

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

2  
3                   **No. 85782**

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Elizabeth A. Brown  
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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 VIII**

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1           A     So Domestic Violence cases, most of them are  
2     misdemeanors that we would receive from patrol that would take  
3     a report. Our duties were to, basically, at that point, re --  
4     re-interview the victim if we needed to and submit the case to  
5     the DA. There wasn't much forensic follow-up that needed to  
6     happen because the victim -- there was a suspect. It wasn't  
7     an unknown suspect.

8           Once you get into Sexual Assault and Robbery, those  
9     become unknowns. Sometimes we have unknown suspects. And  
10    there's more that goes into the investigation, including  
11    callouts to the actual scene of the robbery or sexual assault  
12    or murder.

13          Q     So in the year 2000, what area of the bureau were  
14    you in?

15          A     Robbery.

16          Q     And did you become aware of kind of a series of  
17    events in the downtown area?

18          A     Yes.

19          Q     How did you become aware?

20          A     The robbery -- home invasion/robbery started in  
21    April. There were sexual assaults prior to that, I believe in  
22    February. The Detective Bureau at the time was very  
23    decentralized. So we were spread out in multiple, different  
24    buildings. So Robbery was in one building, Sexual Assault,

1 Homicide, we were all spread out. As it is now, they have  
2 headquarters where somebody's centrally located. And the  
3 communication's probably much easier than it was back then.

4 So by the time that we figured out that we had a home  
5 invasion/robbery series in the downtown area, very kind of  
6 specific area that it was all happening in, it was just  
7 detectives talking amongst themselves and reviewing other  
8 reports, including sexual assault. So we became aware that we  
9 actually did have a series.

10 By the time -- in -- that we got to June, this series was  
11 actually escalating in violence. The suspect -- and we'll  
12 probably get into that -- went from having a knife to having a  
13 gun. And there was increased violence upon the victims inside  
14 their homes.

15 So at that point detectives and supervisors got together  
16 and we created a task force. And we determined that we needed  
17 to be more proactive in our -- in our investigative way that  
18 we were pursuing the suspect in this case.

19 Q So while you were in the robbery area, or  
20 Robbery Division, how -- how is it set up? Like, we talked to  
21 Detective Castaneda and Detective Love about how the Sexual  
22 Assault Bureau handled things. How did Robbery handle cases?

23 A So Robbery, we had two separate squads. One  
24 sergeant, six detectives each squad. All of the detectives

1 had take home vehicles and we were all on a rotation callout  
2 schedule. So if someone were up to be on the next callout,  
3 that detective would be up until they received a callout and  
4 then they would respond to the scene and investigate that  
5 call. And then the callout would go to the -- the callout  
6 schedule would go to the next detective. And so on.

7 So this is how several detectives ended up responding to  
8 these different home invasion robberies and talking amongst  
9 ourselves and the information we have from all the scenes,  
10 that's how we put it all together.

11 Q And did there come a time that the robbery area of  
12 the series was all assigned to you?

13 A Correct. At some point, once we decided that --  
14 once we determined that -- that everything was so consistent  
15 that -- one detective usually handles a series, once we  
16 determined that a series has happened. And these home  
17 invasions also involved sexual assault. I did not receive any  
18 of those cases. Because once there was a sexual assault that  
19 happened, in conjunction with the home invasion robbery, it  
20 went to Sexual Assault Detail.

21 Q Okay. So of the robberies in this series, what was  
22 the first robbery in the series?

23 A Um --

24 Q That -- sorry. That did not involve sexual



1 assaults. I'm not saying that the sexual assaults didn't  
2 involve robberies, but what was the robbery that did not  
3 involve a sexual assault?

4 A It was the Rumbaugh home invasion robbery, where  
5 they -- I don't have the address off the top of my head. But  
6 it was a non -- it was a forced entry in that their front door  
7 was open and a cut was made through the screen to gain entry  
8 into the -- into the residence.

9 Q And I'm going to direct your attention, if I could.  
10 Could that have been to apartment 436, North 12th Street,  
11 apartment B?

12 A Correct.

13 Q And you, in fact, met with the Rumbaughs; is that  
14 correct?

15 A I did, after the fact. I wasn't -- I didn't respond  
16 out to that scene.

17 Q But you went there and you spoke to them and you  
18 went through their apartment at least.

19 A Correct.

20 MS. LUZAICH: Okay. I have a stipulation from the  
21 Defense, Your Honor. State's Proposed Exhibits 391 through --  
22 oops -- 422?

23 MR. GILL: That's correct, Your Honor.

24 THE COURT: Okay. Those will be admitted. You can

1 publish and use with the witness.

2 MS. LUZAICH: Thank you.

3 [STATE'S EXHIBITS 391-422 ADMITTED.]

4 BY MS. LUZAICH:

5 Q So showing you State's Exhibit 391, who is this?

6 A That's Mrs. Rumbaugh.

7 Q 392, is that just a --

8 A That's her standing there.

9 Q -- a close-up her standing in her apartment?

10 A In her kitchen, yeah.

11 Q And -- sorry. Had you learned what had happened,  
12 generally, to them?

13 A Yes, they were watching TV, sitting in their living  
14 room watching TV and were startled when a suspect came through  
15 their -- opened their screen door and came in. Immediately  
16 demanding money. He had a knife in his right hand and he was  
17 concealing his face with a bandana, I believe, on that one.  
18 He also made some sexual comments to Mrs. Rumbaugh, indicating  
19 that, you know, her husband was probably too old to have sex  
20 with her --

21 MR. GILL: And, Your Honor, I'm gonna object as to  
22 hearsay statements.

23 THE COURT: Sustained.

24 THE WITNESS: And --

1 BY MS. LUZAICH:

2 Q Okay.

3 A And basically he demanded money. He went into the  
4 bedroom and --

5 MR. GILL: Same objection, Your Honor.

6 THE COURT: Ms. Luzaich?

7 BY MS. LUZAICH:

8 Q Okay. Let me ask you a new question.

9 THE COURT: Sustained.

10 BY MS. LUZAICH:

11 Q Had you learned at some point that he had grabbed  
12 Mrs. Rumbaugh?

13 A Yes.

14 Q And showing you State's Exhibit 393, does that  
15 depict and -- at least apparent bruise to her right wrist --  
16 left --

17 A Yes.

18 Q -- sorry. I know my right from my -- right from my  
19 left wrist.

20 A Outside of the left wrist, yes.

21 Q Okay. Additionally, State's Exhibit 395.

22 A That's Mr. Rumbaugh.

23 Q And 394.

24 A That's him sitting on --

1 Q Him sitting in his home?

2 A Yeah, in his home.

3 Q So you say that there was a screen door that was

4 latched but the front door was actually open; is that correct?

5 A Correct.

6 Q Exhibit 396. Is that one angle of the screen door?

7 A Yes, you can see the cut right next to the latch in

8 the screen.

9 Q There's a mouse next to you. If you can just kind

10 of point to what you're talking to.

11 A Right there (indicating).

12 Q Okay. And Exhibit 397, is that the other side of

13 the screen door?

14 A Yes.

15 Q And then up close of 397. Here's 399.

16 A Correct.

17 Q Is that the hole that you --

18 A That's the hole right there --

19 Q -- you pointed to?

20 A -- yes.

21 Q And then 398, an up-close of 395; is that right?

22 A Yes.

23 Q Same hole?

24 A Same hole.

1 Q Other side.

2 A Other side.

3 Q You also walked through their apartment; is that  
4 correct?

5 A Yes.

6 Q Exhibit 400. Where -- what are we looking at?

7 A So that -- this is basically a studio-type apartment  
8 where the kitchenette is -- is -- is in the same room as the  
9 living room area. And the bedroom is separate. So this is  
10 their small kitchenette.

11 Q Okay. 401.

12 A And that's the living room, slash, dining room area.

13 Q 402.

14 A Same area, closer -- close-up view.

15 Q 403.

16 A Yes.

17 Q And --

18 A Yeah.

19 Q -- up close?

20 A Yes. And as you can tell, the drawers on the  
21 armoire are all opened and they have been gone through.

22 MR. GILL: Objection. Speculation, Your Honor.

23 THE COURT: You have --

24 ///

1 BY MS. LUZAICH:

2 Q Does it appear as though they had been looked  
3 through?

4 A Yes.

5 THE COURT: Sustained and rephrased such that answer  
6 can stand.

7 MS. LUZAICH: Okay. Thank you.

8 BY MS. LUZAICH:

9 Q And also in that same number, 403, can you see a  
10 table by the dresser?

11 A Yes.

12 Q Is there something on the table?

13 A A telephone.

14 Q Is there something significant about the telephone?

15 A I can't tell.

16 Q Showing you 404.

17 A Oh.

18 Q Now is there something significant about it?

19 A Yeah, it had been cut. The -- the phone line had  
20 been cut.

21 Q And then just 406, is that the up-close of the  
22 dresser? Sorry.

23 A Yes.

24 Q 407, is that just kind of as you turn around in a

1 360 view of the living room open area?

2 A Yes, that's the opposite side of what we were just  
3 looking at.

4 Q And then, finally, 408.

5 A Yes, the two chairs that they were sitting at  
6 watching TV.

7 Q Okay. And had you learned that some items were  
8 taken from the Rumbaugh's?

9 A Yes.

10 Q What did you learn was taken?

11 A Cash and change from an El Cortez cup in the  
12 bedroom.

13 Q Showing you State's Exhibit 411.

14 A That's their bedroom with the El Cortez cup on the  
15 bed. Change cup that you get in the casinos.

16 Q Okay. 412?

17 A Yep. The same -- different look -- looking at a  
18 different angle at their dresser.

19 Q Okay. And can you tell what's to the left of their  
20 dresser?

21 A I think that is a -- I'm not sure what that is.

22 Q Okay. Is it a white plastic-ish piece of some kind  
23 of equipment in the bedroom?

24 A That -- yes.

1 Q And shorter than the dresser but taller than the  
2 bed, would you agree?

3 A Yes.

4 Q 413. Just kind of going around the bedroom, on the  
5 other side of the bed, to the bathroom?

6 A Yes. These are overall pictures of the bedroom  
7 area.

8 Q 414.

9 A And that is on the opposite side of the bedroom,  
10 looking out through the -- the door to the bedroom.

11 Q Which you can see the dresser in the background --  
12 or the thing with the drawers --

13 A The armoire --

14 Q -- that --

15 A Yes.

16 Q The armoire. That's -- I knew there was a word.  
17 And on the left and then closet on the right?

18 A Yes.

19 Q 415, was that a little more close-up of that item  
20 that we couldn't really describe?

21 A It looks like -- almost like a plastic dryer with  
22 the El Cortez cup upside down on the bed.

23 Q And 416.

24 A Close-up of the dresser with items that had been



1 removed and strewn over the top of the dresser.

2 Q Are there also items that are kind of open?

3 A Yes, opened and removed from the jewelry case and a  
4 box that has a lid off. And looks like items have been taken  
5 out.

6 Q Okay. 417.

7 A A closet.

8 Q 419, what are we looking at?

9 A This is the El Cortez cups that were on the -- well,  
10 I think one was in -- inside another one, on the bed.

11 Q And --

12 A And they had been -- I'm -- go ahead.

13 Q Is there something significant about what you see in  
14 the photograph?

15 A Yes, you can tell that they've been removed and --  
16 by the crime scene analyst and placed upside down and printed  
17 for latent prints. And this is a black -- this black powder  
18 is consistent -- is what you will see when latent prints are  
19 discovered. And then --

20 Q Okay.

21 A -- the tape right here is how they -- they take the  
22 latent print off of the cup.

23 Q And when they take the print off the cup, what do  
24 they do with it?

1           A     They put it on a card for -- it's like a plastic --  
2     it's like an index card for a later comparison.

3           Q     Showing you State's Exhibit 420.

4           A     That is a back side of the plastic washer -- or  
5     dryer piece of equipment that's in the bedroom.

6           Q     The one we -- we talking about, weren't entirely  
7     sure what it was?

8           A     Correct. It looks like a dryer. It's got like a  
9     dryer hose coming out of the back of it.

10          Q     Okay. And is there any significant -- some  
11     significant -- sorry -- about how it appears in the  
12     photograph.

13          A     It looks to be like there is processing powered for  
14     latent prints on top of here (indicating) and on the back.

15          Q     Okay. And do you see any tape?

16          A     I don't.

17          Q     And what would that indicate to you?

18          A     That would indicate that there's been no latent  
19     prints discovered that they need to recover.

20          Q     State's Exhibit 421.

21          A     That is the screen that has been -- they -- they  
22     tried to process the screen for fingerprints. So they would  
23     place the powder on the screen. And that's kind of the  
24     picture that you see, although you have a little bit of a

1 glare there.

2 Q And State 422.

3 A That's the same screen.

4 Q And then 410, what do we see?

5 A This is the -- yeah. This is the living room,  
6 slash, kitchen area where you can tell some items have been  
7 strewn on the -- on the floor: Cup, chapstick, and some  
8 coins.

9 Q So when there are latent print processing -- or is  
10 latent print processing done, what do you, as the detective,  
11 do?

12 A So we will obtain crime scene analysts that go out  
13 and process the scene, will recover items of evidence. We  
14 then get the report of which items of evidence were recovered.  
15 And then at some point, at a later date, when we want to  
16 submit those for processing or comparison, then we can do that  
17 based off of what prints were recovered.

18 Q And when you say "we want to submit them," is it  
19 you, the detective, who's in charge of an investigation who  
20 then goes and asks the lab to do certain things?

21 A Correct.

22 Q So what, if anything, did you ask the lab to do as  
23 it pertains to the Rumbaugh's?

24 A Once we had identified the suspect, Justin Porter,

1 those prints -- his prints were submitted with a request to  
2 compare them to the latent prints that were recovered from the  
3 El Cortez coin jar from the house.

4 Q Okay.

5 A From the apartment.

6 Q And had there been a -- well, you said you went back  
7 and enter -- re-interviewed the Rumbaugh's.

8 A Correct.

9 Q When you spoke with Mrs. Rumbaugh, what was her --  
10 how did she appear?

11 A Shaken and she -- but she was specifically talking  
12 to me about the sexual comments that were made to her. That  
13 was the information that I obtained from her.

14 Q Okay. And had you learned of a description of the  
15 suspect who had broken into their home?

16 A Yes.

17 Q What was the description of the suspect?

18 A A black male in his 20s, medium build, with -- was  
19 concealing his face and carrying a -- was armed with a knife  
20 in his right hand.

21 Q In addition to handling the Rumbaugh's, was there an  
22 other robbery that occurred that you became involved with?

23 A Yes.

24 Q What was that?

1           A     The Fowler home invasion robbery.

2           Q     And was that on June 6th of 2000?

3           A     Correct.

4           Q     And was his apartment 1121 East Ogden, number 9?

5           A     Yes.

6           Q     What was the description of the individual who  
7 handled -- or who committed that offense?

8           A     Black male in his 20, medium build -- it varied from  
9 medium build to muscular build, armed with a knife and  
10 concealing his face also.

11          Q     Did you learn kind of the mode of entry into  
12 Mr. Fowler's apartment?

13          A     Mr. Fowler was a door kick that left a shoe print on  
14 the front door.

15          Q     And did you learn that nothing was actually taken  
16 from that location?

17          A     Correct.

18          Q     Was there a third robbery that you became involved  
19 with?

20          A     Yes.

21          Q     And what robbery was that?

22          A     That was Guadeloupe Lopez and Zazueta on Cedar.  
23 2850 Cedar, I believe.

24          Q     And was that on June 9th of 2000?

1           A     Yes.

2           Q     Did you go to that scene?

3           A     I did.

4           Q     Showing you State's Exhibit 214. Is that kind of,  
5 like, right as you walk in the apartment?

6           A     That is in the apartment, the front door. There was  
7 no forced entry on this home invasion robbery. They believe  
8 that they had a malfunctioning locking mechanism or that  
9 somehow it was not properly locked.

10          Q     And showing you State's Exhibit 229, what are we  
11 looking at?

12          A     You're looking out in the exterior of the apartment,  
13 and the broken glass from the window that is right next to --  
14 this is the front door (indicating) on the outside. And this  
15 is the window right here that is shattered right -- with all  
16 the glass on the outside (indicating).

17          Q     And is that how it looked when you got there?

18          A     Yes.

19          Q     Did you speak with Mr. Lopez when you got there?

20          A     I did.

21          Q     He spoke English; is that correct?

22          A     Yes.

23          Q     Were there other individuals there that did not  
24 speak English?

1           A     Yes. Ms. Zazueta, she did not.

2           Q     Did somebody call a Spanish-speaking officer to help  
3 communicate with Ms. Zazueta?

4           A     Yes.

5           Q     Actually, two Ms. Zazuetas; is that right?

6           A     Yes.

7           Q     When you spoke to Mr. Lopez, what kind of condition  
8 was he in?

9           A     Bloody and shaken.

10          Q     Showing you State's Exhibit 231. Is that Mr. Lopez?

11          A     That's him.

12          Q     And when you say "bloody," did you -- where was he  
13 bleeding from?

14          A     I believe he had an injury to his arm or leg and his  
15 head (indicating). As you can see, there was a mark right  
16 there on his head.

17          Q     Okay. And showing you Exhibit 232. Is that the  
18 injury to his head?

19          A     Yes.

20          Q     And exhibit -- oh, wait. You said arm or leg.  
21 Sorry. Got the wrong one. Did you notice any other part of  
22 the body?

23          A     Not that I can recall.

24          Q     How about State's Exhibit 234.

1           A     Yes, so those are cuts, as you can tell right here  
2     (indicating), cut on the middle finger, cut on the ring finger  
3     and abrasions, consistent with having been in a fight. And  
4     there was also a googie (phonetic) right there on the knuckle  
5     of the middle finger (indicating). Cut.

6           Q     State's Exhibit 2 --

7           A     Laceration.

8           Q     Ooo, I'm sorry. Laceration --

9           A     No, I just said laceration. It's okay.

10          Q     And did you say Exhibit 233.

11          A     Yes.

12          Q     And what do you see there?

13          A     There's a laceration, cut on his thumb, on his left  
14     thumb.

15          Q     Okay. You mention that it's potentially consistent  
16     with him being in a fight.

17          A     Yes.

18          Q     Were the injuries also consistent with maybe cutting  
19     himself on glass?

20          A     Yes.

21          Q     And then, finally, State's exhibit -- well, sort of  
22     finally -- 235. What's that?

23          A     That is a pretty good cut on his -- looks like the  
24     interior of his left leg, bottom left leg, on his calf.



1 Q Consistent with bullet grazing?

2 A Bullet grazing, yes. Consistent with bullet  
3 grazing, or -- or a cut.

4 Q Okay. So while you were at the home, did you walk  
5 through the apartment?

6 A Yes.

7 Q And did you notice any items of evidentiary value  
8 there?

9 A They were in a pretty good fight in the hallway.  
10 There was damage to the wall, into the living room area where  
11 they had scuffled and fought. And --

12 Q Was that --

13 A -- the suspect was trying to get away and jumped --  
14 that's the -- that is the area of the hallway that has been  
15 dented by a body.

16 Q Okay. Is there a second area of the hallway that  
17 you recall, 226?

18 A And another dent in the drywall, a body, possibly,  
19 being thrown up against the wall.

20 Q Did you notice anything in the bedrooms?

21 A Yes, there were several gunshots that had been fired  
22 by the suspect when Guadalupe started to fight back.

23 Q And do you recall where the gunshots went?

24 A I believe one was in a headboard, and I'm not

1 100 percent on the other two. But I think there were three  
2 gunshots fired and cartridge cases also recovered.

3 Q Could one -- Exhibit 225, have been above the  
4 headboard on the wall?

5 A Yes. That looks like --

6 Q Showing you also --

7 A -- a bullet strike.

8 Q -- 222. Would you agree that's the bed, the  
9 headboard --

10 A That is the bed.

11 Q -- and the plaid wallpaper?

12 A Correct.

13 Q And then back to 225, the bullet hole in the wall in  
14 the plaid --

15 A Yes.

16 Q -- wallpaper.

17 Where else?

18 A In the bedroom.

19 Q But, no, where else in the bedroom? Do you recall?

20 A No, I don't.

21 Q Do you remember one in the mattress, 223?

22 A Yes. I know there were three -- that there were  
23 three strikes in the bedroom, but I'm not specific on exactly  
24 where.

1 Q And then 224, that it went through the mattress out  
2 the bottom?

3 A Yes. That is -- that is the -- so if you -- when  
4 you pull the mattress off, this is going to be the box springs  
5 on the bottom of the mattress.

6 Q And then did you recall one going through the  
7 floor -- or the carpet in the floor?

8 A Yes. And that is the -- the pad underneath the  
9 carpet being pulled back.

10 Q And into --

11 A That is the bullet strike right there (indicating).

12 Q (Indiscernible). And it ultimately went into the  
13 floor; is that correct?

14 A Correct.

15 Q Did you also find shell casings -- or cartridge --  
16 sorry. Sorry -- cartridge casings?

17 A Three cartridge casings were recovered.

18 Q Okay. You recall three of them recovered?

19 A Yes.

20 Q What, if anything -- oh, did you also learn that  
21 there was some bloodstains there?

22 A Was blood on the interior of the apartment and on  
23 the exterior of the apartment in the glass where the -- the  
24 window had been shattered when the suspect jumped through it.

1           Q     Okay. Now, the blood inside the apartment, did you  
2 have any reason to believe that the suspect had bled inside  
3 the apartment?

4           A     Because it was a fight and a pretty violent fight,  
5 yeah, we -- we felt that he possibly could have bled inside  
6 the apartment and then certainly when he -- he was the only  
7 one that went through the window. So we have to assume that  
8 that is his blood outside.

9           Q     Okay. Was that blood tested?

10          A     Yes.

11          Q     And what did you learn, if anything?

12          A     DNA lab tested that the -- the items of blood that  
13 were recovered from that scene were not able to make a DNA  
14 genetic -- there was not enough blood there to make a genetic  
15 DNA code or to get that code for comparison.

16          Q     So they tested and were not able to tell whose it  
17 was.

18          A     Correct.

19          Q     Okay. Did you request any other analysis from the  
20 Zazueta and Lopez apartment?

21          A     Fingerprint comparisons.

22          Q     And where were the fingerprint comparisons taken  
23 from?

24          A     From the interior door handle, I believe.

1 Q Anywhere else?

2 A Not that I can recall.

3 Q Okay. Do you recall at what point in these three  
4 crimes, if at all, that you realized that they might have been  
5 associated with the sexual assaults that Detective Love and  
6 Detective Castaneda were investigating?

7 A At some point during the -- early on in the series,  
8 probably in June, we had conversation with Sexual Assault. We  
9 did hear that there were sexual assaults being committed also  
10 in the home invasion robberies.

11 Like I said earlier, if there is a home invasion robbery,  
12 but there's a sexual assault that occurs inside the residence,  
13 I would not be aware of it. I would not be called out.  
14 Robbery would not be notified. It would be a sexual assault  
15 case.

16 So at some point we became aware that sexual assault also  
17 had these home invasions that were resulting in sexual  
18 assaults. And we did talk to them and compare notes and  
19 descriptions and where -- and location of these crimes and --  
20 and they were all consistent.

21 Q And I'm sorry. I forgot to ask you. Did you learn  
22 the suspect description for the individual who was in the  
23 Zazueta/Lopez apartment?

24 A Yes.

1 Q And what was that?

2 A Black male, 20s, medium build, armed with a handgun  
3 in his right hand that he actually did fire inside the  
4 residence.

5 Q And you had said that the suspect had jumped out the  
6 window. Did you learn that he had jumped somewhere else as  
7 well?

8 A Off the balcony.

9 Q Sorry. Was it kind of a decedent jump down the  
10 balcony?

11 A It was a second -- second-floor apartment balcony.  
12 So it's -- it's a good -- it's a good ways down there.

13 Q Too many photos. Well, we saw that photo the other  
14 day. But you said -- like you said, there's stairs. So it  
15 was a second-story --

16 A Second --

17 Q -- apartment.

18 A Second-story apartment. And he is going -- coming  
19 through this window and going off this balcony here, off this  
20 ledge.

21 Q Okay. As opposed to down the stairs.

22 A As opposed to down the stairs.

23 Q So did there come a time that you learned that there  
24 was -- well, you said that you had talked to the Sexual

1 Assault detectives and discovered that there were similarities  
2 between the support description in your robberies as well as  
3 their sexual assault, robbery, home invasions --

4 A Correct.

5 Q -- is that correct?

6 A Yes.

7 Q What was the -- what were the similarities that you  
8 all had noticed?

9 A Force entry or no force entry into an apartment,  
10 late night hours, after 10:00 o'clock at night. So graveyard  
11 hours. These are all happening when everybody's usually home  
12 in their houses and they're -- and they're sleeping or awake  
13 watching TV. So that's all happening nighttime hours.

14 Suspect was always described as a black male, early 20s,  
15 early to late 20s, medium build or muscular, always trying to  
16 conceal his face either with a bandana, a towel, or some item  
17 that he's trying to cover his face. And he's right-handed  
18 because he's carrying a knife and/or gun in the right hand.

19 Q And you said in the downtown area. Can you describe  
20 for us, like, the vicinity that all of these sexual assaults  
21 and robberies occurred in?

22 A So, we're talking north of Charleston, south of  
23 Bonanza, east of Las Vegas Boulevard, and west of Pecos.  
24 That's all -- that's the geographical area.

1           Q     And as far as you know, you're -- well, your three  
2 incidents occurred in there; is that correct?

3           A     Correct.

4           Q     And as far as you know, the sexual assaults that  
5 Detective Castaneda and Detective Love were investigating also  
6 occurred in that same area.

7           A     Yes.

8           Q     So once you had this suspect description and the  
9 area, what did all of you detectives do?

10          A     Well, after the -- Guadeloupe Lopez, the one that we  
11 just previewed, where he went out the window and there were  
12 shots fired in the residence, that's a -- that's a significant  
13 escalation in violence. So we got together, a task force was  
14 formed and we decided to be proactive in our investigation  
15 tactics.

16          So what we decided to do -- detectives typically work day  
17 shift hours. So my shift at the time was 7:00 to 5:00,  
18 ten-hour shift -- 7:00 to 5:00, 7:00 to 4:00. And most of the  
19 detectives in this investigation were all day shift. We  
20 flipped our schedules. So we all came in, in graveyard hours.  
21 We started 10:00 o'clock at night until sunrise. And we tried  
22 to saturate the down -- the parameters of the area that I was  
23 telling you about, saturate that area with patrol officers and  
24 plain clothes detectives to try to determine if we could stop



1 or see someone out at that time of night that was doing these  
2 crimes.

3 Q And what specifically did you do?

4 A I was in a plain vehicle. We all worked on a  
5 dedicated channel. So it was just us, you know, everybody  
6 that was involved in this operation. We're talking to each  
7 other for several nights in a row. And we -- we -- we were  
8 just basically have a geographical area that we just sit and  
9 watch and wait and see what passed us by.

10 So if there was somebody that matched the description of  
11 the suspect walking, we would stop that individual and ask --  
12 ask, you know, obviously consensually have a conversation with  
13 them and ask where they were going, where they're coming from.  
14 You know, try to do a preliminary investigation with that  
15 particular person.

16 Q Okay. And if an individual that you approached  
17 didn't want to talk, what would you do?

18 A Let 'em go.

19 Q Okay. And in addition to asking, you know, who are  
20 you? Where you going? What you doing? Would you ask them  
21 for anything else?

22 A Identification. And we would ask them to -- if they  
23 would be willing to voluntarily submit a DNA sample through a  
24 buccal -- through what is called a buccal swab. And it is a

1 little kit that we carry. It's basically like a toothbrush.  
2 And if they consent to it, they just basically toothbrush the  
3 inside of their gums. And that collects the DNA sample. And  
4 we collect it and impound it.

5 Q I described it in the past as a cotton swab. Does  
6 it kind of look like a cotton swab?

7 A Cotton swab. Yeah, but it's a little more  
8 bristley, kind of like a toothbrush. Mm-hmm.

9 Q But it does not hurt; correct?

10 A No.

11 Q Do you know how many individuals you spoke to during  
12 that time frame?

13 A I have to say five to ten, maybe.

14 Q Okay. For how long did you personally do it?

15 A I would say under 60 minutes, our -- our interviews  
16 were all, you know, pretty -- pretty quick. We didn't detain  
17 them for longer than 60 minutes.

18 Q No. No. That was a bad question.

19 A Sorry.

20 Q For how long -- like, how many days -- over the  
21 course of how many days did you do it?

22 A It -- oh, I think I was out there for four nights.  
23 Four or five nights.

24 Q Okay. Were you the only detective in the Robbery

1 section that was out there?

2 A No.

3 Q Who else was out there?

4 A My sergeant, Lori Crickett and Steve Pop (phonetic),  
5 another detective, Chuck Mayo, I think Cliff Mogg was out  
6 there as well. It was a bunch of us and from both squads.

7 Q And were you together or were you separate? How did  
8 that work?

9 A All separate. We were all -- yeah, single --  
10 single-man vehicles in plain clothes, plain vehicle.

11 Q Okay. In addition while you guys were out there,  
12 were you aware that the Sexual Assault detectives were also  
13 out there doing the same thing?

14 A Yes, we were all working on a dedicated channel  
15 together. So we were all in communication with each other.

16 Q And PSU was out there as well?

17 A PSU, Problem Solving Unit from -- from Downtown Area  
18 Command. They're also plain clothes. They were out there as  
19 well.

20 Q Do you know how many officers they had out --

21 A I don't.

22 Q -- at a given time -- I mean, more than one?

23 A A squad is usually six people. So six officers. So  
24 I -- I would imagine there no more than six.

1 Q Okay. And as far as you know, did everybody that  
2 was out there at least stop one person?

3 A Yes.

4 Q And were many buccal swabs collected?

5 A Many, yes.

6 Q Did you learn at some point that one of the buccal  
7 swabs that was collected matched a sexual assault kit and an  
8 other item in the evidence?

9 A Yes.

10 Q And once that was learned, what happened?

11 A A lot happened. Once we identified who  
12 Justin Porter was, we located where he lived. We started  
13 doing background on him, his family members, and trying to put  
14 together information that -- that we could obtain a search  
15 warrant for his residence. So there was a lot that was  
16 happening within a very short period of time.

17 Q What were you looking for to search in his  
18 residence?

19 A Clothing and shoes and any -- any property.

20 Q When you say "clothing and shoes," do you mean  
21 clothing, shoes that might have matched the description that  
22 any of the victims had given?

23 A Correct.

24 Q And any property that was taken during the crimes?

1           A     Yes.

2           Q     As this is happening, were Sexual Assault and  
3 Robbery working together?

4           A     Yes.

5           Q     And do you know who was handling the writing of the  
6 search warrant?

7           A     It was Detective Jensen, Detective Love, Detective  
8 Castaneda. I think that Detective Jensen was the affiant on  
9 the search warrant.

10          Q     Okay. For the home?

11          A     Correct.

12          Q     Could that have been Detective Castaneda?

13          A     Yes, they were all working together. So I don't  
14 know who -- who was actually writing it.

15          Q     Okay. And at the time was Detective Jensen working  
16 Sexual Assault?

17          A     Yes.

18          Q     Along with Castaneda and Love?

19          A     Yes.

20          Q     Were you asked to help in the service of the search  
21 warrant?

22          A     Yes.

23          Q     Do you know when the search warrant was actually  
24 obtained?

1           A     I think it was obtained on the 10th and it was  
2 served on the 11th. Either -- one of those days.

3           Q     Had --

4           A     Of August.

5           Q     Had you learned that individual -- well, that  
6 detectives had spoken -- well, I'm sorry. Did you learn the  
7 name of the mother of Justin Porter?

8           A     Yes.

9           Q     What was her name or what is her name?

10          A     Angela Porter.

11          Q     And had you learned that she is -- or was married to  
12 somebody other than Justin Porter's father?

13          A     Yes.

14          Q     Do you know that name?

15          A     I do. Not off the top of my head. I just read it.  
16 But I've --

17          Q     Could it have been Sergo Prevost?

18          A     Yes, that's it.

19          Q     And had you learned that detectives had had a  
20 conversation with Mrs. Porter and Mr. Prevost during the day  
21 on the 10th?

22          A     Yes.

23          Q     Did you ever see a consent to search the apartment?

24          A     I don't recall seeing the card, but I know at some

1 point one was obtained, yes.

2 Q Okay. So you learned that a consent to search --

3 A Yes.

4 Q -- was signed?

5 A Yes.

6 Q Did the detectives get a search warrant anyway?

7 A Yes.

8 Q And were you part of the service of that search  
9 warrant?

10 A Yes.

11 Q Do you recall where the search warrant was served?

12 A It was on North 13th Street. I don't know the --  
13 the number. Sorry.

14 Q Okay. Okay. I'll come back to the photos. When --  
15 did you go to the location yourself?

16 A Yes, with other --

17 Q I'm sorry. By yourself?

18 A Yes, but with other detectives.

19 Q Who else went?

20 A Sergeant Crickett, Detective Jensen, Detective  
21 Castaneda, Detective Love.

22 Q When you went to the location, was a crime scene  
23 analyst with you?

24 A Yes.

1 Q Showing you State's Exhibit 337. Does that indicate  
2 who the crime scene analyst was?

3 A Yes, this -- so this is the crime scene analyst  
4 initials, JC. And this is their P number, 4792. Basically  
5 their I -- their personnel number.

6 Q Okay. And the crime scene analyst, is that  
7 Jenny Car (phonetic)?

8 A Yes.

9 Q Would she have taken photographs of the apartment?

10 A Yes.

11 Q State's Exhibit 339. Is that the apartment?

12 A Yes.

13 Q And does that indicate to you that it's 208 --

14 A Yes.

15 Q -- North 13th Street?

16 And is it apartment number -- oops. Sorry. State's  
17 Exhibit 340. Number 3.

18 A Number 3, yes.

19 Q When you go serve a search warrant at a location  
20 like that, who -- who goes?

21 A Usually.

22 Q Does that make sense --

23 A Yeah. Usually it's detectives and crime scene  
24 analysts that go to the property.



1 Q Okay. Do you bring patrol officers sometimes?

2 A Sometimes, sometimes not, depending upon the time of

3 day, what the circumstances are behind the warrant.

4 Q Okay. What time was it that y'all went to serve

5 this warrant?

6 A Nighttime hours.

7 Q Sorry?

8 A I believe it was nighttime hours. I'm not sure.

9 Q Could it have been like midnight-ish?

10 A Yeah. Yes.

11 Q Ish.

12 A Ish.

13 Q So very late.

14 A Yes.

15 Q Do you recall was patrol with you or not?

16 A I don't.

17 Q When you got there, who was there?

18 A Angela Porter and her husband, Mr. Provost, were in

19 the apartment.

20 Q Where were they?

21 A They were in the apartment.

22 Q Okay. So when you served the search warrant on

23 their apartment, they were inside?

24 A They were inside sitting on the couch.

1 Q Did you have any conversation with them initially?

2 A At some point a statement was obtained from  
3 Angela Porter, a taped statement.

4 Q But was that kind of later?

5 A Yes.

6 Q Did you search first and talk later? I mean, take a  
7 statement later?

8 A Yes.

9 Q Were you there when the apartment was first entered?

10 A I believe so.

11 Q And was there conversation between detectives and  
12 Mrs. Porter?

13 A Yes.

14 Q Did somebody explain to her what you were doing?

15 A Yes.

16 Q And why you were doing it?

17 A Yes.

18 Q And what you were looking for?

19 A Yes.

20 MR. GILL: Your Honor, just for clarification, was  
21 she present for these conversations or was this something she  
22 learned?

23 THE COURT: Okay. Can you answer that question,  
24 ma'am?

1 THE WITNESS: I was there.

2 THE COURT: Okay.

3 THE WITNESS: I was -- I was in the front area of  
4 the home. We were all there.

5 THE COURT: Thank you.

6 BY MS. LUZAICH:

7 Q Is the apartment quite small?

8 A Very small.

9 Q So you all kind of had to be --

10 A Close quarters.

11 Q -- on top of each other?

12 A Yes. Yes.

13 Q Was Mrs. Porter being cooperative?

14 A Yes.

15 Q Was she -- well, what was her demeanor like? I  
16 mean, was she upset? Was she distressed? Was she calm --

17 A Calm.

18 Q -- was she --

19 A Just curious as to what was going on, but calm.

20 Q Okay. Calm and cooperative?

21 A Yes.

22 Q Okay. So you searched through the apartment.

23 A Yes.

24 Q Were there items of evidence that were found?

1 A Yes.

2 Q And do you recall what was found?

3 A A pair of Saucony tennis shoes and black shorts and  
4 another item with logan, I believe.

5 Q Something red?

6 A Yes.

7 Q Showing you State's Exhibit -- good God -- 348. Is  
8 that upside down? Can you tell?

9 A It's a BOSS jacket or -- yes.

10 Q Okay. And then you said --

11 A And a CD -- there's a CD player also, right there.

12 Q And a CD player. And you said Saucony tennis shoes.

13 State's --

14 A Yes.

15 Q -- Exhibit 350.

16 A Saucony tennis shoes, yes.

17 Q Okay. Could be the red items, showing you 350 --  
18 25 -- 352, could that have been shorts, maybe?

19 A BOSS shorts, red shorts, yes.

20 Q And then just 33 -- 354, does that kind of show you  
21 how tight the apartment was?

22 A Yes. Yes.

23 Q So once these items were found, would they have been  
24 given to somebody to impound?

1           A     Yes, crime scene analyst that was present.

2           Q     And you said that you participated in a taped  
3 statement with Mrs. Porter?

4           A     Yes.

5           Q     When you actually did the taped statement, what was  
6 her demeanor?

7           A     The same. Calm. Cooperative.

8           Q     Okay. And when you did the taped statement, did you  
9 learn where Justin Porter was?

10          A     He was in Chicago.

11          Q     Did she give you information where specifically he  
12 was?

13          A     I believe he was at his father's house in Chicago.

14          Q     Okay. Did she give you the address?

15          A     Yes.

16          Q     Did she give you a telephone number for --

17          A     Yes.

18          Q     -- his father?

19                Did she talk to you about any -- well, was she asked  
20 about any potential injuries that he had?

21          A     Yes.

22          Q     And did she tell you about injuries?

23          A     She did.

24          Q     And what did she tell you about injuries?

1           A     She said that he had a very large scrape on his  
2 buttocks area, as if he had fallen. She noticed scratches on  
3 his arms and on his neck.

4           Q     Did she tell you around when she noticed those  
5 injuries?

6           MR. GILL: Objection as to hearsay, Your Honor.

7           THE COURT: Ms. Luzaich?

8           MS. LUZAICH: Prior consistent statement?

9           THE COURT: I do believe that we have a prior  
10 inconsistent statement coming in. So I'll hear the answer  
11 first. But overruled for now.

12           MS. LUZAICH: And just for the record, all of the  
13 questions about what she said are prior inconsistent --  
14 offered as prior inconsistent statements.

15           THE COURT: Understood. Overruled. You can answer  
16 the question, ma'am.

17           THE WITNESS: She said that she noticed these  
18 scratches on him about two weeks before he left town.

19 BY MS. LUZAICH:

20           Q     Okay. And do you know -- well, do you recall when  
21 his -- Justin Porter's buccal swab was taken?

22           A     Believe it was the 13th of June.

23           Q     Okay. And that was -- I can't do the math -- how  
24 many days after Zazueta on the 9th?

1           A     It was the 9th or the --

2           Q     Four day -- so it was four days later?

3           A     Correct.

4           Q     And had you learned that he left on a bus on  
5 June 13th?

6           A     Yes.

7           Q     So it was not long -- July 13th. Sorry about that.

8           A     July 13th -- yes. Yes.

9           Q     So it was not long after the Zazueta robbery that  
10 she noticed those injuries?

11          A     Correct.

12          Q     Did she talk to you about things that she had given  
13 him, Justin, her son.

14          A     She said before he left she went out and bought him  
15 FUBU shoes and, like, six shirts and six shorts and a  
16 toothbrush and toothpaste.

17          Q     Okay. And sent him with a bunch of new things?

18          A     And sent him, yeah.

19          Q     Did you find some new things, however, in the  
20 apartment?

21          A     I don't recall that.

22          Q     Okay. During the course of the statement that you  
23 took from Angela Porter, did she mention that police had  
24 brought him home to her in June?

1           A     Yes.

2           MR. GILL:   And, Your Honor, same objection.   Is this  
3 all still being offered as inconsistent?

4           THE COURT:   State?

5           MS. LUZAICH:  Yes.

6           THE COURT:   Okay.  As long as it's being offered for  
7 an incon -- prior inconsistent statement, it's overruled and  
8 you can answer the question.

9           THE WITNESS:  Yes.

10          BY MS. LUZAICH:

11          Q     And did she tell you that they had taken a buccal  
12 swab from him?

13          A     Yes.

14          Q     And that she was present for that?

15          A     Yes.

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

17          THE COURT:   Mr. Gill.

18          MR. GILL:   Thank you, Your Honor.

19                           CROSS-EXAMINATION

20          BY MR. GILL:

21          Q     Detective, how are you?

22          A     Good.  Thank you.

23          Q     Been a long time on this one; correct?

24          A     I'm sorry?



1 Q Been a long time on this case?

2 A It's been a long time --

3 Q Yeah.

4 A -- since the case, yes.

5 Q Yeah. So 2000 --

6 A Correct.

7 Q -- you were investigating.

8 Now, at the time you stated that you were doing

9 robberies, is that -- was that your detail at this time?

10 A I was investigating robberies, yes.

11 Q Okay. And then -- and then you have expertise -- or

12 excuse me -- investigative experience in some of the other,

13 you know, DV, sex assaults, and homicides; correct?

14 A Correct.

15 Q And that's kind of your background as a detective.

16 A Yes.

17 Q Which you did for 18 years, give or take.

18 A Ish. Mm-hmm. Yes.

19 Q Now, let's -- let's talk first about the Rumbaugh's.

20 You actually went and spoke to them; correct?

21 A Yes.

22 Q And they gave you a description -- correct? -- of

23 the suspect?

24 A Yes.

1 Q And that -- that was black male, 20s, concealed  
2 face, and possessed a knife; correct?

3 A In the right hand, yes.

4 Q In the right hand. Okay. So the knife was in the  
5 right hand. And was there anything else that they gave you,  
6 as far as a description, that you recall?

7 A Not that I recall, no.

8 Q Okay. And also, Francis, we saw the picture of her  
9 wrist. Her left wrist was injured; correct?

10 A Correct.

11 Q And then you did recover many items, but one of the  
12 items was these cups; is that right?

13 A I didn't. I wasn't at the scene. I came back later  
14 and interviewed them after that.

15 Q Okay. Thank you for that. But you were aware that  
16 the cups were recovered --

17 A Yes.

18 Q -- and tested for fingerprints; correct?

19 A Correct.

20 Q And the -- the other one that -- another one that  
21 you investigated was Leroy Fowler; correct?

22 A Yes. Correct.

23 Q And that scene was similar. Small apartment;  
24 correct?

1 A Yes.

2 Q Somewhat the same area.

3 A Yes.

4 Q Now, you had described, earlier, this -- this area  
5 that you guys were focused on, and I've got north of  
6 Charleston; is that right?

7 A Yes. Yes.

8 Q Just correct me if I'm wrong on these --

9 A Sure.

10 Q -- south of Bonanza --

11 A Yes.

12 Q -- west of Vegas Boulevard?

13 A No. East of Las Vegas Boulevard.

14 Q Okay. East of Las Vegas Boulevard and west of --

15 A Pecos.

16 Q Pecos. How large is that area?

17 A It's a pretty big area. But it's small enough to be  
18 considered an area command. So it's Downtown Area Command.

19 Q And does all of that -- that descriptive -- that  
20 description of the area in the Downtown Area Command?

21 A It's probably larger than that, but that is the  
22 specific area we were in.

23 Q So -- and which is larger, the area you were focused  
24 on --

1           A     The actual area command is bigger than the area that  
2 we were actually focused on.

3           Q     Okay. So it does fit within.

4           A     Correct.

5           Q     Okay. Now, with Fowler, the same description --  
6 correct? -- or similar description.

7           A     Similar.

8           Q     Black male; correct?

9           A     Yes.

10          Q     In his 20s, concealing his face and with a knife.

11          A     Yes.

12          Q     And do you know which hand --

13          A     Right hand.

14          Q     Right hand?

15          A     [Witness nods head.]

16          Q     Mr. Fowler at least relay that?

17          A     Pretty sure, yes.

18          Q     Okay. The door was kicked in on the Fowler entry;  
19 correct?

20          A     Yes.

21          Q     Or that -- that's how the perpetrator gained entry.

22          A     Yes.

23          Q     How did the perpetrator gain entry on the Rumbaugh's  
24 home?

1           A     Cut the screen and the -- the front door was open.  
2     So he just accessed the screen handle by cutting through the  
3     screen and opening the handle.

4           Q     Okay. So that screen was pushed in or kicked in.

5           A     No.

6           Q     It was cut and then manipulated to -- to enter?

7           A     Yes. Yes.

8           Q     Zazueta, description was given there as well.

9           A     Yes.

10          Q     Who gave you that description? Do you recall if it  
11     was Guadalupe --

12          A     It was a combination of all three of 'em.

13          Q     Okay. And the three of them being Beatriz --

14          A     The victims, yes.

15          Q     Beatriz, Laura, and Guadeloupe Lopez; correct?

16          A     Correct.

17          Q     The two Zazueta sisters.

18     And that was also black male in his 20s.

19          A     Yes.

20          Q     And this was a gun; correct?

21          A     Yes.

22          Q     No, knife.

23     Now, you -- you were part of forming the task force or  
24     you were part of the task force as soon as it was formed; is

1 that fair?

2 A No, I -- I don't have the power to form a task  
3 force. That was above my pay grade.

4 Q Okay.

5 A But it was formed. Yes.

6 Q And you were on that task force from day one; is  
7 that also fair?

8 A Yes.

9 Q Now, with that, you started to learn that there  
10 might have been some crossovers with -- I think you said PSU  
11 and sex assault?

12 A No, PSU wouldn't have handled any cases. PSU is  
13 Problem Solving Unit. It's basically a plain-clothed unit  
14 tasked to the area command. So we're separate. We're  
15 investigative detectives. So it would have been Sexual  
16 Assault detectives only.

17 Q Okay. So that was the crossover.

18 A They were just called into help with the saturation  
19 of that area.

20 Q Gotcha. So the crossover, if you will, is you and  
21 Sex Assault Detail sharing information.

22 A Correct.

23 Q And with that, you were privy to incident reports  
24 from the crimes that they were investigating?

1           A     Probably, yes.

2           Q     And at least -- and when we say "information," in  
3     quotes, where are you -- what kind of information are you  
4     getting from Sex Assault? Is it from just incident reports or  
5     interviews? What -- what are we talking about here?

6           A     So I wouldn't have delved specifically into the  
7     incident reports because I wasn't the primary investigator.  
8     What I'm looking at is method of operation, which is what a  
9     suspect will do when they're doing a series. We look at what  
10    their MO is. So what are they doing to facilitate the crime.  
11    And those were consistent with sexual assault.

12          Q     Okay.

13          A     Along with the description.

14          Q     And, again, those -- those consistencies were for --  
15    you said force or no force; right?

16          A     Both.

17          Q     So is that a consistency or a difference?

18          A     It's usually a crime of opportunity. If a suspect  
19    can't gain entry by just opening a door or a handle, then --  
20    then a door kick will do. So it's basically all of the above.  
21    Any way that they -- the suspect can gain entry into the  
22    property.

23          Q     So, obviously, in order to commit a robbery, there  
24    needs to be some sort of -- or a home invasion -- excuse me --

1 there needs to be some sort of entry into the home; correct?

2 A Yes.

3 Q And -- and you guys determine that that was done by  
4 force or not force; correct?

5 A Correct.

6 Q Graveyard hours is another thing you mentioned.

7 A Yes.

8 Q And what -- what were the hours ranging from?

9 A After 10:00 p.m.

10 Q Until?

11 A Sunrise.

12 Q Okay. So anywhere from --

13 A 5:00 a.m.-ish, approximately.

14 Q Okay. And, again, not -- not set in stone but --

15 A Right.

16 Q -- your -- graveyard hours to you is 10:00 p.m. to  
17 5:00 a.m.

18 A To sunrise, correct.

19 Q And was that -- that was consistent throughout?

20 A Yes.

21 Q Now, black male, early to late 20s I think is what  
22 you said the descriptions were coming in as.

23 A Yeah.

24 Q And that's between the sex assaults and the



1 robberies.

2 A Yes.

3 Q And concealment of the face.

4 A Yes.

5 Q Right-handed. And then that downtown area that we  
6 talked about.

7 A Yes.

8 Q Now, were you privy to kind of some of the other  
9 items or things that the suspect might be wearing in some of  
10 these other -- let's call 'em either the essays or the  
11 robberies, were you privy to what was worn by the suspect?  
12 What was given as a description of the suspect being --

13 A Probably at the time. I'm -- not off the top of my  
14 head now, no.

15 Q Okay. Let me just ask you these questions and if  
16 you can or can't answer 'em --

17 A Sure.

18 Q -- just let me know.

19 Did -- when you guys -- and you were present for the  
20 search warrant; correct?

21 A Yes.

22 Q You went through the home; correct?

23 A Yes.

24 Q Along with other detectives.

1 A Yes.

2 Q Or the apartment.

3 A Yes.

4 Q It's fairly small; correct?

5 A Yes.

6 Q Did you guys recover a red handkerchief?

7 A I don't believe so.

8 Q A pairing knife?

9 A I don't believe so.

10 Q A butcher knife?

11 A No.

12 Q A red or -- red and white scarf?

13 A No.

14 Q A yellow shirt?

15 A No.

16 Q Yellow jacket?

17 A No.

18 Q White sweater?

19 A No.

20 Q Dark pants?

21 A No.

22 Q How about a white shirt?

23 A Possibly a white shirt.

24 Q Okay. A white handkerchief?

1           A     I don't think we had any handkerchiefs or bandanas.

2           Q     Okay. And that would include a white or blue  
3 bandana, handkerchief kind of --

4           A     Any -- yes.

5           Q     But you did recover -- I want to make sure I have it  
6 right. You did recover those shoes; correct?

7           A     Yes.

8           Q     Pair of black shorts.

9           A     Yes.

10          Q     And then that -- that red --

11          A     BOSS --

12          Q     -- I think --

13          A     -- shorts, yes.

14          Q     Was it shorts or jacket?

15          A     Those -- I think it was short -- I think those were  
16 shorts. I looked at it and initially thought it was a jacket,  
17 but shorts.

18          Q     Okay. And I'll -- and I'll find that photo.

19               MR. GILL: Did you put 'em all back?

20               MS. LUZAICH: I did. Sorry.

21               MR. GILL: Oh, that is okay.

22               MS. LUZAICH: But they're together.

23               MR. GILL: Thank you.

24               And I'll find that. Court's indulgence.

1           Sorry, Judge. I just need to locate the correct stack.

2           THE COURT: That's okay.

3           MR. GILL: We've got a few over here.

4           Well, I -- I can't find the exact picture. Like I  
5 said --

6           MS. LUZAICH: (Indiscernible)

7           MR. GILL: It's okay. It's okay.

8           MS. LUZAICH: I'll find it.

9 BY MR. GILL:

10          Q     The -- that red article of clothing with the "BOSS"  
11 on it.

12          A     Correct.

13          Q     That's what you're talking about, whether it was a  
14 jacket --

15          A     Yes.

16          Q     -- or a -- jacket or a -- you said shorts?

17          A     I think they were shorts, yes.

18          Q     Okay. But that's what was recovered; correct?

19          A     Yes.

20          Q     Was there anything else of interest that you guys  
21 recovered from the -- Ms. Angela Porter's apartment?

22          A     No.

23          Q     Now, you -- you saturated the area. You remember  
24 discussing that with --

1 A Yes.

2 Q -- Ms. Luzaich?

3 What day was that? Do you recall?

4 A That would have been probably before the 13th, after  
5 the 9th --

6 Q Of August.

7 A -- so -- of June.

8 Q Of June. Okay. So between, approximately, June 9th  
9 of 2000 and June 13th; is that fair?

10 A I believe so.

11 Q And you did say you were out there for those four  
12 nights; correct?

13 A Several nights, yes.

14 Q Okay. And you talked to -- you stopped at least  
15 five to ten individuals.

16 A Cumulative over that whole period, yes.

17 Q And that's you alone; right?

18 A When we stopped, we were -- there were several of  
19 us, you know, converging on it, the same area --

20 Q Okay.

21 A -- yes.

22 Q And, again, this is just people that are maybe  
23 walking around, sitting about. These are people that are out  
24 of their homes, outside at the time that you guys were there.

1           A     Yes.

2           Q     Did you do any traffic stops on anybody?

3           A     I don't recall.

4           Q     Okay. But you do recall people -- the people that  
5 you talked to were generally just outside.

6           A     Yes. Walking.

7           Q     Walking or sitting.

8           A     Correct.

9           Q     And -- and, again, you would ask them where they  
10 were going and asked them general questions, but they weren't  
11 under arrest; correct?

12          A     No.

13          Q     They were free to leave?

14          A     Yes.

15          Q     And you wouldn't take a buccal from them unless they  
16 consented to it.

17          A     Correct.

18          Q     And if they said, "I don't want to talk," they were  
19 free to leave; correct?

20          A     Yes.

21          Q     Now, the actual -- and I'm sorry to jump back to the  
22 search warrant. But the actual search warrant you said was  
23 obtained on August 10th of 2000?

24          A     I believe so.

1 Q And you did not write that up; correct?

2 A No.

3 Q You believe it was either Castaneda or Jensen?

4 A Yes.

5 Q And then it was served the following day, on the  
6 11th of August 2000, and you were present.

7 A Yes.

8 Q Okay. And -- so, again, the search warrant is  
9 served on the 11th of August, and it's that same night or the  
10 following day that you talk to Ms. Porter.

11 A Yes.

12 Q And take a statement from her.

13 A Yes.

14 Q And you were present for that interview as well.

15 A Yes.

16 Q And in that, she let you know where Justin was.

17 A Yes.

18 Q And that he had gone there about month prior to  
19 that; is that -- is that correct?

20 A Correct.

21 Q And that was on a bus to Chicago? Do you know?

22 A That's what she said.

23 Q Okay. And that's because his dad's in Chicago; is  
24 that right?

1           A     Yes.

2           Q     Did she tell you how -- when you asked her about the  
3 scratches and the injuries to his -- Justin's buttocks, did  
4 she explain how those occurred or how -- how she was told they  
5 were -- they occurred?

6           MS. LUZAICH:  Objection.  Hearsay.

7           THE COURT:  What would the -- it -- is there an  
8 exception?

9           MR. GILL:  I -- I'll strike the question,  
10 Your Honor.

11          THE COURT:  Okay.  That'll be stricken.

12          MR. GILL:  Court's indulgence.

13          Nothing further, Your Honor.  Thank you.

14          Thank you, detective.

15          THE COURT:  Redirect?

16          MS. LUZAICH:  Just -- oh, just one question.  I'm  
17 sorry.

18                               REDIRECT EXAMINATION

19 BY MS. LUZAICH:

20          Q     When you spoke to Mrs. Porter, did she tell you that  
21 the Defendant had been staying late -- out late at nights and  
22 it had her worried?

23          MR. GILL:  Objection, Your Honor.  Hearsay.

24          MS. LUZAICH:  Prior inconsistent statement.



1 THE COURT: Sustained in regards to inconsistency.  
2 Go ahead.

3 THE WITNESS: Yes, she say --

4 THE COURT: Or overruled in regards --

5 MR. GILL: Judge -- can we approach on that?

6 THE COURT: Yeah.

7 [BENCH CONFERENCE BEGIN]

8 MR. GILL: It's not -- it's not inconsistent. She  
9 testified that he was out late and would worry. So I don't  
10 know where the inconsistency --

11 MS. LUZAICH: No, she didn't. She said, "No, he was  
12 always home with me. He was always home with me when I was  
13 home."

14 THE COURT: So it went both ways; right? She said,  
15 "When I was home, I always knew where he was and he was with  
16 me. When I was at work, I had no way of knowing."

17 MR. GILL: How is she gonna know the differentiation  
18 of that, though?

19 THE COURT: I assume that she was specifically --  
20 went there with the (indiscernible) statement with Ms. Porter.  
21 Do you know what I mean? So I would --

22 MS. LUZAICH: Well, it's inconsistent with "when I  
23 was home, he was with me." Because she said he was staying  
24 out late at night and she was worried. So how would she know

1 he was staying out late at night if she wasn't home?

2 MR. GILL: But how is this particular witness know  
3 the different -- the differentiation between the two?

4 THE COURT: You guys know the statement better;  
5 right?

6 MS. LUZAICH: Yeah.

7 THE COURT: So I don't know if it was delved in  
8 (indiscernible) in regards that -- like in the statement in  
9 itself, does she talk -- does she say (indiscernible) and I  
10 was home --

11 MS. LUZAICH: No, she did not say anything, like, in  
12 her statement, "When I was home, he was with me."

13 MR. GILL: Correct. She did not. But -- but when  
14 she testified, she said, "When I was around, he was around.  
15 When I wasn't, I was worried." How -- my question is --

16 MS. LUZAICH: No, she said --

17 MR. GILL: -- how do you --

18 MS. LUZAICH: -- "When I wasn't around, I didn't  
19 know where he was."

20 MR. GILL: Okay.

21 THE COURT: "I had no way of knowing" --

22 MS. LUZAICH: She didn't say she was worried.

23 THE COURT: -- "where he was." Yeah.

24 MS. LUZAICH: Yeah.

1 MR. GILL: So how does this witness know where he --  
2 he --

3 MS. LUZAICH: No, but my point is she said, "When I  
4 was home, he was home." But what she was saying was, to the  
5 detective, "He was staying out late and I was worried." So if  
6 she wasn't home, she won't know. So obviously she was home  
7 and he was out is how it's inconsistent. I mean, it's subtle,  
8 but it's inconsistent.

9 THE COURT: So you're saying that it's different  
10 from the stand because she's even saying, like, when she was  
11 home, she was worried? Like, she (indiscernible) of it, but  
12 she was saying, like, "I was worried."

13 MS. LUZAICH: Well, she said that she knew he was  
14 staying out late -- late at night and she was worried. And  
15 she said that he would go out while she slept is --

16 THE COURT: Oh, well, that's -- that is  
17 inconsistent --

18 MR. GILL: She didn't testify to that, though. She  
19 didn't --

20 MS. LUZAICH: No, she said --

21 MR. GILL: I might have --

22 MS. LUZAICH: -- when she was home, he was home.

23 THE COURT: She was pretty --

24 MS. LUZAICH: But she told the detective he would go

1 out while she slept.

2 THE COURT: That part -- that part right there is  
3 inconsistent 'cause she said, "When I was home, he was home.  
4 I knew where he was. When I was at work, I didn't know where  
5 he was because," and -- you know, she went (indiscernible) --

6 MS. LUZAICH: No, she didn't say she didn't know  
7 where he was.

8 MR. GOODWIN: Well, was there ever --

9 MS. LUZAICH: -- she just --

10 MR. GOODWIN: Was there ever a question that, while  
11 you were sleeping would he go out? I mean, that -- that was  
12 never asked.

13 MS. LUZAICH: No, she said, "While I was home, he  
14 was home." That's what she said.

15 THE COURT: Yeah. So, now that we've all been up  
16 here, now I don't even remember what the original question to  
17 her was.

18 MR. GILL: Well --

19 MS. LUZAICH: "Did she say that he was staying out  
20 late all the time and she was worried?" To which she said  
21 "yes," which is in -- and then I was gonna say, "Did she also  
22 say that while she slept he was out?"

23 THE COURT: That part, I think, (indiscernible) that  
24 part.

1 MR. GILL: Okay. Thank you.  
2 [BENCH CONFERENCE END]  
3 THE COURT: Ms. Luzaich.  
4 BY MS. LUZAICH:  
5 Q Did she tell you that while she -- sorry about  
6 that -- while she slept he would be out late at night?  
7 A Yes.  
8 Q Thank you.  
9 MS. LUZAICH: Nothing further.  
10 THE COURT: Mr. Gill?  
11 MR. GILL: Nothing on that, Your Honor. Thank you.  
12 THE COURT: Any questions from the jury?  
13 Thank you.  
14 Parties approach.  
15 [BENCH CONFERENCE BEGIN]  
16 THE MARSHAL: Just have one more coming.  
17 THE COURT: That is okay. Thank you.  
18 THE MARSHAL: Sure.  
19 MS. KOLLINS: How to commit a robbery without --  
20 MS. LUZAICH: Hmm?  
21 MS. KOLLINS: His last question is, how do you  
22 commit an arson without getting caught --  
23 MS. LUZAICH: It's not what she said.  
24 MS. KOLLINS: It's not what --

1 THE COURT: I don't ever remember the mom saying  
2 that. She said something --

3 MS. LUZAICH: She didn't.

4 THE COURT: -- that she'd [sic] be at his  
5 girlfriend's house.

6 MS. LUZAICH: Well, sometimes he stayed at Dorothy  
7 and Christian [sic] Deloney's house and sometimes at brother  
8 and sometimes at sister.

9 MS. KOLLINS: But he didn't live there.

10 THE COURT: Yeah.

11 MS. LUZAICH: And she didn't say while she worked.  
12 She just said "sometimes."

13 MR. GILL: Yeah.

14 THE COURT: Well, I guess you can -- I mean, I can  
15 ask that and you guys can clar --

16 MS. KOLLINS: And then clean it up?

17 MS. LUZAICH: But none -- none of the other places  
18 were searched.

19 THE COURT: So do you want it asked or do you guys  
20 just want to ask follow-up with her knowing what that question  
21 is?

22 MS. LUZAICH: Well, were you -- I mean, you can ask,  
23 "Were you aware of any other places he stayed?"

24 MS. KOLLINS: Not "lived" but "stayed."

1 MS. LUZAICH: Stayed.

2 MS. KOLLINS: Clarify it.

3 MS. LUZAICH: Yeah.

4 MS. KOLLINS: So maybe that'll clean it up.

5 MS. LUZAICH: And are any of those locations  
6 searched? I don't -- I mean, they only search (indiscernible)  
7 was at his house. I guess you could ask the question, "Were  
8 any locations beside her house searched?"

9 THE COURT: So I'm fine in asking it, but I guess  
10 what my thing is, though, is this doesn't clarify that that --  
11 they don't clarify his mass confusion about the situation. Do  
12 you know what I'm saying? So that's what I'm saying, do you  
13 want me to not ask it so as not to cause confusion of the  
14 jurors and you guys just do follow-up into what he's trying to  
15 get at? I'll do whatever way you want. I just think that  
16 this is not what testimony was.

17 MS. LUZAICH: Right.

18 THE COURT: And it's going to be injected into other  
19 jurors' minds, which makes me uncomfortable because it's  
20 almost like I'm adopting the question as true, which always --

21 MS. KOLLINS: Right.

22 THE COURT: -- makes me nervous when a question is  
23 inaccurate.

24 MS. LUZAICH: Okay. Well, we don't have to ask that

1 because Barry Jensen is going to testify last. And he'll  
2 testify. I'll make sure he testifies that the only place that  
3 was searched was there.

4 THE COURT: (Indiscernible) I'm fine with that. But  
5 what I'm saying is that, in this juror's mind --

6 MS. LUZAICH: Yeah.

7 THE COURT: -- he thinks that Justin rolled with a  
8 bunch of different people. And that is an inaccurate  
9 statement of that testimony.

10 MR. GILL: (Indiscernible)

11 MS. LUZAICH: And I don't know how to fix that.

12 THE COURT: Lived. Lived.

13 MR. GILL: Right.

14 MS. KOLLINS: Can -- can we ask Laura --

15 MR. GILL: Yeah, but --

16 MS. KOLLINS: -- did you ever know that [sic] Justin  
17 to have another residence? And we're not talking about  
18 friends he stayed at, a residence where he lived. And she's  
19 gonna say "no." And that would --

20 THE COURT: "Did Angela" --

21 MS. LUZAICH: Well, I -- I hope so.

22 THE COURT: -- "ever tell you" -- or, "Did Angela  
23 ever tell you he lived anywhere else?"

24 "No, she never said that in the statement." She never



1 said that on the stand.

2 MR. GILL: Right.

3 THE COURT: He would stay at places, but that's a  
4 lot different than living.

5 MS. LUZAICH: Yeah.

6 THE COURT: I mean, just -- (indiscernible) woefully  
7 inaccurate question. But I'm not gonna ask it. Whatever  
8 follow-up you guys want to do --

9 MR. GILL: Okay.

10 THE COURT: -- is good with me. 'Cause I'm not  
11 gonna inject confusion.

12 Did I already give you that back?

13 MR. GILL: No.

14 MS. KOLLINS: I didn't say that.

15 MS. LUZAICH: Oh.

16 MS. KOLLINS: And is this a real trial?

17 MR. GOODWIN: Judge, may I see?

18 THE COURT: (Indiscernible)

19 MS. KOLLINS: Can I take a picture of that one? No,  
20 I'm kidding.

21 MS. LUZAICH: I know.

22 THE COURT: What did you say? Can you --

23 MS. KOLLINS: Can I take a picture of that one?

24 MS. LUZAICH: (Indiscernible)

1 MS. KOLLINS: Well, we're not there yet.

2 MS. LUZAICH: Yeah, she didn't -- she can't testify

3 to that.

4 THE COURT: What do I say about -- what -- what's

5 this one?

6 MR. GILL: No.

7 MS. KOLLINS: She can't testify to that.

8 MR. GILL: Can't -- she doesn't have that --

9 THE COURT: And then, obviously --

10 MS. LUZAICH: Yeah, no.

11 THE COURT: -- I'm not asking that. But did you

12 want --

13 MS. KOLLINS: Which part -- which --

14 THE COURT: Oh, (indiscernible)

15 MS. KOLLINS: Which part?

16 MR. GILL: Could I see that?

17 THE COURT: I thought --

18 MR. GILL: I -- I saw the first couple lines but

19 stopped.

20 MS. KOLLINS: (Indiscernible) what number is that?

21 MR. GILL: Juror Number 2.

22 MS. KOLLINS: Mm-hmm.

23 THE COURT: Okay. So then it's -- does anyone -- I

24 mean, what do you guys want to do now? Do you want to do

1 follow-up?

2 MS. LUZAICH: I'm just gonna ask the question --

3 THE COURT: Okay.

4 MS. LUZAICH: -- did you ever learn -- did she ever  
5 tell you that he lived anywhere besides with her?

6 THE COURT: Okay. So --

7 MS. LUZAICH: Oh, well, no. 'Cause she did say that  
8 he stayed with Dorothy and --

9 MR. GILL: (Indiscernible)

10 MR. GOODWIN: Well, isn't -- like --

11 MS. KOLLINS: But that's not the --

12 MR. GOODWIN: The question -- the question misstates  
13 the facts; right? So obviously we can't -- I mean,  
14 questioning's closed; right? Isn't it just not -- we're not  
15 gonna ask the question? What do we need continue doing the  
16 following up --

17 MS. LUZAICH: Yeah, but he clearly has --

18 MR. GOODWIN: -- it's all in the past.

19 MS. LUZAICH: -- wrong information in his head.

20 MR. GOODWIN: That's true. But that's not -- I  
21 mean --

22 THE COURT: Because I am so -- because I'm not  
23 (indiscernible) question to be asked, what I said is, I'm not  
24 going to ask it because I feel like the question's factually

1 inaccurate. However, if either side wants to address it and  
2 do follow-up in a way that would still be able to address his  
3 question without injecting a falsehood to the jury, I'm good  
4 with that. Because otherwise you have a juror that you know  
5 has somehow confused information and you're just letting it  
6 stand in his head. You know what I mean?

7 MR. GOODWIN: Right. My -- my own question is, if  
8 we all passed the witnesses and we're not gonna ask that  
9 question, are we just -- like, it's closed at this point --

10 THE COURT: Yeah, I'm reopening it.

11 MR. GOODWIN: -- so we don't -- okay.

12 THE COURT: Unless everyone's like, no, we just --  
13 we can just keep it as is.

14 MR. GILL: No, I'm fine. It's follow-up. It's just  
15 regarding the State because (indiscernible) that was my  
16 understanding.

17 THE COURT: Okay. Let's turn it back over to you  
18 guys.

19 MR. GILL: Whether it's her (indiscernible).

20 [BENCH CONFERENCE END]

21 THE COURT: State.

22 FURTHER REDIRECT EXAMINATION

23 BY MS. LUZAICH:

24 Q Did -- did Angela Porter tell you that there were

1 times that he would stay with another friend?

2 A Yes.

3 Q Was that Christian [sic] Deloney?

4 A Yes.

5 Q Dorothy Frazier's daughter -- son. Sorry about  
6 that.

7 A Yes.

8 Q And that was Kristopher. Sorry. Not Christian.  
9 Kristopher Deloney --

10 A Kristopher, yes.

11 Q -- his friend. But she never told you that he was  
12 living anywhere else.

13 A No.

14 Q Okay. Thank you.

15 THE COURT: Mr. Gill?

16 MR. GILL: Nothing on that, Your Honor. Thank you.

17 THE COURT: Okay. Ma'am, thank you so much for your  
18 testimony. Please don't share with anyone else involved in  
19 the case, but you are free to go. Thank you very much.

20 THE WITNESS: Okay. Thank you.

21 MS. KOLLINS: Your Honor, may I approach?

22 THE COURT: Yep.

23 [BENCH CONFERENCE BEGIN]

24 MS. LUZAICH: Okay. We're gonna have to do multiple

1 things at once at the bench. I'm in pain.

2 THE COURT: Yes, ma'am.

3 MS. KOLLINS: That's the funniest note ever.

4 We did a material witness for it and I believe you signed  
5 it. I don't know if you want a hard copy of it. It looks  
6 like it's been filed. Does that change the Court's  
7 consideration of our ability to call Joni Hall?

8 THE COURT: So -- so what's -- sorry. Let me just  
9 make it -- the parties had approached right before we started  
10 last time and approached the Court regarding scheduling  
11 purposes, and the State had renewed their request to use  
12 reading of the transcript of Joni Hall.

13 My response was that, previously on the record I had  
14 stated that I thought that the order -- or excuse me -- that  
15 the request was premature and that I had also thought that --  
16 that I wouldn't be allowing the testimony at this point in  
17 time, but I would be happy to sign a material witness warrant  
18 if one was sent over.

19 And so when the State came up today asking for the  
20 scheduling and whether or not Ms. Hall could be used, I still  
21 denied their request, saying that I was -- it was premature.  
22 That I had already stated a material witness warrant was the  
23 avenue that I would go.

24 So I did sign the material witness warrant. However,

1 beside signing it, it really hasn't gone into effect, if  
2 that's the right word; right? It hasn't been put into the  
3 system. It hasn't been any of the things that go into effect  
4 once it's put into the system, none of that has been utilized  
5 yet, but for the very fact that it hasn't been input.

6 So I don't think it changes -- though I have signed it.  
7 And that step has been taken, I don't think it changes the  
8 analysis, though, because the warrant hasn't been placed in  
9 and then, therefore, any of the avenues that that opens up for  
10 her pick up by law enforcement or whoever still hasn't been  
11 in. I mean, I think we still have a week left of trial. Is  
12 that -- would you say that's fair?

13 MS. LUZAICH: No, we're gonna rest Wednesday.

14 THE COURT: Last week -- on Friday when we talked  
15 about it, you guys said that you didn't even think we would  
16 get to -- or that we would probably be --

17 MS. LUZAICH: That we wouldn't get to closing.

18 THE COURT: -- closing next week.

19 MS. LUZAICH: Yeah. Well, right. So I cut out two  
20 witnesses by getting Laura and somebody else. I mean, I --  
21 we're just cutting out as many witnesses as we can to move  
22 faster.

23 MR. GILL: And I -- I think with closing, it also  
24 depends on my client's wishes, which we -- are still unknown.

1 THE COURT: Right.

2 MS. LUZAICH: Oh, he's testifying. There's no  
3 doubt.

4 THE COURT: Yeah (indiscernible) but, I mean, I --  
5 so I don't ever want to put the State in a position to where  
6 they're cutting witnesses; right? I mean, you obviously have  
7 to put on your case, and I understand that. But what I do  
8 want is to have -- don't want to not -- we -- we have finished  
9 early on several days; right? So I'm just like, let's just  
10 use the time that we have wisely. But that definitely doesn't  
11 mean, you know, either side ever cutting out witnesses for  
12 their case. I mean, you guys saying you're closing Wednesday  
13 right now is, like, blowing my mind because, yet, last week --

14 MS. LUZAICH: No, I didn't say close Wednesday --

15 THE COURT: Or rest.

16 MS. LUZAICH: -- I said we're gonna rest --

17 THE COURT: Rest. Rest.

18 MS. LUZAICH: -- on Wednesday.

19 THE COURT: So I think at this --

20 MS. LUZAICH: And --

21 THE COURT: -- point in time we go forward with the  
22 Court's original ruling that the warrant goes into the system.  
23 As the State gets closing [sic] to resting their case, I think  
24 that the State, at that point, having a mat -- you know,



1 making all the representations that they've already had on the  
2 record: Getting a material witness warrant, inputting it into  
3 the system, Reno knowing about it, Vegas knowing about it. I  
4 mean, I don't know what else, at this point, the State could  
5 do.

6 MS. KOLLINS: So I will communicate with my  
7 investigator this afternoon and make sure that that's in the  
8 system. I know it's late -- I mean, all day today he's been  
9 trying to find her, still, with the assistance of Washoe DA.  
10 And --

11 MS. LUZAICH: And her mother.

12 MS. KOLLINS: And her mom. He can't find her.

13 THE COURT: But she's in Reno -- well --

14 MS. KOLLINS: Well --

15 THE COURT: -- that's where she normally is; right?

16 MS. KOLLINS: That's --

17 MS. LUZAICH: The last place --

18 MS. KOLLINS: -- her last known.

19 MS. LUZAICH: -- she was -- yes.

20 MS. KOLLINS: -- is Reno. I mean, she was  
21 incarcerated till 2021 and paroled.

22 THE COURT: And the -- but the last known since '21  
23 was Reno or it was before her --

24 MS. KOLLINS: No, it was Reno.

1 MS. LUZAICH: No, when --  
2 MS. KOLLINS: -- (indiscernible) '21.  
3 MS. LUZAICH: When our invest -- or my investigator,  
4 Cristen, spoke to her two weeks ago --  
5 THE COURT: Oh, yeah. Yeah.  
6 MS. LUZAICH: -- she was in Reno.  
7 MS. KOLLINS: Right. But now she went off the grid.  
8 THE COURT: Okay.  
9 MS. KOLLINS: So we'll get it in, put in the system.  
10 MS. LUZAICH: Right.  
11 MS. KOLLINS: And then -- so --  
12 MS. LUZAICH: (Indiscernible)  
13 MR. GILL: Joel Gellar, I think can be read, Judge.  
14 I think -- I don't want to --  
15 MS. LUZAICH: He's old and decrepit and, I mean, I  
16 have --  
17 MR. GILL: Yeah, she --  
18 MS. LUZAICH: -- conversation with him about why he  
19 cannot travel.  
20 THE COURT: Joel's the one I already ruled on;  
21 right? That --  
22 MR. GILL: I thought so.  
23 MS. LUZAICH: No. No.  
24 MR. GILL: That was Welch. But I --

1 MS. LUZAICH: Welch.

2 MR. GILL: It's a very similar situation.

3 THE COURT: Who's the one that was in the hospital?

4 MS. LUZAICH: Welch.

5 MS. KOLLINS: Welch.

6 THE COURT: And then what was the -- did -- was --  
7 was the guy you're talking about right now in that motion?

8 MS. LUZAICH: Well, no, because I originally thought  
9 he only did footwear. And we're not doing -- I mean, we're  
10 just not presenting footwear. But he also did prints. So  
11 Fred Boyd's going to testify to what he did tomorrow. But  
12 Gellar did more.

13 THE COURT: Okay.

14 MR. GILL: And Gellar as in -- unavailable  
15 because --

16 MS. LUZAICH: Because of his physical dis -- and  
17 it's written down. I'll read it into the record. I just  
18 don't have it in my hand right now.

19 THE COURT: So did you guys want to do it at the  
20 bench right now or do you guys want to give them a recess so  
21 you can make this record?

22 MS. LUZAICH: Well, I did -- I -- recess, but we  
23 also need to print and redact his statement. Like, cut out  
24 the footwear stuff. So could we just get a 20-minute break?

1 THE COURT: Yeah.

2 MR. GILL: Thanks.

3 MS. KOLLINS: Do you want a hard copy of that for  
4 any reason?

5 THE COURT: It's already filed. No.

6 MS. KOLLINS: Okay.

7 THE COURT: We're good -- but, guys, is there  
8 anything that anyone wants to put on the record that was  
9 discussed when we were discussing scheduling when we went  
10 into --

11 MR. GILL: Joni Hall, specifically?

12 THE COURT: Yeah.

13 MR. GILL: I have already made my objection, I  
14 believe, on the record.

15 THE COURT: Yeah.

16 MR. GILL: And I understand the Court's ruling  
17 regarding (indiscernible) so, no.

18 THE COURT: But -- sorry. I guess I should have  
19 asked more specifically. My representation -- when the  
20 parties approached me about scheduling, when we were off the  
21 record --

22 MR. GILL: Oh, no.

23 THE COURT: -- did I make a full representation of  
24 everything that was discussed? Does anyone want to add

1 anything on it?

2 MR. GILL: No.

3 THE COURT: Okay. All right. Thank you.

4 [BENCH CONFERENCE END]

5 THE COURT: All right. Ladies and gentlemen, our  
6 next witness will be one of those that is read into the  
7 record. And so we're running a little bit early today in  
8 regards to our schedule. So we will have that at -- I don't  
9 have my glasses on. Sorry. So 3:25. So we'll be at recess  
10 until 3:25.

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

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

24 We'll see you at 3:25. Thank you.

1 THE MARSHAL: All rise.

2 [RECESS AT 3:06 P.M.; PROCEEDINGS RESUMED AT  
3 3:38 P.M.]

4 [IN THE PRESENCE OF THE JURY]

5 THE MARSHAL: All rise.

6 THE COURT: All right. Welcome back, everybody.  
7 We're on the record in State of Nevada versus Justin Porter,  
8 C174954. Mr. Porter is present with Mr. Gill as well as  
9 Mr. Goodwin. Both Chief Deputy District Attorneys,  
10 Ms. Kollins as well as Ms. Luzaich, are present on behalf of  
11 the 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. So the reading of the  
16 testimony that I was talking about before the break is no  
17 longer necessary. So there's a little -- there's good news  
18 and bad news. The bad news is that we're actually done for  
19 the day. That -- that's bad news to me. I don't know if you  
20 guys --

21 [Laughing]

22 THE COURT: But it is bad news to me because just  
23 is. But the good news is, is that we're really ahead of  
24 schedule. We think -- we think, but we believe that we'll

1 have the case to you with closing arguments on Monday. So  
2 we -- I know it feels like every day you're leaving early  
3 and -- but the fact of the matter is, is we are moving much  
4 faster than we anticipated. So please don't get frustrated.

5 I have my criminal calendar tomorrow morning. So I'm  
6 going to ask that you be back here at 11:00 a.m. One of  
7 the -- other reason that we're struggling today is one of the  
8 witnesses is on an airplane. We're having issues with the  
9 traveling because, as you know, a lot of people don't live  
10 here anymore. And so that witness isn't going to be here in  
11 time enough to testify, due to the airplane issues.

12 So tomorrow is 11:00 a.m. Please enjoy the rest of your  
13 day.

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

22 Please do not make any investigation, test a theory of  
23 the case, recreate any aspect of the case, or in any other way  
24 attempt to learn or investigate the case on your own. And

1 please do not form or express any opinion regarding the matter  
2 until it's formally submitted to you.

3 Have a great evening. We'll see you tomorrow at  
4 11:00 a.m. Thank you very much.

5 THE MARSHAL: All rise.

6 [Hearing concluding at 3:41 p.m.]

7 \*\*\*\*\*

8  
9 ATTEST: I do hereby certify that I have truly and  
10 correctly transcribed the audio/video proceedings in the  
11 above-entitled case to the best of my ability.

12  
13   
14 ALLISON SWANSON, CSR NO. 13377  
15 CERTIFIED SHORTHAND REPORTER  
16 FOR THE STATE OF CALIFORNIA  
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STATE OF NEVADA, )  
 )  
 Plaintiff(s), ) CASE NO. C174954-1  
 )  
 vs. )  
 ) DEPT. NO. VI  
 PORTER, JUSTIN D., )  
 )  
 Defendant(s). )

RECORDER'S TRANSCRIPT OF HEARING:  
JURY TRIAL - DAY 8

For the Plaintiffs: STACY L. KOLLINS  
ELISSA LUZAICH

For the Defendants: ADAM L. GILL  
CHARLES R. GOODWIN

AA 1799

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1 Las Vegas, Nevada, Tuesday, September 13, 2022

2 [Case called at 11:13 a.m.]

3 \*\*\*\*\*

4 [OUTSIDE THE PRESENCE OF THE JURY]

5 [DISCUSSION OFF THE RECORD]

6 THE MARSHAL: All rise.

7 [IN THE PRESENCE OF THE JURY]

8 THE COURT: All right. Good morning, everyone.

9 Welcome back.

10 We are on the record in State of Nevada versus  
11 Justin Porter, C174954. Mr. Porter is present. He is -- he  
12 has Mr. Gill as well as Mr. Goodwin present on his behalf.  
13 Both Chief Deputy District Attorneys, Ms. Luzaich as well as  
14 Ms. Kollins, is present on behalf of the State.

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

16 MS. LUZAICH: Yes, Judge.

17 MR. GILL: Yes, Your Honor.

18 THE COURT: Okay. State.

19 MS. LUZAICH: State calls Sam Cirone.

20 THE MARSHAL: You can just step up there, remain  
21 standing, and raise your right hand so the clerk can swear you  
22 in. Thank you.

23 ///

24 ///

1 SAM CIRONE,  
2 [Having been called as a witness and being first duly  
3 sworn testified as follows:]

4 THE WITNESS: I do.

5 THE CLERK: Please be seated.

6 Will you please state your name and spell it for the  
7 record.

8 THE WITNESS: Lieutenant Sam Cirone, C-I-R-O-N-E,  
9 member of Chicago Police Department.

10 THE CLERK: Thank you.

11 MS. LUZAICH: May I?

12 THE COURT: Miss -- yes, Ms. Luzaich.

13 MS. LUZAICH: Thank you.

14 DIRECT EXAMINATION

15 BY MS. LUZAICH:

16 Q Good afternoon, sir. Or good morning. Sorry.  
17 Getting ahead of myself here.

18 How are you employed?

19 A I am currently lieutenant with the Chicago Police  
20 Department.

21 Q How long have you been with the Chicago Police  
22 Department?

23 A Thirty years.

24 Q How long have you been a lieutenant?

1           A     Less than a year.

2           Q     And what kind of areas have you worked in, in your  
3 years with Chicago Police?

4           A     Twenty-seven or twenty-eight of those thirty have  
5 been within Detective Division and in Violent Crime Section.

6           THE COURT: I'm sorry. Did you say Violent Crime  
7 Section?

8           THE WITNESS: That's what we call it in Chicago,  
9 Violent Crime Section.

10          THE COURT: Violent crime.

11          THE WITNESS: Yes.

12 BY MS. LUZAICH:

13          Q     Okay. And as a detective, on a daily basis, you  
14 investigate, obviously, crimes that occur in Chicago; is that  
15 correct?

16          A     That's correct.

17          Q     Are you sometimes called upon to help other agencies  
18 with things that they request?

19          A     Yes.

20          Q     I'm gonna direct you back, if I could, directly to  
21 August of 2000. Were you requested to help the Las Vegas  
22 Metropolitan Police Department?

23          A     Yes.

24          Q     Do you recall how that request came about?

1           A     My lieutenant at the time said he had field a call  
2     from Las Vegas PD that was requesting us to check out an  
3     address for (indiscernible) out of Las Vegas.

4           Q     Okay. And do you recall what the address was?

5           A     Believe it was 1251 South Kildare.

6           Q     Is that an apartment?

7           A     It's an apartment building, yes.

8           Q     That's what I meant. Sorry.

9           And did you go to that location?

10          A     I did.

11          Q     When you went to that location, did you go alone or  
12     with anyone else?

13          A     No, there were a bunch of us that proceeded to that  
14     location.

15          Q     When you say "a bunch of us," can you just be a  
16     little more specific?

17          A     So I would say four to five squad cars with two  
18     detectives each. So roughly eight to ten detectives  
19     responded.

20          Q     When you go to help find a wanted suspect, do you  
21     dress like you are right now, in a jacket and tie?

22          A     Well, so, normally, I'd be wearing this outfit,  
23     minus the jacket. That's what usually the detective attire  
24     is. We're supposed to wear these coats, but on an August



1 night, I probably wouldn't have been wearing it.

2 Q But you would agree, that's plain clothes.

3 A It's considered plain clothes, correct.

4 Q Were you wearing anything that depicted the fact  
5 that you were police officers?

6 A Yeah, so we all wear bulletproof vests; we wear our  
7 stars on the outside. Our stars are what you -- I'm not sure  
8 if you -- Vegas -- Vegas PDs have stars, I believe, which is  
9 our --

10 Q Like a badge.

11 A Like a badge. We have radios and handcuffs and  
12 guns, all the basic symbols that you would see on TV.

13 Q So is it fairly obvious when you're walking into the  
14 apartment building that you are a police officer?

15 A Yes.

16 Q And are all of you dressed similarly?

17 A Yes.

18 Q How did you approach the building? Did everybody go  
19 to the door? Did different people go different locations?

20 A Several of us went to the front door. People went  
21 to the back and there were people on the side.

22 Q Before you went, were you provided with a photograph  
23 of the individual you were looking for?

24 A I don't remember the exact photograph. I'm guessing

1 we must have been to have, you know -- we would have had some  
2 perspective on what -- who he -- who he was and what he looked  
3 like.

4 Q Okay. So you know who you're looking for.

5 A Correct.

6 Q What was the name of the individual?

7 A Justin Porter.

8 Q And when you went to this apartment, what time of  
9 day was it?

10 A It was right before 12:45 a.m. on the 12th of  
11 August.

12 Q So would it be kind of like the night of the 11th,  
13 going into the morning of the 12th?

14 A That's correct.

15 Q So shortly after midnight on the morning of the  
16 12th?

17 A That's correct.

18 Q And that's 2000; is that correct?

19 A That's year 2000.

20 Q Were you at the door?

21 A I was.

22 Q Do you recall who, if anyone, was at the door with  
23 you?

24 A My partner, Detective Kato was present, and I

1 believe Lieutenant Ferrell (phonetic) was also present.

2 Q Okay. And that's Kato, K-A-T-O; correct?

3 A That's correct.

4 Q When you got to the door, had a did you do?

5 A We knocked on the door.

6 Q Did anybody answer the door?

7 A A female answered the door.

8 Q Did it take a while? Was it quick? Somewhere in  
9 between?

10 A It wasn't long. You know, maybe less than a minute,  
11 I would guess.

12 Q Okay. You said a female answered the door.

13 A Female answered the door, correct.

14 Q Can you describe kind of what the female looked  
15 like?

16 A Female, black, and I was a lot younger then, so I  
17 want to say she was older than me. We told her who we were.  
18 We announced we're Chicago Police Department. And we asked  
19 her if Justin Porter was home.

20 Q And when you asked if Justin Porter was home, how  
21 did she respond, if at all?

22 A She responded by looking at us and then bobbing her  
23 head in an inward direction toward the living room  
24 (indicating).

1 Q Okay. Did she say anything at the time?

2 A I don't recall her saying anything.

3 Q And you said you, Detective Kato were at the door.

4 When she did that, what did you and Detective Kato do?

5 A We stepped into the apartment.

6 Q Okay. Did she, I mean, allow you entry?

7 A Yeah, she kind of had stepped to the side of the  
8 doorway when she was doing the head bob (indicating).

9 Q Okay. Stepped to the side so you could enter?

10 A Correct.

11 Q She never said, "No, don't come in."

12 A Correct.

13 Q So when you entered the apartment, what did you see?

14 A I saw a living room couch, which would have been in  
15 the direction of her head bob. I was looking at the couch and  
16 then looked behind the couch, at which time I saw  
17 Justin Porter between the couch and the wall.

18 Q And when you say you looked, and the couch, was the  
19 couch, like, against the wall or was there, like, a lot of  
20 room that you would walk around the room behind the couch?

21 A No, the couch was against the wall but enough room  
22 for him to fit.

23 Q Okay. And when you saw him, how did he appear?

24 A He was, like, in a -- either prone position or in a

1 crouch position behind the couch.

2 Q Okay. So not looking up at you?

3 A No.

4 Q What did you do when you saw him there?

5 A Well, we gave each other indications that -- the  
6 other police officers that we had located Justin and announced  
7 our office and at which time Detective Kato had pulled the  
8 couch away from the wall.

9 Q Okay. Now, when you said "we announced to each  
10 other," what do you mean by that?

11 A We kind of told each other we had located Justin  
12 behind the -- 'cause as you progress in, and I'm looking, not  
13 everybody has my eyesight. So I told others, either through  
14 signal or verbally, I had seen him.

15 Q And "others" being other police officers.

16 A I'm sorry. Other police officers that were with me.

17 Q Thank you.

18 So you said Detective Kato pulled the couch out and what  
19 happened when he did that?

20 A Justin just sat there.

21 Q Did you say any -- did you or Detective Kato say  
22 anything to him?

23 A We gave him verbal direction to comply with putting  
24 his hand behind his back, which he did. And I cuffed him.

1 Q Okay. Was he cooperative?

2 A He was cooperative.

3 Q Did it appear to you that he was surprised that you  
4 were there?

5 A He did not appear surprised.

6 Q Did you speak with him at that point?

7 A Other than verbal direction, there was really no  
8 other communication.

9 Q So you didn't say "this is why I'm here."

10 A I didn't say that, no.

11 Q You didn't say "this is where we're going."

12 A No.

13 Q You just gave him commands and he followed your  
14 commands?

15 A Correct.

16 Q Was he handcuffed?

17 A Correct. He was.

18 Q And did the individual that you saw behind the couch  
19 match the photo or whatever it was that you had from Las Vegas  
20 Metropolitan Police of the individual they're looking for?

21 A Yes.

22 Q What did you do once you had him handcuffed?

23 A We escorted him to our police vehicle.

24 Q And did you take him somewhere?

1           A     We took him to Area 4. Area 4 is a -- for detective  
2 divisions in Chicago, there are five areas. And they're just  
3 geographically located. They're numbers 1 through 5. I  
4 happen to work in Area 4 and that's where we brought him to.

5           Q     So the police station.

6           A     The police station.

7           Q     And did somebody notify the Las Vegas police that he  
8 was in your custody?

9           A     Yes. And I believe that was Lieutenant Ferrell, but  
10 I wasn't present for that conversation.

11          Q     Okay. Was it your understanding that the Las Vegas  
12 police were coming later that day?

13          A     Yes, I learned that Las Vegas police would be  
14 responding to Chicago.

15          Q     And that they were going to have some kind of  
16 contact with him.

17          A     Yes.

18          Q     Did there come a time, a couple of years later,  
19 maybe 2002 or so, that you actually came to Las Vegas for a  
20 hearing?

21          A     I did.

22          Q     And did you testify at that hearing?

23          A     I did.

24          Q     And at that time, were you asked to identify the

1 person that you saw on August 12th of 2000?

2 A I was.

3 Q And did you actually identify that person?

4 A I did.

5 MS. LUZAICH: Thank you. I have no further  
6 questions.

7 THE COURT: Mr. Gill.

8 MR. GILL: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. GILL:

11 Q Detective -- or sorry. Lieutenant. My apologies.

12 A No -- no, apologies needed.

13 Q The -- I just want to go into the couch a little  
14 bit. Your testimony was that there was just enough room for  
15 Mr. Porter to fit; is that correct?

16 A That's my memory, yes.

17 Q And -- and it was pushed up against the wall or  
18 close to the wall?

19 A Correct.

20 Q And how far would you say? Was it touching the  
21 wall? Do you recall?

22 A I -- I don't recall it touching the wall. I mean,  
23 obviously it had -- it need -- it needed enough space for  
24 Justin to fit in between the couch and the wall. So it would



1 be difficult to be up against the wall. I don't remember  
2 how -- what wide -- width of spread there was.

3 Q Okay. And you identified yourself at what point?

4 A When we knocked on the door. Between knocking on  
5 the door and the woman actually opening the door, we  
6 identified ourselves.

7 Q Okay. And how far away from that entryway, that  
8 door that you were standing in when you identified yourself  
9 was the couch?

10 A I'd be guessing. But I want to say, you know, I  
11 could see maybe a portion of the couch from the doorway. So  
12 it wasn't very far.

13 Q And it's in that front room, if you will.

14 A Yes.

15 Q That first room you would walk in to.

16 A It would have been the first room I walked in to.

17 Q Okay. So you didn't go far; fair to say?

18 A Correct.

19 Q And then you took him out of there.

20 A Correct.

21 Q You or one of the people that you were with, one of  
22 the officers that you were with.

23 A Correct.

24 Q Transported him, you said, to substation 4?

1 A Correct. Area 4. But correct.

2 Q Area 4?

3 A Yes.

4 Q And did that kind of end your -- your involvement at  
5 that point?

6 A Pretty much, yes.

7 Q I mean, you did testify couple years later.

8 A Correct.

9 Q But as far as the arrest and the apprehension, once  
10 you got him down to Area 4, you were -- you were done for the  
11 evening; is that fair?

12 A That's fair.

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

14 THE COURT: Anything based on that, Ms. Luzaich?

15 MS. LUZAICH: Just briefly.

16 REDIRECT EXAMINATION

17 BY MS. LUZAICH:

18 Q Was there anyone else in the residence?

19 A Besides the female that opened the door.

20 Q Yes.

21 A Not to my knowledge.

22 Q Okay. And between all of you that were there,  
23 somebody would have gone through the apartment to clear it for  
24 officer safety; correct?

1           A     That is correct.

2           Q     And if somebody else had been there, they would have  
3 brought them out?

4           A     That's correct. I would have learned that.

5           Q     Okay. Did you have an idea what the relationship  
6 was of the woman who answered the door to the apartment?

7           A     Oh, I believe, later, I learned that that was  
8 Justin's stepmother.

9           Q     Okay. And it was Justin's father's apartment that  
10 you went to.

11          A     That's correct.

12          Q     And I'm sorry. Earlier I misspoke. Is it possible  
13 that you came and testified on March 8th of 2004, not 2002 or  
14 '3?

15          A     That sounds better, yes.

16          Q     Okay. Thank you.

17               THE COURT: Anything based on those?

18               MR. GILL: No, Your Honor. Thank you.

19               THE COURT: Anything from the jurors?

20               Lieutenant, thank you so much for being here. Please  
21 don't share with anyone else involved in the case, as it is  
22 ongoing. But you're excused. We appreciate you coming here.

23               THE WITNESS: Thank you.

24               MS. KOLLINS: State calls Kathy Guenther.

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

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

5 KATHY GUENTHER,  
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.

10 Will you please state your name and spell it for the  
11 record.

12 THE WITNESS: My name is Kathy Guenther, K-A-T-H-Y,  
13 G-U-E-N-T-H-E-R.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MS. KOLLINS:

17 Q Ma'am, good morning.

18 A Morning.

19 Q Still morning. From what profession are you  
20 retired?

21 A I'm retired from the Las Vegas Metropolitan Police  
22 Department forensic science laboratory. And I was a DNA  
23 specialist.

24 Q And how long did you work for Metro?

1           A       I worked for Metro from September of 1998 until  
2 April 29th of 2011.

3           Q       Tell the ladies and gentlemen of the jury what you  
4 did as a DNA scientist, DNA forensic scientist.

5           A       Forensic scientist in the DNA section works with  
6 biological evidence, mostly stains of blood and other  
7 biological fluid, mostly from serious crimes, sexual assault  
8 cases, and homicide, other assaults where there are biological  
9 fluids and potential fluids on items of evidence.

10          Q       Prior to attaining your position at the Las Vegas  
11 Metropolitan Police Department, what kind of training and  
12 education did you have?

13          A       Training and education. Okay. So I graduated many  
14 years ago with a bachelor's degree in biology from Wittenberg  
15 University in Ohio. I have a master of science degree from  
16 Miami University in Ohio in biological sciences. I worked  
17 briefly for the Ohio State University Division of Biological  
18 Sciences and then worked at the Ohio Bureau of Criminal  
19 Identification for about four and a half years.

20               And that was the beginning of my work as what they call  
21 the criminalist or a specialist working on crime scene  
22 evidence. And I learned -- I took classes and specialized in  
23 biological fluid evidence. I also worked for the Florida  
24 Department of Law Enforcement from 1980 until 1998 in the

1 Biology and DNA Unit and did attend FBI classes in my  
2 specialty of DNA examination from the beginning of the DNA  
3 technology into the United States and obtained updated  
4 training throughout.

5 Q Did you continue your education after training while  
6 you were employed with Metro?

7 A Yes, there was a national accreditation requirement  
8 that each person in the laboratory obtained at least eight  
9 hours of continuing training. And I successfully did that  
10 each year and additional training pertaining to the laboratory  
11 operations.

12 Q And fair to say that your career spanned kind of the  
13 onset of the use of DNA in criminal work.

14 A Yes, it did. I took the DNA analysis class in 1991  
15 at the FBI academy.

16 Q Have you testified here in the Eighth Judicial  
17 District both in district court, Justice Court, also in the  
18 grand jury as an expert in DNA analysis comparison and  
19 profiling?

20 A Yes, I have.

21 Q Okay. Do you know how many times?

22 A Probably about 30 times.

23 Q And it is been a little bit since you've testified  
24 here?

1           A     It -- it has been, yes.

2           Q     Okay. Thank you.

3           Very briefly, can you just tell the ladies and gentlemen  
4 of the jury what DNA is.

5           A     Well, DNA is the material that our chromosomes are  
6 made of. And when we're looking at evidence for DNA, we  
7 realize that the contributors of the -- of DNA have unique  
8 characteristics.

9           So that it is said that approximately 99 percent of all  
10 of our human DNA is the same, but there is at least one  
11 percent that is unique to the individual. And that is the  
12 basis upon which the forensic DNA is used to determine the  
13 differences between people, and then to make matches between  
14 unknown stains left at a crime scene with a particular victim  
15 or suspect or missing person.

16          So that technology evolved over the years where, now, the  
17 technology is so good that they can obtain -- scientists can  
18 obtain a DNA profile from a tiny, tiny, little amount of  
19 cellular evidence that is left.

20          Q     Okay. You gave us a lot of information there.  
21 First point, that science was not as good many years ago.

22          A     That -- it is correct. From the beginning, we had  
23 biologically determined markers that were not DNA that we used  
24 for comparison. And they were quite good. And then the first

1 science of DNA was highly complex, and we used large portions  
2 of DNA. Now, the amount of DNA to do an examination is very  
3 small.

4 Q You also mentioned that DNA is unique to the  
5 individual; is that true?

6 A Yes, that's true.

7 Q And is that true, save and except for identical  
8 twins?

9 A Yes. But even identical twins can have some small  
10 differences. But those are not used in forensics as yet.

11 Q Okay. But identical twins would share the same DNA  
12 profile.

13 A For the -- yes.

14 Q Okay.

15 A Yes.

16 Q Now, back in 2000, was --

17 MS. LUZAICH: Bless you.

18 MS. KOLLINS: Bless you.

19 BY MS. KOLLINS:

20 Q Part of what you measure in DNA analysis are  
21 locations on a chromosome; correct?

22 A Yes.

23 Q And just tell the ladies and gentlemen kind of how  
24 those numbers are acquired by an individual and what we're



1 measuring.

2       A     Each person has two forms of DNA at any location.  
3 And those are called loci. We obtain our DNA from our  
4 mother's egg cell and our father's sperm. So there'll be two  
5 forms. At any location, there will be two forms. Sometimes  
6 they will be the same type, the DNA type would be the same.  
7 Other times they would be different.

8       And so the differences that we detect are the source of  
9 our known sample. So I could say if I'm testing my own DNA, I  
10 would get my profile. And if I'm testing my son's DNA and  
11 compare it to me, approximately half of his DNA will match  
12 mine.

13       I've actually done this in a laboratory. We had to prove  
14 DNA works on many samples. So we begin with our own samples.  
15 They're easy to obtain. So I had my husband's sample, my  
16 sample, and my son's sample. And of course, just like a  
17 paternity case, in the comparison, the mother and father,  
18 their DNA types would be present in the child.

19       So these types that we're determining are not genes, but  
20 they're areas of complex repeat unit of DNA. So it's kind of  
21 hard to explain what that is. But it'll show up as a number  
22 of repeats. Like, I go to a certain location on a chromosome  
23 and I see a result that is a 15 and a 16. So that meant that  
24 that person that the sample came from, the 15 came from one of

1 their parents, the 16 came from the other one. What that  
2 represents is a repeat unit of DNA. It's not one repeat unit,  
3 it's 15 repeat units and then the second result is a 16. So  
4 that's the kind of numbers we're looking at.

5 Q Okay.

6 MS. KOLLINS: And, Your Honor, I'd like to use  
7 State's 423. I've shown that to Defense counsel and move for  
8 its admission right now.

9 THE COURT: Mr. Gill?

10 MR. GILL: No objection, Your Honor. I have seen  
11 it.

12 THE COURT: Okay. It will be admitted --

13 MS. KOLLINS: So with --

14 THE COURT: -- and you can publish.

15 [STATE'S EXHIBIT 423 ADMITTED.]

16 BY MS. KOLLINS:

17 Q We're not gonna go into the specific results yet.  
18 But maybe this visually -- oh, (indiscernible) if it's on.

19 THE COURT: It was on.

20 THE CLERK: Push it again.

21 THE COURT: Push it one more time, Ms. Kollins.

22 There you go. And then I think that TV's just warming  
23 up -- right? -- Chris?

24 THE MARSHAL: Yeah. It's (indiscernible) the lights

1 (indiscernible)

2 MS. KOLLINS: There we go.

3 BY MS. KOLLINS:

4 Q So just in terms of explaining the numbers and the  
5 locations you're talking about -- and we're just -- we're just  
6 looking at this for an example now. We're not gonna talk  
7 about any specific results in here. Count with me. There are  
8 14 blocks on here that were used in the year 2000; correct?

9 A That's correct.

10 Q And that's 13 blocks that measure DNA and then XY,  
11 it's the sex identifier?

12 A That's the sex identifier, yes.

13 Q Okay. So when you talk about pairs of numbers,  
14 like, at D3 -- D3S1358, that person is a 15 and a 16. So one  
15 of those comes from mom and one comes from dad.

16 A From dad. That's correct.

17 Q And though -- that -- is it fair to say that the  
18 unique combination of the numbers at all those locations is  
19 what leads you to an identification or an exclusion?

20 A That's correct.

21 Q Okay. I would like to call your attention to the  
22 year 2000. Were you working within the forensic lab at Metro?

23 A Yes, I was.

24 Q Were you working with another scientist by the name

1 of David Welch?

2 A Yes, I -- I did.

3 Q Welch, not Welsh.

4 A David Welch, yes.

5 Q Did it come across your desks that there were --  
6 there was a series of sexual assaults that had taken place in  
7 the Las Vegas area?

8 A Yes.

9 Q Okay. Now, when you would receive evidence in the  
10 forensic lab, would it come to you in a sealed condition?

11 A Yes, it did.

12 Q And would it always come to you in a sealed  
13 condition?

14 A Yes.

15 Q Okay. If it did not come in a sealed condition,  
16 would you question the integrity of how it was packaged or  
17 preserved?

18 A Yes, certainly.

19 Q And would you continue testing something that wasn't  
20 packaged or preserved appropriately?

21 A No.

22 Q Okay. So, again, going back to 2000, there was a  
23 sear -- there were a series of women that their sexual assault  
24 kits were submitted to Metro; is that fair?

1 A That -- that's fair.

2 Q Okay. One of them being Teresa Tyler?

3 A Yes.

4 Q One being Ramona Leva?

5 A Yes.

6 Q One being Marlene Livingston?

7 A Yes.

8 Q And the other being Leona Case; is that fair?

9 A That's fair.

10 Q And the other being Joni Hall?

11 A Yes.

12 Q So when those kits, early on, came in, there was no  
13 known profile to compare them to; is that fair?

14 A The only known in the sexual assault is of the --  
15 the person who's claiming the assault. There is a sample  
16 inside the kit of them. That is a known sample of them.

17 Q Okay. And that was a poorly phrased question. I  
18 apologize.

19 So when this series commenced, profiles were developed  
20 from the kits without a suspect with whom to compare it to.

21 A That's correct.

22 Q Okay. So looking at the evidence and the sexual  
23 assault kit of Teresa Tyler, that would have been under event  
24 number 0002012429. Are you familiar with the evidence that

1 came in with Teresa Tyler?

2 And are you using your notes to refresh your  
3 recollection?

4 A Yes, I'm using my notes.

5 Yes, Teresa Tyler.

6 Q And when you're looking at a sexual assault kit and  
7 you are looking for something that you can test, what kind of  
8 processes do you go through? In other words, if you know it's  
9 a male perpetrator, what are gonna look for?

10 A Right. We're gonna look for the presence of semen  
11 and semen that contains sperm. Sperm allow us to get the DNA  
12 profile.

13 Q So were there some tools that you could use to  
14 search for the presence of semen within that kit?

15 A Yes, to -- first you examine the contents of the kit  
16 and record and make copious notes on anything that you see.  
17 On the sex assault kit there will be various swabbings of --  
18 of parts of the body. And the nurse examiner would have  
19 labeled everything and sealed them individually.

20 So you look at any kind of swabs, any items of clothing  
21 that might have stains and then start the process of testing  
22 each sample individually for the presence of semen. And then  
23 to further microscopically look to see if there are sperm  
24 present.

1 Q So in Teresa Tyler's case, along with the sexual  
2 assault kit, was there also some other pieces of evidence that  
3 were taken at Fast Track at UMC?

4 A Yes.

5 Q And what specific piece of evidence, did you look at  
6 Teresa Tyler's items?

7 A One item was a towel. I believe it was, like, a  
8 hand towel.

9 Q And on that towel, did you look for the presence of  
10 semen before you ran any further tests on it?

11 A Yes.

12 Q And what did you conclude based on what you --

13 A We look for the presence of stains, and we sometimes  
14 use an ultraviolet light in a darkened room to determine the  
15 size of the stain. And then I did determine that there was  
16 semen present on a stain on that towel and did determine that  
17 there was sperm present. And from there I was able to extract  
18 the stain and determine that there -- there was a partial DNA  
19 profile.

20 Q Okay. And I did -- I just want to clarify one thing  
21 you said there. There can be semen without sperm; correct?

22 A That's correct.

23 Q Okay. But semen that contains sperm, the sperm is  
24 where the DNA profile might be obtained, not just from the

1 semen itself.

2 A That's correct.

3 Q Okay. And in this case you were able to develop a  
4 profile.

5 A Yes.

6 Q And when you develop profiles, did you chart it very  
7 similar to the chart that I just showed you?

8 A Yes.

9 Q Okay. And Teresa Tyler's profile was developed on  
10 June 6th of 2000. Does that sound fair?

11 A Yes.

12 MS. KOLLINS: And continue -- continuing permission  
13 to use 423?

14 THE COURT: Yeah.

15 MS. KOLLINS: Thank you.

16 BY MS. KOLLINS:

17 Q So -- too far. Can you see that on your TV screen?

18 A Yes.

19 Q No. There's one right next to you.

20 A Oh, I'm sorry. Yes.

21 Q So this was the profile developed from the towel  
22 from Teresa Tyler's kit; correct?

23 A That's correct.

24 Q Well, from her evidence that was with the kit.



1           A     Yes.

2           Q     And at that time, that just kind of sat by itself --

3 right? -- because it didn't have anybody to compare it to.

4           A     That was the result at that time.

5           Q     Okay. Now, prior to that, had Dave Wall [sic]

6 developed a profile from a kit from Ramona Leva?

7           A     David Welch, yes.

8           Q     Dave -- David Wall [sic], sorry.

9           A     Yes.

10          Q     And that was under 0003252971.

11          A     Yes.

12          Q     Okay. And Mr. Welch would have been held to the

13 same standards as you were and -- in terms of integrity and

14 evidence; correct?

15          A     That's correct.

16          Q     In terms of ensuring the chain of custody; correct?

17          A     That's correct.

18          Q     And these pieces of evidence in these kits, they

19 would not have been tested at the same time next to each

20 other. I mean, these were exclusively tested alone.

21          A     That's correct.

22          Q     Okay. And did Dave Welch develop a profile

23 regarding Ramona Leva?

24          A     Yes.

1 Q And that would have been from her sexual assault  
2 kit.

3 A It was from a vaginal swab from the sexual assault  
4 kit of Ramona Leva.

5 Q Okay. And -- I'm sorry. Need to see my notes. You  
6 don't need to see my scribble.

7 And that reported in the same fashion, using the same 14  
8 locations, including the sex I -- identifier; correct?

9 A That's correct.

10 Q Okay. And you have gone back -- and I know the  
11 file's old. But you've gone back and reviewed as many of  
12 these reports as are available; correct?

13 A That's correct.

14 Q Okay. Now, at some point, because this is  
15 developing as a series, does someone decide to cross-compare  
16 the kit from Teresa Tyler and the kit from Ramona Leva?

17 A There would be a request that we do a comparison.

18 Q Okay. And was that done?

19 A Yes.

20 Q And was that done on about June 10th of 2000?

21 A Yes.

22 Q And -- now, they were each profiled separately but  
23 then compared to each other; correct?

24 A Yes.

1 Q And was it determined that the DNA -- the profile  
2 from Teresa Tyler matched the profile from Ramona Leva?

3 A Yes.

4 Q Now, during the course of this investigation, Metro,  
5 through a task force, continued to try to identify suspects;  
6 correct?

7 A Correct.

8 Q And many swabs were taken and processed by the lab;  
9 correct?

10 A That's correct.

11 Q And they would have been buccal swabs that came  
12 packaged individually?

13 A Yes.

14 Q Okay. Were most of those done by Dave Welch?

15 A Most of 'em were done by David Welch, yes.

16 Q Okay. And in a set of those buccal swabs was a  
17 buccal swab taken of one Justin Porter?

18 A That's correct.

19 Q Okay. And was Mr. Welch able to -- or was Mr. Welch  
20 able to obtain a profile of Justin Porter from that buccal  
21 swab?

22 A Yes.

23 Q And did you also independently test Justin Porter's  
24 buccal swab?

1           A     Yes.

2           Q     Okay. And did you match your results to Dave Welch  
3 to see if they were the same or similar?

4           A     I do not recall if I compared it with his -- his  
5 case.

6           Q     Was Justin Porter's DNA profile compared to the DNA  
7 profile that was taken out of the sexual assault kit of  
8 Ramona Leva and the DNA profile that was obtained from the  
9 towel from Teresa Tyler?

10          A     Yes.

11          Q     And what -- when hooking at all three of those  
12 things together, what was determined?

13          A     It was determined that -- at first, the way we  
14 explained it, was that we do a comparison that will either  
15 include or exclude a particular suspect. And Justin Porter's  
16 sample could not be excluded as being the source because he  
17 matched the Ramona Leva at each of the 13 locations, plus the  
18 XY; and that the sample matched the stain from the towel at  
19 ten locations, including the XY.

20          Q     Now, Dave Welch testified previously and created a  
21 chart that is a type of chart that used to be created by the  
22 laboratory for testimony.

23          A     Yes.

24          Q     Do you -- do you recall those charts?

1           A     Yes.

2           Q     And they're no longer used; correct?

3           A     That's -- I -- I believe they're no longer used --

4           Q     Okay.

5           A     -- at the lab.

6           Q     So showing you State's Admitted 423, I'd just like

7 to walk you through this, if I might.

8           A     Okay.

9           Q     At the top we're looking at the profile for

10 Teresa Tyler. We're looking in the center at the profile for

11 the buccal swab from Justin Porter. And at the bottom we are

12 looking at the profile and comparison for the vaginal swab

13 from the sex kit from Ramona Leva.

14           A     Are you familiar with all of those -- all of those

15 profiles and all of those identity statements?

16           A     Yes. Yes.

17           Q     So you just testified that -- let's just go through

18 Ramona first. You said Marown -- Marowna -- Ramona matched

19 Justin Porter at ten locations plus the --

20           A     X --

21           Q     -- sex -- sex identify --

22           A     Amelogenin and XY, yes.

23           Q     Amelogenin. I've never been able to say that word

24 in my whole career so I -- that's why I've thrown it out there

1 for you. Thank you.

2 Now, what are reasons, just while we're here, that you  
3 might not get data at every loci? Tell us what some of those  
4 reasons are.

5 A Okay. This could be insufficient amount of sperm  
6 for certain locations might -- of the DNA might require a  
7 stronger sample. There might not be enough. There could be  
8 bacterial breakdown of the stain -- it's a biologic stain.  
9 And because this is a towel, it might have a background of  
10 bacteria. Sometimes people would say fungi, but I think it's  
11 probably mostly bacterial that is clinging to the fiber -- the  
12 actual cotton fiber that the DNA is clinging to. And so there  
13 could be some damage.

14 So it's an environmental -- and for each of these generic  
15 locations, there's probably a little bit of demand by the --  
16 the detection that you need more of a particular part of the  
17 DNA to get a reaction. Some of -- in essence, some are  
18 stronger, some are weaker, at that point.

19 At that point, back in 2000, we were doing the DNA, we  
20 needed a certain amount to get a full -- what I call a "full  
21 profile."

22 Q Okay. So fair to say that the towel was a piece of  
23 transfer evidence. I mean, sperm doesn't live on a towel;  
24 right?

1           A     Right.

2           Q     So it would -- the -- the semen or sperm would have  
3 been transferred to that item; right?

4           A     It would have been transferred to that item, yes.

5           Q     Okay. So when you match those alleles, those loci  
6 to the known sample of Justin Porter, if you could just walk  
7 us through those locations.

8           A     Okay. So we're -- we're looking at the designators  
9 in the upper left. It's D -- we called it DAT. Oh, excuse  
10 me. DAT locus. And you will see that there's a -- is that a  
11 16, comma, 16?

12           THE COURT: Do you need her to blow it up a little  
13 bit?

14           THE WITNESS: Oh, I need my glasses. One or the  
15 other.

16           THE COURT: Okay.

17           THE WITNESS: It might be good to have glasses on.  
18 Because the -- the copy's blurry.

19           Okay. Some of 'em are 15, 16.

20 BY MS. KOLLINS:

21           Q     So --

22           A     But each one, the 15, 16 --

23           Q     Ms. Guenther, there's a mouse up there if you want  
24 to use it to point.

1           A     Okay.

2           Q     And I -- do you have a copy of what I'm using on  
3 the --

4           A     Yes, I have the copy in front of me now. Okay.

5           Q     Is that refreshing your recollection to have you --

6           A     So there -- there would be a --

7           THE COURT: Is that -- that copy, ma'am, that you  
8 have in front of you, does that help refresh your  
9 recollection, if you're able to look down at it?

10          THE WITNESS: Yes, it does.

11          THE COURT: Okay.

12          THE WITNESS: May -- may I look down?

13          THE COURT: Yeah.

14          THE WITNESS: Okay. Okay. So my -- mine is a  
15 little more blurry. But this is the first box is a 15, 16  
16 (indicating).

17 BY MS. KOLLINS:

18          Q     And the box that you're pointing at now, that is the  
19 first location --

20          A     First location.

21          Q     -- for Teresa Tyler. And when you come down to the  
22 known profile with the same designator of "Justin Porter,"  
23 what do you see?

24          A     You see the same type of profile: 15, comma, 16.



1 Once again, that shows it's 15 repeats on one chromosome and  
2 16 repeats on the other, meaning, as I explained before, half  
3 DNA from mother and father are -- are there.

4 Q Okay. And then when you move on to the next --

5 A One -- the location called VWA is another instance  
6 of 15 repeats and 16 repeats.

7 Q Okay.

8 A Then the next location -- and it goes on across.  
9 The FGA location: 23, comma, 28. The amelogenin is -- is XY  
10 because it's the male portion of the sample. And the known.  
11 The next box is a 13, comma, 14. The next box is a -- okay.  
12 There's a little blur there, but it's a 28, comma, 31. You  
13 can see kind of that that's a "3." I apologize for that.

14 And then at D18, the reference sample from the known  
15 person is a 14, 15. But on my evidence that I have the towel  
16 sample, there was no reaction. Meaning that there most  
17 likely -- the DNA reaction was below our detection threshold.  
18 So it -- it was there, but there wasn't enough to conclusively  
19 say what the profile was at that. So we do have a cut off.

20 Q What -- what the profile was at that location --

21 A At that location.

22 Q -- and that -- that doesn't affect your opinion  
23 about the remainder of the profile.

24 A No, you look at the entire profile and then make a

1 determination. So once again, you go down to the remaining  
2 blocks, 12, comma, 13; 12, comma, 13. Now, at the D13 locus,  
3 it was inconclusive. There was something there that -- and  
4 without actually looking at the peak data, I cannot tell why  
5 it was inconclusive.

6 Q Again, not unusual.

7 A Not -- not unusual for a sample that may have been  
8 eaten up by bacteria. And then you might expect that to  
9 happen. Okay. And then at the D7 location: 8, comma, 10; 8,  
10 comma, 10. D16: 11, comma, 12. D16: 11, comma, 12. The  
11 TH01: 7, comma, 8. TH01: 7, comma, 8. The TPOX location:  
12 8, comma, 11; 8, comma, 11. And then the final one, CSF1PO:  
13 7, comma, 11; 7, comma, 11.

14 Q So based on a comparison of the known profile of  
15 Justin Porter against the profile that was obtained from the  
16 towel from Teresa Tyler, as a forensic scientist, can you draw  
17 any conclusion?

18 A I can draw a conclusion that the reference sample  
19 from Justin Porter matched -- matched the profile from the  
20 semen stains of the towel at ten locations, with the exception  
21 of the three that were either inconclusive or no reaction.  
22 And he cannot be excluded as a source of that semen.

23 Q And do you attach a -- back then, did they attach,  
24 at that time, a probability statement to that?

1           A     There -- there was a probability statement that came  
2 from the statistics that the FBI had developed for DNA  
3 analysis to make some sense of the rarity of a match to, in  
4 essence, confirm that whether a sample matched or did not  
5 match.

6           Q     And just for the record, what was that value here?

7           A     Okay. So the value -- and there is a time  
8 difference between when I did my work and when the  
9 Justin Porter sample came into the laboratory. And so we set  
10 a -- what we called the "threshold." The -- you can see that  
11 this one figure in the top is 1 in 437 billion.

12           And it's different for each population, per the FBI  
13 statistics. And at the time my work was done, this was --  
14 this was the way we expressed it. It was the actual statistic  
15 that came from the computer. And in a full profile, the  
16 rarity of the profile is, indeed, very rare.

17           So in order to make sense of it, we set what we called an  
18 "identity threshold," which we did discuss it with other  
19 experts in the field and they said it might make it more  
20 understandable if it were -- if there were 6 billion people in  
21 the world -- back in 2000, there were approximately 6 billion  
22 people in the world. If it were hundred times the earth's  
23 population, then that might be something that might be more  
24 understandable than the individual statistics.

1 Q So what that -- what that number shows, that value  
2 shows is that the combination of all of those 14 locations,  
3 that is the chance -- that's how many times it would occur in  
4 600 --

5 A Yes, that's --

6 Q -- billion people.

7 A -- the number of times it would occur.

8 Q Okay. And when you acquire a probability of that  
9 magnitude and -- what does that say about identity?

10 A That was what we, at that point, had called the  
11 threshold the "identity statement."

12 Q So if you were going to give an identity statement  
13 in this case, you would say that the DNA found in  
14 Teresa Tyler -- on Teresa Tyler's towel is a match to the DNA  
15 of Justin Porter?

16 A Yes.

17 Q Now, similarly, a vaginal swab of Ms. Leva was  
18 profiled; correct?

19 A That's correct.

20 Q And that was actually a swab that was contained  
21 within the sexual assault kit that was taken from Ms. Leva's  
22 body; correct?

23 A That's correct.

24 Q And kind of the same question I asked you before.

1 If a sexual assault kit or any piece of evidence came to you  
2 disturbed or disrupted, would you test it?

3 A No.

4 Q And anything unusual about the packaging or the  
5 chain of custody with Ms. Leva's sexual assault kit?

6 A Mr. Welch would have determined that. It would not  
7 have -- he would not have proceeded with that.

8 Q Okay. And was a profile developed from Ms. Leva's  
9 kit?

10 A Yes. A complete profile at all 14 loci.

11 Q Okay. At all 14 locations that we just went  
12 through?

13 A That's correct.

14 Q Okay. And at the first Loci, the D351358, they're a  
15 15, 16.

16 A That's correct.

17 Q Consistent with Justin Porter at that location.

18 A That's correct.

19 Q And at the VWA, there's a 15 -- 15, 16, also  
20 consistent with Justin Porter at that location.

21 A That's correct.

22 Q And at FGA2328, the same are consistent with the  
23 profile from Justin Porter.

24 A Correct.

1 Q And does it go that way down the line, the XY, the  
2 13, 14; the 28, 31; and the 14, 16?

3 A That's correct.

4 Q And as to the bottom row of locations, again,  
5 Ms. Leva is a 12, 13 -- or the sample, excuse me, from  
6 Ms. Leva, not -- it's not Ms. Leva's profile. That's the  
7 sample profile; correct?

8 A That's correct.

9 Q Okay. At the D -- D55 -- oh, gosh --

10 A D5S818.

11 Q I'm sorry. D5S818?

12 A Right there.

13 Q Sorry about that.

14 Defendant -- or Mr. Porter is a 12, 13.

15 A Correct.

16 Q Same as the sample profile from Ramona Leva.

17 A Correct.

18 Q Is that correct?

19 A That's correct.

20 Q And at the D13S317, Justin Porter is 11, 12, same  
21 with Ramona Leva.

22 A That's correct.

23 Q Is that correct?

24 A Yes.

1 Q And the next location is a 8, 10; also an 8, 10 on  
2 Ms. Leva. And then the next location, 11, 12; 11, 12 for both  
3 Mr. Porter and Ms. Leva.

4 A Correct.

5 Q And following the TH01, it's a 7, 8; 7, 8.

6 A Correct.

7 Q And then at the TPOX, 8, 11 and 8, 11.

8 A Correct.

9 Q And at the CSF1PO, 7, 11 and 7, 11.

10 A That's correct.

11 Q So in Ms. Leva's profile there were no -- none of  
12 the blocks were incapable of a profile; correct?

13 A That's correct. It's -- it -- what we call a  
14 "complete profile."

15 Q And was -- was there a calculation associated with  
16 Ms. Leva's profile -- Ms. Leva's vaginal swab profile as it  
17 relates to Justin Porter?

18 A Yes.

19 Q And what was that calculation?

20 A Okay. The calculation's done by the computer. And  
21 the actual statistic I do not have here because it's rarer  
22 than 600 billion. So you see at the first sample where I have  
23 the partial profile. I had a more definitive number for each  
24 population type. But since we instituted that threshold or

1 ceiling, it could be rarer than 1 in 600 billion. So we had  
2 less than 1 in 600 billion as the result.

3 Q And what does that tell you in terms of identity?

4 A That means there were absolutely no differences for  
5 the 14 loci of the evidence sample to the known sample, and  
6 that for all intents and purposes that that was the match  
7 between Justin Porter's DNA and the vaginal swab DNA.

8 Q Okay. Between Justin Porter's DNA and the sample  
9 that was developed from the vaginal swab --

10 A The vaginal swab, yes.

11 Q Okay. Now, no DNA was discovered on  
12 Marlene Livingston's kit; correct?

13 A No DNA.

14 Q And no DNA from Leona Case?

15 MR. GILL: And, Your Honor, just for the record, can  
16 we maybe note what she might be referring to?

17 THE COURT: Sure. What are you referencing, ma'am?

18 THE WITNESS: I'm referring to a summary sheet.

19 THE COURT: A summary sheet?

20 MS. KOLLINS: Do you want to look at it?

21 MR. GILL: No, it's the summary sheet from -- that's  
22 handwritten?

23 MS. KOLLINS: Yes.

24 MR. GILL: Yes, thank you.



1 BY MS. KOLLINS:

2 Q There was no DNA profile for Ms. Leona Case's?

3 A That's correct.

4 Q And there was no comparison to Justin Porter for  
5 Joni Hall; is that correct?

6 A That's correct.

7 Q Now, we talked about Mr. Welch running a number of  
8 buccal swabs that were obtained pursuant to this task force;  
9 correct?

10 A Correct.

11 Q And did you review some of the reports where he ran  
12 those buccal swabs for profiles?

13 A I did look at the report.

14 Q Okay. There's multiple of those people; correct?

15 A Correct.

16 Q And I'm assuming, 22 years later, you have not  
17 committed those names to memory?

18 A No.

19 Q Would it refresh your recollection to just go  
20 through some of the names that were buccal swabbed if you  
21 looked at one of the reports?

22 A Certainly.

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

1 THE COURT: Yes.

2 BY MS. KOLLINS:

3 Q So I just -- I kind of want to get at least some  
4 idea of some of the exclusion work that was done in this case,  
5 okay? Now, starting at item 15 and moving forward, if we  
6 could just -- item 15 and moved forward, could we just talk  
7 about some of the profiles that were done by Dave Welch in  
8 this work.

9 A Okay.

10 Q And I know you haven't committed 'em to memory so --

11 A Okay. May I look at the other pages?

12 Q Sure. Sure.

13 Okay. I just kind of want to get some of those names on  
14 the record, okay? So we can start with DW15, right here.  
15 That was an exclusionary sample ran by David Welch; correct?

16 A Yes.

17 Q And what's that name?

18 A I'm maybe mispronouncing it, but Jadney Mitchell  
19 (phonetic).

20 Q Okay. And the next exclusionary sample ran by  
21 Dave Welch.

22 A Was Jerald Ferrell (phonetic).

23 Q And the next one?

24 A Larry Monger (phonetic).

1 Q And the next?

2 A George Perez.

3 Q And the next?

4 A Harold Holms.

5 Q Just keep going.

6 A Travis Brown, Jay Foster.

7 Q And there's a second page to that.

8 A All right.

9 Q Up here.

10 A Those are the excluded sources.

11 Q Okay. And all of those profiles were excluded.

12 A Were excluded, yes.

13 Q Okay. And the last question I have for you, when

14 the match was discovered between Ramona Leva -- between the

15 sexual assault kit with Ramona Leva, the towel from

16 Teresa Tyler, that that was a match to the DNA profile of

17 Justin Porter, did the forensic lab contact the -- the

18 assigned detectives?

19 A Yes.

20 Q Okay. And that would have been via phone call or

21 e-mail or something like that?

22 A Certainly the laboratory report went out. I do not

23 have recollection of personally making phone calls to anyone.

24 Q Thank you.

1 MS. KOLLINS: I will pass the witness.

2 THE COURT: Mr. Gill.

3 MR. GILL: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. GILL:

6 Q Good -- now we're in afternoon, Ms. Guenther. How  
7 are you?

8 A Good afternoon.

9 Q And I just want to -- I kind of want to start with  
10 State's 423. And I'll -- I'll try to keep it legible.

11 Now, we're gonna start with the -- the top portion here.  
12 And that -- that's the Teresa Tyler sample from the towel;  
13 correct?

14 A Towel, yes.

15 Q So when the State references Teresa Tyler, it's not  
16 her DNA profile; correct?

17 A That's correct.

18 Q You maybe separated that out?

19 A She -- there was a reference sample from her. And  
20 there was sex assault kit and the DNA analysis was performed  
21 on the sam -- questioned semen from the towel.

22 Q Okay. So can you kind of explain how that might  
23 work? When -- when you start with that towel, kind of what --  
24 what you do.

1           A     What we do. Obviously, we're looking for what could  
2 be a stain of a biological fluid. I look at it under white  
3 light and under ultraviolet light. I generally will have some  
4 kind of a marker to draw a hemisphere or a circle around the  
5 area where I'm going to pursue the testing and actually do a  
6 cutting of the -- this was a terry cloth towel, I believe.

7           And I did a cutting of the -- what we call a cutting of  
8 the towel. So you take a sterile forceps or scissors and cut  
9 a small sample and put that in a test tube to do the color  
10 analysis for the detection of possible semen. And when that  
11 is positive, then you can proceed to do another cutting of the  
12 same area, because that original sample's contaminated in  
13 there because of the reagents that are used. It turns purple.  
14 You can't use that, necessarily. Well, I've never had to.  
15 And then gone back to the stain, take another clipping of it  
16 and extract it via a differential extraction, which separates  
17 the sperm cells from any other epithelial cells that are  
18 present.

19           And then you can proceed with that sample. You can look  
20 at it under a microscope and determine if there are sperm.  
21 And then from that process, go back to that same test tube and  
22 begin prepping it for the DNA analysis, which actually  
23 takes -- splits open the sperm cells and gets the DNA from the  
24 nucleus of the cell.

1       So it's a long, involved process of many washing steps  
2 with various reagents, purification, and then determination if  
3 there's enough sample to proceed. And then you go through the  
4 DNA analysis, which is a polymerase chain reaction that  
5 actually amplifies the DNA sections that you want to look at.

6       And then it's a long, involved process to get it into the  
7 actual detection instrument and run against known samples.

8       Q     And back in 2000, when this was done --

9       A     Yes.

10      Q     -- how long was that process?

11      A     How long was the process?

12      Q     Approximately.

13      A     Okay. For -- if I would start, say, on the Monday,  
14 I could have results by Friday.

15      Q     Okay. Approximately four to five days?

16      A     Yes.

17      Q     And in -- in the Teresa Tyler sample with the towel,  
18 did you follow those processes?

19      A     Yes.

20      Q     How many -- again, this is 22 years ago. You had  
21 started your career in the 70s; is that correct?

22      A     Yes.

23      Q     Or your training --

24      A     Yes.

1 Q -- and education?

2 A That's correct.

3 Q How many -- when did you start? I apologize. When  
4 did you start doing DNA testing of this type?

5 A Of this type. And this is the STR type. When we  
6 started in the Metro police lab, about 1998.

7 Q Okay. So couple years prior to this?

8 A That's the STR portion. I'd done the -- what I call  
9 the old style, RFLP DNA, in Florida for many years.

10 Q Okay. And STR was the latest and greatest at the  
11 time?

12 A That's -- it's still the method that's used now.

13 Q Okay. And, again, that started in approximately  
14 1998.

15 A At our lab, yes.

16 Q At your lab. And that's the Las Vegas Metropolitan  
17 Police Department.

18 A Las Vegas lab, yes.

19 Q Okay. And, now, sticking with this sample from the  
20 towel, the -- the FGA was -- was an NR as was the -- and I  
21 have to apologize that --

22 A D18.

23 Q D18 was an NR. Can you explain a little bit more  
24 about what might cause that?

1           A     Um --

2           Q     I mean -- and not specifically, but -- but there are  
3 certain --

4           A     There -- there could be something wrong with the  
5 sample itself. The -- the matrix that it's on, the towel, a  
6 dye within the towel could be causing a problem for the  
7 binding sites. It's highly biochemical. So we may never  
8 know.

9           And without my actual case file and the notes here, I --  
10 I don't know if I made any other notes, but it was -- I won't  
11 say that it's really rare, but it was not unusual to only have  
12 a sample that did not give a full profile.

13          Q     Okay. So does -- and again, this one, you wouldn't  
14 call -- I think you refer to it as a "complete profile." Like  
15 the Leva --

16          A     A complete profile's when you have all 14.

17          Q     Okay. So this one was not complete, but enough to  
18 do your tests?

19          A     Yes.

20          Q     And still some up with these numbers on the bottom  
21 here, with the 1 and 40 -- 437 --

22          A     Right.

23          Q     -- 1 in 6.4, 1 in 842.

24          A     That's correct.



1           Q     And -- and the -- the -- the sets of numbers that  
2     you have in the 14 locations help generate those statistics;  
3     is that correct?

4           A     That was where the statistics come from.

5           Q     And you mentioned one thing that -- that these  
6     charts -- and let me just ask you about the chart that you're  
7     referring to. Those are usually handwritten; correct?

8           A     Initially, in our case notes, the charts are filled  
9     in by hand, as I remember. And that the secretary who types  
10    up the lab report, the actual text -- text of a lab report  
11    would fill in the charts. But --

12          Q     And I'm sorry. I don't mean to interrupt you --

13          A     Okay.

14          Q     -- but "fill in," like, on the computer?

15          A     On the computer. But I know there were times when I  
16    did it myself instead of asking the secretary to fill in all  
17    those tiny blanks. That I would do it myself because I had  
18    it -- results right there.

19          Q     Okay. And do you recall --

20          A     So it's possible --

21          Q     I'm sorry.

22          A     I do not recall --

23          Q     On this one you don't recall? Is that the same for  
24    the Leva sample?

1           A     For the Ramona Leva sample, I would say Mr. Welch  
2 would let the secretary -- he had a handwritten chart and let  
3 the secretary do the professional work of typing it in.

4           Q     And then what kind of controls or checks -- after  
5 you've given to the secretary, is she under any kind of  
6 control or -- to make sure that what she --

7           A     It --

8           Q     -- is translating is what you wrote down?

9           A     It would come back to the case analyst. They would  
10 look at it. They would also have a case reviewer look at it.  
11 And I'm not really sure when we started it, but we would have  
12 the supervisor of the unit also look at it.

13          Q     And what are they, quote-unquote, looking at? Are  
14 they looking at your notes as well as the --

15          A     They're looking at the notes and making sure that  
16 the final report accurately represents the notes.

17          Q     Okay. And then on -- and I -- I have to apologize.  
18 I just cannot -- maybe I need glasses.

19          A     D13.

20          Q     D13 is inclusive. Is that similar -- similar  
21 potential reasons?

22          A     It could be -- it could be that it did give a small  
23 reaction and that the actual detection peaks, it did not meet  
24 the threshold of whatever the peak threshold was at that time

1 because we did have -- we were going through a process where  
2 we were coming better at determining profiles over time. That  
3 our detection methods were getting better. And so it changed.

4 I don't remember what the threshold was. It might have  
5 been 75 units. It might have been 50 units. But it did not  
6 hit the threshold. And that's probably why it's inclusive.  
7 Because it's there, but it's not there in a sufficient amount  
8 to call.

9 Q Okay. So -- in layman's terms, that's all I know,  
10 the -- there is a D -- there is some sort of DNA --

11 A The DNA there.

12 Q -- just not enough; is that fair?

13 A Just not enough. That could be fair, yes.

14 Q Okay. And that's, again, possibly due to a variety  
15 of reasons --

16 A Yes.

17 Q -- external forces, what's on the towel previously,  
18 handling --

19 A The --

20 Q -- all -- any of those.

21 A Yes.

22 Q Okay. And you -- you also mentioned might have been  
23 eaten up by bacteria. Do you recall that statement?

24 A Well, yes. It could be. There could -- bacteria

1 are everywhere. It could be detergents on a towel. Soaps,  
2 things like that.

3 Q Something left over on the towel?

4 A Could be.

5 Q Okay. And I just want to also ask you about, you  
6 got -- and you did state you don't do this anymore, but you  
7 have frequency of the US Caucasian population, frequency US  
8 African American population, and frequency US Hispanic  
9 population. Can you explain kind of why those are all  
10 different numbers?

11 A When the FBI began doing DNA analysis back in 1990  
12 and '91, they realized that, in DNA and in genetics, there are  
13 different -- differences in frequencies from one race to  
14 another. And so that has been accepted by academics. And  
15 they wanted to make sure that they did not ignore that  
16 difference. Because there are some differences in frequencies  
17 of certain biochemicals.

18 And I don't know -- I don't have a good example to use  
19 for that other than we did do a test for hemoglobin and -- and  
20 certain people of African descent, there was hemoglobin that  
21 would link to ethnically related diseases. And so -- and in  
22 other groups, say, people of Ashkenazi, Jewish descent, there  
23 were certain genes that make someone more likely to have some.

24 So they didn't want to ignore that there were some racial

1 differences in populations. And those were borne out through  
2 any type of GN -- DNA analysis. So even with this kind of DNA  
3 analysis, which is not -- are not genes. These are rep --  
4 replicated units of -- we hate to say "waste DNA" because it's  
5 there for a purpose.

6 But it's not a gene like if someone has genetic diabetes  
7 or whatever. It's not like that. They're replicated units  
8 that were determined to be good for forensic use because  
9 they're not related to genes and they cannot be linked. So it  
10 gets a little hairy in the -- in the weeds.

11 But -- so there are population differences in frequencies  
12 of certain profiles.

13 Q And that's what's reflected on the --

14 A And that's what's reflected on that.

15 Q That sample from the towel.

16 A On -- on the towel.

17 Q Okay. Now, there are -- there's some writing on the  
18 Ramona Leva sample. Did you write those in?

19 A No.

20 Q Are those from your summary?

21 A That's from -- that's -- that would be from  
22 Mr. Welch's summary.

23 Q I'm -- and I'm sorry.

24 A Mr. Welch's result, yes.

1 Q Okay. So those are just, you know, kind of written  
2 in there, but they are from somewhere, meaning Mr. Welch's  
3 summary reports --

4 A Right. There's some summary report.

5 Q Okay. Is that a portion that you would commonly  
6 write in as well or where does that -- that figure come from?

7 A That fits in when we set -- we set up to try to make  
8 DNA results understandable, we set the threshold of the rarity  
9 of a profile. When you have a complete profile, it could be  
10 in the trillions, quadrillions, quintillions. And we figured  
11 that no one can even imagine what that is.

12 Whether that's good or bad, we thought it -- it's better  
13 to just stick to a ceiling, frequency, that it's rarer than 1  
14 in 600 billion or a hundred times the world's population in --  
15 in 2000. Because that -- that case was worked in 2000.

16 So between my working of the case and Mr. Welch's -- or  
17 when those samples came in, there was a change in the lab as  
18 to how we report the results.

19 Q Okay. So that's more of a max, if you will. You  
20 can call --

21 A That -- that is just a threshold, and we just felt  
22 that that was a better way to express it.

23 Q Is it still done that way or --

24 A I do not know how they -- how they do it at --

1 currently at the Metro lab.

2 Q Okay. But in 2000, this is how they did it.

3 A Yes.

4 Q You -- you wouldn't see anything higher than one in  
5 600 billion, is that what you're saying?

6 A No matter how -- septillion. I would seen -- had  
7 seen some results in septillion. And no one can imagine what  
8 that is. So --

9 Q Okay. Now, as far as the Leva sample. And this  
10 is -- I know it's Mr. Welch that did this, but you reviewed  
11 it; correct?

12 A Yes.

13 Q And it's common in a case -- in any case where  
14 you've got multiple -- are you guys reviewing one another's  
15 work, if you will, reports?

16 A Yes.

17 Q And in this case, it's -- you called it a complete  
18 or a full profile; correct?

19 A Yes.

20 MR. GILL: Court's quick indulgence.

21 BY MR. GILL:

22 Q And Ms. Kollins ask you about some exclusions that  
23 you did. And had you read some names. Do you recall that?

24 A Yes.

1           Q     When you -- can you tell the jury about your  
2 definition of "include" and "exclude"?

3           A     All right. When we have a DNA profile from an item  
4 of evidence, oftentimes we're presented with the potential  
5 suspect or a list of people that need to be compared to the  
6 sample. And so we look at the DNA results and we look at the  
7 entire profile and we try to make sure that they either match  
8 or they are an exclusion.

9           And an exclusion means that that sam -- that biologic  
10 sample could not have originated from a particular individual.

11          Q     Okay. So in this case, and a -- and I do have the  
12 report.

13               MR. GILL: If I could maybe approach, Your Honor.

14               THE COURT: Yeah.

15 BY MR. GILL:

16          Q     She -- Ms. Kollins showed you this -- this report  
17 here with all -- all the names.

18          A     Yeah.

19          Q     And these -- your understanding is these are buccals  
20 that were either compared by you or Mr. Welch.

21          A     Mr. Welch, yes.

22          Q     Okay. And there are -- that ex -- excluded only,  
23 there's -- one, two, three, four, five, six -- seven  
24 exclusions; correct?



1           A     Yes, that's correct.

2           Q     Okay. And, again, I'm sorry, Ms. Guenther. But did  
3 you not test those buccals from those seven individuals?

4           A     Mr. Welch test --

5           Q     Okay.

6           A     Tested those.

7           MR. GILL: Thank you, Your Honor. And nothing  
8 further.

9           THE COURT: Thank you.

10          State?

11                               REDIRECT EXAMINATION

12          BY MS. KOLLINS:

13          Q     DNA labs, specifically Metro's lab, they go through  
14 a certification process; is that fair?

15          A     It's an -- yes, it's an accreditation process.

16          Q     Accreditation. Excuse me.

17          A     Right.

18          Q     Better word. And accreditation, what does that kind  
19 of involve?

20          A     That's a national body of forensic science -- it's  
21 hard to explain. It's -- it is a national group that  
22 accredits laboratories and makes sure that all laboratories  
23 working on forensic evidence meet certain quality standards  
24 and maintain those through internal audits and regular quality

1 controls.

2 So it's made a big -- since I started in forensic science  
3 in 1975, there have been a big change in how that is applied  
4 to the laboratory. And it also meant that laboratories  
5 obtained more resources to do their work and to make the work  
6 better. So it was something that we did in our laboratory.

7 Q So in 2000, Metro lab was accredited.

8 A I don't know if it was accredited yet. I -- I think  
9 it met all the standards, but I'm not sure that we had gotten  
10 our final certification at that time.

11 Q And were -- when you would work on a case, would  
12 that case be reviewed?

13 A Yes.

14 Q Would all of your work be reviewed?

15 A Yes.

16 Q Okay. So peer-reviewed and technically reviewed.

17 A That's correct.

18 Q And when numbers were reported, in a final report --  
19 and this -- 423 is a collaboration of -- of profiles from  
20 several reports; is that fair?

21 A That's fair. Yes.

22 Q That's not what that looked like --

23 A That's true. That's a different point in time.

24 Q Okay. And we've just put it there for the ease of

1     testifying; correct?

2           A     Yes, that's correct.

3           Q     But those numbers that ultimately end up in that  
4     profile at the different locations, those are checked even  
5     after somebody fills in the boxes for you that might be a  
6     secretary or someone else; right?

7           A     Yes, someone can actually go back to the analysis  
8     computer and reanalyze that data and make sure that those are  
9     the correct profiles.

10          Q     Okay. Because we don't just throw DNA reports out  
11     there and go "I hope it's right"; right? I mean, somebody  
12     checks --

13          A     I hope not. No.

14          Q     Somebody checks the work; right?

15          A     Yes.

16          Q     Okay. And is it your belief it was checked in this  
17     case?

18          A     I believe so.

19          Q     Okay. You talked about a number with Mr. Gill  
20     talking about, you know, you've seen numbers in the  
21     septillions.

22          A     Yes.

23          Q     So in 2000 we look at 14 locations; right?

24          A     Right.

1 Q And now they look -- now, 2022, they look at a  
2 different number of locations.

3 A It's more like 20 to 24 locations.

4 Q Okay. That accounts for that septillion number  
5 because you're -- because the multiplier's getting bigger;  
6 correct?

7 A Yes.

8 Q Are --

9 A And some profiles are more rare. And even with the  
10 14 loci we had, we did see very rare numbers even back then in  
11 2000.

12 Q Okay. Just because those septillion numbers that I  
13 don't know how many zeros exist, that does not detract from  
14 the identification that was made in this case; right?

15 A That's correct.

16 Q Okay. That doesn't alt -- that doesn't mean 600  
17 billion's a bad number; right?

18 A No. No.

19 Q Okay. I don't know if we touched on this. I  
20 just -- really briefly. When you talked about epithelial  
21 cells, you're talking about skin cells; correct?

22 A Yes.

23 Q And so when someone has a buccal swab done of their  
24 mouth, those are skin cells that are being removed from the

1 mouth and ultimately profiled.

2 A Yes.

3 Q Okay.

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

5 THE COURT: Mr. Gill?

6 MR. GILL: Just briefly on that, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. GILL:

9 Q This accreditation that Ms. Kollins asked you about,  
10 the labs you worked in previously were in Florida?

11 A In Florida and Ohio.

12 Q And Ohio. Were those accredited?

13 A The Florida laboratory was.

14 Q Were you present during that process?

15 A Yes.

16 Q You worked there --

17 A Yes.

18 Q -- at -- poor question.

19 You worked there during that process.

20 A Yes.

21 Q And do you know when the Metro lab was accredited?

22 A It wasn't in the year 2000. The -- the final  
23 accreditation, it wasn't -- I believe it was around 2005.

24 MR. GILL: Nothing further. Thank you.

1 THE COURT: Anything based on that?

2 MS. KOLLINS: No, Your Honor.

3 THE COURT: Anything from the jurors?

4 Ma'am, thank you so much for your testimony --

5 THE MARSHAL: Oh, we have one, Judge.

6 THE COURT: Oh, I'm sorry. I couldn't see the hand.

7 [BENCH CONFERENCE BEGIN]

8 [DISCUSSION OFF THE RECORD]

9 MS. KOLLINS: Oh, that just gave you your defense.

10 They're not accredited. You can't believe 'em.

11 MR. GILL: Sorry.

12 MS. LUZAICH: Is that all?

13 MR. GILL: No, not yet.

14 MS. KOLLINS: Yeah.

15 [BENCH CONFERENCE END]

16 THE COURT: All right. Ms. Guenther, I have a

17 question for you. What are the determining factors used to

18 exclude a DNA sample? For example, certain number of

19 locations do not match or frequency percentage is below a set

20 number, et cetera.

21 THE WITNESS: Okay. The exclusion, when we look at

22 the whole set of the 14 locations, you might see some that

23 have the same 14, comma, 15 or whatever. You go to the next

24 location and you see that they're different. That indicates

1 to you that, already, there is a difference and a potential  
2 exclusion. And you -- it's a combination of all those  
3 samples.

4 So if you were to look at the -- well, the sample from  
5 the alleged victim and the sus -- alleged suspect, if they  
6 were put side by side and you looked at those, you would know,  
7 almost immediately, that one is excluded from coming from the  
8 towel. The victim's sample -- if the victim's sample were  
9 there. Or not.

10 So if they matched at all 14 locations, that is an  
11 inclusion. The frequency population just shows the rarity of  
12 a profile. And I would say that all samples at the 13 loci  
13 are going to -- the 13 loci plus the amelogenin are going to  
14 be rare. They're all going to be rare in the population  
15 because we're talking about each person's DNA as being unique.  
16 So it will be rare.

17 But you have to make sure that everything matches. If  
18 they match, they could have come from the same person. So  
19 that's all we're saying.

20 THE COURT: Follow-up, State?

21 MS. KOLLINS: Very briefly.

22 FURTHER REDIRECT EXAMINATION

23 BY MS. KOLLINS:

24 Q So we talked about the 14 locations and some

1 identifications were made in this case, even though there were  
2 less than 14 -- 14 pure profiles, I'll call them, on  
3 Teresa Tyler; right?

4 A That's right.

5 Q So if -- say that we're missing seven more rows or  
6 seven more locations and there were only, you know, two or  
7 three alleles that had, maybe, only one number in each box  
8 instead of two. You would never make an identification off  
9 that; right?

10 A You could not call it identification; however, you  
11 might be able to do a -- an exclusion based on a perishable  
12 profile. But as far as a match, you would hesitate making a  
13 match based on just a few loci.

14 Q And I guess maybe -- that was kind of an inartful  
15 question. But you would never call a match if you didn't feel  
16 the science was there; is that a fair question?

17 A That's correct.

18 Q Okay. And you could never call an exclusion if you  
19 didn't think the science was there.

20 A That's correct.

21 Q If there -- if there wasn't enough information to  
22 know one way or the other, you would just say "there's not  
23 enough information" --

24 A Yes. And --



1 Q -- to -- to test and compare; fair enough?

2 A That's correct.

3 Q Okay.

4 MS. KOLLINS: No more questions.

5 MR. GILL: Nothing on that, Your Honor.

6 THE COURT: One additional question, Chris, please.  
7 Thank you.

8 THE MARSHAL: Sure.

9 [BENCH CONFERENCE BEGIN]

10 THE COURT: (Indiscernible)

11 MS. KOLLINS: What?

12 MS. LUZAICH: Well, if she knows.

13 THE COURT: If she knows.

14 [BENCH CONFERENCE END]

15 THE COURT: All right. Ms. Guenther, how long does  
16 it take to reach accreditation at labs, if you know?

17 THE WITNESS: It can take many years before a  
18 laboratory has the resources to obtain accreditation.

19 THE COURT: State, follow-up?

20 MS. KOLLINS: No, ma'am.

21 THE COURT: Mr. Gill?

22 MR. GILL: No, Your Honor. Thank you.

23 THE COURT: All right. Thank you very much. Please  
24 don't share with anyone else involved in the case, as it's an

1 ongoing trial. But we appreciate you being here. You are  
2 excused.

3 THE WITNESS: Thank you.

4 THE COURT: All right. Ladies and gentlemen, we are  
5 going to take our 15-minute break at this point in time.

6 Please remember that during this recess to 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 matter  
18 until it's formally submitted to you.

19 I will see you at 12:55, 12-5-5.

20 THE MARSHAL: All rise.

21 [RECESS AT 12:38 P.M. PROCEEDINGS RESUMED AT  
22 1:00 P.M.]

23 [OUTSIDE THE PRESENCE OF THE JURY]

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 Please be seated when you are ready.

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

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

11 MS. LUZAICH: Yes, judge.

12 MR. GILL: Yes, Your Honor.

13 THE COURT: All right. State.

14 MS. LUZAICH: State calls Fred Boyd.

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

18 FRED BOYD,  
19 [Having been called as a witness and being first duly  
20 sworn testified as follows:]

21 THE WITNESS: Yes, ma'am, I do.

22 THE CLERK: Please be seated.

23 THE WITNESS: Thank you.

24 THE CLERK: Will you please state your name and

1 spell it for the record.

2 THE WITNESS: My name is Fred Boyd, B-O-Y-D.

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 afternoon, Mr Boyd.

9 A Hi.

10 Q Are you retired?

11 A Yes, ma'am, I am.

12 Q What are you retired from?

13 A Las Vegas Metropolitan Police Department, the  
14 forensic crime laboratory as a latent print examiner.

15 Q For how long did you work with Metro's crime lab as  
16 a print examiner?

17 A I was with Metro for 15 years.

18 Q Were you anywhere prior to that?

19 A Yes, ma'am.

20 Q Where were you prior to that?

21 A Prior to my employment with Metro crime lab, I was  
22 eight and a half years employed with the Broward County  
23 Sheriff's Office in Fort Lauderdale, Florida, their forensic  
24 crime laboratory as a latent print examiner.

1 Q And is that all of your latent print work  
2 experience?

3 A No, ma'am.

4 Q What else did you do? Sorry.

5 A Prior to Broward County, I was with the  
6 United States Army Criminal Investigation Command. The Army  
7 CID, where I retired in 1988, as a latent print examiner,  
8 chief warrant officer, specializing in latent print  
9 identification, where I spent ten years full-time duty as a --  
10 working in the crime lab. And prior to that with the Army  
11 CID, as a special agent working cases, learning -- learning  
12 the various aspects of -- of fingerprints and whatnot.

13 All total, I have approximately 40 years of experience  
14 associated with the latent print discipline.

15 Q Well -- and thank you for your service.

16 What does a latent print examiner do?

17 A Real briefly, a latent print examiner, we examine  
18 fingerprints that are left at crime scenes, those that are --  
19 that are submitted to us. And when we determine that those  
20 prints are of value for identification, then we compare those  
21 to known individuals.

22 Q Can you describe for us what training and education  
23 you have that qualifies you to do that, above and beyond your  
24 many years of experience.

1           A     Well, during the actual on-the-job work as a latent  
2 print examiner, we go to many schools. I have attended the  
3 FBI academy, Advance Latent Print Academy, the Quantico,  
4 Virginia. And member of various professional organizations,  
5 the International Association for Identification being one of  
6 the major ones in the state. And they have -- they are  
7 various state divisions, which I was a member of the Nevada  
8 chapter.

9           I was a member of the Fingerprint Associate of Great  
10 Britain. And just a continuous training aspect of my career  
11 that I have chosen. Also I was certified as a latent print  
12 examiner by the International Association for Identification  
13 and by the United States Army.

14          Q     And have you testified as an expert in the area of  
15 latent print examination in numerous courts across the county?

16          A     Yes, ma'am, I have.

17          Q     Thank you. Now, you mention that you look at  
18 fingerprints that are of value. Can you describe for us what  
19 you mean by that?

20          A     Yes, ma'am. In order for us to make a -- an  
21 examination of a fingerprint, that fingerprint has to be of  
22 sufficient quality that you can make a comparison with.  
23 Example, if you have a -- a print that is smudged and there's  
24 no friction ridge detail in that fingerprint, you're not gonna

1 be able to make a comparison with that.

2 And also if you -- and basically if you have not  
3 sufficient amount of ridge detail, you're not gonna be able to  
4 make a comparison. And it's those fingerprints that do have a  
5 sufficient amount of ridge detail, those are the ones that  
6 we're able to make a comparison with.

7 Q So if I walk up to this podium and I grab it like  
8 this, am I necessarily gonna leave a fingerprint or palm print  
9 or any kind of print?

10 A Oh, if you touch a surface, you can leave a print.  
11 You may not leave a print. It depends on the type of surface  
12 that it is. The podium being a hard surface, this is a very  
13 good surface to leave a fingerprint on.

14 Basically, what is a fingerprint? A fingerprint is  
15 nothing more than a mark that is left as a result of a finger  
16 touch. And, now, if you touch a surface and if -- if you go  
17 like this here (indicating), well, you're -- you're gonna  
18 smudge that print. It's gonna be a smudged print and you're  
19 gonna wipe off any sufficient ridge detail that might be on  
20 there.

21 Another thing, you could have a smooth surface too, like  
22 that podium, but maybe there's some contaminates on that  
23 surface that will not make those friction prints actually  
24 adhere to the surface -- they may adhere to it, but it's

1 adhering to that -- to the contaminates on there and maybe not  
2 leaving a good print.

3 So there's a lot of factors involving a fingerprint and  
4 whether it's of value or not and what we look at.

5 Q Are there also may be some, for example,  
6 environmental concerns that affect the, I guess, ability to  
7 leave a fingerprint or whether or not a fingerprint would be  
8 of value?

9 A Yes, ma'am. Environmental factors are very  
10 important. You can touch a surface and you might have a real  
11 good area on there that a fingerprint can be lifted from or  
12 photographs or whatever technique that is used to recover that  
13 fingerprint. But maybe prior to the recovery of that  
14 fingerprint -- let's say it's gonna rain or wind, dust,  
15 whatnot, and that's gonna blow on there and it's gonna  
16 contaminate that fingerprint.

17 So -- and those are factors that interplay too. And  
18 those are factors that we look at when we examine a  
19 fingerprint to determine whether or not it's of value of  
20 identification or not. And if it's not of value for  
21 identification, we look at, well, why isn't it maybe of value  
22 for identification.

23 You could have a lot of friction ridge detail there, but  
24 if the -- my -- minutiae in that fingerprint that we look at



1 is insufficient, then we won't be able to make a good  
2 comparison with that print.

3 Q Okay. And you're talking about friction ridge  
4 detail. Can you describe what you mean by that?

5 A Well, if -- if you look at your fingers, it's  
6 corrugated skin. And the corrugated skin is made up of  
7 various patterns and made up of various components that we  
8 call minutiae detail or ridge detail. You may have a ridge  
9 that will go up and stop. That's called ending ridge. You  
10 may have a loop that will go up and go maybe around and form a  
11 loop pattern.

12 Within those ridge detail, you might have a little dot.  
13 You might have various size ridges. You have spacing between  
14 the ridges. All these little things are minutiae detail and  
15 characteristics that we look at when we form a -- a  
16 comparison.

17 And then, of course, we try to match those  
18 characteristics up which are in the same relative position to  
19 one another, and we try to find the same characteristics in a  
20 set of known fingerprints. And then when you find a suitable  
21 number of points where -- that are consistent with each other,  
22 then you have an identification.

23 Q Are there times, sometimes, where a crime scene  
24 analyst might go to a scene and lift a latent print that he

1 thinks -- he or she thinks is sufficient and when you examine  
2 it, it is not sufficient?

3 A Oh, yes. And that is -- I always tell crime scene  
4 analyst, if you see something -- and of course, first of all,  
5 they're -- they're trained. They know, basically, what to  
6 look for, what not to look for also, because of their  
7 training. But if they see a print that their -- that they  
8 have a doubt about lifting, where they may feel that there's  
9 not a sufficient amount of detail there, I tell them, go ahead  
10 and lift it and send it into us. We're the ones to make that  
11 determination, whether the print is good or whether it's not  
12 good for comparison purposes.

13 Q So better to lift anything you see than leave  
14 something behind.

15 A Exactly.

16 Q Okay. Now, is it possible that you and I might have  
17 the same fingerprints or leave the same fingerprint behind? I  
18 don't know a better way to phrase it.

19 A The same fingerprint, no. We may have same  
20 fingerprint patterns. You may have all loops; I may have all  
21 loops. But when you get down to actually looking at the  
22 fingerprints themselves, the minute characteristics, then  
23 you're gonna find these minute characteristics, they're gonna  
24 be all different.

1           And there has been nobody that has been found to have  
2 identical fingerprints. Although, they do say that identical  
3 twins, you may have identical prints on -- on twins. However,  
4 in comparing the prints on twins, there is differences. And  
5 the differences may be within the spacing of the friction  
6 ridge detail themselves on the fingers. You might have the  
7 same patterns, you might have everything that looks the same.  
8 But you will have some minute features in there that's  
9 different.

10           And if I may -- I may be spilling too much here, but also  
11 in reference to the fingerprint, we not only look at the  
12 friction ridge detail that's there and the patterns and the  
13 ending ridges and all that. But within your ridge itself, you  
14 have pores. You have sweat pores. And these pores -- this is  
15 what leaves the -- the -- the -- the sweat on a surface where  
16 you can put powder on that there and lift it.

17           But the -- these pores that you have -- it's called  
18 poroscopy. These pores are all different. And they're all  
19 shaped different. And so in addition to the fingerprint  
20 itself, you have the ridges, you have the pores, and over the  
21 years with the development of all the new equipment that they  
22 have, they can really zoom in now and really see what's that,  
23 it's really getting quite -- quite amazing.

24           And I -- when I retired, they were coming out with so

1 much new stuff. And of course, we -- we had the stuff, but it  
2 wasn't as advanced as it is. And every day there's something  
3 new.

4 Q So your job as a latent print examiner, would that  
5 be to take latent prints that are found at, for example, a  
6 crime scene and compare them to known fingerprints or  
7 fingerprints from a known person?

8 A Yes, ma'am.

9 Q And when you are doing that, is there a certain  
10 amount of information that needs to be present for you to say,  
11 "Yes, this latent matches this person"?

12 A Well, yes, there has to be a sufficient amount that  
13 you can form in your own mind that, yes, it is one and the  
14 same.

15 Years ago they used to say how many points of  
16 identification does it take to make identification? My answer  
17 to that is one or more. I may never see that fingerprint with  
18 that one mark in it. However, if you have a complete row of  
19 fingerprint and tip to joint, side to side, and if there's  
20 only one characteristic in that print and the question print  
21 that you, the latent print, and then the known print, I would  
22 say that I would not call it -- I mean, I -- I would call it  
23 if there was sufficient amount of detail.

24 And, of course, that was when we'd have to go into the

1 pore structure, the spacing of the ridges and whatnot. But  
2 I -- I could call that on one print, if I was comfortable  
3 enough.

4 Probably, in my life, I would never probably see it. But  
5 if I did, would I call it. I couldn't say that I wouldn't.  
6 But normally, years ago, the FBI, they had 12 points of  
7 identification was really good to really be a good, solid  
8 amount of points that you would see.

9 But -- but then they came down from that. And so,  
10 really, there is no, really, number that you have. Unless  
11 they've changed that in the last 11 -- 11 years that I've been  
12 retired. I've kind of been out of the network in the last  
13 11 -- 11 years.

14 Q Okay.

15 A But I still remember the basics and things that I've  
16 learned before I retired.

17 Q Once you, as a latent print examiner, make a  
18 comparison and say "yes, this is a match," does it end there  
19 or is there necessarily a review of what you've done?

20 A There is a review. All identifications have to be  
21 verified before they go out of the crime lab. And the basic  
22 fundamentals of the fingerprint discipline in examining a  
23 latent print is called ACEV, which is the -- you have your  
24 initial analysis of the print to determine if it's a value or

1 no value of identification. You have your comparison. Then  
2 you have your evaluation of that, where you form your opinion.  
3 And if there is identification in the opinion state, then you  
4 have that verified.

5 And this is the -- kind of the standard now of the  
6 fingerprint discipline that you have. But all prints, when  
7 there's identification made, specifically at Metro and the  
8 majority of the labs -- and I know of no labs that -- that  
9 have it, all identifications are verified by another examiner  
10 that you have.

11 Q And if the other examiner says, "No, I don't see a  
12 match," is it then not officially a match?

13 A If the other examiner says that it is not a match,  
14 if he has an issue with it, we both look at it and then we get  
15 another, third, examiner in with that. And then -- then if he  
16 has a question too, going, eh, then it's a no-go.

17 We're dealing with people's lives here. And it's --  
18 we're dealing with our representation as a latent print  
19 examiner, the department that we work for, and also the entire  
20 latent print division or latent print discipline throughout  
21 United States, or the world, really. And we can't have a bad  
22 ID go out. And -- so --

23 Q So every time you report a match, at least two  
24 people have looked at it and agreed.

1           A     Yes.

2           Q     Okay.  Thank you.

3           I'm gonna take you, if I could, back to the year 2000.

4     Were you working as a latent print examiner at Metro's lab in  
5     2000?

6           A     Yes, I was.

7           Q     And between February and June of 2000, were you  
8     aware of a series of home invasions where we were trying to  
9     locate a suspect?

10          A     Yes, ma'am, I was.

11          Q     And were you given a number of latent prints to  
12     examine from different scenes?

13          A     Yes.

14          Q     And were you ultimately asked to not only see if you  
15     can formulate or find a print in those latents, one of  
16     value -- that's the word, sorry -- and then compare it to  
17     certain individuals?

18          A     Yes.

19          Q     If I could direct your attention specifically, when  
20     you do your examination, and you find a match, and an  
21     individual who reviews it agrees with you, do you actually  
22     generate a report and send it to the detectives?

23          A     Yes.

24          Q     During the course of this series, did you compare

1 latent prints from an event number 000412-2745 from the home  
2 of Francis and Clarence Rumbaugh?

3 A Yes, I did.

4 Q And did you -- do you recall where that print came  
5 from?

6 A Not without seeing my report.

7 Q Okay. Did -- all of the reports that we're about to  
8 discuss, do you actually have them with you?

9 A Yes. May I --

10 Q Can you -- will it refresh your recollection --

11 A May I get --

12 Q -- if you reviewed them?

13 THE COURT: As long as that would help refresh your  
14 recollection, go ahead and take them out and then read them to  
15 yourself. And when you're done, feel free to answer.

16 THE WITNESS: Okay.

17 BY MS. LUZAICH:

18 Q And right now I'm referring to a report dated  
19 August 16th of 2000. Supplemental number 2. Do you see that  
20 record?

21 A Can we backtrack. What -- that first one -- I just  
22 pulled 'em out. I want to make sure I have them okay. The  
23 first report that you --

24 Q It's dated August 16th of 2000. And this is just my



1 order, it's not necessarily the order in which you did things.  
2 Would you agree with that?

3 Mr Boyd, would you agree with that?

4 A Okay. I have that here in front of me.

5 Q Okay. And did you compare latent prints that were  
6 found in the residence?

7 A Yes, I was -- yes, I did.

8 Q And where were the latent prints that you compared  
9 found?

10 A The latent print that -- I'm not sure how many total  
11 latent prints were on this particular case. My report does  
12 not indicate that. However, latent print that I did compare,  
13 one was on an El Cortez plastic cup on a bed in the bedroom.

14 Q And who did you compare that print on the El Cortez  
15 cup found in the bedroom to?

16 A It was compared to Mr. Justin Porter.

17 Q When you compare the latent to Mr. Justin Porter's  
18 fingerprint, what did you determine?

19 A I determined that there was an identification made  
20 to Mr. Porter.

21 Q Okay. Now, what will happen is you are given a  
22 latent print; correct? You're given a latent print from the  
23 side of the plastic cup.

24 A Okay.

1 Q Am I right?

2 A Yes, I -- I -- I don't have the list so -- it was on  
3 the side of the plastic cup (indicating). So if this is a  
4 plastic cup, it would be on the side, yes.

5 Q Okay. But the finger -- you got a fingerprint  
6 card --

7 A Yes.

8 Q -- with a print on it.

9 A Yes, a latent print lift that was obtained --

10 Q Lift. Sorry.

11 A -- by the crime scene analyst.

12 Q Thank you. And on that card, will it say where that  
13 print was lifted from?

14 A Yes.

15 Q And that's how -- and then you would include it in  
16 your report --

17 A Yes.

18 Q -- it was lifted from the plastic El Cortez cup that  
19 was found in the bed in the bedroom --

20 A Yes.

21 Q -- is that accurate?

22 And then you're not just comparing it to Justin Porter  
23 out of the blue. You're comparing it to Justin Porter because  
24 somebody gave you a known print and said, "Please compare to

1 the latent print." Is that correct?

2 A Yes, we had a known print and a request from the  
3 detective to -- to a comparison.

4 Q Okay. So on -- and just for the record, the -- does  
5 your report indicate when the known prints bearing the name  
6 "Justin Porter" were obtained?

7 A They were -- when -- when or were?

8 Q When.

9 A When? They were -- the prints were dated 8/13.  
10 So --

11 Q Of 2000; correct? 8/13 the year 2000?

12 A Of 2000.

13 Q Okay. Just so we're on the same page.

14 A Right.

15 Q Right. So you found a match, Justin Porter, to the  
16 print on the cup in the Rumbaugh's home?

17 A Yes.

18 Q Next. Did you -- and I'm looking at a report dated  
19 May 24th of the year 2000. Did you look at latent prints from  
20 Marlene Livingston's home?

21 A Yes.

22 Q And did you find that there was a print identified  
23 to somebody in particular in this report, on May 25th -- or  
24 4th -- sorry -- of 2000?

1           A     Yes. We had some elimination prints. And we did  
2 identify Marlene Livingston to a print from the interior of  
3 the west entrance door.

4           Q     Door 2301 Clifford?

5           A     Yes.

6           Q     That it was your understanding was her home?

7           A     Yes.

8           Q     Now, when you say "had elimination prints," what are  
9 elimination prints?

10          A     Elimination prints are those prints belonging to  
11 the -- of the known individual. Usually if you have your car  
12 stolen or -- if you're the victim and if you have property  
13 that belongs to you, we get prints. We take your presents and  
14 we eliminate any prints that we find to you. And that narrows  
15 down the -- the latent prints that we have to compare.  
16 Elimination prints are just prints of known individuals.

17          Q     Okay. Did you also, at the same time, eliminate  
18 somebody from the prints -- that print?

19          A     Yes, Marlene Livingston.

20          Q     No, you said that was her.

21          A     That was her, yes.

22          Q     Yes. Did you eliminate somebody in that same  
23 report?

24          A     Oh, on this particular report here, we --

1 David Dogan (phonetic).

2 Q Okay. So somebody would have given you a known  
3 print from somebody named David Dogan and you compared it to  
4 the latents at Marlene's home; correct?

5 A Yeah, according to my report here -- four -- let's  
6 see. There were several --

7 Q Okay. I'm just on that one right now.

8 A Pardon?

9 Q I'm still on that same report. So at that --

10 A The one dated the 24th?

11 Q Yes.

12 So at that time, you eliminated an individual named  
13 David Dogan; correct?

14 A Oh, the -- the only one who -- I'm sorry. The only  
15 one we eliminated, we eliminated Marlene Livingston. We  
16 identified her. And then -- and that was on this report.

17 Q Okay. Okay. Wait. You said you eliminated Marlene  
18 and identified her.

19 A Okay. Let me backtrack here. You're getting -- we  
20 compared elimination prints to the prints we had on file in  
21 this case. And one of the prints was identified to  
22 Marlene Livingston. Okay. We still had outstanding prints,  
23 okay. And then we had -- and that was the only one that we  
24 identified. Then we had another request that had numerous

1 names on it.

2 Q Okay. Before you get there. On that same May 24th  
3 one, did you compare prints to somebody named David Dogan and  
4 did you determine that his prints were not identified at  
5 Marlene's residence?

6 A Oh, I didn't see it down. Yes, I did. And he was  
7 not identified.

8 Q Okay. And then were you, later, in July of 2000,  
9 given a list of -- or, well, a list of individuals, each  
10 accompanied by a known sample to compare?

11 A Yes.

12 Q And what were the names of the individuals that you  
13 were asked to compare?

14 A We have -- one, two, three, four, five, six, seven,  
15 eight, nine, ten -- we have 12 names. Okay. The 12 names are  
16 a James Gilbert, Jerell Patrick (phonetic), Donya Mallery  
17 (phonetic), Tyrone Salton (phonetic), Terrence Richard Lee,  
18 Denis Daniel, Tony Lincoln, Derrick Sterling, Reginald Pen,  
19 Robert Martin, Thomas Brown, and a Malcolm Styles.

20 Q And when you compared those known prints to the  
21 latents obtained from Marlene's case, did any of them match?

22 A No. No, ma'am.

23 Q So they were all excluded?

24 A It was all negative.

1 Q And still on Marlene Livingston, on August 23rd of  
2 2000 -- or sorry -- August 18th of 2000, were you asked to  
3 compare latents obtained from Marlene's event to  
4 Justin Porter?

5 A Yes, ma'am.

6 Q And what latents did you compare to Justin Porter?

7 A We look at latent prints that were submitted by  
8 Crime Scene Analyst Brotherson and Crime Scene Analyst Poland  
9 -- Pullin (phonetic). And latent print from Crime Scene  
10 Analyst Brotherson, from the exterior window of a 1991 Dodge  
11 Dynasty, Nevada license 728ENB --

12 Q Okay. Was that a latent palm print that was  
13 submitted?

14 A Yes, it was.

15 Q And it was the exterior of the windshield; is that  
16 correct?

17 A Yes.

18 Q As opposed to just a window?

19 A Right.

20 Q And that latent --

21 A And --

22 Q -- from the windshield of Marlene Livingston's  
23 vehicle, was that a match with Justin Porter?

24 A Yes, it was.

1           Q     And then you said there was a second? Was it also a  
2 latent palm print?

3           A     Yes. That print from the vehicle was by Brotherson  
4 and a -- there was a palm print that was submitted by Pullin  
5 from the top of a handrail of the exterior walkway directly  
6 across from the front door. And then, parentheses on the  
7 card, he had "point of entry." This palm print, it was  
8 identified to Justin Porter.

9           MR. GILL: And, Your Honor, can the record just  
10 reflect that most of this testimony is coming from him reading  
11 his reports. I understand that we refreshed his recollection  
12 earlier --

13           THE COURT: Sure.

14           MR. GILL: -- but --

15           THE COURT: Of course.

16           MS. LUZAICH: It's also past recollection recorded  
17 so --

18           THE COURT: Understood. Noted.

19 BY MS. LUZAICH:

20           Q     Okay. Then, were you also asked to compare latents  
21 from a -- a scene attached to Joni Hall? And I'm looking at a  
22 report dated July 1, 2000.

23           A     Yes, ma'am.

24           Q     And when you compared latents in July of 2000, what



1 did you do?

2 A This is the Joni Hall case?

3 Q Yes.

4 A We compared prints on a Joni Hall case with those 12  
5 individuals that I just previously mentioned. And we also  
6 compared Joni Hall's prints. We had her elimination prints.  
7 And -- you want the results of --

8 Q Yes. And what were your results?

9 A The results of my examination was that we identified  
10 a print to the east entry door and a gold metal tin to  
11 Joni Hall. The comparisons to the 12 individuals that I had  
12 just mentioned, there was negative results on that match.

13 Q Okay. And when you say "we," I mean, it was you --

14 A Well, it was me.

15 Q -- right? You did it?

16 A Yeah.

17 Q The royal "we."

18 Did you also compare, subsequently, on August 17th of  
19 2000, prints -- latent prints from Joni Hall's residence to  
20 Justin Porter?

21 A Yes, ma'am, I did.

22 Q And what did you discover?

23 A The latent print on a plastic NFL surged drink cup,  
24 recovered from the kitchen sink. There was a print that was

1 identified to Justin Porter.

2 Q And that was the kitchen sink in Joni Hall's home;  
3 correct?

4 A Yes.

5 Q And all of these that we just discussed were  
6 verified by somebody else from the latent print area of the  
7 crime lab; correct?

8 A Yes, ma'am, they were.

9 Q Were you also asked to compare a series of other  
10 latents that you were not able to find a match to?

11 A Yes.

12 Q So, specifically, I'm looking at a report dated  
13 July 1st of 2000. Were you asked to compare latents from  
14 Ramona Leva's scene?

15 A Yes.

16 Q And did you compare 'em to those same 12 individuals  
17 that you listed earlier?

18 A Yes, I did.

19 Q And that's from James Gilbert all the way through  
20 Malcolm Styles; correct?

21 A Yes.

22 Q And were you able to determine whether any of the  
23 latents from Ramona Leva's scene matched any of those  
24 individuals?

1           A     There was no match.

2           Q     Were you also asked to compare latents from  
3 Leroy Fowler's scene? I'm looking at a report dated  
4 August 16th of 2000.

5           A     Yes.

6           Q     And this is more than 12 individuals; correct?

7           A     I'm sorry, ma'am. The last --

8           Q     This is more than 12 individuals?

9           A     Yes, ma'am.

10          Q     And just easier, is it Bernard Allen, Turner Turner,  
11 Rosheed Brandon (phonetic), David Jardene (phonetic),  
12 Andrew Slater (phonetic), Jimmy Sawyer (phonetic),  
13 Ray Cunningham (phonetic), Larry Monger (phonetic),  
14 Norris Lowry (phonetic), Maurice Trailer (phonetic),  
15 Charles Von Luis (phonetic), Anthony Edwards, Sean Smith,  
16 Jay Foster, Harold Holms, Sean Carter, Wayne Jemerigee --  
17 sorry -- J-E-M-E-R-I-G-E-E, for our nice court recorder --  
18 Willis Davis, Kevin Williams, Donyell Weathersby (phonetic),  
19 and Justin Porter?

20          A     Yes, ma'am, I did a comparison on those.

21          Q     And when you did a comparison on those to the  
22 latents from Leroy Fowler's home, what did you conclude?

23          A     There was no match to these individuals.

24          Q     On September 6th of 2000, were you also asked to

1 compare the latents from Leroy Fowler's home to an in -- to a  
2 buccal -- sorry -- to a known fingerprint from  
3 Kristopher Deloney?

4 A Yes.

5 Q And when you compared the known prints from  
6 Kristopher Deloney to Leroy Fowler's crime scene, what did you  
7 conclude there?

8 A Was no match.

9 Q Were you also asked to compare latent prints from a  
10 scene involving Guadeloupe Lopez? And I'm looking at July 1st  
11 of 2000 report.

12 A Yes, ma'am.

13 Q And did you compare latents from Guadeloupe Lopez  
14 scene to those same 12 that you originally talking about with  
15 us?

16 A Yes, ma'am.

17 Q And that's from James Gilbert through  
18 Malcolm Styles.

19 A Yes.

20 Q And what did you conclude when you compared the  
21 latents from Guadeloupe Lopez's scene to those 12 individuals  
22 there?

23 A Was no match.

24 Q On August 16th of 2000, were you asked to compare

1 more individuals to the latents from Guadeloupe Lopez?

2 A Yes, ma'am.

3 Q And that's the list that I read to you correctly  
4 [sic] Bernard Allen through Justin Porter?

5 A Yes.

6 Q And when you compared the latents for all those  
7 individuals, what did you conclude?

8 A There was no match.

9 Q Okay. So Justin Porter did not match Guadeloupe  
10 Lopez or Leroy Fowler's scene; correct?

11 A That's correct. Justin Porter was not identified.

12 Q And then, finally, on September 6th of 2000, were  
13 you asked to compare the prints from Guadeloupe Lopez's scene  
14 to Kristopher Deloney?

15 A Yes, ma'am.

16 Q And what did you conclude?

17 A There was no match.

18 MS. LUZAICH: Thank you. I would pass the witness.

19 THE COURT: Mr. Goodwin?

20 CROSS-EXAMINATION

21 BY MR. GOODWIN:

22 Q Good afternoon, sir. How are you?

23 A Fine. Thank you.

24 Q So I just have a -- a couple questions. I guess we

1 can start with this: You had originally stated that the  
2 amount that it would need for an identification would be one  
3 or more points of identification; correct?

4 A Yes.

5 Q So if you found one good point, you might call that  
6 fingerprint; correct?

7 A I might do that. But you -- like I mention, you'd  
8 have to have a print that would be on the tip -- the very high  
9 tip of your finger all the way down to the joint, from side to  
10 side. It would have to be a fully rolled print and then  
11 there's -- like I say -- a lot of factors and --

12 Q Right.

13 A -- and it's a print that you would never see.

14 Q And it's --

15 A Yeah.

16 Q -- a determination that you yourself would make, if  
17 all factors aligned --

18 A Well, right. Right.

19 Q And, potentially, another fingerprint examiner might  
20 not feel comfortable making that same determination; correct?

21 A That's correct.

22 Q And I just want to talk about that a little bit.  
23 Now, you stated that you are a member of the IAI; correct?

24 A I am a life member of it. And like I say, when I

1 retired in 2011, I kind of -- although still a life member on  
2 paper --

3 Q Did --

4 A -- because the number of years and the system, you  
5 know, there for so many years they make you a life member.

6 But as far as being active in the --

7 Q And -- and were you a member of the IAI in 2000?

8 A Yes.

9 Q And were you a member of the IAI at the time of your  
10 retirement in 2011?

11 A Yes.

12 Q And just -- just to refresh, the IAI, that's the  
13 International --

14 A Association for Identification.

15 Q -- Association for Identification; correct?

16 And they provide guidelines on proper training and things  
17 that should be done by latent print examiners; correct?

18 A Yes.

19 Q So you did all of these in the summer of 2000; is  
20 that right?

21 A Yes.

22 Q Now, are you familiar with the National Academy of  
23 Sciences?

24 A I'm familiar with it. I'm not a member of it.

1 Q Sure. And do you want to tell a little bit --  
2 what -- what -- in your opinion, what is the National Academy  
3 of Sciences?

4 A It's basically an org -- it's just another -- it's  
5 just another professional organization that's out there for  
6 members who are involved in forensics and maybe medicine. You  
7 might find all kind of people belonging to this organization,  
8 and I'm really not all that familiar with it -- with all  
9 the -- their guidelines and whatnot --

10 Q Sure.

11 A -- you know.

12 Q And are you aware, in 2008, they were tasked with  
13 taking a look at many forensic science, but fingerprints  
14 included in that? Are you aware of that?

15 A Yes. Possibly so, yes.

16 Q Are you familiar with the report that they released  
17 in 2008, 2009?

18 A No, not right off. Not -- not without seeing it.  
19 We're looking at 20 -- 15 years ago and --

20 Q Sure. About 14 -- yeah.

21 A -- you know, a lot of reports and --

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

23 THE COURT: Of course.

24 THE WITNESS: Yeah. It -- it doesn't stick out in



1 my mind.

2 MR. GILL: I'm sorry, sir.

3 [BENCH CONFERENCE BEGIN]

4 MR. GILL: Unless we have a competing expert, we  
5 can't --

6 MS. LUZAICH: Where are we going --

7 MR. GILL: -- challenge his --

8 MS. LUZAICH: -- with this?

9 MR. GILL: I said, unless we have a competing  
10 expert, we can't challenge his credentials. So I don't want  
11 you --

12 MR. GOODWIN: I'm not going for his credentials.

13 MR. GILL: But this report -- we don't have anybody  
14 to speak on it. And you can't testify to it. So --

15 MR. GOODWIN: Unless -- unless he testifies to it.

16 MS. LUZAICH: But what's the point?

17 MR. GILL: He's not familiar with it.

18 MR. GOODWIN: Because after 2008, 2009 --

19 THE COURT RECORDER: I can't hear him.

20 THE COURT: Sorry. Mr. Goodwin, just come up.

21 MR. GOODWIN: In 2009 both the IAI and the  
22 fingerprinters changed the whole entire process that they do.  
23 And afterwards there was a huge shift in how they testify,  
24 report, and look at these types of --

1 MS. LUZAICH: He said that.

2 MR. GILL: He doesn't know that or -- I mean, you  
3 know, you just -- I'm sorry to do this here.

4 THE COURT: That's okay.

5 MR. GILL: It's just uncomfortable with us not  
6 having an expert to come and testify to that record. I -- I  
7 just can't --

8 MS. KOLLINS: Yeah. 'Cause right now it's hearsay.

9 MR. GILL: Exactly. So unless --

10 MS. KOLLINS: (Indiscernible)

11 MR. GILL: Yeah. So we haven't shared the report  
12 you're referencing, nor have we noticed an expert in -- in  
13 fingerprints --

14 MR. GOODWIN: Okay.

15 MR. GILL: -- or (indiscernible) so I just want you  
16 to move on to -- and I'm sorry to do this at the bench, Judge.

17 THE COURT: That's okay.

18 MR. GILL: Just move on to what he did. 'Cause we  
19 can't get into an expert battle without an expert.

20 MR. GOODWIN: Sorry. Yeah, and I wasn't. I just  
21 wanted to see if he had changed his procedures based on the  
22 IAI guidance --

23 MR. GILL: Yeah, and he did in 2008, 2009.  
24 That's -- that's --

1 MS. LUZAICH: Doesn't matter.

2 MR. GILL: -- not gonna -- that's not gonna come in  
3 either. He wasn't aware of it in 2000. Of course -- of  
4 course he wasn't.

5 MR. GOODWIN: Right. Right.

6 MR. GILL: Which we can't get into it, is what I'm  
7 saying.

8 MR. GOODWIN: Okay.

9 MR. GILL: Make sense?

10 MR. GOODWIN: Yep.

11 [BENCH CONFERENCE END]

12 MR. GOODWIN: I'm sorry. We'll just move on, okay?

13 BY MR. GOODWIN:

14 Q If you refer to your report, several things were  
15 given to you to examine latent prints; correct?

16 A Yes.

17 Q And you may need to refer to your report. Do you  
18 see the name -- a name "Mr. David Jardene"?

19 A If I may look at these again. The number 12, I can  
20 see on that one. And Jardene? Was that the last name?

21 Q That's correct, sir.

22 A Yes, it was. Yes.

23 Q And was there something different about his prints  
24 than the other prints?

1           A     Was there something different --

2           Q     Yes, sir.

3           A     -- on those submitted prints?

4           Q     Yes, sir.

5           A     The -- as I'm looking at the report that has his  
6 name on it, where we have the date of the fingerprint on the  
7 other individuals on the list, I have down there date and all  
8 listed. Well, apparently there was no date that was listed  
9 that I could see on the known print that I had of him.

10          Q     Okay. So at this time -- and I'm sorry. I'm  
11 referring to report --

12               MR. GOODWIN: Did do you mind if I show the State --

13               THE WITNESS: Your Honor, may I get a glass of water  
14 here?

15               THE COURT: Of course. Yeah.

16 BY MR. GOODWIN:

17          Q     And I'm sorry. If you would direct your attention  
18 to the bottom, after the names -- and I'm sorry. Go ahead and  
19 drink your water.

20          A     Okay. I'm sorry, sir.

21          Q     After the list of the names, where Mr. Jardene is  
22 listed.

23          A     Okay.

24          Q     They also stated there are no known fingerprints on

1 file for Jardene -- isn't that correct? -- under the ID  
2 number?

3 A Uh, let's see. We have "date not listed" on top.

4 Q Looks like it would be on --

5 A Okay. Okay. I guess I do have that checked that  
6 there were no print for him. And I'm trying to -- why I would  
7 have that on there. It's confusing. "Date not listed" I  
8 have.

9 Oh, okay. I -- oh, I see what it is. Okay. I stand  
10 corrected. There were no prints for David Jardene that I  
11 compared, okay? Where I had "date not listed" the -- the  
12 fingerprint request -- and I don't have a request here in  
13 front of me, so I'm going by my memory. The fingerprints that  
14 come in, the request will usually have person's name. It will  
15 have the -- maybe the Metro ID number, and it will also have a  
16 date. Maybe a date of birth on there or date when the prints  
17 are taken. And I did not see a date. That's why it says  
18 "date not listed."

19 But I guess there were no prints that I compared to  
20 David Jardene. And I did not notice that, that I had that on  
21 the check there. Since I have it checked, then I would say  
22 that, no, I did not compare his prints 'cause they were -- I  
23 could not find any in the file.

24 MR. GOODWIN: Okay. No further questions.

1 THE COURT: Thank you, Mr. Goodwin.

2 Follow up from the State?

3 MS. LUZAICH: Nothing, Judge.

4 THE COURT: Okay.

5 MS. LUZAICH: Oh, wait. Sorry about that.

6 REDIRECT EXAMINATION

7 BY MS. LUZAICH:

8 Q Just because you are not able to match an  
9 individual's known prints to a latent that is found at a  
10 location doesn't mean that the suspect person was not there.  
11 That's a lot of double negatives.

12 A That's correct. I --

13 Q Right. That make sense?

14 A It doesn't eliminate him from being there, it just  
15 that -- what was found didn't belong to him.

16 Q Okay. Those prints that were there didn't belong to  
17 him, but it doesn't mean he wasn't there.

18 A Right.

19 Q Okay. Thank you.

20 MR. GILL: I'll just -- one follow-up --

21 THE COURT: Of course. Yeah.

22 RECROSS-EXAMINATION

23 BY MR. GILL:

24 Q And -- and on following up on that, millions of

1 people could have been there; correct? They just didn't leave  
2 prints?

3 A That's correct, sir.

4 MR. GILL: Okay. Nothing further, Your Honor.

5 MS. LUZAICH: Just one?

6 THE COURT: Oh, yeah. You guys just keep --

7 FURTHER REDIRECT EXAMINATION

8 BY MS. LUZAICH:

9 Q You can be there and not -- you can be there and not  
10 leave a print; right?

11 A You can be there and not leave a print.

12 Q Is that right?

13 A Yes.

14 Q Thank you.

15 MR. GILL: No, Judge. Thank you.

16 THE COURT: Anything from any of the jurors?

17 All right. Mr Boyd, thank you so much --

18 THE MARSHAL: We got one, Judge.

19 THE COURT: We got one. Let me just --

20 [BENCH CONFERENCE BEGIN]

21 MS. KOLLINS: Well, I think he's confusing prints  
22 and latents.

23 THE COURT: Yeah.

24 MS. KOLLINS: Right?

1 THE COURT: Yeah. Definitely that. I think it's a  
2 fair question. What do you guys think? Yeah?

3 MS. LUZAICH: Well, it's (indiscernible).

4 [BENCH CONFERENCE END]

5 THE COURT: All right. Mr Boyd, do all prints --  
6 and I think we're talking about latent prints that are  
7 recovered and you do an analysis on.

8 THE WITNESS: Yes.

9 THE COURT: Do all prints get peer-reviewed or just  
10 those in question?

11 THE WITNESS: All the ones in question that we do  
12 have identification, they do get peer-reviewed. The other  
13 prints that we still have that maybe we did not make  
14 identification to, the majority, they do not get  
15 peer-reviewed, unless however -- if I have a question on a  
16 print, then I will ask one of my colleagues, "Hey, take a look  
17 at this and tell me what you think. Think that's a value or  
18 no value?"

19 Because, you know, there is a -- kind of a fine line,  
20 sometimes, if you have that kind -- maybe a questionable  
21 print, whether there is sufficient amount of detail. I may  
22 not say sufficient amount, someone else might say submit.

23 However, on the cases that we do have identifications  
24 on -- okay -- they all get peer-reviewed. If you make



1 identification and you give me the case, you're not only  
2 giving me that latent print that you made the identification  
3 on, but you give me the whole packet. And I will go over that  
4 packet just to see if there can be an identification made on  
5 something. Maybe I missed something.

6 So I would say 90 -- about 90 percent would be maybe  
7 peer-reviewed on the non-identified latents to the case that  
8 you did make an ID on, where we double-check that ID that we  
9 made, that suspect, with the -- or elimination prints too.  
10 And cases that we ID eliminations on, we do compare those with  
11 all of 'em.

12 And during the peer-reviewed process, about 90 percent of  
13 the entire latent packet, it does get peer-reviewed. And  
14 that's kind of a practice that we have, and it's good  
15 practice. Not all departments do it. They just stick with  
16 basically what the ID that they have. But -- but we did  
17 initiate that during our SOP that we had at the lab.

18 THE COURT: Follow up on that?

19 FURTHER REDIRECT EXAMINATION

20 BY MS. LUZAICH:

21 Q Well, just so that we're clear, a latent print is  
22 what's found at a scene and you don't know whose it is;  
23 correct?

24 A Right.

1 Q And then the known print is a print that is obtained  
2 by some law enforcement-type personnel of an individual and  
3 the information is taken down. You have name, birthday, date  
4 that it's taken; correct?

5 A Right.

6 Q And that's why it's a known --

7 A Right.

8 Q -- because you know for sure who that is. And  
9 you're comparing the latent to the knowns.

10 A Right. We want to try to eliminate those prints  
11 that -- that belong to the victims and whatnot. Because if I  
12 had -- if you made this print, well, I don't want to be  
13 looking at this with the suspect prints. So that's why we're  
14 doing all we can to obtain your elimination prints. And we  
15 don't always get those. You know, but --

16 Q Okay.

17 A -- when we do, we do look at 'em.

18 Q Thank you.

19 MR. GILL: No, Your Honor. Thank you.

20 THE COURT: All right. Thank you so much.

21 THE WITNESS: Yeah.

22 THE COURT: We appreciate you being here. Please  
23 don't share with anyone else involved in the case since it's  
24 ongoing.

1 THE WITNESS: Okay.

2 THE COURT: All right. You are excused. Thank you.

3 THE WITNESS: Thank you, ma'am.

4 THE COURT: State.

5 MS. LUZAICH: State calls Cristen Carnell.

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

8 CRISTEN CARNELL,  
9 [Having been called as a witness and being first duly  
10 sworn testified as follows:]

11 THE WITNESS: I do.

12 THE CLERK: Please be seated.

13 THE WITNESS: Thank you.

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

16 THE WITNESS: Cristen Carnell, C-R-I-S-T-E-N,  
17 C-A-R-N-E-L-L.

18 THE CLERK: Thank you.

19 MS. LUZAICH: May I?

20 THE COURT: Mm-hmm.

21 MS. LUZAICH: Thank you.

22 DIRECT EXAMINATION

23 BY MS. LUZAICH:

24 Q Good afternoon, ma'am. How are you employed?

1           A     I am criminal investigator in the District  
2 Attorney's Office.

3           Q     How long have you been an investigator with the  
4 District Attorney's Office?

5           A     Four and a half years.

6           Q     And what is your -- kind of your duties on a daily  
7 basis?

8           A     I help locate witnesses and victims and provide them  
9 with subpoena to come to court.

10          Q     Do you also participate in interviews of witnesses?

11          A     Yes.

12          Q     And do you actually do investigation as well?

13          A     Yes.

14          Q     And what area of the District Attorney's Office are  
15 you assigned to right now?

16          A     The Special Victims Unit.

17          Q     Were you asked to locate witnesses, serve subpoenas,  
18 and speak to witnesses in the instant case, the State of  
19 Nevada versus Justin Porter?

20          A     Yes, I was.

21          Q     And as part of the witnesses you were asked to  
22 locate, can you tell us where Clarence Rumbaugh is?

23          A     He's deceased.

24          Q     Can you tell us where Francis Rumbaugh is?

1           A     Deceased.

2           Q     Can you tell us where Leona Case is?

3           A     Also deceased.

4           Q     And can you tell us where Marlene Livingston is?

5           A     Deceased.

6           Q     Did you make an effort to contact Joni Hall?

7           A     Yes, I did.

8           Q     Were you actually able to speak to Joni Hall?

9           A     Yes, I talked to her over the phone.

10          Q     And when you spoke to her, did you identify who you  
11 were?

12          A     Yes.

13          Q     And why you were calling?

14          A     Yes.

15          Q     And when you did that, identified why you were  
16 calling, how did she react?

17          A     She was shocked and very surprised to hear from me  
18 all of these years later. And then when I explained to her my  
19 reason for calling, that the trial was about to start, she  
20 began to cry.

21          Q     And did she continue to cry through the course of  
22 your phone call?

23          A     The whole conversation.

24          Q     Okay. Had you spoken to her -- oh, oh, I'm sorry.

1 Where was she when you spoke to her?

2 A She was in Reno.

3 Q And had you spoken to her about actually traveling  
4 to Las Vegas to testify?

5 A Yes, I did.

6 Q Did you -- after you finished your phone  
7 conversation, did you have further communication with her  
8 about travel here?

9 A Yes, over text message.

10 Q And when you texted her, did you text her on the  
11 same phone number that you actually spoke to her on?

12 A Yes.

13 Q And did she respond to you?

14 A Yes.

15 Q Did she give you some more information?

16 A Yes.

17 Q What kind of information?

18 A She gave me her e-mail address. I also asked her  
19 about a friend of hers that she knew at that time. And she  
20 told me that she no longer had communication with her since  
21 she moved to Reno in 2003.

22 Q Okay. When you had further communication with her  
23 via e-mail, did she respond to you, initially?

24 A My e-mail?

1 Q Yes.

2 A No, she didn't.

3 Q When you sent the e-mail, what was the purpose of  
4 that e-mail?

5 A I text her that I was -- that I needed her e-mail to  
6 send her the subpoena. And she gave me the e-mail. I told  
7 her I sent her the subpoena and she thanked me, over text, but  
8 she didn't reply to the e-mail.

9 Q Okay. Did you try to contact her for another  
10 purpose as well?

11 A Yes, after that initial conversation?

12 Q Yes.

13 A Yes, I did.

14 Q And what was that purpose?

15 A To make travel arrangements for her to come here.

16 Q Okay. And how did you make that communication to  
17 her?

18 A I called and left a message and sent a text message.

19 Q And did the message say specifically that that's  
20 what you were calling about?

21 A Yes.

22 Q Both the phone message and the testimony?

23 A Yes. Yes.

24 Q Did you ever hear back from her --

1           A     No, I did not.

2           Q     -- after that?

3           Over the course of the last few weeks, were there  
4 repeated attempts by yourself and another investigator to  
5 contact her?

6           A     Yes.

7           Q     And were you ever able to be in contact with her  
8 again?

9           A     No, I wasn't.

10          Q     Were you aware of a particular problem that she had  
11 in recent years?

12          A     Yes, that she was homeless at one time and using  
13 drugs.

14          Q     Okay. Did you also make an effort to see what her  
15 criminal history was?

16          A     Yes, I did.

17          Q     Has she been convicted of a felony?

18          A     Yes.

19          Q     What was she convicted of?

20          A     Grand larceny.

21          Q     When was that?

22          A     In 2019.

23          Q     And any other felony?

24          A     Convictions, no.



1 Q Okay. Thank you.

2 MS. LUZAICH: I pass the witness.

3 MR. GILL: May I, Your Honor?

4 THE COURT: Of course.

5 CROSS-EXAMINATION

6 BY MR. GILL:

7 Q Investigator Carnell, when you -- when did you first  
8 speak to Joni Hall on the phone?

9 A On August 25th.

10 Q 25th of August?

11 A Yes.

12 Q And that's 2022?

13 A Yes.

14 Q And then you say repeated attempts were made. And  
15 that was from the phone?

16 A Yes.

17 Q Phone calls?

18 A And text messages.

19 Q And text messages. Thank you.

20 A Yes.

21 Q And then the e-mail, she gave that to you via text.

22 A Yes.

23 Q And then you e-mailed a subpoena but never heard  
24 back on the e-mail.

1           A     Exactly.  Yes.

2           Q     You confirmed with her on text, "Hey, I sent you  
3 this."  And she said "thank you"; is that what your  
4 testimony --

5           A     She said "thank you," yes.

6           Q     Okay.  And those -- those attempts to reach her have  
7 continued while this trial has been going on as well; correct?

8           A     Yes.

9           Q     And that's not only you but another investigator in  
10 your office?

11          A     Yes.

12          Q     As far as the deceased individuals --  
13 Clarence Rumbaugh, Francis Rumbaugh, Leona Case, and  
14 Marlene Livingston -- how did you confirm that they were, in  
15 fact, deceased?

16          A     I looked in one of our investigator databases.  And  
17 when I look by their social security and date of birth, it  
18 comes up as listed as deceased and it has a death date.

19          Q     Okay.  So it has the actual date of their passing.

20          A     Yes, it does.

21          Q     And then it also has their date of birth.

22          A     Yes.

23          Q     Okay.  Now, other than -- and I'm sorry to bounce  
24 back to Joni Hall.  But other than the -- the time you talked

1 to her on the phone where she cried, this first conversation,  
2 did you speak to her on the phone after that?

3 A That was my only conversation with her.

4 Q You attempted to, so you could arrange travel,  
5 though.

6 A Yes.

7 Q Okay.

8 MR. GILL: Nothing further, Your Honor.

9 THE COURT: Ms. Luzaich?

10 REDIRECT EXAMINATION

11 BY MS. LUZAICH:

12 Q In decision to communicating like that, were there  
13 efforts made to contact local police and District Attorney  
14 investigators in Reno, Washoe County?

15 A Yes.

16 Q And did they also make efforts to find Joni?

17 A Yes, they did.

18 Q Thank you.

19 MR. GILL: Nothing on that, Your Honor. Thank you.

20 THE COURT: Anything from the jurors?

21 All right. Ma'am, thank you so much for your testimony.  
22 Please don't share with anyone else involved in the case. If  
23 you could stay seated for one moment.

24 THE WITNESS: Okay.

1           THE COURT: And then we are taking a recess before  
2 our next reader witness; right?

3           MS. LUZAICH: Yes, Your Honor.

4           THE COURT: Okay. Great. So, ladies and gentlemen,  
5 we are going to take a brief recess. Please remember during  
6 this recess not to discuss or communicate with anyone,  
7 including fellow jurors, in any way regard the case or its  
8 merits either by voice, phone, e-mail, text, internet, or  
9 other means of communication or social media. Please do not  
10 read, watch, or listen to any news, media accounts, or  
11 comments about the case; do any research, such as consulting  
12 dictionaries, using the internet, or using reference  
13 materials.

14          Please do not form or express any opinion regarding the  
15 matter until it's formally submitted to you.

16          We will see you at 2:20.

17          THE MARSHAL: All rise.

18          [OUTSIDE THE PRESENCE OF THE JURY]

19          THE COURT: All right. We are outside the presence  
20 of the jury. The -- it's my understanding that the State's  
21 next witness is going to be -- the State, before their next  
22 witness, is renewing their motion to bring in the testimony of  
23 Joni Hall; is that correct?

24          MS. KOLLINS: That's correct, Your Honor. The

1 combination of our first motion and we've supplemented with  
2 acquiring the material witness warrant. That has been placed  
3 into NCIC state-wide. People have been looking for her  
4 continually. She's not been located.

5 THE COURT: And so the reason why I kept the  
6 investigator here -- and you can sit down. Thank you.

7 THE WITNESS: Oh.

8 THE COURT: Mr. Gill, I didn't know if there were  
9 any questions -- obviously, we're outside the presence of the  
10 jury.

11 I didn't know if there were any questions that you wanted  
12 to ask the investigator, just because you have, you know, the  
13 right to in regards to whether or not the Court should allow  
14 the prior testimony.

15 MR. GILL: Yeah. Maybe just as, to your knowledge,  
16 regarding what local police were doing when they got involved.  
17 "Local" being Reno PD, I would imagine.

18 THE WITNESS: I don't have the answer to that.

19 MR. GILL: That's fine. And -- and, Judge, I asked  
20 questions on the record. Other than that, I'm going to submit  
21 it with my original objection or opposition, if you will, that  
22 you allowed me to make orally. But like I said earlier, I  
23 understand that -- the efforts that have been made.

24 THE COURT: Ms. Kollins?

1 MS. KOLLINS: I believe the address location in  
2 Reno, that information is contained in Mr. Revel's (phonetic)  
3 affidavit. That -- what that law enforcement agency, whether  
4 it be the DA's investigator or Reno PD and what they did in  
5 regards to that address. And that's in the affidavit.

6 MR. GILL: That's right. I apologize.

7 THE COURT: That's okay. I know that there were a  
8 couple of different investigators within the Clark County  
9 District Attorney's Office working on this. So I know that  
10 Mr. Revel had done some things to which were contained in his  
11 affidavit.

12 State, anything else that you wanted to ask?

13 MS. KOLLINS: No, Your Honor.

14 THE COURT: All right. Thank you. Appreciate it.

15 MS. LUZAICH: Although, I would just --

16 MS. KOLLINS: Thank you, Ms. Carnell.

17 MS. LUZAICH: Not for Cristen. I would just point  
18 out that, yesterday, the Investigator Revels also enlisted the  
19 con -- the help of Johnny's mother, who had been on a cruise.  
20 So I mean, we've literally tried everything that we can.

21 THE COURT: All right. And it's my understanding,  
22 Mr. Gill, that you are submitting it on your previous  
23 opposition in regards to the reading of the testimony of  
24 Ms. Hall.

1 MR. GILL: Yes.

2 THE COURT: All right. So the Court does need to  
3 make a specific finding in regards to the unavailability of  
4 Ms. Hall. Sworn affidavit as well as testimony now  
5 (indiscernible) will show that, I mean, the District  
6 Attorney's Office has been doing everything that they possibly  
7 can to find her.

8 She originally, in that phone call and text messages,  
9 said that -- you know, it seemed as though she was going to be  
10 cooperative and then she really just dropped off the face of  
11 the earth. They tried contacting family members; tried  
12 contacting, going to her home; tried her phone number; tried  
13 text messages; tried her e-mail, which she receive -- said  
14 that she had received the documents and thank you.

15 They have gone as far as contacting Reno local police and  
16 detective bureaus, having them check her whereabouts, check  
17 her address, getting a material witness warrant.

18 At this point in time the State tells me that they are  
19 out of witnesses as of tomorrow. Therefore, they will be  
20 resting. I do think they've done their due diligence,  
21 everything they could up to this point in finding Ms. Hall.  
22 So I am declaring her unavailable and will allow the prior  
23 testimony.

24 MR. GILL: Thank you, Your Honor.

1 MS. KOLLINS: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MS. KOLLINS: Before we take our break, there's a  
4 stipulation to the admission of 146 through 152.

5 THE COURT: Okay.

6 MS. KOLLINS: Please and thank you.

7 THE COURT: Those will be admitted.

8 MS. LUZAICH: 152, did you say?

9 MS. KOLLINS: And there is --

10 MS. LUZAICH: 146 to 152?

11 MS. KOLLINS: That's what I said.

12 MS. LUZAICH: Okay. I'm sorry. I thought I heard  
13 142.

14 THE COURT: Yep. Okay.

15 [STATE'S EXHIBITS 146-152 ADMITTED.]

16 [RECESS AT 2:10 P.M; PROCEEDINGS RESUMED AT  
17 2:24 P.M.]

18 [OUTSIDE THE PRESENCE OF THE JURY]

19 THE COURT: All right. We are on the record.

20 State of Nevada versus Justin Porter, C174954. We're  
21 outside the presence of the jury. All attorneys and  
22 Mr. Porter are present.

23 Ms. Kollins?

24 MS. KOLLINS: Your Honor, the other day we had the



1 testimony of Teresa Tyler. At the conclusion of that  
2 testimony the State offered into evidence a copy of her  
3 preliminary hearing transcript marked as State's Proposed 424.  
4 The State is offering that pursuant to 51.0352(D), prior  
5 testimony. I have spoke to Mr. Gill --

6 MR. GILL: That's my name.

7 MS. KOLLINS: -- and have redacted everything that  
8 refers to anal sex. That was kind of the other bad act  
9 concern that was not bound over out of Justice Court.

10 THE COURT: Oh, okay.

11 MR. GILL: And that was not read in, my  
12 recollection, the -- the redacted -- the redactions that were  
13 made, were made prior to the reading in of the testimony. So  
14 that --

15 MS. KOLLINS: Well -- well, Teresa Tyler was here  
16 live.

17 MR. GILL: I'm sorry.

18 MS. KOLLINS: Teresa Tyler was here live. And --

19 THE COURT: Oh, yeah. Sorry. I'm getting confused  
20 with witnesses. Tyler was the one that was here. And so  
21 you're asking, just under the statute, that her statement  
22 comes in.

23 MS. KOLLINS: As non-hearsay, yes.

24 MS. LUZAICH: Is tomorrow Wednesday?

1 THE COURT: Yeah.

2 MS. LUZAICH: It is; right?

3 MR. GOODWIN: Yes.

4 THE COURT: Anything, Mr. Gill, on that?

5 MR. GILL: No, Your Honor.

6 THE COURT: Okay. All right. That'll be admitted.

7 [STATE'S EXHIBIT 424 ADMITTED.]

8 MS. KOLLINS: And you're satisfied the State's

9 redacted all the other bad acts items out of that transcript?

10 MR. GILL: I have reviewed it and I am satisfied,

11 yes.

12 MS. KOLLINS: Thank you.

13 THE COURT: Okay. Perfect.

14 THE MARSHAL: Bring 'em in, Judge?

15 THE COURT: Yes, please.

16 MS. KOLLINS: So that will be admitted?

17 THE COURT: Yes. It --

18 MS. KOLLINS: Thank you.

19 THE MARSHAL: All rise.

20 [IN THE PRESENCE OF THE JURY]

21 THE COURT: All right. Welcome back, everybody.

22 Please be seated when you get to your seats.

23 We're on the record in State of Nevada versus

24 Justin Porter, C174954. Mr. Porter is present with Mr. Gill

1 as well as Mr. Goodwin. Both Chief Deputy District Attorneys,  
2 Ms. Luzaich as well as Ms. Kollins, are present on behalf of  
3 the State.

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

5 MS. LUZAICH: Yes, Judge.

6 MR. GILL: Yes, Your Honor.

7 THE COURT: State?

8 MS. LUZAICH: State calls Ms. Moors to read for  
9 Joni Hall.

10 THE COURT: All right. Ms. Moors, come on up,  
11 please.

12 THE CLERK: Please raise your right hand.

13 LINDSEY MOORS,  
14 Was first duly sworn to read the answers in the transcript  
15 to the best of her ability:

16 MS. MOORS: I do.

17 THE CLERK: Please be seated.

18 And will you please state your name and spell it for the  
19 record.

20 THE WITNESS: My real name?

21 THE CLERK: Yes.

22 THE WITNESS: Okay. Lindsey Moors, L-I-N-D-S-E-Y.  
23 Last name is Moors, M-O-O-R-S.

24 THE COURT: All right. And so, ladies and

1 gentlemen, we are now going to read the testimony into the  
2 record of Ms. Hall's, who, just like the other witnesses we've  
3 read, was [sic] previously raised her right hand sworn to tell  
4 the truth, just like you've seen the other witnesses do.

5 All right. Ms. Luzaich as Mr. Herndon.

6 MS. LUZAICH: Thank you. And she -- did you tell  
7 what the -- what time -- what day she testified?

8 THE COURT: Oh, no. I don't have it in front of me.  
9 Do you know what -- which one it was? Otherwise I can pull it  
10 up on my computer.

11 MS. LUZAICH: I do.

12 MR. GILL: It was the 13th of November 2000.

13 MS. LUZAICH: Thank you.

14 THE COURT: 2000.

15 MR. GILL: November 13, 2000.

16 THE COURT: Perfect. Thank you.

17 [TRANSCRIPT READING BEGIN]

18 DIRECT EXAMINATION

19 BY MS. LUZAICH:

20 Q Good morning, Ms. Hall. Could you please tell this  
21 Court where you were living on June 7th of this year?

22 A That would be 624 -- sorry. 624 North 13th Street.

23 THE COURT: Joni, I'm going to need you to speak a  
24 little louder into the microphone. It's really hard to hear

1 you because you're facing them answering the questions, but I  
2 have to hear you over here, okay?

3 THE WITNESS: Okay.

4 BY MS. LUZAICH:

5 Q Was that a home or an apartment?

6 A Apartment.

7 Q Do you recall the number or letter of your  
8 apartment?

9 A B.

10 Q Okay. B as in "boy"?

11 A Yes.

12 Q Is that apartment located here in Las Vegas,  
13 Clark County, Nevada?

14 A Yes, it is.

15 Q How long had you been living there on June 7th?

16 A A little over a month.

17 Q Okay. And can you tell us a little bit of the  
18 layout of the that apartment? How big it was, the room.

19 A Well, I'd say the living room was about --

20 Q And I'm sorry. I didn't mean to give dimensions.

21 A Yeah.

22 Q I just mean how many bedrooms? Is there a living  
23 room?

24 A Two-bedroom apartment.

1 Q Kitchen?

2 A Kitchen, living room, separate bathroom.

3 Q One bathroom?

4 A Yes.

5 Q And did you live there by yourself?

6 A No, I had a roommate.

7 Q What was your roommate -- or was your roommate male

8 or female?

9 A Female.

10 Q And were there any children living there?

11 A Yes, my child and her three children.

12 Q And you and your child stayed in your bedroom, I

13 guess, and she and her three kids all stayed in the other

14 bedroom?

15 A Yes.

16 Q How old is your child?

17 A Two.

18 Q Boy or girl?

19 A Boy.

20 Q How old were their children?

21 A Seven, five, and four.

22 Q When you would sleep at night, would you keep your

23 bedroom door open or closed?

24 A Closed.

1 Q What about her?

2 A Closed.

3 Q And do you remember about what time you got home on,  
4 I should say the late night of June 6th or early morning of  
5 June the 7th?

6 A I'd say it was about 1:30, 2:00 o'clock in time.

7 Q In the morning?

8 A Yes.

9 Q So it would be in the morning of June 7th?

10 A Uh-huh.

11 Q What time did you get home?

12 A Went straight to bed --

13 [TRANSCRIPT READING END]

14 MS. LUZAICH: Okay. Sorry. No. No. No. I'm  
15 sorry.

16 [TRANSCRIPT READING BEGIN]

17 BY MS. LUZAICH:

18 Q What did you do when you got home?

19 A Went straight to bed.

20 [TRANSCRIPT READING END]

21 MS. LUZAICH: Apologize.

22 [TRANSCRIPT READING BEGIN]

23 BY MS. LUZAICH:

24 Q And your child was there with you?

1           A     Yes.

2           Q     Was your roommate at home as far as you knew?

3           A     Yes.

4           Q     Bathroom door closed or open?

5           A     Closed.

6           Q     Did you close the bedroom door?

7           A     Yes, I did.

8           Q     What's the next thing you remember happening that  
9 morning?

10          A     I remember waking up to a thud-type noise. He  
11 knocked me out of my sleep. I thought it was maybe my  
12 roommate either hitting the wall or one of her kids hitting,  
13 maybe, the door or something. And --

14          Q     Was it a noise that --

15          A     That --

16          Q     -- that you associated with somewhere in your  
17 apartment?

18          A     Yes.

19          Q     And I'm sorry. Is your apartment on the first or second floor?  
20 apartment a first floor or second floor?

21          A     First floor.

22          Q     And after you heard this loud thud, what happened  
23 next?

24          A     I laid in bed for a couple of seconds and then went



1 to go shut my eyes and my door's opening again. You know,  
2 opening. And I see a man standing at my bedroom door and  
3 commenting "oh, yeah."

4 Q That's what the man said?

5 A Uh-huh.

6 MR. GOODWIN: I beg your pardon, ma'am, I didn't  
7 hear.

8 THE WITNESS: "Oh, yeah" as he was opening the door.  
9 He was putting on something over his face, I could tell. And  
10 I could hear the ripping as he was putting something over his  
11 face. At that time I didn't know what it was he was putting  
12 over his face, whether it was a stocking cap, mask, or what.

13 BY MS. LUZAICH:

14 Q Was there any light on in your bedroom?

15 A No.

16 Q Was there any light that you could see outside in  
17 the hallway?

18 A Yes.

19 Q Or other areas?

20 A Living room light was on.

21 Q Okay. And at this point could you make out things  
22 about this person or were you able to make out things later  
23 on?

24 A I could make out that it was an African American

1 male.

2 Q Okay.

3 A Medium build.

4 Q And let me just ask you, did there -- how long was  
5 this person in your apartment before he left, as far as you  
6 know?

7 A With all the activity that had gone on, I would say  
8 about a good 45 minutes.

9 Q Were there times that you were with him in your  
10 apartment, in more lighted areas than when you were laying in  
11 bed?

12 A Uh-huh. Yes.

13 Q Were there times during this 45 minutes that you had  
14 a good opportunity to observe things about him --

15 A Yes.

16 Q -- or his clothing?

17 A Yes.

18 Q Tell us what you can, if you would, please. You  
19 stated that it was an African American male. Do you recall  
20 about how tall he was?

21 A About 5-7 or 5-8.

22 Q You said medium build?

23 A Yes.

24 Q Can you tell us what type clothing he was wearing?

1           A     He was wearing baggy clothing.  He was wearing a  
2 grey T-shirt outside -- inside out --

3           Q     Okay.

4           A     -- with a light blue T-shirt underneath it,  
5 underneath.

6           Q     Do you remember if there were -- they were long  
7 sleeve or short sleeve?

8           A     Short sleeves on both.

9           Q     Okay.

10          A     He was wearing navy-blue-type jeans with some white  
11 tennis shoes.

12          Q     Do you recall whether or not the person had any type  
13 of weapon when you first saw them?

14          A     When I first saw them in the bedroom, I could see  
15 that he was carrying a knife in his right hand.

16          Q     Okay.  Did he maintain possession of that knife  
17 throughout the time he was there?

18          A     Yes, he did.

19          Q     Did you ever see him use it in his other hand or did  
20 he just keep it in the right hand?

21          A     Mainly in his right hand.

22          Q     Okay.  Did you notice any kind of markings or tags  
23 on any of the jeans or the shirts or anything?

24          A     Noticed a black tag on his gray T-shirt, since it

1 was inside out, that had the initials "DD" on the tag in cream  
2 color embroidery-type thing.

3 Q Embroidery, like, as part of the tag?

4 A Yes.

5 Q Could you -- now you said that when you first saw  
6 this man he appeared to be pulling something over his face.

7 A Uh-huh.

8 Q Throughout this 45 minutes, as you had better  
9 opportunities to observe him, were you able to tell what it  
10 was that he had --

11 A That was --

12 Q -- over his face?

13 A Nylon stocking, women's nylon.

14 Q Like pantyhose?

15 A Yeah.

16 Q Were there any portions of the face that were cut  
17 out?

18 A The eyes.

19 Q How far over the head or -- and/or face were the  
20 nylons pulled?

21 A Came just a little bit underneath the chin, right  
22 hear (indicating).

23 MS. LUZAICH: For the record, the witness is  
24 indicating with her fingers on --

1 THE COURT: The jaw line.

2 MS. LUZAICH: -- jaw -- the jaw. Primarily the jaw  
3 line.

4 THE COURT: Just below the jaw line. Okay. The  
5 record will so identify.

6 MS. LUZAICH: Thank you.

7 BY MS. LUZAICH:

8 Q Could you see his face through the nylon?

9 A Somewhat.

10 Q Could you tell whether it appeared he had any facial  
11 hair?

12 A No facial hair.

13 Q Could you make any determinations or opinions about  
14 how old the person appeared to be?

15 A He appeared to be about -- I would say no late --  
16 older than his early 20s, maybe early, late teens.

17 Q Would you say that you were able to get a good  
18 enough look at this person's face, even though he was wearing  
19 a nylon, to be able to identify him later?

20 A Yeah.

21 Q Can you tell us whether you see anybody in the court  
22 today that you recognize as being the person that was in your  
23 apartment that night?

24 A Yes, I do.

1 Q Can you tell me where that person is sitting today?

2 A Beside the Defense attorney.

3 Q Can you tell me what that person is wearing today.

4 A A navy blue jumpsuit.

5 MS. LUZAICH: Okay. Record reflect identification  
6 of the Defendant, please.

7 THE COURT: The Court will so -- or the record will  
8 so reflect.

9 MS. LUZAICH: Thank you.

10 BY MS. LUZAICH:

11 Q Now, you said when this person first came to your  
12 bedroom, the Defendant, he made a comment "oh, yeah."

13 A Uh-huh.

14 Q Obviously you were -- you saw him and heard him at  
15 that point. What happened after that?

16 A He was -- he had asked me if I had any money, any  
17 car keys. I told him no.

18 He told me, "Don't lie to me."

19 I told him, "I don't." And he proceeded to tell me to  
20 get up out of bed and had me follow him into my living room  
21 and kitchen area --

22 Q What were you wearing --

23 A -- out toward --

24 Q -- at this time?

1           A     At this time I was wearing a gray T-shirt, adidas  
2 T-shirt with adidas logo on the front left side with some  
3 black pants.

4           Q     Was your son awake, as far as you knew, at this  
5 time?

6           A     No. No, he wasn't.

7           Q     Did you -- could you tell or did the Defendant make  
8 any reference that led you to believe that he saw your son in  
9 the bed?

10          A     He asked me at one point if there was anybody else  
11 in the house. And I told him, "Yes, my roommate and her  
12 children and my child." And he did ask me where my child was.  
13 And I told him in the bed next to me.

14          And he said, "Well, they're not going to wake up, are  
15 they?"

16          And I told him, "I don't know. No."

17          Q     Now, when was this that he was asking you about  
18 that?

19          A     When he had me follow him into the kitchen.

20          Q     Okay. After you left your bedroom?

21          A     Yes.

22          Q     When he had you follow him into the kitchen, after  
23 you left your bedroom, what happened after that?

24          A     He had me opening and checking in my cabinets to see

1 if I was hiding anything. Asked me what I had to eat in the  
2 apartment or to drink.

3 Q To eat or drink?

4 A Uh-huh.

5 Q Was he wearing gloves, as far as you know?

6 A No, he wasn't.

7 Q Okay. And in response to these questions about what  
8 you had to eat or drink, did you tell him or provide him with  
9 anything?

10 A I just opened my refrigerator and freezer and, you  
11 know, said this is all that I had at that point in time.

12 Q Did he indicate, the Defendant, whether he wanted  
13 anything?

14 A He did at one point ask for Kool-Aid.

15 Q Okay.

16 A He --

17 Q Was this something that was in your refrigerator?

18 A Yes.

19 Q Okay.

20 A He had me get a 42-ounce surge drink cup out of my  
21 cabinets where my cups were and fill it up with Kool-Aid for  
22 him.

23 Q Okay.

24 A When he proceeded to drink it, he had me turn away



1 from him at that point in time.

2 MR. GOODWIN: I'm going to object to what she's  
3 assuming.

4 THE COURT: Sustained.

5 BY MS. LUZAICH:

6 Q Did he hold the cup and drink from it?

7 A Yes, he did.

8 Q Or did you hold it for him?

9 A He held it up and drank.

10 Q What happened to that cup after he drank from it?

11 A He dumped -- dumped it into the kitchen sink and  
12 rinsed it off.

13 Q The cup?

14 A Yes.

15 Q Okay. Did the cup stay in the kitchen sink as far  
16 as you know?

17 A Yes, it did.

18 Q Just to jump ahead, after all these events that  
19 we're about to talk about happened, did the police come to  
20 your house?

21 A Yes, they did.

22 Q Did you point the cup out to them?

23 A Yes, I did.

24 Q As far as you know, did they take that cup?

1           A     Yes.

2           Q     After you provided him with this glass of Kool-Aid,  
3 please tell us what happened after that.

4           A     He still proceeded to go through the cabinets. He  
5 found my roommate's cigarettes in one of the cabinets and  
6 pulled them out of the cabinet and laid them on the counter  
7 and took off the cellophane wrap that was on the outside of  
8 them and burned it in my kitchen sink.

9           Q     Burn --

10           MR. GOODWIN: I'm going to object to what he knew,  
11 Your Honor.

12           THE COURT: Sustained.

13 BY MS. LUZAICH:

14           Q     Just tell us about the things that you observed.

15           A     He --

16           Q     You said he took the cellophane off the cigarettes.  
17 Off the outside of the cigarette package I guess?

18           A     Uh-huh.

19           Q     And then he did what -- and then what -- sorry --  
20 did he use to burn it?

21           A     A lighter.

22           Q     Okay. Was it a lighter that was in your apartment  
23 or did it appear to come from him?

24           A     I can't remember.

1 Q Did he say anything to you about why he was --

2 A He knew --

3 Q Why --

4 A He said that he knew it'd be evidence, that his  
5 fingerprints were on it.

6 Q Okay.

7 A That's why he was burning it.

8 Q Okay. Did he take any of the cigarettes out of the  
9 package?

10 A No, he left the cigarettes there.

11 Q And what did he do after that?

12 A Proceeded to have me walk back towards the bedroom  
13 area of my apartment. Ask me again what I had in the  
14 apartment. Did I have any keys to the car? I told him, no, I  
15 didn't have a car. He did flip on my bathroom light and had  
16 me open my bedroom door all the way.

17 Q Okay.

18 A And he went in the room and started going through my  
19 belongings. At this point in time he went through a little  
20 black box that I had, and I had all my nail kit stuff in there  
21 because I did nails on the side. And he went through that to  
22 see if there was money in that. He didn't find anything in  
23 there.

24 He was making comments, sexual comments, that he was

1 going to get some pussy from a scaredy white girl.

2 Q This was while he was in your bedroom?

3 A Yes.

4 Q Were you in the bedroom as well?

5 A Yes, I was next to him the whole entire time.

6 Q Did your son wake up at all while you all were in  
7 the bedroom at the time?

8 A No. No.

9 Q And after making the sexual comments, what occurred?

10 A He had me get back up and I -- he had me lay down at  
11 the end of my bed and take off my pants. He then stated that  
12 he was joking with me. That he wasn't like that. That he  
13 wasn't going to do that.

14 Q Okay. What happened after that?

15 A We then heard a loud noise. I assumed it was from  
16 upstairs neighbor, from the ceiling above, and he got -- he  
17 asked me if they were going to come down. And I told him no.  
18 He then had me get up, shut off the lights from the bathroom  
19 and the living room and kitchen that he had on and he peeked  
20 out my blinds of my kitchen to see if anybody was coming down.  
21 And at that time he had me in front of him opening up the  
22 blinds --

23 Q The blinds of your kitchen --

24 A -- were --

1 Q -- looked out the front of your apartment, I guess?

2 A Yes.

3 Q Were the -- they -- they were vertical blinds?

4 A And he had me open them up just enough to where we  
5 could see the stairway coming down from the upstairs  
6 apartment. And he asked me, no, you know, is my neighbor  
7 upstairs, neighbor going to come down. I told him, no, I  
8 don't talk to my upstairs neighbor. She works odd hours. I  
9 work during the day. That was, you know, about it that I knew  
10 about my neighbor.

11 And he goes, "You sure?"

12 And I told him, "Yes."

13 And then he had me back in the kitchen. And I assume  
14 that when he saw -- it was in the kitchen we were going  
15 through things. He saw the cling wrap and he made --

16 Q I'm sorry. Cling wrap?

17 A Cling wrap. Like cellophane. Saran wrap.

18 Q Okay.

19 A And he had me go tear off a piece of it. It was  
20 about a foot and -- you know, square. He then had me walk  
21 back towards the living room and he stated to me again that he  
22 was going to get some pussy from a white girl. And he then  
23 had me lay in front of my living room couch on the floor and  
24 he came toward me with the Saran wrap in his hand and the

1 knife still in his hand, proceeded to have me lay down and not  
2 move and then ended up raping me.

3 Q When he had you take your pants off in the bedroom,  
4 before you went into the kitchen, looked out the blinds and  
5 then went to the living room, did you ever put your pants back  
6 on?

7 A No.

8 Q So between that whole time, you're just wearing the  
9 T-shirt?

10 A Yes.

11 Q Were you wearing panties or any underwear under  
12 the --

13 A No. He had me take all that off.

14 Q Prior to the -- him taking the cling wrap and having  
15 you -- or him having you take the cling wrap and tear off  
16 about a foot of it, did he ask you at all about condoms or  
17 any --

18 A Yes, he did.

19 Q Okay. What, if anything, did he say about that?

20 A Did I have any condoms or anything in the house. I  
21 told him no.

22 Q Okay. Was that before or after he takes the  
23 cling -- or had you tear off the cling wrap?

24 A That was as I was doing it.

1           Q     You said he had you go back -- oh, sorry -- go in  
2 the living room, lay down on the floor on your back?

3           A     Uh-huh. Yes.

4           Q     He came into the room with the knife and the cling  
5 wrap?

6           A     Yes.

7           Q     And you said he then proceeded to rape you. I need  
8 you to tell us, if you can, exactly what happened. Did he  
9 remove any of his clothes?

10          A     Yes.

11          Q     What clothes did he remove?

12          A     He unbuckled his belt. And I can't make out for  
13 sure if he had pants that he unzipped them. I know he  
14 unbuttoned them. But I don't know if they were baggy enough  
15 that he just pulled them down. I know he did have boxers on  
16 because I could see the striping on the boxer and that they  
17 weren't, like, a brief-type pant.

18          Q     Okay.

19          A     He then came towards me and knelt down on his knees  
20 and placed his right hand, which he had the knife in it, next  
21 to me, near my head, and told me that if I screamed or  
22 anything that he would kill me.

23                He then put the Saran wrap on with -- with his other  
24 hand, his left hand, just over his penis and then ended up

1 going inside of me. He didn't really use force. It didn't  
2 last long at all. I would say not more than a minute.

3 Q Could you tell, or did you have an opinion as to  
4 whether he ejaculated or not?

5 A I -- no. I would say no.

6 Q Okay. When you say he placed Saran wrap on his  
7 penis and then "he was inside of me," what part of your body  
8 did he put his penis in?

9 A My -- my vagina.

10 Q And did he put his penis inside your vagina?

11 A Yes.

12 Q You said it lasted no longer than a minute. What  
13 did he do after?

14 A He got up real quick, took the Saran wrap off and  
15 went into the bathroom. He flipped on the bathroom light and  
16 I heard -- then I heard the toilet flush.

17 MR. GOODWIN: I'm going to object as to what she  
18 assumed, Your Honor.

19 THE COURT: Sustained.

20 BY MS. LUZAICH:

21 Q Did you ever see the Saran wrap anywhere?

22 A No.

23 Q Did you see the Saran wrap or anything in his hand  
24 when he came out of the bathroom?



1           A     No.

2           Q     What happened after he went into the bathroom and  
3 you heard the toilet flush?

4           A     He came back out of the bathroom. I had a closet  
5 across the way from the bathroom door and he was looking in  
6 it, pulling out what I had. Then some -- a gold tin which  
7 had, like, sewing needles and thread and buttons and safety  
8 pins and everything in it for sewing.

9           And he pulled out, also, a -- he threw that on the couch  
10 after he had took the bottom part of his T-shirt and wiped it  
11 off, you know, and threw it on my couch. Then he pulled out  
12 the curling iron and told me he was going to tie me up with  
13 that. He did ask me if he could take my stereo, which was in  
14 my bedroom next to my bed.

15          Q     Okay.

16          A     And I told him no. He then said that he was going  
17 to take the TV.

18          Q     And was this a TV that was in your bedroom?

19          A     It was in the living room.

20          Q     Okay.

21          A     I was sitting on top of it, like a table, a table in  
22 the corner of the room. And he me walk over with him and plug  
23 the -- and unplug the cable box from the TV. And he then  
24 stated that he had never done this before. That, you know, he

1 was very sorry for what he had done.

2 He then had me, as I was undoing the TV, bring out a  
3 stroller that was sitting in my room that was a collapsible  
4 stroller and --

5 Q Talking about, like, a child -- a baby stroller?

6 A A child stroller.

7 And had me unfold it. And he then had me take the cable  
8 box that was on the TV off the TV and set it on the floor.  
9 And I did that. And that's when I took the TV off the  
10 stroller [sic] and sat it in the stroller -- I mean, off of  
11 the table. Had me set the TV in the stroller.

12 Q He took the TV off the table and put it in the  
13 stroller?

14 A Uh-huh.

15 Q Was it a small TV, I guess.

16 A It's about a 19-inch TV.

17 Q Do you remember what brand of TV it was?

18 A Westinghouse.

19 Q Were there any other things that he asked you to be  
20 able to take or that you saw that he took?

21 A I also noticed that he had on my CD Walkman. He had  
22 the ear phones wrapped around his neck and the cord was  
23 hanging out from his shirt and --

24 Q Did you see when he took possession of that?

1           A     As I was putting the TV, or unhooking the TV from  
2 the cable box.

3           Q     Where in the apartment had it been?

4           A     That was on the same table that the TV was on.

5           Q     Okay. Do you know what brand?

6           A     Lennox.

7           Q     Lennox, L-E-N-N-O-X?

8           A     Lennox.

9           Q     Were there any other things that he asked about or  
10 took?

11          A     Not at that time. He did state that the next --  
12 that since he didn't get anything from me, that he was --  
13 because he was in trouble, he knew the next person that he  
14 would have to rob from, he would probably have to kill them.  
15 That he knew that this person had a substantial amount of  
16 money. That he would -- after he would do whatever he was  
17 going to do next, then he would come and place some money  
18 underneath my door mat with a new door mat in front of my  
19 door.

20          Q     How long did you stay in that apartment after this  
21 happened?

22          A     I would say about a month.

23          Q     Okay.

24          A     After --

1 Q Ever find any money under your door mat?

2 A No. No new door mat, no. No money.

3 Q After he's loaded the TV up in the stroller, you see  
4 him in possession of your CD player, your -- and I'm sorry.  
5 The conversation about "I'm gonna have to have to go some" --

6 [TRANSCRIPT READING END]

7 MS. LUZAICH: Wait.

8 [TRANSCRIPT READING BEGIN]

9 BY MS. LUZAICH:

10 Q "I'm going to have to go somewhere else and I'll  
11 probably have to kill that person," is that after he's loaded  
12 up the TV and stuff or is that before?

13 A That was at the time of everything.

14 Q 'Kay. What happens after this conversation and the  
15 TV getting loaded in the stroller?

16 A He then tells me that he's going to leave and that,  
17 you know, he would be back Friday. And, you know, he would do  
18 the -- you know, leave the money under the mat. And he had me  
19 standing at the door as he was leaving and he made sure that I  
20 shut the door before he actually walked away from the door.

21 Q You said, earlier, that one of the items he removed  
22 from the closet was a curling iron?

23 A Uh-huh.

24 Q And at some point he had talked about tying you up

1 with that?

2 A Uh-huh.

3 Q At what point during the proceedings is it that he  
4 talks about tying you up with the curling iron?

5 A Before he had me undoing the TV and the cable box,  
6 he took that out of the closet and threw it on the couch,  
7 where he threw the gold tin that had the sewing kit.

8 Q Okay. Now, you said that, when he left, he had you  
9 stand there and close the door when? I'm sorry.

10 A When he was leaving.

11 Q Did he say anything to you about calling the police  
12 or ask if you were going to call the police?

13 A He did ask me if I was going to call the police. I  
14 told him, no, just to leave. I stood there for a couple of  
15 seconds to make sure he was gone, you know, or I thought that  
16 he was gone. I walked back to my roommate's room. And at  
17 this time I was in tears, crying, telling her, "You need to  
18 get up. You need to go call the police. We've been rape" --  
19 robbed and I'd been raped. My roommate then got up. And I  
20 don't know where she went to call the police from.

21 Q Did you all have a phone?

22 A No.

23 Q Okay.

24 A At this time, no. I sat back in the living room

1 with -- I had a butcher block of knives in my kitchen on top  
2 of my refrigerator, and I had grabbed a knife from there until  
3 the police had got there, and I sat in my living room.

4 Q Can you tell whether the knife he had was a knife  
5 that had been yours?

6 A No, it was not.

7 Q Okay.

8 THE COURT: I'm sorry. It was what?

9 THE WITNESS: No, it was not.

10 THE COURT: I can't hear you because you're facing  
11 him. The microphone is too far from your face.

12 THE WITNESS: The knife was not.

13 THE COURT: The knife was not your knife.

14 THE WITNESS: Yes.

15 BY MS. LUZAICH:

16 Q Had you ever seen the Defendant before?

17 A No.

18 Q Before he came that day?

19 A No.

20 Q You obviously didn't give him permission to come in  
21 your home.

22 A No.

23 Q Did you feel as though you were free to leave at any  
24 time while he was there, if you had wanted to?

1           A     No, because he was -- I mean, he was next to me the  
2 whole entire time.

3           Q     Were you afraid?

4           A     Yes.

5           Q     Once the police arrived, did you stay at your  
6 apartment or did they take you anywhere?

7           A     They took me to the hospital.

8           Q     Did you have a sexual assault examination?

9           A     Yes.

10          Q     Did you talk to the police when they first arrived?

11          A     Yes.

12          Q     Did you talk to any police officers or detectives at  
13 the hospital?

14          A     Yes, I did.

15          Q     Do you remember giving a taped statement to police  
16 officers?

17          A     Yes, I did.

18          Q     Do you know where it was that you gave that  
19 statement?

20          A     It was in the waiting room where they had me wait  
21 for the victim's --

22          Q     At the hospital?

23          A     In the hospital waiting room, yes.

24          Q     Was it when the police first arrived or later on

1 that you pointed out the cup to them that they took?

2 A It was later on. I remember when I was being  
3 questioned, at first, by one of the detectives that he had  
4 shown up, they had asked me, you know, what I can give them as  
5 far as he had touch or anything. And I told them -- and he  
6 told the other people and the police that were in my house  
7 what I thought he had touched --

8 Q Okay.

9 A -- where the fingerprints may be. And I told them  
10 about the cup that was in the sink and the piece of Saran --  
11 or the piece of wrapping that was off the cigarette box that  
12 he had burned.

13 Q Okay. When you got home that night, did you lock  
14 your apartment door when you came in?

15 A When I got home later on that day?

16 Q Oh, I'm talking about before the incident happened.

17 A Oh, the night?

18 Q When you got home about 1:30, 2:00 o'clock in the  
19 morning.

20 A Yes, windows were locked, doors were looked.

21 Q What kind of locks did your door have?

22 A A deadbolt.

23 Q Did it have a little lock on the knob as well or  
24 just the deadbolt?



1           A     Just the deadbolt.

2           Q     Was your door damaged at all prior to this  
3 happening?

4           A     No.

5           Q     Okay. Did you have occasion after this, the  
6 Defendant had left, to notice any damage to your door?

7           A     When I got home latter on that afternoon, after  
8 being questioned and done at the detectives, after they had  
9 questioned me and got my testimony, or testament, the one  
10 detective met me back at my apartment.

11               MR. GOODWIN: I'm going to object to what the  
12 detective told her, Your Honor.

13               THE COURT: Okay.

14               MS. LUZAICH: That's fine.

15 BY MS. LUZAICH:

16           Q     Have occasion to look at your door when you came  
17 back to your house?

18           A     It wasn't to where it was a really noticeable as  
19 you're walking up to the door. But as I opened the door, I  
20 could see the footprint that they were talking about, the dirt  
21 that was left from the shoe on the door.

22           Q     So you noticed something that seemed consistent with  
23 a footprint?

24           A     Yes.

1 Q How about damage to your door?

2 A The door frame, the door lock, the deadbolt  
3 actually was out of the door at that time.

4 Q Okay.

5 A When I had -- when I got -- when he was leaving the  
6 apartment I --

7 Q "He" being the Defendant?

8 A Yes.

9 Q Okay.

10 A He -- when I was walking back to my roommate's room,  
11 I noticed that the actual lock part of the door was laying on  
12 my -- on the sofa, love seat.

13 Q When you say "the lock part," you mean the little  
14 bar?

15 A Yes, that goes into the frame.

16 Q Okay. So is that love seat in your living room area  
17 as well?

18 A Yes.

19 Q And I'm sorry. Other damage or anything you noted  
20 to the door?

21 A The door was split.

22 Q Ms. Hall, I want to show you a series of photographs  
23 that have been marked Proposed Exhibits 146 through 152.

24 MS. LUZAICH: For the record, they were shown to