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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 IV**

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1 Q You would probably remember if somebody had asked  
2 you to do that? You would have put that in your report?

3 A Well, I mean, that would be something, part of our  
4 decision-making process while we're there.

5 Q Okay. Now, looking at the complex here, going  
6 back to -- going back to State's 1, this is a street-side  
7 view; is that fair to say?

8 A Yes.

9 Q Of this apartment? In other words, where you're  
10 taking the photo, you're basically standing either on the  
11 sidewalk or in a street?

12 A That would be accurate.

13 Q And there's traffic that can drive by that street,  
14 people walking on the sidewalks.

15 A Yeah.

16 Q There is another set of apartments identical to  
17 this on the reverse side of this building; is that fair to  
18 say?

19 A No.

20 Q Go -- well, then -- there are apartments similar  
21 to this that face away from this direction, into the parking  
22 lot?

23 A They're on this side of it here.

24 Q Okay. And they face away, and they face into the  
25 parking lot area? Or some of them?

1 A Of the building structure itself.

2 Q Yeah, I'm talking about a completely different --

3 A Oh, on the back side of this, there are four more  
4 apartments, yes.

5 Q There's four more apartments on the back side of  
6 this one?

7 A Yes.

8 Q And then another building like this one that you  
9 just described?

10 A Yes.

11 Q That has eight different units in it?

12 A Yes.

13 Q Okay. And the other apartment from this photo,  
14 even from where you're standing, you're not looking directly  
15 at that apartment building or -- there are units that are more  
16 concealed, I guess is what I'm getting at. More secluded from  
17 this vantage point.

18 A Both to the rear of this photograph and to the  
19 right of this photograph.

20 Q That's what I'm getting at, thank you. Just  
21 getting back to one thing, just to clean up a little point.  
22 In your report, you actually referred to the blood you saw on  
23 the carpet as a trail, of a trail going eastward, and we had  
24 that discussion, down the hallway?

25 A Yeah. It would be something, we call in the

1 bloodstain world, a flow pattern. You know, blood is flowing  
2 and it has a pattern to it and it has movement and  
3 directionality.

4 Q Without being too scientific, necessarily, what  
5 happened, somebody got shot, he moved around the apartment.  
6 And as he moved, blood dripped and his direction ultimately  
7 was from where he was eastward back to the bedroom. That seem  
8 fair?

9 A That would be certainly a fair statement.

10 Q At one point, there was a sandal which is  
11 overturned. It has blood on the bottom of the sandal; do you  
12 remember that?

13 A Yes.

14 Q Now, based on your recollection and your opinion,  
15 does it seem more likely the sandal was already there and the  
16 blood just dripped on it?

17 A Yes.

18 Q As opposed to that sandal was being worn and  
19 picked up the blood?

20 A What's being described is, there's a sandal, and  
21 it's the left foot, flipped over, so the rubber side that  
22 would contact the surface when you're walking is flipped over  
23 and these stains we're talking about have dripped on top of  
24 the bottom of the sandal.

25 Q I'm going to go ahead and put a picture up. It's

1 State's 17. That's the sandal we're referring to?

2 A Yes.

3 Q And then this blood that you're talking about  
4 here, this is what you refer to in your report as a trail and  
5 now you've described as a flow pattern?

6 A Yes.

7 Q Okay.

8 MR. BROWN: Court's indulgence.

9 (Pause in proceedings)

10 MR. BROWN: Okay. I don't have any questions,  
11 thank you.

12 THE COURT: Thank you.

13 (Pause in proceedings)

14 MR. TOMSHECK: Judge, before I ask questions, the  
15 State has no objections to State's Proposed 79, 80 and 81  
16 coming into evidence.

17 THE COURT: You mean the defense?

18 MR. BROWN: The defense doesn't object either,  
19 Your Honor.

20 THE COURT: Okay. They'll be admitted.

21 MR. TOMSHECK: We certainly don't, but I guess  
22 they don't either.

23 THE COURT: Okay. 79, 80 and 81?

24 MR. TOMSHECK: Correct.

25 THE COURT: Okay. They're admitted.

1 (Exhibit 79 through 81 admitted)

2 REDIRECT EXAMINATION

3 BY MR. TOMSHECK:

4 Q Mr. Brown had asked you some questions about some  
5 items in the apartment. He mentioned a watch and the  
6 television. Do you remember those questions?

7 A Yes.

8 Q I'm just going to show you what's now in evidence  
9 as State's 81. Is the watch he was referring depicted on that  
10 nightstand there?

11 A Yes. You can actually see, I'll circle the watch.  
12 Or here it looks like a clock.

13 Q But that's the item that you were referring to;  
14 correct?

15 A I would have to -- there's so much information in  
16 my head right now, I'd have to search out my notes and see  
17 specifically the description of a watch.

18 Q Do you have your report with you?

19 A Yes. May I just quickly --

20 (Witness reviews document)

21 THE WITNESS: Okay. May I --

22 BY MR. TOMSHECK:

23 Q After the --

24 A On the coffee table, I describe --

25 THE COURT: Let him ask the question.

1 BY MR. TOMSHECK:

2 Q After looking at your report, do you have a fresh,  
3 independent recollection about where the watch would have been  
4 located?

5 A The watch was on the coffee table in the  
6 livingroom.

7 Q Okay. In the livingroom as well, Mr. Brown  
8 referred to a television set; do you remember that?

9 A Yes.

10 Q And I believe you referred to it as a small TV.

11 A Yes.

12 Q Yes?

13 A Yes.

14 Q And you had indicated this was a rather small,  
15 one-bedroom apartment; is that right?

16 A Yes.

17 Q And State's 79, does that depict the front door on  
18 the right side of that photo?

19 A Yes.

20 Q And in that photo, in that small space, you can  
21 see the actual opposite end of that livingroom area; is that  
22 right?

23 A Yes.

24 Q And is that the TV that you're referring to?

25 A Yes.



1           Q     It appears to be a, kind of a boxy type TV.  
2     Approximately how big would you say it is?

3           A     If I could show, maybe that big. You know, what,  
4     18 inches by 18 inches.

5           Q     So in screen size, what size would you estimate  
6     that as?

7           A     Well, it may be a little more. I don't know, 16-  
8     18 inches.

9           Q     Not a large, fancy television?

10          A     It's a small, older television.

11          Q     Mr. Brown had also asked you about some items  
12     where potentially fingerprints, latent fingerprints could be  
13     recovered and he asked you about some shell casings. Do you  
14     remember those questions?

15          A     Yes.

16          Q     When a gun is fired, do you have experience with  
17     what happens structurally within a bullet that makes the  
18     bullet come out of a gun?

19          A     Yes.

20          Q     Does it get hot?

21          A     It gets very hot.

22          Q     There's gun powder inside a cartridge; correct?

23          A     Yes.

24          Q     It ignites, the bullet's expelled, and the casing  
25     then comes out of the gun in the occasion of a semi-automatic

1 weapon; is that right?

2 A Well, the casing can get ejected. There's a  
3 little explosion, the powder burns, the pressure builds, it  
4 forces the bullet out and then depending on if it's a revolver  
5 or a semi-auto, it can kick a cartridge case out, or stay in  
6 the cylinder if it's a revolver that just turns.

7 Q Okay. In the case of the semi-automatic, the  
8 cartridge case would get ejected?

9 A Yes.

10 Q It would come out hot?

11 A It would come out very hot.

12 Q If you were to catch it, it would burn you  
13 probably; correct?

14 A I get burned all the time at the range with them  
15 hitting my neck.

16 Q A fingerprint, and you have some experience with  
17 this because you worked as a latent fingerprint examiner for a  
18 while; correct?

19 A Yes.

20 Q Are fingerprints are made usually of some --  
21 whatever substance is on your finger when you touch something.

22 A The question was, I'm sorry?

23 Q The fingerprint that's left behind is made of,  
24 generally speaking, whatever substance is on your finger when  
25 you touch something; Oil, water, moisture.

1           A     Yes. The two main constituents of -- on the ends  
2 of our fingers and palms are little raised strips of skin is  
3 water, when you get nervous, you perspire, and oils, when we  
4 touch certain areas of our body. Those are the two main  
5 things, aside from other contaminants.

6           Q     So when a cartridge if fired out of a gun, if  
7 there's a fingerprint left behind when it's being loaded in,  
8 chances are it burns off?

9           A     Chances are definitely are that it would burn off,  
10 yes.

11          Q     And would it be extremely rare that you would find  
12 a fingerprint on an ejected shell casing that's been fired?

13          A     I -- value for comparison, I would like to see it.

14          Q     In other words, have you ever, that you can  
15 recall?

16          A     My personal experience is I have not recovered one  
17 of value for comparison, not to say I haven't seen a ridge,  
18 one little teeny, tiny line, but to get enough information and  
19 data in there to make an opinion on, me personally, no.

20          Q     State's 14 depicts the coffee table in the  
21 livingroom. It's kind of tough to see, but I'm going to zoom  
22 in here. It looks on that coffee table like there's a little  
23 wrist watch. Do you recall, like, what manufacturer or type  
24 of wrist watch that was?

25          A     I couldn't tell you. Maybe I have more angles in

1 my photography. But if I may circle it and I need it to  
2 refresh my memory, there's the watch. You can see that's a  
3 black band with some type of silver base on it.

4 Q Does it appear to be kind of a rubber material on  
5 the band?

6 A Yeah, yes.

7 Q Not a Rolex?

8 A Not a Rolex.

9 MR. TOMSHECK: I have nothing else, Judge.

10 THE COURT: Okay. Anything?

11 RECROSS-EXAMINATION

12 BY MR. BROWN:

13 Q Brightly (phonetic)? You just don't know?

14 A I wouldn't dare guess.

15 Q Okay. Just to follow up real quickly, and a  
16 little bit out of curiosity, you're saying with at least with  
17 respect to ejected shell casings, you look occasionally?

18 A Well, it depends on what the job is. There's  
19 times where we'll impound evidence and let the forensics  
20 laboratory process that evidence. I've been on both sides.  
21 But even as a crime scene analyst, many times we'll take  
22 something and it will go through it's process in the forensics  
23 laboratory versus in the field which is what we call CSI.

24 Q But it's not as a matter of policy so unlikely,  
25 you don't even bother, we're not even looking. You'll look,

1 you just haven't seen it be successful to this point, and you  
2 wouldn't put a whole lot of personal value into it?

3 A That is correct.

4 Q Okay.

5 MR. BROWN: That's all I have, Judge, thank you.

6 THE COURT: Anything further?

7 MR. TOMSHECK: No, Judge.

8 THE COURT: Thank you, sir.

9 THE WITNESS: Thank you.

10 THE COURT: Do you want to come on up for a  
11 second?

12 (Bench conference began)

13 THE COURT: Do you have anything short or we'll  
14 be done for the day.

15 MR. TOMSHECK: We have one that will probably be  
16 about 20 minutes --

17 MS. LUZAICH: Oh, really?

18 MR. BROWN: The guy that took the picture of the  
19 footprint; right?

20 MS. LUZAICH: Yeah.

21 MR. TOMSHECK: The CSI (indiscernible), this is  
22 what he did on these three areas.

23 THE COURT: Okay. Might as well get them in  
24 while can.

25 MR. BROWN: (Inaudible) about an hour and a half

1 cross with him. It's based on his drinking. Are we still on  
2 the record?

3 THE COURT: Yes, we are. Thanks.

4 (Bench conference concludes)

5 MR. TOMSHECK: The State's next witness will be  
6 Jeffrey Smink.

7 THE MARSHAL: Who's that?

8 THE COURT: Jeffrey Smink.

9 (Pause in proceedings)

10 THE MARSHAL: Step up in the box, raise your  
11 right hand, face that gentleman right there.

12 JEFFREY SMINK, PLAINTIFF'S WITNESS, SWORN

13 THE CLERK: Thank you. Please be seated. Please  
14 state your complete name spelling both your first and last  
15 names for the record, please.

16 THE WITNESS: Jeffrey Smink, J-e-f-f-r-e-y,  
17 S-m-i-n-k.

18 MR. TOMSHECK: May I proceed, Judge?

19 THE COURT: Yes.

20 DIRECT EXAMINATION

21 BY MR. TOMSHECK:

22 Q Sir, how are you presently employed?

23 A As a crime scene analyst supervisor.

24 THE COURT: Crime scene analyst what?

25 THE WITNESS: Supervisor.

1 THE COURT: Supervisor, thanks.

2 BY MR. TOMSHECK:

3 Q With the Las Vegas Metropolitan Police Department?

4 A Yes.

5 Q Okay. We've had some other CSAs testify, so I'm  
6 not going to go through all of what a CSA or a CSI does. You  
7 mentioned you're a supervisor. We've already heard kind of  
8 the hierarchy of how it works through the ranks. Supervisor,  
9 is that the highest position you can have?

10 A Yes.

11 Q So you supervise other crime scene analysts that  
12 do the type of work that we've already heard testimony about?

13 A Correct.

14 Q I want to direct your attention back to a homicide  
15 scene which occurred in June of the year 2000. Were you  
16 working as a crime scene analyst then?

17 A Yes.

18 Q And did you respond to what we've already heard  
19 testimony about, event number 000610-1143?

20 A Yes.

21 Q And is that the homicide scene at 415 South Tenth  
22 Street here in Las Vegas, Clark County, Nevada?

23 A Yes.

24 Q When you responded to that scene, were there  
25 actually identified, on the building of 415 itself, two

1 separate crime scenes?

2 A Yes.

3 Q Can you describe for the Ladies and Gentlemen why  
4 there was two?

5 A Well, one was in the upstairs apartment, Apartment  
6 number H. The second one was in the east parking lot, or the  
7 back area of this apartment building.

8 Q Okay. So we've already heard testimony about  
9 there's four apartments in the front. In the back, there's a  
10 parking lot and four more apartments. Is that your  
11 recollection?

12 A Yes.

13 MR. TOMSHECK: Judge, I will move, by stipulation  
14 with no objection, State's Proposed 82 through 91.

15 MR. BROWN: True.

16 THE COURT: They'll be admitted.

17 (Exhibit 82 through 91 admitted)

18 BY MR. TOMSHECK:

19 Q What's now in evidence as State's 82, do you  
20 recognize that as the backside of apartment building 415 South  
21 Tenth?

22 A Yes.

23 Q Are you able to see in the center of that  
24 photograph the stairs leading up to the back of building 415  
25 to the apartments upstairs there?



1 A Yes. It's in the middle of the frame.

2 Q It looks like in State's 83, that that's kind of a  
3 closeup of the same building. You can see the stairs there?

4 A Yes.

5 Q And in State's 84, it looks like we have actually  
6 a photograph of the stairs leading up to the back of apartment  
7 building 415?

8 A Yes.

9 Q At the top of those stairs, it looks like there's  
10 a little item on the landing. Are you able to tell what that  
11 is?

12 A Yes. It was a potted plant of some sort.

13 Q And 85, is that a closeup of the potted plant on  
14 the landing?

15 A Yes.

16 Q We've already heard testimony about the evidence  
17 in the front and what was termed the Crime Scene One. Crime  
18 Scene Two, is that essentially a mirror image?

19 A Yes.

20 Q And when I say Crime Scene Two, that's just how  
21 you defined it at the time you guys were out there on the day  
22 of June 10th of 2000?

23 A Correct.

24 Q Immediately above that potted plant, what are we  
25 looking at?

1           A     It is a fire extinguisher case with the glass that  
2 covered the fire extinguisher broken.

3           Q     I'm assuming when you first respond to a crime  
4 scene, you don't always know exactly what's going to be  
5 important, so you go around and collect whatever you can that  
6 might be important?

7           A     Correct.

8           Q     And the Crime Scene Two area on the back of  
9 building 415, is that some of that evidence that you  
10 collected, not knowing what it may lead to?

11          A     I didn't collect it, but it was one of the things  
12 that was observed.

13          Q     And at the bottom of those stairs, what are we  
14 looking at?

15          A     Reddish-brown stains, with reasonable doubt are  
16 blood stains.

17          Q     So apparent blood at the bottom of the stairs?

18          A     Yes.

19          Q     And while you're there, is the thinking that that  
20 may be important because it may be related to the homicide  
21 around the other side of the building?

22          A     Correct.

23          Q     State's 88, is that the walkway between buildings  
24 415 and 417?

25          A     Yes.

1 Q While you're at the scene, do you come into  
2 contact with an individual by the name of Derrick Sterling?

3 A Yes, I did.

4 Q And do yourself and detectives in your presence  
5 talk to Mr. Sterling?

6 A Yes.

7 Q How would you describe his demeanor interacting  
8 with the police and crime scene investigators?

9 A Very cordial and cooperative.

10 Q Was there an indication that he could explain the  
11 blood at the bottom of those stairs?

12 A Yes.

13 Q And in an effort to explain it, did he allow you  
14 take possession of his clothing?

15 A Yes.

16 Q Did he allow you to take photographs of an injury?

17 A Yes.

18 Q And we've already heard testimony about the broken  
19 fire extinguisher case at the top of the stairs in the back of  
20 the building. Did Mr. Sterling indicate to you that he had  
21 injured himself while breaking that fire extinguisher case?

22 A Yes, he did.

23 Q 87, is that a closeup of the fire extinguisher  
24 case?

25 A Yes.

1 Q 91, is that a closeup of an injury on Mr.  
2 Sterling's person?

3 A Yes, his thumb and left index finger.

4 Q Looks like there's a cut?

5 A Yes.

6 Q It looks like there's a little scale with a ruler  
7 there; is that right?

8 A Correct.

9 Q Who's name is on that?

10 A It is my name and my employee number.

11 Q So did you take that photograph?

12 A Yes, I did.

13 Q State's 90, who are we looking at?

14 A Mr. Derrick Sterling.

15 Q And while talking to Mr. Sterling, yourself and  
16 detectives in your presence, was there an indication that he  
17 had cleaned his wound in a particular place at that location?

18 A I don't recall that.

19 Q Let me just ask you this. In State's 89, does  
20 that appear to be a faucet on the outside of the apartment  
21 building?

22 A Yes.

23 Q And you took those photographs as well?

24 A I might have, or it might have been Crime Scene  
25 Analyst LeMaster.

1           Q     Okay. One of the two of you took all the  
2 photographs that we're talking about?

3           A     Yes.

4           Q     We've heard some testimony from Crime Scene  
5 Analyst LeMaster about a footprint, a shoe-wear impression on  
6 the outside of the door leading into Apartment H. Do you  
7 recall that piece of evidence?

8           A     Yes.

9           Q     And did you do anything to attempt to document it,  
10 collect it and preserve it?

11          A     Yes.

12          Q     Can you tell the Ladies and Gentlemen of the Jury  
13 what you did?

14          A     I took photographs of the footwear impression with  
15 black and white and color film. Prior to doing so, the area  
16 was marked with a footwear ruler. After it was photographed,  
17 a device called an electrostatic dust lifter was attempted to  
18 be used to recover the footwear impression which didn't work.  
19 And then I resorted to a vinyl lifter, which was basically an  
20 adhesive piece of wax paper to recover the actual impression.  
21 And then that piece of lifting item was booked into evidence.

22          Q     Okay. You mentioned that you took photographs in  
23 both black and white and in color. Why do you do that?

24          A     The primary photographic tool is the black and  
25 white film. That has the larger format and that was the --

1 that's the primary footwear photographing tool of that time.  
2 I took color photographs as a backup, just in case the black  
3 and white film didn't develop, or there was some sort of  
4 failure in the photographic lab.

5 With the color film specifically, I altered the  
6 exposures to try to enhance or bring out more detail of the  
7 footwear impression. That was all an attempt to ensure that I  
8 properly documented and enhanced the footwear as best I can  
9 with the photography.

10 Q Okay.

11 MR. TOMSHECK: Judge, I don't believe there's any  
12 objection to State's Proposed 48 through 52. I'd ask to move  
13 them into evidence, please.

14 MR. BROWN: That's correct, Your Honor. I'm  
15 sorry.

16 THE COURT: It's admitted.

17 (Exhibit 48 through 52 admitted)

18 MR. TOMSHECK: If we may publish.

19 BY MR. TOMSHECK:

20 Q State's 48 looks like there's a camera on a  
21 tripod. Who's camera is that?

22 A That was my black and white camera. It is a large  
23 -- or actually a medium format black and white camera which we  
24 used to use back in 2000. It's placed on a tripod and the  
25 footwear impression that I'm taking a photograph on is

1 depicted in the middle of the photograph, which is on the  
2 exterior door of Apartment H. And the footwear scale which I  
3 had discussed is around the perimeter of the impression on  
4 that door.

5 Q And the scale kind of serves as a frame and a  
6 reference in size to what you're taking a photograph of; is  
7 that correct?

8 A Yes. The ruler does three main things. The ruler  
9 shows the size of the item that you're photographing. If  
10 there's ever an enlargement done for comparison purposes, it  
11 gives a scale so the photo lab can print it one to one, or in  
12 real life size. And it also identifies the person taking the  
13 photograph, because each photograph is personalized with the  
14 employee's name and personnel number.

15 Q Number 50 there looks like a closeup with that  
16 same scale in it, but a color photograph.

17 A Correct.

18 Q And you mentioned that you tried to take different  
19 exposures in order to bring out more detail potentially?

20 A Correct.

21 Q State's 51, does that look like a different  
22 exposure with color film?

23 A Yes.

24 Q And in State's 52, is that yet another exposure?

25 A Yes.

1 Q Let's see, in addition to the color photographs,  
2 you said you took black and white photos?

3 A Yes.

4 MR. TOMSHECK: Judge, the defense has no  
5 objection to the admission of State's Proposed 5, 6 and 7.

6 MR. BROWN: That's correct, Your Honor.

7 THE COURT: All right. They'll be admitted.

8 (Exhibit 5 through 7 admitted)

9 MR. TOMSHECK: If I could approach the witness.  
10 BY MR. TOMSHECK:

11 Q These are a little bit bigger and tougher to put  
12 on the overhead. But what are we looking at in State's 5, 6  
13 and 7?

14 A Several black and white photographs of the  
15 footwear impression on the door which we've been discussing.

16 Q Okay. And if you could hold the one on top there,  
17 it's number 5. If you could hold that up to the Ladies and  
18 Gentlemen of the Jury. Are you able to see in better detail  
19 in the black and white photograph, the tread pattern and the  
20 writing on the bottom of that shoe?

21 A Yes.

22 Q And is that the reason that you took it with the  
23 black and white?

24 A Yes. With the larger format film, we were able to  
25 recover more detail and information.



1 Q And on the overhead I've placed a portion of  
2 State's 5 because it's a big photograph. You're able to see  
3 the tread pattern and the writing in the middle of that  
4 photograph; is that correct?

5 A Yes.

6 Q Ultimately, a comparison can be done with footwear  
7 to a known shoe; correct?

8 A Yes.

9 Q You personally wouldn't do that. You'd send it to  
10 someone who would?

11 A Correct.

12 Q Are you familiar with an individual by the name of  
13 Joe Geller?

14 A Yes, I am.

15 Q And did he work in the lab doing that type of  
16 work?

17 A Yes, he did.

18 Q Okay. You mentioned that you attempted to do a  
19 lift with a certain devices that had kind of a long name. Can  
20 you tell us what that is and how it's done?

21 A Yes. The device is called an electrostatic dust  
22 lifter. The device is used to recover footwear or dust  
23 impression with the use of static electricity. The way it  
24 works is, you have a dust impression, perhaps on this book  
25 here. And it -- a piece of mylar film, which is basically

1 window tint with a metallic backing, is placed over the item  
2 where the footwear impression is at. The paper is then  
3 charged with static electricity. And what is supposed to  
4 happen is, the dust from the item is supposed to adhere to  
5 this mylar paper. When that happens, the static electricity  
6 is turned off, the mylar paper is removed, and then that piece  
7 of mylar film with the dust impression on it would be a  
8 photographic document of the impression.

9           However, in this case, the dust did not adhere to  
10 the mylar paper at all, and I resorted to plan B, which was  
11 the vinyl lifter which I spoke of.

12           Q     Okay. And for those of us that don't use  
13 electrostatic dust lifters in our everyday life, if it doesn't  
14 work, does it, in any way, impact your ability to take a  
15 rolled print?

16           A     No.

17           Q     Okay. So if plan A doesn't work, you're still  
18 fine to go ahead with plan B?

19           A     Yes. It's still another acceptable means of  
20 recovering that impression.

21           MR. TOMSHECK: Did we already move in 49 or not?

22           THE COURT: It's 48 to 52.

23 BY MR. TOMSHECK:

24           Q     In 49, it looks like the front door to Apartment  
25 H, we can see the hole over here that Dave LeMaster testified

1 to and the damage to the door that you testified to. What are  
2 we looking at in that white piece in the middle of the door  
3 there?

4 A What we're looking at is the documentation of me  
5 placing this vinyl lifter over the footwear impression after  
6 it was photographed. This vinyl lifter is purchased by our  
7 department through a crime scene supply company, and it has an  
8 adhesive, vinyl, rubber-type backing which is covered by wax  
9 paper.

10 And the way it's used is the wax paper is removed  
11 from the adhesive backer, it's placed onto the surface, a  
12 rubber roller is then used to ensure that the adhesive surface  
13 is in firm contact with the door in this case. And then a  
14 photograph is take to show the location of where that footwear  
15 impression was recovered from. The vinyl lifter is then  
16 peeled back from the door, the wax paper is returned to the  
17 top, and then it is booked into evidence.

18 Q Okay. The piece that were depicted in there to  
19 lift the footwear off of, that's a prefabricated kit in order  
20 to do that; correct?

21 A Correct.

22 Q Okay. It's not something that you just make up in  
23 the trunk of your car?

24 A No. They're supplied in all of our vehicles and  
25 like I said, they're commercially purchased.

1 Q Okay. And the roller you talked about, kind of  
2 like a little paint roller, but with a rubber, smooth surface?

3 A Yes. With a rubber wheel.

4 MR. TOMSHECK: Can I approach your clerk a  
5 minute, Judge?

6 (Pause in proceedings)

7 MR. TOMSHECK: I'm showing opposing counsel  
8 what's been marked as State's Proposed 94.

9 BY MR. TOMSHECK:

10 Q I'm showing you what's been marked as State's  
11 Proposed 94. It appears to be an evidence envelope bearing J-  
12 6556-S, your P number; correct?

13 A Yes.

14 Q And if you were to open that up, what would you  
15 expect to find inside?

16 A The rubber adhesive lifter which we've been  
17 discussing, which was used to recover the footwear impression  
18 off the front door.

19 Q Okay. So if you're able to, if you could go ahead  
20 and open that at the top there without disturbing the seal  
21 that you have on there.

22 MR. TOMSHECK: Actually, I'd move for admission,  
23 Judge. I don't believe the defense has an objection.

24 MR. BROWN: That's correct. I have no objection.

25 THE COURT: It'll be admitted.

1 (Exhibit 94 admitted)

2 (Pause in proceedings)

3 BY MR. TOMSHECK:

4 Q And if we look at this item here, what does that  
5 appear to be to you?

6 A This appears to be the back of a vinyl lifter.

7 Q Okay. And the other side, what does that appear  
8 to be?

9 A This appears to be the wax paper side which is  
10 used to cover the film.

11 Q Okay. And if you were to separate those two, what  
12 would you expect to find?

13 A A partial footwear impression which I recovered  
14 from the door.

15 Q Okay. On this envelope, do you see someone else's  
16 name and P number on there?

17 A Yes.

18 Q Okay. Who's name and P number is that?

19 A Joe Geller's.

20 Q Okay. And are you aware of whether or not -- I  
21 mean, did you personally request that Joe Geller do work on  
22 this particular item?

23 A No, I did not.

24 Q Okay. So if it shows in the chain of custody that  
25 has his name and P number, is it safe to assume, from your

1 experience, that he did?

2 A Yes.

3 Q Okay. Someone else would have requested that;  
4 correct?

5 A Correct.

6 Q And Mr. Geller would be the one to testify about  
7 what his findings were.

8 A Yes.

9 THE COURT: That was 94 and its contents;  
10 correct?

11 MR. TOMSHECK: Yes.

12 THE COURT: Yes.

13 BY MR. TOMSHECK:

14 Q You mentioned that Mr. Sterling, when you spoke to  
15 him outside, did he -- you mentioned he was cooperative, gave  
16 you some clothing; correct?

17 A He gave a Detective some clothing and then I  
18 recovered the clothing from the Detective.

19 Q Okay. Did he also agree to provide you with  
20 what's known as a buccal swab?

21 A Yes.

22 Q And what is that?

23 A A buccal swab is what we use to collect a DNA  
24 standard from a person.

25 Q Kind of like a little toothbrush or Q-tip that

1 goes inside the mouth and would take some skin cells; correct?

2 A Yes. It's a -- two serrated cotton swabs and  
3 they're rubbed on the inner cheek and then it is submitted to  
4 the forensic lab and they're able to obtain a DNA profile from  
5 those.

6 MR. TOMSHECK: I'm showing opposing counsel  
7 what's been marked as State's Proposed 93.

8 THE COURT: Ninety what?

9 MR. TOMSHECK: Ninety-three.

10 THE COURT: Okay.

11 MR. TOMSHECK: Can I approach the witness,  
12 please?

13 THE COURT: Yes.

14 BY MR. TOMSHECK:

15 Q State's Proposed 93 appears to be an evidence  
16 envelope with your name, P number indicating that it's a DNA  
17 buccal swab kit for Derrick Sterling, black male adult,  
18 4/15/58 would be his date of birth; is that correct?

19 A Yes.

20 Q I'm sorry, 4/19/58.

21 A Yes, correct.

22 Q Okay. Is that the buccal swab kit that you took  
23 from Derrick Sterling back on June 10th of 2000?

24 A Yes.

25 Q In addition to your seal and P number at the top,

1 is there a seal and P number from the forensic lab on that  
2 item?

3 A Yes.

4 Q And who's seal and P number is that?

5 A Dave Welch.

6 Q And are you familiar with who Dave Welch is?

7 A Yes.

8 Q Who is he?

9 A He's a DNA chemist.

10 Q Someone who would do a DNA analysis in the lab?

11 A Correct.

12 MR. TOMSHECK: Move for admission to State's

13 Proposed 93.

14 MR. BROWN: No objection.

15 THE COURT: And contents?

16 MR. TOMSHECK: Yes, please. Although we won't be  
17 opening it.

18 THE COURT: We're not going to open it right now.

19 MR. BROWN: No objection.

20 THE COURT: It's admitted.

21 (Exhibit 93 admitted)

22 BY MR. TOMSHECK:

23 Q Finally, we heard some testimony previously about  
24 a calendar inside the apartment identified as Apartment H. Do  
25 you remember that calendar?



1 A Yes.

2 Q And were there photographs taken in your presence  
3 and was that item ultimately impounded by you?

4 A There were some currency in a pocket in the  
5 envelope and I impounded the currency.

6 MR. TOMSHECK: Judge, I don't believe the defense  
7 has any objection to State's Proposed 43 through 47.

8 MR. BROWN: Correct.

9 THE COURT: It will be admitted.

10 (Exhibit 43 through 47 admitted)

11 BY MR. TOMSHECK:

12 Q I have to work in reverse order here. State's 47,  
13 do you see a wall calendar depicted in State's 47?

14 A Yes, I do. It's in the middle frame, it's on the  
15 wall adjacent to a television.

16 Q And while you were present at the crime scene, did  
17 someone indicate to you that that calendar may be important?

18 A Yes.

19 Q State's 46, is that a closeup of that same  
20 calendar?

21 A Yes.

22 Q Does it appear there's some fruit depicted on the  
23 particular month of that calendar, and some type of writing  
24 that, unless you speak that language, you probably can't read?

25 A On the -- yes, that's correct. On the left side,

1 I don't know the language. And on the right side, I can read  
2 that.

3 Q It appears to be some type of Chinese character of  
4 some sort, is that a fair assessment?

5 A Yes.

6 Q State's 45, what are we looking at?

7 A On the front of the calendar there was actually a  
8 pocket. And that is me showing that there is a pocket in  
9 existence on the front of that calendar.

10 Q State's 43, what are we looking at there?

11 A That's me photographing the contents of that  
12 pocket which was \$119. And this is the process of taking it  
13 out of the calendar and showing that's where it came from.

14 Q State's 44, is that the pocket inside the  
15 calendar.

16 A Yes.

17 Q Let me just ask you this question. If you're  
18 looking at that calendar on the wall in State's 47, unless  
19 someone directs you to it, would it be something that would  
20 catch your attention?

21 A No.

22 MR. TOMSHECK: I'll pass the witness, Judge.

23 THE COURT: Cross.

24 CROSS-EXAMINATION

25 BY MR. BROWN:

1 Q Good afternoon.

2 A Afternoon.

3 Q Who directed you to the calendar?

4 A I believe it was Homicide Detective Tommy Thowsen.

5 Q Okay. So somebody noticed it and recognized that  
6 it had some value and asked you to take pictures of it?

7 A Yes. I don't know how he got the information, but  
8 I was directed, yes.

9 Q Okay. So it wasn't so concealed that nobody found  
10 it?

11 A I believe he obtained some sort of information,  
12 but I don't recall the specific details.

13 Q Appreciate it.

14 MR. BROWN: No other questions, Judge.

15 THE COURT: Anything further?

16 MR. TOMSHECK: No, Judge.

17 THE COURT: Okay. Thank you, sir.

18 THE WITNESS: Thank you.

19 THE COURT: Okay. At this time, we'll go ahead  
20 and break for the evening, pick up again, hopefully, around  
21 10:00 tomorrow morning. So meet outside the courtroom again.  
22 Try to be here by 9:45 and I'll try not to keep you waiting  
23 too long when you get here.

24 During this overnight recess, you are admonished  
25 not to talk or converse among yourselves or with anyone else

1 on any subject connected with this trial; or to read, watch or  
2 listen to any report of or commentary on the trial, or any  
3 person connected with this trial by any medium of information  
4 including, without limitation, newspapers, television, the  
5 internet and radio; or to form or express any opinion on any  
6 subject connected with this trial until the case is finally  
7 submitted to you. Have a good night.

8 (Court recessed at 4:58 p.m., until Thursday,  
9 May 7, 2009 at 10:00 a.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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43

**ORIGINAL**

DISTRICT COURT  
CLARK COUNTY, NEVADA  
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**ORIGINAL**

THE STATE OF NEVADA  
  
Plaintiff,  
  
vs.  
  
JUSTIN D. PORTER,  
  
Defendant.  
.....

CASE NO. C-174954

DEPT. NO. 6

Transcript of  
Proceedings

CLERK OF COURT

JAN 27 2010

FILED

BEFORE THE HONORABLE ELISSA CADISH, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 4**

THURSDAY, MAY 7, 2009

APPEARANCES:

FOR THE PLAINTIFF:

LISA LUZAICH, ESQ.  
Chief Deputy District Attorney

JOSH TOMSHECK, ESQ.  
Deputy District Attorney

FOR THE DEFENDANT:

CURTIS BROWN, ESQ.  
JOSEPH ABOOD, ESQ.  
Deputy Public Defenders

COURT RECORDER:

JESSICA RAMIREZ  
District Court

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CLERK OF THE COURT

1 LAS VEGAS, NEVADA, THURSDAY, MAY 7, 2009, 10:54 A.M.

2 THE MARSHAL: All rise. This court, Department 6, is  
3 now in session, the Honorable Judge Elissa Cadish presiding.  
4 Please be seated, come to order.

5 THE COURT: All right. Good morning, everybody.

6 MR. TOMSHECK: Good morning, Your Honor.

7 THE COURT: Sorry for a little delay. We had to talk  
8 about next week's case for a while this morning.

9 Do you anticipate State's witnesses taking all of  
10 today and into tomorrow or what do you think?

11 MR. TOMSHECK: Yes.

12 THE COURT: What do you think, State?

13 MS. LUZAICH: I expect we're going to rest today.

14 MR. TOMSHECK: We'll get two witnesses on before  
15 lunch I think, and then we'll have two that will be a little  
16 bit more lengthy. We'll have to play the defendant's audio  
17 tape through one of those.

18 THE COURT: Right.

19 MR. TOMSHECK: So the State will rest probably mid to  
20 late afternoon. And if we could, probably settle the jury  
21 instructions today and then just argue tomorrow.

22 THE COURT: Right. Okay. That would be good. Okay.  
23 Anything else before we bring in the jurors?

24 MR. BROWN: No, Your Honor.

25 THE COURT: Okay. Let's go.



1 THE MARSHAL: Please rise.

2 (In the presence of the jury)

3 THE COURT: All right. Everybody can go ahead and  
4 have a seat.

5 Do counsel stipulate to the presence of the jury?

6 MR. TOMSHECK: Yes, Judge.

7 MR. BROWN: Yes, Your Honor.

8 THE COURT: All right. State, call your next  
9 witness.

10 MS. LUZAICH: State calls Dr. Olson.

11 THE MARSHAL: Please remain standing, raise your  
12 right hand, face that gentleman right there.

13 DR. ALANE OLSON, PLAINTIFF'S WITNESS, SWORN

14 THE CLERK: Thank you. Please be seated. State your  
15 complete name spelling both your first and last name for the  
16 record, please.

17 THE WITNESS: My name is Alane Olson. My first name  
18 is spelled A-l-a-n-e. My last name is spelled O-l-s-o-n.

19 THE CLERK: Thank you.

20 THE COURT: Go ahead.

21 DIRECT EXAMINATION

22 BY MS. LUZAICH:

23 Q And how are you employed?

24 A I'm employed as a medical examiner at the Clark  
25 County Coroner's Office.

1 Q What does a medical examiner do?

2 A A medical examiner performs autopsies and other types  
3 of examinations with the goal of determining cause and manner  
4 of death.

5 Q Is a medical examiner also a physician?

6 A Yes.

7 Q Can you describe for the jurors what training and  
8 education you have that qualifies you to do what you do?

9 A I have a bachelor's degree in microbiology. I did  
10 medical school at the University of Nevada School of Medicine.  
11 After I got my MD degree, I moved to Portland, Oregon, and  
12 spent five years at Oregon Health Sciences University in an  
13 anatomic and clinical pathology residency program. That's  
14 where I learned how to do autopsies, also about learning to run  
15 a clinical lab in hospitals and looking at surgical specimens.

16 Following my completion of residency, I moved to  
17 Milwaukee, Wisconsin, and spent one year at the Milwaukee  
18 County Medical Examiner's Office doing a forensic pathology  
19 fellowship. That was one year. And following that, I was able  
20 to go out and get a real job.

21 Q And what was that real job that you got?

22 A I worked at the coroner's office in Washoe County in  
23 Reno for just over five years.

24 Q While you were at the coroner's office in Reno, what  
25 did you?

1           A     Again, I was performing autopsies and other  
2 examinations with the goal of determining cause and manner of  
3 death.

4           Q     When you left the coroner's office in Reno, did you  
5 come down here?

6           A     Yes.

7           Q     How long have you been here?

8           A     I've been here for about three and a half years.

9           Q     And do you have any idea in the years that you've  
10 been with the office up in Reno and down here approximately how  
11 many autopsies you've performed?

12          A     I have a better idea of the number that I performed  
13 since I started doing autopsies, and that number's around  
14 2,000.

15          Q     Okay. So you have a little bit of experience. And  
16 have you had the opportunity to testify as an expert in the  
17 area of forensic pathology in the courts in Clerk County?

18          A     Yes, I have.

19          Q     And as well in Washoe County.

20          A     Yes.

21          Q     As a medical examiner, in order to perform autopsies  
22 -- sorry, to determine cause and manner of death, how do you go  
23 about doing that?

24          A     An autopsy generally consists of two main portions.  
25 There's an external examination and an internal examination.

1 Q When you -- do you perform an autopsy on everyone who  
2 dies?

3 A No.

4 Q What is the distinction?

5 A The distinction generally has to do with the statute  
6 in the jurisdiction that you're working in. There are certain  
7 types of deaths that must be reported to the coroner or medical  
8 examiner's office, and among those certain types of death are  
9 subsets in which autopsies are performed.

10 Generally, in Clark County, any case or any death  
11 which is suspected to be the result of a homicide, those  
12 definitely get autopsied. People who are young and don't have  
13 much medical history and die suddenly, those generally get  
14 autopsied.

15 Q And in those situations you're kind of looking for  
16 manner of death, correct, as well as cause of death?

17 A Often, yes.

18 Q And what are the options for manner of death?

19 A In Nevada there are five manners of death. There's  
20 homicide, suicide, accident, natural and undetermined.

21 Q So if somebody passes away in hospice, you're  
22 probably not going to perform an autopsy.

23 A Likely not. They would generally have a  
24 well-established medical history.

25 Q But somebody shows up with gunshot wounds, you're

1 going to do an autopsy.

2 A Yes.

3 Q Okay. Are you familiar with an individual by the  
4 name of Dr. Giles Sheldon Green?

5 A Yes, I am.

6 Q Was he a medical examiner at the Clark County  
7 Coroner's Office for many, many, many, many, many, years?

8 A Yes. He was employed at the coroner's office as a  
9 medical examiner.

10 Q And are there occasions when a medical examiner who  
11 performs an autopsy is unavailable somebody else from your  
12 office will review reports and photographs from the autopsy so  
13 that they can testify in trial on behalf of the person who's  
14 unavailable? Did that make sense?

15 A Yes, it made sense and, yes, we do testify based on  
16 other doctors' reports.

17 Q And, in fact, were you asked in this situation to  
18 review the reports and photographs of an autopsy, coroner  
19 medical examiner Case No. 003381, and an individual by the name  
20 of G-y-a-l-t-s-o Lungtok?

21 A Yes.

22 Q And is that because Dr. Green was unavailable?

23 A That's correct.

24 Q Now, when an autopsy is performed at the Clark County  
25 Medical Examiner's Office, does somebody actually attend and

1 specifically take photographs for this kind of purpose?

2 A Yes. When there is a suspicion that the death is a  
3 result of a homicide, then there are people who attend from the  
4 law enforcement jurisdiction in which the death took place.

5 Q When a body comes to the Clark County Coroner's  
6 Office having been determined that an autopsy is required, what  
7 happens? The body is picked up at the scene and placed into a  
8 sealed bag, correct?

9 A Yes. That's correct.

10 Q And then when it gets to your office, what happens to  
11 it?

12 A The -- the body is received in the office. It may be  
13 stored overnight for examination the following day. The seal  
14 is broken in the presence of the crime scene analyst and our  
15 autopsy techs, and photo documentation occurs so that we have a  
16 photographic record of how this person appeared when they  
17 arrived at the coroner's office as well as sequential  
18 photographs taken after the body's undressed. The wounds are  
19 photographed individually so that there is a good close-up  
20 photograph.

21 Q And is the body at some point then cleaned off as  
22 well?

23 A Often it is, yes.

24 Q When I asked you about the Clark County Medical  
25 Examiner number, now that is entirely different from Las Vegas

1 Metropolitan Police Department's event number; is that correct?

2 A Yes. We assign a unique number to all of the  
3 decedents who come through our office.

4 Q And when I said 00-3381, the 00 does indicate the  
5 year, though; is that correct?

6 A Yes. The first two numbers in the entire autopsy  
7 number are referring to the year in which the examination was  
8 conducted.

9 Q And when an autopsy is performed in your office, is  
10 there a way to kind of take notes or keep track of notes while  
11 you're performing the autopsy?

12 A The -- the question of whether a doctor or medical  
13 examiner takes notes, it actually varies from person to person.  
14 Dr. Green in fact in this case did perform the autopsy, and he  
15 did take notes in the form of markings on body diagrams.

16 Q And did you review those body diagrams as well before  
17 coming to court today?

18 A Yes, I did.

19 Q Maybe I should just ask you. What did you review  
20 before coming to court today?

21 A I had the opportunity to review Dr. Green's autopsy  
22 report. There was a toxicology report. I looked at the  
23 investigator's report, Dr. Green's body diagrams, and the  
24 photographs which were taken by the Metro CSIs.

25 Q And when you say investigation report, is there a

1 specific coroner's investigator that goes out to a scene and  
2 documents the scene and gets information that is then provided  
3 to the collective you, the medical examiner?

4 A Yes.

5 Q Specifically regarding the autopsy --

6 MS. LUZAICH: Well, may I approach?

7 THE COURT: Yes.

8 BY MS. LUZAICH::

9 Q Showing you what's been marked as State's Exhibits  
10 74, 75, 76, 77, and Proposed Exhibit 97.

11 MS. LUZAICH: For the record they've been shown to  
12 counsel.

13 BY MS. LUZAICH::

14 Q Did you review those photographs?

15 A Yes, I did.

16 Q And will they aid in your description of what you're  
17 about to talk about?

18 A Yes, they will.

19 MS. LUZAICH: I would move 97 into evidence. It has  
20 not yet --

21 MR. BROWN: No objection.

22 THE COURT: Admitted.

23 (Plaintiff's Exhibit 97 admitted into evidence.)

24 BY MS. LUZAICH:

25 Q And showing you what's been marked as State's



1 Proposed Exhibits 98 and 99, are those the body diagrams that  
2 we talked about?

3 A Yes, they are.

4 Q And will that also aid in your description for the  
5 jury of what we're about to talk about?

6 A Yes.

7 MS. LUZAICH: Move them into evidence as well.

8 MR. BROWN: No objection, Your Honor.

9 THE COURT: They're admitted.

10 (Plaintiff's Exhibits 98 and 99 admitted into evidence.)

11 MS. LUZAICH: Thank you.

12 BY MS. LUZAICH:

13 Q Okay. So just the -- so that I'm showing --

14 MS. LUZAICH: Do I need to do something to get a  
15 picture?

16 UNIDENTIFIED SPEAKER: Yes.

17 (Off-record colloquy)

18 BY MS. LUZAICH:

19 Q Just so that we're sure we're talking about the same  
20 person, showing you State's Exhibit 74 --

21 (Pause in proceedings)

22 BY MS. LUZAICH:

23 Q State's Exhibit 74, is this the individual who was  
24 the subject of the autopsy?

25 A Yes, he was.

1 Q And that indicates the case number that we discussed,  
2 correct?

3 A Yes. The case number is listed on the card which is  
4 adjacent to his head.

5 Q Okay. Thank you. Now, Dr. Olson, pursuant to your  
6 review of all the notes, photographs and reports, did Dr. Green  
7 have the opportunity to perform an autopsy which would include  
8 the external and internal evaluation of the decedent?

9 A Yes, he did.

10 Q And what if any significant findings externally did  
11 he note?

12 A The significant external findings consisted of  
13 multiple gunshot wounds which were present on the decedent's  
14 torso and his right arm.

15 Q When you say multiple gunshot wounds, how many  
16 gunshot wounds were there?

17 A There were seven separate injuries.

18 Q Now, specifically regarding the torso, what injuries  
19 were located on the torso?

20 A On the torso there were injuries, gunshot entry  
21 wounds on the back. There were two of those. There was a  
22 gunshot exit wound on the right upper chest. There was a  
23 through-and-through gunshot wound on the right chest, and there  
24 was an additional gunshot entry wound on the abdomen.

25 Q And then as far as the arm, what wounds were noted?

1           A     There was a gunshot entry wound on the right  
2 shoulder, and there were two gunshot wounds both  
3 through-and-through on the right forearm and also involving the  
4 tissues near the elbow.

5           Q     Showing you State's Exhibit 77 -- and just for the  
6 record, when I showed you these up close, do they appear better  
7 than they do on the screen here?

8           A     Yes. The projection doesn't help usually with colors  
9 and appearance. So yes, they do appear better in person than  
10 they do projected.

11          Q     Okay. Can you show us on this exhibit what -- well,  
12 first, what is this depicting? What part of the body since  
13 it's not very clear.

14          A     This photograph depicts the decedent's back. On the  
15 left is his head. His buttocks are down here, and on the right  
16 side of his back roughly midway between his shoulder and his  
17 buttocks there are two gunshot entry wounds.

18          Q     For the record, you circled them on the screen,  
19 correct?

20          A     Yes.

21          Q     Showing you State's Exhibit 75, can you orient us to  
22 this photo?

23          A     Yes. State's 75 is a picture of the front of the  
24 decedent's body. Again, his head is at the left of the  
25 photograph. On his right shoulder there is a gunshot entry

1 wound. On his right chest just towards center of his right  
2 nipple is a gunshot exit wound.

3 On the side of his right chest outside of his right  
4 nipple is a through-and-through gunshot injury, meaning that  
5 the entry is on the skin of the chest. The bullet went through  
6 just the soft tissue beneath the skin and it exited on this  
7 lower portion.

8 And also depicted in this photograph near the bottom  
9 of his chest towards his abdomen is another gunshot -- gunshot  
10 entry wound. It doesn't like that. Okay. So I can't circle  
11 that one, but it's basically near the bottom of the ribcage on  
12 the right.

13 Q And then State's Exhibit 76, what does this show?

14 A This is a photograph. Again, you can orient  
15 yourself. You see his face. His right arm has been drawn up  
16 over his head. On the underside of his upper arm there is a  
17 gunshot exit wound. On his forearm below the elbow is another  
18 gunshot exit wound, and I don't think you can see the other  
19 injuries on this particular photograph.

20 Q Which would be State's Exhibit 97. Does this show  
21 you those other injuries?

22 A Yes, it does. So this particular photograph is of  
23 the decedent's forearm, the right forearm. And the majority of  
24 the photograph depicts the palm surface of the right forearm.  
25 And on that surface there is a gunshot entry wound, and at the

1 edge of the forearm near where it turns on to the back of the  
2 forearm there is another gunshot entry wound.

3 Q And I'm going to try this. I don't know if it's  
4 going to work. I'm moving State's Exhibit 97 over a little and  
5 putting 76 next to it. And does that depict the entry in 97  
6 and the exit in 76 of both wounds?

7 A Yes, it does.

8 Q Now, you talked about entry wounds and exit wounds.  
9 Can you describe the path that the wounds took if we look at  
10 the diagrams, the body diagrams?

11 A Yes.

12 Q Like what went in where and out where. Okay. So  
13 showing you State's Exhibit 98, can you describe what we're  
14 looking at?

15 A Yes. This diagram has two views of the body, a front  
16 and a back view. And we'll start with the injuries on his  
17 torso.

18 So on the right back there are the two gunshot entry  
19 wounds which you saw depicted in the photographs, and they're  
20 essentially one atop the other. And Dr. Green, when he  
21 performed his autopsy, determined that the gunshot entry wound  
22 which was on top closer to the head, that bullet went into his  
23 -- into the decedent's body and lodged in the right side of the  
24 diaphragm, so that bullet was recovered.

25 The bullet which entered below that closer to the

1 waist, that is the bullet which went through his body. It went  
2 through his right lung and it exited here on his right upper  
3 chest.

4 Q And if I could stop you for just one second. As we  
5 look at the diagram there appears to be a little bit of writing  
6 and some circles. The circles, are those numbers in a circle?

7 A Yes, they are.

8 Q And did Dr. Green actually name or number each wound  
9 in the body?

10 A Yes, he did.

11 Q So when you were talking about the two entry wounds  
12 in the back and you said the upper one was the one that lodged  
13 in the diaphragm, would that be No. 4?

14 A Yes. That's No. 4 on the diagram, and No. 5 is the  
15 injury that's below it, the gunshot entry wound that's below  
16 which went through his right lung.

17 Q And when No. 5 entered the body and went through his  
18 lung, it exited. And is there on the diagram a number that  
19 corresponds to the exit wound?

20 A Yes, there is and that's No. 1 on the front portion  
21 of the body diagram.

22 Q Okay. So you talked about the two entry wounds and  
23 there -- and one exit, and the other one was lodged. What  
24 else?

25 A Going to the front aspect of the body diagram, on the

1 right chest -- and this is labeled No. 2 on the diagram -- is  
2 the through-and-through gunshot wound that basically went only  
3 through the soft tissues. It didn't hit any vital structures.

4 And continuing, on the abdomen labeled No. 3 on the  
5 body diagram is a gunshot entry wound, and this gunshot entry  
6 wound went into the front of the abdominal wall, and it did not  
7 hit any vital structures, and that bullet was recovered from  
8 within the soft tissues in the abdomen.

9 Q Okay. So so far we have two bullets recovered from  
10 within the body, correct?

11 A Yes.

12 Q Okay. Now showing you State's Exhibit 99, what is  
13 that?

14 A This is a diagram again prepared by Dr. Green during  
15 the course of the autopsy, and this is essentially side views  
16 of the body. And there are two additional more detailed views  
17 of what he has labeled as the right arm.

18 So looking at the right side body diagram labeled as  
19 No. 10 on the diagram, on the right shoulder is a gunshot entry  
20 wound. And that particular bullet went through the soft  
21 tissue. It actually -- it didn't go through the -- the body,  
22 the chest cavity. It went through the muscle and soft tissue  
23 of the back and was recovered on the left side of the body near  
24 the tip of the 12th rib. It did not hit anything vital.

25 Going to the body diagram which depicts injuries on

1 the right arm, on the right forearm towards the wrist -- it's  
2 labeled No. 6 on the diagram -- is a gunshot entry wound, and  
3 this is the entry for an exit which is No. 8 on the diagram,  
4 and this is the one that's on the inner aspect of the palm side  
5 of the right forearm. Again, that's No. 8 on the diagram.

6           On the diagram No. 7 is actually on the edge of the  
7 palm surface of the right forearm, and that's the entry wound.  
8 And the exit wound for that particular bullet is labeled No. 9  
9 on the diagram. And this is on the inside of the right upper  
10 arm above the elbow.

11           Q     So now we have a third bullet recovered inside the  
12 body, the one that entered in the arm at No. 10, correct?

13           A     Yes. That's correct.

14           Q     Internally did Dr. Green find anything significant  
15 when performing his autopsy?

16           A     Yes, he did.

17           Q     What did he find?

18           A     The significant finding related to the gunshot wound,  
19 specifically entry wound No. 5 on the right side of the back  
20 and exit wound No. 1 on the right chest. That particular  
21 bullet went through the right lung and it caused a great deal  
22 of bleeding within his body.

23           Q     And would you call that the fatal shot?

24           A     Yes.

25           Q     The other shots, other than the one that entered at



1 No. 5 and exited at No. 1, do you have an opinion? Would those  
2 other wounds in and of themselves if treated have been fatal?

3 A Unlikely.

4 THE COURT: Sorry. What was that?

5 THE WITNESS: Unlikely.

6 THE COURT: Thanks.

7 BY MS. LUZAICH:

8 Q Now, you cannot, you, any medical examiner, cannot  
9 tell the order in which the shots or the wounds were sustained,  
10 correct?

11 A That's correct, not based upon the description of the  
12 injuries that is present in the autopsy report as well as the  
13 photographs. No.

14 Q And based on your review of the reports and  
15 specifically the photographs, can you tell how far away the gun  
16 was when these wounds were inflicted?

17 A Not with any great degree of accuracy, no.

18 Q Can you say either not less than or not more than  
19 anything?

20 A For these particular injuries there was no soot or  
21 unburned gunpowder on his skin, and, generally speaking, that  
22 puts the distance between the end of the barrel and the skin  
23 surface when the gun was fired at probably two to three feet.  
24 And that distance depends on the type of ammunition that was  
25 used as well as the type of weapon that was used, and it's --

1 it will vary depending on those factors.

2 Q Okay. If .22 caliber bullets were recovered, does  
3 that factor into it?

4 A Well, again it depends on the type of ammunition and  
5 the type of weapon that was used.

6 Q Can you say that the gun barrel was at least -- I  
7 don't know -- two or three feet away? I mean, it was not up  
8 close.

9 A It was not up close, no.

10 Q Okay. Based on everything that was observed and  
11 known at the time of the decedent's death, did Dr. Green form  
12 an opinion as to the cause of Mr. Lungtok's death?

13 A Yes, he did.

14 Q What was that opinion?

15 A Dr. Green opined that the decedent's death was the  
16 result of a gunshot wound of -- I think he phrased it of the  
17 back which went through the right lung.

18 Q Did he also find contributing factors to that cause  
19 of death?

20 A Yes. He listed the additional gunshot wounds of the  
21 torso and the right arm as contributing conditions.

22 Q And did Dr. Green form an opinion as to the manner of  
23 Mr. Lungtok's death?

24 A Yes, he did.

25 Q And what was that?



1 A His opinion is that the death was a homicide.

2 Q Based on your review of the reports and photographs  
3 and diagrams, do you concur with his opinions?

4 A Yes, I do.

5 Q Thank you.

6 MS. LUZAICH: I would pass the witness.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 BY MR. BROWN:

10 Q Good morning, Doctor.

11 A Hello.

12 MR. BROWN: Thank you, Your Honor.

13 BY MR. BROWN:

14 Q I actually just had a few follow-up questions, some  
15 clarifications, and then just a couple of additional questions  
16 if you don't mind. I'm probably going to use the same diagram.

17 If we could just go through the injuries real quickly  
18 again just to clarify. Now, first off -- and I think you  
19 stated this, but just to clarify, Dr. Green wrote numbers next  
20 to these injuries. For example, this says No. 1 with a circle  
21 around it, No. 2 with a circle around it; is that correct?

22 A Yes. Those are Dr. Green's notations.

23 Q And the jury's going to have this actual diagram, so  
24 they can look at that and read the writing that's there. But  
25 that's not indicative of the order of the wounds.

1           A     No. That's simply a help to keep track of the  
2 injuries.

3           Q     He's just got to number them because there are, as  
4 you indicated, seven separate entry wounds.

5           A     Yes.

6           Q     Okay. And so when we might be referencing wound No.  
7 5 as being the fatal wound, it doesn't mean that the fifth shot  
8 is the one that killed him. It's just No. 5 on this diagram.

9           A     That's correct. Yes.

10          Q     Okay. And with respect to that, of the seven wounds  
11 that you identified, the ones in the arm and the two in the  
12 back, only one of those you would have characterized as fatal.

13          A     As immediately fatal, yes.

14          Q     Okay. And we have the diagram. I'm going to use  
15 myself a little bit here, also, but we have basically the two  
16 wounds that you see on the pictures that were in the back?

17          A     Yes.

18          Q     And one was directly through the lung and then exited  
19 in the front chest; is that correct?

20          A     That's correct.

21          Q     And that's the one that was fatal.

22          A     Yes. That's the one.

23          Q     It nicked some of the arteries and the pulmonary  
24 artery.

25          A     Yeah. It -- it went through the lung and it tore up

1 the blood vessels in the lung.

2 Q And you testified that it caused a great amount of --  
3 a great deal of bleeding.

4 A Yes.

5 Q But would you agree that the wound wouldn't have been  
6 immediately fatal?

7 A That's correct.

8 Q In fact, the person that was shot would have been  
9 able to -- and we saw this in some of the pictures with the  
10 crime scene analyst -- walk around a little bit and maybe drip  
11 or leave blood in different places.

12 A Yes, that's possible.

13 Q Is it fair to say that this individual even after all  
14 of these shots could have survived up to five or ten minutes?

15 A Yes.

16 Q Okay. There's another wound that you indicated that  
17 went in the back. I think it was the lower one labeled No. 4  
18 by Dr. Green.

19 A Actually, it's -- it's the upper --

20 Q It's the upper --

21 A -- one. Yes.

22 Q But that went through the tissue. That really didn't  
23 go through any organs of the body?

24 A It didn't go through any vital organs. It actually  
25 went through soft tissue and then the muscle in the diaphragm

1 on the right side.

2 Q Okay. So there was some discussions with the State  
3 about directionality of the wounds. I think it's fair to say  
4 No. 2 on the diagram which is right here -- actually, that's a  
5 bad way to put my hand. Here?

6 A Yes.

7 Q Exiting here. Either the victim was bent over  
8 similar to this or the -- you know, the -- or the shooter was  
9 coming straight above if we assume an erect victim is --

10 A Yes.

11 Q So the most logical is that the person who was shot  
12 was probably bent over.

13 A He was bent over or he could have been lying down on  
14 a bed or something on the floor for that matter, but yes. The  
15 angle between his body and the barrel of the gun when it was  
16 fired was -- was very acute.

17 Q It's just straight back.

18 A Yes.

19 Q And the fatal injury also suggests kind of an upward  
20 in the back, kind of upward and out the chest here so that  
21 would -- again, if we're assuming the victim's standing and the  
22 stationary shooter, this is also an explanation the victim was  
23 somewhat bent over as a straight bullet went in and out  
24 crossing the lung; is that fair?

25 A Yes. That's possible.

1           Q     I guess what I'm getting at is it's not inconsistent  
2 to as this person's being shot to imagine that he might be  
3 turning, raising his arm and bending in some form of emotion.

4           A     Yes.

5           Q     Okay. Now, there was no indication that any of these  
6 wounds occurred postmortem. In other words, it appears that  
7 this person was alive during all of these gunshots.

8           A     That can actually be a little difficult to say with  
9 certainty one way or the other. Certainly if you are shot  
10 around the time that you are dying or have just died,  
11 sometimes we can't tell if the shot occurred while your heart  
12 was still beating or shortly after it stopped beating.

13          Q     In Dr. Green's autopsy findings he made no finding of  
14 anything resembling blunt-force trauma for example.

15          A     That's correct.

16          Q     It didn't appear this victim had been beaten or  
17 struck or hit with an object.

18          A     No.

19          Q     Now, I just want to clear up a little bit the  
20 question about the distance of the shooter from the thing. And  
21 what -- and if I understand you right, when a gun is fired,  
22 powder comes out of the barrel of the gun and it's hot.

23          A     Yeah. Actually it -- yes. A number of things come  
24 out of end of the barrel of a gun when it's fired.

25          Q     Go ahead and explain when -- because you said there



1 were no powder or no marks on the victim's body. Explain what  
2 that would be.

3       A     So when you fire a gun, obviously the bullet comes  
4 out the end of the barrel, but there are other things that come  
5 out, too. There are hot gases caused by the combustion or  
6 burning of the gunpowder. There's soot which is the burned  
7 gunpowder, and sometimes there are fragments of gunpowder that  
8 doesn't actually burn.

9             So if you have a gun that is fired and you have a  
10 surface relatively close to the end of the barrel when that gun  
11 is fired, you can see deposits of those materials on that  
12 surface if the gun is close enough. So at close range, within  
13 say six inches, you can see deposits of soot around the gunshot  
14 injury, and it actually looks like a very fine black powder or  
15 dark gray powder.

16            As the range gets a little longer, you may start to  
17 see a bit less soot, but you'll see fragments of unburned  
18 gunpowder which actually hit the skin if you're aiming at skin  
19 and cause little scrapes or abrasions. That's called gunpowder  
20 stippling or gunpowder tattooing.

21            But as the range increases, you see less of those two  
22 substances because of the distance. They don't travel all that  
23 well. So the farther the distance between the end of the  
24 barrel and the surface that the projectile or the core has  
25 struck, the less you'll see of soot and powder until you get

1 out to a point where you don't see any soot or powder deposited  
2 on the skin.

3           And the point at which you don't see soot or powder  
4 deposited on the skin varies, and it varies because weapons are  
5 different. For example, if you have a longer barrel on a  
6 weapon, you may actually have more combustion or burning of the  
7 gunpowder. You may see relatively little gunpowder stippling.

8           So the barrel length and actually the weapon itself  
9 in general has an effect on what that range is where you stop  
10 seeing soot and powder and also the type of ammunition has an  
11 effect. If you have a cartridge that has a small amount of  
12 gunpowder, relatively speaking, that gunpowder is more likely  
13 to combust completely so you'll have less stippling than, for  
14 example, a magnum which has more gunpowder.

15           So all of those factors effect what you see on the  
16 skin surface depending on the distance between the end of the  
17 barrel and the skin surface.

18           Q     Thank you for that explanation. And so what we're  
19 really talking about is if it had been a close-up shooting,  
20 there are certain things you would expect to find on the  
21 victim, on the body.

22           A     Yes. That's correct.

23           Q     And we had prior evidence that this particular victim  
24 was unclothed, and so that would be -- you would expect to see  
25 things on an unclothed person more readily than a person who

1 perhaps is wearing a shirt. Is that fair to say?

2 A Well, on the skin surface, yes. It's -- you more  
3 readily see the deposits of soot and powder if the range is  
4 close enough on someone who's not clothed. If they're wearing  
5 clothing, then obviously those will be -- those substances will  
6 be deposited on the clothing because it's between the end of  
7 the barrel and the skin surface.

8 Q So where we're at is because you didn't note those  
9 things and Dr. Green didn't note the soot, the powder, and the  
10 things you just mentioned, we are assuming that the gunshot did  
11 not occur within a certain distance, say one foot or maybe even  
12 two feet. Is that fair?

13 A Yes, approximately.

14 Q You don't know how far back.

15 A No. I can't tell you that.

16 Q There's no indications that a wound's going to look  
17 different at 10 feet than it does at 11 feet.

18 A That's correct.

19 Q All we can say is that at least this person was  
20 greater than two to three feet away, could have been even  
21 further.

22 A Yes, that's possible.

23 Q And the only reason I clarified that is I didn't want  
24 to leave the jury with the impression that the opinion was the  
25 shot was two or three feet away. I just wanted to make sure

1 we're clear it couldn't have been that close, it was at least  
2 further. Is that fair?

3 A That's correct. Yes.

4 Q Okay. Thank you, Doctor.

5 MR. BROWN: Your Honor, I don't have anything  
6 further.

7 THE COURT: Redirect?

8 MS. LUZAICH: Just briefly.

9 MR. BROWN: Do you need this?

10 MS. LUZAICH: No.

11 REDIRECT EXAMINATION

12 BY MS. LUZAICH:

13 Q Dr. Olson, Mr. Brown talked to you about, you know,  
14 positions and contorting and stuff. The through-and-through  
15 and the chest -- I'm on the wrong side. The  
16 through-and-through and the chest, is that also consistent with  
17 somebody standing over him and shooting down into him?

18 A Yes, that would be possible.

19 Q And then the two in the back, are those consistent  
20 with him running away and being shot while running away?

21 A It's possible. I can't tell you -- I can't tell you  
22 what he was doing, if he was running or walking. I can just  
23 tell you that his back was facing the end of the gun barrel  
24 when those shots were fired.

25 Q Okay. I'm sorry. Running, walking, I shouldn't have

1 used that. But he was moving away from the person who was  
2 shooting him.

3 A Or at least his back was turned to the shooter.

4 Q Okay. Thank you.

5 THE COURT: Anything further?

6 MR. BROWN: No, Your Honor.

7 THE COURT: Okay. Thank you, ma'am.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Next witness.

10 MR. TOMSHECK: State calls Joel Geller.

11 THE MARSHAL: Please step up into the box, place your  
12 items down, raise your right hand, face that gentleman right  
13 there.

14 JOEL GELLER, PLAINTIFF'S WITNESS, SWORN

15 THE CLERK: Thank you. Please be seated. Please  
16 state your complete name spelling both your first and last name  
17 for the record, please.

18 THE WITNESS: Joel Geller, J-o-e-l G-e-l-l-e-r.

19 DIRECT EXAMINATION

20 BY MR. TOMSHECK:

21 Q Mr. Geller, can you tell the ladies and gentlemen of  
22 the jury currently what it is you do for a living.

23 A I am retired.

24 Q Prior to being retired -- and I can tell there's a  
25 little bit of satisfaction saying that -- what did you do

1 professionally?

2       A     I was a latent print examiner forensic scientist with  
3 the Las Vegas Metropolitan Police Department.

4       Q     In addition to doing latent prints in your capacity  
5 with Metro, did you also do examinations of footwear and tire  
6 impressions?

7       A     Yes, sir.

8       Q     I want to talk to you a little bit about your history  
9 professionally that allowed you to have that job and that  
10 capacity with Metro. Obviously if I were to sit down in a lab  
11 and compare fingerprints, I wouldn't know what I was looking  
12 at, or if I was trying to compare footwear impressions I  
13 wouldn't know what I was doing. What kind of education,  
14 training and experience do you have that allows you to do that  
15 type of work?

16       A     I completed the 104-week latent print training course  
17 which included footwear and tire track examination with the  
18 United States Army Criminal Investigation Laboratory. I also  
19 attended the footwear print and tire tread examination course  
20 given by the Florida Department of Law Enforcement. I also  
21 attended a footwear print and tire print class offered by the  
22 Federal Bureau of Investigation. I also attended the  
23 International Symposium on footwear hosted by the Federal  
24 Bureau of Investigation.

25             I also authored articles pertaining to footwear and

1 tire track examination. I also attended over 20 educational  
2 conferences hosted by the International Association for  
3 Identification. I also provided classes during those  
4 conferences, and I also attended International Association for  
5 Identification division section such as the Missouri division,  
6 Nevada division, Florida division and the California division.

7 Q With all that training, do you also have some  
8 experience above and beyond that which you had at the Las Vegas  
9 Metropolitan Police Department doing that work professionally?

10 A Yes. I did this type of examination throughout my  
11 employment as a special agent with the U.S. Army CID. After  
12 retirement I worked for the Florida Department of Law  
13 Enforcement, the Kansas Bureau of Investigation, the Santa  
14 Clara County Police Department, and the Colorado Springs Police  
15 Department before I came to Las Vegas where I eventually  
16 retired again.

17 Q Kept moving west.

18 A Yes. You could look at that.

19 Q Now that you're retired, obviously, there's still  
20 some cases that you worked on that you are the person who has  
21 the expertise that can testify about it. Do you remember the  
22 case that you're here to testify about today?

23 A Yes, sir.

24 Q And would that be the case identified by Las Vegas  
25 Metropolitan Police Department Event No. 000610-1143?

1 A Yes, sir.

2 Q In that particular case dealing with specifically the  
3 area of footwear comparisons, were you asked to perform a  
4 footwear comparison on some items of evidence recovered from a  
5 crime scene as well as a pair of shoes recovered by Detective  
6 Barry Jensen?

7 A Yes, sir.

8 Q Specifically what from the crime scene did you look  
9 at in order to make your comparison?

10 A I looked at the footwear impression lifter and the I  
11 believe photographs that were submitted under this event  
12 number.

13 Q And obviously -- and the jury understands this to  
14 some extent -- you don't go out and take the footwear  
15 impressions yourself as a general rule of what you did at  
16 Metro, correct?

17 A That's correct.

18 Q You work in a laboratory type environment?

19 A Yes, sir.

20 Q And you would be submitted certain items that had  
21 been impounded by a crime scene analyst.

22 A Yes, sir.

23 Q And the particular items that you examined in this  
24 case, the footwear lifter and the photographs, those were  
25 submitted to you by Crime Scene Analyst Jeff Smink; is that



1 correct?

2 A That's correct, sir.

3 Q The examination that you did in this case, will you  
4 tell the ladies and gentlemen of the jury how it is that you  
5 would look at something taken from a crime scene and compare it  
6 with a known object such a shoe that you have in the laboratory  
7 and how you would make that comparison.

8 A First thing you would do is you look at the footwear  
9 track which people also call an impression. Normally a  
10 footwear track is a two- or three-dimensional reproduction of  
11 the outsole of a shoe. The outsole is the design placed on the  
12 bottom of shoes whether it be an athletic shoe, a boot, a  
13 sandal.

14 Once you determine that there is a sufficient track  
15 evidence present be it a photograph or a lift, you compare it  
16 to any known shoes that are submitted. So you would compare  
17 the outsole design that you would see in the footwear track to  
18 the outsole design of the shoe. The first thing you would do  
19 is determine whether or not it was a similar outsole design.  
20 Then you would determine if it's a similar size. Then you  
21 would look for individual characteristics that reproduce  
22 themselves in the footwear track and also on the bottom of the  
23 outsole design of the shoe.

24 Q In this particular science do you have access to the  
25 sole design related to shoes provided by manufacturers? Are

1 you able to research that?

2 A Yes. In this case I did.

3 Q In this particular case you mentioned that you were  
4 provided with a pair of shoes that were impounded by Detective  
5 Barry Jensen; is that correct?

6 A Yes, sir.

7 Q Those particular shoes, what was the brand of shoes?

8 A It was a pair of Saucony athletic shoes.

9 MR. TOMSHECK: May I approach (indiscernible) the  
10 witness, Judge?

11 THE COURT: Yes.

12 BY MR. TOMSHECK:

13 Q I want to show you what's been marked as State's  
14 Proposed 100. Do you recognize that as a photograph of the  
15 Saucony tennis shoe that was submitted to you by Detective  
16 Barry Jensen?

17 A Yes, sir.

18 Q Fairly and accurately depict the tread pattern on the  
19 bottom of the right shoe from that set of athletic shoes?

20 A Yes, sir. May I see the photograph? I'd just like  
21 to note when the shoe is turned over it looks like the left  
22 shoe, when it sits in the proper location it is the right shoe.  
23 When you view it, you turn it over the shoe, it's in a reversed  
24 position and it looks like the left shoe.

25 Q Okay. So this one here would be the right shoe.

1           A     Yes, sir.

2           MR. TOMSHECK:  Move for admission of State's Proposed  
3 100.

4           MR. BROWN:  No objection.

5           THE COURT:  It's admitted.

6           (Plaintiff's Exhibit 100 admitted into evidence.)

7 BY MR. TOMSHECK:

8           Q     And I'm going to show you what's already in evidence  
9 -- you can see there -- as State's Exhibit 94, a rubber lifter  
10 bearing footwear impression impounded by Jeff Smink on June  
11 10th of 2000.  Do you see a signature at the chain of custody  
12 and a personnel number that you recognize down at the bottom?

13          A     Yes.  I see my signature, my former P number 5892,  
14 the date and time.

15          Q     Date and time that you would have reviewed and done  
16 the work on this particular --

17          A     The date and time I received it.  Yes, sir.

18          MR. BROWN:  Your Honor, if I may publish what's now  
19 in evidence as State's 100.

20 BY MR. TOMSHECK:

21          Q     Would that be the photograph of the known shoe from  
22 the perspective of the bottom of the right shoe that you just  
23 talked about?

24          A     Yes, sir.

25          Q     Did you do a comparison between the lifter that CSA

1 Smink provided to you and the right shoe depicted in State's  
2 100?

3 A Actually, I had determined that the footwear  
4 impression lifter was not of value for a comparative  
5 examination. Even though I looked at it, I determined that I  
6 couldn't do anything with it.

7 Q Were you also provided with crime scene photographs  
8 that CSA Smink took in this particular case?

9 A Yes, sir.

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

11 THE COURT: Yes.

12 BY MR. TOMSHECK:

13 Q I'm going to hand you what's been marked for  
14 identification State's Proposed 70. Can you tell us what  
15 State's proposed 70 is?

16 A This is a poster board that I prepared depicting an  
17 enlargement of the photograph that was taken by CSA Smink,  
18 S-m-i-n-k, at the crime scene and a transparency that I made of  
19 the right shoe. A transparency is made by putting the shoe on  
20 top of a copier using a clear plastic film which reproduce the  
21 outsole of a shoe.

22 Q Okay. And the purpose of doing that is that to  
23 illustrate the comparison that you did between the Saucony shoe  
24 that was provided to you and the photographs in black and white  
25 that were provided to you by CSA Smink?

1           A     Yes. It was used to determine that the footwear  
2 track on the door was of a similar design as the Saucony shoe  
3 that I compared it to.

4           Q     Okay. And this is something that you yourself  
5 prepared, correct?

6           A     Yes. I had prepared this just for a demonstration  
7 purpose at that time.

8           Q     Okay.

9           MR. TOMSHECK: I'd move for admission of State's  
10 Proposed 70.

11           MR. BROWN: No objection.

12           THE COURT: It's admitted.

13           (Plaintiff's Exhibit 70 admitted into evidence.)

14 BY MR. TOMSHECK:

15           Q     When you said a moment ago that it was to illustrate  
16 that it was a similar design, what do you mean by the phrase  
17 "similar design"?

18           A     Actually that the outsole design that was depicted in  
19 the crime scene photograph was similar to the outsole design  
20 which is the design that was placed on the bottom of the  
21 Saucony shoe by the manufacturer. You could easily see the  
22 triangular design and you can also read the word "Saucony" in  
23 the crime scene photograph that also appears on the outsole of  
24 the shoe.

25           Q     In the photographs that you had you could actually

1 see the word "Saucony"; is that correct?

2 A That's correct, sir.

3 Q Taking out the word "Saucony", if you hadn't been  
4 able to see that -- those diamond patterns at the top of the  
5 shoe, did you do an analysis to determine if there were any  
6 other manufacturers that used that type of tread design?

7 A Yes. I did a search on the Internet of Web sites  
8 pertaining to footwear. Numerous outsole designs I reviewed.  
9 I personally reviewed it rather than to request it from Saucony  
10 to determine if any other manufacturer had it. I wanted to do  
11 it myself. And I didn't find any other manufacturer that had a  
12 similar outsole design.

13 Q In other words, can you tell us that the shoe print  
14 that was left on the door was left by a Saucony tennis shoe?

15 A Yes, sir.

16 Q In other words, it couldn't have been made by a Nike  
17 or a Reebok or a hiking boot.

18 A No, sir.

19 Q Did you conduct an investigation with Saucony itself  
20 to determine if there were more than one type of Saucony shoe  
21 that had the upper that matched that sole?

22 A Yes, sir. I was not familiar with that particular  
23 Saucony outsole design, so I sent a request through channels to  
24 the manufacturer to determine what the uppers looked like and  
25 if it was significant just for one particular brand of shoe

1 that they made. Much to my surprise, within three days I got a  
2 reply which showed over 60 uppers.

3 The upper is the part of the shoe above the outsole  
4 design where you have your laces or buckles or whatever you --  
5 is used to tighten the shoe. There were over 60 different  
6 designs for the uppers. When I contacted the Saucony  
7 individual that assisted me, he said the outsole design was so  
8 popular they decided to put a lot of different uppers on it.

9 Q Okay. In other words, you can tell us that it's a  
10 Saucony shoe. You can't tell us exactly which type of Saucony  
11 shoe because there's several, correct?

12 A And not from just the outsole design from the crime  
13 scene photograph. I was unable to do so.

14 Q Okay. Based on the comparison that you did related  
15 to the Saucony shoe that you had in your possession provided by  
16 Detective Jensen and the photographs that detective -- or CSA  
17 Smink took at the crime scene, what was your determination  
18 about whether or not that print could or could not have been  
19 made by that shoe?

20 A I wrote a report which I have in front of me that  
21 basically says that it could have been made -- the footwear  
22 track could have been made the by right shoe. At the time that  
23 was the way I normally wrote a report. Now I would write it  
24 simply as a similar outsole design as the right shoe. I was  
25 able to eliminate the left shoe.

1 Q Couldn't have been made by a left shoe, correct?

2 A No, sir.

3 Q Couldn't have been made by any other brand but a  
4 Saucony shoe.

5 A That's right, sir.

6 Q And it could have been made by the shoe that you had  
7 in your possession.

8 A That's right, sir.

9 Q In addition to the Saucony shoe were you provided  
10 with some --

11 MR. TOMSHECK: I'm showing opposing counsel what's  
12 been marked as State's Proposed 95 and 96. I don't believe  
13 they have an objection, Judge. If I could move this.

14 THE COURT: Is there any objection?

15 MR. BROWN: No, there's no.

16 THE COURT: It'll be admitted.

17 (Plaintiff's Exhibits 95 and 96 admitted into evidence.)

18 BY MR. TOMSHECK:

19 Q Were you also asked to compare another set of shoes  
20 recovered by CSA Smink related to this event number?

21 A Yes. I compared this pair of athletic shoes to the  
22 footwear track photograph that was taken by Jeff Smink. And if  
23 you notice on the outsole of the shoe, if you see the design,  
24 this is the design on the bottom of the footwear made by the  
25 manufacturer. There are no star designs whatsoever. So



1 basically this was an easy elimination that this pair of shoes  
2 did not make the crime scene photograph of the track evidence  
3 found at the scene.

4 Q And when you examine shoes or photographs, you don't  
5 know from what person they came from. It's just information  
6 that's provided to you.

7 A That's correct, sir.

8 Q So when you received these shoes which were impounded  
9 by CSA Smink from an individual by the name of Derrick  
10 Sterling, you don't know that information at that time,  
11 correct?

12 A Unless it's written on the evidence package, I don't  
13 pay that much attention to whose pair of shoes it is. My only  
14 concern is whether or not this pair of shoes or any pair of  
15 shoes made the track evidence that was recovered by the CSI.

16 Q And you can tell us that these shoes impounded by CSA  
17 Smink from an individual by the name of Derrick Sterling did  
18 not make the footwear on the door, correct?

19 A Definitely.

20 Q The shoes that you had provided by Detective Barry  
21 Jensen, the Saucony brand shoes, did you visually inspect those  
22 in order to see if there was any visible apparent blood on  
23 them?

24 A Yes, I did. I did do a visual inspection.

25 Q And did you see any blood on them?

1           A     No, sir.

2                   MR. TOMSHECK: Pass the witness, Judge.

3                               CROSS-EXAMINATION

4 BY MR. BROWN:

5           Q     I have one kind of quick follow-up question, and  
6 that's you had indicated that you kind of changed your standard  
7 a little bit on how you evaluate could be or similar in design.

8           A     Yes, sir.

9           Q     Okay. And when Mr. Tomsheck was getting you to  
10 finalize your opinion, he says this could be the same Saucony  
11 shoe that you reviewed that was provided to you by Detective  
12 Jensen?

13          A     Yes. It could have been made by.

14          Q     But if I understood you correctly, it could have been  
15 made -- this particular footprint on the door could have been  
16 made by any of the Saucony shoes with that similar outsole  
17 design of the numerous top soles that you talked about.

18          A     Upper soles.

19          Q     Upper soles.

20          A     That's 100 percent correct, sir. It could have been  
21 made by any Saucony shoe with a similar outsole design and a  
22 similar size.

23          Q     I take it from your research that you concluded that  
24 Saucony sold probably more than one pair of shoes in the year  
25 2000 -- 1999 to 2000?

1           A     Yes, sir. As I said, there was over 60 uppers for  
2 this pair of shoes on the market at that time.

3           Q     That's just the design. We don't know -- you know,  
4 do you know how many shoes were actually Saucony sole?

5           A     No, sir, I do not.

6           Q     Fair to say numerous?

7           A     Yes, sir.

8           MR. BROWN: Okay. I have no other questions, Judge.

9                         REDIRECT EXAMINATION

10          BY MR. TOMSHECK:

11           Q     Just real briefly. So we're clear, you said it had  
12 to be -- that particular footwear impression had to be left by  
13 a Saucony manufactured shoe, correct? Yes?

14           A     Yes, sir.

15           Q     In a similar size.

16           A     Yes, sir.

17           Q     In other words, it couldn't have been made by a size  
18 14 or a size 8. It had to be of comparable size, correct?

19           A     Yes, sir, plus or minus, anywhere from a 10 and a  
20 half to 11 and a half. The reason why I say that especially  
21 when you kick a door, there is some slippage, so there is  
22 movement. So unless I had a full, complete photograph of an  
23 entire outsole design to nail it down to a particular size it'd  
24 be awful difficult.

25           Q     So it'd have to be a 10 and a half, an 11, or an 11

1 and a half in U.S. size of a Saucony brand shoe.

2 A I would say so.

3 MR. TOMSHECK: Nothing else.

4 MR. BROWN: No.

5 THE COURT: Thank you, sir. Appreciate your time.

6 All right. We're going to go ahead and take our

7 lunch break at this time, ladies and gentlemen.

8 We'll take a break until -- I need to make it 1:15.

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

18 See you after lunch.

19 THE MARSHAL: All rise. Court's now in recess.

20 (Court recessed at 11:55 a.m. until 1:19 p.m.)

21 (Outside the presence of the jury)

22 THE MARSHAL: Please rise. This court, Department 6,  
23 is back in session. Please be seated, come to order.

24 THE COURT: All right. Are we ready to go?

25 MR. BROWN: I just have one thing real quick, Judge,

1 literally just a couple seconds. The record we made earlier  
2 with respect to Detective Jensen and the comments that you  
3 ruled, the conversations from Mr. Porter that could come in, I  
4 wanted to mark and admit the actual testimony from the  
5 preliminary hearing if that was okay with the Court. State  
6 doesn't have an objection other than I have pages 17 through  
7 22. They would like pages 15 through 22.

8 MR. TOMSHECK: And I'm just going off memory. It's  
9 my recollection that that context of that testimony starts at  
10 15. Before the end of the day today, we'll agree upon it and  
11 we'll just submit it as a Court's exhibit.

12 THE COURT: And that's to be a Court exhibit for me.

13 MR. TOMSHECK: Correct.

14 MR. BROWN: Yeah. I actually have the -- my copy  
15 plus a photo copy. I can include pages 15, 16, 17, et cetera.  
16 They might be a little disjointed, but I don't need those two  
17 pages right now. We have a statement (indiscernible) copy, so  
18 we can make these a court exhibit.

19 THE DEFENDANT: Are they coming in?

20 THE COURT: All right. That's fine. It makes sense  
21 to have that in the record.

22 (Pause in proceedings)

23 MR. TOMSHECK: I think that's appropriate, Judge.  
24 That's fine.

25 THE COURT: Okay.

1 (Pause in proceedings)

2 MR. BROWN: Provide this to the clerk as a Court  
3 exhibit.

4 THE COURT: Right. Okay.

5 (Pause in proceedings)

6 THE COURT: Those are the pages. All right.

7 UNIDENTIFIED SPEAKER: Okay.

8 THE COURT: So that will a Court exhibit.

9 (Pause in proceedings)

10 THE COURT: Okay. Anything else? Okay. Let's bring  
11 in the jury.

12 THE MARSHAL: Please rise.

13 (In the presence of the jury)

14 THE MARSHAL: Be seated.

15 THE COURT: Counsel stipulate to the presence of the  
16 jury?

17 MS. LUZAICH: Yes, Judge.

18 MR. ABOOD: Yes, Your Honor.

19 THE COURT: All right. State, call your next  
20 witness.

21 MS. LUZAICH: Barry Jensen.

22 THE MARSHAL: Good. Just step up into the box,  
23 remain standing, raise your right hand. Face that gentleman  
24 right there.

25 BARRY JENSEN, PLAINTIFF'S WITNESS, SWORN

1 THE CLERK: Thank you. Please be seated. Please  
2 state your complete name spelling both your first and last name  
3 for the record, please.

4 THE WITNESS: My name is Barry Jensen. It's  
5 B-a-r-r-y J-e-n-s-e-n.

6 MS. LUZAICH: Thank you.

7 DIRECT EXAMINATION

8 BY MS. LUZAICH:

9 Q Sir, how are you employed?

10 A I'm employed with the Las Vegas Metropolitan Police  
11 Department.

12 Q How long have you been with Metro?

13 A About 20 years.

14 Q In what capacity are you now?

15 A I'm a detective.

16 Q How long have you been a detective?

17 A Approximately 14 years.

18 Q Okay. And as a detective are you assigned to  
19 investigate many different crimes?

20 A Yes, I am.

21 Q As opposed to a patrol officer who just kind of  
22 responds initially to a call.

23 A That's correct.

24 Q And when a homicide is involved when patrol comes  
25 out, do many detectives go out?

1 A Yes, they do.

2 Q I'm going to take you back to June of 2000. In June  
3 of 2000 were you also -- you were already a detective at Metro?

4 A That's correct.

5 Q And through the course of that summer, summer, June,  
6 July, August of 2000, did you participate in an investigation  
7 into the murder of an individual known as Gyaltsso Lungtok?

8 A Yes, I did.

9 Q And I'm sorry. I don't mean to laugh. We were  
10 having a hard time pronouncing his name. And while the  
11 investigation into the gentleman's death was ongoing, were  
12 there numerous detectives that participated in that?

13 A Yes, there were.

14 Q Another one is Detective LaRochelle?

15 A That's correct.

16 Q And he's outside, right?

17 A Yes.

18 Q Okay. Now, I'm going to take you forward, actually,  
19 in August of 2000. Had the collective you, all of the  
20 detectives, by then developed a suspect into the murder?

21 A Yes, we did.

22 Q And was that individual -- well, what was that  
23 individual's name?

24 A Justin Porter.

25 Q And once Justin Porter was developed as a suspect,



1 did you and some other detectives go to his home?

2 A Yes, we did.

3 Q Where is his home -- or back in June of 2000 or  
4 August was his home?

5 A His home was at 208 North 13th Street, Apartment 3.

6 Q Is that in the downtown area?

7 A Yes, it is.

8 Q And about how far -- you know where the scene of the  
9 homicide was, correct?

10 A Yes, I do.

11 Q 10th Street?

12 A Yes.

13 Q 415 South 10th Street?

14 A That's correct.

15 Q How far from 415 South 10th Street -- I'm sorry --  
16 was Justin Porter's home?

17 A Using Mapquest it was .6 miles.

18 Q Did you actually drive and/or walk the distance  
19 between there?

20 A Yes. I walked the distance.

21 Q And how long did it take you?

22 A Well, using the sidewalks and street -- I didn't cut  
23 across any vacant lots -- I believe it took me 14 minutes going  
24 north on 14 Street -- correction, on 10th Street to Ogden  
25 Street east, and then just a little north to his apartment.

1 And when we walked back, I walked down 13th Street south, came  
2 up I believe Bridger and ended up at 415 10th Street, and that  
3 took me 13 minutes.

4 Q Okay. And as you were doing this, were you running?

5 A No.

6 Q Were you walking at a leisurely pace?

7 A Yes. I was walking at a leisurely pace.

8 Q So if somebody were running, it would be much faster?

9 A Yes.

10 Q If somebody were cutting through lots and yards it  
11 would be faster?

12 A Yes.

13 Q And with no disrespect intended, if somebody were in  
14 a little better shape than you, would it be faster?

15 A Yes.

16 Q And younger than you.

17 A Yes.

18 Q Okay. Now, when you went to Justin Porter's home,  
19 was it your intention to look for some evidence?

20 A Yes, it was.

21 Q Specifically, were you looking for a pair of shoes?

22 A Yes.

23 Q And is that because -- well, why is that?

24 A There was footwear at the murder scene.

25 Q A footwear impression?

1 A Yes.

2 Q And had it been looked at by an expert at the crime  
3 lab?

4 A Yes, it was.

5 Q Okay. When you went there, was it your intention to  
6 obtain and then serve a search warrant or just kind of go say,  
7 hey, can we come in?

8 A No. Our intention was to -- we were preparing a  
9 search warrant for the residence.

10 Q And was there actually team of officers waiting at  
11 the house for the search warrant?

12 A Yes, there were.

13 Q So some officers were preparing the search warrant  
14 and some officers were waiting?

15 A Yes.

16 Q In order to get a search warrant can you just, you  
17 know, write something down on a piece of paper and that's it?

18 A No. There's -- there's a standard wording that we  
19 use, and then you also have to enter the address that you're  
20 going to search, a description of the residence, what you're  
21 going to search for, and then you have to list your probable  
22 cause that would allow you to go into the residence and search  
23 for those items. And then you -- you take that search warrant  
24 to a judge who reviews it. And if he agrees that there's  
25 probable cause to search the residence, he signs it.

1 Q And that takes a little bit of time sometimes.

2 A Yes, it does.

3 Q So while you all were waiting for the search warrant,  
4 did you come into contact with anybody from the residence that  
5 you waiting at?

6 A Yes, we did. We came --

7 Q Who did you come into contact with?

8 A Angela Porter and her husband, Sergio, I believe.

9 Q How did it come about that you came into contact with  
10 them?

11 A They were leaving the apartment, and the officers  
12 that we had surveilling the apartment made a car stop a couple  
13 blocks away from their apartment.

14 Q Why is that?

15 A We didn't know if Justin Porter was in there or not,  
16 and if he did -- if he was, we didn't want to stop them where  
17 he could see that the police were there in case it would cause  
18 him to run or do anything.

19 Q Okay. Now, this is August 10th of 2000. What time  
20 of day is it that you're having contact with Angela Porter and  
21 her husband?

22 A It's late evening, 11:00 o'clock at night.

23 Q So very late at night and dark?

24 A Yes.

25 Q And when you had contact with Ms. Porter, did you

1 discover that Justin was not in fact in the residence?

2 A Yes, we did.

3 Q Did you discover that he was actually not even in  
4 town?

5 A Yes, we did.

6 Q Where did you discover he was?

7 A His mother told us that he was -- that Justin Porter  
8 was in Chicago with his father.

9 Q Was she cooperative with you at that point?

10 A Yes, she was.

11 Q And did you explain to her why you were wanting to  
12 talk to Justin?

13 A Yes, we did.

14 Q Did you tell her something or give her something?

15 A I provided her my business card with my name and  
16 phone number.

17 Q For what purpose?

18 A So she would know who to contact.

19 Q Did you then arrest her or keep her in custody or  
20 anything?

21 A No.

22 Q What did you do?

23 A I believe her husband, Sergio, signed the -- signed a  
24 consent to search card to allow us to search their apartment  
25 without obtaining a search warrant. They were on their way to

1 a real estate transaction of some kind, and he provided us a  
2 key to the apartment so we could go in.

3 Q He voluntarily provided that to you?

4 A Yes, he did.

5 Q So you have a consent to search the home in your hand  
6 and you have the key. Did you then just go inside?

7 A No, we did not.

8 Q What did you do?

9 A We waited for the search warrant to be approved and  
10 signed by a judge.

11 Q Okay. Did you think that was just the better course?

12 A Yes, we did.

13 Q Did you at some point actually get the search warrant  
14 in hand?

15 A Yes, we did.

16 Q And go into the house?

17 A Yes.

18 Q Had Ms. Porter and her husband returned by then?

19 A Yes, they had.

20 Q When you went -- and I'm sorry. Did you personally  
21 also go into the house?

22 A Yes, I did.

23 Q And did you participate in the search of the house?

24 A Yes.

25 Q Had you asked Ms. Porter or her husband whether or

1 not Justin Porter kept clothing and things of that nature at  
2 that place?

3 A Yes, we did.

4 Q And did they show or tell you where he kept his  
5 items?

6 A Yes. They told us that he -- his clothes were in the  
7 hall closet.

8 Q Did you look in the hall closet?

9 A Yes, we did.

10 Q What if anything did you find of interest?

11 A Inside the hall closet there were some bags of -- of  
12 clothes, and we found a pair of white Saucony tennis shoes.

13 Q And why is that significant to you?

14 A That was what the footwear impression on the door  
15 came back to.

16 Q When you found those white Saucony shoes, did you  
17 then mark, tag and place them into evidence?

18 A Yes, we did.

19 MS. LUZAICH: And may I approach the clerk?

20 THE COURT: Yes.

21 MS. LUZAICH: Court's indulgence one second. Since  
22 there's a bag and contents, I would ask that

23 the bag be marked as A and the contents as B.

24 THE COURT: Okay. What number is it?

25 MR. TOMSHECK: 106.

1 MS. LUZAICH: 106. May I approach the witness?

2 THE COURT: Yes.

3 BY MS. LUZAICH:

4 Q Detective, showing you what's been marked as State's  
5 Proposed Exhibit 106A, do you recognize that?

6 A Yes, I do.

7 Q And does that bag contain the tennis shoes that you  
8 found at the residence?

9 A Yes, they do.

10 MS. LUZAICH: Can I have a scissor, please. Thank  
11 you.

12 BY MS. LUZAICH:

13 Q Now, is the bag sealed?

14 A Yes, it is. (Indiscernible).

15 Q It's been opened.

16 A It's been opened.

17 Q Well, was there a preliminary hearing in this case?

18 A Yes, there was.

19 Q Did you testify at a preliminary hearing?

20 A Yes, I did.

21 Q And were the shoes brought to the preliminary  
22 hearing?

23 A Yes, they were.

24 Q Okay. So since the preliminary hearing is that bag  
25 -- does it look in the same or similar situation that it was



1 then?

2 A Yes, with the exception the staples have come through  
3 the paper bag.

4 Q Okay. Can you open it up and make sure the shoes are  
5 in there, and can you take them out?

6 MS. LUZAICH: And I would ask that the shoes be  
7 marked as 106B, and I would move 106B into evidence.

8 THE COURT: Did you want 106A also?

9 MS. LUZAICH: No.

10 THE COURT: Okay. 106B.

11 MR. ABOOD: No objection.

12 THE COURT: 106B is admitted.

13 (Plaintiff's Exhibit 106B admitted into evidence.)

14 MS. LUZAICH: Thank you.

15 BY MS. LUZAICH:

16 Q And those shoes that are in front of you, do they in  
17 fact say Saucony on the bottom?

18 A Yes, they do.

19 Q Did you ultimately have -- cause those to be examined  
20 and compared to the door from Mr. Lungtok's apartment?

21 A Yes.

22 Q Okay. While you were serving this search warrant,  
23 did like enough time pass that you're now into August 11th of  
24 2000?

25 A Yes, we did. We were notified by the affiant of the

1 search warrant, Detective Casteneda, that the judge had signed  
2 the search warrant and so we could go into the residence.

3 Q Okay. When you concluded your service of the search  
4 warrant, did detectives go home essentially?

5 A I believe so.

6 Q Did you receive some phone calls later that day?

7 A Yes, I did.

8 Q Where did you receive some phone calls later that  
9 day?

10 A Well, I had three voice messages on my message  
11 machine on -- at my office.

12 Q Did you say on your E-mail?

13 A No. At my office phone.

14 Q On your office phone. Okay. Do you have an  
15 answering machine on your office phone?

16 A Yes.

17 Q And when you gave -- oh, and who were messages from?

18 A They were from Justin Porter.

19 Q How could you tell that?

20 A Well, he identified himself as Justin Porter.

21 Q Okay. How many voice messages did you get from him?

22 A Three.

23 Q And what did they say, essentially?

24 A Essentially, he said that he got my name and number  
25 from his mother, that he spoke to her. The second one I think

1 the message was like this is important, and I don't recall what  
2 the third message was.

3 Q Okay. But in each message did he say hi, it's -- and  
4 did he actually say it's me, Justin Porter?

5 A Yes, he did.

6 Q Okay. Did you actually have contact with the person  
7 who left you the messages?

8 A Yes, I did.

9 Q How did that come about?

10 A I was sitting at my desk, and it would be August 11th  
11 at 11:00 o'clock or so in the morning. I answered my phone and  
12 a person identified himself as Justin Porter to me.

13 Q Did the person who identified himself to you  
14 personally sound the same as the three messages that had been  
15 left?

16 A Yes, he did.

17 Q And what if anything did the person identifying  
18 himself to you as Justin Porter say?

19 A He said that he hadn't committed any crimes in Las  
20 Vegas, and he believed that somebody was lying about him, and  
21 he thought that person's name was Dude, and he told me he  
22 thought Dude was in the jail.

23 Q Okay. Did he sound like he wanted to talk to you?

24 A Yeah. I mean, three -- three phone messages and a  
25 phone call, yes.

1 Q In a relatively short period of time?

2 A Yes.

3 Q Did he tell you where he was?

4 A I believe he told me he was in Chicago. I don't know  
5 if he told me that over the phone or if that was on one of the  
6 messages, but he was in Chicago.

7 Q Okay. Did you arrange to talk to him?

8 A No.

9 Q In person?

10 A Oh, I didn't tell him -- I didn't set up an  
11 appointment or anything like that.

12 Q I guess that was my question. Did you make an  
13 appointment with him to talk in person?

14 A No, I did not.

15 Q Okay. What did you do, however?

16 A Eventually, myself and some other detectives flew to  
17 Chicago where we interviewed Justin Porter.

18 Q Okay. Now, after you found out from Justin Porter's  
19 mother that he was in Chicago, did one of the detectives that  
20 you are working the investigation with contact the Chicago  
21 police department and seek their help?

22 A Yes, he did.

23 Q And did they -- did the detective send some  
24 information to Chicago that would aid them in helping you?

25 A Yes, he did.

1 Q One, did you have an address and a potential phone  
2 number for Justin Porter in Chicago?

3 A Yes. We had an address, a phone number and a name of  
4 his father, George Porter.

5 Q Where did you get that information from?

6 A I believe we got the phone number and the name from  
7 Justin Porter's mother, and I think off an Internet search is  
8 where they -- another detective or investigator came up with an  
9 address.

10 Q Okay. And had you generated an arrest warrant for  
11 Justin Porter prior to that?

12 A Prior to going to Chicago?

13 Q Yes.

14 A Yes.

15 Q Did one of the detectives also fax the warrant to  
16 Chicago?

17 A Yes, he did.

18 Q Did the detective ask the Chicago police to actually  
19 go to that location and find Justin Porter?

20 A I don't know if he personally asked him that, but we  
21 provided that name and that address to the Chicago Police  
22 Department.

23 Q Okay. Did you receive information back from Chicago  
24 that Justin Porter was in their custody?

25 A Yes, we did.

1 Q Do you know about when it was that you received that  
2 information?

3 A I believe that detective got notified at 11:30 at  
4 night that --

5 Q So we're still on the 11th, correct?

6 A Yes.

7 Q August 11th?

8 A Yes.

9 Q So 11:30 or at least really late at night on the 11th  
10 you all find out that he's in custody. What do you then do?

11 A Arrangements were made for myself, Detective  
12 LaRochelle and a sergeant, Laurie Cricket (phonetic) to fly to  
13 Chicago where we could interview Justin Porter.

14 Q When did you guys fly to Chicago?

15 A We flew out the early morning of the 12th I think  
16 or --

17 Q And did the three of you arrive in Chicago?

18 A Yes, we did.

19 Q Did you go to the police department in Chicago?

20 A Yes, we did.

21 Q Do you know about what time of day in Chicago it was  
22 that you got there?

23 A I believe we arrived in Chicago at 3:30 Central  
24 Standard Time, Chicago time.

25 Q So mid afternoon.