

1 Whitmarsh.

2 Q The woman that's depicted in this photograph on this
3 Nevada driver's license, was that the same person -- the
4 decedent -- the victim in the bedroom?

5 A Yes, it was.

6 MR. LALLI: Can I have the Court's indulgence?

7 THE COURT: Yes.

8 BY MR. LALLI:

9 Q All right. I'm going to go back to State's Exhibit
10 number 27. We talked about the sock that's in the front of
11 that photograph. What is the black item beyond the sock?

12 A That is a knife.

13 Q Did you impound the knife?

14 A Yes, I did.

15 Q And the knife seems to be laying on some items, and
16 I think you alluded to it a little bit earlier. But what's
17 laying around, on top of, underneath the knife?

18 A The knife is located on the top sheet of the bed.
19 And there's a pillow case partially covering the knife,
20 specifically the blade area. And there's bloodstains
21 surrounding that area.

22 Q There's bloodstains around it?

23 A Yes.

24 Q What are we seeing in State's Exhibit number 45?

25 A That is a close-up view of the top sheet that the

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1 knife was located on top of. But more towards the end of the
2 bed, the foot of the bed; more specifically, the northeast
3 corner of the bed, those were some specific areas of interest
4 that were observed and documented.

5 Q I'm going to show you State's Exhibit number 46. Is
6 that a photograph of an area designated A?

7 A Yes, it is.

8 Q Why was that an area of interest?

9 A It appeared to be what we refer to as a contact
10 transfer impression pattern in blood. And it was notated
11 because it didn't appear to be just a regular bloodstain.
12 There's something going on.

13 Q Do you have any opinion to any reasonable degree of
14 certainty as to what that is?

15 A No, I do not.

16 Q What about State's Exhibit number 47, designated as
17 B? Why was that of interest?

18 A B was also of interest. There appeared to be
19 possibly some type of ridge detail, possibly from a
20 fingerprint.

21 Q What if I show you State's Exhibit number 48?

22 A That's a close-up view of that particular area
23 referred to as B.

24 Q What's -- you said that ridge detail relates to a
25 fingerprint. Can you just explain how, for our jury?

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1 A This type of fingerprint is what we refer to as a
2 patent print. That means that it's usually visible. It's not
3 from residue or perspiration from your fingertips. It would
4 be from a substance such as grease or blood.

5 For example, if you had grease or blood on your
6 fingertips and you touched another surface, it would be
7 possible to leave a greasy or bloody fingerprint on the
8 surface that you touched.

9 Q Okay. What are we seeing in State's Exhibit 49?

10 A That was an area of interest. There appeared to be
11 three linear lines that were extending down off the corner of
12 the bed.

13 Q Do you have any idea as to what that could be?

14 A No, I do not.

15 Q Was that pattern roughly the same size, the same
16 length as the knife that you impounded?

17 A I didn't measure that particular area, so I'm not
18 for sure.

19 Q All right. What are we seeing on the top of the
20 exhibit?

21 A That is a scale with my initials and P number, that
22 we place into the photograph to give approximate size or
23 dimension of that particular area.

24 Q All right. And the units of measure here, we've got
25 centimeters on one side, and inches on the other; is that

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1 correct?

2 A I believe so, yes.

3 Q So, if we zoom-in even more, does that appear to be
4 inches?

5 A Yes.

6 Q And if we go down, your ruler -- your scale is --
7 that's -- is that six inches-long?

8 A Yes.

9 Q And then, if we turn it over, we have metric in
10 centimeters on the other side?

11 A Yes.

12 Q Let's go back to the bed, and that particular item
13 there. You said that's where the knife was located, correct?

14 A Yes.

15 Q What are we seeing in State's Exhibit number 43?

16 A That is a close-up view of the knife that was
17 located on top of the bed in the northwest master bedroom,
18 including another scale, what we refer to as an L scale. It's
19 in the shape of the letter L. And again, that's to give
20 approximate size or dimension of the item.

21 Q There appears to be a substance near the tip of the
22 knife.

23 A Yes.

24 Q Do you have any idea what that was?

25 A Apparent blood.

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1 Q And what about on the handle? Do you -- I'm not
2 sure if you can see that from this image, but do you see a
3 reddish substance down near the handle also?

4 A Yes, I do.

5 Q Did that appear to be -- what?

6 A Apparent blood.

7 Q What are we seeing in State's Exhibit number 44?

8 A That's a photograph of the same knife, flipped over
9 on the other side to show the other side of the blade and the
10 handle.

11 Q All right. Did you impound that item?

12 A Yes, I did.

13 (Pause in the proceedings)

14 BY MR. LALLI:

15 Q I think there's -- do you have gloves behind you
16 there?

17 A Yes.

18 Q Can you throw some gloves on?

19 A Sure.

20 Q Now, Ms. Maldonado, I'm going to show you what we've
21 marked as State's proposed 128 for identification purposes.
22 Do you recognize that?

23 A Yes.

24 Q What is it?

25 A That is a box containing the knife that was depicted

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1 in the photograph.

2 Q Now, this box is open?

3 A Yes.

4 Q Do you know who opened it?

5 A Yes, I do.

6 Q Who?

7 A I did.

8 Q Was that at a prior proceeding?

9 A Yes, it was.

10 Q All right. If you could remove the item from
11 inside, and describe for us what you're removing.

12 A This is the knife that was depicted in the
13 photograph.

14 Q Oh. Before you show them.

15 MR. LALLI: Your Honor, move for the admission of
16 State's proposed 128.

17 THE COURT: Any objection?

18 MR. O'KEEFE: No objection, Your Honor.

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

20 (Exhibit 128 is admitted)

21 MR. LALLI: All right. Now, Your Honor, what I
22 would like her to do is just pull the knife out, just walk
23 down, just --

24 THE COURT: That's fine, it's admitted.

25 MR. LALLI: -- show the jury, and then put it all

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1 back in there, if that's okay.

2 THE COURT: All right. That's fine.

3 BY MR. LALLI:

4 Q Can you remove it? And if you could just --.

5 (Pause in the proceedings)

6 MR. LALLI: Your Honor, that concludes direct
7 examination.

8 THE COURT: All right. Cross-examination, Mr.
9 O'Keefe?

10 THE CLERK: Mr. Lalli --

11 MR. O'KEEFE: Yes, Your Honor.

12 THE CLERK: Mr. Lalli, 128A is the knife.

13 MR. LALLI: Okay. I would move for the admission of
14 128A -- or 128 and contents.

15 THE COURT: Any objection?

16 MR. O'KEEFE: No, Your Honor. Absolutely not.

17 THE COURT: It will be admitted.

18 (Exhibit 128 and contents are admitted)

19 THE WITNESS: Your Honor?

20 THE COURT: Yes.

21 THE WITNESS: May I remove my gloves, please?

22 THE COURT: Please.

23 THE WITNESS: Thank you.

24 THE COURT: And make sure when you go to jury
25 deliberation, if you do look at anything, make sure you have

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1 your gloves on, whoever looks at it, all right? And we'll
2 give you gloves -- provide them. Is that right, Mr. Bailiff
3 -- Mr. Marshall?

4 THE MARSHAL: Sir?

5 THE COURT: The jury will have access to gloves,
6 right?

7 THE MARSHAL: That's correct.

8 THE COURT: All right. Proceed.

9 MR. O'KEEFE: Court's indulgence. One second,
10 folks, please.

11 (Pause in the proceedings)

12 MR. O'KEEFE: Okay.

13 CROSS-EXAMINATION

14 BY MR. O'KEEFE:

15 Q Hi, Joyce.

16 (Pause in the proceedings)

17 BY MR. O'KEEFE:

18 Q Ms. Maldonado?

19 A Yes.

20 Q Okay. I'll be real brief, okay?

21 A Okay.

22 Q No tricks, no ploys. Just want to clarify a couple
23 things, you know, for everybody. Okay. You come out, and you
24 photograph a crime scene. And you did that, correct?

25 A No, I did not. I did not do the photographs.

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1 Q Okay. You're just -- okay. Your exact purpose then
2 again, is?

3 A I recovered and collected the evidence, and
4 completed a sketch and a diagram in the computer program --

5 Q Okay.

6 A -- of the crime scene.

7 Q Were you there when any of the photographs were
8 taken?

9 A Yes, I was.

10 Q Okay. Is it correct -- what I was trying to get at
11 is, should all property be photographed, Ms. Maldonado, before
12 it's tampered, or moved, or -- you want to get a photograph of
13 it as it is, correct?

14 A I don't understand what you mean by, all property.

15 Q Okay. Any property, any scene (sic), anything that
16 might relate, like the purse, a table, the taser probes. You
17 want to photograph that stuff or whatever before it's removed,
18 and you tag it and all that, or whatever you do, correct?

19 A Right. There's a series of photographs that are
20 taken, yes.

21 Q Okay. So, like --

22 MR. O'KEEFE: Mr. Maningo?

23 MR. MANINGO: Yes, sir.

24 MR. O'KEEFE: Because I don't want to --

25 BY MR. O'KEEFE:

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1 Q There was a receipt, if I could bring it up -- have
2 it brought up to you.

3 MR. O'KEEFE: I don't want to enter it as an exhibit
4 or anything, Your Honor. I want her to look at it first.

5 MR. MANINGO: May I approach, Your Honor?

6 THE COURT: Yes. Show it to [inaudible].

7 MR. O'KEEFE: Okay.

8 BY MR. O'KEEFE:

9 Q Will you read the receipt at the top of it to
10 yourself? I mean, I'm not asking you, ma'am, to verify where
11 it's from. You see the date and the time?

12 A Okay, because I don't recognize this document at
13 all.

14 Q Okay.

15 A I never saw this document.

16 Q That was a discovery document by the -- if --

17 MR. O'KEEFE: Can Mr. Maningo show that to her?

18 BY MR. O'KEEFE:

19 Q At the --

20 MR. MANINGO: [Inaudible]

21 BY MR. O'KEEFE:

22 Q The subpoena?

23 A Okay. I'm not familiar with these documents.

24 Q Okay.

25 A This is out of the course of my duties and

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1 responsibilities.

2 Q Okay. My question is though, the items were listed,
3 just like the property that we admitted. And Mr. Lelli just
4 got you to state that the purse was removed from the room, you
5 thought, the northwest bedroom, and brought out onto the
6 counter. And then, the wallets were taken out, and laid out
7 and displayed.

8 And that receipt was taken out of my wallet. If you
9 look on it -- if you'll read, it says, "Receipt from O'Keefe's
10 wallet." Do you see about down in the middle, it says,
11 "Receipt from O'Keefe's wallet"?

12 A Okay.

13 Q Okay. Should -- and it's listed on the subpoena. I
14 know that's not your part, ma'am. But I'm just saying, the
15 wallet appears to be -- the purse was removed from the bedroom
16 to the kitchen counter, and we all have seen that. I don't
17 even have any need to show that.

18 It was on the kitchen counter, everybody's seen
19 that. Wallets were displayed. Evidence was taken out, but it
20 wasn't photographed, at least that I know of. Is that -- is
21 that standard procedure?

22 A I can't verify that. I don't know specifically what
23 evidence you're referring to, and I wasn't the one responsible
24 for the photographs.

25 Q Okay. But photographs should have been taken of it,

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1 if it would have been under you; should have been photographed
2 -- pulled out, photographed, and then tagged or whatever is
3 standard, I mean, usually is the procedure, correct?

4 A Items of evidence are usually photographed.

5 Q Yes. Are they? I'm asking you. You're the --
6 you're there when the pictures are taken?

7 A Yes, most are.

8 Q Okay. Nothing else on that.

9 MR. O'KEEFE: I'll deal with that in closing, Your
10 Honor.

11 THE COURT: Yeah.

12 BY MR. O'KEEFE:

13 Q In Exhibit 45 and 46 of the bed, where you thought
14 it was a print impression -- let me get it out real quick,
15 just to make sure. Because I thought prior testimony was
16 given to that fact, that -- and [inaudible].

17 MR. MANINGO: Which one do you want?

18 MR. O'KEEFE: I'll put one on -- I mean, one at a
19 time.

20 BY MR. O'KEEFE:

21 Q Yeah. Exhibit 45, State's Exhibit 45, that they
22 entered as -- did B relate -- did they get the idea that that
23 might have been a footprint?

24 A B, no.

25 Q No? Nothing -- A, B -- okay. State's Exhibit, I

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1 think it was 46. Yes, 46. Did they think that possibly might
2 have been a footprint?

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

4 Q Well, the investigation team, whoever. They took it
5 for a reason. They identified it. You know, I'm -- I'm
6 just --

7 A It is some type of --

8 MR. LALLI: Your Honor, I'm going to --

9 BY MR. O'KEEFE:

10 Q They photographed it for a reason, is all --

11 A Yes.

12 Q -- I'm trying to get at.

13 A Yes.

14 MR. LALLI: Your Honor, I'm going to --

15 BY MR. O'KEEFE:

16 Q Do you agree with that? Okay.

17 MR. LALLI: I'm sorry. I'm going to object to what
18 anybody else thought. There will be a homicide detective who
19 testifies in the case. She -- this witness already testified
20 she doesn't know what it is.

21 THE COURT: All right. Yeah, we just want -- she
22 just has to testify as of her own knowledge.

23 MR. O'KEEFE: Okay.

24 THE COURT: It's difficult to testify on whatever
25 somebody else knows or did. All right? So, try to limit it

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1 to that.

2 MR. O'KEEFE: Yes, sir. All right. I'm moving on,
3 Judge.

4 BY MR. O'KEEFE:

5 Q In State's Exhibit 28. And I want to go to the
6 light switch up here.

7 MR. O'KEEFE: Can we zoom-in on that a little bit,
8 put the light on?

9 BY MR. O'KEEFE:

10 Q Where you wanted to see about the blood.

11 MR. O'KEEFE: And that's good enough. They know --
12 okay.

13 BY MR. O'KEEFE:

14 Q Do you know when that was photographed? Did anybody
15 flip the switch on and test it, do you --

16 A I honestly don't know that.

17 Q Okay. I'm just asking. That's all.

18 MR. O'KEEFE: I'm moving on, Judge.

19 BY MR. O'KEEFE:

20 Q And State's Exhibit 31. I just want to show here
21 that the lamp right there --

22 MR. O'KEEFE: That's good enough. I'm just showing
23 that the lamp her -- or if you can focus in on that here. But
24 you said no one -- a little further in on that, if you would.
25 A little further in. I mean, back. Back a little bit.

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1 BY MR. O'KEEFE:

2 Q Okay. Basically, I'm just saying, this here -- can
3 you clearly see that, Ms. -- that's a radio and a lamp. And
4 you would agree with that, in this photo?

5 A Yes.

6 Q Okay. Because if you flip the switch on, the radio
7 -- okay.

8 MR. O'KEEFE: That will be later for argument. Your
9 Honor. I just want to make sure she was around when the
10 pictures were taken of it. Okay. And that's it on that.

11 BY MR. O'KEEFE:

12 Q They took the tile though -- they photographed it,
13 and they removed that tile because it had a footprint on it?

14 A Okay.

15 Q Am I correct? I'm asking.

16 A Yes. Uh-huh. That's correct.

17 Q Okay. And let's be honest -- honest here. They
18 assumed it was my footprint. Was that identified, matched, or
19 whatever?

20 A I don't have any indication of that. I just
21 document the evidence, recover it. And if any further
22 analysis needs to be done, that would be at the direction of a
23 detective.

24 Q Okay.

25 MR. O'KEEFE: Actually, Mr. Lalli presented

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1 everything else. [Inaudible] later for argument. No further
2 questions, Your Honor.

3 THE COURT: Thank you. That completes the --

4 MR. O'KEEFE: Thank you, Ms. Maldonado.

5 THE COURT: -- testimony now, Mr. Lalli?

6 MR. LALLI: Yes, Your Honor.

7 THE COURT: Thank you very much.

8 THE WITNESS: You're welcome.

9 THE COURT: You can go about your business.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Next witness, please.

12 MR. LALLI: Your Honor, the State calls Jennifer
13 Bas.

14 THE MARSHAL: Ma'am, if you will remain standing.
15 Please raise your right hand and face the clerk.

16 JENNIFER BAS, STATE'S WITNESS, SWORN

17 THE MARSHAL: Have a seat, please.

18 THE WITNESS: Thank you.

19 THE MARSHAL: Please state and spell your name for
20 the record.

21 THE WITNESS: My name is Jennifer Bas. First name,
22 J-e-n-n-i-f-e-r. Last name, B-a-s.

23 DIRECT EXAMINATION

24 BY MR. LALLI:

25 Q Can you tell us how you're employed?

1 A Yes. I work for the Las Vegas Metropolitan Police
2 Department in the biology DNA detail, where I specialize in
3 DNA testing.

4 Q How long have you been so employed with Metro?

5 A I've been with Metro for over five years now.

6 Q Can you explain your formal education?

7 A Yes. I have a bachelor's degree in genetics and
8 cell biology from the University of Minnesota. And I also
9 have a master's in forensic molecular biology from George
10 Washington University in D.C.

11 Q Do you have any professional experience in the area
12 of DNA analysis?

13 A I do. Prior to --

14 Q Can you explain that?

15 A Sure. Prior to working for Metro for the last five
16 years, I also worked for the Armed Forces DNA Identification
17 Laboratory in Rockville, Maryland. At that place, my primary
18 responsibilities were to identify soldiers that had lost their
19 lives in Iraq or Afghanistan. I also responded to mass
20 disasters, such as Hurricane Katrina, and helped with DNA
21 collections from the bodies there.

22 Moving forward to the Las Vegas Metropolitan Police
23 Department, I use the exact same DNA technologies that I did
24 there, and I apply it to criminal case work, and help solving
25 crimes.

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1 Q Have you ever testified as an expert in courts of
2 this state, or any other state, as an expert in the area of
3 DNA analysis?

4 A I have. In the State of Nevada, I've testified
5 approximately 21 times, and I believe 17 of those have been in
6 district court.

7 MR. LALLI: Your Honor, I'd ask that Ms. Bas be
8 allowed to render her opinions in the area of DNA analysis.

9 THE COURT: Yeah, she can so testify.

10 BY MR. LALLI:

11 Q Can you explain for us what is DNA, and how is it
12 used in criminal investigations?

13 A Sure. DNA is a tiny molecule found in the nucleus
14 of a cell; at least that's the areas that I'm looking at. But
15 what I really like to think of it is like the blueprint for
16 the human body. There's proteins and things in that DNA
17 molecule that makes each of us unique, and that's why
18 everybody that you're sitting next to right now is different
19 than you are.

20 Without the -- with the exception of identical
21 twins, no two people on this planet have the same DNA profile.
22 And that's very useful in forensic investigations, because
23 when we develop our DNA profiles, it helps us determine, could
24 somebody be included in a sample, or excluded. But it also
25 allows us to say, yes, it was definitely that person, and make

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1 those identifications, just like I had done with my previous
2 employment identifying soldiers. So, it's just really useful
3 to help make those identifications with the DNA samples.

4 Q Can you just briefly explain how it is that you once
5 you get a biological sample sent to your laboratory, how do
6 you go about making a DNA comparison?

7 A Sure. First of all, typically, there's two types of
8 samples that are sent to the laboratory. One of them is
9 called a crime scene evidence, or we call them questioned
10 samples. And those are going to be the samples that I process
11 in the lab, and I'll talk to you about that here in a little
12 bit.

13 The second set of samples we get in are called
14 reference samples, or buccal swab cheek samples. And those
15 are used, because those are collected from a specific
16 individual. And we use the profile developed from the
17 reference sample, and we compare that to the DNA profiles that
18 we get from the question or unknown samples.

19 In the laboratory, I do a lot of DNA steps. There's
20 some steps that I have to take in order to generate that
21 profile. I typically start with receiving a request for DNA
22 evidence, and I call the evidence in to the laboratory. I'll
23 then take a look at the evidence piece by piece, and I'll take
24 notes on it, photographs. I might have to screen it, or do
25 some testing to find out if there's blood or semen.

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1 When I say screening, really, I mean I'm looking at
2 it. I'm looking at what the detective or somebody requested.
3 I might be taking cuttings or swabbings of evidence. If I'm
4 doing serology testing, I might be trying to identify blood or
5 semen. And then, I take those samples that I've screened up
6 front, and I take them through the laboratory process.

7 At the end of that process, I will have generated
8 DNA profiles from the questioned samples that I just
9 described, as well as the known samples, the buccal swab
10 samples that I also described, and I compare those two.

11 I then interpret the DNA results, and I make those
12 decisions of whether or not somebody could be included or
13 excluded in the DNA profiles that I obtained from the
14 questioned samples. I generate statistics to help, like give
15 weight to that match, if there is a match. And I also -- I
16 write my reports, and I also review other analyst's case
17 files.

18 Q Sometimes when you make a DNA comparison, or when
19 you're handling evidence, do you need to coordinate with other
20 disciplines? So, example, sometimes do you need to coordinate
21 with trace, or sometimes do you need to coordinate with latent
22 prints --

23 A Yes.

24 Q -- when handling an item of evidence?

25 A Yes. It's very, very common that one piece of

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1 evidence will be requested from multiple sections within the
2 laboratory. And our laboratory actually has an internal way
3 of processing that.

4 Typically, all of the evidence goes to DNA first,
5 and we take our sample collections. And then, it will move
6 onto latent prints, so that they can do their latent print
7 comparison. DNA -- it comes to me first, because I handle
8 that with -- you know, with gloves, and a mask, and I am
9 completely sterile, and I keep that in the environment that it
10 needs to be to get those DNA profiles.

11 Next, it's going to go to latent prints, because
12 they want to actually collect the prints from the evidence.
13 And then finally, it might go to firearms, let's say. And you
14 know, they don't wear gloves or masks, and they need to handle
15 that evidence. So, there's usually a really good routine of
16 how we do that, and it's very common.

17 Q All right. Now, were you asked to analyze evidence
18 related to a homicide that occurred on 5001 El Parque Avenue,
19 under event number 081105-3918?

20 A Yes, I did. Or yes, I was.

21 Q Okay. And if I understand in my over-simplistic
22 mind what you do, you take a known sample --

23 A Um-hum.

24 Q -- and you compare it to an unknown sample at --
25 that you might find at a crime scene?

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1 A Typically, I process all the questioned samples
2 first, and I get those DNA results. I always separate my
3 questioned samples from my known samples. But when I've
4 developed both of those profiles from the questioned and the
5 known, it's at that point, when I'm finished, that I make
6 those comparisons.

7 Q But that's the whole idea? The goal is to compare a
8 known DNA profile with a questioned one to say, hey, these two
9 match up, this is person X's DNA?

10 A That's correct. A DNA profile really is just a
11 series of numbers or peak patterns, and it doesn't tell me
12 anything without being able to compare it to somebody. When I
13 look at a DNA profile, the only thing that I can tell without
14 any reference standard whatsoever is if it's a male
15 contributor, or a female contributor, or components of both.
16 But I need that reference sample to say, yes, this person is
17 included, or they are excluded.

18 Q All right. Let's talk about the known DNA
19 samples --

20 A Okay.

21 Q -- or the reference standards that you used in this
22 case. Did you -- or were you provided with a known DNA
23 profile from an individual by the name of Brian O'Keefe?

24 A I was -- I got a buccal swab sample, which I
25 generated the profile from.

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1 Q Very good.

2 A One from Brian O'Keefe, and another from Victoria
3 Whitmarsh.

4 Q Do you know who -- well, we've had testimony from
5 former crime scene analyst Ford that he obtained a buccal swab
6 from Brian O'Keefe. Is that the buccal swab that you
7 analyzed?

8 A Yes, I believe so. His P number is 4244. Yes.

9 Q I believe so.

10 A Yeah.

11 Q And did you also obtain a buccal swab from an
12 evidence collection kit at autopsy of Victoria Whitmarsh?

13 A Yes, I did.

14 Q And from those two buccal swabs, you were able to
15 prepare or create a known DNA profile?

16 A Yes. I generate the DNA profile from those samples,
17 and I use those to compare to the questioned samples that I
18 also analyzed.

19 Q Okay. Now, there has been testimony in this case
20 regarding what appeared to be blood. And for the benefit of
21 the jury, I'm showing them State's Exhibit number 29. There
22 appeared to be a reddish bloody substance near a light switch
23 that crime scene analyst Maldonado testified to swabbing and
24 impounding. Did you analyze a blood sample of apparent blood
25 from a light switch?

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1 A Yes, I did.

2 Q Okay. What if anything did you find when you
3 analyzed that blood sample?

4 A Okay. Well, I determined a few things. First,
5 whenever I see a red-brown stain, or a reddish stain, that
6 indicates to me that it might be blood. Earlier, I had
7 mentioned that some of my job duties is to identify blood or
8 semen.

9 And so, the first thing I did is a test on there.
10 It's a presumptive test called phenolphthalein, and it helps
11 me determine, is that presumptively blood. Other things could
12 react positively for blood. But if this one reacts
13 positively, it's saying, yes, it probably is blood. And then,
14 from there, I took a cutting of that swab that I received, and
15 I generated a DNA profile.

16 Q Was it blood?

17 A It was positive for blood, yes.

18 Q Okay. And with respect to the profile -- I don't
19 know if it helps, but I think this is your JB2?

20 A Yes. And I'm sorry, I should have finished that
21 thought process. The second thing I did was I made a -- I
22 generated the DNA profile from it. And in this particular
23 case, it was a full male profile.

24 I'm going to talk about a couple different types of
25 profiles that I obtained today. One is called a single-source

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1 sample. It means it's only from one person. The source of it
2 is one person. Later, I'll talk about mixture profiles, and
3 that means that more than one person's DNA is there.

4 So, this was a full, single-source male profile. It
5 was a complete profile, and it was consistent with Brian
6 O'Keefe.

7 Q You told us earlier that you insert probabilities to
8 your analysis. Can you explain how that works?

9 A Yes. Whenever we have a match or an inclusion, or
10 if somebody's profile is consistent with a reference standard,
11 if the questioned sample is consistent, I need to lend weight
12 to that.

13 And so, in this particular case, I do a statistic
14 called a random match probability. And what it's saying is,
15 what is the chance that any person in the planet would
16 randomly match the DNA profile that I obtained from this blood
17 swab? This particular statistic was incredibly high.

18 At our laboratory, what we do is we take the Earth's
19 population, which at the time of this report, was about 6.5
20 billion people. We then multiply that by 100. We figure, 100
21 Earths, or the population of 100 Earths. If this profile is
22 rarer than what I would see on the population of 100 Earths,
23 we'd call it just greater than that, and we say, "Identity is
24 assumed."

25 So, this statistic was rarer than one in 100 Earths,

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1 you know, 650 billion. It was rarer than 1 in 650 billion,
2 and this DNA profile belongs to Brian O'Keefe. The source of
3 that -- the source of that blood.

4 Q So, you can say it's his blood?

5 A I would say that it's his blood.

6 Q Now I'm going to show the jury State's Exhibit
7 number 36.

8 A Okay.

9 Q Did you analyze as your JB5 a pair of black pants?

10 A I did.

11 Q When you analyze evidence, because you talked about
12 how that -- you not only look at swabs, but you actually
13 handle specific items of evidence. Do you prepare any
14 diagrams that assist you in coming to court and testifying
15 about where it is that you obtained certain stains that you
16 tested, things of that nature?

17 A I do. One of the first things that I do when I get
18 a piece of evidence is I take it out of the package. And I
19 actually photograph it, and I take notes on it. And this
20 helps me to just document what I'm doing, where I'm taking
21 samples from. But also, I believe that this report was
22 initially issued in 2009. And so, it helps me when I do come
23 back to testify later to remind me of what it is that I had
24 done at that time.

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

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1 THE COURT: Yes.

2 BY MR. LALLI:

3 Q Ms. Bas, I'm going to show you what we've marked as
4 State's proposed 123 for identification purposes. Do you
5 recognize that?

6 A I do.

7 Q What is it?

8 A This is like a little slide that I made of the
9 pictures that I had taken when I was examining the pants.

10 Q All right.

11 MR. LALLI: Your Honor, move for the admission of
12 State's proposed 123.

13 THE COURT: Any objection?

14 MR. O'KEEFE: No, Your Honor.

15 THE COURT: It will be admitted.

16 (Exhibit 123 is admitted)

17 THE COURT: It will be admitted.

18 BY MR. LALLI:

19 Q So, can you -- I'm going to go to the left.

20 A Okay.

21 Q Can you explain to the jury what we're seeing here?

22 A Yes. Okay. So, this is the pair of pants, entirely
23 laid out.

24 First, I want to direct you to just right here.

25 There's where I've documented the event number that I have it

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1 under. The JB5 stands for my initials, which is Jennifer Bas,
2 and 5 is the fifth item of evidence that I examined. And it's
3 also the date that I examined it on; so, January 6th of 2009.
4 And then, this is just an overall picture of the pants laying
5 out, with the front side facing up.

6 Q We'll move over here to the left. Let me
7 zoom-out --

8 A Do you mind just --

9 Q -- just a little bit.

10 A Thank you. Okay. So, now, what I had done is that
11 long pair of pants that was laying out flat, when I was doing
12 my screening and serology testing, I kind of noticed possible
13 bloodstains on a couple different areas. One was at the very
14 top of the pant, which is like here in this whole front panel.
15 In the second -- there was a lot.

16 But then, I also honed in on another area in the
17 lower left ankle. And so, what I did is I took that pant leg,
18 and I folded it up on top of the top of the pant, just so that
19 I could show both areas in the same photograph.

20 Q Okay. What is JB5A?

21 A JB5A is a sample that I took from the front of the
22 pants, like the stomach area of the pants.

23 Q Did you analyze that?

24 A I did. That sample was positive for blood. And I
25 got a full female profile; again, a complete single-source

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1 female profile, and that was consistent with Victoria
2 Whitmarsh.

3 Q Did you assign a probability number to that?

4 A I did not. And in this particular case, the reason
5 that I didn't is because we make those statistics when we
6 determine that that match is probative, or of value.

7 In this particular instance, these were Victoria
8 Whitmarsh's pants. This was her blood on her pants. And so,
9 we didn't -- in my opinion, that's not probative, or -- and
10 so, we don't do a statistic with it. Had I done a statistic,
11 it would have been identity, because it was a full female
12 profile.

13 Q All right. And what is your JB5B?

14 A JB5B is this sample here that I took from the lower
15 left pant leg. Again, this was positive for blood. And in
16 this time, I obtained a mixture profile, meaning more than one
17 person's DNA was there at that stain that I took.

18 Q All right. What can you tell us about the genetic
19 information you gleaned from the mixture profile?

20 A This was consistent with a mixture of two
21 individuals, one of which was male. Victoria Whitmarsh and
22 Brian O'Keefe were both included in that mixture.

23 Q And what was the probability that you assigned to
24 them being included?

25 A The included one? May I refer to my note at the

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1 back of the file?

2 Q Yes. Yes.

3 A Okay. I actually did two statistics for this one.
4 So, the one where --

5 Q Well, why don't you explain both of the statistics?

6 A Sure. So, with a mixture statistic, what I'm saying
7 is, what is the probability that somebody could be included in
8 this mixture? There's second statistic as, what is the
9 probability that somebody would be excluded from this mixture?

10 So, the first statistic that I generated was that
11 more than 99.99 percent of the people in the general
12 population could be excluded from this mixture. The inverse
13 of that is -- you might want to know, how many could be
14 included, then? And is it okay if I refer to my notes --

15 Q Yes.

16 A -- for that?

17 Q Yes.

18 A Thank you. Conservatively, approximately one in 21
19 million, 890 people -- 890,000 individuals could be included.
20 So, that means one person for every 21,890,000 would be
21 expected to be in this mixture.

22 Q And are you aware that the population of Clark
23 County is roughly 2 million?

24 A Yes, I am.

25 Q In that neighborhood?

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1 A Yes.

2 Q So, this is --

3 A It's --

4 Q -- almost ten times that.

5 A Ten times rarer, or -- yeah. Or -- yes.

6 Q Correct. So, in Clark County, the chances are that
7 there would be one individual, if that --

8 A I mean, statistically, out of the whole world's
9 population, one out of every 21,890 could be included. That's
10 a very, in my opinion, significant statistic.

11 Q And Victoria Whitmarsh is included?

12 A That is correct.

13 Q And Brian O'Keefe is included?

14 A That is correct.

15 Q All right. Now, there has been testimony about a
16 cut on the defendant's hand, or cuts on his fingers.

17 A Okay.

18 Q And State's Exhibit number 62. There's been
19 testimony about swabs being obtained by crime scene analyst
20 Daniel Ford. Did you analyze as your JBJA blood swabs from
21 the right index finger of Brian O'Keefe?

22 A I did.

23 Q And what, if anything, did you find when you
24 analyzed that?

25 A Sure. Again, this swab was red in color, so I

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1 presumptively tested it for blood, and it was positive for
2 blood. I obtained a single-source, full male profile, that
3 was consistent with Brian O'Keefe. In this particular
4 instance, I also did not do a statistic. Because again, this
5 was his finger, his blood on his finger. That's not
6 probative, necessarily, in terms of getting a statistic.

7 Q All right. Did you analyze an evidence collection
8 kit that was impounded by crime scene analyst Robbie Dahn at
9 autopsy?

10 A I did.

11 Q And I think you've already told us that buccal swabs
12 were included in that collection kit?

13 A That's correct.

14 Q And those buccal swabs were the source or the
15 standard for Victoria Whitmarsh's DNA profile?

16 A That is correct.

17 Q Are there other things contained in the evidence
18 collection kit, other than simply buccal swabs?

19 A In this particular evidence collection kit, I
20 obtained vaginal swabs, cervical swabs, rectal swabs, oral
21 swabs, a pubic hair brushing, right hand fingernail clippings,
22 and left hand fingernail clippings.

23 Q All right. Let's talk about the vaginal swabs.
24 What, if any, analysis did you do on those?

25 A So, on this one -- I mentioned a little earlier that

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1 I do serology testing. In vaginal swabs, what I might be
2 interested in finding is if there's semen present. And so, I
3 do both a presumptive and a confirmatory test to determine if
4 semen is there.

5 The presumptive test is called acid phosphatase.
6 And I take a small cutting from that swab, and I put it in a
7 tube. And if the chemicals react and semen is indicated
8 there, or presumptively there, it will turn a bright purple
9 color. And that was negative.

10 The second one -- the second thing I did now is I
11 want to -- I'm sorry, that was positive. And this is actually
12 common for those types of samples to be presumptively
13 positive.

14 And so, I need to confirm, is it semen, or not
15 semen? I took a cutting from those vaginal swabs, and I put
16 them through a second chemical test, which is called
17 prostate-specific antigen, or p30. And this test is important
18 because, typically, males have a high concentration of
19 prostate-specific antigen in their semen secretions. This was
20 negative.

21 I also took a -- I also wanted to determine if sperm
22 were present. It's -- you know, some men produce sperm;
23 others might be vasectomized, or not have any. But this one
24 was sperm negative. So, after it was confirmed that it was
25 semen negative and sperm negative, I stopped testing on this

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1 sample.

2 Q Okay. What about cervical swabs?

3 A This one, also -- exactly like I just described,
4 also semen negative, sperm negative.

5 Q Rectal swabs?

6 A Also semen negative, and also sperm negative.

7 Q What about oral swabs?

8 A Those ones, I did the presumptive chemical test for
9 semen, and they were presumptive negatively -- they were
10 presumptively negative, and I stopped testing there. I did
11 not confirm that they were negative.

12 Q All right. On your JBI-F, they were right hand nail
13 clippings. Were you able to perform any DNA analysis on
14 Victoria Whitmarsh's nail clippings?

15 A I did. When obtained the -- there's five clippings
16 of fingernails. And they had a red-brown appearance to them,
17 so I tested them for blood, and they were positive for blood.
18 The profile that I generated was a full single-source female
19 profile, consistent with Victoria Whitmarsh.

20 Q Okay. What about fingernail clippings from the left
21 hand, your JBI-G?

22 A Again, these clipped fingernails were positive for
23 blood, and that blood belonged to Victoria Whitmarsh.

24 Q I'm going to show you a photograph of State's
25 Exhibit number 44.

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1 A Okay.

2 Q Have you seen that item before?

3 A Yes, I have.

4 Q Were you asked to perform DNA analysis on that
5 knife?

6 A Yes. This was a Wolfgang Puck knife that I examined
7 under JB4. JB for my initials; it was the fourth item that I
8 examined. And I actually took -- we'll talk about this here,
9 but I tested four different areas on this knife.

10 Q All right.

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

12 THE COURT: Yes.

13 BY MR. LALLI:

14 Q Okay. As you did with the pants, did you also
15 create slides of the knife?

16 A I did.

17 Q And are those represented here in State's proposed
18 Exhibits 121 and 122?

19 A That is correct.

20 Q Would they assist you in explaining your results to
21 the jury?

22 A Yes, they would.

23 MR. LALLI: Your Honor, move for the admission of
24 State's proposed 121 and 122.

25 THE COURT: Any objection?

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1 MR. O'KEEFE: No objection, Your Honor.

2 THE COURT: They will be admitted.

3 (Exhibits 121 and 122 are admitted)

4 BY MR. LALLI:

5 Q All right. I'm going to show you State's --
6 actually, let's do this. State's Exhibit number 122. And
7 again, I'm going to go to the left here.

8 A Okay.

9 Q Can you explain to us what we're seeing there?

10 A This is the evidence as I received it after I opened
11 up the box. The knife was wrapped in like a brown paper
12 bundle, and it was zip-tied inside of a cardboard box. It was
13 labeled with item number 8. It has Jocelyn Maldonado's P
14 number there and initials, as well as the event number that I
15 worked it under.

16 Q And then as we go over to the side here, just
17 backing up, there appears to be two photos, one on top of the
18 other. Let's go to the top one first.

19 A This is after I removed the knife from that brown
20 paper bundle. And this is one side of the knife. I was just
21 taking an overall photograph of what the knife looked like
22 when I received it.

23 Q And then, as we go down to the lower panel of this
24 exhibit, what is that?

25 A This is the other side of that same knife.

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1 Q Now, how many different areas were you able to
2 sample from the knife?

3 A I personally tested four areas of the knife. Now,
4 if we look -- can you show just like -- maybe like an overall
5 example of maybe this top one, for instance?

6 On this knife, there was numerous areas that were
7 red-brown staining, you know, which might indicate to me that
8 there was blood present in numerous areas. Now, as the DNA
9 examiner, I don't want to test every single piece of blood on
10 that knife for two reasons.

11 One, I really just want a representative sample of
12 what is across the knife. But also, two, it's really
13 important that we preserve some of the evidence, in case it
14 does need to be tested at a later date. So, I chose to test
15 four areas. I did not test everything.

16 Q All right. Let's go to --

17 A That's great.

18 Q What are we seeing there?

19 A Okay. So, this is a close-up view of one side of
20 JB4, that knife. And I've circled in on three different areas
21 that I actually tested for blood. I designated them as JB4A,
22 4B, 4C, and then there's a fourth one, 4D, which we'll talk
23 about in a second. 4A right here was in an area that I called
24 the middle of the blade. I noticed some red-brown stain
25 there. I took a swab of it. That was -- do you want me to

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1 get into the results on each one --

2 Q Sure.

3 A -- individually?

4 Q Tell us what you found --

5 A Sure.

6 Q -- with respect to your JBA, or the middle part of
7 the knife.

8 A JB4A. So, for JB4A, which is this one right here,
9 this was positive for blood. And this was consistent with a
10 mixture of two individuals, with at least one being male. The
11 major DNA contributor was Brian O'Keefe.

12 Now, when I say major DNA contributor, what that
13 means is, yes, there's a mixture. But it's -- in mixtures,
14 it's possible for somebody to have left more DNA than another
15 person. So, the person whose DNA was there more, or the major
16 portion of the DNA belonged to Brian O'Keefe.

17 Q Were you able to generate a level of statistical
18 certainty with that?

19 A Yes.

20 Q What was that?

21 A Now, because this is a mixture, I can kind of go two
22 different ways on the stats. I've talked to you about the
23 single-source version, where I -- you know, it's the random
24 match probability, or the mixture statistic; what is the
25 probability that somebody could be included?

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1 When I have a major contributor, I'm able to isolate
2 that as if it is single-source, because it's the major
3 component, and I apply a statistic to it that way. So, the
4 frequency of the major profile was rarer than one in 650
5 billion, and identity is assumed.

6 Q So, you can say that that was Brian O'Keefe's blood
7 in the middle section?

8 A The major contributor to the bloodstain that I took
9 was consistent with Brian O'Keefe. That was -- he was the
10 major contributor.

11 Q Okay. Let's talk about the minor contributor.

12 A So, now, the minor component, I couldn't isolate
13 this, because it's less DNA. And so, I applied a mixture
14 statistic to the mixture as a whole. What is the chance that
15 somebody could be included or excluded from this mixture? And
16 greater than 99.99 percent of individuals in the population
17 could be excluded from the mixture.

18 Q Could you exclude Victoria Whitmarsh?

19 A I could not. She could not be excluded as a minor
20 contributor to that mixture.

21 Q So, in this particular area of the knife, you found
22 a mixture of blood, the minor component or DNA contributor --
23 the major, rather. The major contributor is Brian O'Keefe?

24 A That's correct.

25 Q You can say that? And you cannot exclude Victoria

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1 Whitmarsh as the minor contributor?

2 A That is also correct.

3 Q Okay. Let's move to your JB4B. Where is that
4 located?

5 A This is the one that's located right here. You can
6 probably see a little bit of a red-brown stain still left, and
7 you can kind of see where I hollowed-out the part that I took.
8 This profile -- this sample, JB4B, was also positive for
9 blood.

10 In this one -- the profile that I obtained from this
11 sample, it was a single-source full male profile, consistent
12 with Brian O'Keefe. The statistic there again was rarer than
13 one in 650 billion. So, identity is assumed that the blood on
14 that particular location of the knife belonged to Brian
15 O'Keefe.

16 Q Okay. Let's move onto JB4C. Where is that?

17 A 4C is this one right here. And it's actually
18 depicting the underside of the knife handle. So, like if
19 you're -- it was the bottom part of the knife handle. This
20 one was a mixture of two individuals, with at least one being
21 male. It was also blood positive.

22 The major contributor to this mixture was Brian
23 O'Keefe. And again, it was rarer than one in 650 billion, so
24 identity is assumed that the major contributor there is Brian
25 O'Keefe.

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1 Q So, there's no question in your mind that it was
2 Brian O'Keefe's blood on the bottom of the handle of the
3 knife?

4 A That's correct.

5 Q All right. And you said this was a mixture profile?

6 A That's correct. Now, whenever we have a mixture
7 profile, we could interpret that mixture, or we might not be
8 able to for various different reasons. In this particular
9 instance, he's the major contributor. And the minor component
10 was actually so limited that I couldn't make any comparisons
11 about it at all, so I didn't do anything with the minor
12 component.

13 Q So, you have no information that you can give us in
14 that regard?

15 A That is correct. I could --

16 Q In terms of identity?

17 A I could not make any conclusions about the minor,
18 because there just wasn't enough information there for me to
19 be able to make a comparison to it.

20 Q What's touch DNA?

21 A Touch DNA is -- it's -- DNA is found in all sorts of
22 areas of your body. It could be in blood, semen, hair. But
23 it's also found in skin cells. And so, there's -- you know,
24 the cells that are sloughed off of your skin -- maybe I pick
25 up this pen, and I've touched this pen, or I'm holding it, I

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1 would consider this touch DNA. It's basically just skin cells
2 that were left on an item.

3 It's also [inaudible] think of like low contact.
4 For instance, maybe, your shirt. You know, your skin cells
5 might rub off on the inside of your shirt. And if I tested
6 that for DNA, that would be, again, touch DNA. So, something
7 like that.

8 Q Are you able to get -- or to identify full DNA
9 profiles where there has been a suspected touch DNA left on an
10 item?

11 A With touch DNA, it is completely variable. I could
12 have had very little contact with this knife -- or I'm sorry,
13 this pen, and left virtually no DNA, or not enough DNA for my
14 system to be able to be able to detect it. Or, I could have
15 had a lot of contact with this pen, and I could get a full --
16 my full profile from this item.

17 With touch DNA, it is variable. I could either
18 expect to get absolutely nothing, or I could get a great
19 result. And it really has to depend on how much contact maybe
20 came in with the item, how long a person had contact with it.
21 Maybe they sweated on it; or if it's been out in the heat, and
22 the DNA is, you know, going bad. It just -- it's just
23 completely variable. So, I expect nothing, or I could expect
24 everything.

25 Q So, in finding nothing --

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1 A That's not uncommon.

2 Q Let's assume you're not able to get any profile at
3 all.

4 A Um-hum.

5 Q Would your result be that you're not able to render
6 any conclusions with respect to the DNA?

7 A That's correct. I might not get a DNA profile at
8 all. I might get something so limited that I couldn't make a
9 conclusion about it. Or I could get something so great that
10 it could be single-source, you know, female profile.

11 Q Okay. Going back to the handle of the knife, with
12 respect to the minor profile, you just can't tell us anything
13 about that?

14 A Exactly, there just isn't enough there. And that's
15 -- a lot of that probably has to do with the fact that there
16 is blood there. There's so many cells in blood that, when I
17 go through and do my DNA testing, the types of kits and the
18 testing that I do, it amplifies -- or it gives profiles from
19 what's there the most.

20 You know, that's why I say, you know, someone's a
21 major contributor, because their DNA was there the most. So,
22 that's going to give me the results, over maybe just a few
23 skin cells that might be there, underneath all that blood and
24 all those blood cells.

25 Q Now, as we flip the knife over, and we go over to

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1 the other side of your diagram, is that your JB4D?

2 A This is, and I designated this as the tip of the
3 knife. I just wanted to see what was on the very tip. This
4 sample was, again, positive for blood. And on the tip of the
5 knife, I obtained a full single-source female profile that was
6 consistent with Victoria Whitmarsh. And the DNA profile was
7 rarer than one in 650 billion, so identity is assumed that the
8 source of the blood on the tip of the knife is Victoria
9 Whitmarsh.

10 Q So, to summarize your findings, when we look at the
11 knife, blood on the handle was identified to Mr. O'Keefe?

12 A That's -- yes, right in this area. Yes. Correct.

13 Q And blood -- I'm sorry.

14 A Or, do you want to do the other one with the
15 circles? Or -- okay. This is fine.

16 Q Sure. So, blood on the handle is identified to Mr.
17 O'Keefe?

18 A That is correct.

19 Q And blood on the very tip of the blade is identified
20 to Victoria Whitmarsh?

21 A That is correct.

22 Q All right.

23 MR. LALLI: Your Honor, that concludes direct
24 examination.

25 THE COURT: All right. Anything -- any cross-exam?

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1 MR. O'KEEFE: No, Your Honor, I have no questions.
2 THE COURT: All right. Thank you.
3 THE WITNESS: Okay.
4 THE COURT: Thank you for testifying.
5 THE WITNESS: Thank you.
6 THE COURT: You're excused.
7 THE WITNESS: Thank you.
8 THE COURT: I think. I think.
9 THE WITNESS: Do they have any questions?
10 THE COURT: That's why I said, I think.
11 THE WITNESS: Do you have any questions?
12 THE COURT: Going once. [Inaudible] questions?
13 THE WITNESS: I like to answer questions.
14 THE COURT: No questions.
15 THE WITNESS: Okay.
16 THE MARSHAL: Get out of here.
17 THE WITNESS: Thank you.
18 THE COURT: Thank you very much. We appreciate it.
19 THE WITNESS: Thank you very much.
20 THE COURT: All right. I think that concludes the
21 witnesses for today, ladies and gentlemen. We're going to
22 take an early recess, maybe beat the traffic, whatever it is.
23 And we'll see you back at 9:30.
24 During this recess, you're to -- it is your duty not
25 to converse among yourselves, or anyone else, on any subject

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1 connected with the trial; read, watch, or listen to any report
2 or commentary on the trial, by any person connected with the
3 trial, or by any medium of information, [' including, without
4 limitation, newspapers, television, radio. You are not to
5 form or express any opinion on any subject connected with the
6 trial until the cause is finally submitted to you.

7 We'll be at ease until the jury leaves. Mr. Lalli,
8 just come here a minute.

9 (Off-record bench conference)

10 (Outside the presence of the jury)

11 THE COURT: All right. This is outside the presence
12 of the jury. We can go on the record now. There was a note
13 from Juror number -- what was it?

14 MR. LALLI: 12.

15 MR. O'KEEFE: Juror number 10 --

16 THE COURT: 12. She indicated, "I feel like I'm
17 falling asleep. I think I have sleep apnea. I've not been to
18 the doctor, but it does run in the family. I don't feel it is
19 fair for everyone else if I keep doing this, and I certainly
20 don't want to jeopardize the case." Nella Humphries, Juror
21 number 12. That's the sister of Juror number 10, I believe.

22 MR. LALLI: Yes.

23 THE COURT: So, in any event, I just got this note.
24 And we'll talk about it tomorrow. Maybe I'll talk to her
25 tomorrow, and we'll get her alone and we'll talk to her, see

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1 if she's -- you know, what the situation is. And then we'll
2 make a decision whether to put an alternate juror in. Is that
3 all right, Mr. Lalli?

4 MR. LALLI: Sounds good, Your Honor. Thank you.

5 THE COURT: Mr. O'Keefe?

6 MR. O'KEEFE: Yes, that's okay. And Your Honor, if
7 I could, tomorrow morning, Your Honor, we have a slight
8 evidentiary issue that we need -- we'll handle, if that's
9 okay, pertaining to --

10 THE COURT: Well, what is it?

11 MR. O'KEEFE: -- the suicides in the medical records
12 that were stipulated to partially come in; partially not. Me
13 and Mr. Lalli was (sic) talking about it partially today. We
14 kept pushing it off, pushing it off. So --

15 THE COURT: Why don't you talk about it and let me
16 know tomorrow, all right?

17 MR. LALLI: Sure.

18 THE COURT: And how many witnesses you got left?

19 MR. LALLI: We have I believe three.

20 THE COURT: All right. So, you should be done by
21 what time?

22 MR. LALLI: I would say -- you know, I would
23 guesstimate early afternoon.

24 THE COURT: Oh, so it's not -- you're not going to
25 be able to argue tomorrow afternoon?

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1 MR. LALLI: I don't -- I don't think so. We haven't
2 settled jury instructions.

3 THE COURT: All right.

4 MR. LALLI: We're going to --

5 THE COURT: Do you have any proposed jury
6 instructions, Mr. O'Keefe?

7 MR. O'KEEFE: Excuse me, I --

8 THE COURT: Do you have any proposed -- did you look
9 at the State's proposed jury --

10 MR. O'KEEFE: No, I have not had a copy. I have
11 not --

12 THE COURT: Did you give Mr. --

13 MR. MANINGO: They've been -- Mr. Lalli emailed it
14 to me, Your Honor.

15 THE COURT: Oh, I see. You'll --

16 MR. MANINGO: And I'll go over it with Mr. O'Keefe.

17 THE COURT: You'll give a copy to Mr. O'Keefe?

18 MR. MANINGO: I will.

19 THE COURT: I don't know if you have any yourself
20 proposed jury instructions. If you do, please get them ready
21 so we don't have to delay the case, all right?

22 MR. O'KEEFE: Okay, Your Honor.

23 THE COURT: In any event, we'll see everybody -- try
24 to, you know, resolve this issue, if you can. If not, I'll
25 take a little time, you know --

ROUGH DRAFT TRANSCRIPT

003997

1 MR. LALLI: Very good. What time would the Court
2 want witnesses tomorrow?

3 THE COURT: Well, I think 9:30. I hope.

4 MR. LALLI: Okay.

5 THE COURT: I mean, I still got a calendar, but I'm
6 pretty quick, you know. So, I'll --

7 MR. LALLI: Quickest in the courthouse.

8 THE COURT: -- try. We've got an evidentiary -- but
9 I -- I just -- everybody here at 9:30, all right?

10 MR. LALLI: Very good.

11 THE COURT: All right. Thanks.

12 MR. LALLI: We'll be ready to go. Thank you, Your
13 Honor.

14 MR. O'KEEFE: Thank you, Your Honor.

15 (Court recessed at 4:07 p.m., until Thursday,
16 June 14, 2012, at 9:30 a.m.)
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1 Could an injury from someone falling --

2 A The injury on the forehead --

3 Q Yes.

4 A -- could be consistent with a blow to the head, or a
5 fall where the head struck something. Yes.

6 Q Okay. But you didn't know about that testimony,
7 basically, as I -- so, I guess I see what you're saying. You
8 wasn't -- you didn't have that.

9 MR. LALLI: I object to --

10 MR. O'KEEFE: You didn't read that.

11 MR. LALLI: -- the defendant testifying now.

12 THE COURT: Yeah. Just ask questions, and you can
13 argue --

14 MR. O'KEEFE: Okay, Your Honor.

15 THE COURT: -- to the jury later.

16 MR. O'KEEFE: I appreciate it. I'm just trying
17 to --

18 BY MR. O'KEEFE:

19 Q Okay. You did say the depth of the wound was like
20 four and-a-quarter inches, Doctor. You read it in the report,
21 correct?

22 A Yes.

23 Q Okay. It hit no bone?

24 A Right.

25 Q It hit no cartilage?

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003900

1 A Right.

2 Q Just skin?

3 A Yeah.

4 Q And the blade was eight inches?

5 A Right.

6 Q And it only went in four and-a-quarter inches?

7 A Right.

8 Q Okay.

9 MR. O'KEEFE: I can see what you're saying, Your

10 Honor. I'll save it -- that for argument.

11 THE COURT: Right. Thank you.

12 MR. O'KEEFE: Okay.

13 THE COURT: You just get the facts out, and --

14 BY MR. O'KEEFE:

15 Q Now, if somebody was right-handed, and had a blade

16 -- because the pictures showed -- and I don't want to bring it

17 up again, because they can have it, and they can look at it.

18 The sharp part of the blade was facing back?

19 A Right.

20 Q That rod -- projectory rod is exactly -- her arms

21 were half the size of mine, and she was very flexible.

22 A Right.

23 Q This is, from out to in, and the sharpness is facing

24 that way, Doctor, am I not -- if I had the butcher knife in my

25 hand, would the sharpness not be facing back, just like the

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003901

1 wound?

2 A Backwards and upwards, yes.

3 MR. O'KEEFE: No further questions.

4 THE COURT: All right. Anything else, Mr. Lalli?

5 MR. LALLI: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. LALLI:

8 Q Dr. Dutra, when you are making a determination as to
9 the manner of death, can you constrain your analysis to just
10 the body, or must you also look to factors outside of the
11 body?

12 A We often have to look to factors outside the body.

13 Q So, let's talk about that. And let me give you a
14 hypothetical. Let's assume that you examine the body of a
15 decedent, and there is a single gunshot wound to the chest,
16 which caused death.

17 A Right.

18 Q All right? And you knew nothing else about it.

19 A Right.

20 Q That's all the body showed you. Now, an
21 investigator with the police department was able to create a
22 report that you were allowed to review. And you learn that,
23 next to the body, there was a suicide note, and in very close
24 proximity to that body, there was a gun. If you knew those
25 additional facts, what would the manner of death be?

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003902

1 A At that point, I would certainly consider suicide,
2 although I would not base my manner of death entirely on that.

3 Q Sure. But those facts external to the body would
4 lead you to the conclusion of suicide?

5 A It would point me in that direction.

6 Q Point you in that direction. If in the
7 investigation, you learned that there was another individual
8 in the room with the decedent who had a motive to kill that
9 person, and there was evidence in fact that a witness saw that
10 person shoot the decedent, what would you call that?

11 A That would certainly point me in the direction of
12 homicide.

13 Q Those are determinations that you cannot make just
14 from looking at the body alone, correct?

15 A No. We are allowed to study everything, including
16 the police reports, the -- or as our usual practice, and the
17 standard of practice among forensic pathologists is to review
18 everything we can get. Police reports, investigator's
19 reports, do our own autopsy findings. And then, to a
20 reasonable degree of certainty, come to a conclusion, and make
21 a determination on the manner of death.

22 Q Okay. Now, I wasn't going to ask you about Dr.
23 Benjamin, but since the defendant did, I'm going to. You
24 indicate that she prepared a report --

25 A Yes.

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003903

1 Q -- in this case? Did she reach an opinion as to the
2 cause of death of Victoria Whitmarsh in the report?

3 A Yes.

4 Q What was her opinion as to the cause of death?

5 A The cause of death was a stab wound of the chest.

6 Q Did she list in her report other significant
7 conditions?

8 A Yes, she did.

9 Q What were those --

10 A Well, she --

11 Q -- other significant conditions? And I'm on the
12 second page of her report.

13 A May I refer to it? She's listed, in her words,
14 "cutaneous blunt trauma."

15 Q What is that?

16 A That refers to the contusions of the skin.

17 Q The bruising all over Victoria's body?

18 A Yes.

19 Q She listed that as another significant condition?

20 A Yes.

21 Q And what was Dr. Benjamin's manner of death?

22 A Homicide.

23 Q So, she, like you, believed that this was a
24 homicide?

25 A Yes.

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003904

1 Q She didn't list that it was an accident?

2 A No.

3 Q She didn't list that it was a suicide?

4 A No.

5 Q Did she testify consistent with that?

6 A Yes.

7 Q All right. Now, Mr. O'Keefe asked you about some
8 testimony. And you reviewed Dr. Benjamin's testimony from
9 prior proceedings in this case?

10 A Yes.

11 MR. LALLI: Mr. O'Keefe, I am on page 106 of her
12 testimony from August 25th, 2010. May I approach the witness?

13 THE COURT: Yes.

14 BY MR. LALLI:

15 Q Dr. Dutra, I've got an electronic version of -- does
16 that appear to be a transcript?

17 A Yes.

18 Q Is this -- does it say 106 at the top there?

19 A Yes.

20 Q And is this some of the -- I don't know if you can
21 say you recognize this transcript as actually having been a
22 transcript that you reviewed.

23 A I reviewed everything. I don't remember this exact
24 page.

25 Q All right.

ROUGH DRAFT TRANSCRIPT

003905

1 A Okay.

2 Q This was a page that Mr. O'Keefe asked you about --
3 with respect to other opinions elicited by Dr. Benjamin. On
4 the page, there are questions and answers, correct?

5 A Yes.

6 Q And he asked you about Dr. Benjamin's testimony, "I
7 would have either -- it would have either been homicide, or
8 undetermined." Do you see that?

9 A Yes.

10 Q Just going up and looking at the question itself,
11 was she asked, "And considering just the body in this case,
12 and not the evidence from the homicide detectives, or anything
13 else;" does that preface the question?

14 A Yes.

15 Q "Considering just the body, can you rule out an
16 accident -- an accidental wound sustain during struggle over a
17 knife?" Is that the question asked?

18 A Yes.

19 Q And her answer is, "Given those circumstances, I
20 probably still would not have called that an accident." Is
21 that what her testimony was?

22 A That's what she says.

23 Q That's what the transcript says?

24 A Yes.

25 Q "I would have either -- it would have either been

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003906

1 homicide, or undetermined."

2 A Correct.

3 Q Right? That answer presumes that Dr. Benjamin had
4 not looked at those circumstances outside the body?

5 A Yes.

6 Q Those other facts?

7 A Right.

8 Q Which, as a forensic pathologist, you must do?

9 A As our standard of practice.

10 Q And that was a question -- I don't know if you
11 realize it was a question by the defense attorney.

12 A Okay.

13 MR. LALLI: Nothing else, Your Honor.

14 THE COURT: All right. Anything else, then? Does
15 that complete the testimony?

16 MR. O'KEEFE: Yes. Recross just for a second, Your
17 Honor.

18 RECROSS-EXAMINATION

19 BY MR. O'KEEFE:

20 Q Again, Dr. Dutra, you stated again that Dr. Benjamin
21 stated she didn't have all the facts also. She said -- stated
22 it on this information. Just on this information, she made
23 that -- just on this. My whole thing is, do you feel -- and
24 you testified to this just a minute ago, that you stated you
25 feel all evidence that you can gather together to make a

1 proper determination is necessary, right?

2 A Yes.

3 Q That would then be the alleged suspect, and the
4 alleged victim, their suicidal histories, if they're mentally
5 ill, if they're intoxicated, under any drugs. You would want
6 proper photos of any defensive wounds, any offensive wounds;
7 you know what I'm trying to get at?

8 A Yes.

9 Q You want everything?

10 A [Inaudible].

11 Q You just don't want specific little -- to fit my
12 story. I mean, you want everything, Doctor, to make a proper
13 determination, right?

14 A Correct.

15 Q Okay. No one's disputing -- I'm not disputing the
16 knife caused the wound.

17 MR. LALLI: I'm going to object, Your Honor, to the
18 defendant testifying.

19 THE COURT: All right. Just ask questions. Just
20 ask another question.

21 BY MR. O'KEEFE:

22 Q The wound caused the death?

23 A Yes.

24 Q The case is about, was it an intentional, or an
25 accidental; that's what we're trying to get to.

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003908

1 A Yes.

2 Q So, you need all information. Again, the suspect's
3 condition, if he was extremely intoxicated, couldn't even
4 move, sloppy, you need everything, right?

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

7 THE COURT: Yeah. Just -- I think you made your
8 point, you need all evidence. But that will be sustained.

9 THE WITNESS: Correct.

10 BY MR. O'KEEFE:

11 Q But all evidence is needed?

12 A Right.

13 Q You need really everything? You would have to start
14 again -- and I must say this. You would need -- if the
15 testimony from the neighbors, what they said, because there's
16 stuff that you haven't heard. There's a lot of testimony that
17 disputes whether -- that stated a battery wasn't going on,
18 there was no fighting. You never heard that. There's
19 testimony that you never heard, Doctor.

20 MR. O'KEEFE: This is imperative, Your Honor.

21 BY MR. O'KEEFE:

22 Q They said there was no shouting, no fighting, no --
23 we didn't hear anything. The 9-11 calls, you should have
24 heard that. That should have been supplied to you. The 9-11,
25 and we will hear it, says -- they called in, and they say

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1 right on it, and they can't hide it; nobody's fighting, what
2 are you talking about?

3 Now, they heard, we're a close-knit neighborhood.
4 We all know each other. We're so close together, and you
5 could hear someone fart, excuse me, across the balcony. Now,
6 if somebody was loud, like they're claiming I am, and
7 screaming, and I'm a killer and all this, I've got a motive
8 and intent, I want to get her; you need to know that?

9 MR. LALLI: Your Honor, I object to this rant --

10 THE COURT: Yeah, I got to stop you.

11 MR. LALLI: -- by the defendant.

12 THE COURT: I got to stop you. You're just going
13 on, and on, and on. There's no questions there. You asked
14 your question. That's argument to the jury. You --

15 MR. O'KEEFE: Okay.

16 THE COURT: -- [inaudible] jury, they didn't have
17 all of that.

18 MR. O'KEEFE: I apologize.

19 THE COURT: But I can't let you argue --

20 MR. O'KEEFE: All right.

21 BY MR. O'KEEFE:

22 Q You -- there's just -- you -- again, and I'm -- to
23 cap it up. Last time, Doctor. Please, this is important. To
24 make a really, really -- the best decision possible, I do
25 believe that you stated, Doctor, forgive me, that all the

1 evidence you could get concerning a situation is relative,
2 right? It's very good to have all the evidence you could have
3 to make a determination, right?

4 A Yeah.

5 Q Thank you so much, Doctor. And I -- I mean nothing
6 -- thank you.

7 THE COURT: Anything else, Mr. Lalli?

8 MR. LALLI: No, Your Honor.

9 THE COURT: Thank you very much, Doctor. You can --

10 THE MARSHAL: We have a question, Your Honor.

11 THE COURT: -- go about your business.

12 THE MARSHAL: We have a question.

13 THE COURT: Oh, no. [Inaudible].

14 (Off-record bench conference)

15 THE COURT: All right. There will be no objection
16 to Juror number 1's questions. So, I'm going to read them,
17 and you see if you can answer them.

18 "Is there any way she could have reached the wound
19 site herself? Could she have stabbed herself at this angle,
20 while having the knife in her hand, accidentally?" Could you
21 answer that?

22 THE WITNESS: I think that, mechanistically, it's
23 extremely difficult for several reasons. I don't know her
24 handedness, whether she was left or right-handed. But I think
25 that with her right hand, it would put the hand in such a

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1 position that you couldn't generate enough force with your
2 triceps muscle to extend your elbow to push down. So, I don't
3 think it could be done with a right hand.

4 If the decedent had positioned the knife with the
5 left hand up, here again, just -- she'd have to use her
6 shoulder adductors, the muscles that pull the shoulder down,
7 and kind of maybe push -- in other words, it would be very --
8 I cannot say that it is physically impossible, but I could say
9 that it is biomechanically close to being impossible for a
10 person to stab themselves with this trajectory, in this
11 position.

12 I just -- I knowing what I know about the human
13 body, I don't see that it's an intentional stab. And I
14 suppose that -- since the question included accidental --

15 THE COURT: "Is there any way she could have reached
16 the wound site herself? Could she have stabbed herself at
17 this angle, while having the knife in her hand" --

18 THE WITNESS: I --

19 THE COURT: -- and then it's a quotation mark, or a
20 parenthesis, "Accidentally."

21 THE WITNESS: I suppose if someone positioned the
22 knife, and then pushed themselves against an object. But here
23 again, it's a simple in and out wound. And I think if
24 somebody is pushing against something to get the knife to go
25 in, they're going to see secondary cutting marks around the

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1 knife edge part of the wound. So, I'm not going to say it's
2 impossible, but I'm going to say -- I would say that it's
3 improbable.

4 THE COURT: And the next section, "Is the entrance
5 wound too smooth to be an accidental stabbing? Would it
6 likely be more jagged if accidental?"

7 THE WITNESS: I think that's what I just said. I
8 think that if it had been accidental, there would be more
9 torsional element to the -- which would cause some additional
10 cutting of the skin, where the -- on the sharp edge -- or
11 sharp end of that wound.

12 THE COURT: And the next, "How much force required
13 to make this wound? How about to go up to the handle?"

14 THE WITNESS: We do know that most of the force --
15 in a wound that doesn't go into bone, most of the force is
16 exerted to get through the skin. And different people have
17 different amounts of connective tissue in the skin, so that it
18 -- there are so many elements involved. There's the sharpness
19 and the pointedness of the blade. There's the thickness of
20 the person's skin.

21 But basically, once you get through the skin, the
22 soft tissues have very little resistance. You can cut right
23 through muscle, and the diaphragm is just a muscle. The
24 cirrhotic liver, because of the scar tissue, would have
25 provided some resistance.

1 But basically, how much force is necessary; I would
2 hesitate that -- to put that in pounds, or some number. But
3 it would take -- it would take a significant amount of force,
4 but not a huge amount of force. I hope I'm not being too
5 vague.

6 But there are studies that have been done to see how
7 much force in actual pounds you need to get through the skin.
8 But as I said, it's very variable, and depends on the
9 thickness of the person's skin, and -- but -- and the short
10 answer is, once you get through the skin, there's very little
11 resistance to the passage of the blade.

12 THE COURT: And finally, "At what point in the
13 bleeding out process does bruising stop?"

14 THE WITNESS: Bruising basically stops when blood
15 circulation stops. So, what happens is, as long as you are
16 maintaining a pulse -- because what bruising is, is you have
17 damaged and broken some -- the capillaries in the skin, so
18 they leak the blood into the tissue.

19 And once the blood stops flowing, once the heart
20 stops beating is really when you stop bruising. So, as long
21 as your heart is beating -- once your heart stops beating,
22 that's basically when you stop showing evidence of bleeding
23 into the skin from a contusion.

24 THE COURT: All right. So, without objections from
25 either party, these questions were read. Any further

1 question?

2 MR. LALLI: No, Your Honor.

3 THE COURT: Any further question?

4 MR. O'KEEFE: No, Your Honor.

5 THE COURT: All right.

6 THE MARSHAL: One more question, Your Honor.

7 MR. O'KEEFE: Do you want us to approach, Your
8 Honor?

9 THE COURT: No. Oh, I'm sorry. Yes, since there's
10 another question.

11 (Off-record bench conference)

12 THE COURT: All right. There being no objections to
13 this -- this is Juror number 8. I'm going to put Juror number
14 8 on the note, just for the record, and this will be part of
15 the record.

16 Where -- excuse me. "Was there any evidence of her
17 mouth being covered, or contusions around the mouth?"

18 MR. LALLI: Your Honor, if I could just put up
19 State's Exhibit number 81.

20 THE COURT: Why don't you do that.

21 THE WITNESS: Okay. I didn't -- I don't recall
22 anything in the report, or in my examination of the
23 photographs of the body, seeing anything that indicated that
24 the mouth had been covered, or --.

25 THE COURT: Okay. The next question, "Could you

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1 please state again how long you feel it took for this person
2 to die?"

3 THE WITNESS: Well, I can state with some certainty
4 that it's not an immediate death. It takes time for the blood
5 to flow out of the injured vessels. And it takes a little bit
6 of time for the lung to collapse; it depends on how quickly
7 the air is pulled into the chest wound.

8 But in general, I'd fall back on what I said
9 earlier, that I would estimate that it took about 10 to 30
10 minutes for her to -- after the stab wound, for her to
11 actually die, and her heart to stop beating.

12 THE COURT: All right. Any further questions?

13 MR. LALLI: No, Your Honor.

14 MR. O'KEEFE: Yes, Your Honor, if I could have one
15 question. And I don't even need to --

16 FURTHER RECROSS-EXAMINATION

17 BY MR. O'KEEFE:

18 Q Dr. Dutra, did you see the testimony -- and I'm sure
19 Mr. Lalli will -- is very aware of this, that Dr. Benjamin
20 stated with her hep C and her cirrhosis of the liver, she
21 would have bled out rather quickly? Do you remember seeing
22 that in forming your opinion?

23 A I don't remember her exact words as to that. As I
24 read through the testimony, I found myself to be a little less
25 in agreement with Dr. Benjamin as to the amount of -- or the

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1 injury to the coagulation system that goes along with
2 cirrhosis and hepatitis C.

3 I found that she had some -- but, in general, I
4 think that was a -- not a major disagreement, just one of
5 degree of opinion. And it's a very variable thing anyway.
6 Some people are different.

7 Q Thank you, Doctor.

8 THE COURT: Any others?

9 MR. LALLI: Just one follow up.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. LALLI:

12 Q Dr. Dutra, you indicated for us that your background
13 -- or you have substantial experience in -- as a hospital
14 pathologist; is that correct?

15 A I -- yeah. Yes.

16 Q Do you believe that that background makes you better
17 suited to assess the cirrhotic nature of Victoria Whitmarsh's
18 body, than was Dr. Benjamin?

19 A I respect Dr. Benjamin. And I have found that in
20 cases where I've reviewed of hers, I've never been in any
21 substantial disagreement with her. But I'm boarded in
22 blood-banking and transfusion medicine. And part of
23 transfusion medicine is study of coagulation, and being able
24 to answer clinical questions regarding coagulopathies. So, I
25 do think that I have a little bit more experience in that one

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1 small area than she does.

2 Q All right. Thank you.

3 MR. LALLI: Nothing else.

4 THE COURT: All right.

5 MR. O'KEEFE: Well, I have a recross.

6 FURTHER RECROSS-EXAMINATION

7 BY MR. O'KEEFE:

8 Q Doctor, then you just stated quite clearly, your
9 specialty is more medicine and alcohol, you know, in medical
10 situations like this. If someone has prolonged -- for years
11 used excessive alcohol and medication, pills, prescription
12 pills, does that not thin the blood, and therefore, possibly
13 lead to early bleeding or quicker bleeding?

14 A You can't tell from looking at someone. Certainly,
15 the only real goal standard would be some blood tests that
16 would evaluate the coagulation system. And those -- I have
17 seen no record of those having been done on her. But from the
18 fact that she's not in liver failure, she's not jaundiced, and
19 is -- well, she does have cirrhosis, and the alcohol in her
20 system.

21 I -- my personal opinion is, I don't think that it
22 significantly affected her coagulation system, but I can't
23 deny that it could have had some effect.

24 Q Okay. And I appreciate that. That's what we're
25 here --

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1 THE COURT: Anything else?

2 MR. O'KEEFE: We're trying to get as much --

3 THE COURT: Anything else?

4 MR. LALLI: No, Your Honor.

5 THE COURT: Anything else? Anything else?

6 UNKNOWN JUROR: We're good over here.

7 THE COURT: All right.

8 Don't converse among yourselves, or anyone else, on
9 any subject connected with the trial; read, watch, or listen
10 to any report of, or commentary on the trial, by any person
11 connected with the trial, or by any medium of information,
12 including, without limitation, newspapers, television, radio.
13 Don't form or express any opinion on the trial until the cause
14 is finally submitted to you.

15 We'll see you in about an hour and 15 minutes. And
16 we're going to work until about 4:15, 4:30. Thank you,
17 Doctor.

18 (Outside the presence of the jury)

19 THE COURT: All right. Outside the presence of the
20 jury. Do you have some -- who are you going to call this
21 afternoon?

22 MR. LALLI: Who are we calling next, Your Honor?

23 THE COURT: Yeah, when we --

24 MR. LALLI: We're going to be --

25 THE COURT: -- get back from lunch.

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1 MR. LALLI: We will be calling Jocelyn Maldonado,
2 who is the crime scene analyst who will be somewhat lengthy.
3 We have Edward Guenther, the latent print examiner. And we
4 have Jennifer Bas, the DNA analyst. Quite frankly, I'm not
5 sure that we're going to get much further than that.

6 THE COURT: Well, that's fine. I don't want to get
7 any -- you know, I don't want people waiting around. I'm
8 going to work until about 4:15 to accommodate Mr. Maningo, so.

9 MR. MANINGO: Thank you, Your Honor.

10 MR. LALLI: I'm anticipating, you know, in that
11 time, maybe three witnesses.

12 THE COURT: Well, it's up to you. But if you have
13 -- I'm going to have to recess without finishing them up; you
14 understand that, right?

15 MR. LALLI: No, I understand that. Maybe we'll just
16 go with the crime scene analyst and the latent print examiner,
17 call everyone off. Just -- and we -- that may -- we may
18 conclude before --

19 THE COURT: That's fine, let's do that.

20 MR. LALLI: -- 4:15 or so, but I --

21 THE COURT: Let's do -- just to be on the safe
22 side.

23 MR. LALLI: Understood.

24 THE COURT: It's very important.

25 MR. LALLI: Very good.

ROUGH DRAFT TRANSCRIPT

003920

1 THE COURT: All right.

2 MR. LALLI: We can do that. Thank you, Your Honor.

3 THE COURT: So, I'll just -- I just want to make a
4 record on, we did have discussions at the bench. And Mr.
5 O'Keefe objected to Dr. Timothy Dutra's testimony, because he
6 didn't do the original autopsy, he had a right to confront
7 witnesses, and he wasn't there. And but -- so, I just wanted
8 to make a record of that. Do you want to say anything
9 regarding that?

10 MR. O'KEEFE: Yeah, Your Honor. I just feel -- just
11 to protect myself when I --

12 THE COURT: Um-hum.

13 MR. O'KEEFE: Thank you, Your Honor. I do feel it's
14 a violation -- of course, I have to state for protection, the
15 Sixth Amendment Right confrontational clause, my due process,
16 Fourteenth Amendment, for -- you know. I do believe as to
17 Crawford vs. Mendez, they stated that the true -- the United
18 States Supreme Court had a real problem, unless the original
19 coroner, or testing was done by the person that did it.

20 And I'm just trying to state that, you know, she did
21 the examination that was closer here. It's been years. You
22 know, I just wanted to make that objection.

23 THE COURT: Sure. Mr. --

24 MR. LALLI: Your Honor, I was very careful to only
25 elicit Dr. Dutra's opinions, which are proper. It's my

ROUGH DRAFT TRANSCRIPT

003921

1 position -- and you know, the appellate courts, if we ever get
2 to an appellate review in this case, they can make their own
3 determination.

4 But it's my position that in the defendant then
5 asking Dr. Dutra that -- for Dr. Benjamin's opinions, not only
6 did he open the door to me then going into those areas, but he
7 also waived any objection that he had to Dr. Dutra testifying,
8 because he did exactly what we're not allowed to do.

9 And I understand the Court allowed him to do it, and
10 that was a strategic decision that the Court allowed the
11 defendant to make. But it's my position, he did exactly what
12 we're not supposed to do. He violated the confrontation
13 clause, and he now cannot raise that claim on appeal. But
14 that's something that an appellate court --

15 THE COURT: Yeah.

16 MR. LALLI: -- will determine.

17 THE COURT: Well, again, we had a conference at the
18 bench. He objected. And we did talk about, you're just going
19 to go to the opinions of Dr. Dutra, we're not going to get to
20 any opinions of Dr. Benjamin; but the defendant insisted that
21 he wants to get opinions of Dr. Benjamin.

22 And I did warn him that if he did do that, which is
23 -- you know, he's opening the door to redirect examination
24 regarding Dr. Benjamin.

25 MR. O'KEEFE: And --

ROUGH DRAFT TRANSCRIPT

003922

1 THE COURT: And he said he understood, and took the
2 risk. And so, everything's fine. I mean, I --

3 MR. O'KEEFE: And if I may, Your Honor.

4 THE COURT: The record is what it is.

5 MR. O'KEEFE: And if I may, Your Honor. Thank you;
6 you did. I would stipulate to that on the record. But that
7 was after I was denied. I objected properly and timely before
8 you overruled and allowed him to do that.

9 THE COURT: That's correct.

10 MR. O'KEEFE: I did make the objection beforehand.
11 And once -- and he knew beforehand that he should have got Dr.
12 Benjamin, since he wanted to prosecute me on that case. He's
13 very trained. He knows he should have got the original
14 coroner. The law states that clear. I only went into that
15 area for the record after I was denied on my objection.

16 THE COURT: Absolutely.

17 MR. O'KEEFE: God bless you, Your Honor.

18 THE COURT: Let the record reflect -- absolutely.
19 All right. We'll see you back.

20 MR. MANINGO: All right. We'll see you after lunch,
21 Brian.

22 MR. O'KEEFE: Okay, thank you.

23 MR. LALLI: Back at about 2:30, Your Honor?

24 THE COURT: Something like -- well, I said -- I said
25 an hour. But yeah, that's fine.

ROUGH DRAFT TRANSCRIPT

003923

1 (Court recessed at 1:14 p.m. until 2:29 p.m.)

2 (Within the presence of the jury panel)

3 (Pause in the proceedings)

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

7 (Pause in the proceedings)

8 THE MARSHAL: All right. Let's come to order,
9 please. Make sure all cell phones are turned off.

10 THE COURT: All right. Parties, stipulate to the
11 presence of the jury?

12 MR. LALLI: Yes, Your Honor.

13 MR. O'KEEFE: Yes, Your Honor.

14 THE COURT: All right. Call your next witness.

15 MR. LALLI: Your Honor, the State calls Jocelyn
16 Maldonado.

17 THE MARSHAL: Please remain standing, and raise your
18 right hand, and face the clerk.

19 JOCELYN MALDONADO, STATE'S WITNESS, SWORN

20 THE MARSHAL: If you would have a seat, and slide up
21 to the microphone. And state and spell your name for the
22 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

ROUGH DRAFT TRANSCRIPT

003924

1 BY MR. LALLI:

2 Q Ms. Maldonado, how are you employed?

3 A I am a crime scene analyst with the Las Vegas
4 Metropolitan Police Department.

5 Q Were you working in that capacity back on November
6 6th of 2008?

7 A Yes.

8 Q Directing your attention to the very early morning
9 hours of that day, did you respond to an address of 5001 El
10 Parque Avenue, unit number C35?

11 A Yes.

12 Q What was your purpose in responding to that
13 location?

14 A It was for a death or homicide investigation.

15 Q Were you called to document and process the crime
16 scene?

17 A Yes, I was.

18 Q All right. I'm going to show you what we've marked
19 as State's Exhibit number 1. What is this?

20 A This is a crime scene diagram that I completed in
21 the CAD program, which is a computer program we use for doing
22 crime scene diagrams.

23 Q All right. You actually created this diagram?

24 A Yes, I did.

25 Q What I'd like to do is zoom-in on some things.

ROUGH DRAFT TRANSCRIPT

003925

1 There's a number 3 there; do you see that?

2 A Yes.

3 Q And if I were to scooch it over a little bit, now we
4 see other numbers. We see a number 6, a number 5, a number 4;
5 do you see that?

6 A Yes, I do.

7 Q What do those various numbers -- just in general,
8 not specifically in this case. But what do the various
9 numbers represent?

10 A Those represent items of evidence that were
11 recovered at the scene, or documented at the scene.

12 Q And then, if we take State's Exhibit number 1, and
13 we move down a little bit, we have a legend; is that correct?

14 A Yes.

15 Q How does the legend correspond to the various
16 numbers that we see?

17 A The number in the legend corresponds to the number
18 in the diagram, and provides a description of that particular
19 item of evidence.

20 Q So, one of the ways that you document a crime scene
21 is by creating a crime scene diagram?

22 A Yes.

23 Q And it puts in perspective where various items of
24 evidence are located within a scene?

25 A Yes, it does.

ROUGH DRAFT TRANSCRIPT

003926

1 Q When you go to a crime scene, do you normally -- and
2 let's use the case of a homicide investigation. Do you
3 usually go by yourself, or is it common for Metro to send
4 teams of crime scene analysts out?

5 A For a homicide, it's common for the department to
6 send a teams out.

7 Q And can you explain generally how that works? How
8 does the team go about processing a particular scene?

9 A Usually, at least two crime scene analysts will
10 respond to the scene, along with a crime scene analyst
11 supervisor. And the supervisor will usually decide what
12 duties and responsibilities each crime scene analyst is
13 responsible for, for that particular scene. So, we kind of
14 divide up the work amongst the crime scene analysts that are
15 there.

16 Q Was there a crime scene supervisor on this
17 particular scene?

18 A Yes.

19 Q Who was that?

20 A That was Gary Reed (phonetic).

21 Q Were you teamed up with other crime scene analysts
22 to process this scene?

23 A Yes, I was.

24 Q Who were you teamed up with?

25 A Chelsea Collins.

ROUGH DRAFT TRANSCRIPT

003927

1 Q Okay. And with respect to Ms. Collins, what were
2 her responsibilities at the scene?

3 A Her responsibilities were to take photographs of the
4 scene, and to generate a crime scene investigation report.

5 Q And your responsibilities?

6 A My responsibilities were to collect the evidence,
7 impound the evidence, construct a sketch of the scene, and
8 also, the computer-generated diagram.

9 Q And that diagram obviously is State's Exhibit number
10 1?

11 A Yes.

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

13 THE COURT: Yeah.

14 BY MR. LALLI:

15 Q Ms. Maldonado, I'm going to show you a number of
16 photographs. And what I'd like you to do, because I think
17 there may be some gaps in here, I'd like you to look at these.
18 And as you're looking at them, as you're flipping through
19 them, just state for the record what exhibit number is on the
20 photo.

21 A Okay.

22 Q Do you see what I mean?

23 A For each individual photo?

24 Q Yes. Just as you're looking at those, have a peek
25 at them, and then just state for the record what exhibit

ROUGH DRAFT TRANSCRIPT

003928

1 number it is.

2 A Exhibit number 10. Number 8.

3 Q And if you would, try not to show the jury until
4 they're admitted into evidence, if that's possible.

5 A Number 7. Number 11. Number 12. Number 13.

6 Number 14. Number 15. Number 16. Number 17. Number 18.

7 Number 19. Number 20. Number 21. Number 24. Number 25.

8 Number 26. Number 27. Number 28. Number 29. Number 30.

9 Number 31. Number 32. Number 33. Number 34.

10 Number 35. Number 36. Number 37. Number 38.

11 Number 39. Number 40. Number 41. Number 42. Number 43.

12 Number 44. Number 45. Number 46. Number 47. Number 48.

13 Number 49. Number 50. Number 51. Number 52. Number 53.

14 Number 54. Number 55. Number 56. Number 57. And number

15 132.

16 Q Are those fair and accurate depictions of the crime
17 scene that you observed?

18 A Yes.

19 MR. LALLI: Your Honor, I would move for the
20 admission of those exhibits.

21 THE COURT: I don't remember the exhibits. But --
22 do you remember the exhibits, Ms. Clerk, that they just read?

23 THE CLERK: Yes.

24 THE COURT: All right. Then, any objection?

25 MR. O'KEEFE: No objection, Your Honor.

ROUGH DRAFT TRANSCRIPT

003929

1 THE COURT: So, they will be admitted, all right?
2 (Exhibits 7; 11 through 21; 24 through 57, and 132 are
3 admitted)

4 THE COURT: Will you put that on my list, too, Ms.
5 Clerk, when you get a chance?

6 THE CLERK: Okay.

7 THE COURT: All right.

8 BY MR. LALLI:

9 Q Okay. Can you indicate on State's Exhibit number 1
10 where the kitchen area of this apartment is?

11 A Yes. Would you like me to circle it?

12 Q Yes, if you could. Now, I'd like to show you
13 State's Exhibit number 5. What are we seeing there?

14 A That is a photograph from the living room area,
15 looking into the kitchen.

16 Q Can you describe some of the items that we're
17 seeing? For instance, there's a couch. Is there anything
18 unique about the couch?

19 A Yes. It appeared that the couch was made up as a
20 bed. There were bedding items on top of the couch.

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

22 A This is a photograph of the kitchen area.

23 Q This is State's Exhibit number 11.

24 A That's another photograph of the kitchen.

25 Q And then, if we continue to pan, we see Exhibit

ROUGH DRAFT TRANSCRIPT

003930

1 number 12?

2 A Another photograph of the kitchen, and part of the
3 living room.

4 Q Now, I'm going to show you State's Exhibit number
5 13, and then I will go to Exhibit number 14. What is that?

6 A That is a photograph of the knife block that was
7 located on top of the kitchen counter.

8 Q And does there appear to be a vacant slot?

9 A Yes, there does. There is.

10 Q All right. How many bathrooms are there in this
11 unit?

12 A There were two bathrooms.

13 Q One off the master -- off the master bedroom?

14 A Yes.

15 Q And can you just indicate on the diagram where the
16 other bathroom is?

17 A It was located in the hallway.

18 Q And if I show you State's Exhibit number 15, what is
19 that?

20 A That is a photograph of the bathroom located in the
21 hallway.

22 Q And is -- State's Exhibit number 16?

23 A A photograph of the counter top, or the sink basin
24 in the bathroom in the hallway.

25 Q How many bedrooms were in this unit?

ROUGH DRAFT TRANSCRIPT

003931

1 A There were two bedrooms in the unit.

2 Q In addition to the master bedroom, which we've

3 talked a lot about during the course of the trial, can you

4 indicate where the other bedroom is?

5 A There was the southwest bedroom.

6 Q What are we seeing in State's Exhibit number 17?

7 A That's a photograph from the doorway of the

8 southwest bedroom, looking into the bedroom.

9 Q Number 18?

10 A A photograph of inside the southwest bedroom.

11 Q And number 19?

12 A Another photograph of inside the southwest bedroom.

13 Q Now, I'm going to show you State's Exhibit number

14 21. A little difficult to see. Let me throw the lamp on.

15 Can you -- I'm not sure if you can see what that is.

16 A Yes, I can see that.

17 Q Okay, what is that?

18 A That's a photograph from the hallway, looking

19 through the doorway into the northwest master bedroom.

20 Q What are we seeing in State's Exhibit number 25?

21 A That is a photograph of the victim on the floor in

22 the northwest master bedroom.

23 Q What about State's Exhibit number 26?

24 A That is a photograph of the bed located in the

25 northwest master bedroom.

ROUGH DRAFT TRANSCRIPT

003932

1 Q And what specifically are we seeing in State's
2 Exhibit number 27?

3 A That's a closer view of the bed in the northwest
4 master bedroom, including some of the items that are located
5 on top of the bed.

6 Q What are those items?

7 A There were pillows with pillow cases, there was a
8 pillow without a pillow case, there was a loose pillow case,
9 there was a knife, and there was a sock on top of the bed.

10 Q With respect to the knife and the -- well, was the
11 knife impounded?

12 A Yes, it was.

13 Q What about the bedding? Did you impound the
14 bedding?

15 A The loose pillow case that's covering the knife was
16 impounded. The top sheet, which the knife is located on top
17 of, was impounded. And the sheet underneath the top sheet was
18 also impounded. And the sock was also impounded.

19 Q Ms. Maldonado, I'm going to show you what we've
20 marked as State's proposed 127 for identification purposes.
21 Do you recognize that?

22 A Yes, I do.

23 Q What is it?

24 A This is the package that I impounded the two sheets
25 from the bed in the northwest master bedroom.

ROUGH DRAFT TRANSCRIPT

003933

1 MR. LALLI: Your Honor, I'd move for the admission
2 of State's proposed 127.

3 THE COURT: Any objection?

4 MR. O'KEEFE: No, Your Honor.

5 THE COURT: It will be admitted.

6 (Exhibit 127 is admitted)

7 BY MR. LALLI:

8 Q What are we seeing in State's Exhibit number 29?

9 A That is a photograph of the light switch located on
10 the south wall in the northwest master bedroom.

11 Q And if we look at State's Exhibit number 26, does
12 that give us some perspective on the light switch?

13 A Yes, it does.

14 Q Can you just circle the light switch --

15 A Yes.

16 Q -- in this exhibit? And then, can you describe for
17 us, going back to State's Exhibit number 29, what the
18 substance is on top of the -- or to the top left of the light
19 switch?

20 A That's apparent blood.

21 Q Did you make any effort to preserve that, or to test
22 that?

23 A I did make an effort to preserve that, yes, when I
24 collected it.

25 Q Okay. Can you explain for us how you collect that?

ROUGH DRAFT TRANSCRIPT

003934

1 A I always wear gloves when handling or collecting
2 evidence, especially biological fluids. I used a sterile
3 cotton-tipped swab. I applied one drop of distilled water to
4 the tip of the swab. I then touch the stain to collect part
5 of the sample onto the swab.

6 I placed the wooden part of the swab through a
7 little plastic container, which has a cap on it and two holes
8 in it, so the wet part of the swab goes in the plastic cap so
9 it's preserved, and it can also air-dry because of the two
10 little holes.

11 That swab is then placed into a white biological
12 evidence envelope, where the pertinent information regarding
13 the case is filled out, the event number, the item number, my
14 initials, my personnel number.

15 And that small white envelope is then placed into a
16 manilla envelope with a label identifying, again, the event
17 number, the description, my personnel number. That's placed
18 on the outside of the manilla envelope, which is then sealed
19 with red evidence tape, which I initial and date.

20 Q I'm going to show you State's Exhibit number 31.
21 What are we seeing there?

22 A That's a photograph of the northwest master bedroom,
23 just a different angle.

24 Q And if you look to the right of the bed there, down
25 on the ground, does there appear to be an object?

ROUGH DRAFT TRANSCRIPT

003935

- 1 A Yes, there does.
- 2 Q Do you know what that is?
- 3 A That is a jacket.
- 4 Q I'm going to show you State's Exhibit number 30.
- 5 What is that?
- 6 A That's a photograph of a black jacket.
- 7 Q And there appears to be some white objects down near
- 8 the jacket. What is that?
- 9 A That is a shoe. And also, the other white items are
- 10 slats from the vertical blinds.
- 11 Q So, if we go back and look at State's Exhibit number
- 12 31, does it appear as though there are slats missing from the
- 13 blinds there?
- 14 A Yes, it does.
- 15 Q And those slats were on the ground around the jacket
- 16 that we're seeing there?
- 17 A Yes.
- 18 Q All right. I'm going to show you State's Exhibit
- 19 number 31. What's that?
- 20 A That is another photograph of the northwest master
- 21 bedroom.
- 22 Q Does it show closet doors in the background?
- 23 A Yes, it does.
- 24 Q And I'm going to show you State's Exhibit number 33.
- 25 Does that also show closet doors?

ROUGH DRAFT TRANSCRIPT

003936

1 A Yes, it does.

2 Q Can you describe anything unusual about those doors
3 for us?

4 A The center door and the right door appear to be
5 somewhat off the track at the top. The rollers were not
6 completely attached at the top.

7 Q In the crime scene report, it indicates that there
8 appeared to have been a disturbance in this bedroom. Was that
9 the observation that you had as well?

10 A Yes.

11 Q Based upon what?

12 A Based upon the doors, the closet doors being off the
13 track at the top. Based upon the fact that the vertical blind
14 slats were located on the floor instead of hanging from the
15 blinds. And also, some of the bedding appeared to be somewhat
16 disturbed.

17 Q Okay. I'm going to show you State's Exhibit number
18 34. What's that?

19 A That is a photograph from inside the northwest
20 master bedroom, looking into the master bathroom.

21 Q I'm going to show you State's Exhibit number 35.
22 What are we seeing there?

23 A That is a photograph of the floor area inside the
24 master bathroom.

25 Q And if I show you State's Exhibit number 36, what

ROUGH DRAFT TRANSCRIPT

003937

1 are we looking at there?

2 A That is a pair of black stretch pants with white
3 piping, with apparent blood on them, on the floor inside the
4 master bathroom.

5 Q Now, I don't know if you can tell from that
6 photograph. Does it appear as though they were folded over,
7 and put down next to the hamper there?

8 A Yes, it does.

9 Q With respect to those stretch pants, did you impound
10 those?

11 A Yes, I did.

12 Q Ms. Maldonado, I'm going to show you what we've
13 marked as State's proposed 126 for identification purposes.
14 Do you know what that is?

15 A Yes, I do.

16 Q What is it?

17 A That is a package containing one pair of black
18 stretch pants, size small, with white piping on the pant legs,
19 and apparent blood.

20 Q The pants that are depicted in the photograph on the
21 scene --

22 A Yes.

23 Q -- on the -- on the viewer?

24 A Yes.

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

ROUGH DRAFT TRANSCRIPT

003928

1 State's proposed 126.

2 THE COURT: Any objection?

3 MR. O'KEEFE: No objection, Your Honor.

4 THE COURT: It will be admitted.

5 (Exhibit 126 is admitted)

6 BY MR. LALLI:

7 Q Now, Ms. Maldonado, what I want to do is I want to
8 show the jury the bag. And you talked about certain
9 information that's contained on the bag, how the bags are
10 sealed. And so, this is a little easier to work with, because
11 it's a littler smaller. I'm going to just pop this up there.
12 What are we -- what are we looking at?

13 MR. LALLI: And for the record, I'm showing the jury
14 State's Exhibit number 126.

15 THE WITNESS: The large white label is the label
16 that I complete. It's an evidence impound label. It contains
17 the date and the time that I arrived on the scene. It
18 includes an event number which is related to the scene.

19 BY MR. LALLI:

20 Q Where is the event number? Let me see if I can
21 zoom-in on it.

22 A Yes, that's the event number in the top right
23 corner.

24 Q What's the event number?

25 A 081105-3918.

ROUGH DRAFT TRANSCRIPT

003929

1 Q What is an event number insofar as it relates to a
2 case?

3 A It's a ten-digit number. The first two digits
4 represent the year. The second two digits represent the
5 month. The next two digits represent that particular day of
6 the month. There's then a hyphen or a dash. And the last
7 four digits represent that particular event for that
8 particular day.

9 Q Is the event number unique to each particular event
10 that Metro responds to?

11 A Yes, it is.

12 Q So, this event number is the unique Metro case
13 number for this case?

14 A Yes, it is.

15 Q And all the evidence impounded is stored under that
16 same case number?

17 A Yes.

18 Q All right. Now, there's some other information on
19 the bag; is that correct?

20 A Yes.

21 Q It indicates a homicide?

22 A Yes.

23 Q And an address?

24 A Yes.

25 Q That's the address from which these pants were

ROUGH DRAFT TRANSCRIPT

003940

1 impounded?

2 A Yes. Uh-huh.

3 Q And then, there are some other numbers there, that
4 J6920M. What's that?

5 A That is my personal identifier. My first initial,
6 my personnel number that was assigned to me by the police
7 department, and then my last initial.

8 Q And then if we move it over, is that just your
9 signature there?

10 A Yes, my signature and P number.

11 Q Now, we've got this item number. What does that
12 mean?

13 A That's an item number that I designated for that
14 particular item to impound it.

15 Q Does the item number on the evidence bag correspond
16 to the item number on your crime scene diagram?

17 A Yes.

18 Q And then, there's the description there; is that
19 correct?

20 A Yes, that's correct.

21 Q Now, you said that, typically, evidence bags are
22 sealed?

23 A Yes, they are.

24 Q I'm going to show you the back of this. What are we
25 looking at here?

ROUGH DRAFT TRANSCRIPT

003941

1 A The red tape is the evidence seal, which is placed
2 across the back of the bag. It then has my initials and P
3 number on it to designate that I did secure that seal on that
4 particular bag. And if the seal was torn, you would be able
5 to tell. There would be a tear either in the bag, or on the
6 seal. It's for chain of custody purposes.

7 Q All right. To make sure that the evidence is
8 preserved, and nobody tampers with it?

9 A Yes.

10 Q Now, if I show the jury the bottom part of the bag
11 here, there is some blue tape on it; is that correct?

12 A Yes.

13 Q What does that signify?

14 A That indicates that another department employee
15 entered that particular bag. It would usually be somebody
16 from the forensic lab. And they resealed the bag with the
17 blue tape when they were finished with the package.

18 Q And if I go back to the white label on the front,
19 there's an area here that's called chain of custody. Do you
20 see that?

21 A Yes.

22 Q What is that?

23 A That is record of chain of custody as to who else
24 entered that particular bag, their personnel number, and the
25 date.

ROUGH DRAFT TRANSCRIPT

003942

- 1 Q Do you recognize whose writing that is?
- 2 A Yes, I do.
- 3 Q Who's that?
- 4 A That is Jennifer Bas.
- 5 Q Who is she?
- 6 A She works in our forensic lab.
- 7 Q Is she a DNA analyst?
- 8 A Yes, she is.
- 9 Q In this particular bedroom area -- let's go back and
- 10 talk about the master bedroom. What are we seeing in State's
- 11 Exhibit number 39? I'll zoom-out here.
- 12 A That is a photograph of the inside of the medicine
- 13 cabinet that was in the master bathroom.
- 14 Q And are those pill bottles down there at the bottom?
- 15 A Yes, they are.
- 16 Q I'm going to show you State's Exhibit number 40.
- 17 What is that?
- 18 A Those are close-up views of the pill bottles that
- 19 were located in the medicine cabinet.
- 20 Q Why do you film pill bottles?
- 21 A They at one point in time could be pertinent to the
- 22 case. We also want to indicate the name on the prescription,
- 23 the type of medication, and any other information that might
- 24 be pertinent within the investigation.
- 25 Q Can you read the name on the medication?

ROUGH DRAFT TRANSCRIPT

003943

- 1 A Yes, I can.
- 2 Q What is it?
- 3 A Victoria Whitmarsh.
- 4 Q All right. Now I want to go back to State's Exhibit
5 number 35. What are we looking at there? And I've zoomed-in
6 on the photograph a little bit.
- 7 A That is a photograph of the linoleum, or the vinyl
8 floor tiles inside the master bathroom, adjacent to the
9 doorway of the bedroom.
- 10 Q Did you see any evidence on the linoleum floor tile?
- 11 A Yes, I did.
- 12 Q What did you see?
- 13 A I saw some type of bloody impression, which appeared
14 to be a partial footwear pattern.
- 15 Q So, did you do anything to enhance what you saw on
16 the tile?
- 17 A Yes, I did.
- 18 Q Can you tell us what you did?
- 19 A A chemical called leucocrystal violet was applied to
20 that particular area on the floor tile. It turns a purple
21 color when it's applied to the surface, which helps you
22 visualize, and or photograph the impression in blood.
- 23 Q So, if I show you now State's Exhibit number 41,
24 what's that?
- 25 A That's a close-up view of the same tile, with the

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1 leucocrystal violet chemical applied to it.

2 Q What are we seeing in State's Exhibit number 42?

3 A That's a photograph of the actual tile once it was
4 removed from the floor, before it was impounded as evidence.

5 Q Now, I want to go back to talk about the bed,
6 State's Exhibit number 27. And we see that there's the black
7 item that's close -- kind of closest to us in the photo. You
8 indicated that that is a sock?

9 A Yes.

10 Q Did you observe a second sock, or a partner sock?

11 A Yes, I did.

12 Q Where was that at?

13 A That was located under the comforter and on top of
14 the top sheet, between the comforter and the top sheet, at the
15 foot of the bed.

16 Q So, one sock on top; one sock underneath the covers?

17 A Yes.

18 Q All right. I'm going to show you State's Exhibit
19 number 24. What are we seeing there?

20 A That is a photograph of the decedent on the floor in
21 the northwest master bedroom, at the foot of the bed, or on
22 the north side of the bed.

23 Q Does there appear to be an item lying on her?

24 A Yes.

25 Q What is that?

ROUGH DRAFT TRANSCRIPT

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1 A That was a black and white scarf that had tassels
2 and fringe on each end, and it was also stained with apparent
3 blood.

4 Q I'm going to show you State's Exhibit number 50.
5 What's that?

6 A That is a close-up view of that same scarf, which is
7 intertwined or attached to an elastic hair band on the
8 victim's right wrist.

9 Q What are we seeing in State's Exhibit number 51?

10 A That's another view of the same scarf and the
11 elastic hair band attached to the victim's right wrist. It's
12 a top view, or from the top of the hand.

13 Q So, was the scarf intertwined with the hair band
14 actually on the victim's wrist when you observed her?

15 A Yes, it was.

16 Q And what are we seeing in State's Exhibit number 52?

17 A That's a photograph of the scarf and the elastic
18 band as it was laid out, to document the bloodstained areas
19 and the condition of the scarf and elastic band.

20 Q What are we seeing in State's Exhibit 132?

21 A That's a close-up view of the elastic hair band,
22 with the fringe or the tassels intertwined and attached to it.

23 Q Did you impound that?

24 A Yes, I did.

25 Q Ms. Maldonado, I want to show you what we've marked

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1 as State's proposed Exhibit 124 for identification purposes.

2 Do you recognize that?

3 A Yes.

4 Q What is it?

5 A That is the package that contains one white and
6 black scarf with fringe and tassels on one end, wrapped around
7 a brown elastic hair band, with apparent blood.

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

10 THE COURT: Any objection?

11 MR. O'KEEFE: No, Your Honor.

12 THE COURT: It will be admitted.

13 (Exhibit 124 is admitted)

14 BY MR. LALLI:

15 Q Ms. Maldonado, I'm showing you State's Exhibit
16 number 6. Now we're out in the living room area. What is
17 this?

18 A That is a photograph of the living room floor, and
19 into the hallway area.

20 Q What do the cones represent, or what are they there
21 for?

22 A The cones were placed on the floor to designate a
23 wire -- or wires that were coming off of a cartridge from a
24 taser. It was just designating the directionality of it.

25 Q So you could see where that wire actually was?

ROUGH DRAFT TRANSCRIPT

003947

1 A Yes.

2 Q Is it difficult to see the wire on the carpet?

3 A Yes, it was.

4 Q And then, if we go to our legend, and we see number
5 1 as "taser cartridge with wires;" number 2, "taser probe;"
6 number 3 is "taser blast door."

7 A Yes.

8 Q What's a blast door?

9 A A blast door is a little piece of plastic that's
10 actually attached to the taser cartridge. And when the taser
11 is fired or deployed, the blast door comes off of the
12 cartridge. And we usually will find it, hopefully somewhere
13 at the scene.

14 Q And then, if we go down, we see "AFID tag," or
15 "A-F-I-D tag." What are those?

16 A AFID tags are anti-felon identification tags, that
17 also come out of the cartridge when the taser is deployed.
18 They're little, very, very small circular pieces of paper that
19 have a serial number on them, that are specific to that
20 cartridge that was fired from the taser. There's usually
21 about 20 or 30 of them that come out of the cartridge.

22 Q And do they let us know approximately where the
23 taser was when it was discharged?

24 A Yes.

25 Q And they are unique to a particular taser cartridge?

ROUGH DRAFT TRANSCRIPT

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1 A Yes, they are.

2 Q I don't know if you know the answer to this. But
3 once a taser cartridge is utilized, can you use it again, or
4 is it done?

5 A I don't believe you can, no.

6 Q All right. So, once the blast doors and the probes,
7 and the AFID tags, and everything comes shooting out of that
8 taser, you basically have to put a new cartridge on the taser
9 for it to work again?

10 A For the cartridge to work, yes.

11 Q All right. I'm going to show you State's Exhibit
12 number 55. What's that?

13 A That is a photograph of a red purse and two wallets.

14 Q Where was the purse located?

15 A I believe the purse was originally located inside
16 the northwest master bedroom.

17 Q And it was brought out to the kitchen?

18 A Yes, to be photographed.

19 Q And there are two wallets there that are opened?

20 A Yes.

21 Q State's Exhibit number 56. What's that?

22 A That is a Nevada driver's license bearing the name
23 Brian O'Keefe.

24 Q And State's Exhibit number 57?

25 A A Nevada driver's license bearing the name Victoria

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1 pathologist who examines that tumor to see what kinds of cells
2 are in it, as an example?

3 A Exactly. We'll give you a definitive diagnosis on
4 your tumor.

5 Q All right. And you did that for a period of time?

6 A Yes.

7 Q You indicate that you studied, or had a fellowship
8 in forensic pathology at --

9 A Saint Louis University.

10 Q -- Saint Louis University?

11 A Yes.

12 Q How long is that program?

13 A That's -- it's an ACGME, accredited program. It's a
14 one-year program.

15 Q And what do you do in that?

16 A You do forensic autopsies under the supervision and
17 direction of board-certified forensic pathologists for one
18 year. They are ultimately responsible for the cases, but
19 during that period of time, the trade-off is that you get
20 training in forensic pathology.

21 Q Have you ever testified as an expert in the area of
22 forensic pathology?

23 A Yes.

24 Q Where?

25 A Both in Saint Louis, and here in Las Vegas.

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1 Q Approximately how many times?

2 A I would think before a grand jury, about 10 times.
3 And before a court, maybe 10 or 15 times.

4 MR. LALLI: Your Honor, at this point, I would ask
5 that Dr. Dutra be allowed to offer his opinions in the area of
6 forensic pathology.

7 THE COURT: Well, he can so testify.

8 BY MR. LALLI:

9 Q Can you explain to our jury what forensic pathology
10 is?

11 A Forensic pathology is a sub-specialty of pathology,
12 where we are, by law -- statutory law, we make the -- we sign
13 the death certificates, giving a cause of death and a manner
14 of death in cases which are unexpected or suspicious. And all
15 cases where death is not natural fall under the jurisdiction
16 in the State of Nevada of the coroner, and I work for the
17 coroner of Clark County.

18 Q During the course of your investigation, are you
19 tasked with determining a cause of death, as well as a manner
20 of death?

21 A Yes.

22 Q What do we mean by a cause of death?

23 A A cause of death is really the diagnosis of death.
24 Not necessarily the manner -- pardon me, the mechanism of
25 death, but it is the ultimate cause of the death.

ROUGH DRAFT TRANSCRIPT

003851

1 Q Can you give me an example of a cause of death?

2 A Well, it could be something like lung cancer, or it
3 could be a gunshot wound to the head.

4 Q All right. What do we mean by manner of death?

5 A Manner of death, we have five options. We have
6 homicide, suicide, natural, accidental, and undetermined. And
7 on every death certificate, that has to be decided, and
8 written on the death certificate.

9 Q Let's talk about those manners of death. You said
10 that one manner of death is homicide, correct?

11 A Yes.

12 Q What does homicide mean?

13 A Homicide is when there is an interaction of two
14 people, and one of them dies.

15 Q At the hands of the other person?

16 A There's an interaction, and yes, at the hands of the
17 other person.

18 Q Okay. What would be an example of a homicide?

19 A It could be a gunshot wound to the chest. It could
20 be --

21 Q By another person?

22 A By another person. It could be a strangulation by
23 another person.

24 Q All right. What is -- you said that one of the
25 manners of death was accident?

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003852

1 A Yes.

2 Q What is that?

3 A An accident is where there may be -- may or may not
4 be an interaction between two people, but the death is
5 accidental. I think it kind of --

6 Q What's an example of that?

7 A -- speaks for itself. A traffic accident might be
8 -- a traffic collision might be considered an accident, if
9 there's no intent and it's truly accidental. If someone falls
10 off of a cliff, that would be accidental.

11 Q Okay. If somebody is mishandling a gun, they're by
12 themselves, and the gun drops and discharges, and --

13 A That would be --

14 Q An accident?

15 A -- accidental, yes.

16 Q All right. What is suicide?

17 A Suicide is where a person purposefully kills
18 themselves. And so, it's a self-inflicted injury that results
19 in death.

20 Q All right. You said that another manner of death
21 was natural?

22 A Yes.

23 Q An example of a natural death?

24 A It could be atherosclerotic cardiovascular disease,
25 or leukemia, or any disease process or condition that would

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1 result in the death of the person.

2 Q And the fifth manner you indicated was undetermined.
3 What does that mean?

4 A Undetermined is that we cannot determine a manner of
5 death. That could be the skeletal remains, where there's no
6 -- not enough evidence. Or it may be a case where there is
7 not enough known about the circumstances to decide whether a
8 wound was at the hands of another, or at a -- or
9 self-inflicted, in which case, the manner would be
10 undetermined because I could not determine whether it was -- I
11 should use suicide, or I should use homicide.

12 Q Okay. I want to talk to you a little bit about the
13 autopsy process. I take it, as a forensic pathologist with
14 the coroner's office, you do autopsies?

15 A That's my job.

16 Q Okay. About how many autopsies would you conduct in
17 an average week?

18 A It's variable, but I would say 10. 10, maybe 15.

19 Q 10 to 15 autopsies a week?

20 A Yes.

21 Q So, are you familiar with the process that the Clark
22 County Coroner's Office uses in conducting autopsies? And I'm
23 talking about photographs being taken, preparation of reports,
24 specimens obtained during the course of the autopsy. You're
25 familiar with those procedures?

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003854

1 A Yes.

2 Q During the course of the autopsy, is the body of the
3 deceased photographed?

4 A Yes.

5 Q By employees of the coroner's office?

6 A Yes, on intake.

7 Q All right. Are reports prepared?

8 A Yes.

9 Q How are the reports prepared? At -- does a doctor
10 conduct the autopsy, and then go to an office, and sit down
11 and start writing them out? Is dictation used at the time?
12 Give us some sense of that.

13 A A typical case will have three reports associated
14 with it. One is a report by the coroner's investigator, who
15 is a person trained in evaluation of the death scene. They
16 will be called out by the police, or by the paramedics, and
17 talk to witnesses, take photographs. And then, write an
18 investigative report, which I will use when I am coming to my
19 determinations as to the cause and manner of death.

20 Then, there's also a toxicology report, which comes
21 from our toxicology lab, based on the specimens that we send
22 to them.

23 And then, thirdly, I have an autopsy report. I --
24 during an autopsy, I will perform the case. And then, my
25 usual practice is, immediately after the case, and before I

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1 start another case, I will write -- or dictate my autopsy
2 findings of the external examination and the internal
3 examination, and my preliminary findings.

4 Q So, the report -- or at least the dictation that a
5 forensic pathologist makes, is made at or near the time of the
6 autopsy?

7 A Yes.

8 Q And the dictation made by that person with knowledge
9 of the autopsy is then transcribed into a report?

10 A Yes.

11 Q And is it the regularly conducted activity of the
12 coroner's office to do autopsies?

13 A Yes.

14 Q All right. And you mentioned the other two
15 autopsies as well -- the other two reports. You talked about
16 the investigative report, and the --

17 A Toxicology.

18 Q -- toxicology report. Are those routinely reviewed
19 by forensic pathologists?

20 A Yes, as part of our summation. When I get my
21 original dictation back, and I have the other reports in hand,
22 I will review my first report, and along with the case photos
23 and the investigator's report, and any medical records that
24 have been asked -- or additional information: police reports,
25 toxicology report. And then, I will dictate my final

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1 diagnoses, and a -- sort of an epilogue of the case; a brief
2 description of what my determination is.

3 Q With respect to the photographs, are the photographs
4 stored?

5 A Yes.

6 Q So, one pathologist would have the ability to go
7 back and review photos taken in a different autopsy?

8 A Oh, yes.

9 Q What about investigators? What about the coroner's
10 investigators? Does the coroner investigator take photos of
11 the scene, usually?

12 A Yes.

13 Q And are those available for you to go back and look
14 at?

15 A Yes.

16 Q Now, I want to direct your attention to November 7th
17 of 2008. Were you employed with the Clark County Coroner's
18 Office then?

19 A No.

20 Q Are you familiar with a forensic pathologist by the
21 name of Jacqueline Benjamin?

22 A Yes.

23 Q Who is Dr. Benjamin?

24 A Dr. Benjamin is a board-certified forensic
25 pathologist, who at that time was working as a medical

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1 examiner for the Clark County Office of the Coroner.

2 Q Does she still work there?

3 A No.

4 Q Where does she work?

5 A She has gone forward in her career and done a
6 fellowship in neuropathology, and now practices as a
7 neuropathologist in Southern California.

8 Q So, she's out of state?

9 A Yes.

10 Q Is it the normal practice of the Clark County
11 Coroner's Office in cases where a pathologist has either
12 passed away, has died, or is no longer living in the state, to
13 assign a different pathologist to review the case file, and
14 then come to court to testify in front of juries?

15 A Yes, that is our normal practice.

16 Q Have you done that before?

17 A Yes.

18 Q Have you in fact actually testified previously on
19 cases which were originally performed by Dr. Benjamin?

20 A I believe on one occasion, certainly, but possibly
21 on two.

22 Q All right. So, with respect to November 7th of
23 2008, did you review the materials associated with an autopsy
24 that was performed on Victoria Whitmarsh in case number
25 08-8747?

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003858

- 1 A Yes.
- 2 Q Did you review Dr. Benjamin's autopsy report?
- 3 A Yes.
- 4 Q Did you review the investigative report?
- 5 A Yes.
- 6 Q Did you review the toxicology report?
- 7 A Yes.
- 8 Q Did you also review photographs from the autopsy?
- 9 A Yes.
- 10 Q Did you review photographs from the crime scene?
- 11 A Yes.
- 12 Q Did you also review prior testimony from Dr.
- 13 Benjamin?
- 14 A Yes.
- 15 Q All right. Based upon all of those materials, do
- 16 you have a basis to render your own opinions with respect to
- 17 cause of death and manner of death of Victoria Whitmarsh?
- 18 A Yes.
- 19 Q All right.
- 20 THE COURT: Just for the record now, you're going to
- 21 elicit testimony as to Dr. Dutra's own opinion --
- 22 MR. LALLI: Yes.
- 23 THE COURT: -- after reviewing these documents?
- 24 MR. LALLI: Correct.
- 25 THE COURT: But you're not going to elicit any

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1 opinion that Dr. Benjamin might have had; is that correct?

2 MR. LALLI: That is correct, Your Honor.

3 THE COURT: Because Dr. Benjamin's not here. She's
4 unavailable to be here. So, you're just going to limit your
5 examination to Dr. Dutra's own opinion after reviewing the
6 documents.

7 MR. LALLI: Correct. And we're going to actually
8 show him some photographs, and ask him of his opinions about
9 certain --

10 THE COURT: All right.

11 MR. LALLI: -- photographs.

12 THE COURT: So, you'll limit it to that?

13 MR. LALLI: Yes, sir.

14 THE COURT: All right. Thank you.

15 MR. LALLI: All right.

16 BY MR. LALLI:

17 Q So, was this autopsy in fact conducted in November
18 7th, 2008?

19 A Yes.

20 Q All right. Just going to show you one overall
21 photo, State's Exhibit number 85. Can you see that, Dr.
22 Dutra?

23 A Yes.

24 Q Do you recognize the decedent in this photograph?

25 A Yes.

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1 Q Is this the person who was depicted in the
2 photographs that you reviewed in your office, and purported to
3 be Victoria Whitmarsh?

4 A Yes.

5 Q All right. Now, I want to zoom-in to something
6 here. Let's give it a moment to focus. What is that?

7 A That is the case file number.

8 Q And is -- how -- why is it in the photograph?

9 A It's to identify the case that's being photographed.

10 Q So you know that when you're looking at particular
11 photographs, they are associated with the same case that
12 you're investigating or looking at?

13 A Yes.

14 Q And does there appear to be a little
15 greenish-bluish dot in the upper left hand corner of that?

16 A Yes.

17 Q Do you know what the significance of the dot is?

18 A I do not.

19 Q All right. Have you ever heard that the dot is the
20 position that the decedent's head is in? So, in this
21 particular photo, the dot is in the upper position, so that
22 points to the direction of the decedent's head?

23 A Okay.

24 Q But that wasn't something you were aware of?

25 A I wasn't aware of that.

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1 Q All right. Now, with respect to Victoria Whitmarsh,
2 did she suffer from various areas of blunt force trauma?

3 A Yes.

4 Q What is blunt force trauma?

5 A Blunt force trauma is trauma to the outside of the
6 body, the skin, by an object that is not sharp. Just a --
7 just exactly what it says.

8 Q How is it that you're able to see blunt force trauma
9 in a person?

10 A The blunt force trauma breaks small blood vessels in
11 the skin. And we forensic pathologists call that a contusion,
12 and lay people would refer to that as a bruise.

13 Q So, you were -- did you observe evidence of bruising
14 on Victoria Whitmarsh's body?

15 A Yes.

16 Q Are forensic pathologists able to date bruises?

17 A In a general sense, yes.

18 Q Can you explain, to what extent you can, how that
19 works?

20 A Yes. There is a progression in the color change of
21 a bruise over time. This has been studied scientifically.
22 And the peer-reviewed results of such studies are that this is
23 a consistent color change, although the timing of it can be
24 variable, due -- based on where the injury is, the depth of
25 the -- where the bleeding occurred, the pigmentation of the

ROUGH DRAFT TRANSCRIPT

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1 skin.

2 But in general, a bruise that is immediate will be
3 pink, or purple-pink, or purple-blue, if the bleeding is a
4 little bit deeper in the skin. And then, over time, over
5 several days, it will develop some greenish coloration. The
6 coloration change begins peripherally, and progresses
7 centrally.

8 And finally, after several more days, a week or so,
9 the bruise is starting to take on a yellow, or yellow-brown
10 color.

11 Q Does a person bruise after they're dead?

12 A No.

13 Q So, any bruises that you observe on a decedent
14 occurred while they were still alive?

15 A Yes.

16 Q All right. I'm going to show you what we've marked
17 as -- and admitted as State's Exhibit number 86. And let me
18 just tell you, Doctor, you're looking at this photograph
19 through a monitor. If you, on any of these, need to actually
20 look at the actual photo, just tell me, and I'll bring the
21 actual photo up for you. Okay?

22 A Yes.

23 Q Is that all right? And I'm going to show you 87,
24 which is a close-up of that. What are we looking at there?

25 A We're looking at a contusion of the forehead.

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1 Q And there appears to be an elevated area around
2 that. Do you know what that is?

3 A That's some hematoma, or additional bleeding
4 underneath the skin, which has not permeated more
5 superficially and caused color change in the skin.

6 Q Would you say that -- would it be your opinion that
7 this contusion, this bruise was a result of blunt force
8 trauma?

9 A Yes.

10 Q So, can you give us some -- I'm not asking you, what
11 caused that particular bruise, but can you give us some
12 examples of how a bruise like that would be caused?

13 A It could be caused by a person falling and striking
14 themselves. It could be caused by a -- something falling on
15 the person. It could be caused by a blow to that area.

16 Q A punch?

17 A A punch.

18 Q Or a kick?

19 A Yes.

20 Q Striking either with a hand, or with an object?

21 A Yes.

22 Q All right. Do you have an opinion as to the age, or
23 the timing of that particular injury?

24 A I would like to look at the original picture, if
25 that would be --

ROUGH DRAFT TRANSCRIPT

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1 MR. LALLI: Your Honor, I may have to approach
2 several times. May I just have the ability to do that --

3 THE COURT: Yes.

4 MR. LALLI: Thank you.

5 THE WITNESS: Based on the color of this contusion,
6 I would say that it appears to be a fresh contusion.

7 BY MR. LALLI:

8 Q What's your definition of fresh?

9 A Within 24 hours or so.

10 Q Within 24 hours of death?

11 A Yes.

12 Q Now, when you say within 24 hours, forensic
13 pathologists can't give a specific time that an injury
14 occurred, or bruise, correct?

15 A If we examine it microscopically and look for
16 inflammatory response, we can get a little bit closer to the
17 time. But in general, that is correct. And even with my
18 cryoscopy, there is still some variability.

19 Q All right. So, you say fresh, within 24 hours. So,
20 this particular bruise on Victoria's forehead could have been
21 caused as late as 24 hours before her death, and as early as
22 right at the time of her death?

23 A Or shortly before her death.

24 Q Shortly before. Minutes before?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

003865

1 Q Okay. And that's really the best that forensic
2 pathologists can do in terms of dating injuries?

3 A That's the best we can do.

4 Q Now, I'm going to show you a series of photographs.
5 And again, if you need to see them up-close, I'll certainly
6 give those to you. State's Exhibit number 88, 89, and 90.
7 What are we looking at there?

8 A We're also looking at contusions.

9 Q On what part of Victoria's body?

10 A The upper extremities.

11 Q Is that her left arm?

12 A It appears to be her left arm, yes. Yes, it is.

13 Q All right. Let me show you State's Exhibit number
14 89. Do those appear all to be the same contusions around the
15 same arm?

16 A Yes. It might also be a patterned, combined
17 contusion.

18 Q All right. Can you explain what a patterned,
19 combined contusion is?

20 A A patterned contusion is simply that, where we can
21 suggest that there appears to be a pattern to the contusion.
22 And in a case like this, the pattern is suggestive of possible
23 finger marks, or a grasping as a mechanism for the cause of
24 this contusion.

25 Q This particular pattern is consistent with a

ROUGH DRAFT TRANSCRIPT

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1 grabbing?

2 A It could be.

3 Q All right.

4 A It could be.

5 Q Now --

6 A It could be multiple, separate blows, too.

7 Q Sure. Do you have an opinion as to the age of this
8 bruising? Or would you like to see the photographs?

9 A I think in this case, I'm fine. And I think they
10 appear to be, again, fresh.

11 Q Going to show you State's Exhibit number 91. What
12 are we seeing there?

13 A We're looking at another contusion. It is of the
14 shoulder area, from --

15 Q Can you circle what you're looking at? Just take
16 your finger and touch the screen, and circle it, if you can.

17 A Well, I see actually two contusions. I see one
18 here, and I see one here.

19 Q So, you've drawn a circle in the center of this
20 exhibit, as well as to the upper right hand corner of the
21 exhibit --

22 A Correct.

23 Q -- correct?

24 A Correct.

25 Q Let's talk about what's in the center first.

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1 Explain for us what we're looking at.

2 A I'm looking at a relatively small sized contusion,
3 which is overlying what appears to be the back of the right
4 shoulder region. If I have additional --

5 Q All right.

6 A I think that's what it is. It could be the front of
7 the left shoulder. I'm not sure. I don't have --

8 Q Let me show you the --

9 A -- enough perspective.

10 Q -- actual photograph so you can see the whole thing.

11 A Oh, okay. It was the front of the left shoulder
12 region. Yes.

13 Q Now, with respect to the bruising that we're seeing
14 in the center of that shoulder, is that indicative of blunt
15 force trauma?

16 A Again, yes.

17 Q Do you have an opinion as to the age of that injury?

18 A By the color, again, it appears to be a fresh
19 contusion.

20 Q Now, let's talk about the other contusion that is
21 down on the upper part of the arm. What is that?

22 A That is also a contusion, and by the color, appears
23 to be fresh.

24 Q I want to show you up-close, because these are more
25 difficult to see, 92 and 93. Do you see evidence of injury in

ROUGH DRAFT TRANSCRIPT

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1 those photographs?

2 A I see -- I see a stab wound on the side of the chest
3 in the upper part. I see contusions on the front of the
4 abdomen. I --

5 Q Okay. I'm talking about in the -- in the arm area.

6 A There's some faint coloration in the arm area that
7 possibly could be a faint contusion.

8 Q All right. What about on -- and you were just
9 looking at State's Exhibit number 92, correct?

10 A Yes.

11 Q What about in 93?

12 A On that, I see a contusion on the -- what do you
13 call it, the -- it would be the front side when we put the
14 person in the anatomic position of the right forearm.

15 Q All right. Let me show this to the jury. This is
16 State's Exhibit number 93. That is also a bruise --

17 A Yes.

18 Q -- or a contusion? Do you have an opinion as to the
19 age of that?

20 A By the color, I would -- I think it appears to be
21 fresh.

22 Q I'm going to show you State's Exhibit number 97.
23 What are we looking at there?

24 A We're looking at an abrasion on the -- what we would
25 call the back side, or what some people might refer to as the

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1 top if the knuckle of the middle finger of the left hand.

2 Q What's an abrasion?

3 A An abrasion is a shearing injury of the skin, where
4 the surface of the skin is injured, and there's some tissue
5 damage, some bleeding, and disruption of the superficial
6 covering of the skin.

7 Q Do you have an opinion as to the age of this injury?
8 And I'll zoom into it for you. And again, if you need to see
9 the photograph, I'll bring it.

10 A I think this is an abrasion that has -- an abrasion
11 that is a day or two-old, or possibly -- more or less,
12 possibly a little bit older. And then, there's been some
13 re-injury where the blood clot and -- on the surface has been
14 scraped away, revealing the injured tissue underneath.

15 Q So, you would not characterize this -- or at least
16 the original injury as fresh?

17 A No.

18 Q I'm going to show you State's Exhibit number 99.
19 What are we looking at here?

20 A Here, we're looking at a pair of contusions on the
21 right upper aspect of the abdomen.

22 Q Again, blunt force trauma?

23 A Yes.

24 Q And do you have an opinion as to the age of those
25 injuries?

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1 A Again, by the color, I believe that these are fresh.

2 Q I'm going to show you up-close State's Exhibit 100,
3 because these are more faint. Do you see evidence of trauma
4 -- blunt force trauma in that photograph?

5 A Yes.

6 Q All right. Let me put it up for the jury to see.
7 Showing you State's Exhibit number 100, what are we looking at
8 there?

9 A We're looking at the left side of the chest.

10 Q And do you see evidence of injury?

11 A I see two contusions.

12 Q Do you have an opinion as to the age of those
13 contusions?

14 A Again, by their color, they appear to be fresh
15 contusions.

16 Q All right. I'm going to show you State's Exhibit
17 number 103. What are we looking at there?

18 A We're looking at the body from the posterior aspect.
19 And --

20 Q Do you see evidence of injury?

21 A I see two faint contusions on the upper aspects of
22 the buttocks by -- on both sides, one on each side. And then,
23 a much larger contusion on the lower aspect of the right
24 buttock.

25 Q If I show you State's Exhibit number 108, is that a

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1 blow-up of that area?

2 A Yes.

3 Q Okay. The large area of contusion, can you circle
4 that for us? And then, you indicated that there were two
5 smaller areas of contusion. Let's talk about the smaller
6 areas first. Do you have an opinion as to the age of those
7 injuries?

8 A Again, in these -- for these injuries, by their
9 color, they appear to be fresh contusions.

10 Q What about the large bruise on the buttocks?

11 A That also appears to be a fresh contusion.

12 Q And by fresh, again, could be --

13 A Within --

14 Q -- up to the moment of death, ten minutes before, or
15 as far back as 24 hours?

16 A Yes. And as I said, excuse me, it's variable. It
17 could be even two days. But --

18 Q All right.

19 A -- color changes start within -- in about one to two
20 days.

21 Q I'm going to show you State's Exhibit number 105.
22 What are we looking at here?

23 A In this case, we're looking at a contusion on the
24 lateral side of the left thigh.

25 Q And is State's Exhibit 111 just a blow-up of that?

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1 A Yes. And in the blow-up, I see there's a smaller
2 contusion further down the thigh as well.

3 Q Do you -- in your opinion, is that evidence of blunt
4 force trauma?

5 A That is blunt -- that is evidence of blunt force
6 trauma.

7 Q Do you have an opinion as to the age of that injury?

8 A By the color of those injuries, I think that they
9 are fresh contusions.

10 Q I'm going to show you up-close State's Exhibit
11 number 114. What is that?

12 A Those are the front of the lower legs of the body.

13 Q Do you see evidence of injury?

14 A I see abrasions on the right leg, and I see several
15 contusions on the front of the left lower leg.

16 Q All right. Going to show you Exhibit 114 on the
17 screen now. You indicated -- let's talk about the left leg
18 first. Is that the leg that's on the bottom?

19 A Yes.

20 Q You indicate that there's evidence of contusion?

21 A Yes.

22 Q Can you circle that for us? Do you have an opinion
23 as to the age of that injury? And I can bring the photograph
24 back to you, if that would help, Doctor.

25 A I -- in looking at these, I believe that they are

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1 fresh contusions.

2 Q Now, the other leg, the right leg -- I'm going to
3 show you State's Exhibit number 115. Is that a close-up?

4 A Yes.

5 Q Now, those are not contusions?

6 A Well, there's a mixture of contusions and abrasions.

7 Q Would an abrasion be a scrape?

8 A Yeah. Yes.

9 Q Do you have an opinion as to the age of those
10 injuries?

11 A They all appear to be fresh injuries.

12 Q What are we looking at in State's Exhibit number
13 116?

14 A We're looking at -- we're looking at contusions of
15 the lateral aspect of the right ankle, possibly also
16 ecchymosis or bruising in that area. If there had been an
17 ankle sprain as well, there could be some bleeding below the
18 ankle. In other words, above the ankle, that -- this -- may I
19 circle?

20 Q You can circle it.

21 A Okay. This is a contusion. Down here, this could
22 be contusion. It could also be some bleeding due to some
23 sprain injury of the ankle on that side.

24 Q With respect to the -- let's talk about the bruise
25 above the ankle. Do you have an opinion as to the age of that

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1 injury?

2 A It also appears to be a fresh injury.

3 Q And what about the ecchymosis on the ankle and below
4 the ankle; is there any way to date that?

5 A By viewing the picture, it appears to be a fresh
6 injury.

7 Q I'm going to show you up-close State's Exhibit
8 number 120. Do you see evidence of blunt force trauma there?

9 A Yes.

10 Q Let me throw it up for the jury to see. Showing you
11 State's Exhibit 120, what are we looking at there?

12 A We're looking at the inside, or medial aspect of the
13 left ankle. And slightly above the bone, behind it, there's a
14 contusion, which appears to be fresh.

15 Q Did you observe evidence of sharp force injury in
16 reviewing this case?

17 A Yes.

18 Q I'm going to show you State's Exhibit number 101.
19 And then, I'm going to show you State's Exhibit number 102.
20 What are we looking at in State's Exhibit number 102?

21 A We're looking at a stab wound of the chest.

22 Q Can you stand up, Doctor, and just kind of indicate
23 for our jury where that stab wound is on your own body?

24 A It's -- it would be about here on my body.

25 Q And you're indicating right underneath your right

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1 armpit?

2 A Yes.

3 Q All right. You can sit down. I'm going to zoom-in
4 on State's Exhibit number 102. Describe that injury for us,
5 please.

6 A It's a stab wound of the chest. There is -- the
7 margins of the wound are straight. The --

8 Q What are the margins?

9 A The sides of the wound.

10 Q All right.

11 A There is -- there is -- one end is blunted, and that
12 would be the end of the wound that is towards the front, and
13 downwards. And --

14 Q Can you just circle the blunted part? And what do
15 you mean by blunted? Not sharp?

16 A Not sharp, yes.

17 Q Okay. And then, on the -- please continue.

18 A And then, the other end of the wound is sharp. And
19 that is the end of the wound that is towards the back, and
20 upwards.

21 Q Do you have an opinion as to what caused this
22 injury?

23 A It's a stab wound of the chest.

24 Q And can you tell from the -- looking at the injury,
25 which way -- when you're saying stab wound, I presume you're

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1 talking about a knife?

2 A A knife blade, yes.

3 Q Can you tell which end of the wound was caused by
4 the sharp end, or the front of the knife?

5 A Yes.

6 Q The cutting portion of the knife, versus the back
7 end of the knife?

8 A The spine of the knife, the blunt side would be
9 towards the front and downwards, this blunted end of the
10 wound. And then, the sharp aspect of the blade is this area
11 here.

12 Q I want to ask you about some things around the knife
13 wound. And I'll zoom-in. And if that's good enough, let me
14 know. If it's not, I'll bring the photo up to you.

15 A Okay.

16 Q [Inaudible]. So, now, as we're looking at this
17 photograph, to the left of the knife wound, there appears to
18 be a dark, round object. Do you --

19 A Right.

20 Q -- see that? Do you have any opinion as to what
21 that is?

22 A I think that's just a benign cutaneous lesion,
23 possibly a mole or something like that. But it's a natural
24 finding on the skin.

25 Q It doesn't represent any sort of injury?

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1 A No.

2 Q Now, what is to the right of the injury?

3 A There are some very superficial -- there's a pattern
4 of a very superficial abrasion.

5 Q Are you familiar with the term -- or the phrase,
6 hesitation marks?

7 A Yes.

8 Q What are hesitation marks?

9 A Typically, in a wound of suicidal intent, a person
10 may make several superficial cuts or superficial stabs before
11 self-inflicting a fatal injury.

12 Q Are those hesitation marks?

13 A No.

14 Q Do you have an opinion as to the cause of these
15 injuries? If they are injuries. What is your opinion --

16 A Well, they're very --

17 Q -- as to what they are?

18 A They're very superficial injury. And because of
19 their location, I think they are associated or related to the
20 stab wound injury. It appears to me that the hand that was
21 holding the knife may have caused some abrasion, or the
22 clothing that was intervening between the hand that was
23 holding the knife may have caused some forcible abrasion of
24 the skin when -- at the depth of the thrust of the knife.

25 Q All right. What was the depth of the wound?

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- 1 A Four and-a-quarter inches.
- 2 Q Was any bone structures struck?
- 3 A No.
- 4 Q A bone of any sort?
- 5 A No.
- 6 Q I'm going to show you State's Exhibit 130. What is
7 this?
- 8 A That's a trajectory rod. That is something that we
9 forensic pathologists will position in the track of the wound
10 in order to demonstrate it's direction.
- 11 Q And is this trajectory rod inserted in the direction
12 of this injury?
- 13 A Yes.
- 14 Q You indicated, Doctor, that there was a toxicology
15 analysis done?
- 16 A Yes.
- 17 Q Can you explain to the jury what hepatitis C is?
- 18 A Hepatitis C is a viral illness of the liver that is
19 most usually transmitted by blood contamination, or by blood.
20 And it in many people causes a very slow and prolonged
21 inflammatory response in the liver, which is generally without
22 symptoms until many years later, when the person may, due to
23 the chronic inflammatory process, develop scarring of the
24 liver, which we call cirrhosis.
- 25 Q Did the toxicology samples taken reveal that

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1 Victoria Whitmarsh was positive for hepatitis C?

2 A Yes.

3 Q How does hepatitis C affect the body and bruising?

4 A Chronic liver disease -- most of your clotting
5 factors, with the exception of one or two, are made by the
6 liver. So, a person who is in liver failure will have
7 problems with their clotting factors, and may have difficulty
8 clotting.

9 On the other hand, there are -- most people who are
10 cirrhotic are not in liver failure. They have no jaundice,
11 and in general, don't have any real significant problem with
12 clotting their blood. The only way that we can really tell
13 whether the clotting factors are involved is by -- is by doing
14 some clotting factor studies, notably, a test called a
15 prothrombin time.

16 But in general, people who have cirrhosis due to
17 hepatitis C are -- even with their cirrhosis, are
18 asymptomatic. And it really doesn't affect the clotting time
19 significantly.

20 Q So, a person with hepatitis C, they're not just
21 going to bruise without blunt force trauma actually being
22 inflicted upon their body? I mean, they're not just going to
23 bruise on their own, correct?

24 A Only in advanced liver failure do you see that. In
25 this -- my findings in this case do not indicate that she was

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1 in advanced liver failure.

2 Q All right. How advanced was the deterioration of
3 her liver? Was it --

4 A She had reached a stage of cirrhosis, which is a
5 generalized scarring process of the liver.

6 Q Did that cirrhosis in any way -- was that in any way
7 a cause of her death?

8 A No.

9 Q All right. As part of the toxicology examination,
10 was alcohol --

11 A Yes.

12 Q -- tested for? And what were the results of that?

13 A It was .24 milligrams per deciliter, or I think we'd
14 call that .24 percent.

15 Q Are you familiar with a drug called Effexor?

16 A Yes.

17 Q What is Effexor?

18 A It's a serotonin reuptake inhibitor type of
19 antidepressant medicine.

20 Q So, somebody who suffers from depression may be
21 prescribed Effexor?

22 A Correct.

23 Q Did you observe -- or did the toxicology report
24 reveal evidence of Effexor in Victoria's blood?

25 A Effexor and it's primary metabolite were both

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1 present in the blood.

2 Q At what levels?

3 A The Effexor -- the generic is Venlafaxine, was at a
4 level of 990, I believe it was nanograms per milliliter. And
5 the primary metabolite -- I'd have to refer, but I believe it
6 was 870 nanograms per milliliter.

7 Q All right. Are those therapeutic levels?

8 A They're higher than the usual therapeutic levels.

9 Q Were they toxic levels?

10 A Well, as a forensic pathologist, one thing we have
11 to do is consider the source. And this was heart blood. And
12 due to something called post-mortem redistribution, this would
13 be about 30 percent higher than what it would be in peripheral
14 blood.

15 And we know this from multiple studies, that
16 redistribution is -- occurs with this drug. This was heart
17 blood that was tested. But even if -- accounting for
18 redistribution, it was still above the usual therapeutic
19 range.

20 Q Would it be enough Effexor in a person's blood to
21 contribute to their death in any way?

22 A Oh, no.

23 Q How far above the therapeutic range are you talking
24 about when you say it was above that?

25 A Slightly above the usual therapeutic range.

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1 Q All right. Now, based upon everything that you
2 reviewed, Dr. Dutra, do you have an opinion as to the cause of
3 death with respect to Victoria Whitmarsh?

4 A Yes.

5 Q What is that?

6 A She died of a stab wound to the chest.

7 Q We talked a lot about the bruising on her body.

8 A Yes.

9 Q Do you believe that the amount of bruising on her
10 body contributed to her death in any way?

11 A It contributed in the sense that it was additional
12 blood that was lost from the vascular system, and had been
13 sort of sequestered into the soft tissues, and was unavailable
14 to provide oxygenated blood in the circulation.

15 So, yes, there was some contribution from the soft
16 tissue injuries. But in my opinion, from the amount of
17 contusional injury that I saw, I don't think it was greatly
18 significant. Just a contributing factor.

19 Q But you would agree that it's a contributing factor?

20 A Yes.

21 Q All right. Can you explain for the jury how
22 Victoria Whitmarsh died? What was -- what happened to her
23 that caused her to die with respect to the injury that she
24 suffered?

25 A The mechanism of death in this case was that the

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1 knife wound -- the stab wound had penetrated the chest cavity.
2 And when that happens, the lung collapses. And so, she lost
3 function in one lung. The bleeding that was part of that stab
4 wound injury into her chest cavity was measured at 500
5 milliliters, or about half-a-quart of blood.

6 And the wound continued through the diaphragm, and
7 into the liver, and there was another lesser quantity of blood
8 in her abdomen. And from my review of the photographs of the
9 death scene, there was a significant amount of blood that had
10 been lost externally.

11 So, the mechanism of this death was basically
12 exsanguination, with the contributing factor of the collapse
13 of that right lung.

14 Q What about timing? How long would it take someone
15 to die as a result of exsanguination?

16 A It takes several minutes. It's not something that's
17 instantaneous.

18 Q When you say several, are we talking about 30
19 minutes, or are we talking about a minute or two?

20 A I --

21 Q Or somewhere --

22 A In this case --

23 Q -- in between?

24 A I would say somewhere in between. Somewhere in
25 between.

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1 Q What range would you opine in this case as to how
2 long it would take from the time of that stab wound, until
3 Victoria's death?

4 A I would estimate it would be maybe 10 minutes, maybe
5 30 minutes. Somewhere in that range.

6 Q All right. Now, there has been testimony in this
7 case of a neighbor who at one point heard a disturbance in the
8 area that Victoria was ultimately found, and that she heard
9 crying, which turned into moaning, which lasted for about ten
10 minutes.

11 Is that consistent with somebody who would die of
12 exsanguination, being able to moan, or to cry at some point
13 after they suffered a knife injury?

14 A Oh, yes.

15 Q Dr. Dutra, do you have an opinion as to the manner
16 of death in this case?

17 A Yes.

18 Q What is that?

19 A Homicide.

20 Q Why do you believe that this was a homicide?

21 A Based on the investigator's evaluation of the scene,
22 and based on the -- my examination of the autopsy findings,
23 the -- this wound -- I really can't see another mechanism --
24 or manner, other than homicide, especially considering the
25 thrust of this wound, it's location --

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1 Q And by thrust, are you talking about directionality?

2 A Yes. It's location, and it's direction.

3 Q Are you able to rule out that this was a suicide?

4 A By stating that the manner of death is homicide, I
5 am ruling out that this is a suicide.

6 Q Okay. And would the same apply as to accident?

7 A Yes.

8 Q And homicide is death at the hands of another?

9 A Correct.

10 Q Thank you.

11 MR. LALLI: Your Honor, that concludes direct
12 examination.

13 THE COURT: All right. Cross-examination?

14 MR. O'KEEFE: Yes, Your Honor.

15 (Pause in the proceedings)

16 CROSS-EXAMINATION

17 BY MR. O'KEEFE:

18 Q Hello. Dr. Dutra, right?

19 A Yes, sir.

20 Q Again, as I keep stating with all witnesses, you
21 know, I'm just trying to get to the facts. No tricks or
22 ploys, Doctor, with all sincerity, okay? Dr. Benjamin at the
23 time she did her autopsy had made the determination -- or
24 testimony -- I don't know if you read this in your examination
25 -- you did examine all her files, correct?

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1 A Yes.

2 Q Okay. She had stated at the time of the autopsy,
3 the reason why, or one of the leading factors was that the two
4 key detectives of the homicide were there, telling her, oh, we
5 were told a battery domestic violence was going on, this and
6 that, there was fighting going on, there was a situation. And
7 she says, you know, she ruled that in as part of her
8 determination. So, you're saying --

9 MR. LALLI: Your Honor, I'm going to object as to
10 what Dr. Benjamin said. It's hearsay.

11 MR. O'KEEFE: I'm stating -- Your Honor, again, if I
12 may rebut on that. He just stated clearly that he read all of
13 her files, everything that was put in. And for her to make a
14 determination for him to examine, the cops had to give her
15 that information, Your Honor, with all due respect.

16 THE COURT: That's correct. I mean, but are you
17 asking Dr. Dutra his opinion as to what Dr. Benjamin's opinion
18 was?

19 MR. O'KEEFE: I'll clarify it, if I could, then
20 I'll --

21 THE COURT: Yeah.

22 MR. O'KEEFE: Okay.

23 BY MR. O'KEEFE:

24 Q Basically, it does help a pathologist or coroner
25 doing an autopsy to know whether a DV was going on. It helps

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1 in a situation like this where it's borderline, if a battery
2 was going on or not, correct? In your opinion.

3 MR. LALLI: I object to the insinuation that this is
4 a borderline case, Your Honor.

5 THE COURT: All right, rephrase it.

6 MR. O'KEEFE: Okay.

7 THE COURT: And this -- again, this is your opinion.
8 Not anybody else's.

9 MR. O'KEEFE: Exactly.

10 THE COURT: Right.

11 BY MR. O'KEEFE:

12 Q In your opinion -- in your opinion, if you was (sic)
13 to do an autopsy, would it make a difference in a situation
14 like this if you knew conclusively a battery was going on or
15 not -- a true battery, or not?

16 A I'm always glad to get all of the information, every
17 part of -- as much as I can.

18 Q So, if possibly detectives gave you information that
19 was wrong based on what they were given, it could affect your
20 decision? Yes or no.

21 A That's reasonable.

22 Q I'm trying to be --

23 A Yes.

24 Q -- simple about it.

25 A Sure.

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1 Q Okay. Thank you. You've already agreed she had a
2 high level of intoxication, which would affect anybody that's
3 generally an alcoholic -- you're the doctor, you tell me.
4 They say they bruise very easily, correct, usually? A true
5 alcoholic, or someone on meds, and again, somebody with a
6 situation of hepatitis C and cirrhosis of the liver, they
7 bruise much, much, much easier?

8 A I did not say that.

9 Q No. I'm asking you in your opinion as a doctor.

10 A Oh.

11 Q Do you agree in your opinion that that's true?
12 Because that's knowledge you would need to be able to make
13 proper assessments.

14 A I would not dispute that some alcoholics have some
15 easy bruising. However, the fact that a person has cirrhosis
16 and alcohol onboard, in my opinion, is not an indication that
17 -- in general, I don't believe that in many cases, it causes
18 easy bruising.

19 Q Okay. And I asked your professional -- and I
20 appreciate that was your opinion. Did you know -- did you
21 have any information -- was there shared information that,
22 during your determination -- or did Dr. Benjamin have any
23 information when she made her determination that you viewed to
24 make your opinion -- did you know that she was a cutter,
25 suicide, and depression, and all that? And I mean, acts of

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1 self-mutilation with knives? Did you know that?

2 A You're talking about the decedent, right?

3 Q Yes.

4 A That was not known by me, no.

5 Q Do you feel that would be important?

6 A I would certainly appreciate all the information I
7 can get on any case.

8 Q Wow. That's what I thought. Thank you on that.
9 Were you aware that Dr. Benjamin stated that the bruising
10 couldn't be caused -- or it couldn't be determined, any amount
11 of time that there was -- you know, some were darker, some
12 were lighter, and that it could have easily been caused by
13 bumping into things? Were you aware of that testimony? Did
14 you get to view her testimony?

15 A Yes.

16 Q Okay. So, you were aware that she stated quite
17 clearly, this could have been caused easily by being pulled,
18 picked up, dropped? She was aware that -- the statement that
19 was made that she was dropped on the floor, easily could have
20 caused the head (sic).

21 MR. LALLI: Your Honor, I'm going to object. Number
22 one, it's hearsay. Number two, it misstates Dr. Benjamin's
23 opinion.

24 THE COURT: Well, I mean, you've read Dr.
25 Benjamin's --

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1 THE WITNESS: Yes.

2 THE COURT: So, if you could answer that, answer it.
3 Overruled.

4 THE WITNESS: I'd agree with her that a contusion is
5 simply that, is a contusion is evidence of blunt force trauma.

6 BY MR. O'KEEFE:

7 Q Okay. Was there any information provided to Dr.
8 Benjamin? Because, see, it's kind of hard here, you not being
9 the original coroner. That's kind of not -- okay. So, I
10 don't know what you viewed to make your decision of what she
11 viewed; do you see what I'm saying with that? I don't know
12 what she had.

13 Was there reports in there that, you know, the cops
14 stormed into the room, and there was confusion, I was on her,
15 beside her, fighting the cops, and there was a possibility
16 they stated they could not dispute for sure that nobody kicked
17 her? These were big men, four or six men that's been --
18 testimony's been switched back and forth. And there was a
19 struggle in an area that, wherever all these people standing,
20 and the fighting was going on, and struggling, and bouncing,
21 and kicking at the feet, and just -- you know.

22 There was some prior testimony that the police said,
23 you know, we can't say for sure. There was definitely -- I'm
24 not stating it was intentional. But it was a major critical
25 situation. And information like that, was that in there that

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1 you got to view to form this opinion, Doctor?

2 A The only testimony that I reviewed was Dr.
3 Benjamin's.

4 Q And you didn't remember seeing anything like that in
5 there? Any of --

6 A No.

7 Q Dr. Benjamin also gave an opinion that accidental
8 death couldn't be ruled out. Would you dispute that?

9 THE COURT: Just a minute. We limited this
10 testimony here to Dr. Dutra's opinion after reviewing all the
11 items. I don't think Mr. Lalli went into any opinion that Dr.
12 Benjamin had; is that correct, Mr. Lalli?

13 MR. LALLI: That's correct, Your Honor.

14 THE COURT: So, are you objecting to this? Or
15 what's --

16 MR. LALLI: I do object.

17 THE COURT: And what's --

18 MR. LALLI: It's hearsay.

19 THE COURT: Well, I guess if you go into that, I'm
20 going to allow Mr. Lalli to go into other areas. You might be
21 opening the door to some other opinions, but that's your
22 decision to make.

23 MR. O'KEEFE: And with all due respect, Your Honor,
24 that's what this trial is about.

25 THE COURT: Listen, and I'm just telling you, if you

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1 want to --

2 MR. O'KEEFE: Let it be heard.

3 THE COURT: -- go into that, I'm going to allow you.
4 But I might have to allow --

5 MR. O'KEEFE: And if he can do --

6 THE COURT: -- Mr. Lalli to go into Dr. Benjamin's
7 opinions also.

8 MR. O'KEEFE: That's --

9 THE COURT: To be fair to everybody.

10 MR. O'KEEFE: And I appreciate that, Your Honor.

11 And you see what I'm trying to -- let it be heard.

12 THE COURT: But I'm telling you what the pitfalls
13 are, here. If you want to go into it, I'm going to allow it.
14 I'm not going to prevent you. But I have to be fair to the
15 State, too. So, it's up to you. You do what you want. So --

16 MR. O'KEEFE: Thank you, Your Honor. And I
17 understand the State has the right to do whatever after
18 [inaudible].

19 THE COURT: Yes.

20 BY MR. O'KEEFE:

21 Q She made a ruling that an accidental wound --
22 accidental wound sustained during the struggle over a knife
23 could not be ruled out. Were you aware of that?

24 A I reviewed all of her testimony.

25 Q Did you see that testimony then, if you read it?

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1 A I can't remember those exact words, but I'm sure
2 that I --

3 MR. O'KEEFE: May I approach -- have you approached?
4 Page 106, lines 15 and 19.

5 THE COURT: Are we stipulating this was her
6 testimony at a prior hearing?

7 MR. LALLI: Yes, Your Honor. That was --

8 THE COURT: All right.

9 MR. LALLI: -- her testimony.

10 THE COURT: Go show that to the --

11 MR. O'KEEFE: And this was the original coroner that
12 did --

13 MR. MANINGO: May I approach, Your Honor?

14 THE COURT: Yes.

15 MR. MANINGO: Thank you, sir.

16 THE COURT: Just read that to yourself, Doctor.

17 THE WITNESS: All right.

18 THE COURT: Take your time.

19 THE WITNESS: Okay.

20 THE COURT: All right. Now, ask the question again.

21 BY MR. O'KEEFE:

22 Q So, you agree now after reading that, Dr. Benjamin
23 did make that determination that, from looking at those
24 bruises, they were not caused from somebody grabbing an arm,
25 [inaudible] somebody hurt someone. And that she also ruled

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1 out -- I lost myself; that an accidental wound could not be
2 ruled out from a struggle over the knife. You read that,
3 Doctor?

4 A I read that.

5 Q Okay. Did you read -- do you remember that she also
6 stated that, by looking at the body, you can't completely rule
7 out whether this injury was sustained in an accidental
8 struggle over -- in or over -- is that correct, that she
9 stated that that was correct? It couldn't be ruled -- did you
10 remember reading that?

11 A Would you repeat the question, please?

12 Q You can't completely rule out whether this injury
13 was sustained in an accidental struggle? And she said, that's
14 correct. She was asked a question, and she said it's
15 absolutely correct, you cannot rule out accidental struggle.

16 MR. O'KEEFE: It would probably be better if we may
17 approach and let him read it --

18 THE COURT: Sure.

19 MR. O'KEEFE: -- and see it, because I'm very tired,
20 and I apologize.

21 BY MR. O'KEEFE:

22 Q And I put a little pencil mark, Doctor, to help you
23 key-in -- to help speed.

24 A Okay. Yes.

25 Q So, again, basically, I'm getting at, she stated

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1 that you couldn't rule out accidental. Couldn't rule out
2 accidental.

3 A That's what she says.

4 Q That's what she says. Another doctor that did the
5 original autopsy, you know, she has her opinion, too. That
6 was her opinion. You just read it.

7 (Pause in the proceedings)

8 THE COURT: Did you answer that?

9 THE WITNESS: I'm not sure if I understand the
10 question.

11 THE COURT: All right. Ask the question again.

12 BY MR. O'KEEFE:

13 Q Dr. Benjamin again was clearly asked, from looking
14 at the body, you can't complete rule out that this injury was
15 sustained in an accidental struggle, was it? And she said,
16 that's correct, stating that you couldn't rule out the
17 accidental struggle.

18 A Couldn't completely rule out.

19 Q Completely rule out. You couldn't completely rule
20 it out, right. It's a possibility, is basically what she's
21 saying. She did say it.

22 MR. LALLI: Your Honor --

23 THE WITNESS: That's what she said, yes.

24 MR. LALLI: -- I object to any of the
25 characterization of her testimony. I mean --

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1 THE COURT: Yeah. We just want to know exactly what
2 the testimony was.

3 MR. O'KEEFE: Yeah.

4 THE COURT: I'm allowing that.

5 MR. O'KEEFE: Okay.

6 THE COURT: Okay, Doctor --

7 MR. O'KEEFE: Well, I've said it over and --

8 THE COURT: -- you want to answer the question now?

9 THE WITNESS: That's what she said.

10 THE COURT: All right. That's what she said.

11 MR. O'KEEFE: Okay. That's --

12 THE COURT: All right.

13 MR. O'KEEFE: -- what I thought I clearly asked.

14 BY MR. O'KEEFE:

15 Q And I apologize. I'm not trying any tricks, Doctor.
16 I mean it, I'm not.

17 MR. O'KEEFE: Court's indulgence, one second.

18 THE COURT: Sure.

19 (Pause in the proceedings)

20 BY MR. O'KEEFE:

21 Q Okay. She also made another determination besides
22 homicide, couldn't rule out accidental. She stated that,
23 considering the body in this case and the evidence, they were
24 asked -- her own words. They said, can you rule out
25 accidental wounds sustained during the struggle over the

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1 knife?

2 And she said, given those circumstances, I still
3 would not call it an actual accident. But I'd probably call
4 it the homicide, or undetermined. But still, now -- now,
5 we're getting the third option. I mean -- and I'll let you
6 read that.

7 THE COURT: Don't argue. Just, is that correct?
8 Did you remember that testimony?

9 THE WITNESS: I remember her testimony.

10 THE COURT: All right.

11 BY MR. O'KEEFE:

12 Q And do you remember -- okay, so then you've seen
13 that?

14 A Yeah.

15 MR. O'KEEFE: Page 106, if you need it, Mr. Lalli,
16 lines 16 to 20.

17 BY MR. O'KEEFE:

18 Q So, now, my point is, it's clearly -- you read it.
19 And I'm not trying any tricks here. I mean, we're going from,
20 okay, it could be a homicide; okay, you can't rule out
21 accidental; okay, undetermined, because I don't know all the
22 truth.

23 You know, there's so many -- the cops are saying
24 this, the neighbors were saying this, people were saying this.
25 And you don't -- you didn't know that she was suicidal. You

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1 knew about her hep C and all that, though. You didn't know
2 about her mental state, major depression, borderline
3 personality traits; it goes on, and goes on, and goes on,
4 Doctor. She had a history -- it was like this.

5 My point is, can you rule out, from trying to pull a
6 body up and dropping her, and being kicked and stepped on,
7 possibly, could those bruises have appeared from that? These
8 are --

9 A Bodies don't bruise after death. So, all I can say
10 is that the blunt force injuries that I saw occurred within
11 the day preceding her death. And that could be from
12 immediately preceding it, to 24, even up to 48 hours earlier.
13 But they don't bruise after death. So, that's -- contusions
14 are what I saw. And I can date them by their color, which is
15 as good as we can get with forensic pathology.

16 Q Okay. And testimony has been given that, at the
17 time that the injury happened, she was still alive when she
18 was being pulled up, and she was being dropped. Testimony was
19 given her head -- they heard a loud thump.

20 MR. O'KEEFE: Testimony was given, Your Honor,
21 multiple times, they heard a couple big, all the sudden,
22 thumps.

23 BY MR. O'KEEFE:

24 Q Could the injury be consistent with that, someone
25 falling; bam, their head? Could it be consistent with it?

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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 **BRIAN K. O'KEEFE,**
 Appellant,
4 vs.
5 **THE STATE OF NEVADA**
 Respondent.

Supreme Court No.:

District Court Case No.: 08C250630

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7 **APPELLANT'S APPENDIX – VOLUME XX – PAGES 3800-3999**

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19	ProSe "Reply" to State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/24/14	4792-4799
20	Receipt of Copy filed on 01/03/11	2761
21	Receipt of Copy filed on 01/12/11	2812
22	Receipt of Copy filed on 01/12/11	2813
23	Receipt of Copy filed on 01/18/11	2876
24	Receipt of Copy filed on 01/27/09	0134
25	Receipt of Copy filed on 01/30/09	0146
26	Receipt of Copy filed on 02/06/09	0168

1	Receipt of Copy filed on 03/04/09	0221
2	Receipt of Copy filed on 03/24/09	0323
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6	Receipt of Copy filed on 08/02/10	1243
7	Receipt of copy filed on 08/13/10	1255
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8	Receipt of Copy filed on 09/17/10	1433
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9	Receipt of File filed on 07/01/10	1046
10	Reply in Support of Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on 08/25/15	5500-5510
11	Reply to State's Response to Defendant's Pro Per Post-Conviction Petition for Habeas Corpus filed on 06/16/15	5423-5432
12	Reply to State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus filed on 08/24/15	5489-5499
13	Request for Rough Draft Transcripts filed on 10/21/15	5549-5551
14	Request for Rough Draft Transcripts filed on 07/17/12	3458-3460
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17	Second Amended Information filed on 08/19/10	1326-1328
18	State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/07/14	4768-4791
19	State's Opposition to Defendant's Motion for a Reasonable Bail filed on 09/27/10	1452-1461
20	State's Opposition to Defendant's Motion for Judicial Notice - The State's Failure to File and Serve the Response in Opposition filed on 03/10/14	4834-4839
21	State's Opposition to Defendant's Motion to Dismiss filed on 03/21/12	3407-3411
22	State's Opposition to Defendant's Motion to Preclude the State from Introducing at Trial Improper Evidence and Argument filed on 01/12/11	2814-2871
23	State's Opposition to Defendant's Motion to Seal Records filed on 04/05/12	3431-3433
24	State's Opposition to Defendant's Motion to Suppress his Statements to Police, or, Alternatively, to Preclude the State from Introducing Portions of his Interrogation filed on 08/17/10	1306-1319
25	State's Opposition to Defendant's Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be	
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1	Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 06/25/15	5442-5446
2	State's Opposition to Defendant's Pro Per Motion for Leave of Court to File Motion. . .Rule 2.4 filed on 09/12/14	4935-4939
3	State's Opposition to Defendant's Pro Per Motion to Chief Judge to Reassign Case to Jurist of Reason Based on Pending Suit Against Judge Michael Villani for Proceeding in Clear "Want of Jurisdiction" Thereby Losing Immunity, Absolutely filed on 09/12/14	4930-4934
4	State's Opposition to Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 02/24/14	4811-4817
5	State's Opposition to Motion for Evidentiary Hearing on Whether the State and CCDC have Complied with their Obligations with Respect to the Recording of a Jail Visit Between O'Keefe and State Witness Cheryl Morris filed on 08/10/10	1244-1247
6	State's Opposition to Motion to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 08/16/10	1277-1282
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9	State's Opposition to Motion to Preclude Expert Testimony filed on 08/18/10	1320-1325
10	State's Response and Motion to Dismiss Defendant's Motion for Relief from Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issued any Remand, Mandate or Remittature of filed on 08/07/14	4891-4902
11	State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive based on Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal Then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since (Post Conviction), Amended Petition and Accompany Exhibits, Opposition to Request for Evidentiary Hearing, and Opposition to Pro Per Motion to Appoint Counsel filed on 10/10/14	5041-5050
12	State's Response to Defendant's Motion to Preclude the State from Introducing at Trial Other Bad Acts or Character Evidence and Other Evidence that is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 08/16/10	1268-1276
13	State's Response to Defendant's Petition for a Writ of Mandamus or in the Alternative Writ of Coram and Response to Motion to Appoint Counsel filed on 12/31/13	4708-4713
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1	of Habeas Corpus and Evidentiary Hearing Request, "Motion for Leave to	
2	File Supplemental Petition Addressing all Claims in the First Instance	
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4	State's Response to Defendant's Pro Per Post Conviction Petition for	
5	Habeas Corpus," and "Supplement with Notice Pursuant NRS 47.150(2);	
6	NRS 47.140(1), that the United States Supreme Court has Docketed (#14-	
7	10093) the Pretrial Habeas Corpus Matter Pursuant 28 USC 2241(c)(3)	
8	from the Mooting of Petitioner's Section 2241 Based on a Subsequent	
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10	on 07/09/15	5455-5458
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12	Conviction Petition for Writ of Habeas Corpus filed on 09/03/15	5511-5516
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10	Transcript – Status Check: Availability of Dr. Benjamin for Trial filed on	
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1 THE COURT: And as soon as they're marked, Mr.
2 Maningo, are you going to show them to the witness?

3 MS. MERCER: I am, Your Honor. Thank you.

4 THE COURT: All right.

5 MR. LALLI: We don't oppose to them just being, Your
6 Honor, placed right up here on the door, if Mr. O'Keefe wants
7 to show them to Mr. Ford first, or he can just put them up on
8 the equipment here. Either way. We don't --

9 THE COURT: You're very accommodating. Thank you,
10 Mr. Lalli.

11 MR. O'KEEFE: Again, thank you, Mr. Lalli.

12 THE COURT: But knowing though that this witness
13 never went to the crime scene, so I don't know how he could
14 testify, but we'll just see how it plays out. So, you look at
15 them. Mr. Maningo, you want to put it on the screen? Is
16 that --

17 MR. MANINGO: Yes, sir.

18 THE COURT: -- what you want to do? And for the
19 record, indicate what exhibit you're putting on the screen.

20 MR. O'KEEFE: Yeah. For the record, these were the
21 State's exhibits. Now, I'm transferring [inaudible]. The
22 situation was, we had to remark them as defense exhibits.

23 BY MR. O'KEEFE:

24 Q And I just wanted to clearly see, this was the
25 vehicle here, when we pulled back. I just wanted to get -- I

ROUGH DRAFT TRANSCRIPT

003800

1 was under the understanding with -- Mr. Ford, can you see the
2 screen?

3 A Yes, sir.

4 Q Okay. At any time, were you there at the scene, or
5 anything like that?

6 A No, sir. Went from --

7 Q [Inaudible].

8 Q -- probably the intersection of Decatur and Oakley,
9 at the time, to the homicide bureau, which was just down the
10 street. Finished my job there at the homicide bureau, and
11 went back to the criminalistics bureau on the south side of
12 the city.

13 Q Okay. So, what I'm trying to get at here is I just
14 wanted to show in the back of the car here -- I'm not familiar
15 with this piece of equipment here, and you can't clearly see
16 here.

17 MR. O'KEEFE: Mr. Maningo, if you --

18 MR. MANINGO: [Inaudible].

19 MR. O'KEEFE: Yeah. Well, zoom-in on the handle
20 there. Well, the photographs -- it will be part of the
21 jurors' exhibits. You'll be able to see. What I just want to
22 bring at this time -- because I want to speed this up for
23 everyone. And the vacuum cleaner that they'll [inaudible]
24 exhibit too, also. This shows the vacuum cleaner that I was
25 talking about in the back, folks. You'll see the handle quite

ROUGH DRAFT TRANSCRIPT

003801

1 clearly. That's all that this exhibit is.
2 BY MR. O'KEEFE:
3 Q But you said you didn't see this?
4 A No, sir, I did not.
5 Q Okay.
6 MR. O'KEEFE: Does the Court oppose he admits what
7 the State gives a partial stipulation (sic), that these five
8 photos -- says he did some of the photos down at the crime
9 scene, that these could be admitted? Is that --
10 THE COURT: They are admitted. They're admitted.
11 MR. LALLI: I've already agreed --
12 THE COURT: The jurors are going to see them.
13 MR. LALLI: -- to them being admitted.
14 THE COURT: They're admitted.
15 MR. O'KEEFE: Okay.
16 THE COURT: So --
17 MR. O'KEEFE: That -- okay. All right.
18 THE COURT: He just -- this is the wrong witness.
19 He doesn't know anything about it. He wasn't at the crime
20 scene. He can't, I guess, tell it's a vacuum or not.
21 MR. O'KEEFE: Right. And --
22 THE COURT: But they're admitted. They're going to
23 be --
24 MR. O'KEEFE: And it's for the jury to see, right?
25 THE COURT: Exactly.

ROUGH DRAFT TRANSCRIPT

003802

1 MR. O'KEEFE: And that's the whole --

2 THE COURT: And you can argue that to the jury.

3 MR. O'KEEFE: That's the whole purpose. Thank you,
4 Your Honor.

5 THE COURT: Thank you.

6 MR. O'KEEFE: And I'm really trying to speed this up
7 for everybody's sake.

8 THE COURT: You don't -- Mr. -- we want everybody to
9 do what they have to do, all right?

10 (Pause in the proceedings)

11 MR. O'KEEFE: And again, that's the one we just
12 pulled in. And again, I'm just trying to accommodate
13 everybody, and I appreciate it. These will be with you when
14 you go back. This is [inaudible] we pulled in and we parked.
15 BY MR. O'KEEFE:

16 Q And you already said you didn't see it, Mr. Ford.
17 I'm just utilizing you while you're here.

18 A Okay.

19 MR. O'KEEFE: And here is a critical one you'll see.
20 And you can see the seat's back. It's laying completely back.
21 When you get into the room and look at it, you can see the
22 hat. You'll see some glasses of wine. And this photo here is
23 taking them out. You can see the passenger's seat. And you
24 can see this here. You can kind of get an idea, the driver's
25 seat was pulled up for the size of the -- I mean, in the rear.

ROUGH DRAFT TRANSCRIPT

003803

1 And basically, that's all I wanted to do while Mr. Ford was
2 here, Your Honor, was just --

3 THE COURT: Thank you.

4 MR. O'KEEFE: -- get them in, speed --

5 THE COURT: They're in, they're in.

6 MR. O'KEEFE: -- things up. And I appreciate it.

7 THE COURT: So, we can excuse him now. Thank you
8 very much.

9 MR. O'KEEFE: Mr. Ford, thank you very much.

10 THE COURT: Go about your business --

11 THE WITNESS: Thank you, sir.

12 THE COURT: -- of retirement.

13 THE WITNESS: Good seeing you again, sir.

14 THE COURT: I'm retired too, but I'm still working.

15 THE WITNESS: I know. What are you doing here then?

16 THE COURT: The senior judge.

17 THE WITNESS: Congratulations, sir.

18 THE COURT: Thank you. You, too.

19 All right. The State will call it's next witness,
20 please.

21 MS. MERCER: State calls Officer Christopher
22 Hutcherson.

23 THE MARSHAL: Please, sir, remain standing. Raise
24 your right hand, and face the clerk.

25 CHRISTOPHER HUTCHERSON, STATE'S WITNESS, SWORN

ROUGH DRAFT TRANSCRIPT

003804

1 THE MARSHAL: If you'd have a seat, sir. Please
2 slide up to the microphone. If you would, please state and
3 spell your name for the record.

4 THE WITNESS: Officer Christopher Hutcherson.
5 C-h-r-i-s-t-o-p-h-e-r, H-u-t-c-h-e-r-s-o-n.

6 MS. MERCER: May I proceed, Your Honor?

7 THE COURT: Yes.

8 DIRECT EXAMINATION

9 BY MS. MERCER:

10 Q Sir, where are you currently employed?

11 A Las Vegas Metropolitan Police Department.

12 Q In what capacity?

13 A Police officer.

14 Q Patrol officer?

15 A Yes, ma'am.

16 Q How long have you been employed with Metro?

17 A Four and-a-half years.

18 Q Back in November of 2008, what was your position
19 with Metro?

20 A Patrol officer.

21 Q Were you completing what's referred to as field
22 training at the time?

23 A Yes, ma'am.

24 Q What is field training?

25 A Field training is, after the academy, new officers

ROUGH DRAFT TRANSCRIPT

003805

1 go through an 11-week, 12-week training with another patrol
2 officer, to make sure they're up to par for the job.

3 Q Okay. And is the other patrol officer kind of a
4 supervisor during that period of time?

5 A Yes, ma'am.

6 Q On November 5th of 2008, how far into your field
7 training would you have been?

8 A I was in what we call, solo beat. I was at the end
9 of my training.

10 Q Solo beat, what does that mean?

11 A I was allowed to ride by myself. I was proven to be
12 up to par for the job, so.

13 Q Okay. So, on November 5th of 2008, were you in fact
14 riding solo?

15 A Yes, ma'am.

16 Q And towards 11:00 P.M. that evening, were you
17 dispatched to an incident at 5001 El Parque?

18 A Yes, ma'am.

19 Q What information did you have at the time you were
20 dispatched?

21 A It came out to us as an unknown trouble call. A
22 neighbor walked past an apartment, and saw a woman bleeding
23 from the door.

24 Q Okay. When calls come in to dispatch, are they
25 assigned different priority codes?

ROUGH DRAFT TRANSCRIPT

003806

1 A Yes.

2 Q And what do those priority codes signify to you all?

3 A Whether -- pretty much dispatched our response time.
4 Whether we go lights and sirens, whether a call needs to be
5 handled immediately, or whether that call can be handled at a
6 later time.

7 Q Okay. So, it kind of indicates how serious the call
8 is?

9 A Yes.

10 Q And this call would have come out as what level
11 priority?

12 A Zero.

13 Q And is zero the most important?

14 A Yes.

15 Q When you responded to the scene, what did you
16 observe?

17 A When I responded to the scene, there were already
18 several officers arrived. I went to the front of the
19 apartment in question. I was instructed to go to the rear of
20 that apartment to make sure nobody fled from the balcony of
21 that unit.

22 Q Okay.

23 MS. MERCER: Your Honor, permission to publish?

24 THE COURT: Yes.

25 BY MS. MERCER:

ROUGH DRAFT TRANSCRIPT

003807

1 Q I'm showing you what's been admitted as State's
2 Exhibit 2. Is this the apartment that you're referring to?

3 A Yes.

4 Q And where were you asked to stand post?

5 A To the rear of the apartment. I guess to the back
6 of these units, there's a balcony, a balcony for the second
7 story.

8 Q Okay. And why were you asked to stand there?

9 A To make sure no one fled out of the balcony, tried
10 to flee the scene.

11 Q Were you aware that officers were trying to gain
12 custody of a suspect?

13 A Yes.

14 Q How long were you standing behind the apartment?

15 A Approximately 10, 15 minutes.

16 Q And at some point, were you made aware that they had
17 a suspect in custody?

18 A Yes, ma'am.

19 Q Did you have contact with that suspect?

20 A I did.

21 Q Can you tell me how that came about?

22 A After they got the subject in custody, I ran around
23 the front. I was instructed to put up crime scene tape. That
24 took maybe about 15, 20 minutes. At that time, I was
25 instructed to take control of the suspect that was in custody.

ROUGH DRAFT TRANSCRIPT

003878

1 Q Okay. Do you see that suspect in the courtroom
2 today?

3 A I do.

4 Q Could you please point to him, and identify an item
5 of clothing that he's wearing?

6 A Gentleman. He has on like a dark colored suit.

7 MR. O'KEEFE: I'll stipulate to my identity Your
8 Honor. This is no --

9 THE COURT: It's just easier for them to do this --

10 MR. O'KEEFE: Yes, sir.

11 THE COURT: -- all right? But go ahead. Proceed
12 again.

13 BY MS. MERCER:

14 Q Can you point to him and describe an article of
15 clothing that he's wearing? I'm sorry you got interrupted.

16 A Yes, ma'am. Gentleman sitting there.

17 THE COURT: All right. Record reflect the
18 identification of the defendant. Proceed.

19 MS. MERCER: Thank you.

20 BY MS. MERCER:

21 Q Going back to the crime scene tape, where did you
22 put up crime scene tape?

23 A In the front -- in the front of the unit. Pretty
24 much, there's a -- there's an entrance here to where you can
25 come into the courtyard. An entrance on the other side, we

ROUGH DRAFT TRANSCRIPT

003809

1 pretty much --

2 THE COURT: Is that fixed now? You can touch it?

3 So --

4 MS. MERCER: Yes.

5 THE COURT: Oh, it is fixed. All right.

6 MS. MERCER: Yes.

7 THE COURT: I just wanted to know.

8 MS. MERCER: Thank you, Your Honor.

9 BY MS. MERCER:

10 Q Go ahead.

11 A I'm sorry. You want me to describe it on the --

12 Q If you can.

13 A Oh, okay. There's an entrance here, and an entrance
14 over here. And we pretty much put crime scene tape --

15 Q You can actually touch it on the screen. If you
16 touch it, it will highlight it for the jury.

17 A Oh. I'm sorry.

18 (Pause in the proceedings)

19 THE WITNESS: There's an entrance here off to the
20 right, and an entrance here off to the right. And there are
21 some more apartments facing the front. So, we cordoned off
22 those entrances and the apartment area, so no one could come
23 out of the apartment into the crime scene.

24 BY MS. MERCER:

25 Q Okay. What is the purpose of doing that?

ROUGH DRAFT TRANSCRIPT

003810

1 A To preserve evidence.

2 Q Okay. Now, when you were asked to take custody of
3 the defendant, did you actually have to go upstairs to get
4 him?

5 A I did.

6 Q And where was he upstairs?

7 A He was upstairs, here, by the stairs.

8 Q At the very top of the stairwell??

9 A Yes, ma'am.

10 Q And what was his demeanor when you made contact with
11 him?

12 A He was very belligerent, yelling obscenities.
13 Pretty much, what did he do wrong, and why do we have him in
14 handcuffs.

15 Q So, he was in fact in handcuffs already?

16 A Yes.

17 Q And when you -- did you take him down the stairs?

18 A I did.

19 Q What did you do with him once you were down the
20 stairs?

21 A We came out this area, walked around here. And my
22 patrol car was on this side, the exit on this side, and I took
23 him to my patrol car.

24 Q Okay. Did you actually put him in the patrol car?

25 A I did.

ROUGH DRAFT TRANSCRIPT

003811

- 1 Q Prior to placing him in your patrol car, what did
2 you do?
- 3 A I conducted what we call search incident to arrest.
- 4 Q What --
- 5 A Just wanted to make sure he had no weapons, or other
6 contraband on him for safety reasons.
- 7 Q Okay. And do you always do that before you place a
8 suspect in your patrol car?
- 9 A Yes, ma'am.
- 10 Q What was his demeanor during that search incident?
- 11 A Still belligerent, yelling obscenities and
12 profanities.
- 13 Q Did you have to have another officer assist you, or
14 was it just you at this time?
- 15 A It was just me at this time.
- 16 Q And eventually, did you put him in the back of your
17 patrol car?
- 18 A Yes, ma'am.
- 19 Q Once you placed him in the back of your patrol car,
20 what did you do?
- 21 A I walked around to the front of my patrol car, got
22 in the driver's seat.
- 23 Q When you were placing him -- when you put him in the
24 back of the patrol car, was he cooperative?
- 25 A No, ma'am.

ROUGH DRAFT TRANSCRIPT

003812

1 Q How was he behaving?

2 A Just very belligerent. He didn't want to sit down.
3 He just kept yelling profanities. I placed him between the
4 door and the seat itself, and I nudged him in.

5 Q So, you actually had to physically nudge him to get
6 him into the car?

7 A Yes, ma'am.

8 Q And how long did it take you to get him into the
9 back of your patrol car?

10 A A few minutes.

11 Q Okay. Once you got into the patrol car with him,
12 what happened?

13 A He was yelling, being belligerent, loud. So, I
14 decided to turn on the radio, turned on some music. Thought
15 that might calm him down. He made it very strongly -- he
16 didn't want to hear that music. So, I turned the radio down.

17 Q Okay. So, it didn't calm him down, I take it?

18 A No.

19 Q What did you do at that point?

20 A After a couple minutes, I decided to get out of my
21 patrol car.

22 Q Why?

23 A I didn't want to hear the profane language and him
24 being loud anymore. So, I just stood outside of my patrol car
25 and observed him from there.

ROUGH DRAFT TRANSCRIPT

003813

1 Q How close to your patrol car were you standing?

2 A I walked -- actually walked back around to the rear
3 passenger's side, where he was sitting. And I just stood off
4 a few feet. And --

5 Q When you were observing him, were you still able to
6 hear him yelling obscenities, and --

7 A Yes.

8 Q -- being belligerent?

9 A Yes.

10 Q How long did that proceed?

11 A Maybe 5, 8 minutes.

12 Q What made him stop?

13 A Like he fell asleep.

14 Q He fell asleep?

15 A Yeah.

16 Q How long did he sleep?

17 A I would say about -- between 5 to 8 minutes. Wasn't
18 very long.

19 Q Did anything specific wake him up?

20 A No.

21 Q When he woke up, how was he behaving at that point?

22 A He was just mumbling and talking to himself. He
23 wasn't really loud anymore.

24 Q Were you still outside the car at this point?

25 A No, ma'am. I had sat back in my patrol vehicle once

ROUGH DRAFT TRANSCRIPT

003814

1 he went to sleep.

2 Q And when he started mumbling, what kinds of things
3 was he mumbling?

4 A He just started mumbling things, you know, "I love
5 you, V." He said that a few times. And then, he made some
6 statements that I wrote down.

7 Q What made you write the statements down?

8 A Just because his -- his mumbling when he first woke
9 up, he was saying things that -- we're trained to write down
10 any utterances suspects might make. So, I took out my
11 notebook and wrote down, just in case he said anything that
12 was pertinent.

13 Q To the case?

14 A Yes.

15 Q And is that just a little notebook that you carry in
16 your pocket?

17 A Yes, ma'am.

18 Q Do you recall exactly what those statements were, as
19 you sit here today?

20 A I can't recall them verbatim.

21 Q If I showed you a copy of the page of your notes,
22 would that refresh your memory?

23 A Yes, ma'am.

24 MS. MERCER: Your Honor, may I approach the witness?

25 THE COURT: This is not an exhibit; it's just --

ROUGH DRAFT TRANSCRIPT

003815

1 MS. MERCER: No.

2 THE COURT: -- to refresh his memory?

3 MS. MERCER: Correct.

4 THE COURT: All right. Go ahead.

5 BY MS. MERCER:

6 Q If you could just look at that and read it to
7 yourself, and hand it back to me when you're done reading,
8 please.

9 A Okay.

10 Q Is your memory refreshed?

11 A Yes, ma'am.

12 Q And what were the statements that he made?

13 A "I swear to God, V, I didn't mean to hurt you. What
14 did I do wrong? Let's go do the ten years. That's why I love
15 you, V, because you're so crazy."

16 Q How long did the mumbling go on?

17 A Maybe a couple minutes. Wasn't long. He started
18 being loud and belligerent again, wanted to know why he was in
19 the back of my patrol car.

20 Q Okay. And during the time that he was mumbling, you
21 weren't asking him any questions or anything, correct?

22 A No, ma'am.

23 Q They were just spontaneous statements?

24 A Yes, ma'am.

25 Q How long were you sitting in the patrol car with him

ROUGH DRAFT TRANSCRIPT

003816

1 at that point?

2 A I would say about another eight minutes or so.

3 Q And then, what happened next?

4 A I got out of my patrol vehicle. Detectives wanted
5 to take photographs of the subject. And I took him out of my
6 patrol car, and handed him over to the detectives.

7 Q And how was he behaving during that process?

8 A Still loud, belligerent.

9 Q Were you actually present when the detectives took
10 the photographs of him?

11 A I was.

12 Q Or when they had the CSA's take them?

13 A Yes, ma'am.

14 MS. MERCER: Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 BY MS. MERCER:

17 Q I'm showing you what's been marked as State's
18 proposed Exhibit 58 for identification purposes. Could you
19 take a look at that, and tell me whether you recognize it?

20 A Yes.

21 Q Do you recognize it?

22 A I do.

23 Q And is this one of the photographs that they took
24 that night?

25 A Yes, ma'am.

ROUGH DRAFT TRANSCRIPT

003817

1 Q And you were present during it?

2 A Yes, ma'am.

3 MS. MERCER: Move for the admission of State's
4 proposed 58, Your Honor.

5 THE COURT: Any objection, Mr. O'Keefe?

6 MR. O'KEEFE: No, Your Honor.

7 THE COURT: Thank you. 58 will be admitted.

8 (Exhibit 58 is admitted)

9 BY MS. MERCER:

10 Q And was the photograph just taken in the parking
11 lot?

12 A Yes, ma'am.

13 Q Okay. When he was being photographed, how was he
14 behaving?

15 A Loud, belligerent. I really didn't see him do
16 anything that was uncooperative. He was just really being
17 loud and using profane language.

18 Q Okay. How long did you spend with him that evening
19 at the apartment complex?

20 A I'd say, entirety, maybe 45 minutes --

21 Q And --

22 A -- or so.

23 Q During that 45 minutes, did his demeanor change?

24 A No.

25 Q He was just belligerent the entire time?

ROUGH DRAFT TRANSCRIPT

003818

1 A Yes.

2 Q After the photographs were taken, what were you
3 asked to do with him?

4 A I was asked to put him back in my patrol car; to
5 wait for the instructions to go down to the detective bureau.

6 Q Did you put him back in the back of your patrol car?

7 A I did.

8 Q And the second time that you had to put him in your
9 patrol car, was it just you, or did you have to enlist the
10 assistance of another officer?

11 A Another officer.

12 Q So, it took two of you to get him into the patrol
13 car this time?

14 A Yes, ma'am.

15 Q And is that because he was being uncooperative and
16 belligerent?

17 A Yes, ma'am.

18 Q Did you at some point obtain further instructions
19 with regards to what to do with the defendant?

20 A I did.

21 Q And what were you asked to do?

22 A To transport him down to the detective bureau for an
23 interview.

24 Q Did you in fact transport him there?

25 A I did.

ROUGH DRAFT TRANSCRIPT

003819

1 Q And do you recall about what time that would have
2 been?

3 A Not exact time, I don't. Maybe 50 minutes after the
4 initial -- the initial call.

5 Q So, about 11:50 P.M.?

6 A Yeah.

7 Q Somewhere around there? And when you transported
8 him to the detective bureau, what was his demeanor?

9 A Very loud, using profane language, wanted to know
10 why he was going to -- going to jail. And I told him he
11 wasn't going to jail at this time, just calm down. And he
12 wanted to know why he was in handcuffs, and just being very
13 loud and belligerent.

14 Q Was that the entire way to the bureau?

15 A Yes.

16 Q And how long was that car ride?

17 A Maybe six minutes.

18 Q Once you arrived at the bureau, were you responsible
19 for escorting him inside?

20 A Yes, ma'am.

21 Q And when you took him inside, how was he behaving?

22 A Same way. Wild, belligerent.

23 Q Did it take some prodding to get him to walk inside?

24 A Yes.

25 Q Did you remain there the entire --

ROUGH DRAFT TRANSCRIPT

003800

- 1 A I did.
- 2 Q -- early morning --
- 3 A Yes, ma'am.
- 4 Q -- while he was with the detectives?
- 5 A Yes, ma'am.
- 6 Q Where were you?
- 7 A I stood outside in the hallway while the detectives
8 interviewed him.
- 9 Q Okay. So, you weren't present during the interview?
- 10 A No.
- 11 Q After they were done interviewing him, what did you
12 do?
- 13 A I was instructed to transport him to Clark County
14 Detention Center.
- 15 Q Do you recall about what time that would have been?
- 16 A That would have been early morning. I'm saying
17 maybe 4:30, 5:00 o'clock in the morning.
- 18 Q And did you in fact transport him to the Clark
19 County Detention Center?
- 20 A I did.
- 21 Q What was his demeanor at that time?
- 22 A When I first put him in the car, he was okay. Then,
23 when we got down to the jail, he realized he was actually
24 going to jail, he started up being profane again.
- 25 Q Okay. Do you remember anything specific he said?

ROUGH DRAFT TRANSCRIPT

003821

1 A Nothing. Nothing specific. Just, you know, pretty
2 much the entire contact, "Why the fuck am I going to jail,"
3 things like that.

4 Q Okay. And this would have been approximately five
5 to six hours after your initial contact with him?

6 A Yes.

7 Q And his behavior never changed?

8 A No.

9 MS. MERCER: Court's indulgence.

10 BY MS. MERCER:

11 Q Officer, during the time that you spent with the
12 defendant that evening, did he ever appear to you to be
13 intoxicated?

14 A Yes.

15 Q And when he was being photographed, was he so
16 intoxicated that he couldn't stand up on his own?

17 A Yes.

18 Q Okay.

19 MS. MERCER: Pass the witness, Your Honor.

20 THE COURT: All right. Cross-examination, Mr.
21 O'Keefe?

22 MR. O'KEEFE: Yes, Your Honor. I'll try to be
23 brief.

24 CROSS-EXAMINATION

25 BY MR. O'KEEFE:

ROUGH DRAFT TRANSCRIPT

003822

1 Q Mr. Butcherson --
2 A Sir.
3 Q -- I believe it is. How are you, sir?
4 A All right.
5 Q Okay. I want to keep it simple, straightforward.
6 Let's just let it fall where it lays, okay, Officer? Okay.
7 Are you aware -- okay. Would you stipulate or agree -- I have
8 the 9-11 call here that this tragedy was called in at 23:02.
9 A Okay.
10 Q Okay. State won't disagree with it. Okay. Did you
11 -- were you aware at any time that they called in that -- four
12 minutes later, that they already knew I was extremely 408?
13 Did you hear that on your radio?
14 A No, I don't recall that.
15 Q Okay. At any time, did you realize that I was
16 extremely intoxicated when you did come in hand with me -- or
17 contact with me?
18 A Yeah, when I came in contact with you.
19 Q It was apparent to you, correct?
20 A Yes.
21 Q I appreciate your honesty. Okay. Now, you were in
22 the back, you stated, Officer, and you moved around to the
23 front after it was cleared. You did the tape. Then you were
24 instructed, if I remember through prior testimony, that you
25 were to take control of me, and move me to the squad car,

ROUGH DRAFT TRANSCRIPT

003823

1 correct?

2 A That's correct.

3 Q Okay. And you clearly stated -- I have it here, if
4 you -- you know. After I ask the question, if you need to be
5 refreshed, we'll go through it. But you might remember.

6 A Okay.

7 Q Who knows. Some people do. Trying to, you know, be
8 very -- no tricks, no ploys. Straightforward, what it shows.
9 Okay. You stated you moved me down to the squad car. That I
10 -- it quoted that I was apprehended, in custody at 11:13.
11 Would you agree with that?

12 A Yeah.

13 Q That's what it states. 11:13. You testified that,
14 within 30 to 35 minutes after being in your squad car --
15 exactly 30, 35 minutes, that I started to make these comments.
16 Would that be about right, what you stated?

17 A 30, 35 minutes?

18 Q That's what it shows. If you --

19 A Okay.

20 Q You know what -- okay, well, [inaudible]. That's
21 fine. Okay. But what I want to get to mainly here is, you
22 said exactly about 15 minutes after the code 4 was called --
23 the scene was all secure; that's what a code 4 is, correct?

24 A Yeah.

25 Q Okay. The code 4 was called, that you moved me to

ROUGH DRAFT TRANSCRIPT

003824

1 your vehicle?

2 A I'm sorry, sir?

3 Q Okay. "About 15 minutes after we were given a code
4 4, I moved the victim -- or the suspect to my squad car."

5 A After code 4 was given, I was instructed to put up
6 crime scene tape.

7 Q Okay. Would you like to refresh your memory here?
8 I'll have it brought to you, and let you read it.

9 A Sure.

10 Q Okay.

11 (Pause in the proceedings)

12 BY MR. O'KEEFE:

13 Q And I just put little X's for -- so you can see
14 where to go to, just to speed things up. On each page, if you
15 would read --

16 A Okay.

17 Q -- that little block off, sir. You know, I want to
18 be straightforward here, so you can clearly see what was --
19 yes. Thank you.

20 A Now, I'm sorry, sir. What exactly am I looking at?

21 Q Okay. It's saying, after the code 4 was called --
22 see that down here? I was apprehended about 15 minutes after
23 the code 4 was called.

24 A Do you have it marked here? I can't --

25 Q Page 180 -- I think it's 183 at the bottom. See

ROUGH DRAFT TRANSCRIPT

003825

1 where the --

2 A 83? Okay.

3 Q -- first X is looking at? Read that little page

4 there. It will fill you in and give you the great synopsis.

5 A Okay.

6 Q Okay. So, without saying anything, it clearly

7 states, the code 4 was called at 11:13?

8 A Um-hum.

9 Q 11:13 is after 11:00, correct?

10 A Okay.

11 Q Okay. 30 to 35 minutes after I started making these

12 statements in your car? What it says.

13 A Okay.

14 Q At 11:13 approximately, you stated also in that

15 section that 15 minutes after the code 4, which was at 11:13,

16 so it would have been 11:28 --

17 A Um-hum.

18 Q -- you moved me to the car.

19 A Okay.

20 Q Are you with me?

21 A Yeah.

22 Q The code 4, clear, was called at 11:13. 15 minutes

23 later, you took me to the car.

24 A Are you trying to get to where the point I took

25 custody of you? Or --

ROUGH DRAFT TRANSCRIPT

003826

1 Q Right. Right. -

2 A Okay.

3 Q You said after the code --

4 A I mean, that's --

5 Q It's right there, Officer. You just read it. I'm
6 not trying to --

7 A I did. I mean, after code 4 was given, it takes
8 about 15, 20 minutes for me to put up the crime scene tape.
9 And that's when I took --

10 Q Okay.

11 A -- custody of you.

12 Q If there was much testimony given that I was up on
13 the balcony for an hour, hour and-a-half, would you dispute
14 that?

15 A I would say, yeah, I would.

16 Q Okay. So, you would dispute that I was up on the
17 balcony for at least an hour -- if you're stating --

18 A Before I got you?

19 Q Prior testimony was given I was on the balcony for
20 an hour -- some say an hour, hour and 15 minutes before I was
21 even removed from the balcony, and taken to the car. Your
22 testimony there states that code 4 was called at 11:13.

23 A Okay.

24 Q Approximately 15 minutes after the code 4, you took
25 me to the squad car.

ROUGH DRAFT TRANSCRIPT

003827

1 A Okay.

2 Q That's what it states.

3 A Yeah. That's what I said. That's what I just said
4 here today.

5 Q On the next page. No further questions on that
6 topic. Did you read -- now, you're stating that when I was in
7 the car, I was completely talking to myself. You admitted
8 that, right?

9 A Um-hum.

10 Q And you know, it was a tragic situation, okay? You
11 stated that I said the words, "I love you, V. I didn't mean
12 to hurt you." Okay. But I was talking to myself, you stated,
13 correct?

14 A That's correct.

15 Q So, you weren't at the scene then, correct, Officer?
16 Of course.

17 A No, I was not at the scene.

18 Q Okay. So, I'm mentally talking to myself. Did you
19 know that I had dropped her a couple times?

20 A No.

21 Q Does that make sense to you?

22 A No.

23 Q Okay. [Inaudible]. And you state quite clearly
24 there, I'm talking to myself. I'm in shock. And I say, "V, I
25 didn't mean to hurt you. What did I do? That's why I love

ROUGH DRAFT TRANSCRIPT

003828

1 you, you're so crazy." Did you know she was truly crazy?

2 A No.

3 Q Now does it make more sense, Officer? Possibly?
4 Possibly?

5 A I mean, are you asking me if it --

6 Q Yes. Possibly? Does it make -- it's -- maybe make
7 some sense?

8 A Sir, I'm getting bits and pieces of what you're
9 talking about.

10 Q Sir --

11 A I mean, I only can testify to what I actually -- the
12 facts that I know. I mean --

13 Q And I'm not trying to trick you.

14 THE COURT: But what you're trying to do is
15 you're --

16 MR. O'KEEFE: The facts that you said you --

17 THE COURT: -- [inaudible] argue. Not to the --
18 you're being very gentle, but you're trying to argue your
19 case. What you do is elicit facts. He presented facts. The
20 officer who made the report, that's facts. Then when the
21 appropriate time (sic), then you argue to the jury. That's
22 your argument to the jury.

23 MR. O'KEEFE: Right, Your Honor. Right --

24 THE COURT: Does that make sense, ladies and
25 gentlemen? And that's the --

ROUGH DRAFT TRANSCRIPT

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1 MR. O'KEEFE: Okay.

2 THE COURT: -- person you argue to.

3 MR. O'KEEFE: Well, I'm -- yes, sir, Your Honor.

4 THE COURT: But that's all.

5 MR. O'KEEFE: I'm trying to get into --

6 THE COURT: I just --

7 MR. O'KEEFE: Okay.

8 THE COURT: Proceed.

9 MR. O'KEEFE: And the reason why, Your Honor -- and
10 it will get a little bit clearer now.

11 THE COURT: Okay.

12 BY MR. O'KEEFE:

13 Q You just testified that you're trained to take
14 statements possibly that could lead to a scene. You said
15 that, didn't you? You know, we're --

16 A Yeah.

17 Q -- trained to take comments that maybe could lead --
18 okay. That's why I'm trying to get you to expand on it a
19 little bit, so I can use it in my argument. You know, you
20 said you took statements. Okay, you admitted that. I was
21 talking to myself. I'm confused, correct? I'm talking to --

22 MS. MERCER: Objection, Your Honor.

23 MR. O'KEEFE: -- myself?

24 MS. MERCER: Calls for speculation.

25 THE COURT: I don't know if he said, confused. He

ROUGH DRAFT TRANSCRIPT

003830

1 said you were mumbling to yourself.

2 MR. O'KEEFE: And I'm talking to myself.

3 THE COURT: All right.

4 BY MR. O'KEEFE:

5 Q To myself. Correct, Officer?

6 A That's correct, sir.

7 Q Okay. You testified that I am extremely, extremely
8 loud, correct?

9 A I did.

10 Q In your professional opinion, wouldn't you think
11 that if a call's made for battery, domestic violence, alleged,
12 don't you think it would be hard for somebody extremely drunk
13 not to even talk, or scream, or yell? I'm just asking in your
14 opinion.

15 A What do you mean?

16 Q Well, if I'm so loud, and screaming and belligerent,
17 constantly, "What did I do," don't you think I would have been
18 that way before you guys were called and came?

19 MS. MERCER: Objection, Your Honor, calls for
20 speculation.

21 THE COURT: Yeah, that calls for --

22 MR. O'KEEFE: All right.

23 THE COURT: -- speculation. Sustained.

24 BY MR. O'KEEFE:

25 Q Again, you do agree that I was extremely

ROUGH DRAFT TRANSCRIPT

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1 intoxicated?

2 A Yes, sir.

3 Q You do agree the call time of the code 4, that it
4 was clear at 11:13; they had me apprehended?

5 A I don't know the approximate time, but I would say
6 that's about correct.

7 Q Okay. You do agree that I -- without a doubt, you
8 could smell, and you could see I was drunk?

9 A Yes.

10 Q And you do agree that, in my mind and my thinking, I
11 was like, why are you taking me; what did I do? You testified
12 to that, right? Like, why are you taking me? Why are you
13 putting me -- why are you arresting me? Did you not testify
14 to that?

15 A I didn't testify to that. I'll testify that you
16 were being very profane, loud.

17 Q You didn't state any words or anything like, why am
18 I being arrested, why am I being taken to jail? Did you not
19 say that? Do we need to get a playback?

20 A On your way to jail, you did.

21 Q And at any time when you said you were trying to
22 stick me in the car, I was saying, like, no -- what's going --
23 why am I being taken, what are you doing? You didn't say
24 that?

25 A It wasn't quite --

ROUGH DRAFT TRANSCRIPT

003832

1 Q They heard it.

2 A -- frank to that nature. I mean, I'm trying to save
3 the ears of the jury from what you were saying. But it was
4 very profane, very loud, belligerent.

5 Q So, then you also stated you didn't know anything
6 about her mental illness?

7 A I did not.

8 Q You didn't know that they said she only had five
9 years to live?

10 A I didn't know that.

11 Q And you didn't know -- you wasn't there (sic). You
12 didn't know that I dropped her multiple times?

13 A I did not know that.

14 MR. O'KEEFE: No further questions.

15 THE COURT: Thank you, Mr. O'Keefe. Any redirect?

16 MS. MERCER: No, Your Honor.

17 THE COURT: Thank you so much, Officer, for
18 testifying. You're excused now. All right?

19 THE WITNESS: Thank you, sir.

20 THE COURT: State will call it's next witness. Or
21 maybe -- do you want to take a ten-minute recess? How about
22 that?

23 Don't converse among yourselves, or anyone else, on
24 any subject connected with the trial; read, watch, or listen
25 to any report or commentary on the trial, by any person

ROUGH DRAFT TRANSCRIPT

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1 connected with the trial, or by any medium of information,
2 including, without limitation, newspapers, television, radio.
3 And you are not to form or express any opinion on any subject
4 connected with the trial until the cause is finally submitted
5 to you.

6 We'll take a ten-minute recess.

7 (Court recessed at 10:49 a.m. until 11:03 p.m.)

8 (Within the presence of the jury panel)

9 THE COURT: We're going to proceed now in the
10 State's case in chief. We have a few witnesses that we need
11 to get before the lunch break. So, if we go until 12:15,
12 12:30, don't be -- we're still going to get our hour and 15
13 minutes lunch. Might be a little delay, but we want to keep
14 things moving along.

15 And then, we'll do our lunch after we get through
16 these couple of witnesses. We'll come back. And we're going
17 to work until about 4:15, 4:30 today, and then recess about
18 that time today. All right? That being said, State will call
19 it's next witness.

20 MR. LALLI: Your Honor, the State calls Robbie Dahn.

21 THE MARSHAL: If you would raise your right hand,
22 please.

23 ROBBIE DAHN, STATE'S WITNESS, SWORN

24 THE MARSHAL: Have a seat, please. Watch your step
25 there. If you would, please slide up to the microphone. And

ROUGH DRAFT TRANSCRIPT

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1 state your name, and spell it for the record.

2 THE WITNESS: My name is Robbie Dahn. First name's
3 spelled, R-o-b-b-i-e. Last name, D-a-h-n.

4 DIRECT EXAMINATION

5 BY MR. LALLI:

6 Q Can you tell us how you're employed?

7 A Yes, sir. I'm a senior crime scene analyst with the
8 Las Vegas Metropolitan Police Department.

9 Q I'm going to move this a little closer, so you don't
10 have to --

11 A Okay.

12 Q Is that a little more comfortable for you?

13 A Yes. Thank you.

14 Q Okay. You're a senior crime scene analyst?

15 A Yes, sir.

16 Q How long have you been employed with Metro?

17 A Next month will be 14 years. 13 months -- I mean,
18 13 years, 11 months.

19 Q Something that you crime scene analysts do, you're
20 very precise in the amount of time with Metro. Do you -- you
21 respond to crime scenes?

22 A Yes, sir.

23 Q Do you also respond to autopsies?

24 A Yes, I do.

25 Q What is your purpose in responding to an autopsy?

ROUGH DRAFT TRANSCRIPT

003835

1 A We come in the morning to briefing. We do a
2 rotation. I work on day shift, and day shift crime scene
3 analysts respond there. Our job there is to go to the
4 coroner's office. And prior to the cutting part of an
5 autopsy, we collect evidence and do photographs.

6 Q Did you respond to an autopsy on November 7th, 2008?

7 A Yes, sir.

8 Q Who was the decedent?

9 A A woman named Victoria Whitmarsh.

10 Q Who was the doctor who was performing the autopsy?

11 A After their meeting, the doctor that was assigned
12 was Dr. Jacqueline Benjamin.

13 Q Is Dr. Benjamin still with the coroner's office?

14 A No, she's not.

15 Q Do you know where she is? Do you know whether she's
16 moved out of the state?

17 A I don't have that knowledge.

18 Q Okay. So, when a crime scene analyst responds to an
19 autopsy, are you there to photograph the autopsy?

20 A Yes.

21 Q Are you there also to collect evidence from the
22 autopsy?

23 A Yes.

24 Q When the coroner's office opens an investigation and
25 begins to go through the autopsy process, do they assign a

ROUGH DRAFT TRANSCRIPT

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1 particular case number to a case?

2 A Yes, they do.

3 Q Do you know what the case number -- the coroner case
4 number was in this particular incident?

5 A Yes, I do. The case numbers also begin with the
6 year. So, it was 08-8747, I believe.

7 Q All right. You said that one of the things you do
8 is photograph the autopsy, correct?

9 A Yes.

10 Q While you're photographing the autopsy, does the
11 coroner's office also photograph the autopsy?

12 A Yes, they do. We work together. I'm assigned a
13 coroner tech when I get there. We're inside a special events
14 room on the -- right off the side of the room, where all the
15 open medical examinations taking place. And I worked in
16 tandem with the coroner tech that day.

17 Q All right.

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

19 THE COURT: Yes.

20 BY MR. LALLI:

21 Q Ms. Dahn, I'm going to show you what we've marked as
22 State's proposed 77, 78, and 79, and 80. Do you recognize
23 those photographs?

24 A Yes, I do.

25 Q Are those fair and accurate depictions of the

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1 clothing that Victoria Whitmarsh was wearing at the time of
2 autopsy?

3 A Yes.

4 MR. LALLI: Your Honor, move for the admission of
5 those exhibits.

6 THE COURT: Any objection, Mr. O'Keefe?

7 MR. O'KEEFE: No objection, Your Honor.

8 THE COURT: 77, 78, 79, and 80 will be admitted.

9 (Exhibits 77, 78, 79, and 80 are admitted)

10 BY MR. LALLI:

11 Q Those are photos that you actually took?

12 A I -- as I'm looking at the pictures, I'm seeing my
13 arrows, and also a scale with my initials and P number. And
14 I'm pretty sure these may be the ones I took, but they could
15 be Suzanne Mealy (phonetic), the coroner tech, too. I'm not
16 sure.

17 Q All right. Now I'm going to show you what we've
18 marked as State's proposed 81 through 130. And I'd ask you to
19 look at those.

20 A As I'm going through the pictures, I'm seeing a gray
21 square identifying card, which I know that the coroner
22 technicians use. So, I'm thinking that these are probably the
23 ones that were taken in tandem with my photographs by Suzanne
24 Mealy, the girl who I was working with.

25 Q Now, with respect to State's proposed Exhibits 81

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1 through 130, are those fair and accurate depictions of
2 Victoria Whitmarsh during the course of the autopsy?

3 A Yes.

4 MR. LALLI: Your Honor, I'd move for the admission
5 of State's proposed 81 through 130.

6 THE COURT: Any objection, Mr. O'Keefe?

7 MR. O'KEEFE: No, Your Honor.

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

9 (Exhibits 81 through 130 are admitted)

10 BY MR. LALLI:

11 Q Now, you indicated that during the course of an
12 autopsy, the body of the decedent is actually cut?

13 A Yes. They do a -- I think most people think of an
14 autopsy as the internal examination. But there is like an
15 external examination as well.

16 Q But in terms of cutting, is the body of the decedent
17 opened up?

18 A Yes, it is, at the secondary stage of the autopsy
19 procedure.

20 Q And is that photographed?

21 A I believe that the coroner's office does photograph
22 that, but we do not.

23 Q All right. They're particularly gory; not
24 appropriate for a jury. Would you agree?

25 A I agree.

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1 Q Okay. As part of the autopsy, is the head -- skin
2 around the head kind of cut, and pulled back and removed, so
3 that the brain and the scalp are revealed to the pathologist?

4 A Yes, sir.

5 Q And the coroner's office routinely photographs those
6 as well?

7 A Yes.

8 Q Do you recall whether that was done in this case?

9 A I believe it was.

10 Q So, there are more photos that the coroner's office
11 has that a pathologist could review, that wouldn't necessarily
12 be appropriate for a jury to see; is that --

13 A Yes.

14 Q -- a fair statement?

15 A Yes, there would be.

16 Q Okay. And it's your recollection that that was done
17 in this case as well?

18 A Yes.

19 Q All right. Let's go through some of the items that
20 you impounded in this case. Did you recover what I'll refer
21 to as a DNA collection kit, or an evidence collection kit?

22 A Yes, I did.

23 Q What is that?

24 A That's a kit where there's swabs inside for
25 different areas of the body. And we collect a swab sample for

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1 DNA in those areas of the body.

2 Q As part of the evidence collection kit, did you
3 collect buccal swabs?

4 A Yes, I did.

5 Q Are those collected from the mouth of the decedent?

6 A Yes.

7 Q And that is a way that we can obtain a sample of a
8 person's DNA?

9 A Yes.

10 Q As part of the process, do you collect vaginal
11 swabs?

12 A Yes.

13 Q Do you collect cervical swabs?

14 A Yes.

15 Q Rectal swabs?

16 A Yes.

17 Q Oral swabs?

18 A Yes.

19 Q What's the difference between an oral swab and a
20 buccal swab?

21 A The buccal swab's taken from the area of the cheek
22 with -- trying to get epithelial cells for DNA identification.
23 And we swab like the tongue and the back of the throat, but
24 primarily focusing more on the tongue area for the oral swab.

25 Q Do you try to attempt to recover pubic hairs during

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1 the autopsy?

2 A Yes.

3 Q Do you take clippings from the right and the left
4 hands?

5 A Yes.

6 Q And all of that is done and placed in this DNA
7 collection kit?

8 A Yes.

9 Q And then, sent off to Metro's forensic lab if
10 requested to be analyzed by DNA analysts?

11 A Yes.

12 Q So, you did that in this case?

13 A Yes, I did.

14 Q As part of the autopsy process, do you also collect
15 any clothing that the decedent is wearing?

16 A That's correct.

17 Q How was Victoria Whitmarsh dressed when you observed
18 her at autopsy?

19 A Once opening the bag and, you know, opening up the
20 sheet that was surrounding her, she was bare from the waist
21 down. And her upper body had a black under-type shirt, or I
22 call them ribbed t-shirts, short-sleeve. And then, a black
23 jacket with some red striping in it, and I believe the jacket
24 had a hood.

25 Q All right. I'm going to show you what has now been

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1 admitted as State's Exhibit number 77. I'm going to move to
2 the item on the left. What is that?

3 A That's the undershirt that I was referring to, the
4 black ribbed undershirt or t-shirt.

5 Q And then if I move over to the right side of the
6 photo, what is that?

7 A And that's the jacket that was on the -- you know,
8 covering on the outer portion of her body.

9 Q So, Victoria had the t-shirt or the ribbed garment
10 underneath, and then the jacket on top of it?

11 A Yes, sir.

12 Q There are some arrows that you indicated that you
13 recognized. What are the arrows?

14 A I had the arrows marking like a -- it was a material
15 defect in both pieces of clothing, where there was an open
16 area in the material.

17 Q When you say defect, what are you talking about?

18 A There was like a hole in the t-shirt, a cut through
19 the material. And so, I was highlighting it in my -- to just
20 show location with the arrow.

21 Q With respect to the jacket -- or actually, I believe
22 it's the jacket. Let me show you State's Exhibit number 79.
23 That's very difficult to see. Let me see if I can -- okay.
24 Can you see that?

25 A Yes, I can.

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1 Q What are we looking at there?

2 A That's the material defect that I was referring to.

3 Q So, we see a long, kind of linear tear or cut in the
4 material?

5 A Yes.

6 Q All right. Said there was also a -- well, let me
7 show you State's Exhibit number 80. What is that?

8 A That's the ribbed shirt. And I would like to add
9 that I believe the picture that you showed me previously, as
10 well as this one, is a back view of those two items. They're
11 actually flipped over, and showing from the back view.

12 Q All right. So, we're seeing the back here, the back
13 of --

14 A Yes.

15 Q -- the shirt? And the same, or a similar defect was
16 on the ribbed shirt, as well as the jacket?

17 A Yes.

18 Q Okay.

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

21 THE COURT: All right. Any cross-examination, Mr.
22 O'Keefe?

23 MR. O'KEEFE: I have no questions, Your Honor.

24 THE COURT: Thank you. You're excused.

25 THE WITNESS: Thank you, sir.

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1 THE COURT: Next witness, please?

2 MR. LALLI: The next witness is Dr. Timothy Dutra.

3 MR. O'KEEFE: Your Honor, can we approach the bench,
4 please?

5 THE COURT: Yes.

6 MR. LALLI: Oh, I'm sorry. I've got one other item.
7 I didn't see it down here. I apologize.

8 THE COURT: Well, so you want to --

9 MR. LALLI: May I reopen?

10 THE COURT: Yes. He's got another item, Mr.

11 O'Keefe. Any objection?

12 MR. LALLI: Just going to move this into evidence.

13 MR. O'KEEFE: I have no objection.

14 THE COURT: All right. He's going to reopen.

15 BY MR. LALLI:

16 Q Ms. Dahn, I'm going to show you -- we talked about
17 the clothing. And I'm going to show you what we marked as
18 State's proposed 125. Do you recognize this?

19 A Yes, I do.

20 Q What is it?

21 A It is my evidence impound bag for the clothing we
22 were just talking about.

23 Q So, the clothing that you observed on Victoria
24 Whitmarsh, you impounded it and collected it?

25 A Yes, I did.

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1 Q And it's in this evidence bag?

2 A Yes.

3 Q All right.

4 MR. LALLI: Your Honor, move for the admission of
5 State's proposed 125.

6 THE COURT: I thought -- I thought it was admitted,
7 81 through -- unless I'm wrong. Is it already admitted?

8 THE CLERK: [Inaudible].

9 MR. LALLI: Oh.

10 (Pause in the proceedings)

11 MR. LALLI: Oh. One of these photos is marked out
12 of order. So --

13 THE CLERK: The photos should have ended at --

14 MR. LALLI: 120.

15 THE CLERK: -- 123. And then it should have been
16 130. Because --

17 MR. LALLI: That's correct.

18 THE CLERK: -- evidence bags are in between.

19 MR. LALLI: Right. Okay. So, I would move for the
20 admission of 125. I don't think it's been admitted.

21 THE CLERK: No.

22 THE COURT: All right. Any objection, Mr. O'Keefe?

23 MR. O'KEEFE: No, Your Honor.

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

25 (Exhibit 125 is admitted)

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1 MR. LALLI: Thank you. That concludes my
2 examination. I apologize.

3 THE COURT: All right. Thank you.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Now, you want to approach the bench?

6 MR. O'KEEFE: Yes, Your Honor. If we may, please.

7 (Off-record bench conference)

8 THE COURT: All right. Call your next witness.

9 MR. LALLI: Your Honor, the State calls Dr. Timothy
10 Dutra.

11 THE COURT: And again, just for the record, there's
12 an objection here that Mr. O'Keefe mentioned, and it was
13 timely made. And we'll put it on the record at a later time.
14 All right?

15 MR. O'KEEFE: Yes, Your Honor. Thank you.

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

18 TIMOTHY DUTRA, STATE'S WITNESS, SWORN

19 THE MARSHAL: If you could, slide up to the
20 microphone. If you would, sir, please state and spell your
21 name for the record.

22 THE WITNESS: Timothy, T-i-m-o-t-h-y. Franklin,
23 F-r-a-n-k-l-i-n. Dutra, D-u-t-r-a.

24 DIRECT EXAMINATION

25 BY MR. LALLI:

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1 Q Sir, can you tell us how you're employed?

2 A I'm a medical examiner for the Clark County office
3 of the coroner and medical examiner.

4 Q How long have you done that?

5 A A little over two years now.

6 Q Do you hold any professional licenses in the State
7 of Nevada?

8 A I am a licensed physician in the State of Nevada.

9 Q A medical doctor?

10 A Yes, a medical doctor.

11 Q How long have you been a medical doctor?

12 A Well, since 1974.

13 Q 1974?

14 A Yes.

15 Q Okay. Can you --

16 A Excuse me. I'll have to shut that off. That
17 shouldn't have occurred.

18 Q I'm sure the Judge would appreciate it.

19 (Pause in the proceedings)

20 THE WITNESS: I apologize. Yes.

21 THE COURT: All right. Proceed.

22 BY MR. LALLI:

23 Q Can you explain for the jury your formal education?
24 Where did you go to --

25 A I went to --

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1 Q -- undergraduate, where did you go to medical
2 school?

3 A -- University of Southern California Medical School.
4 I also have a PH.D. from UCLA in anatomy and cell biology.
5 I'm board-certified in anatomic and clinical pathology. I'm
6 also board-certified in blood banking and transfusion
7 medicine, and also board-certified in forensic pathology.

8 Q Can you explain for the jury your past employment
9 history? Tell us where you've been able to practice medicine
10 in the past.

11 A I practiced as a pathologist -- as a hospital
12 pathologist in Los Angeles for one of the Los Angeles County
13 hospitals. And subsequently, after that, got my blood
14 banking. I did research for several years. I went back, and
15 did a fellowship at the University of -- at Saint Louis
16 University in forensic pathology in 2008, and took my board
17 exam in 2009.

18 Q What is hospital pathology?

19 A That's where you work in a hospital laboratory, and
20 you receive the surgical specimens, and make microscopic
21 diagnoses on them. You also run the clinical laboratory, the
22 blood bank, the chemistry section, the microbiology.

23 Q So, in other words, with respect to hospital
24 pathology, if I go to UCLA Medical Center and I have a tumor
25 that is removed, that tumor is then sent to a hospital

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