

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

2
3 **No. 85782**

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Elizabeth A. Brown
Clerk of Supreme Court

4 **JUSTIN D. PORTER**

5
6 Appellant,

7 v.

8 **THE STATE OF NEVADA**

9 Respondent.

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

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

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1 A Okay. What I meant was --

2 MR. GILL: And, Your Honor, nonresponsive at this
3 point. He wasn't posed with a question.

4 THE WITNESS: Right. Okay.

5 THE COURT: Okay. So let her --

6 THE WITNESS: Okay.

7 THE COURT: Let -- let's step back. It's okay.

8 Ms. Luzaich, form the question and then you respond.

9 MS. LUZAICH: Thank you.

10 BY MS. LUZAICH:

11 Q You were given the same opportunity to testify and
12 present your side in that trial as you were here today.

13 A Yes, ma'am.

14 Q And your attorneys suggested that it would be in
15 your best interest not to testify; correct?

16 A Yes, ma'am.

17 Q But you could still testify if you want.

18 A Yes, ma'am.

19 Q So you weren't prevented from testifying.

20 A No, ma'am.

21 Q And, in fact, you were convicted of the murder
22 because there was significant evidence, overwhelming evidence
23 of the murder.

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

1 THE COURT: Sustained.

2 MR. GILL: It would be --

3 THE COURT: Sustained. Sustained. Sustained.

4 Stricken.

5 BY MS. LUZAICH:

6 Q Okay. Because there were evidence that you
7 committed the murder.

8 MR. GILL: Same objection, Your Honor. Speculative
9 on what he knows in the jury's minds. He -- he's not in the
10 jury's --

11 THE COURT: Sustained in relevance in regard to this
12 proceeding.

13 BY MS. LUZAICH:

14 Q Okay. You confessed to the murder as well.

15 MR. GILL: And objection as to the "as well,"
16 Your Honor.

17 MS. LUZAICH: Well, he confessed -- we heard his
18 confession yesterday, did we not?

19 THE COURT: I'm gonna overrule it.

20 Go ahead, you can answer the question.

21 THE WITNESS: When you being threatened --

22 BY MS. LUZAICH:

23 Q What did Detective Jensen do to threaten you?

24 A It's not Detective Jensen that did the threatening.

1 Q What did Detective Jensen do to threaten you?

2 A Detective Jensen had done nothing to threaten me.

3 Q What --

4 A That --

5 Q -- did Detective LaRochelle do to threaten you?

6 A I -- he had done nothing to threaten me.

7 Q What did Sergeant Crickett do to threaten you?

8 A None of them -- the one that threatened me was Kato.

9 Q And was he in the room when you talked to Jensen and

10 LaRochelle?

11 A No, he wasn't.

12 Q Okay.

13 A But I understood -- but I understood, ma'am --

14 Q That's not responsive.

15 A Oh.

16 Q He was not in the room when you talked to Jensen

17 and --

18 A No, ma'am.

19 Q -- LaRochelle; isn't that right?

20 A No, ma'am. No, ma'am.

21 Q And when Detective Jensen went back the second day

22 with Sergeant Crickett, Kato wasn't there, was he?

23 A He was there.

24 Q In the room?

1 A Not in the room, but he was in the pre -- the
2 whatcha call it, the area. He came in the door -- when they
3 placed me back in the room, he came in the door and he -- he
4 looked in on me. So I did see that he was there. Seen him.

5 Q Okay. So are you saying that every police officer
6 in Chicago is bad?

7 A I'm not saying every police officer is --

8 MR. GILL: Objection, Your Honor, as to --

9 MS. LUZAICH: Well, he --

10 THE COURT: Overruled.

11 MR. GILL: That misstates the testimony.

12 THE COURT: Overruled. You can clarify if that's
13 what you were saying or what you weren't saying, Mr. Porter.

14 THE WITNESS: No, I was just simply saying that I
15 know that he was in the precinct. I -- I couldn't tell where
16 he was at or anything like that but I --

17 THE COURT: No, I understand that. Her follow-up
18 question was, are you saying -- are you saying that every
19 police officer in Chicago is bad?

20 THE WITNESS: No. No, I'm not saying every officer
21 in Chicago is bad. I'm saying --

22 THE COURT: Okay.

23 THE WITNESS: -- you do have some that follow
24 different rules than others.

1 THE COURT: Understood. Ms. Luzaich, next question.

2 BY MS. LUZAICH:

3 Q So you said earlier you know how it is in Chicago.
4 So basically you're saying that every officer in Chicago is
5 bad.

6 A I'm not saying every officer in Chicago's bad. I'm
7 just saying you have officers that will do something to you.
8 That will hurt you. That will harm you.

9 Q With all the other people in the area.

10 A I -- I can't say which officer would have take it
11 upon himself to bring physical harm to somebody.

12 Q Okay. So you were so afraid of Kato that you
13 confessed to a murder that you didn't commit.

14 A I'm 17 years old.

15 Q You were so afraid that you confessed to a murder
16 you didn't commit.

17 A Of course.

18 Q You confessed to multiple sexual assaults you didn't
19 commit.

20 A Yes, of course. You --

21 Q There was no -- well, did Kato participate in any of
22 the investigation, as far as you know?

23 A As far as I know, I -- I believe he had information.
24 He had -- Las Vegas had faxed him information pertaining to --

1 Q How do you know?

2 MS. LUZAICH: Well, assumes facts not in evidence.
3 Move to strike.

4 MR. GILL: Well, Your Honor, the question was "if
5 you know." And he was trying to answer that.

6 THE WITNESS: Yeah.

7 MS. LUZAICH: No, I asked if he participated in the
8 investigation.

9 THE COURT: Do you have any knowledge that
10 Officer Kato participated in the actual investigation?

11 THE WITNESS: Beside him telling me that he received
12 information --

13 MS. LUZAICH: Objection. Move to strike.

14 MR. GILL: Your Honor, that's the answer. I
15 don't --

16 MS. LUZAICH: No, it's not.

17 THE WITNESS: Is that part of an investigation
18 'cause you have the papers --

19 THE COURT: No, she's talking about actively
20 investigating the crimes.

21 THE WITNESS: Oh.

22 THE COURT: Right?

23 THE WITNESS: Oh, okay.

24 THE COURT: So is that answer no?

1 THE WITNESS: That's -- I -- other than I know, he's
2 in Chicago, so he can't be. It's impossible.

3 BY MS. LUZAICH:

4 Q Right. So you have no reason to believe that he
5 par -- that he investigated the Teresa Tyler incident.

6 A I'm believing that he had papers faxed from
7 Las Vegas to him.

8 MS. LUZAICH: Objection. Nonresponsive. Move to
9 strike.

10 THE COURT: Sustained.

11 THE WITNESS: Okay.

12 BY MS. LUZAICH:

13 Q Did he investigate the Teresa Tyler incident?

14 A Not that I know of.

15 Q Did he investigate the Ramona Leva incident?

16 A Not that I know of.

17 Q Did he investigate the Marlene --

18 A Not that I know of --

19 Q -- Livingston --

20 MR. GILL: Let her finish.

21 THE WITNESS: Okay.

22 BY MS. LUZAICH:

23 Q -- incident?

24 Did he investigate the Marlene Livingston --

1 A Not that I know of.

2 Q -- incident?

3 MR. GILL: Let her finish so we can make a clean
4 record, please.

5 THE WITNESS: Oh, okay.

6 BY MS. LUZAICH:

7 Q Did he investigate Clarence and Francis Rumbaugh
8 incident?

9 A Oh, not that I know of.

10 Q Did he investigate Leroy Fowler incident?

11 A Not that I know of.

12 Q Did he investigate Leona Case incident?

13 A Not that I know of.

14 Q Did he investigate Joni Hall incident?

15 A Not that I know of.

16 Q Did he investigate Guadalupe Lopez and Beatriz and
17 Laura Zazueta incident?

18 A Not that I know of.

19 Q Now, you were saying earlier that you don't have all
20 of the documents for these incidents. Would you agree that
21 there are hundreds of pages of documents, such as police
22 reports, voluntary statements, transcripts of statements, DNA
23 reports, fingerprint reports, and other things?

24 A I would believe so.

1 Q And during the course of the representation that
2 you've had over the years, what do you think you're missing?

3 A Well, first of all, my lawyer -- when I first --
4 when he first came -- when we first had a -- a meeting, he
5 never --

6 THE COURT: Just one second. I'm sorry. You have
7 to be specific in regards to what lawyer because we've put a
8 couple names on the record. So let me know.

9 THE WITNESS: I'm sorry. Adam -- I mean, I say
10 Adam. Joseph Abood and Curtis Brown.

11 THE COURT: Okay.

12 THE WITNESS: When I first was able to meet them,
13 they -- they explained to me that they didn't want to give me
14 anything because --

15 MS. LUZAICH: Objection. Hearsay. Move to strike.

16 THE WITNESS: Okay. They didn't give me anything --

17 MR. GILL: Your Honor, could we approach, please?

18 THE COURT: Sustained. Approach.

19 [BENCH CONFERENCE BEGIN]

20 MR. GILL: The answer to the question --

21 MS. LUZAICH: No (indiscernible)

22 MR. GILL: -- involves hearsay. What did they give
23 you? He's trying to say they didn't give me the sex assault
24 stuff because --

1 THE COURT: It's (indiscernible)
2 MR. GILL: -- jail. So how else does he get that
3 out?
4 MS. LUZAICH: In the beginning.
5 MR. GILL: I know.
6 MS. LUZAICH: But he's had it --
7 MR. GILL: But why are we going back down this
8 road --
9 THE COURT: Well, let him explain that.
10 MS. LUZAICH: Huh?
11 THE COURT: Let him explain that, in the beginning,
12 I wasn't --
13 MR. GILL: Or I can ask him on re -- redirect. I
14 mean, but that's -- that's very common for us not to give --
15 "us" being Defense counsel --
16 MS. LUZAICH: Yeah, but my point is, there's
17 hundreds if not thousands of pages --
18 MR. GILL: Thousands. Thousands.
19 MS. LUZAICH: -- and Kato, as he sat there, couldn't
20 have enough information. That's my point.
21 THE COURT: I mean, but your point is easily made,
22 you know, and it's more argument. Like, you don't need to get
23 him to affirm or deny that because it's clearly obvious --
24 MS. LUZAICH: But it also -- it -- he lied. I mean,

1 he's lying.

2 THE COURT: So, I mean, it's ridiculous to think
3 that this case is 20 years old and he's never seen a document;
4 right? I mean, it's like --

5 MR. GILL: And, I mean, I don't want to have to
6 testify that I -- one of the first things --

7 MS. LUZAICH: Right. Right. Right.

8 MR. GILL: -- I did was ensure --

9 MS. LUZAICH: Well, no, I -- I'm just --

10 MR. GILL: -- that he had everything and tell --
11 have him tell me --

12 MS. LUZAICH: No, I --

13 MR. GILL: -- what he was missing. So that -- that
14 happened in, like, 2018, 2019. 'Cause I got this in November
15 of '18. So, I mean, I know when he says he didn't have
16 everything, that could be prior counsel, which I know is what
17 you're asking about. But -- but as far as for the last almost
18 four years, there's no question in my mind that I've had the
19 conversations of "do you have everything? If not, what are
20 you missing?" And things have been sent to him that he may
21 have misplaced or lost or his copy was bad.

22 MS. LUZAICH: 'Cause he's moved around so much.
23 But --

24 MR. GILL: So there are times where I've

1 supplemented in the last four years. But to -- for him -- I
2 mean, I don't know why he would respond that -- with that way.
3 For him to sit up here now and say, yes, I've seen everything
4 I -- I find incredible.

5 MS. LUZAICH: Completely in -- yeah.

6 THE COURT: Right.

7 MS. LUZAICH: I'll get through it fast.

8 MR. GILL: All right.

9 [BENCH CONFERENCE END]

10 THE COURT: She's gonna ask more questions.

11 THE WITNESS: Oh.

12 MS. LUZAICH: Sorry.

13 BY MS. LUZAICH:

14 Q And you, in fact, have been litigating this case
15 yourself for a good 15 years. Would you agree with that?

16 A No.

17 Q No?

18 A No, not 15 years.

19 Q Well, the conviction was in '07 -- correct? -- or
20 '09? What year?

21 A I think it was 0 -- 0 -- '09 I was convicted.

22 Q Sorry. I can't do math. I thought it was '07. So
23 '09. So 13 years you've been filing post conviction motions
24 and litigation; correct?

1 A Right.

2 Q And you've been doing it from police reports and
3 voluntary statements and --

4 A No --

5 Q -- reports and --

6 A -- actually -- no. Because I didn't receive -- when
7 I received one finally, Howard Brooks -- I didn't have nothing
8 from that point, from the point of being convicted up into --
9 2012 I think I received something from Howard Brooks. And it
10 had specific things in there. But it was just, like,
11 pertaining to my conviction. Nothing really pertaining to
12 anything other than that, other -- other than my conviction.
13 And then everything else I was just say, "Hey, look, I know
14 this is not true."

15 Q Okay. So we listened yesterday to your statement;
16 correct?

17 A Yes, ma'am.

18 Q And you gave a lot of detail, didn't you?

19 A Well, I mean, I was fed a bunch of details so I
20 could bear it -- I mean, I could -- I could basically
21 remember -- some of the things at that point in time was fresh
22 in my mind, what to remember when somebody says this, that,
23 and over -- and beat it over in your head over and over and
24 over and somebody's speaking to me over and over and over and

1 over. End on after end on after end. So when I speak, I add
2 a little extra what -- what my life was like. And that's how
3 I was able to present the whole --

4 Q So who fed you information?

5 A You had Detective Kato tell me things. Then you
6 had --

7 Q You mean Detective Kato who did not participate in
8 the investigation --

9 A Uh --

10 Q -- of any of it?

11 A Yeah, it -- he didn't participate but he had papers
12 with stuff on it.

13 Q I thought you said you didn't see what was on the
14 papers?

15 A No, but that's what he was reading from. He was
16 telling me this event and that event and all this and this,
17 that, this, that, and other stuff like that. So he went --

18 Q How many events did he talk to you about?

19 A I can't remember, but it was -- it was quite a few.
20 And then --

21 Q Okay. Wait. Wait. Wait.

22 A -- the detectives --

23 Q Let's talk about that. Isn't it true that he only
24 talked to you about a couple of the events?

1 A No, it was -- it was -- it had -- a couple is two.
2 It had to be more than two.

3 Q Oh, no, a couple is not two, but I did not mean two.
4 He talked to you about an event on June 7th; correct?

5 A I believe -- I believe so. I can't remember. He
6 had 'em all on the -- on paper.

7 Q How do you know what he had on --

8 A Like somebody gave it --

9 Q -- the paper? You didn't see it, did you?

10 MR. GILL: Your Honor, asked and answered.

11 THE COURT: Overruled. I don't know in regard -- I
12 don't know if it's been specifically stated in regards to that
13 question. How -- how did you know what he was looking at or
14 what was on the paper?

15 THE WITNESS: Because he was going through it. He
16 was saying -- he was telling a lot of events. He had a paper
17 that had to be about, like, something like this (indicating)
18 and he was just going through it saying that this, this, and
19 that, this, and that. And he was just going through
20 everything. So it was -- I can't say for sure, specific
21 events. I can just say, basically, it was a slew of things
22 that he was just bringing to me.

23 THE COURT: And for the sake of the record, when you
24 turned to me to answer that question, you said a stack of

1 papers about this big. So maybe --

2 THE WITNESS: About something like that
3 (indicating).

4 THE COURT: -- like a half inch to an inch; is that
5 fair?

6 THE WITNESS: Yeah, some -- I might be a little bit
7 over, but it was something like that (indicating).

8 THE COURT: Oh, like a fourth of an inch to a half
9 an inch.

10 THE WITNESS: Yeah. It could be about --

11 MR. GILL: Your Honor, the record can reflect a
12 quarter of an inch to a half an inch, thank you.

13 THE WITNESS: Right. Okay.

14 THE COURT: Yeah. Great.

15 BY MS. LUZAICH:

16 Q Isn't it true he had three pieces of paper with him?
17 Three.

18 A Not that I've seen three. I seen a little bit more
19 than three, I believe.

20 Q But you don't know what was on them 'cause you
21 didn't see them; correct?

22 MS. LUZAICH: Asked and answered again, Your Honor.
23 You just respond --

24 THE COURT: Sustained. Sustained.

1 BY MS. LUZAICH:

2 Q Okay. He talked to you about an incident on
3 June 7th. We now know that that pertained to Joni Hall. And
4 you gave him information.

5 A No. No. No. I didn't give him information. He
6 gave me information.

7 Q He talked to you about an incident on April 4th.
8 That's Marlene Livingston; right? We know that now?

9 A I believe so.

10 Q He talked to you about March 25th. And that's
11 Ramona Leva; right?

12 THE COURT: You can ask a question.

13 THE WITNESS: Excuse me. May I ask what are you
14 reading from?

15 THE COURT: He asked me if he could ask for a point
16 of reference 'cause he doesn't know what you guys are talking
17 about. I said that he could.

18 MS. LUZAICH: Okay. I am reading from the Chicago
19 police report.

20 THE WITNESS: Oh, oh.

21 BY MS. LUZAICH:

22 Q So they asked you about March 7th, which we know
23 is -- oh, yeah, Leona Case; right? And you gave them details?

24 A I never gave him any details.

1 Q No?

2 A No.

3 Q And then when they asked you about March 1st, you
4 couldn't recall anything about it. And that's all they asked
5 you about.

6 A I never gave him any details.

7 Q Okay. So when you talked to Detective Jensen -- we
8 listened to your interview yesterday; correct? That was your
9 voice?

10 A Yes, ma'am.

11 Q That was you talking to him.

12 A Yes, ma'am.

13 Q When did you tell Detective Jensen that Kato
14 threatened you?

15 A Tell another police officer another police officer
16 threatened you?

17 Q Well, Jensen has nothing to do with Chicago;
18 correct?

19 A Now that I know he ain't got nothing to do with
20 Chicago, but back then --

21 Q Well, did -- did he -- did you -- did he ever tell
22 you that he was a Chicago detective?

23 A No, he never told me.

24 Q Did he tell you that he was a detective from the

1 Las Vegas Metropolitan Police Department and that he was
2 investigating crimes that occurred in Las Vegas; right? He
3 had a little Metro badge; right?

4 A When I see a badge, ma'am, I just see a badge. I --
5 I'm not gonna sit here and say --

6 Q So every police officer is lumped into the same
7 person in your mind?

8 A When I was 17, of course. That's -- that's --

9 Q Why?

10 A Because I was 17. That's how I perceived it to be.
11 That's what it -- that's what it was. It was one police
12 officer is no different than the next police officer.

13 MS. LUZAICH: Could we approach?

14 THE COURT: Yep.

15 [BENCH CONFERENCE BEGIN]

16 MS. LUZAICH: He's got a juvenile record. He was
17 arrested for and convicted of carjacking with a weapon when he
18 was 13. So --

19 MR. GILL: How does that come in under the response
20 there?

21 MS. LUZAICH: He's got experience -- 'cause he's
22 like "I'm 17." But he wasn't a young 17. He was a hard 17.

23 THE COURT: I have no --

24 MS. LUZAICH: I mean, he's misrepresenting himself.

1 THE COURT: Yeah, but --

2 MS. LUZAICH: He's making it sound like he was this
3 innocent 17-year-old kid.

4 THE COURT: Well, I mean, but --

5 MS. LUZAICH: Which we know is not true.

6 MR. GILL: But I don't think that allows you to get
7 into his juvenile record.

8 THE COURT: Yeah, we're not getting into his
9 juvenile --

10 MS. LUZAICH: Not a conviction, but the fact that
11 he's had prior experience with police and violent crimes.

12 THE COURT: No. No. That's -- that's
13 (indiscernible) it's very clear --

14 MS. LUZAICH: His whole defense --

15 THE COURT: -- (indiscernible)

16 MS. LUZAICH: His whole defense is that he's this
17 poor little 17-year-old kid who got threatened by a cop, a cop
18 that has nothing to do with Metro and that he wouldn't tell
19 Metro about it and that he confessed to all these violent
20 crimes that he didn't commit because this poor innocent
21 17-year-old was afraid of one detective? He --

22 THE COURT: Well --

23 MS. LUZAICH: -- committed a carjacking with a
24 weapon.

1 THE COURT: I get it. But -- and I -- I --

2 MS. LUZAICH: At 13.

3 THE COURT: -- I know. I get it. But it doesn't
4 make it (indiscernible) and also when you are in it -- like,
5 when you're in the thick of it, you can't see the broader
6 strokes. I mean, he's saying that he didn't do anything and
7 you've got DNA in these people. Do you know what I mean?

8 MS. LUZAICH: Yes.

9 THE COURT: Like, it speaks for itself. Just move
10 on.

11 [BENCH CONFERENCE END]

12 MS. LUZAICH: I'm sorry. I lost my place. So I'm
13 just -- I may ask a question again.

14 BY MS. LUZAICH:

15 Q You heard your confession yesterday; correct?
16 Right?

17 A Embarrassingly, yes.

18 Q Your voice.

19 A Yes.

20 Q With a lot of detail.

21 A (Indiscernible) yeah.

22 Q Right? You gave a lot of detail about what
23 occurred.

24 A I -- I wouldn't say it was -- it was -- if that's

1 what you say, ma'am.

2 Q Well, are you disagreeing with me?

3 A No, I'm not disagreeing. I'm just saying when you
4 feel as though, you know, harm can be brought to you and
5 you -- the way you live, you're incorporating some of your
6 life into some of this -- this fear of if you don't say
7 something in particular, things where -- if you don't know
8 everything -- I didn't know everything that happened because I
9 wasn't there. So I couldn't explain to 'em completely details
10 like somebody that was there that did it all. If you there,
11 then you can completely explain exactly what you did. A, Y,
12 Z, Z, et cetera, et cetera.

13 Q All right. So you're saying that --

14 A So --

15 Q -- interposed your life into it. So at 17 you were
16 this hot young kid that --

17 A I won't --

18 Q -- all women --

19 MR. GILL: Your Honor, and I'm gonna --
20 BY MS. LUZAICH:

21 Q -- wanted?

22 MR. GILL: -- object as to --

23 THE WITNESS: No, I wouldn't --

24 MR. GILL: -- misstating testimony at this point.

1 The -- the --

2 MS. LUZAICH: That's exact --

3 MR. GILL: -- that's not his testimony --

4 MS. LUZAICH: No --

5 MR. GILL: -- that he's some hot kid, that's not his
6 testimony.

7 THE COURT: Yeah, I --

8 MS. LUZAICH: That was the statement.

9 THE COURT: Oh, that -- there was a point in the
10 statement yesterday I think --

11 MS. LUZAICH: Repeatedly.

12 THE COURT: -- when you said "hot kid," didn't you?

13 THE WITNESS: No, I never said "hot kid."

14 MS. LUZAICH: Well, my -- I mean, my wording is "hot
15 young kid," but --

16 THE COURT: No --

17 MS. LUZAICH: -- he said he was a good-looking young
18 kid --

19 THE COURT: Something about good looking.

20 MS. LUZAICH: -- that all the women wanted.

21 THE WITNESS: Yeah, I mean, you know, back the days,
22 I -- when I was 17, I understood I had a couple of different
23 girlfriends that I was deal with at the time.

24 THE COURT: Sure.

1 THE WITNESS: And the area I lived in, the stuff
2 that I was doing and the things that I was -- when you -- when
3 you -- I don't know -- when you making a little bit of money,
4 doing some things on the side --

5 MR. GILL: And, Your Honor, what -- what question is
6 he responding to at this point?

7 THE WITNESS: Right.

8 THE COURT: So whether or not he said he was a
9 good-looking kid.

10 THE WITNESS: I'm not -- and I have few -- few --

11 MS. LUZAICH: No. No. No. No. No. That wasn't
12 my -- that he's a hot young kid that all the women wanted.

13 THE COURT: Okay.

14 THE WITNESS: I never said that.

15 MS. LUZAICH: That was what he said.

16 THE WITNESS: Nah, I didn't say that. I didn't say
17 that, ma'am. Miss --

18 THE COURT: I don't --

19 THE WITNESS: -- Ms. Lisa, I didn't say that.

20 THE COURT: I don't -- I -- I'm -- I'm not going to
21 be able to rule on that because I don't have an independent
22 recollection on whether or not he said all the women want him.

23 THE WITNESS: Yeah. I didn't never --

24 THE COURT: So if you have it in your notes one way

1 or the other, jurors, I would ask you to just refer to your
2 notes. Because at this point in time I don't have an
3 independent recollection. So I'm just going to ask them to
4 rely on their memory and their notes, okay? Unless
5 Ms. Luzaich finds it in a transcript and she can approach with
6 that.

7 THE WITNESS: She will not find it, probably.

8 THE COURT: Okay.

9 MR. GILL: And objection, again, as to
10 nonresponsive. There was no question for the witness.

11 THE WITNESS: Yeah.

12 MS. LUZAICH: All right. I'll come back and look
13 for that.

14 BY MS. LUZAICH:

15 Q So you never told the detective that you -- you
16 never told Detective Jensen that you were threatened. You
17 just confessed to a whole bunch of violent, horrific crimes
18 that you didn't commit. Is that what you're saying?

19 A What I'm actually saying is being threatened --
20 because he's --

21 Q You know, I asked you a yes-or-no question.

22 A Oh, if you want that -- that's what you want, ma'am.
23 Yes.

24 Q Yeah, a yes-or-no question.

1 A That's what you want.

2 Q That's right. You never told him you were being
3 threatened. Instead --

4 A No, I never told him I was being threatened.

5 Q -- you confessed to a bunch of violent, horrific
6 crimes that you didn't commit. Is that what you're saying?

7 A Yes, ma'am.

8 Q Okay. So Teresa Tyler said that you came into her
9 home. She didn't want you there. And she -- you put your
10 penis in her vagina; right? Didn't she say that?

11 A Accordingly [sic] to the records, if that's what she
12 said, yeah.

13 Q Well, I mean, you were here --

14 A Oh --

15 Q -- you heard her testify, didn't you?

16 A Yes, ma'am.

17 Q Okay.

18 A She didn't say me.

19 Q This is Teresa Tyler; right?

20 THE COURT: Would you do me a favor and zoom just a
21 little bit, Ms. Luzaich, so we can --

22 MS. LUZAICH: Oh --

23 MR. GILL: Just --

24 MS. LUZAICH: -- sorry about that.

1 THE COURT: -- see it. It's a little bit --
2 MS. LUZAICH: Yes.
3 THE COURT: -- blurry for me.
4 Thank you. And that was exhibit what?
5 MS. LUZAICH: 185.
6 THE COURT: Thank you.
7 BY MS. LUZAICH:
8 Q That's Teresa Tyler; right?
9 A Yes, ma'am.
10 Q You saw her here in court today.
11 A Today?
12 Q Not today. A couple of -- within a couple of weeks;
13 right?
14 A Yes, ma'am.
15 Q She said -- Exhibit 195 -- she lived at -- in
16 Apartment 116; correct?
17 A Yes, ma'am.
18 Q Sorry. At 2895 East Charleston; right?
19 A Yes, ma'am.
20 Q She said you had sex with her on her bed; correct?
21 A With all that stuff on there? I don't think you
22 could really have sex on the bed with a bunch of stuff on it,
23 but I never did that. That's what I'm trying to tell you.
24 MR. GILL: Your Honor, the question was --

1 BY MS. LUZAICH:

2 Q Is there a reason that you can't answer --

3 A No. No.

4 Q -- my questions?

5 A Sometimes I feel -- you know, when I was young --

6 MR. GILL: And, Your Honor --

7 THE WITNESS: Okay.

8 MR. GILL: -- I'm -- I'm --

9 THE COURT: Okay. Just -- yeah.

10 MR. GILL: -- gonna object at this point.

11 THE WITNESS: Yeah. Sorry. Sorry.

12 MR. GILL: No question was posed.

13 THE COURT: It's okay.

14 MR. GILL: And the question that was posed was "yes"
15 or "no."

16 THE COURT: So just answer her questions "yes" or
17 "no"; right?

18 THE WITNESS: Uh-huh.

19 THE COURT: If -- if it calls for a yes-or-no
20 answer, okay?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: And then just keep in mind that when
23 Ms. Luzaich is done, Mr. Gill does have the opportunity to go
24 back through things if he deems it appropriate on direct.

1 THE WITNESS: Yes. Yes, ma'am. Sorry.

2 THE COURT: Okay. Thank you.

3 Ms. Luzaich.

4 BY MS. LUZAICH:

5 Q She said that you had sex on the bed -- her bed.
6 Sorry.

7 THE COURT: Do you remember her saying that?

8 THE WITNESS: Yes, ma'am. I remember.

9 BY MS. LUZAICH:

10 Q Do you remember telling the detective that she had a
11 speech impediment?

12 A Yes. Yes, ma'am.

13 Q You listened to it yesterday; right?

14 A Yes, ma'am.

15 Q You told the detective she had a speech impediment.

16 A Yes, ma'am.

17 Q You heard her testify here. She had a speech
18 impediment; correct?

19 A No, I didn't hear her testify to that, she said she
20 had a speech impediment. Because she was speaking clearly.

21 Q You thought she was speaking clearly?

22 A Yes, ma'am.

23 Q Okay. You told the detective that you had met her
24 at the Showboat.

1 A Her sister. I believe that -- yes, ma'am.

2 Q Okay. So you told us that you'd had sex with her
3 sister with a bunch of people at the apartment; correct?

4 A Yes, ma'am.

5 Q Okay. So her sister doesn't live with her,
6 remember?

7 A No, her sister stayed with her.

8 Q So you're saying that when she told us that her
9 sister did not live with her, that she lived alone in 2000 --

10 A Her sister was --

11 Q -- that she made that up?

12 MR. GILL: No, Your Honor. That misstates what he
13 just said.

14 THE WITNESS: Yeah.

15 MR. GILL: "Stay" and "live" are two different --

16 THE COURT: Sustained. If you could clarify,
17 please.

18 THE WITNESS: Okay. Meaning that she would come
19 over and we all come over and hang out over there. She would
20 go to her mother house and stuff. But she do come over to her
21 sister house.

22 BY MS. LUZAICH:

23 Q Okay. So you didn't cut the phone cord?

24 A No, ma'am.

1 Q Why would she say you did?

2 MR. GILL: Objection. Speculation. Requires
3 speculation.

4 THE COURT: Sustain -- sustained.

5 BY MS. LUZAICH:

6 Q Well, why do you think she would say you did?

7 MR. GILL: Objection. Same objection, Your Honor.

8 THE COURT: So let me ask it -- reword it in regards
9 to, is there any reason that you know of that she would want
10 to say that you cut the cord? Any reason you personally know?

11 THE WITNESS: No, I -- that's what I'm saying, I
12 never -- I ain't never cut the cord and I never heard her say
13 "he cut the cord."

14 THE COURT: Okay. I see what you're saying. That
15 she didn't identify you is what your point is.

16 THE WITNESS: That too. But not (indiscernible) but
17 I see that she wants me to say that I cut the cord, but
18 meaning this --

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

20 THE WITNESS: Yeah.

21 THE COURT: Yeah.

22 [BENCH CONFERENCE BEGIN]

23 MR. GILL: If we take a break, I can make this a lot
24 a easier and remind him about what we talked about, if that's

1 okay.

2 THE COURT: We -- we can take 40. But it -- it's
3 not gonna make --

4 MS. LUZAICH: I can't --

5 THE COURT: Sorry. I told Mr. Gill that we could
6 take 40 breaks, it's not going (indiscernible).

7 MS. LUZAICH: That we can what?

8 THE COURT: Take 40 breaks --

9 MS. LUZAICH: Oh.

10 THE COURT: -- it's not gonna matter. It's gonna be
11 the same thing.

12 MS. LUZAICH: Mm-hmm.

13 MR. GILL: I mean, I made my request.

14 THE COURT: I know.

15 MR. GILL: Thanks.

16 [BENCH CONFERENCE END]

17 BY MS. LUZAICH:

18 Q So you don't remember her sitting up here and saying
19 that the person that held a knife to her then cut the cord.

20 A Yes, ma'am.

21 Q Remember that? Exhibit 201. Cord cut; right? Do
22 you remember that now?

23 A Yes, ma'am.

24 Q And you were telling the detective that you were

1 talking, you talked about a lot of stuff. The first time you
2 met her, you were talking about stuff. That day, when you got
3 there, you were just joking with her. You remember that?

4 A Yes, ma'am.

5 Q And you told her that you don't want to be with her
6 sister, you want to -- you want to, quote, "give it to her."
7 Remember telling the detective that?

8 A I can't -- yes, ma'am.

9 Q You remember telling him that you had found a knife
10 in her apartment?

11 A When -- yes, ma'am. According to -- I don't --

12 Q And you remember telling him that you threatened to
13 cut her but you weren't serious?

14 A Can't -- yeah, according to --

15 Q Your words, not his. Your words.

16 A According to what I was listening to yesterday and
17 going over, yes, ma'am.

18 Q And you -- do you remember telling him that you had
19 sex in her bedroom on her bed?

20 A According to what I heard yesterday, yes, ma'am.
21 Yes --

22 Q Well, I mean, you keep saying "according to what I
23 heard yesterday." That was your voice; right?

24 A Yes, ma'am. Yes, ma'am.

1 Q That was you talking; right?

2 A Yes, ma'am.

3 Q I mean, I'm not making that up, am I?

4 A No, ma'am. No, ma'am. That was my voice. You're
5 right.

6 Q Okay. And -- I mean, like, are you saying that you
7 don't remember telling him these things? Confessing to these
8 crimes that you didn't commit?

9 A I'm saying that I remember some things, but because
10 it's been so long, lapse of time, I have to call back certain,
11 specific things, ma'am.

12 Q Okay. I get that. You remember telling him -- or
13 listening to what you said yesterday, that you had oral sex
14 with her but she didn't do it right?

15 A Yes, ma'am.

16 Q Okay. You put your penis in her mouth and she
17 grabbed it with her own two hands?

18 A Yes, ma'am.

19 Q So these are all your words. It's not like he's
20 feeding you anything. Would you agree with that?

21 A I would say he fed me some things and with that --

22 Q Detective Jensen fed you things?

23 A Yes, ma'am. He told me things. He -- he -- he --
24 he, you know, gave me details and stuff.

1 Q How many de -- how much detail? What detail did he
2 give you --

3 A At that time it was -- it was --

4 Q -- about Teresa Tyler?

5 A It was -- it was a bunch of stuff we went over. It
6 was a bunch of stuff we went over. And as I was trying to
7 explain to him, you know, the --

8 Q So he gave you the detail that she gave you a blow
9 job but it wasn't a good one, she didn't do it right? Did he
10 tell you that?

11 A No, he didn't tell me that. No.

12 Q Okay. And then you said she was acting scared. She
13 was tripping. Acting scared of you so you took the phone
14 'cause you were scared yourself. You threw the phone. You
15 put the knife right up behind her so she could cut herself
16 out. So you admitted to tying her up --

17 A (Indiscernible)

18 Q -- with the telephone cord; correct?

19 A Only but because I was fed those details. That's
20 when I remember, oh, this happened and that happened and I
21 added them too.

22 Q Okay. So are you saying that Detective Kato, who
23 had nothing to do with these investigations, had enough
24 detail -- gave you all the details from all of these eight

1 different incidents and you were able to memorize it so that
2 you could regurgitate it to Detective Jensen? Is that what
3 you're trying to say?

4 A I'm saying with what the Detective Kato told me and
5 with what the other two detectives was feeding me, then at
6 that point I was able to form, to the best of my ability and
7 my knowledge, what I believe what was occurring then.

8 Q So you would be able to -- you were able to form --
9 showing you State's Exhibit 213 -- a story that coincidentally
10 fits with all the evidence.

11 A Well --

12 MS. LUZAICH: So did I just say 217?

13 THE COURT: Yeah.

14 MS. LUZAICH: State's 213. Sorry.

15 BY MS. LUZAICH:

16 Q Phone cord.

17 A When somebody --

18 Q All the stuff you tied her up with right here. So
19 you were able to figure it out without ever seeing these
20 pictures 'cause they weren't developed yet.

21 A They had -- they had pictures of -- of scenes and
22 incidents in the -- in the -- with them when they came. The
23 two --

24 Q Did you hear Detective Jensen say yesterday that,

1 no, there were no pictures. So --

2 A I know what I saw, ma'am. I know what I saw.

3 Q Okay. And -- yeah. You saw a phone cord that you
4 tied her up with and the pieces of material that you tied her
5 up with; right?

6 A The pictures weren't that big. A lot of the
7 pictures that they had wasn't that big. They was -- they was
8 just a small pictures of, like, some that you get printed out
9 from --

10 Q So you talked also about Leona Case. This is
11 Leona Case, remember? State's Exhibit 186. The apartment you
12 burned down. You remember that?

13 MR. GILL: Objection. Argumentative.

14 THE COURT: Overruled. You can answer.

15 MR. GILL: The argumentive portion, Judge, being
16 that he burned it down.

17 MS. LUZAICH: How is that argumentative?

18 THE COURT: Overruled. I don't know. So she's
19 asking you if you burned down Leona's apartment. Do you
20 remember that? Your answer is?

21 THE WITNESS: No, I didn't --

22 THE COURT: Just say no.

23 BY MS. LUZAICH:

24 Q Okay. Well, you remember Leona Case? She testified

1 at the preliminary hearing. You were present; right?

2 A Yes, ma'am.

3 Q Back in, like, November of 2000.

4 A Yes, ma'am.

5 Q She lived at 2900 East Charleston, which is where
6 your sister lives; right?

7 A In -- in a -- my sister live in the same complex as
8 she lived.

9 Q That's what I just said, didn't I?

10 A Yes.

11 Q Leona lives in building 2, apartment number 50;
12 right? What building does your sister live -- did your sister
13 live in?

14 A My sister lived in the first building when you come
15 in. She lived on the third floor.

16 Q Okay. What building was that?

17 A And then she went -- I -- I can't specifically say
18 what building it was.

19 Q It wasn't building 2 though 'cause you would have
20 burned down your sister's building; right?

21 MR. GILL: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MS. LUZAICH:

24 Q So you told the detectives that you and she were

1 coming from the store on another day and you told her -- or
2 you asked her to use her phone; right?

3 A Say -- you say I told the detectives that?

4 Q Mm-hmm. Yep.

5 A Yes.

6 Q And what Detective Jensen, quote, "fed you" was this
7 is the 42-year-old lady.

8 A And at that point by him telling all this, this,
9 that, this --

10 Q Well, no, all he told you -- did you listen
11 yesterday to the statement --

12 A Yes. Yes, ma'am.

13 Q -- he said --

14 A Yes, ma'am.

15 Q -- "Do you remember what happened with this one, the
16 42-year-old lady?"

17 A And that's how I was able to recall when he said the
18 age.

19 Q Recall what you did to her; right?

20 A What -- no, what he -- what he told me. I didn't --

21 Q State's Exhibit 323 --

22 THE COURT: "He" being -- I'm sorry. "He" being
23 Detective Jensen or detective co- --

24 MS. LUZAICH: Kato.

1 THE COURT: Kato?

2 THE WITNESS: No. No. Detective Jensen.

3 THE COURT: Okay. Detective Jensen. Thank you.

4 BY MS. LUZAICH:

5 Q Okay. So you said that --

6 A But he was still (indiscernible).

7 Q -- you asked to use her phone; right? I mean, this
8 is you. You asked to use her phone.

9 A Oh, yeah.

10 Q And you said, "We did make out that day. I ain't
11 gonna tell no story. That's what older women want. A young
12 man that can supply that for them."

13 A According to that, that's what I said. But once
14 again --

15 Q So is that what you interposed your true life with?

16 A I -- I --

17 Q Older women wanting young guy like that?

18 A If -- if I explain to you my life, it wouldn't be
19 the same as yours. And --

20 Q That doesn't answer the question.

21 A And I understand that. But that's what I said. But
22 that -- if that's -- that's what I was saying just so I
23 wouldn't be hurt by any police officer.

24 Q Well, you said you imposed your life into it. So

1 when you --

2 A Not --

3 Q -- said that's what older women want, a young man
4 that can supply that for them, sex.

5 A The area --

6 Q Is that your life that you're interposing?

7 A Some of that is cooperated [sic] in my life. I have
8 been -- I have dealt with older women before.

9 Q So that's your --

10 A Being young --

11 Q -- opinion and is that --

12 A But not with her. I never -- I never dealt with
13 this woman. That's what I'm saying. I never dealt with her.

14 Q Okay. So you told them you walked -- you came back
15 two or three days later. You walked up. The door was closed.
16 And you pushed it and the thing came off the door. So you
17 broke into her apartment; right? She's sitting on the couch
18 like she said. I mean, 'cause you hadn't heard her testimony
19 when you gave the testimony. She testified --

20 A No.

21 Q -- that she was sitting on the couch watching TV.

22 A Previously, I think she gave her statement to the
23 detectives that they was using to inform me. So they was --
24 whatever they was doing, previous to draw what they needed to

1 draw up to feed me information --

2 Q Okay. So they had her entire statement. Did they
3 have the statements for everybody with them?

4 A I don't know. They had a big -- big --

5 Q And the police reports for everybody?

6 A -- they had a big book. They had a big book of
7 stuff. A big folder like --

8 Q Who had a big book of stuff?

9 A Las Vegas police.

10 Q Okay. But not Kato.

11 A No.

12 Q He had a couple pages.

13 A He had a couple of pages. Not a couple. More than
14 a couple.

15 Q So anyway, she said she was sitting -- you said she
16 was sitting on the couch. You came in, closed the door. You
17 had sex. You were putting on your clothes and she was a nasty
18 bitch.

19 A According to -- that's what I said on the --

20 Q Right.

21 A -- taped statement.

22 Q Did -- did somebody feed you that, that she was a
23 nasty bitch?

24 A No, that -- it was a former --

1 Q Okay. So that was you 'cause you think --

2 MR. GILL: And, Your Honor, I -- I would ask the
3 State to allow him to finish his responses --

4 THE COURT: That's fine. Sustained. You can
5 finish, Mister --

6 THE WITNESS: It -- it was a form of being afraid so
7 I had to say something. I couldn't just allow myself not to
8 say something because if I didn't say something, then I felt
9 like, okay. If I don't say nothing, I could be hurt. So I
10 got -- I just come up with anything. Did I ever see this
11 lady? No. Did I ever touch her? No. Did I ever do anything
12 to her? No. I didn't. So --

13 MS. LUZAICH: Nonresponsive. Move to strike.

14 THE WITNESS: Oh, sorry.

15 MS. LUZAICH: Maybe there will --

16 THE COURT: It's --

17 MS. LUZAICH: -- come a time today that you answer
18 my questions. Can that be now?

19 MR. GILL: Objection. Argumentative.

20 THE COURT: Sustained.

21 MS. LUZAICH: I -- he hasn't answered a question.

22 THE COURT: What's the next question?

23 BY MS. LUZAICH:

24 Q So you admitted stabbing her. That she got -- you

1 said to them, at least, that she got mad 'cause you called her
2 a nasty bitch and came at you with a knife.

3 A According to the statement, that's what I said.

4 Q Okay. Well --

5 A But if that's how I felt in my heart, no.

6 Q Why would you make -- why would you make that up?

7 A Once again, if you're thinking -- you're feeling
8 being hurt and you're thinking that somebody is feeling beat
9 you bad or something or even kill you, I felt I had to do
10 whatever --

11 Q So you really thought the detective was going to
12 kill you when every -- like, how many people were in the -- in
13 your apartment? Like, ten?

14 A In my apartment?

15 Q Ten police officer -- your dad's apartment. Ten
16 police officers saw you get taken to the police department.
17 So they all know you there. Las Vegas detectives know you
18 there. You really thought that Kato was going to go down and
19 kill you?

20 A Ma'am, when you in a -- first of all, I wasn't in my
21 house when I was --

22 Q That was a yes-or-no question.

23 A -- in the precinct.

24 THE COURT: Yes --

1 THE WITNESS: Of course I felt that I was -- I could
2 be hurt. Of course I felt I could be killed. Of course I --
3 I seen some things, being in Chicago --

4 BY MS. LUZAICH:

5 Q That it would be okay for you to just disappear?

6 A Ma'am, I don't --

7 Q How would that be explained?

8 A At the time I'm 17. I don't know if I could
9 disappear. I know things hurt -- happen to people in
10 precincts. I know things happen to people in jails. I know
11 that sometimes the police --

12 Q Do you know (indiscernible) --

13 A -- do things that they -- they --

14 Q And how do you know these things?

15 A Because I did -- I know people that been in -- went
16 through that, talk -- told me the police don't -- they ain't
17 no joke. Don't disrespect 'em. Don't do this. Follow they
18 rules because if you don't, you can be hurt. They've been
19 telling us this for years.

20 And I been trying to explain to you that, hey, listen
21 this is -- this was my life. I -- I'm not saying, you know,
22 in Chicago, in Las Vegas, detective, that they kill people and
23 throw them in ditches and all this. But, of course, you could
24 believe that the police, they have a force that can't no man,

1 being a civilian, conquer them.

2 You know, they have DAs, they have judges, they have
3 lawyers. They have everything that -- at they beckon hand
4 that I don't have. So when you show a force or somebody say
5 something like that and you feel a pressure of somebody that
6 has more power and authority over you than you have over
7 yourself and you young, you say whatever it takes to get
8 yourself out this position, this predicament. Because you
9 don't want to become hurt.

10 That's all I'm saying, ma'am. Seventeen, I was -- I was
11 in fear of my life. Did I tell officer -- the Las Vegas
12 detectives that I was in fear? No. Because I felt they
13 couldn't help me. I felt that they was a part of what was
14 going on with me at that particular time. So I had to --

15 Q Well, how was he gonna hurt you? How was he gonna
16 hurt you?

17 A How am I to know when you got guns drawn on you.
18 And then you got an officer --

19 Q Well, you had a gun drawn on you in the apartment --

20 A My --

21 Q -- because they're apprehending a murder, violent
22 sexual assault robbery suspect. It's reasonable, don't you
23 think --

24 A It is.

1 Q -- to have --

2 A But --

3 Q -- guns drawn when you're apprehending that suspect?

4 A You're absolutely right. But then, at the same
5 time, when you tell somebody --

6 Q That was a --

7 A -- you blow their head off, then --

8 Q -- yes-or-no question.

9 A -- you know, if -- yes.

10 Q There is no question pending.

11 A Yes, you're right. You're right, ma'am.

12 Q Okay. So -- well -- so Leona Case had all those
13 injuries to her; correct?

14 A Yes, ma'am.

15 Q And you told them, the police -- sorry --
16 Detective Jensen -- and -- I mean, you talked to them for over
17 an hour. Would you agree with that?

18 A I've been -- I was in the precinct for a long length
19 of time so --

20 MR. GILL: Objection. Nonresponsive.

21 THE WITNESS: Oh.

22 THE COURT: Sustained.

23 BY MS. LUZAICH:

24 Q You talked to Detective Jensen on tape for over an

1 hour. Would you agree with that?

2 A I could say -- I don't know how long it was, but I
3 say -- if that's what it is, over an hour, yes, ma'am.

4 Q Well, didn't we listen, yesterday, for over an hour?

5 A I -- I don't --

6 THE WITNESS: Was it over an our, Your Honor? Okay.

7 THE COURT: It was an hour --

8 MS. LUZAICH: Oh, please.

9 THE COURT: -- and 18 minutes.

10 THE WITNESS: An hour and 18 minutes. Yes, ma'am.

11 BY MS. LUZAICH:

12 Q And during those hour and 18 minutes, so far we've
13 heard about lots of details that you've given. So you think
14 that all of those details that you gave, details, not the
15 extra stuff, you had memorized from what Kato told you hours
16 and hours before?

17 A Yeah.

18 Q Okay.

19 A And it wasn't hours and hours before. It was --

20 Q So you talked about how when --

21 MR. GILL: Judge, he was -- I'm sorry. He was
22 trying to -- the answer wasn't finished.

23 THE COURT: Okay. That's right. Go ahead and
24 finish the answer, what you were saying.

1 THE WITNESS: Like I -- like I was trying to
2 explain, he came in the first time, spoke to me for -- alone,
3 at the time, came back little while later -- I don't know how
4 long that was -- and spoke to me again about it.

5 THE COURT: Jensen or Kato?

6 THE WITNESS: Kato.

7 THE COURT: Okay.

8 THE WITNESS: And then that's when I went in front
9 of the Las Vegas police.

10 BY MS. LUZAICH:

11 Q Okay. So you confessed to Kato and then you
12 confessed to the police.

13 A I never confessed to Kato. He only --

14 Q Okay. Let's read, shall we --

15 MR. GILL: I just want to make sure -- Court's
16 indulgence.

17 THE COURT: Yep.

18 [DISCUSSION OFF THE RECORD]

19 MR. GILL: Thank you, Your Honor.

20 THE COURT: Yep.

21 MS. LUZAICH: Trying to get to the first one.
22 Sorry.

23 BY MS. LUZAICH:

24 Q So he talked to you about -- well, police report.

1 These five incidents were the subject of the interview. Five.
2 We have eight here. Would you agree with that? Plus --

3 A Yeah.

4 Q -- the murder would make nine.

5 So that's not all the incidents. "Porter was informed of
6 the date of the incident, June 7, 2000. Porter stated he did
7 not recall the incident by date. Officer then informed Porter
8 of one item that was taken and Porter stated the following:
9 The door of the apartment was ajar. He only pushed it open
10 with minimum force. The lady inside the apartment was afraid,
11 told Justin she would do anything if he promised not to hurt
12 her. Said he became sexually excited at this statement and
13 felt that the woman was attracted to him.

14 "Porter states he told her to take her clothes off. She
15 complied. They had vaginal sex. Denied entering the
16 apartment with a knife but may have picked up a knife from the
17 kitchen. When he left the apartment with a TV and CD player,
18 he placed the items in a baby stroller, pushes the items down
19 the street. Left the stroller and items next to a building
20 for a few minutes. When he returned, the stroller, TV, and CD
21 player were gone."

22 MR. GILL: Your Honor, I'd ask --

23 BY MS. LUZAICH:

24 Q So --

1 MR. GILL: I'd ask the State finish if we're gonna
2 read from it, finish the last sentence.

3 MS. LUZAICH: Oh.

4 THE COURT: May I have the last sentence, please?

5 MR. GILL: Can I read it in? It's --

6 MS. LUZAICH: "Couldn't add any more to the
7 incident" -- oh, no. Sorry. I went down too far.

8 MR. GILL: It's right here.

9 MS. LUZAICH: Oh, yeah. "No more knowledge of this
10 incident."

11 BY MS. LUZAICH:

12 Q Do you remember telling him that?

13 A No, I never.

14 Q RD gave -- "the detective gave Porter the date of 4
15 April 2000. Porter didn't remember the date. The detective
16 supplied with the -- Porter with the age of the victim.
17 Porter stated the lady reminded him of his mother and he felt
18 bad."

19 MR. GILL: Your Honor, if -- I think there might be
20 a better way to do this. If we can maybe refresh his
21 recollection. If -- if -- ask the question if he remembers
22 and, if not, then -- instead of just read the report.

23 MS. LUZAICH: Well, he said he never confessed,
24 so --

1 THE COURT: So I think --

2 MS. LUZAICH: To them.

3 THE COURT: Correct. Yeah. So I think that the
4 State can do the method of impeachment by two ways. I think
5 they can do it by refreshing recollection, but I think they
6 can also do it by reading the stem -- reading the statement in
7 through the method of impeachment. So your --

8 MR. GILL: Thank you.

9 THE COURT: -- objection's noted, but I do believe
10 it's -- the State can do it whichever way they want --

11 MR. GILL: Thank you, Your Honor.

12 THE COURT: -- during their cross-examination.
13 Overruled.

14 MR. GILL: Thank you.

15 MS. LUZAICH: "Porter stated that he pushed on her
16 apartment door. The door was ajar. He believed he broke the
17 chain that was secured from inside. (Indiscernible) someone
18 was very nice. When they sat down on the bed, the lady said
19 she would do anything he wanted. He pulled -- Porter pulled
20 out his penis. The lady performed oral sex. Porter stated he
21 did not like it. Porter stated that he remembered the lady
22 lived right by the Showboat on the second floor. Porter
23 related he obtained a knife from the kitchen and the lady gave
24 him \$50.

1 "Porter also states that she took off her ring and gave
2 it to him. Porter states he did not like the ring and threw
3 it away as soon as he got outside. Porter states that when
4 she gave him \$50, the lady gave him her car keys. Porter
5 asked the lady what kind of car and she described a white car.
6 Porter locates the car and drives the car approximately half a
7 block away.

8 "Porter states he realized what he had just done and
9 became afraid. Porter states he pulled the car over and
10 parked, saying Porter could not (indiscernible) anything
11 more."

12 BY MS. LUZAICH:

13 Q That was Marlene Livingston. Do you remember
14 telling them that?

15 A Never.

16 Q So you -- so are you saying you didn't tell them
17 that?

18 A I never told them that.

19 Q Okay.

20 A If anything, he told me that.

21 Q Because he would have had all of that information.

22 "The next incident Porter remembered was the incident
23 when the woman -- when the detective described the woman to be
24 of Spanish decent, March 25, 2000, incident." That would be

1 Ramona Leva. "Porter states that her apartment door was open
2 and he believed the lady was attracted to him. Porter stated
3 they had vaginal sex one time. Porter denies taking this
4 person's car and that he obtained the knife from the kitchen,
5 couldn't remember anything more."

6 You told them that?

7 A No, I didn't, ma'am.

8 Q No, you didn't tell them that?

9 A No, I didn't.

10 Q "The March 7, 2000, incident was recalled by Porter
11 when the detective described the fire. Porter states he had
12 vaginal sex one time with the lady and he believed that it was
13 consensual sex. Porter stated that he had used her phone
14 before and was allowed entrance" -- oh, "entry," sorry, "into
15 her apartment. Relates that when he wanted to have sex a
16 second time, the lady acted like she was no longer attracted
17 to him.

18 "Porter became angry, obtained a knife from the kitchen.
19 Porter states he poked her with the knife, he believed two
20 times. Porter relates that he observed a little blood but
21 didn't think she was cut bad. Porter states the lady became
22 sick, ran to the bathroom. Porter states he panics, lights a
23 match, burns a blanket that was on the bed in the bedroom.
24 Porter relates he then threw the match on the rug. Porter

1 leaves the apartment.

2 "Porter denies choking the victim. Denies ever
3 possessing scissors. Porter also denies taking anything from
4 the apartment" -- "apartment," sorry, "Porter could not add
5 anything further."

6 That was Leona Case. Right?

7 MR. GILL: I'm --

8 BY MS. LUZAICH:

9 Q Well, I mean, you've heard -- that's Leona Case on
10 the screen; correct?

11 A Um --

12 Q That's Leona Case that we just -- that I just read;
13 correct?

14 A He had more information than me that
15 (indiscernible).

16 Q Well, interestingly --

17 A I didn't say that to him.

18 Q -- when you talked to the police, your story changed
19 quite -- uh, sorry -- Detective Jensen, your story changed
20 quite a bit, didn't it, regarding Leona, too, Case.

21 A When he types his report, his report is his report.
22 I never told him that. All -- like I says, ma'am, I never
23 told him that.

24 Q Okay. And then the final one that he discussed was

1 February 1st -- or 1 February 2000 incident. "Porter could
2 not recall. Interview terminated."

3 So you couldn't recall Tyler -- Teresa Tyler at all, but
4 you could when you talked to Detective Jensen; right?

5 A You made that seem like what you said there and then
6 what I said there is -- is okay. Now, you -- you said this
7 over here with Kato and now you're saying this over here
8 different. I never -- I told you, I never said anything to
9 Kato about anything I did. I don't know if he took they
10 report and said "I'm gonna fabricate my report off they
11 report" or whatever it is they going on. But I have never
12 spoke to him about any -- me doing any of that.

13 Q Okay. Well --

14 A So I can't say for sure --

15 Q -- he disagrees, doesn't he?

16 A Well, of course he gonna disagree because --

17 Q And Leona Case --

18 A -- he got a job he got to do. I -- I'm -- I'm --
19 I'm --

20 Q What does he have to gain? Kato. Detective Kato,
21 who has absolutely nothing to do with Las Vegas police --

22 A So his record is squeaky clean.

23 Q -- correct and --

24 A Because if his record is squeaky clean then --

1 Q I never --

2 MR. GILL: Objection, Your Honor. Can we approach?

3 THE COURT: Yes.

4 [BENCH CONFERENCE BEGIN]

5 MR. GILL: I'm sorry. I'm sorry to keep -- but --
6 but to keep going down Kato way, we're gonna open up
7 everything that -- and I offered previously that -- to try and
8 clean this up with a quick break. And I'm making that same
9 offer again.

10 MS. KOLLINS: Can we take five and maybe he can get
11 him under control --

12 THE COURT: Sure. Yep.

13 [BENCH CONFERENCE END]

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

23 Please do not make any investigation, test a theory of
24 the case, recreate any aspect of the case, or in any other way

1 attempt to learn or investigate the case on your own. And
2 please do not form or express any opinion regarding the case
3 until it's formally submitted to you.

4 It is 1:05. I'll see you at 1:20.

5 THE MARSHAL: All rise.

6 THE WITNESS: Excuse me, Your Honor. Excuse me --

7 THE COURT: Wait until (indiscernible).

8 [OUTSIDE THE PRESENCE OF THE JURY]

9 [DISCUSSION OFF THE RECORD]

10 [RECESS AT 1:06 P.M.; PROCEEDINGS RESUMED AT
11 1:24 P.M.]

12 [IN THE PRESENCE OF THE JURY]

13 THE MARSHAL: All rise.

14 THE COURT: All right. Welcome back, everybody.
15 Please be seated.

16 We are back on the record in C174954. Mr. Porter is
17 present on the stand, still under oath. Mr. Gill present on
18 his behalf. Ms. Luzaich and Ms. Kollins present on behalf of
19 the State.

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

21 MS. KOLLINS: Yes, Your Honor.

22 MR. GILL: Yes, Your Honor.

23 THE COURT: One of your pieces just flew off the
24 podium or --

1 MR. GILL: The --
2 THE MARSHAL: (Indiscernible)
3 MR. GILL: Yeah, the --
4 MS. LUZAICH: Oh -- (indiscernible) thank you.
5 Yeah. I was like, I don't see anything missing. Thank you.
6 THE MARSHAL: You're welcome.
7 THE COURT: Did -- Ms. Kollins, I'm sorry, did you
8 say you did stipulate to the presence of the jury?
9 MS. LUZAICH: Yeah. Oh, yes.
10 THE COURT: Okay.
11 MR. GILL: And I do as well, Your Honor.
12 THE COURT: All right. I heard you. Thank you.
13 MS. LUZAICH: Can I go?
14 THE COURT: Go ahead and go.
15 MS. LUZAICH: Thank you.

16 BY MS. LUZAICH:

17 Q And I hate to say I don't remember where I was. We
18 were talking about Leona Case and what you told the
19 detectives. You were talking to the detectives about how she
20 came at you with a knife and you accidentally stabbed her in
21 the stomach.

22 Do you remember telling the police, also, immediately
23 after that, "You know what I'm saying? As a young black man,
24 you know, I had a lot of females tell me I'm attractive. You

1 know, they find me attractive to them. Do you know what I'm
2 saying?"

3 A Yes, ma'am.

4 Q Okay. So earlier, when I said, in your life do you
5 think that just -- you're a young -- because you're a young
6 hot kid, all these older women want you?

7 THE COURT: "Yes" or "no" is what -- it's a "yes" or
8 "no."

9 THE WITNESS: Yeah. Well, hold on. What?

10 THE COURT: So she's asking you --

11 MS. LUZAICH: I asked you a yes-or-no question.

12 THE COURT: -- a yes-or-no question. Is that --
13 were those your words to the detective?

14 THE WITNESS: Oh, oh, yes, that was my words.

15 BY MS. LUZAICH:

16 Q Okay. And you talked about Teresa Tyler wanting you
17 and Leona Case wanting you. And you know what I had forgot,
18 you said that you had had sex with Teresa Tyler's sister in
19 the bathroom?

20 A Yes, ma'am.

21 Q How many times in the bathroom?

22 A Just maybe one.

23 Q And --

24 A That --

1 Q -- when?

2 A That -- that particular day.

3 Q When?

4 A I can't recall what day it was.

5 Q Okay. Well, when did you meet her?

6 A I can't recall that day.

7 Q Okay. How old were ya?

8 A Like, uh, I think -- I was 17 at the time because --

9 Q Were you already -- you turned 17 December, like,

10 18th or so; right?

11 A Yeah. So I think it had to be -- I met her in,

12 like, probably before -- okay. Yeah. It'd have to be, like,

13 before I turned 17. I think I was, like, 16 and I was going

14 into 17. Like a couple months before I went into 17 because

15 it was a bunch of us that -- that met her.

16 Q Okay.

17 A It was a --

18 Q You met her over Christmas-ish area? Time?

19 A No, I don't think this was Christmas because at that

20 time -- it was still kind of -- still get -- it still kind of

21 like summertime. So it was probably --

22 Q Oh, so --

23 A So it was probably --

24 Q -- early 16?

1 A -- like in August somewhere. Something like --
2 somewhere in August.

3 Q All right.

4 A August --

5 Q So if you met her in August, did you have sex with
6 her in August?

7 A I believe it was a couple months after that. Little
8 while after that. And then we -- we got together again.

9 Q Okay. How many times -- how many months?

10 A Approximately -- I can't say, probably, months
11 because I can't remember the -- the time back then like that.
12 I can't remember it because, doing so long, I never thought
13 about it like -- like you asking me. Like when was it? This
14 specific day.

15 Q Well, was it before Christmas or after Christmas --

16 A I can't really too much --

17 Q -- that you had sex with her?

18 A -- say. I believe I met her -- I met her when I was
19 around 16.

20 Q Okay. And that was in August. So Christmas --

21 A I don't know for sure if it was August. But I know
22 I met her --

23 Q Ish.

24 A -- when I was like -- yeah. Somewhere when I was

1 16, but I was turning 18 -- I mean, 17.

2 Q Okay. You said you thought it was summer because it
3 was warm.

4 A No, we wear jackets. See, in Chicago, wintertime is
5 cold. Wintertime is --

6 Q I know. But you met her here; right? In Las Vegas.

7 A Yeah. In Vegas time, Vegas is, to me, the -- the
8 wind blowing, that's -- that's cool air to me. I wear jackets
9 out here. In Chicago we have to wear big boomers, furs
10 down --

11 Q You wear a jacket in August in Las Vegas?

12 A When it's cold -- it's not cold out here to me like
13 that. When I -- when I came from Chicago, it cold. Like,
14 snow on the ground and --

15 Q Right.

16 A I was wearing gym shoes in Chicago in -- in the
17 wintertime.

18 Q Okay. So when you had sex with her in the bathroom,
19 was it warmer outside? Was it past Christmas?

20 A I think we -- it was still -- it was in -- we were
21 still wearing -- it -- it was jackets being wore -- jackets
22 being wore because we was all hanging out in canyon -- couple
23 of times. Couple of times. Couple of times.

24 Q Okay. So --

1 A Quite a few times.

2 Q -- is that still when you're 16, not quite 17?

3 A Sixteen and seventeen. Sixteen and going into
4 seventeen.

5 Q Okay. When you had sex with her in the bathroom,
6 when was that?

7 A I can't too much say --

8 Q Earlier? Later?

9 A -- I can't too much say. Because I -- I ran into
10 her again. I went to her momma house one time. And I ran
11 into her again. That's before I left and went to Chicago. So
12 I ran into her again. And --

13 Q Okay.

14 A -- believe the last time I seen her was -- was
15 before I went to Chicago.

16 Q The sister.

17 A Yeah, the sister.

18 Q But when did you have sex with her in the bathroom?

19 A I can't specifically say what day. That's just be
20 like asking me that I know everything that I did back then,
21 ma'am. So I can't really say. I can't recall.

22 Q Okay. Was it in December?

23 A I want to say -- want to say -- I'm not for sure.

24 MR. GILL: Your Honor, I think he's answered that he

1 can't recall.

2 THE COURT: Sustained.

3 BY MS. LUZAICH:

4 Q Okay. I mean, but I'm just trying to figure out was
5 it before you turned -- in the bathroom, before you six -- 17?
6 After you turned 17?

7 A I know I met her when I was, like, turning --
8 turning 17. And then -- I can't say what specific day -- I
9 mean, what specific month or what specific day it was because
10 we was always hanging out, a lot of us. So --

11 Q Was it February 1st? Was it January 1st?

12 A I can't say the actual day because, back then, 17,
13 we weren't like we was --

14 MR. GILL: Same objection, Your Honor.

15 THE WITNESS: -- calendar today this and calendar
16 day is that.

17 THE COURT: Yeah.

18 THE WITNESS: So --

19 THE COURT: We're gonna move on because you don't
20 remember and sustained.

21 THE WITNESS: Right.

22 MS. LUZAICH: Okay.

23 BY MS. LUZAICH:

24 Q So anyway, you told the detectives that women think

1 you're hot and they want to get sex from you. So you told
2 them that you had sex with Leona; right?

3 A Yes, ma'am.

4 Q And that it was in her vagina; right?

5 A Yes, ma'am.

6 Q And that you dropped a cigarette and the alarm -- or
7 you lit a cigarette and the alarm went off; right?

8 A Yes, ma'am.

9 Q Do you remember hearing that the alarm was actually
10 broken?

11 A Yes, ma'am.

12 Q And then you told them that, oh, maybe you did
13 something to it.

14 A Yes, ma'am.

15 Q You also thought that she would probably be able to
16 recognize you again.

17 A Yes, ma'am.

18 Q After Leona Case, you told the detectives about --
19 sorry -- Ramona Leva. Remember, that's Ramona Leva?

20 A Oh, yes, ma'am.

21 Q Sorry. Exhibit 188. She came in here and
22 testified?

23 A Yes, ma'am.

24 Q She was scared.

1 A Yeah.

2 Q You broke into her house.

3 A No, ma'am. No.

4 Q No?

5 A No, ma'am.

6 Q Well --

7 MR. GILL: Are you -- I'm sorry, Ms. Luzaich. Are
8 you asking what the statement says or what he did?

9 MS. LUZAICH: Well, that was what he did. But you
10 told the detectives that you broke into her house; right?

11 THE WITNESS: I -- I never said -- I never -- I
12 never broke into nobody house. I never broke into her house,
13 ma'am. I never broke into nobody house. I didn't have to
14 break into nobody house.

15 BY MS. LUZAICH:

16 Q 188. So you're saying Ramona Leva let ya in?

17 A No, I never -- I never been to her apartment before.

18 Q You've never been to her apartment.

19 A I've been to apartment buildings and around the
20 areas and stuff 'cause that's where we all -- but I never been
21 in her apartment.

22 Q You've never been in her apartment.

23 A Yeah.

24 Q You don't recognize 189 at all?

1 A I never been in that apartment, ma'am.

2 Q You don't recognize that?

3 A Never been in that apartment.

4 Q How did your vagin -- semen get in her vagina?

5 A That's unbeknownst to me.

6 Q It's a miracle?

7 A No, it's not a miracle. If you -- no, I didn't do
8 nothing to her, ma'am.

9 Q Okay.

10 A That day I was not there. I can -- I guarantee --

11 Q Okay.

12 A -- you I -- not that day.

13 Q Then where were you on that day?

14 A I can't tell you specifically where I was, but I
15 wasn't there on that day. I can guarantee you that.

16 Q Where were you on that day?

17 A That was 22 --

18 MR. GILL: Asked and answered, Your Honor.

19 THE COURT: Sustained.

20 BY MS. LUZAICH:

21 Q Then how can you guarantee that you weren't there?

22 A Because I didn't do the crime. I'm telling you, I
23 didn't do the crime.

24 Q Okay. So --

1 A It's -- it's --

2 Q Your DNA just showed up in her vagina by itself;
3 right?

4 A No, that's not my DNA in her vagina.

5 Q Oh, really?

6 A No.

7 Q That's not your DNA. Okay. You remember
8 Detective Love coming and meeting with you and getting your
9 DNA?

10 A I remember the detective, I believe, taking a swab
11 from me, yeah.

12 Q You believe [sic] her taking a -- you -- you do
13 remember her taking a swab from you?

14 A Yes.

15 Q And it was the blond lady that testified here?

16 A Yes, ma'am.

17 Q She was the first witness; right?

18 A Yes, ma'am.

19 Q And I'm showing you State's Exhibit 181. We're
20 gonna blow this up just so everybody can see it clearly. So
21 on June 13th, you would agree that this consent to search part
22 says June 13, 2000; right?

23 A I would agree, but I don't know if that was the
24 card. I don't know if that was the time.

1 Q Okay.

2 A Because I didn't --

3 Q Is that your handwriting? "Justin Porter"?

4 A I believe it is. I believe it is.

5 Q Okay. And --

6 A But I don't --

7 Q -- is that your mom's handwriting, "Angela

8 Smith-Porter"?

9 A I'm not for sure, ma'am, because my momma wasn't

10 with me when -- when all that occurred. My mother wasn't with

11 me.

12 Q Okay. So are you saying that Detective Love didn't

13 talk to your mom and have you and your mom sign this?

14 A No, she -- from -- what my understanding is, I

15 signed it but my -- I don't know if my momma signed it. I

16 didn't see my momma sign anything.

17 Q Okay. Was your mom present when Detective Love took

18 the swab --

19 A No --

20 Q -- in your house?

21 A -- my mother was not present.

22 Q Where was your mother?

23 A She was at home, I believe.

24 Q Okay. And this swab was taken at your home, wasn't

1 it?

2 A No, it wasn't taken at my home. It was taken at a
3 different area where I was hanging out with --

4 Q So then why do you think Detective Love would have
5 said that it was taken at your home?

6 A I don't -- I can't answer that question because I'm
7 not Detective Love.

8 Q I didn't ask why she actually did, I was saying why
9 do you think she would say that?

10 A I don't know, ma'am. I -- I can't answer
11 something -- why she would say something. I don't know.

12 Q Make it up just to make it up?

13 A No --

14 MR. GILL: Your Honor, asked and answered.

15 THE COURT: Sustained.

16 BY MS. LUZAICH:

17 Q So you told the detectives that you were in
18 Marlene Livingston's apartment but you put the -- or you
19 didn't put your penis all the way in her mouth, you put it
20 almost in her mouth; is that right?

21 A That's -- that's what I said, ma'am.

22 Q Do you remember Marlene Livingston testifying that
23 you told her that you liked to fuck old ladies?

24 A I don't recall her testifying to it, but I -- I do

1 remember it coming up.

2 Q Do you remember her testimony being read in here?

3 A Yes, ma'am.

4 Q Okay. And you were at the preliminary hearing in
5 October and November of 2000; correct?

6 A Yes, ma'am.

7 Q And she --

8 A I'm not for sure if that was the date but --

9 Q Showing you State's Exhibit 431.
10 Marlene Livingston. She testified at that hearing; correct?

11 A Yes, ma'am.

12 Q And that's what she testified?

13 A I believe so.

14 Q And then after you put your penis in her mouth, you
15 made her go into the bathroom and wash her mouth out?

16 A You saying I -- I --

17 Q That's what she testified --

18 A Okay.

19 Q -- isn't it?

20 And you said you've never --

21 THE COURT: Wait. Just one second.

22 BY MS. LUZAICH:

23 Q -- been to her apartment --

24 THE COURT: Do you have an answer to that first

1 question?

2 MS. LUZAICH: Okay. I'm sorry. Did I mis --

3 THE WITNESS: No, I'm just saying --

4 THE COURT: It's Okay. No, he didn't answer.

5 THE WITNESS: -- I -- I was confused --

6 MR. GILL: He didn't respond.

7 MS. LUZAICH: Oh.

8 THE WITNESS: -- in the -- the questioning of -- the
9 asking of the question so I didn't --

10 THE COURT: So what's your -- what -- tell me what
11 you're confused about.

12 THE WITNESS: She said that -- she said I did it and
13 everybody -- do I just agree with what she saying when she
14 said that she said that I did it or what do I do?

15 THE COURT: So what -- no, what Ms. Luzaich is
16 asking you is were you present at the preliminary hearing when
17 Marlene said that that was done to her?

18 THE WITNESS: Oh, yes. Yes. Yes, ma'am. Yes.
19 Yes.

20 BY MS. LUZAICH:

21 Q Okay. So you're saying that you were never at her
22 apartment. State's 432.

23 A I never was at her apartment that day.

24 Q Were you ever at her apartment?

1 A Not them apartments. I -- I lived in apartments
2 across the street. I used to -- we used to be in that area a
3 lot.

4 Q Where did you live?

5 A I can't think of the apartment's name now. But
6 they -- I think -- if I'm correct, they somewhere in the --
7 the area. But --

8 Q Okay. Where is this apartment?

9 A I -- is this somewhere by the -- I don't know. I
10 know in the Showboat area that --

11 Q And you lived by the Showboat?

12 A Yes, ma'am.

13 Q When did you live by the Showboat?

14 A I think when we first moved out here, 2000, and -- I
15 mean, 2000 -- '99 -- '98. Then I went -- I had to go -- I
16 went back to Chicago. Believe -- I don't know if it was
17 somewhere around that -- okay. I'm not too much for sure --
18 but I think it was, like, when we first moved out here and
19 periodically I had family members and friends that lived over
20 in that area and I would always go back over in that area.

21 Q Okay. Did you have family and friend that lived on
22 Clifford?

23 A I believe so. Believe so.

24 Q That lived on these apartments on Clifford?

1 A These apartments?

2 Q Yep.

3 A No, not --

4 Q 2301 Clifford?

5 A Not -- not these exact apartments.

6 Q Okay. This exact apartment is 2301 Clifford. Do

7 you have friends --

8 A Oh, then --

9 Q -- that lived in this exact apartment building?

10 A No, not in that exact apartment. Just in the area

11 around.

12 Q In the area. So --

13 A In the houses and the --

14 Q -- have you ever been to 2301 Clifford, on the

15 second floor?

16 A No, ma'am.

17 Q So you've never been to --

18 A I've never been in --

19 Q -- 2301 Clifford --

20 A -- in that --

21 Q -- Apartment 11.

22 A I've never been in that apartment. I've never been

23 in that apartment.

24 Q Then how'd your fingerprints get on the handrail?

1 A My fingerprints on the handrail?

2 Q Yep.

3 A No, they not.

4 Q You heard Fred Boyd testify, found your fingerprints
5 on the handrail right outside Apartment 11.

6 A My fingerprints weren't on the handrail, but if you
7 want to say then that's what he said. I can't --

8 Q Okay. Were you sitting here --

9 A I can't have no power --

10 Q What day is today? Today's Thursday. On Monday
11 or -- on Tuesday, when Fred Boyd testified, he's the latent
12 print examiner.

13 A Yes, ma'am.

14 Q And you remember him saying that he found -- or he
15 found your prints on the card, the late -- that was taken from
16 the handrail right outside the doorway of Apartment 11.

17 A I don't know why my prints would be there. But I
18 can assure you, my prints should not be there.

19 MR. GILL: Your Honor, that's -- that's
20 nonresponsive.

21 THE WITNESS: Yeah.

22 THE COURT: Sustained.

23 BY MS. LUZAICH:

24 Q So why do you think he would lie about that?

1 A I -- (indiscernible) I don't want to say nothing to
2 make her riled or make it seem like I'm going against anything
3 or make anybody feel, you know --

4 THE COURT: Just -- it's okay. Just answer the
5 question that she's asking. Why do you think he would lie?
6 If that's your position.

7 THE WITNESS: My position is I'm not saying I think
8 he lied 'cause I can't -- I don't do what he do. I don't
9 the -- the power and ability to conjure up evidence or
10 anything like that. I don't have that ability to say
11 somebody's fingerprints are here, somebody's fingerprints
12 there. I don't have that -- that luxury to say what I believe
13 is this, what I believe is that.

14 BY MS. LUZAICH:

15 Q Do you think any one of the people that came in here
16 and testified think that you are so important that they would
17 risk their career lying about something that you did or said?

18 A Well, I -- I -- at the time they was calling me a
19 savage beast. At the time I was accused of destroying a world
20 at the time. So who would care about a person that they deem
21 to be this?

22 Q Do you think that you're that important that they
23 would lie and risk their careers just to convict you of crimes
24 you didn't commit?

1 A That would be like asking --

2 Q Is that what you think?

3 A -- have it ever occurred before, when you know it
4 occurred before. It -- it happens. It happens. People --

5 Q Do you think that all of the people that -- how many
6 witnesses testified? Maybe 28 witnesses --

7 A Do I believe -- I think --

8 Q That all of these --

9 A -- I think some people have that ability --

10 Q -- people --

11 A -- to do that.

12 Q Can you wait until I finish --

13 A Oh, yes, ma'am.

14 Q -- my question, please.

15 Of the 28 people that testified -- sorry. That's
16 obnoxious. Of the 28 people who testified -- and that's a
17 guess -- 28, maybe 16 or 17 of them are law enforcement
18 related. Would you agree with that?

19 A Yeah.

20 Q Maybe even more.

21 A Yeah.

22 Q So do you think those 16 or 17 or more people would
23 risk their entire career lying about what you did just to
24 convict you of crimes that you didn't do?

1 A I believe it's possible.

2 Q Don't you think that those people want to get -- or
3 have convicted the person who actually committed these crimes?

4 A I can't say what they believe or what they think.
5 All I can say is things happen, ma'am.

6 Q Okay.

7 A I'm not in control of nothing.

8 Q Well -- okay. So you talked to them about -- sorry.
9 I -- actually, let me rephrase that. Earlier, on direct
10 examination, you said that -- well, you said that you had
11 never been to the Rumbaugh's apartment. Would you agree with
12 that?

13 A Yes, ma'am.

14 Q 392. Francis Rumbaugh.

15 A Yes, ma'am.

16 Q Never saw her?

17 A Seeing her picture and I believe I saw -- I'm not
18 for sure if I can remember if I specifically saw her, what day
19 or -- I just remember seeing this picture.

20 Q Okay. So --

21 A Right now. I mean, as far as going through the
22 trial, I remember seeing this picture --

23 Q April 12th of 2000 --

24 MR. GILL: Your Honor, there's -- I know we're

1 trying to preserve a record here. And I'm not --

2 THE COURT: Yeah.

3 MR. GILL: -- saying either side. But if we could
4 just wait for each other to finish.

5 THE WITNESS: Okay.

6 THE COURT: Yeah. That's fine. Okay. So you
7 remember -- you're saying that you don't remember ever seeing
8 her in person, but you remember seeing her in this picture
9 during this trial. Would that be fair?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Okay. Ms. Luzaich?

12 BY MS. LUZAICH:

13 Q Is that what you're saying, you never saw her in
14 person?

15 A No, ma'am.

16 Q Well, did you see her when she testified in 2000?

17 A I believe -- I -- she came and testified, but I
18 don't remember her like I'm seeing right now. I don't
19 remember -- I don't remember her.

20 Q So you didn't throw her to the ground and cause her
21 bruise?

22 A No, ma'am, I wouldn't --

23 Q Francis Rumbaugh, 394. Remember him?

24 A You say --

1 Q Remember him?

2 A I remember this -- seeing this picture. Like I
3 say --

4 Q Do you remember --

5 A -- I can't --

6 Q -- him testifying at a preliminary hearing in 2000?

7 A I believe he did testify, but I do remember him
8 actually testifying? No.

9 Q Is there another little old man who testified
10 against you?

11 A No, I'm not saying it was another little old man
12 that was testifying against me, ma'am. I'm just saying I
13 don't remember him up on the podium speaking about -- or I
14 don't remember how he looked other than that picture.

15 Q Okay. So 287. You didn't go to their apartment at
16 436 North 12th Street?

17 A No, ma'am. No, ma'am.

18 Q Didn't break the latch on the screen door?

19 A No, ma'am.

20 Q Didn't go through their drawers? 403.

21 A No, ma'am.

22 Q Didn't cut their cord?

23 A No, ma'am.

24 Q 404. Didn't go through their bedroom, 416?

1 A No, ma'am.

2 Q Then how did your fingerprints get on the El Cortez
3 cup, 419, in their bedroom?

4 A You actually have to ask the people that took my
5 fingerprints from me. And I don't know, all of a sudden, now
6 my fingerprints popping up on all this other stuff. So I
7 don't know. I can't speak on that.

8 Q Okay. Well, your fingerprints were taken when you
9 got arrested in August of 2000; correct?

10 A I believe so. Yeah, they -- they took it from --

11 Q And they were compared with the El Cortez cup;
12 correct? You heard that from Fred Boyd on Tuesday?

13 A Yes, I heard that from him, ma'am. Yes, ma'am.

14 Q And you heard that he found your fingerprints on the
15 El Cortez cup. Didn't you hear that?

16 A Yes, ma'am, I heard that.

17 Q How did they get there?

18 A I don't -- that -- I have no ability to tell you
19 other than I wasn't there and I didn't do that. Now, as far
20 as how they got there, if I was able to go and say these was
21 Mr. Porter's fingerprints or I was able to say, hey, look, um,
22 yeah, I can determine these are his fingerprints, then that'd
23 be something different. I can't -- I can't do none of that.

24 Q Remember Joni Hall, Exhibit 187?

1 A Yeah.

2 Q Remember her testifying in court?

3 A Yes, ma'am.

4 Q Remember her identifying you?

5 A Uh, yes, ma'am.

6 Q As the person who broke into her apartment?

7 A Yes, ma'am.

8 Q State's Exhibit 257.

9 A Yes, ma'am.

10 Q At 624 North 13th Street?

11 A Yes, ma'am.

12 Q And that you broke it so hard that the -- oops --

13 the bolt flew all the way across to the couch?

14 A Yes, ma'am.

15 Q Sorry. There was a picture there somewhere. That

16 you took her TV and CD player and the stroller?

17 A Yeah, yes, ma'am.

18 Q Remember telling the detectives that you took her CD

19 player and TV and put 'em in the blue stroller, baby stroller?

20 Sorry.

21 A Yes, ma'am.

22 Q And that you had sex on, 267, the living room --

23 A Yes, ma'am.

24 Q -- floor 'cause the couch was squeaky?

1 A Yes, ma'am, I remember --

2 Q Those are pretty specific details, aren't they?

3 A I don't know 'cause I never -- I don't know if the
4 couch is squeaky.

5 Q Well, you told 'em that, didn't you?

6 A Yes, ma'am.

7 Q And 262. You remember telling them that she gave
8 you a drink of Kool-Aid?

9 A Yes, ma'am.

10 Q You remember her test -- testifying at the
11 preliminary hearing that she gave you a drink of Kool-Aid?

12 A Yes, ma'am.

13 Q That's a pretty specific detail, wouldn't you say?

14 A Yes, ma'am.

15 Q And you say that you were never at this apartment?

16 A No, ma'am.

17 Q How did your fingerprints get in the cup that's in
18 the sink?

19 A Once again, ma'am, I -- when they took my
20 fingerprints from me in Chicago, that's when I realized
21 (indiscernible) that this is your fingerprints.

22 Q Oh, so are you saying that Kato planted your
23 fingerprints?

24 A I'm not saying Kato --

1 MR. GILL: Objection. Argumentative, Your Honor.

2 THE COURT: No, overruled. What -- are you saying
3 that?

4 THE WITNESS: I'm not saying -- I'm not -- I'm not
5 saying that, ma'am. I'm just saying my fingerprints was
6 taken from me in Chicago.

7 BY MS. LUZAICH:

8 Q Right. They were taken and then they were compared
9 to the evidence that we've just talked about --

10 A After my --

11 Q -- and your fingerprints are on --

12 A -- my voluntary confession --

13 Q -- the evidence?

14 MR. GILL: And, Your Honor, again, we've got --

15 THE WITNESS: Oh.

16 MR. GILL: -- both people talking at the same time.

17 THE COURT: Go ahead and repeat your answer.

18 THE WITNESS: No, I was saying they was taken from
19 me -- taken from me after my voluntary confession. Then they
20 took my -- my fingerprints.

21 THE COURT: Okay.

22 BY MS. LUZAICH:

23 Q Right. And they took your fingerprints in August of
24 2000.

1 A I can't say what day it was. But I -- I believe so.

2 Q In August of 2000; correct?

3 A I believe so.

4 Q Okay. And the fingerprints were lifted from
5 Marlene's rail on April 4th, before they even had your
6 fingerprints; right?

7 A I -- I don't know.

8 Q You don't know?

9 A Yes, ma'am, I don't know.

10 Q They were found on Marlene's -- oh, I'm sorry.
11 Marlene's vehicle. You had said you never touched or taken
12 Marlene Leva's [sic] vehicle?

13 A No, ma'am.

14 Q How did your fingerprints get on -- oops. Wrong --
15 how did your fingerprints get on the windshield?

16 A Once again, ma'am, you'd have to -- you'd have to
17 ask -- I don't know. This is --

18 Q Okay. So --

19 A -- a question that I had no -- no answer for.

20 Q So your prints were found on her rail on the 4th and
21 on her finger -- on her car on the 5th, before Kato got
22 your -- or anybody in Chicago -- sorry -- got your prints;
23 right?

24 A According to what you say, yes, ma'am.

1 Q And your fingerprints were found on the Rumbaugh's
2 El Cortez cup on April 12th, before they got your
3 fingerprints.

4 A According to what you say, yes, ma'am.

5 Q Well, according to what I say?

6 A I mean, I'm -- I'm not the one --

7 Q Didn't the witnesses all say that?

8 A Yes, ma'am. Yes, ma'am.

9 Q Have I said anything that the witnesses haven't
10 said?

11 A Well, some things you -- you may have added a little
12 bit extra to it but --

13 Q What have I said that the witnesses didn't say?

14 A I can't say everything there was, ma'am, but I know
15 it was --

16 Q Give me an example. What did I say that the
17 witnesses didn't say?

18 A It's a bunch of things --

19 MR. GILL: Asked and answered.

20 THE COURT: No, overruled. Do you have an example
21 that you can share?

22 THE WITNESS: Like when she kept saying "didn't you
23 do this?" "Didn't she say you did do this?" And had a
24 stuff -- things like that. "You said" -- "they said that you

1 did this." And I had to tell her, no, they never said that I
2 did this. But she said they said that I did it. So that's
3 why I say stuff like that. When she do things like that.

4 THE COURT: Okay. I --

5 MS. LUZAICH: I don't even know where to go from
6 that. I -- I've been saying --

7 THE WITNESS: Yes, ma'am.

8 MS. LUZAICH: -- Marlene said this --

9 THE WITNESS: I -- I'm sorry. I --

10 MS. LUZAICH: -- and Joni said that and all the
11 witnesses said things.

12 THE WITNESS: Yes. I'm sorry, ma'am.

13 BY MS. LUZAICH:

14 Q Right?

15 A Yes, ma'am.

16 THE COURT: So hold on. Because I want to make a
17 clear record of this because it's -- it's confusing because of
18 the he-said-she-said. So, Mr. Porter, tell me if I'm getting
19 it right. So -- Ms. Luzaich, can you give me a name of one of
20 the alleged victims who did not --

21 MS. LUZAICH: Leona Case.

22 THE COURT: -- who did not identify Mr. Porter in
23 court?

24 MS. LUZAICH: Leona Case.

1 THE COURT: Okay. So you're saying that when
2 Ms. Luzaich -- Ms. Luzaich is talking about Leona Case and she
3 says that Leona said you did it --

4 THE WITNESS: Right.

5 THE COURT: -- your point is, is, no, Leona didn't
6 say I did it; she said somebody did it.

7 THE WITNESS: Right. But she --

8 THE COURT: And so you're saying that that's your
9 example of when Ms. Luzaich adds to it because she's, by her
10 questions, is inferring that Leona specifically ID'd you --

11 THE WITNESS: Yes, ma'am.

12 THE COURT: -- is that fair?

13 THE WITNESS: Yes, ma'am. Yes, ma'am.

14 THE COURT: Okay. So now we're --

15 MS. LUZAICH: Okay.

16 THE COURT: Ms. Luzaich, does that --

17 MS. LUZAICH: That's -- I'm -- okay. I get that.

18 THE COURT: Okay.

19 BY MS. LUZAICH:

20 Q Is that all you can point to though? Is there
21 anything else that I said --

22 A Ma'am, there's probably a --

23 Q -- that a witness didn't say?

24 A -- quite a few others. But that's neither here nor

1 there right now.

2 Q Oh, no. No. It's here and there.

3 A No. I don't want to go through -- I'm sorry. I'm
4 sorry. I -- I apologize. I -- I'm sorry, ma'am.

5 Q Well, I mean, you're implying that I'm saying
6 something --

7 A No. I -- I --

8 Q -- that didn't --

9 A I'm sorry. I'm -- I --

10 MR. GILL: And, Your Honor, I'm gonna ask, again,
11 that at least the witness -- Mr. Porter allow Ms. Luzaich --

12 THE WITNESS: Yeah.

13 MR. GILL: -- to finish her thoughts and vice versa.

14 THE COURT: Okay.

15 BY MS. LUZAICH:

16 Q You're implying that I said things that did not
17 occur in court. And I want to know why. And I understand the
18 when I said Marlene said you did it. I get that. That's
19 semantics, but I get that. What else?

20 A I -- I have nothing else to -- that -- I can't
21 recall. I can't recall, ma'am. I just --

22 Q Can't recall or didn't happen? You're just making
23 it up?

24 A I -- I --

1 MR. GILL: Objection. Argumentative.

2 THE COURT: Sustained.

3 BY MS. LUZAICH:

4 Q So remember telling police that you went to the --
5 Guadalupe Lopez and Laura, Beatriz Zazueta's apartment at
6 2850 East Cedar?

7 A Yes, ma'am.

8 Q Apartment 229. I'm sorry. This is Exhibit 214. Do
9 you remember telling them that?

10 A Yes, ma'am.

11 Q And then you went into the first girl's bedroom,
12 Exhibit 219.

13 A Yes, ma'am.

14 Q And that you wanted money?

15 A Yes, ma'am.

16 Q And that she went across the hall, 217, and you went
17 with her?

18 A Yes, ma'am.

19 Q And you found Guadalupe Lopez, 231, in his
20 apartment?

21 A Yes, ma'am.

22 Q And that his, 222, wife -- he and his wife and kids
23 were sleeping in the bed?

24 A Yes, ma'am.

1 Q And that you got into a struggle with him --
2 A Yes, ma'am.
3 Q -- correct?
4 A Yes, ma'am.
5 Q Shots were fired?
6 A Yes, ma'am.
7 Q 235. He got shot?
8 A Yes, ma'am.
9 Q 231, shot went into the wall. 290 -- ooo. 245.
10 Bullet in the wall. 225. Right?
11 A Yes, that's -- yes, ma'am.
12 Q You (indiscernible)?
13 A Yes. Yes. Yes, ma'am.
14 Q There was another shot in the bed, 223, where the
15 babies and his wife were laying. Went all the way through the
16 mattress, 224. Remember that?
17 A Yes, ma'am.
18 Q And, 251, in the floor.
19 A Yes, ma'am.
20 Q You said that there was a huge struggle between him
21 and you.
22 A Yes, ma'am.
23 Q Walls were dam -- like, pushed. He got injured.
24 232.

1 A Yes, ma'am.

2 Q And that you jump out the window, 228.

3 A Yes, ma'am.

4 Q These are a lot of details; correct?

5 A Yes, ma'am.

6 Q And you gave the police all of those details, just
7 with your spin on it. Would you agree with that?

8 A Yes, ma'am.

9 Q Your mom said that you had scratches which would be
10 consistent with you jumping out the window; correct?

11 MR. GILL: Your Honor, I think that assumes a
12 conclusion that was not made by Ms. Porter.

13 THE COURT: So --

14 MS. LUZAICH: No, she didn't.

15 THE COURT: -- in pre --

16 MS. LUZAICH: His mom said he had scratches, period.
17 And my question is, that's consistent with him jumping out the
18 window.

19 THE WITNESS: I believe she said a car accident
20 'cause I did get hit by a --

21 THE COURT: So I -- the question is, though, is
22 whether it was in court or in a previous statement, that your
23 mom did talk about you having scratches.

24 THE WITNESS: I believe she said that somebody told

1 her --

2 MS. LUZAICH: Objection. Move to strike.

3 THE COURT: Sustained.

4 BY MS. LUZAICH:

5 Q Did your mother say, on the stand and in her
6 statement, that you had scratches --

7 A Yes.

8 Q -- at that time?

9 A Yes, ma'am.

10 Q And my question is, your scratches are consistent
11 with you jumping out a window just like the police said you
12 did.

13 A Yes, ma'am.

14 Q Correct?

15 And she said that you looked like you had fallen down,
16 which also would be consistent with 230, you jumping over the
17 balcony just like Guadalupe Lopez said you did; correct?

18 THE COURT: You can answer if you have an answer.

19 THE WITNESS: I --

20 MR. GILL: And is the question -- I'm sorry. Just
21 for clarification. Is the question that his -- he had
22 scratches that would result from jumping?

23 BY MS. LUZAICH:

24 Q No, his mother said that it looked like he had

1 fallen and hurt himself. I mean, she said that?

2 MR. GILL: Thank you.

3 THE WITNESS: Yeah.

4 BY MS. LUZAICH:

5 Q And my question is that would be consistent with you
6 having jumped over the balcony at Guadalupe Lopez's apartment
7 just like he said you did.

8 A When you say "consistent," you saying -- basically
9 trying to -- I feel as though you're trying to make me say,
10 yeah, I jumped over the balcony and I fell and --

11 Q That's not at all what I said.

12 A But I don't know if that's consistent with it
13 because I don't know -- I'm not an expert to say that is --
14 that's consistent with jumping over the balcony and fall and
15 hurt yourself.

16 THE COURT: You can just say "I don't know." "I
17 can't answer that."

18 THE WITNESS: I don't know. I can't -- I can't
19 answer that. I don't know the (indiscernible) to that.

20 BY MS. LUZAICH:

21 Q Okay. So -- and then you went to Chicago on the
22 bus; right?

23 A Yes. I don't know when but, yeah.

24 Q You don't know when? Let's look at State's

1 Exhibit 442. Oops. Upside down. Now can you see? When did
2 you go?

3 A Yeah. Okay.

4 Q When did you go?

5 A I don't -- let me see.

6 MR. GILL: Point to him where it is.

7 THE WITNESS: From Las Vegas. Okay. To Chicago.

8 BY MS. LUZAICH:

9 Q Does it say July 13, 2000, left Las Vegas?

10 A Oh, yes. Yes. Yes.

11 Q Went to Denver. Did you stop in Denver?

12 A Yes.

13 Q And then July 14, 2000, went from Denver to Chicago?

14 A Uh, that Agustus (phonetic), Agustus. That ain't --
15 I don't --

16 Q Okay. So is there a typo in your name, potentially?

17 A Yeah, I believe so.

18 Q Okay. So when your dad gave this to
19 Detective LaRochelle, are you saying that it wasn't really
20 your bus ticket?

21 A No. No. I'm not saying that. I'm just saying I --
22 I can't recall if it was my bus ticket or not. But I know my
23 name is Justin.

24 Q Right.

1 A So I don't know if --

2 Q You ever heard of a typo? Typographical error?

3 A Yes. Yes. Yes, ma'am. Yes, ma'am. So I -- I
4 just -- yes, ma'am. Yes, ma'am.

5 Q Okay. But do you agree you went to Chicago on
6 July 13th?

7 A Yes, ma'am.

8 Q And when you went, are we looking at a one-way
9 ticket?

10 A Yes, ma'am.

11 Q Okay. So you said that when you were in Chicago and
12 in the interview room, you were -- you confessed to all of
13 these horrific things you didn't do because you were afraid?

14 A Yes, ma'am.

15 Q Afraid you were gonna get hurt?

16 A Yes, ma'am.

17 Q Were you as afraid as your victims were?

18 MR. GILL: Objection. Argumentative.

19 THE COURT: Sustained.

20 MR. GILL: And requires speculation.

21 THE COURT: Sustained.

22 MS. LUZAICH: I have nothing further.

23 THE COURT: Mr. Gill.

24 MR. GILL: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. GILL:

Q Justin, Ms. Luzaich went over statements, do you recall, in the cross-examination?

A Yes, sir. Do I recall, yeah.

Q And you made those statements to detectives; correct? Whether it be Chicago detectives or Las Vegas detectives.

A Yes, sir.

Q And those statements were made in Chicago.

A Yes, sir.

Q At the precinct Area 4?

A Yes, sir.

Q And recall giving those statements; correct?

A Yes, sir.

Q And you also recall when I asked you on cross [sic] if you did any of these crimes to any of these individuals that have been alleged against you.

A Yes, sir.

Q Do you recall that?

A Yes, sir.

Q Did you?

A No, sir.

MR. GILL: Nothing further, Your Honor.

1 THE COURT: Do I have anything from my jurors?
2 No?
3 Okay. Thank you. Mr. Porter, if you could go ahead and
4 step down and go back to your seat, sir. Thank you.
5 MR. GILL: And with that, Your Honor, the Defense
6 rests.
7 THE COURT: Okay. If the parties can come up,
8 please.
9 [BENCH CONFERENCE BEGIN]
10 THE COURT: So just tell them Monday at 9:00. If
11 you do rebuttal, we'll do that first. If not, we'll just go
12 right into argument.
13 MS. KOLLINS: Perfect.
14 MR. GILL: And dark tomorrow and --
15 THE COURT: Yeah.
16 MS. KOLLINS: Okay. Are you prepared to do
17 instructions this afternoon?
18 MR. GILL: Yeah.
19 MS. KOLLINS: Okay.
20 MR. GILL: We needed to add one.
21 MS. LUZAICH: We need to add the voluntariness one.
22 THE COURT: Yeah.
23 MS. LUZAICH: Yeah.
24 MR. GILL: And then I think, otherwise, we're good.

1 THE COURT: Okay.

2 MR. GILL: I think they're very stock, so --

3 MS. KOLLINS: Do you want me to get one?

4 THE COURT: All right. We'll do those in a second.
5 Let me just tell them.

6 MR. GILL: Okay.

7 [BENCH CONFERENCE END]

8 THE COURT: All right. So on Monday we're going to
9 move into closing arguments. The parties need to take
10 tomorrow to kind of -- you know, there's a lot of moving parts
11 here. And so you have to process that and moving into what's
12 referred to as closing arguments. So I've given them the day
13 tomorrow to do that.

14 And so on Monday, we will finish with closing arguments
15 and then it will be to you -- to the jurors to deliberate the
16 case. So please enjoy your day tomorrow and your weekend.
17 We'll see you back on Monday morning at 9:00 a.m.

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

1 reference materials.

2 Please do not make any investigation, test a theory of
3 the case, recreate any aspect of the case, or in any other way
4 attempt to learn or investigate the case on your own.

5 Thank you very much for your time and attention today.
6 We'll see you Monday at 9:00 a.m. Have a nice weekend.

7 THE MARSHAL: All rise.

8 [OUTSIDE THE PRESENCE OF THE JURY]

9 THE COURT: All right. We are outside the presence
10 of the jury.

11 So now we are going to -- are we going to take a little
12 bit of a break and then we're gonna move into settling of jury
13 instructions.

14 Mr. Porter, sometimes I have individuals who don't want
15 to stay for the settling of jury instructions because they
16 find it boring and sometimes I have people who do. It's
17 totally up to you. Did you want to stay while the people
18 are --

19 THE DEFENDANT: Oh, yes, I want to stay for
20 everything.

21 THE COURT: Okay. Perfect.

22 All right, guys. Let's take a ten-minute break. Does
23 anybody want me to print out a version --

24 MS. LUZAICH: Please.

1 MR. GILL: Yeah, I -- I didn't print anything,
2 Your Honor.

3 THE COURT: Yeah.

4 MR. GILL: Thank you.

5 MS. KOLLINS: And then we're gonna have to find the
6 one that you want.

7 THE COURT: Yeah, the voluntariness instruction.

8 MS. LUZAICH: Yeah, I -- I can do that pretty quick,
9 I think.

10 MR. GILL: Thank you.

11 THE COURT: Yeah.

12 [RECESS AT 2:04 P.M.; PROCEEDINGS RESUMED AT
13 2:18 P.M.]

14 [OUTSIDE THE PRESENCE OF THE JURY]

15 [DISCUSSION OFF THE RECORD]

16 THE COURT: We are on the record in State of Nevada
17 versus Justin Porter, 01C174954. We are outside the presence
18 of the jury. Mr. Porter is present with Mr. Gill.
19 Ms. Luzaich, Ms. Kollins are present on behalf of the State.
20 We are settling jury instructions.

21 So, Mr. Gill, since it's State proffered, the -- the way
22 I found this the easiest to do this is we just go one by one
23 and you tell me when you have an objection and we'll do it,
24 okay?

1 MR. GILL: And just so the record's clear, this
2 isn't the first time I'm seeing these, Your Honor.

3 THE COURT: Oh, yeah. I know that.

4 MR. GILL: We've seen them --

5 THE COURT: Miss --

6 MR. GILL: -- throughout the week and --

7 THE COURT: Yeah.

8 MR. GILL: -- and gone back and forth. So I do
9 believe -- but I appreciate that, Your Honor. I will speak
10 up, but I have seen these and I don't anticipate any
11 objections.

12 THE COURT: Yeah, Ms. Kollins had sent these to the
13 parties earlier on in the -- the parties in court earlier on
14 in the week. And so everybody's been through them throughout
15 the week.

16 MR. GILL: Thank you, Your Honor.

17 THE COURT: All right. One, "It is now my duty as
18 judge."

19 Two, "If in these instructions" -- we're dealing with an
20 amended information; right?

21 MS. LUZAICH: Third or fourth amended.

22 THE COURT: So do you want -- I'm just gonna put "an
23 amended" --

24 MS. LUZAICH: Uh-huh.

1 THE COURT: -- "information is but a formal method."

2 MS. LUZAICH: And, technically, we can take out all
3 that, you know, felony, 205060.

4 THE COURT: Yeah, I'm gonna take that out because --

5 MS. KOLLINS: Sorry.

6 THE COURT: No, that's okay. I just make the
7 changes as we go on the Word document. So don't worry about
8 that. I just --

9 MS. LUZAICH: You know what I noticed, this case is
10 so old that the names are in there instead of the initials.

11 THE COURT: Yeah. Although, I do see that a little
12 bit in adult cases, though.

13 MS. LUZAICH: Do you?

14 THE COURT: Not -- not -- not kid cases, but in
15 adult, I do see that.

16 MS. LUZAICH: Oh, really?

17 THE COURT: Full names. Yeah.

18 MS. KOLLINS: The cold ones you will, but you
19 shouldn't see anything filed like past 2011 with that in
20 there.

21 THE COURT: Okay. I -- I'll try to keep --

22 MR. GILL: I don't have a position on the names,
23 Your Honor.

24 MS. KOLLINS: I mean, they're on file and

1 everything, so --

2 THE COURT: We'll just keep it as is.

3 Okay. Took all those out. And then -- so then we'll get
4 past the information.

5 All right. So now moving on. This would be -- I
6 don't -- is it five? I didn't -- let's just pretend it's
7 five. We don't need to use the -- but, "A person who."

8 "It is not necessary."

9 "The intention with which."

10 "Consent to enter."

11 MR. GILL: And, Judge --

12 THE COURT: Yes, sir.

13 MR. GILL: And I'm sorry to back up. I don't know
14 if it shows -- shown up that it is not necessary that the
15 State prove, there's a kind of a bolded character in the
16 last -- second to last line. "Intent" --

17 THE COURT: For some reason --

18 MS. KOLLINS: An "A."

19 THE COURT: -- it doesn't show up on mine.

20 MR. GILL: That's fine. It might just be a printer
21 thing.

22 THE COURT: Okay. I'll -- I'll look at it. Tell
23 me -- oh, a bolded "A"?

24 MS. KOLLINS: Yeah.

1 MS. LUZAICH: Yes.

2 MR. GILL: Yeah.

3 THE COURT: Oh, sorry. I thought you said -- yeah.
4 No, you're right. It showed up in mine. I'm sorry. I
5 thought you said a symbol.

6 MS. KOLLINS: I'm sorry. What number are we on? I
7 am, like, already --

8 THE COURT: That's okay. Just give me one second.
9 Two, three, four, five -- we were at --

10 MS. LUZAICH: Are you numbering?

11 THE COURT: No, we're not numbering right now.

12 MS. KOLLINS: Oh, okay.

13 MR. GILL: We're at the "intention with which"
14 entry?

15 THE COURT: Yeah, the "Intention with which entry."

16 "Consent to enter is not a defense."

17 "Every person who."

18 "As used in these instructions."

19 Questions for you guys. So what's -- do you see how it's
20 "as used in these instructions, a deadly weapon means," one,
21 two, three. And then what is the one, two, three at the
22 bottom?

23 MS. KOLLINS: That's --

24 MS. LUZAICH: Firearm --

1 MS. KOLLINS: -- a firearm includes.

2 THE COURT: Oh, okay. I'm gonna -- can I make that

3 A, B, C?

4 MS. KOLLINS: Yeah. I don't know why it's like

5 that, Your Honor.

6 THE COURT: That's okay. Let's just make it A, B, C

7 so it's a little bit --

8 MS. KOLLINS: Like a real outline?

9 THE COURT: Yeah. Okay. Perfect.

10 Next, "The State is not required."

11 "In order to use."

12 "Every person who willfully."

13 "In order for you to find."

14 "A person who willfully."

15 "Where a person is charged with."

16 "You are instructed."

17 "The crime of first degree kidnapping is."

18 "A person who subjects another person."

19 "Physical force."

20 "A person is not required."

21 "Submission is not."

22 "There is no requirement." I'm just gonna take out the

23 "his" since we only have "her."

24 "Where sexual acts occur."

1 "You are instructed."

2 "Robbery's the unlawful taking."

3 "Robbery may spread over."

4 "It is unnecessary to prove."

5 "If you find the Defendant."

6 On the one with the robbery 65 years older, do we not
7 have a weapon there? I can't remember. It's hard for me --

8 MS. KOLLINS: We do. And that's why I said, if you
9 find the Defendant guilty -- yes, we do.

10 THE COURT: Okay.

11 MS. KOLLINS: So there's a --

12 THE COURT: Okay. Sorry. You did -- I see it.
13 "You must determine whether or not a deadly weapon" -- I
14 didn't see that. I only saw the 65. So thank you.

15 MS. KOLLINS: Yeah. I tried to, like --

16 THE COURT: All right.

17 MS. KOLLINS: -- collapse all those instructions --

18 THE COURT: Yeah.

19 MS. KOLLINS: -- (indiscernible) talking about.

20 THE COURT: Yeah.

21 "Attempt murder."

22 "Any person who willfully and maliciously."

23 "The word willfully."

24 "To constitute the setting fire."

1 "Battery means."

2 "Battery means."

3 "When a person is a can camude [sic] -- accused."

4 "Any person who commits a battery."

5 "As used in these instructions."

6 "Prolong physical pain."

7 "Attempt."

8 "When it is truly over an act."

9 "When a person has once done things which constitute."

10 "The Defendant is presumed innocent."

11 "You are to determine the guilt or innocence."

12 "The evidence which you are to consider."

13 "The credibility or believability." I always change this
14 to "his or her." So it doesn't look like we're picking on
15 just certain witnesses.

16 Okay. "Transcape [sic] of testimony."

17 "When the trial witness fails."

18 "A witness who has special knowledge."

19 "Although you to are consider -- although you are to
20 consider."

21 "In your deliberations."

22 "During the course of the trial." I just -- I always
23 change this one. "Communicate with anyone except your fellow
24 jurors in any way."

1 "When you retire to consider your verdict."

2 "If during your deliberation."

3 "Now you will listen."

4 And then the verdict form is -- we've got burglary --

5 MS. LUZAICH: There's a typo on the kidnapping.

6 On the second -- guilty of second degree with use. And then
7 it says "guilty of first," it should be "second."

8 THE COURT: Okay.

9 MS. KOLLINS: It was bound to happen.

10 THE COURT: Of course. Yes.

11 Then we've got our sexual assault. Sexual assault
12 without. Oh, all right. One thing I do want to do, because
13 this one is really hard, I want to put the names of the
14 alleged victims --

15 MS. LUZAICH: Victims.

16 THE COURT: -- on the counts because it's just --

17 MS. LUZAICH: Yeah.

18 THE COURT: -- too hard. So can you tell me who the
19 victim is in one, please.

20 MS. KOLLINS: Teresa Tyler.

21 THE COURT: And that's common spelling? T-E-R?

22 MS. KOLLINS: Yeah.

23 MS. LUZAICH: Yes.

24 THE COURT: Okay. Same thing for -- which -- which

1 ones are hers? One through what?

2 MS. LUZAICH: She's 1 through 7.

3 THE COURT: Okay.

4 MS. KOLLINS: And then starting at count 8, that's
5 gonna be Leona Case.

6 THE COURT: L-E-O-N-A, C-A-S-E; right?

7 MS. LUZAICH: Yes.

8 MS. KOLLINS: Yes, ma'am.

9 THE COURT: And how long does she go for?

10 MS. KOLLINS: She goes through --

11 MS. LUZAICH: (Indiscernible) 14.

12 MS. KOLLINS: And specifically as to count 14,
13 arson, I spoke to Mr. Gill about anything lesser there.

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

15 THE COURT: Okay. And so we're gonna leave it at
16 first and not guilty?

17 MR. GILL: Yes.

18 THE COURT: Okay. And that's a strategic decision?

19 MR. GILL: That is correct.

20 THE COURT: Okay. And 15 starts with who?

21 MS. LUZAICH: Ramona Leva.

22 MS. KOLLINS: Yeah. Leva.

23 THE COURT: R-A-M-O-N-A, L-E-Y-V-E-A [sic].

24 MS. LUZAICH: Mm-hmm.

1 MS. KOLLINS: Yes.

2 And she goes to 17. I'm sorry. She goes to 18.

3 THE COURT: Okay.

4 MS. KOLLINS: And then Marlene Livingston.

5 THE COURT: She goes what?

6 MS. LUZAICH: Nineteen through twenty-one.

7 MS. KOLLINS: So that's where the -- that's the

8 person -- that's the sexual assault and robbery victim over

9 60 --

10 THE COURT: Got it.

11 MS. KOLLINS: With a deadly.

12 THE COURT: All right. Twenty-two?

13 MS. KOLLINS: Clarence and Francis Rumbaugh.

14 MR. GILL: Clarence and Francis are in 22 and

15 then --

16 THE COURT: Is it E-S or I-S on Francis?

17 MS. LUZAICH: I-S.

18 MR. GILL: No, it's -- oh, I'm sorry. I'm sorry.

19 Sorry.

20 MS. LUZAICH: And then it's one count of robbery for

21 each, then one count of --

22 MR. GILL: Yeah, Judge --

23 MS. LUZAICH: Wait. What?

24 MR. GILL: Sorry, Lisa. But for 22 it's Clarence

1 and Francis. So it's both.

2 THE COURT: Got it.

3 MR. GILL: Twenty-three is Clarence.

4 THE COURT: Got it.

5 MS. LUZAICH: Twenty-four is --

6 MR. GILL: Francis. Twenty-four.

7 MS. LUZAICH: Right.

8 THE COURT: Got --

9 MR. GILL: Twenty-five goes to Fowler.

10 THE COURT: The first name?

11 MR. GILL: Leroy, L-E-R-O-Y. And that's the only
12 one for Mr. Fowler.

13 THE COURT: Okay. And 26?

14 MR. GILL: Joni Hall, J-O-N-I. She goes through --

15 MS. LUZAICH: Twenty-nine.

16 MR. GILL: -- and including 29.

17 MS. KOLLINS: And then the Zazuetas.

18 THE COURT: Thirty?

19 MR. GILL: So --

20 MS. KOLLINS: Go ahead, Adam.

21 MR. GILL: Sorry. I just have the fourth amended
22 here. Laura Zazueta, L-A-U-R-A. And Zazueta is
23 Z-A-Z-U-E-T-A.

24 THE COURT: Okay.

1 MR. GILL: Guadalupe Lopez. And then
2 Beatriz Zazueta. And that's with a Z, as in "zebra."
3 B-E-A-T-R-I-Z. And then 31, if you're ready, Judge --

4 THE COURT: Yeah.

5 MR. GILL: -- is just Laura Zazueta.

6 THE COURT: Okay.

7 MR. GILL: Thirty-two is all three of them again.
8 As is 33. And then 34 and 35 are just Guadalupe Lopez.

9 THE COURT: Okay. Did you say Beatriz is a Z?

10 MR. GILL: Z, yes, Your Honor.

11 THE COURT: So for -- okay. Hold on. For 32, it's
12 all three of 'em?

13 MR. GILL: I'm getting back there. Sorry,
14 Your Honor.

15 THE COURT: It's okay.

16 MR. GILL: Yes. Attempt robbery with use.

17 THE COURT: Okay. And then 34 is just Guadalupe?

18 MR. GILL: Correct. And the same on 35.

19 THE COURT: Okay. So let's start from the top just
20 to make sure because this is an important -- all right. So
21 from the top. These are for Teresa Tyler, 1 through 7.

22 Eight, nine, ten, eleven, twelve, thirteen, fourteen are
23 Case.

24 MR. GILL: Correct.

1 MS. LUZAICH: Yes.

2 THE COURT: Fifteen, sixteen, seventeen, eighteen --
3 Ramona Leva.

4 MR. GILL: Yes.

5 MS. LUZAICH: Yes.

6 THE COURT: Nineteen, twenty, twenty-one --
7 Marlene Livingston.

8 MR. GILL: Yep.

9 THE COURT: Twenty-two, both the Rumbaugh;
10 twenty-three, Clarence; twenty-four, Francis.

11 MR. GILL: Yep.

12 THE COURT: Twenty-five, Fowler.

13 MR. GILL: Yes.

14 THE COURT: Twenty-six, Hall; twenty-seven, Hall;
15 twenty-eight, Hall; twenty-nine, Hall.

16 Thirty, the Zazueta, Guadalupe, Beatriz group;
17 thirty-one, just Laura; thirty-two, all three; thirty-three,
18 all three; thirty-four, Guadalupe; thirty-five, Guadalupe.

19 MR. GILL: Correct.

20 THE COURT: Okay. Now, we need to add, at the
21 request of the Defense, the voluntariness instruction, which I
22 will cut and paste. This says, "The State has the burden of
23 proving the voluntariness of a confession by a preponderance
24 of the evidence. This burden of proof shall leave the trier

1 of fact to find that the existence of the contested fact is
2 more probable than its non-existence. Voluntariness is a
3 question of fact to be determined from the totality of the
4 circumstances on the will of the accused. An involuntary
5 statement is one made under circumstances in which the accused
6 clearly had no opportunity to exercise a free and
7 (indiscernible) a voluntary confession must be the product of
8 a rationale intellect and a free will."

9 Is that correct, Mr. Gill?

10 MR. GILL: Yes, Your Honor. Thank you.

11 THE COURT: All right. That will be added.

12 All right. Mr. Gill, any further representations and any
13 objections to the ones that we've gone over?

14 MR. GILL: No, Your Honor. Everything, including
15 the verdict form, is good to go, with the addition of what
16 Your Honor just stated.

17 THE COURT: Okay. And you believe to be a true and
18 accurate statement of the law that should be reflected in the
19 instructions to the jury?

20 MR. GILL: Yes.

21 THE COURT: As well as the verdict form.

22 MR. GILL: Correct.

23 THE COURT: State, do you believe that these are
24 fair and accurate statement of the law that should go forward

1 towards the jury?

2 MS. KOLLINS: I do.

3 THE COURT: As well as the verdict form?

4 MS. KOLLINS: Yes, ma'am.

5 THE COURT: All righty. I am e-mailing you guys. I
6 will e-mail you a numbered copy tomorrow, just because I need
7 to do a few things. And then you guys can have a -- a
8 numbered copy.

9 MS. KOLLINS: Great.

10 THE COURT: I need to do a little bit of formatting.

11 MR. GILL: We adjourned?

12 THE COURT: Yes. That's it. Thank you.

13 MR. GILL: Thank you, Your Honor.

14 [Hearing concluding at 2:35 p.m.]

15 *****

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

19 
20 ALLISON SWANSON, CSR NO. 13377
21 CERTIFIED SHORTHAND REPORTER
22 FOR THE STATE OF CALIFORNIA
23
24

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STATE OF NEVADA,)
)
Plaintiff(s),) CASE NO. 01C174954
)
vs.)
) DEPT. NO. VI
PORTER, JUSTIN D.,)
)
Defendant(s).)
)

RECORDER'S TRANSCRIPT OF HEARING:
JURY TRIAL - DAY 11

For the Plaintiffs: STACY L. KOLLINS
ELISSA LUZAICH

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

AA 2323

I N D E X O F W I T N E S S E S

PLAINTIFFS' WITNESSES:

DAY PAGE

BRIANNE CHAPPELL

DIRECT EXAMINATION BY MS. LUZAICH 11 4

CROSS-EXAMINATION BY MR. GILL 11 19

REDIRECT EXAMINATION BY MS. LUZAICH 11 20

1 Las Vegas, Nevada, Monday, September 19, 2022

2 [Case called at 9:09 am.]

3 *****

4 [IN THE PRESENCE OF THE JURY]

5 THE COURT: All right. Good morning, everybody.
6 Welcome back.

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

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

12 MS. KOLLINS: Yes, Judge.

13 MR. GILL: Yes, Your Honor.

14 THE COURT: All right. As you remember on Thursday,
15 the Defense closed their case-in-chief. And now the State has
16 the right to present what's referred to as rebuttal evidence.
17 State.

18 MS. LUZAICH: State calls Brianne Huzby (phonetic).

19 THE MARSHAL: Step up there. Remain standing and
20 raise your right hand so the clerk can swear you N. Thank you.

21 BRIANNE CHAPPELL,
22 [Having been called as a witness and being first duly
23 sworn testified as follows:]

24 THE WITNESS: Yes, I do.

1 THE CLERK: Please be seated.
2 Will you please state your name and spell it for the
3 record.

4 THE WITNESS: Brianne Chappell, B-R-I-A-N-N-E,
5 C-H-A-P-P-E-L-L.

6 THE CLERK: Thank you.

7 MS. LUZAICH: May I?

8 THE COURT: Yes.

9 MS. LUZAICH: Thank you.

10 DIRECT EXAMINATION

11 BY MS. LUZAICH:

12 Q Good morning, Ms. Chappell.

13 A Good morning.

14 Q Did you used to be Huzby?

15 A Yes, I did.

16 Q Sorry about that. I said Huzby earlier.

17 A That is okay.

18 Q How are you employed?

19 A I'm a forensic laboratory supervisor in the
20 Las Vegas Metropolitan Police Department, DNA Biology Detail.

21 Q How long have you been a part of the Metro DNA
22 Biology Detail?

23 A I started working for Metro in January of 2014.

24 Q And in what capacity did you start?

1 A At that point I was a Forensic Scientist II. So a
2 senior level forensic scientist. And I promoted to supervisor
3 earlier this year.

4 Q And what does a forensic -- what did you do as a
5 Forensic Analyst II?

6 A So I --

7 Q Or scientist. Sorry.

8 A -- examined crime scene evidence and reference
9 standards from individuals, looked for body fluids to -- or to
10 identify body fluids, developed DNA profiles, write reports,
11 and then I could be called to court to testify on my findings.

12 Q What is the difference between a supervisor and a
13 scientist?

14 A I don't write very many cases anymore. I do a lot
15 of reviews, oversee the -- the ordering of chemicals and
16 reagents to keep the laboratory running, perform appraisals of
17 employees that are under me. Just generally help to oversee
18 the Biology DNA Detail. We also have a laboratory manager
19 that is above me. So she has overarching control of the whole
20 section. But I help her with that.

21 Q Can you describe for us, please, the training,
22 education you have that qualifies you to do what you do?

23 A Sure. I obtained a Bachelor's of Science in zoology
24 and a minor in chemistry from the University of Washington in

1 2001. This included course work in biology, microbiology,
2 physics, statistics, and chemistry. So that was my
3 educational background.

4 Would you like me to go into training?

5 Q Yes, please.

6 A Okay. While I was studying at the University of
7 Washington, as well as about a year thereafter, I worked at a
8 research laboratory on campus studying hearing loss in mice.
9 That obviously was much different than forensics, in terms of
10 its goal. But the -- the laboratory processes were very much
11 the same.

12 Then I became employed by the Washington State Patrol
13 Crime Laboratory in Seattle in September 2002, where you
14 underwent about a year of training from the experienced
15 scientists in the laboratory, to learn to identify blood,
16 semen, saliva, urine, and feces, as well as DNA typing,
17 samples from crime scenes, and comparing them to known
18 standards from known individuals.

19 After I worked there for about 11 years, I chose to move
20 here to Las Vegas and began working with Metro and went
21 through almost another year of training here to become
22 familiar with Metro's own internal policies and procedures.

23 Q And while you were working here, did you learn that
24 Metro had become a -- Metro's lab -- sorry -- had become

1 accredited?

2 A Yes.

3 Q What does it mean to be accredited?

4 A Accreditation means that you go through both
5 internal and external audits, where your laboratory is
6 evaluated against a set of standards and criteria to ensure
7 that the results that you're reporting are an equal -- you
8 know, a high quality and that you're following rules that are
9 set forth by the accredited body.

10 Q And if you are not accredited, does it mean that you
11 are not up to standard?

12 A No, not necessarily. Accreditation was, back then,
13 when -- when Metro became accredited and still is a voluntary
14 process. You don't have to be part of an accredited -- you
15 don't have to be accredited to perform -- perform the work
16 that we do. And just because people -- or labs aren't
17 accredited doesn't mean that they aren't already operating to
18 the standards that would allow them to be accredited. It just
19 means they haven't gone through the auditing process to get
20 the -- the document that says, yes, we verify that you're
21 operating at the standard.

22 Q And is it an extensive process that you have to go
23 to get that?

24 A It is. They check hundreds of criteria to ensure

1 that you're following quality control standards, that your
2 personnel meet certain criteria, that the reports that you're
3 issuing reach and meet certain criteria. So it is an
4 extensive process.

5 It's not just like -- you don't just pay and you get a
6 rubber stamp that you're accredited. It's a -- it's -- it
7 actually means something to be accredited.

8 Q And does it take years to accomplish?

9 A It does. And back when Metro was originally
10 accredited, back in 2003, I believe, that was around the time
11 that crime labs across the country were starting to get
12 accredited. So it -- it was kind of at the same time that
13 other labs -- I mean, the lab that I came from was accredited,
14 I think in 2001. So it was a relatively new process for DNA
15 testing.

16 Q And are there many labs still across the country,
17 crime labs, that are not accredited?

18 A I'm -- I'm sure there are. I -- I don't know of any
19 ones in particular, about other labs accreditation standard or
20 status, but I'm sure that there are. If you want to
21 participate in the -- in -- if you want to receive federal
22 funding, you have to be accredited. And then if you want to
23 participate in some other -- some other processes, then you
24 have to be accredited. But not -- you don't have to be

1 accredited to process crime scene evidence.

2 Q Okay. And you said in order to receive federal
3 funding you need to be accredited?

4 A Correct.

5 Q And did Metro -- Metro's crime lab -- sorry --
6 actually get some federal funding to process certain evidence
7 years ago?

8 A Yes, we did.

9 Q Can you describe what it was there?

10 A Was a national push to test untested sexual assault
11 kits that had been in -- in backlogs across the country in
12 many, many different police agencies. So there was a series
13 of different federal and state grants that agencies could
14 apply for to get money to help in the processing of those
15 kits.

16 Metro did receive federal and state funding to outsource
17 some of our kits that had never been tested and some that had
18 maybe been previously tested but a DNA profile had not been
19 obtained from those kits.

20 Q And were there several kind of waves of money that
21 came in?

22 A There was.

23 Q And when you said some tests -- or sorry -- kits
24 that had been tested but the profile was not generated,

1 were -- were there multi -- multiple of those?

2 A Yes, the technology has changed over the years. So
3 back when some of these kits were collected, some in the late
4 90s, early 2000s, the type of testing that was available to
5 the community at that point was not as sensitive as what we
6 have now. So some of these kits that could have been looked
7 at before but deemed to not have enough DNA to develop a
8 profile with those testing capabilities were able to be
9 re-evaluated at this point. And with the new sensitivity of
10 our testing, some profiles were able to be developed.

11 Q And you may have kind of answered this, but what is
12 the significance of the sensitivity?

13 A So the sensitivity of our testing means that if you
14 have a very low amount of DNA, back then, maybe we wouldn't be
15 able to develop a profile. You would need -- just to say a
16 number to explain it -- maybe for like a sexual assault kit,
17 back then, you would need 100 sperm to get a profile. And now
18 you maybe only need five.

19 So it's -- if the original amount of either body fluid or
20 skin cells that were present on that sample didn't reach a
21 certain threshold, then the analysts, back then, couldn't
22 attempt to generate a profile because they could see that
23 there wasn't enough DNA present for the testing that was
24 needed.

1 Q Okay. So you talked about kits. And just so that
2 we're clear, we're talking about sexual assault kits that were
3 sitting on the shelf at the crime lab; is that correct?

4 A That's correct.

5 Q And were there more than 5,000 of them?

6 A There was. And some of these kits, you know, some
7 have never been tested. Some of the cases had just not been
8 properly investigated, in retrospect. Some of them were
9 already adjudicated. So sometimes kits weren't tested because
10 someone already pled to the crime. And so those kits weren't
11 forwarded through the testing process because they weren't
12 deemed necessary at that point.

13 But we did go back to even those kits that had already
14 been through the court process and adjudicated just to lay
15 eyes on them and to provide some closure and to preserve that
16 evidence in the form of a DNA profile.

17 Q And was every sexual assault kit that was still
18 sitting on the shelf ultimately tested?

19 A Yes, it was.

20 Q Now, you talked about outsourcing to Bode. Can you
21 explain what you mean by that?

22 A Yes, Bode is a private laboratory. And we selected
23 them from several different laboratories to have a contract
24 with them for our outsourcing project.

1 So our DNA technical leader evaluated all of their
2 procedures, their accreditation, did a site visit to ensure
3 that if we give them our kits, that they will perform
4 essentially the same testing that we would in-house.

5 The problem is that we don't have enough people to do it
6 all in-house. So the -- the outsourcing project was
7 beneficial because we could put that money towards another
8 laboratory that maybe had more personnel to process those kits
9 for us. So they would process the kit just as we would, if
10 had kept the kit in-house.

11 Then they go through an entire internal review process.
12 So they have a technical review and then what we call an
13 administrative review. So they have analysts at their
14 laboratory that examines the kit. Then they have someone else
15 that does a review of the entire process. And then they have
16 a second person that does a review of that entire case file.

17 Then we send it to another agency that we outsourced with
18 to do another technical review. And then they came back to us
19 for an administrative review.

20 So each of these kits that we sent out to be outsourced
21 underwent multiple reviews to ensure that the DNA profiles
22 that were developed were accurate.

23 Q We heard from another analyst earlier that talked
24 about reviews. So you just mentioned anything that you

1 outsourced. Anything that is done in-house, do they also go
2 through the same extensive reviews, every test that's done?

3 A Every -- yeah, every report and every case that's
4 worked inside Metro, 100 percent of them get a technical
5 review by another experienced analyst -- analyst in the
6 laboratory, and they also get an administrative review by
7 another experienced analyst in the laboratory.

8 So the person that -- that puts the file together and
9 does the interpretation is qualified and experienced and it
10 goes through two other sets of hands to ensure that any
11 mistakes are caught and that -- that the other people also
12 agree with the interpretation.

13 Q And I'm sorry. I don't even know if we got this
14 information before or not. But what is the difference between
15 a technical review and an administrative review?

16 A There's some overlap because what you're -- you're a
17 qualified individual. Even when you're doing an
18 administrative review, you still see the technical things.
19 But generally speaking, a technical review is evaluating the
20 technical decisions that were made in the case, the technical
21 interpretations. So if the profile, you know, maybe was a
22 mixture, which means it was consistent with more than one
23 individual, that takes some experience and technical ability
24 to be able to interpreter a mixture.

1 So when someone's doing a technical review, they're
2 verifying those types of things that -- that all of the
3 standard operating procedures were met and that the quality of
4 the work completed was good.

5 Administrative tends it to focus more an typos and, you
6 know, making sure that the numbers were correct and not
7 transposed. Things like that.

8 Q Sorry about that. And does every kit that is in
9 Metro's crime lab have both a police event number and a Metro
10 crime lab number?

11 A Yes, they did.

12 Q And they're two different numbers; correct?

13 A They are. When -- when an item is submitted to --
14 or when a case is submitted to the crime lab -- because not
15 every Metro case comes through the crime lab. Only things
16 that, like, need, you know, drug chemistry or DNA testing
17 would come to the crime lab. And when it comes to us, we give
18 it an internal number for our own tracking purposes.

19 Q Okay. So pursuant to this grant that outsourced to
20 Bode, was a kit sent to Bode under event -- Metro event number
21 000201-2429?

22 A That's correct.

23 Q And did it have a lab case number 18-09360?

24 A Yes.

1 Q Now, the 18-09360, is that -- does that mean that
2 that kit was kind of looked at again in 2018?

3 A Correct.

4 Q But Metro's event number stays the same from back in
5 2000?

6 A That's correct.

7 Q And did that sexual assault kit come from
8 Teresa Tyler?

9 A Yes, it did.

10 Q When it was sent to Bode, what work did Bode do?

11 A Bode selected three samples. So under our contract,
12 we had them select the top three samples that, based on the
13 scenario, would hopefully have the best chance of getting a
14 DNA profile. So they selected three samples for DNA testing.
15 And they were able to develop a profile from a foreign
16 contributory and submit that back to us.

17 Q What item did they find a profile for a suspect on?

18 A The vaginal swabs. Sperm fraction.

19 Q Okay. And what did they send back to you?

20 A They sent back -- with the case file, they -- part
21 of the case file was a single source male profile, at that
22 time was unknown who the contributory was. But they sent us
23 back the profile so that we could use that for comparison in
24 the future.

1 Q And when it got back here, did it become assigned to
2 you?

3 A It did.

4 Q What did you do with it?

5 A I was able to compare it to another -- another DNA
6 profile in the form of a reference standard that an analyst
7 who previously worked for Metro had developed years ago.

8 Q Who was the analyst who developed it years ago?

9 A Kathy Guenther.

10 Q Okay. We heard from her the other day. So she
11 developed a profile from a reference standard that you began
12 to utilize?

13 A That's correct.

14 Q And who was the reference standard that she had
15 developed a profile from?

16 A It was from Justin Porter.

17 Q And what did you do with the reference standard that
18 Kathy Guenther had developed?

19 A Essential --

20 Q Profile. Sorry.

21 A When you compare profiles, it's essentially just
22 matching numbers together. So if the evident sample maybe had
23 a 15, 16 at one location, then you would want to make sure
24 that the reference standard also had a 15, 16 at that

1 location. So at that point it's just matching numbers. So
2 going through all 13 locations that were tested, that I could
3 do comparisons with, they all matched.

4 Q So the unknown male profile on Teresa Tyler's
5 vaginal swabs belonged to Justin Porter?

6 A Well, I could say that they matched and --

7 Q Thank you for correcting me. Okay.

8 A There's a statistical weight associated with that
9 match that gives you an idea of whether -- how -- what the
10 probability is that that profile from the vaginal swab
11 originated from Justin Porter or if it originated just by
12 random chance.

13 Q Okay. And what was your statistical analysis?

14 A May I refer to my report just to refresh my memory?

15 THE COURT: If that would refresh your recollection,
16 yes, of course.

17 MS. LUZAICH: Go right ahead.

18 THE WITNESS: Yes, it would.

19 So the probability of randomly selecting an unrelated
20 individual from the general population that has a DNA profile
21 that is consistent with the DNA profile deduced from the
22 vaginal swabs sperm fraction is approximately 1 in
23 31.9 trillion.

24 ///

1 BY MS. LUZAICH:

2 Q Can you put that in layman's terms?

3 A Yes. Essentially what that's saying is that we know
4 that Justin Porter's profile matches the sperm fraction of the
5 vaginal swab profile. Now, we want to know, does -- is that
6 just coincidental? Could, you know, any random person that
7 you pick, could they have matched just by coincidence.

8 So this stat is saying if you go out to the general
9 population, if you walk out on the street and you randomly
10 pick somebody, what's the chance that that random person would
11 have a profile that matches. So the chance is one in -- the
12 probability is approximately 1 in 31.9 trillion that you would
13 have someone else that you randomly pick that would also match
14 that profile.

15 Q Okay. And there are a hundred people on the planet?

16 A Oh, gosh. There's, I don't know, like 7 billion.

17 Q All right. So this is astronomically -- the
18 number's astronomically higher than that.

19 A Yes. Trillion is much larger than a billion.

20 Q Was there also a profile from the vaginal swab of a
21 female?

22 A Yes, there was.

23 Q And who was that?

24 A That one -- that DNA profile from the vaginal swab

1 that was the female matches the reference standard from
2 Teresa Tyler.

3 Q Okay. And those are the only two profiles that were
4 found on Teresa Tyler's vaginal swab.

5 A Yes.

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

7 THE COURT: Mr. Gill.

8 MR. GILL: Briefly, Your Honor. Thank you.

9 CROSS-EXAMINATION

10 BY MR. GILL:

11 Q And, Ms. Chappell?

12 A Yes.

13 Q You were first tasked to kind of retest, if you
14 will, in 2018?

15 A To --

16 Q Or review the reports.

17 A Review, yes.

18 Q So do you know who did the actual test in 2018?

19 A We outsourced that to Bode in 2018.

20 Q Okay. So it's outsourced and then it comes back and
21 you review it?

22 A Correct.

23 Q And -- and the reason it wasn't done back in 2000,
24 was it a technology issue?

1 A Yes, the testing just wasn't sensitive enough to
2 develop a profile from that sample back in 2002 or whenever it
3 was tested. I -- I can't recall.

4 Q Early 2000s.

5 A Early 2000s, yeah. That works.

6 Q Is fair. Twenty or so years ago. Is that fair?

7 A Yes.

8 Q And you say there was a match. And you're -- you're
9 unable to say -- or -- or usually you guys won't say that it
10 belongs to somebody; is that correct?

11 A That's correct. We just --

12 Q Okay.

13 A -- say the things match and then it's the jury's
14 determination to take the statistical weight into account and
15 determine whether they think that person contributed it or
16 not.

17 Q Okay.

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

19 THE COURT: Thank you, Mr. Gill.

20 Redirect?

21 MS. LUZAICH: Just briefly.

22 REDIRECT EXAMINATION

23 BY MS. LUZAICH:

24 Q And that's a scientific thing. You're a scientist,

1 not a finder of fact; correct?

2 A That's correct.

3 MS. LUZAICH: Thank you.

4 THE COURT: Any questions from the members of the
5 jury?

6 All right. Thank you so much for coming in and
7 testifying. Please don't share with anyone else involved in
8 the case since it's on ongoing trial. We appreciate you being
9 here.

10 THE WITNESS: Okay.

11 THE COURT: You are excused.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you.

14 State?

15 MS. LUZAICH: The State rests, Judge.

16 THE COURT: All right. Okay. At this point in time
17 we are going to move into our closing arguments. But before
18 we do that, I have to instruct you on the law. And so
19 Officer Kennis is going to pass you out the jury instructions.

20 So these instructions will go back with you into the jury
21 deliberation room. I always encourage all jurors to, once you
22 go back, make sure you read through them, have an
23 understanding of the law. But they really are kind of your
24 dictionary in regards to, okay. This is what the crime is.

1 This is what the State has to prove in order to get this
2 crime. So it breaks down each one for you guys.

3 So I will read those to you in just a moment, after
4 they're all handed out. Then we'll take a short recess 'cause
5 this takes a little bit to do that. And then so the attorneys
6 can set up for their arguments and then we'll go into
7 arguments.

8 THE MARSHAL: Judge, you need a copy?

9 THE COURT: Yes. Thank you.

10 THE MARSHAL: Sure.

11 [THE COURT READ THE INSTRUCTIONS TO THE JURY]

12 THE COURT: All right. So we're gonna take a short
13 break so they can set up for their arguments. You guys can
14 take a quick bathroom break and get something to drink.

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

23 Please do not make any investigation, test a theory of
24 the case, recreate any aspect of the case, or in any other way

1 attempt to learn or investigate the case on your own. And
2 please do not form or express any opinion regarding the case
3 until it's formally submitted to you.

4 I'll see you at 10:20. Thank you.

5 THE MARSHAL: All rise.

6 [RECESS AT 10:07 A.M.; PROCEEDINGS RESUMED AT
7 10:27 A.M.]

8 [IN THE PRESENCE OF THE JURY]

9 THE COURT: All right, everyone. Thank you. Please
10 be seated.

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

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

16 MS. KOLLINS: Yes, ma'am.

17 THE COURT: Mr. Gill?

18 MR. GILL: Yes, Your Honor. Thank you.

19 THE COURT: Ms. Kollins, are you prepared to give
20 the State's first close?

21 MS. KOLLINS: I am.

22 THE COURT: All right. Floor is yours, ma'am.

23 CLOSING ARGUMENT BY THE STATE

24 MS. KOLLINS: Good morning, ladies and gentlemen. I

1 know it's been a long couple of weeks. To reiterate what I
2 told you at the beginning, thank you again on behalf of the
3 Clark County DA's Office, more specifically Special Victims
4 Unit. We appreciate your time and attention. We've actually
5 gotten this case to you for your scrutiny and your attention a
6 little bit quicker than we believed.

7 So kind of the theme of this case is the truth doesn't
8 change. Over all of these years, you saw Ramona Leva testify
9 here, you saw Teresa Tyler, you saw -- you heard test --
10 written -- or read-in testimony from everyone else. But their
11 truth, their victimization, despite the fact that this was
12 some 22 years ago, it hasn't changed.

13 And so what I'm gonna try to do is walk you through the
14 evidence that you've heard over the last couple weeks and show
15 you how those elements meet the offenses that Mr. Porter is
16 charged with.

17 In every criminal case there's two questions we have to
18 answer: Who did the crime and what are the crimes for which
19 the law holds them responsible.

20 We know from the evidence in this case that these crimes
21 began on February 1st of 2000 and concluded around June 9th of
22 2000. So just about a five-, six-month span.

23 At that time what did the robbery and the sexual assault
24 detectives know? Sexual assault detectives knew that there

1 was a black male; teens through mid 20s; all these crimes were
2 committed with forced entry; that a knife was used; phone
3 cords were cut; property and money was taken from everyone;
4 there was sexual assaults, either fellatio or penis/vagina;
5 there were sophisticated, for the time, efforts to clean up
6 DNA evidence and fingerprint evidence; there was sexually
7 explicit conversations with these females -- we'll go through
8 some of that language -- they believe the suspect was
9 traveling on foot because vehicles were being stolen; and it
10 was centralized -- all these crimes were centralized very
11 closely in what is known as the Downtown Area Command.

12 Simultaneously, robbery detectives knew that they had a
13 black male adult, late teens through 20s, forced entry, using
14 a knife, property and money was taken, gun was used in one,
15 efforts were being taken to conceal identity, using knife to
16 rummage through property so as to not leave prints.

17 So this series of crimes -- and they're all mapped out
18 for you there. On February 1st there's Teresa Tyler,
19 2895 East Charleston. March 7, Leona Case. March 25,
20 Ramona Leva. April 4, Marlene Livingston. April 12, the
21 Rumbaugh's. June 6, Leroy Fowler. June 7, Joni Hall. June 9,
22 the Zazuetas. And the homicide that was part of that series.

23 Early in the investigation, after talking to -- or later
24 in the investigation, I should say, after June 7th, after

1 Joni Hall, they -- they have a composite drawing. Sexual
2 Assault has this composite sketch. So the case begins to
3 evolve.

4 And I know you've heard this story through detectives.
5 But I just kind of want to walk you through it a little bit.
6 I didn't put in every victim in this slide. But this is a
7 chronology of the case and how it transpired and ultimately
8 was solved.

9 Teresa Tyler's burglary, robbery, sexual assault starts
10 everything rolling on February 1st. Takes till about June
11 till Sexual Assault and Robbery kind of start to begin to
12 collaborate. On June 10th they know that the DNA from the
13 Teresa Tyler case and the Ramona Leva case match each other,
14 but they don't have a suspect. So they decide to embark on
15 the task force.

16 And the task force starts on June 13th. They contact
17 multiple individuals, Defendant being one of them. Defendant
18 was not a target, it was somebody that was in the area. He
19 was out past curfew. Contact was made with law enforcement.
20 If Defendant hadn't been on that electrical box that night,
21 these cases may have gone unsolved.

22 After that contact was made, Defendant leaves for
23 Chicago. And the DNA process is a little bit slow back then.
24 So by the time Defendant's profile is obtained and matched to

1 Teresa Tyler and Ramona Leva, it's August 10th of 2000.

2 And you heard from Mike Castaneda, Barry Jensen,
3 Debbie Love, all former Metro detectives, that this was the
4 catalyst to apprehend Defendant, talk to him, take him into
5 custody. They begin to communicate with -- begin communicate
6 with Chicago PD. They locate him very quickly. They execute
7 a search warrant on his house. They fly to Chicago and
8 Defendant confesses to many of his crimes.

9 So I want to talk about the who for a minute. 'Cause
10 this is not a whodunit case. These are the things that tie
11 this Defendant to these crimes. This case isn't about Kris.
12 This case isn't about some unknown perp -- perpetrator. So
13 we're going to talk about the who.

14 DNA ties Defendant to this case, through Ramona Leva and
15 through Teresa Tyler. Defendant's known prints tie him to the
16 crime scene of Joni Hall, Marlene Livingston, and the
17 Rumbaughs. Defendant confesses to the sexual assault,
18 robbery, and burglary of Teresa Tyler and Joni Hall and the
19 victimization of Leona Case with the stabbing and the fire.
20 Confesses to the sexual assault of Marlene Livingston. And
21 confesses to the robbery, attempt robbery, and shooting in the
22 Zazueta case.

23 DNA, whether it came from 2000 or in the last testing,
24 2018, is expert testimony. And you can consider it as such.

1 And Defendant's known profile, his known profile, a full
2 profile from his DNA, has been matched to Teresa Tyler's
3 sexual assault kit, pursuant to the funded testing and was
4 also matched to the DNA on the towel taken from her crime
5 scene.

6 Defendant was all -- also a match -- and they gave you --
7 we gave you statistical probabilities, and I don't know them
8 off the top of my head 'cause I'm not scientist, that he was
9 also a match to the vaginal swab from the sexual assault kit
10 of Ramona Leva.

11 He was forensically tied to the rape and victimization of
12 both of those women. We provided this chart in evidence as
13 to -- this is for the towel tested from Teresa Tyler. He is
14 missing on just a couple locations, but there's still a
15 statistical probability. And he was a match at every location
16 for the sexual assault kit of Ramona Leva.

17 Don't forget what Brianne just testified to. That he was
18 a match at every location, full profile, to the vaginal swab
19 of Teresa Tyler.

20 Fingerprints place Defendant, no one else, Defendant, a
21 stranger to all these victims, no one that routinely came to
22 their house, no one that visited -- fingerprints place him at
23 the residence of Joni Hall, at the residence of
24 Marlene Livingston, at the residence of the Rumbaughes.

1 As to Marlene Livingston, prints were identified to
2 Justin Porter on the windshield of that Dodge Dynasty. Prints
3 were also identified to Justin Porter on the balcony rail of
4 her home. It's not a whodunit.

5 Joni Hall. Joni Hall poured that -- poured Mr. Porter a
6 cup of Kool-Aid and he wiped it and he rinsed it and he put it
7 in the sink, but it didn't work out because he left his prints
8 on there, and those prints were identified to him, Joni Hall's
9 rapist.

10 The Rumbaughs. The older couple in the small apartment.
11 He was fishing around for money, demanding money. He had a
12 knife. He found some El Cortez cups.

13 Hadn't seen those in a while. I don't think machines
14 spit out money anymore, do they?

15 He found those El Cortez cups full of change and he left
16 his prints on one of 'em, identified to Justin Porter. Not
17 invited to that home. Not a friend in that home. There to
18 victimize and steal.

19 So all of those things -- prints, DNA -- tie no one else
20 but Justin Porter to these crime scenes. This is not a
21 whodunit.

22 He was identified in court by Joni Hall and Leona Case to
23 where they sat there and testified, pointed across the room
24 and said, "The person over there at that table did these

1 things to me." That testimony is evidence to you that he
2 committed these crimes.

3 Defendant confesses to the crimes against Teresa Tyler,
4 Joni Hall, Leona Case, Marlene Livingston, and the Zazueta.
5 And we're gonna walk through them. We're gonna walk through
6 everything he said. And I'm confident, after we walk through
7 that information, that you will see that this was a knowing
8 and voluntary statement made to detectives.

9 State has the -- the burden of proving that when someone
10 gives a statement to police officers in custody that that's
11 voluntary. That it hasn't been obtained by any coercion or
12 force or distress or anything like that. And the instructions
13 tell you that, okay?

14 But let's just be clear about one thing here when we're
15 talking about this 17-year-old, if you're worried about the
16 voluntariness of his confession. He didn't rape like a kid.
17 He raped like an adult. He didn't rob like a kid. He robbed
18 like an adult. He didn't burglar like a kid. He burglarized
19 like an adult. He didn't steal like a kid. He stole like an
20 adult.

21 So taking all those things, and his savvy and his
22 know-how, into consideration, because you may, was it
23 voluntary when he talked and spoke to Chicago PD and Metro?
24 Well, he was read his Miranda warnings. Again, he's a savvy

1 17-year-old for the year 2000. He's cleanin' crime seeds --
2 crime scenes. He's cleaning up DNA. He's wrapping his penis.
3 He's tying up women so they can't get to the phones.

4 When you listened to his statement, there's no evidence
5 in that statement of anger or distress or fear or compromise
6 or pressure from anyone. Qualitatively, when he's speaking to
7 those detectives, he is still minimizing everything that's
8 happened and everything that's been done. He, Justin Porter,
9 thought he had a handle on all these crimes.

10 He reaches out to police three times before they come to
11 Chicago. He calls Barry Jensen three times. And I submit to
12 you, that's because he's smart, or at least he thought he was.
13 And he thought he was gonna get out in front of it and kind of
14 push the police back, make 'em slow down in hopes that they
15 weren't gonna get him.

16 There were no crimes after they got his buccal swab.
17 It's pretty savvy behavior. He's, like, better get off the
18 radar, better get off the grid.

19 There is no evidence, even by the testimony of the
20 Defendant, there was no evidence that there were any threats
21 made to him by Chicago PD or Metro PD. The only thing he did
22 was cast some vague aspersions, basically "I know what they do
23 in shy (phonetic) and I'm gonna get hit with a phone book."
24 But he didn't impute those threats to any of those

1 detectives -- oh, one second. Just got disconnected.

2 THE COURT: Okay. I'm sorry.

3 MS. KOLLINS: Stopped using my paper, using the
4 screen and here I am -- he wants you to believe that
5 everything that he was able to discuss to Metro and to Chicago
6 PD was because it had been fed to him in a pretext,
7 prerecorded interview of some sort.

8 Well, here's the thing about that and here's why that
9 just falls flat: That warrant was still being drafted. The
10 arrest warrant was still being drafted. The search warrants
11 were still being drafted. Chicago PD did not have all the
12 details of this cases to feed that kid. And there is no
13 evidence that he was bullied, manipulated, lied to, hurt.

14 I mean, again, we're talking about a 17-year-old who's
15 engaging in adult games. He didn't rob like a 17-year-old; he
16 robbed like an adult, raped like an adult, stole like an
17 adult, and thought the story -- the minimized story he was
18 giving was gonna get him out from under all of this.

19 So I submit to you that when you have to make the
20 determination whether the State has shown you by a
21 preponderance of the evidence that that statement and that
22 confession was voluntary, it was. There's no evidence to the
23 contrary.

24 As to Teresa Tyler, on February first, this is what comes

1 out of his statement. His confession to the crimes -- the
2 rape, robbery, and burglary -- of Teresa Tyler. They met at
3 the Showboat. He acknowledged that the apartment was
4 2895 East Charleston, building E, number 1016. Asked her when
5 he could get with her. "She let me in and then asked me to
6 leave."

7 "So she put your penis in her mouth."

8 "Yes, grabbed it with her own two hands."

9 And if you recall, that was something that Teresa Tyler
10 just couldn't talk about when she was here.

11 He said he put his penis in her vagina with a condom.
12 That he flushed it down the toilet. She was scared, she might
13 say it was rape. That's what he said about what he did in
14 Teresa Tyler's apartment. That that victim would call what he
15 did to her rape. "Then she might say 'he's gonna kill me.'"
16 Defendant's words describing the emotional state of
17 Teresa Tyler during the course of that sexual assault. And I
18 submit to you, sexually assaults her four times and puts her
19 in the closet. But we'll get to that later.

20 He says he threw the phone. "I tied her up and I put the
21 knife right behind her so she could cut herself loose. I
22 wasn't really trying to hurt her." That's what the Defendant
23 told police. Used the phone cord to tie her up. "I got the
24 knife at her house and -- out of her kitchen and there was

1 white furniture."

2 I submit to you that confession regarding the rape,
3 robbery, kidnapping, and burglary, as it relates to
4 Teresa Tyler, should show you that the Defendant is the one
5 that did these crimes.

6 He also confessed to his actions against Joni Hall. That
7 they met at 7-Eleven, talked about her to -- like, "I talked
8 to her about stuff like you would talk to your wife about."

9 Sorry. There's a glare on there. Trying to -- "if they
10 say no, I know they're looking for somebody." "She said to me
11 that her man was in California." "Telling me she's got a baby
12 and a roommate with two kids."

13 Went back to her place later that night. "I was knocking
14 and nobody was answering," so you put your foot against the
15 door. It's what he told the police. "I was knocking after I
16 went back there later that night. And nobody was answering me
17 so I put my foot on the door." And then tries to tell the
18 police, oh, the door was already damaged. It's one of those
19 minimizing things I was talking about. One -- one minute he's
20 telling you he basically kicked the door in, now he's telling
21 you, oh, but the door was already damaged.

22 "She came out of her room and sat on the couch with me.
23 Didn't want me to go in the other room." Talks -- talks about
24 Joni Hall for quite a while. Her child was sleeping. "We

1 talked for 45 minutes. And I know what she wanted. And I
2 know what my goal was. Then I didn't know what she wanted so
3 I kissed her. And my goal was to get some, to get some sex.
4 My goal in Joni Hall's apartment was to get some sex. She
5 didn't want it. She gave me Kool-Aid in a cup. Remember,
6 that's where the fingerprints come from. She didn't want to
7 be on the couch because it was squeaky. I wore a condom."

8 And then at the end of his conversation about Joni Hall
9 is where the layers start to peel back. And you see the
10 anger, where the anger comes from. And he says "sometimes I
11 get angry at women and I just snap." That's what he tells
12 those cops. "I just snap." "I'm angry at this one 'cause she
13 wants to use me."

14 Now, you heard these interviews, and I'm paraphrasing
15 some of it just to move this along because we could spend a
16 long time on this. If you remember it differently than I
17 articulated, certainly, you know, rely on your own memories.

18 But he's angry at this one, "so I took the TV and the CD
19 player and the TV fell in the stroller." "Gave the CD player
20 to my girl." And he says he's been telling the truth the
21 whole time. Up there, this part of their conversation, he's
22 just been telling the truth.

23 These admissions to these crime scenes and their
24 knowledge of intricate details, I submit to you, were not

1 capable of being served to this kid for him to regurgitate
2 that. He knew these things because he was there. He knew
3 these things because he committed the crimes.

4 He also confessed to Leona Case. Do you remember
5 Leona Case? She was stabbed twice, locked in her bathroom,
6 her apartment was set on fire. She made it out; right? Knock
7 on wood for Leona.

8 Says he met her at the store. She lived in his sister's
9 apartment complex and she had let him use the phone
10 previously. And we made out that first day. "We made out
11 that day." See, minimizing. What we're doing there is
12 we're -- we're saying -- we're pointing it at the victim. You
13 know, well, this woman made out at me -- made out with me so
14 she must have wanted everything that followed; right? It's
15 called victim shaming. Thinks it's smart, but it's really
16 not.

17 Older women always want a younger man. Walked up to the
18 door. It opened when I pushed on it. Does that sound like an
19 invitation to you? Does that sound like the door was free and
20 open for him to just stroll in whenever he wanted? Just
21 'cause he had previously used the phone?

22 "She was sitting on the couch. We had sex. Then I
23 called her a nasty bitch. She got upset. And she picked up
24 the knife. I grabbed the knife and I stuck it. I think it

1 went in her stomach."

2 "Lot of females tell me I'm attractive. And, yeah, I
3 snapped." Referring to being at Leona's house. "I snapped."
4 Had sex on her bed. Penis/vagina with a condom. "And I was
5 scared because I had just stabbed the woman, so I had her go
6 to the bathroom and then I lit a cigarette, threw the match,
7 then puff." That's what he says.

8 "Propped the chair against the door because I knew I was
9 in trouble." So he's telling you right there, "I confined
10 that woman to that bathroom and did everything I could do to
11 destroy what happened in that apartment. And I lit the place
12 on fire and I hit the trail."

13 Smoke detector goes off. "I took the battery off. I
14 didn't take gas with me 'cause I'm not gonna be stupid and
15 take -- run around with gasoline. Not gonna carry gas with
16 me."

17 He confesses, again, voluntarily, to the crimes against
18 Marlene Livingston. An elderly woman in an upstairs
19 apartment. Took 50 bucks and took her car. Marlene had the
20 Dodge -- white Dodge Dynasty. "Leaned on the door and it was
21 soft and it was wood so it would crack. I wore a mask and she
22 was shaken up."

23 There is -- save and expect Halloween, there is no good
24 reason, no lawful reason to put a mask over your face and bust

1 into someone's apartment that you don't know, whether the
2 door's open or not.

3 "Was your penis in her mouth?"

4 "It got close but not all the way in."

5 If you remember Marlene Livingston was on her period.
6 She displayed a pad to the Defendant. He decided he didn't
7 want penis/vagina sex and he wanted to put his penis in her
8 mouth instead. And then he says, "No, I didn't have to use a
9 knife on this elderly woman 'cause, I mean, I got a grandma."
10 That's what he says. "I got a grandma so I didn't have to use
11 a knife to control, manipulate, sexually assault, rob this
12 older woman."

13 He confession -- he confesses to the Zazueta case. I
14 thought I blew that up.

15 They ask him, "Remember the one where you got in the
16 fight with a guy?"

17 And it's -- he says, "It scared me pretty good. It was
18 on the second floor. I had to turn the knob to the door. I
19 go down the hall and I see the girl and she was scared. She
20 was Hispanic. So I told her all I wanted was money. So she
21 gave me money and I ran to the other room. There was a dude
22 in bed and he rushed me."

23 These are all details of what happened after he broke in
24 the Zazuetas. He went to Beatriz's [sic] room, took money

1 from her. Went to the second room, that's where the
2 altercation happens with Guadalupe. There's two people in the
3 second room. "He rushed me, hit me. My arm is swinging and
4 the gun went off." It's a 6-foot-3, 19- to 20-year-old
5 Hispanic guy.

6 So I submit to you, again, this confession, these
7 admissions are voluntary because there is no way all of these
8 details were fed to Justin Porter for him to give them back to
9 a detective.

10 He said he had a black and brown gun with a black barrel.
11 He had had a few days before the incident. He had to rack a
12 round into the chamber. And that becomes important later. He
13 had to rack a round by pulling the slide back to get into
14 the -- to get a round into the chamber.

15 "I hit the wall and the gun went off. I skinned his
16 legs -- I skinned his leg." Excuse me. "Three shots went
17 off. I was running to open the door and I fled and went out
18 the window. And the glass shattered all over. I didn't wear
19 a bandana, but I had a thing around my head." And at this
20 point some regrets start to seep in. Because he says, "If I
21 could change what I did."

22 He admits all of those crimes, all of those crime scenes.
23 He lays them out in detail. When you listen to -- you know,
24 listen to what we listened to or what was read in and what

1 you'll be able to listen to on your own. You'll hear no
2 evidence of distress, coercion, bullying, force, threats. He
3 gave that information because he was there. He was the
4 perpetrator. He knew those crime scenes. He know those
5 victims. He knew what he had done.

6 There's an instruction that talks about credibility and
7 believability. Now, the Defendant got up here and talked to
8 you about what happened during those interviews that, my
9 words, not his, led him to make a false confession or false
10 admissions.

11 He wasn't able to give you anything specific. Just that
12 law enforcement in Chicago are a rough bunch and that he
13 didn't -- he thought something was gonna happen to him.
14 Thought he was gonna get killed. But there was no evidence of
15 that, other than what Defendant's self-serving testimony,
16 quite honestly, gave you.

17 This instruction tells you that you are the triers of
18 fact and you decide whether someone's believable or not. And
19 if you think somebody lied about something material, i.e.,
20 lied that the cops were beating me or coercing me or
21 threatening me. If you think they lied about something
22 substantial, you can disregard everything they had to say.

23 And I'm not talking about a situation of failed memory,
24 okay? We're talking about, look at their motives. What's

1 Justin Porter's motive as he comes in here and tells you that,
2 despite the forensic links to all of these crimes, that he was
3 led to confess by police manipulation.

4 Justin's got a lot to gain. And his motivation is your
5 decision. What his motives are, are your decision. Whether
6 to believe him or not in his recitation of why he confessed to
7 the details of those crime scenes as voluntary or not.

8 But I submit to you, there was no evidence of, again,
9 coercion, brutalization, any of those things that our law
10 enforcement unpopular today. I mean, this isn't a great time
11 for law enforcement. There's been, you know, issues. But
12 there's no issue with this kid in this case being coerced
13 or bullied or anything of those thing.

14 So I submit to you he was dishonest about that. And
15 based on that dishonesty, you can disregard his explanation
16 for these crimes. For example, he said he never met
17 Teresa Tyler; right? Said he never met her. Today we found
18 out his DNA, his sperm is in Teresa Tyler's vagina. To quote
19 my trial partner, magic sperm. No. He lied. That's a
20 material fact in this case.

21 There are a lot of instructions in this case. I submit
22 to you, at this point, you, as ladies and gentlemen of the
23 jury, should know beyond a reasonable doubt that Justin Porter
24 is the who. He's the whodunit. That ship's sailed, okay?

1 Between the DNA, the confession, the fingerprints, and his
2 disingenuous testimony, he's told you that he did it. Okay?

3 Now, what is the law gonna hold him responsible for? And
4 there's a lot of instructions. And I'm gonna try to walk you
5 through the instructions and the facts. The State is required
6 to prove the material elements of each offense beyond a
7 reasonable doubt.

8 Teresa Tyler. You remember her. She was the young lady
9 that came in here. I stood up here and questioned her very
10 close to the podium, much like we may question a child in a
11 case, so that they have eye contact with the prosecutor.
12 She's very anxious when she was here. I submit to you her
13 deem -- her demeanor, her smiling and her affect was not
14 necessarily reflective of what was going on with her. But you
15 are the triers of fact.

16 Ms. Tyler was the victim in counts 1 through 7. That's
17 in your instructions. Burglary, first degree kidnapping, four
18 counts of sexual assault, and robbery with use of a weapon.

19 That's Teresa Tyler. Doesn't look much different there
20 than she did -- or didn't look much different here than she
21 did there 22 years ago. She lived alone. She was in that
22 apartment on East Charleston. That was her door. And her
23 living room of her apartment at that time.

24 Defendant is charged with entering her home while in

1 possession of a deadly weapon. Burglary is when you go into
2 someone's home, day or night, it can be an apartment, with the
3 intent to commit another felony therein, whether it be robbery
4 or sexual assault, in this case.

5 If you commit that burglary while in possession of a
6 weapon -- and you will see in all of these counts, in all of
7 these charges that you're gonna deliberate on, use of a deadly
8 weapon is a separate finding for each and every count. So I'm
9 gonna tell you that now so I don't have to tell you for every
10 single of the 35 counts we're gonna go through today. Okay?
11 So you must always find if there's use of a deadly weapon.

12 So use of a deadly weapon. You can carry that weapon in.
13 You can acquire that weapon inside. And we are not required
14 to provide you that weapon in court. So if you enter a home
15 with the intent to do bad things inside, sexual assault or
16 robbery, and you go in the kitchen and you grab a knife to
17 commit those crimes, that's burglary while in possession of a
18 weapon, of a deadly weapon. Because the law tells you that
19 you can gain the possession of a firearm or the deadly weapon
20 at any time during the crime and/or any time before leaving
21 the structure. Okay.

22 So in this circumstance, it's not really the case, but --
23 well, I guess it is with Leroy Fowler. Because in
24 Leroy Fowler, you know, the burglary -- I submit to you, the

1 burglary was committed, but no underlying offense was
2 committed because Leroy Fowler thwarted it.

3 So the law tells you that it's not necessary for us to
4 prove that the secondary crime occurred. Burglary is complete
5 when someone enters the home with the intent to do bad stuff
6 inside. Okay.

7 Yeah. The gist of the crime of burglary is the entry
8 with the unlawful intent -- oops.

9 And the question of intent. When someone enters, that's
10 what you're gonna be measuring, is -- rarely are we gonna have
11 the statement of what someone's intent was. But you look at
12 the circumstances, i.e., I put a mask over my head -- over my
13 mouth. I put a stocking over my mouth, or my head. You can
14 kind of use that kind of circumstantial evidence at -- you can
15 use that as circumstantial evidence of what someone's intent
16 was when they entered a residence.

17 So consent to enter -- and this -- this comes into
18 Teresa's case specifically. But consent to enter is not a
19 defense if the entry was made with the intent to commit the
20 sexual assault or robbery or another felony. So if you go in,
21 like in Teresa's case, and get a drink of water. You ask for
22 a drink of water, then you kind of make your way in. That can
23 still be a burglary, and in this case was a burglary.

24 I told you a few minutes ago, in every one of these

1 counts in this case, you're gonna have to decide whether a
2 deadly weapon was used. Submit to you a firearm is a deadly
3 weapon. Defendant admitted he had a firearm, shots were
4 fired, someone was injured, casings were found. That's a
5 no-brainer, okay?

6 A knife in the way that is used, or the manner it is
7 used, if it can cause death or substantial bodily harm, is
8 also a deadly weapon under the law. And in every single scene
9 where a knife was used, Defendant threatened with it. That's
10 how he controlled all these people. That's how he instilled
11 fear in everyone, fear of -- fear of being Leona Case; right?
12 Stabbed in the stomach twice.

13 We're not required to have recovered the deadly weapon,
14 whether it be the firearm or the knives [sic] -- knives.
15 Knives.

16 In order to use a deadly weapon -- and this goes for,
17 again, all of these counts. In order to use a deadly weapon,
18 you don't have to actually produce harm, you just have to
19 produce fear. Fear of injury or fear of harm. So when we
20 talk about Mr. Zazueta later, there's actually harm with that
21 deadly weapon, that firearm. That bullet grazed his leg;
22 right? Leona Case, there was actually physical harm.

23 With a lot of these other individuals, Defendant used a
24 knife to produce fear, to control, to produce fear of injury,

1 to get them to comply with what he was trying -- well, with
2 what he was doing, whether he was raping or robbing, okay?

3 When you look at Teresa Tyler's case, she opened the door
4 for him. But look back at all of the things that he said in
5 his confession about Teresa Tyler. He pulled the knife out of
6 his pocket when he got inside. He brought that knife with him
7 to that scene. Him carrying that knife with him and using it
8 to control her soon after that shows you what his intent was
9 at entry.

10 He didn't happenstance on Teresa Tyler and then decide to
11 do all these bad things. He's a smart kid. He's calculated.
12 He knew she was alone. He committed a burglary while in
13 use -- while in possession of a deadly weapon.

14 First degree kidnapping is another crime that you are
15 going to hear about through the course of these charges.
16 Kidnapping, under the law, is not TV kidnapping. It's not
17 somebody picks ya up, throws you in a trunk, and drives you
18 off 400 miles. Kidnapping has legal elements that are a
19 little bit different than that.

20 If you -- we use a lot -- we use a lot of adjectives --
21 or verbs, I should say. "Every person who willfully seizes,
22 confines, inveigles, entices, decoys, abducts, conceals,
23 kidnaps, or carries away any person by any means whatsoever
24 with the intent to hold or detain them or who actually holds

1 and detains them for the purpose of committing sexual assault,
2 extortion, or robbery from -- or a robbery upon or from the
3 person."

4 So if you conceal, carry away, confine, tie up someone
5 for the purposes of committing a sexual assault or a robbery,
6 that is first degree kidnapping under the law in the State
7 State of Nevada.

8 What that kind of doesn't tell you, and there's a little
9 more nuance to it in a couple slides that I don't really want
10 to explain, but I'm gonna. Robbery's not completed until --
11 or excuse me. Kidnapping's not completed until the crime's
12 completed.

13 So when you're talking about Teresa Tyler and she's tied
14 up in that closet, that's after the sexual assault. But he is
15 not -- Justin Porter's not effectuated his escape yet. So
16 that kidnapping is still for the purposes of sexual
17 assault because those crimes include up to and escaping
18 from the commission. Does that make sense?

19 For you to find somebody guilty of first degree
20 kidnapping, you have to prove -- we have to show you that,
21 in addition to the associated offense -- offenses, that
22 the movement of the victim was not incidental to the robbery
23 or the sexual assault.

24 Let's talk about that for a second. Is there an increase

1 risk of harm to -- to Teresa Tyler by putting her in a closet?
2 Of course there is. You've put her in a closet; you've
3 hogtied her. That's an increased risk of harm, beyond just
4 the commission of the sexual assault. This is kind of the
5 nuanced stuff I was talking about.

6 If -- there's such a glare right there. Sorry about
7 that.

8 That any incidental movement of the victim substantially
9 exceeded that required to complete the robbery or sexual
10 assault. I'm not gonna read all those to you. But I will let
11 you know that the physical restrain includes, but is not
12 limited to tying, binding, or taping. Okay. So I will walk
13 you through which part of this incidental movement instruction
14 you need on the individual kidnappings, okay? So I don't have
15 to stand here and teach school. 'Cause it's pretty boring,
16 okay?

17 So with Teresa Tyler, there's actually one continuous act
18 of kidnapping, if you will. 'Cause not only is there the
19 closet part that we just talked to you about, but he moves her
20 to the bedroom. He moves her to that bedroom not incidental
21 to the sexual assault. He could have sexually assaulted her
22 anywhere. He moves her to the back of the home, away from the
23 front door. That is not -- that is -- increases the harm to
24 Teresa Tyler, like the previous frame instructed you. And he

1 could have accomplished that sexual assault without -- excuse
2 me -- secluding her in that room. Okay.

3 So that is where, if you will, the first degree
4 kidnapping -- and he had the weapon the whole time.
5 Remember, Teresa Tyler said he never let go of the weapon.
6 It's always in his hand.

7 And that act of kidnapping continues through him
8 depositing her in that closet, forcing -- forcing her in that
9 closet, tying her hands, tying her feet, hogtying them in the
10 back. That is not incidental to commission of the sexual
11 assault or robbery. That increases the risk of harm to this
12 victim.

13 And it just -- to remind you again, because this was
14 committed, this restraint and tying up after the sexual
15 assaults were committed, it is still part and parcel of those
16 crimes because up to and including the escape from the
17 commission of those crimes is included in the kidnapping.

18 So with Teresa there was a robbery, if you recall. These
19 are the robbery instructions. Robbery is the unlawful taking
20 of personal property, which can be money or anything else,
21 really, from the person of another or in their presence.
22 Like, I'm in your presence if I'm across the room. I'm taking
23 it from your person if I'm taking it off your body. I'm
24 taking the watch off your wrist versus I'm taking

1 Ms. Luzaich's purse from right here. Okay. That's in her
2 presence, okay?

3 That taking has to be done by force or fear. Force or
4 violence or fear of injury, immediate or future, to the person
5 or property or person or property of a member of the family.
6 And that will apply in the Zazuetas. The force must be
7 used -- the force or the -- fear of force must be used to
8 obtain or retain possession of the property to prevent or
9 overcome resistance to the taking of the property or to
10 facilitate escape. There's no degree of force that you're
11 required to use. It's just the threat of force.

12 The value of the property taken is not an element of
13 robbery. So I can take, you know, a ring from a gum ball
14 machine or I can take your 1989 Dodge Dynasty and it's the
15 same, okay?

16 So in Teresa Tyler's case, he's rummaging through there
17 looking for items to steal. He kept the knife. He had the
18 knife the whole time. That's the exhibition of force or fear
19 of force. She was in the other room when he began taking
20 money out of that vase. But that is still in her presence for
21 robbery with use of a deadly weapon. Because if you use the
22 weapon to create that environment, that fearful environment,
23 that's not deemed over once you walk into the other room.
24 He's still taking property from her presence.

1 Sexual assault is when one subjects another to a sexual
2 penetration against their will or under circumstances where a
3 person knew or should have known that the person -- the victim
4 was mentally or physically incapable of resisting or
5 understanding the nature of her conduct is guilty of sexual
6 assault.

7 In Nevada, sexual assault -- sexual penetration includes
8 intercourse, includes fellatio. It's not just traditional
9 intercourse, okay. Fellatio being oral sex, male penis in
10 female mouth, in this case. There's no -- penetration in
11 Nevada is however slight. It's not penetration how laypersons
12 may think of it. Anything that passes the outer lips of the
13 female genitalia is penetration. Okay.

14 In Nevada, victims aren't required to fight back. So
15 physical force is not an element of sexual assault. The --
16 the crucial question is whether or not the person was
17 physically forced but whether the act was committed without
18 their consent.

19 So we don't have to prove that someone -- let's just say
20 Teresa Tyler, for instance, that she was bound and tied up and
21 forcefully penetrated. We don't have to prove that. Okay.
22 And that's not what happened here. I'm just giving you an
23 example.

24 There's no consent if somebody submits to sexual

1 penetration because they're afraid, because they're afraid of
2 bodily injury, okay? That fear vitiates that consent. Okay?
3 If somebody submits to a sexual assault, that's not consent
4 either. You know, we don't -- the law doesn't require a
5 victim to fighting back. The law let's a victim say, "Okay.
6 Do whatever -- whatever you're gonna do so I survive." We
7 don't require -- we don't require Leona Case, Teresa Tyler,
8 Marlene Leva [sic], Joni Hall, we don't require any of those
9 women to fight back.

10 A person isn't required to -- notice the middle paragraph
11 there -- do more than age, strength, surrounding facts, and
12 attending circumstances make it reasonable for them to do to
13 manifest an opposition to a sexual assault. Kind of saying
14 the same thing. We're not gonna make you fight back.

15 The law would never require a woman or a man or anyone to
16 fight back and struggle when a weapon was being held on them,
17 compelling to be sexually assaulted. The law would never
18 require that. That's just not safe. That's not good public
19 policy.

20 You heard testimony that was read to you by unavailable
21 people. You will not have a copy of those transcripts, okay?
22 You will have to rely on your memory. There are, however,
23 certain circumstances where you will have a transcript --
24 and -- and this is one of 'em. If somebody has given

1 testimony under oath at a trial or a hearing, it is admissible
2 and may be considered for the truth of the information therein
3 if that person testifies at the current trial and is subject
4 to cross-examination concerning that statement. And you can
5 consider that as any other evidence.

6 You're gonna have that transcript of Teresa Tyler.
7 Teresa Tyler testified at a prior hearing. It was a
8 preliminary hearing. It was a probable cause hearing. You
9 will have a copy -- a copy of it is marked in evidence. And I
10 submit to you -- I mean, you saw her demeanor up here. And --
11 and you're the judges of that.

12 Her preliminary hearing testimony, closer in time, the
13 same year that this happened. I submit to you, more linear,
14 it's more chronological, it's clearer. I'll submit to you
15 it's more articulate. And by virtue of all those things, I
16 submit to you, it's more credible than the struggle that she
17 had when she was in here. Certainly, you are the judges of
18 that, however.

19 Additionally -- and this kind of goes hand-in-hand in
20 this -- when a trial witness fails, for whatever reason, to
21 remember a previous statement made by that witness, the
22 failure of their recollection -- that means when they don't
23 remember -- constitutes a denial. So under the law, like if
24 you say "I don't remember," the law treats it like you said

1 didn't happen; all right?

2 So there are -- and there was several cases with
3 Ms. Tyler where we would ask -- I would ask -- however
4 inartfully, I would ask, "Do you remember where this -- when
5 you said this?"

6 And she would say, "That didn't happen."

7 And, "Do you remember when you said B?"

8 And she would say, "That didn't happen," specifically
9 relating to the fellatio incidents. That was something -- and
10 I -- I can't tell you why -- something she wasn't comfortable
11 about speaking about now. That's something that she
12 specifically spoke about during the preliminary hearing. That
13 I'm gonna go through that testimony with you now and point to
14 you places to look in that testimony.

15 So counts 3 through 6 are charged sexual assault with use
16 of a deadly weapon regarding Teresa Tyler. She did tell you
17 in here that there was penis/vagina sex. You know that to be
18 true because there's DNA, sperm of the Defendant in her
19 vagina. So you know that count to be true. But at this
20 preliminary hearing -- and, again, you have the transcript --
21 and this is what she had to say about what transpired on
22 February 2nd of 2000, when the Defendant came to her home.

23 At page 42 she says someone she may have met through her
24 sister. Page 46, gave him a drink of water and "he's talking

1 to me like he wants to get with me." I submit to you at this
2 point, I mean, by Teresa Tyler's demeanor, I submit to you
3 she's a little naive. Page 47 she tells the Court implicitly
4 she's not interested in him. And page 48 she says she went
5 and got him water, left the door acracked [sic]. "He wanted
6 to put the cup in the house and I told him no." "He went in
7 and put the cup in the house and started looking around."

8 So that is what Teresa Tyler testified to back in
9 October, November of 2000. He wasn't invited in and he pushed
10 the door open. That's what she says at page 49. She was a
11 little equivocal about that in here. Obviously something
12 happened on February 2nd of 2000 that caused this young lady
13 to call the police; right? I mean, this wasn't an invited in,
14 consensual contact. So this is her memory back in 2000.

15 "He sat on the couch and I" -- wait. I'm sorry.
16 Page 50, "I grabbed his arm to pull him out and he wouldn't
17 go." And then "he sat on the couch and I still tried to pull
18 him out," is basically what she says at page 51. So she's
19 art -- articulate and linear in 2000 about that initial
20 contact with the Defendant.

21 She tells that court, under oath, that he stood up and he
22 pulled out a knife. Stood up from that couch and pulled out a
23 knife. He said, "Get up and go in the room," he meant the
24 bedroom. And if you recall back to the kidnapping, that's

1 where the kidnapping starts that I just talked to you about in
2 the other count. "He told me to take off all my clothes. I
3 didn't want to, but I complied. He had me lay on my back, put
4 his penis in my vagina," no condom. "He had the knife in his
5 hand and started looking around my apartment." That's at
6 page 54. That is the first count of sexual assault with use
7 of a deadly weapon. Penetration, penis to vagina, however
8 slight, no consent, knife in his hand.

9 Page 57, "He's threatening me. He wants oral sex. He
10 wanted me to perform. He puts his penis inside my mouth," and
11 this was after sexual intercourse. This is what, for whatever
12 reason -- and I can't tell you why. I'm not a psychiatrist.
13 I'm not a psychologist. I'm a prosecutor. I don't -- you
14 know, everyone's victimology is different.

15 I don't know if we discussed that much in jury selection.
16 But there's not one set of expectations for every victim, like
17 cookie cutters. For whatever reason, Teresa couldn't find her
18 voice to come in here and tell you that this man -- man put
19 his penis in her mouth. She couldn't do it. But she told
20 that court. And I submit to you, you can accept that as truth
21 for what's in there. That's the next count of sexual assault
22 with use of a deadly weapon.

23 "Oral sex was after he took money from my purse." There
24 was no condom. "He got up and peed in the floor," she told

1 the Court. I submit to you that is an ultimate act of
2 disrespect. And why would Teresa Tyler make that up back
3 then? I've just sexually assaulted you. I've just held a
4 knife on you, and I am so full of whatever I am, my own
5 bravado that I pee in your floor. Teresa Tyler told them that
6 detail back then.

7 "His penis inside my mouth was after the sexual
8 intercourse" -- I'm sorry. Page 58. "He started looking
9 around again. Had me follow him around and I was completely
10 nude." Teresa Tyler, at this point, has walked that court,
11 22 years ago, through the first two incidents of sexual
12 assault with use of a weapon in the commencement of the act
13 that constitutes kidnapping with use of a deadly weapon.

14 At page 60 she said, "He went to the restroom. He made
15 me follow and got a towel and made we wipe myself and he wiped
16 me, my vagina." Ladies and gentlemen, you know that's true
17 because that's where Defendant's DNA comes from, is that
18 towel. That white towel that was pointed out by the Crime
19 Scene Analyst Atkin. That's the towel that was tested back in
20 2000. That was the first DNA hit. Not the bandana, the
21 towel.

22 So you know that happened because we have independent
23 evidence. You don't need it 'cause the law tells you we don't
24 need to corroborate the report or the testimony of a sexual

1 assault victim. But you have it in this case. You have a ton
2 of it, including from his mouth.

3 A page 61, "We want back to my bedroom again and he had
4 me lay on my stomach and he put his penis in my vagina again
5 with no condom." That is the third count of sexual assault
6 with use of a deadly weapon against Teresa Tyler.

7 After that act of intercourse at page 63, they had oral
8 sex again. And the victim testifies that Justin Porter talks
9 to her about rape. And tells her, and she tells the Court, at
10 page 64, "You know you are being raped."

11 She believes, and she tells the Court this at page 66,
12 that he ejaculated during the second series of sex acts and
13 that some of it landed on her ankle and "he began to talk to
14 me about going to the cops."

15 And at page 67 she talks about him taking coins from the
16 vase. And this testimony is not only substantive as to the
17 sexual assaults, it works as to the robbery and the kidnapping
18 as well, okay? This is -- you can look at this for the truth
19 of all the counts that are contained therein.

20 "Tied my hands behind my back." At 69, "He tied my hands
21 with phone wire." She reports what Defendant said to her and
22 Defendant said, "You didn't think God would let something like
23 this happen." And then he tied her feet with work ribbon and
24 he tied her hands and feet together with another cord. That's

1 what she told the Court.

2 And I submit to you, in this prior testimony, she goes
3 from A to Z. Not like she did in here.

4 "He dragged me to the closet and he got a container of
5 water out of the" -- or got a container out of bathroom. "He
6 put water in it and tried to wash me -- wash me out with my
7 clothes on." She talked about that in here, if you recall.
8 She talked about being rinsed out and she talked about him
9 wiping her with a bandana. But she didn't talk about the
10 towel in the bathroom. But we know that towel exists --
11 right? -- because of the DNA.

12 He used -- he poured that water in her vagina area.
13 That's at 72. And "he left me a knife so I could get out."
14 That is at page 73.

15 So that prior preliminary hearing testimony outlines for
16 you, again, the four counts of sexual assault with a weapon
17 against Teresa Tyler. Two intercourse, two fellatio for him
18 putting his penis in her mouth. It gives you some talk about
19 the first degree kidnapping as well as the robbery and the
20 burglary, all with use of a deadly weapon.

21 This just kind of reiterates. We know there was sex in
22 Teresa Tyler's case because there was DNA. The experts came
23 in here and told you. Should be 2018 and not '19. Apologize
24 for that.

1 His semen, his sperm should be nowhere on her body. He
2 was a stranger to her, okay? This was not a consensual
3 encounter.

4 Leona Case is charged in counts 8 through 14. Similar
5 charges with Leona: Burglary while in possession with a
6 weapon, first degree kidnapping, there is a single count of
7 sexual assault, there is an attempt murder with use of a
8 deadly weapon -- sorry -- two counts of sexual assault. I
9 apologize. Robbery with use of a deadly weapon and first
10 degree arson.

11 So all those big instructions that I read to you at the
12 beginning that are in your packet regarding robbery, sexual
13 assault, burglary, what it means to use a weapon, just refer
14 back to those same instructions. They don't change victim to
15 victim. But I will walk you through how the elements are met
16 in Leona's case.

17 On March 7th of 2000 she lived alone at 290 East
18 Charleston, building 2, apartment 50. How do you get to --
19 how do you, as jurors, come to a conclusion that Defendant is
20 guilty of burglary with use -- while in possession of a deadly
21 weapon as it relates to Leona Case?

22 She's home watching TV. Knocks on the door. He has used
23 the phone there before. He was with his buddy, Kris, that
24 time, if you remember. He introduces himself as "Jug" on that

1 former time. So, remember, Leona identifies him in court and
2 that's because he's been to her house before. He -- he's a
3 stranger the first time, and he's just as much a stranger the
4 second time.

5 He runs alone on March 7 to borrow the phone. It's
6 really late. It's, like, midnight or after. She's like, no.
7 Can't come in my house. It's late. You can't come in.

8 He kicks the door and the frame comes off. She tries to
9 call 9-1-1. He slaps her and knocks her to the ground. So
10 she tries some self-help there to get him out and enlists the
11 assistance of law enforcement and she's not successful.

12 'Cause, you know, at this point Justin Porter's the thing that
13 goes thump in the middle of the night; right? Preying on
14 women, like Leona Case, home alone.

15 He gets pissed off and he says, "Why did you dis me,
16 bitch?" I.e., by not letting her [sic] use the phone. He
17 went to the kitchen, got a knife, used it to threat -- to
18 threaten her and find money.

19 So once he's dissed for not being able to use the phone
20 and he kicks the door in, starts yelling and goes straight for
21 a knife, that shows you his intent at entry. He isn't
22 entitled to be there. He wasn't invited in. He's a stranger.
23 Doesn't matter that you -- you had consent to enter before and
24 she was being nice before. It doesn't matter. This time he

1 went in to rob and rape. And that's what his conduct tells
2 you and that's what his demeanor told her.

3 He takes -- it's his first degree kidnapping with use of
4 a deadly weapon with substantial bodily harm.

5 Now, you remember, I told you deadly weapon enhancement
6 is on every one of these charges that we're gonna talk about
7 today. Few and far between, some of them will have
8 substantial bodily harm as another element that you would have
9 to find, okay? So, for instance, when you get to the verdict
10 form on this count -- I know this is a lot of stuff. Probably
11 super boring. But we're doing it.

12 You have first degree kidnapping with use of a deadly
13 weapon with substantial bodily harm. The next level down
14 would be first degree kidnapping with use of a deadly weapon,
15 no substantial bodily harm. Next one down, first degree
16 kidnapping with substantial bodily harm. Can only find
17 one of those. And the list goes on. I'm not gonna sit and
18 read it to you, but you need to find one. So if you find
19 there's a first degree kidnapping with use of a weapon with
20 substantial bodily harm, then that is your verdict, okay?

21 So he takes her to the bedroom and he ties her up --
22 excuse me. He takes her to the bedroom at knife point. He
23 cuts the cord on the lamp. He puts it around her neck. Leona
24 thought -- Leona thought she was checking out. She gets her

1 fingers in between the cord and her neck and starts to twist
2 so that it -- you know, so that there's some room so she
3 doesn't lose consciousness. Starts to strangle her. That
4 detention, that tying up, that's an increased risk of harm.
5 That is sufficient for a first degree kidnapping. And we
6 know what his intent was at -- at that time to sexually
7 assault or rob her.

8 He says to her -- or kill her. He says to her, "Why
9 don't you just die bitch?" "Just die, bitch." And we're just
10 talking about the kidnapping right now. We'll go through the
11 rest of the facts as they apply to the elements.

12 After the stabbing and the sex acts are over, he takes
13 her to the bathroom and shut the door. She locked it. The
14 smoke alarm goes off. So that -- securing her in that
15 bathroom and then putting that dresser or chair up in front of
16 that door, that's -- that is a continuation of the first
17 degree kidnapping. We know it increased the risk of harm
18 to her because she couldn't get out.

19 She heard the smoke alarm go off. She heard it break.
20 She was assisted by neighbors. Her apartment was destroyed.
21 That certainly was an increase risk of harm and a movement of
22 her, beyond what was necessary to rape her; right? That is a
23 first degree kidnapping under the law in the State of Nevada.

24 Substantial bodily harm, as it applies to Ms. Case.

1 Substantial bodily harm is defined in Nevada as "bodily injury
2 which creates a substantial risk of death or which causes
3 serious permanent disfigurement or protracted loss or
4 impairment of the function of any bodily member or organ or
5 prolonged physical pain. Prolonged physical pain necessarily
6 encompasses some physical suffering or injury that lasted
7 longer than the immediate -- than the pain immediately
8 resulting from the wrongful act."

9 So when she is strangled, when Leona Case is strangled
10 and she gets blood pooling in her eyes and all those bruises,
11 that -- that pain and that injury, as documented at the
12 hospital, lasted beyond Defendant immediately putting that
13 wire around her throat. That's protracted physical pain.

14 She testified, even though it was read, that she had
15 pooled blood in her eyes for weeks. Pooled blood from the
16 (indiscernible) she had in her eyes. That she had scarring
17 from the stabbing. That is a prolonged attribute attributable
18 to his conduct and constitutes substantial bodily harm.

19 So when we talk about the first degree kidnapping of
20 Leona Case, for the movement, for the sexual assault -- back
21 to the bedroom, then to the bathroom -- we know a deadly
22 weapon was used, a knife. And was there substantial bodily
23 harm? I submit to you there was. So your appropriate verdict
24 is first degree kidnapping with a deadly weapon with

1 substantial bodily harm.

2 Showing you Leona's bruises, in the top right picture,
3 from the stabs. The left picture shows you the puncture
4 wounds from the stabbing. And she was beat around the face.

5 Count 10 is a count -- one of the counts of sexual
6 assault for Leona Case. Defendant, if you recall in testimony
7 that was read in, he had a knife in his hand, told her to take
8 off her clothes, told her -- "told me, he's gonna fuck me."
9 Those are Leona's words, parroting the words of her rapist.

10 He asked for condoms. He used a plastic bag off of
11 coffee filters, the plastic bag that comes on the outside of
12 coffee filters. He wrapped it around his penis and flushes it
13 down the toilet after the sex act.

14 That sex was penis to vagina. That's sexual penetration,
15 obviously without her consent. And he washes himself off. He
16 had the knife the entire time. Again, the -- at the
17 conclusion of all of his acts, she suffered substantial bodily
18 harm. And it is appropriate for you to find that verdict here
19 as well.

20 You know that there was a sexual assault, penis to
21 vagina. Defendant even admits this one. We know there was a
22 weapon. There was a knife used. And the substantial bodily
23 harm, the slides that we just went to -- (indiscernible)
24 battery?

1 Indulge me for just a minute (indiscernible).

2 THE COURT: Mm-hmm.

3 MS. LUZAICH: It's the connection.

4 MS. KOLLINS: Indulge me for just a moment. My IT
5 team is hard at work. Oh, there we are.

6 So, again, the substantial bodily harm is just a result
7 of the entirety of the conduct, not just the act of
8 penetration itself. So for you to find substantial bodily
9 harm, you don't have to find that it -- find that it occurred
10 actually during the act of penetration, if that makes sense.

11 I know. I don't know it all by heart.

12 Bear with me for just one second till we get hooked back
13 up. 'Cause there's too much on this and it's too
14 (indiscernible) for me to read it.

15 MS. LUZAICH: It's timing. You just gotta --

16 MS. KOLLINS: We're at 58, if that helps you.

17 See, really what that is, is they don't want you to talk
18 this long. So they just keep shutting me down. They don't
19 want (indiscernible).

20 MS. LUZAICH: Is that where you are? Substantial
21 bodily harm or the next one?

22 MS. KOLLINS: Next one. Oop.

23 Okay. So when you look at the charging document, there
24 are two counts of sexual assault for Leona Case, about they're

1 numbers 10 and 12 and there's something else in the middle.
2 Don't ask me why it's like that, but it is.

3 So the second count of sexual assault on Leona Case --
4 during the first sexual assault -- I don't know if you
5 remember this -- but she gets that knife, after he gets up to
6 go wash, and she tucks it between the mattress. And she gets
7 that cord, because she doesn't want it wrapped around her
8 throat again, and she hides that.

9 Defendant goes back to the kitchen and he gets a second
10 knife. So there is use of a deadly weapon in the second
11 count. "He tells me to turn around and get undressed because
12 he's gonna fuck me in the ass." He's got his knife in his
13 hand, or the kitchen knife. Remember, he just went and got it
14 from her kitchen. Not the -- not a knife he brought with him.
15 He takes the cellophane off of a cigarette pack and has penis
16 to vagina sex with Leona Case again. He washes and he flushes
17 that makeshift condom.

18 And here is where things get heated. This is where, as
19 Defendant puts it, he snapped. Remember, he said that? "I
20 snapped." And he lunged at her and he stabs her twice in the
21 stomach.

22 She says he makes her wash her vagina. It's after the
23 stabbing. And he makes her, if you remember, clean out under
24 her fingernails because she -- Leona fought back a little bit.

1 Leona gave him a little bit a run for his money. Does not
2 justify him stabbing her twice in the stomach, however.

3 So that is the second count of sexual assault with use of
4 a deadly weapon with substantial bodily harm regarding
5 Leona Case.

6 Count 11 is in between those two sex counts. And this is
7 regarding Leona Case. Attempt murder with use of a deadly
8 weapon.

9 Attempted murder is a promise of an act which tends but
10 fails to kill a human being when such acts are done with
11 express malice, namely the deliberate intention unlawfully to
12 kill. You don't have to prove premeditation and deliberation
13 in order to prove attempt murder.

14 So what do we know about what's going on in
15 Justin Porter's head when he's trying to take out Leona Case,
16 this woman that he's just choked and stabbed? Like, what do
17 we know? Well, from Leona, we know that he's told her "I wish
18 you would just die, bitch." That means he wants to kill her.
19 Wants to kill her but he just hasn't succeeded. Either
20 because when he's strangling her because Leona gets her
21 fingers in there, in that cord.

22 He stab -- he repeatedly stabs her in the stomach. At
23 one point he goes to stab her in the throat, from her
24 testimony. She fights back a little bit and he strangles her

1 a second time to unconsciousness. Again, he's saying "die,
2 bitch." That's how we know that Justin Porter wanted
3 Leona Case dead. All those things. He confined her to the
4 bathroom. He lit the apartment on fire.

5 You don't have to agree as to what theory you think shows
6 you that Justin Porter tried to kill her 'cause it can either
7 be 'cause he stabbed her, lit her apartment on fire, or
8 strangled her. Half of you can think, well, he only intended
9 to kill her when he strangled her, and half of you can think
10 he only intended to kill her when he lit her apartment on
11 fire, but you don't have to agree. Just have to agree --
12 agree that he had the intent to kill her, by whatever theory.

13 Again, he gave an unequivocal statement of his intent
14 "die, bitch."

15 The elements of attempted crime are the attempt to commit
16 that crime, performance of sudden act towards its commission
17 but failure to commit it. So in this case, I stabbed you
18 twice. That's performance of an act. But you didn't die. I
19 put a lamp cord around your throat and pulled it as tight as I
20 could, but you didn't die. I lit your apartment on fire,
21 locked you in a bathroom, but you didn't die. I strangled you
22 manually with my hands until you lost consciousness, but you
23 didn't die. So all those things are the act towards the
24 commission of the final act.

1 I submit to you, you can find Defendant, Justin Porter,
2 guilty of attempt murder with use of a deadly weapon as it
3 relates to Leona Case.

4 Count 13, with Leona. He has the knife. He wants money.
5 She says she's got none. He goes to her purse, if you
6 remember. He takes 40 bucks out and her food stamps. And the
7 purse was on the dresser in her bedroom. Okay? And he
8 took -- her daughter had given her a ring that said "mom."
9 She talked about it being, like, a ten karat little ring. And
10 he took that.

11 So those -- that's property taken by force or fear. The
12 force or fear is the exhibition of the weapon during the
13 taking of the property. It's from her purse, not her person,
14 but it's in her presence because it's in the same apartment.
15 You can find Defendant guilty of count 13, robbery with use of
16 a weapon as it relates to Leona Case.

17 First degree arson. "Any person who willfully or
18 maliciously sets fire to or burns or causes to be burned or
19 aids -- or who aids, counsels, or procures the burning of any
20 dwelling, house, or other structure, whether occupied or
21 vacant, personal property which is occupied by more than one
22 person, by one or more than one person, whether the property
23 of himself or of another" -- so you can arson your own
24 property -- "is guilty of first degree arson."

1 In this case, what do we know? Well, Fire Investigator
2 Hevel was here. He described the gap in the burn pattern,
3 meaning that there had to be two origins. If you recall his
4 testimony, there had to be two origins of that fire. He said
5 that it was incendiary. And incendiary, in his world, means
6 set by human hand, okay?

7 And Justin Porter, remember, back in the admissions we
8 went through earlier? He says, "Yeah, I dropped a match and
9 it went puff." Well, I submit to you he did more than drop a
10 match in there. But that was Justin minimizing in his
11 statement to police detectives because it went more than puff.
12 I mean, that apartment was destroyed. It was destroyed at the
13 hands of Justin Porter.

14 And we don't have to prove the why to ya. But I submit
15 to you, as you all sit here today, you know the why. Because
16 he wanted Leona dead. He wanted that crime scene wiped off
17 the face of the earth, and he wanted no one to find any
18 evidence.

19 Ramona Leva is in counts 15 through 18. Same burglary,
20 possession of a weapon; same first degree kidnapping, same
21 instructions apply; and same with sexual assault and robbery.
22 All the prior instructions that we went to [sic] alike apply
23 to Ms. Leva.

24 Ms. Leva was here. She's in her 70s now. She's very

1 emotional. She came in here and talked to you about the
2 things that happened to her some 20 years ago at the hands of
3 Justin Porter. She traveled to Las Vegas to share that with
4 you.

5 On March 25th of 2000 she lived with her husband in a
6 little studio apartment off -- at 600 East Bonanza, apartment
7 114. And that night she got home from work and hubby wasn't
8 home, but she was starting to get changed. And, boom,
9 count 15, burglary with use of a deadly weapon.

10 She was in the bathroom and she heard a loud noise. In
11 comes a man with a bandana over his face. He actually broke
12 the front door and broke the bathroom door of that apartment.
13 He grabbed her and pushed her to the wall. He dragged her to
14 the kitchen to find a knife.

15 So, one, what was his intent at entry? Well, he kicked
16 the door and he had a bandana over his face; right? So that
17 pretty much tells ya, I'm up to no good once I get in here;
18 right? Don't forget, his DNA is on the vaginal swab of this
19 woman, okay?

20 He grabs her and pushes her to the wall and drags her to
21 the kitchen to get a knife. That -- all those things show you
22 that he had the intent to commit sexual assault and/or robbery
23 in that apartment, obviously with use of a deadly weapon
24 because he obtained possession of that, remember, after he got

1 in.

2 First degree kidnapping for Ms. Leva. It was a studio
3 apartment. He would not let her leave. He -- he confined her
4 in that small area for the purposes of committing sexual
5 assault and a robbery and he drug her around that apartment,
6 if you remember, at knifepoint looking for items. That
7 movement is not incidental to the commission of sexual assault
8 or robbery.

9 In other words, moving her around, that movement,
10 dragging her around, that is sufficient for first degree
11 kidnapping. And, obviously, he had a weapon, a knife,
12 that he acquired. And she had some evidence of that knife
13 being held on her there.

14 So count 17 -- count 17 is sexual assault with use of a
15 deadly weapon. This is the one where he -- you know, he
16 touches her body a little bit and he -- he begins to remove
17 his clothes. She tells him, because she knows what's gonna
18 happen, to get a condom. 'Cause if you remember, she's
19 afraid -- she doesn't know some random guy. She's afraid of
20 diseases or something he might give her. So she's like, "Go
21 get a condom."

22 But they don't have any. So he goes and gets that rubber
23 glove off the table -- or not that particular glove, but from
24 that set of gloves on the table. And he cuts off the finger

1 and puts it on his penis. And he has penis to vagina sex with
2 her. He has the knife the entire time, the entire time. And
3 he flushes the glove down the toilet.

4 The -- which, you know, obviously you've been here days
5 and days and paying attention, that is the MO of Justin Porter
6 is "I'm gonna destroy whatever makeshift condom that I have.
7 I'm gonna flush it down the toilet. I'm gonna make sure I
8 don't leave that stuff at the scene." So he does [sic]
9 consistent with that modis operandi.

10 He does the same thing here with Ramona Leva. He has the
11 gun in his hand obviously -- obviously this elderly married
12 woman, living in an apartment with her husband, did not
13 consent to having sex with Justin Porter. And that was -- she
14 succumbed to that sexual assault because of the, just like
15 many of these victims, the display and use and threat of that
16 knife being right there.

17 She doesn't have any money to give him. So he rummages
18 around and finds the keys to her car. And when he finds the
19 keys to her car, this is after the sex acts occurred -- you
20 know, he's looking for money before the sex acts. She says
21 she has any -- she doesn't have any. After the sex act he
22 continues to look for money, rummaging around the apartment.
23 He rummages through her purse and he finds the keys to her
24 car.

1 I submit to you, you know, that little apartment that her
2 and her husband lived in -- she said she had just gotten this
3 car and Justin takes it. And it's found not long after and
4 very close to where he lives. But he takes that car and,
5 obviously, he takes that with the force and threat of force of
6 that knife.

7 So that's the taking of personal property with use of a
8 deadly weapon. Just 'cause the car's parked outside doesn't
9 mean it's not in her presence. He takes the keys by force and
10 that gives him the ability to take the vehicle. And that's
11 what he does.

12 I submit to you, you can find him guilty of robbery with
13 use of a deadly weapon, sexual assault with use of a deadly
14 weapon, first degree kidnapping with use of a deadly weapon,
15 and burglary while in possession of a deadly weapon, as it
16 relates to Marlene Livingston, who came in here not that many
17 days ago and described to you what Justin Porter did to her at
18 knifepoint. And you know it's him 'cause his DNA ties him to
19 the crime.

20 Marlene Livingston is counts 19 through 21. Same thing,
21 again. Just walking you through all of these. You know from
22 the begin -- we know whodunit. Now we're just talking about
23 what he done; right?

24 So same charges: Burglary, sexual assault, and robbery.

1 Except in this case Marlene Livingston is over 65 years old.
2 Similarly we had -- you know, use of a deadly weapon is a
3 finding you'll have to make. Substantial bodily harm is a
4 finding you'll have to make. And some of these circumstances,
5 these victims were over 65.

6 Marlene Livingston is one and the Rumbaugh's, that little
7 old couple with Cortez cups, they were also over 65. So
8 that's a finding that you will have to make.

9 On April 4th of 2000, Marlene lived alone on that second
10 floor apartment. If you remember, it was on Clifford Avenue.
11 Her birth date was 10/12 of '33 and she was 67 years old when
12 this happened. So as it relates to Marlene -- there's her
13 door with the splintered wood. Her door was kicked in. You
14 see the -- the damage up there. Obviously that splintering
15 isn't from somebody answering the door and letting someone in.
16 And that was her Dodge Dynasty that was ultimately taken.

17 But as for the burglary, as it relates to Marlene, she
18 got home from work around 9:20. She had her -- she went to
19 Boulder stay -- slow down. She went to Boulder Station to
20 cash her social security check. It was about \$510. She
21 played nickels for a while. She got \$10 from that.

22 She bought herself some Chinese food and she came home
23 and she went inside and she was getting ready to change, if
24 you remember. And she hears a bang on the door. And someone

1 breaks through her door and he's got a mask on. "And he
2 starts to walk toward me and he had a knife." So in this
3 instance, Justin Porter, who admitted to this victimization,
4 if you re -- recall back to the beginning of an hour and a
5 half ago, admitted to going into Marlene's apartment, sexually
6 assaulting her.

7 In this instance he had the knife with him when he came.
8 Entry with the mask, approaching her, instilling fear. We
9 know he has the intent to do something nefarious inside,
10 namely robbery and/or rape. And while in possession of a
11 deadly weapon because he had it when he walked in.

12 So Marlene was 67. Sixty-seven. And Defendant says to
13 her, "I like to fuck old ladies." This is kind of, submit to
14 you, indicative of his entire disrespect that he's shown to
15 all these female victims: Peeing in the floor, calling 'em a
16 nasty bitch. Looking a 67-year-old woman in the face and
17 telling her she -- he wants to fuck her, and then trying to
18 get some, I don't know, some relief from the detectives when
19 he says, "But I have a grandma." Remember that? Back when he
20 was talking about Marlene?

21 Anyway, Marlene has on a sanitary pad of some sort. And
22 so when he's decided to sexually assault her, you know, she
23 let's him know that this is a mechanism that's making this not
24 gonna happen for whatever reason. So he wants to put his

1 penis in her mouth and keeps telling her "don't bite me."

2 "Don't bite me."

3 Took his -- took his hand and he manipulated the
4 67-year-old woman's head up and down on his penis. That's
5 penetration. Penis in the mouth. He made her go in the
6 bathroom and he repeatedly washed her mouth out. Washing her
7 mouth out, washing her mouth out. Sixty-seven.

8 Obviously this was not consensual, wanted contact from
9 Marlene. It's a sexual assault. There's penetration; there's
10 penis in a mouth. He obtained a knife -- or he brought a
11 knife with him to the crime scene. And she was over 65 years
12 old -- years of age. I submit to you, you can find the
13 Defendant guilty of sexual assault with use of a deadly
14 weapon, victim over 65.

15 Tell Justin you know what his preferences are.

16 Again, victim over 65 is an enhancement for the robbery
17 count as well, as is the deadly weapon.

18 He demanded money from her and he reached in her wallet.
19 He got the social security money. He wanted more. She had
20 the ten bucks or whatever she had cashed out from playing
21 nickels and she had just thrown it in her purse. And when he
22 thought she was hiding money from him, that pissed him off.
23 That made him angry.

24 He went to her jewelry box; he cut her phone cord. He

1 leaves every one of these women that he finds alone, every one
2 of them, incapable of getting help because he's cutting phone
3 cords.

4 Anyway, after the sex acts, he asked her if she had a
5 car. She gave him the keys. Obviously, she gave him those
6 keys as a result of the fearful environment that Justin
7 created, the exhibition of force with that knife. He goes, he
8 takes the car, and he leaves it in a neighborhood not far
9 between Marlene's home and his.

10 And you kind of saw that on the map. I'm not gonna,
11 like, keep showing you that map. But there is the phone cord
12 that he cut, as well, in Marlene's residence.

13 Do you remember the Rumbaugh's? Their testimony was read.
14 You saw their pictures.

15 Let me back up for just a second. I didn't have a
16 picture of Marlene Livingston in there. There's one admitted
17 into evidence, if you should care to see it. I just -- I
18 didn't get it into the PowerPoint. I apologize for that.

19 Francis and Clarence Rumbaugh, they're in counts 22
20 through 24. They're burglary while in possession of a weapon.
21 And robbery with use of a deadly weapon, victim over 60 years
22 of age.

23 The burglary -- the burglary counts for the over 65 --
24 I'm sorry. I didn't know if you were laughing at me or -- the

1 burglary counts don't have the over 65 enhancement. Clarence
2 and Francis, on October 12 of 2000, Clarence is 84 and Francis
3 is 79. There's their picture.

4 They live in a little, tiny one-bedroom apartment.
5 They're at 436 north 12th, apartment B, just very, very short
6 distance from where Justin Porter lives.

7 If you recall, they had a bedroom with some closets. He
8 had cut the phone cord in there -- the closets are kind of
9 there to the right. And he had ultimately taken coins, after
10 demanding money from them, from those El Cortez cups that we
11 spoke about earlier. Ultimately, his handling of that
12 El Cortez cup ties him to this because his fingerprints are on
13 there, in any event.

14 So it's about 11:30 at night. They're home watching TV.
15 The screen door's latched, but the front door is open.
16 According to Francis Rumbaugh, he busted in and told her to
17 shut up. He took the knife from where they were cutting cake
18 and enjoying cake together and he cut the phone cord.

19 So what was his intent at entry? Well, we know that. He
20 busted in, told 'em to shut up, and began his criminal
21 enterprise inside that house. I submit to you this is one of
22 the homes where there was a man there, so we didn't have a
23 sexual assault.

24 Okay. So we know what his intent was at entry. He

1 entered that place with the intent to commit robbery and/or
2 sexual assault. And, ultimately, (indiscernible) robbery
3 because of the presence of Clarence.

4 Count 23 charges robbery with use of a deadly weapon,
5 victim 65 or older. This count names Clarence as the victim.
6 Clarence is 84. And this is kind of the sequence of events.
7 After he manhandles Francis, the little old lady in the
8 picture, he kind of throws her to the couch. Remember when
9 they read in her testimony, she complained about having, like,
10 a bump or bruise from him about how he manhandled her.

11 He throws little old man Clarence to the floor and starts
12 demanding money. So obviously there's an exhibition of force.
13 He's forced Clarence to the ground; he's making money demands.
14 He's displayed a knife or obtained the knife in the residence
15 and displaying that, demanding money. That's in their
16 presence.

17 He ultimately took 81 bucks out of Clarence's wallet.
18 Defendant -- Clarence goes to get it out, Defendant grabs it,
19 Defendant takes the money out. Then he forced both in the
20 bedroom and went through the closets. Okay. So he's -- force
21 or fear, taken their property, used that force or fear to take
22 and retain that property. Obviously, we know Clarence is 84
23 and we know there was a deadly weapon involved, the knife.

24 Count 24 is robbery with use of a deadly weapon, victim

1 65 or older for Francis. She's 75 -- 79 -- excuse me. He
2 throws her to the couch after cutting the phone cord with the
3 knife in his hand. She gets some bruising.

4 He touched everything in the house. He was very careful;
5 he used the corner of the knife. He forced her in the
6 bathroom and went through the closets, those closets that I
7 showed you, their kind of in the right of that picture.
8 They're kind of stand alone closets. They're not
9 traditoinal connected-to-the-house closets.

10 He finds the El Cortez containers and he takes the
11 change. And he does that with a deadly weapon in the presence
12 of Francis. Obviously, he doesn't have permission to do that.
13 Obviously, there's an exhibition of force that has caused fear
14 in this little elderly couple.

15 You know, he gives -- he gives the 81 bucks out of his
16 wallet and she gives a container of change. Justin is very
17 careful to wipe those prints off, but it doesn't quite work
18 out because when crime scene comes, then his prints are on one
19 of those cups. And Fred Boyd was here and testified to all of
20 the fingerprint analysis in this case.

21 Leroy Fowler, July 6, 2000. He's at 1121 East Ogden,
22 apartment 9. In this case, this one's a little tougher
23 'cause, you know, Defendant doesn't admit to Leroy. This is
24 the one where Leroy's home sleeping and he hears the door --

1 door bust in and he gets the chair and he starts fighting back
2 and he ultimately chases. He -- Leroy was here, live, the
3 other day.

4 So with Leroy's house, apartment, Defendant's charged
5 with burglary one, possession of a deadly weapon. Just want
6 to walk you through a couple things that circumstantially tie
7 Defendant to this crime scene. And -- and, honestly, Leroy
8 didn't come in here and say, "Hey, that's Justin." There are
9 no fingerprints at Leroy's house. So I'll give you all that,
10 okay. Just walk with me for just a minute and then you decide
11 'cause that's your job.

12 The day before the Leroy Fowler incident is the incident
13 involving Joni Hall. On each side of Leroy Fowler is a female
14 residence.

15 At 1:55 in the morning he's sleeping in bed. The door's
16 kicked in. He grabs -- "he," being Leroy, grabs the chair --
17 remember, we saw the chair in the pictures. I think I have
18 one for ya -- and he starts -- he, Justin, starts telling him
19 "Shut up. Shut up."

20 Leroy's able to tell the man had a knife in his right
21 hand. Justin admits to being right-handed. He always wields
22 a knife in his right hand. That's something that he told
23 detectives back in that confession, he's right-handed. He's
24 an African American male, light skinned, 5-9 to 5-10, early

1 20s, covered his face with a bandana.

2 Fowler chases him and chases him to the neighborhood just
3 close to 13th Street. Remember, this crime is right in the
4 middle of this Downtown Area Command and the same proximity,
5 the same MO, the same description.

6 He was unsuccessful this night and the very next night is
7 the Joni Hall case. It is corroborated by his MO, kicking in
8 doors, wielding a knife, covering his face, his physical
9 description, the area of downtown, the time of night when
10 people are their most vulnerable. Most people -- most people
11 are in bed at midnight, 12:30 -- not me last night doing this.
12 I'm just kidding -- the type of weapon he used, chose a knife.
13 The clothing that he was wearing. All those things
14 circumstantially tie Justin Porter to the burglary of
15 Leroy Fowler.

16 So if you look at 1121 East Ogden, that's where Leroy --
17 Leroy Fowler lives. Defendant is at 208 North 13th. If you
18 remember Leroy talking about chasing Defendant, he chases him
19 up to 13th Street. And then he kind of loses track.

20 So his break-in at Leroy Fowler's house is unsuccessful.
21 He doesn't get money, he doesn't get property, he doesn't get
22 a car, and he almost gets caught; right? 'Cause now I got
23 somebody that's coming after me.

24 So the very next night -- obviously, Justin Porter's not

1 gonna stop. I mean, he's gonna go and go and go and go --
2 right? -- until we get his DNA and catch him.

3 The very next night he goes to Joni Hall's house because
4 he got nothing from Leroy; right? So he's got to go out
5 immediately again. Joni Hall is in counts 26 to 29. You
6 remember Joni Hall is the lady with the -- the carriage and
7 the TV and all that? The television and the CD player?

8 So count 26, burglary while in possession of a deadly
9 weapon. Counts 27, first degree kidnapping with use of a
10 deadly weapon, sexual assault with use of a deadly weapon, and
11 then robbery with use of a deadly weapon. All the same
12 charges that we've been talking about over and over. I just
13 want to walk you through them as they relate to Joni Hall.

14 So that's Joni on June 7th of 2000. If you remember, she
15 lived with her child and she had a roommate that had a couple
16 kids. They were in a two-bedroom apartment over on 624 North
17 13th Street. It's right up the street from Justin. And she
18 lived with her roommate and her children.

19 And after these crimes, Joni was able to sit down with
20 police and give a composite sketch, which is something that,
21 you know, generated some collaboration between Robbery and
22 Sexual Assault, if you remember way back about an hour and a
23 half ago when we were talking.

24 And I know you heard that from the detectives. There was

1 some collaboration. And this is one of the things that was
2 used in those briefings and with Robbery and Sex Assault,
3 trying to see if these crimes were all interrelated.

4 Joni Hall gave that description. And she sat in court
5 and she testified back in 2000 and she said "that man right
6 there in those clothes, he's the one that sexually assaulted
7 me and he's the one that did that. He's the one that came in
8 my house." So she, in court, identified him. Don't forget
9 that.

10 He was identified at her scene by prints on the Kool-Aid
11 cup that he put in the sink that he thought he rinsed. But,
12 alas, his efforts failed and that ties him to the Joni Hall
13 scene.

14 So it's 1:30 in the morning on June 7th. Joni's in her
15 bedroom with her kid, with her baby, I think is two at the
16 time. She sees a man in her doorway. Talk about things that
17 go thump in the night. You live with your female roommate,
18 not expecting anybody over, and you look up in the middle of
19 your sleep and there's a stranger in your doorway. That's
20 what happened to Joni.

21 She could see that he was carrying a knife. There was
22 some light, backlight from the living room, if you read her --
23 or if you listen to her testimony. So she could see that he
24 had a knife. He had possession of that knife the entire time.

1 She described him as a medium build African American male,
2 late -- early 20s, late teens. And, remember, she ID'd him in
3 court.

4 She -- while they're in the bedroom, he's asking for
5 money and keys, car keys. So he's making demands for
6 property. He didn't have any gloves on. Those things, right
7 when he entered, let you know what his intent was when he
8 entered. He was gonna rob her. He's making a demand for
9 money. He got in the front door, he wasn't invited in. He
10 kicked the door so hard in this case -- this is the one where
11 the dead bolt goes flying on the sofa.

12 So she had heard something, but she thought it was
13 neighbors or something making noise. You know, she's in an
14 apartment. And then she -- she wakes up to see Defendant in
15 her -- in her doorway of her bedroom.

16 So we know that he had intent to commit a felony therein,
17 robbery and sexual assault -- at least robbery right then, we
18 know, based on what Joni testified to. He's making a demand
19 for money and keys.

20 First degree kidnapping of Joni. He uses that knife and
21 he makes her follow him to the kitchen. He -- he uses that
22 knife again to lead her back to the bedroom. He turns off all
23 the lights in that apartment because he's afraid that someone
24 is coming from upstairs, if you remember that portion of the

1 testimony. So all those things that he does to seclude and
2 quiet Joni are in an effort to perpetrate the rest of the
3 sexual assault and the robbery.

4 He goes -- he goes and gets a curling iron to tie her up.
5 So he has the intent to detain her, but he ultimately doesn't
6 use that to tie her up. But his movement of her around that
7 apartment at knifepoint, that is sufficient and that is -- to
8 find first degree kidnapping beyond a reasonable doubt. And
9 it's also -- lost my train of thought.

10 It is beyond what was necessary to commit the sexual
11 assault and/or the robbery. I mean, he could -- he could have
12 committed those and not increased her risk of harm by leaving
13 her in a stationary position.

14 So Joni doesn't want to wake up -- Joni wants to keep him
15 away from her child. And you can kind of tell that because
16 he's asking her, "Is your gonna -- child gonna wake up?"

17 And she's like, "I don't know." So he takes her out to
18 this living room, also movement for the first degree
19 kidnapping.

20 Her roommate is still asleep. He makes her get Saran
21 wrap for him to cover his penis. He's still got the knife.
22 He asked for condoms. She doesn't have any. He had her lay
23 down in front of the floor of the sofa and told her not to
24 move. He put the knife next to her head and said if she

1 screamed he would kill her.

2 Joni remembered a lot of the things, her interaction with
3 Justin, specifically that threat, the knife -- the knife
4 laying on the floor of your apartment, "I'm gonna kill you."
5 They had penis to vagina sex. Again, Justin takes the Saran
6 wrap off of his penis and flushes it down the toilet.

7 Obviously this is not a consensual encounter. He breaks
8 in her house in the middle of the night, worst fear of a lot
9 of people, drags her out to the living room, at knifepoint,
10 forces her to have sex on that floor when she knows her kid's
11 just sleeping a little while away, keeps that knife, puts his
12 penis in her vagina, again, goes through efforts to avoid
13 being identified, thinking he's getting rid of DNA. But Joni
14 recognized him.

15 He asked for money and car keys. She didn't have any
16 money. Again, still with that knife. He's exhibiting that
17 knife, causing force or fear to take this property. "Told me
18 he's gonna take the TV." He took the Lennox CD player and
19 told Joni the next person that he would rob, he would kill and
20 come back and leave her some money.

21 So I don't -- I don't know what that was about. But he
22 told Joni -- maybe he felt bad 'cause she was a mom. I can't
23 tell you why he said that. But he told her the next person he
24 would kill, come back and kind of make amends for all the

1 things he was taking that night.

2 You can find the Defendant guilty of the counts -- beyond
3 a reasonable doubt of the counts involving Joni Hall.

4 The Zazueta family is the family, if you recall, that
5 there was a husband and a wife and then the sister-in-law in a
6 separate room. And the Defendant broke in -- it's the one
7 Defendant told detectives it scared him. Kind of bit off more
8 than he can chew. If you remember, he got in a struggle and
9 the gun went off and all of that.

10 So his crimes regarding the Zazueta family are found in
11 counts 30 through 35. Burglary while in possession of a
12 weapon, robbery with use of a weapon, two -- three counts of
13 attempt -- excuse me -- two counts of attempt robbery with use
14 of a deadly weapon. And this is all in your instructions.
15 And you will have a verdict form that reflects everything that
16 we've talked about today. And count 35, battery with use of a
17 deadly weapon.

18 So on June 9th of 2020 [sic], 2850 East Cedar,
19 Guadalupe Lopez, Beatriz Zazueta, and Laura Zazueta were all
20 living in that apartment, sharing it. And the door didn't
21 shut well in that apartment. So Defendant was able to open
22 the door and come in. He was able to turn the knob and come
23 in. He even says that in his confession.

24 But that doesn't make his entry any less felonious or

1 make him any less liable for committing a burglary. Just
2 'cause somebody leaves a door open, if you enter with
3 intent -- or let's not say "open." Let just say not fastened
4 well, or there's something irregular with it. You can't take
5 advantage of that and call yourself innocent if you enter with
6 this intent to commit a felony in that house, then you're
7 guilty of burglary.

8 He goes through at 2:00 a.m. And in this case we know
9 he's got a gun. Right? He admits to having a gun. He even
10 describes for detectives the gun that he took and how that gun
11 functioned. He said you had to pull back the slide to chamber
12 a round. Okay. So that means he had to make a conscious
13 effort to get a round into the chamber and ready to fire in
14 that gun. Okay. At least for the first round. Now, maybe
15 not every subsequent round, but the first round.

16 So he didn't really handle that gun as he was coming in,
17 that we have any testimony of. So I would submit to you, you
18 have enough evidence to consider that he had that round
19 chambered when he entered that apartment. But I'll come back
20 to that.

21 The gun is first seen by Laura Zazueta. She's in her
22 room. She says that he has a gun. He has his face covered.
23 And he tells detectives it's some kind of headband. It's not
24 a bandana this time, it's some kind of headband.

1 And he took \$200 from Laura Zazueta. If you remember, he
2 demands money. She goes over to her dresser, she pulls out
3 200 bucks, and she gives him the cash. And then she hightails
4 it out of there and goes to the room where Beatriz and
5 Guadalupe are sleeping.

6 And remember, there's kids all over this apartment. We
7 haven't really talked that much about it. There's kids in
8 this apartment.

9 Okay. We have a live weapon and live fire rounds. So we
10 know he brought the gun with him and we know how he got in.
11 He went straight to Laura's room. That shows you his intent
12 at entry for the burglary. And you know he was identified
13 as -- or that he robbed her. Took that money from her
14 presence, from her person, by a show of force.

15 So we talked about attempts a little bit earlier. When
16 you take an act towards of commission of a crime but you fail.
17 Remember we did it in Leona Case. Like, I stabbed her but
18 she's still alive. And I choked her. That's an act in
19 furtherance, but she still didn't die, even though that's the
20 result I wanted. And I put her in the bathroom and lit the
21 house on fire, but she still didn't die. So it's doing an act
22 but not getting the result that you want.

23 So it's the same thing with attempt robbery with use of a
24 deadly weapon. And that is charged for Guadalupe and Beatriz

1 in the bedroom.

2 So count 32 covers Guadalupe. Defendant's in the -- in
3 there demanding money from Guadalupe. He's saying "we don't
4 have any." There was some language barriers too in that
5 house, but not with Guadalupe. Guadalupe tried to offer him
6 different property. Like, "Take something else. We don't
7 have any cash." And he already had the 200 from Laura, from
8 the other room.

9 Both Guadalupe and Beatriz see him kind of bringing
10 Laura, though, into this room at gunpoint. Guadalupe
11 describes it as a bandana. He put that gun to Guadalupe's
12 forehead. Put it to his forehead and he tries to get
13 property -- I mean, he's demanding property, but there's
14 nothing to give him. So that's why this is an attempt robbery
15 'cause there's no property, with use of a deadly weapon.
16 "Give me money." "I don't have anything to give you." Okay.
17 So he tried but failed.

18 But the law doesn't give you a pass on that because the
19 victim doesn't have property. Okay.

20 So, if you remember, that's Guadalupe's room. Guadalupe
21 and Beatriz's room.

22 So we talked about attempt murder, as it applied to
23 Leona Case. There's a charge of attempt murder, count 34, for
24 Guadalupe.

1 So Defendant has gone into this apartment, with a gun,
2 where he has described that gun as being a firearm that
3 requires you to chamber a round. And by chambering a round, I
4 mean pulling back the slide and making sure that round is
5 ready to fire. So that's what he decided to take into that
6 apartment. Okay.

7 Now, very recently he's just had a run-in with
8 Leroy Fowler; right? Leroy Fowler coming after him. So the
9 firearm is kind of one step further of protection for
10 Defendant.

11 So we know that four shorts were fired in that apartment.
12 We know how that firearm had to be manipulated by the
13 Defendant. Told Joni Hall that he had be prepared to kill
14 next time. Zazueta was just a couple days later. A round
15 grazed Guadalupe. We don't have to prove that there was a
16 huge injury that he was almost successful.

17 So what makes this an attempt murder of Guadalupe and why
18 do -- why is the State charging him with trying to kill
19 Guadalupe? So they get in a struggle and the first round goes
20 off, okay? And then three more rounds go off.

21 Guns don't shoot themselves. Takes pressure to pull a
22 trigger. Defendant tried to tell you it was accidental, I
23 think, in his testimony. Wasn't accidental. He was aiming,
24 grazed Guadalupe, he was shooting at his body. Defendant knew

1 that he didn't want to have -- he didn't want to have a bad
2 interaction by somebody that he described as being 6-foot-2
3 Hispanic young man. He didn't -- he didn't like those odds.
4 So he took a shot and he tried to kill Guadalupe, and he was
5 unsuccessful. And not only did he take one shot, he took four
6 shots.

7 Gun did not go off by itself. Takes pressure to pull a
8 trigger. That is a deliberate act to take the life of
9 Guadalupe and get the hell out of there. And you know he
10 wanted to get the hell out of there 'cause when Guadalupe
11 caught up with him, he jumped out the window.

12 So, of course, he was afraid. And of course he was
13 thinking this guy -- this 6-foot-2 guy's gonna -- gonna take
14 me and I'm gonna get caught; right? 'Cause right now
15 Defendant's just on a spree. Nobody's caught him. There's
16 been no consequences. There's been -- police have been called
17 for all these sexual assaults and all these robberies, but he
18 has successfully eluded and ducked and snuck around and
19 covered up DNA and snuck home in the middle of the night to
20 mommy's house and not gotten caught.

21 But this one, this one's close; right? So he doesn't
22 want to get caught. And he's smart and he pulled the trigger
23 of that gun four times and tried to kill Guadalupe. And the
24 evidence tells you that. Hold him responsible.

1 And if you think that shooting at Guadalupe wasn't enough
2 to show his intent to kill, he pistol whipped him over the
3 head at the same time, in the same series of events. He
4 pistol whipped him over the head. He had the intent to kill
5 Guadalupe Lopez.

6 If you don't believe that the Defendant had the intent to
7 kill, this was just a battery with use of a deadly weapon.
8 Battery meaning "a willful and unlawful use of force on
9 another person." In other words, I can hit you with the
10 bullet, but I didn't intend to kill you. So there's use of a
11 deadly weapon and there's an unlawful touching there, which is
12 a battery. So it's the same act without an intent to kill.

13 So if you don't -- if you think he was just shooting
14 willy-nilly and he didn't really have the intent to kill
15 Guadeloupe Lopez, then 35 should be your verdict. But I
16 submit to you, these crime scenes were escalating. He was
17 getting closer and closer to getting caught. He gunned
18 himself up so he could do -- create the ultimate act in
19 escaping these scenes. And that's what happened and he had
20 the intent to kill Guadalupe Lopez.

21 Now, I've talked to you, oh, a long time. I am certain,
22 as I stand here, that you are very tired of listening to me.
23 But I'm gonna just beg your indulgence for one more minute.

24 There is a verdict form. And you're gonna go back there.

1 And it has a count for everything that we've gone through
2 today. And I thank you for your patience and your indulgence.
3 And I submit to you that, over the course of these past few
4 weeks, through these witnesses, live or not, through the DNA,
5 through the fingerprints, through his admissions, that this
6 man robbed and raped and kidnapped like an adult and you hold
7 him responsible and you find him guilty of all 35 counts.

8 Thank you.

9 THE COURT: Thank you, Ms. Kollins.

10 Ladies and gentlemen, at this point in time we're going
11 to recess. We brought lunch in for you guys this afternoon so
12 that we could have a shorter lunch, make sure you guys get
13 fed, and then continue on with the arguments. So we're going
14 to do that now.

15 That admonition will -- the one that I've been reading
16 every recess, it still goes into effect. So the case isn't
17 over because arguments aren't over yet. So when you go back
18 into the room, it actually is the jury deliberation room, but
19 at this point in time, just know that there can be no
20 deliberations. It's just you guys eating lunch, okay?

21 Please remember that during this recess you're not to
22 discuss or communicate with anyone, including fellow jurors,
23 in any way regard the case or its merits either by voice,
24 phone, e-mail, text, internet, or other means of communication

1 or social media. Please do not read, watch, or listen to any
2 news, media accounts, or comments about the case; do any
3 research, such as consulting dictionaries, using the internet,
4 or using reference materials.

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

10 It is 20-10 [sic]. We'll probably check in with you guys
11 in about 30 minutes and see if you are done eating. If not,
12 we can give you more time. So if you would please rise and
13 follow Officer Kennis to the room. Thank you.

14 THE MARSHAL: All rise.

15 [RECESS AT 12:41 P.M.; PROCEEDINGS RESUMED AT
16 1:25 P.M.]

17 [OUTSIDE THE PRESENCE OF THE JURY]

18 [DISCUSSION OFF THE RECORD]

19 THE MARSHAL: All rise.

20 [IN THE PRESENCE OF THE JURY]

21 THE COURT: All right. Welcome back, everyone.
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's present with Mr. Gill as

1 well as Mr. Goodwin. Both Chief Deputy District Attorneys,
2 Ms. Kollins as well as Ms. Luzaich, are present on behalf of
3 the State.

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

5 MS. KOLLINS: Yes, Your Honor.

6 MR. GILL: Yes, Your Honor.

7 THE COURT: All right. Mr. Gill, this would be
8 Defense's closing. (Indiscernible), sir.

9 MR. GILL: Thank you, Your Honor.

10 CLOSING ARGUMENT BY THE DEFENSE

11 MR. GILL: Ladies and gentlemen, I do share the same
12 sentiments as Ms. Kollins. I thank you for being with us
13 these last few weeks, listening to all the testimony, paying
14 attention. I'm gonna ask ya just for a bit more of your time
15 as -- as we go through my closing arguments. This will be the
16 last time I get to speak to you. The State gets to -- to
17 close this as it is their burden.

18 What is a trial? Well -- this is not working very well.
19 Okay.

20 Trial has some questions and you're supposed to be
21 provided with the answers. The questions here, as Ms. Kollins
22 kind of detailed in each one of these counts, 35 of them, has
23 separate elements, separate facts, separate stories. We want
24 you to focus on these facts, focus on these elements and --

1 and -- and take time.

2 I understand that we've taken a lot of your time these
3 last few weeks. But this is kind of where, you know, push
4 comes to shove. Take a look -- as jurors, you've got to
5 answer some questions yourself. And most important, did the
6 State meet their burden. Did they prove that Mr. Porter
7 committed these crimes that he's accused of. And we'll go
8 through them in somewhat similar fashion as Ms. Kollins on --
9 on her close.

10 What is an information? It's simply a formal method of
11 accusing a person of a crime. It's not any evidence. So,
12 obviously, just because there are allegations here, put down
13 in paper on an information, it does not -- it is not, itself,
14 any evidence.

15 The writing's kind of small there, but this is what
16 the -- your information does contain. It's included in your
17 jury instruction packet. I've broken it down a little bit.
18 Each -- there's burglary while in possession of deadly weapon
19 on all. And then you can kind of see the breakdown -- and
20 again, these are all in your jury instructions, the first few
21 pages there. And it does -- and it does go in chronological
22 order, the information.

23 And, ultimately, did the State prove it? Did the State
24 prove each element of each crime beyond a reasonable doubt?

1 Trying to get a little closer.

2 What is evidence? The evidence in this case, which you
3 are to consider, consists of testimony of witnesses, the
4 exhibits, and any facts admitted to or agreed by counsel.

5 Now, obviously, we've had some read-ins. The -- the
6 read-in stuff is a little bit disadvantageous for you. It's
7 still -- it's still considered evidence, but you don't get to
8 see, you know, experience an actual witness. Like the
9 Rumbaughs. We -- we had the young ladies come in here from
10 the DA's Office. They read that testimony in. You don't
11 really get to get a feel. You just hear -- hear the actual
12 words. That's all. And that -- but it -- but, again, that's
13 still evidence. That's still something that you can consider.

14 MR. GOODWIN: Makes you feel better, the -- the
15 laptop's moving.

16 MR. GILL: Oh, it is? Okay.

17 THE COURT: Do you want to hook it --

18 MR. GILL: I think it's another disconnection.
19 I'll -- I'll double-check.

20 THE COURT: Okay.

21 MR. GOODWIN: Yeah, 'cause his -- his laptop is
22 moving.

23 THE COURT: Okay.

24 MR. GILL: It is. Court's indulgence.

1 THE COURT: Yeah.

2 MR. GILL: I'll just check it.

3 THE COURT: That's all right.

4 MR. GILL: It's trying, Your Honor. I'm sorry.

5 THE COURT: Okay. Yeah. No, just --

6 MR. GILL: Sorry, Judge. Court's indulgence again.

7 [DISCUSSION OFF THE RECORD]

8 MR. GILL: I'll just -- I'll just speak from the --

9 from the laptop.

10 MR. GOODWIN: Do you want me to hold it so they can

11 see it?

12 MR. GILL: No, I'll put it over here. Sorry about

13 that, ladies and gentlemen.

14 THE COURT: No, that's okay. Mr. Gill, quick

15 question for you.

16 MR. GILL: Yes.

17 THE COURT: Does it -- if you display it up there

18 and -- and hand click it on the computer, does it work?

19 MR. GILL: It does not, Judge. The -- you know, can

20 we go off record?

21 THE COURT: Yeah.

22 [RECESS AT 1:34 P.M.; PROCEEDINGS RESUMED AT

23 1:34 P.M.]

24 MR. GILL: Sorry about that, ladies and gentlemen.

1 I love technology.

2 So we talked about what is evidence before everything
3 went out on me. What is not evidence? And what isn't
4 evidence is my argument here. Ms. Kollins's argument earlier,
5 Ms. Luzaich will get up and argue, that -- that is not
6 evidence for you to consider. What you need to consider is
7 what you've heard from this witness stand from the last
8 two-plus weeks.

9 And instruction 41, "The Defendant is presumed innocent
10 until the contrary is proved." This presumption places upon
11 the State the burden of proving beyond a reasonable doubt
12 every element of the crime charged and that Defendant is the
13 person who committed the crime.

14 As a defense attorney, this is probably the most
15 important jury instruction. They're all important. But this
16 one here -- and it goes on beyond what I've read. But the
17 judge mentioned at the beginning of the trial that Mr. Porter
18 and myself could sit there, not say a word for the entire two
19 and a half, two weeks of the trial. Obviously, I didn't do
20 that. I don't know if I'd ever do that. But it -- it puts
21 upon the State the burden of proving every element of every
22 offense beyond a reasonable doubt.

23 First want to talk about Chicago. And the State
24 dismissed the Chicago testimony from Mr. Porter as unbelievable

1 and unbelievable and he's this savvy 17-year-old kid. He's a
2 17-year-old kid at the time. He goes to Chicago. You heard
3 it from him. He's threatened to be beat with a phonebook and
4 taken to the docks. And all of this happens before tape
5 recorders are turned on.

6 And so the State made the point, as well, that there's no
7 corroboration of that. There's no evidence of that. Well,
8 why would there be evidence of a Chicago -- or any police
9 officer getting on the stand and saying, "Hey, yeah. I told
10 the kid I'd kill him if he didn't say what I wanted him to
11 say." Or, "Hey, I told him I'd take him down to the docks."
12 How -- how probable or credible is that? That -- that there'd
13 be evidence of this, other than the person who confessed, who
14 allegedly confessed and experience the pressures that he
15 experienced prior to giving that testimony to, not only the
16 Chicago detectives, but to the Vegas detectives when they
17 arrived.

18 Teresa Tyler is kind of the first set of counts. Those
19 are counts 1 through 7. Those occurred February 1st of 2000.
20 That's the burglary with deadly weapon, first degree kidnapping
21 with deadly weapon, and sex assault with a deadly weapon.

22 Now, as far as the sexual assault counts with
23 Teresa Tyler go, what did you hear on the stand? And I know
24 Ms. Kollins had kind of explained to you that, well, we're

1 gonna get this transcription in. We're gonna get this
2 testimony in. But what did we hear on the stand? We heard
3 about one alleged count. A penis to vagina sexual assault.
4 We didn't hear about the other three until you get the
5 transcripts in.

6 But she had an opportunity. She was present and faced
7 all of you. What else did she say? She didn't recall any
8 money being taken. She -- she didn't recall whether or not --
9 and, again, this is her on the stand and what she said to you
10 when she was present a couple of weeks ago. She recalled only
11 the one sex act.

12 The sex acts for her are counts 3 through 6. And, again,
13 they're four of them.

14 She also said he acted like this person wanted to get
15 with her. And I say "this person," because she didn't
16 identify Mr. Porter. You know, there's talk that they had
17 known each other prior. And then Mr. Porter himself admitted
18 to being at that apartment. She didn't say he had on a mask
19 or any -- any coverings of his face. She just simply did
20 not -- did not identify him whatsoever.

21 What did Mr. Porter say? Again, he talked about Chicago.
22 He talked about the pressures he faced when -- when faced with
23 the Chicago Police Department. As -- and, again, that didn't
24 carry over. And I'm not saying that Barry Jensen or the

1 detectives from Vegas had anything to do with that. Because
2 it's -- it's true, he didn't mention it to Barry Jensen or
3 anybody else. He saw them as law enforcement as well. And
4 rightly so. He's a 17-year-old young man being harassed by --
5 by officers and detectives.

6 What else did Mr. Porter say? He said he'd been to that
7 apartment prior. He's been there. He had sex with Teresa's
8 sister, in the bathroom. And he used the towel. This -- this
9 DNA that they have on the towel came from that encounter. He
10 said he'd never had sex with Teresa.

11 Leona Case is the March 7th of 2000 incident. This --
12 this is covered in counts 8 through 14. There's various
13 counts: Burglary, first degree kidnapping, sex assault, two
14 of those, attempt murder, robbery, and first degree arson.

15 This was read to you. She, in this case, was not
16 present. This was read to you from the preliminary hearing
17 that occurred back in 2000. And she stated that Porter and
18 friend came to her apartment about three to four days prior.
19 And then she describes a very violent encounter.

20 The reason I'm -- I'm highlighting that it was this
21 violent encounter, it's kind of the only -- or at least the
22 most violent. He kicks in the -- she says this person kicked
23 in the door, slapped her, knocked her to the ground, took the
24 phone. And, again, nothing covering the face on this one.

1 He began strangling her. I think this one was the one
2 where "why you dis me, bitch?" Just -- just violence from the
3 beginning. Very different from some of the others that we'll
4 get to.

5 And what did Mr. Porter say about the Leona Case
6 apartment -- allegations? He's never been to the apartment.
7 Said he didn't kick in the door. He didn't ever attack her.
8 Never had sex with her. Never tied her up with a cord. Never
9 locked her in the bathroom and never lit the apartment on
10 fire.

11 Ramona Leva's March 25th of 2000. This covers four
12 counts. And I want to -- kind of the -- it's the burglary
13 with deadly weapon, first degree kidnapping, sex assault,
14 robbery, all with deadly weapon. And she -- she appeared.
15 She had a Spanish interpreter, as she speaks Spanish.

16 She testified. Also did not identify Mr. Porter. She
17 said he grabbed a knife from the kitchen. Perpetrator was not
18 loud, but he sounded anxious and desperate. And she described
19 him as tall and slender. And again, this is -- this anxious,
20 desperate, this is -- this is about three weeks from
21 March 7th. Not quite three weeks, 18 days from March 7th.
22 And suddenly we have a perpetrator who is anxious and
23 desperate and not nearly as violent.

24 And instruction 12 specifically speaks to the kidnapping.

1 And instruction 12, I'll read it, but you'll obviously have it
2 there with you when you go back. "In order for you to find
3 the Defendant guilty of first degree kidnapping, in addition to
4 to the associated offenses of robbery and/or sexual assault,
5 you must also find beyond a reasonable doubt that either,"
6 and the "either" means you only need to find one of these,
7 "that any movement of the victim was not incidental to the
8 robbery and/or sexual assault. This" -- it has to be
9 separate and apart from the rob -- to accomplish the
10 robbery and/or the sexual assault.

11 Simply, in this case, the State's not gonna be able to
12 show this one or any of the other four.

13 "That any incidental movement of the victim substantially
14 increased the risk of harm to the victim over and above that
15 necessarily present in the robbery and/or sexual assault or
16 that any incidental movement of the victim substantially
17 exceeded that required to complete the robbery and/or sexual
18 assault." And I have an "or" in there. "Four, the victim was
19 physically restrained and such restraints substantially
20 increased the risk of harm to the victim. The movement or
21 restraint had an independent purpose or significance."

22 You guys have to ask yourself, this perpetrator, did
23 anything that happened, according to Ms. Leva, was it -- was
24 it -- or was it not incidental to the robbery or sexual

1 assault? Did it substantially increase the risk of harm? Did
2 it substantially exceed -- the movement, did it substantially
3 exceed that required to complete the robbery or sexual
4 assault? Did the -- if she was restrained, did that increase
5 the risk of harm to her? And then, did the movement or
6 restraint have an independent purpose or significance?

7 I submit to you that the State has not met their burden
8 beyond a reasonable doubt on the first degree kidnapping
9 count as it pertains to Ramona Leva.

10 What does Mr. Porter say about Ramona Leva? Never kicked
11 in the door. He never brandished a knife. Never had sex with
12 her and did not take her car or her keys. Her car keys or her
13 car.

14 Marlene Livingston is April 4th of 2000. That deals with
15 counts 19 through 21. And that's burglary with a deadly
16 weapon and then sexual assault with a weapon, victim over 65,
17 as well as robbery with weapon, victim over 65.

18 Again, we got this testimony from a preliminary hearing
19 transcript in 2000. She was not present. This is the -- the
20 lady who came home after cashing her check and playing slots
21 at the Boulder Station. This time the perpetrator had a knife
22 when he entered.

23 And in some of these you'll see that the knife -- the
24 State wanted to build, from the very beginning, from their

1 opening, they wanted to build all these similarities. And if
2 you recall, Detective Love, she made the comment that one of
3 these similarities -- and I think it was on the -- on the big
4 screen for ya -- it was entry. Forced or not forced.

5 Well, in all of these crimes there -- there needs to be
6 some sort of entry. I mean, you see it in the burglary, for
7 instance, where there's got to be an entry into a dwelling.
8 But to say that a forced entry or an unforced entry is a
9 similarity, I -- it -- I asked her a question about that and I
10 didn't quite get any clarification.

11 So I'll submit to you that there are differences here in
12 this MO and in this -- this whole idea that this task force
13 was created because of these similarities. Keep on eye on the
14 facts here as it pertains to each one of these.

15 And on Livingston there was no tying her up. And, again,
16 she did not identify Mr. Porter. She was on the stand at a
17 preliminary hearing within the same calendar year. It was
18 either October, November of 2000. The -- the preliminary
19 hearing took place over quite a few days and quite a few
20 weeks. But she -- she did not identify him.

21 And Mr. Porter, himself, stated he's never been to that
22 apartment. He's never had any sexual contact with her. Her
23 out -- her allegation was that there was fellatio. Never took
24 money from her and never took her car.

1 MS. LUZAICH: Well, objection.

2 MR. GILL: That was his statement.

3 MS. LUZAICH: Oh, I -- I apologize.

4 THE COURT: Yeah. No, that's okay. Overruled.

5 MR. GILL: Marlene Livingston -- I'm sorry. Francis
6 and Clarence Rumbaugh are next, April 12th of 2000. This
7 deals with a few counts of burglary with a deadly weapon and
8 then robbery with a deadly weapon, victim over 65. There's
9 two of those.

10 Let's talk about Francis's testimony first. Again, read
11 to you from a preliminary hearing in 2000. This time the
12 screen door's cut. And the window -- windows were open. That
13 front door was open, but the screen was closed. They're
14 watching TV. It was around 11:00 or 12:00 -- 11:00 p.m.,
15 12:00 a.m.

16 And, again, the State's trying to fit their narrative --
17 and the detectives did this with their investigation, that
18 this has to be the same person because of all of these
19 similarities.

20 But this one, we've got -- we've got the perpetrator
21 coming, essentially, with window -- windows open, doors open,
22 TV on, and he goes in anyway, grabs a knife from the kitchen.
23 This time, again, didn't take a knife with him. The
24 perpetrator grabbed a knife from the kitchen. And Francis

1 estimated his age at 30 to 35.

2 The handkerchief that the perpetrator had on was held to
3 his mouth. It wasn't tied up. It wasn't a stocking. And
4 perpetrator asking for a gun. Again, this is back on
5 April 12th of 2000. She also was unable and did not identify
6 Mr. Porter.

7 Clarence was read in as well. It was a little bit
8 shorter testimony, but it was read from a preliminary hearing
9 in 2000. He -- he did notice that the hand appeared through
10 the screen door to open. So there's not this bursting in or
11 this kicking of the door, whatever allegations are on the
12 other ones. There's simply a wide -- an open apartment, at
13 night, TV on, things going on, windows open, and this cutting
14 of the screen.

15 He described the perpetrator's age as late teens, early
16 20s and a red bandana. But, again, Clarence Rumbaugh did not
17 identify Mr. Porter.

18 Mr. Porter took the stand and I asked him about Mr. and
19 Mrs. Rumbaugh. He said he's never been to that apartment,
20 never grabbed a knife while inside that apartment, and never
21 took money from them. Never threw either of them to the
22 ground.

23 There was -- there was talk about Francis being thrown to
24 the ground and then kind of Clarence -- there was a bit of a

1 struggle later with Clarence. And then he never made any
2 sexual comments to them.

3 Leroy Fowler was June 6th of 2000. This was only
4 count 25. And it's the burglary with a deadly weapon. His
5 testimony -- pay attention here to Leroy Fowler. The State
6 just hasn't met their burden when it comes to this one.

7 He did -- he did appear in person. Said he was in bed,
8 heard a loud noise. You remember the -- kind of the pictures
9 of the apartment. The perpetrator was inside the apartment at
10 this point. So, again, we have a loud noise on entry. I
11 would call that a forced entry, not an unforced entry, as
12 Detective Love kind of described.

13 The perpetrator was standing in the apartment, had a big
14 knife, and he said maybe like a machete. He kept describing
15 it as very big and he would make motions with his hand that
16 the blade got bigger as it went up. So he described it on the
17 stand as "like a machete." And he chased the perpetrator out
18 of there.

19 It's a high crime area. And as you're -- I don't know
20 which detective it was, but that -- that map that the State
21 kept showing, that Downtown Area Command, if you're not
22 familiar, that area has -- has high crime. But to -- to just
23 say that Mr. Porter did this because it's somewhat similar and
24 the timing matches up. And that's it. He didn't identify

1 Mr. Porter. He simply said, "There was a man that came into
2 my apartment and I chased him out."

3 Obviously, there's some details in there like the knife
4 and the chair. He -- he used this chair. But has the State
5 proven beyond a reasonable doubt that those facts that
6 Justin Porter committed any crimes against Leroy Fowler? I'll
7 submit that they have not.

8 Joni Hall is June 7th of 2000. That's counts 26 through
9 29. Again, a burglary count with a deadly weapon, first
10 degree kidnapping with deadly weapon, sexual assault with
11 deadly weapon, and robbery with a deadly weapon.

12 Her testimony was, again, read from the stand. She said
13 that the perpetrator spent 45 minutes in her apartment. And
14 you guys have her transcript -- actually, they won't have
15 those transcripts, will they, Judge, those that are read in?

16 THE COURT: No. No, not the ones that were read in.

17 MR. GILL: So go back to your notes. She -- she
18 said she spent 45 minutes in her apartment and that the
19 roommate and -- and at least her child and other children were
20 present.

21 And I bring that up to kind of contrast this situation
22 with the others. But there's not this -- she did hear a noise
23 and -- and -- but she describes him being in her room. And
24 then there's this description where, you know, they -- they go

1 out of the room and they're kind of back and forth. There are
2 multiple people in this apartment. Small, two-bedroom
3 apartment with, I -- I believe, two children of her roommate.
4 But at least her child in her bedroom with her. And that's
5 Joni's child with her -- in the bedroom with her.

6 And the perpetrator had a knife when he entered the
7 bedroom. And then there's all these items taken. A CD
8 player, TV, and used the stroller to get out. It just doesn't
9 fit the way that the -- the detectives from the State want it
10 to fit.

11 Mr. Porter also testified he's never been to that
12 apartment. Didn't kick in her door and did not have sex with
13 Joni Hall.

14 The Zazueta and -- Laura Zazueta and Guadalupe Lopez,
15 they testified fairly early in the trial. Ms. Zazuetaa did
16 use a Spanish -- actually, I don't know if she used a Spanish
17 interpreter or not. But she did describe kind of this
18 discussion that she was having with the perpetrator when the
19 perpetrator entered because of the language barrier.

20 I want you to focus on count 33, which is the attempt
21 robbery with a deadly weapon. And that's -- that's
22 specifically to Beatriz Zazueta, who we did not hear from.
23 The -- the language of count 33 is a little bit -- I don't
24 know, convoluted. But it describes all three as property

1 being taken from Beatriz, Laura, as well as Guadalupe. And
2 then it states "from the person of Beatriz Zazueta."

3 The State -- there were kids in the apartment as well,
4 like Ms. Kollins had mentioned and the evidence showed. But
5 there was no -- there's no charge for the kids either. So to
6 argue that, well, we have testimony from Laura; we have
7 testimony from Guadalupe; we don't have testimony from
8 Beatriz.

9 There was nothing taken from Beatriz. There's no
10 evidence, no testimony, nothing that would support count 33.
11 So keep an eye on that specifically. As well as count 34.

12 Ms. Kollins went into this on her closing argument. This
13 is the attempt murder with a deadly weapon. Her statement was
14 that Mr. Porter aimed and fired. And if that's true, ladies
15 and gentlemen, Mr. Porter is the worst shot you've ever seen.
16 You got one grazing the leg, one in the bed, one in the wall.

17 If -- if it's an aim and shoot situation, that's --
18 that's like you see on country westerns or any -- any movie
19 where the bad guy's just -- Star Wars. The bad guys just
20 can't hit a thing. That's what the State wants you to believe
21 is that he was still aiming. He was still trying to take the
22 life of Guadalupe Lopez. He didn't bring it for any other
23 purpose but to shoot Guadalupe Lopez and he just failed.

24 He -- he -- if -- if you believe Mr. Porter was in that

1 apartment, I -- I submit that you cannot believe that he tried
2 to murder Guadalupe Lopez. Just, again, look at the facts.
3 Look at what's been presented. Use your common sense. And if
4 you do that, you cannot find that Justin Porter
5 (indiscernible) count 34, which is the attempt murder with
6 deadly weapon.

7 Laura Zazueta's testimony, she's in bed, she's woken up
8 by the light being turned on. She understood that the
9 perpetrator -- I mean, obviously she testified that there was
10 a gun and the perpetrator asked for money. But, again, she
11 didn't understand a whole lot of this exchange, other than,
12 you know, the seriousness. There's a gun and he's saying the
13 word "money" and she understood that. But, again, she did not
14 identify Mr. Porter in court for you.

15 Guadalupe Lopez, this kind of just follows into his
16 room. He's in the room with Beatriz. Laura comes in with the
17 guy behind her. Perpetrator. He -- he also said -- had a gun
18 and asked for money. And he said three to four shots. And
19 I've already spoken about it. But he grabbed at the gun and
20 then the shots went off.

21 Ladies and gentlemen, I submit to you, that's not an
22 attempt murder. That's a robbery. That's whatever else you
23 want to call it. But neither the striking of the head with
24 the butt of the gun nor this shooting that took place was --

1 is an attempt murder.

2 And then, obviously, he stated he chased the perpetrator
3 out and the perpetrator went out the front window. But he
4 also did not identify Mr. Porter.

5 Mr. Porter testified he's never been to that apartment,
6 never had a gun in that apartment, never took a gun to that
7 apartment, didn't shoot the gun three to four times, and he
8 did not jump out the window.

9 Instruction number 44 is the credibility or believability
10 of the witness. The State used this to discredit
11 Justin Porter, but this -- this pertains to all witnesses.
12 It's "the credibility or believability of a witness should be
13 determined by his or her manner upon the stand, his or her
14 relationship to the parties, fears, motives, interests or
15 feelings, opportunity to have observed the matter to which
16 they testified, the reasonableness of their statements and the
17 strength or weakness of their recollections."

18 If you believe that a witness has lied about any material
19 fact in the case, you may disregard the entire testimony of
20 that witness or any portion of their testimony which is not
21 proved by other evidence.

22 And, again, if you believe that a witness has lied about
23 any material fact in the case, you may disregard their entire
24 testimony.

1 Also want to point you to instruction number 48. And
2 this is the common sense instruction. I mentioned it earlier.
3 I'll summarize it because you guys have it in there. Again,
4 it's 48. "A verdict can never been influenced by sympathy,
5 prejudice, or public opinion. Your decision should be the
6 product of sincere judgment and sound discretion in accordance
7 with these rules of law."

8 In this case the investigators came up with a theory,
9 quite early. It was two or three episodes in. And they
10 really tried to make the evidence fit, really tried to hammer
11 home these similarities. But, ladies and gentlemen, they just
12 do not fit. And -- and we would ask you to return a verdict
13 of not guilty.

14 Thank you.

15 THE COURT: Thank you, Mr. Gill.

16 I have rebuttal on behalf of the State, Ms. Luzaich.

17 MS. LUZAICH: Thank you.

18 CLOSING ARGUMENT BY THE STATE

19 MS. LUZAICH: I promise that I will not talk for too
20 long. I know you all are tired. I know you have heard all
21 the evidence and arguments and you're ready to get to
22 deliberating. But there are still some things I feel I need
23 to say.

24 And, you know, I never envy the rebuttal spot because you

1 have listened to so much. And I just ask that you not tune me
2 out unless I go more than 20 minutes. If I go 21 minutes, you
3 can point at me and tell me to sit down. Fair?

4 THE COURT: Fair.

5 MS. LUZAICH: But I do want to -- button to get
6 Elmo?

7 THE COURT: The blue one.

8 MS. LUZAICH: I did.

9 THE COURT: Sometimes it takes it, like, pushing it
10 down hard. It also has, like, a little bit of a --

11 MS. LUZAICH: Okay. Now there's a red. And I will
12 even let this go towards my 21 minutes -- or my 20 minutes.
13 Sorry.

14 THE COURT: There we go. No, it just turned blue.
15 (Indiscernible) okay. Just give me a second.

16 MS. LUZAICH: You know, don't you love the expensive
17 equipment that we have that doesn't work at all?

18 MR. GILL: I think turnabout's fair play,
19 Your Honor.

20 MS. LUZAICH: Yes. That is true. Turnabout is fair
21 play.

22 THE COURT: We're just gonna unplug it really quick,
23 Ms. Luzaich, and then we'll re-plug.

24 MS. LUZAICH: No worries. I'll go somewhere else

1 and then I'll come back to that.

2 Remember, everyone, please, the State of Nevada must
3 prove to you beyond a reasonable doubt that the Defendant
4 committed the crimes that he is charged with. So we must
5 prove the who, him. And we must prove the what, you know,
6 burglary, robbery, sexual assault, and all of those things.
7 We do not have to prove the why. It doesn't matter why he did
8 what he did. The fact is that he did it.

9 You know, sometimes good people do bad things. Sometimes
10 people are not good. It doesn't matter where you are on that
11 spectrum of why do you think he did it. It doesn't matter why
12 he did it. It just matters that the State has proven that he
13 did it.

14 And I suggest that the State has proven beyond a
15 reasonable doubt that he has done everything that we have
16 charged. Of course, the burden of proof is beyond a
17 reasonable doubt. And, yes, that is the highest burden of
18 proof in our juris prudence. And I wouldn't have it any other
19 way.

20 You know, this isn't a contract. This isn't a slip and
21 fall. This is very serious. And we should have the highest
22 burden of proof. But please remember, the burden beyond a
23 reasonable doubt is not an insurmountable burden. Every
24 single case in every single court in every single state across

1 the country has the same burden of proof in criminal actions.
2 Beyond a reasonable doubt. Whether it is a petty larceny
3 because a toothbrush was stolen or a sexual assault where
4 somebody was assaulted at knifepoint, beaten, strangled, and
5 their home burnt down, it is the same burden of proof. And
6 what the burden of proof is, of course, is beyond a reasonable
7 doubt.

8 Are we getting there?

9 THE MARSHAL: Yeah.

10 MS. LUZAICH: Okay.

11 And turn -- turn with me, if you would, to instruction
12 number 41. And instruction number 41 defines for you beyond a
13 reasonable doubt. I'm not gonna try to quantify it or
14 redefine it or anything like that. But I just want to point
15 out it says, "A reasonable doubt is one based on reason. It
16 is not mere possible doubt."

17 So you know how you see all those things on TV "beyond a
18 shadow of a doubt." You know, "beyond all imaginary doubt."
19 That's not what beyond a reasonable doubt is.

20 The instruction goes on to say, "Doubt to be reasonable
21 must be actual, not mere possibility or speculation."

22 So let's talk again about the instruction on credibility.
23 Ms. Kollins talked about it and Mr. Gill talked about it.
24 Instruction number 48, if you would turn with me there -- oop.

1 No. I lied. Instruction number -- see, this is why it's nice
2 when you have the thing to put up there. Instruction number
3 44 is the instruction that talks about credibility. And the
4 second paragraph says, "If you believe that a witness has lied
5 about any material fact in the case," and remember a witness
6 is anybody who gets up here, raises their right hand, and
7 swears to tell the truth and then tells you something. Well,
8 he might be the Defendant. He is also a witness.

9 So "any witness that has lied about any material fact in
10 the case, you may disregard the entire testimony of that
11 witness or any portion of his or her testimony which is not
12 proven by other evidence."

13 So let's talk for a second about this. Of the Defendant
14 told you that he never had sex with Teresa Tyler, never had
15 sex with her. Well, we know that's not true because his DNA
16 was not only on the towel, but it was on her vaginal swabs.
17 That is a swab that was taken when the sexual assault nurse
18 examiner swabbed the inside of her vagina. How else is semen
19 gonna get there? Well, it gets there when a penis is inserted
20 in and semen comes out. It's not magic sperm. It -- it
21 isn't. The only way that it gets there is through having sex.

22 Now, he says that, oh, wait. You know, I was at their
23 apartment all the time. And when I pointed out that Teresa
24 lived alone, he's like, "Well, her sister stayed there. And

1 she hung out there. And me and all my friends, we were there
2 all the time from, you know, before I turned 17. You know, I
3 was 16 in the summer until, you know, later." He would never
4 say when.

5 Allegedly, you know, they had sex in the bathroom, him
6 and the sister. But come on. You think they ever wash the
7 towels in there? Even if it were true that he had sex with
8 her sister, and I suggest that it's not, even if it were, his
9 semen wouldn't be on the towel because it would have been
10 washed by then.

11 But above and beyond that, his semen was on Teresa's
12 vaginal swabs. He said he never had sex with her. That is
13 just not credible. So -- which brings you back to if you
14 believe a witness has lied about any material fact. And
15 that's a really material fact because he's charged with
16 sexually assaulting her. You can disregard everything. So,
17 technically, just because of that alone, you can disregard
18 every word that came out of his mouth when he was sitting
19 there.

20 But it goes on. He said that he never had sex with
21 Ramona Leva. Well, if he never had sex with Ramona Leva, how
22 did his semen get on -- or in her vagina and on her vaginal
23 swabs? And when I asked him that, he said, "Well, I don't
24 know. I was trying to figure that out."

1 You know how his semen got on her vaginal swab? Because
2 he put his penis in her vagina at knifepoint and his semen got
3 on her vaginal swabs. Because the glove that he used to cover
4 his penis just didn't work.

5 So based on Teresa and Ramona, you can completely
6 disregard everything he told you from that stand.

7 But there's more -- oh, look. It's blue.

8 THE COURT RECORDER: It's not.

9 MS. LUZAICH: No?

10 THE COURT RECORDER: I'm overriding it for you --
11 yeah, I don't think it's working.

12 MS. LUZAICH: Okay.

13 THE COURT RECORDER: I'm trying to override it, but
14 I don't think it's connecting.

15 MS. LUZAICH: Okay. So -- okay. Well, you remember
16 Ramona. She was 70-something when she -- sorry. She was
17 70-something when she came in here, I don't know, a week ago,
18 two weeks ago. She was emotionally distraught. She told you
19 about everything that happened to her, being dragged from the
20 bathroom naked, at knifepoint, around the house and sexually
21 assaulted.

22 And they want to say that when she sat here and cried and
23 told you about it that because she didn't identify him sitting
24 there, he couldn't have done it. Well, let's think about

1 this. She's 70-something and it was 22 years ago and she was
2 dragged around that apartment and sexually assaulted at
3 knifepoint. What do you think she was focusing on? The knife
4 or his face? So not a surprise that Ramona did not identify
5 the Defendant.

6 Marlene Livingston. She didn't identify the Defendant at
7 preliminary hearing. She was 67 when it happened. She was
8 sexually assaulted at knifepoint. She had a knife pointed at
9 her. He forced his penis into her mouth. Sixty-seven years
10 old. What do you think she was focusing on? His face or the
11 knife?

12 The Rumbaugh's. Broke into their apartment. They didn't
13 ID him at the preliminary hearing. What do you think they
14 were facing -- or -- or focusing on? Francis Rumbaugh was 75
15 and Clarence Rumbaugh was 84 or more. Sorry. I can't do the
16 math. Not a surprise that they didn't identify him at the
17 prelim.

18 But let's go back to why should you not believe anything
19 he told you when he sat there. So above and beyond Teresa and
20 Ramona, he told you that he was never at Marlene Livingston's
21 apartment.

22 Well, if he were never at Marlene Livingston's apartment,
23 how did his fingerprints get on the handrail right outside her
24 apartment? He said he was never there, never once, wasn't

1 there, didn't go in. So how did his fingerprint get on there?
2 How did his fingerprint get on the front windshield of her
3 car?

4 How -- he said he was never at the Rumbaugh's apartment.
5 How did his fingerprints get on the plastic cup, the El Cortez
6 cup in their bedroom? 'Cause, remember, it was still found in
7 their bedroom when the police got there, immediately
8 thereafter.

9 Said he was never at Joni Hall's apartment. How did his
10 fingerprints get on the cup that she gave him Kool-Aid with if
11 he was never at her apartment?

12 So let's think about that for a second, "Well, how did
13 they get there?" He said, "They put them there." The police
14 put them there. Well, let's see, his fingerprints were found
15 in Joni Hill's [sic] apartment June 7th. His fingerprint
16 were -- fingerprints were found in the Rumbaugh's bedroom
17 April 12th.

18 His fingerprints were found on Marlene Livingston's
19 vehicle on March 26th. 'Cause it was the day after -- after
20 the -- no, Ramona Leva was the 25th. So April 12th.
21 April 5th? I'm sorry. I don't know the date off the top of
22 my head. But it was found the day after it was reported
23 'cause that's when the car was found. And his fingerprints
24 were found on Marlene Livingston's handrail in April.

1 They took his fingerprints in August. Remember, you
2 heard that. When they were in Chicago, they took his
3 fingerprints. He told you that, the police took [sic] him
4 that. So what? He had a time machine? They floated back in
5 time and from the August fingerprint lift they put his
6 fingerprints on all these locations in March? April? June?
7 Not possible. Not credible what he had to say.

8 Now, think, also, Ms. Kollins talk about the fact that
9 the Defendant had called Detective Jensen three times. And,
10 you know, there's another way to look at that as well. He
11 calls Detective Jensen on August 11th three times. Why does
12 he keep calling him? She said 'cause he wants to get in front
13 of it. Okay. Maybe he wants to get his story straight.

14 But when he calls Detective Jensen and Detective Jensen
15 actually answers the phone to his desk, he knows detect --
16 Defendant knows that Detective Jensen is in Las Vegas.
17 Remember, his mother had told him that the detectives were at
18 their home searching through stuffs -- searching through their
19 things -- sorry -- because they were looking at him for some
20 crimes.

21 So he tells Detective Jensen, "Hey, hey. I'll be back on
22 the 18th. We can talk on the 18th." Do ya think he was
23 really gonna come back on the 18th now that he knew the police
24 were looking for him? But you know what, the detectives got