

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESEAN COLLINS

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May 16 2016 09:04 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 69269

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Kathleen Delaney, District Judge
District Court No. 25

**APPELLANT'S APPENDIX
VOLUME 9 OF 11**

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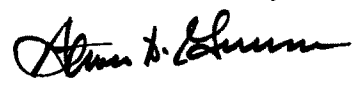
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DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

THE STATE OF NEVADA,)
) Case No. 09C252804
Plaintiff,)
) Dept. No. XXV
vs.)
)
LESEAN COLLINS,)
)
Defendant.)
)
_____)

BEFORE THE HONORABLE KATHLEEN DELANEY

AUGUST 10, 2015, 1:30 P.M.

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

APPEARANCES:

(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

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LAS VEGAS, CLARK COUNTY, NEVADA
MONDAY, AUGUST 10, 2015, 1:30 P.M.

PROCEEDINGS

* * *

THE COURT: We are resuming the trial of the State of Nevada versus Lesean Collins. Counsel for the State is present, counsel for the defense is present and Mr. Collins is present with us and dressed out today.

I understand the State is having some computer difficulties that may impact its ability to proceed.

MS. LUZAICH: No. We are going to proceed.

THE COURT: Okay. I was not sure if that would impact the witnesses you have coming forward. Who are we going to be calling first today?

MS. LUZAICH: Officer Montgomery.

THE COURT: I just wanted to do a couple of quick housekeeping matters and, really, primarily just to find out where we were with jury instructions. I don't know if folks have a better idea at this point on whether we might complete with the evidence but the Court wants to make sure it has time to work on the final version of those, so I just wanted to touch base on that.

MS. LUZAICH: On Friday the State sent a draft of our jury instructions to the defense so that they would have an opportunity to review them over the weekend. This

1 afternoon they provided us with a rather large stack so I
2 assume that it is the whole set instead of just their
3 specials. And we are expecting that the State is going to
4 rest this afternoon.

5 THE COURT: Okay. And then you have Officer
6 Montgomery. Who else do you have?

7 MS. LUZAICH: A crime scene analyst, Maria Lopez.
8 Also Kelly Gauthier, she's DNA. Dan Horn, another crime
9 scene analyst. And the custodian of records from Avis
10 whose name escapes me.

11 THE COURT: Okay. Just keeping a head count.

12 If you expect to rest today then what I would
13 ask, and obviously we are in trial, the last thing in the
14 world the Court wants to do is further burden the
15 attorneys while they are in trial, but I would like to
16 obviously get from you if we are going to have an agreed
17 upon set, I'm not anticipating a fully agreed upon set but
18 I do need at the end of the day whatever is agreed upon in
19 one document and then whatever is in dispute in another
20 document, even if it's two separate documents with the
21 State's in dispute and the defense's in dispute.

22 I just can't -- it takes me far too long to have
23 two full sets and try to make heads or tails of it. So
24 even if it's in an e-mail and somehow pointed out with
25 page numbers or instructions. But I am assuming there is

1 going to be some discussion.

2 MS. LUZAICH: We have not started discussing it
3 but we will.

4 THE COURT: Right. But I have to be ready to go
5 and I am going to have my lunch hour or tonight to be able
6 to work on this. That's fine. I am not having a problem
7 with it, I just want to be ready with it. I can't do it
8 on the fly.

9 MS. LUZAICH: Does the Court want me to send what
10 we sent the defense or wait until we have discussed them?

11 THE COURT: My preference I guess would be to
12 have what you have so far, so both of you go ahead and
13 send what you have so far to my JEA so we can see it so we
14 have an electronic version. That is part of our
15 requirements anyway and I think you are all familiar with
16 that.

17 But at whatever point you can today before the
18 end of the day get over to my JEA the electronic versions
19 of what you have so at least I have that and then I can do
20 some things and piece some things together.

21 And then I would like to have if I could sometime
22 before lunch tomorrow whatever is still in dispute so that
23 I can work on finalizing some things and then have some
24 discussion at some point.

25 MS. LUZAICH: We are sending them to Cindy right

1 now.

2 THE COURT: Okay. Thank you.

3 Mr. Schieck, do you think you are near --

4 MR. SCHIECK: Yes, Your Honor. We do have a hard
5 copy of our proposed which is a large set, however, as the
6 State indicted, it does duplicate a number of things they
7 have and we wanted to be sure that we had everything that
8 we may need in our proposed set.

9 I have a hard copy for Your Honor. I need to
10 contact my office and have them electronically sent to
11 your chambers a copy here very shortly or at a break.

12 THE COURT: Well, I'm not even going to look at
13 it until we adjourn for today.

14 MR. SCHIECK: Okay. I will have them do that at
15 the break then. Do you want a hard copy now?

16 THE COURT: If you have an extra copy that would
17 be fine.

18 MR. SCHIECK: We have reviewed the State's
19 proposed and have filed some objections. Those are
20 standard objections that aren't going to cause any undue
21 research to have to be done. They are objections that we
22 made previously on some instructions that the State always
23 presents, and so in our opinion they are valid arguments,
24 however, it's not going to -- I don't think it will
25 surprise the State when they see what our objections are.

1 THE COURT: I did not check to see if anything
2 else had come in but we would have an actual copy of it in
3 the system.

4 MR. SCHIECK: That was electronically filed about
5 noon today, so it should be winding its way through the
6 clerk's office electronic system. And we always e-mail
7 those when we send them so they should be getting to the
8 DA very shortly.

9 THE COURT: We could have on the break your staff
10 send over the defendant's proposed trial phase
11 instructions if you could also have them send over the
12 objections that would be fine. Whether it is hard copy or
13 an electronic version, I don't care. I just want to be
14 able to see it and I cannot be sure we will have anything
15 in Odyssey today to wind their way through, as you said.

16 MR. SCHIECK: They went somewhere.

17 THE COURT: Well, they sit there until they get
18 accepted. And of course we can't see that they've been
19 filed. In the past there used to be an entry that showed
20 that something was attempting to be filed but the document
21 itself would be missing, but now we don't see anything
22 until it pops in. So just out of an abundance of caution
23 if we could get a copy I would appreciate it.

24 MR. SCHIECK: I will have those sent at the
25 break.

1 THE COURT: Thank you. Is there anything else we
2 need to address before we bring the jurors in?

3 MR. SCHIECK: At some point Mr. Collins needs to
4 be canvassed on his right to testify or not testify. We
5 have discussed that with him over the weekend and before
6 this weekend also, but for the record he does need to be
7 canvassed on that right.

8 THE COURT: Right. That is what I was alluding
9 to when I said that somewhere with the State resting and
10 that's why I wanted to get a head count of witnesses that
11 we would need to speak with Mr. Collins. And I usually
12 prefer to have that discussion after all of the evidence
13 is in, so we will have a break somewhere in there to be
14 able to do that.

15 MR. SCHIECK: Or if the State finishes today we
16 can do it at the conclusion of the State's case also, Your
17 Honor.

18 THE COURT: Certainly.

19 MR. SCHIECK: And if his decision is still up in
20 the air at the end of the day we will need to meet with
21 him tonight to discuss his possible testimony for
22 tomorrow, and so I will anticipate asking him tomorrow
23 before we present any of our case.

24 THE COURT: Well, we will address that when we
25 can, but let's finish with the State's case.

1 Anything else before we go forward?
2 MR. SCHIECK: Not from the defense, Your Honor.
3 THE COURT: Okay. Ms. Luzaich, anything else?
4 MS. LUZAICH: No, Your Honor.
5 THE COURT: Let's have the jurors brought in.
6 (Jurors enter the courtroom.)
7 THE COURT: Welcome back. We are now resuming
8 the trial in the State of Nevada versus Lesean Collins.
9 The record will reflect the presence of counsel and the
10 defendant, counsel for the State and the members of the
11 jury are all present.
12 Ask the State at this time to call their next
13 witness.
14 MS. LUZAICH: Thank you. State calls Officer
15 Montgomery.
16 THE COURT: Officer Montgomery, please come
17 forward to the witness stand and my clerk will swear you
18 in.
19
20 Whereupon,
21 SEAN MONTGOMERY,
22 was administered the following oath by the court clerk.
23 THE CLERK: You do solemnly swear that the
24 testimony you give in this action shall be the truth, the
25 whole truth, and nothing but the truth so help you God.

1 THE WITNESS: I do.

2 THE CLERK: Please state and spell your full name
3 for the record.

4 THE WITNESS: Sean, S-e-a-n; Montgomery,
5 M-o-n-t-g-o-m-e-r-y.

6 THE COURT: Thank you, Officer.

7 Whenever you are ready, Ms. Luzaich.

8 MS. LUZAICH: Thank you.

9

10 DIRECT EXAMINATION

11 BY MS. LUZAICH:

12 Q Good afternoon, sir. Can you describe for us how
13 you are employed.

14 A I am employed with the North Las Vegas Police
15 Department as a police officer.

16 Q How long have you been a police officer with the
17 North Las Vegas Department?

18 A Approximately eight years.

19 Q And as a police officer in North Las Vegas, what
20 are your duties currently?

21 A Patrol duty at this time working the streets,
22 answering calls for service.

23 Q Driving a marked patrol car?

24 A Yes, ma'am.

25 Q Directing your attention back to September of

1 2008 were you working as a patrol officer for the North
2 Las Vegas Police Department as well?

3 A Yes.

4 Q In September of 2008 were you a patrol officer
5 back then as well?

6 A Yes.

7 Q Specifically on September 2nd of 2008, were you
8 working the graveyard shift?

9 A Yes, ma'am.

10 Q What hours are the graveyard at North Las Vegas
11 PD?

12 A At that time I believe it was ten to eight in the
13 morning.

14 Q So at ten at night until the next day at eight
15 the next morning?

16 A Yes.

17 Q So if you went to work on September 2nd of 2008
18 you would have worked into September 3rd; is that right?

19 A Yes, ma'am.

20 Q And back in September of 2008 while you worked
21 graveyard, did you ride alone or with somebody in your
22 car?

23 A I rode alone.

24 Q Very often are graveyard officers dispatched to
25 call with somebody else?

1 A Yes.

2 Q What is the purpose behind that?

3 A Depends on the type of call that we receive.

4 Q Generally would it be an officer-safety thing?

5 A Yes.

6 Q And graveyard especially, dark, things like that?

7 A Yes.

8 Q So on September 3rd of 2008 at 2:30 in the

9 morning were you dispatched to 1519 Laguna Palms?

10 A Yes.

11 Q Did you actually go to that location?

12 A Yes.

13 Q Did you go alone or did somebody go with you?

14 A There was two other units that were dispatched

15 there.

16 Q Do you recall who they were?

17 A It was Officer Chavez and Officers Wheeler and

18 Stancil.

19 Q What was the nature of the call that sent you

20 there?

21 A They received a call from a neighbor stating that

22 there was a gentleman by the name of Lesean Collins that

23 was out in the driveway.

24 Q In a vehicle?

25 A Yes.

1 Q And did your dispatcher when you were dispatched
2 give you the license plate of the vehicle?

3 A Yes.

4 Q Do you remember the license plate of that
5 vehicle?

6 A I would have to look at the ticket.

7 Q When you say "at the ticket," what is a ticket?

8 A It is an incident call that we receive on our
9 computers that gives us all the information pertaining to
10 that call.

11 Q So for example, if I were to call the police
12 there would be somebody taking down the information from
13 dispatch so that they could relay it to you?

14 A Yes.

15 MS. LUZAICH: May I approach the witness?

16 THE COURT: You may.

17 BY MS. LUZAICH:

18 Q Is this the ticket that you just referred to?

19 A Yes.

20 Q And is it from September 3rd of 2008?

21 A Yes.

22 Q Can you look at it, read it to yourself, and tell
23 me if that refreshes your recollection as to the license
24 plate of the vehicle?

25 A Yes.

1 Q Can you tell us what the license plate of the
2 vehicle was?

3 A Nevada 428 Union, Zebra, Sam.

4 Q Would that be a UZS for us non-military
5 police-type people?

6 A Yes.

7 Q When you got to that location, did you see a
8 vehicle in the driveway?

9 A Yes.

10 Q Did you see an individual in the vehicle?

11 A Yes.

12 Q Can you describe the individual that you saw?

13 A Individual was a black male adult who is sitting
14 in the middle over there with a blue shirt on
15 (indicating).

16 Q Okay. You are pointing to somebody that is
17 sitting at the table. Does that mean that you see the
18 person here in court that you saw in the vehicle that
19 night?

20 A Yes, ma'am.

21 MS. LUZAICH: Let the record reflect the
22 identification of the defendant.

23 THE COURT: The record will so reflect.

24 BY MS. LUZAICH:

25 Q As you approached the vehicle and saw the

1 defendant that night was there something distinctive that
2 you were able to notice about the defendant that night?

3 A Yes. He is blind in his left eye.

4 Q Is that visible?

5 A Yes.

6 Q So you and the other officers get to the location
7 at 1519 Laguna Palms at 2:30'ish in the morning; what
8 happens when you get there?

9 A We approach the vehicle that was in question. We
10 saw the defendant, that I just pointed out, sitting in the
11 vehicle. He had his head down and appeared to be
12 sleeping. We approached the car. We gave him commands to
13 let us see his hands and exit the vehicle.

14 Q When you say "we gave him commands," who is we?

15 A Myself and Officer Chavez.

16 Q What commands did you give?

17 A We said "North Las Vegas Police, let us see your
18 hands, step out of the vehicle."

19 Q When you did that did the defendant at least look
20 in your direction?

21 A Yes. At that time the window was open. It was
22 rolled down and he looked at us and mumbled something. I
23 am not sure what he said. And then he started the car up.

24 Q At the time that you were saying, Show us your
25 hands and things of that nature, how close to the vehicle

1 were you?

2 A We were about 20 feet, 15 to 20 feet.

3 Q In addition to approaching the vehicle did you
4 physically do anything to the vehicle?

5 A (No audible response.)

6 Q Did you shine lights on the vehicle?

7 A Yes.

8 Q What kind of lights did you shine on it?

9 A I had my weapon drawn and I had my weapon light
10 mounted on my handgun that was on.

11 Q Did it light up the vehicle so that you could see
12 inside the vehicle?

13 A Yes.

14 Q As you approached the vehicle, it is two in the
15 morning, was it dark outside?

16 A Yes.

17 Q Were you dressed similar to how you are right now
18 in uniform?

19 A Yes, exactly.

20 Q Was it obvious above and beyond what you were
21 saying that you were a police officer?

22 A Yes.

23 Q So you said in response to your commands he did
24 not get out of the car but he started the car. What
25 happened after that?

1 A After he mumbled something he started the car.
2 He drove out. We gave him more commands, myself and
3 Officer Chavez, to stop the vehicle and he continued to
4 drive away disregarding our commands.

5 Q How did he drive away?

6 A After he started the car he pulled out of the
7 driveway at 1519 and went westbound on Laguna Palms and
8 then went south on Roaring Surf.

9 Q Did he drive slowly and safely or in a different
10 manner?

11 A He sped off really, really fast.

12 Q So what did you do?

13 A We chased the vehicle for as long as we could.
14 Officers Wheeler and Stancil were on the corner. He went
15 around the corner almost striking them as they were in the
16 street coming to assist us.

17 And then I'm not sure if it was myself or Officer
18 Chavez called out the plate on the vehicle.

19 Q When you say "called out the plate," would that
20 be over the radio?

21 A Yes.

22 Q So that other officers in other locations would
23 be aware?

24 A Yes. And also so dispatch would know that we
25 were out at the vehicle that we were dispatched to look

1 at.

2 Q And when you said that the other two officers
3 were out in the street, do you mean out of their car and
4 in the street?

5 A Yes. They were out of their car standing
6 somewhat near the corner in the street.

7 Q And did you get back in your car?

8 A Yes.

9 Q Did they get back in theirs?

10 A Yes.

11 Q And did any of you go after him?

12 A Yes. But he was going so fast that none of us
13 could catch up to him.

14 Q Did you attempt to catch up to him?

15 A Yes.

16 Q And were you ever able to?

17 A No.

18 Q Were any of the officers ever able to catch up to
19 him that night?

20 A No.

21 MS. LUZAICH: Thank you. I pass the witness.

22 THE COURT: Thank you.

23 Mr. Schieck.

24 MR. SCHIECK: Thank you.

25

CROSS-EXAMINATION

BY MR. SCHIECK:

Q Officer Montgomery, did you ever write a report on this incident?

A No, I didn't.

Q So you are testifying only from your memory?

A Yes and a recollection from Officer Chavez because he told Detective --

Q So wait a minute. You reviewed Officer Chavez' report?

A Yes -- it wasn't a report. It was just a statement that was given soon thereafter the incident.

Q So you reviewed Officer Chavez' statement that was given in this case?

A Yes.

Q And so you used his recollections and his statements for your testimony here today?

A I did not use his recollection. It just made me understand and remember what actually happened that night.

Q So you are basing your testimony on what Officer Chavez put in his statement to the police?

A I would not say based on it. It's based on what I remember.

Q But you didn't remember the number of the vehicle, right?

1 A Right.

2 Q Now where did you park your vehicle when you got
3 there?

4 A I parked about three to four houses down from the
5 1519 house.

6 Q When you say "down" you mean --

7 A To the west.

8 Q Is that as you are turning to Laguna Palms?

9 A Yes from Roaring Surf.

10 Q Okay. So you come off from Roaring Surf and you
11 park about three to four houses away?

12 A Yes.

13 Q On Laguna Palms?

14 A Yes.

15 Q And you were on foot from there?

16 A Yes.

17 Q What about Officer Chavez, do you recall where he
18 parked?

19 A About the same house or maybe one back.

20 Q And you were both driving patrol vehicles?

21 A Yes.

22 Q So you both parked three to four houses away from
23 the house you were called to go look at?

24 A Yes.

25 Q What about Officers Wheeler and Stancil, where

1 did they park?

2 A They were at the corner of Laguna Palms and
3 Roaring Surf just in case the vehicle took off.

4 Q So they were even further away than you were?

5 A Yes.

6 Q Were they in two vehicles or one?

7 A One vehicle. They were a two-man unit.

8 Q But they got out of their unit apparently?

9 A Yes.

10 Q So you were all outside of your vehicles?

11 A Yes.

12 Q And you walked three to four houses down the
13 street toward the 1519 Laguna Palms?

14 A Yes.

15 Q Were you on the sidewalk?

16 A Yes.

17 Q Did you stay on the sidewalk the whole time?

18 A No.

19 Q When you approached the car, where did you
20 approach the car from?

21 A We were more towards the houses.

22 Q Up by the yard area?

23 A Yes.

24 Q So you walked through the yard in order to
25 approach the car?

1 A Yes.

2 Q Okay. Now the car is in the driveway and you are
3 walking on the sidewalk, you would have been approaching
4 from the front of the car, correct?

5 A The side of the car.

6 Q Well, the car was backed in the driveway?

7 A Correct. And I am approaching the driver's side.

8 Q Approaching the driver's side from the yard?

9 A Yes.

10 Q And is it your testimony that when you approached
11 the driver's side of the car from the yard that you were
12 15 to 20 feet away when you or Officer Chavez apparently
13 made some commands to the person in the car?

14 A Yes.

15 Q Were you and Officer Chavez right there together?

16 A Yes.

17 Q So you were both in the same spot, roughly the
18 same spot in the yard, 15 to 20 feet away from the car
19 parked in the driveway?

20 A Yes.

21 Q And that is not a long driveway, correct?

22 A No.

23 Q It is barely room for one car parked in that
24 driveway?

25 A Well, it's enough for one or two cars.

1 Q Length-wise I mean.

2 A Yes.

3 Q One car?

4 A Yes.

5 Q And did you get the call over your radio; is that

6 the way you were dispatched?

7 A Yes.

8 Q And it is your testimony that that dispatch call

9 that came out to you had the license number in that call?

10 A Yes.

11 Q Did you actually listen to the tape of the call

12 that came in?

13 A No.

14 Q So you don't know what actually the call was, all

15 you know was the information that came over your dispatch?

16 A Right. And we could read it in the vehicle as

17 well.

18 Q I am talking about when you were dispatched out

19 there.

20 A Yes.

21 Q You are saying it was in the call that you got

22 when it was dispatched out there?

23 A Yes.

24 Q So the person calling in must have gave that

25 number to the dispatch?

1 A Correct.

2 Q But you have not listened to that call yourself
3 to see if that information was actually in that call?

4 A I referenced a ticket number of the call that
5 night and I looked at that.

6 Q The ticket numbers were prepared after the
7 completion of the call?

8 A Well, whenever they have a call, the incident
9 number, that's what starts the ticket number.

10 Q It starts it?

11 A Yes.

12 Q And then the ticket number is completed after the
13 call?

14 A Yes.

15 Q You indicated that when you were asked this
16 question by the State that you had your gun drawn as you
17 were walking three to four houses down this residential
18 street?

19 A Yes.

20 Q And as you were approaching from the yard side of
21 the car, on the driver's side in the yard, it was both you
22 and Chavez together; he had his gun drawn also?

23 A I believe so. I am not 100 percent positive but
24 I believe so.

25 Q And as you approached you did not observe any

1 criminal activity taking place at that time; is that
2 correct?

3 A I believe that the call was --

4 Q As you observed as you walked up did you see any
5 criminal activity going on yes or no?

6 MS. LUZAICH: Can we approach?

7 THE COURT: Yes.

8 (Discussion held at the bench.)

9 THE COURT: Thank you. We are going to have the
10 jurors take a brief recess outside. This is not a time to
11 go have a smoke or put change in the meter. This is going
12 to be very quick. We just need the opportunity to put
13 something in the record and obviously having a
14 conversation at the bench is a little limiting. So I will
15 ask the jurors to please step out briefly.

16 During this brief recess, you are admonished not
17 to talk or converse among yourselves or with anyone else
18 on any subject connected with the trial or read, watch or
19 listen to any report of or commentary on the trial or any
20 person connected with the trial by any medium of
21 information including without limitation newspaper,
22 television, radio, Internet or social media of any kind,
23 or to form or express any opinion on any subject connected
24 with the trial until the case is finally submitted to you.

25 (Jury exits the courtroom.)

1 THE COURT: Officer, can you please take your
2 seat again. What I would like you to do before we put in
3 the record the circumstances of the bench conference is I
4 would like you, Mr. Schieck, to repeat the question to the
5 officer and I would like to hear what the officer's answer
6 would be.

7 MR. SCHIECK: I believe my question was as you
8 approached the car did you observe, as in see, any
9 criminal activity taking place?

10 THE WITNESS: See actually as in him, no.

11 MR. SCHIECK: That's the question I was trying to
12 ask because the State opened the door with that when he
13 said they approached with their guns drawn.

14 MS. LUZAICH: Well, I was not looking for the
15 answer guns drawn. I was looking for light, light 'em up.

16 THE COURT: And, Officer, the concern that was
17 expressed at the bench and I won't go into the details but
18 that your answer might be otherwise in light of the
19 circumstances which are not coming into evidence in this
20 case as to why you might have otherwise been called out
21 there, so if that is the answer that we are going to
22 receive I think we can proceed.

23 Mr. Schieck would you have other questioning
24 after that or would you further continue in this line of
25 questioning?

1 MR. SCHIECK: That is all I was going to go into
2 in that line of questioning, Your Honor.

3 THE COURT: All right. You can further voir dire
4 if you wish outside the presence of the jury.

5 MR. SCHIECK: And for the record we talked about
6 this at the bench, we are aware of what is in Officer
7 Chavez' statement as to information that they had been
8 given concerning Lesean Collins, Mr. Collins, quite
9 frankly, is known to the North Las Vegas Police
10 Department, that is not a secret in this case, so I was
11 not going to get into those areas.

12 THE COURT: I think out of an abundance of
13 caution with the concern of not how the question was
14 phrased, the question was phrased the way you intended to
15 phrase it but whether or not the officer would hear the
16 question and answer it in that fashion or might read
17 something else into the question and answer it
18 differently.

19 MS. LUZAICH: And if I could maybe for purposes
20 of any appellate record have the ticket marked as Court's
21 exhibit --

22 THE COURT: That's fine.

23 MS. LUZAICH: -- because what the ticket actually
24 says is that the person reporting said that the defendant
25 has a TPO against him and is not supposed to be there, so

1 our concern was that the officer might have said when Mr.
2 Schieck asked, Did you observe any criminal activity, that
3 if the defendant had a protective order against him and
4 wasn't supposed to be there, the fact that he was there is
5 criminal in nature.

6 That was our concern and we just wanted to make
7 sure that Mr. Schieck didn't inadvertently get that answer
8 into the record.

9 THE COURT: Officer, you understand the concern
10 about the question or the answer that was either
11 anticipated -- different answers possibly being
12 anticipated on either side.

13 The way you answered the question based on the
14 way the question was asked we think is an accurate answer
15 and in fact would be the answer that we would assume that
16 you would give.

17 THE WITNESS: Yes.

18 THE COURT: Are you understanding the concerns
19 that have been expressed here?

20 THE WITNESS: Yes, ma'am.

21 MR. SCHIECK: Just so the record is absolutely
22 clear, Your Honor, there was in fact no TPO against
23 Mr. Collins at the time of that call so he was not in
24 violation of the TPO.

25 In fact, Your Honor has already heard testimony

1 that not only was Mr. Collins there that day he was there
2 the day before and many days thereafter up until the arson
3 fire when he was arrested. There was not a TPO that he
4 couldn't be at that house.

5 THE COURT: Well, again, the concerns expressed
6 by the State as I understand it is what is reflected in
7 the ticket and what this officer may have understood and
8 so as to avoid the answer and I appreciate out of an
9 abundance of caution let's have you approach, Ms. Luzaich,
10 and put that in as Court's exhibit. I believe it would be
11 Exhibit 1.

12 MS. LUZAICH: I agree. And also just for the
13 record, this incident occurred a couple of weeks after the
14 arson. The State's understanding that after the arson
15 there may have been an at least a temporary protective
16 order. It would have expired by then but a neighbor might
17 not have known that.

18 MR. SCHIECK: The TPO was after September 2nd.

19 MS. LUZAICH: Oh, never mind. There were other
20 domestic violence issues.

21 THE COURT: He will be able to answer this with
22 the answer we expect the officer to give and Mr. Schieck
23 will be allowed to directly reask the question and give
24 the answer that you gave, Officer.

25 We have the ticket now in as Court's Exhibit 1

1 which has been marked and admitted as a court exhibit, not
2 part of the record and not what will go to the juror's,
3 just to be clear for the record. And we will resume.

4 I had one other thought but it has escaped me at
5 the moment. Give me a second. Well, whatever it was it's
6 gone. Shall we are the jurors back?

7 MR. SCHIECK: Yes, Your Honor.

8 (Jurors enter the courtroom.)

9 THE COURT: I will invite everybody to have a
10 seat. Officer Montgomery, can I get you to please
11 acknowledge for the record that you understand that you
12 are still under oath.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Mr. Schieck, I will ask you to resume
15 your questioning and if you have the question that was
16 asked before we took the recess if you wish to ask that
17 again or however you wish to proceed.

18 MR. SCHIECK: Thank you, Your Honor.

19 BY MR. SCHIECK:

20 Q Officer Montgomery, just so we are clear I think
21 the last question I asked you was as you were approaching
22 the car you did not actually see any criminal activity?

23 A No.

24 Q Thank you. Do you recall whether or not the
25 windows of that vehicle were tinted?

1 A I don't recall.

2 MR. SCHIECK: That is all I have, Your Honor.

3 THE COURT: Thank you.

4 Ms. Luzaich, any further questions for the
5 officer?

6 MS. LUZAICH: No. Thank you.

7 THE COURT: May I see by a show of hands if the
8 jurors have any questions for this witness.

9 Okay. It looks like we do have a question for
10 this witness. I will ask my marshal to approach. I will
11 just remind the jurors that the process here is that I
12 will review the questions first and then I will review it
13 with counsel. If we determine it is appropriate to ask we
14 will ask it. Again, you are to give the question no
15 greater weight just because it is the question of a juror
16 and do not take into consideration that if the Court does
17 not ask it as to why.

18 May I have counsel at the bench, please.

19 (Discussion held at the bench.)

20 THE COURT: We are not going to ask the juror
21 question. Thank you, Officer. You are excused at this
22 time.

23 THE WITNESS: Thank you.

24 The State's next witness.

25 MS. BLUTH: State calls Jason Turner.

1 Whereupon,

2 JASON TURNER,

3 was administered the following oath by the court clerk.

4 THE CLERK: You do solemnly swear that the
5 testimony you give in this action shall be the truth, the
6 whole truth, and nothing but the truth so help you God.

7 THE WITNESS: I do.

8 THE CLERK: Please state and spell your full name
9 for the record.

10 THE WITNESS: Jason Turner. J-a-s-o-n
11 T-u-r-n-e-r.

12 THE COURT: Thank you, Mr. Turner. You may be
13 seated.

14 Ms. Bluth, whenever you are ready.

15 MS. BLUTH: Thank you, Your Honor.

16

17 DIRECT EXAMINATION

18 BY MS. BLUTH:

19 Q Mr. Turner, how are you employed?

20 A I am employed with the Avis Budget Group which
21 owns Avis Rent-A-Car.

22 Q And how long have you been employed by that
23 company?

24 A Since 2005, March.

25 Q Now in regards to your employment with the

1 company can you explain your position and then your job
2 duties within that?

3 A I basically oversee the operations of a division
4 within the city. It's a hotel group from the Mandalay Bay
5 down to the Four Queens.

6 Q And in 2008 were your job duties the same?

7 A Yes but in 2008 we just added the location of
8 Planet Hollywood and the Venetian so we didn't have -- it
9 is a smaller group of hotels that we had.

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

11 THE COURT: You may.

12 BY MS. BLUTH:

13 Q I am showing you what has been marked for
14 purposes of identification as State's Proposed Exhibit
15 120. Can you just thumb through those pages and I will
16 have a few questions for you when you are done.

17 A It looks like rental contracts and a couple of
18 exchanges.

19 Q And on the top of the rental contract do you see
20 the Avis insignia?

21 A The logo?

22 Q Yes.

23 A Yes.

24 Q And it says "Avis LLC"?

25 A Yes.

1 Q Now as part of your job duties are you the
2 custodian of records of such records?

3 A Yes.

4 Q And are these records kept in the normal and
5 ordinary course of Avis Rent-A-Car?

6 A Yes. This how we keep our records.

7 Q Did your company receive a subpoena from my
8 office, the District Attorney's Office, in regard to a
9 certain individual, that person named Brandi Payton, and
10 her rental history within some months of 2008?

11 A Yes.

12 Q And are these a fair and accurate depiction of
13 the records that you also provided my office?

14 A Yes, these are the records.

15 MS. BLUTH: Okay. Your Honor, at this time I
16 would move to admit into evidence State's Proposed Exhibit
17 120.

18 THE COURT: Any objection?

19 MR. SCHIECK: No objection.

20 THE COURT: State's 120 will be admitted and you
21 may publish.

22 (Whereupon, State's Exhibit 120 was admitted
23 into evidence.)

24 BY MS. BLUTH:

25 Q Did you also bring a copy of the records?

1 A Yes.

2 Q We will go off of the records that are in
3 evidence at this point, okay?

4 A Perfect.

5 Q Now I would like to ask you a few questions in
6 regards to the records. So when someone comes in and
7 rents a vehicle from Avis does the recordkeeping process
8 show the date and time that they rented the vehicle and
9 when it should be returned?

10 A Yes.

11 Q Does it also state the make and model of the
12 vehicle?

13 A Yes.

14 Q And usually a description like the color,
15 four-door, et cetera?

16 A Yes.

17 MS. BLUTH: Mr. Schieck, is it okay if he refers
18 to the record while he testifies?

19 MR. SCHIECK: Yes.

20 MS. BLUTH: Thank you so much.

21 BY MS. BLUTH:

22 Q Now to the first part of those records, when I
23 asked you a question earlier as to there was an individual
24 that was subpoenaed specifically referenced and that name
25 was Brandi Payton, are those records sitting in front of

1 you right now?

2 A Yes. Brandi Payton's rental agreements.

3 Q Thank you. And turning to the period of August
4 of 2008, when was the first time in August that
5 Ms. Payton rented a vehicle from Avis?

6 A The 15th of August 2008, at around 10:46 in the
7 morning. She rented it at Planet Hollywood Avis.

8 Q And there's an Avis located inside of Planet
9 Hollywood?

10 A Yes.

11 Q What date was she supposed to return that vehicle
12 on?

13 A She was going to return it on the 22nd of August.

14 Q And what type of vehicle was that?

15 A It was a dark blue Ford Taurus.

16 Q And so if you could turn to the next page. Does
17 it appear that Ms. Payton brought that vehicle back?

18 A Yes. That vehicle was exchanged. Something
19 wasn't right with that vehicle for her so she exchanged it
20 at the Las Vegas airport location and she exchanged it on
21 the 21st of August.

22 Q What date did that exchange take place?

23 A 21st of August.

24 Q What did she exchange it for?

25 A She exchanged it for a grey Chevy Impala.

1 Q Now did she actually drive that car off the lot?

2 A I would say no.

3 Q Why would you say that?

4 A Because there's an exchange right after that
5 exchange.

6 Q And do your records reflect that something was
7 wrong with that vehicle that she exchanged?

8 A It looks like the grey Chevy Impala had a check
9 engine light on --

10 Q Okay.

11 A -- so she got into a silver Chevy Impala.

12 Q And when was that car due?

13 A That car was due on the 5th of September, 2008.

14 Q And before the 5th of September of 2008, did
15 Ms. Payton exchange that vehicle for a different vehicle?

16 A Yes.

17 Q And can you tell the ladies and gentlemen of the
18 jury when that exchange took place?

19 A So she exchanged it on the 31st of August at
20 around 4:00.

21 Q And when you say she exchanged, meaning, she
22 turned in that vehicle for another vehicle?

23 A Yes. For a beige Hyundai Sonata.

24 Q And is the license plate of that beige Hyundai
25 Sonata listed on the record?

1 A Yes. Out of Nevada. And it looks like 42B UZS.
2 Q Is it possible that could be an 8?
3 A Yes, very possible.
4 Q That's pretty small print?
5 A Yes. Very hard to read, yes.
6 Q And so you stated that that car was rented out on
7 August 31st?
8 A Yes. It was exchanged at the McCarran Airport
9 August 31st.
10 Q And what was the due date of that vehicle to be
11 returned?
12 A The 5th of September.
13 Q Now, the first page of those records is there a
14 VIN number associated with that vehicle?
15 A Yes.
16 Q And that's listed on the first page of those
17 records?
18 A Yes.
19 Q Now to your knowledge did you receive the vehicle
20 on September 5th?
21 A You know I am not sure if it was returned. These
22 records do not show a return on the 5th. It only shows
23 that it was due in on the 5th.
24 Q Okay.
25 MS. BLUTH: Can I approach the witness, Your

1 Honor?

2 THE COURT: You may.

3 BY MS. BLUTH:

4 Q Showing you what has been marked as State's
5 Proposed Exhibit 121.

6 A Yes. This looks like a closed rental agreement.

7 Q Do you recognize what you are looking at right
8 now?

9 A Yes.

10 Q What is it?

11 A This is the closed rental agreement from Planet
12 Hollywood, the original which opened on the 15th of
13 August. And it looks like it was returned at the LAX
14 Airport on the 2nd of October.

15 Q Are these a fair and accurate depiction of the
16 type of records that discuss open and closed contracts
17 within Avis?

18 A Yes.

19 MS. BLUTH: Your Honor, I would ask to move to
20 admit into evidence State's 121.

21 THE COURT: Any objection?

22 MR. SCHIECK: No objection.

23 THE COURT: State's 121 will be admitted and may
24 be published.

25 MS. BLUTH: Thank you.

1 (Whereupon, State's Exhibit 121 was
2 admitted into evidence.)

3 BY MS. BLUTH:

4 Q So you are stating that the car was returned on
5 October 2nd of 2008?

6 A Yes.

7 Q I see a bunch of numbers and billing; what is all
8 of that?

9 A That is just almost like an invoice for the
10 charges that were due on October 2nd.

11 Q Just so we're clear, is that a two-page document?

12 A Yes, it is.

13 Q Or how many pages total?

14 A Actually it's a three-page document.

15 Q And what is listed in the rest of the three pages
16 if you could please.

17 A Looks like it's a document that indicates there
18 was an adjustment at some point in the rental.

19 Q What does that mean, an adjustment?

20 A That check engine light, they gave her money off
21 for her inconvenience.

22 Q So an adjustment in the fees?

23 A Yes.

24 Q And the third page just so we are clear.

25 A The third page is just a screen shot of our

1 system that indicates the -- looks like the adjustments --
2 no. This is the exchanges that we had talked about.

3 Q That you previously referenced in your testimony?

4 A Yes.

5 Q Thank you. Obviously, you were subpoenaed to
6 testify by the District Attorney's Office?

7 A Yes.

8 Q And in doing so you looked through the records
9 pertaining to this vehicle?

10 A Yes.

11 Q And so you obviously were aware that it did not
12 come back on September 5th?

13 A Yes.

14 Q And also in looking at your records did you have
15 knowledge that when this came back it was severely
16 damaged?

17 A I didn't see the condition of it when it was
18 returned.

19 Q But in looking at the records you reference that
20 you knew it had been missing for roughly 30 days before it
21 got back to you guys?

22 A Yes. That's fair. I knew it was missing. I did
23 not know it was damaged.

24 MS. BLUTH: Thank you. Nothing further.

25 THE COURT: Mr. Schieck.

1 MR. SCHIECK: Just a few questions, Your Honor.

2

3

CROSS-EXAMINATION

4

BY MR. SCHIECK:

5

Q Good afternoon, Mr. Turner.

6

A Good afternoon.

7

8

9

10

Q Let me just clear up a couple things to make sure I'm clear on that. The rental history for August of 2008 is what you were asked to bring to court for Brandi Payton?

11

A What date?

12

Q August of 2008.

13

A Yes.

14

15

Q Did you go back and search prior to August of 2008 or you just focused on that period?

16

17

A Yes. The 15th of August was all that was researched.

18

19

Q You did not go back any further and look at how many other rentals there were?

20

A No.

21

22

23

Q And correct me if I'm wrong, it sounds like a Ford Taurus was rented on August 15th and kept until August 21st?

24

A That's correct.

25

Q And was ultimately exchanged for a silver Chevy

1 Impala on August 21st, which was kept until August 31st?

2 A That's correct.

3 Q And I assume the Ford Taurus and the Chevy Impala
4 had different license plate numbers?

5 A Yes.

6 Q On the 31st of August was when the beige Sonata
7 was picked up?

8 A Yes.

9 Q And that was the last exchange that you show for
10 this particular transaction?

11 A That's correct.

12 Q And the license number on the beige Sonata was
13 different from that on the Chevy Impala and the Ford
14 Taurus?

15 A That's correct.

16 Q The last rental was due back on September 5th; is
17 that correct?

18 A Yes.

19 Q And does your printout show any of the particular
20 equipment that came on that Sonata when it was rented?

21 A How do you mean equipment?

22 Q Was there a GPS in it? Was there a map system or
23 anything like that in there?

24 A Yes. That's what it indicated there was.

25 Q Was a GPS system in that car?

1 A This paperwork would not indicate if there was.
2 Q It would not indicate?
3 A Yes, it would not indicate.
4 Q And none of your research would show that?
5 A That's correct.
6 Q And you can't tell us whether or not the windows
7 were tinted or not tinted?
8 A I can't tell you that but I can tell you that we
9 don't tint our windows as a company.
10 Q It would have been whatever came from the
11 factory?
12 A Yes whatever the factory installed on it.
13 MR. SCHIECK: Thank you very much, sir.
14 That is all I have, Your Honor.
15 THE COURT: Anything further, Ms. Bluth?
16 MS. BLUTH: No, Your Honor.
17 THE COURT: May I see by a shows of hands if any
18 jurors have any questions for this witness. Seeing none,
19 you are excused, Mr. Turner. Thank you.
20 The State's next witness.
21 MS. LUZAICH: Maria Lopez.
22
23 Whereupon,
24 MARIA ZAPATA,
25 was administered the following oath by the court clerk.

1 THE CLERK: You do solemnly swear that the
2 testimony you give in this action shall be the truth, the
3 whole truth, and nothing but the truth so help you God.

4 THE WITNESS: I do.

5 THE CLERK: Please state and spell your full name
6 for the record.

7 THE WITNESS: Maria Zapata. M-a-r-i-a
8 Z-a-p-a-t-a.

9 THE COURT: Ms. Luzaich, whenever you are ready.

10 MS. LUZAICH: Thank you.

11

12 DIRECT EXAMINATION

13 BY MS. LUZAICH:

14 Q Ma'am, did you used to be Maria Lopez?

15 A Yes.

16 Q Have you subsequently gotten married?

17 A Yes, I have.

18 Q May I call you Maria?

19 A Yes.

20 Q Maria, how are currently employed?

21 A I am a crime scene investigator with the
22 Huntington Beach Police Department.

23 Q How long have you been employed with the
24 Huntington Beach Police Department?

25 A Approximately seven years.

1 Q Prior to working for the Huntington Beach Police
2 Department what did you do?

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

5 Q How long were you employed with the Las Vegas
6 Metropolitan Police Department?

7 A Approximately 19 years.

8 Q And in your 19 years at Metro what did you do?

9 A Initially I was in the records department. Once
10 I completed my degree I applied for the crime scene
11 analyst, so I was a crime scene analyst for 13 years.

12 Q When you say that you completed your degree, what
13 is your degree in?

14 A Criminal justice system.

15 Q When did you complete your degree?

16 A About 14 years ago.

17 Q After that was that when you came to be a crime
18 scene analyst at Metro?

19 A Yes.

20 Q In order to become a crime scene analyst at
21 Metro, do you go through any kind of training and
22 education?

23 A Yes, both.

24 Q Describe for us the training.

25 A Once we test for the position and we go through

1 the testing process then at the time there was a six-week
2 training, in-service training through the department. And
3 then we were basically responsible for all the classes and
4 studying before being in the field. Once we completed the
5 six-week classroom training then we were out in the field
6 with different trainers for approximately three months and
7 we changed trainers every two weeks.

8 Once that is completed we also were assigned a
9 one-year correspondence course that had to be completed
10 within the year before we were actually hired. So we were
11 on probation for 12 months.

12 Q And did you successfully complete that whole
13 process?

14 A Yes.

15 Q And then what?

16 A From there American Institute of Applied Science.
17 And then periodically throughout the 13 years we were
18 assigned numerous classes, workshops, seminars involving
19 all aspects of crime scene documentation, photography,
20 diagramming. We took classes from North West University,
21 the FBI.

22 I actually spent two weeks in American College on
23 a degree class on buried bodies, so we had extensive
24 training that we had to complete that was mandatory.

25 Q Can you describe for the members of the jury what

1 is a crime scene investigator? What do you do as a crime
2 scene investigator?

3 A Primarily we identify documents and collect and
4 preserve evidence that will prove or disprove a crime has
5 been committed with the objective of identifying the
6 person or persons responsible.

7 Q So as a crime scene investigator would you go to
8 crime scenes to do that?

9 A Yes. I would be assigned a case depending on
10 what my responsibilities were at the scene specific to
11 that crime or that case. So it is case specific as to
12 what my duties and obligations would be on that particular
13 case.

14 Q And when you say that your duties and
15 obligations, when you get to a scene who kind of tells you
16 what they want you to do, if anyone?

17 A Well, before we are even dispatched to a scene
18 the officers are usually there before we are and then they
19 determine whether we need to come to the scene. So they
20 contact dispatch and then we are dispatched to the scene.
21 And once we arrive we gather as much information as
22 possible before actually making an assessment of the
23 scene.

24 So we gather information from whomever; the
25 detectives, the officers. On a homicide our supervisors

1 are always there. It's mandatory. It's department
2 policy. At least it was when I was here, and so we worked
3 as a group, as a team to determine what needs to be done
4 and how best to do it and then we proceed as far as what
5 the case requires and I do my job as an investigator.

6 Q Just so we're clear, what you do when you go to a
7 scene is nothing like the TV show, Crime Scene
8 Investigation, correct?

9 A I have not watched those shows.

10 Q You don't interview witnesses?

11 A The police do that.

12 Q You get your information from the police?

13 A Yes. From the detectives also.

14 Q Detectives are police, are they not?

15 A Yes. And also from -- I have asked questions
16 sometimes depending on the scene if something has not been
17 addressed that I need to know as a CSA then I will ask the
18 officers or ask one of the detectives or if the
19 opportunity arises I will ask the individual if they saw
20 gloves, if they didn't, things like that. But for the
21 most part I don't do the questioning in the interview.

22 Q So at the Las Vegas Metropolitan Police
23 Department when you respond to a scene does every event
24 get its own number?

25 A Yes.

1 Q An event number is addressed how?

2 A It is the report number. So it is the date and
3 the year and then the number is assigned based on however
4 many cases there were that day, at least that is how it
5 was when I was here.

6 Q And once an event is assigned a number anything
7 that you do or any evidence that you collect pursuant to
8 that investigation will be assigned to the same event
9 number; is that correct?

10 A Yes.

11 Q I am sorry. You also mentioned when you retired
12 from Metro you were a senior crime scene analyst?

13 A Yes.

14 Q What is the difference between a senior and not a
15 senior?

16 A I had been a trainer for about five years before
17 I retired, so I was a trainer.

18 Q So what do you do as a senior or a trainer that
19 you might not do before?

20 A I train new CSI's. I am also working on my
21 masters so I was assigned a lot of duties that wanted to
22 know about our position about forensics, et cetera. So
23 for the most part I was responsible for training.

24 Q Okay. I am going to direct your attention to
25 October 2nd of 2008. Were you working as a crime scene

1 investigator at that point for Metro?

2 A Yes.

3 Q And were you asked to go to 1519 Laguna Palms in
4 Las Vegas, Clark County, Nevada?

5 A Yes.

6 Q Was this a house or something else?

7 A It was a house.

8 Q Did you go to that house?

9 A Yes, I did.

10 Q Did you go alone or with somebody else?

11 A No. The sergeant at the time was with me and he
12 has since retired, so he was at the scene.

13 Q When you say sergeant, was he your supervisor?

14 A Yes.

15 Q When you got to the scene, or to that location I
16 should say, were there police officers there?

17 A Yes.

18 Q What was the purpose for your going to 1519
19 Laguna Palms on that date?

20 A I went there on the search warrant related to a
21 follow up that was being done on a homicide.

22 Q Is there a difference from your perspective to
23 arriving at an active scene where there's just been a
24 crime as opposed to the service of a search warrant for
25 something that is further in the investigation?

1 A Yes. It varies as to what we do there. But
2 primarily we are advised by the detectives as to what they
3 will need from me at that scene.

4 Q So when you got to Laguna Palms was Detective
5 Mogg there?

6 A Yes.

7 Q Did he talk to you about what he wanted you to
8 do?

9 A I'm sure that we spoke. Also my supervisor was
10 also involved in the communication and there were other
11 people there, but I definitely remember Detective Mogg.

12 Q When you got there at the house was it clearly
13 that there had been a fire at the house?

14 A Yes, definitely.

15 Q And was there evidence of that that you could see
16 pretty much everywhere?

17 A Yes, there was.

18 Q Was there extensive damage from the fire?

19 A Yes. There was extensive damage and there was
20 also a lot of water on the carpeting. We knew we had
21 information that the fire department had been there.

22 Q Prior to your being there?

23 A Yes.

24 Q But by the time you got there was the fire
25 department gone?

1 A Yes, I believe they were.

2 Q You did not see any firemen?

3 A I don't remember seeing them, no.

4 Q So when you get to a scene where it is an active
5 crime scene for the serving of a search warrant the first
6 thing you do is take photographs of the overall condition
7 of the location you are at?

8 A Yes.

9 MS. LUZAICH: May I approach the witness?

10 THE COURT: You may.

11 BY MS. LUZAICH:

12 Q I will show you what has been marked as State's
13 admitted Exhibits 40 through 69. Can you just look
14 through these and tell me if these photographs are of 1519
15 Laguna Palms from October 2nd of 2008?

16 A Yes, they are.

17 Q And do these photographs fairly and accurately
18 depict what you saw at 1519 Laguna Palms on that date?

19 A Yes.

20 MS. LUZAICH: I would move into evidence the
21 State's Proposed Exhibits 40, 41, 43, 44, 45, 47, 48, 49,
22 50, 51, 52, 54, 55, 56, 58, 60, 65, 66, 67, 68 and 69.

23 THE COURT: Any objection from the defense?

24 MR. SCHIECK: May we see them real quick?

25 MS. LUZAICH: Sure.

1 MR. HYTE: No objection.

2 THE COURT: All right. The State will admit
3 exhibits 40, 41, 43, 44, 45, 47, 48, 49, 50, 51, 52, 54,
4 55, 56, 58, 60, 65, 66, 67, 68 and 69. They are admitted
5 and you may publish.

6 (Whereupon, State's Exhibits 40, 41, 43,
7 44, 45, 47, 48, 49, 50, 51, 52, 54, 55,
8 56, 58, 60, 65, 66, 67, 68 and 69 were
9 admitted into evidence.)

10 MS. LUZAICH: Thank you.

11 BY MS. LUZAICH:

12 Q State's Exhibit 40, that is the front of the
13 house?

14 A Yes.

15 Q And as you entered, did you enter through the
16 garage.

17 A Yes.

18 Q And I'm showing you Exhibit 41; is that the
19 garage?

20 A Yes.

21 Q As you entered the house at the garage, what did
22 you see, where did you enter the house from?

23 A The laundry room.

24 Q When you got to the laundry room was there
25 anything of note?

1 A I saw a bottle of bleach on top of the dryer. I
2 remember seeing that.

3 Q And as you moved your way through the laundry
4 room did you discover something?

5 A Well, several things. I noticed that the home
6 was -- the carpeting was very stained. I remember that.
7 It was somewhat in disarray, the interior. And of course
8 we did a search of the area but I noticed the carpet was
9 pulled back just outside the laundry room area.

10 Q Showing you State's Exhibit 42; is that what you
11 are talking about, the carpet being pull back outside the
12 laundry room?

13 A Yes.

14 Q Now if you touch the screen you can mark on it.
15 Can you just circle where the laundry room door is.

16 A Right here.

17 Q And in front of the laundry room, so you had said
18 there was a stain. Can you circle the stain that you
19 talked about?

20 A This area here.

21 Q Try that again. Circle the big stain that you
22 mentioned where the carpet was pulled back.

23 A It was in this area here.

24 Q And when you said that the carpet was pulled
25 back, that is how it looked when you got there, correct?

1 A Yes.

2 Q And just for the record, Exhibit 43, is that an
3 up-close version of 42?

4 A Yes. I am also looking at a partial picture but
5 that is the general area. When I came in through the
6 laundry room, that carpet section was pulled back.

7 Q And as you go down the hallway from that
8 location, State's Exhibit 46, is that what you see as you
9 go further down the hallway?

10 A Yes. The kitchen area was here.

11 Q And then Exhibit 47, is this the front of the
12 kitchen area?

13 A It is very dark.

14 Q Okay. Is that the kitchen counter?

15 A Yes.

16 Q And then is there carpet in front of the kitchen
17 counter?

18 A Yes.

19 Q Was there a second stain that you observed in
20 front of the kitchen counter?

21 A Yes. There was a reddish stain there. The
22 carpet was very, very soiled. Very dirty with stains.

23 Q There were stains everywhere?

24 A Yes.

25 Q Showing you State's Exhibit 48; is that the

1 second stain that you mentioned?

2 A Yes. This area here, that reddish color, it kind
3 of piqued our interest.

4 Q Now in addition to the stains on the carpet did
5 you notice anything else at or near the laundry room?

6 A Yes. The laundry room door. We also observed
7 some apparent blood stains there.

8 Q When you say apparent blood stains -- well, let
9 me go back to State's Exhibit 53. What are we looking at
10 here?

11 A Those are the stains. They were numbered and
12 marked and scaled, which is how we document blood stains.

13 Q For the record, are we looking at the laundry
14 room doorway?

15 A Correct.

16 Q As well as a little bit in front of the laundry
17 room and then the wall that leads to the laundry room
18 doorway?

19 A Yes. This is the laundry room right here, so
20 this is the doorway. This is one side of the doorway
21 where we found those stains.

22 Q How many stains did you find?

23 A Six.

24 Q What did you do when you found those stains?

25 A Well, we documented them first of all and

1 numbered them. We did a presumptive test, which is
2 typically what we do. They did appear to be blood stains
3 based on my training and experience. They definitely
4 appeared to be blood stains, but we had to do a
5 presumptive test first. It is a very simple test that we
6 do. We tested a representative sample, which means we
7 just find a very inconspicuous place like around one of
8 the stains and we test that.

9 If it comes back as positive, if we get a
10 positive result then we would indicate that they are
11 apparent blood stains. We still do not confirm that they
12 are blood stains. We have to collect them and send them
13 to a lab and at the lab they determine whatever else needs
14 to be done with the stain.

15 Q When you said that you thought that these were
16 blood stains, what caused you to think that?

17 A The color, the texture, the pattern.

18 Q You said that you marked them, is that the little
19 numbers that we see on here?

20 A Yes.

21 Q On this particular exhibit, Number 53, you said
22 we can see all six; is that correct?

23 A Yes. This one, this is two, this is three, four,
24 five is on the jamb and six and seven are on the jamb
25 also.

1 Q Showing you State's 55, does that show you one,
2 two and three?

3 A Yes.

4 Q And then State's Exhibit 54, does that show you
5 five and six?

6 A Correct.

7 Q And can you see four just kind of around the
8 sides as well?

9 A Four is right here.

10 Q And in fact does each one of them, just for the
11 record, have a white background with a black number on it?

12 A Yes.

13 Q And then do you also have yellow tape showing
14 where they are?

15 A Yes.

16 Q Now you said that you tested them with a
17 presumptive kind of test; what is that?

18 A Phenylethylene.

19 Q How does that work? What do you do? Not
20 physically how it works.

21 A They were dry in this case, so what we would do
22 is we would moisten a sterile like Q-tip basically. We
23 call it a swab. And then we would wet that with water
24 provided by the police department; it's sterile water.
25 And we used that to swab the area the, the suspected area

1 and then we used phenylethylene, which is a reagent that
2 is going to react with the heat in the blood.

3 And if it is blood it will become like a pinkish
4 purplish color almost instantly.

5 Q And when you did that did it react?

6 A Yes.

7 Q Did it react on all six stains?

8 A We would not do all six because we don't want to
9 lose all of them so we do a representative test and then
10 we collect everything and it is submitted to the lab and
11 the lab proceeds from there.

12 Q So you do your presumptive test and then in
13 addition to your presumptive test you said you swabbed
14 each of the six stains?

15 A Yes. Once it is documented photographically, it
16 is included in our notes then we do the presumptive and we
17 can now -- it's called validation, that's what we
18 suspected was blood, still continues to be suspected
19 blood. It's worthy of notice so we would number each one
20 and the reason we use those scales is because there are
21 blood spatter experts that can actually gather more
22 information and draw conclusions from the photographs
23 based on the stains, the size of the stain, the blood in
24 the stain, et cetera.

25 So all I am doing is documenting it properly so

1 that a blood spatter expert who is certified in this field
2 can actually draw conclusions and summarize what is there.
3 Or if there is nothing to conclude from that it would be
4 up to them to come up with those.

5 Q So after you photograph it and you do your
6 presumptive test you said you then collected a sample from
7 each one of the six?

8 A Correct.

9 Q And how did you do that?

10 A Pretty much the same way we do the presumptive in
11 that we use the cotton swab. We swab each individual one.
12 For swab number one, remove as much of it as possible with
13 the swab and then I would place that in its own container
14 in its own envelope and I would label that as Item No. 1
15 with the event number and all the pertinent information
16 involved in the case. Then I would go to number two and
17 do the same thing.

18 So I keep each one in a separate envelope and
19 each one is numbered separately so that each stain has a
20 different item number in the package.

21 Q When you say with the pertinent information,
22 would that include the event number that we mentioned?

23 A Correct.

24 Q And what is the event number from this event?

25 A 080906-1227.

1 Q So 08, is that 2008?

2 A Yes.

3 Q 0906, is that September 6th?

4 A Yes.

5 Q And then 1227, would that be the, for example, on
6 that particular date the 1,227 call that was answered?

7 A Yes.

8 Q And then everything that is collected under this
9 event number is all collected together, correct?

10 A (No audible response.)

11 Q It is put together under this event number
12 ultimately?

13 A Yes. It would be filed under this number but all
14 evidence would be filed under this number.

15 Q Now, these six particular items that you just
16 talked about, the pertinent information would include the
17 event number that we just mentioned, with your name on it
18 and personnel number on it?

19 A Yes.

20 Q So that everybody knows that you are the person
21 who impounded it?

22 A Correct.

23 Q Would the location that you impounded it from
24 also go on it?

25 A Yes.

1 Q So 1519 Laguna Palms?

2 A Correct.

3 Q Then do you seal it so that everybody knows that
4 now that its sealed nobody can touch it until evidence
5 testing is going to happen?

6 A Right. We seal it with our initials and our
7 personnel number. There is a chain of custody and it is
8 indicated on that envelope, so anyone who would open that
9 for any reason, whether they are doing blood testing or
10 anything else, that person would also have to write their
11 initials and the date and their personnel number if they
12 were to take custody of the evidence for whatever reason
13 whether it be testing, review, whatever.

14 Q Now you had mentioned that you did a
15 representative sample testing for phenylethylene. When
16 you took your sample that you were going to collect and
17 send to the lab did you do it from a different location on
18 the particular item so that it wouldn't be contaminated by
19 the phenylethylene testing?

20 A Well, the representative sample that we took
21 would not affect the six samples I collected. Basically
22 it is a sterile cotton swab when you do the
23 phenylethylene. You only do it once. There is no need --
24 first of all there wasn't volumes of blood, so we didn't
25 want to risk losing the blood that we had, so I determined

1 based on my training and experience in the field that if I
2 did a presumptive test of the representative sample, which
3 is also department policy, I don't have to alter in any
4 way any of the other ones until I collected each
5 individual one with its own swab. So I don't know if that
6 answers the question.

7 Q Yes. There was no contamination going on?

8 A None whatsoever.

9 Q So I am going to show you -- when you talked
10 about the first sample, State's Exhibit 56, is that the
11 blood stain that you were talking about?

12 A This right here, yes.

13 Q State's Exhibit 58; is that the second one?

14 A Yes.

15 Q And 61, is that Number 3?

16 A Yes.

17 Q And 53, is that Number 4?

18 A Right here, yes.

19 Q 65, is that Number 5?

20 A Right here.

21 Q And 66, is that Number 6?

22 A Yes, those two were collected.

23 Q Now in addition to the blood that you saw and
24 tested on the door you mentioned that there was a stain in
25 front of the laundry room door and the carpet had been

1 pulled back. What, if anything, did you do regarding
2 that? And just for reference I am putting Exhibit 42 back
3 up.

4 A We swabbed several areas looking again for any
5 blood that may be -- we couldn't really determine -- it
6 was not as clear as to what those stains were. It was
7 very soiled, very dirty and all we could do is test
8 several stains to see if anything developed.

9 Q What did you test? Like what location, what
10 specific area did you test?

11 A The areas on the carpet on both sides of the
12 carpet. We also tested several areas in this here, again,
13 with the cotton swab moistened and we did numerous tests
14 on both sides and nothing resulted positive.

15 Q When you say both sides, you mean the carpet as
16 you would stand on it and then folded it back and tested
17 the back of the carpet?

18 A The top of the carpet and underneath the carpet
19 and the concrete area.

20 Q What kind of test did you perform on the carpet
21 area?

22 A All were phenylethylene first.

23 Q Okay. And on the carpet, what did the
24 phenylethylene show?

25 A Negative. No parent blood.

1 Q Then what did you do?

2 A Then we tried -- we went to leuco crystal violet,
3 which is a reagent that detects minute traces of blood
4 even if we can't see them maybe we can find them with
5 leuco crystal violet. So we use leuco crystal violet
6 because we didn't want to overlook the possibility that
7 maybe the area had been washed and maybe there were still
8 some traces that maybe were missed during washing. So
9 that's why that was kind of a backup --

10 Q And in fact State's Exhibit 51, did you find
11 bleach in the laundry room?

12 A Yes.

13 Q Can bleach in your experience kind of degrade or
14 get rid of blood?

15 A Yes. It works well on cleaning up areas such as
16 blood.

17 Q And in your years as a crime scene investigator
18 did you see other scenes where individuals had used bleach
19 to get rid of things like blood?

20 A Numerous.

21 Q After you did the leuco crystal violet test, what
22 did you observe?

23 A There was no reaction whatsoever in any of those
24 areas.

25 Q Was there another stain that you looked at?

1 A Yes. It was another small section from -- if you
2 are entering the home from the laundry room area to the
3 left would be the kitchen area and there was another stain
4 there that was reddish and it was diluted.

5 And like I said the detectives were there, my
6 supervisor was there with me, we did not believe it to be
7 blood but we did not want to leave anything to chance so
8 it was also tested with phenylethylene and there was
9 nothing there. And then we also tested with leuco crystal
10 violet in that other section.

11 Q The stain that was in front of the kitchen
12 counter, is that the one that you are referring to as
13 having a red color to it, State's Exhibit 48?

14 A Yes, that is it.

15 Q So even if you don't think it's blood because
16 it's red, out of an abundance of caution you will you test
17 it?

18 A Yes.

19 Q And in fact did you -- State's Exhibit 45 -- did
20 you cut out that area so that you could test it not only
21 on the top but on the bottom?

22 A Correct. And we also did the phenylethylene on
23 those areas as well.

24 Q And what did you find when you did the
25 phenylethylene on those two areas?

1 A Negative for apparent blood.

2 Q Did you also do the leuco crystal violet test?

3 A Yes.

4 Q And what did you find out when you did that?

5 A It was also negative.

6 Q As you went through the house did you also locate
7 a sheet somewhere that caught your attention?

8 A Yes. I don't remember who discovered the sheet.
9 I do remember documenting the sheet so it could have been
10 one of the detectives that saw it. And I did see it
11 behind the sofa and I photographed it when it was brought
12 to my attention.

13 Q Showing you State's 49. Is that the sheet that
14 we are talking about?

15 A Yes, that is the sheet.

16 Q So somebody brought it to your attention and you
17 photographed it?

18 A Yes, I photographed it. We pulled it out from
19 behind the sofa and I noticed the stain. With items like
20 this there may be other trace evidence there but the less
21 we manipulate it at the scene the higher the chances of us
22 being able to do more at the lab and so I did not want to
23 risk losing any trace evidence so I didn't shake the sheet
24 out or anything like that.

25 That was an obvious stain that I saw and I tested

1 that stain and then we just booked the sheet and packed
2 whatever trace evidence was there and then we would leave
3 it up to the lab to determine what else they wanted to do.

4 Q When that was tested, presumptively positive
5 blood, and just for the record State Exhibit 50, is that
6 also a close-up of that same stain?

7 A Yes. And that was also tested with
8 phenylethylene.

9 Q And did you mark and tag and impound that as well
10 under the same event number?

11 A Yes.

12 Q In your travels through the house, did you also
13 collect some evidence that indicated who might be living
14 there?

15 A Actually, during the search warrant the
16 detectives would have asked me to take a look at that and
17 I did. If I may refer to my reports?

18 THE COURT: You may.

19 BY MS. LUZAICH:

20 Q Did you generate a report at or near the time of
21 the incident?

22 A Yes.

23 THE COURT: If we can just do this first, look at
24 it and see if that refreshes your recollection and then
25 testify from your recollection rather than reading from

1 the report. If you are unable to do so let us know.

2 THE WITNESS: Okay. Yes.

3 BY MS. LUZAICH:

4 Q Was there a piece of mail at least with the name
5 Lesean Collins on it pointed out to you at the location?

6 A Yes. Correct.

7 MS. LUZAICH: Thank you. Pass the witness.

8 THE COURT: I would like to take a brief recess.
9 We'll take ten minutes.

10 During the recess, you are admonished not to talk
11 or converse among yourselves or with anyone else on any
12 subject connected with the trial or read, watch or listen
13 to any report of or commentary on the trial or any person
14 connected with the trial by any medium of information
15 including without limitation newspapers, television,
16 radio, the Internet, or any social media, or to form or
17 express any opinion on any subject connected with the
18 trial until the case is finally submitted to you.

19 (Whereupon, a recess was taken.)

20 THE COURT: Is there anything we need to address
21 before the jury is brought in.

22 MR. HYTE: No, Your Honor.

23 MS. BLUTH: Your Honor, pursuant to stipulation
24 Exhibits 90 and 99 are two maps of the area.

25 THE COURT: Those are stipulated to be admitted?

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MS. BLUTH: Yes.

THE COURT: All right.

MS. BLUTH: Thank you. That was it.

THE COURT: Anything else?

MR. SCHIECK: No.

MS. LUZAICH: No.

THE COURT: All right. We are ready for the jury.

(Jury enters the courtroom.)

THE COURT: Before we resume, Ms. Zapata, can I ask you to please acknowledge that you are still under oath.

THE WITNESS: Yes.

THE COURT: Thank you.

Mr. Hyte, whenever you are ready.

MR. HYTE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HYTE:

Q Officer Zapata, I want to talk to you for a bit about that bottle of bleach that you observed.

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

THE COURT: You may.

BY MR. HYTE:

1 Q Showing the witness what has been admitted as
2 State's 51 and 52. Are these photographs that you took?

3 A Yes.

4 Q And those depict the bottle of bleach?

5 A Yes.

6 MR. HYTE: Your Honor, these two have been
7 admitted. I don't know if they have been published yet.
8 Permission to publish.

9 THE COURT: Just identify them for the record.

10 MR. HYTE: State's 51 and 52.

11 THE COURT: I believe 51 was published. Go
12 ahead, either one.

13 MR. HYTE: Thank you.

14 BY MR. HYTE:

15 Q Showing you State's 51. Now you indicated this
16 bottle of bleach was close to where the biggest carpet
17 stain was; is that right?

18 A Yes.

19 Q And then showing you Exhibit 52, that is just a
20 close-up of the same bottle, correct?

21 A Correct.

22 Q Thank you. Now you indicated that the bottle of
23 bleach still had some liquid in it right?

24 A Yes. I indicated that in my report, correct.

25 Q You indicated that frequently you see bleach used

1 to remove blood stains; is that right?

2 A Yes.

3 Q In this case, you did not impound that bottle of
4 bleach, did you?

5 A No, it was not impounded.

6 Q You did not note what kind of bleach it was, did
7 you?

8 A In the photographs it shows the type of bleach.
9 It is on the photograph.

10 MR. HYTE: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. HYTE:

13 Q Showing you again State's admitted 51 and 52.
14 Can you please identify from those photographs which
15 ingredients are contained in that bottle of bleach?

16 A Oh, I thought you meant the brand. I'm sorry.

17 Q No.

18 A I'm sorry. It would not indicate what the bleach
19 was comprised of, no.

20 Q Thank you. Now that carpet stain you indicated
21 there had been evidence of a fire in the residence but the
22 carpet stain area itself was not affected by the fire; is
23 that right?

24 A Not that I could tell, correct.

25 Q Thank you. And the carpet you testified had

1 already been lifted up also by the time you got to the
2 residence?

3 A Yes.

4 Q You tested that carpet for blood as you said?

5 A Yes.

6 Q And you found no evidence through the presumptive
7 test; is that right?

8 A That's correct.

9 Q And if the carpet had had a heavy stain of blood
10 it could have leaked down through the carpet itself;
11 correct?

12 A Yes.

13 Q And that's why, as you testified, you tested the
14 pad and cement as well?

15 A Yes.

16 Q And it was all negative for blood, right?

17 A Yes. That's correct.

18 Q You testified that there were some very soiled,
19 dirty areas of carpet; is that right?

20 A Yes.

21 Q You did not test those areas for oil, did you?

22 A No, we did not.

23 Q You did not test any of the carpet stains for
24 oil, did you?

25 A No, we did not.

1 Q In fact, there were in addition to that larger
2 stain that you had identified there were several stains in
3 the foyer in the laundry area and in the living room and
4 they were all tested for blood?

5 A The areas that were tested were outside the
6 laundry room and the other stain that appeared reddish
7 because there were many stains throughout the residence.

8 Q Now you also testified that there were apparent
9 blood stains on the frame of the door, kind of in the east
10 hallway by the laundry room?

11 A Correct.

12 Q And you collected six blood samples; is that
13 right?

14 A Yes.

15 Q And you did not test all of those but of the
16 sample you tested they were presumptive for blood?

17 A One phenylethylene was the representative sample
18 for blood. That's what was done on the frame so as not to
19 destroy the actual blood stains.

20 So typically what that consists of, I would
21 examine those stains closely and anything maybe residual
22 outside of the actual concentration of blood on that
23 stain, I would just take a very, very minor swab of that
24 area. Very minor, very small swab. And that's typically
25 enough for the phenylethylene test because it's pretty

1 sensitive.

2 Q And you are being very careful with these
3 samples?

4 A Yes.

5 Q And as you testified a moment ago it was because
6 there wasn't a lot of blood there?

7 A That's correct.

8 Q So for example, if someone were a frequent
9 visitor to that home and had a bloody nose or a benign cut
10 on their finger, that amount of blood it's possible that
11 that could be a castoff pattern --

12 MS. LUZAICH: Objection. Irrelevant and
13 speculation. Foundation.

14 THE COURT: Let's lay a little foundation,
15 Mr. Hyte.

16 BY MR. HYTE:

17 Q You testified as to your qualifications, correct?

18 A Yes.

19 Q And that you underwent extensive training both in
20 the field and through classrooms and online in order to
21 become certified; is that right?

22 A Not online but the rest is true.

23 Q Oh, I'm sorry. I thought you did a course online.

24 A It was a physical book and we submitted the test.

25 Q Very well. I misunderstood your testimony.

1 And so as you went through this process you are
2 credentialed as a crime scene analyst?

3 A Correct.

4 Q And at one point with the local law enforcement
5 agency you were a supervisor?

6 A I was a trainer.

7 Q And you during that process then went to
8 approximately how many crime scenes during that time?

9 A Hundreds.

10 Q Okay. And for the amount of blood that you
11 observed in this residence would you necessarily conclude
12 that it was due to some type of traumatic injury?

13 MS. LUZAICH: Well, objection. She is not
14 qualified to testify about that.

15 THE COURT: Sustained.

16 BY MR. HYTE:

17 Q Now under the door frame where you found that
18 blood spatter you also tested the carpet under that area?

19 A Under the -- I'm sorry. Could you repeat that.

20 Q The door frame you observed --

21 A The laundry room door frame?

22 Q Yes. Where the blood spatter was collected from?

23 A Okay, yes.

24 Q The carpet directly beneath that area, you in
25 fact tested that area for blood, didn't you?

1 A Yes. That's correct.

2 Q And you chemically enhanced the area to see if
3 you could find blood?

4 A Yes.

5 Q And what type of test did you do?

6 A The leuco crystal violet as stated previously.

7 Q And that is also know as LCV just for shorthand?

8 A Yes.

9 Q And the LCV test revealed no evidence of blood
10 for that location; isn't that right?

11 A That's right.

12 Q You also impounded a blue sheet behind the sofa;
13 is that right?

14 A Yes.

15 Q And that sheet contained a stain of blood on it?

16 A Yes.

17 Q And you were able to determine that through your
18 presumptive testing, correct?

19 A That's correct.

20 Q And so that evidence was impounded?

21 A Yes.

22 Q You never collected any evidence from the sports
23 utility vehicle from a woman named Shalana Eddins, did
24 you?

25 A No, I did not.

1 Q You never collected any evidence from either a
2 vehicle or a residence occupied by a man named Rufus
3 Hicks, did you?

4 A I did not.

5 MR. HYTE: Nothing further, Your Honor.

6 THE COURT: All right. Thank you.

7 Ms. Luzaich.

8 MS. LUZAICH: Just very briefly. Thank you.

9

10 REDIRECT EXAMINATION

11 BY MS. LUZAICH:

12 Q Leuco crystal violet the test that you were
13 talking about, that is a presumptive test, correct?

14 A That's correct.

15 Q Somebody else would do some kind of confirmatory
16 analysis?

17 A That's correct.

18 Q And Mr. Hyte asked you about a test for oil. Do
19 you even have a test for oil?

20 A We do not.

21 Q When he ask you about there was no fire damage to
22 the carpet, but you had mentioned that there was water.
23 Were the carpets wet from the fire department?

24 A The carpets were wet. I don't remember how wet
25 that section was specifically, but most of the carpets in

1 the residence were wet.

2 Q And the interest in the area at the doorjamb and
3 the stain in front of the door is what everybody focused
4 on, correct?

5 A That's correct.

6 Q That other stain like in the kitchen or living
7 room or whatever area, you just tested that because it was
8 red and you felt that it is always better safe than sorry?

9 A Yes. And it was not too far from the blood
10 spatter observed on the doorway.

11 Q But based on what you saw before you thought that
12 was blood but the other stain, that red stain, that never
13 occurred to you to be blood?

14 A Right. It did not appear to be blood.

15 MS. LUZAICH: Thank you. Nothing further.

16 THE COURT: Mr. Hyte.

17 MR. HYTE: Briefly.

18

19 RE CROSS-EXAMINATION

20 BY MR. HYTE:

21 Q You did not impound any samples of that carpet,
22 did you?

23 A No.

24 Q And in fact the lab has more sophisticated tests
25 that are available to you in the field, are they not?

1 A At the time of the test they would have had
2 presumptive we used for presumptive. In fact, they
3 trained us on doing the presumptive test.

4 Q Okay. Now the carpet that you indicated had been
5 soggy or wet that could have been dried out in the lab and
6 then tested there; is that correct?

7 A I don't recall that section of the house as being
8 as wet. I don't recall the stain, that part of house
9 whether the carpet was wet or not.

10 MR. HYTE: Thank you. Nothing further.

11 THE COURT: Ms. Luzaich, anything further?

12 MS. LUZAICH: No. Thank you.

13 THE COURT: May I see by a show of hands if any
14 jurors have questions for this witness.

15 Seeing none, Ms. Zapata you are excused.

16 THE WITNESS: Thank you.

17 THE COURT: State's next witness.

18 MS. BLUTH: Thank you, Judge. The State calls
19 David Horn.

20 THE COURT: Mr. Horn, if you will come up to the
21 witness stand so my clerk can swear you in.

22 Whereupon,

23 DAVID HORN,
24 was administered the following oath by the court clerk.

25 THE CLERK: You do solemnly swear that the

1 testimony you give in this action shall be the truth, the
2 whole truth, and nothing but the truth so help you God.

3 THE WITNESS: I do.

4 THE CLERK: Please state and spell your full name
5 for the record.

6 THE WITNESS: David Horn. D-a-v-i-d, H-o-r-n.

7 THE COURT: Thank you.

8 Ms. Bluth, you may proceed.

9 MS. BLUTH: Thank you, Judge.

10

11

DIRECT EXAMINATION

12

BY MS. BLUTH:

13

Q Good afternoon, Mr. Horn. Are you currently
14 employed?

15

A No, I am retired.

16

Q And before you were retired were you employed?

17

A Yes, I was.

18

Q And what were you employed as?

19

A I was employed as a senior crime scene analyst
20 with the Las Vegas Metropolitan Police Department. I
21 worked that job for 31 years and four months.

22

Q And when you use the term senior crime scene
23 analyst? How is that different from a crime scene
24 analyst?

25

A Well, basically, a regular crime scene analyst

1 you hire in for two years -- I think when I hired in it
2 was called an Identification Specialist and you had to
3 take a written examination to get promoted to
4 Identification Specialist II and that was another two
5 years as a crime scene analyst. And then you took a
6 two-part test to make Identification Specialist III.

7 In 1994 the Department reclassified and went from
8 the Identification Specialist series to the Crime Scene
9 Analyst series and then there was like a Crime Scene
10 Analyst I, Crime Scene Analyst II, and then the senior.
11 And since I was already an Identification Specialist III I
12 was just transferred over and paid at the Crime Scene
13 Analyst level.

14 Q In your 31 years as a crime scene analyst and a
15 senior crime scene analyst how many crime scenes would you
16 say that you responded to?

17 A Properly over a hundred thousand.

18 Q Now I would like to turn your attention to
19 October 1st of 2008. On this date were you called to the
20 location of 1913 Olwil (phonetic) in North Las Vegas,
21 Nevada?

22 A I was, but it's actually in Las Vegas.

23 Q Oh, I apologize. In Las Vegas, Nevada. And
24 could you give us an idea of what area of the Valley
25 that's in?

1 A Basically, 1913 Olwil, if you go north on Rancho
2 and you come to a little street called Holly, you make a
3 right turn and go east and this will lead you into a
4 series of apartment complexes. And the next street north
5 of that is Carey. So it is near Rancho and Carey and
6 Rancho and Holly.

7 Q And when you responded on this date what was the
8 reason for your response to that specific area?

9 A There was a report of a car that had been found
10 that had been listed with the patrol officers as requiring
11 an ID response if it was located, so that is why I was
12 called to that scene.

13 Q And when you responded to the scene was there
14 already an event number generated and associated with the
15 investigation having to do with that car?

16 A Yes, there was.

17 Q Do you remember that event number?

18 A No. I would have to look at the report.

19 Q Would looking at that help refresh your
20 recollection?

21 A Yes, it would.

22 Q Do you have that with you today?

23 A Yes. The original report number that I was
24 initially given was 08 for the year, 10 for October, 01
25 for the first day in October, hyphen 2915. But because

1 there was an earlier event number associated with that car
2 that is what I ended up going with as a matter of
3 department policy.

4 Q What was that number?

5 A 08, for the year, 09 for the month of September,
6 06 for the 6th day of September, and 1227, which was the
7 last four that was generated one second after midnight; it
8 was the 1,222 call for September 6th.

9 Q So the second event number that you gave is the
10 initial investigation under the September 6th of 2008
11 date?

12 A Yes, it is.

13 Q Now when you ultimately were going to get into
14 you writing a report and impounding evidence collected and
15 processed, when you do those things do you do that under
16 the September 6th, 2008 event number?

17 A Yes.

18 Q When you responded to the 1913 Olwil address, can
19 you explain to the ladies and gentlemen of the jury the
20 condition of the vehicle.

21 A It was a wreck. There was three wheels, the left
22 front -- all the rims had been taken. The left front
23 brake drum was on the blocks. The left rear drum was on
24 blocks. The right front brake drum was on blocks and
25 there was nothing supporting what had been the wheel.

1 The car was extensively dirty. We had no idea
2 how long it had been parked in that alley because it
3 looked like it had been dumped. Looking from the outside
4 in part of car around the driver's seat had been burned
5 and because it had a homicide hold on it and it was
6 getting to be dark -- and it was 6:00 on October 1st, and
7 I went ahead photographed it to show its current condition
8 and location and then I put seals on the doors, the trunk
9 and the hood of the car and had it towed back to the
10 Criminalistics Bureau under remote control setting for
11 other processing.

12 MS. BLUTH: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MS. BLUTH:

15 Q Showing you State's Proposed Exhibits 70 through
16 74. Please take a look at those photographs and let me
17 know when you are done and I will have a few questions for
18 you.

19 A I recognize these photographs as ones I took
20 several years ago.

21 Q Is it a fair and accurate depiction of the
22 vehicle and what it looked like on the day that you
23 responded?

24 A Yes.

25 MS. BLUTH: Move to admit into evidence State's

1 Proposed 70.

2 THE COURT: Any objection?

3 MR. HYTE: No, Your Honor.

4 THE COURT: State's 70, 71, 72, 73 and 74 will be
5 admitted and may be published.

6 MS. BLUTH: Thank you.

7 (Whereupon, State's Exhibits 70, 71, 72, 73
8 and 74 were admitted into evidence.)

9 BY MS. BLUTH:

10 Q Showing you State's 72. Now in the top left-hand
11 corner of the building that we see the car parked in front
12 of, is that the 1913 Olwil address?

13 A Yes. The address is 1913 Olwil but it's in the
14 alley. It was a common alley that ran between those
15 apartment buildings.

16 Q And showing you State's 73. This is a close up
17 of the license plate of the vehicle at the time you found
18 it?

19 A Yes. It was 428 UZS.

20 Q And showing you State's 74, is this what the
21 vehicle looked like on the evening of October 1st?

22 A Yes.

23 Q And when you say it was a wreck, and I believe
24 you stated it looked like it had been there a while, what
25 gave you that impression?

1 A Well, it had been parked there and someone had
2 come in and stole all four tires. Once it got back to the
3 Criminalistics Bureau parts of the interior had been
4 stolen from -- there was a rear deck speaker from the
5 interior of the car that had been stolen.

6 On the left side of the steering compartment the
7 cover for the fuse panel that was stolen. And, like I
8 said, somebody tried to set it on fire, the driver's seat
9 area and the headliner of the car. And there was an
10 extensive layer of dirt on the outside of the car so it
11 had been sitting in that alleyway for a while.

12 Q And showing you the State's 70, is that the other
13 side of the vehicle showing you the condition of the
14 vehicle with the tires?

15 A Yes. And if I might add, one other thing that
16 was stolen from the car was the vehicle battery so that
17 was gone too. And the gas tank lid was open.

18 Q Thank you. Now right before I approached with
19 the pictures, you were discussing the fact that it was
20 getting dark and so you took photos of the vehicle and
21 then you sealed the doors, the trunk and the center.

22 Can you explain to the ladies and gentlemen of
23 the jury what that means and what the purpose of that is.

24 A Well, basically, when you seal a vehicle like
25 that and it is to be towed it just seals and preserves the

1 interior and whatever is located inside of the vehicle if
2 it's the trunk, the passenger compartment or the engine
3 and so that nobody can tamper with it from the time it's
4 towed until it gets to the Criminalistics Bureau and it's
5 opened again.

6 Q So on October 1st after you photographed and
7 sealed the vehicle did you then move it to what's called
8 the Criminalistics Garage?

9 A Yes.

10 Q And once you got to the Criminalistics Garage,
11 what is the first thing that you do upon arrival there
12 with the vehicle?

13 A The first thing was it had to be taken off the
14 platform bed of the tow truck and that was an ordeal
15 because it had to be moved into the garage so they had to
16 put some wheels underneath it to move it inside our
17 garage.

18 And then once that was all done I rephotographed
19 the car and then I started working with my supervisor,
20 Mike Perkins, and started to recover evidence off of the
21 car.

22 Q I believe you briefly discussed damage done to
23 the interior of the vehicle and I believe you stated that
24 there was a panel related to like a fuse panel on the left
25 side of the interior of the vehicle that was missing?

1 A Yes. On part of the dashboard, yes.

2 Q And the front seat and the headliner, which is
3 located above the seat, were partially burned?

4 A That's correct.

5 Q Now you stated that you and your partner, CSA
6 Perkins worked on the collection of the evidence in
7 regards to the vehicle. What steps did you take to
8 collect that evidence?

9 A Basically, the first thing that we would do would
10 be to photograph because I didn't photograph the interior
11 of the vehicle when I was at the scene. With the doors
12 open I started photographing the condition of the
13 interior.

14 And then once the photographic documentation was
15 done it was just primarily a case of determining what
16 areas I could possibly recovery DNA swabs with. And so I
17 did that on the steering wheel, the left front door
18 handle, a combination of rearview mirror frames because a
19 lot of times when people get in the car they adjust the
20 mirror so they can see when they back up. And I also used
21 a swab from the door frame and the driver's handle.

22 And then there was a little Bic cigarette lighter
23 that was on the driver's seat and I processed that, too,
24 and tried to obtain DNA samples, so that was one part.

25 I was also trying to collect trace evidence off

1 of the four seats inside the car because it was bucket
2 seats; left-front, right-front, right-rear, left-rear. I
3 used an adhesive lifter and I placed the adhesive lifter
4 against the seat bottom, the seat back and the headliner
5 for all four seats keeping each of the adhesive lifters
6 separate from each other. That was also an attempt to
7 recover DNA.

8 Q When you use the term in an attempt to collect
9 trace evidence, can you explain what trace evidence is?

10 A Basically, trace evidence is just any physical
11 specimens that might be from the body, whether it be
12 sweat, blood, urine, anything along those lines that could
13 possibly be used by forensic scientists to type that and
14 compare it against a sample of somebody that might be in
15 the system.

16 Q Now when you were collecting those you used the
17 term apparent trace lifts from those different areas of
18 the seats. Did you actually see something and thought,
19 Oh, I better take a lift --

20 A I did not see anything specific. I was using for
21 example when you are a driver there are certain areas that
22 you presumed to have been touched. You've got to get in
23 the car and get out of the car so you will test the
24 interior of the driver door handle. You are going to
25 drive the car so you are going to have to touch the

1 steering handle. Same thing with the steering wheel and
2 the rearview mirror frame.

3 So those are things that a driver could be
4 expected to touch and they might leave a minute trace of
5 either skin cells or DNA behind that you can recover with
6 a Q-tip swab, a sterile swab.

7 Q Okay. Now were there any items of evidentiary
8 value that you actually collected and impounded?

9 A Oh, yes.

10 Q Explain what those were to the ladies and
11 gentlemen of the jury.

12 A Somebody used like a wash rag to try to burn the
13 car and so that was sitting on driver's seat. I took
14 that. The cigarette lighter, I took that.

15 There was some paperwork that had the name on it
16 Brandi Payton. It was on the right, front floor area. I
17 took all that because that was possible evidence. There
18 was adhesive lifters that I took from the seat bottoms,
19 back and headliners of the four seats inside the car.

20 There was also -- while I was doing this my
21 supervisor Mike Perkins, he was fingerprinting the outside
22 of the car trying to obtain some fingerprints.

23 Looking inside the passenger compartment it
24 looked like there were some footwear impressions and some
25 dirt on the left-front floor mat and right-front floor mat

1 and the left rear floor mat, so when I took those floor
2 mats then later Mike went ahead and photographed the
3 footwear impressions with scales and such the next day on
4 October 2nd.

5 And then in the trunk, there was a trunk floor
6 mat, I rolled that up and took that. But prior to doing
7 that it looked like there was a lot of dirt on the
8 right-rear side of the interior of the trunk and I used
9 another adhesive lifter to collect that soil sample and so
10 I was doing all that to try to either place a potential
11 victim in the car or a possible assailant, a suspect.

12 MS. BLUTH: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MS. BLUTH:

15 Q Showing you what has been marked for purposes of
16 identification, State's Proposed Exhibits 75 through 94.
17 If you could look through those for me and let me know if
18 you recognize them.

19 A Yes. I recognize these as the photographs I took
20 back on October 1st, 2008.

21 Q Are those a fair and accurate depiction of the
22 vehicle and what it looked like on that date?

23 A Yes, it is.

24 MS. BLUTH: Your Honor, at this time I would move
25 into evidence State's Proposed 75 through 94.

1 THE COURT: Any objection? Would you like to see
2 them?

3 MR. HYTE: I would like to flip through them if I
4 could.

5 THE COURT: Sure.

6 MR. HYTE: No objection.

7 THE COURT: State's 75 through 94 will be
8 admitted and you may publish.

9 (Whereupon, State's Exhibits 75, 76, 77,
10 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88,
11 89, 90, 91, 92, 93, 94 were admitted into
12 evidence.)

13 MS. BLUTH: Thank you, Your Honor.

14 BY MS. BLUTH:

15 Q Mr. Horn, showing you State's 75. Is this the
16 front view of the vehicle once it arrived into the
17 Criminalistics Garage?

18 A Yes, it is.

19 Q And we see a red sticker on the left side of
20 picture that is State's warning keep out. Is that the
21 type of sealed documentation that you were referencing
22 earlier?

23 A Yes. It's the Criminalistics Bureau's seal.

24 Q Showing you State's 76. What were you
25 documenting when you took this photograph?

1 A That was basically a view of the left front seat
2 area, the steering wheel and the end of the dash where the
3 compartment panel cover was off, just to show that from
4 immediate view.

5 Q Showing you State's 77. Is this a closer up view
6 of the contents in the front seat?

7 A Yes, ma'am, it is. That's a shot of the
8 cigarette lighter and at the bottom is the burned rag that
9 I found in the driver's seat and some paper that was next
10 to it.

11 Q Showing State's 78. Would this be the front
12 passenger side of the vehicle?

13 A Yes, it is. That is a view of the right front
14 seat of the seat back, the glove box area and also the
15 paperwork that was on the floor in the right, front floor
16 area.

17 Q Looking at State's 79, is this just a close-up of
18 some of the pictures of some of the paperwork that was
19 found in the vehicle?

20 A Yes, it is.

21 Q Showing you State's 82. Once the items were
22 removed from the front seat, is this the burn evidence
23 that you noticed in the front driver's seat?

24 A Yes, it is.

25 Q Showing you State's 84. Is this the close-up of

1 that paperwork that you had referenced earlier that was
2 found in the passenger front seat?

3 A Yes, it is. Well, that is actually on the
4 passenger floor, I apologize.

5 Q Showing you State's 86. Is this the paperwork
6 that you referenced finding in that same area in the name
7 you Brandi Payton?

8 A Yes, it is. It had her name and address on it on
9 a couple of packets of the paperwork that was on the
10 right, front floor area.

11 Q Showing you State's 87. Is this another piece of
12 paperwork located in that same area with Brandi Payton's
13 name on it?

14 A Yes. That was a resume that she had made for
15 herself. She was seeking another job I believe.

16 Q Showing you State's 91. In regards to that
17 damaged panel area in the front of the car, do you see
18 that damage in this picture?

19 A Yes. That is basically a shot I had taken across
20 the opposite seat area from the right front area showing
21 the left front door closed and that fuel compartment --
22 well, I call it a panel cover for the fuses, at the end of
23 the dashboard on the left front side of the car.

24 Q And in the picture that would be the right corner
25 of the picture?

1 A Yes.

2 Q You previously referenced burn damage to the
3 front driver's side, the headboard area. Is that what is
4 being depicted in Photograph No. 93?

5 A Yes. I call it the headliner, yes.

6 Q And a close-up of that same area in 94?

7 A Yes.

8 Q You also previously testified to taking the trunk
9 mat out, rolling it up and impounding it. Is that what we
10 are looking at in State's 80?

11 A Yes, it is.

12 Q And did you also document the vehicle's VIN
13 number by photography in State's 84?

14 A Yes, I did.

15 Q Now, the items that we have discussed in regards
16 to items collected for evidentiary value purposes you
17 stated that those were collected by you then impounded
18 into evidence; is that correct?

19 A That's correct, ma'am.

20 Q When you impound something into evidence do you
21 include the original event number that we spoke of,
22 September 6th of 2008?

23 A That's correct.

24 Q And then do you also have what is referenced as a
25 Metro personnel number that you include whenever you

1 impound an item?

2 A Yes.

3 Q And what was your Metro personnel number?

4 A For impound purposes you use your first letter of
5 your first name. In my case it's D. My personnel number
6 when I was hired in was 1928. And then you use the first
7 letter of your last name, which is H. So D1928H would
8 have been on the impound sheets and also on the seals of
9 the envelope or bag of whatever package the thing is in.

10 Q So every time you impounded an item you then put
11 into either a bag or an envelope and then sealed it?

12 A Yes.

13 Q And then on that seal you had the event number
14 and/or your Metro personnel number?

15 A That's correct.

16 Q I meant to ask you about the Bic lighter. I
17 remember you referencing a DNA sample, did you also check
18 that for prints?

19 A Yes, I did.

20 Q Were you able to lift anything?

21 A I did not get any fingerprints off the Bic
22 lighter.

23 MS. BLUTH: Thank you so much. Pass the witness,
24 Your Honor.

25 THE COURT: Thank you.

1 Mr. Hyte.

2 MR. HYTE: Thank you, Your Honor.

3

4

CROSS-EXAMINATION

5

BY MR. HYTE:

6

Q Good afternoon.

7

A Afternoon.

8

9

Q Office, you indicated that when you came upon the vehicle it was in a pretty sad state, right?

10

A Yes.

11

Q It looked like it had been stripped?

12

13

14

A At least the vehicle battery and the four tires was gone and the gas tank lid was open, so I don't know if anybody syphoned the gas out of it.

15

16

Q And in your investigation you had received a report that it had been stripped by a group of Mexicans?

17

18

19

A I don't remember that but it very well could have been because the area around 1913 Olwil is what you might call a distressed area.

20

21

22

Q Now, when you were going over the vehicle you observed that there were no apparent blood stains in the interior or exterior of the car; is that right?

23

A None that was obvious. Nothing that stood out.

24

25

Q And nothing stood out or was obvious in terms of blood evidence in the trunk either, right?

1 A That's correct.

2 Q Now, you've indicated that crime scene analyst
3 Perkins also assisted you to process the car?

4 A Yes. He did the outside with the fingerprinting
5 and later photography with what we thought were some
6 partial footwear impressions on three floor mats in the
7 car.

8 Q Did he take the photos of those or did you?

9 A He took the photos of the footwear on
10 October 2nd, 2008.

11 MR. HYTE: Your Honor, I would like to have these
12 marked as Defendant's Proposed next in order.

13 THE COURT: How many do you have?

14 MR. HYTE: Three.

15 THE COURT: That will be marked as D, E and F.

16 (Defendant's Exhibits D, E and F were marked
17 for identification.)

18 MR. HYTE: May I approach the witness?

19 THE COURT: You may.

20 MR. HYTE: Let the record reflect I am showing
21 the witness what has been marked at Defense Proposed D, E
22 and F.

23 BY MR. HYTE:

24 Q Do you recognize those photos?

25 A This one.

1 THE COURT: When you say this one, can you please
2 identify which one.

3 THE WITNESS: Proposed Defense Exhibit D, I
4 recognize this one that I took. These other two
5 photographs I know who took them. Exhibits E and F was
6 taken by Mike Perkins.

7 BY MR. HYTE:

8 Q Do they reflect your recollection of what the
9 vehicle looked like that day?

10 A Yes. Exhibits E and F was the full mass taken of
11 the outside of the vehicle.

12 MR. HYTE: Your Honor, I move to admit Defense
13 Proposed D, E and F.

14 THE COURT: Any objection?

15 MS. BLUTH: No objection.

16 THE COURT: Defendant's D, E and F are admitted
17 and you may publish.

18 (Whereupon, Defendant's Exhibits D, E and F
19 were admitted into evidence.)

20 MR. HYTE: Thank you.

21 BY MR. HYTE:

22 Q And so showing you now what has been admitted as
23 defense Exhibit D, this is as you indicated the photo that
24 you remember personally taking?

25 A Yes.

1 Q Can you describe what that shows.

2 A That is basically a photograph with the floor mat
3 in place inside the car.

4 Q Okay. And then showing you what has been
5 admitted as Defense E. What are we looking at there?

6 A Those are the two other floor mats that was taken
7 from the interior of the car and it was placed on the
8 garage floor for purposes of better photographing some
9 footwear that was in dirt on those floor mats.

10 Q And likewise, now showing you what has been
11 admitted as Defense F, what are we looking at there?

12 A That is the same thing. It's a floor mat that
13 was inside the Sonata car and it's placed outside of the
14 car on the floor for better ease of photography of some
15 footwear impressions and dirt that was on the floor mat.

16 Q And so what these mats appear to show are
17 footwear impression patterns; is that right?

18 A Yes, sir.

19 Q Now you collected or more accurately Crime Scene
20 Analyst Perkins took photos of those and then those mats
21 were in fact impounded, correct?

22 A Yes. He took the photographs and I actually
23 physical impounded the floor mats.

24 Q And you got them from the driver's side floor
25 mat?

1 A The three floor mats was from the driver's side
2 floor, the right-front floor, the left-rear floor and I
3 did not take any of the floor mats from the right-rear
4 floor area.

5 Q Now those footwear impressions did they appear to
6 you to be of comparison quality?

7 A Yes.

8 Q Did you request that those impressions be
9 compared to anyone?

10 A No. That is something that a homicide detective
11 would have to do.

12 Q So you have no knowledge whether those footwear
13 impressions were ever compared?

14 A I don't know if they were.

15 Q You also took a brake pedal measurement; is that
16 right?

17 A Yes, I did.

18 Q And what was the purpose of taking that
19 measurement?

20 A That was basically to try to get a potential
21 estimate of the size of whoever last drove the vehicle to
22 1913 Olwil because the measurement was taken from the
23 brake pedal to the edge of the driver's side seat. And I
24 think it was like one foot, 12 inches or something like
25 that. I would have to refer to the report for more

1 specific recollection of the measurement.

2 But it was just to show the last person's
3 physical dimension where they would have to place their
4 feet either on the gas or the brake pedal in relationship
5 to where the driver's side seat was located when it was at
6 the car location and also at the garage.

7 MR. HYTE: Your Honor, I would like to have this
8 marked as defense's next in order.

9 THE COURT: Defendant's G will be marked.
10 (Defendant's Exhibit G was marked for
11 identification.)

12 MR. HYTE: May I approach the witness?

13 THE COURT: You may.

14 MR. HYTE:

15 Q Showing you Defense Proposed Exhibit G; do you
16 recognize that?

17 A Yes. This is the measurement I was telling you
18 about from the brake pedal to the edge of the driver's
19 seat and it looks like it's about one foot and 10 inches,
20 10 and a half inches.

21 MR. HYTE: Your Honor, I move to admit the
22 State's Proposed G.

23 THE COURT: Any objection?

24 MS. BLUTH: No objection.

25 THE COURT: Just to clarify since you did on the

1 others; did you take this photograph?

2 THE WITNESS: I took that photograph. It was
3 inside the car.

4 THE COURT: All right. Defense Exhibit G is
5 admitted and you may publish.

6 MR. HYTE: Thank you, Your Honor.

7 (Whereupon, Defendant's Exhibit G was
8 admitted into evidence.)

9 BY MR. HYTE:

10 Q And then just showing you now Defense G which has
11 been admitted, now this measurement you indicated was
12 approximately 1 foot, 10 or 10 and a half inches?

13 A Yes.

14 Q And when you do that you are measuring from the
15 brake pedal to the end of the seat?

16 A Yes.

17 Q And hopefully when you do that you are trying to
18 get a determination of the length of the leg of the person
19 who drove the vehicle?

20 A That's correct.

21 Q And in this case did you request that that
22 measurement be compared to anyone?

23 A No, I did not.

24 Q And so you don't know if that comparison was ever
25 made, do you?

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A No, I do not.

Q You did not see a blanket in the car, did you?

A No.

Q Did you ever collect evidence from a vehicle
belonging to Rufus Hicks?

A No, I did not.

Q You also never collected evidence from a vehicle
belonging to Shalana Eddins, correct?

A No, I did not.

Q You indicated that you also collected some soil
samples?

A Yes, I did.

Q Did you ever request that those be compared to
any other soil samples?

A No, I did not.

Q So you do not know whether those were ever
compared, right?

A I do not.

Q Did you ever contact Avis to see what stock tires
would have been on that vehicle?

A No.

MR. HYTE: Nothing further, Your Honor.

THE COURT: All right.

Ms. Bluth.

REDIRECT EXAMINATION

BY MS. BLUTH:

Q Mr. Horn, as a senior crime scene analyst is it ever part of your job duties to request lab processing or testing to be done?

A It's very rare. The longer it got the tighter they got on those type of requests. It became the policy that a request that the forensic laboratory would honor had to come from the case detective.

Q So in 2008 did all requests for any type of DNA analyzing or latent print processing come from detectives?

A That's correct.

MS. BLUTH: Thank you so much.

THE COURT: Mr. Hyte, anything further?

MR. HYTE: Nothing, Your Honor.

THE COURT: May I see by a show of hands if any jurors have any questions for this witness. Seeing none, Mr. Horn, you are excused.

THE WITNESS: Thank you.

THE COURT: State's next witness.

MS. LUZAICH: State calls Kellie Gauthier.

Whereupon,

KELLIE GAUTHIER,
was administered the following oath by the court clerk.

1 THE CLERK: You do solemnly swear that the
2 testimony you give in this action shall be the truth, the
3 whole truth, and nothing but the truth so help you God.

4 THE WITNESS: I do.

5 THE CLERK: Please state and spell your full name
6 for the record.

7 THE WITNESS: Kellie Gauthier. K-e-l-l-i-e
8 G-a-u-t-h-i-e-r.

9 THE COURT: Thank you.

10 Ms. Luzaich, whenever you are ready.

11 MS. LUZAICH: Thank you.

12

13 DIRECT EXAMINATION

14 BY MS. LUZAICH:

15 Q Good afternoon, ma'am.

16 A Good afternoon.

17 Q Can you tell us how are you employed?

18 A I am employed with the Las Vegas Metropolitan
19 Police Department.

20 Q What do you do for Metro?

21 A I currently am the biology DNA manager and I have
22 held that for the last year. Prior to that I was a
23 forensic scientist in the DNA Detail for nine years.

24 Q In order to become a forensic analyst, do you
25 have special training and education?

1 A Yes. I have a bachelors degree from the
2 University of West Florida, which I have the required
3 course work. As well, I went through extensive training
4 programs at Florida Department of Law Enforcement which I
5 was previously employed at before I came to Las Vegas
6 Metropolitan Police Department, as well I did a year long
7 training program here at Metro.

8 Q When you were in Florida can you describe for us
9 what you did.

10 A I was a forensic pathologist and I did a lot
11 screening for analysts there, so I would look at all their
12 evidence, take cuttings, look for biological stains;
13 semen, blood, things like that.

14 Q For how long did you do that?

15 A I was there for approximately two years.

16 Q When did you come here to Metro?

17 A 2005.

18 Q And you explained that you had more training when
19 you came to Metro. What kind of training did have here?

20 A So when I came here I did a full on DNA training
21 course from start to finish. Since I had already screened
22 lots of stuff prior for two years that was pretty fast for
23 me to get through but I while I went through DNA analysis
24 training and physical training so it was another year-long
25 course.

1 Q For how long a period of time did you actually
2 conduct DNA analysis?

3 A Eight years after that.

4 Q And you said that now you are the lab manager?

5 A That's correct.

6 Q What do you do as the lab manager?

7 A I manage roughly 20 people.

8 Q Is that all of the analysts within the DNA lab?

9 A It is analysts, law enforcement, support
10 personnel as well. We have two units actually now because
11 we have gotten so big. We have our casework unit and we
12 have our data basing unit, so I have analysts in the data
13 basing unit that work all the offender and arrestee and do
14 the CODIS program.

15 I also oversee two supervisors now, so we have
16 just grown a lot and continue to.

17 Q Okay. I am going to take you back for a minute
18 to October of 2008. What were you doing at that point?

19 A I was a forensic scientist examining evidence and
20 reporting.

21 Q Can you explain for us who do not have a degree
22 like you what is DNA and why is it helpful to us in law
23 enforcement?

24 A DNA stands for deoxyribonucleic acid and I'm sure
25 everybody has seen the crime shows, it's simply a

1 blueprint of what makes you who you are and what
2 differentiates you from the people sitting next to you.

3 Everybody has a nose, everybody has two eyes.
4 That's all the same. And what we do is we look at these
5 places on the DNA where repetitive letters are persistent
6 and we are looking at what makes you different from person
7 to person. The only people who have the identical DNA
8 profile are going to be identical twins.

9 Q So other than identical twins everybody has their
10 own specific DNA profile?

11 A That's correct. I mean related people are going
12 to have some, just like a mother and a father are going to
13 have a child and the child is going to have 50 percent
14 from the mother and father; therefore, siblings would
15 roughly share 25, maybe upwards of 75 percent. So related
16 people are going to share some but even then you could
17 have maybe 30,000 kids and no one would have the same
18 profile.

19 Q How do we collect or what kind samples can we
20 collect so that you a DNA analyst can find what the
21 profile is?

22 A So evidence-wise it seems like everything is
23 collected, swabs from door handles -- typically, back in
24 the day and even when this case was done in 2008 we were
25 more looking at blood, semen and saliva. Touch evidence

1 was just coming on the scene. Now touch evidence is
2 everything.

3 We'll look at the knife and we'll look at the
4 handle for who handled it and we will look for blood on
5 the blade of the knife.

6 For reference standards which we would compare
7 the evidence from the scene we just do a buccal swab which
8 is just a simple swabbing of the inside cheek which are
9 called buccal cells.

10 Q Are there occasions where you cannot get a buccal
11 swab from someone, therefore you do something else?

12 A If we don't have a buccal swab there will be no
13 comparison done to that individual. But when we look at
14 the evidence we look at the evidence as it is.

15 So we have a profile. It is male profile. And
16 then we will compare it. If it does not match anybody
17 that is there for comparison it would just be named an
18 unknown male or unknown female.

19 Q So basically as a DNA analyst you compare samples
20 from scenes to something that you know to be somebody's
21 particular profile?

22 A Yes. What we would call the question samples
23 from the scene are compared to known samples from
24 individuals.

25 Q So if you have a known individual but you are

1 unable or somebody is unable to obtain a buccal swab can
2 they obtain a different portion of their body sometimes to
3 give you a known standard?

4 A Well, there's several things this could happen
5 with. If you have someone -- and unfortunately the
6 temperatures in Vegas get so hot that sometimes we have to
7 use another reference standard or something we would call
8 a secondary standard -- so a female victim dies and we
9 obtain a sexual assault kit from her, just for example,
10 maybe the buccal swab is just too degraded, been out in
11 the sun too long and her body is decomposing, so we would
12 take maybe if we got a full profile off the vaginal swab
13 which might have been more kept without it being exposed
14 to the weather or the environment, we might get a full
15 profile. Anywhere where I could assume it to be from that
16 individual I could use as a secondary standard.

17 We also have surreptitious standards which are
18 taken when we cannot find a suspect or we don't have
19 rights to get a standard and that could be used from
20 someone saying they saw someone toss this cup after
21 drinking out of it. So we could use that as a
22 surreptitious. There are several different ways to use
23 that and we have to do it sometimes in certain situations.

24 Q For example, in this case can you use a rib and
25 kidney tissue sample?

1 A That would actually be a known sample.

2 Q That is what I meant.

3 A Yes. That is a known standard.

4 Q I will direct your attention specifically to
5 October of 2008, as a DNA analyst were you asked to
6 analyze and compare some samples under Event No.
7 080906-1227?

8 A Yes.

9 Q Did you receive a known standard from an
10 individual, Brandi Payton?

11 A Yes.

12 Q And where did that come from?

13 A May I refer to my notes?

14 Q At any time that you are doing any kind of
15 analysis do you prepare reports at or near the time that
16 you do it?

17 A Yes.

18 Q And would it refresh your recollection to review
19 that report?

20 A It would.

21 Q Did you bring it with you?

22 A I did.

23 Q Please go ahead and refer to your report.

24 A I did receive a reference to a kidney tissue from
25 Brandi Payton.

1 Q When you got that did you obtain a profile from
2 that standard?

3 A It was only a partial female profile.

4 Q What does that mean?

5 A It means that when we are looking at all these
6 locations on the DNA, and there's 15 and there's the sex
7 determining one that shows whether the person is male or
8 female.

9 A full profile means that we've got something at
10 every single location. A partial means there's certain
11 locations where we couldn't. When I was talking about
12 something being exposed to the weather and the elements,
13 what happens is DNA doesn't change. The profile itself
14 does not change.

15 And all that a profile consists of is two
16 numbers. And I think we're going to show everybody in a
17 little bit, but it's really just two numbers that when I
18 was talking about we are looking at these repetitive
19 numbers over and over again, it is how many repeats you
20 have at a place.

21 So as I mentioned earlier, you get 50 percent
22 from your mother and 50 percent from your father. If that
23 is chromosome 8 the section we are looking at your mother
24 may have 8 and a 10 because of course she got two from her
25 parents also. Your dad might have an 11 and 12. You

1 could have got the 8 or the 10 or the 11 and 12. You are
2 going to get one and both of those, so you might get 8/12
3 or an 8/11 such an such for every single location.

4 Q Once you obtain a profile from an individual you
5 can then compare that to evidence and make various
6 conclusions?

7 A Yes. For quality assurance purposes we like to
8 run our question samples first before our known's. We run
9 all the question stuff from a scene and then we run the
10 known's through and we just always like to run the
11 question samples first so there's no risk of any kind of
12 contamination or anything like that. It's quality that we
13 want.

14 So once we run the question samples and then we
15 run the known's, then we would compare them and see if
16 they match.

17 Q In this particular situation did you actually
18 conduct analysis on two separate occasions?

19 A I did. I was asked to do some supplemental work.

20 Q Is that something that happens fairly often?

21 A Pretty regularly in homicide.

22 Q So first in October of 2008 were you asked to
23 look at some swabs that were apparent blood from a door?

24 A Yes.

25 Q Two fake fingernails?

1 A That's correct.

2 Q Some rocks?

3 A Yes.

4 Q And some fingernails and toenails?

5 A Yes.

6 Q How do you go about doing that?

7 A Well, the swabs that were submitted were just
8 swabs sent in. And of course in this case they appeared
9 to be blood so of course I attempted them.

10 We have two different tests we can run. We run a
11 presumptive test for some biological fluid like blood and
12 semen. Presumptive just means there's indication that it
13 could be. It does not mean that it is. First indication;
14 presumptively. There's also some conservatory tests out
15 there for like sperm we look under a microscope and see if
16 we actually see a sperm head.

17 For blood there's a thing called hemo trace,
18 which almost looks like a pregnancy test where two lines
19 mean positive, one means negative.

20 There are some false negatives to all of these.
21 Human blood is very hard. Higher pregnant blood will test
22 positive for a lot of these things.

23 So we would do that first. We would do any
24 presumptive confirmatory testing and then we would take it
25 through the DNA process. The DNA process is simply a few

1 steps; we extract it. We want to get rid of all of the
2 impurities in the samples.

3 So you put your cutting, say, from a swab, put it
4 into a tube, you add some chemicals, you heat it and you
5 separate it and you get a nice pure DNA sample.

6 At that point we want to know how much we have in
7 the sample. To actually get a full profile you only need
8 a ten to the negative eight, the amount. It's so small.
9 So we quantify it. We want to see how much we have.

10 At that point we put it through like a Xerox
11 machine. We make a million copies of these small
12 fragments that we want to look at and we put it through
13 our instrument and it takes pictures as it crosses.

14 And if you can think about it separates by size.
15 So the smaller fragments will go through first and then
16 the larger fragments will go through last.

17 So through about 55 minutes running on the
18 instrument it will take pictures and show the entire DNA
19 profile that we are looking at. At that point it comes
20 across in more of a diagram and we make it more linear in
21 Excel just so we can do comparisons, which you will see in
22 a little bit.

23 Q And before you even test this evidence you call
24 it up from where it has been impounded; is that right?

25 A Yes, sorry. I skipped all that.

1 Q That's okay. So packages of evidence will come
2 to you?

3 A That's correct. We call it up from our main
4 vault. It comes to our vault within our laboratory and at
5 that point chain of custody takes place. I take
6 possession of it through a password that is protected. I
7 take it into my custody, I keep it in my locker and make
8 sure it's sealed appropriately and at that point I would
9 start my note taking and all of that.

10 Q And when you get a package with something like
11 blood swabs do you make sure that chain of custody is
12 intact, in other words, that it has not been tampered with
13 since it has been marked, tagged, sealed and placed into
14 evidence?

15 A That's correct.

16 Q Was there any question as to whether or not it
17 had been tampered with would you even then conduct
18 analysis?

19 A No. I mean I might be asked to but we would
20 usually leave it with the vault because they would want to
21 call the person who originally packaged it to see if there
22 was an issue.

23 Q Okay. So I am going to ask you specifically
24 about one package containing six swabs from a laundry room
25 door in a hallway. When you received that package was it

1 tamper free?

2 A Yes, it was sealed.

3 Q And what did you discover when you conducted
4 analysis on those six swabs?

5 A All of them just in general?

6 Q Well, did you analyze each one separately?

7 A I did. All six were tested and brought through
8 the process separately.

9 Q Do you kind of name them, just because I can't
10 think of a better word right now, so that you know each
11 one is separate?

12 A Yes. They are designated with my initials and
13 then 1-A, 1-B, 1-C.

14 Q So the first one, for example, KG, your initials,
15 1-A and then the second one, KG 1-B?

16 A That's correct.

17 Q When you examined these six swabs what did you
18 compare them to?

19 A Well, the first one the swab from the east wall
20 in the hallway by the laundry room door was positive
21 presumptive test for blood, what I talked about earlier.
22 However, no DNA profile was obtained from this one, so
23 there was no comparison done on the first one.

24 Q Why might that be?

25 A Several reasons. Sometimes there's just not

1 enough stain there. Sometimes maybe it's diluted out.
2 There was no profile obtained.

3 Q Let me ask you a better question. Of those six
4 swabs were you able to obtain a full profile on any of
5 them?

6 A On three of them.

7 Q And which three was it?

8 A It would be KG 1-B, KG 1-C and KG 1-F.

9 Q And when you obtained full profiles on KG 1-B, C
10 and F, did you compare those to anything?

11 A Yes. They are all consistent with Brandi Payton.
12 The estimated frequency of that DNA profile population is
13 rarer than one in 650 billion identities that don't.

14 Q What does that mean in layman's terms?

15 A So what we can do when we get a profile we have
16 frequency. So like I was telling you earlier, you are,
17 say, chromosome eight. You have eight received and ten
18 received. We actually have a population database where we
19 can see the frequency of an eight in the population, what
20 is the general frequency of that eight. And then what we
21 can do, if you remember the product rule, we can take each
22 of those frequencies and times them by each other. So
23 literally you're going to have 30 when you look at all 15
24 and there's two at each one and they also tell us how rare
25 or how common the estimation of that is in the population.

1 In this case we gave indemnities assumed because
2 it was more than a hundred times the world's population at
3 the time.

4 Q So on those three swabs it was Brandi Payton's
5 blood?

6 A That's correct.

7 Q Did you chart that out like you were you talking
8 about earlier with the alleles and things of that nature?

9 A Yes. We do it with every single case.

10 MS. LUZAICH: May I approach?

11 THE COURT: You may.

12 BY MS. LUZAICH:

13 Q Showing you what has been marked as State's 122,
14 which for the record has been provided to counsel. Is
15 that the chart that you are talking about regarding Brandi
16 Payton's known standard and the swabs that we just
17 mentioned: B, C and F?

18 A That's correct.

19 Q And would that help you explain to the jury what
20 we are talking about?

21 A Yes.

22 MS. LUZAICH: Move it into evidence.

23 THE COURT: Any objection?

24 MR. SCHIECK: No.

25 THE COURT: State's 122 will be admitted and you

1 can publish.

2 (Whereupon, State's Exhibit 122 was
3 admitted into evidence.)

4 BY MS. LUZAICH:

5 Q Can you explain for me -- can you see the whole
6 thing on your screen?

7 A Yes.

8 Q Explain for us what we are looking at.

9 A So as I described earlier, these are the
10 locations that I am talking about on your DNA that we are
11 looking at.

12 THE COURT: You just drew a line on the left-hand
13 side of the exhibit.

14 THE WITNESS: Yes. And then the third one up in
15 the pink one, you see the little black box, which is three
16 up from the bottom, that is the sex determining location
17 where we can actually tell if someone is an XX they are a
18 female, if they are an XY they are a male, so mighty see
19 some that are XY.

20 At the top of KG 4, KG 1-B, KG 1-C, those are my
21 initials for the designation showing each separate sample
22 that was taken. KG 4 is the reference standard from
23 Brandi Payton that was used for comparison.

24 And a few more things that I will point out. If
25 you see three down on the left side where that D-7 is and

1 you see the NR, that's no result was obtained at that
2 lotion.

3 Earlier you might get a partial profile. As you
4 can see with Brandi Payton I was only able to get a
5 partial profile. The star right below that NR which is
6 next to CSF on the left-hand side just shows that there
7 was something. There was a peak that came up you could
8 say but it didn't meet our threshold in order to actually
9 call it and use it for comparison.

10 But as you can see very easily looking across 14,
11 16 and D-8 is Brandi Payton. The swab from the east wall
12 is the 14 and 16. D-21, Brandi Payton. 28, 35, so on and
13 so on all of these to show that she of course is
14 consistent with those two swabs.

15 Q Consistent with sounds kind of generic. You said
16 one in 650 billion identity assumed. Why do you say
17 consistent with?

18 A Well, when we are doing DNA analysis there's
19 three actually; either someone included, someone excluded,
20 or it is inconclusive. In this case Brandi Payton could
21 not be excluded as the contributor to these individual
22 tings, that's what consistent with it means.

23 And the statistics show the relevance of that
24 match.

25 Q When you talk about consistent and included is

1 that almost like word gymnastics?

2 A It really is and we change constantly.

3 Q But because of your statistical analysis can you
4 say that Brandi Payton is the only person on the planet
5 that her DNA is in those three swabs?

6 A What I will say is that identified them to be
7 hers because it met our threshold of a hundred times the
8 world's population it's rarer than.

9 Q So those are those three swabs. You mentioned on
10 the A swab that you were unable to get a profile. What
11 about the D swab?

12 A D as well. I was unable to get a profile from.
13 There was no DNA profile obtained.

14 Q Again, just potentially just not enough being on
15 the swab?

16 A That's correct. It does happen.

17 Q And what about the E swab?

18 A There was a partial female profile.

19 Q And when you say a partial female profile, what
20 do you mean?

21 A A lot of what you just saw with Brandi Payton
22 where some of the locations are there and some are not.

23 Q In addition to the six swabs from the doorway
24 were you asked to examine some rocks that were found?

25 A Yes. I did examine three rocks. They came back

1 as blood positive and was consistent with Brandi Payton,
2 again, rarer than the 100 times the world population
3 identity is assumed.

4 MS. LUZAICH: May I approach?

5 THE COURT: You may.

6 BY MS. LUZAICH:

7 Q Showing you what's been marked as State's Exhibit
8 124, is this a chart that talks about Brandi's standard
9 and the rocks?

10 A That's correct.

11 Q Would that also help your testimony?

12 A Yes.

13 MS. LUZAICH: Move into evidence.

14 MR. HYTE: No objection.

15 THE COURT: State's 124 is admitted and you may
16 publish.

17 (Whereupon, State's Exhibit 124 was
18 admitted into evidence.)

19 MS. LUZAICH: Thank you.

20 BY MS. LUZAICH:

21 Q So can you just briefly explain again.

22 A Again, you are looking at the same locations. On
23 the left-hand side of the screen is Brandi Payton's
24 profile on the left as well and then these are the rocks.

25 And as you can see in addition there are those

1 little asterisks, that is additional information within
2 our threshold with which I can make a call.

3 Q What is below the threshold?

4 A As we were talking about a profile should only
5 have two numbers there. If I have more than two numbers
6 it means that there's additional possibly a mixture
7 happening; however, in this case everything that has a
8 star nothing met the threshold with which to call.

9 So when we look at DNA we have a threshold. When
10 I talked about stuff coming across the camera and it
11 looking like peaks. If that peak is not strong enough we
12 will not call it and the reason why is when we go through
13 validations we spend months and months looking at this
14 data saying at what point do we say something is reliable
15 and reproducible and accurate. And in order to present an
16 accurate representation of that data in court I would not
17 want to use something that doesn't meet that threshold to
18 make an opinion on.

19 Q Does whatever you found that was potentially
20 below a threshold does that have any affect on finding
21 Brandi's blood on the rocks?

22 A No.

23 Q Do you know where those rocks were found?

24 A I don't actually. I just have three rocks
25 written down. It might be in my notes.

1 Q Is your file with you?

2 A It is.

3 Q Could you check -- if there was more information
4 would it be included in your notes?

5 A It would be.

6 Q Could you refresh your recollection?

7 A I don't see where it was that they were
8 collected.

9 Q Okay. That's fine. You mentioned also that
10 there were some fingernails that were examined. Were
11 there a full profile obtained from fingernails?

12 A I'm sorry. I have several fake fingernails.

13 Q KG 3-A and B?

14 A Full profiles from both the right hand and the
15 left hand, fake fingernails both are consistent with
16 Brandi Payton.

17 Q Were those obtained from the autopsy?

18 THE COURT: Noting for the record that the
19 witness is looking at her notes.

20 THE WITNESS: Yes. Those were collected at CCCO.

21 MS. LUZAICH: Clark County Coroner's Office?

22 THE WITNESS: Correct.

23 BY MS. LUZAICH:

24 Q And you obtained full profiles from Brandi
25 Payton?

1 A That's correct.

2 MS. LUZAICH: May I approach?

3 THE COURT: You may.

4 BY MS. LUZAICH:

5 Q Showing you State's Proposed Exhibit 126. Are
6 those reflected on here?

7 A Yes.

8 Q Are there also fake fingernails from another
9 location reflected on here?

10 A I don't know about another location. A different
11 person collected them. I didn't write where they came
12 from. And there is two more fake fingernails, both
13 partial female profiles and they are both consistent with
14 Brandi Payton.

15 Q And in KG 4, the standard that we have been
16 talking about all along, that is also included on this?

17 A Yes, it is.

18 MS. LUZAICH: Move into evidence.

19 MR. HYTE: No objection.

20 THE COURT: State's 126 is admitted and you may
21 publish.

22 (Whereupon, State's Exhibit 126 was
23 admitted into evidence.)

24 MS. LUZAICH: Thank you.

25 BY MS. LUZAICH:

1 Q State's 126 all the way to the left, is that KG
2 4, the standard that we have been talking about?

3 A Yes.

4 Q And that's all the way to the right, KG 3-A and
5 3-B, were those also taken from the autopsy?

6 A That's correct.

7 Q And those are clearly both from Brandi Payton.

8 A Yes. In fact they are better profiles than the
9 standard itself.

10 Q You had mentioned that very often you are asked
11 to do supplemental evaluation. And so in February of 2009
12 were you asked to analyze and compare some more items?

13 A I was.

14 Q And in February of 2009 were you asked to look at
15 a black trunk mat and a white hand towel among other
16 things?

17 A Yes, I was.

18 Q When you looked at the black trunk mat what did
19 you find?

20 A I found what was believed to be a blood stain by
21 doing presumptive testing again.

22 Q Were you able to obtain a profile off the black
23 trunk mat?

24 A Yes. I obtained a full female profile that was
25 consistent with Brandi Payton. Again, the estimated

1 frequency of the DNA profile was rarer than one in 650
2 billion identities assumed.

3 Q And is that KG 6?

4 A Yes.

5 Q And were you also asked to examine a stain on a
6 white hand towel?

7 A Yes, I was.

8 Q Is that KG 8-A?

9 A Yes.

10 Q Were you able to obtain a full profile on that?

11 A I was. That as well was consistent with Brandi.

12 MS. LUZAICH: May I approach?

13 THE COURT: You may.

14 BY MS. LUZAICH:

15 Q Showing you Exhibit 125. Is this the chart that
16 shows the standard KG 4 and the black trunk mat, KG 6, and
17 the stain on the white towel, KG 8-A?

18 A Yes.

19 MS. LUZAICH: Move it into evidence.

20 MR. HYTE: No objection.

21 THE COURT: State's 125 is admitted and you may
22 publish.

23 (Whereupon, State's Exhibit 125 was
24 admitted into evidence.)

25 MS. LUZAICH: Thank you.

1 BY MS. LUZAICH:

2 Q On State's 125, all the way to the left, is that
3 KG 4, the standard?

4 A Same standard, that's correct.

5 Q And then KG 6 the trunk mat?

6 A Yes. KG 6 is the trunk mat and KG 8-A is the
7 stain on the white towel. And all the way down again is
8 consistent with Brandi Payton.

9 Q Again, identity is assumed for both?

10 A That's correct.

11 Q Now you were not asked to examine carpet; is that
12 correct?

13 A That's correct.

14 Q Have there been in your experience situations
15 where blood is on an item such as carpet and bleach was
16 able to degrade the blood to the point that it would
17 presumptively come back negative?

18 A Yes. And it is a proven fact that chemicals can
19 inhibit and interfere with DNA testing.

20 Q Is bleach specifically one of those chemicals?

21 A It is.

22 Q Does time also inhibit and interfere with DNA
23 testing?

24 A Time doesn't if it something that is collected
25 and stored properly, but if you think about a piece of

1 carpet on the floor, if you had a blood stain over time as
2 people walk on it, it wears it.

3 I never say never anymore in this job, but at the
4 same time realistically in Vegas in general stuff left in
5 cars -- I just worked a set that we were doing some
6 sampling for our new trainees on with stuff left in the
7 trunk for over a week in 100 degrees. It just does not
8 bode well for DNA testing after a while and that is how we
9 end up where we are with profiles that are not full
10 profiles.

11 Q You mentioned also if people walk on it. So if
12 30 days goes by and somebody walks over a stain and at
13 least six people walk over a stain because it's a high
14 traffic area that has already had bleach poured on it
15 would that further degrade the sample?

16 A In my opinion I would think it would. I would
17 think anything not just bleach but even pouring any kind
18 of liquid over it is going to disperse that stain more and
19 more. And most carpet has padding underneath it, if you
20 have liquid under there and it's kept wet you have mold
21 issues that come into play.

22 I know when I worked in Florida mold was our big
23 thing we were combatting. Here, it's the temperature and
24 the heat typically, so it just depends on climate and how
25 things are kept. I never say never but I do think it does

1 get to a point if you have a blood stain the size of a
2 quarter and you pour a gallon of bleach over it, I'm
3 probably going to have a pretty hard time getting a
4 profile off of it.

5 Q So bleach and foot traffic. What about fire, if
6 there was a fire in the house or damage from fire or smoke
7 or the water used to put the fire out?

8 A Again, heat is a huge thing. There are times
9 when you can get something. Pipe bombs we work, we work
10 everything; fire. I work stuff for the fire department
11 here too. It is hard to find stains after a fire has hit
12 because the fire itself does so much damage you cannot
13 visibly see a stain anymore, so that is what I would say.

14 But I never say never because we have and we can
15 and it just depends on the elements with which it had to
16 sustain it.

17 Q But is it possible in your experience if all of
18 those things occur on top of a blood stain that at least
19 the presumptive test would be negative?

20 A It is very possible.

21 Q And that would not surprise you at all?

22 A No.

23 MS. LUZAICH: Thank you. I pass the witness.

24 THE COURT: Mr. HYTE.

25 MR. HYTE: Thank you.

CROSS-EXAMINATION

BY MR. HYTE:

Q Good afternoon.

A Good afternoon.

Q I just want to go through a few things with you.
There was also a sexual assault kit that was done?

A That's correct.

Q And that is pretty standard?

A That is very standard nowadays, yes.

Q And that came back and there was no evidence of
sexual assault, correct?

MS. LUZAICH: Objection. She can't testify to
that.

THE COURT: You would have to lay a foundation,
Mr. HYTE. Sexual abuse is not within this witness'
ability to testify.

BY MR. HYTE:

Q So in a sex assault case, are sometimes given
evidence from that test that's done to analyze it?

A Yes. I worked with a lot of SA kits.

Q And in this case were you given this SA kit to
test?

A That's correct.

Q And did you find any evidence that a sexual
assault had occurred?

1 MS. LUZAICH: Objection. She cannot testify to
2 that.

3 THE COURT: I do not believe you set the
4 foundation. I appreciate that she has done some analysis
5 but the analysis is in a certain framework and not able to
6 answer the question that you are asking, not the least of
7 which ultimately could call for a very different
8 conclusion, so sustained.

9 BY MR. HYTE:

10 Q Let me ask you this then. At the time of autopsy
11 certain evidence was impounded, correct?

12 A I was not there at the autopsy, but yes.

13 Q To your knowledge some of that evidence that was
14 impounded came to you to be tested, correct?

15 A That's correct.

16 Q And some of those items were fake fingernails
17 from the hands of the decedent?

18 A That's correct.

19 Q And on one of those fingernails it might for
20 example, in a typical case you might expect to find DNA of
21 someone else under that fingernail; is that correct?

22 A Yes. That is what we would be looking for.
23 That's correct.

24 Q And in this case you did not find any evidence of
25 Mr. Collins' DNA on those fingernails?

1 A I only found it on the victim.

2 Q And the same is true not only of fake fingernails
3 but also of natural fingernail clippings?

4 A That's correct.

5 Q And in this case were you asked to compare
6 natural fingernail clippings that were taken from the
7 victim at autopsy?

8 A What item and package would those be? I have a
9 lot of fake nails.

10 Q Well, that is why I'm asking you. I saw that
11 they were collected at autopsy, but was there any testing
12 done?

13 A I would only see stuff that was asked. So, yes,
14 you are correct if it is not in my report I was not asked
15 to test them.

16 Q Then so you would have the same answer regarding
17 the toenail clippings that were taken at autopsy but are
18 not indicated in your report?

19 A I did receive the right foot toenails and left
20 foot toenails but I was not asked to examine them. I was
21 not asked to.

22 Q I would like to talk about the sample profiles on
23 the 1519 Laguna Palms residence. Now of some of those
24 tested positive for Brandi's blood; is that right?

25 A That's correct.

1 Q And the sample that you were given, that wasn't a
2 large volume of blood was it?

3 A For which one?

4 Q For any of the blood samples that you were given
5 in this case to test, did they contain a large amount of
6 blood?

7 A Some of the swabs had like 20 percent staining on
8 them while other ones had definitely more. And then some
9 had like 10 percent.

10 Q No. What I am getting as is that when you are
11 given these samples, you are just given a little bit on
12 the end of the swab. They are not giving you volumes of
13 blood to test, correct?

14 A That's correct.

15 Q In general when you are testing DNA evidence you
16 cannot really tell under what circumstances the DNA got
17 there, can you?

18 A None whatsoever.

19 Q Also does not tell you how long it has been
20 there, correct?

21 A Correct.

22 Q And so in this case you don't know how long the
23 blood DNA had been there?

24 A That's correct.

25 Q I want to talk to you about the carpet stain that

1 was in the house that has been discussed. Now you say a
2 fire is something that could maybe degrade the evidence;
3 is that right?

4 A It could possibly degrade the DNA, that's
5 correct. High heat does that.

6 Q Would you agree that the fire that occurred is
7 not observed to be close to where the stain is and it is
8 less likely to degrade the DNA?

9 A I would agree with that.

10 Q And you were never asked to test a piece of
11 carpet in this case, were you?

12 A No.

13 Q You never tested the padding, right?

14 A No.

15 Q Now in the field they use presumptive blood
16 tests, right?

17 A That's correct.

18 Q And you testified that in the lab you can do
19 presumptive tests?

20 A That's correct.

21 Q You can also do confirmatory tests.

22 A That's correct.

23 Q And you gave an example of a confirmatory test,
24 the hemo trace test?

25 A Yes.

1 Q So in the field they may have tried a presumptive
2 test but they would not have been able to do a hemo trace
3 test, right?

4 A No. Do not have that with them.

5 Q And so in this case that carpet stain was never
6 subjected to a hemo trace test, correct?

7 A That's correct.

8 Q Now you talked a little bit about bleach. Bleach
9 can sometimes remove stains, correct?

10 A Yes. It is very good at removing stains.

11 Q And whether it does so it can depend on the
12 dilution, the strength of the bleach and how long it has
13 been there, correct?

14 A For sure.

15 Q Also can depend on the kind of bleach, can't it?

16 A As a parent I would agree with you completely
17 after getting stains out of my kids clothes.

18 Q Fair enough. You said some bleach in fact is
19 sodium hydrochloride based and some oxygen based, isn't
20 it?

21 A That's correct.

22 Q And those two different kinds of bleaches do not
23 react identically with blood DNA, do they?

24 A I have not done a lot of testing with the
25 oxy-clean out there. We have done a lot of studies just

1 with training with the bleach-bleach, Clorox bleach versus
2 oxy-bleach. I can't really state a lot about the
3 oxy-clean and how much degradation it has. I have not
4 read any articles on it.

5 Q So you are not aware then whether oxy-clean or an
6 oxy-based bleach could react differently with hemoglobin
7 and the DNA than sodium hydrochloride bleach?

8 A That's true. I still think you would have the
9 same dilution problem where you would be diluting the
10 stain out no matter what you are pouring on it.

11 Q But you have not read any articles on that?

12 A No, on dilution, I have. Diluting the blood
13 stain, there is a point where we will not get a positive
14 presumptive or confirmatory result if you dilute the stain
15 out too much.

16 Q And in this case you were never given a bottle of
17 bleach to test which kind it was, were you?

18 A We don't test for which kinds of chemicals are
19 used. That is not within what I do.

20 Q Who within the lab of what you do would look at
21 those types of things?

22 A Would test for bleach? I don't know if anybody
23 would.

24 Q Now you never tested anything for oil; is that
25 right?

1 A No. We do not do any tests on oil.

2 Q There has been talk about a blue sheet that came
3 into the lab that had a blood stain on it and you tested
4 that blood strain?

5 A The blue fitted sheet?

6 Q That's correct.

7 A Yes.

8 Q And you were able to determine that that blood
9 stain belonged to a male; is that correct?

10 A Yes. It is an unknown male.

11 Q And you were able to determine that that was not
12 Mr. Collins' blood; is that correct?

13 A Mr. Collins was excluded as a contributor to that
14 profile.

15 Q And you didn't compare that sample to any other
16 males, did you?

17 A I was not asked to, that's correct.

18 Q And so along with that you were not comparing
19 that sample with Rufus Hicks, were you?

20 A No, I was not.

21 Q You testified about the trunk mat in the Sonata
22 that Brandi's blood tested positive there?

23 A That's correct.

24 Q And just as with the residence you were not able
25 to tell the circumstances under which the blood ended up

1 in the trunk?

2 A That's correct or the time frame.

3 Q And you were not able to find any DNA from the
4 trunk mat leading to Mr. Collins; isn't that right?

5 A That's correct.

6 Q Now you noted that the DNA on the steering wheel
7 from the Sonata could not exclude Mr. Collins?

8 A That's correct. That's a partial profile.
9 However, approximately one in one individual in the
10 population are included, meaning, anybody could be
11 included in that mixture.

12 Q And that's my question. So the strength of your
13 analysis on that is that anyone in the world literally
14 could have contributed to that?

15 A That's correct.

16 Q The yellow Bic lighter that was found in the
17 Sonata, that contained a mixture profile of at least two
18 individuals; is that right?

19 A That's correct.

20 Q And one of those contributors was in fact male;
21 isn't that right.

22 A That's correct.

23 Q And Mr. Collins was excluded as the male
24 contributor to that profile?

25 A That's correct.

1 Q And you didn't test any other males besides
2 Mr. Collins to that sample?

3 A To anything in this case, that's correct.

4 Q So I guess the sum up question to that and
5 everything is you never tested any DNA evidence in this
6 case to Rufus Hicks, did you?

7 A No.

8 MR. HYTE: Nothing further.

9 THE COURT: Ms. Luzaich.

10 MS. LUZAICH: Very briefly.

11

12 REDIRECT EXAMINATION

13 BY MS. LUZAICH:

14 Q Of the three swabs -- sorry, of the six swabs,
15 three of them are Brandi's and two of them you could not
16 get a profile. And the one that you were able to get a
17 partial profile on what was your statistical analysis?

18 A The partial profile, the estimated frequency of
19 that partial profile and the general population is rarer
20 than one in one billion.

21 THE COURT: And I will just note for the record
22 that the witness was just referring to her notes.

23 MS. LUZAICH: Thank you.

24 BY MS. LUZAICH:

25 Q So still like more than the people on the earth?

1 A Yes, still a significant number.

2 Q When Mr. Hyte was asking you about oxygen-based
3 bleach, oxy-clean, that's the stuff that we buy in grocery
4 stores, right?

5 A That's correct. Like a detergent, which most
6 detergents do affect DNA one way or the other. I just do
7 not know to what capacity it is because I have not done my
8 own tests on it.

9 Q Okay. Have you ever seen oil give a false
10 positive for blood?

11 A No. Usually false positives are stuff that react
12 with the hemoglobin like you were just discussing which is
13 like iron. Things like that. Rust will sometimes, rust
14 on iron will sometimes. It just depends. But it is
15 certain things that definitely give false positives. Not
16 that many though. Like horseradish will. But I don't
17 typically mistake horseradish for a red-brown stain so it
18 all starts with looking at an item and seeing what the
19 physical stain looks like.

20 Even on a black trunk mat in a white light
21 typically on black items you can see a distinction in the
22 color and kind of see if there is a stain on it. So we
23 start with a visual exam always before we narrow it down
24 to the stain. Rust is the hardest one because it does
25 look like blood and yet it typically is not blood. It can

1 just be rust.

2 Q And then when you were asked about the fake
3 fingernails, there were the ones that mentioned from
4 autopsy from CCCO, KG 3-A, KG 3-B. And then there were
5 two other fake fingernails, KG 2-A and KG 2-B. 2-A and
6 2-B were from a different location than the coroner's
7 office, correct?

8 A Yes.

9 Q And on those you obtained a partial female
10 profile?

11 A That's correct. Still consistent with Brandi.

12 MS. LUZAICH: Thank you. Nothing further.

13 THE COURT: Anything further, Mr. Hyte?

14 MR. HYTE: No, Your Honor.

15 THE COURT: May I see by a show of hands if the
16 jurors have any questions for the witness. Seeing none,
17 Ms. Gauthier, you are excused.

18 THE WITNESS: Thank you.

19 THE COURT: May I have counsel at the bench.

20 (Off-the-record bench conference.)

21 THE COURT: It is just a few minutes after five
22 because I wanted to complete with this witness. I am
23 going to have you return here tomorrow at 1:30.

24 During the overnight recess, you are admonished
25 not to talk or converse among yourselves or with anyone

1 else on any subject connected with the trial or read,
2 watch or listen to any report of or commentary on the
3 trial or any person connected with the trial by any medium
4 of information including without limitation newspaper,
5 television, radio, Internet or social media of any kind,
6 or to form or express any opinion on any subject connected
7 with the trial until the case is finally submitted to you.

8 (Jury exits the courtroom.)

9 THE COURT: We still have some things to do
10 before we adjourn officially for the day.

11 At this time I would like to have a discussion
12 with regard to the waiver of self-incrimination of Mr.
13 Collins. And what I mean by that, of course, is that Mr.
14 Collins has the right under the Constitution not to be
15 compelled to testify. It is of course his election as to
16 whether or not he chooses to testify.

17 We did discuss earlier that we would have this
18 conversation this evening but we may not necessarily have
19 a definitive answer this evening and that is fine, but I
20 think it is important that we go through the information.

21 Mr. Schieck, do you want to make representations
22 or can you make representations, you had indicated and I
23 just want to confirm for this place in the record that you
24 have had discussions with Mr. Collins regarding his
25 constitutional right both recently and in the past, and if

1 you could just reorient us before I begin canvassing Mr.
2 Collins when those conversations occurred.

3 MR. SCHIECK: Your Honor, we have advised Mr.
4 Collins, both Mr. Hyte and myself have, of his right to
5 testify or not to testify under the Fifth Amendment. We
6 had these discussions with him prior to the commencement
7 of the trial and we had these discussions with him as late
8 as yesterday afternoon and that it is one decision in the
9 criminal case that belongs to the defendant and he can
10 make the decision whether or not he desires to testify
11 with or without the advice of counsel on that issue or
12 over the objection or advice of counsel on that issue.

13 So we have had these discussions with him on an
14 ongoing basis throughout our representation in the case.

15 THE COURT: All right. Thank you.

16 So, Mr. Collins, I am going to go ahead and run
17 through some questions now. I would ask and appreciate if
18 you would -- I know some of these questions are yes/no
19 questions, but of course, as we go through this if you
20 have a question for your counsel or for the Court please
21 advise us. But, again, these are yes or no questions just
22 to make sure we are on the same page.

23 I need to make sure that you do understand that
24 you have the right under the Constitution of the United
25 States and under the Constitution of the State of Nevada

1 not to be compelled to testify in this case; do you
2 understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Of course, that means that no one can
5 make you take the witness stand or make you answer any
6 questions; do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: You may, if you wish, give up this
9 right and you may take the witness stand and testify and
10 if you do you will be the subject of cross-examination
11 both by the District Attorney's Office and possibly by
12 your own counsel, and anything that you say whether it is
13 in response to what the State asks or whether it is in
14 response to what your counsel asks can and would be the
15 subject of fair comment by the District Attorney in
16 addressing the jurors at the conclusion of the case in
17 their closing or final argument. Do you understand that?

18 THE DEFENDANT: No.

19 THE COURT: You do not understand. Which part if
20 you could help me understand. There were obviously
21 multiple pieces to that but the issue there that we are
22 talking about is first of all, you have the right to give
23 up the right not to be compelled. Do you understand that,
24 if you wish to take the witness stand, you can.

25 THE DEFENDANT: Yes.

1 THE COURT: You do understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And you understand that if you take
4 the witness stand anything that you say at some point when
5 the case is concluded and the counsel are making their
6 final arguments to the jurors anything that you say can be
7 commented on by the State; do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. That is essentially what we
10 were talking about there.

11 Of course if you chose not to testify, if you
12 choose to invoke your right or, again, not be compelled to
13 testify and ultimately no one is seeking to compel you to
14 testify, so really what it boils down to is if you choose
15 not to take the stand, which is your right, then I do want
16 you to understand that the district attorney may not make
17 any comments about that fact to the jury. Do you
18 understand that?

19 THE DEFENDANT: To testify?

20 THE COURT: We will get to that in a minute. I
21 am not asking you the final outcome. I have to ask you if
22 you understand all the rights and the variations of the
23 rights. So I am still asking you those questions, okay?

24 So, again, we have gone over that you have the
25 right not to testify and you have indicated that you

1 understand that. We have gone over that you can give up
2 that right and if you do testify the State can talk about
3 it, right?

4 THE DEFENDANT: Yes.

5 THE COURT: Now back to if you choose not to
6 testify, and I know this is a little bit back and forth,
7 so I apologize if that's confusing at all. I just want
8 you to understand that if you were not to testify the
9 State would not be able to comment on that in any way.
10 They wouldn't be able to go up and argue at the end, Hey,
11 why didn't he take the stand, that kind of thing. They
12 cannot do that at all. They cannot comment on at all. Do
13 you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: I also want you to understand that if
16 you do not testify then I am going to read an instruction
17 to the jury specifically about the fact that you have not
18 testified and it is going to read just like this:

19 "It is a constitutional right of a
20 defendant in a criminal trial that he may not be
21 compelled to testify, thus, the decision as to
22 whether he should testify is left to the
23 defendant on the advice and counsel of his
24 attorney. You must not draw any inference of
25 guilt from the fact that he does not testify nor

1 should this fact be discussed by you or enter in
2 your deliberations in any way."

3 Basically, that instruction makes it clear to the
4 jurors that if you do not testify they cannot consider
5 that in any way, shape or form in their deliberations and
6 they certainly cannot draw any inferences that you are
7 guilty because you did not testify. And they are
8 specifically instructed with regard to that.

9 So do you have any questions about that
10 instructions?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Couple more things for us to go over
13 before you make your final decision. And I appreciate you
14 may have made your decision but I need to make sure that
15 we have gone over all these things so that I can be
16 assured if and when you ultimately do testify that you are
17 aware of all of the pros and cons, so to speak, or all of
18 the consequences.

19 Back to, if you will, to choose to testify. I
20 know that this is an issue as well I think this has come
21 up in our prior discussion.

22 If you were to choose to testify the act that you
23 have been convicted of a felony in the past ten years or
24 have been on parole or probation for a felony within the
25 past ten years the district attorney could inquire about

1 that but in a very limited way.

2 The district attorney could ask if you have been
3 convicted of a felony, what was the felony and when it
4 happened. But they may not ask any other questions as
5 long as you were to answer those questions truthfully or
6 accurately, okay?

7 THE DEFENDANT: Yes.

8 THE COURT: If you were to not testify truthfully
9 or denied a felony in any way then the State could seek to
10 impeach your testimony or question your testimony and then
11 in doing so they could do that with actual certified
12 copies of the conviction that might have more information
13 in them that the jurors might see than otherwise they
14 would be allowed to ask about.

15 So if you were to take the witness stand they
16 could ask you about the felony or felonies but they could
17 not go into any details about them other than what they
18 are. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: I have gone over if you don't testify
21 and if you do testify what the limitations are with the
22 State in either option and what your rights are.

23 And so at this time the Court would like to ask
24 you have you made a determination on whether or not you
25 wish to testify?

1 THE DEFENDANT: I need to discuss it with my
2 counsel.

3 THE COURT: Okay. So we will allow you to do
4 that and what I will do when we return here tomorrow we
5 will come back at 1:15 and that will give us a little bit
6 of time before we bring the jurors in at 1:30 and we will
7 talk to you at that time and ask you what your
8 determination is on whether or not you wish to testify.

9 THE DEFENDANT: Thank you, Your Honor.

10 THE COURT: Thank you.

11 And, Mr. Schieck, can I ask in the meantime does
12 the defense intend to call any witnesses? The main reason
13 I'm asking this question and I have seen indications of
14 who might be called but I am just trying to confirm now
15 that we're through the trial on the State's side, I am
16 trying to determine are we likely to get to instructions
17 and closings tomorrow or were we going to be dealing with
18 those on Wednesday?

19 MR. SCHIECK: There is a possibility we will be
20 doing closings tomorrow, Your Honor.

21 THE COURT: Okay. So obviously that then means
22 we need to have instructions, which means at the lunch
23 hour I will be completing the instructions so I really do
24 need counsel to have whatever review of each others
25 versions. I appreciate that you had maybe objections. I

1 have not confirmed with my JEA that we have gotten those
2 documents but assuming that you asked your staff to send
3 them and we do have them, my preference would be to have
4 them this evening because at some point obviously you are
5 going to have to look at them. It could be any time
6 before 9:00 because I am not going to look at them before
7 that time frame because I know what my schedule is this
8 evening.

9 But I would need to have at least some
10 identification or understanding from the State what if any
11 of the defense's that you object to and if the defense has
12 anything further to indicate or if you all are able to
13 talk and work out any details so that I am not sort of
14 shooting in the dark tomorrow as far as what we're dealing
15 with, okay?

16 And then we will have to build in some time -- I
17 don't know when or how unless we were to come together
18 prior to the lunch hour because that would be the only
19 time I would have to work on them.

20 MR. SCHIECK: We did talk during the break and
21 went over our proposed instructions, so I think the
22 district attorneys have an idea of what the issues are
23 that we are going to have to talk about and we will talk
24 with them later this evening or before we go over to the
25 jail anyway.

1 THE COURT: I am happy to avoid you all having to
2 come in before the lunch hour. Do you think that there's
3 the ability for you to communicate with me in some
4 meaningful way via email about final discussions about
5 this so at least I have that before the lunch hour?

6 MR. SCHIECK: I would think so.

7 MS. LUZAICH: I believe so. You have civil
8 calendar tomorrow, right?

9 THE COURT: I do.

10 MS. LUZAICH: Is it a big calendar?

11 THE COURT: It is fairly heavy. I do not see us
12 starting before 11:30 in all honesty, so we will have to
13 just see.

14 I just ask, and I appreciate it's late in the day
15 and we have already put the work in but I need whatever
16 input you can give me about your discussion about your
17 review of each others versions by 9:00 tonight. And I
18 will give you, if you don't already have it, I will go
19 ahead and give you my email address to send it.

20 And then what I would need is if there is any
21 further updating, any further review, any further
22 assistance that you may have because you have either
23 discussed it or agreed upon some things at whatever point
24 by, say, 11:30 tomorrow.

25 So if I don't get anything by tonight then I am

1 going to assume that what we have so far is the best we
2 are going to get.

3 But anything that you can give me this evening
4 because I will be working on putting together the set
5 tonight, as much as I can, and then, of course, if there
6 is any further updates or discussions I would just need to
7 know what that is. Does that make sense?

8 MS. LUZAICH: Yes.

9 MR. SCHIECK: Yes, Your Honor.

10 THE COURT: Anything else that we need to
11 discuss?

12 MS. LUZAICH: I don't believe so.

13 THE COURT: For the time being I will leave in
14 the instruction of course relating to the defendant not
15 testifying, which of course can also be removed in the
16 final version if Mr. Collins otherwise chooses to testify.

17 Anything else before we conclude for the evening?

18 MR. SCHIECK: No, Your Honor.

19 THE COURT: We will see you all tomorrow. Thank
20 you very much.

21 (Proceedings were adjourned.)

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I, BRENDA SCHROEDER, a certified court reporter in and for the State of Nevada, do hereby certify that the foregoing and attached pages 1-179, inclusive, comprise a true, and accurate transcript of the proceedings reported by me in the matter of THE STATE OF NEVADA, Plaintiff, versus LESEAN TARUS COLLINS, Defendant, Case No. C252804, on August 10, 2015.

Dated this 19th day of January, 2016.

/s/ Brenda Schroeder
BRENDA SCHROEDER, CCR NO. 867