

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALISHA BURNS,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Case No. 82686

RESPONDENT'S APPENDIX
Volume 2

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1 state would want to keep out a confession. This man
2 is on trial for his life, your Honor. he's facing the
3 death penalty. This assists us in proving he didn't
4 have the intent to kill.

5 THE COURT: Doesn't that go to the penalty
6 phase and not the trial?

7 MR. GUYMON: I think it at least goes to
8 that.

9 MR. DENUE: Well --

10 MR. GUYMON: Judge, I concede that it goes to
11 the penalty phase because it's a hearsay statement.
12 That's why it goes to the penalty phase.

13 THE COURT: I don't see why we're fighting
14 over this trial.

15 MR. GUYMON: I don't. I don't. I don't
16 understand the issue, Judge.

17 THE COURT: Because when it comes down to --
18 well I can see their side of the case too. Because if
19 they can show that perhaps it wasn't first degree,
20 then, of course, the death penalty is off the table.

1:45P 21 MR. GUYMON: But, Judge, here's the problem
22 with that. His own statement concedes the same thing
23 that her statement does which is, this was a robbery,
24 and we didn't mean to kill him.

1 So they're going -- They're already going to
2 have that testimony. The very testimony which they're
3 trying to get from her statement which is a hearsay
4 statement is the very testimony they have here
5 available. And more importantly, they said he was
6 going to testify so if he's going to testify to that,
7 so is it any --

8 THE COURT: Counsel, as long as he's going to
9 testify, I don't think I need to have any written
10 briefs prepared. I'm going to rule that can't be used
11 in the trial phase. It can be used in penalty phase.

12 MR. WOMMER: Very well.

13 MR. DENUE: Thank you, Judge.

14 THE COURT: You're welcome.

15 Although I'm still going to look up that
16 case.

17 MR. GUYMON: The record should reflect I have
18 prepared jury instructions and provided defense
19 counsel with both copies.

20 MR. WOMMER: I've received a copy of the
21 instruction. I'll go over them this evening.

22 THE COURT: Okay. We'll settle them
23 tomorrow.

24 Anything else before we bring the jury back

1 in?

2 MR. GUYMON: Judge, I can tell you real
3 quickly that we're still trying to find a courtroom
4 that will hear your misdemeanor appeals for you if
5 you'll still allow that to happen.

1:46P 6 MS. BROWN: The Court's indulgence for a
7 minute. I need to --

8 THE COURT: Counsel, we're down to one
9 appeal.

10 MR. GUYMON: Are we? That makes -- that may
11 make a big difference.

12 THE COURT: That's what somebody told me.

13 THE COURT CLERK: I don't know. Karen said
14 there were twelve matters on the calendar.

15 THE COURT: Somebody told me we were down to
16 one.

17 MR. GUYMON: When I learned we were down to
18 one, I thought we had a court. But we learned we had
19 twelve, and we lost the Court. I will find out on the
20 break, Judge, if you'll allow me to do that.

21 MR. DENUE: You're not going to start those
22 until ten clock tomorrow.

23 THE COURT: No.

24 All right. Anything else before we bring the

1 jury?

2 MR. WOMMER: No, your Honor.

3 THE COURT: Please bring the jury in.

1:47P

4 (Whereupon, the following
5 proceedings were had in
6 the presence of the jury.)

7 THE COURT: All right. Let the record
8 reflect that the jury and the two alternates have
9 returned to the courtroom.

10 Call your next witness.

11 MR. GUYMON: We were in the middle of
12 Detective Rob Wilson.

13 THE COURT: Call him back in, Bill, please.

14 THE COURT: Good afternoon, Detective.

15 THE WITNESS: Good afternoon.

16 THE COURT: I would remind you you're still
17 under oath.

18 THE WITNESS: Yes.

19 THE COURT: Thank you.

20

21 RESUMED DIRECT EXAMINATION

22 BY MR. GUYMON:

23 Q. Detective Wilson, last night we left off on
24 the VCR taped confession of the defendant. And I had

1 asked earlier if you had in fact had the defendant
2 read and sign his consent card, waiving his rights?

3 A. Yes.

1:49P 4 MR. GUYMON: If I can have this marked next
5 in order. It would be 7 --

6 THE COURT CLERK: 72.

7 MR. GUYMON: 72, Judge.

8 BY MR. GUYMON:

9 Q. And tell me, is this the original signed by
10 Steven Kaczmarek?

11 A. Yes, it is.

12 Q. Was it signed in your presence?

13 A. Yes.

14 Q. And did you witness the very man that sits in
15 this courtroom sign it?

16 A. Yes.

17 MR. GUYMON: I'd move for the admission of
18 State's Proposed Exhibit 72. \

19 MR. WOMMER: No objection.

20 THE COURT: Be admitted.

21 MR. GUYMON: And ask to publish the same.

22 THE COURT: You may.

23 BY MR. GUYMON:

24 Q. All right. This is a Las Vegas Metropolitan

1 Police Department advisement for persons arrested; is
2 that correct?

3 A. Yes.

4 Q. Was it your partner that read Steven
5 Kaczmarek this card?

6 A. Yes.

7 Q. He read then:

8 Number one, you have a right to remain
9 silent;

10 Number two, anything you say can be used
11 against you in a court of law;

12 You have a right to the presence of an
13 attorney.

1:50P 14 If you can not afford an attorney, one will
15 be appointed before questioning.

16 Do you understand your rights; is that
17 correct?

18 A. Yes.

19 Q. There's a box checked. The box says yes.
20 Can you tell me who checked that box?

21 A. I believe Mr. Kaczmarek did. But I'm not
22 positive.

23 Q. Okay. Did Mr. Kaczmarek indicate that he
24 understood his rights?

1 A. Yes.

2 Q. Was it clear to you that Mr. Kaczmarek
3 understood his rights?

4 A. Yes.

5 Q. And how is it that you make that
6 determination that it was clear to you?

7 A. He verbally said he did. And at that point
8 we either checked the box for him or had him check it
9 and then sign the card.

10 Q. Okay. And tell me, it appears that a
11 signature is right here indicating Steven Kaczmarek?

12 A. Yes.

13 Q. Is that man right here, the man that signed
14 that card?

15 A. Yes, it is.

16 Q. All right. Now then at the outset of the
17 taped statement that we're going to hear, did you --
18 right when you walked in and introduced yourself, did
19 you start the tape?

1:51P 20 A. No.

21 Q. Tell me why.

22 A. We didn't know if he was going to be willing
23 to talk to us at all to begin with. So we wanted to
24 sit down with him, explain to him who we are, why we

1 were there, and find out if he was willing to tell us
2 what happened.

3 Q. About how many minutes went by before you
4 start the tape that we're about to hear?

5 A. Maybe ten minutes.

6 Q. During those ten minutes did you share with
7 him any of the facts about your investigation?

8 A. No.

9 Q. Did you share with him any of details of your
10 findings?

11 A. No.

12 Q. Did you coax him or encourage him in what he
13 should say?

14 A. No.

15 Q. Did you instruct him as to what not to say?

16 A. No.

17 Q. Were the words that we're going to now hear
18 words that he selected on his own without any coaxes,
19 promises or threats?

20 A. That's correct.

1:52P 21 Q. All right.

22 MR. GUYMON: And, Judge, I would -- we had
23 discussed about moving and marking states, I believe
24 the next tapes or the next two pieces of evidence

1 would be pieces, 70 and 71. They are the tape
2 recording that the defense has stipulated is a true
3 and accurate tape recording. This detective has
4 previously reviewed it and has authenticated the tape
5 recording.

6 THE COURT: As I say before, do we have those
7 tran --

8 MR. DENUE: They're --

9 MR. GUYMON: What I was going to do, Judge,
10 is I was going to now play the tape so that the Court
11 can play the tape through speakers and the transcript
12 will appear on the screen as the tape is played.

13 THE COURT: Can I see counsel at the bench?

14 MR. GUYMON: So, Judge, at this time I would
15 move to admit State's Exhibit 70 and 71 which are the
16 tapes that they have stipulated as being
17 authenticated.

18 MR. WOMMER: That's correct.

1:53P 19 THE COURT: All right. Fine. 70 and 71
20 would be admitted.

21 MR. GUYMON: And, Judge, what I would ask the
22 Court to allow me to do, the transcript which is
23 marked Number Sixty-nine, so that the record is clear
24 although the transcript that they see come across this

1 screen now it may be in a different format, but it
2 would be the same words. And I would like for the
3 jury to see a demonstrative evidence of the actual
4 transcript. As it was printed and hear it along with
5 the tapes.

6 THE COURT: You're not going to give them
7 copies of the transcript?

8 MR. GUYMON: No. Quite honestly, Judge, it
9 allows them to follow along as it's being spoken.

10 THE COURT: Let me explain, ladies and
11 gentlemen of the jury, this is high tech. It used to
12 be that when we give you transcripts, okay, and then
13 we would let the district attorney's office play the
14 tape.

15 And you would have to follow the transcript
16 with the tape. And what this does it cuts out --
17 eliminates that barrier, so now you'll be able to see
18 it visually. I guess we're all used to T.V., so
19 that's why you're seeing it and not going to be
20 reading the transcript. Thank you.

1:54P 21 MR. GUYMON: Thank you.

22 BY MR. GUYMON:

23 Q. Just so it's clear, now whose voices are we
24 going to be hearing on the tapes that we're playing?

1 A. You'll hear Detective John Mikolainis, my
2 voice, Detective Rob Wilson, and Steven Kaczmarek.

3 Q. All right. If I could now play this.

4 THE BAILIFF: Mr. Guymon, would you like me
5 to now to turn off the fluorescent light so they can
6 see the screen.

7 MR. GUYMON: I think they can.

8 THE COURT: Dim them a little bit. You don't
9 have to turn them off. Just dim them.

10 (Whereupon, the tape was placed.)

2:53P 11 BY MR. GUYMON:

12 Q. Thank you. I think the defendant's
13 concluding remark was quote, everything I told you
14 guys was the truth. Is that what he said?

15 A. Yes.

16 Q. Now then, as he told you about this crime,
17 did you find indicia or indicators of truthfulness
18 throughout his confession?

19 A. Yes.

20 Q. How would you describe his confession?

21 A. It went in line very closely with the
22 evidence that we found at the scene.

23 Q. The fact that he could describe where the
24 residence was located was that of any value?

1 A. Yes.

2 Q. The actual description of the motel was that
3 consistent with what you had learned?

4 A. Yes.

5 Q. The layout of the room itself?

6 A. Yes.

7 Q. Did he give details of the layout that were
8 interesting or of importance to you?

9 A. Yeah. He was able to describe where
10 everything was, the refrigerator in particular was
11 unusual to that type of room, and he was able to
12 describe exactly where it was in the room.

2:55P 13 Q. In the confession he even talked about the
14 chairs that he sat in, where Tommy sat and where
15 Alicia sat. Did you find that there was chairs there
16 that were consistent with the configuration that this
17 man had indicated?

18 A. Yes.

19 Q. The items that he indicated he stole, were
20 they items that you found to be missing at that
21 apartment?

22 A. Yes. During the course of our investigation,
23 we were able to determine that a few more items had
24 been taken, yes.

1 Q. Did you learn during the course of your
2 investigation that Pedro Villareal had a cell phone or
3 owned a cell phone during his lifetime?

4 A. Yes.

5 Q. Did you find a cell phone there?

6 A. There was a cell phone, but it wasn't his.

7 Q. Okay. There was a cell phone at his
8 apartment?

9 A. Yes.

10 Q. But that one was not his?

11 A. No.

12 Q. Was the cell phone that you knew he used
13 during his lifetime found at the scene?

14 A. No.

15 Q. How about the comb. Would you expect the man
16 to have a come in his bathroom?

17 A. Yes.

18 Q. Did you find a comb in his bathroom?

19 A. I couldn't swear whether there was a comb
20 there or not.

21 Q. That's okay.

22 A. We didn't know that a comb was even relevant
23 until we talked to Mr. Kaczmarek.

2:56P 24 Q. Okay. And would you expect -- I take it as a

1 police officer you've been in many motel rooms or
2 apartments of people?

3 A. Yes.

4 Q. Did you commonly find that citizens keep
5 money in their apartment?

6 A. Usually, yes.

7 Q. And you indicated yesterday you found no
8 money?

9 A. No money.

10 Q. Was that consistent with the defendant's
11 confession?

12 A. Yes.

13 Q. Can you tell me the size of the defendant?
14 We talked a little bit about the size of Tommy. And I
15 want to talk a little about the size of the defendant.
16 At the time that you took this interview do you recall
17 getting a weight and size of Steven Kaczmarek?

18 A. It was just estimates because when we
19 rebooked him we always put down a height and a weight.
20 And the -- his estimated height was 5'10" and
21 estimated weight was approximately 170 pounds.

22 Q. During the course of his confession, there
23 were questions that were requested that were asked
24 about Tommy's descriptions. Can you tell the jury why

1 you would ask about Tommy's description?

2 A. The reason -- the reason we'd asked about
3 Tommy is: Number one, he's an additional suspect in
4 this crime. And we want to be able to eventually
5 identify this person. But also during the course of
6 our investigation we'd received some information about
7 a female who had possibly knew something about this
8 crime. And that she had had a boyfriend that worked
9 as a clerk at the 7-Eleven that he was referring to
10 there at Las Vegas Boulevard and Fremont street.

2:57P 11 And when we contacted the clerk, we found out
12 that that person's name was Tom Wilson.

13 And so that that was one of the reasons we
14 were trying to find out if the physical description of
15 the Tommy that he was referring to matched the
16 description of Tom Wilson who was a clerk at that
17 7-Eleven.

18 Q. Did the description of -- that he gave you of
19 Tommy fit the description of Tom Wilson, the clerk, at
20 7-Eleven?

21 A. Generally in some ways it did and in other
22 ways it didn't.

23 Q. Have you pursued your investigation of the
24 clerk Tom Wilson at the 7-Eleven and either excluded

1 him as a suspect or included him?

2 A. Yes. As I referred in the statement we
3 showed him, Mr. Kaczmarek, a photograph of Mr. Wilson
4 after the statement. And he said that was not the
5 Tommy, that he was referring to.

6 Q. Okay. So you actually showed Steven
7 Kaczmarek a photograph of Tommy Wilson and did not
8 identify him?

2:58P 9 A. That's correct.

10 Q. Has Mr. Kaczmarek identified a photograph of
11 Tom for you so that you could in fact identify Tommy?

12 A. No.

13 Q. All right. To date have you identified or
14 located a Tommy?

15 A. No.

16 Q. Do you know one way or another whether or not
17 Tommy even exists or is it something that Steve simply
18 made up?

19 A. He could have; he could exist.

20 MR. WOMMER: Objection, your Honor.

21 THE WITNESS: He may not.

22 MR. WOMMER: Calls for supposition on --

23 THE COURT: Sustained.

24 ///

1 BY MR. GUYMON:

2 Q. But on your investigation have you found or
3 arrested a Tommy in relationship to this offense?

4 A. No.

5 Q. Now then, the break that we talked about in
6 this investigation the first suspect that was
7 identified was identified by a Torrence Lewis; is that
8 correct?

9 A. Correct.

10 Q. And how would you describe that break in this
11 case? Was it monumental or insignificant?

2:59P 12 A. It was huge.

13 Q. Tell me, are persons that break homicides or
14 give valuable information in homicides rewarded ever?

15 A. Yes, quite often.

16 Q. You say quite often?

17 A. Yeah.

18 Q. Why is that? Why would the police use a
19 reward for someone that solves or gives you a big lead
20 in a homicide?

21 A. Well, what it does it gives an incentive for
22 people who are uninvolved or unattached to the crime
23 to come forward. Because as you're aware coming to
24 court and having to testify and being involved in a

1 hearing like this is rather stressful. And people
2 don't really like to get involved in that kind of
3 thing. And so at times money or other considerations
4 are offered to people in order to help them be more
5 willing to come forward and participate.

6 Q. Are you familiar with Secret Witness?

3:00P 7 A. Yes.

8 Q. Just what is secret witness?

9 A. Secret witness is actually called Crime
10 Stoppers now. And it's used where people can
11 anonymously call in and provide information to the
12 police department. And they are given a code number.

13 And if that information works out, then the
14 officers contact the Crime Stoppers and say, yes, this
15 is good information. And then through this code
16 number, people can receive the payment for the
17 information that they provided.

18 Q. At the time that you spoke to Torrence Lewis
19 on, I believe it was the 21st of October, 2002, did
20 Torrence Lewis ask for any rewards for the information
21 he was now bringing forward?

22 A. It was the 22nd of October that we talked to
23 him, and, no, he didn't ask for anything.

24 Q. Did you make any promises?

1 A. No.

2 Q. Based on your familiarity with homicide
3 investigations had Torrence Lewis asked for a reward
4 of some sort, might he been entitled to one?

3:01P 5 A. Had he asked for one, he definitely deserved
6 one.

7 Q. Okay. Based on the information he provided
8 if, in fact, you learned that he received the benefit
9 of being released from a sentence of incarceration by
10 thirty days, in other words being released 30 days
11 early, would that be a normal for the information he
12 provided?

13 A. I would say it's probably subnormal I mean,
14 he would probably deserve --

15 MR. WOMMER: Objection.

16 THE WITNESS: -- a greater --

17 MR. WOMMER: Objection, your Honor. Lack of
18 foundation.

19 THE COURT: Sustained.

20 BY MR. GUYMON:

21 Q. Well, then let me establish it. Have you
22 made determinations as to what rewards are
23 appropriate, in any, given case for one's assistance?

24 A. I've -- I have opinions on what's -- yes.

1 Q. And have you commonly rewarded or given, for
2 instance, moneys to a witness where information they
3 provide on homicide?

4 A. I don't personally usually give money to
5 people. But I make recommendations, and the people
6 who have money would provide.

3:02P 7 Q. And who do you make the recommendations to
8 for a promise for a person that's helped?

9 A. The judge in the case that they're involved.

10 Q. Okay. And in this case, did you make a
11 recommendation to a judge, a judge that presided over
12 Torrence Lewis's case, that perhaps he was entitled to
13 some kind of benefit?

14 A. Yes. We explained to the judge the value of
15 the information that Mr. Lewis had provided to us and
16 expressed to him our appreciation if he felt that it
17 was possible that he could give us -- give Mr. Lewis
18 some consideration in his sentence.

19 Q. Okay. And who was the judge that you had
20 gone to this on?

21 A. Judge Bonaventure.

22 Q. Okay. He's a District Court Judge that
23 presides over trials similar to this one here in Clark
24 County?

1 A. Correct.

2 Q. And did you learn whether or not Torrence
3 Lewis received any benefit for his cooperation?

4 A. Yes.

5 Q. And what benefit did Torrence Lewis receive?

3:03P 6 A. He received -- he got thirty days early.

7 Q. Okay. And based on your experience having
8 gone to judges and knowing the value of the
9 information that Torrence Lewis provided, would that
10 be normal? Not normal?

11 A. That's normal.

12 Q. Okay. Now then, I want to ask you also about
13 a second person that provided some information. I
14 believe his name was Edd Pryor?

15 A. Yes.

16 Q. Are you familiar with that name?

17 A. Yes.

18 Q. Did you learn during the course of this
19 investigation that Edd Pryor, another person that was
20 housed in the Clark County Detention Center, also
21 provided information as it related to this particular
22 case?

23 A. Yes.

24 Q. And who was that information given to?

1 A. Detective Mikolainis.

2 Q. All right. Since it was Detective Mikolainis
3 that received that I'll leave that alone.

4 Let me turn now to the notion of DNA. Is DNA
5 of any value in a homicide investigation?

6 A. Yes.

7 Q. Are you familiar with buccal swabs, spelled
8 b-u-c-c-a-l?

3:04P 9 A. Yes.

10 Q. You call them buccal or buccal?

11 A. I call them buccal swabs. I don't know if
12 it's right or not.

13 Q. All right. Let's go with buccal swabs then.

14 A. Okay.

15 Q. Showing you what's been marked State's
16 Proposed Exhibit Fifty-eight. Do you recognize that
17 particular exhibit?

18 A. Yes.

19 Q. And how is it that you recognize it?

20 A. It has my name on, P number which is my
21 personnel number, and then also my name and my
22 initials and my P number on the back with the date.

23 Q. Now, what particular date?

24 A. It was the twelve seventeen of 2002.

1 Q. And tell me if we were to open this
2 particular exhibit what would we find in it?

3 A. There's a small carton. It's just probably
4 about half inch tall and about, oh, I say maybe four
5 inches, five inches long.

6 And inside that carton would be two almost --
7 they look almost like a thin, real thin toothbrush.
8 But it's just made out of an absorbent type material

9 Q. And tell me, are you the one that removed
10 that particular toothbrush looking item out of the
11 container in order to collect the evidence you
12 collected?

13 A. Yes.

14 Q. And where do you receive that particular
15 toothbrush?

3:06P 16 A. It comes in this kit. There's this envelope
17 and it actually comes in the kit. And inside the kit
18 there's a pair of latex gloves. That's the evidence
19 seal, and there is the box. And then there are two of
20 those sealed brushes that are actually sealed closed,
21 and you have to open it to use them.

22 Q. All right. Now in this particular case, did
23 you collect any DNA from the defendant, Steven
24 Kaczmarek?

1 A. Yes.

2 Q. And on what day did you collect it?

3 A. December 17th, 2002.

4 Q. And what location?

5 A. The Clark County Detention Center.

6 Q. And who was present if you will?

7 A. Myself, Detective Mikolainis, and

8 Mr. Kaczmarek.

9 Q. All right. Now the toothbrushes that you
10 used, were they in a sterile condition at the time
11 that you obtained them from the kit?

12 A. Yes. They were both sealed.

13 Q. All right. And just what is it that you did
14 with those toothbrushes in order to get the sample you
15 were looking for?

16 A. What you do is you take the absorbent end of
17 the brush and you put it up inside the cheek up in the
18 gum area and you rub it about approximately ten times
19 on the cheek.

3:07P 20 And that removed enough DNA in the skin cells
21 that come off to provide a DNA sample for the lab.

22 Q. Okay. So this would be a known sample from a
23 known suspect?

24 A. Correct.

1 Q. In this case the DNA sample that you obtained
2 was the known sample of Steven Kaczmarek?

3 A. Yes.

4 Q. Now after you rub those toothbrushes on the
5 inside of his mouth what do you do with the
6 toothbrushes in order to preserve them?

7 A. We put them in the box. The box has holes in
8 it which allows it to dry. The box is then closed and
9 put inside this envelope. And then the envelope is
10 sealed and impounded into evidence.

11 Q. And you say you placed some seals on that; is
12 that correct?

13 A. Yes.

14 Q. Did you place it in the custody of the
15 evidence vault?

16 A. Yes, a drop, a pickup point.

17 Q. I take it that's a secured facility; is that
18 correct?

19 A. Yes, it is.

20 Q. Now is that in substantially the same
21 condition today as when you secured it in the evidence
22 vault?

3:08P 23 A. The only difference is that it's been opened
24 on the bottom. This is what I did at the top. It was

1 sealed at the top. And then the DNA lab has to access
2 it. So instead of breaking my seal which I can
3 testify is still intact, they will open it at a
4 different location.

5 Q. All right. Is it common for the DNA lab to
6 actually open it at a different location and do
7 further testing?

8 A. Yes.

9 Q. With the exception of the DNA lab seal, is
10 this in the same condition?

11 A. Yes.

12 MR. GUYMON: I'd move to the admission of
13 State's Proposed Exhibit Fifty-eight.

14 MR. WOMMER: No objection.

15 THE COURT: Be admitted.

16 BY MR. GUYMON:

17 Q. So that we can see, I can publish it very
18 quickly, Judge, on the screen here.

19 You indicate that you dated it and filled it
20 out; is that correct?

21 A. Yes.

22 Q. There is a portion there that indicates, I
23 believe it says chain of custody right down in this
24 particular location?

1 A. Yes.

2 Q. And do you recognize the name Terry Cook, and
3 if so, who is Terry Cook?

3:09P 4 A. Terry Cook is one of our DNA examiners for
5 the police department.

6 Q. All right. So based on the date of December
7 17th 02, that's when you got the known sample from
8 Steven Kaczmarek?

9 A. Yes.

10 Q. And then it looks like Terry Cook would have
11 become associated with this sample on February
12 Twentieth of 03; is that correct?

13 A. I can't read it from here, but I'll trust
14 you.

15 Q. Okay. Now then, the fact that Steven
16 Kaczmarek, in the confession that he gave, indicated
17 that he oftentimes went into 7-Eleven, bought
18 cigarettes, was that of any importance to you, that
19 fact.

20 A. The fact it would indicate that he smoked.
21 And also we were interested because of the -- as I
22 said, the connection between the clerk Tom Wilson the,
23 clerk at that 7-Eleven.

24 Q. Okay. Now, the fact that you knew that by

1 the defendant's own admissions that he smoked and the
2 fact there was cigarette butts at the crime scene
3 what, if anything, did you do in making a request to
4 have those cigarette butts tested?

3:10P 5 A. Put a request in to the DNA lab, and they
6 will order up the evidence and make the comparisons.

7 Q. And do you have personal knowledge as to
8 whether or not your request to make comparisons was
9 done in this case?

10 A. Yes, it was.

11 Q. All right. Was that done by Terry Cook?

12 A. Yes, it was.

13 Q. All right.

14 MR. GUYMON: Court's indulgence.

15 Pass the witness, your Honor.

16 MR. WOMMER: Thank you, your Honor

17
18 CROSS-EXAMINATION

19 BY MR. WOMMER:

20 Q. Good afternoon, Detective Wilson. Torrence
21 Lewis told you some things that peaked your interest
22 in this investigation, correct?

23 A. Yes.

24 Q. And Mr. Lewis was an inmate at the Clark

1 County Detention Center, correct?

2 A. Yes.

3 Q. You indicated that you did not pay Torrence
4 Lewis any money for this information he provided to
5 you?

6 A. Yes.

7 Q. Okay. But Mr. Lewis was released from the
8 Clark County Detention Center early based upon the
9 information he provided to you, correct?

3:11P 10 A. That's my understanding, yes.

11 Q. Okay. So Mr. Lewis tells you something that
12 you want or need, and you go and get a statement from
13 Mr. Kaczmarek, correct?

14 A. Yes.

15 Q. Okay. Now when you went to the Clark County
16 Detention Center Mr. Kaczmarek had had an attorney;
17 didn't he?

18 A. On his other case, yes.

19 Q. Yes. So you went to talk to Mr. Kaczmarek.
20 You ask him if he wants to talk to you, right?

21 A. Yes.

22 Q. And as a matter of fact he indicated to you
23 that he wanted to wait until his attorney was present
24 before he talked to you, didn't he?

1 A. He indicated that his attorney was coming in
2 the afternoon and wondered if we could wait until his
3 attorney was there.

4 Q. And then you said something along the lines
5 of we're busy. You can talk to us now. We're not
6 coming back, right?

3:12P 7 A. Correct.

8 Q. Okay. So then you take the statement from
9 him that was played for us this afternoon, correct?

10 A. Yes.

11 Q. Okay. Now early on in that statement he
12 indicated that he and Alicia were begging on the
13 streets; didn't he?

14 A. Yes.

15 Q. Didn't he indicate that?

16 A. That he indicated that Alicia would ask for
17 money from people, yes.

18 Q. Okay. Did he also indicate that from time to
19 time they stayed at various motels in Las Vegas based
20 upon whether or not they had had any money?

21 A. Yes.

22 Q. Okay. And if they didn't have enough money
23 that they got from begging, then they stayed up all
24 night and took cat naps over on the park bench,

1 correct?

2 A. Yes.

3 Q. Okay. Did he also say that when Alicia was
4 begging that he would stay behind her or in the area
5 to make sure she was safe?

3:13P

6 A. Yes.

7 Q. Okay. And when Alicia and Pedro Villareal
8 were at the McDonald's, Mr. Kaczmarek said he stayed
9 in the area around where Alicia and Pedro were just to
10 make sure she was safe, correct?

11 A. Yes.

12 Q. During this entire interview did
13 Mr. Kaczmarek ever indicate to you that he, Alicia, or
14 anyone else planned or conspired to kill someone at
15 some later point?

16 A. No.

17 Q. Okay. As a matter of fact, this killing was
18 pretty much off the cuff, wouldn't you say?

19 A. What do you mean, off the cuff?

20 Q. It happened without any prior conspiring or
21 planning?

22 A. The murder did. That's what he indicated to
23 me.

24 Q. Yes?

1 A. Is that the murder occurred that way.

2 Q. As a matter of fact on two different
3 occasions during that taped statement, he indicated to
4 you that he didn't want to kill anybody, didn't he?

3:14P

5 A. Yes.

6 MR. WOMMER: Thank you. No further
7 questions, your Honor.

8

9 REDIRECT EXAMINATION

10 BY MR. GUYMON:

11 Q. Using defense counsel's word, would you say
12 that it is off the cuff to choke someone out?

13 A. No.

14 Q. Is it off the cuff to choke them out more
15 than once?

16 A. Yeah.

17 Q. To would it be off the cuff to stuff a sock
18 in someone's mouth?

19 A. Yes.

20 Q. Off the cuff to tie them up?

21 A. Yes.

22 Q. Are those deliberate actions?

23 A. Yes, they are.

24 Q. To hog tie someone's leg. Is that a

1 deliberate action?

2 A. Yes.

3 Q. Hands behind their back, a deliberate action?

4 A. Yes.

5 Q. To cut the oxygen off of a man, a deliberate
6 action?

7 A. Yes.

8 Q. To place a man face down in a bathtub, a
9 deliberate action?

10 A. Yes.

11 Q. Turn the water on, deliberate action?

12 A. Yes.

13 Q. A sock in one's mouth, a deliberate action?

3:15P 14 A. Yes.

15 Q. And what happens when you cut the oxygen off
16 of a man?

17 MR. WOMMER: Objection, your Honor.

18 BY MR. GUYMON:

19 Q. Make it so a person didn't breath.

20 MR. WOMMER: Objection. Based upon this
21 witnesses expertise.

22 THE COURT: He's not an expert, so objection
23 is sustained. We're going to have a physician come in
24 later I assume.

1 BY MR. GUYMON:

2 Q. The defendant make it clear to you that he
3 had planned to commit a robbery?

4 A. Yes.

5 Q. And that during the commission of that
6 robbery the killing occurred?

7 A. Yes.

8 Q. Did he describe to you deliberate acts that
9 brought about the death of this man?

10 A. Yes.

11 MR. GUYMON: I have no further questions.

12 MR. WOMMER: Just briefly, your Honor.

13
14 CROSS-EXAMINATION

15 BY MR. WOMMER:

16 Q. Detective, based upon your training and
17 experience when someone has killed someone else, does
18 the perpetrator usually tie their hands and feet
19 together?

3:16P 20 A. After someone is dead?

21 Q. Yes.

22 A. Not usually.

23 Q. Thank you. Did Steven indicate to you during
24 his statement that there were a number of knives in

1 that apartment?

2 A. Yes.

3 Q. Did the victim have any stab wounds on his
4 body?

5 A. None.

6 Q. Thank you.

7 MR. WOMMER: No further questions, your
8 Honor.

9 MR. GUYMON: Nothing else, Judge.

10 THE COURT: Thank you. You may leave.
11 Call your next witness.

12 MS. BROWN: State would call Dr. Gary
13 Telgenhoff.

14 Whereupon,

15 DR. GARY TELGENHOFF

16 having been first duly sworn to tell the
17 truth, the whole truth and nothing but
18 the truth, testified as follows:

19 THE COURT CLERK: Would you state your full
20 name and spell your last name for the record, please?

21 THE WITNESS: Dr. Gary Telgenhoff, last name,
22 T-e-l-g-e-n-h-o-f-f.

23 ///

24 ///

DIRECT EXAMINATION

3:18P 2 BY MS. BROWN:

3 Q. I apologize for keeping you waiting so long
4 this afternoon, Dr. Telgenhoff. Can you tell me how
5 you are employed?

6 A. Employed by the Clark County Coroners Office.

7 Q. A what do you do there?

8 A. I'm a forensic pathologist deputy medical
9 examiner.

10 Q. And what are the duties of a forensic
11 pathologist deputy medical examiner?

12 A. The primary duty I have is to determine cause
13 and manner of death. And usually this involves
14 looking at lots of dead bodies.

15 Q. Do you have special qualifications,
16 education, and experience for this job?

17 A. There's many years of school required for
18 this job. Four years of college degree which I
19 achieved, and I have a major in biology and chemistry.

20 After that, four years of medical school are
21 required too. I completed that in 1992. I have a
22 year of internship in where I took care of patients.

23 After that, four years of pathology residency
24 where I concentrated in pathology itself which is the

1 study of disease. An additional year was required in
2 forensic pathology which is the study of unnatural
3 death.

3:19P 4 Q. Have you previously qualified as an expert
5 in the eighth judicial district court?

6 A. Yes, many times.

7 Q. Okay. And what are you -- what have you
8 qualified as an expert in? What field?

9 A. Forensic pathology.

10 MS. BROWN: I would offer the doctor as an
11 expert in forensic pathology at this time..

12 MR. WOMMER: No objection.

13 THE COURT: Be accepted.

14 BY MS. BROWN:

15 Q. You mentioned that as a part of your duties
16 you do autopsies. Can you describe briefly how an
17 autopsy is done?

18 A. Yes. First of all, information is gathered
19 from a police officials from our own investigator,
20 from the coroner office, and we are separate entities.

21 That information is passed along to myself,
22 the extent of it that is known at the time. And I
23 review that briefly and get an idea what kind of case
24 I might be looking at. If someone has been shot or

1 something I need to know that.

2 After reviewing the records and the
3 information, then I look at the outside of the body.
4 And I look at them from head to toe, and I look for
5 any disease processes, any injuries, any identifying
6 marks like tattoos, all fine details on the outside of
7 the body.

8 Those are all documented, and I do it at the
9 same time that I look at it, in a hand held recorder.

3:20P 10 After that the body is opened through a
11 number of particular incisions that we make and the
12 inside is inspected and organs are removed. Blood is
13 taken. Urine is taken, sometimes when it's there.

14 Other fluids if I choose. Those are sent to
15 the toxicology lab here in town and tested for drugs
16 and poisons. I then look at each organ and look for
17 any disease process or injury of any of those.

18 When this is all done and I get all this
19 information back, this can take weeks, I then
20 synthesize my determination based upon all the
21 information I have at the time.

22 Q. Okay. On October 28th, year 2002, did you
23 have an opportunity to perform an autopsy on someone
24 identified to you as Pedro Villareal?

1 A. Yes.

2 Q. Showing you what's been admitted as State's
3 Exhibit Number Twenty-six. Do you recognize what's
4 depicted in State's Exhibit Twenty-six?

3:21P 5 A. Well, the picture is small, but it does
6 remind me of the case that I saw that day.

7 Q. And so you said you start -- and based on
8 your autopsy did you perform that well in accordance
9 with the manner that you just described?

10 A. Yes.

11 Q. What was -- did you determine a cause of
12 death for Mr. Villareal?

13 A. Yes.

14 Q. And what was that cause of death?

15 A. Cause of death is asphyxia.

16 Q. Okay. And what is asphyxia?

17 A. Asphyxia is a lack of oxygen to the brain.

18 Q. Did you determine a manner of death?

19 A. Yes.

20 Q. And what was that?

21 A. Homicide.

22 Q. Okay. Did you determine by what means the
23 asphyxia may have come about?

24 A. There were a number of clues left on the body

1 that made it a very comfortable determination for me
2 that three things were involved: Suffocation,
3 strangulation, and drowning.

4 Q. Can you describe the difference between
5 suffocation and strangulation just briefly so we all
6 understand?

3:22P 7 A. Yes. They are confusing terms.

8 Any of the things that I just mentioned, the
9 three things, can prevent oxygen from going to the
10 brain. The brain needs oxygen to survive. If it's
11 cut short, a person will go unconscious. If it
12 continues to be cut short, a person will die within
13 minutes.

14 Suffocation, you may be familiar with from
15 childhood or whatever you were told not to put a
16 plastic bag over your head. And that is because you
17 can become suffocated. You can prevent air from
18 getting into your airway.

19 This can happen a number of ways. You could
20 put something over your head or you can stuff
21 something in your mouth.

22 Your nose could be clamped shut. That is
23 suffocation. You're closing off of the airway. That
24 happened in this case. We'll get into the details

1 probably in a bit.

2 Strangulation refers to pressure around the
3 neck. It can happen with either an object like a
4 cord, a rope, or just a hands, or a bed sheet, any
5 number of ways, and strangulation does not cut off the
6 airway. It compresses the vessels on the side of the
7 neck. And by this means, oxygen is kept from going to
8 the brain.

9 Q. Thank you.

10 A. Drowning is the third one. Drowning, I think
11 we're all familiar with that, would be actually a form
12 of suffocation. I suppose one could argue in that you
13 have water obstructing the ability of air to get into
14 your respiratory tree.

15 Q. Okay. If you can start chronologically in
16 the manner that you previously described going through
17 the autopsy and explain to the jury what details it
18 was that you saw that lead you to this conclusion?

19 A. I may have to refer to this report that I've
20 prepared to recall detail.

21 Q. Can you tell me the report that you've
22 prepared. Is that done at or near the time of the
23 autopsy?

24 A. The majority of it is done exactly at the

1 time of autopsy. Excuse me.

3:25P 2 Q. Okay. And does it fairly and accurately
3 reflect the information gathered at the autopsy?

4 A. Yes.

5 Q. Please go on.

6 A. The first thing I noticed was there was
7 apparent pillow case or something like that wrapped
8 around the head. I mean, it was wet. The pillow case
9 appeared to me to be multicolored brown, orange, and
10 white.

11 There's an electrical extension cord, white,
12 the typical kind you would find in any home. Multiply
13 looped around both wrists. And these were back behind
14 the back, so the wrist were tied behind the back with
15 a white extension cord.

16 Q. If I can show you State's Exhibit Number
17 Thirty-two and Thirty-three. Do those fairly and
18 accurately depict the ligatures that you're describing
19 along the hands?

3:26P 20 A. Yes.

21 Q. Thank you.

22 A. This cord was secured with multiple square
23 knots. Another part of a white extension cord,
24 possibly the same one or a different one, was around

1 the legs just above the ankles, so the ankles were
2 tied together with the same type of cord.

3 Again there were multiple loops and multiple
4 square knots securing the apparatus. The upper part
5 of the body was unclothed when I saw it. There was a
6 black pair of denim jeans on the lower half of the
7 body. And when I saw it, the right front pants pocket
8 was pulled out empty.

9 There's some additional articles of clothing,
10 underwear athletic shoes -- I'm sorry athletic socks,
11 not shoes, a white piece of cloth, a white sock was
12 stuffed in the mouth, the whole thing, and was soaked
13 with blood.

14 Q. Showing you State's Exhibit Number
15 Twenty-eight. Do you recognize that?

16 A. Yes.

17 Q. And what does that depict?

18 A. It shows the head of the deceased. You can
19 see the mouth. There's a lot of red liquid around the
20 mouth. That's blood. And there is something
21 protruding from the mouth. And that is the white sock
22 that I mentioned is blood soaked.

23 Q. Please go on.

24 A. Upon further inspection, I realized that that

1 blood is from trauma of the lips. And I can not say
2 with certainty, but certainly one would be justified
3 in thinking that the sock was forcibly pushed into the
4 mouth.

3:28P 5 Q. And why is that?

6 A. Because of the bleeding.

7 Q. And the lacerations on the lips that you
8 described?

9 A. Yes.

10 Q. Thank you. Please go on.

11 A. I need to just find where I left off here.
12 As I said the entire sock was in the mouth and
13 compressed the tongue down against the bottom of the
14 oral cavity.

15 The only ability to breath then would be
16 through the nostrils. There was too much material in
17 the mouth for that to be the breathing passage.

18 Q. And was that your determination after
19 examining the sock within the mouth?

20 A. Yes.

21 Q. What about the breathing passages through the
22 nose? Would the victim with an athletic sock stuffed
23 inside his mouth have been able to breath through his
24 nose?

3:29P 1

A. Yes.

2

Q. Okay. So did you also notice some abrasions on the face or head of the victim?

3

4

A. Yeah. There are a number of abrasions on the body in general, primarily on the back.

5

6

Q. On the facial abrasions as opposed to the back abrasions were you able to determine whether these were fresh abrasions or old abrasions?

7

8

9

A. Well, injuries of this type can not be precisely dated by any means. But based on my experience of seeing many many of these over many many cases, this looked very fresh at the time of death.

10

11

12

13

Q. What about the -- in contrast the abrasions on the back? Did those seem to be new abrasions just near the time of death? Or did those appear to be substantially healed?

14

15

16

17

A. Those were all fresh.

18

Q. Okay. I'm sorry, on the back?

19

A. Yes.

20

Q. Showing you State's Exhibit Number Twenty-nine. Does that -- can you describe what's depicted there and whether that helped lead you to your conclusion?

21

22

23

24

A. I wanted to be sure of my description here

1 because photographs sometimes do not bring out the
2 detail that was seen at the time looking at the case.

3 Q. In that case why don't I have you look at
4 Thirty-nine as well just so that we can get an overall
5 picture?

3:31P 6 A. First --

7 Q. Does that appear --

8 A. The first photograph that was shown, the
9 previous one, was a picture of the head and neck and
10 partial upper shoulders from the decedent's right
11 side, his right side.

12 This is also the decedent's right side, and
13 this is his shoulder area. And you can see -- ignore
14 the red areas here and look at the dark purple areas,
15 splotches. Those are contusions or in other words
16 bruises, contusions or bruises. The red is what is
17 known as livor mortis. That is the color of death.

18 Q. Doctor, would you be able to come down to the
19 stand and maybe indicate to the -- indicate for the
20 jury maybe the two types of marks that you're
21 describing.

22 A. After death, however the body is laying --
23 blood will pool to gravity.

3:32P 24 So if a person is lying on their stomach and

1 on their face, you would expect a dark pink and
2 possibly purple color, maybe blue color, on the front
3 of the body. If they're laying on their back, same.

4 This pink coloration is this livor mortis.

5 And this is on the anterior aspect of the
6 body here. What I'm referring to for contusions are
7 these dark purple spots. This is a contusion. It's a
8 little reddish, but these are bruises. The typical
9 bruises that one would get from bumping into
10 something, or being struck, or rough handling. A
11 number of cases.

12 Q. Did you also notice something about the eyes?

13 A. Yes. There were petechia hemorrhages in the
14 eyes.

3:33P 15 Q. What is a petechia hemorrhage if you will?

16 A. Petechia hemorrhages are teeny little red
17 spots of bleeding. If you were to take a red pen and
18 just make a bunch of dots on a piece of paper, that's
19 all the bigger they are.

20 In this eye, all of this red coloration on
21 the white part of the eye is commensurate with this
22 red coloration. Most of this is from livor mortis or
23 the blood going to gravity. This indicates to me that
24 the head was dependent or down for a number of hours

1 after death.

2 The blood pools in all of these areas.

3 This particular spot right here is one of
4 these petechia hemorrhage areas.

5 Petechia hemorrhages generally are not this
6 big. They're smaller than that.

3:34P 7 But dependency of the head being down can
8 exaggerate the ones that are there.

9 I need to explain what the petechia
10 hemorrhages are.

11 Q. Feel free to retake your seat.

12 A. There are major vessels going to the head
13 through the neck. There are two carotid arteries, one
14 on each side. And the heart is pumping blood in the
15 head and into the brain.

16 There are two major veins draining the head,
17 the jugular veins. So you've got that blood going in,
18 blood coming out.

19 If a person was to have their neck compressed
20 to where you shut off the carotid arteries, there
21 would be nearly instant unconsciousness and possibly
22 death if not released.

3:35P 23 If a person's neck was compressed to a lesser
24 degree to where only the jugular veins are compressed,

1 you will still have blood flow to the head, but it
2 won't be able to come back out and all of the little
3 capillaries will start to break. And it will make
4 tiny little red dot hemorrhages in the eyes. And in
5 the eye lids. And that's where the petechia
6 hemorrhages are from.

7 In addition, a person could sit on someone's
8 chest, and it may help prevent blood from coming back
9 out.

10 By some means blood is not coming back out of
11 the head. And so classically petechia hemorrhages are
12 a clue that some type of strangulation or asphyxia by
13 some other means has occurred.

14 Q. After you completed your external examination
15 on Mr. Villareal, did you also do an internal
16 examination to confirm your findings?

3:36P 17 A. Yes.

18 Q. And can you tell me what, if any, significant
19 findings you had as a result of your internal
20 examination?

21 A. Yes. There -- first of all, there were some
22 contusions on the side of the neck and some
23 irregularities on the neck. One cannot conclude as
24 strangulation or something just from that, especially

1 one that's started to accumulate livor mortis.

2 So the neck is meticulously dissected on
3 the inside. There are numerous numerous hemorrhages
4 around the muscles of the neck and in between the
5 muscles of the neck and around the hyoid bone which is
6 the bone that the tongue is anchored to.

7 Q. And what did that indicate to you?

8 A. That indicates trauma of the neck to such an
9 extent that it causes bleeding in the deep muscles.

3:37P 10 And with that present, and with the petechia
11 hemorrhages present, the conclusion of strangulation
12 is sound.

13 Q. Did you also notice anything in the chest
14 area? Either the ribs or the lungs?

15 A. There was a rib on the right side, I believe,
16 that was fractured. I think it was rib number nine.

17 Q. And what about the lungs?

18 A. Again, I need to review. There was a small
19 amount of what is referred to as intercostal
20 hemorrhage. In other words the muscle between the
21 ribs was -- had some blood in it. The lungs primarily
22 were filled with fluid, and this happens commonly in
23 many deaths of different types.

3:39P 24 Q. Did you find water in the lungs?

1 A. There was pulmonary edema.

2 Q. Like a drowning, you know, some of the jurors
3 might expect there to be water in the lungs. Was
4 there water?

5 A. Let me clarify that for you. That's heard on
6 television a lot and in movies. But there is no
7 findings in drownings. There are no finding that you
8 can actually see and say that a person was drowned.

9 People with heart failure or slow
10 respiratory death will accumulate fluid in their
11 lungs, so can heroin overdoses and many reasons for
12 there to be fluid in the lungs.

13 People can drown and not have any of that
14 water in their lungs.

15 Some people could have a lot of water in
16 their lungs from around where they drown. And that
17 could be strictly from current going in and out. It
18 can also be from parties trying to lift the body out
19 of the water. You can force water down in there.
20 There may or may not be water in the stomach.

3:40P 21 None of these findings are hard and fast.
22 And I typically don't look at them that closely. I
23 mean, if I saw a large amount of chlorine smelling
24 water in the stomach, I think I'd be justified in

1 saying he drowned in a pool or something. But you
2 just never see that.

3 Oftentimes in drowning the throat shuts
4 off from a reflex mechanism and will not allow water
5 to go down in there. A person asphyxiates anyway
6 because they're not getting oxygen.

7 Q. So correct me if I'm wrong, are drowning,
8 strangulation, and suffocation alternate means of
9 asphyxiation?

10 A. Yes.

11 Q. Perhaps I can suppose a hypothetical.

12 If you were given these facts that the
13 victim was taken from behind,

14 An arm was crooked around his neck with
15 the forearm on one side of the neck,

16 The upper arm on the other with the
17 elbow in approximately the throat position.

18 The person was taken to the ground and
19 strangled unconscious, at which time the pressure was
20 relieved and the person started to move again,

21 They were strangled again by the same
22 means until they went unconscious.

23 At which time the pressure was removed
24 and they began to move again.

3:41P 1 They were strangled then a third time by
2 the same means until they went unconscious again.

3 The person was then bound hands and feet
4 with electrical cord and placed in a tub where a sock
5 was forcibly shoved into the mouth,

6 A pillow case put over the head,
7 Water was turned on to run over the
8 body,

9 And the person was left there for
10 approximately thirty-six hours before he was found
11 with water running over his body. Would that or would
12 that not be consistent with your findings?

13 A. Well I couldn't think of a better scenario
14 that would be consistent with my findings.

15 Q. And can you explain to the jury why that's
16 true?

3:42P 17 A. Because of all the reasons I just outlined
18 for you.

19 Typically what's been described is the
20 carotid sleeper hold or choke hold. However, that
21 only depends on how much pressure is applied.

22 If a person were squeezed with his neck
23 in the crook of the arm hard enough, they would go
24 instantly unconscious and they did not release that

1 hold, they would die within minutes.

2 They go unconscious within very -- you know,
3 number of seconds to minutes. It would be very fast,
4 drop unconscious.

5 However, if the pressure was not that great
6 or if they went unconscious and the pressure released,
7 a person can become lucid again.

8 And of course the more you do that the more
9 they're going to be in and out of consciousness.

10 If this -- if this is a scenario we're
11 talking about the hemorrhages in the neck are well
12 explained by that. And you can imagine it from how I
13 described it, pressure on the neck would cause the
14 hemorrhages.

15 Also this squeeze and release would be
16 causing alternating occlusion of the carotid and the
17 jugulars, and you would expect to see some petechia
18 hemorrhages present.

3:44P 19 The time of death which is another thing is
20 shown in the movies and totally wrong can be estimated
21 in the six to twelve to twenty-four hour range,
22 guesses like that, and that's the best you can do.
23 I'm sorry. But that's all the science allows.

24 The findings on this individual are very

1 consistent with someone that's been -- from the time I
2 saw them, dead at least thirty-six hours.

3 Q. Okay. Based on what you saw, would you say
4 that this was an easy death?

5 A. I don't know if any of them are easy. I
6 haven't experienced it.

7 Q. With the -- perhaps I can clarify.

8 MR. WOMMER: Objection, your Honor. I think
9 that calls --

10 THE COURT: Sustained.

11 MR. WOMMER: -- calls for speculation on the
12 part of the witness.

13 THE COURT: Sustained.

14 MS. BROWN: I think he's an expert witness,
15 and he can testify as a expert based on the
16 hypothetical and the photo.

3:45P 17 THE COURT: Sustained.

18 BY MS. BROWN:

19 Q. When someone cuts off either the oxygen or
20 the blood supply, how long can a human being live
21 before going brain dead?

22 A. Once again it depends on the mechanism and
23 what's being done if a person's neck were being
24 compressed very hard and on both sides of the neck and

1 they drop unconscious, and that that hold continues
2 within, within three or four minutes, the brain is
3 going to be dead, three to four minutes.

4 Unconscious can happen very fast.

5 With jugular compression it would take much
6 longer than that, a number of minutes. Given other --
7 given other factors; however, that I'd mentioned in
8 the report that I saw: Sock in the mouth, being bound
9 from behind, being in a tub of water, you can imagine
10 that it would take much less time to die with all of
11 those things together.

12 But it would still take a number of
13 minutes.

3:46P 14 Q. Perhaps I can ask you this: Given the
15 hypothetical we've given you where he's choked, he
16 passed out, comes too, passes out, comes to, passes
17 out, is then placed in the tub, tied up and the gag is
18 put in his mouth before the water fills with water,
19 can you estimate how long it would take from the
20 beginning of the struggle to the end of the struggle
21 best case scenario?

22 A. The best I can do is say a number of minutes.

23 Again, the person hasn't been killed by that
24 choke hold. They've been incapacitated from it, and

1 there's been some anoxia or lack of oxygen to the
2 brain. So the person is not quite what he was before
3 the incident. And now we have more obstruction of the
4 airway binding in the water interfering with the
5 nostrils that he has left to breathe with.

6 I just say a number of minutes. It could be
7 anywhere from one or two to ten, but I wouldn't think
8 it would be much longer than that.

3:47P 9 Q. Thank you.

10 MS. BROWN: Pass the witness.

11 MR. WOMMER: Thank you, your Honor.

12

13 CROSS-EXAMINATION

14 BY MR. WOMMER:

15 Q. Doctor, as part of your examination, you've
16 determined the height and weight of the deceased,
17 correct?

18 A. Correct.

19 Q. And in this case your determination was that
20 the deceased was five feet seven, hundred and
21 eighty-nine pounds?

22 A. Let me describe how I do that.

23 Q. Okay.

24 A. The body is brought to our office by our

1 investigator. We have a scale in the garage where
2 they come in, and they're on a gurney. And they're
3 weighed as they are when they come in. And, of
4 course, the individual was wet.

5 So a person may need to take that into
6 consideration. I do not reweigh them. The height is
7 approximate within an inch either way. I do not
8 typically remeasure them.

9 So these values are ones that I receive
10 from the investigator who did that when he brought it
11 in, and I assumed that they could correct and, of
12 course, if I see the body is significantly different
13 then what's described, I will then reweigh it or
14 remeasure it.

3:48P 15 Q. Did that appear to be correct, five feet
16 seven, hundred and eighty-nine?

17 A. It appeared to be, yes.

18 Q. Thank you. You have indicated in your
19 external examination that there was some blood coming
20 from the nostrils of the deceased?

21 A. Yes. I recall that.

22 Q. Okay. Did you find any blood emanating from
23 any other wounds on the body?

24 A. I don't recall that I did.

1 Q. Did you find any trauma on the face or the
2 chest area of the deceased?

3 A. I may --

4 Q. Please.

5 A. I may have to refer to the record. There's a
6 lot of details in the report. And that's the reason I
7 need to look.

8 There's an abrasion on the left aspect of the
9 forehead, which is a scrape. It's about two inches.
10 There's an abrasion and or a pressure mark on the
11 center of the chin. Of course, this could be from the
12 tub. There are multiple bruises and small tears in
13 the skin of the lips, top and bottom.

3:50P 14 There are multiple bruises overlying the
15 right side and front of the neck and over the Adams
16 apple. A similar area is on the right cheek, a bruise
17 on the right cheek referring to the back. You
18 specifically wanted the anterior aspects of the torso
19 or the chest.

20 Q. Yes, please.

21 A. No. I did not list any on the -- on the
22 outside of the chest.

3:51P 23 Q. The injuries you've just described, doctor,
24 would you expect to find those type of injuries if

1 someone was involved in either a fight or a scuffle?

2 A. Yes. Yes, you could certainly see them in an
3 altercation.

4 Q. Thank you. You also indicated on direct
5 examination that you thought that the deceased had a
6 fractured rib?

7 A. Yes.

8 Q. Would you take a look at your report on page
9 five under the area x-rays. Specifically about five
10 sentences down.

11 A. You mean page four?

12 Q. Page -- I have page five designated as x-ray.
13 That's a section designated x-rays.

14 A. I have a section called x-ray on page four.

15 Q. All right. Do you see where it says ribs are
16 intact as far as seen?

17 A. Yes.

18 Q. Did the deceased have a fractured rib or not
19 have a fractured rib?

3:52P 20 A. I apologize. I have two trials this
21 afternoon. And you can imagine some of these details
22 get mixed up.

23 Q. I just --

24 A. Let me check.

1 Q. I can show you a copy of your report.

2 A. I've got the report right here.

3 Q. Oh.

4 A. I did. I was correct. The right ninth rib
5 is fractured laterally. It was a small amount of
6 intercostal hemorrhage, yes.

7 Q. Okay. Doctor, do you find any evidence of
8 projectiles or foreign objects such as a bullet or a
9 knife on the deceased?

10 A. No.

11 Q. Okay. Did you find any evidence of trauma
12 caused by another instrumentality such as a bat or an
13 iron bar or something like that?

14 A. No. Not that was distinct enough for me to
15 say something like that.

16 Q. Okay. And on direct examination when you
17 were talking about this cutting off of the airway, you
18 indicated that if someone were to try to strangle a
19 person and the strangulation was cut short, it would
20 result in unconsciousness of the victim, correct?

3:53P 21 A. Correct.

22 Q. And if the strangulation was protracted, that
23 could cause the death of the victim, correct?

24 A. Correct.

1 MR. WOMMER: Thank you. No further
2 questions, your Honor.

3 MS. BROWN: Just a couple of follow ups, your
4 Honor.

5

6 REDIRECT EXAMINATION

7 BY MS. BROWN:

8 Q. Showing you what will be marked as State's
9 Proposed Exhibit Number Seventy-three, do you
10 recognize that?

11 A. Yes.

12 Q. And is that a fair and accurate picture of an
13 abrasion you just described on the back and arm of the
14 victim Pedro Villareal?

15 A. Yes, it is.

16 MS. BROWN: Move to admit what will be marked
17 as State's Proposed Exhibit Number Seventy-three which
18 has previously been shown to defense counsel.

19 MR. WOMMER: No objection.

20 THE COURT: Be admitted.

21 BY MS. BROWN:

22 Q. Doctor, you indicated that sometimes it's
23 hard to keep things straight between the two trials,
24 and I appreciate that. However, after reviewing your

1 note, are you then able to differentiate between the
2 two cases.

3:54P 3 A. Yes.

4 Q. So you're confident that everything you've
5 stated in court today for the jury is in fact accurate
6 of this death of Pedro Villareal?

7 A. Absolutely. When the question was asked of
8 me, I wondered if I had confused cases. But I had
9 reviewed it, and I knew there was a fractured rib.

10 And to address that, many times in
11 x-rays, fractures are not seen, especially if they're
12 fresh, even in the emergency room, even in the
13 hospital.

14 So I stated in the x-rays that the ribs
15 were intact as far as seeing, and that is correct.
16 When I looked at it with my eye and had my hand on it,
17 the fracture was obvious.

18 Q. If a person was involved in a fight as
19 described by defense counsel, would you expect to see
20 either offensive or defensive wounds on his hands and
21 arms?

22 A. Possibly; possibly not.

23 Q. Did you see any of those in this case?

3:55P 24 A. No, I did not.

1 Q. Thank you.

2 MS. BROWN: No further questions.

3 MR. WOMMER: No questions.

4 THE COURT: Thank you. State has another
5 witness.

6 MR. GUYMON: Terry Cook.

7 THE COURT: Okay. We're going to take a
8 break now. Fifteen minute break.

9 Thank you.

10 Don't discuss the case.

11 Do not read, watch, or listen to any
12 accounts of these proceedings.

13 Do not express any opinion on any issue
14 connected to this case until after it's submitted to
15 you. Thank you.

16 (RECESS)

17 THE COURT: Let the record reflect we're back
18 in session in the matter of state versus Steven
19 Kaczmarek. Let the record reflect the presence of the
20 defendant, his attorneys, the state's attorneys.

21 Now, is the state going to call another
22 witness?

4:19P 23 MR. GUYMON: We'd like to, Judge, if you'll
24 permit us.

1 THE COURT: Do you object if I admonish your
2 client now about his right to testify?

3 MR. WOMMER: That's fine.

4 THE COURT: Sir, pursuant to a Nevada Supreme
5 Court case called State versus Johnson, I'm required
6 at the conclusion of the state's case in chief to
7 recess the jury and remind you of the right to take
8 the stand and testify if you want to, and you will
9 make that decision after the state concludes its case
10 in chief after consultation with your attorneys.

11 Do you understand that, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Anything else before we bring the
14 jury back?

15 MR. WOMMER: No.

16 MR. GUYMON: No, your Honor.

17 THE COURT: Bill, bring the jury back in.

18 (Whereupon, the following
19 proceedings were had in
20 the presence of the jury.)

21 THE COURT: Let the record reflect the jury
22 and alternate have returned to the court.

23 Call your next witness.

4:21P 24 MS. BROWN: The state calls Terry Cook.

1 THE COURT: Please be seated.

2 Whereupon,

3 TERRY COOK

4 having been first duly sworn to tell the
5 truth, the whole truth and nothing but
6 the truth, testified as follows:

7 THE COURT CLERK: Please state your name and
8 spell you last name.

9 THE WITNESS: My name is Terry Cook, C-o-o-k.

10 THE COURT CLERK: Is your first name K or T?

11 THE WITNESS: T.

12

13 DIRECT EXAMINATION

14 BY MS. BROWN:

15 Q. Good afternoon, Mr. Cook?

16 A. Hi.

17 Q. How are you employed?

18 A. I'm a forensic DNA analyst with Las Vegas
19 Metropolitan Police Department crime laboratory of Las
20 Vegas.

21 Q. And what are the duties of a DNA analyst?

22 A. Forensic DNA analyst, a forensic DNA analyst
23 who is an individual that analyzes items of evidence
24 associated with crime scenes looking for the presence

1 of biological material, and then when the biological
2 material is found, that individual uses a DNA
3 technician to make certain inclusion or exclusion of
4 whether or not certain victims or suspects are a part
5 of that biological substance.

4:22P 6 Q. And have you previously testified as an
7 expert in the Eighth Judicial District Court in DNA
8 technology?

9 A. I've testified over three hundred times in
10 DNA. Over 80 times in many courts including this one.

11 MS. BROWN: Your Honor, at this point
12 pursuant to stipulation with defense counsel, I would
13 offer Mr. Cook as an expert in DNA.

14 MR. WOMMER: We would so stipulate, your
15 Honor.

16 THE COURT: Thank you.

17 BY MS. BROWN:

18 Q. Can you tell us briefly what DNA is and how
19 you analyze DNA?

20 A. In laymen's terms, DNA is this enormously
21 large molecule that is in the nucleus of our cells
22 that have a nucleus. And it's about three feet long.
23 And it's tightly compressed in nucleus much like a
24 fifty foot garden house would be compressed in a match

1 box.

2 Ninty-nine percent of all DNA, human DNA is
3 exactly the same. And that's why we recognize each
4 other as being human beings from across the parking
5 lot.

4:24P 6 And one percent is different. And that one
7 percent is very different.

8 And that's kind of how we focus our tests on.
9 A lot of people don't realize this, but your ABO blood
10 type of which we're all pretty much familiar, we're
11 all either an A, B, AB, AO, that's actually a DNA
12 variations on chromosome number nine, I believe. And
13 in that one area, chromosome number nine, we have like
14 four different possibilities of separating of the DNA
15 technology such that we look at fourteen difference
16 areas.

17 And each area that is anywhere to three
18 hundred different variations, each one is independent
19 of each other. And we're able to essentially
20 differentiate an individual with exclusion of all
21 others in the earth assuming they're not identical
22 twin.

23 Q. Did you have an opportunity to examine the
24 evidence for event number 0209271153?

4:25P

1 A. I did.

2 Q. And can you tell me what evidence is that you
3 examined?

4 A. The evidence in the case you just mentioned
5 was that of mainly cigarette butts as well as certain
6 reference standards of -- for DNA comparison purposes.

7 Q. Can you explain what a reference standard is?

8 A. Right. When we examine evidence for the
9 presence of biological fluids or blood, semen, saliva,
10 or whatever, and we identify a fluid, and I have a DNA
11 pattern from that, we also require that we have DNA
12 standard. That's the DNA, the known DNA from a
13 certain individual, be they a victim or the suspect.
14 So we can include then or exclude them has having
15 deposited DNA on the items of evidence that we
16 examined.

17 Q. Showing you what's been marked and admitted
18 as State's Exhibit Number Fifty-eight. Do you
19 recognize that?

20 A. I do.

21 Q. And how do you recognize that?

22 A. I recognize it in actually two ways. My
23 signature is the only on the chain of custody as well
24 as the blue tape seal at the bottom is bears my

1 initials TLC and the date of which this item was
2 examined.

3 Q. Is that a standard as you previously
4 described to the jury?

4:26P 5 A. Right. This is a DNA buccal swab kit. It's
6 a standard. It's the DNA taken from a victim or
7 suspect inside their cheek. It's called a buccal
8 swab. The cells of which I'm interested in transfer
9 onto a little comb and they're pretty standard in the
10 DNA community.

11 Q. And showing you what's been marked as State's
12 Exhibit Fifty-one which will contain Fifty-one A, B,
13 and C. If you can review that envelope and its
14 contents and let me know if you recognize those?

15 A. Yes. In the same manner I do recognize this.
16 Again, my initial, the only appearing in the chain of
17 custody as well as my tape seal. Much like the first.

18 I do in fact recognize it's contents
19 three small envelopes each bearing my tape tag, again,
20 with my initials and the date at which it was
21 examined. And these small envelopes did, in fact,
22 contain smoked cigarettes butts.

23 Q. And there's -- you said that there's some
24 handwriting on there. On the bottom side it appears

1 to be in pencil; is that your handwriting?

4:27P 2 A. It is.

3 Q. Okay. Thank you. So did you compare
4 the -- were you -- first of all were you able to find
5 any DNA on the cigarette butts contained in exhibits
6 Fifty-one A, B, and C?

7 A. In this case, yes. I found some DNA on some
8 of the butts which is reasonably consistent with
9 analyzing cigarettes butts.

10 Q. Did you then compare the DNA on the cigarette
11 butts to the known sample of Steven Kaczmarek?

12 A. I did.

13 Q. And did you prepare a report elaborating your
14 findings?

15 A. I did.

16 Q. And as a part of that report, did you create
17 a chart, a chart of the result?

18 A. I did, ma'am. That would be page three of my
19 report.

20 Q. Showing you what's been marked as State's
21 Proposed Exhibit Number Sixty-six. Do you recognize
22 that?

23 A. I do, ma'am. This is an accurate copy of
24 page three of the report that I generated from this

1 matter.

2 Q. And does it accurately reflect your findings
3 as a result of the DNA testing?

4 A. Yes, it does.

4:28P 5 MS. BROWN: I would move to admit State's
6 Proposed Exhibit Number Sixty-six.

7 MR. WOMMER: No objection.

8 THE COURT: Be admitted.

9 BY MS. BROWN:

10 Q. And if you can explain your findings to the
11 jury. Would it help you to fully use this chart?

12 A. Yes. Yes, it would.

13 THE COURT: Can the jury see that? I don't
14 know if can --

15 MS. BROWN: I can. Maybe what we can do is
16 start in.

17 BY MS. BROWN:

18 Q. And why don't you come on over here, and I'll
19 switch spots with you.

20 A. You bet.

21 Q. And you can move around and point and just
22 move this as it becomes helpful?

23 A. Yes. I'll do that.

24 Q. Why don't you use that pointer. Thank you.

1 A. You want me to use this one here? This was
2 the report that was generated in this matter. And
3 I'll be the first to admit that it -- at first it's
4 kind of complicated, but like most things, once a
5 little explanation becomes clearer.

6 One of the evidence, pieces of evidence I
7 examined was a cigarette butt. This basically is how
8 it's listed on my report. The package number and item
9 and who booked, that's just administrative stuff, has
10 the burned cigarette butt.

11 What we see is actually fourteen different
12 boxes. Some are even off screen. Each box has two
13 numbers in it.

14 And one would immediately ask why does DNA
15 come in number pairs? And my response would be
16 because parents come in pairs. We get half of our DNA
17 from mom and half OF them from dad. And each one
18 contributes one number or one DNA type.

19 So in the world of DNA, we talk about number
20 pairs. And on this cigarette butte, we found a
21 fourteen eighteen. This is one of the 14 areas we
22 look. Actually there's 270 some different number
23 possibilities here. We're looking at one of the
24 independent areas called VWA.

1 This is again sort of like a genetic address.
2 It really doesn't matter. And in this area we have a
3 seventeen eighteen. And this goes on and on and on.
4 And each box represents a DNA type.

4:30P 5 Q. And you're mentioning the different numbers
6 within the box. Are there different possible
7 combinations? And if so, how many for each box?

8 A. Well, in this one, as I said there's about
9 274 possible combinations. And this one is about 250.
10 And these are each one just displaying one type. And
11 this one is about three hundred.

12 Each one of these boxes or each one of these
13 DNA areas is unrelated to the other one. And so each
14 box is relatively a rare type in and of itself. But
15 there's something called a product rule. And it says
16 we can take the probability of unrelated events and
17 multiply them together.

18 So we take this rare probability times this
19 rare probably, and we're able to get DNA. You hear
20 the people you get in the trillions, and the
21 quadrillions.

22 And that's really why, because you take
23 fourteen rare events and basically multiply them to
24 the 14th power and you get some really small number.

1 And that's why we're able to individualize someone in
2 the population of the whole world.

4:31P 3 The population of the whole world right now
4 is six billion. And routinely our screening DNA
5 profiles are in the hundred of trillions on the
6 average.

7 So any way, we look at all these different
8 corresponding areas and corresponding profiles are all
9 the same. All fourteen areas are collectively known
10 as the DNA profile. So I generate the DNA profile
11 from the cigarette butts, and I compared them to the
12 DNA profiles generated from the buccal swabs as
13 identified earlier, the scraping of the inside of
14 someone's mouth where the cells are easily available
15 and you don't need medical staff to get the sample.

16 So I developed a DNA profile on this case,
17 and I notice women have an XX chromosome and men have
18 a XY chromosome in this one area. It's really
19 significant because I know that the smoker of this
20 cigarette was in fact a male.

21 As it turns out we didn't have a standard
22 from an individual. We really didn't know who he was.
23 So we just call him unidentified male.

24 Now, later on, struggling with this. Okay.

1 There was another cigarette butt I analyzed. And this
2 again is not an uncommon result. What we see here we
3 have multiple numbers, and that tells us that we have
4 a DNA mixture.

5 It's actually very common. If this DNA was
6 in an ashtray, you have DNA co-mingling in an ashtray,
7 but you still have a lot of genetic information.
8 Again, I noticed that the DNA were much the -- that
9 were mixed had -- were actually mixed of two men
10 because of some information here. But you notice we
11 have the number we have a fourteen fifteen seventeen
12 and eighteen.

4:33P 13 And you see a little asterisk here, a little
14 star. That basically means that the fourteen and
15 fifteen, that DNA is of a much -- a much lesser
16 quality or a much lesser concentration. But you see a
17 seventeen and eighteen.

18 So I looked at my other standard. I said
19 where have we seen a seventeen and eighteen before?
20 And at this point that there's a buccal swab of Steven
21 Kaczmarek. No big deal. He's still just -- It looks
22 look he should be the major contributor. But we still
23 have thirteen other areas in which we can exclude
24 somebody.

1 So I go to the next area. And there's a
2 seventeen on the cigarette butt. The reason why
3 there's probably not two more numbers is because the
4 DNA concentration was so small it actually drops out
5 of my analytical range. But I look here, and guess
6 what? There's a seventeen eighteen. Again, we cannot
7 exclude Mr. Kaczmarek as being the source of this DNA.

8 We look at another address and we see the
9 FGA. We see that is a DNA type of eighteen
10 twenty-two. And again eighteen twenty-two.

4:34P 11 If you follow this on and on, you can see
12 that there's a corresponding DNA type of Mr. Kaczmarek
13 with the major component. That is the ones without
14 the asterisk on the cigarette butts.

15 And you probably will pick up the fact there
16 are just a twelve here, the other half of the twelve
17 which we have a fifteen was there. But it's below or
18 analyst threshold limit. And we're not allowed to
19 call it unless it reaches a certain data point. But
20 still, he's not excluded at this point.

21 Q. If you were excluded in any one of those
22 boxes, would he be excluded from being the person
23 whose DNA was on that cigarette butts?

24 A. The answer is yes. So actually it's fourteen

1 different chances to be excluded.

2 And keep in mind this is not an exclusion.
3 It's just there's not a whole lot of sample in this
4 area.

5 Q. And kind of -- I'm sorry. I don't mean to
6 interrupt.

7 A. That's all right.

8 Q. I want to tie back to what you said before.
9 You said in the first box there are how many
10 possibilities?

4:35P 11 A. About 274 different types.

12 Q. And in the second box?

13 A. About 250.

14 Q. And the third is about 300 you said?

15 A. It's two or three hundred, and then here they
16 got high again, and here they get low again. So about
17 250, 270 per box.

18 Q. So and the way you're explaining in that,
19 just by the time you get to the third box, his chances
20 are one in 274 times 1 in 250 times 1 in 300 give or
21 take?

22 A. Right. And that would push up probably in
23 the hundreds of thousands. But still we go on. And
24 if there's -- generally, in DNA if you're excluded in

1 one you're excluded in them. I mean, it's not
2 uncommon for some people to share some genetics
3 because we're all from the same population basically.

4 But for the most part its not uncommon to
5 exclude in as many of ten to twelve boxes on a normal
6 case. So we see a complete consistency. The major
7 component that is the DNA numbers without the asterisk
8 and that of Mr. Kaczmarek. I then prepared a report.
9 And in which I said Mr. Kaczmarek could not be
10 excluded as a possible component. In fact the major
11 component of this DNA mixture was detected on the
12 cigarette butts.

13 And I gave some sort of numerical value. It
14 exceeded one in 600 billion. But in truth it was
15 probably in fifty trillion or something like one in
16 every fifty trillion people. And there's not that
17 many people that have ever lived.

18 So at that point we have -- at that point we
19 have identity assuming there's not an identical twin.

20 There was another individual that I was asked
21 to see if there's a relationship at all with the
22 cigarette butts. And, of course, there is none. You
23 see that this person is excluded and in most locii.

4:37P 24 Q. That being Alicia Burns?

1 A. Right.

2 Q. You want to go ahead and retake your seat.

3 And a cigarette butt that matched, that came from what
4 was impounded as package two, item number four.

5 A. That is correct.

6 Q. Okay. Let me go ahead. Is that correct?

7 A. That is correct.

8 Q. And does that correspond with the markings on
9 the packaging that say: Two cigarette butts inside
10 ashtray on wire rack table along west wall of
11 apartment 25?

12 A. That is correct.

4:38P 13 Q. And you said, if you want to refer back to
14 your report, what is the probability that the DNA on
15 that cigarette butt belonged to the defendant Steven
16 Kaczmarek?

17 A. Well, we just, essentially we just call it
18 identity because it is so rare. We just arbitrary --
19 Las Vegas Metro was one of the first crime
20 laboratories to actually use an identity statement
21 because we would routinely stumble over numbers that,
22 you know, that were in the hundred of trillions and
23 stuff.

24 And we just said, you know, if it's over a

1 hundred times the earth's population, let's just call
2 it identity assumed. And the only thing you're
3 assuming at that point is that there's no identical
4 twin. This actual number has about eighteen zeros
5 after it. Oh, it would put it in the trillions or
6 something like that, hundreds of trillions.

4:39P 7 Q. So how certain are you that the DNA on the
8 cigarette found in Pedro Villareal's apartment on
9 September 27th, 2002, is that of the defendant Steven
10 Kaczmarek?

11 A. I'm positive assuming he doesn't have an
12 identical twin that was in the same apartment at the
13 same time.

14 MS. BROWN: Pass the witness.

15 MR. DENUE: Thank you.

16
17 CROSS-EXAMINATION

18 BY MR. DENUE:

19 Q. Mr. Cook, can you help the jury determine
20 what occurred in the room from which the cigarette was
21 taken?

22 A. I have no idea.

23 Q. Then I won't keep you any longer.

24 A. Thank you.

1 THE COURT: Any redirect?

2 MS. BROWN: No, your Honor.

3 THE COURT: Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: Call the next witness.

6 MS. BROWN: Amanda Villareal.

7 Whereupon,

8 AMAMDA VILLAREAL

9 having been first duly sworn to tell the
10 truth, the whole truth and nothing but
11 the truth, testified as follows:

12 THE COURT CLERK: Would you state your
13 full name and spell your last name for the record,
14 please?

4:41P 15 THE WITNESS: Amanda Villareal,
16 V-i-l-l-a-r-r-e-a-l.

17 DIRECT EXAMINATION

18 BY MS. BROWN:

19 Q. Amanda, how old are you?

20 A. Fifteen.

21 Q. Where do you live?

22 A. Tennessee. Manchester, Tennessee.

23 Q. Do you know someone by the name of Pedro
24 Villareal?

1 A. Yes. That's my dad.

2 Q. It's your dad. Do you recognize the person
3 up on this screen in State's Exhibit Number One?

4 A. My dad and some girl.

5 Q. The man on the left is?

6 A. My dad.

7 Q. Did some people call him Pete?

8 A. Everyone called him Pete.

9 Q. Okay. Were you close to your dad?

10 A. Yes.

11 Q. Did you all have -- when was the last time
12 you saw your father?

4:42P 13 A. This summer.

14 Q. Okay. Do you -- how long did you used to
15 spend with him? Did you live with him?

16 A. No. I never lived with him.

17 Q. Did you visit him?

18 A. Yeah.

19 Q. When would you visit him?

20 A. When we lived down here, I visited with him
21 on Tuesday and Wednesday, his days off.

22 Q. Okay. And when did you move?

23 A. When I was thirteen.

24 Q. Okay. Did you visit him since then?

1 A. Yeah. Every Christmas and summer.

2 Q. Okay. Was your dad what you call a messy
3 person?

4 A. No.

5 Q. What kind of manner did he live in? Was he
6 fairly neat?

7 A. Yeah.

8 Q. Okay. Do you recognize State's Exhibit
9 Number Two?

10 A. Yes that's where he lived.

11 Q. And did you used to visit him there?

12 A. Yeah.

13 Q. Showing you State's Exhibit Number Six, would
14 you call that messy or neat?

4:43P 15 A. My dad's house was never like that.

16 Q. Okay. Is this, in fact, a picture of your
17 dad's apartment?

18 A. Yes.

19 Q. Is that the condition in which he kept it?

20 A. Never.

21 Q. Showing you State's Exhibit Number Eight, is
22 that also a picture of your dad's apartment?

23 A. Yes.

24 Q. Is that the condition in which he kept it?

1 A. No.

2 Q. Showing you State's Exhibit Number Nine, is
3 that your dad's apartment?

4 A. Yes.

5 Q. And is that the condition in which he usually
6 kept it?

7 A. No.

8 MS. BROWN: Your Honor --

9 Amanda, I'm going to approach and show you
10 what is contained in the contents of State's Exhibit
11 Number Fifty-three A. Do you recognize that?

12 A. Yeah.

4:44P 13 Q. How do you recognize that?

14 A. That's my handwriting.

15 Q. And what is it?

16 A. A keno card.

17 Q. Does that have any relevance to you?

18 A. Yeah. He used to let me pick the numbers,
19 and then he'd go play them.

20 Q. Okay. And is that what you did on this day?

21 A. Yeah.

22 MS. BROWN: Your Honor, this has already been
23 admitted. I'm just going to put it up to publish it
24 to the jury.

1 BY MS. BROWN:

2 Q. So when was the last time you saw your dad?

3 A. End of July beginning of August.

4 Q. Had you been there for the summer?

5 A. Yeah.

6 Q. And when was the last time you talked to your
7 dad?

8 A. I don't remember what month it was.
9 September.

4:45P 10 Q. Okay. Did something unusual happen just a
11 couple of days after you talked to your dad?

12 A. Yeah. I called him the first time, and we
13 were talking. And then I called him about two days
14 later, and his phone was off. It wasn't connected.

15 Q. Did that strike you as unusual?

16 A. Yeah. He would tell me if his phone ever got
17 disconnected or if he turned it off or he didn't have
18 it on. He would call and tell me.

19 Q. Is that the only way you had of contacting
20 him?

21 A. He would call me, but he didn't have a house
22 phone.

23 Q. So that was the phone that you used to
24 contact him?

1 A. Yeah.

2 Q. And was that the phone that he used to
3 contact you?

4 A. Yeah.

5 Q. Just a couple of days after you called and
6 the phone was disconnected, did something more unusual
7 happen?

8 A. Yeah. My mom called the place where he
9 lives, the manager Deloris.

10 Q. Okay. I don't want you to -- I just want you
11 to tell me what happened to you. What information did
12 you receive?

13 A. That he had got murdered.

4:46P 14 Q. Okay. Just after that, did you come to Las
15 Vegas?

16 A. Yeah, the next day.

17 Q. And at that time were you asked by detectives
18 of the Las Vegas Metropolitan Police Department to go
19 through the apartment number 25 at 813 East Ogden,
20 your dad's apartment and determine if anything was
21 missing?

22 A. Yes.

23 Q. And were you able to find anything that was
24 missing?

1 A. Yes.

2 Q. Can you tell me what those things were?

3 A. His gold bracelet, VCR, coin collection, a
4 leather jacket.

5 Q. Were you able ever to find his phone?

6 A. His cell phone?

7 Q. Yeah.

8 A. No. But when we were down here, we had
9 called it, and some lady had had it.

10 Q. Okay. Did your dad usually carry a wallet of
11 any kind?

4:47P 12 A. He always carries a wallet.

13 Q. Did he have a habit of where he kept his
14 wallet?

15 A. Yeah. In his front right pocket.

16 Q. And did he explain to you why that was?

17 A. So he would never get robbed.

18 Q. I'm going to show you what's previously been
19 admitted as State's Exhibit Fifty-seven A. Do you
20 recognize that?

21 A. Yeah. That's his.

22 Q. Got to speak up because she has to write it
23 down.

24 A. Yeah. That's his bracelet.

1 Q. Did your dad always wear that bracelet?

2 A. Yeah. Unless he took it off when he went to
3 bed.

4 Q. But otherwise your dad always wore that
5 bracelet?

6 A. Yes.

7 Q. Showing you State's Exhibit Number One,
8 again, does that show your dad, in fact, wearing that
9 bracelet?

10 A. Yes.

11 Q. You mention that he was missing a jacket.
12 The jacket that's depicted in State's Exhibit Number
13 one.

14 A. I never found that jacket either.

15 Q. Did you ever find that hat that he's wearing
16 in State's Exhibit Number One?

17 A. No.

18 MS. BROWN: Pass the witness, your Honor.

19 MR. DENUE: No questions, Ms. Villareal.

20 THE COURT: Thank you, Miss. You may step
21 down.

22 Call your next witness.

23 MR. GUYMON: You want us to call one more,
24 Judge?

1 THE COURT: How long?

4:49P 2 MR. GUYMON: Fifteen minutes.

3 THE COURT: Ladies and gentlemen --

4 Whenever you look like that.

5 We're going to excuse you for the night, ask
6 you to come back. We talked about nine thirty
7 tomorrow. So if you can come back at nine fifteen in
8 the juror's lounge. Okay. We're going to try to get
9 you started. I will advise you that I have what it is
10 called misdemeanor appeals tomorrow at ten o'clock
11 that I'm going to maybe take a short break and try to
12 get rid of them all at once and continue them if I
13 have to.

14 While you're on break do not discuss the case
15 amongst yourselves or with anybody else do not read
16 watch or listen to any account of these proceedings.

17 Especially do not form or express any opinion
18 on any issue connected to this case until after it's
19 submitted to you.

20 Any questions?

21 THE COURT: Thank you. Tomorrow morning.

22 THE BAILIFF: Nine o'clock.

23 THE COURT: No. Nine fifteen.

24 Anything outside the presence?

4:50P 1 MR. WOMMER: One thing, your Honor.
2 THE COURT: We'll wait.
3 MR. WOMMER: Your Honor, we have about ten
4 minutes, I was provided with a copy of Proposed Jury
5 Instructions by Mr. Guymon. I've reviewed them. I
6 don't have an objection to any of the instructions.
7 But there -- we are going to modify a verdict form and
8 one of the instructions.
9 THE COURT: Tell you what. Why don't you do
10 that and get together, number them, and I'll read them
11 into the record tomorrow.
12 MR. DENUE: Okay.
13 MR. GUYMON: Very well. I'll have those two
14 changes corrections made by tomorrow morning.
15 THE COURT: Anything else?
16 MR. WOMMER: No, your Honor.

17 (WHEREUPON, THE PROCEEDINGS WERE
18 CONCLUDED AT 4:50 P.M.)

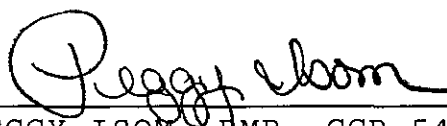
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REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND
REPORTER, DO HEREBY CERTIFY THAT I TOOK DOWN IN
STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE
BEFORE-ENTITLED MATTER AT THE TIME AND PLACE
INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES
WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY
DIRECTION AND SUPERVISION AND THE FOREGOING TRANSCRIPT
CONSTITUTES A FULL, TRUE AND ACCURATE RECORD TO THE
BEST OF MY ABILITY OF THE PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF
CLARK, STATE OF NEVADA.


PEGGY ISOM, RMR, CCR 541

CASE NO. C188781

DEPT. NO. 16

DOCKET U

ORIGINAL

FILED IN OPEN COURT

3/18/03
SHIRLEY G. PARRAGUIRRE, CLERK

BY Barbara Karp
DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,

PLAINTIFF,

VS.

STEVEN KACZMAREK,

DEFENDANT.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE JUDGE JOHN MCGROARTY
DISTRICT COURT JUDGE

March
DATED FRIDAY, ~~SEPTEMBER~~ 14, 2003

FOR THE PLAINTIFF: GARY GUYMON -AND- MARY BROWN

FOR THE DEFENDANT: GREGORY DENUE -AND- PAUL WOMMER

REPORTED BY: PEGGY ISOM, RMR, CCR NUMBER 541

CE

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1 LAS VEGAS, NEVADA; FRIDAY, SEPTEMBER 14, 2003

2 9:35 A.M.

3 P R O C E E D I N G S

4 * * * * *

9:35A 5 THE COURT: Let the record reflect we're back
6 in session in the matter of state versus Steven
7 Kaczmarek. Let the record reflect the presence of the
8 defendant, his attorneys, the state's attorney, the
9 absence of the jury.

10 Is there anything outside the presence of the
11 jury?

9:43A 12 MR. GUYMON: Judge, there is one thing that
13 perhaps I could bring up to the Court's attention.
14 The stipulation I indicated on Monday regarding the
15 custody status.

16 We're now going to hear testimony, additional
17 testimony of an inmate. His name is Torrence Lewis,
18 and I have drafted that if the Court wants a copy, so
19 I can read it either at the front, or the back, or
20 both in order to cure any concern that it is
21 consistent with what I read into the record. We may
22 want to have that marked.

23 THE COURT: I would prefer to have it marked
24 as a court exhibit next in order and read it to the

1 jury before the testimony.

2 Do you have any objection to that,
3 Mr. Wommer?

4 MR. WOMMER: Read it to the jury and mark it
5 as a court's exhibit is fine with me.

6 THE COURT: All right. We'll do that. Thank
7 you. Anything else before we bring the jury?

8 MR. GUYMON: No, your Honor. I believe
9 that's all.

10 THE COURT: Mr. Wommer?

11 MR. WOMMER: No.

9:44A 12 THE COURT: Bring the jury in, please.

13 (Whereupon, the following
14 proceedings were had in
15 the presence of the jury.)

16 THE COURT: Let the record reflect that the
17 jury and two alternates have returned to the courtroom
18 in the matter of state versus Steven Kaczmarek.

19 Good morning, ladies and gentlemen of the
20 jury.

21 THE JUROR: Good morning.

22 THE COURT: As you can see we have a couple
23 of things going on. As I told you yesterday, we have
24 misdemeanor appeals at ten o'clock, so we'll be taking

1 a break after the first witness the state is going to
2 present. Okay. You may have a seat.

3 Now, you're going to call your first witness,
4 Counsel?

9:45A 5 MR. GUYMON: Yes, Judge.

6 I understand there's an admonishment the
7 court is going to give prior to us calling him.

8 THE COURT: Ladies and gentlemen of the jury,
9 as I remember the state has indicated to you
10 previously that we have these two witnesses from the
11 jail that are being called. Now I want to read to
12 you. On October 11th, 2002, Steven Kaczmarek was
13 placed in the Clark County Detention Center on a
14 warrant.

15 Steven Kaczmarek remained in the Clark County
16 Detention Center on the warrant through October 29,
17 2002.

18 The warrant is in no way related to the
19 offenses for which he's being tried. The warrant and
20 any associated proceedings have been dismissed.

21 You should not speculate as to the nature of
22 the warrant nor why it was dismissed.

23 Is that clear?

24 THE JUROR: Um-hum.

1 THE COURT: All right. Fine. Thank you.
2 Counsel.

3 MR. GUYMON: Thank you, Judge. That will be
4 the Court's next order.

5 Call your witness.

9:46A 6 MR. GUYMON: Torrence Lewis.

7 Whereupon,

8 TORRENCE LEWIS

9 having been first duly sworn to tell the
10 truth, the whole truth and nothing but
11 the truth, testified as follows:

12 THE COURT CLERK: Would you state your full
13 name and spell your last name for the record, please?

14 THE WITNESS: Torrence Lewis, L-e-w-i-s.

15 DIRECT EXAMINATION

16 BY MR. GUYMON:

17 Q. Mr. Lewis, good morning.

18 A. Good morning.

19 Q. You are wearing a blue uniform and the
20 chains; is that correct?

21 A. Yes, sir.

22 Q. Are you currently housed in the Clark County
23 Detention Center?

24 A. Yes, sir.

1 Q. All right. I want to direct your attention
2 to September 2002 and October of 2002.

9:47A 3 Were you in the Clark County Detention
4 Center?

5 A. Yes, sir.

6 Q. And were you there as a result of a probation
7 revocation on a gross misdemeanor charge?

8 A. Yes, sir.

9 Q. I take it that you had had -- had you been
10 given probation originally for that charge?

11 A. Yes.

12 Q. Did you violate your probation?

13 A. Yes, sir.

14 Q. And did the judge then take away your
15 privilege of probation?

16 A. Yes, she did.

17 Q. And do you recall about when it was he took
18 away your privilege of probation?

19 A. August Sixth, August 21st somewhere in there.

20 Q. Okay. Now, did you -- when he took away your
21 privilege of probation, how long were you to stay in
22 custody for?

23 A. Nine months.

24 Q. And when was the ninth months to expire?

1 A. January 18th.

2 Q. So I take it you had already some good time
3 credits, some credits for time served that were built
4 into that nine month window?

9:48A 5 A. Yes, sir.

6 Q. When was the window -- the window was to
7 expire on January 18th?

8 A. Yes.

9 Q. Did you get released before January 18th?

10 A. Yes, sir.

11 Q. All right. I'm going to talk about that with
12 you as well.

13 While I were in the Clark County Detention
14 Center did there come a time when you were housed with
15 anyone that you see here in the court today?

16 A. Yes, sir.

17 Q. Can you point as best as you're able to the
18 person that you were housed with?

19 MR. GUYMON: The record reflect the
20 identification of the defendant, your Honor.

21 THE COURT: Yes.

22 BY MR. GUYMON:

23 Q. And do you recall what month it was that you
24 were housed with the defendant?

1 A. September and October.

2 Q. Okay. I'm going to show you two calendars
3 that have been marked as Exhibit 59 and 60 September
4 and October. All right?

5 A. Uh-huh.

6 Q. And I'm going to use some specific dates as
7 we talk with you. Do you recall giving a statement to
8 the homicide detectives about this case?

9:49A 9 A. Yes.

10 Q. All right. And you know specifically what
11 day you give that statement?

12 A. No, not specifically what day.

13 Q. If you were to show you, would that give you
14 the date?

15 A. Yes.

16 Q. Directing your attention to what appears to
17 be a voluntary statement of the Las Vegas Metropolitan
18 Police Department, does it bear your name?

19 A. Yes.

20 Q. Date of birth?

21 A. Yes.

22 Q. Social security number?

23 A. Yes.

24 Q. Does it have a date on it?

1 A. Yes.

2 Q. What date do we have there?

3 A. September.

4 Q. Actually --

5 A. October.

6 Q. All right.

7 A. Yes.

8 Q. So it's ten twenty-three?

9 A. Twenty-third, 2002.

10 Q. Okay. So on the Twenty-third of October, you
11 spoke to the detectives; is that correct?

12 A. Yes.

13 Q. And does this appear to be your statement?

14 A. Yes, sir.

15 Q. Okay. Now, about how many days before the
16 Twenty-third had you been housed with the defendant
17 Steven Kaczmarek?

9:50A 18 A. Say about two weeks.

19 Q. So two weeks earlier?

20 A. Uh-huh.

21 Q. All right. Now, then, when we talked about
22 being housed with the defendant were you actually in
23 the same cell?

24 A. Yes, sir.

1 Q. And were you in the same cell for very long?

2 A. For about a week.

3 Q. Okay. Now, then did there come a point in
4 time when the defendant told you some things that you
5 thought you should tell the detectives about?

6 A. Yes.

7 Q. Tell me how that came about?

8 A. We was sitting up playing cards. And he ax'd
9 me, how much do murder carry in the state of Las
10 Vegas, and I ax'd I told him I don't know.

11 Q. Okay. Let me stop you there for a second.
12 You were playing cards. Where were you playing cards
13 at?

14 A. In our cell.

15 Q. All right.

16 A. On the bottom bunk.

17 Q. I'm sorry?

18 A. On our bottom bunk.

19 Q. Now then is there a top and a bottom bunk?

20 A. Yes, sir.

21 Q. Who occupied the bottom bunk, and who had the
22 top bunk while the two of you were together?

23 A. He had the top bunk, and I had the bottom
24 bunk.

1 Q. So you're playing cards down on your bunk; is
2 that right?

9:51A 3 A. Yes.

4 Q. Anybody else in the room?

5 A. No.

6 Q. And his question was what?

7 A. How much murder carry in the state of Las
8 Vegas.

9 Q. How much does murder. What does that
10 question mean?

11 A. What is -- how much time does it carry.

12 Q. How much time. And did you know the answer
13 to that?

14 A. No.

15 Q. Did you ask him why he would ask a question
16 like that of you?

17 A. Yes.

18 Q. And what was his response?

19 A. Well, he started explaining to he had killed
20 somebody, him and his girlfriend. He explained that
21 he had strangled somebody.

22 Q. Okay. You say he explained that. He and his
23 girlfriend had strangled somebody?

24 A. Yep.

1 Q. Did he indicate who this somebody was?

2 A. Alisha.

3 Q. That was her name?

4 A. Yes. That was his girlfriend's name.

5 Q. Um-hum. Did he indicate how old his
6 girlfriend was?

9:52A 7 A. About fourteen -- or fourteen or sixteen.

8 Q. Okay. And did he indicate where he had met
9 his girlfriend?

10 A. In Iowa.

11 Q. Okay. Do you recall telling the detectives
12 where he said he met his girlfriend at?

13 A. Yes. Yes.

14 Q. Show you your statement again. Let me move
15 on, and I'll get to it.

16 Now, he indicated that he had strangled
17 someone. Did he tell you who the person was he
18 strangled?

9:53A 19 A. No, he didn't.

20 Q. Did you describe that person?

21 A. No.

22 Q. Did he give him an age or a race?

23 A. He said he was just an elderly, an older man.

24 Q. Okay. Did he indicate whereabouts this

1 strangulation had occurred?

2 A. He said down somewhere on Fremont.

3 Q. Okay. Now, do you know where Ogden Street
4 is?

5 A. Yes.

6 Q. Is is Ogden near Fremont?

7 A. Yes.

8 Q. All right. Tell me as the defense -- as the
9 defendant told you, take us through the story just as
10 he told it to you.

11 A. Well, he started -- he said that the man
12 addressed his girlfriend wanting a date. Addressed
13 her, came at her like she was a prostitute. And he
14 said they went back to his room, and I guess him and a
15 guy got into an argument, and he said, came behind him
16 and choked him strangled out.

17 And he -- he said he had his girlfriend
18 standing on his neck, and he said he tied him up and
19 wiped the place down. And he said it was on the
20 newspapers the next day. You know, they didn't no
21 trace -- they didn't have no fingerprints or no
22 evidence who did it.

9:54A 23 Q. Okay. Did he -- when he told you that he
24 strangled a man, did he demonstrate how it was he

1 strangled him?

2 A. Yes.

3 Q. Can you demonstrate -- I know you're in
4 chains -- but can you demonstrate for us how Steven
5 showed you how he strangled the man?

6 A. He said he came from behind and put his
7 forearm around his neck.

8 MR. GUYMON: The record should reflect that
9 the witness has moved his right arm in a process, I
10 guess, left to right at an angle.

11 Would that be fair, Judge?

12 THE COURT: Yes.

13 BY MR. GUYMON:

14 Q. Did he indicate to you how long it took to
15 strangle the man?

16 A. No. No, he didn't.

17 Q. Did he indicate to you you said he tied him
18 up. Did he say what part of his body he tied up?

19 A. No. No, he just said his hands. He didn't
20 say what else he just said he tied him up and put him
21 in the bathtub and cut the water on.

22 Q. Did he indicate to you whether or not there
23 was more than just he and Alisha there?

9:55A 24 A. He said there was another party, a male, but

1 he never gave no name, and he said he left town after,
2 after the murder. He went to the the Greyhound and
3 caught a bus and left town.

4 Q. Okay. Now then, did Steven Kaczmarek
5 indicate to you after he strangled the man, tied him
6 up, and put him in the bathtub, did he tell you what
7 he did while he was in the apartment?

8 A. He said he took \$600, and that's all he told
9 me.

10 Q. Okay.

11 A. In the apartment.

12 Q. Did he tell you how much money the other
13 man -- the unnamed man got --

14 A. Yes.

15 Q. -- from this?

16 A. \$50.

17 Q. Did he tell you why the man got only \$50 if
18 in fact they had gotten \$600 from this robbery?

19 A. Because he didn't take place -- he didn't
20 help do it. He didn't help him when he ax'd him to.
21 He said he just sat there and looked stupid.

22 Q. Okay. Had Steven indicated to you that he
23 had asked the man to do things?

24 A. Yes.

9:56A

1 Q. And did the man do those things?

2 A. No.

3 Q. Did Steven say whether or not he was happy
4 about the fact that the other man had just stood there
5 and acted stupid?

6 A. He said that's why he only got \$50 because he
7 just sat there and didn't do nothing.

8 Q. During the course of the conversation was it
9 clear to you who had murdered this man?

10 A. Yes.

11 Q. Who had murdered him?

12 A. Steven and his girlfriend.

13 MR. GUYMON: The Court's indulgence, Judge.

14 BY MR. GUYMON:

15 Q. Now are these this information, the
16 information you share with the detectives on the
17 Twenty-third?

18 A. Yes.

19 Q. And did they tape that statement?

20 A. Yes.

21 Q. Now, when they came to talk to you originally
22 they come actually the day before on the Twenty-second
23 and talk to you first and then tape it on the
24 Twenty-third?

1 A. Yes.

2 Q. When they came to you on the Twenty-second
3 and the Twenty-third, did the detectives tell you what
4 to say?

5 A. No.

6 Q. Did they suggest anything to you? In other
7 words did they tell you anything about the evidence
8 anything they knew?

9 A. No.

9:58A 10 Q. The information you provided to them, where
11 and how did you learn that information?

12 A. From Steven.

13 Q. During the course of Steven talking to you,
14 did he indicate to you how much earlier this killing
15 had taken place? In other words if he spoke to you a
16 week or two before, that's when you were cell mates,
17 how much earlier did he indicate the robbery and
18 killing had happened?

19 A. At least a month.

20 Q. You indicated that Steven spoke to you, and
21 you waited a little longer before you went to the
22 police; is that right?

23 A. Yes.

24 Q. As Steven spoke to you, did you think the

1 things he was telling you were important?

2 A. Yeah.

3 Q. Did you think the police would want to know
4 that information?

9:59A 5 A. Yep.

6 Q. Now, if you thought the police would want to
7 know the information. Why didn't you call the police
8 the very next day?

9 A. I had to sit and think was he telling me the
10 truth, or was he just lying.

11 Q. What did you think about that? I mean when
12 he spoke to you, did he act as though he was telling
13 you the truth?

14 A. Yeah.

15 Q. And what made you think that he was telling
16 you the truth?

17 A. Because it was like he didn't sit there
18 because he explained it. It's like word for word what
19 happened. And then like he sit up there and making
20 anything up. The conversation went smooth when we
21 were talking.

22 Q. Okay.

23 A. It was like he didn't have to guess back what
24 happened or nuthin like that.

1 Q. Okay. Believing that what he had told you
2 was the truth, you still took a little time to call
3 the police. Why?

4 A. I really thought it was none of my business.

10:00A 5 Q. When the police came to you, did the police
6 make you any promises?

7 A. No.

8 Q. What would happen to you if you talked with
9 them?

10 A. No.

11 Q. Did you ask for any promises?

12 A. No, not at that time.

13 Q. Okay. So you gave the statement. As you've
14 given today?

15 A. Yes.

16 Q. At the time of giving your statement did you
17 get any promise at all?

18 A. Nope.

19 Q. Since the time of giving your statement, did
20 you ask a promise?

21 A. Yeah.

22 Q. Did you ask for a benefit?

23 A. Yes, I did.

24 Q. And what benefit did you ultimately ask for?

1 A. Just I be released before Christmas.

2 Q. Okay. Now you were supposed to be in until
3 January when?

4 A. The Eighteenth.

5 Q. When did you get out?

6 A. December Eighteen.

7 Q. And who did you ask for a benefit?

8 A. You.

9 Q. And did I make you any promises?

10 A. No.

11 Q. Tell me how was it you got released. In
12 other words did you have to go back in front of Judge
13 Bonaventure?

10:01A 14 A. Yes.

15 Q. And what day did you go back in front of
16 Judge Bonaventure?

17 A. December, December Eighteen. The same day.

18 Q. Okay. And did Judge Bonaventure give you a
19 release thirty days early?

20 A. Yes.

21 Q. And was that based on your request and myself
22 and the detective going to Judge Bonaventure and
23 indicating that you had provided information?

24 A. Yes.

1 MR. GUYMON: The Court's indulgence, Judge.

2 BY MR. GUYMON:

3 Q. Let me ask you one other -- appreciate that.

4 Showing you what had been marked as State's
5 Proposed Exhibit Seventy-four. At the conclusion of
6 giving your taped statement to the detective -- did
7 they show you some photographs?

8 A. Yeah.

9 Q. And what did they ask you to do with regard
10 to the photographs?

11 A. Point out the -- point out Steven.

12 Q. Okay. Did you indicate to them that you
13 could in fact identify Steven Kaczmarek?

14 A. Yes.

15 Q. Showing you what's been marked as State's
16 Proposed Exhibit Seventy-four, is -- are these the six
17 photographs you were shown?

10:02A 18 A. Yep.

19 Q. And which photograph did you pick out --

20 A. Two.

21 Q. -- as being Steven Kaczmarek?

22 A. Yes.

23 MR. GUYMON: I'd move for admission of
24 State's Proposed Exhibit Seventy-four.

1 MR. WOMMER: No objection, your Honor.

2 THE COURT: Be admitted.

3 BY MR. GUYMON:

4 Q. How certain are you as you sit in court today
5 that the man sitting before us, Steven Kaczmarek, is
6 the man that confessed to you about committing a
7 murder?

8 A. How positive am I?

9 Q. Yes.

10 A. I couldn't be no more positive. I'm sure.

11 MR. GUYMON: I have no more questions.

12 THE COURT: You may cross.

13 MR. WOMMER: Thank you, your Honor

14

15 CROSS-EXAMINATION

16 BY MR. WOMMER:

17 Q. Good morning, Mr. Lewis. You were convicted
18 of a gross misdemeanor, correct?

19 A. Yes.

20 Q. What was the gross misdemeanor you were
21 convicted of?

22 MR. GUYMON: Objection, relevance.

23 MR. WOMMER: He indicated he was doing a
24 sentence, your Honor.

1 THE COURT: I agree. Go ahead.

2 THE WITNESS: Grand theft auto.

3 BY MR. WOMMER:

4 Q. All right. And on that case you received a
5 probationary sentence, right?

6 A. Uh-huh.

7 Q. And if you completed your probation, the case
8 would have gone away, right?

10:03A 9 A. Right.

10 Q. But you didn't do what you were supposed to
11 do on probation, did you?

12 A. Right.

13 Q. And you had -- you having your probation
14 revoked and getting a nine months sentence from Judge
15 Bonaventure, right?

16 A. Right.

17 Q. And then you're supposed to be released on
18 the end of this ninth month sentence in January of
19 2003, right?

20 A. Right.

21 Q. But you give a statement to the officers
22 about what Mr. Kaczmarek supposedly told you, and then
23 the wheels start to turn, don't they?

24 A. Right.

1 Q. So Detectives Wilson and Mikolitis and
2 Mr. Guymon go to Judge Bonaventure and tell him what a
3 great job you did, right?

4 A. I guess.

5 Q. So then you don't have to serve out the rest
6 of your sentence and you go home for Christmas, right?

7 A. Right.

8 Q. And once you were released on that sentence,
9 the case was over because you didn't have to come back
10 to court, right?

10:04A 11 A. No. The case was over because I had --

12 Q. The case was over?

13 A. -- finished my time.

14 Q. Did your time. And you're back in custody
15 now, aren't you?

16 A. Yes.

17 Q. You want to get released early now?

18 A. No.

19 Q. You like it in there.

20 A. No, I don't.

21 Q. It'd be nice to get out early, wouldn't it?

22 A. It would.

23 MR. WOMMER: No further questions, your

24 Honor.

REDIRECT EXAMINATION

BY MR. GUYMON:

Q. Let me ask you, have you gotten any new promises? You picked up a new case?

A. No.

Q. Have I made any promises?

A. No.

Q. Have anyone made any promises?

A. Nope.

Q. Have you asked for any promises?

A. No.

Q. In fact on December 16th of 2002, you testified in an earlier hearing, didn't you?

A. Yes, sir.

Q. And did you tell the defense, the Court, and myself that if you picked up a new case that was on you?

A. Yes, sir.

Q. Is it on you?

A. Yes.

MR. GUYMON: I have nothing else.

MR. WOMMER: No questions, your Honor.

THE COURT: Thank you. You may step down.

1 Now, ladies and gentlemen of the jury, it's
2 10:00 o'clock. Mr. Hastings, would you please step
3 outside and ask -- wait, wait a minute. Wait a minute
4 the deputy is here.

5 What's happening outside. I think that --

10:05A 6 THE COURT: I hate to break in up, ladies and
7 gentlemen of the jury, but I hope you understand.

8 THE COURT CLERK: Judge, twenty minute.

9 THE COURT: All right. Ladies and gentlemen,
10 please take a twenty minute break.

11 Don't discuss the case amongst yourselves or
12 with anyone else.

13 Do not read, watch, or listen to any accounts
14 of these proceedings.

15 Do not form or express any opinion on any
16 issue connected to this case until after it's
17 submitted to you.

18 Thank you.

19 (Whereupon, the following
20 proceedings were had outside
21 the presence of the jury.)

22 THE COURT: All right. Let the record
23 reflect that the jury and alternates have left the
24 courtroom.

1 Counsel, you just want to leave everything on
2 your tables?

10:06A 3 MR. WOMMER: Please.

4 THE COURT: I'll make sure nobody touches it
5 if we just take the prisoner out.

10:29A 6 THE COURT: Let the record reflect we're back
7 in session in the matter of state versus Kaczmarek.
8 Let the record reflect the presence of the defendant,
9 his attorneys, the state's attorneys, the absence of
10 the jury and the alternates.

11 Anything outside the presence?

12 MR. WOMMER: No, your Honor.

13 MR. GUYMON: No, your Honor.

14 THE COURT: Bring them in, please.

15 MR. GUYMON: Judge, we'll need the same
16 admonishment for this witness.

17 THE COURT: Counsel, this one here.

18 MR. GUYMON: Yes, your Honor. And maybe we
19 should approach for a second.

20 (Whereupon, discussion was had
21 at bench, not reported.)

10:31A 22 THE COURT: Let the record reflect that the
23 jury and the alternates have returned to the
24 courtroom.

1 Counsel, call your next witness.

2 MR. GUYMON: Edd Pryor.

3 THE COURT: Edd Pryor.

4 Whereupon,

5 EDD PRYOR

6 having been first duly sworn to tell the
7 truth, the whole truth and nothing but
8 the truth, testified as follows:

9 THE COURT CLERK: Would you state your full
10 name and spell your last name for the record, please?

11 THE WITNESS: Edd Pryor. Last name is,
12 P-r-y-o-r.

13 DIRECT EXAMINATION

14 BY MR. GUYMON:

15 Q. Good morning, Mr. Pryor. Directing your
16 attention to October 28th of 2002 were you in the CCDC
17 had CCDC?

18 A. Yes I was.

19 Q. And I have a calendar right there I believe
20 it is is State's Exhibit 60 I believe. 60 the month
21 of October the 2002 the date being the 28th?

10:32A 22 A. Okay. Yes I was in the Clark County
23 Detention Center.

24 Q. And prior to the 28th, how long had you been

1 in custody?

2 A. Since the 19th of October.

3 Q. Since the 19th of October. And was that on a
4 felony charge?

5 A. Yes, it was.

6 Q. Are you convicted of a felony offense?

7 A. Yes I was Yes, I am.

8 Q. More than one?

9 A. Yes.

10 Q. Give me the year that you were convicted and
11 what the offenses are for?

12 A. 1995 in Arizona I was convicted of
13 telecommunications harassment. Harassed my girlfriend
14 on the phone.

15 Q. Okay. And do you have any other felony
16 convictions?

17 A. On May Seventh, 2002, I was convicted of two
18 counsels of statutory sexual seduction.

19 Q. Now were you in custody during the months of
20 October as a result of your felony convictions for
21 statutory sexual seduction here in Nevada?

22 A. As a result, yes.

23 Q. While you were in custody on the felony
24 offenses of statutory sexual seduction, did you come

1 in contact or meet anyone that you see in court today?

10:33A 2 A. Yes, I did.

3 Q. Where is the individual seated?

4 A. Sitting between the two people on that desk
5 there.

6 Q. Do you know him by a name?

7 A. Steven Kaczmarek.

8 MR. GUYMON: The record reflect the
9 identification of Steven Kaczmarek?

10 THE COURT: Yes.

11 BY MR. GUYMON:

12 Q. About when is it that you met Steven
13 Kaczmarek and where?

14 A. Where I met him was in Module Three at the
15 Clark County Detention Center. Just let me look at a
16 calendar for a minute. And I would believe it would
17 be the third week -- between the second and third week
18 of October.

19 Q. Okay. Were the two of you housed together in
20 the same unit?

21 A. In the same unit yeah. It's a module and
22 there's rooms, and then there was -- at the time there
23 was cots there in the day room. And then you're
24 housed on cots until you move into a room.

1 Q. All right. Were you ever his actual cell
2 mate though?

3 A. I would no. No, we weren't.

4 Q. You were in the same, I guess --

5 A. Module --

6 Q. -- module or general floor if you will?

10:34A 7 A. General living area.

8 Q. All right. And here's the problem. Many of
9 these folks have never been to the jail. They don't
10 know what the module is?

11 A. Okay.

12 Q. Is the module a floor of a level of the jail?

13 A. It's a -- what it is, it's a dorm, dorm-type
14 setting. That's two floors inside there. There's an
15 upper floor and lower floor with cells on these
16 floors.

17 In the day room that's on the lower floor
18 which has cots the people sleep on during the night,
19 it was because of the over crowdedness. They put them
20 on cots. But the dorm-type setting.

21 Q. All right. So you would have had contact
22 with him in the module but not as a cell mate?

23 A. That's right.

24 Q. All right. And tell me who initiated the

1 contact between you and Steven Kaczmarek?

2 A. He did.

3 Q. And tell me how that came about?

4 A. He had asked me some questions on some other
5 things there.

6 Q. Okay.

7 A. Other --

10:35A 8 Q. Did you develop a rapport with him?

9 A. Yes, I did.

10 Q. And what, would you say the two of you were
11 friendly with each other?

12 A. Yes, we were.

13 Q. Would you speak with each other about your
14 concerns?

15 A. Could you repeat that?

16 Q. Did you talk about concerns, common
17 interests, things of that nature?

18 A. Common interests. Concerns, yes. Charges.
19 What they would carry. What, how long it would -- you
20 know.

21 Q. Now did there come a point in time in your
22 relationship with Steven Kaczmarek that he came to you
23 startled or concerned?

24 A. Yes. I believe between the Twenty-first and

1 the Twenty-third, I better say the third week of
2 October, he was taken downstairs to be
3 re-fingerprinted. And upon returning he looked very
4 spooked, very scared.

5 And I asked him what the problem was. And is
6 there anything wrong? And he said, uh-huh he, nodded
7 his head. And I said what's wrong? Are you here for
8 something else like armed robbery or something?

9 He said, among other things. And then he
10 looked at me and told me he killed someone.

10:36A 11 Q. All right. Now, when he told you he killed
12 someone, what was the tone of his voice?

13 A. I killed someone.

14 Q. Just --

15 A. Just like that.

16 Q. Just as you said it?

17 A. Just like that.

18 Q. The look on his face, can you describe it?

19 A. More of a -- I want to think of a good
20 description. It was more confused, but, yet, I killed
21 someone. I mean, I really killed someone. It's scary
22 to me.

23 Q. Okay. You say it was scary to you. What was
24 your response if it was scary to you?

1 A. I said, woohah. I stepped back, took a
2 couple moments. And then I mentioned it to -- I said
3 don't mention it to anybody here in here, but let's go
4 talk at table where nobody would be speaking or
5 listening.

6 Q. Did you want to talk to him about this
7 information?

8 A. Seemed like he wanted to talk.

9 Q. Did you have a relationship such that you had
10 a friendly rapport with him?

11 A. Yeah. I was -- I was in there. And I do a
12 lot of reading in there about the law. So I
13 was -- I'm up on the law, and, how would you say, I
14 read a lot of cases.

15 And he was just interested in what, why they
16 would the re-fingerprint. Why they -- what are the
17 chances of them finding, you know, out that if they
18 found out something about the murder.

10:38A 19 Q. All right. Now, after he told you that he
20 had murdered someone, did the two of you go off into a
21 different area?

22 A. Yes, we did.

23 Q. And was it just the two of you?

24 A. At that time.

1 Q. And what area were you in?

2 A. In the living area in the -- in the module in
3 the dorm setting. We went to a table in the far back
4 away from people.

5 Q. Tell this jury what it is Steven Kaczmarek
6 now told you.

7 A. I asked him, I said, exactly -- I mean -- I
8 mean, I'm curious with you. It's not every day
9 someone tells you that someone killed someone. You
10 know, I said how did you do it? Did you use anything?
11 He, he said, no, I used my hand. I'm a fifth degree
12 black belt.

13 I said, well, what, you know, how did you do
14 it? And he showed me. He put the guy in the head
15 lock like this and brought him to the ground. They
16 had a struggle, told me they had a struggle, ripped
17 his shirt in the process.

18 And then stole \$480 from him.

10:39A 19 Q. Okay. Did he tell you who he was with when
20 this happened?

21 A. Yes.

22 Q. Who did he indicate he was with?

23 A. Alisha Burns his girlfriend.

24 Q. Did he indicate how old his girlfriend

1 Alisha Burns was?

2 A. Fifteen years old.

3 Q. Now, prior to telling you that he killed
4 someone, had he talked about his girlfriend with you?

5 A. Yes. Yes. He was more -- more obsessed
6 about how she was doing, where she was at. Are they
7 going to charge her. He's sorry he ruined her life.
8 And so forth.

9 Q. Um --

10 A. Trying to find out where she was. Where she
11 was being held at.

12 Q. Okay. During this conversation where he
13 indicated that Alisha Burns was also involved, did he
14 indicate where he and Alisha had met the man that he
15 had killed?

16 A. Yes, he did.

17 Q. Where did he say he had met him?

18 A. On Fremont Street.

19 Q. Tell me a little about the meeting, how that
20 came about?

10:40A 21 A. Alisha and him were trying to earn some
22 money. Alisha propositioned this man, lured sex for
23 money.

24 They walked to a McDonalds, talked about it

1 some more. Then they went to the man's apartment, a
2 place of residence and had some beers. And after the
3 beers they began to -- they did what they did there.
4 And robbed him and killed him.

5 Q. Okay. I'm going to talk a little bit about
6 what happened, actually there, according to the
7 defendant. Did he tell you whether or not anyone else
8 was involved other than himself and Alisha?

9 A. There was a third man involved. I can't
10 remember the name. He told me that the man wasn't
11 really involved in the struggle, in the strangulation,
12 and in anything like that, but -- but he was observing
13 that.

14 Q. Okay. Did he ever describe the man?

15 A. The third party?

16 Q. Yes.

17 A. I can't remember. I know he did, but I can't
18 vaguely. I was so overwhelmed on the other things.

10:41A 19 Q. Did the defendant Steven Kaczmarek describe
20 the man he had killed?

21 A. Yes, he did.

22 Q. What age did he say he was?

23 A. Middle age between thirty-four, forty-two.
24 Little bit bigger than he was, and that's really about

1 it.

2 Q. Did he give him a race?

3 A. No.

4 Q. Okay. Did he indicate as he talked to you --
5 and maybe I'll ask. How long did he talk to you for?
6 How many minutes did this conversation cover?

7 A. Which conversation?

8 Q. Over on the cots.

9 A. Oh, it was several different times.

10 Q. All right. But maybe we'll make that clear.

11 A. Yeah. It was more than --

12 Q. How many times did Steven Kaczmarek talk to
13 you about the subject of him killing a man?

14 A. Between six to eight. Six to ten times would
15 be a fair assumption.

16 Q. And during what window of time, in other
17 words in the month of October, what day is it
18 covering?

19 A. Oh, okay. It would be the Twenty-first,
20 Twenty-second, Twenty-third of October.

10:42A 21 Q. Okay. During the course of those six to
22 eight conversations then I take it that's where these
23 details are coming from?

24 A. That's correct.

1 Q. All right. And who would prompt -- like
2 after the first conversation, who prompted the next
3 conversation?

4 A. I think it was mutual. During free time.
5 Free time is what you're out of cells and you're
6 allowed to wonder around and watch TV and make phone
7 calls. During those times we would say, hey, and
8 what's up.

9 And then we just start talking, and then we'd
10 get into the conversation about the murder again.
11 What if this happened. What if that happened, and so
12 forth.

13 Q. What were some of the what ifs that he would
14 ask you about?

15 A. I would ask him, did you make sure you
16 cleaned everything up? We were retracing his steps.
17 He says, no, we cleaned everything up. We put gloves
18 on. We wiped everything down. We threw everything
19 away in a trash can. I said, did you use the same
20 trash can than their's. No we got rid of it outside
21 of the place.

10:43A 22 I said, well how -- why would they
23 re-fingerprint you then? We kept on going on that
24 question. Because he was really concerned about that.

1 Q. Did he indicate to you, you said he told you
2 at some point that he wore rubber gloves?

3 A. Yes, latex gloves.

4 Q. Did he -- oh, he described them as latex?

5 A. He said latex at the time.

6 Q. Did he tell you where he found the latex
7 gloves?

8 A. They were in the place of residence, in the
9 apartment.

10 Q. Apparently you had a discussion about the
11 clean up of this place?

12 A. Yes. He told me he was very thorough. All
13 of them were very thorough.

14 Q. Take us through the thoroughness of that as
15 he described it to you.

16 A. Wiped the counters, picked up the bottles,
17 wiped everywhere they possibly could have, touched the
18 doorknob. The door there was some -- something
19 involved in of the bathroom. I can't remember. I
20 can't remember a long time ago. He said that -- I
21 can't remember what he said, but it was something to
22 do with the bathroom. But they basically cleaned up
23 the place really well, he said. And he didn't use the
24 trash can inside the residence.

1 Q. During the course of these six to eight
2 conversations was he consistent in his story?

3 A. Extremely.

4 Q. Was he consistent in the facts?

5 A. Yes.

6 Q. Did that send any message to you, the fact
7 that he was being consistent in the conversation?

8 A. He had killed someone that's what sent to me.

9 Q. Was there any doubt in your mind?

10 A. Not a doubt. Not a doubt. No doubt.

11 Q. As he expressed these facts to you, who was
12 it that had killed the man according to Steven
13 Kaczmarek?

14 A. Could you repeat that, please?

15 Q. During the course of these six to eight
16 conversations, who was it that had actually killed
17 this man?

18 A. Steven Kaczmarek.

19 Q. Was there any question in your mind?

20 A. No question at all.

21 Q. Was there any question in your mind about the
22 unidentified other person with Steven had done?

23 A. He always said the other person didn't really
24 have anything to do with it. He was just there.

1 Q. Was he -- did he express any happiness or
2 unhappiness with the fact that the other person was
3 just there and not participating?

10:45A 4 A. He didn't express really anything to that
5 mention.

6 Q. What was the extent of Alisha's involvement
7 according to the defendant's confession?

8 A. She was co-hoaxing him on. Kicking him. The
9 decedent. Yes. But as far as part of the
10 strangulation, she was not the physical person doing
11 that. But she was egging -- egging Mr. Kaczmarek on.

12 Q. Okay. Now, did you -- maybe I'll use your
13 term. Did you egg Steven Kaczmarek on to tell you
14 these things?

15 A. No.

16 Q. Did you want this information?

17 A. I didn't want it. It actually scared me.
18 And, and I didn't feel comfortable. Bare hands
19 killing, I just didn't feel comfortable.

20 Q. Okay. Now, you indicated that this was
21 during a period of time, I think you said the
22 Twenty-first, Twenty-second, Twenty-third; is that
23 right?

24 A. That's the best of my recollection, right.

1 I -- I had gave a voluntary interview on the
2 Twentieth, Monday of October.

10:46A 3 Q. To who?

4 A. To a Detective Mikolainis.

5 Q. And let me ask you, this information that he
6 told you, did you think it was true?

7 A. Yes. I wouldn't have made a phone call if I
8 didn't.

9 Q. If you thought it was true when he first told
10 you, why didn't you immediately pick up the phone?

11 A. I had. I was scared. I had to talk to my
12 girlfriend about it on the phone and ask her what I
13 should do. And if it was real -- I knew it was real.
14 I just -- I didn't know what to do. I've never been
15 approached with the situation my entire life.

16 You hear about people in jail all of a sudden
17 telling on another person and that person getting
18 killed, you know. I -- I wanted to make sure I was
19 doing the right thing. It's a serious matter.

20 Q. Okay. When you called the police, did they
21 come over and speak to you?

22 A. I had called the police on the Friday of the
23 Twenty-fifth. Actually I called the district attorney
24 office on the Twenty-fifth. Wait a minute. Let me

1 back up for a moment. The Friday -- Friday morning on
2 the Twenty-fifth I had called the district attorney
3 office. And they came and saw me that night about at
4 9:00 o'clock.

10:47A 5 Q. Who came and saw you that night?

6 A. Two detectives I can't remember their names.

7 Q. On the Twenty-fifth?

8 A. Yes.

9 Q. All right. Take me from there?

10 A. Gave my statement. It was about forty-five
11 minutes. Monday. On the Twenty-eighth in the
12 afternoon I was called out of the module again, and
13 that's where I met Detective Mikolainis.

14 Q. Okay. So on the Twenty-fifth you gave a
15 statement to I take it some general assignment
16 detectives?

17 A. They wanted to see if what I -- what I had
18 was for real.

19 Q. Okay. And the next thing you know it gets
20 referred to the homicide detectives?

21 A. And here we are.

22 Q. And Mikolainis is there?

23 A. Yes.

24 Q. You gave a taped statement to Mikolainis?

1 A. That's correct.

2 Q. Now prior to either talking to the general
3 assignment detective on the Twenty-fifth or the
4 homicide detective on the Twenty-eighth did the
5 detectives share with you any facts about this case?

6 A. None at all.

7 Q. Did --

8 A. They wouldn't tell me anything.

9 Q. Did they show you any photographs?

10 A. On the Twenty-eighth they showed me a
11 photograph, photographs.

12 Q. Of what?

13 A. Photographs.

14 Q. Okay. Of what?

10:48A 15 A. Of male individuals, six of them.

16 Q. I'm get to that too. So I had a bad
17 question. Let me ask it again.

18 A. Okay.

19 Q. Did they show you any photographs of the
20 crime scene itself?

21 A. No. I still don't even -- no.

22 Q. Okay. Where did you get the information that
23 you were now providing to the detectives? Who did you
24 get that information from?

1 A. Steven Kaczmarek.

2 Q. Now, have you ever met a man by the name of
3 Edd Pryor?

4 A. Yes.

5 Q. That's you. I'm sorry.

6 A. I hope so.

7 Q. I'll make plenty more of those today I'm
8 sure. How about Torrence Lewis?

9 A. Torrence Lewis.

10 Q. Do you know a Torrence Lewis?

11 A. I might know him by another name. I believe
12 I -- was he -- I don't know a Torrence Lewis, but I
13 might know his face.

10:49A 14 Q. Okay. Did you ever speak to Torrence Lewis
15 about the facts of this murder?

16 A. Now I know who Torrence Lewis is now. Yes, I
17 do.

18 Q. Okay. How did that conversation come about?

19 A. I didn't actually -- could I retract that. I
20 didn't personally talk to him about. Mr. Kaczmarek
21 talked to him about, and then I heard through the
22 grapevine that...

23 MR. WOMMER: Objection, your Honor, hearsay.

24 THE COURT: Sustained.

1 THE WITNESS: Okay.

2 MR. GUYMON: Don't --

3 BY MR. GUYMON:

4 Q. I want to know if you personally spoke to
5 Torrence Lewis?

6 A. No.

7 Q. Did Torrence Lewis ever speak to you?

8 A. I had -- actually I had one conversation with
9 Torrence, and the only conversation I had with him was
10 about this murder was, can you believe what he did?
11 And he's telling everybody, so...

12 Q. That was your comment to Torrence?

13 A. Torrence's comment to me.

14 MR. WOMMER: Objection, your Honor, hearsay
15 again.

16 THE COURT: Strike it.

17 BY MR. GUYMON:

18 Q. When you spoke to the detectives, did you ask
19 for any benefit for your information?

20 A. Nuthin.

21 Q. Have you received any benefit for your
22 information?

10:50A 23 A. Not at all.

24 Q. Have you benefited on your statutory sexual

1 seduction case?

2 A. I'm still on probation still doing my terms
3 and conditions.

4 Q. Have you asked for any benefit from anyone?

5 A. No, I haven't.

6 Q. Do you expect any benefit?

7 A. No.

8 Q. You had mentioned the only photographs you
9 were shown by detectives were six individuals; is that
10 correct?

11 A. I believe it was six.

12 Q. Showing you what has been admitted as State's
13 Exhibit Seventy-four, do you recognize that particular
14 exhibit?

15 A. This was the six photos that I was shown.

16 Q. And were you asked to identify anyone?

17 A. Yes, I was.

18 Q. When you were shown the photographs, did the
19 police in any way suggest who to pick out?

20 A. They opened up a folder. This was behind
21 some plastic, and they asked me to pick out the person
22 that I had had this conversation with it. That all
23 this information came from.

24 Q. And did they suggest who to point to?

10:51A 1 A. They just opened up the folder.

2 Q. And who did you pick out?

3 A. Number two.

4 Q. And can you tell me who is in number?

5 A. Steven Kaczmarek.

6 MR. GUYMON: Judge, I'd ask to publish it.

7 BY MR. GUYMON:

8 Q. How certain are you that the man that sits in
9 court today is the man that told you that he killed
10 another man with his own bare hand?

11 A. The most certainest you could ever be, one
12 hundred percent.

13 Q. How certain are you that the man that sits
14 here is the man that robbed this individual?

15 A. 100 percent.

16 Q. Did he indicate to you he said he tore --

17 MR. WOMMER: Objection, your Honor. That
18 calls for supposition on the part of the witness. The
19 witness can testify as to what Mr. Kaczmarek told him.

20 THE COURT: I agree.

21 MR. WOMMER: But he can't evaluate the
22 credibility.

23 THE COURT: I understand, and I agree. The
24 jury is to disregard that.

1 MR. GUYMON: Judge, we'll pass the witness.

2 THE COURT: You may cross.

3

4 CROSS-EXAMINATION

5 BY MR. DENUE:

6 Q. Edd, can I call you Edd?

10:52A 7 A. Sure.

8 Q. Edd, do you remember being interviewed by
9 Detective Mikolainis?

10 A. Yes, I do.

11 Q. Do you remember that -- was that
12 approximately in October Twenty-eighth?

13 A. That's correct.

14 Q. when you were interviewed by Detective
15 Mikolainis, did you tell him everything on that date
16 that you just testified to?

17 A. Not everything.

18 Q. Ninety-nine percent of it?

19 A. Ninety-nine percent of it.

20 Q. So some of the things you said today were not
21 given in your statement to Detective Mikolainis; is
22 that correct?

23 A. Ninety-nine point nine percent of it was.

24 Q. But the part about certain statements

1 Mr. Kaczmarek made, like he was sorry that he ruined
2 Alisha's life, you never said that at that time. That
3 was just made up today, correct?

4 A. It's not made up today.

5 Q. But it was just said today. It wasn't said
6 originally, right?

7 A. I believe I said that in preliminary. I'm
8 not -- I have to look.

9 Q. But that was after your initial statement to
10 Detective Mikolainis, correct, of the preliminary
11 hearing?

12 A. That occurred after. When Officer, Detective
13 Mikolainis and I interviewed me, Alisha wasn't really
14 the subject of the matter.

10:53A 15 Q. You didn't discuss Alisha when you talked to
16 Detective Mikolainis?

17 A. Very vaguely. He wasn't asking -- I answered
18 the questions he asked, and that was --

19 Q. That's it? You didn't volunteer anything so
20 he knew about all this before he spoke to you?

21 A. Excuse me.

22 Q. Detective Mikolainis knew all the facts and
23 circumstances surrounding this case before he spoke to
24 you, then correct?

1 A. I wouldn't believe he would.

2 Q. Well, you said you were just answered
3 questions he asked, you didn't voluntary anything?

4 A. I told -- he had asked me to tell him a story
5 that what I heard from Mr. Kaczmarek.

6 Q. Okay.

7 A. Okay.

8 Q. But you didn't tell Detective Mikolainis at
9 your first interview with him that Steven said he was
10 sorry he ruined Alisha's life, that you didn't say?

11 A. That I can't remember.

12 Q. Well --

13 A. I'm not making is --

14 THE COURT: Wait, wait. One at a time.

15 MR. DENUE: I'll move along, Judge.

16 THE COURT: Okay, go ahead.

17 BY MR. DENUE:

18 Q. And at that time you gave the state -- well,
19 let me ask you this. When you talked to Steven, he
20 told you his girlfriend was fifteen, correct?

10:55A 21 A. That's right.

22 Q. And he told you she had been propositioned by
23 an elderly gentleman, correct?

24 A. No.

1 Q. She didn't say that?

2 A. She propositioned the gentleman.

3 Q. She did, really.

4 MR. DENUE: The Court's indulgence, your
5 Honor.

6 MR. DENUE: May I approach the witness,
7 Judge?

8 THE COURT: You may.

9 BY MR. DENUE:

10 Q. Edd, I'm going to show you just a portion of
11 your statement. It's on page five of Edd Pryor's
12 statement to Detective Mikolainis. And I'm drawing
13 your attention to the first question where it says --
14 and I assume that's Detective Mikolainis asking you,
15 what did he tell you then? Can you -- can you read
16 the answer you gave to Detective Mikolainis?

17 A. Out loud?

18 Q. Yeah, please.

19 A. He explained to me that, um, his girlfriend
20 that was fifteen was propositioned by a guy.

10:56A 21 Q. Was propositioned by a guy. That's your
22 statement?

23 A. Yes, it is.

24 Q. Right so that's different than what you just

1 said that she propositioned a guy?

2 A. Yes. It was a while ago.

3 Q. It's different, right. It's different
4 though; is the correct. Is that a yes?

5 A. Yes.

6 Q. So there's no doubt now that your
7 recollection has been refreshed that she, according to
8 Steven, was propositioned by another man.

9 A. If you read further down --

10 Q. Can you --

11 A. -- in the interview.

12 Q. Let's read further down.

13 THE COURT: Wait, wait. Let's explain.

14 BY MR. DENUE:

15 Q. Do you want to read your statement?

16 THE COURT: Counsel.

17 MR. DENUE: Sorry, Judge.

18 THE COURT: Let me explain. Cross
19 examination generally calls for yes or no answer
20 because they can ask leading questions.

21 THE WITNESS: Okay.

22 THE COURT: And please wait for him to finish
23 his questions before you answer because otherwise my
24 court reporter can't get you both down at the same

1 time.

2 THE WITNESS: Okay. I apologize.

3 THE COURT: Go ahead.

4 BY MR. DENUE:

5 Q. Let me ask you, Edd, are you suggesting that
6 later on somewhere in your statement as to Detective
7 Mikolainis you said that Alisha propositioned the
8 gentleman?

9 A. Could you repeat that?

10:57A 10 Q. Well, are you suggesting that later on in
11 your statement to Detective Mikolainis that Alisha
12 propositioned, according to Steven, the elderly
13 gentleman?

14 A. Not in those words, but...

15 Q. Okay. So the answer is no?

16 MR. GUYMON: It's been asked and answered.

17 MR. DENUE: Well, I'm trying to get him to
18 answer. That's the problem.

19 THE COURT: Go ahead.

20 BY MR. DENUE:

21 Q. You know, Edd, I'm really not trying to fence
22 with you.

23 THE COURT: One at a time.

24 BY MR. DENUE:

1 Q. I'm just trying to get you to at least stick
2 to one story. That's all I'm trying to do today.
3 It's -- I'm trying not to fence with you.

4 MR. GUYMON: Judge, I'm going to object to
5 his counseling the witness. If he'll ask the
6 question.

7 MR. DENUE: I'll move on.

8 THE COURT: You'll move on.

9 BY MR. DENUE:

10 Q. Okay. Edd, Steven told you that he and
11 Alisha got \$480 in cash, correct?

12 A. That's right.

13 Q. \$480, was that the sum?

14 A. That's what he had told me.

15 Q. And you testified when Mr. Guymon asked you
16 questions about when Steven relayed this to you during
17 the several conversations you had, you pondered about
18 what to do; is that correct?

10:58A 19 A. I thought about it.

20 Q. You thought about that. What you thought
21 about what to do because you wanted to make sure you
22 did the right thing; is that right?

23 A. I wanted to make. It's a decision that I
24 needed to make, and I needed to talk to my better

1 half, my girlfriend, so...

2 Q. But the word you used you wanted to do the
3 right thing, right?

4 A. Yes.

5 Q. That's a kind of guy you are, isn't it, Edd.
6 You like to do the right thing, don't you?

7 A. Try to.

8 Q. But you don't always succeed, do you?

9 A. I try to. I'm just a human being like
10 everybody else.

11 Q. Right. And you don't always do the right
12 thing though, correct, isn't that true?

13 A. I'm just a human being like everybody else.

14 Q. Okay. How many prior felonies do you have,
15 Edd?

16 A. Prior felonies?

17 Q. Um-hum.

18 A. Didn't we go over that?

19 Q. Do you mind going it over again? Is it
20 something you rather avoid talking about?

21 A. No, I don't mind. I have two convictions:
22 Telecommunication harassment, class six felonies.
23 It's the lowest felony you get. Equivalent to a gross
24 misdemeanor here.

10:59A 1 Q. So it's no big deal harassing your
2 girlfriend?

3 A. I learned and never did it again.

4 Q. But can you answer the question. You said
5 it's no big deal. You don't consider harassment a big
6 deal?

7 A. It's a big deal. That's why I turned myself
8 in. Surrendered myself. I felt wrong I did that.

9 Q. Did you surrender yourself when you sexually
10 seduced a fourteen year old girl? Did you turn
11 yourself in on that?

12 MR. GUYMON: Objection, relevance, Judge.
13 He's entitled to impeach him with the nature and the
14 date of the offense.

15 MR. DENUE: That's what I just did it. A
16 statutory sexual seduction, you turned yourself in?

17 A. Um.

18 Q. Yes or no?

19 A. I didn't run.

20 Q. So the answer is no.

21 And she was fourteen years old and mentally
22 challenged; isn't that correct?

23 MR. GUYMON: Judge, I'm going to object and
24 ask to approach.

1 THE COURT: Sustained, sustained.

2 BY MR. DENUE:

3 Q. Do you want to --

4 THE COURT: That's irrelevant.

5 BY MR. DENUE:

6 Q. And let me ask you this. In your statement
7 to Detective Mikolainis, you told him that Steven was
8 a real scam, didn't you?

11:00A 9 A. If it's down there, I did.

10 Q. So you don't have an independent recollection
11 of saying that?

12 A. Can you repeat the word?

13 Q. You told -- you told Detective Mikolainis,
14 Steven Kaczmarek was just a real scam. That's the
15 word you use, a real scam? Is that correct?

16 A. For the conversation -- from the
17 conversations that I had with Steven --

18 Q. Well.

19 THE COURT: Wait a minute. Wait a minute
20 just a minute. He's asking you a leading question
21 he's asking, you did you say that, yes or no?

22 THE WITNESS: I would have to look at the --

23 BY MR. DENUE:

24 Q. I'll --

1 A. I don't want to say anything wrong again.

2 THE COURT: That's fine. That's why he can
3 refresh your recollection and get a copy of the
4 transcript.

5 THE WITNESS: Okay.

6 BY MR. DENUE:

7 Q. And I'm going to page 7 of Edd's statement to
8 Detective Mikolainis. And it will be the second
9 answer given at the top of the page. And I'm going to
10 ask you the question Detective Mikolainis asked you.
11 Okay. Did he say anything about taking anything? And
12 can you read your answer and stopping here at the word
13 scam?

11:01A 14 A. \$480 cash he got. Um, as far as any property
15 or anything he didn't say anything. I mean, I'm
16 pretty sure he would have, you know, he's the type of,
17 you know, guy that I've been talking to him, and he's
18 a real scam.

19 Q. So you did say to Detective Mikolainis, I
20 thought Steven Kaczmarek is just a real scam?

21 A. Yes.

22 Q. Correct?

23 A. I wrote that, or I said that.

24 Q. Were you telling the truth when you said it?

1 A. Yes.

2 Q. So you did think he was a scam?

3 A. From the conversations I had with him, yes.

4 Q. And scam meaning you thought he was full of
5 it, so to speak?

6 A. No. Scam, thinking he was really scandalous.

7 Q. Scandalous?

8 A. Scandalous, thievery.

9 Q. Okay. But you did use the word scam,
10 correct?

11 A. My -- yes.

12 MR. DENUE: No other questions, Judge.

13 MR. GUYMON: Nothing else, Judge.

14 THE COURT: Thank you. You may step down.
15 Call your next witness.

16 MR. GUYMON: Judge, at this time there are
17 two -- actually, let me call one other witness, and
18 then we'll have two stipulations.

19 Abe Cruz.

20 Whereupon,

21 ABRAN CRUZ

22 having been first duly sworn to tell the
23 truth, the whole truth and nothing but
24 the truth, testified as follows:

1 THE COURT CLERK: Would you state your full
2 name and spell your last name for the record, please?

11:02A 3 THE WITNESS: Abran, A-b-r-a-n, Cruz,
4 C-r-u-z.

5
6 DIRECT EXAMINATION

7 BY MR. GUYMON:

8 Q. And, Mr. Cruz, directing your attention to
9 October of 2002 can you tell me where you're employed?

10 A. Gold and Silver Pawn Shop.

11 Q. And what was your responsibility at the Gold
12 and Silver Pawn Shop?

13 A. I was the buyer, seller, pawn anything that
14 came up at night.

15 Q. And did you work the night shift or the day
16 shift?

17 A. I worked three nights, one day.

18 Q. Okay. So you work four days a week?

19 A. Yes, sir.

20 Q. And three nights and one day shift?

21 A. Yes, sir.

22 Q. When you worked the night shift, would you
23 work alone or with someone else?

24 A. By myself.

1 Q. And just where is the Gold and Silver Pawn
2 Shop located?

3 A. 713 South Las Vegas Boulevard.

4 Q. Is that within walking distance from, say,
5 the Fremont Street Experience?

6 A. Yes, sir.

11:03A 7 Q. How long, if you could estimate for me, would
8 it take someone to walk from the Fremont Street
9 Experience, say Fremont and Las Vegas down to the Gold
10 Silver Pawn Shop?

11 A. Probably, like, fifteen minutes, if that.

12 Q. And tell me was traffic, the amount of volume
13 or customers that would come through on a night shift
14 was it excessive or was it slow at the nights?

15 A. In spurts. It comes in spurts, you know.
16 You'd have quite a few at one time, and then -- and
17 then none for a little while.

18 Q. I had previously asked you about where you
19 worked in October.

20 I'm sorry, Counsel.

21 Can you tell me if you're also worked at the
22 Gold and Silver Pawn Shop in September?

23 A. Yes, I was.

24 Q. And in total how many months did you work at

1 the Gold and Silver Pawn Shop?

2 A. Just about three years.

3 Q. All right. Directing your attention to
4 October -- excuse me, September 25th of 2002, were you
5 working a night shift that evening?

6 A. Yes, sir.

7 Q. And did you have the responsibilities to
8 either sell or buy things?

11:04A 9 A. Yes, sir.

10 Q. Now, is the store open during the night time
11 for customers to walk into the store?

12 A. Just like three foot by five foot window.

13 Q. So if a customer wants to either purchase
14 something or sell something to you, they do so through
15 a three by five foot window?

16 A. Yes, sir.

17 Q. I take it by your comments that the front
18 door would be locked then?

19 A. Yes, sir.

20 Q. And where would you be seated in relationship
21 to that three by five window?

22 A. Right on the other side by the counter and
23 the desk.

24 Q. Showing you what has been previously been

1 park marked as State's Proposed Exhibit Five or
2 Fifty-five A, do you have recognize this particular
3 document?

4 A. Yes, sir.

5 Q. And just what is this?

6 A. These are buy tickets from the pawn shop
7 stating that I bought these items here.

8 Q. Okay. Are you the individual that generated
9 this particular ticket?

10 A. Yes, sir.

11 Q. Does it bear your employee number?

12 A. Yes, sir. Three two one right here.

13 Q. Also the transaction number?

14 A. That's here.

15 Q. Okay. So the transaction number would have
16 been 415268 and 415269?

11:05A 17 A. Yes, sir.

18 MR. GUYMON: I'd move for the admission of
19 State's Proposed Exhibit Fifty-five A.

20 MR. WOMMER: No objection.

21 THE COURT: Be admitted.

22 BY MR. GUYMON:

23 Q. I'd like to publish that. And then I want to
24 talk to you a little bit about the information that's

1 contained on this. Start at a top. Are you able to
2 see that from where you're at?

3 A. Yeah.

4 Q. All right. There is a portion here that has
5 a number; is that correct?

6 A. Yes.

7 Q. Who's number is that?

8 A. That's my employee number.

9 Q. And who places that number inside of this
10 document?

11 A. I put it in at the end of the ticket before
12 it prints out.

13 Q. There's a name that appears on this
14 particular ticket. It says Steven Kaczmarek. Who
15 would have placed that particular information in
16 there?

17 A. I type everything in.

18 Q. And how would you have gotten the name Steven
19 Kaczmarek?

20 A. From an I.D. State I.D.

21 Q. Okay. So this transaction appears to be
22 dated September Twenty-fifth, 2002, or 02. At 2223
23 hours, ten twenty-three?

11:07A 24 A. Yes, sir.

1 Q. Is that the date of this transaction?

2 A. Yes, sir.

3 Q. Tell me what happened in this transaction?

4 A. I had a gentleman come up to the window,
5 wanted to sell a couple of objects. I offered him so
6 much money. He agreed upon it. So I asked for I.D.
7 after receiving the I.D., I typed up the ticket, had
8 him sign them and paid him. And that was it.

9 Q. All right. You mentioned a gentleman comes
10 up to the window there, the three by five window I
11 take it?

12 A. Yes, sir.

13 Q. Does the gentleman have I.D.?

14 A. He has to. I won't take anything without
15 I.D.

16 Q. All right. So this gentleman that came to
17 the window presented an I.D.?

18 A. Yes, sir.

19 Q. In whose name?

20 A. In the name that's on the ticket.

21 Q. Now do you require the individual to have a
22 photograph on the I.D.?

23 A. Yes, sir.

24 Q. Or photo I.D.?

1 A. Yes, it's got to be a legitimate state I.D.

2 Q. Did you examine the identification to make
3 sure that the same picture that was on the
4 identification was the person that's now standing in
5 front of you?

6 A. Yes, sir.

7 Q. And did the identifications match?

8 A. Yes, sir.

9 Q. In this case it was Steven Kaczmarek then,
10 was it not?

11:08A 11 A. Yes, sir.

12 Q. It indicates that he comes from Ohio. Where
13 would you have gotten that information?

14 A. Off the driver's license.

15 Q. It listed him as being approximately five ten
16 171 pounds?

17 A. Yes, sir.

18 Q. Where would that have come from?

19 A. Driver's license.

20 Q. Blue eyes, a male; is that correct?

21 A. Yes, sir.

22 Q. And it has a particular item that was pawned
23 that evening. What item is that?

24 A. That looks like the yellow gold bracelet,

1 fourteen karat, ten grams -- thirteen grams.

2 Q. Did you weigh the item --

3 A. Yes, sir.

4 Q. -- to know?

5 A. Weigh them on a digital scale.

6 Q. And how much did you give him for that
7 particular item?

8 A. \$30.

9 Q. All right. There's a signature here. Can
10 you tell me who signed that particular document?

11 A. The gentleman who sold them to me with the
12 I.D.

13 Q. Now when the gentleman came to the window,
14 the three by five window, was he with anyone else?

15 A. Not that I particular thirty noticed.

16 Q. Okay. If a individual was standing off to
17 the side of the window, would you be able to notice
18 them?

11:09A 19 A. No.

20 Q. And why?

21 A. Because as the window sits, you can only see
22 straight out toward Las Vegas Boulevard. And it's got
23 like little enclosure here where there's a door to
24 shove larger items, VCR, T.V., whatever, and then on

1 the other side just a block wall, you can't see around
2 the corner.

3 Q. Tell me how common is it for someone to
4 present a bracelet for you to purchase?

5 A. Very all night.

6 Q. I realize you don't have a scale with you,
7 but can you -- this particular bracelet, would you
8 describe it as fourteen karat gold?

9 A. Yes, sir.

10 Q. And what weight would you give it? Does it
11 match the weight that you gave it that night?

12 A. Thirteen, thirteen grams.

13 Q. Okay. If we had testimony that -- well, let
14 me ask you this. Were you at work the day the
15 detective came and actually retrieved this item?

16 A. They picked this up the day before because it
17 was my day off. I was in the next day when they came
18 in.

19 Q. All right. Is this in fact the item that was
20 pawned that night to you?

11:10A 21 A. And the ticket, yes, sir.

22 Q. All right. Now then, you indicated that
23 there was also one additional transaction that
24 occurred that night; is that correct?

1 A. Yes, a VCR.

2 Q. Same individual pawned it; is that correct?

3 A. Yes, sir.

4 Q. And it looked like the time is 2225, two
5 minutes later?

6 A. Yes, sir.

7 Q. It takes just a couple minutes to type up the
8 ticket.

9 A. Okay.

10 Q. And again you were the person that typed up
11 that ticket?

12 A. Yes, sir.

13 Q. What item was pawned?

14 A. It was a VCR, Sharp VCR. I can't really see
15 it here.

16 Q. Okay. And how much did you get for that
17 item?

18 A. \$10.

19 Q. Again, has a signature -- can you tell me who
20 signed it?

21 A. Same gentleman that gave me the I.D. It has
22 to be the same person.

23 Q. Okay. And would that have concluded your
24 dealings with this individual that night?

1 A. After I paid him, yes.

2 Q. Okay. You indicated that the police came
3 sometime later and actually picked up those items?

11:11A 4 A. Yes. They came in, like, the day before I
5 came back to work.

6 Q. Directing your attention to October 24th of
7 2002. Is that the day you are now at work and spoke
8 to the police?

9 A. Yes, sir.

10 Q. And do you recall them showing you a
11 photograph lineup and asking you if you could actually
12 identify this individual, Steven Kaczmarek, who had
13 been involved in these transaction?

14 A. Yes, I do remember that day.

15 Q. Did you -- was this a particular memorable
16 transaction for you?

17 A. Not really. I deal with so many people a
18 night. But, you know, a lot of times, you know, you
19 just -- the faces stick to you.

20 Q. Showing you what was marked as State's
21 Proposed Exhibit Seventy-four. Is this the six
22 photographs that the detectives showed you?

23 A. Yes, sir.

24 Q. Did they suggest to you in any way who you

1 should pick out?

2 A. No, sir.

3 Q. Were you able to pick out someone?

4 A. Yes, sir.

5 Q. And who did you pick out?

6 A. Number two.

7 MR. GUYMON: If I could publish that, Judge.

8 And is the person in number two the same person that's
9 in the courtroom today?

11:12A 10 A. Yes, sir.

11 Q. And where is he seated in court today?

12 A. Directly in front of me.

13 MR. GUYMON: Pass the witness, your Honor.

14 MR. DENUE: No questions, Judge.

15 THE COURT: Thank you. You may step down.

16 Call your next witness.

17 MR. GUYMON: Judge, there are a couple of
18 stipulations in the interest of time that counsel has
19 entered into with the prosecution. The first would be
20 that -- and I move to admit State's Proposed Exhibit
21 Seventy-six as well as Seventy-five A and B.

22 MR. WOMMER: Those are all correct.

23 THE COURT: Okay. Thank you.

24 MR. WOMMER: Sure.

1 MR. GUYMON: And for the record, Judge, so
2 that the jury understands State's Exhibit seventy-five
3 if I could published it, Judge.

4 THE COURT: Yes.

5 MR. GUYMON: Is an affidavit from Jimmy Smith
6 who is a document examiner with the Las Vegas
7 Metropolitan Police Department. Contained within
8 Exhibit Seventy-six, Jimmy Smith indicated that he
9 examined the known signature of Steven Kaczmarek as
10 well as the signatures that were on the pawn ticket
11 Fifty-five A.

12 And his conclusion after examining those
13 particular items are found right here. I will let the
14 conclusions speak for itself. The jury can read that.
15 I will zoom in on it if I could please, Judge.

16 Under results of the examination on page one,
17 and I'll go to page two, it reads: Based on the known
18 writing submitted, it is highly probably that Steven
19 Kaczmarek signed his name on the bottom right of the
20 pawn ticket listed in questioned, item one.

11:13A 21 There are similarities between the known Steven
22 Kaczmarek signatures and the Steven Kaczmarek
23 signatures on the bottom of the questioned item two
24 and on the bottom left of questioned item one. The

1 reason for this limited conclusion is the poor
2 condition of the questioned signatures.

3 The second page indicates that he then sealed
4 the evidence and returned it.

5 THE COURT CLERK: So that will be
6 Seventy-five, Seventy-six, Seventy-five A and
7 Seventy-five B will be submitted?

8 THE COURT: Yes.

9 MR. GUYMON: And, Judge, the summary of
10 Seventy-five A and B is that Joel Geller, a latent
11 print examiner who is qualified as an expert in the
12 past with the Las Vegas Metropolitan Police
13 Department, examined all of the fingerprints that were
14 listed by the crime scene analyst in this case which
15 we have had testimony of, and that he did not find
16 Steven Kaczmarek's fingerprints there at the scene at
17 813 Ogden, Apartment Number 25.

11:15A 18 THE COURT: All right. Anything else?

19 MR. GUYMON: Judge, with that the state would
20 rest with this understanding. If at a break we could
21 look at all the evidence and make sure we have
22 admitted each and every piece.

23 THE COURT: Without objection that will be
24 the order.

1 Counsel, are you ready to proceed?

2 MR. WOMMER: We are. I have something out of
3 the presence, your Honor.

4 THE COURT: Okay. Then we have to take a
5 break. How long will this take, Counsel?

6 MR. WOMMER: I'd say five, ten, minutes at
7 the most.

8 THE COURT: All right. Come back in ten
9 minutes. Now, before you leave --

10 Counsel, approach the bench, please.

11 (Whereupon, discussion was had
12 at bench, not reported.)

11:17A 13 THE COURT: All right. In the interest of
14 timing we're going to just go right on ahead.
15 Counsel.

16 MR. WOMMER: Your Honor, our first witness
17 would be Mr. Kaczmarek.

18 THE COURT: Thank you.

19 Whereupon,

20 STEVEN KACZMAREK

21 having been first duly sworn to tell the
22 truth, the whole truth and nothing but
23 the truth, testified as follows:

24 THE COURT CLERK: Would you state your full

1 name and spell your last name for the record, please?

2 THE WITNESS: Right now? My name is Steven
3 Kaczmarek, K-a-c-z-m-a-r-e-k.

4

5 DIRECT EXAMINATION

6 BY MR. WOMMER:

7 Q. Mr. Kaczmarek, you can adjust that microphone
8 to where it's comfortable. Try to keep your voice up
9 and speak directly in the microphone. All right?

11:18A 10 A. Okay. All right.

11 Q. Mr. Kaczmarek, you're the defendant in this
12 case?

13 A. Yes, sir.

14 Q. And directing your attention back to the fall
15 of 2002, were you living in Ohio?

16 A. Yes, sir.

17 Q. Where in Ohio were you living?

18 A. Hillsborrow, Ohio.

19 Q. Did you have a girlfriend in Ohio?

20 A. Yes, sir.

21 Q. What was her name?

22 A. Alisha Burns.

23 MR. WOMMER: May I approach the witness, your
24 Honor?

1 THE COURT: You may.

2 BY MR. WOMMER:

3 Q. Showing you what's been marked and admitted
4 as State's Exhibit Number Sixty-eight, tell me if
5 you're familiar with the person depicted in that
6 picture?

7 A. That's Alisha Burns.

8 Q. Now, when you were living in Ohio, did you
9 and Alisha decide that you were going to leave Ohio
10 and come to Las Vegas?

11 A. Yes, sir.

12 Q. Why did you decide to come to Las Vegas?

13 A. Well, when I met Alisha she was -- you know,
14 we met, and she told me a lot about, you know,
15 herself, and, you know, I told her a lot about myself.
16 And, you know, we got along pretty good.

17 You know, and you know, I would -- she would
18 tell me, you know, about guys, you know, beating her
19 up and things like that. Just -- it's just -- we got
20 along really good, you know.

21 And one night she asked -- you know, she
22 asked me -- well, a conversation had struck up while
23 we were sitting in my car about, you know, where she
24 would want to go, if she would, you know, just ever

1 leave. And we was just talking.

2 But then the next day, you know, she started
3 talking about it more. And she told me about her, you
4 know, her foster mom leaving, you know, her car, her
5 keys in her car and things like that. And she
6 suggested that, you know, we take the car and stuff
7 like that.

8 Q. What made you decide to come to Las Vegas?

9 A. This is where she pretty much wanted to come
10 because we just figured we'd come out here and then,
11 you know, get married. And just be together, you
12 know, pretty much.

13 Q. So you drove from Ohio to Las Vegas?

14 A. Yes, sir.

15 Q. When did you do that?

16 A. It had to be, like, the beginning of August
17 maybe.

18 Q. Of 2002?

19 A. Yes.

20 Q. Did you have a lot of money on you then?

21 A. Well we had -- we had some money because her
22 foster -- Alisha's foster mom had, you know, money in
23 her purse and stuff.

24 Q. How much money did you have?

1 A. When we got here?

11:21A 2 Q. Yes.

3 A. Maybe \$150, something like that.

4 Q. All right. You had \$150 when you got to Las
5 Vegas. Did you find a job here?

6 A. No, sir.

7 Q. Did Alisha find a job here?

8 A. No, sir.

9 Q. All right. So when -- where did you stay?
10 What type of places did you live in when you got to
11 Las Vegas with this \$150?

12 A. Well, we lived in the motels.

13 Q. How much were they costing a night to stay in
14 these motels?

15 A. Well, at first it was like \$50, between \$45
16 and \$55. And, you know, we would overhear, you know,
17 people, you know, saying pretty much just telling me
18 and Alisha that there are cheaper hotels. So...

19 Q. Did you find some cheaper places to stay?

11:22A 20 A. Yes, sir.

21 Q. What did they cost?

22 A. Like \$32. Motel Six on Tropicana cost \$32.

23 Q. Now being you -- you didn't have a job so you
24 didn't have any income coming in. She didn't have a

1 job. Did you have any credit cards or anything like
2 that?

3 A. No, sir.

4 Q. Well, did there come a time when you decided
5 to start begging on the streets?

6 A. Yes, sir.

7 Q. And did you try begging?

8 A. I tried. But...

9 Q. Were you very good at it?

10 A. Not really.

11 Q. Did Alisha try?

12 A. Yes. She -- she tried.

13 Q. Was she better at it than you?

14 A. Yeah.

15 Q. Well --

16 A. We found it more --

17 Q. On a good day how much money could she make
18 begging on the streets?

19 A. Between \$35 \$50 something --

20 Q. How about on a bad day? How much did she
21 bring in?

11:23A 22 A. \$10 \$5, I don't know.

23 Q. Now, did you use this money that she got
24 begging to pay for a motel and buy food?

1 A. When we had enough. We would worry about
2 sleeping, you know, somewhere before we worried about
3 anything else.

4 Q. Was there a lot of times when you didn't have
5 money to pay for a hotel?

6 A. Yeah. Extremely a lot of times.

7 Q. What would you do on those nights?

8 A. We would -- we would go to Fremont Street and
9 sit at the tables.

10 Q. The park benches there, picnic tables?

11 A. Yes. By the Neapolitan thing I think it is.
12 And, and I would let her rest her head on my shoulder,
13 you know, so she could get, you know, some sleep. And
14 when the bikes -- you know, the bike, the security
15 guards rode by, I would wake her up because they
16 would -- they, you know, they told you that you
17 couldn't sleep, you know, there.

11:24A 18 Q. On the picnic tables?

19 A. Yeah. Or while you were sitting there at the
20 picnic tables.

21 Q. Now when she would go out begging, would you
22 lurk around where she was begging?

23 A. Yes. I would stay behind her and make sure
24 she was all right.

1 Q. All right. Directing your attention back to
2 September of 2002. Did there come a time when you met
3 someone you later knew as Pedro Villareal?

4 A. Yes.

5 Q. How would that happen?

6 A. Me and Alisha had just came back. You know,
7 we were on the strip. And we didn't have enough
8 money, you know, to get a motel.

9 Q. How much did you have?

10 A. We only -- at that time we only had, like,
11 \$5, \$6, five or six dollars at that time.

12 Q. Okay.

11:25A 13 A. So we were, we were sitting, you know, at the
14 tables. And Alisha, she said that she's going to go
15 ask people for money. And I was like, all right. So
16 I started following her, following her like I always
17 do follow her.

18 And the first -- the first street that goes
19 through Fremont, I don't know what the first red light
20 is, and she stopped there. And she came back. She
21 told me, she said, this guy wants to buy me something
22 to eat.

23 And I saw the guy. And I said, yeah, go
24 ahead. Because, you know, we didn't have too much

1 money to eat, you know.

2 Q. This guy turned out to be Pedro Villareal?

3 A. Yes, sir.

4 Q. Okay. So go ahead.

5 A. And she started to go. You know, I said,
6 okay. She started to go, and we went to McDonald's.

7 Q. McDonald's is right up the street here?

11:26A 8 A. Over by Fitzgerald's.

9 Q. Okay.

10 A. In Fitzgerald's. And I walked, you know.
11 And he bought her a pop, a soda. And...

12 Q. Where are you at this time?

13 A. Oh, I was, like, right -- there's an opening
14 on, by Fitzgerald's where the McDonald's is because
15 the McDonald's is in the corner. I was standing by
16 the slot machines, you know, so -- because I didn't --
17 I didn't want -- I didn't want him to feel as if I was
18 following them or anything.

19 Q. But you were still in the area watching?

20 A. Yes, sir.

21 Q. Go ahead.

22 A. Well, he went and he bought her a soda, and
23 they sat at one table. I sat at another table.

24 Q. How far away?

1 A. Thirty-five, forty feet.

2 Q. Okay. What happened then?

3 A. Well, I couldn't hear the conversation or
4 anything. So -- well they got up, and they walked
5 out, and I walked out. You know. And Alisha or -- I
6 mean, Pedro, I assume, went -- went to the bathroom.

7 Well I was talking to Alisha out in front.
8 And she -- she was telling me, you know, about what
9 they were talking about and stuff.

11:28A 10 Q. What were they talking about?

11 A. About her being some type of prostitute or
12 something like 'at. I don't know. I don't know.
13 That's what they were talking about. I mean, I have a
14 hard time because I don't get into that type of stuff.

15 Q. Did Pedro offer her any money for sex?

16 A. He said -- he said that \$200. That's what
17 she told me that he had offered her to go back to his
18 room.

19 Q. Was she interested in having sex with him for
20 \$200?

21 A. Well, she came up with a different idea.

22 Q. What was her idea?

23 A. She wanted to try to rob the guy.

24 Q. What did you say when she proposed robbing

1 him?

2 A. Well, I said, yes.

3 Q. All right.

4 A. I said, okay. I said, okay.

5 Q. Pedro come back then?

6 A. Yes. He came back.

7 Q. What happened then?

8 A. She started talking to him again and things
9 like that. You know, and after a while she's, like,
10 okay. After she talked to him for, like, five or ten
11 minutes on the side -- I was just standing there
12 because they have a stage in between. And I was just
13 standing there. And I, I suppose she told him about
14 me too. So we started going, you know, with --

11:29A 15 Q. When you say "we" who are you talking about?

16 A. Me and Alisha.

17 Q. What about Pedro. Where is he?

18 A. He was with us.

19 Q. So the three of you start walking away?

20 A. Yeah. We started walking to his house.

21 Q. Well, did he -- did Pedro talk to you at this
22 time?

23 A. Yeah. He was -- he was talking to me about
24 some Beatles thing. Beatles CD or something like

1 that. I was like okay. And that was pretty much it.

2 Q. So it was agreed that you were going to watch
3 this Beatles C.D. at his place?

4 A. Yeah.

5 Q. That sounded like a good idea to you?

6 A. It sounded like a good idea to me, because I
7 didn't -- we didn't have any place to go, you know,
8 that nice.

9 Q. How did the idea of \$200 sound to you?

10 A. The money sounded good. But what he wanted
11 to give up the money for didn't sound too good to me.

12 Q. All right. So what happened next?

13 A. We went -- we went to his apartment.

11:30A 14 Q. That's the place at the Uptown?

15 A. Yeah. Yes, sir.

16 Q. Okay. What happened when you first arrived
17 there? Could you just walk into the place? Or do you
18 have to go through a gate?

19 A. No. He had to open it up, a gate.

20 Q. All right.

21 A. The key.

22 Q. All right. What -- now were you standing
23 near him when he's opening this gate up, are you? Or
24 standing near Alisha?

1 A. I was standing by Alisha.

2 Q. And are you two talking about anything then?

3 A. Yes.

4 Q. What are you talking about?

5 A. She asked me if that's what we were going to
6 do, rob the guy.

7 Q. What did you say?

8 A. I told her, yeah, if that's what you want to
9 do.

10 Q. Okay.

11 A. And she said, yeah, because we needed the
12 money. So I was like, okay. So pretty much, you
13 know, it was pretty much it. And on the way up the
14 stairs, she told me that as soon as she, you know,
15 jumped on the guy, that to, you know, try to help her,
16 you know, if the guy struggled any at all.

11:31A 17 Q. Okay.

18 A. And I was like, all right.

19 Q. So what happened when you got into his room?

20 A. We sat there for a few minutes. And we drank
21 a couple of beers.

22 Q. All right.

23 A. Alisha went to the bathroom, got up and went
24 to the bathroom somewhere. I think, I'm pretty sure

1 she went all the way in the bathroom. You know, I
2 wasn't really paying attention if she went all the way
3 in, but she went by the bathroom.

4 Well, the guy got up and he went over towards
5 the bathroom too. Well, I mean, just I -- it happened
6 so fast. It just kind of like --

7 Q. Explain it to me. What happened?

8 A. Well, I was sitting by the door, and he had
9 the Beatles thing in. And he got up. And all of a
10 sudden, Alisha just jumped on him. And he was trying,
11 you know, he wasn't falling all the way to the bed or
12 to the ground.

11:32A 13 Q. What was she doing to him?

14 A. Excuse me?

15 Q. What was she doing to him?

16 A. She just jumped on him.

17 Q. Was she punching him?

18 A. She was trying to force him down.

19 Q. All right.

20 A. On the ground.

21 Q. Was she successful in doing that? Was she
22 able to do that?

23 A. Well, she got -- she grabbed him, and he hit
24 the bed first. And then he fell on the ground. And,

1 you know, they started struggling. So she told me to
2 help. You know, she's like, help me, help me.

3 Q. So what did you do?

4 A. I grabbed him.

5 Q. What -- grabbed him where?

6 A. Around the neck.

7 Q. What were you trying to do to him?

8 A. I was just trying to, like -- I was trying to
9 choke him, but I wasn't trying to kill him, I mean, or
10 anything.

11 Q. Why were you trying to choke him?

12 A. So he would pass out, so we would have the
13 time to grab the money and leave.

14 Q. All right. Were you able to choke him?

15 A. Yeah. I choked him.

16 Q. While you were choking him, what was Alisha
17 doing to him?

18 A. She was going in his pockets and stuff.

19 Q. All right. When you choked him the first
20 time, what happened? Did he pass out?

11:33A 21 A. Yes.

22 Q. So what did you and Alisha do then?

23 A. I just -- we got up, and she said, told me to
24 start checking drawers and stuff. And started

1 checking all the drawers.

2 Q. What were you looking for?

3 A. Just anything of value.

4 Q. Did you find any money?

5 A. Yes. We found money.

6 Q. How much?

7 A. Found \$20 in a wallet.

8 Q. All right. So you had \$20 in cash. Did you
9 find anything else that you could maybe trade for
10 money?

11 A. Well, Alisha had while she was going through
12 his pockets, she had -- she grabbed a bracelet.

13 Q. The bracelet we've seen here in court?

14 A. Yes, sir.

15 Q. Okay. What happened then?

16 A. Well, he had, you know, a VCR, and we took
17 that too.

11:34A 18 Q. All right. Did Pedro ever get up or try to
19 get up?

20 A. Yes. He started moving.

21 Q. What did you and Alisha do when he started to
22 move?

23 A. I didn't really star -- I mean, I -- I was --
24 I didn't see him start moving. She -- she saw him

1 start moving first, and she went over there, and he
2 was laying on the ground. And she started stomping on
3 his neck and his throat.

4 Q. What are you doing at this time?

5 A. I was just at -- for, I don't know, three or
6 four seconds, I was like, you know, tripping, you
7 know, tripping out because I was like, whoa.

8 Well, she kept doing that, and then after she
9 started, you know, stomped on his neck and his throat
10 and stuff, she just grabbed him around the neck. And
11 she just fell to the ground and grabbed him around his
12 neck.

13 Q. All right.

14 A. And she asked me to tie him up.

15 Q. All right.

16 A. You know, well, tie his hands. And I tied
17 his hands.

18 Q. What did you tie his hands with?

19 A. Electricity cord.

11:35A 20 Q. All right. How did you get that cord?

21 A. She pointed to it over by where the guy had
22 the beer at.

23 Q. Did she --

24 A. In the refrigerator.

1 Q. Did she cut the cord from whatever it was
2 attached to?

3 A. Yeah. After -- well, when she got up,
4 because the guy was passed out again. Okay. Well,
5 that's what I thought he was passed out again. And
6 she got up. His hands were already tied and tied up.

7 Q. Who tied his hands?

8 A. I tied his hands with the extension cord.

9 Q. All right. Now, were there any knives around
10 this room or this apartment?

11 A. Yeah. There were knives all over the place.

12 Q. How many knives were there?

13 A. I didn't take time out, but, to count them,
14 but there was a lot of them. A lot of them.

15 Q. Now did you or Alisha ever take any of these
16 knives and stab Pedro?

17 A. No.

18 Q. All right. What happened after you tied his
19 hands?

11:36A 20 A. Alisha, like I said, she got up because the
21 guy wasn't moving anymore. And she cut -- cut the
22 cord on something, I assume it was of the fan, and
23 tied his feet.

24 Q. What did you decide to do then?

1 A. She was like, let's put him in the bathtub.
2 I wanted to put him on the bed and stuff, you know,
3 because --

4 Q. Did you think he was still alive at that
5 point?

6 A. Yeah. I thought he was alive.

7 Q. Did you think he was going to awake and be a
8 little angry?

9 A. Yeah. I want -- yeah, I mean, I would be a
10 little angry too.

11 Q. What did the two of you decide to do after
12 you tied his hands and feet?

13 A. Well, she -- well, she wanted to put him in
14 the bathtub. So I said, all right. Because I pretty
15 much just did whatever she wanted to do anyway. And I
16 said, all right. So we put him in the bathtub.

11:38A 17 Q. Now, did you turn the water on in the
18 bathtub?

19 A. Yeah. She asked me to turn the water on.
20 She told me to turn the water on.

21 Q. Why?

22 A. I couldn't really tell you.

23 Q. All right. After you put Pedro in the
24 bathtub, what did you decide to do then?

1 A. She shut the bathroom door. And on the way
2 out, I turned, you know, I turned the T.V. on.

3 Q. Why?

4 A. Because I didn't -- you know, I though maybe
5 somebody might hear, you know, the noise or something.
6 And, plus, when he got up, I thought, you know, I
7 thought that Pedro, when he woke up, that he would
8 think that somebody was in the room still.

9 Q. All right.

10 A. You know. So I wasn't -- I mean, I -- there
11 was no way, no way in my mind that I thought that he
12 was, he was gone, you know. That I didn't think he
13 was dead.

11:39A 14 Q. Did you and Alisha then leave the room?

15 A. Yeah.

16 Q. Did you take that bracelet and that VCR and
17 pawned it at the pawn shop?

18 A. Um-hum, yeah.

19 Q. How much money did you get for that?

20 A. \$40.

21 Q. What did you do with this \$40 you got from
22 the pawn shop and the \$20 you got from the room?

23 A. We went -- we were going to buy some reefer.
24 Well, we went to buy some reefer, and the guy, you

1 know, he jacked us.

2 Q. He jacked you?

3 A. Yeah.

4 Q. What's that mean?

5 A. Kind --

6 Q. Does that mean he scammed you?

7 A. Yeah, kind of.

8 Q. Took your money?

9 A. Yeah.

10 Q. And you didn't get the reefer?

11 A. No. So that was pretty much after that she
12 was -- I mean, I was mad too. But, you know, we were
13 both mad about that because now we couldn't do
14 nothing, you know. And -- and that was it.

11:40A 15 Q. Did you ever intend to kill Pedro Villareal?

16 A. No, I did not.

17 MR. WOMMER: I have no further questions,
18 your Honor.

19 CROSS-EXAMINATION

20 BY MR. GUYMON:

21 Q. You were mad about losing \$20 for being
22 jacked for \$20. Is that what you just said?

23 A. Yes.

24 Q. How do you think Pedro felt?

1 MR. WOMMER: Objection, your Honor,
2 speculation.

3 THE COURT: Sustained.

4 BY MR. GUYMON:

5 Q. Do you think Pedro was mad?

6 MR. WOMMER: Objection, your Honor.

7 THE COURT: Sustained.

8 BY MR. GUYMON:

9 Q. The devil made me do it. Did you ever hear
10 that expression?

11 A. Yes.

12 Q. How old are you, sir?

13 A. How old am I?

14 Q. Yes.

15 A. I'm thirty-three.

16 Q. How old is Alisha?

17 A. She's sixteen.

18 Q. And on September 25th, how old was she?

19 A. Fifteen.

20 Q. And how large were you a man on September
21 25th of 2002?

22 A. How large was I of a man?

23 Q. Yeah. Are you the same size today?

11:41A 24 A. Yeah.

1 Q. Your driver's license that you presented to
2 the Gold and Silver Pawn Shop put you at 171 pounds?

3 A. Well, sir, they do that at DMV. They just
4 asked us around how much we weigh. And I said 171
5 pounds.

6 Q. All right. And if I was to ask you on
7 September 25th around how much you weighed, how big
8 were you?

9 A. About 160 pounds, 160 pounds, about 160.

10 Q. And Alisha is not a big woman, is she?

11 A. She's -- she's about five three, weighs 130
12 pounds. So...

13 Q. You're bigger than she is?

14 A. I'm taller and weigh about twenty-five,
15 thirty pounds more.

16 Q. You're stronger than she?

17 A. Excuse me?

18 Q. You're stronger than she is?

19 A. I would assume, yes.

11:42A 20 Q. And you're more streetwise than she is?

21 A. I, I wouldn't say all that.

22 Q. Have you been convicted of a couple felonies,
23 sir?

24 A. Yes, sir, I have.

1 Q. 1988, what felonies were you convicted of?

2 A. I was convicted of -- I was convicted -- in
3 Illinois I was convicted of statutory or criminal
4 sexual assault, and home invasion.

5 Q. And --

6 A. That's all I --

7 Q. Weren't you also convicted of two different
8 counts of armed robbery in 88? Or excuse me, one
9 count of armed robbery?

11:43A 10 A. I -- I may have been, but I'm not really sure
11 because, you know, I've never -- I took a plea bargain
12 with the Court which is -- I didn't take it all the
13 way to trial because I was guilty, and I accepted my
14 responsibility for what I did.

15 Q. Guilty of two counts of aggravating criminal
16 sexual assault?

17 A. Um-hum.

18 Q. One count of home invasion and one count of
19 armed robbery. 1988?

20 A. Yes, sir.

21 Q. Before you ever met Alisha?

22 A. Yes. That's back in 1988.

23 Q. All right. Any other felony convictions?

24 A. Yes. I think I had -- or I know I had one in

1 Ohio for aggravated burglary.

2 Q. In 1996, correct?

11:44A 3 A. Yes, sir.

4 Q. All right. You had not met Alisha Burns at
5 that point either; is that correct?

6 A. No, sir.

7 Q. All right. In fact, you met Alisha Burns the
8 summer of 2002?

9 A. Yes, sir. I met her at the beach by my
10 house.

11 Q. All right. And after you met her, a romance
12 started?

13 A. Yes.

14 Q. The two of you wanted to marry one another?

15 A. Yes, sir.

16 Q. Come to Vegas and perhaps live happily ever
17 after?

18 A. That's what we had planned.

19 Q. Okay. And you planned on sharing a life
20 together, correct?

21 A. Yes. Yes, sir.

22 Q. You made a lot of plans together, didn't you?

23 A. I wouldn't say a lot.

24 Q. Well, but you'd share with each other your

1 thoughts?

2 A. Well, two people that care about each other
3 should, you know, you know, share their thoughts with
4 each other. I mean, especially, if they're talking
5 about running away and marrying each other.

11:45A 6 Q. Okay. And perhaps you were going to be the
7 breadwinner of the family; is that correct?

8 A. I was going to try, yes, I was.

9 Q. Like every man, you have some pride?

10 A. Yes, I do.

11 Q. You want to be able to provide for your girl?

12 A. I want to. I want to provide for my family.

13 Q. Okay. And so you came out here and what did
14 you begin to do to provide for your family?

15 A. I really couldn't do anything. I --

16 Q. Tell me --

17 A. I mean --

18 Q. -- where did you apply for a job at?

19 A. I applied for a job. I applied for a job at
20 a lot of places.

21 Q. But you weren't successful, so you began to
22 beg?

23 A. Yes, sir.

24 Q. And each day you spent with Alisha talking

1 about your concerns and trying to do the best you
2 could to get a little money?

11:46A 3 A. Yes, sir.

4 Q. And isn't it true that when things got bleak
5 you began to talk about perhaps robbing somebody?

6 A. Yes, sir, we did; robbing, not killing.

7 Q. All right. Let's talk about that then. You
8 indicated when you spoke to the detectives, and, in
9 fact, you told the detectives you didn't plan on
10 killing anybody, didn't you?

11 A. Yes, sir, I did.

12 Q. You told them you just planned on robbing
13 this man?

14 A. Yes, sir, I did.

15 Q. On October 29th did -- you tried to make that
16 very clear, didn't you?

17 A. I didn't try to make that clear. I did not
18 try to kill that man.

19 Q. All right. But you told the detectives about
20 the plan just to rob him, not to kill him, correct?

21 A. Yes, sir.

22 Q. Okay.

11:47A 23 MR. WOMMER: What page?

24 MR. GUYMON: Page thirty-three.

1 BY MR. GUYMON:

2 Q. You indicated that, quote, we weren't out to
3 kill nobody, correct?

4 A. Yes, sir.

5 Q. We weren't out to hurt no one, you know, hurt
6 no know, kill nobody. Well, I can't say hurt nobody
7 because, you know, just somebody up and taking their
8 stuff, just taking their stuff is hurting them, true?

9 A. Yes. Yes, sir.

10 Q. You were out to take --

11 A. Yes, sir. I mean, if you take -- I mean,
12 even if you punch somebody in their mouth, or even if
13 you take two dollars out of their wallet, that is
14 still hurting them. I mean, physically, you know, or
15 just, you know, emotionally by taking money.

16 Q. So you planned on just taking his stuff,
17 correct?

18 A. Exactly. We did not try to hurt him.

19 Q. In fact, you went on to say that we planned
20 on beating him up and taking his stuff. That was the
21 extent of your plan?

11:48A 22 A. I don't know about beating him up. I mean, I
23 may have said that.

24 Q. Let's take a look. I'm referencing Proposed

1 Exhibit Sixty-nine that was previously played to the
2 jury. Can you read that, sir, from where you're at?

3 A. What line is it?

4 Q. Right here. Does that say --

5 A. We planned maybe beating him up.

6 Q. All right. So that --

7 A. Maybe.

8 Q. That was something you may have to do in
9 order to carry out your plan to rob him, correct?

10 A. To rob him; not kill him.

11 Q. All right. And I just want to make that
12 clear.

13 A. Okay.

14 Q. Your plan was to rob him; not to kill him?

15 A. Yes, sir.

16 Q. All right. And, in fact, you were out to get
17 some money, isn't that what you told the detectives,
18 not to kill him?

19 A. Yes, sir.

20 Q. And isn't it true that you and Alisha had
21 actually talked about this quite a bit prior to this?

11:49A 22 A. Talked about robbing?

23 Q. Yeah, robbing somebody; not killing somebody.

24 Let's leave killing alone. We'll get to killing

1 later. You talked with Alisha all the time about
2 robbing somebody?

3 A. I wouldn't say all the time, no.

4 Q. Well, didn't you say that to the detectives
5 on the 29th of October?

6 A. Yes. I told them that me and Alisha had
7 talked about, you know, robbing people before, yes, I
8 did.

9 Q. And about how many times had you talked with
10 Alisha about robbing people?

11 A. I never really took count about it. I mean,
12 a few times. We've talked about it a few times. I
13 don't -- I don't have an exact number or -- I mean, it
14 wasn't over five, I mean, times that we talked about.

15 Because we were -- we were always -- we were
16 always trying to hustle money before we would even try
17 to hurt anyone because we -- that's just --

18 Q. Perhaps you can explain then to me if you
19 would what you mean when you told the detectives, and,
20 you know, what I mean -- I mean, we talked about it
21 all the time. But we never do it. And, uh, but this
22 time I guess we're actually going to go through with
23 it because I had a little help, you know, I had Tommy
24 with me.

1 I want to break that down for you a little
2 bit. When you told the detectives, I, me, you're
3 talking about, I, Steven Kaczmarek, right?

11:51A 4 A. Yes, sir.

5 Q. We, meaning you and Alisha, talked about it
6 all the time. Now how often did you talk about
7 robbing somebody?

8 A. I don't know how many times. I mean, I mean,
9 how often -- or not how many times -- how often that
10 we talked about it. I mean, whenever the conversation
11 came up.

12 Q. Came up more than once, didn't it?

13 A. Yes. It came up more than one time.

14 Q. Came up more than twice?

15 A. I -- I can't sit here and tell you that it
16 came up ten times. I can't sit here and say it came
17 up four times because I don't know how many times it
18 came up. Because that -- that's not what all I
19 thought about, was just robbing someone, just in
20 talking about it all the time, every day, all the time
21 every day.

22 I just -- I -- I don't -- I'm not that type
23 of person where I talk about just, you know, hurting
24 someone or take something, or, I mean, you know, there

1 are other things in life like that.

11:52A 2 Q. You're not that type of person. You're the
3 type of person in 1988 that was convicted of
4 aggravated sexual assault. That's the type of person,
5 correct?

6 A. I was convicted of it.

7 Q. Convicted of home invasion, that type of
8 person?

9 A. Um-hum.

10 Q. Convicted in 88 of armed robbery, that type
11 of person, correct?

12 A. Yes. I mean, I --

13 Q. In 96?

14 A. I stole.

15 Q. Aggravated burglary?

16 A. Yes.

17 Q. And your plan now in 2002 was to rob someone,
18 correct?

19 A. We planned to rob him, yes, we did.

20 Q. All right. And this time you had a little
21 help. Is that why you carried it out this time as
22 opposed to the times you talked about it but didn't do
23 it?

24 A. No. Nothing really came up. I mean, I

1 don't --

2 Q. Isn't that what it says here that this time
3 you actually carried out your plan because you had had
4 a little help. Is that true or not true?

11:53A 5 A. I carried the plan out because I had help?

6 Q. Yeah.

7 A. Yes. I mean, I could -- I couldn't -- I
8 wouldn't -- I don't know, I just -- I don't -- not my
9 type of person. Just not my personality.

10 Q. Okay. Tell me, though, in your direct
11 examination we didn't hear a word about Tommy. Was
12 Tommy there or wasn't Tommy there?

13 A. That's something the detectives made up when
14 they came in.

15 Q. Let me ask you this. Was it the detective's
16 voice that we heard in this courtroom when you -- when
17 Tommy was described?

18 A. It was the detective that came and testified
19 that was -- that is the one who said Tommy, when they
20 first came and saw me without the tape recorder, and
21 stuff, on.

11:54A 22 Q. But tell me this, you told the detectives,
23 did you not, that Tommy was a wanna be, is that what
24 you said?

1 A. Yeah.

2 Q. Tommy wore his pants down, he sagged, you
3 say?

4 A. Um-hum.

5 Q. Tommy was a white guy?

6 A. Um-hum.

7 Q. Real skinny?

8 A. (No audible response)

9 THE COURT: Please answer yes or no.

10 THE WITNESS: Okay.

11 BY MR. GUYMON:

12 Q. Real skinny?

13 A. Yes.

14 Q. And I think you said a little pubic hair on
15 his face; is what you called it?

16 A. Yes, I did.

17 Q. Wore a hat?

18 A. Yes.

19 Q. Couldn't describe a hair style?

20 A. Yes.

21 Q. All right. Now, that was your description of
22 Tommy?

23 A. Yes.

24 Q. Is that an accurate description of Tommy?

1 A. That's an act -- it's a description of
2 someone I know.

3 Q. Was Tommy there to help you with this
4 robbery?

5 A. They wasn't a Tommy.

6 Q. How many people were there?

7 A. Two people.

8 Q. You and who else?

9 A. Three people counting Pedro. Me,
10 Alisha Burns, and Pedro.

11:55A 11 Q. All right. So Tommy wasn't in that room?

12 A. No, sir. Tommy is someone the detective told
13 me about before they turned the tape recorder on.

14 Q. Okay.

15 A. That's just one of the things he said before
16 they turned the tape recorder on.

17 Q. So we've narrowed it down so far that only
18 two people are guilty of robbery of Pedro Villareal?

19 MR. WOMMER: Objection, your Honor, calls
20 for --

21 THE COURT: Sustained.

22 MR. GUYMON: Well --

23 MR. WOMMER: Calls for a legal conclusion.

24 THE COURT: Correct.

1 BY MR. GUYMON:

2 Q. All right. Let's not use a word of art. Let
3 me say it this way. Tommy didn't take the gold
4 bracelet then, did he?

5 A. I -- he wasn't there, so I guess not.

6 Q. Okay. So you were there and Alisha was
7 there?

8 A. Yes.

9 Q. So either you or Alisha took the gold
10 bracelet, correct?

11 A. She took it off of -- off of his body.

12 Q. You pawned it?

13 A. Yes, sir. I pawned it because I was the only
14 one, out of me and her, that had had an I.D. That is
15 why I pawned it. Because they would not take the VCR
16 and the bracelet because I was the only one to have an
17 I.D.

11:56A 18 Q. And you and her took the VCR, correct? Yes
19 or no?

20 A. Yes.

21 Q. And you and her took Pedro's money, correct?

22 A. Yes.

23 Q. And you or her took Pedro's comb?

24 A. Comb?

1 Q. Well, you took --

2 A. Yeah, out of the bathroom, yes.

3 Q. You told the detectives that?

4 A. Yes.

5 Q. They didn't make that up, right?

6 A. No, no, no, no. I said the comb because we
7 did take a comb. Yes, we did.

8 Q. All right. And a roll of quarters?

9 A. While Alisha was checking his pockets, he had
10 a roll of quarters, yes, he did.

11 Q. And you and Alisha took the roll of quarters?

12 A. Alisha took them off, yeah, of -- off of him.

13 Q. How about the black jacket? You and her took
14 the black jacket, correct?

15 A. Yes.

16 Q. And a couple of baseball caps?

17 A. Yes.

18 Q. These were mens jackets, correct?

19 A. I would say so.

11:57A 20 Q. All right. And it was you and Alisha that
21 made this plan together to rob this man, not to kill
22 him?

23 A. To rob, yeah, yes.

24 Q. And so the police didn't make that up. You

1 and Alisha made that plan, correct?

2 A. Yes. We planned to rob him, yes, we did.

3 Q. All right. And on page thirty-two when you
4 talk about that plan to rob somebody, it's right here.
5 You talking about not having a job and being homeless,
6 and your response is: No, I -- I never really asked
7 him about a job.

8 And this is Tommy.

9 But, I mean, I would assume that he didn't,
10 if he wanted to go out and, you know, rob somebody
11 with me and Alisha, you know what I mean, I mean, why
12 would you want to rob somebody when you got a job
13 unless you're just mentally retarded, you know.

14 That was you that said that, correct?

15 A. Yes. That was me.

11:59A 16 Q. Okay. So the truth is Tom -- according to
17 what you're telling us now, Tommy didn't exist?

18 A. No. He did not.

19 Q. Tommy wasn't there?

20 A. No, he did not.

21 Q. All right. So the person that didn't have a
22 job was you and Alisha?

23 A. Yes.

24 Q. So the persons or people that made the plan

1 to go out and rob Pedro was you and Alisha?

2 A. Yes.

3 Q. This plan was a plan that was pretty fixed in
4 you and Alisha's mind, correct?

5 A. I wouldn't say pretty fixed. I mean, it was
6 like a spur of the moment thing.

7 Q. Wait.

8 A. As far as robbing, I mean, we planned it, but
9 we didn't sit there and like mastermind it, you know
10 what I mean, like two, three hours masterminding a
11 plan to rob him.

12 Q. Well, you can agree people can make a plan
13 instantly, can't they?

14 A. I mean, it would -- it would all depend on
15 what they're making plans of doing.

16 Q. In a moment, a husband and wife can -- or not
17 husband and wife, boyfriend and girlfriend, can plan
18 to go to lunch, can't they?

12:00P 19 A. In the spur of the moment?

20 Q. Well, let me ask you, how long did it take
21 you and Alisha to go to lunch on any given day if you
22 had money?

23 A. Well, we were living on the streets, so when
24 we had money, I mean, if we were hungry, I mean, we

1 would -- we would go to McDonald's.

2 Q. And that wouldn't take long to make that
3 decision, would it?

4 A. No. But we didn't have any jobs or anything
5 else to do. So, I mean, you know, it's kind of easy
6 to make decisions like that when you don't have
7 anything to do.

8 Q. All right. How about a plan to, say -- did
9 you and Alisha ever make plans to, say, walk across
10 the street and go get cigarettes? Is that something
11 you could plan to do?

12 A. Well, yes. I mean, I -- I could, yeah, we
13 could plan that.

14 Q. So plan a plan doesn't necessarily take a
15 long time, does it?

16 A. It depends on what you are going to do, what
17 you plan to do.

18 Q. But something you talk about all the time is
19 something that you're able to plan; are you not?

12:01P 20 A. Well, like I said, we didn't talk about it or
21 make plans about it. We may have talked about it, you
22 know, a couple of times or whatever. But we did not
23 sit there and plan it, plan things out on how we would
24 carry it out, or even if we did do it if we was to do

1 it.

2 Q. Okay. But when you said at page eleven or
3 twelve that you talked about it all the time?

4 A. Um-hum.

5 Q. All the time means more than once, right?

6 A. Yes.

7 Q. All the time means more than twice?

8 A. I don't know.

9 Q. Well --

10 A. I mean, if it goes -- I mean, all the time, I
11 mean--

12 Q. All the time.

13 A. We've -- I mean we talked about it, but, I
14 mean, we never just sat there and, like, every
15 single -- that's not that -- that's not what we talked
16 about every single day, no, it is not.

17 Q. Okay.

18 A. I mean, what we've talked -- maybe, we could
19 break it down. We talked about maybe two or three
20 times a week.

12:02P 21 Q. Okay.

22 A. But, I mean, you know, not, you know,
23 constantly talking about robbing someone. No, we did
24 not. We did not sit there and say, well, we'll rob

1 him. We'll rob her. We'll rob this. We'll do that.
2 We'll do this, and then two hours later start talking
3 about it again. No, we did not do that.

4 Q. But if you talked about it for two or three
5 times a week, how many weeks you think you talked
6 about robbing somebody?

7 A. Well, we started talking about robbing
8 somebody when we ran out of money.

9 Q. All right. Let's -- so let's back up. When
10 did you get here?

11 A. In August.

12 Q. With \$150?

13 A. Um-hum.

14 Q. And when did \$150 run out at the tune of \$50
15 a night for hotel?

16 A. Well, it wasn't exactly \$50. It was, you
17 know, between \$45, \$50, \$40, \$50. It took about three
18 or four days.

12:03P 19 Q. Okay.

20 A. But we still had Alisha's foster mom's car.

21 Q. All right. Which ultimately you sold?

22 A. Alisha did. Yes, she did.

23 Q. You got her a fake I.D. so she could sell it?

24 A. She went and got a fake I.D. hustling money

1 on the street. She had enough, she went and got
2 enough money to pay for the fake I.D.

3 Q. And that was \$350?

4 A. Not the fake I.D.

5 Q. No, but the car, the sale of the car, the
6 proceeds?

7 A. Yes.

8 Q. All right. So \$150 runs out in three or four
9 days? How long does \$350 take you?

10 A. Well, Alisha got sick. I mean, we rented a
11 motel, and Alisha got sick. And when Alisha got sick,
12 we stayed in the motel three or four more days than,
13 you know, than we should have because on Fridays and
14 Saturdays you have to pay more money because I guess
15 it's the weekend or whatever.

12:04P 16 And Alisha had got sick. And I was, you
17 know, going to the store and stuff getting her hot tea
18 because of her ear and stuff. So, yes, we stayed in
19 the motel longer than that.

20 Q. All right.

21 A. Than three or four days.

22 Q. And life was a little more expensive in Las
23 Vegas than you thought it was doing to be, correct?

24 A. Extremely, yes.

1 Q. And so in truth and in fact within, say, two
2 or three weeks you're out of money?

3 A. Well, we had -- we had money because we
4 would -- we would buy the cheapest, you know, what we
5 could. You know what I mean, when we first got here.

6 Q. Okay. Is it fair, though, to say that by
7 September you were out of money?

8 A. By September I was -- I would say so because
9 we're in CCDC in September.

10 Q. Okay. And so in truth and in fact, even in
11 October -- in August you were out of money?

12 A. No.

12:05P 13 Q. All right. We'll leave it at that then.
14 Nonetheless this plan that you established between the
15 two of yourselves having spoken about it three times a
16 week for a couple of weeks, at least was a plan that
17 you were going to now be able to carry out, correct?

18 A. I didn't -- to be honest with you, we planned
19 it, but I didn't know if we was going to carry it out.
20 No, I did not.

21 Q. All right.

22 A. We planned the burglary or the robbery,
23 burglary, or same thing, I guess. We planned that,
24 but I didn't know if we was going to carry it out.

1 No, I did not.

2 Q. All right. And it was your suggestion that
3 the detectives nonetheless that -- page twelve -- that
4 Alisha began to, quote, she kept motioning, in other
5 words, for you to jump on him, correct?

6 A. Yes.

7 Q. And, in fact, that's what you're talking
8 about if we read it in its context. It says,
9 question, was, when were you going to do something?

10 Your answer, right, exactly. Because at
11 first I wasn't -- I was like, you know, you know,
12 forget about it. At first I was, like, no, you know,
13 just forget about it. He's only got \$30. And, you
14 know, it was really nothing, you know.

15 She kept motioning. She went to the
16 bathroom, and I talked to the guy.

17 Now, you telling us the guy you're talking
18 about is Pedro, right? The guy is Pedro?

12:06P 19 A. I guess.

20 Q. And, you know, I was like, well, you where is
21 the money at? And he showed me the money. He had a
22 roll of quarters and \$20. Alisha came out of the
23 bathroom, and she motioned again, you know, when,
24 like, when are you going to do it? You know, when you

1 going to grab him?

2 A. Um-hum.

3 Q. That's your answer?

4 A. That's what I said.

5 Q. All right. So she's motioning to you to
6 carry out the plan, correct?

7 A. That's what I said. I --

8 Q. You want to change what you said now, right?

9 A. Do I want to change what I said?

10 Q. Yes.

11 A. No. I want to -- I want to explain why I
12 said it.

13 Q. All right. Let me get to that. You go on
14 the next page, let me keep reading then to make sure
15 it's all in context. I was, like, you know, let's
16 finish our beer, you know, in a secret code way.
17 Correct?

18 A. Yes.

19 Q. All right. Now, you go on at page thirteen,
20 do you not, about the plan of what's going to happen
21 to the detectives?

12:08P 22 A. What do you mean if I go on about the plan.
23 The plan of what?

24 Q. Well, you go on and say, I was, like, well

1 let's finish our beer, you know, and then we'll have
2 another one, and then I looked at them. It was like,
3 you know, you know what I mean, like, like, you know,
4 winking my eye.

5 Now who was you winking your eye to?

6 A. I -- probably Alisha. I mean, if I was
7 winking my eye or I just might have been winking my
8 eye. I don't know.

9 Q. Because she had been motioning to you and you
10 had been responding back in secret code Pedro had no
11 idea he was going to be robbed, right?

12 A. I guess not. I mean, I --

13 MR. WOMMER: Objection. Calls for speculation
14 on...

15 THE COURT: Sustained.

16 BY MR. GUYMON:

17 Q. This was your little secret with you and
18 Alisha, wasn't it?

19 A. Yes. We -- like I said, I mean, there's
20 no --

21 Q. And you --

22 A. -- question, okay, about we -- yes, we did.
23 We did plan on robbing him. Okay. There's no
24 question about that. None at all.

1 I mean, that's -- I mean, I've told you that
2 200 times now, but we did not plan on killing this
3 guy.

12:09P

4 Q. I haven't accused you of that yet, have I?

5 A. Well, you're trying to get to there, yes, you
6 are.

7 Q. We're just getting with the plan so far.

8 A. All right. Go ahead.

9 Q. Hundred percent certain there was a plan to
10 rob him; is that fair?

11 A. Yes. We did plan to rob him.

12 Q. All right.

13 A. Yes, we did.

14 Q. And, in fact, you told the detectives that
15 you carried out the plan when you went on to say,
16 winking my eye, you know, so that they knew when we
17 finished the beers that's when I was going to grab
18 him.

19 You're talking about yourself.

20 Well, I called Tommy into the bathroom, and I
21 said, you know, like, hey, Tommy, look at this because
22 the guy had a mirror that came out, you know, like a
23 mirror you hold it up.

24 Now you're telling us today Tommy doesn't

1 exist, right?

2 A. Tommy does not exist.

3 Q. Okay.

4 A. No, he does not.

5 Q. But you went back, and you said, well, I
6 grab, you know, just -- well, let me back up. Hey,
7 you know, I'm going to grab him. When I grab, you
8 know, just punch him in the stomach a few times, you
9 know what I mean.

10 He was like, okay, all right. All right. We
11 went back, and he sat down. Tommy did. Well, I call
12 the guy in the bathroom, and I was like, hey, man look
13 at this, you know.

14 Well, he looked at it, and when he turned
15 around I grabbed him.

16 Now I'm going to leave the plan, and I'm
17 going to get now to the action; is that fair? We're
18 in the action. I grabbed him. When you said, I
19 grabbed him, who did you mean?

12:10P 20 A. I grabbed Pedro.

21 Q. Okay. So you were the first one to lay hand
22 on Pedro, right?

23 A. No.

24 Q. But yet in the statement the first time you

1 mentioned anybody touching Pedro it's you, I, Steven
2 Kaczmarek, grabbed Pedro?

3 A. Yes, it is. In the statement, yes, it is.

4 Q. All right. Tommy did nothing. Now, you want
5 us to believe that Tommy doesn't exist now, correct?

6 A. Tommy does not exist.

7 Q. All right. But the first time you told this
8 story on October 29 it was you that grabbed Pedro?

9 A. Yes, it was.

10 Q. And when you talked to Edd Pryor, it was you
11 that grabbed Pedro?

12 A. That -- with Edd Pryor it's -- he -- no, I
13 did not tell him that.

14 Q. So you told the police that, but apparently
15 you didn't tell Edd Pryor that?

16 A. No. I did not tell Edd Pryor nothing.

17 Q. All right. And you told the police that, I,
18 Steven Kaczmarek grabbed Pedro, but you didn't tell
19 Torrence Lewis or Edd Pryor that?

12:11P 20 A. No, I did not.

21 Q. Okay. So you weren't making it up when you
22 told the Detectives, but, apparently they're making it
23 up now is that what we're to believe?

24 A. That, that the witnesses are making it up?

1 Q. Yeah.

2 A. Well --

3 Q. Yes or no, sir?

4 MR. WOMMER: Objection, your Honor.

5 MR. GUYMON: It calls for a yes or no, Judge.

6 THE COURT: I don't think so.

7 If you're not able to answer it, just tell
8 him that.

9 THE WITNESS: I'm not making anything up.

10 BY MR. GUYMON:

11 Q. All right. Now when you talked to the
12 detective, if you're not making anything up, when they
13 asked you how did you grab the guy, I grab him around
14 his neck, were you making that up?

15 A. No. I wasn't making that up.

16 Q. So you did grab him behind his neck?

17 A. Yes, I did after Alisha jumped on him.

18 Q. But is Edd Pryor making it up when he says
19 that you put your arm around Pedro's neck?

20 A. Probably. I mean, I can't speak for him. I
21 did not tell him that.

12:12P 22 Q. Okay. But you told the detectives that?

23 A. Yes, I did.

24 Q. And, in fact, that very night on the 25th,

1 that's exactly what you did, you put your arm around
2 Pedro's neck?

3 A. Yes, I did.

4 Q. And you choked him out?

5 A. Yes, I did.

6 Q. And when you choke a guy out, what are you
7 really doing?

8 A. Just, you know, just trying to get him to
9 pass out because, and he was just passed out.

10 Q. Okay.

11 A. Okay. Because he started moving. And Alisha
12 jumped on, jumped on him in his neck and his throat, I
13 mean.

14 Q. You choke him out?

15 A. I mean, a person is dead does not move.
16 Okay. You know. And then all of a sudden he's, you
17 know, I don't -- I don't know if he's passed out or
18 what. Okay.

19 Q. All right.

20 A. So --

21 Q. Is it sufficient to say that when you choke a
22 guy out you disable him?

23 A. Well, he's, you know, like, you know how you
24 sleep, or, you know, maybe like doze off something

1 like that, for two or three minutes, then you wake
2 back up.

12:13P 3 Q. Mr. Kaczmarek, how long -- how quickly can
4 someone grab money out of somebody's front pocket?

5 A. I don't know. I've never grabbed it out of
6 their front pocket.

7 Q. How long does it take you to grab money out
8 of the front pocket if you had it in your front
9 pocket?

10 A. It all depends.

11 Q. How about a wallet? How long does it take
12 you to take a wallet out of your pocket?

13 A. Couple of seconds I would say.

14 Q. And Pedro was out for at least a couple of
15 seconds, right?

16 A. Yes.

17 Q. So you all could have grabbed his money and
18 his wallet and simply walked out the door, couldn't
19 you?

20 A. Yes.

21 Q. But --

22 A. But Alisha wanted to get anything of value,
23 so I mean -- yes, I mean, we -- we could have just --

24 Q. Did you want things of value?

1 A. Did I?

2 Q. Yes.

3 A. Yes, because I knew that we could get a
4 little bit more money if we took, you know, the VCR
5 and things to the pawn shop.

12:14P 6 Q. So it's really not fair to lay this off on
7 Alisha because not only did Alisha want things of
8 value, you wanted things of value?

9 A. Things of value, yes.

10 Q. All right. So you and she both wanted things
11 of value. Let's not lay it off on her.

12 A. No, we could say -- yeah, we could say that.
13 That we -- that both of us, me and -- me and her, that
14 we both wanted things of value because that's, I mean,
15 that's -- that's money, you know. I mean, to somebody
16 that don't have anything, okay, that's money.
17 Something that a person can pawn would be money.

18 Q. Okay. I'm going to leave the plan. I know I
19 got us in the action, but let me talk about leadership
20 for a minute. Because three or four times you talk
21 about about what Alisha wants, and I want to talk
22 about what you wanted and what Alisha wanted both.
23 Okay?

24 A. Um-hum.

1 Q. When I use the word leadership, you
2 understand what a leader is, right?

3 A. Yes, sir.

4 Q. Okay. And isn't it true, that you were the
5 ones -- you were the one that told the detective that
6 you were quote, streetwise; is that fair?

7 A. Yes, I am street -- I -- I grew up on the
8 streets my whole life, yes.

12:16P 9 Q. Convicted of aggravated rape twice, two
10 counts?

11 A. Rape?

12 Q. Aggravated sexual assault is that what it
13 was?

14 A. Yes.

15 Q. Two counts?

16 A. Yes.

17 Q. Armed robbery?

18 A. Yes.

19 Q. Felony home invasion?

20 A. Right.

21 Q. And aggravated burglary?

22 A. Right. Now, do you see all of them are
23 stealing, not murdering, or hurting, or anybody, or
24 anything like that.

1 Q. A pattern?

2 A. Of stealing.

3 Q. Okay. You indicated, did you not, to the
4 detective that you were stronger than Alisha, true?

5 A. Well, yes.

6 Q. Okay. In fact that's at page fifteen, can we
7 just assume that's there?

8 A. Yeah, we can assume that's there.

9 Q. All right.

10 A. I mean, if you have the statement. I don't
11 think that you would lie.

12 Q. All right. And page thirteen, we read it.
13 You said you were the one that grabs the man around
14 the neck, correct?

12:17P 15 A. Yes, yes.

16 Q. You said it not once but twice on page
17 thirteen; is that fair?

18 A. If that's what it says.

19 Q. Let's -- let's make sure. I don't want to
20 misstate the evidence. I grabbed him. Is it there?

21 A. Which line? I -- I can --

22 Q. if I read it, it says I grabbed him, okay.
23 Tommy didn't do nothing at first. Well, I grab -- I
24 just grabbed the guy. And, in fact, here it says, I

1 grabbed him around his neck?

2 A. Yes, I did grab him around his neck.

3 Q. All right. And you grabbed him with your
4 left arm, right?

5 A. Yes. I -- I'm -- you know, I mean, I
6 could -- I grabbed him like this. Yes, I did. Or I
7 grabbed him, you know, in a choke, you know, like
8 choking him, you know.

9 Q. How much force did you put on Pedro to choke
10 him out?

11 A. I didn't put enough force on to kill him.

12:18P 12 Q. I'm not --

13 A. I mean, I'm just letting you know. I mean, I
14 did not put force enough to kill nobody on the neck.

15 Q. All right. It says I grabbed him, and I
16 brung him to the floor. How much force does it take
17 somebody to choke a man and bring him to the floor?

18 A. I don't know because I grabbed him around the
19 neck. I didn't bring him to the floor because he was
20 already there. And like I said --

21 Q. Wait an second.

22 A. -- before you even asked that, I said I may
23 have said that, Yes, I did. I said that for a reason.

24 Q. Well, here you said that, I, Steven

1 Kaczmarek, brung him to the floor. Is that what you
2 told the police?

3 A. Yes.

4 Q. All right. And, in fact, you told the police
5 wanting to make sure they knew you weren't trying to
6 kill him. You said, I was just going to choke him
7 out. You know, you know, I didn't want to kill the
8 guy. True?

9 A. Yes.

10 Q. All right. Now, those are all things that
11 you're telling the police that you were doing,
12 correct?

12:19P 13 A. Yes.

14 Q. And at no time did you tell the police that
15 Alisha was the first one to lay?

16 A. No, I did not.

17 Q. Okay. And Edd Pryor didn't tell the police
18 that Alisha brought him to the floor, did he?

19 A. I don't know what Edd Pryor or Torrence Lewis
20 told --

21 Q. Torrence --

22 A. -- the police or told you.

23 Q. Okay.

24 A. But --

1 Q. You heard Torrence's testimony, right, today?

2 A. Yeah.

3 Q. All right. And he did not include any facts
4 about Alisha being the one to take him to the floor,
5 correct?

6 A. Not that I heard.

7 Q. Okay. And you didn't hear it from Edd Pryor
8 either, did you?

9 A. No.

10 Q. Okay. And tell me something. You told this
11 jury that it was Alisha who began to tell you what to
12 do, correct?

13 A. Um-hum.

14 Q. But no where in the statement do you talk
15 about Alisha telling you what to do?

16 A. I don't know if it's nowhere in the
17 statement. I mean --

12:20P 18 Q. We will get to that then. She wasn't --

19 A. You know, I haven't --

20 Q. She wasn't punking you around, was she?

21 A. To be honest with you I was in love with her,
22 and I was -- I was -- I was in love with her. I mean,
23 I would do pretty much anything she told me to do.

24 Q. And would she do anything that you would tell

1 her to do if she was in love with you?

2 A. I don't know because -- I just -- I don't
3 think so.

4 Q. All right. But isn't it true you told the
5 police that it was you who said, I told them to start
6 grabbing money and stuff; is that true?

7 A. If that's what I said on the statement.

8 Q. All right.

9 A. I mean, I don't know.

10 Q. Let get to it.

11 A. If that's what I said.

12 Q. After telling the police that you wouldn't
13 kill anybody, you said, I told them to, you know,
14 start grabbing, you know, the money and stuff. Now,
15 when you said, I told them, you're talking about
16 yourself, right?

12:21P 17 A. That -- that I --

18 Q. I?

19 A. Me.

20 Q. I told them.

21 A. That I told her, I guess, or them, whatever
22 this says on the statement.

23 Q. All right. If Tommy doesn't exist and only
24 Alisha was there, who would you have been telling to

1 grab money?

2 A. Exactly. That's why I said there's a reason
3 for what I said on that statement.

4 Q. All right. Did you tell Alisha to start
5 grabbing money and stuff?

6 A. No.

7 Q. All right. So you lied to the police?

8 A. Yes.

9 Q. Okay.

10 A. But I --

11 Q. And --

12 A. -- I lied to them for a reason.

13 Q. All right. And when you told the police
14 that, I told them, you know, you need to wipe the
15 fingerprints, your fingerprints off, is that your
16 order? Or was Alisha telling you what to do?

17 A. What do you mean was it my order to --

18 Q. Well --

19 A. -- tell her to wipe fingerprints off?

12:22P 20 Q. It says here, and I told them -- now, if
21 there's no them, it's just Alisha, okay.

22 A. Um-hum.

23 Q. So let's replace that, I told Alisha, well
24 look, guys, you need to wipe your fingerprints off,

1 you know?

2 A. Um-hum.

3 Q. Now, is that what you told Alisha?

4 A. First of all, I may have said that, but you
5 don't tell Alisha to do really anything. She pretty
6 much just does what she wants to do when she wants to
7 do it and how she wants to do it.

8 Q. Right. Because a thirty-two year old street
9 smart ex-felon can't tell a fifteen year old anything,
10 can he?

11 A. She's just as street smart as you. Street
12 smart as you.

13 Q. I don't know that my street smarts are at
14 issue. We're talking about yours, sir.

15 A. No. You asked me if I could tell a fifteen
16 year old, okay, what to do because I'm street smarter
17 than her. No. Not if she's as street smart as you.
18 If I know two plus two, you know what I mean, and you
19 know it -- there's nothing I can --

12:23P 20 Q. But when you talked to the police, it was you
21 who said, I told them to get his wallet, and I told
22 them to wipe the fingerprints, correct?

23 A. Yes. When I talked to the police.

24 THE COURT: Wait. One at a time.

1 BY MR. GUYMON:

2 Q. And at page fifteen it was you who told the
3 police, I told them to get his wallet, true?

4 A. Yes.

5 Q. It's right up there at the top.

6 And it was you who told the police that once
7 he was out, I told Tommy to hold him. Now Tommy
8 doesn't exist?

9 A. No, he does not.

10 Q. So if we were to replace the name Tommy, it
11 would be once he was out, I told Alisha to hold him,
12 right?

13 A. What do you mean replace the word Tommy?

14 Q. I'll leave that alone.

15 A. I mean, how are you going to just put that in
16 there.

17 Q. Now, isn't it true that you told the police
18 at some point in time Alisha needed advice from you
19 during this robbery, correct?

20 A. I may have said that.

21 Q. Okay. You told the police, in fact, that
22 while Alisha was holding him down -- and I'll read the
23 whole thing. We're talking about the guy being on the
24 ground, and you said, exactly, the same way. And

1 there was a little wall about this -- I don't know,
2 about five or six inches wide. And I had told her to
3 press her foot against where she would get just a
4 little more strength. So it was you that was telling
5 her to push her foot there, right? That's what you
6 told the police?

7 A. That's what I told the cops, yes.

12:25P 8 Q. All right. And it says, well, the guy -- she
9 did, and the guy was still moving, so she or I -- I
10 got -- I went, cause -- cause she said, Steve, the
11 guys moving. He's moving. And I, you know, I saw his
12 legs. So she called out for your help as to what to
13 do. Fair enough?

14 A. Okay.

15 Q. All right. And you were the one that told
16 her to get rubber gloves, correct, according to what
17 you told the police?

18 A. Yes, according to what I told the police.

19 Q. All right.

20 A. I told the police a lot of things that really
21 didn't happen or anything. But that's besides the
22 point. I mean --

23 Q. All right.

24 A. I told them --

1 Q. But what you will agree that a robbery did
2 happen. Well, I can't use a robbery for now. That
3 Pedro's stuff was stolen, right?

4 A. Um-hum.

12:26P 5 Q. That latex gloves were used, correct?

6 A. Yes, we used gloves.

7 Q. That the place was wiped down, correct?

8 A. I don't know if it was all the way wiped
9 down.

10 Q. That Pedro was tied up?

11 A. Yes.

12 Q. That he was put in the tub?

13 A. Yes.

14 Q. That you tore his shirt off of him?

15 A. Yes. I did.

16 Q. And that you turned the water on?

17 A. That I turned -- I -- I was told, yeah, I
18 turned it on.

19 Q. Okay.

20 A. And all those things happen.

21 Q. You now want to dispute, however, who
22 actually did them; is that right?

23 A. I don't want to dispute nothing. I mean,
24 I -- I said what I said, yes, I did.

1 Q. All right.

2 A. Okay.

3 Q. And it was you who told Alisha to cut the fan
4 cord, correct?

5 A. No. If I said that, that's -- that's what
6 according to police is what I said to the police, yes.

12:27P 7 Q. Let's read it. Well, we tied him up with the
8 extension cord, and then, uh, Alisha cut the fan. I
9 was thinking -- excuse me. I think it was the fan.
10 I'm pretty sure it was the fan. She cut the wire
11 because I told her to cut that wire, and that's how we
12 tied her hand -- his hands. Okay?

13 A. Um-hum.

14 Q. And that's how he got tied up.

15 A. Um-hum.

16 Q. So according to what you told the police on
17 the 29th it was you who told her to cut the cord?

18 A. Yes.

19 Q. And it was you who told Alisha to get a sock;
20 is that right?

21 A. According to what I told the police, yes.

22 Q. You did tell her that, right, or told the
23 police that?

24 A. Yes, I told the police that.

1 Q. And it was you who told her to step to the
2 side when you went to pawn the items later on that
3 night, correct?

4 A. Yes, I did tell her that. That part is true.
5 I did tell her that.

12:28P 6 Q. All right. So while you would agree that in
7 your statement it is you that is telling people what
8 to do while at apartment 25, true?

9 A. I -- I wouldn't say people. Well, in my
10 statement, I guess, yes.

11 Q. All right.

12 A. Because Tommy --

13 Q. I want you to look at your statement and tell
14 me if one time you told the police that Alisha told
15 you to choke the guy?

16 A. You want me to read this whole statement?

17 Q. Well, you think it's in there?

18 A. I don't know because I don't -- like I
19 said --

20 Q. Will you take my word for it that nowhere in
21 there does it say that you said Alisha told me to
22 choke him out?

12:29P 23 A. I could take your word for it. I don't -- I
24 mean, I wouldn't --

1 Q. Would you take my word for it that nowhere
2 does it say that Alisha told me to cut the cord?

3 A. Yes.

4 Q. Would you take my word for it that nowhere
5 does it say that Alisha told me to turn on the bath
6 water?

7 A. I don't know of the, but I -- I'd take your
8 word for it, yes.

9 Q. Will you take my word for it that nowhere in
10 that statement does it say that Alisha told me to put
11 the sock in his mouth?

12 A. Right. I'd take your word for it.

13 Q. Will you take my word for it that nowhere
14 does it say that Alisha told me to take his wallet?

15 A. Yes.

16 Q. Will you take my word for it when nowhere
17 does it say that Alisha told me to take the bracelet,
18 the comb, the VCR, his jackets, or his hat?

19 A. Yes.

20 Q. Will you take my word for it that nowhere in
21 there does it say that Alisha told me to cut off the
22 shirt?

12:30P 23 A. Yes.

24 Q. Will you take my word for it that nowhere in

1 there does it say that Alisha told me to put him in
2 the tub?

3 A. Yes.

4 Q. Will you take my word for it in nowhere in
5 there does it say that Alisha told me to put a
6 pillowcase over this man's head?

7 A. Yes.

8 Q. Thank you, sir. All right. Now then, I want
9 to conclude one last line of questioning. And that is
10 your comments to the police that you didn't mean to
11 kill this man. All right?

12 A. Yes, sir.

13 Q. I want to be fair.

14 A. Okay.

15 Q. You said repeatedly to the police that you
16 didn't mean to kill him?

17 A. Yes, I did.

12:31P 18 Q. That you only meant to rob him?

19 A. Yes, sir.

20 Q. That's in there more than once, more than
21 twice?

22 A. It -- it -- I don't know exactly how many
23 times it was that I said it, but I probably said it a
24 lot. Because, I mean, it hurt, you know, to know

1 someone was dead that you robbed.

2 Q. Okay. And it was only your intent to choke
3 him out?

4 A. Yes, it was.

5 Q. In hindsight choking him out was a dangerous
6 thing to do; was it not?

7 A. Yes, I guess it is. Yes, it is. It is a
8 dangerous thing, I mean, to do. I mean, and to hold
9 it -- you know, to hold the grip for an extended
10 period of time, yes, it is.

12:32P 11 Q. And this was extensive enough that you broke
12 a sweat; isn't that true?

13 A. Well, it was hot anyway. I mean, it wasn't
14 just, I mean, because I had him around the neck I was
15 seating. I mean, it was hot outside. I mean, even
16 when you're in the house, I mean, and it's -- I mean,
17 especially, you know, a little room, I mean, you know,
18 anybody is going to sweat.

19 Q. All right.

20 A. I mean, anyone.

21 Q. But you would agree that it's a lot of work
22 to struggle with a man for a prolonged period of time?

23 A. I mean, I didn't struggle with him. I mean.

24 Q. It was that easy?

1 A. Alisha jumped on him. I mean -- I mean
2 all -- like I said, he was already -- he hit the bed,
3 and then he hit floor.

4 Q. And hit --

5 A. And I grabbed him around the neck, and then
6 he was out, you know. And we started looking for
7 things like I explained. And he started to wake, and
8 Alisha started stomping on his neck.

12:33P 9 Q. All right. In hindsight when he went down
10 the first time and passed out, you could have grabbed
11 a couple things and just left, true?

12 A. Yes, we could.

13 Q. And in hindsight --

14 A. Assume --

15 THE COURT: One at a time.

16 BY MR. GUYMON:

17 Q. Yes or no?

18 A. We couldn't have grabbed -- I don't think we
19 could have grabbed a couple of things, you know, a few
20 things and left -- a few things of value and then left
21 before he woke up, no, I don't.

22 Q. Well, you could have got away while he was
23 out, right?

24 A. Yes. We could have just left. But...

1 Q. But you didn't?

2 A. No, we did not.

3 Q. You got greedy?

4 A. No.

5 Q. You wanted a little more, right?

6 A. Yes.

7 Q. Okay. So he got choked out, not once, not
8 twice, but three or more times, correct?

9 A. Just once.

10 Q. Well, how many times did he pass out and come
11 back?

12 A. Just once because Alisha stomped on his neck
13 and stuff. And I thought after that, that he was just
14 passed out begin.

12:34P 15 Q. Okay. What --

16 A. Like I say I tied his -- you know, Alisha
17 told me where the extension cord was, and I saw it,
18 and I got it, and I tied his hand behind his back.
19 Yes, I did.

20 Q. Well, tell me something, while you were tying
21 his hands up behind his back, were you able to
22 determine whether he was alive or dead then?

23 A. I don't know. I mean, I'm not a doctor or
24 anything. I don't know when people -- you know, I

1 don't know how to take pulses or anything.

2 Q. Isn't it true that you told the police that
3 when you tied him up he was still alive?

4 A. I may have said that.

5 Q. Isn't it true that you told the police when
6 you stuffed the sock in his mouth he was still alive?

7 A. I may have said that.

8 Q. Okay. And isn't it true that he was still
9 alive when you put him in the bathtub?

10 A. I don't know if he was or not to be honest.
11 I mean, I -- I -- in my opinion, okay, I thought he
12 was. Yes, I did. But, you know, I mean...

12:35P 13 Q. What made --

14 A. I really thought --

15 Q. Excuse me. And what made you think this man
16 was still alive when you put him in the bathtub?

17 A. Because I didn't -- you know, I didn't --
18 like I said, I'm not a doctor or anything. I don't
19 think choking somebody or, you know, for five seconds
20 or ten seconds would kill someone, or you know,
21 or -- but, you know, then I wasn't -- you know, I
22 wasn't really thinking because she stomped on his neck
23 and things like that. And I wasn't really thinking
24 about him really being alive, you know what I mean, or

1 dead. Because I really wanted to get out of there.
2 You know.

3 Q. Nobody made you stay though, did they?

4 A. No. Nobody made us stay.

5 Q. I mean, Alisha doesn't make you do something,
6 does she?

7 A. Not -- not forcibly, no. But...

8 Q. And you obviously thought he was still alive
9 because you told the police, look, man, I put him in
10 the tub so that when he woke up, he'd say, oh, dude,
11 what a bummer?

12:36P 12 A. Thought. I thought. I thought is the main
13 word there. I thought he was alive.

14 Q. All right. Now do you really think a man can
15 continue to breathe with a sock in his mouth?

16 A. (No audible response)

17 Q. Yes or no?

18 A. Yes. Through his -- you know, like what the
19 doctor was pretty much saying, through his nose. I
20 mean, I could cover my mouth and breathe through my
21 nose --

22 Q. You --

23 A. -- and still be alive.

24 Q. Do you really think, sir, that a man can

1 continue to breathe when he's under water?

2 A. Uh.

3 Q. Yes or no?

4 A. I didn't know. I don't think you can breath,
5 no, not underwater. I mean, not if you stay under
6 water for a long period of time, no.

7 Q. How long do you think this man was going to
8 be able to hold his breath as he lay in a bathtub that
9 was filling with water?

10 A. I, I really don't know. I mean...

11 Q. Isn't it true --

12 A. I thought we did for the -- I did not know
13 that it would fill up with water. Okay. I did not
14 know that the plunger or whatever to hold the water in
15 the tub was even on or off. I mean, all I did was,
16 Alisha told me to turn the water on the shower. I
17 turned the shower on. I did not know that the shower
18 was going to fill the bathtub up. I mean...

12:38P 19 Q. Let me ask you --

20 A. That's were. That's a drain. I didn't know
21 if it was closed or, I mean, I didn't -- my mind
22 wasn't -- if you know thinking on the drain.

23 Q. Let me ask you this, you can't get off your
24 stomach when your hands were tied behind your back and

1 your feet are tied up, can you?

2 A. I don't know. I've never tried it.

3 Q. You think you could?

4 A. I -- I'm, uh -- it depends on the person.

5 Q. Do you think you could continue to breathe if
6 a man had his arms around your neck and was pressing
7 them against your neck?

8 A. No. I mean, that's why, you know, you fall
9 asleep. That's --

10 Q. Do you think --

11 A. That's why they call it the sleeper hold.

12 Q. Do you think you could still to breathe?

13 A. Excuse me?

14 Q. Do you think you can continue to breathe if
15 you were under water and couldn't come up for air?

16 A. No. I don't think you could.

17 Q. Just how long was that sock that was put in
18 his mouth, if you could show us with your hand?

12:39P 19 A. I don't know. I didn't put it in his mouth.

20 Q. But it was you that told the detective?

21 A. Yes, it was.

22 Q. And it was described as a tennis styled sock;
23 is that right?

24 A. Yeah.

1 Q. And you heard the testimony that it was
2 forcibly put in his mouth to the point that his mouth
3 bled. You heard that testimony, right?

4 A. I heard that testimony, yes.

5 Q. How long did you think you could breathe if a
6 sock, a tennis style sock, was stuffed in your mouth?

7 A. Forcibly? Probably not too long I don't
8 think. Probably not too long.

9 Q. If a sock was wadded up and stuffed to the
10 back of a person's throat?

11 A. They would probably choke, choke to death
12 probably.

13 MR. GUYMON: I have no other questions.

14 MR. WOMMER: May I? Your Honor, may I
15 approach the witness, your Honor?

16 REDIRECT EXAMINATION

17 BY MR. WOMMER:

18 Q. Mr. Kaczmarek, Mr. Guymon asked you a number
19 of questions regarding this statement. And a couple
20 of those questions were, would you take my word for it
21 that there was never an indication that Alisha gave
22 you a pillowcase; do you remember those questions?

12:40P 23 MR. GUYMON: That was not the question. It
24 was did Alisha tell you to put the pillowcase over his

1 head?

2 THE COURT: That was the question.

3 BY MR. WOMMER:

4 Q. Would you take a look at the statement, page
5 20, Counsel. Would you take a look at this and read
6 this line here. And tell me what that says?

7 A. There?

8 Q. No, from right there.

9 A. It was, it was Alisha who gave --

10 THE COURT: Wait a minute, wait a minute.
11 Speak into the microphone?

12 THE WITNESS: Okay. It was -- it was Alisha
13 who gave me a pillowcase and told me to put it over
14 his head.

15 BY MR. WOMMER:

16 Q. Would you take a look at the first two
17 sentences of page twenty-one?

18 A. Just a regular pillowcase. Yeah, it was
19 Alisha. She told me, she said, here put this over his
20 head. So I put it over his head. She said turn the
21 water on.

22 Q. Thank you. Mr. Kaczmarek, when you gave this
23 statement to Detectives Wilson and Mikolainis, were
24 you protecting anyone?

12:41P 1 A. Yes, I was.

2 Q. Who were you protecting?

3 A. I was protecting Alisha.

4 Q. Why?

5 A. Because I really really loved her and cared
6 about her. And I thought she really really loved and
7 cared about me.

8 Q. Would it be fair to say that you weren't
9 completely honest with the two detectives when you
10 gave them this statement?

11 A. Yes, it would.

12 Q. Thank you.

13 MR. WOMMER: No further questions, your
14 Honor.

15 THE COURT: Anything on that?

16 RECROSS-EXAMINATION

17 BY MR. GUYMON:

18 Q. You wouldn't be protecting yourself today,
19 would you?

20 A. No. I -- I'm not lying.

21 Q. There's a lot at stake, isn't there?

22 A. Yes. There's a lot at stake.

23 Q. And you wouldn't lie to save your life, would
24 you?

1 A. I think anybody would.

2 MR. GUYMON: I have no other question?

3 THE WITNESS: I -- I -- I wouldn't, no. I
4 wouldn't lie to save my life. Not, not feeling the
5 way I feel about Alisha Burns, no.

12:42P 6 MR. GUYMON: I have no other questions,
7 Judge.

8 MR. DENUE: No.

9 MR. WOMMER: No questions.

10 THE COURT: Thank you. You may step down.
11 Call your next witness.

12 MR. WOMMER: Your Honor, at this point the
13 defense would rest.

14 THE COURT: All right. Does the defense have
15 any rebuttal?

16 MR. GUYMON: No, your Honor.

17 THE COURT: All right. Ladies and gentlemen,
18 we're going to send you to lunch. Ask you to come
19 back at, let's see now, two thirty.

20 MR. WOMMER: That would be fair because I
21 2:30 have some --

22 THE COURT: Do not discuss the case amongst
23 yourselves or with anyone else.

24 Do not read, watch, or listen to any accounts

1 of these proceedings.

2 Do not form or express any opinion on any
3 issue connected to the case until after it's submitted
4 to you.

5 Bill, should they meet you downstairs or up
6 here?

7 THE BAILIFF: Yes, your Honor. Down in the
8 lounge.

9 THE COURT: Meet in the juror lounge. Thank
10 you.

11 No, no. What time did I say 2:30?

12:43P 12 A JUROR: Two thirty.

13 (Whereupon, the following
14 proceedings were had outside
15 the presence of the jury.)

16 THE COURT: All right. Let the record
17 reflect that the jury and the alternates have left the
18 courtroom. At this time we want to make part of the
19 record the fact that the defense did not want the
20 Exhibit 1 read to the jury again. And that was at a
21 bench conference with --

22 MR. WOMMER: Prior to Edd Pryor's testimony.

23 THE COURT: Exactly.

24 MR. WOMMER: That's correct.