

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

2
3 **No. 85782**

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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 VII**

17 Thomas A. Ericsson, Esq.
18 Nevada Bar No. 4982
19 Ornoz & Ericsson, LLC
20 9900 Covington Cross Dr., Suite 290
21 Las Vegas, Nevada 89144
22 Telephone: (702) 878-2889
23 Facsimile: (702) 522-1542
24 tom@oronozlawyers.com
 Attorney for Appellant Justin D.
 Porter

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1 Q And what about the screen door?

2 A Because momma was going to try to close it, but she

3 didn't get there in time.

4 Q Your wife was going to try to close the front door?

5 A Yes.

6 Q Okay.

7 A When he was working with the screen.

8 Q Oh, I see. Okay. Before he actually made his way

9 into your --

10 A Yes.

11 Q -- apartment?

12 A Right.

13 Q Okay. Once he got into the apartment and got

14 through the screen door and came in, um, did the front door

15 remain open while he was in there?

16 A I don't recall. I think it was left open.

17 Q Okay.

18 A But I'm not sure.

19 Q You said he had got a knife from --

20 A Yes, from the kitchen, um, the shelving.

21 Q And once he got the knife, what did he do with it?

22 A He cut the phone line, first thing.

23 Q And then after he cut the phone line?

24 A Well, he just brandished it around, threatening us

1 with it.

2 Q And he threatened you with the knife?

3 A Yes.

4 Q And he threatened your wife with the knife?

5 A Yeah.

6 Q Did he ask you for anything?

7 A Yes, he wanted our money and a gun.

8 Q Okay. And was he able to get any money?

9 A Yes, he got \$80 from me and a bunch of coins that I
10 had that I was -- couldn't say I was collecting 'em but when I
11 had change, I just threw 'em into a casino cup.

12 Q Did --

13 A On the dresser in -- in the bedroom.

14 Q The --

15 A And I had pennies and nickels and quarters and he
16 picked up the one with the pennies, said, "Bah, there's
17 nothing there." So he took the nickels and quarters.

18 Q And what did he do with them?

19 A Stuck them in his pocket.

20 Q Did he leave the cup?

21 A Yes.

22 Q How was it that he got the \$80 from you?

23 A I was too scared to keep it.

24 Q Okay. Where -- where was the \$80?

1 A In my hip pocket.

2 Q Okay. And was there anything else in your hip
3 pocket?

4 A No, just that and the wallet.

5 Q Okay. What else do you keep in your wallet?

6 A Well, I had my cards, social security card and --

7 Q Did you have any credit cards?

8 A No.

9 Q Okay.

10 A I had a bank card but no credit cards.

11 Q Okay. Did the man ask you for your bank card?

12 A No.

13 Q How did the money get out of your wallet?

14 A Well, I took it out.

15 Q And where were you -- where were you when all of
16 that happened, where he got the money?

17 A I was laying on the floor.

18 Q In the living area?

19 A Yes.

20 Q And after he got the money, then what happened?

21 A Well, he just went around and used the knife to open
22 drawers and things, looking for whatever.

23 Q And you said that he, uh -- earlier you said he
24 wanted guns and money?

1 A Yes.

2 Q Now, did you own a gun?

3 A No.

4 Q Did you tell him that?

5 A Yes.

6 Q And what did he say?

7 A Well, he didn't believe it. He looked.

8 Q So after he was done looking and you were in the

9 living room, then what happened?

10 A Well, he told us to stay where we were and don't

11 come to the door until after he was gone.

12 Q Did he ever have you move from the living room to

13 another room in the house?

14 A Well, as I recall, we went to the bedroom, but I'm

15 sorry.

16 Q Where were the -- the cups with the coins in them?

17 A They were in the bedroom on the desk.

18 Q And you said you saw him go through those cups?

19 A Yes.

20 Q So were you in the bedroom with him?

21 A Uh, the entryway.

22 Q Did he go through anything else in the bedroom?

23 A I don't recall anything else. No.

24 Q Do you recall any other things that he said to you

1 or your wife while he was in your home?

2 A No, I don't.

3 Q Did he make any sexual comments or say things that
4 were vulgar or foul?

5 A Just sorta halfway, yes.

6 Q And -- and what was that?

7 A Well, uh, I told him I couldn't get up and he said I
8 was too old.

9 Q Anything else that he said that you recall?

10 A I don't recall anything else.

11 Q Once he took the coins out of -- out of the cups,
12 then where did he go?

13 A He told us to stay back in the corner and he left.

14 Q And do you recall which corner you were in?

15 A Well, it was in the west side of the living room.

16 Q And did you do as he said?

17 A Oh, yes.

18 Q When he was in the bedroom going through the coins,
19 was it his idea for you and your wife to be in there with him
20 or was it your idea?

21 A It was -- it was just sort of a mutual thing.

22 Q And in what way?

23 A Well, that he [sic] wanted to protect our things in
24 case he went wild or anything.

1 Q And how were you going to protect your things?

2 A Well, that, I had no idea. But we were going to do
3 our damndest.

4 Q Did you, at any point, physically resist him?

5 A No.

6 Q So it's -- he -- when he left, tell us about how he
7 left?

8 A I actually don't know because he -- we stayed inside
9 and he shut the door and left.

10 Q Okay. And, um, so you stayed where you were until
11 you heard the door shut?

12 A Yes.

13 Q And after you heard the door shut, then what did you
14 do?

15 A Well, we waited probably 5, 10 minutes and we ran
16 over to our daughter's house to call 9-1-1 since our phone was
17 disabled.

18 Q Did he take the knife with him?

19 A Yes.

20 Q Had you ever seen the individual before that, had
21 come into your house?

22 A I wouldn't know that. He was pretty well covered.
23 The only thing that showed was his forehead, his eyes. I did
24 notice that he was about, oh, 5-10, 5-11 and about 180 pounds

1 and seemed to be quite young.

2 Q And did you give him consent to come into your home?

3 A No.

4 Q Thank you, Mr. Rumbaugh.

5 MS. KOLLINS: Pass the witness.

6 THE COURT: Mr. Abood.

7 MR. GILL: Good --

8 MR. GOODWIN: Good afternoon, Mr. Rumbaugh.

9 [TRANSCRIPT READING END]

10 MR. GILL: I got this one.

11 MR. GOODWIN: Oh, you got this one?

12 MR. GILL: Yeah.

13 MR. GOODWIN: Oh, okay. (Indiscernible)

14 MR. GILL: It's okay.

15 [TRANSCRIPT READING BEGIN]

16 CROSS-EXAMINATION

17 BY MR. GILL:

18 Q Good afternoon, Mr. Rumbaugh. I have some questions
19 I'd like to ask you as well.

20 A Okay.

21 Q I'm sorry?

22 A Have at it.

23 Q Can you hear me, sir?

24 A Yes.

1 Q Mr. Rumbaugh, I heard you testify a little earlier
2 that you thought he was about six-foot tall. And you
3 testified to that today and then you told the police that you
4 thought he was about 6-foot-1; is that right?

5 A That could be, very well be, yes.

6 Q Okay. And of course the reason I ask is because
7 just now you said that you thought he was between 5-10 and
8 5-11.

9 A Well, that's what I am. And I could look directly
10 into his eyes. So I was only guessing.

11 Q Okay. Well, is it fair to say that, as we sit here
12 today, your best estimate that -- is that he's between 5-10
13 and 6-1?

14 A Yep.

15 Q Okay. Fair enough. Also, you mentioned that you
16 thought he weighed about 180 pounds; is that right?

17 A That was a guess.

18 Q Okay. And again, you recall that you told the
19 police that you thought this person weighed about 170 pounds.

20 A Okay. I have no idea.

21 Q That's fine, sir. I just want to clear those things
22 up.

23 So in terms of the weight, you really don't know how much
24 this person weighed either.

1 A No.

2 Q Correct?

3 A No.

4 [TRANSCRIPT READING END]

5 THE COURT: Oh, or --

6 MR. HALLQUIST: Oh --

7 THE COURT: -- ha, ha.

8 MR. HALLQUIST: -- I apologize.

9 [TRANSCRIPT READING BEGIN]

10 THE WITNESS: Uh-huh.

11 BY MR. GILL:

12 Q Okay. Now, you're 5-9, is that so?

13 A Yes.

14 Q Okay. Now, when the State -- when the

15 District Attorney asked you earlier whether or not anybody

16 else was living in that house with you, other than you and

17 your wife, you stated that no one else lived there at the

18 time; is that right?

19 A Right.

20 Q Was there a time when somebody else did live in that

21 house?

22 A Yes.

23 Q Who was that?

24 MS. KOLLINS: Objection.

1 THE COURT: Uh, what is the relevance?

2 MR. GILL: I'll let that question go, Judge.

3 THE COURT: Withdrawn. Okay.

4 MR. GILL: It's not that important. Yes, judge.

5 BY MR. GILL:

6 Q Suffice it to say that, at that point in time,
7 nobody else lived there.

8 A Right.

9 Q Okay. Now, you also stated that you felt that this
10 person was in his, either, late teens or young 20s, in your
11 own words --

12 A Yes.

13 Q -- correct?

14 A That was an impression.

15 Q Okay. And one of the first things that this person
16 apparently did when they entered into your house is they took
17 a pairing knife from the kitchen?

18 A Yes.

19 Q And this is the same pairing knife, apparently, that
20 your -- I guess, your wife was using to cut a cake with that
21 you were eating?

22 A Right.

23 Q Do you recall whether or not this pairing knife
24 actually had any cake on it or anything like that?

1 A No, I don't.

2 Q Okay. And you're -- and you are not able to
3 describe this person's face, obviously, because --

4 A Right.

5 Q -- there was a red bandana covering most of the
6 face; that's correct?

7 A Yes.

8 Q Okay. These cups, the cups from the El Cortez,
9 those cups were in the bedroom; correct?

10 A That's correct.

11 Q And when this individual that was in your house
12 started walking towards the bedroom, did you and your wife
13 follow him?

14 A To the doorway.

15 Q To the doorway?

16 A Yes.

17 Q All right. So you followed him as far as the
18 doorway. He entered all the way into the bedroom; is that
19 correct?

20 A That is -- that is correct.

21 Q Okay. And when you follow -- when you followed --
22 when you followed this person into the bedroom, is it fair to
23 say that you were behind him as he was walking?

24 A Oh, absolutely.

1 Q And you were there primarily because you wanted to
2 see what this person was doing with your possessions; correct?

3 A Yes.

4 Q Okay. This -- the money that was in those cups, the
5 El Cortez cups, is it fair to say that that money belonged to
6 you?

7 A Yes.

8 Q Did your wife have any interest in it or was it just
9 your --

10 A No.

11 Q -- money?

12 A That was all mine.

13 Q Okay. And, obviously, the money in your wallet,
14 that was your money as well.

15 A Right.

16 Q Okay. Now, do you know for a fact that there was
17 \$80 in your wallet?

18 A Yes.

19 Q Was there anything more than 80?

20 A Nope.

21 Q So if somebody said there was 81, would that be
22 correct?

23 A No.

24 Q Okay. Just four 20s is all it was --

1 [TRANSCRIPT READING END]

2 MR. GILL: Oop. Sorry.

3 [TRANSCRIPT READING BEGIN]

4 BY MR. GILL:

5 Q Okay.

6 A Just four 20s is all it was.

7 Q Okay. And you, yourself, took the money out of that
8 wallet.

9 A Yes.

10 Q Nobody else ever touched your wallet?

11 A Right.

12 Q Okay. Sir, there's a couple issues I want to clear
13 up with you if I could.

14 A Okay.

15 Q Can you describe for us how this person was holding
16 that bandana to their face?

17 A He had his hand flat across his face.

18 Q And other -- underneath his hand was a red bandana?

19 A That is right.

20 Q Okay. So one hand was continuously covering his
21 face while you --

22 A Yes.

23 Q -- he was in your place.

24 A Right.

1 Q Okay. You also described, somewhat, the shoes that
2 this person was wearing. You claim that they were white
3 shoes?

4 A They were white tennis shoes.

5 Q Any markings on them that you recognized?

6 A No.

7 Q Okay. Do you know if they were high top or low?

8 A High top.

9 Q They were high top tennis shoes?

10 A Shoes.

11 Q Very well.

12 A Not slippers.

13 Q Okay. And, finally, sir, the clothing that this
14 person was wearing?

15 A I don't recall what it was now.

16 Q Okay. You don't recall whether he was wearing a
17 long-sleeved shirt --

18 A Month.

19 Q -- or a short-sleeved shirt?

20 A No, I don't.

21 Q You don't recall the color of the shirt?

22 A No. You don't recall whether he was wearing short
23 pants or long pants.

24 [TRANSCRIPT READING END]

1 MR. GILL: And just for the record, Your Honor,
2 the -- the witness did read "A" correctly, but I believe that
3 that was a question asked by Mr. Abood.

4 THE COURT: Oh, okay. Yeah. So the question was,
5 "You don't recall whether he was wearing short pants or long
6 pants."

7 And then the answer from the witness would be, "No."

8 MR. HALLQUIST: "No."

9 THE COURT: Okay. Question.

10 [TRANSCRIPT READING BEGIN]

11 BY MR. GILL:

12 Q Okay. When you were looking at this person that was
13 in your house, you didn't recognize or you didn't see any kind
14 of scars; is that correct?

15 A No.

16 Q You didn't see any tattoos.

17 A No.

18 Q Very well. Thank you, sir.

19 THE COURT: Any additional questions?

20 MS. KOLLINS: No.

21 THE COURT: Thank you for your testimony.

22 [TRANSCRIPT READING END]

23 THE COURT: Court exhibit. Thank you.

24 State?

1 MS. LUZAICH: State calls Rick Workman.

2 THE MARSHAL: If you could just step up there,
3 remain standing and raise your right hand so the clerk can
4 swear you in.

5 RICKEY WORKMAN,
6 [Having been called as a witness and being first duly
7 sworn testified as follows:]

8 THE WITNESS: I do.

9 THE CLERK: Please be seated, stating your full
10 name, spelling your first and last name for the record.

11 THE WITNESS: Rickey, "rice," K-E-Y, J., Workman,
12 W-O-R-K-M-A-N.

13 THE COURT: Whenever you're ready, State.

14 MS. LUZAICH: Thank you.

15 DIRECT EXAMINATION

16 BY MS. LUZAICH:

17 Q Good morning, sir.

18 A Morning.

19 Q Have you recently retired from a long-term
20 profession?

21 A Yes, two professions long.

22 Q What did you retire from?

23 A First from the military after 20 years, and then
24 I -- I worked 26 years at the Las Vegas Metropolitan Police

1 Department in the forensic lab (indiscernible) area.

2 Q And thank you for your service.

3 In the military, what did you do?

4 A I was a nickel weapons technician, manager and
5 commander, and I also was a stealth fighter and maintenance
6 commander.

7 Q Okay. When you came to the police department, when
8 did you start at the police department?

9 A Started in October of 1993, actually concurrent,
10 three-year overlap with the Air Force.

11 Q Okay. And in 1993, when you started, what did you
12 do?

13 A I started as a crime scene analyst. If I may, I did
14 not finish. One thing I also --

15 Q Oh, I apologize.

16 A -- I -- I worked at the Henderson Police Department
17 for the last 20 year -- for 20 years, subsequent to Metro.

18 Q I'm sorry. I thought I did that.

19 A I worked for Metro for approximately six years and
20 then at the Henderson Police Department for 20.

21 Q Okay. So when you were at Metro, can you tell us,
22 what did you do?

23 A I started as a crime scene analyst. I left there as
24 a crime -- crime scene analyst and my jobs, primarily, were to

1 go to the scenes of crime (indiscernible) preserve and collect
2 evidence of all types -- information and other physical
3 evidence as well -- and to present that evidence. Also to
4 attend autopsies and to present that information, evidence,
5 and otherwise, in court or whenever otherwise I needed.

6 Q And then you went, after that, to the
7 Henderson Police Department?

8 A I did.

9 Q What year did you go to the Henderson Police
10 Department?

11 A 2000. April of 2000.

12 Q For how long were you there?

13 A Until May of two years ago.

14 Q When you retired?

15 A Yes, when I retired.

16 Q Okay. And when you were with the Henderson Police
17 Department, what did you do?

18 A I actually was hired to begin development of the
19 crime scene analyst or Crime Scene Investigation Section, as
20 well as the forensic laboratory. And so I oversaw -- I built
21 up and oversaw those portions for 16 of the 20 years that I
22 was there. And for four other years, part of that time, I
23 was -- I had some other duties assigned for accreditation.

24 Q As a crime scene analyst, you talked about what your

1 duties were. Did you have any training and education that
2 qualified you to do that?

3 A Yes, very extensive, lengthy and frequent training.
4 Hundreds of hours -- several hundred hours. And initially,
5 Las Vegas Metro PD had a crime scene investigation training
6 portion which were -- that was a full-time event that lasted
7 for several months.

8 And then we -- I attended a lot of advanced --
9 intermediate and advance bloodstain pattern and
10 (indiscernible) courses, crime scene investigation courses,
11 forensic photography, pretty much anything that is generally
12 required in a crime scene investigation role, minus the
13 physical forensic laboratory, we had significant training.

14 I also had to -- so that I fully answer your question. I
15 also worked part-time as a police officer in California, while
16 I was in the Air Force. And I had significant amount of
17 experience during that time as a -- as a part-time police
18 officer. And I worked my own crime scenes. I did
19 investigations and testified as well. And during that time I
20 also had a lot of significant training.

21 Q Okay. Thank you.

22 I'm going to direct your attention all the way back to
23 March of 2000. On March 7th of 2000, were you working as a
24 crime scene analyst with Metro?

1 A I was.

2 Q And did you respond to several different -- well,
3 multiple locations in furtherance of your duties?

4 A I did.

5 Q What was the first and did you come to learn that
6 the investigation was pertaining to a lady named Leona Case?

7 A Then -- early in the morning, it was
8 approximately -- if I may refer to my notes for the time?

9 THE COURT: If that would help refresh your
10 recollection, feel --

11 THE WITNESS: Yes.

12 THE COURT: -- free to do so, sir.

13 THE WITNESS: Thank you.

14 I -- I arrived at approximately 2:53 in the morning, oh
15 dark thirty hours. And my arrival was actually first at the
16 hospital, the best -- best of my recollection and -- and to my
17 written documentation.

18 I went to the hospital where I conducted some activities
19 with the -- for the victim with the help of a nurse. And then
20 I subsequently went to the scene of -- of the -- to document
21 the arson and (indiscernible) of that crime.

22 MS. LUZAICH: Okay. I have what's been marked as
23 State's Proposed Exhibits 322 through -- sorry -- 336.
24 Photographs that I believe will be moved in by stipulation.

1 MR. GILL: Correct, Your Honor. I've seen them.

2 THE COURT: Okay. That'll be admitted.

3 [STATE'S EXHIBITS 322-336 ADMITTED.]

4 MS. LUZAICH: I also have 289 through 321 that also
5 moved in by stipulation.

6 MR. GILL: That is correct, Your Honor. They're all
7 of the crime scene.

8 THE COURT: That'll be admitted.

9 [STATE'S EXHIBITS 289-321 ADMITTED.]

10 MS. LUZAICH: Thank you. Permission to publish?

11 THE COURT: Yep.

12 BY MS. LUZAICH:

13 Q Mr. Workman, I'm gonna show you, first, State's
14 Exhibit 322. Let me unzoom.

15 When you went to the hospital, is this how you saw
16 Leona Case?

17 A Yes, I took numerous photos of the victim at the
18 hospital, and this represents one of the photos I took.

19 Q And when you took the photos, were you attempting to
20 depict the injuries that she sustained as a result of what
21 sent her to the hospital?

22 A To the best of our -- my ability, without further
23 injuring the victim, yes.

24 Q Okay. Now, when you're doing this, are you touching

1 her at all or are you just photographing her?

2 A In this particular case, the -- the acronym's the
3 SANE, but there was a registered nurse that assisted me. And
4 she is the person who basically held my scale in some of the
5 photographs and also any -- anything that had to be handled or
6 touched to assist the victim.

7 Q It was the nurse who did it?

8 A Generally, yes.

9 Q Okay.

10 A In this case it would have been the nurse.

11 Q Okay. Thank you. And just for the record, it's
12 Exhibit 322.

13 Can you tell me specifically what we're looking at?

14 A This is a photograph of the face and our -- one of
15 our initial photographs is -- is all -- is generally -- we
16 call it an identification photograph so that we know who we
17 are -- who, in this case, the victim is and who the subsequent
18 photos belong to.

19 Q Thank you. Okay. Exhibit 323.

20 A Another --

21 Q What are we looking at?

22 A Another view of the victim, showing injuries and her
23 condition.

24 Q But specifically.

1 A Specifically to show the victim and her -- I
2 wouldn't call this an ID shot, but it's just additional
3 information to show her condition.

4 Q Okay. Are we looking at the left side of her face?

5 A Oh, I'm sorry. Yes. This would be the left side of
6 her face.

7 Q And what injury can we see on the left side?

8 A Well, from here I can see a mark. I couldn't
9 testify, now, what that particular mark is. But she
10 apparently has blood and -- and other -- other injuries,
11 apparent bruises and other injuries to her face and head.

12 Q Can you see kind of red marks on the left side of
13 her nose?

14 A I can see on her nose and -- and then something on
15 her left ear as well. Also, there's a mark on her cheek and
16 then a bruise below that mark, closer to her chin.

17 Q Okay. And when you say her ear, can you see blood
18 dripping down her ear?

19 A It -- from what I can see, it appears to be blood.
20 And it certainly is consistent with the other information that
21 I saw that night.

22 Q Okay. Consistent with, I should have said, blood.
23 State's Exhibit 324, what is this depicting?

24 A This is a photograph, again, of the victim, shown

1 primarily from -- this would be me standing at her right side,
2 down, showing additional condition of her -- her head and
3 face. Again, primarily the right side of her face.

4 Q Okay. And you can see -- or can you see injury to
5 her nose?

6 A I can see what looks like a -- it's a deep red, dark
7 red and what appears to be an injury and also other things
8 that are, again, consistent with -- with apparent blood.

9 Q Okay. And can you also see kind of a mark to the
10 left side -- right side -- sorry, I got to learn my left --
11 right side of her face at the cheekbone area?

12 A I can see -- I can see a mark, a red mark that may
13 be an injury. It -- it's kind of the lower -- just around
14 the -- the tip, but on the right-hand side of -- if that's
15 what you're referring to.

16 Q Okay. On her cheek (indicating)?

17 A Yes.

18 Q And do you also see a red mark on her chin?

19 A Oh, I'm sorry. I misspoke. I said -- I said
20 cheek -- answer the cheek, I meant her -- her chin, the tip of
21 her chin.

22 Q Okay. So you meant her chin. Do you also see a
23 mark on her cheek?

24 A Yes, and that line, which I believe is the tube that

1 also was helping her breathe. There's a lot of red -- redness
2 and possible bruising. I say "possible," I can't tell from
3 this --

4 Q Okay.

5 A -- view.

6 Q Here. Let me approach --

7 MS. LUZAICH: May I approach? Sorry.

8 THE COURT: Yes.

9 BY MS. LUZAICH:

10 Q Showing you, just in person, State's Exhibit 324,
11 would you agree that when you look at the actual photo, you
12 can see more clearly than you can on our, like, really
13 expensive equipment here?

14 A It's -- it's much more clear -- clearer that she has
15 various bruising and injuries and redness to her face,
16 particularly in (indiscernible) cheeks she's got apparent
17 blood. And I say "apparent," but in this case, it's very
18 obvious that she did bleed in various -- from various
19 locations. And she has injuries on her -- up around her
20 (indicating) hair line and other places.

21 Q Okay. But the photographs that you look at, that
22 they'll take back in the deliberation room with them, more
23 clearly depict what you're discussing than when we're looking
24 at it on the screen. Would you agree with that?

1 A I agree, much better.

2 Q Okay. And then State's Exhibit 325. What are we
3 looking at?

4 A Again, this is another photograph that I took of the
5 victim, showing her -- primarily her forehead. You can
6 see kind of the top portion of her nose. I can see what is,
7 again, consistent with injuries, redness, injuries, bruise --
8 potential bruising, and also I can see some of the same red
9 markings or potential injuries on her hair line, which --

10 Q And --

11 A -- and those are primarily on the left side. Her
12 left side.

13 Q State's Exhibit 326, what specifically are we
14 looking at?

15 A Those are apparent stab wounds of the -- not a
16 doctor, so I did not examine her for that. But apparently
17 stab wounds. And also you can see the -- some fluids that
18 have been used in the treatment, for medical treatment and
19 some apparent blood on her stomach area as well.

20 Q How many stab wounds do you see?

21 A I see two.

22 Q And I'm gonna assume that that hand with red nail
23 polish would not be yours.

24 A That is not mine. The scale is mine. It has my P

1 number. It's -- with my initials is R4597 (indiscernible).

2 Q And a P number, is that personnel number?

3 A That -- I'm sorry. That's my personnel number.

4 Q And that's how you can always tell that it's you who
5 take -- took the photos; correct?

6 A That's generally the case, yes. And in this case,
7 it is. And I (indiscernible) one -- one that was not.

8 Q Okay. Showing you State's Exhibit 329. What are we
9 looking at?

10 A That is her -- I believe it's her right leg. And
11 it, again, shows a -- a lot of substantial -- I'll use the
12 term "apparently" 'cause I'm not a medical professional --
13 bruising and injuries to her right side of her calf and -- and
14 apparently the front of her knee.

15 Q Showing you 331.

16 A More bruising of -- of her -- and injuries that --
17 it's actually a better -- shows a greater extent of injuries
18 to basically around her knee. Also, you can see some redness,
19 injury in -- at the right hand -- bottom right hand in the
20 photograph, portion of her calf. And apparently on the front,
21 in her case, front portion of her thigh.

22 Q Okay. State's Exhibit 333.

23 A Same victim. Again, this shows injuries of, I
24 believe, from looking at that, that's her right leg that we

1 can see on the top portion of the photograph. Additionally,
2 we can see injuries -- potential injuries to -- towards the
3 bottom where her leg side meets the -- is -- is near that
4 white sheet. And --

5 Q That would be kind of the inner portion of her
6 thigh; correct?

7 A Yes. Yes.

8 Q State's Exhibit 334.

9 A That's one of her feet. And looking at her toes, I
10 would -- this looks like her right foot. She has substantial
11 bruising and injuries -- apparent injuries to her toes and the
12 front of her foot and then up near her ankle.

13 Q What else can we --

14 A There's also some -- apparently -- I think it was
15 soot, apparent soot on a lot of portions of her body.

16 Q For example, soot from a fire?

17 A Yes (indiscernible) example.

18 Q And then Exhibit 336.

19 A This is the victim's left foot. Another photograph
20 that I took. And it indicates -- also shows some -- little
21 bit less injury to her toes, but it's an injury to the inside
22 portion of her right foot, a little bit of apparent bruising
23 on her ankle and redness. When I say "bruising," it may --
24 may be redness or -- and/or bruising.

1 Q And soot again; correct?

2 A Pardon me?

3 Q And soot again?

4 A I can see something that looks like that from here.

5 Q Okay.

6 A It's consistent with injury.

7 Q After you photographed Ms. Case at the hospital,
8 where did you go?

9 A I went to the scene and I met with a fire
10 investigator.

11 Q And the scene was located at 2900 East Charleston;
12 is that correct?

13 A That's correct.

14 Q And when you say you met with the fire investigator,
15 specifically why?

16 A When we investigate arson, cases, crimes that
17 involve arson, in any case, the arson investigators are the
18 primary persons as far as -- because they're unique and
19 extensive training on identifying potential evidence of the
20 arson and -- and helping assist with the crime scene analyst
21 collection of other evidence within the arson.

22 And in most cases, the arson investigator would collect
23 anything that is flammable or that was directly tied to the
24 fire. Also they are the ones that generally would make the

1 initial, after the fire department clears the scene and some
2 of the smoke clears, they -- they make some of the initial
3 assessment. Because they're trained to better see things that
4 we -- much more extensively than we as crime scene analysts
5 were. And they would assist us as we tried to identify
6 relative, potential evidence at the scene.

7 Q Okay. So you spoke with the fire investigator?

8 A Yes.

9 Q They were already on scene before you; correct?

10 A Yes. I -- my -- I believe so.

11 Q Did you --

12 A Now --

13 Q Sorry?

14 A Yeah, I believe so.

15 Q Did you also walk through the crime scene?

16 A I did. And I took photographs.

17 Q That was my next question. And you took photos.

18 I'm just -- real quick, I would like you to look at --
19 sorry -- Exhibits 289 through 302, just real quickly. And
20 tell me, are those depictions of the interior of Leona Case's
21 apartment on March 7th, when you arrived?

22 A Yes, these are consistent -- they correctly and
23 accurate -- accurately represent the scene as it was when I
24 photographed it.

1 Q Okay. And just like, briefly, overall, what was the
2 state of the scene?

3 A This was a -- I don't know what scale I would even
4 be using, but it's a very significant, complete, completely
5 destroyed area in the scene. And all the -- everything is
6 burned. Burned. And I won't go any farther than that 'cause
7 I'm not trained to arson --

8 Q Okay. I'm gonna show you State's Exhibit 302.
9 Oopsy. Let's go back to -- what are we looking at?

10 A It's hard for me to see from here.

11 THE COURT: There's a -- is the monitor on in front
12 of you, sir?

13 THE WITNESS: I wasn't smart enough to look that
14 way. And -- (indiscernible) yep. It's --

15 BY MS. LUZAICH:

16 Q Is this the interior of her apartment?

17 A This is -- this is -- appears to be the interior of
18 the scene. I can see -- because I can also see the interior
19 of the electrical box, well, from one wall. But it is part of
20 the scene that I documented, significant damage to walls and
21 all the contents that are beyond that doorway.

22 Q Okay. And would you agree that pretty much
23 everything in here is burned almost beyond recognition, except
24 for maybe a big gulp cup and a trash can?

1 A I -- I would use the word "burned to a crisp."

2 Q Fair enough. State's exhibit --

3 A I will add those photographs are still better than
4 this but --

5 Q Oh, 30 -- oops. 289?

6 A This is more of the scene. I'm not -- it's not
7 quite clear. There's couple of pictures where I can actually
8 see the frame of the bed, the springs. And I -- it -- without
9 looking (indiscernible) picture, I'm not certain. But it's
10 same type of significant damage. There's nothing that's
11 untouched by the fire in this particular scene. And it's
12 burnt very well.

13 Q Okay. So that used to be a room.

14 A Oh, yes. It's the interior of the room.

15 Q And State's 2 -- Exhibit 290.

16 A Another interior of the room. Same type of
17 significant fire damage.

18 Q Can you kind of see -- oops. I went the wrong way.
19 Can you see a bed frame and bedding?

20 A Yeah, I can -- yes. I can see -- looks like the
21 spring -- springs from the mattress, something like that, or
22 consistent with that. And I wouldn't have known -- there at
23 the scene, I obviously would have known that it does -- it is
24 consistent with portion of bedding that's been significantly

1 burned.

2 Q Okay. So does that appear that that used to be the
3 bedroom?

4 A Yes.

5 Q Or a bedroom.

6 A Yes, a bedroom.

7 Q Exhibit 291.

8 A This is another photograph that depicts an interior
9 room with significant damage. I believe what I see on the
10 right-hand side of the picture is the edge of the springs on a
11 bed, what used to be a bed. Everything is, again, same type
12 of significant damage, destroyed.

13 Q State's Exhibit 293. And I hate to say, I can't
14 tell if I'm upside down or right side up or if it should be
15 sideways. I don't know if you can tell.

16 A I don't recall either. Some of the photographs I
17 took --

18 Q There.

19 A -- were from the exterior portion. But -- and I
20 can't --

21 Q Does this look like it used to be a closet?

22 A Well, I look -- apparently, that's con -- that would
23 be consistent. It has a -- what looks like it used to be a
24 shelf cord -- toward the top portion of that. There's also

1 some sort of metal framing nearby.

2 Q And then like a bar that could you hang clothing on?

3 A Your better eyes than me. But that's consistent --
4 that -- I can see, actually, the hooks for what would --
5 appears to be a bar for hanging clothes. Now I can see it
6 much better.

7 Q Sorry?

8 A Now I can see it much better. It's got the supports
9 holding what appears to be a bar that you would use typically
10 to hang clothes with a hanger.

11 Q (Indiscernible) Exhibit 294.

12 A This is, again, a bedroom scene. I can see things
13 that are overlapped from the previous photograph that shows
14 the rack on the bottom. Some of that metal framing-type
15 things. And I think I mentioned bed springs.

16 Q Maybe clothing that used to be on the floor, or on
17 what used to be the floor to the left?

18 A Oh, on the bottom of the closet area --

19 Q Yes.

20 A -- that appears to be burned clothing, yes.

21 Q State's Exhibit 295. That appear --

22 A Significant damage --

23 Q -- used to be a dresser?

24 A -- it appears to be a bathroom, or a portion of a

1 bathtub with a rod of some sort laying on that. There's a --
2 potential -- a piece of material, potentially, since we're
3 speaking of bedrooms, potentially a sheet or something --
4 something similar to that.

5 Q On the bottom corner?

6 A In the bottom left, yes.

7 Q State's Exhibit 297, can you tell?

8 A Uh, I can't -- this, again, I know it is among the
9 photographs that I took. I can't identify this particular
10 location.

11 Q It's (indiscernible) you can't tell where it is?

12 A It looks like a -- maybe, possibly, a can on top of
13 some object -- oh, that's -- that's -- if you can push it up a
14 little as well? Unless that's the extent of it.

15 Q And how about State's Exhibit 220 -- oops -- 299.

16 A That, as appears and is consistent with a -- a
17 portion of a kitchen. It was -- looks like a sink, faucet.
18 So it was a sink. The thing on -- item on the left, kind of
19 the center -- of the left of the center portion, appears to be
20 consistent with a refrigerator with two portions in it, two
21 doors.

22 There's a -- I don't know the type of cabinetry or object
23 on the left. Appears to be what I might drink out of, use as
24 a coffee cup on the left side and some sort of container

1 nearby. And then on the right side by the -- on just the
2 right of the center, towards the bottom, there's a red object
3 on what appears to be the remains of the sink. I don't know
4 what that object is. There's also some items in the cupboard
5 above what I say appears to be the kitchen sink.

6 Q State's Exhibit 300.

7 A This, again, is another photograph of an interior
8 room. And to it -- it's burned to the point where -- whether
9 it was burned or done by the action of the -- the respond fire
10 and other personnel, you can see the -- the framing or
11 joints -- I don't know what the proper term -- the studs in
12 the wall.

13 Q Went all the way through to the insulation, huh?

14 A Either that -- I do know that in -- in fire fighting
15 and arson investigation --

16 MR. GILL: Your Honor, I'm gonna object as to that
17 question.

18 THE WITNESS: I -- I --

19 THE COURT: I'm sorry --

20 MR. GILL: Calls for speculation and outside of
21 his --

22 THE WITNESS: I've observed them do that, yes.

23 MR. GILL: Sir --

24 THE COURT: Just one second.

1 Ms. Luzaich, your response in regards to that?

2 MS. LUZAICH: How does it call for speculation? You
3 can see the pink stuff.

4 THE COURT: So you -- well, when you were present,
5 you observed --

6 THE WITNESS: I observed this when I was present.
7 Yes. Yes, Your Honor. And I didn't observe it being done,
8 but I've been in many scenes, more like hundreds --

9 THE COURT: Okay.

10 THE WITNESS: -- hundreds of scenes, but dozens
11 where I've actually been in there where -- and participated
12 with the arson investigators as they was -- or as they were
13 looking for source of the fire. And this is consistent with
14 that.

15 THE COURT: Okay. Overruled. His previous answer
16 will stand.

17 MR. GILL: Thank you, Your Honor.

18 THE COURT: Yeah.

19 BY MS. LUZAICH:

20 Q And then, finally, State's Exhibit 30 -- oops --
21 301. Can you tell what we're looking at?

22 A Yeah. Without knowing and -- without knowing the
23 size, it may be -- appears -- it would be consistent with --
24 well, I can't tell.

1 Q Okay.

2 A I can see the inner side -- inner portion of that --
3 that wall, but I -- I'd be speculating if I said anything else
4 about that one.

5 Q Okay. Is it still the interior of this apartment?

6 A It -- it appears to be, and it shows the black, and
7 the black walls as well.

8 Q Okay.

9 A That are consistent with the other photographs.

10 Q And is it similar, like you said earlier, burnt to a
11 crisp?

12 A It's such a dark picture, it's -- it appears to be.

13 Q Okay. Thank you.

14 Once you were finished photographing the residence, did
15 you collect some evidence -- or did you walk around and try to
16 find some there?

17 A Was -- the arson investigator and I -- and this is
18 the absolute routine that we do and I also have documented,
19 that arson investigator pointed out a green -- a lighter that
20 had a green plastic body to it, like a cylinder, like a little
21 BIC lighter. And I recovered that. I --

22 Q Showing you --

23 A -- recovered that from the scene.

24 Q -- State's Exhibit 303.

1 A That was outside. Yes, and I should have mentioned
2 I, earlier, recovered a -- a -- an electrical wire from inside
3 the bedroom, near the bed, that I recovered and packaged as
4 evidence.

5 Q And when you say "electrical wire," what kind of
6 electrical wire?

7 A It's the type of two strand electrical wire that you
8 would see plugged into -- into any wall -- typical wall
9 socket. It's got two prongs. But the wire has been cut on
10 one end. The opposite -- apparently cut. On the opposite
11 side of the end, it's a male plug and it is bent. One -- one
12 of the two protrusions of the metal is bent towards the
13 inside.

14 Q Showing you State's Exhibit -- sorry -- 307. Is
15 that what you're talking about?

16 A Yes, that's it.

17 Q And then did you take numerous, I mean, photos of
18 it, up close and even closer?

19 A I took several photographs. And one of 'em is --
20 there's at least one that's up closer.

21 Q Did you also take a photo -- you mention that the
22 end was cut?

23 A Yes. There --

24 Q State's Exhibit 312. Is that what you're talking

1 about?

2 A Yes.

3 Q And then you're talking about the two -- 313.

4 A That's -- and that also is one that has my P number
5 and initials as well. And that documents the condition of the
6 cord, including what I -- what I -- what apparently was -- the
7 end that had been cut off.

8 Q Okay. And I probably should have shown you,
9 first -- do you always take -- or do you generally take an
10 overview of outside, like the building where you're going to?

11 A This particular view was taken to help identify the
12 location of -- of that particular unit.

13 Q Okay. So she was in building 2 --

14 A This indicates it's building 2 and then her
15 apartment, which I believe was 51, is indicated in -- in one
16 of the sequences of numbers on this photograph.

17 Q Okay. And then State's Exhibit 305. What is that?

18 A This -- this appears to be stairs -- stairs. And
19 quite frankly, I don't have an independent recollection of the
20 significance of this, other than demonstrating the fire --
21 extent of the fire.

22 Q And the front -- like I said, does that appear to be
23 the front door?

24 A It's consistent with that, particularly when -- in

1 conjunction with the stairs, yes.

2 Q I should say, let me -- does it appear to be
3 exterior --

4 A Yes.

5 Q -- as opposed to interior?

6 And then, finally, State's Exhibit 304, what are we
7 looking at?

8 A I took several pictures from the outside. And that
9 appears to be one of the ones from outside on -- facing the --
10 the unit that was burned.

11 Q Demonstrating the extent of the burning.

12 A Yes.

13 Q Did you collect anything else besides the wire and
14 the lighter?

15 A With the assistance of the nurse at the hospital, I
16 collected her -- I collected the victim's shirt and underwear.
17 It was a black T-shirt with a logo that had something to do
18 with a -- a fight with Tyson.

19 Q Showing you State's Exhibit 317. Is that the
20 clothing that you collected?

21 A Yes.

22 Q And you said with the assistance of the nurse?

23 A Yes.

24 Q Thank you.

1 A Now, I -- I did photography on this later at the
2 lab. But I collected -- but the nurse actually recovers those
3 items from the victim and then hands 'em to me, basically.
4 And then I document and preserve.

5 Q Okay. And when you say the nurse, were you dealing,
6 at this point, with the sexual assault nurse?

7 A Yes.

8 Q And that would be at the time, Marianne Adams
9 (phonetic)?

10 A I -- may I refer to my notes?

11 Q Sure.

12 A This is from Cathy Oldber (phonetic). It says RN.

13 Q Oh, okay.

14 A In -- in many cases it's -- some of the nurses were
15 trained -- highly trained to do the SANE nurse work. SANE
16 where -- the SANE nurses were more of a -- little bit unique.
17 We didn't always have one. I can't testify whether or not
18 this person is actually a SANE nurse, but she's the one that
19 would have assisted the victim and me.

20 Q Let me ask it a different way. When you saw
21 Leona Case in the hospital and you took the photographs and
22 you retrieved the clothing, where in the hospital was she?

23 A UMC trauma.

24 Q So she was in the trauma area as opposed to the

1 sexual assault area?

2 A Yes.

3 MS. LUZAICH: Thank you. I have no further
4 questions.

5 THE COURT: Mr. Goodwin?

6 MR. GOODWIN: Just quickly, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. GOODWIN:

9 Q Sir.

10 A Afternoon.

11 Q So in your work, you would agree that what you do is
12 document; correct?

13 A Yeah, that's one of the things that we do. Yes.

14 A -- a lot of other things, but that's a good --

15 MR. GILL: Yeah, I'm having trouble hearing him,
16 Your Honor.

17 THE WITNESS: Yes --

18 THE COURT: Just a little bit louder, sir.

19 THE WITNESS: -- doc -- documentation is one of
20 the -- one of the main things that we do. Yes.

21 BY MR. GOODWIN:

22 Q Sure. And would you agree that, in these two scenes
23 you went to, you were just documenting; correct?

24 A Searching, documenting, recovering --

1 Q And --

2 A -- observing.

3 Q And let's talk about the searching and recovering.

4 So somebody was on scene -- let's first talk about the
5 location where the fire occurred. The investigator was there?

6 A I don't have any independent recollection or
7 documentation about that.

8 Q You did speak about him in your prior testimony,
9 though; right? The arson investigator, I believe, or the fire
10 investigator.

11 A The arson investigator. Oh, when you say
12 "investigator," to me, I'm generally thinking of the police
13 investigator, the -- the detective on the case. But, yes,
14 there was a --

15 Q Apologize for that.

16 A -- I did work with an arson investigator.

17 Q Okay. And he was pointing these things out to you;
18 correct?

19 A I don't know exactly how that happens. But we --
20 generally, when that happens, we look together. We're a team.
21 We become a team.

22 Q Sure. And so as it pertains -- I believe you
23 referenced, specifically, the lighter. He pointed that one
24 out to you; correct?

1 A That -- that's my rec -- that's -- my recollection
2 based on the notes that I have, yes.

3 Q Okay. And he was the one that walked the scene with
4 you and was looking for certain things; right?

5 A He would have been one person, yes.

6 Q Okay. So in terms of that, you're not really
7 investigating that incident, you're just looking; correct?

8 A Well, it's kind of overlap. I'm -- still
9 investigating. I don't know what your term of investigating
10 is, but -- and that's why, in many places we call ourselves
11 "crime scene investigators." So it's -- there's a lot of
12 overlap. I don't want to get mixed-up with words either. But
13 we're looking, investigating, collecting, recovering,
14 identifying, those -- all those sorts of thing.

15 Q Sure. What I mean is this: Based on your training
16 and -- and those situations, if you were placed into seven
17 rooms and fires had occurred in each one, or in this instance,
18 some kind of crime had occurred in each one, or maybe no crime
19 occurred in each one, and you went in to go in, it's not
20 really your job to determine what crime was [sic] occurred.
21 Your job is to look for that evidence; correct?

22 A Well, it's not our overall job to determine the
23 specific crime occurred. But with our education, training,
24 experience, we actually work hand-in-hand with even the police

1 investigators to help determine what crimes may or may not
2 have happened. We're not just a bump on the wall just
3 documenting things. That's not -- that's not the way it
4 operates in this valley.

5 Q Right. And -- okay. Going to Ms. Case. When you
6 were there documenting those pictures, there was a nurse
7 there; right?

8 A At the scene?

9 Q No, at the hospital. When you were documenting
10 Ms. Case's injuries.

11 A Yes.

12 Q And I'm sorry. We're at the hospital now. So --

13 A Okay.

14 Q When you're at the hospital, there was a nurse
15 there; right?

16 A Yes.

17 Q And she was the one who examined -- or the doctor
18 examined Ms. Case and they did the whole
19 look-through-everything with her; correct?

20 A Well, I can't testify to what they did. All I know
21 is that I recovered those items from -- those two items from
22 that particular nurse. And it's consistent that she would --
23 would or may have been the one that -- whose fingernails
24 appear in those photographs.

1 Q Sure.

2 A But --

3 Q What I --

4 A Again -- again, it's a team effort. So people may
5 come and go. But she is the person that I received the
6 evidence directly from.

7 Q Sure. And all I mean by this is that they were
8 saying "here are the injuries" and you were taking pictures of
9 all of them; correct?

10 A Well, again, not -- not to understate what we do or
11 overstate, we've seen a lot of injuries. And we -- we can
12 look at a lot of things that we believe are injuries. But
13 until a doctor -- or someone in medical profession says so,
14 then it's -- it's an injury or apparent injury.

15 Q And that was just the point that I was making.

16 A Yeah.

17 Q Okay.

18 MR. GOODWIN: No further questions.

19 THE COURT: Redirect?

20 MS. LUZAICH: No, Judge.

21 THE COURT: Anything for this witness?

22 Sir, thank you so much for your testimony. Please don't
23 share it with anyone else involved in the case, as it is
24 ongoing still.

1 THE WITNESS: Understood, Your Honor.

2 THE COURT: Thank you. You're excused.

3 Is that it before lunch, State?

4 MS. KOLLINS: Yes, Your Honor.

5 THE COURT: All right.

6 All right, guys. We are going to take our lunch. We'll
7 be back at 1:30.

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

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

21 We'll see you at 1:30.

22 THE MARSHAL: All rise.

23 [RECESS AT 12:26 P.M.; PROCEEDINGS RESUMED AT
24 1:43 P.M.]

1 [OUTSIDE THE PRESENCE OF THE JURY]

2 THE COURT: -- record State of Nevada versus
3 Justin Porter, C174954. Supplement to motion to use recorded
4 testimony is the motion that we are hearing.

5 Like I said, we're outside the presence of the jury.
6 Mr. Porter is present, in custody. Mr. Gill and Mr. Goodwin
7 present on his behalf. Ms. Kollins, Ms. Luzaich present on
8 behalf of the State.

9 All right. This is the supplement to motion -- to the
10 motion to use reported testimony. However, this is different
11 to then previous individuals. So this is for fingerprint
12 examiner Fred Boyd.

13 MS. LUZAICH: Oh, no. Not Fred Boyd. Sorry about
14 that. I meant to take him out. Just Dave Welch and
15 Joni Hall.

16 THE COURT: Just Dave Welch and Joni Hall. Okay.
17 So, Ms. Luzaich.

18 MS. LUZAICH: As far as Dave Welch, he is in very
19 poor health. He's been in the hospital for the last five
20 weeks. His wife has no idea when she's [sic] coming home. My
21 investigator spoke to her personally. So he is unable,
22 physically, to testify.

23 THE COURT: And the motion states that Mrs. Welch,
24 which is Dave Welsh's wife, informed the investigator that

1 he's actually been in the hospital for five weeks.

2 MS. LUZAICH: Yeah. Didn't I just say that? No?

3 THE COURT: No, you just said he's been in poor -- I
4 thought -- I don't know. I thought you said he's been just in
5 poor health. I'm not sure. But just so I -- just so we're
6 clear --

7 MS. LUZAICH: And she doesn't know when he's getting
8 out.

9 THE COURT: Yeah. Five weeks. He's had two past
10 back surgeries, a surgery for kidney stones, pneumonia, and
11 multiple U -- UTIs. So there's multiple issues there with him
12 that prevents him from being available. Even though this is a
13 longer trial, she -- he's been there for five weeks. She
14 doesn't know when he's getting out.

15 Let's move to Joni Hall.

16 MR. GILL: Judge, just for the record, note my
17 objection, please. I understand his condition --

18 THE COURT: Yeah. No, I'm gonna give you an op -- I
19 want you to be heard --

20 MR. GILL: Okay.

21 THE COURT: -- in full. I'm just gonna do them
22 first and then --

23 MR. GILL: My apologies.

24 THE COURT: -- and then Mr. Gill.

1 Ms. Luzaich, in regards to Joni.

2 MS. LUZAICH: And Joni Hall, I mean, I waited this
3 long to file it because we were still thinking that we were
4 going to get her back. So my investigator did speak with her
5 and they talked about the trial -- she's in Reno. Sorry.
6 She's in Reno. She has been since this event. Her life has
7 spiraled. She went to drugs.

8 She, in fact, has a felony conviction, which I understand
9 would be admissible for credibility purposes. She was on
10 probation for it. I believe she may have -- well, there's an
11 issue between who you talk to, whether it was probation or
12 parole, has she been to prison. Before she read her -- I
13 would figure out so that they have the ability, you know, that
14 comes in.

15 So my investigator spoke to her on the phone. She's in
16 Reno. She had been living, at the time my investigator spoke
17 with her, at a transitional kind of place. It was weekly.
18 She was sobbing the whole time that my investigator,
19 Cristen Carnell -- sorry -- spoke to her.

20 But she did agree that she would come down. And she
21 wanted to know when she had to come and for how long. Told
22 Cristen to tell her that I was gonna have her fly in Sunday,
23 the day before Labor Day. We were gonna pretrial her on
24 Monday, Labor Day, so she could testify Tuesday, first day of

1 trial.

2 So Cristen had e -- had texted her to get her e-mail
3 address. She got the e-mail address and they sent texts and
4 e-mails back and forth about "we're gonna set up travel." And
5 then when Cristen finally sent her the e-mail that says "this
6 is what we need to do for travel," there was no response.

7 So Cristen, again, called her, texted her. No response.
8 Sent another e-mail. No response. And that was, I believe,
9 on the 30th. And then Cristen went out of town. So
10 investigator Jerome Rebels (phonetic) took over.

11 He went through all of the databases -- SCOP, NCIC,
12 CLEAR, everything that the DA investigators have available to
13 them -- to see if he could find a current address for Joni.
14 He even went and found an old police report where she was a
15 Defendant.

16 Her son was a victim. He tried to contact the son, Kyle,
17 I think his last name is Richards. He was not able to find
18 him. He did find four of her relatives that live here in
19 Las Vegas. He spoke to the four relatives. Three of them
20 have no contact with her whatsoever because of her change in
21 lifestyle. The fourth one had had contact, but not in the
22 last -- anywhere close in time to now and has no idea what her
23 number is, what her e-mail address might be, or where she
24 might be living, other than in the Reno area.

1 So he contacted DA investigators in Washoe County to get
2 their assistance. They found -- between him and they, they
3 found two residences. One was a weekly and one was a home
4 that she was at least had some association to.

5 The investigators went to both of those locations. She
6 was not there at the weekly. They didn't have her registered,
7 but they left their contact information, "if anybody sees or
8 hear from her, please contact us." At the home, they left
9 their contact information. Again, nobody was home. They left
10 cards. And as of today -- that was on September 6th. And as
11 of today, they have had no response back.

12 So I believe that we have done all that we can to get her
13 here and we have not been able to. If she were local, it
14 would be one thing. But she's out of state. So we did what
15 we could. And we would be asking to read her preliminary
16 hearing transcript.

17 THE COURT: Wait. Sorry. I thought she's in Reno,
18 no?

19 MS. LUZAICH: That's what I said. Reno.

20 THE COURT: Oh, well --

21 MS. LUZAICH: I said if she --

22 THE COURT: -- that's in the same state.

23 MS. LUZAICH: -- were here --

24 THE COURT: But she's out the state, you said.

1 MS. LUZAICH: Oh, well, out of jurisdiction. Sorry
2 about that.

3 THE COURT: Yeah, but --

4 MS. LUZAICH: I mean, if she were here, Jerome would
5 drive all over town. But because she's in Reno, she's [sic]
6 not driving all over town. He had them helping us.

7 THE COURT: Adam?

8 MR. GILL: Judge, I -- I'll deal with Mr. Welch
9 first. While I sympathize -- similar objection to the others.
10 I know this is an old case, Judge. But without -- I mean,
11 I -- I'll actually submit on Welch.

12 I do want to talk more about Hall. I think the efforts
13 have been, you know, what they are. But there are questions I
14 want to ask her live, Judge. And -- and it's a somewhat short
15 preliminary hearing transcript for her. And I appreciate
16 Ms. Luzaich's offer to kind of put her felony on the record.
17 I think there's something we can do there if Your Honor does
18 grant it. But I would like the opportunity, because she is
19 still with us -- the others, Your Honor, as you know, that you
20 granted were -- were deceased.

21 THE COURT: Right.

22 MR. GILL: So there's only --

23 THE COURT: Not much we can do.

24 MR. GILL: -- so much we can do.

1 But as for Ms. Hall, with her being alive, there are
2 questions I'd like to ask her regarding the incidents from
3 2000. So --

4 THE COURT: So in regards to -- I mean, in regards
5 to Welch, here's the deal. He's been in, you know, in the
6 hospital for five weeks with multiple, multiple issues. So
7 let's say even -- I spoke to the parties last week. They
8 think we may be -- even be able to close next week. So even
9 if he does get out, there's no way we're gonna get him to be
10 able to get in -- get on a plane and get here in that type of
11 health.

12 So as far as Joni, though, I think that -- so if we were
13 closer to the end of the trial, then I would be more inclined
14 to grant it. But I think, at this point in time, I mean, I do
15 think you can apply for -- because it's within the state, a
16 material witness warrant. I do think that Reno will help.

17 MS. LUZAICH: Oh, they will. But I have to know
18 where she is in order for them to serve it. And we have been
19 unable --

20 THE COURT: No, you don't have to have -- I mean,
21 I've gotten tons of material witness warrants for people that
22 I didn't know where the hell they were because they were
23 hiding; right? So I get the material witness warrant. It
24 goes in the system. They get popped 'cause they get picked up

1 for jaywalking or DUI or something like that. And then they
2 arrest her.

3 I'm not saying by the end of next week I'm not gonna
4 grant this. I'm just saying with --

5 MS. LUZAICH: It's premature?

6 THE COURT: It's premature at this point in time.
7 That's all I'm saying.

8 MS. LUZAICH: Okay.

9 THE COURT: With a, you know, multiple week trial,
10 right now, you still have a lot of time to do things that you
11 can do. That's all I'm saying in regards to Joni.

12 MS. LUZAICH: Okay. I understand that. I just
13 think that, based on her communications with my investigator
14 and bringing this up, that she's gone back to drugs and she's
15 spiraled and she's not gonna be located.

16 THE COURT: But people who get wrapped back up on
17 drugs and spiral, sometimes they get arrested; right? Like --

18 MS. LUZAICH: That's true.

19 THE COURT: -- I'm just saying, if this, for some
20 reason, gets looked at later, the record is much cleaner if
21 the DA has exhausted all absolute --

22 MS. LUZAICH: Okay.

23 THE COURT: -- remedies up to that point. So on
24 Hill [sic] I think it's premature.

1 MS. LUZAICH: Hall.

2 THE COURT: So -- or Hall. At this point it's
3 denied. So --

4 MS. LUZAICH: Can I orally request the warrant now
5 and then I will send the paperwork through when you sign it?

6 THE COURT: Yeah. No, I do think that -- I do think
7 you have enough to -- for the material witness warrant for
8 sure.

9 Okay. So what -- where does that leave us with today?

10 MS. KOLLINS: That leaves us with two witnesses for
11 today: Detective Castaneda and a read-in for David Welch.

12 THE COURT: You guys?

13 MR. GILL: Probably takes us to about 4:00 o'clock,
14 Your Honor. 'Cause it's already 2:00. And I had requested a
15 4:30.

16 THE COURT: I know. Every day next week we are
17 going to be completely full and you're going to have everyone
18 lined up or I'm gonna lose it. Lose it. Everybody, pack
19 them -- pack the entire day every day. We better get to 4:00.
20 'Cause they're gonna start getting pissed.

21 One of 'em got pissed the other day when I let them off
22 early. He was like (indicating) and shook his head and
23 whispered something. So I want to fill it up.

24 Other thing I need to talk to you guys about is, I cannot

1 get Juror Number 5 to stay awake.

2 MS. LUZAICH: Oh, the guy up there? Yeah.

3 THE COURT: I've done everything. I've had Chris go
4 up to him multiple, multiple, multiple times. I watch him.
5 He knows I'm watching him. Because I, like, lift my eyebrows
6 at him. I don't know what else to do at this point.

7 MR. GILL: Do we want to stipulate that he's an
8 alternate? I mean, is that a remedy that we can even --

9 MS. LUZAICH: I would just say replace him.

10 THE COURT: I -- I think he needs to go.

11 MR. GILL: It's been -- I -- and --

12 MS. LUZAICH: Oh, blatant, yeah.

13 MS. KOLLINS: You mean kick him out?

14 THE COURT: And I -- yeah. I mean, release him. I
15 know that Chris, my marshal, went up to him this morning and
16 is like, "You have got to stay awake."

17 And he said something about Mrs. Porter, like -- I think
18 what he -- like "she's ridiculous" or --

19 THE MARSHAL: Or "she's killing me" or something --

20 THE COURT: Yeah, that's what it was. "She's
21 killing me." And then he just shook his head and kind of went
22 back to sleep.

23 MS. KOLLINS: So, today, when he first got here, I
24 did notice --

1 MR. GOODWIN: I'm sorry. I'm not laughing --

2 THE COURT: No. No. It's okay.

3 MR. GOODWIN: He's killing me and goes right back to
4 sleep in front of everyone. It's kind of impressive.

5 THE COURT: Yeah. So at this point, just because of
6 how many times my marshal has had to approach him and ask him
7 to stay awake, the fact that my marshal approached him this
8 morning, during a witness testimony -- you know, sometimes I
9 understand. Like, crime scene analysts, they -- they get dry;
10 right? And you fall asleep.

11 Ms. Porter was not a dry witness. She was -- it was not
12 a dry combination between her and Ms. Luzaich, and he just
13 flat out was like "she's killing me," shook his head and then
14 closed his eyes again.

15 So at this point in time I am releasing Juror 5, [JUROR
16 NO. 5].

17 So, Chris, when you pull them in, just ask him to step
18 outside. And if you could explain the situation on that, we
19 just -- he need --

20 THE MARSHAL: You got it.

21 THE COURT: Yeah. Thank you.

22 THE MARSHAL: We lining them up, Judge?

23 THE COURT: Yes, please. And bring them in.

24 [DISCUSSION OFF THE RECORD]

1 THE MARSHAL: All rise.

2 [IN THE PRESENCE OF THE JURY]

3 THE COURT: All right. Welcome back, everybody.
4 Thank you. Please be seated.

5 We're on the record in State of Nevada versus
6 Justin Porter, C174954-1. Mr. Porter is present with Mr. Gill
7 as well as Mr. Goodwin. Both Chief Deputy District Attorneys,
8 Ms. Luzaich as well as Ms. Kollins, are present on behalf of
9 the State.

10 Ms. Kollins, what witness are we calling next?

11 MS. KOLLINS: The State would call retired Detective
12 Mike Castaneda.

13 THE COURT: Okay.

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

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

20 THE WITNESS: I do.

21 THE CLERK: Please be seated, stating your full
22 name, spelling your first and last name for the record.

23 THE WITNESS: Michael A. Castaneda,
24 C-A-S-T-A-N-E-D-A.

DIRECT EXAMINATION

BY MS. KOLLINS:

Q Good afternoon, sir. Can you tell us from what profession you are retired?

A I am retired detective with the Las Vegas Metropolitan Police Department.

Q And when did you retire?

A September 2016.

Q And how many years at Metro?

A Twenty-four years.

Q Did you retire as a detective?

A Yes, I did.

Q And what assignments as a detective did you cover while at Metro?

A During my 18 years as a detective, I worked various things: Burglaries, robberies, domestic violence, sex crimes, and child internet crimes.

Q During the year 2000, what were you assigned to?

A I was assigned to the Sexual Assault Detail.

Q Did you have a partner at that time?

A Yes, my partner was Detective Debbie Love.

Q Also retired from Metro?

A Yes.

Q Okay. Tell us a little bit about how detectives

1 were assigned to calls back in 2000.

2 A Back in 2000, when we were notified of a call,
3 depending on the location, either both of us would go to the
4 crime scene or both of us would go to the specific hospital
5 where the sexual assault exam was being conducted. It just
6 depends on the time. Sometimes we would also split. One
7 would go to the crime scene and one would go to the hospital.

8 Q And back in 2000, did you become aware of a series
9 of sexual assaults and robberies that were believed to be
10 connected?

11 A Yes.

12 Q And how is it that you became aware of that series,
13 or connected series of events?

14 A That was based on the time, the location. 'Cause if
15 you looked at -- started looking at everything, it was roughly
16 a two-mile radius, as far as location. The similarity of the
17 suspects, similarity -- I shouldn't say suspects, suspect.
18 Similarity as far as the method of operandi, the MO. His
19 features, weapon being used, the type of attack that was being
20 perpetrated against the victims.

21 Q When you say "type of attack," what do you mean?

22 A So as far as the female victims, all of them were
23 sexually assaulted. Sometimes they were instructed to perform
24 fellatio on the suspect. One other similarity, as far as with

1 the sexual assault, he was using makeshift condoms during
2 these attacks. Anything that he could find within the house.

3 Q And were some of the people being restrained?

4 A Yes. There -- you know, at one point after the
5 attack, there would be restrained, usually with an electrical
6 cord of some type, whether it be a power cord from a lamp,
7 phone cord, handkerchief, scarf, something.

8 Q Was there any suspicion that the person was arriving
9 on foot?

10 A Yes. And two of the incidents that I remember, the
11 victim's vehicle was taken and then later recovered.

12 Q And then another one was a baby carriage used to
13 transport out of the residence?

14 A Yes. And the last sexual assault, in that victim,
15 her name was Joni Hall. And in that victim, a TV was taken, a
16 portable CD player, Lennox CD player and then the stroller.
17 And then, later, that portable CD player was turned over to us
18 by an acquaintance of the Defendant who we later learned was
19 Justin Porter.

20 Q Okay.

21 MR. GILL: Your Honor, can we approach?

22 THE COURT: Sure.

23 [BENCH CONFERENCE BEGIN]

24 MS. KOLLINS: I know, nonresponsive.

1 MR. GILL: What's that?

2 MS. KOLLINS: Go ahead.

3 MR. GILL: No. No. No. No. No. If -- if we're

4 kind of delaying the ruling on Joni Hall, are we just talking

5 about what he --

6 MS. KOLLINS: We already had the crime scene.

7 MR. GILL: Fair.

8 MS. KOLLINS: We already had --

9 THE COURT: Yeah, I think -- I don't think she's

10 gone into anything here that would be hearsay that would

11 violate that as of yet.

12 MR. GILL: Okay.

13 THE COURT: I mean, I agree you can't, you know, get

14 into Joni, the entire --

15 MR. GILL: No, I got it.

16 THE COURT: -- Joni. But, no, I think, right now,

17 we're good.

18 MR. GILL: Okay.

19 MS. KOLLINS: Yeah, I wasn't --

20 MR. GILL: I know.

21 MS. KOLLINS: -- intending to --

22 MR. GILL: I know.

23 MS. KOLLINS: -- have him --

24 MR. GILL: No, I just wanted to be careful.

1 MS. KOLLINS: -- do that.

2 MR. GILL: That's all. Thank you.

3 MS. KOLLINS: His answer (indiscernible).

4 [BENCH CONFERENCE END]

5 BY MS. KOLLINS:

6 Q So this group of sexual assaults, did -- was there
7 some opinion within Metro detectives, that being sex assault
8 detectives and robbery detectives, whether there was an
9 associated grouping of robberies as well?

10 A Yes, once we started looking at that location,
11 again, the time of day, these incidents were occurring -- I
12 think the earliest was at 8:00 in the evening. And the latest
13 that I remember was around 3:45 in the morning.

14 Q So suspect description, MO, those types of things?

15 A Yes.

16 Q Okay. And you did say that, usually, the females
17 were sexually assaulted, but that wasn't necessarily the case
18 in the robbery --

19 A Correct.

20 Q -- series; correct?

21 A Correct.

22 Q Okay. So were some briefings given in Downtown Area
23 Command to kind of notify the troops of what was going on in
24 that area?

1 A Yes. So, basically, as far as for the Downtown Area
2 Command, any time an incident like this was occurring, the
3 command, they would be notified or they should be made aware
4 as far as what's occurring within the area. They would tell
5 every day for their briefings, the patrol officers, say this
6 is a major incident that happened.

7 And then when we started having suspect descriptions,
8 similarities, begin, they were told to be aware of the
9 suspect, this person fitting this description.

10 Q Okay. So once sex assault and robbery kind of come
11 to -- or get this suspicion that there's some commonality in
12 the series, is a task force set up?

13 A Yes, so detectives from the Robbery Detail and the
14 Sexual Assault Detail, we start -- we started the task force
15 and started looking at the similarities, again, with the
16 description, and then also looking as far as items that may
17 have been taken from the victims in these. So if there was
18 ever a point when somebody was identified, we'd have items to
19 look for in a search warrant.

20 Q So is it fair to say that part of the goal of that
21 task force was to make contact with individuals that fit that
22 description, were in that area during the relevant time frame,
23 either the early summer of 2000?

24 A Yes. So at that time, my partner, Detective Love,

1 along with other members, along with what they call a Problem
2 Solving Unit from DTAC, were out saturating the area. Again,
3 during that time that we -- I just mentioned earlier, from
4 8:00 to 4:00, roughly. And looking for people that may match
5 that description. And identifying them and seeing if they
6 would submit to what's called a buccal swab or DNA, since we
7 did have DNA from some of our incidents.

8 Q So you said 8:00 to 4:00. Are you referring to
9 8:00 p.m. to 4:00 a.m.?

10 A Correct.

11 Q And when that task force started, were you in town
12 to work with your partner, Debbie Love, or were you somewhere
13 else?

14 A No, I was at a class in Quantico, Virginia, the FBI
15 academy. And then after that class, I was on vacation for two
16 weeks.

17 Q Now, that task force was kind of an ongoing thing
18 for several days, commencing June 13th of 2000; correct?

19 A Correct.

20 Q And just to just kind of describe that a little bit
21 more, any contact that was had was somebody that fit the
22 description of -- of the perpetrator of this series, that
23 contact was voluntary, and any evidence you received from them
24 was consensual; correct?

1 A Correct. And that's why, had the person who they
2 ever made contact acknowledge that with a consent to search
3 card. It was them giving us permission to obtain that. If
4 somebody refused to provide that consent, then we just walk
5 away. There was no reason to try to obtain a search warrant.

6 Q So fair to say those efforts were exclusionary as
7 well as inclusive? In other words, you were excluding people
8 and attempting to find a suspect.

9 A Correct. So any DNA that would have been obtained
10 would have been compared with the DNA that we had from the
11 scenes and then, obviously, if it was excluded, it just, you
12 know -- we wouldn't pursue that person, you know, any further.

13 Q Now, did there come a time just before that task
14 force was initiated that detectives learned there was a DNA
15 match between a couple of the (indiscernible)?

16 A Yes. And -- so Detective Love, since it was her
17 case -- or several of the cases were hers, she was the lead
18 detective on this. And she did become aware that DNA from
19 Teresa Tyler's event and Ramona Leva's event matched.

20 Q Okay. And, again, to no known suspect; correct?

21 A Correct.

22 Q Did you learn that on June 13th -- well, let me ask
23 it this way: Did you review, like, the people that the task
24 force made contact with? Like, a list of names like, oh,

1 (indiscernible) contacted this person, this person, this
2 person, got DNA. Did you ever review that?

3 A No.

4 Q Okay. Did -- was there a time that you became aware
5 that Justin Porter was contacted by Debbie Love?

6 A Yes, when I returned from vacation, she had
7 mentioned that she made contact with -- with an individual on
8 June 13th.

9 Q Okay. And did she -- and you -- did you learn that
10 she got a buccal swab of that individual?

11 A Yes.

12 Q Now, when -- after that buccal swab of Justin Porter
13 was obtained, just to be clear, that task force continued on
14 making consensual contacts with individuals; correct?

15 A Right.

16 Q Okay. And was there a particular piece of
17 information that came to you that caused the case to kind of
18 start to move forward very quickly?

19 A Yes. Well, on July -- I believe it was 11th or so,
20 Debbie Love gets notification that the DNA or the buccal swab
21 that had been entered -- that had been collected, I should put
22 it this way, is now available to be analyzed.

23 So what happened in the process, any evidence that was
24 collected goes to our evidence vault. And it gets inputted

1 into a database or to the system. And then once it's
2 available to be examined, then she would receive that
3 notification, as was in this case.

4 So she put a request in to have that DNA, along with any
5 other buccal swab that may have been collected around that
6 time, to be examined.

7 Q And when you say "buccal swabs collected around that
8 time," you're referring to buccal swabs collected during that
9 task force; correct?

10 A Correct.

11 Q So as those swabs came in and became available for
12 testing, profiles were requested from the lab.

13 A Correct.

14 Q So we didn't just do that for Justin Porter's, we
15 didn't just pull his out and say, "Oh, we're gonna test this
16 guy."

17 A Correct.

18 Q And so after that testing of Mr. Porter's buccal
19 swab was done, did you receive some information that caused
20 everything, again, to move forward rather quickly?

21 A Yes, on August 10th we received -- Detective Love
22 received a call from Dave Welch, from the crime lab, stating
23 that he had a match from the D -- DNA from Justin Porter to
24 the two crime scenes that DNA collected from Teresa Tyler and

1 Ramona Leva.

2 Q So as her partner, once you both received this
3 information, what's the very next thing that you do?

4 A Start preparing for a search warrant. So I drove
5 down to the residence that we were able to identify for
6 Justin Porter, and I got a physical description so I could
7 obtain a search warrant.

8 Q And --

9 A And then I started authoring -- authoring a search
10 warrant, collecting all the information from all the different
11 cases that had the similar MOs and, obviously, with the two
12 matching DNA profiles.

13 Q And we're talking about the residence of 208 North
14 13th Street, apartment 3, Las Vegas 89101?

15 A Yes.

16 Q Okay. And this collection of information and
17 drafting of the search warrant, is that a quick process or
18 does that take a while?

19 A No, that was a lengthy process. Again, reviewing
20 every case that we had and then having the robbery detectives
21 come over and provide the information for their case, or
22 cases, I should say. So that was Detective Andersen that was
23 helping with that.

24 So as I typed that out, I prepared all that. And then

1 getting a DA, District Attorney to review it and then trying
2 to locate a judge to approve and sign the search warrant.

3 Q And so that probably takes the better part of a
4 business day; correct?

5 A Yes.

6 Q Okay. And did you accomplish all those steps in
7 this case?

8 A Yes.

9 Q Okay. And so once the judge signs off on a search
10 warrant, how -- how do you serve that search warrant?

11 A Well, we have --

12 Q Or how did you serve it in this case, I guess I
13 should ask?

14 A So in this case we had couple detectives that were
15 over -- went over to that area because of a traffic stop that
16 had been conducted. And that traffic stop was on
17 Justin Porter's mother, Angela, and stepdad, Mr. Prevost. And
18 that traffic stop was because of a traffic violation. It
19 wasn't like they were looking for those people. They just ran
20 a red light or whatever it may have been.

21 Patrol stopped 'em, identified 'em. Once they're
22 identified, we, the detectives, went over there. I still
23 conducted a -- typed out the search warrant, finished that.
24 And they'd obtained -- Detective Jensen was one of the

1 detectives. He had obtained -- after explaining to them what
2 was going on and that they believed Justin Porter, their son,
3 was the possible suspect or the suspect in this investigation,
4 he -- they gave him consent to search.

5 But we didn't search on that consent. We waited for the
6 search warrant. Once I had the search warrant signed, I
7 con -- I called Detective Jensen, told him the search warrant
8 was signed. They began the search of the residence at that
9 time and then I arrived later with the search warrant, the
10 sealing order, and then helped with the search.

11 Q And that search warrant, when it was served, was
12 that served -- was anybody home when it was served?

13 A Angela Porter would -- would have been home and --
14 and her husband, Mr. Prevost.

15 Q So when you served the search warrant, was it matter
16 of simply knocking on the door, showing them the search
17 warrant, and entering or was it executed in any different
18 fashion?

19 A It was executed differently because, again, they
20 were there. The parents had shown back up. And they spoke
21 with Detective Jensen. He told 'em that they could enter the
22 residence 'cause we're still waiting on the search warrant but
23 not to remove anything. And I'm sure he would have had 'em
24 leave the front door open, just so he could see what was going

1 on inside the residence while they, you know --

2 MR. GILL: Your Honor, objection as to speculation
3 as so what --

4 THE COURT: So --

5 MS. KOLLINS: I --

6 MR. GILL: -- as to what Detective Jensen did.

7 THE COURT: Sustained.

8 BY MS. KOLLINS:

9 Q The execution of this warrant, it did not involve
10 SWAT or breaking down doors or anything like that; right?

11 A No.

12 Q Okay. Have you reviewed any of the photographs from
13 the execution of the warrant?

14 A I briefly reviewed some of 'em.

15 Q Okay. I am going to show you -- I'm gonna show you
16 up there for a second, let you flip through 'em, State's
17 stipulated 337 through 358.

18 MS. KOLLINS: If I may approach the witness,
19 Your Honor.

20 THE COURT: Yes.

21 MR. GILL: And that's correct, Your Honor. I
22 reviewed these previously. No objection.

23 THE COURT: Okay.

24 [STATE'S EXHIBITS 337-358 ADMITTED.]

1 BY MS. KOLLINS:

2 Q You can just look at these to yourself and if you
3 can keep them in order and I'll come back and ask you some
4 questions about it.

5 Look familiar?

6 A Yes.

7 Q Thank you. So what's the date of the execution of
8 that warrant?

9 A That would have been on the 11th of August.

10 Q August 11th? Showing you admitted State's 338, do
11 you recognize what's depicted there?

12 A Yes, that's the apartment for Justin Porter and the
13 front door and the windows on both sides as described in the
14 search warrant.

15 Q Okay. And State's Admitted 339?

16 A Yes, that's showing the apartment number with the
17 208. And it's a single-story apartment complex.

18 Q Believe that's 340. Do you recognize that?

19 A Yes, and that's the number that's on the apartment
20 for Justin Porter, number 3.

21 Q And no damage or forced entry of the front door;
22 correct?

23 A No.

24 Q And none was -- again, none was used to gain entry

1 in this residence; right?

2 A Correct.

3 Q Okay. Had you been to that residence before that
4 day, before you went and did the visual and got the
5 information for the warrant?

6 A No.

7 Q Had your partner, Debbie Love, been there?

8 A Yes.

9 Q And what did she do there?

10 A That's when she went there and spoke with
11 Angela Porter and Justin Porter and got the consent to search
12 for the buccal swab.

13 Q Okay. Showing you State's Admitted 341, what's
14 depicted there?

15 A Looks like it's a little closet. Can't really tell
16 what's on the ground there, but --

17 Q Did you recover some items of significance from that
18 closet?

19 A Yes, we recovered some red shorts that had the brand
20 name "BOSS" on 'em. We had -- we recovered white tennis shoes
21 and a black T-shirt.

22 Q And 342, just a different angle of that closet as
23 well as 343; correct?

24 A Yes.

1 Q And then you said you obtained some red shorts, some
2 white shoes and black -- I'm sorry. What was that?

3 A A black T-shirt.

4 Q Showing you what's been admitted as State's 344, do
5 you see the T-shirt, shorts, and tennis shoes in that picture?

6 A Yes, they're by the doorway. It looks like it's to
7 the bathroom.

8 Q Okay. Are those the red shorts?

9 A Yes.

10 Q Okay. They don't look very red up on the screen;
11 right?

12 A No. But -- but there's another picture.

13 Q And white tennis shoes?

14 A Yes.

15 Q And then the black clothing behind that, is that the
16 black T-shirt?

17 A Yes.

18 Q Did you find anything of significance in the
19 bathroom?

20 A Not that I remember.

21 Q Okay. Did you find a jacket, a BOSS jacket that you
22 found of significance?

23 A If we found a BOSS jacket, it would have been on the
24 search warrant return, as far as items.

1 Q Okay. Showing you State's 346, do you see the
2 jacket?

3 A Doesn't look like -- that's -- looks like the red
4 shorts.

5 Q Okay. I apologize, detective. I have some
6 directional things on my notes confused. I'm gonna show you
7 348. That's a close-up of the red shorts; fair?

8 A Yes.

9 Q And what I showed you early -- what I show -- last
10 showed you in 346, that was incorrect. That was my mistake.
11 Sorry about that.

12 And a close-up, 350, of the white shoes.

13 A Yes.

14 Q And State's Admitted 351, the black T-shirt?

15 A Yes.

16 Q And there are 352, the BOSS shorts unfolded; fair
17 enough?

18 A Yes.

19 Q And why did you collect these particular items of
20 evidence?

21 A Those were described by some of the victims, as far
22 as footwear that was described by some of the victims or the
23 clothing that the suspect was wearing.

24 Q Is it your practice to document everything you

1 retrieve from a premises pursuant to a search warrant?

2 A Yes, that's required.

3 Q Okay. And what's that called?

4 A That's a search warrant return.

5 Q And showing you State's Admitted 353, what are we
6 looking at there?

7 A So that's the search warrant return. That's the
8 document that would have been left, in this case, with the
9 sealing order, describing what was taken from this location.
10 And it states the white tennis shoes, the red shorts, and then
11 the black shirt -- or -- yeah, black shirt.

12 Q Okay. And just for the initial entry into the
13 residence, do you recognize what's depicted in State's
14 Admitted 354?

15 A Yeah, that would have been walking into the living
16 room area.

17 Q And same in 355?

18 A Yes.

19 Q And 356?

20 A Yes, obviously you can see -- you can see the front
21 door there.

22 Q Okay. And what about 358?

23 A Yes, same.

24 Q And the condition of -- of this apartment, as I

1 showed you, did Las Vegas Metropolitan Police Department leave
2 it as they found it, save and except those items they took
3 with 'em?

4 A Yes.

5 Q So nothing was destroyed? knocked around? turned
6 over? broken?

7 A No.

8 Q Did you also learn that on August 10th, by the time
9 this warrant was executed, that Justin Porter was no longer in
10 Las Vegas?

11 A Yes, we had learned that from Mr. Prevost and
12 Angela Porter.

13 Q Okay. And did you know where he went in Chicago,
14 like who he was staying with?

15 A Mr. Prevost had provided a phone number stating that
16 he was with his natural father there in Chicago.

17 Q At some point was someone provided a bus ticket that
18 showed Justin Porter's travel?

19 A Yes, but I don't remember who that was.

20 Q Okay. That wasn't you?

21 A No.

22 Q Okay. And because you learned that Justin was in
23 Chicago, did you make some efforts to contact Chicago law
24 enforcement?

1 A Yes. As I stated earlier, I attended a class in the
2 FBI academy of Virginia. And one of those attendees was a
3 detective from Chicago. And so I reached out to him and
4 provided him with information.

5 Q Okay. Now, did you also, as part of your
6 investigation, have contact with a Kris Delaney (phonetic)?

7 A Yes.

8 Q Okay. And who was that in relation to
9 Justin Porter?

10 A Kris or -- Kris De --

11 Q Christian --

12 A Or --

13 Q Go ahead. Sorry.

14 A Kris Delaney was a friend of Justin Porter.

15 Q And physically, as compared to Justin, do you recall
16 what he looked like?

17 A Not off the top of my head, no.

18 Q Did you obtain a buccal swab of Christian Delaney?

19 A Uh --

20 Q Or did someone at some point obtain a buccal swab of
21 Christian Delaney?

22 A Yes, that would have been my partner,
23 Detective Love.

24 Q Okay. Was he ever, Mr. Delaney, ever linked to any

1 of these incidents that we've talked about today that were
2 part of the series?

3 A No.

4 Q Okay.

5 MS. KOLLINS: I will pass the witness, Your Honor.

6 THE COURT: Mr. Gill?

7 CROSS-EXAMINATION

8 BY MR. GILL:

9 Q Detective, I'm gonna follow up real quick with that
10 last question. Ms. Kollins asked you if Kris Deloney had been
11 connected to any of these you [sic] incident -- incidents that
12 you were investigating. Do you recall that question?

13 A Correct.

14 Q And when you said "no," did you mean DNA-wise or --
15 or what did you mean exactly?

16 A Yeah, DNA-wise.

17 Q So the investigation didn't pull up any Kris Deloney
18 DNA; correct?

19 A Correct.

20 Q Or, like, hair samples --

21 A Correct.

22 Q -- or fingerprints; is that all correct?

23 A Yeah, I don't remember any fingerprints being
24 recovered at any of the scenes that I was aware of.

1 Q And, again, of -- of Kris Deloney?

2 A Right.

3 Q And, detective, you were part of the task force;
4 right?

5 A Yes.

6 Q Or -- or did you help set it up? What was your
7 role?

8 A No, I was just another detective assigned to the
9 task force.

10 Q And do you remember how many detectives were part of
11 that task force, roughly?

12 A Roughly, probably six to eight.

13 Q Okay. And -- and you are the detective who drafted
14 the search warrant.

15 A Correct.

16 Q And when I say "drafted," like you said, it takes a
17 while. You got to put all these things in and talk to all
18 these different detectives; correct?

19 A Correct.

20 Q And you drafted that up.

21 A Correct.

22 Q You were present -- correct? -- when the search was
23 conducted?

24 A Towards the end, yes.

1 Q And -- and then -- so explain that a little bit to
2 the jury.

3 A Well, as -- as I stated earlier, since I was
4 authoring the search warrant, I had go get it signed. Once
5 the search warrant was signed, since we already had detectives
6 at the scene for the execution of the search warrant, they
7 began the search.

8 Q So -- and -- and I just want to kind of go in with
9 that, the workings of that. You -- you're drafting it, and
10 you said, earlier, you're waiting for a signature; correct?

11 A Right.

12 Q Whose signature?

13 A Well, it would be the judge's signature for
14 approving the search warrant.

15 Q Okay. So the search warrant goes to a judge for
16 approval before you can do the search.

17 A Correct.

18 Q Or conduct the search?

19 A Correct.

20 Q And when that started, the -- the start of the
21 conducting of the search, you weren't present.

22 A Correct.

23 Q You came later.

24 A Correct.

1 Q And you -- Ms. Kollins had shown you that property
2 return.

3 A Right.

4 Q That's your handwriting; correct?

5 A Uh --

6 Q You want me to show it to you again?

7 A Show it to me again. The --

8 Q Thank you.

9 MR. GILL: Court's indulgence.

10 THE COURT: Yes.

11 MS. KOLLINS: It's in the stack.

12 MR. GILL: Is it on the bottom? Oh, got it.

13 BY MR. GILL:

14 Q And I'm showing you 353, State's 353. You want me
15 to blow up that a little bit?

16 A All right. So that is not my handwriting. That is
17 Detective Jensen's handwriting and Sergeant Lori Crickett's
18 handwriting.

19 Q Okay. And you can tell that how?

20 A Based on the bottom -- the signature and the P
21 number.

22 Q Okay. And --

23 A And, plus, that -- that's a lot neater than mine
24 would be.

1 Q The handwriting is neater?

2 A Yeah.

3 Q Okay. But you can see a "Barry" there.

4 A Right.

5 Q And then --

6 A The "L. Crickett" would be for Lori --

7 Sergeant Lori Crickett.

8 Q Okay. But were you present when those items were

9 recovered?

10 A Yes.

11 Q So when -- when you testified earlier you actually

12 saw the shorts in the apartment?

13 A Yes.

14 Q The -- the black shirt?

15 A Yes.

16 Q And what was the other item?

17 A The white --

18 Q The shoes?

19 A White shoes.

20 Q And there was only those three items recovered.

21 A Correct.

22 Q Now, you also testified that your partner at the

23 time, Detective Love -- and I'm skipping back a little bit --

24 got a consent to search for a buccal swab.

1 A Correct.

2 Q And were you present for any of that?

3 A No, I was out of town.

4 Q Okay. And -- but you were made aware.

5 A Correct.

6 Q And did she mention -- "she" being Detective Love.
7 Did she mention anything out -- outstand -- outrageous or
8 anything like that about the obtaining of that buccal swab?

9 A No.

10 Q She did not mention it.

11 A (Witness shakes head)

12 Q And do you recall when in time that buccal was
13 taken, as it relates to the search of the apartment? Was it
14 same day? Day after that?

15 A Buccal swab would have been done on June 10th. And
16 the search warrant wasn't executed until August 11th.
17 Start -- began typing it up on August 10th.

18 Q Okay. And -- strike that.

19 So the buccal was done two months prior, approximately?

20 A Correct.

21 Q Give or take a few days.

22 Now, as far as other scenes, was the apartment search the
23 only scene that you responded to in this investigation?

24 A No, I went to other -- other crime scenes. I would

1 have went to Teresa Tyler's crime scene because it was --

2 Q And --

3 A -- Debbie Love was, again, assigned to that. So as
4 a partner --

5 Q And --

6 A -- and then --

7 Q And you mention Hill [sic]?

8 A Yeah. Joni Hill's [sic], yeah.

9 Q Okay. Were those two?

10 A Well, I went to another one. Leona Case.

11 Q Okay.

12 A I went to that crime scene.

13 Q So you were active pretty much throughout the
14 investigation, as soon as it started.

15 A Yes.

16 Q And I -- I believe Ms. Kollins and -- sorry if I'm
17 asking a question she asked. As far as a physical description
18 of Mr. Deloney, you could not give one?

19 A No, I can't -- that's 22 years ago.

20 Q Understood. Understood.

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

22 THE COURT: State?

23 MS. KOLLINS: A couple questions, Your Honor.

24 ///

REDIRECT EXAMINATION

BY MS. KOLLINS:

Q Detective -- former Detective Castaneda, was that buccal swab taken on June 13th or June 10th? Because you said June 10th just now.

A Yeah. I'd have to re -- remember -- refresh my memory. But it -- it was June 13th or June 10th. It was one of those two days.

Q Okay. Prior to the buccal swab being taken, was there a match between the Leva and Tyler cases?

A Yes, it was DNA -- there was a DNA match between those two cases.

Q As to the date of the buccal swab, would it refresh your recollection to look at your report?

A Yes.

Q Okay.

MS. KOLLINS: May I approach the witness, Your Honor?

THE COURT: Yeah.

BY MS. KOLLINS:

Q Can you just read that quietly to yourself and then I'll ask you --

Does that help you remember?

A Yes, it does.

1 Q And what's the date of the buccal swab?

2 A June 13th.

3 Q Okay. And I -- I think Mr. Gill asked you, was
4 there anything unusual noted about the retrieval of that
5 buccal swab by Debbie Love?

6 A No, nothing unusual.

7 Q Okay.

8 MS. KOLLINS: No more questions, Your Honor.

9 THE COURT: Mr. Gill?

10 MR. GILL: Just very quickly, Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. GILL:

13 Q Detective, this -- you describe the area as, like, a
14 two-mile radius. Do you remember that?

15 A Yes.

16 Q And that being the -- the victims' homes?

17 A Correct.

18 Q Did you patrol -- excuse me. You weren't patrolling
19 at the time. But investigating at the time, was that a high
20 crime area? Would you classify it as a high crime area?

21 A During my career, there are several areas I would
22 say were high crime areas, but that -- I'm not the chief of
23 police or whatever, so --

24 Q Not -- not privy to those statistics.

1 A Right.

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

4 MS. KOLLINS: Nothing else, Your Honor.

5 THE COURT: Anything based on that?
6 Anything for this witness?

7 Sir, thank you so much for coming in today. Please
8 don't -- please do not share your testimony with anyone else
9 involved in the case as it's ongoing. But we appreciate you
10 and you are excused.

11 THE WITNESS: Thank you.

12 MS. KOLLINS: Your Honor the State is going to read
13 in testimony of Forensic Scientist David Welch. That will be
14 conducted by Brandon Albright, who I have just notified to
15 come in the courtroom. I will get the Court their copy.

16 THE COURT: Okay.

17 MS. KOLLINS: May I approach?

18 THE COURT: Thank you.

19 MS. KOLLINS: Yes, ma'am.

20 MR. ALBRIGHT: Your Honor, I apologize. I'm gonna
21 be reading. May I have a cup of water, though? My water
22 bottle ran out.

23 THE COURT: Yeah. Sure.

24 MR. ALBRIGHT: I don't have a water.

1 THE COURT: We have some water up here. We'll get
2 it for ya.

3 MS. KOLLINS: Mr. Albright, they're gonna swear you
4 in as yourself and then (indiscernible).

5 MR. ALBRIGHT: Okay.

6 BRANDON ALBRIGHT,
7 Was first duly sworn to read the answers in the transcript
8 to the best of his ability:

9 MR. ALBRIGHT: Yes.

10 THE CLERK: Please be seated, stating your full
11 name, spelling your first and last name for the record.

12 MR. ALBRIGHT: My name is Brandon Albright,
13 B-R-A-N-D-O-N. Albright, A-L-B-R-I-G-H-T.

14 THE COURT: All right, guys. And for your notes, it
15 looks like Mr. Welch testified on November 29th of 2000. And
16 as with the others, he was sworn in just like Mr. Albright was
17 sworn in.

18 And the direct examination will be by Ms. Kollins, or
19 District Attorney Herndon at the time.

20 [TRANSCRIPT READING BEGIN]

21 DIRECT EXAMINATION

22 BY MS. KOLLINS:

23 Q Mr. Welch, could you please tell the Court what your
24 profession is?

1 A I'm employed as a criminalist with the Las Vegas
2 Metropolitan Police Department. I am currently assigned to
3 the DNA biology laboratory.

4 Q How long have you been employed with the
5 Metropolitan Police Department?

6 A Approximately 23 years.

7 Q And has that entire employment period been as a
8 criminalist?

9 A Yes, it has been.

10 Q And how long have you specifically been involved in
11 the DNA biology section?

12 A I've been working in the DNA section for
13 approximately four or five years.

14 Q Have you had occasion in the past, pursuant to your
15 employment and work and experience within the DNA biology
16 section of the Metropolitan Police Department to give
17 testimony as an expert witness in courts of law?

18 A Yes, I have.

19 Q Would that include the justice courts and district
20 courts of Clark County, Nevada?

21 A Yes.

22 MS. KOLLINS: Judge, previously in speaking with
23 Counsel, I think they agreed to stipulate to qualifications
24 for purposes of this hearing.

1 THE COURT: Is that correct?

2 MS. KOLLINS: An expert in the area of DNA analysis?

3 MR. GOODWIN: Yes, Judge. That's correct.

4 THE COURT: Okay. I do believe that Mr. Welch is an
5 expert in that area.

6 MS. KOLLINS: Thank you.

7 THE WITNESS: Thank you. Thank you.

8 BY MS. KOLLINS:

9 Q Mr. Welch, did you have occasion to become involved
10 in doing some work in relation to a series of crimes here in
11 Las Vegas known as the Downtown Area Command series?

12 A Yes, I did.

13 Q And could you tell us how it was that you first
14 became involved in doing some work on those crimes.

15 A Well, originally, requests are received from the
16 laboratory from various details from the Metropolitan Police
17 Department. Going back to approximately a year, we started
18 receiving some requests from our Sexual Assault Detail that
19 indicated that there was a series of sexual assaults that they
20 thought were tied into one another. And they began submitting
21 their sexual assault kits from a variety of victims. And at
22 that time they didn't have any suspects.

23 Um, subsequently, they thought that perhaps more sexual
24 assaults were being committed by the same suspect and they

1 slowly began developing some suspects. So over a period of
2 time, over a period of months, several sexual assault kits
3 were submitted to the laboratory and numerous buccal swab
4 or -- or standards from suspects were submitted.

5 It's generally our policy that if a case is determined to
6 be a series case, which this was, that one criminalist is
7 assigned the case. And that one criminalist would analyze all
8 the sexual assault kits and buccal swabs that they thought
9 were associated with this case. So that's exactly what
10 happened in this case.

11 Q Now, can you give us just a brief overview, in terms
12 of DNA analysis, what is involved in doing an examination
13 against items and against known people trying to establish a
14 DNA link.

15 A Well, in the case of -- of sexual assault kits,
16 basically the kits are received from -- kits are taken at the
17 hospital. They are then submitted to our laboratory. We
18 begin the examination of the kit. In the case of a sexual
19 assault kit, the kit contains a variety of different pieces of
20 physical evidence: Blood samples, vaginal swabs, saliva
21 samples, whole blood from the victim.

22 So we begin by processing all the evidence within the
23 kit. In a case of a sexual assault, some of the most
24 important pieces of evidence are the vaginal swabs, if the

1 victim claimed vaginal penetration.

2 So we would then examine the vaginal swab, determine if
3 there's any semen present. If there was any semen present,
4 determine if any spermatozoa are present. If that's
5 spermatozoa, which we get the profile, the DNA profile of the
6 suspect from and then begin processing that swab by trying to
7 separate out the vaginal swabs from the spermatozoa. And then
8 profiling both the vaginal epithelial cells and the sperm.

9 Q How do you go about separating vaginal epithelial
10 cells off the vaginal swab from the sperm cells or
11 spermatozoas that may be on a vaginal swab?

12 A It's basically a chemical step -- what we call a
13 chemical separation. In other words, it's not a physical
14 separation, if you could imagine that. There isn't a little
15 screen where larger female cells are separated from smaller
16 spermatozoa. In fact, what we do is we treat those two cells
17 individually, in different ways.

18 And the idea is that we know that the vaginal epithelial
19 cells are, per se, weaker cells than the sperm cells. So we
20 can treat those cells with chemicals in a certain way, break
21 apart those cells and then collect that DNA which comes from
22 the female. Once that DNA is collected, we process the --
23 the -- that extract in a different way where we treat it with
24 a different set of chemicals and then we break apart the sperm

1 cells and then collect that DNA. And that would be the
2 profile of the suspect.

3 Q Okay. Now, you mentioned earlier that, in this
4 investigation, you had been submit -- submitted to you a
5 variety of sexual assault kits involved in the series. And
6 over the course of time, also a number of buccal swabs from
7 suspects?

8 A Yes.

9 Q What exactly is a buccal swab?

10 A A buccal swab is a source of DNA that we use for a
11 reference standard from the suspect. And a buccal swab is
12 basically a cotton-type swab where one rubs the inside of your
13 cheek, sort of roughly, and removes those cells. Those are
14 called buccal cells. And those are a source of DNA, just as
15 all other cells in our -- in your body are a source of DNA for
16 a profile.

17 Q So when -- so when you're submitted a buccal swab on
18 a certain individual, what do you do to determine a -- a DNA
19 profile of that individual?

20 A Basically we do the same process. The beginning
21 process is that we have this buccal swab from the suspect. We
22 take that buccal swab. We extract the cells from the swab
23 itself, digest them or break up those cells, collect the DNA,
24 and then process that DNA. The end result being the profile

1 of the suspect.

2 Q Okay. And once you have a DNA profile of the
3 suspect from his buccal swab, you could then match it to a DNA
4 profile developed off sperm cells located on the vaginal swab?

5 A That's correct.

6 Q And what are we doing in making the DNA profile?
7 What exactly is that? Could you explain that to us?

8 A Well, a DNA profile basically -- a DNA -- what I
9 would call DNA typing. What we're doing is we're target, um,
10 sites on chromosomes that are -- vary from individual to
11 individual. So the DNA's packaged within these chromosomes
12 within the cells. And they are -- we know there are sections
13 of this DNA that vary from individual to individual. So when
14 we look at those sections and determine what DNA type, one
15 particular sample of DNA is and compare it to another.

16 Q How do you come up in terms of -- well, my
17 understanding is that when you compare a DNA profile from a
18 suspect to a DNA profile developed, let's say, off a -- from
19 spermatozoa from a vaginal swab, you're also able to make
20 determinations on how frequently that would occur within the
21 human population.

22 A Yes.

23 Q And how do you arrive at those results?

24 A There's a statistical number associated with these

1 DNA types. Just like there's a statistical number associated
2 with ABO types. In other words, we know that -- you talk
3 about ABO, that -- let's just say 40 percent of the population
4 are type A. We just know that from studies that have been
5 over, you know, hundreds of years. And we know if we talk
6 about a type B that that's approximately ten percent of the
7 population.

8 Well, all these DNA types can be looked at in a certain
9 way. We know that if you look at these variance at the
10 different loci and -- or locations that we're looking at,
11 there is a statistical number, a percentage of people that
12 fall into one group. Another percentage of people fall into
13 this group -- this other group. Other percentage of people
14 fall into this group.

15 So from the knowledge of that, we can come up with the
16 statistical number that gives a probability.

17 Q Okay. As part of your work in this case, did you
18 have occasion to examine a sexual assault kit collected under
19 event number 0003252971 involved -- involving a victim named
20 Ramona Leva?

21 A Yes, I did.

22 Q And did sexual assault kit include the normal things
23 that you would see in a sexual assault, mainly vaginal swabs
24 that were taken from Ms. Leva at the hospital?

1 A Yes.

2 Q And were you able to determine whether or not there
3 were spermatozoa located on the vaginal swab?

4 A Yes. Yes, I did.

5 Q The chart that's sitting up to your right there, do
6 you recognize what's depicted on that chart?

7 A Yes, that is a blowup of a DNA summary chart that
8 was produced by myself in the forensic laboratory.

9 Q Would referring to that chart during your testimony
10 be helpful to you in explaining the things you did in regard
11 to examining the sexual assault kit of Ramona Leva and later
12 on comparing it to a buccal swab sample collected from
13 Justin Porter?

14 A Yes, I think it would.

15 Q Could you explain, if you would, the examination of
16 the vaginal swab of Ramona Leva and how -- and how you reached
17 the results you reached that are depicted on that chart?

18 A Well, on the summary chart here is the results of
19 the vaginal swab of Ramona Leva. It's identified on the chart
20 as the sperm fraction. We also refer to that sometimes as the
21 E2 fraction. And underneath that was the original event
22 number that that particular sexual assault came into the
23 laboratory under.

24 Okay. If we look at the results of the chart, which are

1 these series of blocks here, they are DNA STR results. Simply
2 speaking, these -- these refer to different sites on the
3 chromosome. For example, the first one is D3D, refers to a
4 chromosome, chromosome number 3; S1358 refers to a site on
5 that chromosome. That is sort of a more modern, common
6 terminology for identifying the chromosome site.

7 You can see that the majority have a "D" with a site
8 number. There are also some letters there, VWA and TH01.
9 Some of the older technology doesn't use this new terminology,
10 but they refer to also a specific site on a specific
11 chromosome.

12 So TH01 is actually on chromosome number 11, and VWA is a
13 chromosome number 2. So --

14 Q So with regard -- I'm sorry. With regard to that
15 row that we're referring to, vaginal swab Ramona Leva sperm
16 fraction D2, those 14 blocks to the right of that are all
17 referring to specific sites on one chromosome.

18 A Right. They are specific sites on different
19 chromosomes.

20 Q But you can think of each one of those blocks as
21 being a type.

22 A Right. And instead of using different designations
23 like we do in the ABO system, where somebody would be type A,
24 B, AB, or O, in the DNA typing system it's just more

1 convenient and easier to understand if we use numbers.

2 So within the DNA typing system that we incorporate in
3 our laboratory, we just use a numbering system, okay? So if
4 you look at the first block under Ramona Leva, vaginal swab,
5 sperm fraction E2, under D3 you see that we would just call
6 her -- her DNA type in D3S1358 is A1516. That would be
7 similar to someone being ABO type and saying they're just --
8 they're type A or type AB.

9 And if we go down the line, you can see that each --
10 under each one of these DNA sites we have a type. So in VWA,
11 Ramona Leva's type would be 15, 16. That FGA site.

12 Q Now, I'm sorry. Is that Ramona Leva's type or the
13 sperm fraction?

14 A Oh, excuse me. I'm sorry. That is a sperm fraction
15 type. Excuse me.

16 Q Uh, Ramona Leva, we always do --

17 [TRANSCRIPT READING END]

18 MS. KOLLINS: Oh, I'm sorry.

19 [TRANSCRIPT READING BEGIN]

20 BY MS. KOLLINS:

21 Q Okay.

22 A Ramona Leva. We always do standards from the victim
23 and use them as a reference standard to see if there's any
24 mixture in with the two fractions. So, again, I'm sorry I

1 misspoke. But Ramona Leva --

2 Q That's okay. You can stand up if you need to refer
3 to anything.

4 A Okay.

5 Q But just for edification of the record, the top
6 column across here is labeled "The Bloodstain Card of
7 Ramona Leva." So that would be the known DNA profile of
8 Ramona Leva?

9 A Correct.

10 Q And then the second row across refers to the female
11 cells that were located on that vaginal swab.

12 A Right.

13 Q And would we expect that to correlate as well to
14 Ramona Leva's DNA profile?

15 A Exactly.

16 Q And then on the third row in the vaginal swab with
17 the sperm fraction, that, we would expect to relate to the DNA
18 profile of the perpetrator of the sexual assault.

19 A Exactly.

20 Q Okay. Gotcha.

21 A Okay. So, again, if we look at her standard, per
22 se, each one of these refers to a type at the certain location
23 on a particular chromosome. So we can see, if we go across
24 here, she would be called 15, 16 and 16, 18 and so on. As you

1 said, we would expect to find the same type on her vaginal
2 swabs because every cell in your body should have the same
3 DNA. And if you look at the second row of types here, you can
4 see that they do match. 15, 16; 15, 16, 18, so on and so
5 forth.

6 There's a site that we look at that's called a melungeon.
7 And that determines sex. So in this case, a double X means a
8 female. And we would expect her to be a female. In the case
9 of the sperm fractions, we look down here. Before we had a
10 suspect swab on this case, we just generated a profile of the
11 suspect in this particular rape case.

12 We didn't have a suspect at the time and this was the
13 profile that was generated. Of course, since it's a sperm
14 fraction, it's a male. And this is the types of the suspect
15 at that particular time.

16 Later on, I believe it was sometime in August, we
17 received buccal swabs from a variety of suspects. One of them
18 happened to be Mr. Porter, and I generated a profile on his
19 buccal swab. And as you can see, the same types match up:
20 15, 16; 15, 16; 23, 26, right down the line. So in this case,
21 it's a perfect profile match.

22 Q So Mr. Porter is a perfect profile match of the
23 sperm cells that were found, the spermatozoa that was found on
24 the vaginal swab taken from Ramona Leva?

1 A That's correct.

2 Q Um, were you able --

3 THE COURT: Which Mr. Porter are we talking about?

4 MS. KOLLINS: Pardon?

5 THE COURT: Mr. Porter? Mr. Porter who?

6 MS. KOLLINS: Justin Porter.

7 THE COURT: Middle of the name first. Need
8 something more than "Mr. Porter" I think is necessary.

9 BY MS. KOLLINS:

10 Q Did you understand the buccal swab came from an
11 individual at least known to --

12 A Named Justin Porter.

13 Q Justin Porter. Okay.

14 Now, with regard to the DNA profile of Mr. Porter, in
15 comparing it to the spermatozoa found on the vaginal swab of
16 Ramona Leva, were you able to prepare it in such a way to come
17 up with a population estimate, if you will, as to matching him
18 either closely or not closely?

19 A Yes, we did. We did.

20 Q And what conclusion did you reach in that regard?

21 A Our analysis indicated that less than 1 in 600
22 billion people have this profile.

23 Q Okay. And is there -- is DNA science, in your
24 opinion, to a point with the population genetics that you can

1 say that the identity of somebody is now presumed based upon
2 the number of the frequency?

3 A Yes, in our laboratory we have decided that the
4 number is 1 in 600 billion. If the profile exceed that
5 number, we would say it's an identity.

6 Q Okay. Would that be your opinion in regards to
7 Justin Porter?

8 A Yes, uh-huh.

9 MS. KOLLINS: Court's indulgence.

10 Judge, I don't have any more questions for Mr. Welch.

11 Thank you, Mr. Welch.

12 I'll pass the witness.

13 THE COURT: Okay.

14 CROSS-EXAMINATION

15 BY MR. GOODWIN:

16 Q Good day, sir.

17 A Hello.

18 Q I'm looking at the same chart that you were just
19 talking about, the DNA summary chart.

20 A Yes.

21 Q I note that the numbers all the way across
22 concerning the bloodstain card of Ramona Leva and the vaginal
23 swab of Ramona Leva are the same?

24 A Yes, they are.

1 Q Yeah, but I look at the vaginal swab, all of a
2 sudden some of the numbers that are generated are somewhat
3 different. Are you aware of that?

4 A Are you -- are you referring to these? These two
5 instances here?

6 Q Sir, if you don't mind --

7 MR. GOODWIN: Judge, I'll approach --

8 THE COURT: Yes, that's fine.

9 MR. GOODWIN: -- and I'll point out to him what I'm
10 talking about.

11 Thank you, Judge.

12 THE COURT: Okay.

13 BY MR. GOODWIN:

14 Q Mr. Welch, apparently the exhibit that you have in
15 front of you there has "Justin Porter" on the bottom.

16 A Yes, it does.

17 Q And that wasn't the way that you generated the
18 original report.

19 A No, I'm looking at my original. I think they did
20 this for the convenience of the presentation.

21 Q Okay. Thank you.

22 A Oh --

23 Q Let me -- let me just discuss with you a few areas
24 concerning the DNA and let me see whether or not you agree or

1 don't agree to some of these assertions.

2 A Okay.

3 Q Can we say that from the moment the biological
4 material is out of the body, it's in a foreign environment and
5 certain changes begin to take place?

6 A I would say that's correct.

7 Q And would that include saliva that's extracted by
8 use of a buccal swab?

9 A Well, certain biological changes start to occur.
10 You're correct. In other words, the minute a biological
11 sample is removed from the body, it's exposed to an
12 environment, where the example of the buccal swabs would be,
13 over a period of time it's going to start to dry out. So
14 that's different than it would be, you know, cells different
15 than the cells that would be inside the mouth.

16 If the buccal swab was left over a long period of time,
17 things would start to degrade, bacteria would start to affect
18 it.

19 Q And, in fact, one of the changes that you just
20 brought up is called degradation, isn't it?

21 A Yes, and generally speaking, all of those things are
22 referred to as degradation. Now, those changes do occur.

23 Q And that would be the breaking down the chromosomes?

24 A Yes, it does. But in this case I would say it

1 doesn't affect the DNA type. In other words, if the -- if we
2 didn't examine that buccal swab for two years, given that it
3 was properly stored, we could expect to get the same DNA type
4 and results. If we stored that buccal swab for ten years and
5 it was properly stored, we would still get the same DNA type
6 and results.

7 Q So one of those factors leading to degradation is,
8 as I'm sure you're aware, time?

9 A Time. Correct.

10 Q But there are other ones, including temperature,
11 humidity, light, a lot of other factors?

12 A Of course. And, um, and a buccal swab is a very
13 pure type of example that we get. A lot of the problems with
14 degradation are, let's just say blood samples that are
15 deposited from the scene on -- in the desert and we don't find
16 them for two years. Then lots of things can happen to degrade
17 DNA.

18 Q Other than the temperature, the humidity, the light,
19 the time --

20 A All those things.

21 Q -- all those things. But we're also looking at
22 chemical and biological contamination in some cases; is that
23 right?

24 A Sure.

1 Q Okay.

2 A You're correct.

3 Q And obviously you don't -- I mean, you weren't there
4 when the buccal swab was collected?

5 A No, I was not.

6 Q Okay. Now, these environmental changes that we're
7 talking about, they -- they're not going to change the DNA
8 type from one to another, are they?

9 A No, they will not. What -- what generally occurs,
10 if there is degradation, is that, in typing results, some of
11 the loci or locations that are -- that you target give you no
12 results in DNA typing. So generally speaking, if a DNA is
13 that degraded, where it starts to affect the DNA typing, what
14 you'll see happen is in some of these blocks there will be no
15 results.

16 Q So you'll just have no results at all?

17 A Or -- or sometimes you can get no results in all of
18 them -- at all of the locations.

19 Q Now, also, the crime scene samples -- like blood,
20 semen, et cetera -- these things provide a fertile environment
21 for the growth of certain bacterias and certain fungi; is that
22 correct?

23 A Correct.

24 Q And as these things grow, bacteria or fungi, they

1 excrete their own biochemicals that also degrade the DNA
2 sample?

3 A Correct.

4 Q Now, partially degraded DNA gives the possibility
5 that part of the pattern has been obscured in a way; is that
6 correct?

7 A Part of the pattern, um, is not recognized.

8 Q So when it's obscured in a way, it's just something
9 that you can't recognize. It will not be recognized by --

10 A Basically, in the type of analysis we do in our
11 laboratory, if a loci -- certain loci or location is -- if the
12 sample is degraded, we would look at and we would just see no
13 results.

14 Q And if that's the case, then your result ends up
15 being inconclusive?

16 A Or no results.

17 Q Or no results. Okay.

18 Sir, do you use the PRC type testing or the RFLP type
19 testing?

20 A PCR.

21 Q Beg your pardon? PCR?

22 Now is PCR as accurate as the RFLP?

23 A PCR, now, I think is more accurate than the RFLP.
24 You're basically talking about two different technologies.

1 They are both, um, good technologies for DNA typing. RFLP is
2 an older technology that is sort of finding its way out of the
3 forensic community, although some laboratories still do RFL --
4 RFLP typing.

5 PCR is the newer technology that came on board several
6 years ago. And because of certain aspects that the forensic
7 laboratory looks at when they do typing, like quantity of
8 sample. In other words, PCR is a much better system for a
9 forensic laboratory as opposed to RFLP because you need much
10 lesser sample. And a lot of times we're only talking about
11 one drop of blood or a tenth of a drop of blood.

12 The other thing is it's -- it's less -- it's less time
13 consuming. RFLP is a very labor-intensive, long process and
14 you -- many labs that do RFLP also do radioactive tags, which
15 is another problem.

16 So they're both good technologies. RFLP is the older
17 technology. PCR is the new technology. There seems to be a
18 crossing of the technologies now where RFLP is sort of on its
19 way out. Most laboratories are picking up PCR.

20 And as far as the numbers go now, when we look at the
21 type of results that we get, PCR is -- is equal to RFLP, if
22 not exceeding it now.

23 Q Would you agree, obviously, this technology, DNA
24 technology does keep it fancy?

1 A Oh, yes.

2 Q Really, year by year; is that correct?

3 A Yes, every couple years things that were
4 state-of-the-art a few years ago are now obsolete.

5 Q And how long do you think it's going to be before we
6 start calling the PCR technology obsolete?

7 A I don't know.

8 Q Could it be in the next year? Couple years?

9 A Several years, perhaps.

10 Q Okay. Now, in Mr. Porter's case, the DNA typing
11 consisted of comparing the evidence samples. Those were
12 biological fluids with some reference. In this case it was
13 his saliva samples; is that right?

14 A His buccal swabs.

15 Q And the buccal swab would be a technique where
16 you're actually analyzing a saliva sample?

17 A No, it's -- I think the saliva sample is a little
18 bit different. I think of the saliva sample as taking a piece
19 of paper and spitting on the paper and you have saliva there.
20 Now, granted there are some cells in the saliva. But the
21 buccal technique, you're getting more of the solid cells from
22 the inside of the cheek and some of that saliva. So in the
23 buccal swab technique you get more cells and that's what we're
24 interested in.

1 Q And regardless of whether it's one or the other, you
2 would expect the same DNA profile out of either; right?

3 A Yes, I would.

4 Q Now, my understanding is that there's three possible
5 conclusions. Let me go through each one individually and see
6 if you agree.

7 A Okay.

8 Q The first conclusion that you might make in making
9 those comparison is that the types are different and must have
10 originated from a different source. That would be exclusion;
11 is that right?

12 A Correct.

13 Q And the second possible conclusion is that it's not
14 possible to be sure whether the samples have similar DNA
15 types. That would lead to a inconclusive result?

16 A Would you --

17 Q I'll repeat that for you.

18 A Yeah. Repeat that. I'm not quite following what
19 you're saying there.

20 Q Sure. The second possible conclusion in comparing
21 the biological fluid and then some reference, in this case the
22 buccal swabs --

23 A Okay.

24 Q -- the second possible conclusion is it's not

1 possible to be sure whether the samples have similar DNA types
2 and that would reach -- give us an inconclusive result?

3 A Well, I'm not sure if it would be inconclusive. I
4 would say an example of what I think you're getting at is just
5 say that I did -- um, I did a DNA -- DNA profile on this sperm
6 fraction. And for whatever reason, degradation, I didn't get
7 any typing results, or maybe I got one typing result.

8 So as an example, if we look at this, let's just say
9 degradation had occurred to this swab for whatever reason. I
10 tried typing it. I was successful, but perhaps all I got was
11 two types. Maybe 15, 16 and 15, 16, but the rest of the
12 blocks would -- would show NR, no results, or INC,
13 inconclusive. Does -- does that give me some information?
14 Um, yes.

15 But, statistically, I would not say it came from this
16 individual. Statistically, I would have to say there could be
17 many, many other individuals that have those two types. We
18 don't have enough information to conclusively identify
19 somebody. So the final result would be -- if you ask me, "Do
20 you think it's this particular person?"

21 I would say, "Well, it's inconclusive. I don't know."
22 All I can tell you is look at the statistics and you make up
23 your own mind.

24 Q And then the third possible conclusion that you

1 might reach are that types are similar and could have
2 originated from the same person?

3 A Yes.

4 Q Okay. Now, the word "match" apparently is used to
5 describe the genetic similarity between the evidence and the
6 reference sample?

7 A Yes.

8 Q And even the scientists use the word "match," it's
9 still possible -- even when scientists use the word "match,"
10 it's still possible that two samples may be different?

11 A Well, I think you'd have to look at the numbers and
12 make up your own mind regarding that. In other words, going
13 back to the example we were just talking about. If I only had
14 two types there and you would ask me, "Does this match the
15 vaginal swabs? The sperm fraction match the suspect?" Well,
16 those two types match, but it doesn't really indicate that it
17 is that person. You'd have to look at the statistical number.
18 So I think you can use "match" sort of however you want to use
19 it.

20 Q So right now, when we compare the evidence sample
21 with the reference sample, in any hypothetical case, the
22 samples can show a genetic similarity under three
23 circumstances. Let me just go over each one with you.

24 A Okay.

1 Q The first -- first circumstance would be that the
2 samples actually come from a common source.

3 A Yes. Okay. I agree with that.

4 Q Secondly, there's a similarity but it's
5 coincidental. And I could expand upon that if you'd like me
6 to.

7 A Yeah, I'm not really sure where you're going with
8 that.

9 Q Well, the evidence sample comes from someone other
10 than the person who provided the reference sample. And I
11 guess the point is that two individuals may share the same
12 genetic profile from the particular markers that were
13 examined, just those particular markers.

14 A Well, it's -- it's possible that if -- for example,
15 it's possible to find an individual that has, perhaps, like
16 Mr. Justin Porter, a 15, 16. As a matter of fact, if you look
17 up at Ramona Leva, she's also a 15, 16.

18 Q Right.

19 A So we couldn't just look at that particular loci and
20 include or exclude or included anybody. And it's possible,
21 you know, to have two or three of these different loci or
22 types in common with other people. It's possible if you have
23 a close relative, like a brother, there could be more loci
24 where they share alleles.

1 Q And the third conclusion that we might reach is that
2 these similarities is an accident. And what I mean by that
3 is, that the evidence sample comes from someone other than the
4 reference donor, but that some collection or analytical or
5 clerical error has occurred. Does that make some sense?

6 A Well --

7 Q I mean, you don't have --

8 A I know -- I know what you're saying. You're saying
9 if this's a mix up. I mean, can an error occur in collection
10 or mislabeling. Is that what you're saying?

11 Q Right.

12 A And what I'm -- and what I would say is, if that
13 occurred, we would exclude the person. In other words --

14 Q But you wouldn't necessarily know. In other words,
15 you --

16 A I don't know. I -- I look at this blindly.

17 Q Right.

18 A I don't know if the sample is, in fact, you know,
19 Justin Porters' or, you know, if it's somebody else's.

20 Q Right?

21 A And if there is a mix up, but in this case if there
22 was a mix-up of samples, it's my opinion that, I mean, you'd
23 be able to tell that it wasn't Justin Porter. He would have
24 been excluded as the suspect.

1 Q You brought up siblings and relatives a minute ago.
2 Let me talk to you just very quickly about that. Is it fair
3 to say that siblings share the most genetic material and
4 identical twins have exactly the same genetic material?

5 A Identical twins have exactly the same material.
6 Meaning that if Mr. Justin Porter had an identical twin, this
7 DNA profile for the identical twin would be exactly the same.
8 If it was a brother, sister, sibling, or whatever, there would
9 be some similarities but there would still be plenty of
10 differences.

11 Q And other than just brother, sisters, et cetera, we
12 can even talk about cousins and --

13 A Correct.

14 Q -- other relatives like that?

15 A Correct.

16 Q Okay. Now, depending on the genetic profile that's
17 being detected, genetic material from one relative may be
18 similar to genetic material from another relative; is that
19 right?

20 A Similar, but not exact.

21 Q But, again, just depending on the loci or the
22 profile that you're looking at?

23 A Well, I think I can -- maybe I can answer this. In
24 my opinion, using this DNA STR technology, I don't care how

1 close the relatives you would bring me. If you had a hundred
2 relatives or a thousand relatives, mother, father, 40
3 children, 500 cousins, we would be able to distinguish each
4 and every one of them. There may be some similarities, but we
5 would be able to distinguish them. However, not in the case
6 of an identical twin.

7 Q And you're confident in what you're saying?

8 A Yes.

9 Q About being able to distinguish these things based
10 on a good sample and a sample that has enough points of
11 reference; is that right?

12 A Based -- yes, based on this technology and assuming
13 we get a good profile.

14 Q Excuse me for just one second.

15 A Sure.

16 Q Mr. Welch, you -- just one second.

17 A Sure.

18 Q You testified on direct a little earlier that you
19 were provided a large number of buccal swabs, weren't you?

20 A Yes.

21 Q And each one of these buccal swabs that you were
22 provided had something to do or some connection with that DTAC
23 crime series; is that right?

24 A I would say most of the buccal swabs that I examined

1 were possible suspects in the DTAC series.

2 Q And do you have any recollections as to how many
3 buccal swabs you were asked to evaluate as possible suspects?

4 A Um, my guess would be at least 15 to 20, perhaps.

5 Q And, again, when you get these buccal swabs for
6 evaluation, they're already labeled, they already have a name
7 on them. And you have no reason to question, one way or the
8 other, whether or not that was done accurately; is that right?

9 A Yes, I -- I don't know.

10 Q Okay. Is it common practice -- I mean, has this
11 happened before, where you've been asked to evaluate, my guess
12 is over a dozen different buccal swabs as possible suspects?

13 A Yes.

14 Q It has happened?

15 A Yes.

16 Q Do you remember how -- exactly how many specific
17 buccal swabs you evaluated in this specific series?

18 A Are you asking me exactly how many in this
19 particular --

20 Q If you have a recollection.

21 A -- in this specific series?

22 Q This series. The DTAC series?

23 A I could tell you exactly, but I'm guessing it was
24 probably, you know, 15 to 20.

1 Q But going back to your other question --

2 [TRANSCRIPT READING END]

3 MR. ALBRIGHT: Oh, that --

4 MR. GOODWIN: I'm sorry.

5 [TRANSCRIPT READING BEGIN]

6 THE WITNESS: But going back to your other question,
7 we have -- we've had other series of sexual assaults in the
8 community where I've probably done 40 or 50 buccal swabs. So
9 it's not an uncommon practice to do a series of buccal swabs.
10 Because during the investigation, they produce what they think
11 is a list of suspects, possible suspects.

12 BY MR. GOODWIN:

13 Q Right. And if there's going to be any possible
14 error in terms of maybe mislabeling or things along those
15 lines, it's not going to happen when these things get to the
16 lab, it's going to happen before these samples are even ever
17 provided to you; is that right?

18 A We believe so, yes.

19 Q You believe so. Okay.

20 Sir, thank you very much. I appreciate -- hold on just
21 one second.

22 Sir, when you get a hit is it -- on the buccal swabs,
23 when you get a hit, does not -- normally not your practice to
24 ask the detectives to get an actual blood sample or something

1 along those lines?

2 A Um --

3 Q I mean, for more complete analysis?

4 A Getting an individual -- getting an additional blood
5 sample would not make it a more complete analysis. The
6 profile of the blood or the profile of a person's buccal swabs
7 or blood, blood cells or sperm is all identical. It's the
8 same profile. One is not more accurate or precise than the
9 other. They're the same.

10 Q So the blood sample is not going to be more accurate
11 for identity than the buccal swabs?

12 A No.

13 Q If you get a hit and you have a strong suspicion and
14 you ask for a blood sample, can we say that the act of
15 actually going to a specific person and getting one blood
16 sample for evaluation is probably more clerically accurate
17 than dumping the 15 or 16 samples of the buccal swabs on you?

18 A Um --

19 Q I mean, is that a safeguard that --

20 A Well, what you're suggesting is that we -- we run
21 one sample through DNA analysis at a time and that you're
22 indicating is that I take one sample and run it through the
23 whole process, then come back and get another sample and run
24 it through the whole process. We just feasibly can't do that.

1 I mean, generally speaking, we're running a number of
2 samples, you know, on a particular case. I think in the case
3 of buccal, in the case of the particular buccal swab, I -- I'm
4 counting up, I think I ran eight buccal swabs at the same
5 time. That's not unusual. For me to look at each individual
6 buccal swab and run it through the whole process individually,
7 we'd never get anything done. That's not unusual.

8 Q Could the chance of an error be greatly lessened if,
9 after evaluating the buccal swab and getting a strong
10 suspicion or a hit, the detectives actually did go back out
11 and get a blood sample from one specific person as opposed to
12 the 15 or 16 that were all delivered at the same time or over
13 a period of time?

14 MS. KOLLINS: Judge, I'm going to kind of object to
15 that question. I think -- I think it calls for speculation on
16 the part of the witness. I think it's assuming facts not in
17 evidence that were -- that there was some type of error. And
18 I don't really think it's relevant since there hasn't been an
19 establishment that there is any type of error or suspected
20 error.

21 THE COURT: I think that Mr. Welch is an expert and
22 he can explain. I think he's already answered that question
23 but it's worded differently a minute ago.

24 ///

1 BY MR. GOODWIN:

2 Q Sir, do you understand where I'm going?

3 A Yeah. I -- I know where you're going. In other
4 words, as a double-check.

5 Q Right.

6 A To make sure there was no mix-up in the packaging or
7 the labeling.

8 Q Because we have a large number of 'em.

9 A Because we have a large number. Um, perhaps one --
10 as you're suggesting, one could go back to the same suspect
11 and get another buccal swab or blood sample, doesn't matter --
12 actually, buccal swabs are better for DNA analysis than
13 blood -- label that again and the analysis could be performed
14 again. I mean, that's something that's possible. But that's
15 something that's out of my control.

16 Like, I can tell you that what we do in our laboratory in
17 a case like this. And, in fact, in this case, when there's a
18 hit, which there was in this case, another analyst in the
19 laboratory takes that particular buccal swab by itself and
20 reanalyzes it.

21 Q And, again, you're analyzing the same buccal swab?

22 A The same buccal swab.

23 Q If there were clerical errors, just multiplying
24 itself?

1 A You're correct. That's correct.

2 Q All right. Sir, thank you again so much.

3 MR. GOODWIN: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. KOLLINS:

6 Q Mr. Welch, are there sufficient samples remaining
7 when you do these tests that if anybody wants to retest
8 things, they can?

9 A Yes.

10 Q The buccal swab. I'll tell you that there was
11 testimony earlier that the buccal swab was collected on
12 June 13th of 2000 from Justin Porter. Do you recall when it
13 was you did the comparison in this case of that buccal swab?

14 A Um, I believe it was in August some time.

15 Q Okay. So two months? When you first came into
16 contact with that buccal swab, I'm assuming you got it from
17 the evidence vault.

18 A Yes.

19 Q In examining it did -- in examining it, did it look
20 to you like it had been preserved properly?

21 A Yes.

22 Q Was there any sign of any type of degradation or any
23 form to that buccal swab -- or any form to that buccal swab
24 during your examination?

1 A No.

2 Q The vaginal swab that was collected from
3 Ramona Leva, there was a report introduced that it was
4 collected on March 25th of 2000. When you examined that
5 sexual assault kit from which the -- from which that vaginal
6 swab came, I'm assuming you got that from evidence as well?

7 A Yes, and I believe that examination was done in
8 April some time.

9 Q Okay. So about a month after?

10 A About a month after.

11 Q The vaginal swab looked to have been preserved
12 properly?

13 A Yes.

14 Q And was there any sign of degradation of any form to
15 that vaginal swab during any of your examination?

16 A No.

17 Q Okay. If I understand your testimony, there are
18 people who could have maybe the same, one of these, I don't --
19 I'm just going to use layman terms. And if you have a profile
20 of all 14 of those blocks and you find a sample from a crime
21 scene and that has that same profile in all 14 blocks, you are
22 now presuming identity.

23 A Yes, that's correct.

24 Q Okay. Now, two people may have the same numbers

1 within one block.

2 A Right. In fact, it's indicated right here.

3 Q Ms. Leva and Mr. Boarder -- and Mr. Porter both have
4 the same number in that first block there.

5 A In that particular type, yes. Right.

6 Q Okay. And relatives, cousins, brothers of
7 non-identical twin nature may have a couple or several of
8 those blocks that are the same.

9 A Yes, a few.

10 Q But they're not going to have anywhere near all 14.

11 A No.

12 Q Okay. One last thing. Mr. Abood asked you a
13 question and referred to three options that you could reach in
14 your conclusions on the comparison. And I think that the
15 highest option he referred to was the reference sample of a
16 buccal swab could have been the source of the evidence located
17 at the crime scene. To me, "identity presumed" kind of seems
18 like a fourth option, or a higher option than could have
19 [sic], am I right?

20 A Well, whatever you want to call it, "match"
21 "identity," you know, to me, the bottom line is, I look at the
22 probabilities. And in this case, if we just look at the
23 probabilities, what we're saying is less than 1 in 600 billion
24 people. So you would have to take a hundred times the world's

1 population, you'd only find one person with this profile.

2 Q And, in your opinion, is a buccal swab just as good
3 as a blood sample to be able to make a DNA profile of a
4 person?

5 A I think it's better.

6 Q Okay. Sir, if you had a good buccal swab, you don't
7 see any need to go back and get a blood sample from somebody.

8 A No.

9 Q Okay.

10 A Not for a DNA typing.

11 MS. KOLLINS: Okay. I don't have anything further,
12 Judge. Thank you.

13 THE COURT: Anything else, Mr. Abood?

14 RECROSS-EXAMINATION

15 BY MR. GOODWIN:

16 Q Sir, concerning this series --

17 A Yes.

18 Q -- the DTAC series, the items collected in the
19 Teresa Tyler case -- now, do I have to give you a case number
20 on that or are you aware of that case?

21 A Um --

22 [TRANSCRIPT READING END]

23 THE COURT: Ms. Kollins.

24 MS. KOLLINS: Oh, I'm sorry.

1 [TRANSCRIPT READING BEGIN]

2 MS. KOLLINS: You know, I think if you just refer
3 to -- just refer it as the one that Kathy did, he'll know what
4 you're talking about.

5 MR. GOODWIN: The one that Kathy did?

6 MS. KOLLINS: Yeah.

7 THE WITNESS: Oh, excuse me. That was a case that I
8 did not work on personally.

9 BY MR. GOODWIN:

10 Q Okay.

11 A And the reason that we have two analysts working
12 that was that she had worked on the case prior to my working
13 on the first of these DTAC series. We didn't know until we
14 did profires -- profiles later on that it was actually tied
15 in. So I really don't know anything about that case.

16 Q Let's see, if you know this then --

17 A Other than she -- one of the other analysts in the
18 laboratory worked on a case that was tied into the DTAC
19 series.

20 Q And it's tied in the DTAC series just like the case
21 that you worked on is concerning -- worked on is concerning
22 Ramona Leva; is that correct?

23 A Correct. It's a sexual assault kit that was
24 analyzed. There was a sperm fraction. A profile to sperm

1 fraction was generated and then it was tied into this case.

2 Q All right. And other than those two cases that
3 we're talking about, out of this whole DTAC series, there's no
4 other DNA ties that need to be a concern to anyone; is that
5 correct?

6 A Um, not that I'm aware of.

7 Q Okay. Thank you again, sir.

8 MS. KOLLINS: Judge, I probably ought to clear
9 something in light of that last question.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. GOODWIN:

12 Q Um, the testimony that we've had in the -- in
13 regards to the DTAC series, we've had testimony about five
14 separate sexual assaults. Now, it's not your understanding
15 that somebody else's DNA was tied to the -- the other sexual
16 assaults, is it? Or is it your understanding that there
17 wasn't any DNA profileable evidence at those other three?

18 A Um, again --

19 Q Does that question make sense?

20 A It's a -- there's a lot of event numbers and a lot
21 of people. And my understanding is, I don't think so, but
22 I -- you know, I'd have to review everything to be absolutely
23 sure.

24 Q Do you have a copy of the initial report that you

1 generated in this case?

2 A Yes.

3 Q Okay. Let me refer you to that.

4 A Okay.

5 Q Did that --

6 A Maybe -- maybe I'm not understanding your question.

7 Q I think my question was rather inartful.

8 [TRANSCRIPT READING END]

9 MS. KOLLINS: Court's indulgence for just a moment.
10 Can we just pause for just a moment?

11 THE COURT: Sure. Yeah.

12 MS. KOLLINS: Thank you.

13 We're back at the top of 111. I'm sorry.

14 THE COURT: Okay.

15 MR. ALBRIGHT: Okay.

16 MS. KOLLINS: (Indiscernible) and, Mr. Albright,
17 apologies for that.

18 [TRANSCRIPT READING BEGIN]

19 BY MS. KOLLINS:

20 Q Reference -- reference you examining a sexual
21 assault kit from Leona Case under 0003070141?

22 A Yes, I did.

23 Q Was there any suspect-type evidence obtained that
24 could have been compared to a DNA profile?

1 A No, on that particular sexual assault kit -- again,
2 I'm referring to my notes -- semen was not detected on oral,
3 rectal, or vaginal swabs of Leona Case. No foreign DNA was
4 detected on a swab collected around the mouth. Human blood
5 was detected on a black T-shirt. Leona Case cannot be
6 excluded. So what we're basically -- we're saying is that's
7 her blood on the T-shirt.

8 Q Okay.

9 A And that's the end of my analysis.

10 Q Okay.

11 A Now, in this case there was nothing to do a DNA
12 profile on.

13 Q Okay. Did your initial report also involve you
14 examining a sexual assault kit from Marlene Livingston under
15 event number 0004040324?

16 A Do you have a DW reference number for me?

17 Q Oh, you know what? I do. Let me get that. DW3?

18 A DW3. Oh, Marlene Livingston. I'm sorry. Yes, I do
19 see that.

20 Q So did you look at the sexual assault kit from her
21 as well?

22 A Yes. And in this case, according to my notes, there
23 were no vaginal swabs or, say, rectal swabs taken. There was
24 a -- the kit wasn't complete. However, there were oral swabs

1 there, and I did look at the oral swabs and semen was not
2 detected on the oral swabs.

3 MS. KOLLINS: Okay. Court's indulgence.

4 THE COURT: Okay.

5 BY MS. KOLLINS:

6 Q So my understanding would be that Ms. Leva's case
7 and then the case that Ms. Guenther examined, the other sexual
8 assault, those are the only two sexual assaults where a
9 perpetrator-type evidence was located that a DNA profile could
10 be compared to.

11 A I believe so.

12 THE COURT: That's on Marlene Livingston; right?

13 MS. KOLLINS: Pardon?

14 THE COURT: That's on Marlene Livingston?

15 MS. KOLLINS: No, that's Ms. Guenther did the
16 examination on the Teresa Tyler case.

17 THE COURT: There's Teresa Tyler also. Nothing to
18 be compared?

19 THE WITNESS: Teresa Tyler.

20 BY MS. KOLLINS:

21 Q Teresa Tyler and Ramona Leva are the only two cases
22 that evidence was found to do a DNA profile.

23 A Teresa Tyler was analyzed by another analyst in our
24 laboratory.

1 THE COURT: Okay.

2 MS. KOLLINS: I don't have anything further, Judge.

3 THE COURT: Mr. Abood, anything else?

4 MR. GOODWIN: No. Thank you very much, Judge.

5 THE COURT: Okay. I just have one question. How
6 long did it take to run the sample? You explained how you
7 wait until, like, you know, you get a number of people, like
8 eight suspects?

9 THE WITNESS: Uh-huh.

10 THE COURT: Then you run one, say, like one test --

11 THE WITNESS: Uh-huh.

12 THE COURT: -- how long does the test take?

13 THE WITNESS: Well, we try to group them to be more
14 efficient. The answer is the actual analysis can probably be
15 performed in, let's just say, less than a week. But in our
16 laboratory we have to follow DNA guidelines, which means that
17 then the case has to be reviewed. Before we send out the
18 case, it has to be reviewed by another analyst in the
19 laboratory. Then it has to be administered --
20 administratively reviewed by the lab manager.

21 And the bottom line is, by the time you go there, that --
22 this whole process, generally speaking, on a case, a two-week
23 turn around time is probably average. Could we do it a little
24 faster? Yeah. But, you know -- now, what I'm saying is if I

1 did -- whether I did one sample or eight samples, it would
2 still take the same period of time.

3 THE COURT: Okay. And the other question, I'm a
4 little confused about the identical twin issue. Are you
5 saying that if Justin Porter had an identical twin, he would
6 have all 14 things exactly the same too? So you wouldn't be
7 able to tell who did the alleged sexual assault?

8 THE WITNESS: Yes. Yep. Identical twins have the
9 same DNA. Different fingerprints, but the same DNA.

10 THE COURT: I didn't know that. Okay. Did my
11 questions of this witness elicit any additional questions by
12 either side?

13 MS. KOLLINS: Not from the State, Judge. Thank you.

14 THE COURT: Mr. Abood?

15 MR. GOODWIN: No, thank you very much.

16 [TRANSCRIPT READING END]

17 THE COURT: All right. And that concluded the
18 testimony.

19 Thank you, Mr. Albright.

20 MR. ALBRIGHT: Thank you.

21 THE COURT: (Indiscernible). Parties approach.

22 [BENCH CONFERENCE BEGIN]

23 MS. LUZAICH: Bless you.

24 MS. KOLLINS: (Indiscernible)

1 THE COURT: What were you saying that it was gonna
2 be 4:00 o'clock?

3 MR. GILL: No comment for the record.

4 MR. GOODWIN: One of 'em's pointing at a four.

5 THE COURT: What?

6 MR. GOODWIN: One of 'em's pointing at a four.

7 THE COURT: What are we doing on Monday?

8 MS. LUZAICH: I have four already lined up.

9 THE COURT: Yeah.

10 MS. LUZAICH: I'm trying to get more. I have some
11 lined up for Tuesday, Barry for Wednesday. Monday, Tuesday,
12 Wednesday are all 11:00, 11:30 to 5:00; correct?

13 THE COURT: Well, I mean, Monday, I can start
14 whenever.

15 MS. LUZAICH: No, because we have people coming in
16 from out of state. Remember, (indiscernible) that's why we
17 asked for --

18 THE COURT: Yeah.

19 MS. LUZAICH: And the problem we're having is that
20 all of these witnesses are saying, "Oh, no. I'm too busy.
21 Oh, no, I'm too busy. I can't come." Like all the retired
22 crime scene people. Except for Brotherson. So that's what
23 I'm dealing with. I'm e-mailing people --

24 THE COURT: I mean, if you --

1 MS. LUZAICH: -- call, call, call.

2 THE COURT: -- need to, I would just tell -- like,
3 just blame it on me. Like, listen, she's being crazy and
4 she'll issue arrest warrants. But like --

5 MS. LUZAICH: You already have one.

6 THE COURT: They can't be too busy for a trial.

7 MS. LUZAICH: Uh, yeah. James O'Donnell, he's
8 remodeling his house in, I don't know, Tennessee or Arkansas
9 or something. Yeah, right. And -- and the issue, like I
10 said, is that so many of them are out of state. So Jerome
11 could just drive down the street and grab 'em if they were in
12 Vegas, but, like, literally, everybody's giving me hard time.
13 I'm working on it.

14 THE COURT: Okay. So for Monday, you have four
15 witnesses.

16 MS. LUZAICH: I have four, for sure, lined up.

17 THE COURT: Is that gonna fill up 11:30 to 5:00?

18 MS. LUZAICH: It should. Laura Andersen. So she's
19 the detective who is robbery and search warrants and
20 Angela Porter interview. Fowler, Leroy Fowler, one of the
21 victims. Hevel, the fire investigator.

22 MS. KOLLINS: Diaz.

23 MS. LUZAICH: And Rich Diaz, the paramedic from
24 Leona Case.

1 THE COURT: (Indiscernible)
2 MR. GILL: I'm not gonna make any estimations on how
3 long that'll take.
4 THE COURT: No. Yeah.
5 MS. LUZAICH: Well, if you had talked slower --
6 MR. GOODWIN: I'm sorry.
7 MR. GILL: At the reading?
8 MS. LUZAICH: [Descriptive noise] you sound like
9 her.
10 MR. GOODWIN: I have a problem.
11 THE COURT: All right. So 11:30, then, on Monday.
12 MR. GILL: If I stood here and talked for 35 more
13 minutes, we would get to 4:00 o'clock, just for the record.
14 MS. LUZAICH: Almost 4:00.
15 MR. GILL: Almost 4:00.
16 MS. LUZAICH: I would want you to sing and dance,
17 though.
18 MR. GILL: I'll do that too.
19 MS. LUZAICH: Okay.
20 THE COURT: Okay. So -- yeah. So Monday will be
21 11:30 to 5:00. Tuesday will be 11:30 to 5:00 -- or I can
22 start -- I can start as early as 11:00 on Tuesday.
23 MS. LUZAICH: That's fine.
24 THE COURT: Wednesday, 11:00 to 5:00. Thursday,

1 11:00 to 3:00 to 5:00 and then Friday -- yeah, I have -- I
2 can't remember when I have my special settings. Friday will
3 be 9:30. So we'll have a full day Friday. So make sure you
4 have enough (indiscernible). Okay.

5 MS. KOLLINS: And when will we know if he's
6 testifying? He's still planning on it; right?

7 MR. GILL: I'll talk to him.

8 THE COURT: Do you want me to ask him? Do you --

9 MR. GILL: No.

10 THE COURT: Sorry. Not ask him. Do you want me to
11 advise him so he can think about it over the weekend?

12 MR. GILL: No, I've given him homework to do over
13 the weekend regarding that. So that's --

14 MS. LUZAICH: Oh, that's so cute.

15 MR. GILL: -- I don't have an answer yet, but --

16 THE COURT: Got it.

17 MR. GOODWIN: I'm gonna go see him too.

18 MS. LUZAICH: Homework.

19 MS. KOLLINS: What? Like a coloring book? Like
20 a -- (indiscernible) sorry.

21 THE COURT: Thank you.

22 MR. GILL: Thank you.

23 [BENCH CONFERENCE END]

24 THE COURT: All right. So that is it for witnesses

1 for the day. But the parties do assure me that we are running
2 on time, even a little bit ahead of time. So I don't want you
3 to worry about the timing. So we're going to start on Monday
4 at 11:30. I have court pretty much every morning that next
5 week.

6 So most of our start times will either be at 11:00 or
7 11:30, except for, most likely, Friday we'll have a full day
8 at 9:30. So just in case you want to plan ahead of time or do
9 any work or school or anything like that. But for Monday
10 it'll be 11:30. Okay? So have a great weekend and please
11 remember --

12 JUROR NO. 10: (Indiscernible)

13 THE COURT: Yes, sir?

14 JUROR NO. 10: I just had a question. If we had --
15 the witnesses that you brought in the scientific part, if we
16 had a question about something we missed when they were here,
17 can we ask it later on?

18 THE COURT: Why don't you do this -- so, like, the
19 analyst who just testified? Or -- you mean like the DNA
20 analyst who just testified right now through the reading?

21 JUROR NO. 10: Well, that -- that investigating on
22 the last case --

23 THE COURT: Okay.

24 JUROR NO. 10: -- when the guy jumped through the

1 window?

2 THE COURT: Detective Castaneda?

3 JUROR NO. 10: Yeah. I forgot to ask about if they
4 had recovered blood samples from the glass when the guy jumped
5 through it. I mean --

6 THE COURT: Okay. Yeah. So the -- the parties now
7 know about that question and so they can answer it. I'm sure
8 they'll be able to try to get through it through another
9 witness.

10 JUROR NO. 10: Yeah. Because, I mean, that guy that
11 tried to grab the person cut his hands --

12 THE COURT: Right.

13 JUROR NO. 10: -- and the guy jumped through a
14 window, there should be blood evidence from that; right?

15 THE COURT: So I -- I'm not answering anything. But
16 now that you've stated your question, I'm sure that the
17 parties will find a way, if they can, in order. But it also
18 would be helpful if you would write it out for me so I can
19 make it a Court's exhibit so they can know specifically. That
20 would help me.

21 Yes, ma'am.

22 JUROR NO. 11: I was just wondering why they weren't
23 showing us that chart they did so much referring to so we
24 could follow along --

1 THE COURT: Yeah.

2 JUROR NO. 11: -- 'cause it's not --

3 THE COURT: So -- understood. That's actually -- so
4 whenever there's a hearing, you notice that the parties have
5 put things up on what we refer to as the Elmo so you guys can
6 follow along or you can see.

7 At that previous hearing, that graph wasn't admitted into
8 evidence, which means it didn't go into a packet for -- to
9 come up to my court. And so I believe the parties are trying
10 to get a copy of it from the lab in order to give it to you
11 guys.

12 But, yeah, we -- we did recognize that. And we tried to
13 remedy it. But because it was just referred to as a
14 demonstrative aid instead of a formal exhibit. So
15 demonstrative aids are just things that we can show the jury
16 but they don't come in as evidence. Exhibits actually come in
17 evidence and they become part of the case file.

18 So because it was a demonstrative aid, the previous judge
19 didn't -- didn't take it. So we don't have possession of it,
20 which has made things quite difficult. But we recognize that
21 you would probably want to do it and we're doing our best.
22 That's all I can say about that.

23 All right. So 11:00. Please remember during this recess
24 do not --

1 [Inaudible talking]

2 THE COURT: 30. 11:30.

3 UNIDENTIFIED JUROR: (Indiscernible) every day but
4 Friday?

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

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

19 11:30. Have a great weekend. Thank you.

20 THE MARSHAL: All rise.

21 JUROR NO. Ten: Judge, (indiscernible).

22 THE COURT: Oh, yeah. You can just hand it to me.
23 Thank you.

24 JUROR NO. Ten: I'm running out of hands. There you

1 go.

2 THE COURT: Thank you, sir.

3 JUROR NO. Ten: You can read my chicken scratch.
4 I'm nervous, I write fast.

5 THE COURT: No, I can totally read it.

6 JUROR NO. Ten: Okay.

7 THE COURT: I got it. Thank you.

8 [OUTSIDE THE PRESENCE OF THE JURY]

9 THE COURT: All right, you guys. So number 10 put
10 his question in writing. His handwriting is very difficult to
11 read but it says, "When a suspect on the layer," that's what
12 it says, "case Laura Zabith (phonetic) jumped out window, was
13 any blood and/or DNA collected and any results?" So --

14 MS. LUZAICH: Thank you.

15 MS. KOLLINS: So we already did the crime scene
16 analyst that processed that scene. So --

17 THE COURT: Was there a detective, though, coming
18 still on this?

19 MS. LUZAICH: Yeah. Laura -- Laura Andersen can
20 talk about -- but you tell -- you ask them, any questions --

21 THE COURT: I know.

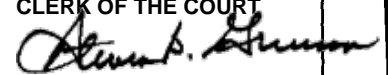
22 MS. LUZAICH: -- and they didn't ask the question.

23 [Hearing concluding at 3:27 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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1 **EPAP**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 LISA LUZAICH
6 Chief Deputy District Attorney
7 Nevada Bar #005056
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JUSTIN PORTER,
13 #1682627

14 Defendant.

CASE NO: 01C174954

DEPT NO: VI

15 **EX PARTE APPLICATION FOR ORDER REQUIRING**
16 **MATERIAL WITNESS TO POST BAIL**
17

18 COMES NOW, STEVEN B. WOLFSON, Clark County District Attorney, by and
19 through LISA LUZAICH, Chief Deputy District Attorney, and makes application to the
20 above-entitled Court that an Order be entered herein requiring JONI HALL be taken into
21 immediate custody as a material witness for the purpose of posting bail for her appearance in
22 the jury trial of the above-entitled matter for the said reason of attempting to avoid testifying
23 before the Eighth Judicial District Court.

24 Further application is made that the Court set bail in the amount of \$10,000.00 and if
25 the said witness fails to post bail in the amount of \$10,000.00 for her appearance as a witness
26 in this matter that the Court further direct and order that said witness be delivered into the
27 custody of the Sheriff of Clark County, pending final disposition of the jury trial in the above
28 entitled matter on or until further Order of this Court.

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This application is made pursuant to the provision of NRS 178.494 and is based upon Affidavits attached hereto which are incorporated herein by this reference.

DATED this 12th day of September, 2022.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY



LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

hjc/SVU

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LISA LUZAICH, declairs and states:

This matter has been set for jury trial, said hearing to commence at or about 9:00 a.m. on the 12th day of SEPTEMBER, 2022 in said Court.

Your affiant will further advise the Court on information and belief that said witness is avoiding testifying before the Eighth Judicial District Court in which she is a material and essential witness.

THEREFORE, your affiant would respectfully pray that this Honorable Court under the authority of NRS 178.494 issue an Order directing that any police officer of this State shall forthwith take the said JONI HALL, ID#1237935 into custody and forthwith convey to the jail of the County of Clark, State of Nevada, for incarceration to insure her presence before the Eighth Judicial District Court.

I declare under penalty of perjury that the foregoing is true and correct.

(Signature)

1 10. Sent her a text message so she had my cell number. Asked her for an
2 email address which she provided. Emailed her a copy of her Subpoena and she
3 thanked me. Several other text messages exchanged regarding how long she has been
4 living in Reno and if she still had contact with her friend Stacey Foote. She stated she
5 has not spoken to her since she moved to Reno in 2003.

6 11. August 29, 2022-Sent text message to Joni and left a voice message to set
7 up travel. No responds.

8 12. August 30, 2022- Left voice message, sent text message and emailed Joni
9 to contact me so travel could be arranged. No responds.

10 13. All information updated in JW for Joni Hall, sent email to Lisa, Stacey,
11 Jerome as I was out of the office August 31-September 6th.

12 14. That on or about Aug 31st, 2022, I began to search for victim Joni Hall,
13 for District Court Case number 01174954X. Initial contact with Hall was made via
14 telephone by another Investigator in SVU. However, all follow up phone calls and text
15 messages made to Hall were not returned.

16 15. This Investigator started to search for Hall through Clark County
17 databases. A search in SCOPE, provided no current entries. Las Vegas Metro ON
18 BASE, and Premier One provides arrest reports, property reports, etc., but no entries
19 provided current contact information for Hall or any useful information. There was on
20 case which I cross referenced to Las Vegas Justice case number 01F02730X, Child
21 Endangerment, the victim was her biological son, Kyle Thomas.

22 16. In addition, a search for Hall was made through NICI/III for past or
23 current arrests through all states, including federal charges.

24 17. Hall had no current or pending charges. She expired from Nevada state
25 prison in June of 2021, however no longer on any parole supervision. This investigator
26 followed up with the Nevada Department Parole and Probation, and they did not have
27 any current information for Hall. Per the Department of Public Safety her file was either
28 sent to Records division in Carson City or purged.

1 18. Inmate searches in Washoe County were made daily, however there was
2 no inmates in custody under the name of Joni Hall.

3 19. A Nevada DMV check for Hall provided an address from March of 2017.
4 That address was connected to a weekly rental where that property currently did not
5 have anyone by that name staying there.

6 20. *CLEAR- is a database that acquires information from Experian, Trans
7 Union, Banks accounts, utilities , government reports, relatives etc.*

8 21. A complete search for Hall was made through CLEAR database. One
9 local address from 2022 was provided, however it was another weekly rental where
10 they had no record of Hall nor recognized her through a DMV photo. The bulk of other
11 addresses were located in Reno, Nevada.

12 23. There were four relatives listed for Hall in the Clark County area. All
13 possible family members were contacted in person, however three of them had no direct
14 relationship with Hall and could not provide any useable information. One possible
15 relative was Kyle Thomas, the victim in case 01F02730X. Three different trips were
16 made to his current residence. Each time no one was home, and contact information
17 was left at the door. I have not received a call back from Kyle Thomas yet.

18 24. On Facebook Joni Hall has an active account with posts as recent of
19 September 2nd, 2022. The photos on the site match Hall's DMV photo. I sent a message
20 to Hall identifying myself as an Investigator with the Clark County District Attorney
21 Office asking her to contact me. As of now, she still has not contacted me back.

22 25. Since most of the information I was receiving placed Hall in the Reno
23 area I reached out to Washoe County District Attorney office for assistance.

24 26. Per Washoe County District Attorney Office Investigation Unit, In April
25 of 2022, Hall was a witness for them in felony battery case. They were able to provide
26 some information on Hall from her voluntary statement.

27 //

28 //

1 27. I went ahead and provided Washoe County District Attorney Office with
2 a Clark County District Court subpoena for Hall, with my contact information directing
3 her to contact me once received.

4 28. On September 6th, 2022, Washoe County District Attorney Office had
5 investigators visit two different addresses that we felt were potential residences. One
6 was another weekly rental that had no current record of Hall, and the second was a
7 house where no one was home. The investigators left contact information at the
8 residence however as of September 8th, 2022, no one from that residence has contacted
9 them.

10 29. On September 9th, 2022, Washoe County District Attorney Office
11 updated me stating that they would make another attempt to locate Hall at that
12 residence.

13 30. Also, according to the felony battery report from Washoe County, the
14 victim Amber Ransford described Joni Hall as a "friend". I then began a search for
15 Amber Ransford mostly through the same databases in the hopes of contacting her and
16 she would put in touch with Hall. All the information for Ransford was not current,
17 including cell phone numbers that were out of service, an email address in which I sent
18 an email to Amber, however, have not heard back and one possible address through an
19 old boyfriend.

20 31. I was able to find Amber though Facebook and sent her a message,
21 however she has not reply to me yet.

22 32. As of September 9, 2022, these are attempts I have made to find Joni Hall.

23 //

24 //

25 //

26 //

27 //

28 //

1 I declare under penalty of perjury under the law of the State of Nevada that the
2 foregoing is true and correct.

3

4 Executed on September 9, 2022

/s/ Jerome Revels
JEROME REVELS
Investigator
Clark County District Attorney

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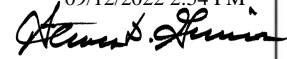
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28


CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-VS-

JUSTIN PORTER,
#1682627

Defendant.

CASE NO: **01C174954**

DEPT NO: **VI**

ORDER REQUIRING MATERIAL WITNESS TO POST
BAIL OR BE COMMITTED TO CUSTODY

STATE OF NEVADA }
COUNTY OF CLARK } ss:

TO: Any Sheriff, Constable, Marshal,
Policeman or Peace Officer in
the State of Nevada

An ex parte application upon declaration having been presented to this Court pursuant to NRS 178.494, wherein it appears that the testimony of JONI HALL, ID#1237935 is material to the jury trial in the above-entitled matter, and it further appearing to the Court by the way of affidavit that the attendance of said witness in the jury trial of this matter by subpoena is impracticable;

//

//

YOU ARE THEREFORE commanded forthwith to place said witness in your immediate custody for the purpose of said witness posting bail with the above entitled court in the amount of \$10,000.00 in order to secure the attendance of said witness JONI HALL, ID#1237935 before the Court on the 12th day of SEPTEMBER, 2022, at 9:00 a.m., in the jury trial of the above entitled matter.

IT IS FURTHER ORDERED and directed that if said witness JONI HALL, ID#1237935 fails to post bail in the sum of \$10,000.00 to secure her attendance as a witness in the jury trial in the above-stated matter as above provided, then you are further commanded to deliver said witness into the custody of the Sheriff of Clark County pending final disposition of the jury trial in the above-entitled matter or until further Order of this Court.

YOU ARE FURTHER ORDERED to direct the Sheriff of the County of Clark, State of Nevada, to make the said JONI HALL, ID#1237935 available in custody in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark at 9:00 a.m. on the 12th day of SEPTEMBER, 2022, for the testimony in the captioned matter and further disposition by this Court.

You are further ordered that if the said JONI HALL is incarcerated pursuant to this order, she shall be brought before me or in my absence another Judge of the Eighth Judicial District Court within seventy-two (72) hours after the beginning of her detention for the purpose of determining whether the bail previously set should be modified and whether the detention of the material witness should continue and in addition so that a schedule for the periodic review of whether the amount of bail required should be modified and whether detention should continue.

Dated this 12th day of September, 2022

J. Bluth

23B A6D 2EB1 3305
Jacqueline M. Bluth
District Court Judge

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 The State of Nevada vs Justin D
7 Porter

CASE NO: 01C174954

DEPT. NO. Department 6

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 9/12/2022

14 Carrie Connolly .	connolcm@ClarkCountyNV.gov
15 JACKIE Mosley .	Jaclyn.mosley@clarkcountyda.com
16 Law Clerk .	Dept06LC@clarkcountycourts.us
17 Delene Fennell	dfennell@doc.nv.gov
18 DeAwna takas	TakasD@clarkcountycourts.us
19 ADAM ESQ.	adam@aisengill.com
20 LISA CHEF DEPUTY DA	lisa.luzach@clarkcountyda.com
21 STACEY Chief Deputy DA	stacey.kollins@clarkcountyda.com

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STATE OF NEVADA,)
)
 Plaintiff(s),) CASE NO. C174954-1
)
 vs.)
) DEPT. NO. VI
 PORTER, JUSTIN D.,)
)
 Defendant(s).)

AA 1628

I N D E X O F W I T N E S S E S

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1 Las Vegas, Nevada, Monday, September 12, 2022

2 [Case called at 11:44 a.m.]

3 *****

4 [OUTSIDE THE PRESENCE OF THE JURY]

5 [DISCUSSION OFF THE RECORD]

6 [IN THE PRESENCE OF THE JURY]

7 THE COURT: All right. We are on the record.

8 State of Nevada versus Justin Porter. Thank you,
9 everyone. C174954. Mr. Porter is present with Mr. Gill as
10 well as Mr. Goodwin. Both Ms. Luzaich as well as Ms. Kollins
11 are present on behalf of State.

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

13 MS. LUZAICH: Yes, Judge.

14 MR. GILL: Yes, Your Honor.

15 THE COURT: All right. State, next witness, please.

16 MS. LUZAICH: State calls Richard Diaz.

17 THE MARSHAL: Please step up there. Remain standing
18 and raise your right hand so the clerk can swear you in.

19 RICHARD DIAZ,
20 [Having been called as a witness and being first duly
21 sworn testified as follows:]

22 THE WITNESS: I do.

23 THE CLERK: Please be seated.

24 Will you please state your name and spell it for the

1 record.

2 THE WITNESS: Richard Diaz, D-I-A-Z.

3 THE CLERK: Thank you.

4 THE COURT: Ms. Luzaich.

5 MS. LUZAICH: Thank you.

6 DIRECT EXAMINATION

7 BY MS. LUZAICH:

8 Q Good morning, sir. Have you fairly recently retired
9 from a long-term profession?

10 A I did.

11 Q What did you retire from?

12 A I was a firefighter/paramedic/engineer for City of
13 Las Vegas Fire and Rescue.

14 Q How long did you do that?

15 A Twenty-five years.

16 Q Can you briefly describe for us what training and
17 education you had that qualified you to do that.

18 A We go through an extensive rookie academy. And if
19 you go to paramedic school, you end up furthering your
20 education through a long course and on-the-job training and --

21 Q Did you, in fact, go through the paramedic school?

22 A Yes.

23 Q What was the extent of the paramedic school?

24 A Well, we -- it's like a six-month course where you

1 do all the skills and tests required to be a paramedic and
2 then you have to challenge -- or take the state test for
3 protocols.

4 Q And did you ultimately pass that test?

5 A Yes.

6 Q And at what point did you finish with school and
7 pass the test to be a paramedic? When, about?

8 A Oh, I would -- I want to say '99, 1999.

9 Q Okay. And when did you start working for the fire
10 department?

11 A 1994.

12 Q What were the duties that you did on a daily basis?

13 A Anything from fire, responding to fires or
14 responding to medical, assisting the public, doing public
15 safety programs, and pretty much responding to any emergency
16 medical calls required by, you know, by the fire department
17 and then where we need to respond.

18 Q So how would you particularly get to a location?
19 Like who would send you there?

20 A So we'd get a 9-1-1 --

21 Q Does that make sense?

22 A -- call into the dispatch. They would dispatch
23 appropriate units for that area, based on the level of the
24 call. So if it's medical, fire, hazmat response, or anything.

1 Q Were there some times that dispatch would send
2 particular units and then sometimes those units would realize
3 more was needed?

4 A Yes.

5 Q And did that happen quite often?

6 A Yes.

7 Q I'm gonna direct your attention to March 7th of
8 2000. Were you working as a fire department paramedic at that
9 time?

10 A Yes.

11 Q Did -- how did your shifts go?

12 A Twenty-four-hour shifts. Twenty-four on twenty-four
13 on -- twenty-four off for three days. And then after the last
14 24-hour shift, we'd have four days off.

15 Q Okay. So on March 7th, would you have come to work
16 on March 6th in the morning into the 7th of the morning?

17 A Depending on if that was after midnight, I would
18 have come in the night -- day before.

19 Q What time would your shift start?

20 A 7:00 a.m.

21 Q Okay. So if you responded to a call at 1:30 in the
22 morning on March 7th, would your shift have started at 7:00 in
23 the morning on March 6th?

24 A No. Uh, I would have -- yes, it would have started

1 on March 6th at 7:00 a.m.

2 Q Okay.

3 A Yes.

4 Q So did you respond to a call around 1:30 in the
5 morning on March 7th to the area of 2900 East Charleston?

6 A Yes.

7 Q What was the nature of the call that sent you there?

8 A We were called out for a medical -- there was a fire
9 at a building, and the responding units to that fire had a
10 patient to be transported. So we got called to transport that
11 patient.

12 Q Okay. And when you say there was a fire at a
13 building, do you recall what type of building it was?

14 A Apartment complex.

15 Q When you arrived at the scene, did you find a woman
16 that became known to you as Leona Case?

17 A Yes.

18 Q Showing you State's exhibit -- oops. Sorry -- 322,
19 is this Leona -- oops. Is this Leona Case?

20 A Yes.

21 Q And when you responded to the scene, where was
22 Ms. Case?

23 A She was in the -- on the asphalt in the parking lot
24 of the apartment complex.

1 Q Was anybody with her there?

2 A Was some fire unit -- someone from the fire serve --
3 department was with her.

4 Q And do you know, at the time you responded, did you
5 know the nature of any injuries she might have had?

6 A Not at the time of the response. I didn't know
7 until I got on the scene.

8 Q Okay. So when you got on the scene, you said that
9 she was in a parking lot on the asphalt. What did you to?

10 A Once we got on -- get on scene, we'll make contact
11 with the personnel on scene. They stated that she was in a
12 fire and had been assaulted. It was obvious from her -- the
13 state that she was in that she'd been beat up or assaulted.

14 So we put her on the gurney, noted some stab wounds on
15 her abdomen. And because I wasn't sure how deep those stab
16 wounds were, we went ahead and did a rapid transport to the
17 hospital.

18 Q What does that mean "rapid transport to the
19 hospital"?

20 A We'll load a patient -- load 'em on the gurney and
21 take 'em right away to the hospital. We won't sit on scene
22 and treat them or do any significant medical procedures at the
23 scene. We'll take 'em right to the hospital and we'll perform
24 those duties en route to the hospital.

1 Q Okay. So when you responded to the scene, how many
2 of you responded?

3 A It would be me and my partner, a firefighter.

4 Q And if you were in the back with her, would he have
5 been driving?

6 A Yes.

7 Q Okay. So while you are in the back of the ambulance
8 with Ms. Case -- you said she's on a gurney. And are you
9 communicating with her?

10 A Yes.

11 Q How are you communicating with her? Like, what are
12 you attempting to do?

13 A Well, trying to get a history of her -- medical
14 history, for one. I want to know what her injuries are, if
15 she's -- where she's hurt or injured. Allergies to medicine,
16 stuff like that.

17 Q And what is the purpose for, like, medical history
18 and allergies to medicine?

19 A Well, I want to make sure I know what she's taking
20 so I don't give her something that might interact with what
21 she's already taking. Also, it's significant for the
22 hospitals to know what they are -- you know, what we're
23 bringing in.

24 Q Okay.

1 A And what allergies that patient might have.

2 Q And did you learn of any medication she was taking
3 or allergies that she had?

4 A I -- from the report, there's some medication and
5 allergies to medication, I believe.

6 Q Okay. Have you responded to numerous scenes since
7 2000 -- March of 2000?

8 A Absolutely.

9 Q Thousands, maybe?

10 A Yes. Thousands.

11 Q And would it -- you can't remember every one, can
12 you?

13 A No.

14 Q Would it refresh your recollection to refer to your
15 report?

16 A Yes.

17 MS. LUZAICH: May I approach?

18 THE COURT: Yep.

19 BY MS. LUZAICH:

20 Q Can you look at that and tell me if it refreshes
21 your memory as to medications she was taking and what she
22 might be allergic to?

23 A Yes, I wrote down she was -- had a history of
24 depression. She had medications. Two medications: Rameron

1 and Chomel (phonetic). And she's allergic to fedda --
2 Feldene. Feldene.

3 Q Okay. So you made note of that so you could inform
4 the hospital when you got there.

5 A Yes.

6 Q Did you also determine what, if any, pain she was
7 having?

8 A Yeah, she was complaining that she had been stabbed,
9 raped, and had pain to her head and neck area.

10 Q Okay. Stabbed, raped. Anything else?

11 A From my report, reading my report, it --
12 strangulation, beaten, and from what she told me, "a suspect
13 set patient's apartment on fire."

14 Q Okay. So when she said that she had injuries to her
15 head -- or I should say her head hurt, showing you State's
16 Exhibit 323, did you note any of these injuries?

17 A Yes, she had dry blood all over her face, and she
18 had a laceration on -- on her head.

19 Q When you say laceration on her head, showing you
20 State's Exhibit 325, is that what you're talking about?

21 A Yes.

22 Q And then to go back to 323 for a second, in addition
23 to dry blood, do you see other injury here?

24 A Just marks around her chin and neck area.

1 Q And cheek?

2 A And cheek.

3 Q And is that the left side of her face? Sorry.

4 A Yes.

5 Q Just to orient.

6 A Yes.

7 Q Showing you State's Exhibit 324. Is that a little

8 bit more of the right side of her face?

9 A Yes.

10 Q And can you see injuries there?

11 A Some reddening -- reddening and swelling.

12 Q Reddening and swelling where?

13 A Around the eye area.

14 Q Anything on her chin?

15 A Some abrasions.

16 Q And her right cheek?

17 A Dry blood.

18 Q A little bit of reddening?

19 A Yes.

20 Q And her nose?

21 A Yes, she had dry blood and -- and --

22 Q And some reddening?

23 A -- blood around her nose.

24 Q Okay. You said that you -- she said she was

1 stabbed. How did you attempt to ascertain whether or not she
2 had actually been stabbed?

3 A We actually cut her shirt -- cut -- I cut her shirt.
4 And was able to see two puncture wounds.

5 Q Showing you State's Exhibit 319, does that look
6 familiar?

7 A I don't remember the exact writing on the shirt, but
8 it looks familiar.

9 Q Okay. How about -- let me make this a little bit
10 bigger. Can you -- does it appear that -- or you can see any
11 evidence of the fact that a shirt was cut for you for medical
12 reasons?

13 A It looks like it was cut from the bottom -- at the
14 bottom all the way to the top. We'd normally expose the --
15 the body to make sure that there's no other injuries that
16 we're not seeing.

17 Q Okay. And is that what you would always do, cut
18 from the bottom up?

19 A Mm-hmm.

20 Q Is that a "yes"?

21 A Yes. I'm sorry.

22 Q As opposed to, you know, pull the shirt just over
23 her head?

24 A Right.

1 Q Do you note anything else on the T-shirt?

2 A I notice some puncture wound -- some holes in the
3 shirt as well.

4 Q There is a mouse in front of you. I think. If you
5 kind of move it around -- okay. So can you show --

6 A So right here you'll see a hole (indicating). Right
7 there (indicating).

8 Q You're pointing right there. And is that under
9 the --

10 A (Indiscernible) where it says "oxing."

11 Q "Oxing"? Maybe if the shirt were together it would
12 have said "boxing"?

13 And is there an others that you see?

14 A It looks like above that there's some puncture marks
15 right above the lettering as well.

16 Q Kind of under where the end of "January" is?

17 A Yes.

18 Q And then showing you State's Exhibit 328, are these
19 the stab wounds that you observed?

20 A Yes.

21 Q Now, as you observed the stab wounds, you said you
22 couldn't tell how deep they were; correct?

23 A Correct.

24 Q Is there a worry that you have when you see stab

1 wounds like that?

2 A Absolutely. There could be internal bleeding. They
3 could have punctured it -- some sort of organ or something and
4 then, you know, becomes critical to get them to the hospital
5 as soon as possible.

6 Q Okay. Do you know about how long it was from the
7 time you arrived on scene till the time you arrived at the
8 hospital?

9 A I would have to look at my report --

10 Q Would it refresh your memory?

11 A -- (indiscernible) looks like my arrival time on
12 scene was 1:52 and at the hospital at 1:56. So it was a rapid
13 transport. We could have loaded that patient up and took 'em
14 to the hospital.

15 Q Okay. And when you say "the hospital," that would
16 be UMC?

17 A Trauma. UMC trauma.

18 Q What did you do to or with Ms. Case as you were
19 transporting her?

20 A As -- after finishing an assessment, I did provide
21 oxygen, started an IV on her and provide -- comfort care,
22 basically. Did a telemetry to the hospital, let 'em know what
23 I was coming in for.

24 Q What's a telemetry?

1 A Telemetry's when you radio the hospital and let them
2 know what patient you're bring in to their facility, what type
3 of patient.

4 Q And --

5 A And then they can raise the level of who they need
6 to call for depending on the call that we're bringing in.

7 Q So you're explaining to them what you know and what
8 you've seen.

9 A Correct.

10 Q As you were speaking to her, was she able to
11 converse with you?

12 A She was ANO times four. So she'd talk -- she was
13 alert and oriented.

14 Q I was gonna say, in people term, she was alert and
15 oriented.

16 A She was alert and oriented times four --

17 Q What is "times four"?

18 A -- which -- times four, that means all faculty --
19 she's got all her faculties.

20 Q Okay. So she was able to converse in a manner that
21 was reasonable.

22 A Yes.

23 Q And able to answer your questions --

24 A Yes.

1 Q -- appropriately.

2 A Mm-hmm.

3 Q Is that a "yes"?

4 A Yes.

5 Q So four minutes later you get to the hospital and
6 then what happens?

7 A Once I get to the hospital, I transfer the patient
8 over to the nurses or the doctors who -- who's ever there to
9 receive the patient. And then I give them a report of what I
10 saw, what I did, and what I treated for the patient.

11 Q Okay. And then it's the -- and where, specifically,
12 did you drop her at the hospital?

13 A UMC trauma ER. The emergency.

14 Q I guess "drop" is a bad word. Where did you
15 exchange possession of her?

16 A Inside the trauma bay, inside one of the beds.

17 Q Okay. So it was the trauma area as opposed to
18 anywhere else?

19 A Yes.

20 Q Thank you.

21 MS. LUZAICH: I pass the witness.

22 MR. GILL: No questions for this witness,
23 Your Honor.

24 THE COURT: Any questions from the jury?

1 Sir, thank you so much for coming in today. Please
2 don't --

3 THE WITNESS: Thank you.

4 THE COURT: -- share your testimony with anyone else
5 involved in the case since it's still an ongoing trial. But
6 we appreciate you being here.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: You are excused. Thank you.

9 THE WITNESS: Thank you.

10 THE COURT: State?

11 MS. KOLLINS: State calls Robert Hevel.

12 THE MARSHAL: Please step up there. Remain standing
13 and raise your right hand so the clerk can swear you in.

14 THE WITNESS: Thank you.

15 ROBERT HEVEL,
16 [Having been called as a witness and being first duly
17 sworn testified as follows:]

18 THE WITNESS: Yes, ma'am.

19 THE CLERK: Please be seated.

20 Will you please state your name and spell it for the
21 record.

22 THE WITNESS: Robert Hevel. Last name Hevel, H-E-V,
23 like in "Victor," E-L. First name Robert, common spelling.

24 THE CLERK: Thank you.

1 DIRECT EXAMINATION

2 BY MS. KOLLINS:

3 Q Sir, what is your profession?

4 A I'm retired now. I used to be a fire investigator
5 and a bomb technician for the City of Las Vegas Fire
6 Department.

7 Q And how long were you employed in that capacity?

8 A In the capacity of fire investigator and bomb
9 technician? For 21 years.

10 Q And prior to that?

11 A Firefighter, firefighter/paramedic for the Las Vegas
12 Fire Department for ten years.

13 Q What types of training or classes did you have to
14 attend to become a fire investigator for the city?

15 A It's required by the fire department that you're on
16 the fire department for a minimum of five years before you can
17 test for the position. After you test for the position and
18 you're awarded the position, you have to go through POST
19 training, peace officer standard training, like every
20 policeman that you see in a vehicle. Same kind of training
21 'cause I'm change from a fire department to a peace officer
22 because we can do arrest secondary to our (indiscernible)
23 fires.

24 And there's continuing education to keep up your POST

1 standards. Interviewing techniques, almost anything you can
2 think of that relates to police work. And in particular, for
3 fire investigations, I belong to the IAAI, International
4 Association of Arson Investigators. I'm now a CFI with them.
5 But to get that certification, you have to do classes,
6 seminars, have hours trained, and then take a comprehensive
7 test and pass that test.

8 Q And have you kept up with all of your certification
9 now that you're retired?

10 A Now that I'm retired, no.

11 Q Were you operating as a fire investigator in the
12 year 2000?

13 A Yes, I was.

14 Q Calling your attention -- my notes. There we go.
15 Were you working on March 7th of 2000?

16 A Yes, I was.

17 Q How is it that a fire investigator versus a fire
18 squad, I guess, fireman squad gets called to a scene?

19 A The squad, you mean if the fire crew, like that's --

20 Q The fire crew.

21 A -- on the engine or the ladder apparatus or a rescue
22 unit get called to a scene if they get a 9-1-1 call stating
23 there's a fire.

24 Q Does a fire investigator go to every scene where

1 there's a fire?

2 A No.

3 Q What prompts the request of your services back then?
4 What would prompt them to call a fire investigator?

5 A There's several benchmarks set up by the department
6 that would require us to come to the scene shortly or --
7 basically it's a fire that any civilian or firefighter got
8 severely injured or died. Any fire that causes more -- at
9 that time, any fire that caused more than \$10,000 worth of
10 damage. Any fire that a fire captain or an incident
11 commander, like a battalion chief, could not determine the
12 cause of a fire, they would call us out.

13 Q So on March 7, 2000, at about 1:30 in the morning,
14 were you called to 2900 East Charleston?

15 A Yes, ma'am.

16 Q And was that an apartment building?

17 A Yes, it was an apartment complex. There were
18 several buildings.

19 Q Okay. Describe the scene for me, in general, when
20 you arrived.

21 A Down on East Charleston, below five point several --
22 I believe three-story apartments, if I remember right, in an
23 apartment complex, basically the apartment buildings are in
24 the middle. The driveway, if you will, that services the

1 apartment complex and all the parking lot area makes a big U
2 around the buildings.

3 The fire that evening was in building number 2, apartment
4 50. When I arrived on scene, there were several fire units
5 still on scene, including the incident commander, in this
6 case, was the battalion chief. And several Metro patrol cars.

7 Q Did you learn whether or not -- upon your arrival,
8 whether someone had been injured in that fire?

9 A Yes, it's common practice to do a face-to-face
10 update with the incident commander. So in this case it was
11 battalion chief. So on each and every fire, basically you
12 walk up and it's like, "Why was I called? What's going on?
13 What can you tell me about this?"

14 You know, they'll (indiscernible) "I don't know,"
15 "somebody got hurt," "somebody died." Go from there. So
16 that's why you always do a face-to-face and try to understand
17 why you're there.

18 Q Did you learn that the person injured had already
19 been transferred to UMC?

20 A Yes, I was told that by several people.

21 Q So when you commence a fire investigation, I assume
22 you gather some information from the people that are already
23 on scene?

24 A Yes.

1 Q Okay. And then what is the first thing you do when
2 you actually begin your physical investigation of the scene?

3 A I don my personal tech equipment. I get the tools
4 that I need: Shovels, rakes, camera, evidence kit. And
5 depending on the building, depending on the fire, usually do a
6 global view of the scene.

7 This one, the global view is kind of like walking between
8 the buildings. You see the fronts of the building. I did
9 look at the back of the building to see if there's any back --
10 damage to the back of it. There wasn't. And then I proceed
11 into the fire trying to go from the area -- I conduct my fire
12 investigation by going to the area of least damage, examining
13 that, taking pictures of that, documenting that and
14 progressing to the areas of the most damaged in the building.

15 Q When you arrived on this particular scene, was the
16 fire contained or out?

17 A It wasn't completely out. The firefighters were
18 still conducting their firefighter activities, ventilating the
19 building, and putting out what they call "hot spots," areas
20 that weren't completely extinguished. Areas that a lot of
21 debris falls in, you have hot embers still burning. And they
22 usually break open drywall to look for any hidden fires behind
23 the drywall to make sure they've fully extinguished it.

24 MS. KOLLINS: Your Honor, at this time the State has

1 a stipulation from State's 360 to 373, inclusive, as well as
2 359.

3 THE COURT: Mr. Gill; is that correct?

4 MR. GILL: That's correct, Your Honor.

5 THE COURT: All right. Pursuant to stipulation,
6 those will be -- those will be admitted and you can publish.

7 MS. KOLLINS: Thank you.

8 [STATE'S EXHIBITS 359-373 ADMITTED.]

9 BY MS. KOLLINS:

10 Q Just showing you the outside of that building, sir.
11 Generally, what was the damage level to that apartment?

12 A Moderate to severe.

13 Q Apologies, sir. I thought I had the outside
14 photograph for you here. Give me just a moment, please. This
15 is stuck together.

16 Huh, apparently I do not. Give me just a moment and
17 we'll get back to that.

18 What was the size of the layout of the apartment?

19 A I can't really remember. I think the apartment's
20 somewhere around 700 square feet. It's a -- I guess a lot of
21 people would consider it a studio apartment. It's a
22 one-room -- a one-room apartment, bathroom being separated by
23 the door, some sheet rock. The bedroom area is separated by a
24 small wall, like a pony wall similar to that. It doesn't go

1 all the way to the top that separates the bedroom area from
2 the living room area.

3 Q Did you, in fact, take occasion to diagram that
4 apartment?

5 A Yes, I did.

6 Q Showing you admitted State's 373, can you see that
7 on your screen right there?

8 A Yes, ma'am.

9 Q Trying to get your legend in there as well. Can you
10 see the legend? I -- I see (indiscernible) up there.

11 A Yeah, I can see the legend perfectly.

12 Q Okay. Great.

13 A Yes, ma'am.

14 Q So walk us through there and tell us kind of what
15 kind of damage you saw, where you saw it, and where your
16 investigation took you.

17 A First off, this -- the better part of this, the
18 "kitchen" writing and toilet and everything else is a -- off
19 the brochure of the apartments. I got that, copied that, and
20 then I hand drew in all the objects, 1 through 13.

21 Q Okay.

22 A So the front door of this building, over adjacent to
23 what says "AC" and number "7," faces north. That's the
24 entrance to the apartment.

1 Q There's a mouse next to you if you want to use it to
2 click on what you're talking about.

3 THE COURT: Ms. Kollins, did you want him to use the
4 red pencil or you just want him to click? What would be best?

5 MS. KOLLINS: I think he can just point.

6 THE COURT: Okay.

7 Go ahead, sir, whenever you're ready.

8 THE WITNESS: Okay. Yeah. You're -- the task bar
9 kind of covers it up. Number seven, right there (indicating),
10 adjacent to -- that's a front door.

11 THE COURT: If you want the task -- okay. We can do
12 it that way too.

13 MS. KOLLINS: Sorry.

14 THE WITNESS: Quick. Quick. Oh, so then all these
15 different numbers are different items in the apartment that
16 wouldn't be in the -- I mean, they just give you the basic
17 footprint. The bed's not drawn in, the electrical cord, all
18 those different things aren't drawn in. The kitchen area is.
19 That's drawn in. The sink and the toilet and the tub are
20 drawn in. The closet are drawn in. That's part of that
21 footprint that I used from them. One through thirteen
22 indicates all the furnishing are all the items in there that
23 are significant in this case.

24 ///

1 BY MS. KOLLINS:

2 Q Now, when you respond to a scene like this, is one
3 of the things you do is exclude a mechanical cause for that
4 fire or something that's like intrinsic to the apartment, like
5 an electrical outlet or something like that?

6 A Yeah, when you conduct your fire investigation, I'm
7 looking for a cause. I don't know the cause. Nobody's told
8 me the cause of this fire as yet. So I go in and try to rule
9 out possible causes. As we all know, gas appliances and
10 electrical appliances are big causes of fires. We all load
11 our apartments, our houses with electrical appliances.

12 So I'll go in and look for any of those things being a
13 possible cause of the fire, whether it be a TV, a computer,
14 gas stove, whatever. I ruled out the electrical appliances,
15 the TV and such, just by the damage or how undamaged they
16 were.

17 Usually -- like, for instance, if a fire starts on a T --
18 in a TV, and the TV's sitting on top of the table number 8,
19 there would be -- the TV would be very, very damaged. There
20 wouldn't be much left of it because that's where the fire
21 started. Where the fire starts is -- usually the stuff around
22 it is the most consumed by the heat and the fire and the
23 direct flame impingement of the fire.

24 On conducting this investigation, I identified the TV. I

1 didn't believe it was damaged. The AC that is part of the
2 building components up front -- I'm sorry -- right here
3 (indicating), wasn't damaged enough that I believe that was
4 the fire start. I -- off the top of my head, I address the TV
5 in my report, but I can't remember where the TV was. Most
6 likely somewhere around 4 and 3. It wasn't damaged enough
7 either.

8 On my report, I indicated and I did do on this fire, I
9 look at all the electrical outlets of the apartment, thinking
10 that sometimes there are system failures within buildings and
11 they can start the fires. One of the things you do is look at
12 the wall socket itself. They're usually covered with plastic
13 covers.

14 On this small apartment, with the intensity of the fire,
15 and I believe it went in to flashover, which means it got
16 really hot and a lot of fire in there, so much it was blowing
17 out the window. And that's what I was told by the
18 firefighters.

19 Most of the plastic covers you see over the electrical
20 are damaged, if not completely gone. So you strip back the
21 drywall was the wires come down the wall and service that
22 electrical plug. You take out the drywall around it, you look
23 at that. You're looking for any signs of electrical arcing,
24 which is going to cause a fire or a fire start, and you look

1 for excessive heat.

2 And the way you do that is by what they call "sleeving."
3 All electrical wires have a plastic coating over them. So
4 when they touch each other they don't arc or start fires.
5 When they're exposed to extreme amount of heat, that -- that
6 plastic comes off. It's called sleeving, it gets stripped.

7 None of the wires that I found in the walls were like
8 that, indicating the wire -- the fire did not start in the
9 wall or at that socket. The drywall did its job by protecting
10 the wires, protecting the plastic. It was still in good
11 enough shape that I could understand that the fire did not
12 start behind that wall socket or that wall socket was not the
13 cause of the fire.

14 Q What, if anything, did you notice about the damage
15 pattern from the fire in that apartment?

16 A Well, it's one-room apartment. Like I said, you
17 enter the door. So you're kind of walking through everything.
18 I walked toward the back to what appeared to me -- the back of
19 the apartment, the south side of the apartment, back here
20 where the bathroom is, the closet is, the foot of the bed is
21 (indicating). This area appeared, to me, to be less damaged
22 than this living room area. And a lot of that is due to be --
23 because of the fire load in there and what I -- and how I
24 believe the fire was started and progressed.

1 Q Okay. So based on your experience and your review
2 of this particular scene, how do you believe -- how do you
3 believe the fire was started and where do you believe it was
4 started?

5 A As indicated in this, the two red fire plumes that I
6 have indicate that -- the fire starts that I know of. So as I
7 said, this south side of this building, back here, wasn't that
8 heavily damaged. At the foot of the bed, the bed was damaged.

9 If -- my experience, being a firefighter for all the
10 years and being a fire investigator, once a bed starts -- if
11 you guys have ever torn into a bed and see like the -- almost
12 like the hay material, the grass material that they use in the
13 box springs and the mattress, it -- once you -- starts on
14 fire, because it's very compact and pressed, it continues on
15 usually until the whole mattress is gone.

16 Mattress fires are very hard to put out before they're
17 completely consumed. However, this fire, the mattress wasn't
18 completely consumed. It was well consumed up to about the
19 middle of it. I noticed about the middle of it, that there
20 were still bed linen in place and it was all wadded it up.
21 And I noticed that the damage to the -- the foot of the bed,
22 if you will, the occupant was using this pony wall, like, for
23 the head board.

24 This was -- this area right here was the head of the bed

1 (indicating). This area down by 13 was the foot of the bed
2 (indicating). There was pillows up here and there were still
3 some linen up here (indicating). But, yet, back here, at the
4 foot of the bed, where this fire start was, there was nothing
5 but box springs left because the metal's going to stay until
6 it gets really super hot.

7 All the bedding material that's around the box springs
8 and the mattress was gone and a lot of that stuffing or hay
9 material make the mattress feel soft was gone. As you
10 progress towards the head of the bed, some of the material
11 started to appear and the pillows and the linen was all intact
12 up in this area (indicating), as was most of the bed. And I'd
13 have pictures of that.

14 Q So showing you what's been admitted 366, are we
15 seeing that bed in that photograph?

16 A Yes. So if you -- could you remove that just one
17 second?

18 Q Could I what?

19 A Could you remove that just one second?

20 Q Sure.

21 A Go back to the drawing. Sorry.

22 So you see, this is a closet right here (indicating).
23 And I'm saying that's the foot of the bed.

24 Now, if you put that back on, please.

1 Here is that closet (indicating). Here's what's left of
2 the door, just -- just these metal aluminum frames, the wooden
3 portion is gone. This is the base of the bed that was at --
4 by the closet (indicating). This material right here is that,
5 like, straw, hay material I'm telling you about that's on the
6 bed (indicating). Foot of the bed here, nothing here
7 (indicating). You can see the springs here (indicating). You
8 can see all this material's consumed.

9 As you progress from the foot toward the top of the bed,
10 you can see what I was explaining earlier. This right here is
11 a pillow and this is some of the linen (indicating). I think
12 there's a better picture. This is a sheet of drywall that
13 fell on top of the bed, which probably saved some of the
14 sheets and linen also (indicating).

15 Q Showing you -- I'm just gonna try to put it in the
16 corner. That's not gonna work.

17 A So --

18 Q 359.

19 A Yeah. This picture indicate -- this is the same
20 bed. This is a close-up. You can see the box springs right
21 here that are exposed (indicating). Excuse me. You can still
22 see a piece of drywall here (indicating). This is the bed
23 linen and this is some of the pillow (indicating). This is
24 where that piece of sheet rock was laying (indicating).

1 That's why you can still see all these colors vividly.
2 If you're to see some of the other pictures of the apartment,
3 everything kind of looks like a gray scale. You get black,
4 kind of white, hundred different shades of gray in between,
5 depending on the material consumed and the soot deposited on
6 it.

7 Q So when you -- oops. Is there kind of -- well,
8 first of all, how -- how does fire travel?

9 A Fire travels up and out.

10 Q Okay. So looking at that mattress, what made you
11 think that the fire started at that particular end and not
12 somewhere else?

13 A Looking at the entire scene -- bless you. Looking
14 at the entire scene, I see that the fire at the foot of the
15 bed, because of the damage to the bed, especially at the foot
16 and not so much at the top of the bed, and then in the living
17 room, looking at the damage the fire caused in there to that
18 number 3, which was an ottoman, number 4, which was a -- just
19 a standard, like, chair with big arms on it, and number 5
20 being an end table. Most of that was consumed.

21 I think there's a picture -- I have a picture of the
22 chair in the corner. There's not much left of that except for
23 the feet and part of the bed. Or the feet or part of the seat
24 area. But that whole top area, the big arm rest, it's all

1 gone.

2 So looking at the bed, looking at the damage to the foot
3 of the bed, looking at the damage in the living room area, I
4 know, by the fire behavior, that the fire, by number 13 there,
5 the fire at the foot of the bed did not progress over the top
6 of that -- I'm sorry. This fire right here (indicating) did
7 not progress over the top of this bed, over this pony wall and
8 ignite this furniture on fire.

9 These two are separate fires just by the amount of
10 material left here (indicating). I know this fire did not
11 progress and start this on fire and continue to consume
12 everything else.

13 Q So my words, not yours, there's kind of a -- a
14 sparing or a gap in the damage; is that fair?

15 A Yes.

16 Q There was a fire here and a fire here?

17 A Yes, but the gap in the damage would be indicated by
18 the bed. This material left, the linen on top of it, how well
19 that is.

20 Q And how about the pony wall, did it stay --

21 A Well, the pony wall is basically made out of
22 drywall. So it act -- does what it does. It protects the
23 wood frame from being damaged. There was quite a bit of
24 damage to that one, mainly by firemen, the hose -- hose

1 strings.

2 Q Showing you 361, you were talking about, again, the
3 chair in the corner, number 3 and number 5. Is that what's
4 depicted in 361?

5 A Yeah. The ottoman would have been in this area
6 (indicating). As I said in my report, there's not much left
7 of the ottoman. It was pretty much consumed. The -- I see
8 a -- a deposit of material down there.

9 I had interviewed the occupant of the apartment, the next
10 night. I had -- I had observed the whole apartment. I kind
11 of drew that crude sketch. I put all the furniture where I
12 thought it was. I put the furniture, what I thought it was,
13 what -- ottoman, bed, dining room table, whatever, by the
14 stuff that had been left behind.

15 So I confirmed with her all the things that were there.
16 So the ottoman's in this area (indicating). It's almost all
17 gone. There's hardly nothing left of it. And then this is
18 that chair I was talking about (indicating). Those big arms
19 are gone. Here's part of the back (indicating); here's part
20 of the back (indicating), but it fell in 'cause there's no
21 structure to hold it. Here's part of the arm, but there's no
22 arm back to the back of it.

23 So you can see this is mostly all consumed. This is that
24 pony wall (indicating). You see all the heavy char on it. It

1 was a little bit damaged by the fire hose streams. And then
2 firemen punched this hole and this hole because they were
3 trying to make sure the fire isn't in the wall because this
4 pony wall right here is just basically a cavity with wood in
5 it.

6 So the firemen usually, typically will knock holes in the
7 wall like this to make sure the fire's not in there, they
8 don't have a fire behind the wall.

9 Q So based on what we just were talking about in 361
10 and your notes on the chart, that is number 373, do you have
11 an opinion about that area of the fire starting?

12 A Well, I -- like I said, I looked at the TV. I'm --
13 can't really remember where it was. But I remember addressing
14 it. Was in my report. It didn't cause the fire. The fire
15 didn't start there. I looked at the sockets around there and
16 know that they didn't fire -- start -- the fire didn't start
17 in those either and come from the wall sockets or the building
18 system.

19 Q Do --

20 A I could see remain -- remnants of books, magazines,
21 and some papers and they were all over the house. Number 10,
22 right here (indicating), just a whole bunch of paperback books
23 stored right there. She had some magazines below this,
24 like -- so this is like an open bar, if you will. If you're

1 standing here, looking here (indicating), you can look into
2 the kitchen because this is kind of like a pony wall with some
3 cabinets up above it.

4 She had some magazines stacked on top of this, paperback
5 books over here, a lot of books and magazines in what -- this
6 was a chest of drawers (indicating). She had taken out the
7 drawers and she's using it for a bookcase.

8 So looking at the fire, looking at the intensity, looking
9 at the fire load in here, I surmised that the person that
10 started the fire collected ordinary combustibles and ignited
11 the fire in order to get it started and in order to propagate
12 the fire.

13 Q So is the term that you would use to characterize
14 this fire "incendiary"? Is that --

15 A Yes, this fire was caused by human hands, a
16 willfully and malicious act. So it makes it incendiary and
17 not an accident.

18 Q And I did gather my photos from in my file. So I am
19 going to show you just a couple of those. Particularly 371.
20 Do you recognize 371?

21 A Yes, this is the outside of apartment number 50 --
22 building 2, number 50. You can see over here the air
23 conditioning unit. This is that front door. The only means
24 in and out of the apartment. This -- when I interviewed the

1 firefighters, they said the fire was, as they put it, blowing
2 out the adjacent window and out the door (indicating). Like
3 forcefully rolling out that. That usually tells me that a
4 flashover had occurred within the build -- within that
5 apartment.

6 Q And what's a flashover?

7 A So when you have an apartment -- when you have a
8 building like we have, and we furnish it with wood furniture
9 and plastics and you have (indiscernible) and all the other
10 man-made materials, all that puts out a lot of smoke,
11 especially when it's not a really good fire. It's kind of
12 incomplete combustion. All the smoke that comes off all this
13 furniture, especially the plastics, is also flammable.

14 Everything that catches on fire has to get to its
15 ignition point. Wood has a different ignition point than,
16 say, like a piece of paper. Wood has a different ignition
17 point than a hunk of coal. Obviously a hunk of coal would
18 take a lot more energy, heat, and have a higher ignition point
19 for it to burst into flames.

20 All this puts out smoke. At some point that smoke just
21 catches on fire because it gets to its ignition point. That
22 fire goes from the furniture, on the ground, the combustibles
23 in the building, to just basically all the airspace in that
24 apartment because all that smoke is combustible.

1 So all that smoke is rolling out the building. It
2 catches on fire somewhere in the building, where it's a lot
3 hotter, and it just follows the openings out.

4 The firemen say when they get there, fire is shooting out
5 of the door and the window. And that's evident by this
6 (indicating). Right here is a walkway that services the
7 upstairs apartments. This is heavily fire damaged by all that
8 fire that came out of that door and that window.

9 Q And just for completeness, do you recognize 360?

10 A Yeah, that's the kitchen area. This in the corner
11 would be the refrigerator. These are the cabinets. This
12 cabinet right here, door (indicating), is mostly consumed by
13 the fire. This is closest to the opening of the kitchen
14 (indicating). This door is actually propped open, but it's
15 severely warped (indicating). It's fairly thin wood. The
16 heat of the fire and probably the (indiscernible) water in the
17 coolness warped it like that. The refrigerator, which is
18 insulated, is pretty damaged on the outside, fairly damaged on
19 the inside (indicating).

20 Q And showing you admitted 365, kind of a different
21 angle of that same kitchen?

22 A Yes, ma'am. That's just -- this is the side of the
23 refrigerator right here (indicating). This is that cabinet
24 door on the first one that's mostly consumed -- no, this is

1 the second one that's mostly consumed and kind of warped
2 (indicating). And this is just a piece of the insulation of
3 the building that has dropped down out of the ceiling
4 (indicating).

5 Q And I meant to show you this photograph in
6 conjunction with your diagram, but I did not. So pardon me.
7 This is State's 363. And you were talking about the portion
8 of the bed that was not damaged by the fire path. Do you see
9 it in that photograph?

10 A Yes.

11 Q And could you just use your mouse on that for me?

12 A This is the bed linen (indicating). And this is
13 still a piece of sheet rock that's sitting on that stuff that
14 we looked at earlier (indicating). You can see this bed linen
15 back here, the flower design on it. Isn't quite as vivid and
16 you don't have all the other colors around it, plus all the
17 stuff that fell on it. This is that piece of sheet rock
18 (indicating). If you remember that one photo she showed us,
19 that bed linen had more, like, vivid colors to it. Red, the
20 green leaves and everything else.

21 Q And just, lastly, for the record, your opinion as to
22 the cause of this fire?

23 A Cause of the fire was caused by human hands.

24 Q Okay.

1 A Flame source, whether it be light or match, was
2 introduced to common combustibles. The combustibles were
3 arranged in order to ignite the fire and in order to propagate
4 the fire.

5 Q Thank you, Mr. Hevel. I am going to turn you over
6 to Defense counsel.

7 THE COURT: Mr. Goodwin.

8 CROSS-EXAMINATION

9 BY MR. GOODWIN:

10 Q Afternoon, sir. How are you?

11 A Good, sir. How you doing?

12 Q Good. Thank you.

13 Just want to talk about your report first. So --

14 A Okay.

15 Q -- part of conducting this report is interviewing
16 Ms. Case; correct?

17 A Yes, sir.

18 Q And you discussed certain things in the house?

19 A The arrangement of the furniture and to confirm what
20 I saw -- 'cause I didn't know what the ottoman was. I just
21 knew it was like her -- a pile -- you know, a mass of
22 material.

23 Q And --

24 A It was pretty well consumed. She's the one that

1 told me, "That was my foot rest."

2 Q Sure. And the books, she told you about those as
3 well?

4 A I could see a lot of the books even before I talked
5 to her. She had a lot of books, magazines, and even some
6 papers in her room. And she confirmed that.

7 Q She was confirming what you did see in that scene?

8 A Yes.

9 Q And she also discussed with you -- she was also --
10 when you were interviewing her for this purpose, she told you
11 who did this; correct?

12 MS. KOLLINS: Objection. Hearsay.

13 THE COURT: What's your response to that,
14 Mr. Goodwin?

15 MR. GOODWIN: I would say that we're doing it more
16 for -- I mean, he presented this report that he was
17 submitting. It's more for his investigation; correct?

18 THE COURT: No. Overruled -- or sustained. I
19 apologize, in regards to the objection. So --

20 MR. GOODWIN: Okay. I'll rephrase. That's fine.

21 THE COURT: -- he's gonna ask you differently.

22 BY MR. GOODWIN:

23 Q Was -- was (indiscernible) --

24 MR. GILL: Well, Judge, can we approach on that --

1 MS. KOLLINS: Objection.
2 MR. GILL: -- actually?
3 THE COURT: Sure.
4 [BENCH CONFERENCE BEGIN]
5 MR. GILL: Everything he's testified to today has
6 been from the report. We can't cross Leona Case --
7 MS. LUZAICH: (Indiscernible)
8 MR. GOODWIN: Sorry. I'm sorry.
9 MS. LUZAICH: Thank you.
10 MR. GILL: -- as to giving him the name
11 "Sean Carter," which is what he says started the fire. So how
12 do we get into --
13 THE COURT: Well, he said (indiscernible).
14 MR. GILL: Leona told him.
15 MS. KOLLINS: Leona says.
16 MR. GILL: How do we -- I mean, without a --
17 MS. KOLLINS: Leona gives a name to somebody and it
18 somehow gets relayed to him and --
19 THE COURT: So it's double hearsay.
20 MR. GILL: His conclusion is that Sean Carter
21 started the fire, along with all the other conclusions that
22 he's drawn. So if we can't get in through him, how do we get
23 into it? 'Cause Ms. Case is unavailable.
24 THE COURT: So I guess -- a couple different things.

1 So if -- if Defense's position is he shouldn't be able to be
2 getting into this (indiscernible) I mean, the correct thing
3 would have been, you know, objection. You could have dealt
4 with it up here at the bench, which there wasn't an objection.

5 MR. GILL: Well, the State didn't ask him about who,
6 just how.

7 THE COURT: Oh, no, but I mean, what your point was
8 is a lot of the stuff -- everything testified to was from his
9 report; right?

10 THE WITNESS: Correct. Yes.

11 MS. KOLLINS: Well --

12 THE COURT: And so I'm saying, (indiscernible) there
13 was no objection (indiscernible). So it came in, whereas if
14 there had been an objection (indiscernible) we would have had
15 to come up here and do this for analysis. But just because
16 they got into his stuff -- stuff in his report doesn't
17 necessarily mean that the other side gets to go into his
18 report.

19 But, secondly, is what is the hearsay exception for that
20 coming in? Because now it seems like it's hearsay within
21 hearsay. And why didn't -- secondly, and then I'll let you
22 talk. Secondly, I mean, that's really previous Defense
23 counsel's problematic previous hearing that they -- was he an
24 individual that was previously --

1 MS. KOLLINS: He was.

2 THE COURT: -- testified?

3 MS. KOLLINS: He was. And I guess I just disagree

4 that everything he testified to is hearsay. That's not true.

5 He testified to his investigation. So to say that I've

6 somehow opened the door by --

7 THE COURT: I don't think --

8 MR. GILL: No.

9 MS. KOLLINS: Do you see what I'm --

10 THE COURT: Yeah.

11 MR. GILL: Yeah.

12 THE COURT: I don't think that that -- yeah, I agree

13 with what you're saying, but I don't think that that argument

14 was --

15 MR. GILL: No, that's not --

16 THE COURT: -- made.

17 MS. KOLLINS: Well, he said he testified from his

18 report.

19 MR. GILL: This is -- well, it's 22 years old. My

20 investigator did reach out to this gentleman who had no

21 recollection until he reviewed his report. Obviously, we

22 can't get into that on the record. But that's why I made that

23 statement. And it's 22 years.

24 THE COURT: Yeah.

1 MR. GILL: He was -- he was a third year --

2 THE COURT: So clearly he's relying on it.

3 MR. GILL: -- at that time and --

4 THE COURT: But I think that, unlike other reports
5 that we have, I think when witnesses have pictures to go back
6 and then crosscheck with their report, I do think it's -- it
7 aids them a lot in having a memory of the scene. But I'm just
8 trying to think of an exception --

9 MR. GOODWIN: Well, if we just --

10 MS. KOLLINS: Well --

11 MR. GOODWIN: -- phrase it as, do you -- did you
12 have a conclusion as to who started this fire? Without
13 jumping into where he got that conclusion from?

14 THE COURT: But the objection is then foundation;
15 right? Like, how did you get that information? Well, the
16 information came from Leona Carter [sic] who gave you the
17 name. And that's hearsay. So I'm just trying to go -- so he
18 testified at prelim and that information never came out. He
19 wasn't crossed.

20 MR. GILL: I believe it was -- he was crossed. I
21 can double-check.

22 MS. KOLLINS: On Sean Carter?

23 MR. GILL: On -- I can double-check it.

24 MS. KOLLINS: Maybe he was.

1 MR. GILL: 'Cause it --

2 THE COURT: What's that?

3 MS. KOLLINS: Maybe he was. I -- I just don't
4 recall it right now. I mean, just for right --

5 MS. LUZAICH: But, so what if he was? I mean, it's
6 still hearsay whether he was asked it before or not. Today,
7 it's hearsay.

8 MR. GILL: But you see where we're pinned into a
9 corner, Judge? We can't ask anybody about that.

10 MS. KOLLINS: Well, you can ask Barry Jensen that.
11 You can ask Barry Jensen, did you have all three suspects?
12 Did you have an alternate suspect in Leona Case for the arson?

13 MR. GILL: But he talked to Leona Case. Leona Case
14 is now dead.

15 THE COURT: But --

16 MR. GILL: So why is that different with Barry?

17 THE COURT: Yeah, I don't see why that one's
18 different, though. If we're gonna get it in through Barry,
19 then might as well get it through -- in through the source,
20 you know what I mean? 'Cause I don't -- I'm not seeing the
21 difference there.

22 MR. GILL: And we made a great record and
23 (indiscernible) our objection. So --

24 THE COURT: Yeah. No, I know.

1 MR. GILL: -- if the ruling is the ruling --

2 THE COURT: And just -- yeah. No, I know.

3 So Lisa's point is well made that, okay. Well, even if
4 he testified to it before -- I think, actually, I was going
5 the wrong direction. Leona -- Leona should have been asked
6 that (indiscernible) and then it would have come in, but she
7 wasn't asked that, apparently.

8 MR. GILL: She was not. Don't remember any -- and,
9 again, I can double-check these.

10 THE COURT: No, because we had her read --

11 MR. GILL: Right. And he --

12 THE COURT: -- we read it.

13 MR. GOODWIN: Sean Carter was mentioned in Leona's
14 testimony.

15 THE COURT: But that she said he set the fire.

16 MR. GILL: No, that was not --

17 MR. GOODWIN: No. But he said remember -- like,
18 Sean Carter --

19 MS. LUZAICH: "Remember my name."

20 MR. GOODWIN: Yeah, "Remember my name, Sean Carter
21 is" --

22 THE COURT: What? Yeah. No. No. No. But I mean,
23 the direct testimony --

24 MR. GILL: But that he started the fire.

1 THE COURT: -- that he --

2 MR. GOODWIN: Oh, right.

3 THE COURT: -- started the fire. 'Cause then it
4 would have come in. Because they would have heard that
5 testimony -- you know what I mean? -- through (indiscernible)
6 testimony. If Leona would have said that (indiscernible) then
7 they would have done that.

8 But as of right now, I think it's hearsay. And I think
9 the only way it comes in is, A, if Leona was here; right?
10 She's not. And then he -- if her testimony at preliminary
11 hearing, if she had been crossed on that and it had come in.
12 Other than that, I -- then it would have obviously been
13 (indiscernible) her prior statement. But I'm not seeing any
14 other --

15 MR. GILL: So --

16 THE COURT: -- hearsay exception.

17 MR. GILL: So I guess my question is, why is it
18 admissible that Leona told him about the books, Leona told him
19 about the magazines, Leona told him about the position of
20 everything else in the room, that's all fine, but Leona told
21 him who started the fire, that's not. Like, that -- that's --

22 MS. KOLLINS: 'Cause it's sworn testimony. I mean,
23 it's prelim transcript. It's sworn. This is --

24 THE COURT: Did she --

1 MR. GILL: No, I'm talking about -- I'm talking
2 about now.

3 THE COURT: Well, that's kind of the same to you is
4 that if you have objected to that -- or sorry. If you would
5 have objected to that, then we would have done this analysis
6 and then I would have had to do analysis, said, okay. What
7 was -- for the effect on the listener in regards to his
8 investigation. Now, did he -- does he do any investigation
9 once that name is given or he's just like "that's the person
10 who did it."

11 MS. KOLLINS: That's --

12 MR. GILL: I believe --

13 MS. KOLLINS: -- the -- just goes to --

14 MR. GOODWIN: That's --

15 MS. KOLLINS: -- that's the person that did it.
16 And, I mean, I didn't ask him, "What did she tell you?" He
17 took himself there about, you know, the directions of the
18 furniture. It wasn't anything --

19 MR. GILL: No. No. No.

20 MS. KOLLINS: -- regarding a suspect. Well, I don't
21 know. I'm just making a record.

22 THE COURT: Yeah. That's fine.

23 I -- I don't believe that by the State asking that
24 question, that opened the door. I also don't think that

1 that's what Defense is arguing right now. Defense is saying,
2 what's the difference between him saying, "Well, Leona told me
3 this and then I saw this," versus, "Leona telling me that
4 Sean Carter did this."

5 And my response to that is, is had Defense objected, then
6 I probably would have made a ruling that some of this was
7 relevant and can come in through effect on listener and
8 investigative purposes and some of it couldn't. But there was
9 no objection made, so I didn't have to do that analysis.

10 The last thing I'm going to say is, how could this -- had
11 he said "Leona told me that Sean Carter did it and based on
12 that information I then went and did the search warrant," or
13 something, "on Sean Carter's house and saw if there was any
14 combustibles this and that." Then I'm letting it in every day
15 of the week.

16 But if you're just telling me that he says,
17 "Sean Carter's the person that did the fire." And then he
18 just puts that in his report and doesn't do anything, then
19 it's not coming in for effect on the listener.

20 MR. GILL: Okay.

21 THE COURT: So I'm sustaining the objection.

22 MR. GILL: All right. Thank you.

23 [BENCH CONFERENCE END]

24 THE COURT: Mr. Goodwin, whenever you're ready, sir.

1 MR. GOODWIN: Brief Court's indulgence. I'm sorry.

2 BY MR. GOODWIN:

3 Q Okay. I apologize, sir.

4 Now, you are a fire investigator; correct?

5 A Yes, sir.

6 Q And when did you retire? I'm sorry.

7 A April of 2019.

8 Q Okay.

9 A About three years ago.

10 Q And in -- are you familiar with a piece that was put
11 out by at National Academy of Science, it's called
12 "Strengthening Forensic Science in United States, A Path
13 Forward"?

14 A No.

15 Q You've never heard of that report?

16 A No, I haven't.

17 THE COURT: May I just have the date for that,
18 please?

19 MR. GOODWIN: I'm sorry. That is "Strengthening
20 Forensic Science in United States, A Path Forward." That
21 would have been in 2008.

22 THE COURT: Okay.

23 MR. GOODWIN: Released by the National Academy of
24 Sciences.

1 THE COURT: Thank you.

2 BY MR. GOODWIN:

3 Q So when you're discussing the fire investigation,
4 though, you're part of a -- you get certain training. Who was
5 the training from again?

6 A Several documents, several people, several, like,
7 professional agencies.

8 MR. GOODWIN: I -- I apologize, Your Honor. I lost
9 something (indiscernible).

10 THE COURT: That's okay.

11 THE WITNESS: May I ask you a question?

12 MR. GOODWIN: Of course.

13 THE WITNESS: Are you familiar with NFPA 921?

14 MR. GILL: Your Honor, I'm going to object as to --
15 I -- I know Mr. Goodwin said "sure," but I'm objecting to the
16 witness asking any questions. That's absolutely
17 inappropriate.

18 THE COURT: Sustained.

19 MR. GOODWIN: Okay.

20 BY MR. GOODWIN:

21 Q Okay. So I apologize, sir. So when you did this,
22 you concluded that the fire started in two places; correct?

23 A Yes, sir.

24 Q Now, in your report, you also, in the conclusion,

1 mention that it could have potentially been three; correct?

2 A Yes, sir.

3 Q So when you're looking at those two, are -- do you
4 have any -- as to which one you think, are -- is it two or do
5 you believe it was three locations for this fire?

6 A Personally, I believe it was three because of the
7 fuel load and availability of the fuel in there. I can't
8 articulate the fire -- on number 8, the dining room table,
9 being a separate and a distinct fire from the fire that was on
10 the ottoman, but I can make distinction between the fire at
11 the foot of the bed and the fire in the living room area.

12 I believe the ottoman over the dining room because of the
13 nature of the fuel package and the remnants that are there.

14 Q And based on that, you're looking at the remnants
15 that were just on the floor -- correct? -- or that were left
16 over from that --

17 A Remnants that are in the room, on the floor and
18 still standing, like the chair that was still partially there.

19 MR. GOODWIN: No further questions, Your Honor.

20 THE COURT: Okay. Ms. Kollins, any further
21 questions, ma'am?

22 MS. KOLLINS: Just very quickly, Judge.

23 ///

24 ///

REDIRECT EXAMINATION

BY MS. KOLLINS:

Q Showing you 373 again. Sir, you're confident in your assessment of locations, we'll just call 'em 3 and 13; is that correct?

A Yes, ma'am.

Q Okay. And, potentially, there could have been another ignition point somewhere near the dining table.

A Yes.

Q Is there -- why didn't you include that as a for sure instead of a maybe? Can you tell us that?

A Yeah. Several factors. One, as we discussed before, an intense fuel load. The paper, the magazines, the books, everything else, all in itself is a good fuel load.

I'm gonna talk about a concept of surface area versus mass. If you have a two-by-four, it's hard to ignite. If you have that same two-by-four cut up into saw dust, same amount of material, with a lot more surface area, it ignites a lot easier.

So given that concept, looking at this, number 8, a flat table made out of wood with metal trim around it with dining room chairs around it, with stuff -- stuffing for the cushions and everything else is a good fuel load and a good fuel package. You had a huge surface area with not a lot of mass.

1 Going over to 3 and 4, you have good fuel packages. The
2 chair has wood in it, has all the stuffing in it, but it's not
3 as good of a fuel load, if you will, as the table because it's
4 more condensed. It's sitting on top of each other; you got
5 the converging walls. It's not like a flat piece of wood
6 sitting out there. It's contained, like, in this box with a
7 bunch of other stuff around it.

8 The fact that the ottoman was completely destroyed, the
9 chair was so destroyed, the ottoman was gone. It wasn't
10 really even identified until she told me what it was. The
11 chair's almost completely gone. And that little end table is
12 too. But, yet, there's nothing of the dining room table. But
13 that's a good surface-to-mass ratio.

14 I can't say that this fire didn't progress over to here
15 and consume this as it went out -- because another factor is
16 when this door's open, and the firefighter said they saw the
17 door open, this window falls out, which the firefighter said
18 the window fell out. And I took pictures of glass sitting on
19 the sidewalk. This is another factor of fire investigations.
20 This ends up being a ventilation effect too.

21 You have an intense fire here. There's plenty of fuel
22 load. There's books, papers, magazines all behind it.
23 Sitting on top of the table also, magazines, books, which are
24 a good fuel load. You got a piece of paper sitting out, it's

1 not sitting on top of other ones, then this window breaches.
2 Well, the fire's gonna want to start coming out here.

3 Fire's very abrasive also. Fire destroys a lot of
4 things. The fire's gonna want to come out here. You got a
5 bunch of oxygen rushing in or rushing in the door. It's
6 almost like a whirlwind. So I can't say that the fire was
7 started here, absolutely positively by itself.

8 I think it because of the -- everything's consumed. But
9 then again, I have this great fuel load over here and a great
10 fuel package. I can't say that this fire (indicating) didn't
11 progress over to here, start the paper on fire, and then when
12 this window breached, it just didn't -- like I said, just kind
13 of that whirlwind of abrasion -- abrasive fire, just like
14 consuming everything as it went out. I can't say that
15 number 8 was started all by itself.

16 Q So for those reasons, you decided upon 13 and, we'll
17 call it 3 as ignition points; right?

18 A Yes, ma'am.

19 Q I did forget to ask you something. In 13 up there
20 (indicating), you have an electrical cord drawn. What is
21 that?

22 A It was a -- I think we addressed it in the picture,
23 looked at the picture. It was -- at the foot of the bed,
24 laying on top of the stuff, as I kind of indicate here,

1 crudely (indicating) -- I'm sorry about my drawing as I'm not
2 an artist.

3 This indicates the prongs that go into the wall. This
4 indicates the wire. That there's no, like, female end of
5 this, if you will, that something else would plug in to. It
6 got severed. So this was an incomplete extension cord. Which
7 is just kind of odd that it was laying there.

8 Q So it --

9 A I had the luxury of doing this the night after I
10 talked to her. She actually told me she was choked by an
11 electronic --

12 THE COURT: Just so --

13 MR. GILL: Objection, Your Honor.

14 THE COURT: Sustained.

15 MR. GILL: Unless --

16 THE COURT: Sustained.

17 BY MS. KOLLINS:

18 Q So that cord was detached from an appliance or a
19 wall or an outlet or anything, it was just on its own;
20 correct?

21 A It was detached and broken.

22 Q Okay. Thank you.

23 A It wasn't complete.

24 Q Thank you.

1 MS. KOLLINS: Nothing else, Your Honor.

2 THE COURT: Mr. Goodwin, is there a follow-up in
3 those areas?

4 MR. GILL: Your Honor, can we approach, Judge?

5 THE COURT: Sure.

6 [BENCH CONFERENCE BEGIN]

7 MR. GILL: He's gonna talk about her being choked
8 and -- and strangled, does that not open the door for us to
9 talk about Sean Carter?

10 THE COURT: So (indiscernible).

11 MS. KOLLINS: Well, I didn't ask him -- I just asked
12 him about the item on the diagram. I didn't ask him about
13 what he was told about it.

14 THE COURT: Yeah. I mean, I definitely think it
15 (indiscernible) surprise when that came out. I don't think
16 the State purposely opened the door. I am happy -- I mean,
17 here's the thing: They already (indiscernible) Leona Case;
18 right? And she already testified to that, well, through
19 reading her testimony. I'm happy to give them a caution
20 instruction that they can't take that into --

21 MR. GILL: It's okay. Just (indiscernible).

22 THE COURT: Okay. The objection's noted.
23 Overruled.

24 MR. GILL: Thank you.

1 [BENCH CONFERENCE END]

2 THE COURT: Mr. Goodwin, is there follow up in those

3 areas, sir?

4 MR. GOODWIN: No, Your Honor.

5 THE COURT: Any questions from the jurors?

6 Sir --

7 UNIDENTIFIED JUROR: (Indiscernible) sorry.

8 THE COURT: Oh, okay. No. Just take your time.

9 Let me know when you're ready.

10 Parties approach, please.

11 [BENCH CONFERENCE BEGIN]

12 MS. LUZAICH: This is Adam. Oh.

13 MR. GILL: Hiding.

14 Can I see it (indiscernible)?

15 MS. LUZAICH: This is like --

16 THE COURT: For future reference.

17 MS. LUZAICH: Right. This is like OJ going "if I

18 had a shot" --

19 THE COURT: It's like what?

20 MS. LUZAICH: OJ "if I had killed my wife."

21 MR. GILL: Yeah (indiscernible).

22 THE COURT: (Indiscernible)

23 [BENCH CONFERENCE END]

24 THE COURT: Thank you, sir, for your testimony.

1 Please don't share with anyone else involved in the case. But
2 you are excused at this time. We appreciate you being here.

3 THE WITNESS: Thank you.

4 THE COURT: State?

5 MS. KOLLINS: State calls Leroy Fowler.

6 Nope, one more.

7 THE COURT: Good morning, Mister --

8 THE MARSHAL: Right up here, sir.

9 MS. KOLLINS: That's mine. Thank you.

10 THE MARSHAL: Sorry.

11 THE WITNESS: Oh, here?

12 THE COURT: You get to --

13 THE MARSHAL: Yes.

14 THE COURT: -- sit down. Be more comfortable.

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

18 THE CLERK: Right over here, sir.

19 LEROY FOWLER,
20 [Having been called as a witness and being first duly
21 sworn testified as follows:]

22 THE WITNESS: I do.

23 THE CLERK: Please be seated.

24 Will you please state your name and spell it for the

1 record.

2 THE WITNESS: Leroy Fowler.

3 THE CLERK: And spell it, please.

4 THE WITNESS: L-E-R-O-Y. Leroy Fowler, F-O-W-L-E-R.

5 THE CLERK: Thank you.

6 THE COURT: Ms. Kollins?

7 MS. KOLLINS: Thank you.

8 DIRECT EXAMINATION

9 BY MS. KOLLINS:

10 Q Good afternoon, Mr. Fowler, how are you?

11 A I'm good.

12 Q Good. Where did you live back in 2000?

13 A Um, I lived on Ogden, 1121 Ogden.

14 Q Okay. And was that a house or an apartment?

15 A It's an apartment.

16 Q And what was your apartment number? Do you
17 remember?

18 A Number 9.

19 Q Okay. Is that here in Las Vegas, Clark County,
20 Nevada?

21 A Yes, it is.

22 Q And on June 6th of 2000, how long had you been
23 living there?

24 A Due to 2000, I've been there a little while. I'm

1 not exactly sure how long, but it was a while. I was pretty
2 close to some of the neighbors.

3 Q Okay. There's a microphone right in front of you
4 and I would just ask that you --

5 A Okay.

6 Q -- (indiscernible) over a little bit so everybody
7 can hear ya.

8 I'm sorry. How long did you live there?

9 A I don't remember exactly how long I was there, but I
10 was there for a little while because I know I made friend with
11 some of the neighbors.

12 Q With some of your neighbors?

13 When you lived in Apartment 9 in 2000, do you recall who
14 lived next door to you on either side?

15 A Yeah, I had two -- on both side, I had an elderly --
16 an elderly lady living there. I don't remember their name. I
17 know I had gotten pretty close to the one on -- in 10.

18 Q The early morning hours of June 6th of 2000, were
19 you home?

20 A Yes, ma'am.

21 Q Was anybody there with you?

22 A No.

23 Q Okay. I'm going to ask you a small favor. Can you
24 take your hands down so we can hear ya?

1 All right. Thank you.

2 Were you home by yourself?

3 A Yes, ma'am.

4 Q About 2:00 o'clock in the morning, were you
5 sleeping? Were you awake? Something different?

6 A I was sleeping.

7 Q Okay. Did something wake ya up?

8 A Yes, ma'am.

9 Q What woke ya up?

10 A A loud bang.

11 Q A bang like something outside? A bang like a car
12 crash? What kind of bang?

13 A Like someone -- someone kicked my door in.

14 Q Okay. Showing -- after you heard that bang, what
15 happened?

16 A I saw someone coming down the hall towards me and I
17 just jumped out (indiscernible) I just jumped up.

18 THE COURT: I'm so sorry. What did you say?

19 THE WITNESS: After I heard the bang. I woke up. I
20 jumped up and I looked and I saw someone coming down the
21 hallway.

22 THE COURT: Okay. Got it.

23 BY MS. KOLLINS:

24 Q Was that one person by themselves or more than one

1 person?

2 A One person.

3 Q Okay. And male? Female?

4 A It was male.

5 Q Okay. Could you see what they were wearing?

6 A Yeah. Yeah. Pretty much. What they were wearing,
7 yeah. He had a bandana on his face. Wearing, I remember
8 correctly, I know he had on shorts, red shorts, white socks,
9 white T-shirt, I believe.

10 Q So red shorts, white socks, white T-shirt. Anything
11 else? Red bandana?

12 A He had -- bandana I believe was blue.

13 Q The bandana was blue?

14 A Think it was blue.

15 Q Okay. Showing you admitted 389, do you recognize
16 that picture?

17 A Yes, ma'am. That's my front door, back then it was.

18 Q Okay. And showing you State's 388, what about that?

19 A That's the hallway. And that's the bed down there
20 at the end. That's where I was sleeping when I heard the bang
21 and I jumped up and I saw him coming directly towards me.

22 Q Okay. Is that the front door of your apartment?

23 A Yes, it is.

24 Q And the bed we see, that's where you were sleeping?

1 A Yes, ma'am.

2 Q And this area, from the front door back to the
3 bed -- is that correct? -- sir, what you call the hallway?

4 A Yes, that's the hallway.

5 Q Okay. Now, when the person was coming down the
6 hallway, what did you do?

7 A I jumped up and I picked up the kitchen -- one of
8 the chairs sitting at the kitchen table.

9 Q Picked up a chair from your kitchen table?

10 A Yeah. Yes.

11 Q Showing you --

12 THE COURT: Ms. Kollins, I don't think those ones
13 have been admitted yet. I didn't know --

14 MS. KOLLINS: I'm -- I'm sorry. We have a
15 stipulation to these.

16 THE COURT: That's okay.

17 MS. KOLLINS: I apologize. To -- 374 to 388.

18 MR. GILL: And I have reviewed those. And she's
19 correct. We are stipulating to their admission.

20 THE COURT: Okay. Thank you. Having the -- been
21 stipulated in, those are admitted, and Ms. Kollins can publish
22 on the Elmo.

23 [STATE'S EXHIBITS 374-388 ADMITTED.]

24 MS. KOLLINS: Just getting way ahead of myself.

1 THE COURT: That's okay.

2 MS. KOLLINS: Monday.

3 BY MS. KOLLINS:

4 Q Okay. So showing you 380, what do we see there?

5 A That's the kitchen.

6 Q Okay. And showing you 384, what do we see there?

7 A That's the front -- front hallway. Little -- little
8 messed up, you know, from the altercation but, yeah, that's --
9 that's basically the whole apartment. It's three -- it was
10 really small.

11 Q Okay. So you said when the person came in, you
12 picked up a chair from the kitchen. Is that -- what we're
13 looking at in that photo, is that the chair from the kitchen
14 you picked up?

15 A That's the chair I had, yeah.

16 Q Okay.

17 A It was at the dining room table, if you want to call
18 it a dining room. It's only one room.

19 Q What did you do with the chair when you picked it
20 up?

21 A I used it to defend myself.

22 Q Okay. Well, did you poke him with it? Did you
23 swing it at him?

24 A I started swinging at him, yeah.

1 Q Okay. Did you make contact with him?

2 A I don't think so, no.

3 Q Was he saying anything to you while you're swinging
4 the chair at him?

5 A He told me to shut up.

6 Q Okay.

7 A He told me to shut up in a hush tone like -- like
8 trying to quiet someone. "Shut up. Shut up. Shut up."
9 Like --

10 Q You said he told you to shut up in a hush tone and
11 you just kind of described it?

12 A Yeah.

13 Q When you started swinging the chair at him, what did
14 he do?

15 A He stood there and told me to shut up and --

16 Q Did he stay there for a long time or a little bit of
17 time or --

18 A No. No. It hap -- it was all very fast. I guess
19 when he realized he was gonna be -- encounter more resistance
20 than he expected, I guess he -- he left. 'Cause he just turn
21 around and ran. Just -- like, within the first two to three
22 minutes of this, he turn around and took off out the
23 apartment.

24 Q And showing you 386, do you recognize that?

1 A Yeah, that's the front door that got kicked in.
2 That's the damage from when he kicked it in.

3 Q And same for 387, also the front door?

4 A Yes, ma'am.

5 Q Now, after you started swinging this chair and he
6 left, what did you do?

7 A I ran after him.

8 Q You ran after him?

9 A Yes, ma'am.

10 Q Is that a "yes"?

11 A Yes, ma'am. Yes, it is.

12 Q And where did you run to?

13 A I chased him down the street a little bit. He ran
14 across the street. I followed him. Then he hit a dark alley
15 and that's when I got off the chase. I figured if I did catch
16 him -- he had a knife, so it's not a good idea to try to
17 confront him in a dark alley.

18 Basically, I just was hoping to run into some law
19 enforcement or somebody around to help me. That's why I
20 chased him. I didn't chase him to try and catch him and beat
21 him up or nothing like that.

22 Q You just chased him to try and get law enforcement
23 to come?

24 A Yeah.

1 Q Okay. And did that work out that night?

2 A No, it was very dark. It was very late. Nobody was
3 around.

4 Q So I want to back ya up. When you heard the bang
5 and you saw him come in, did he have anything with him?

6 A Yes, ma'am.

7 Q What did he have?

8 A He had a knife.

9 Q What kind of knife?

10 A It was a big knife. Thinking back, it was more like
11 a really large hunting -- hunting knife maybe or a -- a
12 cleave -- not a cleaver, but like I would liken to a small-ish
13 machete type of knife. Long handle (indicating). Long knife.
14 It was a long knife, about eight to ten inches long
15 (indicating).

16 Q About eight to ten inches long?

17 A [Witness nods head.]

18 Q Is that a "yes"?

19 A Yeah. Yes.

20 Q And did he have that out when he came in?

21 A Yes, ma'am.

22 Q And that's when you picked up the chair?

23 A That's why I picked up the chair. Yeah.

24 Q When you chased him down the street, did you chase

1 him down Ogden?

2 A It started on Ogden. It (indiscernible) Ogden. He
3 crossed the street going east, I believe it was going east
4 towards Stewart. And then he made a right down the alleyway,
5 in the middle of that block. When you come out -- Ogden's
6 right here (indicating) and (indiscernible) parkway, Stewart's
7 a block up. So he went this way and then down that alley
8 (indicating). And I mirrored him up straight and mirrored him
9 on -- on that street.

10 Q So when you -- you say you married [sic] on the next
11 street --

12 A Mirrored him on the next street. Yeah, once he
13 crossed the street and ran down the alley, I didn't chase him
14 down the alley. I went straight down the street (indicating).

15 Q And what -- do you know what street that was?

16 A That was Ogden, in between Marilyn Parkway and 13th,
17 I believe.

18 Q Between Marilyn Parkway and 13th?

19 A Or 15th. Marilyn Parkway's 13. It was -- I believe
20 it's Ogden and Marilyn and 15th -- no, not 15th. Ogden,
21 Marilyn Parkway, going this way (indicating) is
22 (indiscernible) parkway, 13th Street's -- yeah. 13th, I
23 believe. I'm not exactly sure.

24 Q In that vicinity --

1 A Yeah.

2 Q -- though, of Ogden and 13th?

3 A Yeah.

4 Q Okay. And he didn't run to a car that you saw;
5 right?

6 A No, that's --

7 MS. KOLLINS: And we'll pass the witness,
8 Your Honor.

9 THE COURT: Mr. Gill.

10 MR. GILL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. GILL:

13 Q Mr. Fowler, how are you today?

14 A I'm good.

15 Q Now, just real quick -- and I'll -- I'll get a
16 State's exhibit out of your apartment.

17 MR. GILL: Court's indulgence.

18 THE COURT: Sure.

19 BY MR. GILL:

20 Q This is 388, State's 388. Can you see that okay
21 there?

22 A Yes, sir.

23 Q And that is, again, the front door which has the "9"
24 on it; correct?

1 A Yes, sir.

2 Q And then that kind of shows all the way back to the
3 bed; right?

4 A Yes, ma'am -- yes, sir. I'm sorry.

5 Q That wall that has the AC unit -- unit on it, is
6 that the end of the apartment, if you will?

7 A Yes. Yes.

8 Q So that's as far back as you can go; correct?

9 A Yes, ma'am -- yes, sir.

10 Q And then the individual who came into your house
11 that evening, how far in did he get? If you could maybe kind
12 of describe it or indicate it on that picture.

13 A You see the end --

14 Q Well, sir, there's a mouse right there. And
15 it'll --

16 A Oh, okay.

17 Q See that? Okay.

18 A This -- this wall right here (indicating), right
19 behind that wall is a 'frigerator. He got about that far.

20 Q Okay. So -- and if you will, that's kind of a
21 corner?

22 A Yeah.

23 Q And around that corner to -- to your left, if you're
24 walking in, is a refrigerator?

1 A A refrigerator, the dining room table.

2 Q It's all right in that area with the bed?

3 A Oh, yeah. Yeah.

4 Q Okay. So it is a studio, as you described; right?

5 A Yes.

6 Q And then he got in as far as maybe that threshold of
7 where that corner wall is?

8 A Yeah.

9 Q And that's when you grabbed the chair; correct?

10 A Yeah. By that time I was standing up by the dining
11 room table with the chair (indiscernible) at that point, yeah.

12 Q Okay. And he -- you described to Ms. Kollins that
13 he had a knife in his hand; correct?

14 A Yes, sir.

15 Q And do you recall giving a written statement?

16 A Yes, sir.

17 Q Talking to police?

18 A I talked to police, yeah.

19 Q And what did you tell 'em at the time about the
20 length of that knife? Do you remember?

21 A That it was a big knife, sort of like a cleaver,
22 like a butcher's cleaver, I believe I said. But not -- not
23 exactly a cleaver, just a big long knife. Probably at least
24 eight to -- eight inches?

1 Q Okay. But let -- let's talk about that cleaver.
2 You were asked if it was a cleaver; correct?

3 A Um, I don't know if was asked, but that's what I --

4 Q Okay.

5 A -- likened it to.

6 Q It was brought up.

7 A Yeah.

8 Q And you decided, even then, that it was not a
9 cleaver; right?

10 A It was not a cleaver.

11 Q Okay. And that was your testimony today --

12 A Yeah.

13 Q -- correct, that it's not a cleaver.

14 A Mm-hmm.

15 Q It's -- I think you said -- is that a "yes"? Sorry.

16 A Like a large -- long knife. Just a long knife.

17 Q And when --

18 A You know, a small machete or a long hunter's knife
19 or a long -- I think it was longer than a kitchen knife you
20 would have in your kitchen.

21 Q Okay. And -- and -- and you recall this incident;
22 correct?

23 A Vividly.

24 Q Because even though it was 22 years ago, it's

1 something that doesn't happen every day; right?

2 A Yeah. I pushed that dresser up against my door for
3 two months after that happened.

4 Q Okay. So your memory is still fairly good; is that
5 fair to say?

6 A Yeah.

7 Q And when you describe -- when you described,
8 earlier, the eight to ten inches, are you including the handle
9 or are you just talking about the blade?

10 A I'm just talking about the blade.

11 Q Okay. Was there a handle on the knife, if you
12 recall?

13 A He had it in his hand, so I couldn't see it very
14 clear. But I'm sure there was.

15 Q Okay. You -- you would assume that there was.

16 A Yeah.

17 Q Yes?

18 A Mm-hmm.

19 Q And, again, she's writing everything down. The
20 reason --

21 A Yes. Yes. Yes. --

22 Q -- I keep asking you --

23 A -- yes. Yes.

24 Q Sorry about that.

1 So you're -- he either had it in his hand or there was
2 some sort of handle and then above that --

3 A Was a long --

4 Q -- was eight to ten inches.

5 A Yeah, I think so. Yeah.

6 Q Okay. And that's your estimation as you sit here
7 today.

8 A My estimate, yeah.

9 Q And, again, more of a hunting-type knife, not a
10 cleaver or a butcher knife; fair?

11 A Yeah, long -- long, slim blade. Not a -- a cleaver
12 would be a bigger block, like a square-like blade; right?

13 Q Right.

14 A Yeah. It's just long -- long blade.

15 Q Can you -- and I'm sorry. I didn't mean to
16 interrupt you there. Can you give a description, maybe, on
17 the depth of the blade? And by that, you know, you talk about
18 a cleaver being a little bit wider or -- or deeper?

19 A Yeah.

20 Q So the -- the blade portion, can you give an
21 estimation on that or no?

22 A It started out a little bit -- like a machete. It's
23 like a machete with -- (indiscernible) a little bit small and
24 then it just gets a little wider as it gets longer

1 (indicating).

2 Q Toward the end?

3 A Yeah.

4 Q Towards the tip?

5 A Yeah.

6 MR. GILL: Okay. So, Judge, I'm going to try -- and
7 for the record he -- it was about an inch and a half or so at
8 the base and then grew from there to about three inches? Is
9 that fair or am I --

10 THE WITNESS: I'm talking about, like, the width.
11 BY MR. GILL:

12 Q Yes.

13 A Okay. Yeah, it kind of grew out (indicating).
14 Like, you know, skinny and then goes (indicating) and then --

15 Q Okay. And -- and -- and I'm trying to get an
16 accurate --

17 A I'm picturing a machete when I think of the
18 description.

19 Q Okay. And as far as the width goes, did it go out
20 as far as you put your hands, which was about five to six
21 inches wide?

22 A I can't say it was that -- that wide, but --

23 Q Okay. You -- you can't say; is that fair?

24 A I can't say, no.

1 Q Okay. Now, after -- and the chair there in 388 is
2 the chair that you swung at him?

3 A That's the chair, yeah.

4 Q Okay. And then did you, at some point, drop it or
5 throw it at him?

6 A When he took off out the apartment, I took off after
7 him. I just -- I threw the chair down and --

8 Q Okay. So you used the chair to protect yourself.
9 He then turned around and ran back out of the apartment;
10 correct?

11 Yes?

12 A Mm-hmm. Yes, it is.

13 Q And you dropped the chair.

14 A Yeah.

15 Q And then you ran back out after him, outside.

16 A Yes, sir.

17 Q Okay. And you chased him down an alley I think --

18 A He ran down an alley. I didn't go down that alley,
19 no.

20 Q He went down it, you did not.

21 A Yes.

22 Q And how far is that alley from your front door,
23 approximately, if you --

24 A When you come out -- my apartment complex is right

1 there on that corner. So he crossed the street (indicating),
2 half a block down --

3 Q Okay. Half a block --

4 A Yeah.

5 Q -- you followed him?

6 A He ran half a block to the alley. It's half a block
7 up Marilyn Parkway. But he made a right down that alley. I
8 continued straight down Ogden.

9 Q Okay. Now, last few questions, Mr. Fowler. The
10 amount of time this perpetrator spent in your apartment, how
11 long was that?

12 A Two to three minutes.

13 Q Two to three minutes?

14 A And the whole time he was telling you, essentially in a
15 hushed tone to -- to shut up.

16 A No, just three quick "shut up. Shut up. Shut up."
17 And when I wouldn't shut up, he turned around and ran.

18 Q And what were you saying? Do you recall?

19 A I probably was incoherent but I was -- I was -- I
20 was screaming. I was yelling. I was like -- in my mind I was
21 saying, "What are you doing? What the F are you doing in my
22 apartment?" But I believe it was just -- I was more like
23 hyperventilating. I was like [descriptive noise] just, like,
24 panicked.

1 Q Just shocked and panicked --

2 A Yeah.

3 Q -- is that fair?

4 Yes?

5 A Yeah.

6 Q Now, you also described some of the clothing that he
7 was wearing. You said blue bandana; correct?

8 A Yeah.

9 Q And red shorts?

10 A Mm-hmm.

11 Q Is that a "yes"?

12 A Yes.

13 Q And then describe those shorts for me, if you
14 remember.

15 A I can't. Two to three minutes. It happened real
16 fast. I just noticed the color was red.

17 Q Okay. And white socks; correct?

18 A As far as I could -- that was a guesstimation. I
19 would say, yeah, when you -- when you see your field of vision
20 and everything, yeah, I would say the socks were white. Yeah.

21 Q Okay.

22 A When you look at someone in the field of vision, if
23 something happening that fast but, yeah, I would say my first
24 glance, I would say the socks were white. Yeah.

1 Q Okay. So -- and -- and I want to just kind of
2 clarify that. You're not focused, necessarily on --

3 A Exactly.

4 Q -- every detail; correct?

5 A Exactly. That's what I'm saying.

6 Q You are shocked.

7 A Yeah.

8 Q And you see somebody burst into your apartment --

9 A Yes, sir.

10 Q -- with a knife.

11 A Yes, sir.

12 Q And you're not necessarily scanning this person --

13 A Exactly. To see what he's wearing or --

14 Q Okay. But --

15 A -- anything like that. Yeah.

16 Q But you believe the socks were white.

17 A Yeah. Or -- or when you see 'em, your overall
18 vision tells you, okay. Yeah. His shirt was white, his
19 shorts were red. Basically, I wasn't looking down and see --
20 check out his socks (indiscernible).

21 Q Okay. And did you notice anything about shoes?

22 A No. No. Nothing at all.

23 Q Okay. And then I think the -- the shirt you said
24 was white?

1 A It was a T-shirt, white T-shirt.

2 Q Okay. Anything else clothing-wise?

3 A No.

4 Q And what about this person's hair?

5 A It was short cut. It was nowhere near an afro, but
6 it wasn't like bald like me, but maybe a half an inch
7 (indiscernible) half an inch.

8 Q Okay. What color?

9 A It was black.

10 Q Okay.

11 MR. GILL: Court's brief indulgence.

12 Nothing further for this witness, Your Honor. Thank you.

13 THE COURT: Ms. Kollins.

14 REDIRECT EXAMINATION

15 BY MS. KOLLINS:

16 Q And I don't know if I asked you, so I just want to
17 make sure I did. Did you tell me what the race was of the
18 person that came in your house?

19 A The what?

20 Q Did you tell me what the race was of the person that
21 came in your house?

22 A He was a black man.

23 Q He was a black man. All right. Thank you.

24 MS. KOLLINS: Nothing further.

1 MR. GILL: Nothing, Your Honor. Thank you.

2 THE COURT: Anything for this witness?

3 Sir, thank you so much for testifying today. Please
4 don't share with anyone else involved in the case since it's
5 an ongoing trial. But we appreciate you being here. And
6 you're excused.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: All right, ladies and gentlemen. We're
9 going to take a 15-minute recess at this point in time.

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

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

23 It is 1:20 I'll see you at 1:35 please.

24 THE MARSHAL: All rise.

1 [RECESS AT 1:19 P.M.; PROCEEDINGS RESUMED AT
2 1:42 P.M.]

3 [IN THE PRESENCE OF THE JURY]

4 THE MARSHAL: All rise.

5 THE COURT: All right. Welcome back, everybody.

6 We are on the record in State of Nevada versus
7 Justin Porter, C174954. Mr. Porter is present with Mr. Gill
8 as well as Mr. Goodwin. Both Chief Deputy District Attorneys,
9 Ms. Luzaich as well as Ms. Kollins, are present on behalf of
10 State.

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

12 MS. KOLLINS: Yes, ma'am.

13 MS. LUZAICH: Yes.

14 MR. GILL: Yes, Your Honor.

15 THE COURT: All right. State.

16 MS. LUZAICH: State calls Laura Andersen.

17 THE MARSHAL: You can just step up there, remain
18 standing, raise your right hand so the clerk can swear you in.

19 LAURA ANDERSEN,
20 [Having been called as a witness and being first duly
21 sworn testified as follows:]

22 THE WITNESS: I do.

23 THE CLERK: Please be seated.

24 Will you please state your name and spell it for the

1 record.

2 THE WITNESS: Laura Andersen, A-N-D-E-R-S-E-N, last
3 name. First name Laura, L-A-U-R-A.

4 THE CLERK: Thank you.

5 THE COURT: Okay.

6 DIRECT EXAMINATION

7 BY MS. LUZAICH:

8 Q Good afternoon, ma'am.

9 A Good afternoon.

10 Q Have you sort of recently retired from the police
11 department?

12 A Yes.

13 Q When was that?

14 A 2012.

15 Q And for how long were you a police officer?

16 A Twenty-eight years.

17 Q Can you tell me when you started and when you
18 retired?

19 A 1984 and I retired in 2012.

20 Q And in the 28 years that you were there, can you
21 describe for us the things that you did?

22 A So I started out, after going through the police
23 academy, in patrol. I was uniform patrol officer until 1994.
24 I tested for the Detective Bureau. I went to the

1 Detective Bureau in 1994 and spent the rest of my career
2 there. So I was a detective in Domestic Violence, Sexual
3 Assault, Robbery, and Homicide.

4 Q Do you recall around when it was that you went to
5 the bureau?

6 A 1994.

7 Q And you said that you were in Domestic Violence,
8 Sexual Assault, Robbery, and then Homicide.

9 A Correct.

10 Q Approximately how long did you spend in Domestic
11 Violence?

12 A Three years.

13 Q Approximately how long in Sexual Assault?

14 A Same time, about three years.

15 Q Approximately how long in Robbery?

16 A Four or five years.

17 Q And approximately how long in Homicide?

18 A Eight years.

19 Q So you retired from Homicide.

20 A Correct.

21 Q As a detective, do your duties differ depending on
22 what area of the bureau you're in?

23 A Yes.

24 Q How?