

1 blood started on the waist, and kind of tapered down the legs?

2 A I can't say where it started. I can say where it
3 appears to be located.

4 Q Okay.

5 A There does appear to be apparent blood at the waist
6 level and towards the bottom of the pants, towards the bottom
7 of the pant leg.

8 Q Okay. And is there more at the waist and less toward
9 the knees?

10 A I really can't say.

11 Q Okay. And is your testimony the same with respect to
12 the front and the back of the pants, as far as you can tell?

13 A It appears on one side of the pants that there is
14 less blood toward the waist area. But I don't know if that's
15 the front or backside of the pants.

16 Q Okay. Thank you.

17 THE COURT: Anything further, Ms. Palm?

18 MS. PALM: No, thank you.

19 THE COURT: Any other questions from any of the
20 jurors? No other questions. Thank you, Ms. -- oh.

21 MR. LALLI: Can I just ask one more?

22 THE COURT: Sure.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. LALLI:

25 Q Ms. Maldonado, you impounded the pants, correct?

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1 A Yes.

2 Q And they are admitted as an exhibit. You were shown
3 those pants I believe on Friday; is that true?

4 A Yes.

5 Q Okay. So if somebody wanted to look at them, they're
6 in evidence?

7 A Yes, they are.

8 Q Thank you.

9 THE COURT: Anything further, Ms. Palm?

10 MS. PALM: No, Your Honor.

11 THE COURT: All right. Thank you, Ms. Maldonado, for
12 your testimony. You are excused. Next witness for the State?

13 MS. GRAHAM: State calls CSA Robbie Dahn.

14 THE MARSHAL: What was the last name?

15 MS. GRAHAM: Robbie Dahn.

16 THE MARSHAL: Ma'am, if you will remain standing,
17 please. Raise your right hand and face the clerk.

18 ROBBIE DAHN, STATE'S WITNESS, SWORN

19 THE MARSHAL: Have a seat, please. Slide up to the
20 microphone. Ma'am, if you would please state your name and
21 spell it for the record.

22 THE WITNESS: My name is Robbie Dahn. My name is --
23 first name is spelled, R-O-B-B-I-E. And my last name is
24 spelled, D-A-H-N.

25 DIRECT EXAMINATION

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1 BY MS. GRAHAM:

2 Q Ms. Dahn, how are you employed?

3 A I'm employed as a senior crime scene analyst for the
4 Las Vegas Metropolitan Police Department.

5 Q How long have you been a crime scene analyst?

6 A July was 12 years for me.

7 Q Okay. I want to draw your attention to November 7th
8 of 2008. Were you asked to report to the coroner's office to
9 perform duties as a crime scene analyst during the autopsy of a
10 Victoria Whitmarsh?

11 A Yes, I was.

12 Q Okay. And can you tell the jury basically what
13 happens when you are called to -- as a crime scene analyst with
14 regard to an autopsy? Can you just generally explain --

15 A Yes, I can.

16 Q -- what's -- thank you.

17 A We're assigned to go down. I'm usually assigned a
18 coroner's tech. And what we do is we do all the preliminary
19 work on the body prior to the medical examiner doing the
20 internal cutting, like we know an autopsy to be. And that
21 preliminary work includes doing photography, many sets of it,
22 pre-clothed, unclothed, of any injuries, of the condition of
23 the hands, and this type of thing.

24 On top of that, we also collect the clothing. We do
25 finger and palm prints. And we also take different types of

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1 swabs, collect trace evidence, fingernail clippings, and that
2 type of thing.

3 Q Okay. When you arrived for the autopsy of Victoria
4 Whitmarsh, do you recall the condition -- or the condition of
5 her body? How was she clothed?

6 A When I arrived there, the bags are sealed. So once
7 we did open the bag, her body was naked from the waist down,
8 and then she had two pieces of upper body clothing on her.

9 Q Okay. And did you take photos as the way she
10 appeared once the body bag was unzipped?

11 A Yes, I did.

12 Q Okay. Did you take photos of your observations as
13 the coroner in the case, or the medical examiner in the case
14 also documented injuries?

15 A Yes. A lot of it's kind of a dual photography. I do
16 my photography, as well as the coroner technician also does.
17 They do a little bit more internal, like taking close pictures
18 of the eyes in that beginning stage.

19 Where I have a tendency on the other side of things
20 to take maybe a few more pictures of -- you know, a lot more
21 of the pictures of injuries, and you know, the injuries that
22 are shown clothed and pre-clothed. Where for them, they are
23 more concentrating on the injuries once the body is clean, and
24 just to show quickly the injures.

25 Q Okay. And prior to the autopsy being conducted --

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1 and do you recall the medical examiner that conducted the
2 autopsy in this case?

3 A Yes, I do.

4 Q And who was that?

5 A It was a Doctor Jacqueline Benjamin.

6 Q Okay. Prior to her performing the autopsy in the
7 case, was clothing removed from the body?

8 A Yes, it was.

9 Q Okay. And who removes that clothing?

10 A Myself, and the coroner technician in this particular
11 case was Suzanne Mealy (phonetic). So it was Suzanne and I.

12 Q Okay.

13 MS. GRAHAM: I'm showing defense counsel what's been
14 marked as State's proposed 77 through 80.

15 MS. PALM: Thank you.

16 BY MS. GRAHAM:

17 Q And once that clothing is removed from the body, what
18 happens with that clothing?

19 A Generally what we'll do is take a sheet, lay the
20 sheet out. And then we'll lay the clothing out so it can start
21 to dry. Because sometimes it may be, you know, wet in certain
22 situations. So we lay it out, it starts to dry.

23 And that way it's there for the medical examiner to
24 come over and view prior to the post starting, as well as I'll
25 go ahead and document it with photography. And if there's any

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1 material defects in the clothing, you know, I'll use arrow
2 markers and rulers and scales to document that as well.

3 Q Okay. And did you do that in this case when the
4 clothing was removed from the body?

5 A Yes, I did.

6 MS. GRAHAM: Your Honor, may I approach the witness?

7 THE COURT: Yes.

8 BY MS. GRAHAM:

9 Q Ms. Dahn, I'm showing you what's been marked as
10 state's proposed 77 through 80. If you could just flip through
11 those photos, and tell me if you recognize those photos.

12 A Yes, I do. These are my photos. A couple of them
13 have my scale in it with my initials and P number as well. So
14 these are the pictures that I took.

15 Q And those are the photos that you took at the autopsy
16 that day --

17 A Yes.

18 Q -- of the clothing? And they fairly and accurately
19 depict the way the clothing was at the time?

20 A Yes.

21 Q Okay.

22 MS. GRAHAM: Your Honor, move for admission of
23 State's 77 through 80.

24 MS. PALM: No objection.

25 THE COURT: 77 through 80 will be admitted.

ROUGH DRAFT TRANSCRIPT

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1 (Exhibits 77 through 80 admitted)

2 BY MS. GRAHAM:

3 Q Showing you what's State's Exhibit 77, can you --
4 let's see. Oh, got to (indiscernible). Can you explain to the
5 jury what that is a photo of?

6 A It's a photo of the clothing that was on the body.
7 And the piece to the left was like a ribbed undershirt, or a
8 black ribbed undershirt. And then there was an -- this was
9 like a hooded over jacket that was over the top. I've got
10 arrow markers in the photo marking a material defect on either
11 side on that -- it would be like the right side. This is
12 actually -- this view here is where I have the photos -- I
13 mean, the clothing actually flipped. This isn't the front
14 view.

15 Q So that's the back view of the --

16 A Yes. You can see how the -- on the jacket, the
17 hood's coming up from the back. So this is -- when I'm taking
18 photographs, I take photographs of one side of the clothing,
19 and then we flip the clothing and always show the backside as
20 well. So this is a back view.

21 Q Thank you. And the sheet that you mentioned, you lay
22 that sheet on the ground?

23 A Yes.

24 Q Prior -- and then the clothing on top of it?

25 A Yes.

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1 Q Showing you State's 78, I'm going to kind of zoom out
2 a little bit. Can you tell the jury what that is a photo of?

3 A That's a photo of the jacket on the front -- the
4 jacket laying on the front side. And it appears I've moved the
5 sleeve slightly a little bit to show that arrow marker.

6 Q Okay. And again, what's the significance of that
7 arrow?

8 A There was a material defect in the clothing --

9 Q Okay.

10 A -- at that point.

11 Q Showing you State's 79. Oh, I have that upside down.
12 Let's try to -- this way. There we go. And what is that a
13 photo of?

14 A This is a scaled photo of the material defect that I
15 was highlighting in this picture. It looks like it's a little
16 tiny bit dark. Do you want me to mark around where that's --

17 Q Yeah, if you could mark the --

18 A -- at, or circle it, or?

19 Q -- material defect. And for the record, your -- what
20 piece of -- what article of clothing specifically is this?

21 A I would have to probably see.

22 Q If I --

23 A It's hard to tell right there.

24 Q Okay. Let me show you State's 78.

25 A Okay.

ROUGH DRAFT TRANSCRIPT

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1 Q Is that the photo of the jacket?

2 A Yes, that's the jacket.

3 Q Okay.

4 A Both items are black, so that's the reason I want to

5 --

6 Q Okay. And again, State's 79. Does that appear to be
7 the material defect in the jacket?

8 A It does appear to be the material of the jacket.

9 Q Okay. That defect -- I can actually see the defect
10 when I stand up like this, but it's just the glare of the
11 screen. But it's basically right around there.

12 Q Okay. And what -- when you say material defect, what
13 do you mean by that?

14 A It's where the material has broken open. In this
15 particular case, I had a little bit of background about what
16 type of injuries she had. So we were told that it could be a
17 possible knife wound, so I'm assuming that this defect was made
18 from that after seeing the injuries on the decedent.

19 Q Okay. And showing you what's been marked as -- or
20 admitted as State's 80, what is that a photo of?

21 A This is a photo of the ribbed shirt that was -- she
22 was wearing closest to her body. And I have highlighted again
23 the material defect on that.

24 Q Now if I zoom in closer, can you see the material
25 defect and can you circle that so the jury can observe where

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1 that is?

2 A Yes. These photos are a tiny bit dark. But I think
3 I'm seeing it right there.

4 Q Okay. So once you photograph the clothing, what then
5 do you do with that?

6 A The clothing, I in this particular case dried the
7 clothing. After I cleared the coroner's office -- we have a
8 crime scene investigation lab and section. And we also have a
9 biohazard drying room. So I took this clothing and put it
10 under lock and key to dry. And then what we do is, once it's
11 dry and we're able to wrap it and get it inside bags, and then
12 I impounded it into evidence.

13 Q Now when you take the clothing to dry, how do you
14 transport it?

15 A It's wet. But down at the coroner's office, we have
16 rolls -- we have a roll of butcher paper that we've taken and
17 made into sections. So all the clothing is usually a piece of
18 butcher paper on either side. And then I'm able to roll it
19 kind of onto itself, and then put it into double, triple bag,
20 depending on the saturation level of the clothing.

21 Q Okay. And at that point is it impounded, or is that
22 after the drying process?

23 A I impound after the drying process.

24 Q Okay. In addition to taking photos of the clothing,
25 do you do any presumptive testing regarding any of the blood?

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1 A At the point when we're there, we don't take
2 phenolphthalein down. As far as viewing the body, I know what
3 blood looks like. So I don't believe that there's any reason
4 for me to have to do a presumptive test when I see it actually
5 coming from the body. We usually do the presumptive test when
6 we're out in the field and we have a reddish spot, and we have
7 no idea where that came from. So in this case, no, I didn't
8 take phenolphthalein, or any of our presumptive tests to test
9 the blood.

10 Q And the reason for that is you're in an autopsy, and
11 your --

12 A And I physically -- I mean, my eyes saw it.

13 Q Okay.

14 A You know, so I had no question it was blood or not.

15 Q All right. Once that clothing is dried, then what do
16 you do with it?

17 A The clothing, I transport it back to the lab, put it
18 inside the drying cabinet if it's necessary. Some clothing
19 we'll recover we don't need to dry. So I can go ahead and
20 impound that right away. In this particular case I did dry the
21 clothes for like an overnight drying. And then I impounded
22 them into evidence.

23 Q Okay. And the evidence that you impound in this
24 case, did you impound the jacket and the tank-top, or the
25 little top that came off the body of Victoria Whitmarsh?

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1 A Yes, ma'am.

2 Q And when you impound items, do you mark them in such
3 a way as to identify them with this specific case?

4 A Yes, I do. They're labeled with a specific case
5 number. And on my impound -- we label our packages. My p
6 number is 5947. So I label with, you know, my packages, 5947
7 dash 1, 2, 3; in that type of order.

8 Q Okay. And did you do that in this case?

9 A Yes.

10 Q Okay. Once you've photographed the body and the
11 clothing, what other sorts of evidence do you collect with
12 regard to the body, in this case, with regard to Victoria
13 Whitmarsh at the autopsy?

14 A On this particular case, when we -- when I did unzip
15 the bag -- at certain scenes, the crime scene analysts that
16 work the case through conferring with the detectives, they'll
17 decide if it's a situation where they need to bag the hands.
18 And in this particular case, her hands were covered.

19 So what I did in this case was I collected -- at one
20 point when we're ready, myself and the coroner tech will say,
21 okay, we're ready to do the hands. Then I'll collect those
22 bags, and we'll photograph the hands, the condition they are as
23 they come out of the bag. And then we'll go ahead and collect
24 the fingernails, depending if we need to. In some cases, the
25 nails are too short. We might have to swab. In this case, we

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1 did collect the fingernail clippings.

2 And other swabs that we took were buccal swabs, trace
3 evidence lifts from the bottom her feet. There was several
4 other swabs taken, cervical, vaginal, mouth swabs, that type of
5 thing.

6 Q And did you clip her fingernails in this case?

7 A Whenever I work down there, I always let -- anything
8 that's cutting onto the body, the coroner tech does, and I do
9 the assisting. So I'm standing there with my glassine paper.
10 As Suzanne cut them, each one -- we collected them together.
11 But I was the one receiving, and she was actually doing the
12 clipping.

13 Q Okay. And did you impound those?

14 A Yes, I did.

15 Q Okay. With regard to any swabbing, can you describe
16 to the jury what exactly you swabbed in this particular case?

17 A Again, when it comes to the buccal swabs, that's
18 taking like little skin cells, the epithelial cells from inside
19 the mouth. I generally always do my own buccal swabs. There
20 were some other swabs that were put in different orifices of
21 the body. And in that case, I always have the coroner tech
22 take care of those type of swabs.

23 And then she'll go ahead and insert them. They
24 usually leave them in place for about ten minutes to do a
25 collection. Then we'll dry them, and then I receive those from

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1 Suzanne. And I impounded those as well.

2 Q Okay. Did you -- upon impounding all the evidence
3 that was collected during the autopsy, did you do an impound
4 report?

5 A Yes, I did.

6 Q Evidence impound report?

7 A Yes, I did.

8 Q Okay. And that was in conjunction with -- as you
9 were collecting the evidence?

10 A Yes.

11 Q Okay. Would it refresh your recollection to look at
12 your report to explain to the jury exactly what evidence you
13 collected and impounded in this case?

14 A Yes, it would. I have my impound in front of me, so
15 if I could refer to that, I'd like to.

16 THE COURT: Go ahead.

17 THE WITNESS: Thank you.

18 BY MS. GRAHAM:

19 Q Okay. If --

20 A Did you want me just to --

21 Q If you --

22 A -- do a basic, general --

23 Q If you could --

24 A -- just through the impound report?

25 Q -- just do a basic what you impounded in this

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1 particular case.

2 A Yes. When I do an impound from an autopsy, generally
3 speaking I always put the buccal swab first. So that is my
4 first item. It's in it's own package, the buccal swab.

5 Q And that buccal swab came from?

6 A From Victoria Whitmarsh's mouth.

7 Q Okay.

8 A And I collected that myself. Then I have another
9 package where we've got some vaginal swabs, rectal swab, buccal
10 swab, oral swab, pubic hair combings, fingernail clippings.
11 And I -- that came from the body of Victoria Whitmarsh. And
12 that's my second package.

13 Q And just for the record, could you (indiscernible)
14 the package number and --

15 A Yes.

16 Q Okay.

17 A The buccal swab was in 5947 dash 1, and that was the
18 first package number. The second package number is 5947 dash
19 2. That's the one with the numerous different types of swabs,
20 and fingernail clippings and combings.

21 Q Okay.

22 A And then my 5947 dash 3, Dr. Benjamin did something
23 kind of unique. I had never seen it done before, but I had
24 never -- she was new. And she, you know, came to our county
25 with certain ways that she did stuff. So she actually did some

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1 like liquid washes of the mouth and the vaginal area, so I
2 collected those from her. I did have to freeze those items, so
3 I put them in a separate package. And those are my 5947 dash
4 3.

5 Q Okay.

6 A And then I collected those two drawstring bags that
7 were covering her hands. That's in the 5947 dash 4.

8 Q And those are the hands that were covering the body
9 (sic) once they were -- the body was unzipped, that were -- the
10 hands were covered at the crime scene?

11 A Yes.

12 Q Okay.

13 A They took, and just covered the hands with these --
14 we have these hand protection bags, or little drawstring bags
15 that we put on.

16 Q Okay.

17 A And that was my item 4. Then in -- prior -- you
18 know, and during the course of photographing, sometimes you
19 will end up seeing some pieces of trace evidence here or there.
20 And we did notice that there was like a long black hair on the
21 body, so I collected that. And that's in my package, 5947 dash
22 5.

23 Q And exactly where was that long hair found?

24 A It was on the left side of the torso of Victoria
25 Whitmarsh.

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1 Q Okay. And in this case, you're familiar with what
2 type of hair Victoria Whitmarsh has?

3 A Yes.

4 Q Did it seem consistent with --

5 A It did, it did. She had long dark hair, and this
6 hair was a long dark human hair. I mean, and at the time, we
7 did believe that it was Victoria Whitmarsh's hair.

8 Q Okay. And anything else that you impounded?

9 A Yes. In viewing the body, also there were a couple
10 of unusual what appeared to me and to Suzanne both like swipe
11 type marks, or just unusual blood marks. So I did collect a
12 swab of those of these swipe areas, and I impounded those as
13 well.

14 Q Okay. And where did those -- where did you observe
15 those unusual swipes of blood from?

16 A The one was on the left side of the torso, and the
17 other one was on the inner side of the right thigh.

18 Q Okay. And once you collect this evidence and --
19 let's see. Okay. And the next package that you --

20 A On the bottom of the feet were -- there was some
21 trace type -- you know, some fuzz, and this and that. And
22 there was also blood. And so we made the decision that we were
23 -- and with -- the detectives were right there too, that we
24 thought it might be a good idea to do some trace lifts on her
25 feet.

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1 So it's this -- it's a big piece of like and-a-half
2 by 11 adhesive paper. And we just put it on the bottom and
3 peel it up, and then secure it. And that's what we generally
4 use to collect trace with. And that's in my package, 5947 dash
5 7, these two adhesive lifts from her feet.

6 Q Okay. And what else did you impound?

7 A At the scene the night before, they always use a
8 sterile sheet, in order to collect any trace that might fall
9 from the body. So we always at every autopsy, we collect these
10 sterile sheets and impound those into evidence. So my next
11 package, which was the 5947 8, is that sheet that was under the
12 body inside the bag. I actually collected that and got that
13 dried, and I impounded that.

14 Q Okay. Now just for clarification, that white sheet
15 is originally at the crime scene; is that what I'm
16 understanding?

17 A Whenever we have these major cases like this where
18 we're going to have a sealed body bag, we always line the
19 inside of the body bag with a sterile sheet. And that sterile
20 sheet's purpose is, like I had said, anything trace, fibers,
21 anything that might fall from the bag, this is like a place for
22 it to all catch. So we always impound those.

23 Q Okay. And that's what was in package 5947 dash 8?

24 A Yes.

25 Q Okay. And again, you impounded both the tank-top and

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1 the long sleeved jacket that Victoria was wearing?

2 A Yes. And in the final package were those two items
3 of clothing.

4 Q Okay. Now incidently, when you indicated that Dr.
5 Benjamin was new, do you mean she was new to Clark County?

6 A It was the first time I had -- new to me, I should
7 say.

8 Q Okay.

9 A Because I think she -- she had been working there,
10 but this was the first occasion for me to -- I worked several
11 cases with her. But new in the fact of a case in this
12 particular way that I had never seen that done before. So I'm
13 not really sure of the time line. But I know she was at the
14 Clark County Coroner's Office for a short period of time. She
15 came, was hired, worked there I believe a year or two. I don't
16 know the time line.

17 Q Okay. But you're not aware of her background prior
18 to coming to --

19 A Oh, no. I don't know.

20 Q Okay, Clark County? All right.

21 MS. GRAHAM: Court's indulgence.

22 THE WITNESS: May I pour myself a glass of water,
23 please?

24 THE COURT: Sure.

25 THE WITNESS: Thank you.

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1 MS. GRAHAM: I'll pass the witness at this time.

2 MS. PALM: Your Honor, can we approach?

3 THE COURT: All right.

4 (Off-record bench conference)

5 CROSS-EXAMINATION

6 BY MS. PALM:

7 Q Morning, Ms. Dahn.

8 A Hi.

9 Q The fingernail clippings that you collected from the
10 decedent, you personally collected those?

11 A I did. Suzanne clipped them, and I was standing
12 there. And I personally collected those, yes.

13 Q Okay. And is that because sometimes there might be
14 DNA under a deceased person's fingerprints -- or under their
15 fingernails?

16 A Yes.

17 Q If they happen to scratch somebody, or somehow
18 otherwise collected it?

19 A Yes, ma'am.

20 Q Okay. And you don't know whether any further testing
21 was done on that?

22 A I do know that some testing was done. I found that
23 out through Mr. Lalli.

24 Q Okay.

25 A And so I do know that there was some testing done on

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1 the nails.

2 Q Okay. But you weren't part of the testing on the
3 nails?

4 A No, I was not.

5 Q Okay. And do you remember in this case that my
6 investigator attempted to serve you with subpoenas for the
7 other CSA's in the case?

8 A Yes, I do.

9 Q Okay. And there was a little conflict at the time?

10 A Yes, there was.

11 Q Okay. And is that because there was a policy issue?

12 A Yes. I was acting supervisor. And I actually
13 deferred to another supervisor that was on for like about 20
14 years. And there was like a policy issue, or something to that
15 effect. I do have to say I didn't even realize at the time
16 when those were trying to be served that it had anything to do
17 with the case. And I actually just spoke to the investigator
18 about that, that I had no clue that it was the same case.

19 Q Okay. The same case that you were on, but you didn't
20 know the other CSA's --

21 A I didn't realize, because I didn't check the event
22 number. I had no idea.

23 Q Okay.

24 MS. PALM: No further questions. Thank you.

25 THE WITNESS: Okay.

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1 THE COURT: Any redirect?

2 MS. GRAHAM: no, Judge.

3 THE COURT: Any questions from any of the jurors? No
4 questions. All right. Thank you, ma'am, for your testimony.
5 You are excused. Ladies and gentlemen, let's take our lunch
6 break at this time. We'll come back at 1:15.

7 During this recess, it is your duty not to converse
8 among yourselves, or with anyone else on any subject connected
9 with this case. Or to read, watch or listen to any report of
10 or commentary on the trial by any person connected with the
11 trial, or by any medium of information, including without
12 limitation, newspaper, television, radio, or the internet. You
13 are not to form or express an opinion on any subject connected
14 with this case until this matter is submitted to you. We'll
15 see you back at 1:15. Counsel approach, please.

16 (Off-record bench conference)

17 (Court recessed at 12:11 p.m. until 1:22 p.m.)

18 (Outside the presence of the jury)

19 THE CLERK: Yes, we are.

20 THE COURT: All right. Ms. Palm, we're outside the
21 presence of the jury panel. You had a matter to bring to my
22 attention?

23 MS. PALM: Thank you, Your Honor. I just wanted to
24 address a concern that Edward Guenther I noticed is out there
25 waiting to testify. The notice with respect to him says that

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1 he will give scientific opinions related to the collection and
2 analysis of (indiscernible) latent prints that he -- collection
3 and analysis of various latent prints that he performed in the
4 case.

5 The only report we have from him as to anything he
6 performed is the examination of the Wolfgang Puck black handled
7 carving knife. I just wanted to make sure that that's what his
8 testimony is limited to, because I don't want to have to be
9 objecting with regard to anything else if it goes beyond the
10 knife, because that's what we had notice of.

11 MS. GRAHAM: Well actually, Judge --

12 THE COURT: Did you ask Mr. Lalli or Ms. Graham?

13 MS. GRAHAM: -- the report indicates also, that Ms.
14 Palm has a copy of, that he did examine a photograph of the
15 fingerprint that CSA Collins took of the flat sheet on the bed,
16 and it was not of comparison quality. So he will be testifying
17 to that.

18 MS. PALM: And that's correct, Your Honor. I was
19 just concerned, I don't want him going into footprints, we
20 don't have any notice of footprints. And I didn't want the
21 question being asked so I don't have to object in front of the
22 jury.

23 THE COURT: Well feel free to ask the deputy DA's if
24 they're going to do that, then bring it to my attention.

25 MS. PALM: Well --

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1 THE COURT: They're approachable.

2 MR. LALLI: I'm approachable.

3 MS. PALM: I would disagree, Your Honor.

4 THE COURT: Okay.

5 MS. PALM: I would like to make a record of these
6 things before we go into it, and I have to object in the middle
7 of it.

8 THE COURT: All right. Let's bring them in.

9 (Pause in proceedings)

10 THE MARSHAL: (Indiscernible).

11 THE COURT: All right.

12 THE MARSHAL: (Indiscernible).

13 (Pause in proceedings)

14 (In the presence of the jury)

15 THE MARSHAL: Officers and members of the Court,
16 Department 17 jurors. You may be seated, ladies and gentlemen.
17 Let's make sure all cell phones are turned off, please.

18 THE COURT: All right. State, your next witness?

19 MR. LALLI: Well Your Honor, before we call our next
20 witness, I would move for the admission of State's proposed 125
21 and State's proposed 128.

22 MS. PALM: No objection, Your Honor.

23 THE COURT: Those two exhibits will be admitted.

24 (Exhibits 125 and 128 admitted)

25 MS. PALM: Thank you.

ROUGH DRAFT TRANSCRIPT

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1 THE COURT: And your next witness?

2 MS. GRAHAM: Yes, Judge. State calls latent print
3 examiner, Ed Guenther.

4 THE WITNESS: Hi, Your Honor.

5 THE COURT: Good afternoon.

6 THE MARSHAL: Mr. Guenther, if you will remain
7 standing. Please raise your right hand and face the clerk.

8 EDWARD GUENTHER, STATE'S WITNESS, SWORN

9 THE MARSHAL: Please have a seat. Sir, if you will
10 please state your name and spell it for the record.

11 THE WITNESS: Yes. My name is Edward Guenther. The
12 last name is spelled G-U-E-N-T-H-E-R.

13 THE COURT: Go ahead, counsel.

14 MS. GRAHAM: Thank you.

15 DIRECT EXAMINATION

16 BY MS. GRAHAM:

17 Q Mr. Guenther, how are you employed?

18 A I'm employed with the Las Vegas Metropolitan Police
19 Department. I work in the forensic laboratory. And my area of
20 speciality in the laboratory is latent fingerprint
21 examinations.

22 Q Can you give the jury an idea of your education and
23 experience --

24 A Yes.

25 Q -- in latent prints?

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1 A Yes. I began my career in latent -- well in the
2 field of fingerprinting way back in 1975. I was employed by
3 the Federal Bureau of Investigation in Washington, DC. That's
4 where I learned the basics of fingerprinting, classifying,
5 searching, and identification.

6 In 1977, I entered into a training program with the
7 State of Ohio. Was trained by three qualified examiners, and
8 eventually released to do my own independent case work, which I
9 did for three years in Ohio. And then followed that up with
10 more years of bench work for the Florida Department of Law
11 Enforcement in their forensic laboratory.

12 In 1998, I moved to Las Vegas and took my current
13 position with the Las Vegas Metropolitan Police Department.
14 Along the way, I acquired my bachelors degree in criminal
15 justice from the University of South Florida. I'm also a
16 member of the International Association for Identification, and
17 am certified by that organization to conduct latent fingerprint
18 examinations.

19 Q And total, Mr. Guenther, how many years of experience
20 have you had?

21 A Well that's 35 years in the field, and 32 years as a
22 latent fingerprint examiner.

23 Q Okay. And through the course of your duties as a
24 latent fingerprint examiner, are you required to complete any
25 kinds of continuing education in the field of latent

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1 fingerprint examination?

2 A Yes. As part of maintaining my certification with
3 the IAI, or the International Association, I have to -- I test
4 every five years for that. And I also have to have education
5 credits prior to them letting me test every five years. And
6 also, our laboratory system is accredited by the American
7 Society of Crime Lab Directors.

8 And within the confines of the accreditation process,
9 every analyst in the laboratory system is tested every year at
10 proficiency testing. It goes on every year. At some
11 (indiscernible) in the laboratory, it goes on more than once a
12 year.

13 And also we have to have continuing education credits
14 per the ASCLD regulations. So every year we probably get
15 approximately 40 hours of either in-service, or going to a
16 class outside of the laboratory setting.

17 Q In addition to that and your educational background,
18 are there seminars that you often attend with -- in -- with
19 relation to the latent fingerprints?

20 A Yes, that would be, you know, going out to the --
21 primarily to the international meeting, international
22 association of identification meeting, which is held annually
23 somewhere, usually in America. Sometimes it's held overseas.
24 So attending that is our primary vehicle for information
25 sharing with our colleagues. But we also, you know, attend

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1 various seminars on computer programs that we're operating, and
2 so on and so forth.

3 Q Okay. Mr. Guenther, I'm going to ask you to explain
4 to the jury exactly what a latent print is.

5 A Okay. A latent print is really a very simple
6 concept. It is a chance impression. It's made by the
7 accidental touching of a surface with the specialized skin on
8 your hands and or on your feet. Your -- the skin on this area
9 of your body is quite different than the rest of your skin.
10 It's raised into what are known as rows or ridges.

11 And of course you're constantly perspiring through
12 those -- the pores that are at the summits of those ridges.
13 And when you touch a surface, you're going to leave a deposit
14 on that surface of not only the outline of the ridges
15 themselves, but also there's going to be -- perspiration and
16 chemicals are going to be deposited on that surface.

17 Now at times, these prints are visible. And but most
18 of the time, they're not. They're invisible, therefore being
19 latent. There's also another category of latent prints that's
20 called a patent print, beginning with a "P." And that refers
21 to a print that's in a substance. It could be like grease,
22 blood, paint. So even though it's visible, we call it a patent
23 print, and so but it's a part of the family of latent
24 fingerprints.

25 Q Is it possible to touch a surface and not leave a

ROUGH DRAFT TRANSCRIPT

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1 latent print, whether patent or --

2 A Right.

3 Q -- visible or invisible?

4 A Yes. The answer --

5 Q Can you explain to the jury how that's possible?

6 A Yes, ma'am. Well there are many factors that go into
7 whether or not a latent print is going to be left on a surface.
8 The primary one of whether it will or won't be, at least in my
9 experience, is the amount of pressure that's applied to that
10 surface. These ridges are not -- they're three-dimensional,
11 and they're pliable.

12 So if I touch something and I put too much pressure
13 down with my hand, those ridges are going to have a tendency to
14 just -- to smear. And especially if I'm adding motion, up,
15 down, left, right, or a twist to them. So that is the primary
16 ruination of friction ridges on a surface.

17 We also have the substrate that's touched. That's
18 very important. Whether something is smooth or not smooth can
19 have a big affect on whether a latent print is left behind.
20 Generally speaking, something smoother, it's more receptive to
21 latent prints. It doesn't mean irregular surfaces don't retain
22 latent prints, but the smoother ones are more receptive. So
23 pressure and the substrate.

24 Also what the print is left in is important, whether
25 it's a like we said before, a residue print of a perspiration,

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1 or whether it's in the paint, or grease, or whatever. So
2 that's also an important factor in whether or not the prints
3 will be left behind. The skin condition that a person has,
4 some people are occupationally plumbers, carpenters. Their
5 skin condition is going to be rough and tough, as opposed to,
6 well, my soft hands of a guy who works in an office all day.
7 So that can also have an effect on the quality of the print.
8 And also the processing technique that's used, whether it was
9 processed with powder, chemicals, so on and so forth.

10 So those are the main reasons that a surface can be
11 touched, and latent prints just simply won't be left behind.
12 And it's much more common than you would think. Probably our
13 only recovering latent prints and maybe one-third of the cases
14 that are coming into the laboratory.

15 Q Okay. So specifically then, would blood have an
16 affect on whether a patent print is visible or invisible, and
17 left on a surface?

18 A Yes. All those factors which I have just described.
19 If you have -- if there is contact with blood on the hand,
20 depending would be how much -- what the volume of that blood is
21 on the hand, did it soak into the ridges or the furrows between
22 the ridges on those fingers. So that would be a primary
23 factor.

24 And then of course all those other factors, mostly
25 how much pressure was placed on that surface. Because if

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1 there's too much -- if there's a large volume of blood, or
2 paint or so forth, it's going to basically leave a smear that's
3 not going to be recognizable. But if there's the right amount
4 and a surface is touched, you will get what we call the ridge
5 paths and the ridge flow showing up on that surface.

6 Q Okay. And is there a life to a fingerprint?

7 A Well we can't age latent -- we can't age
8 fingerprints. So we like to say that the life expectancy of a
9 fingerprint is the amount of time that it can be developed for
10 some sort of probative value. And that time could be from
11 seconds to years.

12 Fingerprints have been developed on items many, many
13 -- that are many, many years-old. And then of course if you
14 have a situation where it's -- something's touched and it's
15 pouring down rain, it's probably not going to last but a few
16 seconds.

17 Q Okay. Well specifically then, what are your duties
18 as a latent fingerprint examiner, generally?

19 A Yeah. Well these duties are to examine friction
20 ridge detail that comes to us either through our own
21 processing, or is generated by our field unit, our crime scene
22 unit, to make an analysis of that ridge detail, and to make
23 comparisons with a known finger, palm, and sole prints of
24 individuals.

25 Q And what's a known comparison?

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1 A Well a known is a standard. Every function in the
2 laboratory -- well almost -- well every function in the
3 laboratory needs a standard. We are -- especially in my area
4 of expertise, we are in the comparison business. So we have to
5 have a standard to make a comparison with -- to, with between
6 the latent print and something to look at with it to try to
7 make an association. So in fingerprints, we call those known
8 fingerprints or standards.

9 Q And how do you receive known standards? Generally,
10 how do they come to you?

11 A Well in our situation here with Metro, we are the
12 repository for the -- all of the local records are stored
13 within Metro. And if I need a record file from an individual
14 who may -- that the detective may want me to look at, I would
15 basically on my computer generate that record from the archive.

16 All of our records are electronically stored now,
17 everything's digitized. So I'm able to call the record up
18 electronically and print it out, and work from it right there
19 at my desk.

20 Q Okay. And in what form do those come in? Are you
21 talking about fingerprints that are on cards, or how do those
22 -- the standards?

23 A Oh. Well no, we don't print them up on cards
24 anymore. They would just be printed up on a regular sheet of
25 -- on a sheet of paper that -- but it would have the record of

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1 that person, the name, and all then of their fingerprints. And
2 then what we call the slaps (phonetic), which is another
3 marking on the bottom of the card. So it would look like a
4 fingerprint card, only it would be printed up onto a regular
5 sheet of paper.

6 Q Okay. And specifically related to this case, were
7 you requested by Detective Wildemann to look at pieces of
8 evidence in this case to see if you could find a latent print
9 of comparison quality?

10 A Yes, it was.

11 Q And what piece or pieces of evidence were those?

12 A Well the first piece of evidence that I was asked to
13 look at, submitted by a Jocelyn Maldonado, was a Wolfgang Puck
14 black handled carving knife. And visible on the knife was a
15 partial print and suspected blood.

16 Q Okay. Let me -- I'm showing you what's been entered
17 as State's Exhibit 43.

18 A Yes, ma'am.

19 Q Zoom in on it a bit. Does that look familiar to you?

20 A Well, I don't see any of my markings on there, if
21 that's what you're asking. Because (indiscernible) are on the
22 backside, or that I may have just left them on the -- it was in
23 a different container at one time (indiscernible).

24 Q Okay. So when you received the piece of evidence,
25 did you actually view the knife itself?

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1 A Yes, I did.

2 Q Okay. So you actually handled the piece of evidence?

3 A Yes.

4 Q The knife in this case?

5 A Yes, I did.

6 Q Okay. Can you explain to the jury the process that
7 you have to go through when you receive a piece of evidence and
8 -- that's already been impounded?

9 A Right.

10 Q How does it come to you, and --

11 A Well generally, the knife would be -- or any evidence
12 would be impounded at our vault. When the request from the
13 detective is received in the laboratory, it would be up to me
14 as the analyst to make an electronic request to the vault.

15 And then to our in-house delivery system, the piece
16 of evidence is delivered to the laboratory. There is a
17 signature transfer, and I would physically take possession of
18 it. And it would be my responsibility to -- custody and
19 control of that item for the length of time that I had it. And
20 then it eventually would make it's way back to the vault.

21 I believe in this particular case, I -- the evidence
22 kind of was in my possession two times, because I did make a
23 visual examination of the evidence while it was in the custody
24 of another analyst in the laboratory. And then later I did
25 personally receive it for later examination done on my part, or

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1 I should say additional examinations done by myself.

2 Q Okay. And when you receive that knife, what were you
3 asked to do with it?

4 A Well I was asked to make a visual -- well to do an
5 examination of the knife, to determine if the -- if there could
6 be any latent fingerprints either noted, or later developed on
7 the particular knife.

8 On the knife itself in the handle area, there was a
9 transfer of blood onto the handle. And there was some what we
10 call ridge -- there was ridge detail, what we would classify as
11 what I -- in my opinion and my experience, determined that
12 probably was ridge detail on the knife.

13 So I was asked to look at this knife to see if there
14 was any way that that -- to see if that material on there, the
15 blood-like substance on the knife was in fact going to be of
16 comparison quality. And if it wasn't, could I then enhance it
17 in some fashion, or could I develop additional prints that were
18 not visible to the naked eye.

19 Q Okay. And you said comparison quality. What exactly
20 does comparison quality mean?

21 A Well there's a range of quality and quantity in the
22 work that we do. Just because there's a touch does not mean
23 that there's what we would call sufficiency to make an actual
24 comparison with an individual. There has to be a -- well it's
25 -- when we look at latent prints, we look at different -- we

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1 look at the flow, what we call the flow of the print on the
2 pattern. Now does it flow like in a wave, does it flow in a
3 circle, or does it flow in a loop pattern.

4 Then we also -- after that, we make a determination
5 of that, we're then looking at we call the ridge paths. And
6 this is where the identification process actually beings. Now
7 ridge paths are where the ridges actually separate, or they
8 end. Sometimes there's a little short ridge in there, and
9 sometimes there's little dots. These are the features that
10 make each and every one of our fingerprints unique, and make
11 them our's.

12 So this is what we are trying to quantify and qualify
13 before we move forward and make a comparison. And sometimes
14 there are several of these on a piece of evidence. But they're
15 just not enough to make any kind of conclusion at all.
16 Sometimes there are enough to make a limited conclusion.

17 And sometimes there is enough to actually make an
18 identification, stating the same source, that the latent print
19 and the ink print that we look at did originate from the same
20 source. So that's what we kind of mean by comparison quality.
21 It's kind of a continuum across the spectrum.

22 Q And when you were asked to look at the knife for
23 comparison quality prints, whose standards were you to compare
24 those to?

25 A Well I -- the person listed in the request for

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1 comparison is Brian O'Keefe.

2 Q Okay. And ultimately, did you analyze that knife for
3 latent prints?

4 A Yes, I did. I analyzed it both visually, and then
5 additionally with various chemical processes and so forth.

6 Q Okay, and we'll talk about those steps. But
7 ultimately, what conclusion did you come to with regard to the
8 knife?

9 A Well ultimately, the conclusion that I came to with
10 the knife was that the ridge detail that was on there was not
11 of -- was not of comparison quality. And all of the processing
12 techniques I used did not enhance or develop any additional
13 latent prints. So essentially, the ridge detail that was on
14 there was insufficient for comparison purposes. And as I said,
15 I was not able to develop any fingerprints or palm prints to
16 make additional comparisons, or I should say to make any
17 comparisons.

18 Q Okay. Mr. Guenther, can you tell the jury
19 specifically what steps you went through when determining that
20 there was nothing of comparison quality on the knife?

21 A Okay. Well the first thing we always do is to do a
22 visual examination. As I said, these prints are invisible most
23 of the time. But there are occasions if you turn an object --
24 as we all know, if you turn an object under a light, you can
25 see a reflection if something's been touched, and those -- and

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1 the ridges will be visible.

2 So we always do a visual just with our eyes, and
3 under a light source first. Because sometimes latent prints
4 will kind of pop up, and then we take steps to photograph
5 those, and to document and preserve them.

6 Q On the visual inspection, did you see anything of
7 comparison quality?

8 A No, I did not.

9 Q Okay, then what did you do?

10 A Okay. The second -- well after I did a visual, I
11 believe that I did a scan of the blood area on the knife
12 itself, on the handle. I scanned that using a Photoshop in our
13 laboratory, and saved that and -- because I wanted it
14 documented before I conducted any other type of examinations.
15 So now I've preserved the material that was on the handle of
16 the knife.

17 So the next step that I used, we have a couple
18 techniques that we use that are noninvasive techniques. They
19 involve different kinds of light sources. We used what's
20 called an alternate light source, which in the old days was
21 called a laser.

22 And we don't really use lasers in our part of the
23 laboratory. An alternate light source just is going to operate
24 in the middle spectrum of the light wave, that starts at
25 ultraviolet and goes to infrared. And then we also use another

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1 light source in the ultraviolet and -- called the ruvu
2 (phonetic).

3 So sometimes print residue will glow all by itself
4 either because of the touch, the residue of the touch, or maybe
5 a contaminate on that touch. And these light sources,
6 sometimes you can -- the ridge detail will pop. And then if it
7 does, we go ahead and photograph it, and use that developed
8 latent in that fashion.

9 I did both of those techniques in this case, and
10 neither one of them proved productive. So there were no latent
11 prints noted with either one of the light sources.

12 Q What did you do then?

13 A Well my next procedure was to try to process the
14 handle of the knife to see if I could enhance that blood that
15 was on the knife.

16 So in this particular case, I chose a chemical that
17 we call acid yellow 7 (phonetic). And this is chosen in this
18 particular case because the handle is black. And this acid
19 yellow under the presence of the alternate light source gets
20 kind of a yellow glow. So what it does, it's going to attach
21 itself to the proteins that are in that blood. And then when
22 the light hits it, it's going to glow.

23 So I did that technique on the knife handle, trying
24 to either enhance the blood that was there, or possibly even
25 develop some very faint blood that I couldn't see visually, or

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1 through these other processing techniques. So that's the
2 choice that I made on the handle of the knife. I used the acid
3 yellow 7, applied the alternate light source, all with negative
4 results. No enhancement, no additional latent prints were
5 developed.

6 Q So the bottom line is, there were no latent prints
7 available to you for comparison on the knife?

8 A On the handle itself.

9 Q On the handle itself.

10 A Right. And then on the smooth blade portion of the
11 knife, I decided to use a very common processing technique
12 that's used in the laboratory now, the super glue method, or
13 the sinoacolate (phonetic) method.

14 I think we've probably all seen this on TV, where the
15 item is put in a box or inside of a cabinet, and the glue is
16 put onto a heating element, and there's a big cloud of smoke.
17 Well this actually -- this is what we actually kind of do. And
18 then these fumes will actually adhere to the ridge detail if
19 it's present on a -- well on a lot of surfaces, but primarily
20 on these smooth surfaces that we work with, which a knife blade
21 would be one of them.

22 So the latent -- so the knife would have then been
23 placed in the super glue cabinet, exposed to the super blue
24 fumes. I would have done a visual exam at that point to see if
25 any ridges developed. I did not see any.

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1 At that point, I then applied another chemical just
2 to the blade portion that we use in conjunction with our
3 alternate light source again, and took it back into the dark
4 room with the alternate light source and scanned it again.
5 Once again, did not develop any latent prints on the knife
6 blade itself.

7 Q Okay. And upon visual examination of the knife, did
8 you see any visible palm impressions at all?

9 A Well the impression that was left on the knife, the
10 one that was in blood, when -- there was enough on it there
11 that I knew I could eliminate the ridge detail that was on the
12 knife as being a fingerprint. Because the flow, what we -- as
13 I talked earlier, we talked about the flow of the ridges. It
14 was kind of a broad flow, it was probably maybe several inches
15 long. So that automatically eliminated the fingers.

16 And just through my experience and so forth and the
17 way that these ridges flowed, it was my opinion that the ridge
18 flow probably came from the palm of the hand. And more than
19 likely, because of where they were and how ridges flow in your
20 palm, came from this area which we call the hypothenar, which
21 is this fatty pad on the outside of your hand, below this big
22 old crease that everybody running through there, called -- this
23 big fat pad here, it's called a hypothenar.

24 So that's the area of the palm that I -- that in my
25 opinion, that touch more than likely came from. Now I couldn't

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1 tell if it was a left or a right, but it just -- that's all I
2 could say, that it appeared to be a palm area with a touch in
3 the hypothenar area.

4 Q But it wasn't of comparison quality?

5 A No, it was not of comparison quality.

6 Q Okay. Were you given any other piece of evidence in
7 this case to examine for possible latent print exam?

8 A Yes.

9 Q And what was that?

10 A Well also received in the laboratory from a CSA
11 Chelsea Collins was a small packet. And inside this packet
12 were four photographs that she had taken of the crime scene,
13 which is -- I believe was at 5001 El Parque Avenue, number C35.

14 And I was asked to look at these photographs that she
15 had taken. I believe they were from a corner of the bed, just
16 let me double-check here. They were all indicated as being
17 from the northeast corner of the bottom flat sheet of the bed
18 in the northwest bedroom. So there was a transfer of what she
19 believed I believe she thought was blood, onto the bed sheet,
20 onto the corner of the bed.

21 And she -- the request was for us in the laboratory
22 to take a look at this transfer to see if it was ridge detail.
23 And if it was, was there any way that we could develop it or --
24 I should say if there was any way it could be of comparison
25 quality.

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1 Q And Mr. Guenther, I'm going to show you what's been
2 entered as State's Exhibit 48. Does that appear to be a photo
3 of the transfer that you were asked to examine?

4 A Yes, it is.

5 Q Can you just kind of point to the screen and --

6 A Yes. Yeah. Well this is our -- the area right here,
7 of course this is the mark that -- Chelsea Collins, here is her
8 initials. And her P number, her employee identification
9 number.

10 So this is her photograph, and this is one of the
11 four photographs that -- this is an enlargement of it. But
12 this is one of the four photographs that was submitted to the
13 laboratory for my analysis. And I believe this is her B
14 photograph over here of the four that she took.

15 And the touch area is right in there, that actually
16 had some -- as you can see, some ridge flow -- ridges flowing
17 through that -- now we know this is a transfer because if you
18 look at the sheet itself, you can see that the thread count of
19 the sheet is going definitely north and south, and east and
20 west. Where the flow of these ridges is more from an angular
21 -- across that.

22 So I didn't -- at that point, I didn't believe it was
23 just the thread count being stained, and coming through to me.
24 Because sometimes you can see that when there's a touch, and
25 it's just a crosshatch. We don't really have that here, we

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1 actually have some ridges flowing through here.

2 But an analysis of this, under magnification that we
3 use on our desk, I determined that this area here that I'll
4 make a smaller circle around in particular, did not contain any
5 ridged paths that we talked about, those things that make your
6 finger and palm prints unique. Did not have any or enough in
7 this area to make any kind of conclusion, or any kind of
8 comparison whatsoever.

9 About the only thing I could say about this was that
10 it's probably from a palm. Where on that palm, I do not know.
11 It could be from this hypothenar area, because it's kind of
12 linear. And then once again, it could be down -- it could have
13 come from this area, down way at the bottom that we call the
14 carpal delta area. Most people have a big formation right down
15 there at the bottom center of their hand. It's called the
16 carpal delta area.

17 So because of some of the striations and these voids
18 here between these areas of touch, you sometimes see that in
19 the carpal delta area. But I can't be sure. So it was really
20 not of -- it's not of comparison quality. That's all I could
21 really say, that it was probably a touch from a palm.

22 Q And you talked about four photographs. Was it four
23 photographs of the same visual image that you received?

24 A Yes. All four --

25 Q And this was that visual image?

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1 A Yes. All four photographs were of the same.

2 Q Okay. So no other photographs, just different images

3 --

4 A Yes.

5 Q -- of this particular photograph, which is State's
6 Exhibit 48?

7 A Correct.

8 Q And your conclusion was that it was not anything of
9 comparison quality?

10 A Correct.

11 Q Okay.

12 MS. GRAHAM: Court's indulgence.

13 BY MS. GRAHAM:

14 Q I'm showing you what's been -- let's see, where's the
15 mark.

16 MS. GRAHAM: May I approach, Judge?

17 THE COURT: Yes.

18 BY MS. GRAHAM:

19 Q I'm showing you what's been entered into evidence as
20 State's Exhibit 125. And Mr. Guenther, without opening it, if
21 you could just take a look at this box.

22 A Yes, ma'am.

23 Q And see if you recognize that.

24 A Yes, I do recognize --

25 Q How do you recognize it?

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1 A Well I recognize it because my initials are -- or my
2 identifying mark, EG1, is slapped right here on the front of
3 it. And also, this piece of blue tape that runs across the
4 center portion where the box is folded, that would have been my
5 -- and on the ends here, that would have been my seal, where I
6 was done processing the evidence.

7 I would have sealed this with the blue tape, wrote
8 the date and my initials on it, prior -- before I turned it
9 back into our evidence receiving area. So that's how I
10 recognized it also. It has our laboratory event number,
11 081105398 -- 3918, excuse me. And it's -- item is identified
12 as the same -- or as a Wolfgang Puck eight-inch carving knife,
13 which I of course have in my notes as the knife that I
14 examined.

15 Q And that's the box that you received from the crime
16 scene analyst?

17 A Yeah, well I would have received it from the vault.
18 From our --

19 Q In the vault?

20 A From our internal vault, yes.

21 Q Okay.

22 A But yes, this would have been what the item was
23 placed in by the crime scene analyst.

24 Q Okay. And when you received that, there was a seal
25 on that box?

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1 A Yes, yeah. All evidence that arrives at the lab
2 unsealed goes back. We don't receive anything in our
3 laboratory that hasn't been sealed by a police officer or our
4 crime scene people, or whosoever making the submittal into the
5 laboratory, or into the vault itself, the main evidence vault.

6 Q Okay, thank you.

7 MS. GRAHAM: Court's indulgence. I'll pass the
8 witness at this time.

9 THE COURT: All right, thank you. Ms. Palm?

10 MS. PALM: Thank you.

11 (Pause in proceedings)

12 CROSS-EXAMINATION

13 BY MS. PALM:

14 Q Good afternoon, Mr. Guenther.

15 A Good afternoon, Ms. Palm.

16 Q Is it Guenther, or Guenther?

17 A Guenther.

18 Q Okay. The photograph that the State showed you,
19 their State's Exhibit 44.

20 A Yes, ma'am.

21 Q You don't necessarily recognize that, do you?

22 A Well I'm 99 point 9 percent sure that this is the
23 knife that I looked at, because I can see the blood on it. And
24 when it was flipped over or there -- if you would scroll into
25 the handle area, I think I can actually see maybe where the

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1 blood-palm transfer occurred, either on this side or on the
2 flip-side. I'm not -- I don't recall.

3 Q Perhaps if I approach, it might be easier for you to
4 look at the actual photographs?

5 A That might be helpful, yes.

6 Q And I'm going to approach with State's 43 and 44.

7 MS. PALM: May I approach the witness?

8 THE COURT: Yes.

9 MS. PALM: Thanks.

10 THE WITNESS: Thank you. Yes, I believe that the
11 area that I examined would be on State's Exhibit 44 on the
12 handle portion, between the middle rivet and the rivet that's
13 towards the terminal end of the handle.

14 BY MS. PALM:

15 Q Well I'll put it up on the screen, and maybe you
16 could circle the area that you believe that you --

17 A Yes, ma'am.

18 Q -- you're examining. And this is State's 44. All
19 right.

20 A Yes. Could you enlarge that please, just a little
21 bit? Okay. See if it will stay focused.

22 Q There you go.

23 A Oh. Maybe that's not the area. Could you put the
24 up? Well I can't recognize the area as it looks in these
25 photographs right now, to be quite honest with you.

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1 Q Okay. Did you make a notation as to which side of
2 the knife you were examining?

3 A No, I don't believe I did. I just put that the area
4 was scanned. I mean, I have my photo shop (phonetic) scan with
5 me. Of course, that doesn't do the Court much good right now.
6 But no, I did not put down exactly which side it was on.

7 Q Okay. Well just for -- so I can understand what
8 you're talking about when you were describing the areas of the
9 knife, if it were on this side or the other side, what portion
10 of the knife -- could you circle what portion of the knife --

11 A Yes.

12 Q -- it was on?

13 A Yes. It would have been up in this area here.

14 Q Okay. So sort of in the middle of that, or toward
15 the butt of it, of the end of the knife?

16 A Towards the terminal end over here where I just
17 marked.

18 Q Okay.

19 A Or you mean towards where the -- or the blade joins
20 the handle, like over there?

21 Q Oh, I'm -- yes. I'm calling -- you're calling this
22 --

23 A That --

24 Q -- the terminal end?

25 A You're going to call that the butt end? Okay.

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1 Q Yes.

2 A I believe the majority of the print wold have been to
3 the left of the -- as we're looking at this photograph, to the
4 left of the knob, down towards the center portion.

5 Q Okay.

6 A There may have been some bleed over into the butt
7 area. But the majority of it would have been in the main
8 center portion of the handle.

9 Q Okay. So sort of in between the two rivets? Am I
10 understanding you correctly?

11 A Yeah. That is what my recollection is, yes.

12 Q Okay. And do you recall previously testifying that
13 the entire length of the knife was 14 inches?

14 A I believe I -- as in my notes here, I have that the
15 blade is eight inches long, and the handle is approximately
16 six.

17 Q Okay. And if other testimony had said it was a
18 12-inch knife total, would you agree with that, or do you think
19 it was 14 inches?

20 A Well I can only have -- I only have what's in my
21 notes here. So I don't know.

22 Q Okay.

23 A If there was testimony to 12 inches. In my notes, I
24 wrote that the blade was eight and the handle was six. I mean,
25 I could have mis-measured. It's certainly possible.

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1 A It's a view of the tennis shoes that the -- or
2 athletic shoes that the defendant was wearing.

3 Q Showing you State's Exhibit 71?

4 A It's a view of the soles of the shoes. Is that in
5 focus, ma'am, or am I going blind?

6 Q It could be -- let's see.

7 A Oh, thank you.

8 Q Okay. Is that better?

9 A Yes, ma'am. The soles of the shoes, showing there's
10 apparent blood on the -- near the toe of both shoes. And then
11 also near the instep of both shoes.

12 Q Showing you State's Exhibit 62?

13 A That's showing the side of the shoe, and apparent
14 blood.

15 Q And what shoe is that --

16 A That would be the --

17 Q -- just for the record?

18 A That would be the right shoe, I believe.

19 (Indiscernible), I think that's the left shoe.

20 Q State's Exhibit 73, showing you.

21 A Showing the outside of the shoe with the stains.

22 Q State's Exhibit 74?

23 A Again, the view of the shoe with the staining near
24 the sole.

25 Q And for the record, what shoe is -- does that appear

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1 to be?

2 A That would be the -- that should have been then the
3 right shoe, if the other was the left.

4 Q Showing you State's Exhibit 75, can you describe to
5 the jury what that is?

6 A Views of the socks that the defendant was wearing.

7 Q And State's Exhibit 76?

8 A The other side of the socks with apparent blood near
9 the heel of one -- on both socks.

10 Q Now after you photographed the clothing with the
11 apparent blood, did you do anymore presumptive testing on
12 clothing or shoes?

13 A All of the clothing that was collected from the
14 defendant was tested using phenolphthalein, which is a field --

15 Q Let me stop you right there. What were you testing
16 for?

17 A To confirm that the reddish stains were in fact
18 blood.

19 Q Okay. And what's the process that you do for the
20 presumptive test?

21 A We take a clean swab, put two to four drops of
22 distilled water on the end of the swab. We touch the swab to
23 the reddish stain, and then there's a two-step process with
24 phenolphthalein. We apply one drop to the tip of the swab, we
25 wait ten seconds. Apply a second drop from the second vial to

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1 the tip of the swab. And if it's blood, the swab will turn
2 pink immediately.

3 Q And do you know, Mr. Ford, which articles of clothing
4 or shoes that you took swabs from?

5 A The --

6 Q Or did presumptive testing on for blood?

7 A The socks, the shoes, the shirt, and the jeans.

8 Q And do you know the results of the presumptive
9 testing for blood?

10 A They were all positive for blood.

11 Q Okay. And where was the presumptive testing done?

12 A At the criminalistics bureau.

13 Q Okay. And was that before or after you took photos
14 of the clothing?

15 A After.

16 Q Okay. What then did you do with the articles of
17 clothing?

18 A They were placed back into the bags that they had
19 been removed from. The bag was sealed. The evidence label was
20 placed to the outside of the bag. Evidence tape was placed
21 across the seal of the bag, sealing that. My initials and date
22 -- initials and P number and date were attached to those seals.
23 And then the items were placed inside the evidence hold.

24 Q Okay. And specifically do you recall the item number
25 for those impounded --

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1 A If I could refer to my evidence impound.

2 Q Did you write a report --

3 A Yes ma'am, I did.

4 Q -- in this case?

5 A Yes, I did.

6 Q Okay. Would it refresh your recollection to refer to
7 your report?

8 A Yes ma'am, it would.

9 THE COURT: Go ahead.

10 THE WITNESS: Package number 4244 slash 1 contained
11 the one pair of white GRX athletic shoes, size 9H with apparent
12 blood. And item 2 was one pair of white socks with apparent
13 blood. Package 4244 slash 2 contained a black Fruit of the
14 Loom short-sleeved t-shirt, size extra large with apparent
15 blood.

16 Package 4244 slash 3 contained one pair of Arizona
17 Jeans Company blue jeans, size 34 by 32, with apparent blood.
18 And the last package, 4244 slash 4 contained apparent blood
19 swab, which was item 5. Item 6 was the penile swabs, and item
20 was the buccal swab kit.

21 BY MS. GRAHAM:

22 Q And once you seal all of -- impound that evidence and
23 seal it, what then happens to that bag?

24 A Those bags are placed in the evidence hold room with
25 the copy of the evidence impound report. They were picked up

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1 by the evidence vault the next day, or at the next work day for
2 them, and then logged into the evidence inventory at the
3 evidence vault.

4 Q Okay. And do you know where they go from they're?

5 A They're held at the evidence vault until they're
6 called for court.

7 Q Okay. Showing you what's been entered as State's
8 Exhibit 62. Mr. Ford, in your experience, is it uncommon to
9 see injuries --

10 MS. PALM: Objection, Your Honor.

11 MS. GRAHAM: -- similar to this --

12 MS. PALM: For one, it's a leading question. For
13 two, she's going to be asking for a lay opinion. And we don't
14 have any notice of lay opinions for this witness. We've
15 litigated this issue already.

16 THE COURT: Counsel approach, please.

17 (Off-record bench conference)

18 THE COURT: I'm going to sustain Ms. Palm's
19 objection.

20 MS. GRAHAM: Court's indulgence. I'll pass the
21 witness at this time.

22 THE COURT: Cross-examination

23 MS. PALM: Thank you. You can leave the pictures up
24 there.

25 MS. GRAHAM: Oh, sure.

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CROSS-EXAMINATION

1
2 BY MS. PALM:

3 Q Good morning -- is it Officer, or Mr.?

4 A No, ma'am. I'm a civilian.

5 Q Mr. Ford?

6 A Yes ma'am, that's correct. Used to say Mr. Ford --
7 it was Dan, because Mr. Ford (indiscernible), but he's since
8 passed on.

9 MS. PALM: Court's indulgence. I thought my pictures
10 were (indiscernible). I'm trying not to duplicate pictures,
11 but it's a little hard to keep track because we both have
12 similar pictures. I'm just going to go ahead and use my
13 pictures because I know --

14 THE WITNESS: That's fine.

15 MS. PALM: May I approach the witness, Your Honor?

16 THE COURT: Yes.

17 BY MS. PALM:

18 Q Do you mind taking a look at all these and see if you
19 recognize them?

20 A Okay. Okay.

21 Q So for the record, that is defendant's proposed MM,
22 NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, and DD, AA, EE,
23 GG, CC, and FF. And do you recognize what's contained in those
24 photographs?

25 A Yes ma'am, I do.

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1 Q Are those photographs that you took?

2 A Yes ma'am, they are.

3 Q Were they taken in the detective's bureau?

4 A In the interview room at the detective bureau, yes,
5 ma'am.

6 Q And they were the photographs you were talking about
7 that you took of my client, Mr. O'Keefe?

8 A That's correct.

9 MS. PALM: Your Honor, I would move for admission of
10 those exhibits.

11 THE COURT: Any objection?

12 MS. GRAHAM: No objection.

13 MS. PALM: Thank you.

14 THE COURT: They will be admitted.

15 (Exhibits MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY,
16 DD, AA, EE, GG, CC, and FF are admitted)

17 MS. PALM: All right.

18 BY MS. PALM:

19 Q I just want to go over some of the photographs of my
20 client's injuries. Could you recognize NN?

21 A Yes, ma'am.

22 Q Defense Exhibit NN?

23 A It's to the -- I believe looking at my report, it was
24 a bruising to the right inside biceps.

25 Q Okay, thank you. And OO, is that the same picture

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1 with a scale?

2 A Yes ma'am, that's the same one with a scale.

3 Q PP?

4 A The scratch to the upper back, upper right rear
5 shoulder I think.

6 Q Defense QQ?

7 A Scratch marks along the belt line on the lower back.

8 Q Okay. RR?

9 A That's a view with the jeans not being pushed down
10 there at the lower back.

11 Q And without the scale?

12 A And without the scale. Yes, ma'am.

13 Q SS?

14 A Another view of the reddish marks or bruising on the
15 forehead.

16 Q UU?

17 A That was a frontal view of the defendant that night
18 in the interview room.

19 Q And this is subsequent to the interview?

20 A That I don't know. That was taken shortly after I
21 arrived at the bureau, so I don't know when the interview was
22 done.

23 Q Okay. Was it about 3:47 in the morning?

24 A Yes, ma'am. That's when I arrived. Yes, ma'am.

25 Q And what is this picture of?

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1 A A view of the back of the defendant holding on to the
2 bar there in the interview room.

3 Q Okay. And WW?

4 A That's a view of the lower legs, the trousers of the
5 jeans, showing the apparent blood.

6 Q Okay. And is this with him standing in the interview
7 room?

8 A Yes, ma'am.

9 Q And XX?

10 A The view of the left side of the defendant being
11 assisted with one of the uniformed officers.

12 Q And who was that holding him up?

13 A It was either Officer Hatchet (phonetic) or
14 Hutcherson. I don't -- I couldn't say which one.

15 Q Okay. And defense YY?

16 A A view of the front of the defendant, again being
17 assisted by the uniformed officer.

18 Q Okay. And that's either Hatchet or Hutcherson again?

19 A Yes, ma'am.

20 Q Defense Exhibit DD?

21 A View of the palm side of the hand, showing the
22 apparent blood on the hands.

23 Q Okay. And he had not washed his hands at that point?

24 A That's correct, had not washed his hands.

25 Q And AA?

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1 A View of the right index finger, showing the area of
2 the laceration near that first joint.

3 Q Okay. And I'm sorry. GG, that another view?

4 A That's the view of the laceration with the scale.

5 Q Okay. And defense CC?

6 A Views of the backs of the hands.

7 Q And is that apparent blood on the hands?

8 A Yes ma'am, here in the crook of the left hand, and
9 also on the -- or the right hand rather. And the left thumb
10 area.

11 Q Okay. Now you identified some photographs for the
12 State, 63 and 64. Do you remember those?

13 A I would have to see -- I remember the numbers, yes,
14 ma'am. That's again a view of the right hand.

15 Q Okay.

16 A Showing the area of the laceration on the finger
17 here.

18 Q Right. Okay. And State's 64?

19 A A closer shot of that same hand in the same position.

20 Q Do those pictures not indicate an injury on the
21 thumb?

22 A It's hard to say if that's an injury on the thumb, or
23 if it's just a large amount of blood there that's on the thumb.

24 Q Was it possible these photographs, these last two
25 photographs were actually taken at the scene, and not by you in

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1 that room?

2 A Possibility, yes ma'am.

3 Q Okay. And do recall previously testifying that no
4 injury was pointed out on a thumb to you while you were in the
5 room documenting injuries?

6 A That's correct. The only thing was the laceration to
7 the right index finger.

8 Q Okay. So if there are photographs apparently
9 documenting a thumb injury, they wouldn't have been taken by
10 you?

11 A No, ma'am.

12 Q So when you go into the interview room, you're just
13 documenting what's pointed out to you in there?

14 A That's correct.

15 Q Okay. You don't independently look for your own
16 evidence?

17 A After the defendant removed his shirt, I did,
18 confirming what had been pointed out to me. I didn't see any
19 additional.

20 Q Okay. If you had only taken injuries (sic) of the
21 right index finger injury, that would be because that was what
22 was pointed out to you?

23 A Yes, ma'am. That's correct.

24 Q Okay. And if you had been trying to document an
25 injury on the thumb, you would have used a scale also; is that

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1 correct?

2 A That's correct. We're required or trained to take
3 photographs with and without a scale.

4 Q Okay. And they take -- other CSA's sometimes take
5 pictures at a scene of an arrestee?

6 A Yes, ma'am. That's correct.

7 Q Okay. Did you also document taser marks on my
8 client?

9 A Yes ma'am, there were two.

10 Q Okay. You wouldn't have had any role in comparing
11 the soles of the shoes that you photographed to any apparent
12 footprints at the crime scene, would you have?

13 A No, ma'am. That's the footwear examiner over at the
14 forensic lab.

15 Q Okay. And you testified that Mr. O'Keefe was
16 actually asked to collect his own sample of DNA from his penis?

17 A That's correct.

18 Q Okay. And can you explain to the jury what
19 cross-contamination is?

20 A Cross-contamination is when we have -- we've
21 collected evidence, such as a blood swab, and we end up with
22 more than just blood in that swab. Or we collect semen stains
23 of the sexual case, and we end up with more than just semen
24 stains on that swab.

25 Q Okay. So would it be the unwanted transfer of two or

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1 more sources of physical evidence?

2 A Yes, ma'am.

3 Q Okay. And you're trained -- are you trained in the
4 proper method to collect a penile swab?

5 A At the time, no ma'am, there was no training. And I
6 examined our CSI training manual this past weekend, and still
7 there is nothing in that training manual.

8 Q Okay. But if a suspect has bleeding hands as in
9 defense Exhibit DD, has blood on his hands, would it -- is it
10 possible that he could contaminate a sample if he uses those
11 hands to manipulate his own penis and collect the penile
12 sample?

13 A In this situation it would have already happened
14 because of his being allowed to go to the bathroom.

15 Q Okay.

16 A Had I known that, I would have identified -- or
17 notified the detective that we probably had a
18 cross-contamination issue already.

19 Q Okay. But you didn't know that?

20 A Correct.

21 Q Okay.

22 A And I didn't feel that the blood on his hands was
23 going to cause a cross-contamination issue.

24 Q Okay. If you previously testified it was a concern
25 of your's and you told the detective about it, do you remember

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1 that?

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

3 Q Would it refresh your recollection to look at your
4 testimony?

5 A Yes ma'am, it would.

6 MS. PALM: (Indiscernible) transcript, page 241. May
7 I approach?

8 THE COURT: Yes.

9 MS. PALM: Thank you.

10 THE WITNESS: Okay. Yes ma'am, I do.

11 BY MS. PALM:

12 Q Okay. So when I asked you about the possibility of
13 cross-contamination, did you say, "Yes, ma'am, it was a concern
14 of mine. I asked the detectives about it, and they said go
15 ahead and let the defendant do it himself?"

16 A That's correct.

17 Q Okay. And so with his bloody hands he touched his
18 penis, and gathered the penile sample with the same hands?

19 A Yes ma'am, with the two swabs. Yes, ma'am.

20 Q Okay. And he wasn't gloved?

21 A No, ma'am.

22 Q Okay. And in doing that sample collection, he had to
23 manipulate his penis with the one bloody hand, and collect it
24 up and down with the other hand?

25 A Well he basically had to hold his penis up with the

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1 one hand, and run the swab up and down the shaft of the penis
2 with the other.

3 Q Okay. So collecting under those circumstances, is it
4 possible that any blood on his hands might have flaked off onto
5 the swab?

6 A Possibly. Yes, ma'am.

7 Q And it might be a better procedure to give him gloves
8 first?

9 A Or to take it at the scene before allowing the
10 suspect or the arrestee to leave the scene at all.

11 Q Okay. But assuming you didn't take it at the scene
12 and you're stuck in a situation with a suspect with bloody
13 hands, is it a better procedure to either have him wash his
14 hands or put on gloves?

15 A Or not let him do it all, have the CSA do it.

16 Q Okay. And do you recall Mr. O'Keefe having to be
17 steadied by somebody to be dressed?

18 A To put the bunny suit on, yes ma'am, I do.

19 Q Okay. And do recall Detective Wildemann helping him
20 put it on because he couldn't put it on right?

21 A Correct. It's not easily assessable piece of paper.

22 Q And do you recall in your crime scene report you only
23 documented the fact that you took photographs of the right
24 index finger?

25 A Yes ma'am, that's correct.

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1 Q Okay. So you didn't document taking photographs of
2 any thumb?

3 A No, ma'am. For injuries, no, ma'am.

4 MS. PALM: Court's indulgence. Thank you, sir. I'll
5 pass the witness.

6 THE COURT: Any redirect?

7 MS. GRAHAM: Just one question briefly.

8 REDIRECT EXAMINATION

9 BY MS. GRAHAM:

10 Q Mr. Ford, the --

11 MS. GRAHAM: Sorry, I'll wait for Ms. Palm to --

12 MS. PALM: Sorry.

13 BY MS. GRAHAM:

14 Q Mr. Ford, the buccal swab of -- that was taken of
15 defendant's mouth, did you take that yourself?

16 A I don't remember, ma'am. If I took that -- I may
17 have, because of the defendant's inability to stand by himself.

18 Q Okay.

19 A So I would have had to have him just open his mouth,
20 and then I would have rubbed the swab inside the cheek on the
21 right side with one swab, and the inside of the cheek of the
22 left swab.

23 Q Okay.

24 A Or inside the left cheek, rather.

25 Q All right. And how long is that swab? How -- can

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1 you describe that?

2 A Approximately six inches. And the cotton end is
3 maybe three quarters of an inch long.

4 Q Okay. And what's the purpose of swabbing the inside
5 of the mouth?

6 A To obtain the person's DNA.

7 Q Okay.

8 MS. GRAHAM: Nothing further.

9 THE COURT: Any recross?

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

11 THE COURT: Any -- thank you. Any questions from any
12 of the jurors? No questions. Mr. Ford, thank you for your
13 testimony. You are --

14 THE MARSHAL: Oh, hold on. We got a question.

15 THE COURT: Oh, we did? I'm sorry. Counsel
16 approach, please.

17 (Off-record bench conference)

18 THE COURT: Mr. Ford, we have a question from one of
19 the jurors. "Where was the blood located on the t-shirt?"

20 THE WITNESS: It was on the front of the t-shirt.
21 There was none on the back.

22 THE COURT: Any follow up questions by the State?

23 THE MARSHAL: I believe we do. Oh, sorry.

24 (Indiscernible).

25 THE COURT: Yes, ma'am?

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1 UNKNOWN FEMALE SPEAKER: (Indiscernible) --

2 THE MARSHAL: Just write it down.

3 UNKNOWN FEMALE SPEAKER: Oh, I'm sorry.

4 THE COURT: (Indiscernible) another question? All
5 right. At this point, is there any follow up questions by the
6 State to this question?

7 MS. GRAHAM: Not from the State.

8 THE COURT: Ms. Palm?

9 MS. PALM: No, thank you.

10 THE COURT: All right. We may have another question
11 from the juror. Counsel approach again. Just going to review
12 the question.

13 (Off-record bench conference)

14 THE COURT: Sir, one of the attorneys is going to
15 place up on the monitor the photograph of the shirt.

16 THE WITNESS: Okay.

17 THE COURT: And the question is, "Could you point out
18 -- point it out on the shirt?"

19 THE WITNESS: Okay.

20 MS. GRAHAM: Ms. Palm, do you have the exhibits?

21 MS. PALM: I gave them to the clerk.

22 (Pause in proceedings)

23 MS. GRAHAM: Based on a juror question, I'm showing
24 you Mr. Ford what's been entered as State's Exhibit 65. Let's
25 see. Let me try to -- can you point to the blood on the

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1 t-shirt?

2 THE WITNESS: Down near the bottom, bottom left.

3 THE COURT: Okay. Any other question, Ms. Graham?

4 MS. GRAHAM: Yes.

5 FURTHER REDIRECT EXAMINATION

6 BY MS. GRAHAM:

7 Q Based on the juror question, Mr. Ford, did you do a
8 presumptive test of that blood?

9 A Yes ma'am, I did.

10 Q Okay. And what were the results of the presumptive
11 test?

12 A It was positive for apparent blood.

13 Q Okay.

14 THE COURT: Any other question, Ms. Graham, relating
15 to that question?

16 MS. GRAHAM: No, Judge.

17 THE COURT: All right. Ms. Palm?

18 MS. PALM: No, thank you.

19 THE COURT: All right. And in the interim we
20 received another question. So can we have counsel approach,
21 please?

22 (Off-record bench conference)

23 THE COURT: The last question from the juror, the
24 Court's not at liberty to ask that question. Anything else by
25 the State?

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1 MS. GRAHAM: Nothing.

2 THE COURT: By the defense?

3 MS. PALM: No, Your Honor.

4 THE COURT: All right. Thank you sir, for your
5 testimony. You are excused. Next witness for the State? Are
6 we going to recall Ms. Maldonado?

7 MR. LALLI: Yes.

8 THE COURT: All right.

9 MR. LALLI: We're going to resume that testimony,
10 Your Honor.

11 THE MARSHAL: Ms. Maldonado, if you will remain
12 standing. Please raise your right hand.

13 JOCELYN MALDONADO, STATE'S WITNESS, RE-SWORN

14 (Pause in proceedings)

15 MR. LALLI: All right.

16 DIRECT EXAMINATION

17 BY MR. LALLI:

18 Q Ms. Maldonado, when we were talking last on Friday,
19 we were discussing various items of evidence that you impounded
20 from the crime scene. Do you recall that?

21 A Yes.

22 Q The last item I believe we spoke about was a knife,
23 and you described for us how you had impounded that, correct?

24 A Yes.

25 Q All right. Now I'm going to show you what we've

ROUGH DRAFT TRANSCRIPT

002319

1 marked as State's Exhibit 23. There appears to be an item of
2 cloth of some sort on Victoria's leg?

3 A Yes.

4 Q What was that?

5 A That was a scarf. It had fringe and tassels on the
6 end. And also there was an elastic band kind of intertwined
7 with some of the tassels on one of the ends.

8 Q Did you impound that item?

9 A Yes.

10 Q What are we seeing in State's Exhibit number 50?

11 A That is a picture of the same scarf with the elastic
12 band that is around the decedent's hand, wrist area.

13 Q And how about 51?

14 A The same scarf with the elastic band on the hand
15 area.

16 Q So this is a top picture of the -- or I'm sorry, a
17 photo of the top of the hand?

18 A Yes.

19 Q And then what about State's Exhibit number 52?

20 A That is a picture of the actual scarf with the
21 elastic band attached at one end, laid out on the paper sacks
22 for photographs.

23 Q Approximately how long is that scarf?

24 A I would say approximately around five feet long.

25 Q All right.

ROUGH DRAFT TRANSCRIPT

002320

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

2 THE COURT: Yes.

3 BY MR. LALLI:

4 Q Ms. Maldonado, showing you what's been marked as
5 State's proposed 132 for identification purposes, is that a
6 fair and accurate photograph of the elastic band on the end of
7 the scarf?

8 A Yes.

9 MR. LALLI: Move for the admission of State's
10 proposed 132.

11 MS. PALM: No objection.

12 THE COURT: 132 will be admitted.

13 (Exhibit 132 admitted)

14 BY MR. LALLI:

15 Q So what are we seeing there?

16 A That is a close up view of the elastic band that's
17 attached to the end of the scarf.

18 Q Okay.

19 (Pause in proceedings)

20 MR. LALLI: May I approach?

21 THE COURT: Yes.

22 BY MR. LALLI:

23 Q Ms. Maldonado, if I were to show you State's proposed
24 Exhibit 124 for identification, what do you believe to be
25 contained in that bag?

ROUGH DRAFT TRANSCRIPT

002321

1 A One white and black scarf with the fringe and tassels
2 on one end, wrapped around a brown elastic hair band, and with
3 apparent blood.

4 Q Same one we're seeing in the photograph?

5 A Yes.

6 MR. LALLI: Your Honor, move for the admission of
7 State's proposed 124.

8 MS. PALM: No objection.

9 THE COURT: 124 will be admitted.

10 (Exhibit 124 admitted)

11 BY MR. LALLI:

12 Q Now I'm going to show you State's Exhibit number 1 --
13 I'm sorry, 31. Now I'm going to direct your attention to kind
14 of this bloody sheet that appears to be under the comforter.
15 Do you see that?

16 A Yes, I do.

17 Q Did you -- well strike that. There appears to be
18 something on top of the bloody sheet that also has apparent
19 blood on it?

20 A Yes.

21 Q What is that?

22 A There's a pillow case on top of the sheet.

23 Q And you impounded the pillow case?

24 A Yes.

25 Q What about the sheet underneath?

ROUGH DRAFT TRANSCRIPT

002322

1 A Yes, I did.

2 Q Okay. Can you explain for us what we're seeing in
3 State's Exhibit number 45?

4 A These were some areas of bloodstain patterns that
5 were observed on top of the bottom sheet that was on top of the
6 mattress, toward the northeast corner of the bed.

7 Q So this is the actual -- this actually came from the
8 bed itself that we just saw?

9 A Yes.

10 Q Okay. And then there are the letters A, B and C on
11 the exhibit.

12 A Yes.

13 Q What are those?

14 A Those are just notating the different areas that were
15 observed that were of interest on the sheet.

16 Q Okay. Let's look at State's Exhibit 46. What is
17 that?

18 A That is an area labeled A, which is a possible
19 contact transfer pattern impression on the sheet.

20 Q Okay. Do you have -- well what is that, a possible
21 contact -- pattern contact --

22 A A contact transfer -- excuse me, I'm sorry. It's a
23 contact transfer pattern impression. It's when something
24 bloody comes in contact with something else.

25 Q Kind of like if you have a big -- you know, maybe a

ROUGH DRAFT TRANSCRIPT

002323

1 rubber stamp, and you stamped in blood, and then you stamped on
2 the sheet, there would be a transfer of that pattern?

3 A Yes.

4 Q Do you have any idea what that is?

5 A No, I do not.

6 Q Was it described in the crime scene report as a shoe
7 print impression?

8 A No, it was not.

9 Q Okay. Do you know what it is?

10 A I do not know what it is.

11 Q Is it possible that it's a shoe print?

12 A Yes.

13 Q Is it possible that it is part of the wadded up
14 pillow case that came into contact with the sheet?

15 A Yes.

16 Q What about State's Exhibit 47?

17 A That is a closer view of the area labeled B.

18 Q And what was B?

19 A B is a possible patent print that was observed on the
20 sheet.

21 Q I'm going to show you State's Exhibit number 48. Is
22 that a close up of the same area?

23 A Yes.

24 Q Can you explain for us what a patent print is?

25 A A patent fingerprint is usually visible. It's not

ROUGH DRAFT TRANSCRIPT

002324

1 from residue of perspiration, but from another substance such
2 as grease or blood. If grease or blood comes in contact with
3 your fingertip and you touch another surface, it's possible
4 that you may leave a fingerprint on the other surface due to
5 the ridges, which are the raised portions of skin of your
6 finger. It's possible to leave that behind with the substance
7 that was on the finger.

8 Q Okay. And what about State's Exhibit number 49?

9 A That's an area labeled C, which were basically three
10 linear lines that were observed on the sheet.

11 Q Do you know what those are?

12 A No, I do not.

13 Q Now with respect to that sheet itself, did you
14 impound it along with another sheet on the bed?

15 A Yes, I did.

16 MR. LALLI: May I approach?

17 THE COURT: Yes.

18 BY MR. LALLI:

19 Q Are those sheets contained in what we've marked as
20 State's proposed 127 for identification purposes?

21 A Yes.

22 MR. LALLI: Move for the admission of State's
23 proposed 127.

24 MS. PALM: No objection.

25 THE COURT: 127 will be admitted.

ROUGH DRAFT TRANSCRIPT

002325

1 (Exhibit 127 is admitted)

2 BY MR. LALLI:

3 Q Two last photos apparently I missed on Friday.
4 State's proposed 158 for identification. And I would also like
5 you to look at State's proposed 131. Do you recognize those?

6 A Yes, I do.

7 Q Are those photos taken from the crime scene?

8 A Yes.

9 Q Do they fairly and accurately depict various areas --
10 well 131, does that show an area in the kitchen?

11 A Yes.

12 Q Is that a fair and accurate depiction of it?

13 A Yes.

14 MR. LALLI: Move for the admission of State's
15 proposed 131.

16 MS. PALM: No objection.

17 THE COURT: 131 will be admitted.

18 (Exhibit 131 admitted)

19 BY MR. LALLI:

20 Q And then what are we seeing in State's proposed 58?

21 A That is a photograph as a subject identified to me as
22 Mr. Brian O'Keefe.

23 Q Is that how he looked back on November 6th of 2008?

24 A Yes, when I saw him.

25 MR. LALLI: Your Honor, move for the admission of

ROUGH DRAFT TRANSCRIPT

002306

1 State's proposed 158.

2 MS. PALM: No objection.

3 THE COURT: 158 will be admitted.

4 THE CLERK: No, just 58.

5 MR. LALLI: I'm sorry, 58.

6 THE COURT: 58 will be admitted.

7 (Exhibit 58 admitted)

8 BY MR. LALLI:

9 Q Now showing you 58, do there appear to be two cell
10 phones in that photograph down at the bottom right hand side of
11 the photograph?

12 A Yes.

13 MR. LALLI: Your Honor, that concludes direct
14 examination.

15 THE COURT: All right. Cross-examination.

16 MS. PALM: Your Honor, I have quite a few photographs
17 that I need to have marked, because I wasn't sure what he was
18 going to put in. It might take a minute.

19 THE CLERK: (Indiscernible) is this going to take a
20 while?

21 THE COURT: Ladies and gentlemen, why don't we just
22 take a five-minute break at this point. We're going to mark
23 some more exhibits for your consideration.

24 During this recess, it is your duty not to converse
25 among yourselves, or with anyone else on any subject connected

ROUGH DRAFT TRANSCRIPT

002327

1 with this case. Or to read, watch or listen to any report of
2 or commentary on the trial by any person connected with the
3 trial, or by any medium of information, including without
4 limitation, newspaper, television, radio, or the internet. You
5 are not to form or express an opinion on any subject connected
6 to this case until this matter is submitted to you. We'll see
7 you back in approximately five minutes.

8 (Court recessed at 10:54 a.m. until 11:07 a.m.)

9 (Outside the presence of the jury)

10 (Pause in proceedings)

11 THE MARSHAL: Officers and members of the Court,
12 Department 17 jurors.

13 (In the presence of the jury)

14 THE MARSHAL: You may be seated, ladies and
15 gentlemen. Let's make sure our cell phones are turned off,
16 please.

17 THE COURT: All right. Ms. Maldonado, do you
18 understand you're still under oath?

19 THE WITNESS: Yes, I do.

20 THE COURT: All right. Go ahead, Ms. Palm.

21 CROSS-EXAMINATION

22 BY MS. PALM:

23 Q Good morning, Ms. Maldonado. This is going to be a
24 little bit choppy because we are waiting for the clerk to
25 finish marking exhibits. So I'm going to just start with some

ROUGH DRAFT TRANSCRIPT

002308

1 of the photographs. So if you could look at them and see if
2 you recognize them.

3 A I don't know what this is. Okay.

4 Q Thank you.

5 (Pause in proceedings)

6 BY MS. PALM:

7 Q Ms. Maldonado, do you recognize what's depicted in
8 those photographs?

9 A Yes, I do.

10 Q And what are the photographs generally?

11 A Of the residence area, and a few other photographs at
12 5001 El Parque Avenue, number C35.

13 Q Okay. I'm just going to go through the photographs a
14 little bit, one by one. Defense proposed Exhibit BB.

15 MR. LALLI: Your Honor, I don't -- for the record, I
16 don't oppose their admission.

17 MS. PALM: Oh, I'm sorry.

18 MR. LALLI: That's okay.

19 MS. PALM: I'd move to admit the photographs.

20 THE COURT: Okay. And can you identify them again
21 for --

22 MS. PALM: Oh, I'm sorry.

23 THE COURT: -- the record, please?

24 MS. PALM: It is BB, defense BB. Defense Z, defense
25 Y, defense E.

ROUGH DRAFT TRANSCRIPT

0023^9

1 THE CLERK: That's not right.

2 MS. PALM: Oh, that's not right? Is it on the back?

3 Oh, I'm -- okay.

4 THE CLERK: ZZ, AA, triple (indiscernible).

5 MS. PALM: May I approach the clerk?

6 THE COURT: Yes.

7 (Pause in proceedings)

8 MS. PALM: Starting over. Defense BB, and these are
9 proposed. 2 -- or Z, Y, B, triple A, triple B, triple C,
10 triple D, triple E, triple F, triple G, triple H, triple I,
11 triple J, triple K, triple L, triple M, triple N, triple O,
12 triple P, triple R, triple S, triple T, triple U, triple V,
13 triple W, triple X, triple Y, and triple Z. Move to admit.

14 THE COURT: And those will be admitted.

15 (Exhibits BB, Z, Y, B, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH,
16 III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP, RRR, SSS, TTT, UUU,
17 VVV, WWW, XXX, YYY, and ZZZ admitted)

18 MS. PALM: Thank you.

19 BY MS. PALM:

20 Q Okay. Showing you first defense proposed BB. Do you
21 recognize what that photograph depicts?

22 A Yes, I do.

23 Q And what is it?

24 A That is the right hand of Mr. O'Keefe.

25 Q Okay. And were those -- or was that photograph taken

ROUGH DRAFT TRANSCRIPT

002330

1 at the scene?

2 A Yes.

3 Q Okay. And who took the photograph?

4 A CSA Chelsea Collins.

5 Q Okay. Did you and CSA Collins go together through
6 the scene, documenting various pieces of evidence?

7 A Not the entire scene, no.

8 Q Okay. The apartment? Inside?

9 A Mostly yes. However, I'm not standing side by side
10 with her when she takes the photographs.

11 Q Okay.

12 A And there may be areas that she photographs while I'm
13 not present.

14 Q For instance, the car in this case; you weren't
15 present for the car?

16 A Correct.

17 Q Okay. This is Mr. O'Keefe's apparent thumb injury at
18 the scene?

19 A That's just a photograph of his right hand, yes.

20 Q Okay. And these are going to be a little bit out of
21 order. But this is defense triple A. And what does that
22 depict?

23 A That is a photograph if you were standing in the
24 living room looking into the hallway, the north-south hallway
25 inside the residence.

ROUGH DRAFT TRANSCRIPT

002331

1 Q So that would be the hallway in between the two
2 bedrooms that are on either side of that bathroom?

3 A Yes.

4 Q Okay. And it appears that the light is on in that
5 bathroom, would you agree?

6 A I honestly can't tell in the photograph.

7 Q Okay. If I approach, would it help you if you saw
8 the picture up close?

9 A Yes.

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

11 THE COURT: Yes.

12 THE WITNESS: I honestly can't tell. It appears to
13 be, but I can't see the actual light fixture.

14 BY MS. PALM:

15 Q Okay. Well I guess my question is when you're
16 documenting the scene, do you generally leave things as you
17 found them, or do you turn lights on and off?

18 A Usually we try to leave things as we find them.

19 Q Okay. And defense proposed -- or defense triple B is
20 what?

21 A That is another photograph of the living room area.

22 Q And that is as you found it that evening?

23 A Yes.

24 Q Defense triple C?

25 A Just another view, a different view of the same

ROUGH DRAFT TRANSCRIPT

002332

1 living room area.

2 Q Okay, another corner of the living room?

3 A Yes.

4 Q Defense triple D?

5 A Again another view, just a different view inside the
6 living room.

7 Q Okay. And defense triple E?

8 A That is a photograph of the table that was at the
9 south end of the sofa that was along the east wall.

10 Q Is that right next to the front door?

11 A Yes, very close.

12 Q And defense triple F?

13 A That is just a photograph of the kitchen area, the
14 counter.

15 Q Okay. Now in defense triple J, is that the same
16 kitchen area?

17 A That's a different view of the kitchen, that's a
18 different counter.

19 Q Okay. Do you know if that purse was moved from
20 anywhere to be put there?

21 A Yes, I believe so.

22 Q Okay. So when you go through the scene, do you
23 generally take photos to document how it was, and then move
24 things around that you think are of evidentiary value?

25 A Yes, eventually.

ROUGH DRAFT TRANSCRIPT

002333

1 Q Okay. So this photograph depicts what?

2 A That's a red purse and two wallets.

3 Q Okay. And can you tell what's in the wallets from
4 looking at the photograph?

5 A I believe they appear to be some type of
6 identification.

7 Q Okay. Do you know if that was the drivers license of
8 Ms. Whitmarsh and Mr. O'Keefe?

9 A I believe so, yes.

10 Q And that was defense triple J. And defense triple G,
11 what is that showing?

12 A That is the view from the living room looking into
13 the kitchen area.

14 Q Okay. And now defense triple H, do you recognize
15 what that is?

16 A Yes.

17 Q Okay. Can you explain what the picture is showing?

18 A That is showing the floor area in the northwest
19 master bedroom, adjacent to the sliding glass door or the
20 vertical blinds.

21 Q And is that the bedroom that the body was found in?

22 A Yes.

23 Q Okay. Now if the light appears to be off in that
24 picture, was it because you turned it off, or because it was
25 off?

ROUGH DRAFT TRANSCRIPT

002324

1 A I honestly don't know. I never touched the light
2 switch --

3 Q Okay.

4 A -- for -- to turn the light on or off.

5 Q Okay. The blinds that are on the floor, were they in
6 that condition when you found them?

7 A Yes.

8 Q Okay. And what is that next to the blinds on the
9 floor?

10 A That's a black jacket.

11 Q Okay. Defense triple I, is that the jacket in an
12 unfolded condition?

13 A Yes.

14 Q Okay. Defense triple K, what is this?

15 A That is the photograph in the northwest master
16 bedroom looking toward the bathroom that's inside the bedroom.

17 Q Okay. And is that red purse that's there the same
18 purse that was later in the kitchen?

19 A Yes, I believe so.

20 Q And the lights on in the bathroom, would you have
21 turned them on, or do you believe they were on?

22 A That's how I saw it when I entered the scene.

23 Q Okay. And defense triple L, what is that?

24 A That is a photograph of the other bedroom, the south
25 bedroom.

ROUGH DRAFT TRANSCRIPT

002335

1 Q Okay. And that bedroom didn't have a bed in it, did
2 it?

3 A No, it did not.

4 Q Okay, just basically exercise equipment and a desk,
5 and some other miscellaneous items?

6 A Yes.

7 Q And defense triple M. That -- is that again the
8 bedroom where the body was found?

9 A Yes, it is.

10 Q Okay. And I believe that might have been the same
11 photograph that Mr. Lalli was showing you earlier where the
12 closet door was off-track?

13 A Yes.

14 Q Okay. Is that what you were attempting to document?

15 A No. Crime scene analyst Chelsea Collins was doing
16 her overall photographs. And that just happens to be what
17 appears in the photograph in the overall view.

18 Q Okay. Defense triple N, what's that?

19 A That is a photograph of the top of the bed in the
20 northwest bedroom.

21 Q Okay. And what is the measurement tape surrounding
22 it for, what's the purpose of that?

23 A The scales are placed in there later on during the
24 scene in case there needs to be an reconstruction done to give
25 approximate size and distance of items.

ROUGH DRAFT TRANSCRIPT

002336

1 Q Okay. And if that blue pillow was up in this
2 photograph and down in other ones, is that because you moved
3 it?

4 A It had to be moved, yes, in order to place the tape
5 later on during the scene. Yes.

6 Q Okay. Do you know if the blue pillow started down
7 further on the bed, or if it started in that condition?

8 A I believe it started down further.

9 Q Okay. And then you moved it up to take this
10 photograph?

11 A Yes, to lay the tape and take the photograph.

12 Q Defense triple O, is that the possible apparent
13 footwear pattern that you were talking about on the bed?

14 A That's the --

15 MR. LALLI: I'm going to object, Your Honor. That
16 assumes facts not in evidence.

17 THE COURT: Sustained.

18 BY MS. PALM:

19 Q Didn't -- did you testify that could possibly be a
20 footwear pattern?

21 A Yes.

22 Q Okay. And is that what you had testified to earlier?
23 With this picture here, you're documenting that apparent
24 pattern on the bed?

25 A Yes, the contact transfer pattern impression. Yes.

ROUGH DRAFT TRANSCRIPT

002337

1 Q And defense triple S. Is that how the pillow case
2 was laying on the knife when you found it?

3 A Yes.

4 Q Okay. Does it appear that the bloody portion of the
5 pillow case is actually laying on the blade of the knife?

6 A Yes.

7 Q And defense triple X. Is this that pillow case
8 unfolded?

9 A Yes.

10 Q Okay. And what is the scale here trying to do?

11 A That's just indicating another area of a bloodstain
12 pattern, possibly again another contact transfer pattern
13 impression.

14 Q Okay. And possibly a footwear pattern?

15 A Possibly, yes.

16 Q And defense triple Y, is this just a picture without
17 the scale of the same thing?

18 A Yes.

19 Q And defense triple Z, is this the other side of the
20 pillow case?

21 A I believe so, yes.

22 Q Okay. And defense Z, does this appear to be an
23 overview of the A, B and C that you had testified about
24 earlier?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002338

1 Q And defense B. Can you tell the jury what that is?

2 A Those are prescription medication bottles.

3 Q Okay. And do they appear to be for Ms. Whitmarsh?

4 A Yes.

5 Q Okay. And do you look at the bottles to determine
6 whether they have been taken as prescribed?

7 A No, I do not.

8 Q That would be the coroner's job?

9 A I honestly don't know if they make that evaluation.
10 I do know that they look at the medication bottles, and they do
11 some sort of count.

12 Q Okay. But that's not your job?

13 A No.

14 Q Okay.

15 (Pause in proceedings)

16 BY MS. PALM:

17 Q If you could look at these.

18 MS. PALM: May I approach the --

19 THE WITNESS: Sure.

20 MS. PALM: -- witness?

21 THE COURT: Yes.

22 THE WITNESS: Okay.

23 (Pause in proceedings)

24 BY MS. PALM:

25 Q All right. And for the record, I have just shown you

ROUGH DRAFT TRANSCRIPT

002339

1 defense quadruple V, quadruple U, quadruple S, quadruple Q,
2 quadruple P, quadruple O, quadruple N, quadruple M, quadruple
3 K, quadruple I, quadruple E, quadruple H, quadruple G,
4 quadruple W, quadruple F, quadruple D, quadruple C, quadruple
5 B, and quadruple A. Did you recognize those photographs?

6 A Yes, I did.

7 Q And were they additional pictures taken at the crime
8 scene?

9 A Yes.

10 Q Okay. Showing you -- oh, I think we've done this
11 one.

12 MS. PALM: I would move to admit the photographs,
13 Your Honor.

14 MR. LALLI: No objection.

15 THE COURT: They will be admitted.

16 (Exhibits VVVV, UUUU, SSSS, QQQQ, PPPP, OOOO, NNNN, MMMM, KKKK,
17 IIII, EEEE, HHHH, GGGG, WWWW, FFFF, DDDD, CCCC, BBBB,
18 AAAA admitted)

19 MS. PALM: Thank you.

20 BY MS. PALM:

21 Q Showing you defense quadruple C, is that the apparent
22 pattern on the pillow case, a close up view?

23 A Yes.

24 Q Okay. And defense quadruple W, is that the knife
25 prior to your impounding of it?

ROUGH DRAFT TRANSCRIPT

002340

1 A Yes.

2 Q Okay. And with the scale around it?

3 A Yes.

4 Q And defense quadruple G, does that appear to be the
5 other side of the knife?

6 A Yes.

7 Q And defense quadruple E, what does that appear to be?

8 A That is a photograph of the pair of black stretch
9 pants that were located on the floor in the bathroom in the
10 northwest bedroom.

11 Q Okay. And that's after you unfolded them to take a
12 photograph?

13 A Yes.

14 Q Okay, do you know if that's the front or the back of
15 the pants?

16 A I don't know that.

17 Q All right. Defense quadruple I. Is that another
18 view of the same pants?

19 A Yes.

20 Q And it appears to be a different view of the same
21 pants?

22 A Yes, it would be the opposite side.

23 Q Okay. Were those pants fairly saturated with blood?

24 A They appeared to be saturated, yes.

25 Q Okay. And would that be on both sides of the pants?

ROUGH DRAFT TRANSCRIPT

002341

1 A I honestly don't remember that.

2 Q Okay. Would it help you if you looked at the
3 pictures close up?

4 A Possibly, yes.

5 MS. PALM: May I approach?

6 THE COURT: Yes.

7 THE WITNESS: Yes, there appears to be apparent blood
8 on both sides of the pants.

9 BY MS. PALM:

10 Q Thank you. And defense quadruple K, who is that
11 holding my client's head?

12 A I believe that's Homicide Detective Wildemann's arm.

13 Q Okay. So he was at the scene?

14 A Yes, he was.

15 Q And defense quadruple M, is that a close up of the
16 kitchen counter view that we saw earlier?

17 A Yes.

18 Q Okay. And do you know if anything had been removed
19 at this point?

20 A I honestly don't know.

21 Q Defense quadruple N, is that a close up view of the
22 knife block in the corner of that kitchen?

23 A Yes.

24 Q Okay. Defense quadruple O, can you explain what this
25 photograph is documenting?

ROUGH DRAFT TRANSCRIPT

002342

1 A That's a photograph of the floor in the living room
2 area. And the cones depict the wire that was attached to the
3 taser cartridge located in the hallway area. It's just showing
4 the general direction and extent of the wire.

5 Q Okay. Was this photograph taken before the other
6 photographs of the living room which don't have the cones?

7 A No, this would have been later in the scene.

8 Q Okay. And it would appear as that bedroom light is
9 off. You don't know whether anybody turned it on or off, do
10 you?

11 A I do not know that, no.

12 Q Defense quadruple P, is this a close up of the knife
13 as it was found --

14 A Yes

15 Q -- on the bed? Okay. And defense quadruple B, is
16 this an even closer up view of the knife?

17 A Yes, it is.

18 Q Now when you were walking through the scene, you were
19 walking through with Detective Bunn also?

20 A I know he was present at the scene. I don't recall
21 if he was actually inside the apartment when I was doing my
22 walk-through.

23 Q Okay. If there had been any kind of disarray,
24 meaning things knocked over or on the floor in the living room
25 or kitchen area, would you have documented that?

ROUGH DRAFT TRANSCRIPT

002343

1 A Yes, that would have been photographed.

2 Q Okay. Okay. When you're determining what to take
3 photographs of, do you independently use your imagination to
4 determine how things might have been used?

5 A I don't understand the question.

6 Q Okay. Do you determine what to take photographs of
7 on your own sometimes?

8 A Yes.

9 Q Okay. Does doing that require you to consider how
10 things might have been used?

11 A Not necessarily, no.

12 Q Okay. So is there any imagination at all involved in
13 what you do?

14 MR. LALLI: I would object, Your Honor. This is the
15 third time she's asked the same question, and each time the
16 witness has answered the same way, no.

17 MS. PALM: Well I think the first question --

18 MR. LALLI: I object. It's asked and answered, and
19 she's badgering.

20 THE COURT: Ms. Palm?

21 MS. PALM: I think the first time she said she didn't
22 understand. I'm just trying to clarify the question.

23 THE COURT: Okay, last time. Let's ask the question.

24 MS. PALM: Okay.

25 BY MS. PALM:

ROUGH DRAFT TRANSCRIPT

002344

1 Q Do you use your imagination at all in assessing the
2 evidence at a crime scene?

3 A I don't know what you mean by imagination.

4 Q Okay. I'll move on. Okay. Did you -- were you part
5 of impounding any of the documentary evidence at the scene?

6 A What do you mean specifically by documentary
7 evidence?

8 Q What I'm referring to is -- did Detective Shoemaker
9 searched pursuant to a warrant; do you know that?

10 A I don't know what specifically that is. I know I
11 entered the apartment after he secured the search warrant.

12 Q Okay. And you were part of taking the photographs or
13 -- of the wallets on the counter?

14 A No, I was not.

15 Q Okay. So would CSA Collins know the answer to what
16 might have been obtained from the wallets?

17 A She possibly could. She would have been the one
18 actually photographing them.

19 Q Okay. So if there was a note or receipt taken from
20 my client's wallet, it wouldn't have been you that would have
21 impounded that?

22 A Possibly. If the detective would have notified me
23 that there was something else that they needed recovered, yes.

24 Q Okay. But if they didn't notify you, would they have
25 just impounded it?

ROUGH DRAFT TRANSCRIPT

002345

1 A I honestly don't know. They may have.

2 Q Okay. And you don't recall impounding any receipts
3 in this case?

4 A No, I do not.

5 Q When you were documenting the evidence of clothing,
6 did you find any underwear at the scene?

7 A No, I did not.

8 Q Okay. And looking at your crime scene -- you're the
9 one that did the crime scene diagram?

10 A Yes.

11 Q Okay. And that's not to scale, is it?

12 A No, it is not.

13 Q Okay. Does the body appear to be about two feet
14 taller than it actually is in your crime scene diagram?

15 A It is -- appears to be taller than what the body
16 actually was, yes.

17 Q Okay. Did you do any further testing on the knife?

18 A No, I did not.

19 Q Okay. Did you do any further testing on the footwear
20 pattern in the bathroom?

21 A No.

22 Q Were you the one that enhanced it?

23 A I did not actually physically apply the chemical. I
24 recovered the tile after that had been done, and after it was
25 photographed.

ROUGH DRAFT TRANSCRIPT

002346

1 Q Okay. And who did the actual enhancement?

2 A I don't know. It could have possibly been my
3 supervisor, Gary Reed (phonetic).

4 Q Okay.

5 A Or it could have also been CSA Collins.

6 Q Okay. And you didn't do any kind of enhancement or
7 further handling of the patterns on the bed either, did you?

8 A No, I did not.

9 Q And you -- when you photographed the body or CSA
10 Collins did, that's the condition it was in when you arrive at
11 the scene?

12 A Originally, yes. There are some overall views of the
13 body, yes.

14 Q And would you agree from your contact with my client
15 at the scene that he was obviously intoxicated?

16 A I could not make that determination, no.

17 Q Okay. If you previously testified you would agree to
18 that, do you disagree now?

19 A No, I do not.

20 Q Would you like to see your prior testimony? Would it
21 help you remember?

22 A Sure.

23 MS. PALM: May I approach?

24 THE COURT: Yes.

25 MS. PALM: Rough draft transcript, page 225.

ROUGH DRAFT TRANSCRIPT

002347

1 BY MS. PALM:

2 Q I'll show you. The question is the bottom of 225,
3 and the answer is the top of 226.

4 A Okay. Okay. I believe that's what I just said.

5 Q Okay. So you would agree he was obviously
6 intoxicated?

7 A Based on Detective Wildemann's observation, yes.

8 Q Okay.

9 MS. PALM: Court's indulgence. Thank you. Pass the
10 witness.

11 THE COURT: All right. Any redirect?

12 REDIRECT EXAMINATION

13 BY MR. LALLI:

14 Q That was never your observation, that was somebody
15 else's

16 A Correct.

17 Q Okay. Thank you.

18 MR. LALLI: Nothing else.

19 THE COURT: Any recross?

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

21 THE COURT: Any questions from any of the jurors? We
22 do have a question from a juror. Counsel, approach.

23 (Off-record bench conference)

24 THE COURT: Ms. Maldonado, we have a question from
25 one of the jurors. "Where is the blood on the women's pants?"

ROUGH DRAFT TRANSCRIPT

002248

1 THE WITNESS: The blood covered the front side of the
2 pants and the backside of the pants in various areas.

3 THE COURT: Any follow up questions by the State to
4 that question?

5 MR. LALLI: Yes.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. LALLI:

8 Q Ms. Maldonado, do you recall whether there was any
9 blood down along the bottom of the pant leg? Do you recall?

10 A I don't recall.

11 Q Okay, very good. Thank you.

12 MR. LALLI: Nothing else.

13 THE COURT: Ms. Palm?

14 MS. PALM: Thank you.

15 RECROSS EXAMINATION

16 BY MS. PALM:

17 Q Ms. Maldonado, would it help you answer questions
18 about the pants to look at the photographs again?

19 A Yes.

20 Q Okay.

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

22 THE COURT: Yes.

23 BY MS. PALM:

24 Q Showing you defendant's quadruple I and quadruple E.
25 Can you tell from looking at those photographs whether the

ROUGH DRAFT TRANSCRIPT

002349

1 BY MR. LALLI:

2 Q Now I'm going to direct your attention to this front
3 area of the apartment, the area you've indicated as the living
4 room. Can you describe that room for us?

5 A The living room was located at the southeast corner
6 of the apartment. The front door was facing east toward the
7 south end of the room. There were various furniture items in
8 the room, including a sofa, television, and a table.

9 Q I'll show you what's been admitted as State's Exhibit
10 4. What is that?

11 A That is a picture of the living room toward the
12 northwest corner.

13 Q How about State's Exhibit number 5?

14 A That is another picture of the living room toward the
15 northeast corner.

16 Q Do you see a couch in the photograph?

17 A Yes.

18 Q What's the position of the couch?

19 A It appeared to be made up as a bed. It had a pillow
20 and bedding items on top of it.

21 Q Is that how you observed it?

22 A Yes.

23 Q As part of your responsibilities going to the scene,
24 are you required to impound evidence?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002250

1 Q And you do that?

2 A Yes.

3 Q Okay. I'm going to show you two photos in
4 conjunction with each other. First I'm going to show you
5 State's Exhibit number 7. And it's really hard to see for some
6 reason. I think this is a -- it's awfully dark, but let me see
7 if I can zoom in on these here. So do you see this black
8 object down on the floor that I've zoomed in on?

9 A Yes.

10 Q What is that?

11 A That is a taser cartridge.

12 Q Do you know why a taser cartridge would be on the
13 ground?

14 A It was reported that a taser had been discharged
15 inside the apartment.

16 Q And after it's discharged, is it unusual for the
17 cartridge to either come off or be removed by the officers?

18 A No, it's not unusual.

19 Q Okay. Is there more stuff I guess, for lack of a
20 better word, related to the taser cartridge --

21 A Yes, there is.

22 Q -- that you found? What else did you find?

23 A Attached to the taser cartridge was the actual wire
24 that extended in the southeast direction across the living
25 room, toward the front door. And on top of the end table on

ROUGH DRAFT TRANSCRIPT

002251

1 the south end of the sofa, there was a taser probe or taser
2 barb. And on the floor in the northwest bedroom, there was the
3 taser blaster (phonetic) and taser AFID tags on the floor.

4 Q Okay. Let's go through some of that stuff. Blaster,
5 that sounds like something out of Star Wars. What is that?

6 A A blaster is part of the taser. And when it's
7 discharged, oftentimes you'll find the blaster somewhere in the
8 vicinity, hopefully. It actually comes off some part of the
9 taser.

10 Q So you found the blaster?

11 A Yes.

12 Q Where?

13 A In the northwest bedroom.

14 Q Okay. That's the bedroom we're seeing now in State's
15 Exhibit number 1?

16 A Yes.

17 Q And I don't know if you can read it, but there's a
18 legend over here on the left. Can you see where it says "Taser
19 blaster?"

20 A Yes.

21 Q I think it's number 3.

22 A Yes.

23 Q Can you find the 3 on your crime scene diagram if I
24 zoom in on it?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002252

1 Q All right. Where is it?
2 A Do you want me to circle it?
3 Q Circle it if you would.
4 A Whoops.
5 Q Okay, you missed.
6 A Yeah.
7 Q How about if I do that and help you out there?
8 A I'm sorry.
9 Q Got to work together, not against each other. How's
10 that?
11 A Better.
12 Q There's the 3?
13 A Yes.
14 Q Okay. So and if we zoom out, we see kind of this
15 dotted line through the center of your diagram; is that
16 correct?
17 A Yes.
18 Q Does that correspond to State's Exhibit number 6?
19 A Yes.
20 Q How is it -- how does it correspond?
21 A That is the wire that was actually attached to the
22 taser cartridge.
23 Q All right. Did you -- so the wire, all the different
24 pieces of the taser that are discharged, you collect all that
25 stuff?

ROUGH DRAFT TRANSCRIPT

002253

1 A Yes, oftentimes we do.

2 Q And you did that in this case?

3 A Yes.

4 Q Now you indicated that there was a laser -- I'm

5 sorry, a taser probe as well?

6 A Yes.

7 Q Where is that located on your crime scene diagram?

8 A On top of the table.

9 Q Okay. If I show you State's Exhibit number 8, does

10 that appear to be the table on which the taser probe was found?

11 A Yes.

12 Q And is State's Exhibit number 9 just a close up of

13 that?

14 A Yes.

15 Q All right. Now I want to talk about the southwest

16 bedroom. Can you just indicate where that is for us? Did you

17 go into the southwest bedroom?

18 A Yes, briefly.

19 Q I'm going to show you State's Exhibit number 17.

20 What is that?

21 A That is a view from the hallway looking through the

22 doorway into the southwest bedroom.

23 Q Did you take a number of -- or were a number of

24 photographs taken from within that bedroom?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002254

1 Q And if I were to show you State's Exhibit number 19,
2 does that appear to be a depiction or photograph of that back
3 bedroom?

4 A Yes.

5 Q Now your crime scene diagram shows what appears to be
6 a bathroom just north of the southwest bedroom?

7 A Yes.

8 Q Can you just kind of circle that on the background
9 for us? Okay. And I'm going to show you State's Exhibit
10 number 15. What is that?

11 A That is a overall view of the bathroom in the
12 hallway.

13 Q And is -- State's Exhibit number 16, what is that?

14 A That would be a close up of the vanity, or the sink
15 inside the bathroom.

16 Q Does there appear to be toiletries scattered around
17 on that vanity?

18 A Yes.

19 Q What do you see?

20 A I believe I see shaving cream, a brush and a comb.

21 Q All right.

22 A And various other items.

23 Q That (indiscernible) there. Looks a little blurry,
24 but it's right next to the shaving cream. Is that a razor? Do
25 you know what that is?

ROUGH DRAFT TRANSCRIPT

002255

1 A I can't tell from the picture.
2 Q Let me show it to you up close.
3 A Yes, it appears to be a razor.
4 Q Okay. Did you photograph the kitchen area?
5 A It was photographed by Crime scene analyst Collins.
6 Q And the kitchen area, as we're looking at the
7 diagram, is in the upper left hand -- oh, I'm sorry, upper
8 right hand corner --
9 A Yes.
10 Q -- of it? Okay. What's State's Exhibit 10?
11 A That is a picture of the kitchen area.
12 Q And when a crime scene analyst photographs a room
13 such as a kitchen, is part of the idea to pan the room so
14 somebody who wasn't there can get a good sense of what's in the
15 room so various locations are shot?
16 A Yes.
17 Q Is State's Exhibit 11 just a continuation of the pan?
18 A Yes, it is.
19 Q Same with State's Exhibit number 12?
20 A Yes.
21 Q Now as we zoom in to 12, do you see an item on the
22 counter?
23 A Yes.
24 Q What is that?
25 A The main item that I see is a knife block with knives

ROUGH DRAFT TRANSCRIPT

002256

1 in it.

2 Q Okay. Now I'm going to show you State's Exhibit
3 number 13. Is that a close up of that same block?

4 A Yes, it is.

5 Q And did you all go even closer one more time in
6 State's Exhibit number 14?

7 A Yes.

8 Q And there appears to be a knife missing?

9 A Yes.

10 Q Okay. Do you recall the brand of knives? They look
11 like quite an assortment, don't they?

12 A There was an assortment, yes.

13 Q Were there any Wolfgang Puck knives in that assembly?

14 A Yes, there were.

15 Q More than one?

16 A I don't recall that.

17 Q Okay, but at least one in the block?

18 A Yes.

19 Q And all of them were pulled out and photographed?

20 A Yes.

21 Q All right. Did you go into the master bedroom area?

22 A Yes.

23 Q All right. Okay. Already seen a number of photos of
24 that room, let me show you a few more. Well will you start by
25 describing the condition of what appears to be a decedent in

ROUGH DRAFT TRANSCRIPT

002257

1 your diagram? What was her condition?

2 A She was laying on the floor on her back, with her
3 head to the west and her feet to the east. She did not have
4 any panties or pants on. She did have a top on with a jacket
5 over it, and she had a scarf attached to her right wrist with
6 an elastic hair band that went over the top of her right thigh.
7 And she was on the floor at the north end of the bed.

8 Q State's Exhibit number 25. Is that a photograph of
9 the victim?

10 A Yes.

11 Q Let me show you State's Exhibit number 26. What is
12 that?

13 A That is a photograph of the bed that was in the
14 bedroom.

15 Q Now just to the left of the headboard, there appears
16 to be something on the wall there. What is that?

17 A That is a light switch.

18 Q If I show you State's Exhibit number 29, is that a
19 close up of that same light switch?

20 A Yes, it is.

21 Q There appears to be something on it, a smear of some
22 sort?

23 A Yes.

24 Q What did you do besides just photograph -- not you
25 yourself, but you and Crime scene analyst Collins, what did you

ROUGH DRAFT TRANSCRIPT

002258

1 do to preserve this?

2 A A sample was taken of the substance on the light
3 switch cover.

4 Q Tell us how that's done.

5 A I was wearing gloves when that was done. And I used
6 a sterile cotton tip swab and apply a drop of distilled water.
7 And I take the swab and actually put it onto the stain to
8 collect the substance onto the cotton. And that cotton tip
9 swab is then put into a little plastic container that covers
10 the actual tip, and it has a hole in it so the substance can
11 air-dry.

12 That item is then put into another white envelope,
13 it's called a biological envelope that has a lot of information
14 on it regarding the case, the event number, the location, my
15 initials, my personnel number, and the date. That envelope is
16 then packaged into another small manilla envelope, which is
17 also done by myself.

18 And I put a label on the outside of it, again with
19 all the pertinent information regarding the case and a
20 description of what's inside the envelope. And I then seal the
21 envelope with red evidence tape, and put the date on it with my
22 initials and personnel number.

23 Q Okay. So a lot of information put on these packages?

24 A Yes.

25 Q In addition to everything you've just indicated, is

ROUGH DRAFT TRANSCRIPT

02259

1 there a description of the item usually contained on the
2 outside of that package?

3 A Yes.

4 Q You mentioned event number; is that correct?

5 A Yes.

6 Q Can you explain for our jury what an event number is?

7 A An event number is a ten-digit number that the Las
8 Vegas Metropolitan Police Department uses to assign to an
9 incident. The first two digits of the event number indicate
10 the year that it happened. The second two digits indicate the
11 month. The next two digits indicate the day of that particular
12 month. There's then a dash or a hyphen, and the last four
13 digits indicate that particular event number generated for that
14 specific day.

15 Q Is an event number unique to a certain event that the
16 police respond to?

17 A Yes.

18 Q Was this particular case given a single event number?

19 A At that particular time, I only had a single event
20 number, yes.

21 Q Okay. Can you tell us what the event number was?

22 A The event number was 081105 dash 3918.

23 Q And I guess for lack of a better word, it's sort of a
24 -- it's sort of Metro's case number for this particular case?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002260

1 Q Okay. And so you impounded a swab of this substance
2 using a swab. And you labeled it, sealed it under an event
3 number?

4 A Yes.

5 Q Do you also identify items as you're packaging them
6 by package number and item number?

7 A Yes.

8 Q What was the package number for this swab?

9 A Do you mind if I refer to my report to refresh my
10 memory?

11 Q As part of the process of analyzing a crime scene, do
12 you prepare a report?

13 A Yes.

14 Q At or near the time that the events occur?

15 A Yes.

16 Q Do you believe your report is accurate?

17 A Yes.

18 Q Would it refresh your recollection to review it?

19 A Yes, please.

20 Q You may do so.

21 A That item was impounded under package number 6920
22 dash 2, item number 7.

23 Q Okay. The "dash 2" -- well the "6920," is that your
24 personnel number or your unique ID number for Metro?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002261

1 Q And then the "dash 2," that's the second package that
2 you impounded?

3 A Yes.

4 Q So it's package 2, item 7?

5 A Yes.

6 Q Okay. I'm going to show you State's Exhibit number
7 27. What is that?

8 A That is a picture of the top of the bed in the
9 northwest bedroom.

10 Q There appears to be a black item kind of in the
11 center of that photograph. What is it?

12 A That is a sock.

13 Q Were there any other socks on the bed?

14 A Yes, there were.

15 Q Where was the other one?

16 A The other sock was located between the comforter and
17 the top sheet, toward the foot of the bed.

18 Q Okay. Now did there appear to be a disturbance to
19 the mattress of the bed?

20 A Yes, slightly.

21 Q Can you describe that for us?

22 A From what I recall, the mattress was slightly pushed
23 away from the box spring, I believe toward the southeast corner
24 of the mattress. It was just slightly pushed back. And the
25 bedding on top of the bed was pushed back from the east side

ROUGH DRAFT TRANSCRIPT

002262

1 towards the west side.

2 Q If I show you State's Exhibit number 31, does that
3 help you to describe some of your observations?

4 A Yes.

5 Q Okay. You indicated that it looked like the mattress
6 was kind of off-kilter in some way?

7 A Yes.

8 Q Can you maybe indicate for us -- help us see that in
9 this photo? So what -- I'm going to remove your circle. What
10 did you just circle there?

11 A I circled where I saw the mattress slightly pushed
12 off of the box spring, or away from the box spring toward the
13 west wall.

14 Q Okay. And then there is what appears to be an item
15 -- I'll zoom in on it for a moment. Appears to be an item
16 right in the -- at least on the bed. What is that?

17 A That was a pillow case.

18 Q And there's an item just to the right of that?

19 A Yes.

20 Q What is that?

21 A That is a knife handle, or a knife.

22 Q Okay. The -- was the pillow case impounded?

23 A Yes.

24 Q Now as we zoom out, when you look to the blinds, do
25 you see any evidence of disturbance with respect to the blinds?

ROUGH DRAFT TRANSCRIPT

002263

1 A Yes.

2 Q Describe for us what you saw.

3 A The blinds weren't in the normal vertical position
4 all the way across. Some of them were slightly pushed back or
5 bent. And there were actually a couple of them that were
6 removed, and were on the floor between the bed and the blinds.

7 Q Okay. I'm going to show you State's Exhibit number
8 30. Well let me back up just for a moment. On 31, does there
9 appear to be something dark in the bottom right hand corner of
10 the photo?

11 A Yes.

12 Q Zoom in on that. Is that what we're talking about?

13 A Yes.

14 Q What was that?

15 A That was a jacket.

16 Q Now I'm going to go to 30. Is that the same item?

17 A Yes.

18 Q What is that?

19 A That is a jacket, and the vertical blinds that were
20 on the floor.

21 Q Were there any markings on the jacket, any logos or
22 things of that nature --

23 A Yeah.

24 Q -- that you recall?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002264

1 Q What kind of logo?

2 A There was a Silver State silkscreen Union Pride --
3 I'm sorry, that was the brand of the jacket. The actual logo
4 was Laborers International Union of North America, 872.

5 Q Does that appear to be a man's jacket?

6 A Yes.

7 THE COURT: Mr. Lalli, we need to take a quick recess
8 at time point.

9 MR. LALLI: Okay.

10 THE COURT: Ladies and gentlemen, before I read you
11 the admonishment, I was previously advised by the marshal that
12 you thought all of you could stay until 6:30. We appreciate
13 your willingness to put a long day in, but we want to make sure
14 that you're also fresh when you hear any testimony. Is there
15 anyone here that needs to adjourn for the day, or is everyone
16 good until 6:30? If anyone's not good to 6:30, please raise
17 your hand. All right, we'll take a quick recess at this time.

18 During this recess, it is your duty not to converse
19 among yourselves, or with anyone else on any subject connected
20 with this case. Or to read, watch or listen to any report of
21 or commentary on the trial by any person connected with the
22 trial, or by any medium of information, including without
23 limitation, newspaper, television, radio, or the internet. You
24 are not to form or express an opinion on any subject connected
25 with this case until this matter is submitted to you. We'll

ROUGH DRAFT TRANSCRIPT

002265

1 see you back in about 5 to 10 minutes.

2 (Court recessed at 5:53 p.m. until 6:10 p.m.)

3 (In the presence of the jury)

4 THE MARSHAL: You may be seated, Ladies and
5 gentlemen. Let's make sure our cell phones are turned off,
6 please. Number 2.

7 JUROR NO. 2: Yes, sir.

8 THE COURT: Ladies and gentlemen, again, on behalf of
9 the attorneys as well as my court staff, we do appreciate your
10 willingness to stay later and to help us get caught up. We
11 will adjourn promptly at 6:30, if not a few minutes beforehand.
12 So thank you again. Mr. Lalli?

13 MR. LALLI: Thank you.

14 THE COURT: And Ms. Maldonado, you understand you're
15 still under oath?

16 THE WITNESS: Yes.

17 THE COURT: All right. Go ahead, Mr. Lalli.

18 BY MR. LALLI:

19 Q I think we were talking about photographs of the
20 scene; is that correct?

21 A Yes.

22 Q Okay. Now I want to show you State's Exhibit number
23 28. Does that appear to be another photograph of the bedroom,
24 the master bedroom?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002266

1 Q And if I zoom in here to the left, what is that kind
2 of red item we're seeing?

3 A There's a red lady's purse.

4 Q Do you eventually -- are things eventually pulled out
5 of that?

6 A I believe they were, yes.

7 Q Okay. I'm going to show you State's Exhibit number
8 33. And I want to zoom into the top of these closet doors.
9 There's something unusual about those.

10 A Oh.

11 Q Is there?

12 A Yes, there is.

13 Q Okay. What do you observe there?

14 A They were off the upper track. The rollers were off
15 the track.

16 Q Okay. Is that suggestive of some disruption to those
17 doors?

18 A Yes.

19 Q Okay. Now going back to Exhibit 1. There is a --
20 was there a master -- was there a bathroom off of the master
21 bedroom?

22 A Yes.

23 Q I'll show you State's Exhibit 34. Is that looking
24 into that bathroom?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002267

1 Q And there appears to be something kind of black on
2 the floor of the bathroom?

3 A Yes.

4 Q The same item depicted in State's Exhibit 35?

5 A Yes.

6 Q And also in State's Exhibit 36?

7 A Yes.

8 Q What is that?

9 A Those are a pair of black stretch pants.

10 Q Were those impounded?

11 A Yes.

12 Q They appear to be laying on the floor; is that
13 correct?

14 A Yes.

15 Q Just in front of what appears to be a hamper of some
16 sort?

17 A Yes.

18 Q Do those appear to be folded to you?

19 A They weren't folded, no. They were just kind of
20 laying on the floor.

21 Q Just dropped down?

22 A Yes, yes.

23 Q By the hamper?

24 A Yes.

25 Q State's Exhibit 37, what is that?

ROUGH DRAFT TRANSCRIPT

002268

1 A That's another photograph of the bathroom inside the
2 northwest master bedroom.

3 Q Same thing in State's 38?

4 A Yes.

5 Q Now does there appear to be an assortment of items on
6 the counter?

7 A Yes.

8 Q What sorts of things are those?

9 A Lotion, a hair band, a hair brush, a makeup brush,
10 and an elastic hair band, and various other personal items.

11 Q All right. Now in this photo, if we look kind of
12 over to the sink area, right at the very top there appears to
13 be something. What is that?

14 A That is the medicine cabinet.

15 Q Showing you State's Exhibit number 39, is that the
16 medicine cabinet opened?

17 A Yes.

18 Q And inside the medicine cabinet, are there in fact
19 vials of medicine?

20 A Yes.

21 Q Were those arranged in such a way as to photograph
22 the labels?

23 A I believe so, yes.

24 Q Okay. I'm going to show you State's Exhibit 40 now.
25 Does that appear to be the same three vials of medicine?

ROUGH DRAFT TRANSCRIPT

002269

1 A Yes.

2 Q Can you see a date -- well let me just slide this one
3 over. That's Victoria Whitmarsh; is that correct?

4 A Yes.

5 Q And if I scroll down here, that's Effexor on that
6 same prescription bottle?

7 A Yes.

8 Q And the date of the prescription, can you see that?

9 A I believe it says, 09-03. And I believe the last two
10 digits could possibly be 09. Or I mean, excuse me, 08.

11 Q Okay. Tough to see --

12 A Yes.

13 Q -- the final two? Okay.

14 A Yes.

15 Q All right. Did you observe any evidence of blood in
16 the bathroom on the floor?

17 A Yes.

18 Q Is there something that crime scene analysts can do
19 to extenuate blood if it's there?

20 A Yes.

21 Q I'm going to zoom in the lower section of -- we're
22 looking at State's Exhibit 35. There appear to be some
23 staining, or something of some sort there?

24 A Yes.

25 Q Was that area of the floor further processed?

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1 A Yes, it was.

2 Q How was it processed?

3 A It was processed using a chemical called Leuco
4 Crystal Violet, which is used to locate, enhance, or develop
5 impressions in blood.

6 Q What happens when you apply that chemical to blood?

7 A It turns a purple color.

8 Q Now if I show you State's Exhibit number 41, what is
9 that?

10 A That is the same floor tile after it was processed
11 with LCV.

12 Q LCV is Leuco Crystal Violet?

13 A Yes.

14 Q So after you apply that chemical, we get what we're
15 seeing in State's Exhibit 41, correct?

16 A Yes.

17 Q Before that, it just looks like a white floor almost?

18 A Yes.

19 Q I'm going to show you State's Exhibit number 42.
20 What happened there?

21 A That is the tile when it was actually removed prior
22 to myself impounding it.

23 Q Okay, so the tile was actually impounded?

24 A Yes.

25 Q In the crime scene report, how was that item

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1 described?

2 A In the crime scene report, or my evidence impound
3 report?

4 Q Well let's start with the crime scene report, first
5 of all. On page 2, under the heading of, "Northwest master
6 bathroom evidentiary observations."

7 A Okay.

8 Q How was that described?

9 A "Also an apparent footwear was observed on the floor,
10 see footwear section below."

11 Q And is the footwear that was observed, is that the
12 item on that tile that we're talking about?

13 A Yes.

14 Q Okay. Now I want to back up to these pants. Did you
15 impound the pants?

16 A Yes.

17 Q Can you describe the process of impounding evidence?

18 MR. LALLI: May I approach the witness?

19 THE COURT: Yes.

20 BY MR. LALLI:

21 Q I'm going to show you what we've marked as State's
22 proposed 126 for identification purposes. Do you recognize
23 that?

24 A Yes, I do.

25 Q What is it?

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1 A This is one pair of black stretch pants, size small,
2 with white piping on the pant legs and apparent blood. This is
3 the item that I impounded from the floor inside the bathroom in
4 the northwest master bedroom.

5 Q Those -- what do you believe to be contained within
6 State's proposed 126?

7 A One pair of stretch pants, size small, with white
8 piping on the pant legs and apparent blood.

9 Q Okay, but the same pants that we're seeing on the
10 video monitor?

11 A Yes.

12 Q All right. Now there's -- are there -- well how do
13 you -- do you take it to the evidence vault?

14 A No, I do not.

15 Q You take it to your crime scene office?

16 A Yes, I do.

17 Q And you impound the things there?

18 A Yes.

19 Q Do you recognize this package with your signature on
20 it?

21 A Yes, I do.

22 MR. LALLI: Your Honor, I'd move for the admission of
23 State's proposed 126.

24 MS. PALM: No objection, Your Honor.

25 THE COURT: It will be admitted.

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1 (Exhibit 126 admitted)

2 BY MR. LALLI:

3 Q Okay. Now let's just talk just about this one bag
4 (indiscernible). Are there various colored tapes on the bag?

5 A Yes.

6 Q Okay. Why don't we start with the red one on the
7 back.

8 A The red --

9 Q What is that, this tape going across the back?

10 A That is an evidence seal that I placed on the bag.
11 And I put my initials and personnel number and the date on the
12 actual evidence seals.

13 Q What's the purpose of putting a seal like that on it?

14 A To preserve the item inside, and for chain of custody
15 purposes.

16 Q So everybody knows it hasn't been opened?

17 A Yes.

18 Q Okay. Now are there -- is there some other colored
19 tape on the bag as well toward the bottom?

20 A Yes.

21 Q It's in a different area?

22 A Yes.

23 Q Do you know why it's in a different area?

24 A That means that the bag would have been opened by
25 other personnel within the department for further analysis, or

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1 for further observations. And they also have to sign the label
2 on the front for chain of custody purposes. And then they
3 reseal the bag, and initial it with their initials and P number
4 and the date to reseal it for chain of custody.

5 Q And whenever it's opened and resealed, that's done in
6 another place so everybody can kind of keep track of how many
7 times an item was opened?

8 A Yes.

9 Q Why do you use red tape and somebody else uses blue
10 tape?

11 A I honestly don't know that.

12 Q Okay. Is blue actually used by the crime lab; do you
13 know that?

14 A Yes, they do use blue tape.

15 Q Okay. And then you said that whoever opens it signs
16 the front of it?

17 A Yes, the label that's on the front of the package.

18 Q What do they sign under, what's the title of that
19 area?

20 A Chain of custody, signature, P number, date and time.

21 Q Okay. Do you know who signed that?

22 A Jennifer Bass, P number --

23 Q Do you know --

24 A -- 9944.

25 Q Do you know who Jennifer Bass (phonetic) is?

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1 A Yes, I do.

2 Q Who is she?

3 A She works in our forensic lab.

4 Q Is she a DNA expert?

5 A She works in the DNA, yes.

6 Q Okay.

7 (Pause in proceedings)

8 BY MR. LALLI:

9 Q Well let's talk about State's Exhibit number 22, and
10 more particularly, the knife. Was the knife impounded?

11 A Yes, it was.

12 Q Before you impounded it, was it photographed?

13 A Yes.

14 Q All right. State's Exhibit number 44, what is that?

15 A That is a photograph of the knife that was located on
16 top of the bed.

17 Q Okay. On the break, did we open a package?

18 A Yes.

19 Q On the break while the jury was out --

20 A Yes.

21 Q -- did we open something?

22 MR. LALLI: May I approach the witness?

23 THE COURT: Yes.

24 BY MR. LALLI:

25 Q Can you get some gloves on, please? Okay. What is

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1 this item that I'm holding in my hand?

2 A That is one Wolfgang Puck eight-inch carving knife
3 with a black handle and apparent blood.

4 Q Do you recognize your seals on the box?

5 A Yes, I do.

6 Q And do you recognize your signature on the evidence
7 impound sheet on the front of it?

8 A Yes.

9 Q What do you believe to be contained within that box?

10 A One Wolfgang Puck eight-inch carving knife.

11 Q Okay. And can you remove it and show it to the jury,
12 please?

13 A Does there appear to be still a reddish substance on
14 it?

15 A Yes.

16 Q All right. Okay, very good. You can put that back
17 in the package. Now just going back to State's Exhibit number
18 44, what's this L-shaped object in the photograph?

19 A That's what we call an L scale, or a scale.

20 Q I'm going to zoom in on it. What's on here?

21 A There are numbers on there --

22 Q What are the numbers --

23 A -- for measuring.

24 Q Okay. How -- is this how we would ascertain how long
25 it is?

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1 A Yes. You could possibly, yes.

2 Q And is this -- is it indicated in millimeters and
3 centimeters?

4 A Yes.

5 Q All right. Thank you.

6 MR. LALLI: Your Honor, I'm not sure if this is an
7 appropriate place to stop.

8 THE COURT: I think it is. Thank you, Mr. Lalli.
9 Ladies and gentlemen, again, thank you for your courtesies
10 today. I have a very short calendar on Monday morning, so we
11 will start at 9:30 Monday. Please everyone drive safely home
12 this evening, have a good weekend.

13 So during this recess, it is your duty not to
14 converse among yourselves, or with anyone else on any subject
15 connected with the case. Or to read, watch or listen to any
16 report of or commentary on the trial by any person connected
17 with the trial, or by any medium of information, including
18 without limitation, newspaper, television, radio, or the
19 internet. You are not to form or express an opinion on any
20 subject connected with this case until this matter is submitted
21 to you. Please have a good weekend. We'll see you on Monday.

22 (Outside the presence of the jury)

23 (Pause in proceedings)

24 THE COURT: All right. Counsel, is there anything we
25 need to resolve for anything?

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1 MS. GRAHAM: I'm not sure.

2 MS. PALM: I'm sorry?

3 THE COURT: Anything we need to resolve before we all
4 leave tonight?

5 MS. PALM: Can I put on the record the thing about
6 Morris (phonetic), or do you want to do that Monday?

7 THE COURT: Let's do it Monday so we can all go.

8 MS. PALM: How about that --

9 (Court recessed at 6:27 p.m., until Monday,

10 August 30, 2010.)

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<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
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DEFENSE'S WITNESS:

George Schiro	3	46	72	77	36
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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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11-15-10
DATE

ROUGH DRAFT TRANSCRIPT

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Nov 23 10 23 AM '10

DISTRICT COURT
CLARK COUNTY, NEVADA

Ann J. Schum
CLERK OF THE 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 6

MONDAY, AUGUST 30, 2010

DSC250630
TRANS
Transcript of Proceedings
1070262



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District Court

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002282

1 LAS VEGAS, NEVADA, MONDAY, AUGUST 30, 2010, 9:42 A.M.

2 (Outside the presence of the jury)

3 MS. PALM: Sorry, Your Honor.

4 THE MARSHAL: Are we waiting (indiscernible) outside
5 the presence?

6 MS. PALM: There were just a couple things outside
7 the presence. One would be that I wanted to address on the
8 record the lack of a limiting or cautionary instruction with
9 regard to the testimony of Cheryl Morris, and the bad acts
10 therein.

11 I did request that the Court give a cautionary or
12 limiting instruction ahead of her testimony. During her
13 testimony, I did not bring it up. I was -- confess -- I
14 confess I was a little bit perplexed by the new testimony that
15 we've never heard before, and trying to look through her
16 statements at the time. So I didn't bring it up on the spot.

17 But we talked about it afterwards, and it was my
18 request that a delayed limiting instruction not be given,
19 because I thought it would overly emphasize her testimony when
20 she was not on the stand again. So that's where things stand,
21 I just want to make a record of that.

22 THE COURT: And specifically, what was her testimony
23 regarding other bad acts?

24 MS. PALM: Her testimony was with regard to that Mr.
25 O'Keefe said he wanted to kill Victoria repeatedly, that he

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1 demonstrated how he would kill somebody with a knife by slicing
2 upward from the sternum. And then there was the new testimony
3 about how he would kill somebody by slicing their throat with a
4 knife.

5 THE COURT: All right, thank you. Mr. Lalli?

6 MR. LALLI: Your Honor, we have never opposed the
7 giving of a limiting instruction. So we're -- I mean, we would
8 not have opposed it then. We don't oppose giving one now. You
9 know, that's kind of a decision for counsel. I guess her
10 preference as she has stated is that one not now be given.

11 I can tell the Court we anticipate Detective
12 Wildemann testifying at some point later today, and he will
13 testify as to the defendant's prior conviction. And at that
14 time certainly we would not oppose the giving of a limiting
15 instruction. And the instruction that I would propose is the
16 same one that we proffered to the Court as a proposed jury
17 instruction with respect to bad acts.

18 MS. PALM: And with respect to that, Your Honor, I
19 would submit that their instruction is insufficient, because
20 the Court is supposed to make it specific to the facts of the
21 case and what that evidence is being admitted for, the exact
22 purpose, not just generally citing the statute. We did propose
23 a limiting instruction. And I would submit our limiting
24 instruction would cover her bad acts, as well as the prior
25 conviction, and the limited use thereof.

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1 THE COURT: Do you have a copy -- an extra copy of
2 their limiting instruction? And do you object to giving Ms.
3 Palm's instruction, Mr. Lalli?

4 MR. LALLI: I didn't think I've seen it. But I don't
5 --

6 THE COURT: Well Ms. Palm, if you can just provide
7 that to me at the next break.

8 MS. PALM: I did provide it to your clerk via email
9 if that's -- I don't know if I have my instructions with me
10 (indiscernible).

11 THE COURT: Or don't need it for this morning; is
12 that correct?

13 MR. LALLI: No, it will be later for --

14 THE COURT: Okay.

15 MR. LALLI: -- Detective Wildemann.

16 THE COURT: All right. We'll get it over the lunch
17 hour.

18 MS. PALM: Okay.

19 THE COURT: All right. Let's bring the jury, unless
20 there's any other matters.

21 MS. PALM: There is one other matter, Your Honor. I
22 would like the stipulation to be admitted before we start our
23 case in chief with regard to Ms. Whitmarsh's medical records.
24 There's been plenty of time for everybody to look at the edits
25 that I made to it.

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1 MR. LALLI: I don't have a problem with the edits
2 that she made. I think they're consistent --

3 THE COURT: All right.

4 MR. LALLI: -- with the Court's ruling.

5 THE COURT: I'll read -- unless you want to read the
6 stipulation to Ms. Palm, I'm more than happy to do it. And if
7 you want to do it, that's fine.

8 MS. PALM: I'd actually like it to come in as an
9 exhibit also.

10 THE COURT: Okay.

11 MR. LALLI: I would object to it coming in as an
12 exhibit.

13 THE COURT: Right.

14 MR. LALLI: Stipulations are normally read to the
15 jury.

16 MS. PALM: Well on the ground that we were required
17 not to submit the actual records because of other things that
18 were contained in those records, and it's not the same to have
19 the jury just be read something that they can't necessarily
20 retain, as look at it.

21 If we had been allowed to present the medical
22 records, which were already very limited, they would have had a
23 piece of paper in their hand to look at what exactly was said.
24 And we think that's an important piece of evidence in this
25 case.

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1 MR. LALLI: Well the problem with admitting the
2 exhibit of the stipulation is it overly emphasizes it. If the
3 jury has a question about it, they can request a read-back, or
4 they have a vehicle to recall specifically what is in the
5 stipulation if they have a question about it. But under the
6 circumstances, I would certainly object to the stipulation
7 being in the form of writing and as an exhibit.

8 THE COURT: Ms. Palm, I'm not going to -- we'll make
9 it a Court's exhibit. Or if you want to -- you know, he can
10 offer it. And I'm not going to admit it into evidence. We
11 have -- there's various testimony throughout this trial without
12 any document for the jury. For example, the Tolivers. There
13 isn't any document for their testimony, and we expect the jury
14 to recall their testimony.

15 If need be, we can have a playback, and they can
16 request the same with the stipulation. I'm more than happy to
17 read it, Ms. Palm. If you prefer to read it as a stipulation
18 by the parties, I have no objection to do that. Which do you
19 prefer?

20 MS. PALM: I'd rather it come from the Court.

21 THE COURT: All right. And just tell me when you
22 want it read, and I'll read it.

23 MS. PALM: Thank you.

24 THE COURT: All right. Anything else?

25 MS. PALM: No, Your Honor.

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1 THE COURT: State?

2 MR. LALLI: Not on behalf of the State --

3 THE COURT: All right.

4 MR. LALLI: -- Your Honor. Thank you. Your Honor,
5 just to I guess remind the Court, we're taking Dan Ford out of
6 order because of his graveyard shift.

7 THE COURT: That's fine.

8 MR. LALLI: Thank you.

9 (Pause in proceedings)

10 THE MARSHAL: Officers and members of the Court,
11 Department 17 jurors.

12 (In the presence of the jury)

13 THE MARSHAL: You may be seated, ladies and
14 gentlemen. Let's make sure all cell phones are turned off,
15 please.

16 THE COURT: Good morning, ladies and gentlemen. Hope
17 you had a good weekend. On Friday when we adjourned, we had
18 CSA Maldonado on the witness stand, and she was completing her
19 testimony. Due to some scheduling issues, we're going to have
20 another witness called at this time, then Ms. Maldonado will
21 finish her testimony. State, your next witness?

22 MS. GRAHAM: Thank you, Judge. Calling out of order
23 crime scene analyst, Dan Ford.

24 THE MARSHAL: Mr. Ford, if you would remain standing.
25 Please sir, raise your right hand.

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1 DANIEL FORD, STATE'S WITNESS, SWORN

2 THE MARSHAL: You can have a seat, please. Slide up
3 to the microphone. Sir, if you would please state and spell
4 your name for the record.

5 THE WITNESS: Daniel Ford. D-A-N-I-E-L, F-O-R-D.

6 THE COURT: All right. Go ahead, State.

7 DIRECT EXAMINATION

8 BY MS. GRAHAM:

9 Q Mr. Ford, how are you employed?

10 A As a senior crime scene analyst with the Las Vegas
11 Metropolitan Police Department criminalistics bureau.

12 Q How long have you been a crime scene analyst?

13 A It will be 19 years September.

14 Q Okay. And were you on duty as a crime scene analyst
15 on the early morning hours of November 6, 2008?

16 A Yes ma'am, I was.

17 Q Approximately 3:30-ish, were you contacted by the
18 detective bureau to respond to the homicide bureau?

19 A Yes ma'am, I was.

20 Q And who requested you to respond?

21 A It was Detective Raetz and Detective Wildemann.

22 Q And did you report to the detective bureau?

23 A Yes, ma'am. I arrived around 3:47 that morning.

24 Q And what was the purpose of you being called to the
25 bureau.

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1 A There was a defendant -- or a suspect, defendant, in
2 the homicide case that was presently being worked at the
3 detective bureau. They wanted photos of the individual, the
4 clothes collected, and the evidence collected from the
5 individual.

6 Q Okay. And as a crime scene analyst, basically what
7 are your general duties?

8 A We respond to the scene of a crime when requested by
9 patrol officers or detectives, document that scene as it exists
10 upon our arrival, take photographs of the scene, collect
11 evidence. And come back impound that evidence, and write
12 report related to what our actions were.

13 Q Okay. And when you arrived at the request of
14 Detective Wildemann, where did you report?

15 A To the third floor of the detective bureau, and met
16 with the two detectives.

17 Q Okay. And was the suspect that you were asked to
18 process present?

19 A He was in an interview room, in a holding interview
20 room with two patrol officers.

21 Q Okay. And what if anything happened once you got
22 there?

23 A Detective Wildemann explained to me that -- what we
24 wanted. Photographs of the suspect, the suspect's clothes
25 collected, swabs of his hands because of a cut on the right

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1 index finger, and then swabs of the suspects penis. And then
2 he -- Detective Wildemann took me to the interview room.

3 Q Okay. And was the suspect with you at that point?

4 A No, ma'am. The suspect was in the interview room.

5 Q Okay. So Detective Wildemann took you to the
6 interview room. Once you got to the interview room, what
7 happened?

8 A Detective Wildemann explained to the suspect what was
9 going to take place, had him stand. He had a problem standing
10 on his own, so one of the uniformed patrol officers stepped
11 into the room and assisted with him standing. I took
12 photographs of all four sides of the individual. And then he
13 --

14 Q Okay, let me just --

15 A Okay.

16 Q Let me just stop you right there. Okay. So once you
17 -- did all of this happen inside the interview room?

18 A Yes ma'am, it did.

19 Q Okay. So the first thing you did when you got there,
20 what did you do?

21 A Took photographs of the individual, again all four
22 sides to show his condition and the condition of the clothes
23 that he was wearing.

24 Q Okay.

25 MS. GRAHAM: May I approach the witness?

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1 THE COURT: Yes.

2 MS. GRAHAM: I'm showing defense what's been marked
3 as State's Exhibit 59 -- proposed Exhibit 59, what's already
4 entered into evidence as State's Exhibit 60, 61. And then
5 State's proposed Exhibits 62 through 76.

6 (Pause in proceedings)

7 MS. GRAHAM: May I approach the witness?

8 THE COURT: Yes.

9 BY MS. GRAHAM:

10 Q Mr. Ford, I'm handing you what's been marked as
11 State's proposed 59, entered into evidence as State's proposed
12 60, what's already been entered into evidence as State's
13 Exhibit 61, State's proposed 62 through 76. Could you just
14 take a look at those sir, and flip through those and see if you
15 recognize those?

16 A Yes, ma'am.

17 Q Are those photos that you took of the scene?

18 A 59 through 64 were taken at the interview room at the
19 detective bureau. 65 through 76 were taken at the
20 criminalistics bureau.

21 Q Okay. And do those -- are those the photos that you
22 yourself took?

23 A Yes ma'am, they are.

24 Q Okay. And do they fairly and accurately depict all
25 of the photos and the suspect and the evidence that you

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1 photographed that evening?

2 A Yes, ma'am.

3 MS. GRAHAM: Your Honor, I'd move for admission at
4 this time for State's proposed 59, and 63 through 76.

5 MS. PALM: No objection.

6 THE COURT: 59, 63 through 76 will be admitted.

7 (Exhibits 59, 63 through 76 admitted)

8 THE COURT: You may publish.

9 MS. GRAHAM: Thank you.

10 BY MS. GRAHAM:

11 Q So Mr. Ford, you indicated that you took photos of
12 the suspect standing up, and all four sides. Do you recognize
13 the suspect that you took photos of in the courtroom today?

14 A Yes ma'am, I do.

15 Q Can you point to him and describe something that he's
16 wearing?

17 A He's sitting at the defense to the right of the
18 attorney.

19 Q Okay. Can you describe a piece of clothing that he's
20 wearing?

21 A A green shirt, a brownish coat.

22 Q Okay.

23 MS. PALM: Stipulate to identity, Your Honor.

24 MS. GRAHAM: Thank you.

25 THE COURT: All right. The record reflect defendant

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1 -- I'm assuming the witness has identified the defendant.

2 BY MS. GRAHAM:

3 Q In addition to -- well let me just show you what's
4 been entered into evidence as State's 59. Is that a photo of
5 the defendant that you took that evening?

6 A Yes ma'am, of the left side of the defendant. He's
7 being assisted by one of the uniformed officers that was
8 present.

9 Q Okay. State's Exhibit 60 I'm showing you?

10 A This was a frontal view of the defendant after his
11 clothing had been removed.

12 Q Okay. In addition to taking photos of all four
13 sides, what other photos did you take of --

14 A Took close-ups of the right hand to show the injury
15 to the right index finger. Took photos with the scale and
16 without to show size.

17 Q Okay. Did you photograph any other injuries on the
18 defendant's body?

19 A There was a reddish mark on his forehead, there was a
20 mark on the upper left shoulder, scratches on the lower back
21 above the waistline. There was another mark on the left upper
22 chest area.

23 Q Okay. And you took photos of all of those --

24 A Yes ma'am, I did.

25 Q -- injuries? Okay. Showing you what's been entered

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1 into evidence as State's Exhibit 61. What's that a photo of?

2 A It's a photo of the reddish marks on the forehead
3 with the scale in place to show the size.

4 Q Showing you what's been entered as State's Exhibit
5 62?

6 A It's the laceration of the right index finger with
7 the scale to show -- again, to show the size.

8 Q Once you took photos of the defendant and his
9 injuries, what then did you do?

10 A I collected a swab of blood from the right index
11 finger, around the area of the laceration.

12 Q Okay. And what's the process of that collection?

13 A We take a clean swab. You drop two to four drops of
14 distilled water on the end of the swab to wet it. And then
15 move the swab back and forth across the area where you're
16 trying to collect the blood with the swab. Again, gets a
17 reddish color.

18 We cap the swab, place it into an envelope marking
19 where that item came from, the evidence came from, and what the
20 evidence is, if we know. In this case, apparent blood. Seal
21 the envelope, and put it into another package.

22 Q Okay. And do you mark that package with that would
23 identify that particular swab with this particular case?

24 A Yes, ma'am. It's identified with the event number,
25 my initials and P number, the date that it was collected. And

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1 then an evidence seal is put onto it, the package is sealed.

2 Q Okay. I want to talk about the other photos you
3 took. What other sorts of photos did you take that evening
4 after you took suspect of -- photos of the defendant himself?

5 A Once I left the detective bureau, I returned to the
6 criminalistics bureau with the clothing and the swabs. I laid
7 the defendant's clothing out on brown butcher paper in the
8 criminalistics bureau, with scales in place to show the size
9 again of the clothing, the size of the shirt and the pants, the
10 jeans. And then took photographs of the -- each individual
11 items, to include the shoes and the socks, showing where
12 reddish stains were located on each of those items.

13 Q Okay. And can you tell the jury the process and when
14 those items were removed from the defendant?

15 A We were in the interview room after photographs were
16 taken of the defendant on all four sides. I opened an evidence
17 bag, same size as a grocery bag that we're familiar with from
18 the stores. And had the defendant remove his t-shirt and put
19 it into a bag, folded that bag closed.

20 Took a secondary bag, opened it up. Had the
21 defendant remove his jeans and put the jeans in that bag,
22 closed that up. Removed -- opened a third bag, and had the
23 defendant drop his shoes and socks into that bag.

24 Q Okay. And once that was completed, what did you do
25 with the bag?

ROUGH DRAFT TRANSCRIPT

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1 A Again, set them to one side. And then when I left
2 the detective bureau, they went with me to the criminalistics
3 bureau.

4 Q Okay. All right. What then did you do?

5 A The detectives had request the penile swabs be
6 collected from the individual. And at that time, I wet two
7 more swabs with two to four drops of distilled water, and
8 handed the swabs to -- one swab at a time to the defendant, and
9 had him do the swabbing of his penis before taking him back
10 into my custody, and placing them into an envelope.

11 Q And did you observe the defendant taking the swabs of
12 his penis?

13 A Yes ma'am, I did.

14 Q Okay. And what's the purpose of these swabs that
15 you're taking?

16 A To try and collect any biological evidence that may
17 be on the individual.

18 Q Okay. Let me ask you this. Had you -- were you
19 aware at the time that you asked the defendant to take his own
20 penile swabs that he insisted on going to the bathroom, and he
21 was allowed to do so --

22 A No, ma'am.

23 Q -- prior to the swabbing?

24 A No ma'am, I did not.

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

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1 THE COURT: All right.

2 (Off-record bench conference)

3 THE COURT: Objection's overruled.

4 BY MS. GRAHAM:

5 Q Do you remember the question? Were you aware that
6 the --

7 A Yes ma'am, I remember the question. And no, I had
8 not been informed.

9 Q That he had gone to the bathroom --

10 A That's correct.

11 Q -- prior to swabbing -- okay. All right. How many
12 swabs did you take?

13 A There was one swab on the apparent blood on the hand,
14 and then the two swabs of the defendant's penis.

15 Q Okay. And you had testified earlier there was a
16 buccal swab taken?

17 A And buccal -- two buccal swabs were taken of the
18 defendant's mouth, the interior of the mouth.

19 Q Okay. And all of those swabbings, what did you do
20 with those?

21 A Those are again placed in envelopes, the envelopes
22 are sealed. Evidence labels are attached to those packages,
23 and then they're dropped into the evidence hold at our
24 criminalistics bureau.

25 Q Okay. I'm showing you what's been marked as State's

ROUGH DRAFT TRANSCRIPT

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1 Exhibit 65.

2 A That's a view of the defendant's t-shirt with scales
3 on the brown butcher paper at the criminalistics bureau.

4 Q Okay. So that's after you took the clothing back to
5 the criminalistics bureau?

6 A Yes, ma'am.

7 Q Showing you what's been entered as State's Exhibit
8 66, can you describe that for the jury?

9 A That's a view of the defendant's jeans that he was
10 wearing, again with scales, and laying on brown butcher paper
11 at the criminalistics bureau.

12 Q Showing you what's State's Exhibit 67, can you
13 explain to the jury what that photo is?

14 A The view of the jeans showing the areas of apparent
15 blood on the jeans, the right and left leg.

16 Q Showing you State's Exhibit 68, can you describe for
17 the jury what that photo is?

18 A The bottom of the jeans legs, again showing apparent
19 blood on the left and right leg of the jeans.

20 Q Okay. Showing you State's Exhibit 69. Let's see,
21 I'm going to turn it this way Mr. Ford, so you can see the
22 entire photo. Can you tell the jury what that photo is?

23 A It's a view of the back of the jeans that the
24 defendant was wearing.

25 Q Showing you State's Exhibit 70?

ROUGH DRAFT TRANSCRIPT

002299

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 BRIAN K. O'KEEFE,
4 Appellant,
5 vs.
6 THE STATE OF NEVADA
7 Respondent.

Supreme Court No.:

District Court Case No.: 08C250630

Electronically Filed
Dec 01 2015 10:54 a.m.
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Clerk of Supreme Court

8 **APPELLANT'S APPENDIX - VOLUME XII - PAGES 2200-2399**

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O'Keefe, Brian

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10	State's Response and Motion to Dismiss Defendant's Motion for Relief from Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issued any Remand, Mandate or Remittature of filed on 08/07/14	4891-4902
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1 A Yes.

2 Q Do you remember testifying at a preliminary hearing?

3 A Yes.

4 Q And I don't know if you recall being asked about
5 whether you ever stepped on the decedent's body. Do you
6 remember that?

7 A I don't remember if I was ever asked that or not.

8 Q Okay. Would it refresh your recollection to see page
9 48 of the preliminary hearing transcript?

10 A Yes, it would.

11 Q Okay.

12 A Okay.

13 Q Okay. Do you remember being asked about that?

14 A Yes. Yes, I do.

15 Q What was your testimony about stepping on or near the
16 body?

17 A That I didn't step on the body, I stepped around it.

18 Q Okay. And to be fair, you didn't specifically say
19 one way or the other that you stepped on it, but your testimony
20 was, I stepped around the body?

21 A Yes.

22 Q Okay. With respect to the injury on the defendant's
23 forehead, you were asked about that at a prior hearing in this
24 case; is that true?

25 A Yes, I believe so.

ROUGH DRAFT TRANSCRIPT

002200

1 Q Do you remember that?

2 A Vaguely.

3 Q Okay. Would it refresh your recollection as to
4 whether you were asked about it to see the transcript of that?

5 A Yes, it would.

6 Q Okay.

7 MR. LALLI: Page 166 and 167. May I approach the
8 witness?

9 THE COURT: Yes.

10 BY MR. LALLI:

11 Q If you could just read to yourself this highlighted
12 portion. I'm sorry, it goes this page, and then to this page.

13 A Oh, okay.

14 Q It's tough to follow these.

15 A Okay.

16 Q Okay. Do you remember being asked at a prior hearing
17 about whether the defendant was injured by -- as a result of
18 being dropped?

19 A Yes, I do.

20 Q And what did you say?

21 A I said that I don't recall if we injured him, but I
22 was asked if it was possible. And I said yes, it's a
23 possibility.

24 Q Okay. Thank you.

25 MR. LALLI: Your Honor, that is all of the direct.

ROUGH DRAFT TRANSCRIPT

002201

1 THE COURT: Any recross?

2 MS. PALM: Just briefly.

3 RECROSS-EXAMINATION

4 BY MS. PALM:

5 Q So do you still believe that you never had to step
6 over her body at all to get on the other side of it?

7 A Yes, ma'am.

8 Q Okay. And it was you and Officer Conn, and who else
9 carried him out of the bedroom?

10 A Out of the bedroom? I believe it was just me and
11 Officer Conn. And at some point in the living room, Officer
12 Hatchet became involved.

13 Q Okay. So Officer Hatchet was not in the bedroom?

14 A I don't recall seeing him in the bedroom.

15 Q If he previously testified that he was not in here
16 when you were in there, would that be accurate?

17 A That would be accurate.

18 Q Okay. So when you carried Mr. O'Keefe back over the
19 body to go out of the bedroom, did you have to step over it
20 then?

21 A No, I only remained at his feet.

22 Q Wasn't he on the other side of her?

23 A Yes.

24 Q So how did you get him out of the bedroom?

25 A Around -- I stepped around the body to get to his

ROUGH DRAFT TRANSCRIPT

002202

1 feet, and I went the same way that I came.

2 Q Okay. So you basically went between -- again,
3 between her -- (indiscernible). Between her feet and the
4 dresser --

5 A Yes.

6 Q -- on the way out also?

7 A Yes, and I recall there being room for me to do so.

8 Q Okay. And Officer Conn, did he do the same thing, or
9 did he step over her?

10 A I don't recall where Officer Conn stepped.

11 Q Okay. And it was just the two of you carrying him
12 out of the bedroom?

13 A Yes.

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

15 THE COURT: Any questions by any of the jurors? No
16 questions. Thank you, Officer, for your testimony. You are
17 excused. Next witness for the State?

18 MS. GRAHAM: State calls Officer -- Detective
19 Jeremiah Ballejos.

20 THE MARSHAL: Detective, if you will remain standing.
21 Please sir, raise your right hand and face the clerk.

22 JEREMIAH BALLEJOS, STATE'S WITNESS, SWORN

23 THE MARSHAL: Please be seated, sir.

24 THE WITNESS: Thank you.

25 THE MARSHAL: Slide up to the microphone. And please

ROUGH DRAFT TRANSCRIPT

002203

1 state and spell your name for the record.

2 THE WITNESS: Jeremiah, J-E-R-E-M-I-A-H. Ballejos is
3 B as in boy, A-L-L-E-J-O-S.

4 DIRECT EXAMINATION

5 BY MS. GRAHAM:

6 Q Detective Ballejos, how are you employed?

7 A I'm a police officer with the Las Vegas Metropolitan
8 Police Department.

9 Q How long have you been with Metro?

10 A Five and-a-half years.

11 Q And were you on duty on the night of November 5th,
12 2008?

13 A Yes.

14 Q And what was your assignment that night?

15 A I was working the problem solving unit over in Bolden
16 area command.

17 Q Were you working solo?

18 A No.

19 Q Who were you working with?

20 A I was with my partner, Sean Taylor, and our sergeant,
21 Dan Newberry.

22 Q And at some point, did you become aware of a
23 situation that was occurring at 5001 El Parque in Clark County,
24 Nevada?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002204

1 Q And what were the details of that situation?

2 A It was a 9-11 call, a neighbor calling in a problem
3 upstairs, or the unit upstairs. Just got reports there was
4 blood, open door blood, and a female victim laying somewhere in
5 the apartment.

6 Q Okay. And were you riding with the other officers
7 that you were working with?

8 A Yes.

9 Q Okay. And did you assign yourselves to the scene?

10 A We did.

11 Q Okay. And you arrived. Can you describe the scene
12 when you arrived?

13 A Patrol cars, so we just kind of followed them in. We
14 got to the courtyard of the complex and started to head
15 upstairs. There were neighbors standing outside.

16 Q Okay. And did you eventually enter the apartment,
17 which is apartment 35 of that --

18 A Yes.

19 Q -- complex? Okay. And who did you enter the
20 apartment with?

21 A With Officer Taylor and Sergeant Newberry.

22 Q Okay. When you entered the apartment, what was going
23 on as you three entered?

24 A Officer Conn was already there, was trying to call
25 the male subject, later learned his name was Brian.

ROUGH DRAFT TRANSCRIPT

002205

1 Q Okay. Let me stop you right there. Is this --

2 MS. GRAHAM: I'm showing Detective Ballejos what's
3 been introduced State's Exhibit 1.

4 BY MS. GRAHAM:

5 Q Does that look familiar to you?

6 A Yes.

7 Q Is that the diagram of the apartment that night?

8 A It is.

9 Q Okay. Can you describe where Officer Conn was at
10 that point?

11 A Officer Conn was here in the living room, trying to
12 look in as deep into the apartment -- or the bedroom as he
13 could to talk with Brian.

14 Q Okay. And when you arrived, did you know the details
15 of who was in the bedroom?

16 A Just a male and female. Female was supposedly
17 injured.

18 Q But you didn't know her condition at the time?

19 A No.

20 Q Okay. And what happened then?

21 A Officer Conn is giving instructions, trying to have
22 Mr. O'Keefe come out of the bedroom so that medical -- the
23 paramedics could come in. And I give medical assistance to
24 Victoria.

25 Q Okay. And did you hear what the defendant's

ROUGH DRAFT TRANSCRIPT

002206

1 responses were to Officer Conn's commands?

2 A Fuck you, you come in here.

3 Q Okay. And about how long did this go on while you
4 were present?

5 A Several minutes, probably at least three or four
6 minutes.

7 Q Okay. Ultimately, did you -- was a decision made to
8 enter the bedroom?

9 A Yes.

10 Q And who made that decision?

11 A Myself, Officer Conn, and Sergeant Newberry.

12 Q Okay. And what did you -- you formulated a plan?

13 A Yes.

14 Q And what was that plan?

15 A It was deemed there was an exigent circumstance to
16 remove Mr. O'Keefe out of the bedroom so that the paramedics
17 could come in.

18 Q Okay. And could you tell the jury what an exigent
19 circumstance means?

20 A That if there's no action -- immediate action taken,
21 that there's probably going to be -- there runs a high risk of
22 serious injury, or potentially death.

23 Q Okay. And why at this point did you think there was
24 an exigent circumstance?

25 A Looking into the bedroom, I could see there was large

ROUGH DRAFT TRANSCRIPT

002207

1 amounts of blood on the bed, the sheets. And when Sergeant
2 Newberry also looked into -- did a quick peek from around the
3 corner here, he reported that there was a knife also on the
4 bed. But -- and that there was two subjects laying at the foot
5 of the bed.

6 Q Okay. And based on that, you decided to enter the
7 bedroom. Can you describe to the jury how you entered the
8 bedroom?

9 A We set up here in a stack, a four-man element.

10 Q Okay. And where were you positioned in the stack?

11 A Second.

12 Q And who was in front of you?

13 A Officer Conn.

14 Q Okay. And what was the plan?

15 A It was to go in with both a lethal and a nonlethal
16 option. We had also heard over the radio that the victims
17 blood -- or that she was positive for hepatitis C, so there was
18 also that risk of exposure that we were trying to deal with.

19 Q Okay.

20 A It was to go -- so we went with a lethal, nonlethal
21 option. And if there was no weapons seen or anything, I was
22 going to use a nonlethal option.

23 Q Okay. And what nonlethal option were you designated
24 to use?

25 A Was the electronic control device, more commonly

ROUGH DRAFT TRANSCRIPT

002208

1 known as a taser.

2 Q Did you have a taser on you that night?

3 A No, I did not.

4 Q Okay. So if you were going to use a taser, whose
5 taser did you use?

6 A Officer Conn gave me his.

7 Q Okay. So once you made entry into the room, describe
8 to the jury what exactly happened.

9 A Mr. O'Keefe is waving us off, saying you know, no,
10 don't look at her. He's tugging on her shirt trying to pull it
11 over her torso.

12 Q Okay.

13 A Officer Conn is still giving instructions to Mr.
14 O'Keefe to get away from the body, put his hands up.

15 Q And does he comply with those commands?

16 A No, just shouting over the commands.

17 Q What's he shouting?

18 A Get away from her, don't look at her.

19 Q Okay. So at some point, you determine that it's
20 necessary to use nonlethal force?

21 A Yes.

22 Q Okay. Describe to the jury why you decided to use
23 the taser?

24 A There -- I could see both of Mr. O'Keefe's hands; no
25 weapons in his hands. Other than, you know, the swiping away

ROUGH DRAFT TRANSCRIPT

002209

1 from us. But no cause for -- to use anything like a handgun.
2 He was exposing his torso. In my experience in using the
3 taser, you know, I saw that's a primary target where you can
4 get a good spread and muscle control to get his hands behind
5 his back, and move him out of the bedroom so -- you know,
6 quickly, so paramedics could come in and treat her.

7 Q Okay. And ultimately, did you deploy the taser?

8 A Yes.

9 Q Okay. Can you describe to the jury how you did that?

10 A It has to be canted, because it -- one dart shoots
11 straight out, and the other drops at an 8-degree angle. So it
12 had to be canted and kind of shot from a side shot. And one
13 dart placed here, and the other drops around the waistline.
14 For whatever reason, it wasn't completely effective, because
15 Mr. O'Keefe was still able to struggle with Officer Taylor.

16 Q Okay, let me stop you right there. Where was Officer
17 Taylor at this point, if you recall?

18 A He comes from my right.

19 Q Can you point on the diagram?

20 A Sure. Officer Taylor comes from my right to get
21 around in between the -- her feet and this -- I don't even know
22 what it was, a dresser or something. And comes from Mr.
23 O'Keefe's feet to grab his left hand that he's been using to
24 kind of swipe as we come in.

25 Q Okay. I'm showing you what's been marked as State's

ROUGH DRAFT TRANSCRIPT

002210

1 -- what's been introduced as State's Exhibit 23. Does that
2 look familiar to you?

3 A Yes.

4 Q Is that the area where this was occurring?

5 A Yes.

6 Q Can you point on the screen and show where -- let me
7 clear that for you, where O'Keefe was in relation to the body?

8 A Laying parallel, face to face.

9 Q Can you drag your hand along the screen so the jury
10 can get a look? Okay, and I see you drew the line over her
11 feet?

12 A Yes.

13 Q Was --

14 A Actually, he was kind of laying on top of her. One
15 of his -- would have been his left knee was draped over the
16 body -- over her body.

17 Q Okay. So he was laying on his side?

18 A Yes.

19 Q And which side would that have been?

20 A His right side.

21 Q Okay. So he's -- just to understand for
22 clarification, he was laying on his side, and then his left leg
23 was draped over her body?

24 A Yes.

25 Q Okay. You deployed the taser, and you indicated that

ROUGH DRAFT TRANSCRIPT

002211

1 the first round was not effective?

2 A From my experience, an effective cycle when you have
3 two good probe contacts, he wouldn't have been able to resist
4 in the manner that he was. So, no.

5 Q Okay.

6 A It was not effective.

7 Q So he was still resisting after that --

8 A Yes.

9 Q -- cycle? So what did you decide to do then?

10 A We were already -- I was already connected with the
11 probes, so a second cycle, a five-second cycle was conducted.

12 Q Okay. And at that point, was defendant able to be
13 under control?

14 A Yes.

15 Q Okay.

16 A Officer Taylor did get his -- was able to get his
17 right hand, both hands behind his back.

18 Q Okay. Are you aware of -- once Officer Taylor took
19 him to custody or was able to get his hands behind his back,
20 where defendant's body was at that point? Let me --

21 A Still here.

22 Q -- clear this screen.

23 A Still probably in this area.

24 Q Okay. So he was still kind of draped over Victoria's
25 legs?

ROUGH DRAFT TRANSCRIPT

002212

1 A Yes.

2 Q Okay. And his upper torso would have been on the
3 carpet?

4 A Yes.

5 Q Okay. What happened then?

6 A The five-second cycle completed again. But because
7 he's already in handcuffs, our policy doesn't allow for another
8 cycle of the -- or another use of the taser. So officers came
9 in from here to grab his feet. And they just kind of lifted
10 him up and moved him out of the room.

11 Q Okay. And when you say officers, do you know who --
12 what officers those were that actually lifted him up and
13 carried him out of the room?

14 A I don't recall right now.

15 Q Okay. What did you do once they were able to
16 maintain custody of defendant?

17 A I followed them out into the living room.

18 Q Okay. Then what did you do?

19 A Once they got him out onto the catwalk, I started
20 talking to Mr. O'Keefe.

21 Q Okay, let me stop you right there. So you -- once he
22 was outside -- they ultimately took him out onto the catwalk?

23 A Yes.

24 Q Okay. I'm showing you what's been marked as State's
25 Exhibit 2. Can you point to the catwalk area that you are

ROUGH DRAFT TRANSCRIPT

002213

1 describing?

2 A Here.

3 Q Okay. So he was taken out to the catwalk eventually?

4 A Yes.

5 Q And he was in handcuffs at this point?

6 A Yes.

7 Q Okay. And you maintained contact with the defendant?

8 A I did.

9 Q Let me ask you this. Do you know -- or did you
10 observe him to be intoxicated?

11 A I smelled alcohol on his breath and coming from his
12 body.

13 Q While you were in the bedroom, did you ever step on
14 to the bed when you made entry into the apartment?

15 A No.

16 Q Did you ever step on Victoria Whitmarsh's body --

17 A No.

18 Q -- when you went into the bedroom? All right. When
19 you deploy a taser, is there a policy that you have to write a
20 report --

21 A Yes.

22 Q -- regarding that?

23 A Yes.

24 Q Okay. And what is that policy basic -- just describe
25 to the jury.

ROUGH DRAFT TRANSCRIPT

002214

1 A The use of force -- well anytime there is a use of
2 force where there's injury to the person who's been arrested,
3 there's just -- it's kind of a computer entry -- or computer
4 entered form that's filled out, just to explain the
5 circumstances of why that force was deemed necessary, injuries
6 to the suspect if there were any. You know, initial -- or what
7 charges were filed against them ultimately. And then it's
8 pretty much just the circumstances of why that force -- you
9 thought that force was necessary.

10 Q So is the use of force report, that's for lethal and
11 nonlethal reports?

12 A Yes.

13 Q Okay. So it's a standard report that --

14 A It is.

15 Q -- it's policy that you fill out? And did you fill
16 one of those out?

17 A Yes.

18 Q Okay. And so did you describe the circumstances
19 around use of the taser, or the nonlethal force on the
20 defendant --

21 A Yes.

22 Q -- that night? Okay. And then what happens to that
23 report?

24 A It's forwarded to Internal Affairs.

25 Q Okay. And does your sergeant take a look at it?

ROUGH DRAFT TRANSCRIPT

002215

1 A He does review it, yes.

2 Q All right. I want to go back to when you had
3 defendant out on the catwalk. I'm showing you what's been
4 entered as State's Exhibit 60. Incidentally, do you see the
5 person that you tased --

6 A Yes, I do.

7 Q -- in the courtroom?

8 A Gentleman here in the tan suit.

9 MS. GRAHAM: Record reflect identity of the
10 defendant?

11 THE COURT: Yes, it will.

12 MS. GRAHAM: I'm going to zoom in a little bit here.

13 BY MS. GRAHAM:

14 Q When you observed defendant in the bedroom, did you
15 notice any injury to his forehead?

16 A No, I did not.

17 Q Okay. Could it have been possible for that injury to
18 have occurred while he was taken into custody?

19 MS. PALM: Objection, speculation.

20 THE COURT: Sustained.

21 BY MS. GRAHAM:

22 Q Was there anything that you observed other officers
23 doing while taking him into custody that may have caused injury
24 to Mr. O'Keefe?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

002216

1 Q Specifically to his forehead?

2 A Yes.

3 Q While he was out on the catwalk with you, did he make
4 any statements to you?

5 A You guys are mad at me, aren't you.

6 Q You guys are mad at me, aren't you?

7 A Yes.

8 MS. GRAHAM: I'll pass the witness at this time.

9 THE COURT: All right. Cross-examination.

10 MS. PALM: Thank you.

11 CROSS-EXAMINATION

12 BY MS. PALM:

13 Q Good afternoon, Officer Ballejos. Is it Detective
14 now?

15 A Yes, it is.

16 Q How long have you been a detective?

17 A One year and-a-half.

18 Q Congratulations.

19 A Thank you.

20 Q When the prosecutor was asking you about the use of
21 force report, you remember writing that report?

22 A Yes.

23 Q Okay. Do you remember describing in that report my
24 client as mentally ill or under the influence?

25 A No.

ROUGH DRAFT TRANSCRIPT

002217

1 Q Would it help you remember if you could look at your
2 report?

3 A Sure, thank you.

4 MS. PALM: May I approach?

5 THE COURT: Yes.

6 BY MS. PALM:

7 Q That highlighted portion there.

8 A Okay.

9 Q Where it says, "Officer assessment conditions," did
10 you say he was mentally ill or under the influence?

11 A Never mentally ill. I -- under the influence, I
12 don't know if that's even -- I'd have to look at the templates
13 for that. That might just be something that is -- it's not a
14 separate selection.

15 Q So you might just have to pick, "Mentally ill slash
16 under the influence?"

17 A Correct.

18 Q All right. But you picked one of them?

19 A Yes.

20 Q And so you're thinking it was the under the
21 influence?

22 A Yes.

23 Q And my client was also saying when you guys first got
24 there, come in here, come in here; do you recall that?

25 A No, I don't. I never heard that.

ROUGH DRAFT TRANSCRIPT

002218

1 Q Do you remember writing -- or giving a recorded
2 voluntary statement on the evening of the 5th, or early morning
3 hours of the 6th?

4 A Oh, excuse me. If I can remake a statement.

5 Q Pardon?

6 A He was saying, fuck you, come in here.

7 Q Okay.

8 A But not, come in here, come -- like it didn't sound
9 as an urgent call for help. More so --

10 Q Okay. If you wrote in your statement, if all you
11 said was he was saying, you get in here, would you deny that
12 that's what you said in your recorded statement?

13 A No, that's not --

14 Q Or would you like to look at it?

15 A -- what I said.

16 Q Would you like to look at it?

17 A Sure.

18 MS. PALM: May I approach?

19 THE COURT: Yes.

20 BY MS. PALM:

21 Q Page 3 toward the bottom.

22 A Okay.

23 Q Okay. Did you say (indiscernible) you said, he was
24 saying, you come in here?

25 A That's what's written there, yes.

ROUGH DRAFT TRANSCRIPT

002219

1 MS. PALM: Court's indulgence. Do we have the
2 diagram?

3 MS. GRAHAM: Did I take it? I thought I laid it up
4 there.

5 MS. PALM: Oh, you know what, it's under this thing.

6 MS. GRAHAM: Okay.

7 MS. PALM: I'm just trying to put up the crime scene
8 diagram, which is State's Exhibit 1 for these next questions.

9 BY MS. PALM:

10 Q Okay. So in the room with you are Officer Conn,
11 Officer Taylor, and Sergeant Newberry? Or just Officer Conn
12 and Officer Taylor?

13 A I remember Officer Conn being in front of me, Officer
14 Taylor being to the rear. I don't remember who else was
15 entering in the room with us.

16 Q Okay. And you're kind of in between the bed and the
17 dresser there?

18 A Yes.

19 Q Do you recall how much room was on the other side of
20 my client?

21 A No.

22 Q So between him and the wall, do you think there was
23 very much room?

24 A I don't know.

25 Q Well, from looking at the diagram, does that help you

ROUGH DRAFT TRANSCRIPT

002220

1 think about it?

2 A No, it doesn't. If there were some -- you know, if
3 the room was scaled or measured somehow. But I have no idea
4 how much room was in the room.

5 Q Showing you --

6 (Pause in proceedings)

7 BY MS. PALM:

8 Q Showing you State's 23, does that help you remember
9 how much room was there?

10 A I can see there's space between the body and the
11 wall.

12 Q Right. Think it's maybe a couple feet?

13 A That's guessing, I don't know.

14 Q All right. How many officers went over on the other
15 side of her, on the other side of the body toward the wall?

16 A I only recall Officer Taylor.

17 Q Only Taylor?

18 A That's the only one I recall.

19 Q Now do you remember initially testifying at a
20 preliminary hearing that Officer Taylor did not need to step
21 over her to do that?

22 A Over -- yes, over her --

23 Q Over the body?

24 A Right.

25 Q Okay. And then at a subsequent hearing, you

ROUGH DRAFT TRANSCRIPT

002221

1 testified that he actually would have had to. Do you recall
2 that?

3 A Over her feet, yes.

4 Q Yes. Because when you first testified, you didn't
5 remember the dresser being there?

6 A Right.

7 Q Okay. And do you recall being asked who assisted
8 Officer Taylor on the other side of the body, and you said
9 Officer Hatchet?

10 A To grab the feet, yes.

11 Q Okay. So was Officer Hatchet also on the other side
12 of the body?

13 A No, here.

14 Q Okay. So Officer Hatchet is -- if you testified
15 previously that Officer Hatchet was on the other side of the
16 body, is that not correct?

17 A You'd -- I'd have to -- I don't recall saying --

18 Q Would it help you if you look at --

19 A Sure, thank you.

20 Q -- a transcript?

21 MS. PALM: May I approach?

22 THE COURT: Yes.

23 MS. GRAHAM: What page is that?

24 MS. PALM: Oh, I'm sorry. It's 138.

25 BY MS. PALM:

ROUGH DRAFT TRANSCRIPT

002222

1 Q Do you see what I'm saying?

2 A Yes.

3 Q Okay. So did you previously testify that Officer
4 Hatchet assisted Taylor on the other side of the body?

5 A That's what's there, yes.

6 Q Okay. Do you recall if Sergeant Newberry went over
7 there?

8 A No, I don't.

9 Q Did Officer Conn go over there?

10 A I don't recall that.

11 Q So as far as you know, it's Taylor and Hatchet over
12 on the other side of the body?

13 A Yes.

14 Q And you don't know whether anybody bumped her body
15 going over there, do you?

16 A No.

17 Q And you don't know whether anybody went over the bed
18 to get over there, do you?

19 A No, I never saw that.

20 Q Were you watching everything going on in the room,
21 or?

22 A No, I wasn't.

23 Q What was your focus on?

24 A Mr. O'Keefe.

25 Q Because you had the taser trained on him?

ROUGH DRAFT TRANSCRIPT

002223

1 A Exactly.

2 Q And then that's your job to focus on him so that if
3 something happens, you can deploy it?

4 A Yes.

5 Q And who carried Mr. O'Keefe out of the room?

6 A It was Officer Taylor and would have been Officer
7 Hatchet. I don't recall anybody else.

8 Q Okay.

9 A Or who else would have helped.

10 Q Okay. Do you recall whether when the taser is
11 deployed, it caused my client to go on top of the female's
12 body?

13 A No, I don't.

14 Q Do you recall saying during his struggling, Mr.
15 O'Keefe was smothering the female's body?

16 A If it's what's in the report, then that's -- I just
17 don't remember, no.

18 Q Okay. Well do you want to look at your report to see
19 if he said that?

20 A If it's what's in there, I'm not contesting it.

21 Q Okay. Now do you remember at the preliminary hearing
22 you said that my client fell on his face in the bedroom?

23 A Yes.

24 Q Okay.

25 MS. PALM: Court's indulgence.

ROUGH DRAFT TRANSCRIPT

002224

1 BY MS. PALM:

2 Q And is that still how you recall it, that he fell on
3 his face in the bedroom?

4 A Yes.

5 Q Do you recall him falling on his face in the living
6 room, too?

7 A One time.

8 Q So how did he fall on his face in the bedroom?

9 A He was still struggling with the officers. And I
10 don't know if they maybe didn't have a good grip of his ankles
11 or what have you, but he did fall. And the momentum, dragging
12 him, pulling him back made his face have contact with the
13 carpet.

14 Q Okay. Was that still on the other side of her body
15 before you started removing him from the room?

16 A It was in this -- somewhere in that area.

17 Q Okay. So at the time, he's just being carried by
18 Taylor and Hatchet?

19 A I don't recall who else.

20 Q You never carried him?

21 A No.

22 Q And I believe you just testified he smelled real
23 heavily of alcohol?

24 A Yes.

25 Q And when you do a use of force report, that's

ROUGH DRAFT TRANSCRIPT

002225

1 required after you deploy a taser, isn't it?

2 A Yes.

3 Q Okay. And that's something the detectives in the
4 case have access to?

5 A I don't know. I was -- I assume so, but apparently I
6 don't really have any --

7 Q Okay.

8 A I don't know.

9 Q You don't know?

10 A No.

11 MS. PALM: Court's indulgence. Oh.

12 BY MS. PALM:

13 Q Did you happen to see AMR check out my client?

14 A Excuse me?

15 Q AMR, the medical responders?

16 A No, I did not.

17 Q Okay. You weren't with him what that happened, if it
18 did?

19 A No.

20 Q Okay.

21 MS. PALM: No further questions. Thank you,
22 Detective.

23 THE WITNESS: Thank you.

24 MS. GRAHAM: Just briefly, Judge.

25 REDIRECT EXAMINATION

ROUGH DRAFT TRANSCRIPT

002226

1 BY MS. GRAHAM:

2 Q Detective Ballejos, you indicated that the use of
3 force report, once it's completed, it goes to Internal Affairs?

4 A Right.

5 Q And you don't know what happens to it after that?

6 A No.

7 Q Okay. You indicated that Mr. O'Keefe was draped over
8 her body?

9 A Yes.

10 Q When Ms. Palm asked you the question regarding your
11 use of the word smothering the victim's body in the use of
12 force report, is that what you were referring to?

13 A Say that again.

14 Q Ms. Palm referred to your use of force report.

15 A Yes.

16 Q And you indicated in that report that the defendant
17 was smothering Victoria's body?

18 A Yes. When we walked in there, he was laying over the
19 body.

20 Q So you meant when you walked in there?

21 A Yes.

22 Q It wasn't a result of the taser?

23 A No.

24 Q Did he fall on Victoria's body when he was tased?

25 A I didn't recall that, no.

ROUGH DRAFT TRANSCRIPT

002227

1 Q Okay. When Ms. Palm asked you if you previously
2 testified that the defendant said, come in here, --

3 A Right.

4 Q -- you agreed that that was --

5 A Yes.

6 Q -- a correct statement?

7 A Yes.

8 Q What was the demeanor of the defendant when he was
9 saying, come in here? What else was he saying?

10 A Saying, fuck you, come in here.

11 Q Like you're saying right now?

12 A No, it was being yelled out, screamed at us.

13 Q Okay. What was the dynamic between him and Officer
14 Conn when this was going on?

15 MS. PALM: Objection.

16 BY MS. GRAHAM:

17 Q Like you're talking now?

18 MS. PALM: Dynamic? I think it's kind of a vague
19 question.

20 THE COURT: I'm going to sustain the question --
21 sustain the objection. Will you rephrase the question?

22 MS. GRAHAM: All right.

23 THE COURT: Make sure the officer understands.

24 MS. GRAHAM: All right.

25 BY MS. GRAHAM:

ROUGH DRAFT TRANSCRIPT

002228

1 Q Officer Ballejos, can you describe Officer Conn's
2 demeanor when he was talking with the defendant?

3 A It was conversational, but loud enough so that it can
4 be heard.

5 Q Okay. Were they like commands?

6 A No.

7 Q Okay. Were they shouts?

8 A No.

9 Q What was the defendant's demeanor when he was
10 responding to --

11 A Shouts.

12 Q -- Officer Conn? I'm sorry?

13 A Shouts.

14 Q Shouts?

15 A Yes.

16 Q Repeated shouts?

17 A Yes.

18 Q Okay. Can you describe for the jury what kind of
19 shouts they were?

20 A Fuck you, you come in here.

21 Q Okay. How many times did defendant shout?

22 A At least twice.

23 Q At least twice?

24 A Yes.

25 Q Okay. At least twice to one question?

ROUGH DRAFT TRANSCRIPT

002229

1 A To -- that's -- I recall that each time Officer Conn
2 was talking to him, he shouted over what he was saying.

3 Q Okay. And so my understanding is that you were in
4 there for 3 -- 2 to 3, to 4 minutes prior to entering the room?

5 A Yes.

6 Q And you observed some --

7 MS. PALM: Objection. Leading, Your Honor. He's
8 already --

9 THE COURT: Sustained.

10 MS. GRAHAM: My understanding from the testimony that
11 he previously testified --

12 MS. PALM: Well, he's testified already.

13 THE COURT: All right. I'm going to --

14 MS. PALM: It's asked and answered.

15 THE COURT: -- sustain the objection.

16 MS. GRAHAM: Okay.

17 THE COURT: Re-ask the question.

18 MS. GRAHAM: All right.

19 BY MS. GRAHAM:

20 Q How long were you in the apartment before you entered
21 the bedroom?

22 A For several minutes.

23 Q Several minutes. And during this time, for these
24 several minutes, was Officer Conn and the defendant
25 communicating?

ROUGH DRAFT TRANSCRIPT

002230

1 A Yes.

2 Q Okay. Were they communicating that entire time?

3 A Yes.

4 Q And the defendant was --

5 MS. PALM: Your Honor, this has been asked and
6 answered. He already went over the whole conversation.

7 MS. GRAHAM: Judge, I think it --

8 THE COURT: Do you have a new question? Or --

9 MS. GRAHAM: The new question is, what did defendant
10 say, if you recall, each time for --

11 MS. PALM: Objection, asked and answered.

12 MS. GRAHAM: -- three or four minutes.

13 THE COURT: Did the defendant say anything different
14 than what you've already testified to?

15 THE WITNESS: No.

16 THE COURT: Okay.

17 BY MS. GRAHAM:

18 Q Just repeatedly, three or four minutes?

19 A Yes.

20 Q Okay. In a shouting voice?

21 A Yes.

22 Q Thank you. And is the way he responded what helped
23 you determine that he was either mentally ill or under the
24 influence?

25 A No.

ROUGH DRAFT TRANSCRIPT

002231

1 Q Did you just determine that from the way he smelled?

2 A Talking to him later, yes.

3 Q Okay. So --

4 A And not mentally ill. I never got that impression of
5 him.

6 Q Okay. Well then under the influence?

7 A Yes.

8 Q All right. And what he was saying to you was, you
9 get in here, get in here, or you come here?

10 A Yes.

11 Q Thank you.

12 MS. GRAHAM: No more questions.

13 MS. PALM: Briefly.

14 RECROSS-EXAMINATION

15 BY MS. PALM:

16 Q What does the term, baiting mean? You know what,
17 that's beyond the scope of my re --

18 THE COURT: Sustained.

19 MS. PALM: Thank you. My rebuttal.

20 THE COURT: Anything else by the State?

21 MS. GRAHAM: No, Judge. Pass the witness.

22 THE COURT: All right. Any questions by any of the
23 jurors? No questions. Thank you, Officer, for your testimony.
24 You are excused.

25 THE WITNESS: Thank you, Your Honor.

ROUGH DRAFT TRANSCRIPT

002232

1 THE COURT: Next witness for the State?

2 MR. LALLI: Your Honor, can we approach on just a
3 scheduling issue?

4 THE COURT: Sure.

5 MR. LALLI: Thank you.

6 (Off-record bench conference)

7 THE COURT: All right. Next witness for the State?

8 MS. GRAHAM: State calls Officer Hutcherson.
9 Christopher Hutcherson.

10 THE MARSHAL: And Officer, if you will remain
11 standing. Please sir, raise your right hand and face the
12 clerk.

13 CHRISTOPHER HUTCHERSON, STATE'S WITNESS, SWORN

14 THE MARSHAL: Please have a seat. Sir, if you would
15 state and spell your name for the record, please.

16 THE WITNESS: Officer Christopher Hutcherson.

17 C-H-R-I-S-T-O-P-H-E-R, H-U-T-C-H-E-R-S-O-N.

18 DIRECT EXAMINATION

19 BY MS. GRAHAM:

20 Q Officer Hutcherson, how are you employed?

21 A With the Las Vegas Metropolitan Police Department.

22 Q Were you on duty in the capacity as a police officer
23 no November 5th, 2008?

24 A Yes, ma'am.

25 Q Did you respond to a scene at 5001 El Parque in Clark

ROUGH DRAFT TRANSCRIPT

002233

1 County, Nevada that evening?

2 A Yes, ma'am.

3 Q Approximately 11-ish p.m.?

4 A Yes.

5 Q Okay. And what were the details of the call?

6 A Details of the call, came out as unknown trouble
7 call. Details stated that there was a person in the apartment
8 that may have been down and bleeding.

9 Q Okay. And you arrived at the location?

10 A Yes, ma'am.

11 Q What did you observe when you arrived?

12 A I observed some officers at the front of the
13 apartment. I was immediately told to go to the rear of the
14 apartment, and post up outside the balcony.

15 Q Okay. So when you arrived, officers were present on
16 the scene?

17 A Yes.

18 Q How many would you say? I mean, marked cars?

19 A I would say about eight.

20 Q Okay. Were you in a marked car that evening?

21 A Yes, ma'am.

22 Q Okay. So you were told to post-up behind?

23 A Yes.

24 Q What does post-up mean?

25 A Just take position to the rear of that complex to

ROUGH DRAFT TRANSCRIPT

002234

1 make sure no one tried to flee from that residence.

2 Q Okay. And is that what you did?

3 A Yes, ma'am.

4 Q And approximately how long were you back there behind
5 -- on the balcony?

6 A I would say about 10, 15 minutes.

7 Q And incidently, is that balcony the balcony of
8 apartment 35?

9 A Yes.

10 Q Okay. About 10 minutes?

11 A Yes.

12 Q Did you receive information that the suspect had been
13 taken into custody?

14 A I did.

15 Q And then what did you do?

16 A I immediately went to the front. I was ordered to
17 put up crime scene tape around the area. And at some point
18 about five minutes after that, I was told to take control of
19 the subject that they had in custody.

20 Q Okay. And the subject being the defendant, Brian
21 O'Keefe?

22 A Yes.

23 Q And do you see Mr. O'Keefe in the courtroom?

24 A I do.

25 Q Can you point to him and describe something that he's

ROUGH DRAFT TRANSCRIPT

002235

1 wearing?

2 A Gentleman, like the beige jacket, blue tie.

3 MS. GRAHAM: Record reflect identity of the
4 defendant?

5 THE COURT: Yes, it will.

6 BY MS. GRAHAM:

7 Q So you were told to take charge of the defendant
8 here?

9 A Yes, ma'am.

10 Q Okay. So what happened, what did you do?

11 A He was already in handcuffs. And I went up, brought
12 him down, and took him to my patrol vehicle.

13 Q Okay. So when you say you went up, I'm showing you
14 what's marked as State's Exhibit 2, did you actually have to
15 walk up those stairs to escort him down?

16 A I did.

17 Q Okay. So you brought him down to your patrol car.
18 What happened next?

19 A At that time, I did a search incident to arrest, made
20 sure the suspect had any weapons on him (sic).

21 Q Okay. And can you describe for the jury what search
22 incident to arrest means?

23 A Whenever we take someone into custody for an offense,
24 we make sure that they don't have any weapons on them. So we
25 search their person, their pockets before we put them back in

ROUGH DRAFT TRANSCRIPT

002236

1 our patrol car for safety reasons.

2 Q Okay. And after you did search to arrest, what did
3 you do?

4 A I asked Mr. O'Keefe to get into the back of my patrol
5 vehicle.

6 Q Did he comply with your request?

7 A No.

8 Q Okay. What did he do?

9 A He was pretty much belligerent, yelling, what did I
10 do, I'm not getting in the back of this car. I then explained
11 to him, I said, sir, you have to sit down in the back of the
12 car. I positioned him between the door, the door frame, and I
13 kind of nudged him in the car. And at that time, he sat down.

14 Q Okay. So he's in the patrol car, and where are you?

15 A I'm outside of my vehicle.

16 Q Okay. What do you do then?

17 A I go around to the front of my vehicle, and I get
18 inside.

19 Q Okay. What happens once you're inside the vehicle?

20 A He's very belligerent, yelling, cursing. So I
21 decided to turn on some music --

22 Q Um-hum.

23 A -- to see if that would calm him down.

24 Q Okay.

25 A And he didn't want to listen to the music.

ROUGH DRAFT TRANSCRIPT

002237

1 Q What do you mean he didn't want to listen to it?

2 A He just expressed very strongly he didn't want to
3 listen to the kind of music that was on the radio.

4 Q Okay. And what did you do then?

5 A I turned the radio down.

6 Q Okay. So your -- what did you do next?

7 A I exited my patrol vehicle, and went --

8 Q Why did you exit your patrol vehicle?

9 A Because he was being very loud, belligerent. And I
10 didn't want to listen to it, frankly.

11 Q Okay. All right. So what happens then?

12 A I exit my patrol vehicle, I walk around to the rear
13 passenger door. And I just stand outside the door and observe
14 him.

15 Q So how long do you -- how long would you say you
16 observed him from outside of your patrol vehicle?

17 A Between 5, 10 minutes.

18 Q Okay. At some point did the defendant fall asleep?

19 A He did.

20 Q Okay. And what did you do after that?

21 A I got back inside my patrol vehicle and just observed
22 him through the mirror.

23 Q Okay. What if anything happened once you got back
24 inside the patrol vehicle?

25 A I would say a couple minutes after, he became

ROUGH DRAFT TRANSCRIPT

002238

1 conscious, or he awoke. And he just started talking, mumbling.

2 Q Okay. You just said conscious. Do you have any
3 reason to believe he was unconscious?

4 A He appeared to be asleep. But --

5 Q Okay. All right. When you took control of him
6 initially, let me ask you this, did he smell of alcohol?

7 A He did.

8 Q Okay. So he wakes up when you get back into the
9 patrol vehicle?

10 A Yes.

11 Q And he starts mumbling?

12 A Yes.

13 Q Okay. What do you do when he started mumbling?

14 A I take out my notepad, and we're trained to write
15 down utterances that suspects may make.

16 Q Okay. So do you start writing -- are you trained to
17 do this?

18 A Yes.

19 Q Okay. And what's the purpose of writing down
20 statements that a defendant may make?

21 A They utter things that they have done, or things that
22 they have seen. So we just want to take note of it, you know.

23 Q Okay. So did you do this --

24 A I did.

25 Q -- in this case? All right. And did the defendant

ROUGH DRAFT TRANSCRIPT

002239

1 make utterances that you did write down?

2 A He did.

3 Q Okay. Do you recall what those utterances were?

4 A I do.

5 Q Can you tell the jury what they were?

6 A I do (sic). Verbatim? Or --

7 Q If you remember.

8 A It was to the effect of, what did I do, what did I do
9 to you, V. I'm sorry. Let's go do the ten years. That's why
10 I love you, because you're so crazy.

11 Q Would it refresh your recollection if I showed you
12 the notes that you wrote that night?

13 MS. PALM: Your Honor, he didn't say he didn't
14 remember.

15 MS. GRAHAM: It's prior recollection recorded.

16 THE COURT: If you ask him if she (sic) said anything
17 else, then you can refresh his recollection.

18 MS. GRAHAM: All right.

19 BY MS. GRAHAM:

20 Q Do you know if he said anything else?

21 A No, ma'am.

22 Q Okay. Would it help you to remember if I showed you
23 the notes that you made that night?

24 A Yes, ma'am.

25 MS. GRAHAM: I'm showing the defense what's -- the

ROUGH DRAFT TRANSCRIPT

002240

1 notes.

2 BY MS. GRAHAM:

3 Q Could you just look at that and see if you recognize
4 that?

5 A I do.

6 Q What is that?

7 A This is a copy of the notes that I took from my
8 notebook.

9 Q Okay. And how do you recognize it?

10 A My handwriting.

11 Q Okay. And could you read that over?

12 A "I swear to God, V" --

13 THE COURT: Sir, read it to yourself first.

14 THE WITNESS: Oh.

15 MS. GRAHAM: Judge this is a prior recorded
16 recollection. He can read it into the record.

17 MS. PALM: I don't think I've heard a foundation for
18 a prior recorded recollection.

19 MS. GRAHAM: Well I've got the statute.

20 THE COURT: Well he can review it. And if that
21 refreshes his recollection, you can ask him --

22 MS. GRAHAM: Okay.

23 THE COURT: -- did he say anything else.

24 MS. GRAHAM: All right.

25 BY MS. GRAHAM:

ROUGH DRAFT TRANSCRIPT

002241

1 Q Would you read that over? Okay. Now do you recall
2 exactly what he said?

3 A Yes, ma'am.

4 Q Okay. Could you tell the jury exactly what he said?

5 A "I swear to God, V, I didn't mean to hurt you.
6 That's why I love you, because you're so crazy." He said he
7 wanted to do the ten years.

8 Q All right. When you were writing down the statements
9 that the defendant was making, did you know the name of the
10 victim in this case?

11 A No.

12 Q What happened then?

13 A I exited my patrol vehicle, and just observed him --

14 Q Okay.

15 A -- some more.

16 Q And why did you decide to exit your patrol vehicle
17 again?

18 A He wasn't saying anything else, and I just needed
19 some air.

20 Q Okay. Ultimately did you transport the defendant
21 somewhere?

22 A I did.

23 Q And where was that?

24 A To the ICD building.

25 Q Okay. And what is the ICD building?

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1 A Our detective bureau.

2 Q Okay.

3 MS. GRAHAM: Court's indulgence.

4 BY MS. GRAHAM:

5 Q When the defendant was making these statements, how
6 close in time to the -- when he was making the statements did
7 you write this down?

8 A As he was making them.

9 MS. GRAHAM: Pass the witness.

10 THE COURT: Cross-examination.

11 MS. PALM: Thank you.

12 CROSS-EXAMINATION

13 BY MS. PALM:

14 Q Good afternoon, Officer Hutcherson.

15 A Afternoon, ma'am.

16 Q Is it Officer still?

17 A Yeah.

18 Q Okay. Just want to call you the right thing. So
19 when my client was talking in the back of the car, he's kind of
20 mumbling, right?

21 A He is.

22 Q Okay. And this was after he either passed out or
23 went to sleep?

24 A Yes, ma'am.

25 Q Okay. And how long was he out for?

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1 A Between 5, 10 minutes.

2 Q Okay. Then he wakes up, and he's kind of mumbling
3 back there by himself?

4 A Yes, ma'am.

5 Q He's not really having a conversation with you, he's
6 just saying things?

7 A He's just saying things.

8 Q Okay. And part of what he said was, that's why I
9 love you V, because you're so crazy?

10 A Yes, ma'am.

11 Q Okay. And, what did I do wrong?

12 A Yes.

13 Q Okay. And you said when he was talking before he got
14 in, or what made you get out of the car is that he was really
15 loud?

16 A That's right.

17 Q Would you call him a loud drunk?

18 A Well, just call him loud, belligerent person.

19 Q Okay. But he was obviously intoxicated?

20 A It smelled like he had been drinking, yes.

21 Q Okay. If you previously testified before that you
22 agreed he was obviously intoxicated, you don't dispute that
23 now, do you?

24 A I don't dispute it. He had been drinking.

25 Q Okay. Will you agree with that statement, he's

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1 obviously intoxicated?

2 A Yeah.

3 Q Okay. And loud?

4 A Yeah. Very loud.

5 MS. PALM: I have no further questions. Thank you,
6 Officer.

7 THE WITNESS: You're welcome, ma'am.

8 THE COURT: Any redirect?

9 MS. GRAHAM: No, Judge.

10 THE COURT: Any questions from any of the jurors? No
11 questions. Thank you, Officer, for your testimony.

12 THE WITNESS: All right.

13 THE COURT: You are excused.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Next witness for the State?

16 MR. LALLI: All right. Jocelyn Maldonado.

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

19 JOCELYN MALDONADO, STATE'S WITNESS, SWORN

20 THE MARSHAL: If you would have a seat, slide up to
21 the microphone. If you would please state and spell your name
22 for the record.

23 THE WITNESS: Jocelyn, J-O-C-E-L-Y-N. Maldonado,
24 M-A-L-D-O-N-A-D-O.

25 DIRECT EXAMINATION

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1 BY MR. LALLI:

2 Q How are you employed?

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

5 Q What is a senior crime scene analyst?

6 A I respond to crime scenes, usually at the request of
7 officers or detectives for the purpose of identifying,
8 documenting, and collecting evidence.

9 Q Okay. How do you identify, document, and collect
10 evidence, just as a general process? When you get to the scene
11 of a crime, how do you go about processing it?

12 A I take notes of the scene, photograph the scene,
13 possibly do fingerprint processing, recover evidence, diagrams,
14 and sketches. And I generate reports summarizing my actions
15 and observations.

16 Q Is it uncommon for crime scene analysts to work
17 together?

18 A No.

19 Q How -- describe for us how that might happen.

20 A A lot of times if we're assigned to a complicated
21 scene, more than one crime scene analyst would respond to that.
22 And the supervisor would usually decide what duties each crime
23 scene analyst would be responsible for.

24 Q Okay. I want to direct your attention to November --
25 actually -- well November 5th of 2008. Did you respond to 5001

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1 El Parque Avenue?

2 A Yes, I did, actually on the 6th.

3 Q Okay.

4 A Yes.

5 Q So it was the 6th?

6 A Yes.

7 Q What was the nature of that call?

8 A It was in reference to a death or homicide
9 investigation.

10 Q Can you describe the scene as you observed it when
11 you arrived?

12 A When I arrived, I arrived in the parking lot outside
13 the apartment complex. There were numerous detectives and
14 patrol officers present. And inside the courtyard area of the
15 apartment complex, I observed crime scene tape blocking off the
16 courtyard area at the west end of the apartments.

17 Q Okay. Were there other crime scene analysts assigned
18 to that call?

19 A Yes.

20 Q Who were they?

21 A Crime scene analyst Chelsea Collins, and Crime scene
22 analyst supervisor Gary Reed (phonetic).

23 Q And were you and Crime scene analyst Collins assigned
24 the duty to process the scene?

25 A Yes.

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1 Q As part of processing the scene, documenting it, you
2 create a crime scene diagram?

3 A Yes.

4 Q Okay. I'm going to show you what's already been
5 admitted as State's Exhibit number 1. Do you know whose handy
6 work that is?

7 A Yes.

8 Q Whose is it?

9 A That is mine.

10 Q All right. How do you go about creating a crime
11 scene diagram?

12 A At the scene, I use a sketch pad with graph paper and
13 a pencil, and I make an outline of the actual scene. And then
14 I take measurements of the scene, items of evidence in the
15 scene, walls, spacial relationships between items of evidence.
16 And when I get back to my office, within 30 days I am required
17 to construct the diagram in the computer program called Crime
18 Zone, which is what is up on the screen now.

19 Q Okay. And are those measurements transferred over,
20 measurements and sketches, they're transferred to the diagram?

21 A Yes.

22 Q Okay.

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

24 THE COURT: Yes.

25 BY MR. LALLI:

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1 Q Ma'am, if you could just look at these. If you would
2 look at all of them. You have a chance to look at all of
3 those?

4 A Yes.

5 Q Do those photographs fairly and accurately depict the
6 crime scene as you observed it?

7 A Yes.

8 Q Okay.

9 MR. LALLI: Your Honor, this is going to be somewhat
10 tedious, and I'll do the best I can. I would move for the
11 admission of --

12 MS. PALM: Mr. Lalli, can I see what you're
13 admitting?

14 MR. LALLI: Oh, I'm so sorry. Yes.

15 (Pause in proceedings)

16 MR. LALLI: Okay. Your Honor, so I would move for
17 the admission of -- let's see. State's proposed 8, as well as
18 State's proposed 10 through 21, and State's proposed 25 through
19 57.

20 THE COURT: Any objection?

21 MS. PALM: No.

22 THE COURT: All right. Those 8, 10 through 21, 25
23 through 57 will be admitted.

24 (Exhibits 8, 10 through 21, and 25 through 57 admitted)

25 MR. LALLI: Okay.

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