

1 A Most the time, your muscles tend to go rigid. It's
2 not a matter of flopping around or anything like that. It
3 actually incapacitates the neuromuscular system, so you tend to
4 lock up.

5 Q Okay.

6 A It's not so much that you have mobility. As we tried
7 to grab his hands though, and the taser cycle starts to come
8 off, that's when we get movement out of the defendant.

9 Q Okay. So the first taser cycle was not effective on
10 him?

11 A It worked as it's supposed to. It doesn't mean that
12 people always comply after being tased the first time.

13 Q Okay. So during the first tase cycle, you were not
14 able to get control of him?

15 A Correct.

16 Q Did you wait until that cycle ended and try, or did
17 you start during the cycle?

18 A We -- I believe that's when I'm doing the process of
19 putting on my gloves. I don't believe that I was able to
20 holster my firearm, get my gloves on in time, and take the hand
21 from Officer Taylor in the five-second cycle period.

22 Q Okay. So did he I guess tense up completely from the
23 taser?

24 A Yes, ma'am.

25 Q Do you have a concern about the blood at the scene?

ROUGH DRAFT TRANSCRIPT

002150

1 A Yes, ma'am.

2 Q Did you have some information going in that made you
3 concerned?

4 A We were advised that there could be a commutable
5 disease.

6 Q What were you told of?

7 A At the time I can't recall.

8 MR. LALLI: Your Honor, I'm sorry. This is hearsay.
9 I would object.

10 THE COURT: Sustained.

11 MS. PALM: I'm not asking for the truth of the
12 matter, I'm asking for what his reaction to it was.

13 MR. LALLI: Relevance.

14 THE COURT: I think there's been other testimony on
15 this issue. I'm going to sustain the objection.

16 BY MS. PALM:

17 Q Do you know who gave you the information?

18 A I believe it came from dispatch.

19 Q Do you know where dispatch got the information?

20 A No ma'am, I do not.

21 MS. PALM: Court's indulgence. Pass the witness.

22 THE COURT: Redirect?

23 MR. LALLI: Just very briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. LALLI:

ROUGH DRAFT TRANSCRIPT

002151

1 Q Officer, you testified on cross that the defendant
2 became agitated at one point?

3 A Yes, sir.

4 Q When was that?

5 A Well he was agitated once I began the dialogue. His
6 responses to me of, get the fuck in here, these weren't the
7 responses of, oh please come in here, and very calm. No, they
8 were agitated. They were aggressive in nature.

9 Q After you -- or at the point of entering the room,
10 did he become more agitated?

11 A He was still at an elevated state of excitement when
12 he began waving his hands up and down her body.

13 Q Okay. If a suspect has nothing in his hands, does
14 that mean he's not a threat to you?

15 A No, sir.

16 Q A person can still be a threat even though they don't
17 have an actual weapon?

18 A Absolutely.

19 Q Okay. And it's your recollection that you never
20 stepped on the bed?

21 A Yes, sir.

22 Q You never stepped on the victim's body?

23 A Not that I recall.

24 Q Thank you.

25 MR. LALLI: Nothing else.

ROUGH DRAFT TRANSCRIPT

002152

1 THE COURT: Any recross?

2 MS. PALM: No, Your Honor.

3 THE COURT: Any questions from any of the jurors?

4 Yes, we do have a question. Counsel approach, please.

5 (Off-record bench conference)

6 THE COURT: We do have a question from one of the
7 jurors, however I'm not able to ask the question. All right.

8 Thank you, Officer, for your testimony. You are excused.

9 Next --

10 MR. LALLI: Dan Newberry.

11 THE COURT: All right.

12 MR. LALLI: I'm sorry, did the Court want us to call
13 another witness?

14 THE COURT: Yes.

15 MR. LALLI: Okay. Dan Newberry.

16 THE COURT: How long do you expect this witness to
17 be?

18 MR. LALLI: Well my direct will be very short.

19 THE COURT: All right. I'm just trying to schedule
20 the break, that's all.

21 THE MARSHAL: And sir, if you will remain standing
22 please, sir. Raise your right hand and face the clerk.

23 DANIEL NEWBERRY, STATE'S WITNESS, SWORN

24 THE MARSHAL: Okay, if you'll just slide up to the
25 microphone. Please state and spell your name for the record.

ROUGH DRAFT TRANSCRIPT

002153

1 THE WITNESS: My name is Dan Newberry. Spelling of
2 Dan, D-A-N. Newberry, N-E-W-B-E-R-R-Y.

3 DIRECT EXAMINATION

4 BY MR. LALLI:

5 Q How are you employed?

6 A As a sergeant with the Las Vegas Metropolitan Police
7 Department.

8 Q What's a sergeant?

9 A What's that?

10 Q What is a sergeant?

11 A Essentially a team leader of a group of officers or
12 detectives.

13 Q Okay, so you're a supervisor?

14 A Yes.

15 Q And what's your current assignment?

16 A My current assignment right now is property crimes.
17 I supervise four detectives.

18 Q And what was your assignment back in November of
19 2008?

20 A In November of 2008, I was a sergeant over a problem
21 solving unit, also referred to as a PSU.

22 Q What is a problem solving unit?

23 A They are a plain clothes unit used specifically for
24 problems within area commands to address such as robberies,
25 high narcotics, or other crime related issues that pop up.

ROUGH DRAFT TRANSCRIPT

002154

1 Q Were you working on November 5th of 2008?

2 A Yes, I was.

3 Q What were you doing that night?

4 A That night we were working robbery suppression along
5 two specific corridors.

6 Q Robbery suppression?

7 A Yes.

8 Q Okay. You said we. Were there others with you?

9 A There were two officers with me, we were in an
10 unmarked car. Yes.

11 Q Who were those officers?

12 A Officer Jeremiah Ballejos and Officer Sean Taylor.

13 Q At some point do you respond to 5001 El Parque?

14 A Yes, we do.

15 Q Do all of you respond together?

16 A Yes.

17 Q Are you in one car?

18 A Yes.

19 Q Okay. When you respond to El -- I'm sorry, El
20 Parque, do you go to unit 35?

21 A Yes, we do.

22 Q And when you -- I'm going to direct your attention
23 to State's Exhibit number 1. Does that appear to be a diagram
24 of the inside of unit 35?

25 A Yes, it does.

ROUGH DRAFT TRANSCRIPT

002155

1 Q When you arrive, is it a dynamic situation?

2 A Absolutely.

3 MS. PALM: Objection, Your Honor. Leading.

4 MR. LALLI: Okay.

5 THE COURT: Sustained.

6 MR. LALLI: All right.

7 BY MR. LALLI:

8 Q Describe the situation when you arrive in the room.

9 A When I arrived in the room, Officer Todd Conn was
10 standing beside the wall there that leads into the bedrooms.
11 There was yelling going on. Officer Conn was trying to speak
12 with the person in the room, trying to talk with him. There
13 were several other uniformed officers in the kitchen area. It
14 seemed very chaotic. And from the details of the call being a
15 female that was bleeding heavily, also in reference to a
16 domestic dispute, we knew it was not a good situation at that
17 moment.

18 Q Was Officer Conn attempting to get that person out of
19 the room?

20 A Yes, he was.

21 Q And what was the purpose of doing that? Why did he
22 want the suspect out of the room?

23 A We wanted him to come to our environment so that we
24 knew what unknown's or known's were in that room.

25 Q And were you concerned about the person who was

ROUGH DRAFT TRANSCRIPT

002156

1 bleeding?

2 A Absolutely I was.

3 Q All right. Do you formulate a plan to go into the
4 room?

5 A Yes.

6 Q Do you eventually go into that room?

7 A Yes, we do.

8 Q What is the plan?

9 A After listening to Officer Conn converse with the
10 subject in the room for a few moments, I realized that whatever
11 negotiations or attempt to get him out of the room was going to
12 be futile, it wasn't going to work. I moved positions. On the
13 diagram, I moved opposite of Officer Conn.

14 Q You could actually -- yes.

15 A Oh, I can point --

16 Q Yeah.

17 A -- an arrow up here?

18 Q You can -- you can --

19 A Officer Conn is where this arrow is right here. I
20 moved to this position on this wall.

21 Q Let me --

22 A Oh.

23 Q Let me clear. And --

24 A Okay.

25 Q -- try again, maybe using small little checkmarks or

ROUGH DRAFT TRANSCRIPT

002157

1 X's or something.

2 A Officer Conn was in this -- there we go; was about
3 right here trying to speak with the subject in the room. I
4 moved to this wall over here, and do what they call a quick
5 peek, which is a quick motion around the wall using your head
6 and your body, your upper torso to rotate to look around the
7 wall, and see what you can see. It takes a second, second
8 and-a-half, maybe two seconds. Was able to look in the room.

9 Q Okay.

10 A And see our subject on the ground.

11 Q All right. After you do all that, do you and other
12 officers go into the room?

13 A Yes.

14 Q And do you go in in an organized or methodical
15 manner?

16 A We form what we call a stack.

17 Q Okay.

18 A Which is essentially an entry team.

19 Q Officer Conn has testified that he was in the front
20 of the line. Where were you?

21 A Last.

22 Q What other -- who else was in the line?

23 A The other officers in the line -- Officer Conn was
24 first, Jeremiah Ballejos was second as low lethal, and Sean
25 Taylor was third. And I was of course number four.

ROUGH DRAFT TRANSCRIPT

002158

1 Q You said low lethal?

2 A Yes.

3 Q What is low lethal?

4 A Low lethal is a designation for somebody that is
5 going to use -- or is our designated person to use a less than
6 lethal force, something other than a firearm. In this case it
7 was an ECD, or an electronic control device.

8 Q Is that also referred to as a taser?

9 A Yes, it is.

10 Q Was somebody lethal?

11 A Yes, they were.

12 Q Who was that?

13 A That was Officer Todd Conn.

14 Q Okay. So Conn is lethal, and the next person was low
15 lethal?

16 A Yes.

17 Q Were you going into that room with any weapon drawn?

18 A Yes, I had a sidearm in my hand.

19 Q All right. So what happened when you went in?

20 A We made entry into the room. Officers immediately
21 went to our Mr. O'Keefe. Is that correct, Mr. O'Keefe?
22 Immediately went to him, attempted to get him into custody. I
23 cleared the bathroom, and rotated back around to assist in
24 taking Mr. O'Keefe into custody.

25 Q Well when you went in, did you see an individual?

ROUGH DRAFT TRANSCRIPT

002159

1 A I saw --

2 Q A suspect?

3 A I saw two people, yes.

4 Q Okay. Describe either one of them first.

5 A When we went in, there was of course a male subject
6 and a female subject.

7 Q The male subject.

8 A Okay.

9 Q Do you see him in the courtroom?

10 A Yes, I do.

11 Q Can you point to him and tell us what he is wearing
12 today?

13 A He is sitting over here, and he's wearing a brown
14 suit with a blue tie.

15 MR. LALLI: Your Honor, may the record reflect the
16 witness has identified the defendant?

17 THE COURT: Yes, it will.

18 MR. LALLI: Okay.

19 BY MR. LALLI:

20 Q Describe what happened now after you went in.

21 A We went into the room. Orders were given to him to
22 move away from her. He was laying not fully on top of her, but
23 on kind of her left side. Again with the map, he was laying
24 right about there on her side. His hands were moving rapidly
25 and he was yelling at us, don't look at her, almost trying to

ROUGH DRAFT TRANSCRIPT

002160

1 cover up her body.

2 She was nude from the waist down, she had on a tank-
3 top. He refused to obey the officer's commands to roll away
4 from her and lay flat. They used the ECD on him. He was hit
5 with the probes from the ECD.

6 Q When you say the probes, can you just briefly explain
7 to our jury how does a taser work?

8 A A taser, or the ECD as we refer to it, the electronic
9 control device, has two operating modes. One mode is what they
10 call a drive stun, or a drive touch stun type of device where
11 the probes -- there's a cartridge on the front of it that
12 contains two probes. And it can be used to deliver an
13 electronic shock via the touch stun mode. The other mode is of
14 course --

15 Q So let me just clarify. Is that with direct
16 application?

17 A Yes.

18 Q So --

19 A That it touching the taser to the person.

20 Q All right. And there's another way it is utilized?

21 A That's correct, and that is the probes.

22 Q Okay. Can you explain how the probes work?

23 A The probes are on the cartridge or on the front of
24 the taser. When the electricity gets to the -- it fires two
25 barbed probes. They go a distance of 21 feet, and with a

ROUGH DRAFT TRANSCRIPT

002161

1 course of spread. And they hit the subject, and they deliver
2 the shock from a far-off distance.

3 Q Okay. So if you were where you are seated right now,
4 and I was standing right here being the very large target that
5 I am, could you hit me with a taser probe?

6 A Yes.

7 Q And is there anything -- the probes are little darts?

8 A They're a dart, or they look like a dart, and they
9 have a barbed hook on the end.

10 Q And are they designed to stick into a person?

11 A Yes, they are.

12 Q And is there anything connecting the barbed darts
13 with the actual taser?

14 A There are two small wires that are attached. There's
15 a barb -- there's a wire attached to each barb that deliver the
16 electricity from the ECD.

17 Q And they connect to the barbs with the actual ECD?

18 A Yes.

19 MR. LALLI: May I approach the witness?

20 THE COURT: Yes.

21 BY MR. LALLI:

22 Q If I show you State's proposed Exhibit 9 for
23 identification, does that appear to be the barb or the dart
24 that we're talking about?

25 A That is a taser barb -- dart, yes.

ROUGH DRAFT TRANSCRIPT

002162

1 Q Is that a fair and accurate depiction of one that I
2 believe you picked up in the apartment?

3 A Yes, it is. It's one that is also missing the wire,
4 it's been detached from the wire.

5 Q Okay.

6 MR. LALLI: Your Honor, move for the admission of
7 State's proposed Exhibit 9.

8 MS. PALM: No objection.

9 THE COURT: 9 will be admitted.

10 (Exhibit 9 admitted)

11 BY MR. LALLI:

12 Q So now we're seeing -- looks like a little
13 (indiscernible) out of focus (indiscernible). There we go.
14 That's a taser dart or a taser barb?

15 A Yes.

16 Q And when you're firing it, there's a wire that's
17 connected to that and the taser itself?

18 A To the end of it, yes.

19 Q And is it through that wire that the charge comes?

20 A Yes, it is.

21 Q Okay. So a device like this was fired at the
22 defendant?

23 A Yes.

24 Q Okay. What happened?

25 A The cycle of the ECD was administered to him. He

ROUGH DRAFT TRANSCRIPT

002163

1 went rigid. They had difficulty getting his arm out from
2 underneath him to put him in handcuffs. A second cycle of the
3 ECD was used. Once that was done, we had him in handcuffs, and
4 he was carried out of the room.

5 Q When you say a second cycle, what does that mean?

6 A The cycles on the ECD's run in a five-second cycle.
7 It affords officers time to try to get somebody into custody
8 where they are not fully struggling. You still have to fight
9 against their body, but they're not fully struggling.

10 Q So is a cycle a shot of the taser, if you will?

11 A A shock, yes.

12 Q Okay. When you -- let me go back to State's Exhibit
13 number 1. When you go into the back bedroom where the
14 defendant is, using your finger, can you trace your path into
15 the room?

16 A Once we made entry, I rolled from this corner, run
17 into the room following the team. I went right here into the
18 bathroom to clear the bathroom, and then back out to assist
19 with his feet. So about right here.

20 Q Okay. Did you ever jump on the bed?

21 A No.

22 Q Did you ever do anything that would have caused blood
23 to become on the bottom of your shoes on the top of the bed or
24 on the sheets of the bed?

25 A No.

ROUGH DRAFT TRANSCRIPT

002164

1 Q Did you ever step on the body of the woman who was
2 inside the back room?

3 A Absolutely not.

4 Q Okay. Now you indicated that the defendant was taken
5 into handcuffs, and then removed from the room?

6 A Yes, he was.

7 Q Do you go out with him, or do you stay in the room?

8 A I stayed in the room and checked on the female victim
9 on the ground.

10 Q How much time passed between the defendant being
11 removed from the room and you checking on the female?

12 A Mere seconds.

13 Q Okay. Tell us what you did.

14 A I have training as an EMT. I went down and checked
15 for an immediate -- for a carotid pulse on the right --

16 Q And you just -- for the record, you just indicated to
17 your throat area?

18 A Yes.

19 Q All right.

20 A On the right side.

21 Q Okay.

22 A On the ride side of her neck, there was no blood in
23 that area.

24 Q What are you trying to feel for?

25 A Trying to feel for a heartbeat through the carotid

ROUGH DRAFT TRANSCRIPT

002165

1 pulse.

2 Q Okay. And you felt none?

3 A None. I also checked her pupils, they were fixed and
4 dilated. And I looked for chest rise and fall to see if she
5 was breathing, and there was none of that also.

6 Q What is fixed and dilated mean?

7 A Our pupils of our eyes react. They shrink or grow in
8 size with changes of light conditions from dark to -- when it's
9 bright outside they are constricted and small, to when you're a
10 dimly lit room or a dark room where they expand, and they are
11 dilated. In this one they were fixed, meaning that when you
12 shined a bright light in them, they did not constrict. They
13 stayed large, and they stayed dilated.

14 Q Okay. Did you shine a light into them?

15 A Yes.

16 Q Okay. Did you observe any signs of life in her?

17 A No, I did not.

18 Q All right. Was medical nearby?

19 A Medical was staged outside.

20 Q Outside the room?

21 A Outside the apartment. I do not know where they were
22 parked.

23 Q Okay. Does medical come in at some point?

24 A Yes, they do.

25 Q Do multiple paramedics come in and begin to work on

ROUGH DRAFT TRANSCRIPT

002166

1 this woman?

2 A Due to the initial sings that I had seen from the
3 female, I had requested one paramedic to come into the room to
4 start the initial assessment. And if he needed more after
5 that, we would have him bring more in. But --

6 Q Why one?

7 A Sometimes there's difficulty maintaining a crime
8 scene or preserving a crime scene with large numbers of people,
9 you know, walking through it or trampling through it. We try
10 to get like one person in to establish whether or not we can
11 give medical care before we bring in four or five other medical
12 personnel that of course would contaminate the crime scene.

13 Q Is the deceased woman in the bedroom the only person
14 who received -- or was seen by the paramedics who arrived?

15 A No.

16 Q Who else was?

17 A They treated Mr. O'Keefe.

18 Q Why?

19 A Number one, it's policy for us that when somebody has
20 had the ECD or the taser used on them that medical checks them
21 out. And second, we didn't know if he had any injuries from
22 what may have occurred in the apartment.

23 Q Did you observe him being treated by medical staff?

24 A Yes, I did.

25 Q Describe that for us.

ROUGH DRAFT TRANSCRIPT

002167

1 A He was extremely belligerent, would not cooperate
2 with them. Was even swearing at them.

3 Q What did he say?

4 A They were asking about his medical condition, I don't
5 recall the questions. But I do recall that he said, fuck you.

6 Q Okay, thank you.

7 MR. LALLI: Nothing further.

8 THE COURT: Cross-examination.

9 MS. PALM: Thank you, Your Honor. Just trying to
10 find something real quick.

11 CROSS-EXAMINATION

12 BY MS. PALM:

13 Q Good afternoon.

14 A Good afternoon.

15 Q Is it Sergeant?

16 A Yes, it is.

17 Q What time did you arrive at the scene?

18 A The call came out at I believe 23:00 or 23:01.

19 Q Um-hum.

20 A And it was shortly after that, I don't know the exact
21 time.

22 Q Okay. When you got there, do you recall in your
23 statement you said you listened for about 30 seconds, and then
24 decided to enter?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002168

1 Q So would that have been toward the end of the call,
2 or just prior to his arrest?

3 A That would have been just moments prior to his
4 arrest, yes.

5 Q Okay. Would it help you remember what time you got
6 there to look at the dispatch record?

7 A Sometimes they're accurate, sometimes they're not.
8 But yes.

9 MS. PALM: May I approach?

10 THE COURT: Yes.

11 BY MS. PALM:

12 Q (Indiscernible).

13 A Well, I don't remember my call sign from that night.
14 But the seven union (phonetic) units, seven union 3 and seven
15 union 6 are problem solving units, they are PSU units. And
16 they were both assigned, but they do not show arrived. But
17 they are assigned.

18 Q Okay. If Officer Conn testified that he got there
19 about six minutes into the call which started at 23:01, did you
20 get there before or after him?

21 A After him.

22 Q Okay. So you would have been there. Do you recall
23 that he was taken into custody at 23:13?

24 A I do not recall.

25 Q Would it help you to look at the report again?

ROUGH DRAFT TRANSCRIPT

002169

1 A Yes, if you want me to look for it. Yes, 23:13.

2 Q Okay. So you would have been there roughly about
3 five minutes before he was in custody; does that sound
4 accurate?

5 A I don't recall being in the room for any longer than
6 a minute. The living room, a minute and-a-half.

7 Q Okay. So even shorter?

8 A Yes.

9 Q Okay. Now when you looked into the room, you didn't
10 see anything in my client's hands?

11 A No, I did not.

12 Q Okay. And you saw him rubbing her face?

13 A I saw hand movements. I could see both of his hands,
14 and he was doing something with her upper body. I don't know
15 what he was touching or what he was doing, but his hands were
16 moving.

17 Q Okay. If -- do you recall giving a statement on the
18 night of November 5th?

19 A Yes.

20 Q If you said in that statement he looked like he was
21 rubbing toward her face, does that sound accurate?

22 A Yes.

23 Q Okay. And he didn't ever make a movement toward
24 officers, did he?

25 A He never made a punt or a kick that I know of.

ROUGH DRAFT TRANSCRIPT

002170

1 Q Okay. He never got up off the ground either, right?

2 A No.

3 Q On his own? And you never saw him moving to harm the
4 female?

5 A I don't know what he was trying to do.

6 Q Okay. But you never saw him moving to harm her?

7 A He was laying partially on top of her. She was
8 bleeding heavily, and he wasn't exactly inviting us into the
9 room to assist her.

10 Q Okay. But you never saw him try to strike her?

11 A No.

12 Q Okay. And he never made any verbal threats to you?

13 A I don't recall much of the conversation from being in
14 the room.

15 Q Okay. Do you recall the lighting in the room?

16 A I recall the light was on the bedroom, yes.

17 Q Okay. Do you recall if it's a overhead light or a
18 lamp, or what?

19 A I do not know.

20 Q Okay. Is it possible the light was coming from the
21 bathroom, the master bathroom?

22 A I don't know.

23 Q Okay, you just remember there was some light in
24 there?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002171

1 Q All right.

2 MS. PALM: I'm going to show him actually these two.
3 Okay. May I approach the witness?

4 THE COURT: Yes.

5 BY MS. PALM:

6 Q Sir, do you recognize these two photographs, what's
7 depicted in them?

8 A Yes, I do.

9 Q Is that how the room looked that evening?

10 A Yes.

11 MS. PALM: And for the record, that is defendant's LL
12 and KK. And I would move to admit.

13 MR. LALLI: No objection, Your Honor.

14 THE COURT: All right. Those two exhibits will be
15 admitted.

16 (Exhibits LL and KK admitted)

17 MS. PALM: Thank you.

18 BY MS. PALM:

19 Q Showing you KK -- (indiscernible). Is that how the
20 room looked when you were entering?

21 A I believe so, yes.

22 Q Okay. And do you recall how much room there is over
23 on the other side of the female's body?

24 A I do not.

25 Q Okay. Does looking at the crime scene diagram help

ROUGH DRAFT TRANSCRIPT

002172

1 you with that at all?

2 MS. PALM: Put that one back up.

3 THE WITNESS: Without knowing the scale, I wouldn't
4 be able to say what the distance is between her body and the
5 closet, or her body and the bed.

6 BY MS. PALM:

7 Q Okay. And you testified that you went over on the
8 other side of that body?

9 A Yes. I went -- can I draw on the screen again?

10 Q Sure.

11 A I was on this side of her body after we had removed
12 Mr. O'Keefe from the room.

13 Q After, or to get him under arrest?

14 A Well when we took him into custody --

15 Q Yes.

16 A -- as I had testified before, I came into here,
17 cleared the bathroom, and came out over here to control his
18 feet. As soon as Mr. O'Keefe was taken out of the room, I
19 stayed on that side and checked for the pulse.

20 Q Okay. So during the arrest process, you had to go
21 over on the other side to help control his feet?

22 A Yes.

23 Q Okay. And who else was over on the other side?

24 A Officer Todd Conn.

25 Q Uh-huh.

ROUGH DRAFT TRANSCRIPT

002173

1 A Officer Sean Ballejos -- sorry, Sean Taylor. And
2 Officer Jeremiah Ballejos.

3 Q Okay. So there's four of you that were over on the
4 other side --

5 A Yes.

6 Q -- of her body?

7 A Well in that area, yes.

8 Q Okay. Do you recall whether my client ended up on
9 top of her during the tasing?

10 A I do not.

11 Q Okay. Did you have to sign off on Officer Ballejos's
12 use of force report?

13 A Yes ma'am, I did.

14 Q You remember that report?

15 A I do.

16 Q Okay. Would it help you remember what happened to
17 him during the tasing if you looked at that report?

18 A I have looked at that report.

19 Q Um-hum.

20 A But what happened to who?

21 Q Whether Mr. O'Keefe went up over on top of the
22 female's body during the tasing.

23 A Is that written in there? I don't recall.

24 Q Well I'll approach and I'll --

25 A Okay.

ROUGH DRAFT TRANSCRIPT

002174

1 Q -- show it to you, and maybe it will help you
2 remember. Maybe I'm just reading it wrong.

3 A Okay. Well these are Officer Ballejos's -- his --
4 what he determined or what he saw, his observations.

5 Q Um-hum.

6 A And this is what he wrote. I don't recall seeing him
7 go up on her body.

8 Q Okay. But you signed off on his report?

9 A Yes.

10 Q Okay. So at the time you would have had to have
11 thought it was accurate, right?

12 A Well we have to trust our officers when we're doing
13 our stuff.

14 Q Okay. So you didn't actually observe what he
15 observed?

16 A Well each person feels or observes different things,
17 they have different reactions. So his observations and his
18 decision to use the ECD was his decision. There was no order
19 given, it was his decision --

20 Q Sure.

21 A -- to use force.

22 Q Okay. So you didn't actually yourself see my client
23 go during the tasing on top of her?

24 A No, I did not.

25 Q Okay. Did you believe my client was extremely

ROUGH DRAFT TRANSCRIPT

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1 intoxicated?

2 A I could smell alcohol on him. And I felt that he was
3 intoxicated, yes.

4 Q Okay. Do you recall describing it in your use of
5 force report as, "Mr. O'Keefe appeared extremely intoxicated?"

6 MR. LALLI: I'm sorry. I'm going to object. It's
7 not his report, as he's already testified to. So that
8 misstates the evidence.

9 THE COURT: Sustained.

10 BY MS. PALM:

11 Q You did write a portion of this use of force report,
12 did you not?

13 A I wrote a supervisor's portion of it, yes.

14 Q Okay. And in your supervisor's portion of it, do you
15 recall writing, "Mr. O'Keefe appeared extremely intoxicated,
16 and continued to be erratic and emotional in his behavior?" Do
17 you recall?

18 A If that's what's written there in my statements, then
19 yes.

20 MS. PALM: May I approach?

21 THE COURT: Yes.

22 BY MS. PALM:

23 Q Will it help you remember to look at it?

24 A Yes. For the supervisor portion, yes. One moment,
25 please. Yes.

ROUGH DRAFT TRANSCRIPT

002176

1 Q That is what you said?

2 A It is.

3 Q Thank you. Do you recall saying that my client had
4 actually fallen on his right arm, and it was under him during
5 the first tasing?

6 A Do I recall saying?

7 Q Do you recall making that statement in your recorded
8 statement?

9 A Yes.

10 Q Okay. So he actually fell on his right arm?

11 A Well I remember they struggled to get the right arm
12 out. They couldn't get it out, and that's why the second cycle
13 was delivered.

14 Q Okay. So if you described it as, he had fallen on
15 his right arm, would that not be accurate?

16 A Yes.

17 Q It would be accurate?

18 A I believe it would be accurate, yes.

19 Q Okay, thank you. So the three people were trying to
20 get the handcuffs on him, Ballejos, Taylor, and Conn?

21 A Yes, they are with his -- the upper portion of his
22 chest, his arms. I was at the feet.

23 Q And do you recall who carried him over the body?

24 A That would have been those three officers --

25 Q Okay.

ROUGH DRAFT TRANSCRIPT

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1 A -- that carried him at least to the doorway.

2 Q Okay. So Conn, Ballejos and Taylor, did they pick
3 him up and carry him over her?

4 A Well there's -- like we pointed out here on the map,
5 there's not a whole lot of space there. So yes, we had to
6 carry over a portion of her body out.

7 Q Okay. Do you recall him falling on his face in the
8 bedroom at all?

9 A I do not.

10 Q Do you recall him falling on his face in the living
11 room?

12 A He was set down in the living room for a brief
13 moment. And then he was taken back out onto the -- like the
14 walkway up to the door, where he was put down again.

15 Q Were you concerned about the blood at the scene
16 because you had heard the -- there was a possible HIV?

17 A Absolutely.

18 Q Do you know who you heard that from?

19 A I do not. I remember hearing that when were in the
20 room, and I don't know where that information came from.

21 Q Okay. Taser voltage is about 50,000 volts?

22 A Yes.

23 Q Okay. And so when Mr. O'Keefe received the 50,000
24 volts, was that -- at the two cycles, how much distance between
25 the cycles time-wise was there?

ROUGH DRAFT TRANSCRIPT

002178

1 A I do not know.

2 Q Okay. Do you know if tasers can make you agitated?

3 A I can not speak to the medical side effects of the
4 use of a taser.

5 Q Okay. So you were talking a little bit about the use
6 of lethal and less than lethal?

7 A Yes.

8 Q And in the case where somebody has got a weapon, if
9 he had had a weapon and he was pointing a weapon at you, would
10 you have been entitled to use lethal force?

11 A If he was armed with a weapon and I felt that my life
12 or someone else's life was in danger, absolutely.

13 Q Okay. And you had some special medical training in
14 your background, don't you?

15 A Yes.

16 Q Okay. And is that why you were able to know to check
17 the eyes with a flashlight, and --

18 A Yes, ma'am.

19 Q Okay. And until you did that, did you know whether
20 she was dead or alive?

21 A I did not.

22 Q All right. But that helped you make a determination?

23 A Yes.

24 Q Did you happen to notice whether my client had any
25 injuries on him before you went into the room?

1 A No, I did not. There was a lot of blood in that
2 room, and it was spread out over a lot of space.

3 Q Um-hum.

4 A But I did not notice any injuries on him. He did
5 have blood on him, but I did not notice any particular
6 injuries.

7 Q Okay. Who did you see for the medical responder for
8 him?

9 A It was AMR.

10 Q Okay. If AMR has to record of that, would you
11 dispute that?

12 A It was a white uniform EMT pants, standing there
13 talking to him. So I would say the AMR was there, yes.

14 Q Okay. You actually saw them treat him?

15 A I saw them talking to him.

16 Q Okay. Did you see them look at his injuries or
17 anything?

18 A They looked at the taser deployment areas.

19 Q Okay.

20 MS. PALM: Pass the witness.

21 THE COURT: Any redirect?

22 MR. LALLI: Just very briefly.

23 REDIRECT EXAMINATION

24 BY MR. LALLI:

25 Q Sergeant, you gave a statement the same night that

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1 this happened?

2 A Yes, I did.

3 Q Do you recall whether you described medical coming in
4 the room and checking whether the decedent had any signs of
5 life in her?

6 A Yes, I did.

7 Q Did you say that in your statement?

8 A I did.

9 Q And did you also describe the defendant being
10 belligerent while he was being examined by medical folks?

11 A Yes.

12 Q You also described that in your statement?

13 A Yes, I did.

14 Q Same night this happened?

15 A Yes.

16 Q Thank you.

17 MR. LALLI: Nothing further.

18 THE COURT: Any recross?

19 MS. PALM: No, Your Honor. Thank you.

20 THE COURT: Any questions from any of the jurors? No
21 questions. Ladies and gentlemen, we're going to take our
22 mid-afternoon recess.

23 During this recess, it is your duty not to converse
24 among yourselves, or with anyone else on any subject connected
25 with this case. Or to read, watch or listen to any report of

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1 or commentary on the trial by any person connected with the
2 trial, or by any medium of information, including without
3 limitation, newspaper, television, radio, or the internet. You
4 are not to form or express an opinion on any subject connected
5 with this case until this matter is submitted to you. See you
6 back in approximately ten minutes.

7 (Court recessed at 3:44 p.m. until 4:00 p.m.)

8 (In the presence of the jury)

9 THE MARSHAL: You may be seated, ladies gentlemen.
10 Let's make sure out cell phones are turned off, please.

11 (Pause in proceedings)

12 THE MARSHAL: Please remain seated and come to order.
13 Department 17 of the 8th Judicial District is again in session.
14 The honorable Judge Michael Villani presiding. Let's make sure
15 our cell phones are turned off, please.

16 THE COURT: All right. State, please call your next
17 witness.

18 MR. LALLI: Sean Taylor.

19 THE MARSHAL: Officer Taylor, if you will remain
20 standing. Please sir, raise your right hand.

21 SEAN TAYLOR, STATE'S WITNESS, SWORN

22 THE MARSHAL: Please be seated, sir. Please state
23 and spell your name for the record.

24 THE WITNESS: Okay. My name is Sean Taylor. Sean is
25 S-E-A-N. Taylor is T-A-Y-L-O-R.

ROUGH DRAFT TRANSCRIPT

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DIRECT EXAMINATION

BY MR. LALLI:

Q Sir, how are you employed?

A I'm employed with the Las Vegas Metropolitan Police Department.

Q What do you do?

A Currently I'm a financial crimes detective.

Q Okay. Back in November of 2008, were you a patrol officer?

A Yes, I was.

Q And directing your attention to that evening at approximately 11:00 p.m., did you respond to 5001 El Parque Avenue?

A Yes sir, I did.

Q Is that in Clark County, Nevada?

A Yes, it is.

Q Okay. Do you eventually make your way up to apartment 35?

A Yes.

Q Is that an upstairs apartment?

A Yes, it is.

Q And if you look on the -- or on the monitor there in front of you, you will see State's Exhibit number 1, does that appear to be a diagram of the apartment complex?

A Yes, it is.

ROUGH DRAFT TRANSCRIPT

002183

1 Q Now we've had a lot of testimony about what occurred
2 prior to officers going in, or we've had some testimony, I
3 want to ask you if you entered the northwest master bedroom of
4 that apartment?

5 A Yes, I did.

6 Q Okay. Just immediately before you entered, did you
7 go in with other officers?

8 A Yes sir, I did.

9 Q How was that done?

10 A We did what was called a stack-up to make a room
11 entry. Officer Todd Conn was first, Officer Jeremiah Ballejos
12 was second, and I was behind him.

13 Q Was there somebody behind you?

14 A I don't recall if there was anyone behind me.

15 Q Okay. Do you eventually go into that room?

16 A Yes, sir.

17 Q Can you -- using your finger on that diagram, can you
18 indicate for us where you went?

19 A We were all stacked up here in this area somewhere.
20 And we entered approaching the two individuals that were on the
21 floor.

22 Q Okay. What happened as you entered the back bedroom?

23 A Officer Conn -- or we saw individual, Mr. O'Keefe.

24 And --

25 Q You just looked at somebody?

ROUGH DRAFT TRANSCRIPT

002184

1 A Yes, Mr. O'Keefe, who's to my far left.

2 Q Okay. And you're also pointing to somebody. Can
3 you --

4 A Yes.

5 Q -- identify something he's wearing?

6 A He's wearing looks like a tan blazer and a --

7 MR. LALLI: Your Honor, may the record --

8 THE WITNESS: -- blue tie.

9 MR. LALLI: I'm sorry. May the record reflect the
10 witness has identified the defendant?

11 THE COURT: Yes, it will.

12 BY MR. LALLI:

13 Q Was the defendant in the bedroom?

14 A Yes sir, he was.

15 Q Okay. Tell us what happened.

16 A Officer Conn began to yell orders to Mr. O'Keefe, and
17 attempted to gain some compliance. I saw that his hands were
18 empty, so I holstered my handgun, which I had in my hand when I
19 entered. And I moved around to the right side of Officer
20 Ballejos.

21 Q Okay. Can you indicate for us where you went?

22 A I went over towards the feet of the victim and the
23 feet of Mr. O'Keefe.

24 Q Okay. What happened at that point?

25 A At that point, Officer Ballejos indicated he was

ROUGH DRAFT TRANSCRIPT

002185

1 going to use a taser, and he did. And I was waiting for Mr.
2 O'Keefe to tense up so that I could take him into custody.

3 Q Was a taser deployed?

4 A Yes, it was.

5 Q And at some point after the taser was deployed, you
6 and other officers go hands-on with Mr. O'Keefe?

7 A Yes.

8 Q Describe that for us.

9 A He didn't tense up after the first taser cycle.

10 And --

11 Q What does that mean?

12 A When you squeeze the trigger on the taser, the prongs
13 deploy, and they go into the individual that you're aiming the
14 taser at. And there's a five-second cycle.

15 Q So the fact that he didn't tense up, does that
16 suggest maybe the taser didn't have the full effect?

17 A Yes, sir.

18 Q Okay. What happened next?

19 A And at some point at the end of the second cycle, I
20 was able to get his left arm, and I was then yelling commands
21 for him to give me his other arm.

22 Q What were you saying?

23 A Like, give me your arm, give me your arm.

24 Q Did he give you the other arm?

25 A Well I ended up grabbing his arm and pulling it to

ROUGH DRAFT TRANSCRIPT

002186

1 the other arm, and getting it into handcuffs.

2 Q Okay. As you're placing his arms into handcuffs, how
3 was his body positioned?

4 A His right hip was on the ground.

5 Q All right. What happened next?

6 A We then -- I lifted his legs, I believe it was
7 Officer Conn that lifted his torso, and we removed him from the
8 room.

9 Q Okay. Did you drag him out of the room, or was he
10 lifted up?

11 A Initially he was lifted, until we got to the living
12 room. And then Officer Hatchet (phonetic) became involved. So
13 I believe he may have hit the ground --

14 Q Okay.

15 A -- at some point in the living room.

16 Q Now I want to show you --

17 MS. PALM: What's that?

18 MR. LALLI: 60.

19 MS. PALM: But what is it?

20 MR. LALLI: Oh. I'm sorry.

21 MS. PALM: Thank you.

22 MR. LALLI: May I approach the witness?

23 THE COURT: Yes.

24 BY MR. LALLI:

25 Q Officer, I'm going to show you State's proposed 60

ROUGH DRAFT TRANSCRIPT

002187

1 for identification purposes. Do you recognize that individual?

2 A Yes.

3 Q Who is that?

4 A Mr. O'Keefe.

5 Q Mr. O'Keefe? Does that fairly and accurately depict
6 how he looked on November 5th of 2008?

7 A Yes.

8 MR. LALLI: Your Honor, move for the admission of
9 State's proposed 60.

10 MS. PALM: Your Honor, I'm going to object at this
11 point because I don't believe this witness saw him in that
12 unclothed manner.

13 MR. LALLI: Okay.

14 BY MR. LALLI:

15 Q Maybe he wasn't clothed, but other than the clothing,
16 and I'm specifically referencing the head area, is that how his
17 head looked?

18 A Yes.

19 Q Did you ever see him with his shirt off?

20 A I don't recall if I did. I don't believe so.

21 Q Okay.

22 MR. LALLI: So with that understanding, I'd move for
23 the admission of State's proposed 60.

24 THE COURT: 60 will be admitted.

25 (Exhibit 60 admitted)

ROUGH DRAFT TRANSCRIPT

002188

1 MR. LALLI: Thank you.

2 BY MR. LALLI:

3 Q Now Officer, I'd like to focus specifically on the
4 defendant's head. Do you see what appears to be some redness
5 on his forehead?

6 A Yes.

7 Q Do you know how that redness was caused?

8 A No, I don't.

9 Q Okay. Based upon the struggle, could it have been
10 caused by law enforcement?

11 A Yes.

12 Q But you don't know one way or the other?

13 A No, I don't. I don't know for certain.

14 Q Okay. Now let's go back to State's Exhibit number 1.
15 Was there a bed in the room?

16 A Yes, there was.

17 Q Did you ever jump up on to the bed?

18 A No. No, I did not.

19 Q Are you certain of that?

20 A Yes, I am.

21 Q Did you do anything that would cause your footprints
22 to be on that bed in blood, or in some other form?

23 A No, sir.

24 Q Did you ever step on the victim?

25 A No, I don't believe that I did.

ROUGH DRAFT TRANSCRIPT

002189

1 Q Okay. Now at some point, do you go outside?

2 A Yes.

3 Q And do you see the defendant outside?

4 A Yes, I took him outside.

5 Q Is he saying things not in response to anything said
6 to him by police officers?

7 A Yes.

8 Q What kinds of things is he saying?

9 A He was screaming, you're mad at me, you're mad at me,
10 speaking to us.

11 Q Like you, police were mad at him?

12 A Yes.

13 Q Okay. Did he say anything else?

14 A I believe he did. Yes, sir.

15 Q What did he say?

16 A I believe he said something about she tried to stab
17 him. And he just kept repeating, you're mad at me, you're mad
18 at me.

19 Q Okay. She tried to stab him?

20 A Yes.

21 Q Thank you.

22 MR. LALLI: Nothing further.

23 CROSS-EXAMINATION

24 BY MS. PALM:

25 Q Good afternoon. Is it Detective now?

ROUGH DRAFT TRANSCRIPT

002190

1 A Yes. Yes, it is.

2 Q Were you Detective at the time of November 5th --

3 A No, ma'am.

4 Q -- 2008? When you entered the apartment, were the
5 lights on in the living room?

6 A No. No, they weren't.

7 Q Were the lights on in the hallway between the
8 bedrooms?

9 A I believe they were. And also in the bathroom, I
10 believe the lights were on.

11 Q And now are you talking about this bathroom hallway
12 that I'm pointing to right here?

13 A Yes. I believe in this area the lights were on.

14 Q Okay. Do you know if that bathroom door was open or
15 closed?

16 A I don't know if it was completely open or closed.
17 But I just remember that it looked like the lights were on in
18 there.

19 Q Okay. So --

20 A It appeared the light was coming from that room.

21 Q Okay. And do you remember in the bedroom that you
22 ended up entering, were the lights on in there?

23 A Yes, they were.

24 Q Do you remember if they were overhead lights, or a
25 light on the table, or?

ROUGH DRAFT TRANSCRIPT

002191

1 A I don't recall.

2 Q Could it have been light coming from the bathroom?

3 A No. The lights in that bedroom -- there was a lot of
4 light in that bedroom.

5 Q Okay. And you never saw Mr. O'Keefe with any weapons
6 in his hands?

7 A No.

8 Q And you never saw him in any other position than
9 laying on his right side on the floor? Or --

10 A Yes, that's correct.

11 Q Okay. And before you entered the room when you're
12 doing the stack-up, --

13 A Yes.

14 Q -- he's yelling, come on in, come on in, she's
15 breathing, she's breathing; is that correct?

16 A That's correct.

17 Q And then you guys enter, and when you enter, he's
18 rubbing her head?

19 A Yes, he is.

20 Q Okay. And he's kind of trying to shield her lower
21 body from your view?

22 A He was hovering his hand over her body.

23 Q Okay. Was he looking at her?

24 A Yes, he was.

25 Q And was he not looking away from her?

ROUGH DRAFT TRANSCRIPT

002192

1 A He was looking at her. And then when Officer Conn
2 would yell at him, he would look at Officer Conn, and then
3 right back at her.

4 Q Okay. Now do you remember testifying previously that
5 you thought you had room to stand below her feet, the female's
6 feet?

7 A Yes.

8 Q Okay. And looking at the crime scene diagram, do you
9 still think you had room to stand below her feet?

10 A I believe that I --

11 Q And by that I mean between her feet and the dresser?

12 A Yes, I believe I did.

13 MS. PALM: Court's indulgence. I'll find a picture
14 later.

15 BY MS. PALM:

16 Q Okay. So you still think that you were able to stand
17 between her feet and the dresser?

18 A Yes. I believe that when I was in the room, there
19 was room for me to stand there.

20 Q Okay. And so you didn't step over her body at all?

21 A I don't believe that I did.

22 Q Okay. But you go over to Mr. O'Keefe's body?

23 A Yes. I was able to grab his legs after I got his
24 arms in the handcuffs.

25 Q Okay. And by doing that, you walked below her feet,

ROUGH DRAFT TRANSCRIPT

002193

1 between her feet and the dresser, to the other side of her
2 body?

3 A Yes.

4 Q Okay. And how many people were over there on the
5 other side?

6 A On the other side of her body? I don't recall --

7 Q Okay.

8 A -- who was over there.

9 Q Do you recall who helped you take him under control?

10 A Yes.

11 Q Who?

12 A Officer Conn helped me pick him up.

13 Q Okay, so Officer Conn was over there with you?

14 A I don't know where he stepped. I know he hooked his
15 arm under his arm and helped me lift him.

16 Q Okay.

17 A I don't know if he did that from the other side of
18 the victim's body or not.

19 Q So you don't know if Officer Conn stepped over her to
20 get over there?

21 A Yeah, I have no idea where he stepped --

22 Q Okay.

23 A -- to help me remove the suspect.

24 Q And you didn't see anybody step over the bed?

25 A No, I did not.

ROUGH DRAFT TRANSCRIPT

002194

1 Q When you enter a room in a stack formation, are you
2 trained to fan out?

3 A No.

4 Q No?

5 A No.

6 Q So Officer Hatchet (phonetic) was never over on the
7 other side of the body?

8 A I didn't see him over there, no.

9 Q Okay. How about Sergeant Newberry?

10 A I didn't see Sergeant Newberry either.

11 Q Okay. How about Officer Ballejos?

12 A He was on the same side of the body as I was, because
13 I went around his right side.

14 Q Okay. So there's three officers over on the other
15 side of the body; you, Conn and Ballejos?

16 A When we entered, we both stacked up. And we were
17 stacked up behind the body -- oh, I'm sorry. It's kind of hard
18 with my finger. We were stacked up behind the body right --
19 it's still going on that side. Over here.

20 Q Okay. Did anybody bump into the body during the
21 arrest process?

22 A I don't recall --

23 Q Okay.

24 A -- if anyone did or not.

25 Q Do you recall if my client went on to the body during

ROUGH DRAFT TRANSCRIPT

002195

1 the taser cycle?

2 A I don't recall.

3 Q Okay. Do you recall my client being dropped on his
4 face in the bedroom?

5 A I believe it was in the living room when we dropped
6 him.

7 Q Okay.

8 A Or when someone else dropped him. I still had his
9 legs.

10 Q Okay. So do you recall testifying previously that
11 there was never time when you dropped him on his face?

12 A I don't recall ever dropping him on his face.

13 Q Okay. So when you dropped him, then how did you drop
14 him?

15 A Someone else dropped him, and I kept pulling, and I
16 was looking where I was going.

17 Q Okay.

18 A So I had his legs, and I was looking out the door,
19 and I was walking out the door.

20 Q So you're lifting up his -- okay. You're talking
21 about exiting the bedroom? You're --

22 A I'm -- I mean in the living room --

23 Q Uh-huh.

24 A -- when he was dropped, I didn't stop. I kept going.

25 Q Okay. So you dragged him on his face then; would

ROUGH DRAFT TRANSCRIPT

002196

1 that be accurate?

2 A I don't recall if his face hit the ground or not. I
3 don't recall if the side of his body hit the ground, or his
4 torso hit the ground, he held his face up. I can't speak for
5 other officers, but I hoped the victim would still be alive.
6 So I was trying to get him out of the way so the medical can
7 get in.

8 Q Okay.

9 A So it was a sense of urgency to me to keep going to
10 get him out of that pathway.

11 Q Okay. So when you previously testified that you
12 never dropped him on his face, you were just referring to you,
13 yourself, not other --

14 A Yes, absolutely.

15 Q -- officers?

16 A I was only speaking for myself.

17 Q Okay. And when you say -- when you testified, I
18 don't remember ever dropping him, you were only speaking for
19 yourself?

20 A Yes.

21 Q Do you recall how long you were in the bedroom?

22 A I don't recall how long we were in there.

23 Q So you yourself never stepped over the body of a
24 female to get on the other side of her?

25 A I don't believe I did. No, ma'am.

ROUGH DRAFT TRANSCRIPT

002197

1 Q Okay. And you don't know whether anybody else did?

2 A No, I don't know.

3 MS. PALM: Court's indulgence. Pass the witness.

4 Thank you.

5 THE COURT: Any redirect?

6 MR. LALLI: Just a little bit, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. LALLI:

9 Q Detective Taylor, I think Ms. Palm had asked you
10 whether there was enough room in between the body of the
11 decedent and the dresser there for you to stand, and you
12 believe there was?

13 A Yes.

14 Q And she was going to find you a photo.

15 MR. LALLI: Can I approach?

16 THE COURT: Yes.

17 MS. PALM: Thank you.

18 MR. LALLI: Move for the -- I'm sorry. May I
19 approach the witness?

20 THE COURT: Yes.

21 MR. LALLI: Thank you.

22 BY MR. LALLI:

23 Q Showing you State's proposed 23 for identification
24 purposes, does that show at least to some degree the distance
25 between the decedent's feet and the dresser?

ROUGH DRAFT TRANSCRIPT

002198

1 A At that point in time, that is the -- when that photo
2 was taken, yes.

3 Q Okay. Is that a fair and accurate depiction of how
4 that looked?

5 A I don't recall exactly how far away she was from the
6 dresser.

7 Q Okay. Is that a fair and accurate depiction of the
8 dresser and her body?

9 A Yes.

10 MR. LALLI: Move for the admission of State's
11 proposed 23.

12 MS. PALM: No objection.

13 THE COURT: It will be admitted.

14 (Exhibit 23 admitted)

15 MR. LALLI: Okay.

16 BY MR. LALLI:

17 Q Publishing that to the jury, is there -- is that your
18 recollection of how her legs were positioned?

19 A I don't recall ever looking at exactly how her feet
20 were positioned. But yes, she was laying on her back.

21 Q Okay. And do you remember standing in the area in
22 between the dresser and her legs?

23 A Yes.

24 Q Okay. You were asked -- you've testified in this
25 case before; is that true?

ROUGH DRAFT TRANSCRIPT

002199

1 here, with the -- I think with the agreement of Ms. Lalli, Ms.
2 Palm just spoke with the witness just to discuss the parameters
3 of his testimony. She wasn't giving answers to him, it was
4 just strictly parameters.

5 BY MR. LALLI:

6 Q So Mr. Schiro, you reviewed transcripts of witnesses?

7 A Yes.

8 Q All right. What witnesses were those?

9 A Primarily mine, as well as possibly the people
10 involved in the investigation.

11 Q Who? That's what I'm interested in knowing.

12 A I couldn't give you specific names. But I know for
13 sure one of them was the crime scene analyst, maybe the
14 detectives, maybe some of the police officers who were
15 involved.

16 Q And when you're saying maybe, are you -- I know
17 you're doing your best to answer my question, and I appreciate
18 that. But are you speculating? I mean, do you really know --

19 A No. I knew it was within --

20 Q -- for certain who it was?

21 A -- those groups. I just couldn't tell you who
22 specifically, and which ones.

23 Q Okay. So let me ask you, does the name Christopher
24 Hutchins (phonetic), does that sound familiar?

25 A It doesn't ring a bell.

ROUGH DRAFT TRANSCRIPT

002100

1 Q Does not?

2 A Right.

3 Q What about Cheryl Morris, does that ring a bell for
4 you?

5 A No.

6 Q Were you provided testimony from the defendant?

7 A Yes.

8 Q Okay. Were you provided with a videotape of an
9 interview he gave?

10 A I had that from prior.

11 Q Okay.

12 A From back in 2009.

13 Q So you had those things?

14 A Yes.

15 Q You had testimony and a video from the defendant, but
16 not the other witnesses that I mentioned?

17 A Right, that's correct.

18 Q Okay.

19 A To the best of my knowledge.

20 Q Okay.

21 A Like I said, those may have been in there, but they
22 don't -- they're not ringing a bell.

23 Q I understand. I think you -- we had mentioned the
24 Lobato (phonetic) case. And I think you testified in the
25 Lobato case that you perform your services for a fee?

ROUGH DRAFT TRANSCRIPT

002101

1 A Yes.

2 Q Is that correct?

3 A That's correct, yes.

4 Q Okay. What sort of things do you charge for?

5 A What I primarily charge for is case review, reviewing
6 the documents. If I have to prepare reports and if I have to
7 come out to testify, that sort of thing.

8 Q If you have to make phone calls related to a case, do
9 you charge for that?

10 A Yes.

11 Q If you attend meetings with attorneys, do you charge
12 for that?

13 A Yes.

14 Q You flew from Louisiana, or from wherever you were
15 before testifying, you ultimately flew to Las Vegas. Do you
16 charge while you're on the airplane?

17 A It depends on when I'm actually traveling. If I'm
18 traveling during what I consider my normal work hours, for
19 example, 8 to 5, if I'm traveling in that time period, I'll
20 charge for that time. If I'm traveling when it's off-hours,
21 then I don't charge for travel time during those hours.

22 Q Okay. So there have been occasions where you have
23 charged while you're sitting on an airplane?

24 A Yes.

25 Q And what do you -- what is your hourly rate?

ROUGH DRAFT TRANSCRIPT

002102

1 A It's \$150 an hour.

2 Q Okay. How long is the airplane ride from Louisiana
3 to Las Vegas?

4 A Let's see.

5 Q About two and-a-half hours?

6 A Well it's about three hours from Houston. I usually
7 have to fly to Houston, it's about another hour, plus whatever
8 layover time. But I cap my time at 8 hours, the 8 to 5. I
9 don't charge any more --

10 Q Okay.

11 A -- if I have to travel any more beyond that.

12 Q Okay. So eight hours, if you were traveling for
13 eight hours, you would be charging 800, plus another 4; 1,200
14 --

15 A Yes, that's correct.

16 Q -- a day --

17 A Yes, that's correct.

18 Q -- for travel? Okay. You charge more when you
19 actually hit the stand like you're doing today, correct?

20 A No, the rate's the same.

21 Q Oh, it is the same?

22 A Yes.

23 Q So that's different than when you testified in
24 Lobato, right?

25 A I don't --

ROUGH DRAFT TRANSCRIPT

002103

1 Q Didn't you say, I receive \$1,000 a day for testimony?

2 A Yes, but it's at the same eight-hour rate. Back
3 then, it was \$125 an hour. Now it's \$150 an hour.

4 Q Okay. If you testify for an hour, you only charge
5 \$125? Or do you charge a full 1,000 every time you hit the
6 stand?

7 A It depends where I'm at. If -- and you know, the
8 travel time involved. If I'm here for a full day, then that's
9 what I'm going to charge for, a full day.

10 Q Okay. On a day when you don't travel, it's \$1,000 a
11 day?

12 A Wait, I don't -- say again, please? I don't --

13 Q You said if you're traveling the same day you're
14 testifying, you won't charge more than a full eight-hour day,
15 correct?

16 A That's correct, right.

17 Q If you're (indiscernible) -- let's assume you don't
18 testify, it's \$1,000 a day?

19 A Well it's 1,200 now. Yes.

20 Q I beg your pardon. Assuming you do not travel, it's
21 \$1,000 a day to testify?

22 A 1,200.

23 Q 1,200?

24 A Yes.

25 Q Okay.

ROUGH DRAFT TRANSCRIPT

002104

1 A It's the same hourly rate, \$150 an hour.

2 Q Okay. So your fee has gone up some. When you
3 testify, because you indicated that you did analysis, and you
4 testified in this case before, what was your total bill?

5 A I think the total bill for the case then was \$6,300.

6 Q \$6,300?

7 A Yes.

8 Q And what do you anticipate your bill to be this time
9 around?

10 A Probably somewhere in the neighborhood of 5,000 or
11 so.

12 Q Okay. So that's about \$11,300?

13 A Yes.

14 Q And this is one case you've had with the special
15 public defender?

16 A Yes.

17 Q So you're paid on the other cases as well?

18 A That's correct.

19 Q Okay. I want to talk to you now a little bit more
20 about your report. And I want to ask you about some of the
21 terminology that you use. At the top of your report, just kind
22 of below the header information when you identified the case
23 number and the client, things of that nature, there's a section
24 entitled, "Specimens examined." Do you see that?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002105

1 Q And in this case you wrote, "Case documentation,
2 photographs, and a DVD?"

3 A Correct.

4 Q Are those -- and you reviewed those -- you refer to
5 those as specimens?

6 A Yes.

7 Q And the analysis, or analytical procedures is
8 reviewed and analyzed case documentation, photographs, and DVD?

9 A Yes.

10 Q So your analytical procedure is to review them?

11 A That's correct.

12 Q Does your analytical procedure include using your
13 imagination?

14 A It could be, yes.

15 Q Okay.

16 A Yes.

17 Q You've testified to that in the prior proceeding in
18 this case, didn't you?

19 A I don't recall.

20 Q You don't recall that? Okay. When you were talking
21 about the various scenarios that you had testified to, --

22 A Um-hum.

23 Q -- you were asked if you used a manikin to assist
24 you; do you recall that?

25 A I thought you said -- the question you asked me was

ROUGH DRAFT TRANSCRIPT

002106

1 did I use my imagination.

2 Q Right.

3 A Okay. No, I didn't use a manikin. No.

4 Q But you were asked about that, true?

5 A I don't recall, but I wouldn't doubt it.

6 Q Okay.

7 MS. PALM: If counsel could refer to a page.

8 MR. LALLI: Page 172, starting at line 13.

9 BY MR. LALLI:

10 Q Do you remember this answer, "No, I didn't use a
11 manikin. But you know, I used my imagination as to how -- you
12 know. I mean, I had a knife in hand to demonstrate how the
13 knife would be used in a person's hand that received the cuts
14 in this position. And you know, just used my imagination as to
15 how someone was standing." So is imagination a -- well do you
16 remember saying that?

17 A I don't remember specifically saying it, but I don't
18 doubt it.

19 Q Would you like to see the transcript?

20 A No, I believe you.

21 Q Okay. Is imagination a validated technique for usage
22 in analyzing forensically crime scenes?

23 A Well imagination is, you know, the spark of science.
24 So, yes. I mean, you do have to use your imagination
25 sometimes.

ROUGH DRAFT TRANSCRIPT

002107

1 Q Okay. And you used it in this case?

2 A Yes.

3 Q And that's your analysis?

4 A Part of the analysis.

5 Q All right. I want to talk to you about some of your
6 conclusions. One of your conclusions is that blood and urine
7 samples of the defendant should have been collected in this
8 case?

9 A That's correct.

10 Q Because you would have liked to have known the extent
11 of intoxication, if any, the defendant had at the time that
12 this crime were committed?

13 A I think any investigator would want to know --

14 Q My question is --

15 A -- that.

16 Q -- you thought that would be helpful?

17 A Yes. Oh, absolutely.

18 Q Do you know to what extent voluntary intoxication --
19 and this is a yes or no question. Do you know the extent to
20 which voluntary intoxication is a defense to crimes in Nevada?

21 A No.

22 Q All right. Let me talk to you about the collection
23 of the penile swabs. It's -- you and I would agree that it's
24 not a good idea to let somebody with bloody hands collect a DNA
25 sample from themselves?

ROUGH DRAFT TRANSCRIPT

002108

1 A Yes.

2 Q We would both agree on that?

3 A Yes.

4 Q Okay. You're aware that there also was a buccal swab
5 collected from the defendant?

6 A Yes.

7 Q Can you tell the jury what a buccal swab is?

8 A A buccal swab is a swab that's taken, a sterile
9 cotton swab in the inside of the mouth, or rubbed to get a
10 reference DNA sample.

11 Q Okay. And a reference is what's used as a known
12 sample in DNA comparison?

13 A Yes.

14 Q You don't take any issue whatsoever in the manner in
15 which the buccal swab was collected in this case, do you?

16 A I don't recall how the buccal swab was collected in
17 this particular case. I don't remember if the CSA took it, or
18 if Mr. O'Keefe took it himself.

19 Q Okay. Do you remember testifying at the prior
20 proceeding, now -- question, "Now despite what you've testified
21 to, you have no reason to doubt the integrity of the buccal
22 swab conducted in this case, do you?" Answer, "No.
23 Considering that they gave a pure profile, no." So if back in
24 March of 2009 you testified that the buccal swab collected was
25 viable, no issue with it, you would still stand by that today?

ROUGH DRAFT TRANSCRIPT

002109

1 A Yes.

2 Q Okay. You have a conclusion about the cuts on the
3 defendant's hand when he was arrested?

4 A Yes.

5 Q And you concluded that he had cuts on his hands from
6 the photographs that you reviewed, true?

7 A That's correct.

8 Q And in your report, you write that O'Keefe appeared
9 to have two injuries on his right hand?

10 A Yes.

11 Q And you say the exact mechanism by which he received
12 these injuries is unknown?

13 A That's correct.

14 Q You wrote that?

15 A Yes.

16 Q The mechanism or the manner in which he received the
17 injuries, you admit in your report is unknown?

18 A The exact mechanism, that's correct.

19 Q Okay. Yet you testified today about various
20 mechanisms?

21 A Various possibilities, yes.

22 Q All right. You also talk about the timing of that
23 injury, when it occurred?

24 A Yes.

25 Q And what you say in your report is quote, "Most

ROUGH DRAFT TRANSCRIPT

002110

1 likely, he received these injuries around the same time that
2 Mrs. Whitmarsh received her injuries?"

3 A That's correct.

4 Q And then you attempt to become more specific, true?

5 A Discuss the three possibilities.

6 Q Okay.

7 A Yes.

8 Q And your three possibilities are that, it either
9 happened before her injury, true?

10 A Yes.

11 Q At the same time?

12 A Yes.

13 Q Or after her injury?

14 A Yes.

15 Q So any of those three possibilities could have
16 happened?

17 A Yes.

18 Q There are no other possibilities, are there?

19 A Right. That would cover the gambit.

20 Q So anything could have happened in terms of timing,
21 you would agree with that?

22 A Yes, that's correct.

23 Q And that's what you wrote in your report?

24 A Yes.

25 Q Okay. You talked about -- I think there was a

ROUGH DRAFT TRANSCRIPT

002111

1 demonstration that you gave here about various ways that Mr.
2 O'Keefe could have suffered injuries on his hand?

3 A Yes.

4 Q And you would agree that those are some of the ways
5 he could have?

6 A Yes.

7 Q And there are many other ways he could have as well?

8 A Within the context of it happening right around
9 there, in my opinion, I couldn't see any other ways.

10 Q Well I understand that. But you would agree with me
11 there are other ways in which he could have cut his hand?

12 A Well I think --

13 Q You're not saying the way you testified is the only
14 way, are you?

15 A Well I believe I said it could have been accidental,
16 it could have been deliberate, as well as it could have
17 occurred, you know, in the process.

18 Q Okay. So there are multiple explanations?

19 A Yes, there can be.

20 Q All right. You have a section in your report called
21 quote, "Other notes of interest;" is that true?

22 A Yes.

23 Q And in that section of your report, you say things
24 like quote, "Shoe prints were deposited after stepping in
25 blood."

ROUGH DRAFT TRANSCRIPT

002112

1 A Correct.

2 Q So you have to step in blood to get blood on your
3 shoes before you can step somewhere else and leave a print?

4 A A bloody print, yes.

5 Q A bloody print?

6 A Yes.

7 Q And I don't mean to disrespect you or your
8 credentials. But it doesn't take an expert to understand that
9 concept, does it?

10 A No, uh-uh. It's a very simple --

11 Q Okay.

12 A -- concept, yes.

13 Q And when you say things like, the pillow case was
14 removed, possibly held together, bunched up, and then it came
15 into contact with Ms. Whitmarsh's blood, you can tell that if
16 there's a bloody pillow case there, that's what probably
17 happened?

18 A Again, with the type of creases it had in it, yes.

19 Q Okay. And again, I don't mean to disrespect you or
20 your opinion. But it doesn't take an expert to see that, does
21 it?

22 A Well it might. Because again, you know, some people
23 may look at it and not see that, where someone who's a little
24 more versed might look at it and see that's a possibility as to
25 how that --

ROUGH DRAFT TRANSCRIPT

002113

1 Q Okay.

2 A -- how that happened. But I'm not saying that a lay
3 witness couldn't make that determination --

4 Q Okay.

5 A -- as well.

6 Q All right. Ms. Whitmarsh received her injury. Mr.
7 O'Keefe's blood next came in contact with one side of the
8 knife, and then the pillow case was placed or landed on the
9 knife. So basically what you're saying is there was an injury,
10 and then at some point after that, the pillow was laid on top
11 of the knife?

12 A Yeah. But in between that, his blood got --

13 Q Okay.

14 A Yes.

15 Q But with respect to those two issues, I mean, a
16 layperson could see that just from looking at the photo, right?

17 A Well again, if they had access to the DNA
18 information, as well as if they were able to look at it and put
19 the pieces together, yes. Um-hum.

20 Q Okay. What's new in your report is this information
21 about an accidental stabbing?

22 A Yes, that's correct.

23 Q That this was an accident somehow?

24 A There's a possibility of an accident, yes.

25 Q There's a possibility of it?

ROUGH DRAFT TRANSCRIPT

002114

1 A Yes.

2 Q Are you familiar with the term, hesitation mark?

3 A Yes, um-hum.

4 Q What's a hesitation mark?

5 A A hesitation mark, you typically see these in people
6 who may be suicidal. They may cut themselves, like some small
7 cuts with the knife before they make the deep cut, or whatever.

8 Q Okay. Could a hesitation mark also be a poke in the
9 side, and then a more full insertion of a knife into one's
10 body?

11 A That's a possibility.

12 Q Okay. Did you know that there were hesitation marks
13 in this case?

14 A I did not note any.

15 Q You didn't note any?

16 A That's correct.

17 Q So you would disagree with Dr. Grey, another defense
18 expert, if he said there were?

19 A Again, I didn't see any. When he examined it, maybe
20 he saw what he interpreted as hesitation marks.

21 Q Could he have been more thorough than you?

22 A He may have been, I don't know.

23 Q All right. So you have this scenario of accidental
24 stabbing, correct?

25 A A possibility, yes.

ROUGH DRAFT TRANSCRIPT

002115

1 Q Possibility. Could it also have been a suicide?

2 A I'd say it's a possibility.

3 Q It's a possibility?

4 A Yes.

5 Q What about a homicide?

6 A Yes, that's a possibility as well.

7 Q So really, it could have been anything?

8 A Out of homicide, accidental or suicidal, could have
9 been. Yes.

10 Q Could have been any one of those?

11 A That's correct.

12 Q All right. Thank you.

13 MR. LALLI: Nothing further.

14 THE COURT: Any redirect?

15 MS. PALM: Yes. Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. PALM:

18 Q I think Mr. Lalli talked to you about your
19 credentials a little bit, and where you worked. You have
20 worked for the government, have you not?

21 A Yes.

22 Q And could you tell me again where?

23 A I worked for the Jefferson Parish Sheriff's Office
24 crime lab, which again is like a county-type government entity.
25 And I've also worked for the Louisiana State Police Crime Lab.

ROUGH DRAFT TRANSCRIPT

1 which is a state governmental entity.

2 Q And how long did you work for those entities?

3 A Three and-a-half years for the sheriff's office, and
4 then approximately 13 and-a-half years with the sheriff -- with
5 the state police.

6 Q And have you -- do you still actually go to the field
7 now?

8 A Yes.

9 Q And can you explain how you do your job now?

10 A Primarily my job again is DNA analysis. But we do
11 get called out by our local agencies occasionally when there's
12 a difficult case, or if they need some sort of specialized
13 technique done at the crime scene, they'll call us out.

14 Q Okay. And Mr. Lalli talked to you about working a
15 few times for the Special Public Defender's Office?

16 A Yes, that's correct.

17 Q Have you worked for anybody else in Las Vegas?

18 A Yes. I have worked for the Public Defender's Office.
19 I know within the State of Nevada, I have also worked for I
20 believe a private -- a couple of private attorneys maybe.

21 Q Okay. Do you find that after you get a working
22 relationship with somebody that they call you again?

23 A Occasionally, yes.

24 Q Do you ever come back with opinions that are not
25 favorable to the person who wanted to hire you?

ROUGH DRAFT TRANSCRIPT

002116

1 A Yes.

2 Q In that case, they just -- what happens?

3 A In the majority of the cases they won't call me to
4 testify. And that happens in the majority of the cases that I
5 work, is that I will not be called to testify.

6 Q And with respect to the issue of doing a supplemental
7 report, were you asked your opinion previously whether accident
8 could be ruled out?

9 A Yes.

10 Q And did you have the same opinion previously?

11 A Yes.

12 Q Was it in your report?

13 A Not the first report.

14 Q And what's the reason you were asked to do a
15 supplemental report?

16 A Was to specifically address the possibility of it
17 being an accident.

18 Q Okay. Were you allowed to testify about that before?

19 A No.

20 Q Why not?

21 A There was an objection.

22 Q Okay. And is it because it wasn't in your report?

23 A That's correct, yes.

24 Q Okay. So then the supplement, none of your opinions
25 changed?

ROUGH DRAFT TRANSCRIPT

002117

1 A No.

2 Q Okay. Was it just more thorough than your first
3 report?

4 A Probably covered a little more ground.

5 Q Okay. With respect to that issue?

6 A Yes.

7 Q Anything else?

8 A No.

9 Q Okay. And with the issue with respect to
10 transcripts, were you asked to consider whether the transcripts
11 changed your opinion at all?

12 A Yes.

13 Q And did they?

14 A No.

15 Q You've had the same opinion since the first time you
16 looked at the case?

17 A That's correct.

18 Q Can you tell me how you use imagination in sequencing
19 as a crime scene analyst?

20 A Well again, you know, I may not have a body in front
21 of me. But based on the reports that I have, the scientific
22 information I have, I can create scenarios with using my
23 imagination.

24 Q Is part of what you do to rule in and rule out
25 various possibilities?

ROUGH DRAFT TRANSCRIPT

002118

1 A Yes.

2 MR. LALLI: Objection, leading.

3 THE COURT: Sustained.

4 BY MS. PALM:

5 Q Can you tell me why it's important to use your
6 imagination?

7 A Well because it can help us determine what
8 mechanisms, and you know, what actions may have been taken at a
9 crime scene.

10 Q Can anybody -- could anybody have known exactly what
11 happened in that room if they weren't there?

12 A No.

13 Q And by that, I mean the crime scene in this case.

14 A That's -- yes, correct.

15 Q And Mr. Lalli asked you whether anything could have
16 happened; do you recall that?

17 A Yes.

18 Q Okay. Your testimony is as to what was more likely
19 than other things?

20 A Yes.

21 Q Okay. That's what you were asked to opine on?

22 A Yes.

23 Q And your opinion is you can't rule out suicide?

24 A That's correct.

25 Q And you can't rule out accident?

ROUGH DRAFT TRANSCRIPT

002119

1 A That's correct.

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

3 THE COURT: Any recross?

4 RECROSS-EXAMINATION

5 BY MR. LALLI:

6 Q The last time you worked for the Louisiana State
7 Police was in 2001?

8 A Yes.

9 Q About ten years ago?

10 A Yeah, I guess it's about ten years now.

11 Q Thank you.

12 MR. LALLI: Nothing else.

13 THE COURT: Any questions from any of the jurors?

14 No --

15 UNKNOWN MALE SPEAKER: One, one.

16 THE COURT: Yes, we do have a question. Counsel
17 approach, please.

18 (Off-record bench conference)

19 THE COURT: All right. Sir, in our jurisdiction, we
20 allow jurors to ask questions of witnesses. And we have two
21 questions for you. "Could the pillow case have been used to
22 try to stop bleeding, that is why there's so much blood on the
23 case?"

24 THE WITNESS: That's a possibility, yes.

25 THE COURT: Next question is, "Would the awkward

ROUGH DRAFT TRANSCRIPT

002120

1 angle of the blade described in your demonstration have been
2 more natural if she were laying down when stabbed, and say on
3 her stomach?"

4 THE WITNESS: I still think it would be an awkward
5 angle given the position that it was in his hand, if he
6 received that injury at the same time she received her's.

7 THE COURT: Any follow up by Ms. Palm?

8 MS. PALM: No, Your Honor.

9 THE COURT: Mr. Lalli?

10 MR. LALLI: No, Your Honor.

11 THE COURT: Any follow up questions by any of the
12 jurors? No other questions. Thank you, sir --

13 THE WITNESS: Thank you.

14 THE COURT: -- for your testimony. You are excused.
15 Next witness for the State, please?

16 MR. LALLI: Your Honor, State calls Todd Conn.

17 THE MARSHAL: And sir, if you will remain standing.
18 Please raise your right hand and face the clerk.

19 TODD CONN, STATE'S WITNESS, SWORN

20 THE MARSHAL: Please have a seat please, sir. Please
21 state and spell your name for the record.

22 THE WITNESS: My name is Todd Conn. T-O-D-D,
23 C-O-N-N.

24 DIRECT EXAMINATION

25 BY MR. LALLI:

ROUGH DRAFT TRANSCRIPT

002121

1 Q How are you employed?

2 A I'm employed with the Las Vegas Metropolitan Police
3 Department as a traffic officer.

4 Q Okay. How long have you been employed by Metro?

5 A September will be seven years.

6 Q I want to direct your attention back to November of
7 2008. What was your assignment then?

8 A At that time I was a field training officer stationed
9 at a Bolden area of command.

10 Q And as a field training officer, are you in the
11 patrol division of Metro?

12 A Yes, I am.

13 Q Can you explain for our jury what patrol is?

14 A Patrol is your basic calls for services officers for
15 the police department. We're all broken upon basic area of
16 commands. At the time I was at Bolden area of command, which
17 covers from Desert Inn all the way up to Cheyenne.

18 Q Okay. Let me ask you this with respect to being in
19 patrol. Are patrol officers -- well I think you used the
20 terminology, we respond to calls for service?

21 A Correct.

22 Q If somebody calls the police, the first responders
23 are patrol officers?

24 A Yes, sir.

25 Q Those officers drive police cars?

ROUGH DRAFT TRANSCRIPT

002122

1 A Correct, your standard black-and-whites.

2 Q Wear police uniforms?

3 A Yes, sir.

4 Q Okay. Did you have any special training? You
5 indicated that you were a field training officer?

6 A Yes, sir.

7 Q What's a field training officer?

8 A We're responsible for ensuring that new officers that
9 just graduate the Academy go through in-service training
10 basically while they're on the street. And we measure their
11 performance based upon a standardized criteria, and score their
12 records every single day, and ensure that they graduate that
13 field training program.

14 Q Is it kind of like being a mentor to a younger
15 officer, however it's part of the process of ultimately getting
16 the job?

17 A Yes, sir.

18 Q They're on probation, you're mentoring them, making
19 sure they're doing everything right?

20 A Correct, sir.

21 Q Are you selected to be a field training officer, or
22 is everybody a field training officer?

23 A No, you have to apply. And there's tests that you
24 have to take, a oral board process to determine whether or not
25 you're capable of being a field training officer.

ROUGH DRAFT TRANSCRIPT

002123

1 Q Okay. And you had that designation back in November
2 of 2008?

3 A Yes, sir.

4 Q What is CIT?

5 A CIT is the Crisis Intervention Team. It's a class
6 that's put on by the department for those who apply for it.
7 Again, it's another position which you have to apply, and you
8 have to go through an oral board process.

9 Q What's the purpose of the Crisis Intervention Team?

10 A It's to deal with people that suffer from either
11 mental illness, or are experienced EOD, excited states of
12 delirium.

13 Q EOD?

14 A Correct.

15 Q What is EOD?

16 A It's excited delirium.

17 Q Okay, I understand. Is part of the training to
18 de-escalate situations?

19 A Absolutely.

20 Q Okay. And did you have that training back in
21 November of 2008?

22 A Yes, I did.

23 Q I want to direct your attention to November of 2008.
24 Did you arrive at 5001 El Parque?

25 A Yes, sir.

ROUGH DRAFT TRANSCRIPT

002124

1 Q Did you make your way to apartment 35?

2 A Yes, sir.

3 Q I'm going to show you what we've admitted as State's
4 Exhibit number 2. Is that apartment 35?

5 A Where the door is open.

6 Q Okay. Do you actually go inside the apartment?

7 A Yes I do, sir.

8 Q Showing you State's Exhibit number 1, is that a fair
9 and accurate depiction of the inside of the apartment?

10 A Yes sir, it is.

11 Q When you are there, do you begin to utilize your CIT
12 training?

13 A Yes sir, I do.

14 Q How? Tell us what happened.

15 A When I first come in, I observe that Officer Fonbuena
16 and a secondary officer were stationed just outside the kitchen
17 area. There's a wall right here. They're both positioned here
18 and here over on the right side of the building. I can see
19 that they don't have any coverage on this side, so I post up
20 right against this wall. Once there --

21 Q When you're saying your post up (sic), you just go
22 over into that location?

23 A I walk over to there, and I actually press my
24 shoulder up against the wall so that I'm minimizing the amount
25 of my body that's exposed.

ROUGH DRAFT TRANSCRIPT

002125

1 Q Where is your attention directed?

2 A I am looking into this open doorway here?

3 Q Who's in there?

4 A You can't see anybody from where I'm positioned. I
5 can hear basically mumbling. It's not very coherent at this
6 point in time. But I can tell that there is a person inside
7 the room.

8 Q Do you address that person?

9 A Yes, I do.

10 Q What do you say?

11 A I advise them my name is Officer Conn with the Las
12 Vegas Metropolitan Police Department. Basically explain that
13 we're concerned that somebody's hurt, and that we need them to
14 step outside with their hands in the air so that we can provide
15 any assistance.

16 Q So you instructed the person in that back room to
17 come out with their hands in the air?

18 A Correct.

19 Q So you could provide assistance to the person inside?

20 A Correct.

21 Q Did someone come out at that point?

22 A No, sir.

23 Q At various times, do you say different things to get
24 the person to come out?

25 A Yes, I continue my dialogue. And when I say my

ROUGH DRAFT TRANSCRIPT

002106

1 dialogue, I'm not having a conversation with anyone. I'm not
2 getting timed responses into my questions. There are some
3 utterances made by the individual inside the room. Basically
4 I'm told to, quote, get the fuck in there. At this point in
5 time, I can see that there's a large amount of blood on the
6 bed. I can see the bed spread inside that room. So I believe
7 that there's somebody armed. We're not going to walk into that
8 blindly. So I keep --

9 Q So that's why you didn't --

10 A -- challenging the room.

11 Q Okay. That's why you didn't get the "F" in there?

12 A Correct.

13 Q Okay. When you say you were challenging the room,
14 what does that mean?

15 A Challenging is just a term that we use on the police
16 department when we're calling in to either residents by blow
17 horn, or if we're using our voice into a room, telling people
18 to come out, letting them know that we are there, and trying to
19 get a response from the individual inside.

20 Q Okay. What sort of responses did you get upon
21 challenging the room?

22 A Again like I said, I was -- a couple of times, I was
23 told, get the fuck in here. I advised the individual that we
24 couldn't, that we needed them to step out of the room. It was
25 at this time the individual inside the room gave me the name of

ROUGH DRAFT TRANSCRIPT

002127

1 Veronica. He said, she's dead. And then I -- again, I advised
2 him, step outside the room, we'll get her help. I wouldn't get
3 any response.

4 Again I'd keep trying to continue this dialogue, I'd
5 be told she was alive. And then again I'd tell him, okay, well
6 come out, and we will come in there, we will get her all the
7 help that she needs. And again, nothing. Wouldn't come out of
8 the room, told to get the fuck in there again. And it just --
9 it wasn't going anywhere.

10 Q Do you remember the voice from the person inside
11 saying, fuck you? Do you remember that?

12 MS. PALM: Objection, leading.

13 THE WITNESS: I --

14 MR. LALLI: I just --

15 THE COURT: Sustained. Sustained.

16 MR. LALLI: Well I just asked if he remembered it.

17 THE COURT: Well (indiscernible) the specific
18 statement (indiscernible) anything else, and then you can
19 refresh his memory.

20 MR. LALLI: Okay.

21 THE WITNESS: I don't recall.

22 BY MR. LALLI:

23 Q Do you remember anything else? Would you like to see
24 a prior transcript to help refresh your recollection as to what
25 else might have been said?

ROUGH DRAFT TRANSCRIPT

002128

1 A Yes, sir.

2 Q Page 92.

3 A Yeah, I made a statement. It says, "Fuck you, get in
4 here."

5 Q Do you eventually go into the room?

6 A We do go into the room, but only once Sergeant
7 Newberry comes inside the room to assist.

8 Q Other officers show up?

9 A Yes, sir.

10 Q You eventually go into the room?

11 A Yes, sir.

12 Q Who else goes into the room with you?

13 A It would be myself, Sergeant Newberry, Officer Sean
14 Thomas.

15 Q Sean Taylor?

16 A Taylor, I'm sorry. And Officer Ballejos.

17 Q So that's a total of four of you?

18 A Correct.

19 Q And the room in State's Exhibit number 1 where there
20 is a diagram of a person laying on the ground, is that the room
21 you went into?

22 A Yes, sir.

23 Q Did other officers go into what's labeled as the
24 southwest bedroom?

25 A I believe that officers did clear that bedroom.

ROUGH DRAFT TRANSCRIPT

002109

1 Q Okay.

2 A Just not at the time that we had formulated our
3 arrest team.

4 Q Do you go in in an ordered manner?

5 A Yes, we do.

6 Q How did that -- describe that for us.

7 A We would call it stacking. Again, you have my posted
8 position.

9 Q I'm going to clear this, and then start --

10 A Okay.

11 Q -- start over.

12 A We have my posted position. I can't remember whether
13 Officer Taylor or Ballejos was directly behind me. But each
14 officer is then staggered behind the other person, putting a
15 hand on top of their shoulder so that when the first person
16 moves, the other individuals know to follow.

17 Q So you're in front?

18 A I am in front, correct.

19 Q All right. And I take it your direction is -- or
20 your attention is faced forward?

21 A Correct, sir.

22 Q Tell us what happened when you go into the room?

23 A Once I go in, I can clear past the bed. And that's
24 when we get a full visual. That's when I see the defendant
25 laying next to a woman who is covered in blood. His right hand

ROUGH DRAFT TRANSCRIPT

002130

1 is on the -- he's kind of laying on his side, right here along
2 her. His right hand is kind of caressing the back of her head.
3 His left hand is over her body.

4 And at this time, he immediately begins waving his
5 arm up and down going, don't fucking look at her, don't fucking
6 look at her. We immediately give him verbal commands to step
7 away from her.

8 Q Okay, can I stop you there?

9 A Uh-huh.

10 Q When he's saying that to you, what -- was there --
11 was -- what was he waving his hands over?

12 A He was waving his hands over her body. She was naked
13 from the waist down.

14 Q Was he waving his hands over the naked portion of her
15 body?

16 A It was actually just over the general torso area,
17 including that lower portion that was naked.

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

19 THE COURT: Yes.

20 BY MR. LALLI:

21 Q Officer, I'm going to show you what's been marked as
22 State's proposed 24 for identification purposes. Was that the
23 condition of the woman when the defendant was laying next to
24 her and waving his hand over her body?

25 A Yes sir, it is.

ROUGH DRAFT TRANSCRIPT

002131

1 MR. LALLI: Your Honor, move for --

2 BY MR. LALLI:

3 Q Is that a fair and accurate depiction of the position

4 --

5 A Yes, sir.

6 Q -- of her body?

7 MR. LALLI: Your Honor, move for the admission of
8 State's proposed 24.

9 MS. PALM: No objection.

10 THE COURT: It would be admitted.

11 (Exhibit 24 admitted)

12 BY MR. LALLI:

13 Q Just to publish for the jury, is that the condition
14 of her body?

15 A Yes, sir.

16 Q And he was laying right next to her?

17 A Correct.

18 Q Now when you come in and he's saying that to you, do
19 you begin -- you and other officers begin to give him commands?

20 A I'm giving him verbal commands to step away from her,
21 put his hands in the air where we can see them. He does not
22 listen to any verbal commands which are issued to him. It's at
23 this time we keep approaching, giving the verbal commands.

24 Officer Ballejos --

25 Q Okay.

ROUGH DRAFT TRANSCRIPT

002132

1 A -- is armed.

2 Q Let me ask you this. You say that you're
3 approaching. Can you use your finger and indicate the path you
4 took into the room?

5 A Okay. We come through the doorway here. And we
6 approach as close to the dresser here as possible. We then
7 have to -- once we -- he -- actually, this is the position
8 where I'm basically standing. You have me off a little bit to
9 the left over here. I'm trying to get this to do it.

10 The other officers, since I'm with my firearm -- I
11 have my firearm out in case a deadly force option was needed.
12 The other officers are armed with tasers. We also have one
13 that's empty handed in case he has to go hands-on with the
14 subject.

15 Q So you go into the room with your gun drawn and
16 pointed?

17 A Correct.

18 Q Did you ever fire your gun?

19 A No, I did not.

20 Q All right.

21 A So at this time, we're giving him the verbal
22 commands. He refuses those verbal commands. Officer Ballejos
23 deploys my taser, which was given to him previous to us
24 entering the room. Once the subject's been hit with the taser,
25 that's when Officer Taylor goes over to attempt to retrain him.

ROUGH DRAFT TRANSCRIPT

002133

1 He's putting up a fight still with the taser. He
2 isn't listening to the verbal commands. I see that there's a
3 lot of blood on the hand that Officer Taylor has, so I
4 immediately holster my firearm, put on a pair of latex gloves.
5 I grab that bloody hand for Officer Taylor while he secures the
6 other hand so that we can handcuff him. We then come back out
7 of the room the same direction which we came, and we place the
8 defendant right here in the middle of the living room.

9 Q Okay. Now let me ask you this. There was a bed in
10 the bedroom?

11 A Yes, sir.

12 Q Did you ever jump up on to the bed?

13 A No sir, I did not.

14 Q Did you ever do anything that could possibly transfer
15 blood from the bottom of your shoes on to that bed?

16 A No, sir.

17 Q Are you absolutely certain of that?

18 A I'm positive, sir.

19 MR. LALLI: Your Honor, that concludes direct
20 examination.

21 THE COURT: All right. Cross-examination.

22 MS. PALM: Thank you.

23 CROSS-EXAMINATION

24 BY MS. PALM:

25 Q Good afternoon, Officer Conn. When you were going

ROUGH DRAFT TRANSCRIPT

002134

1 into the bedroom, do you remember there was a light on in the
2 bedroom?

3 A Yes, there was a light on in the bedroom.

4 Q Do you know if it was an overhead light, or what kind
5 of light it was?

6 A I just remember the room being illuminated.

7 Q Okay. Could it have come from the bathroom light?

8 A No, that light would not have shown into where the
9 deceased and defendant were.

10 Q How about eh master bath light? Do you remember
11 there being a master bathroom there?

12 A I don't recall whether a light was on there or not.

13 Q Okay. It's possible?

14 A It is possible.

15 Q Was the light on out in the living room?

16 A No, living room was dark.

17 Q Was a light on in the bathroom in the hallway?

18 A The bathroom in the hallway actually had the door
19 closed. So I'm not sure at that point in time if it was
20 illuminated.

21 Q Okay. And when you first got there, my client was
22 mumbling?

23 A Correct.

24 Q Okay. And not very coherent, right?

25 A Correct, ma'am.

ROUGH DRAFT TRANSCRIPT

002135

1 Q And he was saying, get the fuck in here, get the fuck
2 in here?

3 A He made that statement. Not twice in a row, but
4 during different segments of my dialogue into the room with
5 him.

6 Q Okay. If in your statement you said he said, get the
7 fuck in here, get the fuck in here, that would not be correct?

8 A I don't recall it being --

9 Q Do you remember giving your statement back on -- you
10 gave a recorded statement on the night of November 5th?

11 A Correct, ma'am, to the homicide detectives.

12 Q Okay. Would it help you remember what you said in
13 that statement --

14 A Yes, ma'am.

15 Q -- if I showed you a copy of it?

16 MS. PALM: May I approach?

17 THE COURT: Yes.

18 MS. PALM:

19 BY MS. PALM:

20 Q Page 3.

21 A Okay, it says -- yeah. After -- it says, "She
22 stabbed herself. Get the fuck in here, just get the fuck in
23 here."

24 A Thank you. And he -- and do you remember saying the
25 only coherent thing she was saying was that she stabbed

ROUGH DRAFT TRANSCRIPT

002126

1 herself?

2 A He said that she stabbed herself, he said that she's
3 dead, said that she's alive. Those were coherent statements
4 that he said, along with, get the fuck in here.

5 Q Okay. You don't disagree that you previously said
6 the only coherent thing she (sic) said was, she stabbed
7 herself? Or do you?

8 A I may have mistakenly said that.

9 Q Okay. Would it help you remember you look at your
10 statement (sic)?

11 A That statement there -- I recall for a fact that I
12 have, she stabbed herself, she's dead, she is alive. Those
13 were all statements that were made to me.

14 Q Okay. Do you recall saying the only coherent thing
15 he said was that she stabbed herself?

16 A I don't recall that.

17 Q Would you like to look at a copy of your statement?

18 A That's fine.

19 MS. PALM: May I approach, Your Honor?

20 THE COURT: Yes.

21 BY MS. PALM:

22 Q Page 6.

23 A Correct.

24 Q Do you recall saying that now?

25 A Correct. I'm not sure in what order of my statement,

ROUGH DRAFT TRANSCRIPT

002127

1 there's a lot being said there that that falls in. But, yes.

2 Q Okay.

3 A That was the statement I made.

4 Q So if you -- if your statement says he's saying these
5 other things, it seemed coherent to you when he was saying, she
6 stabbed herself?

7 A (Indiscernible) --

8 Q Okay.

9 A Correct.

10 Q And when you look into the bedroom and you see my
11 client laying down next to the female, he didn't have anything
12 in his hands?

13 A No ma'am, he did not.

14 Q Okay. And there was no weapon that was close to him?

15 A There was a weapon in the room, which is within
16 proximity. I wouldn't put it out of reach. But there was a
17 knife located on the bed.

18 Q Okay. But from where he's laying down he can't reach
19 up and grab that knife, can he?

20 A No. But he could have jumped up and grabbed the
21 knife, so we were being very cautious.

22 Q And do you recall saying that he was caressing her
23 head?

24 A Correct, ma'am.

25 Q Okay. So as you walk in, he's laying there kind of

ROUGH DRAFT TRANSCRIPT

002138

1 caressing her head?

2 A His hand is basically on the bottom of her head
3 caressing it while he's kind of on his side, and then his hand
4 began waving up and down the top of her body.

5 Q Okay. And that's when you come in, he kind of gets
6 agitated and is saying, don't look at her, don't look --

7 A Yes, ma'am.

8 Q -- at her? Okay. And I think you just testified
9 that he was saying, don't fucking look at her?

10 A Don't look at her, don't fucking look at her. I
11 can't --

12 Q Okay.

13 A -- recall the exact quotation.

14 Q Well if your statement -- if your statement doesn't
15 say, don't fucking look at her, just "Don't look at her, don't
16 look at her," would that be more likely accurate?

17 A I can't recall. All I remember is an agitated state,
18 don't look at her.

19 Q Okay.

20 A And he was excited.

21 Q So possibly he wasn't cussing along with that
22 statement?

23 A I believe he was cussing.

24 Q Okay. Would you like to look at your statement
25 and --

ROUGH DRAFT TRANSCRIPT

002139

1 A Sure.

2 Q -- see what you said?

3 MS. PALM: May I approach, Your Honor?

4 THE COURT: Yes.

5 BY MS. PALM:

6 Q Page 4.

7 A Correct. Says, "Don't look at her." There's no
8 profanity.

9 Q Okay. And you gave a statement right after the
10 incident; is that correct?

11 A Correct, ma'am.

12 Q When your memory was still really fresh?

13 A Fresh, along with still being extremely excited at
14 the time.

15 Q You think having some time go by helped you remember
16 whether he cussed or not?

17 A Well I believe that I was still at an elevated state
18 when I was speaking to the homicide detectives. It's not a
19 very common occurrence for patrol officers to become involved
20 in this situation, it's a rarity. And your adrenaline is
21 kicking in. Sometimes things after you're able to settle down
22 do become a little clearer.

23 Q Okay. Have you testified back March of last year
24 that all he said was, don't look at her, don't look at her?
25 Was that before your memory became clear?

ROUGH DRAFT TRANSCRIPT

002140

1 A I would just advise that at that point in time,
2 that's what I believe he stated, and that's what I told the
3 detectives that he made those statements.

4 Q Okay. And in -- do you disagree that in March of
5 2009 you testified that he said, don't look at her, don't look
6 at her?

7 A No, ma'am.

8 Q Okay. No cussing there?

9 A No.

10 Q All right. I'd like to talk about who exactly went
11 over the body of the female. Do you recall who went over and
12 how that happened?

13 A I know that Officer Taylor had to step over the
14 deceased. I'm not sure of Ballejos's exact position when he
15 discharged the taser.

16 Q Okay. And did you step over the deceased?

17 A I don't believe I did. I believe that I reached over
18 her to secure the arm that Officer Taylor had.

19 Q So you reached over the other side of her body?

20 A My -- well my position is here. I would have reached
21 across to secure the arm --

22 Q Okay.

23 A -- that Officer Taylor had.

24 Q Can you draw on there where -- how my client is
25 laying?

ROUGH DRAFT TRANSCRIPT

002141

1 A He's laying along her parallel.

2 Q Okay. And how much space do you think is between my
3 client and the back wall?

4 A They are -- well between the back wall?

5 Q Yes.

6 A I'm not exactly certain.

7 Q Maybe a foot or two?

8 A I don't recall --

9 Q Okay.

10 A -- enough to be able to tell you one way or another.

11 Q Okay. So you think one officer went over the body?

12 A Correct. I know --

13 Q And then --

14 A The only thing I can state is that I know that
15 Officer Taylor crossed the body.

16 Q Okay. And then you picked my client up, along with
17 Officer Taylor?

18 A Yes, ma'am.

19 Q Are you the only two that did?

20 A Yes, ma'am.

21 Q And you dragged him out of the room?

22 A Not dragged, he was off the floor.

23 Q Okay. So if you testified that you dragged him out
24 of the room previously, that would be incorrect?

25 A The terminology at the time would probably be

ROUGH DRAFT TRANSCRIPT

002142

1 incorrect. He was not scraping the floor or anything like
2 that, we had him off the ground.

3 Q Okay. Do you recall testifying you dragged him out?

4 A I may have used the word, dragged.

5 Q Okay, but you didn't mean drag?

6 A Correct.

7 Q Okay. And then just you and Officer Taylor put him
8 in the living room?

9 A Correct.

10 Q Okay. And do you recall whether you dropped him on
11 his face there?

12 A We placed him in the middle of the living room. He
13 would have been face-down.

14 Q Okay. Did he fall down?

15 A When we let him go, his body would have been
16 approximately about a foot off the ground when we let go of
17 him.

18 Q Okay. So his face might have hit the floor?

19 A It's a possibility.

20 Q Do you recall what time you arrived on the scene?

21 A No, ma'am. Not exactly.

22 Q If I show you the dispatch report will that help
23 refresh your recollection?

24 A It may.

25 MS. PALM: May I approach?

ROUGH DRAFT TRANSCRIPT

002143

1 THE COURT: Yes.

2 BY MS. PALM:

3 Q (Indiscernible).

4 A Okay.

5 Q Do you recall what time you arrived on the scene?

6 A I'm going to try to locate it here real quick
7 (indiscernible). I show -- let's see. I'm seeing my in-route
8 time at 23:04.

9 Q If you had previously testified 11:06, does that help
10 you?

11 A I'll look here and see, at 11:06.

12 Q 23:06?

13 A I'm not seeing it on the log here as my call sign
14 showing arrived.

15 Q Okay. Would it help you remember if you looked at
16 your prior testimony?

17 A Yes, ma'am.

18 MS. PALM: May I approach?

19 THE COURT: Yes.

20 MS. PALM: Page 90 of the (indiscernible).

21 THE WITNESS: Yeah, I believe that I was on time at
22 23:06.

23 BY MS. PALM:

24 Q Okay. And the call went out at 23:01?

25 A Correct.

ROUGH DRAFT TRANSCRIPT

002144

1 Q Okay. So and then my client was in custody by 23:13?

2 A That would be the time that it says that he was tased
3 and taking into custody, correct.

4 Q Okay. So about six minutes after you got there?

5 A Correct.

6 Q And you don't recall whether anybody went over the
7 bed, do you?

8 A I don't recall seeing anybody go over the bed.

9 Q So if you previously testified that at one point both
10 you and Officer Taylor were on the other side of the body,
11 would that be incorrect?

12 A No, ma'am. There's a possibility that I could have
13 stepped partially over her to secure the hand while I was
14 helping Officer Taylor.

15 Q Okay. Would it help you remember exactly what
16 happened if you looked at your prior testimony?

17 A Yes, ma'am.

18 MS. PALM: May I approach?

19 THE COURT: Yes.

20 BY MS. PALM:

21 Q Page 94 of (indiscernible) transcript.

22 A Yes, ma'am.

23 Q Okay. Did you previously testify that both you and
24 Officer Taylor were on the other side of the body?

25 A Yes, ma'am.

ROUGH DRAFT TRANSCRIPT

002145

1 Q And do you recall testifying that you would have had
2 to have gone over the body?

3 A I don't recall making that statement, no.

4 Q Would it help you remember to look at the transcript?

5 A I can look at it. My apologies, it's just a long
6 time ago.

7 Q That's all right. I understand.

8 A Let's see it here. Yeah, I went over the body.

9 Q Thank you. So both you and Officer --

10 A Taylor.

11 Q -- Taylor were on the other side of the body?

12 A Correct, ma'am.

13 Q Okay. And you had to step over the body to get
14 there?

15 A Correct, ma'am.

16 Q Okay. And do you recall how many taser cycles there
17 were?

18 A I believe that there was two.

19 Q Okay. If you didn't remember it the last time you
20 testified, would that -- does that sound strange to you?

21 A No.

22 Q Okay.

23 A The cycle can be held continuous if you want, and it
24 can literally be a microsecond in between displacements if you
25 want. You can let go of the trigger and then reapply it. But

ROUGH DRAFT TRANSCRIPT

002146

1 I believe that there was two.

2 MS. PALM: Court's indulgence.

3 BY MS. PALM:

4 Q You don't know whether anybody bumped into the body
5 during the arrest process, do you?

6 A I don't recall anybody bumping into the body.

7 Q But you agree it's possible?

8 A It is possible.

9 MR. LALLI: Objection. I mean, that's speculative,
10 Your Honor. Anything's possible.

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

12 BY MS. PALM:

13 Q Because you didn't see it doesn't mean it didn't
14 happen?

15 MR. LALLI: Your Honor, I'm sorry. Same objection.

16 MS. PALM: I'm not asking him to speculate. I'm just
17 asking him that --

18 THE COURT: Well he's testified he didn't see anyone
19 step -- or --

20 MR. LALLI: Right. It's his recollection that --

21 THE COURT: Right. You are asking him to speculate
22 to a certain extent. He just said he didn't see it one way or
23 the other.

24 BY MS. PALM:

25 Q Did you see everything that happened in the room that

ROUGH DRAFT TRANSCRIPT

002147

1 evening?

2 A No.

3 Q So you didn't see what every other officer was doing?

4 A No, ma'am.

5 Q Okay. Do you recall contact with my client's body
6 and the deceased during the arrest process?

7 A I was --

8 MR. LALLI: Objection, vague. I don't understand the
9 question, Your Honor.

10 MS. PALM: Contact was me --

11 THE COURT: Do you understand the question, sir?

12 THE WITNESS: I believe she's asking what physical
13 contact was made with the defendant and the deceased.

14 THE COURT: With that understanding, can you answer
15 the question?

16 THE WITNESS: Yeah.

17 MR. LALLI: Well I'm going to object. It's been
18 asked and answered at least twice already.

19 THE COURT: I'm going to --

20 MR. LALLI: If that's the question.

21 THE COURT: -- overrule the objection. Go ahead,
22 Officer.

23 THE WITNESS: Okay. The defendant was physically
24 resisting us. It was my hands and Officer Taylor's hands that
25 were attempting to secure him. At no point in time do I recall

ROUGH DRAFT TRANSCRIPT

002148

1 anybody touching her. We immediately removed the defendant
2 from the master bedroom, into the living room. At that point
3 in time, I then ushered all the other officers out, asked for
4 one medical unit to come up and check on the victim inside the
5 bedroom.

6 BY MS. PALM

7 Q Okay. Let me stop you, because I think you
8 misunderstood my question. I probably was very inarticulate.
9 I meant did my client's body come into contact with the
10 deceased during the arrest process?

11 A He was already caressing her head at the time that we
12 came in. So yes, he was touching her.

13 Q Okay. How about when he was tased? Did -- was there
14 any more contact with her?

15 A I don't believe so.

16 Q Okay. If Officer Ballejos said in his report that
17 during the tasing he was --

18 MR. LALLI: Objection, hearsay.

19 MS. PALM: -- kind of smothering her --

20 THE COURT: Sustained.

21 THE WITNESS: I can't --

22 THE COURT: Sustained.

23 BY MS. PALM:

24 Q Did the tasing cause him to have any kind of
25 contractions at all?

ROUGH DRAFT TRANSCRIPT

002149

1 Q Thank you. And the lab you're working for, is that
2 accredited?

3 A Yes, it is. Our lab is accredited by the American
4 Society of Crime Laboratory Directors Laboratory Accreditation
5 Board.

6 Q Can you tell me what that means to be working in a
7 lab that's accredited?

8 A An accredited lab means that we have an organization
9 that comes in, and they examine our policies and procedures,
10 our training guides, our quality control procedures, our case
11 files. They check all this out. And if we meet the standards
12 that they have set, they will accredit us. And so we have an
13 outside agency that comes in and checks all this to make sure
14 that we are doing the things that we're supposed to be doing as
15 a crime lab.

16 Q Okay. Have you testified in a court of law before?

17 A Yes.

18 Q And have you testified as an expert in a court of
19 law?

20 A Yes.

21 Q Have you testified as an expert in the mechanism of
22 injury? Or --

23 A Not specifically in the mechanism of injury.
24 However, I have testified in crime scene reconstruction
25 matters, which sometimes includes --

ROUGH DRAFT TRANSCRIPT

002050

1 MR. LALLI: I'm going to object, Your Honor. This is
2 non-responsive.

3 THE COURT: Overruled.

4 BY MS. PALM:

5 Q Go (indiscernible) --

6 A Which sometimes includes mechanism of injury.

7 Q Okay. Have you testified as an expert as to whether
8 injuries are defensive or not?

9 A Yes.

10 Q And have you testified for both the government and
11 the defense?

12 A Yes.

13 Q Can you tell me which jurisdictions you have
14 testified as an expert?

15 A I've testified in 29 Louisiana parish courts. We
16 don't have counties there, we have parishes. It's the same
17 equivalent as a county. I've also testified in federal court,
18 two city courts in Louisiana. I've also testified in Arkansas,
19 Florida, California, Mississippi, Missouri, New York, and here
20 in Nevada five times I believe.

21 Q Would that be in Clark County, Nevada?

22 A Yes.

23 Q Have you written any papers of collection of
24 evidence?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

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1 Q Do you conduct any training in your field?

2 A Yes. I've conducted training both in forensic
3 science in general and crime scene investigation to -- I've
4 instructed internationally, nationally, regionally, and locally
5 to my area in Louisiana.

6 Q And have you been retained by the defense in this
7 case?

8 A Yes.

9 Q And did we ask you to look at various records that we
10 provided?

11 A Yes.

12 Q And what did you look at?

13 A I believe that I was provided with case
14 documentation, photographs from this particular case.

15 Q And did that include the photographs from the crime
16 scene?

17 A Yes.

18 Q And did that include a videotape?

19 A Yes.

20 Q And police reports?

21 A Yes.

22 Q And DNA evidence reports?

23 A Yes.

24 Q Did I ask you to assess the thoroughness of the crime
25 scene investigation?

ROUGH DRAFT TRANSCRIPT

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1 A Yes.

2 Q In doing that, were you able to make any conclusions?

3 A Yes.

4 Q First let's talk about the issue of toxicology. Did
5 you have any conclusions regarding the handling of -- any
6 conclusions regarding the issue of blood or breath specimens
7 from Mr. O'Keefe?

8 A Yes. In my opinion, blood and urine specimens should
9 have been collected from Mr. O'Keefe shortly after the time of
10 death of Ms. Whitmarsh.

11 Q What would that have allowed to have happened?

12 A That would have allowed a toxicologist to examine
13 the blood and the urine. To determine if there were any -- if
14 there was any alcohol present as well, if there were any type
15 of controlled substances or drugs in his system at the time.

16 Q Would that have given a quantitative number for his
17 -- to measure his intoxication?

18 A Yes.

19 Q Did you any reach other issues regarding the
20 toxicology analysis?

21 A Just the fact that the samples were not collected,
22 and they should have been collected.

23 Q Okay. What might they have indicated?

24 MR. LALLY: Objection, calls for speculation. And
25 it's been asked and answered.

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: On the speculation issue, sustained.

2 MS. PALM: Okay, thank you.

3 BY MS. PALM:

4 Q How is it relevant in a criminal case?

5 A Well in a criminal case, it might indicate substances
6 that may have affected the state of mind or behavior of an
7 individual.

8 Q And do you have a source of authority for your
9 assertion that it should have been collected?

10 A Yes. There's a publication -- well actually a couple
11 of publications. One in particular is called, "Techniques of
12 Crime Scene Investigation." It's written by Barry Fisher, who
13 was -- he's in charge of the Los Angeles Sheriff's county crime
14 lab. And in that book, it's also used as one of the
15 certification -- one of the study guides for certification to
16 be a crime scene investigator.

17 Q And is that book used in your field?

18 A Yes. It's a standard reference text book.

19 Q Did you look at the collection of penile swab
20 evidence?

21 A Yes, I did.

22 Q Did you have any conclusions about that collection?

23 A Yes. There were some penile swabs that were
24 collected from Mr. O'Keefe. And in my opinion, they were
25 collected improperly.

ROUGH DRAFT TRANSCRIPT

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1 Q And can you explain why?

2 A Yes. When they were -- at the time they were
3 collected, a crime scene analyst came in, was wearing gloves.
4 He provided Mr. O'Keefe with two swabs. Handed them to Mr.
5 O'Keefe, who was then allowed to swab his own penis.

6 Mr. O'Keefe's hands at the time had two actively
7 bleeding cuts on it, as well as blood on his hands, most likely
8 from Ms. Whitmarsh. As a result of him swabbing, there's a
9 potential that he could have contaminated those swabs with her
10 blood from his hands.

11 Q And can you explain contamination, what that means?

12 A Contamination is the introduction of an unwanted
13 substance into an item of evidence. An example might be some
14 DNA that gets transferred from one item to another that's not
15 related to the actual events of a crime or criminal
16 investigation, or death investigation.

17 Q Does it ultimately taint the results of an analysis?

18 A Yes. Because you have this mixture, then you can not
19 interpret, did that happen before, during, or after this
20 incident that may have happened.

21 Q Did you explain what the alternative ways were that
22 they could have done it?

23 A No. Proper collection technique would have been --
24 first type of proper collection technique would have been for
25 the crime scene analyst who had the gloves on to just go ahead

ROUGH DRAFT TRANSCRIPT

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1 and swab the penis.

2 The other alternative would have been to document Mr.
3 O'Keefe's hands, take photographs of his hands in their present
4 condition, collect any evidence that he may have had on his
5 hands. Then he should have been allowed to clean his hands, of
6 course under supervision, make sure that his hands were clean.
7 The cuts could have been bandaged. They could have then
8 provided him with gloves to then swab his own penis. So there
9 were two alternative ways of doing it.

10 Q So the way it was done with Mr. O'Keefe's bloody
11 hands handling his penis during the collection, is that
12 acceptable practice under any standard that you know of?

13 A No.

14 Q Did I also ask you to look at the wounds to Mr.
15 O'Keefe's hands?

16 A Yes.

17 MS. PALM: Your Honor, may I approach the witness?

18 THE COURT: Yes.

19 BY MS. PALM:

20 Q Showing you what's been marked as defendant's triple
21 L, triple (indiscernible), triple J --

22 UNKNOWN FEMALE SPEAKER: That's the old one. That's
23 the old one.

24 MS. PALM: -- triple F, triple --

25 THE COURT: Oh. Ms. Palm, I think it's the --

ROUGH DRAFT TRANSCRIPT

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1 MS. PALM: Oh, these are the old ones?

2 THE COURT: Older numbers.

3 MS. PALM: Okay.

4 THE COURT: (Indiscernible).

5 UNKNOWN FEMALE SPEAKER: It's the white tag.

6 MS. PALM: Oh, I'm sorry. Okay.

7 BY MS. PALM:

8 Q Proposed GG, FF, EE, DD, CC, BB, and AA. Could you
9 take a look at those, please?

10 A Okay.

11 Q Thank you. Do you recognize those photographs?

12 A Yes.

13 Q Are they part of what you reviewed to make your
14 analysis of this case?

15 A Yes.

16 MS. PALM: And Your Honor, as we're taking them out
17 of order, I would move to conditionally admit these so that I
18 may publish them for the jury.

19 MR. LALLI: Your Honor, the foundation hasn't been
20 laid. But for the purpose of accommodating this witness, we
21 have no objection that they --

22 THE COURT: Okay.

23 MR. LALLI: -- conditionally be admitted.

24 MS. PALM: Thank you.

25 THE COURT: Conditionally admitted.

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1 (Exhibits GG, FF, EE, DD, CC, BB, and AA conditionally
2 admitted)

3 BY MS. PALM:

4 Q And in looking at the wounds to his hands, were you
5 able to make any determinations about the time frame in which
6 they were received relative to the victim's injuries?

7 A Okay. He has a cut here on the kind of inside joint
8 of the thumb. And he has one right here between the first --
9 can you see it? Between the first and second joints on the
10 finger. So kind of -- like if they were connected, it would be
11 kind of like in this type of area.

12 And given that his blood was found I believe on a
13 light switch, on the knife that was found on the scene, and on
14 some pants that were found in the bedroom, he most likely
15 received these cuts around the same time Ms. Whitmarsh received
16 her injury. And it could have been either before, during, or
17 after she received her injury. But sometime within a time
18 frame -- within that general time frame.

19 Q Can I stop you for a minute?

20 A Sure.

21 Q And ask, this is defendant's double A. Is that --
22 that photo show the injury to his finger?

23 A I believe it's right there.

24 Q Thank you. And this is BB. Does that show the
25 injury to the thumb?

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1 A Yes, right here. Right there.

2 Q And this is DD. Does that show the blood on his
3 hands?

4 A Yes.

5 Q And this is FF. What is that showing?

6 A This shows the cut right here on his hand.

7 Q I'm sorry, do you want -- can you continue?

8 A Oh.

9 Q Sorry.

10 A In terms of -- okay. So --

11 MR. LALLI: I'm going to object to the form of the
12 question.

13 MS. PALM: All right.

14 THE COURT: Sustained.

15 BY MS. PALM:

16 Q You -- when you're saying that they were received
17 about the same time, are you giving a sequencing by that, or
18 are you just saying a time frame?

19 A Just a time frame.

20 Q Okay. So can you explain the time frame issue?

21 A Okay. If he -- one possibility is that he received
22 these cuts on his hands after Ms. Whitmarsh received her
23 injury. In that case, the only two mechanisms that in my
24 opinion would have caused them would have either been some sort
25 of self-inflicted, or some sort of accidental cut. Okay.

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1 That's as much statement as I could make about if it occurred
2 after the -- Ms. Whitmarsh's injury.

3 Another possibility is that he received the injury at
4 the same time Ms. Whitmarsh received her injury. In this case,
5 because of the way the cuts are on the index finger and the
6 thumb, the blade would have to be oriented -- or the edge of
7 the blade would have to be oriented downward, kind of like
8 this. Kind of like he's grabbing here.

9 But in order for him to receive it at the same time,
10 the blade of that knife would have to be in a particular
11 position, based on the position that it went into her body.

12 Q Can I stop you for a minute? Would it help you --

13 A Yes.

14 Q -- to demonstrate that?

15 A Yes.

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

17 THE COURT: Yes.

18 BY MS. PALM:

19 Q Using a ruler as a demonstrative exhibit, can you use
20 this ruler to show what you're talking about?

21 A Sure.

22 Q Would you mind stepping down and --

23 A Sure.

24 Q -- demonstrating for the jury what you mean?

25 A Okay. Assume this is the point of the blade, of the

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1 knife, or the tip of the knife. It could have been in this
2 type of orientation, because the cuts are appearing over here
3 on this end. So in order for it to appear on this end, it
4 would have to be oriented in a position like this. Okay.

5 In order for the blade to cut both the thumb and the
6 forefinger, it would have to be kind of almost -- it would have
7 to be in a position like this. (Indiscernible). Okay, this
8 would be the spine of the knife, which is the dull part of the
9 knife. This would be the edge. Now according to the autopsy
10 report -- (indiscernible). The way that the wound went in was
11 kind of -- the edge part was pointed up, the spine part was
12 (indiscernible).

13 MR. LALLI: I apologize, Your Honor. Can we
14 approach? I apologize.

15 (Off-record bench conference)

16 THE COURT: Ladies and gentlemen, we need to -- we're
17 on the record, Michelle?

18 THE COURT RECORDER: Yes.

19 THE COURT: All right. We need to resolve an issue.
20 And I just don't want to have you sit there while we hash this
21 issue out. And I apologize, but we do need to resolve this
22 issue before we go any further. And so again, I appreciate
23 your patience. We're going to take our lunch break now. And
24 so it's 12:20. If we can have you come back at 1:20.

25 During this recess, it is your duty not to converse

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1 among yourselves, or with anyone else on any subject connected
2 with this case. Or to read, watch, or listen to any report of
3 or commentary on the trial by any person connected with the
4 trial, or by any medium of information, including without
5 limitation, newspaper, television, radio, or the internet.
6 You're not to form or express an opinion on any subject
7 connected with this case until this matter is submitted to you.

8 Actually ladies and gentlemen, come back at 1:30. So
9 we'll give you a couple minutes extra. And counsel, we'll meet
10 at 1:20.

11 MR. LALLI: 1:20?

12 THE COURT: Okay?

13 MR. LALLI: Very good.

14 THE COURT: Ms. Palm, my office will make a copy of
15 this. It will be at Cindy's desk.

16 MS. PALM: At whose desk? At your secretary's?

17 THE COURT: Cindy's. Yeah.

18 UNKNOWN FEMALE SPEAKER: Yes.

19 MS. PALM: Thank you.

20 (Court recessed at 12:20 p.m. until 1:23 p.m.)

21 (Outside the presence of the jury)

22 THE COURT: All right. We're outside the presence of
23 the jury panel. The Doctor Schiro was testifying --

24 MR. LALLI: I think it's Mr. Schiro.

25 THE COURT: Oh, Mr. Schiro.

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1 MR. LALLI: I don't think he's got a --

2 THE COURT: Excuse me. Was testifying. And he said,
3 according to the autopsy report, the blade went in, and then
4 there was an objection at that point. And we adjourned, and we
5 reviewed the Vega case (phonetic), which is at 125 Nevada
6 Advance 33 (phonetic). Mr. Lalli?

7 MR. LALLI: Well Your Honor, my concern was the --
8 what's not reflected in the record, and that's the manner in
9 which he was showing the ruler being a knife entering the body.
10 It was inconsistent with A, the testimony of Dr. Benjamin, and
11 B, the photograph. And essentially, he's testifying from facts
12 that he does not have firsthand information of, a report, and
13 the autopsy itself, which he was not present for. He didn't
14 see the paths of those things.

15 And my right of confrontation is being compromised
16 because I didn't have the chance to -- A, this is was never
17 done before. Never this demo thing that's going on did not
18 happen in the last trial. And I did not have the right to ask
19 Dr. Benjamin if this manner in which the knife went into the
20 body is consistent with her findings, and they are certainly
21 inconsistent with the photograph. So under Vega, my
22 confrontation right is being violated.

23 THE COURT: Okay. Ms. Palm?

24 MR. LALLI: And my position --

25 THE COURT: Oh, I'm sorry.

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1 MR. LALLI: I'm sorry. My position at the bench Your
2 Honor was if they want to do a demo, they can do a demo. That
3 is absolutely their right to do it. But it's got to comport
4 with the manner of entry that's depicted in the trajectory rod
5 photo.

6 THE COURT: Okay. Ms. Palm?

7 MS. PALM: Your Honor, a demonstration was done in
8 the last trial, page 131 of the rough draft transcript. If the
9 Court would like to see it, I can show you.

10 THE COURT: Well --

11 MS. PALM: I have it with me.

12 THE COURT: -- I'm not doubting what you're saying.
13 Is -- I mean, it's --

14 MS. PALM: Okay.

15 THE COURT: You know, I mean --

16 MS. PALM: So I mean, on the notice issue --

17 THE COURT: Let's deal with this trial, because --

18 MS. PALM: All right.

19 THE COURT: -- there was an appeal. And I didn't
20 read your brief but I'm assuming --

21 MS. PALM: I understand. But he just --

22 THE COURT: -- you're saying there were errors.

23 MS. PALM: -- raised a notice issue.

24 THE COURT: Okay.

25 MS. PALM: So secondly, Vega is not even apt to this

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1 case. Vega is just a restatement of Polk (phonetic), which was
2 addressing Melinda's DS (phonetic) issues and confrontation
3 clause issues for a criminal defendant. It doesn't apply to
4 their confrontation rights.

5 They get the hearsay rule. And the hearsay rule has
6 an exception for experts, which is at NRS 5285, which allows an
7 expert to rely on other experts' reports and opinions. So
8 that's what they get.

9 Mr. Schiro can rely on that expert. And to the
10 extent he's saying that they're -- it's not consistent, he is
11 saying what their expert's pathology report said. And I know
12 that the pathology report is not apparently reflective of the
13 diagram as you look at it, but Dr. Benjamin explained that in
14 her testimony, Mr. Schiro understands it. Dr. Grey explained
15 it.

16 I think everybody gets that that diagram is not
17 entirely how the injury went in, and you have to rely on the
18 pathology report, which is what he's doing. Now that's a
19 matter for cross-examination. If he wants to cross-examine him
20 on that, I think that's fine.

21 But to say that he can't testify and rely on what Dr.
22 Benjamin said -- and the other thing is, even if he did have a
23 confrontation right under this case, it only applies if you
24 haven't gotten to cross-examine the expert who wrote it.
25 That's what Polk says. And if you want the cite for Polk, I'll

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1 give it to you. It's 233 P.3d 357, that's a 2010 Nevada case.

2 And it says you can not introduce hearsay, which the
3 other part, he hasn't gotten the right to cross-examine. They
4 cross-examined Benjamin on her -- or actually they didn't
5 cross-examine, I did. They know the issues in Benjamin's
6 report, and the jury knows the issues in Benjamin's report.
7 He's relying on the report he has a right to as an expert.
8 This case does not even apply to them. So I think the issue is
9 just a red herring.

10 MR. LALLI: Well I'm not saying that an expert can't
11 rely on the report. He can certainly rely on it. But experts
12 can't testify, they can not articulate hearsay statements
13 attributable to other people.

14 What happened in the Vega case is -- and the Supreme
15 Court commented on this. They said, sure. Dr. Meda (phonetic)
16 could come in. And based upon admissible evidence, she could
17 formulate her opinions, no problem. This gentleman, he can
18 come in here, he can formulate his opinions. But he can't
19 regurgitate information from reports from other folks that he
20 was not privy to. And that's what he's doing in this
21 demonstration.

22 THE COURT: In Vega, Nurse Suder (phonetic) did not
23 testify. And Dr. Meda basically just read her report. I mean,
24 not in those terms. But basically testified as to his review
25 of her report. But then later in his testimony, he gave his

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1 opinions based upon photographs and a video of the sexual
2 assault examination.

3 Supreme Court said that it was -- in it -- it was an
4 error to allow him to basically regurgitate Nurse Suder's
5 report. She wasn't cross-examined, she did not testify. They
6 said it was appropriate for him to render an opinion based upon
7 his independent review of the diagram, and the video of the
8 examination.

9 And so in this case, we did have Dr. Benjamin
10 testify, and she identified a photograph. I'm going to allow
11 him to render his opinion. I think he is subject to cross-
12 examination, Mr. Lalli, if his opinion is based upon an
13 incorrect interpretation of the photograph, incorrect
14 interpretation of Dr. Benjamin's testimony.

15 And I mean, that's subject to vigorous cross-
16 examination on your part. And obviously, a comment in closing
17 by both sides that if his opinions are based on a false
18 assumption, then I assume you're going to argue that it's not
19 worth anything, and Ms. Palm's going to argue that it's based
20 upon a correct assumption. It's up for the jury to determine
21 that. So I'm going to allow him to testify.

22 MR. LALLI: Incorrectly about the manner in which the
23 knife went into the decedent's body?

24 THE COURT: Well I think the question, Ms. Palm, is
25 should be to somehow get into that his interpretation of her

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1 testimony or position, this is how I think the knife was held.

2 MS. PALM: Okay.

3 THE COURT: Okay? And then Mr. Lalli can -- well, if
4 he's going to be able to establish that that interpretation is
5 180 degrees wrong --

6 MS. PALM: Okay.

7 THE COURT: I mean, and it's somewhat unclear. I
8 think there's some statement about the rod shows the exact
9 path, and I think she sort of backed off a little bit saying,
10 well it's not exact. And so that testimony came out to the
11 best of my recollection. And so --

12 MR. LALLI: All right, Your Honor. Well thank you
13 for letting us --

14 THE COURT: Okay?

15 MR. LALLI: -- present the issue.

16 THE COURT: And actually, I did read this case on a
17 -- for another case. Not dealing with this issue, but dealing
18 with the issue of suicide, of whether or not that was relevant
19 to a certain issue. So when I started getting to the facts of
20 the case, I remembered it, but I didn't remember it for this
21 issue.

22 MR. LALLI: Your Honor, there was also another matter
23 that I brought up that probably ought to be brought up now
24 before we resume. And that is whether this witness can testify
25 as to what -- whether he believes certain injuries are

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1 defensive wounds. It's my position that he can't, based upon
2 his lack of experience. He is not a forensic pathologist, he's
3 not a medical doctor.

4 And he himself, although he claims to be an expert in
5 every other area under the sun, he said he was not an expert in
6 the mechanism of injury. He said that himself. And under
7 those two scenarios, he can not testify as to how certain
8 injuries -- whether they were defensive injuries, or any other
9 matter.

10 THE COURT: Ms. Palm, I do believe he testified he
11 was not an expert in that area.

12 MS. PALM: Your Honor, I asked him about that. And
13 he said -- no, that's not what he said. What he intended to
14 say, and I don't know if it came across right, was that he is
15 an expert in crime scene reconstruction and bloodstain
16 patterns, and the mechanism of injury is a subset of those
17 things. So while he doesn't -- that's not what he says.

18 He's an expert in -- it's a subset of what he is an
19 expert in, and it's part of what he does. He has testified as
20 an expert here in Clark County on defensive wounds in front of
21 Judge Hardcastle. And he does have the experience, and I went
22 over it with him. And I can put him back up to have him say
23 some more about his backgrounds. But --

24 THE COURT: Well I think you do need to lay a better
25 foundation --

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1 MS. PALM: Okay.

2 THE COURT: -- as to his expertise to render an
3 opinion on the mechanism of injury, specifically, you know, the
4 defense wounds --

5 MS. PALM: Okay.

6 THE COURT: -- in this case.

7 MS. PALM: Okay.

8 THE COURT: I mean, if they are defensive wounds.

9 MS. PALM: And the other thing that --

10 THE COURT: Right now, there's not sufficient
11 foundation laid. So if you ask the question, I would -- I will
12 sustain the objection until you lay better foundation.

13 MS. PALM: If they're defensive, that's where I'm
14 limited?

15 THE COURT: Right.

16 MS. PALM: Okay.

17 THE COURT: Right now, there's not sufficient
18 foundation for him to render that opinion.

19 MS. PALM: Okay. And if he lays a better foundation,
20 there's not going to be some kind of notice issue, because
21 that's what I heard Mr. Lalli kind of talking about too. And I
22 wanted to address that if that's the case.

23 THE COURT: Well was he noticed on this expert?

24 MS. PALM: He was noticed as an expert on this issue.
25 I provided an updated report talking about his opinions on the

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1 defense wound issue. He was noticed timely with the report.
2 And my problem is that I think that, you know, I have filed
3 everything timely, every notice, every motion timely.

4 I think under Hernandez vs. State (phonetic), which
5 is 188 Pacific 3rd, 1126, that's a 2008 case, and under EDCR 3
6 point 28, they are supposed to bring a timely motion to
7 preclude something once they have notice of it. They haven't
8 done that. And they're doing these things mid-trial, and I'm
9 having to respond mid-trial when they should have litigated
10 this previously, as I'm trying to prepare my defense.

11 MR. LALLI: You know what trial judges are supposed
12 to do is they're supposed to make evidentiary rulings on issues
13 as they come up in trials. That's how this job is done. And
14 you know, I don't know what to say other than that.

15 THE COURT: And I do my best, Mr. Lalli.

16 MR. LALLI: You do, Your Honor, and I appreciate it.

17 THE COURT: Well his testimony regarding whether or
18 not this is a defensive wound or not, was that contained in the
19 report that was attached?

20 MS. PALM: It was.

21 THE COURT: Do you agree, Mr. Lalli?

22 MR. LALLI: Pardon?

23 THE COURT: Was --

24 MR. LALLI: It's not a notice issue, Your Honor. It
25 is an expertise issue.

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1 MS. PALM: Okay. I heard him also talking about
2 notice issue, so I wanted to clarify if there is --

3 THE COURT: On the expertise --

4 MS. PALM: -- a notice issue.

5 THE COURT: -- issue, at this point, I would sustain
6 the objection because appropriate foundation has not been laid
7 --

8 MR. LALLI: Thanks.

9 THE COURT: -- as of this moment.

10 MS. PALM: Okay.

11 THE COURT: All right?

12 MS. PALM: Okay, thank you.

13 THE COURT: Anything else?

14 MS. PALM: No.

15 THE COURT: Let's call the witness and the jury.
16 Off, Michelle.

17 (Off the record from 1:35 p.m. until 1:36 p.m.)

18 (In the presence of the jury)

19 THE MARSHAL: You may be seated, ladies and
20 gentlemen. Let's make sure all cell phones are turned off,
21 please. Number 2.

22 THE COURT: Mr. Schiro, do you understand you're
23 still under oath?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right, thank you. Go ahead, counsel.

ROUGH DRAFT TRANSCRIPT

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1 MS. PALM: Thank you, Your Honor.

2 BY MS. PALM:

3 Q Mr. Schiro, we were just in the middle of doing a
4 demonstration. Can you explain again what that demonstration
5 was?

6 A Demonstration was to show that if Mr. O'Keefe's
7 injury to his hand occurred at the same time as Ms. -- excuse
8 me, Ms. Whitmarsh's injury, what the position would have had to
9 have been of the knife in relation to his hand and her wound.

10 Q Okay. And in considering that issue, did you
11 consider the autopsy report prepared by Dr. Benjamin?

12 A Yes.

13 Q And the autopsy photographs?

14 A Yes.

15 Q Would you like to continue the demonstration, please?

16 A Sure.

17 MS. PALM: May I approach, Your Honor?

18 THE COURT: And sir, as you're describing how you're
19 holding the ruler and any angles or positions, you need to
20 describe that for us so we can put it on the record, because if
21 we don't have that explanation, it won't make it to the
22 transcript.

23 THE WITNESS: Okay.

24 THE COURT: All right. Thank you, sir.

25 THE WITNESS: Thank you. Okay. As I stated earlier,

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1 imagine that the end of -- the one-inch end is the tip of the
2 knife. And this is the handle then near the 12-inch part of
3 the ruler.

4 His injury is on the side of the joint here of the
5 right thumb, and between the joints of the first and second
6 fingers. In order for his injury to occur, his hand would have
7 to have been positioned with that first joint and the cut by
8 the thumb aligned with the blade (indiscernible).

9 BY MS. PALM:

10 Q And did you say what the sharp side of the blade was?

11 I --

12 A The sharp side is the edge, and that's this part down
13 here, the metal part. And this is the spine, or the dull side.
14 Now according to the autopsy report, the sharp edge was upward,
15 whereas the dull edge of the spine was downward. Okay? So
16 we're talking about something like this position.

17 Also, according to the autopsy report, the wound was
18 from right to left, and the wound was slightly downward, and
19 from front to back. So we're talking about -- it would have to
20 be in a position like this in order for him to get that injury
21 at the same time she received her injury, which to me is an
22 awkward angle.

23 Q Thank you.

24 A You're welcome.

25 Q So that would be the same time.

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1 A If --

2 Q And then is there another option?

3 A Yes. The third option would be -- as I discussed
4 previously, I said the injury could have happened before she
5 received her injury, at the same time she received her injury,
6 or after. We've talked -- I've talked about after, and at the
7 same time.

8 The other instance would be if it occurred before, in
9 which case it's before she received her injury. In that case,
10 the wound on his hand could be defensive in nature if he tried
11 to grab the blade.

12 Q Okay. And --

13 MR. LALLI: Your Honor, I -- I'm sorry. At this
14 point, I would object to his statement that the wound could
15 have been defensive.

16 THE COURT: The jury is instructed to disregard the
17 last statement of the witness at this point.

18 MR. LALLI: Thank you.

19 MS. PALM: Okay.

20 THE COURT: Okay.

21 BY MS. PALM:

22 Q Could the wound have been caused by grabbing the
23 blade?

24 A Yes.

25 Q Okay. So because it's a little unclear, you talk

ROUGH DRAFT TRANSCRIPT

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1 about the injuries could have been received either before,
2 during, or after. You're talking about the general time frame
3 when you say that?

4 A Yes.

5 Q Okay. And then specifically, you're talking about
6 the different possibilities. Which --

7 MR. LALLI: Objection, leading.

8 MS. PALM: I'm just trying to clarify.

9 THE COURT: Well, sustained.

10 MS. PALM: Okay.

11 BY MS. PALM:

12 Q When you are talking about the sequencing -- is that
13 a better way to say it, when you're saying -- when you're
14 explaining the different options?

15 A I don't know if sequencing would be the right thing.
16 But the different possibilities --

17 Q Okay.

18 A -- that could have occurred.

19 Q Okay. And were you able to determine what was more
20 likely?

21 A The scenario where he gets cut before.

22 MR. LALLI: I'm going to object as to more likely. I
23 don't think he's got the expertise. He wasn't there, he didn't
24 see it. I mean, there are different possibilities that could
25 have happened, but I would object as speculation as to more

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1 likely.

2 THE COURT: I'm going to sustain that at this time.
3 If there's foundation that can be laid to better establish the
4 opinion, then we'll -- the Court will hear it.

5 MS. PALM: Okay.

6 BY MS. PALM:

7 Q Mr. Schiro, have you studied pattern of injuries?

8 A Yes.

9 Q Have you studied mechanism of injuries?

10 A Yes.

11 Q In your job as a crime scene reconstructionist, is
12 that part of what you do?

13 A Yes, that's a subset of crime scene reconstruction.

14 Q How about bloodstain patterns?

15 A Yes, it's also sub state of -- excuse me. It's also
16 part of bloodstain patter analysis.

17 Q So knowing the mechanism of injury is part of that?

18 A Yes.

19 Q Okay. And is that a job that you're performing and
20 have performed?

21 A Yes.

22 Q Is part of what you do determining how a weapon was
23 used?

24 A Yes, that could be part of it?

25 Q How injuries were sustained?

ROUGH DRAFT TRANSCRIPT

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1 A Yes.

2 Q Do you attend --

3 MR. LALLI: Objection, leading.

4 THE COURT: Well I'm going to overrule the last
5 objection.

6 BY MS. PALM:

7 Q Do you attend autopsies?

8 A I have, yes.

9 Q And is that part of your crime scene reconstruction?

10 A Yes, that has been part of my crime scene
11 investigation duties to attend autopsies.

12 Q Does crime scene reconstruction encompass whether
13 wounds were defensive or not?

14 A Yes, it could.

15 Q And have you testified as an expert in defensive
16 wounds?

17 A Yes.

18 Q Have you testified as an expert on how wounds were
19 sustained?

20 A Yes.

21 Q Have you testified as an expert in mechanism of
22 injury? Is that --

23 A Yes.

24 Q -- how wounds were sustained?

25 A Yes.

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1 Q Okay. Is part of what you do looking at the angle of
2 injuries?

3 A Yes.

4 Q Is part of what you do as an expert sequencing
5 injuries?

6 MR. LALLI: Your Honor, I'm going to object. This is
7 all just leading. If he wants to describe his experience, then
8 he ought to be allowed to describe it, not have the examining
9 attorney just lead him through all this stuff. That's
10 improper.

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

12 BY MS. PALM:

13 Q Can you explain how you're qualified to give an
14 opinion on the sequencing of injuries?

15 A Yes. It varies from case to case as far as if you're
16 able to sequence injuries or not. You may be able to in some
17 cases, in some cases you can't. But that's part of what you do
18 in crime scene reconstruction, especially when you've combined
19 that in conjunction with bloodstain patten analysis to maybe be
20 able to sequence certain events and certain things that
21 happened, including any wounds received by an individual, or
22 wounds delivered to a person.

23 Q And in reaching your opinions in this case, did you
24 rely on any authority?

25 A Yes.

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1 Q What was that?

2 A There's a particular book called, "Principals of
3 Bloodstain Pattern Analysis," which is again a reference book
4 that's used in bloodstain pattern analysis. And it talks about
5 certain mechanisms of injury. One of the things that it does
6 cover is where would you most likely expect wounds on a
7 suspect's hands if they were delivering some stab wounds.

8 Q Okay.

9 MS. PALM: Your Honor, may the expert testify as to
10 the sequencing of injuries?

11 THE COURT: I think proper foundation has been laid
12 at this point.

13 MR. LALLI: Can I voir dire the --

14 THE COURT: All right.

15 MR. LALLI: -- witness?

16 THE COURT: I'll allow that at this time.

17 MR. LALLI: Thank you.

18 VOIR DIRE EXAMINATION

19 BY MR. LALLI:

20 Q Mr. Schiro, you're not a medical doctor?

21 A That's correct. It's Schiro, I'm sorry.

22 Q Schiro.

23 A Yes.

24 Q I apologize.

25 A That's okay. No, I'm --

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1 Q Mr. Schiro, you're not a doctor of osteopathy, are
2 you?

3 A No.

4 Q You are -- have you ever worked as a forensic
5 pathologist?

6 A No.

7 Q Have you ever performed an autopsy?

8 A I've never performed one, no.

9 Q And I think if I understood your testimony on direct
10 examination, you've -- you actually said that you were not an
11 expert in the mechanism of injury?

12 A I did not say that.

13 Q Oh, you didn't say that?

14 A I did not say that. I said -- what I said before
15 your objection was I said I'm an expert in crime scene
16 reconstruction, which also includes mechanism of injury.

17 Q Okay.

18 MR. LALLI: Your Honor, I would submit he does not
19 have the credentials to testify to mechanism of injury.

20 THE COURT: I think that sufficient foundation has
21 been laid. I'm going to allow the testimony.

22 MS. PALM: Thank you.

23 DIRECT EXAMINATION (CONTINUED)

24 BY MS. PALM:

25 Q Mr. Schiro, can you explain -- again, it's been a

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1 little bit choppy. Can you explain what you thought was likely
2 and why?

3 A To me, the most -- I can tell you what the least
4 likely in my opinion of the scenarios are. The least likely is
5 that he received it at the same time as she received her
6 injury, other than it possibly being the result of an accident.

7 More likely is going to be either as a defense wound.
8 Or equally likely, which I can't say which one's more likely or
9 less likely, that he received it after, either as a
10 self-inflicted or an accidental injury.

11 Q And can you explain the basis for that?

12 A Yes. Again, it has to do with the angle of the way
13 the -- as I demonstrated, the angle of the knife injury. But
14 also, there's certain patterns that have been recognized that
15 when a person -- a perpetrator gets injured on their hands,
16 where their injuries typically are.

17 And the three main ways that a person gets cut when
18 they're stabbing someone is one, if they're stabbing and they
19 strike bone, in which case their hand slips on the knife blade
20 and they get cut. In this case, no bone was struck.

21 Another mechanism is if they're stabbing someone and
22 the handle of the knife becomes bloody, their hand will slide
23 down onto the knife blade. And again, this was not a situation
24 where there was multiple stab wounds and there was blood on the
25 handle.

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1 And the final way that a person typically cuts their
2 hands is if they're holding someone down and they're stabbing,
3 and they'll get stabbed on the back of their hands. And those
4 injuries did not correspond with the type of injury that Mr.
5 O'Keefe had.

6 Q Okay. Showing you defense Exhibit HH, have you seen
7 this before?

8 A Yes.

9 Q Did that help you in your determinations?

10 A Yes, it did to a certain extent.

11 Q How?

12 A What I was able to determine based on the crime scene
13 photos and the bloodstains that are on there in conjunction
14 with the DNA report, I was able to determine approximately when
15 some of the blood may have become deposited on. On that -- in
16 terms of the whole dynamic of the situation.

17 Q Can you explain how you used that to determine that?

18 A Yes. According to the DNA results, Ms. Whitmarsh's
19 blood was found here on the tip end of the knife. There was a
20 mixture of blood, Mr. O'Keefe and Ms. Whitmarsh here at this
21 spot. And there's also -- it's hard to see on this monitor.
22 There's also a spot here that was Mr. O'Keefe's blood.

23 And the then there was also a blood sample from the
24 handle of the knife, which is very -- it can't really been seen
25 in the photographs. But they swabbed that area, and it was a

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1 mixture with Mr. O'Keefe. But the DNA that was there was not
2 enough to say, you know, who the other person was.

3 Q I'm going to show you defense Exhibit JJ. Have you
4 seen this before?

5 A Yes.

6 Q Did you actually make that?

7 A Yes.

8 Q What is it?

9 A What this consists of is this is a photograph -- this
10 photograph right here is a photograph that was taken from the
11 crime scene. This photograph here is a photograph that was
12 taken by the lab, and it shows the areas that they tested.
13 This is one area, here's another area, and here's a third area
14 that they tested. And they also tested the tip end over here.

15 This line of demarcation, I put that in the photo,
16 right here. I don't know if you can see that line. That was
17 indicating how deep the knife penetrated. Because of the
18 penetration of the knife, and you have a mixture of Ms.
19 Whitmarsh and Mr. O'Keefe here, that indicated to me that those
20 bloodstains came after she received her injury, as well as this
21 one here. This one, we can't tell, just because we don't -- we
22 can't tell what the nature of that bloodstain is due to the
23 photograph.

24 Q Is there anything about how the blood looks that
25 informed your decision?

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1 A Yes. In this particular case, it's not what we would
2 call transfer, where a bloody object comes in contact with
3 something else. These have the appearance of being drips, the
4 stains along the edge here, and this stain over here. They're
5 more drop-wise.

6 Q And what do the drops tell you?

7 A It indicates to me that he had an actively bleeding
8 wound, and there was blood dripping on the knife blade, on that
9 side of the knife blade.

10 Q And did you look at the other side of the knife?

11 A Yes.

12 Q Showing you defense Exhibit II, does that tell you
13 anything?

14 A In this particular case, it doesn't really, other
15 than you can see here at the tip end there is some smearing.
16 But there's no drips, or any type of what appears to be any
17 other blood that may be on that side of the knife.

18 Q Do you recall which side was laying up in the crime
19 scene photographs?

20 A The first photograph that Ms. Palm showed, where the
21 photograph was on the bed, that was the original position as
22 far as the photograph that was taken.

23 Q And how about the smearing on there; does that
24 smearing tell you anything?

25 A It just indicates that it went into something bloody

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1 and came out.

2 Q Okay. So that smearing can be caused by just coming
3 out of a body?

4 A Yes.

5 MS. PALM: Court's indulgence.

6 BY MS. PALM:

7 Q Was there anything else regarding sequencing that you
8 were able to determine?

9 A There were a couple of other events that were
10 associated with the incident. They all happened at some point,
11 I could not tell necessarily what -- which order. The pillow
12 case that was removed, it was possibly held together or bunched
13 up, and then it came in contact with Ms. Whitmarsh's blood.

14 Based on the way that the bloodstain patterns were on
15 the pillow case itself, it looked like it had been bunched up.
16 And there were creases. When you opened it up, you could see
17 where there were definite creases in the bloodstain, indicating
18 it had been bunched up, and came in contact with --

19 Q And Mr. Schiro, if I could just interrupt you for a
20 minute. Showing you defense Exhibit 2. Do you recognize this?

21 A Yes.

22 Q Okay. Is that the pillow case you're talking about?

23 A This is the pillow case right here.

24 Q Okay. Please continue.

25 A And that was ti essentially about the pillow case.

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1 Also we could tell it was bunched up at some point, had come in
2 contact with her blood.

3 Another sequence of events we could make, based --
4 and we've kind of already discussed this, about -- with the
5 bloodstains on the knife. Ms. Whitmarsh received her injury.
6 Mr. O'Keefe's blood next came in contact with that one side of
7 the knife, and then the pillow case was deposited or landed on
8 top of the knife. And you can see the pillow case, here's the
9 knife handle sticking out right here.

10 The other thing, a couple other things was that her
11 pants were removed. Ms. Whitmarsh's pants had been removed
12 after they were saturated with blood, and then they were placed
13 in the bathroom. And there were also shoe prints that were
14 deposited in the bathroom after blood had been stepped in.

15 Q Okay. Showing you defense Exhibit Y. Do you
16 recognize that? Do you know how to clear the screen? Okay.

17 A No.

18 Q Thank you.

19 A The Judge was handling that.

20 Q Do you recognize that?

21 A Yes.

22 Q Okay. Does it appear that there's blood actually
23 touching the knife there?

24 A Yes.

25 Q Does that make a difference in your determination of

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1 how the blood got on the knife blood?

2 A No, hum-um.

3 Q Okay. Can you explain why?

4 A Well again, there's really -- on the knife blade, the
5 photographs, there was -- it doesn't look like any type of
6 blood had been transferred from that -- from the pillow case
7 onto the knife itself.

8 Q Okay.

9 A It could have been saturated in there, then it was
10 absorbed by the pillow case. And when it came in contact, it
11 just didn't make any -- leave any trace.

12 Q Okay. Did I ask you to consider the issue of
13 accidental stabbing?

14 A Yes.

15 Q And did you come to an opinion on that?

16 A Yes. The possibility of an accidental stabbing can't
17 be ruled out.

18 Q Can you explain why?

19 A Again, the demonstration of how he could have
20 potentially received that cut on his hand at the same time she
21 did again puts the knife in a very unusual position. Also
22 considering that there's a lack of defense wounds on Ms.
23 Whitmarsh, and also there's a presence of a single stab wound.
24 These could be consistent with an accident.

25 Q And when you say, lack of defense wounds, are you

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1 specifically looking for knife wounds?

2 A Yes.

3 Q Okay.

4 A Cuts on the hands or arms.

5 Q Were there any other significant findings that you
6 made?

7 A I think that was about the extent of my findings.

8 Q In your opinion, could any further testing have been
9 done on that night?

10 A They may have been able to test some more areas of --
11 for DNA. That would be about it.

12 Q Okay. And explain DNA versus blood?

13 A DNA in terms of maybe they could have swabbed -- and
14 again, not knowing the condition of the knife handle. If there
15 was some non-bloody areas on the knife, they may have been able
16 to swab that for what we call contact DNA, where someone holds
17 an object or grabs an object. In some cases, there can be a
18 transference of DNA. That would be the only other thing I
19 would think that could have been done in this case.

20 Q Okay. And that -- and you're talking about looking
21 at the knife handle --

22 A Yes.

23 Q -- for skin cells? Is that --

24 A Well what you do is really kind of a general swabbing
25 of non-bloody areas. And then you analyze it for DNA, and see

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1 whose type comes up.

2 Q Okay. Did you look at the evidence to see if
3 anything looked like it might have been used to stop bleeding?

4 A Not in particular. Although like I said, there was
5 the information about the pillow case that was bunched up.

6 Q Is it possible that the handle of the knife still
7 could be tested for DNA at this time?

8 A I don't know. It just depends on how it was handled
9 at the lab and who handled it, and the -- how well it was
10 managed, essentially.

11 MS. PALM: Pass the witness. Thank you.

12 THE COURT: All right. Cross-examination.

13 MR. LALLI: Thank you.

14 CROSS-EXAMINATION

15 BY MR. LALLI:

16 Q Sir, I don't want to mispronounce your name. So is
17 it Schiro, or Schiro?

18 A Schiro, like school.

19 Q Schiro. Okay, thank you. Mr. Schiro, what -- how --
20 what is your primary source of employment?

21 A My primary source of employment; I'm employed by the
22 Acadiana Crime Lab in New Iberia, Louisiana.

23 Q And is that A-C-A-D-I-A-N-A, for the purposes of the
24 record?

25 A Yes.

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1 Q What do you do there?

2 A I'm the DNA technical leader, as I had explained
3 earlier. My primary duties involve making sure that the
4 technical operations of the DNA lab are operating. I'm also a
5 DNA analyst, as well as go out on crime scenes when called.

6 Q Your -- is it fair to say that your -- probably your
7 two primary responsibilities at the Lab in Acadiana are one, to
8 perform and conduct DNA analysis, and two, as the technical
9 leader to control at your lab; is that a fair --

10 A Yes, that --

11 Q -- statement?

12 A Yes, yes.

13 Q Okay. And is that a full-time job?

14 A Yes.

15 Q How many hours a week do you work?

16 A 40.

17 Q All right. So you also have -- you also do
18 consulting work, --

19 A Yes.

20 Q -- correct?

21 A That's correct.

22 Q So the forensic science resources company, that's
23 you?

24 A That's me, that's correct.

25 Q Are there any other employees of that company?

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1 A No. I do have other people that I consult with
2 occasionally. Or if there's some specialty testing that needs
3 to be done, we'll provide them with information. But I'm
4 essentially forensic science resources.

5 Q But you're the only employee of that organization?

6 A Yes.

7 Q You are not here in your official capacity as a -- as
8 the technical leader of the --

9 A Acadiana.

10 Q Acadiana, thank you, criminalistics laboratory, are
11 you?

12 A Right. That's correct.

13 Q All right. That lab never performed any analysis or
14 testing in this case, did they?

15 A No.

16 Q All right. So you are here -- would you say that
17 your consulting work then is a part time job?

18 A Yes.

19 Q Okay. So you are here in your part time capacity as
20 a consultant?

21 A That's correct.

22 Q All right. At the beginning of your testimony, you
23 started to indicate your various areas of expertise?

24 A Yes.

25 Q And you said that you are an expert in shoe print

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1 comparisons?

2 A Yes.

3 Q DNA analysis, which we've talked about, correct?

4 A Yes.

5 Q Crime scene investigation?

6 A Yes.

7 Q Crime scene reconstruction?

8 A Yes.

9 Q Bloodstain analysis?

10 A Yes.

11 Q And I think -- perhaps I misunderstood you. But you
12 would also include, you're an expert in mechanism of injury?

13 A As a subset of bloodstain pattern analysis and crime
14 scene reconstruction, yes.

15 Q So would you consider yourself an expert in mechanism
16 of injury?

17 A Yes.

18 Q All right. What other areas are you an expert in?

19 A Fracture match comparisons. Also hair analysis.

20 I've also been qualified in forensic science in general.

21 Q Anything else?

22 A I think that's it.

23 Q Okay. Would you agree with me that is a wide gambit
24 of areas of expertise?

25 A Yes.

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1 Q Who retained you in this case?

2 A I guess the county did through Ms. Palm, the defense.

3 Q Was Ms. Palm the person who actually contacted you?

4 A Yes.

5 Q When was that done?

6 A That was done sometime in July, I believe. I don't
7 know the specific date.

8 Q Were you in fact retained on this case much earlier
9 than that?

10 A I had -- in terms of -- I have looked at this case
11 before.

12 Q Okay, that's what I'm talking about.

13 A Yes.

14 Q Who retained you at that time? Was it Ms. Palm?

15 A Not her individually.

16 Q Okay. Was she one of the attorneys who was assigned
17 to this case?

18 A Yes.

19 Q Approximately when was that?

20 A I believe that was in 2009 sometime. Early 2009, or
21 maybe late 2008.

22 Q Okay. So if you wrote a report dated March 15th of
23 2009, is that about right?

24 A Yes.

25 Q And I think if your report said that the case was

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1 accepted in January of 2009, would that be consistent with your
2 recollection?

3 A Yes.

4 Q Okay. And at the time, you indicated that you were
5 contacted by the county?

6 A Well in terms of the county -- in terms of the
7 Special Public Defender's office, (indiscernible) to retain me,
8 it's kind of a gray area in terms of, it's the county, or is it
9 them, so.

10 Q Understood. And at the time, was it Ms. Palm who was
11 working for the Special Public Defender's Office?

12 A Yes.

13 Q All right. So originally in this case, you were
14 retained by the special public defender?

15 A Correct.

16 Q How many times have you testified here in Clark
17 County?

18 A I believe I've testified five times.

19 Q And how many of those times did you testify for the
20 special public defender?

21 A I believe all five were --

22 Q All of them?

23 A -- with the special public defender, yes.

24 Q Would it be true that you testified in the Lobato
25 case (phonetic)?

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1 A Yes.

2 Q Would it be true that you testified in the Doser case
3 (phonetic)?

4 A Yes.

5 Q Would it be true that you testified in the Goodman
6 case (phonetic)?

7 A Yes.

8 Q All for the special public defender?

9 A Yes.

10 Q And as part of your analysis, I guess that would
11 assume that you looked at those cases? You looked at photos,
12 documents, much as you did in this case?

13 A Yes.

14 Q You found things favorable for the defense?

15 A Yeah, I guess. Otherwise they wouldn't have called
16 me. Yes.

17 Q Right, or they wouldn't have called you. And then
18 you did in fact get called, and you testified in those cases?

19 A Yes.

20 Q Any other case that I haven't mentioned?

21 A There might be one more, but it's not coming to mind.

22 Q Okay. Now your report indicates that it is a
23 supplement; is that true?

24 A Yes.

25 Q So I have a report in front of me dated July 24th of

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1 2010, which is your report?

2 A July 27th of 2010 --

3 Q Did I --

4 A -- I believe.

5 Q Yeah, July 27th?

6 A Yes.

7 Q And then there is another report for this very same
8 case dated March 15th of 2009?

9 A Yes.

10 Q And you indicate in the latter report, quote, "This
11 is a supplemental report to the PSR 309 report issued March
12 15th?"

13 A Yes.

14 Q Why did you create a supplemental report?

15 A Because I was asked to consider some additional
16 information in the case.

17 Q Okay, what was the additional information that you
18 didn't --

19 A The additional information that I was asked to
20 include was, you know, is this the possibility of an accidental
21 stabbing.

22 Q So was it additional information, or were you asked
23 to expand your opinion?

24 A I think it was to -- an additional conclusion.

25 Q To expand your opinion?

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1 A Yes, I guess that would be --
2 Q Okay.
3 A -- fair to say.
4 Q Did anything -- was any new evidence presented to you
5 in between July 27th of this year and March 15th of last year?
6 A Yes.
7 Q Okay, what?
8 A There were some transcripts that I looked at.
9 Q All right. Was there anything forensically?
10 A No.
11 Q Okay. So what information did you review prior to
12 testifying today?
13 A In terms of reviewing prior to testifying? My report
14 --
15 Q Yes, sir.
16 A -- essentially. Just reviewing my report.
17 Q And as part of what you based your opinion on?
18 A Yes.
19 Q Well what was it? What -- not your report, because
20 your report would be your opinions.
21 A Right.
22 Q True?
23 A Yes.
24 Q What I'm asking you is what forensic evidence did you
25 review in order to formulate those opinions?

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1 A I would have been the photographs, the documents.

2 But your specific question was to prepare for today. The only
3 thing I really did was review my report, and just kind of went
4 over it.

5 Q But your original analysis that you performed in this
6 case is what you did to prepare ultimately for today, right?

7 A Yes.

8 Q Ultimately?

9 A Right.

10 Q Okay. And you indicated that you've also -- you also
11 reviewed transcripts?

12 A Yes.

13 Q And that was what is new?

14 A Yes, that was the only additional information that I
15 had.

16 Q Okay. Transcripts of what? Transcripts of who; let
17 me put it that way. Whose transcripts did you review;
18 transcripts of witnesses?

19 A Possibly.

20 Q And you're not sure?

21 A Well not --

22 THE COURT: Counsel approach, please.

23 (Off-record bench conference)

24 (Pause in proceedings)

25 THE COURT: Ladies and gentlemen, just so it's clear

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IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN K. O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA
Respondent.

Supreme Court No.:
District Court Case No.: 08C250630
Electronically Filed
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Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX – VOLUME XI – PAGES 2000-2199

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Counsel for Respondent

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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
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11	02/04/11	2990-2995

1 A Yes.

2 Q When you arrived on the scene there, can you describe
3 for the jury what was going on at the scene at that point when
4 you arrived?

5 A When we walked up to that location, we saw -- it was
6 just -- there were some neighbors outside by the stairs
7 downstairs, and some neighbors on the patio area.

8 Q Okay. Can you -- do you know how many neighbors were
9 there?

10 A I can't recall, no.

11 Q Okay. So neighbors downstairs, and neighbors
12 upstairs?

13 A Yes.

14 Q Were there any other officers there at that time?

15 A Yes, Officer Fonbuena.

16 Q Okay. And Officer Fonbuena, did he arrive
17 separately --

18 A Yes, he did.

19 Q -- from you? But about the same time?

20 A He arrived like maybe 30 seconds before I did.

21 Q Is he what was called a first responder?

22 A Yes.

23 Q Okay. And what does first responder mean?

24 A You're the first officer there.

25 Q Okay. When you arrived there and Officer Fonbuena

ROUGH DRAFT TRANSCRIPT

002000

1 was there -- now incidentally, was Officer Fombuena, was he
2 also in a marked car?

3 A Yes.

4 Q In full uniform?

5 A Yes.

6 Q Did you receive any more details from the neighbors
7 as to what was going on at the scene?

8 A Yes. As we walked up to the apartment, one neighbor,
9 I don't know who, just pointed at the --

10 MS. PALM: Objection, Your Honor. Hearsay.

11 THE COURT: Sustained.

12 MS. GRAHAM: Judge, it's not for the truth of the
13 matter. It's for what the officers did next.

14 MS. PALM: Did you receive information that made you
15 do something next.

16 THE COURT: Right. I'm going to sustain the
17 objection. Just ask it a different way.

18 BY MS. GRAHAM:

19 Q You received information --

20 A Yes.

21 Q -- from neighbors?

22 A Yes.

23 Q What did you do then?

24 A We immediately went up to the open door.

25 Q Can you just point on the screen? If you touch that

ROUGH DRAFT TRANSCRIPT

002001

1 screen it will make a mark, so you can describe for the jury
2 exactly where you and Officer Fonbuena were.

3 A Okay. We initially basically walked up to the
4 apartment, and stood -- there we go, right there. And then do
5 the details. We basically pause maybe like a second, and then
6 we made entry into the apartment.

7 Q Okay. Now the details that you heard from not only
8 dispatch, but the neighbors --

9 A Um-hum.

10 Q -- did you feel the need to get a search warrant
11 before you entered that apartment?

12 A No.

13 Q Why not?

14 A Because the details stated that there was a female
15 inside bleeding, which my first thought was, okay, somebody
16 probably needs medical help, extenuating circumstances. And
17 the other detail we were given was that there was a male still
18 inside.

19 Q Okay. When you arrived at the top of the stairs --
20 and incidentally, do you know what apartment number it was?

21 A I believe it was C.

22 Q Okay.

23 A From my memory.

24 Q If I said C35, would that be --

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002002

1 Q -- accurate?

2 A Yes.

3 Q Was the door to the apartment open or closed?

4 A It was open.

5 Q And did you immediately make entry into the open

6 door?

7 A Yes.

8 Q Okay. And what did you observe when you went in the

9 apartment?

10 A We -- excuse me. We went into the living room. All

11 we saw was an empty living room, that nothing seemed disturbed.

12 There wasn't any signs of violence.

13 Q Okay. Let me stop you right there.

14 MS. GRAHAM: I'm showing what's -- defense counsel

15 what's been marked as State's proposed 3, and State's proposed

16 4. May I approach the witness?

17 THE COURT: Yes.

18 MS. GRAHAM: As well as State's proposed 5, 6, and 7.

19 In order. May I approach?

20 THE COURT: Yes.

21 BY MS. GRAHAM:

22 Q Officer, can you just take a look at these photos for

23 a minute, flip through them and see if you recognize those?

24 A Yes, I do.

25 Q And what are they?

ROUGH DRAFT TRANSCRIPT

002003

1 A That's the inside of the apartment.

2 Q Okay. And do those fairly and accurately depict the
3 way that apartment, the living room -- specifically the living
4 room area looked that evening?

5 A Yes.

6 MS. GRAHAM: Move to admit State's 5, 6, 7 -- 4, 5,
7 6, and 7.

8 MS. PALM: No objection.

9 THE COURT: They will be admitted.

10 (Exhibits 4, 5, 6, and 7 admitted)

11 MS. GRAHAM: Thank you.

12 BY MS. GRAHAM:

13 Q I'm showing you what's been admitted as State's 3,
14 Exhibit 3 --

15 THE CLERK: (Indiscernible).

16 THE COURT: Pardon?

17 THE CLERK: (Indiscernible).

18 UNKNOWN MALE SPEAKER: She hasn't asked for
19 admission.

20 THE COURT: It should be 4. You asked for 4 through
21 7.

22 MS. GRAHAM: Oh, I'm sorry.

23 THE COURT: Is this 3?

24 MS. GRAHAM: 3, 4, 5, 6, and 7.

25 THE CLERK: Okay. (Indiscernible).

ROUGH DRAFT TRANSCRIPT

002004

1 MS. PALM: And I have no objection to those.

2 THE COURT: Okay.

3 (Exhibit 3 admitted)

4 MS. GRAHAM: Apologize for that.

5 BY MS. GRAHAM:

6 Q What's been admitted into evidence now as State's 3.
7 What is that a photo of?

8 A That's the -- just outside the front door, looking
9 in.

10 Q Okay. And that's where you entered with --

11 A Yes.

12 Q -- Officer Ponbuena?

13 A Yes.

14 Q Okay. So you entered the living room?

15 A Yes.

16 Q And what did you observe in the living room?

17 A Just -- it was just (indiscernible). There wasn't
18 anything disturbed, no signs of violence of anything.

19 Q Okay. What did you do then?

20 A At that point, we then called out, and identified
21 ourselves as police officers.

22 Q And did anybody respond to you?

23 A Yes, we heard a voice say -- a male voice say, get in
24 here.

25 Q Okay. And what was your response to the male voice

ROUGH DRAFT TRANSCRIPT

002005

1 saying, get in here?

2 A We immediately asked him to step out into the living
3 room, because we couldn't tell which room it was coming from.

4 Q And where were you at this time?

5 A When we first entered, we basically kind of -- in the
6 middle of the living room.

7 Q Showing you what's been marked as -- or entered into
8 evidence as State's 4, does that depict the area that you and
9 Officer Fonbuena were?

10 A Yes.

11 Q Can you just point to where you were when you heard
12 the male voice shouting out?

13 A We were basically in this area here, me and -- he and
14 I.

15 Q Okay.

16 A In the middle of the living room.

17 Q So he says, get in here. And in response, you tell
18 him what?

19 A We ask him to step out into the living room.

20 Q Okay. And did he comply with that?

21 A No.

22 Q Okay. What did he say?

23 A At first -- I can't recall the order in which these
24 things were said. But I can say that when we asked -- we asked
25 him to come out into the living room, because we couldn't tell

ROUGH DRAFT TRANSCRIPT

002006

1 which room he was in. In fact, we initially thought it was the
2 room -- I'll depict, it's just on the other side of this wall
3 right here. So we took a position by the kitchen so we can see
4 into that room.

5 Q Okay.

6 A Which was --

7 Q Can you point in the screen where you and Fonbuena
8 took a position?

9 A Right -- that area right there.

10 Q Okay. So as you're standing there, are you giving
11 him verbal commands?

12 A Yes.

13 Q Okay. And did you get a view inside what would be
14 known now as the second bedroom?

15 A Yes, we did. A partial view.

16 Q And were there any signs of anybody in that --

17 A No.

18 Q -- particular bedroom? Okay. And once you noticed
19 that the male voice was not coming from the second bedroom,
20 what did you do then?

21 A We just stayed where we were, and continued to -- we
22 basically tried to ask his name, and kept asking him to come
23 out into the living room.

24 Q Okay. And do you recall how many times you asked him
25 to come out?

ROUGH DRAFT TRANSCRIPT

002007

1 A I don't. There was a -- it was a lot, but I can't
2 recall a number.

3 Q Okay. Do you recall -- was it repeatedly?

4 A Yes.

5 Q Okay. And did you explain to him why you needed him
6 to come out?

7 A During our back-an-forth, he said that -- something
8 to the effect like, she's bleeding, or she's still breathing,
9 or something -- that somebody in there was injured. So we
10 asked him to step out in the living room so we can get her
11 help.

12 Q Okay. And when you asked him to step out so you
13 could get her help, what was his response?

14 A To that exact answer (sic), I don't know what his
15 exact response was. But I know one of his responses when we
16 were trying to get him out in the living room was, fuck you.

17 Q So he wasn't cooperating?

18 A No.

19 Q Okay. Even though you indicated you needed to get
20 her medical?

21 A Yes.

22 Q Okay. At that -- at some point while you're talking,
23 did you know the identity of the people inside the apartment at
24 this point?

25 A No.

ROUGH DRAFT TRANSCRIPT

002008

1 Q Okay. Neither the male?
2 A No.
3 Q Or the female?
4 A No.
5 Q And at this point, you had not made visual with
6 anybody inside the apartment?
7 A Correct.
8 Q Okay. At some point, did other officers arrive?
9 A Yes.
10 Q And do you recall what officers those were?
11 A It was Officer Conn, was the third to arrive.
12 Q Officer Conn was the --
13 A Todd Conn, correct.
14 Q Todd Conn was the third to arrive? And once -- did
15 he enter the apartment?
16 A Yes.
17 Q And did you relay the information that you had thus
18 far --
19 A Yes.
20 Q -- to him?
21 A I briefly told him what was going on.
22 Q Okay. And once he joined you, where did he join you
23 in the apartment?
24 A He stood by the -- oh, not there. But by this wall,
25 right behind this wall. That wall right there.

ROUGH DRAFT TRANSCRIPT

002009

1 Q Okay. And do you know what Officer Conn's assignment
2 was at that time at Metro?

3 A He was also patrol.

4 Q Okay. And do you know if he had any special training
5 with de-escalating situations?

6 A Yes. He was trained -- he was trained as a crisis
7 intervention team officer.

8 Q Okay. And upon entering into the apartment, and
9 after you let him know what was going on, did he attempt to
10 make contact with the people inside?

11 A Yes.

12 Q And do you recall, if anything, what he did?

13 A He basically -- I can't recall exactly what he said.
14 But it was basically the same as we were saying. We were just
15 trying to get whoever was in that apartment talking to us out
16 so we can see them.

17 Q Okay. And you were there when he was issuing verbal
18 commands?

19 A Yes.

20 Q And do you know how long between the time you and
21 Fonbuena arrived and Officer Conn arrived?

22 A I don't recall exactly.

23 Q Okay. Once Officer Conn started issuing the verbal
24 commands, what if anything did defendant do?

25 A Nothing. He just kept saying, get in here. He said

ROUGH DRAFT TRANSCRIPT

002010

1 at one point, she's breathing. Then at one point said, she's
2 dead. He just -- he kept -- it just kept going back and forth.
3 We kept saying, come out in the living room so we can get her
4 help.

5 Q Okay.

6 A But he wouldn't.

7 Q And why didn't you go in there?

8 A Well once he -- once we were trying to get him out in
9 the living room, and once his response was, fuck you, that
10 changed my mind to, why is he so intent on getting us in that
11 bedroom.

12 Q Okay. So you had no idea at that time what the
13 situation was in the bedroom?

14 A Correct.

15 Q Other than the initial details of the call?

16 A Correct.

17 Q Okay. Did Officer Conn ever make visual into that
18 room at that point?

19 A I believe is when he peeked, and he saw blood on the
20 bed area, is I think is -- if I remember correctly
21 (indiscernible) relate to us.

22 Q Okay. At some point, did other officers arrive on
23 the scene?

24 A Yes.

25 Q And do you recall who those officers were?

ROUGH DRAFT TRANSCRIPT

002011

1 A Sergeant Dan Newberry. Officer -- I can't remember
2 his first name, but his last name is Ballejos. And Officer
3 Sean Taylor.

4 Q Okay. And did they arrive together?

5 A I don't recall.

6 Q Okay. And in -- was this a dynamic situation at that
7 point?

8 A Yes.

9 Q Can you explain to the jury what a dynamic situation
10 is?

11 A A dynamic situation is basically, things are still
12 going on. There's still a chance for someone to get hurt. The
13 scene isn't safe, we're still trying to get it under control.
14 That's the best I can describe as dynamic.

15 Q Okay. So at that point -- now Officer Newberry,
16 Ballejos, and Taylor, did they also enter the apartment with
17 you?

18 A Yes.

19 Q Okay. Were they in full uniform that evening?

20 A I believe they were in plain clothes.

21 Q Okay. So at that point, that's five officers; is
22 that correct?

23 A Correct. Six.

24 Q Including -- six?

25 A Counting -- sorry, I'm losing count. I believe it's

ROUGH DRAFT TRANSCRIPT

002012

1 six with myself and Officer Fonbuena. No, I'm sorry. Correct,
2 you're right. Five officers, not counting me and Officer
3 Fonbuena.

4 Q Actually, I think you're right. I think it was --

5 A Was it six?

6 Q -- six at that point.

7 A Okay. Okay.

8 Q My addition skills are a little -- all right. So
9 once they arrived, nobody had made entry into that bedroom at
10 that point?

11 A Correct.

12 Q Did you relay the information to Sergeant Newberry,
13 Ballejos, and Officer Taylor once they arrived?

14 A I didn't. I believe Officer Conn did.

15 Q Okay. And what happened then?

16 A At that point -- or the three officers that came in
17 aligned up along this wall behind Officer Conn --

18 Q Okay.

19 A -- in what we call a stack position.

20 Q A stack position?

21 A Correct.

22 Q Okay. Did somebody formulate a plan for that, or how
23 does that work? They just immediately started --

24 A That's -- that -- the stacking up like that behind
25 each other is kind of a standard thing that we use. We don't

ROUGH DRAFT TRANSCRIPT

002013

1 have to plan for it. We just do it automatically when we know
2 it's a situation like that.

3 Q Okay. Now at that point, you don't know if -- you
4 don't have visual of inside the master bedroom --

5 A No.

6 Q -- at that point?

7 A No.

8 Q And after those officers arrived, Newberry, Ballejos,
9 and Taylor, do you have any information of the male that's in
10 the apartment, or the female at that point?

11 A No.

12 Q You still don't have that information?

13 A Correct.

14 Q Are there five -- six officers at the scene then, and
15 at some point, the male voice was indicating that the female
16 was alive, she's dead, she's alive, she's dead; why didn't you
17 guys just go in there?

18 A Like I said, once -- when -- we were basically trying
19 to get him out because he was saying someone needs help. We
20 were trying to -- well, come out into the living room first.
21 And he responded with, fuck you. That was not indicative of
22 somebody who was trying to get help from the police.

23 Q Okay. All right. So you indicated that officers
24 stacked up?

25 A Correct.

ROUGH DRAFT TRANSCRIPT

002014

1 Q Okay. And you said that that was a term that you
2 use. Can you describe stacking up to the jury?

3 A It simply is lining up behind each other. Like say
4 at a doorway, we just line up behind each other. That's the
5 term we use, called stacking up.

6 Q Okay. And what's the purpose of stacking?

7 A It's just for efficient movement when we make entry
8 into a room. It's just for efficient entry through the door.

9 Q So was it determined that you were going to make
10 entry into that room?

11 A At some point, yes.

12 Q Do you know who made that determination?

13 A Sergeant Newberry was --

14 Q Okay. Are you aware if Sergeant Newberry did a quick
15 peek?

16 A He did.

17 Q Okay. And what is a quick peek?

18 A It's basically you peek your head around the wall --
19 around the corner real quick to get a glimpse of what's in that
20 room.

21 Q Okay. And he did a quick peek of the master bedroom?

22 A Correct.

23 Q And what's the purpose of a quick glance?

24 A Because if there is somebody armed inside, doing a
25 quick peek doesn't give them the chance to find a target and

ROUGH DRAFT TRANSCRIPT

002015

1 start shooting.

2 Q Okay. After Officer -- or Sergeant Newberry did a
3 quick peek, did he relay what he had observed inside the
4 bedroom to --

5 MS. PALM: You know, Your Honor, I'm going to object.
6 She's leading an awful lot. If she could just say, what
7 happened next, it might go a little faster.

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

9 BY MS. GRAHAM:

10 Q Did Officer Newberry indicate to you what he had
11 observed in the bedroom?

12 A Yes.

13 Q And what was that?

14 A He said that he can see blood on the ground. He saw
15 the male laying down on top of another subject. He just saw
16 the bottom half of her legs though.

17 Q Okay. At this point, did you know the condition of
18 the female?

19 A No.

20 Q Did you know the condition of the male?

21 A No.

22 Q Okay. Did he indicate to you at all whether he saw a
23 weapon?

24 A I can't -- I don't remember if he's the one that said
25 it. But I did remember hearing that there was a knife on the

ROUGH DRAFT TRANSCRIPT

002016

1 bed.

2 Q Okay. And at some point, did Newberry, Ballejos, and
3 Taylor enter the bedroom?

4 A Yes, they did.

5 Q Did you ever enter the bedroom --

6 A No.

7 Q -- with the other officers?

8 A No, I did not.

9 Q Why not?

10 A Because myself and Officer Fonbuena, once they made
11 entry into the master bedroom, we made entry into the second
12 bedroom to clear that to make sure there wasn't anybody in
13 there.

14 Q And who directed you to do that?

15 A That's also common practice. We already knew that
16 that was going to happen, because they were passing that room.
17 Once they passed that, I was going to go into that room, make
18 sure nobody else was in there. So you can (indiscernible)
19 clear the apartment.

20 Q Okay. So basically your role then was to clear the
21 apartment?

22 A Correct.

23 Q And you never made entry into the room?

24 A Correct.

25 Q Did you ever have an personal interaction with the

ROUGH DRAFT TRANSCRIPT

002017

1 defendant?

2 A After he was taken into custody, I assisted with
3 carrying him out onto the balcony.

4 Q Okay. So he was ultimately taken into custody?

5 A Yes.

6 Q But as far as personal interaction with him --

7 A No.

8 Q -- did you have any?

9 A No.

10 Q Okay.

11 MS. GRAHAM: I'll pass the witness.

12 BY MS. GRAHAM:

13 Q Do you know who --

14 MS. GRAHAM: I'm sorry, one more question.

15 BY MS. GRAHAM:

16 Q Do you know who maintained custody of him?

17 A I believe it was Officer Ballejos, stood outside with
18 him.

19 Q Okay. Thank you.

20 CROSS-EXAMINATION

21 BY MS. PALM:

22 Q Good afternoon, Officer Santarossa.

23 A Good afternoon.

24 Q At the time on November 5th, 2008, how long have you
25 been with Metro?

ROUGH DRAFT TRANSCRIPT

002018

1 A For probably about -- I believe it was about a year.

2 Q Were you working with anybody else? Were you working
3 with a field training officer still? Or --

4 A No.

5 Q -- were you on your own?

6 A I was by myself.

7 Q Okay. So when you first get there, and you enter the
8 apartment, Brian O'Keefe is saying, get in here, get in here?

9 A Correct.

10 Q And you're afraid to go in because it's a possible
11 baiting situation?

12 A Correct.

13 Q And when you do go in though, he doesn't have a
14 weapon, right?

15 MS. GRAHAM: Objection, misstates the facts. He
16 never went in. He never went into the bedroom.

17 THE COURT: Sustained.

18 MS. PALM: All right.

19 BY MS. PALM:

20 Q When you looked into the room, he didn't have a
21 weapon, right?

22 MS. GRAHAM: Objection, facts not in evidence. He
23 never went into that bedroom.

24 THE COURT: Officer, did you ever go into that master
25 bedroom?

ROUGH DRAFT TRANSCRIPT

002019

1 THE WITNESS: No, I did not.

2 THE COURT: Sustained.

3 BY MS. PALM:

4 Q When Sergeant Newberry looked into the room, he told
5 you he didn't see him with a weapon, right?

6 A No. Well (indiscernible) I can't recall. I guess --
7 I heard that there was a knife in there. I can't recall who
8 relayed that information.

9 Q Okay. You heard there was a knife on the bed?

10 A Correct.

11 Q Not in my client's hand?

12 A No.

13 Q Okay. Did you watch them when they went in the room?

14 A I watched them pass me. I just -- I -- because I
15 went into the second bedroom, so I didn't see much of what
16 happened. I knew when they initially made entry.

17 Q Okay. So you weren't watching the arrest happen?

18 A No.

19 Q A crisis intervention officer is somebody who's
20 trained to deal with people with mental illnesses, or suicidal
21 people?

22 A Correct.

23 Q A lot of what Mr. O'Keefe was saying while you were
24 waiting for other officers to arrive was kind of
25 unintelligible, correct?

ROUGH DRAFT TRANSCRIPT

002020

1 A I understood what he was saying.

2 Q If you previously testified it was unintelligible,
3 would that be incorrect? Do you remember testifying to that?

4 A I don't.

5 Q Would it help you remember if I showed you a copy of
6 your transcript?

7 A Absolutely.

8 MS. PALM: Page 56 of the previous proceeding. May I
9 approach, Your Honor?

10 THE COURT: Yes.

11 MS. PALM: Thank you.

12 BY MS. PALM:

13 Q Look at the highlighted.

14 A Okay.

15 Q Did you previously testify that --

16 MS. GRAHAM: Judge, objection. We need to approach,
17 please.

18 THE COURT: All right.

19 (Off-record bench conference)

20 THE COURT: We need to take a break at this time.
21 Ladies and gentlemen, during this recess, it is your duty not
22 to converse among yourselves, or with anyone else on any
23 subject connected with this case. Or to read, watch or listen
24 to any report of or commentary on the trial by any person
25 connected with the trial, or by any medium of information,

ROUGH DRAFT TRANSCRIPT

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1 including without limitation, newspaper, television, radio, or
2 the internet. You are not to form or express an opinion on any
3 subject connected with this case until this matter is submitted
4 to you.

5 We'll see you back in approximately five to ten
6 minutes.

7 (Pause in proceedings)

8 THE COURT: When the jury leaves, you can just go
9 outside, or go to the anteroom here if you like.

10 THE WITNESS: Okay, thank you.

11 (Outside the presence of the jury)

12 THE COURT: Yes?

13 MS. GRAHAM: Actually Judge --

14 THE COURT: Officer (indiscernible) --

15 MS. GRAHAM: -- I withdraw my objection.

16 THE COURT: -- (indiscernible).

17 THE WITNESS: Oh, yeah.

18 THE COURT: Okay. All right. As soon as the jury's
19 done with their break, can you call me, Cliff?

20 THE MARSHAL: I will.

21 THE COURT: All right.

22 (Court recessed at 5:01 p.m. until 5:11 p.m.)

23 (In the presence of the jury)

24 THE MARSHAL: Officers and members of the Court,
25 Department 17 jurors. You may be seated, ladies and gentlemen.

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1 Let's check to make sure all cell phones are turned off.

2 THE COURT: Officer, do you understand you're still
3 under oath?

4 THE WITNESS: Yes.

5 THE COURT: All right. Go ahead, Ma. Palm.

6 MS. PALM: Thank you, Your Honor.

7 BY MS. PALM:

8 Q Officer, do you recall now that you had testified
9 that a lot of what my client said was unintelligible?

10 A Yes.

11 Q And it was kind of mumbled?

12 A Correct.

13 Q One of those statements was that she stabbed herself
14 though?

15 A Correct.

16 Q And do you recall what time the dispatch call went
17 out?

18 A I believe it was at 11:00.

19 Q Okay.

20 A (Indiscernible).

21 Q If I show you a copy of the 9-11 -- or the dispatch
22 log, would it help you recall the times?

23 A Yes, it will.

24 MS. PALM: May I approach, Your Honor?

25 THE COURT: Yes.

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1 BY MS. PALM:

2 Q If you want to just keep referring to that
3 (indiscernible). Do you recall what time the call was
4 dispatched?

5 A 11:02.

6 Q Okay. And do you recall what time you personally
7 arrived? It might help you out -- if you previously testified
8 11:06, does that sound right?

9 A Correct. 11:06.

10 Q Okay. And then do you recall what time my client was
11 in custody? Is it -- would it be at 11:13?

12 A Correct.

13 Q Okay. So basically, it was about 6, 7 minutes that
14 you were there total?

15 A Correct.

16 Q Okay. And is -- was anybody there before you, or
17 were you the first ones there?

18 A Myself and Officer Ponbuena were the first ones to
19 arrive.

20 Q Okay. So the entire situation took about six minutes
21 to resolve?

22 A Right.

23 Q And was it a matter of seconds once the officers went
24 into the bedroom?

25 A I can't recall the exact time frame, no.

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1 Q And when you entered the apartment area in the living
2 room, you didn't notice any kind of disarray or signs of
3 violence in there, did you?

4 A No, I did not.

5 Q And do you recall whether the bedroom was lit, the
6 bedroom that my client was in?

7 A I only recall one light being on, but I can't
8 remember which room had that light on.

9 Q Okay. Do you recall my client being dropped on his
10 face in the living room?

11 A No.

12 Q Did you recall putting him on his stomach in the
13 living room?

14 A Yes, we did.

15 Q Was he dropped in a way that he would have been
16 injured?

17 A No, he wasn't.

18 Q Did you see whether he was dropped in the bedroom?

19 A No.

20 Q If you previously testified if you didn't recall if
21 his face actually hit the ground or not, would that be
22 accurate?

23 A It would.

24 MS. PALM: Court's indulgence.

25 BY MS. PALM:

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1 Q So you yourself never looked into the bedroom and saw
2 my client, did you?

3 A No.

4 Q And I'm sorry. His first statements were, get in
5 here, get in here?

6 A Correct.

7 MS. PALM: No further questions. Thank you.

8 THE COURT: All right. Any redirect?

9 MS. GRAHAM: Just very briefly, Judge.

10 REDIRECT EXAMINATION

11 BY MS. GRAHAM:

12 Q Ms. Palm mentioned the word, baiting.

13 MS. PALM: Objection, Your Honor. I don't think I
14 mentioned the word, baiting.

15 MS. GRAHAM: She -- in cross she did, Judge.

16 MS. PALM: Oh.

17 THE COURT: I'll overrule the objection. If not,
18 I'll let you go into that area at this point.

19 BY MS. GRAHAM:

20 Q Officer Santarossa, can you describe for the jury
21 what the term baiting means to police officers?

22 A It's when somebody wants us to get into -- basically
23 get into their turf. Get us into their situation, so whatever
24 they have planned, they can execute.

25 Q Okay. And does that -- generally, is that a concern

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1 for officers --

2 A Yes.

3 Q -- when you say baiting?

4 A Yes.

5 Q And are precautionary measures taken when officers
6 feel as if they're being baited?

7 A Yes.

8 Q Okay. The only other question that I have for you
9 today is, did you ever witness the circumstances under which
10 the defendant was eventually restrained and taken into custody
11 in the bedroom?

12 A I couldn't see it.

13 Q Okay.

14 A I heard it though.

15 Q Okay. But you --

16 A I couldn't see it.

17 Q -- visually saw nothing?

18 A No.

19 Q Okay. Thank you.

20 A Thank you.

21 THE COURT: Ms. Palm, anything further?

22 RECROSS-EXAMINATION

23 BY MS. PALM:

24 Q Officer Santarossa, when my client -- when officers
25 entered into the bedroom, it didn't turn out my client was

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1 baiting anyone, was he, under the term you use it when
2 somebody's preparing to ambush officers?

3 A No, correct.

4 Q Thank you.

5 MS. PALM: That's all.

6 THE COURT: Any questions by any of the jurors? No
7 questions. All right. Thank you, Officer, for your testimony.
8 You are excused.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Ladies and gentlemen, I understand that
11 the jury needs to leave at 5:30 or before 5:30 today. And so
12 with your request, we'll adjourn today. I have a very late and
13 long calendar tomorrow morning. We're going to resume tomorrow
14 at 11 in the morning. Also, I understand the jury can stay
15 until 6:30 tomorrow. And so I don't know if you want to take a
16 late breakfast or an early lunch, but we'll start up at 11
17 tomorrow morning.

18 During this evening recess, it is your duty not to
19 converse among yourselves, or with anyone else on any subject
20 connected with this case. Or to read, watch or listen to any
21 report of or commentary on the trial by any person connected
22 with the trial, or by any medium of information, including
23 without limitation, newspaper, television, radio, or the
24 internet. You are not to form or express an opinion on any
25 subject connected with this case until this matter is submitted

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1 to you.

2 Please have a good evening, and we'll see you
3 tomorrow at 11.

4 (Outside the presence of the jury)

5 THE COURT: All right, we're outside the presence.
6 Anything for the State?

7 MR. LALLI: Not on behalf of the State, Your Honor.
8 Thank you.

9 THE COURT: Anything on defense?

10 MS. PALM: No thank you, Your Honor.

11 THE COURT: All right. Are the attorneys able to
12 stay to 6:30?

13 MS. PALM: I have no life. I can stay --

14 THE COURT: I mean, are we getting caught up?

15 MS. PALM: -- whenever.

16 THE COURT: Are we behind schedule, or?

17 MS. GRAHAM: Well I think we're getting caught up.

18 MR. LALLI: I think we're -- I personally believe
19 we're on schedule to finish up with the evidence Monday
20 probably. At the latest, Tuesday, at this point. But I think
21 -- I don't know. My sense is that it will be maybe a full day
22 on Monday, but on Monday the evidence would conclude.

23 THE COURT: All right.

24 MS. PALM: Yeah. I'm thinking we'll probably finish
25 Tuesday though when you count argument too.

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1 MR. LALLI: Yeah. Yeah. I'm not talking about
2 argument, but I'm talking about the conclusion of the evidence.

3 THE COURT: Okay.

4 MR. LALLI: I would see it concluding --

5 THE COURT: Good.

6 MR. LALLI: -- on Monday.

7 THE COURT: See everybody tomorrow. Have a good
8 evening.

9 MS. PALM: You too.

10 (Court proceeding concluded at 5:20 p.m., until Friday,
11 August 27, 2010)

12

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Joyce Toliver	73	94	109	112
Charles Toliver	120	145	160	160
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Jimmy Hatchcox	245	252	256	257
O. Brian Santarossu	259	280	288	289

DEFENDANT'S WITNESS:

Louis DeSalvio	58	65	70	
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* * *

EXHIBITS

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ACKNOWLEDGMENT

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, TRANSCRIBER

11-15-10
DATE

ROUGH DRAFT TRANSCRIPT

002032

ORIGINAL

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

Nov 23 10 22 AM '10

Ann L. L...
CLERK OF DISTRICT 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 VILLANI, DISTRICT COURT JUDGE

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 5

FRIDAY, AUGUST 27, 2010

88C260830
TRANS
Transcript of Proceedings
1070245



APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER LALLI, ESQ.
Assistant District Attorney

STEPHANIE GRAHAM, ESQ.
Deputy District Attorney

FOR THE DEFENDANT:

PATRICIA PALM, ESQ.
Special Deputy Public Defender

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

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Littleton, CO 80120
(303) 798-0890

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002033

1 LAS VEGAS, NEVADA, FRIDAY, AUGUST 27, 2010, 11:51 A.M.

2 (Outside the presence of the jury)

3 THE MARSHAL: Officers and (indiscernible) of the
4 Court, Department 17 jurors. Including Lindsay (phonetic).

5 (In the presence of the jury)

6 THE MARSHAL: You may be seated, ladies and
7 gentlemen. Let's make sure our cell phones are turned off.
8 Please remain seated and come to order. Let's make sure our
9 cell phones are turned off, please.

10 THE COURT: Were we taking a witness out of order at
11 this time?

12 MS. PALM: Yes, Your Honor.

13 THE COURT: All right.

14 MS. PALM: George Schiro.

15 THE COURT: All right. Ladies and gentlemen, this
16 will be a defense witness for their case.

17 THE MARSHAL: And sir, if you will remain standing.
18 Please raise your right hand and face the clerk.

19

20 GEORGE SCHIRO, DEFENSE'S WITNESS, SWORN

21 THE MARSHAL: Please be seated, slide up to the
22 microphone. And would you please state and spell your name for
23 the record?

24 THE WITNESS: Sure. My name is George Schiro.
25 That's S-C-H-I-R-O.

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1 THE COURT: Go ahead, counsel.

2 MS. PALM: Thank you.

3 DIRECT EXAMINATION

4 BY MS. PALM:

5 Q Good morning, Mr. Schiro.

6 A Good morning.

7 Q Could you please tell the jury what you do for a
8 living?

9 A I'm a forensic scientist.

10 Q Can you explain what that is?

11 A As a forensic scientist, we take evidence that's been
12 collected at a crime scene or associated with a criminal
13 investigation. We take that into the lab. And then we'll
14 analyze that evidence, run scientific tests on it, and see what
15 type of information we can get from that evidence.

16 Q How long have you been a forensic scientist?

17 A For over 25 years.

18 Q Can -- do you specialize in that field?

19 A Yes, I do have some specializations.

20 Q Do you specialize in any other field? Or can you
21 explain what your specializations are?

22 A My specializations within forensic science are
23 primarily DNA analysis, crime scene investigation, crime scene
24 reconstruction, shoe print identification, bloodstain patter
25 analysis. But my main focus on what I do is primarily DNA

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1 analysis.

2 Q Okay, I'd like to talk about your training and
3 experience. Can first you go over your education with the
4 jury?

5 A Yes. I have a bachelor of science degree in
6 microbiology from Louisiana State University. I also have a
7 master of science degree in industrial chemistry and forensic
8 science through the University of Central Florida.

9 Q Are you a member of any professional groups?

10 A Yes. I'm a fellow in the American Academy of
11 Forensic Sciences. I'm a full member of the International
12 Association of Bloodstain Patter Analysts. I'm a member of the
13 Association for Crime Scene Reconstruction. I'm also a member
14 of the Louisiana Scientific Crime Investigators. Also with the
15 Louisiana Homicide Investigators Association. Those are some
16 of the professional organizations. I'm also a board certified
17 criminalist by the American Board of Criminalistics, with a
18 specialty in molecular biology.

19 Q Can you tell the jury about your experience working
20 as a forensic scientist?

21 A Yes. I began my career at the Jefferson Parish
22 Sheriff's Office crime lab, which is a crime lab, it's located
23 just outside of New Orleans. I began working there in what's
24 called general criminalistics, meaning that I was doing things
25 like marijuana analysis, arson analysis, gunshot residue

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1 detection, latent fingerprint development. After doing that
2 for about a year and-a-half, I was moved to the serology
3 section of the lab, which is the study of blood and body
4 fluids.

5 While I was at the Jefferson Parish Sheriff's Office
6 crime lab, I also began doing some crime scene investigation
7 work with the sheriff's office. I would ride with the crime
8 scene investigators, learn what they were doing, and eventually
9 began going out to crime scenes through the sheriff's office to
10 assist in major crimes.

11 After doing that for about three and-a-half years, I
12 was hired by the Louisiana State Police Crime Laboratory as a
13 forensic scientist, where I continued working in the field of
14 serology. While I was there, I became part of the state
15 police's crime scene investigation team, meaning that we could
16 get called out anywhere within the State of Louisiana at any
17 time to go work crime scenes.

18 As I continued working in the serology area,
19 eventually I also set up the DNA labs at the Louisiana State
20 Police Crime Lab, trained personnel, validated the systems.
21 And then I left there about eight years ago and was hired by
22 the Acadiana Crime Lab, which is a regional crime lab in
23 Louisiana. I was hired by them to be the DNA technical leader,
24 where today my duties include DNA analysis and crime scene
25 investigation.

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1 Q Thank you. And the lab you're working for, is that
2 accredited?

3 A Yes, it is. Our lab is accredited by the American
4 Society of Crime Laboratory Directors Laboratory Accreditation
5 Board.

6 Q Can you tell me what that means to be working in a
7 lab that's accredited?

8 A An accredited lab means that we have an organization
9 that comes in, and they examine our policies and procedures,
10 our training guides, our quality control procedures, our case
11 files. They check all this out. And if we meet the standards
12 that they have set, they will accredit us. And so we have an
13 outside agency that comes in and checks all this to make sure
14 that we are doing the things that we're supposed to be doing as
15 a crime lab.

16 Q Okay. Have you testified in a court of law before?

17 A Yes.

18 Q And have you testified as an expert in a court of
19 law?

20 A Yes.

21 Q Have you testified as an expert in the mechanism of
22 injury? Or --

23 A Not specifically in the mechanism of injury.
24 However, I have testified in crime scene reconstruction
25 matters, which sometimes includes --

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1 MR. LALLI: I'm going to object, Your Honor. This is
2 non-responsive.

3 THE COURT: Overruled.

4 BY MS. PALM:

5 Q Go (indiscernible) --

6 A Which sometimes includes mechanism of injury.

7 Q Okay. Have you testified as an expert as to whether
8 injuries are defensive or not?

9 A Yes.

10 Q And have you testified for both the government and
11 the defense?

12 A Yes.

13 Q Can you tell me which jurisdictions you have
14 testified as an expert?

15 A I've testified in 29 Louisiana parish courts. We
16 don't have counties there, we have parishes. It's the same
17 equivalent as a county. I've also testified in federal court,
18 two city courts in Louisiana. I've also testified in Arkansas,
19 Florida, California, Mississippi, Missouri, New York, and here
20 in Nevada five times I believe.

21 Q Would that be in Clark County, Nevada?

22 A Yes.

23 Q Have you written any papers of collection of
24 evidence?

25 A Yes.

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1 Q Do you conduct any training in your field?

2 A Yes. I've conducted training both in forensic
3 science in general and crime scene investigation to -- I've
4 instructed internationally, nationally, regionally, and locally
5 to my area in Louisiana.

6 Q And have you been retained by the defense in this
7 case?

8 A Yes.

9 Q And did we ask you to look at various records that we
10 provided?

11 A Yes.

12 Q And what did you look at?

13 A I believe that I was provided with case
14 documentation, photographs from this particular case.

15 Q And did that include the photographs from the crime
16 scene?

17 A Yes.

18 Q And did that include a videotape?

19 A Yes.

20 Q And police reports?

21 A Yes.

22 Q And DNA evidence reports?

23 A Yes.

24 Q Did I ask you to assess the thoroughness of the crime
25 scene investigation?

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1 A Yes.

2 Q In doing that, were you able to make any conclusions?

3 A Yes.

4 Q First let's talk about the issue of toxicology. Did
5 you have any conclusions regarding the handling of -- any
6 conclusions regarding the issue of blood or breath specimens
7 from Mr. O'Keefe?

8 A Yes. In my opinion, blood and urine specimens should
9 have been collected from Mr. O'Keefe shortly after the time of
10 death of Ms. Whitmarsh.

11 Q What would that have allowed to have happened?

12 A That would have allowed a toxicologist to examine
13 the blood and the urine. To determine if there were any -- if
14 there was any alcohol present as well, if there were any type
15 of controlled substances or drugs in his system at the time.

16 Q Would that have given a quantitative number for his
17 -- to measure his intoxication?

18 A Yes.

19 Q Did you any reach other issues regarding the
20 toxicology analysis?

21 A Just the fact that the samples were not collected,
22 and they should have been collected.

23 Q Okay. What might they have indicated?

24 MR. LALLI: Objection, calls for speculation. And
25 it's been asked and answered.

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1 THE COURT: On the speculation issue, sustained.

2 MS. PALM: Okay, thank you.

3 BY MS. PALM:

4 Q How is it relevant in a criminal case?

5 A Well in a criminal case, it might indicate substances
6 that may have affected the state of mind or behavior of an
7 individual.

8 Q And do you have a source of authority for your
9 assertion that it should have been collected?

10 A Yes. There's a publication -- well actually a couple
11 of publications. One in particular is called, "Techniques of
12 Crime Scene Investigation." It's written by Barry Fisher, who
13 was -- he's in charge of the Los Angeles Sheriff's county crime
14 lab. And in that book, it's also used as one of the
15 certification -- one of the study guides for certification to
16 be a crime scene investigator.

17 Q And is that book used in your field?

18 A Yes. It's a standard reference text book.

19 Q Did you look at the collection of penile swab
20 evidence?

21 A Yes, I did.

22 Q Did you have any conclusions about that collection?

23 A Yes. There were some penile swabs that were
24 collected from Mr. O'Keefe. And in my opinion, they were
25 collected improperly.

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1 Q And can you explain why?

2 A Yes. When they were -- at the time they were
3 collected, a crime scene analyst came in, was wearing gloves.
4 He provided Mr. O'Keefe with two swabs. Handed them to Mr.
5 O'Keefe, who was then allowed to swab his own penis.

6 Mr. O'Keefe's hands at the time had two actively
7 bleeding cuts on it, as well as blood on his hands, most likely
8 from Ms. Whitmarsh. As a result of him swabbing, there's a
9 potential that he could have contaminated those swabs with her
10 blood from his hands.

11 Q And can you explain contamination, what that means?

12 A Contamination is the introduction of an unwanted
13 substance into an item of evidence. An example might be some
14 DNA that gets transferred from one item to another that's not
15 related to the actual events of a crime or criminal
16 investigation, or death investigation.

17 Q Does it ultimately taint the results of an analysis?

18 A Yes. Because you have this mixture, then you can not
19 interpret, did that happen before, during, or after this
20 incident that may have happened.

21 Q Did you explain what the alternative ways were that
22 they could have done it?

23 A No. Proper collection technique would have been --
24 first type of proper collection technique would have been for
25 the crime scene analyst who had the gloves on to just go ahead

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1 and swab the penis.

2 The other alternative would have been to document Mr.
3 O'Keefe's hands, take photographs of his hands in their present
4 condition, collect any evidence that he may have had on his
5 hands. Then he should have been allowed to clean his hands, of
6 course under supervision, make sure that his hands were clean.
7 The cuts could have been bandaged. They could have then
8 provided him with gloves to then swab his own penis. So there
9 were two alternative ways of doing it.

10 Q So the way it was done with Mr. O'Keefe's bloody
11 hands handling his penis during the collection, is that
12 acceptable practice under any standard that you know of?

13 A No.

14 Q Did I also ask you to look at the wounds to Mr.
15 O'Keefe's hands?

16 A Yes.

17 MS. PALM: Your Honor, may I approach the witness?

18 THE COURT: Yes.

19 BY MS. PALM:

20 Q Showing you what's been marked as defendant's triple
21 L, triple (indiscernible), triple J --

22 UNKNOWN FEMALE SPEAKER: That's the old one. That's
23 the old one.

24 MS. PALM: -- triple F, triple --

25 THE COURT: Oh. Ms. Palm, I think it's the --

ROUGH DRAFT TRANSCRIPT

002044

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	.	CASE NO. C-250630
Plaintiff,	.	
vs.	.	DEPT. NO. 17
BRIAN KERRY O'KEEFE,	.	
Defendant.	.	Transcript of
.....	.	Proceedings

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 5

FRIDAY, AUGUST 27, 2010

APPEARANCES:

FOR THE PLAINTIFF:	CHRISTOPHER LALLI, ESQ. Assistant District Attorney
	STEPHANIE GRAHAM, ESQ. Deputy District Attorney
FOR THE DEFENDANT:	PATRICIA PALM, ESQ. Special Deputy Public Defender

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

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Littleton, CO 80120
(303) 798-0890

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produced by transcription service.

002045

1 LAS VEGAS, NEVADA, FRIDAY, AUGUST 27, 2010, 11:51 A.M.

2 (Outside the presence of the jury)

3 THE MARSHAL: Officers and (indiscernible) of the
4 Court, Department 17 jurors. Including Lindsay (phonetic).

5 (In the presence of the jury)

6 THE MARSHAL: You may be seated, ladies and
7 gentlemen. Let's make sure our cell phones are turned off.
8 Please remain seated and come to order. Let's make sure our
9 cell phones are turned off, please.

10 THE COURT: Were we taking a witness out of order at
11 this time?

12 MS. PALM: Yes, Your Honor.

13 THE COURT: All right.

14 MS. PALM: George Schiro.

15 THE COURT: All right. Ladies and gentlemen, this
16 will be a defense witness for their case.

17 THE MARSHAL: And sir, if you will remain standing.
18 Please raise your right hand and face the clerk.

19

20 GEORGE SCHIRO, DEFENSE'S WITNESS, SWORN

21 THE MARSHAL: Please be seated, slide up to the
22 microphone. And would you please state and spell your name for
23 the record?

24 THE WITNESS: Sure. My name is George Schiro.
25 That's S-C-H-I-R-O.

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: Go ahead, counsel.

2 MS. PALM: Thank you.

3 DIRECT EXAMINATION

4 BY MS. PALM:

5 Q Good morning, Mr. Schiro.

6 A Good morning.

7 Q Could you please tell the jury what you do for a
8 living?

9 A I'm a forensic scientist.

10 Q Can you explain what that is?

11 A As a forensic scientist, we take evidence that's been
12 collected at a crime scene or associated with a criminal
13 investigation. We take that into the lab. And then we'll
14 analyze that evidence, run scientific tests on it, and see what
15 type of information we can get from that evidence.

16 Q How long have you been a forensic scientist?

17 A For over 25 years.

18 Q Can -- do you specialize in that field?

19 A Yes, I do have some specializations.

20 Q Do you specialize in any other field? Or can you
21 explain what your specializations are?

22 A My specializations within forensic science are
23 primarily DNA analysis, crime scene investigation, crime scene
24 reconstruction, shoe print identification, bloodstain patter
25 analysis. But my main focus on what I do is primarily DNA

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1 analysis.

2 Q Okay, I'd like to talk about your training and
3 experience. Can first you go over your education with the
4 jury?

5 A Yes. I have a bachelor of science degree in
6 microbiology from Louisiana State University. I also have a
7 master of science degree in industrial chemistry and forensic
8 science through the University of Central Florida.

9 Q Are you a member of any professional groups?

10 A Yes. I'm a fellow in the American Academy of
11 Forensic Sciences. I'm a full member of the International
12 Association of Bloodstain Patter Analysts. I'm a member of the
13 Association for Crime Scene Reconstruction. I'm also a member
14 of the Louisiana Scientific Crime Investigators. Also with the
15 Louisiana Homicide Investigators Association. Those are some
16 of the professional organizations. I'm also a board certified
17 criminalist by the American Board of Criminalistics, with a
18 specialty in molecular biology.

19 Q Can you tell the jury about your experience working
20 as a forensic scientist?

21 A Yes. I began my career at the Jefferson Parish
22 Sheriff's Office crime lab, which is a crime lab, it's located
23 just outside of New Orleans. I began working there in what's
24 called general criminalistics, meaning that I was doing things
25 like marijuana analysis, arson analysis, gunshot residue

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1 detection, latent fingerprint development. After doing that
2 for about a year and-a-half, I was moved to the serology
3 section of the lab, which is the study of blood and body
4 fluids.

5 While I was at the Jefferson Parish Sheriff's Office
6 crime lab, I also began doing some crime scene investigation
7 work with the sheriff's office. I would ride with the crime
8 scene investigators, learn what they were doing, and eventually
9 began going out to crime scenes through the sheriff's office to
10 assist in major crimes.

11 After doing that for about three and-a-half years, I
12 was hired by the Louisiana State Police Crime Laboratory as a
13 forensic scientist, where I continued working in the field of
14 serology. While I was there, I became part of the state
15 police's crime scene investigation team, meaning that we could
16 get called out anywhere within the State of Louisiana at any
17 time to go work crime scenes.

18 As I continued working in the serology area,
19 eventually I also set up the DNA labs at the Louisiana State
20 Police Crime Lab, trained personnel, validated the systems.
21 And then I left there about eight years ago and was hired by
22 the Acadiana Crime Lab, which is a regional crime lab in
23 Louisiana. I was hired by them to be the DNA technical leader,
24 where today my duties include DNA analysis and crime scene
25 investigation.

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