.

11 THE COURT: Okay, ladies and gentlemen of the jury.
12 I'd like to thank you for your service, and I -- Nancy Mirosock
13 was our alternate; is that correct.

14 THE CLERK: That's correct.

15 THE COURT: And I'd like to give you an extra special
16 thanks because you were here all week, you paid attention, and
17 I think you asked some questions, and were the jury -- the
18 alternate. I know you were probably as --

19 (Court recessed at 7:15:29 p.m.)
20
21
22
23
24
25

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* * *

EXHIBITS

DESCRIPTION:

ADMITTED

//

ACKNOWLEDGEMENT

ATTEST: Pursuant to Rule 3C(d) 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.

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Julie Lord

JULIE LORD, TRANSCRIBER

7-7-09

DATE

FILED

JUL 10 2009

[Signature]
CLERK OF COURT

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN KERRY O'KEEFE,

Defendant.

CASE NO. C-250630

DEPT. NO. 17

TRANSCRIPT OF
PROCEEDINGS

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

THURSDAY, MARCH 19, 2009

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 4

APPEARANCES:

FOR THE PLAINTIFF:

PHILLIP SMITH, ESQ.
STEPHANIE GRAHAM, ESQ.
Deputy District Attorneys

FOR THE DEFENDANT:

RANDALL H. FIKE, ESQ.
PATRICIA A. PALM, ESQ.
Special Public Defenders

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

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CLERK OF THE COURT

1 LAS VEGAS, NEVADA, THURSDAY, MARCH 19, 2009, 10:02 A.M.
2 (Outside the presence of the jury)
3 THE COURT: On the record?
4 THE CLERK: Yes, on the record.
5 THE COURT: Okay, we're on the record. We're outside
6 the presence of the jury. You had something, Mr. Pike?
7 MR. PIKE: Yes, your Honor. The State introduced a
8 redacted judgment of conviction. Rather than bring any
9 attention to it by raising an objection at that time, I had
10 raised all of our objections at the time of the Petrocelli
11 hearing, so I believe that the issue was preserved for appeal.
12 Because of that hearing, and it was not that I wasn't
13 aware that there may have been a contemporaneous objection, but
14 I believe that that issue had been protected for appeal, and it
15 was a tactical decision not to raise that contemporaneous
16 objection and bring unnecessary attention to it.
17 THE COURT: Okay.
18 MS. PALM: And I was -- I'm sorry. Did you want to
19 comment on that one?
20 THE COURT: Anything else, Mr. Pike?
21 MR. PIKE: No. I just wanted that for the record.
22 THE COURT: Anything, Mr. Smith, on that issue?
23 MR. SMITH: No, Judge. I think it's been litigated,
24 your Honor.
25 THE COURT: All right. Okay.

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1 way --
2 MR. SMITH: -- of his testimony.
3 MS. PALM: -- it was -- I was objecting to --
4 THE COURT: You objected.
5 MR. SMITH: She's objecting either way.
6 MS. PALM: -- his testimony.
7 MR. SMITH: I got it. Fair enough.
8 MS. PALM: Thank you.
9 THE COURT: And that's another grounds for appeal.
10 Okay. Anything else?
11 MS. PALM: No, that's it. Thank you.
12 THE MARSHAL: You may be seated, ladies and
13 gentlemen. Let's check to make sure our cell phones are turned
14 off. All rise and come to order. Department 17 of the Eighth
15 Judicial District is again in session. Honorable Judge Michael
16 P. Villani presiding. Please be seated. Remain in order.
17 Make sure your cell phones are turned off, please.
18 THE COURT: Morning, ladies and gentlemen. Apologize
19 for the delay, but the Court's (indiscernible) the calendar
20 which we thought would go a lot quicker. It went a lot slower
21 this morning, so I appreciate your patience, and State, please
22 call your next witness.
23 MR. SMITH: Judge, the State rests.
24 THE COURT: Okay, the State has rested. Defense.
25 MS. PALM: The defense would call Chelsea Collins.

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1 MR. SMITH: Rule that it comes in.
2 THE COURT: Okay.
3 MR. SMITH: I understand the purpose of Mr. Pike's
4 putting it on the record right now.
5 THE COURT: Okay. And Ms. Palm, you had one.
6 MS. PALM: Thank you. I just wanted to preserve that
7 yesterday I made a contemporaneous objection to testimony
8 coming in through the detective regarding his opinion on
9 whether the wounds could have been defensive wounds or not. I
10 objected on the basis he wasn't an expert, and it was beyond
11 the scope of my cross because it came back in on redirect, and
12 the Court overruled my objection. I just wanted to preserve
13 that.
14 THE COURT: All right. Mr. Smith.
15 MR. SMITH: And Judge, the State's recollection of
16 Detective Wildeman's testimony was not that they could be
17 defensive wounds. And, in fact, I don't even recall asking her
18 that question -- or asking him that question. His testimony
19 was that in his training and experience as a homicide detective
20 working stabbings, that it was relatively -- not relatively
21 uncommon for suspects to have wounds in the same location that
22 the defendant did. And that was the --
23 MS. PALM: You know what, I would agree with that.
24 MR. SMITH: -- extent of --
25 MS. PALM: That's a better way to say it, but either

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1 THE COURT: All right.
2 THE MARSHAL: Ms. Collins, if I can get you to raise
3 your right hand, please, and face the clerk.
4 CHELSEA COLLINS, DEFENDANT'S WITNESS, SWORN
5 THE CLERK: Please be seated. Will you please state
6 your name and spell it for the record.
7 THE WITNESS: Chelsea Collins, C-h-e-l-s-e-a.
8 C-o-l-l-i-n-s
9 THE CLERK: Thank you.
10 DIRECT EXAMINATION
11 BY MS. PALM
12 Q Good morning, Ms. Collins.
13 A Good morning.
14 Q Will you please tell the jury how you're employed.
15 A I am a crime scene analyst two with the Las Vegas
16 Metropolitan Police Department.
17 Q And were you working on the morning of November 6th,
18 2008?
19 A That's correct.
20 Q And were you called to a crime scene at 5001 El
21 Parque?
22 A Yes.
23 Q And did you arrive with another crime scene analyst?
24 A Yes.
25 Q And who was that?

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1 A Jocelyn Maldonado.
 2 Q And what was your role and what was her role?
 3 A We split the responsibilities on a scene like this.
 4 I'm responsible for taking the notes and doing the photography
 5 of the scene. These responsible for doing a diagram and
 6 recovering the evidence.
 7 Q So generally, she would follow along with you from
 8 item to item. You would photograph, she would impound?
 9 A Later in the scene. Initially overalls are taken of
 10 the way the scene is. And then after that, then we'll start
 11 recovering the evidence, and it will be photographed
 12 individually.
 13 Q Okay. Did the detectives direct you to evidence that
 14 they want to have photographed?
 15 A They have certain things they like photographed, yes.
 16 Q Okay. Did they direct you to a car that they wanted
 17 to be photographed?
 18 A Yes.
 19 MS. PALM: May I approach the witness, your Honor?
 20 THE COURT: Yes.
 21 BY MS. PALM:
 22 Q Would you look at these photographs, and they are
 23 Defense BB, DD, CC, and EE, and tell me if you recognize what's
 24 depicted in them.
 25 A Yes, this is the vehicle I photographed.

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1 A I couldn't tell you.
 2 Q Do you know what time you arrived at the scene?
 3 A Yeah, we arrived at 0034 hours which would be 12:34
 4 in the morning.
 5 Q And this is Defense Exhibit CC. What does that
 6 depict?
 7 A The interior of the front of the vehicle.
 8 Q Now, I noticed there's a couple of glasses there.
 9 Did you happen to notice whether they contained any liquid?
 10 A No. It appears as they do, but no, I didn't look at
 11 the time.
 12 Q Okay. Did you open up the door of the car to take
 13 this photograph?
 14 A No.
 15 Q You took it through the window?
 16 A Yes, the windows were closed. It's taken through the
 17 window.
 18 Q Okay. And is this another angle of basically the
 19 same thing from the other side of the car?
 20 A Yes, that's correct.
 21 MS. PALM: May I approach the witness, your Honor?
 22 THE COURT: Yes.
 23 BY MS. PALM:
 24 Q I'm showing you another series of photographs, and it
 25 would be Defense AA, BB — or AAA — four As. BBBB, CCCC,

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1 MS. PALM: Move for admission of EE, CC, BB, and DD
 2 Defense Exhibits.
 3 MR. SMITH: No objection, your Honor.
 4 THE COURT: They'll be admitted.
 5 BY MS. PALM:
 6 Q So looking on the monitor, is this a photograph of
 7 the Hyundai?
 8 THE COURT: Counsel, can you zoom out a little bit
 9 because we're missing part of the picture.
 10 BY MS. PALM:
 11 Q This is a Hyundai that you photographed?
 12 A Hyundai accent, correct.
 13 Q Okay. And that is the one the detectives directed
 14 you to?
 15 A Yes.
 16 Q Okay. And what is — and this is Defense DD. What
 17 is this a photograph of?
 18 A That's a photograph of the entry of the vehicle
 19 through the window.
 20 Q And this was the condition the vehicle was in when
 21 you were there at the scene; is that correct?
 22 A That's correct.
 23 Q And what time was that?
 24 A This photograph was taken?
 25 Q Yes?

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1 DDDD, EEEE, FFFF, GGGG four Hs, four Is and four Js. Do you
 2 recognize those photographs?
 3 A Yes, I do.
 4 Q And were those taken at the crime scene?
 5 A Yes.
 6 MS. PALM: Move for admission of those exhibits, your
 7 Honor.
 8 MR. SMITH: Can we see them, Judge?
 9 MS. PALM: Oh, I'm sorry.
 10 MR. SMITH: That's okay.
 11 MS. PALM: And for the record, I think most of these
 12 have already been admitted in another form, but these are a
 13 better quality photographs or copies.
 14 MR. SMITH: No objection, Judge. Thank you.
 15 THE COURT: They will be admitted.
 16 BY MS. PALM:
 17 Q Okay, just going through them, can you tell me what
 18 CCCC depicts.
 19 A That's a bird's eye view of the bed in the bedroom.
 20 Q And the same question for BBBB.
 21 A That's a photograph of a pillowcase that was
 22 recovered.
 23 Q And that's the same pillowcase we just saw folded up
 24 on the bed.
 25 A Can I see that photograph again, I'm sorry.

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1 Q Yes.
2 A Yes, that's correct.
3 Q Okay. So you took photographs with it folded up and
4 then unfolded?
5 A Correct.
6 Q Okay. And is this the other side of that same
7 pillowcase?
8 A That's correct.
9 Q And these are what?
10 A A pair of pants.
11 Q And where did you find those?
12 A Those were in the bathroom on the floor.
13 Q Okay. And this is after you've unfolded them to take
14 the photograph?
15 A Correct.
16 Q And this is the other side of those same pants?
17 A Yes.
18 Q This is as the pants were originally discovered?
19 A Correct.
20 Q And just a footprint, and do you recall where that
21 was recovered from?
22 A That was on the bathroom floor.
23 Q And this photograph depicts what?
24 A The knife that was found on the bed.
25 Q And this IIII depicts what?

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1 your right hand, please, sir.
2 DETECTIVE CLIFFORD MOGG, DEFENDANT'S WITNESS, SWORN
3 THE CLERK: Please be seated. Will you please state
4 your name and spell it for the record.
5 THE WITNESS: Clifford, C-H-I-F-F-o-r-d, Mogg.
6 M-o-g-g.
7 THE CLERK: Thank you.
8 DIRECT EXAMINATION
9 BY MS. PALM:
10 Q Good morning. Can you please tell the jury how you
11 are employed?
12 A I'm a detective with the Las Vegas Metropolitan
13 Police Department, homicide section.
14 Q And how long have you been in that section?
15 A Almost six years.
16 Q Do you work with Detectives Wildemann and Bunn?
17 A I do.
18 Q How large is that section at Metro?
19 A We have 34 detectives, four sergeants and a
20 lieutenant.
21 Q And were you subpoenaed here today with a request
22 that you bring copies of documents in Event No. -- Metropolitan
23 Police Department Event No. 070408-0444?
24 A That's correct.
25 Q And were you detective on that case?

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1 A The same knife.
2 Q Just the other side of it?
3 A Yeah, different angle.
4 Q Okay. And this photograph, and that's IIII.
5 A It appears to be an injury on his thumb.
6 Q And that would be on thumb of Mr. O'Keefe?
7 A Correct.
8 Q And is Mr. O'Keefe in the courtroom today?
9 A Yes.
10 Q Is it the gentleman over there in the blue jacket and
11 red tie?
12 A Yes.
13 MR. SMITH: We'll stipulate to identity, Judge.
14 THE COURT: All right.
15 MS. PALM: Court's indulgence. Pass the witness.
16 THE COURT: Any cross-examination?
17 MR. SMITH: Judge, we have no questions.
18 THE COURT: All right. Okay, thank you, Ma'am, for
19 your testimony. You're instructed not to discuss your
20 testimony with any other witness involved in this case until
21 this matter is finally resolved. Thank you for your time.
22 THE WITNESS: Thank you.
23 THE COURT: Next witness for the defense.
24 MS. PALM: That would be (Indiscernible).
25 THE MARSHAL: And Detective Mogg, if you'll raise

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1 A I was one of the detectives assigned to that case.
2 Q And did that case -- what did that case involve?
3 A It involves the --
4 MR. SMITH: Judge, I'm going to object at this point
5 to the relevance of this testimony.
6 THE COURT: Would counsel approach.
7 (Bench conference).
8 MS. PALM: I'm sorry, detective, I have no more
9 questions for you.
10 THE COURT: Any cross-examination?
11 MR. SMITH: No, Judge.
12 THE COURT: All right. Thank you, detective.
13 THE WITNESS: Thank you, your Honor.
14 THE COURT: Any other witnesses for the defense?
15 MR. PIKE: Louis DeSalvio.
16 MR. SMITH: Actually, Judge, I do have one question
17 for -- is it too late?
18 THE COURT: Are you sure?
19 MR. SMITH: Just one.
20 THE COURT: Okay.
21 MR. SMITH: Okay.
22 THE COURT: You're still under oath, detective. You
23 understand that?
24 THE WITNESS: Yes, your Honor.
25 THE COURT: All right.

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1 CROSS-EXAMINATION
2 BY MR. SMITH:
3 Q The event number that Ms. Pike -- I keep doing that
4 -- Ms. Palm asked you about has nothing to do with this current
5 instant case; is that correct?
6 A That's correct.
7 Q Okay.
8 MR. SMITH: No further questions.
9 THE COURT: Any direct for that? All right, thank --
10 now you're excused.
11 THE WITNESS: Thank you, your Honor.
12 THE COURT: Thank you. Did Cliff go to get your
13 other witness?
14 MR. PIKE: Yes, Louis DeSalvio.
15 THE COURT: I'm sorry, were there any questions from
16 the jurors? Okay.
17 THE CLERK: Please remain standing and raise your
18 right hand.
19 LOUIS DeSALVIO, DEENDANT'S WITNESS, SWORN
20 THE CLERK: Please be seated. Will you please state
21 your name and spell it for the record.
22 THE WITNESS: Louis DeSalvio, L-o-u-i-s,
23 D-e-s-a-l-v-i-o.
24 THE CLERK: Thank you.
25 DIRECT EXAMINATION

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1 A That is correct.
2 MR. PIKE: May the record reflect identification?
3 THE COURT: Yes, it will.
4 BY MR. PIKE:
5 Q How did you come to know Brian?
6 A He applied for the apprenticeship program which
7 consists of an application process, some testing and some
8 interviews. You have to score at least a 70 or above. I do
9 believe he scored a 74, and he gets put in our pool. And as we
10 need people to come in as the demands are in the field, we
11 bring them in and then we offer them a general construction
12 course. And if they successfully complete that, then they
13 become a -- then they become a union member.
14 Q And as he was proceeding through the apprenticeship
15 program, was he on his way to what's called a journeyman?
16 A Absolutely.
17 Q And what is a journeyman position?
18 A A journeyman's position, of course, pays
19 substantially more than an apprentice because you are in the
20 process of learning. But then you, you know, you have an
21 opportunity to go become a boss and lead other people and maybe
22 have some apprentices work under you at that point in time.
23 Q And was Mr. O'Keefe working his way towards a
24 journeyman in a satisfactory condition?
25 A Absolutely.

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1 BY MR. PIKE:
2 Q Mr. DeSalvio, how are you employed?
3 A I'm with the labor's union.
4 Q Which labor's union is that?
5 A Labors Local 872.
6 Q When you say local, that's local here to Las Vegas?
7 A Correct.
8 Q And can you describe what the union is and what your
9 capacity is in that union.
10 A I am the apprenticeship coordinator for Labors Local
11 872. I basically assist with the director in running that
12 training center, and we basically train our up and coming
13 trade.
14 Q And so the apprenticeship program is where you take a
15 new hire or a new member to the union, and forgive me for
16 leaving, but then you put them together with a training program
17 and with more senior employees?
18 A Correct.
19 Q Okay. And in your capacity as doing that, did you
20 have occasion to become acquainted with Brian O'Keefe?
21 A That is correct.
22 Q Is Mr. O'Keefe in the courtroom?
23 A Yes, he is.
24 Q He's the gentleman seated over next to Ms. Palm in
25 the red tie?

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1 Q Did there come a time when Brian came to you because
2 he was having problems with alcohol?
3 A Yes, he did.
4 Q What did you do when he came to you?
5 A I got with our patient advocate that is employed by
6 our local union. Basically looks out for our membership, if
7 they have problems or needs medical attention and they're
8 getting the runaround, this guys handles it. Sent him -- sent
9 Brian to him. The same day, actually just a few hours later
10 after he left me, went home, showered, cleaned up, and actually
11 went and met with this gentleman, and then that gentleman
12 passed him onto Mike Thompson who is basically overseeing his
13 rehabilitation, help, whatever you want to call it.
14 And with the stipulation that whoever got assigned to
15 Brian had to also keep me in the loop so I knew exactly how he
16 was progressing because I was not going to put him on that
17 out-of-work list until I knew that he was not going to be
18 hurting himself or anybody else by maybe being under the
19 influence of alcohol on a job site.
20 Q But that hadn't been a problem with any of the
21 employers that you assigned Mr. O'Keefe to go.
22 A That is true.
23 Q In fact, he hadn't missed any work as a result of
24 drinking or anything up to that point in time.
25 A That is true, too.

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1 Q Having come forward to you in dealing with that, do
2 you -- the program you referred him over to is called MIND
3 (phonetic)?
4 A That is correct.
5 Q And that is a provider that the union uses for its
6 members.
7 A That is correct.
8 Q Now, during the time that Brian was in this alcohol
9 program, he was still allowed to come in and participate in
10 union activities, wasn't he?
11 A That is correct.
12 Q What sort of union activities were available to him
13 during the period of time that he was in that treatment
14 program?
15 A Volunteer work, maybe helping out with some political
16 campaigning for some, you know, political people that had
17 election going on at that time, whether it be the president or
18 local. You know, driving signs, and whatever he could do to
19 help out just to kind of keep him busy until we were able to
20 feel comfortable enough to place him on a job site. So it was
21 strictly volunteer on his part. He just basically didn't want
22 to sit at home and was looking for something to do.
23 Q So the union more than just directing people to jobs
24 also is a very social organization?
25 A Absolutely.

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1 hell and take care of some business and came across Keef
2 (phonetic), and he was more than happy to introduce his wife to
3 me.
4 Q Did you have to chance to see the two of them
5 interacting together with other people at the union?
6 A On that same day.
7 Q And would you describe their -- how would you
8 describe their relationship or what you saw the two of them
9 doing together?
10 A It seemed to be great like as if any of you
11 introduced your significant other, you know.
12 Q And did they -- did both Victoria and Brian work the
13 phone bank?
14 A I believe she did the phone banking, and he was with
15 some of the other volunteers out hitting the streets hanging up
16 political signs, taking some down, doing -- you know, basically
17 that kind of -- the physical part of it. She was more in the
18 office on the phones calling people.
19 Q And from your contact with her, did she seem excited
20 about these activities?
21 A Oh, yes. Actually, she got praised by the man that
22 she worked under said it was pretty much the best he's ever
23 seen, and I caught wind that she had done this for the
24 Democratic party before, so it was like a perfect fit. It
25 actually took some stress off him to concentrate on other

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1 Q Its members are almost like a family.
2 A That is correct.
3 Q As part of that social activity, are members allowed
4 to bring family members or friends or girlfriends into them for
5 these social or political activities?
6 A That is correct, yes, they are.
7 Q And did Brian do that?
8 A Yes, he did.
9 Q Do you recall who he brought in with him?
10 A His wife.
11 Q Okay. I'm showing you a picture of -- it's a
12 driver's license. The name on it is Victoria Witmarsh. Do you
13 recognize the person depicted --
14 A Yes, I do.
15 Q -- in that picture? Is that the person that he
16 described to you as his wife?
17 A Yes, it is.
18 Q You had a chance to see the two of them together?
19 A On one occasion, actually. It was the first day that
20 I actually had an opportunity to meet her. Like I said, I'm
21 usually with the workers. I don't get to see their families,
22 maybe at a picnic or some kind of social gathering or may it be
23 Christmas party or something when you actually get to see the
24 other side of the family.
25 And at this point in time I had to go over to our new

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1 things while she actually pushed the other people that was
2 phone banking. So he was in love with her as far as that's
3 concerned.
4 Q And Brian was out hanging signs, doing other
5 political activities on behalf of the union. Was he happy
6 about the relationship that he -- let me ask, from your
7 observations and between the two of them and the conversations
8 that you had, did the two of them seem happy and forward
9 directed?
10 A In my opinion, for the distance that I got to see it,
11 absolutely. I didn't see anything out of the norm. I mean, he
12 was actually very excited to introduce his wife to me. He's
13 like this was the guy I was telling you about, you know, that
14 helped me, whatever. So he very up beat, very up beat.
15 MR. PIKE: I have no further questions. Thank you
16 very much.
17 THE COURT: Cross-examination.
18 MS. GRAHAM: Yes, Judge.
19 CROSS-EXAMINATION
20 BY MS. GRAHAM:
21 Q You said Mr. DeSalvio?
22 A DeSalvio. Close enough.
23 Q DeSalvio. And what union is that again?
24 A Labors Local 872.
25 Q And you would agree with me, sir, that unions --

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1 members of unions are kind of family like?
 2 A Yes.
 3 Q Yes? Now, did I understand you correctly in saying
 4 you were his direct supervisor?
 5 A For the apprenticeship program, that is correct.
 6 Q Okay. And what dates were those?
 7 A I believe he came in the program in February of 2006,
 8 and currently he's still involved technically. He hasn't been
 9 -
 10 Q I question was when were you his supervisor?
 11 A At the point of entry into the program.
 12 Q Entry into the apprenticeship program?
 13 A That's correct.
 14 Q And when he actually went into the MINDS (phonetic)
 15 recovery program, were you his supervisor at that point?
 16 A Yes, I am.
 17 Q Okay. Now, what is MINDS? Do you know what MINDS
 18 is?
 19 A It's an organization that was passed down to us
 20 through our business manager who -- when I came across this
 21 problem, I had asked the advice of who would be the best suit
 22 person to deal with this problem, and I was told that this guy
 23 is top notch, he's good at what he does, and recommended that I
 24 kind of direct him in that matter.
 25 Q And when you him, you're talking about the defendant

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1 somewhere around in there.
 2 Q Okay. If I told you it was November 5th, 2008, would
 3 you have any reason to disagree with me?
 4 A I don't know the date. I just know it's about --
 5 about that time frame.
 6 Q Okay.
 7 A I wouldn't argue it.
 8 Q All right. And did you have any contact with the
 9 defendant and Victoria on November 5th, 2008?
 10 A Are we talking about the day of the incident or the
 11 day of --
 12 Q The day of the murder, yes.
 13 A No, none.
 14 Q No contact?
 15 A I actually found out through the Internet.
 16 Q Okay. All right. Let me ask you this, you indicated
 17 that you thought Brian was in love with Victoria.
 18 A From what I seen for the brief 10, 15 minutes that I
 19 was around them, yes.
 20 Q Okay. And would you agree with me, sir, that if you
 21 loved somebody you don't hit them?
 22 A Absolutely.
 23 MR. PIKE: Objection, your Honor.
 24 THE COURT: Sustained.
 25 MR. PIKE: Motion to hit (Indiscernible).

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1 here?
 2 A That is correct.
 3 Q Okay. So you were his supervisor that recommended
 4 defendant go to MINDS; is that correct?
 5 A Yes, it is.
 6 Q Okay. And you testified that the defendant never
 7 missed a day of work; is that correct?
 8 A From what has been reported to me by his employer, he
 9 hadn't missed any work due to my problems and had never been
 10 reported to me.
 11 Q Never had been reported to you?
 12 A That is correct.
 13 Q So it would surprise you, then, if a report from
 14 MINDS indicated that he was actually fired from his position
 15 for missing three days in a row out of five?
 16 A That would be, yes.
 17 Q It would be surprising to you?
 18 A Yes, it would.
 19 Q Okay. Now, the day that you met Victoria, what date
 20 was that; do you recall?
 21 A Exactly, no. I do believe it was two days prior to
 22 this incident.
 23 Q This incident. Do you know what date this incident
 24 was?
 25 A I want to say somewhere maybe in October, November,

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1 BY MS. GRAHAM:
 2 Q Did you interact with the defendant on a social level
 3 at any other time than you've just mentioned today?
 4 A No, it was strictly business.
 5 Q Okay. And had you ever met Victoria or had any
 6 interaction with her prior to that day that you --
 7 A No.
 8 Q So just the one day?
 9 A That's correct.
 10 Q Okay.
 11 MS. GRAHAM: Court's indulgence. Nothing further,
 12 Judge.
 13 THE COURT: Any redirect?
 14 MR. PIKE: Thank you.
 15 REDIRECT EXAMINATION
 16 BY MR. PIKE:
 17 Q In fact, on the day that this tragedy occurred, you
 18 actually were attempting to call Brian to let him know that
 19 there was a job available for him.
 20 A That is true.
 21 Q He'd made every qualification and was prepared and
 22 you were prepared to place him back on jobs?
 23 A That's correct. I received a call from Mike. He
 24 called me and said I feel that he's good to go. He has never
 25 missed a meeting. We're working together. We're constant

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1 contact. I said okay, if your professional tells me -- because
2 I was kind of leery with the length of time, September 11th,
3 and I believe he called me on the 29th. I'm like, okay. I
4 mean, you're the professional. I just get them the work, you
5 know. If that's what you're telling me, then so be it, and
6 that's -- that's how it worked out.

7 Q Thank you.

8 MR. PIKE: No further questions.

9 THE COURT: Any recross?

10 MS. GRAHAM: No, Judge.

11 THE COURT: All right. Thank you, sir, for your
12 testimony. You are instructed not to discuss your testimony
13 with any other witness involved in this case until this matter
14 is finally resolved. Thank you for your time, sir.

15 MS. GRAHAM: Judge, I think a juror has a question.

16 THE COURT: Oh, I'm sorry, sir. We do allow our
17 jurors to ask questions of witnesses so we're going to check
18 out --

19 THE WITNESS: Feel free.

20 (Off-record bench conference).

21 THE COURT: All right, sir, we have a couple
22 questions from one of the jurors. First question is what is
23 the union's policy on employees requesting assistance with
24 their problems?

25 THE WITNESS: If they come to me and I know that --

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1 am not going to put you in jeopardy or anybody else's life in
2 jeopardy, especially with the problems we've been having on the
3 city center and stuff like that. With that, I'm not going to
4 do it.

5 So until you're -- whoever helps you convinces me
6 that you're going to go, however long it takes, that's when
7 I'll then put you on the at work list.

8 THE COURT: Thank you. Any follow-up questions,
9 actually, by you Mr. Pike?

10 MR. PIKE: None by me, your Honor.

11 THE COURT: Any by the State?

12 RECROSS-EXAMINATION

13 BY MS. GRAHAM:

14 Q So basically he wasn't allowed to come back to work
15 until he went through a treatment program, is that correct?

16 A That is correct. Came to me --

17 Q That's a yes or no question.

18 A Okay.

19 Q Thank you.

20 THE COURT: Anything else, Mr. Pike?

21 MR. PIKE: No.

22 THE COURT: All right, thank you, sir.

23 THE WITNESS: Okay. Next witness for the defense.

24 MR. PIKE: Robert Paisano.

25 THE MARSHAL: Mr. Paisano, if you'll remain standing,

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1 and if they tell there's a problem, I'm going to do everything
2 I can for them. Like the counsel stated, they're like family.
3 I mean, if we don't lookout for them, who's going to, so if
4 they come to me with a problem, I'm going to do the best I can
5 to try to find the best help I can find them. I mean, it's
6 just that's all there is to it.

7 But I can't fix something I don't know nothing about,
8 so he came to me. I sent him to the best place that I thought
9 I could send him to get the best help, and, you know, the
10 ball's then in that court with the stipulation that wherever
11 you go to, please make sure they keep me in the loop so we can
12 make sure that your progress is moving along properly. You
13 know, that's kind of like baby sitting. Making sure it's all
14 going down right.

15 THE COURT: All right. Next question is when did Mr.
16 O'Keefe notify you of his drinking problem? Do you have a
17 date?

18 THE WITNESS: September 11th. How do you forget
19 that, you know.

20 THE COURT: And what type of rehab did the union send
21 him to? Mandatory, volunteer -- is it volunteer or mandatory,
22 and how long was the program, if you know.

23 THE WITNESS: The treatment that I believe he was
24 going to receive was whatever it took to get him out from this
25 problem, okay. I didn't set a time on it. I just said that I

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1 please. Raise your right and hand face the clerk.

2 ROBERT FRANCIS PAISANO, DEFENDANT'S WITNESS, SWORN

3 THE CLERK: Please be seated. Will you please state
4 your name and spell it for the record.

5 THE WITNESS: Robert Francis Paisano.

6 THE CLERK: And the spelling.

7 THE WITNESS: Oh, P-a-i-s-a-n-o.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. PIKE:

11 Q Okay, Mr. Paisano, how are you employed?

12 A I'm a private therapist at Star Counseling. I also
13 do contract work with a group called Minds & Associates
14 (phonetic).

15 Q And in your capacity as doing contract work with
16 Minds & Associates, do you conduct alcoholism treatment
17 programs?

18 A Yes.

19 Q During the time that you have been doing that, did
20 you have occasion to meet with an individual by the name of
21 Brian O'Keefe?

22 A Yes.

23 Q Is Brian here in the courtroom?

24 A Yes.

25 Q Is he the gentleman seated over there with the red

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1 lie?

2 A Yes.

3 MR. PIKE: May the record reflect identification of
4 the defendant?

5 THE COURT: Yes, it will.

6 BY MR. PIKE:

7 Q How was Brian referred over to you?

8 A Brian was a self-referral coming through his union,

9 UF - I'm sorry, Labors Local 872.

10 Q And after you had an opportunity to meet with him,
11 did you make a determination as to whether he become involved
12 in individual and/or group counseling?

13 A Yes.

14 Q What was your determination?

15 A When he first came to me, one of the primary issues
16 we - that was concerning was that he was under the influence,
17 and so we sent him to a detox process. Once he completed that,
18 then he came back to me. I did a further assessment, which
19 deemed that he needed to be in a more intensive out-patient
20 treatment process as well as individual counseling.

21 Q Can you describe the detox program that was necessary
22 to refer him to in order to get to the point where he could
23 even participate in the counseling program.

24 A I referred him to a group called Las Vegas Recovery
25 Center that's up on Buffalo and Cheyenne. I believe he was

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1 Nevada want my training consists of I have to participate in 40
2 hours of CEU process. Currently as a licensed professional you
3 have to have a graduate degree in order to obtain the - that
4 licensure.

5 Q During the time that you went through this program
6 and in the group therapy, during the group meetings were the
7 participant encouraged to bring any family members or support
8 members of the community with them?

9 A Yes.

10 Q Did Brian bring somebody to those group meetings with
11 him?

12 A Yes, he brought a young lady who was considered to be
13 his significant other.

14 Q And besides handling the individual counseling, you
15 often participated in the group counseling, too; is that
16 correct?

17 A Yes.

18 Q Did you have occasion to meet the woman that he
19 identified as his significant other?

20 A Yes. I had the opportunity to meet her at the
21 individual session. She never participated in that, but I met
22 her in the lobby. And also, too, she attended the group
23 sessions that Brian attended.

24 Q I'm showing you what has been admitted into evidence
25 as Defendant's Exhibit XX. This is a driver's license of

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ROUGH DRAFT TRANSCRIPT

1 there for approximately three or four days, and at that time
2 what they did, they completely detoxed him from the alcohol
3 substance that he had in his system.

4 We're able to, I guess, treat any withdrawal process
5 that he may have had at that time.

6 Q Based upon the observations that you incurred --
7 based upon the observations that you made and the detox -- the
8 length of the detox program, did you consider Brian's
9 alcoholism to be mild, moderate, acute or how did you assess
10 it?

11 A I assessed his situation as very severe because he
12 was using the substance almost on a daily basis, and the extent
13 of time of his consumption and the amount of his consumption
14 warranted that.

15 Q Once you got him in detoxed after that four day
16 period to get the alcohol out of his system, did you engage in
17 any individual and group counseling with him?

18 A Yes, I did. I was his primary therapist as far as
19 individual counseling. I referred him back to the Minds &
20 Associates chemical dependency intensive outpatient treatment,
21 and that was an 18 session program where he attended three days
22 a week for three hours per session.

23 Q And what sort of training do you have to being a
24 counselor therapist for alcoholism?

25 A I've been a therapist since 1982 with the state of

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ROUGH DRAFT TRANSCRIPT

1 Victoria Witmarsh. Is this the same lady that came to those
2 individual and group sessions with Brian?

3 A Yes.

4 Q So based upon her participation in those group
5 sessions, was she present when Brian addressed some of his
6 issues regarding alcohol?

7 A Yes.

8 Q Was she aware from your conversations with her that
9 Brian was an alcoholic?

10 A Yes.

11 Q Did she ever indicate to you that she had an alcohol
12 problem?

13 A No.

14 Q In going through this group session, do the
15 significant others or wives or girlfriends sit in during the
16 group session?

17 A Yes.

18 Q What do the group sessions -- you indicated it was an
19 18 week program. Can you describe what's -- what occurs during
20 that 18 week program.

21 A Each session is primarily focused on individual
22 concepts that usually apply to the disease, to the recovery
23 process, to what we call the relapse (phonetic) prevention, and
24 then the other areas will be focused in on identification of
25 what we call critical thinking and ineffectiveness thinking of

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1 that process. We also help the individuals to identify certain
2 problematic behaviors that if not corrected would lead back to
3 the use of alcohol and/or any other substance they were using.
4 Q Okay. And problematic behaviors, would that include
5 maintaining contact with someone that would -- let's delicately
6 call it an unhealthy relationship.
7 A Yes.
8 Q And do you find that relationships -- that as part of
9 your counseling that relationships often can cause lapses of
10 alcohol consumption?
11 A Well, they contribute to that behavior.
12 Q So if a couple is not -- if a couple is not
13 addressing their problem together, then only half of the
14 problem may be being solved?
15 A True.
16 Q And in this case Victoria was just coming as a
17 support person. Did she actively participate in these group
18 sessions?
19 A In the sessions that I conducted, yes, she did.
20 Q So in the sessions that you participated in, the
21 risks, difficulties and problems that ensued from over
22 consuming alcohol is that was discussed?
23 A Yes.
24 Q As part of the training or these counseling sessions
25 that you had and the group sessions, did you also talk about

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ROUGH DRAFT TRANSCRIPT

1 limit or an amount of alcohol in the blood system at .08, which
2 is illegal to drive. Are you aware of that?
3 A Yes.
4 Q And .24 would be approximately three times that legal
5 limit?
6 A Yes.
7 Q Now, during the time that you saw Victoria and Brian
8 together, did they appear to be a couple?
9 A Yes, they did.
10 Q Did they attempt to hide her name or their
11 relationship?
12 A No.
13 Q Did the two of them while you were involved in this
14 group session make plans forward? Were they planning a future
15 together?
16 A Yes, from my understanding.
17 Q And during the time that you ever saw the counseling
18 together, they were both participating in these actions that
19 were related to their future?
20 A Yes.
21 Q In your opinion, did they appear to be a loving
22 couple?
23 A I would say that they were -- they shared very strong
24 affection toward each other.
25 MR. PIKE: Court's indulgence.

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ROUGH DRAFT TRANSCRIPT

1 the -- or was the problem addressed of using drugs in
2 consumption with the use of alcohol?
3 A Yes.
4 Q What's what called? Does that have a specific name?
5 A It's probably just a combination of use and the
6 effects would be somewhat of a synergistic type. It would
7 either add to the chemical effects that were being used.
8 Q And can you give us -- synergy, that's a term of art.
9 Can you describe what that is maybe like in mathematical terms
10 or something?
11 A If one were using alcohol and then they were taking
12 another central nervous depressant chemical, that would enhance
13 the effects of the alcohol and or the other chemical.
14 Q And some of the detrimental effects of alcohol, what
15 are those?
16 A Well, situation that we're in today is one of them.
17 Legal, family, employment, physiological, and marital issues
18 are usually contributing factors to the problem.
19 Q Does the use of alcohol affect somebody's ability to
20 observe and understand situations --
21 A Oh, very much.
22 Q -- properly?
23 A And it's determined upon the use of and the amount of
24 chemical being used.
25 Q As part of your counseling there, there is a legal

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ROUGH DRAFT TRANSCRIPT

1 BY MR. PIKE:
2 Q Now, in going through this program, that the referral
3 -- you indicated this was a voluntary referral.
4 A Yes.
5 Q They came to you from the union, and you were
6 reporting back to the union?
7 A Yes.
8 Q During the time that you are conducting this program,
9 do you obtain a history of when alcohol use first started?
10 A Yes.
11 Q In this relation or in relationship to Brian O'Keefe,
12 were you able to ascertain when the overuse of alcohol started?
13 A Not without my documentation I can't. But I do know
14 that it started probably after military service.
15 Q And you discussed his military service with him and
16 things that occurred during that?
17 A Briefly, yes.
18 Q And in order to adequately assess and treat an
19 individual that suffers from alcoholism, you have to determine
20 how far advance that alcoholism is, how advance the disease is?
21 A Yes.
22 Q During that do you make inquiries as to whether or
23 not blackouts have occurred?
24 A Yes.
25 Q And were you able to ascertain whether or not Brian

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ROUGH DRAFT TRANSCRIPT

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1 had suffered from blackouts in the past?
 2 A I believe that he did answer that question yes, that
 3 he did experience blackouts. As far as onset, I have no idea
 4 without the documentation.
 5 Q Can you describe what an alcoholic blackout is and
 6 how it affects people?
 7 A An alcoholic blackout takes place when a certain
 8 amount -- and again, the amount differs within individual is
 9 consumed. What happens is the individual loses memory of
 10 actions and behaviors. They're still conscious that they're
 11 still interacting, but when they come to a point of sobriety,
 12 they have very little recollection or no recollection of the
 13 behaviors.
 14 Q And is that a point where the alcoholism has become
 15 so acute that it actually affects the cognitive functions of
 16 the brain?
 17 A Yes.
 18 MR. PIKE: I have no further questions.
 19 THE COURT: Cross-examination.
 20 MS. GRAHAM: Yes, Judge.
 21 CROSS-EXAMINATION
 22 BY MS. GRAHAM:
 23 Q Good morning.
 24 A Morning.
 25 Q Okay, so just so I understand, you were the counselor

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ROUGH DRAFT TRANSCRIPT

1 A No.
 2 Q Okay. Now, you say -- you indicated that the
 3 defendant was voluntarily came to you; is that correct?
 4 A Yes.
 5 Q But it is true, sir, that he came to you because he
 6 was fired from his for missing three days of work out of five;
 7 is that correct?
 8 MR. PIKE: Misstates the evidence. We had the
 9 witness testify that it was a referral from the union over to
 10 MINDS.
 11 THE COURT: That's correct. Sustain the objection.
 12 BY MS. GRAHAM:
 13 Q If the client would have told you that he was faked
 14 from work because he called in sick three days out of five in
 15 one week, would you have any reason to dispute that if it's in
 16 your report?
 17 A No.
 18 Q Okay. But you don't recall him telling you that?
 19 A No.
 20 Q Okay. The defendant indicated to you that he had
 21 severe substance abuse; is that correct? Or that's your
 22 determination?
 23 A Right, that was my determination.
 24 Q Because of the amount of substance he was using,
 25 correct?

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ROUGH DRAFT TRANSCRIPT

1 that first assessed the defendant when he came to you for
 2 treatment?
 3 A Yes.
 4 Q Is that -- okay. And when you do an assessment,
 5 there's a lot of self-reporting by the client; is that true?
 6 A Yes.
 7 Q So for you to gather the information, the client
 8 actually has to tell you the information himself --
 9 A Yes.
 10 Q -- would that be correct? And do they fill out a
 11 questionnaire?
 12 A No, actually, my assessment is an oral process, I do
 13 the questioning.
 14 Q You do the questioning. And then do you document
 15 that in some fashion?
 16 A Yes.
 17 Q Okay. And is that through a report?
 18 A It's through what we call a psychosocial assessment.
 19 Q Psychosocial --
 20 A Um-h'm.
 21 Q -- assessment?
 22 A Yes.
 23 Q Did you review that today?
 24 A No.
 25 Q Before you came here?

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ROUGH DRAFT TRANSCRIPT

1 A Right, and the history.
 2 Q And the history. And he did indicate you the amount
 3 of consumption of alcohol that he was using on a daily basis,
 4 did he not?
 5 A Yes.
 6 Q And would -- if you indicated that he was drinking,
 7 let's see, five to eight quarts of beer on a daily basis, would
 8 that sound accurate?
 9 A I can't answer that truthfully because I don't have
 10 the documentation in front of me.
 11 Q You don't have any documentation in front of you
 12 regarding his assessment today?
 13 A No, because --
 14 Q You didn't review it before you came to court today
 15 here, sir?
 16 A No.
 17 MR. PIKE: Your Honor, the complete copy available at
 18 the clerk's if she wants to refresh his recollection.
 19 THE COURT: I'll leave it up to --
 20 MS. GRAHAM: Well, Judge, I don't think he compiled
 21 this report so --
 22 THE COURT: Let's ask questions. Don't --
 23 MS. GRAHAM: Okay.
 24 BY MS. GRAHAM:
 25 Q Did you review any documentation before you came to

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1 court here today?
 2 A No.
 3 MS. GRAHAM: May I approach the witness?
 4 THE COURT: Yes.
 5 BY MS. GRAHAM:
 6 Q Do you recognize that? Just take a look at it.
 7 A I guess -- I don't know if I've seen this before.
 8 Q You never seen it? Could you just read that
 9 paragraph for me right there.
 10 A Which one?
 11 Q This paragraph starting with the diagnoses and then
 12 that paragraph.
 13 THE COURT: Is he reading it to himself?
 14 BY MS. GRAHAM:
 15 Q Read it to yourself, please.
 16 A Oh, okay.
 17 MR. PIKE: For the record, I haven't been shown the
 18 document. May I approach the witness, Judge?
 19 THE COURT: Yes.
 20 MR. PIKE: It's the document that defense provided.
 21 THE COURT: Well, let --
 22 MR. PIKE: Okay.
 23 THE COURT: Well, let's see -- let's refresh Mr.
 24 Pike's recollection so he can look at it.
 25 THE WITNESS: Okay.

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1 Q Okay. Well, if --
 2 MR. PIKE: Objection, your Honor.
 3 BY MS. GRAHAM:
 4 Q Would you have --
 5 MR. PIKE: For purposes of cross-examination, she's
 6 addressing a document that has not been introduced into
 7 evidence, and he's offering information contained from that.
 8 If she wants to publish it, if she wants the entire records,
 9 we'll move for the admission of Defendant's Exhibit A, which
 10 contains all of the records so that this could be a proper
 11 cross-examination.
 12 THE COURT: I'm going to sustain the objection. Are
 13 you offering the reports?
 14 MS. GRAHAM: Judge, may we approach?
 15 THE COURT: Are you offering it?
 16 MS. GRAHAM: I'm not offering the document at this
 17 time. I think it's subject for impeachment, absolutely.
 18 THE COURT: Well --
 19 MR. PIKE: He has no personal knowledge of it.
 20 THE COURT: -- he didn't author it, did he?
 21 MS. GRAHAM: No, he just read it, your Honor. I'm
 22 going to ask him --
 23 THE COURT: Well, he didn't author it, he didn't
 24 direct it, he hasn't seen it before today, I'm sustaining the
 25 objection.

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ROUGH DRAFT TRANSCRIPT

1 BY MS. GRAHAM:
 2 Q Okay. Does that refresh your recollection of
 3 anything that the defendant would have told you when he came to
 4 you for the first interview for counseling?
 5 A That report or that information you have is coming
 6 from the detox facility.
 7 Q Okay.
 8 A That's not any of --
 9 Q And he was referred by you?
 10 A Yes.
 11 Q So this information that you just read, you have no
 12 knowledge ever existed?
 13 A Well, this is the first time I've seen that document.
 14 Q Okay. Would you have any reason after reviewing this
 15 document that came from the MINDS facility to dispute the
 16 accuracy of the content of this document that I just showed
 17 you?
 18 A That document is what he was presenting to the
 19 facility.
 20 Q Okay.
 21 A It does not reflect what he reported to me.
 22 Q Okay. So he reported to you something different than
 23 what you read that he would have reported to MINDS; is that a
 24 correct statement, then?
 25 A Yes and no.

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ROUGH DRAFT TRANSCRIPT

1 MS. GRAHAM: And what objection -- just so I
 2 understand the objection.
 3 THE COURT: Why don't you restate your objection, Mr.
 4 Pike.
 5 MR. PIKE: Thank you, your Honor. Lack of
 6 foundation. Lack of personal knowledge. He didn't prepare the
 7 document. Improper foundation for impeachment based upon a
 8 document that's not been introduced into evidence.
 9 THE COURT: That's what I'm sustaining.
 10 BY MS. GRAHAM:
 11 Q Were you asked by the defense to provide a copy of
 12 your evaluation of the defendant in this case?
 13 A No.
 14 Q Okay. And you neither reviewed that nor provided it
 15 to the defendant?
 16 A No.
 17 Q And you recalled the date, though, that the defendant
 18 came to you for counseling?
 19 A No, I do not.
 20 Q You do not. So you don't recall the date, sir, is
 21 that correct?
 22 A Yes.
 23 Q You don't recall what's actually in your report, your
 24 assessment of the defendant at this point; is that correct?
 25 A Yes.

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1 Q And you didn't review any documents before coming
2 here today, before testifying on what the defendant may have
3 said to you regarding his problems with alcohol; is that
4 correct?
5 A Yes.
6 Q Okay. You referred him to MINDS; is that correct?
7 A No. MINDS is the group that his union utilizes for
8 the EAP process, Employee Assistance Program.
9 Q Okay. Exactly sir - I'm confused. What was your
10 involvement in the case? In his actual recovery process as
11 opposed to MINDS? Just if you could educate the jury on your
12 involvement in the process and then MINDS involvement on the
13 process.
14 A Okay. My involvement with MINDS, at that time I was
15 a contract employee. They would refer all assessments to me
16 because I was their primary alcohol and drug specialist. So
17 when he came to me, I did the assessment because that's
18 basically what I was supposed to do. I then after he was
19 referred to the detox facility, then I assumed responsibility
20 as being his primary therapist.
21 Q Okay. And so the reason for his admission into MINDS
22 would have been reported by you?
23 A Actually, no, because his union referred him to minds
24 whom I was a contractor with.
25 Q Okay. All right. The document that I just showed

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ROUGH DRAFT TRANSCRIPT

1 Q And tolerance, sir, basically means that your ability
2 to function on alcohol is better than the average person that
3 doesn't drink that amount of alcohol?
4 A Yes.
5 Q So for instance -- for example, if somebody had a BAC
6 of over .08 which is we've established a legal limit, correct?
7 A Yes.
8 Q Their BAC could be .24, .38, and if they had a
9 tolerance to alcohol while consuming that much alcohol on a
10 daily basis since their teen years, they would be able to
11 function more normally than the average person on that alcohol;
12 is that correct?
13 A They --
14 Q The effects of alcohol -- let me rephrase.
15 A Okay.
16 Q The effects of alcohol do not affect their motor
17 skills as it would a person that doesn't drink that mass amount
18 of alcohol daily; is that correct? That's a yes or no
19 question.
20 A Okay. Could you read the question or give me the
21 question again?
22 Q Well, basically, you know, simply put, when somebody
23 has a tolerance to alcohol, it's usually because they consume
24 masses amounts of alcohol a day; is that correct?
25 A No.

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1 you, who generates that document?
2 A That would be the facility at which he was admitted
3 to for detox because that's what it was. It was a detox
4 assessment.
5 Q Okay. And you had nothing to do with the detox
6 assessment?
7 A No.
8 Q Okay. Are you familiar with diagnosis 303.9?
9 A Yes.
10 Q And do you know if Brian was diagnosed with 303.9?
11 A Yes, that was my primary diagnosis.
12 Q Okay. And you're aware, sir, that 30.39 (sic)
13 indicates that the use of alcohol despite adverse consequences
14 and distortions in thinking most notably denial is one of
15 those?
16 A Yes.
17 Q Yes? Would you say that the defendant was a chronic
18 alcoholic?
19 A Yes.
20 Q Are you familiar with the term tolerant, sir?
21 A Yes.
22 Q If someone were to drink five to eight quarts of beer
23 on a daily basis coupled with shots of hard liquor, say for
24 instance vodka, would they build up a tolerance to alcohol?
25 A Yes.

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ROUGH DRAFT TRANSCRIPT

1 Q You can become tolerant to alcohol once -- if you
2 consume masses of alcohol each day.
3 A True.
4 Q For several years?
5 A Yes.
6 Q And what the word tolerance means is that your motor
7 skills and your functions that alcohol normally would effect,
8 they don't affect you like that anymore after you consume
9 alcohol over and over for years and years and more and more and
10 more alcohol; is that correct?
11 A I can't -- that's kind of a variable because the
12 alcohol -- or actually, the use of that affects people
13 differently. Whereas a person who, let's say has a .42 level or
14 .42 level is still under the influence, but they may not have
15 any recollection of their abilities or their actions. Whereas,
16 again, you could have less and still be functioning as well.
17 Q And that's basically my question. You can develop a
18 tolerance to alcohol.
19 A Oh, yes. Yes.
20 Q And essentially -- you know, the definition of
21 tolerance is that it doesn't affect you once you drink and
22 drink daily and daily for years and years massive amounts of
23 alcohol, it doesn't affect you like it would somebody that
24 doesn't drink at all; is that a fair statement, sir?
25 A Yes.

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1 Q Okay. Would you have any reason to dispute your
2 earlier testimony that defendant had indicated that he never
3 had blackouts?
4 A I'm sorry?
5 Q Would you have any reason to dispute your earlier
6 testimony that the defendant indicated to you that he never had
7 -- that he had blackouts with alcohol?
8 A He did have blackouts, yes.
9 Q He indicated to you he had blackouts?
10 A Yes.
11 Q If he told somebody else that he never blackouts,
12 would you have any reason to dispute that?
13 A No.
14 Q Are you a member of the union, sir? You a member of
15 the union?
16 A Mc, no.
17 Q And how long have you been treating persons with
18 alcohol addition?
19 A I was first certified in April of 1982.
20 Q So that's 25 years, 26 years or so?
21 A Close to 27, yeah. 26.
22 Q And you would agree with me, sir, in those 26 years
23 somebody has a severe problem with alcohol, as you've
24 indicated, that their sensitivity to alcohol is lessened even
25 if the BAC would be very high? It's a yes or no. Would you

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1 THE COURT: All right. All right, it will be
2 admitted, and what's the -- just for the record, what's the
3 number?
4 MR. PIKE: A. We do need to lay a bit of a
5 foundation in reference to these. Maybe if I could have three
6 questions on voir dire just from the --
7 THE COURT: All right.
8 BY MR. PIKE:
9 Q Sir, as a contract employee with MINDS, you send your
10 records to the MINDS headquarters which is located in another
11 state.
12 A Yes.
13 Q And the custodian of records would prepare a copy of
14 those and then provide them pursuant to subpoena, and so these
15 records would come from another state and would contain some
16 much your records; is that correct?
17 A Yes.
18 Q Along with other records that they accumulate during
19 the time of treatment?
20 A Yes.
21 Q Okay. Thank you.
22 THE COURT: All right. Go ahead, Ms. Graham.
23 MS. GRAHAM: Okay. May I approach the witness again?
24 THE COURT: Yes.
25 MS. GRAHAM: Judge, I'm going to show him my copy, is

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1 agree or not?
2 A Well, I have difficulty with answering that in that
3 capacity.
4 Q Well, would you agree or not? If you don't agree,
5 just tell me you don't agree.
6 A No, I don't agree.
7 Q You don't agree that somebody's sensitivity can -- is
8 lessened if they're BAC's very high? If they're an alcoholic
9 and they consume quarts and quarts of alcohol on a daily basis
10 for several years.
11 MR. PIKE: Objection. Compound question.
12 THE COURT: Sustained.
13 MR. PIKE: Cannot be answered with a yes or no.
14 THE COURT: Sustained.
15 MS. GRAHAM: Court's indulgence. Would you like to
16 stipulate to the admission of the entire packet
17 (indiscernible)?
18 MR. PIKE: Yes, we have custodian of records
19 authentication of all the records of MINDS. They're marked --
20 previously marked as Defendant Exhibits A and by stipulation
21 with the State, then we'd like to have them admitted.
22 THE COURT: Is that correct, State?
23 MR. SMITH: Can we review it --
24 MS. GRAHAM: That is correct.
25 MR. SMITH: -- together real quick just to make sure.

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1 that okay, because these pages are not numbered.
2 THE COURT: All right.
3 MR. PIKE: Absolutely.
4 THE COURT: Why don't you show the defense counsel
5 which --
6 MR. PIKE: We --
7 MS. GRAHAM: I think they know what I'm --
8 MR. PIKE: We have a complete copy on this.
9 MS. GRAHAM: -- referring --
10 THE COURT: No, I'm saying as far as the specific
11 page.
12 MR. PIKE: What page that she's going to use, thank
13 you.
14 MS. GRAHAM: I believe Mr. Pike reviewed it. It's
15 the same paragraph that I showed him before.
16 MR. PIKE: Okay. And then with the Court's
17 permission, I'll just approach with counsel.
18 THE COURT: All right.
19 MR. PIKE: Thank you.
20 BY MS. GRAHAM:
21 Q I'm showing you, sir, a previous document that you've
22 had a chance to review. It comes -- it's been admitted as
23 Defense Exhibit I. Specifically -- well, these pages are not
24 numbered. It's patient chart. The date --
25 THE COURT: First, that's Defendant's A, for the

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1 record.
2 MS. GRAHAM: Yeah, Defendant's A.
3 BY MS. GRAHAM:
4 Q Patient chart, inpatient. This date is 9/30/08, 1146
5 a.m., that's the date on the page.
6 MS. GRAHAM: Judge, for the record, the pages are not
7 numbered, but the date on the page is 9/30/08.
8 BY MS. GRAHAM:
9 Q Sir, if you would -- right there reason for
10 admission. You've reviewed that --
11 A Um-h'm.
12 Q -- previously?
13 A Right.
14 Q You want to read that out loud to the jury?
15 A Reason for --
16 Q Or actually, you know what, you've reviewed it. Let
17 me just ask you some questions. In this report, State's
18 Exhibit A, reason for admission, you've read it, sir, right?
19 A Yes.
20 Q It indicates that the defendant started drinking at
21 age 17.
22 A Yes.
23 Q How would that information get into this report?
24 A He would acknowledge that.
25 Q Okay. It's also indicates that the defendant had

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1 treatment program. I have no idea because he was in compliance
2 when he was with me.
3 Q Okay. It says discharge review. Discharge review,
4 ongoing risk factors, non-compliant with after-care
5 recommendations. Who would have written that in the report?
6 A The primary therapist of that facility.
7 Q Do you know who that is?
8 A I have no idea.
9 Q Sir, there are several -- are you familiar with these
10 -- I mean, do you ever review these documents, sir, the MINDS
11 documents?
12 A As far as on it -- I'm not too sure because when I --
13 Q In conjunction with your treatment and with your
14 participation in somebody's alcohol recovery process.
15 A Do I review them?
16 Q Yes.
17 A Usually if they -- if they come to me, I review the
18 previous session on the plans that we had to conduct for the
19 next session, and then I follow up with that to see whether or
20 not compliance was done.
21 Q Okay.
22 A And that would be the only time.
23 Q Now, I noticed that there are different sessions
24 labelled, and do you know how many sessions the MIND program
25 is?

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ROUGH DRAFT TRANSCRIPT

1 been out of control since early 20s when he was in the service.
2 How would that report -- how would information get into this
3 report?
4 A That would be self admit.
5 Q Okay. It indicates that the defendant drinks quarts
6 of beer, 15 per day -- 15 quarts of beer per day and has drank
7 as much as a case a day. How would that information get into
8 in report?
9 A Self report.
10 Q Defendant denies ever blacking out. How would that
11 get into this report?
12 A Self report.
13 Q Defendant was fired from work because he called in
14 sick three days out of five in one week. How would that
15 statement get into this report, sir?
16 A Self report.
17 MS. GRAHAM: May I approach the witness?
18 THE COURT: Yes.
19 BY MS. GRAHAM:
20 Q Sir, I'd ask you to look down at the bottom of the
21 page, ongoing risk factors. Do you see that?
22 A Um-h'm.
23 Q Same page dated 9/30/06. Does that indicate to you
24 that he is non-compliant with after-care recommendations?
25 A I don't know. That -- that may be from a prior

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1 A Well, the COIOP is 18 sessions. Initially when they
2 come to us, we have five EAP sessions and then we request
3 additional managed care sessions after that.
4 Q And when you say EAP, what do you mean?
5 A It means these are sessions that are provided to the
6 member at no cost.
7 Q Do you know what happens during these group sessions?
8 Are these group sessions?
9 A In the IOP program, you mean?
10 Q No, in the MIND sessions.
11 A Well, that's the IOP.
12 Q Oh, okay.
13 A That's the chemical -- yes, it's three hours of
14 education as well as process.
15 Q Okay. Three hours of education each session?
16 A Yes.
17 Q Okay. And after those sessions are -- is there a
18 caseworker involved in each of those sessions? How does that
19 work?
20 A Well, there is a therapist who conducts the sessions,
21 yes.
22 Q Do you know how many people are involved in each
23 session?
24 A No, I don't because it varies from a daily
25 participation.

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1 Q Okay. And so during these group sessions you have
2 like one caseworker, usually, if you know, sir?
3 A Yes.
4 Q And during these sessions, is -- are there like
5 written exercises that they do or is it all kind of oral
6 presentation?
7 A There are some written assignments that are done in
8 the sessions.
9 Q Okay. And I noticed progress notes. Would it be
10 typical for a caseworker that's involved in the recovery
11 process during each session to notate progress?
12 A Yes.
13 Q That's just something that's done on a normal basis?
14 A Yes.
15 Q Okay. And there's a couple of lines of progress
16 note on each session. Is that just through observation, what
17 -- how do they come up with those progress notes?
18 A Usually with the group progress note. It documents
19 what took place, what interaction was conducted by the patient.
20 Q If a progress note would indicate that a client is
21 abstinent from alcohol, would that be something that the client
22 would have to tell the therapist or would they actually perform
23 BACs at each session?
24 A No. There usually is not any kind of forensics done
25 at these sessions.

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1 Q Have you heard that phrase?
2 A Yes.
3 Q Where does that phrase come from?
4 A I'm sorry?
5 Q Does that phrase come out of the big book for
6 alcoholics anonymous?
7 A That I choose into the to drink today?
8 Q That's the exact phrase, I'm sorry.
9 A Yes.
10 Q Okay. What does that mean to you? Does it mean that
11 alcoholism is a daily event?
12 A Alcoholism is a chronic progressive illness. Once we
13 cross the line of addiction, there is no not being an alcoholic.
14 So yes, it's an ongoing process.
15 Q And is there a higher failure rate recidivism rate or
16 redinking rate among alcoholics, particularly alcoholic with a
17 long history of alcohol consumption?
18 A Yes.
19 Q So it's not uncommon for someone to maintain a period
20 of sobriety while they're in a program and then fall off as
21 soon as the program stops?
22 A Yes.
23 Q Is that one of the reasons why alcoholics anonymous
24 has daily meetings?
25 A Alcoholics anonymous does provide support, yes, on a

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1 Q Okay. So during these sessions there's no blood
2 draw, no breath test?
3 A In.
4 Q So any report of abstaining from alcohol would be
5 self reported?
6 A Self report or observed.
7 MS. GRAHAM: I'll pass the witness. Or actually --
8 MR. PIKE: It's my turn.
9 MS. GRAHAM: -- your witness.
10 MR. PIKE: Thanks. I just have a few questions.
11 MS. GRAHAM: If I could gather my stuff --
12 MR. PIKE: Oh, you bet.
13 MS. GRAHAM: -- for a minute here.
14 REDIRECT EXAMINATION
15 BY MR. SMITH::
16 Q I didn't have a drink today. Sobriety is a
17 day-by-day basis or an ongoing --
18 MS. GRAHAM: Objection. Leading.
19 MR. PIKE: Okay. Thank you.
20 BY MR. PIKE::
21 Q You've heard the phrase I cannot take a drink today
22 or something similar to that, haven't you?
23 MS. GRAHAM: Objection. Leading.
24 THE COURT: Try have you heard the phrase, sir.
25 BY MR. PIKE::

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1 daily basis.
2 Q And by providing support, they provide a sponsor. Is
3 that term a correct term?
4 A Yes.
5 Q What's a sponsor's duty?
6 A As I understand, a sponsor's duty is to be available
7 for when the patient is in time of crisis or if they are
8 working on the steps of recovery, then that would be their
9 guiding person through that process.
10 Q They're guiding their support person?
11 A Yes.
12 Q And during the time that this program was on going,
13 you were never informed that Victoria was an alcoholic.
14 A No, never.
15 MS. GRAHAM: Objection.
16 THE COURT: Assumes facts not in evidence.
17 MS. GRAHAM: Yes.
18 THE COURT: Sustained.
19 BY MR. PIKE::
20 Q She appeared to be supportive or assuming that role
21 that would normally --
22 MS. GRAHAM: Judge, asked and answered. It exceeds
23 the scope --
24 MR. PIKE: It --
25 MS. GRAHAM: -- of cross-examination --

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1 THE COURT: Overruled.
2 MS. GRAHAM: -- at this point.
3 BY MR. PIKE:
4 Q So Victoria would be assuming that role, that
5 supportive role by attending those classes?
6 A Yes.
7 Q In order to obtain a complete report -- well, let me
8 just strike that.
9 MR. PIKE: Court's indulgence.
10 BY MR. PIKE:
11 Q In your previous testimony you indicated that there
12 are certain areas that alcohol affects people. One of them is
13 legal.
14 A Yes.
15 Q One of them's employment?
16 A Yes.
17 Q And the other one is what?
18 A Family.
19 Q In relationship to the employment issues, it is -- if
20 an individual reports that they suffer from blackouts, does
21 that often dictate a longer treatment program than someone who
22 does not?
23 A Yes, that would indicate there's more severity.
24 Q And it's not uncommon during the initial phase --
25 initial phases of evaluation for an alcoholic for them to

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1 MS. GRAHAM: Nothing further, Judge.
2 THE COURT: Anything, Mr. Pike?
3 MR. PIKE: I'm not going to step into that box. So
4 no, I don't have any further questions. Thank you very much,
5 sir.
6 THE COURT: Any questions from any of the jurors?
7 All right, thank you, sir, for your testimony. You're
8 instructed not to discuss your testimony with any other witness
9 involved in this case until in matter is finally resolved.
10 Thank you for your time.
11 THE WITNESS: Thank you.
12 THE COURT: Do you have another witness for this
13 morning --
14 MS. PALM: Not until 1:30.
15 THE COURT: -- before the lunch break?
16 MR. PIKE: Not until 1:30, your Honor, we have --
17 THE COURT: 1:30?
18 MR. PIKE: Yes.
19 THE COURT: Okay, ladies and gentlemen, because of
20 scheduling issues, we're not able to start at 1:00. We'll
21 start at 1:30. We will start promptly at 1:30. So during this
22 lunch recess it is your duty not to converse among yourselves
23 or with anyone else on any subject connected with the trial or
24 to read, watch or listen to any report over commentary on the
25 trial by any person connected with the trial or by any medium

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1 minimize their use of alcohol.
2 A Yes.
3 Q But in this case you thought it was severe enough
4 that you directed Mr. O'Keefe to go into an actual detox
5 program?
6 A Yes.
7 MR. PIKE: I don't have any further questions.
8 THE COURT: Any recross?
9 RECCROSS-EXAMINATION
10 BY MS. GRAHAM:
11 Q How long did the detox last?
12 A I would imagine from -- anywhere from three or four
13 days. I'm not accurate on that.
14 Q And that was because he would have been intoxicated
15 at the time?
16 A Yes.
17 Q Okay. And sir, in your opinion -- let me ask you
18 this. Somebody who drinks 15 quarts of beer on a daily basis
19 for several years, would you agree if they drink a couple
20 bottles of wine one day, it probably wouldn't affect them that
21 much? Would you agree, yes or no?
22 A No.
23 Q Have you ever heard the term I can really hold my
24 liquor? Have you heard the term, sir?
25 A Yes.

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1 of information, including without limitation newspaper,
2 television, radio or Internet.
3 And you're not to form or express an opinion on any subject
4 connected with this case until this matter is finally submitted
5 to you. We'll see you back at 1:30. Thank you.
6 (Outside the presence of the jury)
7 We're outside the presence of the jury panel. If I
8 could have counsel back about 1:15. We can start working on
9 some of the jury instructions. I've had an opportunity to
10 review
11 MR. SMITH: I think it might take a little longer
12 than 15 minutes, Judge.
13 THE COURT: No, we won't finish it.
14 MR. SMITH: Oh, okay.
15 THE COURT: We'll start it.
16 MR. SMITH: Okay.
17 MS. PALM: Your Honor, can we put a couple of things
18 on the record before we break or do you want to do it when we
19 come back?
20 THE COURT: No, let's do this now.
21 MS. PALM: Okay. I just wanted to preserve the issue
22 on Detective Mogg's testimony. He would have testified
23 recording the Franco Ardonia's (phonetic) case which was the
24 event number that he read. That was a case where he was one of
25 the detectives. It was a murder case. He claimed that he

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1 couldn't remember the murder, so they gave him a breath test,
2 and they did that by Detective Mogg ordering it and Officer
3 Lyle's (phonetic) who came and took it.

4 So we wanted to show that they had the ability to do
5 that and they chose not to do it here, and that Detective
6 Wildemann through his training would have been aware of that
7 ability to do that and aware of the availability of having that
8 be done. It's part of our theory of defense that the State has
9 not conducted themselves properly in this case by hiding
10 evidence and minimizing evidence of Mr. O'Keefe's alcohol
11 consumption, and for that reason we don't have a quantified
12 number.

13 And that problem was enhanced by the
14 cross-examination of the last witness when they were talking
15 about tolerance levels based on blood alcohol levels. It just
16 proves the point we don't have that number, and so I think we
17 should have been able to present the testimony, and the Court
18 ruled that it was collateral. We don't believe it is. It -- I
19 believe it was admissible as impeachment under Labado
20 (phonetic) because it impeaches their motives with
21 regard to Mr. O'Keefe and their conduct in that case and
22 supports our theory of defense.

23 THE COURT: Mr. Smith.

24 MR. SMITH: Judge, there's nothing to suggest that
25 there was a motive for Detective Wildemann to order a blood

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1 also testified that there's nurses at the jail who could
2 provide that service, and so, you know, the testimony with this
3 particular detective here today related to a different case,
4 and he just said that he's done it in a case. It doesn't mean
5 it doesn't exist and it doesn't really attack the credibility
6 of Detective Wildemann. So that's why I sustained the
7 objection. Can I have Mr. Pike and Mr. Smith, and I think you
8 were here during -- we're off the record.

9 (The court recessed at 12:02:25 p.m. until 1:19:31
10 p.m.)

11 (In the presence of the jury)

12 THE MARSHAL: Come to order. Department 17 of the
13 Eighth Judicial District is now in session. Honorable Judge
14 Michael P. Villani presiding. Please be seated. Remain in
15 order. Let's make sure our cell phones are turned off.

16 THE COURT: Mr. Pike, are -- we're outside the
17 presence of the jury panel, and Mr. Pike, did you have that
18 copy of yours with some cites?

19 MR. PIKE: I do, your Honor.

20 MR. SMITH: I'm sorry, I don't have you guys'
21 instructions.

22 MS. PALM: We filed them.

23 MR. SMITH: I know.

24 MS. PALM: I only have the clean set.

25 THE COURT: I have a non-annotated set. I have two.

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1 alcohol test. I mean, the detective testified that that's not
2 protocol, and that the only time officers generally request
3 blood alcohol information from a defendant is when they're
4 charged with DUI. Obviously, here this defendant is charged
5 with murder. So for them to suggest that there was some kind
6 of nefarious motive or malicious intent and that's why the
7 detective didn't do it, it just doesn't comport with the
8 evidence.

9 Furthermore, what the detective said was that in his
10 knowledge, that had never happened. Furthermore, it appears
11 the defense were only able to produce one witness that we know
12 of from an event that transpired in 2007. That was the event
13 number. Something that happened two years ago that one
14 detective did. So it was the State's position that they were
15 attempting to impeach Detective Wildemann using extrinsic
16 evidence on a collateral issue, and that's whether or not
17 Detective Wildemann should have or should have not requested
18 BAC evidence from the defendant.

19 Now, they're going to be able to argue that, so it's
20 also the State's position that there really isn't any prejudice
21 anyway. They're going to be able to argue that yes, the
22 detective could have done it, and he chose not to for whatever
23 reason. The detective admitted as much on the stand.

24 THE COURT: And the detective testified that he
25 wasn't aware of or he wasn't aware of people doing that, and he

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1 (Off the record colloquy).

2 THE COURT: I think, in one of the packets we had, we
3 had an instruction about defendant testifying and what the
4 jury's not to consider. I just can't locate that with a tab
5 here. Does someone have that handy? I just want to go over
6 that with the defendant at this time.

7 MR. SMITH: I think I have --

8 (Off the record colloquy).

9 MS. PALM: It's our instruction?

10 THE COURT: I think you proposed it. I don't think
11 there's one of those in the State's packet. Has anyone found
12 that one yet? Here we go, I've got it.

13 MS. PALM: Is it in our instructions?

14 THE COURT: It is in Mr. Pike's. Page 30.

15 MS. PALM: Okay.

16 THE COURT: All right, Mr. O'Keefe, can you please
17 stand up.

18 THE WITNESS: Yes, sir, your Honor.

19 THE COURT: I just want to go over this with you.
20 You have the right under the Constitution of the United States
21 of America and the Constitution of the State of Nevada not to
22 be compelled to testify in a criminal proceeding. Do you
23 understand that, sir?

24 THE WITNESS: Yes, your Honor, I do.

25 THE COURT: You may, if you wish, give up that right

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1 and take the witness stand and testify. If you do, you will be
2 subject to cross-examination by one of the deputy district
3 attorneys, and anything you say either on direct or
4 cross-examination would be fair comment for either counsel to
5 address during closing argument in front of the jury. Do you
6 understand that, sir?

7 THE WITNESS: Yes, your Honor.

8 THE COURT: If you choose not to testify, the Court
9 will not permit the deputy district attorneys from making any
10 comment to the jury regarding the fact that you have not
11 testified. Do you understand that, sir?

12 THE WITNESS: Yes, sir, your Honor.

13 THE COURT: And if you elect not to testify, the
14 Court will instruct the jury as follows, if your attorney and
15 you agree as follows. This would be the instruction the Court
16 would be inclined to give. As a Constitution right of a
17 defendant in a criminal trial that he may not be compelled to
18 testify. Thus, the decision as to whether he should testify is
19 left to the defendant on the advice and counsel of his
20 attorney.

21 You must not draw any inference of guilt from the
22 fact that he does not testify, nor should this fact be
23 discussed by you or discussed by you or enter into your
24 deliberations in any way. Do you understand that, sir? If
25 your attorney request that instruction, I will give that to the

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1 If the matter were to be reversed by an opinion of
2 the supreme court or a decision of any other -- or a mistrial
3 or anything else that may happen in this case, having once
4 waived his right to not testify and to testify on the stand, he
5 cannot subsequently at any subsequent trials reinvoke his right
6 to not testify because at subsequent trials his testimony -- if
7 he does not testify, his testimony would be able to be read in
8 by the District Attorney's Office if they desire to publish it
9 to any juror.

10 So this is a one time thing, and I explained to him
11 the possible consequences of that, that that is a collateral
12 consequence if he does testify.

13 THE COURT: Do you understand that, sir?

14 THE WITNESS: Yes, your Honor, and he did so.

15 THE COURT: All right. All right, thank you. You
16 can have a seat, sir.

17 THE WITNESS: Yes, your Honor.

18 THE COURT: Thank you. Let's go over the State's
19 packet, and there's someone's here that (indiscernible).
20 They're not numbered by page, obviously, but if you go to page
21 four, five, seven. I think it's seven. It's you are here to
22 determine the guilt -- guilt of the defendant from the evidence
23 in the case not called upon regarding any other person. Is
24 that applicable to this case?

25 MR. PIKE: No. If we could go through --

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1 jury.

2 THE WITNESS: Yes, your Honor.

3 THE COURT: Okay. And sir, if you do have a prior
4 felony conviction, you do testify on the convictions within
5 last ten years, you understand that State can confront you with
6 that conviction and that will be utilized to attack your
7 credibility. Do you understand that, sir?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: The State would be allowed to ask you if
10 you've been convicted of a felony or your attorney can do this,
11 what was the felony, when did it happen, but no specific
12 details of the felony can be discussed. Do you understand
13 that, sir?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: All right. I'm not going to ask you at
16 this time whether or not you've made that decision. We'll wait
17 until closer to the end of your case in chief. But I just
18 wanted to make sure you understand those rights, sir.

19 THE WITNESS: Yes, your Honor. Thank you.

20 MR. PIKE: Your Honor, in reference to that, to make
21 a complete record, I also advised Mr. O'Keeffe that if he makes
22 the election to testify at the time of this trial, by waiving
23 his right against or exercising his right to testify and not --
24 let put it this way. Once he testifies, he has forever waived
25 the right to not testify.

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1 MS. PALM: Can we go --

2 MR. PIKE: -- from the beginning?

3 MS. PALM: -- page by page?

4 MR. PIKE: We've got some --

5 MS. PALM: Objections along the --

6 MR. PIKE: -- objections before that.

7 MS. PALM: -- way.

8 THE COURT: No, I was going to -- I had some ones I
9 thought right off the bat.

10 MR. PIKE: Okay.

11 MS. PALM: Oh, okay.

12 THE COURT: We're not going to get them done now. I
13 just wanted to -- like I said --

14 MR. PIKE: Right.

15 THE COURT: -- I like to chip away at these.

16 MS. PALM: Okay.

17 MR. PIKE: Oh, okay. It isn't relevant. It's

18 misstates the burden and has no relevance under these factors.

19 MR. SMITH: Well --

20 MR. PIKE: Facts.

21 MR. SMITH: -- I -- I don't know if it restates the
22 burden because they are here to determine the guilt meaning
23 whether or not we've proven case beyond a reasonable doubt. I
24 mean, they're not here to determine whether the defendant is
25 innocent. They're here to determine whether or not he's guilty

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1 because we proved our case.
 2 THE COURT: All right, the last line of that
 3 instruction talks about even though you may believe one or more
 4 persons are guilty.
 5 MR. SMITH: We can strike that. That's just a stock
 6 instruction, Judge.
 7 THE COURT: No, I understand.
 8 MR. SMITH: Yeah.
 9 THE COURT: That's all I'm going. We don't need this
 10 one, correct?
 11 MR. SMITH: Correct.
 12 THE COURT: All right. I just want to hit some
 13 highlights that I was looking at.
 14 MR. PIKE: Okay, thank you.
 15 THE COURT: Towards the end there's an instruction, a
 16 bear fear of death or great bodily injury is not sufficient to
 17 justify killing. Should we go through about two-thirds or
 18 three-quarters through the packet. Do you have a cite for
 19 that, Mr. Smith?
 20 MR. SMITH: That's straight from Runyon (phonetic),
 21 Judge. Runyon v. State. I don't know the cite --
 22 THE COURT: Okay.
 23 MR. SMITH: -- off the top of my head, but it's
 24 straight out of Runyon. Runyon lists the seven instructions
 25 applicable to self-defense. These are the same seven

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1 THE COURT: All right. State your objection, please.
 2 MR. SMITH: My objection is that it's confusing
 3 because it says if you find -- if you find the State has
 4 established that the defendant has committed murder, you shall
 5 select the appropriate degree of murder as your verdict. Then
 6 it says the crime of murder may include the crime of voluntary
 7 or involuntary manslaughter. I mean, it just sounds confusing.
 8 It sounds like the jury could determine that we have, in fact,
 9 proven beyond a reasonable doubt that he's guilty of murder,
 10 but nonetheless they can decide that it's manslaughter, too.
 11 I mean, it's confusing. As written it's confusing.
 12 I understand the concept they're attempting to import upon
 13 them, but as written it is confusing.
 14 THE COURT: Mr. Pike or Ms. Palm.
 15 MR. PIKE: Probably a better way to state it that is
 16 that then to go to the next line and say if you find that the
 17 State has not established the defendant has committed murder,
 18 you shall determine whether or not the State has established
 19 that the defendant has committed the crime of voluntary or
 20 involuntary manslaughter. And that would clear up the
 21 language, but it certainly is -- follows the language of Lizbi
 22 (phonetic) versus State, 82 Nevada 183.
 23 MR. SMITH: Judge --
 24 THE COURT: I think the way it's written is
 25 confusing. If you want to draft a new one for consideration --

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1 instructions that I have used in every case where self-defense
 2 has been alleged.
 3 THE COURT: Okay, what's the defense view on that?
 4 MS. PALM: We need to find it first.
 5 MR. PIKE: No, that appears to be consistent with
 6 Runyon.
 7 THE COURT: All right. And the next one thereafter.
 8 MR. PIKE: That -- well, that may -- we've got to go
 9 through the definitions of reasonable or unreasonable. We do
 10 accomplish that in some of the other instructions, but that is
 11 a correct statement concerning self-defense. I don't -- and
 12 indicating that an insufficiently or unreasonable aspect of
 13 self-defense is a second degree murder -- supports a second
 14 degree conviction and not a voluntary manslaughter.
 15 So I can't say that it violates any case law or any
 16 statutes.
 17 THE COURT: We will look at that again when we
 18 discuss the other self-defense instructions. Actually, let's
 19 jump to Mr. Pike's Page 10 of his packet. Does anyone need an
 20 -- I've got an extra copy of Mr. Pike's if anyone needs it.
 21 MS. GRAHAM: Thank you, Judge.
 22 THE COURT: Page 10.
 23 MS. GRAHAM: Thank you.
 24 MR. SMITH: Yeah, for the record, I do have an
 25 objection to this instruction.

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1 MR. PIKE: I will.
 2 THE COURT: -- more than happy, and we'll just have
 3 this marked as it's been offered and Court's not going to
 4 provide that. And if we can go to --
 5 MR. SMITH: And Judge, one more thing just in regards
 6 to this instruction, I would note that it's the State's
 7 position that this is covered by the State's proposed
 8 instructions that describe what open murder is and that there
 9 are lesser included offenses of open murder.
 10 THE COURT: Well, that's what I said, I'm not giving
 11 it.
 12 MR. SMITH: Oh, okay. All right. Oh, I'm sorry,
 13 Judge. I missed that part.
 14 THE COURT: Okay.
 15 MR. SMITH: Sorry.
 16 THE COURT: Never argue with someone who's agreeing
 17 with you.
 18 MR. SMITH: You're right, Judge. You're right.
 19 You're right.
 20 THE COURT: Let's go to instruction 20 or Page 20.
 21 MR. PIKE: This is offered under Sandborn (phonetic)
 22 versus State. And I think --
 23 THE COURT: I didn't have a cite on -- because
 24 unfortunately the cite version you gave me didn't have the
 25 numbers at the bottom of the page so I'm trying to --

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1 MS. PALM: 107 --
 2 THE COURT: -- match those up.
 3 MS. PALM: 107 Nevada 399, 812 Pacific 2nd.
 4 THE COURT: 1073 --
 5 MS. PALM: 399.
 6 MR. PIKE: 107, 399.
 7 THE COURT: State, have you had an opportunity to
 8 look at that?
 9 MR. SMITH: I have, Judge, and I will inform the
 10 Court that I read that case in its entirety, and I didn't see
 11 any case law or legal concept in that case that would support
 12 a, giving instruction -- giving this instruction at all, and b,
 13 giving it under these circumstances. So we did want to object
 14 to it being given, for the record.
 15 THE COURT: I'm going to review that case. The next
 16 one is the non-flight. I haven't seen that one before.
 17 MR. PIKE: It --
 18 THE COURT: It's creative, Mr. Pike.
 19 MR. PIKE: Thank you.
 20 MR. SMITH: All right, we have an objection to that
 21 one as well.
 22 MR. PIKE: And honestly, I've seen the flight
 23 instruction offered so many times. The fact that Mr. O'Keefe
 24 stayed in the location, didn't attempt to flee even after he
 25 had been discovered by private individuals and had the

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1 cite for that? I didn't -- and like I said, I didn't have an
 2 opportunity to compare that the version that you gave the
 3 citations on.
 4 MR. SMITH: And Judge --
 5 MR. PIKE: In reference to this, the -- it -- there
 6 must exist a union between a joint operation of an act and the
 7 conduct and voluntariness as opposed to a reaction based upon
 8 training or circumstances. Voluntariness is a way of
 9 describing the actual mind set that must be produced along with
 10 the fact there's voluntary acts and then there's mens rea that
 11 involves premeditation deliberation. So voluntary acts are
 12 directed towards an end.
 13 And I think they have to show that's just part of the
 14 mental state and it's voluntary committed towards act. I --
 15 other than interpreting Kaljick 3.3 -- 31.5, I don't have
 16 Nevada case law to support that.
 17 THE COURT: Isn't that covered by the State's
 18 instructions to constitute the crime charged there must exist a
 19 union or joint operation of an act (indiscernible) and the
 20 intent to do the act?
 21 MR. PIKE: Yes, but not quite completely, and so --
 22 and I think it does -- well, I'd request that it give more
 23 definite or suggest that it gives more definite guidance to the
 24 jury. If you feel that it's confusing or duplicative, then
 25 we'll submit it.

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1 opportunity to flee, I think the fact that he remained in there
 2 certainly is evidence that he did not, in his mind, believe
 3 that he had committed a crime. So it is simply an inverse
 4 statement of a case -- or of an instruction that's been given
 5 by the State in numerous occasions.

6 It is kind of a reverse of a standard instruction
 7 we've seen. And also the inverse of Kaljick (phonetic)
 8 instruction number 2.52 which is a statement of a -- is a
 9 similar instruction to the Nevada instruction for flight.

10 MR. SMITH: Judge, I tried to search the case law to
 11 see if an instruction like this has ever been given, and I
 12 couldn't find one. I looked at the Kaljick instruction, and it
 13 mimics our own, like Mr. Pike just stated. I mean, I can
 14 appreciate the creativeness of this instruction, but I do
 15 object to it, for the record, and I submit that there's no
 16 basis for it in the case law.

17 THE COURT: Okay. The Court's not going to give that
 18 instruction. And we have -- this will be the last one and then
 19 we can call the jury in.

20 MR. PIKE: So that will be made a court exhibit --

21 THE COURT: Yes, yes.

22 MR. PIKE: -- as offered -- defendant's offered --

23 THE COURT: Right.

24 MR. PIKE: -- but not admitted. Thank you.

25 THE COURT: Instruction 31 or Page 31. Do you have a

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1 THE COURT: All right, Mr. Smith.

2 MR. SMITH: Judge, I do have a problem with this
 3 instruction. I do that it's confusing, and I do think it's
 4 covered by the other instructions.

5 THE COURT: I agree. I think it's covered by the
 6 instruction I previously read. So this will be marked not
 7 given. Let's call the -- are we ready?

8 MR. SMITH: Judge, well, actually I do -- it's my
 9 understanding that -- and I had addressed this with Mr. Pike
 10 previously. But it's -- as we understand, they're getting
 11 ready to call a Dr. Christensen who is an ER doctor. After
 12 that the afternoon break we received a note with pretty much a
 13 complete medical history of the named victim, including some
 14 prior suicide attempts.

15 So we want to either make a motion in limine right
 16 now to preclude any mention that Ms. Witmarsh ever committed
 17 suicide or an offer of proof as to what this doctor is actually
 18 going to testify to. Especially considering that she's only an
 19 ER doctor and is not noticed to talk about any of these other
 20 things.

21 MR. PIKE: I gave that to the State because it was a
 22 note of the medical history of the deceased, and these were the
 23 doctor's notes that she put together. I don't anticipate
 24 calling her to testify about her complete medical history. I
 25 will ask her to testify about the dosages when she started on

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1 anti-depressants because there is a question that's been
2 brought up by the State when they called the ME about the --
3 whether or not the amount of medication was within the
4 therapeutic range or not.

5 I'm not going to ask about suicide attempts. If they
6 want to get into that, that certainly is their prerogative.
7 But I had Dr. Christensen prepare a report specifically along
8 these areas and as she was a substitute expert regarding
9 toxicology, so I plan on limiting it. This was simply some
10 notes that were prepared by her, and I didn't want to withhold
11 those from the State, so I gave them to him. This is just for
12 her reference if --

13 THE COURT: So she's going to testify that --

14 MR. PIKE: -- there's any questions.

15 THE COURT: -- if you're on this medication at
16 certain levels, this is the reaction? Is that --

17 MR. PIKE: There's certain --

18 THE COURT: -- sort of summarizing what she's going
19 to say?

20 MR. PIKE: Right. She's going to testify that
21 basically she -- Victoria Witmarsh had been placed on
22 anti-depressants since about 1983 and that she had gone through
23 a number of different medications during that period of time.

24 Just prior to the time of events in question here on
25 October 21st, I believe, she was -- this became a new

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1 MR. SMITH: Well, he just said he's going to ask her
2 when did she start taking anti-depressants.

3 THE COURT: Okay, what you can do because yeah, we're
4 not going to get into that because I know you have other
5 issues, what were her other problems, et cetera.

6 MR. PIKE: Oh, just the medications.

7 THE COURT: But she started on the new medication
8 when?

9 MR. PIKE: On the 21st. October 21st.

10 THE COURT: Okay. Can't you ask her -- I'm assuming
11 she was treating her or examining her -- that on October 21st
12 she started --

13 MR. SMITH: She wasn't. She wasn't treating her.

14 THE COURT: -- she started with this drug, this
15 medication. And it was --

16 MR. PIKE: On August -- on August 5th she was changed
17 from Lexapro to Effexor. The target dose at that time was 115
18 milligrams per day. And on October 21st she started the trial
19 of Effexor with Southern Nevada Mental Health.

20 THE COURT: Okay. How does this doctor know? Is
21 there a foundation --

22 MR. PIKE: Through her medical -- we provided her the
23 full medical records.

24 THE COURT: Are those medical records part --

25 MR. PIKE: We provided them to the State, and we have

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1 medication to her and therapeutic levels were supposed to be at
2 a certain level. The amount that she had in her system when
3 she -- as part of the autopsy -- exceeded that therapeutic
4 level, and that in conjunction with the alcohol possibly could
5 have caused these effects.

6 It was a new medication to her, and so I'm not going
7 to get into the history of it and the fact to say that she
8 reviewed her complete medical history to determine when she
9 started on these medications and when she transferred to this
10 drug because it's important when you change medication, you
11 don't know what it does to you, and she was overdosing on it
12 during that period of time.

13 I'm not going to get in the history. I -- and I gave
14 that to Counsel not to prepare them for that I was going to get
15 into that, but they're her notes. She may refer to them if
16 they ask some -- her questions about that, but that's where I'm
17 going with it. And --

18 THE COURT: Mr. Smith.

19 MR. SMITH: Judge, I understand what Mr. Pike is
20 saying. However, it's our contention that, you know, the fact
21 that Ms. Witmarsh started anti-depressants in 1983 isn't
22 relevant to what happened --

23 THE COURT: No, no, we're not --

24 MR. SMITH: -- in 2008.

25 THE COURT: No, this is --

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1 them here marked as an exhibit in the event that they question
2 that. I'm simply going through because there is -- when you
3 change these --

4 THE COURT: No, I understand that.

5 MR. PIKE: -- medications -- yeah.

6 THE COURT: I'm just concerned about the foundation
7 issue. I understand what you're saying, that there's --

8 MR. PIKE: Yeah. And that --

9 THE COURT: -- you change --

10 MR. PIKE: And it's just based -- I'm just going to
11 ask you reviewed her medical records, when did she start on
12 that in I'm not going to get into details of the -- what she
13 was being treated for or anything else. If they want to get
14 into that, that's fine.

15 I'm -- but it's important to know that there was --
16 that she knew the deceased, Mrs. Witmarsh, had been taking
17 anti-depressants, she was familiar with some of them, this was
18 a new one, and she had too much, so some of the possible
19 effects of that would have been this. And then I'm going to
20 let Dr. Christensen go because I don't want to exceed what the
21 purpose that I was allowed to call her as a substitute witness
22 for.

23 THE COURT: All right, Smith.

24 MR. SMITH: Judge, I don't think that this witness
25 should be allowed to testify as to like the fact that she was

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1 on Lexapro before she started taking this. I don't really have
2 an objection to the admissibility of the effects
3 (indiscernible) because I think I agree with Mr. Pike that
4 that's relevant here. But that should be all that's relevant.

5 I mean, they shouldn't -- and I have to be careful
6 because I know they noticed a toxicologist, and I -- we, the
7 State, as a courtesy agreed to let them substitute this ER
8 doctor in. But this ER doctor shouldn't be allowed to testify
9 to things that not only are outside of her area expertise, but
10 would be outside the expertise of a toxicologist. That's what
11 they noticed, a toxicologist to talk about -- to make
12 interpretations regarding to the toxicity of the venlafaxine in
13 her blood. Not that well, if you combine these together, these
14 are the types of effects you get.

15 That's outside of the scope of this witness'
16 knowledge, and it's outside the scope of a toxicologist's
17 knowledge.

18 MR. PIKE: Well --

19 MR. SMITH: I mean, they --

20 MS. PALM: (Indiscernible).

21 MR. SMITH: I mean, that would be more appropriate
22 for say, a representative from the drug itself or a pharmacist
23 or something like that. Not just an ER doctor who's going to
24 be able to say it's my opinion that if you mix alcohol and
25 venlafaxine, even though I don't know what concentration it was

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1 No, this doctor is imminently qualified and
2 appropriately and significantly so, and I'm limiting it
3 strictly to the toxicology issues in relationship to that.

4 MR. SMITH: Just so I understand what you're trying
5 to get because I think I may be confused. Can you just tell me
6 one more -- and I'm not trying to infuriate you at all. I just
7 want to understand what you're putting this doctor up on the
8 stand for.

9 MR. PIKE: To indicate that with the amount of --
10 when -- with the prescription when it started this was to be
11 the basis of her therapeutic level. The amount that was found
12 in her at the time that she -- the autopsy was performed was in
13 excess of that therapeutic level, and that directly deals with
14 what the medical examiner testified to.

15 Based upon her research and her experience as an
16 emergency room physician, what are the possible effects that
17 the combination of alcohol and Effexor have in combination?
18 Not that they didn't know this -- this wasn't her patient.
19 Didn't know it was a new medication to this patient. Were some
20 of them the same ones that the last doctor had indicated.

21 MR. SMITH: Which -- I'm sorry, which last doctor?

22 MR. PIKE: The medical examiner. And that's --

23 THE COURT: Yeah, because the medical examiner
24 testified that she had therapeutic levels.

25 MR. PIKE: Right. And she did not. It was in excess

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1 and I'm not a toxicologist, but if you mix those together, the
2 person's going to be aggressive, because that's exactly the
3 testimony that they're going to try and elicit.

4 MR. PIKE: And it's unusual that the State would say
5 that when they called a medical examiner, a doctor that doesn't
6 treat anybody, never prescribes medication, and they asked the
7 exact same questions. Now, they're a doctor, they researched
8 it. She testified about Dr. Christensen's report. She relied
9 upon that when she offered her testimony.

10 They want to try and keep out Dr. Christensen based
11 upon that when they've already allowed examination in
12 relationship to her report, then let them go ahead raise the
13 objection now. I'm happy to try this again. I -- that -- this
14 objection is infuriating. It's not based in any -- it's not
15 based in law, it's not based in fact. I've limited everything
16 that this doctor was going to testify.

17 And medical examiner -- or excuse me, emergency
18 doctors, they have to know the effects of alcohol. They have
19 no know the effects of drug. They have to be able to do that
20 in a short triage period of time so they don't put in an
21 adverse drug into a patient so that they kill them by putting
22 in the wrong medication. If they put more Effexor into this
23 person and kill her, then certainly, what happens if the
24 medical examiner makes a misdiagnosis like that? Somebody
25 becomes alive again?

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1 --

2 THE COURT: Oh, all right.

3 MR. PIKE: -- of the therapeutic level. And we're
4 contesting that and certainly, we can call about her to testify

5 --

6 THE COURT: Okay, but --

7 MR. PIKE: -- regarding that, but I just --

8 THE COURT: -- you need to tell --

9 MR. PIKE: I'm not going to get into the history. I

10 --

11 THE COURT: I'm going to -- okay, if you lay the
12 proper foundation that this ER doctor knows what the
13 interactions are, okay --

14 MR. PIKE: She did the same research that the other

15 --

16 THE COURT: Well --

17 MR. PIKE: -- doctor did.

18 THE COURT: -- if you lay that foundation what the
19 adverse reactions are, okay --

20 MR. SMITH: Potential adverse reactions.

21 MR. PIKE: Right.

22 THE COURT: Right, potential. And then on cross you
23 can say well, you don't know -- not everyone gets these
24 reactions.

25 MR. SMITH: Okay. I got it.

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1 MR. PIKE: And I'm not going to try and bring in any
2 medical records --
3 MR. SMITH: And that's what I'm concerned about and
4 talk about prior suicide and how long she's been on
5 anti-depressant and what anti-depressant she was on before
6 venlafaxine.
7 THE COURT: So Mr. Pike, what I'd like you to do is
8 you or Ms. Palm can talk to the doctor. She's not going to
9 blurt that out. You're not going to ask her that. You're not
10 going to ask her how long she was on this other medication.
11 You can say on September 11th, as far as your review of her
12 records, she switched to Effexor.
13 MR. PIKE: Okay.
14 THE COURT: And then you move forward.
15 MR. PIKE: All right.
16 MR. SMITH: Can we say that she began Effexor, Judge,
17 because it implies that she was on --
18 MR. PIKE: That's just fine. I'll use language.
19 THE COURT: Okay.
20 MR. PIKE: And I've already cautioned her because I
21 told the State I'm not calling her for the past history. Just
22 the -- this medical --
23 THE COURT: Okay, can you -- before you call her --
24 is she the next witness?
25 MR. PIKE: She's the next witness.

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1 Nevada?
2 A Yes, I am.
3 Q And what type of a physician are you?
4 A Emergency medicine physician.
5 Q And where did you receive your medical training?
6 A I went to medical school in Cincinnati, Ohio.
7 Q When did you graduate?
8 A I graduated in 1990, and then I went to -- 1994, and
9 then I went to an emergency medicine residency in Tucson, and
10 that was from 1994 to 1997.
11 Q When did you come to Las Vegas to begin practice in
12 medication? Or excuse me, practicing medicine.
13 A 2002.
14 Q And you are licensed within the state of Nevada?
15 A Yes, I am.
16 Q You have any areas of specialties?
17 A Emergency medicine specialty.
18 Q As part of your work in emergency -- or excuse me, as
19 an emergency physician, is -- you have to be able to identify
20 different drugs within a patient?
21 A Yes, I do.
22 Q You have to be able to determine any possible
23 reactions that a patient may be having to a drug?
24 A Yes, I do.
25 Q And this would include both beneficial and adverse

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1 THE COURT: Then why don't you just --
2 MR. PIKE: Okay.
3 THE COURT: -- try the ground rules for her. All
4 right.
5 MR. PIKE: Okay, do you want to go ahead and put the
6 witness on the stand? We're ready?
7 THE COURT: Sure. And you spoke to the doctor about
8 parameters?
9 (In the presence of the jury)
10 THE MARSHAL: Officers and members of court,
11 Department 17 jurors. You may be seated, ladies and gentlemen.
12 Let's make sure our cell phones are turned off, please.
13 THE COURT: All right, Mr. Pike, please call your
14 next witness.
15 THE WITNESS: Dr. Tawni Christensen.
16 THE CLERK: Please raise your right hand.
17 DR. TAWNI CHRISTENSEN, DEFENDANT'S WITNESS, SWORN
18 THE CLERK: Please be seated. Will you please state
19 your name and spell it for the record.
20 THE WITNESS: Tawni Christensen, T-a-w-n-i. Last
21 name's Christensen, C-h-r-i-s-t-e-n-s-e-n.
22 THE COURT: Go ahead, Mr. Pike.
23 DIRECT EXAMINATION
24 BY MR. PIKE:
25 Q Dr. Christensen, are you a doctor here in Las Vegas,

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1 effects that may be occasioned by the use of drugs?
2 A Correct.
3 Q In addition to that, do you see -- in the emergency
4 room do you see people there that are there because of the
5 affects of alcohol?
6 A Yes, I do.
7 Q And as a result of that, you have to be familiar
8 also, with the effect of alcohol upon individuals.
9 A Yes.
10 Q Have you ever had occasion to testify as an expert
11 before in the state of Nevada?
12 A No.
13 Q Okay. Is this your first time testifying --
14 A Yes.
15 Q -- before -- okay.
16 MR. PIKE: Based upon her qualifications, your Honor,
17 I'd ask that she be allowed to offer her opinions in
18 (indiscernible).
19 MR. SMITH: Judge, I have no objection.
20 THE COURT: All right.
21 MR. PIKE: Thank you.
22 BY MR. PIKE:
23 Q You were retained by my office in order to review the
24 possible effects of the combination of Effexor and alcohol; is
25 that correct?

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1 A Yes.
 2 Q And in this case you have never met Brian O'Keefe or
 3 Victoria Witmarsh, have you?
 4 A No.
 5 Q You were provided records of -- to show that Mrs.
 6 Witmarsh on the date of her death was prescribed Effexor as a
 7 medication --
 8 A Correct.
 9 Q -- is that correct? And will you identify for the
 10 jury what that type of a medication is.
 11 A It's an SSNRI. It's a selective serotonin
 12 norepinephrine reuptake inhibitor. It's for depression.
 13 Q And alcohol, what kind of drug is that?
 14 A It's -- has depressing qualities to it. It's a
 15 central nervous system depressant.
 16 Q You were able to ascertain as to the dosage amount
 17 that was prescribed for Mrs. Witmarsh prior to the time of her
 18 death, weren't you?
 19 A Yes.
 20 Q What was dosage that was prescribed to her?
 21 A She was to meet a target dose of 150 milligrams per
 22 day.
 23 Q Okay. Now, the autopsy showed that she had a certain
 24 level of Effexor within her system. How much was in her
 25 system?

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1 cause seizures. It can cause some high blood pressure
 2 problems.
 3 Q Can it cause anxiety?
 4 A It can cause anxiety, confusion.
 5 Q Anger?
 6 A Potentially.
 7 MR. SMITH: Objection to the leading.
 8 MR. PIKE: I'm sorry.
 9 THE COURT: Sustained.
 10 MR. PIKE: Thank you.
 11 BY MR. PIKE:
 12 Q Now, and from the research that you did -- the
 13 research that you conducted, that was done through medical
 14 documents or reports, what did you review in determining the
 15 adverse -- possible adverse effects?
 16 A I reviewed some of my emergency medicine textbooks,
 17 and then I also have an article about Effexor. It's a summary
 18 of basis for regulatory position related to the Effexor.
 19 Q And you did not have an opportunity to treat either
 20 -- or to treat Mrs. Witmarsh, so you don't know which, if any
 21 of these effects may have affected her with this dosage.
 22 A Correct.
 23 Q But those are possible adverse side effects that that
 24 combination may have occurred -- may have caused?
 25 A If she were to come into the emergency room, I'd be

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1 A 990 nanograms per milliliter.
 2 Q Was that different than what you would expect that
 3 the normal target dose would have rendered within her system?
 4 A They showed a target dose for the 150 milligram per
 5 day should have a peak plasma level at 93 to 330 nanograms per
 6 day.
 7 Q So if math serves me correct, the dosage that she had
 8 was about three times that of her target dosage?
 9 A Yes.
 10 Q In addition to that at the time of the autopsy, her
 11 blood alcohol was found to be .24.
 12 A Yes.
 13 Q Is that correct?
 14 A Yes.
 15 Q What would you consider the possible effects upon a
 16 person of having an alcoholic level -- or excuse me, an alcohol
 17 level of .24?
 18 A Very concerning, very drowsy, concerns about
 19 protecting her airway, difficulty walking, confusion.
 20 Q And during your preparation or reviewing the medical
 21 reports in relationship to this, were you able to find out any
 22 possible adverse reactions of combining Effexor with alcohol?
 23 A Yes. In high amounts it can cause -- affect the
 24 heart, can lead cardiac arrhythmias that can be fatal. It can
 25 also lead to a syndrome called serotonin syndrome. It can

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1 looking for those things.
 2 Q Thank you very much, Dr. Christensen.
 3 MR. PIKE: I have no further questions.
 4 CROSS-EXAMINATION
 5 BY MR. SMITH:
 6 Q Good morning, doctor. Now, as Mr. Pike just asked
 7 you, you testified that you have no idea -- actually strike
 8 that. Is it -- would it be your testimony, then, that you have
 9 no idea as to what side effects may be may not have affected
 10 Victoria Witmarsh; is that correct?
 11 A I did not physically examine her, but just cutting
 12 the high alcohol level with the high level of Effexor in her
 13 system, putting that combination, there can be possible side
 14 effects that come from that.
 15 Q Sure, okay. My question is is you don't know --
 16 actually, let back up. Can you tell me, again, what the
 17 possible side effects of Effexor are.
 18 A In lower -- in high dosages, like what she had, you
 19 can run into some cardiac arrhythmias, you can have seizures.
 20 you can have a situation called serotonin syndrome, you can
 21 have high blood pressure. She -- confusion, central nervous
 22 system depression.
 23 Q Okay.
 24 A Anxiety.
 25 Q How about what are the normal side effects of the

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1 drug?
 2 A It's initially they can cause some tremors, some
 3 anxiety, there's some constipation. It's a long list of
 4 initial side effects that the person can become more resistant
 5 to as time goes on after they've been on the medicine for
 6 awhile.
 7 Q Okay. And you'd agree that practically every drug
 8 has a side effect or potential side effect?
 9 A True.
 10 Q And you'd agree with me that not every side effect
 11 affects every person who takes a drug?
 12 A Right.
 13 Q And you'd agree with me that despite your
 14 assumptions, you really have no way of knowing what, if any,
 15 side effects may or may not have affected Victoria Wiumars?
 16 A Just the concerns that the levels that were in her
 17 system were beyond what her normal therapeutic dosage was.
 18 Q Okay, let's talk about that. What types of
 19 references did you review in order to determine what the
 20 therapeutic level was?
 21 A Her autopsy report.
 22 Q Okay. But I mean, what types of documents did you
 23 consult to establish what the baseline was?
 24 A Her baseline medication.
 25 Q No. Okay.

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ROUGH DRAFT TRANSCRIPT

1 presumably you looked at.
 2 A Yes.
 3 Q And that says that the level in her system was 990
 4 nanograms per milliliter, is that correct?
 5 A Yes.
 6 Q And you're saying that a peak dosage or excuse me,
 7 you would expect a therapeutic dosage to be 93 to 334 nanograms
 8 per day, so I'm a bit confused because it sounds like are we
 9 comparing apples to oranges?
 10 A Do you have the laboratory results --
 11 Q Yes, I do?
 12 A -- that are a part of the -- for the purpose the 150
 13 milligrams per day it says that she should be at 93 to 334
 14 nanograms per milliliter.
 15 Q Okay. Now --
 16 A But then she's at 990 nanograms per milliliter.
 17 Q Okay. I'm confused. I just want to make sure that
 18 we're on the same page.
 19 A Okay.
 20 Q Are you -- you're looking at the report from Quest
 21 Diagnostics, is that correct?
 22 A Yes.
 23 Q Okay. And that says that the amount of venlafaxine
 24 in her system at the time of death was 990 nanograms per
 25 milliliter.

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1 A Her baseline level.
 2 Q Right.
 3 A Okay.
 4 Q What would be the normal level?
 5 A Right. Her dosage actually was 150 milligrams per
 6 day.
 7 Q Okay.
 8 A And if you were to call up poison control center
 9 they're going to deal more with the dosages that a person
 10 takes. Not with serum levels.
 11 Q Okay.
 12 A Yeah.
 13 Q When Mr. Pike asked you what would be the normal
 14 level of, I believe you said it was nanograms per milliliter.
 15 A True.
 16 Q Do you recall what that answer was?
 17 A Yes.
 18 Q What was it?
 19 A For her level of 150 milligrams per day, her peak
 20 plasma level should have been 93 to 334 nanograms per day.
 21 Q Okay. Well, now, let's talk about the actual report,
 22 the autopsy report. You reviewed that, correct?
 23 A Yes.
 24 Q Okay. Let me get it so that we're on the same page.
 25 And then specifically referring to the toxicology report that

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1 A Right.
 2 Q Okay. And then you're saying that you did some
 3 independent research where you discovered that the therapeutic
 4 levels for a person taking 150 milligrams of venlafaxine --
 5 A Right.
 6 Q -- per day was 93 to 334 nanograms per day. That's
 7 what you initially said.
 8 A Right, here's it's 90 -- it's on this 93 to 334
 9 nanograms per milliliter.
 10 Q Okay, so that was just kind of a mistake when you
 11 said nanograms per day?
 12 A That should be nanograms per milliliter.
 13 Q So again, that was a mistake?
 14 A I'd like to correct that to milliliters.
 15 Q Okay. Now, incidentally, what document were you
 16 referencing to arrive at the information of the 93 to 334
 17 nanograms per milliliter?
 18 A I'm using the Quest range that they give.
 19 Q Okay. Okay, did you consult any other outside
 20 treatises or reports or anything like that?
 21 A I did do an Internet search and I also called poison
 22 control.
 23 Q Okay. Are you familiar with -- as an ER physician
 24 and a former medical student, are you familiar with a treatise
 25 called the Disposition of Toxic Drugs and Chemicals in Man?

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1 A Is that from a certain textbook or -
 2 Q Well, it's a treatise that - I mean, have you -
 3 strike this. I mean, excuse me, strike that. We've heard
 4 testimony from a medical examiner that a treatise called the
 5 Disposition of Toxic Drugs and Chemicals in Man is a commonly
 6 accepted and referenced textbook in the medical profession.
 7 Would you have any reason to dispute that?
 8 A I'm assuming you're speaking the truth on that.
 9 Q Okay.
 10 A But there's a lot of different toxicology books that
 11 people will study in medical school and residency.
 12 Q Okay. Did you consult any of those textbooks?
 13 A I essentially looked at the Internet and I also
 14 talked to a specialist at poison control.
 15 Q Okay. Have you ever heard of a publication called
 16 Winick's Drug and Chemical Blood Level Data (phonetic)?
 17 A No.
 18 Q So just so I'm clear, the only things that you did to
 19 try and determine the therapeutic level was to look on the
 20 Internet and call a person at a poison control center?
 21 A Well, I also looked through some emergency medicine
 22 textbooks also.
 23 Q Okay, and what -
 24 A And how I would treat a patient that come into the
 25 emergency room with this kind of overdose.

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1 A Yes.
 2 Q Since they're recording everything here. And so
 3 based upon your evaluation and your research, the - certainly
 4 the medication amount that was in Mrs. Witmarsh's body at the
 5 time of the autopsy was in excess of her prescribed amount?
 6 A Yes.
 7 Q That was consistent with a report of Quest
 8 Diagnostics; is that correct?
 9 A That's right. They have reference ranges that they
 10 list underneath that - her high dose.
 11 Q Okay. And for the record, because the autopsy report
 12 has not been introduced into evidence, the Quest Diagnostics is
 13 a company here in town that examines or determines level of
 14 blood or levels of alcohol, chemical or drugs in blood; is that
 15 correct?
 16 A Correct.
 17 Q And, in fact, you will often send out specimens to be
 18 analyzed by Quest Diagnostics and you rely upon them?
 19 A That's right, and you have to know what those
 20 reference ranges are on these specialized tests.
 21 Q And so Quest Diagnostics the reports that you
 22 received them just similar to that report that's attached to
 23 the autopsy, they include on that the amount that should be or
 24 is generally allowable of that drug in the blood as part of the
 25 report.

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1 Q Okay. Now, okay, you just said overdose. So is it
 2 now your opinion that the level was actually a level of
 3 overdose?
 4 A I think it's beyond what her normal daily regimen
 5 was. It's excessively high.
 6 Q According to the person at the poison control center
 7 and the Internet?
 8 A And her levels that were taken at Quest Laboratory.
 9 Q Okay.
 10 MR. SMITH: Court's indulgence, Judge.
 11 BY MR. SMITH:
 12 Q Ma'am, are you aware of, excuse me, the cause of
 13 death of Victoria Witmarsh in this case?
 14 A I did look at the autopsy report.
 15 Q And you'd agree that it's not due to an overdose?
 16 A The autopsy report said it was a single stab wound.
 17 Q Okay.
 18 MR. SMITH: No further questions.
 19 THE COURT: Any redirect?
 20 MR. PIKE: Yes, please.
 21 REDIRECT EXAMINATION
 22 BY MR. PIKE:
 23 Q Thank you, Dr. Christensen. And the term overdose
 24 may mean that an individual is taking an excess of the
 25 prescribed amount? Is that yes?

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1 A That's true.
 2 Q And that report that was part of the autopsy that was
 3 done in this case indicated also that it was an overdose.
 4 A It's much higher than what her daily should have
 5 been.
 6 Q And in addition to determining whether or not
 7 something is also an overdose, you not only look to the actual
 8 drug that is involved, but something that's called a
 9 metabolite.
 10 A Yes.
 11 Q What is a metabolite?
 12 A It's the breakdown product much the initial
 13 medication, and that was high also.
 14 Q Okay. So you actually have the drug and then the
 15 metabolite is kind of like the trail of what is done with that.
 16 How much of the metabolite of the Effexor was in the blood
 17 specimen that was retrieved from Victoria Witmarsh's body at
 18 the time of the autopsy?
 19 A It says 870 nanograms per milliliter.
 20 Q And what should have been the level of that?
 21 A It should have been 85 to 472 nanograms per
 22 milliliter.
 23 Q And that's consistent with the report from Quest
 24 Diagnostics also?
 25 A That's right.

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1 MR. PIKE: Thank you. I have no further questions.
 2 THE COURT: Any recess?
 3 MR. SMITH: May I approach the witness, Judge?
 4 THE COURT: Yes.
 5 RE-CROSS-EXAMINATION
 6 BY MR. SMITH:
 7 Q Ma'am, I'm showing you a page of a Winicks Drug and
 8 Chemical Blood Level Data 2001. Do you see the line --
 9 actually, I apologize.
 10 MR. PIKE: That's -- okay.
 11 MR. SMITH: Let me show -- I'm sorry.
 12 MR. PIKE: That's okay.
 13 BY MR. SMITH:
 14 Q Showing you a page out of Winicks Drug and Chemical
 15 Blood Level Data 2001 edition. Do you see that there's a line
 16 that talks about the therapeutic or normal levels of a person
 17 taking Effexor?
 18 A Yes.
 19 Q And do you see that there's actually a column where
 20 it has the therapeutic or normal levels of Effexor in the body
 21 for microgram -- excuse me, yeah that is micrograms.
 22 Micrograms per milliliter?
 23 A Okay.
 24 Q Do you see that?
 25 A Yes.

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1 nanograms, we would simply, using the rules of Algebra and
 2 multiplication, have to multiply these numbers by 1,000. Would
 3 you agree?
 4 A Yes.
 5 Q Okay. And if we do that -- and this should be .07.
 6 That was wrong. The simplest way to do that is to simply move
 7 the decimal point over three points, correct?
 8 A Correct.
 9 Q Okay. So if we do that, one, two, three, that's 70,
 10 and then with the 3.93, we move that over one, two, three,
 11 that's 3930, so that gives us 70 to 3930 micro grams per
 12 milliliter. Would you agree with those calculations?
 13 A That seems reasonable.
 14 Q Okay. So then basically, according to Winicks Drug
 15 and Chemical Blood Level Data, which is apparently acceptable
 16 authority, the therapeutic level is .07 to 3.93 micrograms per
 17 milliliter which converted to 70 to 3,930 micrograms per
 18 milliliter, correct?
 19 A Correct.
 20 Q And we've already heard testimony that Victoria's was
 21 somewhere in the 900 range, right?
 22 A Right.
 23 MR. SMITH: No further questions.
 24 THE WITNESS: But I -- I had one --
 25 MR. SMITH: Your attorney --

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1 Q Can you tell us what it says?
 2 A It says it has milligrams percent at .007 to 3.93, and
 3 then a micrograms per milliliter at .07 to 3.93.
 4 Q Okay. So this says that the therapeutic levels of
 5 Effexor is .007 -- the range at least is .007 to 3.93 micrograms
 6 per milliliters; is that correct?
 7 A Yes.
 8 Q Okay. Now, we could actually convert that to
 9 nanograms per milliliter by doing some simple Algebra; would
 10 you agree?
 11 A Yes.
 12 Q Okay. Let's try and do that. Okay. So we have .007
 13 to 3.93, and that's the sign for micrograms, correct?
 14 Actually, let me zoom in on this. Micrograms per milliliter.
 15 Is that -- does that is seem accurate?
 16 A Yeah, whatever is on your --
 17 Q Okay.
 18 A -- chart there.
 19 Q And would you agree that there are 1,000 nanograms in
 20 1 microgram?
 21 A Yes.
 22 Q Okay. So we have 1,000 nanograms equals 1 microgram.
 23 So in order for us to figure out -- in order for us to change
 24 this to represent what would be -- and actually, I wrote this
 25 wrong. It should be (indiscernible). And what would be

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1 THE COURT: Mr. Pike will ask you any questions.
 2 FURTHER REDIRECT EXAMINATION
 3 BY MR. PIKE:
 4 Q And in relationship to that, you have additional
 5 information that -- to finish answering the question --
 6 A I just noticed on --
 7 Q -- from the DA?
 8 A -- his chart that it never had any toxic level, so
 9 was that to say that then a patient could just take whatever
 10 they want and there is no toxic level.
 11 Q And in a situation like this, then, where you're
 12 relying upon an individual to self-regulate their dosage, we
 13 know that Mrs. Witmarsh exceeded her prescribed amount, based
 14 upon the amount that was inside of her body. Is that yes?
 15 A Yes.
 16 Q We know that there is a potential range of acceptable
 17 levels, and that's for the entire human population that may
 18 take this drug.
 19 A That's correct. They didn't look at her risk
 20 factors.
 21 Q She had risk factors that would have mitigated --
 22 that would have made her toxic level much lower, such as
 23 cirrhosis of the liver.
 24 A Correct, because it's broken down by the liver and
 25 the kidney.

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1 Q And Hepatitis C.
2 MR. SMITH: I'm going to object to the leading --
3 MR. PIKE: He opened the door.
4 THE COURT: No, he's --
5 MR. SMITH: I'm going to object to the leading.
6 THE COURT: -- objecting to the leading nature of the
7 question. I'm going to sustain the objection. Just ask it in
8 a different way.
9 MR. PIKE: All right, thank you.
10 BY MR. PIKE:
11 Q And what are the -- what are some of the things that
12 would have from her medical condition, medical, strictly
13 medical condition, that would have reduced the amount that she
14 could tolerate in her body?
15 A Her liver dysfunction could have decreased her
16 ability to break down the Effexor, plus it's also
17 contraindicated to be drinking alcohol with Effexor.
18 Q And in addition -- so the amount that was shown you,
19 the diagram, for this to have any real meaning in the case at
20 bar, would you have to take these amounts and say plus a 24
21 alcohol, and that would give you a real basis for the potential
22 overdose amount in this case?
23 A Correct.
24 Q In addition to that, the amount that a 300 pound man
25 may take because apparently there's nothing in that report

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1 in five deaths attributed solely to venlafaxine intoxication
2 was 41 milligrams per liter.
3 Q Now, would you agree that that would provide a useful
4 standard of comparison as to determine what kind of levels of
5 venlafaxine we might expect to find in the blood of someone who
6 was taking it at a toxic level?
7 MR. PIKE: Your Honor, I'd object to the question.
8 It's irrelevant to the case at bar because it does not add in
9 the effects of alcohol and the synergistic effect of the
10 alcohol --
11 THE COURT: Well, I'm --
12 MR. PIKE: -- and this drug that's been indicated.
13 THE COURT: I'm going to overrule the objection
14 because I'll let you follow up on this issue, if you want to,
15 because I think she has to do one step at a time.
16 MR. PIKE: Thank you.
17 THE WITNESS: It doesn't go into the dose that the
18 person took, though, on here.
19 BY MR. SMITH:
20 Q Well --
21 A It goes into a blood level, and most the time with
22 case reports, you're looking at what dose did the person take
23 to have a fatal outcome.
24 Q So, okay, I understand your answer, but -- so it's
25 your testimony that this does not provide any basis for

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ROUGH DRAFT TRANSCRIPT

1 regarding weight, would be very different than what the woman
2 that weighed approximately 100 pounds could take.
3 A Correct.
4 MR. PIKE: Nothing further.
5 THE COURT: Mr. Smith.
6 MR. SMITH: Briefly.
7 FURTHER RECROSS-EXAMINATION
8 BY MR. SMITH:
9 Q Ma'am, but you would agree, however, that this is a
10 range with a minimum range and a maximum range, correct?
11 A It doesn't have any maximum range because it has no
12 level -- it has no information under the toxic. If someone
13 were to take too much of it, it has -- see the stars? It never
14 lists anything for the toxic level.
15 Q Okay. If I --
16 MR. SMITH: May I approach the --
17 THE COURT: Yes.
18 MR. SMITH: Actually, let me show defense counsel.
19 May I approach the witness, Judge?
20 THE COURT: Yes.
21 BY MR. SMITH:
22 Q Ma'am, I'm showing you a page from the Disposition of
23 Toxic Drugs and Chemicals in Man, the 8th edition. And I'd
24 like you to read this highlighted portion.
25 A The average femoral blood venlafaxine concentration

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1 comparison whatsoever to determine what types of levels we
2 might expect in a person who's actually taking the drug at a
3 toxic level?
4 A Well, this could be used as -- this is a case report,
5 but there's a wide range in what people can take, and there can
6 be deaths at a dosage of 2 grams, was one of the lowest dosage
7 that killed a person, but then some people can live at taking
8 so grams.
9 Q Okay.
10 A Yeah.
11 Q But that did say 41 milligrams per liter?
12 A Yes.
13 Q Okay. And one of the things that you said was that
14 the information that I showed you didn't take into account the
15 synergistic possibilities combining the two together as they
16 were of alcohol and venlafaxine; is that correct?
17 A I didn't read the whole article, but I -- is that one
18 talking about --
19 Q No, I'm talking about --
20 A -- the alcohol?
21 Q -- what you said on the stand.
22 MR. PIKE: She didn't say that. That was the
23 testimony of Mr. Paisano in my argument.
24 MR. SMITH: No, I think she -- I think --
25 THE COURT: Well, why don't you ask her if that's

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1 what she said, and we can go from there.

2 MR. SMITH: Okay.

3 BY MR. SMITH::

4 Q In your opinion, what are the potential side effects
5 from combining venlafaxine and alcohol?

6 A In central nervous system depression, in high
7 amounts, seizures, cardiac arrhythmias serotonin syndrome are
8 some of the things that can happen.

9 Q And you said, in fact, your research revealed that
10 the two were contraindicated; is that correct?

11 A They're not supposed to be -- it's -- you're not
12 supposed to drink alcohol when you're taking Effexor.

13 Q And isn't it a fact that the danger of doing that is
14 actually that the combination of the two might affect a
15 person's motor skills more so than each one separately?

16 A It would affect her whole body to include her central
17 nervous system also.

18 Q So is that a yes?

19 A Wouldn't just the fact one part of her body that will
20 just -- not just her motor skills. It would like her movement.
21 It would be other things also.

22 Q Okay. But motor skills including one of them?

23 A Yes.

24 Q Thank you, doctor, I appreciate it.

25 THE COURT: All right.

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1 MR. SMITH: No, Judge.

2 MR. PIKE: No.

3 THE COURT: All right.

4 MR. PIKE: No, your Honor.

5 THE COURT: Counsel approach. We have two questions
6 from the jurors.

7 (Off-record bench conference).

8 THE COURT: Doctor, under our rules, we're allowed to
9 -- our jurors are allowed to ask questions of witnesses, and we
10 have two questions from one of our jurors here, and they may be
11 somewhat related. We'll leave that up to you if they are or
12 not. I'll ask both at the same time --

13 THE WITNESS: Okay

14 THE COURT: -- and you can answer them how you feel
15 it would be appropriate. Would cirrhosis of the liver cause
16 the drug, Effexor, to move slower through the system? The next
17 question, the amount in her system, could it be attributed to
18 the liver not processing it instead of taking too much?

19 THE WITNESS: Cirrhosis of the liver can affect the
20 breakdown of Effexor, but she actually was on a lower dose the
21 maximum dose. The maximum dose per day was 375 milligrams and
22 they actually had decreased that to only put her on 150
23 milligrams per day as a target.

24 So I would hope that her liver would be able to break
25 down that lower dose that she was supposed to be taking. If

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FURTHER REDIRECT EXAMINATION

2 BY MR. PIKE::

3 Q In high amounts, then, from the evidence that's been
4 presented, this drug is potential toxic.

5 A It can be toxic. It's -- the range at which it's
6 toxic is hard to determine, but some people can't tolerate too
7 much of it, and in come by nation with alcohol, it could be a
8 real problem.

9 Q And alcohol can in itself be death producing or toxic
10 also.

11 A That's true.

12 Q Okay.

13 MR. PIKE: Nothing further. Thank you.

14 THE COURT: Actually, I have a question, doctor. If
15 you can just define for us the phrase toxic as it relates to
16 the medication that she was taking.

17 THE WITNESS: It's just that the level that they
18 found in her system on her autopsy was higher than what her
19 daily dose would have been. And so usually -- and then her
20 alcohol was much higher than just a one or two glasses of
21 alcohol. She had a very high amount in her system, so toxicity
22 can be a few extra pills or it can be a large amount of pills
23 and other substances. So it's whenever you're affected
24 adversely by a substance, it can be referred to as toxic.

25 THE COURT: Any follow-up, Mr. Smith to my question?

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1 she was taking extra doses because she has a history of taking
2 extra doses when she's stressed, then that would elevate her
3 levels. And I attributed more of what they found in her system
4 at autopsy as taking much more than her daily dose.

5 THE COURT: Any follow-up, Mr. Smith?

6 MR. SMITH: Judge, the answer was rather
7 non-responsive.

8 THE COURT: Okay, well follow up.

9 FURTHER RECROSS-EXAMINATION

10 BY MR. SMITH::

11 Q Can you answer the question directly? I believe --

12 THE COURT: Maybe she -- maybe there's --

13 BY MR. SMITH::

14 Q Right, but the question was, and I don't want to try
15 and do the yes or no, but the question was could Mrs. Witmarsh
16 liver condition contribute to how her body processed the
17 venlafaxine?

18 A It could, but her dose had already been decreased to
19 the 50 percent. Anyone in -- with renal or -- with renal
20 failure or liver conditions, they would actually go with a much
21 lower dose, target dose, and she was on a lower target dose.
22 She was not on the maximum dose.

23 Q Okay.

24 A So I attributed most of her high dose that was found
25 at autopsy to taking too much.

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1 Q Okay. And that's what you did, but the answer is
2 that yes, her liver could have, in fact, affected her ability
3 to process the drug?

4 A The liver is involved in the breakdown of Effexor.

5 Q Thank you.

6 THE COURT: Mr. Pike.

7 MR. PIKE: Nothing further.

8 THE COURT: Any other questions from the jurors? All
9 right, thank you, doctor. You're instructed not to discuss
10 your testimony with any other witness involved in this case
11 until this matter is finally resolved. Thank you for your
12 time.

13 THE WITNESS: Okay. Thanks.

14 THE COURT: Defense, please call your next witness.

15 MR. PIKE: George Schiro, Released Dr. Christensen
16 from her subpoena at this time.

17 THE MARSHAL: If you'll remain standing, please
18 Raise your right hand and face the clerk.

19 DR. GEORGE SCHIRO, DEFENDANT'S WITNESS, SWORN

20 THE CLERK: Please be seated. Will you please state
21 your name and spell it for the record.

22 THE WITNESS: My name is George Schiro, that's
23 S-c-h-i-r-o.

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

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1 Q And are you a member of any professional groups?

2 A Yes. I'm a fellow of the American Academy of
3 Forensic Sciences. I'm a member of the International Society
4 of Forensic Genetics. I'm a member of the Association of Crime
5 Scene Reconstruction. I'm a fellow of the American Board of
6 Criminalistics. I'm on the American Society of Testing
7 Materials E30 Committee on Forensic Science Standards. I'm
8 former chairman and current fellow in the Association of
9 Forensic DNA Analysts and Administrators. I'm a member of the
10 Southern Association of Forensic Scientists, the Louisiana
11 Association of Forensic Scientists and the Louisiana
12 Association of Scientific Crime Investigators.

13 Q Okay, can you tell the jury about your experience
14 working as a forensic scientist?

15 A Yes, I began over 20 years ago. I started off in
16 Jefferson Parish Sheriff's Office Crime Lab which is a crime
17 laboratory located just outside of New Orleans. I began
18 working in what's known as general criminalistics, and that's
19 things like marijuana analysis, arson analysis, gunshot residue
20 detection, shows sort of things.

21 After doing that for about a year and a half, was
22 moved into the serology section which is the analysis of blood
23 and body fluids and trying to determine if it may have come
24 from a victim or a suspect. After working there for about
25 three and a half years, I was hired by the Louisiana State

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1 BY MS. PALM:

2 Q Good afternoon, Mr. Schiro.

3 A Good afternoon.

4 Q Can you please tell the jury what your profession is?

5 A I'm a forensic scientist.

6 Q And how long have you been a forensic scientist?

7 A Over 20 years.

8 Q Can you explain what a forensic scientist is?

9 A A forensic scientist, much like you see on TV, takes
10 evidence, examines evidence, does scientific tests on the
11 evidence, and draws conclusions based on that evidence.

12 Q Do you specialize in that field?

13 A Yes.

14 Q Do you specialize in any other fields?

15 A Primarily my areas of specialty are primarily DNA
16 analysis, crime scene investigation, crime scene
17 reconstruction, bloodstain pattern analysis and shoe print
18 identification.

19 Q Okay. I'd like to talk about your training and
20 experience for a minute. Can you tell the jury what your
21 education is.

22 A Yes. I have a bachelor of science degree in
23 microbiology from Louisiana State University. And I have a
24 master of science degree in industrial chemistry and forensic
25 science from the University of Central Florida.

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1 Police Crime Laboratory. I continued working in the area of
2 serology and also became part of their crime scene
3 investigation team. So we would get called out anywhere in the
4 state any hour to go work a crime scene.

5 Continued working in serology and then probably my
6 last three years I was there began setting up the DNA labs at
7 the state police, validated all the systems, trained the
8 personnel, and then in 2000 -- at the beginning of 2002 I was
9 hired by the Acadiana (phonetic) crime lab to be their DNA
10 technical leader. And I've been there -- that's where I
11 currently work and have been there ever since, and I continue
12 to do DNA analysis and crime scene investigation at the
13 Acadiana crime lab.

14 Q And is the lab you're currently working for
15 accredited?

16 A Yes.

17 Q Have you testified in a court of law before?

18 A Yes.

19 Q What jurisdictions?

20 A I've testified over 140 times in 29 parishes in
21 Louisiana. We don't have counties. We have to be different,
22 we have parishes. So 29 parishes in Louisiana. I've testified
23 in federal court, two Louisiana city courts. I've also
24 testified in Lee County, Florida; St. Louis County, Missouri;
25 Pope County, Arkansas; Washington County, Mississippi; San

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1 Bernardino County, California; and here in Clark County,
2 Nevada.
3 Q And how testified as an expert in crime scene
4 reconstruction, DNA collection —
5 A Yes.
6 Q Okay. Have you written my papers on the collection
7 of evidence?
8 A Yes.
9 Q Do you conduct any training in your field?
10 A Yes, I do.
11 Q And have you been retained by the defense in this
12 case?
13 A Yes.
14 Q And have you ever worked for the government and
15 testified for the government?
16 A Yes.
17 Q And in this case we asked you to review records.
18 A Yes, that's correct.
19 Q Okay. Tell the jury what records you reviewed?
20 A I reviewed documentation that was sent to me from
21 this case, mostly crime scene investigated related. Also
22 examined photographs and a DVD that was taken.
23 Q And did you review the DNA evidence reports?
24 A Yes.
25 Q And did we ask you to assess the thoroughness of the

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1 or behavior at the time of the incident.
2 Q It would have given some indication of factors which
3 might have affected how he was behaving?
4 A Yes.
5 Q Did you look at the collection of evidence in the
6 penile swab collections?
7 A Yes.
8 Q Did you make any conclusions about that collection?
9 A Yes. Those swabs were improperly collected.
10 Q Can you explain why?
11 A Well, for one thing, a lot of what is done when
12 evidence is collected and analyzed is there may be certain
13 interpretations associated with how that evidence is perceived.
14 And it's imperative that proper collection techniques be used
15 so that there's no inadvertent contamination of one source to
16 another. Cross contamination occurs when two items of
17 evidence, you know, for instance, DNA from one item gets
18 transferred to the DNA of another item.
19 It could make the interpretation of that evidence
20 difficult or maybe even unknown if it's not collected properly.
21 And in this case I felt that the way the swabs were collected
22 was improper.
23 Q And what was improper, specifically about it?
24 A Well, what should have been done in this case was the
25 crime scene analyst who was wearing gloves should have

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1 crime screen and crime lab investigation?
2 A Yes.
3 Q And doing that, were you able to make any
4 conclusions?
5 A Yes.
6 Q Okay. First I would like it talk about any
7 conclusions you were to able to reach on — at the issue of
8 toxicology and whether blood or urine specimens should have
9 been collected from Mr. O'Keefe.
10 A Yes, they should have been collected in the hours
11 after Mrs. Winmarsh's death to determine if there were any —
12 if there was a quantitative analysis of any alcohol or drugs
13 and what was the nature of any drugs that may be in his system
14 and how they may have affected his behavior. So yes,
15 toxicology specimens should have been collected.
16 Q And if it had been collected, could it have been
17 subjected to toxicological analysis?
18 A Yes.
19 Q And that analysis would determine a quantitative
20 level of blood — or of alcohol in his system?
21 A Yes.
22 Q Did you reach any other conclusions with regard to
23 toxicology issues?
24 A No, other than the fact that they should have
25 collected, and that may give an indication into state of mind

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1 collected the swab himself as opposed to letting Mr. O'Keefe
2 collect his own swabs while not — while his hands were bloody,
3 he had injuries to his hands. At the very least what could
4 have been done was they could have collected — they could have
5 documented his hands, collected any evidence they needed off
6 his hands, then allowed him to maybe clean his hands and then
7 put gloves on him and let him collect it. That would have been
8 alter method of collecting. But in this case none of that was
9 done.
10 Q And is the way the evidence was collected in this
11 case an acceptable practice under any standard that you know
12 of?
13 A No.
14 MR. SMITH: And Judge, I'm going to object to that —
15 the form of the question. He's talking — is he talking about
16 penile swabs or the evidence collection in general?
17 THE COURT: Which were you referring to, sir?
18 THE WITNESS: Just the penile swabs.
19 MR. SMITH: Thank you.
20 BY MS. PALM:
21 Q And going back to the previous question on alcohol
22 because I forgot to ask you. In talking about that the breath
23 or blood level should have been collected from Mr. O'Keefe, in
24 reaching that conclusion, did you rely on any source of
25 authority for that or just your own knowledge?

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1 A No, there is a source of authority, one of which is
2 Techniques of Crime Scene Investigation published by Barry
3 Fischer (phonetic). It's a text that's -- it's standard in the
4 industry. The International Association For Identification
5 uses that as one of the texts for people who want to get
6 certified in crime scene analysis to use that text as a study
7 guide.
8 Q Did we also ask you to look at the wounds to Mr.
9 O'Keefe's hands, at least the photographs of them?
10 A Yes.
11 Q And assess whether you thought those wounds might
12 have been made in self-defense?
13 MR. SMITH: Objection, Judge. Calls for speculation
14 and it's asking for a legal conclusion.
15 THE COURT: Sustained.
16 MS. PALM: I'm asking him if we asked him to do that.
17 THE COURT: Okay, well, just leave it right there.
18 MS. PALM: That was the question.
19 THE COURT: This question calls for a yes or no, sir.
20 THE WITNESS: Yes.
21 BY MS. PALM:
22 Q And did you examine the photographs of his injuries?
23 A Yes.
24 Q Showing you what's been admitted on -- and you can
25 look at your monitor. That's been admitted as Defense Exhibit

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1 of the thumb and forefinger?
2 MR. SMITH: Objection, Judge. It calls for a legal
3 conclusion.
4 THE COURT: What are your observations?
5 BY MS. PALM:
6 Q What are your observations?
7 A I observed, as I said, one cut which appeared to be
8 right here on the inside right thumb joint and also a cut here
9 on the inside between the first and second joints of the index
10 finger. So kind of in this type of position.
11 Q And did you consider any other evidence and asking
12 another question be asked (indiscernible). We asked you to
13 consider whether it could be determined when Mr. O'Keefe's
14 injuries were sustained.
15 A Yes.
16 Q And what other evidence did you rely onto determine
17 whether you could answer that question?
18 A I also relied upon the DNA analysis reports and crime
19 scene photos. I think that was primarily what I used.
20 Q And were you able to determine a time frame?
21 A Given the fact that his blood, according to the DNA
22 report, was found on a light switch, it was found on one side
23 of the knife which was on the bed, and found on the pants, then
24 his injuries most likely occurred around the same time that Ms.
25 Witmarsh received her injury.

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1 JJJJ. I'll zoom it out. Is that one of the photographs that
2 you relied on?
3 A Yes.
4 Q And what did that photograph tell you?
5 A That photograph appears to depict an injury to the
6 right thumb of Mr. O'Keefe.
7 MS. PALM: Court's indulgence. May I approach the
8 witness?
9 THE COURT: Yes.
10 BY MS. PALM:
11 Q Did you look at all of these photographs in
12 considering the other injuries?
13 A Yes.
14 Q All of them?
15 A Yes.
16 THE COURT: Counsel, for the record, are you going to
17 identify the numbers so the jury can follow along?
18 MS. PALM: I will. It's Defendant's LLLL, KKKK, IIII
19 and JJJJ. And Mr. Schiro's indicated that he has looked at all
20 of them.
21 BY MS. PALM:
22 Q And showing you JJJJ on the monitor, that's one of
23 the photographs that you looked at.
24 A Yes.
25 Q And were you able to determine from the photographs

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1 Now, it could have happened just before she received
2 her injury, while she received her injury or just after she
3 received her injury.
4 Q Can you explain why you determined it was most likely
5 at the same time or shortly after?
6 A Well, my conclusions were that, you know, again,
7 given the three possibilities. First off, one possibility is
8 it occurred shortly after. This would have required -- this
9 would have either been through Mr. O'Keefe self-inflicting it
10 or through some sort of accident that he got the cut on his
11 hand.
12 Another likely scenario is that he received it before
13 Ms. Witmarsh received her injury. The other possibility, which
14 I found to be the least likely, is that he received at the same
15 time she received her injury.
16 MR. SMITH: And Judge, I'm going to object to this
17 line of testimony. It's purely speculative.
18 MS. PALM: I'm going to ask him on his basis for
19 those conclusions.
20 THE COURT: Well, ask him the basis of that. I'm
21 going to overrule the objection at this point.
22 MS. PALM: Thank you.
23 BY MS. PALM:
24 Q Can you explain the basis for each of those
25 conclusions?

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1 A Yes. Like I said, the first one is let's say he
2 received it after -- after the injury. I mean, after Ms.
3 Witmarsh received her injury. I have no other explanation
4 other than it's either self-inflicted or accidental. So that's
5 one possibility.
6 The other possibility that he received it at the same
7 time she received hers is less likely based on his injuries,
8 where they're located, the angle of her wound, the fact that
9 according to the autopsy report no wounds were struck.
10 Typically when a stabbing event occurs, there are typically
11 three types of mechanisms where a person who's stabbing someone
12 will get an injury to their hand.

13 One is if they hit bone. The stabbing and the motion
14 of the blade suddenly stops and their hand slides onto the
15 blade. That's one mechanism of how they could cut their hand.
16 Another mechanism is if the handle of the knife becomes very
17 bloody and slips onto the knife blade. And the third
18 possibility is that while stabbing someone they may stab the
19 backs of the fingers, backs of the hands. So those are three
20 primary ways a person while stabbing someone could get that
21 injury.

22 But based on where his injury's located, I found that
23 to be the least likely of the three scenarios, unless it
24 possibly could be through some sort of accident or some sort of
25 awkwardly placed position in his hand of the knife.

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1 Q Could you demonstrate on me (indiscernible)?
2 A Yes.
3 Q Could you step down and --
4 A Yes. If your hand was let's say here, it would have
5 to be coming in kind of like this going through when you
6 receive that cut (indiscernible).

7 Q Okay. And that -- per -- that was the angle per
8 injury (indiscernible)?

9 A Correct, right. Like I said, this would be slightly
10 angled up and it would kind of come down (indiscernible).

11 Q Okay. And I'm sorry, I didn't mean to cut you off.

12 A That's okay.

13 Q Were you still explaining the basis for your time
14 determinations?

15 A Oh, and then finally the other possibility is that he
16 received the injury prior to her receiving her wound. And
17 hands -- typically hands -- cuts on the hands are referred to
18 as defense wounds. They can be defensive in nature. When
19 someone's trying to ward off a knife attack or they're trying
20 to deflect the blade, and what will happen is if someone grabs
21 the knife blade, they could grab it in such a way that they
22 could cause an injury to their hand or if they're trying to
23 block the knife out the way, some sort of mechanism like that,
24 that would be the other possibility that would lead to a person
25 getting an injury on their hand.

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1 Q Okay. And when you were talking about based on the
2 angle of the injury --

3 MS. PALM: May I approach the witness?

4 THE COURT: Yes.

5 BY MS. PALM:

6 Q Can you with this ruler demonstrate to me how the
7 knife went into Ms. O'Keefe or Ms. Witmarsh.

8 A Okay. May I stand up?

9 THE COURT: Yes.

10 THE WITNESS: Okay. Okay, assuming this is the blade
11 of the knife, okay, and in order for him to get the cut on his
12 hand at the same time she received her injury, his hand would
13 have to be in a position like this. It can't be like this
14 because if that's the case, the cuts would be on this end of
15 the hand or if it's turned around this way, it would be on this
16 side of the hand. So it has to be somehow in this sort of
17 position.

18 The other thing is the blade would have to be turned
19 in such a way that it would cut both this thumb and index
20 finger here, so that puts it at a very awkward angle. The
21 angle that she -- from her injury based on autopsy report is
22 that the knife was tilted slightly upward, that it came from
23 front to back kind of left to right and downward.

24 So like I said, it makes for kind of a very awkward
25 angle for someone --

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1 Q And you feel this latter scenario have the more
2 likely scenario?

3 A It's more likely than, I think, him receiving it at
4 the same time she received her injury, but I can't say whether
5 it's more likely or not if it occurred after she received her
6 injury. Just, like I said, given the nature that that could
7 either be accidental or self-inflicted, I don't know. But I do
8 feel it's more likely that than having received at the same
9 time that she received her injury.

10 Q Okay. I'm showing you what's been marked as Defense
11 Exhibit HH-HH. Did this photograph help you in your
12 determination?

13 A Yes.

14 Q Can you explain to the jury how...

15 A Well, for one thing the -- it shows the position of
16 the knife where it was found on the bed as the crime scene
17 investigators found it, and there was also some DNA results
18 relating to some of the stains that were on the knife.

19 Q And can you explain how those DNA results helped your
20 analysis.

21 A Yeah, one -- given that the stains appear only on one
22 side of the knife, it appears more likely that those
23 bloodstains got on there after the knife was used, after the
24 knife was on that bed because on the other side of the knife
25 there are no stains of this nature that look like what we call

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1 transfer stains.

2 The other thing is given the depth, according to the
3 autopsy report of Ms. Witmarsh's injury, the very first kind of
4 blood spot that you see coming from the point of the blade
5 back, that type --

6 THE COURT: Sir, you can draw on the screen.

7 THE WITNESS: Oh, okay.

8 THE COURT: You know, make mark on that.

9 BY MS. PALM::

10 Q Yeah, if you just touch it.

11 A Just touch it. Okay, this one right here, okay, that
12 stain, that would be beyond the depth of -- I'm sorry, it would
13 be within the depth of what the pathologist said in their
14 report as far as the depth of the wound. He had -- had that
15 bloodstain got on there beforehand, then it would have smeared.
16 It wouldn't have been a distinct spot like you're seeing there.

17 MS. PALM: May I approach the witness, your Honor.

18 THE COURT: Yes.

19 BY MS. PALM::

20 Q Did you create this photograph?

21 A Yes.

22 Q And what is it?

23 A This photograph is a composite of, I believe it's
24 this photograph from the crime scene and a photograph used by
25 the DNA analysis in her Power Point and also combined the

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1 was not the same kind of bleeding on the bottom side of the
2 knife.

3 A Correct.

4 Q I'm showing you Defense Exhibit III. Is that what
5 you saw?

6 A Yes. There's no spotting of blood on this side of
7 the knife which had -- you know, if someone had grabbed that
8 prior to or if there was some sort of -- some sort of blood, I
9 would expect to see it on both sides of the knife as opposed to
10 just one. So like I said, I believe all the bloodstains that
11 are on the knife on that other side came after she received her
12 injury.

13 Q Okay. And this side of the knife that's now facing
14 up was actually done on the bed when it was photographed.

15 A Correct.

16 Q Okay. And the side that was facing up had a
17 (indiscernible) on top of it?

18 A Yes.

19 Q Showing you Defense Exhibit CCC. That's what I'm
20 talking about, you reviewed this photograph?

21 A Yes.

22 Q And did you find any notes of interest regarding the
23 photographs of the pillowcase that was wadded up over the
24 knife?

25 A Yes, there were a couple of things that I was able to

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1 information from the autopsy report in this -- in that
2 particular photo.

3 MS. PALM: I didn't realize I didn't get it mark yet,
4 so I apologize. I'm going to admit Defense KKJKK.

5 MR. SMITH: Oh, I'm sorry. No objection.

6 THE COURT: It will be admitted.

7 MS. PALM: Thank you.

8 BY MS. PALM::

9 Q Sir, looking at the composite photograph you made,
10 does this help you explain to the jury what you were just --

11 A Yes. If you look at that mark, that line on the
12 blade, that was the depth, according to the autopsy report, of
13 Ms. Witmarsh's injury. This stain over here, this first stain,
14 is the ones DNA analyst typed and said that that was a mixture
15 of blood with Mr. O'Keefe being the major contributor of the
16 blood.

17 Like I said, had that stain been deposited there
18 after -- before Ms. Witmarsh received her injury, then that
19 stained would have smeared. It would be a mixture of their
20 bloods, and it would be a smear there. Given the nature of the
21 spots on the knife blade, all through this and this, and the
22 lack of it on the other side of the knife, indicates to me that
23 those bloodstains were deposited there after the knife had been
24 down on this side.

25 Q And one of the things you indicated was that there

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1 determine. One thing, and you know, in terms of crime scene
2 reconstruction sometimes we can't sequence all the events in
3 the exact order. We can only sequence portions of what may
4 have happened. One of the sequences involved the knife getting
5 on the bed, Mr. O'Keefe's blood getting deposited on the knife,
6 and then the pillowcase landing on top of the knife, okay.

7 So we can kind of see that sequence of events based
8 on the evidence in the photographs. The other thing is that
9 the pillowcase was removed at some point possibly held together
10 or bunched up, and then it came in contact with Ms. Witmarsh's
11 blood.

12 Q And I'm showing you Defense Exhibit AAAA. Does that
13 photograph help you explain what you're talking about?

14 A Yes. If you look at these patterns along here,
15 there's void of blood within these areas indicating that that
16 was bunched up. It could have either been held together and
17 maybe placed up against Mrs. Witmarsh or came in contact with
18 her blood somehow or it could have been bunched at the time it
19 came in contact with her blood. But that's what those void
20 areas indicate to me: is that at some point the pillowcase was
21 bunched up.

22 Q And showing you the Defense Exhibit BBB. Is that the
23 other side of that same pillowcase?

24 A Yes.

25 Q And does it demonstrate the same thing.

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1 A It's hard to tell on this side. There is a void --
2 sort of a semi-void pattern around here, but it's difficult to
3 tell and make any type of interpretation of this side of the
4 pillowcase.
5 Q Could you make any other sequencing determinations?
6 A The only other -- there were only two other items of
7 sequencing information. One was that Mrs. Witmarsh's pants
8 were moved after they had been saturated with blood and then
9 they were placed in the bathroom.
10 Q And I'm showing you Defendant's Exhibit FFF. And
11 what do you understand that to show?
12 THE COURT: Can you turn the photo?
13 THE WITNESS: Yes, this is a photograph of the pants
14 in the bathroom.
15 BY MS. PALM::
16 Q And Defendant's Exhibit DDD.
17 A Yes, this is a photograph of the pants as they are
18 laid out evidently. And you can kind of see the blood along
19 here which indicates that it was in contact with her for awhile
20 before they were actually removed. It's also sort of difficult
21 to see in this photograph and on the monitors, but there's also
22 sort of a line of -- oops, sorry. Sort of a line of blood on
23 this area -- on these areas also indicating, again, that it was
24 in contact with her for some time before they were removed.
25 Q So meaning she was probably wearing the pants for

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1 A No, that was -- that was essentially it.
2 Q Did you notice anything about the locations of Mr.
3 O'Keefe's blood at the scene?
4 A Yes. Based on the documentation I reviewed and
5 photographs, when someone receives cuts to the hand, they're
6 typically going to drip blood around the crime scene. In some
7 of the -- in one of the photographs it showed some of his blood
8 on the light switch. And there was definitely the blood that
9 was on the knife, but there's not like a lot of blood around
10 the area, so he probably used something to either slow the
11 blood flow down, wrapped his hand or used something to slow
12 down the bleeding because there's not any drip trails around
13 that I could see in the documentation that I reviewed.
14 MR. SMITH: Objection to the last part of the answer,
15 Judge. It's completely speculative. Complete speculation.
16 THE COURT: I'm going to sustain that because we
17 don't have photos of every ground surface as far as --
18 MS. PALM: He's saying the evidence that he reviewed
19 did not show any other blood drops.
20 THE COURT: Just the photographs you reviewed,
21 correct?
22 THE WITNESS: That's correct.
23 THE COURT: Doesn't apply to throughout the house?
24 THE WITNESS: Correct.
25 THE COURT: All right.

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1 awhile bleeding, and then the pants were removed?
2 A Correct.
3 MR. SMITH: Objection, Judge. That calls for
4 speculation.
5 THE COURT: Sustained.
6 BY MS. PALM::
7 Q And you noted in Defendant's Exhibit GGG, which I'm
8 showing you now. Do you know how to clear the screen?
9 THE COURT: It's clean.
10 THE WITNESS: Yeah.
11 THE COURT: It's clear.
12 BY MS. PALM::
13 Q All right. Anything significant about that
14 photograph?
15 A This indicates some shoe prints most likely in blood.
16 You notice they have a purple coloration to them? This is a
17 chemical called leucocrystal violet, which is used to enhance
18 bloody shoe prints when you can't -- when they're barely
19 visible, you can add this chemical to it, and it brings them up
20 -- adds more contrast so that you can visualize them. And this
21 just indicates to me that those shoe prints were made sometime
22 after blood was stepped in.
23 Q So that's the last sequencing determination?
24 A Yes.
25 Q And did you find any other notes of interest?

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1 BY MS. PALM::
2 Q In your opinion, could any other kind of DNA testing
3 been done on that knife?
4 A One area that could have been tested is the handle
5 could have been tested for what we call contact DNA. In
6 someone handles, you know, like let's say I handle this paper
7 or a pen, then some people tend to leave more DNA than others.
8 It's possible that that could be swabbed and then that analyzed
9 and determine if someone had come in contact with that
10 particular item.
11 So it's possible that -- and again, it's just going
12 to depend on the surface and maybe how much blood is present on
13 a surface, but it would be possible, perhaps, to swab a handle
14 and determine who came in contact with that knife handle.
15 Q And that would be DNA from the person's skin versus
16 just the blood DNA?
17 A Correct.
18 Q Just the blood DNA was done here?
19 A Right, just the distinct areas of bloodstains that
20 were observed appeared to be the only ones that were tested for
21 DNA.
22 Q Is there anything inconsistent with the pillowcase
23 photographs or is there anything about the pillowcase
24 photographs that's inconsistent with them having been used to
25 stop bleeding?

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1 MR. SMITH: Objection, Judge. Calls for speculation.
2 THE COURT: I'm going to sustain the objection. Ask
3 it in a different way and also make sure you have the proper
4 foundation for his ability to make that determination.
5 BY MS. PALM:
6 Q Do you have expertise in crime scene reconstruction?
7 A I'm sorry, in crime scene what?
8 Q Your expertise is in crime scene reconstruction also?
9 A Yes.
10 Q And are you sometimes asked to determine how evidence
11 was used --
12 A Yes.
13 Q -- in your field of work? And as a forensic
14 scientist is that a determination you're qualified to make?
15 A Yes.
16 Q So is there anything --
17 THE COURT: Well, I think your question has to do
18 with stopping blood, stopping the bleeding.
19 MS. PALM: I asked if there's anything inconsistent,
20 any evidence with that having been used to stop bleeding?
21 MR. SMITH: And Judge, my -- I mean, that -- I object
22 to the form of the question, and I just I don't know if this is
23 within the scope of his knowledge or his expertise that he's on
24 the stand for today.
25 THE COURT: I'll let you take him on voir dire on

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1 A Not in terms of any fresh cuts on her hands or arms.
2 Didn't see anything like that which is typically indicative of
3 defense wounds.
4 Q Considering all of the evidence which you've reviewed
5 and just testified about, can you rule out accident?
6 MR. SMITH: Objection, Judge. It's calling for a
7 legal conclusion.
8 THE COURT: Sustained.
9 BY MS. PALM:
10 Q As part of your job as a crime scene analyst and
11 crime scene reconstructionist, have you been asked to consider
12 whether a death might be accidental or purposeful?
13 A Yes.
14 MR. SMITH: Objection, Judge. It's outside the scope
15 of his knowledge. It's not a medical examiner.
16 THE COURT: He's not, is he?
17 BY MS. PALM:
18 Q Mr. Schiro, is that a determination you make on a
19 regular basis?
20 A I have been asked to do that, and I have made certain
21 determinations based on the physical evidence.
22 THE COURT: No, I'm going to sustain the objection.
23 MS. PALM: Court's indulgence
24 BY MS. PALM:
25 Q Have you been allowed to testify as an expert in

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1 this issue.
2 MR. SMITH: It's not necessary, Judge.
3 BY MS. PALM:
4 Q Could that pillowcase --
5 THE COURT: Do you have that expertise to make that
6 conclusion, sir?
7 THE WITNESS: The conclusion that I could make would
8 be that the pillowcase was either folded or bunched up and that
9 it came in contact with her blood. And that would not be
10 inconsistent with what Ms. Palm just said.
11 THE COURT: Are there other options for that finding
12 or --
13 THE WITNESS: There are other options, yes.
14 THE COURT: And who are those?
15 THE WITNESS: Well, for instance, like I said, the
16 pillowcase could be bunched up, and if it came in contact with
17 her blood somehow while it's bunched up, it could also have a
18 that appearance.
19 BY MS. PALM:
20 Q Did you consider the question of whether Ms. Witmarsh
21 had any defensive wounds on her body?
22 A I did examine the autopsy photographs and the scene
23 photographs and read the autopsy report.
24 Q And did you note any wounds that could have been
25 defensive wounds on her body?

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1 other courts in Clark County on the issue of whether a wound is
2 defensive or accidental?
3 A Yes.
4 Q And so other courts in Clark County have recognized
5 you as an expert in that field?
6 A Yes.
7 Q And what qualifies you to be an expert and give such
8 an opinion?
9 THE COURT: Ms. Palm, I think your other question was
10 the -- I don't know if you were referring to the stab wound to
11 her side or are you just referring to --
12 MS. PALM: I'm just referring to the stab wound her
13 side, could that have been an accidental wound? Can that be
14 ruled out?
15 THE COURT: Okay, but he's -- your question now is
16 asking about defense wounds on the hand.
17 MS. PALM: No, my question now --
18 BY MS. PALM:
19 Q Have you been accepted as an expert in Clark County
20 courts to testify on the issue of whether injuries to a person,
21 injuries received by a person or a deceased person are
22 accidental or appear to be accident?
23 MR. SMITH: And Judge, I'm going to object. This
24 witness wasn't noticed for those purposes, first of all. And
25 he's not a medical examiner. He can't offer his opinion on the

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1 ultimate legal conclusion in this case.
 2 MS. PALM: I'm not asking him for opinion. I'm
 3 asking if it --
 4 THE COURT: Counsel approach.
 5 MS. PALM: -- could be ruled out.
 6 (Off-record bench conference).
 7 THE COURT: Ladies and gentlemen, it's a good time
 8 for us to take your afternoon break. During this recess it is
 9 your duty not to converse among yourselves or with anyone else
 10 on any subject connected with the trial, read, watch or listen
 11 to any report over commentary on the trial by any person
 12 connected with the trial or by any medium of information,
 13 including without limitation, newspaper, television, radio or
 14 the Internet.
 15 You're not to form or express an opinion on any
 16 subject connected with this case until this matter is finally
 17 submitted to you. We'll just take a short recess.
 18 Sir, you can come down from the stand. If you don't
 19 mind, sir, we have a little ante room right --
 20 THE WITNESS: Uh-huh.
 21 THE COURT: -- after the first doors.
 22 THE WITNESS: Okay.
 23 THE COURT: You can just have a seat in there.
 24 (Outside the presence of the jury)
 25 THE COURT: And we're outside the presence of the

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1 office with her stab wound. I mean, I've never heard of a body
 2 being a crime scene.
 3 MS. PALM: The crime scene extends to the
 4 instrumentality of death.
 5 THE COURT: Okay.
 6 MS. PALM: And the collection of evidence and the
 7 body that was at the crime scene.
 8 MR. SMITH: Judge, there's another problem. This
 9 isn't listed in his report at all that he was going to offer
 10 this conclusion. The report that was provided says the
 11 conclusions were going to go to toxicology, improper evidence
 12 collection, and Mr. O'Keefe's wounds, and that's it. It
 13 doesn't say anything about offering an opinion as to whether or
 14 not this was a homicide or an accidental death.
 15 THE COURT: Is that part of his report that was
 16 provided to the DA?
 17 MR. SMITH: No, it's nowhere in the one that I'm
 18 reading.
 19 THE COURT: I'm asking Ms. Palm.
 20 MS. PALM: No, I don't --
 21 THE COURT: I mean, she can --
 22 MS. PALM: -- I don't believe it's in the report, but
 23 he does include his conclusion that Mr. -- that he concludes
 24 conclusions about the angle of Ms. Winmarsh's wounds, Mr.
 25 O'Keefe's injuries, the fact that the timing of the injury

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1 jury The notice of expert says that Mr. Schiro will testify
 2 in the area of crime scene analysis, crime scene investigation,
 3 processing of crime scenes, collection and preservation of
 4 evidence, latent print comparison, footwear comparison, and DNA
 5 evaluations, okay.
 6 Now you've asked him to render opinion as to whether
 7 or not the stabbing was accidental, is that correct?
 8 MS. PALM: No, I asked him to render an opinion
 9 whether an accident can be ruled out.
 10 THE COURT: Okay want where in what you've identified
 11 as to his area of testimony have you identified that topic?
 12 MS. PALM: I --
 13 MR. SMITH: Not only that, Judge, it's not in his
 14 report.
 15 THE COURT: Well, hang on. Let's go one step at a
 16 time.
 17 MS. PALM: I think it's part of crime scene
 18 reconstruction and analysis.
 19 THE COURT: Well, isn't crime scene the location of
 20 the bed, the blood splatter, the detection of blood, the
 21 measurements?
 22 MS. PALM: Interpretation of all the evidence is part
 23 of what he does and what he's qualified to do. And the other
 24 thing is --
 25 THE COURT: The crime scene is not in the coroner's

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1 could have been an accident. So that's all in there. I just
 2 want him to say so an accident can't be ruled out.
 3 And they got their ME to testify that it's a
 4 homicide, but the ME does not look at any of the physical
 5 evidence, she doesn't do crime scene reconstruction, so she's
 6 just limited to the body. This is his area of expertise.
 7 THE COURT: Can I see his report? I just have a CV
 8 here.
 9 MR. SMITH: And Judge, it's the ME's job to rule out
 10 whether or not it's an accidental death, not this chemist.
 11 THE COURT: Do you know which paragraph I should be
 12 looking at?
 13 MS. PALM: Well, I think probably all of them on the
 14 injuries. Actually, O'Keefe's wounds and it talks about the
 15 angles of Ms. Winmarsh's wound and the depth of her injuries.
 16 THE COURT: In the report under conclusions it
 17 appears to me that there are four conclusions that he
 18 identified. One is toxicology, which we're not dealing with
 19 right now. Number two is improper evidence collection. Number
 20 three is Mr. O'Keefe's wounds. And number four is basically
 21 miscellaneous. I don't see under -- I'm assuming it would be
 22 under miscellaneous where he gives notice to the State that
 23 that will be one of his conclusions.
 24 MS. PALM: So --
 25 THE COURT: Tell me where to look and I'll review it.

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1 MS. PALM: — I think the State has notice from his
2 area of expertise from the kind of evidence that he's
3 considering in that report that I might ask that question. It
4 doesn't have to be conclusion in his report.

5 And aside from that, we didn't have a notice that
6 they were going to have an officer blurt out a racial slur, but
7 they got to do that, and that's not harm. I can't ask an
8 expert that they have notice of the subjects that he's going to
9 be covering —

10 THE COURT: Okay, we don't — okay, hang on. In this
11 court we don't go in for that, first off. If there was an
12 error on one side that doesn't mean we commit an error on the
13 other side. So, the fact that someone may have blurted out a
14 racial slur doesn't mean that I ignore the rules of evidence
15 nor the requirements under noticing of experts.

16 And so if you want to start over with your argument,
17 I'll be more than happy to listen to it.

18 MS. PALM: My argument is that I think that they had
19 fair notice given his area of expertise and the kind of
20 evidence that he was reviewing and the comments in his report
21 about looking at the angle of the wound and those kind of
22 things that questions about the injuries to either one of them
23 could have come up in the context of crime scene reconstruction
24 and that kind of determination.

25 And again, you know, the ME does not consider that

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1 can in his report. I don't see — please tell me which page
2 and which paragraph where it says he's going to render an
3 opinion on this question.

4 MS. PALM: It's not addressed in there.

5 THE COURT: Well, isn't it required to if he submits
6 a report?

7 MS. PALM: I think it's fair game for a crime scene
8 reconstructionist given the kind of evidence that he's looking
9 at that I can ask him if something can be ruled out, I'm not
10 asking him is it an accident. I'm not asking him is it
11 self-defense. I'm just asking him in his experience can that
12 be ruled out.

13 And the difference between the State's CSAs and him
14 is he's a crime scene reconstructionist in addition to being a
15 crime scene analyst.

16 MR. SMITH: Well, Judge, where is his crime scene
17 reconstruction? Where is the body? Where's a mannequin of a
18 woman with a body and a knife in it? We don't — I mean, that
19 — he wants to draw a conclusion based on the crime scene,
20 which is now Mrs. Witmarsh's body, but there's no evidence that
21 he actually did anything but look at some photographs.

22 THE COURT: I think the question that is being posed
23 to Mr. Schiro is beyond his expertise, beyond what's identified
24 in his report, and also beyond the notice of expert that was
25 filed in this court February 20th, '09. So I'm sustaining the

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1 kind of evidence. That's — he's perfect impeachment for the
2 ME who testifies that it's a homicide just based on looking at
3 the body.

4 MR. SMITH: Judge, and the problem is that the State
5 calls crime scene analysts and crime scene investigators,
6 people who actually go to crime scenes and reconstruct crime
7 scenes and impound evidence. And I think it goes without
8 saying that the State couldn't ask one of its crime scene
9 analysts whether noticed as an expert or not to render opinion
10 as to the mechanism of death in a case. That's not — that's
11 outside of their area of expertise.

12 It's no different — this guy is a crime — this is a
13 chemist posing as a crime scene analyst for today. He's been
14 noticed as a crime scene analyst. So for them to argue that we
15 are on notice that he was going to get up on the stand and say
16 that this was an accidental stabbing because he was noticed as
17 a crime scene analyst and an expert in DNA collection, I just
18 that that kind of flies in the face of reason.

19 MS. PALM: And —

20 THE COURT: Doesn't under the notice statute state
21 that a report's supposed to be provided?

22 MS. PALM: If a report is made, then you need to
23 provide it. It doesn't say you're limited to only discussing
24 every sentence that in that report.

25 THE COURT: Well, he didn't even address this top he

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1 objection. Everyone take their break. As soon as the jury's
2 ready, we'll get back on the stand. We do have some questions,
3 if you want it come up and review these. Have I not looked as
4 them yet.

5 MS. GRAHAM: Judge, can we take a bathroom break real
6 quick, too, or —

7 THE COURT: That's fine. Just —

8 (Court recessed at 3:14:45 p.m. until 3:26:34 p.m.)

9 (In the presence of the jury)

10 THE MARSHAL: Come to order. Department 17 of the
11 Eighth Judicial District is again in session. Honorable Judge
12 Michael P. Villani presiding. Make sure your cell phones are
13 turned off, please.

14 MR. PIKE: Your Honor, during the break —

15 THE COURT: We're outside the presence of the jury
16 panel.

17 MR. PIKE: Thank you. During the break Mr. Smith and
18 I had the opportunity to review the three questions
19 (indiscernible) by Juror No. 7.

20 THE COURT: I haven't even looked at them yet.

21 MR. PIKE: Okay. We — one question is could a
22 scenario of the knife being wiped off cause that injury? Mr.
23 Smith and I both have the concern about a scenario. That term
24 being used may open the door to questions of other scenarios
25 are possibilities, so if you strike the scenario and if you

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1 want to phrase the question or if you want to ask it in a
2 different way that just says could the notify be wiped off
3 cause the wound, certainly that would be within the Court's
4 discretion or if you don't want to ask it, that's fine, too.
5 Other than that --
6 THE COURT: You said could they --
7 MR. PIKE: The scenario --
8 THE COURT: Could the knife have been wiped off. Is
9 that it? I mean --
10 MR. PIKE: Well, could wiping the knife off have
11 caused the wound -- it just causes -- it's too inarticulate.
12 THE COURT: Right.
13 MR. PIKE: We don't know which wound it is, so maybe
14 it just be better to not try and rephrase what we think they're
15 saying.
16 THE COURT: The parties agree? They agree.
17 MR. PIKE: Okay.
18 THE COURT: This the next one?
19 MR. PIKE: Could the bruises on Mrs. Witmarsh's body
20 be considered defensive wounds? I don't think either of us
21 want that.
22 THE COURT: Okay.
23 MR. PIKE: Can the handle of the knife still receive
24 DNA testing at this time? I have no objection to that. The
25 State --

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1 please.
2 THE COURT: Sir, you understand you're still under
3 oath?
4 THE WITNESS: Yes.
5 THE COURT: All right. Next question.
6 MS. PALM: Pass the witness, your Honor.
7 CROSS-EXAMINATION
8 BY MR. SMITH:--
9 Q Now -- good afternoon, sir.
10 A Good afternoon.
11 Q On direct examination you talked a little bit about
12 defensive wounds. Do you recall that?
13 A Yes.
14 Q And one of the answers that you gave was that you
15 reviewed the autopsy photos and you saw no evidence of any
16 injuries on Mrs. Witmarsh's hands. Do you recall that?
17 A I didn't say any injuries. There were some injuries,
18 but it appeared to be an older injury, I know, at least one on
19 her hand.
20 Q Older by how long?
21 A I have no idea.
22 Q So do you mean older like it was scabbed over already
23 or it was fresh or --
24 A It looked like it was scabbed and may have maybe been
25 a couple of days old.

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1 MR. SMITH: (Indiscernible).
2 MR. PIKE: -- has an objection to it.
3 THE COURT: Yeah, because there's nothing that can be
4 done now, so -- I mean, he's already testified that they could
5 have done it.
6 MR. SMITH: Right.
7 THE COURT: So that's --
8 MR. PIKE: But it's still preserved. The evidence is
9 preserved for any --
10 THE COURT: Right.
11 MR. PIKE: -- additional testing.
12 THE COURT: New trial that you're going to get. Is
13 that what you're saying?
14 MR. PIKE: No. That's right. Think positively. No,
15 so that -- and that's strictly up to the -- I'm not going to
16 push for it if your Honor doesn't want to give it.
17 THE COURT: No, because I think it's --
18 MR. PIKE: Then they're considering speculation.
19 THE COURT: Right.
20 MR. SMITH: Yeah, they may take (indiscernible).
21 THE COURT: All right, are we ready?
22 MS. PALM: Yes.
23 THE MARSHAL: Officers and members of the court.
24 Department 17 jurors. You may be seated ladies and gentlemen.
25 Let's check to make sure your cell phones are turned off,

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1 MR. SMITH: And for the record, I'm holding State's
2 Exhibit 39.
3 BY MR. SMITH:--
4 Q Were you talking about this injury?
5 A Yes.
6 Q And you're saying that looks older?
7 A Yes.
8 Q Okay. Now, I'd like to talk a little bit about your
9 training and experience. We've already heard testimony that
10 you received a bachelor of science degree in microbiology.
11 A Yes.
12 Q And it appears that you also received a master of
13 science in industrial chemistry.
14 A In forensic science, yes.
15 Q Okay. And those are generally -- that's generally
16 the education that a person who wants to become a chemist goes
17 into; is that correct?
18 A It depends. Microbiology, you know, typically a
19 biology area; industrial chemistry, a chemist, but those are
20 the types of analyses we do in crime labs.
21 Q Okay. And also, the type of analyses you do if
22 you're a DNA person?
23 A Correct.
24 Q But that education doesn't necessarily help you
25 formulate opinions about mechanism of injuries now, does it?

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1 A Not those particular aspects of my education.
 2 Q Okay. So let's talk a little bit about your
 3 training. How many classes have you had in crime scene
 4 documentation?
 5 A Training classes I know I've attended several
 6 classes. I've attended over 35 continuing education classes,
 7 some of which were dealing with evidence collection,
 8 preservation, crime scene investigation maybe three.
 9 Q Okay. So three classes total, but some continuing
 10 education?
 11 A Yes.
 12 Q Okay. And, in fact, on your CV that you provided
 13 both to the defense and the State, you list professional
 14 training attended; is that correct, sir?
 15 A Yes.
 16 Q And that CV -- actually, why don't you describe what
 17 a CV is.
 18 A A CV is a collection of information about a person.
 19 Kind of like a resume. Has all the person's, I guess,
 20 accomplishments and professional organizations, things like
 21 that.
 22 Q Okay. And what training they've gone through?
 23 A Yes.
 24 Q And it's important to kind of list everything on that
 25 CV; is that correct?

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1 remember that class?
 2 A Yes.
 3 Q How long was that?
 4 A That was also a week long, and I believe that one was
 5 in May of '95.
 6 Q July of '95.
 7 A July of '95.
 8 Q Okay. Now looking at your CV, you'd agree with me
 9 that it appears you've never taken a class in the mechanism of
 10 injury, correct?
 11 A Not according to my CV, but then my CV doesn't list
 12 like seminars that I may have attended. For instance, death
 13 investigation conferences, things like that that may be shorter
 14 in nature.
 15 Q Nothing in depth, correct?
 16 A Other than my reading and being exposed to it through
 17 my job and in these short training classes, that would be about
 18 it.
 19 Q Okay. Now let's talk about your job. You're
 20 currently employed as a forensic chemist, right?
 21 A Yes, that is my title, yes.
 22 Q And is that your major job description?
 23 A Major job description would be DNA technical leader,
 24 actually.
 25 Q Okay. Now, you don't actually go out to the scene

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1 A Yes.
 2 Q Okay. And on your CV you list a class blood stain
 3 pattern analysis and crime scene documentation. Do you recall
 4 taking that class?
 5 A Yes.
 6 Q And how long was that class?
 7 A That was a week long course.
 8 Q Okay. And when did you take that class?
 9 A Let me think, that was -- I know the date's
 10 specifically on the CV, but I think --
 11 Q August, 1996 sound appropriate?
 12 A Yes.
 13 Q Okay.
 14 A Yes.
 15 Q And so from August 1996 through up until the present
 16 time you'd agree that there's no other classes in crime scene
 17 documentation listed on your CV; is that correct?
 18 A There may not be.
 19 Q Okay.
 20 A That's correct.
 21 Q Okay. And so that was a class you took 13 years ago,
 22 correct?
 23 A Correct.
 24 Q Okay. And then it says here that you also took a
 25 class personality profiling and crime scene assessment. Do you

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1 and operate as a crime scene investigator, correct?
 2 A Yes, we still do at my lab, yes.
 3 Q You do at your lab?
 4 A Yes.
 5 Q Okay. Is there a person that works at your lab --
 6 MR. SMITH: Court's indulgence.
 7 BY MR. SMITH::
 8 Q What's the name of the director at your lab?
 9 A The director of my lab a currently Kevin Arduwin
 10 (phonetic).
 11 Q Is it your lab's practice to go out to crime scenes?
 12 A Yes, if we're called upon by our local law
 13 enforcement agencies, yes, we'll go out.
 14 Q Okay. So it's your testimony that it's a practice
 15 DNA analysts go out to crime scenes?
 16 A Yes.
 17 Q Now, if Kevin Arduwin said differently, would you
 18 have a reason to dispute that?
 19 A If he said differently, I would, yes.
 20 Q Even though he's the director?
 21 A If you were to call him and he says no, we don't go
 22 to crime scenes, I would definitely dispute that.
 23 Q Okay. So you also have some experience in crime
 24 scene reconstruction?
 25 A Yes.

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1 Q But you didn't actually reconstruct a crime scene in
2 this case, did you?

3 A Well, in this case there were only certain elements
4 that could be reconstructed and those were the elements that I
5 discussed towards the end of my direct testimony.

6 Q Okay. And sir, it's correct that your primary job
7 function is to merely evaluate DNA samples once they arrive at
8 your lab, is that correct?

9 A Well, as a technical leader I'm also responsible for
10 the quality assurance and the results that come out of our lab,
11 our DNA lab, yes.

12 Q But your primary job is to -- is handling DNA,
13 correct?

14 A Yes, handling and analyzing it and supervising the
15 technical aspects of it, yes.

16 Q Your primary job duty is not drawing conclusions as
17 to what happened at a crime scene based on photographs, is that
18 correct?

19 A I would say that's not my primary duty, but that can
20 be one of my duties, yes.

21 Q Is it kind of like a hobby of yours?

22 A No, we do it as part of our investigations a lot of
23 times when the law enforcement agency may bring us crime scene
24 photographs and ask us to assess the crime scene photographs to
25 try and determine any information we can that may help them in

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1 A Yes.

2 Q Okay. Now looking at your report, do you have your
3 report with you?

4 A Yes.

5 Q Okay. Now I'm looking at and I'm on Page 3, and
6 we're looking at the conclusion -- the paragraph where we're
7 talking about Mr. O'Keefe's wounds, is that correct?

8 A Which paragraph? There are several paragraphs.

9 Q Okay. I'm talking about the first paragraph.

10 A Okay.

11 Q Now the third line down starting with the first
12 complete sentence, starting with the exact mechanisms. Do you
13 see that part?

14 A Yes.

15 Q So in your report you acknowledge that the exact
16 mechanism by which the defendant received those injuries is
17 unknown, is that correct?

18 A That's correct.

19 Q Okay. Then you attempt to come up with a sequence of
20 events nonetheless based on your interpretations of the
21 evidence, correct?

22 A Well, based on, again, where his blood was found. I
23 believe it was most likely occurred either just before Ms.
24 Witmarsh received her injury, while she received her injury or
25 just after she received her injury.

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1 their investigation.

2 Q Okay. Now, let's talk about of the testimony you
3 gave regarding the collection of the penile swabs in this case.
4 Do you recall that?

5 A Yes.

6 Q Okay. Now, despite what you testified to, you have
7 no reason to doubt the integrity of the buccal swabs conducted
8 in this case, do you?

9 A No, considering that they gave a pure profile, no.

10 Q Okay. It's no reason to question those integrity
11 (sic)?

12 A That's correct.

13 Q And, in fact, you relied on the buccal swabs to make
14 some conclusions in your report, correct?

15 A Well, based on what the DNA analyst found in the
16 buccal swab, yes.

17 Q Okay. Let's talk a little bit about the report
18 itself. Specifically with regards to your conclusions that you
19 drew about Mr. O'Keefe's wounds. It appears that you attempted
20 to come to a conclusion as to the sequence of events in this
21 case, is that correct?

22 A Certain aspects of the sequence of the events, yes.

23 Q Okay. Specifically with regards to the injuries that
24 we've all now seen that were apparently on Mr. O'Keefe's hands,
25 is that correct?

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1 Q Well, I mean, those are the only three possibilities,
2 correct? It's either before, at the same time or after.

3 A Given the evidence, yes.

4 Q Okay. But your ultimate conclusion was that it's
5 your opinion that he received those injuries at the same time
6 she -- Ms. Witmarsh received her injuries?

7 A No, I believe that it was more likely that he
8 received them before or after.

9 Q Okay. Now, looking at the same -- the first
10 paragraph. Now I'm going one, two, three, four, five, six
11 lines down. Can you see the part where it says and his blood
12 on the pants found in the bathroom? Are you with me?

13 A Yes.

14 Q Okay. Then there's a part where it says it is most
15 likely that he received these injuries around the same time
16 that Ms. Witmarsh received her injury. Do you see that part?

17 A Yes.

18 Q Okay. Now, if we go down to the third paragraph
19 where it says another possibility is that he received his
20 injuries at the same time Ms. Witmarsh received her injury,
21 then you say this scenario is less likely than the other two
22 scenarios. So those two sentences are somewhat inconsistent,
23 are they not?

24 A No, I don't believe so because sentence after the one
25 I said that he received his injury around the same time she

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