

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 83917

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EDWARD MICHAEL ADAMS

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Appeal from a Denial of Petition for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County
The Honorable Nancy A. Becker, District Court Judge
District Court Case No. 08C241003

**APPELLANT'S APPENDIX
VOLUME III**

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on April 20th, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

STEVEN B. WOLFSON
Clark County District Attorney

By /s/ Jan Ellison
An Employee of Oronoz & Ericsson, LLC

1 A 2:15.

2 Q Did you get picked up from school or did you walk
3 home?

4 A Walked home.

5 Q Did you walk home with anybody?

6 A Jonathan.

7 Q Do you know his last name?

8 A Cerboni.

9 Q Do you know how old he was?

10 A I think 12.

11 Q Now, back then did you live in that area?

12 A Yeah.

13 Q Did Jonathan live in that area?

14 A Yes.

15 Q Okay. Now, did you go directly from school, leave
16 school and then head home?

17 A Yes.

18 Q Did you and Jonathan see anyone as you were walking
19 home from school?

20 A We seen Amber.

21 Q Do you know Amber?

22 A Yes.

23 Q Do you know her last name?

24 A It starts with a V, but I don't know it.

25 Q Did you know Amber that well?

1 A Yeah.

2 Q Okay. Had you had classes with her?

3 A No.

4 Q Would you say you were friends with her?

5 A Yes.

6 Q Now, when you usually saw Amber, would you guys greet

7 each other in a particular way?

8 A Sometimes I'd just hi or sometimes give her a hug.

9 Q Now, on that day, when you were walking home from

10 school, did you say hi to her?

11 A No.

12 Q Did she say hi to you?

13 A No.

14 Q Was that unusual?

15 A Kind of.

16 Q Did she come over and give you a hug?

17 A No.

18 Q Did you walk over and give her a hug?

19 A No.

20 Q Why not?

21 A I don't know, I had a funny feeling not to.

22 Q How come?

23 A I'm not really sure.

24 Q Was Amber with anyone?

25 A Yes.

1 Q Can you tell us about that person?

2 A It was a guy.

3 Q What else about that person?

4 A He was like holding her by her hand or her arm like
5 they walked -- trying like to avoid us.

6 Q Tell me about that.

7 A It was like they were walking and they were kind of
8 walking fast, and then they like walked on somebody's property.
9 And then like I don't know.

10 Q Were you still on the sidewalk?

11 A Yes.

12 Q So this man who had a hold of her arm or hand walked
13 her up onto someone's yard?

14 A Yes.

15 Q To avoid you? Is that a yes or a no?

16 A Yes.

17 Q Did that seem unusual?

18 A Yeah.

19 Q Did Amber live there?

20 A No.

21 Q Did that guy live there?

22 A I don't know.

23 Q Well, let's talk about that guy. Had you ever seen
24 that guy before?

25 A No.

1 Q Could you tell how old he was?

2 A No.

3 Q How old, just a guess. Old like me, younger, older?

4 A Like you.

5 Q Old like me, okay. Did you know Amber's dad?

6 A No.

7 Q Had you ever seen Amber's dad?

8 A No.

9 Q Did you know if that was Amber's dad?

10 A Jonathan said it wasn't.

11 Q But you had never met Joseph Valles, had you?

12 A No.

13 Q Okay. Now, you said that they walked up in a yard

14 away from you, right?

15 A Yes.

16 Q What were you thinking when that happened?

17 A I wasn't really thinking anything.

18 Q Why not?

19 A Because I was just going home.

20 Q Okay. Did you speak with Jonathan about it?

21 A Yes.

22 Q What did you say to Jonathan?

23 A Well, we were messing around, and we like -- I said,

24 "Well, is that her dad," and he was like, "No." And then like

25 later on we were messing around and we're like, "Well, that

1 could be a rapist or something," and just like messing around,
2 didn't even think about anything.

3 Q Did you find out later you might have been right?

4 A Yeah.

5 Q Now, when you saw this happening to Amber, did you
6 call someone?

7 A No.

8 Q Did you have a phone?

9 A Yes.

10 Q Did you think about calling someone?

11 A No.

12 Q Why not?

13 A Because I didn't think anything of it.

14 Q But you said you were joking around and you thought
15 well, maybe this could be a rapist, right?

16 A Yeah.

17 Q But you decided not to call, right?

18 A Yes.

19 Q Why didn't you?

20 A Because if it was wrong, then it would be a big
21 mistake and we could get in a lot of trouble.

22 Q You thought you could get into trouble if you called
23 and said someone's taking Amber away and if it turned out to be
24 her dad or uncle or something, you thought you'd be in trouble?

25 A We didn't think of anything.

1 Q Okay. Now, I asked you, you had never seen this guy
2 before, right?

3 A No.

4 Q And you had certainly had never seen this guy with
5 Amber, right?

6 A No.

7 Q Do you remember what this guy was wearing?

8 A No. It could have been like tennis shoes and like
9 just a hoody, I don't know.

10 Q What do you mean by a hoody?

11 A It could have been like just a like a hoody that you
12 put on.

13 Q Did you notice anything else about his clothes?

14 A No.

15 Q Do you remember anything about his face or his hair
16 or how tall he was?

17 A No.

18 Q No? Okay. Now, at some point the police officers
19 come and meet with you, right?

20 A Yes.

21 Q When did that take place?

22 A I don't remember the date.

23 Q Do you know whether it was that same day?

24 A I think it was.

25 Q Okay. And did they ask you to write out a statement?

1 A Yes.

2 Q And did you do that?

3 A Yes.

4 Q Do you remember if you were able to describe his hair
5 in that statement?

6 A No.

7 Q Now, if I showed you that statement, do you think it
8 would help you remember?

9 A No.

10 Q Okay. Have you had an opportunity to see this
11 statement?

12 A Yes.

13 Q Did you read through it?

14 A Yes.

15 Q Would you like to read through it again real fast?

16 A No.

17 Q You don't want to? Okay, we won't do it then. Let
18 me ask you this, did the police officer ever show up, I think
19 at your school, at your middle school or junior high, and ask
20 you to look at some photos?

21 A Yes.

22 Q Is that something you wanted to do?

23 A No.

24 Q But you did it, didn't you?

25 A Yes.

1 Q And did he ask you to try and pick out if that same
2 individual's in that photo that you saw on December 14th?

3 A Yes.

4 Q Did he tell you who to pick?

5 A No.

6 Q Okay. Now, were you able to pick anyone out of that
7 line up?

8 A Yes.

9 Q How many people?

10 A Two.

11 (Off-record colloquy).

12 MR. HENDRICKS: Previously shown defense counsel
13 what's been marked for identification purposes State's Proposed
14 Exhibit 75, which contains two separate sheets. May I approach
15 the witness, Judge?

16 THE COURT: You may.

17 MR. HENDRICKS: Thanks.

18 BY MR. HENDRICKS:

19 Q Angela, I'm going to show you what's been marked as
20 State's Proposed Exhibit 75. Can you tell me what that is?

21 A I don't know what that means.

22 Q What's the piece of paper?

23 A A statement.

24 Q Okay. Did you write that statement?

25 A Yes.

1 Q Does it have your name on it?

2 A Yes.

3 Q And does it have a date on it?

4 A Yes.

5 Q What's the date?

6 A 1/16/08.

7 Q Okay. So it's over a month from the time that you
8 saw this guy, right? Is that a yes?

9 A Yes.

10 Q Okay. And they actually came out to Johnson Junior
11 High School to speak with you?

12 A Yes.

13 Q And as we talked about, you picked out two different
14 guys from that photo line up, right?

15 A Yes.

16 Q Okay. And is that what's shown here on the second
17 page?

18 A Yes.

19 Q And how did you identify those two people? Did you
20 write your name anywhere near those?

21 A Yes.

22 Q Okay. Did you actually write your name underneath
23 pictures of two separate individuals?

24 A Yes.

25 Q Now, you didn't know the names of those individuals,

1 did you?

2 A No.

3 Q But you picked out two that looked like the guy you
4 saw that day, right?

5 A Yes.

6 Q Okay. Now, when you first --

7 MR. HENDRICKS: At this point, Judge, I'd move for
8 the admission of State's Proposed Exhibit 75.

9 THE COURT: Any objection?

10 MR. MANINGO: No objection.

11 THE COURT: 75's admitted without objection.

12 (Exhibit 75 admitted).

13 MR. HENDRICKS: Thanks, Judge. Thanks, Counsel.

14 BY MR. HENDRICKS:

15 Q Now, when you're giving the statement to the police
16 and wrote it out on December 14th of 2007, had you spoken with
17 Amber before talking with the police?

18 A Not really about it.

19 Q Okay. Now, they came out that same night to speak
20 with you, right?

21 A Who?

22 Q The police officers.

23 A Yeah.

24 Q Okay. Now, had Amber called you that night to speak
25 with you?

1 A No.

2 Q Okay. So you wrote it out before speaking with her,
3 correct?

4 A Yes.

5 MR. HENDRICKS: Nothing further, Judge.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. MANINGO:

9 Q Hi Angela.

10 A Hi.

11 Q You had said that you were with Jonathan that day?

12 A Yes.

13 Q And you saw Amber?

14 A Yes.

15 Q And she was with someone -- she was with a man?

16 A Yes.

17 Q And you didn't recognize that person?

18 A Yes.

19 Q Okay. Now, you had said that she was holding onto
20 her hand?

21 A Either her hand or her wrist like --

22 Q Or her wrist, okay.

23 A Yeah.

24 Q Okay. And that he was -- he was leading her
25 somewhere?

1 A Yes.

2 Q Okay. You spoke to the detective about all of this,
3 correct?

4 A Yes.

5 Q Okay. Now, if the detective put down that you said
6 something completely different in his report, did he just get
7 it wrong?

8 A What do you mean?

9 Q Well, if the detective wrote in his report that you
10 had said that Amber was chasing after this man trying to keep
11 up with him because he was walking too fast, is that right or
12 wrong?

13 A That's wrong.

14 Q Okay. So the police officer would be wrong, then?

15 A I never said that.

16 Q Okay. Now, did you -- did you get a look at Amber?

17 A Yes.

18 Q Okay. And you got a little bit of a look at this
19 man, right?

20 A Yes.

21 Q Okay. But you weren't really paying attention?

22 A Yes.

23 Q Okay. You -- I think you testified that when you saw
24 them, the two of them together, you didn't make anything of it.

25 A Correct.

1 Q Okay. If you saw that there was a building on fire
2 or something like that, what number would you call?

3 A 911.

4 Q Okay. You were still close to your school at that
5 time also?

6 A Yes.

7 Q Okay. You had a working cell phone on you?

8 A Yes.

9 Q If you thought there was trouble, do you think you
10 could -- would you feel comfortable calling your mom or your
11 dad?

12 A Yeah.

13 Q Okay. On this day you didn't call 911, correct?

14 A Correct.

15 Q And you didn't call your mom or your -- your mom or
16 your dad and tell them that there was something wrong going on?

17 A Correct.

18 Q You didn't go back to school and tell your teachers
19 or anything?

20 A Correct.

21 Q Okay. You said that you just sort of went on your
22 way home and you were messing around with Jonathan?

23 A Correct.

24 Q Okay. And that's because when you saw the two of
25 them together you didn't make anything of it?

1 A Yes.

2 Q Okay. Thank you.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

5 BY MR. HENDRICKS:

6 Q Just to clarify. Defense counsel said that you
7 didn't make anything of it and you said right or correct,
8 right?

9 A Yes.

10 Q But you did say that it was unusual that you didn't
11 exchange greetings or say hi or hug each other, right?

12 A Yes.

13 Q You also said that it was unusual that this guy was
14 holding her -- her arm or her hand and took her up into a yard
15 to avoid you, right?

16 A Yes.

17 Q Thanks.

18 MR. HENDRICKS: Nothing further.

19 THE COURT: Recross.

20 RECROSS-EXAMINATION

21 BY MR. MANINGO:

22 Q Amber was your friend?

23 A Yes.

24 Q If you thought she was being dragged away with a gun
25 pointed at her and that she was in trouble and her life was at

1 risk, would you just ignore it and go mess around somewhere?

2 A Well, if I thought that, I wouldn't have -- I would
3 have done something.

4 Q Thank you.

5 THE COURT: Anything else for this witness?

6 MR. HENDRICKS: Just one question.

7 FURTHER REDIRECT EXAMINATION

8 BY MR. HENDRICKS:

9 Q You didn't know if she was in trouble at that point,
10 did you?

11 A No.

12 Q If you knew she was in trouble, would you have called
13 911?

14 A Yes.

15 Q Looking back on it now, do you wish you had?

16 A Yes.

17 Q Thank you.

18 THE COURT: Anything else for this witness? Thank
19 you for your testimony. Please step down. Call your next
20 witness.

21 MR. HENDRICKS: Cierra Cipriani.

22 THE CLERK: Please stand in the witness stand,
23 please, and remain standing and raise your right hand. I'll
24 swear you in.

25 CIERRA CIPRIANI, STATE'S WITNESS, SWORN

1 THE CLERK: Once you're seated there, will you please
2 state your name loudly for us, spelling your first and last
3 name. Real loudly so we can hear.

4 THE WITNESS: Oh, Cierra Cipriani, C-i-e-r-r-a,
5 C-i-p-r-i-a-n-i.

6 THE CLERK: Thank you.

7 THE COURT: Counsel.

8 MR. HENDRICKS: Thanks, Judge.

9 DIRECT EXAMINATION

10 BY MR. HENDRICKS:

11 Q Cierra, how old are you?

12 A 14.

13 Q What's your date of birth?

14 A June 23rd, 1995.

15 Q How old were you back on December 14th of 2007?

16 A I think 12.

17 Q Okay. Did you go to school then?

18 A Yeah.

19 Q What school?

20 A Johnson.

21 Q Is that a junior high school?

22 A Oh, yeah.

23 Q Yes?

24 A Yes.

25 Q Okay, here in Las Vegas, Clark County, Nevada?

1 A Yes.

2 Q Okay. Did you know someone name the Amber Valles?

3 A Yeah.

4 Q How well did you know her?

5 A We just talked in school.

6 Q Did you have a similar class or same classes?

7 A Yeah.

8 Q Which one?

9 A PE.

10 Q PE?

11 A Yeah.

12 Q Okay. Now, recalling your attention back to December

13 14th of 2007, did you go to school that day?

14 A Yeah.

15 Q And did you speak with Amber that day?

16 A Yeah.

17 Q Had you guys made any plans for after school?

18 A She was going to come over or stay the night, and my

19 mom said no, not today.

20 Q Okay. Did that upset you?

21 A Kind of.

22 Q Okay. Do you know if it upset Amber?

23 A I don't think so.

24 Q So did you make those plans during school?

25 A No.

1 Q Was it after school?

2 A Yeah.

3 Q Okay.

4 A I think so.

5 Q So you get out of school and then you start making

6 phone calls?

7 A Yeah.

8 Q Who do you call?

9 A I called my mommy.

10 Q Do you recall what time it was?

11 A It was around like 2:20ish.

12 Q Okay. And you spoke with her?

13 A Yeah.

14 Q And she gave you the bad news?

15 A Yeah.

16 Q Okay. So what happened after you got the bad news?

17 A We kind of stood there and talked a little bit just

18 about school. And then we went our separate ways.

19 Q Did you live near school at that time?

20 A I think so.

21 Q Okay. Do you know if Amber lived near the school?

22 A I didn't -- I didn't know where she lived.

23 Q Now, you said she walked away from the school?

24 A Yeah.

25 Q Okay. You didn't walk with her, did you?

1 A No.

2 Q Now, about what time was it when you guys finally
3 left each other?

4 A Like 2:00 -- would say 2:30, around 2:30.

5 Q So it's at least 15 minutes after school had gotten
6 out, right?

7 A Yeah.

8 Q Okay. Would you say that most the kids had already
9 gone?

10 A No.

11 Q Were there still some kids around school?

12 A Yeah.

13 Q Okay. Do you know whether there were other kids on
14 the street at the time?

15 A I think so.

16 Q Okay. Did you walk home?

17 A I think I went to a friend's house.

18 Q Okay. Do you remember that person's name?

19 A Amber Mason (phonetic).

20 Q A different Amber?

21 A Um-h'm.

22 Q Is that a yes?

23 A Yeah.

24 Q Okay. Now, at some point did you find out about what
25 had happened that day?

1 A She told me the day after.

2 Q And you spoke with her about it?

3 A Yeah.

4 Q All right.

5 MR. HENDRICKS: I have nothing further, Judge.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. MANINGO:

9 Q Hi Cierra.

10 A Hi.

11 Q So the last -- on that day, December 14th, 2007, you
12 were with Amber after school for a few minutes?

13 A Yeah.

14 Q And then when you received the news that your mom
15 thought that it was not a good idea for her to spend the night,
16 the two of you went your separate ways?

17 A Yeah.

18 Q And so you didn't walk home with Amber that day?

19 A No.

20 Q You didn't -- you weren't on Alta with -- with Amber?

21 A No.

22 Q You didn't see her the rest of the day?

23 A No.

24 Q Or anything that happened with her that day?

25 A No.

1 Q Then I have no more questions. Thanks.

2 THE COURT: Any redirect?

3 MR. HENDRICKS: No thanks, Judge.

4 THE COURT: Is this witness free to go?

5 MR. HENDRICKS: Yes, thanks.

6 THE COURT: Thank you for your testimony. Please
7 step down. Call your next witness.

8 MR. SCOW: Amy Russell.

9 (Off-record colloquy).

10 THE CLERK: Once you arrive in the witness stand,
11 please remain standing. I'll swear you in.

12 AMY RUSSELL, STATE'S WITNESS, SWORN

13 THE CLERK: Thank you. You may be seated. And
14 please state your full name for the record and spelling both
15 your first and last name for me.

16 THE WITNESS: Amy Russell. First name A-m-y. Last
17 name R-u-s-s-e-l-l.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. HENDRICKS:

21 Q Amy, how are you currently employed?

22 A Property manager at 1111.

23 Q And what is 1111?

24 A It's an apartment community on the corner of
25 Warbonnet and West Charleston.

1 Q This apartment complex, how long have you been the
2 manager there?

3 A Little over two years.

4 Q So were you the apartment manager in May 2007?

5 A No, Debbie Cally (phonetic) was.

6 Q But you were employed there?

7 A I was employed at another property. I transferred to
8 that one on September of '07.

9 Q Okay. So I'm going to direct your attention December
10 of 2007, shortly after you became manager. Did you become
11 aware of police trying to locate a specific apartment?

12 A Yes. They originally had spoken with George who was
13 in the sales office. He in turn came to our office and told me
14 and his -- his description of the apartment, I realized I'd
15 seen it.

16 Q Okay. So he gave you a description of an apartment
17 the police were looking for?

18 A Yes.

19 Q And you recognized that description?

20 A Yes.

21 Q What did you do based on that description you
22 received?

23 A To make sure I was correct, I took the key and went
24 up to the unit. I opened the door. There was a black sofa, a
25 lot of candles. I just pulled the door shut, relocked it and

1 then contacted Metro.

2 Q And what you saw, it was consistent with the
3 description you'd been given?

4 A Yes.

5 Q And consistent with what you had previously seen or
6 remembered?

7 A Yes.

8 Q I'm going to show you what's been marked as -- marked
9 as State's Proposed Exhibits 37, 76. Do you recognize these
10 two documents?

11 A Yes.

12 Q And first in 37, what is this?

13 A This is -- there was a fire in the building in Unit
14 203 next door to 204, and that is part of the damage in the
15 unit.

16 Q Okay.

17 A It's actually a bedroom.

18 Q Is this Unit 204?

19 A Yes.

20 Q And this is how it looked on December 14th, 2007?

21 A Yes.

22 Q And No. 76, is this document you provided to us?

23 A Yes.

24 Q It's kind of a layout of the apartment complex?

25 A Yes.

1 MR. SCOW: At this time I'd move to admit State's
2 Proposed 37 and 76.

3 THE COURT: Any objection?

4 MR. MANINGO: I'm sorry, which ones are they? The
5 map and -- oh, no objection.

6 THE COURT: 37 and 76 will be received.

7 (Exhibits 37 and 76 admitted).

8 MR. SCOW: Okay.

9 BY MR. SCOW:

10 Q I'm going to show you first No. 76. This is the top
11 half of the document. And can you indicate on here where No.
12 204 is located?

13 A The top right first building. Unit 204 faces the
14 interior.

15 Q Okay. And if you touch the screen it will actually
16 put a mark.

17 A Okay.

18 Q Okay. I think I can see that. It's where you
19 indicated the top right corner of your complex. And that sits
20 on the corner of Charleston and Warbonnet Way?

21 A Yes.

22 Q So to the east, would that be where Buffalo is, on
23 this side of the map?

24 A Yes.

25 Q Okay. And showing you State's Exhibit No. 9, do you

1 recognize this?

2 A Yes, that's Unit 204.

3 Q Okay. And now State's Exhibit 37.

4 A That's the bedroom in 204.

5 Q That's where you described the damage?

6 A Yes.

7 Q And State's Exhibit 12, is this the description that
8 you were given and basically what you saw you when you went to
9 that unit?

10 A Yes, that's the living room.

11 Q Now, according to your records and knowledge, this
12 fire had occurred when?

13 A In May 23rd.

14 Q Of 2007?

15 A Yes.

16 Q So from May 23rd, 2007, this apartment was --

17 A Vacant. The entire building.

18 Q So the power and water would have been shut off?

19 A Yes.

20 Q Since May 2007?

21 A Yes.

22 Q So when we're talking December, that's at least seven
23 months?

24 A Yes.

25 Q Now, the -- after you found this apartment and

1 confirmed which one it was, did you call the police at that
2 time?

3 A Yes.

4 Q To inform them that you'd found this apartment?

5 A Yes.

6 Q And when they came, were you involved with giving
7 them consent to search that apartment?

8 A Yes.

9 Q So you're the property manager, it's not leased to
10 anybody because it had been vacant since May?

11 A Right.

12 Q Were you aware of whether Edward Adams had ever
13 leased Apartment No. 204?

14 A No, he hadn't.

15 Q And you've searched your records and you haven't been
16 able to locate --

17 A The resident that had been in there during the fire
18 was transferred on site to another unit, and his name was
19 Hindacot Wate (phonetic).

20 Q Okay. So not Edward Adams?

21 A No.

22 Q And have you searched through your records to see if
23 an Edward Adams had ever rented from that apartment complex?

24 A Yes. We have no records.

25 Q Of him ever renting that --

1 A Ever renting.

2 Q So he had -- based on your knowledge and
3 understanding, December 14th, 2007, he had no business being in
4 Apartment No. 204?

5 A Correct.

6 MR. SCOW: Pass the witness.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. MANINGO:

10 Q Good afternoon.

11 A Hi.

12 Q Do you know -- do you know who Amber Valles is?

13 A No.

14 Q Do you know who Edward Adams?

15 A Nope.

16 Q Have you ever seen the two of them together at your
17 apartment complex?

18 A No.

19 Q Do you have video on your properties?

20 A No, we don't.

21 Q Okay. So you're just testifying today about the
22 actual apartment itself?

23 A Yes.

24 Q You don't know any of the individuals involved in
25 this case?

1 A No.

2 Q Okay.

3 MR. MANINGO: No questions. Thank you.

4 THE COURT: Redirect.

5 MR. SCOW: Judge, I don't have anymore questions for
6 this witness.

7 THE COURT: Is this witness free to go?

8 MR. SCOW: Yes.

9 THE COURT: Thank you for your testimony. Please
10 step down. Call your next witness.

11 MR. HENDRICKS: Can I check real quick, Judge --

12 THE COURT: Yes.

13 MR. HENDRICKS: -- to see which order I'm going to
14 use? Judge, State's going to call Randy McPhail.

15 THE CLERK: And I'll swear you in once you arrive in
16 the witness stand.

17 RANDALL MCPHAIL, STATE'S WITNESS, SWORN

18 THE CLERK: Thank you. You may be seated. And
19 please state your name again for the record and spelling both
20 the first and last name.

21 THE WITNESS: My name is Randall McPhail, and the
22 first name is with it two Ls on the Randall. And McPhail is
23 M-c, capital P-h-a-i-l.

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

1 BY MR. HENDRICKS:

2 Q How are you employed?

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

5 Q You said senior. Does that mean you're old or you've
6 actually accomplished that?

7 A I accomplished that and I'm old, yes.

8 Q Okay. How long have you been with Metro?

9 A I've been with Metro for over 21 years. And I've
10 been in the crime scene analyst position for approximately 13,
11 just over 13.

12 Q Do you have to get or receive any type of specialized
13 training to become a crime scene analyst and then a senior
14 crime scene analyst?

15 A Yes. Basically I have over 20 years experience in
16 photography and that was how I started with it. I've also
17 completed university courses in science, math and business
18 related courses as well. I've completed the crime scene
19 analyst academy. I've completed the field training and
20 evaluation program for crime scene analyst.

21 I've completed American Institute of Applied Science
22 course in forensic science. I've tested for and been granted
23 certification as a senior level crime scene analyst and a
24 second level through the International Association For
25 Identification. I've also tested for and been promoted to both

1 second level and third or senior level crime scene analyst with
2 Metro.

3 I've completed numerous forensic courses through such
4 entities as the FBI, ATF, Northwestern University and others in
5 a wide variety of topics, including practical homicide
6 investigations, bomb blast investigations, different firearms
7 and fingerprint classes that I've completed. Also, crime scene
8 investigation classes and advanced photography and such.

9 And to date I've responded to over 4,000 crime
10 scenes. That includes things as simple as burglaries, all the
11 way up to sexual assaults and person crimes, homicides.

12 Q Okay. Now, were you employed in this same capacity
13 as a crime scene analyst or senior crime scene analyst back on
14 Saturday, December 15th of 2007?

15 A Yes.

16 Q And were you called out to a location located at 1111
17 Warbonnet, Building No. 1, Apartment 204 here in Las Vegas,
18 Clark County, Nevada?

19 A Yes.

20 Q And do you know why you were called out there?

21 A I was told that it was a sexual assault scene, and I
22 was called to help the detectives process that scene, pick up
23 any evidence, photograph the scene, fingerprint the scene.

24 Q Do you recall if you were called out during the day
25 or was it evening?

1 A It was about 5:30 at night. So it was nighttime that
2 time of year.

3 Q Okay. Did you respond to that location?

4 A Yes.

5 Q Were you with anyone else at the time?

6 A Yes, senior crime scene analyst John Fried (phonetic)
7 was with me at the time.

8 Q Now, did you two have different responsibilities once
9 you arrived there?

10 A Yes. We work together, but he branched off and was
11 doing a lot of the fingerprint work while I was doing some of
12 the rest of the -- the work that needed to be done at the
13 scene, the documentation and collecting of evidence.

14 Q Is that how you guys usually do it?

15 A We usually break it up. You make it go a little
16 faster when you break it up a bit.

17 Q Who took the photos?

18 A I did.

19 Q Who gathered up the evidence?

20 A I did.

21 Q And you actually brought all that evidence with you
22 -- or the evidence that we had requested, brought that with you
23 to court yesterday, correct?

24 A I did, yes.

25 Q Okay. Now, just to clarify, all that evidence that

1 you retrieved from that crime scene, you took it directly to
2 the evidence impound, correct?

3 A I took it to the lab, and impounded it at the lab.
4 The -- the evidence impound folks come and take it to permanent
5 storage facility and that's where I picked it up.

6 Q And then the next time you saw it is when you
7 retrieved it from that same location and brought it to court
8 yesterday and turned it over to the court clerk, right?

9 A Yes.

10 Q Okay. Now, except for one little tear in one of the
11 bags, everything appears to be intact, correct?

12 A It was.

13 Q And we'll go over that later. First what I'd like to
14 do is show you a number of photos here. If you could --

15 MR. HENDRICKS: And we've previously shown defense
16 counsel all these items. I think it's 9 through 51, some of
17 which have already been admitted, Judge. But I'm going to have
18 him look through all of those.

19 THE COURT: All right.

20 (Off-record colloquy).

21 MR. HENDRICKS: May I approach, Judge?

22 THE COURT: You may.

23 MR. HENDRICKS: Thanks.

24 BY MR. HENDRICKS:

25 Q Now, I'm going to have you look through 9 -- like I

1 said, some of these were already admitted as exhibits, some are
2 proposed exhibits. 9 through 51, if you could go ahead and
3 look through those rapidly and then we'll talk about each one.

4 A All right.

5 Q Okay. Now, are those all items that you recognize?

6 A Yes.

7 Q How so?

8 A I took those photos. I just remember them, remember
9 the scene, and recognize them as photos I -- I took.

10 Q So those are all photos that you took, and do they
11 accurately reflect that crime scene as it existed back on
12 December 15th of 2007?

13 A Yes.

14 MR. HENDRICKS: Judge, I don't know if Counsel has
15 any objection, but at this time I'd move to admit the ones that
16 haven't been admitted.

17 THE COURT: Offering again 9 through 51.

18 MR. MANINGO: I have no objection to those photos.

19 THE COURT: 9 through 51 are admitted without
20 objection.

21 (Exhibits 9 through 51 admitted).

22 MR. HENDRICKS: Thanks, Judge. Thank you, Counsel.

23 BY MR. HENDRICKS::

24 Q Now, let's go through these rapidly. State's 9, can
25 you tell us what that is?

1 A Yes, that is the -- the west facing side of Building
2 No. 1. And Apartment 204 is right here in this area.

3 Q And that's the apartment that you processed?

4 A Yes.

5 Q Okay. That might help if I flip it over and turn it
6 over. What about 10?

7 A This would be the front entry door leading into the
8 living room of Apartment 204.

9 Q Anything significant about that photo that you can
10 see from the outside?

11 A Well, the door's open, and I -- I don't know of
12 anything else. A little damage to the light hanging up. There
13 was fire damage inside of the apartment.

14 Q Okay. 11?

15 A This is the receiver or the strike plate for the
16 front entry door. And you can see it's plugged up with, what I
17 believed was cardboard at the time so that the door could
18 easily be pushed -- even if it was locked, it could easily be
19 pushed open to gain access.

20 Q Do you know if there were any other locks located on
21 that door or do you recall?

22 A I don't believe there was any.

23 Q Okay. 12?

24 A This would be the living room. Again, looking at the
25 front entry door here. And this is the sliding glass door

1 right here in this area and that is looking west. Had a couch
2 on the south side of the room, couple -- a pair of shoes here.
3 This candle actually happened to be lit when we walked in
4 indicating that somebody was there at some point near -- in the
5 recent past since the time we got there.

6 Just debris on the floor and that's the -- the living
7 room looking at the southwest corner.

8 Q Okay. If you could, look at that door and are there
9 two different locks or latches on that door?

10 A Yes.

11 Q There are, right?

12 A Yes.

13 Q Thank you. Now, 13.

14 A The lit candle in front of the couch and one of the
15 shoes. Oh, also, in that picture there's just a little bit of
16 a piece of tape or a wad of tape, blue masking tape that we
17 ended up collecting there.

18 Q 14?

19 A This is looking into the dining and kitchen area.
20 They had the breakfast bar here. Again, the south -- the south
21 wall contained the couch, debris on the floor in front of it.
22 There's a -- a white towel here. That blue tape again is right
23 there.

24 Q Let me ask you, if you were sitting on the floor in
25 front of the couch or on that couch, would you be able to see

1 inside of the sink inside of the kitchen?

2 A I don't believe so, no. It was below this breakfast
3 bar counter are here, and I don't believe you could see.

4 Q So you wouldn't be able to?

5 A No.

6 Q Thanks. 15.

7 A That's a complete shot showing the -- the couch, how
8 I found it that day. Again, wad of tape, wad of tape, towel,
9 the lit candle here.

10 Q 16.

11 A Closer up view showing one of the slippers that was
12 impounded as well, towel, wad of tape again.

13 Q 17.

14 A More complete shot showing the east cushion and the
15 center cushion of the couch.

16 Q Going to skip past. 19.

17 A This is the floor area just east of the couch, a vase
18 here. And it's just showing some of the debris on the floor.

19 Q 20.

20 A Pair of shoes that were on the floor in front of the
21 couch. The shoes actually had spider webs and a spider in this
22 area here. A small spider. It may have even been dead. It
23 wasn't moving around much.

24 Q 21?

25 A This is a -- sorry, it's a Wynn magazine that was on

1 the floor at the east end of the couch. And there was a little
2 package of hand lotion there as well opened.

3 Q Which end of the couch is that located on --

4 A It's on the east end.

5 Q -- in regard --

6 A Toward the dining room.

7 Q That's reflected in 22?

8 A Yes.

9 Q Okay. 23.

10 A This is looking down northward. This would be the
11 master bedroom here and the damage to the door. Again, there
12 was fire damage inside the apartment. The building obviously
13 had some kind of fire activity before I got there, long before.
14 And it looked like it had -- it was closed down for sometime.
15 This would be the laundry room here, and again, the breakfast
16 bar area right here.

17 Q 24.

18 A Showing northward view of the kitchen, wax on the
19 floor here, some of the debris on the floor, refrigerator,
20 sink, typical setting.

21 Q 25.

22 A Closer up view showing the sink. The sink actually,
23 since it was brought up, below the counter.

24 Q Okay, do you know what was located inside of that
25 sink?

1 A I don't remember. It -- there was some kind of
2 bottle of something. I don't know if it was hair spray or hand
3 lotion, something, I don't know.

4 Q Some sort of bottle of something?

5 A Yeah, I -- like a cosmetic bottle. Maybe lotion or
6 something. I can't remember.

7 Q Okay. Thanks. 26.

8 A Again, just showing the kitchen counters, the stove
9 inside. This would be the north wall here.

10 Q Does it show anything inside those cabinets?

11 A There was a few little things here and there, but it
12 was basically void of anything.

13 Q Now, I know you processed just about every room in
14 there, correct?

15 A We did.

16 Q Or at least photographed.

17 A Yes.

18 Q I'm going to skip through to 30. Tell us what that
19 is.

20 A This is actually the south bedroom. And it's just
21 showing some -- there was a black folder and a red folder right
22 here, as well as a cap, a baseball style cap that had Vons on
23 it with a question mark, v-o-n-s question mark, on the front.
24 Those were subsequently impounded after we located it.

25 Q In regards to paperwork, were you able to associate

1 any name to those documents?

2 A I don't believe we saw a name on them. They were
3 university -- some kind of university notebook. The other one
4 had Motorola, maybe a sales notebook or something. I didn't
5 see a name on it that I -- that I can recall.

6 Q 31.

7 A This is the common bathroom on the south side of the
8 residence.

9 Q Question, is there water in that toilet?

10 A There is, and there was no running water in the
11 building, so I -- I don't know exactly how it got there, but
12 there -- there was water in that toilet, not the other one.

13 Q Okay. But there is --

14 A And the master bedroom.

15 Q -- water there?

16 A Yes.

17 Q Okay. 32. A more complete look at the water there.

18 A Also, the lotion on the -- on the bathtub.

19 Q Bottle of lotion?

20 A Yes.

21 Q Okay. 33.

22 A Closer up view of the bathtub. Soap in the bag tub,
23 lotion.

24 Q 34.

25 A Kitchen counter. Several medication bottles, I

1 presume from the people who were living there prior to that
2 point. There was -- the same last name -- two or three
3 different medications there.

4 Q I'm going to skip ahead to 37.

5 A Yeah. This shows some of the fire damage in the
6 master bedroom. That was the only room that I really saw any
7 fire damage to it. Water damage -- oops I'm sorry. Water
8 damage up mere to the ceiling area. And most of the ceiling
9 components, the insulation, drywall, et cetera, falling down on
10 the floor. There's also a shirt and a purple towel hanging
11 from the curtain rod in this area, and broken blinds down here
12 from the window.

13 Q 38.

14 A That would be the closet inside the master bedroom.
15 That would be the on the east side of the master with a
16 bathroom area here open through that closet.

17 Q Anything else?

18 A I don't know for sure. I mean, I see blue stuff, and
19 I didn't note what this was. I'm not sure what that is at this
20 point, and I'd hate to say.

21 Q Okay. Now, you found blue tape --

22 A Yes.

23 Q -- in other areas of the house, correct?

24 A Yes.

25 Q Would it be a similar color to those items located

1 right there?

2 A Yes.

3 Q Thanks. 39.

4 A That would be the vanity. That would be on the north
5 side of the -- of the master bathroom. Drawers open. And a
6 lot of herbal supplements here, vitamins, et cetera. Drawer
7 pulled out here, and again, there's no water inside there.

8 Q 40.

9 A This is a photo strictly showing the locations of
10 fingerprints recovered from the sliding glass door leading to
11 the -- the patio area or the balcony on the north side of the
12 living room. And all these little tapes here are tapes that
13 were subsequently recovered as fingerprints.

14 Also, this table had some blue masking tape holding
15 the leaves down. I don't know exactly why, but that was the --
16 the same kind of blue masking tape that we found in the living
17 room was on that table.

18 Q Now, skipping to 42. Is that what you just
19 described?

20 A Yes.

21 Q Same color tape is found in that living room area?

22 A Correct.

23 Q 43.

24 A Again, we're just showing the fingerprint tape. This
25 is -- this is the other side. This is looking from the outside

1 in, so this area here's outside. And we're showing
2 fingerprints recovered on the exterior side of that sliding
3 glass window as well as the interior.

4 Q Now, you don't know what the point of entry was for
5 the individuals that were inside of that, correct?

6 A The front door was easily opened. That's all I know
7 about it. The -- this door was very difficult to open. I had
8 a real hard time with it. Somebody else opened it for me,
9 really.

10 Q The sliding glass door you say?

11 A Yes.

12 Q Okay.

13 A So I -- I sort of doubt that the sliding glass door
14 was used, but it could have been.

15 Q 44.

16 A This is the closeup view of those shoes. And I can't
17 really see -- up in this area here -- the reproduction isn't
18 very good, but up in this area here there was spider webs, and
19 there was actually a spider somewhere in here. Again, it was
20 -- I wasn't sure how old these were, if they belonged to
21 anybody, I just wasn't sure, but we ended up recovering them.

22 Q 45. I think we got Mr. Spider, if you can find it.

23 A Yeah, he's right here.

24 Q Okay.

25 A So the same shoes. I -- to me, they may have been

1 there for awhile, I'm not sure.

2 Q 46.

3 A This would be the fingerprint processing on the
4 interior side of the front entry door. All the black stuff
5 here is our fingerprint pattern. This white material here is
6 casting material, a plastic casting material that we call
7 Microseal. We use it on rough surfaces. The paint on this
8 door was obviously pretty rough.

9 Pardon me, we didn't feel like we were going to be
10 able to pull a fingerprint off with tape, so that's what we
11 usually go to when we have a problem with tape. And that will
12 fill in all the little grooves, get inside the grooves and pull
13 your fingerprint out more complete than tape would. So that's
14 why that's there.

15 Q Who did the prints at this scene?

16 A John Fried did most of the fingerprinting. I may
17 have helped him, but he did most of them and recovered most, if
18 not all of them.

19 Q Okay. 47.

20 A This shows items where fingerprints were recovered.
21 All these items here had fingerprints on them. Mostly candles,
22 there's a pill bottle or two that had fingerprints. The lotion
23 bottle on the bathtub had a fingerprint. That's the lotion
24 package that was in the living room. And candles throughout
25 the residence here.

1 Q Now, these items are obviously all black now?

2 A Yes.

3 Q Why is that?

4 A Our powder makes -- just ruins things when we
5 fingerprint, and it turned out black. Then we apply tape to
6 recover the prints.

7 Q 48.

8 A Closeup view of one of the items that was processed
9 with a candle inside.

10 Q 49.

11 A Another closeup view of a candle with tape on it.

12 Q 50.

13 A Same thing, candle with tape on it.

14 Q And 51.

15 A Wow, looks like a mess. I -- there's tape right
16 there. And this is the Wynn magazine there, and I'm not sure
17 what -- what I'm even showing there. I see tape on a couple
18 items. Maybe that's just it.

19 Q Okay. Now, you said you photographed the crime
20 scene, correct?

21 A Yes.

22 Q And you also retrieved some items that you thought
23 may have some evidentiary value --

24 A Yes.

25 Q -- correct?

1 A Yes.

2 (Off-record colloquy).

3 BY MR. HENDRICKS:

4 Q Now, in regards to State's Proposed Exhibit No. 2 --

5 MR. HENDRICKS: May I approach, Judge?

6 THE COURT: Yes.

7 MR. HENDRICKS: Thank you.

8 BY MR. HENDRICKS:

9 Q -- can you tell me what that item is?

10 A It's a wad of blue colored masking tape.

11 Q And where was that recovered from?

12 A I think I recovered a couple. Can I check my notes
13 just to make sure I get it right?

14 Q Please do.

15 A Thanks. That masking tape was recovered from the
16 floor inside the living room in front of the couch.

17 Q And that's that same masking tape that was reflected
18 in those photos?

19 A Correct.

20 MR. HENDRICKS: Judge, at this point, I mean, it's --
21 I don't know if Counsel wants me to open it up or not. I don't
22 think so. We'd move for the admission of State's Proposed --

23 THE COURT: State's offering 2.

24 MR. HENDRICKS: -- Exhibit 2.

25 THE COURT: Any objection?

1 MR. MANINGO: I have no objection, and I do not
2 require it be open now. It's up to Counsel how he wants to do
3 it.

4 MR. HENDRICKS: Yeah.

5 THE COURT: 2's admitted without objection.

6 (Exhibit 2 admitted).

7 MR. HENDRICKS: Yeah, I want to open it up.

8 THE CLERK: That would be 2 and 2-A.

9 THE COURT: 2 and 2-A.

10 THE CLERK: The contents. Thank you.

11 THE COURT: Is there a (indiscernible) exhibit?

12 MR. HENDRICKS: Yeah, 2 and 2-A is perfect.

13 THE COURT: 2 and 2-A is offered. Any objection to

14 A?

15 MR. HENDRICKS: Thank you, Judge.

16 MR. MANINGO: No, sir.

17 MR. HENDRICKS: (Indiscernible).

18 THE COURT: Both are in.

19 (Exhibits 2 and 2-A admitted).

20 BY MR. HENDRICKS::

21 Q Let me show you what's been marked as as State's --
22 for identification purposes State's Proposed Exhibit 6. Can
23 you tell us what that is?

24 A Yes, this is a package that contains the white bath
25 towel that was in -- in front of the couch. It contains a

1 white wash cloth that was on the shelf of the south bedroom
2 closet. And it contains a purple bath towel and the gray plaid
3 shirt that were hanging from the curtain rod inside the master
4 bedroom.

5 Q Okay. And all those items were taken, sealed up, and
6 placed inside of that larger bag?

7 A Yes.

8 Q Okay.

9 MR. HENDRICKS: Once again, Counsel, I don't know if
10 you want me --

11 MR. MANINGO: No objection, and no --

12 MR. HENDRICKS: -- to (indiscernible).

13 MR. MANINGO: -- requirement that it be opened. It's
14 up to you.

15 MR. HENDRICKS: Okay. Thank you. We'd move for the
16 admission of State's Proposed Exhibit -- and I think Ms.
17 Clerk's way ahead of me with 6.

18 THE CLERK: And --

19 MR. HENDRICKS: 6-A, 6-B, and 6-C.

20 THE CLERK: That's correct.

21 MR. HENDRICKS: Thank you.

22 THE COURT: Offered now. Hearing no objection, 6-A
23 and contents will be admitted.

24 (Exhibits 6-A, 6-B and 6-C admitted)

25 MR. HENDRICKS: Thank you, Judge.

1 BY MR. HENDRICKS:

2 Q In regards to State's Proposed Exhibit 7, do you
3 recognize that?

4 A Oh, yes. The one I wrecked yesterday getting out of
5 my car. This is a package that I -- I made, and it has cut
6 sections of the couch inside. I -- rather than bring the whole
7 couch in, I cut the -- the material, the leather like material
8 from the cushions, from the back cushions and from the arm
9 rests of the couch. And so there's eight items in here, each
10 representing those cushions and the -- the backings and the arm
11 rests.

12 MR. HENDRICKS: At this point I'd move for the
13 admission of State's Proposed Exhibits 7 and 7-A through 7-H.

14 THE COURT: Offered 7-A through H.

15 MR. MANINGO: No objection.

16 THE COURT: No objection.

17 MR. HENDRICKS: Thank you, Judge and Counsel.

18 THE COURT: 7 will be admitted. All right.

19 (Exhibits 7, and 7-A through H admitted).

20 BY MR. HENDRICKS:

21 Q Now, you said you didn't bring in the whole couch.

22 A Correct.

23 Q I mean, for obvious reasons. You couldn't carry it
24 in, right?

25 A That's part of it, yes.

1 Q Now, what did you find on these seat cushions that
2 you thought might be relevant?

3 A There were stains. There was some burn marks on it
4 as well in one cushion. But there were some stains. I wasn't
5 certain what they were. And rather than testing them out in
6 the field, I just cut them and impounded the whole thing so
7 that we would have all of the material necessary to -- if it
8 was important.

9 Q So how many different sections did you take out of
10 that couch?

11 A There's three different seat cushions, so I took the
12 seat cushion top part from that, cut them out, the backing from
13 that. So that's six pieces. The arm rests from both sides,
14 cut that out and collected it. Individually wrapped each one
15 of them, put them inside here, so there's eight pieces inside.

16 Q Okay. Just to clarify, I had made fun of you a
17 little bit earlier about having one little tear in this little
18 bag over here.

19 A Yes.

20 Q Now other than that tear on the bag, does it appear
21 to be in substantially the same condition and --

22 A The only other change on it is the blue tape on the
23 bottom that I -- I would put the red tape on top, that's my
24 tape, and bears my signature, the date of when I impounded it.
25 The blue tape means that it was subsequently examined in the

1 forensic lab and resealed.

2 Q Okay. Do you know who examined it?

3 A I really don't. Let me see if I can determine by
4 looking at it. I would hate to even venture a guess at that.
5 It's like P number 8691. I'm not sure who that is, I'm sorry.

6 Q But once you impound it, it may go off to the lab for
7 additional testing and then it comes back --

8 A To the evidence vault.

9 Q -- to the evidence vault and then you bring it in?

10 A Yes.

11 Q Okay.

12 (Off-record colloquy).

13 MR. HENDRICKS: Court's indulgence.

14 BY MR. HENDRICKS:

15 Q Now, I discussed earlier with you that you were the
16 one who photographed and basically recovered all the items that
17 you thought had evidentiary value. It was your partner's kind
18 of duty that day to (indiscernible).

19 A Correct.

20 Q And you said you also assisted him with that.

21 A I may have helped powder it. He actually would have
22 lifted the prints and turned them in in his name. I'm not sure
23 how that worked out exactly. It changes from scene to scene.

24 Q Okay. We'll go through that with him. Thank you
25 very much.

1 MR. HENDRICKS: I have no additional questions,
2 Judge.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. MANINGO:

6 Q One of those bags, sir, that -- that you collected
7 contains a wad of the blue tape.

8 A Yes, sir.

9 Q Okay. Do you know if that was ever sent to the lab
10 to have it tested for any kind of hair or skin that might have
11 been there?

12 A I did see a blue seal on that bag, so yes, I'm sure
13 it did.

14 Q Okay. Now, you don't know -- you didn't do the
15 testing on that?

16 A Correct.

17 Q So you don't know what the results are or anything
18 like that?

19 A Yes, sir.

20 Q Okay. Just to clarify, you said yes, so --

21 A I don't -- I don't know the results of that.

22 Q Okay. You took several photographs, correct?

23 A Yes.

24 Q Okay. And -- and it's part of your job to photograph
25 anything that you -- you think may have evidentiary value?

1 A Correct.

2 Q Okay. Did you photograph a gun in this case?

3 A No.

4 Q Okay. So in -- in all these pictures that we have
5 admitted into evidence so far, there's no picture of -- of a
6 firearm?

7 A That's correct. I didn't -- we didn't see a firearm
8 at the scene at all.

9 Q Okay. And when you're examining the couch and you're
10 cutting samples from the couch, obviously, you're lifting the
11 cushions up?

12 A Correct.

13 Q Okay. And you never found -- found a gun at the
14 scene?

15 A No, sir.

16 Q Okay. Now, I understand that as a police department
17 different units have different roles at a crime scene, correct?

18 A Correct.

19 Q Okay. Now, so I'm asking based on what your role was
20 in this case, it was to -- to take photographs of the scene,
21 correct?

22 A Uh-huh.

23 Q And to collect evidence?

24 A Yes.

25 Q Okay.

1 A And to fingerprint. I mean, both of us together, you
2 know, working that -- that role. As crime scene analysts,
3 that's what we do, yes.

4 Q And -- okay, so and also collect fingerprints?

5 A Correct.

6 Q Okay, okay. You don't conduct any interviews in the
7 case?

8 A No.

9 Q Okay. Based on your pictures and the evidence that
10 you collected, you can't come to any conclusion as to how many
11 people had come into that apartment in the last few days before
12 you had examined it?

13 A Correct.

14 Q Okay. And -- and you wouldn't be able to tell just
15 based on your role, whether or not anyone had consensual or
16 non-consensual sex in that apartment?

17 A That's correct. I mean, there was indications that
18 there was sexual activity. I found some stains that I believed
19 were semen at the -- at the scene. And that's why we collected
20 some of the material the -- the couch and the -- the towel.
21 So, you know, I knew that -- I assumed there was some sexual
22 activity. Whether it was consensual or not consensual, I had
23 no knowledge of that, no.

24 Q Okay. Okay. Then that's all I need to know. Thank
25 you, sir.

1 A You're welcome.

2 THE COURT: Redirect.

3 MR. HENDRICKS: Thanks, Judge. Just a couple.

4 REDIRECT EXAMINATION

5 BY MR. HENDRICKS:

6 Q He asked you about whether or not you found a gun
7 there.

8 A Correct.

9 Q You said you didn't, right?

10 A Yes.

11 Q That's the only location that you processed, correct?

12 A Yes.

13 Q You didn't go out to any other location, right?

14 A No.

15 Q You weren't aware of some guy named Edwards Adams at
16 the time, were you?

17 A No.

18 Q This guy right here, was he at that location at the
19 time?

20 A No.

21 Q Are you sure?

22 A Positive.

23 Q He wasn't there?

24 A Positive.

25 Q Okay. You didn't search him or process him at the

1 time, did you?

2 A No.

3 Q Okay.

4 MR. HENDRICKS: Nothing further, Judge.

5 THE COURT: Recross.

6 MR. MANINGO: No, nothing else.

7 THE COURT: Anything else for this witness?

8 MR. HENDRICKS: No. Thanks, Judge.

9 THE COURT: Thank you for your testimony. Please
10 step down. Ladies and gentlemen, we'll take our afternoon
11 recess at this point.

12 It is your duty not to converse among yourselves or
13 with anyone else on any subject connected with this trial.
14 Further, you may not read, watch or listen to any report of or
15 commentary on this trial by any medium of information,
16 including without limitation, newspaper, television or radio.
17 And you may not form or express any opinion on any subject
18 connected with this case until it's finally submitted to you.
19 15 minutes, ladies and gentlemen, as to our afternoon recess.
20 Follow Officer Reichert, please. ***stopped @ 3:01***

21 (Outside the presence of the jury).

22 THE COURT: The record should reflect we're outside
23 the presence of the jury. Anything to come before the court
24 outside the presence that either side needs to make a record
25 on? State?

1 MR. SCOW: No, Judge.

2 MR. HENDRICKS: No. Just --

3 MR. MANINGO: No, sir.

4 MR. HENDRICKS: -- letting you know, Judge, I know
5 we're -- we're moving fast now. We've got three witnesses
6 scheduled. One's going to be the fingerprint guy, which
7 shouldn't take extremely long. One is one that just took a
8 swab from him after a search warrant, took a couple photos of
9 him, which should be five minutes, if that.

10 Then the detective. And I'd imagine Mr. Maningo has
11 quite a few questions for him, so that -- that will probably
12 get us through the evening.

13 THE COURT: That's fine.

14 MR. HENDRICKS: So if I'm coming up before 5:00 I
15 don't want --

16 THE COURT: Basically what I want understand you
17 saying --

18 MR. HENDRICKS: I don't want you yelling at me.

19 THE COURT: -- Mr. Hendricks, is you're probably
20 going to be done in here in an hour, hour and 15, an and so
21 we'll --

22 MR. SCOW: It's possible.

23 MR. HENDRICKS: I'm just trying to make it so you
24 don't start yelling at me.

25 MR. MANINGO: Either way, we're way ahead of

1 schedule.

2 THE COURT: I'm saying, yeah, you put ten up today.
3 Try your case.

4 MR. MANINGO: Yeah.

5 THE COURT: I'm -- I'm not going to (indiscernible)
6 either side if we're, you know, 45 minutes in front of the
7 curb, okay. Anything else, Mr. Maningo?

8 MR. MANINGO: No, sir.

9 THE COURT: All right, see you in a few.

10 MR. HENDRICKS: Thanks, Judge.

11 MR. SCOW: Thanks, Judge.

12 (Court recess at 3:02 p.m. until 3:20 p.m.).

13 (In the presence of the jury).

14 THE COURT: This is C-241003, State of Nevada,
15 plaintiff versus Edward Michael Adams. Record should reflect
16 the presence of representatives of the State, defense. All
17 members of the jury panel appear to be present. State,
18 stipulate to the presence of the entire jury panel?

19 MR. SCOW: Yes, Judge.

20 MR. MANINGO: Yes, Judge.

21 THE COURT: Thank you very much. We are in State's
22 case in chief. Call your next witness.

23 MR. SCOW: Jonathan Fried.

24 THE CLERK: Sir, I'll swear you in once you arrive on
25 the stand, please. Remain standing.

1 JONATHAN FRIED, STATE'S WITNESS, SWORN

2 THE CLERK: You may be seated. Then please state
3 your name for the record.

4 THE WITNESS: Jonathan Fried.

5 THE CLERK: And spell both first and last name,
6 please.

7 THE WITNESS: J-o-n-a-t-h-a-n, F-r-i-e-d.

8 THE CLERK: Thank you.

9 THE COURT: Counsel.

10 MR. SCOW: Thank you, Judge.

11 DIRECT EXAMINATION

12 BY MR. SCOW:

13 Q How are you currently employed?

14 A Currently I'm assigned to the forensics lab as a
15 firearms examiner trainee in the Las Vegas Metropolitan Police
16 Department. But prior to about three weeks ago I was a senior
17 crime scene analyst with Metro.

18 Q So as of three weeks ago you were a crime scene
19 analyst --

20 A Yes.

21 Q -- with Las Vegas Metro?

22 A That's correct.

23 Q How long were you a crime scene analyst?

24 A Six years.

25 Q What kind of training -- briefly describe what kind

1 of training you go through to become a crime scene analyst.

2 A In addition to a crime scene analyst academy that's
3 about 160 hours followed by a three month field training
4 program. I also had about 5 or 600 hours of additional
5 training in specific areas of crime scene work and photography,
6 fingerprint processing, shooting reconstruction, bloodstain
7 analysis.

8 Q Depending on the type of scene you come upon is the
9 type of training you want to have in order to process that
10 scene?

11 A I'm sorry?

12 Q Do you receive training for whatever type of scene
13 you might come upon to be able to process that scene?

14 A Yes, that's correct.

15 Q So addressing this case specifically, were you asked
16 to go to the 1111 Apartments located at 1111 Warbonnet here in
17 Clark County, Nevada?

18 A Yes, I was.

19 Q That was December of 2007?

20 A That's correct.

21 Q Now, when you went to the scene, what was your main
22 role and who did you go with?

23 A I was -- had been advised that the scene was in an
24 apartment that there was no electricity and it was cold
25 evening. And I went initially to assist another crime scene

1 analyst, Randy McPhail, with whatever he had to do with the
2 scene. It was initially his -- the -- his call to go to the
3 scene. I went to assist him in any -- any way that I could.

4 Q Now, you went kind of as an assisting capacity?

5 A Yes.

6 Q This was December 15th, specifically?

7 A Yes.

8 Q Okay. Now, when you went to the scene, what was --
9 what was your assigned role at the time?

10 A After meeting with the other crime scene analyst and
11 the detectives that were at the scene, it was determined that I
12 would be assisting with the fingerprint processing, any of the
13 areas and any of the items inside that we were going to be
14 analyzing and looking for evidence.

15 Q And so specifically you were going around to search
16 for fingerprints in the apartment?

17 A That's correct.

18 Q Can you describe for the jury what you're
19 specifically looking for and latent print and that terminology?

20 A Sure. A latent print is sort of the residue that's
21 left behind from your fingers, moisture, oils, your sweat.
22 Latent prints are usually -- they're not -- the term means that
23 they're not visible, readily visible to the naked eye. So with
24 the use of various types of powders or casting agents, we'll
25 develop those prints and then recover them and preserve them

1 for -- for evidence to be analyzed by fingerprint examiners.

2 Q So when you dust, you put powder out, it will show
3 ridges of a fingerprint that's been left behind when you touch
4 a surface?

5 A Yes, that's correct.

6 Q I'm going to show you a few exhibits. 34, is this
7 the scene generally, kitchen area?

8 A Yes.

9 Q And did you -- you went through and dusted some items
10 in this photograph?

11 A Yes, that's correct.

12 Q What items would those -- would those be, if you
13 remember, specifically?

14 A Just about every glass or item, prescription bottles.
15 You can see there there's a small like a vase or candle holder
16 right there, this lamp oil bottle. All these things sitting on
17 top of the breakfast bar were -- were dusted for prints.

18 Q Dusted. You didn't recover everything, but you
19 dusted everything?

20 A Right.

21 Q Now, showing you Exhibit 29. Is there anything there
22 that you dusted for prints?

23 A Specifically the -- there's a candle here on the
24 floor in a glass jar.

25 Q Okay. Is that what you're referring to here?

1 A Yes, that's right. I believe that's the -- I think
2 it's the south bedroom or what we deemed the south bedroom.

3 Q Okay. Showing you State's Exhibit 21, is that
4 another item you were searching for prints?

5 A Yes. It's -- this is actually two items. This
6 magazine, I believe it was -- it was called Wynn magazine, and
7 then an open lotion packet that was on top of the magazine.
8 That was how we found it and both items were dusted for prints.

9 Q Okay. And those shots were items without any dust on
10 them, so pre-dusting for prints?

11 A Yes.

12 Q Showing you Exhibit 40, what does this show?

13 A That's the sliding glass door with -- and this is the
14 fingerprint tape that's applied after -- after I applied the
15 dust and located some areas where there was ridged detail
16 observed. And that's how we go about recovering prints off of
17 smooth surfaces.

18 Q After you dust, you see what might be a latent
19 print --

20 A Right.

21 Q -- and you put tape on it?

22 A Yes.

23 Q What does the tape do?

24 A What happens is and what you're seeing in this
25 photograph up here is a flash -- oh, sorry about that. I don't

1 know what I did there.

2 Q (Indiscernible).

3 A Okay. The bright light up near the top of the photo
4 is the flash of the camera. That's the other crime scene
5 analyst taking a photograph to show the locations of all those
6 pieces of tape. And if you think of a piece of tape as a -- as
7 a window, once that photograph is taken to show where the tape
8 is, we pull the tape off and place it down onto a white card
9 and the dust is typically black or darker in color so that
10 there's a contrast.

11 And the tape acts as a way to see the print exactly
12 as it was seen on the window. And it allows the fingerprint
13 examiners to conduct comparisons between those print and other
14 -- other prints that were recovered and known prints from
15 people, and the tape will protect what's underneath. So it
16 allows them to -- it allows the cards to be handled as -- as
17 evidence without destroying the print.

18 Q So the tape will act to protect and preserve the
19 print as you find it?

20 A Yes.

21 Q And then in 43, is this similar, just the other side
22 of that door?

23 A Yes, that's the outside of the door. There were a
24 couple of lifts from there.

25 Q And 47, some of the jars and prescription bottles

1 that you'd mention before, is this items that you were able to
2 recover prints from?

3 A Yes. These were removed after the print processing
4 was conducted. We moved them to the kitchen counter to group
5 them together to photograph them, where all the pieces of tape
6 are on them. Just to orient you a little bit, under the
7 microwave here there's a -- this is the magazine, the lotion
8 packet that was on the magazine. This right here was a lotion
9 bottle that was on the side of the tub in one of the bathrooms.
10 And then we have some of the candle jars and prescription
11 bottles.

12 Q Okay. And then in 48, is that just a closeup of one
13 of the jars?

14 A Yes, that's -- actually that jar was exactly --
15 that's where that jar was on the -- on the kitchen sink, that
16 vase, candle holder looking jar.

17 Q So same with 49, where this vase was on that counter?

18 A Yes, that's on the breakfast bar above the sink.

19 Q Now, 51, more of the items that were put on the
20 counter to photograph?

21 A Yep. Yes, that is correct.

22 Q And this again, is the lotion packet that was seen in
23 the other photo?

24 A I believe so, yes. It's just the other end of the
25 counter. There were some more items here -- here off to the

1 right. And this is that magazine again and the lotion packet
2 here.

3 Q Okay. Now, you've described previously different
4 techniques for lifting latent prints or finding them, dust and
5 then a casting method. Did you use that in this case?

6 A Yes, I did. The dust works great on a smooth surface
7 such as glass or like the outside of a car. But if you think
8 about your front door, it's kind of -- maybe it's glossy from
9 the paint, but there's a rough -- there's a texture to it. So
10 the -- the dust will show up -- it will show the prints, but to
11 recover that, the tape can't get on there flat enough. The
12 texture of the wood makes the tape bubble up.

13 So we have a casting material that can be spread out
14 right on top of the powder, which is adhering to the print, and
15 then after the casting material dries, it peels right off the
16 surface. But now, if you think about it, your print is
17 actually reversed because while the tape we're looking right
18 through the tape as if it was a piece of glass, the casting
19 material is on there, but now we have it flipped over.

20 So what's done then is a photograph is taken of the
21 powder on the opposite side of that material showing the print.
22 And then that photograph is what's used by the latent print
23 examiners to do their comparisons.

24 Q So they get the reverse reversed.

25 A Right.

1 Q So it's back to normal?

2 A So they rereverse it so it's an original image. And
3 then the casting materials are -- they're booked as -- as
4 actual evidence. And the photographs are forwarded to the --
5 the fingerprint examiners to do their comparisons.

6 Q So showing you State's 46, is this an example of the
7 casting you did in this case?

8 A Yes, you can see the -- the dark is the powder that's
9 -- makes a nice mess of the door. And then there are two lifts
10 here, the smaller one right by the door knob and then the
11 larger one above the dead bolt.

12 MR. SCOW: Now, I'm going to approach the witness, if
13 I may, Judge.

14 THE COURT: Yes.

15 (Off-record colloquy).

16 BY MR. SCOW:

17 Q Showing you what's been marked for identification as
18 State's Proposed Exhibit 4.

19 A Okay.

20 Q And State's Proposed Exhibit 78, which includes 78-1
21 through 71 -- 78-14. Do you recognize these items?

22 A Yes, I do.

23 Q And starting with Proposed Exhibit 4, what is this?

24 A This is an envelope containing those two casting
25 lifts that I recovered from the door.

1 Q That we saw in that last photograph?

2 A Yes.

3 Q And it's the same or substantially the same condition
4 as when you impounded it?

5 A It's been opened and then resealed by one of the
6 latent print examiners to look at the -- they like to sometimes
7 look at the actual original evidence as opposed to just the
8 photograph that was taken.

9 Q Okay.

10 MR. SCOW: At this time I'd move to admit State's
11 Proposed Exhibit 4.

12 THE COURT: Any objection?

13 MR. MANINGO: No objection.

14 THE COURT: 4's admitted.

15 (Exhibit 4 admitted).

16 BY MR. SCOW:

17 Q And now looking at 78.

18 THE CLERK: (Indiscernible).

19 THE COURT: And sub exhibits of 4 are offered?

20 MR. SCOW: And the contents, A and B of 4, yes.

21 THE COURT: 4 and contents are admitted.

22 (Exhibit 4, A and B admitted)

23 BY MR. SCOW::

24 Q Now, looking at 78 with its contents, 78-1 through
25 14, do you recognize these items?

1 A Yes, I do.

2 Q What are these?

3 A Two of these are photographs that I took of the -- of
4 the prints developed on the casting material.

5 Q Okay, and for the record those two that you're
6 looking at are 78-1 and 78-2.

7 A And the remainder are the tape lifts off of various
8 surfaces inside the apartment that I recovered.

9 Q So these are the tape that you removed --

10 A Yes.

11 Q -- from the surface after dusting and you put it
12 directly on that card?

13 A That's correct.

14 MR. SCOW: At this time I'd move to admit State's
15 Proposed Exhibits 78 with contents, 78-1 through 78-14.

16 THE COURT: Any objection?

17 MR. MANINGO: No, sir.

18 THE COURT: 78 and contents are admitted.

19 (Exhibits 78-1 through 78-14 admitted).

20 BY MR. SCOW:

21 Q And just to give the jurors an idea of these cards
22 now. When you created these cards, did you also create a label
23 that indicates the event number, yourself, and the location and
24 description of where the print was located?

25 A Yes, I do.

1 Q And looking at this particular card, 78-3, what does
2 it describe here?

3 A Reading from top to bottom, you can see that it's a
4 -- a Las Vegas Metropolitan Police Department latent print card
5 label that is then -- it's -- the -- the card itself is just a
6 white index. I generated the label on a computer and stuck it
7 on the card after the tape was on there with the prints on it.

8 We have the event number up in the upper left-hand
9 corner from -- with the year '07, December 14th.

10 Q If you can touch the screen where you're in
11 indicating that.

12 A Oh, okay, sorry. The year '07, December 14th. And
13 the event number unique to this event was 1983, my name -- my
14 name here, the date that I recovered the prints, which was on
15 the 15th. We have the -- the victim's name listed here, the
16 address of the prints of where -- where the investigation was
17 conducted. And then this print location is specifically where
18 that lift came from.

19 So all the labels will have the same information up
20 on the first two lines, and then the print location label will
21 be unique to each -- each lift that's recovered.

22 Q So for this particular card, again, 78-3, the
23 location was the small open lotion packet located on top of the
24 Wynn magazine under the couch. That's what you put here for
25 the location?

1 A That's correct.

2 Q And then showing you 78-2, this is one of the
3 photographs you took of the casting lift you took from the
4 door --

5 A That's correct.

6 Q -- from one of the two?

7 A That's correct. And the -- when the photograph is
8 taken, this -- this scale is included with -- which has the
9 event number up here, my initials and my number. And then I
10 had labelled it an evidence item two. The label for that card
11 is actually on the reverse side just because the casting
12 material took up most of the photograph.

13 And when we take those photographs, we include the
14 scale so that it can be made exactly one to one. When you lift
15 the -- the tape off of a surface with the -- the dusted prints
16 on it, that's -- that's the original. What you see is what you
17 get, so that is already in the one to one real ratio. But when
18 you're taking a photograph of something, in order to show that
19 it's not smaller or bigger than actual size, the scale's
20 included.

21 So after all of that was in there, there was no room
22 on the photograph for the actual label. So that's on the
23 reverse side of the card.

24 Q Okay. Now showing you State's Proposed Exhibit 77
25 with contents, contents being 77-1 through 77-21. Do you

1 recognize these?

2 A Yes, I do.

3 Q And these are similar to what we've just seen, more
4 of your latent --

5 A Yes.

6 Q -- print cards?

7 A Yes, that's correct.

8 MR. SCOW: And at this time I'd move to admit
9 Proposed 77 and contents.

10 THE COURT: Any objection?

11 MR. MANINGO: No objection.

12 THE COURT: There being no objection, 71 -- 77 and
13 contents are admitted.

14 (Exhibits 77-1 through 77-21 admitted).

15 BY MR. SCOW:

16 Q The only one I'll go through on this is the last one,
17 77-21. What is this card here?

18 A This -- when there's a -- when there are a number of
19 lifts recovered from the same item, sometimes we'll take --
20 we'll just draw a quick sketch on a card to make it -- make it
21 its own card to include with the packet to aid the fingerprint
22 examiner to show where -- to orient them as to where these
23 prints might have been recovered from.

24 So this is a rough sketch of a -- a sliding glass
25 door, the interior side. The handle's here on the right. And

1 instead of just labelling each lift interior side of the
2 sliding glass door and doing that ten times, I assigned each
3 one a -- a separate number. So it's the interior side of the
4 door, print 1, 2, 3, 4 and so on up to number 10.

5 Q So this is the diagram -- and looking at 77-1,
6 interior side of sliding glass door number 1 of 10?

7 A Yes, that's correct. So that would correspond to
8 where specifically that piece of tape was lifted from on the
9 interior side of the door.

10 MR. SCOW: Judge, I'm pass the witness.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. MANINGO:

14 Q Sir, if I told you that Mr. Adams was -- was in that
15 apartment at that scene, would you be surprised to also find
16 his fingerprints there?

17 A No, not necessarily.

18 Q Okay. And the same with -- with Amber Valles. If it
19 was already known that she was there, would you also expect to
20 maybe find her fingerprints?

21 A Yes.

22 Q Okay. Did you lift any fingerprints from a firearm
23 in this case?

24 A I don't recall there being a firearm, no.

25 Q Okay. When you -- when you pulled these -- when --

1 excuse me, let me rephrase that. When you look for
2 fingerprints, the goal of -- of finding fingerprints would be
3 for identification purposes; is that fair to say?

4 A Yes.

5 Q To identify who was there, which person was at that
6 scene?

7 A Yes.

8 Q Okay. It doesn't go towards the other issues of what
9 those people were thinking at the time, correct?

10 A No.

11 Q Just ID?

12 A Yes.

13 Q Okay.

14 MR. MANINGO: That's -- that's all I have. Thank
15 you.

16 THE COURT: Redirect examination.

17 MR. MANINGO: No more questions.

18 MR. SCOW: Nothing, Judge.

19 THE COURT: Is this witness free to go?

20 MR. SCOW: Yes, Judge.

21 THE COURT: Thank you for your testimony. Please
22 step down. Call your next witness.

23 MR. HENDRICKS: Thank you, Judge. State calls Shayla
24 Joseph.

25 JUROR NO. 7: Excuse me, your Honor, I realize I know

1 Shayla Joseph. Just met her one time socially.

2 THE COURT: Okay.

3 JUROR NO. 7: I'm recognizing the name now.

4 THE COURT: Parties approach.

5 (Off-record bench conference).

6 THE CLERK: I'm swear you in once you arrive in the
7 witness stand.

8 SHAYLA JOSEPH, STATE'S WITNESS, SWORN

9 THE CLERK: Thank you. You may be seated. And
10 please state your name for the record, spelling both first and
11 last name.

12 THE WITNESS: Shayla Joseph, S-h-a-y-l-a. Joseph,
13 J-o-s-e-p-h.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MR. HENDRICKS:

17 Q Good afternoon, Ms. Joseph?

18 A Hello.

19 Q How are you employed?

20 A I'm a crime scene -- a senior crime scene analyst for
21 Las Vegas Metropolitan Police Department.

22 Q And how long have you been so employed?

23 A Five and a half years.

24 Q Employed with Metro all that time?

25 A I've been employed five and a half years with Metro.

1 I did go to Washoe County for a short time in between.

2 Q Okay. Doing the same thing there?

3 A Yes, sir.

4 Q Okay. Now, were you employed in this same capacity
5 on or about January of 2008?

6 A Yes, sir.

7 Q Now, let me first ask you, did -- did you receive any
8 training in regards to this particular occupation?

9 A Yes, sir. I have a bachelors degree and I have
10 approximately 1350 hours worth of training on the job.

11 Q What about other particular training in regards to
12 seminars or -- or continuing education? Have you done any of
13 that also?

14 A And that's included in the 1350. I have a Crime
15 Scene Analyst Academy that I attended when I was new to the
16 job. And I have extensive seminars, training, classes, things
17 such as that.

18 Q Okay. Now, specifically, back on January 13th of
19 2008, were you called out to do some fingerprint rolling, some
20 photographing, and also retrieving a buccal swab?

21 A Yes, sir.

22 Q And did you eventually do that in this particular
23 case?

24 A Yes, I met with Detective Lebario and did so.

25 Q Okay. And that came with the request of Detective

1 Gabe Lebario?

2 A Yes, sir.

3 Q Okay. And did you eventually make contact with an
4 individual that was presented to you as being a Mr. Edward
5 Adams?

6 A Yes, sir.

7 Q And do you know if that person is present here in the
8 courtroom today?

9 A Yes, sir.

10 Q Okay. Can you please point to that individual and
11 describe an article of clothing that person is wearing this
12 afternoon?

13 A The gentleman in the white button up shirt.

14 Q Okay.

15 MR. HENDRICKS: May the record reflect identification
16 of the defendant, your Honor?

17 THE COURT: It will.

18 MR. HENDRICKS: Thank you.

19 BY MR. HENDRICKS:

20 Q So you eventually made contact with the defendant at
21 the request of the detective, correct?

22 A Yes, sir.

23 Q Did you, in fact, take some photos of that
24 individual?

25 A Yes, sir.

1 Q Okay.

2 MR. HENDRICKS: Judge, having previously shown
3 defense counsel what's been marked for identification purposes
4 State's Proposed Exhibit 69, 70, 71 and 72. May I approach the
5 witness?

6 THE COURT: You may.

7 MR. HENDRICKS: Thank you.

8 BY MR. HENDRICKS:

9 Q Ms. Joseph, I now show you State's Proposed Exhibit
10 69, 70, 71, 72. Do you recognize those items?

11 A Yes, sir, these are the photographs that I took.

12 Q Okay. And who's represented or who's depicted in
13 those items?

14 A The defendant, sir.

15 Q And is that the same individual that presented to you
16 as Edward Adams?

17 A Yes, sir.

18 Q Okay. And there's a -- a couple of different shots
19 in there, correct?

20 A Yes, sir.

21 Q And what was the purpose of that?

22 A To show -- I take a series of photographs whenever I
23 photograph anybody. And they're to show their identification
24 and condition. And if the detective asks for anything
25 specific, then I'll photograph that as well. Obviously, we

1 have the photos here with the --

2 Q Okay. Well, let me ask you --

3 A Okay.

4 Q -- first, do those accurately and truly depict Mr.
5 Adams as he existed on January 13th, 2008?

6 A Yes, sir.

7 MR. HENDRICKS: Judge, at this point I'd move for the
8 admission of State's Proposed Exhibit 69, 70, 71 and 72.

9 THE COURT: Any objection?

10 MR. MANINGO: Yes. Judge, I would reassert my
11 relevance objection that I made earlier in the trial regarding
12 these photos.

13 THE COURT: The objection was relevancy. Noted again
14 for the record. Overruled. 69, 70, 71, 72 are admitted,.

15 (Exhibits 69, 70, 71 and 72 admitted).

16 MR. HENDRICKS: Thank you, Judge.

17 BY MR. HENDRICKS:

18 Q Let's specifically talk about 69. What's depicted in
19 69?

20 A This is --

21 Q You know what, let's do this. If you could, just go
22 ahead and look at your screen there. Showing you No. 69. Is
23 that a picture of Mr. Adams?

24 A Yes.

25 Q And what does that depict?

1 A It depicts his face, upper body, his mouth open.

2 Q Is that something that you normally do or that came
3 at the request of the detective to get certain photographs of
4 this suspect?

5 A There's photographs in here that were at the specific
6 request of the detective, yes, sir.

7 Q Okay. In regards to State's 70.

8 A Identification shot to show the -- Mr. Adams' face
9 and who he is.

10 Q Now, did you -- were you familiar with the specific
11 facts of this case or identifications made by any witnesses
12 whatsoever?

13 A Absolutely not.

14 Q Okay. It's your job to capture him as he existed on
15 that date, correct?

16 A And anything specifically that the detective asked me
17 to -- to photograph.

18 Q Okay. Was he present with you when you were
19 photographing him?

20 A Yes.

21 Q Okay. 71.

22 A It's not showing up the best on this screen, but it's
23 going to be the left forehead. There's a mark on the left
24 forehead area of -- and this is Mr. Adams again.

25 Q And No. 72.

1 A Again, a picture of his face, specifically showing
2 the mouth area.

3 Q Okay. Now, there's some other responsibilities that
4 you had on that date, correct?

5 A Yes, sir.

6 Q Did you, in fact, roll Mr. Adams' fingerprints at
7 that time?

8 A Yes.

9 Q And what type of procedure do you use to do that?

10 A In this particular case I did major case prints, and
11 that's going to include not only the fingerprint detail that
12 you would normally have, but it's going to include the majority
13 of the latent print detail surfaces. Not only is there prints
14 on your finger tips, but there's prints on your entire palm
15 area. So I collected all of the print detail.

16 Q From both hands?

17 A Yes.

18 Q Okay. And additionally, you had a search warrant to
19 -- and the detective was present with you, and you obtained a
20 -- what we call a buccal swab, correct?

21 A Yes.

22 Q And how is it that you obtained that?

23 A A buccal swab is a kit that includes a swab or a
24 small brush that you put on the inside of the cheek and you rub
25 it on the inside of the cheek to collect cells, nucleated cells

1 that are going to contain DNA that can be used at a later date
2 and time for a comparison.

3 Q Okay. Let me back you up now. When you talk about
4 fingerprints, are you an actual fingerprint examiner?

5 A No, sir.

6 Q So you just retrieve the prints as an exemplar; would
7 that be safe to say?

8 A Yes, sir.

9 Q And someone else tries to look at those fingerprints
10 and compare them to -- to something they may have lifted from a
11 crime scene?

12 A Exactly.

13 Q Okay.

14 A Well, that somebody may have lifted from a crime
15 scene. Not necessarily the latent print examiner.

16 Q Okay. In this particular case it wasn't you lifting
17 the prints from a crime scene, correct?

18 A Not for this case, no, sir.

19 Q And in regards to the photos, that's something that
20 you just captured and then turned over to the lead detective?

21 A The photographs?

22 Q Correct?

23 A I -- I take them and impound them and then the
24 detective has access to them. But I do -- I take the
25 photographs, the disks that they're on with me, impound them

1 and they go up to the photo lab.

2 Q Now, finally with the buccal swab, you said that that
3 is taken to eventually be used or potentially in some DNA
4 examination?

5 A It will -- it can be used to create a profile of DNA
6 that can later be used to compare with an unknown DNA profile.
7 Like the latent prints are an exemplar for a print that may be
8 recovered from a scene later. The DNA can be used as an
9 exemplar for DNA that may be recovered from a scene at a later
10 -- or previous, later -- or later date and time.

11 Q So you're not the fingerprint examiner, right?

12 A Exactly.

13 Q And you're not the person who does the DNA
14 comparisons, correct?

15 A I do neither of those.

16 Q So it would be fair to say you just retrieved all of
17 this evidence, correct?

18 A Yes, sir.

19 Q Okay.

20 MR. HENDRICKS: I have no additional questions,
21 Judge.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. MANINGO:

25 Q Hi.

1 A Hello.

2 Q Your role in this case was the -- was the collection
3 of certain evidence, correct?

4 A Yes, sir.

5 Q And that was directed by the detective?

6 A Yes, sir.

7 Q Detective Lebario?

8 A Yes, sir.

9 Q Okay. You -- you did not conduct any interviews of
10 witnesses in this case?

11 A No, sir.

12 Q Okay. You did assist in taking the fingerprints and
13 palm prints of Mr. Adams?

14 A Yes, sir.

15 Q Okay. And one of the purposes of -- of getting
16 prints would be for identification purposes; is that fair to
17 say?

18 A Like I'm not sure I understand the question, sir.

19 Q In order to compare, let's say, fingerprints that may
20 be found at a scene so you could identify the individual --

21 A Yes, sir.

22 Q -- that would be a purpose of fingerprints?

23 A Yes, sir.

24 Q Okay. And taking the photographs, those might also
25 be used for identification purposes?

1 A They may be, yes, sir.

2 Q Okay. And you called one of those photos an ID
3 photo.

4 A To -- to identify who the person is. Sometimes
5 they'll identify who they are in attachment to like an injury
6 that I photo or identify who they are to the condition that I'm
7 photoing. But it's an identification photo, yes, sir.

8 Q Okay. And then you also took a buccal swab, correct?

9 A Yes, sir.

10 Q And that could be used for DNA analysis?

11 A Yes.

12 Q And -- and again the DNA analysis can be used to show
13 identification, to show that an individual, maybe it's their
14 blood at the scene, or it's maybe their saliva or something
15 like that?

16 A Yeah, it can be used for comparison, that's a known
17 sample to an unknown sample.

18 Q Okay. Now, while you're doing all this, you're not
19 informed about the details or the nature of this case, correct?

20 A Not necessarily.

21 Q Okay. And you --

22 A On this one I --

23 Q -- you wouldn't be aware of whether or not
24 identification was even an issue in this case?

25 A On this one, no, and not necessarily, I --

1 Q Okay.

2 A -- don't always get that information. Especially on
3 a search warrant.

4 Q Okay. Great. And -- and you didn't come into
5 contact with any firearm in this case, correct?

6 A No. I -- all I did was the -- the photographs, the
7 buccal swab and the major case prints.

8 Q That's it? Okay, thanks.

9 A Thank you.

10 THE COURT: Redirect.

11 MR. HENDRICKS: Nothing. Thank you, Judge.

12 THE COURT: Is this witness free to go?

13 MR. HENDRICKS: Yes.

14 THE COURT: Thank you for your testimony. Please
15 step down.

16 THE WITNESS: Thank you, your Honor.

17 THE COURT: Ladies and gentlemen, we need to take a
18 short recess. It is your duty not to converse among yourselves
19 or with anyone else on any -- with anyone else on any subject
20 connected with this trial. Further, you may not read, watch or
21 listen to any report of or commentary on this trial by any
22 medium of information, including without limitation, newspaper,
23 television or radio. You may not form or express any opinion
24 on any subject connected with this case until it's finally
25 submitted to you. About five minutes, ladies and gentlemen.

1 (Outside the presence of the jury).

2 THE COURT: Record should reflect we're outside the
3 presence of the jury. Record should further reflect that
4 parties approached after Juror No. 7, Ms. Clayton, indicated
5 that she had knowledge, independent familiarity with the
6 previous witness, Ms. Joseph, that was just called. And
7 parties agreed to address this issue out -- well, after the
8 witness had completed her testimony.

9 It would be my inclination to call Ms. Clayton back
10 in to -- to inquire as to her -- the base of her knowledge.
11 I'll give each side an opportunity to inquire and make
12 decisions on whether or not you want to challenge her as
13 consequence of this disclosure.

14 MR. HENDRICKS: No, I think that's a great idea just
15 to -- just to have that on the record. Just to make sure Mr.
16 Maningo and the defendant's rights are preserved just in case.

17 MR. MANINGO: Agreed.

18 THE COURT: That's exactly what I want to do. Could
19 you go ask Danny to bring Juror No. 7, please.

20 (Juror No. 7 present)

21 THE COURT: Thank you. Record will reflect Ms.
22 Clayton's returned to the courtroom, Juror No. 7.

23 Ms. Clayton, you indicated that you had some
24 knowledge or you know Ms. Joseph, the previous witness called,
25 so we've taken you outside the presence of the rest the jury to

1 inquire about how you know Ms. Joseph. Could you tell us a
2 little bit about that relationship.

3 JUROR NO. 7: When I -- since we're having crime
4 scene examiners here, and I heard her name and I thought oh, my
5 God, I've met -- we have a -- Shayla and I have a mutual friend
6 named Tim Speese (phonetic), who's a police officer. And I met
7 Shayla once, perhaps twice, over the summer socially at -- I
8 mean, at a bar, you know, just because we have mutual friends.
9 And she and I spoke a few minutes.

10 I don't even think she probably would have even
11 recognized me, honestly. But she has a distinctive name. And
12 again, when (indiscernible) and again, she's not somebody that
13 I consider to be -- you know, she is somebody that I met once,
14 possibly twice and we have a very good mutual friend.

15 THE COURT: All right. State, any inquiry of Ms.
16 Clayton as a consequence of that disclosure?

17 MR. HENDRICKS: No. Thanks, Judge.

18 THE COURT: Ms. Clayton, anything about that contact,
19 as you described with Ms. Joseph, that might affect your an
20 ability to be fair and impartial in this case?

21 JUROR NO. 7: No, not at all.

22 THE COURT: Mr. Maningo, any questions?

23 MR. MANINGO: Ms. Clayton, just because you have --
24 you've met that witness in your social life, would you give her
25 testimony any more weight than you would any of the other

1 witnesses?

2 JUROR NO. 7: No, sir.

3 MR. MANINGO: Okay, then -- then I have no problem.

4 JUROR NO. 7: I apologize, Judge.

5 THE COURT: It's all right. That's what it's all
6 about. Thank you. We'll be with you in just a few minutes.

7 JUROR NO. 7: Okay.

8 (Juror No. 7 exits the courtroom)

9 THE COURT: Record should reflect Ms. Clayton has
10 left -- Juror No. 7, Ms. Clayton, has left the courtroom. Any
11 challenge to Ms. Clayton remaining on this jury, either side,
12 as a consequence of this disclosure? State?

13 MR. HENDRICKS: None from the State. Thank you,
14 Judge.

15 THE COURT: None from the State. Mr. Maningo?

16 MR. MANINGO: No, Judge.

17 THE COURT: All right. Then we'll get the jury back
18 in here and continue.

19 (Off-record colloquy).

20 (Court recessed at 3:57 p.m. until 4:03 p.m.)

21 (Outside the presence of the jury).

22 THE COURT: This is C-241003, State of Nevada versus
23 Edward Michael Adams. Record should reflect the presence of
24 the representatives of the State, defense, outside the presence
25 of the jury.

1 Mr. Adams, I need to explain to you some important
2 constitutional rights. You need to understand you have a right
3 under the Constitution of the United States and under the
4 Constitution of the State of Nevada not to be compelled to
5 testify in this case. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You may, if you wish, give up the right
8 and take the witness stand and testify. If you do, you'll be
9 subject to cross-examination by the district attorney and
10 anything that you may say, be it on direct or
11 cross-examination, will be the subject of fair comment when the
12 district attorney speaks to the jury in final argument. Do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If you choose not to testify, the court
16 will not permit the district attorney to make any comments to
17 the jury concerning the fact that you have not testified. Do
18 you understand I would -- I'd give that order?

19 THE DEFENDANT: Um-h'm.

20 THE COURT: If you elect not to testify, the court
21 will instruct the jury, only if your attorney specifically
22 requests, as follows: The law does not compel a defendant in a
23 criminal case to take the stand and testify, and no presumption
24 will be raised, no inference of any kind may be drawn from the
25 failure of the defendant to take -- to testify. Do you

1 understand I would instruct the jury again, if your attorney
2 requests, that they're not allowed to consider that in any way?
3 Is that -- do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, I don't need you to make a decision
6 on whether or not you want to testify or whether or not that
7 instruction should be given right now. I require it when you
8 -- as you present your case, your evidence and defense --
9 defense case in chief. Are there prior felony convictions
10 potentially at issue here?

11 MR. MANINGO: There -- there is. I don't know if
12 it's within the ten years, though. When --

13 THE DEFENDANT: Real close.

14 MR. MANINGO: There's a --

15 MR. SCOW: I think the parole.

16 MR. MANINGO: There's an -- there's an auto theft is
17 what there is.

18 THE COURT: Okay.

19 MR. SCOW: And (indiscernible) two.

20 THE COURT: Mr. Adams, you need to understand that if
21 you've been convicted of a felony offense and it's within the
22 rules, usually it's ten years from the expiration of the
23 sentence. If it's within the rules, I would permit the
24 district attorney, if you chose to take the stand to impeach
25 you with that prior, assuming it met those criteria. Rules are

1 pretty much a bright line rule. We just do some math on it.

2 You need to talk to your attorney about that and use
3 that in determining whether or not it's your decision to
4 testify or not. That's just a -- that's just a fact that you
5 need to be concerned about or consider in making that decision.
6 Do you understand that?

7 THE DEFENDANT: (No audible response)

8 THE COURT: All right. Mr. Maningo, I'm sure you'll
9 brief up, and knowing you, you've done a thorough job at
10 looking at that and deciding whether or not that's something
11 that needs to be addressed or not --

12 MR. MANINGO: Yes, sir.

13 THE COURT: -- but you can consider that. Anything
14 else to come before the court outside the presence, State?

15 MR. HENDRICKS: No. Thanks, Judge.

16 THE COURT: Defense?

17 MR. MANINGO: No, sir.

18 THE COURT: All right. Bring them in.

19 (In the presence of the jury).

20 THE MARSHAL: Jury's present, please.

21 THE COURT: Thank you. This is C-241003, State of
22 Nevada versus Edward Michael Adams. Record should reflect the
23 presence of representative of State, defense. All members of
24 the jury panel appear to be present. Do the parties stipulate
25 to the presence of the entire jury panel? State?

1 MR. HENDRICKS: Yes.

2 MR. SCOW: Yes, Judge.

3 THE COURT: Defense.

4 MR. MANINGO: Yes, sir.

5 THE COURT: We are in State's case in chief. Call
6 your next witness.

7 MR. HENDRICKS: Thank you, Judge. State calls Gabe
8 Lebario.

9 THE CLERK: And I'll swear you in, sir, once you
10 arrive in the witness stand. If you'll remain standing. Raise
11 your right hand for me.

12 DETECTIVE GABRIEL LEBARIO, STATE'S WITNESS, SWORN

13 THE CLERK: Thank you. You may be seated. And once
14 you're seated, please state your name, spelling both first and
15 last name.

16 THE WITNESS: Yes. Gabriel Lebario. Last name
17 L-e-b-a-r-i-o.

18 THE CLERK: And your first name.

19 THE WITNESS: Gabriel, G-a-b-r-i-e-l.

20 THE CLERK: Thank you.

21 THE COURT: Counsel.

22 MR. HENDRICKS: Thank you.

23 DIRECT EXAMINATION

24 BY MR. HENDRICKS:

25 Q How are you employed?

1 A A detective with the Las Vegas Metropolitan Police
2 Department.

3 Q How long have you been so employed with Metro?

4 A I've been with Metro for 12 years.

5 Q How long have you been a sexual assault detective?

6 A In February of 2010 it will be five years that I've
7 been assigned as a detective.

8 Q You've done nothing but sexual assault cases or child
9 molestation, stuff like that?

10 A Yes, sir.

11 Q Now, you were employed in that same capacity on or
12 about December 14th of 2007, correct?

13 A Yes, I was.

14 Q And were you dispatched to a location on 1111
15 Warbonnet here -- well, actually, you were dispatched to a
16 different location, correct?

17 A Yes. We were dispatched to actual universal medical
18 -- University Medical Center, UMC.

19 Q Okay. And that's located here in Las Vegas, Clark
20 County, Nevada, correct?

21 A Yes.

22 Q Now, were you able, after you responded there, to
23 determine where the original crime scene was?

24 A Yes. After we had finished at UMC.

25 Q All right. Let's start with you responding to UMC,

1 right?

2 A Yes, sir.

3 Q And what was the purpose of you responding there?

4 A We received a call from patrol officers of a
5 13-year-old female, juvenile, who was being transported as a
6 victim of a sexual assault.

7 Q Now, you weren't the original responding officer,
8 correct?

9 A No, sir.

10 Q Now, is it kind of protocol for Metro to call out a
11 detective instead of just having the patrol officers handle
12 these types of cases?

13 A Yes, that's protocol.

14 Q And so you responded to UMC?

15 A Yes.

16 Q Who did you meet with once you arrived there?

17 A Well, I initially met with the patrol officer who was
18 the original primary unit. And then I met with Amber, Amber
19 Valles.

20 Q Okay. And do you recall if her mother was present
21 also?

22 A Yes, and her mother as well.

23 Q Now, did you get an opportunity to speak with Amber
24 Valles?

25 A Yes, I did.

1 Q And did you actually conduct a taped interview?

2 A Yes, I did.

3 Q Why do you conduct taped interviews?

4 A For recollection purposes and for documenting details
5 of the interviews that we conduct.

6 Q Now, that's your first duty there in -- in regards to
7 this case was to respond and you actually spoke to the victim,
8 right?

9 A Yes.

10 Q You hadn't been to a crime scene, you had no other
11 evidence, correct?

12 A That's correct.

13 Q Just her word at that point?

14 A Yes.

15 Q Okay. Did you also get an opportunity to speak with
16 her mother, Louise Valles on that day?

17 A Yes, I did.

18 Q And did you also conduct a taped interview with her?

19 A Yes.

20 Q Now, were -- was Amber able to relay to you what had
21 happened to her?

22 A Yes, she was.

23 Q And was she able to give you details about what had
24 happened?

25 A Yes, she was.

1 Q Now, after that interview was conducted, she had an
2 exam done to her, correct? Or was the interview after the
3 exam?

4 A The -- the -- the interview came first and then
5 afterwards, yes, an exam was completed.

6 Q So at the time you conduct an interview, you don't
7 know anything about DNA, right?

8 A That's correct.

9 Q You don't anything about fingerprints?

10 A Right.

11 Q You don't know anything about a crime scene?

12 A That's correct, yes.

13 Q You don't anything about her medical exam, right?

14 A Right.

15 Q You just have a 13-year-old girl telling you that she
16 was picked up off the street in broad daylight, taken to a
17 vacant apartment and sexually assaulted?

18 A Yes, that's correct.

19 Q That's it?

20 A Yes.

21 Q Okay. Now, she has an exam done, correct?

22 A Yes.

23 Q Were you able to speak with the person who conducted
24 that exam right then or did you get results later on?

25 A I got results after the nurse had completed the exam,

1 yes.

2 Q And did you find out what some of those results were?

3 A Yes.

4 Q Did you find out that there was damage --

5 A Yes.

6 Q -- to her vagina and to her anal area?

7 A Yes.

8 Q So now you've got her statement, and now you've got
9 physical evidence that shows that something happened to those
10 areas on her body, correct?

11 A Correct, yes.

12 Q Do you eventually leave UMC?

13 A Yes.

14 Q Where did you do?

15 A That's when we drive over towards to the 1111
16 Warbonnet.

17 Q Let me stop you there for a minute. Now, you, as
18 part of your job as lead detective, you recover evidence from
19 the hospital in addition to sometimes a crime scene, correct?

20 A Yes.

21 Q Do you recall recovering anything from the hospital?

22 A I believe we took some clothing that was taken from
23 Amber that the nurse had recovered.

24 Q Okay.

25 MR. HENDRICKS: May I approach, your Honor?

1 THE COURT: Yes.

2 BY MR. HENDRICKS:

3 Q Now, having previously shown defense counsel what's
4 been marked for identification purposes is State's Proposed
5 Exhibit 1. Detective, if you could take a look at that and
6 tell me what that item is.

7 A Item one is white pants and item two is a white/pink
8 t-shirt.

9 Q And are those the items that are contained inside of
10 that evidence bag?

11 A Yes.

12 Q And is that an evidence bag that you retrieved from
13 the hospital and then eventually impounded into the -- the
14 vault?

15 A Yes, it is.

16 Q Okay. Now, you're not the one who retrieved it from
17 the evidence vault. That was a crime scene analyst that did it
18 in this case, correct?

19 A That's correct, yes.

20 Q Okay. Now, there's a couple different labels on
21 there. What do those reflect?

22 A The first label it's basically to document the items
23 inside the -- the bag. The red labels are basically just our,
24 what we call seals to seal whatever openings. And then the
25 rest are my initials to show that I was the person that sealed

1 this particular bag.

2 Q And date identifiers and everything else?

3 A Yes, sir.

4 Q Okay. Do you seal it with the red tape?

5 A Yes, I do.

6 Q Okay, Detective. How about the blue tape?

7 A No, I do not use -- we do not use the blue tape.

8 Q Who used -- who used the blue tape?

9 A You know, I mean, as for as I know, I think that's
10 the -- probably the evidence vault or maybe -- maybe a lab.

11 Q The lab?

12 A Yes.

13 Q Okay.

14 MR. HENDRICKS: In regards to State's Proposed
15 Exhibit 1, at this point instead of opening up, I would move
16 for the admission of that, being the white pants and the -- the
17 t-shirt that we've already seen photos of.

18 THE COURT: 1 is offered. Any objection?

19 MR. MANINGO: That's -- that's fine, no objection.

20 THE COURT: 1's admitted without objection.

21 (Exhibit 1 admitted).

22 MR. HENDRICKS: Thank you, Judge. Thank you,
23 Counsel.

24 BY MR. HENDRICKS:

25 Q Take a look at State's Proposed Exhibit 5, Detective.

1 Tell us about that one.

2 MR. HENDRICKS: And actually, for the record it's
3 State's 1, 1-A and 1-B. Thank you, Ms. Clerk.

4 THE COURT: Any objection to that -- the sub exhibits
5 of 1-A and B?

6 MR. MANINGO: No, sir, that's fine.

7 THE COURT: All are admitted.

8 (Exhibits 1-A and 1-B admitted).

9 MR. HENDRICKS: Thanks.

10 THE WITNESS: This one here we -- I impounded. It's
11 a item number three, which is a gray hooded sweatshirt; item
12 number four, which is a white bra; and item number five, which
13 is a pink and white tank top.

14 Q Okay. And do you know where those items came from?

15 A Those also came from Amber -- Amber.

16 Q Amber Valles?

17 A Yeah, Valles.

18 Q Do you know if she was wearing those items or if she
19 had them somewhere else or do you know?

20 A I don't recall. No, I don't know.

21 Q Items retrieved from the victim at UMC?

22 A Yes.

23 Q Okay. And does it also reflect your identifiers on
24 there and also the evidence seal tape in red and also blue?

25 A Yes, sir. Yes.

1 MR. HENDRICKS: Same thing, Judge, I would move for
2 the admission without opening it, State's Proposed Exhibit 5.

3 THE COURT: 5 is offered. Hearing no objection, 5's
4 admitted.

5 MR. MANINGO: No objection.

6 (Exhibit 5 admitted).

7 MR. HENDRICKS: Thank you, Judge. Thank you,
8 Counsel.

9 BY MR. HENDRICKS::

10 Q And these are items that you retrieved from the
11 hospital, took them to the evidence vault, correct?

12 A Yes.

13 Q And then you had no other dealings with those items,
14 correct?

15 A That's correct.

16 Q You didn't do any DNA testing or anything like that,
17 right?

18 A No, I did not.

19 Q Now, you said that you then left UMC and then went
20 somewhere else, correct?

21 A Yes.

22 Q Where was that?

23 A That's when we drove to 1111 Warbonnet apartment
24 complex.

25 Q How did you know to go there?

1 A We were directed there with Amber and her mom.

2 Q Once you got there what happened?

3 A We parked our vehicles. Amber and her mom followed
4 in a separate vehicle. We got out, walked to the complex and
5 Amber pointed out on apartment building.

6 Q That's on -- during the evening hours of December
7 14th, 2007, correct?

8 A It was that same evening after we left UMC, yes.

9 Q So on the 14th?

10 A Yes.

11 Q Okay. Now, she pointed out an apartment, right?

12 A Yes.

13 Q Did you go inside that apartment?

14 A At that time, no. It was evening already, so we --
15 we felt it'd be better to go the following day.

16 Q Okay. Now let me ask you, Detective, was that the
17 same apartment that you eventually processed or not?

18 A No, it was not.

19 Q So you go back the next day, correct?

20 A Yes.

21 Q Do you eventually meet with an apartment manager or
22 some sort of personnel or individual from that location?

23 A Yes. We made contact with the apartment manager at
24 the complex and asked her -- you know, advised her that, you
25 know, we were interested in learning more about the apartment

1 that was pointed out to us. And she allowed her maintenance
2 man to come with us to show us the apartment.

3 Q Did you actually go to that first apartment, which
4 was the wrong apartment that day or not?

5 A Yes, we did. Yes.

6 Q Found out that was the wrong one?

7 A Yes.

8 Q Did you eventually get to the right one?

9 A Yes, we did.

10 Q How did you get to that?

11 A About an hour after leaving the apartment complex, I
12 had left my business -- my business card and a contact number
13 with -- with the management. And after about an hour of
14 leaving, I received a phone call from the manager.

15 Q So based upon that conversation with the manager, did
16 you head back over to that 1111 Warbonnet apartment?

17 A Yes, we did.

18 Q Okay.

19 A Yes.

20 Q Now, you knew because Amber had told you there was an
21 apartment with basically nothing in it but a black couch, some
22 tennis shoes, some blue tape, a towel, some candles, right?

23 A Yes. Yes.

24 Q And based upon your conversation with the apartment
25 person, you now found the location that matched that, didn't

1 you?

2 A Yes.

3 Q So once you arrive at that location, do you go
4 inside?

5 A Yes, we do.

6 Q What did you notice about that apartment?

7 A Well, first thing we noticed was a -- a black couch.
8 Also the apartment, it was no -- no power, no utilities going
9 into the apartment. But also noticed candles. One in
10 particular that was still lit. Noticed tennis shoes and some
11 blue tape around the apartment.

12 Q Did you notice any towels?

13 A Initially didn't notice. There were quite a few
14 towels, but didn't particularly focus on the towels, but yeah.

15 Q Okay. So once you find this location and it matches
16 up with what Amber had told you, then what do you do?

17 A At that point we basically received a consent from
18 the apartment manager, a written consent to go in there and
19 process the apartment. We then contact our CSI to come out and
20 process the apartment.

21 Q Were you present when they arrived?

22 A Yes, I was.

23 Q Were you present when they were processing the
24 apartment?

25 A Yes, I was.

1 Q Okay. And so you basically saw everything that they
2 did, correct?

3 A Yes.

4 Q Okay. Did you give them any -- I hate to say it this
5 way, any orders or did you make any requests of them in regards
6 to evidence retrieval?

7 A Sure. I gave them a briefing of what we were
8 investigating and the particular items we were searching for
9 and concerned with. And basically just was there to assist
10 with any other questions they may have with -- with processing
11 the apartment.

12 Q So would it be fair to say that you were kind of in
13 charge and you had to direct them as to what you wanted?

14 A Yes.

15 Q And that was based upon what Amber had told you,
16 right?

17 A Yes.

18 Q Okay. Did you request that there be fingerprints
19 lifted?

20 A Yes.

21 Q Was that done?

22 A Yes.

23 Q What about some of those pieces of evidence, did you
24 request that those items be retrieved?

25 A Yes.

1 Q And they did that, didn't they?

2 A Yes, they did.

3 Q You eventually made requests in regards to those
4 items as lead detective in regards to fingerprints, DNA and
5 everything else, didn't you?

6 A Yes, I did.

7 Q Now, you also that same evening, not the 15th, but
8 the prior evening on the 14th, you had the opportunity to speak
9 with some witnesses that were out there, right?

10 A Yes.

11 Q A couple kids?

12 A It was one -- one person that was out there. The --
13 the kids we followed up, I believe on Monday with.

14 Q Did you, in fact, get a statement from Angela
15 Abarzua?

16 A The written statements, I believe, were taken by
17 patrol officers.

18 Q Had you had an opportunity to review those
19 statements?

20 A Yes.

21 Q Okay. And one from Jonathan Cerboni?

22 A Yes, sir.

23 Q And those were the two teenage kids that actually
24 came in contact with Amber and this suspect, right?

25 A Yes, sir.

1 Q Now, as of December 14th and 15th, all you had was a
2 description, right?

3 A That's correct.

4 Q Do you recall kind of what description all these
5 witnesses had given you?

6 A Yes.

7 Q What was it?

8 A It was a white male adult, kind of tall, balding. A
9 couple described that he had something on his -- on his
10 forehead, crooked teeth and --

11 Q Any facial hair?

12 A I think they described it as slight facial hair or
13 kind of a goatee, goatee type.

14 Q Okay. So you have statements indicating this is what
15 the guy looks like, right?

16 A Yes.

17 Q But you don't have a suspect at that point, do you?

18 A No, I don't.

19 Q Now, was there someone out at the scene that was
20 actually stopped and you did a one-on-one with Amber and her
21 mom or --

22 A No. No, we did not do a --

23 Q You didn't. Do you know if patrol did that or not?

24 A I don't know if patrol did that or not, right.

25 Q But you didn't have a suspect at that point?

1 A Right.

2 Q So you're kind of just making requests. And the only
3 thing you can really request at that point is fingerprints,
4 right?

5 A Fingerprints and for the -- for the towels and --

6 Q Okay. You can have some DNA processing done,
7 correct?

8 A Right.

9 Q Okay. Now let's move forward to January 10th of
10 2008. You received information that some of the fingerprints
11 that were lifted from that crime scene came back to an
12 individual by the name of Edward Adams, right?

13 A Yes, that's correct.

14 Q Now, let me ask you, is Edwards Adams present here in
15 the courtroom today?

16 A Yes, he is.

17 Q Can you please point to that individual and describe
18 an article of clothing he's wearing this afternoon.

19 A Yes, he's the gentleman sitting here off to my right.
20 He's wearing a white long-sleeved shirt with a, it's like a
21 burgandy or dark brown tie.

22 MR. HENDRICKS: May the record reflect identification
23 of defendant?

24 THE COURT: It shall.

25 BY MR. HENDRICKS:

1 Q Now, when you first made contact with Mr. Adams back
2 in about the second week of January, did he look a little
3 different than how he looks today?

4 A Yes.

5 Q Now so?

6 A Well, he had a facial hair. He was dressed
7 differently. And basically his hair was a little different as
8 well.

9 Q So he looks a little different today, right?

10 A Right.

11 Q Now, once you find out that there's some fingerprints
12 found at the crime scene from a guy named Edward Adams, you
13 then retrieve a photo of Edward Adams and then put it in a
14 six-pack line up, correct?

15 A Yes.

16 Q Now, going back to -- well, once you find out on
17 January 10th, you immediately put together that six pack and
18 get Amber in on January 11th, right?

19 A Yes.

20 Q Now, in regards to the six pack, do you make it with
21 six different guys? Six guys that look very different from one
22 another or -- or do they look alike?

23 A We want to keep it to where there's some
24 similarities, yes.

25 Q Why?

1 A To make it fair. Don't want to have different ethnic
2 groups mixed up with, you know, like subject. You want to kind
3 of just make it -- make it fair to have the victim -- to be
4 assured that the victim's picking out the proper person.

5 Q Okay. So all these guys, these six guys, kind of
6 look similar?

7 A Yes.

8 Q Would it be fair to say that that makes it a little
9 bit more difficult on the witness or victim?

10 A Yes.

11 Q Now, this was December 14th of -- of 2007, and here's
12 it almost a month later, January 11th, 2008, and now you're
13 showing Amber Valles this line up, right?

14 A Yes.

15 Q Now, there was also another individual shown a photo
16 line up and that was the -- the Angela, that young girl,
17 correct?

18 A Yes.

19 Q Now, you had a chance to look at both of those line
20 ups, didn't you?

21 A Yes, I did.

22 Q Now, you were present when there was a line up
23 conducted with Amber, right?

24 A Yes, I conducted it.

25 Q Now, Detective, did you tell her who to pick out?

1 A Not at all, no.

2 Q What -- what do you tell a witness or victim before
3 you hand them a six pack line up?

4 A Basically I read her the admonishment, which is on
5 the -- on the instructions. It's a basically instruction sheet
6 for conducting a photo line up.

7 Q What else do you tell them?

8 A Tell them, you know, not to speak to anybody about
9 their selection or not to -- to speak with any other persons
10 while they're reviewing or looking at the photo line up.

11 Q Okay.

12 MR. HENDRICKS: May I approach the witness, Judge?
13 Thanks.

14 BY MR. HENDRICKS:

15 Q Detective, in regards to State's 68, do you recognize
16 what that is?

17 A Yes.

18 Q What is it?

19 A It's a photo line up witness instructions.

20 Q Okay. And was that with Amber Valles?

21 A Yes, it was.

22 Q Was she able to pick someone out?

23 A Yes, she was.

24 Q How sure was she?

25 A She -- she was -- on a scale from 1 to 10 she said

1 she was -- it was a 10, completely positive --

2 Q Okay.

3 A -- that it was the person in the picture.

4 Q Okay. And she didn't know the name of the guy, but
5 you did, right, because you put him in the six pack?

6 A Yes.

7 Q What number did she pick out?

8 A She picked out number five, person number five.

9 Q And who is in position number five?

10 A That would be Edward Adams.

11 Q Edward Adams?

12 A Yes.

13 Q Okay. In regards to State's 75, that would be -- and
14 is that a line up that was conducted with Angela Abarzua?

15 A Yes.

16 Q Is that correct?

17 A Yes, sir.

18 Q Okay. And did she, in fact, pick out an individual
19 or individuals?

20 A Yes, she did.

21 Q One or two?

22 A She actually picked out two.

23 Q Okay. And what number -- if you could, flip it over.
24 What numbers did she pick out?

25 A She picked out the person positioned in number three

1 and the person positioned in number four.

2 Q Okay. And who's in position number four?

3 A That is also Edward Adams.

4 Q He's not in the same position as the other line up,
5 is he?

6 A No, sir, he's not.

7 Q Okay.

8 A Different position.

9 Q So he was actually moved?

10 A Yes.

11 Q Okay. So now you have fingerprints. You now have a
12 couple different witnesses. One saying they're completely
13 positive. Scale of one to ten, it's a ten, that's Edward Adams
14 is the guy that did this to me, right?

15 A Yes.

16 Q We now move up to January 12th. Would it be fair to
17 say that's the day in which Mr. Adams was arrested?

18 A Yes.

19 Q Okay.

20 MR. HENDRICKS: Previously shown to defense counsel
21 what's been marked for identification purposes State's Proposed
22 Exhibit 73. Can I approach.

23 A Yes.

24 MR. HENDRICKS: Thanks.

25 BY MR. HENDRICKS:

1 Q Let me show you, Detective, that's State's Proposed
2 Exhibit 73. Who's reflected in that photo?

3 A Edward Adams.

4 Q And is that truly and accurately depict Mr. Adams as
5 he existed back on January 12th of 2008?

6 A Yes, it does.

7 MR. HENDRICKS: Judge, at this point I'd move for the
8 admission of State's Proposed Exhibit 73.

9 THE COURT: Any objection?

10 MR. MANINGO: Judge, reasserting my relevance
11 objection from earlier.

12 THE COURT: Can I see 73? 73's admitted over defense
13 objection.

14 (Exhibit 73 admitted).

15 MR. HENDRICKS: Thank you, Judge. Thank you,
16 Counsel.

17 BY MR. HENDRICKS:

18 Q Now, the investigation doesn't stop at that point
19 once he's arrested, is it?

20 A No, sir.

21 Q In fact, you continue on in the investigation and --
22 and actually get a search warrant and eventually get some
23 photos taken, fingerprints done, and actually get a buccal swab
24 from Mr. Adams, don't you?

25 A Yes, I do.

1 Q And that's something that you requested?

2 A Yes.

3 Q Why did you get a buccal swab?

4 A To submit it to the -- to the lab to submit for
5 possible any other evidence.

6 Q Now, you've already had the evidence retrieved from
7 the crime scene, right?

8 A Yes.

9 Q You had evidence retrieved from UMC from the victim,
10 right?

11 A Yes.

12 Q Now you need to compare it with your suspect?

13 A That's correct.

14 Q And you did that in this case, didn't you?

15 A Yes.

16 Q And you know what the results were, right?

17 A Yes.

18 Q And that's part of that packet that you sent over to
19 the District Attorney's Office, correct?

20 A That's correct, yes.

21 Q And it turns out that Mr. Adams' DNA was located both
22 on and inside of 13-year-old Adam Valles (sic), correct?

23 A That's correct, yes.

24 Q And that's something that you are now aware of?

25 A Yes.

1 Q But you didn't know that back in December or January,
2 did you?

3 A No, I did not.

4 Q Now, in addition to preparing a long report, you also
5 have case notes, correct?

6 A Yes, I do.

7 Q And case notes are kind of a daily thing that you're
8 making notes of as you're investigating the case?

9 A Yes. It's for management purposes.

10 Q Now, in regards to those case notes, there's some
11 things that you made note of in regards of what Amber told you
12 and what you had noted at the time, correct?

13 A Correct.

14 Q One of those things was the blue tape, right?

15 A Yes.

16 Q Okay. Now, you were out at the crime scene --

17 A Yes, I was.

18 Q -- correct? You saw that there was blue tape
19 recovered?

20 A Yes.

21 Q Now, would that corroborate Amber's statement that
22 blue tape was there?

23 A Yeah, that there was tape there, yes.

24 Q Okay. But you made note of something about the tape,
25 and what was that?

1 A The tape was -- wasn't very strong. It was kind of a
2 blue -- blue painter's tape.

3 Q Right.

4 A And that it -- and that it just it wasn't very strong
5 as, you know, as --

6 Q So probably wasn't going to hold her together or
7 bound up for very long, right?

8 A Right, that's correct.

9 Q Now, would it be fair to say that -- that Amber told
10 you that she tore that tape off and tore off of her mouth?

11 A Yes.

12 Q Rather easily?

13 A Yes.

14 Q Okay. But you would say that tape probably wouldn't
15 have been too effective in keeping her bound up?

16 A That's correct.

17 Q Okay. There was something in regards to those Nike
18 tennis shoes.

19 A Yes.

20 Q Now, you were there when those Nikes were discovered
21 at the crime scene, correct?

22 A Yes, I was.

23 Q You don't know whether Mr. Adams or anyone else had
24 on those shoes that day, do you?

25 A No, I don't.

1 Q In fact, Amber told you that when she went inside the
2 apartment she saw black and white Nike tennis shoes there,
3 correct?

4 A Yes, that's what she described, yes.

5 Q The other thing is is this took place on the 14th,
6 right?

7 A Yes.

8 Q And you didn't get in that apartment until a day
9 later --

10 A Correct.

11 Q -- correct?

12 A Yes.

13 MR. MANINGO: I'm going to object. I don't mind some
14 leading, but we're getting to a cross-examination.

15 THE COURT: Sustained.

16 MR. HENDRICKS: Okay. That's fine.

17 BY MR. HENDRICKS:

18 Q What other items did you find in that apartment?

19 A Found some towels.

20 Q Okay. Did -- did she ever tell you about a towel?

21 A Yes.

22 Q What did she tell you was done with that towel?

23 A She said that after the -- the sexual assault that he
24 then wiped her body and himself with the -- with the towel.

25 Q Okay. Are you sure about that?

1 A Well, I -- I remember that she said yeah, that he had
2 wiped her --

3 Q Are you sure that --

4 A -- with the towel.

5 Q -- she didn't tell you that she had wiped herself
6 with the towel? Do you remember?

7 A Possibly. I -- I don't remember, but I just remember
8 a towel being used, yes.

9 Q Okay. Do you recall -- you've already testified,
10 excuse me, that you saw a candle, a lit candle in there,
11 correct?

12 A Yes.

13 Q Had you spoken with Amber about that?

14 A Yes.

15 Q And what did she tell you?

16 A She -- during the interview she had said that there
17 were lit candles inside the apartment.

18 Q And so that was consistent with what she told you --

19 A Yes.

20 Q -- right? Okay. In regards to this towel, do you
21 recall what she told you about the towel and -- and what was
22 done in the kitchen with that towel?

23 A I don't recall exactly, but I believe she said that
24 he -- he wet it with some water.

25 Q Now, you were inside of that apartment, correct?

1 A Yes.

2 Q Now, if you were sitting on the floor or sitting on
3 the couch, would you have been able to see inside of the
4 kitchen sink?

5 A No.

6 Q Now, you know that the -- the water was -- was turned
7 off, based upon your investigation, correct?

8 A Yes.

9 Q So whatever fluid was on that towel, it didn't come
10 from the sink being run in the kitchen, correct?

11 A That's correct.

12 Q And that's something that you noted?

13 A Yes.

14 Q In regards to your investigation, you also went out
15 and interviewed some witnesses in that apartment area, correct?

16 A Yes.

17 Q Who else did you come in contact with?

18 A We came in contact with a -- one of the residents
19 that lived in the next building over in the same apartment
20 complex.

21 Q What did he look like?

22 A He was a black male in his late teens, kind of tall,
23 maybe six -- six feet tall.

24 Q Did you ask him about what he saw?

25 A Yes.

1 Q Did you have him fill out a report?

2 A No, I did not.

3 Q So would you be able to recall exactly what he had
4 told you?

5 A Not exactly word for word, no.

6 Q Now, had he spoken with you about possibly seeing
7 some people that may have matched that description?

8 A Yes, he did.

9 Q Okay. And did he say he actually made contact with
10 him?

11 A I believe he said he saw two people matching the
12 description. And I believe he said what's up or hello or
13 something like that. Something to that effect.

14 Q But nothing else noteworthy in regards to his
15 description of what happened?

16 A No.

17 Q And there wasn't a report prepared in regards to what
18 he would eventually testify to?

19 A No.

20 Q Why not?

21 A Well, I mean, at that point, you know, I didn't see
22 any need to -- to get a report from him.

23 Q Now, do you recall approximately when that was when
24 you spoke with him?

25 A It would have probably been the same time that we

1 were in there processing the -- the apartment.

2 Q So back --

3 A That would have been on --

4 Q -- on the 15th or around there?

5 A Around there, yes.

6 Q Now, you've had a chance to review Jonathan Cerboni's
7 statement, correct?

8 A Yes.

9 Q And you've also had a chance to review Angela
10 Abarzua's statement, correct?

11 A Yes.

12 Q And you've also had a chance to review your own
13 statement?

14 A Yes.

15 Q Now, in regards to Angela Abarzua's statement, was
16 there anything in that statement that she wrote out that said
17 that Amber was actually following --

18 A Yes.

19 Q -- the suspect?

20 A Yes.

21 MR. HENDRICKS: May I approach, Judge?

22 THE COURT: You may.

23 BY MR. HENDRICKS:

24 Q If you could, Detective, go ahead and review that and
25 tell me where in that statement it says that she was actually

1 following the suspect.

2 A Probably would have been here where she says that she
3 first saw Amber.

4 Q First saw Amber with some guy?

5 A With some guy and --

6 Q "I was like look, it might be her dad." But --

7 A Correct.

8 Q -- there's nowhere in that statement that -- that
9 talks about her following, correct?

10 A No.

11 Q Would that be accurate?

12 A That's correct, yes.

13 Q Okay. Another thing in your report that you
14 prepared, you actually put in your report that -- that Amber,
15 once she got out from this apartment, she was the one who made
16 the phone call to her mom, correct?

17 A Yes.

18 Q And that's what you put in your report?

19 A Yes.

20 Q Were you certain about that?

21 A About that she had made the phone call to her mom?

22 Q Yes. Were you certain about whether it came from the
23 mom or it came from Amber?

24 A I believe it was her mom who said that Amber called
25 her.

1 Q Okay.

2 MR. HENDRICKS: I have nothing further, Judge.

3 THE COURT: Cross-examination.

4 MR. MANINGO: May we approach, Judge?

5 THE COURT: Yes.

6 (Off-record bench conference).

7 THE COURT: Cross-Examination.

8 CROSS-EXAMINATION

9 BY MR. MANINGO:

10 Q Hello, Detective.

11 A Hello. How you doing?

12 Q Good, thank you. We've met before?

13 A Yes, sir.

14 Q Okay. I just want to ask you a few questions about
15 -- about your investigation in this case. You were the -- the
16 lead detective in this case, correct?

17 A Yes, I was.

18 Q Okay. And one of the things that you did in this
19 case was that you conducted the interview with Amber?

20 A Yes.

21 Q That was the first step in your investigation?

22 A Yes, that's correct.

23 Q Speak to the alleged victim in the case?

24 A Yes.

25 Q Okay. That's not abnormal for -- for you to do as a

1 first step, is it?

2 A No, it's not.

3 Q Okay. Mr. Hendricks asked you on a number of
4 different occasions about how you had interviewed Amber before
5 you had fingerprints and DNA and that kind of thing, right?

6 A Yes.

7 Q Okay. That's typically how it goes, isn't it?

8 A Yes.

9 Q You'll normally talk to the complaining witness
10 first. I mean, that's your initial step.

11 A Yes.

12 Q And then that's what can lead you to other
13 information?

14 A Yes.

15 Q Okay. Now, during your interview of -- of a
16 complaining witness, you'll also make observations, correct?

17 A Yes.

18 Q Especially if you're able to do an interview on the
19 same day or within a short period of time of the allegations.

20 A Yes.

21 Q And that was the case with this situation.

22 A Yes.

23 Q You were able to speak with Amber within a few hours
24 of the allegations.

25 A That's correct, yes.

1 Q Okay. One of the observations that you made was that
2 she had no visible injuries, correct?

3 A That's correct.

4 Q Okay. There was no markings on her face as though
5 she had been struck, correct?

6 A That's correct, yes.

7 Q Okay. You didn't notice any markings across her face
8 like she had been gagged or tied around her face?

9 A Not that I noticed, no.

10 Q Okay. You didn't notice any marks or bruising around
11 her wrists, correct?

12 A Right. Correct.

13 Q Okay. If you had, you would have had those
14 photographed, correct?

15 A Yes. And that's part of the exam process.

16 Q Okay. Now, as you -- as you discussed with Mr.
17 Hendricks, Amber had informed you that she was taped.

18 A Yes.

19 Q Okay. And she told you that she just -- she just
20 broke the tape easily and took it off of her face.

21 A Yes.

22 Q Okay. And then you asked about whether or not she
23 had washed her face or anything like that, correct?

24 A Yes.

25 Q And that's because you wanted to be able to preserve

1 if there was any adhesive or anything like that that might show
2 that there was taping?

3 A Yes.

4 Q Okay. You don't have any testing of tape adhesive or
5 anything like that from her face?

6 A No, we didn't --

7 Q Okay.

8 A -- we didn't do anything like that.

9 Q Okay. Are from her wrists, correct?

10 A Correct.

11 Q Okay. You also made observations regarding her lack
12 of injuries for the purpose of determining whether or not there
13 was a struggle, correct?

14 A Right.

15 Q Okay. And in your experience as a sexual assault
16 detective, you know that there are 85-year-old ladies out
17 there --

18 MR. HENDRICKS: Judge --

19 BY MR. MANINGO:

20 Q -- who could barely see --

21 MR. HENDRICKS: Judge, I'm going to object.

22 THE COURT: Basis of the objection?

23 MR. HENDRICKS: It doesn't -- it's not relevant,
24 number one. Certainly, he can't give his opinion in -- in
25 regards to this. The only thing that's relevant is what took

1 place in this particular case, not his speculation in regards
2 to what happens when other people are involved these specific
3 instances.

4 THE COURT: Response. The objection's relevance.
5 85-year-old woman.

6 MR. MANINGO: It's relevant as to the conversation
7 that he had with his interview of -- of this accuser and -- and
8 her veracity for truthfulness.

9 THE COURT: I'm going to sustain that objection.
10 BY MR. MANINGO:

11 Q You noted that there was -- there was no evidence of
12 any -- of any struggle as far as Amber's concerned?

13 A Not that I could see, correct.

14 Q Okay. You noted that Amber had been -- her time
15 frame of missing was -- of being missing was about an hour.

16 A Yes.

17 Q Okay. And that's where you tried to figure out the
18 details of what went on during that hour?

19 A Yes.

20 Q Okay. Now, when you conduct an interview like this,
21 you're trying to get to the truth?

22 A Yes.

23 Q Okay. And you know that -- that based on your
24 experience, a lot of 13-year-old have thought that this was the
25 way out?

1 MR. HENDRICKS: Judge, I'm going to object. Same
2 objection. This isn't relevant. If we're going to focus
3 specifically on this 13-year-old -- first of all, he can't give
4 his opinion --

5 THE COURT: This 13 -- 13-year-old, this is the way
6 out.

7 MR. HENDRICKS: I think where he's headed is --

8 THE COURT: So what's -- what's the basis -- the
9 objection is relevance again?

10 MR. HENDRICKS: Right. How any 13-year-old that he's
11 dealt with in the past, how that has any relevance to this
12 case, I --

13 THE COURT: Response.

14 MR. HENDRICKS: -- I can't figure it out.

15 THE COURT: Any response?

16 MR. MANINGO: It goes -- it goes towards his -- his
17 experience as a detective and how he conducts his investigation
18 and whether or not, you know, he will follow certain leads or
19 ask certain questions of this witness. I mean, this is -- this
20 is what this detective says to --

21 THE COURT: All right, I'm going to sustain. I'll
22 ask you to rephrase. I'm not cutting you off on this, but at
23 this point I'm sustained as to relevance. Let's talk about
24 this case.

25 BY MR. MANINGO:

1 Q You know that in -- in in situation with Amber that
2 she was escorted from near her school up to 1111 Warbonnet Way,
3 correct?

4 A I wouldn't say escorted, but yeah, she had gone from
5 her -- the area of her school to 1111 Warbonnet, yes.

6 Q Okay. About -- what's the distance of that traveling
7 on foot?

8 A You know, it's probably, if not a mile, maybe just
9 under a mile.

10 Q Okay. Do you have an approximation of how long it
11 would take to walk?

12 A No. I mean, it would just be my opinion on it, you
13 know.

14 Q Okay. So about a mile, though, is the distance?

15 A I would say, yes.

16 Q Okay. And you know that during that -- that time
17 where she traveled from her school to 1111 Warbonnet Way, she
18 didn't call for help, correct?

19 A Well, in -- I believe she -- when she did encounter
20 her friends, she whispered to, I believe, it was Joseph (sic),
21 you know.

22 Q But she didn't make any phone call?

23 A No, no phone calls, no.

24 Q Okay. And -- and you didn't have any -- any log or
25 any reports of any 911 calls from anybody else in that area

1 regarding Amber and Mr. Adams?

2 A That's correct, yes, there wasn't --

3 Q Okay. And that's something you would -- you would
4 check?

5 A Yes, sir.

6 Q Okay. And you would look into something to see if --
7 if other people had called for an abducted child or something
8 in the area?

9 A Yes, sir.

10 Q Because that would match what the story or the
11 information that you were receiving at the time?

12 A Yes.

13 Q And there were none?

14 A That's correct, there were none.

15 Q Okay. You collected a bra from Amber at UMC?

16 A Yes, sir.

17 Q Okay, so she had that with her?

18 A Yes.

19 Q Okay. Another part of your investigation, you -- you
20 went around to the different businesses in the area or at least
21 some of them and checked to see if they had video cameras,
22 correct?

23 A Yes.

24 Q Okay. And I believe you went by the Sinclair
25 (phonetic) gas station?

1 A Yes, sir.

2 Q Okay. And they had no video of the -- of the two
3 people together, correct?

4 A Yeah, they had no video of them together, that's
5 correct.

6 Q Okay. And then you also went by the 7-Eleven that's
7 in the area, correct?

8 A Yes.

9 Q And they had no cameras that were able to capture any
10 images of the two people together?

11 A That's correct.

12 Q Okay. And then you also checked the McDonalds, which
13 is in the area, correct?

14 A Yes.

15 Q No -- no useful video there?

16 A That's correct, yes.

17 Q Okay. Nothing to show the two of them -- when I say
18 the two of them, I mean Amber and Mr. Adams --

19 A Yes.

20 Q -- together?

21 A Right, yes.

22 Q Okay. As part of your investigation you also
23 conducted some other interviews of -- of witnesses in this
24 case, correct?

25 A Yes.

1 Q When -- let me back up for just a second. When you
2 put together a report, that's something you've been trained to
3 do, correct?

4 A Yes.

5 Q Okay. And making reports is an important part of
6 your job --

7 A Yes.

8 Q -- is that fair to say?

9 A Yes, sir.

10 Q Okay. You have to document when you do certain
11 things or when you speak to people, correct?

12 A Yes.

13 Q And the reason you document these things is so that
14 if you get called into trial, like now, two years later, you
15 can look at your report and it can refresh your memory?

16 A Right.

17 Q Okay. It would be difficult to just remember off the
18 top of your head all of your cases, you know, years down the
19 road?

20 A Yes, sir.

21 Q Okay. So when you take these reports and make these
22 case notes, you detail these things out, correct?

23 A Yes.

24 Q Okay. And in your report you detailed out how you
25 checked with these different businesses and the videos,

1 correct?

2 A Yes, sir.

3 Q Okay. And you also talk about the different people
4 you interviewed?

5 A Yes.

6 Q Okay. And one of the people that you interviewed was
7 Angela Abarzua?

8 A Yes.

9 Q Okay. When you interviewed Angela, she described to
10 you that -- that the male she saw with Amber was walking at a
11 fast pace in front of Amber and that Amber was trying to keep
12 up, correct?

13 A I believe, yes, sir.

14 Q Okay. You also asked her about whether or not the
15 adult that Amber was with was grabbing or holding onto her
16 hand, correct?

17 A Yes.

18 Q And she said that she did not recall that he was
19 holding onto her.

20 A Right.

21 Q You spoke to another individual who -- who lived in a
22 nearby apartment building, correct?

23 A Yes.

24 Q Okay. And this is the person that -- that you
25 described as the adult black male, correct?

1 A Yes.

2 Q And the reason we refer to this gentleman that way,
3 in your report you don't list his name, correct?

4 A Right.

5 Q Okay. We've sense found out that his name is Andre
6 Randall (phonetic).

7 A Right.

8 Q And that's because you had taken notes and kept those
9 separate notes, correct?

10 A Well, written, yes.

11 Q Written, okay. It just didn't make it into the
12 report?

13 A That's correct, yes.

14 Q Okay. When you spoke to Mr. Randall, he gave a
15 description of seeing two people together that matched the
16 description of Mr. Adams and Amber?

17 A Yes.

18 Q Okay. And he said he was close enough to them am on
19 the street that he was able to -- to say what's up or exchange
20 a greeting with them?

21 A Yes.

22 Q Okay. He also noted that the two individuals he saw
23 were not touching one another, correct?

24 A Right.

25 Q And he noted that they were not emotional, and that

1 the girl was not emotional?

2 A Correct.

3 Q He also noted that the girl did not appear to be in
4 any distress.

5 A Correct.

6 Q This -- this Mr. Randall, he has no ties or
7 connections that you're aware of, to Mr. Adams, correct?

8 A Not that I know of, no.

9 Q And he has no ties or connections to -- to Amber,
10 that you're aware of?

11 A No, not that I'm aware of, no, sir.

12 Q You just spoke to him about the two individuals that
13 he saw that day?

14 A Yes.

15 Q Okay. Now, you didn't record that interview,
16 correct?

17 A Right.

18 Q Okay. I think you said earlier that there was no
19 need to get a report from him at that time.

20 A At the time, yes.

21 Q Okay. You did, however, note the details of what he
22 told you in your -- in your report, correct?

23 A Yes.

24 Q Okay.

25 A My case notes.

1 Q Now, a few of the other items I want to talk to you
2 about briefly Mr. Hendricks already touched upon. Amber had
3 told you about the blue tape?

4 A Yes.

5 Q When you when to the scene, you found some blue tape?

6 A Yes.

7 Q There was blue tape being used to tape up on old
8 table?

9 A Yes.

10 Q And there was some tape sort of scattered around
11 different places in the apartment?

12 A Yes.

13 Q Okay. You examined the tape?

14 A Well, I didn't examine -- I mean, I looked at the
15 tape and then we had a CSI forensic guys recover it.

16 Q Right, but you noted in your report that the tape was
17 -- it was not very strong, correct?

18 A Right.

19 Q It was more of like an outlining type tape for when
20 you're painting?

21 A Yeah, painter's tape, yes.

22 Q Okay. So it tears very easily?

23 A Yes.

24 Q It's not like an electrical tape or a duct tape or
25 something?

1 A Right.

2 Q Okay. You also stated that you had -- that you had
3 seen some shoes on the floor of the apartment?

4 A Yes.

5 Q Those shoes matched the -- the shoes that Amber had
6 described the suspect as wearing, correct?

7 A Yes.

8 Q Okay. Now, one of the things you noted when you
9 found the shoes that they were cobwebbed over, right?

10 A Inside, yes.

11 Q Okay. And so based on -- on your observations, those
12 shoes couldn't have been worn --

13 MR. HENDRICKS: Judge --

14 BY MR. MANINGO:

15 Q -- recently?

16 MR. HENDRICKS: -- objection. Calls for speculation.

17 THE COURT: Sustained.

18 MR. MANINGO: And just for the record in response, I
19 was only asking what, you know, based on his observations, not
20 on speculating as to what someone else was doing or thinking.

21 THE COURT: Okay. I'll let him answer that question,
22 then.

23 MR. MANINGO: Okay, thank you, your Honor.

24 BY MR. MANINGO:

25 Q Based on your observation, because of the -- the

1 cobwebs, you didn't feel that someone had been recently wearing
2 those?

3 A Not recently, correct.

4 MR. HENDRICKS: And Judge, I'm also going to object
5 as to the depiction as she described them as he was wearing
6 those shoes.

7 THE COURT: No speaking objections. Give me a basis
8 of the objection.

9 MR. HENDRICKS: Well, it's factual in that that's not
10 what the victim testified to. She stated that the shoes were
11 in the apartment when he went in.

12 THE COURT: All right, it's cross-examination. I'll
13 allow the question. You can clean it up on redirect
14 examination. Counsel.

15 MR. MANINGO: Thank you, Judge.

16 BY MR. MANINGO:

17 Q Also, at the -- at the scene, based on your
18 observations, there seemed to be very little fluids that could
19 be collected for evidence?

20 A Well, there wasn't anything visible at the time.

21 Q Um-h'm.

22 A It was dark, and I mean, there was no -- no light
23 source, so.

24 Q You stated in your report that the biological
25 evidence on the couch revealed very little fluids, correct?

1 A The initial, yes.

2 Q Okay. You also noted -- you found a towel at the
3 scene?

4 A Yes.

5 Q And you noted that the -- the fluids found on the
6 towel were also very weak?

7 A Yes, from what I had noted, yes.

8 Q Okay. The -- Amber had told you during her interview
9 that the towel was wet down in the -- in the kitchen sink,
10 correct?

11 A I believe, yes.

12 Q Okay. You noted in your report that that would have
13 been impossible because the water turned off?

14 A Right.

15 Q That's something that you observed?

16 A Right.

17 Q Okay. When interviewing these witnesses, you did a
18 taped interview of some, correct?

19 A Yes.

20 Q Okay. You did a taped interview of Cierra Cipriani?

21 A Yes.

22 Q Okay. And you did a taped interview of Amber's
23 mother, Louise?

24 A Yes.

25 Q And you did a taped interview of Jonathan Cerboni,

1 correct?

2 A Yes.

3 Q Okay. Now, of -- regarding Angela Abarzua, the --
4 the young lady who told you that Amber wasn't being dragged
5 anywhere, that she was actually following the suspect, you
6 didn't tape that interview?

7 A I was not the one who conducted that interview.

8 Q Okay. So you didn't do a taped interview with
9 Angela?

10 A Right.

11 Q Okay. And the witness Andre Randall, the young man
12 who lives nearby --

13 A Yes, sir.

14 Q -- who saw the two and said they were not in
15 distress --

16 A Right.

17 Q -- okay, that individual also not tape recorded?

18 A That's correct.

19 Q As a sexual assault detective, you oftentimes work
20 with an organization known as SANE?

21 A Yes.

22 Q Okay. And could you tell the jury what SANE is?

23 A SANE is basically Sexual Assault Nurses Examiner, and
24 they conduct the actual, what we call a rape examination at
25 UMC. And basically they're nurses that specialize in searching

1 and recovering any kind of evidence from a victim of sexual
2 assault.

3 Q And -- and you work with those individuals who are
4 known as SANE nurses, correct?

5 A Yes, sir.

6 Q Okay. Now, when you -- when you work with them, you
7 will oftentimes actually take an alleged victim to the -- to
8 the hospital and to these nurses?

9 A In some cases, yes.

10 Q Okay. And sometimes you'll conduct the interviews
11 there at the hospital?

12 A Yes.

13 Q And that's what you did in this case?

14 A Yes.

15 Q Okay. And then before an examination is done, you
16 will oftentimes give information to the nurse examiner about
17 the allegations?

18 A Yes, I'll give them a briefing.

19 Q Okay. You'll give them a briefing, and that's done
20 before the physical exam is done?

21 A Yes.

22 Q Thank you, Detective.

23 A Thank you, sir.

24 THE COURT: Redirect.

25 MR. MANINGO: No further questions.

1 MR. HENDRICKS: No thanks, Judge.

2 THE COURT: No redirect? Is this witness free to go?

3 JUROR NO. 10: I have a few questions, your Honor.

4 THE COURT: Okay. Parties approach.

5 (Off-record bench conference).

6 THE COURT: Was Amber's cell phone and battery dusted
7 for prints? If so, any prints found? If not, why not?

8 THE WITNESS: I -- I do not recall exactly if we did
9 dust her phone for print, but only because it had been handled
10 already by several different people, so.

11 THE COURT: Second question. Blue tape, was it
12 dusted for prints and checked for hair?

13 THE WITNESS: Yes, that was part of the -- the lab
14 request.

15 THE COURT: Third question. Would this tape leave
16 marks on her because of how weak it was?

17 THE WITNESS: That's -- that's -- again, I mean, I
18 don't know. I can't really say exactly. It's --

19 MR. HENDRICKS: And Judge, I -- I guess the problem
20 is he's going to now speculate, and I don't think that'd be a
21 -- would be appropriate.

22 THE COURT: Counsel, I'll give you a chance to clean
23 it up --

24 MR. HENDRICKS: Okay.

25 THE COURT: -- as -- as you see fit. Is that your

1 answer, complete answer?

2 THE WITNESS: Yes, sir.

3 THE COURT: Any additional questions as a consequence
4 of these questions posed? We have hand.

5 UNIDENTIFIED JUROR: None of those posed. I have a
6 different question.

7 THE COURT: All right, write it out, please. While
8 -- while we're doing that, any follow-up questions as a
9 consequence of these three questions posed by the jury from the
10 State?

11 REDIRECT EXAMINATION

12 BY MR. HENDRICKS:

13 Q Detective, in regards to that tape, you wouldn't know
14 whether it would -- it would leave a mark or not, correct?

15 A I wouldn't know that, no.

16 Q And you aren't the one that -- that dusts for prints
17 or checks for hair fibers or anything else, correct?

18 A No, no, sir.

19 THE COURT: Defense.

20 REDIRECT EXAMINATION

21 BY MR. MANINGO:

22 Q Detective, you said that the hair -- I mean, excuse
23 me, the tape was tested for hair and fingerprints?

24 A Well, everything was submitted to the lab to be
25 tested.

1 Q Okay. What was the result of the tape?

2 A Of the tape, I do not know the specific results of
3 the tape, but when I did my lab request, all the items were --
4 were placed into my lab requests.

5 Q So you don't know?

6 A So I don't know. No, I don't know the specific
7 results of the -- of the tape.

8 Q And you don't know about the fingerprints on the cell
9 phone or on the cell phone battery?

10 A On the cell phone, no, there -- we did not recover
11 any fingerprints.

12 Q And I -- I realize you're no expert on whether tape
13 would leave a mark or not, but you didn't go out and grab any
14 of that tape and -- and test it?

15 A I myself?

16 Q Um-h'm.

17 A No, no, sir.

18 Q And so that's why you don't know?

19 A That's -- exactly.

20 Q Okay.

21 A I'm not a tape expert.

22 THE COURT: All right, we have another question
23 posed.

24 MR. HENDRICKS: I just have one.

25 THE COURT: All right, follow-up.

1 FURTHER REDIRECT EXAMINATION

2 BY MR. HENDRICKS:

3 Q Now, Detective, you didn't impound Amber's phone, did
4 you?

5 A No, we did not.

6 Q Okay. She kept her phone, correct?

7 A Yes.

8 Q Thank you.

9 THE COURT: Parties approach.

10 (Off-record bench conference).

11 THE COURT: Since there was the possibility of a gun
12 at the scene, were the items logged in tested for residue or
13 gun oil, specifically the couch, cushions where the alleged
14 firearm was hidden? If so, was any found?

15 THE WITNESS: No, nothing for firearm residue or
16 anything like that. And no, nothing was ever found.

17 THE COURT: Any additional questions from the jury as
18 a consequence of this question posed and answered?

19 UNIDENTIFIED JUROR: I have a question.

20 THE COURT: All right, we've got another question
21 coming up. As that's being written, any follow-up from the
22 State as a consequence of this -- this question posed by the
23 juror?

24 FURTHER REDIRECT EXAMINATION

25 BY MR. HENDRICKS:

1 Q I guess, since we're asking him, now residue or
2 gunshot residue, that would come when a gun has actually been
3 fired, correct?

4 A From what I understand, yes.

5 Q Okay. Thank you.

6 THE COURT: Defense.

7 FURTHER RECROSS-EXAMINATION

8 BY MR. MANINGO:

9 Q And actually, Detective, it -- the gun doesn't have
10 to be fired. The gun could have been fired at any time and the
11 residue can be remain on the weapon; isn't that also true?

12 A You know, I don't know that.

13 Q Okay.

14 A I don't know that.

15 Q And -- and to expand on that question that was asked,
16 not only the -- the couch cushions or anything else, but did
17 you -- was the hoody tested? Because there's an allegation
18 that there was a gun carried around in the hoody, was there
19 ever tested for any kind of a residue or gunpowder or anything
20 else?

21 A No, sir, not for that specific, no.

22 Q Okay.

23 THE COURT: All right.

24 MR. HENDRICKS: Judge, I --

25 FURTHER REDIRECT EXAMINATION

1 BY MR. HENDRICKS:

2 Q Was this hoody that the defendant was wearing at the
3 time he committed these crimes, was that ever recovered?

4 A No.

5 Q It wasn't?

6 A No.

7 Q Was that gun ever recovered?

8 A No.

9 Q Were his pants that he was wearing that day ever
10 recovered?

11 A No.

12 Q In fact, you didn't make contact with this guy until
13 you found out through the fingerprints almost a month later who
14 the guy was, right?

15 A That's correct, yes.

16 Q Thanks.

17 THE COURT: All right, we have another question
18 posed. Parties approach.

19 (Off-record bench conference).

20 THE COURT: Ladies and gentlemen, I'm going to have
21 that marked as next in order. Remember, and I admonish you
22 again, don't give any question posed by any juror additional
23 weight simply because it's a question posed by a juror. In the
24 alternative should a question not be asked, don't draw any
25 adverse inferences from that fact either. Anything else for

1 this witness, State?

2 MR. HENDRICKS: No thank you, Judge.

3 THE COURT: Defense? This witness is free to go now.
4 Thank you for your testimony.

5 THE WITNESS: Thank you, your Honor.

6 THE COURT: Please step down. Ladies and gentlemen,
7 we're going to take our evening recess at this time. It is
8 your duty not to converse among yourselves or with anyone else
9 on any subject connected with this trial. Further, you may not
10 read, watch or listen to any report of or commentary on this
11 trial by any medium of information, including without
12 limitation, newspaper, television or radio. You may not form
13 or express any opinion on any subject connected with this case
14 until it's finally submitted to you. We'll be in recess until
15 tomorrow morning 10:00 a.m. Follow Officer Reichert.

16 (Outside the presence of the jury).

17 THE COURT: Record should reflect we're outside the
18 presence of the jury. Any additional record need to be made
19 outside the presence as a consequence of the examination of the
20 witnesses so far, State?

21 MR. HENDRICKS: No thanks, Judge.

22 THE COURT: Defense.

23 MR. MANINGO: Judge, the only -- I just have one
24 quick question. The third question, the juror's name so I can
25 make a record on my own to who asked the question.

1 THE COURT: We just do them by number. Which one?

2 The three part question?

3 MR. MANINGO: No --

4 THE COURT: The one that was three parts?

5 MR. MANINGO: -- no -- no, the last one that we --

6 UNIDENTIFIED SPEAKER: No. 14, the alternate.

7 MR. MANINGO: No. 14, the alternate. Okay, great,
8 thank you.

9 THE COURT: 14, alternate. All right.

10 MR. MANINGO: Thank you.

11 THE COURT: All right, see you tomorrow morning 10:00
12 a.m.

13 MR. HENDRICKS: Judge --

14 THE COURT: What?

15 MR. HENDRICKS: -- this doesn't -- well, I guess it
16 does need to be on the record.

17 THE COURT: Okay, we're still on the record.

18 MR. HENDRICKS: Okay. Now, I don't think either one
19 of us, I'm not sure though, has this -- this black male adult
20 listed on our witness list. But as you know, he was not
21 interviewed at the time other than just what was reflected in
22 the case notes. We've now contacted him. We tracked him down.
23 We found him so that he's available to defense counsel.

24 He's going to be here tomorrow morning at 10:00 a.m.
25 My concern is this, is he's not on our witness list, but we

1 would still like to call him. And I want to make sure that
2 defense counsel doesn't have an objection because they're
3 actually the ones who wanted him and made a motion to -- to
4 dismiss the whole case because they didn't have him.

5 Now we have him. I want to make sure it's okay we
6 can call him.

7 THE COURT: Defense position.

8 MR. MANINGO: Yeah, that's fine. I don't have an
9 objection. I'm not worried about -- I know that the reason he
10 wasn't on the witness list at the time is because neither one
11 with of us knew who this person was.

12 THE COURT: Well, hearing no objection from the
13 defense, the State calling the witness, even though the witness
14 wasn't identified on their witness list, so --

15 MR. HENDRICKS: And I'll make him available in the
16 morning so Jeff can speak with him also beforehand just -- just
17 to know what we're getting.

18 THE COURT: Fine. All right.

19 MR. HENDRICKS: Thanks, Judge.

20 THE COURT: Anything else, gentlemen?

21 MR. MANINGO: No. Thank you.

22 THE COURT: See you tomorrow morning 10:00 a.m.

23 (Court recessed at 5:16 p.m., until Wednesday,
24 November 4, 2009, at 10:00 a.m.)
25

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CERTIFICATION

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

AFFIRMATION

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

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Julie Lord
JULIE LORD, TRANSCRIBER

4-12-10
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FILED IN OPEN COURT

NOV - 4 2009 -

STEVEN D. GRIERSON
CLERK OF THE COURT

BY *Sharon Chun*

DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

SHARON CHUN

THE STATE OF NEVADA,)
Plaintiff,)
-vs-)
EDWARD MICHAEL ADAMS,)
Defendant.)

CASE NO: C241003
DEPT NO: XVIII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)
MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Amended Information that on or about the 14th day of December, 2007, the Defendant committed the offenses of First Degree Kidnapping with Use of a Deadly Weapon, Battery with Intent to Commit a Crime with Use of a Deadly Weapon, Sexual Assault with a Minor Under Fourteen Years of Age with Use of a Deadly Weapon, and Open or Gross Lewdness.

COUNT 1 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

did wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away AMBER VALLES, a human being, with the intent to hold or detain the said AMBER VALLES against her will, and without her consent, for the purpose of sexual assault, by taking the said AMBER VALLES against her will, saying he has a gun and by tying her wrists and taping her mouth, said defendant using a deadly weapon, to-wit: a firearm, during the commission of said crime.

COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME WITH USE OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: AMBER VALLES, with intent to commit sexual assault, by grabbing the said AMBER VALLES by the neck to restrain her and by grabbing her by the arm forcing her to go with him, said defendant using a deadly weapon, to-wit: a firearm, during the commission of said crime.

COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE WITH USE OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously sexually assault and subject AMBER VALLES, a female child under fourteen years of age, to sexual penetration, to-wit: digital penetration, by defendant inserting his finger(s) into the genital opening of the said AMBER VALLES, against her will, or under conditions in which defendant knew, or should

1 have known, that the said AMBER VALLES was mentally or physically incapable of
2 resisting or understanding the nature of defendant's conduct, said defendant using a deadly
3 weapon, to-wit: a firearm, during the commission of said crime.

4 COUNT 4 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
5 AGE WITH USE OF A DEADLY WEAPON

6 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
7 AMBER VALLES, a female child under fourteen years of age, to sexual penetration, to-wit:
8 sexual intercourse, by defendant inserting his penis into the genital opening of the said
9 AMBER VALLES, against her will, or under conditions in which defendant knew, or should
10 have known, that the said AMBER VALLES was mentally or physically incapable of
11 resisting or understanding the nature of defendant's conduct, said defendant using a deadly
12 weapon, to-wit: a firearm, during the commission of said crime.

13 COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
14 AGE WITH USE OF A DEADLY WEAPON

15 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
16 AMBER VALLES, a female child under fourteen years of age, to sexual penetration, to-wit:
17 digital penetration, by defendant inserting his finger(s) into the genital opening of the said
18 AMBER VALLES, against her will, or under conditions in which defendant knew, or should
19 have known, that the said AMBER VALLES was mentally or physically incapable of
20 resisting or understanding the nature of defendant's conduct, said defendant using a deadly
21 weapon, to-wit: a firearm, during the commission of said crime.

22 COUNT 6 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
23 AGE WITH USE OF A DEADLY WEAPON

24 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
25 AMBER VALLES, a female child under fourteen years of age, to sexual penetration, to-wit:
26 sexual intercourse, by defendant inserting his penis into the genital opening of the said
27 AMBER VALLES, against her will, or under conditions in which defendant knew, or should
28 have known, that the said AMBER VALLES was mentally or physically incapable of
resisting or understanding the nature of defendant's conduct, said defendant using a deadly

1 weapon, to-wit: a firearm, during the commission of said crime.

2 COUNT 7 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
3 AGE WITH USE OF A DEADLY WEAPON

4 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
5 AMBER VALLES, a female child under fourteen years of age, to sexual penetration, to-wit:
6 digital penetration, by defendant inserting his finger(s) into the genital opening of the said
7 AMBER VALLES, against her will, or under conditions in which defendant knew, or should
8 have known, that the said AMBER VALLES was mentally or physically incapable of
9 resisting or understanding the nature of defendant's conduct, said defendant using a deadly
10 weapon, to-wit: a firearm, during the commission of said crime.

11 COUNT 8 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
12 AGE WITH USE OF A DEADLY WEAPON

13 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
14 AMBER VALLES, a female child under fourteen years of age, to sexual penetration, to-wit:
15 sexual intercourse, by defendant inserting his penis into the genital opening of the said
16 AMBER VALLES, against her will, or under conditions in which defendant knew, or should
17 have known, that the said AMBER VALLES was mentally or physically incapable of
18 resisting or understanding the nature of defendant's conduct, said defendant using a deadly
19 weapon, to-wit: a firearm, during the commission of said crime.

20 COUNT 9 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
21 AGE WITH USE OF A DEADLY WEAPON

22 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
23 AMBER VALLES, a female child under fourteen years of age, to sexual penetration, to-wit:
24 digital penetration, by defendant inserting his finger(s) into the genital opening of the said
25 AMBER VALLES, against her will, or under conditions in which defendant knew, or should
26 have known, that the said AMBER VALLES was mentally or physically incapable of
27 resisting or understanding the nature of defendant's conduct, said defendant using a deadly
28 weapon, to-wit: a firearm, during the commission of said crime.

///

1 COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
2 AGE WITH USE OF A DEADLY WEAPON

3 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
4 AMBER VALLES, a female child under fourteen years of age, to sexual penetration, to-wit:
5 sexual intercourse, by defendant inserting his penis into the genital opening of the said
6 AMBER VALLES, against her will, or under conditions in which defendant knew, or should
7 have known, that the said AMBER VALLES was mentally or physically incapable of
8 resisting or understanding the nature of defendant's conduct, said defendant using a deadly
9 weapon, to-wit: a firearm, during the commission of said crime.

10 COUNT 11 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
11 AGE WITH USE OF A DEADLY WEAPON

12 did then and there wilfully, unlawfully, and feloniously sexually assault and subject
13 AMBER VALLES, a female child under fourteen years of age, to sexual penetration, to-wit:
14 anal penetration, by Defendant inserting his finger(s) and/or penis and/or unknown object
15 into the anal opening of the said AMBER VALLES, against her will, or under conditions in
16 which Defendant knew, or should have known, that the said AMBER VALLES was
17 mentally or physically incapable of resisting or understanding the nature of Defendant's
18 conduct, said Defendant using a deadly weapon, to-wit: a firearm, during the commission of
19 said crime.

20 COUNT 12 - OPEN OR GROSS LEWDNESS

21 did then and there wilfully and unlawfully commit an act of open or gross lewdness
22 by Defendant masturbating his penis in the direct view and presence of AMBER VALLES.

23 It is the duty of the jury to apply the rules of law contained in these instructions to the
24 facts of the case and determine whether or not the Defendant is guilty of one or more of the
25 offenses charged.
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INSTRUCTION NO. 4

Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for the purpose of committing sexual assault upon the person is guilty of Kidnapping in the First Degree.

INSTRUCTION NO. 5

Every person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine him from his parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act is guilty of Kidnapping in the First Degree.

INSTRUCTION NO. 6

The crime of Kidnapping in the First Degree, as charged in this case is a specific intent crime. A specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the state must prove that the defendant knowingly did the act which the law forbids, purposely intending to violate that law.

An act is "knowingly" done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The intention or purpose for which the victim was held against his or her will is a question of fact to be determined by your consideration of the evidence. The intention may be inferred from the defendant's conduct and all other circumstances.

INSTRUCTION NO. 7

In order for you to find the defendant guilty of both first-degree kidnapping and an associated offense of sexual assault, you must also find beyond a reasonable doubt either:

(1) That any movement of the victim was not incidental to the sexual assault;

(2) That any incidental movement of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the sexual assault;

(3) That any incidental movement of the victim substantially exceeded that required to complete the sexual assault;

(4) That the victim was physically restrained and such restraint substantially increased the risk of harm to the victim; or

(5) The movement or restraint had an independent purpose or significance.

"Physically restrained" includes but is not limited to tying, binding, or taping.

If you find the Defendant guilty of First Degree Kidnapping, you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you are convinced beyond a reasonable doubt that the defendant committed the offense of First Degree Kidnapping, and you are convinced beyond a reasonable doubt that a deadly weapon was used in the commission of that offense, then you are instructed to return a verdict of Guilty of First Degree Kidnapping with the Use of a Deadly Weapon.

If you are convinced beyond a reasonable doubt that the defendant committed the offense of First Degree Kidnapping but you have a reasonable doubt that a deadly weapon was used in the commission of that offense, then you are instructed to return a verdict of Guilty of First Degree Kidnapping.

You are instructed that only one verdict may be returned for each count.

INSTRUCTION NO. 9

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death; or a dangerous or deadly weapon specifically described as a gun, pistol, spring pistol, revolver or other firearm.

You are instructed that a firearm is a deadly weapon.

INSTRUCTION NO. 10

In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

INSTRUCTION NO. 11

Battery means any willful and unlawful use of force or violence upon the person of another.

Any person who commits a battery upon another with the specific intent to commit a crime is guilty of the offense of Battery with Intent to Commit a Crime.

INSTRUCTION NO. 12

If you find the Defendant guilty of Battery with Intent to Commit a Crime, you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you are convinced beyond a reasonable doubt that the defendant committed the offense of Battery with Intent to Commit a Crime, and you are convinced beyond a reasonable doubt that a deadly weapon was used in the commission of that offense, then you are instructed to return a verdict of Guilty of Battery with Intent to Commit a Crime with the Use of a Deadly Weapon.

If you are convinced beyond a reasonable doubt that the defendant committed the offense of Battery with Intent to Commit a Crime but you have a reasonable doubt that a deadly weapon was used in the commission of that offense, then you are instructed to return a verdict of Guilty of Battery with Intent to Commit a Crime.

INSTRUCTION NO. 13

A person who subjects a minor under the age of 14 to sexual penetration against the minor's will or under conditions in which the perpetrator knows or should know that the minor is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of Sexual Assault with a Minor Under 14.

As used in these instructions, "sexual penetration" means any intrusion, however slight, of any part of a person's body into the genital or anal opening of the body of another.

INSTRUCTION NO. 14

Where multiple sexual acts occur as part of a single criminal encounter, each separate and distinct act may be charged as a separate offense.

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Physical force is not a necessary ingredient in the commission of sexual assault. The crucial question is not whether the victim was physically forced to engage in a sexual assault but whether the act was committed without her consent. There is no consent where the victim is induced to submit to the sexual act through fear of death or serious bodily injury.

The requirements of force and fear are of a different and less degree for a child than a person of more mature years. The fact that the defendant may not have employed violence nor expressed threats to obtain a child's submission does not preclude a finding of sexual assault. A sexual assault victim is not required to do more than his or her age, strength, surrounding facts and all attending circumstances make it reasonable to do in order to manifest opposition.

INSTRUCTION NO. 16

It is a defense to a charge of sexual assault that the Defendant entertained a reasonable and good faith belief that the female person voluntarily consented to engage in sexual intercourse. If from all the evidence you have a reasonable doubt whether the Defendant reasonably and in good faith believed she voluntarily consented to engage in sexual intercourse, you must give the Defendant the benefit of that doubt and find him not guilty of said charge.

INSTRUCTION NO. 17

There is no requirement that the testimony of a victim of sexual assault be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

INSTRUCTION NO. 18

If you find the Defendant guilty of Sexual Assault you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you are convinced beyond a reasonable doubt that the defendant committed an offense of sexual assault, and you are convinced beyond a reasonable doubt that a deadly weapon was used in the commission of that offense, then you are instructed to return a verdict of Guilty of Sexual Assault with the Use of a Deadly Weapon.

If you are convinced beyond a reasonable doubt that the defendant committed an offense of sexual assault but you have a reasonable doubt that a deadly weapon was used in the commission of that offense, then you are instructed to return a verdict of Guilty of Sexual Assault.

You are instructed that only one verdict may be returned for each count.

INSTRUCTION NO. 19

"Statutory sexual seduction" means ordinary sexual intercourse, anal intercourse, or any other sexual penetration committed by a person 21 years of age or older with a consenting person under the age of 16 years.

INSTRUCTION NO. 20

Every person who willfully masturbates his penis in the direct view of a minor in an offensive manner is guilty of the crime of Open and Gross Lewdness.

INSTRUCTION NO. 21

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3 The law does not compel a defendant in a criminal case to take the stand and testify,
4 and no presumption may be raised and no inference of any kind may be drawn, from the
5 failure of a defendant to testify.
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INSTRUCTION NO. 22

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You have heard evidence of defendant's character, that is, opinion evidence about a character trait for violence or nonviolence. You should consider character evidence together with and in the same manner as all the other evidence in the case.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 24

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 26

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 27

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

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Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 29

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the Defendant.

INSTRUCTION NO. 30

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.


If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange his/her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 32

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

NOV - 4 2009

STEVEN D. GRIERSON
CLERK OF THE COURT

BY

Sharon Chun
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12DISTRICT COURT
CLARK COUNTY, NEVADATHE STATE OF NEVADA,)
)Plaintiff,)
)-vs-)
)EDWARD MICHAEL ADAMS,)
)Defendant.)
)

CASE NO: C241003

DEPT NO: XVIII

VERDICTWe, the jury in the above entitled case, find the Defendant EDWARD MICHAEL
ADAMS, as follows:COUNT 1 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON*(please check the appropriate box, select only one)*☐ Guilty of First Degree Kidnapping with Use of a Deadly Weapon☒ Guilty of First Degree Kidnapping☐ Not GuiltyCOUNT 2 - BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT WITH USE
OF A DEADLY WEAPON*(please check the appropriate box, select only one)*☐ Guilty of Battery with Intent to Commit Sexual Assault with Use of a
Deadly Weapon☒ Guilty of Battery with Intent to Commit Sexual Assault☐ Not Guilty

1 **COUNT 3** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
2 AGE WITH USE OF A DEADLY WEAPON

3 *(please check the appropriate box, select only one)*

4 ☐ Guilty of Sexual Assault with a Minor Under Fourteen Years of Age with
5 Use of a Deadly Weapon

6 ☒ Guilty of Sexual Assault

7 ☐ Guilty of Statutory Sexual Seduction

8 ☐ Not Guilty

9 **COUNT 4** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
10 AGE WITH USE OF A DEADLY WEAPON

11 *(please check the appropriate box, select only one)*

12 ☐ Guilty of Sexual Assault with a Minor Under Fourteen Years of Age with
13 Use of a Deadly Weapon

14 ☒ Guilty of Sexual Assault

15 ☐ Guilty of Statutory Sexual Seduction

16 ☐ Not Guilty

17 **COUNT 5** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
18 AGE WITH USE OF A DEADLY WEAPON

19 *(please check the appropriate box, select only one)*

20 ☐ Guilty of Sexual Assault with a Minor Under Fourteen Years of Age with
21 Use of a Deadly Weapon

22 ☒ Guilty of Sexual Assault

23 ☐ Guilty of Statutory Sexual Seduction

24 ☐ Not Guilty

25 **COUNT 6** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
26 AGE WITH USE OF A DEADLY WEAPON

27 *(please check the appropriate box, select only one)*

28 ☐ Guilty of Sexual Assault with a Minor Under Fourteen Years of Age with
Use of a Deadly Weapon

☒ Guilty of Sexual Assault

☐ Guilty of Statutory Sexual Seduction

☐ Not Guilty

1 **COUNT 7** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
2 AGE WITH USE OF A DEADLY WEAPON

3 *(please check the appropriate box, select only one)*

4 ☐ Guilty of Sexual Assault with a Minor Under Fourteen Years of Age with
5 Use of a Deadly Weapon

6 ☒ Guilty of Sexual Assault

7 ☐ Guilty of Statutory Sexual Seduction

8 ☐ Not Guilty

9 **COUNT 8** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
10 AGE WITH USE OF A DEADLY WEAPON

11 *(please check the appropriate box, select only one)*

12 ☐ Guilty of Sexual Assault with a Minor Under Fourteen Years of Age with
13 Use of a Deadly Weapon

14 ☒ Guilty of Sexual Assault

15 ☐ Guilty of Statutory Sexual Seduction

16 ☐ Not Guilty

17 **COUNT 9** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
18 AGE WITH USE OF A DEADLY WEAPON

19 *(please check the appropriate box, select only one)*

20 ☐ Guilty of Sexual Assault with a Minor Under Fourteen Years of Age with
21 Use of a Deadly Weapon

22 ☐ Guilty of Sexual Assault

23 ☐ Guilty of Statutory Sexual Seduction

24 ☒ Not Guilty

25 **COUNT 10** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
26 AGE WITH USE OF A DEADLY WEAPON

27 *(please check the appropriate box, select only one)*

28 ☐ Guilty of Sexual Assault with a Minor Under Fourteen Years of Age with
Use of a Deadly Weapon

☐ Guilty of Sexual Assault

☐ Guilty of Statutory Sexual Seduction

☒ Not Guilty

1 **COUNT 11** – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
2 AGE WITH USE OF A DEADLY WEAPON

3 *(please check the appropriate box, select only one)*

4 ☐ Guilty of Sexual Assault with a Minor Under Fourteen Years of Age with
5 Use of a Deadly Weapon

6 ☒ Guilty of Sexual Assault

7 ☐ Guilty of Statutory Sexual Seduction

8 ☐ Not Guilty

9 **COUNT 12** – OPEN OR GROSS LEWDNESS

10 *(please check the appropriate box, select only one)*

11 ☒ Guilty of Open or Gross Lewdness

12 ☐ Not Guilty

13 DATED this 4th day of November, 2009

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15 FOREPERSON

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DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

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THE STATE OF NEVADA, CLERK

CASE NO. C-241003

Plaintiff,

DEPT. NO. 18

vs.

EDWARD MICHAEL ADAMS,

**Transcript of
Proceedings**

Defendant.

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, NOVEMBER 4, 2009

APPEARANCES:

FOR THE PLAINTIFF:

CRAIG L. HENDRICKS, ESQ.
Chief Deputy District Attorney

RICHARD H. SCOW, ESQ.
Deputy District Attorney

FOR THE DEFENDANT:

JEFFREY S. MANINGO, ESQ.
Deputy Public Defender

COURT RECORDER:

TRANSCRIPTION BY:

RICHARD KANGAS
District Court

VERBATIM DIGITAL REPORTING, LLC
Littleton, CO 80120
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

CLERK OF THE COURT

APR 13 2010

RECORDED

1 LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 4, 2009, 10:34 A.M.

2 (In the presence of the jury).

3 THE MARSHAL: Panel's present, your Honor.

4 THE COURT: Thank you. This is C-241003, State of
5 Nevada, plaintiff versus Edward Michael Adams. Record should
6 reflect the presence of representatives of the State, defense.
7 All members of the jury panel appear to be present. Parties
8 stipulate to the presence of the entire panel? Mr. Scow?

9 MR. SCOW: Yes, Judge.

10 THE COURT: Mr. Maningo?

11 MR. MANINGO: Yes, sir.

12 THE COURT: All right. Ladies and gentlemen, I want
13 to apologize for the late start. It's on me. My
14 responsibilities this morning ran a little long, so I apologize
15 for that. We remain in State's case in chief. Call your next
16 witness.

17 MR. SCOW: Kelly Gauthier.

18 (Off-record colloquy).

19 THE COURT: Mr. Maningo, if you could approach while
20 the witness is approaching.

21 (Off-record bench conference).

22 THE COURT: Record should reflect we received a
23 question for Juror No. 4. Question is, "Can we have a printed
24 copy of the charges at this point for reference?" The
25 procedure in all criminal cases is to provide that information

1 when I instruct you on the -- on the case, not a point before
2 that. And -- and that's -- so that's exact -- that's when
3 you'll receive that information. Okay. So that's the answer
4 to that question. Let's swear the witness.

5 KELLIE GAUTHIER, STATE'S WITNESS, SWORN

6 THE CLERK: Thank you. Please be seated. Please
7 state your full name and spell your name for the record.

8 THE WITNESS: Kelly Gauthier, K-e-l-l-i-e,
9 G-a-u-t-h-i-e-r.

10 THE COURT: Counsel.

11 MR. SCOW: Thank you, Judge.

12 DIRECT EXAMINATION

13 BY MR. SCOW:

14 Q Good morning. How are you currently employed?

15 A With the Las Vegas Metropolitan Police Department in
16 the forensic lab as a DNA analyst.

17 Q How long have you been a DNA analyst with the
18 forensic lab?

19 A Four and a half years.

20 Q Do you have any experience prior to working with the
21 Las Vegas Metro Lab?

22 A Prior to working here, I worked for the Florida
23 Department of Law Enforcement in the same capacity for about
24 two years.

25 Q What kind of training, experience goes into becoming

1 a -- or education goes into becoming a forensic scientist, and
2 specifically, with regards to DNA?

3 A I have a bachelors degree from the University of West
4 Florida in biology. As well as when I was hired by Florida
5 Department of Law Enforcement, I went through about an eight
6 month rigorous raining program. As well as when I was hired
7 here at Metro I went through another year of training. Plus,
8 we do continuing education every year to keep up on the field.

9 Q Have you previously testified as an expert witness in
10 the field of DNA analysis?

11 A Yes, I have.

12 Q Can you tell the jury generally what DNA is?

13 A DNA's simply what makes us all individuals. And no
14 one with has the same DNA profile except identical twins.

15 Q Now, with regards to where we can get DNA from our
16 bodies, can you examples of the different types of DNA?

17 A The three pain types that most people talk about are
18 blood, semen and saliva. All those contain DNA within the
19 cells. But as well, the newest one is touch DNA, where people
20 touch an item rigorously or even somewhat and you can get a
21 partial or a full profile or sometimes no profile at all.

22 Q So in what you just testified about touch DNA, it's
23 possible to touch something and leave DNA, it's possible to
24 touch something and not leave any DNA?

25 A Yeah, depending on the surface which is touched. If

1 it's a rigid surface, you're going to leave more cells versus a
2 smooth surface or just in general how much you touch the item.
3 And plus, we all shed cells individually differently, so
4 depending on if you're a high shedder or a low shedder will
5 depend on how much DNA you leave.

6 Q Depending on all the circumstances combined?

7 A Exactly, and that's why it's is hard to do reference
8 testing on touch DNAs because each individual's so different.

9 Q Now, the -- the samples you get in a touch DNA versus
10 the other types you described, the bodily fluids, is one going
11 to give a richer or a more source of DNA?

12 A For sure, I would assume that if someone spit on
13 something, left a blood sample or left sperm, which is where
14 DNA's found, you're going to get a profile. Versus touch DNA,
15 you might end up with multiple people touching an item, so you
16 might end up a -- with a mixture of tons of people or you might
17 not get anything.

18 Q So have you had any examples of items that you know
19 have been touched or owned where you get no DNA results, no
20 profile at all?

21 A Yes, actually, we did a study with guns in the DNA
22 lab to see, you know, how good guns are for DNA. People own
23 them, people touch them, they clean them, they do all these
24 things. And we did about 35 guns, I believe, and swabbed
25 different areas of the gun. And on several of them we got no

1 profiles, even though we knew people had touched the items.

2 And then sometimes we'd get great profiles.

3 A lot just depends on several circumstances all
4 working together to get a profile.

5 Q Now, how do you use DNA and DNA technology to make
6 identifications?

7 A We look at unknown items from crime scene samples and
8 we compare them to standards, which are taken from individuals
9 and are known to be from those individuals. So we'll end up
10 with a profile from an unknown, say anything, a vaginal swab, a
11 blood sample, and we'll compare it to known individuals in any
12 case, a victim or a suspect.

13 Q And those known samples, are those common -- what's
14 commonly used a buccal swab?

15 A Yeah. They're commonly buccal swabs, which are just
16 swabbings of the inner cheek. And that's why they're called
17 buccal swabs, because you have buccal cells in your cheeks. So
18 those are taken from individuals and submitted. In the old
19 days it used to be blood drawn, but now it's buccal swabs most
20 of the time.

21 Q Were you, in this specific case, asked to examine
22 items of evidence?

23 A I was.

24 Q And you had some known samples to compare that
25 evidence with?

1 A I did.

2 Q And what were the known samples you had?

3 A I had one from Amber, that was contained within the
4 sexual assault kit that was taken. And you I also had one from
5 Edward Adams, and that was buccal swabs in a separate
6 container.

7 Q Okay. Now let's turn first to the sexual assault kit
8 that you mentioned you examined. Showing you State's Proposed
9 Exhibit 3. Do you recognize this?

10 A I do.

11 Q What is it?

12 A It is a sexual assault collection kit taken from
13 Amber Valles, and it has my signature on it on the chain of
14 custody as well as my seal that is still intact.

15 Q And this sexual kit is done by a nurse, an examining
16 nurse?

17 A That's correct, and submitted to our vault.

18 Q Okay. And you -- your blue tape here indicates
19 you've opened this and examined the -- the items inside?

20 A That's correct.

21 MR. SCOW: (Indiscernible) at this point I'll move to
22 admit State's Proposed 3. We could wait for the next witness,
23 but I'll see if the defense (indiscernible).

24 THE COURT: Offering 3. Any objection?

25 MR. MANINGO: No objection.

1 THE COURT: 3's admitted.

2 (Exhibit 3 admitted).

3 BY MR. SCOW:

4 Q With regards to this kit, what items did you test?

5 A I looked at everything within the sexual kit, the
6 vaginal swabs, the cervical swabs. There were no underpants
7 collected. Swabs from the inner thigh, pubic hair brushing,
8 rectal swabs, anus swabs, oral swabs with floss was not
9 collected. There was a slide that was not examined by me and
10 there was paperwork which was used for informational purposes
11 only.

12 Q Okay. So first turning to the vaginal swabs and the
13 cervical swabs. What results did you obtain from those?

14 A For vaginal swabs and cervical swabs, they were both
15 sperm positive meaning there was sperm present. And the
16 epithelial fraction of both the vaginal swab and cervical swabs
17 matched Amber.

18 Q Okay. Now explain the difference between the
19 epithelial fraction and sperm fraction.

20 A With a sexual assault case, or any type where there
21 is semen and epithelials, meaning epithelials from the victim,
22 semen, sperm from the suspect, we actually can do a really neat
23 process in DNA where we actually spin the sample down in a
24 tube, and sperm cells are more dense, so they go to the bottom
25 of the tube versus the epithelial cells, which will float at

1 the top. So we can actually take off the top layer of liquid
2 and try to get a good separation of victim from the sperm cells
3 that are there.

4 Sometimes you will end up with a mixture where you
5 get cross over where you don't get all the epithelial cells
6 out, or the sperm will go over to the epithelial fraction, but
7 it gives us a way better differential separation of the two.

8 Q The different types?

9 A So the epithelial would typically be the female. And
10 the sperm fraction would typically be the male.

11 Q So examples of epithelial would be like skin cells,
12 blood, those types of --

13 A That's correct.

14 Q Okay. So again, just to make sure we're clear, the
15 -- the sperm fraction of the cervical and vaginal swabs was
16 identified to Edward Adams' profile?

17 A Those -- the sperm fractions of the vaginal swabs and
18 the cervical swabs were a mixture, and Amber could not be
19 excluded as the minor contributor. Meaning that some of the
20 epithelials probably got over in the sperm fraction. And E.
21 Adams, Edward Adams, cannot be excluded as the major
22 contributor to the sperm fraction.

23 And the estimate of the major profile in the
24 population is rarer than 1 in 650,000,000,000, meaning identity
25 is assumed.

1 Q Can you explain that statistic and where you come up
2 with those items?

3 A The actual number is much greater than
4 650,000,000,000. Las Vegas Metropolitan Police Department DNA
5 unit set that number at a hundred times the world's population
6 to identify someone as being the contributor of the DNA
7 profile. The FBI, I believe, uses the U.S. population as their
8 threshold. We use a hundred times the world's population.
9 Meaning if you're had a hundred worlds, the random possibility
10 of finding this profile again is rarer than 1 in
11 650,000,000,000. So we identify the person.

12 Q So that you indicate identity is assumed based on
13 that very rare statistic?

14 A That's correct.

15 Q Now, with regards to you examined rectal swab and
16 anal swab, what results did you have there?

17 A The epithelial fraction, once again, is consistent
18 with Amber, the victim. And the partial DNA profile obtained
19 from the rectal swabs and the full DNA profile obtained from
20 the anus swabs of both the sperm fractions are consistent with
21 a mixture of two individuals. Both Amber and Edward Adams
22 cannot be excluded as contributors to this mixture.

23 Greater than 99.9 percent of the population are
24 excluded as contributors. But I could not exclude those two.

25 Q But 99.99 percent of the population can be excluded?

1 A Greater than that, yes.

2 Q Now, with regards to there was a (indiscernible) swab
3 in there as well?

4 A That's correct.

5 Q And what were your results from that swab?

6 A Presumptive tests for blood were negative on that
7 swab as long with presumptive tests for semen. But from that
8 swab, I did get a mixture of two individuals. Both Amber and
9 Edward Adams could not be excluded as contributors to that
10 mixture. And greater than 99.99 percent of the population are
11 excluded.

12 Q Okay. Let's move to State's Exhibit 6 and the
13 contents. Do you recognize this?

14 A I do. Once again, I it has my signature on the chain
15 of custody, my blue seal still intact with my initials and P
16 number.

17 Q And this contains item that -- items that you
18 examined as well?

19 A That's correct.

20 Q Now, specifically with regards to a pair of pants --
21 or actually, this was the towel, the white/yellowish towel.
22 Did you do any examination of -- of that towel?

23 A I did.

24 Q What did you do specifically with that towel? How do
25 you collect samples? How do you go about your testing there?

1 A We screen the towel. Of course, I was looking for
2 semen. And alternate light source is great for that. It's
3 actually, which most people have seen on CSI, but it's just an
4 alternate light source that actually fluoresces sperm and
5 semen. So we turn off the lights, we use it, and it will
6 actually fluoresce in areas that appear to have stains on them.

7 Now, other things that fluoresce or saliva and stuff
8 like that. So after we find those stains, we actually have to
9 do more testing on them to make sure that we do confirm sperm
10 is there. So I did that with this towel.

11 Q Okay.

12 MR. SCOW: And I'll approach to show you State's
13 Proposed Exhibits 52 to 56.

14 BY MR. SCOW:

15 Q Do you recognize these?

16 A I do.

17 Q What are they?

18 A They're pictures of took of each stain that I looked
19 at that was positive.

20 Q So these are pictures you took of the towel and the
21 different stains that you observed in -- and your markings of
22 those stains?

23 A That's correct.

24 Q Okay.

25 MR. SCOW: At this time I'd move to admit State's

1 Proposed Exhibits 52 through 56.

2 THE COURT: Any objection? Any objection to 52
3 through 56 offered?

4 MR. MANINGO: Oh, no, sir.

5 THE COURT: Hearing no objection, they'll be
6 admitted.

7 (Exhibits 52 through 56 admitted).

8 BY MR. SCOW:

9 Q Just showing 52 first as an example of what you're
10 doing. You said you use a light source into looking for
11 stains, and you do presumptive testing for semen?

12 A That's correct.

13 Q And what on this towel any markings that you can let
14 the jury know what you're doing?

15 A Tested this stain right here. Sorry, there's arrows
16 everywhere. And as you can he see, I marked acid phosphatase,
17 AP, the AP you see there, right here, that's a presumptive test
18 for semen. It does not mean that sperm are present. It just
19 means that semen is possibly there. It's a presumptive test.
20 And I marked it as positive, so that stain was positive.

21 Q And then in these other photographs, 53, 54, 55 and
22 -- and 56, these are different areas that you're testing to
23 determine whether or not further analysis needs to be done?

24 A That's correct.

25 Q And with regards to the towel and the different areas

1 you tested, what results did you have?

2 A There were five stains total that had positive
3 presumptive testing for semen. And of those I took two onto
4 the DNA and actually got profiles from they will. The other
5 ones I did not take cuttings from.

6 Q And what were the results of the two samples that you
7 did test?

8 A The DNA profile obtained from the epithelial fraction
9 of stain five on the white/yellow bath towel is consistent with
10 a mixture of two individuals. Both Amber and Edward could not
11 be excluded as contributors to this mixture. Greater than
12 99.99 percent of the population and individuals are excluded as
13 contributors to this mixture.

14 The DNA profile obtained from sperm fraction of both
15 stains five and seven, those are the two I took cuttings from,
16 on the white/yellow bath towel are consistent with Edward
17 Adams. The estimate of the DNA profile in the population is
18 rarer than 1 in 650,000,000,000 meaning identity's assumed.
19 And -- sorry, that's it with -- that's it with the towel.

20 Q Okay. So you -- you identified Edward Adams' sperm
21 on that towel?

22 A That's correct.

23 Q Now showing you State's Proposed 57 through 66 --

24 (Off-record colloquy).

25 BY MR. SCOW:

1 Q Again, 57 through 66, do you recognize these?

2 A The rest of the pictures I took.

3 Q Of your -- documenting your analysis in this case?

4 A That's correct.

5 MR. SCOW: 62 and 63 are already in. Other than
6 those, at this time I'd move to admit -- admit States Proposed
7 57 through 66.

8 THE COURT: Any objection?

9 MR. MANINGO: No objection.

10 THE COURT: 57 through 66 are admitted.

11 (Exhibits 57 through 66 admitted).

12 BY MR. SCOW:

13 Q I believe you were about to move on to a white wash
14 cloth?

15 A That's correct.

16 Q That's depicted in State's 57. And you did a couple
17 of presumptive tests?

18 A Yes. Both of those were positive, and I took the
19 cutting from this one right here.

20 Q Okay. Now, with regards to this, what was the
21 results of your examination?

22 A The DNA profile obtained from the epithelial and
23 sperm fraction of the wash cloth is consistent with an unknown
24 male number one.

25 Q Okay. So you didn't have a known sample to compare

1 with that particular result?

2 A That's correct. But I can say that Edward Adams is
3 excluded as the contributor for unknown male number one.

4 Q Okay. And whether this wash cloth was found in the
5 closet or wherever, you don't know that, this is just the test
6 result you got?

7 A That's correct.

8 Q Now, with regards to State's 59, do you recognize
9 this?

10 A I do.

11 Q And what is it?

12 A It's blue masking tape.

13 Q And showing --

14 A Painter's tape.

15 Q Showing you State's Exhibit 2, do you also recognize
16 this?

17 A Yes. Once again, it has my signature, the blue tape
18 sealed capacity with my initials and P number on it.

19 Q And what's depicted in the photograph 59 is what's
20 contained within State's Exhibit 2?

21 A Yes, that's correct.

22 Q What -- what did you do with this tape in your
23 analysis?

24 A I again, used alternate light source to look at it
25 underneath the light to see if there was any semen stains on

1 it. There was one spot that fluoresced, and I did a swabbing
2 on it and it was semen negative. As well as, I swabbed the
3 edges around where the tape would appear to be maybe ripped
4 with the mouth or ripped with the hands to get a DNA profile
5 from touch DNA or from saliva, and I received no DNA profile on
6 this item.

7 Q Okay. And so you said you checked like the edges?

8 A That's correct.

9 Q You didn't check the adhesive portions?

10 A No.

11 Q And just for purposes of -- of the jury
12 understanding, why didn't you test the adhesive parts?

13 A Normally, when we get tape in it's usually from being
14 wrapped around a victim's mouth or being cut off at scene. We
15 don't have all the details from all the cases when we get them
16 in. So typically we would avoid the mouth area where it was
17 placed around the victim because we would expect the victim to
18 be there. We're not looking for the person that was actually
19 bound with it. We're looking for the person that actually did
20 the binding. So we look more at the edges and stuff where
21 someone would, like I said, be ripping it off with their mouth
22 to put it over someone's mouth or something like that.

23 Q And again, you did not obtain any DNA from the swabs
24 you took?

25 A That's correct.

1 Q From the edges of the tape. Now, with regards to
2 State's Exhibit 1 and contents, do you recognize this?

3 A I do.

4 Q And what is it?

5 A These are white pants and a white and pink t-shirt.
6 Once again, my chain of custody I signed and blue seal still
7 intact.

8 Q And you examined contents of that bag?

9 A I did.

10 Q Now I'm showing you State's 62. Is this a photograph
11 you took of the -- the pants contained within that bag?

12 A That's correct.

13 Q You did some testing there?

14 A I did.

15 Q And there's a -- is circle in here. Is that an area
16 that you swabbed or cut out?

17 A That's an area that was positive for semen. And I
18 took a small cutting from that area.

19 Q What were your results from that?

20 A The epithelial fraction obtained from the white pants
21 is consistent with Amber. The DNA profile obtained from the
22 sperm fraction of the white pants is consistent with Edward
23 Adams. And the estimate of the DNA profile in the population
24 is greater than 1 in 650,000,000,000, identity's assumed it's
25 him.

1 Q Okay. For the sperm fraction of that DNA sample?

2 A For the white pants, that's correct.

3 Q Now, 63, the shirt that's contained within that bag?

4 A Yes.

5 Q And what's going on there?

6 A As you can see, again, ran the same processes I
7 always do. These three spots were AP positive. I took my
8 cutting from this one right here.

9 Q AP positive, again, is presumptive (indiscernible) --

10 A For semen.

11 Q What were your are results for testing that cut out?

12 A The epithelial fraction from the white t-shirt is
13 consistent with a mixture of two individuals. Amber could not
14 be excluded as the minor contributor to the mixture. Edward
15 Adams could not be excluded as the major contributor to the
16 mixture.

17 The major DNA profile in the population is rarer than
18 1 in 650,000,000,000. Again, identity's assumed it is him.
19 The sperm fraction from this t-shirt is consistent with Edward
20 Adams. The estimate again is greater than 1 in
21 650,000,000,000, identity is assumed.

22 Q Now, the last thing that you examined -- this
23 suffering bag. Do you recognize this?

24 A I do. It has my name on the chain of custody. My
25 seal is down here and it's no longer intact.

1 Q It has been damaged.

2 THE COURT: What's the exhibit number for the record?

3 MR. SCOW: This is Exhibit 7 with contents.

4 BY MR. SCOW:

5 Q And now showing you photographs State's Exhibit 65
6 and 66. First 65, is this one of the cushions, seat cushion
7 covers that you examined?

8 A Yes, this is the east seat cushion of the couch. And
9 once again, ran the same process for semen. It's again,
10 phosphatase positive, meaning presumptively it's positive for
11 semen. And I took my cutting from right in here.

12 Q In that dotted area?

13 A Yes.

14 Q What were the results from in seat cushion?

15 A This is 7-A. The DNA profile obtained from the
16 epithelial fraction of the east seat cushion is consistent with
17 a mixture of three individuals. Amber and Edward and the
18 unknown male, same male that was found on the wash cloth,
19 cannot be excluded as contributors to this mixture. Greater
20 than 98.87 percent of individuals are excluded as contributors
21 to this mixture.

22 Q So the number there, the 98.87, is lower than the --
23 the 99.99 percent that you had with other mixtures. Is that a
24 result of not having as much DNA source or what's the result --
25 the reason for that?

1 A May I refer to my notes?

2 Q Sure.

3 A It's due to the fact that the mixture, when you get
4 up with three or four people involved, you've got a lot more
5 profiles you're dealing with. And I probably just did not
6 obtain enough information at every place we look at on the DNA
7 to give a good enough number. But still 98.87 percent of the
8 population is excluded.

9 Q And with DNA, when you're looking at a mixture like
10 this, you can't tell dates or time that any of this was left
11 there through your testing procedures?

12 A No, not at all. And the sperm fraction from that
13 east seat cushion is consistent with unknown male number one.

14 Q Oh, okay. Now, with State's 66, this is another seat
15 cushion cover that you examined?

16 A Yes. This is the center seat cushion.

17 Q What results did you have from that?

18 A Again, it was sperm positive, and I took my cutting
19 -- this whole area was positive, so there wasn't a smaller area
20 I had to take from. And the profile obtained, the DNA profile
21 obtained from the epithelial fraction is consistent with a
22 mixture of two individuals. Unknown male number one could not
23 be excluded as the major contributor. Amber could not be
24 excluded as the minor contributor. Edward Adams was excluded
25 as a contributor to this mixture.

1 Q Okay.

2 A And the sperm fraction from that -- sorry, I'm just
3 trying to find it -- is again, consistent with unknown male
4 number one, I think. Hold on, sorry.

5 Q If you need to refer to your report, that's fine.

6 A Yes, I do. Yes, the sperm fraction from 7-B is
7 consistent with unknown male number one.

8 Q That was the sperm fraction?

9 A That's correct.

10 MR. SCOW: Court's indulgence. I'll pass the
11 witness, Judge.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. MANINGO:

15 Q Good morning.

16 A Good morning.

17 Q Would it be fair to say that the primary purpose of a
18 DNA analysis is to help identify whether a certain individual
19 has been at a specific location or in contact with another
20 individual?

21 A Definitely.

22 Q Okay. And so when you look at a DNA analysis, you're
23 able to -- let's say if it's a sample including semen or sperm,
24 you'd be able to tell that that individual may have had sexual
25 contact with another individual?

1 A Yes, we can.

2 Q Okay. You can't tell from your analysis whether or
3 not the sexual contact is consensual or forced or the nature of
4 the actual contact, correct?

5 A No, we cannot.

6 Q Okay. You're just identifying whether an individual
7 was -- was with another person?

8 A That's correct.

9 Q Okay. You -- you've already gone through all the --
10 the items that you tested. I just want to hit on a couple very
11 quickly. The blue tape.

12 A Yes.

13 Q You said it was negative for any semen or -- or
14 sperm?

15 A That's correct. And one -- one spot that fluoresced
16 under the ALS I checked for semen, and it was negative.

17 Q Okay. And then you checked around the -- the edges
18 of the tape, and you did not find any -- it says no DNA profile
19 obtained.

20 A That's correct. I swabbed around the edges, took
21 that swab for DNA, and I received no profile.

22 Q Okay. You also -- did you also test a gray hooded
23 sweat shirt?

24 A I did.

25 Q Okay. So you had a gray hoody?

1 A I did, and the results for that were negative for
2 semen.

3 Q Okay. And then lastly, there were a couple of things
4 that you tested that showed profiles for an unknown individual?

5 A That's correct.

6 Q Okay. And that was on one of the couch samples? The
7 seat cushion samples?

8 A Both of the seat cushion.

9 Q Both of them, okay.

10 A And the wash cloth.

11 Q And the wash cloth you found a profile for an unknown
12 individual?

13 A It's the same person.

14 Q Right.

15 A Yes.

16 Q Correct. I mean, when you say it's the sperm person,
17 it's the same person that's on the wash cloth as on the seat
18 cushions?

19 A That's correct.

20 Q Okay. But you don't know who that is? You don't
21 have a comparison?

22 A I don't. I just know the profiles are identical.

23 Q Okay.

24 A So unless it's two identical twins, it's the same
25 person.

1 Q Right, okay. But it's not Edward Adams on those.

2 It's someone else?

3 A That's correct.

4 Q Okay. That's all. Thank you.

5 THE COURT: Redirect.

6 MR. SCOW: Just one question.

7 REDIRECT EXAMINATION

8 BY MR. SCOW:

9 Q The gray hooded sweat shirt was the sweat shirt
10 obtained from the victim by the sex assault detective, correct?

11 A It was included with the victim's bra and white and
12 pink tank top, so I would assume it was victim's.

13 Q Okay.

14 MR. SCOW: Nothing else.

15 THE COURT: Anything else for this witness? Thank
16 you for your testimony. Please step down.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness.

19 MR. HENDRICKS: Thanks, Judge. The State calls Andre
20 Randle.

21 THE CLERK: And once you arrive in the witness stand,
22 please remain standing, and I'll swear you in. Raise your
23 right hand.

24 ANDRE RANDLE, STATE'S WITNESS, SWORN

25 THE CLERK: Thank you. You may be seated. And

1 loudly state your name for us, spelling both your first and
2 last name.

3 THE WITNESS: Andre Randle. Andre Randle.

4 THE CLERK: Spell your first and last name for me.

5 THE WITNESS: A-n-d-r-e, R-a-n-d-l-e.

6 THE COURT: Counsel.

7 THE CLERK: Thank you.

8 MR. HENDRICKS: Thanks, Judge.

9 DIRECT EXAMINATION

10 BY MR. HENDRICKS:

11 Q Andre, how old you?

12 A 18.

13 Q What's your birth date?

14 A 8/16/91.

15 Q Now, going back to December 14th and 15th of 2007,
16 how old were you?

17 A 17. 16, 17, something --

18 Q Somewhere around there?

19 A Yeah, yeah.

20 Q Okay. Now, back on that date where did you live?

21 A At 1111 Warbonnet Way.

22 Q What are the major cross streets over there?

23 A Buffalo and Charleston.

24 Q And who did you live with back then?

25 A Me and my mom.

1 Q Now, at some point during that time period, I think
2 on the -- the 15th of December, 2007, did anyone come to talk
3 with you?

4 A Yes, some officers came and knocked on the door, told
5 me to come outside, and they -- they -- what is them things
6 called? A little recorder. They did one of those.

7 Q So they did a taped interview with you?

8 A Yeah.

9 Q Okay. What did you tell them?

10 A Told them I seen two people walking into a vacant
11 apartment.

12 Q Now, when you say vacant apartment, how were you
13 aware that there was a vacant apartment?

14 A Because it was a fire not too long ago, and they
15 cleared out everything, everybody out of those apartment
16 buildings.

17 Q Do you remember what number it was?

18 A I don't.

19 Q How many vacant apartments were cleared out because
20 of the fire?

21 A All of them in that building. They almost got our
22 building in the fire.

23 Q Okay.

24 A And almost got our building, but they cleared out
25 everybody out of there.

1 Q So a lot of different apartments were vacant --
2 A Yeah.
3 Q -- because of fire damage?
4 A Yep.
5 Q Okay. Now, where did you see these two people?
6 A I was walking home from school, and I was going up my
7 hill, it's like some stairs and stuff to come in my house, and
8 they were coming down the hill going into upstairs.
9 Q Okay. So right near stairs going towards that
10 apartment?
11 A Yeah.
12 Q Okay. Tell -- tell me about what the girl looked
13 like.
14 A Just a little girl, backpack on. I didn't really see
15 her that much. Like a purplish/pinkish backpack.
16 Q You said little girl.
17 A Yeah, little.
18 Q About how old?
19 A 8, 10, couldn't be more than that.
20 Q 8 or 10 years old?
21 A Yep.
22 Q Okay. What about -- what about the guy?
23 A He looked around 30, 40 years old.
24 Q Old like me?
25 A Yeah.

1 Q Okay. Now, can you tell me what he looked like?

2 A I didn't see his face like that. I don't really
3 remember.

4 Q Can you tell me anything about him?

5 A No, I can't, I'm sorry.

6 Q Well, what did you think when you saw this little 8
7 or 10-year-old girl with this -- this man?

8 A I didn't know what they were doing. I just was
9 coming home from school. I went right in my house.

10 Q Did you have a conversation with them?

11 A Nope, they didn't say nothing.

12 Q Okay. But you thought it was a little strange that
13 these two people were going to this vacant apartment?

14 A Yes.

15 Q Did you call the cops?

16 A No, I didn't.

17 Q Why not?

18 A I -- I didn't know. I didn't know. I had no idea.

19 Q Do you remember anything else about this little 8 or
20 10-year-old girl?

21 A Nope. Nope. She didn't even look mad or nothing or
22 nothing.

23 Q Okay. Did you know anything about her?

24 A Nope.

25 Q Had you seen her before?

1 A Nope, never.

2 Q Had you seen him before?

3 A Never.

4 Q Had you ever seen other people going in and out of
5 that vacant apartment?

6 A Nope, that was the first time.

7 Q Now, you were going to school at --

8 A Bonanza.

9 Q -- at what place? Bonanza back then?

10 A High school, yeah.

11 Q Okay. And did you -- when you say you spoke with
12 police officers, do you know if they were officers or
13 detective?

14 A I think they were detectives.

15 Q Okay. Now, you said it was males, females or --

16 A Male and a female.

17 Q Do you remember what they looked like?

18 A I think it was a white female officer and a -- like
19 an Asianish -- I don't know, kind of Asian looking detective
20 guy, I don't know.

21 Q Asian looking guy?

22 A Yeah.

23 Q Okay. Thank you.

24 MR. HENDRICKS: I have nothing further.

25 THE COURT: Cross-examination.

1 CROSS-EXAMINATION

2 BY MR. MANINGO:

3 Q Hi, Andre.

4 A Hello.

5 Q We're asking you about two people that you'd never
6 seen before two years ago --

7 A Yeah.

8 Q -- right?

9 A Yeah.

10 Q Is it fair to say that it's -- it's a little bit
11 difficult to remember --

12 A Yeah.

13 Q -- the details?

14 A Yes, it is a lot.

15 Q Now, when you were doing the interview with the
16 detective, did you write everything down?

17 A I don't -- I think they did tell me to write
18 everything down, but they did a voice recorder and so they got
19 my voice.

20 Q Okay. So you didn't write the stuff down and --

21 A No, I think they wrote it and I just signed it.

22 Q Okay.

23 A Yeah.

24 Q So then the detective, though, they were taking notes
25 and stuff like that?

1 A Yes.

2 Q Okay. Do you remember telling the detective that the
3 two people that you saw, the man and the girl, that they were
4 not touching one another?

5 A No, they weren't.

6 Q They were not?

7 A I don't -- no, no, they weren't touching each other.
8 They were walking side by side.

9 Q Okay. So the man wasn't dragging the girl or pulling
10 her along or anything like that?

11 A No.

12 Q Okay. And -- and you said that the -- the girl
13 didn't look mad.

14 A No, nope.

15 Q Okay. So she wasn't crying?

16 A Nope.

17 Q She wasn't screaming?

18 A Nope.

19 Q She wasn't shaking or anything?

20 A Uh-uh, not at all.

21 Q Okay.

22 A Just walking -- walking along. I thought it was
23 normal day, you know, coming home from school.

24 Q Okay. If -- if you had seen -- now, you knew that
25 those apartments were vacant?

1 A Yes.

2 Q If you had seen a man dragging a girl up those stairs
3 who was crying and shaking --

4 A Yeah.

5 Q -- and -- and seemed to be afraid, would you have
6 told anyone?

7 A Yes.

8 Q Okay. What would you have done?

9 A I would have called the cops.

10 Q Okay. Okay.

11 A Yeah.

12 Q What if you saw a man going up to that apartment with
13 a young girl and you saw that he had a gun with him?

14 A I would have definitely called the cops.

15 Q Okay. That wasn't the situation?

16 A No. They was just walking normal.

17 Q Okay. Thank you.

18 A Um-h'm.

19 THE COURT: Redirect.

20 MR. HENDRICKS: Thanks.

21 REDIRECT EXAMINATION

22 BY MR. HENDRICKS:

23 Q Andre, if -- if someone would have had had a gun
24 inside of their shirt and pointing at this little girl, would
25 you have seen that or no?

1 A No.

2 Q You wouldn't have seen it?

3 A No.

4 Q Did you hear any conversation between them? Did you
5 ever hear this guy say, "Hey, listen, shut up, I've got a gun,
6 I'm going to kill you?"

7 A No, not at all.

8 Q You present when that happened, right?

9 A Nope, nope.

10 Q Okay. Yet, you say that you would have called the
11 cops if you thought that he was dragging her up there, right?

12 A Yeah.

13 Q Yet, you didn't call the cops even though you thought
14 it was strange because they were going to an apartment where no
15 one lived.

16 A Yeah, I didn't think of nothing about it, though, you
17 know. I was just coming home from school, a normal day.

18 Q Well, let me ask you, when you said you weren't
19 thinking anything about it, what did you think this guy was
20 going to do with this little 8 or 10-year-old girl once they
21 got to the vacant apartment?

22 A I have no idea.

23 Q You have no idea. But you didn't call the cops, did
24 you?

25 A No, I didn't.

1 Q Do you know what happened to that little 8 or
2 10-year-old little girl inside that apartment?

3 A Nope. Didn't -- nobody ever told me.

4 Q No one ever told you?

5 A Nope.

6 Q Okay. Thanks.

7 A Yep.

8 THE COURT: Recross.

9 MR. MANINGO: Nothing further.

10 THE COURT: Is this witness free to go? Thank you
11 for your testimony.

12 THE WITNESS: All right.

13 THE COURT: Please step down. Call your next
14 witness.

15 MR. SCOW: Vicki Farnham. Vicki Farnham.

16 THE CLERK: Once you arrive in the witness stand, if
17 you'll remain standing, please, and I'll swear you in.

18 VICKI FARNHAM, STATE'S WITNESS, SWORN

19 THE CLERK: Thank you. You may be seated. Can you
20 please state your name again for us, spelling both first and
21 last name.

22 THE WITNESS: My name is Vicki Farnham.

23 THE CLERK: And spell your first and last name for
24 me.

25 THE WITNESS: Vicki, V-i-c-k-i. Farnham,

1 F-a-r-n-h-a-m.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. SCOW:

5 Q How are you currently employed?

6 A I'm a forensic scientist two with Las Vegas
7 Metropolitan Police Department.

8 Q What's your assignment or your capacity in the
9 forensic lab?

10 A I work in the latent print detail as a certified
11 latent print examiner.

12 Q How long have you been doing that?

13 A Since 1988.

14 Q So a little while.

15 A Just a little bit.

16 Q Aside from the long career you've had, what -- what
17 training and education did you have leading up to becoming the
18 forensic scientist with latent prints examination?

19 A Well, I went to -- went to school and I got an
20 associate in science degree plus 38 hours in criminal justice
21 evidence technology. While I was in school I studied the
22 science of fingerprints, and I also did my internship at the
23 San Diego County morgue fingerprinting and photographing the
24 deceased.

25 After school, I went to work for the San Diego County

1 Sheriff's Department where I entered fingerprints into AFIS.
2 AFIS is a database that is it stands for the Automated
3 Fingerprint Identification System. I did that for eight
4 months.

5 And I also trained police officers how to process
6 property crimes for latent prints with powder. I moved to
7 Virginia. Worked there for nine and a half years doing both
8 crime scene and latent prints. And during that time I joined
9 the International Association of Identification which is the
10 professional organization that governs our science.

11 In '96 I tested to become a certified latent print
12 examiner, and every year I test -- excuse me, every five years
13 I test to keep my certification. I also hold two offices with
14 your local body of the International Association of
15 Identification. Each year that I've been employed, I go to
16 different schools and seminars and conferences to make sure
17 that I'll remain current. And every year I'm tested by the --
18 by the Metro to make sure that I am proficient.

19 Q And have you previously testified as an expert
20 witness in the area of latent print examination?

21 A Yes, sir.

22 Q What are latent prints?

23 A Well, on the palms of your hands and the soles of
24 your feet you have raised portions of skin that we call
25 friction ridge, and they're made of sweat pores and they're

1 connective tissues. So between what we exude out of our hands
2 and feet and what we pick up from what we touch, when we touch
3 an item, we leave behind that residue.

4 We call it latent, meaning latent meaning hidden. It
5 usually has to be processed with powders or chemicals, and
6 that's what a latent print is.

7 Q Now, do any two individuals have the same
8 fingerprints, latent prints as far as we know?

9 A No, we've not found any two to have -- any two people
10 to have the same fingerprints.

11 Q So part of your science is identifying who those
12 prints belong to?

13 A That's the primary responsibility.

14 Q Now, with regards to this case specifically, were you
15 asked to possibly identify latent fingerprints?

16 A As a result of an AFIS search and later a request
17 from the district attorney, I have compared all the latent
18 prints that were submitted in your case to both the victim and
19 the defendant.

20 Q Now, AFIS, this is a general -- it could be for work
21 card, it could be any -- any reason that somebody needs to be
22 printed to work or -- or whatever, generally speaking?

23 A Yes.

24 Q Okay. Now, you said there were two different --
25 initially through an AFIS search you were able to identify some