

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID CRAIG MORTON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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APPEAL FROM JUDGMENT OF
THE HONORABLE RICHARD WAGNER

SIXTH JUDICIAL DISTRICT COURT

APPELLANT'S APPENDIX

VOLUME 2

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1 this into evidence so that the jury can see it.

2 MR. WILLIAMS: No objection, Your Honor.

3 MR. MOLEZZO: Thank you, counsel.

4 THE COURT: This is admitted as Exhibit C.

5 MR. MOLEZZO: Thank you, Your Honor.

6 (Whereupon, Exhibit C was admitted into evidence.)

7 THE COURT: Do you have any other questions, sir?

8 MR. MOLEZZO: Yes. I'm trying to pace them a

9 little bit, Your Honor. I want to make sure I get it. I

10 got one shot. Um, I have no further -- well, strike that.

11 When you -- just briefly, Your Honor, please.

12 THE COURT: Okay.

13 (BY MR. MOLEZZO:)

14 Q. When you got to the residence on August 5th, 2009,

15 uh, do you recall a radio being played? Was there a radio,

16 a stereo on?

17 A. Yes, there was while we were --

18 Q. Huh?

19 A. Yes, there was.

20 Q. Was it loud or kind of loud?

21 A. No.

22 Q. I know that's vague, but --

23 A. Because we were getting ready for bed, so it

24 wasn't loud.

25 Q. Okay. Do you recall hearing a thud?

1 (indicating). Like someone falling?
2 A. It was more of a bang than a thud.
3 Q. Well, that's a big difference, Stasia. So you
4 heard a bang, like a -- like a gun?
5 MR. WILLIAMS: Objection, Your Honor.
6 MR. MOLEZZO: Strike that.
7 (BY MR. MOLEZZO:)
8 Q. It was more of a bang? It wasn't a thud?
9 A. Yes.
10 Q. You didn't hear a thud, but you heard more of a
11 bang; is that fair?
12 A. Yes.
13 MR. MOLEZZO: I have no further questions at this
14 time. The jury may have a few. Thank you, Your Honor.
15 THE COURT: Redirect, sir?
16 MR. WILLIAMS: Thank you, Your Honor. One moment.
17 Approach, Your Honor?
18 THE COURT: You may.
19 MR. WILLIAMS: Thank you. Approach the witness?
20 THE COURT: You may.
21 REDIRECT EXAMINATION
22 (BY MR. WILLIAMS:)
23 Q. Stasia, I'm going to show you page two of your
24 statement. Could you read that line here from your
25 statement?

1 Since we're talking about this sound you heard,
2 let's read what you wrote in your statement.

3 THE COURT: It's in evidence. She can read it.

4 THE WITNESS: The sentence that it goes with?

5 (BY MR. WILLIAMS:)

6 Q. Yeah, the sentence that you described this sound
7 in your statement.

8 A. Okay. "Which sounded like running and a big bang,
9 then we heard Cindy scream."

10 Q. Thank you.

11 We talked a little bit about your muscular
12 dystrophy. So I just wanted to ask you a couple questions
13 about that.

14 Is that why Robert had to help you get on the
15 stage (verbatim) today?

16 A. Yes.

17 Q. Is it tough for you to go upstairs?

18 A. Yes.

19 Q. Now, this condition, does that affect any part of
20 your body, besides your muscles?

21 A. Um, my upper arms. That's about it.

22 Q. I guess I should ask this a little better.

23 Does it affect your sight at all?

24 A. My side?

25 Q. Does it affect your ability to see?

1 A. Oh, no.

2 Q. Does it affect your ability to hear?

3 A. No.

4 Q. Does it affect your memory?

5 A. No.

6 Q. Talked about a stereo being played when you were

7 there that night. Were you talking about Robert's stereo?

8 A. Yes.

9 Q. Did you hear any other stereo being played?

10 A. No.

11 Q. Now, you said that that night you couldn't tell

12 whether or not the defendant had been drinking?

13 A. Yes.

14 Q. Had you seen him drinking before that night?

15 A. Yes, I have.

16 Q. Where would you see him drinking at?

17 A. Upstairs in the rocking chair in the living room.

18 Q. What time of the day would you see him drinking?

19 A. All times.

20 MR. MOLEZZO: Objection, relevance.

21 THE COURT: Sustained. Unless you can show it's

22 relevant to this matter, sir.

23 MR. WILLIAMS: I'll move on, Your Honor.

24 (BY MR. WILLIAMS:)

25 Q. You said you went and visited Cindy when she was

1 in the hospital in Reno?

2 A. Yes.

3 Q. And did you go with Robert?

4 A. Yes.

5 Q. And are you the one who paid to stay in Reno so
6 that he could see Cindy?

7 A. Yes.

8 Q. How long did you pay for that hotel room for?

9 A. A week.

10 MR. MOLEZZO: Objection, relevance.

11 THE COURT: Sustained.

12 MR. WILLIAMS: That's all the questions I have,
13 Your Honor. Thank you.

14 THE COURT: Do you have any follow-up with regard
15 to those questions, sir?

16 MR. MOLEZZO: Yes, sir. May I be seated, Your
17 Honor?

18 THE COURT: You may.

19 RECROSS-EXAMINATION

20 (BY MR. MOLEZZO:)

21 Q. Anastasia, I have some notes here so I want --
22 anytime that you visited Cindy, the deceased, do you recall
23 anybody asking her what had happened, Stasia?

24 A. No. She couldn't speak.

25 Q. But you shared with us she could nod, right?

1 A. Yes. I, uh, didn't always stay in the room. I
2 thought it was more of a personal thing for Robert.

3 Q. Okay. That's fine. The times that you were in
4 the room, isn't it true that there were times that she could
5 communicate through nodding?

6 A. Yes, when I looked over. I was out of the room
7 most of the time.

8 Q. Stasia, I'm not trying to trick you.

9 A. Okay.

10 Q. The times that you were in the room, at times she
11 could communicate by nodding, correct?

12 A. Yes.

13 Q. And the times that you were there, in that room,
14 do you recall anyone asking her what had happened?

15 A. No.

16 Q. At the times that you were in that room, if you
17 recall, was Robert always with you in that room? In the
18 hospital room, dear?

19 A. Yes. I went one time with just Jessica.

20 Q. Okay. Okay. Thank you.

21 At any time in that room when you were in it, was
22 Mr. Morton's older son in that room?

23 A. Yes, he was at the hospital when I was there, but
24 I didn't see him.

25 Q. Okay. Was he in the room with you anytime during

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that?

A. No.

Q. Okay. And just a few more.

When you were in that room, could you -- do you have personal knowledge that the deceased was able to write? Did you ever see her write anything?

A. No.

Q. Okay. So it was just the nodding? This kind of thing, (indicating) head thing, right?

A. Yes.

MR. MOLEZZO: Thank you, Your Honor. I have nothing further.

The jury may have a few. Thank you.

THE COURT: I will so inquire. Thank you.

Ladies and gentlemen of the jury, if any of you have any questions, now is the time. It appears the jury does not have any questions.

If you will wait just one minute, we will get Robert in to help you.

THE WITNESS: Okay.

THE COURT: You will be excused, I take it?

MR. MOLEZZO: For -- yes.

MR. WILLIAMS: She's excused subject to recall, Your Honor.

MR. MOLEZZO: Yes, subject --

1 THE COURT: All right. So you will be available
2 if somebody decides to recall you during the trial.

3 THE WITNESS: Okay.

4 THE COURT: Okay.

5 THE WITNESS: So I don't have to come back after
6 this or do I?

7 THE COURT: You don't have to come back unless
8 somebody feels they need to call you back.

9 THE WITNESS: Okay.

10 THE COURT: So stay in touch through the district
11 attorney's office.

12 Robert, if you would come and help her?

13 Now, ladies and gentlemen, we're going to take our
14 first morning recess. I'm going to admonish you.

15 You can just walk that way, if you'd like.

16 Robert, why don't you just take her out that door?

17 MR. ROBERT MORTON: Sorry.

18 THE COURT: That's fine. It's closer.

19 I'm going to admonish you. It is your duty not to
20 discuss among yourselves or with anyone else any matter
21 having to do with this case.

22 It is your further duty not to form or express any
23 opinion regarding the guilt or innocence of the defendant
24 until the case has been finally submitted to you for your
25 decision.

1 You are not to read any newspaper articles or
2 listen to or view any radio or television broadcasts
3 concerning this case.

4 Should any person attempt to discuss the case with
5 you or in any manner attempt to influence you with respect
6 to it, you are to advise the bailiff who will, in turn,
7 advise the Court.

8 We will be in recess for about 10 minutes.

9 (Whereupon, a recess was had.)

10 THE COURT: Court will come to order. Please be
11 seated.

12 Will counsel stipulate to the presence of the jury
13 and the alternates?

14 MR. MOLEZZO: Defense stipulates.

15 MR. SMITH: The State would stipulate.

16 THE COURT: You may call your next witness.

17 MR. SMITH: Jessica Morton.

18 JESSICA MORTON

19 Called as a witness on behalf of the Plaintiff,
20 having been first duly sworn, was examined and testified as
21 follows:

22 THE COURT: Go ahead and turn around and we'll
23 have you have the microphone there with you.

24 Would you please state your name for the record.

25 THE WITNESS: My name is Jessica Morton.

1 THE COURT: You may proceed on direct examination.

2 MR. SMITH: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 (BY MR. SMITH:)

5 Q. Jessica, how old are you?

6 A. 21.

7 Q. And how old were you on August 5th, 2009?

8 A. I was 20.

9 Q. What were you doing earlier in the day on August
10 5th, 2009?

11 A. Me and my friend, Ashley, we went to Reno for the
12 day.

13 MR. SMITH: Can the jury hear the answers?

14 JURY: Yes.

15 (BY MR. SMITH:)

16 Q. On the evening of August 5, 2009, what were you
17 doing?

18 A. We got back to Winnemucca late. So it was too
19 late to go to my mom's house. So we called Robert to see if
20 we could stay the night at his house.

21 Q. And were you able to spend the night at Robert's
22 house?

23 A. Yes.

24 Q. When you got to Robert's house, what did you do?

25 A. When we got to Robert's, we pulled out in the

1 middle of the street so I could get out of my car, and then
2 I waited for Anastasia to park the car, and then Robert
3 pulled up. And we proceeded to go downstairs, where his
4 room was.

5 Q. I now hand you what's previously been marked
6 State's Exhibit 7.

7 MR. SMITH: I've already shown this to defense
8 counsel, Your Honor.

9 THE COURT: Okay.

10 (BY MR. SMITH:)

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. What is this a document of?

14 A. It's the downstairs layout of the house we were
15 at.

16 Q. And the house that you were at, whose house was
17 it?

18 A. It was my Aunt Cindy's and Uncle Dave's house.

19 MR. SMITH: Your Honor, at this time we'd like to
20 use this to help aid and we'll enter it later. Is that
21 okay?

22 THE COURT: Yes.

23 (BY MR. SMITH:)

24 Q. Cynthia -- sorry about that. Jessica, I now hand
25 you a green pen.

1 For orientation purposes, could you put "back
2 door" where the back door would be located on that drawing.
3 And you can move yourself however you need to to make it so
4 you can do that.

5 THE COURT: Why don't you hold the paper, Counsel.
6 (BY MR. SMITH:)

7 Q. For purposes of orientation, could you write
8 "front door" where the front door would be located upstairs.

9 A. About right here.

10 Q. And with this diagram, where would the street be
11 located?

12 A. The street is over on this side.

13 Q. Can you write "street" on that side.

14 A. (Witness complied.)

15 Q. Where would the backyard be located?

16 A. (Witness writing.)

17 Q. Jessica, because I'm having you mark this one,
18 would you write your name on this diagram, on the outside
19 anywhere.

20 A. My whole name?

21 Q. No, that's good. When you went downstairs, how
22 did you get downstairs?

23 A. I parked my chair right here by the back door and
24 Robert carried me.

25 Q. Where did he carry you when you went into the

1 basement?

2 A. Into his bedroom.

3 Q. And you indicated that Bedroom 1 is Robert's
4 bedroom?

5 A. Yes.

6 Q. Can you write "Robert's bedroom" on that. What
7 happened when you got to Robert's bedroom?

8 A. When we got to Robert's bedroom, he sent me out
9 and -- it was me, Robert, Anastasia, and two of Robert's
10 friends were there.

11 Q. Did the friends stay very long?

12 A. No. For about ten minutes.

13 Q. What did you guys do when you first got to
14 Robert's room?

15 A. We were just talking and watching TV and hanging
16 out.

17 Q. What happened next?

18 A. His friends left and I told Robert that I was
19 ready to go to bed because I was really tired. So --

20 Q. Then what happened when you told Robert that you
21 were ready to go to bed?

22 A. He picked me up and carried me to the second
23 bedroom downstairs.

24 Q. And what did you do when you got into the second
25 bedroom?

1 A. He laid me down on the bed. And he got me all
2 comfortable because I can't position myself at all. And he
3 put the blankets over me and then he turned the bathroom
4 light on and cracked the door a little bit so that there was
5 light when he came in to turn me at night.

6 Q. Can you put "Jessica" inside of Bedroom 2. Can
7 you write that?

8 After Robert turned on the light and adjusted the
9 bathroom door, what did he do?

10 A. He left the room. My door was left open, and I
11 heard him walk back to his room and close the door.

12 Q. Is there a reason that your door was left open?

13 A. Just so that I can yell for him at night.

14 Q. And why would you yell for him at night?

15 A. I need help turning over.

16 Q. I take it that you've spent other nights at
17 Robert's house.

18 A. Yes.

19 Q. After Robert left the room and went into his
20 bedroom, what did you do?

21 A. I fell asleep.

22 Q. And what happened next?

23 A. Next I was woken up by someone at the back door.
24 And it was Dave and Cindy. And I knew it was them because
25 of their voices.

1 Q. So are you positive that you heard both voices
2 coming in the back door?

3 A. Yes.

4 Q. And what is the relationship of Dave and Cindy to
5 you?

6 A. They're my aunt and uncle.

7 Q. Do you spend much time with them?

8 A. At this point in time, sort of. Whenever we went
9 over there, yes.

10 Q. So you were familiar with their voices; is that
11 fair to say?

12 A. Yes.

13 Q. Now, are you positive that it was Cindy's voice
14 that you heard?

15 A. Yes.

16 Q. Are you positive that it was Dave's voice that you
17 heard?

18 A. Yes.

19 Q. What happened next?

20 A. Next, I fell back to sleep again. And around
21 11:30 I was woken up to them arguing.

22 Q. How do you know that it was around 11:30 when you
23 were woken up?

24 A. Because I looked at my phone and checked the time.

25 Q. And you said you heard them arguing. Who was

1 arguing?

2 A. Dave and Cindy.

3 Q. Could you tell what they were saying?

4 A. I heard because they were in the room above me

5 upstairs.

6 Q. And what room would be located above you upstairs?

7 A. The master bedroom.

8 Q. And what did you hear in that bedroom upstairs?

9 A. Cindy was telling Dave to put the tires on the car

10 and she'd be gone. And she said that about two or three

11 times. And then Dave just kept telling her, Shut up. Shut

12 up. Shut up.

13 Q. Could you tell where they were at in the room?

14 A. Not really. I knew they were in the room. I'm

15 not quite sure where.

16 Q. And why do you believe they were in the master

17 bedroom?

18 A. Because I could hear their footsteps and I could

19 hear their voices.

20 Q. And after this conversation or this -- how would

21 you describe the conversation?

22 A. It was an argument. Definitely.

23 Q. How were the voices? What were the tones?

24 A. I'd say angry.

25 Q. What was the volume?

1 A. It was loud. That's why it woke me up.

2 Q. And what happened after you heard this arguing for
3 a bit?

4 A. Well, Cindy was still talking, but I could hear
5 her walk out of the room going down the hallway. I could
6 hear her footsteps and her voice carrying.

7 Q. Okay. So you heard her voice and footsteps leave
8 the bedroom?

9 A. Yes.

10 Q. Was it only one person who left the bedroom?

11 A. Yes.

12 Q. How do you know?

13 A. Because I could still hear Dave talking under his
14 voice in the bedroom. I don't know what he was saying, but
15 I could hear him in there.

16 Q. Okay. "Hear him." Did you hear just his voice,
17 or did you hear other things?

18 A. I heard his voice and his footsteps walking
19 around.

20 Q. So there were still footsteps in the bedroom?

21 A. Yes.

22 Q. Then what happened?

23 A. Then I heard Dave running out of the room toward
24 -- down the hallway towards the kitchen area. I heard a
25 loud sound. And then I heard Robert open his door and run

1 up the stairs.

2 Q. This loud sound, how loud's loud?

3 A. It sounded like a crash of something.

4 Q. Okay. What happened after Robert ran upstairs?

5 A. I heard Cindy telling Robert to get out of the
6 way, and then I heard her say "oh, my God," and then I heard
7 some shuffling around. And then Robert came back downstairs
8 and I heard him get on the phone with 911.

9 And then I heard Dave come downstairs not too long
10 after that.

11 Q. What happened after you heard -- how do you know
12 that Robert got on the phone with 911?

13 A. Because I could hear him. I heard: Yeah, my dad
14 just shot my mom.

15 Q. And then what happened after you heard that?

16 A. Dave came downstairs and he kept telling Robert
17 that just give him the gun back, it was an accident. Just
18 give me it back, it was an accident.

19 Q. Then what happened?

20 A. Then someone ran upstairs and then someone ran up
21 right after him. And then I heard shuffling. And then I
22 heard both of them go out the back door.

23 Q. Okay. And then what happened?

24 A. I heard Cindy screaming like in pain, "Oh, my God.
25 Oh, my God," over and over.

1 Q. And where were you during this whole time?

2 A. I was still in the bedroom in bed.

3 Q. Did anyone come into the bedroom with you?

4 A. After they ran out the back door, Anastasia came
5 into the bedroom and sat with me until the police showed up.

6 Q. And when the police showed up, did any of the
7 officers come and visit with you?

8 A. Yeah. One of the officers came down and made sure
9 that we were okay and asked if we wanted to go upstairs.
10 And I explained to him that I couldn't because I was in bed
11 and I can't walk.

12 And so we had to wait until Robert was calm enough
13 to pick me up and carry me upstairs.

14 Q. When Robert carried you upstairs, was there a time
15 -- or after Robert carried you upstairs, was there a time
16 that you spoke with law enforcement?

17 A. Yes.

18 Q. And was it that evening before you left?

19 A. Yes.

20 Q. And did you explain it all to them what had
21 happened?

22 A. Yeah, I told them that I heard everything that
23 happened and kind of gave them my side of the story.

24 And then they asked for my phone number so they
25 could get a statement.

1 Q. And then were you allowed to leave?
2 A. Yes.
3 Q. Did there come a time that you visited with law
4 enforcement later?
5 A. Yes.
6 Q. How much later?
7 A. It was in October.
8 Q. Okay. And did you visit with them?
9 A. Yes.
10 Q. Did you write a statement for them?
11 A. Yes.
12 Q. And in that statement, did you write what
13 occurred?
14 A. Yes, I did.
15 MR. SMITH: Thank you. No further questions, Your
16 Honor.
17 THE COURT: You may cross-examine.
18 MR. MOLEZZO: Thank you very much. May I remain
19 seated?
20 THE COURT: You may.
21 CROSS-EXAMINATION
22 (BY MR. MOLEZZO:)
23 Q. May I call you by your first name, if the Court
24 allows?
25 A. Yes.

1 MR. MOLEZZO: May I do so, Judge?

2 THE COURT: You may.

3 (BY MR. MOLEZZO:)

4 Q. You do recall drafting a statement in this case or
5 writing a statement?

6 A. Yes.

7 Q. In that statement you tell the police that you
8 could tell they were both drinking when you heard them come
9 in?

10 A. Yes.

11 Q. How was that? Slurred speech? Or what was the
12 trigger?

13 A. Slurred speech and the way they were acting. I've
14 known them my whole life. I know when they're -- when you
15 know someone that long, you know if they're drinking or
16 they're sober. So I just knew.

17 Q. Now, you testified that -- now, you remained in
18 the bedroom, right?

19 A. Yes.

20 Q. And you're familiar with that house pretty well,
21 would you say?

22 A. Yes.

23 Q. Okay. Thank you. And there came a time where you
24 were listening to my client and the deceased right above
25 your head; is that correct?

1 A. Uh-huh.

2 THE COURT: Just a second. Is that a yes?

3 MR. MOLEZZO: I'm sorry, Judge. That's my duty.

4 I'm sorry.

5 THE WITNESS: Yes.

6 (BY MR. MOLEZZO:)

7 Q. And right above your head it's the master bedroom?

8 A. Yes.

9 Q. And then you testified today that, again, you're

10 just hearing, correct?

11 A. Right.

12 Q. You're not seeing what's going on?

13 A. Right.

14 Q. Thank you, Jessica. And do you have any issue

15 hearing? Your hearing is A-okay?

16 A. Yeah.

17 Q. So you hear what you believe is the deceased

18 leave?

19 A. Yes.

20 Q. And it's your testimony today that you hear my

21 client like continue to talk?

22 A. Uh-huh.

23 THE COURT: Just a second.

24 MR. MOLEZZO: I'm sorry.

25 THE WITNESS: Yes.

1 MR. MOLEZZO: That's fine, Judge.
2 (BY MR. MOLEZZO:)
3 Q. But you didn't share this on your written
4 statement; isn't that correct?
5 A. Yes.
6 Q. So it's kind of like a mumbling or -- you don't
7 know what it is. You just think it's him talking, Jessica?
8 A. Right.
9 Q. Thank you. Now, is it your testimony that while
10 you were in that guest bedroom downstairs you heard the
11 deceased say she needs tires on her car?
12 A. Uh-huh.
13 Q. Is that right? Yes?
14 A. Yes.
15 Q. And is it your belief that that --
16 MR. MOLEZZO: May I approach, please, Judge?
17 THE COURT: You may.
18 (BY MR. MOLEZZO:)
19 Q. Is it your belief when you heard the deceased say
20 that that you were here in your bedroom? Right?
21 A. Yes.
22 Q. And when she allegedly said that, it's your belief
23 that she was in the master bedroom; is that right?
24 A. Yes.
25 Q. Right above you?

1 A. Yes.

2 Q. Thank you, Jessica.

3 MR. MOLEZZO: And if I may approach again, please,

4 Judge?

5 THE COURT: You may.

6 MR. MOLEZZO: Thank you.

7 (BY MR. MOLEZZO:)

8 Q. And so you're in the guest bedroom, right,

9 Jessica?

10 A. Yeah.

11 Q. May I walk around you?

12 A. Yes.

13 Q. So you're in the guest bedroom right here; is that

14 right?

15 A. Yes.

16 Q. And as far as you know, Robert and Stasia are

17 here; is that right?

18 A. Yes.

19 Q. And this is the other side of the room; is that

20 fair?

21 A. Yes.

22 Q. Then you testified --

23 MR. MOLEZZO: I apologize, folks, I didn't mean to

24 turn my back on you.

25 (BY MR. MOLEZZO:)

1 Q. Then you testified that you heard -- you heard my
2 client come down or talk to Robert downstairs; is that
3 right, Jessica?

4 A. Yes.

5 Q. And then -- and you heard -- and this is your
6 testimony -- that you heard my client say, "Give me back the
7 gun, it was an accident."

8 A. Yes.

9 Q. And it's fair to say, isn't it, that he was saying
10 this over and over again; is that correct?

11 A. Yes.

12 Q. Now, when you were hearing that -- you're familiar
13 with my client, correct?

14 A. Yes.

15 Q. All your life, I would imagine. Is that right?

16 A. Yes.

17 Q. When you were hearing my client say, "Give me the
18 gun back, it was an accident," how did his words sound? Did
19 they sound frantic? Normal? Can you share with us how his
20 words --

21 A. It sounded empty.

22 Q. "Give me the gun back, it was an accident," kind
23 of like a monotone delivery?

24 A. Yeah.

25 Q. Okay. Could it have also sounded like a calming

1 -- a calming-type cadence, "Give me the gun back, it was an
2 accident, give me" --

3 A. I don't think so.

4 Q. I'm sorry?

5 A. I don't think so.

6 Q. Just empty, like in shock?

7 A. Yeah.

8 Q. And you've known your uncle a long time,
9 obviously, Jessica.

10 A. Yes.

11 Q. It's fair to say he's not a real emotional kind of
12 guy; isn't that true?

13 A. I'm sorry, what?

14 Q. He's not an emotional-type guy; isn't that true?
15 Some guys are, you know --

16 A. Kind of emotional, yeah.

17 Q. Okay. So he's kind of an emotional guy or --

18 A. A little bit.

19 Q. Okay. That's fair. Okay. Now, the police
20 finally came into contact with you; is that right?

21 A. Yes.

22 Q. And how long did they speak to you? I know it's
23 been a year ago. How long, about?

24 A. Probably about an hour to an hour and a half.

25 Q. They talked to you for an hour to an hour and a

1 half?

2 A. Yes.

3 Q. When they were talking to you, if you have

4 personal knowledge, was Stasia there as well?

5 A. Yes.

6 Q. Okay. And then after about an hour or so or hour

7 and a half you guys left; is that right?

8 A. Well, she came to my house.

9 Q. I'm sorry?

10 A. She came to my house.

11 Q. Okay. So you left the crime scene, and then they

12 came --

13 A. You mean that night?

14 Q. Yes. I'm sorry.

15 A. I'm sorry, I thought you were talking when they

16 came back.

17 Q. No, that night. How long did the police talk to

18 you?

19 A. They talked to us probably for like 15, 20

20 minutes.

21 Q. Okay. Thank you. Did they ask you for a written

22 statement?

23 A. No, they did not.

24 Q. So after you leave with Stasia, the police come

25 and speak to you again. That's correct, right?

1 A. Yes.

2 Q. And when was that? It was quite some time later;

3 is that right?

4 A. It was in October.

5 Q. October. 77 days later?

6 A. Yeah.

7 Q. August 5th, October 21, 2009?

8 A. Yeah.

9 Q. Is that fair?

10 A. Yes.

11 Q. And did they have -- did they talk to you at the

12 police station?

13 A. No. They came to my house.

14 Q. And had you ever been taken to the police station

15 for a formal interview?

16 A. No.

17 Q. It was done at your home?

18 A. Yes.

19 Q. Were there other folks present when you

20 interviewed with the police?

21 A. Yes.

22 Q. Who was there?

23 A. Anastasia and my mom.

24 Q. Did the police tell you why they were there and

25 they didn't -- did you have -- did they ask you to come to

1 the police station?

2 A. No. They told me that they were coming to my

3 house to make it easier on me.

4 Q. I'm sorry, please --

5 A. They told me they would come to my house to make

6 it easier on me.

7 Q. Okay. Did they offer to take you to the police

8 station themselves?

9 A. No.

10 Q. Did they -- or do you recall them recording what

11 you were saying?

12 A. Yes.

13 Q. You saw them recording your words?

14 A. I'm pretty sure they had a tape recorder.

15 Q. One of those micro recorders?

16 A. Yeah.

17 Q. But you're not certain?

18 A. But I'm not for sure.

19 Q. Okay, Jessica.

20 MR. MOLEZZO: Court's indulgence, please, Judge?

21 THE COURT: Yes.

22 (BY MR. MOLEZZO:)

23 Q. Soon after your conversation -- you've only

24 interviewed with the police one time, right, Jessica?

25 A. Yes.

1 Q. Did they -- did anybody from the police department
2 follow up or call you in California, keep you advised of
3 this case?
4 A. No.
5 Q. Okay. Did you go visit the deceased at the Renown
6 Medical Center?
7 A. Yes.
8 Q. How many times would you say you were able to do
9 that?
10 A. Probably four or five.
11 Q. At any time when you were personally there, was
12 she able to communicate?
13 A. Not with words, no.
14 Q. With movement was she able to communicate?
15 A. A little bit, yes.
16 Q. Head up and down, like saying yes?
17 A. Right.
18 Q. Head side to side, like saying no?
19 A. Yes.
20 Q. Thank you, Jessica.
21 MR. MOLEZZO: Nothing further, Your Honor.
22 THE COURT: Any redirect, sir?
23 MR. SMITH: Yes, Your Honor. Your Honor, the
24 State would move to enter Exhibit 7 into evidence in this
25 case.

1 THE COURT: That's identified as her written
2 statement to the police, sir?
3 MR. SMITH: No, this is the diagram.
4 THE COURT: Oh, I'm sorry.
5 MR. MOLEZZO: No objection.
6 THE COURT: Exhibit 7 is the diagram that she
7 wrote on. And it is admitted as Exhibit 7.
8 (Exhibit 7 admitted.)
9 REDIRECT EXAMINATION
10 (BY MR. SMITH:)
11 Q. Jessica, I hand you what's been previously marked
12 as State's Exhibit 13. Do you recognize this document?
13 A. Yes.
14 Q. What is it a document of?
15 A. My statement.
16 Q. Is that the statement that you wrote for law
17 enforcement?
18 A. Yes.
19 Q. Did you sign this document?
20 A. Yes, I did.
21 MR. SMITH: Your Honor, the State would move for
22 State's Exhibit 13, the witness' handwritten statement, in
23 evidence in this case.
24 MR. MOLEZZO: No objection.
25 THE COURT: It is hereby admitted as Exhibit 13.

1 (Exhibit 13 admitted.)

2 MR. SMITH: No further questions, Your Honor.

3 THE COURT: Any recross?

4 MR. MOLEZZO: On moving evidence in, Your Honor?

5 THE COURT: Yes, sir. That's it.

6 MR. MOLEZZO: That's pretty much -- no, unless the

7 jury has some questions. Thank you.

8 THE COURT: Ladies and gentlemen of the jury, if

9 any of you have questions, now is the time to do that. I

10 would remind you that you only get to do that at the end --

11 we can't recall witnesses. So if you do have a question,

12 it's important that you let me know.

13 Ma'am, would you please write your question down

14 on a sheet of paper that you have. Make sure you put your

15 jury number on so we know who the question comes from.

16 It appears that there's two people on the jury

17 that have questions that they're writing.

18 Do you need another pencil there, ma'am?

19 JUROR: No, I just dropped mine.

20 THE COURT: Counsel, if you would agree we'll step

21 out into the hallway and make a record afterward?

22 MR. MOLEZZO: Yes, sir.

23 MR. WILLIAMS: That's fine, Your Honor.

24 THE COURT: We'll be at ease. Did you put your

25 number on there?

1 JUROR: Yes, I did.

2 THE COURT: We'll step out into the hallway and
3 I'll determine if the questions are appropriate. Be at
4 ease.

5 (Brief recess taken.)

6 THE COURT: Ms. Morton, I'm going to ask you a
7 couple of questions. I've determined that there are two
8 questions that are appropriate to be asked of you.

9 First question is: Other than what you've heard
10 as a crash or a loud sound, did you ever hear a thud that
11 evening on the 5th of August of 2009?

12 Did you understand the question?

13 THE WITNESS: No, I didn't.

14 THE COURT: Let me try it again. Other than what
15 you heard as a crash or loud sound, did you ever hear a thud
16 that evening on the 5th of August, 2009?

17 THE WITNESS: No.

18 THE COURT: So are you saying you only heard one
19 loud noise? Is that --

20 THE WITNESS: Yes. Yes.

21 THE COURT: The next one is: Did you ever hear
22 the volume of music increase?

23 And I think this is referring to the music --

24 THE WITNESS: No, I never heard --

25 THE COURT: -- from Robert's room.

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THE WITNESS: No.

THE COURT: Those are the questions that I have determined with counsel that are appropriate to ask. And I would be handing those to the clerk as part of the record.

Any other questions? If not, this witness is going to be excused.

Ma'am, you will be excused at this time.

MR. MOLEZZO: May Jessica be excused, Your Honor?

THE COURT: She is excused.

MR. SMITH: Can we have her subject to recall?

THE COURT: Jessica, in the event that either of the attorneys want you recalled at some time, please stay in touch with the District Attorney's Office. Thank you.

Call your next witness.

MR. WILLIAMS: The State will call Officer Jeff Murdock to the stand.

THE COURT: My intention is we'll go about 15 minutes with this witness, take a short break, and then go until noon with that, just so that you know.

Sir, would you come forward and be sworn.

JEFF MURDOCK

Called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

THE COURT: Please come and be seated at the

1 witness stand. After you're seated, please pull up to the
2 microphone -- pull the microphone to you so that you can
3 speak right into the microphone. Don't back away from it.

4 Would you please state your name.

5 THE WITNESS: Jeff Murdock.

6 THE COURT: Would you spell your last name for the
7 court reporter.

8 THE WITNESS: M-u-r-d-o-c-k.

9 THE COURT: You may proceed on direct examination.

10 MR. WILLIAMS: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 (BY MR. WILLIAMS:)

13 Q. Officer Murdock -- actually, it's Detective
14 Murdock now, right?

15 A. Yes, sir.

16 Q. Who do you currently work for?

17 A. Winnemucca Police Department.

18 Q. And what is your role at the Winnemucca Police
19 Department?

20 A. I'm currently assigned to detectives.

21 Q. In the past have you been a patrol officer?

22 A. Yes, sir.

23 Q. Were you a patrol officer on August 5th of 2009?

24 A. I was.

25 Q. And at that time, on August 5th, how long had you

1 been with the police department?

2 A. About four and a half years.

3 Q. Did you receive a call on that evening?

4 A. I did.

5 Q. And do you remember what time it was that that

6 call came in?

7 A. I believe it was about 11:50 in the evening.

8 Q. That's 11:50 p.m.?

9 A. Yes.

10 Q. What type of a call was it?

11 A. For a shooting.

12 Q. What address were you directed to go to?

13 A. 1565 Harmony.

14 Q. Did you go to that address?

15 A. I did.

16 Q. Did any other police officers go there at the same

17 time as you?

18 A. Sergeant Morgan, Officer Dominic Cassinelli, and

19 Officer Matt Haylett.

20 Q. And when you got to the house, did you park right

21 in front of the house?

22 A. It was pretty close to right in front.

23 Q. Did the other officers -- did they pull up at the

24 same time as you?

25 A. We kind of all pulled up at the same time.

1 Q. Did you get out of your car?
2 A. I did.
3 Q. Where did you go when you got out of your car?
4 A. I was going to start going south, because I was
5 unsure of the exact address of the house. And I heard
6 someone shout and turned around. And the other officers
7 were running towards the house that I know as 1565 Harmony,
8 because there was a couple of guys out in the yard yelling.
9 Q. And did you go towards where that shouting was
10 going on?
11 A. I did.
12 Q. What did you see as you approached that?
13 A. I saw a man with no shirt on and another guy who
14 was kind of forcing him out to the street, almost like
15 holding him, pushing him out to the street.
16 Q. Do you see that man with no shirt on here today?
17 A. I do.
18 Q. Could you point to him, state what he's wearing.
19 A. He's wearing the blue suit with the red tie.
20 THE COURT: The record should reflect that he has
21 identified the defendant in this matter.
22 (BY MR. WILLIAMS:)
23 Q. Was the other person in that fight -- did you see
24 him in court today as well?
25 A. I saw him outside the court, yes.

1 MR. MOLEZZO: Objection. Mischaracterizing the
2 term "fight."

3 THE COURT: Sustained.

4 (BY MR. WILLIAMS:)

5 Q. When you saw these two, what were they doing?

6 A. It looked like the younger man was forcing the guy
7 with no shirt on out to the street. He was trying to get
8 our attention as the cops showing up.

9 Q. Were they in physical contact with one another?

10 A. It looked like the younger man was actually
11 holding him like behind, forcing him out, kind of in a
12 subdued position.

13 Q. Were you able to learn later who that younger man
14 was?

15 A. Yes.

16 Q. Who was it?

17 A. Robert Morton.

18 Q. What did the officers do in regards to this
19 struggle?

20 A. They ordered them both onto the ground, because we
21 didn't know who was who or what was going on. They ordered
22 them to the ground and began handcuffing them. I came over
23 to cover them while they handcuffed him.

24 Q. Did either of them say anything to you?

25 A. The younger man that I now know as Robert told me

1 that his mom was inside bleeding.

2 Q. And when you heard that, what did you do?

3 A. I looked towards the house, saw an open door on
4 the north side of the residence. I entered through that
5 door. I could hear a lady like moaning, sounding like she
6 was injured. I wasn't sure exactly where she was.

7 As I came through the door, I was in the living
8 room of the residence. I cleared that, made sure there was
9 nobody in there. Went into the kitchen. Nobody was in
10 there. As I was in the living room, I noticed that there
11 was a bullet laying on the floor that hadn't been fired.

12 I entered --

13 Q. I'm sorry. You're fine.

14 THE COURT: Single page of paper being marked for
15 identification purposes, Ms. Clerk, as what?

16 THE CLERK: 14.

17 THE COURT: Exhibit 14 for identification.

18 (Exhibit 14 marked.)

19 MR. WILLIAMS: Approach the witness, Your Honor?

20 THE COURT: You may.

21 (BY MR. WILLIAMS:)

22 Q. Showing you what's been marked as Exhibit 14,
23 Officer. Could you look at that, please.

24 A. Okay.

25 Q. Do you recognize that drawing?

1 A. It looks like the layout of 1565 Harmony.
2 Q. Thank you. You mentioned you went in the front
3 door of the house?
4 A. Yes.
5 Q. Or what you thought was the front door?
6 A. Uh-huh.
7 THE COURT: Was that a yes?
8 THE WITNESS: Yes, sir.
9 (BY MR. WILLIAMS:)
10 Q. Could you step over here for a minute and mark
11 which door you went in.
12 First thing I'll have you do is write your name on
13 it somewhere so we can identify this as the drawing that you
14 marked on.
15 A. Okay.
16 Q. Okay. Could you mark now which door that you went
17 in.
18 A. (Witness complied.)
19 Q. You said you first went into the living room?
20 A. Yes, sir.
21 Q. Could you turn maybe so the jury can hear us.
22 Okay. Thank you.
23 You stated that as you went into the living room
24 you noticed that there was a bullet there?
25 A. Yes, sir.

1 Q. Could you please mark on there where the bullet is
2 with an X and then write "bullet."

3 A. It would be approximately here.

4 Q. So you said after that that you went to the
5 kitchen next?

6 A. Yes, sir.

7 Q. What were you doing as you were going through the
8 house?

9 A. I'm checking for injured people or suspects.

10 Q. What's the term the police use for that?

11 A. Clearing the residence.

12 Q. So you cleared the kitchen next?

13 A. Yes, sir.

14 Q. And then after you cleared the kitchen, where did
15 you go?

16 A. To the hallway right here.

17 Q. And as you went down the hallway, what did you
18 notice?

19 A. There was a light on in the bathroom on the right
20 side of the hallway. So I went to the light. I observed a
21 lady laying on the floor, bloody, wearing a nightgown. I
22 remember her underwear being down towards her knees. She
23 was holding her hands around her waist, and I could see like
24 her internal organs, she was holding them in, and asking for
25 help.

1 Q. Could you mark where you found her at, please.

2 A. This would be the bathtub. She was laying like
3 head towards the door. This is the toilet. So she was
4 laying with her head towards the door, up against the
5 bathtub, with kind of her back propped against the bathtub.

6 Q. As you were approaching her, did you notice
7 anything in the hallway?

8 A. I noticed there was another bullet about here that
9 hadn't been fired. I remember there being some like blood
10 smears on the wall, like on the opposite side of the
11 hallway.

12 And then just inside the door near where she was
13 laying there was another bullet, but it was an empty
14 cartridge. The bullet had been fired.

15 Q. Okay. Thanks. You can return to your seat.

16 THE COURT: Before you do that, have him put his
17 name on there.

18 MR. WILLIAMS: He did, Your Honor.

19 THE COURT: Oh. Okay. I'm sorry.

20 (BY MR. WILLIAMS:)

21 Q. Thank you. When you got to the victim, did she
22 say anything to you?

23 A. She said that her tummy hurt and can't I do
24 anything to help her or ease the pain, something along those
25 lines.

1 Q. Did you say anything to her in response to that?

2 A. I told her that the ambulance was coming and that
3 they would be here soon to help her. I remember hearing the
4 sirens coming. I said, "Can you hear the sirens? Help's
5 coming soon."

6 Q. Did you ask her any more questions?

7 A. I asked her what her name was.

8 Q. What did she say?

9 A. Cynthia.

10 Q. Did you ask her anything else?

11 A. I asked her who had shot her.

12 Q. What did she say?

13 A. She said her husband.

14 Q. Did you stay with her until the paramedics got
15 there?

16 A. Yes, sir.

17 Q. How long did it take for them to get there?

18 A. I would estimate a minute to two minutes. Not
19 very far.

20 Q. After that, after the paramedics got there and
21 started treating her, what did you do?

22 A. I continued down the hallway past the bathroom to
23 clear the rest of the residence. I didn't know if there was
24 anybody else hurt or anybody else that was a bad guy in the
25 situation.

1 So I cleared the other bedrooms in the hallway,
2 and I noticed there was stairs in the kitchen area. So I
3 went to the stairs, went down to the basement to make sure
4 that there was nothing down there that I needed to know
5 about.

6 Q. Did you find anybody in the basement?

7 A. There was two females in the basement, one in a
8 wheelchair.

9 Q. What did you tell them?

10 A. I asked them to come out of the residence. And
11 due to the girl's disability, they said that they couldn't
12 right then. So I asked them just to stay put until police
13 officers asked them -- helped them out of the house.

14 Q. After talking to them, what did you do?

15 A. I came back up the stairs. I closed the door to
16 the upstairs. And then one of the EMTs, Pat Songer, I
17 remember asked me to look at an injury to Cynthia.

18 Q. Did you go and look at it?

19 A. I did look at it.

20 Q. Where was the injury?

21 A. It was on her left arm, near like her elbow area.

22 Q. What did it look like to you?

23 A. It was dark and it had like speckles around it.
24 It looked like what I know to be powder burns from a shot
25 being fired from a gun.

1 Q. As you started doing this, did you have a camera
2 with you?

3 A. I went back to the vehicle and got a camera, I
4 believe, when Pat Songer asked me to check out the injury.
5 I wanted to make sure I documented it while it was there.
6 So I took pictures of her injury.

7 Q. Did you take pictures of other things in the house
8 as well?

9 A. After I took pictures of her injuries, I then took
10 pictures of the bullets that I talked about earlier that I
11 had saw on the floor and blood smears that I saw on the
12 walls.

13 Q. Did you also go outside of the house while you
14 were looking around?

15 A. Yes, sir.

16 Q. Did you find anything outside?

17 A. We found the weapon that Robert had told us his
18 father had used to shoot his mom.

19 MR. WILLIAMS: At this point I would ask the
20 deputy to remove the gun from the box over there and show it
21 to our witness.

22 (BY MR. WILLIAMS:)

23 Q. I'm going to have him show you a firearm, Officer,
24 that we've had marked as Exhibit 6.

25 Do you recognize Exhibit 6?

1 A. It looks like the gun that was in the yard that
2 night.

3 Q. Where exactly did you find the gun in the yard?

4 A. It would have been to the north of the residence,
5 in the next-door neighbor's yard, just over a chain-link
6 fence that separated the two back yards of the residences.

7 Q. Did you take pictures of that as well?

8 A. I did.

9 THE COURT: Ladies and gentlemen, we're going to
10 have our last break for this morning. It won't be long.
11 But we'll be a few minutes.

12 It is your duty not to discuss among yourselves or
13 with anyone else any matter having to do with this case. It
14 is your further duty not to form or express any opinion
15 regarding the guilt or innocence of the defendant until the
16 case has been finally submitted to you for your decision.

17 You are not to read any newspaper articles or
18 listen to or view any radio or television broadcasts
19 concerning this case. Should any person attempt to discuss
20 the case with you or in any manner attempt to influence you
21 with respect to it, you are to advise the bailiff and in
22 turn advise the Court.

23 We'll be in recess for about five or ten minutes.

24 (Recess taken at 11:28 a.m.)

25 (Jury excused.)

1 (Whereupon the following proceedings were held in open
2 court, outside the presence of the jury.)

3 THE COURT: Court will come to order. The record
4 will reflect the absence of the jury and alternates.

5 You requested a side bar. Is there something that
6 you want to bring to the attention of the Court?

7 MR. WILLIAMS: Yes. The first two photographs
8 taken by Officer Murdock which I seek to admit here are of
9 the victim. The defendant has made a motion in regards to
10 some photographs. So I thought now might be the time to
11 start addressing that.

12 THE COURT: Let's do that. If there's any issues
13 with regard to the question of admissibility of photographs,
14 let's deal with it at this time.

15 You're going to be offering what?

16 MR. WILLIAMS: Why don't I show them to you, Your
17 Honor. At this time there are two photographs. There are
18 six other photographs that I'll be offering to Officer
19 Garrison this afternoon.

20 THE COURT: Let's take a look at them.

21 MR. WILLIAMS: Here's the two taken by Officer
22 Murdock.

23 THE COURT: Show them first to counsel. These are
24 marked as Exhibits what?

25 MR. WILLIAMS: 8-1 and 8-2, Your Honor.

1 THE COURT: For the record, in marking the
2 photographs, as I understand it, there's numerous
3 photographs that have been marked for identification. My
4 intention is to have them marked with an exhibit number such
5 as 8 with a -1 and then consecutively numbered so we can
6 keep track of them. It will be 8-1, 8-2, and so forth.
7 These two photographs are 8-1 and 8-2.

8 Have you seen those?

9 MR. MOLEZZO: I have.

10 MR. WILLIAMS: We have six additional. They are
11 marked as 9-1 through 9-6.

12 THE COURT: Counselor, look at those as well. Let
13 me be looking at 8-1 and 8-2, please.

14 Now I'll examine 9-1 through -6. With regard to
15 Exhibit 8-1 and 8-2, sir, do you have any objection to them?

16 MR. MOLEZZO: In reference to 8-1 and 8-2, no.

17 THE COURT: Okay. They will be admitted.

18 (Exhibits 8-1 and 8-2 admitted.)

19 THE COURT: With regard to 9, I would indicate to
20 counsel these seem to be cumulative in some respects with
21 regard to that. It would appear to this Court that two of
22 those photographs should be sufficient.

23 It would appear to the Court that Exhibits 9-3 and
24 9-5, those two photographs show an indication of identity as
25 well as the extent of the wounds, and the others are simply

1 repetitive of those.

2 MR. WILLIAMS: That's fine, Your Honor.

3 THE COURT: Counsel, now you can make any
4 objections.

5 MR. MOLEZZO: Thank you. Defense in reference to
6 the photographs you have, Your Honor, would submit to the
7 Court that they're absolutely too graphic to be submitted
8 before the jury.

9 As the Court understands, this is not an alibi
10 case, this is not a self-defense case, nor is it an extent
11 of injury case, personal injury. It's clearly going to be
12 prejudicial as opposed to probative; they're put forth to
13 inflame the jury, and really they tell us nothing but the
14 extent of the injury.

15 We acknowledged in opening and through our
16 strategy in this case that we have culpable conduct. I see
17 no reason to have that before the jury. They're disgusting.
18 They are gross. And they merely show the injury. And I
19 would ask that they be kept out.

20 THE COURT: Well, the nature of homicide cases
21 with gunshot wounds is graphic. We know that. Part of this
22 and the reason these are admissible is to show identity
23 together with the location and the extent of the injury.
24 And that is admissible with regard to the -- particularly
25 the location of the injury and the nature of those as to the

1 issue of whether or not this is an accidental or deliberate
2 shooting, and I believe there's sufficient evidence that it
3 could be used by the State for those purposes.

4 And I do find that by keeping out the other --
5 there's four other photographs that I'm not going to allow
6 that I believe is cumulative. I believe the State has a
7 right to have the jury understand the nature and extent of
8 that and the proximity of the wounds.

9 MR. MOLEZZO: Thank you for the Court's courtesy.
10 I would move now for a sanitization, Your Honor. I'm
11 requesting that the Court sanitize those photographs; i.e.,
12 photocopies, black and white only.

13 THE COURT: Okay. I'm denying that request. They
14 have a right to see the accurate photographs. I understand
15 it's not pretty. But these kinds of cases are not pretty.

16 MR. MOLEZZO: Yes, sir.

17 THE COURT: It's the nature of the case. And I
18 believe that I've restricted the State sufficiently in the
19 cumulative number of photographs, and therefore I'm going to
20 allow these photographs out of these 8 and 9 series of
21 photographs to be admitted as I've indicated.

22 I've separated them out for the clerk. These will
23 not be admitted.

24 Again, for the record, Exhibits 8-1 and 8-2 will
25 be admitted as well as 9-1 and 9-6.

1 Excuse me. I misspoke. It's actually 9-3 and 9-5
2 are the two photographs that will be admitted out of the
3 series. 9-1 through -- 9 through 6, those will not.

4 Keep those separate, Ms. Clerk.

5 (Exhibits 8-1, 8-2, 9-3, and 9-5 admitted.)

6 THE COURT: Now, you still have to lay the
7 foundation for those, though.

8 MR. WILLIAMS: We'll do that. I wanted to address
9 it before we went there, though.

10 THE COURT: Okay. Let's see.

11 MR. MOLEZZO: As a friend of the Court, would the
12 Court consider breaking now for lunch?

13 THE COURT: I'm thinking so, particularly with
14 these photographs. Everybody going to lunch, it's probably
15 better they go to lunch and then see the photographs rather
16 than before. They're quite graphic.

17 What I'm going to do with consent of counsel is to
18 have the bailiff just direct the jury -- rather than come
19 back and readmonish them, have them -- just tell them to
20 come back at 1:30. That will give you time to also do what
21 you need to do in preparation, gentlemen, with regard to
22 these matters.

23 MR. WILLIAMS: Thank you.

24 MR. MOLEZZO: Thank you.

25 THE COURT: We'll be in recess until 1:30. We'll

1 come back at 1:30.

2 (Noon recess taken at 11:38 a.m.) WINNEMUCCA, NEVADA,
3 WEDNESDAY, SEPTEMBER 15, 2010, 1:30 P.M.

4 -oOo-

5 THE COURT: Court will come to order. Please be
6 seated.

7 Counsel stipulate to the presence of the jury and
8 the alternates?

9 MR. MOLEZZO: Defense stipulates.

10 MR. WILLIAMS: The State stipulates.

11 THE COURT: You may continue with your current
12 witness on direct examination.

13 Mr. Murdock, would you please retake the stand.
14 Please pull up to the microphone and speak into the
15 microphone.

16 Mr. Murdock, you understand you're still under
17 oath?

18 THE WITNESS: Yes, sir.

19 THE COURT: You may proceed on direct examination.

20 CONTINUED DIRECT EXAMINATION

21 (Resumed)

22 (BY MR. WILLIAMS:)

23 Q. Officer Murdock, before we broke for what ended up
24 being our lunch recess, we talked about the fact that you
25 had taken photographs of the house while you were doing your

1 investigation; is that true?

2 A. Yes.

3 MR. WILLIAMS: May I approach, Your Honor?

4 THE COURT: You may.

5 (BY MR. WILLIAMS:)

6 Q. I'm going to hand you a stack of photographs.
7 They've been marked for identification as State's Exhibit 8,
8 and there's a dash there, 1 through 7. I know there's a
9 bunch of them. But could you take a look at each one of
10 them, please.

11 MR. WILLIAMS: While he's looking through those,
12 I'm going to move to have State's Exhibit 14 moved into
13 evidence. It's the drawing that Mr. Murdock was marking on
14 previously.

15 MR. MOLEZZO: May I see it, Counsel?

16 MR. WILLIAMS: Yes.

17 MR. MOLEZZO: No objection.

18 THE COURT: It's hereby admitted as Exhibit 14.

19 (Exhibit 14 admitted.)

20 (BY MR. WILLIAMS:)

21 Q. Thank you. Apologize for making you look through
22 all of those, but it's what we have to do here today.

23 Did you look through each and every one of those
24 photographs?

25 A. Yes, sir.

1 Q. Are you the person that took all those
2 photographs?
3 A. Yes, sir.
4 Q. Were all those photographs taken on or about the
5 night of August 5th, 2009?
6 A. Yes, sir.
7 Q. I guess some could have been taken on the 6th.
8 A. Yeah, as time elapsed over.
9 Q. Were all those taken at the house located at 1565
10 Harmony?
11 A. Yes, sir.
12 Q. Or in the yard or somewhere around there?
13 A. Yes, sir.
14 Q. And do they appear to have been altered in any way
15 since that evening?
16 A. No.
17 Q. They're a fair and accurate depiction of what you
18 saw that night?
19 A. Yes, sir.
20 MR. WILLIAMS: Move to have those admitted into
21 evidence, Your Honor.
22 MR. MOLEZZO: No objection.
23 THE COURT: Exhibits 8 with the sub numbers 1
24 through 57 are admitted, and they're consecutively so
25 numbered, for the record.

1 (Exhibit 8-1 through -57 admitted.)

2 MR. WILLIAMS: May I approach again?

3 THE COURT: You may.

4 (BY MR. WILLIAMS:)

5 Q. I'll take those back from you. We're going to go
6 through a few of them.

7 First I'll place on the projector for you State's
8 Exhibit 1. And I'll warn everybody this is a picture of the
9 victim while she was being treated.

10 THE COURT: These are graphic pictures, so we want
11 to make sure you're aware of that.

12 (BY MR. WILLIAMS:)

13 Q. Can you see that fine? Can everybody see that?
14 Exhibit 1, is this one of the pictures you took of the
15 victim while she was being treated that night?

16 A. Yes, sir.

17 Q. That was when you were called over by EMS?

18 A. Yes.

19 Q. I'm going to put --

20 THE COURT: Was that identified with the number?

21 MR. WILLIAMS: Yes. Excuse me. It's 8-1.

22 THE COURT: Okay.

23 (BY MR. WILLIAMS:)

24 Q. Now I'll put up here 8-2. Is this also of the
25 victim?

1 A. Yes, sir.

2 Q. And is this the picture you took to try to show
3 the injury on her arm?

4 A. Yes.

5 Q. Before I put this up there, when you were looking
6 in the bathroom, did you notice anything about the wall?

7 A. I noticed there was a hole in the wall near the
8 toilet. Blood. And other tissues that looked like they had
9 been recently splattered on the wall.

10 Q. You took some pictures of that hole?

11 A. Yes.

12 Q. This is 8-9. Is that a picture of the hole in the
13 wall that you observed by the toilet?

14 A. Yes.

15 THE COURT: Counsel, maybe you ought to have him
16 at least identify where that is.

17 MR. WILLIAMS: Okay.

18 (BY MR. WILLIAMS:)

19 Q. Where in relation to the toilet is this?

20 A. If you were facing the toilet, it would be to the
21 right lower part of the wall.

22 Q. I'm going to put Exhibit 14, the drawing, back on.
23 Why don't you come down and mark where the hole was in
24 relation to the toilet.

25 A. This is the toilet here. So it would be like

1 lower right-hand side of the wall, towards the bottom of the
2 tank.

3 Q. Could you write "hole" there.

4 A. (Witness complied.)

5 MR. WILLIAMS: Let the record show that he's
6 altered 14 by writing "hole" on it.

7 THE COURT: The record will so reflect.

8 MR. WILLIAMS: Thank you, Your Honor.

9 (BY MR. WILLIAMS:)

10 Q. Next going to put on 8-28. Is that the gun you
11 found that night?

12 A. Yes, sir.

13 Q. Is that a picture of how it was lying on the
14 grass?

15 A. Yes.

16 Q. This is 8-30. I don't think you can see it very
17 well there. I'll put a different one up. 8-31. Is that
18 another angle of the gun?

19 A. Yes.

20 Q. This is 8-33. Actually, I don't know if it will
21 be visible. Is this a picture of one of the bullets you
22 found?

23 A. Yes.

24 THE COURT: Counselor, you might want to turn it
25 so that the floor is on the bottom.

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(BY MR. WILLIAMS:)

Q. There we go. Which bullet is it that you found?

A. I believe it was a .303 unexpended cartridge.

Q. And where in the house was it found at?

A. The living room. It would be the little speck to the left side of the couch if you're facing the couch.

THE COURT: Might be useful to have him point out where it is, sir.

(BY MR. WILLIAMS:)

Q. Why don't you come down and point where it's at.

A. Right there.

MR. WILLIAMS: Everybody see where he pointed?

(BY MR. WILLIAMS:)

Q. I'm going to have you take a red pen and circle the bullet on the picture.

THE COURT: For the record, what's the number of that one again, sir?

MR. WILLIAMS: This is -33, Your Honor, -33.

THE COURT: It will be 8-33?

MR. WILLIAMS: Yes.

(BY MR. WILLIAMS:)

Q. I'm putting up 8-34 now. Is that a closer shot of the bullet?

A. Yes.

Q. You also testified you found an unexpended round

1 by the bathroom?

2 A. Yes.

3 Q. We'll put up 8-39. Is that a shot of the
4 unexpended round?

5 A. That would actually be the one that was
6 unexpended, yes, outside the bathroom door. Do you need me
7 to circle where it's at?

8 Q. Yes. Why don't you come circle. It is a little
9 hard to see.

10 MR. WILLIAMS: For the record, that's -39 that's
11 been altered, Your Honor.

12 THE COURT: All right, sir. 8-39.

13 (BY MR. WILLIAMS:)

14 Q. One more we've got to go through. You also
15 testified that you found a round that had been expended in
16 the bathroom?

17 A. Yes.

18 Q. I'll put up 8-36. Is that a picture of the round?

19 A. Yes.

20 Q. And where you found it?

21 A. Yes.

22 MR. WILLIAMS: One moment, Your Honor.

23 THE COURT: Yes, sir.

24 (BY MR. WILLIAMS:)

25 Q. You did have some further contact with the victim

1 after you were done with the house?

2 A. Yes.

3 Q. What form did that take?

4 A. I was asked by, I believe, Detective Garrison to
5 go to the hospital to see if I could obtain permission to
6 search her residence. So I went to the hospital. That's
7 where I had contact with her.

8 Q. Did you talk with her?

9 A. Yes.

10 Q. What did you ask her?

11 A. I explained to her the search form we use for the
12 Winnemucca Police Department. Initially she had no response
13 to what I said. And I again began to explain it to her.
14 And she -- I believe she said, "I know what you want, you
15 want to be able to look through the house for evidence."
16 And she signed the form that I had.

17 Q. Did that happen at the hospital?

18 A. Yes, in the emergency room.

19 MR. WILLIAMS: Those are all the questions I have
20 for the witness, Your Honor.

21 THE COURT: You may cross-examine.

22 CROSS-EXAMINATION

23 (BY MR. MOLEZZO:)

24 Q. Detective?

25 A. It is now, yes.

1 Q. Sir -- can I say sir without offending you?

2 A. No, that's fine.

3 Q. Is it your testimony -- well, it's your testimony

4 that the deceased was at the hospital laying on a table,

5 correct?

6 A. I don't know that I testified to it. But, yes,

7 she was.

8 Q. She was laying on a table at the hospital. And

9 you testified that she said, "I know you're there for a

10 search warrant for evidence." Is that what she said?

11 A. After explaining the permission to search form --

12 we use a standardized form at our department. I took that

13 to her and I read through it to explain it to her. She

14 didn't initially answer me or respond in any way.

15 So I began to explain it to her again. She said,

16 "I know you want to look through the house for evidence."

17 Q. She said that word, "evidence"?

18 A. Yes.

19 Q. How long have you been a police officer, sir?

20 A. Six-plus years now.

21 Q. And you've testified before, I take it.

22 A. Yes, sir.

23 Q. And you went through the academy and all that,

24 correct?

25 A. Yes, sir.

1 Q. And is it fair to say homicide is about as big as
2 it gets? Wouldn't you agree?

3 A. I agree.

4 Q. And wouldn't you also agree that your report that
5 you generate, if you're active in the case, is vital?

6 A. Yes.

7 Q. You would agree. And you do everything possible
8 to be as specific and detailed as you can, correct?

9 A. Yes, sir.

10 Q. Because you know someone's going to be looking at
11 it.

12 Now -- and also through the academy you take
13 courses on how to testify and how to draft reports, correct?

14 A. Yes.

15 Q. Now, according to your testimony -- and, please,
16 Detective, correct me if I'm wrong -- you were first there?
17 Or was Officer Haylett and Cassinelli there before you?

18 A. All four officers arrived at the very same time,
19 within seconds of each other. I was very the first person
20 in the residence.

21 Q. May I assume, then, that you would be the first
22 officer there, even if it's a second apart, you were the
23 first there?

24 A. For what purpose? As far as report writing or --

25 Q. To secure the premises.

1 A. I suppose they were securing who we would believe
2 were the suspects and I was going to secure the residence
3 and possible victims.

4 Q. What were your duties that evening?

5 A. Render any aid to the victim that I could, and
6 once the detective arrived, assist in whatever he needed
7 from me.

8 Q. You kind of gave me a scowl there. Am I making
9 sense with my questions?

10 A. I'm trying to remember what duties. No one was
11 specifically giving me orders in what to do.

12 Q. Did you take field notes? A log of what -- isn't
13 that one of your duties, to keep a log of who's there? Do I
14 understand --

15 A. As I understand, that would be standard procedure
16 for a crime scene, but that was not something I was taking
17 on at that time.

18 Q. So the question is: You did not generate a log?

19 A. I did not.

20 Q. And do you recall drafting reports in this case,
21 Officer?

22 A. Yes.

23 Q. I apologize. Detective. And I have in my hand a
24 couple of pages. Do you have any more reports than that?
25 Do you recall?

1 A. No, sir.

2 Q. And you were able to review this before
3 testifying; is that correct?

4 A. Yes.

5 Q. The first thing you do when you arrived -- you
6 came into contact with officer Haylett and Cassinelli; is
7 that correct?

8 A. Yes.

9 Q. And then you testified -- or you came into contact
10 with folks downstairs; is that right?

11 A. Later on, yeah.

12 Q. And you testified that you left those individuals
13 down there?

14 A. Yes.

15 Q. Did you leave an officer there to make certain
16 they didn't disrupt evidence or do anything?

17 A. No, sir.

18 Q. And there were four officers at this time, if you
19 can recall?

20 A. Yes.

21 Q. Now, I want to talk about -- I'm doing a big jump
22 ahead -- I want to talk about some photographs, if I may.

23 In looking at the photographs, since they were
24 right there, I see what appears to be packaging, like an
25 ambulance kind of stuff. Do you recall that packaging?

1 A. Yes, sir.

2 Q. Was an EMT there before you got there?

3 A. No.

4 Q. Soon thereafter; fair to say?

5 A. Yes.

6 Q. Isn't it true that you located and photographed

7 the bullets after EMT was there? Clearly, it has to be the

8 case.

9 A. I saw them beforehand. Photographed after.

10 Q. You saw them beforehand and photographed -- but

11 the photograph was after they were there, correct?

12 A. Yes.

13 Q. So it's possible the position of those bullets

14 could have moved; you would agree with that?

15 A. I would agree with that.

16 Q. And thank you for your honesty. Now, in looking

17 at this situation, it was obviously a very serious

18 situation. Do you agree with that?

19 A. Yes.

20 Q. And did you ever encounter Robert Morton?

21 A. When I first got there, yes.

22 Q. And we had a little break, so I'm -- did you see

23 them traveling? When you drove up, you saw two individuals

24 walking or arguing; is that correct?

25 A. I saw Robert Morton forcing David Morton towards

1 the street. And Robert was trying to get police attention,
2 because we had pulled up just past the house.

3 Q. That's fair. You saw the movements of Robert; you
4 didn't see my client fighting or trying to resist, correct?

5 A. I didn't see that, no.

6 Q. If you did, you would have put it in your report?

7 A. Yes.

8 Q. Did it appear more like Robert was, you know,
9 getting him to go to an area?

10 A. It looked like he was restraining David from
11 whatever he wanted to do and making him go to the street
12 whether he wanted to or not.

13 Q. That David would be who?

14 A. David Morton.

15 Q. Mr. Morton?

16 A. Yes.

17 Q. Now, after you came into -- you came into the
18 bathroom. The restroom. You took some photographs,
19 correct?

20 A. Once she was transported, yes.

21 Q. Correct. Now, you were the first person to enter
22 that restroom as far as you know, correct?

23 A. Yes.

24 Q. Now, when did you come back and take measurements
25 of the entry and the bullet hole and do trajectory analysis?

1 When did you do that?

2 A. I never did, sir.

3 Q. Why is that, please?

4 A. It wasn't my job, I guess. Once detectives
5 arrived, it was turned over to them. And I went back to
6 normal patrol calls.

7 Q. Have you ever done trajectory analysis?

8 A. No.

9 Q. Now, you testified that -- you're an experienced
10 officer; that's fair to say, correct?

11 A. Yes.

12 Q. Six-years plus on the force. Do I have that
13 right?

14 A. Yes.

15 Q. You mentioned something -- or you testified to
16 what you believe to be gunshot residue. Do you recall
17 testifying to that?

18 A. I believe I said powder burns.

19 Q. I apologize. And that was on the deceased?

20 A. Yes.

21 Q. And did you have someone or did you swab that area
22 to determine later on -- for scientific study later on?

23 A. No, sir.

24 Q. Did you not think that that was important?

25 A. I've never been trained in that, sir.

1 Q. It's your testimony you don't know what gunshot
2 residue is?

3 A. I understand what it is.

4 Q. Okay.

5 MR. MOLEZZO: Court's indulgence, please, Your
6 Honor?

7 THE COURT: Yes, sir.

8 MR. MOLEZZO: Thank you.

9 (BY MR. MOLEZZO:)

10 Q. When you returned or when you began taking
11 photographs, medical staff was there?

12 A. Yes, sir.

13 Q. As best you recall, how many folks were in the
14 residence?

15 A. At least two. I mean, I remember two specifically
16 from my pictures. I could tell there was two different sets
17 of legs. I remember Pat Songer as one specifically. But
18 I'm sure there had to be more than two.

19 Q. And when you were talking to people there, you
20 talked to Jessica Morton and Anastasia Barsness, correct?

21 A. I believe those were the ladies in the basement.
22 I didn't identify them.

23 Q. I'm sorry, sir. The people in the basement you
24 talked to, right?

25 A. Yes.

1 Q. Did you memorialize that conversation with a micro
2 recorder, sir?

3 A. No, sir.

4 Q. Did you take any photographs of those individuals,
5 sir?

6 A. No.

7 Q. You encountered, during your time there, a Robert
8 Morton, correct?

9 A. Yes.

10 Q. Did you have a conversation with Robert Morton?

11 A. I had no conversation with him. The only contact
12 I had with him was when he was being handcuffed and he said,
13 "My mom's bleeding."

14 Q. Did you have a conversation with Mr. Morton later
15 on?

16 A. No.

17 Q. So from the time that you came to Harmony until
18 when you left, would you say less than an hour, more than an
19 hour?

20 A. I would say less.

21 Q. So, again, you found no direct witness to what
22 happened to the deceased, correct?

23 A. Correct.

24 Q. And not to minimize what you did, sir, but do I
25 have it correctly: You came there, correct?

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A. Correct.

Q. Through your training and experience, you determined that someone was injured?

A. Yes.

Q. It appeared that there had been a weapon involved?

A. Yes.

Q. You come into contact with folks that are not law enforcement, not medical help?

A. Yes.

Q. You undertake really no questioning; is that fair?

A. That's fair.

Q. You then photograph various areas of the home, correct?

A. Correct.

Q. And you then -- and you also photographed the injured person in the restroom; is that correct?

A. Correct.

Q. Now, you secured the deceased. You make sure she was tended to; is that fair to say?

A. That's fair.

Q. And, please, Detective, don't let me put words in your mouth. So you secured the victim. Do I have that right?

A. I went to see if there was any aid I could give to her.

1 Q. You didn't secure the two possible witnesses
2 downstairs, correct?

3 A. I just asked them to stay in the basement.

4 Q. In your definition, would that be securing them?

5 A. No.

6 Q. Now -- and thank you -- you tell us that at least
7 at this time, in 2009, you didn't have gunshot residue
8 training. Is that fair to say?

9 A. Yes.

10 Q. But you knew that there's a possible weapon
11 involved, correct?

12 A. Yes.

13 Q. And thank you. And you saw powder -- what you
14 believe to be

15 powder burns, right?

16 A. Yes.

17 Q. And you don't need someone to tell you to swab
18 those for testing, do you?

19 A. No.

20 Q. So other than the image -- again, this is your
21 personal knowledge -- other than the image that we saw --
22 let me ask it this way: Did you rub the elbow or the area
23 where you thought were powder burns? Did you rub it and see
24 if they were powder?

25 A. No.

1 Q. So it could have been a hematoma or a bruise,
2 correct?

3 A. Other than I've never seen a bruise with speckled
4 marks in it.

5 Q. Is that an I don't know or no?

6 A. It's an I don't know.

7 Q. And you take the photographs. And you secured the
8 two individuals, my client and his son; is that correct?

9 A. I did not. But other officers did.

10 Q. I'm sorry. Other officers did?

11 A. Yes.

12 Q. And not to hit it too hard, you didn't record --
13 you didn't micro record when you talked to witnesses,
14 correct?

15 A. Correct.

16 Q. Or when you encountered them.

17 A. I didn't record any of it on a recorder.

18 Q. Do you carry a micro recorder with you, sir?

19 A. Not at that time.

20 Q. You do now, though, don't you?

21 A. I do.

22 Q. And, again, based on the images of the shells, at
23 least when those were taken, other folks were there?

24 A. Yes.

25 Q. Right? So anybody could have kicked those shells?

1 A. I suppose it's possible. But before anyone else
2 besides myself was there, I saw them in those general areas.
3 Whether they were moved somewhat, they were in the general
4 areas where they were found later.

5 Q. Detective, I respect that. But this is critical
6 stuff. The images that we have were taken when other human
7 beings were in the residence, correct?

8 A. Yes.

9 Q. And I'm not saying you're hedging or anything. So
10 it's possible that they could have been moved by the feet of
11 occupants or folks in the house?

12 A. Yes.

13 Q. And specifically the spent cartridge that was in
14 the restroom, that image also had what appeared to be
15 medical supplies, correct?

16 A. Yes.

17 Q. Now, were you aware -- without any details at all
18 -- were you aware of the -- I'm sorry, how long have you
19 been here in Winnemucca, please?

20 A. 29 years.

21 Q. I apologize. As a police officer.

22 A. Six years.

23 Q. And is it safe to say that the Morton family
24 dynamic was well known?

25 A. I did not have knowledge of it at that time.

1 Q. You did not?

2 A. No.

3 Q. Was it you, sir, who allowed Miss -- or Jessica
4 Morton and Anastasia to leave the area? Or the last you
5 saw, you just told them to stay put?

6 A. The last I saw, they were in the basement.

7 Q. And you had no knowledge of -- did you come back
8 to them? Did you try to find them later?

9 A. No.

10 MR. MOLEZZO: Court's indulgence, please, Your
11 Honor?

12 THE COURT: Yes, sir.

13 MR. MOLEZZO: Thank you.

14 (BY MR. MOLEZZO:)

15 Q. Sir, you left for a period of time, or at least
16 from where the deceased was, and then you came back after
17 the EMT folks were there; is that fair?

18 A. I came back as soon as I came up from the
19 basement. I went back to where the EMTs were.

20 Q. And so when you went down to the basement, an EMT
21 wasn't there and then you came back and they were, correct?

22 A. No. Once the EMTs arrived with the deceased, I
23 left her presence then to continue to clear the rest of the
24 residence. Went to the basement, talked to the two ladies
25 in the basement. When I came back up, that's when I spoke

1 with the EMTs.

2 Q. And you did speak to the EMTs?

3 A. Uh-huh.

4 Q. And prior to this you -- it's fair to say you had
5 a good feeling that -- well, obviously, a weapon was used
6 and someone probably possessed that weapon when the shot was
7 fired, correct?

8 A. Yes.

9 Q. Well, then you must have -- did you ask the EMTs
10 if the deceased made any statements?

11 A. No.

12 Q. And thank you. So if I understand it correctly,
13 your service in this whole situation is to gather as much
14 information as you can, correct?

15 A. I would say the first job I have is to secure any
16 victims or suspects in the situation, render any aid that
17 was applicable.

18 Q. Fair enough.

19 A. Then, like you said.

20 Q. So you secured the person who was hurt?

21 A. Uh-huh, yes.

22 Q. You didn't secure possible suspects or witnesses;
23 you just told them to stay there, correct?

24 A. Yes.

25 Q. You took photographs. And at the behest of your

1 colleagues, you went to the hospital and gained some
2 information also, correct?

3 A. Yes.

4 Q. You're not the lead detective here; we know that.
5 That's true, correct?

6 A. Correct.

7 Q. Well, educate me and the jury, if you will. After
8 this tragic event, are you completely out? You submit your
9 report, you move on to the next case, true?

10 A. Yes.

11 Q. So you did no follow-up investigation whatsoever
12 after this event of August 5th, 2009, true?

13 A. True.

14 MR. MOLEZZO: Thank you. I have no further
15 questions.

16 THE COURT: You may carry out redirect, sir.

17 MR. WILLIAMS: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 (BY MR. WILLIAMS:)

20 Q. Couple of follow-ups, Officer Murdock. Is it
21 standard procedure to interfere with EMTs treating somebody
22 by swabbing somebody as they're being treated?

23 A. No.

24 Q. Is that why you didn't do that here?

25 A. Other than I would normally -- I don't know how to

1 do it. I'm not trained in it. But, no, I would not have.

2 MR. WILLIAMS: That's actually the only question I
3 had, Your Honor.

4 THE COURT: Recross on that question?

5 MR. MOLEZZO: Yes, Your Honor.

6 RECROSS-EXAMINATION

7 (BY MR. MOLEZZO:)

8 Q. You have a weapon, correct?

9 A. Yes.

10 Q. You have someone injured, what appears to be
11 because of that weapon, correct?

12 A. Yes.

13 Q. It's a combustible-type weapon. It's a gun,
14 correct?

15 A. Yes.

16 Q. And until technology changes, there's powder
17 involved in the combustible gun, correct?

18 A. Yes.

19 Q. Did you request EMT or the emergency medical folks
20 to swab that for you?

21 A. No.

22 Q. Did you smell powder when you came to the victim
23 where the deceased was?

24 MR. WILLIAMS: Objection, Your Honor. That's
25 outside the scope of redirect.

1 THE COURT: It goes to -- I'm going to allow it.

2 MR. MOLEZZO: Thank you, Your Honor.

3 (BY MR. MOLEZZO:)

4 Q. In reference, did you smell powder?

5 A. I don't remember.

6 Q. If you had, it clearly would be in your report;
7 you agree?

8 A. I've never documented smell in a report -- I've
9 never documented smell in a report that I've done before.

10 Q. Well, staying with the powder thing, you have a
11 shooting. If you came and you smelled gun powder, what
12 would that have told you?

13 A. That a gun was shot.

14 Q. Okay. So if you smelled gun powder, it would have
15 been in that report, wouldn't you agree?

16 A. It should have been in the report. But I'm not
17 going to say it would have. Because I've just never
18 documented smell. I never thought about it being of
19 evidentiary value, I guess.

20 MR. MOLEZZO: I have nothing further. The jury
21 may have a few.

22 THE COURT: Ladies and gentlemen of the jury, if
23 you have any questions, now is the time to give those to the
24 bailiff.

25 We've received one question. Counsel, we'll step

1 outside. Everyone be at ease while we review the question.

2 (Brief recess taken.)

3 THE COURT: I've determined with regard to the
4 question it would require speculation on the part of this
5 witness rather than actual knowledge. Therefore, I'm not
6 going to ask the question. I'll give it to the clerk for
7 part of the record.

8 Now, sir, you may step down and be excused subject
9 to recall by either side.

10 Please call your next witness.

11 MR. WILLIAMS: The State would call Detective Dave
12 Garrison to the stand.

13 THE COURT: Come forward and be sworn, sir.

14 (Witness sworn.)

15 THE COURT: Would you please be seated in the
16 witness stand. After you're seated, please pull up your
17 microphone and speak right into the microphone.

18 Please state your name for the record.

19 THE WITNESS: David Garrison, G-a-r-r-i-s-o-n.

20 THE COURT: Thank you. You may proceed on direct
21 examination, Counsel.

22 MR. WILLIAMS: Thank you, Your Honor. One second.

23

24 DAVID GARRISON,

25 Called as a witness on behalf of the Plaintiff,

1 having been first duly sworn, was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 (BY MR. WILLIAMS:)

5 Q. Mr. Garrison, who do you currently work for?

6 A. The City of Winnemucca, Winnemucca Police
7 Department.

8 Q. What's your current position with the Winnemucca
9 Police Department?

10 A. Currently I'm a sergeant in the patrol division.

11 Q. Previous to that, had you been a detective with
12 your department?

13 A. Yes, sir.

14 Q. How long were you a detective?

15 A. Right about two and a half years.

16 Q. Were you a detective on the night of August 5th,
17 2009?

18 A. Yes, sir.

19 Q. Were you the on-call detective that evening?

20 A. Yes, sir.

21 Q. How many detectives do you have in your
22 department?

23 A. At that time there were two of us. One detective.
24 Excuse me. There's actually three people assigned to the
25 detective division. One of them is assigned to the

1 Tri-County Drug Task Force. He's not a criminal detective
2 as far as criminal investigations. He's solely responsible
3 for the drug task force. And at that time there was a
4 Detective Sergeant, Sergeant Mike Pardovich and myself.

5 MR. MOLEZZO: I apologize. May we approach,
6 please.

7 (Bench conference between Court and counsel.)

8 MR. MOLEZZO: Thank you, Your Honor.

9 THE COURT: You may proceed.

10 (BY MR. WILLIAMS:)

11 Q. Would you and Sergeant Pardovich, then, switch out
12 being on call?

13 A. Yes.

14 Q. This happened on an evening you were on call?

15 A. Yes.

16 Q. Since it fell on your evening, were you assigned
17 the case?

18 A. Yes.

19 Q. What time did you get a call to go to the crime
20 scene?

21 A. It was approximately 11:50 p.m.

22 Q. Did you drive to the crime scene on Harmony Lane?

23 A. Yes. I was called at home. I went to 1565
24 Harmony directly from my residence.

25 Q. What time did you get there?

1 A. It was approximately 10 after midnight on the
2 morning of August 6th.

3 Q. When you got there, were you briefed on what had
4 happened?

5 A. Yes, sir.

6 Q. Who briefed you?

7 A. I believe it was Captain Rick Waldie and Sergeant
8 Matt Morgan both of our department.

9 Q. They gave you a brief rundown of what happened so
10 far?

11 A. Yes, sir.

12 Q. And then at that point did they turn the
13 investigation over to you?

14 A. Yes, sir.

15 Q. What was your first act in that investigation?

16 A. My first act was to seal the residence, order
17 everybody out of the residence, in preparation to either get
18 consent to search the residence or obtain a search warrant.

19 Q. After you had done that, what did you decide to do
20 next?

21 A. I went to Humboldt General Hospital where Cynthia
22 Morton had been transported by Humboldt Emergency Services.

23 Q. Why did you go there next?

24 A. I wanted to speak directly with her. I did not
25 know the extent of her injuries and I wanted to get a

1 statement from her.

2 Q. So at that point you decided to go talk to her at
3 the hospital?

4 A. Yes, sir.

5 Q. What time did you get to the hospital?

6 A. It's about 12:30 a.m.

7 Q. And were you able to talk to the victim at all?

8 A. Briefly, yes.

9 Q. And what did she say to you?

10 A. She indicated that she -- she stated she had been
11 shot by her husband, David Morton. Her exact words were,
12 "He shot me with a shotgun."

13 Q. Did she say where she was at when that shooting
14 occurred?

15 A. She stated that she was urinating on the toilet.

16 Q. As you were talking to her, were you able to look
17 at her at all and see what type of injuries she had?

18 A. Yes, sir.

19 Q. What were you able to observe?

20 A. I observed major trauma to her left chest and
21 abdomen area.

22 Q. Did you take pictures of those?

23 A. Yes, sir, I did.

24 MR. WILLIAMS: May I approach, Your Honor?

25 THE COURT: You may.

1 MR. WILLIAMS: Approach the witness, Your Honor?

2 THE COURT: You may, sir.

3 (BY MR. WILLIAMS:)

4 Q. I'm going to show you what's marked as State's
5 Exhibit 9-3 and 9-5. Would you please take a look at those
6 two photographs.

7 A. Yes, sir.

8 Q. Have you looked at them?

9 A. Yes, sir.

10 Q. Are those the photos you took of her injuries on
11 that night?

12 A. Yes, sir.

13 Q. Those were taken on August 5th, 2009, at Humboldt
14 General Hospital?

15 THE COURT: Just a second. Okay, you may proceed.

16 (BY MR. WILLIAMS:)

17 Q. Are those photographs a fair and accurate
18 depiction on what you saw that night?

19 A. Yes. And the morning of August 6, 2009, yes.

20 Q. And they appear to have been altered at all since
21 you took them?

22 A. No, sir.

23 MR. WILLIAMS: I'm going to move to have them
24 moved into evidence.

25 MR. MOLEZZO: Foundation met. No objection.

1 THE COURT: Exhibits 9-3 and 9-5 are hereby
2 admitted into evidence.

3 (Exhibits 9-3 and 9-5 admitted.)

4 MR. WILLIAMS: Your Honor, due to their graphic
5 nature, instead of putting them up I'll move to publish them
6 to the jury.

7 THE COURT: You may. Publish them to the jury
8 means he's going to

9 hand them to Juror No. 1, look at them briefly and
10 pass them down so that everyone gets a chance to see them.

11 You'll get to see them in more detail later. So
12 just take a few seconds to look at them, each one of them.
13 Just pass them down.

14 MR. WILLIAMS: I warn everybody: They are
15 graphic.

16 THE COURT: Return them back to the clerk, please.
17 You may proceed.

18 MR. WILLIAMS: Thank you, Your Honor.

19 (BY MR. WILLIAMS:)

20 Q. Was that the only time you were ever able to talk
21 to Cynthia?

22 A. Yes, sir.

23 Q. After you were done with your investigation, did
24 you ever try to remain in contact with her?

25 A. Yes, sir.

1 Q. How did you try to make contact with her?

2 A. She was transported to Renown Medical Center for
3 further treatment that morning. And I called several times
4 a week until the time of her death to ascertain whether or
5 not she was able to speak, but there never came a point to
6 where she was ever able to talk to where I could do an
7 interview with her.

8 Q. Once you were done talking to her, what did you
9 decide to do next?

10 A. At that point, we had decided to obtain a search
11 warrant. And I was on my way to the District Attorney's
12 Office to prepare that search warrant.

13 As I was on my way there, I received a call --
14 actually, I didn't receive the call. There was a broadcast
15 put out over the police radio that Mr. Morton was trying to
16 injure himself.

17 Q. When you heard that call, what did you decide to
18 do?

19 A. I went to the Humboldt County Jail where Mr.
20 Morton was at to ascertain the extent of his injuries.

21 Q. When you went there this first time, were you
22 intending to speak to Mr. Morton?

23 A. At that time, no.

24 Q. Why not?

25 A. Because I had just very minimal facts of the case.

1 I wasn't -- at that point in time I wasn't equipped with the
2 facts necessary to do a proper interview.

3 Q. Where was the defendant being kept at the
4 detention center?

5 A. He was being kept in a small room in the booking
6 area of the jail. It's a cubicle, maybe 5-by-5-feet square.

7 Q. And when you got there, was he in that cubicle?

8 A. Yes, sir, he was seated in that cubicle.

9 Q. Were you able to look in and see him?

10 A. Yes.

11 Q. Did there appear to be injuries like had been
12 broadcast over the radio?

13 A. Yes. He some minor what I would term lacerations
14 to his neck, more like scratches to his neck.

15 Q. Were you able to recover what he used to inflict
16 those injuries?

17 A. Yeah. I was shown a piece of a countertop, like a
18 Formica countertop, that had been peeled off. It was
19 indicated to me that's what he had used to injure himself.

20 Q. Did you take that into evidence?

21 A. I directed Officer Mitch Hinton to take it into
22 evidence.

23 MR. WILLIAMS: May I approach?

24 THE COURT: You may. The record should reflect
25 that the clerk is

1 presently marking a brown bag with black printing
2 on it as Exhibit 17 for identification.

3 (Exhibit 17 marked.)

4 MR. WILLIAMS: Approach the witness, Your Honor?

5 THE COURT: You may.

6 (BY MR. WILLIAMS:)

7 Q. I'm going to hand you a bag, Sergeant Garrison.
8 Please open that bag.

9 THE COURT: The record should reflect, sir, you've
10 just broken the seal on that. Is that correct?

11 THE WITNESS: Yes.

12 THE COURT: This is a sealed envelope that is
13 being broken at this point.

14 (BY MR. WILLIAMS:)

15 Q. Could you please remove the contents of the bag.

16 A. If possible, sir, I'd like a glove.

17 MR. MOLEZZO: Defense has no objection to a tissue
18 if no glove is available.

19 THE COURT: One of the things I would like to
20 clarify with the jury: When you are in the jury room and
21 have various items of evidence, if there's possibility of
22 contamination, blood or otherwise, you will have gloves.
23 And please be sure to handle them safely. We do that out of
24 an abundance of caution in the world we live just for
25 everyone's safety and protection.

1 (BY MR. WILLIAMS:)
2 Q. Not very big, is it?
3 A. No, sir.
4 Q. Is that the piece of Formica that you recovered on
5 that night?
6 A. Yes, sir.
7 MR. WILLIAMS: Your Honor, I'd move to have that
8 admitted into evidence.
9 MR. MOLEZZO: May I approach the witness? I need
10 to see it, Judge. I'm sorry.
11 No objection.
12 THE COURT: Exhibit 17 is hereby admitted.
13 (Exhibit 17 admitted.)
14 THE COURT: Please put it back into the bag.
15 (BY MR. WILLIAMS:)
16 Q. Seeing the injuries, were people summoned to treat
17 the defendant?
18 A. Yes, they were.
19 Q. Did they go into the cell while you were there?
20 A. The holding room, yes.
21 Q. Did you follow them in?
22 A. No. I stayed immediately outside. It was
23 entirely too small to have multiple people in there.
24 Q. While you were standing there, did the defendant
25 make any statements?

1 A. He said that, "I can't believe I shot her. I'm
2 going to prison for a very long time." And then there was a
3 pause. And he said, "I should have done it right the first
4 time."

5 Q. What did you do when he made those statements?

6 A. I stopped him and informed him if he wanted to
7 talk with me I would have to read him his Miranda rights
8 prior to any questioning.

9 Q. Did you use anything to assist you in reading
10 those rights?

11 A. Yes, sir.

12 Q. What was that?

13 A. It was a standard Miranda waiver form that we use
14 that the rights are printed on.

15 MR. WILLIAMS: May I approach, Your Honor?

16 THE COURT: You may.

17 MR. WILLIAMS: Approach the witness?

18 THE COURT: You may do so.

19 (BY MR. WILLIAMS:)

20 Q. I'm going to show you what's been marked as
21 State's Exhibit 15. Would you please look at that document.

22 THE COURT: The record should reflect that Exhibit
23 15 is a single page.

24 (BY MR. WILLIAMS:)

25 Q. Do you recognize that document, Sergeant Garrison?

1 A. Yes. This is the Miranda waiver form that I read
2 to Mr. Morton on the morning of August 6th.

3 Q. Does that form tell the defendant that he has the
4 right to remain silent?

5 A. Yes, sir.

6 Q. That he has the right to have an attorney there
7 while you question him?

8 A. Yes, sir.

9 Q. And the right not to incriminate himself?

10 A. Yes, sir.

11 Q. And did he initial next to all those rights?

12 A. Yes, sir.

13 Q. Did he sign the document at the bottom?

14 A. No. There's actually not a place for him to sign.
15 There's a place for the individual officer to sign.

16 Q. Did you sign the document?

17 A. Yes, sir.

18 Q. Looking at Exhibit 15 itself, is that a fair and
19 accurate copy of the waiver form you gave to the defendant?

20 A. Yes, sir.

21 Q. Does it appear to have been altered since that
22 night?

23 A. No, sir.

24 MR. WILLIAMS: I would move to have this admitted
25 into evidence, Your Honor.

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MR. MOLEZZO: No objection.

THE COURT: It's hereby admitted as Exhibit 15.

(Exhibit 15 admitted.)

(BY MR. WILLIAMS:)

Q. Once he signed the document and agreed to speak to you, what was the first question you asked of the defendant?

A. I asked him what had happened that evening.

Q. What did he say to you?

A. He said that he had been sleeping when Cynthia arrived home from a location unknown to him. He said that he was awakened by her hitting him.

Q. Did he say what happened after that?

A. He said they argued in the bedroom and then moved to the living room area where they continued to argue. And he stated that she continued to hit him and assault him.

Q. Did he say what happened after that?

A. He said that she stopped her attack on him to go to the bathroom.

Q. Did you find that statement unusual?

A. Yes, I did.

Q. Why?

A. Well, it's my experience, after 11 -- almost 11 years of law enforcement, now, that I've never seen somebody stop an attack like that just to use the restroom.

Q. And knowing that, did you question him further on

1 it?

2 A. I did. I said, "She stopped hitting you or
3 attacking you to go to the bathroom?"

4 Q. What was his response to your question?

5 A. At that point he said, "Well, I really don't
6 remember what happened. I just lost it and got the gun."

7 Q. What did he say after he said he lost it and got
8 the gun?

9 A. I can't remember exactly what he said. I believe
10 he said again that, "I can't believe I shot her."

11 Q. Did he tell you where she was located when he shot
12 her?

13 A. He said that she was seated on the toilet in the
14 hall bathroom.

15 Q. Did he say anything about trying to scare Cynthia?

16 A. He did. When I asked him what his intention was
17 when he got the gun, not only loaded -- pointed at her and
18 discharged it, when I asked him what his intention was, he
19 said that he was just trying to scare her.

20 Q. Did he tell you where he had gotten the gun from?

21 A. He did. He said he retrieved the gun from its
22 stored location by the front door in the living room area.
23 There was a bookcase or maybe an entertainment center, and
24 it was between that and the door.

25 Q. After that did you ask him more about the fight

1 between the two of them?

2 A. I asked him again what had started or what they
3 were arguing about. I can't remember what he replied at
4 that point.

5 Q. After that, did you ask him to show you where she
6 had hit him?

7 A. Yes.

8 Q. Did he tell you where?

9 A. He said -- when I first asked him, he said, "It
10 doesn't matter." I informed him yes, it did matter because
11 I needed to corroborate his story that she had been hitting
12 him.

13 Q. And so did you ask him again?

14 A. Yes, I did.

15 Q. What did he say this time?

16 A. Then he just made a general pointing to his head
17 and face.

18 Q. At that point did you look at his head and face?

19 A. I did.

20 Q. Did you see any injuries?

21 A. I didn't see any fresh injuries. He had the
22 scrape marks that I had talked about previously here. And
23 then several old injuries, but nothing to indicate that he
24 had been injured that evening.

25 Q. Now, while you were speaking to him, did you ever

1 become aware that he might have been consuming alcohol that
2 evening?

3 A. Yes.

4 Q. How did that come about?

5 A. It was only because I could smell -- I term it a
6 moderate odor of alcoholic beverage coming from his person.

7 Q. Any other signs of intoxication?

8 A. I didn't. His speech wasn't slurred, mumbled.
9 Even though he wasn't walking around much, what he did, he
10 wasn't staggering. He didn't appear to need support,
11 anything that -- any of the signs that I commonly look for
12 for an intoxicated person.

13 Q. If you hadn't smelled alcohol, would you have
14 known that he had been drinking?

15 A. No.

16 Q. Knowing that, did you ask him if he had consumed
17 any alcohol?

18 A. I did.

19 Q. What did he say?

20 A. He said that he had consumed about three or four
21 beers.

22 Q. Did you give him a blood alcohol test to confirm
23 whether or not he had been consuming alcohol?

24 A. I didn't. I didn't have my certification card on
25 me at that time. So I asked Officer Hinton to perform a

1 Breathalyzer test on Mr. Morton.

2 Q. What were the results of that test?

3 A. .276 and .266 breath alcohol content.

4 Q. After you gave him this test, did he ask you
5 anything?

6 A. At that point he did. He asked me what the
7 condition of his wife was.

8 Q. What did you tell him?

9 A. I told him that I wasn't exactly sure; that she
10 was still alive and in critical condition.

11 Q. Did he want to talk to you any more after that?

12 A. No, he did not.

13 Q. Did you honor his request?

14 A. I did.

15 Q. Did you leave the jail at that time?

16 A. Yes, I did.

17 Q. Where did you go after that?

18 A. I immediately went to the District Attorney's,
19 your office, to prepare the affidavit for the search
20 warrant.

21 Q. What time were you able to receive that search
22 warrant?

23 A. I believe it was between 4:00 and 4:15 a.m.

24 THE COURT: Counsel, this might be a good time to
25 take a recess.

1 MR. WILLIAMS: I think it would be.

2 THE COURT: Ladies and gentlemen, it's your duty
3 not to discuss among yourselves or with anyone else any
4 matter having to do with this case. It is your further duty
5 not to form or express any opinion regarding the guilt or
6 innocence of the defendant until the case has been finally
7 submitted to you for your decision.

8 You're not to read any newspaper articles or
9 listen or view any radio or television broadcasts concerning
10 this case. Should any person attempt to discuss the case
11 with you or in any manner attempt to influence you with
12 respect to it, you are to advise the bailiff who in turn
13 will advise the Court.

14 We'll be in recess until the call of the Court.

15 (Recess taken at 2:38 p.m.)

16 THE COURT: Court will come back to order. Please
17 be seated.

18 Will counsel stipulate to the presence of the jury
19 and the alternates?

20 MR. MOLEZZO: Defense stipulates.

21 MR. WILLIAMS: The State stipulates, Your Honor.

22 THE COURT: Do you want to continue on direct
23 examination with Mr. Garrison? Please continue.

24 MR. WILLIAMS: Thank you, Your Honor.
25

1 CONTINUED DIRECT EXAMINATION

2 (BY MR. WILLIAMS:)

3 Q. Officer Garrison, before we left you said you had
4 gotten a search warrant for the home on 1565 Harmony?

5 A. Yes, sir.

6 Q. Now, I forgot to ask you this previously, and I
7 apologize. That house on Harmony Lane, is that located in
8 Winnemucca?

9 A. Yes, sir.

10 Q. Which is in Humboldt County?

11 A. Yes, sir.

12 Q. Which is in the State of Nevada?

13 A. Yes, sir.

14 Q. And in that area of Harmony Lane, is that a
15 residential area?

16 A. Yes, it is a residential area within the
17 incorporated city limits of Winnemucca.

18 Q. Okay. And you said you got that search warrant at
19 around when?

20 A. I believe it was between 4 and 4:15 a.m.

21 Q. Once you had that warrant, you went back to the
22 house?

23 A. Yes, sir.

24 Q. And as part of that warrant, did you take
25 photographs?

1 A. Yes, sir.

2 MR. WILLIAMS: May I approach, Your Honor?

3 THE COURT: You may.

4 (BY MR. WILLIAMS:)

5 Q. Do you know how many photographs you took, all
6 tolled?

7 A. Between 260 and 270 photographs. I believe the
8 count is 262.

9 Q. Show you a group of photographs that's been marked
10 as State's Exhibit 12-1 through -234.

11 THE COURT: So there's 234 photographs?

12 MR. WILLIAMS: Yes, Your Honor.

13 THE COURT: Consecutively numbered with the base
14 number 12-1 through -234; is that correct?

15 MR. WILLIAMS: That's correct, Your Honor.

16 THE COURT: Okay.

17 (BY MR. WILLIAMS:)

18 Q. Now, during the break did you go through each and
19 every one of those photographs?

20 A. I did.

21 Q. And did you look at the contents of those
22 photographs?

23 A. I did.

24 Q. Were those the photographs that you took that
25 evening while you were doing the search warrant?

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A. Yes.

Q. Did any of them appear to be altered since that night?

A. No, sir.

Q. And they're a fair and accurate depiction of what you saw that evening?

A. Yes, sir.

MR. WILLIAMS: Your Honor, I would move to have this Exhibit 12-1 through 12-234 admitted into evidence.

MR. MOLEZZO: Uh, no objection, Your Honor.

THE COURT: They're hereby admitted.

(Whereupon, Exhibits 12-1 through 12-234 was admitted into evidence.)

MR. WILLIAMS: Thank you.

(BY MR. WILLIAMS:)

Q. Okay. I'm also going to hand you a group of photographs that you took that evening as well, and they are numbered Exhibits 11-1 through -28. Did you go through those photographs as well?

A. Yes, sir.

Q. Were those also a fair and accurate depiction of photographs you took that evening?

A. Yes, sir.

Q. Have they been altered in any manner since you took them?

1 A. No, sir.

2 MR. WILLIAMS: I would move to have these admitted
3 as well as, Your Honor.

4 MR. MOLEZZO: No objection.

5 THE COURT: They are hereby admitted.

6 (Whereupon, Exhibits 11-1 through 11-28 were admitted
7 into evidence.)

8 (BY MR. WILLIAMS:)

9 Q. Okay. So let's go back and go through what you
10 did when you served the search warrant. Where did you go
11 first?

12 A. Are you talking in reference to, um, at the
13 residence?

14 Q. Yes. When you got to the house and you're going
15 to start processing this crime scene, what did you do first?

16 A. I started photographing the exterior of the
17 residence, starting from the street, working my way into the
18 property and then around the residence.

19 Q. And when you got around the residence, did you go
20 to where the gun was located?

21 A. Yes. Typically, I would, um, complete the
22 photographing of the entire crime scene and residential
23 area, but it was starting to rain. I didn't want to lose
24 any evidence. So I went to the firearm and photographed it
25 as well.

1 Q. Did you take some photographs of the gun and where
2 it was located?

3 A. Yes, sir.

4 Q. All right. I'll put some of these photographs up
5 here on the overhead. Okay?

6 A. Okay.

7 Q. Start with 11-1. Is that a picture of the
8 firearm?

9 A. Yes, sir.

10 Q. Is that how it was found?

11 A. Yes, sir. In fact, that's my foot that you see in
12 the middle-left side there.

13 Q. Okay. Now, we're at 11-2. What does this
14 photograph depict?

15 A. That's the same firearm. I had opened the bolt to
16 clear the firearm. It's just to show that there was a round
17 chambered inside that firearm.

18 Q. This is 11-4. What does this depict?

19 A. Again, that's that same round that, when the bolt
20 was partially opened, that's a picture of the round as it's
21 being ejected out of the rifle.

22 Q. After making these photographs of the gun, did you
23 take the gun into custody?

24 A. Yes. I had Officer Cassinelli take it in as
25 evidence --

1 Q. And secure it?

2 A. Yes.

3 MR. WILLIAMS: Could I have the deputy pick up
4 Exhibit 6, take that over to Sergeant Garrison, please?

5 You don't need to handle it. I'm just going to
6 have him show it to you.

7 (BY MR. WILLIAMS:)

8 Q. Does that appear to be the firearm that you took
9 into custody that evening?

10 A. Yes, other than having the bolt removed.

11 Q. Other than having the bolt removed, does that
12 appear to be in essentially the same condition that you
13 found it in that evening?

14 A. It appears so.

15 MR. WILLIAMS: All right. Your Honor, I would
16 move to have the firearm admitted into evidence.

17 THE COURT: How is that marked for identification,
18 sir?

19 MR. WILLIAMS: As No. 6, I think.

20 THE COURT: Exhibit 6 is being offered into
21 evidence as the firearm, sir.

22 MR. MOLEZZO: No objection.

23 THE COURT: It is hereby admitted.

24 (Whereupon, Exhibit 6 was admitted into evidence.)

25 MR. WILLIAMS: I ask, Your Honor, that admittance

1 include the bolt and the clip. I consider them all the
2 exhibit.

3 THE COURT: Yes, all of the parts together will be
4 Exhibit 6.

5 MR. WILLIAMS: Thank you.

6 (BY MR. WILLIAMS:)

7 Q. So you said that when you got to the gun --

8 THE COURT: Just a second. Let's make sure that's
9 clear on the record.

10 MR. WILLIAMS: Okay.

11 THE COURT: The parts that go with that is the
12 bolt, which has been removed.

13 MR. WILLIAMS: And then the clip.

14 THE COURT: And a clip?

15 MR. WILLIAMS: Yes, that's what I consider to be
16 the firearm.

17 THE COURT: Okay. And the clip -- where's the
18 clip? Let's make a record of that. Bring it over here,
19 please.

20 Is it your understanding there are any live rounds
21 within the clip, sir?

22 MR. WILLIAMS: There are none, Your Honor. That's
23 my understanding at least.

24 THE COURT: Okay. So -- all right. So Exhibit 6
25 includes the bolt and a clip without any live rounds in

1 there. So it's three pieces is Exhibit 6?

2 MR. WILLIAMS: Yes, Your Honor.

3 THE COURT: All right.

4 MR. WILLIAMS: Thank you.

5 THE COURT: Do you agree, counsel?

6 MR. MOLEZZO: Yes, sir, I do. Thank you.

7 THE COURT: All right.

8 (BY MR. WILLIAMS:)

9 Q. So after taking the gun into evidence, what did
10 you do next?

11 A. I moved to the front door and began to photograph
12 the interior of the residence.

13 MR. WILLIAMS: Approach, Your Honor?

14 THE COURT: You may.

15 (BY MR. WILLIAMS:)

16 Q. Could you step down from the witness chair,
17 please?

18 A. Yes.

19 Q. I'm going to have you look at a drawing first. Do
20 you recognize this drawing?

21 A. I do. It's a rough drawing that I completed of
22 the upstairs portion of the residence at 1565 Harmony Road.

23 Q. Okay.

24 THE COURT: How has that been marked, sir?

25 MR. WILLIAMS: As Exhibit 16, Your Honor.

1 THE COURT: Exhibit 16 for identification?
2 MR. WILLIAMS: Yes.
3 THE COURT: All right. Go ahead.
4 (BY MR. WILLIAMS:)
5 Q. Put this on the projector, and I'll give you a
6 thing here so you can mark on it.
7 A. Yes, sir.
8 Q. First thing, can you write your name on it?
9 Okay. Now, you said you started in the living
10 room?
11 A. Yes, sir.
12 Q. So that means that you went in the door to the
13 living room?
14 A. Yes, sir.
15 Q. Would you please mark where you started? Put
16 "started."
17 A. (Indicating).
18 Q. And as you entered into the living room, you took
19 photographs of that area?
20 A. Yes, sir.
21 Q. Did you find anything in particular in the living
22 room that you wanted to take photographs of?
23 A. Yes.
24 Q. What's that?
25 A. I found a live -- what turned out to be a 303

1 round in an area approximately right here (indicating),
2 where that X is.

3 Q. I'm going to ask you to move Exhibit 16 off, off
4 of the projector. Okay. I'm going to put on Exhibit 11-5.
5 Is that a picture of where you found the live round?

6 A. Yes, sir.

7 Q. Now, I'm going to put on 11-6. Is that another
8 picture of the same round?

9 A. Yes, sir.

10 Q. Now, there's a ruler on there. Did you put that
11 there?

12 A. I did.

13 Q. And why did you put the ruler in the picture?

14 A. It just goes to depict the actual size of the
15 object that -- that you're photographing.

16 Q. All right. Thank you. If you'll put Exhibit 16
17 back on there?

18 After photographing the living room, where did you
19 go after that?

20 A. I went, photographed the kitchen area of the
21 residence to include the kitchen or dining room table. And
22 then moved downstairs, which is located in this area right
23 here (indicating). Went down to photograph the stair area.
24 And as I progressed, I photographed down the stairs and into
25 the downstairs portion of the residence.

1 Q. Okay. And did you take photographs of all the
2 bedrooms and et cetera downstairs?

3 A. Yes, sir.

4 Q. Once you were done with that, did you go back
5 upstairs?

6 A. I did.

7 Q. When you went back upstairs -- oh, yeah.

8 When you went back upstairs, where did you go
9 next?

10 A. As I came back upstairs, I started down the
11 hallway located in this general area right here
12 (indicating). I believe the first couple of shots that I
13 took, uh, were -- had the bathroom door area and some
14 medical supply waste just immediately outside the door. And
15 instead of photographing that area right then and there, I
16 photographed this bedroom here (indicating).

17 Q. And then once you were done with that bedroom,
18 where did you go?

19 A. I believe I photographed outside the hallway even
20 closer and then photographed the bathroom area.

21 Q. And then the bathroom area, what did you find in
22 there?

23 A. Immediately outside the bathroom, I found another
24 live 303 round near the medical waste. Just inside the
25 bathroom on the tile I found a spent 303 shell casing.

1 Q. Okay. Would you mark on there where you found the
2 spent 303 shell casing, please?

3 A. Yes, sir. And this is approximately.
4 (indicating).

5 Q. Okay. Did you label the X in the living room?

6 A. Yes. (Indicating).

7 Q. And that would be the first bullet? The first
8 bullet?

9 A. (Indicating).

10 Q. You said you found a live round in the hallway
11 first before you went in the bathroom?

12 A. Yes, sir.

13 Q. Okay. Would you mark that on there?

14 A. (Indicating).

15 Q. Remove the drawing briefly. Okay. I'm going to
16 put on 11-2 first. It's tough to see, but is that a
17 photograph of where you found the live round?

18 A. Yes, sir. The live round is actually right here.
19 (indicating).

20 Q. Could you circle it, please?

21 MR. WILLIAMS: The record can reflect he circled
22 on 11-2, Your Honor.

23 THE COURT: 11-2 has been marked with a circle.

24 (BY MR. WILLIAMS:)

25 Q. I'm going to put on 11-11 now. Is that another

1 photograph of the live round?

2 A. Yes, it is. It's just a close-up again with a
3 scale to show the size.

4 Q. Thank you. So after finding that --

5 THE COURT: Can you all see around the court
6 reporter and so forth?

7 (BY MR. WILLIAMS:)

8 Q. Okay. Good. You said after finding a live round,
9 you went in the bathroom and found a shell that had been
10 used?

11 A. A spent shell casing, yes.

12 Q. Okay. I'm going to put on 11-9. Is that a
13 picture of the spent shell casing?

14 A. Yes, located just inside the bathroom. Right here
15 (indicating).

16 Q. Put on now 11-10. Is that also a picture of the
17 spent shell casing?

18 A. Yes, sir. Again with a scale to show size
19 (indicating).

20 Q. Thank you. Okay. You can put the drawing back up
21 there. Thank you.

22 All right. So after finding this spent shell
23 casing, could you label it on the drawing? I think you
24 marked it.

25 A. (Indicating).

1 Q. Did you photograph anything else in the bathroom?

2 A. Yes, photographed the entire bathroom, to include
3 the shower, tub area, the countertop. And I made my way
4 down here towards the toilet, where I photographed, um, some
5 blood and tissue spatter or what appeared to me to be blood
6 and tissue spatter, as well as a hole in the drywall. If
7 you were looking at the toilet, it would be in the
8 lower-right portion of the -- on the wall.

9 Q. Could you mark on the drawing approximately where
10 that hole would have been?

11 A. Yes. (Indicating).

12 Q. Okay. Did you take pictures of this hole?

13 A. I did.

14 Q. Okay. I'm going to ask you to remove that again,
15 and we will put up 11-13. Is that a picture of the area
16 around the toilet where the hole is?

17 A. Yes, sir.

18 Q. Could you circle the hole, please?

19 A. Yes. (Indicating).

20 Q. Okay. And I'm going to put up 11-16. Is that
21 also a picture of the hole?

22 A. Yes, picture of the same hole, again, with a scale
23 to show size.

24 Q. Now, when you saw this hole, did you take any
25 steps as far as investigation goes to see if you could find

1 where that bullet went as it went into the wall?

2 A. Yes. I used a saw to cut that portion of the
3 drywall out and preserve the hole and attempt to locate the
4 path of the bullet.

5 MR. WILLIAMS: Approach, Your Honor?

6 THE COURT: You may.

7 (BY MR. WILLIAMS:)

8 Q. Did you take that section of drywall and take it
9 into custody?

10 A. Yes, sir.

11 Q. Probably want to put gloves on again?

12 A. Yes, sir.

13 Q. Would you please open the bag that's been marked
14 as Exhibit 20?

15 THE COURT: The record should reflect that he's
16 opening a sealed, Manila-colored envelope that has red
17 evidence tape on it as Exhibit 20 for identification.

18 (BY MR. WILLIAMS:)

19 Q. Would you please take it out?

20 THE COURT: This is for identification? Is that
21 correct, sir?

22 MR. WILLIAMS: Oh, yes.

23 (BY MR. WILLIAMS:)

24 Q. Opening that bag, is that the piece of drywall
25 that you cut out of the wall?

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A. It is.

MR. WILLIAMS: I would move now to have it
admitted as Exhibit 20, Your Honor.

THE COURT: It is hereby admitted.

(Whereupon, the exhibit was misstated to be Exhibit
20.)

(Whereupon, Exhibit 18 was admitted into evidence.)

(BY MR. WILLIAMS:)

Q. Would you hold that up so the jury could see it,
please?

(Whereupon, the drywall was shown to the jury.)

(BY MR. WILLIAMS:)

Q. Okay. Put it back in the bag now. If you just
want to set it back up there?

Okay. Now, as you took that piece of drywall off,
were you able to see where the bullet had been lodged?

A. Yes.

Q. Where was it lodged at?

A. It was lodged in a, I believe it was a two-by-six
piece of wood that we believed to be a structural support
for the staircase.

Q. And so would you be --

Believing it to be a structural support, were you
able to get the bullet out?

A. No.

1 Q. Did you take pictures of where the bullet was at?
2 A. I did.
3 Q. 11-17, is that a photograph of the bullet being
4 lodged in the two-by-six?
5 A. Yes, it's -- I believe this to be the actual
6 round. Without the removal, I wasn't able to confirm that.
7 Q. Now, when you were done with that, did you -- I'll
8 wait until you're done. I think at this point you can
9 return to your seat. I think we're done with the photos.
10 A. Okay.
11 Q. When you were done with that, did you collect some
12 other evidence from the bathroom?
13 A. I did.
14 Q. What did you collect?
15 A. I took swabs. They're basically a Q-Tip. A long
16 Q-Tip with a cotton -- cotton end on it. I took swabs of
17 the blood spatter or the suspected blood spatter and tissue
18 that was on the walls and on the floor.
19 MR. WILLIAMS: Approach, Your Honor?
20 THE COURT: You may.
21 MR. WILLIAMS: Approach the witness, Your Honor?
22 THE COURT: You may.
23 MR. WILLIAMS: Your Honor, I think I misspoke.
24 This has been marked as Exhibit 20, and I thought the piece
25 of the wall was Exhibit 20. I want to make sure I have the

1 record clear. Oh, sorry. The wall was 18, Your Honor.

2 THE COURT: Okay. We direct the record to show
3 that the piece of drywall is actually 18, instead of 20.

4 MR. WILLIAMS: Approach the witness, Your Honor?

5 THE COURT: Any objection to that?

6 MR. MOLEZZO: I'm sorry, Judge. What was it,
7 please?

8 THE COURT: The piece of drywall was apparently
9 erroneously identified as Exhibit 20, but it's actually 18.

10 MR. MOLEZZO: No objection to the change.

11 THE COURT: So for the record, it is 18, the piece
12 of drywall.

13 Now, you have 20 in your hand, is that --

14 MR. WILLIAMS: I have 20 in my hand, Your Honor.

15 THE COURT: All right. The record will so
16 reflect.

17 MR. WILLIAMS: I apologize.

18 (BY MR. WILLIAMS:)

19 Q. Can you look at that evidence bag marked as
20 Exhibit 20?

21 A. Yes, sir.

22 Q. Are those the swabs that you took out of the
23 bathroom?

24 A. They appear to be. Yes.

25 MR. WILLIAMS: Your Honor, I would move to have

1 the bag admitted into evidence. Does he need to open it
2 right now?

3 MR. MOLEZZO: Your Honor, for the record, I have
4 not seen those through the process of discovery. And I
5 don't believe he's laid the foundation to move those in.

6 Based upon my review of that package, it's just
7 four small cylinders. And I don't see any swab-like
8 material. I've never seen that before.

9 MR. WILLIAMS: Well, I'll have him open it, Your
10 Honor, I guess.

11 THE COURT: I understand. Right now you're laying
12 foundation that he collected these. At this point, they
13 have no evidentiary value until such time as they've been
14 identified as having some relationship to this charge.

15 MR. WILLIAMS: Okay. We'll have him open them,
16 Your Honor.

17 THE COURT: Pardon?

18 MR. WILLIAMS: Open the bag and identify them.

19 THE COURT: Yeah, he can identify them here.

20 MR. WILLIAMS: Okay. All right. We will have him
21 identify them and leave it at that then, Your Honor.

22 THE COURT: All right. You can open them up.
23 Open up the bag, sir.

24 The record should reflect that there's a Manila
25 envelope with red evidence tape that is being opened by this

1 witness at this time that has been marked Exhibit 20 for
2 identification purposes.

3 (BY MR. WILLIAMS:)

4 Q. Maybe just pull one of them out and see if it is a
5 swab, in fact.

6 A. (Indicating).

7 Q. Are those the type of swabs that you used that
8 evening?

9 A. Yes, sir.

10 Q. Did you direct to have these swabs that have been
11 collected sent to Washoe County Crime Lab for analysis?

12 A. Yes, sir.

13 Q. Thank you.

14 Are those the swabs you actually collected that
15 evening?

16 A. I'm sorry?

17 Q. Do you have a marking on them where you can tell
18 that?

19 A. Yes. Yes, they are. They were collected by me
20 and labeled by Officer Cassinelli.

21 THE COURT: For the record, sir, how many swabs
22 are there or boxes of swabs are there?

23 THE WITNESS: There are two, four -- seven boxes,
24 sir.

25 THE COURT: Seven individual boxes?

1 THE WITNESS: Yes. With one of them being what we
2 call a control swab.

3 THE COURT: And do they have various labels on
4 them to be identified separately?

5 THE WITNESS: Yes, sir.

6 (BY MR. WILLIAMS:)

7 Q. And did you look -- have you looked at all seven?

8 A. I have now.

9 Q. Okay. And are all seven swabs that were taken
10 from that -- from the bathroom on that evening?

11 A. Yes, sir.

12 Q. Now, the control swab, what does that mean?

13 A. Control swab, it's, um -- it's a swab taken with a
14 control solution. We use distilled water to moisten the,
15 for lack of a better term, Q-Tip, to moisten the cotton tip
16 and to collect dry -- dried material. In this case,
17 suspected blood.

18 Q. And did you -- the control swab, was it
19 functioning properly that evening that you saw?

20 A. Yeah. And the control swab -- if I can back up?

21 Q. Yeah.

22 A. The control swab is just a sample of the solution
23 that we submit with the rest of the evidence so that if
24 there's any foreign or unknown, um, material in the sample,
25 the lab can use that control swab to identify any --

1 anything that might be unknown, if that makes sense?

2 MR. WILLIAMS: I would now move to have these
3 admitted into evidence, Your Honor.

4 MR. MOLEZZO: With respect, Your Honor, to
5 Sergeant Garrison, I don't believe the foundation has been
6 met.

7 THE COURT: It has not. You don't have to argue
8 it. The point is, is that these were collected. They may
9 have been analyzed, but until the laboratory people who
10 analyzed them can say they have some evidentiary value,
11 they're not relevant to the case.

12 MR. WILLIAMS: Okay, Your Honor. Thank you.

13 THE COURT: He's in the chain of evidence with
14 regard to collecting them. But at this point there's
15 insufficient foundation that they can be admitted.

16 MR. WILLIAMS: Okay. Thank you, Your Honor. I'll
17 ask him to put them back in the bag and we'll move on.

18 THE COURT: Okay.

19 MR. WILLIAMS: The envelope marked Exhibit 20 for
20 identification.

21 THE COURT: And that's still open, that envelope.

22 Do you want to return that back to the clerk,
23 Mr. Bailiff?

24 Unless -- did you need it for additional purposes?

25 MR. WILLIAMS: No, Your Honor.

1 THE COURT: Okay. Hand it back to the clerk.
2 MR. WILLIAMS: Thank you.
3 THE COURT: Once items are marked for
4 identification, they belong to the clerk of the court.
5 (BY MR. WILLIAMS:)
6 Q. Did you also collect some items of clothing of the
7 victim?
8 A. Yes, sir.
9 Q. Where did you collect those from?
10 A. From the bathroom floor.
11 Q. What was collected?
12 A. Uh, pajama top, and I think the bottoms as well.
13 MR. WILLIAMS: Approach, Your Honor? One moment,
14 Your Honor.
15 THE COURT: The record will reflect that a white
16 cardboard box with a brown paper bag on top, taped to the
17 top is being marked for identification as what?
18 MR. WILLIAMS: Exhibit 26, Your Honor.
19 THE COURT: Exhibit 26 for identification.
20 (Whereupon, Exhibit 26 was marked for identification.)
21 MR. WILLIAMS: Okay. Thank you.
22 May I approach the witness?
23 THE COURT: You may.
24 (BY MR. WILLIAMS:)
25 Q. After collecting those items of clothing, did you

1 place them in a box?

2 A. No. They were actually placed in a bag by Officer
3 Cassinelli.

4 Q. Okay. Now, they're in a box. Do you know how
5 they got in the box?

6 A. This appears to be a box commonly used by Washoe
7 County Crime Lab.

8 Q. There's a bag on the top. Could that be the bag
9 that you had placed them in?

10 A. It could be. But without removing it, I don't
11 know. I doubt it. I'm going to guess the bag is actually
12 inside the box.

13 THE COURT: Don't go guessing, sir. If you want
14 to remove it, you can check it and see.

15 MR. WILLIAMS: I think that's what I'm going to
16 do, Your Honor, is have him remove it.

17 THE COURT: Yeah.

18 MR. WILLIAMS: I think we might need scissors for
19 that. Thank you.

20 THE WITNESS: This is not the bag that they were
21 placed in.

22 (BY MR. WILLIAMS:)

23 Q. Okay. Would you now open the box and examine the
24 items inside?

25 THE COURT: The record should reflect that a brown

1 bag has been removed from -- being now unattached from the
2 top of the box.

3 MR. MOLEZZO: Your Honor, for the record, I do see
4 a biohazard sticker on that box.

5 THE COURT: That's why he's wearing gloves, sir.

6 (BY MR. WILLIAMS:)

7 Q. Is there a bag inside of the box?

8 A. Appears to be at least two bags, sir. Three.

9 Q. Would you remove those bags, please?

10 A. There's several items in here.

11 Q. Oh, okay.

12 A. The first one I'm removing is labeled "light green
13 pajama bottom."

14 Q. Did you collect light green pajama bottoms at the
15 scene that evening?

16 A. No. These were collected by Officer Haylett.

17 Q. Were you there when he collected them?

18 A. No, they were collected from the --

19 Q. From the hospital?

20 A. From the hospital.

21 Q. Place those aside for now then.

22 What is the next bag?

23 A. It's labeled as a "light green clothing item with
24 red stains." I believe this is going to be the pajama top.

25 Q. Would you need to open it to be sure then?

1 A. I would.

2 Q. Then I'm going to ask you to open it.

3 THE COURT: The record should reflect that a brown

4 paper bag with both yellow and red evidence tape is being

5 opened at this time, unsealed by the officer.

6 The record should reflect there's being removed --

7 is that white paper, sir?

8 THE WITNESS: Yes, sir. It's --

9 THE COURT: White paper with yellow evidence tape

10 around it and a red sticker on it. Three red stickers. Go

11 ahead. I'm not telling you to open it.

12 THE WITNESS: Yes.

13 MR. WILLIAMS: I would ask that he open it, Your

14 Honor.

15 THE COURT: Okay. I'm just trying to make a

16 record of what's happening in court.

17 MR. WILLIAMS: I understand.

18 MR. MOLEZZO: Your Honor, may we approach, please?

19 THE COURT: Yeah.

20 MR. MOLEZZO: Thank you, Judge.

21 THE COURT: Hold on just a minute, Officer.

22 (Whereupon, a sidebar was had.)

23 THE COURT: Sir, go ahead. But I don't want you

24 taking anything out. If you could just open it sufficiently

25 so that you can identify the item as quickly as possible?

1 THE WITNESS: This does appear to be her pajama
2 top, sir.

3 THE COURT: Okay. And is there a photograph of
4 that that we can identify, sir?

5 MR. WILLIAMS: Yes, Your Honor. If I may
6 approach?

7 THE COURT: All right. He's being handed
8 photograph what, sir?

9 MR. WILLIAMS: Eleven-14.

10 THE COURT: Can you look at the photograph, sir?

11 THE WITNESS: Yes, sir.

12 (BY MR. WILLIAMS:)

13 Q. Is that the same item as in the photograph?

14 A. Yes, sir.

15 THE COURT: Okay. Why don't you put it back in
16 the bag?

17 Again, we want to be careful, ladies and
18 gentlemen, that we don't just have items that might be what
19 we call biohazardous today. So again, I would caution you
20 in the jury room. These items will be in there. Take
21 extreme caution in dealing with them if you need to.

22 Sir, would you go ahead and set that behind you as
23 well?

24 THE WITNESS: Yes, sir.

25 ///

1 (BY MR. WILLIAMS:)

2 Q. You doing all right?

3 A. Yeah.

4 Q. Okay. Just put the box to the side and we'll move
5 on.

6 THE COURT: Are there any more items in the box,
7 sir?

8 THE WITNESS: There appear to be.

9 MR. WILLIAMS: I guess we better go through them.

10 (BY MR. WILLIAMS:)

11 Q. What else is in the box?

12 A. They're just empty bags and an empty envelope.

13 THE COURT: Sir, those items are just items with
14 no evidence or evidentiary value? No writing on them? Is
15 there any writing on any of them?

16 THE WITNESS: Other than this one labeled "item
17 No. 9," but it's empty.

18 THE COURT: Okay. So there's two empty brown,
19 large bags, and a smaller Manila envelope, all of which are
20 empty and have no evidentiary value; is that true, sir?

21 THE WITNESS: Yes.

22 THE COURT: All right. Put them back in the box
23 and then --

24 MR. WILLIAMS: Your Honor, I would move just to
25 have the green top he identified admitted into evidence.

1 THE COURT: Okay.

2 MR. WILLIAMS: There was something else in the

3 box, but I'm just asking for the green top.

4 MR. MOLEZZO: As reflected in the photograph, we

5 have no objection, Your Honor.

6 THE COURT: Exhibit 9 is that item; is that

7 correct?

8 MR. WILLIAMS: No, Your Honor. Exhibit -- what is

9 it?

10 THE COURT: Oh, 26.

11 MR. WILLIAMS: The box is marked as 26, Your

12 Honor.

13 THE COURT: Hold on. Let's get this clear. The

14 box is marked as what?

15 THE COURT CLERK: Twenty-six.

16 THE COURT: So the entire box, white box is 26.

17 The individual item with the tops -- with pajama top is

18 marked as what?

19 THE COURT CLERK: It's not marked.

20 MR. WILLIAMS: Could we make it 26-1, Your Honor?

21 THE COURT: Yes. It will be marked by the clerk

22 as 26-1. And you've requested that be admitted?

23 MR. WILLIAMS: Yes.

24 THE COURT: And counsel on behalf of the defendant

25 does not object to that?

1 MR. MOLEZZO: No, I don't. Thank you, Judge.

2 THE COURT: So Exhibit 26-1 will be admitted into
3 evidence.

4 (Whereupon, Exhibit 26-1 was marked and admitted into
5 evidence.)

6 THE COURT: Now, for the record, again, that is a
7 pajama top, sir?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right.

10 (BY MR. WILLIAMS:)

11 Q. Now, once you were done with that, the bathroom
12 and collecting evidence there, where did you go after that?

13 A. Went back to Humboldt County jail.

14 Q. Back up before that.

15 A. Okay.

16 Q. You're still in the house?

17 A. Okay. Yeah.

18 Q. Did you go anywhere else in the house?

19 A. Yes. We had located some divorce paperwork in the
20 kitchen on the kitchen table.

21 Q. And did you go and photograph those divorce
22 papers?

23 A. Yes, sir.

24 Q. Would you please come back down briefly and mark
25 where you found the divorce papers?

1 A. The divorce papers were found on the kitchen table
2 (indicating).
3 Q. Okay. Could you write "divorce papers" there,
4 please?
5 A. (Indicating).
6 Q. Would you remove that, please? I'm going to put
7 up 11-18.
8 THE COURT: Just a second, sir. Let's back up.
9 MR. WILLIAMS: Oh, sorry.
10 THE COURT: The record should reflect, is that
11 Exhibit 18 -- on the back, sir?
12 THE WITNESS: Sixteen, sir.
13 THE COURT: Sixteen. So Exhibit 16 you've marked
14 on that where the divorce papers were; is that correct?
15 MR. WILLIAMS: Correct, Your Honor. Thank you.
16 THE COURT: All right.
17 (BY MR. WILLIAMS:)
18 Q. Now, I'm going to put up here 11-18. Is that a
19 front cover of the divorce papers?
20 A. Yes.
21 Q. Also going to put up 11-23. Does that reflect
22 that some of the divorce papers have been torn?
23 A. Yes.
24 Q. Did you take those papers into evidence?
25 A. I did.

1 Q. You can return to your seat. Thank you, Sergeant
2 Garrison.

3 MR. WILLIAMS: Your Honor, I'm going to move at
4 this time to have Exhibit 16 admitted into evidence.

5 THE COURT: Any objection, sir?

6 MR. MOLEZZO: I'm sorry, Your Honor? I apologize.

7 THE COURT: Exhibit 16, do you have any objection?

8 MR. MOLEZZO: No, I don't.

9 THE COURT: Sixteen is hereby admitted into
10 evidence.

11 (Whereupon, Exhibit 16 was admitted into evidence.)

12 MR. WILLIAMS: Approach the witness, Your Honor?

13 THE COURT: You may.

14 (BY MR. WILLIAMS:)

15 Q. I'm going to show you a bag that's been marked as
16 Exhibit 23. Would you please look at that bag?

17 A. Yes, sir.

18 Q. Does that bag contain or appear to you to contain
19 the divorce papers that you collected?

20 A. Yes, sir.

21 Q. Would you please open that bag now?

22 THE COURT: The record should reflect a Manila
23 envelope marked as Exhibit 23 for identification is now
24 being opened and unsealed. It has some red evidence tape on
25 it.

1 (BY MR. WILLIAMS:)

2 Q. Contained in that bag, are these the papers that
3 you recovered that evening?

4 A. Yes, sir, they are.

5 MR. WILLIAMS: I move to have this exhibit
6 admitted into evidence, Your Honor.

7 MR. MOLEZZO: Foundation not met, Your Honor. The
8 prong for it is vacant in reference to true and accurate
9 depiction.

10 THE COURT: He said these are the items that he
11 picked up that night. That's sufficient foundation.
12 They're admissible and relevant.

13 MR. MOLEZZO: I'll submit it, Judge.

14 THE COURT: They're hereby admitted as Exhibit 23.

15 (Whereupon, Exhibit 23 was admitted into evidence.)

16 (BY MR. WILLIAMS:)

17 Q. Would you put them back in the bag, please?

18 THE COURT: They're being returned back to the
19 clerk, Exhibit 23.

20 (BY MR. WILLIAMS:)

21 Q. Now, after completing the search of the house with
22 getting those divorce papers, where did you go after that?

23 A. Excuse me. We secured the house, and I went to
24 Humboldt County Detention Center.

25 Q. And when you got to the detention center, what was

1 your purpose in going there?

2 A. To speak with Mr. Morton.

3 Q. Did you have a search warrant to photograph
4 Mr. Morton?

5 A. Yes.

6 Q. Were you able to take photographs of him?

7 A. Yes.

8 Q. What was your purpose for obtaining a warrant to
9 take photographs of Mr. Morton?

10 A. The purpose was just to document any injuries that
11 he had on his person.

12 Q. Exhibit 11-25, is that one of the pictures you
13 took of Mr. Morton?

14 A. Yes, sir, it is.

15 Q. This is 11-26. Is this also a picture you took of
16 Mr. Morton?

17 A. Yes, sir.

18 Q. Eleven-27. This one as well?

19 A. Yes.

20 Q. And last 11-28?

21 A. Yes, it is a picture that I took of him.

22 Q. Now, when you were photographing the defendant,
23 did he say anything to you?

24 A. He once again said that he couldn't believe that
25 he shot her.

1 Q. When he said that, what did you do?

2 A. I reminded him of his Miranda rights that I had
3 previously read to him and asked him if I could ask -- ask
4 him a couple more questions.

5 Q. What did you ask him?

6 A. I asked him about the divorce paperwork that we'd
7 found and who had torn the papers.

8 Q. What was his response?

9 A. Mr. Morton stated that he had completed the
10 divorce paperwork on several occasions and each time they
11 would be destroyed or thrown away by Cynthia.

12 Q. After he said that to you, did he want to talk to
13 you anymore?

14 A. Uh, he again inquired about the status of his
15 wife. And I informed him that she had been flown to Reno.
16 That she was in critical, and at that time, stable condition
17 was the information that I had. I relayed this to him, and
18 then he terminated the conversation with me.

19 Q. Were you able to record either of these two
20 interviews with the defendant?

21 A. Unfortunately not.

22 Q. Why is that?

23 A. Um, at the time while I was at the jail, I
24 believed their video and audio surveillance system to be
25 working. So I conducted both interviews right in the

1 booking area, where it was my belief that they would be
2 captured by the jail's surveillance system. Unfortunately,
3 I was told several days afterward that they had not been
4 captured, because the jail system was down at that time.

5 Q. And at the time as a detective did you have a
6 digital recorder?

7 A. I did, but I did not have it on my person. It was
8 at the office. And throughout this whole evening and into
9 the morning, I had not been to the office.

10 Q. After that night, did you meet with Robert Morton
11 a few days later to get a follow-up interview?

12 A. Yes, sir.

13 Q. Do you recall what day you met with him?

14 A. I believe it was August 10th. August 9th or
15 August 10th.

16 Q. And did you get a follow-up statement from Robert?

17 A. I did.

18 Q. Did you record that?

19 A. No.

20 Q. That night were you aware that, besides Robert,
21 there were two other individuals in the house?

22 A. I was. I was told that by Captain Waldie, I
23 believe.

24 Q. Did you ever have a chance to speak with them that
25 night?

1 A. Not that night.

2 Q. Why not?

3 A. Um, unfortunately, we're a small department. We

4 have limited resources. I was pretty much a one-man show.

5 I had two rookie patrol officers assisting me with the crime

6 scene. There was nobody else available to assist me in

7 other interviews and talking with other people.

8 Q. Were you able to eventually get follow-up

9 interviews with them?

10 A. Yes.

11 Q. Do you remember what day it was that you did that?

12 A. I believe it was October 22nd. It was a couple

13 months after the incident.

14 Q. Did you record either of those conversations?

15 A. No.

16 Q. Were you able to get -- were you able to, uh, get

17 a DNA swab from Robert?

18 A. Yes.

19 MR. WILLIAMS: Approach, Your Honor? Approach the

20 witness, Your Honor?

21 THE COURT: You may.

22 (BY MR. WILLIAMS:)

23 Q. I'm going to bring a bag that's been marked as

24 State's Exhibit 25. Do you recognize that bag?

25 A. Yes, sir, I do.

1 Q. What is that bag?

2 A. Contains the box, the swab box that I have labeled

3 as "buccal swabs from Robert Morton."

4 Q. What day did you collect that buccal swab from

5 Robert Morton?

6 A. September 24th.

7 Q. Would you open that bag, please?

8 A. Yes.

9 THE COURT: Counselor, I don't know that he needs

10 to, does he?

11 MR. MOLEZZO: I don't -- I don't need it. I'll --

12 THE COURT: For the record, it appears there is a

13 Manila envelope with a clear portion to that which you can

14 see the box.

15 Is that correct, sir?

16 THE WITNESS: Yes, sir.

17 THE COURT: And are your markings on that box?

18 THE WITNESS: Yes, sir.

19 THE COURT: Do you wish to have it opened, sir?

20 MR. MOLEZZO: No, Your Honor. Thank you.

21 THE COURT: Okay.

22 (BY MR. WILLIAMS:)

23 Q. Did you have the swab you took from Robert sent to

24 the crime lab for analysis?

25 A. I did.

1 Q. What was the purpose of taking that swab from
2 Robert?

3 A. It was as a comparison swab for any DNA that may
4 be found on any of the other evidence that I submitted to
5 the crime lab.

6 Q. Did you also have fingerprints taken from Robert?

7 A. Yes.

8 Q. Did you send those to the crime lab?

9 A. Yes.

10 Q. Why did you send those to the crime lab?

11 A. They were again elimination fingerprints that were
12 taken to identify, to compare to any fingerprints that may
13 be found on any of the evidence that I submitted to the
14 crime lab.

15 Q. Now, what about the gun that we talked about
16 previously? Did you have that sent to the crime lab?

17 A. Yes, sir.

18 Q. When you were doing this follow-up, did you also
19 obtain a DNA sample from the defendant?

20 A. Yes, at Humboldt County Detention Center.

21 MR. WILLIAMS: Approach, Your Honor?

22 THE COURT: You may.

23 MR. WILLIAMS: Approach the witness, Your Honor?

24 THE COURT: You may.

25 ///

1 (BY MR. WILLIAMS:)

2 Q. Show you a bag that's been marked as Exhibit 19.

3 THE COURT: Again, this is a Manila envelope with
4 a clear portion to the envelope, sealed with evidence tape.

5 (BY MR. WILLIAMS:)

6 Q. Are you able to see into that?

7 A. Yes, sir.

8 Q. Does that contain what appears to be a box with a
9 swab?

10 A. Yes.

11 Q. That you took from the defendant?

12 A. I'm sorry?

13 Q. That you took from the defendant?

14 A. Yes, sir.

15 Q. Did you have that sent to the crime lab?

16 A. Yes.

17 Q. Now, what about all the rounds you collected that
18 evening? The shell casings and the rounds, did you have
19 those sent to the crime lab for analysis?

20 A. Yes, we did.

21 MR. WILLIAMS: Approach the witness, Your Honor?

22 THE COURT: You may, sir.

23 (BY MR. WILLIAMS:)

24 Q. I'm going to show you what's been marked as
25 Exhibits 22 and 24. Start with 22 and then you can do 24.

1 THE COURT: This appears to be a Manila envelope,
2 sealed with a clear envelope in it, red evidence tape. And
3 there is stapled to that a white sheet of paper with
4 printing and writing on it.

5 (BY MR. WILLIAMS:)

6 Q. Exhibit 22, if you can tell from the sheet
7 outside, what's contained in that?

8 A. There is a white cardboard box. It's common to
9 the swab boxes. That's not something that I included, but
10 the empty 303 casing is right there (indicating).

11 Q. Is that the empty casing that you found on that
12 evening?

13 A. Yes.

14 Q. Now, if you'll turn to Exhibit 24?

15 A. Yes.

16 Q. What's contained in Exhibit 24?

17 A. Several.

18 THE COURT: For the record, again, Exhibit 24 is a
19 Manila envelope. It has a clear portion to the envelope
20 with sealed red evidence tape.

21 Are there two of them together, sir?

22 THE WITNESS: There's three, Your Honor.

23 THE COURT: Three separate items; is that correct?

24 THE WITNESS: Yes.

25 THE COURT: And there is attached to all three,

1 stapled to it a white piece of paper with printing and
2 writing on it; is that correct?

3 THE WITNESS: Yes, sir.

4 THE COURT: Go ahead.

5 (BY MR. WILLIAMS:)

6 Q. Do all three of those bags contain shell casings
7 you sent to the crime lab?

8 A. Yes, they do.

9 Q. And when they came back from the crime lab, had
10 they been used?

11 A. Yes.

12 Q. But when you sent them there, were they live
13 rounds?

14 A. Yes, they were.

15 MR. WILLIAMS: Your Honor, I would move to have
16 Exhibit 22 admitted into evidence at this time.

17 MR. MOLEZZO: No objection, Your Honor.

18 THE COURT: Twenty-two is hereby admitted.

19 (Whereupon, Exhibit 22 was admitted into evidence.)

20 MR. WILLIAMS: And also Exhibit 24.

21 MR. MOLEZZO: What is 24 again, counsel, please?

22 THE COURT: Are those the three live bullets that
23 were photographed; is that correct?

24 MR. WILLIAMS: Yes.

25 THE WITNESS: Yes.

1 MR. WILLIAMS: They're no longer live, Your Honor.

2 THE WITNESS: They're no longer live.

3 THE COURT: I understand that. But when you sent
4 them in they were live; is that your testimony?

5 THE WITNESS: Yes.

6 THE COURT: And these are the ones that you
7 indicated were depicted in the photographs that you took?

8 THE WITNESS: Yes.

9 MR. MOLEZZO: No objection, Your Honor.

10 THE COURT: All right. Exhibit 24 is hereby
11 admitted as well.

12 (Whereupon, Exhibit 24 was admitted into evidence.)

13 MR. WILLIAMS: With that, Your Honor, I have no
14 further questions for this witness at this time.

15 THE COURT: All right. It's time for our last
16 break of the day.

17 I'm going to admonish you it is your duty not to
18 discuss among yourselves or with anyone else any matter
19 having to do with this case.

20 It is your further duty not to form or express any
21 opinion regarding the guilt or innocence of the defendant
22 until the case has been finally submitted to you for your
23 decision.

24 You are not to read any newspaper articles or
25 listen to or view any radio or television broadcasts

1 concerning this case.

2 Should any person attempt to discuss the case with
3 you or in any manner attempt to influence you with respect
4 to it, you are to advise the bailiff who will, in turn,
5 advise the Court.

6 During the recess, let's be sure that we get all
7 of the evidence returned back to the clerk.

8 THE BAILIFF: Yes, sir.

9 THE COURT: All right.

10 THE BAILIFF: All rise.

11 (Whereupon, a recess was had.)

12 THE COURT: Court will come to order. Please be
13 seated.

14 MR. WILLIAMS: Your Honor, sorry, I wanted --

15 THE COURT: Just a second. Hold on just one
16 minute.

17 MR. WILLIAMS: Yeah.

18 THE COURT: Will counsel stipulate to the presence
19 of the jury and the alternates?

20 MR. MOLEZZO: So stipulated defense.

21 MR. WILLIAMS: The State will stipulate, Your
22 Honor.

23 THE COURT: Now, counsel.

24 MR. WILLIAMS: Sorry. During the break, the clerk
25 informed me that she didn't have down that Exhibit 18, which

1 is the piece of drywall, had been admitted. I wanted to
2 make sure, Your Honor, that is admitted into evidence. I
3 remembered it being admitted, but she wasn't sure. So we
4 wanted to verify that.

5 THE COURT: Just a second. I'll check my notes
6 too. Well, do you have any objection to it, sir?

7 MR. MOLEZZO: No, Your Honor.

8 THE COURT: Exhibit 18 is admitted. If it has not
9 been previously, it is now admitted.

10 (Whereupon, Exhibit 18 was admitted into evidence.)

11 MR. WILLIAMS: Thank you, Your Honor.

12 THE COURT: Now, you may carry out
13 cross-examination, counselor.

14 MR. MOLEZZO: Thank you very much, Your Honor.
15 Your indulgence, please?

16 THE COURT: Yes.

17 MR. MOLEZZO: For a moment, Judge, may I?

18 THE COURT: You may.

19 MR. MOLEZZO: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 (BY MR. MOLEZZO:)

22 Q. Sergeant Garrison, may I refer to you as sir?
23 Would that be okay?

24 A. Yes, sir.

25 Q. Because the title sometimes I forget.

1 Now, I'm going to show you --

2 MR. MOLEZZO: For the record, Miss Clerk, I do
3 have images already in evidence in reference to prescription
4 medication. Would you locate those in the pile for me,
5 please?

6 MR. WILLIAMS: They're at the top. I put them at
7 the top.

8 THE COURT CLERK: Of this stack or this stack?

9 MR. WILLIAMS: The big stack. Take one off the
10 top and they're there.

11 MR. MOLEZZO: Thank you. For the record, I've
12 retrieved the images I'm looking for in reference to
13 prescription medication.

14 (BY MR. MOLEZZO:)

15 Q. How long have you been a police officer, sir?

16 A. November, 1999, I started with the Winnemucca
17 Police Department.

18 Q. And, uh, you had to go through the academy?

19 A. Yes, sir.

20 Q. And they -- you go through classes in how to draft
21 reports and so forth, correct?

22 A. Yes, sir.

23 Q. And you still -- and you have continuing education
24 as you go throughout your career, correct?

25 A. That's correct.

1 Q. And during this event, August 5th, 2009, how long
2 had you been with the police force, please?

3 A. Just shy of 10 years.

4 Q. Just shy of 10 years.

5 And you're currently a sergeant now; is that
6 correct?

7 A. Yes, sir.

8 Q. At the time of this event, you were a detective?

9 A. That's correct.

10 Q. Is a sergeant a step up or a step down?

11 A. It's a step up.

12 Q. Okay. Now -- now, you responded to the Harmony
13 residence after hearing dispatch tell you that there was a
14 possible shooting; correct?

15 A. Yes. I received a phone call at my house. I was
16 off duty at the time.

17 Q. And upon arrival who did you see there? Were
18 there other law enforcement folks?

19 A. Yes, sir, there was.

20 Q. Approximately how many?

21 A. Let's see. There was -- if I can just go through
22 the names, that will be a little easier.

23 Q. Take your time.

24 A. Captain Rick Waldie, Sergeant Matt Morgan, Officer
25 Haylett, Officer Hinton, and Officer Cassinelli. So maybe

1 five. I might be forgetting one person, but I don't think
2 so.

3 Q. And thank you. Prior to today's appearance, had
4 you looked at your reports and gotten prepared to testify;
5 is that correct?

6 A. Yes, sir.

7 Q. Okay. And do I understand that you were the --
8 you were assigned as the lead detective?

9 A. That's correct.

10 Q. Okay. Is that -- that's kind of the boss; is that
11 fair?

12 A. Yes.

13 Q. And it's your duty to make sure the investigation
14 is done as best as it can be done, correct?

15 A. That would be correct.

16 Q. Correctly investigated, correct?

17 A. Yes.

18 Q. Um, now and you drafted reports in this case, did
19 you not?

20 A. Yes, I did.

21 Q. Okay. And you do mention in those reports, don't
22 you, that you come into contact with a Robert Morton; is
23 that correct?

24 A. Yes.

25 Q. And you came into contact with Robert Morton at

1 the Harmony residence; isn't that true?

2 A. Yes, just briefly.

3 Q. Yes, sir.

4 And -- but prior to that contact, you were also
5 aware that there was a possible struggle that took place;
6 isn't that true?

7 A. That was the information that was relayed to me,
8 yes.

9 Q. And thank you. And so, before you came into
10 contact with Robert Morton, you received information that
11 there was a struggle over a weapon?

12 A. That's correct.

13 Q. And as far as you know, prior to contacting Robert
14 Morton, there was only one weapon involved, correct?

15 A. Yes.

16 Q. And, in fact, in your report you go so far as to
17 call Robert Morton a suspect; do you recall that?

18 A. No, I don't recall.

19 Q. Would seeing your report revive your recollection?

20 A. Yes, it would.

21 Q. Thank you.

22 MR. MOLEZZO: Counsel, I'm looking at the primary
23 criminal investigation report, page one, middle paragraph.

24 May I approach, Your Honor?

25 THE COURT: You may.

1 MR. MOLEZZO: Thank you.

2 (BY MR. MOLEZZO:)

3 Q. For the record, I have highlighted that area not
4 to manipulate or taint the report.

5 Would you read that to yourself?

6 A. Yes, sir.

7 Q. Thank you.

8 A. Okay.

9 Q. Thank you. Thank you.

10 Did I interpret that correctly, at least in
11 reference to the time this report was drafted, you assumed
12 he was a suspect?

13 A. No, sir.

14 Q. I'm sorry?

15 A. No, sir, you did not interpret that correctly.

16 Q. Okay. How did I mess that up, sir?

17 A. Uh, I was referring to the suspect Mr. Morton, and
18 the victim -- I was referring to Robert as the suspect and
19 the victim's son, not as being a suspect.

20 Q. Okay. Did you make a determination that Robert
21 was a suspect?

22 A. At no time was he ever a suspect, no.

23 Q. Well, that's a bold statement, Officer. You had
24 information that he was involved in the possession of that
25 firearm, correct?

1 A. That's correct.

2 Q. Why wouldn't you think that he's a suspect?

3 Possible suspect?

4 A. The information as it was relayed to me by other

5 officers indicated that Robert was not a suspect. That he

6 had acted in defense of his mother.

7 Q. Well, you didn't have information from any direct

8 witness; isn't that correct?

9 A. I'm sorry? A direct witness; is that what you

10 said?

11 Q. Yes.

12 A. That's correct, sir.

13 Q. And thank you for your honesty. So fellow law

14 enforcement relates to you, and these are my words, a theory

15 of what happened, and you just accepted it, correct? Not to

16 sound flippant, but you went along with it?

17 A. That's the avenue we took, yes.

18 Q. Well, murder is about as big as it gets in our

19 republic; you would agree?

20 A. I would definitely agree with that.

21 Q. It's probably right up there with the pornograph

22 (verbatim), and the assault/rape stuff; would you agree?

23 A. I would put it above that, sir.

24 Q. Thank you for your honesty.

25 So you come into this situation and now you're

1 lead detective, correct?

2 A. That's correct.

3 Q. Thank you. And you are aware that there's

4 other -- and I'm gonna use the term "civilians" -- other

5 witnesses at the residence, correct?

6 A. Yes.

7 Q. Thank you.

8 And you come to find out that those witnesses are,

9 uh, Robert Morton, uh, who struggled with the firearm,

10 correct?

11 A. That's correct.

12 Q. And you come to find out that there's two other,

13 and this is my words, "civilian" witnesses downstairs; is

14 that right?

15 A. Yes, sir.

16 Q. And one is a Jessica Morton, and the other one is

17 Anastasia Barsness?

18 A. Yes.

19 Q. How soon after you arrived did you have an

20 impression that this was serious stuff? That this was a

21 possible homicide investigation?

22 A. Immediately.

23 Q. Okay.

24 A. Upon hearing the severity of the injuries.

25 Q. Okay. And with that knowledge, you -- isn't it

1 true that you didn't really question any of the other
2 witnesses there?

3 A. At that point in time, that is entirely correct.
4 I did not question any other witnesses there.

5 Q. And, in fact, you allowed the two potential
6 witnesses in the basement, Jessica and Anastasia, I'm not
7 saying you directly but you found out that they left,
8 correct?

9 A. That's correct.

10 Q. Next question. Did you allow that to occur?

11 A. I did not. Um, I believe it was Captain Rick
12 Waldie that allowed them to leave.

13 Q. And who allowed Robert Morton to leave; do you
14 know?

15 A. Again, I don't know that, sir. I'm -- I don't
16 want to speculate.

17 Q. Is it possible to shoot another human being
18 accidentally?

19 A. Yes, it is.

20 Q. Okay. So you have information --

21 Not to belabor it, Your Honor --

22 -- you have information there's a struggle with a
23 weapon, and you did not interview one of the strugglors
24 (verbatim) over that weapon, Robert Morton, right?

25 A. I personally did not.

1 Q. And, sir, I know you can't do all things all at
2 once. But you did not, correct?

3 A. That's correct.

4 Q. Did you -- how was the scene secured? I think you
5 testified that the scene was secured. How is that done? Is
6 that stuff we see on TV, the yellow tape?

7 A. Yes, the yellow crime scene tape. And then two
8 officers, Captain Waldie and Officer Cassinelli, remained on
9 scene to guard the house.

10 Q. And then you immediately left and went to the
11 police station; is that right?

12 A. No, sir, that's not right.

13 Q. I'm sorry. Help me. You went to the hospital?

14 A. Yes, sir.

15 Q. And that was your first encounter with the
16 deceased?

17 A. Yes.

18 Q. And the deceased was, obviously, in serious pain
19 and shock; you would agree to that?

20 A. Most definitely.

21 Q. And at the time you -- and then you engaged her?
22 You tried to speak to her as well, correct?

23 A. I tried, yes.

24 Q. And health care providers were around and they
25 pretty much got you out of there pretty quick, correct?

1 I mean, you didn't have a conversation with her;
2 isn't that right?

3 A. As I testified earlier, she made a couple of
4 statements to me. But, uh, I was in the way there.

5 Q. I'm sorry, sir?

6 A. I was in the way.

7 Q. Well, no, I respect that.

8 A. So --

9 Q. For reliability purposes, did you ask for a
10 toxicology screen from any of the health care providers?

11 A. I think I asked them if they were going to do a
12 medical, blood-alcohol content on her. And I requested
13 that -- I requested her medical records. Um, so what's a
14 commonality for them, I don't know.

15 Q. I'm sorry, I don't understand "commonality." What
16 do you mean?

17 A. What their normal practice is.

18 Q. Uh-huh.

19 A. I don't know.

20 Q. So but were you proactive in saying, you know, do
21 a tox screen? I want to see if there's alcohol in this
22 system?

23 A. I did tell them that I wanted to know if they were
24 going to do a medical B.A., blood alcohol.

25 Q. Yes, sir.

1 A. That if they weren't, that I would like that.

2 Q. So it was kind of a, hey, guys, you know, if you
3 could do that, that would be pretty -- pretty okay?

4 You didn't direct anybody or as an officer ask
5 someone to get this done, correct?

6 A. No, because I didn't -- it was my belief that I
7 didn't have any right to direct that it be done. Meaning,
8 an evidentiary test be taken from her.

9 Q. But at the time that you encountered the health
10 care staff, you were aware that there was a struggle over a
11 weapon, correct?

12 A. Yes.

13 Q. And I'm not trying to put words in your mouth.

14 So you're aware of a struggle and, at least at the
15 time that you encountered her, along with medical staff, you
16 didn't have any direct witness? "I saw what happened." You
17 didn't have that kind of witness, correct?

18 A. At that point, I personally did not, no.

19 Q. Okay. So the information you retrieve from the
20 deceased was, you don't have any clue what medication may
21 have been in her?

22 A. That's correct.

23 Q. To stabilize her because of the serious injury,
24 correct?

25 A. That's correct.

1 Q. Obviously, she was in dramatic amounts of pain;
2 you would agree?

3 A. Definitely.

4 Q. Did you ever follow up on that through the
5 investigation and determine if there was a toxicology done?

6 Or let me ask it a better way. Do you know now
7 whether that was ever done, toxicology?

8 A. I don't. I got her medical records. And there
9 was, for lack of a better term, a copious amount of records.
10 So I don't -- I don't know exactly what's contained in
11 there.

12 Q. Eventually you did go back to the -- to the house
13 at Harmony, correct?

14 A. Correct.

15 Q. And thank you. You took a lot of photographs?
16 You testified to that?

17 A. Yes.

18 Q. And some of those photographs depicted a large
19 amount of prescription pills, did they not?

20 A. Yes, they did.

21 Q. I'm going to show you what's already in
22 evidence --

23 MR. MOLEZZO: Your Honor, may I approach, please?

24 THE COURT: You may.

25 MR. MOLEZZO: And correct me, Judge, I know you

1 will, if this is not in evidence. I think it is.

2 (BY MR. MOLEZZO:)

3 Q. I'm going to hand you just a series of
4 photographs.

5 THE COURT: Would you identify them on the back?

6 MR. MOLEZZO: I apologize, Your Honor.

7 (BY MR. MOLEZZO:)

8 Q. This is State's Exhibit 12-177. Can you testify
9 as to what that image depicts?

10 A. Yes. It depicts a prescription pill bottle with
11 the name of Robert Morton. It indicates that the medication
12 within is hydrocodone.

13 Q. Excuse me, I'm sorry? Hydrocodone?

14 A. Hydrocodone.

15 Q. Do you have any knowledge as to what type of
16 medication that is?

17 MR. WILLIAMS: Objection, Your Honor.

18 MR. MOLEZZO: Not the effect, but -- I'm sorry?

19 MR. WILLIAMS: He's not an expert. He can't
20 identify what that medication is.

21 THE COURT: I agree. You haven't qualified him to
22 give that opinion testimony, sir.

23 MR. MOLEZZO: Thank you.

24 (BY MR. MOLEZZO:)

25 Q. Continue to share. What was the image, Robert and

1 hydro -- hydrocodeine; is that right?

2 A. Hydrocodone.

3 Q. Thank you. Set that right there.

4 MR. MOLEZZO: Your Honor, may I publish this to
5 the jury?

6 THE COURT: It's in evidence.

7 MR. MOLEZZO: I think I better ask you every time.
8 There you go, folks.

9 (BY MR. MOLEZZO:)

10 Q. Again, State's Exhibit 12-178. And in brief,
11 could you tell us what that description of that image is?

12 A. It's another prescription pill bottle, but I
13 didn't capture the name or the, um, actual medication.

14 Q. Does it appear to be different than the first
15 photo I showed you?

16 A. No. I believe it's the same, same bottle.

17 Q. But you don't see the word "hydrocodone" on it,
18 correct?

19 A. No.

20 MR. MOLEZZO: Okay. I'm just going to keep giving
21 these to the jury. Judge, may I publish?

22 THE COURT: You may.

23 (BY MR. MOLEZZO:)

24 Q. We'll get this going here.

25 And here's another image. And this is referencing

1 State 12-179. And what does that depict, please?

2 A. A prescription medication bottle, green in color
3 with a white, blue, yellow, black label with the medication
4 Lyrica. L-y-r-i-c-a.

5 Q. Okay. Thank you.

6 And if I may, in reference to -- only have a few
7 more -- State's Exhibit 12.180. And what does that depict,
8 sir?

9 A. Uh, same type of pill bottle with the name of
10 Cynthia Morton on it.

11 Q. And thank you for telling us that name.

12 MR. MOLEZZO: I'm going to publish, Your Honor.

13 THE COURT: Okay.

14 MR. MOLEZZO: Thank you.

15 (BY MR. MOLEZZO:)

16 Q. A few more. State's Exhibit 12.182, please? And
17 brief description as well?

18 A. Uh, this one is a white pill bottle, prescription
19 medication bottle with the name of Cynthia Morton, again
20 with that medication name of Lyrica. L-y-r-i-c-a.

21 Q. Thank you. A few more.

22 State's Exhibit 12-183. Please describe that as
23 you've done previously.

24 A. Uh, an orange prescription medication bottle with
25 a white top with the name of Cynthia Morton. And the

1 medication is -- I'm not even going to try to say this.
2 C-a-r-v-e-d-i-l-o-l.

3 Q. Thank you. And the last one.

4 And the last one is State's Exhibit 12-184. Um,
5 briefly share that, what that is and the prescription name
6 on that bottle?

7 A. Again, the same type of pill bottle, orange in
8 color. And the medication, Clonidine or Clonidine.
9 C-l-o-n-i-d-i-n-e.

10 Q. Thank you. And that's the last published
11 photograph so far.

12 Now, when you took photographs, isn't it true that
13 you captured these images in the bedroom on the nightstand?

14 A. The master bedroom, yes.

15 Q. Thank you.

16 And they were all -- as best you can recall, I
17 think you went through them earlier, they were all on the
18 nightstand -- or a lot of bottles were on the nightstand?

19 A. Yeah. They were all within the same general area,
20 I believe.

21 Q. Okay. Did you take possession of those drugs,
22 basically?

23 A. No, I did not.

24 Q. And why is that?

25 A. I didn't see any evidentiary value to them.

1 Q. Now, did you go into the rest room during your
2 investigation on this property? You went into the rest
3 room; is that right?

4 A. I believe the residence contained three. So if
5 you could narrow it down for me?

6 Q. I'm sorry.

7 You went into the rest room where the deceased was
8 injured; is that right?

9 A. Yes, sir.

10 Q. And when you went into this rest room was the
11 deceased there?

12 A. No, she wasn't.

13 Q. Was, uh -- was there a log in the rest room to
14 tell you who previously had gone into that rest room?

15 A. No, sir.

16 Q. Do you know who generated, and these are my words,
17 the crime scene log in this investigation?

18 A. There was no log completed, sir.

19 Q. Uh, isn't that one -- isn't that something you
20 should -- you should do? Let me rephrase that.

21 Sir, isn't that common practice and -- to have an
22 officer draft a log?

23 A. Under --

24 Q. In your experience?

25 A. With our department, it's not common practice. It

1 is -- it is an advisable practice. That way you can
2 definitively say who went in and went out of that crime
3 scene. But on this date and time -- or on this incident, we
4 did not do one.

5 Q. This is a very serious violation, right?

6 A. Yes, sir.

7 Q. And, obviously, someone was severely injured,
8 right?

9 A. Yes, sir.

10 Q. And Mr. Morton is presumed innocent. So it's
11 serious for him; you would agree?

12 A. I would.

13 Q. You're not going to tell me it was because you
14 were understaffed, are you? It's just --

15 MR. WILLIAMS: Objection, Your Honor.

16 (BY MR. MOLEZZO:)

17 Q. It's just something you forgot?

18 MR. WILLIAMS: I think that's argumentative.

19 MR. MOLEZZO: Your Honor, this is trial. I don't
20 believe it's argumentative. It's not personal in nature.
21 Pursuant to Black's Law Dictionary, I would like to
22 continue.

23 THE COURT: Black's Law Dictionary, sir?

24 MR. MOLEZZO: Black's Law Dictionary says
25 argumentative is personal in nature.

1 THE COURT: Well, there's an objection. If a
2 question becomes argumentative, I can sustain it if it's
3 argumentative.

4 MR. MOLEZZO: Yes, sir.

5 THE COURT: I don't know if we've got to that
6 point yet. But move on, please.

7 MR. MOLEZZO: Yes, sir. Thank you.

8 (BY MR. MOLEZZO:)

9 Q. So it wasn't done?

10 A. Correct, it was not done.

11 Q. And thank you for your sincerity.

12 So we really don't know -- or that's one reliable
13 document we don't have?

14 A. Correct.

15 Q. Okay. When you went into -- when you went into
16 the rest room, we know that there was no log to show who had
17 entered previously, correct?

18 A. Yes, sir.

19 Q. And thank you. You -- you handled surfaces and
20 items at the crime scene, correct?

21 A. Yes.

22 Q. You were wearing rubber gloves, correct?

23 A. Yes.

24 Q. Did you put those gloves into evidence?

25 A. I did not.

1 Q. To preserve that evidence?
2 A. No, sir.
3 Q. Were you wearing, my term again, rubber covering
4 or things over your feet?
5 A. Yes.
6 Q. Did you put those into evidence to preserve that
7 that occurred?
8 A. No, sir. If I can back up a little bit?
9 Q. Uh, please.
10 A. It was when we entered the area where the
11 biohazards were --
12 Q. Yes, sir.
13 A. -- that I donned or put on the shoe coverings.
14 When we were working around --
15 Q. Okay.
16 A. -- like, say, outside, when I recovered the
17 firearm, I was not wearing those. And you can see that
18 clearly in the picture where you see my shoe.
19 Q. Okay. Okay. Well, also, I mean, you look at the
20 biohazard issue and that would be blood and body fluids,
21 right?
22 A. Yes, sir.
23 Q. And I've got to think that also, at least in your
24 mind, that this was where the shooting occurred, right?
25 A. Yes.

1 Q. Okay. So that was also an important factor as to
2 protect yourself?

3 A. Yes.

4 Q. So it wasn't just the biohazard aspect. It was
5 the crime scene you wanted to protect as best you could,
6 correct?

7 A. That's correct.

8 Q. When you encountered the deceased at Renown, you
9 recall that, right?

10 I'm sorry. Was it at Renown or Humboldt? I'm
11 sorry?

12 A. It was at Humboldt General.

13 Q. It's fair to say that you made up your mind that
14 my client was the shooter?

15 A. Yes.

16 Q. So you would agree, right off the bat, your
17 investigation was flawed?

18 A. No.

19 Q. Well, let's talk about that. Did you question
20 Robert Morton at length that night?

21 A. No, I did not.

22 Q. Did you take fingerprint clippings or -- strike
23 that.

24 Did you take nail clippings or fingerprints that
25 night?

1 A. No, sir.

2 Q. You eventually took fingerprint clippings

3 or -- strike that.

4 Fingerprint impressions later, correct?

5 A. Yes.

6 Q. And you did a DNA swab later, right?

7 A. Yes.

8 Q. Did you request of Robert Morton that night to

9 submit to a toxicology test, a Breathalyzer, or anything

10 like that?

11 A. No.

12 Q. Did you request any of these evidentiary-type

13 things with any of the witnesses, be them Jessica or

14 Anastasia? The breath test? The PBT?

15 A. No, sir.

16 Q. And during -- and I guess you really just had a

17 brief -- you really didn't have a conversation with Robert

18 Morton, correct?

19 A. That's correct.

20 Q. Did you engage him verbally at all? Not really?

21 A. Just to tell him that I would be wanting to talk

22 with him.

23 Q. You allowed him to leave the property?

24 A. The police did.

25 Q. Okay. You didn't tell your fellow officers that,

1 hey, we need to keep this guy here till we're done?

2 A. No.

3 Q. Okay. And I'm sorry, you never encountered

4 Anastasia or Jessica; is that right?

5 A. That's correct.

6 Q. I'm sorry. Okay. I wasn't sure about that.

7 Now, when you engaged the deceased, this was at

8 Humboldt, did you record that? And if I asked it, I'm

9 sorry. Did you record that?

10 A. No, sir.

11 Q. How long was this verbal -- so how long was this

12 conversation? Five minutes or so before they kicked you out

13 of there?

14 A. I -- the conversation itself was -- it was even

15 less than that. It took me longer to photograph her than it

16 did to have the conversation with her.

17 Q. And thank you. And in drafting your report,

18 it's -- it's -- you say that the deceased said, "My husband,

19 David Morton, was the guy who shot me?"

20 A. Yes.

21 Q. She actually said, my husband, David --

22 A. I believe --

23 Q. Let me finish, please.

24 A. Okay.

25 Q. Thank you.

1 Are you paraphrasing or did she say, "My husband,
2 David Morton"?

3 A. I'm paraphrasing.

4 Q. Okay. Okay. But you retrieved from her
5 information that you felt that it was my client who was the
6 shooter, and then you put in "husband, David Morton," right?

7 A. Yes.

8 Q. And at the time of this brief encounter, she's
9 being worked on by medical staff?

10 A. Yes, sir.

11 Q. Okay. Now, prior to this investigation, were you
12 familiar, without details, of the Morton -- well, the Morton
13 family? You were, correct?

14 A. No. Personally no, I was not.

15 Q. You had not heard of the Morton family prior to
16 this investigation?

17 A. No. Um, I work in investigations. I didn't have
18 the opportunity to come in contact with them. And then, at
19 the time, I don't recall any contacts with the Morton family
20 other than Mr. Morton's father-in-law. I went to his house
21 for -- at some point years ago.

22 But I -- I think that is -- I'm sorry, his
23 stepfather and mother's house. I went to their house years
24 ago for -- for something, but I think that's my only contact
25 with that family.

1 Q. Okay. Now, after your first encounter with
2 Cynthia Morton, you never spoke to her again; is that
3 correct?

4 A. That's correct.

5 Q. And at least at this stage, you believe that --
6 Well, the fact is you believed that it was an
7 intentional shooting, correct?

8 A. I'm --

9 Q. Through your investigation, that's what you
10 believed, isn't it?

11 A. I'm not -- are you asking if I believed it was an
12 intentional shooting, that he intentionally shot -- shot
13 her?

14 Q. Uh-huh.

15 A. Um, I don't know that we investigated it, uh, as
16 an intentional shooting. Um, but I definitely looked at
17 more than an accidental shooting.

18 Q. Well, that's -- and that's interesting, your
19 hesitation.

20 So I think what you're saying is that you weren't
21 convinced, at least in your mind, that it was an
22 intentional -- a clear, intentional shooting; is that fair
23 to say?

24 A. That's fair to say, yes.

25 Q. Well, so you, yourself, had doubts, at least as

1 you were investigating it, correct?

2 A. I wouldn't call them doubts. I was open to, um,
3 different scenarios.

4 Q. Well, if that's true why didn't you pursue further
5 investigation, follow-up investigation?

6 A. Well, I would have loved to, but the only other --
7 the two people that --

8 THE COURT: Sir. Approach.

9 (Whereupon, a sidebar was had.)

10 THE COURT: Ladies and gentlemen, you get to go
11 home, and we have some legal issues to deal with. And I
12 want you back at 9:00. Tomorrow is probably going to be a
13 day much like today. It's hard work.

14 And so anything that you need, I want to make sure
15 you let the bailiff know your needs. I hope we've been
16 taking care of you well during this time. But I'm going to
17 let you go until the morning at 9:00, we will continue.

18 What will probably happen is, is that there will
19 be a witness coming from out of town who will be put on the
20 witness stand. And this gentleman will have to testify
21 after that, somewhat out of order.

22 Is that counsel's understanding?

23 MR. SMITH: That is, Your Honor.

24 MR. WILLIAMS: Yes, Your Honor.

25 MR. MOLEZZO: It is.

1 THE COURT: All right. So ladies and gentlemen,
2 I'm going to admonish you. Please follow my admonition. It
3 is your duty not to discuss among yourselves or with anyone
4 else any matter having to do with this case.

5 It is your further duty not to form or express any
6 opinion regarding the guilt or innocence of the defendant
7 until the case has been finally submitted to you for your
8 decision.

9 You are not to read any newspaper articles or
10 listen to or view any radio or television broadcasts
11 concerning this case.

12 Should any person attempt to discuss the case with
13 you or in any manner attempt to influence you with respect
14 to it, you are to advise the bailiff who will, in turn,
15 advise the Court.

16 All rise for the jury, please.

17 Good night, ladies and gentlemen. You are
18 excused.

19 (Whereupon, the following proceedings were had outside
20 the presence of the jury and the alternates.)

21 THE COURT: Court will come back to order, please.

22 The record should reflect the absence of the jury
23 and the alternates.

24 The record should reflect that I, sua sponte as
25 the Judge, intervened with regard to an answer.

1 Sir, you are about to answer. Would you continue
2 what you were going to say about the only two people?

3 THE WITNESS: Yes. The only two people that were
4 direct -- direct witnesses to the incident were -- were, for
5 lack of a better term, unavailable for talking to or
6 speaking to.

7 THE COURT: Exactly where I thought it was going
8 to go. It's what we call a Doyle violation and could result
9 in a mistrial. And that's why I stopped the, uh, answer
10 from coming out, counselor.

11 MR. SMITH: The State appreciates that, Your
12 Honor.

13 MR. MOLEZZO: Defense always, Judge.

14 THE COURT: Okay.

15 MR. MOLEZZO: And I will continue with that line
16 of questioning.

17 THE COURT: All right. Make sure that you
18 understand, I don't want any kind of answer or question that
19 would indicate invocation of rights by your client.

20 MR. MOLEZZO: Understood.

21 THE COURT: The whole point of what we call a
22 Doyle violation is, is that an officer is not allowed to
23 testify that a person invoked their rights, because the
24 implication is only guilty people would invoke their
25 constitutional rights.

1 And we have case law after case law in this State
2 where cases have been reversed on that basis. I do not
3 intend to get into that situation.

4 MR. MOLEZZO: Not a problem, Your Honor. Thank
5 you.

6 THE COURT: Okay. So is there anything else that
7 needs to happen?

8 In the morning we're going to have who on the
9 witness stand?

10 MR. SMITH: Ellen Clark, Your Honor.

11 THE COURT: The pathologist?

12 MR. SMITH: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. MOLEZZO: For the record, Your Honor, my
15 colleague Dell Hardy will be here --

16 THE COURT: Okay.

17 MR. MOLEZZO: -- as a friend of the Court and will
18 be taking the cross on Ellen Clark. I want to share that
19 with you, Judge.

20 THE COURT: Well, he's more than a friend of the
21 Court. He will be then appearing as an attorney in this
22 case.

23 MR. MOLEZZO: He will be appearing as an attorney,
24 correct.

25 THE COURT: Okay.

1 MR. WILLIAMS: Your Honor, we just want to make
2 the Court aware on Friday, we have Dr. -- she's not a
3 doctor. We have Kerri Heyward coming, Your Honor. And we
4 have a couple additional experts coming now. I want to make
5 the Court aware of that. We're going to bring them all in
6 at 9 and just do all the crime lab experts on Friday.

7 THE COURT: Okay. And the point of that is, is
8 that we need to accommodate those folks. Right now it's
9 getting more and more difficult to get them to our trials.
10 And we seem to be planning our lives and trials around these
11 experts and so forth, but -- so we will try to accommodate
12 their testimony appropriately.

13 And then you have an expert coming on Tuesday?

14 MR. MOLEZZO: Yeah. On Tuesday. We may have
15 actually one witness on Monday, Your Honor.

16 THE COURT: All right.

17 MR. MOLEZZO: Would the State be so kind as to
18 endorse the other experts for Friday, other than Heyward?

19 MR. WILLIAMS: We've already filed a notice of
20 expert witnesses, Your Honor.

21 THE COURT: Who are they going to be?

22 MR. WILLIAMS: Possibly, we have -- let me get the
23 name right. We have Monica -- and I can't say it --
24 Siewertsen.

25 MR. MOLEZZO: Thank you.

1 MR. WILLIAMS: Kevin Byrne. Um, and then I
2 think -- I think that's the extent. There might be one
3 more. Toni Leal-Olsen was another possible expert, but she
4 is -- cannot make it. So we have two additional ones,
5 besides Miss Heyward that I know of right now.

6 MR. MOLEZZO: Thank you.

7 THE COURT: All right. Is there anything else
8 that we need to do outside the presence of the jury,
9 counselors?

10 MR. MOLEZZO: No, sir. Thank you.

11 THE COURT: All right. What will happen then is,
12 is that you will pick up your cross-examination after Ellen
13 Clark testifies tomorrow and is fully examined.

14 MR. MOLEZZO: Yes, sir.

15 THE COURT: All right. That will be the order of
16 the Court.

17 MR. MOLEZZO: Thank you, Judge.

18 THE COURT: We are in recess until 9:00 a.m.
19 tomorrow morning.

20 (Whereupon, the proceedings adjourned.)
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25

Case No. CR-09-5709

Department I

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF HUMBOLDT

ooOoo

THE STATE OF NEVADA,

Plaintiff,

v.

DAVID CRAIG MORTON,

Defendant.

JURY TRIAL - VOLUME III

TAMARA SPERO
DIST. COURT CLERK
Tamara Spero

2010 SEP 17 AM 7:58

FILED

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter
came on for hearing on September 16, 2010, of said
day, before the HONORABLE RICHARD A. WAGNER, District
Judge.

The plaintiff was present in court and
represented by Russell Smith, Humboldt County District
Attorney, and Brian Williams, Deputy District
Attorney.

The defendant was present in court and
represented by Richard Molezzo, and Dell Hardy,
Attorneys at Law.

ORIGINAL

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1
2 Winnemucca, Nevada, Thursday, September 16, 2010

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4
5 P R O C E E D I N G S

6 THE COURT: Court will come to order. Please be
7 seated.

8 Will counsel stipulate to the presence of the jury
9 and the alternates?

10 MR. HARDY: It is so stipulated, Your Honor.

11 MR. SMITH: The State would so stipulate, Your
12 Honor.

13 THE COURT: Good morning, ladies and gentlemen.
14 If at any time you have any issues or problems, please let
15 us know. Just raise your hand and we will take care of it.

16 Counsel, have you received your transcripts?

17 MR. SMITH: Yes, Your Honor, the State has.

18 MR. HARDY: Yes, Your Honor.

19 THE COURT: All right. We are on
20 cross-examination.

21 MR. SMITH: Your Honor, as we discussed yesterday.
22 We need to interrupt Dave Garrison's cross-examination. We
23 have Dr. Ellen Clark here to testify as an expert, first
24 thing this morning.

25 THE COURT: Any objection, sir?

1 MR. HARDY: No objection, Your Honor. Thank you.

2 THE COURT: All right. She will be taken out of
3 order. Ladies and gentlemen, what will happen is Dr. Clark
4 will testify, and then we will pick it back up with the
5 officer who's testified previously.

6 Would you please call her?

7 MR. SMITH: Yes. The State will now call
8 Dr. Ellen Clark.

9 THE COURT: Please raise your right hand and face
10 the clerk to be sworn.

11 ELLEN CLARK, M.D.,

12 Having been first duly sworn to tell the truth, the whole
13 truth, and nothing but the truth, was examined and testified
14 as follows:

15 THE WITNESS: I do.

16 THE COURT: Please come be seated in the witness
17 stand. And if you would pull up to the microphone and speak
18 right into the microphone so everyone can hear you?

19 Would you please state your name for the record?

20 THE WITNESS: Ellen Clark.

21 THE COURT: Would you --

22 THE WITNESS: Excuse me. E-l-l-e-n. C-l-a-r-k.

23 THE COURT: Thank you.

24 You may proceed on direct examination.

25 DIRECT EXAMINATION

1 (BY MR. SMITH:)

2 Q. Dr. Clark, where are you currently employed?

3 A. I am employed at Washoe County, at the Washoe
4 County Medical Examiner Coroner's Office.

5 Q. And what position are you employed there as?

6 A. I'm presently the chief medical examiner for
7 Washoe County.

8 Q. And how long have you been so employed with that,
9 um --

10 A. I've been in that position since July of 2007.
11 And have been in Washoe County conducting forensic autopsies
12 since 1989.

13 Q. And what education do you have that qualifies you
14 to perform those duties?

15 A. I received my doctor of medicine degree from Texas
16 Tech University in 1984. And then transferred to the
17 University of Texas in San Antonio from 1984 to 1987, where
18 I participated in specialty training in an accredited
19 program in anatomic and clinical pathology.

20 I then transferred to the University of New Mexico
21 and completed general pathology training, as well as
22 subspecialty training in forensic pathology.

23 I then took my job in Reno, Nevada, with a private
24 incorporated pathology group, and have been employed since
25 July of 1989 in Reno.

1 Q. Have you ever been qualified in the State of
2 Nevada as an expert in forensic pathology?

3 A. Yes.

4 Q. And about how many times in district court in the
5 State of Nevada have you been qualified as an expert in
6 forensic pathology?

7 A. I don't know specifically how many times. More
8 than a hundred times.

9 Q. Can you explain to the Court what forensic
10 pathology is?

11 A. In general, pathology is the medical specialty
12 which is involved with, uh, studying and making diagnosis on
13 tissues of the body.

14 It is typically broken down into two major
15 disciplines, which are anatomic pathology and clinical
16 pathology.

17 Anatomical pathology involves making diagnosis on
18 solid tissue specimens that may range from cells smeared
19 onto a slide, to intraoperative diagnosis. And ultimately,
20 to examinations at autopsy or postmortem examinations.

21 Clinical pathology is that specialty, uh, that,
22 um, designs, conducts, and interprets tests on body fluids
23 such as blood or urine.

24 Forensic pathology is a subspecialty within that
25 discipline that is specifically charged with, uh,

1 investigating and evaluating unusual, unattended,
2 unexplained, and in particular, violent death cases.

3 Q. Thank you very much. Now, Dr. Clark, in your
4 functions, have you performed any procedures on an
5 individual by the name of Cynthia Morton?

6 A. Yes.

7 MR. SMITH: Your Honor, at this time the State
8 moves to have Dr. Clark declared as an expert in forensic
9 pathology in this case.

10 MR. HARDY: Uh, Your Honor, I don't believe it's
11 necessary for counsel to actually move to have her admitted
12 as an expert. We have no objections from our side. We
13 understand who she is.

14 THE COURT: Okay. But I will acknowledge her to
15 be an expert.

16 As I've told you previously, ladies and gentlemen,
17 a person who has sufficient qualifications in a particular
18 discipline can give opinion testimony. In allowing a person
19 to testify as an expert, the Court does not comment on the
20 weight to be given her testimony. That is entirely up to
21 you, and you should listen carefully and make that
22 determination as part of the factual findings in this
23 matter.

24 MR. SMITH: Thank you, Your Honor.

25 THE COURT: You may proceed, sir.

1 (BY MR. SMITH:)

2 Q. Dr. Clark, what procedures did you perform on
3 Cynthia Morton?

4 A. In this case, on September 8th of 2009, I
5 conducted a complete autopsy examination. This is, um,
6 conducted in several phases, which extends from the external
7 examination to an internal examination. Initially the body
8 is examined and photographed, um, preserved in the condition
9 as nearly as possible as it was found at the scene or the
10 death pronouncement site.

11 The body is then, um, undressed, um, therapy or
12 any, um, evidence removed from the body and reexamined. The
13 objectives of these examinations in the forensic autopsy are
14 to determine the cause of death and the manner of death.
15 The cause of death is simply the disease, injury, or trauma
16 which causes the person to die.

17 The manner of death describes the circumstance
18 under which that death occurs. And circumstances include
19 conditions such as homicide, suicide, accident, natural, and
20 occasionally, undetermined circumstances. Those procedures
21 were followed in this case.

22 Q. Now, in the case of Cynthia Morton, did you
23 discover any injuries that you documented during your
24 autopsy?

25 A. Yes.

1 Q. Could you describe to the Court any of the
2 injuries that would be pertinent for us to know in this
3 case? I know that your report goes into great detail, and I
4 don't think we need to go into that much detail to begin
5 with.

6 A. Okay. In this case, um, the body was received
7 directly from the trauma center hospital, Renown Medical
8 Center in Reno. The report was that, um, Miss Morton had
9 suffered a gunshot wound approximately one month before
10 death occurred; death occurred on September 5th 2009.

11 She had been hospitalized in the intensive care
12 unit at Renown since that time. There was information that
13 she had undergone multiple surgical procedures. And, in
14 fact, the examination confirmed that she had many different
15 therapeutic devices and evidence of surgical procedures, as
16 well as scarring.

17 The scarring on the body was, in particular, in
18 the left-breast region, in the left abdomen, and flank
19 region of the body. Also toward the top of the left buttock
20 or hip, and on the inside of the left-upper arm.

21 These areas of scarring and the therapeutic
22 devices and surgery sites that were evident at autopsy, um,
23 corresponded to the reported circumstances of injury, and
24 the follow-up therapy after that injury.

25 Q. As you performed this autopsy, or at the

1 conclusion of the autopsy, did you come to an opinion as to
2 the cause of death?

3 A. I did.

4 Q. And what was the conclusion that you came to?

5 A. In my opinion, Cynthia Morton died due to multiple
6 organ failure, including sepsis due to gunshot wounds that
7 involved the chest, the abdomen, the flank region, and the
8 buttock.

9 MR. HARDY: I would object, Your Honor, in regards
10 to the testimony of Dr. Clark in regards to the statement of
11 sepsis caused by a gunshot wound. There's lack of
12 foundation in that regard.

13 THE COURT: Well, she can testify as to her
14 conclusion, sir. And they can -- that's part of their
15 finding, her opinion here.

16 MR. HARDY: I understand that, Your Honor. I was
17 just --

18 THE COURT: So I'm overruling your objection.

19 MR. HARDY: Thank you, Your Honor. I understand,
20 but just for the record.

21 THE COURT: Yes, sir.

22 (BY MR. SMITH:)

23 Q. Dr. Clark, I now hand you what has been previously
24 marked as State's Exhibit 1.

25 MR. SMITH: May I approach, Your Honor?

1 THE COURT: You may, sir.

2 (BY MR. SMITH:)

3 Q. Do you recognize this document?

4 A. I do.

5 Q. And what is it a document of?

6 A. Um, this is a certified copy of the certificate of

7 death for Cynthia Ann Morton.

8 Q. And were you involved with the preparation of that

9 document?

10 A. Yes.

11 Q. And did you place on that document, either

12 yourself or cause to have placed on that document, the cause

13 of death?

14 A. Yes.

15 Q. And what is the cause of death that is on the

16 death certificate?

17 A. Immediate cause is multiple organ failure with

18 sepsis due to or as a consequence of gunshot wound of trunk,

19 chest, abdomen, and buttock. In parentheses (chest,

20 abdomen, and buttock.)

21 Q. Thank you.

22 MR. SMITH: May I approach, Your Honor?

23 THE COURT: You may, sir.

24 (BY MR. SMITH:)

25 Q. Dr. Clark, I now hand you what has previously been

1 marked as State's Exhibit 27.

2 THE COURT: How is this marked, the death
3 certificate?

4 MR. SMITH: It's State's Exhibit 1, Your Honor.

5 THE COURT: For identification?

6 MR. SMITH: Yes. And it's already been moved --

7 THE COURT: And it's been admitted into evidence
8 previously?

9 MR. SMITH: Yes.

10 THE COURT: Okay. For the record, you handed her
11 what's been marked what, sir?

12 MR. SMITH: State's Exhibit 27.

13 THE COURT: Counsel, you have that?

14 MR. HARDY: I do have a copy of it. Thank you,
15 Your Honor.

16 THE COURT: Okay.

17 MR. SMITH: And I did previously show it to
18 counsel, Your Honor.

19 THE COURT: All right, sir.

20 THE WITNESS: I've reviewed this.

21 (BY MR. SMITH:)

22 Q. Are you familiar with that document?

23 A. Yes.

24 Q. And how are you familiar with that document?

25 A. This is a signed copy of the autopsy protocol

1 prepared by me relative to the death of Cynthia Ann Morton.

2 Q. And is that a true and accurate copy of the
3 document that you created?

4 A. Yes.

5 MR. SMITH: Your Honor, the State moves for
6 State's Exhibit 27 to be entered as evidence in this case.

7 MR. HARDY: Your Honor, only an objection in
8 regards to Exhibit 27, it being admitted. It's simply
9 cumulative to the statements of what she believes the cause
10 of death were as State's Exhibit 1.

11 It also does not -- it further just talks about
12 the pathological diagnosis, which I'm not sure assists the
13 jury in any of the finding of fact. And therefore, I would
14 enter an objection.

15 THE COURT: Thank you, sir. Your objection is
16 overruled. It is hereby admitted as Exhibit 27.

17 (Whereupon, Exhibit 27 was admitted into evidence.)

18 (BY MR. SMITH:)

19 Q. Dr. Clark, in performing these procedures on
20 Cynthia Morton, did you go into any analysis as to the
21 trajectory of the bullet?

22 A. Yes.

23 MR. HARDY: Objection, Your Honor, in regards to
24 this witness testifying in regards to trajectory. She is
25 not trained in regards to ballistics or ballistics analysis

1 in this regard.

2 And, in fact, there was no trajectory done even by
3 the police in this case. This is not the person that should
4 be testifying about this.

5 THE COURT: Well, she's examining the body as to
6 the path in the body of the bullet. She certainly is
7 qualified to give her opinion. Your objections are
8 overruled.

9 You may proceed.

10 MR. HARDY: Your Honor, may I briefly voir dire
11 the witness in this regard? In regards to trajectory?

12 THE COURT: Voir dire for the purpose of?

13 MR. HARDY: Showing that she is not, one, an
14 expert in that regard; number two is, is that she actually
15 did not actually do any trajectory tests and was only simply
16 doing estimates.

17 THE COURT: Well, I'm going to wait until we have
18 some examination first, sir. This isn't the point to
19 determine voir dire with regard to admissibility of this.

20 She has the right to give her opinion and you can
21 cross-examine. But at this point, I don't see it's
22 necessary to do a voir dire, sir, as to admissibility.

23 MR. HARDY: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 ///

1 (BY MR. SMITH:)

2 Q. Dr. Clark, let me ask you again. Did you do any
3 trajectory analysis on Cynthia Morton?

4 A. Um, yes, to the extent that when we examine the
5 body, um, that is a victim of gunshot wounds, we routinely
6 attempt to track the bullet, um, trajectory through the
7 body. In this case, that had to be based upon the reported
8 entry, um, occurring in the left breast, and the reported
9 exit appearing in the left buttock or hip region.

10 This was necessary because the wounds had
11 partially healed and now consisted of scar entry to the
12 breast and to the buttock in particular.

13 In considering the left breast to be the entry
14 wound and the left buttock to be the exit wound, the bullet
15 tracked acutely downward through the body, uh, approximately
16 70 degrees down from what we call the transfer or the
17 horizontal plane, and slightly from the front of the body to
18 the back of the body, and slightly laterally or, um, outward
19 from the midline of the body.

20 Q. Just for a clarification. What date did Cynthia
21 Morton pass away?

22 A. September 5th of 2009.

23 Q. And so, if the date -- do you know the date of
24 injury?

25 A. Uh, it was August 6th of 2009.

1 Q. And so how many days transpired between the time
2 of the injury and the time that Cynthia Morton expired?

3 A. That would be 30 days.

4 Q. Thank you.

5 MR. SMITH: No further questions, Your Honor.

6 THE COURT: Thank you.

7 Sir, you may cross-examine.

8 MR. HARDY: Thank you very much, Your Honor.

9 CROSS-EXAMINATION

10 (BY MR. HARDY:)

11 Q. Good morning, Doctor. My name is Dell Hardy.

12 A. Good morning.

13 Q. I'm assisting the defense of David Morton.

14 A. Good morning.

15 Q. Doctor, I guess a medical examiner has got to be,
16 well, from what you've testified, part doctor, part
17 scientist, part investigator, and you have to do -- know a
18 little bit about ballistics as well, don't you?

19 A. Yes.

20 Q. Okay. Let's examine you in that regard. And then
21 you prepared this report and you also prepared the medical
22 examination as well, did you not?

23 A. Um, the medical examination, um, in my terminology
24 is an external examination of the body. In this case, a
25 full autopsy was examined (verbatim).

1 Q. Yes. That would be in part of your autopsy
2 protocol, which now has been admitted as Exhibit 27,
3 correct?

4 A. My autopsy protocol has been admitted, correct.

5 Q. And within that it indicated that there was some
6 healing that was taking place; is that right?

7 A. That's correct.

8 Q. And was it -- by the way, was it August 5th or was
9 it August 6th that Cynthia Morton was shot?

10 A. She was actually shot between 12:30 or, in the
11 evening and, um, or between 11:30 in the evening and one in
12 the morning, I believe on the 5th.

13 Q. Okay. And you get that from, not your own
14 investigation at the scene or talking to anybody, but from
15 what you get from the police reports, right?

16 A. That's correct.

17 Q. Okay. And if the police reports are wrong, then
18 you may have some problems as well, right --

19 A. That's correct.

20 Q. -- in your reports?

21 A. We rely upon the police reports.

22 Q. Heavily rely upon them in regards to your
23 investigation, correct?

24 A. Yes. In this case, police reports and
25 photographs.

1 Q. Okay. Let's make sure that the jury understands.
2 When you say that there was a homicide, homicide doesn't
3 necessarily mean that there's been a crime committed, isn't
4 that, in fact, true?

5 A. Homicide refers, um, for the forensic pathologist,
6 to death occurring as the result of the actions or inactions
7 of a person against another. So it's death occurring at the
8 hands of another person.

9 Q. But a homicide can be noncriminal; isn't that
10 true, Doctor?

11 A. Yes. You would have to address the criminality of
12 it.

13 Q. Right. Homicides can be accidental?

14 A. Um, that's correct. We would more likely certify
15 that death as an accident.

16 Q. Okay. I see. So in this regard, you're not
17 trying to assume that -- you're not trying to invade the
18 province of the jury in regards to your opinion, are you, of
19 whether or not this was an accidental shooting or not, are
20 you?

21 A. Um, I'm sorry, please rephrase your question.

22 Q. It's the jury here that decides whether this was
23 an accidental homicide or a criminal homicide, correct?

24 A. That's correct.

25 THE COURT: Counselor, just a second.

1 THE WITNESS: My manner, ruling is homicide.
2 THE COURT: Hold on. Just a second.
3 THE WITNESS: I'm sorry.
4 THE COURT: Just a second. You're using some
5 legal terms, sir. Homicide is an unlawful killing of
6 another human being. And I don't want it confused here as
7 to terms that you're using that I will define what the law
8 is to the jury in terms of what homicide is and so forth.
9 She's not the one to determine that, nor are you. But when
10 you use the word homicide, it implies criminal agency. I
11 just want you to understand that.
12 MR. HARDY: Well, Your Honor, in regards to
13 homicide, um, using Black's dictionary definition of
14 homicide. It's simply the killing of one human being of
15 another.
16 MR. SMITH: I would object to that, Your Honor.
17 It doesn't matter --
18 THE COURT: We're not going to argue the law here,
19 gentlemen. I'm just telling you, you're using the word as a
20 legal term that I will define for the jury.
21 So you can ask her questions of a lay nature, but
22 for her or you to assume the legal definition, which I will
23 tell the jury about at the end of the case --
24 MR. HARDY: Right.
25 THE COURT: -- is not appropriate. I'm just

1 telling you that.

2 MR. HARDY: All right, Your Honor.

3 THE COURT: So --

4 MR. HARDY: By the way, since I mentioned this to
5 you, would the Court like a copy of the --

6 THE COURT: Laws?

7 MR. HARDY: -- in regards to Laws -- Black's Law
8 Dictionary since I did make a reference to it?

9 THE COURT: No, sir.

10 MR. HARDY: All right. Thank you.

11 THE COURT: It's like a dictionary. There's
12 thousands of cases and other things that also define
13 homicide. So I don't want to get into this debate with you.

14 MR. HARDY: Okay.

15 (BY MR. HARDY:)

16 Q. So, um, but in regards -- let's make sure we're
17 clear in regards to this. You're not making an assumption
18 whether it was accidental or not, are you, ma'am?

19 A. In my opinion, this is a homicide based upon our
20 definition of homicide.

21 Q. Well, then we need to know what your definition of
22 homicide is?

23 A. Homicide is a death occurring at the hands of
24 another individual as a result of the actions or inactions
25 upon that individual toward the other.

1 Q. And it doesn't necessarily have -- it can be
2 accidental, correct?

3 A. Um, I will defer to the, Judge, and the legal
4 determinations here.

5 Q. All right. Who's paying you to testify here
6 today?

7 A. My fee will be paid by the Humboldt County
8 District Attorney's Office.

9 Q. Fair to say that the majority of your testimony is
10 always for the district attorney's office?

11 A. Yes, in criminal cases; yes.

12 Q. By the way, have you ever changed your opinion on
13 the stand?

14 A. Um, I don't know. I may have.

15 Q. Now, did you speak to the district attorney,
16 Mr. Smith, about what your testimony was going to be?

17 A. Yes. I've spoken with Mr. Smith.

18 Q. How many times?

19 A. I spoke with him at a preliminary hearing that we
20 had. And I spoke with him this morning for approximately
21 five to 10 minutes.

22 Q. Did you speak to Mr. Williams?

23 A. Uh, I haven't specifically pretried on this case
24 with him, to my knowledge.

25 Q. Okay. Who else did you speak to at the district

1 attorney's office?

2 A. I've spoken several times with Nancy about
3 arranging the time and the date for my testimony.

4 Q. Who did you speak to about your testimony?

5 A. I spoke with Mr. Smith.

6 Q. Anyone else?

7 A. Not to my specific recollection.

8 Q. Did you charge him for the time that you spoke to
9 him?

10 A. I have not billed for this component of the case
11 at this time.

12 Q. Okay. Do you bill for the time in which you speak
13 to the district attorneys?

14 A. Yes.

15 Q. Did you review all of the operation reports in
16 this case?

17 A. Uh, I reviewed documents of the operative reports,
18 including approximately 27 pages, um, computer printout
19 pages of operative reports.

20 Q. Well, but you understand in this case there is
21 literally over a thousand pages of medical records, right?

22 A. Correct. I thought that you asked about the
23 operative reports.

24 Q. Okay. Did you review those medical records?

25 A. I did not review more than a thousand pages of

1 other records.

2 Q. How many operations were there; do you remember?

3 A. The reports or the printout that I had reflected
4 at least 17 separate operations.

5 Q. Right. Now, she was -- do you understand that she
6 was first treated here at Churchill?

7 A. Yes.

8 Q. And then she was care-flighted to Renown?

9 A. Correct.

10 Q. Okay. While her condition (verbatim) was here at
11 Churchill, did she have any toxicology --

12 THE COURT: This isn't Churchill, sir.

13 MR. HARDY: I'm sorry, Churchill Hospital.

14 THE COURT: You're in the wrong county.

15 THE WITNESS: Humboldt General.

16 MR. HARDY: Humboldt General, I apologize. I'm
17 from Reno, Nevada. We all know about Washoe and Renown, but
18 I apologize. Thank you very much for that.

19 (BY MR. HARDY:)

20 Q. In regards to the hospital here -- excuse me,
21 folks -- did they do any toxicology on Cindy Morton?

22 A. I don't know.

23 Q. Do you know if they tested her for sepsis at
24 Churchill -- I'm sorry, Humboldt?

25 A. Uh, I don't know.

1 Q. Is it possible that she could have already had
2 sepsis?

3 A. In fact, it is possible that she had sepsis on the
4 night of the shooting, um, because the gunshot had
5 perforated multiple sections of bowel and caused fecal
6 leakage into the abdominal cavity.

7 Q. Well, are you aware of her prior medical history?

8 A. I do not know in depth her medical history, no.

9 Q. Were you aware of the fact that she had been
10 treated for methamphetamine?

11 A. No.

12 Q. Methamphetamine can be injected by a syringe,
13 correct?

14 MR. SMITH: I would object, Your Honor. I would
15 object. I don't see the relevance of the this line of
16 questioning.

17 MR. HARDY: Well --

18 MR. SMITH: There's been no -- lack of foundation.

19 THE COURT: There is.

20 MR. SMITH: There's been no evidence.

21 THE COURT: Sir, this has just come out of your
22 mouth. There's no foundation for that.

23 MR. HARDY: I understand that, Your Honor. There
24 will be subsequent testimony in regards to Cynthia
25 Morton's --

1 THE COURT: Well, there may or may not. I would
2 suggest that you not bring this up at this point in front of
3 the jury.

4 MR. HARDY: All right. Let me offer it as a
5 hypothetical, Your Honor.

6 THE COURT: Okay. Well, whatever it is -- you
7 cannot assume facts not in evidence in making the question.

8 MR. HARDY: I'll offer it as a hypothetical, Your
9 Honor.

10 THE COURT: All right.

11 (BY MR. HARDY:)

12 Q. If Cynthia Morton had methamphetamine use and she
13 used a syringe, could she obtain sepsis that way?

14 A. That's possible.

15 Q. In fact, sepsis can be obtained in a number of
16 fashions? You can go to a dentist and go have a root canal
17 done and sepsis can be obtained, correct?

18 A. That's correct.

19 Q. Sepsis can be obtained when one goes into the
20 hospital and has an operation and gets MRSA?

21 MR. SMITH: I object at this point, Your Honor.
22 Again, I don't see the relevance of what that has to do with
23 this case.

24 THE COURT: I don't either, sir.

25 MR. HARDY: Your Honor, in regards to -- my

1 understanding is the doctor has testified that the cause of
2 death was because of her multiple organ failure, um, based
3 on sepsis.

4 (BY MR. HARDY:)

5 Q. Correct, Doctor?

6 A. Um, actually, it's multiple organ failure, and she
7 had multiple systemic injuries. She was hypovolemic and in
8 shock. She had bled extensively the night she was admitted
9 to the hospital.

10 Q. But she recovered -- she was in recovery for 30
11 days, correct?

12 A. Um, please define recovery.

13 Q. All right. After she had gotten to Renown, at
14 certain points in Renown, she was actually found to be
15 stable; isn't that true?

16 A. She was identified as stable on several occasions.
17 Critical but stable.

18 Q. In fact, the healing in her left buttocks
19 (verbatim) was, uh, starting to scar over and heal, correct?

20 A. That's correct.

21 Q. And the healing in her breast where she was shot
22 down through here (indicating) was starting to heal and scar
23 over, correct?

24 A. That's correct.

25 Q. And the problem with her was, is that during her

1 treatment, she, um, started to have renal failure? Do you
2 remember, did she have renal failure?

3 A. She did have renal failure.

4 Q. And that she also had sepsis, correct, which is
5 blood poisoning?

6 A. That's correct. She had many bacteria and
7 eventually yeast also growing out of her blood.

8 Q. And that's an infection?

9 A. That's correct. One type of infection.

10 Q. And it was believed by Myron Gomez, I believe who
11 is the surgeon, that it was time to pull the plug, correct?

12 A. That's correct. I believe Dr. Gomez did her last
13 debridement surgery.

14 Q. And, in fact, she actually didn't die of those
15 wounds, she was taken off life support, isn't that, in fact,
16 correct?

17 A. That's correct. She had been maintained on life
18 support from the night of admission to the hospital.

19 Q. Well, are you aware that at one time she was up in
20 a wheelchair and moving around?

21 A. I didn't know that.

22 Q. Now, um --

23 MR. SMITH: Your Honor, I'm going to ask that to
24 be stricken.

25 THE COURT: Sustained. Unless there's some

1 testimony, that's facts not in evidence.

2 (BY MR. HARDY:)

3 Q. We at least -- you can at least testify that you
4 know she was stable?

5 A. She was identified as being stable.

6 Q. All right. And then, uh, who was it that made the
7 election to, um, take her off of life support?

8 A. I believe it was her family.

9 Q. Did David Morton have any decision in that regard?

10 MR. SMITH: Objection, Your Honor. Relevance.

11 MR. HARDY: She just testified she believes it was
12 her family. I would like to know if she knows who that
13 family is?

14 THE COURT: Well, if she knows, she can so
15 testify.

16 THE WITNESS: I don't know specifically. Chad
17 Morton was, um, present at the time of expiration and
18 identified the body to our investigator.

19 (BY MR. HARDY:)

20 Q. And it's your understanding and testimony that it
21 was the family that made the decision to take her off of
22 life support?

23 A. Yes.

24 Q. Did you investigate -- while you were looking at
25 her medical records, did you investigate what her white

1 blood counts were at any time, Doctor?

2 A. Uh, at the time she was admitted to the, um,
3 hospital in Humboldt County, I believe it was around 2.5.

4 Q. Okay. What does that indicate?

5 A. That's a low white count, but she also had a low,
6 um, blood count, a low hemoglobin and hematocrit. She was
7 also anemic at that time.

8 Q. And low white blood count indicates sepsis, does
9 it not?

10 A. Um, not necessarily.

11 Q. It can?

12 A. It's one factor. One finding that can be
13 associated with sepsis. It is not specific for such.

14 Q. Okay. Now, you had talked about the trajectory
15 and how it occurred or how she was shot. Do you know how
16 this accident occurred?

17 A. I know what the reported circumstance was for how
18 the shooting occurred.

19 Q. Okay. And that's what you're basing some of your
20 findings on; is that, in fact, true?

21 A. Actually, my determination, um, relies upon the
22 examination of the body. Again, assuming that the facts are
23 correct, that the entry was at the left breast and the exit
24 was at the left buttock.

25 Q. And you're basing part of your finding on what you

1 were told by the investigation, by what the police did,
2 correct?

3 A. That's correct. And the medical record from
4 Humboldt County general identifying the entrance to the left
5 breast, the exit to the left buttock.

6 Q. Well, let me briefly you take you through the
7 following scenario of what, in fact, did occur. You
8 understand she was shot by a 303 rifle; is that, in fact,
9 true?

10 A. That is what's reported.

11 Q. Have you ever seen that rifle?

12 A. I've seen photographs of it.

13 Q. The bolt has been removed from this rifle, ma'am.
14 I believe it appears to be safe.

15 Do you believe this to be the rifle? Does that
16 appear to be the one that is in the photograph?

17 A. If that is tagged as evidence. I'm not a rifle
18 expert.

19 Q. All right. And are you aware that on the night
20 that this occurred that there --

21 THE COURT: Counsel, would you point it away from
22 your colleague there?

23 MR. HARDY: I will, Your Honor.

24 MR. MOLEZZO: I trust it's safe, Your Honor.

25 THE COURT: Okay.

1 MR. MOLEZZO: Thank you.

2 (BY MR. HARDY:)

3 Q. I read in your report of investigation that you
4 had prepared -- you prepared a report of investigation,
5 correct?

6 A. Um, no, that would have been prepared by one of
7 our field investigators.

8 Q. Would that have been a Kristina Dixon?

9 A. Yes.

10 Q. Did you rely upon that record in regards to your
11 findings?

12 A. To some extent, yes.

13 Q. Were you aware that, um, Cindy Morton had just
14 gotten home from Salt Lake City the morning of the shooting?

15 A. No.

16 Q. Were you aware that she had left there because of
17 some issues in regards to --

18 MR. SMITH: Objection, Your Honor. There's no
19 testimony as to why she left Salt Lake City. So it doesn't
20 matter what she's going to say.

21 THE COURT: There's no evidence that she was in
22 Salt Lake City, sir. So again, you're assuming facts not in
23 evidence.

24 MR. HARDY: I understand that, Your Honor. But in
25 regards to this, we can either, one, hold this witness here

1 and wait for the additional testimony of Chad Morton, who I
2 believe is going to be called; or two, I could ask her --
3 ask her if she's aware of this, and then the Court and jury
4 can judge me as so.

5 THE COURT: Well, it has no relevance at this
6 point where she was, sir. I mean, if she's been to San
7 Francisco or Salt Lake, I don't see any bearing upon this
8 woman's testimony as a forensic expert here.

9 MR. HARDY: Well, in regards to a forensic expert,
10 part of what she testified about and what she's relied upon
11 is an investigation report that discusses some issues in
12 regards to the arguments between the parties, what those
13 arguments were and, um --

14 THE COURT: Well, that's certainly not within her
15 purview. That's factual issues. She's here to testify
16 about cause of death. And you're not going to be able to
17 ask her factual issues that she, obviously, has no knowledge
18 about, sir.

19 MR. HARDY: And that's what I'm trying to find out
20 is what she was told versus -- because we only have partial
21 reports from what she -- other than what, um --

22 (BY MR. HARDY:)

23 Q. Did you speak to Officer Garrison?

24 A. Uh, yes, I believe he attended the autopsy.

25 ///

1 Q. And while you were discussing these matters with
2 Officer Garrison, did he tell you certain things about what
3 happened at the house that day?

4 A. Yes.

5 Q. All right. Did he tell you that, um, Cindy Morton
6 had come home from Utah that morning?

7 A. No.

8 Q. Did he tell you, uh, that, um, Cindy Morton was
9 acting somewhat erratic and arguing -- in arguing with David
10 Morton?

11 A. I don't know that, um, he would have used the term
12 erratic, but there was a reported argument.

13 Q. Would you agree with me that one of the symptoms
14 of sepsis can be, um, irrational acts and behavior?

15 A. Uh, that's a possibility.

16 Q. Were you aware of that Cindy Morton was drinking
17 rum most of that day?

18 MR. SMITH: Objection, Your Honor.

19 THE COURT: Sustained.

20 MR. SMITH: Assuming facts that aren't in
21 evidence.

22 (BY MR. HARDY:)

23 Q. Were you told that by Officer Garrison?

24 A. No.

25 Q. Were you told by Officer Garrison that David

1 Morton had left that house and gone over to his friend's
2 Phil's house (verbatim) after he went to his mother's house?

3 A. No.

4 Q. Were you told that Cindy Morton came back to the
5 house where David Morton was laying in bed at 6:30 at night
6 and came in and started yelling at him in an erratic
7 fashion?

8 A. No, I was not told that. But I did review a
9 police report that indicated that she had, um, potentially
10 been striking him, or I don't remember the phraseology,
11 while he was in bed.

12 Q. And that David Morton then got out of bed? Did
13 you hear about that? Did you read that in the police
14 report?

15 A. Um, yes, I assumed that occurred.

16 Q. Were you told that then David Morton went in and
17 sat in the living room while Cindy Morton yelled at him?

18 THE COURT: Counselor, where are we going with
19 this? Again, I am concerned that you're trying to ask a
20 forensic expert about factual things that occurred.

21 MR. HARDY: Well, Your Honor --

22 THE COURT: Unless it has some direct bearing with
23 regard to her medical diagnosis, it is not relevant here.
24 And I don't want you testifying as to things that you think
25 are factual here. That's inappropriate.

1 You can ask her questions that are the basis for
2 her opinion. And you can certainly try to impeach her with
3 regard to her opinions here based upon medical evidence and
4 other things. But the things that you're going through is
5 inappropriate.

6 MR. HARDY: All right. Your Honor, for the
7 record, I believe that this particular witness has testified
8 that she believes that the cause of death -- she talked
9 about what the circumstances of death were. That's one of
10 the things she said she was going to testify about.

11 THE COURT: Yeah.

12 MR. HARDY: And the next thing that she then
13 wanted to talk about is the fact that she made a
14 determination of whether it was accidental.

15 THE COURT: She didn't make that determination.
16 You're the one that called it homicide for the first time.
17 She said her opinion was that this person died of a gunshot
18 wound. That's what I understood her opinion, together with
19 the other medical issues. That's her expert testimony.

20 MR. HARDY: Yes, Your Honor. I believe that she's
21 the one that used the word homicide, and homicide is a word
22 and a term of art. I wanted to find out what her definition
23 and determination of -- uh, her determination and definition
24 of homicide was.

25 THE COURT: Okay. And she's already given that to

1 you. So we're past that point.

2 MR. HARDY: Right. I would now like to explore
3 with her, Your Honor, the acts of the parties involved in
4 this particular case to see whether or not -- whether or not
5 her opinion in regards to accidental versus death --

6 THE COURT: She cannot give that opinion. She
7 wasn't there. That has to do with other evidence. There's
8 nothing you could ask her about the facts of that case that
9 is relevant or admissible with regard to that, sir. I'm
10 simply not going to allow you to do that. That comes from
11 the witnesses, not from her. She's talking about cause of
12 death.

13 MR. HARDY: All right.

14 THE COURT: So please don't go there.

15 MR. HARDY: All right. Thank you, Your Honor. So
16 if I understand the Court's ruling, it would not be this
17 witness's testimony that would have any bearing on the
18 jury's findings of whether this was an accidental versus an
19 intentional act?

20 THE COURT: I didn't say that. Please do not put
21 words in my mouth.

22 MR. HARDY: Okay. I'm not trying to, Judge.

23 THE COURT: What I'm ruling upon is the evidence.
24 And right now I'm telling you you're trying to elicit
25 inappropriate testimony from this witness in an

1 inappropriate way. It's that simple.

2 MR. HARDY: All right.

3 THE COURT: There's rules of evidence.

4 MR. HARDY: I understand that.

5 THE COURT: She's an expert. She's giving opinion
6 testimony with regard to cause of death.

7 MR. HARDY: May I provide -- Your Honor, may I
8 provide her with a hypothetical of what could have occurred
9 in this case in regards to see whether her opinion would
10 find that to be accidental versus criminal homicide?

11 THE COURT: I can't see how you can possibly do
12 that. You're talking about intent of your client. You're
13 talking about all the other things that distinguish that,
14 sir, and to have her make that opinion. Even the State
15 can't do that. They can't ask her with regard to, you
16 know -- the issues you're trying to talk about, factual
17 issues of what occurred. That is not within her purview of
18 testimony.

19 MR. HARDY: But she is relying upon an
20 investigative report in which there are statements in
21 regards to --

22 THE COURT: I understand that, sir. Please don't
23 argue with me.

24 MR. HARDY: I'm not, Judge.

25 THE COURT: I've made my rulings. I respect the

1 fact that you're here doing your job. But in this case,
2 you're not allowed to ask the kind of questions you're
3 trying to ask here. I'm sorry.

4 MR. HARDY: Right. I'm trying as hard as I
5 possibly --

6 THE COURT: It's that simple.

7 MR. HARDY: -- can to do my job, Judge.

8 THE COURT: I know you are.

9 MR. HARDY: I mean absolutely no disrespect,
10 Judge.

11 THE COURT: Okay.

12 MR. HARDY: So I'll move on from that.

13 THE COURT: Please.

14 MR. HARDY: Thank you, Judge.

15 (BY MR. HARDY:)

16 Q. I would like to visit with the doctor in regards
17 to the actual occurrences, but let me move on to something
18 that I believe would be okay to talk about.

19 So you would agree with me that, um, one, um,
20 there was a do not resuscitate -- do you know if there was a
21 do not resuscitate in this case?

22 A. I don't know.

23 Q. Okay. But we do know that, um, Chad Morton was
24 with Myron Gomez for the determination -- Dr. Myron Gomez --
25 was made to take her off of life support, correct?

1 A. I don't know who was together when that
2 determination was made.

3 Q. Okay. We know that Chad Morton was a family
4 member that was at the hospital at the time? We know that
5 at least?

6 A. He was at the hospital when, um, Mrs. Morton
7 passed or died.

8 Q. Okay. We know that Dr. Myron Gomez, who is the --
9 who's a surgeon, um, was the one that made the determination
10 in regards to, um, taking her off life support, correct?

11 A. Uh, I don't know if he would have done that
12 independently. Typically, there's, um, consultative process
13 that is gone through before there is removal of life
14 support.

15 Q. Right. And who's that process done with?

16 A. It varies from case to case. But typically there
17 is a discussion with family members. There may be a
18 discussion with other physicians as to what is called the
19 futility case, that is -- that is to continue therapy and
20 support is futile. And I don't know specifically the
21 process for that determination in this case.

22 Q. Okay. And did you talk to Dr. Gomez in this case
23 about why she was taken off of life support?

24 A. No, I did not talk with him about that.

25 Q. We know that she had a lower -- she had a low

1 white blood count when she was admitted to the hospital
2 here?

3 A. That's correct.

4 Q. We know that she did not have a toxicology taken
5 while she was here, correct?

6 MR. SMITH: Objection, Your Honor.

7 THE WITNESS: I don't know that. Sorry.

8 (BY MR. HARDY:)

9 Q. You don't know of any toxicology that was taken of
10 her at any time, from the time that she was shot until the
11 date of death? That any toxicology was ever taken of her,
12 do you, Doctor?

13 A. I have not reviewed any toxicology.

14 Q. You have never seen one?

15 A. I have not reviewed one. No, I have not seen one.

16 Q. Thank you. And no toxicology was performed on her
17 after death, correct?

18 A. That's correct.

19 Q. And in regards to sepsis, do you know whether that
20 sepsis was called -- caused by MRSA?

21 A. Uh, I don't know what all the organisms were.

22 Q. Okay.

23 A. MRSA --

24 Q. Go ahead. I'm sorry.

25 A. MRSA is a microbe. It's a methicillin-resistant

1 staphylococcus aureus, which is a microbial infection that
2 occurs in hospitalized and community patients.

3 Q. And MRSA is present -- do you know if MRSA is
4 present in Renown hospital?

5 A. Yes.

6 Q. And that could be obtained through surgeries?

7 A. Um, when you say "through surgeries," if there's a
8 contamination with that organism during surgery. That's a
9 potential.

10 Q. I could go in and I have an operation on my knee
11 and obtain MRSA at Renown hospital, true?

12 A. That's a possibility.

13 MR. SMITH: I'm going to object, Your Honor. I
14 don't know -- I don't see the relevance between MRSA --

15 THE COURT: Overruled.

16 (BY MR. HARDY:)

17 Q. Okay. MRSA is -- can be defined as a portion of
18 sepsis, correct? It becomes sepsis?

19 A. Yes, it can become sepsis.

20 Q. Thank you. I misstated myself the first time.

21 In this particular case, do you have the labs with
22 you in regards to the sepsis?

23 A. No. I have handwritten notes, um, from reviews.
24 Because your partner asked me at the preliminary hearing,
25 um, if I would be reviewing records. So I have handwritten

1 notes indicating some of the infectious organisms.

2 Q. Do you know if there was wound cultures done in
3 this particular case?

4 A. Uh, yes.

5 Q. Was she -- I noticed in some of the surgical
6 reports that she was cleared and irrigated; is that correct,
7 in her wounds?

8 A. She was on numerous occasions.

9 Q. Okay. In the healing of the buttocks wound, as
10 well as the healing of the breast wound would indicate, um,
11 that she was getting better?

12 A. Um, I don't know -- I would not agree with that
13 interpretation.

14 Q. Okay. Do you know who authorized her surgeries in
15 your review of the medical records?

16 A. I do not. Some of her surgeries were emergent,
17 and I'm not sure they would require separate authorization.

18 Q. In regards to the notes that you took, are those
19 notes of surgical records?

20 A. Um, yes. I actually wrote down the surgery
21 records. I reviewed 27 pages of abbreviated operative notes
22 and wrote down very brief notes relative to those.

23 Q. Okay. Let's take a look at August 6th, if you've
24 got that marked there. Do you have that?

25 A. Yes.

1 Q. Does it, in fact, find in the preoperative notes
2 that the patient's awake and responsive?

3 A. I can convey to you what I have written in my
4 notes.

5 Q. I'm asking you, did find that in your notes?

6 A. I don't know. I don't have that recorded in my
7 handwritten notes.

8 Q. Just a moment here, Doctor.

9 Now, so that I understand what your testimony is
10 in regards to your -- when you talked to Detective Garrison,
11 um, did he indicate that the discharge was accidental or
12 intentional of the firearm?

13 MR. SMITH: I'm going to object, Your Honor.
14 Again, we're going back into the facts that other people are
15 testifying to.

16 THE COURT: Well, he'll be here under oath. He is
17 under oath.

18 MR. SMITH: Okay.

19 THE COURT: You can ask the question of him,
20 whether he made that report. It's insignificant what he
21 reported to her in those terms. It's hearsay.

22 THE WITNESS: Shall I answer the question?

23 THE COURT: No, ma'am. I'm sustaining the
24 objection.

25 THE WITNESS: All right.

1 MR. HARDY: That's all the questions I have of
2 this witness. Thank you, Your Honor, for your time.

3 THE COURT: You may redirect, sir.

4 REDIRECT EXAMINATION

5 (BY MR. SMITH:)

6 Q. Has your determination of the cause of death
7 changed?

8 A. No.

9 Q. And what is the cause of death?

10 A. The cause of death is multiple organ failure with
11 sepsis due to or as a consequence of gunshot wound of the
12 trunk (chest, abdomen and buttock).

13 MR. SMITH: Thank you. No further questions.

14 THE COURT: Sir?

15 MR. HARDY: Nothing more. Thank you.

16 THE COURT: Thank you. May the doctor be excused
17 to return back to her duties?

18 MR. SMITH: Yes, Your Honor.

19 MR. HARDY: Uh, Your Honor, we may wish to recall
20 this particular witness. We will give her notice in that
21 regard based on additional testimony that may come through
22 Mr. Chad Morton, who is going to be called, and then I might
23 wish to call her back to the stand.

24 THE COURT: Well, I'm not going to allow you to do
25 that. If you have something now, you better bring it up,

1 because we've had a hard time getting her scheduled. My
2 understanding is her schedule doesn't comport to that.

3 MR. HARDY: I understand that, Your Honor. But I
4 was precluded from making certain examinations based upon
5 the fact that there were statements made and they're not in
6 fact in evidence at the time. And therefore, we did agree
7 that we were going to take this particular witness out of
8 order and did so.

9 And I will tell you, Your Honor, that hopefully
10 the testimony will come out through those other witnesses so
11 it will not be necessary for us to call her back.

12 Might I be able to do it this way? In the event
13 that we find that it is imperative that we call her back, we
14 might be able to make oral motion to this Court at that time
15 and you can consider it outside the presence of the jury.
16 If we need to do that, would that be okay?

17 THE COURT: That's fine. That's fine. But don't
18 count on having her come back. Because, like I say, her
19 schedule is pretty tight, as I understand it.

20 Is that true?

21 THE WITNESS: Yes. All of us are, I think --

22 MR. SMITH: I do want to point out a legal
23 standard, Your Honor. Defense counsel does not have
24 Dr. Clark under subpoena. The State does and the State
25 wishes to release her from our subpoena at this time.

1 THE COURT: Well, she is going to be released to
2 go back to her duties.

3 Thank you for coming, ma'am.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Let's take our first morning recess,
6 counsel.

7 Ladies and gentlemen of the jury, I'm going to
8 admonish you it is your duty not to discuss among yourselves
9 or with anyone else any matter having to do with this case.

10 It is your further duty not to form or express any
11 opinion regarding the guilt or innocence of the defendant
12 until the case has been finally submitted to you for your
13 decision.

14 You are not to read any newspaper articles or
15 listen to or view any radio or television broadcasts
16 concerning this case.

17 Should any person attempt to discuss the case with
18 you or in any manner attempt to influence you with respect
19 to it, you are to advise the bailiff who will, in turn,
20 advise the Court.

21 We will be in recess until the call of the Court.

22 (Whereupon, a recess was had.)

23 THE COURT: Court will come to order. Please be
24 seated.

25 Will counsel stipulate to the presence of the jury

1 and the alternates?

2 MR. MOLEZZO: So stipulated.

3 MR. WILLIAMS: The State will stipulate.

4 THE COURT: I understand that we have Officer
5 Garrison on cross-examination still.

6 MR. MOLEZZO: Defense does.

7 MR. WILLIAMS: He's ready, Your Honor.

8 THE COURT: Sir, would you come back and take your
9 place here at the witness stand.

10 Take the witness stand, pull up the microphone,
11 and state your name for the record.

12 THE WITNESS: David Garrison, G-a-r-r-i-s-o-n.

13 THE COURT: You understand you're still under
14 oath, sir?

15 THE WITNESS: Yes, sir.

16 THE COURT: You may continue with your
17 cross-examination.

18 MR. MOLEZZO: Thank you. Good morning.

19 CROSS-EXAMINATION

20 BY MR. MOLEZZO:

21 Q. Good morning, Officer Garrison. Last time we
22 spoke we were going into another chapter of this case. If I
23 recall correctly, it was how you pursued your efforts in
24 this investigation.

25 What I want to do now is I want to back up a

1 little bit, if I can. We talked about -- you recall that we
2 talked about the medication that was photographed by you,
3 correct?

4 A. Yes, sir.

5 Q. And, I'm sorry, it's the day after. Did you make
6 a glossary or an index of that medication, names, take a
7 list of that medication as part of your case profile?

8 A. Other than the photographs, I didn't document them
9 any other way, no.

10 Q. As best you can recall, again, looking at the
11 photographs -- if you need them again, let me know -- it's
12 your testimony that there was quite a few prescription
13 containers; is that fair?

14 A. Yes, sir.

15 Q. And, of course, pursuant to your testimony, you
16 did not retain the box, you just -- you photographed them,
17 correct?

18 A. That's correct.

19 Q. We have, for demonstrative purposes, obtained what
20 we believe were those medications. I will need you, if the
21 Judge will allow it, to come down and identify some of these
22 meds.

23 Could you do that for us?

24 A. I believe so, yes.

25 Q. Based on what you remember, of course.

1 A. Okay.

2 MR. WILLIAMS: I'm going to object to them showing
3 this.

4 THE COURT: Wait a second. Hold on, sir. Why
5 don't you have him come down, look at it without showing it
6 to the jury. It's not in evidence yet.

7 MR. MOLEZZO: I apologize, Judge.

8 THE COURT: You want to step down and look at it.

9 MR. MOLEZZO: And, for the record, Officer
10 Garrison is looking at a display that the Defense has
11 generated.

12 For the record, the witness is returning to the
13 stand.

14 BY MR. MOLEZZO:

15 Q. Now, in reference to that display, Officer
16 Garrison, were some of those items, as best you can recall,
17 the items that you photographed? Correct?

18 A. I don't know if they're the exact items. But they
19 bear the same labels.

20 Q. And those labels tell us what?

21 MR. WILLIAMS: I'm going to object to any further
22 questioning about it. Talking about something that's not in
23 evidence at this point.

24 THE COURT: Well, he can try to lay the
25 foundation.

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Go ahead, sir.

MR. MOLEZZO: That's what I'm attempting to do,
Your Honor.

BY MR. MOLEZZO:

Q. With what I showed you, isn't it true that in
reference to the bottles on the display, a lot of them were
identified as Cynthia Morton?

A. Yes.

Q. Okay. And as best you can recall, based upon the
photographs that you took of medication -- well, those
photographs, you also saw the name Cynthia Morton?

A. That's correct.

Q. And as you testify here today, as best you can
recall, there's no reason to assume that those bottles are
different; is that correct?

A. That's correct, yes, sir.

MR. MOLEZZO: Your Honor, I'd like to move this as
Defense Exhibit D, if I may.

MR. WILLIAMS: May we approach, Your Honor?

THE COURT: Yes.

(Bench conference between Court and counsel.)

THE COURT: The record should reflect we've had a
side bar, and I've indicated there needs to be sufficient
foundation to make this admissible.

Counsel, do you wish to proceed or wish to wait

1 for another witness to do that?

2 MR. MOLEZZO: I'll proceed. Thank you.

3 BY MR. MOLEZZO:

4 Q. You do recall -- well, we've talked about earlier,
5 yesterday, that some of the medication that you observed and
6 photographed had the name Cynthia Morton on it, correct?

7 A. Yes, sir.

8 Q. And you were able to identify -- you've looked at
9 your report and you've prepared for today's testimony and
10 yesterday's; is that fair?

11 A. That's correct.

12 Q. So you have a good grasp of what you did in the
13 case and what's going on, correct?

14 A. Yes, sir.

15 Q. Okay. You testified yesterday that you saw some
16 medication with Cynthia Morton's name on it, correct?

17 A. Yes, sir.

18 Q. And some of that medication said OxyContin,
19 correct? I believe you testified to that yesterday. Do I
20 have that incorrect?

21 A. Some of the medication did, but it wasn't with
22 Cynthia's name on it. It was with Robert's name on it. And
23 it was oxycodone, I believe.

24 Q. I'm sorry, oxycodone. Do you recall seeing
25 medication with the

1 deceased's name on it, Vicodin, anything like
2 that?

3 A. No.

4 Q. But it is also your testimony that you failed to
5 take control of those bottles, correct?

6 A. I did not take them into evidence, no.

7 Q. And you did not do an index of the items there,
8 correct?

9 A. That's correct.

10 Q. Now, you drew an outline or a blueprint, if you
11 will, of the house, correct?

12 A. Just of the upstairs floor plan, yes.

13 Q. Now, if I may have you --

14 MR. MOLEZZO: District Attorney, may I use your
15 device?

16 MR. SMITH: Yes, sure.

17 BY MR. MOLEZZO:

18 Q. As the lead detective, you investigated the
19 shooting, if you will?

20 A. Yes, sir.

21 Q. And based upon your notes and your preparation and
22 your conduct in this case, you'll be able -- you'll be able
23 to try and estimate where the parties were for us?

24 A. The parties?

25 Q. Well, let me back up a little bit. Did you do any

1 trajectory testing?

2 A. No, sir.

3 Q. Okay. And do you know what trajectory testing can
4 provide?

5 A. I think I understand you to be asking about the
6 path of the bullet.

7 Q. Okay. And also is that your understanding of what
8 that type of testing could aid --

9 A. I have very limited experience with it, so...

10 Q. So going with that path of the bullet, it would
11 also, if done -- could possibly tell where the shooting or
12 the shooter, where the gun or the barrel was positioned; is
13 that fair?

14 The bullet has to come out of the barrel, correct?

15 A. The bullet has to come out of the barrel, yes.
16 But I don't think I'm qualified to say yes or no on that.

17 Q. Okay. But you have testified that trajectory
18 would -- based upon your limited knowledge, would tell us
19 about the path of the bullet, correct?

20 A. Yes.

21 Q. Now, that's from the bullet on your limited
22 knowledge leaving the barrel of the weapon and going
23 forward, correct?

24 A. Correct.

25 Q. Okay. It has no determination, isn't that true,

1 of once the bullet hits the body, if you will, where that
2 bullet will travel necessarily; do you agree with that?

3 MR. WILLIAMS: I'm going to object at this time.
4 He's already said he's not an expert.

5 THE COURT: I don't think he's qualified to
6 answer. It's opinion testimony. He's not qualified for
7 that opinion.

8 BY MR. MOLEZZO:

9 Q. Okay. Could you please step down.

10 A. Yes.

11 MR. MOLEZZO: May he, Your Honor?

12 THE COURT: Sure.

13 MR. MOLEZZO: Thank you.

14 BY MR. MOLEZZO:

15 Q. For the record, I have a blueprint note -- that's
16 my word -- I received through the discovery in this case.
17 Tell me what that is, if you can.

18 A. That's the drawing that I completed of the
19 upstairs floor plan at 1565 Harmony Road.

20 Q. And would you please sign that, because we're
21 going to mark on this a little bit. Sign it as the one
22 you've marked off.

23 MR. WILLIAMS: Can we have that marked for
24 identification, please?

25 MR. MOLEZZO: Ask it be marked as Defense Exhibit

1 D, please.

2 THE COURT: You already have something else marked
3 D.

4 MR. MOLEZZO: E would be fine. Please.

5 (Defendant's Exhibit E marked.)

6 THE COURT: For the record, a single piece of
7 paper is being marked for identification purposes as Exhibit
8 E.

9 BY MR. MOLEZZO:

10 Q. Thank you. Now, based upon your investigation,
11 experience, education, and training, where did you have Mr.
12 Morton at the time of the discharge? Can you share that
13 with us? We know that the deceased was in the restroom. Is
14 that correct?

15 A. That's correct.

16 Q. I'm not trying to put words in your mouth. This
17 is the lavatory. Can you put where the deceased was,
18 please.

19 THE COURT: You're asking where he saw her?

20 MR. MOLEZZO: Yes, where he saw her.

21 THE WITNESS: I did not see her. She was not at
22 the residence when I was there.

23 BY MR. MOLEZZO:

24 Q. Okay. But you also retrieved information from
25 fellow officers that the lavatory was the area she was

1 found, correct?

2 A. Yes. And then there was biological evidence that
3 indicated that she was there.

4 Q. And you photographed some of the shells; is that
5 right?

6 A. Yes.

7 Q. Thank you. Can you show us where the shell was in
8 the hallway, the unspent shell in the hallway --

9 A. The --

10 Q. Pursuant to the photographs. I'm sorry.

11 A. The unspent shell was approximately in this area
12 right here.

13 Q. Okay. And based upon your investigation and
14 discussions with my client, can you check whether it is your
15 theory he was standing?

16 A. My theory that he was standing either in the
17 doorway or just outside the threshold.

18 THE COURT: Wait a second, Counsel. You're asking
19 for his theory on this now?

20 MR. MOLEZZO: I'm asking for his determination
21 based upon the investigation and the interview with my
22 client, Your Honor.

23 THE COURT: If you're asking the question of what
24 your client told him where things were, that's one thing.
25 But to ask this man opinion testimony, he's not been

1 qualified to give opinion testimony.

2 MR. MOLEZZO: Fair enough.

3 THE COURT: So we're seeking factual information

4 from this witness.

5 MR. MOLEZZO: Yes, sir, thank you. I apologize.

6 BY MR. MOLEZZO:

7 Q. Did Mr. Morton share with you where he was

8 standing?

9 A. He stated that he was standing at the doorway.

10 Q. At the doorway. But he didn't give you dimensions

11 or measurements of any kind?

12 A. No, sir.

13 Q. Let's just leave that. Thank you. Please take a

14 seat.

15 This is a true and accurate representation of the

16 floor plan as best you know?

17 A. Again, rough -- it's a rough, but yes.

18 Q. And this is what you generated?

19 A. Yes.

20 Q. Thank you.

21 MR. MOLEZZO: Defense will move this into evidence

22 at this time.

23 THE COURT: Exhibit E is being offered.

24 MR. WILLIAMS: No objection, Your Honor.

25 THE COURT: Exhibit E is hereby admitted.

1 (Defendant's Exhibit E admitted.)

2 BY MR. MOLEZZO:

3 Q. Now, in your report, you share with us information
4 that Mr. Morton was trying to injure himself; is that
5 correct?

6 A. Yes.

7 Q. And because of that you went to see Mr. Morton; is
8 that right?

9 A. Yes.

10 Q. Now, you were aware at this time, isn't it true,
11 that he had been taken from the residence in custody,
12 correct?

13 A. That's correct.

14 Q. And thank you for your honesty. Did you inquire
15 of your fellow officers whether

16 or not his Miranda rights were given to him?

17 A. I don't remember if I did or not. It wouldn't be
18 common practice for me to inquire as to that.

19 Q. Well, you would agree -- well, Miranda is
20 important stuff, correct, you would agree? Whether you
21 agree with it or not, it's an important issue in criminal
22 cases?

23 A. Right. It's definitely important.

24 Q. Thank you for that. But you don't know whether or
25 not you talked to

1 your colleagues to see if it was given to my
2 client?

3 A. I don't remember if that conversation happened or
4 not.

5 Q. And based upon your testimony that it's important
6 stuff -- and thank you for that -- it's fair to say if you
7 received that or asked that question, it would probably be
8 in your report? Is that fair?

9 A. Either in my report another officer's
10 supplemental.

11 Q. So now in reference to whether or not my client
12 was injuring himself, how was that information conveyed to
13 you?

14 A. It was just -- it wasn't directed at me. I
15 believe it was just a general broadcast out over the police
16 radio that Mr. Morton was attempting to do himself harm.

17 Q. And not saying that you're not telling the truth,
18 but did you -- I'm assuming it's a dispatch-type thing,
19 right? Dispatch tells you? Someone from law enforcement is
20 broadcasting this?

21 A. Yes.

22 Q. Would that be recorded in the normal course of
23 business?

24 A. It's my understanding that it is. But I don't
25 work for the Humboldt County Sheriff's Office.

1 Q. Thank you. Pursuant to your investigation, once
2 you were aware this case was going to trial, did you attempt
3 to find any voice recordings whether or not my client was
4 injuring himself?

5 A. Voice recordings made by dispatch or made by
6 myself?

7 Q. By dispatch. Voice recordings verifying in
8 anticipation of trial that it indeed took place.

9 A. I think I put in a request. But I don't remember
10 ever reviewing any of the 911 tapes or anything like that.

11 Q. Now, not to beat this up too much, because we've
12 talked about it, you arrived to the detention center,
13 correct?

14 A. Yes.

15 Q. Thank you. And with the alleged information that
16 he was causing injury to himself, my client, correct?

17 A. Yes.

18 Q. And you go into a cell -- I'm sorry -- a room in
19 the police department. Do I have that correct?

20 A. At the jail, yes. A small room at the jail.

21 Q. I'll ask more defense attorney-type questions. I
22 apologize.

23 Isn't it true that he was in a room in a structure
24 owned by the police?

25 A. Yes.

1 Q. Isn't it true he's in there by himself when you
2 arrived?

3 A. I'm not sure if he was being treated or if he was
4 by himself.

5 Q. And isn't it true that this was soon after the
6 tragic event had happened, within a couple of hours? Is
7 that correct?

8 A. Yes, it is. Hour and a half, maybe.

9 Q. And so you walk into the room where my client is,
10 correct?

11 A. Yes.

12 Q. So you have -- he can see you; you can see each
13 other, correct?

14 A. Yes.

15 Q. And you didn't automatically give him his Miranda
16 rights, correct?

17 A. That's correct.

18 Q. So therefore you must have -- did you engage him
19 verbally in any way? Because we don't have recordings, do
20 we?

21 A. No, we don't.

22 Q. We don't have video or audio recordings, correct?

23 A. That's correct.

24 Q. So I want to play fair. If you don't know, then
25 please say you don't know.

1 Were you the first one to verbally engage my
2 client?

3 A. I don't remember, sir.

4 Q. Were you in a uniform?

5 A. No.

6 Q. Did you have your sidearm on?

7 A. No.

8 Q. Pager, anything like that? Did you look like a
9 police officer or just a regular civilian?

10 A. I believe that night I was wearing jeans and a
11 T-shirt, and I would have had my badge clipped to my belt
12 with an empty holster.

13 Q. Empty holster. Okay. Okay. Now, when you make
14 contact with my client, it's my understanding that there was
15 -- he picked up some type of chip, a Formica chip; is that
16 correct?

17 A. That's correct.

18 Q. And where was that chip located, if you can
19 recall?

20 A. I think it was on the booking counter itself. It
21 had been taken away from him.

22 Q. I apologize. So it's your understanding that
23 another person took that away from my client?

24 A. Yes.

25 Q. And obviously you were there primarily to check on

1 his welfare, correct?

2 A. Yes.

3 Q. Why couldn't the staff that was there take care of
4 that?

5 A. Being the lead investigator on the case, I wanted
6 to have the firsthand information.

7 Q. The fact is you wanted to have the first crack at
8 a guy --

9 MR. WILLIAMS: Objection, Your Honor.
10 Argumentative.

11 MR. MOLEZZO: I'll restructure that, Judge.

12 BY MR. MOLEZZO:

13 Q. The fact is you wanted to be the first one there,
14 correct, to speak to my client?

15 A. No.

16 Q. So it's your position here today, your testimony,
17 that the staff at the facility could not have met his
18 medical needs, correct?

19 A. No, that's not correct. That's not my position.

20 Q. Now, did you take possession of that counter chip,
21 the Formica chip? You took possession of that?

22 A. I directed Officer Hinton to.

23 Q. It's in evidence and we have that, correct?

24 A. Yes.

25 Q. Did you have it tested?

1 A. No, sir.

2 Q. As best you can recall -- I know this is a year
3 ago -- did you look at it while you were there?

4 A. Yes.

5 Q. Did it appear to have blood or body fluid on it,
6 anything like that?

7 A. It had just some minor red staining.

8 Q. But, again, no request by you to test?

9 A. Correct.

10 Q. Now, when you were done with the interview -- this
11 is interview No. 1, correct, or face-to-face contact No. 1,
12 correct?

13 A. Correct.

14 Q. Did you go immediately -- let me ask it this way:
15 Why didn't you go immediately to see if it was recorded for
16 reliability? Why didn't you check that out?

17 A. As I testified previously, it was my assumption
18 that all activities within the jail are recorded, both audio
19 and video.

20 It was --

21 Q. But wouldn't it be reasonable in a serious case to
22 make sure?

23 A. Yes, very reasonable. It was more of an
24 oversight.

25 Q. You would expect that, obviously, right, if you

1 were being investigated for something?

2 MR. WILLIAMS: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. MOLEZZO:

5 Q. And as previously discussed, this is about as big
6 as it gets in our society. You would agree?

7 A. I totally agree.

8 Q. And thank you. So we understand, after the first
9 face-to-face contact you assumed devices worked to
10 memorialize the conversation with my client, correct?

11 A. Correct.

12 Q. And why is that important? Let me ask it this
13 way: As you sit here now, you realize that's an important
14 tool to use, the recording of video and audio, correct?

15 A. Correct.

16 Q. And share with the jury why you think that's
17 important.

18 A. When you have video and audio, there's virtually
19 no disputing it. There's no challenging it.

20 Q. So it provides a level of reliability, can I say
21 that?

22 A. I think you can.

23 Q. It provides the finder of fact, the jury, to
24 witness the events as they unfold; is that fair?

25 A. Yes, sir.

1 Q. Again, reliability?

2 A. Yes.

3 Q. Not to say that you're telling falsehoods, but it
4 allows us to look into how you acted with my client,
5 correct?

6 A. Yes.

7 Q. Now, it's your opinion that my client was trying
8 to cause himself harm; isn't that right?

9 When I say "opinion," you didn't witness it, it's
10 your opinion, correct?

11 A. Yes.

12 Q. Did you check his fingernails or anything like
13 that for skin, anything like that?

14 A. No, sir.

15 Q. And, again, not to beat it up too much, but you
16 didn't have your micro recorder with you, correct?

17 A. Correct.

18 Q. And did you have one at all in 2009, August 5?

19 A. Yes.

20 Q. Do you make it a habit -- is it a habit now to
21 carry it with you? Is that fair to say?

22 A. Actually, I don't have it more often than not.

23 Q. Now, I want to talk about that encounter -- that
24 first encounter with Mr. Morton. It's in evidence. You've
25 testified that he said, "I can't believe I shot her."

1 Correct?

2 A. Yes, sir.

3 Q. But what we don't have is how he said it. Isn't
4 it true this came from a distraught and broken human being?

5 Let me give you this scenario. Was it something
6 like this -- and, for the record, I have my head down -- "I
7 can't -- I can't believe I shot her"?

8 MR. WILLIAMS: Objection, Your Honor. Assumes
9 facts not in evidence.

10 THE COURT: He can ask the question. Overruled.

11 BY MR. MOLEZZO:

12 Q. That's my despondent look. For the record, my
13 head is down: "I can't believe I shot her."

14 Is that how he responded?

15 A. It was something very similar to that, yes.

16 Q. And you had a true sense that it was -- he was
17 showing emotion. You tell us in the report that he was
18 crying over and over again. You recall that?

19 A. Yes.

20 Q. Did you have any sense that he had dual
21 personalities? Was he angry, then sad? Or was it pretty
22 much throughout your contact a sad and -- well, a sad human
23 being?

24 A. Yeah, I would describe him as very withdrawn.

25 Q. And, again, you would agree that words are

1 important, correct?

2 A. Yes.

3 Q. In the academy they teach you how to draft
4 reports. And in what we do as a profession in jurisprudence
5 words are very important, you would agree?

6 A. Yes.

7 Q. And also the delivery of those words can also be
8 important: how they're said, what emotions are behind them.
9 You would agree?

10 A. Yes.

11 Q. So you tell us he said, "I can't believe I shot
12 her." Correct?

13 A. Yes.

14 Q. That "I'm going to prison for a long time."

15 A. For a very long time.

16 Q. Thank you. For a very long time. And one thing
17 that -- your testimony was that he

18 also said, "I wish I had done it right the first
19 time." Correct?

20 A. Yes.

21 Q. Now, this is interview No. 1, correct?

22 A. Yes. Well, prior to interview No. 1, encounter
23 No. 1.

24 Q. I'm sorry. And then right after that, do I
25 understand correctly -- again, there's no video or audio,

1 but your testimony is that you gave him his Miranda
2 warnings?

3 A. Yes.

4 Q. And I have your reports. You did draft a report
5 regarding that encounter?

6 A. Yes.

7 Q. Now, I don't see anywhere in that report where you
8 follow up on this very interesting statement, the statement
9 "I wish I had done it right the first time."

10 Did you follow up with what that meant?

11 A. It was my intention to.

12 MR. WILLIAMS: Objection.

13 MR. SMITH: Objection. We're going into the same
14 area, like yesterday.

15 MR. MOLEZZO: Let me rephrase it.

16 THE COURT: Just a second. Are we plowing old
17 ground here, sir?

18 MR. MOLEZZO: Not quite as close to the edge as
19 yesterday. But I'll watch what I say, Judge. I don't think
20 we are.

21 THE COURT: Well, we only need to ask the
22 questions once. Once we've done it, let's move on.

23 MR. MOLEZZO: Yes, sir, thank you.

24 BY MR. MOLEZZO:

25 Q. Okay. Briefly, with what I've shared with you,

1 you weren't able to follow up -- and thank you District
2 Attorney -- you weren't able to follow up with that line,
3 correct?

4 A. I was not.

5 Q. Okay.

6 MR. WILLIAMS: Can we have a side bar, Your Honor?

7 THE COURT: Yes.

8 (Bench conference between Court and counsel.)

9 THE COURT: You may proceed, sir.

10 MR. MOLEZZO: Thank you, Your Honor.

11 BY MR. MOLEZZO:

12 Q. So then eventually, after some talking with my
13 client, he wanted no more; you left him, correct?

14 A. Yes.

15 Q. Now, what I want to talk about is your follow-up,
16 your alleged follow-up with the deceased in this case.

17 You testified that you made multiple calls to the
18 hospital?

19 A. Yes.

20 Q. Did you do that -- how do we know? Did you record
21 that? Do you have an index or a log of those calls?

22 A. No.

23 Q. Did you try and gain information of what
24 individuals were visiting the deceased at the hospital?
25 Actually, that sounds silly.

1 Did you attempt to find out who was visiting the
2 deceased at the hospital?

3 A. Was it a direct action? No. But I was aware that
4 her children were visiting her as well as her father and
5 stepmother.

6 Q. And at this time you're still -- you have the
7 cloak of being a detective, correct?

8 A. Correct.

9 Q. And part of that definition is you investigate
10 things, right? You're investigating this case, right?

11 A. Yes.

12 Q. But it's also fair to say that at least based upon
13 your efforts you assumed that this was an intentional act
14 right off the bat, didn't you?

15 A. We investigated it as such. But, like I said
16 yesterday, I was open to other avenues.

17 Q. Officer Garrison, I believe you when you say that.
18 So let's see if we can determine by your actions if you were
19 open to other avenues, in your words.

20 You failed to go to Renown personally to see if
21 the deceased was stable, correct?

22 A. I did not go.

23 Q. You were aware -- well, in your own words, you
24 monitored her situation at Renown, correct?

25 A. Yes, I made multiple calls there.

1 Q. So, clearly, if that was indeed done, you became
2 aware that she was stable and able to communicate at times,
3 correct?

4 A. I was informed by hospital staff that although she
5 could communicate, she was not -- they felt that she was not
6 able to conduct an interview with, in regards to what
7 happened.

8 Q. Was that on a phone call?

9 A. Yes.

10 Q. Was that recorded?

11 A. No.

12 Q. Did you send a follow-up letter to nurse whomever
13 that that call took place?

14 A. No.

15 Q. So did you -- in your efforts as an investigator,
16 in your efforts to find the truth, did you attempt to get a
17 log of folks who visited the deceased?

18 MR. WILLIAMS: Asked and answered, Your Honor.
19 Objection.

20 THE COURT: It's been asked and answered.
21 Sustained.

22 BY MR. MOLEZZO:

23 Q. And I believe your answer to that was you did not.
24 Correct?

25 THE COURT: Counselor, I sustained the objection.

1 MR. MOLEZZO: Thank you, Your Honor.

2 BY MR. MOLEZZO:

3 Q. So we know that you had no communication with
4 folks who visited the deceased, correct?

5 A. Like I said just a few minutes ago, I talked with
6 her -- I knew that her children had visited her. I had been
7 in contact with her son, Robert. I believe I had been in
8 contact with her father. So I would have to disagree with
9 that statement that I had not been in contact with the
10 people that had visited her.

11 Q. Where is that report, sir?

12 A. I didn't write a report on that.

13 Q. This is a man's life, Detective. You didn't write
14 a report on contacting potential witnesses?

15 THE COURT: Counselor.

16 MR. MOLEZZO: Withdraw. Thank you, Your Honor.

17 BY MR. MOLEZZO:

18 Q. Did you try to determine after the deceased was at
19 Renown -- strike that.

20 What does the acronym GSR mean?

21 A. Gunshot residue.

22 Q. In your training and experience, what is GSR --
23 why is that important?

24 A. Well, through my experience and training, GSR has
25 become an antiquated technology. And even the crime lab,

1 Washoe County Crime Lab, folks don't conduct GSR tests
2 anymore.

3 Q. So in 2009, August 5, was it still a test that was
4 performed?

5 A. To my knowledge, no. There's no place in the
6 state of Nevada, to my knowledge, that performs the gunshot
7 residue tests.

8 Q. We heard testimony from a colleague earlier about
9 gunshot residue. Officer Murdock.

10 THE COURT: Counselor --

11 MR. MOLEZZO: Thank you, Your Honor.

12 THE COURT: I don't think that's accurate. I
13 think he talked about some stippling, as I
14 recall.

15 BY MR. MOLEZZO:

16 Q. In reference to gunshot residue, when it was an
17 acceptable -- well, it was a procedure used in homicide
18 investigations, correct?

19 A. It's my understanding, but I've never used that
20 procedure or that technology.

21 Q. Okay. So you did not swab any of the witnesses
22 there and take any samples for gunshot residue, correct?

23 A. Correct.

24 Q. Quickly going back on the first face-to-face with
25 my client, it's your testimony that his blood alcohol

1 was.276?

2 A. And.266. There were two samples taken.

3 Q. I'm sorry, what was that?

4 A. There were two samples taken.

5 Q. That's about three times over the limit, isn't
6 it,.08?

7 A. Yes.

8 Q. Now, also you tell us it was your impression that
9 he was walking and talking -- I'm sorry -- walking and
10 talking okay?

11 A. Yes.

12 Q. And his movements appeared to you to be okay?

13 A. Yes.

14 Q. Isn't it true that those are balance-type issues?
15 Movement is a balance issue, you would agree?

16 A. Yes.

17 Q. Well, isn't it also true that you can be
18 intoxicated but able to balance yourself?

19 MR. WILLIAMS: Objection. He's not an expert on
20 intoxication.

21 THE COURT: If you lay the foundation.

22 MR. MOLEZZO: Thank you, Your Honor.

23 BY MR. MOLEZZO:

24 Q. I'll make you an expert right away. Have you ever
25 done DUI investigations?

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A. Yes.

Q. Have you gone through the academy to learn about the effects of consuming alcohol?

A. Yes.

Q. And you've done the continuing and the following education on DUIs, correct?

A. The only continuing education that we have on DUI investigations, actually, is the recertification to run the Intoxilyzer 5000, which is the Breathalyzer machine.

Q. And through your position as law enforcement, you've encountered many human beings that in your opinion were impaired by alcohol?

A. Yes, sir.

Q. Now, let's jump forward to Mr. Morton. It's your testimony that the test, the PBT test -- is that right, the preliminary breath test? Is that what was performed?

A. He was not given a preliminary.

Q. He was given --

A. He was given a test on the Intoxilyzer 5000, which is an evidentiary machine.

Q. By "evidentiary" you mean it's more reliable --

A. It's admissible in court.

Q. It was three times over the limit, correct?

A. Yes.

Q. And it's your testimony that he was able to walk

CERTIFICATE OF SERVICE

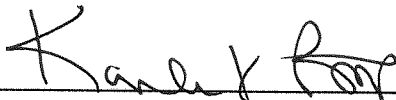
Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd., P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing document to be delivered to all parties to this action by

X E-Flex Delivery System of the Nevada Supreme Court
_____ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada.

addressed as follows:

MICHAEL McDONALD DISTRICT ATTORNEY
ANTHONY GORDON, DEPUTY DISTRICT ATTORNEY
Humboldt County District Attorney's Office
P. O. Box 909
Winnemucca, NV 89446

DATED this 25th day of March, 2022.



KARLA K. BUTKO, ESQ.