

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3                   **No. 85782**

Electronically Filed  
Oct 05 2023 07:19 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

4                   **JUSTIN D. PORTER**

5  
6                   Appellant,

7                   v.

8                   **THE STATE OF NEVADA**

9                   Respondent.

10  
11                   Appeal from a Judgment of Conviction  
12                   Eighth Judicial District Court, Clark County  
13                   The Honorable Jacqueline Bluth, District Court Judge  
14                   District Court Case No. 01C174954

15                   **APPELLANT’S APPENDIX**  
16                   **VOLUME V**

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1 viewed those and processed them for some -- any -- any  
2 biological evidence that might have been there.

3 We have a couple of presumptive tests that we use. One  
4 we use for blood, it's called phenolphthalein. Basically it's  
5 a presumptive -- a swab that you use a -- an enzyme on. And  
6 it produces a color change if blood is present. The second is  
7 another one called acid phosphatase. Same, basically,  
8 principal. You -- you swab a sample and apply an enzyme to  
9 the swab and you get a color change for the presence of semen.

10 And these even -- on these items -- listed in my report,  
11 item number 6, which was the white towel that you see in the  
12 picture here, that came back as positive for the presence of  
13 semen. And that was the only one of those items that -- that  
14 came back.

15 I did note in my report, the red bandana and the white  
16 underwear produced no positive reactions. The comforter that  
17 I collected at the house was folded and rolled and kept in its  
18 condition for trace evidence to go over at another time in the  
19 lab.

20 Q Okay. So when you say this white towel shown in  
21 Exhibit 210 showed positive for -- in the acid phosphatase  
22 test, that's a presumptive test; is that correct?

23 A Yes, it's -- it's a presumptive test.

24 Q And then the lab will then do, under better

1       circumstances, a conclusionary test?

2           A     Right.  They -- they will go through and collect an  
3     actual sample and run it for a profile.

4           Q     So in addition to collecting that, did you also have  
5     occasion to take photographs of injuries to Theresa?

6           A     Yes, I did.

7           Q     Showing you State's Exhibit 208, what are we looking  
8     at here?

9           A     This is a photo that was reported to me.  Has an  
10    apparent -- abrasion to the left elbow.

11          Q     And State's Exhibit 209.

12          A     Again, another bruising to the same elbow.

13          Q     Well, but to a different location --

14          A     To a different location --

15          Q     -- of the elbow.

16          A     -- yes.

17          Q     So this location on the elbow is where?

18          A     That's just above and to the inside of the elbow.

19          Q     Kind of where the arm bends?

20          A     Kind of in this area right here, if you will.

21          Q     And for the record, you're pointing to, like, below  
22    the bicep?

23          A     Yeah, just kind of in the -- above the -- or below  
24    the bicep region.

1 Q And then 208, what portion of the elbow are we  
2 looking at?

3 A This would be the elbow kind of in the forearm area  
4 right in here.

5 Q And for the record you're pointing --

6 A Just -- yeah, just below the elbow in this -- in  
7 this area right here, below the forearm.

8 Q Like in between where a watch would be and an elbow;  
9 correct?

10 A Yes.

11 Q Thank you.

12 MS. LUZAICH: I pass the witness.

13 THE COURT: Mr. Gill.

14 MR. GILL: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. GILL:

17 Q Is it Detective Atkin nowadays?

18 A No, it just --

19 Q I'm sorry.

20 A Just Mike is fine.

21 Q Okay. And -- and in 2000, you were called out to  
22 process this scene; correct?

23 A Correct.

24 Q And -- and I don't want to make light of what you



1 did, but when you go out there, you're kind of told a story,  
2 if you will; correct? And story, don't -- don't -- don't harp  
3 on "story."

4 A No.

5 Q You're told information.

6 A Yes.

7 Q And then from there you kind of go and take  
8 photographs; correct?

9 A Mm-hmm.

10 Q Is that a "yes"?

11 A Yes.

12 Q And then you also were tasked with lifting some  
13 prints?

14 A Yes.

15 Q And you also collected, again, those items that  
16 Ms. Luzaich showed you, which was the towel and the materials,  
17 things like that; correct?

18 A Yes.

19 Q Now, when you're doing this, you don't have a  
20 suspect, necessarily; correct?

21 A No.

22 Q You're not told who certain things might belong to,  
23 whether that be print or the materials; correct?

24 A No.

1 Q Or the semen; correct?

2 A No, I --

3 Q Just that there might be semen there.

4 A Not even -- I wasn't even told that much in this  
5 incident.

6 Q Okay. And -- and if you recall -- and I know it's  
7 been a minute. Twenty-two years.

8 A It's been a little while, yeah.

9 Q Do you recall what you were told about those items  
10 that were -- were laid out in State's, think it was 208?

11 MR. GILL: Are these it? Thank you.

12 BY MR. GILL:

13 Q And I -- just so -- just so you have a little better  
14 idea. We've got State's 211. These are the items I'm talking  
15 about.

16 A Yes.

17 Q You -- you had mentioned the towel, the panties,  
18 sweat pants, bandana, and then this material, multi-colored  
19 material with the phone cord.

20 A Correct.

21 Q So you weren't told that there might be semen on any  
22 of those; is that correct?

23 A I don't recall being told that, no.

24 Q Okay. But you -- you were told (indiscernible) you

1       were told that this was a sexual assault potentially?

2           A     Yes.

3           Q     And that was initially given to you; correct?

4           A     That -- yeah, 'cause that was part of the original  
5       call.

6           Q     So you decided to go ahead and test it -- or at  
7       least do that presumptive test for semen.

8           A     Yes, that was pretty standard.

9           Q     Okay. And -- and which items did you do that  
10       presumptive test on? Do you recall? And if you need to  
11       refresh your recollection, go ahead, use your report.

12          A     I would have -- I would have done the testing on the  
13       most obvious things: The -- the underwear, the towel were the  
14       most obvious things that I want to get. The pants, I believe  
15       I did some testing on. And as I stated earlier, only the  
16       towel came back with a positive presumptive result.

17          Q     Okay. Thank you. That was my -- my next question.  
18       So just to be clear, you -- you tested the underwear, the  
19       towel, and the sweat pants?

20          A     I believe so, yes.

21          Q     Okay. And, again, the towel came back --

22          A     That's correct.

23          Q     And you -- you note that somewhere -- correct? --  
24       before you send it on to the lab?

1           A     Oh, yes. Yeah. Yeah. That was in the -- the  
2     report that the lab would have looked at.

3           Q     Okay. Now, as far as the fingerprints go, you  
4     process the scene and do you recall how many cards you  
5     actually pulled?

6           A     I don't recall, no.

7           Q     Okay. But we're talking the phone; correct?

8           A     The phone, the --

9           Q     Back door?

10          A     -- the box, the cup, the door.

11          Q     The box and the cup.

12          A     Um, yeah.

13          Q     And if you need to look at your report, sir --

14          A     No, that's fine.

15          Q     -- go right ahead.

16          A     Yeah, I -- I don't remember the exact number.

17          Q     Okay. But, again, when you processed it, you did  
18     find some. You -- you at least -- and I don't -- I know  
19     you're gonna correct me on this, but you don't determine if  
20     there's enough ridge detail; correct?

21          A     That's correct.

22          Q     You can kind of look with the naked eye once you've  
23     done the -- put the substance on there.

24          A     Right.

1           Q     And you can see a fingerprint, but you don't -- you  
2     don't necessarily have the technology with you to determine if  
3     it's good or not for testing?

4           A     No, that's correct.

5           Q     Okay. That -- somebody else does that?

6           A     A latent print examiner would do that, yes.

7           Q     Okay. So -- and, again, just to summarize kind of  
8     your role here, you -- you photograph the scene initially.  
9     And those are the photos that we've looked at?

10          A     Yes.

11          Q     Those were taken by you; correct?

12          A     Yes.

13          Q     You process it for prints?

14          A     Yes.

15          Q     You collected evidence that you thought was  
16     important.

17          A     Yes.

18          Q     Including the things that we saw in State's 211,  
19     which was, again, the towel, the panties --

20          A     The -- the photograph, yes.

21          Q     And all of that kind of goes in your report as well  
22     as, you know, any physical evidence goes where?

23          A     Once I have finished my examination, it would have  
24     been booked into evidence. So it would have -- go to the

1 evidence impound for -- at Metro, which at that time was -- I  
2 believe it was on Sunrise Road. The -- the items that would  
3 have been biological in nature -- so anything that I thought  
4 had biological evidence on it would have been sent with a  
5 refrigeration unit.

6 Q Okay. Different unit within Metro that --

7 A Right.

8 Q -- handles that chain of custody concerns; correct?

9 A Correct.

10 Q Okay. And then you said the comforter was kept as  
11 well. Is that -- is that fair?

12 A The comforter was kept, yeah. I folded it at the  
13 scene to try to preserve any trace evidence that might be on  
14 it: Fibers, hairs, that kind of thing. At -- at that period  
15 of time, the lab didn't have a facility for us to lay out an  
16 entire comforter and properly examine it. So our trace  
17 evidence folks would have done that. They had a proper  
18 facility for that kind of thing.

19 Q Okay. And, again, that wasn't in your realm.

20 A Not in my realm, no.

21 Q Okay.

22 MR. GILL: Nothing -- nothing further, Your Honor.  
23 Thank you. Thank you.

24 THE COURT: Okay. Redirect?

1 MS. LUZAICH: No, Judge, nothing.

2 THE COURT: Anything from the jurors?

3 All right. I thank you so much for coming.

4 THE WITNESS: Thank you.

5 THE COURT: Please don't share your testimony with  
6 anyone else involved in the case since it's an ongoing trial.  
7 But you are excused. We appreciate it.

8 THE WITNESS: Thank you, ma'am.

9 THE COURT: All right. Ladies and gentlemen, we are  
10 going to take our lunch at this point.

11 Please remember during this recess not to discuss or  
12 communicate with anyone, including fellow jurors, in any way  
13 regard the case or its merits either by voice, phone, e-mail,  
14 text, internet, or other means of communication or social  
15 media. Please do not read, watch, or listen to any news,  
16 media accounts, or comments about the case; do any research,  
17 such as consulting dictionaries, using the internet, or using  
18 reference materials.

19 Please do not make any investigation, test a theory of  
20 the case, recreate any aspect of the case, or in any other way  
21 attempt to learn or investigate the case on your own. And  
22 please do not form or express any opinion on this matter until  
23 it's formally submitted to you.

24 We'll see you back here at 2:00 o'clock. Thank you.

1 THE MARSHAL: All rise.

2 [OUTSIDE THE PRESENCE OF THE JURY]

3 THE COURT: All right. We are outside the presence  
4 of the jury at this point in time. At the bench during  
5 Teresa Tyler -- is it tile -- Teresa Tyler; right?

6 MS. LUZAICH: Yes.

7 MS. KOLLINS: Yes.

8 THE COURT: Teresa Tyler's testimony, the State  
9 moved into -- well, stated that they -- their intention was to  
10 move the prior preliminary hearing transcript of Ms. Tyler  
11 into evidence. Looks to me, under NRS 51.035(2)(D) that a  
12 statement is not hearsay if the individual has testified at a  
13 previous hearing or trial and they are currently testifying  
14 and under -- and Defense has the ability to cross-examine.  
15 Again, it's 51.035(2)(D). And so I was looking -- just let  
16 me --

17 MR. GOODWIN: So, Your Honor, 51.025(D)?

18 THE COURT: 51.035(2)(D). It's says, "Hearsay means  
19 a statement offered in evidence to prove the truth of the  
20 matter asserted unless," two, "the declarant testifies at the  
21 trial or the hearing and is subject to cross-examine  
22 concerning the statement and the statement is a transcript of  
23 testimony given under oath at a trial or hearing or before a  
24 grand jury." And then the -- the transcript itself comes in.



1 MR. GILL: And the Court noted my objection.

2 THE COURT: Yeah, of course.

3 MR. GILL: Okay.

4 THE COURT: Yeah. So that can come in. The only  
5 thing I'd ask the parties to do is to go through it. Because  
6 I don't know if there's anything in there -- obviously it's  
7 just her testimony. It's not the transcript of everybody.

8 MR. GILL: Of course.

9 MS. KOLLINS: Yes. Yes.

10 THE COURT: I don't think that there's anything in  
11 there that would be objectionable, but I just want you guys to  
12 go through it before we mark it, in case there is.

13 MS. KOLLINS: I will double-check it and I will have  
14 a clean copy when we come back.

15 THE COURT: Okay.

16 MR. GILL: Just for clarification.

17 THE COURT: Yes, sir.

18 MR. GILL: When you say "objectionable,"  
19 Your Honor -- and I don't want to make this difficult, but  
20 there's gonna be things that -- that weren't asked today  
21 that -- that -- that are in there. And responses that -- that  
22 were given that -- that clearly -- and I know that that's what  
23 the State's intending to do. Are those objectionable or are  
24 those covered in my prior objection? Does that make sense?

1 THE COURT: No. Sorry.

2 MR. GILL: Judge, there's a lot in there.

3 THE COURT: Right.

4 MR. GILL: And there's a lot -- it -- mainly the  
5 responses that Ms. Tyler gave back then, during the  
6 preliminary hearing and what she gave today.

7 THE COURT: Yeah.

8 MR. GILL: Today was a lot of "I don't remember," "I  
9 don't recall," "I don't know." You know, things that were  
10 somewhat evasive.

11 THE COURT: Right.

12 MR. GILL: There are clear answers to their  
13 questions and that's essentially the reason why I objected  
14 because she gave answers today that contradicted or -- or did  
15 not explain the answers that she gave 22 years ago. So as  
16 long as my -- and I know I'm making my record now, but --

17 THE COURT: Yeah. So, I mean, I think -- so  
18 you're -- if I -- what I'm understanding is --

19 MR. GILL: Are we going --

20 THE COURT: -- basic, you're say --

21 MR. GILL: And I -- I'm sorry, Judge --

22 THE COURT: -- is it --

23 MR. GILL: -- but are we going question by question  
24 or are we just kind of looking at --

1           THE COURT: Yeah. So -- okay. So there's a  
2 different statute, and I can get it, that talks about if a  
3 certain portion of the transcript comes in then the other side  
4 has the opportunity to bring any other relevant portions of  
5 the transcript in; right? But that's a separate -- that's a  
6 separate issue.

7           Whereas here, under 51.035(2)(D), it's just saying,  
8 listen, they're here. They took the stand. You have the  
9 opportunity to cross-examine them. In a previous hearing they  
10 were under oath and testified, that transcript comes in.

11          MR. GILL: Okay.

12          THE COURT: There are not any limiting instruction.

13          MR. GILL: Okay. So let me just better articulate.  
14 And -- and Your Honor answered it, but she said today one sex  
15 act.

16          THE COURT: Yeah.

17          MR. GILL: She obviously said in -- and tried -- the  
18 State tried to elicit, there was --

19          THE COURT: Multiple --

20          MR. GILL: -- alleged to have been two sex acts plus  
21 an oral sex act.

22          THE COURT: Right.

23          MR. GILL: All of that coming in, is that the  
24 Court's ruling is --

1 THE COURT: Yes.

2 MR. GILL: Okay.

3 THE COURT: The whole -- and -- yeah, and the  
4 transcript in itself, the whole thing --

5 MR. GILL: Right.

6 THE COURT: -- in its entirety.

7 MR. GILL: Okay.

8 MS. KOLLINS: Right. And -- and it comes in for the  
9 truth 'cause it's not hearsay. And we intend to argue it in  
10 its entirety --

11 MR. GILL: Understood.

12 MS. KOLLINS: -- just to be clear. And when you say  
13 "nothing objectionable in it," I assume you mean some  
14 reference to things uncharged --

15 THE COURT: Right.

16 MS. KOLLINS: -- or victims uncharged that were not  
17 here today.

18 THE COURT: Right.

19 MS. KOLLINS: Not objectionable from his standpoint  
20 as to inconsistent with what we heard today.

21 THE COURT: No. No. No. I'm talking about OBA  
22 stuff. I'm talking -- I don't even know how she would know of  
23 any of that; right?

24 MR. GILL: Sure.

1 THE COURT: But I just have never read it so I don't  
2 know. And before it goes back to the jury, I just want a  
3 fine-tooth comb to have gone through it.

4 MS. KOLLINS: I will do that.

5 MR. GILL: I think it will be --

6 MS. KOLLINS: I'll make sure it's clean.

7 MR. GILL: Yep.

8 MS. KOLLINS: Thank you.

9 MR. GILL: Thank you, Your Honor.

10 THE COURT: All right. Thanks, guys.

11 We can go off, De'Awna. Thank you.

12 [RECESS AT 12:58 P.M.; PROCEEDINGS RESUMED AT  
13 2:05 P.M.]

14 [OUTSIDE THE PRESENCE OF THE JURY]

15 [DISCUSSION OFF THE RECORD]

16 THE MARSHAL: All rise.

17 [IN THE PRESENCE OF THE JURY]

18 THE COURT: All right. Welcome back, everyone.

19 Please be seated. Thank you.

20 We are on the record in C174954, State of Nevada versus  
21 Justin Porter. Mr. Porter is present with counsel, Mr. Gill  
22 as well as Mr. Goodwin. Both Chief Deputy District Attorneys,  
23 Ms. Luzaich as well as Ms. Kollins are present on behalf of  
24 the State.

1 Do the parties stipulate to the presence of the jury?

2 MS. LUZAICH: Yes, Your Honor.

3 MR. GILL: Yes, Your Honor.

4 THE COURT: All right. Next witness, please, State.

5 MS. LUZAICH: Laura Zazueta.

6 THE MARSHAL: Step up there, remain standing and  
7 raise your right hand so the clerk can swear you in.

8 THE CLERK: Right over here, ma'am.

9 LAURA ZAZUETA,  
10 [Having been called as a witness and being first duly  
11 sworn testified as follows:]

12 THE WITNESS: Yes, I swear.

13 THE CLERK: Please be seated.

14 Will you please state your name and spell it for the  
15 record.

16 THE WITNESS: Okay. My name is Laura. L-A-U-R-A,  
17 Zazueta, Z-A-Z-U-E-T-A.

18 THE CLERK: Thank you.

19 THE COURT: Ms. Luzaich -- oh, sorry.

20 (Indiscernible) the interpreter (indiscernible).

21 THE CLERK: He's a -- he's a sworn (indiscernible).

22 THE COURT: Okay. Got it. (Indiscernible).

23 THE CLERK: He might want to state it  
24 (indiscernible).

1 THE COURT: Okay. Got it.

2 Mr. Interpreter, may I have your name for the record?

3 THE INTERPRETER: Yeah, this is Yuel Cazman  
4 (phonetic), court certified interpreter.

5 THE COURT: Thank you.

6 THE INTERPRETER: You're welcome.

7 THE COURT: Good afternoon, sir.

8 Ms. Luzaich.

9 MS. LUZAICH: Thank you.

10 DIRECT EXAMINATION

11 BY MS. LUZAICH:

12 Q Good afternoon, Ms. Zazueta. May I call you Laura?

13 A Yes.

14 Q Thank you. Laura, do you have a sister named  
15 Beatriz?

16 A Yes.

17 Q And does Beatriz have children?

18 A Yes, she has two.

19 Q And a husband?

20 A And one husband.

21 Q And is his name Guadalupe Lopez?

22 A Yes.

23 Q And I'm sorry. Is Beatriz's last name Zazueta?

24 A Yes.

1           Q     Was there a time that you lived with your sister,  
2 her husband, and her two children?

3           A     Yes.

4           Q     When was that?

5           A     It was 2000.

6           Q     When you lived with them, was it in a house? An  
7 apartment? Something else?

8           A     It was an apartment.

9           Q     And was that apartment located at 2850 Cedar Avenue  
10 here in Las Vegas, Clark County?

11          A     Yes.

12          Q     And was the apartment number 229?

13          A     Yes.

14          Q     Was it on the first floor or second floor?

15          A     Second floor.

16          Q     And back in 2000, do you recall how old you were?

17          A     About 19 years.

18          Q     Okay. Were you working at the time?

19          A     Yes, I was a waitress.

20          Q     And where did you work back then?

21          A     At a restaurant, Mexican.

22          Q     Okay. And do you recall what hours you worked back  
23 in 2000?

24          A     I -- I don't recall really where.



1 Q Okay. Did you work late at night?

2 A Yes.

3 Q And --

4 A They will change the shift. Sometimes in the  
5 morning, sometimes in the afternoon.

6 Q Okay. So by the time it was bed time, were you  
7 home?

8 A Yes.

9 Q In the apartment that you lived in, do you recall  
10 how many bedrooms there were?

11 A Three, three-bedroom.

12 Q Who had which bedrooms? Or I should say, who had  
13 their own bedrooms?

14 A I had my own bedroom. My sister and husband had  
15 their own. The children would sleep in the other bedroom.

16 Q Okay. I'm gonna direct your attention to June 8th  
17 into June 9th of 2000. Did something occur that causes us to  
18 be here today?

19 A Yes.

20 Q Do you recall around what time it was you went to  
21 bed that date, night, evening, whatever it was?

22 A About 10:00, 11:00.

23 Q And you went to bed in your own bedroom, I assume.

24 A That's right.

1 Q At the time you went to bed, were your sister and  
2 her husband home as well?

3 A Mine? No.

4 Q No, were they home, in the apartment?

5 A Yes.

6 Q And after you went to sleep, did something wake you  
7 up?

8 A Yes.

9 Q Can you tell me about that?

10 A I went -- awoken by the light. Somebody turn the  
11 light on in my bedroom. When I opened my eyes, I had already  
12 a person aiming at me with a gun.

13 Q Can you describe the person that was aiming a gun at  
14 you?

15 A Well, I saw a person. I saw him as big, but I could  
16 not seem him. He was just hooded. I just saw their eyes.

17 Q When you say he was hooded, what do you mean?

18 A That he has covered, his face, all around here and  
19 this part of the head (indicating).

20 Q Okay. So when you say he covered his face around  
21 here, were you pointing covering your nose, cheeks to your  
22 ears?

23 A Yes.

24 Q And then you also said "here" a second time. Were

1       you covering -- were you directing your hands over your head?

2           A       Yes.

3           Q       Could you tell whether the individual was a man or a  
4       woman?

5           A       Yes.

6           Q       Which?

7           A       To me it was a male. To me -- the boys. A male.  
8       The hands, they were male.

9           Q       Okay. Could you tell whether the individual was  
10       Asian? Hispanic? White? African American? Something else?

11          A       He was black.

12          Q       As he was standing over you pointing a gun at you.  
13       Did he say anything?

14          A       Yes.

15          Q       What did he say?

16          A       He was telling me bad words.

17          Q       What kind of bad --

18          A       He was telling me that he wanted money.

19          Q       When you say "bad words," what kind of bad words  
20       would he say?

21          A       "Give me the money, motherfucker" (English).

22               THE INTERPRETER: I just -- the interpreter is going  
23       to shadow. No need. "Give me the money, motherfucker."

24       ///

1 BY MS. LUZAICH:

2 Q Okay. Laura, do you speak a little bit of English?

3 A Very, very little (English). Very little. Very,  
4 very little (English).

5 Q But enough to understand what he had said to you  
6 that day?

7 A Yes.

8 Q And when he said that to you, what did you do?

9 A Well, I was very nervous. And he pulled me up from  
10 my hair, from here (indicating), and he put the gun right here  
11 on the back (indicating).

12 Q Okay. You said he pulled you up from here. So you  
13 were holding your air. Did he pull you by your hair?

14 A [Witness nods head.]

15 THE COURT: Silence.

16 BY MS. LUZAICH:

17 Q Can you answer out loud, please.

18 A When I -- I mean, opening my eyes, when I felt that  
19 the light was on, I felt a person pull me from my hair telling  
20 me that he wanted money.

21 Q Okay. And you said he pointed the gun and you said  
22 "here." Where specifically did he point the gun?

23 A In the head. He pointed at my -- at the head.

24 Q Okay. So when he pointed the gun at your head and

1       said he wants money, what did you do?

2           A       I told him that I had money, but not to harm me.

3           Q       Okay. And when you said that you had money, did you  
4       give him anything?

5           A       Yes, I gave him money that I had in a drawer.

6           Q       Okay. Do you know about how much money you gave  
7       him?

8           A       Between 150 and 200. That money that I had receive  
9       as tip that day. I had it there and I gave it to him.

10          Q       When you gave him that money, what did he do?

11          A       He would tell me to give him more, that he knew that  
12       I had more, to give him more.

13          Q       Did you have more?

14          A       No.

15          Q       So then what happened?

16          A       He told me to turn around. He turned me around and  
17       he took me to the other room.

18          Q       What room did he take you to?

19          A       The -- to -- he took me to the -- my sister's room.

20          Q       When he took you to your sister's room, how did he  
21       do that?

22          A       He had his gun on my head and he was, like, by my  
23       shoulder like this (indicating) and he was aiming at me and he  
24       took me to the other room.

1 Q Okay. So was he behind you?

2 A Yes.

3 Q What happened when you got to your sister's room?

4 A Well, they were sleeping and I was -- I was yelling  
5 "Beatriz." I don't know. They were sleeping, but he was  
6 yelling, speaking very loud when he was in my room.

7 Q Okay. So when you got into the room, did anybody in  
8 the room wake up?

9 A Yes, my sister woke up and my brother-in-law woke up  
10 too.

11 Q What happened when they woke up?

12 A Well, the -- the young fellow started to say that  
13 the -- it was a robbery and that he -- if we will not give him  
14 money, he will kill us.

15 Q So what happened?

16 A Well, he started to talk in English to my  
17 brother-in-law and many things I will not understand. But  
18 what little I under -- understood was that he wanted money.

19 Q Okay. Does your brother-in-law speak English?

20 A He speaks English.

21 Q And he's outside; right?

22 A Yes, he's outside.

23 Q Okay. So they were talking back and forth. What  
24 did you see, if anything, happen?

1           A     I -- I saw that my brother-in-law was getting closer  
2 to the edge of the bed. And this person may aim it at him --  
3 at his head.

4           Q     Okay. And then what?

5           A     He aim at him at the head.

6           Q     And then what happened?

7           A     And my brother-in-law defended himself trying to  
8 take the gun --

9           Q     Did you hear --

10          A     -- and we will hear many shots.

11          Q     Okay. So you heard shots fired?

12          A     Yes.

13          Q     What happened after the shots were fired?

14          A     I -- I threw myself to the ground and my sister  
15 covered herself with the blankets because she had the boy,  
16 little boy over there with her.

17          Q     Her son was in the bed with her?

18          A     Yes.

19          Q     Were you scared?

20          A     We were very scared.

21          Q     So after you threw yourself on the ground, could you  
22 still see what was happening?

23          A     Yes. Yes, it was like there were no more bullets in  
24 the gun, like the cracking in the gun. So they had a fight.

1 I mean, my brother-in-law defended himself. They went all the  
2 way through the hallway, up to the living room.

3 Q And did you see what happened in the living room?

4 A Yes, I peeked out and -- because I wanted to grab  
5 the phone to call the police. Then I -- I saw that my  
6 brother-in-law went and hug him by the waist to defend  
7 himself. But he slid and then he fell to his knees. And then  
8 he -- the young -- the fellow hit him with the gun in the  
9 head.

10 Q So the person who came in with the gun hit your  
11 brother-in-law over the head with the gun?

12 A Yes.

13 Q What happened after that?

14 A He ran away and he went through the sofa and went  
15 out through the window, broke -- breaking the window.

16 Q Okay. And once he got out the window, did you call  
17 the police?

18 A Yes, we call.

19 Q And did they come and talk to all of you?

20 A My brother-in-law, I think he called.

21 Q Oh, somebody called the police.

22 A Yeah, somebody called.

23 Q And did they come and talk to you all?

24 A The police?



1 Q Yes.

2 A Yes.

3 Q And did you give a description as best you could of  
4 the individual?

5 A Yes.

6 MS. LUZAICH: Your Honor, I have State's Proposed  
7 Exhibits 214 through 235 that I would move into evidence. I  
8 believe there's no objection.

9 MR. GILL: That is correct, no objection.

10 THE COURT: All right. There be no objection, those  
11 are admitted and you can publish or the show the witness at  
12 any time.

13 MS. LUZAICH: Thank you.

14 [STATE'S EXHIBITS 214-235 ADMITTED.]

15 BY MS. LUZAICH:

16 Q Laura, I'm just gonna show you a few pictures, if  
17 you don't mind. State's 214. Is that the inside of your  
18 apartment?

19 A Yes.

20 Q And front door with the number 229 on it?

21 A Yes.

22 Q Is that the window that you're talking about?

23 A Yes. Through there, he went out.

24 Q Oh, sorry. And that was 215, if I didn't say.

1           216, what are we looking at?

2           A     That's my bedroom.

3           Q     And is that photograph taken from standing in the  
4 doorway looking into the room?

5           A     Yes.

6           Q     State's 217. Still your bedroom?

7           A     Yes.

8           Q     And as we're looking out through the doorway, who's  
9 bedroom do we see?

10          A     That's my sister's bedroom.

11          Q     Okay. State's 218. Is this still your bedroom?

12          A     Yes.

13          Q     Is that the dresser that you were talking about?

14          A     Yes.

15          Q     And your money was in that -- one of those dresser  
16 drawers?

17          A     Yes, it was on the -- on the upper left side.

18          Q     And then just 219. That's your bed; correct?

19          A     That's my -- my bed.

20               MS. LUZAICH: Thank you. I pass the witness.

21                               CROSS-EXAMINATION

22           BY MR. GILL:

23           Q     Just a few questions, Ms. Zazueta.

24               How are you?

1           A     Fine.  Thank you.

2           Q     Did this person that came into your house -- your  
3 apartment that night, had you ever seen him before?

4           A     No.

5           Q     And was that because he was covered or some other  
6 reason that -- that you didn't recognize him?

7           A     He was covered.

8           Q     He was covered?

9           A     He was covered.

10          Q     Okay.  And -- I'm sorry -- I just didn't understand  
11 the response.

12                 And you described him as -- as having covering  
13 essentially everywhere on his head but his eyes; correct?

14          A     That's right.

15          Q     And did he have gloves on?

16          A     No.

17          Q     And he had a gun; correct?

18          A     Yes.

19          Q     What hand was he holding the gun in?

20          A     I don't remember.

21          Q     Okay.  And can you describe the gun at all?

22          A     No, I don't know about guns.

23          Q     Now, do you know what a revolver is?

24          A     Yes.

1 Q And do you know what, like, a rifle is? Like a  
2 hunting rifle?

3 A Yes.

4 Q One was more of a handgun, the other one is a bit  
5 longer; correct?

6 A Yes.

7 Q Which -- which one was it more similar to?

8 A To a revolver.

9 Q So smaller and hand held; is that fair?

10 A Yes.

11 Q Now, you -- you had also mentioned when you first  
12 saw him you -- your quote was that you saw him as big. Do you  
13 recall saying that this afternoon?

14 A Yes.

15 Q And -- and can you go into a little bit more detail  
16 on what you mean by "big"? Can you give any description about  
17 height and weight?

18 A Well, it was bigger than me.

19 Q Okay. How tall are you?

20 A Five-three.

21 Q Okay. So he was taller than you?

22 A Yes.

23 Q Now, you had mentioned as well that -- that you, at  
24 the time, at least, and we're talking about June 8th, June 9th

1 of 2000, you -- you spoke a little bit of English at that  
2 time; is that correct?

3 A I -- I won't know to speak it, but I was able to  
4 understand a little bit.

5 Q Okay. So -- and that's fair. Thank you for the  
6 distinction.

7 Now, when you say "understand it," when this person asked  
8 you for money, did they do so in English or Spanish?

9 A He did it in English.

10 Q Okay. And you understood that; correct?

11 A Yes.

12 Q And you understand some bad words; correct?

13 A Bad words, yes.

14 Q Beyond that, did you understand much more, when he's  
15 in your room, specifically?

16 A Well, he was telling many words, but I didn't  
17 understand those, but I knew that he was a bad person because  
18 he was there aiming at me with a gun.

19 Q So he -- you understood kind of the gist of it;  
20 correct? You know what "gist" means? I'm sorry if that  
21 doesn't translate.

22 A Sí.

23 Q In other words, you understood what he was getting  
24 at, with a gun and the circumstances; correct?

1           A     Yes, I knew that he was coming because he was saying  
2 many things in English. But he was saying "give me the  
3 money," so I understood that it was a robbery.

4           Q     Okay. And then, again, I -- I think you answered  
5 it, but he didn't ask that in Spanish; correct? "The money,  
6 give me the money," that was in English.

7           A     No.

8           Q     And then when he was speaking to Guadalupe, that was  
9 also in English; is that correct?

10          A     Yes.

11          Q     Okay. And you didn't understand all of that, is  
12 that also correct, the conversation that he had with  
13 Guadalupe?

14          A     Not all of it.

15          Q     Okay. Just, again, some pieces that you understand  
16 in the bedroom as well.

17          A     Yeah.

18          Q     Did you actually see this gentleman leave your house  
19 or your apartment through that window?

20          A     Yes.

21          Q     And then, also, we saw the picture, the window was  
22 kind of broken up; right? The blinds and everything.

23          A     Yes.

24          Q     Okay. And you saw that, obviously, later, so it

1 looked like somebody exited that window; correct --

2 A Yes.

3 MR. GILL: Nothing further, Your Honor. Thank you.

4 THE COURT: Okay. Any redirect?

5 MS. LUZAICH: No, judge.

6 THE COURT: Any questions from the jurors?

7 Ma'am, thank you so much for being here. Please don't  
8 share your testimony with anyone else involved in the case  
9 because it's an ongoing trial.

10 THE WITNESS: Okay.

11 THE COURT: We appreciate you being here. Thank you  
12 very much.

13 THE WITNESS: Thank you (English).

14 MS. LUZAICH: Guadalupe Lopez.

15 THE MARSHAL: Just step up there, remain standing,  
16 and raise your right hand so the clerk can swear you in.

17 GUADALUPE LOPEZ,  
18 [Having been called as a witness and being first duly  
19 sworn testified as follows:]

20 THE WITNESS: I promise.

21 THE CLERK: Please be seated.

22 Will you please state your name and spell it for the  
23 record.

24 THE WITNESS: Guadalupe Lopez, G-U-A-D-A-L-U-P-E;

1 Lopez, L-O-P-E-Z.

2 THE CLERK: Thank you.

3 THE COURT: Ms. Luzaich.

4 MS. LUZAICH: Thank you.

5 DIRECT EXAMINATION

6 BY MS. LUZAICH:

7 Q Good afternoon, sir. Who do you live with?

8 A I live with my wife, Beatriz.

9 Q Could you spell Beatriz for our nice court recorder?

10 A B-E-A-T-R-I-Z.

11 Q And is it just you and your wife?

12 A Yes. Actually my son, Andres (phonetic).

13 Q Okay. How many children do you and Beatriz have?

14 A Two.

15 Q How old are they now?

16 A One is 26 and the other one is 24.

17 Q Okay. I am going to send you all the way back to  
18 2000. Back in 2000, do you remember who you lived with?

19 A With my wife, Beatriz, Andres, Carlos, and my --  
20 Laura, my sister-in-law.

21 Q Okay. And were you living in an apartment at  
22 2850 Cedar in Clark County?

23 A Yes.

24 Q Was that apartment 119?



1           A     Yes, it was.

2           Q     Oh, maybe 229?

3           A     Um --

4           Q     First floor or second floor?

5           A     It was second floor.

6           Q     Okay.

7           A     Yeah.

8           Q     And when you were living there, was it a  
9 three-bedroom apartment?

10          A     Yes, it was.

11          Q     We spoke to Laura just a few minutes ago, so heard a  
12 little bit of these facts.

13          A     Okay.

14          Q     And I'm going to direct you, if I could,  
15 specifically to June 9th of 2000. Had you gone to sleep the  
16 night of the 8th into the 9th?

17          A     Yes.

18          Q     And did something wake you up in the early morning  
19 hours of the night?

20          A     Yes, it was my sister-in-law. She came into my  
21 room.

22          Q     Tell me about that. What happened?

23          A     We were sleeping. Suddenly I hear the door open and  
24 then I see her coming in. And I looked and I see her come

1 walking in. And then she take three steps into the room and  
2 there's a guy behind her with a gun pointed at her head.

3 Q Now, at this time you said you were in bed sleeping.  
4 It woke you up. Who else was in -- in the bed with you?

5 A It was my wife and my two sons.

6 Q And when you saw that, what did you do?

7 A As soon as I saw the guy coming behind her, I looked  
8 and then as soon as he saw me, he pointed the gun at me  
9 (indicating) and he start screaming at me that he wanted some  
10 money. And I just -- I panicked. I just started saying that  
11 I had no money, that he could take whatever he wants and  
12 just -- but he just kept on screaming to me that he wanted  
13 money.

14 Q Can you describe him?

15 A Well, I -- I can't because I couldn't see him. It  
16 was kind of dark and his face was covered with -- with the  
17 rags or -- his whole face was covered. I could only see his  
18 eyes and --

19 Q Okay.

20 A -- of course the gun when he was pointing at me.

21 Q Yeah. When you say his face was covered, was there  
22 any other part of him that was covered?

23 A Well, just, like, his head, his nose from the --  
24 from his nose down and then his whole head was covered.

1 Q Okay. So his head as well.

2 A Yeah.

3 Q Could you tell the color of his skin?

4 A He was brown, dark. Dark skin.

5 Q Okay. African American?

6 A Yes.

7 Q You said that you saw eyes and a gun. Can you  
8 describe the gun for me?

9 A I'm not a gun guy, so I just -- I saw kind of like  
10 it was maybe -- what? -- eight-inch, big gun. Just black --  
11 black gun.

12 Q Okay. A black gun.

13 A Mm-hmm.

14 Q Was it the size that you hold in your hand or do you  
15 need to kind of --

16 A Oh, no, it's just the size you can hold in your  
17 hand. Yeah.

18 Q Okay. And when he pointed the gun at you, where  
19 were you?

20 A I was on the right hand of the bed. My wife was --  
21 my two kids were in the middle and then my wife was in the  
22 left hand -- the left side of the bed. Was on the other side  
23 of the bed when -- when I woke up and I just look -- I look at  
24 the door and I saw him. And just kept walking in -- when

1 he -- when he pointed the gun at me, I sat down on the bed and  
2 I just started getting closer to him 'cause I -- I just -- I  
3 didn't want -- I didn't want him to hurt my family.

4 So I was trying to relax and just trying -- relaxing and  
5 just tell him that he could take whatever he wants. But he --  
6 I guess he just wanted money, so --

7 Q Okay. Where was Laura while this was happening?

8 A When -- when they came in the door, she just went to  
9 the -- to the left and then the guy just put all the attention  
10 to me.

11 Q Okay. So was she closer to Beatriz?

12 A Yes. She was on the left side, yeah.

13 Q You said that you were moving closer to him. Then  
14 what happened?

15 A When I was getting close to him, as soon as I got to  
16 the edge of the bed, he put the gun in my head (indicating).

17 Q And you're pointing to your head --

18 A Yes.

19 Q -- so did the gun actually touch your head?

20 A He touch my head with the gun. But as soon as I  
21 felt the gun that he touch it, I -- I don't know how. I just  
22 grabbed his hand, locked him up and just -- I just started  
23 hitting him. And I just hear gunshots going pop, pop, pop.  
24 And I just -- I just was holding his hand where he had the

1 gun, and I was hoping he would run out of bullets. And I  
2 guess he did because then it -- he -- I only heard four shots  
3 and then that's about it.

4 Q Okay. So when you said you grabbed his hand, kind  
5 of where were you? Were you facing him? Were you to the side  
6 of him? Behind him?

7 A He was right in front of me. I -- I went all the  
8 way to the edge of the bed. When I was sitting there, he just  
9 stand right -- right in front of me and he put the gun in  
10 (indicating) -- as soon as I felt that, I just grab, locked  
11 his hand, and I just started struggle with him, start hitting  
12 him with the left (indicating).

13 Q Okay. So you're grabbing his hand with the gun,  
14 with one hand and hitting him --

15 A Yeah (indicating).

16 Q -- you're pointing with the other hand.

17 A Yes.

18 Q Okay. When you did that, how did he react?

19 A Well, he was trying to just -- he was trying to free  
20 his -- his hand where he had the gun. I mean, I don't know,  
21 maybe to shoot or something. But I guess when he ran out of  
22 bullets, I just started fighting him and just threw him around  
23 and just started punching him (indicating), threw him into  
24 the -- into the closet and started fighting with him.

1 Q Do you remember how many shots you heard?

2 A Four.

3 Q And after you heard the four shots, what did you  
4 hear?

5 A I was just hearing a click like (descriptive noise),  
6 the -- that's when I said, he's out of bullets. I'm lucky.  
7 So I just --

8 Q Okay.

9 A -- I pushed him and I just started fighting with  
10 him.

11 Q 'Kay. Now when the bullets -- when the bullets.  
12 When the gun went off and you heard the shots, could you tell  
13 where the bullets went?

14 A When I was struggling, yeah. He had hit the bed,  
15 two walls, the -- the right wall and then one in front of the  
16 bed. And then on the -- on the bed and on the floor, carpet.

17 Q You said it hit the bed.

18 A Yeah.

19 Q Where in the bed did the bullet hit?

20 A Let's say, like, on the -- like, kind of in the  
21 middle of the bed.

22 Q Like where your --

23 A Yeah.

24 Q -- wife and children were laying?

1           A     Yes.

2           Q     Did any of the bullets hit you?

3           A     Yes, it did.  They -- the first -- when he -- the --  
4     the first shot I felt a -- a burn on my leg, when the first  
5     shot.  And -- but I didn't -- I -- I just felt the -- the  
6     burn, but I just kept on fighting with him.  And then at the  
7     end, that's when I saw that I was bleeding on my leg.  It --  
8     it grazed my leg, my left -- I mean, right leg.

9           Q     Okay.  So as you are kind of holding him, the  
10    bullets -- I mean, there's no more bullets and you're kind of  
11    struggling, what happens?

12          A     Well, like I said, I -- I just pushed him around,  
13    started hitting him, and he was just trying to escape.  He was  
14    trying to run out of the apartment.  But I just kept chasing  
15    him.  Chasing him.  And when he ran out he was trying to get  
16    out the door.  I just ran at him, like, tackled him and I just  
17    started hitting him again (indicating).

18          And then I had socks -- and there was, like, vinyl  
19    flooring on the front -- on the entrance.  I slipped.  He --  
20    I -- I was grabbing him.  So I slipped.  When I slipped, he  
21    pulled his hand out, where he had the gun, and he hit me,  
22    like, three times in the head (indicating).  I got dizzy and I  
23    guess he just ran around and jumped through the window and  
24    jump out the apartment.

1 Q Okay.

2 A And --

3 Q I'm gonna break that down just a little bit. So  
4 while you're in the room, you said he's trying to get away.  
5 Was he able to break away from you while you were in the  
6 bedroom?

7 A Yes.

8 Q And as he broke away from you, where did he go?

9 A He went through the hallway and then -- he went out  
10 through the hallway. 'Cause the door what -- on the left --  
11 on the left side of the apartment. So he ran through the  
12 hallway. When he was running, I pushed him and he hit the  
13 wall. He broke the wall with his foot.

14 Q Okay.

15 A And that's when I chased him all the way down to the  
16 door.

17 Q Okay. So as you chased him further down the  
18 hallway, towards the door, what is out there?

19 A The living room, the couches, the TVs and all that,  
20 you know.

21 Q Okay. And you said --

22 A Kitchen.

23 Q -- there's vinyl floor.

24 A Yes.



1 Q And that you slipped on that.

2 A Yeah. Just right at the entrance of the door,  
3 there's, like, a four-by-four piece of vinyl flooring.

4 Q I'm going to show you State's Exhibit 214. Okay.  
5 So apartment 229; right?

6 A Mm-hmm.

7 Q Okay. Is that a "yes"?

8 A Yes.

9 Q We always have to say "yes" and "no." She has a  
10 "yes" button, "no" button, no "uh-huh" buttons.

11 Okay. So right in front of the inside of the door, is  
12 that the vinyl that you're talking about?

13 A Yes, it is.

14 Q And you said you slipped.

15 A Mm-hmm.

16 Q And when you slipped there, I assume the door was  
17 closed?

18 A Yes.

19 Q Where was he?

20 A He was trying to -- trying to open up the door, but  
21 I didn't let him. Well, I jumped at him. Sorry.

22 (Indiscernible)

23 Q Okay. And you -- you used your arms in a motion  
24 almost like you're hugging a tree kind of thing.

1           A     Yes.

2           Q     What were you doing?

3           A     I was just trying -- I was just trying to grab him  
4     and hold him and just till -- I didn't want to let him go. So  
5     I was just trying to hold him so they can -- somebody can come  
6     over and, you know, help. And I was just trying to keep him  
7     there until the cops get to my apartment.

8           Q     Okay. Try to keep him there until the police came.

9           A     Yeah.

10          Q     Okay. And then I'm going to back up a little bit.  
11     You talked about you were in bed, in your bedroom, and your  
12     sister walk -- sister-in-law walked in with him. Is this the  
13     door to your bedroom?

14          A     Mm-hmm. Yes.

15          Q     And is her room kind of right across the hall?

16          A     Yes, it is.

17                 MS. LUZAICH: Oh, and I'm sorry. That's State's  
18     Exhibit 220.

19                 THE COURT: Okay.

20     BY MS. LUZAICH:

21          Q     State's Exhibit 221. Is this inside your bedroom?

22          A     Yes.

23          Q     State's Exhibit 222, is that just kind of a close-up  
24     of your bed?

1           A     Mm-hmm.

2           Q     Is that a "yes"?

3           A     Yes.   Yes.

4           Q     State's Exhibit 223.   And I don't know if I'm upside  
5 down or right side up.   Can you tell what we're looking at  
6 there?

7           A     Yeah, that's the shot with -- on my bed.

8           Q     Okay.   So the bullet hole in the mattress from the  
9 shot that he fired?

10          A     Yes.

11          Q     And that's in the -- that pink flower in the center  
12 of the ruler thing?

13          A     Yes, it is.

14          Q     State's Exhibit 224.   What's that?

15          A     This's the carpet, isn't it?   On the floor.

16          Q     Is it the exit of the mattress on the bottom?

17          A     Oh, yes.

18          Q     Does it appear that that's the side of the mattress?

19          A     Yes.   Yes.

20          Q     And that's the underneath.

21          A     Mm-hmm.   Underneath.

22          Q     So did it go in one side of the mattress --

23          A     Yeah.

24          Q     -- and out the other.

1           Is that a "yes"?

2           A     Yes.

3           Q     Oh, sorry.

4           225. Can you tell what that is?

5           A     Yeah, that's the wall in the -- by the bed.

6           Q     Bullet hole in the wall?

7           A     On the -- yeah, bullet on the bed [sic].

8           Q     Was there any bullet holes in the wall before he got

9           there?

10          A     No.

11          Q     Were there any bullet holes in your mattress before

12          he got there?

13          A     No.

14          Q     State's Exhibit 226. I got to orient and see if I'm

15          up or down. There. What are we looking at here?

16          A     It's another hole in the wall. Bullet hole?

17          Q     Is it a bullet hole or is it as if somebody was

18          pushed into the wall?

19          A     No, that's -- that -- no. I'm sorry. That's the

20          one where -- yeah. When we were struggling, we crash into the

21          wall.

22          Q     Okay. And where in the apartment is that wall?

23          A     It's, like, by the closet.

24          Q     And is that looking into Laura's bedroom?

1           A     Yes.

2           Q     And then 227.  Where is this?

3           A     Yeah, that's the hallway.  That's where -- that's  
4 where he put his foot into the wall.

5           Q     Okay.  And then you said that he and you had been  
6 kind of struggling in the -- in the front and you slipped and  
7 he hit yourself -- hit you in the head with the gun; correct?

8           A     Yes.

9           Q     232.  What is this?

10          A     That's my head, opened up.

11          Q     Okay.  Is that what he did to your head with the  
12 gun?

13          A     Yes.

14          Q     And just while we're at your body, is this -- 231.  
15 Is that you on that day?

16          A     Yes, that's me.

17          Q     Couple minutes younger.

18          A     Oh, yeah.

19          Q     Now, you had mentioned that he went -- from there he  
20 was hitting you in the head and he jumped out the window.  How  
21 did he get to the window?

22          A     When the struggle happened, when I had him on -- on  
23 the door and I -- I was -- grab him like a bear, when he  
24 pulled his hand out and hit me, I got dizzy.  So he went

1 around (indicating). 'Cause the window -- the -- the door's  
2 on the left side. So the windows on the right side.

3 So he went around me when I -- when I got dizzy and let  
4 him go, he went around and just jumped through the window.  
5 But when I saw him running again, I tried to catch him again.  
6 I tried to grab him and I stretched my hand to grab him when  
7 he was jumping through the window, but I couldn't grab him.  
8 So he just jumped out and disappeared.

9 Q Okay. So 214, again, this is the -- the entrance to  
10 the apartment. So you had him on the vinyl there?

11 A Mm-hmm. Yes.

12 Q Wouldn't let him out -- is that a "yes"?

13 A Yes.

14 Q And you wouldn't let him out?

15 A Yes.

16 Q And then he went towards the window. That's two --  
17 or went around you, you said?

18 A Yes.

19 Q 215, that's the window.

20 A Correct.

21 Q How did he get to the window?

22 A He ran around me and just ran and just jump, put --  
23 put his knee through the window and arms and we went -- I just  
24 saw him go like this and jump, broke the glass when -- trying

1 to get out.

2 Q Showing you State's Exhibit 228, is that the outside  
3 of the window after he jumped through it?

4 A Yes.

5 Q Was there any break, any glass broken, any --  
6 anything like that before he arrived?

7 A No.

8 Q State's Exhibit 229. What are we looking at?

9 A Broken glass on the patio, side my -- side of the  
10 apartment.

11 Q So can you see the open doorway of your apartment?

12 A Yes.

13 Q And then just past the open doorway, is that the  
14 glass -- the window that was -- he came out of?

15 A Yes.

16 Q And then the glass from that window is on the floor,  
17 outside the apartment; is that correct?

18 A Correct. Yes.

19 Q And then you said you're on the second floor. If  
20 you go, like, from the doorway, through the glass, and keep  
21 going, is that stairs to go down?

22 A Those are the stairs.

23 Q Showing you State's Exhibit 230, tell me what we're  
24 looking at.

1           A     We're looking at the apartment on the -- on the  
2 ground, where he -- I mean --

3           Q     All right. Let me ask that better. Is your  
4 apartment kind of -- sort of depicted in that?

5           A     Yes.

6           Q     Which --

7           A     It is.

8           Q     -- side of the photograph?

9           A     On the left.

10          Q     Okay. So over here.

11          A     The second floor, yes.

12          Q     Is that right?

13          A     Second floor, yes.

14          Q     And this is a photograph that's taken from  
15 downstairs; correct?

16          A     Correct. Yes.

17          Q     In the very corner of the photo, can you see your --  
18 the stairs that we were just talking about that would go down?

19          A     Yes.

20          Q     So the individual, once he jumped out the window,  
21 were you able to see where he went?

22          A     He jump out through the window and out through the  
23 little -- the -- the fence. He just jump over there.

24          Q     Okay. So he did not go down the stairs?



1           A     No.

2           Q     He jumped off that balcony?

3           A     Yes.

4           Q     Okay. And you said that you had tried to grab him  
5 when he jumped through the window?

6           A     Yes.

7           Q     Showing you State's Exhibit 233. What's that?

8           A     Those are my cuts. When I tried to grab him, I cut  
9 myself on the window.

10          Q     Okay.

11          A     Broken glass.

12          Q     And then also 234 -- oh, and I'm sorry. Is that  
13 your left thumb?

14          A     Yes. Yes, it is.

15          Q     Just for the record.

16          A     Yes.

17          Q     And then State's Exhibit 234. What's that?

18          A     Same cuts from the broken glass on the window.

19          Q     Okay. And then, finally, State's 235. What is  
20 that?

21          A     That's my leg, when he grazed me with the bullet.

22          Q     So that's the injury that you sustained when the  
23 bullet that he shot (indiscernible) you?

24          A     Yes.

1 Q When -- so somebody -- did somebody call the police?

2 A Yes.

3 Q And did the police come?

4 A Yes.

5 Q Did you give them the best description that you  
6 could of the individual that was in your house?

7 A I tried to give 'em the best I could, but I -- like  
8 I told everybody, that I couldn't see his face or nothing.  
9 All I could see is his eyes and that's about it. But I  
10 couldn't tell who it was. I can't --

11 Q Right.

12 A -- point a finger saying it was him.

13 Q Could you tell approximately how old the individual  
14 was?

15 A He was pretty young. Like 17, 18, probably.

16 Q Okay.

17 MS. LUZAICH: Thank you. I pass the witness.

18 THE COURT: Mr. Gill.

19 MR. GILL: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GILL:

22 Q Mr. Lopez, how are you?

23 A Good.

24 Q I know we're talking about something that's 22 years

1 old, but you seem to have a pretty good recollection; is that  
2 fair?

3 A Yes.

4 Q Now, I want to kind of focus in on the -- the  
5 struggle. So you're in bed -- and Ms. Luzaich showed you the  
6 photos. And I just want to get a little bit of an orientation  
7 here.

8 MR. GILL: Court's indulgence.

9 THE COURT: Sure.

10 BY MR. GILL:

11 Q And what I'm showing you, sir, is 221. When you  
12 talk about left side of the bed, is that the position that you  
13 were sleeping in right there, what's depicted in 221, nearest  
14 the lamp?

15 A On the left side, it was my wife.

16 Q Okay.

17 A Yeah, actually, I was on the -- on the right-hand  
18 side of the bed.

19 Q Okay. So in this picture, they're not standing in  
20 the door when they take that picture; is that fair?

21 A Yeah.

22 Q They're just standing at the bed.

23 A On the bed, yeah.

24 Q Where's the door? Would it be back to their -- over

1       their right shoulder or over the left shoulder?

2           A       It'll be over the right shoulder.

3           Q       Okay.  So when you come in that door, kind of closer  
4       to the dresser and mirror set.

5           A       Yes.

6           Q       Okay.  And your wife was sleeping on that side,  
7       closest to the dresser?

8           A       Yes.

9           Q       And that's Beatriz; correct?

10          A       Yes.

11          Q       Now, when -- so you -- you see light come in --  
12       Laura comes in, a man comes in --

13          A       Mm-hmm.

14          Q       -- and then, eventually -- well, words were  
15       exchanged; correct?

16          A       Yes.

17          Q       And you heard demands for money; is that correct?

18          A       Yes.

19          Q       And you -- you let this intruder know that you  
20       didn't have any money; is that correct?

21          A       Correct.  Yes.

22          Q       And that he could take whatever he wanted; right?

23          A       Yes.

24          Q       "I just don't have any money, but just take whatever

1       you want."

2           A       Yes.

3           Q       Okay.  And, at some point, gun gets put to your  
4       head --

5           A       Yes.

6           Q       -- right?

7           And it's kind of the top of your forehead is what you  
8       indicated earlier; is that correct?

9           A       Yes.

10          Q       And from there, you were able to reach the -- the  
11       intruder's hand?

12          A       Yes.

13          Q       And kind of move that gun away; correct?

14          A       Correct.

15          Q       Now, is it then that the shots went off?

16          A       When I -- when I grab his hand and lock it  
17       (indicating) -- I -- I pull it -- I grab his hand, pull it  
18       down (indicating) --

19          Q       Okay.

20          A       -- that's when the shots started.

21          Q       Okay.

22          A       When I grab his -- and lock him up.  Yeah.

23          Q       Okay.  So just so the record's clear, kind of almost  
24       like a -- like a circular motion with your arm,

1 counterclockwise, and wrenched it down.

2 A Yes.

3 Q The -- the intruder's hand.

4 A Yes.

5 Q You wrenched it down. And then shots went off.

6 Was your hand on the trigger at any time?

7 A No.

8 Q And when you describe where these shots landed, did  
9 you know at the time, like, in the midst of this struggle, do  
10 you know where those shots landed?

11 A No, I did not.

12 Q Other than the one in your leg.

13 A Sure.

14 Q I mean --

15 A Yes.

16 Q -- you felt the burning.

17 A Mm-hmm.

18 Q But later on, you learned one in the bed --  
19 right? -- and one in the wall; is that correct?

20 A Correct. Yes.

21 Q And it's obvious, Ms. Luzaich showed you the  
22 pictures --

23 A Yes.

24 Q -- there's a hole in the mattress and the box

1       spring; correct?

2           A     Correct.  Yes.

3           Q     And there's -- there's that hole in -- I think it  
4       was wallpaper?

5           A     Yes.

6           Q     Okay.  But -- but you learned that later --

7           A     Yes.

8           Q     -- correct?

9           A     After everything was --

10          Q     Calmed down.

11          A     Yeah.

12          Q     At the time you're in the midst of --

13          A     Oh, yes.

14          Q     -- a struggle -- okay.

15          And -- and, again, your finger never hit the trigger, as  
16       far as you know?

17          A     No.

18          Q     Now, the struggle then goes out to the living room  
19       area, in that -- that piece of vinyl; right?

20          A     Yes.

21          Q     The -- the front area, the front room.

22          A     Yes.

23          Q     And from there -- so at -- at that point you get  
24       hit; right?

1           A     Yes.

2           Q     Along with hitting the intruder; correct?

3           A     Correct.  Yes.

4           Q     And did you hit him with, like, your fists?  Your  
5 arms?  How did you -- how did you strike the intruder when you  
6 hit him?

7           A     With my fist.

8           Q     Okay.  So at any point were you on top of him?

9           A     No.

10          Q     But you guys are kind of on the floor; is that fair?

11          A     Correct.

12          Q     And are you both kind of swinging?

13          A     Actually, when -- when he was trying to get out,  
14 I -- I mean, to me, I think I should have just let him go out,  
15 but I -- I just had the nerve just to go at him and try to  
16 catch him.  And when I -- when I ran at him, I -- I jumped and  
17 tackled him.

18          Q     Okay.

19          A     And when I tackle, we both went down on the ground  
20 and I started hitting him.

21          Q     Okay.

22          A     And then that's when he -- he was trying to get up.  
23 When he was trying to get up, that's when I grabbed him  
24 (indicating), I grabbed him like a bear.  And then I was



1 standing up, I -- that's when I slip and then he -- he pulled  
2 his hand out with -- where he had the gun and then just --  
3 that's when he hit me in the hit.

4 Q Okay.

5 A Yeah.

6 Q So let me ask you about that. You -- you said he  
7 pulled -- did he have the gun in somewhere or was it just in  
8 his hand? Do you know?

9 A No, it was always in his hand.

10 Q Okay. So when you say --

11 A Yeah.

12 Q -- "pull it out" or "pull it up," it was just --

13 A He pulled out -- he pulled out his hand --

14 Q Gotcha.

15 A -- when I had him (indicating). 'Cause I had him --  
16 I had him like this (indicating). I hugged him with his hand  
17 down like this (indicating).

18 Q So the bear hug -- and I don't want to put words in  
19 your mouth. But the bear hug was all the way around him.

20 A Yes.

21 Q Including his arms.

22 A I had him -- yeah, when he was down like this  
23 (indicating).

24 Q Okay. And then you get struck in -- in the head.

1           A     Yes.

2           Q     And was that with the gun?

3           A     Yes.

4           Q     And then it -- it dizzies you, I think is what you  
5     said?

6           A     Yes.

7           Q     And he was able to get free and jump out that  
8     window.

9           A     Mm-hmm.

10          Q     Now -- is that a "yes"?

11          A     Yes.

12          Q     I'm sorry.

13          A     Yes.

14          Q     So he jumps out the window. You follow to the  
15     window?

16          A     Actually, when -- when he hit he, when I got  
17     dazed -- 'cause it was, like, on this side. So the door was  
18     here (indicating). So it was blocking him. So I was on this  
19     side (indicating). So when -- what he did -- when -- when he  
20     got free, his hand, when he free his hand where he had the gun  
21     when he hit me, he went around me like this (indicating), and  
22     went out through the window (indicating). So when he -- when  
23     he did that, I just turned around and I went at him again, try  
24     to grab him (indicating) --

1 Q Okay.

2 A -- when he jump out through the window.

3 Q And, Mr. Lopez, I'm gonna find the picture that will  
4 aid us in that a little bit. There were two pictures.

5 So we're gonna look again at, I believe it's 214. Yep.  
6 214 is -- is the entryway. So is that chair kind of what you  
7 guys went around?

8 A Yes.

9 Q And, again, on 215, is that chair depicted in this  
10 photo?

11 A Yes.

12 Q The top of it?

13 A Yes.

14 Q And that's in the bottom left corner of that photo?

15 A Yes.

16 Q So it's -- how big of an area are we talking to go  
17 around that chair?

18 A Mmm --

19 Q Would you say ten feet? And I don't want to  
20 estimate for you, but --

21 A About eight -- eight feet.

22 Q Okay.

23 A Yeah.

24 Q And then, again, when -- when you cut your hand --

1 or your arm, it's because you were reaching out that  
2 particular window that's depicted in 215.

3 A Yes.

4 MR. GILL: Court's indulgence.

5 Nothing further, Your Honor. Thank you.

6 THE COURT: Okay. Redirect?

7 MS. LUZAICH: Nothing, Judge.

8 THE COURT: Anything for this witness?

9 Guadalupe, thank you so much for being here. Please  
10 don't share your testimony with anyone else involved in the  
11 case because it's ongoing. But we appreciate you being here.  
12 And you're excused.

13 THE WITNESS: Okay. Thank you.

14 THE COURT: Thank you so much.

15 THE WITNESS: Thank you.

16 THE COURT: State?

17 MS. LUZAICH: Yeah. Can we approach real quick?

18 THE COURT: Sure.

19 [BENCH CONFERENCE BEGIN]

20 MS. LUZAICH: I'm -- I'm not gonna call Beatriz.

21 MR. GILL: Okay.

22 MS. LUZAICH: I mean, unless there's anything that  
23 you think that --

24 MR. GILL: I don't --

1 MS. LUZAICH: Yeah.

2 MR. GILL: -- think she adds a whole lot.

3 MS. LUZAICH: Just the next one's gonna be a reader.

4 So I just have to distribute. Could we just have five

5 minutes?

6 THE COURT: Yeah. You want them to leave or you

7 want to -- you want them to leave? Like, what are we doing?

8 Distributing what?

9 MS. LUZAICH: I want to distribute -- because you

10 need a copy, they need a copy, we need a copy, reader needs a

11 copy.

12 MS. KOLLINS: It's like a --

13 [Inaudible talking]

14 THE COURT: Yeah, I'm just --

15 MS. KOLLINS: (Indiscernible)

16 THE COURT: Yeah. That's fine. I'm just asking, do

17 you want them to leave or do you want them to just sit still

18 while you hand out --

19 MS. LUZAICH: Well, I mean, it's easier if they

20 leave, but if not --

21 MR. GILL: It'll be their last break. We won't give

22 any more breaks.

23 THE COURT: No.

24 [BENCH CONFERENCE END]

1 THE COURT: All right. Ladies and gentlemen, we are  
2 going to take a quick break because we're going to have to  
3 disseminate some materials to you guys for the next witness.

4 So please remember that during this recess please do not  
5 discuss or communicate with anyone, including fellow jurors,  
6 in any way regard the case or its merits either by voice,  
7 phone, e-mail, text, internet, or other means of communication  
8 or social media. Please do not read, watch, or listen to any  
9 news, media accounts, or comments about the case; do any  
10 research, such as consulting dictionaries, using the internet,  
11 or using reference materials.

12 Please do not make any investigation, test a theory of  
13 the case, recreate any aspect of the case, or in any other way  
14 attempt to learn or investigate the case on your own. And  
15 please do not form or express any opinion on this matter until  
16 it's formally submitted to you.

17 We'll see you in ten minutes at 3:15.

18 THE MARSHAL: All rise.

19 [RECESS AT 3:06 P.M.; PROCEEDINGS RESUMED AT  
20 3:23 P.M.]

21 [IN THE PRESENCE OF THE JURY]

22 THE COURT: And then, while the jury is coming in,  
23 may the parties approach, please.

24 MS. LUZAICH: Well, sort of.

1 [BENCH CONFERENCE BEGIN]

2 MS. LUZAICH: I couldn't get through.

3 THE COURT: All right, guys. So the next witness --  
4 can you hear me, De'Awna?

5 The next witness who is coming on is actually a reader  
6 for one of the alleged victims in this case, Leona. And so  
7 the State is using a reader. State previously filed a notice  
8 of motion, a motion to use recorded testimony based on the  
9 decedent's previous testimony.

10 I know Mr. Gill wanted to make a record and we can make a  
11 more full record on all of the witnesses, but for Ms. Leona, I  
12 know the State has --

13 MR. GILL: It's --

14 THE COURT: -- proffered and that Ms. Leona is, in  
15 fact, deceased. She did testify at a prior multi-day hearing.  
16 The attorneys for Mr. Porter at the time did have the  
17 opportunity to cross-examine her. Therefore, under NRS  
18 171.198 and 51.325, I do believe that the State has met the  
19 threshold of her unavailability and previous testimony coming  
20 in because of her deceased nature.

21 MR. GILL: And, Judge, it'll be the same objection  
22 for each. The case is stale. Your -- Your Honor knows it's a  
23 20 -- not stale. But it's 22 years old. Nobody here -- none  
24 of the parties had anything to do, I don't think, with -- with

1 the delay. But there was a delay in -- in prosecuting this  
2 case. And that's the -- the nature of the objection for all  
3 of 'em. And it's -- I don't need any further record, other  
4 than to note the objection and -- and that being the basis.  
5 Just that the case is so old.

6 THE COURT: State?

7 MS. LUZAICH: And the Court has already ruled on the  
8 speedy trial aspect of this several times. That it was the  
9 Defendant's actions that caused the continuance, the length of  
10 delay.

11 THE COURT: Okay. All right. So just to make  
12 clear, I am granting the State's motion that was filed. I do  
13 understand the witness, Leona Case, to be deceased. Like I  
14 stated further, she was subject to cross-examination at a  
15 preliminary hearing. Therefore, pursuant to the statutes that  
16 I already put on the record, her previous testimony comes in.

17 MR. GILL: And, Judge, just to maybe speed things  
18 up, it'll be the same objection for the others listed. And --

19 THE COURT: Yeah.

20 MR. GILL: -- and I would imagine the same ruling.

21 THE COURT: The others are the 4 and 5 individuals:  
22 Clarence Rumbaugh, Francis Rumbaugh, Dorothy Parton,  
23 Marlene Livingston, and like I stated, Leona Case. All five  
24 of these individuals testified previously at the preliminary



1 hearing that was held between November 2nd and November 6th  
2 and November 13th, on those three dates in November of 2000.  
3 And October 16th of 2000.

4 MS. LUZAICH: Although, just for the record,  
5 Dorothy Parton is not one of the charged victims. That was a  
6 mistake on my part in the motion. Sorry.

7 THE COURT: Is Dorothy Parton --

8 MS. LUZAICH: She's not coming -- she's not coming  
9 in at all.

10 THE COURT: Oh, she's not coming in.

11 MS. LUZAICH: Yeah.

12 THE COURT: Okay. All right. So then it would be  
13 testimony from October 16th, November 2nd, November 6th,  
14 November 13th, all of 2020 preliminary hearing of Clarence,  
15 Francis, Marlene, and Leona.

16 MR. GILL: All of 2000. I think you said 2020,  
17 Judge.

18 THE COURT: Sorry.

19 MR. GILL: It's okay.

20 THE COURT: Yep. Yep. You're right.

21 MR. GILL: Thank you.

22 THE COURT: Okay. Thanks, everybody.

23 [BENCH CONFERENCE END]

24 THE COURT: All right. (Indiscernible) if you

1 wanted to come up to the witness stand.

2 So, ladies and gentlemen, Ms. Schifalacqua was going to  
3 be reading previous testimony from one of the alleged victims  
4 in the case, Leona Case. She is what's referred to under the  
5 statute as "unavailable" to testify. Therefore, her previous  
6 testimony, where she testified at a previous hearing, is  
7 coming in. So the part of Leona Case will be read into the  
8 record by Ms. Schifalacqua.

9 BARBARA SCHIFALACQUA,  
10 was first duly sworn to read the answers in the transcript  
11 to the best of her ability:

12 MS. SCHIFALACQUA: I do.

13 THE CLERK: Please be seated.

14 MS. SCHIFALACQUA: Thank you.

15 THE CLERK: And will you please state your name and  
16 spell it for the record.

17 MS. SCHIFALACQUA: Yes, it's Barbara Schifalacqua.  
18 And that is B-A-R-B-A-R-A. Last name, Schifalacqua,  
19 S-C-H-I-F-A-L-A-C-Q-U-A.

20 THE CLERK: Thank you.

21 THE COURT: All right. Ms. Luzaich.

22 MS. LUZAICH: Thank you.

23 [TRANSCRIPT READING BEGIN]

24 ///

DIRECT EXAMINATION

BY MS. LUZAICH:

Q Ms. Case, how old are you?

A I'm 43.

Q And when is your birthday?

A August 18, 1957.

Q Ms. Case, I'd like to direct your attention to March 7th of this year. Where were you living at that time?

A 2900 East Charleston, number 50.

Q What kind of place was that?

A It was a studio apartment.

Q Was that a multi-story building?

A Yeah.

Q I'm sorry?

A There were several stories, yes.

Q And which floor did you live on?

A The bottom floor.

Q Was that located in Clark County, Las Vegas, Nevada?

A Yes.

Q Did anyone else live with you at that address?

A No.

Q I'd like to direct your attention to approximately half past midnight on that date. Where were you?

A I was at home.

1 Q And what were you doing?

2 A I was watching TV.

3 Q Could you give just -- or could you just give us a  
4 description of, I believe you said it was a studio apartment.

5 A Mm-hmm.

6 Q Could you -- and just for the record, when you  
7 answer, if you'll make sure you answer "yes" out loud or "no"  
8 out loud so the court recorder could pick it up.

9 A Okay.

10 Q Thank you.

11 Give us a description of that studio apartment, kind of  
12 the layout.

13 A The front door entered into kind of a living room  
14 area. And as you walked in, to the left was the dining area.  
15 And then there was a kitchen past then and there was a bedroom  
16 on the right-hand side, behind the living room. And the  
17 bathroom was right off of the bedroom on the left-hand side.

18 Q You said you were watching TV. What room were you  
19 watching TV in?

20 A I was in the living room.

21 Q All right. And did something happen while you were  
22 sitting there watching TV?

23 A Someone knocked on my door.

24 Q And what did you do?

1           A     I put the safety chain on and I opened the door to  
2 see who it was.

3           Q     Did you recognize the person that was at the door?

4           A     Yes, I did.

5           Q     How is it that you recognized him?

6           A     He had knocked on my door previously.

7           Q     And when in relationship to this night?

8           A     About three to four days before. It was Thursday  
9 so -- and that was on a Sunday night so --

10          Q     Okay. And when he had walked -- when he had knocked  
11 on your door previously, what was the purpose for him coming  
12 to your apartment?

13          A     I believe he stated that he was looking for the  
14 person that lived there before me. I had just recently moved  
15 there.

16          Q     Okay. How long had you been in that apartment?

17          A     Ten days.

18          Q     And so the first contact you had with him, he was  
19 looking some -- for someone who used to live there? How long  
20 did you talk with him or have a discussion with him?

21          A     Maybe five minutes. He borrowed my phone.

22          Q     How is it that he borrowed your phone?

23          A     I had a cordless phone and he asked me if he could  
24 use it. I took it outside and let him use it outside.

1           Q     Okay. And on that first occasion, after he used  
2 your phone, then what happened?

3           A     I -- when he knocked on my door that late at night,  
4 I told him, no, that he couldn't use my phone. He wanted to  
5 borrow my phone again.

6           Q     Oh, okay. But the -- I'm still on the first time.

7           A     Okay.

8           Q     First time he knocks on your door, he's looking for  
9 someone who used to live there. He asked you if he could use  
10 your phone, you took the cordless outside --

11          A     Right.

12          Q     -- let him use it, he used it, and did he give it  
13 back to you?

14          A     Yes.

15          Q     And then did that end kind of the contact you had on  
16 that occasion?

17          A     Yes, he introduced himself and he had a friend with  
18 him.

19          Q     Okay. And who did he introduce himself as?

20          A     He said, "My name is Jug and this is my buddy  
21 Chris."

22          Q     Okay. And did he ever come into your place on that  
23 first night?

24          A     No.

1 Q And so on March 7th when he [sic] opened your door,  
2 you recognized him as Jug?

3 A Right.

4 Q Okay. And so what did he want, knocking on your  
5 door on March 7th?

6 A He wanted to borrow my phone.

7 Q And was he with anybody this time?

8 A No.

9 Q What did you say?

10 A I told him, no, it was too late.

11 Q So then what happened?

12 A I shut the door and I thought he threw something at  
13 my window 'cause I heard my window -- something rattle with  
14 the window and then he kicked my door in.

15 Q How is it that you came to the conclusion that he  
16 kicked your door in?

17 A He -- I heard a couple of bangs on the door and then  
18 he was in.

19 Q Where were you when he came into your apartment?

20 A I was sitting in the chair in my living room.

21 Q Did anything happen to your door or was there damage  
22 to your door that you could see?

23 A Yeah, the frame come off of it. I had the deadbolt  
24 on and it just popped right in.

1 Q Okay. Now, you said earlier, when you first opened  
2 the door, you had a chain on.

3 A Yes.

4 Q And after you closed the door, did you have a chain  
5 and the deadbolt on --

6 A I --

7 Q -- if you remember?

8 A I don't remember --

9 Q Okay.

10 A -- whether or not I released the chain.

11 Q But you knew you had the deadbolt on.

12 A Right.

13 Q Okay. So the door flies open and he comes in.

14 A Yes.

15 Q What -- then what happens?

16 A I picked up the phone and started dialing 9-1-1.

17 Q Was that mobile phone?

18 A My cordless.

19 Q The -- your cordless phone. I'm sorry.

20 A Yeah.

21 Q And were you able to connect with 9-1-1?

22 A No.

23 Q Why not?

24 A He slapped me, knocked me to the ground, and took my



1 phone away from me.

2 Q Where did he slap you? Where on your person?

3 A On my face.

4 Q Okay.

5 A Across my jaw.

6 Q You said you were knocked to the ground?

7 A Yes.

8 Q And when he took the phone away from you, what --  
9 what did he do with the phone?

10 A I don't know.

11 Q And so you're on the ground. Then what happened?

12 A I got up and I asked him what he thought he was  
13 doing.

14 Q Did he say anything?

15 A He asked me why I dissed him bitch.

16 Q Okay. And did you respond to that or say anything?

17 A I told him, "I don't let people in my door this late  
18 at night."

19 Q Okay. So then what happened?

20 A He went out into the kitchen and -- and opened my  
21 drawers and got out a kitchen knife.

22 Q What kind of kitchen knife was it?

23 A It was a steak knife.

24 Q And what did he do with the steak knife?

1           A     He -- he basically used it as a threat to begin  
2 with.

3           Q     Okay.

4           A     Just to find where my money was at and to move me  
5 into the bedroom and --

6           Q     Did he ask for money or demand money?

7           A     Yes, he did. He asked me where my money was at.

8           Q     Okay. And what did you do or say?

9           A     I told him, "I don't have any."

10          Q     I -- okay. And then what happened?

11          A     He seen my purse and he grabbed my purse and went  
12 through it. And I think I had \$44, and he took that out and  
13 some food stamps.

14          Q     Where was your purse?

15          A     On the dresser in the bedroom. You could see it  
16 from the front door, basically.

17          Q     Did he take anything else from you?

18          A     Yes, he did. I had a ring that my daughter had  
19 given me for mother's day. A little ten karat gold ring that  
20 said "mom" on it in a -- in a heart.

21          Q     Where was that ring?

22          A     It was on my finger. It was on my left hand ring  
23 finger.

24          Q     And how did he come to get that ring?

1           A     He asked me for it.

2           Q     Okay.

3           A     And --

4           Q     Did you take it off and give it to him?

5           A     Oh, yes.

6           Q     Why'd you do that?

7           A     He had a knife.

8           Q     Let me just back up a little.  The person that we've  
9     been talking about that kicked your door in that night, do you  
10    see him present in the courtroom today?

11          A     Yes, I do.

12          Q     Could you point to him and describe what he's  
13    wearing today, please.

14          A     He's wearing blue, and he's sitting right there  
15    between those two gentleman at the table.

16                MS. LUZAICH:  May the record reflect identification  
17    of the Defendant?

18                THE COURT:  The record will so reflect.

19    BY MS. LUZAICH:

20          Q     Now, did he have anything covering his face at this  
21    time?

22          A     No, he didn't.

23          Q     Okay.  And so when -- when he had you, told you to  
24    give him the ring, where were you in your apartment at that

1 point?

2 A I was still in the living room.

3 Q Okay. And so at -- does there come a point when you  
4 move locations?

5 A Yes.

6 Q How does that come about?

7 A He -- he wielded the knife and he asked me to go  
8 into the bedroom. I complied.

9 Q And so you went into the bedroom. What happened in  
10 the bedroom?

11 A He asked me to hold a lamp while he cut the cord off  
12 of it.

13 Q And where -- where was this lamp located?

14 A Right beside my bed.

15 Q And was the lamp plugged in or --

16 A No, it wasn't plugged in.

17 Q Okay.

18 A It was just sitting there. I'd just cleaned it. It  
19 was a glass lamp, and I was trying to repair it and get it  
20 fixed for use.

21 Q So did you hold the lamp?

22 A Yes, I did.

23 Q Did he cut off the cord?

24 A Yes.

1           Q     And then did he do something with the cord after he  
2 cut it off?

3           A     Yes, he did.

4           Q     What did he do?

5           A     Apparently put some kind of knot in it and slipped  
6 it over my neck and told me he was going to tie me up, and he  
7 started to strangle me with it.

8           Q     When he cut the lamp cord, what did he cut it with?

9           A     The steak knife.

10          Q     And where were you when he slipped the cord over  
11 your neck?

12          A     Sitting on the edge of the bed.

13          Q     And he slipped it over your -- over your head?

14          A     Yes.

15          Q     And it was around your neck?

16          A     Right.

17          Q     And then what happened?

18          A     I grabbed the cord because it frightened me, it  
19 being around my neck. And he climbed up on the back of the  
20 bed and wound it around his hand and started strangling me  
21 with both hands.

22          Q     Okay. And did you --

23          A     Pulling the cord tight.

24          Q     Okay. And so you demonstrated, for the record, with

1 your hands that you took your fingers and you got on the  
2 inside of the cord?

3 A Inside the cord, yes.

4 Q This way, between your neck and the cord and he was  
5 behind you?

6 A Yes.

7 Q And was he on the bed?

8 A Yes.

9 Q And he was pulling the cord tight?

10 A Right. He had it wrapped his -- around his hand and  
11 was pulling it.

12 Q What was happening to you as he did that?

13 A I was losing consciousness.

14 Q And was he saying anything or --

15 A He stated several times, "Why don't you just die,  
16 bitch."

17 Q And so then what happened?

18 A I came close to passing out. I was -- fell forward  
19 and he let go of the cord. I still couldn't breathe, so I  
20 pulled the cord away from my neck and slipped it off my head.

21 Q You said that you came close to losing consciousness  
22 or you did lose consciousness?

23 A I came very close to losing consciousness. I did  
24 not lose it at that time.

1 Q And you said you started to kind of slump forward?  
2 A Mm-hmm.  
3 Q Is that a "yes"?  
4 A Yes.  
5 Q And so you got the cord away from your neck?  
6 A Yes.  
7 Q And you're still on -- sitting on the side of the  
8 bed?  
9 A Yes.  
10 Q And then what happens? What does he do?  
11 A He asked me to disrobe.  
12 Q What were you wearing?  
13 A I pair of pants, a T-shirt.  
14 Q And when he asked you that, then what did you do?  
15 A I disrobed.  
16 Q Where's the cord at this point?  
17 A I shoved it under the corner of the bed. I didn't  
18 want him to find it.  
19 Q And where's the steak knife or the kitchen knife?  
20 A He had it in his hand.  
21 Q So did you take off your clothes?  
22 A Yes, I did.  
23 Q Did you take off everything?  
24 A I asked him if he wanted me to take off everything

1 and he said, yes, he did.

2 Q And pants, shirt, bra, and panties?

3 A Yes.

4 Q So then what happens?

5 A He told me he was going to fuck me.

6 Q And did he, in fact, sexually assault you?

7 A Yes, he did.

8 Q Where did that happen?

9 A On the bed.

10 Q Did he do anything before he did that?

11 A He asked me where my condoms were at. I --

12 Q What did you say?

13 A I told him I don't -- I didn't have any condoms.

14 Q And --

15 A So he grabbed a plastic bag that covered up my  
16 coffee filters and used it as a makeshift condom.

17 Q And what -- and you said the sexual assault occurred  
18 on the bed?

19 A Yes.

20 Q What kind of sex was it? What did he do?

21 A He just put his penis in my vagina.

22 Q Was that against your will?

23 A Yes.

24 Q Did he ejaculate?



1           A     I don't know.

2           Q     And what was your position on the bed when that  
3 happened?

4           A     I was laying sideways on the bed.

5           Q     And where was he?

6           A     On top of me.

7           Q     And does there come a point where he gets off of  
8 you?

9           A     Yes.

10          Q     And what was -- what has he done or where is the  
11 knife during the time that the sexual assault is occurring?

12          A     I don't remember.

13          Q     Okay. So then what's the next thing that happens?

14          A     I sat up and started to get dressed.

15          Q     And where did -- where did he go or what did he do?

16          A     I just stood there and -- between the bed and the  
17 dresser there was a space. And --

18          Q     What -- what happened to the plastic bag/coffee  
19 filter that he had used as a --

20          A     He took it into the bathroom, flushed it down the  
21 toilet and washed himself.

22          Q     When you say he washed himself, what part of him did  
23 he wash?

24          A     His private area.

1 Q And while he was in the bathroom doing that, is  
2 that -- were you still dressing or what were you doing?

3 A Yeah, I had found the steak knife. He had left it  
4 on the dresser. And I grabbed it and shoved it, as I did with  
5 the cord, between the mattress and the box springs.

6 Q How long was he in -- mean, did you have -- could he  
7 see you and could you see him?

8 A Yes.

9 Q When he was in the bathroom?

10 A Yes.

11 Q And how far were you from each other at that point?

12 A About four feet.

13 Q After he finished in the bathroom, then what  
14 happened?

15 A He came back in and he went to the kitchen and got  
16 another knife. The same sort of knife. It was another steak  
17 knife.

18 Q And -- and where were you during the time that he  
19 went into the kitchen then?

20 A I was sitting on the edge of the bed.

21 Q So he goes in the kitchen, gets another steak knife,  
22 comes back into the bedroom and what does he do or say?

23 A He told me to get undressed and turn around. That  
24 he was gonna fuck me up the ass.

1 Q Okay. And so -- and where is the -- the steak knife  
2 that he's gotten or where is the knife?

3 A In his hand.

4 Q In his hand. And do you then take off your clothes?

5 A Yes.

6 Q And then what happened?

7 A I started saying, "Oh, my God. Oh, my God." Turned  
8 around and got on the bed.

9 Q Let me ask you, the first time you said he had  
10 gotten the plastic coffee filter, did he do anything like that  
11 prior to this next incident?

12 A He used something. I know that he grabbed the  
13 cellophane off my cigarette pack.

14 Q Okay.

15 A And another piece of plastic and I -- I can't tell  
16 you what it was.

17 Q And what did he do with it?

18 A He used it as a condom.

19 Q And so after -- after doing that, you said you --  
20 did you then get on the bed or were you on the bed?

21 A I was still on the bed; I just turned around.

22 Q And what happened next?

23 A He sexually assaulted me.

24 Q What kind of sex act? What did he do?

1           A     He put his penis in my vagina again.

2           Q     And that was against your will?

3           A     Yes.

4           Q     Now, you said he threatened to sexually assault

5     anally?

6           A     Yes.

7           Q     Did he follow through on that threat?

8           A     No, he did not.

9           Q     So after the -- the second sexual assault, then what

10    did he do?

11          A     He went to wash himself again and flushed down

12    whatever he used for the condom at that point.

13          Q     And what are you doing?

14          A     I got up and got my underwear on and my T-shirt

15    again, trying to cover myself up.

16          Q     And then what does he do?

17          A     He stabbed me.

18          Q     Okay. And how did that -- how did that come about?

19          A     I stood up off the bed and he just lunged forward

20    and stabbed me.

21          Q     And where did he stab you?

22          A     In the abdomen.

23          Q     Okay. And --

24          A     And right here.

1 Q Your --

2 MS. LUZAICH: I can't see, Judge. Maybe if you can,  
3 for the record?

4 THE COURT: She's showing right blow her right  
5 breast, above the stomach -- above the stomach a little bit.

6 BY MS. LUZAICH:

7 Q Okay. And where were you situated when he first  
8 stabbed you?

9 A I was standing between the dresser and the bed and  
10 he was located to the foot of the bed --

11 Q Okay. And so --

12 A -- and he just lunged forward.

13 Q And the knife went in?

14 A All the way in.

15 Q All the way up to -- did it, like, have a hilt or a  
16 handle?

17 A Yeah. I actually felt his fist hit my stomach.

18 Q And then he pulled the knife out?

19 A Yes.

20 Q And then what happened?

21 A He stabbed me again.

22 Q Where did he stab you the second --

23 A Right in the middle, right here.

24 THE COURT: Okay. Right in the middle, below the

1 breast, the ribcage, top of the ribcage.

2 THE WITNESS: Right.

3 BY MS. LUZAICH:

4 Q Okay. And, again, with the knife, was it the same?  
5 You felt his fist or the hilt or --

6 A Yes, I did.

7 Q Are you standing at this point or --

8 A Yeah. Yes, I was.

9 Q Okay. And does -- he pulls the knife out a second  
10 time?

11 A Yes, he did.

12 Q And then what happened?

13 A He reached out towards my throat and -- to try and  
14 cut the side of my neck on this side.

15 THE COURT: Which side?

16 THE WITNESS: On this side.

17 THE COURT: The right side?

18 THE WITNESS: Yes.

19 BY MS. LUZAICH:

20 Q The right side.

21 And now what are you doing?

22 A I was really quite in shock. I -- when he -- he  
23 went to cut my throat and those are my steak knives. They're  
24 very dull. I realized that he was trying to kill me, so I

1 started kicking him. Went to kick him and he avoided my kick  
2 and so I -- I -- I bent my head down and went for his waist,  
3 thinking if I tackled him, that I could get him down. And  
4 I -- I don't -- I'm not sure how everything came about, but  
5 eventually he wound up with his arm around my neck and  
6 strangled me until I lost consciousness.

7 Q Okay. Let me back up a little bit. You said that  
8 after the second time he stabbed you in the abdomen that he  
9 tried to cut you?

10 A Slice my throat.

11 Q Slice your throat?

12 A Yes.

13 Q And something prevented him. I mean, did the knife  
14 make contact with your throat?

15 A It made contact, but it did not cut.

16 Q Okay. And it didn't draw blood?

17 A No.

18 Q And what prevented it from cutting or drawing blood?

19 A I believe it was just the dull steak knife.

20 Q Okay. All right. And you said that he then put his  
21 arm around your throat?

22 A Yes.

23 Q Was he in front of you or behind you or how was he  
24 situated?

1           A     He was behind me when -- when that -- when I started  
2     losing consciousness. That's all I remember because there was  
3     a -- a wrassle point where I was trying to defend myself and  
4     I'm not sure how everything come [sic] around. I just know  
5     that it -- that he eventually had me around the throat again.

6           Q     Okay. So he got you around the throat. There was  
7     some struggle?

8           A     Yes.

9           Q     And -- but when you came to the point where you lost  
10    consciousness, you recall him being behind you?

11          A     Yes.

12          Q     Okay. And you regained consciousness?

13          A     Yes, I did.

14          Q     Do you have any perception of how long you would  
15    have been unconscious?

16          A     No, I don't.

17          Q     Okay. And what is going on when you regain  
18    consciousness? Where are you?

19          A     I was at the end of the bed. I don't know if I was  
20    on it or on the floor, but I was at the end of the bed.

21          Q     Okay.

22          A     I remember looking up and I had mirrors for closet  
23    doors. And I remember seeing, you know, this horror back at  
24    me.



1 Q Okay. You saw yourself in the mirror?

2 A Yes.

3 Q And where was the Defendant?

4 A I don't know.

5 Q Okay.

6 A I don't remember.

7 Q And you're -- you're still -- you're in your T-shirt  
8 and panties?

9 A Yes.

10 Q So then what's the next thing that happens?

11 A He told me to go to the bathroom and wash myself.

12 Q During the time that he stabbed you, is he saying  
13 anything to you?

14 A He asked me a lot of questions. He wanted to know  
15 how I made money, what my source of income was, mundane  
16 questions like that.

17 Q And when he -- when he choked you --

18 A Or --

19 Q -- when that was -- was he saying anything or  
20 talking to you?

21 A He just kept asking why didn't I die bitch and  
22 was --

23 Q Okay.

24 MR. GOODWIN: Judge, just for calculation, we've had

1 two references to choking?

2 THE WITNESS: Yes.

3 BY MS. LUZAICH:

4 Q Okay. That's correct. We have the lamp cord  
5 choking and we have the manual strangulation.

6 A Right.

7 Q Okay. During the manual choking or strangulation,  
8 what was he saying to you, if anything?

9 A Just "why don't you die, bitch."

10 Q Okay.

11 A And I don't remember much more after that because I  
12 blacked out at that point.

13 Q You said after you regained consciousness, you had  
14 to go to the bathroom to wash?

15 A Yes.

16 Q And what did he say to you?

17 A He told me "and use soap." He wanted me to get  
18 soap.

19 THE COURT: I'm sorry. What?

20 THE WITNESS: He wanted me to use soap in my vaginal  
21 area.

22 BY MS. LUZAICH:

23 Q Was there any other part -- so he wanted you to  
24 clean your vaginal area?

1           A     Right.

2           Q     And was there any other part of your body that he  
3 was concerned about your cleaning or washing?

4           A     No.

5           Q     So do you go into the bathroom?

6           A     Yes.

7           Q     And what do you do?

8           A     I washed.

9           Q     And where did you wash?

10          A     In my vaginal area.

11          Q     What about your hands or your fingernails?

12          A     When I come out of the bathroom, he had me sit on  
13 the bed and clean my -- out from underneath my fingernails.  
14 Apparently I had scratched him during -- scratched him trying  
15 to remove his arm from my throat.

16          Q     And so you came out of the bathroom, you -- I'm  
17 sorry. You sat on the bed, is that what you're saying?

18          A     Yes.

19          Q     And he told you that he wanted you to clean your  
20 fingernails?

21          A     Yes.

22          Q     And did you do that?

23                 [TRANSCRIPT READING END]

24                 MS. LUZAICH:  Oops.

1 MS. SCHIFALACQUA: It doesn't answer?  
2 MS. LUZAICH: I'm missing a page.  
3 MS. SCHIFALACQUA: Oh, so am I.  
4 THE COURT: Probably so are all of us.  
5 MS. LUZAICH: Okay.  
6 MR. GOODWIN: The prelim transcripts --  
7 MR. GILL: -- 64?  
8 MS. LUZAICH: Oh.  
9 MR. GOODWIN: -- sometimes do that.  
10 MS. LUZAICH: 164 is --  
11 MR. GILL: It's (indiscernible).  
12 MS. LUZAICH: You do?  
13 THE COURT: You want to bring it up to  
14 Ms. Schifalacqua so we can just go off that.  
15 MS. SCHIFALACQUA: Sure.  
16 THE COURT: Do --  
17 MS. LUZAICH: Can I stand up there?  
18 THE COURT: You don't have 164 either?  
19 MS. SCHIFALACQUA: No. Yeah, I don't have 164 --  
20 THE COURT: Yeah, that's fine.  
21 MS. SCHIFALACQUA: -- but I have 165. So it'll just  
22 be the -- sorry about that.  
23 MS. LUZAICH: Sorry about this, everybody.  
24 MS. SCHIFALACQUA: All right.

1 [TRANSCRIPT READING BEGIN]

2 THE WITNESS: Yeah, I did. I can't remember what he  
3 gave me to use. I think it was the end of a lotion bottle.  
4 You know, one of the carry on in-your-purse kind with a fat  
5 end on it.

6 BY MS. LUZAICH:

7 Q Okay. And did -- you cleaned under your  
8 fingernail -- under your nails with that?

9 A Yes, I did.

10 Q And then -- then what's the next thing you recall  
11 happening?

12 A He had the cord again. I don't know how. He had  
13 the cord again.

14 Q The lamp cord that he had cut off?

15 A Yes.

16 Q Okay.

17 A And he told me to put it around my neck --

18 [TRANSCRIPT READING END]

19 MS. LUZAICH: Not computer savvy.

20 MR. GILL: If I can approach the witness,  
21 Your Honor.

22 THE COURT: Sure.

23 MR. GILL: Help with the --

24 MS. SCHIFALACQUA: Oh, I got it. Here we go. I'm

1       sorry.

2               MR. GILL:  It's two fingers.

3               [TRANSCRIPT READING BEGIN]

4               THE WITNESS:  And he told me to put it around my  
5       neck and I told him, no, I wasn't going to.  So he started  
6       whipping me with it and beat me around the head with it  
7       severely, till I was bleeding pretty severely around -- and I  
8       told him that I was already dying, he didn't have to worry  
9       about it.

10       BY MS. LUZAICH:

11           Q       What was happening with your stab wounds?

12           A       Nothing.

13           Q       And by "nothing," you mean you weren't -- you  
14       weren't bleeding?

15           A       No, there was no blood.

16           [TRANSCRIPT READING END]

17           MS. LUZAICH:  Oop.

18           MR. GILL:  I got it.

19           [TRANSCRIPT READING BEGIN]

20       BY MS. LUZAICH:

21           Q       Okay.

22           A       There was nothing to the stab wounds.

23           Q       Okay.  And could you feel anything or what were --

24           A       They were sore but --

1 Q Okay.

2 A -- the strangulation was the most horrifying thing  
3 that anyone can imagine.

4 Q What -- what was happening with your throat or neck  
5 or your breathing?

6 A I was struggling to breathe; I could barely talk.

7 Q And did that -- you're struggling to -- to get  
8 breath and difficulty talking. Did that come after the first  
9 strangulation with the lamp cord?

10 A Yes.

11 Q And then after the manual strangulation, was it --  
12 were you in the same or was it worse or --

13 A It was worse at that point.

14 Q And so you said he had found the cut lamp cord  
15 and --

16 A Yes.

17 Q -- and whipped you around the head with it. What  
18 happened then?

19 A The next part that I recall was him telling me to go  
20 back into the bathroom, which I did. He shut the door and I  
21 locked it.

22 Q And so you lock -- you were in the bathroom and you  
23 locked him out of the bathroom?

24 A Yes.

1 Q And then what's the next thing that -- obviously,  
2 you can't see what's going on at that next -- at that next  
3 point. What's the next thing that you hear?

4 A The smoke alarm going off.

5 Q In what room of your place has a smoke alarm?

6 A It was in the bedroom towards the living room area.

7 Q And so the smoke alarm went off?

8 A Yes.

9 Q And what else do you hear at that point?

10 A I assume I heard him knock it off, knock it off the  
11 ceiling. It's -- I heard a bang and then the smoke alarm went  
12 off.

13 Q You heard a bang and then the -- what? -- shrill  
14 beeping noise or whatever, the smoke alarm?

15 A Yeah. It stopped.

16 Q It stopped?

17 A Yes.

18 Q Then what happened?

19 A I listened at the door. I knew that the apartment  
20 was on fire.

21 Q How did you know that?

22 A Because the smoke alarm had gone off and I could  
23 smell smoke.

24 Q Okay.



1           A     And I assume, since the apartment was on fire, he  
2 would be leaving.

3           Q     Okay.

4           A     So I listened at the door until I thought I heard  
5 the front door slam.

6           Q     Did there come a point where you heard --

7           A     What I thought, yes.

8           Q     -- a door slam?

9           A     Right.

10          Q     Okay. And once you heard the door slam, then what  
11 did you do?

12          A     I unlocked the bathroom door and tried to open it.

13          Q     Does your bathroom door open in or open out?

14          A     It opened out into the bedroom.

15          Q     Okay.

16          A     Actually this way.

17          Q     And were you able to open the door?

18          A     No.

19          Q     Could you determine why you couldn't open the door?

20          A     I had a nine -- nine drawer dresser with a mirror on  
21 top. He had slid it up against the door to block me into the  
22 bathroom.

23          Q     And so what -- what did you do?

24          A     At first I started banging it with my shoulder.

1 Q By "it" being the bathroom door?

2 A Yes.

3 Q Okay.

4 A Trying to move the dresser over and it wasn't  
5 budging. So I thought, well, if he can kick my front door in,  
6 I should be able to kick my way out of this bathroom. And I  
7 started kicking the door right beneath the door handle, and  
8 the dresser tipped over. I didn't -- it didn't move, it just  
9 tipped over, and I had about eight inches to squeeze out of  
10 the bathroom door. And my apartment was totally on fire.

11 I raced out the front door. I looked for my cordless  
12 phone. On the way out I seen my sister's cell phone. It was  
13 there. And I grabbed it. I ran out the front door --

14 Q And let me stop you. When you got through the --  
15 the bathroom door, what -- you said the bathroom door is  
16 connected to your bedroom?

17 A Yes.

18 Q The bedroom was on fire?

19 A Yes. The bed was on fire.

20 Q The bed was on fire. And when you -- so you -- you  
21 then went out through the bedroom door and had to go to the  
22 living room to get to the front door?

23 A Right.

24 Q Were other parts of your apartment on fire as well?

1           A     There was a corner in the living room that was on  
2     fire. I assume it was the chair and -- and -- and the kitchen  
3     was totally on fire. I don't know. And dining area, that  
4     whole was -- it was just in flames, engulfed.

5           Q     Okay. And so you grabbed your sister's cell phone?

6           A     And ran out the door.

7           Q     Were you still in your T-shirt and panties?

8           A     Yes.

9           Q     When you ran out the door, where did you go?

10          A     There was a stairwell that went down -- that went to  
11     the apartments above, and I ran beneath, behind those. I was  
12     just as frightened of what was outside as I -- as I was of the  
13     fire inside.

14          Q     What were you afraid was outside?

15          A     This young man right here.

16          Q     Okay. So you thought he still might be around?

17          A     Yes.

18          Q     So you went down the stairs?

19          A     No.

20          Q     I --

21          A     To --

22          Q     To the stairwell?

23          A     Yeah. Just behind them.

24          Q     Oh, and did you try to use the cell phone?

1           A     I tried to use it three times. I kept trying to use  
2     it and it wouldn't get connected. I kept -- it kept getting  
3     disconnected because the batteries were dead or it wasn't  
4     charged up.

5           Q     And so you were able to get help somehow?

6           A     I ran down between the two buildings. There were  
7     two buildings facing each other and I knew -- and I was just  
8     trying to get away. And I knew there were people. And I knew  
9     the more people, the safer I would be.

10          My voice wasn't -- I -- I couldn't talk very well. But I  
11     was trying to get somebody to call 9-1-1. And they were more  
12     interested in the fire. They could see the fire. They didn't  
13     know that I was, you know, had escaped the fire and --

14          Q     At some point does somebody call 9-1-1?

15          A     Yes, the fire department.

16          Q     So the fire department arrives?

17          A     Yes.

18          Q     And there comes a point when someone notices you and  
19     takes care of you?

20          A     Yes.

21          Q     Are you taken to the hospital?

22          A     Yes, I am.

23          Q     What happens at the hospital?

24          A     They did a -- a rape kit.

1 Q Okay.

2 A They swabbed out my stab wounds. They put me in a  
3 burn unit for a couple of nights because of the smoke  
4 inhalation.

5 Q And what about -- how was your throat and your  
6 breathing and --

7 A It was my -- my throat was swollen. My jaw was  
8 really swollen out with [sic] too. I was -- I was having a  
9 difficult time. But they assumed it was basically from the  
10 smoke inhalation.

11 Q How long were you in the hospital?

12 A Two nights.

13 Q And did you have a follow-up medical treatment after  
14 that?

15 A Yes.

16 Q What was that follow-up medical treatment for?

17 A I still have trouble with my sinuses. There's a  
18 problem with my neck that I see a chiropractor for.

19 Q And that's still today?

20 A Yes.

21 Q Still having a problem with the sinus and still  
22 having problems with your neck?

23 A Yes.

24 MS. LUZAICH: May I approach the witness?

1 THE COURT: Yes.

2 MS. LUZAICH: I'm gonna show you some photographs.  
3 They've previously been shown to the Defense counsel and it's  
4 State's Proposed Exhibits 103, 104, 105, 106, 107, 108, 109,  
5 110, 111, 112, 113, 114, 115, 116, 117, and 118. I'm gonna  
6 show you 103.

7 Can I -- I'm sorry.

8 Can I just publish them, Judge?

9 THE COURT: Yeah.

10 BY MS. LUZAICH:

11 Q I'm gonna show you 103. Do you recognize what's in  
12 this photo?

13 Out loud.

14 A Yes.

15 Q And what would that be a picture of?

16 A That would be the end of the building that I lived  
17 in.

18 Q Is that pretty much what it looked like on March 7th  
19 of this year?

20 A Yes.

21 MS. LUZAICH: I'll move for the admission of 103.

22 MR. GOODWIN: We haven't seen those yet.

23 THE COURT: Okay. You may approach.

24 MS. LUZAICH: Oh, I showed them to you when we

1 started this afternoon.

2 MR. GOODWIN: Oh, you know what? She's right. I  
3 did see these. It's been that long of a day.

4 THE COURT: She moved for the admission of 103. Is  
5 there any objection?

6 MR. GOODWIN: No.

7 BY MS. LUZAICH:

8 Q I'm going to show you State's Proposed 104. Do you  
9 recognize what's depicted in this photograph?

10 A I assume that -- that's what's left of the  
11 apartment.

12 [TRANSCRIPT READING END]

13 MS. LUZAICH: Sorry. I was trying to make it  
14 bigger.

15 [TRANSCRIPT READING BEGIN]

16 BY MS. LUZAICH:

17 Q Okay. And why do you make that assumption? What is  
18 it about -- what is it about it that you recognize as your  
19 apartment?

20 A Nothing.

21 Q Nothing? Okay.

22 MR. GOODWIN: Judge, with respect to all the  
23 apartment pictures, there's not going to be an objection  
24 posed. If she wants to go over there and have her identify

1 the injury photos, that's fine.

2 THE COURT: Okay.

3 BY MS. LUZAICH:

4 Q 104, 105, let me ask you -- 106, is there anything  
5 you recognize from your apartment?

6 105, 106.

7 A The dresser. I had just moved it in there that  
8 night.

9 Q Okay. And what room is this?

10 A That's the bathroom.

11 Q Okay. 106, that's Exhibit 106.

12 107, do you recognize -- oops. Sorry -- 107 --

13 A The front door.

14 Q Okay. 108.

15 A That must be the kitchen.

16 Q Okay.

17 A The kitchen door, that's hard to recognize.

18 MS. LUZAICH: Okay. And so 104, 105, 106, 107, 108,  
19 I understand those are admitted without objection by the  
20 Defense.

21 THE COURT: Okay.

22 MS. LUZAICH: Pictures of the apartment.

23 BY MS. LUZAICH:

24 Q State's Proposed 109, can you tell us if you



1 recognize that and what it's a picture of?

2 A Yeah, that's a picture of me in the hospital.

3 Q Okay. And that fairly depicts how you looked in the  
4 hospital?

5 A Yes.

6 MS. LUZAICH: Move for admission of 109.

7 MR. GOODWIN: No objection.

8 THE COURT: Okay.

9 BY MS. LUZAICH:

10 Q 110, do you recognize this photo?

11 A Yeah.

12 Q What is this a picture of?

13 A That's another picture of me in the hospital.

14 Q Okay. Let me ask you, on your cheeks here, there is  
15 redness. Can you tell us how that came about, that area, that  
16 bruised kind of red area here?

17 A No, I can't. I -- I don't remember --

18 Q Okay.

19 A -- how that happened.

20 Q Okay.

21 MR. GOODWIN: Which exhibit is that, Theresa?

22 MS. LUZAICH: 110.

23 MR. GOODWIN: 110. Thank you.

24 ///

1 BY MS. LUZAICH:

2 Q But that was as a result of the encounter with the  
3 Defendant?

4 A Yes.

5 Q Okay.

6 THE COURT: Move for the admission?

7 MS. LUZAICH: Move for admission of 110.

8 MR. GILL: No objection.

9 THE COURT: It'll be admitted.

10 BY MS. LUZAICH:

11 Q And State's Proposed Exhibit 111, do you recognize  
12 that?

13 A Yes.

14 Q That is a fair depiction of you in the hospital at  
15 the time?

16 A Yes.

17 Q And do you appear to have some kind of bloody areas  
18 in your eyes?

19 A Yes.

20 Q Was that a result of your encounter with the  
21 Defendant that night?

22 A Yes, and it got much worse.

23 Q Okay. So it got much -- so it got worse than what's  
24 in the pictures?

1           A     Yes.

2           Q     How long did that last?

3           A     I think about three weeks that my -- my eyes were  
4 just totally full of blood, just pools of blood.

5           Q     Okay. And did you have any visual difficulties?

6           A     I still have a little bit of a slump to my eye when  
7 I get tired.

8           THE COURT: What? I'm sorry.

9           THE WITNESS: I slump --

10          [TRANSCRIPT READING END]

11          MS. SCHIFALACQUA: Oh, sorry.

12          [TRANSCRIPT READING BEGIN]

13          MS. LUZAICH: A slump?

14          THE WITNESS: Little bit of a lazy eye.

15          THE COURT: And which eye are you pointing to?

16          THE WITNESS: The right eye.

17          THE COURT: Okay.

18 BY MS. LUZAICH:

19           Q     And that was as a result of this encounter with the  
20 Defendant?

21           A     Yes.

22           MS. LUZAICH: I'll move for the admission of State's  
23 Proposed Exhibit 111.

24           MR. GOODWIN: No objection.

1 THE COURT: Admitted.

2 BY MS. LUZAICH:

3 Q Again, State's Exhibit 112. Again, a picture of you  
4 in the hospital that night?

5 A I assume that's where he hit me when he first  
6 entered the house, but that's an assumption.

7 Q And this picture is a picture of your eye area  
8 that's bruised and bloodied and there are various markings on  
9 your face around the eye?

10 A Yes.

11 Q And that would have been the area when he first came  
12 through the door that he knocked you to the ground?

13 A Yes.

14 Q Okay. Do you know what he hit you with?

15 A I believe it was just his hand.

16 Q Okay. Open hand? Closed?

17 A I really don't remember.

18 MS. LUZAICH: I'll move for the admission of State's  
19 Proposed Exhibit 112.

20 MR. GILL: No objection.

21 THE COURT: It will be admitted.

22 BY MS. LUZAICH:

23 Q And State's Exhibit 113 and 114. That fairly and  
24 accurately depicts your neck and throat area --

1 A Yes.

2 Q -- in the hospital that night?

3 A Yes.

4 Q And what can you tell us about what you see in these  
5 pictures?

6 A Just the bruising and the red spots from -- probably  
7 from my [sic] hands.

8 Q Okay. From the strangulation with the lamp cord and  
9 then the manual --

10 A Yes.

11 Q -- strangulation? Okay.

12 MS. LUZAICH: I'll move for the admission of State's  
13 Proposed Exhibits 113 and 114.

14 THE COURT: Any objection?

15 MR. GOODWIN: No objection.

16 THE COURT: They will both be admitted.

17 BY MS. LUZAICH:

18 Q I'm going to show you what's been marked as State's  
19 Proposed Exhibits 115 and 116.

20 [TRANSCRIPT READING END]

21 MS. LUZAICH: Oops. Sorry.

22 [TRANSCRIPT READING BEGIN]

23 BY MS. LUZAICH:

24 Q Is that a fair and accurate depiction of your

1 abdomen when you were at the hospital on March 7th?

2 A Yes.

3 Q And in State's 115, there's a bruised area in the  
4 center. Was that there prior to this night?

5 A No.

6 Q And there's a --

7 A Stab wound.

8 Q -- appears to be a stab wound. Was that the result  
9 of Defendant stabbing you?

10 A Yes, it is.

11 Q And then to the upper part of your abdomen?

12 A Actually, it's the lower.

13 Q Oh --

14 MR. GOODWIN: I'm sorry, ma'am. What did you just  
15 say?

16 [TRANSCRIPT READING END]

17 MS. LUZAICH: Court.

18 [TRANSCRIPT READING BEGIN]

19 THE COURT: She had it upside down.

20 MR. GOODWIN: I'm sorry. Thank you.

21 MS. LUZAICH: Thank you.

22 BY MS. LUZAICH:

23 Q There's one upper and then there's one to the lower,  
24 which would have been the lower right?

1           A     Yeah.

2           Q     So this fairly and accurately depict -- depicts the  
3 two stab wounds?

4           A     Yes, it does.

5           Q     And was it a total of two stab wounds?

6           A     Yes.

7           Q     Okay. And the same with 116?

8           A     Yes.

9           Q     Same thing, fairly and accurately depicts the stab  
10 wounds?

11                   MS. LUZAICH: I'll move for the admission of State's  
12 Proposed Exhibits 115 and 116.

13                   THE COURT: Any objection?

14                   MR. GOODWIN: No.

15                   THE COURT: Okay.

16 BY MS. LUZAICH:

17           Q     I'm going to show you what's been marked as State's  
18 Proposed Exhibits 117 and 118.

19                   [TRANSCRIPT READING END]

20                   MS. LUZAICH: I didn't notice that was there. Sorry  
21 about that.

22                   [TRANSCRIPT READING BEGIN]

23 BY MS. LUZAICH:

24           Q     Do you recognize what's in those photos?

1           A     Looks like smoke.

2           Q     Okay. Are those your feet?

3           A     Yes, those are my feet.

4           Q     And they're -- what? -- blackened?

5           A     Yes.

6           Q     And that was the result of the --

7           A     The fire, leaving the fire from my house.

8           MS. LUZAICH: Okay. I'll move for the admission of  
9 proposed 117 and 118.

10          MR. GOODWIN: No objection.

11          THE COURT: That will be admitted.

12 BY MS. LUZAICH:

13          Q     Do you -- Ms. Case, do you have any scars on your  
14 abdomen as a result of the stab wounds?

15          A     Yes, I do.

16          Q     And do you have a scar for each of the stab wounds?

17          A     Yes, I do.

18          THE COURT: So do you have scars?

19          THE WITNESS: Yes, ma'am.

20          THE COURT: From the stab wounds?

21          MS. LUZAICH: Okay. May I have the Court's  
22 indulgence?

23          THE COURT: Yes.

24          ///



1 BY MS. LUZAICH:

2 Q Ms. Case, do you -- can you tell us or do you recall  
3 what kind of clothing the Defendant was wearing this night?

4 A I recall a pair of black flair-leg jeans with the  
5 FUBU logo on them.

6 Q Okay.

7 A And a lime green polo shirt that was really long.  
8 He also wore a red fleece jacket that zipped from probably  
9 here up with a pocket in the front.

10 MS. LUZAICH: For the record, she was indicating the  
11 zipper about mid torso.

12 THE COURT: You mean from the chest up.

13 THE WITNESS: Right.

14 THE COURT: Okay.

15 BY MS. LUZAICH:

16 Q And --

17 A He put my ring in his pocket.

18 Q You're indicating there was a pocket in the --

19 A In the front, yeah. A pocket in the front.

20 Q Okay. And footwear, to the best of your  
21 recollection, what kind of footwear he had on?

22 A No, I don't.

23 Q If -- did you give -- do you recall giving a  
24 voluntary statement, a tape-recorded statement in this case?

1           A     Yes.

2           Q     If I showed you that statement, would that help you  
3 recall if you told the police what kind of footwear he had on?

4           A     Mm-hmm.

5           MS. LUZAICH:   Okay.   Page 6, Counsel.

6   BY MS. LUZAICH:

7           Q     Showing you a voluntary statement with your name on  
8 it, page 6, just read to yourself.

9           To put it in context, we might start on page 5.  You're  
10 asked about his clothing description and you talk about the  
11 FUBU jeans.  And go ahead and take a look at your answer on  
12 page 6.  Just read it to yourself.

13          Does that help you remember what kind of footwear you  
14 said he had on that night?

15          A     No, I really -- I still don't remember what footwear  
16 he had on.

17          Q     Okay.

18          A     Apparently I did at that point.

19          Q     At that point you remembered?  And what did you  
20 remember at that point?

21          MR. GOODWIN:  Judge, is this an impeachment  
22 question?

23          THE COURT:  Sorry.  Give me the page number.

24          MS. LUZAICH:  185.

1 THE WITNESS: Line 14.

2 THE COURT: Sorry. Well, if she doesn't remember,  
3 then you can have past recorded recollection and you can have  
4 it into evidence.

5 MS. LUZAICH: Right.

6 BY MS. LUZAICH:

7 Q So what did you say to the police he was wearing, as  
8 far as tennis shoes, when you gave the statement on March 7th?

9 A He was wearing white and black tennis shoes.

10 Q Okay.

11 MR. GOODWIN: Your Honor, I'm not clear what you'd  
12 indicated. Did you indicate that was a statement given under  
13 oath at a prior hearing?

14 THE COURT: No, there's refreshing the memory. And  
15 if it doesn't work, they can do past recollection recorded.  
16 So first they can read it to her. If it doesn't help, she's  
17 allowed to read the portion out loud. So it's overruled.

18 MR. GOODWIN: Past recollection is an impeachment  
19 technique.

20 THE COURT: If that's what you want to call it, you  
21 can. But she did follow the requirements.

22 BY MS. LUZAICH:

23 Q Ms. Case, during the second sexual assault where the  
24 Defendant grabbed the -- like the cellophane from the

1 cigarette carton, when he then penetrated you, did the  
2 cellophane go inside you?

3 A Yes.

4 Q Okay. And did you -- did it stay in there or did it  
5 come out automatically?

6 A I had to remove it.

7 Q And can you tell us kind of how that came about?

8 A Only thing I can recall is being in the bathroom  
9 trying to remove it.

10 Q Okay.

11 A And that's at the point when he had asked me to wash  
12 myself.

13 Q And were you, in fact, able to remove it?

14 A Yes.

15 Q And then did he tell you to do anything with it?

16 A To flush it down the toilet.

17 Q Okay. Did you do that?

18 A Yes, I did.

19 Q At any point did the Defendant grab a scissor or  
20 have a scissors?

21 A No.

22 Q Thank you.

23 [TRANSCRIPT READING END]

24 MS. LUZAICH: That completes direct examination.

1 THE COURT: Okay. So, ladies and gentlemen, when we  
2 pick up tomorrow, at some point, we will do the rest of the  
3 examination. We're going to break for the evening.

4 Please remember during this recess do not discuss or  
5 communicate with anyone, including fellow jurors, in any way  
6 regard the case or its merits either by voice, phone, e-mail,  
7 text, internet, or other means of communication or social  
8 media. Please do not read, watch, or listen to any news,  
9 media accounts, or comments about the case; do any research,  
10 such as consulting dictionaries, using the internet, or using  
11 reference materials.

12 Please do not make any investigation, test a theory of  
13 the case, recreate any aspect of the case, or in any other way  
14 attempt to learn or investigate the case on your own. And  
15 please do not form or express any opinion on this matter until  
16 it's formally submitted to you.

17 We'll be back tomorrow at 11:30. I have my criminal  
18 calendar in the morning. So if you get here and there are  
19 people coming in and out, just means that the calendar's  
20 going. But try to be done with it before 11:30.

21 Have a nice night. We'll see you then. Thank you.

22 THE MARSHAL: All rise.

23 [Hearing concluding at 4:12 p.m.]

24 \*\*\*\*\*

1 ATTEST: I do hereby certify that I have truly and  
2 correctly transcribed the audio/video proceedings in the  
3 above-entitled case to the best of my ability.

4   
5 ALLISON SWANSON, CSR NO. 13377  
6 CERTIFIED SHORTHAND REPORTER  
7 FOR THE STATE OF CALIFORNIA  
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STATE OF NEVADA, )  
 )  
 Plaintiff(s), ) CASE NO. 01C174954  
 )  
 vs. )  
 ) DEPT. NO. VI  
 PORTER, JUSTIN D., )  
 )  
 Defendant(s). )

RECORDER'S TRANSCRIPT OF HEARING:  
JURY TRIAL - DAY 5

For the Plaintiffs: STACY L. KOLLINS  
ELISSA LUZAICH

For the Defendants: ADAM L. GILL  
CHARLES R. GOODWIN

AA 1102

I N D E X   O F   W I T N E S S E S

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1 Las Vegas, Nevada, Thursday, September 8, 2022

2 [Case called at 12:06 p.m.]

3 \*\*\*\*\*

4 [OUTSIDE THE PRESENCE OF THE JURY]

5 [DISCUSSION OFF THE RECORD]

6 THE MARSHAL: All rise.

7 [IN THE PRESENCE OF THE JURY]

8 THE COURT: Welcome back, everybody. Thank you so  
9 much for your patience. I'm sorry. We had a very long  
10 criminal calendar this morning.

11 We are on the record in C174954. Mr. Porter is present  
12 with counsel, Mr. Gill as well as Mr. Goodwin. Both Chief  
13 Deputy District Attorneys, Ms. Luzaich as well as Ms. Kollins,  
14 are present on behalf of the State.

15 Ms. Schifalacqua has joined us back today and we're going  
16 to continue the reading of Leona Case. This time we're  
17 starting with the very beginning of Defendant's  
18 cross-examination of the witness.

19 All right. So, Mr. Goodwin, are you doing the reading?

20 MR. GOODWIN: That's correct, Your Honor.

21 THE COURT: All right. Sir, whenever you're ready.

22 MR. GOODWIN: The Court like me at the podium or is  
23 here okay?

24 THE COURT: Wherever you're comfortable. It's not a

1 big deal.

2 MR. GOODWIN: Okay.

3 [TRANSCRIPT READING BEGIN]

4 CROSS-EXAMINATION

5 BY MR. GOODWIN:

6 Q Good afternoon, Ms. Case. I have a few questions  
7 I'd like to ask you as well.

8 A Okay.

9 Q You recalled you testified on Friday?

10 A Yes.

11 Q And you told us, to the best of your recollection,  
12 these things that had happened to you?

13 A Yes.

14 Q And prior to that, you remember you gave the police  
15 a voluntary statement, didn't you?

16 A Yes, I did.

17 Q And do you recall that they had a tape recorder  
18 sitting out?

19 A No, I don't recall.

20 Q Okay. Have you ever been shown that voluntary  
21 statement?

22 A No.

23 Q Have you -- you never reviewed it?

24 A No.

1           Q     Okay.  How many different times did you talk to the  
2 police, if you remember?

3           A     I'm thinking about five times.  You know, through  
4 the course of time.

5           Q     Over the course of time?

6           A     Yes.

7           Q     Okay.  That was my next question.  The first time  
8 that you talked to the police, was that right after this  
9 incident?

10          A     That would have been while I was in the hospital, in  
11 the trauma, yeah.

12          Q     And do you have any recollection what time you got  
13 to the hospital?

14          A     I think it was between 1:30 and 2:00 in that  
15 close --

16                   [TRANSCRIPT READING END]

17           THE COURT:  Oh, sorry.  I forget --

18           MR. GOODWIN:  Page 5.

19           THE COURT:  -- that I'm -- I forget that I'm a part  
20 of this.  I forget.  I'm like --

21           MS. LUZAICH:  Line 15.

22                   [TRANSCRIPT READING BEGIN]

23           THE COURT:  A.M.?

24           THE WITNESS:  Approximation, yes.

1 BY MR. GOODWIN:

2 Q Okay. So at 1:30 or 2:00 a.m., your recollection is  
3 that -- that's the first time you spoke to a police officer?

4 A Yes.

5 Q And was it a detective?

6 A That, I couldn't tell you.

7 Q Okay. And did you talk to just one or did you talk  
8 to a number of them on that particular occasion?

9 A I don't remember.

10 Q Okay. And how much time elapsed after that, that  
11 you recall that you spoke to other police officers?

12 A I couldn't tell you. I can't remember.

13 Q Okay. Do you remember the last time you spoke to  
14 police officers about this case?

15 A When he was arrested.

16 Q When he was arrested?

17 A Yes.

18 Q And how did you get word that somebody had been  
19 arrested?

20 A She -- Detective Love came to my job and informed  
21 me.

22 Q And do you have any recollection as to when that  
23 was?

24 A No, I don't. I can't remember.

1 Q Okay. And what did -- what do you recall  
2 Detective Love told you about somebody being arrested?

3 A That they had picked up a young man in Chicago and  
4 that he fit the description and -- I don't know. She said  
5 quite a bit of stuff. I was just really caught up in the fact  
6 that he had been captured.

7 Q Okay. Did she tell you that he fit the description  
8 that you had given them?

9 A Yes.

10 Q Did she tell you that he also fit the description  
11 that other people had given them?

12 A No.

13 Q Okay. I'm sure that Detective Love made you aware  
14 that there were a number of case -- of crimes that were being  
15 investigated that they attributed to the same person.

16 A Yes.

17 Q So you were aware of that?

18 A Yes.

19 Q And, in fact, you were made aware of that prior to  
20 ever making any identification of this person; is that right?

21 A Are you talking about the composite drawing or when  
22 I gave the description of him when the police --

23 Q Did you, yourself, ever have to identify --

24 A No, I haven't.

1 Q Okay.

2 A Not until Thursday afternoon, when I was here.

3 Q So -- so the only time you've ever been face-to-face  
4 with this person was when you testified when the State was  
5 asking some questions; is that right?

6 A Yes.

7 Q Did they ever show you photographs?

8 A No.

9 Q Did they ever take you to a lineup?

10 A No.

11 Q So you came to court -- was it last Thursday?

12 A Yes.

13 Q Okay. Came to court last Thursday, and you were  
14 obviously under the impression that whoever it was that had  
15 done this to you would be in court in that particular day; is  
16 that right?

17 A Um, yeah. I assumed it would be.

18 Q Okay. Now, other than talking to a number of  
19 detectives about this, you also talked to some people over at  
20 the District Attorney's Office; is that right?

21 A Yes.

22 Q Do you remember who you spoke to at the DA's Office?

23 A My two attorneys here, Ms. Lowry and --

24 MS. LUZAICH: Mr. Herndon.

1 THE WITNESS: Thank you. And Cathy Baldinado  
2 (phonetic).

3 BY MR. GOODWIN:

4 Q And who's Cathy?

5 A She's the -- my victim witness person.

6 Q She's from Victim Witness Assistance; is that right?

7 A Yes.

8 Q And obviously she prepared you for the fact that  
9 this person who had done these things to you would be in court  
10 as well, didn't she?

11 A The person that accused -- that they accused of  
12 doing this, yes.

13 Q Okay. And when you spoke to the District Attorneys  
14 who will sitting here today, did they mention to you that the  
15 person who had done these things would be in court today -- or  
16 not today. I'm sorry. But when -- when you first testified?

17 A I don't know if they did or not. They, um, I really  
18 couldn't tell you.

19 Q Okay. Ms. Maldonado (phonetic) -- that is her name,  
20 isn't it, Maldonado?

21 A Baldinado, yeah.

22 Q Okay. She's a cap --

23 MS. LUZAICH: With a "B," Baldinado.

24 MR. GOODWIN: Oh, I beg your pardon. Baldinado.



1 Yes, ma'am.

2 BY MR. GOODWIN:

3 Q She's a counselor over at Victim's Witness  
4 Assistance, isn't she?

5 A I believe so.

6 Q And she's assigned specifically to you to help you  
7 with this matter?

8 A Yes.

9 Q And one of these things that she specifically wants  
10 to help you with is essentially being in the same room as the  
11 person who had done these things; is that right?

12 A Yes.

13 Q Okay. So she made it clear to you that no matter  
14 how many times you had to come here to testify, the person who  
15 did these things to you would be sitting in court; is that  
16 right?

17 A Yes.

18 Q Okay. Now, have you been following this, the  
19 progress of this case in the newspapers?

20 A No.

21 Q What about television?

22 A No.

23 Q You haven't seen any news reports whatsoever?

24 A No, I haven't.

1 Q And you've not read any newspaper articles?

2 A No, I haven't.

3 Q Is there any specific reason why that is?

4 A It's hard to deal with.

5 Q Did anybody over at Victim Witness Assistance  
6 explain to you what this person had done to other people?

7 A No.

8 Q So the only information you had concerning what he  
9 did to other people came from the detectives; is that right?

10 A Um, I don't believe the detectives told me too much  
11 of what happened to anybody else anyway.

12 Q Who was it that told you what happened to these  
13 other people?

14 A All I knew, that Detective Love told me, that there  
15 were a certain amount of charges.

16 Q And she gave you the impression that you weren't the  
17 only -- the only person?

18 A Yeah, exactly.

19 Q And who was the first person to tell you that you  
20 would actually have to point to somebody in court and identify  
21 the person who did these things to you?

22 A That would have been Attorney Lowry.

23 Q All right. Did Ms. Lowry tell you where this person  
24 might be sitting?

1           A     No.

2           Q     Did anybody tell you what this person might be  
3     wearing in court?

4           A     No.

5           Q     And when you identified this person in court, this  
6     person was sitting between me and his other defense attorney,  
7     wasn't he?

8           A     Yes.

9           Q     Okay. Let me start, if you don't mind, with some  
10    identification information that you gave to the police shortly  
11    after these terrible things happened to you. What is your  
12    recollection as to what you told the police concerning this  
13    person's height? this person's weight?

14          A     I would -- I would say between 5-10 and 11. And I  
15    think I told 'em 180 pounds or something like that.

16          Q     Okay.

17          A     And that's all.

18          Q     All right. Now, it's not going to surprise you if  
19    you told 'em this person was between 5-11 and 6-foot, is it?

20          A     No.

21          Q     So if I'm telling you that that's what you told  
22    them, do you agree that this person is actually between 5-11  
23    and 6-foot?

24          A     If that's what I told them, then that's what I

1 believed, yes.

2 Q Okay. Now, do you have any recollection as to what  
3 you told the police concerning this person's hair?

4 A That it was -- yeah, I remember his hair. I mean, I  
5 can remember a lot of this. There's some of it that I don't.  
6 But, yeah, I remember his hair was quite a bit shorter than it  
7 is right now.

8 Q Okay. What description did you give to the police,  
9 if you can recall, concerning his hair when they asked you to  
10 describe his hair?

11 A Just that it was neat and cut short.

12 Q Did you tell them that it was straight hair or curly  
13 hair?

14 A I don't believe I did.

15 Q Okay. So if I told you that you told them he had  
16 short curly hair, would that surprise you?

17 A No.

18 MS. LUZAICH: I'm going to object and ask for some  
19 foundation for the question as to what counsel is referencing  
20 to, what statement, what document.

21 THE COURT: Okay.

22 MR. GOODWIN: I'm referring --

23 THE COURT: Well, was it the first time? The second  
24 time? Or which time is it?

1 MS. LUZAICH: She said she talked to --

2 THE COURT: A couple different cops.

3 MR. GOODWIN: I'm referring to -- for your  
4 information, I'm referring to the police report and the  
5 voluntary statements. This is all information that we  
6 received from you.

7 MS. LUZAICH: Again, I pose the objection as to  
8 foundation. If we're questioning her about what she told the  
9 police, I would --

10 THE COURT: At the hospital?

11 MS. LUZAICH: -- like a reference as to what  
12 document we're referring to.

13 THE COURT: We can do that. That's easy.

14 MR. GOODWIN: Frankly, I was just trying to save a  
15 little time.

16 THE COURT: Okay.

17 MR. GOODWIN: If they want me to lay all the  
18 foundations for everything I need --

19 THE COURT: Just make it clear enough so there's no  
20 confusion. That would be great.

21 MR. GOODWIN: Okay.

22 BY MR. GOODWIN:

23 Q Did you tell any police officer at any time that  
24 this person had short curly hair?

1           A     That's possible, but I don't recall.

2           Q     Okay. And concerning this person's age, do you have  
3 any recollection telling any police officer at any time how  
4 old this person might have been?

5           A     Yeah, I do. I remember that quite well. I remember  
6 telling him that he was probably between 16 and 19 years old  
7 and then I, um -- they seemed to think he was older and so I  
8 changed that.

9           Q     Okay. Let me go --

10          A     Maybe he was 18, you know, maybe he's 18, between 18  
11 and 20.

12          Q     I'm sorry to interrupt you, ma'am. I guess what  
13 you're telling the judge is you seem to think that this person  
14 was -- did you say 16?

15          A     Between 16 and 19 years old, yes.

16          Q     Sixteen or nineteen. And then the police thought  
17 that the person was older and they told you that, so you  
18 revised your age in what way?

19          A     Well, what I did was, I got to doubting myself and  
20 thinking that maybe he's a little older than that. And -- and  
21 so I told them he could possibly be 18. And -- and that's  
22 what they put down in the description. I believe it was 18 to  
23 24.

24          Q     Okay. So your belief was that the person was

1 between 16 and 18. The police doubted you?

2 A Sixteen and nineteen, yeah.

3 Q Sixteen and nineteen. The police doubted you. And  
4 after they made it clear to you that they doubted what you  
5 were saying, you revised your estimate to be as high as how  
6 old?

7 A Eighteen, which is as high I could possibly imagine  
8 him being.

9 Q Okay. Now, is it going to surprise you if you told  
10 the police during the voluntary statement, after they spoke to  
11 you about it, that he was 18 or 19, maybe 22? Would that  
12 surprise you at all?

13 A No.

14 Q Okay. But nonetheless, you acknowledge that you  
15 felt some pressure to revise his age upward; is that right?

16 A Yes, I did.

17 Q Okay. Now, concerning whether or not he was  
18 clean-shaven, what do you recall telling any police officer at  
19 any time about whether this person had facial hair or not?

20 A I don't recall telling them anything. But he didn't  
21 have any facial hair when -- when he attacked me, no.

22 Q Okay. You don't recall telling them in there,  
23 where -- well, such that -- such what they put in their police  
24 report that he was clean-shaven?

1           A     I probably did. But, no, I don't recall it.

2           Q     Okay. And do you recall using the words "he looked  
3 like he never shaved a day in his life"?

4           A     No, I don't recall that. But that's probably what I  
5 said. I can imagine me saying that, yeah.

6           Q     You could imagine yourself saying that?

7           A     Yes.

8           Q     Okay.

9           A     Because he looked so young to me.

10          Q     Okay. Now, you told us that you told the police  
11 that his hair was short?

12          A     Yes.

13          Q     And would it make sense to use this -- the words  
14 "his hair was kept really short," would that make sense to  
15 you?

16          A     Capped really short?

17          Q     His hair was kept really short.

18          A     Yes, that would make sense to me.

19          Q     Okay. And finally, concerning his eyes, what  
20 recollection do you have about telling any police officer at  
21 any time about what this person's eyes looked like?

22          A     I had a hard time remembering his eyes and exactly  
23 what they looked like.

24          Q     So it is your --



1           A     -- in describing him to begin with.

2           Q     Okay. I understand. Is it your -- is it your  
3 opinion that perhaps you didn't give the police any  
4 description of his eyes at all? Is that what you're telling  
5 us?

6           A     Oh, no. I did try to. During the composite  
7 drawing, I did try to. I know what -- I know that they were  
8 brown and -- and I did tell them something about the eyes.

9           Q     Okay. If I told you that you said he had eyes that  
10 were more of a brown -- brown color, what sound -- would that  
11 sound like something you said?

12          A     Yes.

13          Q     Okay. Now, obviously the same difficulty you had  
14 talking to the police initially when this happened in  
15 describing this person, are you experiencing that same  
16 difficulty today?

17          A     I didn't have much difficulty trying to describe him  
18 when this first happened. Um, it was very fresh in my memory.

19          Q     Okay.

20          A     Today I'm feeling a bit ill. I know --

21          Q     (Indiscernible) doing what, ma'am?

22          A     Feeling a bit ill. And it's taking a toll on me.

23          Q     Oh, I understand. Of course.

24          A     Now, other than the age that the police kind of wanted

1 you to estimate up a little bit more, what else did the police  
2 want you to revise in terms of your description of this  
3 person?

4 A There was nothing that I can recall that they ever  
5 wanted me to revise because --

6 Q There was nothing else?

7 A Not that I can recall, no.

8 Q Okay. Now, you've never had your door kicked in  
9 before; is that right?

10 A No, I never have.

11 Q And it was loud and it was scary, wasn't it?

12 A Yeah.

13 Q And then this person just burst in and start hitting  
14 you; is that right?

15 A Basically, yes.

16 Q And he started yelling at you, he used foul  
17 language, "sit down bitch," other things that you said to us  
18 in court last time.

19 A Yes.

20 Q And he grabbed a pair of scissors and kept telling  
21 you he was going to kill you, stuff like that?

22 A No, he never grabbed a pair of scissors.

23 Q Okay. Did you ever tell the police at any time this  
24 person grabbed a pair of scissors?

1           A     No, I believe I told them that I -- I grabbed a pair  
2 of scissors and hid them under my chair.

3           Q     Okay. Now, as I was saying, these things never  
4 happened to you before. In fact, you told the police that it  
5 freaked you out; is that right?

6           A     Yes.

7           Q     And you also used words that it shocked you; is that  
8 correct?

9           A     Yes.

10          Q     And this thing was so shocking and so frightening  
11 that that contributed somewhat to your inability to really  
12 give us a good description as you wanted to give.

13          A     Oh, no. He was in my house for over an hour. I had  
14 plenty of time to get a good look at him.

15          Q     Okay. Yet, if when the police told you that your  
16 estimate as to this guy's age just wasn't accurate, you needed  
17 to estimate it up, you had no problem doing that, did you?

18          A     Well, yes, I did. Um, but I did have some doubt as  
19 to whether or not he could be over 18.

20          Q     And you still have those doubts, don't you?

21          A     Looking at him, yes, now, I would still think him,  
22 you know, between -- I should have said between 16 and 24.  
23 But he -- you know, it's hard to judge.

24          Q     When the police tried to get you to give them a

1 description of this person during the voluntary statement, do  
2 you recall telling the police "I was not really wanting to  
3 look at him very close"?

4 A No, I don't recall that.

5 Q Okay. I can show it to you in your statement if  
6 you'd like me to.

7 A No, I believe I probably said that.

8 Q Okay. Now, I want to talk to you about what you  
9 said a little earlier about the fact that this person never  
10 grabbed any scissors.

11 A Okay.

12 Q I'm a little surprised to hear you say that today,  
13 that he never did grab any scissors. It was you that grabbed  
14 the scissors; is that right?

15 A Yes.

16 Q Okay. With this person's hair -- with this  
17 person -- the description that you're giving of this person's  
18 hair, you acknowledge that at one point you said he had short  
19 curly hair; is that right?

20 A I probably did, yes.

21 Q And then at another point you said it was just like  
22 it was uneven all over. Do you remember saying that?

23 A No.

24 Q I can show you your statement if you'd like me to.

1           A     I'd like to see that.

2           MS. LUZAICH: Could you refer her to page.

3           MR. GOODWIN: Page 25.

4           MS. LUZAICH: Thank you.

5           MR. GOODWIN: Judge, if I could approach very  
6 quickly.

7           THE COURT: Okay.

8 BY MR. GOODWIN:

9           Q     I'm handing you a voluntary statement that was  
10 provided to us from the District Attorney's Office. I'm going  
11 to turn to page 25 for you.

12           I'm on page 25 and I'm pointing to a question. I'm  
13 pointing to a "Q." There, that represents a question. It's  
14 towards the bottom of the page. Not the very last one, but  
15 the one before. Do you want to look that over very quickly  
16 and let me know when you're done?

17           A     That is apparently -- "it was uneven all over, you  
18 know." And I don't believe I really said that. I believe  
19 that I said it is even all over. It was just a --

20           Q     Okay. Did you say anything else about his hair on  
21 that page?

22           A     That I didn't know if it was curly or just a wave.

23           Q     Okay. So you see that now?

24           A     Yeah.

1           Q     Okay. So, again, if I could ask you, you told us at  
2 one point it was short and curly hair. You also said it was  
3 just like it was uneven all over and then you used the words  
4 "I don't know if it was curly or just wavy"; is that right?

5           MS. LUZAICH: Judge, I'll object.

6           THE WITNESS: Well, no, actually --

7           MS. LUZAICH: I think the witness has said that she  
8 doesn't think she said "uneven." She thinks that's a mistype.  
9 She said "even all over."

10          THE COURT: That's my understanding.

11          MR. GOODWIN: Well, frankly, Judge, it's not my job  
12 to correct the detective's and the District Attorney's  
13 statements. I'm simply bringing up with her what they have  
14 led us to believe that she said all this time.

15          MS. LUZAICH: While --

16          MR. GOODWIN: She can obviously say on the record  
17 now that she thinks she said it was even all over and the  
18 Court could obviously take that into account.

19          THE COURT: That's what I think she said. Is that  
20 what you said?

21          THE WITNESS: Yes, that's what I said.

22 BY MR. GOODWIN:

23          Q     So they were wrong when they did that, when they  
24 wrote this down?

1           A     Apparently it's a misprint, yes.

2           Q     Did they ever let you see the statement?

3           A     No, I've never seen it.

4           Q     You've never even seen it before.   Okay.

5                 Now concerning his eyes, we've already established that  
6 you said that he had eyes that were more of a brown, brown  
7 color.  You remember that, don't you?

8           A     Yes.

9           Q     Did you also say that they were kind of light brown?

10          A     I don't recall.

11          Q     Page 26.  I would like to provide you with this  
12 statement again.  And I want to refer you -- and it's on  
13 page 26, voluntary statement -- down to the last "A" there.  
14 That's an answer.  If you don't mind looking that over very  
15 quickly.

16          A     Okay.  Yes, it does say "kind of light brown."

17          Q     The words you used, "They were kind of a light  
18 brown"; that's right?

19          A     Uh-huh.

20          Q     Okay.  Now, ma'am, by the way, "kind of a light  
21 brown," that's not a misprint.  That's actually what you said;  
22 right?

23          A     I -- I supposed so.  I really --

24          Q     Okay.

1           A     I don't really recall what all was said during that  
2 first interview now. It's been a while and you try to let go  
3 of some things.

4           Q     Now, you also told the police that he seemed to be  
5 very articulate; is that right?

6           A     Yes, I remember that.

7           Q     "And he didn't seem to be, I don't know, like he was  
8 in the hood." You told them that too, didn't you?

9           A     Yes, I did.

10          Q     Okay. Now, if I were to ask you if this person that  
11 was in your house, wearing earrings, you -- you honestly have  
12 no idea whether he wore earrings or not; is that correct?

13          A     I couldn't tell you now, but I really don't think  
14 that he did, you know. That's questionable now. But at the  
15 point, I would have remembered something like that because I  
16 was looking for identifying marks or anything that I could to  
17 help substantiate my, um, you know --

18          Q     Well, now that you've had a chance to see somebody  
19 in court, or you've been told this is the person who did this,  
20 do you recognize there's no earrings; is that right?

21               MS. LUZAICH: I'm going to object to the form --

22               THE COURT: The objection is sustained.

23               MS. LUZAICH: -- of the question.

24               THE COURT: That's not what the witness said. She



1 never said anybody told her the person she picked out in court  
2 was the one that attacked her. She identified him herself.

3 Did anybody tell you that's him right there?

4 THE WITNESS: No, nobody told me.

5 THE COURT: That hasn't been the testimony.

6 Don't -- do not -- I take detailed notes. I have hundreds of  
7 pages since this prelim started. Please don't misquote the  
8 witness intentionally or accidentally in my presence.

9 BY MR. GOODWIN:

10 Q When you gave --

11 MR. GOODWIN: Yes, Your Honor. I apologize.

12 BY MR. GOODWIN:

13 Q When you gave the police your statement and they  
14 asked you whether or not this person was wearing earrings, do  
15 you remember what you told them?

16 A I don't remember now, but I think I told them that  
17 he wasn't.

18 Q That he was not?

19 A Right.

20 Q Okay. Would it surprise you if you told them, if  
21 your answer was, "I'm wondering about that. I don't have a  
22 real clear" -- and then your answer kind of trailed off?

23 A I -- that's quite possible too.

24 Q Okay.

1           A     I just don't really recall.

2           Q     Now, the tennis shoes, you've described them as  
3 white and black tennis shoes; is that right?

4           A     I did, apparently, during the police interview.  
5 Yes.

6           Q     Well, you also described them as white and black  
7 tennis shoes when you testified here last week. Do you  
8 remember that?

9           A     No, I told you I didn't recall, but I read it into  
10 the -- I read in the script or in the contest -- the whatever.

11          Q     All right. Well, you heard the judge took detailed  
12 notes and we took notes.

13          A     Yes.

14          Q     Would it surprise you if you described in court  
15 white and black tennis shoes last week?

16          A     I didn't describe white and black tennis shoes last  
17 week in court.

18          Q     Are you confident about that?

19          A     I believe what happened was there was some question  
20 about the black and white tennis shoes, and I didn't recall  
21 the black and white tennis shoes. And then I read it from,  
22 uh, the police report.

23          Q     So you're -- your memory about last week is that you  
24 don't -- didn't recall whether they were black and white

1 tennis shoes?

2 A That's what my answer was to that question, yes.

3 Q Okay. And when the police asked you about  
4 sideburns, did you tell the police that this person had long  
5 or short sideburns?

6 A I don't recall.

7 Q Now, when he took off his clothing, you told the  
8 police that he had no scars and no tattoos; is that right?

9 A That's what I remember telling them, yes.

10 Q So you don't remember any scars; you don't remember  
11 any tattoos?

12 A No. No, I don't.

13 Q And were -- were -- would you agree that he seemed  
14 very clean, very clean-cut?

15 A Yes.

16 Q Okay. No hair on his back? No hair on his chest,  
17 no tattoos. Does that make sense?

18 A Yes.

19 Q Now, after you've spoken to these police detectives  
20 and after you've spoken to the Victim Witness people and  
21 you've had a chance to talk to the District Attorneys, you  
22 were able to provide some information to this Court last week  
23 that you never told the police; is that correct?

24 A Yes.

1           Q     Do you remember what specific information you  
2 provided us last week in your testimony that you never told  
3 the police about?

4           A     Yes.

5           Q     Can you tell us about that?

6           A     It was a recall of the first time he knocked on the  
7 door and him introducing himself. And I couldn't recall his  
8 name until recently.

9           Q     Okay. So -- so one of the things you remembered,  
10 after the fact, is that you had met this person previously?

11          A     No, I knew I had met him previously, I just didn't  
12 recall what the name was that he introduced himself as.

13          Q     Okay. And how did these -- how did these people  
14 remember what his name was?

15          A     Actually, it was a subpoena. His name was on the  
16 subpoena as "Jug," and it just -- it brought back a recall  
17 back of him and the fact that he had a friend there that he  
18 called "Chris."

19          Q     Okay. Let me ask you about that subpoena. So prior  
20 to you getting the subpoena that had the word or the name  
21 "Jug" on it.

22          A     Right.

23          Q     Prior to your getting that, you had no recollection  
24 of him telling you that that was his name?

1           A     I had a recollection of it being a short name, and I  
2     thought it was just a nickname. And I had told the police  
3     that it was like a three- or four-letter name that he had  
4     given me. But, no, I could not recall exactly what that was.

5           Q     When did you tell the police that it was a three- or  
6     four-letter name that he had given? Did you tell that to them  
7     in the voluntary statement?

8           A     I don't recall.

9           Q     Okay. So if it's not -- if there's nothing in the  
10    voluntary statement about you trying to remember this person's  
11    name, that wouldn't surprise you, would it?

12          A     Well, no, it wouldn't.

13               [TRANSCRIPT READING END]

14          MS. LUZAICH: Oh, I'm sorry.

15               [TRANSCRIPT READING BEGIN]

16          MS. LUZAICH: Judge, I would object. Again, it  
17    misstates. It's in the statement if counsel wants to look.

18          THE COURT: Sustained.

19          MR. GOODWIN: I've already looked.

20          MS. LUZAICH: Try page 47, at the bottom.

21          MR. GOODWIN: He told you it was -- he told you his  
22    name and it was small? Where did --

23          THE COURT: Is that a "yes"?

24          THE WITNESS: Yes.

1 THE COURT: Small in letters?

2 THE WITNESS: Small letters, yes.

3 THE COURT: Okay.

4 THE WITNESS: Yeah.

5 Just a short --

6 BY MR. GOODWIN:

7 Q Where did the name "Chris" come from?

8 A That was his friend's name. That brought back,  
9 immediately, as soon as I seen his name on the subpoena.

10 Q As soon as you saw --

11 A I remembered the whole thing.

12 Q Okay. So as soon as you saw whose name?

13 A Jug's name on the subpoena.

14 Q Okay. So you're acknowledging that when you spoke  
15 to the police, you never even told 'em that the first time  
16 you'd seen this Jug person there was another man with him; is  
17 that right?

18 A I don't recall if I told them that or not. I did  
19 eventually.

20 Q Okay.

21 A But I don't remember if I told them immediately.

22 Q Okay. So if your voluntary statement doesn't make  
23 any reference at all to the fact that there was another young  
24 man with this guy, that wouldn't surprise you?

1 A No.

2 Q Okay. And at what point did you actually remember  
3 that there was somebody else with this guy Jug?

4 A I remembered it all along. It's just that it never  
5 came up because I wasn't concerned about the other guy.

6 Q Okay. So the police are asking you questions about  
7 what happened to you, agreed -- you agree?

8 A Right.

9 Q And you explained to them that you had met this guy  
10 before and you told 'em the circumstances of meeting him  
11 before; right?

12 A Yes.

13 Q But you never mentioned this guy Chris?

14 MS. LUZAICH: Judge, I'm going to object. I think  
15 she's testified she talked to the police at least five  
16 different occasions. She said a moment ago that she thinks  
17 she told them about the other guy, she just doesn't know if  
18 she told them about it in the voluntary statement.

19 MR. GOODWIN: Then I'll rephrase the question.

20 THE COURT: Okay. Why don't we do that.

21 MR. GOODWIN: I'm sorry, Judge?

22 THE COURT: Go ahead and do that. That will help.

23 MR. GOODWIN: Thank you.

24 ///

1 BY MR. GOODWIN:

2 Q So you believe you told some police officer that  
3 there was another young man with this guy that you had met a  
4 couple days before you [sic] came back; right?

5 A Yes.

6 Q You don't know which police officer you told that  
7 to?

8 A No.

9 Q Did you -- seeing this guy's -- seeing the name  
10 "Jug" on that subpoena caused you to remember that there was  
11 another young man with him; right?

12 A No. It just caused me to remember what that other  
13 young man's name was.

14 Q And did you call the police immediately and tell  
15 them that you just remembered what the other young man's name  
16 was?

17 A No.

18 Q You didn't call the police?

19 A No, I didn't.

20 Q Okay. Did you call the police and tell them all of  
21 a sudden you remember this guy's name was Jug?

22 A No.

23 Q You didn't do that. Okay.

24 You -- now, you also testified last week that the first



1 time this person came to your door he was looking for somebody  
2 else who had lived there before you?

3 A That's what he told me.

4 Q Okay. And you testified to that last week?

5 A Yes.

6 Q And, again, that's something that you never told any  
7 of the police officers you ever talked to; right?

8 A I have no idea.

9 Q So this person that came to your door the first time  
10 put you under the impression that he knew someone who had  
11 lived in that apartment before?

12 A That's what -- yeah, that's what I'm telling you,  
13 yes.

14 Q Okay. And when did you remember that?

15 A I think I always remembered it.

16 Q But you don't know whether you ever told that to the  
17 police?

18 A I don't recall, no, whether I did or not.

19 Q Can you describe Chris? Can you give us a physical  
20 description of Chris?

21 A Um, not really. Uh, he was shorter. That's about  
22 all I can tell you.

23 Q He was shorter than who?

24 A Than the young man there.

1 THE COURT: The Defendant you picked out in court?

2 THE WITNESS: Yes.

3 BY MR. GOODWIN:

4 Q And how tall do you think this young man is?

5 A I would still assume him being between 5-10 and 11  
6 but, you know, that would just be a guess. I'm not real good  
7 at height.

8 Q You're not real good at height? Okay.

9 MS. LUZAICH: May the record reflect that the  
10 Defendant is sitting down. He asked --

11 THE COURT: The record will so reflect.

12 MS. LUZAICH: -- to state his height in court.

13 BY MR. GOODWIN:

14 Q So, initially, when the -- when these two people  
15 came to your door, the taller man was the one that came back?

16 A Yes.

17 Q Okay. Now, you also testified last week -- and I'm  
18 going to paraphrase what you said. You can let me know if I'm  
19 wrong. But you stated something along the lines that he  
20 kicked your door in, he slapped you, he knocked you to the  
21 ground, and he took the phone from you. Is that what you told  
22 us last week?

23 A I believe that's what I told you last week, yes.

24 Q Okay. Now, you then said, "I got up, asked him what

1 he thought he was doing. He said, 'Why you dissen me,  
2 bitch?'"

3 A Uh-huh.

4 Q Is that what he said and you said something about "I  
5 don't let people in this late"?

6 A Yes.

7 Q Okay. Now, this is the first time we're hearing  
8 that you got knocked to the ground; is that correct?  
9 Initially, when the first person -- person first came through  
10 the door? In other words, you never told that to the police,  
11 did you?

12 A I don't recall.

13 Q You never told the police that he used the words  
14 "why you dissen me, bitch?"

15 A I think I did.

16 Q You think you did?

17 A But, um, then again, it was a long time ago and it's  
18 hard to recall.

19 Q When the police asked you in the voluntary  
20 statement, "Did he say anything to you at that point?" Do you  
21 remember saying to the police, "He told me, 'Sit down, bitch.  
22 Shut up.'"

23 A Yeah, he did, actually.

24 Q Okay. Now, this was after he first came through the

1 door; right?

2 A Yeah, I believe -- yeah, it was while he was in my  
3 house.

4 Q Okay. Now, you testified next, last week, that he  
5 went into the kitchen, he got a steak knife, and he used it as  
6 a threat to find out where your money was; is that right?

7 A He used it as a threat for many things. And it  
8 wasn't necessarily the money, it was a power thing.

9 Q Okay. Well, when he got his [sic] knife out of your  
10 kitchen, he asked you where your money was, didn't he?

11 A Yes.

12 Q Okay.

13 A He also asked --

14 Q I'm sorry?

15 A He also asked me where my drugs were at.

16 Q Okay. Well, you didn't tell that to the police, did  
17 you?

18 A I don't know if I did or not. That was recall, you  
19 know, that I've had. I've had several recalls of the things  
20 that happened that evening that I couldn't remember.

21 Q When these -- when these recalls happened,  
22 apparently, you don't pick up the phone and tell the police  
23 about it?

24 A Um, you know, I never really think about it. I

1 just --

2 Q You never think about calling the police and telling  
3 'em that you remembered something new?

4 A No, I don't.

5 Q Okay. Did you write these things down anywhere as  
6 they start coming to you?

7 A No, I don't.

8 Q Okay. He asked you where your money was and you  
9 told him you didn't have any.

10 A I didn't have any, yeah.

11 Q But he saw your purse?

12 A Right.

13 Q He took it from the dresser in the bedroom?

14 A Right.

15 Q And he took 44 dollars in food stamps out of your  
16 purse?

17 A Yes.

18 Q And then he took your gold ring. He asked you for  
19 it; right?

20 A Well, he took my gold ring first, I believe. Now,  
21 see, these things are real foggy because it was a long time  
22 ago and I was still in the state of shock when, you know -- I  
23 don't remember if he took the money first or the ring first,  
24 but I believe it was the ring first.

1           Q     Okay. But you're sure that he got the knife out of  
2 your kitchen.

3           A     Yes.

4           Q     Before he took the money or the ring?

5           A     Yes, I'm sure.

6           Q     Okay. Would it surprise you if you told the police  
7 that you went directly to your purse and pulled out \$40, then  
8 he asked for the gold ring. Would that surprise you?

9           A     No.

10          Q     Okay. What about if the police officer asked you,  
11 "At -- at that point did he use any weapon?"

12          And your answer was, "At what -- at what -- at one point  
13 he did."

14          "Had he grabbed the weapon at this point by now?"

15          Your answer, "No."

16          A     That doesn't surprise me.

17          Q     Okay. So the fact that -- the fact that he might  
18 not have even had a knife in his hand before he took the money  
19 out of your purse or asked you for your ring doesn't surprise  
20 you today?

21          A     No.

22          Q     Okay. If you don't know the answer to a question,  
23 are you -- I mean, do you have a problem just telling us you  
24 don't know?

1           A     No.

2           Q     Okay.  Do you understand it could be a concern to us  
3 whether somebody had a knife before they took your money or  
4 whether they got the knife later in the -- later in the  
5 sequence of events?  Do you recognize that?

6           A     Yes, I do.

7           Q     Okay.  But you're doing the best you can, aren't  
8 you?

9           MS. LUZAICH:  I'm going to object --

10          [TRANSCRIPT READING END]

11          MS. LUZAICH:  Oh, sorry.

12          [TRANSCRIPT READING BEGIN]

13          MS. LUZAICH:  I'm going to object.

14          THE WITNESS:  For today.

15          THE COURT:  Okay.  Overruled.

16          MR. GOODWIN:  What would be the basis of the  
17 objection?

18          THE COURT:  I overruled the objection.

19          MS. LUZAICH:  It was --

20          MR. GOODWIN:  Thank you, Judge.

21 BY MR. GOODWIN:

22          Q     Okay.  So you're a little iffy as to whether or not  
23 this person had the steak knife at that point; right?

24          A     At this point, yes, I am.

1 Q Okay.

2 A And I'm sure when I told the police, though, it was  
3 much fresher in my mind. And I'd like to say, I'm a bit sick  
4 today. So I suffer with a bit of lethargy.

5 Q And obviously -- I mean, you'll acknowledge the fact  
6 that you just said it, the statement itself that you gave  
7 police would probably be more accurate than your testimony in  
8 court last week?

9 A Um --

10 MS. LUZAICH: I'm going to object. That's not what  
11 she just said. Again, it misstates the testimony.

12 MR. GOODWIN: He can ask if -- frankly, I don't  
13 think it does.

14 THE COURT: He can ask. I'll allow you to ask the  
15 question.

16 BY MR. GOODWIN:

17 Q Would you agree, ma'am, that the statement that you  
18 gave directly after this incident is probably more accurate  
19 than the testimony you gave last week on points like the ones  
20 I'm bringing up?

21 A On some of them, yes. There are some, um -- let  
22 me -- there are some things that I remembered real clearly  
23 when this incident first happened. And other things that my  
24 mind just shut off.



1 Q Okay.

2 A There have been recall things. Like I said during  
3 my testimony today, things I remembered throughout the times.

4 Q All right. So is that to say --

5 A That may not necessarily be on the statement --

6 Q That's fine, ma'am.

7 A -- that I gave.

8 Q I really just want to try to get to what you  
9 remember.

10 A Okay.

11 Q So am I right when I say that the statement you gave  
12 police right after this happened is probably more accurate  
13 than what you told us last week?

14 MS. LUZAICH: Judge, I'll object. That's asked and  
15 answered.

16 THE COURT: That is asked and answered. There's  
17 some things, yes, some things not.

18 BY MR. GOODWIN:

19 Q Do you know what --

20 THE COURT: She answered the question.

21 BY MR. GOODWIN:

22 Q Some of the things you told us last week are more  
23 accurate than what you told the police initially; is that  
24 true?

1           A     Some of the things I told you last week were things  
2     that I recalled since then or things that I believed were true  
3     at that point.

4           Q     That -- last week; right?

5           A     Right.

6           Q     But if they conflict with things you told the police  
7     in your voluntary statement right after the incident, which  
8     part do you think would be more accurate?

9           MS. LUZAICH:  Objection.  Foundation.  What conflict  
10    are we talking about?

11          THE COURT:  Sustained.  You have to go through each  
12    different issue.

13          MR. GOODWIN:  Judge, I could.  I hate to waste the  
14    Court's time.  I could.  I was hoping not to have to --

15          THE COURT:  I don't know how she can answer that  
16    question any other way, but by going question by question.

17          MS. LUZAICH:  When we're talking about accuracy,  
18    then we've got all the time in the world.

19          THE COURT:  I think you're right.

20          MR. GOODWIN:  Okay.  That's what the attitude is  
21    then, fine.

22    BY MR. GOODWIN:

23          Q     Ma'am, did you not tell the police when you gave the  
24    voluntary statement that this individual went into the kitchen

1 for the steak knife, after having sex with you, or after  
2 raping you the first time?

3 A I don't recall.

4 Q All right.

5 MR. GOODWIN: And since the State's requesting that  
6 I do this, I'd like to approach.

7 MS. LUZAICH: Judge, we don't need Mr. Abood's  
8 commentaries about everything.

9 THE COURT: That's true, we don't.

10 MR. GOODWIN: This is what I do. I make comment.

11 THE COURT: I don't need it.

12 MR. GOODWIN: Thank you, Judge.

13 I'm going to look at page 19. Judge, you mind if I  
14 approach?

15 THE COURT: No problem.

16 BY MR. GOODWIN:

17 Q Let me show you page 19 of your statement. And when  
18 you look that over and you're done, let me know.

19 A And this -- this was made before the first rape  
20 incident.

21 Q What was made before the first rape incident?

22 A This. All this.

23 Q Well, let me ask you -- after having read that, let  
24 me ask you the question. Did you tell the police that this

1 person went into your kitchen and got the steak knife after  
2 the first rape?

3 A I don't recall.

4 Q And this doesn't refresh your memory at all?

5 A I know that this happened before the first rape, I  
6 believe.

7 Q Okay.

8 THE COURT: What happened before the first rape?

9 THE WITNESS: Page 19.

10 THE COURT: I -- I don't have a copy of it. Tell me  
11 what you're talking about.

12 THE WITNESS: So he took off --

13 BY MR. GOODWIN:

14 Q Okay. Don't worry about this statement anymore.  
15 The judge is asking you a specific question. What happened?

16 THE COURT: Okay. What happened before the rape  
17 incident that you're referring to?

18 THE WITNESS: Um, him getting my purse and taking  
19 the stuff out.

20 THE COURT: The money out, you mean?

21 THE WITNESS: Right. Right. That did happen before  
22 the first rape. But, also, there was a time that I hid the  
23 knife from him and, uh, he went to the kitchen to retrieve  
24 another one. And that was after the first rape.

1 BY MR. GOODWIN:

2 Q And that's what you testified to last week; right?

3 A Yes.

4 Q But do you remember ever telling any police officer  
5 at any time that this person took one knife, you hid the  
6 knife, and then this person just went and got another one. Do  
7 you recall that?

8 MS. LUZAICH: I'm going to object. That  
9 misstates -- I'm going to move for the admission of the  
10 statement, for one thing --

11 MR. GOODWIN: I -- I don't understand what -- before  
12 you go on, what's the nature of the objection?

13 MS. LUZAICH: You're misstating the statement that  
14 you're asking the question about. And so --

15 MR. GOODWIN: And you know what? The DA can't make  
16 a blanket statement like that to the Court without backing it  
17 up with specific incidents. I have not misstated anything.

18 THE COURT: Why don't you --

19 MR. GOODWIN: She has confused --

20 THE COURT: -- let her finish making her objections  
21 so you know what she's referring to.

22 MS. LUZAICH: Then I'll object to foundation, again,  
23 and start asking him to refer to pages and to refer to  
24 documents so we know where the question is coming from.

1 MR. GOODWIN: Okay.

2 MS. LUZAICH: But based on what I have in front of  
3 me, it is my belief that the basis of the question is not  
4 founded [sic] in her voluntary statement.

5 THE COURT: Okay. Can you be more clear as  
6 requested by Miss -- Ms. Lowry, the pages the --

7 MR. GOODWIN: Yes. Thanks, Judge. So my  
8 understanding is the State's withdrawing their statement that  
9 I have misstated facts?

10 MS. LUZAICH: No, I'm not.

11 THE COURT: She's just objecting and she wants you  
12 to be clearer on your questions and prefer -- and refer to it  
13 so she can follow you.

14 MR. GOODWIN: All right.

15 THE COURT: Is that right, Ms. Lowry?

16 MS. LUZAICH: Yes, judge.

17 THE COURT: Okay. I'll see all four counsel at the  
18 bench.

19 You want to mark that as an exhibit, Mr. Abood?

20 MR. GOODWIN: Yes, I'd like to, Judge.

21 THE COURT: No objection by the State to me reading  
22 her voluntary statement?

23 MS. LUZAICH: No, Your Honor.

24 THE COURT: Okay. That would be Defense Exhibit

1 Number 1 -- or Number A.

2 Mr. Abood?

3 MR. GOODWIN: It's going to be A. And if you don't  
4 mind, Judge, I need to make a copy of it too.

5 THE COURT: We can have a copy made for you.

6 MR. GOODWIN: I think I have a fresh copy. Thank  
7 you, Judge.

8 THE COURT: Okay. A fresh copy would be great.

9 BY MR. GOODWIN:

10 Q So, ma'am, it is clear that you're confused as to a  
11 few things. Specifically -- specifically, are you confused as  
12 to when he went to the kitchen and grabbed the steak knife?

13 A At this point, yeah. There might be some confusion.

14 Q Okay. That's fair. At this point you are; right?

15 A Yes.

16 Q And, obviously, it could have been that this person  
17 grabbed a steak knife right when he came in your apartment or  
18 it could have been that he grabbed a steak knife sometime  
19 later, after he'd been in there; is that right?

20 A I don't recall.

21 Q Okay. And you understand that if I ask you a  
22 question and you don't know the answer, you can say "I don't  
23 recall"?

24 A Yeah.

1           Q     Okay. Now, let me ask you some questions about  
2 scissors. What do you recall about what you told the police  
3 concerning whether you or this person grabbed a pair of  
4 scissors?

5           A     I don't recall that either.

6           Q     You don't have any recollection?

7           A     No, I know there was something about the scissors  
8 but I don't --

9           Q     You said you know that there's something about  
10 scissors?

11          A     Yeah.

12          Q     Where do you know that from?

13          A     I know that because I remember the scissors.

14          Q     Okay. So as you sit here today, you don't know  
15 whether it was you who grabbed the pair of scissors or whether  
16 it was this person that was in your apartment; is that right?

17          A     I believe it was me that grabbed the scissors, but  
18 I --

19          Q     You believe it was you?

20          A     Yeah, but I couldn't swear to it at this point.

21          Q     Okay.

22               MR. GOODWIN: Okay. Judge, I'm handing you Defense  
23 Exhibit A.

24               THE COURT: Okay. Thank you.



1 MR. GOODWIN: Yeah. Actually, Judge, before we  
2 admit it, let's just make sure she looks at it.

3 THE COURT: Okay. That's fine.

4 MR. GOODWIN: Is that admitted without objection  
5 from the State?

6 MS. LUZAICH: Yes, it was.

7 MR. GOODWIN: I think the State didn't have any  
8 problem.

9 THE COURT: That was my understanding.

10 Ms. Lowry?

11 MS. LUZAICH: Yes, Your Honor.

12 BY MR. GOODWIN:

13 Q Let me ask you about these scissors again. You just  
14 got done telling us that you think it was you who grabbed the  
15 scissors; is that right, ma'am?

16 Now let me -- let you look at that. When you're done,  
17 you can hand it to the judge.

18 MS. LUZAICH: I'm sorry. She's looking at her  
19 voluntary statement?

20 THE COURT: Yes.

21 BY MR. GOODWIN:

22 Q Ma'am, I'm sorry. You don't have to read the whole  
23 thing.

24 A I'd like to, actually.

1 Q I'm sorry?

2 A I would like to, actually.

3 Q Well, you can talk to the State about that after the  
4 fact and maybe they'll give you one. But does it have your  
5 name on the front?

6 A Yes, it does.

7 Q Okay. Do you mind handing it to the judge?

8 A Certainly.

9 MR. GOODWIN: My understanding, Judge, is the State  
10 has no problem with its admission so --

11 THE COURT: Is that right?

12 MS. LUZAICH: Yes, that's correct, Judge.

13 MR. GOODWIN: Thank you.

14 BY MR. GOODWIN:

15 Q Now, these scissors, your best recollection right  
16 now is that you grabbed the scissors. Where did you grab them  
17 from?

18 A There was a little, um, like a cup or a vase or  
19 something I had with pens and pencils, and my scissors were in  
20 there. But I don't recall if I grabbed, you know -- I just  
21 remember something about the scissors.

22 Q Okay.

23 A And I remember them being hidden at this point.

24 Q Okay. All right. Do you think this person that was

1 in your apartment threatened you with scissors?

2 A I don't recall.

3 Q All right. Would it surprise you if you told the  
4 police that this person who was in your apartment -- I'm  
5 looking at page 11 -- this person who was in your apartment  
6 grabbed scissors from your bedroom where your purse was?  
7 Would it surprise you if you told that to the police?

8 A Yeah.

9 Q I'm sorry?

10 A Yeah, I think that would kind of surprise me.

11 Q It would surprise you?

12 A I don't believe --

13 Q Okay.

14 A Well, I don't remember telling them that.

15 Q Okay. Do you still have the statement in front of  
16 you there, ma'am?

17 A Right here, yes.

18 Q Take a look at page 11, if you don't mind. In fact,  
19 you know what, I'll do it for you. I'll turn you to the  
20 proper page and have you look it over. Do you mind reading  
21 from the top question and answer until I tell you to stop?

22 A Out loud?

23 THE COURT: To herself?

24 ///

1 BY MR. GOODWIN:

2 Q Actually, you could read it to the judge. It's  
3 already been admitted.

4 A "Did he use any weapon?"

5 "At one point he did. He grabbed a weapon, at this  
6 point, by now. The answer is no."

7 "Okay. So where was your purse sitting?"

8 Answer, "In the bedroom. No, as a matter of fact, he  
9 did. He grabbed my scissors when he went in there because my  
10 scissors were by the telephone."

11 Q Okay. You can stop there.

12 A Okay.

13 Q Now, if you told that to the police when you gave  
14 this voluntary statement, are you comfortable, as you sit here  
15 today, that that was a mistake, that didn't really happen?

16 A No, I would say that that probably did happen, then.

17 Q Okay. Because it's in your statement?

18 A Yes.

19 Q So, again, the testimony that you're giving here in  
20 court conflicts with this statement; is that right?

21 A Yes, I guess it does.

22 Q And you got more faith in what's in this statement  
23 than you do in what you testify to in court; is that correct?

24 THE COURT: As related to the scissors, you mean?

1 BY MR. GOODWIN:

2 Q In relation to the scissors.

3 A Yeah.

4 Q Okay. And, actually, looking at the statement helps  
5 me to recall a lot of what did happen --

6 [TRANSCRIPT READING END]

7 MS. LUZAICH: Well, that was --

8 MR. GOODWIN: Oh, I'm sorry. Okay. I'm sorry. I  
9 apologize.

10 MS. SCHIFALACQUA: No worries.

11 [TRANSCRIPT READING BEGIN]

12 THE WITNESS: And, actually, looking at the  
13 statement helps me to recall a lot of what did happen. See,  
14 I've spent a lot of time trying to put this out of my mind.

15 BY MR. GOODWIN:

16 Q I understand, ma'am. And I don't want to argue with  
17 you about it.

18 A Well, I'm just telling you.

19 Q I can't provide you with a statement to read.

20 A Yeah, okay.

21 Q Okay. Now, you told us last week this person tried  
22 to cut your throat with a steak knife; is that right?

23 A Yes.

24 Q Was it with the first steak knife that this person

1 got or the second one that you testified to?

2 A I don't recall.

3 Q You don't recall. Does it surprise you that -- in  
4 this statement right here, does it surprise you that you never  
5 told the police that this person tried to cut your throat with  
6 a steak knife?

7 A No, that doesn't surprise me a bit.

8 Q Okay. So now the steak knife is something that's  
9 not in the statement. And if it's not in this statement --

10 MS. LUZAICH: I'm sorry. I'm going to object that  
11 he just said the steak knife is not in the statement.

12 MR. GOODWIN: The cutting of the throat. I'm sorry,  
13 Theresa. You're right about that comment. I apologize.

14 THE COURT: That's correct.

15 MR. GOODWIN: I apologize.

16 BY MR. GOODWIN:

17 Q The cutting of the throat with the steak knife,  
18 ma'am, it's not in the statement?

19 A No, it's not.

20 Q I'm sorry?

21 A No, it's not.

22 Q Okay. So is that to say that, again, this statement  
23 is more accurate than your testimony in court?

24 A No, that's to say that I did have a recall about

1 that.

2 Q All right. So if you add it to your statement, if  
3 you add things in court, would you call it a recall?

4 A Some of it is, yes. I mean --

5 Q Okay. And some of it's just inaccurate; is that  
6 true?

7 A No. Um, what I'm saying is there's some, you  
8 know -- it's been a long time ago.

9 Q I understand that. I'm not trying to fault you. I  
10 understand, okay?

11 A Excuse me.

12 Q That's all right.

13 While you were in the -- while this person was in the  
14 bedroom for the first time going through your purse, you  
15 remember that?

16 A Yeah.

17 Q Okay. Where were you?

18 A Some of it, yeah.

19 Q I'm sorry?

20 A Some of it, yeah.

21 Q Okay. Where were you when this person first went  
22 into your bedroom looking through your purse?

23 A Oh, thank you.

24 I -- I don't recall.

1 Q You don't recall?

2 Is that an image that you just can't conjure up in your  
3 mind?

4 A I just don't recall.

5 Q Do you recall what you told us last week about where  
6 you were?

7 A No, I don't recall.

8 Q Do you recall what you told the -- any police  
9 officer at any time about where you were?

10 A No.

11 Q Ma'am, do you think that the fact -- I don't know.  
12 What kind of illness you're experiencing right now, do you  
13 think the fact that you're ill is having an effect on your  
14 ability to testify clearly today?

15 A Yes, I do.

16 MR. GOODWIN: Judge, do you mind if we approach?

17 THE COURT: Okay.

18 BY MR. GOODWIN:

19 Q You were fine last week, it's just today?

20 A Yeah.

21 THE COURT: Okay. I've spoken to the witness, at  
22 the request of both sides, and she has indicated that she is  
23 feeling quite ill and she would much rather come back and  
24 resume her cross-examination on another date. I explained to



1 her that for sure we know next Monday afternoon. That could  
2 change. But why don't we leave her for Monday at 2:00,  
3 knowing that if we go next Monday morning, we get an available  
4 courtroom, we won't start with her, we'll set it for Monday at  
5 2:00, for sure we have a courtroom, this courtroom next  
6 Monday? We're trying to find a courtroom to speed up the  
7 process. If we do get one Monday morning, you won't be there,  
8 you'll be here Monday afternoon.

9 THE WITNESS: Okay.

10 THE COURT: That's what you want to do; right?

11 THE WITNESS: That's right.

12 THE COURT: Both sides agree to that; is that right?

13 MS. LUZAICH: Yes, Judge.

14 MR. GOODWIN: Yes, thank you. And if Ms. Case would  
15 like to review her statement, Judge, she can call the State.  
16 I think they'd probably be happy to provide her with --

17 THE COURT: Do you want to give her a copy when she  
18 leaves the courtroom right now? I can have one made.

19 MS. LUZAICH: Judge, I'll talk to Ms. Lowry about  
20 that.

21 THE COURT: Okay.

22 MR. GOODWIN: Thank you.

23 THE COURT: They'll talk to you, okay?

24 THE WITNESS: All right.

1 THE COURT: Do not discuss your testimony with  
2 anyone at this time. You're free to go today and we'll see  
3 you at 2:00 o'clock next Monday afternoon, this courtroom.

4 THE WITNESS: Okay.

5 THE COURT: Okay?

6 THE WITNESS: I appreciate it. Thank you.

7 [TRANSCRIPT READING END]

8 MS. LUZAICH: That -- that's good.

9 MS. SCHIFALACQUA: Yeah.

10 THE COURT: All right.

11 [TRANSCRIPT READING BEGIN]

12 THE COURT: We're back on the record in the  
13 Justin Porter. All parties prepared to go forward?

14 The State may call your next witness.

15 [TRANSCRIPT READING END]

16 THE COURT: And then it's Ms. Lowry, I believe.  
17 "We're going to recall Leona Case, Judge."

18 MS. SCHIFALACQUA: Line 6, Lis --

19 MS. LUZAICH: Oh, oh, I thought you were further  
20 down. Sorry about that.

21 THE COURT: That's okay.

22 [TRANSCRIPT READING BEGIN]

23 MS. LUZAICH: Judge, I believe we're going to recall  
24 Leona Case.

1 THE COURT: Okay. You have her lined up for this  
2 morning.

3 MS. LUZAICH: Yes, she was under cross-examination.

4 MR. GOODWIN: Morning, Your Honor.

5 [TRANSCRIPT READING END]

6 THE COURT: All right. And then the Court Clerk  
7 swears in the witness. Ms. Case is sworn in again. And  
8 Mr. Abood starts.

9 [TRANSCRIPT READING BEGIN]

10 CROSS-EXAMINATION (Resumed)

11 BY MR. GOODWIN:

12 Q Morning, Ms. Case.

13 A Good morning.

14 Q You remember you were here last time when we were  
15 asking some questions?

16 A Barely.

17 Q Feeling any better today?

18 A Much better today.

19 Q Good. You told us when you were here last time that  
20 you were ill and you were on some kind of medication or  
21 something?

22 A I hadn't gotten any medication. I'm on medication  
23 now.

24 Q Okay. And can you tell us what kind of medication

1 you're on today?

2 A Just an antibiotic and a decongestant.

3 Q Okay. Now, were you under any medication when you  
4 gave your direct examination testimony when Mr. Herndon asked  
5 you questions?

6 A No.

7 Q Okay. What about when you gave the police your  
8 voluntary statement on March 7th at 9:25 a.m. in the morning?

9 A No.

10 Q Okay. Now, the reason I ask is because you were in  
11 the hospital at the time; is that right?

12 A Yes.

13 Q And you're being treated for, I guess, some stab  
14 wounds and some other injuries you had?

15 A Right. Smoke inhalation.

16 Q Beg your pardon, ma'am?

17 A Smoke inhalation.

18 Q And you don't recall, or is it a fact that the  
19 hospital did not put you under any kind of medication?

20 A I don't recall.

21 Q So it's possible that you were under some kind of  
22 medication?

23 A It's possible, but I really don't think so.

24 Q And, specifically, I'm talking about the -- like the

1 stab wound, for example. My guess is that those would have  
2 been painful and they probably would have given you some kind  
3 of pain medication. Is that -- do you recall anything like  
4 that?

5 A I don't recall anything like that.

6 Q Okay. Ma'am, when you were at the hospital, did  
7 they draw any blood?

8 A Yeah, I believe they did.

9 Q Okay. Now, did the District Attorney ever give you  
10 a copy of your voluntary statement that we talked about the  
11 last time you were here in court?

12 A I looked it over this morning.

13 Q Okay. Did you read the whole thing?

14 A Yeah, I just glanced through it. Yeah.

15 Q Did it look something like this?

16 A Yes.

17 Q And -- okay. Did that help you get some  
18 recollection as to some of the things that you told the police  
19 the morning of, the late morning of this incident?

20 A No, not really.

21 Q When you read it, did you get the impression that  
22 you really didn't recognize a lot of the things that you said?

23 A No. No. I recognize most of what I said.

24 Q Okay. There was some of it that --

1 [TRANSCRIPT READING END}

2 MS. SCHIFALACQUA: Oh, switch.

3 [TRANSCRIPT READING BEGIN]

4 THE WITNESS: There was some of it that --

5 BY MR. GOODWIN:

6 Q All right. Did you notice at all that it conflicted  
7 somewhat with some of the things you told us when Mr. Herndon  
8 was asking you questions?

9 A Yes.

10 Q Okay. Can you tell us what things you recognize  
11 right now have conflicted with what Mr. Herndon asked and the  
12 answers that you gave him?

13 A It would have to deal with the scissors.

14 Q Okay. And what's the conflict with the scissors?

15 A In the initial statement, in the statement it says  
16 that he had threatened me with the scissors. And I don't  
17 recall that.

18 Q Okay. So what you're telling us now is that you  
19 told the detectives, Detective Love and Castaneda, that this  
20 morning who -- that this morning [sic] who did these terrible  
21 things to you threatened you with a pair of scissors. But as  
22 you sit here now, you don't have any memory of that; is that  
23 right?

24 A Right.

1           Q     Okay.  So as far as we know, nothing ever happened  
2 concerning the scissors there?

3           A     Was something to do with the scissors, but I don't  
4 recall what it was.

5           Q     Okay.  I remember one of the things that you told us  
6 is that there was a cord cut on a lamp.  Could it be that the  
7 cord was cut with that pair of scissors and that's the thing  
8 that happened?

9           A     No, he used the knife to -- as far as I can recall,  
10 he used the knife to cut the cord.

11          Q     Okay.  Okay.  That's fine.  And you also testified,  
12 when Mr. Herndon was asking you questions, that there were two  
13 separate steak knives involved in this incident.  Do you stick  
14 by that testimony today?

15          A     Let's see, this is -- let me clarify this.

16          Q     Okay.

17          A     I know that I was threatened with two different  
18 articles.  I know the last one was a knife, the one he stabbed  
19 me with.  It's quite possible that the first was the scissors.  
20 But for some reason, I put in my mind as it being a different  
21 knife.

22          Q     Okay.  So the confusion seems to be -- or at least  
23 one area of confusion is whether there was two steak knives  
24 that were -- that were used that early morning or whether

1     there was just one steak knife and a pair of scissors; is that  
2     right?

3           A     That's right.

4           Q     And as you sit here today, you've been honest with  
5     us, you really just don't know what the answer is; is that  
6     true?

7           A     I don't know what the first weapon was, no.

8           Q     Okay.

9           A     I know, not for sure, I couldn't --

10          Q     I understand. Now, you also recall, when you were  
11     in court last time, you agreed that -- and this is when I was  
12     asking you questions the last time when you were in court.  
13     You agreed that the voluntary statement, this statement right  
14     here, is probably more accurate than the testimony you've  
15     given us in court; is that true?

16          A     After looking it over, I'm not real sure about that.  
17     You know, because some of my memory is clearer now than while  
18     I was in the hospital. Then again, some of my memories were  
19     clearer then.

20          Q     Okay.

21          A     You know, it's hard to say.

22          Q     So your opinion last time you were in court, this  
23     voluntary statement is probably more accurate than any  
24     testimony you gave. Are you backing off from that opinion



1 now?

2 MS. LUZAICH: Judge, I'll object. I don't think  
3 that was the earlier testimony. I thought it was that she  
4 thought that her memory was clear in some of her testimony and  
5 statement may have been clear in some respects.

6 THE COURT: I think she made it clear that sometimes  
7 she thinks the statement is better and sometimes the testimony  
8 is better. So we'll leave it at that.

9 BY MR. GOODWIN:

10 Q Did you hear what the judge just said?

11 A Yes.

12 Q Does that make sense to you?

13 A Yes.

14 Q Okay. Now, do you also agree that some of the  
15 things that you've been remembering recently are things that  
16 you've never told Detective Love or Detective Castaneda about?

17 A That's true.

18 Q Okay. And can you tell us what things you've  
19 remembered recently that you didn't tell the detectives about?  
20 And if you can't --

21 A I can't recall.

22 Q Okay.

23 A Yeah.

24 Q Okay. Since the morning of this incident, other

1 than Detective Love and Detective Castaneda, how many police  
2 officers or detectives have you spoken to?

3 A I don't recall even speaking with Castaneda. Is  
4 that the name?

5 Q Yeah, according to the statement.

6 A It must have been really early in the hospital.

7 Q Yeah. It was 9:25 a.m. in the morning.

8 A Okay. The only person I recall talking with,  
9 detective, would be Love.

10 Q Okay.

11 A Detective --

12 Q So you don't recall that Castaneda was there with  
13 her?

14 A I remember there was somebody there.

15 Q Okay.

16 A I don't recall the name.

17 Q Other than those two -- I'm sorry, ma'am.

18 A I just couldn't recall the name.

19 Q That's fine. Other though [sic] those two, do you  
20 have any recollection of speaking to any other police  
21 officers?

22 A I remember speaking with a fire marshal? No. Not  
23 unless some of the people from CARR were detectives.

24 Q Some of the people from where?

1           A     CARR, the sexual abuse whatever.

2           Q     And were those people at the hospital?

3           A     Yes.

4           Q     Okay. Now, you also told us that, before testifying  
5 the first time, when Mr. Herndon was asking you questions, you  
6 spoke to Mr. Herndon and you spoke to Ms. Lowry and you also  
7 spoke to somebody named Baldinado; is that correct?

8           A     Yes.

9           Q     Now, what did you talk about with Baldinado?

10          A     As far as what?

11          Q     Well, as far as Baldinado works for the District  
12 Attorney's Office; is that right?

13          A     Yes.

14          Q     Do you know what person's title is over there?

15          A     She's a Victim's Witness assistant. I mean, you  
16 know --

17          Q     No, that's fine. And how many times did you speak  
18 to Ms. Baldinado?

19          A     I've spoken to her every time that I've come here to  
20 court.

21          Q     And other than the times that you've come to court  
22 and speak to her -- and I guess is you speak to her prior to  
23 court; right?

24          A     Yes.

1 Q Did you speak to her any other times, other than  
2 that?

3 A A couple of times on the telephone.

4 Q Okay. And she calls you?

5 A No, I've called her a few times.

6 Q Okay. Now, what kind of things have you discussed  
7 with Ms. Baldinado?

8 A Basically just what kind of doctors I can see for,  
9 you know --

10 Q Okay. Did she talk to you at all about the fact  
11 that you had to come to court and testify?

12 A I'm not sure if she mentioned that or not. It was  
13 my assumption that I would, you know.

14 Q Other than Ms. Baldinado, did you have occasion to  
15 speak to any other people over at Victim Witness Assistance?

16 A I don't recall. I really don't recall.

17 Q Okay. All right. Now, one of these people told you  
18 that somebody would be in court, the person who did this to  
19 you would be in court and you'd be testifying in front of this  
20 person; is that right?

21 A They did explain it to me, yeah. Somebody would be  
22 here that they suspected.

23 Q Okay. And who was it that they explained that to  
24 you?

1           A     I don't know if was Baldinado or Ms. Lowry. I  
2 just -- you know, somebody.

3           Q     And --

4           A     I just recall that probably somebody mentioned it.  
5 And maybe it was just me thinking that somebody mentioned it.

6           Q     Okay. And did anybody tell you that you would have  
7 to identify this person in court?

8           A     Yes.

9           Q     And do you know who told you that?

10          A     Ms. Lowry.

11          Q     Okay. Now, do you subscribe to the Review Journal  
12 or the Sun, the newspapers?

13          A     No.

14          Q     Do you buy those newspapers?

15          A     No.

16          Q     Do you read them?

17          A     No.

18          Q     Do you tell a lot -- you told us earlier that you  
19 spoke to the fire marshal; is that right?

20          A     Yes, I did.

21          Q     Did you tell the fire marshal that you had at least  
22 two different newspaper editions in your apartment at the time  
23 of the fire?

24          A     I don't recall.

1 Q Do you recall that he was asking you questions -- do  
2 you recall that he was asking you questions about things that  
3 were combustible in your apartment, like books and newspapers?

4 A Yeah.

5 Q And do you just not recall whether or not you told  
6 him that you had at least two different newspaper editions in  
7 your apartment?

8 A No, I don't -- I do recall something about  
9 newspapers, but I don't recall what they were specifically. I  
10 know that I was looking --

11 [TRANSCRIPT READING END]

12 MS. SCHIFALACQUA: Excuse me.

13 [TRANSCRIPT READING BEGIN]

14 THE WITNESS: I know that I was looking for work at  
15 the time. So I quite possibly had a review journal there.

16 BY MR. GOODWIN:

17 Q Okay. So you don't regularly buy those newspapers,  
18 it just happens that those newspapers were in your apartment  
19 at that time?

20 A Yes.

21 Q Okay. Now, you watch local news?

22 A Occasionally, yeah.

23 Q And what channel do you normally watch?

24 A Channel 5.

1 Q And since March 7th, have you seen any reporting  
2 concerning either your specific case or other cases related to  
3 your case on the news?

4 A Yes, I have. I seen just about everything that they  
5 put on the news concerning this.

6 Q Mm-hmm.

7 A Until he was arrested. And I did watch that one  
8 because I wanted to see if this was the person that had  
9 attacked me.

10 Q Okay. So how did you know that this person had been  
11 arrested? I mean, how did you know not to watch that news?

12 A How did I know not to watch the news?

13 Q Well, you watched the news and you knew that he'd  
14 been arrested; is that right?

15 A Yes.

16 Q And then they showed his picture?

17 A Right.

18 Q And after you had saw his picture on TV, are you  
19 telling us that you quit watching the news?

20 A Yes.

21 Q Okay. So just all together, you just quit watching  
22 the news after that.

23 A Well, I don't normally watch the news; I'm a cable  
24 person.

1           Q     That's fine. Now, this person that you saw on TV,  
2 is it this person sitting here?

3           A     Yes, it is.

4           Q     Okay. Now, who explained to you that you're not the  
5 only victim of the person who did these things to you?

6           A     I believe it was Detective Love.

7           Q     Can you tell us what Detective Love told you about  
8 other victims?

9           A     I believe she told me that there were some other  
10 victims that they thought might tie in with the same  
11 situation.

12          Q     Did she give you some details as to why she thought  
13 that?

14          A     No. I don't believe she did. But I -- you know --

15          Q     That's fine. I mean, if you don't remember, I'm  
16 okay with you saying "I don't remember." Is that your answer?

17          A     I don't believe she said -- she did.

18          Q     Okay. Did she give you the impression that there  
19 were some horrific crimes that took place concerning other  
20 people?

21          A     No, not really.

22          Q     Did she tell you that there were other sexual  
23 assaults or burglaries, home invasions, that type of thing?

24          A     Seems to me that she mentioned that there were



1 other -- there were some other sexual assaults, yeah.

2 Q And that she also told you that she believes --

3 A And burglaries.

4 Q I beg your pardon, ma'am?

5 A And burglary.

6 Q Okay.

7 A Oh, you know --

8 Q And then she told you -- my impression is that she  
9 told -- also told you that she believes that the person that  
10 did this to you also did it to the other people; is that  
11 right?

12 A Yeah, she said that's quite possible.

13 Q Okay. I want to talk to you a little bit -- and,  
14 again, I -- I want to go back to your voluntary statement.

15 A Okay.

16 Q I want to talk to you a little bit about the  
17 description you gave the detectives the morning of this  
18 incident.

19 A All righty.

20 Q Can I ask you what you're drinking?

21 [TRANSCRIPT READING END]

22 MS. SCHIFALACQUA: (Indiscernible) excuse me. I'm  
23 sorry. I was, in fact, drinking, for the record. Sorry.

24 [TRANSCRIPT READING BEGIN]

1 THE WITNESS: Diet coke.

2 [TRANSCRIPT READING END]

3 MS. SCHIFALACQUA: And it's not, it's water.

4 [TRANSCRIPT READING BEGIN]

5 THE WITNESS: Diet coke.

6 BY MR. GOODWIN:

7 Q Okay. Now, first off, you initially told the  
8 paramedics -- and this would be a guy named Diaz -- that it  
9 was Mr. Sean Carter who did these things to you?

10 A That's what he told me his name was. I didn't  
11 believe that was his name. It was -- he was trying to make  
12 too much of the point of me remembering --

13 Q Okay.

14 A -- the name.

15 Q And then when you were talking about he -- you're  
16 talking about this person.

17 A I'm talking about the -- yes, the gentleman behind  
18 you.

19 Q When did this person --

20 A Person behind you.

21 Q -- the person that was in your apartment make the  
22 point of telling you that his name was Sean Carter  
23 (indiscernible) the first time you met him or when he came  
24 back?

1           A     It was when he burglarized me, yeah, and broke in my  
2 home.

3           Q     All right. So despite the fact that you didn't  
4 really believe that his name was Sean Carter, you made a point  
5 of telling the paramedics that a guy named Sean Carter did  
6 this; is that right?

7           A     I believe I made a point of telling them that he  
8 told me his name was Sean Carter.

9           Q     Okay. And later on, a few hours later at the  
10 hospital, when you spoke to Detectives Love and Castaneda, you  
11 told 'em that this person's name was Sean Carter; is that  
12 right?

13          A     Yes, I did tell them that I -- that he had told me  
14 that. I also made it clear that I didn't believe it.

15          Q     Now, despite what this person's name was, you also  
16 gave a description of a man who did this to you; is that  
17 right?

18          A     Yes.

19          Q     I want to talk to you about the height and age?

20          A     Okay.

21          Q     You told the police that you thought this person's  
22 height was between maybe 5-11 and 6-foot?

23          A     Mm-hmm.

24          Q     And how tall are you?

1           A     Five-three.

2           Q     Okay. Now, in looking at your statement, you also  
3 told the police that you thought this person was 18 or 19 but  
4 maybe even 22?

5           A     Yeah.

6           Q     And we discovered last time you were in court that  
7 you actually thought this Sean Carter person, or whatever his  
8 name was, was 16 or so. But the police helped you reconsider  
9 that belief up to 18 or 19 or 22; is that right?

10          A     How can I put this? He seemed very young. And I  
11 don't recall if I had talked to the police about it or not.  
12 But it seemed to me that he must have been older than 16 years  
13 of age to have become so violent.

14          Q     Mm-hmm. Let me back up for just a second. Do you  
15 recall testifying last time that you were in court that you  
16 told the police that this person was 16? Do you recall  
17 telling us that?

18          A     Yes, I do.

19          Q     Okay. And do you recall telling us that although  
20 some process of talk -- through some process of talking with  
21 the police, that they helped you revise his age up to at least  
22 18? Do you remember that?

23          A     Well, let me recant that. Because I don't think  
24 they really helped me to make that decision. I think I went

1     there myself.

2           Q     Okay. Well, I guess my question becomes, when did  
3     you tell him you thought this person was 16? Because I never  
4     see the number "16" in your voluntary statement.

5           A     Yeah, I don't know. And maybe it was something I  
6     just thought.

7           Q     Did the police -- did these detectives talk to you  
8     before they sat down with the tape recorder and took the  
9     voluntary statement?

10          A     I don't recall.

11          Q     But you do recall initially telling them that you  
12     thought he was 16?

13          A     I don't recall initially telling them that I thought  
14     he was 16. I do not recall that. It could have been  
15     something I was thinking but not necessarily that I vocalized.

16          Q     Well, the thing that you were thinking that you  
17     don't think you vocalized, you testified to last week?

18                THE COURT: Miss -- I'm going to -- she testified  
19     last week, 16 to 19. I wrote down exactly what she said, so I  
20     don't want her to be confused by her thinking now she said 16  
21     only. Sixteen to nineteen is what she said last week.

22                MR. GOODWIN: And I agree, Your Honor. But I think  
23     she also said that she told the police that he was 16 and then  
24     the police --

1 THE COURT: She said --

2 MR. GOODWIN: -- helped her revise it up.

3 THE COURT: She said, "I began to doubt myself  
4 because they thought he was 18 to 22. So then I said maybe 18  
5 to 19, after speaking to the police." But she never said "I  
6 only said 16" last week, is the point I'm making.

7 BY MR. GOODWIN:

8 Q Heard what the judge just said; right?

9 A Yes, I did.

10 Q Okay. So is it true that the police thought that he  
11 had to have been between 18 and 22 and then you changed from  
12 16 to 18 to 22?

13 A No, they assumed that he was older. The 18 to 22.  
14 And it did cause some doubt in my mind.

15 Q Okay. Now, did the police help you at all in terms  
16 of estimating a height for this individual?

17 A No.

18 Q Let me talk to you about what you told the police  
19 concerning his eyes. Do you recall telling these detectives  
20 that he had eyes that were more of a brown, brown color?

21 A Mm-hmm.

22 Q And then later in your apartment, do you recall --  
23 later in your statement, do you recall telling him that his  
24 eyes were kind of a light brown?

1           A     Yes.

2           Q     Okay.  In fact, when I look at the voluntary  
3 statement, there's one point where the detective asks you a  
4 question along the lines of, "You said that his eyes were dark  
5 brown."

6           And your response was, "They were about this color brown.  
7 Kind of a light brown."  And you were pointing at something.  
8 Do you remember that?

9           A     No, I don't recall that.

10          Q     All right.  So you don't recall what you were using  
11 as an example to show the police what color these person's  
12 eyes were?

13          A     I do not recall what I was using as an example.

14          Q     Okay.  But you do recall saying that they were kind  
15 of a light brown.

16          A     I do remember something about -- yeah, saying  
17 something about --

18          Q     Okay.

19          A     -- the eyes being brown.

20          Q     Let me ask but his hair.

21          A     All right.

22          Q     Do you recall ever telling Detective Love or  
23 Castaneda that this person had short curly hair?

24          A     I remember telling them it was short.  I don't

1 remember telling them it was curly but --

2 Q I can --

3 A -- it's possible.

4 Q Let me ask you this -- okay. Do you recall saying  
5 that his hair was kept really short?

6 A Mm-hmm.

7 Q And then do you recall saying, "I don't remember any  
8 real style or anything about it." Do you recall that?

9 A Right, I didn't -- it didn't seem to have a special  
10 cut.

11 Q Okay. And then you went on to say, "It was just  
12 like it was uneven all over." Do you remember that?

13 A Actually, I didn't say it was uneven. I just said  
14 it was even all over.

15 Q I see.

16 A I mean, it could have been an "a" in front of it.

17 Q I see. In the statement it says "uneven"?

18 A It does say "uneven."

19 Q But you do recognize that; right?

20 A Yes.

21 Q Okay. And then you went on and said you don't  
22 really remember the texture of the hair; is that right?

23 A Right.

24 Q And then, finally, you said, "I don't know if it was



1 curly or just wavy"; is that right?

2 A Yes, that's --

3 Q Okay. Let me talk to you about his face.

4 A Okay.

5 Q Do you recall telling these detectives that he  
6 looked like he never shaved a day in his life?

7 A Yes.

8 Q And that he had no irritation marks or pimples on  
9 his face?

10 A I -- I don't know if that would be accurate. I did  
11 say he was clean-cut.

12 Q I'm going to read you a question then an answer to  
13 see if it's going to refresh your memory a little bit.

14 A All righty.

15 Q And this is in your voluntary statement that's in  
16 evidence.

17 MS. LUZAICH: Page, please.

18 MR. GOODWIN: Page 25.

19 BY MR. GOODWIN:

20 Q So this is the question: Question, "Okay. And  
21 could you tell, then, when you say that he's clean-shaven, um,  
22 did he have -- from shaving, did he have irritation marks?  
23 Any pimples on his face?" That was the question.

24 And your answer was, answer, "No, he looked like he never

1 shaved a day in his life."

2 Does that --

3 A Okay.

4 Q -- refresh your memory a little bit?

5 A I remember telling them he didn't look like he  
6 shaved a day in his life.

7 Q Okay. And to be quite honest, I don't remember any  
8 blemishes -- okay.

9 A And to be quite honest, I don't remember any  
10 blemishes or anything.

11 Q Okay. All right. And you have no idea if this  
12 person wore earrings. You're not really clear about that?

13 A I couldn't recall.

14 Q Is that right?

15 A Yeah, it didn't seem to be, but I couldn't really  
16 recall.

17 Q Okay. Now, do you remember that, besides being  
18 clean-shaven, this person had no sideburns at all?

19 A I don't recall that.

20 Q Do you recall telling that to the police?

21 A I don't think that they asked me that, but I'm not  
22 sure if I had any memory of it.

23 Q All right.

24 MR. GOODWIN: Your Honor, voluntary statement, which

1 is in evidence, page 26.

2 BY MR. GOODWIN:

3 Q Now, when this person kicked your door in, it was  
4 loud; is that right?

5 A Yeah, there were a couple of loud thumps. It was --

6 Q And in your -- I'm sorry?

7 A He kicked it twice --

8 Q Right.

9 A -- as far as I can remember.

10 Q Mm-hmm.

11 A Before it came in and it was -- yeah, there was some  
12 loud thumps. It was --

13 Q And in your words it freaked you out; is that right?

14 A Of course.

15 Q And you also told the police that it was shocking to  
16 you?

17 A Yes.

18 Q And this event was so frightening that the last  
19 thing on your mind was getting a good look at this person; is  
20 that right?

21 A That's true.

22 Q In fact, you even told these detectives that, and  
23 these are your words, "I was really not wanting to look at him  
24 very close"; is that right?

1           A     Yes.

2           Q     Okay. Let me talk to you about his body, his build.  
3 Now, did he ever take off his shirt to expose his chest and  
4 his arms?

5           A     Yes.

6           Q     And, in fact, when he took his shirt off, you did  
7 not notice any scars, tattoos, or any kind of marks that you  
8 remember; is that right?

9           A     None that I remember, no.

10          Q     And in this statement, even Detective Love said to  
11 you, when you described that his body was on top of you,  
12 Detective Love said, "Being that his body was now laying on  
13 top of you, can you give me a description of his body without  
14 his clothes on? Did you see any scars or tattoos?" Do you  
15 remember her asking that question?

16          A     I remember, yeah, somebody asking me that question.  
17 It could have been Detective Love.

18               MR. GOODWIN: That's page 23.

19 BY MR. GOODWIN:

20          Q     Your answer was, "No, I didn't. I didn't see  
21 anything that I could have identified him"; is that right?

22          A     Right.

23          Q     Okay. Now, one of the things you seem clear about  
24 is that this person seemed to be very articulate; is that

1 right?

2 A Yeah, he was very well spoken. What I mean by  
3 articulate was he seemed to be very well spoken. When he  
4 knocked on the door the first time, he seemed like that  
5 everyday neighborhood child.

6 Q And, in fact, to explain this to the police, you  
7 used the words "he didn't seem to be like he was in the hood"?

8 A Right.

9 Q Okay. Now, I want to ask you some questions about  
10 things you testified in court when Mr. Herndon was asking you  
11 questions?

12 A Okay.

13 Q Now --

14 MS. LUZAICH: Just for the record, I know it's not  
15 intentional, but I was the one that asked --

16 MR. GOODWIN: I beg your pardon, Ms. Lowry?

17 MS. LUZAICH: -- Ms. Case questions.

18 MR. GOODWIN: I'm sorry, ma'am. It was actually  
19 Ms. Lowry.

20 MS. LUZAICH: Okay.

21 MR. GOODWIN: And I beg your pardon, why did I think  
22 it was Doug?

23 THE COURT: It's a long case.

24 MR. GOODWIN: Because he did all the objections.

1 That's right. He kept interjecting. All right. Thank you.

2 BY MR. GOODWIN:

3 Q Ms. Case, I apologize. It was actually Ms. Lowry,  
4 wasn't it, that was asking you questions?

5 A Yeah.

6 Q Okay. Now, you told us in court that you first met  
7 this person a couple days before he did these things to you;  
8 is that right?

9 A Yeah.

10 Q Now, do you have any recollection with what date --  
11 with that -- any recollection what that date would be?

12 A Right now, I'm thinking it was Thursday, and I've  
13 thought that for quite a while. But I couldn't swear to what  
14 day it was.

15 Q Okay. And Thursday would have been three days?

16 A Yeah.

17 Q Okay. And the reason -- or I guess the  
18 circumstances you met this person the first time is that  
19 because he knocked on your door and apparently asked if he  
20 could use your phone?

21 A Yeah, I got the impression that he was looking for  
22 somebody who had lived there before. And I'm not sure if I  
23 got that impression from him asking me about someone else, if  
24 they were there, or what. But that's just something that --

1 the impression that I got.

2 Q And this impression that you had, you agree that you  
3 never told the police about that; right?

4 A I don't recall.

5 Q Okay. And you told us that the first time you met  
6 this person, he also had another male with him; is that right?

7 A Yes. Yes.

8 Q And what was this other male's name?

9 A I recall it being Chris. Him introducing himself as  
10 Jug and Chris, his buddy Chris.

11 Q Now, you never told the police that there was  
12 actually another person with him the first time he came over;  
13 is that right?

14 A I don't recall if I did or not.

15 Q Okay. Now, can you describe this Chris person to  
16 us -- or for us? I beg your pardon.

17 A I just remember him being slightly shorter, but I  
18 couldn't really give you a full description.

19 Q All right. So this Chris person was slightly  
20 shorter. Did he have the same complexion?

21 A I really couldn't tell you. I wasn't really paying  
22 close attention. It was just a couple of neighborhood kids.

23 Q And was he also -- the impression you got from him,  
24 also that he was just a kid?

1           A     Yeah.

2           Q     What kind of age would you assign to him?

3           A     I don't know. I don't think I ever considered  
4 assigning him an age. You know, I'm just --

5           Q     That's fine.

6           A     I just haven't thought about it.

7           Q     Can you consider it now? Does he seem younger to  
8 you or older than this other person?

9           A     I really couldn't tell you. I didn't pay much  
10 attention.

11          Q     Now, the first time this person came over with a guy  
12 named Chris, he introduced himself to you and you told us in  
13 court that he called himself "Jug"; is that right?

14          A     Yes.

15          Q     And, in fact, when Ms. Lowry was asking you  
16 questions the first time you came in court, or the first time  
17 you came to court, you testified to the fact that you remember  
18 the guy's name was Jug?

19          A     Yes.

20          Q     Now, when you gave the police the voluntary  
21 statement, you never told them that this person's name was  
22 Jug; is that right?

23          A     That's right. I told them he had a short name or a  
24 small name.



1 Q In fact --

2 A And --

3 MS. LUZAICH: Let her finish.

4 MR. GOODWIN: Yeah, I always do, Ms. Lowry.

5 BY MR. GOODWIN:

6 Q Go ahead.

7 A The fact is that I didn't recall this until I  
8 received the subpoena.

9 Q That's what I'm going to ask you about. My guess is  
10 the reason you never mentioned to the police that this  
11 person's name was Jug is because the name "Jug" came back to  
12 you after you saw the subpoena.

13 A Right.

14 Q That had that name written on it; is that right?

15 A I remember telling them that I thought it was a  
16 nickname or something. You know, just like a neighborhood  
17 name.

18 Q I think you told 'em that it was a short name.

19 A Yeah.

20 Q Now, when you saw that subpoena, ma'am, when you saw  
21 that subpoena that, in fact, that subpoena directed you to  
22 come to court on this case; is that right?

23 A That's right.

24 Q And when you saw that subpoena and saw the name

1 "Jug" attributed to my client, did you ever call the police  
2 and tell them, "That was the name. That's the name, Jug."

3 A No, I didn't.

4 Q Okay. Let me talk to you about the clothing this  
5 person was wearing the second time he came, the morning that  
6 these terrible things happened to you.

7 A Okay.

8 Q You told us in court that he was wearing -- tell us,  
9 what is your recollection as to what he was wearing?

10 A I remember he was wearing a pullover fleece with a  
11 zipper halfway down. It had a pocket in the front.

12 Q What color was the pullover fleece?

13 A Red.

14 Q Okay. What else?

15 A And he was wearing a lime green shirt, was longer  
16 than the red jacket.

17 Q Okay. What about --

18 A And it seemed like it had a few buttons here.

19 Q A few buttons here. Go ahead --

20 A Go --

21 Q -- ma'am, Ms. Case.

22 A It had a few buttons. I don't recall if it had a --  
23 a collar or not. I assume it did. It looked like a polo  
24 shirt.

1           Q     And the question I was asking you after that was,  
2 were there -- were these few buttons on the lime green shirt?

3           A     I couldn't recall.

4           Q     Okay. Now, can you tell us about the type of shoes  
5 this person was wearing?

6           A     I don't really recall. But according to the  
7 statement, I told the police he was wearing white and black  
8 tennis shoes.

9           Q     Would it make sense if the top part was white and  
10 the bottom part was black? I mean, are you talking about the  
11 tread being black and the tennis shoes themselves being white?

12          A     No, I don't really recall talking about the tennis  
13 shoes. But I had mentioned them being black and white, I  
14 assumed there was some black and white on them somewhere.

15          Q     Okay. You acknowledge that you did tell the police  
16 that he was wearing black and white tennis shoes in your  
17 statement; right?

18          A     In the statement, yes.

19          Q     Okay. Now, I guess what you're saying, as you sit  
20 here today, you don't remember which part was white and which  
21 part was black?

22          A     As I sit here today, I'm telling you that I don't  
23 remember talking about his shoes to the police --

24          Q     Okay.

1           A     -- in the hospital.

2           Q     All right. Do you have any --

3           A     I just don't recall.

4           Q     That's fine. Do you have any independent  
5 recollection -- forget about what you told the police. Do you  
6 have any independent recollection of the shoes this person  
7 wore?

8           A     No --

9           MS. LUZAICH: Objection.

10          THE WITNESS: -- I don't.

11          MS. LUZAICH: And I'm going to object at this point.  
12 It's been asked and answered.

13          THE COURT: It has been asked and answered last week  
14 and today -- today. Sustained.

15          MR. GOODWIN: Frankly, I think that the tennis shoes  
16 that this person is wearing is important to us.

17          THE COURT: I understand that. But she's answered  
18 it two or three times.

19          MR. GOODWIN: That's fine.

20          THE COURT: Her testimony today was "I don't recall.  
21 But according to my statement to the police, I said black and  
22 white tennis shoes." And she said that same thing last week  
23 and she hasn't budged on that.

24          MS. LUZAICH: And she says, as she sits here today,

1 she doesn't recall. So to continue to ask her what she  
2 recalls today about the tennis shoes is asked and answered.

3 THE COURT: Sustained.

4 MR. GOODWIN: And just to make a quick record,  
5 Your Honor, there's a lot of things she recalls and doesn't  
6 recall. And through the process of questioning by the State  
7 and the Defense, some things come back to her and things  
8 don't. I don't want to waste any time.

9 THE COURT: Let's not beat a dead horse. Move  
10 along.

11 MR. GOODWIN: I understand.

12 BY MR. GOODWIN:

13 Q Let me discuss with you the sequence of events that  
14 you've testified to and that you've told the police about.

15 A Okay.

16 Q Now, when you testified when Ms. Lowry asked you  
17 questions, I think that the judge took notes. We were  
18 obviously taking notes, and I'm sure that the State took notes  
19 as well.

20 A Mm-hmm.

21 Q If I tell you something that doesn't make sense or  
22 that's out of order, will you tell me?

23 A If I can, yes.

24 Q Okay. Now, the impression I got is that this person

1 kicked your door in, slapped you, knocked you to the ground,  
2 took the phone from you.

3 Does that make sense so far?

4 A Yes.

5 Q Okay. You got up, asked him what he thought he was  
6 doing. He said, "Why you dissen me, bitch."

7 Does that make sense?

8 A Mm-hmm.

9 Q And you told him, "I don't let people in my  
10 apartment this late."

11 A Right.

12 Q So all that makes sense in terms of a sequence?

13 A Yes.

14 Q Okay. Now, after you're reading this statement this  
15 morning, do you acknowledge that you never told the police  
16 that this person knocked you to the ground when he came to the  
17 door?

18 A It's not in the statement, no.

19 Q Okay. And another thing that's not in the statement  
20 is that this person used the word "why you dissen me, bitch";  
21 right?

22 A Right. Right.

23 Q Okay. In fact, when the police asked you in your  
24 voluntary statement, "Did he say anything to you at this

1 point?"

2 You said, "He said sit down, bitch. Shut up."

3 A Yeah, I do recall him saying that to me as well.

4 Q Okay. So that would be in addition to these things  
5 that you just don't remember?

6 A Right.

7 Q Okay.

8 MS. LUZAICH: I'm going to object. That misstates.  
9 It's in addition to these things you don't remember. That  
10 doesn't make sense.

11 THE COURT: It doesn't make any sense. I'm going to  
12 strike that last comment. It's his own comment. She didn't  
13 say she didn't remember it.

14 MR. GOODWIN: Let me rephrase. Do I need to  
15 rephrase it, Judge?

16 THE COURT: Why don't you rephrase it.

17 MR. GOODWIN: Okay.

18 THE COURT: It's very deceptive.

19 MR. GOODWIN: Okay.

20 BY MR. GOODWIN:

21 Q So this --

22 MR. GOODWIN: And, again, Judge, you know I'm not  
23 trying to be. It's very confusing.

24 THE COURT: I understand that.

1 MR. GOODWIN: Okay.

2 THE COURT: It's very complicated.

3 BY MR. GOODWIN:

4 Q So these things that you testified to in court that  
5 didn't end up in your statement that we just talked about just  
6 now --

7 A Yes.

8 Q -- those are in addition to what I just told you  
9 that you actually did say, which was, "Sit down. Shut up"; is  
10 that right?

11 A Yes.

12 Q So all those things happened?

13 A As far as I can remember, yes.

14 Q Okay. Now, after he slapped you and said these  
15 things to you, you testified that he went into the kitchen and  
16 got a steak knife; is that right?

17 A Right.

18 Q Okay. And he used it, the steak knife, as a threat  
19 to "find where my money was"?

20 A Okay.

21 Q "Well, I don't want to hear you." Isn't that what  
22 you told the police?

23 A I don't remember if that's what I told the police or  
24 not.



1 Q Okay.

2 A As I sit here today thinking about it, I'm thinking  
3 that's what happened. But then again, it's been a long time.

4 Q Do you acknowledge that when Ms. Lowry was asking  
5 you questions, you testified that he used it, the steak knife,  
6 as a threat to "find where my money was"? Do you remember  
7 that you at least told us that in court?

8 A Oh, yes, I do remember.

9 Q Okay. Now, if I can get back into the sequence of  
10 when things happened, you testified -- and tell me if I'm  
11 wrong -- after he got the knife, he asked you where your money  
12 was at; is that right?

13 A Yes. That was my testimony.

14 Q Okay. "Then he saw my purse and took it from the  
15 bedroom dresser."

16 A Yes.

17 Q "And then he took \$44 out and my food stamps."

18 A Right.

19 Q So you did testify to that sequence in court when  
20 Ms. Lowry asked you questions; is that right?

21 A Yes. Yes.

22 Q Okay. Now, in the statement that you gave  
23 Detective Love and Castaneda, do you remember telling them  
24 that the money was taken from your purse before he had any

1 weapons?

2 A After reading the statement this morning, yes, I do  
3 recall telling them that.

4 Q Okay. And, in fact, if you might remember, and I'm  
5 looking at page 11, the question that you were asked was, "Had  
6 he grabbed the weapon at this point by now?"

7 And your answer was "no."

8 A Oh, okay.

9 Q That's page 11, okay?

10 A Okay.

11 Q All right. Now --

12 MS. LUZAICH: Judge, actually, I'm going to object  
13 to the characterization of his statement that Mr. Abood just  
14 made saying that he had grabbed a weapon at this point and her  
15 answer being "no" because her answer continues. She changes  
16 that in the statement.

17 MR. GOODWIN: And I'm gonna go through that.

18 THE COURT: Okay. Let's get to that. Page 11. I  
19 have that page in front of me.

20 BY MR. GOODWIN:

21 Q Start at page 11. So, ma'am, as you sit here today,  
22 you believe that he did or did not get the steak knife from  
23 your kitchen before he took money out of your purse?

24 A As I sit here right now, after having read the

1 statement and doing my best to recall, I believe he went to  
2 my -- my purse first, but I could be wrong.

3 Q Okay.

4 A That's -- it's hard to remember the sequence of  
5 events --

6 Q Okay.

7 A -- when you're in a state of shock, basically.

8 Q Okay. I understand. And I'm not faulting you. I  
9 just -- I'm trying to understand, you know, what actually  
10 happened, what might not have happened.

11 A Yes, I understand.

12 Q Okay. Now, again, referring to your statement, in  
13 fact, you told the police that the first time he had a weapon,  
14 it was not a steak knife, it was your scissors. And he got  
15 them from your bedroom while he went through your purse. Do  
16 you remember that?

17 A I don't recall that. I know there was something  
18 about the scissors. And I did read it in the statement this  
19 morning. But if he had my scissors, he did not get them from  
20 the bedroom, and I don't believe that's in the statement.

21 Q Okay. So you don't believe that in his voluntary --  
22 in this voluntary statement that you talked about the fact  
23 that he got the scissors from the bedroom while he was going  
24 through your purse?

1           A     I believe I said something about he took them to the  
2 bedroom, put them on the dresser.

3           Q     Took them to the bedroom.

4           A     According to the statement.

5           Q     So, again -- again, this is a very confusing area  
6 for you --

7           A     Right.

8           Q     -- isn't it?

9           Okay. I don't want to belabor it. If it's confusing and  
10 you just don't know, you can just tell me that.

11          A     Well, I know there was something about scissors and  
12 I don't recall if I hid them or if he had gotten ahold of them  
13 before I hid them. But at some point I had the scissors.

14          Q     Okay. Finally you told police that the first he  
15 went into your kitchen and got a steak knife, the first time  
16 was after he raped you for the first time; is that right?

17          A     According to the statement, yes.

18          Q     Okay. According to the statement. Do you have any  
19 independent recollection of that?

20          A     No.

21          Q     Okay. So that could be wrong and, again, you're  
22 just doing the best you can; is that true?

23          A     I'm assuming it's correct.

24          Q     Okay. Now, why are you assuming that that part is

1 correct?

2 A Because all of the events are very -- like I say, I  
3 was in a state of shock, basically. And I don't really  
4 remember the sequence of everything that happened. So it's  
5 quite possible that I just assumed it's more clear because it  
6 was in the statement I made right afterwards.

7 Q Because all the -- oh, I'm sorry. So that's just an  
8 assumption that you're making?

9 A Right.

10 Q Okay. Now, at one point you told us that, in fact,  
11 I think you just said it just now, that you hid the scissors  
12 under the mattress; is that right?

13 A I know I hid the scissors. I can't -- it's not  
14 clear in my mind whether or not I hid something between the  
15 mattress and the box springs of my bed, and I don't know if it  
16 was the knife or the scissors.

17 Q And of course --

18 A But I remember hiding the scissors. But there's  
19 some confusion there with the knife and the scissors.

20 Q Thank you, ma'am. So you told the police that it  
21 was the scissors you hid under the mattress, but you testified  
22 in court that it was the first knife you hid under the  
23 mattress; is that right?

24 A That's correct.

1 Q And, obviously, you cleared it up by just telling us  
2 that you really don't know whether it was the scissors or the  
3 knife; is that right?

4 A No.

5 Q Okay. Let me ask you a couple of questions about  
6 your testimony concerning the strangulation with the cord.

7 A Okay.

8 Q You testified in court that after he took your money  
9 and the ring, but before he raped you, he asked you to hold  
10 the lamp so he could cut the cord; is that right?

11 A That was my testimony in court here, yes.

12 Q Now, have you recognized, after reviewing your  
13 statement, that that testimony might not be accurate?

14 A I recognize that, yeah, the sequence may not be.

15 Q Okay. And can you tell the Court -- can you tell  
16 the judge which part you think might be accurate -- might not  
17 be accurate about the testimony you gave?

18 A Well, whether or not the rape took place before or  
19 after the strangulation.

20 Q And even --

21 A Or how many rapes took place before the  
22 strangulation.

23 Q Are you confused about how many rapes took place  
24 overall?

1 MS. LUZAICH: Objection. That misstates --

2 THE WITNESS: No, I'm not.

3 MS. LUZAICH: She said, earlier, that the confusion  
4 was in the sequence and so --

5 MR. GOODWIN: I asked her a straightforward  
6 question, Judge.

7 THE COURT: I'm going to allow it. You asked the  
8 question, she answered "no." I'm going to allow the question  
9 and the answer to remain.

10 MR. GOODWIN: Thank you.

11 THE COURT: She knows how many rapes, just maybe not  
12 the sequence, is that what you're saying, Ms. Case?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 MR. GOODWIN: And that's all I asked.

16 BY MR. GOODWIN:

17 Q Now, you told the police that you don't know if he  
18 tried to choke you with this cord before or after he raped you  
19 for the first time; is that right?

20 A I don't recall --

21 Q You don't recall --

22 A -- what I told police.

23 Q You don't recall if you told that to the police?

24 A Right.

1           Q     Okay. But despite that fact, you agree with this  
2 statement, don't you -- and, again, the statement being you  
3 don't know if he tried to choke you with the cord before or  
4 after the first rape?

5           A     I'm agreeing with the statement, yes.

6           Q     Okay. Now, concerning the strangulation with the  
7 cord, you testified that he -- the strangulation was very hard  
8 and very intense; is that right?

9           A     Yes.

10          Q     And I think you also said that the strangulation  
11 almost caused you to die; is that right?

12          A     Yes.

13          Q     And, in fact, he pulled so hard that -- I guess your  
14 words were that you lost consciousness at some point?

15          A     During the second strangulation. There were two  
16 different strangulation episodes. The first one, I almost  
17 lost consciousness. And that was when he had the cord around  
18 my neck. But I also had my hands here and was able to get --  
19 although I was blacking out. The second strangulation was  
20 with his arm, and I did blackout. And for that period of  
21 time, I don't know.

22          Q     Okay. And did you tell the nurses about that when  
23 they were -- when they went to have a SANE examination done  
24 later that morning?



1           A     Yeah, I did because I was very concerned about the  
2 strangulation. I was very upset about that. That was the  
3 most horrifying thing that I'd ever experienced, even with the  
4 stabbing and the rapes.

5           Q     Okay.

6           A     And everything else.

7           Q     Now, you also testified for Ms. Lowry that he  
8 actually tried to cut your throat with the steak knife; is  
9 that right?

10          A     Yes.

11          Q     And after reviewing your statement, do you recognize  
12 that you never told that to the police; is that right?

13          A     No, I never told the police, according to the  
14 statement.

15          Q     Okay. Did he try to cut your throat with the first  
16 steak knife or the second steak knife, if you remember?

17          A     Well, we haven't really established if there were  
18 two steak knives because there's something that's  
19 questionable, whether or not there was a scissors and a steak  
20 knife or two steak knives. As sit [sic] here now, I'm  
21 thinking it was the second weapon that he held.

22          Q     Okay.

23          A     I know that he stabbed me with the steak knife. And  
24 he was holding the steak knife when he tried to cut my throat,

1 or actually just the side of my neck where my main artery is  
2 at.

3 Q Okay. Let me ask you about these stab wounds.  
4 Apparently -- am I correct that they didn't bleed at the  
5 apartment at all?

6 A No, they didn't bleed.

7 Q And did you have any internal bleeding?

8 A No.

9 Q And how far did you tell us that this blade went  
10 into your abdomen?

11 A It went all the way in.

12 Q And how long was this blade?

13 A Oh, I guess about three and a half inches. The  
14 steak knife. It's just a normal steak knife.

15 Q You could --

16 [TRANSCRIPT READING END]

17 MR. GOODWIN: Oh, I'm sorry, Your Honor.

18 MS. SCHIFALACQUA: 52, line 5.

19 MS. LUZAICH: Line 5.

20 MR. GOODWIN: Line 5. I'm sorry.

21 [TRANSCRIPT READING BEGIN]

22 BY MR. GOODWIN:

23 Q What kind of treatment have you been undergoing for  
24 these stab wounds?

1           A     Nothing.

2           Q     Did they stitch them?

3           A     No.

4           Q     There was no stitches?

5           A     No.

6           Q     Okay.

7           A     I was given some kind of antibiotic salve to put on  
8 the top of them because, apparently, they didn't nick anything  
9 inside. It was just a very clean cut, in and out.

10          Q     Were they -- did they -- were they covered at all?  
11 Did the hospital cover them for you?

12          A     No, they just had me put that cream on it.

13          Q     Okay.

14          A     So it would heal up.

15          Q     Now, when this person stabbed you twice in the  
16 abdomen, you have no idea whether you had a shirt on or not;  
17 is that correct?

18          A     I don't recall whether I had the shirt on or not.

19          Q     And that's because you were very disoriented and you  
20 were obviously coming in and out of consciousness at that  
21 point?

22          A     Well, I wasn't coming in and out of consciousness,  
23 but there had been a lot of violence, and I was pretty much in  
24 a state of shock at that point.

1           Q     Okay. Now, after the stabbing, is it fair to say  
2     that everything that occurred after that is sort of fuzzy in  
3     your memory, if that makes any sense to you? I think you  
4     testified that, for Ms. Lowry, that after this person stabbed  
5     you, you were having some issues with consciousness and you  
6     really don't -- didn't remember a lot of the things that  
7     happened after that?

8           MS. LUZAICH: I'm going to object. I think that  
9     misstates. Consciousness was not an issue around the stab  
10    wounds. Consciousness was an issue around the strangulation.

11          MR. GOODWIN: Let me rephrase it, then.

12          THE COURT: Okay. Sustained. That was my memory  
13    also.

14          MR. GOODWIN: It's not mine, Judge, just for the  
15    record.

16          THE COURT: Okay.

17          MR. GOODWIN: For the record, my notes are,  
18    apparently, different.

19          THE COURT: Okay. I'm looking at my notes.

20          MR. GOODWIN: Thank you.

21    BY MR. GOODWIN:

22          Q     After you were stabbed, can you tell us what your  
23    recollection is about what happened from that point on?

24          A     My recollection is that, after he stabbed me, that

1 he went to cut my throat with a knife. And I realized at that  
2 point he was really trying to kill me. I don't know why I  
3 didn't recognize that before, but -- and I started to try and  
4 kick him. And I -- I defended myself or acted aggressively at  
5 that point to try and protect myself from possible death.

6 Q Anything else?

7 A There was a struggle. At the end of the struggle,  
8 he started to strangle me again with an arm. And I did lose  
9 consciousness at that point. And I recall waking up from the  
10 consciousness and -- this is something that I remember after  
11 reading the statement, that he had my hair in his hand. And  
12 he -- I was looking in the mirror and he was -- my face was  
13 toward the mirror, both of our faces. And he was telling me,  
14 "Look at you now, bitch. You're dead."

15 THE COURT: You're what?

16 THE WITNESS: "Look at you, you're dead."

17 BY MR. GOODWIN:

18 Q Was it -- was it after you came out of consciousness  
19 that this lamp cord came into play somehow or was it before?

20 A No, that was before I lost consciousness. That was  
21 during the first strangulation.

22 Q Okay. So after the second strangulation, there was  
23 no lamp cord used?

24 A Right.

1 Q Okay.

2 A Well, actually, he did use the lamp cord again. At  
3 some point he wanted to tie me up again and I wouldn't allow  
4 it, so he whipped me with it.

5 Q But, I mean, after you came out of consciousness,  
6 was the lamp cord ever used on your throat again?

7 A No, not on my throat again. No.

8 Q Not on your throat, okay.

9 MR. GOODWIN: Is Your Honor reviewing her notes on  
10 that point?

11 THE COURT: Yes.

12 MR. GOODWIN: Thank you.

13 BY MR. GOODWIN:

14 Q Now --

15 A Excuse me.

16 Q That's all right. Now, you have no idea -- tell me  
17 if this statement is true. You have no idea if this person  
18 had sex with you a second time before or after he stabbed you;  
19 is that a true statement?

20 A It's all true that I don't recall, yeah, whether or  
21 not I had -- had been stabbed before the second rape or not.

22 Q Okay. Okay. And, in fact, you even told the  
23 police, and these are your words, "I believe it was at this  
24 time. I don't remember all of it. It was so confusing

1 because the violence of it was so," and you trailed off.

2 That's page 30.

3 Do you remember that?

4 A I know that that's what I'm feeling now too.

5 Q Okay.

6 A It's the same kind of -- the violence of it was so  
7 shocking that it's difficult to remember the order of  
8 everything and that kind of thing now.

9 Q Yes, ma'am.

10 A It's just --

11 Q Yes, ma'am.

12 MR. GOODWIN: Judge, will you indulge me for a  
13 second. I'd like to confer with co-counsel.

14 THE COURT: Yes.

15 BY MR. GOODWIN:

16 Q And, ma'am, one of the things, again, that you find  
17 in your statement here, but that you testified to, was that  
18 you never told the police that he used the words, or this  
19 person used the words "why don't you die, bitch"; is that  
20 right?

21 A Restate that because I didn't --

22 Q I'm sorry.

23 A -- I -- get that.

24 Q That's probably my fault. Let me restate that for

1 you.

2 When you testified for Ms. Lowry, you told us that you  
3 remembered that he was saying to you a few times, "Why don't  
4 you die, bitch."

5 A Yes.

6 Q Do you remember telling us that?

7 A I --

8 Q Okay.

9 A I didn't remember him telling me, "Look at you.  
10 You're dead, bitch." I did recall it when reading the  
11 statement.

12 Q Okay.

13 A Because that's a very -- that's something that  
14 sticks out in my mind.

15 Q Okay. And let me -- I'm sorry to interrupt. Let me  
16 try to clarify something. I'm talking about the statement  
17 when this person said to you, "Why don't you die, bitch." Do  
18 you remember that?

19 A Mm-hmm.

20 Q And do you remember telling Ms. Lowry that he said  
21 these things to you? He said that statement to you?

22 A Yes.

23 Q And in reviewing the statement you gave the police,  
24 do you agree that you didn't tell that to the police?



1 A I didn't tell that to the police.

2 Q Okay. Ms. Case?

3 A Yes.

4 Q During this incident or before this incident, had  
5 you been drinking any alcohol or using any illicit substances?

6 A No.

7 Q And, in fact, you --

8 THE COURT: No to both? He asked a compound  
9 question.

10 THE WITNESS: No to both.

11 THE COURT: No to both? Okay.

12 THE WITNESS: Yes.

13 BY MR. GOODWIN:

14 Q And, in fact, you told the police you're a  
15 recovering addict; is that right?

16 A Yes, I am.

17 MR. GOODWIN: I'll pass the witness, I guess.

18 THE COURT: Redirect examination, Ms. Lowry.

19 REDIRECT EXAMINATION

20 BY MS. LUZAICH:

21 Q Ms. Case, how did you get to the hospital on  
22 March 7th?

23 A I was taken by ambulance.

24 Q Okay. And you've already indicated to us that the

1 statement that you gave at the -- to the detectives was taken  
2 at the hospital?

3 A Yes, I believe it was.

4 Q And do you recall where you were in the hospital  
5 when you gave the statement?

6 A I believe I was in the trauma room.

7 Q Okay. And you were you being treated for your  
8 various injuries and smoke inhalation and all of that?

9 A At the same time, yeah.

10 Q Now, you said that the name that the Defendant gave  
11 you on March 7th was Sean Carter?

12 A Yes.

13 Q And you said that you didn't believe that that was  
14 his name.

15 A No, I didn't believe that that was his name because  
16 it wasn't the same name he gave me earlier, when he had  
17 introduced himself.

18 Q Okay. And was there anything else about the giving  
19 of that name that led you to the conclusion that that wasn't  
20 his name?

21 A Because he was very demanding about it. He kept  
22 telling me -- well, he told me several times, let me make that  
23 clear, that his name was Sean Carter and that I should  
24 remember it.

1 Q Okay. Now, when you identified this Defendant last  
2 week, when you were on the witness stand, as your assailant,  
3 did you identify him because you assumed he was the  
4 assailant just because he was sitting in court or did you  
5 identify him because you recognized?

6 MS. KOLLINS: Objection. That is a compound  
7 question.

8 MS. LUZAICH: Okay. I'll break it up.

9 THE COURT: Okay. The objection is sustained.

10 BY MS. LUZAICH:

11 Q Did you identify him because you assumed that the  
12 person was -- that the person -- sorry -- that was the person  
13 just because he was sitting in the courtroom?

14 A No.

15 Q Okay. Why is it that you identified this Defendant?

16 A Because I recognize him --

17 Q Okay.

18 A -- as being the person that attacked me.

19 Q I'm sorry, what? I recognize him --

20 [TRANSCRIPT READING END]

21 THE COURT: So -- sorry. That's me.

22 MS. LUZAICH: Oh.

23 [TRANSCRIPT READING BEGIN]

24 THE COURT: I'm sorry. What? I recognize him what?

1 THE WITNESS: As being the person that attacked me.

2 BY MS. LUZAICH:

3 Q Just for clarification, you indicated that you had  
4 spoken to some CARR people, C-A-R-R. Is that Community Action  
5 Against Rape?

6 A Yes.

7 Q Okay. And when you saw the person arrested in this  
8 case on television, again, did you recognize him as the person  
9 who was your assailant?

10 A Immediately.

11 Q Now, in your statement, you're asked questions about  
12 the Defendant's hair and about your statement, page 25, the  
13 bottom of the page, you'd indicated that your statement says  
14 "uneven."

15 A Right.

16 Q And I believe you started to say something about  
17 your opinion that that's not correct.

18 A I don't believe that's correct.

19 [TRANSCRIPT READING END]

20 THE COURT: Defense --

21 [TRANSCRIPT READING BEGIN]

22 MR. GOODWIN: Well, that's been asked and answered.

23 THE WITNESS: I might have said --

24 MR. GOODWIN: I think she made it clear that she

1     meant "even."

2             MS. LUZAICH: All right. As long as we're clear on  
3     that.

4             THE COURT: She said "even" when she testified also  
5     on direct.

6             MS. LUZAICH: Okay. Thank you.

7     BY MS. LUZAICH:

8             Q     Now, during the -- how long was the Defendant in  
9     your apartment, approximately, that night?

10            A     I'm assuming that he was there for 45 minutes to an  
11     hour.

12            Q     And you indicated that at -- during some point of  
13     him being in your apartment, you weren't looking closely at  
14     him.

15            A     Yeah.

16            Q     Can you --

17            A     Can I clarify that?

18            Q     That's what I'm asking.

19            A     Because there were times when he was looking at me  
20     that I didn't want to look back at him because I didn't want  
21     to give him the impression that I was look -- trying to get a  
22     description of him.

23            Q     Okay.

24            A     Times when he wasn't paying any attention, basically

1 when he had his back to me or things like that, that's when I  
2 would take the opportunity to try to look and see if I could  
3 recognize -- you know, could find anything that I could  
4 identify him by. I just didn't -- didn't want to bring his --  
5 any more anger or any more violence toward myself for looking  
6 too closely at him.

7 Q Okay.

8 A Does that make sense?

9 Q So with this encounter that took -- you said took  
10 about 45 minutes, were there --

11 MR. GOODWIN: She said 45 minutes to an hour,  
12 Your Honor.

13 THE COURT: That's true.

14 MS. LUZAICH: Okay.

15 BY MS. LUZAICH:

16 Q Forty-five minutes to an hour, were there times  
17 when you did look at him?

18 A Yes.

19 Q Okay. And were there times that -- when you looked  
20 at his face?

21 A Yeah, from the side.

22 Q Okay. And when you said that you -- this Defendant,  
23 your comment that he didn't seem like he was in the hood, what  
24 did you mean by that?

1           A     He didn't seem to be -- he didn't have a gangster  
2 appearance.

3           Q     And I need you to explain what you mean by "gangster  
4 appearance." To you, what was it to you?

5           A     To me, he didn't have that pant leg rolled halfway  
6 up.

7           Q     Okay.

8           A     Or, you know, have any specific scarfs or ker --  
9 handkerchiefs or anything. He just looked like a clean-cut  
10 kid.

11          Q     Okay.

12          A     And, you know, an everyday kid.

13          Q     Okay. And on cross-examination, you were asked  
14 about the first contact with the Defendant, when he was with  
15 another young man. And you said you didn't recall if you told  
16 the police if they were two people on that occasion?

17          A     Right.

18          Q     If I show you your statement, would that help you  
19 refresh your memory as to whether or not you refer to there  
20 being more than one person on that occasion?

21          A     Mm-hmm.

22          Q     Answer out loud.

23          A     Yes.

24          Q     Okay. Thanks. Page 47. I'm going to direct your

1 attention to the bottom of the page and ask you, in your  
2 answer about that occasion, if you indicated if the Defendant  
3 was, in fact, with another person.

4 A Yes, I did.

5 Q And how is it that you did that?

6 A Because I told him "they" instead of "him."

7 Q Okay. And that was referencing --

8 A That was --

9 Q -- there was more than one person?

10 A -- plural, right.

11 Q Okay. And I'm gonna direct your attention,  
12 Ms. Case, to the question asked about the Defendant going to  
13 your purse, and you had indicated that your purse was in the  
14 bedroom --

15 A Yes.

16 Q -- is that correct?

17 A Yes.

18 Q Okay. Now, in reference to the statement that you  
19 gave the police regarding the scissors, I'm going to show  
20 you -- do you recall where the scissors was [sic] at that  
21 point in time, where in your apartment were the scissors?

22 A Initially, the scissors were by my telephone, which  
23 is on the little stand beside my chair in the living room.

24 Q Okay.



1           A     A little end table.

2           Q     Okay. And so your purse was in the bedroom and the  
3 scissors was in the living room?

4           A     Right.

5           Q     And so in your statement, when you were asked about  
6 whether or not he had a weapon when he went to your purse, do  
7 you recall what you said about whether or not he had the  
8 scissors with him when he went to get your purse?

9           A     According to the statement, I told them that he had  
10 my scissors with him.

11          Q     Okay.

12               MR. GOODWIN: Your Honor, if you don't mind, can we  
13 approach very quickly?

14               THE COURT: Yes.

15               Could you read back the last comment? I wrote down,  
16 "According to the statement, I told the police he had scissors  
17 with him." Is that what she said?

18               [TRANSCRIPT READING END]

19               THE COURT: And then the -- the requested portion of  
20 the record was read by the reporter. The Court says, "Are you  
21 referring to when he got the purse? Is that what you're  
22 referring to right now?"

23               [TRANSCRIPT READING BEGIN]

24               THE WITNESS: Right.

1 THE COURT: "When he went for my purse."

2 THE WITNESS: Right.

3 THE COURT: Okay.

4 BY MS. LUZAICH:

5 Q And my clarification was just that the scissors --  
6 you kept the scissors in the living room?

7 A Yes, I did.

8 MS. LUZAICH: Nothing further, Your Honor.

9 THE COURT: Mr. Abood, any additional questions?

10 MR. GOODWIN: Very quickly, Judge. And I know we're  
11 under a constraint here.

12 RECROSS-EXAMINATION

13 BY MR. GOODWIN:

14 Q Ma'am, you did tell us that the short name that this  
15 person had you thought was a nickname; right?

16 A Yeah.

17 Q So there's one nickname and one real name, does that  
18 make any sense to you?

19 THE COURT: What do you mean "real name"?

20 MR. GOODWIN: Well, you know, for example  
21 "Sean Carter" -- hypothetically speaking, could a person named  
22 Sean Carter have a nickname "Jug"?

23 MS. LUZAICH: Objection.

24 MR. GOODWIN: Well, I'm not talking -- I'm talking