

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

BENNETT GRIMES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
Supreme Court Case No. 74419  
Mar 13 2018 04:44 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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1           Q     Everything is fresh in your mind. And what you  
2 were thinking about everything was still fresh in your mind.  
3 Fresher than it is now.

4           A     Yes.

5           Q     And at that time you thought there was no way he  
6 could have gotten to a weapon in that kitchen, didn't you?  
7 Well --

8           A     I -- I don't know.

9           Q     Well, in your voluntary statement the police  
10 asked you, "Do you know if he brought the knife in with him?  
11 Where'd he get that knife from?" And you responded, "He like  
12 -- I think he had it on him cause he didn't -- he came -- he  
13 couldn't get in the kitchen or anything, so he had it."

14          MR. BURNS: Your Honor, I just object to her reading  
15 the preliminary hearing transcript.

16          THE COURT: I'm not sure that's what it is. But I  
17 don't know -- I'm not quite sure what you're trying to do. I  
18 don't know -- it's not proper impeachment if that's what  
19 you're trying to do.

20          MS. HOJJAT: Your Honor, at this point she's  
21 testified that she --

22          THE COURT: I know what she testified to. So again,  
23 I'm not sure what you're trying to do but it's not proper to  
24 just start reading it. Is there a question?

25          MS. HOJJAT: Well, Your Honor, I guess my question

1 was, at that time you thought there was no way he could get  
2 into that kitchen to get a knife from the kitchen?

3 A I -- I don't know.

4 BY MS. HOJJAT:

5 Q You don't know?

6 A I -- I don't know if -- he -- I don't know if --  
7 what do you mean -- when you talking -- when -- repeat it,  
8 repeat the question.

9 THE COURT: I think she's trying to take you back to  
10 the day of the incident; is that correct?

11 MS. HOJJAT: Yes.

12 THE WITNESS: Okay.

13 MS. HOJJAT: Yes, going back --

14 THE COURT: On the day of the incident? You can ask  
15 your question.

16 BY MS. HOJJAT:

17 Q On the day of the incident, when you were  
18 watching -- you had seen that Bennett was in the entryway.

19 A Right.

20 Q You had seen that Bennett was in the entryway.

21 A Right.

22 Q You walked to the patio, correct, at some point?

23 A Uh-huh.

24 Q You turned around and you see Aneka and Bennett  
25 on the ground in front of the entryway.

1           A     Right.

2           Q     And so at that time you thought with those  
3 circumstances and that time period, there was no way he could  
4 have made it to that kitchen and back.

5           A     Well, the way the kitchen is he can't go around  
6 the kitchen.

7           Q     Okay.

8           A     But her -- I mean, her -- her -- her utensils  
9 was right, you know --

10          Q     Okay.

11          A     -- right on the -- on the counter.

12          Q     Okay. But so the answer to my question --

13          THE COURT: What is the question?

14          MS. HOJJAT: My question is --

15          THE COURT: Maybe if you could just ask her the  
16 question?

17          BY MS. HOJJAT:

18          Q     At that time you didn't think there was a way he  
19 could get a knife from that kitchen.

20          THE COURT: And again, she's talking --

21          A     I guess -- I guess --

22          THE COURT: -- about the day of the incident.

23          A     Okay. I guess not, no.

24          MS. HOJJAT: I'll pass the witness, Your Honor.

25          THE COURT: Any redirect?

1 REDIRECT EXAMINATION

2 BY MR. BURNS:

3 Q Mrs. Newman --

4 A Uh-huh.

5 Q -- did you know that there was a knife in the  
6 dish rack? Did you know if there was one?

7 A I knew my daughter had just got through washing  
8 the dishes, yes.

9 Q And that dish rack, would that have been --  
10 could you have reached that --

11 A Yes.

12 Q -- from --

13 A Yes.

14 Q -- okay. I want to -- I'd like you to step down  
15 here and readdress this exhibit that Ms. Hojjat was discussing  
16 with you. Do you remember when I showed you State's admitted  
17 Exhibit 17 and it depicted a blue cooler?

18 A Yes.

19 Q Okay. Would you draw a circle on this exhibit  
20 where that blue cooler was?

21 A (Witness complies)

22 Q And you've already indicated having not --

23 THE COURT: Mr. Burns, what are you showing the jury?

24 MR. BURNS: This is the defense's exhibit.

25 THE COURT: Okay. Nobody's publishing Exhibit 17?

1 MR. BURNS: I'm sorry. I had -- I asked her about  
2 that on direct.

3 THE COURT: Okay. All right. I just wanted to make  
4 sure.

5 MR. BURNS: Just bringing her back --

6 THE COURT: Because I can't see. But you're just --  
7 the only thing the jury can see is an admitted exhibit,  
8 correct?

9 MR. BURNS: That's right, Your Honor. And I believe  
10 we stipulated that this exhibit has been admitted.

11 THE COURT: Thank you.

12 BY MR. BURNS:

13 Q So -- so -- I'm sorry. The cooler is right  
14 there, correct?

15 A Yes.

16 Q Okay. Now you -- you described earlier that you  
17 saw Bennett pull the victim towards Aneka, towards --

18 MS. HOJJAT: Objection, misstates the testimony at  
19 this point. She made it clear she didn't see --

20 THE COURT: I don't know. Mrs. Newman, did that  
21 misstate your testimony?

22 THE WITNESS: I did see -- I did see him like pulling  
23 her towards the door --

24 THE COURT: Okay.

25 THE WITNESS: -- and then they fell down.

1 THE COURT: Mr. Burns, you may continue.

2 BY MR. BURNS:

3 Q And draw an arrow in what direction that was --  
4 he was pulling her.

5 A (Witness complies)

6 Q And for the record, you've drawn an arrow from  
7 the general vicinity of where Aneka and the blue cooler were,  
8 correct?

9 A Right.

10 Q Okay. And that moved to the door where you saw  
11 most of the stabbing, correct?

12 A Right.

13 Q Thank you, Mrs. Newman, please resume your seat.  
14 Now, is it safe to say that this was a pretty chaotic scene?

15 A Yes.

16 Q Okay. There was a lot of screaming?

17 A Yes.

18 Q A lot of adrenaline?

19 A Yes.

20 Q Did you feel adrenaline in yourself?

21 A Yes.

22 Q Now, I want to talk about your -- your voluntary  
23 statement. Now, when you said -- when you said that you  
24 didn't think he had been in the kitchen, had you ever seen him  
25 in the kitchen?

1 A Had I ever seen him in the kitchen?

2 Q Correct.

3 A At that time?

4 Q Right.

5 A No.

6 Q Okay. Now, but --

7 MR. BURNS: Court's indulgence. Your Honor, may I  
8 inquire of your clerk whether or not State's proposed Exhibit  
9 19 has been admitted?

10 THE COURT: It's admitted.

11 MR. BURNS: Your Honor, may I publish that exhibit?

12 THE COURT: You may.

13 BY MR. BURNS:

14 Q Now, Mrs. Newman, you'd been staying at the  
15 apartment with Aneka; is that correct?

16 A That's correct.

17 Q Okay. And so you were basically living with her  
18 for a short amount of time, correct?

19 A That's correct.

20 Q Okay. And you're familiar with the environment  
21 in the apartment?

22 A That's correct.

23 Q And did you know that there was -- was there a  
24 knife block in the kitchen?

25 A Yes, it is.

1           Q     And I'm showing you the exhibit. Do you see  
2 that knife block?

3           A     Yes, I do.

4           Q     And is that some distance from the buffet?

5           A     Yes.

6           Q     But it's a farther distance, is it not, than the  
7 dish drying rack, correct?

8           A     It's further from the -- yes.

9           Q     The knife block.

10          A     Yes.

11          Q     And I just -- when a lot of this is going on  
12 when Bennett and Aneka are there, especially initially, where  
13 are you standing in relation to them?

14          A     Where am I standing? This is like before the  
15 police officer --

16          Q     Yeah. When he first bursts into -- and there's  
17 this discussion.

18          A     I'm like -- like over --

19          Q     Well, let me ask you a different question --

20          THE COURT: She seems to be moving the photo up.  
21 Maybe she can't --

22          MR. BURNS: Okay. I'm sorry.

23          THE COURT: -- tell by this photo.

24          A     Not really. Okay.

25 BY MR. BURNS:

1           Q     Is it -- is it safe to say that you were at some  
2 point standing between them?

3           A     Yes.

4           Q     Okay.

5           MR. BURNS: Court's indulgence.

6 BY MR. BURNS:

7           Q     Now when this is going on, why are you standing  
8 between them?

9           A     I was going to stand -- I stood there because I  
10 didn't want him to hurt her. You know, just in case, you  
11 know.

12          Q     Okay. And is it safe to say the first time --  
13 you were -- the first time you see this knife, is that when  
14 he's stabbing her?

15          A     Yes.

16          Q     Okay.

17          MR. BURNS: Your Honor, I'll pass the witness.

18          THE COURT: Any recross?

19          MS. HOJJAT: Briefly, Your Honor.

20                        RE CROSS-EXAMINATION

21 BY MS. HOJJAT:

22          Q     Ma'am, you've testified that you turned around  
23 because you heard your daughter say, "Mom, he's stabbing me."

24          A     Yes.

25          Q     Right? That's what caused you to turn around?

1 A Yes.

2 Q Ma'am, I'm indicating an area of State's Exhibit  
3 19 that's closer to the top left corner. There's a white rag  
4 here and there's a stain in the carpet.

5 A Right.

6 Q That stain is blood.

7 A Right.

8 Q That blood is from the stabbing.

9 A Yes.

10 Q That's the location that the stabbing occurred.

11 A No. The location? You talking about before --  
12 I mean after it all --

13 THE COURT: She said, where's the location --

14 A Okay. The --

15 THE COURT: -- of the stabbing.

16 A -- location is like right in here.

17 BY MS. HOJJAT:

18 Q Okay.

19 A Okay.

20 Q In the entryway, right here.

21 A Right.

22 Q And you testified on redirect that you did know  
23 the knife had just been washed and was sitting to dry in that  
24 area.

25 A I said like my daughter washed the dishes.

1 Q Uh-huh.

2 A So it's in the dry rack. Can I point to where  
3 the dry rack was?

4 Q Absolutely.

5 A Okay.

6 Q Let me move in.

7 A Like you see behind this -- like right behind  
8 this? I'm sorry. Right behind where this is knocked over?

9 Q Uh-huh.

10 A It was right there.

11 Q Okay.

12 A Right there.

13 Q But you testified you did know where the drying  
14 rack was.

15 A Oh, I'm sorry.

16 Q Oh, no worries.

17 A I do know where -- I do know where.

18 Q You do know where the drying rack is. Now if  
19 you can clear out the screen again, please? I want to talk to  
20 you a little bit about this blue bag. You saw Bennett and  
21 Aneka on the ground in the general area in front of the  
22 doorway.

23 A Right.

24 Q And you ran to them.

25 A Yes.

1           Q     You didn't trip over this blue bag when you ran  
2 over there.

3           A     No.

4           Q     After all of this happened, there were a lot of  
5 people in that apartment, weren't there?

6           A     Yes.

7           Q     There were EMTs.

8           A     Yes.

9           Q     There were police officers.

10          A     Uh-huh.

11          Q     More than four police officers?

12          A     Yes.

13          Q     More than six police officers?

14          A     I don't really remember, but it was -- I would  
15 say three.

16          Q     Three, at least --

17          A     In the apartment.

18          Q     -- at least three or four police officers, okay.  
19 There were crime scene analysts.

20          A     Yes.

21          Q     There were people taking photographs.

22          A     Yes.

23          Q     There were people dusting for DNA.

24          A     Yes.

25          Q     There were a lot of --

1 THE COURT: Do you know that people were -- I don't  
2 know that they -- I don't know that they dust for DNA. That's  
3 probably not --

4 BY MS. HOJJAT:

5 Q There were people -- there were people  
6 collecting evidence in the apartment.

7 A Yes.

8 Q There was a lot of people collecting evidence in  
9 that apartment. Fair to say there was a lot of people walking  
10 around that apartment?

11 A After -- are you talking about after, right?

12 Q After.

13 A After, yes.

14 Q After there were a lot of people walking around  
15 that apartment. Okay. And you said the cop was right behind  
16 you also running to Bennett and Aneka on the ground?

17 A Uh-huh, yes.

18 Q And you didn't see him trip over that blue bag  
19 either?

20 A No.

21 MS. HOJJAT: No further questions, Your Honor.

22 THE COURT: Mrs. Newman -- okay, we have a question.  
23 If you will just wait and I can review the question. Just  
24 don't step down yet. Okay. Let me mark this Court's Exhibit  
25 Number 4. Thank you.

1 (Off-record bench conference.)

2 THE COURT: There being no objection, I'm going to  
3 ask what's been marked as Court's Exhibit Number 4, the second  
4 question. Mrs. Newman, do you know if Bennett closed and  
5 locked the front door after he pushed his way in?

6 THE WITNESS: No, I don't.

7 THE COURT: You don't know?

8 THE WITNESS: Close -- closed the --

9 THE COURT: That's okay. You don't know?

10 THE WITNESS: No.

11 THE COURT: Okay. Any follow-up from the State?

12 MR. BURNS: You don't know whether he locked the  
13 door. Do you know that -- whether or not anyone could leave  
14 while he was standing there?

15 THE WITNESS: No, couldn't leave.

16 MR. BURNS: Thank you.

17 MS. HOJJAT: But you did walk to the patio?

18 THE WITNESS: Pardon me?

19 MS. HOJJAT: You did walk to the patio?

20 THE WITNESS: To the patio door, yes.

21 MS. HOJJAT: Okay. No further questions, Your Honor.

22 THE COURT: Mrs. Newman, thank you very much for your  
23 testimony here today. You may step down.

24 THE WITNESS: Okay.

25 THE COURT: And you are excused. At this time we are

1 going to conclude for the evening. During this recess you're  
2 admonished not to talk or converse amongst yourselves or with  
3 anyone else on any subject connected to this trial or read,  
4 watch or listen to any report of or commentary of the trial or  
5 any person connected with this trial by any medium of  
6 information including, without limitation, newspapers,  
7 television, the Internet, radio or form or express any opinion  
8 on any subject connected with this trial until the case is  
9 finally submitted to you.

10 We will start tomorrow morning at 8:30. So again,  
11 you just come up to the 14th floor and Officer Serrano will be  
12 here to greet you. Thank you very much and we'll see you in  
13 the morning.

14 (Jury recessed at 4:58 p.m.)

15 THE COURT: Okay. The record will reflect that the  
16 jury has left for the day.

17 Can I have the lineup for your witnesses tomorrow?

18 MS. BOTELHO: Yes, Your Honor. Tomorrow we have two  
19 crime scene analysts, Tracy Brownlee and also Louise Renhart.  
20 We will also have Julie Marschner and also Melanie Robison.

21 THE COURT: Okay. And that's -- so one, two, three,  
22 four more witnesses?

23 MS. BOTELHO: Yes, Your Honor. But relatively, from  
24 the State's point of view, relatively brief.

25 THE COURT: Okay. So how many witnesses do you have?

1 MR. HILLMAN: At this point in time we don't  
2 anticipate calling any.

3 THE COURT: Okay. Have you talked to Mr. Grimes  
4 about whether he's going to testify or not?

5 MR. HILLMAN: Right. And I will -- I will talk to  
6 him some more in the morning.

7 THE COURT: Okay.

8 MR. HILLMAN: If you want to canvass him in the  
9 morning.

10 THE COURT: Okay.

11 MR. HILLMAN: Because he has some other questions  
12 about how the trial's proceeding.

13 THE COURT: Okay.

14 MR. HILLMAN: So I'll try and come over here a little  
15 bit early and hope they'll have him here early.

16 THE COURT: Can I have the defendant here at 8:15?

17 THE OFFICER: Yes, ma'am.

18 THE COURT: Okay.

19 MS. BOTELHO: And, Your Honor, before the --

20 THE COURT: So I'll make sure the courtroom's open.  
21 We can be here at 8:15 and you can have the courtroom --

22 MR. HILLMAN: Great.

23 THE COURT: -- to converse with your client in  
24 private.

25 MR. HILLMAN: That'll be great.

1 THE COURT: We won't be here.

2 MS. BOTELHO: Right. And, Your Honor, we talked  
3 during the break about a possible -- just a short Hernandez  
4 Hearing regarding the TPO. It's kind of an admission at least  
5 as to the fact that there was a TPO and in fact, not sure if  
6 the Court's inclined to do that in an overabundance of caution  
7 since it is somewhat of a concession.

8 THE COURT: Okay. Are you asking for a Hernandez  
9 Hearing?

10 MS. HOJJAT: We're not, the State is.

11 THE COURT: Okay. Well, generally the defense asks  
12 for it because that means you want the State to leave and you  
13 want to make representations to the Court outside the presence  
14 of the State regarding the strategic reasons for doing so.

15 MR. HILLMAN: I -- I think we can just make it a  
16 record right here --

17 THE COURT: Okay.

18 MR. HILLMAN: -- in that Mr. Grimes and I talked last  
19 week. We talked before that about certain stipulations  
20 regarding certain witnesses, including the person that  
21 gathered the DNA. We didn't feel it was necessary to bring  
22 that person in to testify about going over and getting DNA  
23 from Mr. Grimes. The State's agreed that we can present the  
24 fact that they did get a search warrant to get the DNA, but we  
25 don't need to bring that person in.

1           And also with respect to the TPO, that is something  
2 that's easily proven by the State and we didn't want to slow  
3 the trial down and it's really nothing that we could defend  
4 anyway. There was a TPO in effect, he's seen it, he was  
5 served, we have a copy of it. There -- we didn't see any  
6 practical reason -- or practicable way to keep it from being  
7 admitted. So rather than slow the trial down we agreed to  
8 stipulate to -- to those things.

9           MS. BOTELHO: We just wanted a record, Your Honor.

10          THE COURT: All right. And that's your  
11 understanding, Mr. Grimes?

12          THE DEFENDANT: Yes, ma'am.

13          THE COURT: Okay.

14          MS. BOTELHO: Thank you very much.

15          THE COURT: Thank you.

16          (Court recessed for the evening at 5:02 p.m.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

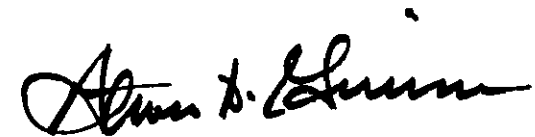
ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a solid horizontal line.

KIMBERLY LAWSON  
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C276163-1
	)	DEPT NO. XII
VS.	)	
	)	
BENNETT GRIMES,	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>
Defendant.	)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 3**

FRIDAY, OCTOBER 12, 2012

APPEARANCES:

For the State:	AGNES M. BOTELHO, ESQ. Deputy District Attorney PATRICK J. BURNS, ESQ. Deputy District Attorney
For the Defendant:	RALPH HILLMAN, ESQ. Deputy Public Defender NADIA HOJJAT, Esq. Deputy Public Defender

RECORDED BY KERRY ESPARZA, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

UNCERTIFIED ROUGH DRAFT

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1           **LAS VEGAS, NEVADA, FRIDAY, OCTOBER 12, 2012, 8:37 A.M.**

2                           **\* \* \* \* \***

3           THE COURT: Do the parties stipulate -- you can have  
4 a seat. Thank you. Do the parties stipulate to the presence  
5 of the jury panel?

6           MS. BOTELHO: Yes, Your Honor.

7           MR. HILLMAN: Yes, Judge.

8           THE COURT: Okay. The State can call their next  
9 witness.

10          MR. BURNS: Your Honor, the State calls Louise  
11 Renhard.

12                   LOUISE RENHARD, STATE'S WITNESS, SWORN

13          THE CLERK: Please be seated and state your name and  
14 spell it for the record.

15          THE WITNESS: Louise Renhard, L-o-u-i-s-e,  
16 R-e-n-h-a-r-d.

17          MR. BURNS: Your Honor, may I proceed?

18          THE COURT: Of course.

19                           DIRECT EXAMINATION

20 BY MR. BURNS:

21           Q     Ms. Renhard, how are you currently employed?

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

24           Q     And how long have you been doing that?

25           A     Just over 16 years.

                          UNCERTIFIED ROUGH DRAFT

1           Q     And is there some special -- what kind of  
2 educational and professional training background do you have?

3           A     Educational, I have an associates degree in  
4 police administration. Training, when we're hired we go  
5 through a technical academy specifically for crime scene  
6 analysts. It's nothing like the police academy, it's  
7 technical for that job; photography, evidence collection,  
8 fingerprint processing, chemical fingerprint processing,  
9 impounding of evidence. After the academy we do 10 to 12  
10 weeks of field training where we ride with a senior CSA and  
11 then we start out doing notes in photography. And through  
12 that period we slowly pick up our skills until at the end of  
13 that period we're doing all the skills necessary to do  
14 property crimes.

15               At the end of two years we have a practical  
16 eight-hour test and they test our skills. And at that point  
17 we start doing minor persons crimes; robberies, battery,  
18 different types of persons crimes. At the end of two years as  
19 a two, we do competitive testing for senior, which is a  
20 combination of practical oral board and written test.

21               During the entire time and after we make senior, we  
22 continue to go to classes and training that involve our  
23 specific area of evidence collection, photography, fingerprint  
24 processing, crime scene reconstruction, shooting  
25 reconstruction and such. And I've done all that and also have

1 completed the applied science -- it's the American Institute  
2 of Applied Science, Forensic Science course, which is --

3 Q Is that a professional association?

4 A No. That -- that's the International  
5 Association of Identifications of Professional Association  
6 that -- that I'm a member of as well as the state division of  
7 that association. The other one is a correspondence course  
8 that's required of every junior level CSA.

9 Q Ms. Renhard, in -- have you testified in the  
10 Eighth Judicial District before as an expert? Have you  
11 testified in a number of cases before?

12 A Yes.

13 Q Okay. And have you -- can you estimate the  
14 number of crime scenes that you've processed, just to the best  
15 of your knowledge? Is it in -- is it in the thousands?

16 A It's in the thousands.

17 Q Okay. And have you processed scenes where  
18 there's an investigation related to violence?

19 A Yes.

20 Q And have you taken any specific courses in the  
21 preservation and collection of blood evidence?

22 A Yes.

23 Q And have you had the occasion to photograph  
24 participants in violent crimes, things like -- such as that?

25 A I have.

1           Q     Okay. Now, what -- when you respond to a crime  
2 scene, what are some of your -- what are the most typical and  
3 most, four or five most typical duties you have when you  
4 respond to a crime scene?

5           A     When we respond to the crime scene we get with  
6 the detective or the officers on duty that are at the scene  
7 and we find out what happened. From there we will take notes  
8 of the scene, we'll do a walk through, take notes of the  
9 scene, do photography of the scene, collect any evidence and  
10 preserve any evidence. And if -- if it's called for, we'll do  
11 latent print processing.

12          Q     And are there protocols in place for the first  
13 responding officers to ensure that when you get there the  
14 scene hasn't been disturbed?

15          A     Yes.

16          Q     When the scene is turned over to you for  
17 processing, are you in control of that scene?

18          A     Yes. It's -- it's officially my scene per  
19 department policies.

20          Q     And if someone comes in to that scene and they  
21 start disturbing things or you're in fear that they're going  
22 to disturb something, what do you do?

23          A     I would normally -- normally I would, you know,  
24 ask them to leave. If that doesn't work I would ask one of  
25 the officers to assist in escorting them out.

1           Q     And in your training and experience, does that  
2 happen very often?

3           A     No.

4           Q     Okay. Now when you're collecting evidence, is  
5 there a procedure in place for you to -- to preserve it, seal  
6 it and send it somewhere?

7           A     Yes. When -- when I recover the evidence, we  
8 would place it in packaging that's consistent with the type of  
9 evidence that it is and there's policies that determine what  
10 type of evidence goes in what type of packaging. I would  
11 place a label on the package, a seal on the package. The  
12 label would have my P number, the seal. I would write my  
13 initials and P number and the date and then I would take it to  
14 the evidence drop at the lab, log it in and then -- and then  
15 drop it. It's a chute, or depending on the weight of it,  
16 there's a cage that my supervisor can come open the cage and  
17 place it in there and then he would also sign that he did  
18 that.

19          Q     Now, you mention this P number. Is that a  
20 personnel number?

21          A     Yes.

22          Q     And what is your P number?

23          A     5-2-2-3.

24          Q     So that number will appear on packages of  
25 evidence that you've collected and sealed?

1           A     Correct.

2           Q     And when they go to that place, you drop them in  
3 the chute. Is that a secure location?

4           A     That is. The evidence vault has access to that  
5 location and they're the ones that would pick up any evidence  
6 from the bottom of the chute or the cage.

7           Q     And if say a forensic scientist was requested to  
8 process something, is that where they would -- would someone  
9 go to get that for the forensic scientist?

10          A     Correct. And then they have to sign for it  
11 there to indicate that they picked it up. And when it went  
12 back after they're done, they would put their seal on the  
13 evidence and log it in and there's just a paper trail  
14 constantly. So every time it comes out somebody signs for it,  
15 every time it goes back in it's signed for.

16          Q     Now, Ms. Renhard, I want to direct your  
17 attention to July 22nd, 2011. Were you directed to  
18 participate to process a crime scene located at 9325 West  
19 Desert Inn Road, Apartment Number 173?

20          A     Yes.

21          Q     And when you were there, did you -- what types  
22 of processing did you engage in?

23          A     I took some notes on the scene, I talked to the  
24 officers. I believe I talked to two different officers at the  
25 scene. I did photography, collected evidence.

1 MR. BURNS: Your Honor, may I approach the witness?

2 THE COURT: You may.

3 BY MR. BURNS:

4 Q Ms. Renhard, I'm showing you what have been  
5 marked as State's proposed Exhibits 13 and 14. Can you look  
6 at those and tell me what -- what those are?

7 A These are photographs of the walkway exiting the  
8 apartment.

9 Q Okay. Well, did you take those photographs?

10 A Yes.

11 Q And these exhibits fairly and accurately reflect  
12 the photographs that you took?

13 A Yes.

14 MR. BURNS: Your Honor, at this time I move for the  
15 admission of State's proposed Exhibits 13 and 14?

16 THE COURT: Any objection?

17 MR. HILLMAN: No, ma'am.

18 THE COURT: They're admitted.

19 (State's Exhibit 13 and 14 admitted.)

20 MR. BURNS: Your Honor, may I publish those exhibits?

21 THE COURT: You may.

22 BY MR. BURNS:

23 Q Ms. Renhard, I'm showing you State's -- what's  
24 been admitted as State's 13. What's that?

25 A That's a walkway exiting the apartment. The

1 apartment, being up towards the top center up here, and then  
2 the walkway coming out from the apartment.

3 Q And there's -- is there some apparent blood  
4 there?

5 A Correct, these little spots along here.

6 Q And did you end up swabbing those spots of  
7 blood?

8 A Not all of them. I swabbed spots of blood up  
9 here right outside the door.

10 Q Showing you what's been admitted as State's 14.  
11 What's that?

12 A That -- those are the spots outside the door and  
13 it was one of those that I took a swab from.

14 Q Can I ask you one question? In your training  
15 and experience what you know about blood and injuries, does  
16 blood automatically come out of wound? Say, for instance, a  
17 non --

18 MS. HOJJAT: Objection --

19 Q -- a non-arterial --

20 MS. HOJJAT: -- Your Honor, this witness has not been  
21 certified as an expert in injuries and what causes bleeding  
22 and things like that. That's more appropriate for a medical  
23 expert.

24 THE COURT: All right. So I think the objection's  
25 foundation. Let me hear the whole question first and then

1 I'll -- if you still have your objection, I'll -- I'll rule on  
2 it. Go ahead, Mr. Burns. I need to hear the whole thing.

3 MR. BURNS: Okay. Thank you.

4 BY MR. BURNS:

5 Q When -- when someone -- in your training and  
6 experience in collecting evidence and photographing wounds and  
7 what you've studied about blood and the preservation and  
8 collection of blood evidence, when someone's stabbed, does the  
9 blood come instantly out all over the place?

10 A Not necessarily.

11 THE COURT: Any objection?

12 MS. HOJJAT: Foundation, Your Honor.

13 THE COURT: Okay. Overruled. You may continue.

14 BY MR. BURNS:

15 Q I'm sorry. Your answer was?

16 A Not necessarily.

17 Q Okay.

18 MR. BURNS: Your Honor, may I have continuing  
19 permission to publish those Exhibits --

20 THE COURT: Sure.

21 MR. BURNS: -- that have been admitted?

22 THE COURT: Sure. Okay. Well, you need to say  
23 because yesterday everybody kept trying to publish exhibits  
24 that weren't --

25 MR. BURNS: I have -- I have a list now and that

1 mistake will not be repeated today.

2 THE COURT: Okay, all right. Thank you.

3 BY MR. BURNS:

4 Q Okay. Ms. Renhard, I'm showing you what has  
5 been admitted as State's 15. Did you take that picture?

6 A Yes.

7 Q Okay. And what does that depict?

8 A That's the front door of apartment 173.

9 Q Okay. Now, showing you what's been admitted as  
10 State's 16.

11 A That's upside down.

12 Q Thank you. Okay. What is that?

13 A That's the leading edge of that same door.

14 Q And did you notice something about that door?

15 A There was a crack down the -- the leading edge  
16 of the door.

17 Q Now, did you -- at some point you entered the  
18 apartment?

19 A Yes.

20 Q And did you take kind of general pictures of the  
21 area?

22 A Yes.

23 MR. BURNS: Your Honor, may I approach the witness?

24 THE COURT: You may.

25 BY MR. BURNS:

1           Q     Ms. Renhard, I'm showing you what have been  
2 marked as State's proposed Exhibits 17 and 18. Did you take  
3 the pictures in those exhibits?

4           A     Yes.

5           Q     And are those exhibits fair and accurate  
6 depictions of the photographs that you took?

7           A     Yes.

8           Q     Okay.

9           MR. BURNS: Your Honor, at this time I'd move for the  
10 admission of State's proposed Exhibits 17 and 18?

11          MR. HILLMAN: No objection.

12          THE COURT: They're admitted.

13 BY MR. BURNS:

14          Q     Showing you, Ms. Renhard, Number 17. What's  
15 that a picture of?

16          A     That's a picture of from one angle in the living  
17 room. It's facing the kitchen, so you're looking at the  
18 buffet counter there of the kitchen. And then on your left  
19 side over here, this is where the front door was that came in.  
20 And then the kitchen being back in here.

21          Q     Okay. Showing you what has been admitted as  
22 State's Exhibit 18. What does that photograph depict?

23          A     That's -- that's basically the opposite diagonal  
24 corner from the one I was at before. So here's the -- that  
25 aquarium that you saw in the other one. I probably was

1 standing about in this corner over here and took a picture  
2 this way. This is I'm standing off closer to the front door  
3 shooting diagonally across that same living room. So this is  
4 the back of that couch that you could see the front of in the  
5 other one.

6 Q Thank you. Showing you what's been marked as --  
7 what's been admitted as State's Exhibit 19. What does that  
8 photograph depict?

9 A Okay. This is another angle. This is along  
10 behind the couch between the couch and the kitchen buffet  
11 counter looking towards the front door up here at the top.

12 Q Showing you what's been admitted as State's 26.  
13 Did you take that picture?

14 A I did.

15 Q Okay. And which part is that?

16 A And that's basically a wider view of the same  
17 one we just looked at. The front door a little bit more over  
18 to your right over there and then the opposite corner of the  
19 living room visible, the couch and the edge of the buffet  
20 counter there.

21 Q And is that the scene as -- is that what the  
22 scene looked like when you came there?

23 A Yes.

24 Q And were there officers there securing the  
25 premises?

1           A     When I got there there was nobody in the  
2 apartment. The apartment had been cleared and the officers  
3 that were securing the premises were on the exterior of the  
4 apartment.

5           Q     So no one was inside the apartment?

6           A     No.

7           Q     At the time you were there. About what time did  
8 you respond, do you -- do you recall?

9           A     7:35.

10          Q     Okay, 7:30 --

11          A     Or 7:36 --

12          Q     Okay.

13          A     -- in the evening.

14          Q     All right. And it's safe to say on some crime  
15 scenes you get there faster than others?

16          A     Oh, yes.

17          Q     And did you get there relatively quickly on this  
18 one?

19          A     I have no idea.

20          Q     Okay. Compared to other ones?

21          A     I --

22          Q     Okay. If you have no idea that's fine.

23          A     Yeah. I don't know how far I was coming from --

24          Q     All right.

25          A     -- to get there.

1           Q     Ms. Renhard, I'm showing you what have been  
2 marked as State's proposed Exhibits 27 and 28. Did you take  
3 those pictures?

4           A     I did.

5           Q     And are those fair and accurate printouts of the  
6 pictures you took?

7           A     Yes.

8           MR. BURNS: Your Honor, at this point I'd move for  
9 the admission of State's proposed Exhibits 27 and 28.

10          MR. HILLMAN: No objection.

11          THE COURT: They're admitted.

12                   (State's Exhibit 27 and 28 admitted.)

13 BY MR. BURNS:

14          Q     Showing you what's been admitted as State's 27.  
15 What does that picture depict?

16          A     This is another picture in the -- in the living  
17 room. At this point I'm taking more intermediate shots of the  
18 area that's predominantly the scene area. And it shows, the  
19 front door would have been out here on the far right. This is  
20 looking towards the back of a chaise lounge and the back of  
21 that couch that we saw previously.

22          Q     Okay. Thank you. And did you detect some  
23 apparent blood on the chaise?

24          A     Yes, I did.

25          Q     Okay. Showing you what's been admitted as

1 State's 28. Did you take that picture?

2 A I did.

3 Q And what does it depict?

4 A That depicts the apparent blood that was on the  
5 carpet, sort of behind the chaise lounge just past the  
6 entryway coming in from the front door.

7 Q How do you describe that blood pattern?

8 A I describe that blood pattern as some passive  
9 drip patterns and some pooling.

10 Q Okay.

11 MR. BURNS: Your Honor, may I approach the witness?

12 THE COURT: You may.

13 BY MR. BURNS:

14 Q Ms. Renhard, I'm showing you what's been marked  
15 as State's proposed Exhibit 30. Did you take that picture?

16 A I did.

17 Q And what's that a picture of?

18 A That's a picture of a knife that was behind the  
19 chaise lounge that had apparent blood on it.

20 MR. BURNS: Your Honor, at this time I'd move for the  
21 admission of State's proposed Exhibit 30.

22 MR. HILLMAN: No objection.

23 THE COURT: It's admitted.

24 (State's Exhibit 30 admitted.)

25 BY MR. BURNS:

1           Q     And is that -- is that where the knife was  
2 found?

3           A     Yes.

4           Q     Okay. And is that a fair and accurate depiction  
5 of that knife?

6           A     Yes.

7           Q     When you found it?

8           A     When I found it my scale wasn't there, but I put  
9 the scale there for the purposes of the -- of this photograph.

10          Q     Okay. You put that scale down there to do what?

11          A     To give anybody looking at it an idea of the  
12 size.

13          Q     And what does -- what does the picture reflect  
14 the size of that blade being?

15          A     As far as the blade -- the picture looks like  
16 it's probably about a five -- five-inch blade.

17          Q     Thank you. Now, the -- the pool of blood that I  
18 showed you in that exhibit, I believe it was Exhibit 28, did  
19 you in fact swab that?

20          A     I swabbed the area next to it where -- where it  
21 was more of a drip pattern.

22          Q     Okay. And did you impound that swab?

23          A     I did.

24          Q     And you sealed it, put your P number on it?

25          A     I did, definitely.

1           Q     Ms. Renhard, I'm going to show you what have  
2 been marked as State proposed Exhibits 20, 21 and 22. Let's  
3 take a look at those. Tell me, did you take those pictures?

4           A     Yes, yes.

5           Q     And these Exhibits are fair and accurate  
6 reproductions of those pictures?

7           A     Yes.

8           MR. BURNS: Your Honor, at this time I would move for  
9 the admission of State's proposed Exhibits 20 through 22.

10          MR. HILLMAN: No objection.

11          THE COURT: They're admitted.

12                   (State's Exhibit 20-22 admitted.)

13 BY MR. BURNS:

14          Q     Ms. Renhard, showing you State's 20. What does  
15 that picture depict?

16          A     That's the entryway of the residence or the  
17 apartment, the floor, the entryway floor of the apartment.

18          Q     Okay. I'll remove that and I'll show you what's  
19 been admitted as State's 21. What does that picture depict?

20          A     That's -- the previous picture was looking from  
21 the apartment out; this is looking from the front door looking  
22 in. So you see that same entryway and you see a closet there  
23 on the right. The blood pattern we had been looking at  
24 previously up here at the top and then this is the entryway  
25 along the bottom here.

1 Q And State's 22, what does that depict?

2 A Okay. That's a zoomed out version of what you  
3 just saw looking, once again, from the door into the apartment  
4 with this little entryway tile here, closet on the -- on the  
5 right, and then looking back towards the buffet counter up  
6 here on your left and the couch -- whoops, ooh. What did I  
7 do? The couch over here on the -- on the right back here.

8 Q Now, approximately -- do you know specifically  
9 how many areas you swabbed? Areas of blood in the apartment  
10 that you swabbed?

11 A In the apartment?

12 Q Yes.

13 A Two.

14 Q Okay. And how many separate swabs did you take?

15 A Four.

16 Q And you impounded those all into a package?

17 A Yes.

18 Q Okay. And do you recall what that impound  
19 package was labeled?

20 A I'd have to look at my impound real quick.

21 Q Okay.

22 A I think it was four.

23 Q Okay.

24 A But I'm not positive.

25 Q That's fine. I want to show you some additional

1 exhibits. Now, you impounded the knife, correct?

2 A Correct.

3 Q And you took numerous photographs of it,  
4 correct?

5 A Correct.

6 Q Ms. Renhard, I'm going to approach you with  
7 State's -- State's proposed Exhibits 34 and 35. Did you take  
8 those pictures?

9 A I did.

10 Q And are those fair and accurate reproductions of  
11 the pictures you took?

12 A Yes.

13 Q Showing you --

14 MR. BURNS: Your Honor, at this time I'd move for the  
15 admission of State's proposed Exhibits 34 and 35.

16 MR. HILLMAN: No objection.

17 THE COURT: They're admitted.

18 (State's Exhibit 34 and 35 admitted.)

19 BY MR. BURNS:

20 Q Ms. Renhard, I'm showing you number 34. What  
21 does this picture depict?

22 A That's the blade of the knife that was seen in  
23 this -- in the scene pictures that was lying on the carpet  
24 that I had the scale next to it previously. It also is  
25 depicting -- it doesn't show well here, but it's also

1 depicting -- that's better. This little reddish hue here,  
2 apparent blood on the -- on the knife in this -- this area  
3 down here and you can see some up here. You also see that in  
4 the apparent blood there's also these lines around in here.  
5 And those -- those lines are fingerprint patterns.

6 Q And is that -- so you notice the fingerprint,  
7 partial bloody fingerprint there?

8 A Yes.

9 Q Okay. And do you -- do you notice -- in this  
10 picture do you see any other fingerprints besides that one?

11 A In this picture, no.

12 Q Okay. And do you see something farther down the  
13 blade towards the hilt?

14 A Yes, there's more apparent blood.

15 Q Showing you what's been admitted as State's 35.  
16 And let me know -- is that -- here, I'll zoom out first.

17 A Actually, that's okay.

18 Q Is that fine?

19 A Yeah.

20 Q Okay. Did you take this picture?

21 A I did.

22 Q And that's a picture of the knife?

23 A Yes. The knife blade near the -- near the --  
24 the handle.

25 Q Okay. So near the handle. And what do -- what

1 do you note about the knife in this picture?

2 A This is the same as the other one. There's --  
3 there's some apparent blood in different points on here but  
4 you -- and you can also see some ridge detail of fingerprints  
5 along through here and then down through here.

6 Q Now, and -- and that's a different section of  
7 the knife then was State's Exhibit 34, correct?

8 A Correct.

9 Q Now, you notice ridge detail. Can you explain  
10 to the ladies and gentlemen of the jury what ridge detail is?

11 A If you take a look at the -- the palms of your  
12 hands and your fingers and the bottoms of your feet, we have  
13 what's called ridge detail and they're the little lines that  
14 make up our fingerprints and that's basically what it is. All  
15 the little lines that go in different directions and all their  
16 -- there's furrows and then ridges. And that's what the  
17 fingerprint detail when -- when I speak about that, I'm  
18 talking about seeing the furrows and ridges. The voids can --  
19 are often the -- the furrows and the lines are often the  
20 ridges. Sometimes, depending if it's in substance, it can be  
21 just the opposite.

22 Q Okay. Now, did you -- did you do everything?  
23 Did you follow all the protocols to preserve those  
24 fingerprints?

25 A Yes.

1           Q     Okay. And you impounded the knife while it had  
2 those fingerprints on it?

3           A     Yes.

4           Q     Okay. Now, in your -- in your training and  
5 experience, is it uncommon to find the own fingerprints on a  
6 piece of property from the property's owner?

7           A     It's totally common. We expect to find that.

8           Q     Now, a bloody fingerprint -- okay, well, let's  
9 back up. Fingerprints -- is there something that's required  
10 for the ridge to be left? Is there some kind of material or  
11 substance that's required for someone to leave a quality  
12 fingerprint?

13          A     Oh, required? Fingerprints are -- generally  
14 fingerprints are moisture. The highest percentage of the  
15 debris on a fingerprint is moisture. There's also oils,  
16 there's also amino acids and other things can be left behind.  
17 The only thing really required to leave a fingerprint is that  
18 somebody touched it.

19          Q     Okay. Now, you -- okay. So the -- the -- the  
20 knife that you impounded and it's -- it's preserved and it's  
21 stored in something?

22          A     Yes.

23          Q     Okay. And --

24          MR. BURNS: Your Honor --

25          THE COURT: You want the --

1 MR. BURNS: If I could, Your Honor.

2 THE COURT: Is it sealed?

3 MR. BURNS: It is, Your Honor.

4 THE COURT: Okay. Are you going to unseal it?

5 MR. BURNS: I'm going to have the --

6 THE COURT: Oh, okay.

7 MR. BURNS: -- CSA unseal it.

8 THE COURT: Are you guys okay with that? Do you want  
9 to watch it be unsealed? what -- how do you want to handle  
10 it?

11 MR. HILLMAN: We can -- we can walk up to it and  
12 watch.

13 THE COURT: Okay, perfect.

14 MS. HOJJAT: Thank you.

15 BY MR. BURNS:

16 Q And for the record, I'm approaching now with  
17 what's been marked as State's proposed Exhibit 81. And here's  
18 some rubber gloves and a pair of scissors. Ms. Renhard,  
19 would you --

20 THE COURT: Now, could you just, Mr. Hillman, so the  
21 jury can see?

22 MR. HILLMAN: Yes, sorry, Judge.

23 THE COURT: That's okay.

24 MR. HILLMAN: I just wanted to look at the seals.

25 BY MR. BURNS:

1 Q And along those lines, are --

2 THE COURT: Are you okay? Do you want to take -- all  
3 right. All right.

4 BY MR. BURNS:

5 Q Can you tell who was the last person to seal  
6 that box? Or at least their number?

7 A It looks like the last person to seal the box  
8 was somebody at the forensic lab with the initials of P number  
9 J8806M.

10 Q Okay. Are you familiar with forensic scientist  
11 Julie Marschner?

12 A I've met her.

13 Q Okay. Now, Ms. Renhard, can you go ahead and  
14 unseal State's proposed Exhibit 81 and withdraw its contents?  
15 Take your time, this box is kind of well secured.

16 A Now do you want me to undo the seals that are  
17 there or would you like me to create a flap?

18 THE COURT: Just open it up.

19 A The contents are strapped on -- into the box.

20 BY MR. BURNS:

21 Q Okay. I'd like you to --

22 A I can probably just lift that up.

23 Q That's -- that's fine if you want to keep it  
24 like that. Ms. Renhard, could you -- do you mind stepping  
25 down out of the witness stand? And can you approach the

1 jurors and give them a good look at that exhibit?

2 THE COURT: Mr. Burns, do you want to mark the  
3 contents?

4 MR. BURNS: I'm sorry --

5 THE COURT: I mean, how's it not falling out?

6 MR. BURNS: It's --

7 THE COURT: Is it glued in?

8 MR. BURNS: It's in there, it's latched in there.

9 THE COURT: Oh, okay.

10 MR. BURNS: By some plastic. And, Your Honor, I  
11 would move for its admission at this point.

12 THE COURT: Any objection to 81?

13 MR. HILLMAN: Not as long as it's clear that -- I'm  
14 sorry -- that 81 is box and contents --

15 THE COURT: Right --

16 MR. HILLMAN: -- which is the knife strapped to the  
17 box.

18 THE COURT: Okay. So 81 will include the box and its  
19 contents. We're not going to mark it separately since it  
20 appears to be -- can I just see how it's in there? It's not  
21 going to come out. That's fine. I'm okay with that.

22 BY MR. BURNS:

23 Q And you can just close that at this point. Ms.  
24 Renhard --

25 THE COURT: Are you going to use it anymore, Mr.

1 Burns?

2 MR. BURNS: I -- I don't plan to at this point.

3 THE COURT: Okay. Can I have 81? Thank you.

4 MR. BURNS: Thank you, Your Honor.

5 THE COURT: Uh-huh.

6 BY MR. BURNS:

7 Q Now, Ms. Renhard, can we back to 34 and 35? Did  
8 you -- do you -- in this situation where you see a partial  
9 bloody fingerprint like that, do you take like a lift of it?

10 A With -- with something like this, what we would  
11 do was -- would photograph it. It often won't lift well  
12 because of the properties of the blood adhering to the -- to  
13 the knife. So we normally photograph it as is.

14 Q And do you have some concern in terms of other  
15 types of forensic analysis that might take place on that  
16 knife?

17 MS. HOJJAT: Objection, vague.

18 THE COURT: Maybe you could be a little more  
19 specific.

20 MR. BURNS: Okay.

21 BY MR. BURNS:

22 Q Are you trying to preserve that knife for more  
23 than just fingerprint analysis?

24 A Correct.

25 Q And what is one of those types of analysis that

1 you're trying to preserve it for?

2 A Potential DNA analysis.

3 Q And are there concerns about contamination,  
4 things like that?

5 A There are concerns. We do use personal  
6 protective equipment and clean surfaces when we work -- use --  
7 impound and work on anything like this.

8 Q Now, Ms. Renhard, in terms of fingerprints, are  
9 some fingerprints -- fingerprint impressions that are  
10 collected, are some of them more useful than others?

11 A Yes.

12 Q And how -- how do they differ in their uses for  
13 quality?

14 A The basic -- this is a -- a really good example.  
15 It's definitely fingerprint impression here, but there's very  
16 little. There's insufficient number of detail --

17 MR. HILLMAN: Objection. Foundation as to this  
18 witness's qualification to make that judgment.

19 THE COURT: I think she's going beyond your question  
20 as well.

21 MR. BURNS: Okay. That's fine, Your Honor.

22 THE WITNESS: Oh, I'm sorry.

23 THE COURT: Objection sustained. Whose witness is  
24 this?

25 MR. HILLMAN: I'm sorry.

1           THE COURT: That's okay. I just wanted to know for  
2 sure.

3           MR. HILLMAN: Ms. Hojjat's.

4           THE COURT: Okay. Thank you, Mr. Hillman. You know  
5 I don't like to be double-teamed.

6           MR. HILLMAN: I know, Judge. I apologize.

7 BY MR. BURNS:

8           Q     Okay. Ms. Renhard, I'm going to show you what  
9 has been admitted as State's 33. Do you recognize that  
10 picture?

11          A     Yes.

12          Q     And what is that?

13          A     That's another photograph of the knife where  
14 it's -- I'm looking directly down on the -- from the edge of  
15 the blade down.

16          Q     And is -- is the blade facing up towards the  
17 camera?

18          A     Yes.

19          Q     And do you notice something -- is there  
20 something notable about the condition of the blade?

21          A     The blade is bent.

22          Q     Ms. Renhard, I'm going to approach with -- with  
23 what have been marked as State's proposed Exhibits 36, 37 and  
24 38. Can you please take a look at those and let me know if  
25 those are photographs that you took?

1           A     They are.

2           Q     And Ms. Renhard, are these exhibits fair and  
3 accurate reproductions of the photographs you took?

4           A     Yes.

5           MR. BURNS: Your Honor, at this time I would move for  
6 the admission of State's proposed Exhibits 36 through 38.

7           MR. HILLMAN: No objection.

8           THE COURT: They're admitted.

9                     (State's Exhibit 36-38 admitted.)

10          BY MR. BURNS:

11           Q     Now, Ms. Renhard, do you recall during the --  
12 during your processing of the scene observing a blue cooler?

13           A     Yes.

14           Q     Showing you what's been marked as 36, State's  
15 36. Did you in fact take photographs of that cooler?

16           A     I did.

17           Q     Okay. And what does 36 depict?

18           A     This is a pocket on the exterior of the cooler  
19 that's been opened showing some of the contents of it.

20           Q     Okay. And did it have kind of an exterior  
21 pocket on it?

22           A     Correct.

23           Q     Okay. So it wasn't perfectly cylindrical?

24           A     No.

25           Q     Now, showing you what's been marked as State's

1 37. What does that depict?

2 A That's the inside and contents of the -- the  
3 actual insulated portion of the cooler.

4 Q I'm sorry. That Exhibit was actually admitted  
5 previously. Do you recall -- did you -- did you take the  
6 things inside the cooler out?

7 A I did.

8 Q Okay. And do you recall recovering any  
9 paperwork?

10 A There was one piece of paper that I recall.

11 Q Showing you what's been admitted as State's 38.  
12 What does that depict?

13 A That is that -- the piece of paper that I  
14 recall.

15 Q And what is the title on that piece of paper?

16 A New Associate Schedule.

17 Q And is there a person's name on that paper?

18 A Yes.

19 Q What's the name?

20 A Bennett G. Grimes.

21 Q Is there also a date on that piece of paper?

22 A Yes, 7/18/2011.

23 Q And at the bottom is there a company identified  
24 on the paper?

25 A Walmart.

1           Q     Thank you. Ms. Renhard, I'm going to show you  
2 what have been marked as State's proposed Exhibits 8 and 9.  
3 Did you take those photographs?

4           A     I did.

5           Q     And those exhibits are fair and accurate  
6 reproductions of the photographs you took?

7           A     Yes.

8           MR. BURNS: Your Honor, at this time I'd move for the  
9 admission of State's proposed Exhibits 8 and 9.

10          MR. HILLMAN: No objection.

11          THE COURT: They're admitted.

12                   (State's Exhibit 8 and 9 admitted.)

13 BY MR. BURNS:

14          Q     Showing you State's admitted Exhibit Number 8.  
15 Do you recognize what that photograph is?

16          A     That's the parking lot adjacent to the apartment  
17 building. And you can see police vehicles out there in the  
18 parking lot and some shoes and socks down here near this right  
19 front tire of this patrol vehicle.

20          Q     Showing you what's been marked as -- it's been  
21 admitted as State's Number 9. What does that exhibit depict?

22          A     This is a close-up of the area with the shoes  
23 and socks and some blood splatter.

24          Q     And did you -- did you swab that blood?

25          A     I did.

1 Q And did you impound the shoes and socks there?

2 A I did.

3 MR. BURNS: Your Honor, may I approach the witness?

4 THE COURT: You may.

5 BY MR. BURNS:

6 Q Showing you what has been marked as State's  
7 proposed Exhibit 77. If you could just look through that and  
8 let me know if you recognize any of the property in there?

9 A I recognize the property on the first two pages.

10 Q Okay. Thank you. And the property on the first  
11 two pages, is that all stuff that you impounded?

12 A Yes.

13 Q Okay. Now, have you -- have you had the  
14 occasion to photograph a lot of people with knife wounds?

15 A Yes.

16 Q Okay. And in fact have you photographed  
17 self-inflicted knife wounds before?

18 A Yes.

19 Q Okay. And have you taken some courses and  
20 training in the way to look at wounds?

21 A Yes.

22 Q Okay. And the ways to photograph them?

23 A Yes.

24 Q And have you ever encountered in your 16 years  
25 as a crime scene analyst self-inflicted knife wounds to the

1 knife wielder's hand?

2 A Yes.

3 Q Okay. And so you know what that looks like?

4 A Yes.

5 Q Okay. Showing you what's been admitted as  
6 State's Number 73. Now what -- how would you describe that  
7 wound?

8 MS. HOJJAT: Judge, I'm going to object.

9 THE COURT: What's the objection?

10 MS. HOJJAT: This is -- she has not been certified as  
11 an expert in this field. And I anticipate he's going to start  
12 asking her speculative questions about these wounds.

13 MR. BURNS: And, Your Honor, I think I've laid the  
14 foundation that she has responded, in her experience she has  
15 the expertise to identify particular types of self-inflicted  
16 wounds.

17 MS. HOJJAT: Your Honor, she's a crime scene analyst.  
18 That's very different then somebody who -- a doctor or  
19 somebody who can look at a crime scene and reconstruct what's  
20 happened at the crime scene. There are two different other  
21 areas of expertise and she testified she's taken classes on  
22 how to photograph injuries, but that's very different than  
23 determining how those injuries came about.

24 THE COURT: Overruled. You can proceed.

25 BY MR. BURNS:

1           Q     Now, Ms. Renhard, how would you describe in your  
2 experience of photographing, seeing self-inflicted wounds, how  
3 would you describe that wound to the right index finger on  
4 that hand?

5           A     I would describe it as a -- an incised wound.

6           Q     Okay. And do those types of wounds sometimes  
7 happen when a knife slips in a person's hand?

8           A     Yes.

9           Q     And was -- is that photograph consistent with  
10 that happening?

11          A     Yes, it is.

12          Q     Now, in your experience photographing wounds and  
13 studying wounds and knowing what to identify and how to  
14 photograph certain wounds, are you familiar with the nature of  
15 defensive wounds?

16          A     Yes, I am.

17          Q     Showing you what's been admitted as State's 43.

18          MS. HOJJAT: Your Honor, I'm going to object again to  
19 foundation.

20          MR. BURNS: And, Your Honor, I can lay some more  
21 foundation if you'd like.

22          THE COURT: Okay, go ahead. Let me hear it.

23          BY MR. BURNS:

24          Q     Have you -- have you studied anything in  
25 relation to the infliction of wounds, the physics of wounds

1 occurring and the different types of wounds, what they should  
2 look like?

3 A I have. I've had a number of different courses.

4 Q Can you talk about that a little bit?

5 A I've had courses in practical homicide  
6 investigation, domestic violence investigation, child abuse  
7 investigation, reconstruction of shooting scenes,  
8 reconstruction of crime scenes, blood stain pattern analysis,  
9 as well as -- and almost all of those cases -- all of those  
10 types of courses get into the -- the types of wounds, how  
11 they're inflicted and what kinds of objects might inflict  
12 them.

13 Q And do you have to know something a little bit  
14 about, you know, the physics of how this happens?

15 A Yes. You have to -- one of the things you --  
16 you're trying to determine is, you know, whether an injury  
17 could be done on purpose, somebody purposely cutting  
18 themselves. Whether it could be accidental or whether it  
19 could -- could have been, you know, defensive in nature.

20 Q And when you are processing a crime scene, is  
21 one of your duties to represent the wound as -- as accurately  
22 and realistically as possible?

23 A Yes.

24 Q Okay. And so someone for later purposes of  
25 analysis can look at it and --

1           A     Correct.

2           Q     -- can study it? Okay. Now, at this point, I  
3 want to turn your attention to what's been admitted as State's  
4 4 -- Exhibit 43. Do you notice anything in particular based  
5 on the placement, the nature of the -- of the line or any  
6 other factors of this cut that indicate something to you?

7           MS. HOJJAT: Your Honor, we're going to object again  
8 to foundation. At this point, this is insufficient  
9 foundation. We haven't heard about the nature -- the length  
10 of these courses, how much --

11          THE COURT: If you want to take the witness on voir  
12 dire I'm happy to let you do that.

13          MS. HOJJAT: Yes, Your Honor.

14          THE COURT: Okay. VOIR DIRE

15 BY MS. HOJJAT:

16          Q     Ma'am, you said you took --

17          THE COURT: She's just going to take you voir dire  
18 regarding your qualifications in this area. Okay? So --

19          A     I have --

20          THE COURT: No, wait a minute. Just go ahead and  
21 answer her question.

22          A     Oh, I have a list of classes.

23          THE COURT: No, no, just go ahead and answer her  
24 questions.

25 BY MS. HOJJAT:

1           Q     The courses that you just mentioned you took,  
2 how long ago did you take them?

3           A     I've taken the -- the courses I've taken, I've  
4 taken over the course of my entire career. With the most  
5 recent courses being within the last year.

6           Q     Within the last year. And how long would --  
7 what was the duration of each course?

8           A     Some courses are one-week long, some courses are  
9 day-long courses, some courses are a matter of just hours.

10          Q     So fair to say the longest course would have  
11 been about a week?

12          A     Yes.

13          Q     Okay. And you are not a doctor.

14          A     I am not.

15          Q     You have not gone to --

16                THE COURT: You need to say a medical doctor --  
17 BY MS. HOJJAT:

18          Q     You are not a medical doctor.

19          A     I am not.

20          Q     You have not gone to medical school.

21          A     I have not.

22          Q     You are not qualified to treat injuries like  
23 this.

24          A     Treat, no.

25          Q     You are not an accident reconstruction

1 specialist.

2 A I am not an accident reconstruction specialist.

3 Q You are not certified to give expert opinions on  
4 how injuries have come about.

5 A Certified, no.

6 MS. HOJJAT: Your Honor, at this time --

7 THE COURT: What did you mean by that? I mean, is  
8 she certified by some type of organization or -- I'm just not  
9 sure I understand that or by a court of law.

10 BY MS. HOJJAT:

11 Q You have received no certification from anybody  
12 to give expert opinions as to how injuries come about.

13 A No.

14 MR. BURNS: Your Honor, at this point I think the  
15 standard is pursuant to Hallmark versus Eldridge.

16 THE COURT: Uh-huh, yeah. Anything else?

17 MS. HOJJAT: Court's indulgence. No, Your Honor.

18 THE COURT: Any further objection?

19 MS. HOJJAT: Yes, Your Honor.

20 THE COURT: Okay. Same, foundation?

21 MS. HOJJAT: There's a little bit further if Your  
22 Honor would prefer for us to approach for me to make an offer  
23 of proof.

24 THE COURT: If you want to, come on.

25 (Bench conference transcribed as follows.)

1 THE COURT: All four lawyers are present.

2 MS. HOJJAT: Your Honor, this is Nadia Hojjat.

3 THE COURT: I think she knows your voice by now.

4 MS. HOJJAT: Your Honor, the State provided us with  
5 an expert notice on this witness and the expert notice that we  
6 received is that she would testify --

7 THE COURT: Have you seen it?

8 MS. HOJJAT: Absolutely.

9 THE COURT: I was going to look it up.

10 MS. HOJJAT: We did not receive any notice that she  
11 would be testifying as to the nature of these injuries or how  
12 they came about. Additionally, they provided us a  
13 supplemental expert notice in which they said somebody else  
14 was going to be testifying to these things. Now I'm at a loss  
15 as to whether they're planning on having her, basically  
16 putting two people on the stand to testify to the exact same  
17 thing.

18 THE COURT: Who's the other person?

19 MS. HOJJAT: Ms. Olson, I believe it is. It's the  
20 first page of that notice. And so at this point, I mean,  
21 they've told us that there's another person testifying to this  
22 information and we prepared cross-examination of the coroner.  
23 Now they're having this person here. I mean, I can only  
24 assume this is bolstering if the coroner's going to come  
25 testify to the identical information.

1 THE COURT: Dr. Olson is a she.

2 MS. HOJJAT: Oh, I'm sorry.

3 THE COURT: It's not your fault. That's a good  
4 objection.

5 MR. BURNS: Your Honor, here's the thing. They've  
6 been noticed that this type of evidence is going to come in.  
7 They've had the opportunity to voir dire this witness. So I  
8 don't know if they were planning on asking some specific  
9 impeachment of the coroner, calling the coroner. So I don't  
10 know what prejudice there is to them. They've already been  
11 put on notice that this type of evidence is coming in.

12 THE COURT: Yeah, but they prepare for certain  
13 witnesses and they prepare their cross-examination. And this  
14 witness, I'm not so sure it's like a foundation thing. I  
15 mean, it doesn't taken an Einstein to conclude that if the  
16 knife slips your finger can get cut. Doesn't take an Einstein  
17 to conclude if the evidence has come in. If you put your left  
18 arm up and someone's holding a knife at you, your arm's going  
19 to get cut. I'm not quite sure we need an expert to tell us  
20 that.

21 MR. BURNS: We'd be arguing that whether or not there  
22 was an expert testimony.

23 THE COURT: I mean, the issue is that you put them on  
24 notice that Dr. Olson was going to come in from the coroner's  
25 office.

1           MR. BURNS: What's the proffer as to unique  
2 impeachment?

3           MS. HOJJAT: And, Your Honor, the prejudice here is  
4 if I had known that Ms. Renhard was going to testify on this  
5 information, I would have done research into her background.  
6 I would have had my investigator go look up exactly what  
7 courses she's taken, exactly when the dates she took them,  
8 exactly how long each course was so that I could --

9           THE COURT: Did you get a copy of her CV like the  
10 other --

11          MS. HOJJAT: No, Your Honor, that's all we received.

12          THE COURT: Don't they give you a copy of the CV?

13          MS. HOJJAT: We had no expectation she would be  
14 testifying, not for crime scene analyst. We had no  
15 expectation she would start proffering testimony as to how  
16 these injuries were caused.

17          THE COURT: -- copy of her CV.

18          MR. BURNS: We did provide a CV.

19          THE COURT: Okay. That's what I asked and you said  
20 no.

21          MS. HOJJAT: That's all we received as to the crime  
22 scene analyst. We received copies of the CV for the coroner,  
23 which is what we're concerned about because this is  
24 [indiscernible] giving medical testimony.

25                       (End of bench conference.)

1 THE COURT: Oh, okay. Does the jury need a break?  
2 I'm sorry. Okay. At this time we'll take a recess. During  
3 this recess you're admonished not to talk or converse amongst  
4 yourselves or with anyone else on any subject connected with  
5 this trial or read, watch or listen to any report of or  
6 commentary on the trial or any person connected with this  
7 trial by any medium of information including, without  
8 limitation, newspapers, television, the Internet or radio or  
9 form or express any opinion on any subject connected with this  
10 trial until the case is finally submitted to you.

11 We'll take at least a 15-minute break. Thank you  
12 very much. We'll see you in a minute.

13 (Jury recessed at 9:30 a.m.)

14 (Outside the presence of the jury.)

15 THE COURT: Okay. The record will reflect this  
16 hearing is taking place outside the presence of the jury  
17 panel. Okay. And the -- is it okay, do you want the witness  
18 to step down?

19 MS. HOJJAT: If she could step down and step outside,  
20 Your Honor.

21 THE COURT: Okay. Do you just mind stepping down and  
22 waiting outside? See, you know what? You should take a break  
23 anyways. We'll start probably around 9:45. You can leave  
24 your stuff here and no one will touch it. Okay.

25 The record will reflect now that the witness has

1 stepped outside of the courtroom. And the objection now seems  
2 to be that the defense doesn't appear as though they've been  
3 put on proper notice because the State proffered -- or noticed  
4 the defense that Dr. Olson from the Medical Examiner's Office  
5 was going to come and offer this testimony. Apparently, she's  
6 not going to come anymore and the State is seeking to get this  
7 information in through the CSA.

8 And I have a -- I have a notice of expert witnesses  
9 and the issue came up as whether the State had provided the  
10 defense with her CV. I mean she's a -- this crime scene  
11 analyst is well known to me. I'm just wondering, is this  
12 crime scene analyst well known to you all?

13 MS. HOJJAT: Your Honor -- as Your Honor's aware, I'm  
14 a little bit new to this jurisdiction so she's not well known.

15 THE COURT: You are? I didn't know that.

16 MS. HOJJAT: I'm new in this jurisdiction so she's  
17 not well known to me. I'm not sure if she's well known to Mr.  
18 Hillman.

19 THE COURT: She is. Everyone's well known to him.

20 MR. HILLMAN: I don't think I've ever had her in a  
21 case, though.

22 THE COURT: You're kidding me.

23 MR. HILLMAN: No.

24 THE COURT: Really?

25 MR. HILLMAN: If -- if I did it was --

1           THE COURT:   Okay, I'm sorry.   I just figured Mr.  
2 Hillman knows everybody.

3           MR. HILLMAN:   If -- if I did it was a long time ago.  
4 I don't recall, though.

5           THE COURT:   Okay.

6           MS. HOJJAT:   And, Your Honor to be clear, we are not  
7 challenging her certification as a crime scene analyst and  
8 that's why frankly when we didn't receive her CV for crime  
9 scene -- when we were put on notice that she'd be testifying  
10 as a crime scene analyst to preservation of evidence,  
11 photographs that were taken, swabs that were taken, we had no  
12 problems.   We anticipated making no objections to her as an  
13 expert and it didn't really concern us.

14           We received a separate expert witness notice that  
15 another individual, Dr. Olson, would be testify -- either Dr.  
16 Olson or Dr. Holtroff [phonetic] would be testifying as to how  
17 these injuries came about, the nature, or whether they were  
18 defensive or offensive and we prepared a cross-examination for  
19 that doctor.   And as Your Honor's aware, when cross-examining  
20 individuals on things like this, their education, their  
21 background, how much training and experience they have, is  
22 certainly an area that an attorney is going to look into very  
23 thoroughly to prepare it's cross-examination.   We are caught  
24 --

25           THE COURT:   I agree.

1 MS. HOJJAT: -- completely off guard to have her up  
2 here now when we haven't even received a CV and certainly when  
3 we had no anticipation of her testifying to this information  
4 because the expert witness notice did not mention that she'd  
5 be testifying to this information.

6 THE COURT: I have a copy of her expert witness  
7 notification. It does not appear as though she -- the defense  
8 was put on notice that this particular witness would be  
9 testifying to these issues. Go ahead, Mr. Burns.

10 MR. BURNS: Your Honor, the notice indicates that she  
11 would be testifying as an expert in the area of  
12 identification, preservation of evidence.

13 THE COURT: Uh-huh.

14 MR. BURNS: They were obviously -- it doesn't say  
15 specifically as to, you know, interpretation of wound evidence  
16 and things like that. But they have been put on notice that  
17 that type of evidence was coming. Ms. Renhard has been, as  
18 we've established, practicing for 16 years. They are clearly  
19 going to be familiar with her from prior cases. Additional --

20 THE COURT: Well, that -- and that's -- that's what I  
21 thought. But then I have Mr. Hillman tell me he's never had  
22 this CSA and I have an attorney that's new to the  
23 jurisdiction. And that's -- that was my initial --

24 MR. BURNS: That's true, Your Honor.

25 THE COURT: -- instinct because I've seen this CSA in

1 the courthouse multiple times.

2 MR. BURNS: And that's fine, Your Honor. Assuming --  
3 you know, and I -- I accept all of that. But she's  
4 nevertheless -- they've had the opportunity to take her on  
5 voir dire. Obviously, happened in front of the jury but it's  
6 still the same thing. They've been able to get an assessment  
7 of her qualifications, her experience. I elicited an  
8 extensive foundation. She testified that she's familiar with  
9 -- she's taken courses in wound identification. I asked her  
10 if she's familiar with the physics of these types of things  
11 and -- there's clearly a foundation laid under Hallmark versus  
12 Eldridge.

13 They've been put on notice that this type of evidence  
14 was coming. So I guess the prejudice that they would have to  
15 show at this point to have this notice issue be fatal is that  
16 there's some kind of -- there's some kind of key impeachment  
17 they were expecting for the noticed witness, you know, or  
18 there's -- there's something that on voir dire they  
19 discovered, you know, that they could have prepared more.

20 THE COURT: I don't think it's a foundation issue  
21 anymore. I think that the State's laid a proper foundation  
22 and I didn't really understand why I kept getting the  
23 objection, so I started to think maybe the notice was off.  
24 And then I got that objection. I think the notice objection  
25 is probably a better objection. I mean, I don't know that her

1 qualifications have been impeached or -- she's clearly  
2 qualified to render these opinions. It's just a notice issue.

3 So, I mean, the State -- did you have some sort of  
4 special -- you know what? Didn't the doctor from UMC testify  
5 to this? I know we've had testimony. The doctor from UMC  
6 testified these were defensive wounds.

7 MS. BOTEELHO: Said they're defensive wounds, yes,  
8 Your Honor. Or --

9 THE COURT: She did. I -- the doctor from UMC did.  
10 Nobody objected then.

11 MS. HOJJAT: Your Honor, and again, it comes down to  
12 the qualifications. We don't have a CV for this individual,  
13 this crime scene analyst. We weren't anticipating making an  
14 objection to her testifying as a crime scene analyst. We  
15 fully stipulate to her qualifications to testify in the areas  
16 of preserving a crime scene, photographing a crime scene,  
17 documenting --

18 THE COURT: Uh-huh.

19 MS. HOJJAT: -- a crime scene. But now all I know is  
20 that she's taken a couple of classes, the longest of which was  
21 one-week long. That's very different from medical school,  
22 Your Honor. When a doctor gets up there, a medical doctor  
23 gets up there and says I'm going to testify to the nature of  
24 these wounds, we're more likely to agree with that. But I  
25 don't have a CV --

1           THE COURT: I think I believe that the doctor already  
2 testified that these wounds on the arm were defensive in  
3 nature. But again, I know I said this at the bench, you do  
4 not need an expert witness to say -- I mean, if you agree with  
5 the state of the evidence that's come in thus far and with the  
6 -- Ms. Newman, Aneka Newman, on what she testified happened,  
7 then it doesn't take an expert to say if someone's wielding a  
8 knife at you and you throw your left arm up in front, that  
9 your arm's going to get sliced up. That is not rocket  
10 science, that is common sense. And you don't need an expert  
11 to tell you that.

12           MS. HOJJAT: And, Your Honor, the distinction here is  
13 this witness seems to be testifying that looking at these  
14 wounds I can tell that's the situation that happened here.  
15 That's very different from, yes, if somebody throws their hand  
16 up and there's a knife coming at it, you're going to get  
17 sliced up. It's looking at these wounds and saying, I can  
18 tell how these wounds happened. She's not qualified. I don't  
19 even have a CV in order to properly be able to impeach her and  
20 go after her. I don't know where she took those classes. I  
21 don't know if that school was certified. I don't know  
22 anything about her education history because I don't have a CV  
23 and I wasn't put on any notice that she was going to be  
24 testifying to these things.

25           MR. HILLMAN: And, Judge, if I could add something

1 too. I've defended 15 or 18 murder trials --

2 THE COURT: Uh-huh.

3 MR. HILLMAN: -- numerous violent crimes and I've  
4 never had a CSA come in and testify as to whether or not  
5 wounds were defensive or not.

6 THE COURT: Because when you have a homicide case the  
7 coroner comes in.

8 MR. HILLMAN: Or a doctor.

9 MS. HOJJAT: And in this case a coroner was noticed.

10 THE COURT: A coroner comes in every time. You don't  
11 bring in somebody extra. I've done a lot of murder cases,  
12 they've not brought in -- it's always the coroner, don't you  
13 think? Generally, because they're the ones that inspect the  
14 body.

15 MR. HILLMAN: Right. It's --

16 THE COURT: They're the ones that have the most  
17 experience and they actually look at the body. But here's the  
18 thing, the doctor from UMC testified to it. So what's the  
19 State's response? I think the objection's well taken. The  
20 defense wasn't put on notice and you have an attorney who's  
21 not familiar with the CSA and didn't have the -- this -- I  
22 looked up this notice, the Curriculum Vitae was not attached.

23 MR. BURNS: And, Your Honor, that's my understanding  
24 as well to this point.

25 THE COURT: Wasn't attached.

1           MR. BURNS: Right. And I believe she may have her CV  
2 with her today. You know, I think it's purely a notice issue  
3 and I think the --

4           THE COURT: It's a notice issue.

5           MR. BURNS: -- the only -- the only thing that they  
6 really have to hang their hat on is that they've somehow been  
7 disadvantaged for their cross-examination because they did not  
8 have a CV. They were already aware that this type of evidence  
9 was coming in, you know, not just from lay people, but that  
10 one expert would be testifying to it. So they --  
11 cross-examination has not commenced. If they want to talk to  
12 the witness further, if they -- if she does in fact have her  
13 resume with her today they could examine that.

14           I'm not really sure what the prejudice is at this  
15 point, particularly because they've had the opportunity to  
16 voir dire, they've had -- they'll have the opportunity if they  
17 want before the cross-examination to speak to her more. This  
18 type of evidence is already coming in through other witnesses,  
19 lay and expert. It's just not an issue -- I mean, I  
20 understand the notice may be imperfect, but it's notice. It's  
21 still notice and they knew this kind of evidence was coming.

22           THE COURT: Well, the notice doesn't even say -- I  
23 have to read this notice as extraordinarily broad to --

24           MR. BURNS: Well, here's --

25           THE COURT: -- indicate -- I mean, look at the notice

1 and just for purposes of argument, look at the notice you did  
2 for Dr. Olson. She's expected to testify regarding the  
3 classification of wounds as offensive or defensive and that's  
4 clear and unequivocal. And look at the notice of the CSA. I  
5 mean, I think it's well taken that they think she's going to  
6 testify about photographing, documenting, collecting and  
7 that's it.

8 MR. BURNS: Your Honor makes a good point. We're  
9 only asking this witness if it's consistent in terms of  
10 preserving and identifying evidence. I was able to elicit  
11 from her that one of the things that she does study and one of  
12 her responsibilities is to take pictures that would portray  
13 particular characteristics of wounds. And so based on looking  
14 at the physics or the line of a wound, she'll take a  
15 particular type of photograph if, you know, she has an  
16 instinct that -- or she believes it's consistent with some  
17 kind of defensive wound or something. I don't -- I don't  
18 think that wholly cures the notice issue but, I mean, there's  
19 just really no prejudice.

20 THE COURT: Well, I don't know if there's any  
21 prejudice because I don't know -- I mean, the defense can't  
22 really make a -- a full proffer because they don't know what  
23 the prejudice would be. So at this time I'm going to sustain  
24 the objection. And I believe the testimony has already come  
25 in through the medical doctor from UMC who actually treated

1 and observed the victim when she came to the hospital. So we  
2 have a -- let's take like five minutes and then we'll bring  
3 the jury back in.

4 MR. BURNS: Your Honor, one more thing.

5 THE COURT: Okay.

6 MR. BURNS: The objection has been sustained so I  
7 think at this point it would probably be appropriate -- I  
8 don't know what the defense's view is, to instruct the jury to  
9 disregard Ms. Renhard's opinions about exhibits -- the exhibit  
10 of the defendant's hand and then the exhibit of the victim's  
11 arm. The things I was referring to as -- or asking her  
12 opinion that she testified about as a knife slippage on the  
13 hand of the exhibits.

14 THE COURT: Well, again, I'm going to say, I didn't  
15 think that was expert testimony. I mean, I think -- I do not  
16 think that was expert testimony.

17 MR. BURNS: All right.

18 THE COURT: I said if someone -- all you have to do  
19 is be in a kitchen and cut vegetables or do anything. Anyone  
20 that has common experiences knows that the knife can slip and  
21 cut your finger. I would be surprised if anyone's -- that's  
22 not happened to someone. I would be more surprised if that  
23 had not happened.

24 MR. HILLMAN: I think we're good where we're at as  
25 long as we don't go any farther.

1           THE COURT: You haven't been in a kitchen cooking if  
2 that hasn't happened to you.

3           MS. HOJJAT: I think perhaps maybe just an  
4 instruction to disregard any testimony she gave as to her  
5 opinion of how these particular wounds were caused because  
6 she's not -- there's a difference between could this happen  
7 this way and I think this wound happened this way and I think  
8 that's the area --

9           MR. BURNS: She testified to consistency is what --

10          THE COURT: Okay. So you want me to instruct the  
11 jury to disregard her testimony that she gave regarding --

12          MS. HOJJAT: Her opinion of how any injuries in this  
13 case may have been caused.

14          THE COURT: How many wounds --

15          MR. BURNS: And I think that -- I mean, I don't -- I  
16 think that might be a little bit broad. I don't know if the  
17 defense is concerned that the CSA's imprimatur is on that type  
18 of evidence now, that her qualifications have been attached to  
19 it. So --

20          THE COURT: Well, what do -- what do you want me to  
21 instruct the jury? I mean, you have to protect the record.

22          MR. BURNS: Well, you've sustained the objection.

23          THE COURT: So I have to clearly tell them to  
24 disregard the last question and any -- I don't know if she  
25 gave an answer?

1 MS. HOJJAT: I can't remember.

2 THE COURT: I remember, I think we stopped her before  
3 she did. How about I follow your notice and say we --  
4 regarding the classification of these wounds as offensive or  
5 defensive?

6 MR. BURNS: And, Your Honor, we're not --

7 MS. HOJJAT: That would be perfect, Your Honor.

8 MR. BURNS: -- it is -- it is something that a lay  
9 person could testify to or that we could just argue to the  
10 jury. The objection was foundation, it was not necessarily as  
11 to expertise. There was foundation under Hallmark versus  
12 Eldridge for expertise, I believe, it's really --

13 THE COURT: I think so too.

14 MR. BURNS: -- the notice issue so --

15 THE COURT: It is.

16 MR. BURNS: -- maybe I'm a little premature in  
17 agreeing to any kind of limiting instruction. So I'd ask that  
18 not be given.

19 THE COURT: Okay.

20 MS. HOJJAT: I would ask for the instruction Your  
21 Honor just said that -- precisely what was on the notice that  
22 we received for Dr. Olson.

23 THE COURT: Okay, here's what I can do. I sustained  
24 your objection. I don't -- did she give an answer?

25 MS. HOJJAT: I can't recall.

1 THE COURT: I don't think that she did. So I can  
2 tell the jury to disregard the last question and any response  
3 that was given by the witness.

4 MR. BURNS: The one about the defensive wounds?

5 THE COURT: Uh-huh.

6 MS. HOJJAT: Yes.

7 MR. BURNS: Thank you, Your Honor.

8 THE COURT: And then the State can just carry on and  
9 they have to go right out of this area.

10 MS. BOTELHO: Perfect.

11 MS. HOJJAT: Thank you, Your Honor.

12 THE COURT: Okay.

13 (Court recessed at 9:45 a.m. until 10:08 a.m.)

14 (Outside the presence of the jury.)

15 THE COURT: You guys are ready? We can wait for Mr.  
16 Burns.

17 MS. HOJJAT: Yes, Your Honor.

18 MR. HILLMAN: Where's Patrick?

19 MS. BOTELHO: With our witness. I'll get them both.

20 THE COURT: Did everyone get to have a break?

21 MS. HOJJAT: Yes.

22 THE COURT: And Mr. Grimes, you had a break?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay.

25 MS. HOJJAT: Thank you, Your Honor.

1 MS. BOTELHO: Do you want her back on the stand, Your  
2 Honor?

3 THE COURT: Sure.

4 MS. BOTELHO: Just bring her back up?

5 THE COURT: Sure.

6 MS. BOTELHO: Just go ahead and take the same seat.

7 THE WITNESS: Okay.

8 (Jury reconvened at 10:09 a.m.)

9 THE COURT: Do the parties stipulate to the presence  
10 of the jury panel?

11 MS. BOTELHO: Yes, Your Honor.

12 MR. HILLMAN: Yes, Judge.

13 THE COURT: Okay. Ladies and gentlemen, I have  
14 sustained the objection made by the defense before we took a  
15 break. So I ask you to disregard the last question and any  
16 testimony that was given in response to that question. You  
17 may continue.

18 MR. BURNS: Thank you, Your Honor.

19 CONTINUED DIRECT EXAMINATION

20 BY MR. BURNS:

21 Q Ms. Renhard, I want to go back to this -- the  
22 blue cooler. Do you remember that? I've shown you -- do you  
23 recall you examined it pretty closely?

24 A I don't recall examining it pretty closely.  
25 Just --

1           Q     Let me ask you this.  Do -- do you think that  
2 you examined it close enough that you would have noted any  
3 apparent blood on it?

4           A     Yes.

5           Q     Okay.  And did you -- after all the exhibits  
6 we've shown, all the different angles you looked at the  
7 cooler, did you ever see any blood on that blue cooler?

8           A     I did not.

9           Q     Now in your experience, have you had the  
10 occasion to lift fingerprints from a knife blade?

11          A     Yes.

12          Q     Okay.  And have you done that a number occasions  
13 throughout your 16 years?

14          A     Yes.

15          Q     Okay.  And for this -- for this knife, would you  
16 have lifted fingerprints?

17          A     No.

18          Q     Okay.

19          MR. BURNS:  Court's indulgence.  Your Honor, I'll  
20 pass the witness.

21          THE COURT:  Cross-examination.

22                   CROSS-EXAMINATION

23          BY MS. HOJJAT:

24           Q     Good morning -- good -- sorry.  Good morning.  
25 How are you doing today?

1           A     Tired.

2           THE COURT:   Sorry.

3 BY MS. HOJJAT:

4           Q     Well, I'll try to finish up quickly, let you go  
5 home and sleep.  Ms. Renhard, what is a phenyl -- and I'm  
6 pronouncing this wrong, phenolphthalein presumptive test for  
7 blood?

8           A     Phenolphthalein presumptive test for blood is  
9 just that.  It's a presumptive test for blood.  It's a test  
10 done to not confirm, but to possibly identify a substance as  
11 being blood.  It's not a confirmatory test, but it just -- if  
12 you see a substance, you think it's blood, you can use a  
13 chemical, a phenolphthalein to test that substance to see if  
14 the -- it's possibly blood.  It's very sensitive and fairly --  
15 and accurate for blood.

16          Q     So basically, it's -- if there's an area that  
17 might have blood, might not have blood, this test can tell  
18 you.  It's sensitive to blood, it will tell you, yes, that's  
19 blood?

20          A     Yes.

21          Q     Now -- sorry, I want to find the correct  
22 exhibit.

23          MS. HOJJAT:  Do you guys have the knife?  Oh, thank  
24 you.  Thank you very much.

25 BY MS. HOJJAT:

1           Q     I'm showing you what's been admitted as State's  
2 Exhibit 34. You said that those are fingerprints, correct?

3           A     Those are ridge detail of the -- either fingers  
4 or palm.

5           Q     Okay. But no fingerprints were lifted from this  
6 knife blade?

7           A     No.

8           Q     And that was because there was also blood there.

9           A     There was also blood there and lifting --  
10 lifting it would not have been the appropriate way to handle  
11 it.

12          Q     Okay. Now, you said that you took swabs of  
13 blood from the concrete area outside the apartment.

14          A     Yes.

15          Q     You took swabs of blood from the living room  
16 carpet east of the front door.

17          A     Yes.

18          Q     You took swabs from the tile in the entryway.

19          A     Yes.

20          Q     And you took swabs from the asphalt next to the  
21 police vehicles.

22          A     Yes.

23          Q     But you did not take a swab of the blood on the  
24 knife.

25          A     I collected the original surface in this case.

1 Q Okay. You did not swab this area.

2 A No.

3 Q Okay. And had you swabbed it, this fingerprint  
4 pattern might have been damaged, correct?

5 A That's correct.

6 Q And it would require a swab to remove that blood  
7 from that area.

8 A Yes.

9 Q So is it fair to say that had you swabbed the  
10 knife blade, you could not then go back afterward and try to  
11 remove that fingerprint if you were inclined to remove the  
12 fingerprint?

13 A Normally, in the instance when there's blood  
14 like that, we would attempt to swab --

15 Q Uh-huh.

16 A -- in an adjacent area to the ridge detail.

17 Q Okay.

18 A And that's what I would have done. I never  
19 would -- I would never try -- I shouldn't say never. I would  
20 -- very unlikely that I would ever try a lift, a print that  
21 appeared to be bloody.

22 Q Okay.

23 A Photographing would be the correct way to  
24 document that print, not lift.

25 Q Okay. And maybe I wasn't very clear with my

1 question. My question was, taking a swab could have damaged  
2 the ridges that you were seeing on that knife.

3 A Yes. If I did it directly on the ridges, yes.

4 Q Okay. So whereas right now you can see the  
5 ridges of the fingerprints.

6 A Correct.

7 Q Had you swabbed that, those ridges would no  
8 longer be there.

9 A I would -- I -- I would say that most likely  
10 they would have been -- I would have lost that detail.

11 Q Okay. And then it would have been impossible to  
12 take a fingerprint even if you wanted to.

13 A Probably.

14 Q Showing you what's been marked as State's  
15 Exhibit 30.

16 MS. HOJJAT: Permission to publish, Your Honor?

17 THE COURT: You may.

18 BY MS. HOJJAT:

19 Q Let me zoom in. Now, there's blood area on the  
20 knife blade, correct?

21 A Correct.

22 Q But no visible blood on the knife handle.

23 A Correct.

24 Q But you didn't do a fingerprint -- you didn't  
25 take any fingerprints from the knife handle.

1           A     I did not attempt any fingerprint processing on  
2 the -- the knife because it was going to be going to the  
3 forensic lab and they -- they would do any processing and  
4 collection of DNA.

5           Q     Okay. So it was going to the forensic lab to be  
6 swabbed.

7           A     And possibly fingerprint processed. I wasn't  
8 sure, I just booked the original item as it was.

9           Q     Okay. So to the best of your knowledge, you  
10 don't know of anybody removing fingerprints from this knife  
11 handle?

12          A     I don't.

13          Q     But you do know that it was sent to the DNA lab  
14 for processing.

15          A     It was sent to the forensic lab. If it was just  
16 DNA, I don't know.

17          Q     Okay. So it was sent to the forensic lab  
18 without having anything removed from -- without having any  
19 fingerprints removed from the knife handle.

20          A     I, yeah -- well, let's put it this way. It went  
21 into the evidence vault without me doing any of that.

22          Q     Fair enough. Now, I want to talk to you for a  
23 minute about State's Exhibit 19.

24          MS. HOJJAT: Permission to publish?

25          THE COURT: Uh-huh.

1 BY MS. HOJJAT:

2 Q You said you took this photograph?

3 A Yes.

4 Q When you took this photograph there were no  
5 police officers inside the apartment.

6 A Correct.

7 Q When you took this photograph there was no EMT  
8 personnel inside the apartment.

9 A Correct.

10 Q When you took this photograph there were no  
11 medical personnel inside the apartment.

12 A That's correct.

13 Q There was nobody inside the apartment except you  
14 and whoever you would work with to process the scene.

15 A I was alone.

16 Q Okay. So all of those people had already left  
17 the scene.

18 A Correct.

19 Q When you arrived, all those people had already  
20 left the scene.

21 A The police officers were still there, but not  
22 inside the apartment.

23 Q Okay. So you did not observe what the police  
24 officers might have done inside of that apartment.

25 A I did not.

1           Q     You did not observe what the EMTs might have  
2 done inside of the apartment.

3           A     I did not.

4           Q     You did not observe what anybody who was inside  
5 of that apartment prior to your arrival might have done.

6           A     I did not.

7           Q     And you talked about preserving a scene.  It's  
8 you and -- I'm sorry, do you work with a team?  Is it multiple  
9 people who go or is it just you?

10          A     In the -- in this case it was just me.

11          Q     Just you, all right.  So it's your job to  
12 preserve the scene.

13          A     Correct.

14          Q     It's your job to photograph it as you find it.

15          A     Correct.

16          Q     But as we discussed, you don't know what's being  
17 done with the scene prior to your arrival.

18          A     That's correct.

19          Q     And you would hope that it's being preserved.

20          A     That's correct.

21          Q     But you can't assure this jury that it was  
22 preserved.

23          A     No.  All I can assure them is that this is the  
24 condition it was in when I got there.

25          Q     When you got there.  And when you arrived at the

1 scene you didn't touch the knife without gloves.

2 A That's correct.

3 Q And you would hope that none of the officers  
4 touched the knife without gloves.

5 A That's correct.

6 Q But, again, you don't know if the officers  
7 preserved this scene.

8 A Per policy, they would have had to notify me if  
9 they had.

10 Q Right.

11 A But nobody did. But then as you say, I don't  
12 know, because I wasn't there.

13 Q Right. Again, you can't assure this jury that  
14 none of the officers touched that knife.

15 A That's correct.

16 Q Actually, I wanted to talk to you about the  
17 contents of the blue backpack. I can't find the photograph  
18 right now. There it is.

19 MS. HOJJAT: Permission to publish State's Exhibit  
20 38?

21 THE COURT: You may.

22 BY MS. HOJJAT:

23 Q You said you found this inside of the blue  
24 backpack. Zooming in to the top, would you read that top line  
25 for me, please?

1 A New Associate Schedule.

2 Q And going to the bottom, corporation was?

3 A WalMart Stores.

4 Q And the date was?

5 A 7/18/2011.

6 Q So that would be four days prior to the date  
7 that you responded to the scene.

8 A Correct.

9 MS. HOJJAT: Court's indulgence, Your Honor.

10 MR. HILLMAN: Judge, can I approach and get the easel  
11 out, please?

12 THE COURT: Of course.

13 MR. HILLMAN: Thank you.

14 MS. HOJJAT: Your Honor, permission to approach with  
15 what's been previously marked as Defense Exhibit --

16 THE COURT: We up to D?

17 MS. HOJJAT: I think it's E maybe?

18 THE COURT: E?

19 MS. HOJJAT: I -- I might have gotten the wrong one,  
20 sorry.

21 THE COURT: I think we're up to D as in --

22 MR. HILLMAN: It is D.

23 MS. HOJJAT: Yes, D.

24 THE COURT: Sure. D. I think defense is going to  
25 ask you step down in front of the jury in front of their

1 exhibit. She can step down. Do you want her to step down?

2 MS. HOJJAT: Yes, please, Your Honor.

3 THE COURT: Okay.

4 MS. HOJJAT:

5 Q I'm showing you what's been marked for  
6 identification purposes as Defense Exhibit D. This is a floor  
7 plan of the apartment that you responded to on July 22nd,  
8 2011. This is a fair and accurate depiction of the floor  
9 plan?

10 A Yes, that looks correct to me.

11 MS. HOJJAT: Your Honor, at this time we would move  
12 to admit Defense Exhibit D into evidence.

13 THE COURT: Any objection?

14 MR. BURNS: No, Your Honor.

15 THE COURT: It's admitted.

16 (Defendant's Exhibit D admitted.)

17 MS. HOJJAT: Permission to publish, Your Honor?

18 THE COURT: You may.

19 BY MS. HOJJAT:

20 Q Now -- I'm sorry. You collected blood swabs  
21 from multiple places.

22 A Correct.

23 Q And you collected blood swabs from everywhere  
24 that you saw blood, correct?

25 A Correct.

1           Q     Can you please mark on this diagram where you  
2 collected blood swabs from?

3           A     This is the -- that dotted line. This side of  
4 the dotted line's going to indicate the tile entryway and so I  
5 collected blood from approximately here. And then this area  
6 here is where there was some pooling and some drops of blood.  
7 I collected some blood there. Out here, outside the door and  
8 then out -- this went this direction and out there was the  
9 parking lot where the shoes were and I collected blood there.  
10 And other than that there was the original surface collected  
11 as far as the knife, the shoes, the socks.

12          Q     Okay, now -- I'm sorry, we ran out of different  
13 colored markers. Can I have you put your initials on the  
14 bottom of this one just so we can keep it straight. Thank you  
15 very much. Now, you did not collect any blood in the area  
16 next to the counter here.

17          A     I did not.

18          Q     You did not collect any blood further down  
19 towards the living room area next to the counter.

20          A     No.

21          Q     You did not collect any blood in the distance  
22 between the counter and the entryway.

23          A     That's correct.

24          Q     In front of the laundry room here on the --  
25 closer to the counter edge, there was no blood that you found?

1           A     There was none that I noted.

2           Q     Okay, thank you. You can be seated. And now,  
3     ma'am, you did say that you are able to latent print  
4     processing, correct?

5           A     Yes.

6           Q     Okay. You just didn't do any on the knife in  
7     this case.

8           A     I did not.

9           Q     Okay. And you were testifying about  
10    fingerprints earlier and you were testing about -- testifying  
11    about oil secretions.

12          A     Correct.

13          Q     And I believe you said the only thing required  
14    to leave a fingerprint is that somebody touched it; is that  
15    correct?

16          A     Well, that's the one thing that is absolutely  
17    required, is that the item be touched.

18          Q     Thank you.

19          MS. HOJJAT: I'll pass the witness, Your Honor.

20          THE COURT: Any redirect?

21          MR. BURNS: Yes, Your Honor.

22                         REDIRECT EXAMINATION

23    BY MR. BURNS:

24          Q     Ms. Renhard, safe to say that some surfaces are  
25    better at retaining fingerprint impressions than others?

1           A     Correct.

2           Q     Now, how would you describe the texture of the  
3 knife handle?

4           A     The knife handle was one of those slightly  
5 rough, you know, plastic like composite blade or handle.

6           Q     And in your training and experience, is that one  
7 of the better surfaces for retaining -- for fingerprint  
8 impressions being left?

9           A     Actually, it's one of the worst.

10          Q     That would be one of the worst. Did -- when you  
11 observed it, did you see anything -- you saw what you -- what  
12 you know are partial blood -- bloody fingerprints on the  
13 blade. Do you see anything similar on the handle?

14          A     I did not.

15          Q     Now, the -- the bloody fingerprint on the knife  
16 blade, could that fingerprint have been left based on blood  
17 being on the finger and then touching the knife?

18          A     It could have.

19          Q     And could it also have been caused by blood  
20 being on the knife and then the knife being touched?

21          A     Yes, it could have.

22          MR. BURNS: Court's indulgence.

23 BY MR. BURNS:

24          Q     Ms. Renhard, I'm going to show you -- let me  
25 just -- I'm going to show you what's been admitted as State's

1 Exhibit 77.

2 THE CLERK: Did you say 77?

3 MR. BURNS: Yes, I did.

4 THE CLERK: Okay, I don't have --

5 MR. BURNS: Oh, I'm sorry. It has not been admitted  
6 yet.

7 THE COURT: Okay.

8 BY MR. BURNS:

9 Q Okay. It -- when I showed you State's Exhibit  
10 77, do you recognize some pictures on it? Let me show you  
11 that exhibit first so you know what I'm talking about.

12 MR. BURNS: Your Honor, may I approach the witness?

13 THE COURT: You may.

14 BY MR. BURNS:

15 Q Do you recall being shown that exhibit?

16 A Yes.

17 Q Okay. And there's four pictures on there that  
18 you recognize?

19 A There's four items that have been photographed  
20 that I recognize the items.

21 Q And you recognize those items because you  
22 impounded them?

23 A Yes.

24 Q And are they in substantially the same condition  
25 in those pictures as they were when you impounded them?

1 A Yes.

2 Q Okay.

3 A Well, this -- this one somebody's made -- looks  
4 like -- I'm not sure if this is a mark on the photograph or a  
5 mark on the actual blade there.

6 Q Does it appear that someone's done some kind of  
7 -- they made some notations --

8 A Right.

9 Q -- and diagrams on it?

10 A And the same here. It looks like there's labels  
11 that are -- I'm not sure if it's -- this actually looks like  
12 they're labels on the item that I didn't put on there.

13 Q Okay. And there are four pages to this exhibit?

14 A Yes.

15 MR. BURNS: Your Honor, at this time I'd like to have  
16 admitted or publish for the jury the first two pages of this  
17 exhibit.

18 THE COURT: Any objection?

19 MR. HILLMAN: We expect that the State's going to be  
20 able to tie up any foundation problems with this, so at this  
21 time we have no objection.

22 MR. BURNS: Thank you, Mr. Hillman.

23 THE COURT: Okay. Exhibit 77 is admitted into  
24 evidence and you may publish.

25 (State's Exhibit 77 admitted.)

1 BY MR. BURNS:

2 Q Okay. Ms. Renhard, I'm showing you what's been  
3 marked as -- what's been admitted as 77. Do -- have you ever  
4 seen this kind of diagram, these kind of notations and stuff?

5 A I have.

6 Q And what does it indicate to you?

7 A It indicates that after I impounded the knife  
8 somebody took it out with the initials of -- it looks like JM  
9 and made some notations directly on the blade.

10 Q Now, that area that's -- has an arrow pointing  
11 to it, it has been enclosed in a pen mark and it has JM --  
12 JM2AP2 attached to it.

13 A Right.

14 Q Is that the area where the bloody fingerprint  
15 was on the knife?

16 A No.

17 Q It's an entirely different area on the knife?

18 A Correct.

19 Q Indeed, the bloody fingerprint towards the  
20 knife, isn't it in fact on the other side of the knife?

21 A I don't recall.

22 Q Okay. If I can show you State's -- what's been  
23 admitted as State's 34. I'll just zoom out some more. Sorry  
24 about that. Is that your -- refresh your recollection as to  
25 --

1 A Yes.

2 Q -- which side --

3 A Yes.

4 Q -- it was on?

5 A Yes, it is on the opposite side.

6 Q Okay. Now, Ms. Renhard, if you could be so  
7 kind, just let me move this. If you could be so kind as to  
8 just to step down.

9 MR. BURNS: Can I borrow your marker?

10 MR. HILLMAN: Sure. Do you want to use a different  
11 color to differentiate your marks?

12 BY MR. BURNS:

13 Q Ms. Renhard, please indicate where the blue  
14 cooler was.

15 A I think it was -- I think it was in this  
16 vicinity right here.

17 Q You may resume your seat at the witness stand.

18 MR. HILLMAN: Can the record reflect a blue mark was  
19 made on the Exhibit, Judge?

20 MR. BURNS: And, Your Honor, for the record that's  
21 Exhibit D of the defense.

22 THE COURT: Okay, thank you.

23 MR. BURNS: Your Honor, I will pass the witness.

24 THE COURT: Any recross?

25 MS. HOJJAT: Briefly, Your Honor.

1 RECROSS-EXAMINATION

2 BY MS. HOJJAT:

3 Q I'm sorry, ma'am. Bear with me while I find the  
4 right pictures.

5 MR. HILLMAN: Judge, can I move the easel?

6 THE COURT: You may.

7 MS. HOJJAT: Oh, thank you.

8 MR. HILLMAN: Thank you.

9 BY MS. HOJJAT:

10 Q So, Ms. Renhard, you testified that this  
11 fingerprint was not lifted in order to preserve the ability to  
12 collect the DNA of that blood, correct?

13 A Correct. Well, it wouldn't have been lifted  
14 anyways, it would have been photographed.

15 Q Okay.

16 A It wasn't enhanced or -- it wasn't enhanced. It  
17 would not be a fingerprint that would have been lifted. This  
18 is an as-if as-is photograph.

19 Q Okay. To the best of your knowledge this  
20 fingerprint was not enhanced.

21 A I did not enhance it.

22 Q To the best of your knowledge this fingerprint  
23 was never sent for any sort of fingerprint comparison.

24 A I don't know if it was or not.

25 Q Okay. You don't know that it was?

1           A     I don't that it was.

2           Q     Okay. You testified on redirect --

3           MR. BURNS: I'm sorry, Your Honor. I'm sorry to  
4 interrupt you, Ms. Hojjat. May we approach?

5           THE COURT: Sure.

6           (Bench conference transcribed as follows.)

7           MR. BURNS: Your Honor, here's the thing. With this  
8 line of questioning, the analysis, if they're going to -- this  
9 is going to be an issue, I think they've sort of opened the  
10 door to this already that there was not a fingerprint  
11 analysis. They're really inviting a response that their brief  
12 is here in the courtroom, that it's been available to them,  
13 that they could have conducted their own independent analysis  
14 consistent with the U.S. Supreme Court's Griffin decision  
15 [indiscernible] decision that there would not be a calling on  
16 the defendant's failure to testify.

17          MS. HOJJAT: And it's not a failure to testify, Your  
18 Honor. It's burden shifting. We have no obligation to  
19 present evidence in the case. They have an obligation, it's  
20 their burden beyond a reasonable doubt to present the  
21 evidence.

22          THE COURT: But they don't have any requirement to  
23 present certain kind of evidence. And apparently, you're  
24 going to harp on this jury that there was some sort of  
25 fingerprint there and they didn't lift it and identify it. Is

1 that right?

2 MS. HOJJAT: Your Honor, they don't have --

3 THE COURT: Sounds like it to me.

4 MS. HOJJAT: Your Honor, the distinction here is they  
5 don't have a burden to present a certain type of evidence.  
6 But we certainly have the ability and it goes to the burden to  
7 say that they failed to meet their burden because they failed  
8 to take certain steps. And that [indiscernible]

9 THE COURT: I think they can argue that they -- I  
10 think they can get into the fact that the print wasn't -- I  
11 don't know. I mean, she's testified it couldn't be lifted,  
12 that that would always be inappropriate --

13 MS. HOJJAT: And that's fine --

14 THE COURT: -- but that it could have magnified. I  
15 don't even know if she's even testified that it could have  
16 actually been identified.

17 MS. HOJJAT: And that's fine. If they want to  
18 recross on that, that's certainly appropriate. But to start  
19 commenting that we have a burden to do any sort of  
20 presentation of evidence or to analyze anything is burden  
21 shifting and they can't do that.

22 THE COURT: I'm not going to let them do that. Don't  
23 panic.

24 MR. BURNS: Well, I mean, if they're going to open  
25 that door I think we're entitled to at least -- that it's

1 available. I have a wealth of persuasive jury experience on  
2 this [indiscernible] defense talks about failure to conduct  
3 particular types of forensic analysis, DNA, fingerprint in  
4 particular, that they invite that [indiscernible] response and  
5 it's a fair response. It's not [indiscernible] because they  
6 don't need to open that door.

7 MS. BOTELHO: And there was a motion to dismiss for  
8 failure to gather [indiscernible].

9 MS. HOJJAT: Your Honor, during the time that we did  
10 the motion to dismiss, Your Honor said I'm not granting this  
11 motion to dismiss, but you can argue it to the jury. I'm now  
12 attempting to argue it to the jury and they're attempting to  
13 [indiscernible]. I've opened the door to them saying that I  
14 have a burden.

15 THE COURT: I also said many times I would happily  
16 discharge this evidence to the defense so they can test it if  
17 need be, like in every other case. And the defense declined  
18 that offer.

19 MS. HOJJAT: Because it's our position that we don't  
20 have the complication to present evidence to the jury. It's  
21 their obligation. And in fact, at this point it's been --  
22 Your Honor, case law's going to be presented. I'm going to  
23 ask for a recess so that I can do research to present contrary  
24 case law.

25 THE COURT: What are you actually asking me to do?

1 MR. BURNS: I'm just asking you to caution them if  
2 they're going to go down this line of questioning they might  
3 be opening the door to [indiscernible]. We reserve the right  
4 to --

5 THE COURT: To an argument or questioning?

6 MR. BURNS: To [indiscernible] it out with argument.

7 MS. BOTELHO: We just don't want false impression  
8 that we failed to [indiscernible] include case law  
9 [indiscernible] to present [indiscernible].

10 THE COURT: The evidence is available to both sides.  
11 Am I missing something?

12 MS. HOJJAT: The point is, Judge, our agreement is  
13 the evidence is available to both sides, but only one side has  
14 the burden of proving things beyond a reasonable doubt.

15 THE COURT: We all agree on that.

16 MS. HOJJAT: And for us to be banned from commenting  
17 on [indiscernible] for the burden --

18 MR. BURNS: But they can't create this false idea  
19 that it was only available to us. That's unfair --

20 MS. HOJJAT: We're not saying it was only available  
21 to them, but we are saying it was available to them and they  
22 chose not to [indiscernible].

23 THE COURT: Okay. I think [indiscernible] where the  
24 State's going now. You're worried that the defense is  
25 representing in front of the jury that the evidence was only

1 available to the State, that it was only available to you and  
2 you were derelict in your duties in not doing this.

3 MR. BURNS: We were handcuffed from doing -- from  
4 finding out --

5 THE COURT: I got it. Okay. I don't think you've  
6 done that yet.

7 MS. HOJJAT: We will not say that we did not have  
8 access to that. We will not imply that.

9 THE COURT: Okay. In every single case there's  
10 always -- sometimes it's the only thing the defense can argue  
11 that they -- I don't know if I've had a case where the defense  
12 hasn't argued the State should have done something that they  
13 didn't do. And then the State argues we don't have to do  
14 every single test known to mankind.

15 MS. HOJJAT: We have no problem with them arguing --

16 THE COURT: I mean --

17 MR. BURNS: State of the law is not this as Ms.  
18 Hojjat's describing it.

19 THE COURT: It is not.

20 MR. BURNS: Most courts find that with the defense  
21 comments, makes this kind of [indiscernible] particular type  
22 of testing being done, that invites a response from the State  
23 as to whether or not they had an opportunity to do so.

24 THE COURT: The state of the record is, not only did  
25 they have an opportunity to do so, I signed an order releasing

1 the evidence to them and allowing them to do it.

2 MS. BOTELHO: But the jury doesn't --

3 THE COURT: I know. Usually don't tell the jury  
4 that. And also, in all fairness, I have never invited that.  
5 I'll sign an order [indiscernible] chain of custody and the  
6 defense stood up and said no, we don't want to do it. That  
7 was really bizarre to me. But you have your own tactical  
8 strategy. You know the case better than me. I mean, that's  
9 me making that from afar. I don't know what your strategy is.  
10 You know your case better than me so I assume you have a  
11 logical reason for doing that. Usually, everybody wants to  
12 test everything, but that's okay. I like that you didn't want  
13 to test everything.

14 MS. HOJJAT: Sorry, Judge, just to clarify what I can  
15 and cannot say and ask. We will, the defense will not be  
16 making any sort of suggestion that we didn't have access  
17 [indiscernible]. However, we believe that we are allowed to  
18 argue they didn't test the knife. And the response they're  
19 allowed to make at that point we don't have an obligation to  
20 test every single thing. But I don't believe they're allowed  
21 to say they should have tested it themselves. Because I do  
22 believe at that point we enter the realm of burden shifting.

23 MR. BURNS: It's a double standard and they're not  
24 entitled to affirmatively create this double standard in this  
25 insinuation to the jury. That being, they're insinuating that

1 they didn't have the opportunity. The only answer to  
2 determining those prints were there was the State testing.

3 THE COURT: There didn't appear to be an objection.  
4 It sounds like the State is putting you on notice that they  
5 intend to go down this road. You're on notice. Do whatever  
6 you think you have to do to defend your client.

7 MS. HOJJAT: I'm asking the Court at this point for  
8 guidance on what -- if we make the argument of they should  
9 have tested the knife [indiscernible] access to the knife  
10 [indiscernible] whether Your Honor is going to allow them to  
11 then turn around and say well, they had access, they should  
12 have tested it. I'm asking for guidance in terms of what Your  
13 Honor's -- because I don't want to open that door if Your  
14 Honor's going to allow that in. But that was a line of -- I  
15 do believe that I'm entitled to point out --

16 THE COURT: In this case the record is very, very  
17 clear that not only was it available to you, I repeatedly told  
18 you that you had it and you had the all ability to test  
19 [indiscernible] experts.

20 MS. HOJJAT: Your Honor, the record is clear on that.  
21 However, it's our position that we don't have the burden to  
22 test.

23 THE COURT: I'll be happy to give you a copy of what  
24 was just presented to me by the State and you can review it.  
25 I'll have someone copy it. I think the State's just telling

1 you what they intend to do.

2 MS. HOJJAT: Okay. Can I inquire at this point, can  
3 we -- the door has not been opened, correct? They cannot turn  
4 around and make that response at this point.

5 MR. BURNS: It was opened in opening statement, but  
6 --

7 THE COURT: It was opened in opening statement. It  
8 was opened like a year ago. His fingerprint wasn't tested. I  
9 don't even --

10 MS. HOJJAT: -- turn around and say we had access to  
11 the knife and we could have tested the knife. I do believe  
12 it's improper burden shifting. I'm wondering if they're  
13 planning [indiscernible], based on the questioning that we've  
14 done at this point.

15 THE COURT: All right.

16 MS. HOJJAT: So I'll stop questioning at this point  
17 if Your Honor will say that if we don't ask anymore questions  
18 they're not allowed to make that argument.

19 THE COURT: I'm not going to make any [indiscernible]  
20 right now, there's nothing pending in front of me.

21 MR. BURNS: Just make our choice, you know, what we  
22 think is good for [indiscernible] --

23 THE COURT: Okay. And then the defense needs to do  
24 what they think is appropriate. You've got, I mean, Mr.  
25 Hillman has got like ten times the experience of all of us put

1 together. That was meant with all due respect.

2 MR. HILLMAN: Thank you.

3 MS. HOJJAT: Yes, Your Honor. What I'm trying to  
4 inquire from the Court at this point, because I can stop this  
5 line of questioning right now, if the door has not been opened  
6 --

7 THE COURT: I'm not going to tell you how to present  
8 your case because clearly, you had a strategy in doing what  
9 you did. When I told you you could test it and you didn't  
10 test it, okay, you had a strategy. So I don't know what that  
11 is and I'm not going to ask you what it is. But I'm not going  
12 to interfere with the defense's strategy and the road you  
13 chose to go down and the tactics you chose to defend your  
14 client. You need to do what you think is right for your  
15 client. I'll give you a copy of this.

16 MR. HILLMAN: I think Patrick just said that  
17 [indiscernible] position.

18 THE COURT: His position is he wants to  
19 [indiscernible] the door already. He thinks that you  
20 [indiscernible] you've put an impression in front of the jury  
21 panel that the State was the only one who had access and no  
22 one had the ability to test this knife and you didn't have the  
23 ability to do it and somehow they were derelict in their  
24 duties.

25 MS. HOJJAT: I guess then we'd ask the Court for a

1 ruling on that issue now then so that I can determine how to  
2 go forward with cross-examination.

3 THE COURT: What do you want me to rule on?

4 MS. HOJJAT: Whether or not Your Honor is going to  
5 allow them to make that argument.

6 THE COURT: I don't know [indiscernible] going to  
7 choose. They have a duty to suggest and to protect the  
8 record. They've got to decide what they're going to do. So I  
9 don't know. I'm not going to prevent them from doing  
10 something they haven't even told me they're going to do yet.  
11 So both of you continue to do what you think is best. I'll  
12 give you a copy of this because it's been presented to me at  
13 this point.

14 MS. HOJJAT: Thank you.

15 THE COURT: And we can go from there. I'll give this  
16 back to you. I'll make two copies and give it back to you.  
17 Thanks.

18 (End of bench conference.)

19 THE COURT: Okay, you may continue.

20 BY MS. HOJJAT:

21 Q I'm sorry, I lost my place. Give me one moment.

22 MS. HOJJAT: Court's indulgence, Your Honor.

23 BY MS. HOJJAT:

24 Q And just going back to your testimony on  
25 redirect, you said that a wooden knife handle would be one of

1 the worst things to collect fingerprints off of.

2 A I'm sorry?

3 MR. BURNS: I'm sorry. I'm not sure if that reflects  
4 her testimony.

5 THE COURT: Maybe you just ask her, I think she wants  
6 to get back to the handle of the knife; is that fair?

7 MS. HOJJAT: Yes.

8 THE COURT: Okay.

9 BY MS. HOJJAT:

10 Q Let's go back to the knife handle.

11 A Okay.

12 Q You were asked I believe on redirect, whether  
13 different substances have different levels of basically  
14 absorbing fingerprints or having fingerprints left on them.

15 A Correct.

16 Q Correct. And you were asked specifically about  
17 the knife handle at one point.

18 A Correct.

19 Q And you said that the knife handle would not  
20 hold fingerprints very well.

21 A This particular type of composite material is,  
22 in my experience, is not very good.

23 Q Okay. You said it was one of the worst.

24 A Yes.

25 Q Okay. What about carpet?

1           A     Oh, no. I'm sorry, carpet is --

2           THE COURT: For what? For what?

3           A     For fingerprints?

4 BY MS. HOJJAT:

5           Q     For purposes of collecting fingerprints.

6           A     For the most part, cloth is not a good surface  
7 to collect a regular fingerprint.

8           Q     Okay.

9           A     Any kind of textured surface, cloth surface, for  
10 collecting some cloth surfaces, for collecting, you know,  
11 fingerprint that has a substance on it like blood or chocolate  
12 or something like that, some very smooth tight-knit surfaces  
13 can retain those. However, carpet, especially like this type  
14 of carpet, is -- I've never heard of it actually ever being  
15 done.

16          Q     Okay. So fair to say carpet would be the worst?

17          A     Yeah.

18          Q     Fair to say cloth would be very bad as well.

19          A     Cloth would be poor.

20          Q     Cloth would be worse than say this knife handle?

21          A     Depends on the cloth.

22          Q     Okay.

23          A     As far as like regular fingerprints, there --  
24 without a substance on it, they're probably very similar.

25          Q     Okay. Can't collect fingerprints off of human

1 skin, can you?

2 A Yes, you can.

3 Q You can?

4 A In certain conditions it has been done.

5 Q Okay. Would you call it a good surface for  
6 collecting fingerprints off of?

7 A It's not that the surface is poor, but it does  
8 tend to absorb it, if that makes sense. I mean, your skin is  
9 -- it's actually a porous material and it tends to absorb it  
10 and they -- and oftentimes it can -- we can -- well, in men  
11 especially, if they have hairy arms, that inhibits it. In the  
12 soft part of the arm they tend to absorb if it's not done  
13 almost immediately. It has been done on corpses. It doesn't  
14 happen often, but it has been done.

15 Q Okay. So you talked about absorption. Can  
16 regular surfaces absorb fingerprints?

17 A Yes.

18 Q They can?

19 A Yes.

20 Q So over time fingerprints -- basically, if  
21 there's a fingerprint here today, the more time passes the  
22 less likely that fingerprint is still there?

23 A Depending on what, you know, depending on the  
24 situation. Fingerprints can be -- are indefinite time  
25 periods.

1 Q Uh-huh.

2 A But there are things that -- that -- that can  
3 ruin them.

4 Q Okay.

5 A A fingerprint here today, somebody else -- they  
6 would smear and -- and it would be gone.

7 Q Okay.

8 A So it can be easily removed. They're mainly  
9 made up of moisture, sweat --

10 Q Uh-huh.

11 A -- and that dries.

12 Q Okay.

13 A And so they could, you know, fade that way.

14 There are different chemicals and -- and means in which to  
15 enhance or develop different components of a fingerprint. Say  
16 the oils or sweats, the amino acids. So there's different  
17 chemicals that can be used to -- and possibly bring up  
18 fingerprints that aren't visible other than your standard  
19 black powder that you see on TV.

20 Q Okay. So going back to -- you mentioned  
21 evaporation. You said that it's -- fingerprints are moisture.

22 A Yes.

23 Q And so over time they evaporate.

24 A Yes.

25 Q So, again, if I put my finger here and a

1 fingerprint is left, as time goes by this fingerprint is  
2 slowly drying up.

3 A Yes.

4 Q It's slowly evaporating.

5 A Correct.

6 Q The more time passes, the less likely that  
7 fingerprint is still going to be there.

8 A Less likely the moisture in the fingerprint is  
9 going to still be there. However, if you've, you know,  
10 touched your hair and have some oil on it --

11 Q Okay.

12 A -- the oil doesn't dry as quickly. Amino acids  
13 in your sweat --

14 Q Uh-huh.

15 A -- might still be there. Salts in your sweat --

16 Q Uh-huh.

17 A -- might still be there.

18 Q Right.

19 A And so using chemical enhancement, those might  
20 be able to bring out a fingerprint.

21 Q But it's less likely than if we were to test  
22 right now, that spot today --

23 A Yeah. Right now I could take some powder and  
24 probably bring it right up.

25 Q Okay.

1           A     But later on that would become more and more  
2 difficult.

3           Q     So five months from now it would be more  
4 difficult today?

5           A     Yes.

6           Q     And a year from now would be more difficult than  
7 five months from now.

8           A     Especially since we assume this place is cleaned  
9 constantly.

10          Q     Right.

11          A     I mean there's no dust, not like my house.

12          MS. HOJJAT: I'll pass the witness, Your Honor.

13          THE COURT: Anything else from this witness?

14          MR. BURNS: No, Your Honor.

15          THE COURT: Thank you very much for your testimony  
16 here today. You may step down and you're excused from your  
17 subpoena. State can call their next witness.

18          MS. BOTELHO: Your Honor, the State calls Tracy  
19 Brownlee.

20                 TRACY BROWNLEE, STATE'S WITNESS, SWORN

21          THE CLERK: Please be seated and speak your name and  
22 spell it for the record.

23          THE WITNESS: Tracy Brownlee, T-r-a-c-y,  
24 B-r-o-w-n-l-e-e.

25          THE CLERK: Thank you.

1 MS. BOTELHO: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. BOTELHO:

4 Q Ms. Brownlee, how are you employed?

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

7 Q And how long have you been so employed?

8 A About five and a half years.

9 Q Could you just please give the jury a brief  
10 background information regarding your training, experience,  
11 education that would make you qualified to be a senior crime  
12 scene analyst with Metro?

13 A I graduated with a bachelor's in criminal  
14 justice with forensic science at Eastern Washington  
15 University. I was then employed with the Cowlitz County  
16 Coroner's Office where I was a Deputy Coroner. From there I  
17 was hired on with LVMPD where I went through their training  
18 academy, field training and then all of the various classes,  
19 crime scene classes, that are offered through the department.

20 Q Thank you. Is one of your duties as a crime  
21 scene analyst to photograph pieces of evidence from certain  
22 crime scenes?

23 A Yes, it is.

24 Q And does it also involve photographing subjects  
25 that were either part of a crime scene or at least part of a

1 case?

2 A Yes.

3 Q Okay. And would documenting injuries and  
4 evidence present on individuals include -- be included in your  
5 job description as well?

6 A Yes.

7 Q As well as photographing evidence that may be  
8 left on clothing and things like that?

9 A Yes.

10 Q Okay. At some point were you -- well,  
11 apparently you were involved and employed with Metro on July  
12 22nd, 2011 as a crime scene analyst; is that right?

13 A Yes.

14 Q And, Ms. Brownlee, did you respond to UMC at  
15 approximately -- the University Medical Center at  
16 approximately 8:19 p.m. regarding an investigation concerning  
17 Bennett and Aneka Grimes?

18 A Yes, I did.

19 Q Okay. And when you arrived at UMC, did you make  
20 contact with Aneka Grimes and photograph her injuries?

21 A Yes, I did.

22 MS. BOTELHO: Permission to approach, Your Honor.  
23 Some of these have already been admitted as State's exhibits,  
24 however, some have not. I would like to just approach the  
25 witness with State's Exhibits 39 through 58.

1 THE COURT: You may.

2 MS. BOTELHO: Thank you.

3 BY MS. BOTELHO:

4 Q Ms. Brownlee, can you just please take a look at  
5 these exhibits and look up at me when you're finished.

6 A Okay.

7 Q Thank you. Do you recognize these photographs?

8 A Yes, I do.

9 Q Are these the photographs of Aneka Grimes and  
10 her injuries that were present on her body on July 22nd, 2011  
11 when you made contact with her at the University Medical  
12 Center?

13 A Yes.

14 Q Jury's already seen some of this, they'll have  
15 it later so we're not going to go through those.

16 MS. BOTELHO: Permission to approach with what's  
17 already been admitted as State's Exhibits 70 through 73 and  
18 74, which has not been admitted.

19 THE COURT: You may.

20 MS. BOTELHO: Thank you.

21 THE CLERK: I don't show 72 either.

22 THE COURT: 72 or 74 have not been admitted.

23 MS. BOTELHO: 72 and 74?

24 MR. HILLMAN: Correct.

25 MS. BOTELHO: Okay. Well, I'm sorry, Your Honor.

1 THE COURT: That's okay.

2 MS. BOTELHO: I don't have 72 with me. The State's  
3 withdrawing 72.

4 THE COURT: Okay. So 70, 71, 73 and 74?

5 MS. BOTELHO: Correct. Thank you.

6 BY MS. BOTELHO:

7 Q Ms. Brownlee, could you please take a look at  
8 these exhibits? Look up at me when you're done.

9 A Okay.

10 Q Thank you. Do you recognize these photographs?

11 A Yes, I do.

12 Q Do you recognize them to be photos of a subject  
13 known to you at that time as Bennett Grimes?

14 A Yes.

15 Q Okay. Do the photographs fairly and accurately  
16 depict Mr. Grimes and the injuries -- or the injury that you  
17 photographed on his body on July 22nd, 2011 at the University  
18 Medical Center?

19 A Yes, they do.

20 MS. BOTELHO: Your Honor, permission to admit State's  
21 Exhibit 72.

22 MR. HILLMAN: No objection.

23 THE COURT: You just withdrew 72.

24 MS. BOTELHO: I'm sorry, 74.

25 MR. HILLMAN: No objection.

1 THE COURT: Any objection to 74?

2 MR. HILLMAN: No objection.

3 THE COURT: It's admitted.

4 (State's Exhibit 74 admitted.)

5 MS. BOTELHO: Thank you.

6 BY MS. BOTELHO:

7 Q Pursuant to this investigation concerning Aneka  
8 and Bennett Grimes, Ms. Brownlee, did you also photograph  
9 items of clothing from both Bennett Grimes and Aneka Grimes?

10 A Yes, I did.

11 Q Thank you.

12 MS. BOTELHO: Permission to approach with what has  
13 not been admitted into evidence yet, Your Honor, State's  
14 Exhibit's 59, 60, 61 and 62.

15 BY MS. BOTELHO:

16 Q Ms. Brownlee, do you recognize these  
17 photographs?

18 A Yes, I do.

19 Q What do you recognize them to be?

20 A Clothing that I had taken from Bennett Grimes.

21 Q Does this fairly and accurately show the  
22 condition and also the state of Mr. Grimes' clothing when you  
23 photographed them on July 22nd, 2011?

24 A Yes.

25 MS. BOTELHO: Permission -- or excuse me, Your Honor.

1 I move to admit State's Exhibit's 59 through 62.

2 MR. HILLMAN: No objection.

3 THE COURT: They're admitted.

4 (State's Exhibit 59-62 admitted.)

5 MS. BOTELHO: Thank you. Permission to publish?

6 THE COURT: You may.

7 BY MS. BOTELHO:

8 Q State's Exhibit number 59. Ms. Brownlee, what  
9 is this?

10 A It's a pair of pants.

11 Q Okay. And were these the pair of pants you had  
12 taken from Mr. Bennett Grimes?

13 A Yes, they are.

14 Q And I note that you have some rulers kind of  
15 throughout. What is the purpose of having these rulers?

16 A For documentation purposes if anybody needs to  
17 do further -- further analysis on the pants.

18 Q Okay. And, of course, the photograph is pretty  
19 apparent there's blood -- apparent blood on this particular  
20 piece of clothing; is that right?

21 A Yes.

22 Q And you photographed that. State's Exhibit  
23 Number 60. Is this just the back portion of the same pair of  
24 pants?

25 A Yes, it is.

1 Q Also to document any and all types of evidence  
2 that may be on this particular piece of clothing?

3 A Yes.

4 Q State's Exhibit 61, what is this?

5 A That is a shirt that was taken from Bennett  
6 Grimes.

7 Q And that was on July 22nd, 2011?

8 A Yes, it was.

9 Q Okay. State's Exhibit 62. Is this the same  
10 shirt taken from Bennett Grimes but the backside?

11 A Yes, it is

12 Q And it fairly shows the -- the condition of his  
13 shirt at that time?

14 A Yes.

15 MS. BOTELHO: Permission to approach with what has  
16 not been admitted yet, Your Honor, State's Exhibits 63 through  
17 69.

18 THE COURT: You may.

19 MS. BOTELHO: Thank you.

20 BY MS. BOTELHO:

21 Q Ms. Brownlee, could you please take a look at  
22 these exhibits and look up at me when you're done?

23 A Okay.

24 Q Thank you. Do you recognize what's shown in  
25 these photos?

1           A     Yes, I do.

2           Q     What do you recognize them to be?

3           A     Those are the clothing I took from Aneka Grimes  
4 patient belonging bags at UMC.

5           Q     Okay. Do they fairly and accurately show the  
6 condition of the clothing you took from Aneka on that  
7 particular night?

8           A     Yes, they do.

9           MS. BOTELHO: Permission to admit State's Exhibits 63  
10 to 69, Your Honor.

11          MR. HILLMAN: No objection.

12          THE COURT: Admitted.

13                (State's Exhibit 63-69 admitted.)

14          MS. BOTELHO: Permission to publish?

15          THE COURT: You may.

16          MS. BOTELHO: Thank you.

17 BY MS. BOTELHO:

18           Q     State's Exhibit Number 63. Ms. Brownlee, what  
19 is this a picture of?

20           A     Is the jumper and underwear of Aneka Grimes.

21           Q     When you received this particular item of  
22 clothing, do you see the -- it looks as though it was cut  
23 right here?

24           A     Yes.

25           Q     Was it in that condition when you received it?

1 A Yes.

2 Q Is that common --

3 A Yes, it is.

4 Q -- okay. And why is that?

5 A It's medical intervention.

6 Q Thank you. State's Exhibit Number 64. Is this  
7 the backside of that same shirt that was taken from Aneka  
8 Grimes that night?

9 A Yes, it is.

10 Q State's Exhibit Number 65, oops. Okay. Is this  
11 the same shirt that we've been talking about?

12 A Yes, it is.

13 Q Now, I notice that there are three, it looks  
14 like sticky notes with -- pink sticky notes with arrows on  
15 them. What does that signify?

16 A Yes. Those are any defects I find in the  
17 clothing.

18 Q And what do you mean by defects?

19 A Any -- basically when there's medical  
20 intervention and then there's other items that can happen to  
21 clothing that is not natural, it doesn't come with the  
22 clothing, it's not medical intervention. So that's basically  
23 what I'm documenting are defects that should not have been in  
24 the clothing.

25 Q Defects like holes or things like that?

1           A     Yes, uh-huh.

2           Q     Okay. I'll get a better picture. Some of these  
3 defects were kind of located in areas where there were blood;  
4 is that right?

5           A     Yes.

6           Q     And did you actually have to, you know, really,  
7 really inspect the item to find that defect?

8           A     Yes. For all -- any sort of clothing you kind  
9 of feel around, use your hands, eyes, to locate.

10          Q     Okay. And these were the areas that you found  
11 the defects?

12          A     Yes, there were.

13          Q     State's Exhibit Number 66. Is this the right  
14 sleeve or shoulder area of that same shirt?

15          A     Yes, it is.

16          Q     And you noted a defect right there as well?

17          A     Yes.

18          Q     Thank you. But it's kind of a bloody area?

19          A     Yes.

20          Q     State's Exhibit Number 67. Is this a photograph  
21 of that same sleeve area?

22          A     Yes, it's just a close-up.

23          Q     Okay. I'm going to kind of zoom in because we  
24 noted earlier there was a bloody area right here. But can you  
25 see the defect that you were pointing to in this particular

1 exhibit?

2 A Yes, I can.

3 Q Okay. State's Exhibit Number 68. These  
4 close-ups of I believe the same ones that were pointed out in  
5 State's Exhibit Number 65; is that right?

6 A Yes, it is.

7 Q So you have the two stickies here and then you  
8 have the two corresponding sticky notes there; is that right?

9 A Yes.

10 Q And upon zooming in, are you able to see the  
11 defects now on the screen?

12 A Yes.

13 Q Thank you. And in case I didn't point it out  
14 for the record, that was State's Exhibit 68.

15 Ms. Brownlee, did you also take any sort of swabs on  
16 that particular night?

17 A Yes, I did.

18 Q And were the swabs for apparent blood?

19 A Yes, they were.

20 Q And where were the swabs taken from?

21 A From the hands and foot of Bennett Grimes.

22 Q Okay. And is it fair to say there were three --  
23 or excuse me, six different swabs taken total?

24 A Yes, two from each area.

25 Q Okay. One area being the right hand of Bennett

1 Grimes?

2 A Yes.

3 Q Another area being the left hand of Bennett

4 Grimes?

5 A Yes.

6 Q And the third area being the left foot of

7 Bennett Grimes?

8 A Yes.

9 Q Thank you.

10 MS. BOTELHO: Court's indulgence. I have no further  
11 questions, Your Honor.

12 THE COURT: Any cross-examination?

13 MR. HILLMAN: No questions, Judge.

14 THE COURT: Thank you very much for your testimony  
15 here today. You may step down, you're excused from your  
16 subpoena.

17 THE WITNESS: Thank you.

18 THE COURT: You may call your next witness.

19 MS. BOTELHO: Your Honor, the State recalls Detective  
20 Michelle Tavaréz.

21 MICHELLE TAVAREZ, STATE'S WITNESS, SWORN

22 THE CLERK: Please be seated. And state your name  
23 and spell it for the record.

24 THE WITNESS: My name is Michelle Tavaréz,  
25 M-i-c-h-e-l-l-e, T-a-v-a-r-e-z.

1 MS. BOTELHO: May I, Your Honor?

2 THE COURT: You may.

3 DIRECT EXAMINATION

4 BY MS. BOTELHO:

5 Q Officer Tavarez, you testified yesterday as  
6 right -- is that right?

7 A Yes, ma'am.

8 Q Okay. And you're just being recalled by the  
9 State right now. All right. Officer Tavarez, do you recall  
10 when you responded to 9325 West Desert Inn, Apartment Number  
11 173, seeing a blue bag located between a couch and also the  
12 bar area of that apartment?

13 A That day I don't specifically remember the bag  
14 being there, but it's in the photos and I recall it from the  
15 pictures that I've seen since the case has happened.

16 Q Okay. So that -- looking at the photos  
17 refreshed your memory --

18 A Yes, ma'am.

19 Q -- is that right? Okay. I'm going to show you,  
20 with the Court's permission, State's Exhibit Number 26,

21 MS. BOTELHO: It's already admitted according to my  
22 records, Your Honor. May I publish?

23 THE COURT: You may.

24 MS. BOTELHO: Thank you.

25 BY MS. BOTELHO:

1           Q     Is that the cooler right there or the blue bag  
2 that had -- that you now remember?

3           A     Yes, ma'am.

4           Q     Okay. When -- your testimony yesterday was that  
5 you also came into this apartment through the balcony; is that  
6 right?

7           A     Correct.

8           Q     And you stated that at least that particular  
9 day, July 22nd, 2011, you don't remember that particular blue  
10 bag?

11          A     That's correct.

12          Q     So you don't remember you making contact with  
13 it, kicking it, moving this particular bag?

14          A     Correct. I would remember if I had moved the  
15 bag.

16          Q     Okay. And you don't remember where it was at  
17 that time and whether you made any kind of contact with it?

18          A     That's correct. I -- I know I would remember if  
19 I specifically made contact with the bag.

20          Q     Okay. When you entered the apartment, though,  
21 and your testimony yesterday was that the defendant and  
22 Officers Gallup and Hoffman were kind of towards the front of  
23 this door.

24          A     Yes, ma'am.

25          Q     Do you remember whether or not there was a

1 cooler in that area?

2 A There was no cooler or anything near the  
3 officers or the defendant when I came in. After I had come in  
4 I know that if I had seen them move it, I would have  
5 remembered them moving it or trying to get it out of their  
6 way.

7 Q And by the time you came into the particular  
8 scene, what you recalled seeing was Officers Gallup and also  
9 Hoffman having the defendant down on the ground; is that  
10 right?

11 A Yes, ma'am. Upon initial entry they were all  
12 kind of leaned up against the door. As I was in there, they  
13 then kind of moved and worked their way towards the ground and  
14 they were on top of the defendant.

15 Q Okay. So it's still a very fluid scene?

16 A Yes.

17 Q And they were still trying to apprehend the --  
18 or actually take him into custody?

19 A Yes, ma'am.

20 Q Thank you. Now after the defendant's taken into  
21 custody, you've already checked on Aneka who is now in the  
22 care of her mother, as you testified earlier, yesterday, what  
23 is it that happens to a scene like this, Officer, once you've  
24 completely cleared it?

25 A Because it was so volatile and unfolding in

1 front of our eyes, we knew that the crime that had occurred  
2 was going to be, you know, a bigger crime, it's not your  
3 simple battery. So with a scene like this, we want to make  
4 sure that we don't allow anybody back in it. Anybody that --  
5 the only people that are allowed in it are those that have to  
6 be in it, which would be ID techs from Metro, officers if they  
7 have to come in and paramedics in this case.

8 Q Okay. You mentioned ID techs.

9 A Correct.

10 Q Are those crime scene analysts?

11 A Yes, ma'am. We -- sometimes we'll refer to them  
12 as ID, their -- their actual name is crime scene analyst.

13 Q Okay. So let me back up. The defendant,  
14 Bennett Grimes, was taken out into the parking lot area; is  
15 that right?

16 A That's correct.

17 Q He was secured there?

18 A That's correct.

19 Q To the best of your recollection, Aneka was left  
20 in the care of her mother?

21 A Yes, ma'am.

22 Q At some point did paramedics arrive? The  
23 paramedics that you and other officers had called.

24 A Yes, ma'am. I went back into the apartment and  
25 I stayed with the victim and her mother until paramedics got

1 there. So it was only the three of us in the apartment until  
2 paramedics showed back up. Then they came in and took Aneka  
3 out and then I escorted her mother out of the apartment  
4 myself.

5 Q And when paramedics came in, did they come in  
6 through the front door or any other doors?

7 A They came in through the front door.

8 Q Okay. Because the only other door is the  
9 balcony door; is that right?

10 A Correct.

11 Q Okay. Were there firefighters as well that came  
12 in or that may have assisted?

13 A Typically -- typically, they both respond. And  
14 I'm not sure -- I don't remember who responded to the scene  
15 first, but usually firefighters and paramedics come both at  
16 the same time.

17 Q And usually, are firefighters also coming in  
18 through the front entrance the same way that paramedics would?

19 A Yes, ma'am.

20 Q Okay. With regard to -- let me show you State's  
21 Exhibit 27.

22 MS. BOTELHO: And I believe this is already admitted.  
23 May I inquire of your clerk, Your Honor?

24 THE CLERK: Twenty-seven, yes.

25 MS. BOTELHO: Okay. May I publish?

1 THE COURT: You may.

2 MS. BOTELHO: Thank you.

3 BY MS. BOTELHO:

4 Q In this particular photo, Detective, I'm sorry I  
5 called you Officer earlier.

6 A That's okay.

7 Q You see how there's a hairpiece here and there's  
8 also a knife there?

9 A Yes, ma'am.

10 Q Do you recall those items being there?

11 A Yes, ma'am.

12 Q As a patrol officer for I believe you said six  
13 years and now as a Detective, how -- what are -- are you  
14 allowed to touch items of evidence --

15 A We are not --

16 Q -- left at the scene?

17 A -- no, ma'am. We are not supposed to touch any  
18 items of -- of evidence unless it's an officer safety issue  
19 where we have to secure it. For example, a loose firearm that  
20 we can't put somebody next to stand by. If we have a body to  
21 stand next to the firearm, we'll -- we'll post an officer  
22 there rather than pick the firearm up. But we obviously can't  
23 just leave a firearm unattended.

24 Q Okay. Now in this particular instance you just  
25 told the jury that the defendant was taken out, you stayed

1 with Aneka and her mother, paramedics came, they took her out.  
2 Was the apartment then sealed awaiting a crime scene analyst?

3 A Yeah. We don't actually put a seal on it --

4 Q Uh-huh.

5 A -- but the door was closed and then I sat with  
6 my sergeant and Aneka's mother on the stairs, which you can't  
7 see in this, but the stairs that lead up to the neighbor's  
8 apartments. We sat right there until the crime scene analyst  
9 arrived.

10 Q So to the best of your knowledge and to -- to  
11 the degree that you can be certain, no one else entered the  
12 apartment after Aneka and her mother and paramedics and  
13 yourself left the apartment?

14 A That's correct.

15 Q Okay. And --

16 MS. BOTELHO: Court's indulgence. I have no further  
17 questions, Your Honor.

18 THE COURT: Cross-examination?

19 MR. HILLMAN: Few questions, Judge. Thank you.

20 CROSS-EXAMINATION

21 BY MR. HILLMAN:

22 Q Good morning.

23 A Good morning, sir.

24 Q I believe it was your testimony that you didn't  
25 remember the blue bag until you saw the photos later on; is

1 that correct?

2 A That is correct.

3 Q So you don't remember stepping over it when you  
4 ran into the apartment?

5 A That's correct.

6 Q And actually, when you came into the apartment  
7 there was a struggle over by that front door; is that correct?

8 A That is correct.

9 Q And it involved Mr. and Mrs. Grimes; is that  
10 correct?

11 A No, that's not correct, sir. By the time I  
12 entered the apartment the victim was already on the floor with  
13 her mother.

14 Q Okay.

15 A So, no, it was the officers and Mr. Grimes.

16 Q So if there was any struggle between Mr. and  
17 Mrs. Grimes, that had ended before you entered the apartment?

18 A Correct.

19 Q Okay. I'm sorry, I didn't mean to  
20 mischaracterize your testimony.

21 A That's okay.

22 Q Mr. and Mrs. Grimes were there, Mrs. Newman was  
23 there; is that correct?

24 A Yes, sir.

25 Q And the two officers were also in there; is that

1 correct?

2 A Yes, sir.

3 Q And they were all pretty much in that entry  
4 area?

5 A Yes, sir.

6 Q Now, when the paramedics arrived, was Aneka  
7 Grimes still in the apartment?

8 A Yes, sir.

9 Q And did the paramedics bring a gurney in, do you  
10 recall?

11 A I don't recall if they did, but I don't think  
12 they would have been able to get the gurney through the door.  
13 They typically, at apartment complexes, will leave the gurney  
14 outside the door.

15 Q Okay. And carry the patient out?

16 A Typically, yes, because the gurney is so bulky  
17 and -- and we were right next to that front door. She was  
18 laying across the door having to block it.

19 Q Okay. And they were probably in a hurry to get  
20 her treatment.

21 A Yes, sir.

22 Q And it's also your testimony that the knife was  
23 not touched; is that correct?

24 A That's correct, sir.

25 Q And none of the men touched the knife --

1           A     To my --

2           Q     -- the male officers?

3           A     -- to my recollection I do not recall an officer  
4 touching the knife.

5           Q     Okay. My last question is, if you remember, do  
6 you remember how long you waited for the crime scene analyst  
7 to show up?

8           A     I don't know how long it took, sir, I'm sorry.

9           Q     Okay.

10          MR. HILLMAN: Thank you, Judge. No further  
11 questions.

12          THE COURT: Any redirect?

13          MS. BOTEHO: No, Your Honor. Thank you very much.

14          THE COURT: Detective, thank you very much for your  
15 testimony and coming back today. You may step down, you are  
16 excused.

17          THE WITNESS: Thank you.

18          THE COURT: You can call your next witness.

19          MR. BURNS: Your Honor, the State calls Julie  
20 Marschner.

21                 JULIE MARSCHNER, STATE'S WITNESS, SWORN

22          THE CLERK: Please be seated and state your name and  
23 spell it for the record.

24          THE WITNESS: My name is Julie Marschner. First name  
25 J-u-l-i-e, last name M-a-r-s-c-h-n-e-r.

1 MR. BURNS: Your Honor, may I proceed?

2 THE COURT: You may.

3 DIRECT EXAMINATION

4 BY MR. BURNS:

5 Q Good afternoon, Ms. Marschner.

6 A Hi.

7 Q How are you currently employed?

8 A I'm a forensic scientist with the Las Vegas  
9 Metropolitan Police Department Forensic Laboratory and I'm  
10 assigned to the biology and DNA detail.

11 Q How long have you been doing that?

12 A Over seven years.

13 Q Okay. And have you always been in the  
14 biological DNA unit?

15 A Yes.

16 Q Okay. And what kind of formal training do you  
17 have regarding DNA analysis?

18 A I have a bachelor's degree in biological  
19 sciences from Cal Poly in San Luis Obispo, California. And a  
20 master's degree in forensic science from Virginia Commonwealth  
21 University in Richmond, Virginia.

22 During my graduate program, all of my laboratory  
23 training, including an internship, was done at the Virginia  
24 Department of Forensic Science, which is a state crime lab in  
25 Richmond, Virginia. After finishing graduate school I was

1 hired on with Metro's forensic lab where I underwent over six  
2 months of additional training where I observed other analysts'  
3 work cases, worked practice cases of my own before being  
4 signed off to work cases on my own.

5 Q And have you tested forensic evidence in a  
6 variety of different cases?

7 A Yes, I have.

8 Q Okay. And in a variety of different types of  
9 objects?

10 A Yes.

11 Q Okay. Now, are you familiar with -- have you  
12 testified in the Eighth Judicial District Court as a DNA  
13 expert before?

14 A Yes, I have.

15 Q Okay. About how many times have you done that?

16 A Over 40 times.

17 Q Can you give us a brief description of what DNA  
18 is and how it's tested?

19 A DNA, it's an acronym. It stands for  
20 deoxyribonucleic acid and it's the genetic material that's  
21 found in the cells of all living organisms. Now in humans,  
22 our DNA is organized into chromosomes and most of our cells  
23 have 46 chromosomes or 23 pairs, because we inherit half from  
24 our mom and half from our dad. And it's the unique  
25 combination of these two that make us different from one

1 another. Now between everyone in this room, over 99 percent  
2 of our DNA is the same because we all need the same basic  
3 genetic information to give us eyes to see, ears to hear, 10  
4 fingers, 10 toes. It's less than .1 percent that we look at in  
5 forensic DNA analysis to be able to tell two individuals from  
6 one another. And the only time we can't do that is when  
7 they're identical siblings because identical siblings have  
8 identical DNA.

9 Q Now is -- DNA is sometimes deposited in -- on  
10 surfaces?

11 A Yes.

12 Q Okay. And -- in -- in your work, your job is to  
13 analyze that, to take DNA that's been found somewhere and to  
14 analyze it?

15 A Yes. I examine evidence that's been collected  
16 from crime scenes and attempt to generate -- or attempt to  
17 locate areas that might have DNA. It could be something  
18 obvious, like a bloodstain or a knife -- on a knife or maybe a  
19 semen stain on a bed sheet. But it could also be where  
20 someone maybe just handled an item in their hand. And so I'm  
21 going to be looking for areas on the object that may have skin  
22 cells that transferred from the person's hand. And so I'm  
23 just going to take a swabbing of that area. And so then I can  
24 generate a DNA profile from that and compare it to a DNA  
25 profile from a known individual to see if they match up or

1 not.

2 Q Ms. Marschner, are some sources of DNA from the  
3 body better for analysis than others?

4 A Yes. Blood, semen, saliva, any type of body  
5 fluid is going to be a good source of DNA. It's when you're  
6 talking about touch DNA and you're just looking for a few  
7 cells that have come off of the person's hand is when  
8 sometimes you aren't going to be able to generate a DNA  
9 profile.

10 Q And what happens when DNA from blood and DNA  
11 from touch intermix?

12 A So when you have touch DNA mixed with a body  
13 fluid that is a good source of DNA, oftentimes you're only  
14 going to detect that body fluid DNA because there's going to  
15 be so much more of it when it's mixed in with the touch DNA  
16 that you aren't going to be able to detect the touch DNA.

17 Q And Ms. Marschner, can the surface of an object  
18 touched affect its -- its -- how it's constituted, texture and  
19 everything, can that affect whether or not DNA is deposited?

20 A Yes. The rougher a surface is the more likely  
21 there's going to be friction that's going to remove more cells  
22 from the skin. And so you're probably going to have more  
23 cells deposited on there than a smooth object that could  
24 easily be wiped off or maybe not create any friction with the  
25 skin.

1           Q     Ms. Marschner, within the LVMPD forensic  
2 laboratory, are there different -- you're in the biological  
3 DNA unit. There are other units that perform different types  
4 of analysis, correct?

5           A     Yes. There's latent prints, firearms,  
6 toxicology and controlled substances.

7           Q     And among the range of different analytical  
8 techniques, is DNA one of the more precise?

9           A     We -- we're able to apply statistics to ours  
10 whereas other details maybe are only doing a visual  
11 comparison.

12          Q     Okay. And a visual comparison, what are some of  
13 those disciplines?

14          A     That would be latent prints and firearms.

15          Q     Now, I want to draw your attention to a specific  
16 case, Ms. Marschner. Were you asked to conduct a DNA analysis  
17 in the case of State of Nevada versus Bennett Grimes?

18          A     Yes.

19          Q     And do you recall who requested you to conduct  
20 that analysis?

21          A     I received a request from Detective Brewer.

22          Q     Okay. And did you -- after you got that  
23 request, did you receive some packages of evidence?

24          A     Yes. Based on the items that are requested on  
25 the request, I call up those items of evidence from our

1 evidence vault and then they're transferred over to the  
2 forensic lab for me to examine.

3 Q And when you get -- and how many packages did  
4 you receive in this case?

5 A There was a total of eight packages.

6 Q And on each package are they sealed?

7 A Yes, with evidence tape.

8 Q And is there a person's -- is -- is there some  
9 way of identifying the person who sealed it?

10 A Yes. Whenever you seal a package or -- or you  
11 make a package, you have to sign with your signature, initials  
12 and your personnel number.

13 Q And did you -- I'm going to ask you about  
14 something, this concept, what is a buccal swab?

15 A A buccal swab is what we use as a known source  
16 of DNA from someone. It's just like a cotton tip swab that  
17 the officer is going to swab on the inside of someone's cheek  
18 and it's just a less invasive way of getting a known DNA  
19 sample then having to do a blood draw.

20 Q Ms. Marschner, why -- why do they do the buccal  
21 swab?

22 A It's just so that we can get a reference DNA  
23 profile from a known individual to be -- be able to compare  
24 that DNA profile to items of evidence.

25 Q And in this case did you receive any buccal

1 swabs?

2 A Yes. I had buccal swabs from Bennett Grimes and  
3 Aneka Grimes.

4 Q And when you get those buccal swabs, do you do  
5 what's called develop a -- do you develop a profile for them?

6 A Yes.

7 Q Okay. And what's -- just in general terms,  
8 what's a profile?

9 A So a DNA profile, it's 15 basically pairs of  
10 numbers and it's a pair of numbers because half of them are  
11 inherited from the mother and half are inherited from the  
12 father. And there's 15 because we're looking at 15 different  
13 locations in that part of the DNA where we're able to  
14 distinguish one person from another.

15 Q And in this case, did you -- after you developed  
16 the profiles from the buccal swabs, did you develop profiles  
17 from the evidence in these, the remaining six packages?

18 A Yes.

19 Q Okay. And I'll ask you about those  
20 specifically. But as part of your analysis, are you able to  
21 determine whether or not blood is present?

22 A Yes. We can do a chemical testing to determine  
23 if blood is present on an item.

24 Q Okay. Now, did you have a -- did you receive a  
25 package that was sealed -- that was impounded under number

1 5223-2?

2 A Yes.

3 Q And what was in that -- and did you put your own  
4 label on that package?

5 A Yes. So whenever I receive a package, I  
6 designate it with my initials and then the number -- a number  
7 and that number is the number in order of the packages that I  
8 look at. So this was the first package that I looked at, so I  
9 called it JM-1. JM being my initials and one being the first  
10 package that I looked at for this case.

11 MR. BURNS: Your Honor, may I approach the witness?

12 THE COURT: You may.

13 BY MR. BURNS:

14 Q Ms. Marschner, I'm going to show you what's been  
15 admitted as State's Exhibit 77.

16 A Okay.

17 Q Do you recognize -- if you want to look through  
18 that and tell me if you recognize what it is?

19 A Yes. These are pictures of a pair of shoes and  
20 a pair of socks that were in that first package I looked at.

21 Q And the other pages?

22 A These are other items that I looked at for this  
23 case.

24 Q Okay. And is that -- I see that there's some  
25 writing and numbers, some labeling and some arrows --

1           A     Yes.

2           Q     -- were you responsible for making that?

3           A     Yes.  These are copies of pictures or pages that  
4 I have in my case file to document the items that I looked at  
5 and I provided them to you.

6           Q     Okay.  Thank you.

7           MR. BURNS:  Your Honor, permission to publish State's  
8 77?

9           THE COURT:  You may.

10          BY MR. BURNS:

11           Q     Now, Ms. Marschner, let's talk about that first  
12 package.  The item JM1-A, which one is that?

13           A     That's the pair of shoes that are pictured in  
14 the top picture.

15           Q     Okay.  And when you -- when you have something  
16 you search for blood first?

17           A     Yes.

18           Q     And do you do that because it's a rich source of  
19 DNA?

20           A     Yes.

21           Q     And when you see some blood, what do you do with  
22 it?

23           A     So first, I'm going to test the stain for the  
24 possible presence of blood doing a chemical test.  And then if  
25 that's positive, then I'll swab the stain and take that swab

1 on for further DNA analysis.

2 Q Ms. Marschner, on JM1-A, this pair of shoes,  
3 they appear to be tennis shoes. Did you locate some blood on  
4 there?

5 A Yes. I located a stain that was on the back  
6 right heel of one of the shoes.

7 Q And this green arrow, does that point directly  
8 to where you located the stain?

9 A Yes.

10 Q Okay. So you swabbed that -- did you develop a  
11 DNA profile from that blood there?

12 A Yes, I did.

13 Q And what was -- what was your result?

14 A The DNA profile was consistent with the DNA  
15 profile of Bennett Grimes.

16 Q So let me just write -- and to what degree of  
17 certainty were you certain that that was his -- his DNA?

18 A For this particular sample -- so when I'm making  
19 a comparison between a known DNA profile on a known piece of  
20 evidence, I can sometimes calculate a statistic as to how  
21 strong that match is. Now, for items where I detected the own  
22 person's blood on their own item of clothing, I didn't  
23 calculate a statistic, so I didn't do that for this particular  
24 sample.

25 Q Okay. So let's go to what's been marked on your

1 report as JM1-B. Now, did you -- did you locate some blood on  
2 that object?

3 A Yes. I located a stain on the front shin area  
4 of one of the tubes of the athletic socks.

5 Q And then you did a comparative analysis to the  
6 buccal swabs?

7 A Yes.

8 Q And what was your result?

9 A The DNA profile again was consistent with  
10 Bennett Grimes.

11 Q So this blood on the sock consistent with  
12 Bennett Grimes?

13 A Yes.

14 Q Did you also receive a laboratory package  
15 labeled -- an impound package labeled 5223-3?

16 A Yes.

17 Q And what was in that package?

18 A This was a kitchen knife that had a black  
19 handle.

20 Q Did you locate some blood on the knife?

21 A Yes. In the bottom picture you can see an arrow  
22 pointing to -- close to the tip of the blade on the left side  
23 of the knife that I identified a bloodstain.

24 Q Did you leave some marks there --

25 A Yes, I --

1 Q -- with a pen?

2 A -- I circled the stain on the knife and then  
3 after I got a positive test for blood I swabbed that stain.

4 Q Okay. You swabbed that stain. With the  
5 exception of that area, that stain that you swabbed, did you  
6 swab any other areas of the blade?

7 A Not on the blade, no.

8 Q Okay. So you didn't apply any kind of -- any  
9 kind of physical force or substance to the rest of the blade?

10 A No, only the area that's circled there.

11 Q Okay. Just this small bloodstain?

12 A Yes.

13 Q Okay. And did you develop a DNA profile from  
14 that blood?

15 A Yes, I did.

16 Q And what was your result?

17 A The DNA profile was consistent with Aneka Grimes  
18 and I did calculate a statistic for this matching of the stain  
19 and Aneka Grimes. The estimated frequency of that DNA profile  
20 on the blade of the knife is rarer than one in 700 and  
21 billion. And the number is actually much larger than that,  
22 but at our laboratory we cut it off at that number. And the  
23 way we came up with that number is that the world's population  
24 is approximately seven billion, so we took 100 times the  
25 world's population. So I'm saying that I would only expect to

1 see that DNA profile from one -- one person in hundred times  
2 the world's population, assuming that they don't have an  
3 identical sibling.

4 Q Okay. So I can safely write the initials Aneka  
5 Grimes here?

6 A Yes.

7 Q Now, you -- did you -- did you end up swabbing  
8 any other area of this knife?

9 A Yes. I also swabbed the handle of the knife.

10 Q And were you able to develop a profile -- well,  
11 first of all, let me ask you. Did you locate any blood on the  
12 knife?

13 A There was staining on the handle of the knife.  
14 And so when I swabbed the handle where I'm trying to figure  
15 out who may have been holding the knife, I was trying to avoid  
16 those obvious stains. However, after swabbing the handle, I  
17 tested the swab itself and it was positive for blood. So even  
18 though I tried to avoid blood, obviously, I picked up some on  
19 that swab. So the DNA profile that I got was a mixture and  
20 the major DNA profile was consistent with Aneka Grimes. And I  
21 calculated a statistic again, the estimated frequency of that  
22 major DNA profile, again, is rarer than one in 700 billion.

23 Q And when you say a mixture, what else does that  
24 mean?

25 A It means that there's DNA from more than one

1 individual. So on something like a bloodstain where you're  
2 only getting DNA from one person, you're only going to see a  
3 -- a pair of numbers at the 15 different locations. When you  
4 have a mixture you're going to see more than two numbers  
5 because there's more numbers being attributed by additional  
6 contributors. So in that mixture I can tell that most of the  
7 DNA is from Aneka Grimes, but there's also minor contributors  
8 present in that sample.

9 Q But as to those minor contributors, were you  
10 able to exclude the defendant as being one of the minor  
11 contributors?

12 A Yes, I was.

13 Q Okay. So you know that that's not -- he's not  
14 one of the contributors to that mix?

15 A He was excluded, yes.

16 Q Now, is it based on your training and  
17 experience, is it possible to touch something and leave no  
18 DNA?

19 A You could leave DNA, but it might not be enough  
20 for us to be able to detect it with the type of analysis that  
21 we do in the laboratory.

22 Q Ms. Marschner, did you receive a package, an  
23 impound package labeled 5223-4?

24 A Yes.

25 Q And what was in that package?

1           A     These were swabs of blood that were collected  
2 from in and around the residence.

3           Q     How many swabs were in there?

4           A     Four.

5           Q     And did you give them each their individual  
6 designation?

7           A     Yes.

8           Q     Okay. And do you go A, B, C, D?

9           A     Yes.

10          Q     Okay. And as to the A swab, what did you --  
11 what did you determine?

12          A     So this is a swab that was collected outside the  
13 front door on the concrete. I identified blood on this swab  
14 and the DNA profile was consistent with Aneka Grimes. And  
15 again, the estimated frequency of that DNA profile is rarer  
16 than one in 700 billion.

17          Q     And the swabs aren't part of your photographic  
18 part of your report --

19          A     No, no, I don't --

20          Q     -- correct?

21          A     -- photograph swabs.

22          Q     Okay. Thank you. Now, as to the B swab, can  
23 you describe where that was from and what your result was?

24          A     So this was labeled as being from the living  
25 room carpet from a drip pattern that was on it. I identified

1 blood on the swab and then the DNA profile again was  
2 consistent with Aneka Grimes and the estimated frequency of  
3 the profile is rarer than one in 700 billion.

4 Q And as to the C swab?

5 A This was a swab that was collected from the  
6 entry tile floor. Again, I identified blood and again it was  
7 consistent with Aneka Grimes and an estimated frequency was  
8 rarer than one in 700 billion.

9 Q Okay. And the D swab?

10 A This was a swab that was collected on the  
11 asphalt near the shoes and the socks. I identified blood on  
12 this swab and this DNA profile was consistent with Bennett  
13 Grimes and the estimated frequency of this profile was rarer  
14 than one in 700 billion.

15 Q Ms. Marschner, did you receive an impound  
16 package labeled 9975-1?

17 A Yes, I did.

18 Q And did -- what did that contain?

19 A This was a pair of tan cargo pants and then also  
20 a white tank top.

21 Q Putting what's been admitted as State's Exhibit  
22 77 back on the overhead, do you recognize what's depicted?

23 A Yeah. So the upper part of this picture shows  
24 the pair of tan cargo pants that I examined.

25 Q And I see two arrows. Are those different areas

1 that you tested?

2 A Yes.

3 Q Okay. And did you swab those areas?

4 A Yes, I did.

5 Q Okay. And did you -- as before, did you give  
6 them their individual designations?

7 A Yes. I called the one on the lower front bottom  
8 part of the leg JM-4A1. And then the one that's on the upper  
9 left thigh next to the pocket is JM-4A2.

10 Q Ms. Marschner, as to JM-4A1, the stain to the  
11 lower part of the left pant leg, what were your findings?

12 A So I tested it for blood and it was positive.  
13 And then the DNA profile I got was a partial DNA profile,  
14 meaning that I didn't have complete results at all 15  
15 locations that I tested at but still it -- being able to  
16 compare it, it was consistent with Bennett Grimes.

17 Q And as to JM-4A2, the stain to the upper thigh  
18 area of the left cargo pant leg?

19 A So I tested this for blood. Again, it was  
20 positive. This DNA profile was consistent with Aneka Grimes  
21 and an estimated frequency of this DNA profile was rarer than  
22 one in 700 billion.

23 Q So as to JM-4A1 I can write on this consistent  
24 with Bennett Grimes?

25 A Yes.

1 Q And as to JM-4A2 I can write A -- Aneka Grimes?

2 A Yes.

3 Q Now, let's talk about the white tank top. Did  
4 you -- just describe your findings there.

5 A So I tested a stain that was on the lower back  
6 area. It tested positive for blood and this DNA profile was  
7 consistent with Bennett Grimes.

8 Q Now --

9 MR. HILLMAN: Did we want to mark that spot since  
10 we've marked everything else?

11 MR. BURNS: I'm sorry. Did I -- didn't I mark that?

12 MR. HILLMAN: I don't believe so.

13 MR. BURNS: On the tank top I believe I marked it.

14 MR. HILLMAN: Oh, I'm sorry, I didn't see that. I  
15 apologize, Mr. Burns.

16 MR. BURNS: No problem.

17 THE COURT: It's okay.

18 BY MR. BURNS:

19 Q Now, Ms. Marschner, did you receive an impound  
20 package labeled 9975-2?

21 A Yes.

22 Q And what was in that package?

23 A These were swabs that were collected from hands  
24 and one of the feet of Bennett Grimes.

25 Q And again, did you designate them with

1 alphabetical --

2 A Yes, A, B, C.

3 Q And as to the A swab, what were your findings?

4 A This was a -- a pair of swabs that was collected  
5 from the right hand of Bennett Grimes. I tested it for blood  
6 and it was positive. And the DNA profile was consistent with  
7 Bennett Grimes and there was indication of additional DNA  
8 there, but I couldn't make any conclusions as to who it  
9 belonged to.

10 Q So you couldn't conclude whether or not Aneka  
11 Grimes --

12 A No.

13 Q Now, as to the B swab, what were your findings?

14 A These were swabs that were collected from the  
15 left hand of Bennett Grimes. Again, same as the right, they  
16 tested positive for blood and the DNA profile was consistent  
17 with Bennett Grimes. There was indication of additional DNA,  
18 but I couldn't determine who it belonged to.

19 Q And as to the C swab?

20 A These were swabs that were collected from the  
21 left foot of Bennett Grimes. Tested it for blood and it was  
22 positive and the DNA profile was consistent with Bennett  
23 Grimes.

24 Q Did you also receive an impound package labeled  
25 9975-3?

1           A     Yes.

2           Q     And how many items were in that package?

3           A     There was a sleeveless jumper, a pair of  
4 underwear and then there was also a plastic bag and a paper  
5 receipt.

6           Q     Ms. Marschner, did you conduct an analysis on  
7 every piece of -- every item in that package?

8           A     No, I only tested the sleeveless jumper.

9           Q     And on the jumper did you test multiple areas?

10          A     I tested two different stains.

11          Q     Okay. And were you able to determine the nature  
12 of those stains?

13          A     Yes. For both stains -- the first one being on  
14 the front right shoulder strap and then the second one was on  
15 the front center chest area. Both of these stains tested  
16 positive for blood and then the DNA profiles were both  
17 consistent with Aneka Grimes.

18          Q     Ms. Marschner, during your analysis, did you  
19 follow all of the forensic laboratory's protocols and controls  
20 for a laboratory practice?

21          A     Yes, I did.

22          Q     And what's the reason that you follow those  
23 protocols and controls?

24          A     We have SOPs in place. It's a standard set  
25 forth by the FBI that we have to have procedures that we abide

1 by and they follow guidelines that are set forth by the FBI  
2 and other agencies that oversee forensic laboratories just to  
3 maintain a quality program so that our results are reliable.

4 Q And your work, is it reviewed by somebody other  
5 than yourself?

6 A Yes. After I complete all of my analysis and  
7 write up a report, it's reviewed by two different people in my  
8 laboratory. The first one is a technical review and this is  
9 done by another qualified DNA analyst. They're going to look  
10 at all of my notes in my report, make sure that I followed all  
11 of those procedures and they're also going to look at any  
12 electronic data that I generated during my analysis. After  
13 they've completed their review, then an administrative review  
14 is done. This is done by another member of the DNA laboratory  
15 and they're going to focus more on my report just to make sure  
16 that everything that I did within my case file is reflected in  
17 the report.

18 Q Ms. Marschner, is it required for those two  
19 reviewers to agree on the results of your report --

20 A Yes.

21 Q -- in order for you to issue that report?

22 A Yes.

23 Q Okay. They have to be agreed on every result,  
24 correct?

25 A Yes.

1           Q     Okay. During the process of swabbing the knife  
2 in this case, do you recall ever running over or obliterating  
3 or somehow messing up any fingerprints?

4           A     So on the blade, I only swabbed that small area  
5 on the blade. And then the handle appeared to be textured  
6 enough that it didn't seem to me like it would be suitable for  
7 processing latent prints. And so that's why I swabbed the  
8 entire handle except trying to avoid those bloodstains.

9           Q     And is it sometimes possible -- that's fine.

10          MR. BURNS: Your Honor, I'll pass the witness.

11          THE COURT: Any cross-examination?

12                   CROSS-EXAMINATION

13 BY MS. HOJJAT:

14          Q     Good morning, Ms. Marschner.

15          A     Hi.

16          Q     How are you doing?

17          A     Good.

18          Q     Am I pronouncing your last name right? Is that  
19 Marschner?

20          A     Yes.

21          Q     Okay, great, thanks. Just correct me if I'm  
22 saying it wrong. Now, obviously, you did a lot of analysis in  
23 this case. There were many different packages that were sent  
24 to you --

25          A     Yes.

1           Q     -- and you were testing a lot of stuff.  So I  
2 just kind of want to clarify with you a couple of things.

3           MS. HOJJAT:  Permission to publish State's Exhibit  
4 77, Your Honor?

5           THE COURT:  You may.

6           MS. HOJJAT:  Thank you.

7 BY MS. HOJJAT:

8           Q     Showing you JM-4B1.  That is Bennett Grimes  
9 shirt.

10          A     Yes, I believe so.

11          Q     And that is a bloodstain on that shirt.

12          A     Yes.

13          Q     And that bloodstain, your testing found that  
14 that was Bennett Grimes' blood.

15          A     Yes.

16          Q     Showing you the part of the exhibit that's  
17 labeled JM-4A1.  That's also a bloodstain.

18          A     Yes, it is.

19          Q     And that bloodstain was consistent with Bennett  
20 Grimes' blood.

21          A     Yes, it was.

22          Q     It was not consistent with Aneka Grimes' blood.

23          A     No, not that particular stain.

24          Q     Showing you what's been labeled JM-1A1.  They're  
25 the back of some shoes, correct?

1           A     Yes.

2           Q     You found blood on the back of those shoes.

3           A     Yes.

4           Q     And that blood was Bennett Grimes' blood.

5           A     Yes, it was.

6           Q     Showing you what's been labeled JM-1B1.

7           A     Okay.

8           Q     That is a sock.

9           A     Yes.

10          Q     You found blood on that sock.

11          A     Yes.

12          Q     And that blood is Bennett Grimes' blood.

13          A     Yes.

14          Q     Now I want to talk to you a little bit about

15 what you described as touch DNA and fluid DNA.

16          A     Okay.

17          Q     So touch DNA is if I touch that spot, my DNA

18 could be left there.

19          A     It could be, but I wouldn't necessarily be able

20 to detect it.

21          Q     Okay. And you said that there are different

22 elements that go into whether you would be able -- whether I

23 left enough DNA there for you to detect it, correct?

24          A     Correct.

25          Q     These things include the texture of the object.

1           A     Yes.

2           Q     The rougher the object the more likely my DNA  
3 got left there.

4           A     Yes.

5           Q     They include the friction that I had with this  
6 object --

7           A     Yes.

8           Q     -- correct? So if I'm running my hand back and  
9 forth on this object, it's more likely that my DNA's going to  
10 be left here --

11          A     Yes.

12          Q     -- correct? Now, the DA asked you about the  
13 texture of the knife handle that you took a look at.

14          A     Uh-huh, yes.

15          Q     You said that knife handle had a rougher  
16 texture.

17          A     It was textured enough that I didn't think that  
18 they would be able to get latent prints from it, but I  
19 wouldn't say it was necessarily really rough.

20          Q     Okay. But it was a textured knife.

21          A     Yes.

22          Q     You wouldn't describe it as smooth as the knife  
23 blade.

24          A     No.

25          Q     Okay. And you said that you did a swabbing of

1 that knife handle.

2 A Yes.

3 Q You tried to avoid the apparent blood on the  
4 knife handle.

5 A Yes.

6 Q You were trying to pick up skin cells.

7 A Yes.

8 Q You were trying to determine who had held this  
9 knife.

10 A Yes.

11 Q You did not find any of Bennett Grimes' skin  
12 cells on that knife handle.

13 A He was excluded as a contributor to the mixture  
14 that I obtained from my swabbing of that handle.

15 Q Okay. So the answer to my question is, yes, you  
16 did not find any of Bennett Grimes' skin cells, you did not  
17 find any on that handle.

18 A None that I could make a conclusion about, no.

19 Q Okay. You actually found a mixture of DNA on  
20 that knife handle, didn't you?

21 A Yes.

22 Q So it wasn't just Aneka Grimes' DNA.

23 A No.

24 Q There was another male's DNA on that knife  
25 handle.

1           A     Yes.

2           Q     So you were talking about touch DNA and fluid  
3 DNA and how fluid DNA can possibly overshadow touch DNA.

4           A     Yes.

5           Q     But you found two DNAs on this knife handle.

6           A     Yeah. I can't say what kind of DNA is from that  
7 other individual.

8           Q     Okay. You didn't find anybody else's blood  
9 anywhere else on this knife, did you?

10          A     I only found Aneka Grimes on the blade of the  
11 knife.

12          Q     Okay. And the second DNA that you found on that  
13 knife handle was male.

14          A     Yes.

15          Q     I'm just curious, were you sent buccal swabs  
16 from any of the officers in this case?

17          A     No, I wasn't.

18          Q     So you weren't able to compare the DNA of the  
19 minor contributor to that knife handle with any of the  
20 officers' DNA?

21          A     No.

22          MS. HOJJAT: I'll pass the witness, Your Honor.

23          THE COURT: Any redirect?

24          MR. BURNS: Briefly, Your Honor.

25                   REDIRECT EXAMINATION

1 BY MR. BURNS:

2 Q I want to clarify something real quick. On the  
3 -- so I don't -- I don't know if the correct exhibit was being  
4 shown to you, but we did establish during direct that this was  
5 Bennett Grimes' blood on the back of that shoe --

6 A Yes.

7 Q -- correct?

8 A Yes.

9 Q Okay. And -- and as to -- as to the knife  
10 handle, did -- did you find Aneka Grimes' DNA there?

11 A Yeah. She was the major contributor to the DNA  
12 mixture I got from the handle.

13 Q Okay. And is it your testimony that touch DNA  
14 can be overwhelmed by blood?

15 A Yes.

16 Q Okay. And there was -- safe to say there was a  
17 lot of blood on that knife?

18 A On the handle there was, yes. And then the  
19 stains on the blade.

20 MR. BURNS: Nothing further, Your Honor.

21 THE COURT: Any recross?

22 MS. HOJJAT: Briefly, Your Honor.

23 RECROSS-EXAMINATION

24 BY MS. HOJJAT:

25 Q Ms. Marschner, how much DNA material actually

1 needs to be on an object for you to be able to detect it?

2 A I mean, it's kind of hard to describe. It  
3 doesn't have to be a lot because we can get touch DNA when  
4 someone has had limited contact with an item. And then we can  
5 also get DNA profiles from very small drops of blood.

6 Q Okay. Very small amounts of DNA you can pick  
7 up, correct?

8 A Yes.

9 Q Okay. So there doesn't need to be a whole lot  
10 of DNA on an object for you to be able to pick it up?

11 A No.

12 Q Okay. And going back to touch DNA versus fluid  
13 DNA -- well, let's do this. Going back to touch DNA versus  
14 fluid DNA, you just know that you picked up Aneka Grimes' DNA  
15 on that knife handle.

16 A Yes.

17 Q You don't know whether it was a mixture of touch  
18 DNA and fluid DNA.

19 A I know that there is at least blood DNA on there  
20 because I had positive tests for blood.

21 Q Okay. But you can't say that her touch DNA  
22 wasn't also on there.

23 A No, I can't.

24 Q Okay. But you can say that somebody else's DNA  
25 was on there.

1 A Yes.

2 Q Another male's DNA.

3 A Yes.

4 Q Another male who is not Bennett Grimes.

5 A Correct.

6 Q And you also cannot tell this jury that based on  
7 your DNA findings, Bennett Grimes ever touched this knife.

8 A I can only say that his DNA isn't in the mixture  
9 I obtained. Whether he touched it long before then --

10 Q Okay.

11 A -- and it's being overwhelmed by the blood  
12 that's there, I can't determine.

13 Q Okay. But based on your findings, you cannot  
14 say that he ever touched that knife. That's not a statement  
15 you can make.

16 A I'm saying that I didn't detect his DNA. So  
17 whether he ever touched it and I'm not detecting it --

18 Q Okay.

19 A -- I can't say that.

20 Q Well, if I were to touch this surface here and  
21 you were to detect my DNA there and there weren't blood  
22 fluids, then you could say that you had found my touch DNA on  
23 this surface, correct?

24 A Yes.

25 Q But you did not find any touch DNA from Bennett

1 Grimes on that knife.

2 A Correct.

3 Q So you cannot say that Bennett Grimes touched  
4 that knife handle.

5 THE COURT: She's answered that like four times now.

6 BY MS. HOJJAT:

7 Q Okay. And then just one final question. You  
8 said that you took swabs from the knife?

9 A The knife handle and then the stain that was on  
10 the blade.

11 Q Okay. Can you describe the swabbing process for  
12 the jury?

13 A So I'm just going to moisten the tip of a cotton  
14 tip swab and then for the stain I'm just going to focus on  
15 that particular -- particular stain. For the handle I'm going  
16 to swab the surface of the handle, but I'm going to try to  
17 avoid the areas that look like they have obvious blood on  
18 them.

19 Q But other than the areas that have obvious blood  
20 on them, you did try to swab the entire handle of the knife.

21 A Yes.

22 Q Actually, I'll leave it at that.

23 MS. HOJJAT: I'll pass the witness, Your Honor.

24 THE COURT: Anything else from this witness?

25 MR. BURNS: One question, Your Honor.

1 THE COURT: Okay.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. BURNS:

4 Q Ms. Marschner, based on your training as a  
5 scientist, what's a more conclusive way of determining if  
6 someone actually held an object, testing that object later to  
7 see if there's DNA on it or actually observing them holding  
8 that object?

9 A I mean, as far as the testing goes, it's going  
10 to depend on the history of the item. How many people held it  
11 before, how many people held it after, what other body fluids  
12 that could be on there. I can't say anything about eyewitness  
13 testimony.

14 Q Okay, thank you.

15 MS. HOJJAT: No further questions, Your Honor.

16 THE COURT: Thank you very much. Okay, we have one  
17 question if you'll just hang on for just one moment. Jury  
18 question will be marked as Court's Exhibit next in line,  
19 Number 5.

20 (Bench conference transcribed as follows.)

21 THE COURT: She can't even answer this. There's no  
22 foundation, she wasn't at the scene.

23 MR. BURNS: [indiscernible] foundation  
24 [indiscernible] already answered that question.

25 THE COURT: [indiscernible] want every single thing

1 answered [indiscernible]. We all agree we're not going to ask  
2 it, right?

3 MR. BURNS: Right, not ask it.

4 THE COURT: Any objection?

5 MR. BURNS: Well, she's an expert on the way that DNA  
6 is deposited on surfaces. If someone's hand was held to that  
7 white tee shirt by a handcuff when the hand is bleeding, would  
8 that be a situation where DNA would be deposited.

9 THE COURT: Do we agree that that is nothing -- maybe  
10 that's what the juror's thinking [indiscernible]

11 MR. BURNS: Let's not mention the handcuff. Just say  
12 if someone's hand was bleeding [indiscernible]

13 THE COURT: [indiscernible]

14 (End of bench conference.)

15 THE COURT: At this time the Court is not going to  
16 ask that question. Is there anything else? Okay. At this  
17 time we are going to -- thank you very much. Thank you.

18 MS. BOTELHO: Your Honor, can we approach very  
19 quickly on the scheduling?

20 THE COURT: We're going to take a recess.

21 MS. BOTELHO: Okay.

22 (Bench conference transcribed as follows.)

23 THE COURT: Who's your witness?

24 MS. BOTELHO: The EMT. [indiscernible]

25 THE COURT: You guys tell me five minutes and then

1 the witness is on the stand for five hours.

2 MS. HOJJAT: Yeah, that's the thing. I was going to  
3 say we don't have cross, but I don't know what she's going to  
4 say so we might have a cross.

5 MR. HILLMAN: You're the boss.

6 THE COURT: I will be happy to go and take a bathroom  
7 break and come back. What do you want to do?

8 MS. HOJJAT: We have no preference, Your Honor.  
9 Whatever the Court --

10 MR. HILLMAN: I think if we have any cross it won't  
11 be very long.

12 THE COURT: Okay. We're going to have to take a  
13 break. Okay?

14 (End of bench conference.)

15 THE COURT: All right. At this time we're going to  
16 take a short recess. During this recess you're admonished not  
17 to talk or converse amongst yourselves or with anyone else on  
18 any subject connected with this trial, read, watch, or listen  
19 to any report of or commentary on the trial or any person  
20 connected to this trial by any medium of information  
21 including, without limitation, newspapers, television, the  
22 Internet or radio or form or express any opinion on any  
23 subject connected with this trial until the case is finally  
24 submitted to you.

25 We'll start again in about ten minutes. We have one

1 more witness from the State. Thank you. I'm sorry, I was  
2 talking too fast, ten minutes. Clearly, I want to get out of  
3 here. Ten minutes. Thank you.

4 (Court recessed at 12:00 p.m. until 12:11 p.m.)

5 THE COURT: Do the parties stipulate to the presence  
6 of the jury panel?

7 MR. HILLMAN: Yes, Your Honor.

8 MR. BURNS: Yes, Your Honor.

9 THE COURT: Okay. State can call their next witness.

10 MS. BOTELHO: The State calls Melanie Robison.

11 MELANIE ROBISON, STATE'S WITNESS, SWORN

12 THE CLERK: Please be seated and state your name and  
13 spell it for the record.

14 THE WITNESS: My name is Melanie Robison,  
15 M-e-l-a-n-i-e, R-o-b-i-s-o-n.

16 MS. BOTELHO: May I?

17 THE COURT: You may.

18 MS. BOTELHO: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. BOTELHO:

21 Q Hello, Ms. Robison.

22 A Hi.

23 Q How are you employed, ma'am?

24 A I am a paramedic with the American Medical  
25 Response and I'm an EMS instructor.

1           Q     Okay. And how long have you worked for American  
2 Medical Response?

3           A     I've been there for 16 years.

4           Q     And what do you do there?

5           A     I run 9-1-1 calls, interfacility transports and  
6 then I also work as a preceptor. So I train incoming  
7 employees and as an instructor, I teach, I've taught over at  
8 the college and I teach in the paramedic program over at NCTI  
9 and various continuing education classes.

10          Q     Okay. But initially, you said you're a  
11 paramedic; is that right?

12          A     Yes.

13          Q     So you're kind of medical personnel that travels  
14 to emergency scenes or --

15          A     Yes.

16          Q     -- to at least transport certain individuals to  
17 the hospital; is that right?

18          A     Yes.

19          Q     Okay. Were you working in that capacity on July  
20 22nd, 2011?

21          A     I was.

22          Q     Okay. Don't pull out any reports yet.

23          A     Okay.

24          Q     If you forget, just let me know if you don't  
25 know and you can look at your reports or anything else that

1 may refresh your memory. Okay?

2 A Okay.

3 Q So July 22nd, 2011. Do you recall at  
4 approximately 7:20 p.m. being dispatched to an area 9325 West  
5 Desert Inn Road?

6 A I'm going to be honest. I don't remember the  
7 call, but I pulled the chart and yes, I wrote a chart and I  
8 did respond there. So yes.

9 Q Let's talk about this chart. Obviously, as a  
10 paramedic you respond to numerous or several locations and  
11 scenes per day.

12 A Yes.

13 Q On any given day.

14 A Yes.

15 Q Okay. For that very reason, when you respond to  
16 a scene and when you treat an individual, is there a certain  
17 type of recording system that can be pulled up later in cases  
18 like this or any other case for that matter?

19 A Absolutely. We write charts on patients that we  
20 transport and our nontransports, calls that we get cancelled  
21 off of. So we do charting on both.

22 Q Okay. And when are these charts composed or put  
23 together?

24 A We can start them during a transport if we have  
25 time and then we complete them at the hospital, all depends.

1 Q Okay.

2 A But they're completed within, usually within 30  
3 minutes of dropping a patient off.

4 Q Okay. And who completes these charts?

5 A The primary patient caregiver.

6 Q Okay. In this particular case, you indicated  
7 that you pulled records; is that correct?

8 A Yes.

9 Q Is that after you were contacted by the Clark  
10 County District Attorney's Office?

11 A Yes. After I received the subpoena, I went over  
12 to our clinical manager and I had him pull up the chart and he  
13 printed it off for me.

14 Q Okay. And upon looking at this report, does  
15 that refresh your memory, at least to responding to the scene,  
16 when and where and details like that?

17 A Yeah, vaguely, yeah. I'm going off of my chart  
18 here because -- and again, I'm being honest here. I run so  
19 many calls that they don't always come back very, very  
20 clearly.

21 Q Okay.

22 A But I have the document and it does -- yeah.

23 Q Okay. So you were dispatched to 9325 West  
24 Desert Inn Road --

25 A Uh-huh.

1 Q -- at approximately --

2 THE COURT: Is that a yes?

3 A Yes.

4 MS. BOTELHO: Thank you, Your Honor.

5 BY MS. BOTELHO:

6 Q And do you recall arriving on scene at 7:27  
7 p.m.?

8 A Can I refer to my chart?

9 THE COURT: Do you have any personal knowledge of  
10 this incident at all?

11 THE WITNESS: You know, I've been racking my brain  
12 since I got the subpoena and maybe some vague recollections.  
13 But mostly, I'm going off of my charting.

14 MS. BOTELHO: A chart that was put together by her,  
15 Your Honor, at the time of the incident. And I can go --

16 THE COURT: I understand. But did you call her here  
17 to read her chart?

18 MS. BOTELHO: No, Your Honor. She can certainly -- I  
19 would ask the Court to allow her to refresh her memory of that  
20 incident using her chart.

21 THE COURT: On every question?

22 MS. BOTELHO: What's that, Your Honor?

23 THE COURT: On every question?

24 MS. BOTELHO: We're almost getting to the --

25 THE COURT: Okay.

1 MS. BOTELHO: -- meat of it, Your Honor.

2 THE COURT: Do you have your report with you?

3 THE WITNESS: I do.

4 THE COURT: Would that help refresh your  
5 recollection?

6 THE WITNESS: Yeah. I never memorize times, so I  
7 have to look at my chart. When you're referring to what time  
8 I arrived and what time I transported and everything, that's  
9 something I would have to refer to.

10 THE COURT: Okay.

11 BY MS. BOTELHO:

12 Q What time did you arrive on scene? Can you  
13 please --

14 MR. HILLMAN: Judge, before you get there, may I look  
15 at her chart to see if it's the same thing I have been  
16 provided with?

17 THE COURT: Sure can. Both sides can look at her  
18 chart. You've seen her chart, I assume?

19 MS. BOTELHO: I have.

20 THE WITNESS: I might have the extra pages with the  
21 times on it.

22 MR. HILLMAN: This is a little different than what --

23 THE WITNESS: Yeah. The first two pages are just  
24 dispatching times.

25 MR. HILLMAN: The first two pages are different, but

1 they're just -- no objection.

2 THE COURT: You can go ahead and look at your chart  
3 and you can answer the District Attorney's question.

4 A Your question was?

5 BY MS. BOTELHO:

6 Q What time did you arrive on scene?

7 A It looks like I arrived at 7:27.

8 Q Okay. Did a person by the name of Bennett  
9 Grimes present to you?

10 A Yes. Metro had the patient in custody.

11 Q Listen to my question. Okay?

12 A I'm sorry.

13 Q That's okay. So Bennett Grimes presented to you  
14 at that time?

15 A Yes.

16 Q Or someone you later identified at Bennett  
17 Grimes; is that right?

18 A Yes.

19 Q Okay. And he presented to you with some type of  
20 injury; is that right?

21 A Yes.

22 Q Okay. Do you recall what type of injury he  
23 presented to you with?

24 A Again, he had a laceration to his right hand on  
25 one of his finger.

1           Q     Okay. And is it fair to say that you were  
2 charged with giving him initial care prior to him arriving at  
3 the hospital?

4           A     Yes, I was.

5           Q     And you were transporting him to the hospital at  
6 that time.

7           A     Yes, I was.

8           Q     Is it part of your duty as a paramedic to also  
9 kind of get a history of the complaint or the injury that the  
10 person comes to you with?

11          A     Absolutely. That's normal practice. Any  
12 patient that we transport we get a medical history and then a  
13 past history and then a current history, like what did they  
14 call us for that time, how did it happen and that type of  
15 thing.

16          Q     Okay. And you're clearly getting this for the  
17 purpose of diagnosis or treatment; is that correct?

18          A     Yes. It can change your treatment depending on  
19 what happened and how it happened.

20          Q     Okay. And is one of the things that you note  
21 when a client or when a person presents to you, the mechanism  
22 of injury? Do you know what that is?

23          A     Yes.

24          Q     Okay. When you complete these charts, is it  
25 fair to say that there's like drop-down menus and you're able

1 to select certain circumstances that are relevant for a  
2 particular person presenting to you?

3 A Yes.

4 Q So I'll re-ask the previous question. Are one  
5 of the things that you try to determine, a mechanism of  
6 injury?

7 A Yes.

8 Q Okay. And in this particular case with the  
9 person Bennett Grimes that presented to you, what type of  
10 mechanism of injury did you note?

11 A This was a new system. This was one of my first  
12 -- we were changing from paper charts to electronic charts.  
13 One of the things that I noticed is when you select a  
14 laceration or a stabbing, it gave the question, it gave the  
15 options of how that happened. And I did inquire with the  
16 patient how did this happen.

17 Q And?

18 A And at that time he indicated that he cut  
19 himself.

20 Q Okay. And so, based on his statement that he  
21 cut himself, what did you note the mechanism of injury to be?

22 A Is it okay if I refer to my chart?

23 THE COURT: You may.

24 A I want to read it to you.

25 BY MS. BOTELHO:

1 Q That's okay if that will refresh your memory.

2 A I did select in the drop-down menu an  
3 intentional self-inflicted stabbing. And then in the comment  
4 section where I can -- not yet?

5 Q No. That's basically all that I was asking.

6 A Okay.

7 Q So the mechanism of injury is intentional  
8 self-stabbing after he related to you that he cut himself?

9 A Yes.

10 MS. BOTELHO: I have no further questions.

11 THE COURT: Any cross-examination?

12 MR. HILLMAN: Just a few questions, Judge.

13 CROSS-EXAMINATION

14 BY MR. HILLMAN:

15 Q Good afternoon.

16 A Hi.

17 Q You arrive on the scene with the intent to  
18 provide medical treatment; is that correct?

19 A Yes, I do.

20 Q And when you provide medical treatment, you try  
21 to get the best information that you can about what the  
22 problem is?

23 A Yes, I do.

24 Q And did you -- and you also talk to people other  
25 than the patient to see what happened?

1 A Yes.

2 Q If they're available.

3 A If they're available.

4 Q And when you arrived there were police officers  
5 present; is that correct?

6 A There were.

7 Q Do you recall if you spoke with them?

8 A Yes.

9 THE COURT: Did you speak with them?

10 THE WITNESS: Yes, I did.

11 BY MR. HILLMAN:

12 Q I'm looking at page one of three -- I only have  
13 two pages, of a Clark AMR Nevada pre-hospital care report. I  
14 think that's deeper into your -- than page one and two; is  
15 that correct?

16 A That's correct.

17 Q And you, under narrative, top line states that  
18 he had an obvious laceration to the right ring finger; is that  
19 correct?

20 A That's correct.

21 Q That's what you put down on this report at that  
22 time; is that correct?

23 A As part of my report, yes.

24 MR. HILLMAN: No further questions.

25 THE COURT: Any redirect?

1 MS. BOTELHO: Not at this time, Your Honor. Thank  
2 you.

3 THE COURT: Thank you very much for your testimony  
4 here today and thank you for your patience in being here. You  
5 may step down and you're excused from your subpoena.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you. Now, we're going to break for  
8 lunch. During this recess you're admonished not to talk or  
9 converse amongst yourselves or with anyone else on any subject  
10 connected with this trial or read, watch or listen to any  
11 report of or commentary on the trial or any person connected  
12 with this trial by any medium of information including,  
13 without limitation, newspapers, television, the Internet or  
14 radio, or form or express any opinion on any subject connected  
15 with this trial until the case is finally submitted to you.

16 We will start again at 2:00 p.m. Thank you very much  
17 and you're excused for lunch.

18 (Jury recessed at 12:23 p.m.)

19 THE COURT: So 1:15 for us. Okay. Thank you.

20 (Court recessed at 12:24 p.m. until 2:55 p.m.)

21 (Outside the presence of the jury.)

22 THE COURT: May the record reflect that this hearing  
23 is taking place outside the presence of the jury panel. Mr.  
24 Grimes is present with his attorney, Mr. Hillman. Mr. Burns  
25 is present on behalf of the State of Nevada.

1           Mr. Grimes, you understand that you have heard all of  
2 the evidence that will be presented against you by the State  
3 of Nevada? Do you understand that?

4           THE DEFENDANT: Yes.

5           THE COURT: The State -- have you -- did you rest  
6 your case? I can't remember.

7           MR. BURNS: Your Honor, we did not rest, but that's  
8 our intention.

9           THE COURT: All right. That's what I believed. The  
10 State has indicated to me that they have presented all of  
11 their evidence and that when the jury comes back in, I'm just  
12 going to look at the State and say do you have any other  
13 evidence and they're going to say they rest their case.

14           So you've heard all of the evidence that will be  
15 presented against you. Do you understand that?

16           THE DEFENDANT: Yes.

17           THE COURT: Okay. And you understand that under the  
18 Constitution of the United States and the Constitution of the  
19 State of Nevada you cannot be compelled to testify in this  
20 case. Do you understand that?

21           THE DEFENDANT: Yes.

22           THE COURT: Okay. You may, at your own request, give  
23 up this right and take the witness stand and testify. If you  
24 do, you'll be subject to cross-examination by the Deputy  
25 District Attorney and anything that you may say, be it on

1 direct or cross-examination, will be the subject of fair  
2 comment when the Deputy District Attorney states to the jury  
3 in his or her final argument. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. If you choose not to testify, the  
6 Court will not permit the Deputy District Attorney to make any  
7 comments to the jury because you have not testified. Do you  
8 understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: In other words, you know, they can't  
11 testify on your right to remain silent. Do you understand  
12 that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Okay. If you elect not to testify, I  
15 will instruct the jury, but only if your attorneys  
16 specifically request that I instruct the jury as follows. The  
17 law does not require -- I'm sorry. The law does not compel a  
18 defendant in a criminal case to take the stand and testify and  
19 no presumption may be raised and no inference of any kind may  
20 be drawn from the failure of the defendant to testify. Do you  
21 understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Okay. And the attorneys have presented  
24 an instruction of that kind to the Court, but I will only give  
25 it if you don't testify and if your attorneys request that I

1 gave it. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. Do you have any questions so far?

4 THE DEFENDANT: No.

5 THE COURT: And you're further advised that if you  
6 take the stand and testify and you have a felony conviction  
7 and more than ten years has not elapsed from the date that  
8 you've been convicted or discharged from prison, parole or  
9 probation, whichever is later, and your attorneys have not  
10 sought to preclude that from coming before the jury, I will  
11 allow the District Attorney in the presence of the jury to ask  
12 you the following questions. Have you been convicted of a  
13 felony? What was it? When did it happen? However, I will  
14 not allow them to go into any details. Do you understand  
15 that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Okay. Your attorneys have not sought to  
18 preclude any prior felonies from coming in. And it's my  
19 understanding that you do have prior -- does he have two prior  
20 felonies within the ten years?

21 MS. HOJJAT: He's had the JOCs.

22 THE COURT: Okay. Well, the State will present  
23 whatever evidence they have, but you know what you have. From  
24 what I understand, the State believes that you have two prior  
25 felony convictions out of the State of California. I haven't

1 seen them yet. But I can also tell you that your attorneys  
2 have not objected or filed a motion to prevent them from  
3 coming in, which generally means they know that they're within  
4 that ten-year period. But obviously, your attorneys will have  
5 an opportunity to review that.

6 So if you take the stand and testify, I'd allow the  
7 District Attorney to ask if you've been convicted of a felony.  
8 You'd have to answer truthfully. You can answer however you  
9 want, but you'd be subject to that type of questioning.  
10 They'd be able to ask what was the felony and when did it  
11 happen. However, they cannot ask you any details unless you  
12 open up that door. Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Okay. And it's my understanding that Mr.  
15 Hillman came in here when we were doing jury instructions and  
16 you had an opportunity to discuss with him whether you should  
17 take the stand or exercise your right to remain silent. Is  
18 that correct?

19 THE DEFENDANT: Yes.

20 THE COURT: And you've had an opportunity to discuss  
21 with him whether you should do that or not; is that correct?

22 THE DEFENDANT: Yes.

23 THE COURT: And has he answered all of your  
24 questions?

25 MR. HILLMAN: There's one thing that we've talked

1 about before that I didn't talk to him about toady. If I  
2 could have just a minute?

3 THE COURT: You bet. When were those felony  
4 convictions?

5 MS. BOTELHO: One was from 2000. The other was from  
6 2004, Your Honor. The one from 2000, however, he was given I  
7 believe three years probation. And actually, sentenced --  
8 three years probation, so that would take us into 2013. So  
9 within ten years of the actual expiration of probation.

10 THE COURT: When did he expire from probation in  
11 2001?

12 MS. BOTELHO: I'd have to look.

13 THE COURT: Sounds like it's within the ten years,  
14 but I just want to make sure. Because what if he got released  
15 from probation early? Can't just add the three years, right?

16 MS. BOTELHO: He was revoked in May 21, 2002.

17 THE COURT: Okay. So when was he released from  
18 prison? May of 2002. Okay. We're beyond the ten years right  
19 now.

20 MS. BOTELHO: And I'm sorry. He had a revocation  
21 proceeding on May 21, 2002. His probation was reinstated,  
22 probation was extended to expire on June 20, 2004.

23 THE COURT: Okay. When did it expire?

24 MS. BOTELHO: 2007.

25 THE COURT: So it's within the ten years.

1 MR. HILLMAN: Mr. Grimes and I have talked about  
2 that.

3 THE COURT: All right. Mr. Grimes, just based on my  
4 cursory review. I mean, the State obviously has to -- I'm  
5 assuming you have certified judgments of conviction?

6 MS. BOTELHO: We do, Your Honor, for both.

7 THE COURT: Okay. And I would look at them, but  
8 based upon their proffer thus far, it looks like -- and  
9 they're battery domestic violence felonies, correct? Is that  
10 correct? Mr. Burns, are they battery DV felonies?

11 MS. BOTELHO: Yes, Your Honor, abuse or injury on a  
12 corporal spouse.

13 THE COURT: Oh, that's right. California says it a  
14 little bit differently. Okay. So if you took the stand and  
15 testified, whoever cross-examines you will be able to ask you  
16 about those prior felonies because they're within the ten  
17 years. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Have you had an opportunity to  
20 discuss whether you should testify or exercise your right to  
21 remain silent with your attorneys?

22 THE DEFENDANT: Yes.

23 THE COURT: Have they answered all your questions?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you have any questions of me? If you

1 have any questions, feel free to ask. Go ahead, just say  
2 whatever it is. I'll figure it out.

3 THE DEFENDANT: I'm just -- I know there's a window  
4 where I could give an answer --

5 THE COURT: It's now.

6 THE DEFENDANT: -- 24 hours.

7 THE COURT: No, you cannot. It's now.

8 THE DEFENDANT: That's what I mean. So I'm just  
9 trying to give it a quick thought.

10 THE COURT: And I don't require you to tell me.  
11 Remember yesterday when I said you're entitled to see and hear  
12 all of the evidence against you before I ask you. That's why  
13 I didn't ask you yesterday. So I got a jury out there  
14 waiting.

15 THE DEFENDANT: No questions.

16 THE COURT: All right. Have you decided whether  
17 you're going to testify or not?

18 THE DEFENDANT: Yes.

19 THE COURT: What are you going to do?

20 THE DEFENDANT: I'm not going to testify.

21 THE COURT: You're not going to testify?

22 THE DEFENDANT: No.

23 THE COURT: Okay. And your attorney has told you how  
24 that could change the case and how I will instruct the jury,  
25 correct?

1 THE DEFENDANT: Yes.

2 MR. HILLMAN: And we'd like to make a record on that  
3 if we could briefly when you're done.

4 THE COURT: I'm done. If he doesn't want to testify.

5 MR. HILLMAN: Right. And I talked to Mr. Grimes for  
6 a few minutes. He indicated he wanted to testify. We talked  
7 about rebuttal evidence. He decided that, and I don't know  
8 what he based his decision on, he decided that he -- it would  
9 be more harm than good for him to testify at this point in  
10 time. Is that correct, Bennett?

11 THE DEFENDANT: Yes.

12 MR. HILLMAN: Okay. And what the basis of our  
13 conversation was is that while reviewing jury instructions we  
14 came to the self-defense instructions and Your Honor indicated  
15 that she felt that the state of the evidence was not such that  
16 we are entitled to argue for self-defense. We respectfully  
17 disagree with Your Honor on that and feel that we've met a  
18 scintilla of evidence.

19 THE COURT: And go ahead and tell me what you think  
20 the evidence is and how you would argue self-defense. Because  
21 I'm not suggesting that there's evidence that you could argue  
22 certain aspects, it was what I was told would be argued. And  
23 so, that's not on the record, so why don't you go ahead and  
24 tell me what your theory is about how Ms. Grimes obtained all  
25 of those wounds and I'll let you make your record.

1           MR. HILLMAN: Beginning with the positioning of the  
2 parties as indicated on our diagrams, as well as in the  
3 photographs shown by the State that Mr. Grimes entered the  
4 apartment, spent most of his time near the door. There may  
5 have been some testimony that he approached Aneka. Aneka did  
6 say that he approached her. Grabbed the knife and pulled her  
7 to the door and then began stabbing her.

8           Our argument would be that it was just as reasonable  
9 that -- that's kind of an unreasonable scenario, that actually  
10 Bennett was standing by the door. She said that she wanted to  
11 get him out of her life forever and that she grabbed a knife  
12 and approached Bennett.

13          THE COURT: Okay.

14          MR. HILLMAN: All of the bloodstains --

15          THE COURT: Right up to he's standing by the door.  
16 It's right up to there I'm okay. It's when you cross over to  
17 Ms. Grimes grabbed that knife in the kitchen, went out of the  
18 kitchen and went after him. That's the part that I don't  
19 believe there is any evidence whatsoever, not even a  
20 reasonable inference.

21          MR. HILLMAN: And we're not saying if she went in the  
22 kitchen, grabbed a knife. She was standing at the counter  
23 next to the knife rack and had a direct shot at him five to  
24 seven feet away, as she said. She could not remember how he  
25 grabbed her, how he pulled her over to the door. And if

1 someone's going to stab someone, why in the world would they  
2 pull them five to seven feet next to the door and then start  
3 stabbing them --

4 THE COURT: Block the front door so the mom can't get  
5 out.

6 MR. HILLMAN: -- instead of grabbing the knife from  
7 the dish rack and starting the attack right there? That's the  
8 basis of our self-defense.

9 THE COURT: I think that's fine. I think you can  
10 argue that what she says doesn't make sense.

11 MR. HILLMAN: Correct.

12 THE COURT: That's perfectly permissible. Where I  
13 have the problem is when you want to stand in front of the  
14 jury and say that Ms. Grimes -- I think there's even a  
15 reasonable inference that she was closest to the knife. Okay.  
16 But it's after that when you say that he's by the front door,  
17 she's five to seven feet away and that she was the original  
18 aggressor and that she began stabbing him. And that in order  
19 to save his own life -- well, I guess you didn't even tell --  
20 it wasn't even really that. There was a struggle that ensued  
21 and in that struggle she ended up with 21 stab wounds and that  
22 that was self-defense.

23 MR. HILLMAN: Also, in addition, the DNA on the  
24 knife, the fact that her DNA was on the knife, Mr. Grimes was  
25 not.

1           THE COURT: Okay. I'm okay with all that. It's the  
2 in between. I mean, I'll just tell you straight out. Mr.  
3 Grimes, there's absolutely no evidence, none, that she grabbed  
4 that knife, went after you, attempted to stab you and that  
5 somehow you acted in self-defense and she received 21 stab  
6 wounds in self-defense. Okay? Everything else you've said, I  
7 agree you can argue all that. I'm not going to -- your  
8 attorneys can only argue the evidence and reasonable  
9 inferences of the evidence. They cannot make up a story.  
10 Well, they can defend you to the extent that the evidence  
11 allows them to defend you. Okay?

12           There is -- we had Ms. Grimes here and everybody had  
13 an opportunity to clearly ask her whether she went after him  
14 with the knife and whether this was a struggle. There's --  
15 your attorneys can argue everything except -- I mean, they can  
16 even argue she had her hand on that knife because the evidence  
17 would support that argument, that she had her hand on that  
18 knife. There's just no evidence to support her being the  
19 original aggressor and that there was some kind of -- I don't  
20 even know. I don't want to put words in your mouth. So how  
21 did she get those stab wounds? What would you argue to the  
22 jury? I'm not telling -- Mr. Grimes doesn't have to answer  
23 that.

24           MR. HILLMAN: She approached him with the knife,  
25 there was an altercation over the knife and she got those stab

1 wounds because he's stronger and bigger than she is and they  
2 were fighting over the knife.

3 THE COURT: And you know what? There's no evidence  
4 of how strong he is. There's no evidence of how tall he is.  
5 There's no evidence about how much he weighs. Nor is there  
6 any evidence about Aneka Grimes. None of that was elicited.

7 MR. HILLMAN: Other than the visual that the jurors  
8 have of both parties.

9 THE COURT: I'm not going to let the jury speculate  
10 as to how big the parties are.

11 MR. HILLMAN: They have seen him standing here when  
12 he's -- when they've walked in and walked out.

13 THE COURT: Okay. So? State it one more time for  
14 me. Just state it one more time.

15 MS. HOJJAT: Your Honor, at this point this is our  
16 theory of the case. Our theory of the case basically is that  
17 we have met the scintilla of evidence standard that we need in  
18 order to get a self-defense instruction. We are not required  
19 to get it even to probable cause, just a scintilla of  
20 evidence.

21 THE COURT: I completely agree with you.

22 MS. HOJJAT: We think we've met the scintilla of  
23 evidence due to the fact that all of the testimony places Mr.  
24 Grimes five to seven feet away from the knife. All of the  
25 testimony places Ms. Grimes, the victim, Mrs. Grimes directly

1 next to the knife. Due to the fact that the testimony as to  
2 the forensic analysis of the knife shows that at least what  
3 could be found by the State, there was no touch DNA of Mr.  
4 Grimes on that knife handle. There was another individual's  
5 touch DNA on that knife handle. There was Ms. Grimes' DNA on  
6 that knife handle. We can speculate as to whether it was a  
7 combination of touch DNA and fluids, but the point is --

8 THE COURT: We don't need to speculate because she  
9 told us it was blood.

10 MS. HOJJAT: She said it could have been a  
11 combination of both, Your Honor. She said it wasn't just  
12 blood, it could be touch DNA and blood. And the point is,  
13 Your Honor, that because another male's touch DNA was found on  
14 that knife, the blood had not overwhelmed all of the touch DNA  
15 on this knife. But Mr. Grimes' touch DNA was not found on  
16 this knife.

17 So given the facts and circumstances that he's five  
18 to seven feet away, she's standing right next to the knife,  
19 none of his touch DNA is found on the knife, and we would  
20 argue to the jury how reasonable does it sound that you'd drag  
21 somebody five to seven feet before you stab them. Now,  
22 whether there's a response to that or not, it is an argument  
23 that we can make to the jury. We do believe that those things  
24 together do rise to the level of a scintilla of evidence that  
25 he's not the first person who touched that knife that day,

1 he's not the person who picked up the knife and began the  
2 aggression that day.

3 THE COURT: If that's all you say. I mean, if you  
4 say as little as you say right now, I don't know what that  
5 gets you. I'm not sure that gets you to self-defense. You  
6 still have a person who has 21 stab wounds and another person  
7 with none. With that, with a cut on their right index finger.

8 MS. HOJJAT: And, Judge, clearly, Your Honor doesn't  
9 feel that this rises to the level of more likely than not --

10 THE COURT: It doesn't matter what I think.

11 MS. HOJJAT: -- or beyond a reasonable doubt.

12 THE COURT: I'm trying to find a scintilla of  
13 evidence. I can't even find a scintilla of evidence to --  
14 everything you said, you can argue his DNA wasn't on there.  
15 You can argue his touch DNA, all that you can argue. And you  
16 can argue in her home, her DNA was on her knife. That's all  
17 fine. That doesn't bother me. It's when you then take the  
18 leap and say she took that hand in her knife -- I'm sorry,  
19 that knife in her hand and that she went after your client in  
20 an effort to stab him. And then he had to stab her 21 times  
21 to thwart the attack on himself? Because it would be -- that  
22 would be deadly force. That would be deadly force. He'd have  
23 the right to use deadly force against her if that happened.  
24 But there's got to be something that gets you to your ability  
25 to use deadly force to get you there.

1 MS. HOJJAT: Your Honor, we do think the fact that  
2 she was the one positioned closer to the knife. She was the  
3 only person in that apartment who actually knew that knife was  
4 there because the testimony was the knife was on a drying  
5 rack, it wasn't in the proper place that a knife is going to  
6 be. She was frankly the only person in the apartment who  
7 actually knew that knife was on that drying rack because it  
8 was on the other side of the counter. She's the person  
9 standing next to it.

10 THE COURT: You're getting caught up on where that  
11 knife is. I'd say I agree 100 percent. She's the only person  
12 on the planet that knew where that knife was.

13 MS. HOJJAT: Then we do think we've risen to the  
14 level of the scintilla of evidence of self-defense if she's  
15 the person who grabbed the knife.

16 THE COURT: Who grabbed the knife and then --

17 MS. HOJJAT: Moved towards him, Your Honor.

18 THE COURT: You don't get to -- you don't get to use  
19 deadly force against someone unless deadly force is being used  
20 against you. So you have to tell me there is a scintilla of  
21 evidence that deadly force was used against your client.

22 MS. HOJJAT: Your Honor, the positioning also, we do  
23 believe there's a scintilla of evidence that she moved towards  
24 the entryway, because again, he's in the entryway the whole  
25 time. She's the one at the counter, she's moving towards the

1 entryway. We believe there is enough for a scintilla of  
2 evidence that she grabbed the knife, she moved towards the  
3 entryway. We do think that's enough for a scintilla of  
4 evidence that this was self-defense. Now certainly --

5 THE COURT: She grabbed the knife. What evidence is  
6 there that she moved towards the entryway in an effort to use  
7 that knife on your client?

8 MS. HOJJAT: Again, every single person has placed  
9 Mr. Grimes' positioning at the entryway.

10 THE COURT: I got that. Tell me what evidence there  
11 is that she -- there's evidence you can argue she put that  
12 knife in her hand. Got it. What evidence is there that once  
13 she put that knife in her hand she became an aggressor and  
14 used deadly force against your client? That's what I want to  
15 hear. Not that everybody says where everybody is. Okay?  
16 Because either way, somebody has to come towards somebody in  
17 order for there to be deadly force. Because if you're seven  
18 feet away with a steak knife, no reasonable person is going to  
19 say that's deadly force.

20 MS. HOJJAT: Precisely, Your Honor, but I think there  
21 is a reasonable inference. Your Honor said somebody has to  
22 move towards somebody for there to be deadly force. We think  
23 there's a reasonable inference that she moved towards him. We  
24 think it's enough for a scintilla, that she moved towards him.

25 THE COURT: Tell me what evidence you have that you

1 can argue, what inference, what evidence is there that the  
2 jury can infer she moved towards him with a knife in her hand  
3 and it was exercising deadly force against your client?

4 MS. HOJJAT: Your Honor, she's at the counter and  
5 then she's in the entryway. He's always in the entryway. I  
6 mean, there's --

7 THE COURT: Who testified that she's in the entryway  
8 besides her and her mother and they both said he dragged her  
9 there. So, who other than her and her mother -- every single  
10 person that's gotten up here, Hoffman, the detective today,  
11 mother, Aneka, all of them said he took her there. Every  
12 single person said he took her there.

13 MS. HOJJAT: And, Your Honor, those are responses to  
14 our argument, absolutely. And we're not saying they're  
15 invalid responses to argument. But our point is that we have  
16 an argument, Your Honor. We have, based on the evidence, the  
17 way that it is, it wouldn't be completely outside the realm --  
18 it's not unreasonable, it's not completely unreasonable for a  
19 juror to think maybe she walked towards him. And that's a  
20 scintilla, Your Honor. If a juror could say you know what,  
21 looking at that positioning, I think she walked towards him.  
22 Then we've met our burden of scintilla.

23 THE COURT: She has to walk towards him with a knife  
24 in her hand and she has to be using deadly force against him.

25 MS. HOJJAT: Your Honor, she has to be using deadly

1 force against him for us to prevail in our self-defense  
2 argument, but not for us to reach a scintilla of self-defense  
3 in a self-defense argument. For us to prevail, absolutely.  
4 There has to be --

5 THE COURT: For you to even argue, you have to --  
6 there has to be some evidence that she had the knife in her  
7 hand and that she moved towards your client in an effort to, I  
8 don't know, guess stab him with it or do something with it.

9 MS. HOJJAT: It's our position that we have met that  
10 burden. We have met the burden of scintilla based on the  
11 forensic evidence that was testified to, based on the  
12 positioning that was testified to, based on where the blood  
13 spatter is in this case, it's our position we've met the  
14 burden of scintilla. This is our theory of the case and we do  
15 think it's fundamentally unfair and in violation of Mr.  
16 Grimes' due process rights under the 14th Amendment if we're  
17 not allowed to present our theory of the case.

18 THE COURT: If you're not allowed to make up  
19 something that isn't supported by the evidence?

20 MS. HOJJAT: Your Honor, we will be drawing  
21 inferences based on the evidence that was presented and we  
22 will be careful not to go outside of drawing inferences based  
23 on the evidence that was presented.

24 THE COURT: And I appreciate because you've been  
25 answering all my questions, you've been doing a really good

1 job, so I don't want you to think I'm -- because you're doing  
2 very, very good. But I think if you rewind the tape and  
3 listen to yourself, you said, at one point you said it's not  
4 unreasonable for the jury to think that maybe she was the one  
5 that grabbed the knife and went towards him. That's a problem  
6 I'm having. I think I've asked like ten times and I keep  
7 getting the same response.

8 The problem is, the state of the record is the state  
9 of the record. There has to be some evidence. There's no  
10 evidence from anybody that's testified that she went towards  
11 him in a manner -- I mean, there has to be some evidence.  
12 Somebody has to testify that she was the initial aggressor and  
13 everything that makes up that. You can't say his DNA wasn't  
14 on the knife so she must have picked it up, went after him and  
15 tried to stab him. That's ridiculous.

16 MS. HOJJAT: And, Your Honor, I guess that's the part  
17 we're disagreeing with. We don't think there has to be some  
18 testimony. We don't think somebody has to get up there and  
19 say she walked towards him for us to be able to make that  
20 inference to the jury. That would be like if there was a gun  
21 and it had been fired and only one person's fingerprints were  
22 on it. Nobody needs to get up there and say I saw him fire  
23 the gun in order for the inference to be drawn that this is  
24 the person who fired the gun. We think that sometimes -- we  
25 think that in this case particularly when the burden is solely

1 a scintilla of evidence, we think positioning, we think  
2 forensics is enough to get us over the burden of scintilla.  
3 We don't think there has to be a person who gets up there and  
4 testifies for us to make that burden.

5 THE COURT: All right. Well, I've asked like ten  
6 times and I haven't gotten anything, so I don't think they  
7 have anything. I've sat here and I know what the state of the  
8 record is. I mean, I'm okay with everything up to her putting  
9 that knife in her hand, but it's the taking the logical leap  
10 that there's some evidence that supports. There's none. That  
11 would be absolutely just making up a story. It's not even in  
12 good -- well, I'm not even quite sure you can tell me that's  
13 in good faith.

14 MS. HOJJAT: Your Honor, we do believe that's what  
15 happened, that she got the knife and -- from the positioning,  
16 from -- it's just not logical, Your Honor.

17 THE COURT: That she grabbed the knife --

18 MS. HOJJAT: For him to have walked five to seven  
19 feet. Grabbed a knife that he didn't know was there. Grabbed  
20 her, dragged her five to seven feet back in the space of --  
21 what the testimony makes it sounds like is 15 to 20 seconds.

22 MS. BOTELHO: But what they believe doesn't  
23 necessarily equal --

24 MS. HOJJAT: To drag another human being that far in  
25 15 to 30 seconds.

1 THE COURT: Yeah, you can't just ignore the evidence.

2 MS. BOTELHO: I mean, what they believe --

3 THE COURT: What you believe and what may have  
4 happened are not evidence and that's a problem. Because every  
5 proffer that you've made is you believe that it's reasonable  
6 or maybe this can happen. Problem is is there has to be some  
7 evidence. I have literally strained myself over the last  
8 couple of days because I knew you were going to bring up a  
9 self-defense argument. I'm trying to articulate how you would  
10 do it and I always got stuck at that point.

11 MS. BOTELHO: And the problem is, Your Honor, we went  
12 over some of the self-defense instructions and they say things  
13 like if a person attempts to kill another in self-defense, it  
14 must appear that the danger was so urgent and pressing -- we  
15 don't have --

16 THE COURT: There's none.

17 MS. BOTELHO: -- anyone saying that there was a  
18 danger, that was urgent, that was pressing, that it was needed  
19 to save somebody's life or to prevent them from receiving  
20 great bodily harm, that the non-assailant did it in good  
21 faith, that the defendant, you know, attacked the initial  
22 aggressor, Aneka, allegedly in good faith. We don't have --  
23 when a person without voluntarily seeking, provoking, inviting  
24 or willingly engaging in a difficulty of his [indiscernible]  
25 is attacked by an assailant.

1 First of all, we have no evidence that she's an  
2 assailant. We have no evidence that he was just standing  
3 there, charming as can be, not voluntarily seeking or  
4 provoking some kind of difficulty. He has the right to stand  
5 his ground. We have no evidence of that. The use of a deadly  
6 weapon is justifiable when it's a lawful defense of the person  
7 and he believes he is in danger of death or great bodily  
8 injury and there is imminent danger. There's no testimony of  
9 that.

10 The right to self-defense exists only as long as the  
11 real or apparent threat and danger continues to exist. We  
12 have no evidence of any danger, whether or not it continued,  
13 whether or not it existed. The use of force against a person  
14 is justified. Again, when there is imminent danger necessary  
15 under the circumstances. What circumstances? We don't have  
16 circumstances.

17 The problem with this particular case is it's  
18 fundamentally unfair to the State. Basically, it's allowing  
19 the defense to put forth a story that's not based on evidence  
20 or fact and that allows the defendant to circumvent having to  
21 take the stand to put forth his defense without  
22 cross-examination. And the problem with this is, if they're  
23 allowed to give this story --

24 THE COURT: Basically allows them to basically tell  
25 the jury what the defendant would have said had he taken the

1 stand.

2 MS. BOTELHO: Exactly. And then, if they were to  
3 argue this particular story in closing, we would be objecting  
4 that it's not supported by facts and evidence and they should  
5 not be allowed to argue it. You take that away, they can't  
6 argue -- I mean, a scintilla or whatever piece of evidence  
7 that they need to establish self-defense cannot be based on  
8 inference built upon inference upon inference that then makes  
9 a story.

10 THE COURT: I don't think, in all fairness, I don't  
11 think you have an inference. Once you place her with the  
12 knife, there is not even an inference. I cannot think of any  
13 logical inference that gets her going after him with the knife  
14 in a deadly manner and him having no choice but to do whatever  
15 it is he did. We don't know what that is, we just know she  
16 ended up with 21 stab wounds.

17 So you cannot get up and argue to the jury what he  
18 may have said had he taken the stand. And in all fairness, it  
19 is extraordinarily difficult to assert a self-defense theory  
20 if there isn't something from your client, either a statement  
21 made to the police. I mean, I've had cases where statements  
22 made to the police, but then -- well, that's a whole other  
23 story about how that gets in or doesn't get in. Or the  
24 defendant has to take the stand.

25 I don't know how in the world you get those jury

1 instructions if -- it's very, very difficult. There has to be  
2 something from the defendant, something. We don't have  
3 anything. It's just a tough case. So that's the deal. I  
4 mean, I tried to give --

5 THE DEFENDANT: So from this standpoint standing  
6 here, I don't have any word? I don't have any say so from  
7 here?

8 THE COURT: For what?

9 THE DEFENDANT: To speak? I don't have any say so  
10 from here, from this Court standing here?

11 MS. HOJJAT: No.

12 MR. HILLMAN: No. You get to decide if you testify.

13 THE COURT: You get to decide if you want to testify.  
14 If you want to testify, you can say whatever you want.

15 THE DEFENDANT: No. I'm saying from standing here  
16 right now.

17 MS. HOJJAT: No.

18 THE COURT: What does that mean, from standing here  
19 right now?

20 THE DEFENDANT: Am I allowed to voice my opinion from  
21 this point from here?

22 MS. HOJJAT: No.

23 MR. HILLMAN: No.

24 THE COURT: About what?

25 THE DEFENDANT: Just am I allowed to?

1           THE COURT: About what? About whether you want to  
2 testify or not? You get to, you can --

3           THE DEFENDANT: Things that occurred and things that  
4 are being said.

5           THE COURT: What happened that day? Take the stand,  
6 take the oath --

7           THE DEFENDANT: I was asking about here, right now,  
8 as I'm standing here.

9           THE COURT: To tell me? I'm not the trier of fact.

10          THE DEFENDANT: I mean, as we were all speaking. I  
11 was just saying am I allowed to speak --

12          THE COURT: No, that's why you have lawyers. The  
13 only thing -- I'll tell you, I think you pretty much realize  
14 I'm not going to give any self-defense instructions. I  
15 thought it was only fair to tell your lawyers back in chambers  
16 that they would be --

17          MR. HILLMAN: We appreciate that.

18          THE COURT: I think it's only fair. I knew your  
19 attorneys wanted to raise a self-defense theory. I've been  
20 following the case intently, taking notepads of notes towards  
21 a self-defense theory. I don't always know that up front, but  
22 towards a self-defense theory. It's not there. I told them  
23 in all fairness it wasn't there. I told them that I thought  
24 maybe you would testify in order to put it there. I did not  
25 know you had the priors. Sometimes you have to weigh all that

1 out. I did not know about your priors before then. So  
2 there's no evidence, so I can tell you there's no evidence,  
3 I'm not going to instruct the jury on self-defense. It will  
4 go to the jury on what there is.

5 It doesn't mean the State doesn't have to prove their  
6 case and the jury doesn't have to hold them to each and every  
7 element as alleged in the charging document. That's still a  
8 fact. I'm just not going to let the attorneys basically make  
9 up a story. And if it's the truth, I'm not going to let them  
10 tell it because it wasn't testified to up there. Do you  
11 understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that?

14 THE DEFENDANT: I do.

15 THE COURT: Okay. And I think that's probably why  
16 your attorney came out here to discuss with you whether you  
17 were going to testify or not. Okay? So it's up to you  
18 because it's your life. And again, I want to make sure you  
19 understand this and I usually tell this to everybody no matter  
20 what kind of case it is. This is your right and your right  
21 alone. Regardless of what anybody in this room tells you to  
22 do, it is your decision whether to testify. You can -- I  
23 mean, your attorneys can tell you don't testify, don't  
24 testify, or the opposite, testify, testify. It is still your  
25 decision what to do.

1           Now, the decision should be made after consulting  
2 with your attorneys. That's my opinion. However, you can  
3 disagree with everything they say or agree with everything  
4 they say. At the end of the day, it is your right and your  
5 right alone. Do you understand that?

6           THE DEFENDANT: Yes.

7           THE COURT: So you have to search your soul and  
8 determine whether you're going to testify or not. Do you  
9 understand that?

10          THE DEFENDANT: Yes.

11          THE COURT: Okay. After hearing everything I said,  
12 do you want to have more time to talk to your lawyers? I'll  
13 make everyone leave the courtroom and you can talk to your  
14 lawyers privately. Do you want more time?

15          THE DEFENDANT: No.

16          THE COURT: Okay. What are you going to do?

17          THE DEFENDANT: I won't take the stand.

18          THE COURT: All right. And you understand I'm not  
19 going to instruct the jury on self-defense?

20          THE DEFENDANT: Yes.

21          THE COURT: Okay. Do you want the Carter  
22 instruction?

23          MR. HILLMAN: No.

24          THE COURT: Okay. Then let's go back and finalize  
25 the instructions.

1           MR. BURNS: Just one quick thing, Your Honor, I want  
2 to put on the record. Ms. Botelho has argued it. Just the  
3 fact that if the defense is to proceed on this non-existent  
4 showing of this affirmative defense, the Nevada Supreme  
5 Court's been very clear that it's the State's burden to  
6 disprove self-defense. And it effectively puts us in a  
7 catch-22 position where we have really nothing to argue about  
8 because there is no evidence. And if we're commenting on the  
9 complete absence of evidence to the jury, then obviously,  
10 we're going to draw a burden shifting objection from the  
11 defense.

12           Also, if this kind of showing is sufficient for  
13 self-defense in the future, then any case where there's victim  
14 defendant proximity, where there's victim DNA on the weapon,  
15 which will be the case in every knife-type case, then there  
16 would be this kind of -- be automatically entitled to argue  
17 self-defense. We just add those things to the record.

18           THE COURT: Okay.

19           MS. HOJJAT: Your Honor has clearly already made your  
20 ruling, so I would just respond to that and say that it's a  
21 very different situation when the alleged perpetrator's DNA is  
22 found nowhere on the weapon and that's what we think  
23 distinguishes this case and that's why we think we have met  
24 the burden of scintilla.

25           THE COURT: All right. Do you want to come back and

1 we'll -- hopefully, they'll all be done and we can finalize  
2 and we can put them in the order you want?

3 (Court recessed at 3:30 p.m. until 4:29 p.m.)

4 (Outside the presence of the jury.)

5 THE COURT: The record will reflect this hearing is  
6 taking place outside the presence of the jury panel. Mr.  
7 Grimes is present with his attorneys. The State is present as  
8 well.

9 We've taken an opportunity to settle all of the  
10 instructions, formally settle them. Is the State familiar  
11 with Court's proposed instructions 1 through 34?

12 MS. BOTELHO: Yes, we are, Your Honor.

13 THE COURT: Any objection to the Court giving any of  
14 those instructions?

15 MS. BOTELHO: No, Your Honor.

16 THE COURT: Does the State wish to propose any  
17 additional instructions?

18 MS. BOTELHO: No, Your Honor.

19 THE COURT: Okay. Is the defense familiar with  
20 Court's proposed 1 through 34?

21 MR. HILLMAN: Yes, Judge. I apologize. I'm sorry,  
22 I'm a little bit behind the curve here.

23 THE COURT: That's okay. I just numbered them. 1  
24 through 34, does defense have any objection?

25 MR. HILLMAN: There are two we'd like to make a

1 record on.

2 THE COURT: Okay. One of them is the reasonable  
3 doubt instruction, I know that. Instruction Number 5? Do you  
4 want to start making a record on -- it's the reasonable doubt  
5 instruction. Go ahead.

6 MR. HILLMAN: Go ahead.

7 MS. HOJJAT: And, Your Honor, on the reasonable doubt  
8 instruction, Instruction Number 5, what we had asked or was on  
9 line two to read, the defendant is presumed innocent. A  
10 period after innocent and striking the language until the  
11 contrary is proved. We believe the fact that it's saying  
12 until the contrary is proved implies to the jury that it's an  
13 inevitable conclusion that the contrary will be proved. We  
14 believe that the rest of the instruction does thoroughly  
15 inform the jury that they -- if the State meets its burden of  
16 proving beyond a reasonable doubt that the defendant did  
17 commit the crimes, then they are to find him guilty. But we  
18 believe that the until the contrary is proved language is  
19 unduly suggestive to the jury.

20 THE COURT: The objection's noted and I indicated I  
21 was going to give the instruction as stated in number 5 based  
22 upon the Nevada Supreme Court's prior precedent and  
23 [indiscernible] give this instruction exactly as stated. Any  
24 other objections?

25 MR. HILLMAN: We have two more and I'm looking for

1 those instructions, Judge. One of them has to do with  
2 burglary.

3 THE COURT: Oh, I know, the burglary in possession.

4 MR. HILLMAN: Every person who commits --

5 THE COURT: Obtaining possession afterwards.

6 MR. HILLMAN: Yes.

7 THE COURT: I'll help you.

8 MR. HILLMAN: Twenty-four. Our objection to number  
9 24 is that the crime of burglary is either committed or  
10 completed upon entry and the weapon in possession can occur  
11 after entry. It seems to be logically at opposite ends of the  
12 intent of the statute. And that's our objection to number 24.

13 MS. HOJJAT: And, Your Honor, coupled with the  
14 objection in number 24, we did propose a defense instruction,  
15 proposed defense instruction number nine, which was if you  
16 find that the State did not prove beyond a reasonable doubt  
17 that Bennett Grimes entered the apartment with a weapon, you  
18 must find him not guilty of burglary with a deadly weapon in  
19 violation of a temporary protective order.

20 THE COURT: You can approach and that will be marked  
21 as Court's Exhibit Number 6, Court's Exhibit Number 6. And  
22 this was the instruction that was proffered by the defense in  
23 place of Number 24 that was rejected by the Court, but I will  
24 make it part of the record. Does the State want to say  
25 anything?

1           MR. BURNS: Briefly, Your Honor. As to Number,  
2 Instruction Number 24, it's the State's view that the statute  
3 intends essentially a separate offense that when there is a  
4 firearm and it's brought into possession, it's a separate  
5 element added to a burglary that there's not the -- the  
6 burglary still has to have the entry intent contemporaneous,  
7 but not necessarily the firearm. It does constitute a  
8 separate offense.

9           As to the defense's proffered instruction number  
10 nine, it's --

11          THE COURT: They wanted me to take out -- I mean, I  
12 believe the statute says --

13          MR. BURNS: -- an incorrect statement.

14          THE COURT: -- regardless of how logical it is, the  
15 statute indicates he can be charged with burglary and  
16 possession of firearm -- I'm sorry, with a deadly weapon, if  
17 he obtains the possession of the deadly weapon after he's  
18 inside the place, whatever structure he enters.

19          MS. HOJJAT: Yes, Your Honor, and I guess we would be  
20 asking Your Honor to find that statute unconstitutional as  
21 it's written because the offense of burglary is completed upon  
22 entering a dwelling. Indeed, if he had entered the dwelling  
23 with an intent to commit a crime and then committed no crime  
24 within it, he would still be guilty of the burglary. However,  
25 it seems the crime can be extended for the purposes of

1 enhancing it, but is cut off if he chooses not to commit the  
2 crime. Basically, it's --

3 THE COURT: It's not an enhancement, it's another --

4 MS. HOJJAT: The deadly weapon is an enhancement on  
5 the burglary.

6 THE COURT: Burglary while in possession of a deadly  
7 weapon. Is that what you're charging, burglary while in  
8 possession of a deadly weapon?

9 MR. BURNS: Yes, Your Honor.

10 THE COURT: Okay.

11 MS. HOJJAT: Basically, it's our position that the  
12 statute is unconstitutional as written.

13 THE COURT: Okay. Any other objections?

14 MR. HILLMAN: The only other one I was going to  
15 object to appears to have been pulled. So I have no other  
16 objections to the 34.

17 THE COURT: Okay.

18 MS. HOJJAT: And then, Your Honor, we did have --

19 THE COURT: All right. Now, does the defense have  
20 any additional instructions they would like to propose at this  
21 time?

22 MS. HOJJAT: I'm sorry, Your Honor. Yes, we did.

23 THE COURT: You know what? Why don't we start with  
24 the self-defense ones because those will be easy.

25 MS. HOJJAT: Yes, Your Honor.

1 THE COURT: If you want, do you want to just staple  
2 them all together? Are those --

3 MS. HOJJAT: Yes, Your Honor. These are them.

4 THE COURT: Do you mind if we just mark them as one  
5 and they'll will be Court's Exhibit Number 7?

6 MS. HOJJAT: Not at all. We can certainly mark them  
7 as one exhibit. If we could just make a very quick record on  
8 them.

9 THE COURT: Absolutely. Go ahead.

10 MS. HOJJAT: If I may approach, Your Honor?

11 THE COURT: Sure.

12 MS. HOJJAT: Thank you. So we're having marked as  
13 Court's Exhibit 7, I believe. Your Honor, as previously  
14 stated on the record, it was the defense's intention in this  
15 case to argue self-defense. We already had a hearing on  
16 whether the defense had met the scintilla of evidence that was  
17 necessary in order to obtain that affirmative defense. Your  
18 Honor ruled that it was -- we had not met the scintilla of  
19 evidence. Obviously, we argued that we had met it.

20 What's been entered as Court's Exhibit 7 is the jury  
21 instructions that had been agreed upon by the State, the  
22 defense and the Court as the jury instructions that would have  
23 been read to the jury had the defense been allowed to argue  
24 self-defense, had the affirmative defense of self-defense been  
25 allowed for the defense. And so it's our position that those

1 jury instructions should be presented to the jury and read to  
2 the jury and we should be allowed to argue self-defense in  
3 this case.

4 THE COURT: Okay. And I think everyone agrees that  
5 if I did instruct the jury on self-defense, they would be the  
6 instructions from the Runyon case. And we actually worked on  
7 them, but they would be -- if I did believe self-defense was  
8 appropriate to instruct the jury on, these instructions would  
9 have been given.

10 MS. HOJJAT: Yes, Your Honor.

11 THE COURT: So they'll be marked Court's Exhibit  
12 Number 7. Any other instructions the defense would like to  
13 propose?

14 MS. HOJJAT: Yes, Your Honor, there are a couple.  
15 I'm going to go backwards a little bit here. Proposed defense  
16 instruction number 12 is our Daniels instruction. We did  
17 previously have --

18 THE COURT: Your what?

19 MS. HOJJAT: The Daniels instruction. The  
20 instruction pursuant to State v. Daniels. We previously filed  
21 a motion for failure to collect and preserve the fingerprints.  
22 Your Honor heard the motion and denied it. However, we are  
23 also -- our first remedy that we requested was a dismissal.  
24 Our second one was a jury instruction. We are now submitting  
25 a jury instruction to the Court that we are requesting

1 pursuant to that motion.

2 THE COURT: Okay. That will be marked as Court's  
3 Exhibit next in line, 8.

4 MS. HOJJAT: May I approach, Your Honor?

5 THE COURT: Yes. Does the State wish to say  
6 anything?

7 MS. BOTELHO: Yes, Your Honor. You had previously  
8 addressed this particular issue and my understanding of  
9 Daniels is that they're entitled to some kind of jury  
10 instruction if there was bad faith or even gross negligence.  
11 However, this particular case there was no failure to gather  
12 and certainly, the evidence has been available to the defense  
13 to test as previous records have already indicated.

14 THE COURT: Okay. So that would be -- the Court is  
15 not giving this instruction, but it will be made part of the  
16 record. Any other instructions that you would like to  
17 propose?

18 MS. HOJJAT: Yes, Your Honor. There were a couple  
19 more. Proposed defense instruction one was simply a  
20 presumption of innocence and reasonable doubt instruction  
21 pursuant to Bleek v. State. If I may approach?

22 THE COURT: That will be marked as Court's Exhibit  
23 Number 9. Says every person charged with a commission of a  
24 crime shall be presumed innocent. This was apparently a  
25 different -- well, why did you want me to give this?

1 MS. HOJJAT: Your Honor, we just -- that's the  
2 presumption of innocence instruction that we are requesting  
3 the Court to give. We think that the other instruction kind  
4 of buries the presumption of innocence and doesn't make it  
5 clear. It's a very long instruction. By the time you get to  
6 the end of it, you kind of forget that there's a presumption  
7 of innocence. So we wanted a short statement of that. We  
8 were asking for that to be given.

9 THE COURT: Okay. Does the State wish to respond?

10 MS. BOTELHO: Yes, Your Honor. The State's position  
11 is that this particular instruction is already covered by the  
12 reasonable doubt instruction, which, according to the Nevada  
13 Supreme Court is all that is allowed to be given as far as the  
14 issue of reasonable doubt.

15 THE COURT: Okay. This instruction will be rejected  
16 and will be marked as Court's Exhibit Number 9. Any other  
17 ones?

18 MS. HOJJAT: Yes, Your Honor. Proposed defense  
19 instruction number five, which was basically that to support a  
20 conviction for attempt murder with a deadly weapon, the -- and  
21 I put the District Attorney, but I guess I'll amend that to  
22 say the State must prove beyond a reasonable doubt that Mr.  
23 Grimes had the specific intent to kill Aneka Grimes and that  
24 he used a deadly weapon.

25 THE COURT: Does the State wish to respond?

1 MS. BOTELHO: Your Honor, we indicated that we  
2 believe this to be an incomplete instruction and also  
3 repetitive, as it is already covered by other instructions.  
4 There are lots of instructions right now regarding the attempt  
5 murder charge and also specifically dealing with the elements  
6 of specific intent and also the deadly weapon. And they were  
7 also given their Crawford instruction, the reverse or the  
8 negatively worded version.

9 THE COURT: All right. And I made a determination  
10 that the jury had been accurately instructed on the attempt  
11 murder. This will be the Court's Exhibit next in line, Number  
12 10. Any other instructions the defense would like to  
13 proposed?

14 MS. HOJJAT: Yes, Your Honor. Proposed defense  
15 instruction number six was -- it's language that we've taken  
16 from Holmes v. State where the Nevada Supreme Court is citing  
17 Randolph v. State, another Nevada Supreme Court case. In  
18 those cases, the Nevada Supreme Court discusses the fact that  
19 the reasonable doubt standard requires the jury to reach a  
20 subjective state of near certitude on the facts in issue. We  
21 were asking for an instruction so saying to the jury.

22 THE COURT: Randolph, the same case that they  
23 sanctioned the District Attorneys off for quantifying -- the  
24 District Attorney's Office for trying to quantify -- here it  
25 is. It's the same case. The DA in that case was sanctioned

1 without even a hearing because he attempted to quantify the  
2 reasonable standard. That case?

3 MS. HOJJAT: In that case, Your Honor, the Nevada  
4 Supreme Court did hold that reasonable -- to reach -- place a  
5 reasonable doubt the jury required -- the jury must reach a  
6 subjective state of near certitude, which is why we're  
7 recording the language directly out of that case, Your Honor.

8 THE COURT: I just think it's interesting it came  
9 from that case. Isn't that the case, the Randolph case? I  
10 don't want to say the D.A.'s name because he gets mad when  
11 people bring it up.

12 MR. BURNS: I don't know.

13 THE COURT: I rejected this instruction for reasons  
14 stated previously, that the reasonable doubt standard has been  
15 given in the format that the Supreme Court has indicated we're  
16 supposed to give it. Therefore, this one was rejected for  
17 that reason. It will be marked as Court's Exhibit Number 11.  
18 Any other instructions?

19 MS. HOJJAT: Yes, Your Honor, we do have one final  
20 instruction, which was proposed defense instruction number  
21 seven, that if their evidence allows two reasonable  
22 interpretations, one of which points to innocence, the other  
23 points to guilt, the jury must adopt the interpretation that  
24 -- must adopt the interpretation that points to his innocence  
25 and reject the interpretation that points to guilt. That is

1 from Crane versus State, which is a Nevada Supreme Court case.

2 THE COURT: Any response?

3 MR. BURNS: Your Honor, the Nevada Supreme Court's  
4 been very clear that no kind of variation or other  
5 [indiscernible] can be put on the reasonable doubt  
6 instruction. I think this is pretty clearly a thinly veiled  
7 attempt to recast part of the reasonable doubt instruction.  
8 So in that case really not permitted.

9 MS. HOJJAT: Your Honor, if I can just respond to  
10 that.

11 THE COURT: Sure.

12 MS. HOJJAT: We think this instruction goes to the  
13 presumption of innocence. The point is if there's two  
14 perfectly reasonable interpretations of the evidence, the  
15 presumption of innocence requires the jury to presume the  
16 defendant is innocent. So this is not an attempt to describe  
17 or quantify reasonable doubt. Instead, it is going to the  
18 presumption of innocence.

19 THE COURT: Okay. And this instruction will be  
20 rejected and will be marked Court's Exhibit next in line,  
21 Number 12. Any other instructions that the defense would like  
22 to propose?

23 MS. HOJJAT: No, Your Honor. Thank you.

24 THE COURT: Is the State familiar with the verdict  
25 form?

1 MS. BOTELHO: Yes, we are, Your Honor.

2 THE COURT: Do you have a copy of it?

3 MS. BOTELHO: I can grab it.

4 THE COURT: Do you mind?

5 MS. BOTELHO: No.

6 THE COURT: Thanks. Do you want a copy of the jury  
7 instructions, Mr. Grimes?

8 MR. HILLMAN: I gave him my copy.

9 THE COURT: Okay. While we're waiting for the DA,  
10 Mr. Grimes, I just want to make sure you understand I know  
11 you're not going to testify and your attorney's asked me not  
12 to give that instruction. Do you understand that?

13 THE DEFENDANT: Yeah.

14 THE COURT: Remember when we were talking earlier I  
15 said if you don't testify, I read to you the instruction I  
16 would give to the jury. I said I would only give it if your  
17 attorney requested that I give it. They requested that I not  
18 give it. Okay? So it's not in there. Okay? But the  
19 District Attorney understands they're not permitted to comment  
20 on your right to remain silent. Okay?

21 THE DEFENDANT: Yeah.

22 THE COURT: Did you do them all?

23 MS. HOJJAT: I'm sorry?

24 THE COURT: Did you make a record on all of them?

25 MS. HOJJAT: All of the ones that we've submitted to

1 Your Honor, yes.

2 THE COURT: Okay.

3 MS. HOJJAT: Other than the self-defense ones, which  
4 we just submitted as one packet.

5 THE COURT: Okay. Oh, that's why it seems like --  
6 okay. Is the State familiar with the verdict form?

7 MS. BOTELHO: Yes, Your Honor.

8 THE COURT: Is the defense familiar with the verdict  
9 form?

10 MS. HOJJAT: Yes, Your Honor.

11 THE COURT: Any objection by the State?

12 MS. BOTELHO: No, Your Honor.

13 THE COURT: Any objection by the defense?

14 MS. HOJJAT: No, Your Honor.

15 THE COURT: All right. The verdict form will be  
16 lodged with the clerk and the jury has been instructed to  
17 return Monday morning at 10:30 at which time State will have  
18 the right -- you have still not rested in front of the jury.  
19 State will rest their case; the defense, obviously, will rest  
20 their case. They will be instructed and closing and then  
21 they'll be excused to deliberate.

22 Anything else?

23 MR. HILLMAN: No, Judge.

24 MS. BOTELHO: No, Judge.

25 THE COURT: Okay. So I can throw these away and all

1 my notes? These were yours. I'm just going to do it.

2 MS. HOJJAT: Sorry, I got confused. I thought those  
3 were the exhibits.

4 THE COURT: No, I get nervous to throw away my notes.  
5 I want to make sure we're done. Monday morning, 10:30.

6 (Court recessed for the evening at 4:47 p.m.)  
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ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON  
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

BENNETT GRIMES,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 74419

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**APPELLANT'S APPENDIX**

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 13th day of March, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Adam P. Laxalt, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions