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IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN PORTER,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
)
_____)

Case No: 80738

APPELLANT'S APPENDIX
Volume II

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1 defendant's admissions. I mean, he confesses to the killing.
2 Prior to that, he says, "I was there and someone else did it."
3 And prior to that, it's our position that his first story is,
4 "I don't know anything about any crimes in Vegas, somebody is
5 lying about me." So the fact that he gives three different
6 stories is a big part of our case, and it's a big part of the
7 presentation the jury's entitled to hear in opening statement.

8 MR. BROWN: And to just give you further context,
9 Judge, they never told Mr. Porter they were investigating him
10 for a homicide. When he was arrested, he was arrested on an
11 arrest warrant sent to Chicago that specifically laid out
12 sexual assaults, robberies, and multiple burglaries and did
13 not list a homicide as part of the investigation. They never
14 introduced themselves, Detective LaRochelle, as a homicide
15 detective when they were interviewing him at the time.

16 And so, the transcript of when he's, of Detective
17 LaRochelle, when he's talking about when they were actually
18 interviewing, they went through all the sexual assaults, they
19 went through a number of burglaries. Keep in mind, there were
20 multiple burglaries originally charged in this case that had
21 been dismissed at the preliminary hearing level that Your
22 Honor doesn't have before you. But there were many more
23 crimes in addition to the multitude that you have, that the
24 total counts were in the 50s, and now they're in the 30s.

25 And they didn't talk about the homicide until the

1 very end. And the way they talked about it is they asked him,
2 "Tell us about Tenth Street," he didn't have a recollection of
3 the address. They put a picture in front of him, he stood up,
4 and to use Detective LaRoche's words, had a non-verbal
5 reaction. And then he backed up, he described it as kind of
6 turning white, so to speak, and kept saying, "I had nothing to
7 do with that, I had nothing to do with that."

8 And you know, I don't offer that as necessarily
9 the denial. Certainly the State's bringing that in. That --
10 it's relevant specifically directed towards the homicide. I
11 offer to point out that when he's talking to Detective Jensen,
12 he doesn't know they're looking at him specifically for this
13 homicide. If you, you know, want to believe he did it, he
14 gave multiple stories, it's hard to say. But it was clear the
15 context was, these 49 other things they're looking for are the
16 crimes you're looking for in Vegas.

17 He had volunteered to give DNA to Detective Love.
18 There were conversations at that time as to what DNA is,
19 between Detective Love and my client's mother. No reference
20 at that point that there's anything to do with a homicide.
21 Clearly they're talking about other crimes.

22 I just think that the risk, we can't be sure to
23 know what he was talking about. But the risk of the out-of-
24 context statement is much more damaging, because it does
25 create the inference that there are multiple, multiple stories

1 when there very well may not be. And I submit there aren't,
2 other than the ones we know when he specifically talked about
3 the homicide.

4 They've got those, when they asked him about the
5 homicide, and then he says what he says. He gives two clear,
6 different versions. They want to throw in a third with some
7 guy named Dude, he's probably talking about, I mean, the
8 likelihood, the assurance, clear and convincing or --

9 THE COURT: That he's talking about what?

10 MR. BROWN: -- you know the risk of prejudice
11 over probative value. Pardon me?

12 THE COURT: That he's talking about burglaries,
13 robberies?

14 MR. BROWN: Burglaries, robberies.

15 THE COURT: That's involved here.

16 MR. BROWN: That stuff's relevant for the other
17 trial when it comes --

18 THE COURT: Well, there's a burglary and robbery
19 charge here.

20 MR. BROWN: Clearly. Well, this burglary and
21 robbery are tied into this homicide here.

22 THE COURT: Right.

23 MR. BROWN: But we're talking about -- at the
24 time, we're talking about different locations. And so it's
25 reference, not counts, but places. So we're talking about 15

1 different places or so originally that were broken into.

2 MR. TOMSHECK: And Judge, to further put it in
3 context, just so the Court's aware, the fact that there wasn't
4 an arrest warrant for the homicide at the time they go to
5 Chicago is further evidence that that's one of the things they
6 want to talk to him about, because they already had probable
7 cause to issue an arrest warrant for the sexual assaults
8 because his DNA had come back.

9 They needed to talk to him about the homicide in
10 order to be able to get an arrest warrant. They were clearly
11 going to talk to him about it the next day in Chicago. And
12 that's black and white in paper. Because in the interview
13 where he gives the first version of the events of the
14 homicide, they don't start talking to him about the homicide
15 until they're 52 pages into that interview, until they're well
16 into an interview, probably close to 45 minutes to an hour
17 into an interview when he starts talking about a homicide
18 after talking about sex assaults.

19 They wanted to talk to him about all the crimes
20 he was involved with. And from the State's perspective, we've
21 done everything we can, and we'll agree to continue to do
22 everything we can to keep the sex assaults out of it. But
23 clearly, one of the crimes that they want to talk to him about
24 is the homicide, and the other crimes related to burglary and
25 the attempted robbery. I mean, that's probably the biggest

1 reason they went to Chicago to talk to him. They already had
2 an arrest warrant for the sex crimes.

3 MR. BROWN: You know, I have no doubt that the
4 Detectives knew what they what were doing. The question is
5 when he makes that statement, what case is he talking about.

6 Can we say with assurance and reliability that
7 when he makes those count -- comments, he's saying, "I did not
8 kick in that door in Apartment G -- or H at Tenth Street.
9 Some other guy did it and he's name -- he's lying on me, his
10 name's Dude." That's what they want to tell the jury. His
11 first story is, this is what he's saying. Or could he have
12 been talking about other things, because the police had been
13 talking in generalities. They didn't tip their hand, so to
14 speak, that they were investigating a homicide. Mr.
15 Tomsheck's right, they waited, talked about all the other
16 crimes.

17 And keep in mind, they did a three-hour interview
18 with him before they turned on the tape and did the tape-
19 recorded interrogation where he speaks of the homicides again
20 on page 52. When Detective LaRochelle is talking about his
21 reaction to the photo, that's in the pre-recorded interview
22 where they're talking to him, and they talked to him about all
23 the other cases, Detective Jensen talked to him about the
24 other cases, and then they started talking about the homicide
25 late. That's when he knows for sure, "They're looking at me

1 for that case."

2 So then he says after that, he knows that they're
3 talking about the homicide. We can't know for sure enough to
4 where the probative value would outweigh the potential
5 prejudice or effect of a statement out of context, which I
6 can't defend. I can't cross-examine, I can't put it into
7 context, I can't do anything about it. I'm stuck with it, I
8 have to live with it and I have to pretend that there was a
9 first story and try to deal with it also. And I will submit
10 it on that, Judge.

11 MR. TOMSHECK: The only thing I would add, in
12 case it needs to be on the record, Judge, at some point is,
13 from the November 15 transcript from the preliminary hearing
14 on page 20, Detective Jensen, at the top of the page, clearly
15 indicates the defendant tells him, "He said that he hadn't
16 committed any crimes." He doesn't say any sex assaults or any
17 robberies. He says "any crimes". That's what the testimony
18 is and that's the content of the call.

19 MR. BROWN: I think a fair resolution, Your
20 Honor, would be Detective Jensen can say he received a phone
21 call from Mr. Porter where he denied committing any crimes in
22 Las Vegas. But the concept of that, he denied it, a guy's
23 lying on him and the guy's name is Dude goes a little far. I
24 think it's fair that he denies committing any crimes. And of
25 course, when we're talking about crimes, we probably need to

1 put it in, you know, make sure that the perspective is
2 burglary, robbery and homicide and not all the crimes.

3 But, if they want to get out of particularly
4 Detective Jensen, "When he called you at one point, he said he
5 didn't commit any crimes in Las Vegas?" "Yes, he said he
6 didn't commit any crimes." I think that's a fair denial
7 generally. But then when you specifically say that somebody
8 else said they -- you know, when he's saying somebody else did
9 do this crime and he's lying on me, that's where I have the
10 problem and I think it's prejudicial.

11 (Pause in proceedings)

12 THE COURT: In the context of his denial of
13 committing any crimes, I think that the statements that he did
14 make are relevant. And I don't think they're outweighed by
15 the danger of unfair prejudice, substantial danger of unfair
16 prejudice. So I'm going to deny the motion.

17 MR. BROWN: Can I have some off-the-record
18 discussions with Mr. Tomsheck about exactly what he's
19 intending on bringing it in? Because the transcript, the
20 phone call is two pages or so where he's talking about
21 polygraph, he's talking about DNA, would you pass a polygraph,
22 he says, "I don't know". Would your DNA be at the scene, he
23 says, "I don't think so." It's my understanding that's not
24 where they're going.

25 So if we could just have, for the record, exactly

1 what we're going to hear in opening with respect to this and
2 what he intends to elicit from Detective Jensen, I think that
3 would prudent. And I object to it now so I don't have to
4 interrupt and object during the opening.

5 MR. TOMSHECK: The content of the call -- the
6 content of what will be in the opening is that on November
7 11th of 2000 at about 11:00 in the morning, the defendant
8 placed a phone call to Detective Jensen. In that phone call
9 he says, "I didn't commit any crimes in Las Vegas, somebody's
10 lying on me. It's a guy who I think's in jail and his name is
11 Dude." That's all it's going to be.

12 THE COURT: Okay. All right. The objection's
13 noted. Let's get the jury. They've been waiting a long time.

14 (Pause in proceedings)

15 (In the presence of the jury)

16 THE COURT: You folks can have a seat if you're
17 in a chair already.

18 All right. Everybody can go ahead and have a
19 seat. Good morning, Ladies and Gentlemen. I do apologize for
20 keeping you waiting in the hallway. We do try to keep those
21 delays to a minimum, but unfortunately, sometimes they cannot
22 be avoided. So, we are going to go ahead and get started this
23 morning.

24 You do have pads and pens for you to use to take
25 notes during the course of the trial. You are permitted to

1 take notes during the proceedings and to take those notes back
2 with you to the jury room when you go to deliberate at the end
3 of the case. You also have your badges that you'll be
4 required to wear during your jury service.

5 As came up several times in the last couple days,
6 your verdict at the end of the case must be based solely on
7 the evidence presented here in the courtroom, not on anything
8 you may see or hear anywhere else, any other incidents and
9 things that may have happened to you at other points in your
10 life. It's got to be based on the evidence presented here in
11 the courtroom.

12 And as we also discussed during the course of the
13 trial, the attorneys, the parties, witnesses and court
14 personnel other than the Marshal are not permitted to talk
15 with members of the jury during the course of these
16 proceedings. So I think you understand that by now having
17 gone through the last couple of days.

18 Now, this is a criminal case commenced by the
19 State of Nevada against Justin D. Porter, the defendant. The
20 case is based on a Third Amended Information. The clerk will
21 now read the information to the Ladies and Gentlemen of the
22 Jury and state the plea of the defendant to that Information.

23 (Information read; not transcribed)

24 THE COURT: All right. Now, Ladies and
25 Gentlemen, please understand as we have discussed several

1 times in the last couple days that the Information is simply a
2 charge. It's not, in any sense, evidence of the allegations
3 that it contains. The defendant has pled not guilty to the
4 Information. The State, therefore, has the burden of proving
5 each of the essential elements of the crimes charged in the
6 Information beyond a reasonable doubt.

7 As the defendant sits there now, he is not
8 guilty. The purpose of the trial is to determine whether the
9 State will meet its burden. It is your primary responsibility
10 as jurors to find and determine the facts. Under our system
11 of criminal procedure, you are the sole judges of the facts.
12 You are to determine the facts from the testimony you hear and
13 the other evidence, including exhibits introduced in court.
14 It is up to you to determine the inferences which you feel may
15 be properly drawn from the evidence.

16 The parties may sometimes present objections to
17 some of the testimony or other evidence. It is the duty of a
18 lawyer to object to evidence which he or she believes may not
19 properly be offered, and you should not be prejudiced in
20 anyway against the lawyer who makes objections on behalf of
21 the party he or she represents.

22 At times I may sustain objections, or direct you
23 to disregard certain testimony or exhibits. You must not
24 consider any evidence to which an objection has been sustained
25 or which I have instructed you to disregard.

1 In considering the weight and value of the
2 testimony of any witness, you may take into consideration the
3 appearance, attitude, and behavior of the witness; the
4 interest of the witness in the outcome of the case, if any;
5 the relation of the witness to the defendant or the State; the
6 inclination of the witness to speak truthfully, or not; and
7 the probability or improbability of the witness's statements;
8 and all of the facts and circumstances in evidence. Thus, you
9 may give the testimony of any witness just such weight and
10 value as you believe the testimony of the witness is entitled
11 to receive. It is for you to decide how much weight to give
12 to any evidence.

13 Once the trial begins, we will have an opening
14 statement by the State and maybe an opening statement by the
15 defense, the State's evidence, possibly defense evidence, jury
16 instructions and closing arguments.

17 Until this case is submitted to you, you must not
18 discuss it with anyone, even with your fellow jurors. After
19 it is submitted to you, you must discuss it only in the jury
20 room with your fellow jurors. It is important that you keep
21 and open mind and not decide any issue in the case until the
22 entire case has been submitted to you under instructions from
23 me.

24 If you cannot hear a witness, please raise your
25 hand as an indication. Also, if you need to use the restroom

1 or if you feel ill, please also raise your hand as an
2 indication.

3 Jurors are allowed to ask questions. The
4 procedures require that you write your juror number and
5 question on a sheet of paper and give it to the Marshal while
6 the witness is still in the courtroom. If it's a proper
7 question under court rules, I'll ask it. If not, I won't be
8 able to ask it. It's important that you not put undue weight
9 on any questions proposed by the jurors as opposed to the
10 lawyers.

11 You're not encouraged to ask a large number of
12 questions, as the questioning is primarily the job of the
13 attorneys involved in the case. Also, the questions need to
14 be directed to the witness, not to me as the Court or to the
15 attorneys. It's simply questions to follow up on facts to
16 which that particular witness is testifying.

17 All right. At this time, State, ready to make
18 opening statement?

19 STATE'S OPENING STATEMENT

20 MR. TOMSHECK: Back on June 10th of 2000, Jay
21 Cleveland was concerned. Jay Cleveland was concerned about
22 his friend, Gyaltsso Lungtok. This, Ladies and Gentlemen, is
23 Gyaltsso Lungtok. During the course of the evidence and
24 testimony in this trial, you will hear from Jay Cleveland
25 about his relationship with Gyaltsso Lungtok. You'll hear that

1 they are friends, that they were both immigrants of Asian
2 descent, and that they had worked together as dealers at the
3 Golden Gate Casino here in downtown Las Vegas. Jay Cleveland
4 dealt a number of different table games. Gyaltsso Lungtok
5 dealt the game, 21.

6 Jay Cleveland, as he developed his friendship
7 with Gyaltsso, called him by his nickname because as I expect
8 you will hear from just about everyone who tries to pronounce
9 his name during this trial, Jay Cleveland had a hard time
10 pronouncing the name Gyaltsso. So he simply called him "Gee".

11 Jay Cleveland will tell us that Gyaltsso Lungtok
12 didn't have his own car and so sometimes after their shifts at
13 the Golden Gate, Jay Cleveland would give him a ride home to
14 his residence.

15 You'll find out that in the June of the year
16 2000, specifically on Saturday, the 10th of June, Jay
17 Cleveland, Gyaltsso Lungtok, and a couple of other of their
18 friends who worked with them at a casino in town, had lunch
19 plans. So on June 10th of 2008 [sic], the day they were to
20 have lunch, Jay Cleveland was concerned when over the course
21 of the day prior, he hadn't been able to reach his friend
22 Gyaltsso.

23 He called his phone number numerous times, and
24 he'll testify that it was in the dozens of times that he tried
25 to reach Gyaltsso and every time he did, he got a busy signal.

1 He'll describe the sound as if the phone was off the hook.
2 This concerned him.

3 So on the afternoon of June 10th of 2000, Jay
4 Cleveland got in his car and he drove over to Gyaltsos
5 residence. Because he'd been there before, he knew that
6 Gyaltsos lived at 415 South Tenth Street in an apartment known
7 as Apartment H here in downtown Las Vegas.

8 So Jay Cleveland parked his car in front of the
9 apartment and he sat outside and made one final attempt via
10 cellular telephone to reach his friend Gyaltsos on the phone.
11 He dialed his number and again, he got a busy signal.

12 So Jay Cleveland walked into 415 South Tenth
13 Street to go to his friend's apartment. And you'll hear
14 during the testimony evidence in this case that this is the
15 apartment building where Gyaltsos Lungtok resided. It was
16 actually one of two identical buildings that sat side by side
17 on that plot of land. Each one of those apartment buildings
18 had four apartments in the front, and four in the back, two
19 downstairs, two upstairs. And if you were to flip the
20 building, the same thing would be in the back of that
21 building.

22 In between the set of apartments in the front is
23 a steep, narrow staircase. And so, on June 10th, when Gyaltsos
24 Lungtok didn't answer the phone, Jay Cleveland climbed those
25 stairs to his friend's apartment. When he reached the top, he

1 turned to his left at the top of that staircase where
2 Gyaltsso's apartment was, and his concern grew stronger because
3 Jay Cleveland noticed when he got to the top of those stairs a
4 couple things about the door leading to his friend's
5 apartment.

6 The first was the door was open and he could see
7 some obvious damage to the door and you can see it in the
8 photographs. There was splintering of the wood around the
9 deadbolt area of that door.

10 Jay Cleveland also noticed a hole in the middle
11 of that door. Jay Cleveland pushed the door open and went
12 inside. And when he did, he began to call out for his friend,
13 "Gee, Gee," are you home? No answer. So Jay Cleveland walked
14 through the apartment.

15 As he walked into the apartment, he missed laying
16 there on the floor the locked deadbolt mechanism to that door
17 where it had come off when whoever had forced their way inside
18 had forced that door open.

19 He walked down the hall, opened the door to his
20 friend's bedroom and saw the reason he was concerned. There,
21 laying next to his own bed, on the floor, hunched over, was
22 the body of Gyaltsso Lungtok. He wasn't breathing, he wasn't
23 moving, he was dead. Jay Cleveland will testify about the
24 holes that he saw in his friend's back and the dried blood
25 that came out of them. And he knew that his friend had

1 passed.

2 Next to Gyaltsso Lungtok's left hand where he was
3 slumped on the ground was the cordless telephone which was off
4 the hook that had cause Jay Cleveland to not be able to reach
5 his friend. So at that point, Jay Cleveland walked out of the
6 apartment and with his telephone, did what Gyaltsso Lungtok was
7 not able to do. He called 911.

8 Police obviously respond to the scene. There's
9 detectives that respond, and there's crime scene analysts.
10 And you'll hear from some of those people during the course of
11 this trial. Detectives will talk to you about how they went
12 around and interviewed some neighbors who lived nearby, who
13 gave them information that a couple of days before the body of
14 Gyaltsso Lungtok was discovered, they had heard a commotion in
15 the middle of the night. They had heard noises that sounded
16 like screams, they had heard bangs, and some of those
17 neighbors even looked outside, but not seeing anything, didn't
18 call the police.

19 You'll hear testimony from some crime scene
20 analysts who will testify about what their job is, essentially
21 how they document, preserve and collect evidence. While their
22 job isn't quite like what you see on TV, but about what they
23 did back in June of 2000 at this crime scene.

24 And bear in mind that all the people that testify
25 in this trial had their own schedules and their own jobs and

1 their own lives. And some of the testimony may come in at
2 different times and out of order, but at the conclusion of
3 this trial, you'll have a clear picture of what happened at
4 the time Gyaltsso Lungtok was killed.

5 A crime scene analyst by the name of Maria
6 Thomas, her name is now Maria Lopez, creates a crime scene
7 diagram. She's one of a team of crime scene investigators who
8 respond to that location and document the evidence in
9 Apartment H. This is the diagram that Maria Thomas generated.
10 It shows the stairs climbing up to Gyaltsso's apartment,
11 Apartment H to the left, and Apartment G to the right where a
12 lady by the name of Nan Winters lived, who will also testify
13 during this trial.

14 Each of these numbers on the crime scene diagram,
15 and I understand that they're kind of hard for you to see from
16 your vantage point right now, but you'll have that in evidence
17 and you can look at it during the course of the trial and when
18 you deliberate. Each of these items that are numbered respond
19 to a portion here identified as a Legend. Essentially each
20 one of those things are an item of evidence which was
21 documented at the time by a crime scene analyst. When they
22 process that crime scene, they find a number of items of
23 interest.

24 Just outside Gyaltsso Lungtok's door is a bullet
25 fragment. Also on the floor of Gyaltsso Lungtok's bathroom is

1 a second bullet fragment, the fragment of a bullet that's been
2 shot out of a gun. And immediately inside the door, just by
3 the locking mechanism to the deadbolt of the front door is yet
4 a third bullet fragment behind Gyaltsso Lungtok's couch. All
5 of those bullet fragments were recovered and they will be
6 admitted into evidence during this trial.

7 The body of Gyaltsso Lungtok is transported to the
8 Clark County Coroner's office where a forensic pathologist, a
9 medical examiner by the name of Dr. Sheldon Green, performs an
10 autopsy on his body. During that autopsy, Dr. Green discovers
11 that there are seven gunshot wounds to Gyaltsso's body. He'll
12 describe how they enter and exit the right side of his chest,
13 his back, his forearm and his right shoulder.

14 Dr. Green follows the path of those bullets and
15 discovers that one goes through Gyaltsso's right lung, and
16 ultimately, those gunshot wounds are the cause of Gyaltsso's
17 death.

18 Dr. Green will rule that that death is a
19 homicide. Now, Dr. Green is one of those people that since
20 the time of this homicide has long since retired. So during
21 this trial, you're going to hear from a medical examiner who
22 currently works at the Clark County Coroner's office by the
23 name of Dr. Alane Olson, and she will tell you that she
24 concurs with the findings of Dr. Green after reviewing all the
25 photographs and reports related to the autopsy as it occurred

1 back in June of 2000.

2 You'll see photographs of the bullet wounds to
3 Gyaltsso's right forearm, his right shoulder, the right part of
4 his chest and his back. During that autopsy, a crime scene
5 analyst by the name of Dave LeMaster who will testify during
6 this trial, receives from the hands of Dr. Sheldon Green three
7 bullets that were recovered from Gyaltsso's body.

8 And that's interesting to police as they begin
9 their investigation. It's interesting because there's three
10 bullets in his body and they'd already discovered three bullet
11 fragments at his apartment.

12 The reason it's interesting is because when crime
13 scene analysts document and preserve that crime scene, in
14 front of the apartment across the hallway from where Gyaltsso
15 lived, on Nan Winter's floor mat, there's a piece of evidence.
16 It's a shell casing. A .22 caliber REM shell casing, the kind
17 that's ejected from a semi-automatic firearm when it's fired.
18 The kind of gun where a clip goes in the bottom of the gun and
19 every time the trigger's pulled, the firing pin strikes that
20 shell casing and the primer ignites the gun powder inside, the
21 bullet comes out of the gun, the slide goes back and the empty
22 shell casing is expelled.

23 And the reason that shell casing is particularly
24 interesting to police in this case is because there's only
25 one, because remember, Gyaltsso was shot at least seven times

1 which there's some missing shell casings.

2 And it's not just ballistics evidence that they
3 find at the crime scene, because on the front door leading to
4 Gyaltsso's apartment, crime scene analysts Dave LeMaster and
5 Jeff Smink set up a tripod camera and a scale and they take
6 photographs, both in black and white and color of a shoe
7 print. And it's the location of the shoe print that's
8 interesting, because it's not where you'd expect to find it on
9 the ground, but it's right near the knob of the door leading
10 into Gyaltsso's apartment, right next to the deadbolt.

11 That shoe print, and understand that you probably
12 can't see it as well in the color photos as you will in the
13 black and white photos, and there's actually a lift taken of
14 that shoe print that depicts the tread of an athletic shoe.
15 That shoe has a diamond tread pattern at the top. And in the
16 middle, when examined forensically, is a single word, Saucony,
17 S-a-u-c-o-n-y. It's a manufacturer of a brand of running
18 shoes.

19 Eventually, the defendant, Justin Porter, is
20 identified as a suspect in the homicide of Gyaltsso Lungtok.
21 The Las Vegas Metropolitan Police Department tries to talk to
22 the defendant. But the defendant, unlike in June of 2000,
23 when he was living in Las Vegas, has left town. The defendant
24 has moved to Chicago. And so Detectives from the Las Vegas
25 Metropolitan Police Department attempt to contact him and they

1 leave a business card with a family member of his. And the
2 defendant actually calls Detective Barry Jensen who will
3 testify during this trial.

4 They have a conversation on the phone. And in
5 that conversation, the defendant offers to Detective Barry
6 Jensen his first story. His first story is that he didn't
7 have anything to do with any crimes in Las Vegas. That's what
8 he tells Detective Barry Jensen. He says that somebody's
9 lying on him and that that person is a guy named Dude, only
10 know as Dude, and that he believes that person is in jail

11 Detectives from Metro, however, travel to Chicago
12 and they meet with the defendant in person. And when I say
13 "meet", that's not exactly how it plays out. Because what
14 happens is, Detectives from Chicago go to the residence where
15 the defendant is staying. And they knock on the door and a
16 female answers the door and they say, "Is Justin Porter home?"
17 The female kind of gives a nod towards the couch in the
18 livingroom. The Detectives go in in her direction, pull out
19 the couch and find this defendant hiding behind the couch on
20 all fours on the ground.

21 So they take him to a station in Chicago where
22 the defendant offers his second story. He's interviewed by
23 Detectives Barry Jensen and James LaRochelle. And when they
24 do, without saying a word, Detective James LaRochelle slides
25 across the table towards the defendant this photograph.

1 Listen when Detective LaRochelle testifies about the
2 defendant's reaction to seeing the photograph of the apartment
3 where Gyaltsso Lungtok was murdered.

4 This interview takes place on August 12th of
5 2000, the day after that phone call where the defendant offers
6 story number two, where he offers story number one. On August
7 12th, the defendant gives the second of his stories. He says
8 that the homicide happened in June and that a guy by the name
9 of Dion did it. The defendant will say that Dion approached
10 him and said he had lick. And while that may not mean
11 anything to you as lay people, we'll find out that the term
12 "lick" is a common street term for a robbery. In other words,
13 to say, I got a lick means I'm going to commit a robbery. Or
14 I did a lick means I just committed a robbery.

15 The defendant will say, on August 12th of 2000,
16 this person named Dion had told him he was going to do a lick.
17 And the defendant agreed to go along. The defendant will say
18 that they went to that apartment where Gyaltsso Lungtok was
19 killed, and that the defendant waited outside while Dion went
20 in. And when you hear Detective LaRochelle's testimony about
21 that particular fact, I'd ask that you pay careful attention
22 to where the defendant tells police he is at the time, and
23 what he can see from where he says that he's at.

24 The defendant says he waits outside and a few
25 moments later, Dion comes jumping down the stairs and they run

1 away. And the defendant says that Dion tells him, hey, don't
2 worry about it, I picked up the shells, obviously something
3 that's important to police. The Detectives conclude that
4 interview and they leave the room for about a half hour and
5 they come back. And when they come back, the defendant
6 indicates to them that he wants to tell them yet a third
7 story.

8 It's probably no secret to anyone at this time
9 what the defendant's been charged with. You heard the
10 Information read to you. And it's no secret that at the
11 conclusion of this trial, Ms. Luzaich and I are going to ask
12 you to find him guilty of those charges.

13 And what makes this trial interesting, because
14 you won't have to take my word for it, and you won't have to
15 take Ms. Luzaich's word for it, because in that interview on
16 August 12th of 2000, the defendant himself admits that he's
17 the person that pulled the trigger that killed Gyaltsso
18 Lungtok. You will hear an audio recording of the defendant's
19 own words from his own mouth admitting to killing Gyaltsso
20 Lungtok.

21 In that second interview, he tells them story
22 number three. And in story number three, he says that he
23 kicked in the door, and he had to kick it more than once. He
24 says that he went inside that apartment and that it was dark,
25 completely dark. And he says while he was inside, he was

1 surprised by a male. And he'll also say, and you'll hear the
2 audio recording, that when he was surprised, he was scared and
3 that he had that gun with him and he fired it. He squeezed
4 the trigger, he kept squeezing the trigger and he didn't know
5 how many times, although he thought it was about three, but he
6 wasn't sure because he hadn't checked the gun to see how many
7 rounds were in it before he started shooting. He'll say that
8 he fired several times and that he ran out.

9 The defendant will also say in that audio
10 recording that he, himself, went back. And the reason that's
11 important is because when the defendant admits that, he's
12 admitting something that only one person could know, the
13 person that was actually there who fired the gun, because the
14 defendant says that he went back to pick up those shell
15 casings. What the defendant didn't know is that he had missed
16 one. The defendant says in that audio recording, when he goes
17 back and picks up the shell casings, Gyaltsso Lungtok is still
18 alive because he can hear him gasping for breath. And on that
19 audio recording, you will hear the defendant emulate the sound
20 Gyaltsso made as he breathed his last.

21 Ultimately, Detectives get a search warrant and
22 they execute it on the house where the defendant had been
23 residing when he was in Las Vegas in June of 2000. They go to
24 208 North 13th Street, and inside a closet where the defendant
25 kept some of his belongings are a pair of shoes, a pair of

1 running shoes, brand Saucony.

2 Ultimately, the shoe lift impression that was
3 obtained by Jeff Smink, and you can see it better in the black
4 and white, the word Saucony in the middle, it's compared
5 against the actual shoes that the defendant wore and had at
6 that residence in Las Vegas. This is a right shoe and if you
7 can imagine that flipping over on top there, that's precisely
8 what forensic scientist Joel Geller did, an expert in the area
9 of footwear impressions, when he performs a comparison of the
10 shoe and the print.

11 Mr. Geller will testify during this trial that
12 although the shoe print on the door wasn't perfect, and it
13 wasn't complete, he can say that the shoe print on the door
14 could have been made by the shoes the defendant was wearing
15 that he had left at his residence in Las Vegas.

16 At the conclusion of this trial, Ladies and
17 Gentlemen, Ms. Luzaich and myself will ask that you return a
18 verdict of guilty. We'll ask for that verdict because the
19 facts that you hear during this case will say that he did it.
20 The evidence that you see during this trial will say that he
21 did it. But most of all, Ladies and Gentlemen, because the
22 defendant himself says that he did it.

23 THE COURT: Thank you. Defense wish to make an
24 opening?

25 MR. ABOOD: Yes, thank you, Your Honor.

1 THE COURT: Go ahead.

2 DEFENSE'S OPENING STATEMENT

3 MR. ABOOD: Good morning. And good morning to
4 you, Your Honor. What happened to Gyaltsso Lungtok on June
5 8th, 2000, is sad and it's tragic. And I am sure that you
6 understand that we don't take that lightly.

7 This trial is going to be about two separate
8 statements given by 17-year-old Justin Porter, some nine years
9 later, today, he's a young man. And the story that the
10 prosecutor told you ends with Justin Porter admitting
11 responsibility for Mr. Lungtok's death.

12 But as I told you, Justin gave two recorded
13 statements where he actually sat down with Detectives and
14 talked about this case. And you're going to find that the
15 first statement that Justin gave after his arrest in Chicago,
16 Illinois places him outside the building at 415 South Tenth
17 Street at the time that Mr. Lungtok is shot.

18 Now, you're going to hear that statement in some
19 detail from a Detective, but let me just summarize it or
20 paraphrase it for you a little bit just like the prosecutor
21 did. In that first statement, Justin and Dion walk there, to
22 this apartment together, because Dion is interested in
23 apparently committing some kind of a crime. And he asks
24 Justin if he can borrow his gun.

25 Justin lets him use the gun and Dion goes

1 upstairs, and you saw the stairs that the State presented to
2 you in the photograph. Dion runs up those stairs and
3 something happens that causes Dion to kill this man.

4 Now Justin hears what he thinks are gunshots at
5 that time and he walks toward the apartment building to see
6 Dion skipping down the stairs. At the time that Gyaltsso is
7 shot, Justin is at a phone bank nearby. And as soon as he
8 heard those shots, he began to walk towards the stairs when he
9 saw Dion come back down.

10 Now, Dion comes down and he says something along
11 the lines of, let's go, and Justin and Dion run off together,
12 and Dion tells Justin not to worry about the shooting because
13 he picked up the casings that would have tied this shooting to
14 the gun that Justin owns.

15 Now, while Justin is giving that statement to the
16 Detectives, he tells them he's scared of Dion. He tells them
17 that he is scared to tell the story that he is now telling
18 them. And, in fact, he says that he fears for his own life
19 because he's telling this story about Dion.

20 Now, shortly after giving that statement, as the
21 State indicated to you, Justin decided to give another taped
22 statement. And in this statement, he talks about when, how,
23 why, his own conduct led to the killing of Gyaltsso Lungtok.
24 Now, in that second statement that you're going to hear,
25 Justin's demeanor is tearful and it's emotional. And in this

1 statement, and again, let me paraphrase for you, he's visiting
2 his girlfriend, and he is out late at night in this
3 neighborhood and he happens to be carrying a gun.

4 A police car apparently drives by and flashes its
5 light at Justin and he becomes frightened because he's
6 carrying a gun and he runs off. And he looks for a place to
7 hide. Now, he runs to this apartment building and he runs up
8 those stairs because he believes that nobody lives there. And
9 the reason that he believes no one lives there is because he
10 lives in this area, and every time he'd ever seen that window
11 and I don't know if you recall, you're going to see
12 photographs that show a large window that one can see from the
13 ground level up towards this second story apartment. Every
14 time Justin had ever seen that window, apparently there were
15 no lights on and the drapes -- not the drapes, but the shades
16 looked to him as if nobody lives there. And this is what he
17 tells Detectives.

18 Now, when he ran to that apartment, again,
19 looking for a place where nobody lives, he runs up those
20 stairs and he kicks his way through that apartment door
21 expecting to find nothing but an empty apartment. Now, as Mr.
22 Tomsheck tells you, instead he's confronted by a man.

23 This man is rushing towards him in the dark and
24 Justin reacts by firing his gun and he fires it a number of
25 times until the -- he's able to make his way out the door and

1 he runs off. When Justin leaves that apartment, Mr. Lungtok
2 is still alive, but unfortunately, a short time later, he
3 dies.

4 So, two separate statements given some nine years
5 ago by 17-year-old Justin Porter, in one, Dion is responsible
6 for the killing of this gentleman; in the other, Justin
7 apparently takes responsibility for it himself. So which
8 statement is true?

9 Well, you're going to be asked to conclude by the
10 State that one statement is true, or parts of one statement
11 are true and that the other statement, therefore, or parts of
12 it cannot be true. And the problem is that both these
13 statements are given by the same individual. And the State
14 has the responsibility of proving beyond a reasonable doubt
15 what they want you to believe at the exclusion of things that
16 don't fit in with the story that they want to tell you.

17 Now, as you all agreed, Justin, as he sits here,
18 and as the Judge told you, is cloaked in an absolute
19 presumption of innocence and the only way to overcome that
20 presumption is with proof beyond a reasonable doubt. And
21 these are things that we talk about and I know that you know
22 that.

23 You're going to find in the next few days that
24 many of the things that we normally look for in a police
25 investigation to answer a question like, which of these

1 statements is true, and which of them is not true, many of the
2 things that we look for are just not going to be present here.

3 For an example, or as an example, there are no
4 eyewitnesses that put Justin there. There are no fingerprints
5 that would indicate that Justin was in that apartment at any
6 time. There is no clothing with bloodstains on it associated
7 with Justin in any place where Justin lived, and that's
8 despite the fact that there is blood, and you'll see
9 photographs of this, throughout that apartment. There is no
10 gun discovered in anyplace that's associated with Justin. No
11 items are stolen from this apartment, nothing that belongs to
12 the deceased is missing. And there is no ransacking of this
13 apartment in anyway.

14 Finally, the investigation into this person named
15 Dion was non-existent. Now this is despite the fact that
16 Justin gives Detectives a good, physical description of Dion.
17 Justin tells Detectives where Dion lives. Justin tells
18 Detectives who Dion lives with, and Justin offers to take
19 Detectives there, so that they can question Dion themselves.
20 And none of those things ever happened.

21 So, you're going to see that the only evidence
22 that Justin killed this man will be the second of those two
23 statements given by a 17-year-old kid who had some motivation
24 to take responsibility for this killing.

25 Now, Judge Cadish spoke a bit about the duties of

1 a defense lawyer in terms of objecting and things along those
2 lines, and I want to briefly talk to you about our duties
3 regarding the evidence that you're going to hear in this case.
4 And I'm sure you understand, you know, when we buy life
5 insurance, we don't buy it because we think we're going to die
6 young. We expect to live a long healthy life. But we buy it
7 in case things don't go the way we hope and the way we plan.
8 And I'm going to buy some insurance this morning.

9 And the reason I say that is that, look, the
10 final point that we need to make in this case is that, you're
11 going to hear that even you believe, even if you accept the
12 second statement Justin gave as being true, that he shot and
13 killed Mr. Lungtok, something that we hope doesn't happen, but
14 that might. Even if you believe that, you need to listen to
15 the surrounding circumstances of that shooting, because Judge
16 Cadish is going to instruct you very thoroughly of the laws in
17 the State of Nevada concerning these types of incidents.

18 And once you evaluate the facts of this shooting
19 and you apply the laws of the State of Nevada to that, we
20 believe that you're going to conclude that even if the
21 prosecutors are able to prove beyond a reasonable doubt that
22 Justin, in fact, did this shooting, what he did does not
23 amount to a first degree murder.

24 Now, in holding the State to their burden of
25 proof beyond a reasonable doubt, I want to make a point that

1 it's not just proof as to whether or not the defendant
2 committed a crime, but it's also proof as to what that crime
3 is if, in fact, he did it. So there's -- those are two
4 separate questions that you're going to have to answer.

5 Now, Curtis and I are trying to do everything we
6 can for our client, and we had jury selection the last couple
7 days and let me just say that if we did or said anything that
8 offended anyone, to let me sincerely apologize to you. We're
9 certainly just trying to do the best we can for our client.
10 Don't take it out on Justin. We think that you're going to
11 apply the standard in this case the way the Judge has
12 explained it to you, and we sincerely thank you for your
13 attention in this case, and we appreciate that you've involved
14 yourself in this and I thank you very much. Thank you, Your
15 Honor.

16 THE COURT: Thank you. Counsel, come on up for
17 just a second.

18 (Bench conference begins)

19 THE COURT: Does it make sense to just take a
20 break before we start witnesses, or do you have somebody
21 short?

22 MR. TOMSHECK: We've got a couple real quick
23 ones.

24 MS. LUZAICH: Yeah.

25 THE COURT: Okay. If you have quick ones, then

1 we can kind of move through it.

2 MS. LUZAICH: Yeah. We have three that we would
3 love to get on.

4 MR. BROWN: (Inaudible).

5 MR. TOMSHECK: We'll be done by 12:15.

6 THE COURT: Okay. Let's do it then. Let's feel
7 like we're moving through witnesses. That will be good.

8 MS. LUZAICH: (Inaudible).

9 THE COURT: Okay.

10 (Bench conference concludes)

11 THE COURT: All right. State, please call your
12 first witness.

13 MR. TOMSHECK: State calls Mark Misuraca. May I
14 approach your clerk, Judge?

15 THE COURT: Yeah.

16 (Pause in proceedings)

17 THE MARSHAL: Just step up in that box, sir.
18 Remain standing, raise your right hand, face the gentleman
19 right here.

20 MARK MISURACA, PLAINTIFF'S WITNESS, SWORN

21 THE CLERK: Please be seated. Please state your
22 complete name, spelling both your first and last name for the
23 record, please.

24 THE WITNESS: My name is Mark Misuraca. That's
25 M-a-r-k, M-i-s-u-r-a-c-a.

1 THE CLERK: Thank you.

2 THE COURT: Just before you begin, do either
3 counsel desire to invoke the exclusionary rule?

4 MR. BROWN: Yes, Your Honor, I would presume
5 that, I'm sure, with each other and I'd advise witnesses, if
6 they were here, to stay outside. We have no witnesses to
7 testify in this case at present.

8 THE COURT: Okay. I just wanted to be clear on
9 the record that it's been invoked. Go ahead.

10 DIRECT EXAMINATION

11 BY MR. TOMSHECK:

12 Q Sir, can you tell us how you are employed?

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

15 Q And currently are you assigned as a sergeant in
16 the Detective Bureau of Metro?

17 A Yes, I am.

18 Q I want to direct your attention back to June of
19 2000, were you working for Metro then?

20 A Yes, I was.

21 Q How many years in total do you have with the Las
22 Vegas Metropolitan Police Department?

23 A Approximately eleven-and-a-half.

24 Q Back in 2000, would you have been working as a
25 patrol officer?

1 A Yes, I would have.

2 Q As a patrol -- well, let me ask you this. As a
3 detective, do you work in plain clothes?

4 A Yes, I do.

5 Q As a patrol officer, would you be the type of
6 officer who would wear a uniform?

7 A Correct.

8 Q You'd ride in a black and white with lights on
9 top?

10 A Yes.

11 Q 911 call comes out, you'd be a responder on the
12 scene?

13 A Yes.

14 Q As a detective, are you now assigned
15 responsibilities later on in the call, and then conduct a
16 followup investigation?

17 A That's correct. We're investigative.

18 Q Okay. I want to direct your attention
19 specifically to June the 10th of 2000. You mentioned that you
20 were working. Do you remember what shift you would have been
21 working back then?

22 A Then I was working day shift.

23 Q Did you have occasion to be dispatched to a call
24 at 415 South Tenth Street, here in Las Vegas, Clark County,
25 Nevada?

1 A Yes, I did.

2 Q And can you describe for us at the time that you
3 got the assigned call, what the nature of the call was?

4 A The nature of the call was the person reporting
5 said that there friend was inside, possibly inside an
6 apartment and possibly dead.

7 Q And that's the information that's radioed to you?

8 A That's correct.

9 Q And then do you physically respond to the scene?

10 A Yes.

11 Q And when you do that, are you in one of those
12 marked cars like you just talked about?

13 A Yes, I was in a marked black and white police car.

14 Q When you arrive on scene, are you the first member
15 of the Las Vegas Metropolitan Police Department to get there?

16 A Yes, I was.

17 Q Can you describe for us the residence of 415 South
18 Tenth Street? What did it look like?

19 A It's a apartment-type complex. Apartment, there
20 was a stairway kind of in the middle and there was apartments
21 on top and bottom on each side.

22 MR. TOMSHECK: May I approach the witness, Judge?

23 THE COURT: Yes.

24 MR. TOMSHECK: For the record, I've already shown
25 opposing counsel what's been marked as State's Proposed 1, 2

1 and 3.

2 BY MR. TOMSHECK:

3 Q I'm going to show you first of all State's
4 Proposed 3, and State's Proposed 1, and then State's Proposed
5 2. Do you recognize those?

6 A Yes.

7 Q And do they fairly and accurately depict the
8 address of 415 South Tenth as you remember it back in 2000?

9 A Yes, they do.

10 MR. TOMSHECK: Move for admission of State's
11 Proposed 1, 2 and 3.

12 THE COURT: Any objection?

13 MR. BROWN: No, Your Honor.

14 THE COURT: They'll be admitted.

15 (Exhibits 1 through 3 admitted)

16 MR. TOMSHECK: Permission to publish, Judge?

17 THE COURT: Yes.

18 BY MR. TOMSHECK:

19 Q We look, for the record, what's now in the
20 overhead is State's Proposed 3, is that the apartment building
21 you're talking about?

22 A Yes, it is.

23 Q And the stairway that leads up to the second story
24 of that apartment building, do you see that in State's 3?

25 A Yes. That's in the middle.

1 Q With your finger, could you go ahead and circle on
2 the screen where that's at? A kind of opening in the middle
3 of those three dark spots in the middle there?

4 A Yes, right about here. Well, right about here,
5 there you do.

6 Q In State's 2, are those the stairs that lead to
7 the top that you were talking about?

8 A Yes.

9 Q Now, at the top there, there's a door to the left
10 and a door to the right?

11 A Yes.

12 Q The door to the left is the door to Apartment H
13 where the call originated from; is that correct?

14 A That is correct,

15 Q Did you go inside?

16 A Yes, I did.

17 Q Can you tell us what you saw when you went inside?

18 A I saw some blood, damage to the door. Once I went
19 inside, I saw a body, a deceased male on the floor. And after
20 that, he was obviously deceased to me, so after that, we
21 backed out and notified detectives.

22 Q No sign of life in the individual that you saw?

23 A No.

24 Q And you mentioned that you saw some blood in the
25 apartment. Did you also see blood on the person?

1 A Yes. There was some dried blood, there was a
2 strong odor in the apartment and discoloration on the body.

3 Q So you, then, back out of the apartment and notify
4 detectives that will come investigate that crime; correct?

5 A Yes, sir, that is correct.

6 Q While you're there waiting for the detectives to
7 show up, did you do anything to ensure that no one goes in or
8 comes out of the apartment until the proper investigative
9 teams are there?

10 A Yes. We set up -- by that time I had plenty of
11 other officers there. We set up some crime scene tape and
12 that was pretty much it. Made sure no one, no one else when
13 in and waited for them to arrive.

14 Q You wait there until detectives show up and tell
15 them what you've just told us?

16 A That's correct, yes, sir.

17 MR. TOMSHECK: Pass the witness, Judge.

18 THE COURT: Cross.

19 MR. BROWN: No questions, Your Honor, thank you.

20 THE COURT: Thank you, sir.

21 THE WITNESS: Thank you, ma'am.

22 THE COURT: Appreciate your time.

23 THE WITNESS: Thank you.

24 THE COURT: Next witness.

25 MS. LUZAICH: State calls Nan Winters. May I

1 approach the clerk?

2 THE MARSHAL: Right over here, ma'am. If you
3 could step up into the box right there, raise your right hand,
4 remain standing and face that gentleman right there.

5 NAN WINTERS, PLAINTIFF'S WITNESS, SWORN

6 THE CLERK: Thank you. Please be seated. State
7 your complete name, spelling both your first and last name for
8 the record, please.

9 THE WITNESS: Nan Winters.

10 THE CLERK: Would you spell that for us, please?

11 THE WITNESS: N-a-n, W-i-n-t-e-r-s.

12 THE CLERK: Thank you.

13 THE COURT: Go ahead.

14 DIRECT EXAMINATION

15 BY MS. LUZAICH:

16 Q Now, that it's shortly afternoon, good afternoon,
17 Ms. Winters. How are you?

18 A I'm just fine.

19 Q I mean, no disrespect when I ask this, but Ms.
20 Winters, how old are you?

21 A I am 74.

22 Q And do you live here in Las Vegas, Clark County,
23 Nevada?

24 A Yes.

25 Q Do you live in the downtown area?

1 A Yes.

2 Q Have you lived in the downtown area for a long
3 time?

4 A Yes.

5 Q About how long?

6 A About 27 years.

7 Q Okay. I'm going to take you, if I might, back to
8 June of the year 2000. In June of 2000, were you living at
9 415 Tenth Street?

10 A Yes.

11 Q And is that a building that has a very similar
12 building next to it? Like 417 right next to it?

13 A Yes.

14 Q What apartment were you living in, in 415?

15 A G.

16 Q Is G an upstairs apartment?

17 A Yes.

18 Q And in your building, 415, are there four
19 apartments in the front of the building?

20 A Yes.

21 Q Yours is G, you said, correct?

22 A Correct.

23 Q Then across the hall from you, what's the
24 apartment over there?

25 A H.

1 Q Okay. And in the building, where you say there's
2 four apartments in front, are there also four around the back
3 of your same building?

4 A Yes.

5 Q And when they're back in June of 2008 -- sorry,
6 2000, did you have a neighbor that was actually living in
7 Apartment H?

8 A Yes.

9 Q Was it a man or a woman?

10 A Man.

11 Q Was it an individual who lived by himself or with
12 anybody?

13 A By himself.

14 Q Did you know him personally?

15 A No.

16 Q Did you know him by face, like to say hello?

17 A Yes.

18 Q Can you describe what he looked like a little bit?

19 A Well, he was tall, slim, well built.

20 Q Was he an African-American gentleman, or a
21 Caucasian or something else?

22 A Asian.

23 Q An Asian gentleman, okay. And did you see him
24 come and go periodically?

25 A Yes.

1 Q Do you know for about how long a period of time he
2 lived there?

3 A About five -- four, five months or so. Five or
4 six months.

5 Q Okay. On June 10th, on Saturday, June 10th of
6 2000, did the police come and talk to you about something that
7 had happened a little bit before that?

8 A Yes.

9 Q A little bit before that, had you heard some kind
10 of commotion at or near his apartment?

11 A Yes.

12 Q Can you describe for us what you heard?

13 A I heard something like -- I didn't understand this
14 question.

15 Q Okay, I'm sorry. When I say did you hear some
16 kind of commotion, first of all, what time of day was it that
17 you heard some kind of commotion?

18 A 1:00 or 2:00 in the morning.

19 Q And when you heard it, were you awake, or had you
20 been sleeping?

21 A I was -- I had been sleeping.

22 Q Okay. And did whatever you hear wake you up?

23 A Yes.

24 Q What did you hear that woke you up?

25 A It was something like a kick, kicking the door.

1 You know, it was like a bang, you know, like kicking the door.

2 Q Okay. Was it a real loud noise?

3 A Loud enough to be heard.

4 Q Okay. Had you ever, like, real loud noises out of
5 your neighbors apartment before that?

6 A No.

7 Q Was he a quiet guy?

8 A Yes, he was.

9 Q When you heard this loud noise that sounded like,
10 you know, kicking the door or banging, what did you do?

11 A I got up and went and looked out the window.

12 Q When you say you went and looked out the window,
13 where does your window look to?

14 A The front of my apartment. At the street.

15 Q Okay. Did you see anything -- oh, I'm sorry. I
16 didn't mean to interrupt you.

17 A No.

18 Q Did you see anything when you looked out the
19 window?

20 A No.

21 Q In addition to the loud kicking or banging that
22 you heard, did you hear any other noise?

23 A No.

24 Q Did you hear a person, any kind of noise related
25 to a person?

1 A I heard a, like a little cry or a scream, whatever
2 you want to call it.

3 Q Crying or screaming.

4 A Right.

5 Q Could you tell whether it was a man or a woman
6 crying or screaming?

7 A It was something like a man.

8 Q Okay. Now, when you talk about a kick or a bang,
9 do you know how many noises that you heard? I mean, did you
10 hear one or more?

11 A Maybe one or two.

12 Q Okay. When you -- well, when you heard the
13 screaming or crying sound from a male, could you hear whether
14 that male was saying something in particular, or just a noise?

15 A Just a noise.

16 MS. LUZAICH: Okay. May I approach the witness?

17 THE COURT: Yes.

18 BY MS. LUZAICH:

19 Q I'm going to show you, ma'am, State's Exhibit 3.
20 Does that look like the front of your building?

21 A Yes.

22 Q Okay. And I'm showing you State's Exhibit 2, does
23 that look like the stairs up to your apartment?

24 A Yes.

25 Q Okay. I'm going to put them on the overhead here.

1 And see, there's a screen in front of you? You should be able
2 to see it right there. Can you see that?

3 A Yes.

4 Q Okay. And now, if you touch the screen, you'll
5 make a -- I mean, you'll be able to see it. Can you circle
6 where your apartment is?

7 A There's the pool right on this side.

8 THE MARSHAL: You can just mark it --

9 THE WITNESS: Oh --

10 THE MARSHAL: -- as if your finger is a pencil
11 and just draw on it.

12 BY MS. LUZAICH:

13 Q Okay. And the window that you're talking about,
14 is that the window facing the street? The window that you
15 looked out?

16 A Yes.

17 Q Okay. Now, I'm showing you State's Exhibit 2.
18 Whoops. Whoops, wrong way. Okay, those are the stairs up to
19 your apartment? Right? That you just looked at?

20 A Yes.

21 Q Okay. And is -- on the right, is that your door?

22 A Yes.

23 Q And on the left, is that your neighbor's door?

24 A Yes.

25 Q So your doors face each other?

1 A Right.

2 Q The window that you looked out, however, was on
3 the street, not there?

4 A Right.

5 Q Okay.

6 A On the street.

7 Q Now, do you remember how much time before the
8 police came and talked to you that it was that you heard these
9 noises?

10 A Before the police talked to me? It was the next
11 day. Day after.

12 Q One day before or two days before?

13 A Let's see, I think it was only one day. Two --
14 one or two days before.

15 Q Okay. Did you talk to the police when they came?

16 A Yes.

17 Q And did you tell them everything that you could
18 remember?

19 A Yes.

20 Q Did you tell the police that it was June 8th of
21 2000 that you heard those noises in the middle of the night?

22 A Yes.

23 Q Okay. Now, after you heard those noises, did you
24 ever see your neighbor again?

25 A No.

1 Q Did you say that you were asleep when you heard
2 the noises? The noises woke you up?

3 A Yes.

4 Q And then you went and got out of bed and went to
5 the window?

6 A Yes.

7 Q Okay. Thank you.

8 MS. LUZAICH: Pass the witness.

9 THE COURT: Cross?

10 CROSS-EXAMINATION

11 BY MR. ABOOD:

12 Q Hello, Ms. Winters.

13 A Hi.

14 Q Nice to see you. I have a few questions that I'd
15 like to ask you --

16 A Okay.

17 Q -- about the same thing. Ma'am, you told the jury
18 about hearing, on June 8th, that you were asleep and you heard
19 a bang-bang noise?

20 A Yes.

21 Q Okay. And then you heard someone screaming or
22 crying out?

23 A Yes.

24 Q Okay. And those two things, the bang-bang and the
25 screaming or crying out happened -- the screaming happened

1 right after the banging; is that right?

2 A Right.

3 Q So there was no space of time between those two
4 things?

5 A No.

6 Q Okay. And that obviously woke you up?

7 A Yes.

8 Q Okay. Now, when you got out of bed to look out
9 your window, you didn't see anybody when you looked out; is
10 that right?

11 A Right, I didn't see anybody.

12 Q Okay.

13 MR. ABOOD: Can I please have -- ah, here it is,
14 thank you.

15 BY MR. ABOOD:

16 Q Ma'am, let me show you what's been admitted as
17 State's Exhibit Number 1. Do you remember this photograph?

18 MS. LUZAICH: Actually, that's not the one I
19 used.

20 MR. ABOOD: Oh, that's not the one you used? Oh,
21 okay, thank you.

22 BY MR. ABOOD:

23 Q All right. Let me show you this one, ma'am. Did
24 you tell the jury that this is your window right here?

25 THE COURT: Can you close up on the --

1 MR. ABOOD: Sure, I think so.

2 THE WITNESS: Yeah, I think it is.

3 BY MR. ABOOD:

4 Q There we go. How's that?

5 A Yes.

6 Q Okay. Ma'am, is this your window right here?

7 A That's my window.

8 Q Okay. And is this the window that belongs to the
9 man that we've talking about, your neighbor?

10 A Yes.

11 Q Okay. So that's his front window?

12 A Yes.

13 Q Okay. As far as you know, did he ever put any
14 kind of decorations or plants or anything at this front
15 window?

16 A No.

17 Q No? It always looked like this?

18 A Yes.

19 Q And yours always had these -- are these drapes,
20 ma'am, on your window?

21 A Curtains.

22 Q Oh, curtains. So yours have always had curtains
23 and his were always just like you're seeing them in this
24 photo?

25 A Yes.

1 Q Thank you very much.

2 THE COURT: Just for the record, she identified
3 the one on the left as --

4 MR. ABOOD: That's right, Judge. On the left
5 side of the building would be Mr. Lungtok's window. And then
6 her's was, I believe, on the right there.

7 THE COURT: Is that correct, ma'am?

8 THE WITNESS: Yeah.

9 MR. ABOOD: Okay.

10 BY MR. ABOOD:

11 Q Ma'am, let me ask you about the times that you've
12 seen this man. Now, you didn't know what his name was, Mr.
13 Lungtok; is that right?

14 A Right.

15 Q Okay. You told us, I believe, that he had lived
16 in the building maybe four or five months?

17 A Yes.

18 Q Okay. And normally, he worked in the evening; is
19 that true?

20 A Yes.

21 Q And he would leave about 3:00 or 5:00 in the
22 evening, and your impression was he was leaving to go to work?

23 A Yes.

24 Q Okay. And as far as you know, was he home all
25 day, generally speaking?

1 A I think he was.

2 Q You think he was?

3 A Yeah.

4 Q Okay.

5 A I got the impression that he was at home all day.

6 Q Okay. So he's home all day, but he works in the
7 evening?

8 A Yes.

9 Q Okay. Now, did he ever leave his lights on in his
10 apartment when he would leave to go to work?

11 A I never seen any.

12 Q You never saw them?

13 A No.

14 Q Okay. Do you think if he left his lights on in
15 the evening when he would go to go to work, that you would
16 notice that?

17 A Yes. I will notice that if I am going out.

18 Q Okay. And you never noticed anything like that?

19 A I never noticed, but I really didn't go out too
20 much after he left as going to work.

21 Q Okay. What time did you normally work back then?
22 Say in June --

23 A Day, days. From 11:00 to maybe 2.

24 Q Okay. So by the time you came home, you normally
25 didn't go out again?

1 A Yes.

2 Q Yes? Okay. Ma'am, thank you so much.

3 MR. ABOOD: Thank you, Your Honor.

4 THE COURT: Anything further?

5 MS. LUZAICH: No.

6 THE COURT: Thank you, ma'am. You're all done.

7 THE WITNESS: Thank you.

8 MS. LUZAICH: The State calls Al Awalom.

9 THE MARSHAL: And if you would step up in this

10 box, remain standing, raise your right hand, face that

11 gentleman right there.

12 THE WITNESS: Okay.

13 THE MARSHAL: Just raise your right hand, there

14 you go.

15 ALEMAYEHU AWALOM, PLAINTIFF'S WITNESS, SWORN

16 THE CLERK: Thank you. Please be seated. Please

17 state your complete name, spelling both your first and last

18 name for the record, please?

19 THE WITNESS: Okay. My name is Awalom Alemayehu,

20 A-w-a-l-o-m, and Alemayehu, A-l-e-m-a-y-e-h-u.

21 THE CLERK: Can you repeat that again, sir?

22 Slowly.

23 THE WITNESS: Okay. Alemayehu, A-l-e-m-a-y-e-h-

24 u.

25 THE COURT: That was your last name, sir?

1 THE WITNESS: This is my first name.

2 THE COURT: Okay.

3 THE WITNESS: Okay.

4 THE COURT: Oh, I see. And then your last name,
5 can you spell that again?

6 THE WITNESS: Last name Awalom, A-w-a-l-o-m.

7 THE CLERK: Thank you.

8 THE COURT: Go ahead, counsel.

9 MS. LUZAICH: Thank you.

10 DIRECT EXAMINATION

11 BY MS. LUZAICH:

12 Q Do people call you Al?

13 A Yeah.

14 Q Would it be okay if I called you Al?

15 A Yeah.

16 Q Thank you. I don't know that I could pronounce
17 your name and I mean no disrespect when I say that.

18 A Yeah.

19 Q Sir, do you live here in Las Vegas?

20 A Yes.

21 Q Back -- and I'm going to take you way back --

22 A Okay.

23 Q -- in June of 2000, did you also live here in Las
24 Vegas?

25 A Yes.

1 Q And specifically, in June of 2000, did you live at
2 415 Tenth Street downtown here?

3 A Yeah.

4 Q What kind of building was that that you lived in,
5 415 Tenth Street?

6 A It's like, I think, a four -- it's got two
7 apartment on west side, and two apartment on the east side of
8 it.

9 Q Okay. Are there two --

10 A One --

11 Q -- buildings that sit next to each other, 415 and
12 417?

13 A 417, too, yeah.

14 Q Okay. And then, in 415, are there four apartments
15 in the front and then four apartments in the back?

16 A Yes.

17 Q Okay. Did you live in the front or in the back?

18 A On the back.

19 Q Okay. And when I say four apartments in the back,
20 are there two upstairs and two downstairs?

21 A Yes.

22 Q Which apartment did you live in?

23 A I live one upstairs, O.

24 Q You lived in Apartment O that was upstairs?

25 A Yes.

1 Q Around the back?

2 A Yeah.

3 Q Okay. And --

4 MS. LUZAICH: May I approach the witness?

5 THE COURT: Yes.

6 BY MS. LUZAICH:

7 Q Showing you State's Exhibit 3, does this look like
8 the front of 415?

9 A This -- look like the front of 415, yeah.

10 Q Okay.

11 A Okay.

12 Q Now, I'm putting this on the overhead and there's
13 a screen to your right. Can you see -- whoops.

14 A Yes.

15 Q Okay. So this is 415, a front view. And as you
16 look over here, you can see that it goes around to the back;
17 correct?

18 A Yeah.

19 Q And that's where you lived, around the back?

20 A Yeah. I lived in the back, yeah.

21 Q Okay. Did you live on the -- in the apartment
22 that is closer to the white car that's depicted in this
23 picture, or on the other side around back?

24 A Should -- yeah, I think it should be directly from
25 -- by the white car, I think, on the other side.

1 Q Okay. Around back, but on the side where the car
2 is as opposed to closer to the blue car?

3 A Yeah.

4 MS. LUZAICH: And for the record, the white car
5 is in the left of the picture.

6 BY MS. LUZAICH:

7 Q And would your apartment share a wall with the
8 apartment that's in the front?

9 A Yeah, I think so.

10 Q Okay. Back in June of 2008 [sic], when you were
11 living there, did you have a friend named Derrick Sterling
12 (phonetic)?

13 A Yes.

14 Q And -- oh, I said 2008, I'm sorry. I meant 2000.

15 A 2000.

16 Q And did you and Derrick Sterling spend some time
17 together as friends back in June of 2000?

18 A Yes.

19 Q What do you do for a living?

20 A I drive a cab.

21 Q Did you do that back in 2000 as well?

22 A Yes.

23 Q And what shift, what hours did you work back in
24 June of 2000?

25 A I was working, like, 3:00 to -- 3:00 in the

1 morning to 3 in the afternoon, somewhere around that time.

2 And

3 then --

4 Q When you would come home from work around 3:00 in
5 the afternoon or sometime after that, what would you do
6 generally back in June of 2000?

7 A Just drink.

8 Q Drink alcohol?

9 A Yeah, beer. I drink beer.

10 Q Okay. And who would you drink beer with back in
11 June of 2000?

12 A Derrick and his brother, Daryl (phonetic).

13 Q Did Derrick and his brother, Daryl, live together?

14 A They -- yeah, they did.

15 Q Back in June of 2000?

16 A Yes.

17 Q And did they live near you?

18 A Yeah, one apartment -- I mean, one street over.

19 Q So walking distance?

20 A Yes, yeah.

21 Q And when you guys would drink beer when you got
22 off work in June of 2000, where would you do that?

23 A My apartment.

24 Q And --

25 A And sometime his brother apartment.

1 Q Okay. And would it generally be the three of you
2 together?

3 A Yeah.

4 Q And for how long a period of time? Like, you'd
5 come home from work, you start drinking. How long would you
6 drink into the evening?

7 A Depends, about -- till 9:00, 10:00 maybe.

8 Q Okay. And did things sometimes happen between
9 Derrick and his brother?

10 A Yes, sometime they have a lot of argument and
11 pushing around and stuff --

12 Q Okay. So they would argue and push each other
13 around a little bit?

14 A Yeah.

15 Q Specifically, was there an occasion in June of
16 2000 where that happened and it went a little further?

17 A Yeah. They just push each other same way, and
18 then Derrick, he went -- you know, he wanted -- I told him to
19 get on, you know, go and stuff like that. So they start -- he
20 start punching on the fire extinguisher.

21 Q Okay. I'm going to back you up just a little bit.
22 On the day that we're talking about, were you guys in your
23 apartment?

24 A Right.

25 Q And when you say, they were arguing and pushing

1 around inside your apartment?

2 A Yeah, they -- yeah, they usually do that, yeah.

3 Q And you wanted them to stop.

4 A Right, get out.

5 Q And you said he punched something. Where is the
6 item that he punched?

7 A Right outside the door on the wall.

8 Q Right outside the door of your apartment?

9 A Yes.

10 Q So --

11 A On the wall.

12 Q -- up the stairs and on the wall?

13 A Yeah.

14 Q When he -- what is it that he punched?

15 A He punch the glass on the box for the fire
16 extinguisher.

17 Q When he punched the glass for the box of the fire
18 extinguisher, what happened?

19 A He cut his fingers.

20 Q Did you see him punch?

21 A Yes.

22 Q Did you see him cut his finger?

23 A Yes.

24 Q And then what did he do?

25 A He went around the -- to wash his, the blood off.

1 Q When you say he went around, did he go down the
2 stairs?

3 A Right.

4 Q And did he go around it to the side that's in
5 between the two buildings, 415 and 417?

6 A Yes.

7 Q Is there something there on the building?

8 A Yeah, there is a water -- there is a little, what
9 they call it, like a water --

10 Q Like a spigot?

11 A Huh?

12 Q Like a spigot?

13 A No, it's a water facet.

14 Q Sorry.

15 A Yes.

16 Q And that's actually on the building, your
17 building?

18 A Yeah, it's on the bottom of the building, yeah.

19 Q As he walked from where he punched the fire
20 extinguisher down the stairs, around to the water facet, was
21 he bleeding?

22 A Yes.

23 Q Did you see him leave a blood trail there?

24 A Uh-huh.

25 Q And did you help him was his hand off?

1 A Right.

2 Q After you guys washed his hand off, what did you
3 all do?

4 A Just wrap it up with towel and --

5 Q Where did you go?

6 A I don't remember that part right there, but maybe
7 drink some more and just nothing happened after that.

8 Q Okay. So back to the apartment, back to drinking?

9 A Back to (indiscernible), yeah.

10 Q Okay. Now, a few days later, did you see
11 something pertaining to Derrick?

12 A Did I see something --

13 Q When you came home? Were there police there?

14 A Yeah, the -- yeah. The police were there and --

15 Q Okay. A few days later --

16 A There's a --

17 Q -- you came home from work and police were there?

18 A Right.

19 Q Were there a lot of police there?

20 A There was a lot of -- couple of uniformed officer
21 and a lot of plain clothes --

22 Q Detectives?

23 A Yeah.

24 Q And were they talking to Derrick?

25 A They're about finished talking with him and then

1 when he see me, he say, there he is. That's the guy who live
2 right there, you can ask him. He was a little bit excited. I
3 don't know, he was nervous because he was -- they were asking
4 him questions.

5 Q Okay. So when you got home from work, you saw the
6 police talking to Derrick and then Derrick pointed at you and
7 said --

8 A Right.

9 Q -- there, that's him?

10 A Yeah.

11 Q And then did you talk to the police at that point?

12 A Yes.

13 Q And did they ask you about what you had seen
14 happen with Derrick and his hand?

15 A Right.

16 Q And did you explain to them what you saw just like
17 you did to the jury?

18 A Yes.

19 Q Thank you.

20 MS. LUZAICH: I would pass the witness.

21 THE WITNESS: Okay.

22 MR. ABOOD: No questions, Your Honor.

23 THE WITNESS: All right.

24 THE COURT: Thank you, sir.

25 THE WITNESS: Thank you.

1 THE COURT: You're all done.

2 THE WITNESS: All right. Thank you.

3 THE COURT: All right. At this point we're going
4 to go ahead and take our lunch break. Come back at 1:30.

5 During this recess, you are admonished not to
6 talk or converse among yourselves or with anyone else on any
7 subject connected with this trial; or to read, watch or listen
8 to any report of or commentary on the trial, or any person
9 connected with this trial by any medium of information
10 including, without limitation, newspapers, television, the
11 internet and radio; or to form or express any opinion on any
12 subject connected with this trial until the case is finally
13 submitted to you. See you in an hour.

14 (Court recessed at 12:29 p.m. until 1:37 p.m.)

15 (Outside the presence of the jury)

16 THE MARSHAL: Just a second, Judge, we keep
17 losing --

18 THE COURT: I'm thinking we're missing somebody.

19 THE MARSHAL: They were here and then they just
20 disappeared on me.

21 MR. BROWN: They do that a lot, Your Honor.
22 They're crafty.

23 THE MARSHAL: They're like magicians.

24 MR. BROWN: Called me the wizard. Got a nerve.
25 I have one real quick thing when they get here,

1 Judge, just to bring to the Court's attention.

2 (Pause in proceedings)

3 MS. LUZAICH: We've been here forever, really, I
4 promise.

5 MR. BROWN: Haven't seen them. Prove it.

6 THE COURT: All right.

7 MR. BROWN: Your Honor, I already mentioned this
8 to the State, brought it to their attention real briefly. It
9 involves a juror potentially overhearing a conversation, just
10 to front load it, may or may not.

11 THE COURT: Uh-huh.

12 MR. BROWN: After Court had recessed and the jury
13 was dismissed, I was detained in the courtroom for just a
14 couple of minutes by one of the reporters and trying to
15 persuade him not to cause a mistrial.

16 THE COURT: Uh-huh.

17 MR. BROWN: But after that, the family who you
18 may have noticed of Mr. Porter was sitting in the courtroom,
19 was sitting in the back of the hallway past the elevators near
20 the balcony entrance. And went back there and they had a
21 couple of questions. I was explaining to them the severance
22 issue and I explained to them, they had a question about
23 juvenile court, this Court didn't rule on those, but I was
24 explaining specifically about a conviction their brother
25 received when was 12, just real quick conversation.

1 THE COURT: Okay.

2 MR. BROWN: And right in the middle of it, Juror
3 Yao walked out of the female bathroom. I mean, she had to
4 have been in there --

5 THE COURT: I'm sure she didn't understand what
6 you were talking about.

7 MR. BROWN: I hope you're right. She had to have
8 been in there --

9 THE COURT: I'm kidding, I'm kidding.

10 MR. BROWN: I know you are, Judge. And I thought
11 the same thing and it is clever. But she had to have been in
12 there, you know, close to 15 minutes if she went in right
13 after court, she may not have. My only concern is that she
14 was in there, heard us talking, thought she'd wait it out,
15 finally had to leave. So if she was standing near the door,
16 maybe not intentionally, but hearing --

17 THE COURT: Right.

18 MR. BROWN: -- she could have heard something.
19 If she was strictly just leaving, very unlikely she heard
20 anything.

21 THE COURT: And you were talking about a juvenile
22 conviction?

23 MR. BROWN: I talked about initially severance
24 which, of course, brought up -- real quickly they asked --

25 THE COURT: Right, the charges.

1 MR. BROWN: -- because they were confused. We've
2 had the conversation before, but they were confused on
3 specifics. And I reexplained that the other cases are another
4 day, but I referenced other cases. And then we were talking
5 specifically about juvenile, why it wasn't remanded to
6 juvenile court, we were talking about a conviction that he
7 received at 12, and how it came across and it was considered
8 vehicular hijacking in Chicago, things like that, so.

9 THE COURT: When she came out of the bathroom
10 door, she didn't linger, she just walked past.

11 MR. BROWN: No, she very quickly ducked right
12 through.

13 THE COURT: Right.

14 MR. BROWN: And unfortunately, she didn't even
15 look to realize. I think she knew that, you know, that -- you
16 know, that was my only concern is that she may have realized,
17 you know, that there was a conversation. You know, to her
18 credit, she didn't stay until we were done, you know.

19 THE COURT: Right.

20 MR. BROWN: But she may have stayed a few
21 minutes, had to leave, unlikely an issue, as the State puts
22 it, probably over-thinking it, but I did just want to raise it
23 to the Court's attention. Seeing as how you don't pick your
24 alternates immediately --

25 THE COURT: Right.

1 MR. BROWN: -- probably don't need to raise it
2 with her until later in the day if you don't want to, as
3 opposed to bringing her right now. I leave that completely up
4 to you.

5 THE COURT: Well, that was a thought, is have her
6 come in first and just ask her if she heard any part of the
7 conversation.

8 MR. BROWN: Court's preference. Either have her
9 come in first, or have everybody leave and have her stay when
10 we're done at a break. Either way, it's fine. And the Court
11 just generally ask her, you know, we saw you there, did you
12 hear anything and what did you hear, if so.

13 MR. TOMSHECK: I appreciate Mr. Brown bringing it
14 up. It doesn't matter to us any which way. I know that the
15 bathroom doors, I think, have two layers of doors, so. And I
16 think she'd have --

17 THE COURT: Right.

18 MR. TOMSHECK: -- to actively be trying to
19 listen, to listen. If she did that, obviously, she needs to
20 go. If you listen to Mr. Brown, anyway, she does understand
21 English, so I guess we (indiscernible).

22 MR. BROWN: She's probably already tuned me out.

23 MR. TOMSHECK: That -- record should reflect that
24 was a joke.

25 THE COURT: Thank you. I appreciate you doing

1 that as well. Let's go ahead and bring Ms. Yao in for just a
2 minute.

3 MR. BROWN: Your Honor, I take full
4 responsibility for it. I don't blame the juror.

5 THE COURT: I don't think anybody did anything
6 wrong.

7 MR. BROWN: I mean, I didn't anticipate it's so
8 long, but.

9 THE MARSHAL: Judge, just put her up there or you
10 want her --

11 THE COURT: Over there is fine, yeah.

12 THE MARSHAL: Just go right up to your seat,
13 ma'am.

14 THE COURT: You got a mic, maybe? Thank you.

15 Ms. Yao, I believe that during the break, or when
16 we broke for lunch that you may have been nearby when Mr.
17 Brown was talking to some people in the hallway. You haven't
18 done anything wrong, so don't be nervous at all. But I just
19 want to know whether you overheard any part of the
20 conversation that Mr. Brown was having with some folks out in
21 the hallway.

22 JUROR NO. 2: No.

23 THE COURT: You didn't hear anything they were
24 talking about?

25 JUROR NO. 2: No, ma'am.

1 THE COURT: Okay. All right. Thank you, ma'am.
2 That's it.

3 MR. BROWN: Thank you, Your Honor.

4 THE COURT: Let's go ahead and get everyone in.

5 (In the presence of the jury)

6 THE COURT: All right. Everybody go ahead and
7 have a seat. Do counsel stipulate to the presence of the
8 jury?

9 MS. LUZAICH: Yes, Judge.

10 MR. BROWN: Yes, Your Honor.

11 THE COURT: All right. Next witness.

12 MR. TOMSHECK: State calls Jay Cleveland. If I
13 may approach your clerk, please, Judge?

14 THE COURT: Sure.

15 (Pause in proceedings)

16 THE MARSHAL: If you could, step up into the box,
17 remain standing. Raise your right hand, face that gentleman
18 right there.

19 JAY CLEVELAND, PLAINTIFF'S WITNESS, SWORN

20 THE CLERK: Thank you. Please be seated. Please
21 state your complete name, spelling both your first and last
22 name for the record, please.

23 THE WITNESS: My first name is Jay, J-a-y. Last
24 name is Cleveland, C-l-e-v-e-l-a-n-d.

25 THE CLERK: Thank you.

1 THE COURT: Go ahead, counsel.

2 MR. TOMSHECK: Thank you, Judge.

3 DIRECT EXAMINATION

4 BY MR. TOMSHECK:

5 Q Okay. Did you know an individual by the name of
6 Gyaltsso Lungtok?

7 A Yes, sir.

8 Q Okay. And I have some problems pronouncing his
9 name. How do you remember it should be properly pronounced,
10 just so the Ladies and Gentlemen of the Jury understand?

11 A We call him by the name Gee.

12 Q Okay. Could you pronounce his actual name?

13 A No, sir. That's the reason we go by the name Gee.

14 Q And G is the first letter of Gyaltsso's name; is
15 that right?

16 A Yes, sir.

17 Q Okay. When you say "we call him Gee", who came up
18 with that nickname?

19 A I'm not really sure, but I think I'm starting that
20 one.

21 Q Okay. Do you think you started it?

22 A Yes.

23 Q When you say "we called him that nickname", did
24 other people that you knew that were friends of him also call
25 him Gee?

1 A Yes.

2 Q Okay. When you were -- I want to direct your
3 attention back to the year 2000. Do you remember that time?

4 A Yes, sir.

5 Q And did you know Gee back at that time?

6 A Yes, sir.

7 Q Can you tell the Ladies and Gentlemen of the Jury
8 where you first met him?

9 A I first met him at work, at the Golden Gates
10 Casino.

11 Q And is that the Golden Gate Casino here downtown?

12 A Yes, sir.

13 Q And you said you worked there. What did you do at
14 the Golden Gate?

15 A I was the 21 dealer at that time.

16 Q Okay. The game, the card game 21?

17 A Yes, sir.

18 Q Now, are you still a dealer?

19 A I'm a supervisor now.

20 Q You supervise other dealers?

21 A Yes.

22 Q And is that in a casino here in Las Vegas?

23 A Yes, sir.

24 Q Do you currently deal card games?

25 A I still can deal.

1 Q What games do you deal now?

2 A I deal all the games right now.

3 Q Table games with cards?

4 A Table game, yeah.

5 Q When you met Gee, do you remember roughly what
6 time period it was?

7 A I believe it's -- I remember it was year 1999.
8 It's about November 1999.

9 Q End of 1999?

10 A Yes.

11 Q Now, obviously, you know you're here to talk about
12 it; right?

13 A Yes, sir.

14 Q You know that Gee passed in June of 2000?

15 A Yes.

16 Q Was he your friend between November of '99 and
17 June of 2000 when he died?

18 A Yes, sir.

19 Q Was he also working at the Golden Gate Casino at
20 that time?

21 A Yes, about November. That's when he started.

22 Q When he started and that's when you met him?

23 A Yeah. Because I was work there before he do, so.

24 Q Was he a dealer there as well?

25 A Yes, sir.

1 Q What game did he deal?

2 A He deal only one game, 21 Blackjack.

3 Q And then you guys kind of meet there and strike up
4 a friendship?

5 A Yes, sir.

6 Q Were you aware between November of 1999 and June
7 of 2000, did Gee have a car?

8 A No, sir. He doesn't have it.

9 Q Did you have a car?

10 A Yes, I do.

11 Q Would you sometimes work the same shift?

12 A Uh-huh.

13 Q Is that a yes?

14 A Yes.

15 Q And just so you know, eventually -- this young
16 lady is recording. Eventually it's going to be a transcript,
17 so --

18 A Okay.

19 Q -- we have to have out loud yes or no answers
20 instead of uh-huh's or huh-uh's; okay?

21 A Okay.

22 Q When you would work the same shift, would you
23 sometimes help Gee get home?

24 A Yes, sir.

25 Q And how would you do that?

1 A If I get off right before he do, so I wait for him
2 to get -- till he get off so I give him a ride home.

3 Q Okay. And would that be in your car?

4 A Yes, sir.

5 Q What part of town did he live in?

6 A He live, I believe, at Bush Street and -- I don't
7 remember across the street what.

8 Q Okay. Do you remember what street he lived on?

9 A No, sir. I'm not clear.

10 Q Do you remember, did he live in a house or an
11 apartment?

12 A He live in an apartment.

13 Q Can you describe the apartment building for us?

14 A That was a two-story building. He live on the
15 second floor, Apartment Number H.

16 Q H?

17 A H.

18 Q As in horse?

19 A Yes, sir.

20 Q Okay. To get to the second story, would you take
21 stairs or an elevator?

22 A The stairs, sir.

23 Q Okay. Can you describe the stairs going up? Were
24 they steep, narrow?

25 A It just -- from the street, it just a stair, the

1 stairs just go straight, right up. And his room was on the
2 left-hand side.

3 Q When you got to the top of the stairs, how many
4 doors were there?

5 A There's two door, one on the left and one on the
6 right.

7 Q Did you know the person that lived on the right?

8 A No, sir.

9 Q You knew that Gee lived on the left?

10 A Yes, sir.

11 Q Had you ever been inside his apartment before, in
12 Apartment H?

13 A Yes, sir.

14 Q And why were you inside his apartment?

15 A Sometime if, when I drop him off, he's invited me
16 up there, you know, just to talk a little bit, then I go home.
17 Sometime he was cooking, then, he invite me over there.

18 Q And you'd eat dinner with him?

19 A Never had a dinner, but lunch, yes.

20 Q Okay. You guys worked and you got off in the
21 middle of the day sometime?

22 A No, sir. We was work on the night shift. We work
23 on the swing shift. If he cooked the daytime, then he'll call
24 me so I came.

25 Q Got you. Did you guys communicate on the phone?

1 A Yes, sir.

2 Q Did you have a cellular telephone back in 2000?

3 A I have a cell phone, yes.

4 Q The kind you can carry with you, take in your car,
5 that kind of thing?

6 A Yes, sir.

7 Q When you would talk to Gee, was he talking with
8 you on his cell phone or was it a land-line in his apartment?

9 A He using a land-line. He don't have a cell phone.

10 Q Okay. I want to direct your attention to the week
11 leading up to when Gee died. Did you have -- did you make
12 plans with him to do something that week?

13 A Yes, sir.

14 Q And what were the plans that you were going to do?

15 A We was planning to have some lunch.

16 Q Were you going to have it at someone's house or
17 were you going to go somewhere?

18 A Some -- at the restaurant.

19 Q And who all was going to go?

20 A One of the friend of us. Her name is Emmy.

21 Q Is that E-m-m-y?

22 A E-m-m-y, yes.

23 Q And yourself?

24 A Yes.

25 Q And Gee?

1 A And Gee, plus Emmy's boyfriend.

2 Q You guys had made the plans to go ahead and do
3 that?

4 A Yes, sir.

5 Q Do you remember what day you were going to have
6 lunch?

7 A No. It's going to be Saturday on June, I believe
8 it's 10 or something. Yeah.

9 Q The day you were going to have lunch, is that the
10 same day that you ultimately found Gee?

11 A Yes, sir.

12 Q So if I told you that was Saturday, June 10th, you
13 would remember that it was that day?

14 A Yes, sir.

15 Q Prior to the 10th of June, when's the last time
16 you remember talking to Gee?

17 A I was talking to him on Wednesday night, June 7,
18 2000.

19 Q And did you talk to him on the telephone or in
20 person?

21 A He came to seeing me at work, at the Stratosphere.

22 Q Back then were you -- at some point between
23 November and June, did you leave the Golden Gate and go work
24 at the Stratosphere?

25 A Yes, sir.

1 Q And you were working at the Stratosphere on
2 Wednesday, June 7th?

3 A Yes, sir.

4 Q And did Gee come and see you there?

5 A Yes.

6 Q And did you guys talk at that time?

7 A Yes, sir.

8 Q Did you discuss future plans about, for instance,
9 going to lunch?

10 A Yes, sir.

11 Q After you saw him on Wednesday, June 7th, did you
12 try to initiate contact with him on the telephone or in
13 person?

14 A Yes, sir.

15 Q Can you describe for us what you did?

16 A He say on -- he met -- we met on Wednesday night,
17 was around, like 12:00 midnight on Wednesday, June 7th. So he
18 said -- the next day was Thursday, June 8. He was going to go
19 over to the Stratosphere to fill out the application for a
20 job. And --

21 Q Okay. Let me just stop you there. Gee had told
22 you on the 7th that the following day, the 8th, he, too, was
23 going to come to the Stratosphere and fill out a job
24 application?

25 A Yes, sir.

1 Q Okay.

2 A So he told me, if he need a ride to go to the
3 Stratosphere, he will give me a call.

4 Q Okay. Did he ever call you?

5 A No, sir. Not in the morning.

6 Q Okay. When's the next time you tried to contact
7 him?

8 A I tried to contact him on Thursday around 4:00
9 p.m.

10 Q And why were you calling him on Thursday? And
11 would that be Thursday, June 8th of 2000?

12 A Yes, sir.

13 Q Why were you trying to contact him in the
14 afternoon?

15 A Because he been calling me on the same day, it was
16 June 8th, around like 2 p.m. on my cell phone. But during
17 that time, I was driving. So I didn't answer the phone.

18 Q Okay. So on June 7th, you see him in person.
19 You're driving your car on June 8th, and you get a phone call
20 from who you believe is Gee on your cell phone?

21 A Yes, sir.

22 Q And you personally don't answer your cell phone
23 while you're driving?

24 A Yes

25 Q Probably a good idea. So you don't pick up the

1 phone, you make a decision to call him back in response to
2 that call?

3 A Yes, sir. When I got home around like 4:00 p.m.

4 Q And are you ever able to get a hold of Gee after
5 that?

6 A No, sir.

7 Q I want to ask you why it is that you think that it
8 was Gee that called you on the afternoon of June 8th?

9 A Because on that time when I have a phone, so is
10 only one person would calling me on the blocking number.

11 Q When Gee would call you from his land-line to your
12 cell phone, did you have caller ID?

13 A Yes, sir.

14 Q And would it come up with a number or would it
15 come up with a message?

16 A It come up with the message. It say it's --

17 Q And what did the message say?

18 A It say blocked number.

19 Q So you thought because it came in as a blocked
20 call, that it had to be Gee?

21 A Yes, sir.

22 Q And you tried to call him back?

23 A I tried to call him back.

24 Q What happened when you tried to call him back?

25 A When they -- when we first call was, the phone, it

1 just like a busy line, like it's off the hook.

2 Q Okay. Like the fast beeping noise? Like beep,
3 beep, beep?

4 A Yes, sir.

5 Q Okay. And that was the afternoon of the 8th?

6 A Yes, sir.

7 Q Did you continue to try to call him?

8 A Yes, I did.

9 Q And why did you continue to try to call him?

10 A Because I was kind of wondering was he need help
11 to go fill out application during that time. So -- and then I
12 wonder what he needs, so that's why I keep calling him back.

13 Q And did you call him repeatedly on June 8th?

14 A Yes, sir.

15 Q And did you call him repeatedly on June 9th?

16 A June 9th.

17 Q Did you --

18 Q And June 10th.

19 Q And June 10th is the day you had planned to have
20 lunch with him?

21 A Yes, sir.

22 Q Were you going to call him prior to picking him up
23 to go to lunch?

24 A Yes, sir.

25 Q Was that one of the reasons in addition to

1 wondering about the job application why you were calling him?

2 A Yes, sir.

3 Q How many times, could you estimate for us how many
4 times that you tried to call Gee between the 8th of June until
5 you went over to his house on June 10th?

6 A Close to 20 time.

7 Q Okay. In those times, did you ever get a hold of
8 him?

9 A No, sir.

10 Q Did you ever get anything other than a busy
11 signal?

12 A No, sir.

13 Q So, fast forwarding, then, to June 10th, did you
14 still intend to go to lunch with Gee?

15 A Yes, sir.

16 Q Okay. Were you worried about him at that point?

17 A A little bit, yes.

18 Q Okay. Because he hadn't called you back?

19 A Yes.

20 Q And you hadn't been able to get a hold of him?

21 A Yes.

22 Q So, did you make a decision to drive somewhere?

23 A On -- you mean, like, on the 10th?

24 Q Correct.

25 A Okay. On the 10th, I dropped off my wife at work.

1 So was -- I believe it was the same street with the Gee
2 apartment leave, but it's on Charleston.

3 Q Okay. She --

4 A So it's close by, yes.

5 Q Your wife was working somewhere nearby Gee's
6 apartment?

7 A Yes, sir.

8 Q So you dropped her off. And then where did you
9 go?

10 A Then I went to Gee house, Gee apartment.

11 Q And where did you park?

12 A I park on the street.

13 Q The street in front of the house?

14 A Yes, sir.

15 MR. TOMSHECK: Judge, if I may publish what's
16 already in evidence as State's Exhibit 1.

17 THE COURT: Yes.

18 MR. TOMSHECK: Actually, I'm going to do State's
19 Exhibit 3, I'm sorry.

20 BY MR. TOMSHECK:

21 Q Do you recognize that street and that apartment
22 building?

23 A Yes, sir.

24 Q Okay. And where is that? And who's apartment is
25 that?

1 A That's Gee apartment on the second floor on the
2 left.

3 Q Okay. So you see the staircase in the middle
4 there?

5 A Yes, sir.

6 Q So you walk up those stairs and his is to the
7 left?

8 A Yes, sir.

9 Q Where did you park your car at?

10 A I believe I parked right behind this car, the blue
11 car, right back there a little bit.

12 Q Okay. Can't see where you parked in that
13 photograph?

14 A Yes, sir.

15 Q Okay. Did you attempt to call Gee again while you
16 were outside?

17 A Yes, sir. As soon I get there, I'll give him one
18 call on the phone.

19 Q What happened when you called?

20 A It still get the same signal.

21 Q So what did you decide to do?

22 A So I decide to go upstairs.

23 Q And did you walk up those stairs we talked about?

24 A Yes, sir.

25 Q When you got to the top of the stairs, can you

1 tell the Ladies and Gentlemen of the Jury what you saw?

2 A First thing that I saw was the -- is the apartment
3 door was cracking, like, around the doorknob. And I see a
4 little hole in the middle of the door. So I call him couple
5 time.

6 Q Okay. When you say you call him, do you mean
7 yelled for him or called --

8 A Yeah, I yell a couple times, so.

9 Q Were you outside the door when you did that?

10 A Outside the door.

11 Q And what did you yell?

12 A So I just call his name, Gee, Gee.

13 Q Did you hear any answer?

14 A No, sir.

15 MR. TOMSHECK: May I approach your clerk, Judge?

16 THE COURT: Yes.

17 (Pause in proceedings)

18 MR. TOMSHECK: Showing opposing counsel what's
19 been marked as State's Proposed 9, 8 and 9. May I approach
20 the witness?

21 THE COURT: Yes.

22 BY MR. TOMSHECK:

23 Q I'm going to show you State's -- first of all,
24 State's Proposed 9. Do you recognize what you're looking at
25 in State's Proposed 9?

1 A Yes, sir.

2 Q And what is that?

3 A It's the -- in his apartment door.

4 Q The door from the outside of his apartment to the
5 inside?

6 A Yes, sir.

7 Q Is it fairly and accurately depict it as you
8 remember seeing it back in June of 2000?

9 A Yes, sir.

10 MR. TOMSHECK: Move for admission of State's
11 Proposed 9.

12 THE COURT: Any objection to 9?

13 MR. BROWN: No objection.

14 THE COURT: It's admitted.

15 (Exhibit 9 admitted)

16 BY MR. TOMSHECK:

17 Q And State's Proposed 8, do you recognize the area
18 inside that door? Who's apartment is that?

19 A That's Gee apartment, yeah.

20 Q Okay. From the inside looking at the other side
21 of that door?

22 A Yes, sir. I believe.

23 Q Okay. Is it fairly and accurately depicted it as
24 you remember it looking back in 2000?

25 A Yeah.

1 MR. TOMSHECK: Move for admission of State's
2 Proposed 8.

3 MR. BROWN: No objection. I assume when he says
4 Gee apartment, you mean your friend Gee, not Apartment G?

5 THE WITNESS: My friend Gee, yes.

6 MR. BROWN: Thank you. No objection, Your Honor.

7 BY MR. TOMSHECK:

8 Q And just so the record's clear, Gee lived in
9 Apartment H?

10 A Yes, sir.

11 Q Okay.

12 THE COURT: Exhibit 8 is admitted.

13 (Exhibit 8 admitted)

14 MR. TOMSHECK: Thank you, Judge. If I may
15 publish State's 9?

16 THE COURT: Yes.

17 BY MR. TOMSHECK:

18 Q You mentioned that you saw the area on Gee's door,
19 I think your word was cracking?

20 A It's cracking, yes.

21 Q Do you see on State's Exhibit 9 the area that you
22 described as looking like it was cracking?

23 A Yes. It's --

24 Q If you take your finger on the screen right there,
25 you can actually circle around the area that you remember

1 seeing. Can you do that for us? That screen right in front
2 of you? It will actually draw a line.

3 A Yes, this area right here.

4 Q Okay. Kind of right by the deadbolt it looks like
5 the wood is kind of splintered?

6 A Yes, sir.

7 Q Do you remember seeing that?

8 A Yes, sir.

9 Q After you yelled, Gee, Gee and got no answer, did
10 you go inside?

11 A Yes, I did.

12 Q And can you walk us through what happened after
13 you walked inside? What did you see and what did you do?

14 A When I first walk inside, because when I got
15 there, the door is not closing. The door was halfway open.
16 So I went inside to the livingroom looking for him. Then I
17 calling his name again. So I didn't get any answer, so then I
18 walk to the -- his bedroom.

19 Q Let me just stop you there. As you're walking
20 into the house, do you walk into the living room first?

21 A Yes, sir.

22 Q Do you see anything unusual prior to going to his
23 bedroom?

24 A No, sir.

25 Q Okay. You don't see anything, at least at first,

1 that's out of the ordinary?

2 A No.

3 Q Okay. So after you leave the livingroom, is there
4 a hallway to his bedroom?

5 A Yes.

6 Q And you walk towards the bedroom?

7 A I walk towards the bedroom.

8 Q What happens then?

9 A So I saw the bedroom door is closed. So I knock
10 on the door and I call his name. So it's no answer. At that
11 time, I was assume that maybe he's not inside apartment or he
12 went outside to do some laundry, which is what he used to do
13 because he had the laundry outside the apartment.

14 Q So his bedroom door is shut?

15 A Yes, sir.

16 Q And you knock on it?

17 A I knock on it.

18 Q And you say Gee?

19 A I call him a couple time, yes.

20 Q No answer?

21 A No answer.

22 Q So what do you do then?

23 A So I open the bedroom door. That's where I found
24 him.

25 Q Can you describe for the Ladies and Gentlemen of

1 the Jury what you saw when you found him?

2 A First I open the bedroom door, I saw Gee was
3 sitting right next to the bed on the left side of the bed.

4 Q When you say sitting, what do you mean by sitting?

5 A He's sitting next to the bed, on the floor, leaned
6 on the bed with the phone right next to his body on the bed.

7 Q The cordless phone?

8 A Yes, sir.

9 Q The kind that goes on a base and you can walk
10 around the apartment with it?

11 A Yes, sir.

12 Q That was right next to him?

13 A That's right next to him, yes.

14 Q Did you see any injuries or anything on his body
15 that caught your attention?

16 A When I get close to his body, then I saw his --
17 about three hole on his back. So at that point, so I just
18 come out on the street and then I call 911.

19 Q When you saw the holes, did you -- on his body,
20 did you see any blood or anything?

21 A Yes, sir.

22 Q Was he wearing any clothes at the time?

23 A Completely naked, sir.

24 Q When you saw the holes in his body and the blood,
25 did it appear to you as if there was any sign of life?

1 A No, sir.

2 Q From what you observed, did you think at that
3 point that he was dead?

4 A Yes, sir.

5 Q So you -- when you walked out, did you take any
6 precautions or do anything so that you wouldn't touch anything
7 or disturb anything?

8 A No, sir. I didn't touch nothing.

9 Q All right. You just wanted to get out of there
10 and not disturb anything?

11 A Yeah. Basically, I tried to call 911 when I was
12 in the apartment. But my phone, it don't have any signal
13 inside of apartment. So I decided to come out on the street
14 and use it.

15 Q You walked outside and you dialed 911?

16 A Yes, sir.

17 Q And did you wait until 911 --

18 A And I wait for the police to arrive at the street.

19 Q Till they arrived there.

20 A Yes, sir.

21 Q And did you talk to them?

22 A Yes, sir.

23 Q Did you tell them about what you just testified
24 about here?

25 A Yes, sir.

1 Q Okay. Did they give you an opportunity to do a
2 recorded statement?

3 A Yes.

4 Q So they ran a tape player while you talked to them
5 about --

6 A Yes.

7 Q Okay.

8 MR. TOMSHECK: May I approach your clerk one more
9 time, Judge?

10 THE COURT: Um-hm.

11 MR. TOMSHECK: And the witness?

12 THE COURT: Yes.

13 MR. TOMSHECK: I'm showing opposing counsel
14 what's been marked as State's Proposed 4.

15 BY MR. TOMSHECK:

16 Q Do you recognize the individual depicted in
17 State's Proposed 4?

18 A Yes, sir.

19 Q And who is that?

20 A That's a friend of mine, Gee, yes.

21 Q Okay. The one that you found in his apartment on
22 June 10?

23 A Yes, sir.

24 Q Fairly and accurately depict him as he looked
25 while he was alive?

1 A Yes.

2 MR. TOMSHECK: Move for admission of 4.

3 MR. BROWN: No objection.

4 THE COURT: Admitted.

5 (Exhibit 4 admitted)

6 MR. TOMSHECK: May I publish?

7 THE COURT: Yes.

8 MR. TOMSHECK: Just for the record, I've put on
9 the overhead State's Proposed 4. I'll pass the witness,
10 Judge.

11 THE COURT: Okay.

12 MR. TOMSHECK: Thank you, Your Honor.

13 THE COURT: Cross.

14 CROSS-EXAMINATION

15 BY MR. ABOOD:

16 Q Good afternoon, sir.

17 A Yes, sir.

18 Q Mr. Cleveland, do you happen to know what your
19 friend, Gee's, work schedule was at the Golden Gate, what time
20 he would normally show up for work and what time he would
21 leave?

22 A Yes, sir.

23 Q Can you please tell us, in the period of time
24 before he died, what was his work schedule?

25 A I'm not sure what time he would start, but I'm

1 pretty sure what his day off is.

2 Q Did you have the same shift that he did?

3 A Yes.

4 Q And do you know what your shift was at that time?

5 A Yes, sir.

6 Q Could you tell us that?

7 A Well, the reason is I can't tell you the time,
8 what time that he work, what time he get out because we work
9 at a different place. My shift, we start at the same shift,
10 but my shift would start at 9:00, get off at 5:00 in the
11 morning, so.

12 Q So yours was 9:00 in the evening until 5:00 in the
13 morning.

14 A Yes, sir.

15 Q Okay. Go ahead.

16 A Okay. So at the Golden Gate at that time, so I
17 don't know what time he would start.

18 Q I see. Did he generally work in the evenings?
19 Can we say that?

20 A Yes, sir.

21 Q Okay. So do you know what time he would normally
22 leave his apartment to go to work in the evenings?

23 A I assume it's about maybe like 6:30, 7:00.

24 Q In the evening?

25 A Yes.

1 Q Okay. And then when he was done working, can you
2 give us an idea of what time he would normally get back home?

3 A If he walked, it's -- he could get home around,
4 like, maybe 3:00.

5 Q Three in the morning?

6 A Yeah.

7 Q Okay. So the evening hours, generally speaking,
8 if he was working, he would be gone from his apartment?

9 A Yes, sir.

10 Q Okay. Do you know whether or not it was his habit
11 to leave his lights on in the apartment when he left for work?

12 A That I'm not sure, sir.

13 Q So you don't know if he left them on or turned
14 them off?

15 A Yes, sir.

16 Q Okay. And would he generally be home during the
17 day if he wasn't working?

18 A Yes, sir.

19 Q Now, no one lived with him; is that true?

20 A Yes, sir.

21 Q So if he was gone, no one would be at his
22 apartment while he was gone?

23 A Yes, sir.

24 Q Okay. Sir, did he hang drapes or anything like
25 that in the windows of his apartment?

1 A No, sir.

2 Q He did not.

3 A No.

4 Q So the window -- or the windows to his apartment,
5 if you were to look at them from outside, would it -- would
6 you just be looking at a window with no drapes, no blinds,
7 things along those lines?

8 A I believe they have the blind, yeah.

9 Q Okay. And did he generally leave the blinds in
10 the big window in the front of his place that you see when you
11 go up the stairs, did he leave those blinds open, generally?

12 A I don't know, sir.

13 Q You don't know? Let me show you what's been
14 admitted as State's Exhibit Number 1.

15 MR. ABOOD: Do you mind, Your Honor?

16 THE COURT: No, go ahead.

17 MR. ABOOD: Thank you.

18 BY MR. ABOOD:

19 Q Sir, if you don't mind quickly taking a look at
20 this photograph, I'm pointing at a window that has no blinds
21 on it as depicted in this picture. Is that Gee's window as
22 far as you recall?

23 A Yes, sir.

24 Q And is this the way that you normally saw it when
25 you went to his apartment?

1 A That one, I'm not sure, because --

2 Q You're just not sure?

3 A Yeah, I'm not sure on that one.

4 Q Okay. Thank you. Sir, you told us about Gee
5 calling you and you were driving your car so you didn't want
6 to pick up the phone?

7 A Yes, sir.

8 Q When you noticed that it was a blocked caller and
9 you thought that it was him calling you, he didn't leave you a
10 message or anything; did you? Did he?

11 A No message.

12 Q No message, okay. Sir, when you went to Gee's
13 apartment the day that you told the jury about?

14 A Yes, sir.

15 Q And you went in that apartment. Did it look to
16 you like there had been -- that any struggle had occurred in
17 that apartment?

18 A You mean inside the apartment?

19 Q Inside the apartment.

20 A No, sir.

21 Q Did it look generally the way it normally did when
22 you went there?

23 A Yes, sir.

24 Q Okay. And --

25 A The only thing is, that don't look right to me, it

1 just the book was on the floor.

2 Q Because there was a book on the floor.

3 A Yeah, it was just like, Gee, he love to reading
4 the books. So normally, he would not leave the books on the
5 floor like that.

6 Q So there was -- you just noticed the one book on
7 the floor?

8 A Yeah, just one book.

9 Q Okay.

10 A That's -- that's, that's the one that is
11 different, so.

12 Q Okay, thank you. As far as you can tell, sir, was
13 anything missing from that apartment based on what you had
14 seen previously?

15 A Nothing missing that I see because he doesn't have
16 anything in there.

17 Q Okay. I understand.

18 A Yeah.

19 Q All right, sir, thank you very much. I appreciate
20 it.

21 A Yes, sir.

22 MR. ABOOD: Thank you, Your Honor.

23 THE COURT: Thank you. Anything further?

24 MR. BROWN: Yes, Judge.

25 REDIRECT EXAMINATION

1 BY MR. TOMSHECK:

2 Q Mr. Abood, that's the defense attorney, he had
3 asked you some questions about the inside of Gee's apartment.

4 A Yes, sir.

5 Q You remember being inside Gee's apartment; right?

6 A Yes, sir.

7 Q Did Gee have many valuables in his apartment?

8 A No, sir.

9 Q When you were over there, did you ever see him
10 with, like, fancy jewelry or electronics or anything
11 expensive?

12 A No, sir.

13 Q Did you and Gee ever talk about where Gee would
14 put the cash that he made from tips at the Casino?

15 A Yes, sir.

16 Q And were you aware of in the apartment where that
17 money would have been kept?

18 A It's right behind a calendar.

19 Q Can you describe --

20 THE COURT: Behind what?

21 THE WITNESS: A calendar.

22 BY MR. TOMSHECK:

23 Q A calendar?

24 A Yes, sir.

25 Q Like a wall calendar?